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P R O C E E D I N G S

[1:33 p.m.]

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3 CHAIRMAN MESERVE: Good afternoon, why don't we
4 get underway. As I think you all know, the purpose of this
5 afternoon's meeting is to obtain a briefing on the progress
6 in developing draft implementation guidance for 10 CFR
7 50.59.

8 As I think you all know, that section is a portion
9 of the regulations governing the operation of nuclear power
10 plants that permits licensees to introduce changes to their
11 facilities without obtaining prior NRC concurrence, and
12 although it is a provision that has long been in our
13 regulations, before I arrived at the Commission there were
14 efforts to incorporate risk insights in that regulation and
15 to make changes in it that would provide an opportunity in
16 appropriate cases to be able to use that authority in a
17 fashion broader than the prior regulation would have
18 allowed.

19 The Commission conditioned the effectiveness of
20 that regulation, however, on the development of guidance,
21 and I think the rule provides that it goes into effect 90
22 days after the guidance is effective.

23 The staff has been working with NEI, as I
24 understand it, to try to develop that guidance, and the
25 purpose of our meeting today is to have a briefing on the

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1 progress in that effort.

2 Frank, why don't you proceed and introduce your
3 colleagues.

4 MR. MIRAGLIA: Thank you, Mr. Chairman. As you
5 indicated, the purpose of the meeting is the status of the
6 development of the Reg. Guide to implement the revision of
7 50.59, which was approved by the Commission last year, and
8 to give you a summary of our interactions to date.

9 With me at the table today is Sam Collins, the
10 Director of Office of Nuclear Reactor Regulation; Jon
11 Johnson, the Associate Director for Inspection and Programs
12 in NRR; David Matthews, Director of the Division of
13 Regulatory Improvement Programs; and Eileen McKenna, Senior
14 Reactor Engineer.

15 We will have Mr. Matthews continue with the
16 briefing.

17 MR. MATTHEWS: Thank you. We are here today as a
18 continuation of a process that began really in about the
19 1996 timeframe, as has been stated. It culminated in a

20 change to the regulations in 10 CFR 50.59 that was approved
21 on June 22nd. However, as also has been mentioned -- the
22 first slide, please -- as also has been mentioned, the
23 effective date of that rule has been stayed pending the
24 completion of the guidance that we are here to discuss today
25 and to give you a status report on that guidance.

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1 Those changes to the rule will be discussed in
2 detail by Eileen and I just wanted to give some additional
3 background in terms of the process that we have been
4 undergoing.

5 We have been working with NEI representing the
6 industry in their development of a guidance document that
7 would hopefully be endorsed by the NRC in a Reg. Guide. And
8 the process has reached the point that we are very close to
9 endorsement, but we do have some outstanding issues that we
10 have yet to pin down, and we would like to discuss those in
11 detail with you, and Eileen will continue this discussion of
12 those issues.

13 MS. MCKENNA: Thank you. Could I have the next
14 slide, please?

15 On this slide I tried to summarize some of the key
16 areas where the rule was changed and, therefore, where we
17 have been focusing on the guidance, so it is clear as to
18 what is required and what licensees can do, and to provide a
19 degree of consistency in implementation. And I think a
20 couple of the key areas where there is change in the rule
21 was the addition of definitions, a particular definition of
22 what "change" means, a definition of a facility as described
23 in the FSAR and also a definition that relates to one of the
24 criteria on departure from a method of evaluation. Some of
25 these definitions in the evaluation criteria are in the

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1 backup slides if we need to refer to those for any reason.

2 The other thing is the evaluation criteria and one
3 of the major changes here was the introduction of a concept
4 of minimal increases in likelihood of occurrences or
5 consequences of events, and the use of criteria based on
6 design basis limits for fission production barriers, and, as
7 I mentioned, a criteria on methods.

8 There were a number of other changes in the rule
9 as a result of these additions and one of the other ones
10 that I will just mention in passing, because it does relate
11 to some of the particular issues we have been dealing with,
12 was the addition of paragraph (c)(4) that was specifically
13 designed to remove any implied duplication of reviews under
14 50.59 and under other processes where the regulations did
15 establish another process for evaluating such changes. So

16 those are kind of the major areas where we have been
17 focusing.

18 Could I have the next slide, please? Here I have
19 tried to summarize the status of our interactions with
20 respect to development of the Reg. Guide. We had received a
21 first draft back in the August timeframe. We have meetings
22 and discussions and drafts resubmitted. We sent comments
23 back in November. And this all culminated really in a
24 submittal in December that -- I think at the time we thought
25 we were on path to reach resolution on the original schedule

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1 of May 30th for the Reg. Guide to the Commission, but in
2 December there were some new issues that were put on the
3 table for the staff to consider, and we have been giving
4 them due consideration, but it has impacted on our original
5 intended schedule.

6 And these new issues included a proposal with
7 respect to fire protection program changes, the proposal
8 with respect to Maintenance Rule (a)(4) assessments with
9 respect to 50.59 evaluations, and some discussion about
10 approach to methods, in particular where a method may have
11 been used -- approved by NRC on a plant-specific basis and
12 another licensee wished to use it for their own use without
13 the need for additional approval.

14 In the original -- in the Statement of
15 Considerations for the Rule, we had stated that that
16 approval should be generic, but this was an area that was I
17 think seen as a potential for some burden reduction, and we
18 have tried to reach agreement on criteria where that could
19 be done by a licensee, provided they were able to determine
20 that, indeed, NRC had reviewed the method for the
21 application it was going to be used for.

22 So those were some of the new things that came in
23 December that we have been studying. As a result of that,
24 we had a meeting early in January and there were some I will
25 say relatively minor changes made in a draft that was

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1 received on January 18th. Subsequently, we sent written
2 comments which we then discussed at a meeting on February
3 9th to try to get to a plan for closure. You know, we
4 wanted to say these are the areas where we think we have a
5 position and we will look for certain clarification in the
6 guidance.

7 There were a few areas at that time that we, the
8 staff was still reserving judgment on pending further
9 discussion within the agency with all affected parties. And
10 so at February 9th, we basically left certain issues for us
11 to look at and other issues for NEI to adjust their
12 guidance. They then submitted the February 22nd version of

13 the guidance, which I believe you have received, and we are
14 here today to discuss with the Commission where we stand on
15 these issues.

16 Next slide, please. In the February 4th letter,
17 there were a number of comments that we provided. I grouped
18 them in this slide into six broad areas that we felt they
19 needed to reach resolution on.

20 And the Resolved and Open really reflects our
21 status at the time we prepared the slides last week, and it
22 was based on our preliminary review, obviously, of the
23 February 22nd version to confirm that the changes we
24 expected to see were in place.

25 I think that basically we are still in agreement

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1 with this, but I will, in the specific areas, talk about
2 where some of these issues do stand.

3 Say, we had six general areas that were open in
4 the February 4th letter, we believe we have come to
5 agreement on four of them, with the potential for some minor
6 wording changes we might include in the Reg Guide for
7 purposes of comment.

8 And there were two that we were holding as open,
9 and the proposal for the briefing that was that we would
10 discuss the two that are open, unless there are questions on
11 any of the others.

12 Can I have the next slide please. I might notice
13 for the audience that some of your copies may have two
14 copies or almost identical versions of the same slide. I
15 apologize if there is any confusion, but there was a little
16 bit of a problem in making the copies.

17 This is a slide that deals with the relationship
18 of a 50.59 evaluations to maintenance rule assessments. In
19 particular, this issue relates to temporary changes that a
20 licensee may need to make in order to do maintenance, and
21 whether those changes should be subjected to a 50.59
22 evaluation, in addition to whatever review is conducted
23 under the 50.65(a)(4) maintenance rule assessment.

24 The view that NEI had proposed was that we should
25 use the provisions under 50.59(c)(4), and conclude that the

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1 maintenance rule (a)(4) assessment provided a process for
2 evaluating such changes, and therefore it was not necessary
3 to do a 50.59 evaluation for such temporary changes
4 associated with maintenance activities.

5 I think that's always a point that was emphasized
6 in both of the guidance documents; that the tech spec
7 requirements need to be satisfied in any event.

8 As I mentioned, this was a proposal that we first

9 received in December. In parallel, they were commenting on
10 the final regulatory guidance on the maintenance rule, which
11 is also in the process of being out for comment at the
12 time.

13 And, therefore, their comments affected both the
14 9607 document and the document that I believe is NUMARC 9301
15 which was the guidance for the maintenance rule.

16 And their schedule on the maintenance rule is for
17 the final Reg Guide to the Commission in the next month or
18 so. So, obviously this was an issue that was very timely
19 and needed our prompt attention.

20 At our last meeting with NEI in February, this was
21 an issue that was left at that point for the Staff's
22 consideration. NEI had put their proposal on the table and
23 staff had raised its questions, but at that point, we were
24 still debating the merits of this and whether we would find
25 it acceptable.

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1 Some of the reasons why we were having these
2 debates really relate to the nature of the kind of reviews
3 that are done under maintenance rule (a)(4) assessment,
4 versus the kind of criteria that were established in 50.59.

5 One is more focused on the risk of particular
6 configurations, and managing that risk; the other is more
7 focused on what the licensing basis is and the design basis
8 events, and, say, originally we working with them to see
9 whether they could really accommodate each other for the use
10 they were being proposed.

11 There were certain events that weren't clear that
12 a PRA, necessarily -- excuse me -- certain conditions or
13 changes that, whether a PRA-type analysis would be able to
14 handle those, although we recognized that the maintenance
15 rule guidance does allow for other approaches as well.

16 So, a lot of our focus tended to be on these
17 activities associated with the maintenance itself. They
18 were not an issue of what system or particular component was
19 actually undergoing maintenance, but what things might be
20 necessary in order to get to that equipment and to do the
21 maintenance.

22 For example, if you had to move heavy loads to
23 place them near the equipment so you could do the work, or
24 you needed to remove walls or other structural elements in
25 order to be able to gain access to the equipment, this would

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1 be placing the plant into a somewhat different configuration
2 than had been considered.

3 And one of the examples that we spent a lot of
4 time thinking very hard about are these kinds of walls or
5 hazard barriers, for example, something that protects

6 against effects of a high-energy line break.

7 And as we worked through these examples and
8 discussed the implications of the proposal, I think where we
9 began to come out was that the issue was not so much whether
10 an (a)(4) assessment or 50.59 was the right answer, but
11 really was more fundamental as to in those cases, being sure
12 that the tech specs and the requirements were all being
13 satisfied.

