UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
***
BRIEFING ON
SAFETY EVALUATIONS, FSAR UPDATES AND
INCORPORATION OF RISK INSIGHTS
***
PUBLIC MEETING
***

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Thursday, June 4, 1998

The Commission met in open session, pursuant to notice, at 2:05 p.m., the Honorable Shirley A. Jackson, Chairman, presiding.

COMMISSIONERS PRESENT:
SHIRLEY A. JACKSON, Chairman of the Commission
GRETA J. DICUS, Member of the Commission
NILS J. DIAZ, Member of the Commission
EDWARD McGAFFIGAN, JR., Member of the Commission

STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:
ANNETTE VIETTI-COOK, Assistant Secretary of the Commission
STEPHEN G. BURNS, Acting General Counsel
RALPH BEEDLE, NEI
HAROLD RAY, NEI
TONY PIETRANGELO, NEI
HUGH THOMPSON, NRC
DAVID MATTHEWS, NRC
SAMUEL COLLINS, NRC
MARK SATORIUS, NRC

P R O C E E D I N G S

[2:08 p.m.]

CHAIRMAN JACKSON: Good afternoon, ladies and gentlemen. The purpose of this meeting is for the Commission to be briefed by the Nuclear Energy Institute and the NRC staff on proposed regulatory guidance related to the implementation of 10 CFR 50.71(e), which addresses updates to final safety analysis reports, and proposed changes to 10 CFR 50.59 entitled Changes, Tests and Experiments.

The Commission recently approved making publicly

available a draft generic letter providing interim guidance on the implementation of 10 CFR 50.71(e). The Commission is considering approving the staff's request to seek public comment on this paper.

Concurrently, the staff is working to address Commission direction on a revision to 10 CFR 50.59 detailed in a staff requirements memorandum resulting from SECY-97-205.

As a result of Commission activity in this area, NEI has requested an opportunity to brief the Commission on its own activities in these areas and to offer ideas and comment for Commission consideration.

Consistent with our stated commitment to involve stakeholders in the regulatory process, the Commission is interested in obtaining and considering the views of NEI on

these matters in an effort to develop the most fully informed decisions possible.

We also look forward to hearing from the staff on the status of their efforts, their opinions on the NEI proposals made here, and the basis for their recent reply to the Commission on 10 CFR 50.59 changes documented in a staff memorandum dated May 27, 1998, which is publicly available.

It is our hope there will be frank, open exchange of the issues before us. Toward that end, I would encourage both NEI and the NRC staff to provide real world examples of the policy issues they discuss, but not just trivial or anecdotal. Too often briefings on these and similar issues become so philosophical and programmatic in nature that connections between policy and field implementation is lost.

Unless any of my colleagues have any opening comments they wish to make, Mr. Beedle or Mr. Ray, whoever is leading the discussion.

MR. BEEDLE: Chairman Jackson, thank you very much. Commissioner Diaz, Commissioner Dicus, Commissioner McGaffigan. We appreciate the opportunity to talk with you today. The matter of 10 CFR 50.59 and the FSAR update rule are both very significant to the industry as well as the Commission staff. A considerable amount of time and energy is devoted to these two topics. As you well know, the 50.59 is probably the most exercised rule in the arsenal of

regulations that we deal with.

This afternoon we have Mr. Harold Ray, the executive vice president, Southern California Edison. He's also chairman of the NEI Regulatory Process Working Group that was formed about a year ago to help us address and focus on the issues of 50.59 and FSAR design basis, and so forth.

We also have Tony Pietrangelo, director of licensing with NEI, here with us today.

We are prepared to discuss the 50.59. We have over the course of the last year had quite a bit of interaction with both the Commissioners and the staff on this topic.

We appreciate the publication of the draft document on FSAR. That has certainly helped us put our comments in perspective today. We think that sets a good tone on how to deal with those issues rather than waiting for a public comment period, at least to get them out and make them available to digest and understand.

With that, I would like to turn to Harold for some comments from his perspective as an executive in the utility to discuss the 50.59 FSAR issues.

Harold.

MR. RAY: Thank you, Ralph.

Chairman Jackson, in the interest of saving time

and in the spirit of the dialogue that you invited, I'm going to skip over three things on my talking points here, namely, the introduction, the history of this sordid affair, and the rationale for the industry initiative.

CHAIRMAN JACKSON: Is that s-o-r-t-e-d or s-o-r-d-i-d?

[Laughter.]

MR. RAY: The latter.

CHAIRMAN JACKSON: Just wanted to be sure.

MR. RAY: And also the rationale for the industry initiative that exists. If any of the Commissioners have questions about that, I'll be glad to comment on them, but I think that we need to cut to the essence of what this is all about as quickly as we can, and I would like to do that.

I don't want to skip over, however, recognizing and, I hope you will accept, commending the Commission for taking up this issue as you have.

I had the opportunity to make some comments at the information conference not so long ago. Commissioner McGaffigan was there, I believe. I tried to underscore the fact that I thought that the Commission vote sheets on SECY-97-205 were very thoughtfully reflecting on the issues that we all faced. Like us, I don't think any of you had the magic solution, and so we are engaged now in a process of trying to find what the best outcome is that we can

cobble together here.

It was very instructive for us to see your deliberations on this. I commented at the time that the Commission secretary doesn't often come in for comment, but I thought a terrific job was done in trying to gather all that together into some summary of where this all stood among the Commissioners.

Having said that, let me now dive into the essence of this. Tony will be making the presentation that we have prepared. We participated in its development and are prepared to answer questions as we go or at the end.

I think the thing that would be most useful for me to comment to you on before Tony speaks is the issue of scope. In the May 27th memo that you referred to that is something which is proposed to be deferred by the staff for attention later. In a letter that Ralph had sent the Commission we suggested that it was timely to take that issue up now. Tony will indicate we are certainly prepared to address it as a second step in the process that we face here in the interest of addressing the other issues that are on the table and ripe for decision.

But I do want to comment on it briefly in terms of the importance of it, and particularly because it connects to the generic letter that you mentioned, the 50.71(e) issue.

Perhaps the easiest way for me to illustrate the point that I want to leave with you is that in talking about 50.71(e) -- and I think I've made this comment to each of you separately -- the role of the SAR in defining what the scope of 50.59 is naturally arises. As you know, we are interested in not having the SAR constitute the scope of 50.59 and believe that it has traditionally not been the

case that it did. But we find ourselves now at a point at which that is in fact the case.

I want to just extract one sentence from the forwarding letter to you of the generic letter that you referred to to illustrate the point. The staff is commenting in the context of the SAR that drawings might be simplified in the SAR of the future. That is one of the changes that might be made. They comment that the effect of this guidance is to reduce the scope of 50.59 changes to some minor components would no longer be required to be evaluated pursuant to 50.59 as they would no longer be "as described in the safety analysis report."

So speaking to a detail on a drawing, you see, the notions persist that by changing what 50.71(e) requires to be in the SAR we are defining or eliminating, adding to, taking away from what is required to be addressed in 50.59, and we just see that as a very significant problem and one that I know you all recognize as well. We do need to be

committed, I think, to address that.

I can tell you as somebody who in past roles has done a lot of writing of what is in a SAR that the intention never was, I think even up to the present day, but surely over most of the time when SARs were being developed, that they serve as the definition of what was subject to the control of 50.59.

They were in fact a convenient place to put information. An excellent place as a matter of fact, rather than have it distributed in many, many locations that were hard to access, particularly when you are facing hearings and other proceedings associated with issuance of a license. We would just put it in the SAR. So a lot of things wound up there.

I don't think that the regulatory guide that defines what needs to be in a SAR was written with that intent either. Yet we find ourselves in that place.

You asked for a real world, not a trivial or anecdotal example. This may be anecdotal. I hope it's not trivial, but it's certainly real world.

I have found myself in the position of spending an enormous amount of time, by my standard anyway, dealing with noncompliance having to do with one of these details that I think the staff is suggesting don't need to be on the P&ID; in the SAR. I was dealing with it because it was a

violation of 50.59.

I won't go into the details unless you want me to, but we had made a change that in our judgment did not require Commission approval, did not involve an unreviewed safety question, and so on, and that became a matter of debate. It had to do with an orifice in a vent line and whether it was removable entirely or whether it was removable by use of a gate valve. And that's all it had to do with.

Anyway, that is a tiny example, yet one that I have personally been involved in, of why we are concerned that the enormous amount of information that is in the SAR can become a source of distraction to the Commission and to us as licensees as we try and go about getting our job done of assuring the safe operation of the plant.

I think that's all I need to say on that point. I just wanted to underscore to you that it is a piece of this overall picture that is equally important to the one of increase in consequences, and so on, that we are also

dealing with here today and that I'm not going to speak to; I'll let Tony do that. But I wanted to underscore to you the importance in our judgment that if we defer giving attention to that to a later time that it not be a too much later time, because this issue is an area of uncertainty and also one where I think improvement in the process can be

made.

CHAIRMAN JACKSON: Thank you.

Commissioner McGaffigan.

COMMISSIONER McGAFFIGAN: I would like to ask a question about the change. At the reg info conference you were very strongly arguing for doing it in the first phase. Is it that you now have seen these documents, particularly the FSAR update guidance, the generic letter?

I know you are going to testify that you think that it doesn't have to go out for formal public comment because you are willing to change 98-03 and to accommodate, and you think that the better use of resources, you're going to testify, is that we use our resources to endorse your guidance.

Has the May 27th meeting with the staff and having this document on the table and having some discussions allayed some concerns and so now you are more comfortable with the two-step process that was in the original Commission SRM?

MR. RAY: Commissioner McGaffigan, I would put it this way. At the margin we are persuaded that we are all committed to take this second step and therefore, since it is the desire, I believe, of the Commission and certainly of the staff to take the first step, that we don't want to appear as objecting to doing that unless it were to be

perceived that somehow that was going to be the only chance we had to address 50.59.

On the other hand, I would say my concerns aren't allayed by this generic letter for the very reason that I said. It seems to underscore the notion that we find troubling, that is, that the SAR, and as far as we know everything in the SAR, is subject to 50.59 requirements.

At the limit, as I think Tony will say, we don't know how to keep that from making the SAR de facto just an enlarged version of the tech specs.

MR. PIETRANGELO: That wasn't the reason. Last week's meeting wasn't the reason why we are more amenable to the two-step process. I think there are really two reasons behind it.

One, I think we got a sense through individual visits with you all that you are committed to do this.

Secondly, we think we have some momentum established by the Commission's actions to take some quick action on some things that we think we are fairly close to. In our view, trying to do scope at the same time would probably prolong that, and we don't know for how long. So we don't want to lose that momentum. We want to keep that going. Again, with a commitment to look at that second step in a very serious way, we are satisfied that that is the right way to go.

MR. RAY: Yes. I think if anything the need is more clear as a result of the generic letter statement that I referred to. It was just an indication of where we have a real concern.

MR. PIETRANGELO: We have to do the 50.71(e) anyway. So that was really not the reason at all.

[Slide.]

MR. PIETRANGELO: First, I want to acknowledge we received COM SECY-98-013 yesterday afternoon and got a chance to look at that a little bit and digest it. We'll try to talk a little bit about some of those views and incorporate that during the presentation.

We do want to do a quick overview on the Commission's SRM on SECY-97-205 and talk about the use of acceptance limits.

One issue we added to this presentation that we hadn't planned to talk about was the design basis interpretation, but it does relate, we think, to some of the issues we are going to discuss this afternoon.

Talk about the enforcement discretion provision in the SRM.

Talk about the draft FSAR update guidance, the draft generic letter, as well as Draft 98-03, and then finish with the scope of 50.59.

[Slide.]

