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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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BRIEFING ON THE PROPOSED RULE: ENHANCEMENTS
TO EMERGENCY PREPAREDNESS REGULATIONS

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TUESDAY

DECEMBER 8, 2009

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The Commission convened at 9:30 a.m., the Honorable Gregory
B. Jaczko, Chairman, presiding.

NUCLEAR REGULATORY COMMISSION
GREGORY B. JACZKO, CHAIRMAN
DALE E. KLEIN, COMMISSIONER
KRISTINE L. SVINICKI, COMMISSIONER

1 PANEL 1: NRC STAFF AND FEMA

2 WILLIAM BORCHARDT, EDO

3 CHRIS MILLER, NSIR

4 DON TAILLEART, NSIR

5 ROBERT KAHLER, NSIR

6 JAMES KISH, FEMA

7

8

9 PANEL 2: STAKEHOLDERS

10 PATRICK MULLIGAN, NEW JERSEY

11 STEPHEN G. PAYNE, NORTH CAROLINA

12 ANTHONY E. MARZANO, WILL CITY, ILLINOIS

13 MARY LAMPERT, PILGRIM WATCH

14 DEBORAH BRANCATO, RIVERKEEPER, INC.

15 RALPH BUTLER, UNIV. OF MISSOURI-COLUMBIA

16 THOMAS JOYCE, NUCLEAR ENERGY INSTITUTE

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1 P-R-O-C-E-E-D-I-N-G-S

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3 CHAIRMAN JACZKO: Good morning everyone.

4 The Commission meets today to hear comments and discuss the
5 proposed changes to our Emergency Preparedness Requirements
6 for licensees.

7 Today's meeting reflects the Commission's critical
8 focus on ensuring the safety and security of our licensed
9 facilities and the American public.

10 Even as we work to prevent accidents and emergencies from
11 arising in the first place, our safety mission requires us
12 to prepare for unexpected challenges.

13 The proposed regulations that we will be discussing today
14 seek to ensure adequate and timely emergency response
15 through several measures.

16 These include provisions to provide on-site emergency
17 responders from being stretched too thin by the assignment
18 of additional responsibilities; efforts to
19 enhance the coordination between on-site
20 personnel and local and state emergency responders;
21 and other measures intended to strengthen the ability of
22 licensees to effectively implement their emergency plans.

1 We're very fortunate that these efforts have been
2 supported by an inclusive, collaborative, and transparent
3 working relationship between the NRC and FEMA.

4 We are pleased that FEMA is here at the table today.

5 The staffs of both of these organizations have worked
6 effectively together to formulate these proposed regulations
7 and the accompanying guidance, drawing on their extensive
8 expertise and experience.

9 I think these efforts have been aided by the comments of a
10 broad range of public and private stakeholders, and we will
11 hear from a sampling of those stakeholders in the second
12 panel.

13 I look forward to hearing their comments on the
14 proposed rule, and to hearing about the efforts that have
15 been made to work in this collaborative environment.
16 To deal with, what I think is a particularly important issue
17 that has tremendous direct impact on members of the public.
18 I think it is one where the comments of members of the
19 public are extremely valuable for us, as they always are,
20 but perhaps even more so in this particular situation.

21 I look forward to continuing to work on the
22 proposed rule, ultimately, and eventually a final rule with

1 my fellow Commission colleagues and as we move forward in
2 the next year.

3 If any of my colleagues would like to make any comments.

4 COMMISSIONER SVINICKI: Very briefly, Mr.

5 Chairman, I would comment on two points you raised.

6 First of all is the very impressive cooperation and working
7 relationship with FEMA.

8 I think there were a dozen or so joint public meetings, and
9 your hard work isn't over because now you begin a process of
10 joint adjudication of over 600 public comments.

11 I look forward to the status briefing that you will give
12 today, and I want to compliment you on the impressive work
13 so far.

14 Thank you.

15 CHAIRMAN JACZKO: With that we will turn the
16 meeting over to Bill, and we will begin the staff's
17 presentation.

18 MR. BORCHARDT: Good morning.

19 If you the go to slide 2, please.

20 This shows the topics we will cover today, and all I wanted
21 to do is to add my thanks to Jim for all of the efforts of
22 FEMA.

1 It really is a model relationship that we have
2 established with FEMA as we work forward on this very
3 important activity.

4 Also to thank all the stakeholders that have participated up
5 to today, and for those that are participating in today's
6 Commission meeting.

7 There is no topic where their participation is more
8 important than emergency preparedness.

9 With that I will turn to Chris who will begin the staff's
10 briefing.

11 MR. MILLER: Chairman, Commissioners, thank you
12 for the opportunity to speak with you today on the Emergency
13 Preparedness Rulemaking effort.