14 And once we kind of reached that sense of
15 agreement among ourselves, I think we became more satisfied
16 with the proposal, and that the (a)(4) assessment does have
17 certain advantages in terms of considering the timeframe
18 that the activity is going on, what other activities are
19 happening at the same time, and a more integrated look, as
20 well as the risk.

21 So, taking these factors into account for the
22 kinds of changes that we're talking about, that is these
23 preparatory activities, if you will, for purposes of
24 supporting maintenance where the plant is going to be
25 restored back to its original condition following the

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1 maintenance, that they were perhaps more suited to the
2 (a)(4) evaluation and that there would be no need then to
3 have the 50.59 evaluation done as well.

4 So, that's really the current thinking that's a
5 little different than what we had on the slide, and we will
6 continue to work since we put the slides together last week
7 to try to come to closure on this issue.

8 One other point that I will just make about the
9 guidance as offered on February 22nd, one of the changes
10 that was made at that time was introduction of a proposal to
11 have a guideline in terms of if the activity is going to be
12 in place for more than 90 days, to consider that as a change
13 and maybe the 50.59 is warranted.

14 We looked at this as kind of a guideline with
15 respect to whether the activity at the plant was really
16 maintenance, and therefore it belonged under the province of
17 the maintenance rule assessment requirements, or whether it
18 was going to be in place for a longer time scale, that
19 perhaps it should also be considered as a change under
20 50.59.

21 We saw that as a kind of guideline and an outer
22 limit. Of course, the specific times for any activity would
23 need to be judged with respect to what the tech specs
24 require, and also what the (a)(4) assessment would tell you
25 in terms of the risk of the activity that's being

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1 undertaken.

2 I think that in this area, the staff feels that
3 we've been able to work to a resolution and our plan for the
4 draft Reg Guide to accept the position that's been offered.

5 MR. MATTHEWS: I might add that we do think that
6 there might be some necessary clarifying language added to
7 both Reg Guides to emphasize this point that it's our
8 expectation that there be no diminution of conformance with
9 tech specs or regulatory requirements for that period of
10 time; that any analysis that's done in anticipation of
11 maintenance must consider the continuity of all three of
12 those situations, namely the (a)(4) assessment and what it
13 tells them with regard to plant configuration, but also what
14 the tech specs would require, and that they need to adhere
15 to the tech specs and make their operability determinations,
16 and all of the operability determinations that are needed by
17 virtue of what the extent of the maintenance activity is.

18 So, we think there is probably some clarifying
19 language that needs to be added to the Reg Guide by way of
20 implementation that would explain that that's our
21 expectation.

22 COMMISSIONER DIAZ: Excuse me, but that definition
23 would include defining maintenance activities and temporary
24 changes associated with maintenance?

25 MR. MATTHEWS: Yes.

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1 COMMISSIONER DIAZ: Thank you.

2 MS. McKENNA: If there are no other comments at
3 this point on that topic, I'd like to move on to Slide 7 on
4 screening.

5 But before I get to the specifics, I'd like to
6 just take a moment and make sure we're all speaking the same
7 language by what we mean by screenings.

8 If you think about 50.59, either under the current
9 version in effect, or under the revision as it would be
10 proposed to go into effect following the guidance, it really
11 sets up a consideration of whether the activity that is
12 being undertaken is a change to the facility.

13 That's kind of the first change, change the
14 facilities, change the procedure, or conduct of test or
15 experiment. There is kind of a first level. Is it one of
16 those things?

17 This is before there is a consideration with
18 respect to whether the specific evaluation criteria or
19 whether approval is needed is met. And in the general
20 parlance that's used in the industry, the first step of
21 deciding whether it is, indeed, a change to a facility as
22 described, or a test or experiment, is considered to be
23 screening.

24 And the consideration -- if you actually go the

25 next step, and then do an evaluation, and list how the

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1 particular criteria and consequences and things are
2 satisfied, that that's an evaluation.

3 And in practice, you do see many. I think most
4 licensees do have in place, mechanisms for screening of
5 their activities as a means of managing their work; that not
6 everything necessarily needs to have a 50.59 evaluation,
7 depending on the nature of the change and what's going on.

8 One of the differences here, of course is what the
9 administrative and review requirements are that are imposed
10 on a screening versus an evaluation. An evaluation is
11 clearly spelled out in the regulation in terms of having
12 records, in most cases either through QA commitments or
13 originally tech specs. There were requirements that
14 evaluations be reviewed by the plant onsite review
15 committee, so there is a process that is applied to those
16 evaluations.

17 Screenings are less prescriptive, shall I say, in
18 terms of the requirements on them. The guidance does
19 establish that there needs to be documentation for these and
20 in many respects of course these are activities affecting
21 quality, so there would be quality assurance type of
22 requirements that may apply but there is clearly more room
23 for a lesser degree of oversight and therefore a lesser
24 degree of resources applied on the screenings versus
25 evaluations.

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1 This was one of the areas that in the rulemaking
2 there was a deliberate attempt to allow screenings where
3 appropriate by developing the definitions that were added
4 for change, in particular that a change is something that in
5 addition to being an addition, modification or replacement
6 but also a change that had some effect in terms of affecting
7 design functions or methods performing functions or the
8 evaluation.

9 So the rule did envision an ability to screen on
10 whether the change did indeed affect any one of these
11 things. What we have been pursuing in the guidance
12 development is exactly how that screening would be carried
13 out, and one of the proposals that was included in the 9607
14 document was what I will call a definition of what design
15 function is and therefore a change that affects one of those
16 would require evaluation against the criteria.

17 In particular, the definition that was developed
18 focused on functions of SSCs that are credited in safety
19 analyses or that support or impact safety analyses, and
20 there's some additional discussion that indicates that the

21 design function includes some of the conditions under which
22 that occurs like environmental conditions, single failure,
23 things like that.

24 On first blush, I think the Staff sees that that
25 definition could be viewed, could be read very broadly, that

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1 a support or impact has a potentially very far-ranging scope
2 of what things need to be considered within there and
3 therefore if change affects one of those thing you do the
4 evaluation. However, we also think there's ambiguity as to
5 what that really means and how it would work in practice in
6 terms of screening something in or screening something out.
7 I think our sense in looking at the definitions and the
8 examples and the additional guidance is that we think there
9 may be, there is potential that there may be too much that
10 would be screened out rather than be subject to evaluations,
11 that depending on how these definitions are interpreted, may
12 be prematurely screening things out without looking at the
13 effects of the change.

14 One of the examples that came to mind was we're
15 trying to see in our own minds how would, for instance, a
16 change to outside power systems fit under this definition.
17 It's not obvious that they would be credited in safety
18 analyses because typically safety analyses assume as one of
19 the first conditions to do bounding analysis that offsite
20 power is not available. It could be viewed very clearly as
21 supports or impacts, but we are not sure whether it would
22 be, so I think we had some possible concerns about whether
23 things would be pushed too much into the screening basket
24 versus the evaluation basket.

25 If you look at some of the examples that were

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1 offered, we saw situations where for instance it stated a
2 particular change in mind, change to a valve, something like
3 that, and there was an engineering evaluation done to look
4 at what was the change and what was the effect of the
5 change, and said, well, yes, there is some effect to
6 characteristics of the valve but it was not felt that that
7 change actually affected the function of the valve, which in
8 the one example was to stay open basically for loss of
9 coolant purposes and therefore you could screen on that
10 basis.

11 A particular example, perhaps, we didn't see an
12 issue but the thinking in terms of whether you're setting up
13 an additional screen, if you will, that yes, there is a
14 design function that is in there but it is not one of these
15 design functions, and therefore can be screened out, I am
16 not sure was consistent with what the intent of the rule
17 was, and we do have some questions as to whether it is

18 putting, pushing too many things out of the screen rather
19 than being swept into the screen and therefore considered
20 for further evaluation.

21 So anyways, one of the points I just want to
22 indicate is that this -- I think I had a bullet here about
23 effects. One of the more recent changes in the guidance in
24 February 22nd had introduced the language of "adversely
25 affects" and we are also looking at it with respect to

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1 functions and while we understand the reasons for that, that
2 if your change is improving the function, that that is not
3 likely to trigger any other criteria, we also need to look
4 at that in conjunction with the definition of what things
5 are being considered to see whether adversely again shifts
6 that balance in an inappropriate direction.

7 At the moment this one we have not fully reached
8 agreement on in terms of the guidance but our plan at this
9 point would be to put our own thoughts down on paper as to
10 how we think this screening on design function should work
11 and try to make sure we are back to the more broad view that
12 we think was envisioned and that would be the discussion
13 that we would include in the document for public comment.

14 May I just have the next slide to touch on
15 schedule.

16 You will see most of these milestones in your
17 Commission tasking memo updates. We do have a milestone in
18 there to provide an information copy of the Draft Reg. Guide
19 to the Commission towards the end of March. We are
20 scheduled to meet with the ACRS in April. Things are a
21 little bit out of phase on that, but we were not able to
22 have our information ready to meet with ACRS this week in
23 order to support a March meeting, so we are looking towards
24 an April meeting.

25 The other milestone had already been established,

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1 but that our goal from there would be to publish the Draft
2 Reg. Guide for comment in the April timeframe. The comment
3 period would end June. We would envision then, based on the
4 comments, whatever changes need to be made to the 96-07
5 document would be in the July timeframe. And then we would
6 come back to the Commission with the final Reg. Guide for
7 approval in September.

8 MR. MATTHEWS: The only other addition I might
9 want to make to those comments is that NEI has scheduled a
10 workshop in the April 10th-11th timeframe, that we all think
11 it would be beneficial our Draft Reg. Guide available for
12 them and for us to discuss at that workshop, since they have
13 invited several utility representatives in to discuss these

14 issues along with others. So that is a target that we would
15 like to move towards, ensuring that we get a Draft Reg.
16 Guide out before that timeframe.

17 MS. MCKENNA: And, finally, I would say following
18 the approval of the Reg. Guide by the Commission, we would
19 then publish the notice that starts the 90 day clock on
20 implementation of the rule. In that same timeframe we would
21 issue inspection guidance and train our staff on the
22 contents of those documents so they are prepared to respond
23 to whatever changes they see in licensees' programs and
24 evaluations they do in the future. And that is the end of
25 my presentation. Thank you.

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1 CHAIRMAN MESERVE: Good. Thank you. I appreciate
2 the briefing and, obviously, there is a huge amount of
3 progress that you have made.

