

1 UNITED STATES OF AMERICA
 2 NUCLEAR REGULATORY COMMISSION
 3 OFFICE OF THE SECRETARY
 4 ***
 5 MEETING ON
 6 NRC RESPONSE TO STAKEHOLDERS' CONCERNS
 7 ***

8
 9 Nuclear Regulatory Commission
 10 One White Flint North
 11 Rockville, Maryland
 12 Tuesday, May 4, 1999

13
 14 The Commission met in open session, pursuant to
 15 notice, at 9:09 a.m., Shirley A. Jackson, Chairman,
 16 presiding.

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 18 COMMISSIONERS PRESENT:
 19 SHIRLEY A. JACKSON, Chairman of the Commission
 20 JEFFREY S. MERRIFIELD, Commissioner
 21 NILS J. DIAZ, Commissioner
 22 GRETA J. DICUS, Commissioner
 23 EDWARD McGAFFIGAN, JR., Commissioner
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- 1 STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:
 2 JOE F. COLVIN, NEI
 3 JAMES T. THODES, INPO
 4 DONALD C. HINTZ, Entergy
 5 W.G. HAIRSTON, III, Southern, Operating
 6 Company, Inc.
 7 JIM P. O'HANLON, Virginia Electric &
 8 Power Company
 9 JAMES R. CURTISS, Winston & Strawn
 10 DAVID LOCHBAUM, Union of Concerned Scientists
 11 THOMAS W. ORTCIGER, IDNS
 12 PAUL GUNTER, NIRS
 13 WILLIAM D. TRAVERS, EDO
 14 SAM COLLINS, NRR
 15 HUB MILLER, NRC Region 1
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1 P R O C E E D I N G S
 2 [9:09 a.m.]

3 CHAIRMAN JACKSON: Good morning and welcome.
 4 Today, the Commission once again has the opportunity to meet
 5 with several interested stakeholders in a continuation of
 6 our previous meetings held in July and November of last
 7 year.
 8 As before, we're meeting in a round table format

9 to promote open dialogue. Based on feedback received
10 following the last meeting, our goal today is to focus on a
11 more specific topic list than in the past. Our proposed
12 agenda topics were culled from that feedback, as well as
13 current salient issues.

14 We will keep the agenda on the screen above for
15 reference. We also have solicited agenda input from the
16 attendees and have left the option open to include other
17 topics, if time permits, as noted by the space for
18 additional suggested topics on the overhead.

19 Several topics were suggested by Mr. Lochbaum and
20 Mr. Ortziger. We can address these topics as time permits
21 at the end of our meeting or consider them as topics for
22 future stakeholder meetings.

23 You also will note that one of my staff, Steve
24 Cahill, periodically will be summarizing key points on the
25 screen as we proceed. We are entering the information age

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1 here.

2 The agency is committed to attaining input from as
3 broad a spectrum of our stakeholders as possible. So some
4 of you will notice that many of the faces at the table are
5 quite different from those at the last meeting. I would
6 like to thank each of you for agreeing to participate.

7 Starting on my far right, I would like to go
8 around the room and introduce each of them and to extend to
9 them the Commission's welcome.

10 First, Mr. Hub Miller, who is the Regional
11 Administrator of NRC Region I. Good morning, Hub. Mr. Paul
12 Gunter, who is Director of the Reactor Watchdog Project of
13 the Nuclear Information Resource Service. NIRS has been an
14 active stakeholder in NRC policy and discussions and I would
15 like to particularly thank Mr. Gunter, because if I was told
16 correctly, you recently were married and you cut short your
17 honeymoon to be here, and that's a real commitment.

18 MR. GUNTER: Postponed.

19 CHAIRMAN JACKSON: Postponed, okay. Even so,
20 that's a real commitment and I really appreciate that. We
21 really do.

22 Jim O'Hanlon, who is Chief Nuclear Officer of
23 Dominion Generation, good morning. One of his Virginia
24 power plants recently implemented one of our risk-informed
25 regulation licensing initiatives.

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1 Dr. William Travers, who you all know. I skipped
2 Commissioner McGaffigan, they have me out of order, but I'm
3 skipping all the Commissioners actually. Bill is the NRC
4 Director, Executive Director for Operations.

5 Mr. Donald Hintz, President of Entergy. His
6 involvement in both license renewal and license transfer
7 will be pertinent current input for our discussion.

8 Dr. James Rhodes, Chairman and CEO of the
9 Institute for Nuclear Power Operations, and he will provide
10 valuable perspective on overall industry performance, as
11 well as the fact that he, too, was a CEO of a nuclear
12 utility.

13 To my left, Mr. George Hairston, President and CEO
14 of Southern Nuclear Operating Company. His experience,
15 through the mind set of a large nuclear operator, will be
16 beneficial to our discussions. I just recently have visited
17 his Plant Vogtle and had a good time.

18 Mr. David Lochbaum, Nuclear Safety Engineer, with

19 the Union of Concerned Scientists. UCS has provided, we
20 believe, very balanced and diverse input to the NRC and we
21 value UCS' comments and Mr. Lochbaum's participation not
22 just in this stakeholder meeting, but in a number of other
23 fora.

24 Mr. Thomas Ortziger, who is Director of the
25 Illinois Department of Nuclear Safety, one of the plants in

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1 Illinois, Quad Cities, will be participating shortly as a
2 pilot plant for the new assessment process.

3 The Honorable Mr. James R. Curtiss is a former NRC
4 Commissioner. Mr. Curtiss is now a partner in the law firm
5 of Winston & Strawn. His work on the Hill, his work as a
6 Commissioner, and now on behalf of the nuclear industry, in
7 his legal practice, allows him to bring a unique perspective
8 to our discussions.

9 Mr. Joe Colvin, President and CEO of the Nuclear
10 Energy Institute. Mr. Colvin has been active in the nuclear
11 association for over 15 years, has been a consistent
12 participant in these meetings, and has taken a leadership
13 position in trying to drive change with respect to how
14 nuclear is viewed nationally, as well as in the regulatory
15 process.

16 Mr. Sam Collins, Director of the NRC Office of
17 Nuclear Reactor Regulation and sits at the focal point of a
18 lot of what's been going on.

19 I'm not specifically introducing the
20 Commissioners, since this is a, quote-unquote, Commission
21 stakeholder meeting and you're our guests, but I will
22 recognize them, so in case any of you don't know who they
23 are.

24 Commissioner Jeffrey Merrifield, Commissioner Nils
25 Diaz, Commissioner Greta Dicus, and Commissioner Edward

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1 McGaffigan.

2 We're striving to be as inclusive as possible, but
3 we recognize that not every stakeholder can be at the table.
4 So let me reemphasize that the Commission needs to hear from
5 every stakeholder, whether it is in this forum or in other
6 avenues that we routinely provide.

7 Endeavors such as this one, though, and our others
8 are key to the NRC continuing to improve the effectiveness
9 of its oversight of all of our licensees.

10 I've always believed that the regulatory process
11 should be as participatory as possible, with input from all
12 the stakeholders, the industries we regulate, members of the
13 public, state and local governments, and other stakeholders.

14 This actually needs to be a routine way of
15 thinking at the NRC and we believe we've begun to turn that
16 corner. However, I must follow that statement with the
17 caveat that the involvement must always, for a regulator, be
18 balanced and that involvement must help to guide, not to
19 dictate our decision-making. This meeting continues to be
20 an opportune time to stop and to review what we have
21 accomplished as a result of our efforts at change and to
22 consider both what is left to be done and the cautions to be
23 considered as we proceed.

24 In doing this, we should begin by recognizing that
25 a significant change has been occurring at the NRC for some

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1 time and that it will have to continue, and it will continue
2 as we gain insights into areas for NRC improvement as a
3 result of active stakeholder involvement.

4 I will not spend the time to enumerate the many
5 outcomes we believe we have achieved. Suffice it to say the
6 staff continues to make very good progress on the
7 comprehensive tasking memorandum items and we have many
8 initiatives that are nearing fruition.

9 There also have been an enormous number of other
10 initiatives which have not been captured in that tasking
11 memo or the tasking memo response, as well as all of our
12 day-to-day work which, on all of these things, are ongoing
13 and they're captured together with the tasking memorandum
14 items in our planning, budgeting and performance management
15 process, about which the Commission will hold a public
16 meeting this afternoon.

17 I am proud that throughout this period of change,
18 we have continued our primary focus of protecting public
19 health and safety -- what I have referred to in the past as
20 holding the center. Of course, we still have more to do.
21 There are a great many areas in which we've made substantial
22 progress, but there are also many that as yet are
23 incomplete.

24 For example, although we have met all of our major
25 milestones to date in the license renewal efforts, we still

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1 have technical issues and stakeholder issues to resolve and
2 there are even adjudicatory issues that continue in the
3 background.

4 Upon the completion of the Commission
5 deliberation, we need to initiate and carefully monitor the
6 task of risk-informing 10 CFR Part 50. We're on the brink
7 of a final rule change to 10 CFR 50.59 and the maintenance
8 rule. The pilot program for the new reactor oversight
9 process is in the near term future.

10 But that will only be the beginning of more work
11 to refine further the processes we learn from its
12 implementation. The list goes on and on. And all of this
13 just represents part of the reactor side of our
14 responsibilities as the Nuclear Regulatory Commission.

15 But the processes, the framework and the vision we
16 have established offer us the right set of tools, we
17 believe, to get the job done. I hope that all of you find
18 cause for encouragement in the process and the changes the
19 NRC is undertaking and that I can motivate you as we go
20 through in the topical areas to comment on your perceptions.

21 These meetings in the past have been very candid
22 and we would like to invite a similar level of interaction
23 and candor at this meeting.

24 On behalf of the Commission, I again, reiterate
25 our thanks to those who may not be at the table, including

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1 other members of the NRC, the GAO Congressional staff,
2 members of the public or the press, for your interest and
3 participation.

4 Our goal is to concentrate on a specific topic
5 list, so, consequently, unlike our last meeting, we will
6 move directly into discussions in each topic area. So to
7 that end, I would like to introduce our first topic area. I
8 believe that all of them have been circulated in
9 correspondence to the participants in the meeting.

10 Our first topic area is risk-informed initiatives.

11 The Commission has placed a high priority on risk-informing
12 numerous aspects of our regulatory process and for that
13 reason, we start with this area, because it's one of our
14 most visible framework changes.

15 Stakeholder input, as you know, played an
16 important part in the formulation of our probabilistic risk
17 assessment PRA policy statement and the subsequent
18 formulation and initial use of NRC risk-informed regulation
19 guidance for licensing action. As a result, the NRC has
20 approved applications in the areas of graded quality
21 assurance, in-service testing of pumps and valves, and
22 in-service inspection of reactor plant piping.

23 We also have engendered a much improved
24 understanding of the applicability of risk assessment to
25 regulatory functions at all levels of the staff. Still, as

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1 always, much remains to be done. We have a pending staff
2 requirements memorandum from the Commission which will
3 delineate the framework for the Commission plan for
4 risk-informing parts of 10 CFR Part 50.

5 This will be a major long-term undertaking and
6 will include pilots in various initiatives and developing
7 risk-informed definitions of terms such as safety-related
8 and important to safety.

9 We also have initiatives underway to consider
10 improved fire risk assessment methods. The staff has
11 identified the maintenance rule change, the so-called
12 "should" to "shall" as a good starting point for
13 risk-informing Part 50. The change to the rule is due,
14 initial change is due to the Commission within the next two
15 weeks.

16 We have a Commission briefing scheduled tomorrow
17 to help us come to closure on some of the remaining issues
18 and the revitalized 10 CFR 50.59 also is due to the
19 Commission next week.

20 We believe all of these initiatives will add a
21 greater degree of objectivity and coherence to our
22 regulations by arriving finally at risk-informed definitions
23 and scopes for the requirements under which reactor
24 facilities operate. With all that lies ahead of us, we need
25 the input and so let me begin to get the input by asking Mr.

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1 O'Hanlon if he would address this topic first, and then I
2 would turn to Mr. Lochbaum for any comments he would wish to
3 make, and then we will open the discussion.

4 As I said, Mr. Steven Cahill will be trying to
5 capture the essence of the discussion as we, in fact, go
6 along.

7 Mr. O'Hanlon.

8 MR. O'HANLON: Madam Chairman, Commissioners, good
9 morning. I appreciate the opportunity to participate in
10 this stakeholder meeting.

11 We support the use of risk information as part of
12 the regulatory process. Risk information has already
13 allowed us to focus our resources and attention in some
14 areas where safety and efficiency have been improved.
15 You've mentioned the example in the introductory comments.

16 We've implemented risk-informed ISI, in-service
17 inspection, at one of our Surry units. As a result, some
18 systems have decreased the inspections, but some have
19 increased, and the core damage frequency has improved.

20 While we do endorse the use of risk information,
21 let us not forget that the existing body of regulations have
22 produced an enviable safety record. As we consider
23 producing an entire new body of regulations, we must ensure
24 that the safety and economic benefits are commensurate with
25 the resources required to develop and implement the new

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1 resources.

2 What I'm trying to say here is we must apply the
3 risk-informed 10 CFR 50 in the right areas.

4 I suggest that we keep some perspective with the
5 issues that we tackle. I'm particularly interested in
6 seeing that the necessary resources are given to the
7 forthcoming license renewal applications, and that's another
8 topic we'll be talking about.

9 Timeliness is also a factor that we should keep in
10 mind, and I will mention a recent example. The NRC issued,
11 on March 29, a final rule providing some flexibility in the
12 frequency of independent audits for emergency preparedness
13 safeguards and security plans. That's great. Until you
14 remember that we submitted the original petition for
15 rulemaking in December of 1993.

16 This was a rulemaking that received fewer than a
17 dozen public comments, all but one in support, and raised no
18 significant safety issues.

19 It's in the spirit of timeliness that I recommend
20 that we know move expeditiously to risk-inform the scope of
21 the maintenance rule and to resolve the questions remaining
22 regarding the implementation of 10 CFR 50.59, and you
23 mentioned both of these just a moment ago.

24 Thank you, Madam Chair.

25 CHAIRMAN JACKSON: Thank you. Mr. O'Hanlon, I

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1 actually have a question for you.

2 MR. O'HANLON: That's not surprising, ma'am.

3 CHAIRMAN JACKSON: That's right. You know my
4 personality and my reputation, which is all true. You made
5 the statement that we must apply a risk-informed 10 CFR Part
6 50 in the right areas. One could potentially pose the
7 question that if one is really doing risk-informed
8 regulation, that by definition, that focuses you in the
9 right area.

10 Would you comment on that? As opposed to a priori
11 deciding what areas can be risk-informed. Is not
12 risk-informed regulation an overall comprehensive approach
13 to focusing on the right areas?

14 MR. O'HANLON: Yes. What I'm saying is that I
15 don't think you can take all of 10 CFR 50 and just replace
16 it at once. I think you can take a look at the entire body
17 of 10 CFR Part 50 and use risk information on that body to
18 find out what areas it makes sense to go in and use risk
19 information would be beneficial, and not just say we're
20 going to change everything, where there is going to be
21 little benefit of doing that.

22 My personal feeling is that when we do that, there
23 is going to be a spectrum and there's going to be areas that
24 we're going to want to focus on quickly and there is going
25 to be sufficient clarification that those are the areas of

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1 high safety significance and we can gain from that.

2 I think there is going to be maybe a high, medium

3 and low level of areas. But some of them, and in-service
4 inspection is an example, it makes sense that you can look
5 at this particular area, this block, in total, that area,
6 risk-inform that, and then use it as an option for
7 regulation, as opposed to just forcing everybody to go
8 through it.

9 CHAIRMAN JACKSON: Mr. Lochbaum, do you have
10 comments you wish to make?

11 MR. LOCHBAUM: I guess the only comments we would
12 have would be on the 10 CFR 50.59. The old rule is any
13 increase in the margin of safety required prior NRC approval
14 and that was -- if not the most abused rule, was probably in
15 the top five, where licensees had trouble following that
16 rule.

17 The new rule change seems to add this gray area of
18 margin of safety. Considering the old rule was black and
19 white and there was trouble following it, diluting the rule
20 and creating this gray area doesn't seem to be really
21 addressing the issue at hand.

22 So we're not overly confident that that will solve
23 the problem that has afflicted this rule for so many years.

24 CHAIRMAN JACKSON: Commissioner Diaz, would you
25 care to make a comment? I know you've thought a lot about

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1 margin of safety issues.

2 COMMISSIONER DIAZ: I will tend to agree with Mr.
3 Lochbaum that ambiguity in any rule doesn't help anybody in
4 the long run. I think that is an issue that we have to
5 face, that sometimes we provide flexibility with the
6 intention of making the rule more useable and it ends up
7 being less useable and creates more problems.

8 So in many ways, providing greater definition is
9 the right thing to do. I do believe that in the case of
10 50.59, we actually have a very strong backbone in the tech
11 specs that actually support whatever we're going to be doing
12 in the area of 50.59 that will not really allow a margin of
13 safety to deviate.

14 But how they interact, how they are supported, I
15 think, is an area that probably needs further definition.

16 COMMISSIONER JACKSON: Anyone else? Sam, would
17 you like to make a comment?

18 MR. COLLINS: I think the comments up to this
19 point are appropriate. I think I would prefer to look at
20 the existing rule as being perhaps too restrictive and in
21 the risk-informed performance-based arena, what we need to
22 be careful of is that we're able to measure, at any point in
23 time, where the new proposed rule allows margins to be,
24 given that there are margins and there are safety areas that
25 exist for consideration as we make changes to the plant.

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1 We have inspected this area quite heavily. I'm
2 not sure I would agree that it's been abused. I think
3 there's been perhaps interpretations that were necessary by
4 the agency and that's probably a result of it being so
5 restrictive that none is none. That's hard to disagree
6 with.

7 Any rule change is going to provide for some
8 period of transition. I think we need to monitor that.
9 We'll do that with the licensees and with our inspectors.
10 Ultimately, the language has to be clear enough so that the
11 licensees are provided the ability to comply in a reasonable

12 fashion. The effectiveness of the rule can be judged
13 objectively by our stakeholders, and, as importantly, it has
14 to be inspectable so that the inspectors can have a
15 reasonable realm to deal with it as far as verification of
16 compliance.

17 Then after that, it's a matter of enforcing our
18 regulations.

19 CHAIRMAN JACKSON: Commissioner McGaffigan.

20 COMMISSIONER MCGAFFIGAN: This is a little bit off
21 the subject, because 50.59 is not going to be a
22 risk-informed rule. But I'd just like to defend what I
23 believe we're headed towards, which is to provide some
24 additional flexibility.