14 The intent is to provide a brief overview of the comments
15 that FEMA and NRC have received during the public comment
16 period, and then to briefly outline how staff is moving
17 forward with those comments towards a final rulemaking.

18 The rulemaking initiative started with a top to
19 bottom review of emergency preparedness program and
20 regulations.

21 Public meetings were held with FEMA in 2005 to obtain
22 stakeholder input on the areas of regulations that could be

1 enhanced, and the results of the program review and
2 recommendations for rulemaking were provided to the
3 Commission in 2006.

4 The Commission directed the staff to pursue the items that
5 you see up on the slide, and these are enhancements to the
6 emergency preparedness regulations that are already in
7 place.

8 The proposed changes include important updates to emergency
9 preparedness area following the events of September 11,
10 2001.

11 There are three guidance documents that we
12 developed to provide additional information regarding the
13 rulemaking topics.

14 There is a Reg Guide for the amended emergency plan change
15 process, a new Reg CR document for evacuation time estimate
16 updating, and an interim staff guidance document to cover
17 the remaining topics.

18 You will look up on the slide, on-shift
19 responsibility area assures, Chairman as you mentioned,
20 emergency responders do not have more tasks than they are
21 able to accomplish in an emergency.

22 -- Emergency action levels for hostile action events,

1 protection for on-site personnel, and emergency responder
2 augmentation at alternate facilities.

3 These, primarily, codify actions that are already being
4 accomplished by the licensees.

5 Coordination with off-site response organizations
6 will explicitly point out that licensees who are making
7 arrangements to request and effectively use off-site
8 assistance for on-site functions will include hostile action
9 events.

10 Licensees will need to coordinate with the off-site response
11 organizations in a similar manner that they already do for
12 things like medical and fire assistance.

13 Challenging drills and exercises seek to enhance
14 the value of exercises and drills by adding more realism to
15 the scenarios and incorporating hostile action based events.

16 Backup alert notification would require a backup to the
17 primary means for both the alert and the notification
18 functions without requiring a specific method, or a minimum
19 time limit for the backup systems to operate.

20 Emergency declaration time limits is based on the fact that
21 effective response organization actions begin after the
22 emergency declaration is made.

1 We would set a time limit for the capabilities to make that
2 declaration.

3 Performance-based criteria for emergency operation facility
4 would set standards for the use of emergency operations
5 facilities.

6 Evacuation time estimate updating would require an update to
7 an evacuation time estimate every ten years, or more
8 frequently than that if a change in population, such as a
9 10% change in population existed around the site.

10 Finally, emergency plan change process would define the
11 process by which licensees would request prior approval for
12 an emergency plan change that would reduce the effectiveness
13 of the plan.

14 Next slide, please.

15 Because of the anticipated stakeholder interest,
16 we felt there was a high interest, and we used expanded rule
17 making process which included a draft preliminary stage, a
18 proposed stage, and the final stage to provide stakeholders
19 with extra opportunities to participate in the process.

20 A standard rulemaking process would normally only have the
21 two major phases proposed and final.

22 The draft preliminary rule language which was made publicly

1 available in March of 2008 following two public meetings in
2 March and July of 2008 to review the language with our
3 stakeholders, we received comments and considered them in the
4 proposed rule.

5 Staff added a third public meeting in the
6 summer of 2008 with representatives from nine governmental
7 organizations.

8 During this time, staff was also working with state and
9 local governments, with the industry, and with FEMA to gain
10 insight from the hostile action drill program.

11 This is a voluntary three-year program as you know to
12 develop and practice aspects of emergency preparedness in a
13 hostile action environment.

14 These insights were later incorporated into the rulemaking
15 and the guidance.

16 The proposed rule was approved by the Commission
17 and then issued in the Federal Register on May 18 of this
18 year.

19 The proposed rule encompassed the specific topics that we
20 already noted on the slide, plus seven requests for
21 additional input.

22 The three guidance documents we talked about, as

1 well as two FEMA guidance documents, were also issued for
2 public comment along with the proposed rule.

3 Then, several stakeholders requested that due to the large
4 volume of the material that the public comment period should
5 be extended, the Commission and FEMA approved extending the
6 comment period to October 19 of this year, which was an
7 overall period of 150 days for the public comment to be
8 submitted.

9 We felt it was critical to inform our stakeholders early on
10 in the comment period about the details of the rule and the
11 guidance to aid them in developing more informed comments.