4 With regard to the slide that has changed.

5 MS. MCKENNA: Yes.

6 CHAIRMAN MESERVE: The one that you have had some
7 further thinking on the Maintenance Rule. Is it your
8 understanding that now that you have sort of reached the
9 conclusion that an (a)(4) assessment, Maintenance Rule
10 (a)(4) assessment might be suitable for changes incident to
11 a maintenance activity, that with that resolution, that you
12 and NEI will be able to close on this issue? Or are there
13 other things lurking out in this area that remain subject to
14 disagreement?

15 MR. MATTHEWS: I think we have reached a point
16 that I am fairly confident that we are at a closure point
17 with regard to that issue, and that what we will be talking
18 about is what I called, you know, some collateral changes
19 that need to be introduced into both Reg. Guides to clarify
20 the nature of the understanding we have reached. In other
21 words, I don't think we are going to expect NEI to come back
22 with yet another revision to their guidance document on
23 either the Maintenance Rule or on 50.59, but that the staff
24 would introduce into the Reg. Guide, in the implementation
25 section, some explanatory material to express the staff's

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1 expectations of the scope of the overall regulatory review
2 that will be completed.

3 CHAIRMAN MESERVE: Okay. And the notion is that
4 the (a)(4) assessment would have to encompass the structural
5 change, for example?

6 MR. MATTHEWS: Or the undertaking of the
7 assessment would be coincident with also ensuring that you
8 do an appropriate review of your compliance situation with
9 regard to operability and tech specs.

10 CHAIRMAN MESERVE: Sure.

11 MS. MCKENNA: The Maintenance Rule and guidance
12 was also revised at the same time to specifically talk about
13 these -- I will call them maintenance preparatory activity,
14 and it gave examples such as erecting scaffolding and
15 temporary bypasses, things like that. And it is clearly
16 stated that they need to be assessed as part of the (a)(4)
17 assessment. It may not be able to be done through the PRA
18 part, they may need to do some other piece to look at what
19 the effects of those other activities that are going on are
20 with respect to the plant configuration and risk.

21 CHAIRMAN MESERVE: What about the other issue, the
22 "Affects Design Function"?

23 MS. MCKENNA: That one I think we are not quite
24 there yet, I mean I think in terms of resolution. I think
25 we understand what their position is and why they proposed

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1 it. We do have some reservations about how it would play
2 out and whether it would allow too much to be screened and,
3 therefore, things that perhaps needed to be evaluated, kind
4 of prematurely cut out of the process. But I think that
5 that is an issue we can resolve, but we are just not there
6 at this point in time.

7 CHAIRMAN MESERVE: The way you described it,
8 however, was that the NEI language you said could be
9 ambiguous.

10 MS. MCKENNA: Yes.

11 CHAIRMAN MESERVE: And the question is, is it an
12 issue merely of clarifying the ambiguity, or, in fact, when
13 you get down cases, do you have a difference in view?

14 MS. MCKENNA: I guess my personal view is that
15 they were looking to be able to screen more perhaps than we
16 thought the rule and the rest would provide. So, therefore,
17 I think there is an element of -- there may be an element,
18 again, there may be a question you and I also addressed to
19 NEI, but I think there may be -- not just matter of
20 definition, but it may be more a matter of really what the
21 intent was.

22 CHAIRMAN MESERVE: Okay.

23 MR. MATTHEWS: And I think our plan in that regard
24 is that, given that we view there to be some ambiguity, we
25 would like to take an opportunity to express some words in

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1 the Reg. Guide potentially that would explain that ambiguity
2 with a broader interpretation. And, of course, we would
3 want comment on that from NEI and other stakeholders. But I
4 think that would be our approach to moving the ball forward
5 on this one.

6 MR. MIRAGLIA: I guess we would also, perhaps also

7 add some examples to demonstrate the broader application.

8 MS. MCKENNA: Yes.

9 MR. MATTHEWS: Yes, I think that would be our
10 point. That would be how we would illustrate our intent.

11 CHAIRMAN MESERVE: Commissioner Dicus.

12 COMMISSIONER DICUS: My questions are severely
13 diluted in light of the fact that apparently one of the
14 issues has been fairly well resolved other than clearing up
15 some of the language in the Reg. Guides. And the Chairman's
16 questions -- you asked my questions very well.

17 So let me just turn then really to the schedule
18 slippage, because, clearly, we have one. It has been caused
19 by this new information, I understand, and the new issues
20 you are trying to resolve. You are working on working out
21 the screening issue that is still an open item. Do you have
22 any real feel -- I mean you have given us some timeframes
23 here, are you pretty comfortable with these timeframes that
24 you can resolve this issue in that timeframe?

25 MS. MCKENNA: I think so. I think, you know,

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1 there were perhaps some fits and starts early on in trying
2 to get everybody focusing on the issues in the same way, but
3 I think at this point we have the people engaged and we have
4 momentum, and I do feel pretty comfortable with them.

5 MR. MIRAGLIA: I think the staff's plan is
6 basically to provide the Commission with a Draft Reg. Guide
7 with the language that we believe we can endorse. And if
8 there is deviations from NEI guidance, we will so indicate
9 that, and that would be what we would propose to issue for
10 public comment. So we believe that we can move the process
11 on on that kind of schedule. I think the staff is prepared
12 to provide the Commission with a Regulatory Guide with that
13 kind of language by the end of March.

14 COMMISSIONER DICUS: Okay. I really no further
15 questions.

16 CHAIRMAN MESERVE: Commissioner Diaz.

17 COMMISSIONER DIAZ: Well, what is left of me, I
18 will go on and try to. First, I would like to congratulate
19 the staff on the fact that they are using the word "minimal"
20 without any significant traumatic lasting effect. It seems
21 like they have overcome that issue relatively well.

22 Having said that, I just acquired new trepidation
23 on some of the comments. At least three times Ms. McKenna
24 or Mr. Matthews have said that they, of course, kind of a
25 proviso that on 50.65(a)(4), as long as it is not used as

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1 only a probabilistic tool on these things, it will be okay.
2 I hope we consider 50.65(a)(4) always like that, not only
3 for 50.59. I mean it is not supposed to be a solely

4 probabilistic tool, it is supposed to be a very complete
5 tool that uses everything that is there.

6 I tremble thinking three years from now somebody
7 is sitting at a computer and putting out take this valve
8 out, pushing a button, doing a PRA assessment and going
9 right away to do it. I think we know better, and I think
10 the industry knows better. So it is not only for this. So
11 it just shows some, you know, the back of mind, if I can
12 have a bad cold, how my hair stood up on the back in here.

13 Having -- getting rid of that, let me just go back
14 at the word "minimal" and go this change, this issue that
15 you are Slide Number 6, backup Slide B-1 "Affects Design
16 Function." I understand that you are considering putting
17 the word "adversely" in the definition.

18 MS. MCKENNA: What I think I indicated was that
19 the guidance introduced the word "adversely," yes.

20 COMMISSIONER DIAZ: The guidance.

21 MS. MCKENNA: YES.

22 COMMISSIONER DIAZ: Because, you know, again, I
23 always had a problem with the fact that we progress in so
24 many areas, and, again, when we come to this fundamental
25 area, we are still, you know, almost at -- no changes or any

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1 changes, and we are back on the same route. You know, I
2 always remember when I had this one time this teacher who
3 was really a working engineer, and he used to tell me that
4 you design a system, you design it the best that you can.
5 You build it the best that you can. You know have a system
6 that you have built according to your design, but it never
7 works according to your design. Okay. And that is the
8 reality of life.

9 So, you know, there is nothing that assures that
10 you are always going to have the same as what you started
11 with. So minimal changes are a part of life. I don't know
12 why, and I fail to understand why we have not allowed some
13 flexibility in the area of changes that are equivalent to
14 the rest of the rule. And maybe, you know, maybe it is a
15 good time to ask, why don't we have some flexibility if
16 there are improvements, if there are, you know, changes that
17 are in the third significant figure? Why aren't we allowing
18 that to happen? Is this consistent with the rest of the
19 rule?

20 MS. MCKENNA: Okay. I think we were looking at
21 whether the guidance was consistent with the rule language
22 and what we saw as the discussion and the Statement of
23 Considerations. You know, we see words in there, "Affects
24 Design Function" I think did represent an initial attempt to
25 do screening and get rid of some of the things that are

1 descriptive and really don't have anything to do with how
2 the plant really functions, and that you didn't want any of
3 that. You are wasting your time by doing evaluations on
4 those kinds of things.

5 COMMISSIONER DIAZ: Right.

6 MS. McKENNA: How far you went along the path of
7 allowing screening versus evaluation I think is the thing we
8 are really trying to say. We have moved the ball a little
9 bit, but how far can you go before you risk screening things
10 out that really warrant a closer look and consideration
11 against the criteria?

12 To some degree you know if the engineering
13 evaluation, if you will, that looks at the change initially
14 if that is done well, your answer is going to come out the
15 same way. You know, either what you are doing -- you say in
16 your example it's well down, the noise really doesn't affect
17 anything or it only made it a little bit better, and
18 therefore really is never going to impact upon any of the
19 criteria. There's really no difference in terms of the
20 outcome, but other changes there is some function involved
21 but the definition is read a little narrowly -- well, this
22 one isn't in my safety analysis because it wasn't explicitly
23 there, but perhaps it had to do with initiating event
24 likelihoods.

25 Whether you screen that out and don't look further

1 really will ultimately come back to whether that is a
2 problem is really the strength of the evaluation of the
3 change itself, the engineering evaluation, the technical
4 evaluation whether 50.59 is kind of the extra regulatory
5 evaluation that you apply once you have done that first
6 piece.

7 We have been wrestling with this ourselves because
8 we do see that there is a benefit from an efficiency point
9 of view certainly if you can screen things that are never
10 going to impact the criteria. That is in everybody's
11 interest. We don't want to waste people's time on things
12 that don't matter but it is how do you write the guidance so
13 you capture the right things, and that is what we are really
14 trying to deal with.

15 COMMISSIONER DIAZ: Okay. No, my concern I think
16 is that we have done such a good job, it's slow, systematic
17 progress in trying to make sure that everything in this rule
18 fits, and we are really almost at the end. I just want to
19 make sure that we can see that these things do have a way of
20 changing and that changes -- sometimes, you know, you do a
21 three-dimensional analysis now, and you come up that your
22 second significant figure changes -- so what?

23 MS. McKENNA: Yes.
24 COMMISSIONER DIAZ: And so I just think that that
25 should be considered as you develop the last steps and I

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1 certainly look forward to the progress. Thank you.