25 In my view, it's a waste of resources. It's

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1 risk-informed only in the sense that looking at trivial
2 changes and forcing those into license amendment space is
3 something that's not a good use of either our or licensee
4 resources. So I basically believe we're in the right
5 direction and the margin of safety criterion turning into a
6 fission product barrier criterion I think is appropriate.

7 I was interested -- I don't know whether I could
8 make a suggestion to the Chair. Mr. Ortziger had some
9 interesting comments.

10 COMMISSIONER JACKSON: I'm coming to him. He's on
11 my list.

12 COMMISSIONER MCGAFFIGAN: In this area, and I
13 thought he might be interesting to hear from.

14 COMMISSIONER JACKSON: Mr. Ortziger.

15 MR. ORTCIGER: That was a very good segue. We, as
16 a department, certainly support the activities of the
17 Commission and as most of the members are aware, we have had
18 a resident inspector program in Illinois for over nine years
19 now, and it has been based on risk information.

20 We believe it's a solid and strong program and we
21 support the activities of the NRC.

22 What we find, though, of concern is that there is
23 no requirement for quality PRAs. We believe the NRC should
24 require PRAs of at least Regulatory Guide 1.174 quality. We
25 also believe that this should not be a voluntary program,

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1 but has to move toward an overall, overarching,
2 risk-informing process.

3 If both the industry and the NRC is serious about
4 modifying their regulations and inspection activities, it
5 cannot be done on this voluntary basis. That is why,
6 although this is the way the process could move, we don't
7 feel that it is demonstrating that that is where it's going
8 to go, and that is of our concern.

9 If the public is going to feel that we are
10 attempting to do something that's going to be an
11 improvement, then it's not going to be acceptable as a
12 voluntary process. Both the regulated community and the
13 regulator are responding and I believe this is a positive
14 attitude, but we should make the best use of our risk
15 information and carry out our responsibilities thoroughly
16 and not on a voluntary basis.

17 I would leave it at that.

18 CHAIRMAN JACKSON: Sam, did you want to make an
19 additional comment?

20 MR. COLLINS: On the topic, but off the direct
21 remarks just made, I would like to respond to Mr. O'Hanlon's

22 issue of timeliness, which I think is appropriate to
23 validation. Responsiveness is another way to put that
24 particular goal.

25 We did receive the VEPCO petition in January of

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1 '94. Our tracking would indicate in a more current sense of
2 how we do business, that we really focused on that. In May
3 of '97, the proposed rule package was put together. We
4 received Commission approval in the beginning of '97 to
5 pursue that package and since then, I think it's marched
6 along fairly smartly in the process.

7 So I do acknowledge the comment. It's a valid
8 issue. I'd like to think, based on the current processes,
9 that we are capable of being more responsive and looking at
10 the back-end of the process. I think it's worked well once
11 it came into the process that we have now. We're focusing
12 and prioritizing our work. It's validation.

13 CHAIRMAN JACKSON: Mr. Colvin, please.

14 MR. COLVIN: Madam Chairman, I'd like to go back
15 to a question you asked Mr. O'Hanlon and then segue into the
16 issue of PSA and risk application. I think that if you look
17 at Part 50 of the NRC's regulations, there are probably,
18 depending on how you count them, if you count each part and
19 each appendix and so on, in round numbers, there's a couple
20 hundred of them.

21 If you look at which ones really apply to a
22 licensee as compared to what directs the agency, there are
23 probably less than a hundred. We counted them one time and
24 if my memory recalls, somewhere about 90 parts of the CFR
25 Part 50 that really a licensee regulates the day-to-day

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1 activities of the plant.

2 So I guess if we're looking at risk-informing Part
3 50, there are certainly some regulations that would be
4 naturally outside of that in how the agency does business,
5 how it's organized and other factors. I mean, just to kind
6 of set those aside.

7 I think that if you then go down to the
8 regulations that affect the licensee day-to-day, there is
9 still another wide spectrum of regulations which there would
10 be a benefit to the agency and to the public and to the
11 licensee to risk-inform.

12 General design criteria, for the most part, I
13 would say, probably don't naturally fit into moving into a
14 risk-informed analysis and so on as the starting point. I
15 think that those are things which have been the foundation
16 for safety and ought to be perhaps looked at, but at a later
17 time.

18 But there are other regulations which, in fact,
19 we're working on, whether we're talking about the quality
20 assurance program or we're talking about the maintenance
21 rule and other aspects, or perhaps even security, where
22 there is a great benefit to taking that focus.

23 So I think that it will -- while we're talking
24 about risk-informing all of Part 50, in reality, we're
25 talking about risk-informing those parts of the regulations

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1 which naturally fit, and there would be benefit to take that
2 resource commitment to make that transition.

3 I guess the second point on the PSA and the

4 application of PSA, I think that we ought to look at, when
5 we talk about risk-informed, whether we're talking about
6 doing it all in PRA or PSA space or we're talking about
7 using the empirical knowledge and experience that we've had.

8 I think if you view that in the context of, say,
9 an ISI or an IST program, we're really risk-informing it
10 based upon, in large measure, inspections that have shown
11 the results over a long period of time, where we have a very
12 vast number of empirical data, and then kind of taking that
13 and using some of the risk tools.

14 So I think it takes a balance of approaches as we
15 see it today and use the tools that are available to us. So
16 while I agree with the comments about the importance of
17 moving forward, to get common agreement and a common
18 baseline on PSA and other technologies, I think that's an
19 important step, some of the applications don't necessarily
20 require that to, in fact, reap the benefit for the agency or
21 for the public.

22 CHAIRMAN JACKSON: Commissioner Diaz.

23 COMMISSIONER DIAZ: It just occurred to me that when you're
24 trying to prioritize what should really be risk-informed and
25 we look at the foundation of even Part 50, isn't

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1 risk-informing how we deal with structures, systems and
2 components, the fundamental corner piece? A question.

3 CHAIRMAN JACKSON: Joe.

4 MR. COLVIN: I guess since you've tapped me, I
5 will try to answer that. I think the answer is yes. I
6 think what we have to look at is where there are -- I mean,
7 when we go into risk-informing the regulations, we're trying
8 to measure, in some way, the connection between what's
9 required by the regulation and how that provides an adequate
10 level of protection of public health and safety.

11 In the areas in which we have breakdowns in that
12 are typically within the systems, structures and components
13 of the facility and how they're maintained and those factors
14 and the reliability of those systems and so on.

15 So I said, I guess, from a natural, if you want a
16 gut feeling, I think that is a natural place to start.
17 Also, I'm not sure that I would want to be limited, because
18 we might find, as we move forward, that there are other
19 opportunities which give promise to making some changes that
20 would be beneficial.

21 CHAIRMAN JACKSON: I had a couple of questions I
22 wanted to pose. A current issue of debate is what forum
23 should be used to risk-inform the scope of some rule; that
24 is, the embodiment of language directly into the body of the
25 rule or in associated guidance documents.

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1 Is there a point of view that different panelists
2 have on this? I would be interested in hearing from you.
3 Yes, Mr. Lochbaum.

4 MR. LOCHBAUM: I guess our view is it should be in
5 the rule and not in the guidance documents, because that
6 gets back into what we feel has plagued the industry for a
7 while, the subjective application of guidance documentation.
8 Some regions are more strict than others.

9 So if you put it in a rule, that would be our
10 preference, because it tends to promote consistency. Also,
11 it tends to promote public comment on a proposed rule as
12 opposed to public comment on a guidance document. It's hard
13 to get people really enthused about commenting on a guidance

14 document. It's hard to get them enthused about commenting
15 on a rule, but guidance documents are even tougher.

16 CHAIRMAN JACKSON: Yes, please.

17 MR. HAIRSTON: I wasn't assigned this one, but my
18 personal opinion is on the rule, we ought to have our
19 principles in the rule and I think all too often we pass a
20 rule or you pass a rule and after you've had several pilots
21 or the first plants are under that rule, things come out
22 that you hadn't thought about.

23 I think we may be into some of that right now in
24 license renewal. I would tend to have the rule set the
25 fundamental principles and the fundamental rules that you're

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1 going to be governed by and then have a guidance document
2 that is somewhat more flexible to give the specifics.

3 CHAIRMAN JACKSON: Actually, that raises an
4 interesting point, because there's been a lot of discussion
5 about risk-informing the scope of a rule, and I could argue
6 that at a certain level, I don't know what that means,
7 because in the end, the scope is plant-specific, because the
8 plants are designed and operated differently.

9 But what one really wants to risk-inform is the
10 fundamental principles or the scope-determining methodology,
11 and then it has to be fleshed out, as you say, with flexible
12 guidance and, if necessary, with some examples that speak to
13 how then those principles are to be applied on a
14 plant-specific basis.

15 I know when one begins to talk about being
16 plant-specific, it make some people shudder, because then
17 they think arbitrariness and lack of consistency.

18 But I must say in looking and having thought about
19 this a long time, I fail to see how one can risk-inform the
20 scope of a rule for all time, for all plants.

21 Mr. Curtiss.

22 MR. CURTISS: Let me respond to a couple of points
23 that have come up and just revert to one of my favorite
24 topics, which is the maintenance rule, because I think it
25 illustrates the point that you're making.

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1 I guess I would focus on three aspects of the
2 experience that the agency has had with this initiative.
3 The first is that as I think Mr. Hairston has said,
4 principles need to be established in the rule, but they need
5 to be established with clarity. So that as one looks at the
6 regulation, whether it's the licensee that is seeking to
7 comply with the regulation or the staff that is seeking to
8 develop guidance for the regulation, that the regulation
9 sets forth, in a clear and unequivocal way, what the
10 Commission's expectations are.

11 I think in this particular area, the Commission's
12 effort to follow the development of the guidance and take
13 the level of interest has been key to the success of the
14 rule, because this is a first of the kind initiative.

15 I think the second point that I would make, and it
16 really goes to the juncture that you're at now with the
17 maintenance rule, I think it's a key juncture, is that over
18 the past four or five years of its implementation, what
19 we've found is that the risk insights, as I think Joe Colvin
20 has said, that have been gained by the inspections and what
21 we know with the pilot inspections and the application of
22 the rule, have served, I think, to inform, to a greater

23 extent than existed in 1991, how a mid-course correction
24 might be made in the regulation itself, because the
25 regulation may drive a scope that is broader in terms of a

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1 principle-establishing framework.

2 I've reflected a lot on that and on your emphasis,
3 Chairman Jackson, on risk-informed and performance-based,
4 and, frankly, what I think has happened is that when the
5 rule was initially promulgated, it was really more
6 performance-based than it was risk-informed. We had the
7 concept, I think, at the time, that performance-based ought
8 to mean we're focused on results, but not necessarily the
9 prescriptive programs on how to get there, and we had a good
10 sense, I think, of what needed to be done to risk-inform the
11 rule, but certainly not a sense that could benefit from
12 everything that's happened since the rule was promulgated
13 and as it's been implemented.

14 So I think in answer to your question, how do you
15 establish the right risk scope and risk focus, the
16 maintenance rule, I guess, stands for the proposition that
17 it may be an iterative process, where, as you develop risk
18 insights and where there is a need for mid-course correction
19 of the rule itself, I think the receptivity of the
20 Commission today to making that change is important.

21 But secondarily, the guidance that needs to lay
22 out how that rule is implemented is something that is going
23 to be the fundamental forum and I think the guidance that's
24 been developed by the industry and embraced by the
25 Commission in the joint guidance development process is a

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1 good example of how that can work.

2 But fundamentally, the clarity in the rule and the
3 oversight of the development of the guidance process, I
4 think, are ultimately going to be the key to the success of
5 any rule.

6 CHAIRMAN JACKSON: Yes, Mr. Colvin.

7 MR. COLVIN: I wanted to follow up on that same
8 question. I appreciate Mr. Curtiss going first, because I
9 know that all of you dubbed me the historian previously on
10 the maintenance rule. He precedes me in that, and with that
11 honor.

12 I think that the answer to your question on the
13 guidance is really a combination of answers. I think the
14 panelists, the participants have already addressed that
15 fairly well. I'd just like to make a couple comments.

16 I think we need, when we talk guidance, we need to
17 decide what do we mean by guidance. I think that goes back
18 somewhat historically. If we talk about a regulatory guide,
19 which provides guidance, and we take it to what it says in
20 the introduction, that that regulatory guide is one
21 acceptable way to meet the intent of the rule, not the only
22 way, then we have a guidance document that provides the type
23 of flexibility that was intended.

24 I think historically, however, what we saw was
25 that was the expected way and, in many cases, through the

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1 inspection process, was used to get each licensee to follow
2 that particular path.

3 The other point I would make on guidance is that
4 as we move forward to issue a new regulation or another part
5 or to make a change, it's important to communicate the

6 expectation of the Commission in that process, the
7 rulemaking process, to the degree that it will allow
8 stakeholders to meaningfully comment on that rule and to
9 provide that kind of feedback.

10 So it's important for the Commission, I think, and
11 the Commission has taken these steps, to a large degree, as
12 to provide guidance documents and definitions and other
13 materials as part of that process to allow that to, in fact,
14 work to the highest degree possible.

15 I think it's in that context that it's important
16 to get the guidance out, whether it's in draft or other
17 processes, or to develop a process that solicits input on
18 the guidance, such as we did in the maintenance rule or such
19 as we have done in other major rulemaking, such as even goes
20 back to the station blackout rulemaking, where we had an
21 industry/NRC/stakeholder set of meetings to develop an
22 acceptable way.

23 In fact, that turned out, in most of those cases,
24 to be the normal way that people use, because it turned out
25 to be the most efficient way possible. So that helped both

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1 the agency and the licensees to follow that process.

2 CHAIRMAN JACKSON: I would very much agree with
3 you that it's important that the Commission should make its
4 intention clear in moving to make a rule change or
5 promulgating a new rule, because all too often, we end up in
6 a mode of trading language as opposed to understanding what
7 we're trying to accomplish, what we, as a regulatory agency,
8 are trying to accomplish and how that plays off against what
9 those we regulate and members of the public think need to
10 occur in an area.

11 I think that that is an area we can improve upon,
12 in fact. Sam, I'm going to come to you, but I think Mr.
13 Gunter wanted to make a comment.

14 MR. GUNTER: I would just comment that this is a
15 particular area of concern for us in that first of all, I
16 think that this whole risk-informing process should be put
17 into light of the stage that it's coming to this industry,
18 where we're seeing, from a public interest point of view,
19 we're seeing a beleaguered industry faced with more
20 uncertainties with regard to age-related degradation or a
21 whole host of issues that are placing greater economic
22 burdens.

23 While the term flexibility in regulation is being
24 used here, what we interpret that to mean is elasticity in
25 regulation, in that literally the regulations are being

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1 provided, the ability to stretch to meet a particular
2 economic concern faced by the industry.

3 I think this is most clearly represented in an
4 issue that we've been following very closely in terms of
5 fire protection and the effort to risk-inform fire
6 protection derives completely, from our perspective, out of
7 the economic hardship brought on by widespread deployment of
8 inoperable fire barriers and fire penetration seals.

9 So in order to meet that challenge, rather than
10 replace the system with an operable barrier, that we're now
11 looking to risk-inform the regulation to provide this
12 elasticity.

13 But when we talk about holding to the center on
14 public health and safety, I don't believe that you do the

15 issue justice by allowing this stretching of the regulation
16 to meet what we debate to be the real issue of lessening the
17 economic burden to the industry.

18 CHAIRMAN JACKSON: Well, let me make one comment
19 to that, and it's just a statement of fact. From my point
20 of view, my interest in risk-informing fire protection
21 regulation doesn't have to do with inoperable fire barriers,
22 per se, but in having to do fundamentally with a focus of
23 mine on risk-informing everything we do. That's number one.

24 Secondly, early in my tenure, and this may make
25 some people shudder, I had always made the point that we

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1 should not regulate by exemption and that if one finds that
2 one has a rule or a requirement that somehow de facto makes
3 us have to exempt everything, then we need to look at
4 whether the rule is necessary or not or what fundamentally
5 is wrong with the rule, so that it has a coherent way of
6 addressing differences in plants, so that everyone is not
7 handcuffed the same way, but ensures that we cover what
8 needs to be covered from a health and safety point of view.

9 But we may have gotten into a situation where --
10 it's not unlike what I was mentioning earlier, where we end
11 up trading language and the discussion shifts, so that one
12 has lost sight of what it was that one wanted to accomplish
13 in the first place.

14 But I don't believe that I or the Commission
15 believes that it's meant to provide an elastic blanket over
16 things that are important. It may, again, I think, because
17 of this issue of maybe our needing to improve in stating
18 intent, that there are conflicting messages that get sent.

19 Let me go to Sam, and then I will come to
20 Commissioner McGaffigan.

21 MR. COLLINS: Just taking the opportunity to
22 comment on Mr. Gunter's issue. I think it's a valid issue
23 that we cannot afford to give the impression or, by
24 practice, look at only one side of risk-informing. The
25 Chairman is fond of saying it's a double-edged sword, and

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1 truth in the process application should have us applying
2 both sides of that instrument.

3 Fire protection may be a very good example, as we
4 went through the process, Paul, to try to understand fire
5 protection better in a risk-informed manner. I had a
6 meeting yesterday with staff on a package that's going to
7 the Commission on all of the attributes of the fire
8 protection program.

9 There are multiple barriers, as you know, fire
10 penetration seals is just one, there are others, for the
11 prevention and the detection and mitigation of fires and
12 then the safe shutdown aspect.

13 Some of those are probably more important than
14 others, given those multiple bets. Some may very well have
15 to be heightened as far as our existing requirements under a
16 risk-informed rule. Others may be less.

17 But what we have to do is strive for that balance
18 and not look at just one side of risk and then be able, in a
19 scrutable fashion, not only to the Commission, but to the
20 other stakeholders, to indicate why those processes depict
21 the requirements the way they are. Then they're subject for
22 debate.

23 So I think we do have, when we look at risk, a
24 tendency to look at how that would benefit not only the

25 industry in applying their limited resources, but in the

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1 staff. We can't lose sight of the fact that maintaining the
2 safety aspect of how we measure our outcomes and our
3 attribute list ensures that we look at the escalation
4 necessary, and then we'll be judged based on that.

5 My original point was going to be on the question,
6 Chairman, you asked about how to structure the format for
7 providing for risk information or risk insights. Working
8 with the program office and the staff and hoping to provide
9 guidance and processes for Hub and the regional
10 administrators, particularly the inspectors, I believe we
11 have to deal with the hierarchy. There has to be some
12 underpinning of requirements, well understood, probably
13 initially deterministic, that set the framework for our
14 bounds as far as regulations and limits and how much is
15 enough, in that traditional sense.