12 In June 2009, we held 11 joint NRC/FEMA public meetings
13 across the country.

14 We included remote meeting capabilities in each of those
15 meetings.

16 Due to additional requests we conducted an additional 12th
17 meeting in September of this year.

18 About 300 people attended the meetings in person and about
19 another 100 participated remotely.

20 Just want to talk a little bit about the remote.

21 First of all, all key stakeholder groups were represented
22 over the course of those 12 meetings.

1 Feedback from most of the stakeholders commenting on their
2 participation via the Internet was very positive, noting
3 that their ability to clearly see the graphics and
4 presentation and to exchange information interactively with
5 the presenters without incurring travel costs, they felt
6 that was a very significant benefit.

7 As one of the state officials noted and I will quote this
8 one, "Technology is great, we could see and hear everything
9 that was said and it was easy for us to participate.
10 I would recommend that all public meetings in the future be
11 conducted in the same manner."

12 We got some real positive comments back from that.

13 I now want to turn the presentation over to Don
14 Tailleart he is our Team Leader for Regulatory Improvements,
15 and he will be discussing the results of the public comment
16 process.

17 MR. TAILLEART: Thank you, Chris, good morning.
18 During the public comment period that Chris just mentioned,
19 the NRC received a total of 94 submittals. From those
20 submittals we identified 687 individual comments.

21 The slide that will appear, and the next two sides show the
22 topics that were most frequently commented upon.

1 Following these slides I will discuss the topics that
2 collectively generated the most interest.

3 Representatives from several stakeholder groups
4 will also provide their perspective on many of these topics
5 in the next panel.

6 For state and local government agencies, the first four
7 items shown on the slide are the ones that generated the
8 most comments.

9 These agencies were also very interested in the use of the
10 National Incident Management System and Incident Command
11 System by licensees.

12 Most comments from these agencies were supportive of
13 requiring licensees to adopt the Incident Command System,
14 since this would better coordinate their response with
15 off-site agencies that already use it.

16 However, some agencies felt that licensees only need to be
17 familiar with the Incident Command System and its concepts,
18 but should not be required to implement it.

19 Non-governmental organizations also provided input
20 on each of the rulemaking topics.

21 Many of the topics of interest to them were the same as
22 state and local agencies.

1 Additionally, non-governmental organizations also pointed
2 out several additional areas of Emergency Preparedness
3 that they felt should have been included in the
4 rulemaking.

5 Academic institutions responded to three requests for
6 additional input.

7 In these requests, we asked whether or not we should expand
8 the proposed requirements on hostile action events,
9 emergency action levels, emergency declaration timeliness,
10 and also on requiring a detailed staffing analysis for
11 non-power reactors.

12 Overall, most of the commenters felt that
13 expanding these requirements to non-power reactors was not
14 necessary, and would be of little benefit in enhancing
15 Emergency Preparedness at those facilities.

16 The nuclear industry also provided comments on each
17 of the rulemaking topics and guidance documents,
18 with their comments focusing on the five items shown here.

19 Again, many of the topics were the same as those of other
20 stakeholders.

21 The fifth topic involving emergency declaration
22 timeliness would require nuclear power plant operators to

1 have the capability to declare an event within 15 minutes.
2 Commenters were concerned that this requirement could lead
3 to rushed and incorrect emergency declarations, or interfere
4 with response to mitigate the effects of an accident.
5 However, other commenters were supportive of the change and
6 noted that this is already standard industry practice.

7 Several other groups, including individuals in private firms
8 with emergency planning expertise, provided comments
9 focusing on the proposed criteria and methodology for
10 updating evacuation time estimates.

11 Several commenters suggested that the rulemaking should also
12 factor in the results of several recent studies on natural
13 disasters, such as Hurricane Katrina and on studies
14 involving severe reactor accidents, such as the
15 state-of-the-art reactor consequence analysis.
16 They believe that this approach would lead to a more risk
17 informed, performance-based emergency preparedness
18 regulatory scheme.

19 The five areas shown on this slide received the
20 most comments overall.

21 I will discuss each of these areas to highlight some of the
22 major concerns.

1 First, licensee coordination with off-site response
2 organizations.

3 The proposed rule would ensure that licensees identify
4 adequate off-site resources for response to the site during
5 hostile action events.

6 Licensees and the NRC would not be expected to determine the
7 adequacy of off-site resources for off-site response.

8 However, several commenters disagreed with the proposed
9 requirement stating that the NRC and nuclear power plant
10 licensees do not and should not have the authority to
11 evaluate the capabilities off-site resources.

12 The commenters noted that FEMA already performs this
13 function, and mutual aid agreements are in place to
14 supplement response resources if needed.

15 The second topic involves a proposed change to
16 require that evacuation time estimates be updated at least
17 once every ten years and updated more frequently if there is
18 a 10% change in the population near a site.

19 Commenters challenged the 10% trigger, stating that the
20 threshold should not be based on a single value that would
21 apply to all sites but should be
22 determined by analyzing the effect of

1 population changes on evacuation times on a site-by-site
2 basis.