MR. PIETRANGELO: The main bullets in the SRM were to expedite this rulemaking, to clarify the threshold criteria as we mentioned before; the enforcement discretion prior to the rule change, and then to reconcile the two FSAR update guidance documents.

We do want to mention one part of COM SECY-98-13 dealing with accidents of a different type as well as malfunctions of a different type. We stand by the proposal we made in our November 14 letter on the language that is appropriate for that criteria.

There is one part of the COM SECY that we started discussing this morning really and we're not sure we agree with the staff on. I think we have to think about it more, but it's really a higher level concern, and that's whether 50.59 is a procedural standard versus a safety standard. In the sense that it's a standard for determining whether prior Commission review or approval is needed, it is procedural in that sense.

On the other hand, we don't think that something that has no safety significance ought to be sent to the Commission for prior review and approval. So there has to be some safety content to that test. I don't think we are prepared today to agree that it's only a procedural standard, that there should be some safety content to the decision. The Commission's direction in the March SRM on

minimal safety impact, we think we understood where you were coming from, and I don't think it's a dichotomy either in terms of those two questions. We just wanted to make that point today.

MR. RAY: This is the context specifically of the subject of malfunction of equipment of a different type. The statement is broader, seemingly. It says, in view of the use of 50.59 as a procedural standard rather than as a safety standard, the staff would not propose language of minimal safety impact. I want to underscore that was in a specific context. Nevertheless, it raises the notion of 50.59 that we are not sure we understand at this point.

[Slide.]

MR. PIETRANGELO: One of the issues where we think we do disagree with the staff is on the use of acceptance limits in determining the increases in consequences and

reductions in margin of safety threshold lines. We think both of those kinds of limits can be found in NRC safety evaluation reports as well as other NRC guidance, like the standard review plan in Part 100.

We did discuss this issue at length with the staff on April 23. I think the result of that was we pretty much agreed to disagree.

CHAIRMAN JACKSON: Whether you like the criteria or not, do you believe that the staff has established clear

and objective criteria? You may not like the criteria, but do you believe the staff has established such criteria?

MR. PIETRANGELO: We have not seen what minimal in terms of consequences means yet. So it's hard to answer that. Conceptually, if there is a line out there that is based on the regulatory framework, I think we would prefer that to some construction of what minimal means vis-a-vis where you stand versus the line. I think that would be our preference.

CHAIRMAN JACKSON: Commissioner McGaffigan.

COMMISSIONER McGAFFIGAN: Going back to the Chairman's admonition that we talk about this in practical terms, as I understand the NEI Guide 96-07 and Mr. Collins' letter of January of this year on this issue of increases in consequences, what you say in that guide is if you find that the agency said something in accepting it relevant to some other document, a Part 100 limit or another document, saying we are accepting it because it's less than that, then that is the limit. If on the other hand we say we accept it -- you'll have to correct me here -- with reference to those things, then that is the limit.

MR. PIETRANGELO: That's correct. That's what our guidance says.

COMMISSIONER McGAFFIGAN: What is the practical effect of that difference at a nuclear plant?

MR. PIETRANGELO: One would have to come in from the change and the other one wouldn't. What we have been advising licensees to do when they are caught in that dilemma -- there are some that have in the SER -- the SAR value is the only value that you would find. We say, well, you'll have to go in then based on our guidance. The advice we have given is when you get your next SER from the staff, try to get the acceptance limit in the SER so that this is a one-time exercise and you won't have to continue to do that in the future, and then eventually you will have everybody consistent across the industry.

COMMISSIONER McGAFFIGAN: But does the staff understand that that is what you are advising?

Obviously the staff has disagreed with you. If they disagree with you, then one way not to ever provide that flexibility you are looking for is to make sure you don't do what you have just announced you've told your licensees to try to do.

Aside from when you have to come in and declare it a USQ and come in for a license amendment or other approval, what are we talking about specifically in terms of the types of things that we end up having to deal with that you think we shouldn't have to deal with?

MR. PIETRANGELO: I can give you an example, and I think it's a current one. South Texas plant has received a

level 4 violation on a very small increase in consequences,

from 22-3/4 rem to 23-1/4. The acceptance limit is 30 per GDC-19, control room habitability. Because it was more than zero, there is the level 4 violation. Yet in a previous one the limit was clearly established as 30. That would be one where we would think that you shouldn't have to go in for something like that.

COMMISSIONER McGAFFIGAN: In that particular case the minimal could cover it.

MR. PIETRANGELO: Right.

COMMISSIONER McGAFFIGAN: I guess the staff's concern, as I've understood it over the years, is they are concerned about going from 22-3/4 to 29-3/4 and being right up against the limit. That's of concern if we haven't routinely approved 29-3/4 in other places; if we have routinely approved 29-3/4, it may not be.

I'm just trying to understand.

MR. PIETRANGELO: My understanding of the staff's is the closer you get to the limit, the more interested they get. It's very similar to the Reg Guide 1.174 discussion.

CHAIRMAN JACKSON: Do you have a comment on this?

MR. RAY: Yes, I do, on point. I don't want to make it sound like we are talking past each other relative to staff, Commissioner. So let me add to what Tony has said.

I think we need to pay attention to the statement staff makes, which I will read one sentence of here.

However, the degree of margin remaining to the limits might be less as viewed by the staff than the licensee. Therefore if a licensee subsequently made changes that would have the effect of increasing the calculated doses up to the limits, it is possible that the staff conclusion would be that the limits were actually exceeded.

So in this case, the example that Tony just gave, we understand that the staff may have a different view about what the increase was, that it wasn't from 23, or whatever it was, that it was something else. That concern that they have does need to be addressed.

Another example. You may be well aware of the Niagara Mohawk case where there was a blowout panel. The thing was set for 80 pounds. The bolts were supposed to be at 45; they were at 53 or something. The argument is made, well, as long it's far away from the limit, then we don't look at it as carefully as if it's closer to the limit, and therefore when you move from being far away to being closer you need to tell us so that then we can weigh in and see if there is something we want to do in terms of our own perception. We understand that.

That's why I made the point I did in passing that, okay, given that, though, if you take that philosophy to the

limit, you basically convert everything that has been said into a tech spec in the sense that we are concerned about it.

So we need to be able to sort through and separate the things that are not in the tech specs but which have this character to them that there is some margin that needs to be maintained against the acceptance limit or the staff wants to re-review the analysis. We need know where those are. We don't know which they are. That's the dilemma. I wanted to add that.

CHAIRMAN JACKSON: Let me ask you a different question. If a SER found a facility to be well below the Part 100 guidelines, would you conclude that Part 100 is the

acceptance limit?

MR. RAY: It's the acceptance limit. I would not conclude that you could approach the acceptance limit without prior NRC approval.

CHAIRMAN JACKSON: But you know there is a footnote to Part 100 that specifically states that Part 100 guidelines are not acceptance limits. So are you of a view that rulemaking would be required to have Part 100 guidelines as acceptance limits?

MR. PIETRANGELO: We are very familiar with the footnote, and we are trying to get a context for that. I think how we read that is you don't have it acceptable to

release radiation to the environment. That's not what that means, and I think that's what the footnote was directed at. If you go back through the standard review plan and all the sections where you do have accident analyses and look at the criteria, that is what is referred to in all the cases we looked at.

CHAIRMAN JACKSON: This relates actually to the earlier comments by Mr. Ray. Do you agree, though, that the SERs are not part of the scope of 50.59?

MR. PIETRANGELO: Right now they are not mentioned in 50.59. We have some additional proposal language that would get those in play, and I'm going to speak to that in a second.

CHAIRMAN JACKSON: Right. Because how are we having a discussion about acceptance limits that are in SERs for purposes of determining USQs under 50.59 if the SERs are not part of the scope of it? That has always been my problem with this.

MR. RAY: I think your comments acknowledge the industry has accepted that SERs are in fact things that must be included within the scope of 50.59 notwithstanding the fact that they are not mentioned.

I think the next slide that Tony is going to go to lends itself to talking about Commissioner McGaffigan's question, which is, what is the practical application of

this? What does it matter?

[Slide.]

COMMISSIONER McGAFFIGAN: May I ask one more on this?

CHAIRMAN JACKSON: Sure.

COMMISSIONER McGAFFIGAN: By all means go to the slide.

Did I just detect in 96-07, what Mr. Ray just said about as you get close to the acceptance limit, you understand that the staff wants to take a look? Maybe not if it's going from 22-3/4 to 23-1/4, but as it gets close to 30. That isn't in 96-07, that concept, at the current time. So that is something that, trying to work out something, you'd be willing to talk about.

The other way to get at it is this question of minimal. What is minimal? Maybe minimal is something that isn't one percent or something, or 10 percent, or whatever, but maybe it's something that depends on, relative to the acceptance limit, am I making more than an X percent approach to the acceptance limit? Is that what you are going to be suggesting?

MR. RAY: Let me clarify one thing and then answer the question.

I didn't say it quite the way I think you repeated

it back to me, Commissioner. I said if the Commission said

that this is acceptable because it is far away from the acceptance limit, which I think was what the Chairman suggested, and you now make it close to the acceptance limit, does that make a difference? And I said yes, I believe it did, because the Commission said this was okay because it was far away from the acceptance limit. Which is a little different than saying if you are getting close to the acceptance limit, that's a problem in and of itself.

MR. PIETRANGELO: And I'm not sure how many SERs say that.

CHAIRMAN JACKSON: The real point is, does minimal have a definition, or should it, in and of itself, or can it only be defined relative to the distance from some boundary? That's really what it boils down to. So I am interested in understanding what you think the boundaries are and what in fact your recommendation is.

Yes, Mr. Ray.

MR. RAY: Can I ask a clarifying question? Is minimal in that context -- I guess I thought about it differently, which is minimal means minimal change.

CHAIRMAN JACKSON: I didn't make a statement. I asked a question.

MR. RAY: Okay. Therefore, I don't want to leave it as if that's agreed. I'm understanding minimal to mean minimal change, not minimal away from some limit.

MR. PIETRANGELO: Your reading of 96-07 was correct.

[Slide.]

MR. RAY: To say it another way, I believe minimal applies to the boundaries of the white square.

CHAIRMAN JACKSON: Let's go back to Part 100 guidelines.

MR. PIETRANGELO: Part 100 is the darker gray square where the tech spec limits are.

MR. RAY: You bet. And minimal we don't apply to that boundary at all.

MR. PIETRANGELO: Right. This is similar to what we said at the reg info conference. If you accept how we view it here, we don't believe there should be any reduction in the margin of safety; we don't think you apply minimal to that line. If the consequence acceptance limits are used, i.e., Part 100 or whatever else was in the SER, then you don't use minimal for that either.

I think when we viewed the Commission's SRM you were talking minimal up from the white box on the inside.

MR. RAY: Yes, that we can make the white box a little bigger, and that would be okay. We're not suggesting we can go a little bit over the line when it comes to the limits that have been set by the Commission in the tech specs, in the regulations, or any other place.

MR. PIETRANGELO: I guess our central point here is and what makes this really germane to not only the design basis discussion but the consequence, margin of safety, and even probability discussion to some extent, is that the FSAR was submitted when a plant went to get its operating license. It had all this information in it, including the technical specification information lifted out of the FSAR and made part of the operating license.

There is a hierarchy established with that information that was selected to be the technical

specifications. Then you apply 50-90; you need to get prior review and approval before you change any of those values, but the rest of that you shouldn't have to get prior review and approval unless it's a similar change to one of those limits.

I think the effect of how we have been treating 50.59 is to make all the information in the SAR a tech spec limit, and I think that Niagara Mohawk case is another example of where there was basically a degraded condition or nonconforming condition that changed it from the white box that was requiring a one-hour report like it was a tech spec violation. We think it's very problematic if you are going to treat all the FSAR information like technical specifications. That's in no one's interest.