16 Then as we move forward, we become smarter. We
17 apply new technologies. We use industry experience. Under
18 the auspices of applying risk-informed, we have to be able
19 to come back to a center of what is risk-informed and what
20 do you apply it to, whether that's structures, systems and
21 components, as applied under the tech spec definition,
22 whether it's the configuration risk management program, and
23 whether the general framework applies to Reg Guide 1.174, I
24 believe we need to keep coming back to a center in that
25 regard and use those languages consistently.

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1 I would agree with Mr. Hairston that I believe
2 rules can be encumbered with too much language, but they
3 need to point in a direction. They need to allow the
4 application of different processes and then bound those
5 processes and point to the application of further guidance
6 that may actually be a little more flexible, but not so
7 much, as Mr. Lochbaum indicated, that it's inconsistent.

8 Where the rubber meets the road at the interface
9 with the inspectors and the reviewers, there needs to be
10 enough guidance such that there is consistency and coherency
11 in how we do our work.

12 We've learned recently, the maintenance rule is a
13 good example, that the use of oversight with a light touch,
14 which means that inspection findings are run through a
15 common place, enforcement may have an oversight board,
16 training is always an issue, and providing updates to our
17 inspectors and to provide for the turnover, we can't lose
18 sight of the back end of our processes wherein we reinforce
19 the application of these rules to provide feedback and
20 experience.

21 So there is as much of that which is ongoing
22 forward effort that has to be addressed as structuring your
23 rule. So I think we're learning that and we have that set
24 up for 50.59, for example, where we presume that any change
25 to the maintenance rule as far as scope would have a similar

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1 process.

2 CHAIRMAN JACKSON: Commissioner McGaffigan.

3 COMMISSIONER MCGAFFIGAN: I just want to go back
4 to the fire protection and back to some of the points the
5 Chairman made. The fundamental problem, as I said at the
6 Commission briefing on this, I think, goes back to the

7 history of the Appendix R rulemaking. The industry
8 representatives could correct me, but I believe that's the
9 last final rule of the Commission that was actually
10 challenged in U.S. Appeals Court.

11 If you read -- I think it's Judge Mickva was the
12 chair of the panel, and a very liberal panel of the U.S.
13 Appeals Court came awful close to throwing that rule out on
14 the grounds it was arbitrary and capricious and arrived at
15 at the last minute, with all sorts of new things added.
16 That was the industry argument. And they said, well, we'll
17 not overturn the rule based on the NRC pleadings, but we're
18 going to grant exemptions to everybody left, right and
19 center.

20 So in some sense, and that was our main pleading
21 and they said give them the flexibility the NRC claims
22 they're going to use, we will not find the rulemaking --
23 this is a non-lawyer describing a judicial decision, I will
24 add. But that's a failed rulemaking, in some sense.

25 We now have lived for, what is it, 17 years, 18

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1 years with a rulemaking that just was not done very well and
2 where we promised, in order to get the rule not overturned,
3 that we would be using exemptions.

4 CHAIRMAN JACKSON: But rather than improve the
5 failed rulemaking, we're trying to do it in guidance as
6 opposed to doing a rulemaking.

7 COMMISSIONER MCGAFFIGAN: At the moment, I think
8 we're trying to do a consolidated guidance to try to keep
9 the practice under this rule consolidated in one place and
10 then we're going to think about risk-informing once we get
11 some standard from some standards body, as I understand it.

12 But basically, I think the consolidated guidance
13 the staff is working on is going to try to consolidate the
14 practice under which we have granted exemptions left, right
15 and center for the last umpteen years.

16 But as I say, going back and trying to be an
17 historian, and I'm not one, and I'm not a lawyer either,
18 that the problem originated with the original rule and it's
19 probably the epitome of how not to rule-make.

20 CHAIRMAN JACKSON: Yes.

21 COMMISSIONER DIAZ: This is an issue that I think
22 is very fundamental. I do believe that you can risk-inform
23 a scope in a rule by providing a series of definitions. The
24 bottom line is what do you risk-inform. What you need to
25 risk-inform is two things.

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1 First, you need to risk-inform the decision-making of the
2 licensee, so they have a boundary, they have an area that
3 they have to work with, because that's what rules are.
4 They're going to exercise, they're going to manage. So the
5 rule has to be clear on what the licensee is going to do.

6 The second is that, of course, we have to be able
7 to see that those requirements are safety -- are risk-bound,
8 are clear, and that we can enforce it.

9 The thing with the guidance, and there are a few
10 people in here that have a lot more experience than I have
11 with guidance, is that it is a document with a certain
12 amount of comfort as existed between the staff and the
13 licensees. There has always been a little bit of trade-in
14 and a little bit of flexibility on it, and I think that's
15 okay.

16 I think that should be there, but we are at a

17 stage in which further definition in the front end could
18 actually make the guidance better, make the guidance more
19 focused, have the flexibility that is needed operationally,
20 to have the definition that is needed, so the people out
21 there that are doing the work know what they have to do and
22 for us to know where we have to focus.

23 I think this tradeoff is a very important thing.
24 This is where, quoting Madam Chairman, the rubber meets the
25 road, because people are really many times, quote, regulated

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1 by the guidance. If the guidance is fussy, then the
2 enforcement is going to be fussy or the people are not going
3 to do it right.

4 There has to be some convergence on how much
5 flexibility and how much the rule can have. I think this is
6 an area that really requires additional effort.

7 CHAIRMAN JACKSON: You opened a kind of a
8 Pandora's box from a consistency point of view, and let me
9 just make two comments.

10 One is I don't disagree with you, frankly, from
11 the point of view of definition, but when you begin to talk
12 definition, you're not talking about risk-informing the
13 scope. You're talking about bounding what people do and how
14 they go about doing it. That's what the definitions
15 accomplish.

16 They don't set a scope for all time for each
17 plant, and that's the point I really wanted to make. So I
18 don't believe we're disagreeing, but it's a question of what
19 you mean by when you talk about risk-informing the scope.
20 It's risk-informing -- you're having definitions that allow
21 you to make risk-informed determinations in given cases
22 within some bounds.

23 But we have to be careful about arguing that it is
24 very important to get these fundamental definitions down and
25 fundamental underpinnings and we go about it apace with

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1 respect to certain rules and then we're in an area like fire
2 protection and you say we don't want to regulate by
3 guidance, then we don't want to regulate by guidance.

4 So in the end, the Commission is going to have to,
5 in my mind, it may not be now, just out of expediency, but
6 it has to address this issue of what is the fundamental
7 underpinning of fire protection and what are you going to do
8 about it. That's not biasing how it comes out one way or
9 another, but we're talking about consolidating guidance and
10 doing various things with guidance, and in the one case, and
11 that's okay, but in the other case we argue for months that
12 we have to get the fundamental rule right.

13 I'm arguing, as an operational principle, from my
14 perspective, for a regulatory agency, we have to get the
15 fundamental underpinnings right in all of these key areas.

16 So one way or the other, we're going to have to
17 come back to fire protection, is my perspective. But we've
18 been arguing among ourselves. I'm really interested in
19 hearing from some of the industry folks, because you may
20 tell us that we're walking off the planet here.

21 Mr. Hairston, I don't know if you have any
22 comments you want to make.

23 MR. HAIRSTON: Actually, this is a issue I'm going
24 to lightly address in license renewal, where you do have
25 very good guidance in the rule, and I think there is an

1 issue or a point that we may be overlooking.

2 As you develop the guidance, somebody has got to
3 ensure that the guidance is in accordance with the
4 principles of the rule.

5 CHAIRMAN JACKSON: That's true.

6 MR. HAIRSTON: And sometimes the problem is not
7 the underpinning of the rule, but how we read that. We've
8 said it's very important to understand where is the
9 Commission coming from, what was the background. We've
10 learned a lot out of the maintenance rule.

11 So I don't think you can write all the guidance in
12 the rule. It just won't work. We've proved that. If you
13 do, we're back to prescriptive regulation.

14 CHAIRMAN JACKSON: That's right.

15 MR. HAIRSTON: But I think it's a lot easier to
16 sit up here and talk about this than to go out and do it. I
17 just appreciate the fact that you all are struggling, staff
18 and the Commission is struggling with this issue, because I
19 think it's a fundamental issue that has not been struggled
20 with in the past, and I think you ought to be commended for
21 it.

22 CHAIRMAN JACKSON: Thank you. Mr. Hintz, do you
23 have any thoughts about this?

24 MR. HINTZ: I don't think I have any thoughts that
25 haven't already been covered.

1 CHAIRMAN JACKSON: Mr. O'Hanlon, do you have any
2 thoughts on it?

3 MR. O'HANLON: Nothing further to add.

4 CHAIRMAN JACKSON: Okay. Are there any further
5 comments anyone would like to have on this general topic? I
6 thought what I would do is that we would move on. It's not
7 in the order you saw things listed, but I think we ought to
8 discuss another risk-informed change process, and that has
9 to do with the revision of our reactor oversight program.

10 We began with some focused attempts to improve the
11 objectivity and transparency of the senior management
12 meeting assessment processes, with eliminating programs like
13 the watch list and the SALP, and then transitioning to an
14 annual meeting schedule.

15 We had an intermediate attempt to improve the
16 objectivity, transparency, scrutability, predictability, et
17 cetera, of the senior management meeting process, and that
18 was IRAP, but recognizing the flaws in it, the Commission
19 really had the staff do an overall rethinking of all of our
20 processes, including inspection assessment and enforcement.

21 That rethinking has occurred in terms of
22 cornerstones of safety as a coherent starting point for our
23 reactor oversight and flowing from that and with that, we
24 have developed and will be implementing a risk-informed
25 baseline inspection program and our review of enforcement

1 has led to a new direction for the enforcement program to
2 compliment the assessment process.

3 As you know, the new process will use action
4 thresholds that are consistent with our recently issued Reg
5 Guide 1.174, which is entitled An Approach For Using
6 Probabilistic Risk Assessment in Risk-Informed Decisions on
7 Plant-Specific Changes to the Licensing Basis.

8 We have a pending, again, staff requirements

9 memorandum from the Commission delineating the new direction
10 of our program and we have nine pilot plants that appear
11 eager to start implementation of the new process for what is
12 initially projected as a six-month trial period, but we
13 recognize they need longer time, during which I'm sure both
14 sides will learn many lessons.

15 And judging from the response of those plants
16 volunteering to be pilot plants, as well as the licensee,
17 Congressional, and public interest group interest in the
18 pilots, this initiative will be under a lot of scrutiny and
19 will be closely monitored for its effectiveness to see that
20 it achieves the outcomes desired.

21 Now, no other effort better demonstrates to me the
22 value of the extensive interaction among the various
23 stakeholders, the nuclear reactor industry, the public
24 interest groups, other members of the public, state and
25 local governments, Congressional stakeholders, the NRC

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1 staff, and the Commission.

2 We've instituted many changes, but we're still in
3 an interim period, in that we have a vision of the future.
4 We have a framework that has been laid out, but we're still
5 living in the present. The NRC, of course, has to remain
6 focused on our task and not be distracted as we go along,
7 and many of you have warned me and warned the Commission
8 about change management, but we do have to still maintain
9 effective oversight of our power reactor operations, both to
10 keep the focus, as Sam says, on maintaining safety, but also
11 in maintaining our public credibility.

12 But the future does hold much promise and
13 anticipation by many, promise for a predictable and
14 effective regulator, promise for the clear and objective
15 thresholds of safety that will dictate agency responses, and
16 promise for a fair and consistent assessment and enforcement
17 process.

18 Mr. Colvin, I know that you and the NEI have been
19 actively involved in the evolution of this process and I
20 believe you could give us a good starting point for our
21 discussions. Since I like to advertise ahead of time, I
22 would then ask Mr. Lochbaum to share his perspective,
23 because he has been equally involved in the new reactor
24 oversight program. Then, Dr. Rhodes, since you have what I
25 call the integrated point of view, I would ask you to share

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1 some of your integrated perspective based on industry
2 performance and your assessment of where we seem to be
3 going.

4 I will go in that order, and then open the floor
5 for further discussion. Mr. Colvin.

6 MR. COLVIN: Thank you, Chairman. I'd just like
7 to make a couple comments. I think that if we take a step
8 back and look at what the agency has proposed and the
9 efforts and the work of the agency in this activity, I think
10 it really stands as a model for any agency and for
11 government in general as to the benefits of an approach of
12 integrating the stakeholders in a process and really trying
13 to get in there and do something that is going to make a
14 significant difference, and I'm very optimistic and I think
15 that the industry as a whole is looking at this program as a
16 way of addressing some things that we grappled with as an
17 industry and you grappled with as a Commission for many

18 years.

19 That is really how do we bridge this tie between
20 performance at the plant and protection of public health and
21 safety in a way that provides some simple objective measures
22 of what we're all talking about and clarifies the
23 expectation.

24 I remember the safety goal initiation and the
25 policies and the discussions and we got in a long what do we

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1 mean by this and what do we mean by that, and how do we tie
2 it together. I think what the staff has done with a lot of
3 solicitation of input has been able to, in fact, define
4 those in terms that really make rational, reasonable sense,
5 and I think give the agency, the industry, and ultimately,
6 when this implemented, the public, the tools which will
7 allow them to understand where the plants are performing,
8 what the agency is going to do in each of the cases where
9 there is a slip in the performance, and at what level of
10 thresholds that would occur.

11 So I think that this really, again, I think,
12 stands as a model. We looked very hard for many years at
13 many other agencies that regulate industries for safety.
14 None of them have made this type of transition to date.
15 None of them have crossed that -- have been able to
16 penetrate that, solving this problem.

17 So I'd commend the Commission and the senior
18 management and all the people working on this. This is a
19 very important effort and the integration of the inspection
20 activities, the assessment of how you measure the
21 performance, and ultimately, when necessary, what
22 enforcement action you take and how that's taken is a very
23 important piece of having an integrated system and program,
24 and I think that's where I see a tremendous benefit for all.

25 CHAIRMAN JACKSON: Thank you. Mr. Colvin, are

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1 there particular vulnerabilities you think we need to be
2 mindful of as we go forward?

3 MR. COLVIN: I don't see any initial
4 vulnerabilities. I think that the approach that you've
5 taken in laying out a series of pilot plants and trying to
6 work through that system and taking the lessons learned from
7 that is a very important step.

8 As we learned through the maintenance rule, as Mr.
9 Curtiss indicated we learned a lot from that over a period
10 of years. I think that we have the ability to learn a lot
11 from these pilot plants very early on and try to address any
12 questions that might arise and unexpected or unintended
13 consequences from the various activities.

14 I think that we ought to hold -- not speculate --
15 I think we could speculate, certainly I could speculate on
16 lots of potential problems in different areas, but I think
17 we ought to learn from the pilot plants and look at that and
18 then make some reasoned and rationed judgment.

19 CHAIRMAN JACKSON: Mr. Lochbaum.

20 MR. LOCHBAUM: I think we share a lot of the
21 optimism about the new program. It looks really good on
22 paper. How it's implemented will be the key to its success.
23 But what encourages us about that aspect of it is that
24 there's a lot of feedback loops built into the process that
25 will allow everybody to look at how it's going and provide

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1 that input and based on past results, it should allow any
2 corrections, mid-course corrections to be made.

3 So I think if there are any deficiencies, they
4 seem to be capably fleshed out during the pilot and being
5 corrected before it's taken nationwide.

6 We will speculate a little bit, despite the
7 warning. One vulnerability we see is how inspector findings
8 and inspection findings are factored into the process, but
9 we're not going to say that that's a doomed process. We'll
10 look at that during the pilot and make any comments
11 appropriate at that time.

12 CHAIRMAN JACKSON: Mr. Rhodes.

13 MR. RHODES: First, I'd like to say, Chairman
14 Jackson, I appreciate the opportunity to be here.

15 CHAIRMAN JACKSON: We're glad you're here.

16 MR. RHODES: Thank you. We, too, believe the
17 Institute of Nuclear Power Operations and the new oversight
18 process is certainly going in the right direction. We
19 applaud it. We support it. We've been involved to some
20 degree.

21 Of course, as you well know, imposed focus is on
22 the day-to-day operation and maintenance of the plants, the
23 training of personnel, and the exchange of information
24 related to that.

25 So our focus really has to been and will continue

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1 to be to go beyond the regulations and operating safely and
2 reliably the nation's nuclear plants.

3 I feel the new oversight process will allow the
4 industry and INPO, working with the industry, to focus on
5 excellence perhaps even more so than we have in the past. I
6 think it will allow us to really focus on the hard
7 day-to-day issues and put our resources more appropriately
8 there.

9 So for that reason, in addition to others, I think
10 the direction you're going is right on target.

11 Of course, as you well know, the performance of
12 the industry perhaps allows this more, it's the performance
13 safety and reliability standpoint, has improved dramatically
14 over the last decade or so.

15 Just since the last stakeholders meeting on
16 November 13, I believe, the results of the 1998 are in and,
17 as you know, the performance indicators that INPO and the
18 industry uses, the so-called WANO performance indicators,
19 are at an all-time high, measuring everything from safety
20 system performance to radioactive goals and the like.

21 In 1985 or '86, the aggregate performance of these
22 ten indicators was 43 points out of 100. In 1998, the
23 aggregate performance was double that, more than double
24 that, 89 points out of 100.

25 Your own data, which your INPO actually agrees

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1 with very much, on significant events per unit per reactor
2 year is at an all-time low, an improvement of some 60-fold
3 from the '80s, it's .04 events per reactor per year.

4 So I think with the new oversight process, we can
5 -- we in the industry can continue to focus on improving
6 even more this already very fine performance.

7 Lastly, I would say it's encouraging the plants,
8 particularly those ten or so over the last two or three
9 years that have been in long-term shutdowns, are now

10 recovering. As you well know, most are back on line. The
11 most recent, LaSalle Unit 2, came on line, I believe it was
12 in power operation in April, and Clinton is in startup now,
13 and Millstone 2, I believe, is ready for startup.

14 So I think that's also a positive indication of
15 the industry performance moving in the right direction.

16 CHAIRMAN JACKSON: Let me ask you this. You made
17 a comment, in a certain sense, that the performance of the
18 industry allows this kind of a change or process to go
19 forward.

20 A devil's advocate question would be if this were
21 1986 and you had the industry performance you referred to
22 then, would this still be the right oversight process?

23 MR. RHODES: I actually think it would. Of
24 course, nobody knows the answer to that. I think if we had
25 had this oversight process in 1986, I think the industry

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1 could have gotten to these levels of performance even sooner
2 than the ten or 12 years. That's just a judgment call.

3 In any event, whether it's 1986 or 1998, I think
4 it's the right way to go forward in 1999.

5 CHAIRMAN JACKSON: Of course, I naturally believe
6 that. But my metric is that it has to be a process that we
7 believe and, as you say, you have to go through the pilots,
8 et cetera, that we believe will work for all levels of
9 performance, because it is meant to be objective and to have
10 thresholds of performance and so on. And so in the end --
11 you know, I never talk about the fact that -- I mean, I
12 acknowledge the improved safety performance of the industry,
13 and you know that. I've said that even in speeches.