2 CHAIRMAN MESERVE: Commissioner McGaffigan.

3 COMMISSIONER MCGAFFIGAN: The Reg Guide that you
4 guys are talking about for 50.59, how long a document is it?
5 I like the brevity of the 50.65(a)(4) Reg Guide, which I
6 recall is about two pages long.

7 Is yours going to be longer?

8 MS. McKENNA: At this point I would say it is
9 going to be in the single numbers of pages. I wouldn't go
10 so far as to say it's two pages but --

11 COMMISSIONER MCGAFFIGAN: But it's going to be
12 discussing one issue?

13 MS. McKENNA: Really yes, yes.

14 COMMISSIONER MCGAFFIGAN: Generally --

15 MS. McKENNA: There is a certain amount of
16 boilerplate, if you will, for Reg Guides that will absorb a
17 page or so --

18 COMMISSIONER MCGAFFIGAN: My recollection of the
19 50.65(a)(4) one was aside from dancing around 10 to the
20 minus 6 and whether we are really endorsing that, we
21 basically endorsed the Reg Guide in toto and said we might
22 come back and think about the 10 to the minus 6 number some
23 day. I was hoping from the outset that this would be a
24 similar Reg Guide, which presumably will discuss now this
25 issue in some depth but presumably the rest of it will

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1 basically say 96.07 represents --

2 MS. McKENNA: Yes.

3 COMMISSIONER MCGAFFIGAN: -- one way of carrying
4 out the --

5 MS. McKENNA: Yes, I certainly do envision it
6 being a short document.

7 MR. MATTHEWS: Okay, and just in terms of analogy
8 I see it consistent in length, probably a little longer,
9 than the one we just recently issued on 50.71(e) and the
10 updating of the FSAR, which was an endorsement of an NEI
11 guidance document and maybe a little shorter than the one we
12 just proposed to you on design basis clarifications -- the
13 design basis was about 10 pages.

14 COMMISSIONER MCGAFFIGAN: The reason I am asking,
15 I am just trying to get a sense as to how much, when you
16 endorse a document you are either endorsing it or not
17 endorsing it --

18 MS. McKENNA: Right.

19 COMMISSIONER MCGAFFIGAN: -- and if you are
20 endorsing it, then it can be, aside from the one-page
21 boilerplate, very short. If you are not endorsing it, or
22 endorsing it with "subject to the following changes" it is a
23 different kettle of fish.

24 On this issue of adverse effects, are you saying
25 that this notion that they have introduced of adverse

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1 effects bothers you?

2 MS. MCKENNA: I think that it would not bother us
3 if we were convinced that we had the right set of design
4 functions and then the adverse effect would not I think
5 bother us, but kind of in combination we are not sure
6 whether that is too constraining.

7 COMMISSIONER MCGAFFIGAN: Because we didn't
8 include the adverb "adversely" in the definition of change.

9 MS. MCKENNA: No.

10 COMMISSIONER MCGAFFIGAN: But that is partly
11 because of everything -- you know, this whole slew of things
12 that follow that --

13 MS. MCKENNA: Right.

14 COMMISSIONER MCGAFFIGAN: -- rather than just
15 affects the design --

16 MR. MIRAGLIA: Commissioner, I would note the word
17 "adverse" -- change sort of implies some sort of evaluation
18 that may be more simple than a screen, so in order to
19 demonstrate "adverse" it requires -- and it goes to
20 Commissioner Diaz's discussion in terms of some changes may
21 be appropriate and the word "adverse" requires some sort of
22 evaluation and it depends upon the degree and it depends
23 upon the issue, and I think if we properly understand the
24 scope of that kind of issue, then as Eileen said, the word
25 "adverse" may have a better context, so those issues are

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1 playing off one another.

2 COMMISSIONER MCGAFFIGAN: I always like working
3 off of a single document as opposed to two documents. Is
4 there any attempt to -- I guess in this Federal Register
5 notice where you put out your comments to say that if 9607,
6 Rev. 1, submitted February 22nd were on page 28 to change
7 the following words, it would be totally acceptable and we
8 wouldn't be having this discussion?

9 Do you intend to give NEI line in, line outs on
10 their February --

11 MS. MCKENNA: I am not sure we are going to go
12 quite to the extent you were going, but I think certainly if
13 we indicate this is the nature of what we think the
14 description or that you need to add some further
15 amplification in this are to explain what supports or

16 impacts means. For instance, that if they were to agree to
17 include that in their document we would not need to include
18 that --

19 MR. MIRAGLIA: It's a draft document for comments.

20 MS. McKENNA: It is a draft for comments, so there
21 is opportunity for that to happen later.

22 COMMISSIONER McGAFFIGAN: I am just trying to
23 understand the process. You all will get comments. Will
24 NEI see all the comments as well that you get?

25 MS. McKENNA: The comments -- what we propose to

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1 do with the draft Reg Guide is to put a Federal Notice out
2 that announces availability for comment, and people could
3 then file written comments or post their comments in various
4 ways and then as we did, as mentioned, on the FSAR guidance,
5 since we are proposing to endorse an NEI document we would
6 then share with NEI -- they would see the comments and we
7 would probably at that point discuss which ones they might
8 propose to include in their document versus ones that we
9 decide either we are not going to accept or that we want to
10 have in the Reg Guide, so I think there is opportunity for
11 those kinds of things to happen.

12 MR. MATTHEWS: Which would result in a final Reg
13 Guide that might be as clean and unilateral as --

14 MS. McKENNA: As the one-pager.

15 COMMISSIONER McGAFFIGAN: The schedule calls for
16 NEI to give the final version within a month of -- June the
17 comment period ends and July they give us their final Reg
18 Guide and so these conversations as to how to deal with
19 comments will intensely occur during this one-month time
20 period?

21 MS. McKENNA: Yes, yes.

22 COMMISSIONER McGAFFIGAN: That's the intent?

23 MS. McKENNA: If we get numerous comments that
24 take us in other directions we may have to revisit whether
25 we can do that --

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1 COMMISSIONER McGAFFIGAN: Right.

2 MS. McKENNA: -- but we don't anticipate that at
3 this point.

4 COMMISSIONER McGAFFIGAN: NEI in its slides raises
5 the issue of whether ACRS and CRGR review has to occur. I
6 think there is a question mark in one of their slides. It
7 will be a little awkward if ACRS and CRGR come along in
8 August or September and say whoops, don't like all the deals
9 you guys made and we hereby -- is there value added to this
10 review at that stage, or should they be involved earlier on
11 and maybe we save -- I mean have somebody sit at the table

12 in June when you are having these intense discussions from
13 both groups and we save two months and get the thing over
14 with.

15 MR. MIRAGLIA: In terms of the ACRS, if you would
16 look at the schedule, Commissioner, we do plan to discuss
17 with them the draft that we send to the Commission, so there
18 will be that early reaction -- or interaction, so the intent
19 is there.

20 As a matter of process and procedure, the CRGR and
21 the ACRS sometimes waive seeing a proposed Guide and wait
22 for a final.

23 MS. MCKENNA: In fact, on the CRGR that is what is
24 happening with respect to the proposed Reg Guide.

25 COMMISSIONER MCGAFFIGAN: It just strikes me --

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1 you know, I just don't like train wrecks at the end. If
2 CRGR is waiving -- there is one issue left. If CRGR has
3 anything useful to say on the one issue, they maybe should
4 be forced to put up or shut up sooner, rather than have this
5 entire process go through and then along August have a
6 formal meeting and say we don't like how you are solving
7 affects design function.

8 I don't know why CRGR, which is a backfit panel,
9 would have profound -- and consists of people like you
10 all -- would have profound input on that, but if they were
11 to have and it were a problem, then this rule that we have
12 been trying to regularize for my entire time here would wait
13 even longer to get regularized.

14 MS. MCKENNA: Yes.

15 MR. MIRAGLIA: The CRGR will receive whatever we
16 send to the Commission at the time that we send it to the
17 Commission as well. Another point of issue is the CRGR
18 looks at that and tries to judge as to the amount of
19 controversy or issues in here and we seem to be heading in a
20 converging kind of way.

21 COMMISSIONER MCGAFFIGAN: Okay.

22 CHAIRMAN MESERVE: Commissioner Merrifield.

23 COMMISSIONER MERRIFIELD: Well, given the
24 questions of the Chairman and the direction that Slide 6
25 went, I, too, like Commissioner Dicus, have some of my

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1 questions that seem to have gone by the wayside, which is a
2 good thing. I know the Staff is working very hard and to
3 the extent we can resolve these thing and move forward and
4 not have to have a last-minute scramble like we do with
5 rulemaking, I think that is very positive.

6 One question I have is, in the SRM that we had
7 associated with COMSECY 99-023, the Commission directed the
8 ACRS to primarily focus on technical issues, and encouraged

9 the staff to have greater discipline not diverting ACRS's
10 resources to more process-oriented matters.

11 I was wondering if you could just characterize the
12 scope of the ACRS review of the Reg Guide, and whether this
13 is merely a technical review, or whether it does creep into
14 those process issues as well?

15 MR. MIRAGLIA: I think, if you recall, there was
16 intense interest by the ACRS in the Maintenance Rule. They
17 provided views to the Commission.

18 And since there is this nexus to (a)(4), that is
19 that type of interest and there is that type of interaction
20 relative to the scope and the degrees of the assessment.
21 And so in that kind of context, there is the interest.

22 The staff is prepared to brief them relative to
23 that nexus. But the direction that the Commission to the
24 ACRS is very clear, and that's the Commission's prerogative
25 in that regard. In terms of indicating an interest and

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1 seeing the nexus, the staff is prepared to meet with the
2 ACRS.

3 Is that fair?

4 MR. MATTHEWS: Yes. My recollection of the
5 interactions we've had to this date -- and Eileen can
6 clarify anything that I might say that I'm not on the mark
7 on, is that their involvement has been dominated with their
8 concerns associated with the clarity of the criteria, and
9 the way in which we've tried to introduce risk-informed
10 thinking into this.

11 They recognize that we're basically dealing with a
12 regulatory framework that is primarily deterministic, and
13 yet we're trying to introduce it in such a way that we don't
14 do a disservice to our future regulatory changes.

15 And the ACRS has been very helpful in that regard,
16 particular in discussions with regard to the word, minimal.
17 Now, I'm speaking of discussion we had in the course of
18 developing the actual rule change in 50.59, but they still
19 are focusing in on those areas as they look at the guidance.