MR. RAY: The sentences that I read earlier apply

to this light gray area surrounding the white area. They are basically saying that when the license is granted, it's based upon that being a big area, and if you do something to make it smaller, you need our prior approval. That's what the staff is saying here.

Although Tony said that's the way it is, I guess I would change that to say that's the way it has become. It certainly wasn't that way for a long time. I've been in this business a long time, as most everybody else in the room has been, and I can say that many things were put in the SAR without any idea that that in fact was going to become the case.

CHAIRMAN JACKSON: How would the boundaries of your diagram fit with the ASME code?

MR. RAY: The ASME code is in the area lying outside, in the most dark band. In other words, the ASME code, having sat on the committee there too, I can say addresses where the limits should be on stress on other things given that construction is imperfect, that there are defects in the material, that the loadings are going to be uncertain, and many other things. You put in the ASME code a margin against the true breaking strength of the material, let's say, which then allows you to define the next box in, which are the limits of the ASME as they are adopted by the Commission; the Commission established for design. Nobody

can go beyond those.

MR. PIETRANGELO: In fact the source documents for much of the design basis information are from the codes.

MR. RAY: Then we back down further to say, okay, here's how we are going to operate the plant, and for those really important things, we are going to put them in tech specs and make sure that you guys focus on them and don't go outside that box without getting our approval. What we are now doing is talking about other things that aren't in the tech specs but are in the SAR, and thus to the issue of scope that I addressed to you in the beginning.

CHAIRMAN JACKSON: Suppose we had a hypothetical plant that had a containment with an internal design pressure of 50 psia and ultimate failure pressure of 100 psia, but the accident analysis says that you can have 46 psia peak containment pressure. Where do those fit on this box?

MR. PIETRANGELO: The 50 would be the acceptance limit.

MR. RAY: It would be from the inside out, 46, 50 and 80, I think you said.

MR. PIETRANGELO: Right, 46, 50 and 100 from the inside out.

CHAIRMAN JACKSON: So where is 46?

MR. PIETRANGELO: Forty-six is on the perimeter of

the white box.

MR. BEEDLE: If I can take that a step further, you picked one that is very likely to be one that you can't go to 46-1/2 or 47 without getting the Commission's approval even though it's not in the tech specs. Our dilemma is, how do we pick those out from the zillions of other pieces of information in the SAR if we are going to use the SAR?

That's the problem with the SAR. If we change to some other measure or some other definition of what we are concerned about, then it's easy to capture the 46 in that, and say, I don't want you to change the 46; I don't want to make it 46-1/2 or anything else without my prior approval.

As long as we continue to use the SAR, we are in the dilemma that there is so much in there that doesn't have that importance that I think we have a hopeless task.

CHAIRMAN JACKSON: Yes.

COMMISSIONER DIAZ: I was just going to say that I hate to use the word right now, but it appears to me that you are trying to risk rank the design and operating envelope.

MR. RAY: I wouldn't hate to use that word, Commissioner Diaz, but I thought that this was a binary risk ranking here we are talking about.

CHAIRMAN JACKSON: It's a tier.

MR. RAY: One of my committee's responsibilities

is to support from the industry side risk information, risk ranking, application of risk, and I certainly want to endorse the idea.

CHAIRMAN JACKSON: Then you should have endorsed option 5 of the staff's paper.

MR. RAY: You have me at a disadvantage.

[Laughter.]

MR. PIETRANGELO: Can we go to the next slide, please.

[Slide.]

CHAIRMAN JACKSON: We're not through yet.

COMMISSIONER McGAFFIGAN: Following up on that example, if those numbers had been 20, 50 and 100, what you are saying is you understand why we would be concerned if we are already at 46, the operating envelope, but if it's at 20, then going to 21 or 22 or even 25 -- let me just ask you. If the inside envelope is 20, the next one is 50, the next one is 100, where should we get concerned?

MR. RAY: You illustrate the problem we have, which is that there hasn't been, to use Commissioner Diaz' notion, a categorization of these things in terms of risk ranking.

I can imagine a situation in which 20 would be even something that the Commission wouldn't want you to exceed without their prior approval for the reason, as the

staff argues here, they just didn't review the analysis very thoroughly because it was so far away. Well, then you have to make that clear, because we can't guess where that is true without, as I said, converting everything into a tech spec type limit.

We have got to somehow solve this problem. I understand that, and I don't have any silver bullets.

CHAIRMAN JACKSON: I want you to keep in mind your risk categorization.

MR. PIETRANGELO: We did mention that we would try to say how we would incorporate risk insights during this particular briefing. I think in this case, besides the example Harold gave you, we think there is an opportunity, and right now it's on very much an evolutionary path, to change the perimeter of the gray box through risk informed tech specs and applying PRA even to the design basis accident analyses. NEI has a pilot project to do that, and I think there is one pilot that is looking at coincident LOCA and loop and all that kind of thing from a risk perspective.

CHAIRMAN JACKSON: Commissioner Diaz.

COMMISSIONER DIAZ: Even if we back away from risk, and I'm going to go back to Commissioner McGaffigan's 20, there is an engineering judgment that is applicable to these cases. Engineering judgment tells us that there is no

difference in calculation accuracy or in measurement of response of equipment between 20 and 21, and that's minimal.

MR. RAY: Commissioner Diaz, I certainly agree with you. I don't want to prolong this part of the discussion beyond what you all wish to do, but I do want to say that we are in an era that is different than the past, for whatever reason. There is no point in debating why we are here, but we are here. One of the things I was going to say in the history discussion was, I think we have learned, all of us, that we have got to deal with the literal application of these words, like it or not, and we're here to try and figure out how to do that.

I would just suggest to you that the existence of the tech specs was in fact a binary risk ranking. Stuff went in there or it didn't go in there. Now we are into a different world. I won't opine on that further.

CHAIRMAN JACKSON: It was a binary ranking. We could argue all afternoon about to what extent it is risk ranked. One could argue that within the FSAR there is a risk ranking. Then if you were looking at relative risk, you might have things in the FSAR and things in the tech specs that cross each other one way or the other.

My basic point of view is that it's really a new paradigm, but we will continue within the context of trying to tinker at the edges, which is really where we are, in my

opinion.

MR. RAY: Regrettably.

MR. PIETRANGELO: Could we go to the next slide, please? We're running way behind here.

[Slide.]

CHAIRMAN JACKSON: No, you're not behind, because we asked the questions.

MR. PIETRANGELO: Design basis interpretation. There is some history to this one.

CHAIRMAN JACKSON: There is history to all of this.

[Laughter.]

MR. PIETRANGELO: First of all, it is an important issue because it's critical to both operability and reportability determinations. We put together guidance in the late 1980s or early 1990s. We revised it last year. It has been with the staff since November.

Interpretation that was provided to a licensee on

a particular issue gave a new interpretation of what the 50.2 definition of design basis entails, and that is any information you used to determine the acceptability of the design. It's very much what we were just talking about.

CHAIRMAN JACKSON: Have you seen guidance documents that say that?

MR. PIETRANGELO: It's in a letter.

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CHAIRMAN JACKSON: A letter from?

MR. PIETRANGELO: The agency to a licensee.

MR. RAY: Yes. As a matter of fact, it's September 1997.

MR. PIETRANGELO: September 12, 1997.

MR. RAY: The way it's expressed, it says the guidance in NUREG-1022 and this letter in September --

MR. PIETRANGELO: There is a little bit more history. When we saw that interpretation, we immediately wrote to the agency saying, wait a minute, there is a Commission policy statement from 1992; there are other regulatory guidance documents that we don't think are consistent with this interpretation of what design basis information entails.

There was more interaction with the licensee in a subsequent letter that came out this past March which mentions the consistency of this September 12th letter with the reportability guidance in NUREG-1022. I think that's part of the problem. We don't think those two things are consistent at all.

MR. RAY: It is precisely what I was alluding to in the scope context. Again, it is one sentence. Let me read it:

It would be inappropriate for the NRC staff at this juncture to provide any new or different guidance

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regarding the definition of design bases provided in 10 CFR 50.2 beyond that already provided in NUREG-1022, revision 2, and the NRC's letter of September 12, 1997.

The problem is those two things are not consistent.

MR. PIETRANGELO: And if there was a new interpretation, it was made in September.

CHAIRMAN JACKSON: This is one example and it's something obviously, if in fact what you say is true is true, that we need to follow up on. Has this been a broad-based change that you have seen in guidance documents or numerous communications between the NRC and licensees?

MR. PIETRANGELO: There is no NRC guidance on this. The reportability guidance which was just issued, I believe in February of this year, was the NUREG-1022, revision 1. We know the staff asked some activities to look at 50.72 and 50.73 reporting. Our point is that that is kind of trying to get at the symptom versus the root cause of what is the appropriate interpretation of the --

MR. RAY: You asked a question I don't think we have a good answer for: how prevalent is this? I can't answer that.

CHAIRMAN JACKSON: That is what I mean. There are two questions. One is, is it your understanding that the definition of design basis has remained static since the

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days of the Atomic Energy Commission, or do you feel there has been some evolution as the industry and we have responded to events such as TMI, Browns Ferry, et cetera? That is one question.

The second is whether there is either specific change in guidance or there is some widespread de facto change in guidance that exists through correspondence.

MR. PIETRANGELO: I think it's the latter, Chairman Jackson.

CHAIRMAN JACKSON: Then you need to bring us that data.

MR. RAY: We understand.

MR. PIETRANGELO: Wait. I got calls this week from a Region IV utility group, and they read everything that comes out of this agency. They're afraid about being in willful noncompliance for not reporting in a similar instance, and this has a destabilizing effect.

CHAIRMAN JACKSON: I'm not here to argue with you, Mr. Pietrangelo. I'm saying to you we are trying to reach some point of where we can and should go on this. If you want to be helpful to NRC, then what you can do is provide us with the information in a constructive way. That's all I'm trying to tell you.

MR. BEEDLE: We will provide the Commission with a letter.

COMMISSIONER McGAFFIGAN: This is an issue that I hadn't been up on, but we have some draft report language that may have been changed since. I assume it reflects this issue.

In order to resolve this design basis uncertainty, NRC needs to reaffirm its interpretation of design basis information consistent with NUMARC 90-12 or the proposed NEI 97-004 revision of NUMARC 90-12.

You said earlier that 97-004 had been submitted to us last year sometime?

MR. PIETRANGELO: Last November.

COMMISSIONER McGAFFIGAN: With a request that we endorse as a guidance document? How is that transmitted to the Commission?

MR. PIETRANGELO: That particular letter, I believe, was sent to Mr. Collins or Mr. Callan. I can't remember which. Previously the NUMARC 90-12 document, we did get a letter of acknowledgement from the director of NRR at that time. Subsequent to that there was a Commission policy statement. I can read you the language that we quoted in the letter from the staff, but we'll provide that later. It basically said, our rationale for the design basis was consistent with the 50.2 definition. Then you see the NUREG-1022 guidance as well.

Our point is we thought we had a fairly good trail

and guidance path, and then this letter came out that seemingly was a new interpretation of that. We tried to bring it to the agency's attention.

MR. RAY: As I think we said at the beginning, this is a bit of a sidetrack from the 50.59 and 50.71(e) subjects that the Chairman indicated we are here to talk about, but it bears on it to some extent. So we bring it to your notice and we'll follow up with a letter.

MR. PIETRANGELO: Let's go to the next slide, please.

[Slide.]

MR. PIETRANGELO: Part of the SRM from March 24 dealt with enforcement discretion for 50.59. We talked about this a little bit. There seemed to be a disagreement following the reg info conference session about what that

direction from the Commission meant with regard to enforcement discretion until the rule was changed to incorporate the minimal standard versus the zero increase standard.