14 But I never link the promulgation and
15 implementation of this program to that, because in the end,
16 as a regulatory agency, whatever we have in place to assess
17 what our licensees do has to work and it can't be based on
18 the fact that the industry is good or better, et cetera,
19 because in the end, we have to do certain things and they
20 should be linked more clearly, the cornerstones of safety,
21 and we have to have a baseline program that allows us to see
22 what we need to see.

23 Do you feel that the new process will have any
24 impact on how INPO goes about doing its business?

25 MR. RHODES: I don't think it will have a

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1 fundamental impact. I think, as I said before or alluded
2 to, it will really allow INPO and the industry to spend even
3 more resources on focusing on excellence, which certainly is
4 supported by the NRC.

5 One other comment I might make, that I should have
6 made earlier, is that as you well know, INPO's programs have
7 been performance-based for almost 20 years now and I think
8 they have stood the industry in good stead, have been one of
9 the reasons for the success of -- the improvement of
10 performance of the plants over the last decade or so.

11 So I certainly support very much the direction
12 you're going, because I think it's, based on our experience,
13 the performance-based processes are very effective.

14 INPO has not been, quite frankly, involved in the
15 risk-informed process very much, but we're even looking at
16 that. That may have some applicability. It may be a
17 change, in response to your question, to the way INPO does
18 business.

19 But it's not clear to me that risk insights or

20 risk-informed processes apply quite as much to the
21 excellence that we're pursuing with the regulation.

22 CHAIRMAN JACKSON: Let me solicit some comment
23 from some of those who actually have the nuclear operations,
24 if they have any comments or any caveats. Mr. Hairston,
25 please.

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1 MR. HAIRSTON: The question about 1985-86 came up
2 and I couldn't let this pass. We are one of the companies
3 that have walked the halls of these buildings and before
4 that in Bethesda, at NUMARC, and many of you remember Pat
5 McDonald, and this was his mission in life, was getting the
6 assessment process out of the SALP and into something that's
7 more objective and performance-based.

8 When I heard that the Commission had agreed to
9 these pilots, it was pretty well reported and I could hear a
10 voice in the wilderness, Pat, who is now six years retired,
11 free at last. And I can tell you, I have talked to Pat and
12 he is ecstatic over this and he is a man, and many like him,
13 Bill Lee, that spent a lifetime working on issues like this
14 and the fact that you work and you work and there's many
15 Commissioners that have worked on this issue, both current
16 and past.

17 And the fact that we've made the progress gives
18 you light at the end of the tunnel on other issues that are
19 harder than this. But Pat knew I was coming up here and I
20 know, Chairman Jackson, you might not know the whole history
21 of this, but if Louis Reyes and his predecessor, who had to
22 sit through SALP meetings and listen to Pat's first five
23 minutes, would be appreciative of this.

24 But I think it's a great step in the right
25 direction and I think it's good for the region. I think the

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1 region was in a position of being somewhat subjective. I
2 think part of this and how this plays out in the pilots, the
3 most important thing is there has to be a dialogue between
4 the region and the plant. I don't care about the grades, I
5 don't care about the indicators. They're all good and we
6 need to look at them.

7 But in the end, the plant needs to know how the
8 region is looking at their operation. Another data point.
9 We get this from INPO and the interim program we're using
10 right now basically does that.

11 So I think that this is a great step, but I think
12 it is a step and I think we have to look at these pilots and
13 continue the dialogue in order to clear this industry up to
14 the next level.

15 CHAIRMAN JACKSON: When I came into NRC, the
16 TowerParrin report had just been done. One aspect of it
17 -- and it turns out I was in the building that day, there
18 was a Commission meeting. I was not confirmed at that
19 point, but I was in the building. So, in fact, I watched
20 the Commission meeting where the PowerParrin results were
21 being laid out on the monitors from some hole in the wall
22 they put me in at that time. They didn't want anybody to
23 know I was here.

24 One aspect of that had to do with inconsistency or
25 perceived inconsistency from region to region and you've

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1 mentioned here the importance of the industry/regional

2 dialogue.

3 How do you feel or do you feel, at least as you
4 understand it, that there are sufficient objective measures
5 or safeguards built into the new process to police that
6 consistency?

7 MR. HAIRSTON: I think we're off to a great start.
8 I won't sit here and tell you there are not concerns that I
9 have. I know there are concerns that you have. We have to
10 implement it.

11 But I think we're on the right fundamental plane,
12 and this is not to cut off feedback. We have an
13 understanding with our resident that if they feel something,
14 whether it's performance-based or not performance-based, I
15 want to know that. But the way that whole SALP came out,
16 with grades and scores, just never felt good about it,
17 whether you got all ones or whether you got two ones and two
18 twos.

19 So I think this, one, does give us a performance
20 measure, and, at the same time, it leaves open the dialogue
21 between the regulator and the people running the plant.

22 CHAIRMAN JACKSON: I'm going to -- I know there
23 are various people who want to speak. I want to finish
24 hearing from the industry participants. Then I'm going to
25 hear from our Regional Administrator, who is here, and then

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1 from Commissioner Merrifield.

2 Mr. O'Hanlon.

3 MR. O'HANLON: Thank you, Madam Chairman. I agree
4 that the process is a good process that we're going to and
5 if the process is good, which I think it is a good process,
6 that regardless of plant operations, whether it be good or
7 not so good, that it would be a good indicator.

8 I think on the -- it's a big step toward using the
9 same standard nationally as opposed to regionally, which has
10 been a comment and you were just talking about that a moment
11 ago, that we say, well, this region versus that region, I
12 think this will do away with those type of questions.

13 I think it can compare just across one set of
14 indicators. And I think it is going to be more objective.
15 There are some discussions on particular indicators and
16 whether we all agree on them, but I think we're talking not
17 with the overall concept so much the specific items.

18 CHAIRMAN JACKSON: Let me ask you a question. Do
19 you understand that the process is not just performance
20 indicator?

21 MR. O'HANLON: It's performance indicators and
22 poor base inspections. Yes, I understand that. I believe
23 everybody else does, as well.

24 I don't think there are indicators, and I think
25 most people agree, that you can't have indicators for

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1 everything, but some things that you just need to go and
2 inspect, and I think there are some cases where, if there
3 are not current indicators and we don't feel there are good
4 indicators, let's not force an indicator on it that we don't
5 have high confidence will be a good representation of what
6 that area is.

7 I would say, also, possibly that this new process
8 will give some sort of predictiveness to how a utility or a
9 plant is doing. I know we talked years -- several -- a
10 while back about trying to have predictive indicators and
11 many of us have wrestled with it, tried to come up with a

12 system.
13 I don't think this is the absolute system, but I think --
14 and we intend to do this, the new process -- while we're
15 doing a pilot at other places, we're going to do it
16 ourselves, but also go back and look at how we've scored
17 ourselves in the past and see how we plot, and I think there
18 will be a little bit of predictiveness on overall
19 performance that can be helpful towards us.

20 CHAIRMAN JACKSON: Mr. Hintz.

21 MR. HINTZ: I'm personally excited about the
22 prospects of this new oversight program and I think it will
23 be hopefully more objective and less subjective. I chair
24 the Nuclear Oversight Committee for NEI and the Strategic
25 Issue Oversight Committee, and that's represented by all the

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1 chief nuclear officers, and we have a report on the progress
2 of this program.

3 I think there is overwhelming support by the
4 industry and I agree with Jim, I think there is at least a
5 potential that we could have improved the industry even
6 faster under this program, because I think the NRC and the
7 industry hopefully can put their valuable resources more on
8 issues that are really important to safety, and I think this
9 will help us do it.

10 So the best I can tell, industry is really excited
11 about it and we're anxiously looking forward to the pilots
12 to see how they go and what we can learn from them.

13 CHAIRMAN JACKSON: Any caveats?

14 MR. HINTZ: No, other than I'm sure we're going to
15 see things during the pilots that we didn't anticipate and
16 we probably have to do a little checking and adjusting. But
17 I think the way this has been handled, by going ahead with
18 the pilots, I think there has been excellent interaction
19 between the various stakeholders and hopefully all our
20 objectives are the same, to try to operate these plants
21 safer and better.

22 So I think the whole process so far has been very
23 positive.

24 CHAIRMAN JACKSON: I'm going to call on Hub
25 Miller, the Region I Regional Administrator. Hub, if you

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1 could feed into your comments, at least based on your
2 perspective, from where you sit today, whether you feel the
3 inspectors are on board and to what extent you feel they are
4 ready for this, at least for the pilots, and just generally
5 that whole situation.

6 MR. MILLER: Well, this is an enormous change, of
7 course. We have focused a lot on change management and, in
8 fact, have borrowed a lot from what the industry has done,
9 as the industry has undergone significant change.

10 Of course, communication is the starting point and
11 the middle point and end point really and a lot of what we
12 have done is in addition to working with Sam and the folks
13 from the program office who are developing the process, in
14 addition to providing training, we spent a great deal of
15 time at the beginning talking about the need for change, why
16 is it necessary to change.

17 And I think I'm pleased to say that it didn't take
18 that long really for inspectors to and the inspection staff
19 to see the need. We have done a lot and I think NRC is, in
20 fact, a part of the -- has contributed to the improvement in

21 safety that has been talked about here.
22 But I think at the same time, there was
23 recognition, on reflection, that there needs to be greater
24 consistency, greater objectivity. And much of what has --
25 much of the rules and the process by which we regulate has

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1 grown up ad hoc over the years. So I think there was an
2 appreciation that it seemed conceivable that by stepping
3 back and looking at things in a very fundamental way and in
4 a systematic way, derive a new oversight process, that there
5 just simply had to be good coming out of this.

6 So I think, in fact, recently, in one of our
7 change communication sessions, I got an interesting
8 reaction, which is move off the need for change, bring it
9 on, and I think -- so I think there is an eagerness on the
10 part of the inspection staff to get on with the pilots.

11 Now, I have to say that I've got a tough sell, of
12 course, because inspectors are trained. Their job is to be
13 inquisitive, to challenge, and to question. So I think
14 while I can report that there is this eagerness to move into
15 this new regime, at the same time, there is an interest in
16 making sure that the details, as we work those out, that
17 those details -- that the program, as it is implemented, is,
18 in fact, consistent with those general principles that we
19 are -- that the Commission, that staff, as we've developed a
20 new process, that it's consistent with those objectives.

21 And I think that Dave Lochbaum mentioned it
22 earlier, the feedback process is an important one. It's an
23 important one to the inspectors. It's important that they
24 know that as we work through this, that you will make
25 adjustments to make the outcome, the implementation be a

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1 good one and really have it be consistent with these broad
2 goals that really no one can argue.

3 CHAIRMAN JACKSON: Commissioner Merrifield.

4 COMMISSIONER MERRIFIELD: To layer on some of the
5 comments that you made, Chairman, as well as some of those
6 made by George Hairston and Mr. Hintz, I'd say a couple of
7 things.

8 First, I think not only is this process looking at
9 -- being looked at with some anticipation by the individuals
10 around the table, our stakeholders and others nationally, I
11 think, also, even some discussions I had last week, there is
12 some international interest in this, as well, and perhaps,
13 again, we can provide leadership to many other sister
14 regulatory agencies we have internationally and help them
15 along in this guidance, as well.

16 I have one strong belief about a pilot project. I
17 think that if we're going to go into the pilot project, I
18 think the staff does have this attitude that we need to go
19 into it without blinders on and with a recognition that this
20 program may evolve and that what we end up with after having
21 gone through the pilots may be significantly different. I
22 think we need to be willing to accept that.

23 The analogy I use is that of the Air Force testing
24 one of its airplanes. It does not merely test the airplane
25 can fly and whether it can get from point A to point B, but

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1 it tests how fast it can go, whether the wings are the right
2 shape or whether the instrumentation is doing what it needs
3 to do.

4 So I think in a similar context, we need to really
5 vigorously test this pilot and recognize that it may not be
6 a full rollout in six months. We may need to take
7 additional time, but I think that's time well spent.

8 That takes me to the final comment that I want to
9 make about this. I know George talked about celebrating the
10 end of the SALP process, but I think we all need to
11 recognize that the SALP process and the watch list were
12 activities that were looked at very favorably by the public
13 and I think many in the public had a great deal of
14 confidence, and I think it's important for us, as we go
15 through this process, to make sure that ultimately the
16 inspection and enforcement of the system we come up and that
17 we all congratulate ourselves about has that same level of
18 public confidence that we're looking at the right areas and
19 doing the right things, because ultimately, in the end, if
20 we do not have the public confidence, I don't think that
21 suits either this agency or the licensees that we regulate.

22 So I think we need to keep that in mind.

23 CHAIRMAN JACKSON: I would hope that the public
24 confidence, in fact, is strengthened coming out of this
25 process.

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1 COMMISSIONER MERRIFIELD: I would agree.

2 CHAIRMAN JACKSON: And I like your analogy about
3 the plane, since I also use plane analogies. One could
4 argue that the fundamental performance metric is that the
5 plane doesn't crash. That's where we want to make sure we
6 keep moving along.

7 Sam, you wanted to make a comment.

8 MR. COLLINS: I always get nervous when we're in
9 violent agreement.

10 CHAIRMAN JACKSON: Yes, right.

11 MR. COLLINS: But I acknowledge the points
12 previously made most recently. One of the challenges that I
13 had written down has been acknowledged by the last two
14 speakers. It's that we need to maintain, as an agency, we
15 can't lose sight of our effectiveness as a strong, credible
16 regulator and how we're viewed by our stakeholders in that
17 sense.

18 That's not inconsistent with the new oversight
19 program. However, we need to be making these changes for
20 the right reasons. There is a perception, we've heard it,
21 acquiescing to the industry, that's out there. I think the
22 validity of the program itself as far as what it measures,
23 where we are in the response bands, allowing the industry to
24 control the ability to respond to the initial indicators of
25 issues, is an attribute.

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1 The agency's measured response provides some
2 predictability to the process. Again, going back in
3 history, I was struck by everyone's dissatisfaction with the
4 SALP. Mr. Lochbaum was dissatisfied for the same reasons
5 the industry was, basically, as far as the scrutability,
6 predictability, the continuity of the process between senior
7 management and the planning, and I think this oversight
8 process will provide for that to take place.

9 It's been a massive effort. Alan Madison is here,
10 representing the team which includes both the region and
11 research, most of the reactor safety program people at the
12 agency that's touched by this program at one point or

13 another.

14 I know the inspectors are concerned about our
15 ability to respond to issues. Hub has expressed that. We
16 have to have the ability to follow our noses on these
17 insights and instincts in a way that provides for, again,
18 scrutability of our resources and be able to transfer that
19 information to the industry, because I think our insights
20 are worthy of consideration. They may not end up to be
21 requirements, but there needs to be a forum, as Mr. Hairston
22 said, to exchange that information in a way that's open to
23 the public and provides for appropriate response.

24 Ultimately, the goal, I believe, is not to engage
25 on the validity of the information, which was the tendency

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1 of SALP, does this information mean the same thing to all of
2 our stakeholders, but to talk about the response, what is
3 the appropriate action that is to be taken both by the
4 industry and is the public educated on the significance of
5 that, is the agency engaged at the appropriate level.

6 If we can achieve that goal and plan our resources
7 appropriately, maintain the credible regulator and maintain
8 the center for safety, then I think the program will be a
9 success.

10 It's a lot of work to do between now and the end
11 of the pilot.

12 CHAIRMAN JACKSON: Thank you. I think it's --

13 COMMISSIONER MCGAFFIGAN: Madam Chairman.

14 CHAIRMAN JACKSON: Please.

15 COMMISSIONER MCGAFFIGAN: Just on the -- there is
16 one issue that Mr. Ortziger raised in his prepared remarks
17 that hasn't come up and I just want to acknowledge it, and
18 that's the issue in the reactor oversight program of whether
19 we should be looking at management.

20 This is also something GAO, who is not here, has
21 criticized us for not doing and I just think I'd take a
22 moment and say why we are not -- don't have a management
23 cornerstone, as I understand it, at the current time. It
24 comes down to despite the fact that when Mr. Kenyon arrived
25 at Millstone, Mr. Kingsley at Con Ed, they talked, I think,

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1 both about dysfunctional management structures they found.

2 The thought is that the rest of the structure will
3 provide us the information. There will be symptoms other
4 than the dysfunctional management that we will receive
5 through the performance indicators, through inspection, in
6 the core inspection program.

7 But I think it's something that just is not going
8 to go away, since this has been a consistent thing with GAO.
9 Mr. Ortziger is raising the concern and I understand some of
10 our European colleagues also are -- and maybe bureaucrats in
11 Europe have higher standing than bureaucrats in America, but
12 some of our European colleagues are focusing their
13 regulatory efforts more on management.

14 So we're a little bit out of align and I think we
15 have to acknowledge that and I believe we're on the right
16 course, but I don't know whether Mr. Ortziger or others want
17 to comment. That is an issue that has been pervading the
18 subject for some time.

19 CHAIRMAN JACKSON: Mr. Ortziger, do you have a
20 comment?

21 MR. ORTCIGER: I almost wanted to speak on this a
22 little earlier, because I really believe this is a good

23 solid program and I'm almost apologetic that I put these
24 comments in here, because the issue of management, the issue
25 of culture, the issue of human attitudes and employee

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1 performance, and, as I indicated, are crosscutting issues
2 and probably need their own cornerstone.

3 The more I've thought about this over the last
4 week, week and a half, the more I think it would disturb the
5 program that you have put together initially and will not
6 give this program a chance.

7 I would almost say I withdraw this comment.

8 COMMISSIONER MCGAFFIGAN: If we could get GAO to
9 do the same, we'd be in good shape.

10 MR. ORTCIGER: But it's there and we know it's
11 there and Oliver has addressed it and any number of people
12 have addressed it, and someday it may be true that what
13 we've designed, what you have designed here will drive
14 management to look more closely at this. But I think at
15 this point, it would be very dangerous to look at this type
16 of cornerstone or performance indicator.

17 CHAIRMAN JACKSON: Commissioner Diaz.

18 COMMISSIONER DIAZ: I just wanted to remark that
19 as we look at the genesis of the oversight process, we all
20 seem to be focusing on the end points of performance
21 indicators and inspection.

22 However, the real start of this program was how do
23 we process information from the plants in a very, very
24 transparent, clear way. It's that information flow that
25 provides a robust foundation for this program and it might

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1 be in the interchange and in the actual analysis of the PIMS
2 in between plants and how they relate to each other where a
3 lot of the raw data provides the industry and us some basis
4 for how we get to a certain point.