20 And we gave them an information briefing in
21 January.

22 MS. MCKENNA: February.

23 MR. MATTHEWS: February. It was just as a status
24 briefing like we gave you, to ensure that they were aware of
25 where we were headed, so that when we got there in April in

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1 the full Committee meeting, that they would be, in effect,
2 up to speed, and we would just be giving the last outcomes
3 with regard to the resolution of these issues.

4 So, I think they have been contributing on a

5 technical basis, as distinct from being concerned about the
6 process-related issues.

7 COMMISSIONER MERRIFIELD: Okay, thank you.

8 COMMISSIONER DIAZ: Just a simple comment, I'm not
9 really expressing a different opinion that that of
10 Commissioner McGaffigan, but now that we have gone so long
11 in this rule, I think that I am all for a simple and
12 effective end to the process.

13 But we also need to be careful to make sure we are
14 extremely thorough so that something will not come back and
15 bite us. So I understand what Commissioner McGaffigan --
16 and he's think he's as tired as I am of 50.59, and we'd
17 rather put it under.

18 But I would encourage you to make sure there is no
19 problem that will come up.

20 MR. MIRAGLIA: We appreciate that, Commissioner
21 Diaz. The staff is very mindful of the maintain safety goal
22 being a tantamount goal, and we look at all the issues that
23 we face to make sure that they're done in a deliberate
24 manner.

25 COMMISSIONER DIAZ: Thank you.

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1 CHAIRMAN MESERVE: Thank you very much. We very
2 much appreciate the staff's presentation, and applaud the
3 great progress that you've made.

4 Let me call on our second panel this morning,
5 which consists of some representatives of NEI. The panel in
6 front of us includes Ralph Beedle, who is the Sr. Vice
7 President for Nuclear Generation, and Chief Nuclear Officer,
8 for the Nuclear Energy Institute; Mr. Harold Ray, who is the
9 Executive Vice President for Southern California Edison
10 Company; and Mr. Tony Petrangelo, who is the Licensing
11 Director for NEI.

12 Good afternoon.

13 MR. BEEDLE: Good afternoon, Mr. Chairman. Thank
14 you very much for the opportunity to discuss the 50.59 from
15 the industry perspective.

16 The three and a half years, it's been a long time.
17 I think some people have got a career invested in 50.59.

18 But it is an extremely significant rule in the
19 regulations that we deal with. It's the one that is
20 currently more exercised than any other.

21 I think we may see the (a)(4) come close to that
22 here very shortly. And it's one that has connection with
23 the (a)(4), as well as the tech specs, design basis, FSAR.
24 All of these things that we've been working on here for the
25 last three years, are, I think, coming together at this

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1 point in time. So it is extremely important, and I think we

2 are mindful of the Commission's admonition to make sure that
3 we do it right, and ensure that we don't create complexities
4 and unintended consequences in the future.

5 So, with that, I'd like to turn to Harold, and
6 have him provide some perspective on this 50.59 process that
7 he's been so heavily invested in. Harold?

8 MR. RAY: Thank you, Ralph, and good afternoon.
9 May I have the first slide, please?

10 Yes, I will introduce our presentation, and Tony
11 will take it beyond where I go with it. But I do want to
12 say that what we've just listened to from the staff does
13 accurately, I think, reflect where we are with this process.

14 The guidance that the industry has been developing
15 has evolved to respond to the feedback and comments that we
16 have received from the staff. I'd like to say that we will
17 intend to continue to do that.

18 So, in terms of Commissioner McGaffigan's goal, I
19 agree with Mr. Matthews, and I think that it will be
20 achieved, albeit, after this next round. I think we'll find
21 that the additional clarifications and so on that can
22 reasonably be included in the industry guidance document
23 will be included there.

24 Before I go to my next slide, let me just draw
25 attention to the fourth bullet on this one, which outlines

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1 what our presentation will contain.

2 The Chairman referred to changes incident to
3 maintenance. I think terminology, as we've learned here, is
4 very important. We've now got definitions because we've
5 learned that we need definitions in order to all be
6 consistent in how we implement a rule.

7 And so I think the question about 50.59 versus
8 50.65(a)(4) is an issue which in years past, we used to say
9 was the issue of when is a change a change, or when is a
10 condition a change, and when is a condition not a change?

11 And I think that we may want to draw a distinction
12 in that regard, because, of course, as we perform
13 maintenance in the plant, things are different as a result
14 of maintenance being performed.

15 Whether or not those differences represent a
16 change and for what period of time the condition exists
17 before it becomes a change -- and 90 days has been suggested
18 here -- is maybe the issue that we're talking about, rather
19 than the issue of, well, some changes get handled in one way
20 and some changes get handled in another way.

21 I do believe that a change to the plant is a
22 change to the plant, and if we create conditions in the
23 course of performing maintenance, that they can be properly

24 evaluated under (a)(4).

25 Again, this is for the important reason, for

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1 example, that (a)(4) does allow us to take into account, the
2 duration, whereas a 50.59 evaluation presumes that the
3 condition, which I will now call a change, is going to
4 continue indefinitely into the future.

5 We will speak to the issue of schedule, finally,
6 here as well. There has been some discussion of that
7 subject, and, again, I appreciate the mention of the
8 industry's plan to hold a workshop in April where we would
9 greatly benefit from having the draft guidance available.

10 If I could go to the next slide, please?

11 This states what the industry's objectives were,
12 and nowhere here does it say anything about removing or
13 reducing burden. I guess I'd like to comment that having
14 been in the position that I am as far as the regulatory
15 process is concerned for 30 years or more, I think I would
16 say we are, indeed, trying to clarify the requirements that
17 years ago we thought were clear enough at that time.

18 But now we learn that we have to be more precise
19 about what things mean, and that's the nature of what's
20 about us all the time. We recognize that in the development
21 of this guidance, and think that the work that has been
22 ongoing has been fruitful and highly productive, insofar as
23 it has allowed us to address things and reach agreement
24 about things that we thought we always did understand.

25 There was a time when that didn't exist, of

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1 course. It triggered this process that Commissioner
2 McGaffigan referred to as having gone on for his entire time
3 here, but it did begin with -- I think that jointly we
4 allowed to develop, a situation in which the industry made
5 assumptions about a requirement meant in the regulations.

6 Ultimately, the regulators came to a different
7 view, or was -- found themselves forming a different view,
8 and those positions then became significantly problematic.
9 We have overcome that now, and I think we all should
10 celebrate having done that.

11 I do believe also, secondarily, that the process
12 will be made more efficient by this, and that takes me
13 perhaps to the dialogue about the issue of screening things
14 out.

15 I think it's important for us to emphasize the
16 importance of a 50.59 evaluation. That is to say that none
17 of us, I don't believe, want that evaluation process to
18 include matters which are trivial and can be screened out.

19 On the other hand, it is important that we not do
20 that prematurely. And Tony will speak to that a bit more in

21 response to some of the dialogue that took place with the
22 earlier panel.

23 Next slide, please. It's stated here on this
24 slide that an accomplishment was to have eliminated the zero
25 standard in the criteria. That's really what I meant when I

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1 referred to the fact that we had a common understanding
2 years ago that did not include a zero standard.

3 At some point along the way, we got there, and I
4 want to acknowledge what I think everyone here knows but I
5 want to say anyway, that it does take some considerable
6 insight, and, I think, even courage at times, to point out
7 what has always been obvious to many, but has become an
8 assumption that is necessarily politically correct over
9 time.

10 And that is, Commissioner Diaz took the bull by
11 the horns and made the point that he made again today, that
12 a zero standard simply never did make sense in this rule,
13 and yet we found ourselves in a position in which that was
14 the standard that we were attempting to implement, not very
15 well.

16 Now, we've made clear what I think always was the
17 case, and that is what we see in the guidance here having to
18 do with the minimal changes, or changes with minimal effect.

19 I have mentioned the establishment of key
20 definitions. That's very a important measure.

21 The discussion about what supports or impacts the
22 design function is an area that we think there is -- it
23 obviously has to be a focus for us and the Staff now.

24 The question, I think, was asked, as to whether or
25 not we anticipate disagreement on that point. Let me say we

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1 don't. I don't know at this point, why it would be likely
2 -- I don't believe it is -- that we will find ourselves
3 having differing views. Yet the Staff, I believe, has
4 formed the opinion that we're attempting to screen out more
5 things than they would like to see us do. I think we will
6 find that we can resolve that.

7 The focus on the safety analysis and the fission
8 product barrier integrity, I believe is truly a very
9 important and significant part of what we're achieving here.
10 Again, I think this is returning to the roots of the
11 requirement and not some erosion of the regulatory
12 requirement.

13 And with that, I think that also the last bullet
14 on here importantly points out that we're making more clear
15 than has ever been, what the relationship is between 50.59
16 and other parts of the regulations which affect and govern

17 changes that take place.

18 So, a lot has been accomplished. And I think that
19 what remains is something that we can easily get closure on.

20 With that, I'll turn it over to Tony.

21 MR. PIETRANGELO: Thank you Harold. Good
22 afternoon.

23 Before I talk about the guidance, first I want to
24 acknowledge Harold in our Regulatory Process Working Group
25 that kind of guided our effort all along through the

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1 rulemaking stages on all the policy issues associated with
2 changing this rule.

3 I'd also like to acknowledge our Task Force
4 chaired by Russ Bell of our staff. Typically an NEI Task
5 Force lasts about six to 12 months; this one has been in
6 effect for three and a half years now. We want to let these
7 guys off the hook and send them back to their real jobs.

8 But they have supported this effort tremendously,
9 as did the Working Group, and I think that together with the
10 effort that the Staff put forward, that's why we're at the
11 position that we are today. And there is really only a
12 handful or a couple, I think, minor issues to resolve. But
13 most of the big stuff has been taken care of.

14 With regard to the guidance, as Eileen mentioned,
15 we forwarded another version over last week on the 22nd.
16 That was our cut at trying to resolve the remaining open
17 issues.

18 When the Task Force set out to develop the
19 guidance, we really wanted to make it comprehensive. We
20 wanted to pick up other areas of guidance through history
21 that it somehow was associated with 50.59.

22 I think the best example of that was the Revision
23 1 of Generic Letter 91-18. We've picked that up in the
24 guidance so that the user doesn't have to go to another
25 source to get the guidance on how to deal with a degraded

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1 condition.

2 There are also some new provision in the guidance
3 that in rule that we had to pick up in the guidance,
4 including the changes to methods and what was the margin of
5 safety criteria and that was replaced by the focus on
6 fission product barrier integrity. That's a major part of
7 the revision.