Our perspective was that we don't know how long the rulemaking is going to take. We hope it's a going to be a fairly quick one, but that in the interim, to avoid examples like the South Texas one I went over before, there shouldn't be enforcement action taken when the clear intent of the Commission on minimal with regard to probability

increases or consequences or malfunction with a different cause but the same result occurred out there.

The staff was apparently interpreting that as, well, there still has to be enforcement action but instead of a level 3 it's a level 4, or instead of a level 4 it's a non-cited violation.

We thought this is very similar to two-year discretion on the FSAR that ends this October. We wanted to raise this because we think there are some interpretation differences between how we view what was in the SRM versus the staff.

CHAIRMAN JACKSON: How do you propose that we proceed in a way to ensure consistency if there isn't a definition of minimal?

MR. PIETRANGELO: Our guidance, and we have the initiative that the deadline is the end of this month, is really less than minimal; it's negligible; or where there is a discernible trend.

COMMISSIONER DIAZ: We are not going to get into that.

MR. PIETRANGELO: That's the industry guidance. My point is that our standard is already higher in the sense of less than minimal than what the Commission said in the SRM. So we think there will be consistency in that regard.

COMMISSIONER McGAFFIGAN: The increase in

consequence within acceptance limits. You get into that same issue we just spent 20 minutes on.

MR. PIETRANGELO: That's right, subject to whatever the Commission decides, obviously.

CHAIRMAN JACKSON: Are you basically suggesting a blanket exemption to the industry?

MR. PIETRANGELO: If it has the minimal consistent with the intent of the SRM until the rule is changed.

CHAIRMAN JACKSON: I'm just saying there is an issue having to do with what guidance one is operating off of. Otherwise, what you are saying is that you want a blanket exemption until the rule is done. Is that what you are saying?

MR. RAY: I would be perfectly comfortable with the notion that the staff simply needed to assert that something wasn't minimal and thereby say that they had satisfied the Commission's direction if they felt it was necessary to do so.

Very often we see things identically in terms of their significance. It's the compelling need to go ahead nevertheless that is the problem. So I don't think we need to debate as much as we think we do what is minimal and what is not, because I'm comfortable with any of the NRC managers that I know making a judgment about what is minimal. I just would like them to be able to say, well, yeah, I agree it's

minimal, and therefore enforcement action is not required.

MR. PIETRANGELO: Next slide, please.

[Slide.]

MR. PIETRANGELO: Switching gears now to the draft FSAR update guidance. This is an overview slide for the next few. I want to talk about focus of what the update ought to entail, some of the reconciliation issues that we read in the SECY that transmitted the draft generic letter, talk about enforcement discretion on 50.71(e) also, and give our perspective on that.

Before we move to the next slide we want to thank the Commission for issuing the draft generic letter. I think that was very helpful for us to get with the staff. I think we are on a positive track here, and I think you will see as we go through the issues that this one is on a good path to resolution.

Next slide, please.

[Slide.]

CHAIRMAN JACKSON: I detected a degree, shall we call it, of excitedness in the April 16th letter from NEI. You recognize that the guidance is interim.

MR. RAY: Remembering only that the subject of implementation of 50.71(e), if we can separate it from the tide of 50.59, is one that I think has the character that Tony just described to you. It's on a track that is

reasonable.

MR. PIETRANGELO: I think the staff did a good job in the draft generic letter of spelling out what was originally required under 50.34 in terms presentation of the design basis for 50.2, the safety analyses, the operating limits, and then what we call a contextual description of those things.

Our guidance document basically had the same focus. I think our only point we have been discussing lately is the limits on operation we would equate with the tech spec values that were in the original SAR that were lifted out and became the tech specs. So they may or may not be in the SAR, but in any event whatever is in the SAR ought to be consistent with the tech spec values.

Next slide, please.

[Slide.]

MR. PIETRANGELO: In the SECY to the Commission the staff said there were three reasons why without change they would be unable to endorse NEI 98-03. The first had to do with removal of historical information; second, removal of obsolete and less meaningful information; and third, treatment of detailed drawings.

In our presentation material that we discussed with the staff on May 27 we proposed some changes to 98-03 that were very consistent, we think, with the draft generic

letter that would resolve those issues.

In addition, we understand there are going to be some comments made part of the meeting summary from May 27 that will provide additional comments that the staff has on 98-03. We think we will be able to turn our document around by the end of this month to continue the discussion. So it is very positive.

In terms of the three issues that would preclude endorsement, we were very comfortable that we could address those concerns.

CHAIRMAN JACKSON: Could I get you to go to slide 10.

MR. PIETRANGELO: Yes.
CHAIRMAN JACKSON: Based on your interpretation of design basis, would this approach that you are talking about exclude updates for nonsafety-related issues involving station blackout, ATWS, or safe shutdown under Appendix R?
MR. PIETRANGELO: Absolutely not. Those are required under 50.71(e). But I think the types of information about those things you cited would fall into these categories.
CHAIRMAN JACKSON: What about FSAR supplements submitted under the license renewal?
MR. PIETRANGELO: It's required by Part 54.
CHAIRMAN JACKSON: That's right, but is it

captured?
MR. PIETRANGELO: Those are really talking about programmatic descriptions, and I might have to refer to the PM for license renewal, Doug Walters here. But my understanding is that is what the rule calls for, to supplement the SAR with programmatic descriptions made as a result of the license renewal review.
CHAIRMAN JACKSON: Would you like to comment?
MR. WALTERS: The position we have taken is that under license renewal the FSAR supplement would be to the same level and same detail that you have today, and it would be the incorporation of, let's say, programs that you are crediting as aging management programs if they are not already described. So there are really two issues: What do you put in the SAR and then what is the level of detail?
CHAIRMAN JACKSON: Can you give me a contextual description of a hypothetical accident analysis?
MR. PIETRANGELO: Not off the top of my head I can't.
MR. RAY: I think it's a redundancy, isn't it, a hypothetical accident analysis? All of them hopefully are hypothetical.
MR. PIETRANGELO: By contextual, we mean how does it fit into the safety analysis. This is the safety analyses report. By contextual, we mean how does that

information --
CHAIRMAN JACKSON: Can you give me an example? Frame it out for me.
MR. PIETRANGELO: I think in terms of presenting the design basis and the description of the system and how it functions and all that, I would say what were the input assumptions and parameters that were used and the input back to the safety analyses. I would try to keep that description contextual to the safety analyses.
We know, though, that over time it got broader than that. I used to work for a vendor and we had separate documents that were system descriptions that had the nameplate data on the motors and the pumps, and all that was eventually included in the SARs, and the initial hazard summary report, I don't think, had a lot of that kind of information.
CHAIRMAN JACKSON: On slide 11, how would NEI 98-03 change as a result of the draft generic letter's content?
MR. PIETRANGELO: I will do them one by one. I think I can do the first two, and I may need help on the third .
On the treatment of historical information and the revision that the staff has, we suggested removal of

historical information that wasn't going to change. I think

the draft generic letter made some points about what was required by 50.34. What we suggested to the staff on the 27th is rather than remove that historical information, it could be reformatted into an appendix or some other part of the document where it would not be subject to change or subject to update. That's our definition of historical.

On the second bullet, with regard to removal of obsolete and less meaningful information, the draft generic letter suggested that the licensee needed to have a process to establish by some criteria what information was obsolete and less meaningful.

I think it would go back to the previous slide on what the focus ought to be. That process along with providing a rationale for the update of why that information came out, a kind of documentation trail that with that process there would be flexibility to remove and less meaningful information.

I think it's basically the same on the detailed drawings. As long as there was a process of paper trail to say why the drawing went from very detailed to a schematic, for example, I think we would tie it back to whether those components listed on the drawings or in that detail were credited in the accident analysis.

MR. RAY: Let me interject here and say I believe a lot of this activity is driven off from the need to

conform the SAR to an acceptable scope for 50.59. If you once break that link, I think the question is, well, why not have detailed drawings in the SAR? It's not that big a deal. You just take reduced size P&IDs; and put them in there. That's what people had done, and they thought that was okay.

The reason that we are driven back to take out all of these details and slim it down to something that doesn't have a lot of details in it is really in an effort to make them not subject to 50.59, which is exactly what the staff said it was for.

I just think we need to first break that link and then decide what to do with the SAR, because we might come out with different answers.

CHAIRMAN JACKSON: My position is well known.

MR. PIETRANGELO: Could we go to slide 12, please.

[Slide.]

MR. PIETRANGELO: With regard to the enforcement discretion on 50.71(e), we are still in the middle of a period of enforcement discretion that ends October 18 of this year. That enforcement discretion required the licensee put a program on the docket to describe how they would go back to validate and verify the information that is in the SAR is accurate.

Given that this is the first stab at regulatory

guidance for 50.71(e), there is also an issue with regard to completeness. We've had a lot of discussion on whether completeness and accuracy are mutually exclusive or not. My own opinion is they are not. Sometimes you are not entirely accurate if you don't have all the information there.

The sub-bullets here.

There is no safety urgency for this information. This is information that is already on the docket. It's a location problem per the regulation, and we recognize that

under 50.71(e) there will be a need for many licensees to go back. They may not have captured some of the information that was required.

CHAIRMAN JACKSON: Are you talking completeness or accuracy?

MR. PIETRANGELO: I think we are talking both, Chairman Jackson. Again, in my own mind, it's hard to separate the two. But we understand that what is in the document needs to be consistent with what is in the plan and the procedures. There are different shades of this also. I think for a lot of licensee, based on the feedback we have received, they will have identified a lot of the discrepancies in the FSAR, but they may not have closed them out yet; they may be in the corrective action program.

CHAIRMAN JACKSON: Do you support the staff's approach to risk informed enforcement discretion periods?

MR. PIETRANGELO: I think that is a way to do it. We did have a discussion about this in last week's meeting. You don't want to get in a situation where you are off for a couple of years and you don't know at the end of that period whether everybody is going to be finally done with this or not, and it's appropriate to get some feedback at some point or some intermediate milestone that would give the Commission a sense that the licensees are progressing with this, and it makes sense to use risk ranking to focus on those.

Right now, given that the FSAR, as I think Harold has underscored, is not basically a risk-significant document, there are certain systems you could pull out by the maintenance rule guidance to say, yes, we can focus on those first.

CHAIRMAN JACKSON: Wasn't that the original go-forward direction? It's certainly the accuracy issue on the FSARs, that it should have been done on that risk ranked basis. So if in fact it hasn't been done on that risk ranked basis, why should there be two more periods? If the most risk-significant things haven't been done, why should there be two more years?

MR. PIETRANGELO: I think with regard to accuracy it hasn't mattered at this point. I said only a way, because I may want to go back to that focus slide and make

sure all my design basis information is accurate and make sure all my safety analysis inputs are accurate, because there has been a lot of activity on those too, and that is not with regard to risk significance. That's another way to approach the which ones I do first argument.

COMMISSIONER DIAZ: Your recommendation is two years?

MR. PIETRANGELO: That's the normal cycle for an FSA update period.

CHAIRMAN JACKSON: Right. It already will have been two years in October, right?

MR. PIETRANGELO: Yes, and I think there has been extensive effort. I think most people are there with regard to accuracy, but the completeness part and given the new guidance, we think it's appropriate to extend that.

COMMISSIONER McGAFFIGAN: Could I clarify?

CHAIRMAN JACKSON: Sure. Go ahead.

COMMISSIONER McGAFFIGAN: I guess I'm having trouble with the accuracy and completeness as well. Your recommendation, as I understand it, is to not try to make the distinction between accuracy and completeness.