3 For some sites, the commenters noted that the threshold
4 could be much higher, for example a 25% change of population
5 before evacuation times were significantly affected.

6 The third topic involves a proposed requirement
7 for a backup means for alerting and notifying the public
8 during an event that the primary methods are unavailable.
9 Some commenters agreed that a time requirement should not be
10 specified to allow flexibility in determining which methods
11 to use, while others stated that backup methods should meet
12 the same requirements as the primary system in order to be
13 fully effective.

14 There were concerns that the proposed rule did not follow
15 Federal directives for developing a public emergency warning
16 system that would use a newer technologies.

17 Commenters also expressed concern that the proposed language
18 did not give enough credit for the reliability of the
19 primary systems, and could in fact discourage additional
20 improvements to those primary systems.

21 The proposed rule regarding challenging drills and
22 exercises would require that a diverse set of scenario

1 elements, including hostile action events, be used during
2 each six-year exercise planning cycle. Several
3 commenters opposed the requirement that some
4 exercises involve scenarios that had no release or minimal
5 release scenarios, noting that these exercises would not
6 fully test off-site organizations in many of the FEMA
7 evaluation criteria.

8 Commenters expressed concern that the added scenario
9 elements would make the exercises just as predictable as
10 before the proposed rule.

11 Other commenters suggested that the exercise planning cycle
12 be expanded to more than six years in order to
13 accommodate these additional scenario elements that would
14 be required.

15 The final major area of comment involves proposed
16 changes to the emergency plan change process.
17 Use of the license amendment process to review and approve
18 certain emergency plan changes was considered appropriate by
19 some commenters, but others suggested that the NRC is not
20 legally compelled to use this process and should not make it
21 a requirement.

22 Performing a reduction in effectiveness analysis for each

1 change was viewed as a new requirement that had not been
2 justified and would be overly burdensome.

3 Finally, the proposed changes were viewed as a backfit,
4 which should have been included in the NRC's backfit
5 analysis for the proposed rule.

6 Now that the public comment period has closed and
7 the comments have been sorted by rulemaking topic, the
8 process of comment resolution is underway.

9 The group responsible for developing responses to the
10 comments is the Emergency Preparedness Rulemaking Working
11 Group.

12 The members of this group represents several NRC offices
13 including Nuclear Reactor Regulation, New Reactors, General
14 Counsel, Administration, and Nuclear Security and Incident
15 Response.

16 For comments pertaining to both on-site and off-site
17 emergency preparedness topics, the NRC and FEMA have formed
18 a joint comment resolution team to address crosscutting
19 issues and those activities are currently underway.

20 The next presenter, Bob Kahler will cover the remaining
21 rulemaking steps in more detail.

22 MR. KAHLER: Good morning.

1 My name is Bob Kahler and I am the branch chief overseeing
2 emergency preparedness rulemaking activities, and also the emergency
3 preparedness cornerstone of the Reactor Oversight Program,
4 the ROP.

5 I will first present the next steps in the
6 rulemaking process and the staff considerations that went
7 into the development of the final rule implementation
8 schedule.

9 The rulemaking working group, along with FEMA is in the
10 midst of a very aggressive schedule that supports the middle
11 of the final rule to the Commission in May of 2010.

12 In addition to resolving the 687 identified comments, the
13 rulemaking working group will be preparing the final rule
14 and its supporting documents, obtaining various NRC office
15 concurrences, and supporting the review by the Advisory
16 Committee on Reactor Safeguards to the ACRS.

17 The current schedule calls for final rule package and NRC
18 guidance documents to be completed in early February 2010 in
19 order to allow for preparation for the ACRS subcommittee and
20 full committee review in March and April 2010, respectively.

21 The NRC will also provide them to FEMA to facilitate their
22 interagency review.

1 Following the ACRS review, the final rule and supporting
2 documents will be submitted to you, the Commission.
3 Following Commission review and approval and incorporation of
4 Commission comments into a final rule, it will be forwarded
5 to the office of Federal Register for Publication.
6 This is anticipated to occur in the second half of 2010.

7 Additional activities support the final rule implementation
8 such as issuing new and revised NRC inspection procedures,
9 revising the impacted elements of the ROP Emergency
10 Preparedness Cornerstone, and conducting training for
11 inspectors would also be performed during this time period.

12 There are several challenges in meeting this
13 aggressive schedule.

14 As the rulemaking working group proceeds with a comment
15 resolution process, it is also evaluating to what extent
16 resolving the extensive comments and revising the proposed
17 rule, supporting documents, and guidance has on the existing
18 schedule, understanding the need to maintain FEMA alignment.