8 Most importantly, though, there was this need to
9 clarify the role of 50.59, versus some of the other
10 regulations. I think that the statements of consideration
11 in the rule went to great lengths.

12 There is a whole section in there regarding, you
13 know, when another change control mechanism is more directly

14 applicable to the change at hand, and then you don't have to
15 do the 50.59. Examples are given in the SOC that are
16 changes to QA programs and security and emergency planning.

17 Unfortunately, the Maintenance Rule overlap wasn't
18 noted in the SOC, however, I think the language was such --
19 and this was even reflected in the SOC -- the language in
20 50.59 (c)(4) that Eileen referred to, is broad enough so
21 that you don't have to go back and change 50.59 if you do
22 find other circumstances where there are overlapping
23 requirements.

24 In the one -- and I'll take the hit on bringing
25 this one up late -- is the 50.59 versus 50.65(a)(4). I was

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1 probably in the best position to know that there was an
2 overlap, since I have responsibility at NEI for both of
3 these issues.

4 And it wasn't until each task force was fairly
5 well down the road that it kind of hit of us that, gee,
6 we're going to be looking at the prospect of doing two
7 assessments for the same condition in the field.

8 And so we have a problem where with overlapping
9 requirements. And we don't want this -- I think the message
10 I want to leave with you today is that we want this resolved
11 in as clear and concretely a fashion as possible before
12 these guidance documents go to the field for implementation.

13 If this is allowed to kind of wander around
14 through inspection and enforcement space, I know our phones
15 are going to ring off the hook, as well as Eileen's and the
16 Maintenance Rule folks here.

17 So, we need to get this resolved, get it very
18 clearly defined in each document before this goes forward.
19 We sent the final -- this isn't even a draft -- we sent the
20 final Maintenance Rule guidance to the Staff on the same day
21 last week for endorsement of the Regulatory Guide.

22 And our premise before we sent that was that I
23 didn't want to send the final until I was sure that there
24 wasn't going to be any more changes to our document. And I
25 think from what we heard this morning and just phone calls

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1 before this meeting, I'm pretty confident that we will not
2 be asked to go back and change our guidance on the
3 Maintenance Rule.

4 There may be some clarifying language in the Reg
5 Guide, but that's okay. We feel pretty -- very good about
6 the guides we've put forward in each document.

7 Let me go to our proposal on Slide 7. It's really
8 quite simple: The Maintenance Rule calls for to assess and
9 manage risk associated with maintenance activities.

10 S, if it's an activity associated with
11 maintenance, you do the assessment under (a)(4). That would
12 include any compensatory measures associated with the
13 maintenance. Part of the assess and manage provision of
14 (a)(4) in the Maintenance Rule, is the manage part, the
15 compensatory actions.

16 And it really makes sense to put all those
17 measures, both removal of equipment from service and comp
18 measures associated with it, in one single evaluation by a
19 single process, not to have the comp measures in one bin,
20 and the actual maintenance activities in another bin. That
21 doesn't make any sense at all.

22 We did retain the treatment under 50.59 of comp
23 measures that address degraded conditions. That was really
24 Revision 1 to Generic Letter 91-18.

25 That's been quite successful in the field.

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1 Licensees are happy with it. I think the Staff is happy
2 with that implementation.

3 And we thought you would to actually change the
4 scope of the Maintenance Rule to try to get any comp
5 measures associated with a degraded condition looked at
6 under (a)(4), because it really wasn't a maintenance
7 activity.

8 You are operable, but degraded, but you're going
9 forward with operations. You take some comp measure to
10 address that condition, and the 50.59 to look at the effects
11 of the comp measure on other parts of the plant was well
12 thought out and is being done today, and we didn't see any
13 need to change that.

14 The last bullet, if the temporary change exists at
15 power greater than 90 days, do the 50.59 review. This was
16 the compromise.

17 Our initial position going in was that if it's
18 associated with the Maintenance activity, do the (a)(4). I
19 think the Staff had a concern. I think this is the old de
20 facto change issue. If something was out there for a long
21 period of time, and it really didn't look like it was a
22 maintenance activity anymore, that they were concerned that
23 it was really more of a permanent type change, and that it
24 really should be assessed under 50.59.

25 So, that's where the 90-day provision came in, to

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1 draw the lines between things that were going to be place at
2 power for more than what the maintenance would be expected
3 in duration. Next slide please.

4 MR. RAY: Could I just make one comment here,
5 Tony? It pertains to something I said earlier.

6 If you look at the first bullet and the third

7 bullet, you'll see that we made the same -- did the same
8 thing I was commenting on earlier. In the first bullet, we
9 call it a temporary activity, and in the last bullet, we
10 call it a temporary change.

11 But I think that these bullets here, irrespective
12 of the words that are used, basically represent practice in
13 terms of defining what is a change.

14 And so we're trying not to introduce something
15 here that is radical, new, or a departure from what practice
16 has been, but to make it clear. In my vocabulary, anyway,
17 things that are triggered here to be looked at under 50.59
18 are changes, whether de facto or otherwise.

19 And those that are not would be treated under the
20 Maintenance Rule. And I think that's why this emerged as
21 late as it did, as Tony said, because that was the logic
22 that we had always used, and we hadn't really thought about
23 it.

24 MR. PIETRANGELO: And there is already a
25 regulatory definition for maintenance. This goes back to a
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1 policy statement of the Commission in 1988 on maintenance,
2 where it's defined, and it's the same definition that was
3 incorporated in NUMARC 9301, the implementation guidance for
4 the Maintenance Rule.

5 And that definition of maintenance is quite broad.
6 It would include things that you would never think are
7 maintenance, and so the scope of that is very, very broad.

8 Going to Slide 8, I wanted to give you the
9 rationale for our proposal. First of all, from a flat-out
10 safety perspective, the (a)(4) is really a much more
11 effective assessment than a 50.59 evaluation.

12 First of all, Eileen did a very good job of
13 summarizing, I think, our proposal and the rationale. But
14 the (a)(4), besides being risk-informed, i.e., it can look
15 at PRA insights, doesn't preclude you from looking at the
16 deterministic insights also.

17 But perhaps most importantly, it has a time
18 element in it that the 50.59 evaluation doesn't, and it also
19 looks at the actual plant configuration, versus an assumed,
20 at-power configuration that the safety analysis assumes.

21 So from just a flat-out technical perspective,
22 it's better. We emphasized in our guidance that tech specs
23 are still limiting. I think that's the kind of
24 clarification that Dave spoke to. And I don't think we'd
25 have any objection to saying you still have to meet tech

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1 specs in the guidance. Every licensee knows that.

2 It's consistent with not only the SOC that I

3 referred to earlier, but 50.59(c)(4). Where there is a more
4 pertinent regulation that deals with that particular
5 situation, the you defer to that specific regulation, and
6 you don't need to do the 50.59.

7 Finally, it is a burden reduction for licensees,
8 and mainly that comes from the paperwork associated with the
9 50.59 evaluation on the recordkeeping parts of 50.59,
10 whereas (a)(4) calls for a documented process more than a
11 piece of paper to show that I did the evaluation that has to
12 be reported and all that stuff, so it is a big burden
13 reduction for licensees also.

14 Before I get to the schedule slide, I did want to
15 talk about the other issue that came up on screening. I
16 didn't put a slide in your package. In the version we sent
17 last week we did make changes to the examples based on the
18 comments we got from the Staff on what's screened in and
19 what's screened out.

20 I think we gave where we could in the examples an
21 example of something that would and would not screen out
22 based on the nuance of the change that was being considered.

23 What we are really getting after though in the
24 screening, and again I think this comes from one of the
25 bullets that Harold went over on the context of these 50.59

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1 evaluations being the safety analyses, really the screening
2 ought to take out -- you shouldn't have to ask yourself
3 those eight questions if it's not in the context of the
4 safety analysis because you can't get a yes answer.

5 When we crafted the guidance we were really trying
6 to focus on design basis safety analysis type things,
7 because again you couldn't get a yes answer if you had
8 passed through the screen and it wasn't in that context, so
9 it is really trying to make these an apples and apples
10 thing.

11 The other question that came up about "any" on
12 screening and whether minimal or negligible would come up,
13 our intent with the screening was really all we were trying
14 to determine is if there was any effect, and then in this
15 last version we added "adversely affect."

16 The degree question you would assess when you
17 answer the eight questions.

18 That is where the minimal comes into play and the
19 actual evaluation to determine whether you need prior NRC
20 review and approval or not. We did not seek to in the
21 screening, because the change was so small, preclude it from
22 answering the eight questions. Simply if it had any effect,
23 then you would ask yourself the eight questions, and that is
24 where the degree of change would be assessed, not in the
25 screening.

1 I think that is consistent with the intent of the
2 rulemaking. There may be some very small things that screen
3 in and require the licensee to ask itself the eight
4 questions, and if it is the minimal standard, then to be
5 able to proceed with that.

6 MR. RAY: Tony, let me say in the dialogue Eileen
7 gave an example, it may have been completely extemporaneous,
8 of a change in offsite power I must say I am a little -- I
9 have been pondering that since I heard her make that comment
10 because changes that occur in the offsite power system, of
11 course, all the time that aren't even subjected to
12 screening.

13 If you say you have four offsite lines and you go
14 to three, then definitely that is a change that gets
15 recognized and screened in, but other than that I am not
16 sure. We are going to have to have some discussion I think
17 to see where that goes.

18 MR. PIETRANGELO: Okay. Now let's go to the
19 schedule slide.

20 I think Commissioner McGaffigan picked up on most
21 of the points we were trying to make here. We want this
22 effort to end this year. It's gone too long. It will be
23 almost four years or longer by the time we get to the
24 implementation date. It would really be nice if that
25 happened this year so we could at least close the book on

1 the work we have to do.

2 Of course, we are going to follow up on
3 implementation but I mean -- and we will have some
4 suggestions on maybe how to streamline the process a little
5 bit in a second, but we would really like to finish this
6 this year.

7 As Dave mentioned, we actually timed our April
8 workshop to coincide with the release of the draft Reg Guide
9 for public comment, so we could bring the Staff down, bring
10 the industry people down, discuss our guidance document,
11 discuss the Staff's views on it.

12 I think the discussion earlier was correct. If
13 the Staff has to put some clarifications in the draft Reg
14 Guide, fine. We can work those out after the comment
15 period. We know we are going to get comments back. We may
16 even file comments on our own document. We did it on the
17 maintenance rule and resolved them, and so I am not
18 concerned about that at all.