If I were to take the staff's proposal and try to merge it with yours, give you six months for accuracy and completeness with regard to the systems and the maintenance rule or the most risk significance and give you two years

for the rest of it, but don't try to make this distinction between accuracy and completeness on October 18, 1998, where you would have to be accurate -- I don't want to get into semantics over whether it was inaccurate because it was incomplete, and maybe we just need a time period for both. That's what strikes me as I listen to this for the first time.

CHAIRMAN JACKSON: Right, but the real issue is that in the end, whatever the time period is, we're probably guaranteed that you are going to come back and say we should have two more years, right?

COMMISSIONER McGAFFIGAN: Get the Bibles out.

[Laughter.]

MR. RAY: Is that a question requiring an answer?

CHAIRMAN JACKSON: No.

MR. PIETRANGELO: I think it's a question of degrees. As Harold underscored, there is a lot of other information in the SAR. We know there is more important information than others. We may want to use that as the stick to measure progress versus some other.

The final slide on SARs is the outcome slide.

[Slide.]

MR. PIETRANGELO: Our conclusion based on the draft generic letter and the meeting we had with the staff on the 27th. We don't see a need to issue the draft generic

letter, and purely from, we think, an efficiency and speed standpoint, we can save a step in this process.

We are comfortable that we are on converging paths with the staff based on the meeting. It is more efficient to seek public comment on a final draft reg guide endorsing our guidance versus having to get formal public comment on two separate documents.

We have talked about a tentative schedule for closure with the staff.

CHAIRMAN JACKSON: What is that?

MR. PIETRANGELO: I'm about to go through that.

CHAIRMAN JACKSON: Tell me the ultimate drop-dead date.

MR. PIETRANGELO: By the end of the year.

Our other conclusion is we don't think there is a need for rulemaking on 50.71(e). That language is pretty straightforward, and I think we are comfortable with it.

[Slide.]

MR. PIETRANGELO: Finally, the last set of slides is on the scope of 50.59. We have already discussed the industry proposal at some length, about decoupling the scope from the SAR, trying to define in A-1 of the rule what scope is, and our April 16 letter suggested a focus on the safety analyses in the SAR.

[Slide.]

MR. PIETRANGELO: We think there are a number of benefits to doing this. In the interest of time, we won't do this, but we could give you several examples on full safety evaluations that really have little or no safety or regulatory value.

We did a survey last year as part of our

commenting on NUREG-1606. The average full safety evaluation time takes about 27 hours, and that does not include review time. We think there could be a substantial benefit in terms of reducing the number of these full evaluations. We think it would improve the consistency between the rule and implementation.

Finally, it gets at trying to define what is important in the SARs from a 50.59 standpoint and would have the effect of leveling this playing field on big SARs versus small SARs, and we know there has been a concern about that.

Last slide, please.

[Slide.]

MR. PIETRANGELO: We continue to believe there is a need per the Commission's SRM to expedite the rulemaking on the threshold criteria, and that's the best way to get long-term regulatory stability in 50.59. I should have said before that part of the rationale for the enforcement discretion until the rulemaking is complete is to get that kind of stability in the short term, but that's no

substitute for the rule language being correct.

We have not changed our mind about the need for a rule change on the scope of 50.59. We are prepared to work in the two-step process. We went over the rationale before, Commissioner McGaffigan. I think the primary reason was after the individual visits we were convinced there was a commitment on the part of the Commission to follow through on this.

We are ready to go on this. We had some preliminary contractor work done on this concept of safety analyses. We are encouraged by the results we are getting thus far.

CHAIRMAN JACKSON: When you talk about safety analysis, do you include shutdown safety, ATWS, station blackout, Appendix R safe shutdown?

MR. PIETRANGELO: Yes. It's all the required analyses as well as some of the requested ones for 50.71(e) that had an effect on the analyses or were new.

CHAIRMAN JACKSON: Does that include human performance and operational safety issues that are currently covered in the programmatic sections of the FSARs?

MR. PIETRANGELO: Our initial work that we have asked the contractor to help us with went back through all the generic letters and bulletins and tried to find where there was a request for a safety analysis to be submitted by

the licensee. That could be with regard to some human performance, but I'm not sure. We did find out of a population of about 300 generic letters about 21 that did in fact request the licensee to submit a safety analysis; in a population of about 100 bulletins there are about 29 that requested a safety analysis.

CHAIRMAN JACKSON: Commissioner McGaffigan.

COMMISSIONER McGAFFIGAN: I want to understand how the 50.59 process works in a real plant. I had an interesting conversation a month or two ago with a young man who I won't name but who had worked in plants. We got into a discussion as to whether we approve changes in plant managers and whether a safety evaluation has to be done to determine whether there is an unreviewed safety question when Joe replaces Tim.

I said to him, Oh my God, they can't be doing that.

But do you? When Joe replaces Tim as head of the

operations department, is there a multi-thousand dollar evaluation made as to whether that is an unreviewed safety question?

MR. RAY: No. It's a fair question, but the answer is there is nothing in any set of reference documents that I could think of that would mean that was a change to the facility.

COMMISSIONER McGAFFIGAN: That was the example this person used.

MR. PIETRANGELO: That was a title change.

COMMISSIONER McGAFFIGAN: The title change one I'm well aware of. We have a license amendment in at the moment because it's a tech spec change. This particular utility did not, as the staff recommended a long time ago, get all these titles out of the administrative section of the tech specs. So we have a license amendment in at the moment to change plant manager to vice president, and we are going to have to go through a license amendment process.

I assume, Mr. Ray, that Southern California Edison probably took the staff's advice in the late 1980s and got all of that stuff out of its tech specs. Or maybe you never change titles.

MR. RAY: We were a lead plant for standard tech specs, and I don't believe that the titles are in the standard tech specs.

MR. BEEDLE: The situation you are referring to, though, the plant had in their tech specs and in their FSAR titles. When they changed the title of their senior manager on site, then they ended up doing 50.59s for that change as well as tech spec changes in order to accommodate that. Some plants do 50.59s when they change people; when they change a plant manager, they do a 50.59 on it.

A lot of that is driven by the request or comments by resident inspectors, and in some cases regional-based inspectors, and so the plant reacts to that and says it's a change in the facility, whether it's people or process or equipment, and they effectively come to ALSAP where they do 50.59s.

COMMISSIONER McGAFFIGAN: We aren't supposed to vote in public, but I suspect there is no Commissioner who would ever ask you to do that in the history of the agency. I get a little bit frustrated. I used to work on Pentagon type issues. We would sneeze in the Congress and they would catch pneumonia at the Pentagon. So I understand. Some of this stuff is self-imposed. That's the only point I'm trying to make.

MR. BEEDLE: I would agree with that, and I think that just points out the significance of the work that is ongoing right now on 50.59 and 50.71(e). The complexity of the process is such that you have several thousand people out there trying to utilize this rule and they all look at it a little bit differently, and where there is ambiguity or a vague definition, then they all interpret it a little bit differently. I'm not saying that they are wrong, but I'm telling you that it yields strange results, this being one of them.

MR. RAY: We need to get up and give the staff a

chance to address this issue.

CHAIRMAN JACKSON: Yes.

MR. RAY: I just want to say one thing in

conclusion. I'll just say it very briefly. I perceive that we will engage in a continuing quest for the unattainable, and that is an objective definition of minimal, and so on. I think we ought to get beyond that. I believe the managers in the NRC are responsible public officials who, if they are given the latitude to decide that something is okay because it's minimal, will make the right decisions, and we don't need to try and find some ruler to give them all that they can apply to everything out there.

CHAIRMAN JACKSON: Then you will head off the next Tower's parent study.

MR. RAY: Chairman Jackson, if I had the opportunity to head it off, I would make that commitment. I don't believe that's in my purview.

CHAIRMAN JACKSON: Thank you very much. We appreciate it.

Let's hear from the NRC staff.

Good afternoon.

Mr. Thompson.

MR. THOMPSON: Thank you, Chairman Jackson, Commissioners. This is a very important issue both for the NRC and for the industry. I think you've heard today that

we have made a lot of progress working well together, and we certainly intend to continue that.

Before I turn the remarks over to Dave Matthews, who will be making our presentation today, also at the table we have Mark Satorius, who is the deputy for the Office of Enforcement, and then Sam Collins, who is has a few opening remarks.

MR. COLLINS: Madam Chairman, Commissioners, the majority of my opening remarks have been covered in some context. I would just acknowledge that today's meeting is part of the continuing dialogue and interaction with the Commission on these important elements of the regulatory process.

The staff is and has demonstrated in the past it is willing to continue discussions with NEI on guidance documents for implementation. As Hugh so noted, we are here today to provide the Commission progress reports since the last meeting that was held on this topic in December and to respond to the Commission's questions. With that, I will turn the briefing over to David Matthews.

MR. MATTHEWS: Good afternoon

[Slide.]

MR. MATTHEWS: In the interest of time, I do have a slide on background which I will have you look at briefly, and then I am going to discuss the central issues that we

have today on the updated FSAR guidance and 10 CFR 50.59.

Recommendations were provided to the Commission in these areas, among others, in 97-205 in September 1997. We had an immediate action shortly after that to address a problem relative to regulatory stability in terms of the treatment of USQs during periods when a plant might be shut down and needing to restart and their relationship to safety and operability.

The Commission approved and we issued a revision to Generic Letter 91-18 to address that issue. I've heard feedback from many arenas that that was long overdue, well needed, and has resulted in an increased amount of stability in terms of the treatment of USQs and their relationship to operability.

We provided a briefing to the Commission in

December, which this is in effect an update to. We have provided the Commission a proposed generic letter which would address interim guidance on updating of FSARs in accordance with 50.71(e).

Prior to that time, because of concerns associated with the enforcement policy and its relationship to treatment of violations under 50.59, we established an enforcement panel. We did that in November of 1997. We did it by the instrument of an enforcement guidance memorandum which is publicly available that we issued at the end of

October. It guides the enforcement discretion the staff exercises under the current policy when dealing with issues of 50.59 and attempts to resolve concerns associated with relative safety significance.

We also have a draft rulemaking proposal on 50.59 that has matured to the point that it is out for office concurrence throughout the NRC and is with the Office of General Counsel. This is with a goal of providing the Commission a draft rulemaking package by the requested date of July 10th. At the present time we are on track to provide you that rulemaking package as requested.

[Slide.]

MR. MATTHEWS: Turning now to the FSAR, I wanted to provide a little context for future discussion and reminding everybody that the FSAR serves several purposes in our regulatory structure.

The requirements are outlined in 50.34(b) relative to its contents, and 50.71(e) relative to its updating.

However, the last four bullets on this slide indicate that it is relied upon in many contexts, one of which is the scope of 50.59 in that 50.59 limits its scope to the facility as described in the safety analysis report. But it is also relied upon as a reference for the vast majority of licensing actions that the NRC undertakes in response to licensee requests for amendment.

It is also used as a document for NRC inspectors in that it describes the facility and is utilized in many different ways to implement our inspections procedures associated with an examination of the conformance of the facility with the agreed upon licensing basis of the plant as reflected in the FSAR.

I mentioned 50.59. It also, as was mentioned earlier today, is a document that forms a basis document as we move into a renewed license arena, and the license renewal rule in Part 54 envisions that it would be supplemented as described in that rule and then continue on as one of the foundations for describing the licensing basis for a renewed license.

CHAIRMAN JACKSON: Let me ask you a question. Does 50.71(e) apply directly to the license renewal supplement?

MR. MATTHEWS: Yes. Not by its word, but the license renewal rule indicates that 50.71(e) applies as well to the supplement. So indirectly I would argue 50.71(e) applies.

CHAIRMAN JACKSON: The scope of 50.59 is described as the "facility -- in the safety analysis report." Does that mean the FSAR, the FSAR and other documents, the updated FSAR?