5 I'd like maybe, if Madam Chairman allows me to, to
6 ask Mr. Rhodes and Mr. O'Hanlon to comment on is the
7 industry considering looking at PIMS from other plants and
8 using that information, which has not been yet manipulated
9 by indicators, as a way of informing themselves and using
10 the fact that this periodicity, there is a lot of good
11 features in the data processing itself before you get to the
12 performance indicators.

13 MR. RHODES: The answer is yes. I believe we are,
14 at INPO, looking at a lot of data. As you know, the
15 performance indicators, the WANO performance indicators that
16 I alluded to earlier, are sort of a wrap-up of a lot more
17 data that we have.

18 I would agree with what I think you're saying,
19 that looking at that data will be, to some degree, a leading
20 indicator which will allow management to function normally
21 and not have to be beat over the head with outside forces.

22 So I very much agree with, I think, the gist of
23 your comments and Mr. Ortziger, that using the more
24 objective process will allow and encourage industry to deal
25 directly with management issues which will hopefully prevent

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1 some of the dysfunctional situations that were referred to
2 earlier.

3 CHAIRMAN JACKSON: Mr. O'Hanlon, and then Mr.
4 Gunter.

5 MR. O'HANLON: Looking at the data from the other
6 plants, we're very interested in that. We have been heavily
7 involved with NEI and the NRC in developing this new
8 process, the oversight process. We volunteered to be one of
9 the pilot plants. Unfortunately, we weren't picked, but
10 part of the reason for that is that we wanted to learn how
11 to use the data and be in the process.

12 But we intend to stay very much involved
13 throughout the entire pilot process. I mentioned earlier
14 that we're going to be doing the assessment on ourselves,
15 doing the data, and certainly wherever we can get data from
16 other sources, we will do that, just so that we can learn
17 and continue to improve.

18 So yes, wherever we can get the data, we will.
19 Not to see how somebody else is doing, but just so that we
20 can learn and how we can continue to improve.

21 CHAIRMAN JACKSON: Mr. Gunter.

22 MR. GUNTER: I think the agency and the industry
23 can anticipate that public interest groups are going to be
24 scrutinizing this very closely in terms of how this is a
25 contributor to further self-regulation by this industry.

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1 Particularly of concern is the fact that we're now
2 also seeing the introduction of greater foreign ownership
3 issues and how this potentially impacts jurisdiction by this
4 agency over foreign corporate board control and management
5 of U.S. reactors.

6 I think that this is very germane to the
7 discussion we're having right here.

8 CHAIRMAN JACKSON: I wanted to go back to
9 something that Sam Collins said. He made a point that he
10 would hope that we would get to a point that we would not
11 focus on the validity of the information, but on the
12 response to the information. So I would like to just kind
13 of issue my own caveat that we all not kind of get off on
14 just the objectivity of the information or how we get it and
15 how we process it, but on that issue of the response to the
16 information, whether we are in a response band that has to
17 do with industry response or a response band that has to do
18 with NRC action, because in the end, the information is only
19 as good as what you do with it.

20 That's an issue I've been driving at NRC; namely,
21 what are we going to do with what we find out, but that's an
22 issue I think for the nuclear industry; what are you going
23 to do with what you find out, because in the end, that is
24 where public credibility ultimately resides.

25 In addition, it provides, if there isn't a,

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1 quote-unquote, direct look at management behavior, it
2 provides the performance oriented way of inferring that
3 behavior, because in the end, management is as management
4 does. You all have performance objectives, and you like to
5 quote me on that one.

6 So the issue is what we do with what we find out
7 and so I would just like to kind of leave that on the table,
8 as I take the Chairman's prerogative and move on to the next
9 topic.

10 I would like to introduce the topic of license
11 renewal and depending upon how that time goes, we'll then
12 talk about license transfer. Then we'll take a break.

13 I actually think that we have an opportunity,
14 depending upon people's schedules, to wrap this up before

15 lunch. But it may be a slight extension past 12:00, if
16 people are willing to indulge that, because we will only
17 then have two additional topics after we talk about license
18 renewal and license transfer.

19 We are operating on the premise that we need to
20 allow for the continued operation of existing plants, where
21 justified, in a stable, predictable and timely license
22 renewal process.

23 As we do that, we have to make sure that we are
24 ensuring the protection of public health and safety and the
25 environment, and that our decisions can be technically

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1 justified, because the metric for success, from the
2 regulatory point of view, is not do we eventually renew a
3 license, but have we adequately evaluated the technical
4 issues and established a comprehensive review and inspection
5 process for license renewal that ensure that reactor safety
6 is maintained; so that if we do renew the license, that
7 there is confidence that that has been achieved.

8 We know that I have charged the Executive Council
9 with overseeing the license renewal efforts, primarily to
10 focus on ensuring resources get deployed in the right way
11 and to ensure that any issues that are generic are elevated,
12 as they should be, to the Commission.

13 The Commission has issued case-specific orders
14 laying out an aggressive adjudicatory schedule for reviewing
15 the first two license renewal applications, for Calvert
16 Cliffs and Oconee, and they have a targeted completion
17 timeframe of 30 to 36 months.

18 NRC management meets monthly with the applicants
19 to monitor progress and resources and to try to resolve
20 emergent renewal issues. So far, all of our milestones for
21 the reviews have been met. We recently issued the draft
22 environmental impact statement for the Calvert Cliffs
23 application, which has caused some response in the Congress.

24 The initial safety evaluation report has been
25 completed and released on schedule and the Commission had

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1 projected a decision on Calvert Cliffs by May of 2000, in
2 the absence of a hearing.

3 But our official estimate remains 30 to 36 months
4 from application to decision, because the 25 months, which
5 is what the May 2000 date would represent, is predicated on
6 no adjudicatory hearing.

7 We do expect more license renewal applications.
8 The Entergy application for Arkansas Nuclear 1 is expected
9 this December and Turkey Point and Hatch also have recently
10 announced plans to license renew.

11 We have asked for what we believe to be sufficient
12 resources in our FY-2000 budget to handle anticipated new
13 activities. We also are continuing to work with NEI on a
14 standard application format and continue to incorporate
15 lessons learned from our first two applications for
16 subsequent reviews.

17 So everything would appear to be going well, but
18 there are concerns. One, some have commented that the
19 public is left out of the process. UCS has made that
20 comment. And that petitions and requests to intervene have
21 been inappropriately dismissed. At least one is under
22 review at the Appeals Court level.

23 Although some have praised the NRC for creating a

24 stable and efficient regulatory process, some have commented
25 that our process is not effective and virtually guarantees

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1 approval of renewal. Third, some in the industry have
2 raised issues that they feel need to be treated on a more
3 generic basis and particularly with respect to the proper
4 scope of the existing programs and the extent to which they
5 can be credited for aging management as opposed to being
6 reexamined.

7 Why don't I begin with Mr. Hairston, followed by
8 Mr. Lochbaum, Mr. Ortziger, and Mr. Hintz. Mr. Hairston.

9 MR. HAIRSTON: Thank you, Chairman Jackson,
10 Commissioners, fellow stakeholders.

11 I didn't want to let pass that I'm up here off my
12 honeymoon. My wife and I have been on a honeymoon for 30
13 years.

14 CHAIRMAN JACKSON: That's the best kind.

15 MR. HAIRSTON: It's real exciting to be here.

16 CHAIRMAN JACKSON: My husband calls our
17 anniversary a license renewal each year.

18 MR. HAIRSTON: That was my perspective. That was
19 not 100 percent probably agreement. But it's real exciting
20 to be here. I'm only going to talk a few minutes about
21 license renewal. But many of these issues we've talked
22 about a long time and the fact that we have a stakeholders
23 meeting is just unbelievable to me.

24 You look around this table at the stakeholders and
25 we can come together and we can share our views, whether

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1 they're consistent or not consistent, because I think it's
2 one of the most telling things on where we are today in the
3 regulatory environment.

4 I think if anything, we need to continue this.
5 You look at the risk-informed initiatives, the oversight
6 process, pilots that are going on, and it really is
7 exciting.

8 But on to license renewal. I don't have to give a
9 sermon about the importance to this body of nuclear power
10 plants, as we all grapple with clean air issues. Obviously,
11 nuclear power is important to us, it's our industry. But
12 it's very important to the American public that at least our
13 current plants continue to operate and operate safely and
14 reliably. I think a major component of that is the license
15 renewal process.

16 We have two plants that are going through the
17 renewal application and we have several others waiting in
18 the queue. Hatch will be submitting in December or early in
19 the year 2000.

20 I think a lot has gone right on license renewal.
21 Certainly there has been a lot of dialogue. The current
22 applications and the timeframes for review are on schedule
23 and it's just a lot for us to be pleased with.

24 I think timeliness is one aspect, but as we go
25 through these two renewal applications, I think some issues

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1 are emerging and I briefly want to mention one of them.

2 We believe that Part 54 was very explicit with
3 respect to the current licensing basis and current program.
4 Rather than debate the technicalities of that today, I'll
5 just mention that I believe some of the things that are
6 happening in the current review of these two renewal

7 applications may not be totally consistent with our
8 understanding of what the rule was based on.

9 A letter is going to be sent to the Commission
10 from NEI, I think today or tomorrow, that really defines in
11 a more specific way what these concerns are and there will
12 be some visits over the next week.

13 I think what I want to talk about is really
14 backing up to what we talked about a while ago. These are
15 generic issues and I think we want to guard against settling
16 generic issues on specific applications. This is what we
17 got into in the '70s and we ended up sort of all over the
18 place.

19 I will grant the Commissioners, I may be off base
20 on this, but I'm still open, but what I would recommend on
21 current licensing basis and on current programs, that we
22 have a dialogue at the Commission level and let us
23 understand this as these two programs are going through.

24 I have heard it says that, well, on one of these
25 applications, it's not a lot of money and let's move on.

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1 But I think we're up here looking at the industry as a whole
2 and such a great job has been done on this, that I think we
3 really need to spend the time and do some dialogue, and if
4 guidance is needed to the staff, that doing the reviews,
5 then let's get it done generically.

6 If we're off base, if we miss something, then we
7 learn something. But I have heard this issue about current
8 licensing programs from my people, putting together our
9 program. It's a big concern. I know that some of the
10 people we're working with with other plants have a concern.

11 I think if there is one thing we've learned, it's
12 don't hold our concerns back, let's lay them on the table.

13 So I would really ask the Commission, as we come
14 up over the next week, talk through this issue and try to
15 get an understanding of it and if something is off, then
16 let's get it on track early.

17 Again, let me just say I just really appreciate
18 the opportunity to be here. I think the more of this, where
19 all the stakeholders are here, is important and I just
20 commend everybody for spending the time to do this.

21 Thank you.

22 CHAIRMAN JACKSON: Mr. Lochbaum.

23 MR. LOCHBAUM: We were concerned the last couple
24 times I was up here that the remodeling being done next
25 door, we heard, was to put in a drive-through window for

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1 license renewal. I'm glad to see that wasn't the case.

2 We talked earlier today about risk-informed
3 initiatives. License renewal increases the risk by 50
4 percent, at least. It's a fairly significant increase. So
5 it needs to be done properly.

6 If the risk per year is X and you've got a 40-year
7 license, that's 40X, 20 year extension would be 60X. So
8 that's a 50 percent increase.

9 CHAIRMAN JACKSON: I don't quite do my statistics
10 that way. But do go on.

11 MR. LOCHBAUM: It's because of PRAs. The concern
12 we have is that the process virtually eliminates public
13 participation, and that -- it's not a new issue for us. In
14 1991, we testified before Congress, and the words that Diane
15 Kern said then are applicable today.

16 The example -- and she forecast -- it wasn't very
17 hard -- she forecasted the process would eliminate public
18 participation, and Calvert Cliffs is proving Diane very much
19 correct.

20 I went in the public document room and looked at
21 the number of supplements and corrections to the Calvert
22 Cliffs license application. There were at least 47
23 individual supplements and clarifications. There is also a
24 13-page list of errata to the original application. It's a
25 very small font, too. So this is quite a bit of information

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1 that was not contained in the original application.

2 All of that information was received after the
3 public comment period on the application had closed. So the
4 public had no opportunity to review the correct and complete
5 application before they chose to intervene or not.

6 We were -- we met with the National Whistleblower
7 Center prior to the closing of the comment period and we
8 just -- there wasn't anything for us to look at it to
9 provide anything to intervene on by August 7. So we told
10 Steve Cohen we could not intervene on a policy issue.

11 That whole process -- I was quote last month in
12 the Washington Post as saying that the process is a sham.
13 That was a misquote. I actually said scam, but it's close
14 enough.

15 It doesn't -- the NRC and the licensee are using
16 the number of public meetings as a measure of public
17 participation. You could have a meeting every day where the
18 public can come in and be patronized, and that doesn't count
19 as public participation. That's attendance. That's not
20 participation.

21 Unless the rules change, where the public can
22 actually get involved and review a complete document, not a
23 blank piece of paper, and provide any meaningful comments,
24 you're not going to have confidence in the rule or the
25 results that come from that process.

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1 Basically, we're reiterating the objection we had
2 in 1991 and in several venues since then.

3 Thank you.

4 CHAIRMAN JACKSON: What would you say has to
5 happen at this point to address your concern?

6 MR. LOCHBAUM: I think it's fair that the public
7 should have at least a 30-day public comment period once the
8 application is finally complete. That would be, as a
9 minimum, an opportunity for the public. The same
10 opportunity with the same rights and privileges that the
11 public had up through August 7 of last year.

12 There may not be somebody or any group that wants
13 to intervene, but to be asked to look at an incomplete and
14 inaccurate document in 30 days, I think, was not meeting
15 with the intent of the rule and the purpose of this agency.

16 CHAIRMAN JACKSON: Mr. Ortziger.

17 MR. ORTCIGER: Our position on this would be to
18 say had you started down this road of risk information and
19 plant operations earlier, where we are today in terms of
20 discussing license renewal, in terms of degradation of plant
21 components, and the risks associated with their failure
22 would not be as an important issue, because we would have
23 had PRAs in place, we would have had more risk information,
24 and I think would have been in a better position to satisfy
25 the public as to where or why you feel we can do these plant

1 life extensions.

2 Having said that, and this whole process was not
3 in place, plant life extension is going to be, I think, very
4 strongly based on addressing very rigorous PRAs, which will
5 be important in identifying the risk important system.

6 I don't know how this is going to be implemented,
7 but I can see this as the direction that we're attempting to
8 go.

9 But I guess the first point is had we had what we
10 discussed earlier today in place five years ago, ten years
11 ago, I think it would have been a lot easier in doing the
12 plant license extensions today.

13 CHAIRMAN JACKSON: What do you feel ought to
14 happen on a go-forward basis?

15 MR. ORTICIGER: I think you have to continue the
16 way you're going. I can't see opening up this process
17 again.

18 COMMISSIONER McGAFFIGAN: Madam Chairman.

19 CHAIRMAN JACKSON: Please.

20 COMMISSIONER McGAFFIGAN: I think I will make
21 public some comments I've made to Mr. Lochbaum on the phone
22 with regard to this public participation.

23 In point of fact, the application for Calvert
24 Cliffs was available in April and it wasn't -- there was a
25 30-day window in which somebody had to come forward, I

1 believe, under our rules, and again, I'm not a lawyer, and
2 claim standing and make a general contention.

3 Specific contentions, I believe, did not have to
4 be formulated until well into November or December. So by
5 the time, I believe, that the National Whistleblower Center
6 had had six months to look at a very voluminous application.
7 To say that there is an errata sheet or to say that there
8 are a few changes that have been made, there was a
9 voluminous application to justify the extension of a
10 license, in which there was potentially many technical
11 issues that could have been raised.

12 We, during that 180-day period, did not receive
13 anything that would come close to the longstanding rules of
14 the Commission with regard to what is a contention and what
15 detail has to support it.

16 So I think Mr. Lochbaum is asking for a
17 fundamental change in our Part 2 hearing process, but I
18 think it's breathtaking what basically would allow our REI
19 process the ongoing exchange to become something that's open
20 for contentions forever. So I'm very uncomfortable with it.

21 I think that said, there is a lot of opportunity
22 for public involvement in the process without a hearing.
23 The environment impact statement process goes on. The
24 comments have to be dealt with formally. If we don't deal
25 with the public comments we receive, I think you can haul us

1 into court.

2 The safety evaluation report is public. People
3 can pour over the safety evaluation report and comment on
4 it. The ACRS process, which, by statute, has to follow the
5 staff evaluation process or would be somewhat parallel, as I
6 understand the ACRS at the moment, is a public process in
7 which folks have participated in the past and I would

8 encourage them to participate this time.
9 And the Commission, at the end, has to make a
10 decision, as the Chairman has said, sometime next April or
11 May, and this will be a pretty profound decisions. If
12 issues have actually arisen, I can't imagine the Commission
13 not dealing with them, whether there is a hearing or no
14 hearing.

15 But I thought I'd just make those points.

16 CHAIRMAN JACKSON: Other comments, Mr. Hintz? Any
17 comments you wanted to make?

18 MR. HINTZ: As the Chairman mentioned, we're going
19 ahead with an application of Unit 1 at the end of this year
20 and we've had a lot of discussions with Baltimore Gas &
21 Electric and Duke on the process, and we're really
22 encouraged about how well that is going.

23 So we're looking forward to submitting our
24 application and getting on with it. The feedback we've had
25 has been very positive the way it's been handled.

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1 CHAIRMAN JACKSON: Mr. Curtiss.

2 MR. CURTISS: Chairman Jackson, let me just pick
3 up on your comment, that you asked a couple of times about
4 before we go forward here in terms of the license renewal
5 initiative.

6 In a sense, the real success of this program is
7 demonstrated by what I think you're going to see for the
8 coming years, and that is that based upon the discipline
9 handling in the first two applications, there are going to
10 be a lot more that come before the agency, two that have
11 been mentioned here and perhaps as many as 20 or 30 over the
12 coming years.

13 So this is potentially a real growth business, as
14 you look at what the staff has done, and I think the staff
15 has done a remarkable job in both of these cases. It does
16 seem to me that recognizing the limited resources that the
17 agency has, that there are a couple things that can be done.
18 One is to capture the experience that has gone forward in
19 the two cases and to revise the standard review plan to
20 accommodate that experience, so that the review process
21 doesn't have to be reinvented at every step of the process.

22 In that context, I do believe that the question
23 that Mr. Hairston raised about the need to come in and
24 defend existing programs needs to be worked through as a
25 policy issue and reflected in the SRP.

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1 The other thing that I know in the case of Calvert
2 Cliffs has been extremely helpful, and I think it's a
3 thought worth considering for the future, is that the
4 oversight processes that have been established, including
5 the steering committee, the active involvement of this
6 Commission and presumably future Commissions, have been real
7 central, I think, as a mechanism to identify and raise
8 issues and get them resolved quickly.