19 At this point we want to get the clock started so
20 that we can get the comment period, get any further comments
21 in and we know we are going to have some stuff to deal with

22 at the end of that and we will do that.

23 We do question the need for some of these ACRS
24 meetings. Russ, our Project Manager, and the Staff briefed
25 the ACRS this month on the guidance document. I don't even

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1 think the Staff is going to be asking for a letter from the
2 ACRS at this point on whether to go out for public comment,
3 so we question the need for an ACRS meeting in April,
4 particularly if that is going to preclude issuing the draft
5 Reg Guide for comment now, and even Mr. Barton, who is on
6 the ACRS, who chairs the subcommittee that has looked at
7 this, questioned the value added by a further ACRS review at
8 the February meeting.

9 I think the Commission has a lot of discretion on
10 what the ACRS has to see and when and we have always viewed
11 this as a regulatory process issue.

12 There aren't really any technical issues
13 associated with this process issue, and on those kind of
14 issues -- the ACRS is really more geared to the hard
15 technical issues, and I think they add great value to those,
16 but on these process issues I think that is a question that
17 may be for another day we'd consider -- in order to
18 streamline the process.

19 I know I remember Commissioner Diaz last year at
20 the Reg Info Conference you were admonishing both us and the
21 Staff for how long both the 50.59 effort and the maintenance
22 rule effort was taking and I was interested in your remarks
23 before that we be thoughtful about this, and we have been.
24 I am really confident that we have done our homework, as has
25 the Staff, and that we are ready to move forward with this.

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1 One other potential -- and it is too late on this
2 one, but maybe for further efforts -- and I think it is
3 written somewhere, and maybe not Commission policy but some
4 of the interoffice memoranda to the Staff, it would really
5 be nice if you could get the draft Reg Guide and the draft
6 rule and maybe even the draft inspection guidance out for
7 comment at the same time.

8 We found even internally working with our own task
9 force that you tend to rehash a lot of the issues. The
10 final rule was done last summer and we set out to develop
11 the regulatory guidance and you kind of rehash all the same
12 issues again, and it would really be nice to do that all at
13 once. It may take a little longer initially, but it would
14 probably cut a year or two off the final schedule because at
15 the end of the day from the time the Commission issued the
16 SRM last June to implementation is going to be roughly a
17 year and a half to the effective date. That is a long time.

18 I think at this point again we are very, very

19 close. I will take the hit for two months on the added
20 schedule by raising those issues, but beyond two months I
21 see no need for furthering this any longer. The industry is
22 ready to go with this. We believe there is great benefit to
23 moving forward with the implementation of the rule and we
24 look forward to working with the Staff to make sure it goes
25 well. Thank you.

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1 MR. BEEDLE: And just a final note, sir. I have
2 cancelled Tony's leave for the month of July --

3 [Laughter.]

4 CHAIRMAN MESERVE: Well, you should do it for two
5 months.

6 [Laughter.]

7 MR. PIETRANGELO: Thank you, Mr. Chairman.

8 CHAIRMAN MESERVE: I would like to compliment
9 you --

10 MR. PIETRANGELO: Thank you.

11 CHAIRMAN MESERVE: -- on how you have worked with
12 the Staff on this. We are very close to crossing the finish
13 line here, and very much appreciate that.

14 I have just a few questions on Slide 7, which is
15 the slide you have about the interconnection between this
16 rule and the maintenance rule.

17 Your third bullet would draw the distinction
18 between the -- it would be covered by the maintenance rule
19 if the changes they set forward for less than 90 days. Let
20 me understand how this would work, that you would evaluate
21 changed circumstance being undertaken under the maintenance
22 rule and suppose you hit Day 85 and you realize, oh, gee, we
23 are going to have to keep this condition in place for
24 another three weeks.

25 MR. PIETRANGELO: Right.

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1 CHAIRMAN MESERVE: At that point you do a 50.59
2 analysis, is that the idea?

3 MR. PIETRANGELO: Yes, and if you knew going in
4 before 85 days that it was going to last longer than 90, you
5 would do -- whenever you know it is going to go longer than
6 90 you would do the 50.59 evaluation together with the
7 (a)(4) evaluation. You would do both.

8 CHAIRMAN MESERVE: Initially.

9 MR. PIETRANGELO: Right.

10 CHAIRMAN MESERVE: Let me ask a question about at
11 power. You know, we have been hearing in other context
12 about low power and shutdown risks.

13 MR. PIETRANGELO: Right.

14 CHAIRMAN MESERVE: And the fact that some systems

15 have great risk significance in that situation. What is the
16 rationale for limiting this? Rather than just picking 90
17 days as a rule, why limit it to just circumstances at power?

18 MR. PIETRANGELO: If we understood the Staff's
19 concerns correctly, the reason we limited it to at power was
20 most of the safety analysis they are concerned about
21 maintaining the integrity of the assumptions as such are at
22 power analyses, and during shutdown there is a heck of a lot
23 more temporary stuff that is in place to clean pipes and do
24 other sorts of activities so that the whole integrity of the
25 safety analysis question really is an at power concern and

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1 not a shutdown concern.

2 CHAIRMAN MESERVE: Does the Staff agree with you
3 on this, incidentally?

4 MR. PIETRANGELO: We have not had -- I had talked
5 to individual members of the Staff. I haven't gotten a
6 collective "yeah, we agree." I suspect we will based on
7 what we heard earlier.

8 CHAIRMAN MESERVE: Okay, good. Thank you very
9 much. Commissioner Dicus?

10 COMMISSIONER DICUS: Can I just -- Slide 6, where
11 you still feel there's some overlapping requirements, some
12 resolutions that must be made, do you really feel that we
13 are on a pathway to success with that?

14 MR. PIETRANGELO: Yes --

15 COMMISSIONER DICUS: Because we all are ready for
16 this to be over. I think we have total agreement on that.

17 MR. PIETRANGELO: Good, because we are prepared
18 today -- we didn't know what the Staff was going to say
19 about our proposal -- and as I said earlier, we have the
20 maintenance rule guidance finalized, ready to be endorsed,
21 and we did not want that effort to move forward until this
22 issue was put to bed, and we didn't know whether it was
23 going to be put to bed or not.

24 In fact, I was holding the final maintenance rule
25 guidance until I thought I was certain that we wouldn't have

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1 to change it anymore, so I was glad to hear what we heard
2 today.

3 Again, there's compliance questions. Am I meeting
4 my 50.59 requirement? Am I meeting my (a)(4) assessment
5 requirement? They overlap when I do them, so the proposal
6 was really geared at distinguishing when you do which and
7 why and we have a maintenance rule workshop March 13th and
8 14th and I suspect we are going to get a lot more questions
9 from the maintenance rule coordinators than we are from the
10 licensing people who go to our licensing issues workshop in
11 April, because traditionally these temporary changes have

12 been assessed under 50.59 and now they are going to be
13 looked at under 50.65(a)(4).

14 It may not be the same group at the utility that
15 is going to be looking at these changes, and Harold may want
16 to speak to that.

17 MR. RAY: Yes, and again we have lapsed into using
18 different terminology here. I would counsel again to be
19 very careful. A change is a change to the plant.
20 Conditions that exist in the course of maintenance I don't
21 believe we should think of as changes, but we need to draw a
22 line and say if this condition exists for some long period
23 of time you are not performing maintenance. You have done
24 something that has to be recognized as a change.

25 Then you use the term "temporary change," which I
65
1 would like to separate from the activity of maintenance. It
2 is a different concept altogether.

3 MR. PIETRANGELO: Right. Okay. We'll do that.

4 COMMISSIONER MCGAFFIGAN: Feel scolded.

5 COMMISSIONER DICUS: Right, you're scolded, and on
6 your schedule slide, and you have suggested that the ACRS
7 need not look at least at the draft guides, Reg Guides,
8 because it is a process issue and not a technical issue, and
9 I assume that extends to the final guidance as well.x

10 MR. PIETRANGELO: It could.

11 COMMISSIONER DICUS: It could? But you were
12 silent about the CRGR.

13 MR. PIETRANGELO: I have done less thinking about
14 them because we don't get a chance to go before the CRGR.
15 We get a lot of chances to go before the ACRS, so in terms
16 of their value added, I am not prepared to offer an opinion
17 on that. I think that is something internal to the Staff.

18 COMMISSIONER DICUS: That's it.

19 CHAIRMAN MESERVE: Commissioner Diaz.

20 COMMISSIONER DIAZ: I continue to believe we
21 should finish it. However, as you know, delay and other
22 things come into play, like 50.65(a)(4). That's what
23 happens when you have gone into a process too much -- other
24 things come into play.

25 With the maintenance rule you just -- like what

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1 happens when you change something and something is changed
2 at the same time, have you checked the 50.59 against
3 50.65(a)(1), (a)(2), (a)(3) and -- is there any overlapping
4 requirements?

5 MR. PIETRANGELO: Scope. but there isn't
6 tremendous overlap, you know.

7 COMMISSIONER DIAZ: But there is a requirement on

8 (a)(1) that says you must monitor the performance of your
9 systems to ensure that they are capable of performing their
10 extended safety function. My concern is since you are now
11 covering some of that with (a)(4), are we going to have to
12 look at (a)(1) and make sure that (a)(1) is also covered, or
13 maybe not, I don't know. It just came now to my mind that
14 if we look at (a)(4) we might have to look at (a)(1) and
15 say, you know, we can take care of (a)(1) via (a)(4) or take
16 care of (a)(1) via 50.59. This is the thing.

17 MR. PIETRANGELO: (a)(1) is not changing. It is
18 still the real big scope of the maintenance rule.

19 COMMISSIONER DICUS: No, it is not changing.

20 MR. PIETRANGELO: (a)(4) provides us an
21 opportunity to risk inform the scope of what we look at
22 under the (a)(4) provision. Now there would be certain
23 things that fall within the scope of (a)(4) and certain
24 things that won't fall within the scope of (a)(4). It is
25 doesn't fall within the scope of (a)(4) you won't do the

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1 assessment.

2 That doesn't mean tech specs go away. Those are
3 still in place, but I think there's more things that fall
4 under the (a)(4) scope than would the 50.59 scope.

5 COMMISSIONER DICUS: You are saying that since you
6 looked at (a)(4) and 50.59, interactions with 50.59, you
7 might want to make sure that you don't get caught on the
8 Catch-22 -- just for you and the Staff to look at. Probably
9 not, but it is certainly worth taking a look.