MR. MATTHEWS: It means the facility's FSAR as

described in 50.34(b) as updated in accordance with 50.71(e).

CHAIRMAN JACKSON: Right.

MR. THOMPSON: That's clear.

MR. MATTHEWS: Let me now turn to slide 5.

[Slide.]

MR. MATTHEWS: In developing guidance on the updating of FSARs to provide additional guidance beyond that which was available with regard to the implementation of 50.71(e) we examined alternative approaches to providing this guidance. The staff concluded that guidance could be provided that would provide enhanced recognition of the requirements of 50.34 and 50.71(e) and at the same time would provide some needed stabilization to the issue surrounding uncertainties as to what should and shouldn't be in a FSAR.

We also concluded that there was benefit to going forward with this guidance at this point in time and there wasn't a need for rulemaking to address the problems that had been identified.

That's a long way of saying that the issues that had been raised associated with information that was contained in the FSAR whose safety significance might not be all that evident or reflected obsolete, outdated or historical information could be dealt with under the current

regulations by treating it in a different category, putting it in a different appendix or a different portion or formatting of the FSAR, and therefore increase the utility of the FSAR for the purposes which I described in a prior slide.

Yes, rulemaking could have been undertaken to eliminate the need for some of that information from even being in the FSAR. The staff didn't feel that it was really a worthwhile use of the Commission's resources to undertake that rulemaking given that we think the purposes could be served by this interim guidance in that regard.

CHAIRMAN JACKSON: Would our consideration of the information required be limited to the information originally required by 50.34(b)?

MR. BURNS: No.

MR. MATTHEWS: I think our consideration of information always ought to be confined by the description of information in 50.34(b). That information may have changed over time and therefore the updating requirements would possibly include more information, but not information of a different type.

CHAIRMAN JACKSON: So that covers ATWS and all these other things that we talked about?

MR. MATTHEWS: Yes.

COMMISSIONER McGAFFIGAN: Are you going back to

that slide you were on?

MR. MATTHEWS: Yes. I did just want to indicate that the guidance would be applicable to plants undergoing decommissioning in terms of updating.

We did propose in connection with that revised guidance to the Commission that enforcement discretion be applied in the following way, and we have discussed this already to some degree.

In light of the fact that we have already had a longstanding involvement in the issue of improving the accuracies of FSARs stemming way back to a policy statement that the Commission issued and an attendant or related

enforcement discretion that was granted relative to that accuracy, our view is that with regard to the information that is in an FSAR or should have been there relative to the plant as it stands today that the FSAR should be accurate by the deadline that the Commission imposed by virtue of granting the original discretion.

Although accuracy and completeness we could argue semantically, the staff adopted those terms really for convenience. The concept, I think, is generally accepted that the FSAR should describe the plant as it is built and being operated. That's accuracy. If there is information that should have been included in the FSAR even though it might exist somewhere else, we think it ought to be included

within the FSAR at one location, and that's completeness.

With regard to the issue of completeness, particularly in light of the enhanced guidance we are proposing to be provided, we proposed a two-step process, that the material of the highest safety significance, and we would use as a descriptor of that the description that was utilized in the regulatory guidance we published associated with the maintenance rule, ought to be included within the FSAR within six months of issuance of the final generic letter, and we think that an additional period of time could be provided for the information of less significance.

COMMISSIONER DIAZ: Could you clarify for me this enforcement discretion? Is there a compelling health and safety issue by which the accuracy is demanded by 10/18 and the completion of high safety significance six months later? Is there any reason why we should maintain that?

MR. MATTHEWS: I have a personal view on the significance of accuracy. Given the use of the FSAR and that it is relied upon as a description of the plant, sometimes to the exclusion of actually going out and looking, I think accuracy does have a significance, and I think it probably goes beyond completeness in terms of that significance.

MR. COLLINS: Commissioner, broadly looked at, the staff's main focus would be that if it's being used, it

should be accurate. To what extent we are amenable to enforcement discretion is in fact, I believe, a resource question; at what point do we believe it is necessary to focus the industry's resources on this type of a goal within a defined period. I think that in and of itself is a matter of some discretion by the Commission to determine how exactly do we want to dictate the industry use those limited and vital resources, because this is an important topic.

But day to day, given that this document is utilized, it should be viewed as being accurate when it's used. So I think there is a window in there. What that is is probably a matter of some discretion and Commission guidance.

CHAIRMAN JACKSON: This is what you are proposal is in terms of what you call the risk informed.

MR. THOMPSON: That reflects the staff's current proposal. There are some judgments in that.

MR. MATTHEWS: This does reflect a phased approach, which I think is responsive also to the staff's concern that we not come upon another two-year deadline, then look, find we are not there, and our choice has become very limited, and then you have to ask the safety significance question, and if you can't answer that it's

overwhelmingly safety significant, what action do you take at that point?

I think the idea of periodic checking and feedback is important, which this does.

COMMISSIONER McGAFFIGAN: I want to ask a technical question as to how all this relates. Even if we take the accelerated NEI approach, which I think in answer to the chairman they said by the end of year they would hope you would be in a position to endorse 98-03, you get into a situation where the final guidance may not be out, whether it's by the generic letter, which NEI would say is a slower approach, or this convergence that appears to be occurring where you would endorse in a reg guide their language.

Should we pragmatically exercise enforcement discretion at least to the point where a document gets out that everybody agrees on? Does that bear on the accuracy issue?

MR. SATORIUS: One thing that I think is important to point out is that the enforcement policy as written today provides for discretion as long as licensees are finding and fixing these problems in the FSAR. So we have discretion available to us beyond what we would propose here. That would continue to be available for the staff to utilize.

COMMISSIONER McGAFFIGAN: So what you have here is a blanket enforcement discretion which you propose to terminate at some point, and then you have remaining within the policy some discretion to use even after the blanket

discretion terminates.

CHAIRMAN JACKSON: Right, but that would be true even after 10/18/98.

MR. THOMPSON: That's true. If it's self-identified, if they have an aggressive program that they are looking hard and identifying the errors, they get credit for that.

CHAIRMAN JACKSON: But does not the current enforcement policy also have a risk gradation built into it also?

MR. SATORIUS: It utilizes risk-informed information in order to make our determinations.

COMMISSIONER McGAFFIGAN: But then you are expending resources of your own and the licensee, saying it's a 3 that deserves to be a 4 or a non-cited, et cetera.

MR. THOMPSON: That's a process that we would not necessarily have to go through.

CHAIRMAN JACKSON: You could ask this question. Is there enough of a distinction between accuracy and completeness, in your minds, to be able to draw this line at 10/18/98?

MR. SATORIUS: I am a member of the 50.59 review panel, and myself and other members of the staff hear every proposed 50.59 violation, and we do determine that there are some that you can say there is an accuracy issue here or

there is a completeness issue here. I think the answer to your question is, yes, we can determine the difference between the two, and we have been able to do that.

CHAIRMAN JACKSON: But in your opinion, as you have gone through it, are licensees able to consistently draw a distinction between the two so that we aren't just creating problems for them and problems for us?

MR. COLLINS: I think it's probably not appropriate to ask licensees to have a program that is

formulated that way such that they would have to focus resources on accuracy versus completeness. I'm not smart enough, for example, to be able to dictate that to happen. I think the goal would be for the documents to be both accurate and complete at a given point in time, which is at the discretion of the Commission, given the licensee's best use of resources, with a caveat that if the document is to be used to make regulatory decisions, then that portion of the document needs to be accurate.

CHAIRMAN JACKSON: That's why you really want to put this 10/18/98 here.

MR. THOMPSON: Yes.

MR. COLLINS: That was the original thought.

MR. THOMPSON: It might be helpful if we take a look at and give you some examples of the types that fall into the two categories so at least you could have available

to you how we bend those.

CHAIRMAN JACKSON: Okay.

COMMISSIONER DIAZ: If I may go a little bit further in time and look at 2/28 and the fact that that is also a deadline date that the Commission has set to get clarification on the scope and how all the things are coming together, and the fact that, as we all understand from the 50.59, the real issue is definition, how do you define things so that people can actually work with them?

Would it be appropriate to be as strict as we want on a date in which we have really defined what the requirements are, be it 10/18 or 2/28 or six months later, whatever it is that is appropriate, but without ambiguity and "Oh, I didn't understand it was accuracy or this was completeness" or we just frame it at one point and say this is it?

MR. THOMPSON: That's certainly one approach that we could do. We gave you our recommendation. For the reasons we said, it's our best recommendation right now, but that doesn't mean that there is not merit in other approaches. We have worked with this issue a fairly long time. There is enough information available, enough guidance available that the dates that are spelled out in our proposal are, I think, doable in most cases.

COMMISSIONER DIAZ: Okay.

MR. THOMPSON: There may be some people that started late and didn't have it, or they may have a bigger problem than we originally anticipated, but as I said earlier, if they are really working at it and they are self-identifying it, we think that the current enforcement policy gives us flexibility and gives them flexibility not to face escalated enforcement.

CHAIRMAN JACKSON: Okay.

[Slide.]

MR. MATTHEWS: On page 6 I wanted to summarize the staff's review to date of NEI 98-03. We shared the substance of these reservations with NEI the last time we met with them, and that is why they indicated they were well aware of what the staff's views were.

In addition, of course, they had the benefit of seeing the draft generic letter, which would have also articulated to them what differences there were between that and 98-03.

We did perform a preliminary review in response to their request for our review and endorsement of 98-03, and

we initiated that review in November when we received that document.

The document that we received in draft form as originally proposed the staff would not be able to endorse short of also proposing changes to our rules with regard to

the content of FSARs. We are receptive to the possibility of endorsing a revised 98-03 if it is revised to address those particular shortcomings.

We think there is a path to resolution in terms of coming to an agreed upon NEI document, but to some degree that is very heavily dependent upon their ability to respond to us with a document that reflects those changes, and we don't have an estimate right now of how soon they will be able to do that, although they have committed that they will try to get us back a document very shortly.

We committed to provide them our preliminary comments such as they have been developed to date. We even proposed that since we shared them with them orally in a public meeting, we may attach the description of those concerns to the back of the meeting summary so they would have that, and that we would endeavor to deliver a letter to them very shortly thereafter articulating the concerns with more specificity to give them a basis for making changes that will have the effect of hopefully being as close as possible.

In terms of overall schedule, though, I think you heard from them an estimate of December as a possible schedule for bringing that to closure. Recognize that the staff, if it is to endorse a document like that, would need to endorse it by means of a reg guide, and we have to have

public participation in that process. So we would be faced with coming to resolution with NEI, then issuing a draft regulatory guide proposing to endorse NEI's document, receiving the public comment on same, and then going through the final steps associated with a final reg guide.

That process is one that we can proceed on. We outlined that process, by the way, in the Commission paper and did so in some detail.

The staff believes, however, that issuing the draft generic letter for public comment as it has been proposed to you and then issuing that in final form could take place as soon as four months after your agreement with the contents of that generic letter. This would also have provided public comment during the summer on that document and would have met that need.

At a later date, then, that generic letter could in effect expire as far as its utility is concerned once we endorse a reg guide that would have been developed in parallel with that process.

That's a long way of saying that we think we can move in a parallel process, and would succeed with interim guidance being out there sooner.

COMMISSIONER McGAFFIGAN: I don't totally understand that. I'm looking at the paper. From the date of Commission approval of the generic letter, which hasn't

occurred yet, it's 150 days to issuing the final generic letter. So we are talking close to the end of the year in any case; we are talking November. And we have run a parallel process that could be resource intensive. You are talking about workshops and all that.

We will have a public process if you get to the

reg guide, as you said, a reg guide endorsing 98-03, but we don't have two competing documents out there, 98-03 as they try to adjust it to meet the staff's desires, and this generic letter simultaneously out there.