9 Those two things taken together, it seems to me,
10 have the benefit or potential benefit of streamlining the
11 process beyond what we've seen in the first two cases.

12 The schedules have been met. It does seem to me
13 that there have been some issues of first impression. But
14 the ability to incorporate those lessons in a go-forward SRP
15 of some sort may actually make this a more efficient process
16 and particularly when you may see a number of additional
17 applications.

18 CHAIRMAN JACKSON: Further comments? Dr. Travers.
19 DR. TRAVERS: Chairman Jackson, I'd just like to
20 acknowledge that by doing, in the context of license
21 renewal, we have an agreement that there are a number of
22 issues that have been identified, we think license renewal
23 is fundamentally a success story in the context of Calvert
24 Cliffs and Oconee and we're working those issues out.
25 Interestingly enough, not exactly the same way in

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1 each instance. So consistent with what I think Mr. Hairston
2 and Jim Curtiss mentioned, there are opportunities. We
3 intend to take advantage of them as we move forward,
4 identify those, perhaps identify some policy issues that may
5 need to be addressed by the Commission as we move forward.
6 There may be perhaps even implications for the
7 rule itself, because there may be some instances where the
8 view that you have of what the rule requires or doesn't
9 require may be at odds with our own read.
10 But fundamentally, we think we're at a good place
11 relative to Calvert Cliffs and Oconee. In parallel with
12 that, we are actively considering the issues that have been
13 raised. There is a white paper and apparently we're going
14 to be receiving some more information from NEI shortly that
15 will continue to foster that kind of understanding and
16 perhaps resolutions as we move forward.

17 CHAIRMAN JACKSON: I appreciate your point about
18 capturing experience and folding that into the standard
19 review plan. The staff is aware that I had explicitly asked
20 them at a certain point to freeze the scope of the draft
21 plan in order to have a stable basis for reviewing the
22 initial applications and the document around which the
23 actual work plan could be structured, but with the full
24 intent that as there are issues that are raised and as there
25 are lessons learned along the way, there has to be a

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1 mechanism to, in fact, fold that back into updates of the
2 plan.
3 But at any given point, there has to be a certain
4 level of stability, if, for no other reason, than it's fair
5 to everybody concerned, it lays out our expectations and it
6 allows us to focus the work and it forms a good legal basis
7 for what we do.
8 So these are non-trivial aspects of it, but I
9 think the full intent -- and Sam and I have had a number of
10 discussions about that -- is to, in fact, fold in the
11 lessons learned.

12 Let me move on, unless there are further comments.
13 Mr. Gunter.

14 MR. GUNTER: I would just take this opportunity to
15 reiterate our objection, albeit briefly, but it's obvious to
16 us that in the light that there are only two growth areas
17 apparently left for this industry, that being
18 decommissioning and licensing renewal, it comes as no
19 surprise to our group, who basically witnessed the licensing
20 of many of these plants by your predecessors, but it -- our
21 objection stems from the fact that this appears to be
22 nothing more than a simple railroad.

23 That the most contentious issues have been taken
24 out of the public purview for challenge and such obvious
25 issues as age-related degradation and the proliferation of

1 nuclear waste, without any demonstrated management plan that
2 has any confidence, I think just underscores the fact that
3 this process will not move forward with public confidence
4 unless there are some radical changes to it.

5 CHAIRMAN JACKSON: What do you feel needs to occur
6 on a go-forward basis?

7 MR. GUNTER: Obviously, the whole generic
8 environmental impact statement, I think, needs to be opened
9 up again in terms of exactly what will be before the table
10 for the public to intervene on. And the fact that the
11 agency has narrowed its scope only furthers not our
12 suspicions, but the apparent evidence that this was a fait
13 d'accompli for the industry to advance candidates for
14 license renewal.

15 CHAIRMAN JACKSON: Comments? Okay, let me move
16 on.

17 I know that all of us have spent a significant
18 amount of time over the past couple of years examining and
19 preparing for the changes introduced by the deregulation of
20 the electric utility industry and as that transition to a
21 more competitive markets on the generation side has begun to
22 take shape, we have seen a lot of changes, internal,
23 restructuring, ownership changes. Some of you have taken on
24 new titles and new roles, and we have worked to try to
25 understand and respond accordingly. We focused on four

1 general areas, as I mentioned at the Regulatory Information
2 Conference in April. We always are looking at the
3 continuation of safe nuclear operations and ensuring that
4 there is no cost impact on that. Electrical grid
5 reliability, which is not directly within our regulatory
6 purview, but we are concerned on the impact on the plants.
7 The availability of funds for decommissioning and, of
8 course, license transfers. And we have seen an uptick
9 increase in license transfer applications as a result of
10 some corporate restructuring, but really fundamentally due
11 to the sale of nuclear power plants.

12 So in December of 1998, the Commission issued a
13 rule that provides uniform rules of practice for hearing
14 requests associated with license transfer application. We
15 also are developing guidance documents and really are using
16 them for evaluating these transfers, and there have been
17 numerous meetings held with various stakeholders.

18 The overall effect has been to improve our degree
19 of preparedness. I think most of you know that the first
20 agency license transfer review was completed on April 13th
21 when we approved the transfer of TMI 1 to Amergen, and just
22 yesterday the NRC Commission approved the transfer of the
23 Pilgrim license from Boston Edison to Entergy Nuclear
24 Generating Company. And so Mr. Hintz, of course, and I
25 think Mr. Curtis and Mr. Gunter, then I would call on you to

1 make pertinent comments in this area, to get us started.

2 Mr. Hintz.

3 MR. HINTZ: Thank you, Chairman Jackson.

4 Let me start out by saying I did not interrupt my
5 honeymoon to attend this meeting.

6 [Laughter.]

7 MR. HINTZ: And after getting hit by a cement
8 truck, you don't know how happy I am to be here.

9 [Laughter.]

10 MR. HINTZ: As was mentioned, we just got the
11 approval of transfer of the Pilgrim license and that
12 process, you know, from my perspective, went very well. I
13 think it was handled in a timely and efficient manner, and
14 based on the comments that I have had from Corbin, I think
15 he would say the same thing about the transfer of the
16 license of TMI.

17 CHAIRMAN JACKSON: Tell Corbin A'Six Month McNeil
18 that that was within six months.

19 [Laughter.]

20 MR. HINTZ: Okay, I'll tell him that.

21 But I would probably caution you that I believe
22 that you are going to see an unexpected number of requests
23 in the next few years, and I think that is going to be based
24 on a number of things.

25 One is I think you are going to see more outright

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1 sales of nuclear plants. Quite a few utilities have talked
2 to Entergy, and I suspect talking to other utilities. You
3 are seeing the setting up of operating companies that will
4 require license transfers. I think some of these operating
5 companies will result in Gencos, which again will require a
6 license transfer. Some of the restructuring changes that
7 are going on I think will affect the majority of minority
8 owners, and that will require a license change, and then
9 just general consolidation of the ownership of some of these
10 jointly-owned plants. So I think it is really important
11 that we do have an efficient process and, if possible, have
12 the generic issues, you know, be addressed sort of once and
13 not be an issue for each license transfer, and I would
14 encourage the use of a legislative type hearing which I
15 think makes the process more efficient.

16 I know this is sort of obvious, but you know,
17 these license transfers are really being caused by a
18 dramatic restructuring of the electric utility business, and
19 that is resulting from encouragement by the regulators for
20 divestiture of some parts of the business. In some cases,
21 if there's a lot of incentives being given, pick whether or
22 not you want to be in the wires business or in the
23 generation business, and you have seen the fossil plants
24 going first, but the preference would be to have the
25 utilities do something with the nuclear plants.

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1 I think you are seeing a number of the single
2 nuclear unit utilities wanting to focus on other parts of
3 the business, that they don't see that the nuclear is a big
4 part of their business, and that they would just as soon,
5 you know, get out of that business.

6 I think you are seeing marginally competitive
7 plants that are looking for synergies, and sometimes those
8 synergies, you know, can be obtained by being part of a
9 larger organization. So I think there is, you know, a lot
10 of forces that are driving this change, and I think it is
11 going to result in a lot of requests for changes over the
12 next few years. And I think if we don't have an efficient
13 process in place, a number of these smaller units will be
14 unnecessarily shut down because of economics, where they
15 probably, you know, could remain in the energy mix of this
16 country if they could be part of another organization.

17 I guess just one other issue I will throw on the
18 table, and that's not directly related to the NRC, but we

19 really have to get resolution on how to transfer these
20 decommissioning funds without adverse tax consequences,
21 because on the larger units, if you can't transfer them
22 without tax consequences, in my opinion, the unit will
23 probably still be transferred and it will continue to
24 operate, but the utility that is selling that plant will be
25 -- that plant will be worth considerably less. But my

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1 concern is on a number of plants, the economics are such
2 that you can't pay the couple hundred million dollars in
3 taxes on the decommissioning fund and so you won't see the
4 transfer, and some of those, I think, will result in
5 premature, unnecessary shutdowns.

6 CHAIRMAN JACKSON: Let me ask you a question, but
7 let me preface it with a comment, and they are actually
8 disconnected.

9 You know, the comment is that the Commission
10 obviously has been approached about commenting on this issue
11 of tax consequences, and some members of the Commission are
12 willing to lean further forward than others, but it's
13 important that, you know, whatever the Commission has to say
14 about this is within the context of our role as a health and
15 safety regulator, what the treatment of decommissioning
16 funds will have to do with that. So, you know, we undertook
17 the rulemaking on decommissioning funds and the
18 decommissioning funding assurance because obviously that,
19 you know, will assure the availability of decommissioning
20 funds for the safe decommissioning of these plants, as is
21 important. So I just kind of wanted to lay that on the
22 table because it is -- you should just know it is playing in
23 the background within the Commission, and there is not
24 universal agreement at this stage of the game as to what
25 might be said, although I think there is probably agreement

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1 that something could be done.

2 Let me have Mr. Curtiss make a comment.

3 I didn't ask my question. My question was, you
4 kept speaking to the issue of having an efficient process,
5 and I guess I just want to know are there things that you
6 have seen that give you pause in terms of a particular
7 concern, or is it more a continue in the mode that the
8 Commission has been in to this point?

9 MR. HINTZ: From what I saw in the transfer
10 license of Pilgrim, there was no part of that that gave me
11 any particular concern. I think more, you know, generically
12 and for the industry, I think the two areas that I do have
13 some concern is I think you are going to see probably more
14 requests than you are anticipating in whether or not, you
15 know, you will have the resources to address those timely, I
16 guess would be one concern.

17 And the second thing is I think we should all --
18 although it wasn't a problem with Pilgrim, but I think
19 anything that can be handled generically, because I think
20 you are going to see so many of them, I think would be in
21 both the industry's and the NRC's best interest.

22 CHAIRMAN JACKSON: Okay. Mr. Curtiss.

23 MR. CURTISS: I would just add, I think, a couple
24 of points to what Mr. Hintz has said. I do think there was
25 a point in time when the regulatory process as it relates to

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1 the issuance of licenses and license amendments was

2 perceived as unpredictable and oftentimes critical path on
3 some of these issues, and largely because of two well-known
4 cases that came before the Licensing Board that were lengthy
5 and unpredictable in the outcome. To the Commission's
6 credit, I think the steps that have been taken in the
7 context of license transfers and licensing actions that
8 relate to what's happening within the industry and the
9 restructuring that Mr. Hintz has referred to have largely
10 addressed the fundamental issues that we see as we advise
11 clients or in the other capacities that I have with
12 individual companies.

13 In particular, I think the step that the
14 Commission took to bring more discipline to the Licensing
15 Board process, where a case comes before the Licensing
16 Board, including the promulgation of the procedures that
17 were adopted for license transfer actions, helped to provide
18 a more productive and focused framework for the addressing
19 of issues in that context.

20 The Commission also, I think, took several steps
21 in the area of establishing the criteria for reviewing these
22 actions, and here I think of issues related to sort of non-
23 traditional ownership of nuclear plants by non-electric
24 utilities where financial qualifications issues could be
25 very nettlesome. And I think what the Commission has

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1 developed and the Staff has worked on really have provided
2 some solid foundation for how to address those issues.

3 The only remaining issues I guess I see that still
4 warrant attention have been referred to in one way or
5 another here. I know the Commission has recommended
6 legislative authority dealing with the foreign ownership
7 issue, and I think that is going to be an important
8 initiative to move forward on. In the context of your
9 current legislative authority, I think there is substantial
10 latitude for the Commission to address the foreign ownership
11 question, but ultimately I think it would be beneficial for
12 the Congress to enact that legislation.

13 Secondly, it seems to me that as the question of
14 non-electric utility ownership becomes a bigger issue, maybe
15 beyond what was originally proposed in the Great Bay case,
16 that there are going to be instances where additional
17 guidance may be useful on what the review criteria are going
18 to be on financial qualifications and other related issues.

19 And then finally I would comment on the question
20 that Mr. Hintz has raised about the tax consequences of
21 decommissioning funds, and Chairman, the question that I
22 think you alluded to, which is what is the nexus between
23 that issue and the agency's regulatory responsibilities for
24 overseeing and regulating nuclear power plants, and I do
25 think one can make an argument that there is an interest

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1 here that this agency has in ensuring that as the industry
2 goes through this consolidation, to the extent that that is
3 a beneficial thing, if this is an impediment or issue that
4 needs to be addressed, to facilitate that happening, that
5 that is consistent with your regulatory role. I understand
6 that there may be another argument on that question, but it
7 does seem to me that there is an interest that you do have
8 in this area.

9 CHAIRMAN JACKSON: I think, though, that there is
10 a question with respect to it in terms of not having tax

11 consequences to transactions being separate and distinct
12 from some total flexibility of licensees to use those
13 transactions or funds that may come out of them. If one is
14 below the actual limit of funds that our regulations
15 prescribe, that these funds, you know, a number of companies
16 have quote, unquote, overfunded pension funds, and they use
17 those funds for various other things that don't have to do
18 with pensions, and that's allowed. But there is an issue
19 having to do with the net amount that the Commission
20 prescribes to have put away.

21 MR. CURTISS: I certainly agree with the emphasis
22 the Commission --

23 CHAIRMAN JACKSON: And even if one, you know, has
24 some transactions that allow some boost, but one hasn't
25 reached that level yet.

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1 MR. CURTISS: Right.

2 CHAIRMAN JACKSON: There's a real question about,
3 you know -- because when I kind of brought that up with a
4 group that shall remain nameless, people kind of seemed a
5 little bit uneasy, which led me to believe that people had
6 some thoughts about using the ability to do transactions
7 with respect to these funds, for uses other than
8 decommissioning, you know, with it still below a certain
9 level. And as long as we are clear on that, then --

10 MR. CURTISS: Yes. I think the Commission's
11 single-minded focus over the past several years on ensuring
12 that irrespective of what happens with the transfers, that
13 sufficient funds need to be available for decommissioning,
14 that ought to be respected both at the federal and the state
15 levels. I think it is an important aspect here because as
16 these transactions involve new ownership arrangements,
17 decommission is clearly -- the adequacy of decommissioning
18 funding is clearly a central focus of the agency.

19 CHAIRMAN JACKSON: Okay. Thank you.
20 Mr. Gunter.

21 MR. GUNTER: Well, one particular concern I would
22 like to focus on is just the whole apparent yard-sale nature
23 of these license transfers, and how it applies to foreign
24 ownership, in that obviously some of our critical concerns
25 with this regard has to do with whether or not your agency,

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1 with all its apparent difficulties in foreign oversight
2 historically, can now take on the added burden and challenge
3 of jurisdictional issues over foreign corporate boardrooms.

4 I think this has a direct bearing on public health
5 and safety here in the United States, and it opens up any
6 number of issues, including the final disposition of nuclear
7 materials which can -- are involved in the proliferation of
8 nuclear weapons, as well as the environmental problems
9 associated with high level nuclear waste and low level
10 nuclear waste. I think this -- it just opens a whole
11 Pandora's box of issues here, and it is going to be a
12 significant challenge to this agency and to the
13 environmental future.

14 CHAIRMAN JACKSON: Well, you are aware of the
15 fact that there are a number of fuel cycle facilities,
16 including fuel fabrication facilities, that in point of fact
17 have foreign, quote, unquote, owners, and so one could make
18 an argument that burning nuclear fuel in a reactor puts it
19 into a more proliferation-resistant form, if one were
20 concerned about the ultimate disposition of the materials.

21 Do you have a point of view about foreign ownership of fuel
22 cycle facilities as operating units?

23 MR. GUNTER: Well, I guess our point of view has
24 to do with our concerns with regard to using nuclear waste
25 as a currency, and the issues that are associated with the

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1 proliferation of this material as a currency, that is both
2 valuable to industry and military applications, and
3 certainly we have concerns with regard to foreign ownership
4 of those fuel cycle facilities as well, but we certainly
5 view this as a departure for accelerating this whole problem
6 by opening it up to foreign ownership of those reactors.

7 CHAIRMAN JACKSON: Commissioner McGaffigan.

8 COMMISSIONER MCGAFFIGAN: Well, I just follow on
9 your point, Madam Chairman, that foreign ownership has been
10 allowed and welcomed in order to keep a viable fuel facility
11 industry in this country for more than a decade, and I think
12 we only have one firm, General Electric, that is still in
13 American hands, and I think we have done a good job
14 overseeing the fuel cycle facilities. There has been no
15 problem dealing with foreign corporate boards, nor has the
16 Food and Drug Administration had any problem dealing with
17 European or Japanese drug manufacturers, or whatever. So I
18 -- we live in an international economy. There are no non-
19 proliferation issues that come up at these plants. The fuel
20 is quite non-proliferation-resistant when it leaves the
21 plants, and I just -- you know, there is a foreign ownership
22 control standard plan that's been out for comment, and I
23 assume we have gotten comments on it, and as people have
24 alluded to, it is part of our legislative program to try to
25 fix this issue, and so it will be debated in Congress, but -

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2 CHAIRMAN JACKSON: You realize, Mr. Gunter, that
3 even if the foreign ownership restriction, quote, unquote,
4 were lifted, that the non-inimicality determination that the
5 Commission would make with respect to any transfer of
6 ownership or foreign ownership remains, the non-inimicality
7 determination.

8 MR. GUNTER: Could you explain that a little bit?

9 CHAIRMAN JACKSON: The Commission, in making any
10 determination with respect to foreign ownership, has to
11 concomitantly make a determination that such a transfer not
12 be inimical to the common defense and security.