19 At this time the staff is still working to the current
20 schedule and still anticipates meeting the current milestones.

21 The staff has been continuously sensitive to the impact of
22 the implementation of the rule on licensees, off-site

1 agencies, and applicants, as well as preparations for NRC
2 and FEMA staff to evaluate conformance with the new
3 requirements and guidance.

4 These considerations were factored into the development of
5 the proposed rule, and provisions were made for an expanded
6 implementation period for certain items.

7 For example, up to 3 years was purposed to implement those
8 items associated with changes to drill and exercise programs
9 and backup means for alert notification systems.

10 Additionally, in the published proposed rule, the staff specifically
11 requested input on the implementation schedule and the
12 impact on applicants.

13 It must be noted that many of the hostile action
14 elements of the proposed rule have already been implemented
15 by licensees in response to an NRC bulletin issued in July
16 of 2005.

17 NRC staff has been working closely with FEMA to ensure
18 alignment between our agencies on the content of the
19 proposed rule and the development of both the on-site and
20 the off-site guidance documents.

21 The staff considers this agency coordination to have been
22 quite valuable in the development of the rule and guidance

1 documents, and recognizes the need to maintain this
2 collaborative effort through the completion of the
3 rulemaking process.

4 In closing our portion of the presentation, the NRC staff
5 would like to take this opportunity to thank FEMA for their collegial
6 and collaborative effort throughout this challenging endeavor.

7 With that I would like to now turn the presentation over to
8 Jim Kish of FEMA.

9 MR. KISH: Good morning, Chairman, Commissioners.

10 I would like to express FEMA's gratitude on behalf
11 Administrator Fugate, and my immediate boss Deputy Administrator
12 Manning, who was scheduled to be here today and I know he
13 would rather be here than what he is doing.

14 There is a bit of a story to that, and I think it speaks to
15 the turbulence of change, but I thought you ought to know
16 that FEMA has just recently reorganized itself a little bit
17 on the high end, and Tim's world has gotten a little bit
18 bigger.

19 He now has the grants program under his direct oversight, so
20 they are in the process of rolling out about \$4 billion
21 dollars worth of grants this morning, which will create lots
22 of opportunities for him to have discussions with people, I

1 am sure.

2 I think it is important to note that we do have this close
3 alignment, as has been identified on many occasions during
4 this morning's presentation, between FEMA and the NRC, but it's
5 equally important to note the active engagement that FEMA
6 takes with its stakeholders through our regional structures
7 with our state and local stakeholders.

8 That is a very vital dimension to these considerations
9 and it is one we intend to continue to foster and strengthen
10 as we go forward with this review and others.

11 If I could get to the first topic, please, first slide.

12 This chart speaks to an outline of the discussion
13 points today.

14 I think we can get through some of these rather
15 quickly because I do think there is some duality of purpose
16 with what's already been presented.

17 Next slide, please.

18 I think it is critical to note, for the record,
19 FEMA's equities here of ensuring health and safety of
20 citizens living in the jurisdiction surrounding commercial
21 nuclear power plants.

22 That is one of our primary missions, obviously and to inform

1 and educate the public about radiological emergency

2 preparedness.

3 Next chart, please.

4 This chart talks to our strategies for the initial phase.

5 Obviously that multi-year process of aligning your rulemaking and our

6 program guidance updates culminating in the release for public

7 comment of our draft documents and then the subsequent number of

8 public meetings that were held jointly with FEMA and the NRC at the

9 headquarters level, then other activities that had been undertaken

10 since then. There have been numerous opportunities to communicate

11 with our stakeholders through FEMA's ongoing coordination

12 activities at the regional level, and I know that several

13 states have actively sought out additional information.

14 I would take away from this that there's been a very

15 significant amount of state involvement.

16 Next chart, please.

17 The purpose of this chart is to talk to the motives

18 behind change, and from our perspective talking about what

19 we consider to be a desk reference for our staff as we

20 implement the rules associated with the preparedness

21 activities off-site.

22 The REP program manual represents the program that for over

1 three decades has been maintaining a steady course to ensure
2 that public safety has been gained and maintained in those
3 areas that are affected potentially by the presence of a
4 nuclear power plant.

5 That is a terrific, good news story and one that we all
6 should be very proud of, but it also by starting with that
7 three decades descriptor, we shouldn't lose sight of the
8 fact that the world evolves, the world changes on every 30
9 years.

10 So, we have some motives here, some profound motives to take
11 a continuous look at our foundations and to make adjustments
12 as the need be.

13 I also would note that the current version of the
14 REP program manual that's been published and is in effect is
15 in an interim draft form, and has been since about 2002.
16 Now, if you think about the events that have transpired
17 since 2002, it is pretty significant, formation of the
18 Department of Homeland Security, a whole range of
19 preparedness related activities, not the least
20 of which is the implementation of the post Katrina
21 Reform Act, and the statutory implications of what that
22 brings to the table.