MR. MATTHEWS: I have on the one hand a generic letter that has already been prepared that you've heard from NEI they have no problem with in terms of its content. It's ready for issuance. So it can get out very quickly. I have, on the other hand, the possibility that we are going to be able to reach closure with NEI on a document I haven't seen the nature of yet. So I have a little difficulty in being as certain with one date as I am with the other.

I feel more comfortable with the staff's ability to issue the generic letter and go through that process of public participation and workshops than I do on setting a date for when I'm going to be able to issue a draft reg guide.

COMMISSIONER McGAFFIGAN: What process did we follow in the maintenance rule? There we endorsed an NEI

reg guide, right, 94-01, or something like that?

MR. MATTHEWS: Tom Bergman was intimately involved in that process.

COMMISSIONER McGAFFIGAN: Did we start with a generic letter and have competing documents?

MR. BERGMAN: There was a parallel reg guide very early in the process. NUMARC 93-01 eventually took it over and the staff never issued that original regulatory guide.

Going from one revision to another even of NUMARC 93-01 is a great deal of work. If you look at Reg Guide 1.160, Rev 2, after several years of work we still had about a dozen exceptions or augments to 93-01 that we took in that reg guide.

That process to go from Rev 0 to Rev 2 -- Rev 1 was withdrawn shortly before Rev 2 came out of NUMARC 93-01 -- was a good year of work between the staff and NEI to come up with a workable Rev 2 to 93-01, and we still had to put a lot in the reg guide. The scope of this FSAR thing is at least as comprehensive as 93-01.

MR. MATTHEWS: If there are no more questions on the FSAR updating, I'd like to turn to a discussion of 50.59.

[Slide.]

MR. MATTHEWS: Slide 7 summarizes in bullet form a paraphrasing of the Commission's SRM on 97-205 as it

pertains to 50.59. There were many other issues in that SRM.

[Slide.]

MR. MATTHEWS: I wanted to summarize what the staff has done in response to that SRM in connection with 50.59.

We have prepared a proposed rule package which addresses the following issues:

It adopts an approach for allowing for minimal increases in probability and consequences.

It establishes a definition for acceptance limits for defining margins.

It introduces the possibility that we would allow equipment malfunctions with a different result, which is consistent with an NEI view that that is more important than malfunctions of a different type, and we agree with them.

It also addresses collateral changes to Part 72

because the rules are parallel with regard to ISFSIs and spent fuel storage.

We have before you in a COM SECY of a number I can't recall right now three remaining questions that stemmed from that SRM.

That is, your suggestion that we consider including a provision that would permit accidents of a different type with minimal safety impact; if they were

identified, that the change, if it were to result in that, would still be an acceptable change without NRC approval.

That we reconsider acceptance limits for consequences. Given that the staff had viewed that acceptance limits for consequences ought to be that reflected as the acceptance limit in the FSAR, NEI has proposed that acceptance limits either established by the SRP, the SER or regulatory limits represent the degree of freedom that they would be permitted to have without NRC involvement. The staff has been opposed to that.

I'm going to comment on that because I want to make a summary statement about this issue in a moment after I mention minimal reductions in margin of safety.

The Commission also asked us to consider regulatory language that would permit minimal reductions in margin of safety provided you put some limit on the word "minimal." This was a proposal that the Commission made to the staff in that SRM.

The staff had not proposed minimal decreases in margin of safety to be permitted. We viewed that permitting that in the light of 50.59 was translating 50.59 from essentially a procedural regulation or a process-related regulation into a safety-related regulation in that we were now going to permit changes to margins of safety that had been established through the licensing process.

We went into more detail in our memorandum as to the reasoning behind that, but I wanted to then reflect in terms of that issue and the one on acceptance limits for consequences that also raises that same issue in that we felt that that was proposing a change in philosophy with regard to the role that 50.59 plays in our regulatory framework; that we were moving it into an arena that it was starting to become a safety regulation as opposed to what the staff had traditionally viewed 50.59 as being, and that being one that controlled process and regulatory process in terms of setting thresholds for when the agency needed to become involved and whether to agree with a change or not.

Many changes that might exceed the threshold for needing staff review still ultimately are acceptable, but when we deal with issues that have started to threaten the margin of safety established through the licensing process, we feel the NRC needs to be involved in those decisions before we agree with that change.

CHAIRMAN JACKSON: Thinking outside the box, is there a way to reconcile those two, or should it become a safety regulation in the sense that you are describing it?

I know I am putting you on the spot.

MR. MATTHEWS: You've heard this phrase. It's a matter of degree and how much flexibility and freedom that the Commission chooses to want to give the industry.

COMMISSIONER DIAZ: Minimal.

[Laughter.]

MR. MATTHEWS: If it's minimum, then I would argue

the best way to do that would be to confine it to being a procedural regulation, not a safety regulation.

COMMISSIONER DIAZ: That might not be responsive to the Commission's original intention. It might be that we might want you to think outside of the box and see not what is traditional, but what is effective, what is protective, and what can be really done.

MR. MATTHEWS: I understand that. I think the staff took a hard look at it from that perspective. I don't believe our answer that we provided you in May was conditioned on it just being traditional. I think we actually viewed that there was a potential that margins of safety might be reduced in ways that were unintended, and that the staff, upon having the opportunity to review them, might not have agreed with.

Let me go back to the issue of consequences. We've seen charts and boxes, but the essential issue as I understood it, as NEI has described it to us in meetings that predated this one, was that they would like the utilities to have the ability to move from the acceptance limit that they established in their FSAR and that the staff agreed with to another limit if they so chose or as the

result of a facility change that would be an SRP established limit or a regulatory limit without NRC involvement.

Those changes could be significant. They might be so significant as to engender, if they were submitted as a license amendment, our inability to make a no significance hazard claim on that license amendment.

If you were to accept the NEI proposal as I've understood it in the past, there was a great deal of change that could be made on their own volition without NRC involvement, and the staff is concerned that it's a greater change than we would want to approve, and may include changes that we wouldn't approve were they submitted.

COMMISSIONER McGAFFIGAN: I want to stay on this consequence thing. I'm going to bo back to the first one too at some point, accident of a different type.

You heard NEI earlier today say it may be a matter of degree, that they understand if the limit is 50 and they are at 46.5 that you might want to know about it. What they don't understand is if the limit is 50 and you are 21.9 going to 22.3, whether that's a big deal and whether we are wasting our and their resources on that. I heard that there is some middle ground here, that a line in the sand sort of approach may not be the right thing.

What has confused me all along is why what they say in NEI 96-07 with regard to the basis for the tech spec,

where they say the same thing, that they find acceptance limit either in regulations or SERs or standard review plans, and that's okay with you guys; that's what Sam Collins' letter said in January; but when it comes to the consequences where they use almost verbatim verbiage it's not okay.

I think Mr. Ray said occasionally 20 going to 22 might be significant. How do we define that without having everything submitted, without having every change of what may be a trivial nature submitted to us?

I remember Commissioner Rogers when we dealt with tritium and the .2 millirem increase when the acceptance limit was rems, a .2 increase in consequences under some design basis accident scenario at the site boundary. When

we get through this process, that can't be, and I know it won't be, because that can't be a 50.59 unreviewed safety question. That is one metric by which we can judge whether we have succeeded.

Is there a middle ground there?

MR. MATTHEWS: I think the staff in the Commission paper, and I'm ready to discuss it here, was going to propose a middle ground.

I have to be honest. The statements of Mr. Ray with regard to that issue on consequences was the first time that we heard that kind of view out of NEI, because previous

to this point in time it has been on consequences, an issue of whether or not they could move from the acceptance limits identified in the FSAR up to those values you just described, SRP, SER, or regulatory limits, without staff review.

Our view is that a minimal change, as the Commission had suggested, is the way to put a limit on that. We have a view that is still undergoing staff review of what would put some limits on minimal increases. What I am giving you is the opposition to a position we've heard to date from NEI that they be allowed to move to the regulatory limit or to the acceptance limit in the SRP irrespective of the licensing review that was conducted on the acceptance limit they offered in the FSAR originally.

We think the FSAR value provides a very sound basis for determining the baseline from which we ought to measure minimal, and we would suggest that is a good baseline for a regulatory process in terms of when the NRC ought to get involved.

COMMISSIONER DIAZ: Would you say that again? I'm sorry.

MR. MATTHEWS: We think the value that the licensee offered in the FSAR with regard to the consequence attendant to a given design basis accident is a good baseline from which to measure a minimal increase which will

attempt to put boundaries around through the rulemaking process, and that will provide the flexibility.

What we are opposed to is a position that would allow increases from that FSAR value up to regulatory limits, SRP limits, or if the staff had done a SER evaluation that came up with a consequence that exceeded the FSAR value. We view that since this is a regulatory threshold that we should only hold them accountable for the analysis that they did themselves, namely, the FSAR value, and the changes about that are what need to be examined.

COMMISSIONER McGAFFIGAN: When I once asked the question, why is 96-07 okay when it discusses acceptance limits for margin of safety as defined in the basis for any tech spec and why it isn't okay for consequences, one of the answers I got was a legal answer: because (2)(i) mentions the words "previously evaluated in the safety analysis report" and (2)(iii), where the margin of safety is defined as the basis for tech spec doesn't talk about "as previously evaluated."

Is it the legality that leads you to the rejection, or is there a substantive reason as to why NEI is okay in looking to acceptance limits as they have defined them in (iii) but they are wrong on (i)?

MR. MATTHEWS: It's a good question. What I have been speaking to is the issue of minimal increases in

consequences attributable to that portion of 50.59 that describes that.

On the other issue, margins of safety, our view is that the margin of safety, which is the difference between the value proposed and accepted by the staff and some ultimate design value or some regulatory limit, that is an established differential that should be maintained. Otherwise we are in effect changing the philosophy of 50.59 and allowing margins of safety to be decreased voluntarily. So we think you need to hold the margin of safety.

However, there are instances where calculations are done associated with consequences related to design basis accidents for which a plant change that would result in a minor change in those accident consequences would be acceptable.

COMMISSIONER McGAFFIGAN: Maybe I misinterpreted Mr. Collins' letter from January. Didn't you endorse NEI 96-07 as it dealt with acceptance limits for margin of safety?

MR. MATTHEWS: Yes. That's not a problem. They didn't propose any flexibility on that point and NEI has never proposed any flexibility.

COMMISSIONER McGAFFIGAN: I thought they did.

MR. MATTHEWS: Not that I'm aware of.

COMMISSIONER McGAFFIGAN: Maybe I'm misreading

96-07.

MR. MATTHEWS: Can you clarify, Tony?

MR. PIETRANGELO: I think what David just described we would disagree with. The example I would cite is what has been in NSAC 125 since 1989 and is still in NEI 96-07. It's a containment heat pressure example that the Chairman went over. Clearly in that we would not call the margin of safety the difference between the calculated value in the acceptance limit.

It's back to our box chart again from the acceptance limit to the failure point. He referred to that as the margin of safety, and we would disagree with that. That has never been the industry position.

COMMISSIONER McGAFFIGAN: They are endorsing you but they are using a different definition.

MR. PIETRANGELO: That's correct.

COMMISSIONER McGAFFIGAN: So you didn't really endorse them on that.

CHAIRMAN JACKSON: You endorsed the words but you have to give definitions.

MR. MATTHEWS: Yes, and I've indicated that here, that we had proposed that we would provide a definition of acceptance limits to be applied to calculations of margin of safety. We may disagree with NEI with regard to what margin we are talking about. They would like it to be a margin

outside of a box that we would choose, but I don't think there is any disagreement with regard to the existence of a terminology of minimal decreases in margin of safety.