10 MR. PIETRANGELO: Okay, thank you.

11 CHAIRMAN MESERVE: Commissioner McGaffigan.

12 COMMISSIONER MCGAFFIGAN: I don't want to disagree
13 with Commissioner Diaz. I have waited -- but I am ready for
14 this to be over and I can't imagine that -- I mean I think
15 four Defense authorization bills of 600 pages' length will
16 have been passed by the Congress in the time period it will
17 take for this --

18 COMMISSIONER DIAZ: It should have been done in
19 the first year, I agree.

20 [Laughter.]

21 COMMISSIONER MCGAFFIGAN: So, you know, you can
22 overthink these things, too, to some degree. I do think
23 there's significance convergence. I am glad that the
24 maintenance rule issue came up. I think you made a point,
25 Tony, about it would be nice if we had the rule, the Reg

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1 Guide, the Inspection Guide all at once. You wouldn't have
2 gotten the synergism between 50.65(a)(4) and 50.59 if we had
3 tried to do each of them that way. Nobody would have been
4 smart enough to put them together until it turned out that

5 they absolutely had to be put together at the same time.

6 The issue of getting this over with. You have a
7 commitment from the Staff, I think, that we are going to get
8 the Reg Guide out whether there is an ACRS meeting or not in
9 April in time to support your meeting. Is that right?

10 MR. PIETRANGELO: Yes.

11 COMMISSIONER MCGAFFIGAN: This really goes to the
12 Staff. That's my understanding of their testimony earlier,
13 that they are going to get that Reg Guide out. I continue
14 to -- I would just join the chorus. I don't know,
15 especially if the ACRS subcommittee chairman himself is
16 questioning what their value added is as we struggle with
17 technical definitional issues in the screening process
18 whether we need to have the ACRS review this summer.

19 I think we need to hear from them and from the
20 Staff and in the CRGR review, again I can't imagine the
21 issues left. I mean unless they come up with an issue that
22 nobody has thought of, and god help us if they did, that
23 there is very little value added at this point.

24 CRGR saw the rule. It passed on the rule. The
25 rule is okay with them. This is a Reg Guide on which there

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1 is tremendous consensus and hopefully perfect consensus by
2 some time in June or early July, whenever -- I guess you can
3 go on leave the day you send the final Reg Guide --

4 MR. PIETRANGELO: I guess. That's my
5 understanding from my director --

6 COMMISSIONER MCGAFFIGAN: It could be July 1st if
7 you get this stuff done fast, but --

8 MR. PIETRANGELO: I got a lot of help.

9 COMMISSIONER MCGAFFIGAN: Well, it strikes me that
10 I would like to get it over with. There is a timing issue.

11 The way we did this last year, how long do you all
12 have to implement 50.59 after the effective date?

13 MR. PIETRANGELO: 90 days.

14 COMMISSIONER MCGAFFIGAN: 90 days.

15 MR. PIETRANGELO: See, that's part of the
16 rationale for if we know we go to this workshop with a draft
17 Reg Guide that basically endorses our document, maybe with a
18 few clarifications, and that is a high confidence level that
19 is not going to change significantly and I think our members
20 can take that and start, you know, gearing up on their
21 training programs and procedure changes and such, and try to
22 get a head start on the 90 days.

23 COMMISSIONER MCGAFFIGAN: But if you don't, if
24 there is a train wreck of some sort, then I think from the
25 conversations we had about a year ago you all might need a

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1 longer implementation period.

2 MR. PIETRANGELO: If there's a train wreck we may
3 add some more time later.

4 COMMISSIONER MCGAFFIGAN: Right. One last
5 question I have for you. I remember when you all were
6 commenting on the statements of consideration on the final
7 rule. There was a license renewal item that came up that
8 set I think your General Counsel to talk about suing us or
9 whatever, but has that issue disappeared?

10 MR. PIETRANGELO: It's interesting that you raise
11 that. We weren't going to comment on that because I think
12 the Staff's probably sick of hearing me talk about this --
13 just about at every forum we have had we brought up this
14 issue about how do you want to handle this.

15 Our position going into the document, on this
16 guidance, is if the NRC endorses our document and our
17 Regulatory Guide, we have very specific guidance on how to
18 treat Criterion 8 for methods, and it is not consistent with
19 that SOC provision.

20 COMMISSIONER MCGAFFIGAN: So since the Staff
21 hasn't raised that today, you assume that that issue has
22 gone away?

23 MR. PIETRANGELO: Well, we will apply the guidance
24 that has been endorsed.

25 COMMISSIONER MCGAFFIGAN: Right. They are going
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1 to endorse it --

2 MR. PIETRANGELO: And if there is a supplement to
3 the FSAR that describes or gives a summary description of
4 the Aging Management Program, then a screening under
5 50.59 --

6 COMMISSIONER MCGAFFIGAN: My view is that the
7 statement of consideration isn't rule text. It's
8 statements. If we come along with a later action and
9 endorse this document that you have submitted and it is
10 inconsistent with the statement of consideration but
11 consistent with the rule -- I got the lawyer looking at
12 me -- then this prevails.

13 MR. PIETRANGELO: That's my view also.

14 COMMISSIONER MCGAFFIGAN: I am glad that that
15 issue has been resolved.

16 COMMISSIONER MERRIFIELD: We have got two
17 non-lawyers --

18 [Laughter.]

19 COMMISSIONER MCGAFFIGAN: Good. The whole country
20 would work a lot better if we could get all these lawyers
21 out of this.

22 COMMISSIONER MERRIFIELD: That's what they always
23 say but it never seems to turn out that way.

24 COMMISSIONER MCGAFFIGAN: I defer.

25 COMMISSIONER MERRIFIELD: I'm not going to touch

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1 this one.

2 I want to go back to one of the issues that the
3 Chairman was pursuing, but I want to do it as it relates to
4 Slide 8. The rationale for the proposal on Bullet Number 1
5 is that (a)(4) is a more effective assessment because it
6 considers time and the actual plant configuration.

7 Now what you selected, as the Chairman pointed
8 out, is less than or equal to 90 days -- or less than 90
9 days, I guess. What is the basis for that 90 days and does
10 it raise an issue? I mean there can be a lot of
11 configurations that the plant could evolve through during
12 that time period and I am trying to get some sense of given
13 that amount of time are these temporary issues of concern?

14 MR. PIETRANGELO: It doesn't have a strong basis,
15 Commissioner, to give the short answer. We did go out to
16 our task force members to look at their temp mod logs to see
17 how long some of these things are in effect, and so we think
18 that 90 days captures more than 90 percent of what would be
19 expected to be in place of a temporary nature.

20 But this gets to the allowed outage time
21 associated with tech specs. I think that is an issue to be
22 considered with this, because that is kind of the
23 deterministic configuration risk management tool that is in
24 place are the existing technical specifications.

25 We are talking about equipment here that is not

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1 even in tech specs that may somehow support equipment that
2 is within tech specs, so there's a lot of other caveats well
3 before those 90 days that are provided by technical
4 specifications.

5 This is kind of the catch-all for when something
6 would not be considered maintenance anymore, that it is
7 going to be there for a longer term nature. Again, beyond
8 that there is no further technical basis associated with it.

9 MR. RAY: Let me come at it from another technical
10 point of view, if I may, Commissioner.

11 First of all, if it is a compensatory measure for
12 a degraded condition, it isn't 90 days. It is immediately.
13 So we are really talking about how long do we need to
14 accommodate conditions that develop in the course of
15 performing maintenance before we no longer are willing to
16 consider it to be associated with maintenance. That is the
17 way I look at the problem.

18 An hour, a day, a week, a month -- all seem too
19 short for something that is global in its extent of this

20 sort. On the other hand, a year is too long. We need to
21 find something that will fit everything that we find
22 ourselves having to do in the plant.

23 Tony used the term again "temporary mod log" --
24 well, a temporary mod log isn't something that normally is
25 associated with performing maintenance.

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1 MR. PIETRANGELO: True.

2 MR. RAY: This has to be part of maintenance in
3 order for this use of (a)(4) to apply, and furthermore, it
4 can't last more than 90 days, so we are trying to bound what
5 is permissible within the scope of maintenance activities
6 and the way we have chosen to do it is it has to be
7 associated with the maintenance activity and it can't go on
8 more than 90 days. Now you could pick 60 days and probably
9 not have much of an effect in terms of making it more likely
10 that you would wind up performing that sort of 50.59
11 evaluation.

12 Tony's point about at power -- the Chairman's
13 question about at power -- I think his answer was entirely
14 accurate, that again it's the pragmatic issue that when you
15 are in an outage you are not at power. There are many
16 things that will persist longer than 90 days.

17 In the course of performing maintenance, if you
18 have a long outage, if you have -- I mean outages these days
19 go much shorter than 90 days, of course, but that may not --

20 COMMISSIONER MERRIFIELD: That is in part what
21 prompted my question. You guys seem to be doing a much
22 better job of having shorter outages or planning these
23 things better, so it seemed odd it was such a long time.

24 MR. PIETRANGELO: You could be doing the steam
25 generator replacement or something.

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1 MR. RAY: Well, sure. I, regrettably, could give
2 you lots of examples from my own experience of --

3 [Laughter.]

4 MR. RAY: -- of outages of more than 90 days but I
5 won't.

6 COMMISSIONER MERRIFIELD: Well, let me just ask an
7 associated question. Given the fact that you have got a
8 90-day time period, what is the thinking about circumstances
9 where you may have multiple (a)(4) assessments and is there
10 sufficient ability to grasp the cumulative nature of those?

11 MR. PIETRANGELO: I think that is part of our
12 maintenance rule guidance is the -- what we call the
13 aggregate effect.

14 They really look at configuration by configuration
15 and try to control those and I know the way online
16 maintenance is being scheduled now, that is down to like 15

17 minute increments --

18 MR. RAY: Right.

19 MR. PIETRANGELO: -- how folks are doing that now,
20 so that is a very controlled activity.

21 COMMISSIONER MERRIFIELD: Those are all the
22 questions I have. Thank you.

23 CHAIRMAN MESERVE: Good. Well, one thing that has
24 become apparent to me from this afternoon's discussion is
25 that I have only recently arrived at the Commission, and it

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1 is clear that I have missed a lot of fun --

2 [Laughter.]

3 CHAIRMAN MESERVE: -- that you had. With that, we
4 are adjourned. Thank you.

5 MR. PIETRANGELO: Thank you.

6 [Whereupon, at 3:15 p.m., the briefing was
7 concluded.]