1 There are some profound reasons why we need to take a hard
2 look and make these changes.

3 Next chart, please.

4 This graph depicts four primary goals that we view
5 as core to the updates to the REP program manual.

6 The first bullet speaks to the need
7 to consolidate guidance, and over that 30
8 year span of time, as you would well understand
9 from your ongoing on-site responsibilities and
10 the overall regulatory oversight of the programs, things
11 happen.

12 There's been numerous policy guidance memoranda that were
13 formulated and published, and so one of the key aspects of
14 this update looks to consolidate and retire where need be if
15 it's obsolete or incorporated into the new updated version,
16 some of those existing policy guidance memoranda.
17 To that effect, we've got over 158 documents that have been
18 promulgated over the years that are being included into or
19 retired.

20 That will help, I think, significantly to help us standardize
21 the way we apply this document across the country, because
22 as you can well imagine, if you have staff in 9 different

1 FEMA regions that are reading these things and applying them
2 in states and local jurisdictions similarly accepting them
3 and applying them, that anytime a person
4 reads something like that there is a
5 chance for some divergent understanding of those things.
6 So, simplifying this thing in that regard is a very
7 important aspect to what we are trying to accomplish here.

8 The second bullet speaks to the need to account
9 for statutory implications of the Katrina Reform Act, as I
10 mentioned before, and all that that brings with it.

11 The third bullet talks to the post 9/11 changes,
12 have hostile action based scenarios and more challenging
13 scenarios that have been discussed previously.

14 The last bullet, obviously, is for us to maintain
15 full alignment with the NRC's steps.

16 Next chart, please.

17 Supplement 4 articulates with a greater
18 degree of specificity some of those activities
19 but does it as it relates to NUREG-0654,
20 and takes the steps to modify that.

21 Chart, please.

22 We've covered, I think, in some detail the notions

1 of how we put the information out to our stakeholders. I
2 would note that in those meetings we were very specific to
3 the stakeholders to encourage that they were both very
4 constructive and critical in their comments and we were not
5 disappointed.

6 We got quite a bit of critical, and in some cases, very
7 constructive input from the state and locals, and that is an
8 absolutely vital part of this process.

9 So, I view that as a real victory before we even get started
10 on the review.

11 Chart, please.

12 The next 2 charts graphically depict -- the first
13 chart talks to the sources of the inputs that we received.
14 If you look at the majority of the local and state inputs,
15 between those two, 72% of the comments we received came from
16 state and local.

17 So, obviously, we connected with our prime constituencies and
18 we were very pleased that that happened in that regard.

19 Next chart, please.

20 This chart depicts in a pie chart manner the
21 comment clusters, if you will.

22 We looked at this and we had a total of 19 different comment

1 clusters that we were able to bin our inputs into.
2 The biggest number of those fall into 3 areas, comments
3 pertaining to alert notification system modifications, which
4 was about 12.5%; the hostile action base scenarios, which
5 was about 16.5%; and then a range of comments pertaining to
6 the Homeland Security Exercise evaluation program, that came
7 right at 19%; then the rest of them fall somewhere along
8 those lines.

9 Chart, please.

10 Some of the representative themes, NUREG-0654
11 should be updated before the REP Program Manual.
12 We had several comments that came in with some rather
13 high-priority attached to them that suggested that we might
14 consider pausing our review process of the REP Program
15 Manual in favor of instituting a more thoughtful and timely
16 review of 0654 before we revise the REP Program Manual,
17 sequencing type things. That was one of the topics.

18 Critical comments to reinforce came in, talking to the need
19 to integrate on and off-site emergency response plans and
20 security plans, and that really speaks to -- and reinforces
21 what we've seen in the three year processes.

22 We've been conducting the hostile action based scenario

1 pilot exercise activities, that is a fairly consistent theme
2 out there that we've learned as we've executed those
3 exercises.

4 Then, as previously mentioned, we've had several comments
5 identifying the need to require utilities to adopt and
6 implement NIMS, and I'm not sure the full range of NIMS
7 is really the target, that's an acronym that they use, but I
8 think the real purpose behind that gets to the use of
9 incident commands so there is a standardized use of incident
10 commands across the country.

11 Another priority, as I mentioned, was HSEEP integration, and
12 then the Hostile Action Based scenarios, requirements for
13 secondary backup alert and warning systems.

14 I think it is worth noting, a lot of the comments that came
15 along that line were focused on encouraging us to be very
16 open-minded in considering of the use of new technologies in our
17 philosophies on how we approach alert notification, and
18 consistent with the President's directive on Integrated
19 public alert and warning systems, that's an area that we
20 probably need to take a good hard look at.