13 COMMISSIONER MCGAFFIGAN: That is in Section 103
14 and 104 of the Atomic Energy Act, and irrespective of the
15 preceding sentence that deals with ownership issues, and
16 obviously that would preclude in the fuel cycle facilities,
17 it would have precluded us from -- although not that
18 section, other sections. If Muamar Khaddafi had volunteered
19 to buy out Westinghouse's fuel cycle facilities, I don't
20 think it would have passed muster. So there is a -- but
21 European or other owner, they allow crosownership by
22 American firms in Europe, and it's the modern world. We
23 would have to make common defense and security
24 determination, and we have not ever proposed to touch that.

25 MR. GUNTER: I would just add, though, that it --

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1 I think that we are all in agreement that the modern world
2 is becoming increasingly a dangerous place, particularly

3 with -- when -- as this material gains more credibility as
4 currency, and that's of particular concern in light of the
5 unpredictability of future government instability around --
6 you know, on a global scale. It just seems to me that this
7 is an issue that we should be keeping in-house for our own
8 security as well as our own ability to control the
9 environmental issues associated with it.

10 CHAIRMAN JACKSON: I think we are really here to
11 hear from you, not to necessarily debate you. But we are
12 not proposing to let the nuclear plants leave the country,
13 and that is an important issue.

14 MR. GUNTER: Control, though, is the issue, and
15 jurisdiction and enforcement of issues.

16 CHAIRMAN JACKSON: Let me just say that in what is
17 proposed -- and I would invite you to actually scrutinize
18 the proposed standard review plan in this area -- those
19 issues, in fact, are ones that the Commission has focused
20 on, the issue of who controls what and so on. And if there
21 are suggestions that you could make to us relative to that
22 in terms of how we might strengthen things in that regard, I
23 think that would be good.

24 MR. GUNTER: Well, I think, to begin with, I think
25 that you don't allow -- that you don't uphold the current

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1 Atomic Energy Act prohibition. I think that is why it's
2 there, and to give this material credibility, I think
3 nuclear waste, particularly as a currency, and --

4 CHAIRMAN JACKSON: That's what I'm missing. How
5 does this give nuclear waste as a currency credibility? Can
6 you explain that to us a little bit?

7 MR. GUNTER: Well, it -- I think that it's a
8 slippery slope that I'm referencing in terms of as we allow
9 greater foreign ownership of U.S. reactors, that opens the
10 question of what happens with nuclear waste, what happens
11 with the nuclear materials generated after the fact, and
12 that's one issue.

13 There are the associated issues, though, of your
14 own agency's history of its inability to adequately enforce
15 safety issues, regulations, and how that's going to be
16 impacted by trying to exert your jurisdiction on foreign
17 corporate boardrooms.

18 CHAIRMAN JACKSON: In some ways what you are
19 talking about relates to, to some extent, the issue of
20 management again, and I will just say that in the end, the
21 NRC always has the prerogative that if it feels that public
22 health and safety is threatened, to shut down an operation,
23 to lift the license, et cetera, of going through due
24 process. And so I don't believe that the agency intends to
25 move away from that, and we will have to see where we go. I

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1 personally believe we are going to have more situations like
2 Mr. Hintz's, where he's going to go around and buy up
3 everybody's nuclear plants, but we will see where it goes.
4 That's just my prediction, and you know how predictions are.
5 It's a free statement and, you know, it's worth what it
6 cost.

7 I think what we will do is try to take about a 10-
8 minute break and then come back and finish our discussion on
9 the final topics, PBPM and 2.206 petitions. Is that
10 reasonable? I just think it's a more efficient use of
11 everybody's time. Okay. Thank you.

12 [Recess.]

13 CHAIRMAN JACKSON: We have two more topics to
14 cover. The first is the Planning, Budgeting and Performance
15 Management process of the NRC and the strategic plan. A
16 major goal of the NRC is to become an outcomeoriented
17 performance-based organization, and the primary strategy for
18 achieving this goal is to create a disciplined, integrated
19 process for planning, budgeting, and measuring performance,
20 and our PBPM process -- it's the acronym for Planning,
21 Budgeting, and Performance Management -- implements this
22 strategy.

23 The four phases of it are, first, planning;
24 namely, setting the strategic direction and planning the
25 work. A second, determining the resources required for

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1 that. Third is measuring and monitoring performance. And
2 fourth is assessing the progress toward and identifying ways
3 to improve outcomes.

4 The PBPM process was used to develop the initial
5 NRC strategic plan in the fall of 1998. It also was used in
6 the development of the FY2000 budget. It is a work in
7 progress. We are continuing to refine and to implement the
8 PBPM process to improve our integrated planning, to advance
9 toward our goal of, as I say, becoming outcomeoriented and
10 performance-based.

11 As part of this effort, the NRC requested Arthur
12 Andersen Consulting to conduct an assessment of the PBPM and
13 to use the Office of Nuclear Reactor Regulation as a pilot
14 to further the implementation of PBPM. This afternoon at
15 2:00, 2:00 p.m., the Staff will be briefing the Commission
16 on the PBPM process and the results of the pilot. You are,
17 of course, all invited to observe. The Commission is in the
18 process of updating the strategic plan to reflect more fully
19 the regulatory reform efforts underway. We are
20 concentrating our efforts on the update of the nuclear
21 reactor safety arena.

22 Additionally, the update of the strategic plan has
23 benefited again from a review by Arthur Andersen to make our
24 activities more effective and efficient, and outcomebased.
25 As part of this review, five outcome goals have been

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1 identified, which we anticipate will be incorporated into
2 the strategic plan. We expect to have a revised strategic
3 plan available for public comment soon. However, we
4 nonetheless are anxious to get your views on these outcome
5 goals today and your general comments, if you have them, on
6 the PBPM process.

7 The outcomes goals are, first, maintaining safety;
8 second, reducing unnecessary regulatory burden; third,
9 increasing public confidence; and four, increasing our
10 internal efficiency and effectiveness. And the fifth goal
11 is enhancing our ability to make realistic decisions that
12 are timely and predictable.

13 I am going to ask Dr. Travers to tackle this topic
14 first.

15 DR. TRAVERS: Thank you, Chairman.

16 I have to admit that about a year and a half ago
17 when I first heard about planning, budgeting, and
18 performance management, it seemed to me that any discussion
19 of that topic might be a sure-fire cure for insomnia, but
20 since then I have become enthusiastic about its potential
21 and its usefulness in NRC. And, in fact, we have been

22 actively pursuing furthering the conceptual objectives of
23 PBPM beginning, as the Chairman indicated, around 1997, we
24 used it to some extent, some limited extent, in our last
25 budget cycle, and we are using it in this current budget

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1 cycle even further.

2 I think if you talk to the managers in the Office
3 of Nuclear Reactor Regulation and more recently in the
4 Office of Research and the Office of Nuclear Materials
5 Safety and Safeguards, you are going to detect -- in fact, I
6 think you will rapidly get the sense of a great deal of
7 enthusiasm for this process and its ability to help us plan
8 work against established outcomes, help us in our
9 fundamental objective to be outcome-oriented and
10 performance-based. We have made some considerable progress
11 in this regard. The Office of Nuclear Reactor Regulation,
12 in particular, facilitated with Arthur Andersen, has gone
13 through a process of defining or identifying work that
14 aligns with the outcomes that we have talked about here,
15 including sunseting, or at least looking at opportunities
16 to sunset some work that had been ongoing.

17 So it's a process that we recognize we need to
18 further refine, particularly in the context of an agency-
19 wide strategy, arena strategy, but we are furthering it, and
20 as I indicated, more recently in the Offices of Research and
21 NMSS.

22 As the Chairman mentioned, this afternoon we are
23 going to be going through a discussion of PBPM in some
24 considerable detail. Additionally, and importantly, we are
25 also going to be issuing a strategic plan for the reactor

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1 arena some time early summer, and my own view is that there
2 is a key element of PBPM that relates to this meeting, and I
3 would like to just discuss it for a moment, and that simply
4 is that we look at PBPM process as an opportunity to help
5 institutionalize some of the current agency initiatives that
6 have been discussed at this meeting, in fact, have been
7 discussed in a number of meetings that we have had recently,
8 including the regulatory information conference.

9 Particularly what I am talking about in the
10 context of PBPM is a requirement in the process that calls
11 for an assessment of how we are doing, how we are in fact
12 performing against the established outcomes. It includes
13 assessments that we would conduct on our own. It includes
14 assessments that would perhaps from time to time be carried
15 out by third-party organizations, perhaps most importantly,
16 it includes assessments from our stakeholders as to how we
17 are doing. And we view the PBPM process and this input,
18 these assessments from various sources, as providing an
19 opportunity to feed the cycle back into the redefining or
20 refinement, at least, of our strategic goals.

21 So we view this meeting, we view certainly PBPM as
22 a process, a tool, really, that can help us achieve this
23 objective.

24 I want to invite everyone who can to come to the
25 meeting this afternoon. I think you will find it

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1 interesting. As I said, I think you will find a lot of
2 enthusiasm on the part of the senior managers for our
3 efforts thus far. As the Chairman indicated, we recognize
4 that we have a ways to go in optimizing the process, but we

5 are confident that with some further refinements and
6 Commission endorsement that we can make this process work
7 even better.

8 CHAIRMAN JACKSON: Thank you.
9 Commissioner Merrifield.

10 COMMISSIONER MERRIFIELD: Thank you, Chairman.
11 I share the enthusiasm of Mr. Travers for this
12 process. I think it will be a very positive effort in terms
13 of bringing us the kind of management style that we need.

14 One of the things, when I was preparing for our
15 meeting this afternoon, reviewing the Arthur Andersen
16 report, it recognized some of the unique characteristics of
17 this agency; most notably the Commission, the Chairman and
18 the other four members, in a role that makes in the whole
19 planning process, that brings with it, obviously, some
20 difficulties, some of which are pointed out in the report.
21 Most notably, it had some criticism, limited criticism for
22 us and our tendency perhaps to micromanage, but also
23 recognizes the fact that it's difficult, given it's a five-
24 member commission, to always come to resolution of issues
25 which, of course, ultimately the ability of the Commission

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1 to direct how it wants this agency to go is directly
2 proportionate to the ability of the Staff to do so.

3 But I guess I want to form this in a couple of
4 questions. We do have some CEOs here today who are
5 responsible for operating large corporations and frequently
6 deal with management structures and consultants who come in
7 and try to tell you how to improve the way in which you can
8 reach the bottom line and serve your own stakeholders, be
9 they stockholders or be they the utility customers that you
10 represent. And I am wondering, given this, if you have some
11 insights as to how, given the unique nature of our
12 Commission, we can appropriately direct our Staff and how
13 perhaps you have dealt with some of the issues and
14 tendencies of micromanaging your staff, and how we might
15 take some lessons from that. Don or George, you had some
16 insights you wanted to share?

17 MR. HAIRSTON: Of course, I'm not privy to
18 everything y'all are working on, but just reading some of
19 the trade articles, you are dealing with this issue of where
20 you can get together as a body and discuss non-decisional
21 things. I have seen -- and I have made this comment to
22 y'all on a number of occasions, that that's something that
23 really you need to do. I'm not talking about decisional
24 issues, but I know there are times that we just sort of have
25 to get together in a room with my leadership team, and Jack,

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1 Dave, Barry, and Barnie, and people like that, and say now
2 where are we going. And just where everybody can do their
3 views. I think that is a big step, if y'all are moving in
4 that direction.

5 I think the other tendency is, that we have had,
6 is to overmanage. I think you don't want to do that, but I
7 gave you a couple examples today of where I think you need
8 to stick your nose in at the front of the process, at the
9 front of the process, and then assume that your leadership
10 team is going to implement the guidance you give them. I
11 really see the Commission moving more in that direction. So
12 I think y'all are on the right path. I think you have got
13 to stay the course. I think listen to people like Arthur

14 Andersen, listen to what they have to say, and understanding
15 what they have to say, and then you're the only people that
16 really know how the Commission, how this Commission works,
17 and so it is your final decision, you've got to make it.
18 But I appreciate the fact that you are wrestling with these
19 kinds of issues. I think it's going to be better for your
20 staff, better for all the stakeholders.

21 CHAIRMAN JACKSON: Mr. Hintz, and then I am going
22 to ask Mr. Curtiss, since in fact was a member of the
23 Commisison.

24 MR. HINTZ: As George said, I really, you know, am
25 pleased that you are struggling with those issues and you

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1 are dealing with those issues, but I don't know that I have
2 got any insightful comments that I can give you. But I
3 think those are, you know, extremely important issues, and
4 the fact that you are taking quality time to deal with them,
5 I think is extremely important, and I am pleased to see
6 that.

7 CHAIRMAN JACKSON: Mr. Curtiss.

8 MR. CURTISS: Let me offer a couple of comments,
9 and I, too, am not a student of the PBPM process, although
10 the fact that it has an acronym I think reflects that it has
11 some staying power, so --

12 [Laughter.]

13 CHAIRMAN JACKSON: Always got to have that.

14 MR. CURTISS: I am impressed with what little I
15 know about this subject because it does seem to me as I
16 looked at the materials from the previous meetings and the
17 tasking memo and so forth, by far and away the most
18 significant challenge, in my view, and it's been said in
19 previous meetings, so it's not an original thought, is the
20 change management process that you have to go through here,
21 and I think, as Jeff's question alluded to, there are others
22 here that have gone through that in a private sector context
23 but don't deal with the kind of issues that you have here,
24 not the least of which is a commission structure that brings
25 a new commissioner and a new chairman to the agency

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1 periodically, so that structure changes statutorily, as well
2 as the subject that I just want to talk about in a minute,
3 and that is the structure of the Commission, the
4 Headquarters Staff and the Region itself. But I know when I
5 came to the Commission in 88 thinking about the fact that
6 five years is going to go pretty quickly, it occurred to me
7 that I ought to have a pretty good sense of the three or
8 four things that I wanted to do, and the maintenance rule is
9 one, and there are two or three others, license renewal and
10 high level waste issues. And against that backdrop, I am
11 struck with how much has been accomplished and what has been
12 set forth and the discipline that the PBPM process has
13 brought to managing the significant changes that are going
14 on right now.

15 So I think that is a real testament to the
16 commitment that you all have made, not just identifying the
17 changes, but managing the successful outcome of the changes.
18 And my only hope, I guess, and I trust most people here
19 would agree with this, is that as you see the transition
20 occur, Chairman Jackson, at the end of your term, and
21 understanding that this set of initiatives really had a
22 strong foundation in the entire Commission and the entire
23 Staff, things are going to change at that level, and it does

24 seem to me that the ability to sustain the progress on the
25 initiatives that you have underway, if there is a question

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1 mark outside of the agency, it would be that. What will
2 happen with respect to the initiatives and their
3 sustainability. And I have a lot of confidence, as I look
4 around the room, at the people involved here, that there
5 will be a seamless transition and those initiatives will go
6 forward smoothly.

7 But let me just offer an observation here that is
8 not squarely on point, but it's something that I guess I
9 characterize more as a rumination rather than a
10 recommendation at this point. If you look at what has been
11 described in some way here about what's happening with the
12 industry and the potential consolidation of utilities
13 operating nuclear plants as one factor, if you consider the
14 budgetary pressures that the agency is under and I think
15 will continue to be under in terms of the FTEs and the
16 downsizing of the manager to staff ratio, and on this
17 question of how you ensure that there is continued line of
18 sight accountability throughout the organization on these
19 very important initiatives, it does seem to me that at some
20 point it's worth asking the question about how the agency is
21 structured in terms of the headquarters region model. And I
22 haven't given that a whole lot of thought, and hence don't
23 couch this as a recommendation, but perhaps there is some
24 merit to looking at the question about whether there is a
25 point in time over the next three to five to 10 years where

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1 one might see a consolidated agency from the standpoint of
2 the regions and the headquarters, with maybe some inspection
3 staff focused in the regions. And I say that for a couple
4 of reasons:

5 One, it does seem to address what will continue to
6 be downward pressures on the agency and its staff and its
7 senior managers, and the importance of having the right
8 senior managers in the right place.

9 Number two, if you have at some point six to 12,
10 15 utilities that are operating plants, you have to envision
11 a circumstance where they're operating plants -- a single
12 entity is operating plants in what now may be multiple
13 regions, which in my mind creates the kind of challenge that
14 I know that Don Hintz dealt with when he had two plants in
15 two different regions.

16 And then, third, it does seem to me that on this
17 question of ensuring sustainability of the initiatives that
18 you have underway, and the ability to make sure that you
19 have got line of sight accountability and close focus of the
20 type that Mr. Hairston described when he gets his team
21 together, that there may be some merit to such a concept
22 from that perspective. So I offer that as sort of a topic
23 somewhat related but not quite related to the PBPM process,
24 but at least worth considering as you look at how you are
25 going to manage change and how the industry is going to

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1 evolve over the next five to ten years.

2 CHAIRMAN JACKSON: Thank you. That was a
3 provocative and, I think, very thoughtful comment. I would
4 just make two comments. I think that, you know, people are
5 ruminating about that, but the thing I have ordered the

6 Staff to do -- and you may have even heard me speak to, I
7 believe, at the INPO CEO Conference -- is that it is
8 important to start from the right end of the paragraph; that
9 moving into this pilot program via-vis a new oversight, we
10 are risk-informing the regulations, we are anticipating and
11 beginning to process license transfer and license renewal
12 applications, and so what happens is going to be driven by
13 what happens, and I think it is important that one know that
14 change may, and most likely will, involve an examination or
15 re-examination of how the agency is structured, but it is
16 not whose ultimate form should bias what we do going in.
17 And that's what I mean by starting at the right end of the
18 paragraph, that we have a lot of work underway, and I think
19 over the course of the next year, a lot more things will
20 become more clear, but that will inform decision-making
21 relative to that.

22 Nonetheless, in the meantime, PBPM and other work
23 change processes are being implemented in a way that will
24 allow us to both handle the work on our plate in as
25 effective a way as we can, but also be as informed about how

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1 we do our work, coupled with any external changes that --
2 and changes in our regulatory program -- that would drive a
3 given structural model. So I welcome your raising that
4 issue, but at the same time I have always maintained that we
5 have to start at the right end of the paragraph.

6 Sam, I don't know if you had any generalized
7 comments. I know you are going to be talking this
8 afternoon, so I don't want to preempt that, but if you have
9 any general comments you want to make in this area.

10 MR. COLLINS: Thank you. Morrie and Jack Silver
11 have the lead this afternoon, so I --

12 CHAIRMAN JACKSON: So you can talk. Okay.

13 MR. COLLINS: We are sensitive as the lead office
14 for the agency, NRR, to the impacts of the PBPM process, as
15 well as its limitations. Commissioner McGaffigan and I had
16 this conversation before. I threatened to bring a potted
17 plant to the Commission meeting, but --

18 [Laughter.]