COMMISSIONER McGAFFIGAN: One last question. On the accident of different type with minimal safety impact, I read the staff paper as at least being willing to go to "is created" as opposed to "may be created," which is what we say in Part 60; is that correct?

MR. MATTHEWS: Yes. Understand there is an attendant consequence to that.

COMMISSIONER McGAFFIGAN: I understand. But it

has the beauty of at least being consistent with what we did and defendable, and we're not asking for speculation on a licensee's part.

MR. MATTHEWS: You are correct in that regard. The possible unattractive consequence is that if they were to fail that test and bring that to us as an amendment, it is not an amendment that we could issue as a no significance hazard amendment. If a hearing were requested and accepted, we would have to hold that hearing before we could issue the amendment because of the nature of 50.92.

CHAIRMAN JACKSON: Why don't we go on.

[Slide.]

MR. MATTHEWS: On the next slide we provided some preliminary views. I put it that way because this is just

that, a proposal on how to deal with issues associated with minimal increases of probability and consequences.

These are conditioned somewhat by our interaction with the industry and the Commission and the public on the development of the reg guides associated with risk-informed licensing decisions.

In there, as you know, there is a terminology of "very small" wherein the staff would entertain license amendment requests that would allow very small increases in probability relative to core damage frequency and large early release fraction. So to some degree we are talking about potential changes being in what I would refer to, as you've heard it before, the negligible category, below those levels when you are dealing with similar parameters.

We have proposed that we permit increases of probability of accidents in the order of one percent without the need for any NRC review.

With regard to reliability or probability of equipment malfunctions, we think that there could be a graduated establishment of threshold based on safety significance.

With regard to consequences, we have attempted to address this issue that consequences, when they are very far below regulatory limits, we are probably more flexible on than consequences that start to approach regulatory limits.

CHAIRMAN JACKSON: How are licensees going to reach these numerical conclusions? Are we saying they have to have at their disposal the way to numerically determine the changes in risk to support compliance?

MR. MATTHEWS: It's going to be a challenge. I think we would expect that they would invoke the same level of precision on this problem as they did with regard to the initial calculation that formed the basis for the value in the FSAR. You only have the tools that you have.

CHAIRMAN JACKSON: How do you go about verifying the adequacy of a licensee's assessment? Is the inspection staff going to do that, and how are they going to do that?

MR. MATTHEWS: That is going to be a daunting task as well, but the inspection staff is going to have to at least recognize that this is going to form a basis for licensee decisions and be able to appreciate the reasonableness with which they have done that. We are going to have to have inspection guidance. That will have to be a companion piece.

CHAIRMAN JACKSON: You're going to have to kind of take selected systems based on risk and have the SRAs take a look at it.

MR. MATTHEWS: Yes.

MR. THOMPSON: It would be that type of approach and probably a sampling basis.

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CHAIRMAN JACKSON: Okay.

[Slide.]

MR. MATTHEWS: You've heard from NEI with regard to their view with regard to the concern they have in that they think that the scope of 50.59 ought to be moved away from the FSAR.

We think that the criteria changes that we have proposed ought to go forward now. We haven't examined alternatives for scope beyond those we discussed with you last year with regard to going to some sort of risk informed perspective associated with essential information or less essential information.

NEI has offered us the outline of a proposal in a meeting a month or so ago which we are willing to go further with and examine. Our idea was that during the course of the year, as they flesh that proposal out, we'll be very receptive to hearing that and seeing whether or not it provides a feasible alternative.

[Slide.]

MR. MATTHEWS: With regard to 50.59 enforcement discretion, you asked us to exercise discretion during the period of any rule change associated with 50.59. We would propose to continue the current policy, which does have provisions for discretion.

We have added to that, as you know, the 50.59

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enforcement panel, which meets as needed on every 50.59 enforcement action. We would propose as a result of our experience gained in that panel to bring back to you in our July rulemaking package the criteria that have evolved and that we would propose we would embrace in more concrete form for this purpose.

COMMISSIONER McGAFFIGAN: I understand what you are doing is consistent with the reading of the SRM based on what you had originally proposed.

What we did on the FSAR update where we had this blanket time period during which we were trying to solve a problem until October 18th of this year, or whatever other time we decide, and then have discretion after that time clock is over with, why is that approach not what the staff originally proposed in 97-205, and why shouldn't we at least consider the approach that has been suggested at least for minimal increases in probability?

I think for consequences Tony was trying to slip one in there on that one.

There is a lot of procedure that gets into. This enforcement panel is presumably resource intensive. We are spending a lot of time thinking about whether something is 4 or non-cited. Maybe the right thing to do is to sort of say they are all minor until proven otherwise and therefore we are not even going to bother to write them up if they are in

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this absolutely minimal category.

MR. MATTHEWS: Let me turn to Mark first.

MR. SATORIUS: The short answer is that, quite frankly, they are not all minor. It does take some staff review to determine there are a lot of them that are minor.

COMMISSIONER McGAFFIGAN: If they fit the category where they are going to be after the rule goes through, they are going to be not only not minor, they are not going to be

rules violations at all. That's what the NEI proposal is. For those things that meet a minimal test, or in their view, a negligible test, we shouldn't be spending a lot of resources on them, at least as regard to probability. With consequences there may be some.

CHAIRMAN JACKSON: I think, though, in order for you to do that -- I'm not the lawyer -- you have to exercise discretion with respect to something. It strikes me that you then basically have to consider whether you want to tell the staff to, on an interim basis, adopt NEI guidance vis-a-vis what a minimal increase would be, barring modulo working through what the ultimate situation is going to be with the rule. They have to operate off of something, if I take Mr. Sartorius' point of view that not everything is necessarily trivial. So you have to have some guidance that you operate off of. The Commission in principle could say, okay, on an interim basis use NEI's guidance and then go

forth and do the rule.

COMMISSIONER McGAFFIGAN: We could also amend the enforcement policy in some way.

How many of the level 4 violations that we are now criticized for increasing from 500 to 1,400 over the last two years are in this area?

MR. SATORIUS: Probably about 40 or 50. Since we started the panel process, I think in October or November, we have probably considered 60 or 70 issues total. We average about two or three a week.

CHAIRMAN JACKSON: So that's not where the problem is.

MR. COLLINS: Commissioner, to respond generally, the staff is not opposed, with proper guidance, EGMs, enforcement guidance memorandums, and training to the inspectors, to providing for a period of implementation and stabilization. During that period I think it's a learning process both for the industry and for us as regulators, including the inspectors, to understand how the process is to be implemented, and there is clearly a transition cost with that, and there is a savings in resources over a graded period of time.

I would propose that during that period, though, we still go through at least a phased manner of understanding the industry's implementation and testing our

inspection and our enforcement guidance. That would be probably with a panel very similar to the one that Mark is a member of now. The disposition of those issues, however, would be a matter of discretion.

CHAIRMAN JACKSON: Right.

[Slide.]

MR. MATTHEWS: I just wanted to conclude with what we saw as the next steps. I think they are probably obvious.

We were looking for Commission direction on the proposed generic letter on FSAR updating. Attendant to that, of course, is the acceptance or at least the response to the staff's proposal with regard to enforcement discretion in the area of FSARs.

We were looking for a response back to the issues we raised in our recent May memorandum with regard to clarification or possible modification of the SRM in several areas.

We have, as I mentioned, a rulemaking package embracing those elements that I referred to. That is very

far along. We met with the ACRS this morning. We are meeting with the ACRS again, I believe on the 17th of June. We are scheduling CRGR review of that rulemaking package, and we expect that to come to closure quickly.

And we are going to continue interactions with NEI

with regard to all of these topics. They have several guidance documents on our plate that relate to this issue. They've got 97-04 with regard to design basis issues; they've got 96-07 with regard to 50.59 issues; and they've got 98-03 with regard to FSAR issues. So we are actively reviewing and working with them on these documents in the hopes that we can come to agreement on industry guidance that could conform to our current regulations or those that have a likelihood of being imposed.

COMMISSIONER McGAFFIGAN: Can I ask a process question? It came up at the reg info conferences, putting these documents out as they come to us and the generic letter which you got permission to do, and you had the May 27th meeting, the 50.59 memo that you've given to us for resolution. I've noticed over the time I've been here this disconnect between what we allow you all to do and what we allow NMSS to do. NMSS is off doing Part 35 rulemakings and putting straw men out on the Web and coming to us occasionally for a little guidance, and a lot of guidance this month. There are various and sundry other quite open processes they run.

One of the criticisms that we get is we oftentimes aren't as open on the reactor side, and I understand the Commission over the years has kept you on short leashes on the reactor side, like the design reviews on the modern

reactors, et cetera.

MR. COLLINS: I'm not sure I like that analogy, but I understand your point.

MR. MATTHEWS: My image of a short leash is two links.

[Laughter.]

COMMISSIONER McGAFFIGAN: A metaphor came from one of the staff I talked to.

CHAIRMAN JACKSON: Why don't you look into creating a 50.59 chat room?

COMMISSIONER McGAFFIGAN: Would the staff appreciate the greater flexibility in their interactions? Public interactions. Not in closed doors, but public interactions with the regulator on what you all call pre-decisional documents. I don't know what Carl calls them, because he gets away with a lot more flexibility.

CHAIRMAN JACKSON: Let's let him answer it.

MR. THOMPSON: Obviously it is very helpful to have an open and frank dialogue. What you have to be comfortable with is what the stage and level of maturity of these documents is. What I guess I would like to propose is that we would come back and maybe propose some guidelines for you. We have done that in the NMSS area. We have told you when we are going to put things up on the Web. We have told you when we are going hold public workshops.

Maybe just put some guidelines out. I think we can do that and give us some more flexibility as well as give you an understanding of how we would decide that.

CHAIRMAN JACKSON: The only question and probably why it has been on such a short leash, aside from the issues

involved, is to ensure that it is not just one channel, that if it is public and you are dealing with the stakeholders, that you deal with all the stakeholders. There are different constituencies, and NEI is a critical one, but it's not the only one.

MR. THOMPSON: We have special arrangements with Agreement States. They are kind of co-regulators, and we have a certain degree of flexibility there.

COMMISSIONER McGAFFIGAN: Another document that some of us, because it's about six inches thick, have been slow to vote on -- the Chairman, give her credit, has --

CHAIRMAN JACKSON: That's because I'm a fast reader.

COMMISSIONER McGAFFIGAN: It's the decommissioning reg guide. Even as we voted on it it was on the Web page. We must have a pretty big Web page, by the way.

MR. COLLINS: Your point is well taken. It's a worthy pursuit.

CHAIRMAN JACKSON: Chat Room 50.59.

[Laughter.]

CHAIRMAN JACKSON: On behalf of the Commission, let me thank NEI and the staff for presenting to the Commission the results of their respective evaluations and recommendations for improvements in the areas of FSAR updates and 10 CFR 50.59.

The staff's Commission papers on these areas and today's presentations are helpful in describing the options available to addressing these two important issues. While obvious differences remain between the staff and NEI on issues related to 10 CFR 50.59, it's encouraging to note that clarity and agreement are being reached in the area of FSAR update requirements.

The conclusions reached in this area appear to be appropriately focused on meeting and properly enforcing the existing regulations, ensuring that information is maintained current and that new information is appropriately and accurately included.

At the same time, these conclusions allow licensees the latitude to reformat to some degree, to slim down and to simplify their FSARs.

With respect to 10 CFR 50.59, things are in a state of flux, but it is clear that the staff is working hard to responsibly implement Commission direction, and the extent to which the staff's conclusions are adopted will be considered obviously by us in the near future. NEI's

comments in this area have been helpful in presenting alternative approaches to the changes we seek to make, particularly with respect to 50.59, including the scope issue.

Unless there are further comments, we are adjourned. Thank you.

[Whereupon at 4:30 p.m. the briefing was concluded.]