21 Another topic came up about the need for a second review
22 period for the REP Program Manual after we incorporate the

1 current public comment inputs that we've received, and that
2 is something we've been in discussion with FEMA leadership
3 on and, as well, we've initiated discussions with the staff
4 at NRC and we really haven't gotten a full decision on that
5 today, but I wanted you to be aware of that.

6 There has also been a request put forth through several
7 venues for more active voice in participation from the state
8 and local government expertise out there, our stakeholders.
9 We are certainly engaged to try and make that happen in a
10 way that is suitable and feasible in the deliberative process of
11 rulemaking and updates.

12 Chart, please.

13 As we look to move forward, as previously
14 mentioned, there is a joint process established, but even
15 before we get to the joint review of comments that are
16 cross-cutting between the two organizations,
17 we have a group that's been established to oversee the
18 integration and review of the comments we've received. That
19 group consists of people from FEMA headquarters and not just
20 FEMA headquarters from the radiological program, we
21 also have expertise from across the national
22 preparedness directorate that are participating in this.

1 We also have inputs from our regional staff across the
2 country, so it's a pretty robust group that's met for two
3 weeks, last week was the second time they got together and
4 we're about 70% of the way through the initial comment
5 review.

6 We have also had one joint meeting with the NRC and will
7 continue to move that process along, trying to maintain some
8 semblance of order and try to get it done before the major holidays
9 occur. Although as I've told my staff, holidays are overrated.

10 Chart, please.

11 Before I stop talking and let you start asking
12 questions, I would want to observe that these public
13 meetings and the effectiveness of them.

14 In this administration, a hallmark of success is
15 transparency, and the use of these technologies was a very
16 important step towards meeting those underlying goals of the
17 Administration.

18 I know that Administrator Fugate was extraordinarily pleased
19 in the manner in which we conducted those and looked at that
20 as a model for going forward.

21 I would highlight one of Chris's comments about the
22 favorable inputs we received from the field. In one

1 particular instance, I believe we were in Dallas, Texas, and
2 we had a pretty significant weather event rolling through
3 the area that day, and a large number of the people, because
4 we were at NRC Region IV, that's a big geographic footprint,
5 were physically unable to get there because flights were
6 interrupted because of the weather events.

7 Those people who were significant commenters with
8 significant interest in these programs, were still able to
9 participate even though they weren't able to physically be
10 there.

11 Had we not had that kind of approach, in terms of how we
12 were sharing information and synthesizing it, that would not
13 have been possible.

14 I think that it can only improve as we continue to use
15 these technologies are expertise in that, and the comfort
16 level of our stakeholders will only continue to improve,
17 and we will start to get some payoff from some of those
18 digital investments that all the levels of government have
19 been making.

20 With that, I will stop talking for a moment and
21 ask if you have questions.

22 CHAIRMAN JACZKO: Thank you, Jim, and thank you to

1 the NRC staff for a very good presentation, and to reinforce
2 what has been a very good process and a very open
3 transparent process.

4 I think this meeting and subsequent actions will allow us to
5 continue in that way, and I look forward to the continuing
6 dialogue as we work to resolve these comments.

7 We will begin our comments and questioning with Commissioner
8 Svinicki.

9 COMMISSIONER SVINICKI: Thank you.

10 Thank you all for those presentations.

11 It was an interesting meeting to prepare for, for me at
12 least, because in light of certainly the next panel where we
13 will have many of our very engaged stakeholders and
14 commenters, the natural thing to do is to look at the comment
15 record and I'm sure most of us did that.

16 And you look through it, but it is human nature to say,
17 these are really good points and interesting comments, and
18 people put a lot of thought and work, and were
19 participating strongly in this process.

20 I want to be able to look at our NRC presenters and say,
21 what do you say about that, what is your response to that?

22 The thing I have to keep reminding myself is, that is not

1 the point we are at in this process.

2 So, I will just start out with this caution, is that as I'm
3 asking questions, please don't try to read between my
4 questions of anything.

5 What I am interested in, when we get to the appropriate
6 point is what do you purpose is the answers, and the
7 purposed comment responses that you will put forward
8 sometime next year.

9 This is my opportunity, obviously, to ask you specifically
10 about some of these issues, but if you want to throw a flag
11 on the play on any of these, I'm telling you up front that's okay,
12 just tell me yes, we are going to consider that and we will
13 get back to you later on what answer is.

14 Something, as I looked at comments, was clearly
15 this across state commenters and other commenters, maybe
16 this is a flag on the play, with NRC saying that ensuring
17 the adequacy or availability of off-site responders and the fact that
18 many commenters stated NRC, you do not have that
19 authority if anybody has it, it is FEMA, not you.