19 MR. COLLINS: -- but you can only plan, quite
20 frankly, so much work as far as the outgoing schedule is
21 concerned. The NRR organization, by necessity, has to be
22 responsive to the Commission, has to be responsive to the
23 active work, it's part of what we do. I believe if we ever
24 get to the point where we can plan in an outgoing fashion 80
25 percent of our work, that will probably be as close as we

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1 get. But what this process does allow is for the discipline
2 to acknowledge the impacts. It's something we have perhaps
3 been searching for in the past, as well as the ability to
4 respond.

5 Many of the issues that we discussed here today,
6 public perception issues, new issues we hadn't anticipated
7 years ago, like the transfer of foreign ownership, how many
8 plants do we have coming in for license renewal. I've heard
9 valid concern expressed, is the agency positioned source-
10 wise, talent-wise for some of these challenges of the
11 future. This process allows us to look at those in a way,
12 at the plan in a way that makes our response credible and
13 dependable, and it raises the balance issues that we
14 discussed, about this balance between reducing unnecessary
15 regulatory burdens and a balance between being efficient and

16 effective by being able to communicate to our stakeholders
17 like we are here today on the types of issues that we talked
18 about. Within NRR, I believe that through all the work of
19 the Staff, they are positioned very well for it. I don't
20 think we could let go of this process and still be as
21 credible as we have been for the past year and a half, to
22 focus on change and get things done to help other regions.
23 I didn't mention the regions in this process, but clearly
24 the regions are involved through their operating plants,
25 through the PBPM, they are supporting the program office in

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1 our goals.

2 We are at the point now where we are looking at
3 organizational and individual effectiveness, starting to
4 look at the attributes of leadership, team work. We are
5 focusing on areas that the Staff has brought forward. Can
6 we get to where we want to go as an organization without
7 centralized planning and work processes? We have issues in
8 that area. How are we going to handle as an agency the
9 shutdown plants, a process we have looked at for a while.
10 What is our involvement in a shut-down plant. The old 350
11 process, as far as oversight, how is that -- the Staff
12 actually is engaged in bringing those issues forward and
13 saying for us to be effective, we should address that. So
14 again we have a lot of work to do that I believe will help
15 position us for the future and some of the successes and
16 challenges that we talked about today.

17 CHAIRMAN JACKSON: Thank you.

18 The next area and the final area I would like to
19 discuss is the quality of our 10 CFR 2.206 petition process,
20 and this is a crucial and a valued aspect of our regulatory
21 regime. It is meant to allow the voice of any stakeholder
22 to be heard and the concern of that stakeholder to be
23 reviewed appropriately and expeditiously.

24 In that vein, we have reviewed and have worked to
25 revitalize our process for responding -- in order to respond

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1 to stakeholder criticisms that this process is slow,
2 unresponsive and unclear.

3 In fact, I included the 2.206 petition process in
4 my tasking memo to the Staff, directing that we focus on
5 being responsive and on improving our timeliness. We need
6 to be more open with petitioners, similar to the efforts we
7 have made to be more open with our licensees and other
8 stakeholders. Some actions we took under the tasking memo
9 included we established a petition review board --
10 established petition review boards for early management
11 involvement in the process. We posted petition status on
12 our web site, established timeliness performance matrix,
13 provided our internal review process procedure to
14 petitioners, and surveyed petitioners in January for
15 feedback on how to improve our process. We have seen
16 improved timeliness of our petition responses, and we have a
17 pending change to our internal process for handling
18 petitions due to be implemented this June, and it will
19 include first changing the informal hearing process to
20 public meetings; providing petitioners approximately one-
21 half hour to present their petitions to the petition review
22 board; assigning a single staff point of contact; and
23 conducting more telephone contact with petitioners; adding
24 petitioners to appropriate plant service lists which

25 petitions are pending.

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1 However, we do remain aware of criticism from
2 petitioners that our process needs further improvement and
3 may not have considered all the needed stakeholder input.
4 Considering the aforementioned value of this part of our
5 regulatory regime, I think it is essential to solicit
6 unfiltered feedback on this issue, and to that end, I would
7 like Mr. Lochbaum to start, and then I would like to ask Mr.
8 Gunter to share his insights.

9 MR. LOCHBAUM: In the written comments that we
10 provided for today's meeting, we looked at how the Staff is
11 addressing a number of other issues that are before
12 stakeholders and how the Staff is dealing with this issue.

13 In the tasking memorandum, they have defined
14 design bases, and the Staff action was to meet with NEI.
15 The applicability of the backfit rule to decommissioning;
16 meetings with NEI. Request for additional information;
17 stakeholder meeting with NEI. Application of backfit rule;
18 meeting with NEI. And on the 2.206 petition, obtain
19 stakeholder feedback, which was a telephone call.

20 If you look at how the Staff deals with these
21 other issues, it is to meet with the people, the
22 stakeholders who have the issues face to face to make sure
23 they understand what the issues are, and then discuss what
24 resolution might address those issues.

25 On the 2.206, the Staff basically feels that there

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1 is no concern in the public. The Staff -- the public just
2 doesn't understand the process. If they understood it
3 better, they would be -- they would love it, and there's
4 really no need to do much substantive action to address
5 their issues. It's a -- you know, the great unwashed again
6 still just don't get the picture. And I don't think that's
7 the case. We submitted a number of petitions in the last
8 year. We don't do them to address the Staff. We do them to
9 get media attention because that's the only way we can
10 engage the Staff on technical issues, to get media
11 attention, to focus on the issue, to get the Staff to
12 address the issue. That's wrong. We shouldn't be doing
13 that. But there's no other way, either through 2.206 or the
14 allegation process, to bring a sincere technical issue to
15 the Staff and have it discussed and resolved. Absent that
16 process, we are forced to do something to get outside
17 pressure on this agency, and that something is media
18 attention, which is relatively easy to do on nuclear power
19 issues.

20 So until either the allegation and/or the 2.206
21 process is fixed, that's going to continue to do it. It's a
22 great media hook to say that some group is petitioning the
23 government on a safety issue. It's an automatic media draw
24 or media hook, and it's wrong for us to do it, and it's
25 wrong that the fundamental root cause is that this agency

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1 doesn't have a valid 2.206 process.

2 CHAIRMAN JACKSON: So what needs to change? Can
3 you give us some specifics? What needs to change?

4 MR. LOCHBAUM: A few years ago, I don't know when
5 and who, but the Staff determined that the 2.206 process was
6 limited to suspension, revocation or termination, or
7 suspension of a license. The law, the statute says other

8 actions, which we interpreted to be force a regulation or
9 some other action that might be out there, but it's a strict
10 one of those three things. If you don't meet that, your
11 petition is automatically bounced back, and we feel that is
12 wrong, because most of the time we are not -- we are just
13 trying to get some safety issue fixed, not wanting to
14 suspend a license or revoke it.

15 A good example is D.C. Cook. Everything we asked
16 for in the petition was done by the Staff; more than we
17 asked for, yet the petition was formally denied because we
18 asked for suspension or revoking. So it's a -- the way the
19 Staff has defined the regulation has led to some problems.

20 In addition, the Staff very seldom contacts the
21 petitioner like they do with licensees for license
22 amendments. We maintain that if the Staff treated
23 petitioners -- or licensees the same way they treated
24 petitioners, there would be very few license amendments
25 granted because the Staff would not send out requests for

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1 additional information and other things that the Staff uses
2 when the licensee doesn't submit a full and complete
3 application. But when a petition comes through that might
4 be missing something or the Staff may not misunderstand it,
5 they just deny it, it's a simple process and meets the
6 timeliness standard. So that kind of equity, we feel, needs
7 to be built into the process.

8 CHAIRMAN JACKSON: Okay. Thank you.
9 Mr. Gunter.

10 MR. GUNTER: I would agree with Mr. Lochbaum's
11 remarks and only add that a couple of areas that we would
12 suggest -- well, one particular area would be for there to
13 be some greater contact between the petitioner and the
14 petition review board. That's basically a behind-the-
15 closed-door process at this point. We don't even really
16 know often who the review board is in terms of personality
17 and their particular expertise, but it would be helpful for
18 there to be a -- it would be a confidence move on the part
19 of the agency's part to open this process up so there'd be
20 more face-to-face meeting between petitioner and petition
21 review board. But ultimately I believe that the only
22 measure you have to restore public confidence is to provide
23 us with adjudicatory review of this whole procedure. That
24 ultimately speaks to your willingness to air these issues
25 out to the full extent, and to give the public a truly

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1 independent review of the issues and an opportunity to
2 present their concerns, albeit that you will have, you know,
3 the technical expertise in it, but adjudicatory review does
4 provide us to bring in independent expertise to really
5 counter Staff argument, or to, you know, bring out our
6 differences or where we are off base. But this has come up
7 time and time again in terms of the ability of adjudicatory
8 review and, frankly, the industry is absolutely opposed to
9 it, and we have gone through this before, I believe it was
10 back in '93 or '94, where the whole 2.206 process was
11 reviewed and the adjudicatory review issue was brought up,
12 and it's a stone wall in terms of both agency and industry's
13 willingness to open it up. But I think that's ultimately
14 where we begin to move towards gaining -- regaining
15 confidence in the agency, by airing these issues fully in an
16 independent court of law.

17 CHAIRMAN JACKSON: Do you feel that every issue
18 should be adjudicated and --
19 MR. GUNTER: Certainly --
20 CHAIRMAN JACKSON: You're saying that every issue
21 should be adjudicated and merits adjudication?
22 MR. GUNTER: It should be open for adjudication.
23 I mean there are, you know, there -- you know, there may be
24 trivial petitions that you have to deal with, and certainly
25 we are not saying that every petition be adjudicated. But

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1 certainly the more legitimate issues such as thermal lag,
2 fire barriers, which, you know, is an issue that persists in
3 this agency now seven years after the original 2.206
4 petition was presented, certainly something like this, you
5 know, would have merit in some court of law. And so I think
6 there's got to be a filtering process, you know, by the
7 various issues themselves as to whether or not they are
8 going to be adjudicated.

9 CHAIRMAN JACKSON: Further comment?
10 Mr. Collins?

11 MR. COLLINS: I don't disagree with the
12 characterization of the insights of the 2.206 process. I do
13 disagree with the characterization of Staff's view of 2.206
14 petitioners. I don't think it's appropriate for other
15 individuals to speak about Staff's view of other
16 individuals. What we do, and what I have done personally in
17 contrast to the great unwashed remark, is contact
18 individuals personally that have submitted petitions. Dr.
19 Shearon has also done that, as have the Staff's -- for at
20 least the past four to six months, this has been in
21 progress, based partly on the valid comments about the
22 performance of 2.206. Plus we had a very extensive program
23 to upgrade to 2.206, but we have limitations, and again we
24 have to look at the interpretations of 2.206. We have been
25 working with OGC on that, and OGC has helped us as far as

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1 what room we have to operate in, within the bounds of past
2 precedent and how far past we can go just in language, but
3 ultimately maintain some of the points in 2.206 in the
4 statute itself. The process, I believe, in the past six to
5 eight months has varied significantly from past practice.
6 We have allowed hearings in instances when people take
7 advantage of those with regard to which they are intended,
8 and in some cases are abused, but they are -- that opened up
9 and people have the ability to present views in hearing --
10 in one case we went to a very extensive effort to broadcast
11 the hearings to other parties involved at remote locations -
12 - based on power plant issues.

13 As far as the timeliness, our goals have improved
14 our timeliness as far as the goal 100 percent, but we are
15 still below the overall goal. We have to address the
16 topics, some 120 days for some of the technical petitions
17 that we receive, or in fact we may have to reprogram our
18 resources.

19 Ultimately the Staff's tracking efforts here under
20 the petition item runs through both the long term and short
21 term efforts which get to some of the areas, Paul, that you
22 and David indicated as far as participation at the front end
23 in front of the review board, or clarification of the
24 issues. Do we need to have a process which mirrors license
25 amendments for request for additional information to clarify

1 and get the petition to a point where all the information is
2 available. But ultimately I think that 2.206 process may
3 not satisfy some of the intent of our stakeholders. They
4 may have to look to other processes, whether they be the
5 ability to request inspections in certain areas. As Mr.
6 Lochbaum indicated, if this vehicle is the only one in town
7 that's available to get to some areas where the Staff needs
8 to be responsive, that this vehicle will not satisfy all of
9 the stakeholders in that area. When it's appropriate,
10 David, I'll point those out.

11 CHAIRMAN JACKSON: Well, thank you.

12 In closing, let me thank all of the participants
13 for your comments and your insights, and this remains a time
14 of fundamental change for the NRC, and we believe the change
15 is a necessary and healthy organization. If you are not
16 changing, you are not alive. And to the extent that our
17 stakeholders have aided us in identifying areas for NRC
18 improvement and focus, they have our gratitude, you have our
19 gratitude.

20 The Commission will reflect upon the issues
21 discussed today and will take the actions we can to address
22 stakeholders' concerns within the confines of our primary
23 mission as a regulator tasked with the ensuring public
24 health and safety in the environment. We will use your
25 input in improving our regulatory effectiveness, in

1 positioning the NRC for change, and in changing the NRC.
2 Now aspects of some topics we have discussed today have
3 particular interest to me. With respect to risk-informed
4 regulation, I agree that timeliness of all our actions needs
5 to be a priority. I believe NRC responsiveness, actually,
6 will result from risk prioritization of what we do.

7 I understand the concerns that have been raised
8 relative to PRA quality, the nature of voluntary process in
9 that regard, and that flexibility can be perceived as
10 elasticity, and so we have to be clear on how we posit what
11 we do.

12 Much discussion was spent on the use of rules as
13 guiding principles, and the importance of guidance, not only
14 in providing necessary definition, but in accurately
15 following the intent of any rule.

16 With respect to reactor oversight, there seemed to
17 be much unanimity that this revision is a step in the right
18 direction, but that open dialogue must be maintained between
19 plants and the regions and other stakeholders. Our metric
20 will be whether we have the degree of consistency region to
21 region that we hope to have.

22 Changed management principles must be applied, and
23 the NRC ability to respond must be preserved. The NRC must
24 implement the process with an open mind and accept that it
25 may need to further change the process. This is what I

1 think we heard. I am aware that this change can be
2 perceived as a further move to self-regulation of the
3 industry. We have to guard against that, but we have to
4 explain what we are trying to do so that that perception
5 does not either become reality or persist in the minds of
6 the public.

7 I reiterate that the, you know, essential
8 question, an essential question is what will the NRC and the

9 industry and the public do with what the process reveals;
10 that one has to close the loop; it's not just gathering
11 information, but what is done with the information.

12 With respect to license renewal, the Commission is
13 very aware that the process may give the appearance of
14 further acquiescence to the industry, and that contentious
15 issues seem removed from public intervention. Yet as
16 Commissioner McGaffigan previously summarized, there have
17 been extensive efforts at in fact facilitating public
18 comment.

19 The NRC will review the standard review plan,
20 using lessons learned from the first two applications.

21 On license transfer, as an outcrop of electric
22 utility deregulation, the NRC does expect and is planning
23 for an increased number of transfers, each with its own
24 unique facets, and perhaps we need to revisit our planning
25 assumptions in that regard, in light of some of the comments

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1 we heard.

2 The Commission understands the concerns relative
3 to tax issues and foreign ownership and control issues, but
4 I will reiterate that the NRC must assess inimicality to the
5 U.S. interests, to common defense and security, and that
6 this is a broad net that allows us to capture what we need
7 to capture. But what the Commission has focused on is the
8 NRC not being an impediment procedurally. That does not
9 mean that technically where the concerns are identified that
10 we will not put appropriate license conditions in place.

11 With respect to 2.206, I noted the improvements we
12 have been making and that we plan to make during my
13 introduction on this topic, and that the Commission is
14 committed to ensuring and improving upon the public's
15 ability to effectively participate.

16 We heard you relative to the equity concerns, and
17 the greater contact, that perhaps we need to review further
18 the interpretation of the 2.206 rule itself, but as Mr.
19 Collins said, we may need to look to other processes as
20 paths for providing public input. We will implement the
21 changes that I have outlined, but we will continually
22 reassess and structure this process as necessary.

23 Now with respect to PBPM, this is an important
24 shift for the NRC, to become more outcomeoriented. We do
25 plan on including self and third-party assessments as part

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1 of that process, and we welcome your input, but -- and I
2 remind all of you that whatever we do, we always have to
3 start at the right end of the paragraph.

4 Since this will be my last stakeholders meeting,
5 unless you all are planning to come back within the next six
6 or seven weeks, I won't be here, let me close by saying that
7 I have enjoyed these meetings. We have come a long way down
8 the pike. I have appreciated our stakeholders' criticisms
9 and suggestions and, in fact, this was perhaps too much of a
10 love fest for me. I can't get used to it. But I sincerely
11 will miss interacting with the nuclear community on a daily
12 basis, and while all of us may not have always seen eye to
13 eye on the issues before us, I do admire all of you, NRC
14 Staff, public interest groups, state government officials,
15 industry groups and regulated entities. But I am confident
16 that the changes that the NRC has initiated will be
17 sustained following my departure, and that we will remain
18 committed to the path we are on. I believe that I am

19 leaving an agency with a renewed ability to take on and to
20 make difficult decisions and to act when appropriate, but
21 also one with an improved desire to bring coherency and
22 scrutability to the actions it takes, while seeking to
23 impose only the necessary burden on licensees.

24 I thank you again for your participation, and if
25 there are no further comments --

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1 COMMISSIONER MERRIFIELD: Chairman --

2 CHAIRMAN JACKSON: -- we are adjourned.

3 COMMISSIONER MERRIFIELD: Chairman, I'd like to
4 make a comment.

5 CHAIRMAN JACKSON: Please.

6 COMMISSIONER MERRIFIELD: I want to join my
7 appreciation that you expressed to all the members that came
8 today and spending even a few hours today, we have had some
9 folks that have had to travel a long way, and we really do
10 appreciate it. I appreciate the fact that you have done
11 that.

12 I would agree with the Chairman, I think these are
13 very useful. As a Commissioner who will be here till the
14 year 2002, I certainly look forward to a repeat of these
15 stakeholder meetings. I have found them very useful. The
16 first one I had was a few mere days after I became a
17 Commissioner, and I think I have enjoyed them even more, and
18 I enjoyed it even more today.

19 The one comment I would like to make, all too
20 frequently we as an agency focus only on issues associated
21 with reactors. I look forward and will encourage my fellow
22 Commissioners who will remain that we ought to be having a
23 stakeholder meeting on some of the other issues our agency
24 deals with, some of the materials issues, because I think
25 those are some areas which could also use some appropriate

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1 stakeholder input. Thank you, Chairman.

2 CHAIRMAN JACKSON: Thank you.

3 As I say, you have always heard me say, we are not
4 the Nuclear Reactor Regulatory Commission.

5 Adjourned.

6 [Whereupon, at 12:46 p.m., the briefing was
7 adjourned.]

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