20 You can't be putting this out there, so it was interesting.

21 I read the strength of peoples comment on that and I stepped
22 back and thought to myself, one way of thinking of it given

1 the way the NRC does business is, if you want to take credit
2 for something in a plan this is no different than what we do
3 on safety issues, if you want to take credit then you have
4 to prove and justify that this is something you can take
5 credit for.

6 Then I began to wonder, maybe, is this kind of where we are
7 just miscommunication, or are we talking past each other,
8 are there any general thoughts about what NRC intended
9 those statements to mean that you could share, because that
10 is just a bit of an elaboration on what we put forward for
11 people to comment on.

12 MR. MILLER: Commissioner, good question, and I
13 think that has been a source of, perhaps, miscommunication or
14 not full understanding on both sides.

15 We do intend to address that and because we do have comments
16 on that we will address it with both the rulemaking and the
17 guidance to make sure that point is clear. But there is
18 already pieces of our regulation in 5047, Appendix E that
19 say, licensees if you are going to take credit for something
20 just as you pointed out that you have to make sure that you have made
21 arrangements to ensure that whatever you are taking credit
22 for that you can ensure that that is going to be available

1 for you to use on-site.

2 We have that for fire, specifically, and emergency medical
3 and that kind of thing already.

4 All we are trying to do is make sure that we add the
5 understanding that for hostile action based events that
6 same kind of thing is being covered.

7 There still is more work to do in the comment adjudication
8 period.

9 COMMISSIONER SVINICKI: Certainly, one of the
10 outcomes of a public comment is that we can see how others
11 perceived what we put forward, and what we thought we meant
12 is not always what people read in the language that we put
13 forward.

14 Again, there was a lot of very strong comment on that.
15 I am hopeful that we will be able, if it was a
16 miscommunication to work past that as we move forward.

17 Mr. Kish, I would like to say that you pointed out something
18 in your presentation, which was there were a lot of comments
19 from state and local emergency preparedness and response
20 organizations.

21 FEMA brings to this coordinated exercise we have going on
22 here, they bring very strong and direct relationships with those

1 constituencies, so you have a lot of comment from groups
2 that you have very established relationships with, and what
3 is interesting here, is that you bring that to the comment
4 resolution process.

5 As we work for alignment you have those direct
6 relationships, it is a good basis to begin to work through
7 comment resolution, but it certainly is, there is a lot of
8 moving pieces here so we have to not disrupt things that you
9 already have on going what works.

10 Something that I thought was a theme in some of the state
11 comments was perhaps for some of this there is not a
12 one-size-fits-all solution.

13 It seems to me that is the kind of thing that FEMA probably
14 hears a lot and deals with a lot.

15 Did you discern from a number of the state and local
16 comments that that was some of their concern, is they are
17 worried about prescriptiveness or trying to find that
18 one-size-fits-all solution?

19 MR. KISH: I would add that finding that balance
20 between the need to standardize and the need to develop some
21 sort of a criteria that someone can reproduce across the
22 country when they look at it and understand what riot looks

1 like, that is a difficult task when you try to balance the
2 sovereignty issues and the traditions of the way certain
3 jurisdictions have always managed their operations.
4 This is a dynamic world.

5 The emergency management community of 1979 when we
6 embarked on this development of this program, was dramatically
7 different than the emergency management profession of today.
8 There are literally hundreds of universities and colleges
9 today that are offering degrees in emergency management.
10 That wasn't the case in 1979.

11 That is a signal that as the rest of the community of
12 emergency management matures, that makes our jobs a little
13 bit easier on one hand, because you have a growing body of
14 professional knowledge out there that really adds to public
15 safety which is what we are all about.

16 It makes our jobs difficult in the fact that we have to
17 continuously analyze what we require of people to ensure
18 that we are keeping pace with those changes.
19 That has really been, I think, the core of the challenge
20 that we face today.

21 You see it when comments come in from jurisdictions of
22 various size and sophistication in their capabilities when

1 they look at what we are doing, they might kind of shake
2 their head and say, we have evolved through that phase years
3 ago, now you are asking, you are telling us that you want us
4 to go back down a couple of levels. Whereas,
5 it might be a challenge for a different jurisdiction
6 that we are putting something on them that might be beyond
7 their current capacities.

8 It is a challenge.

9 It is one of those things, I think that really is the
10 essence of our relationship with the stakeholders.
11 It is not easy.

12 It is one that we are committed to, to listen to our
13 jurisdictions and to the best of our abilities find that
14 sweet spot, that center line.

15 COMMISSIONER SVINICKI: I think that, I felt like
16 and I didn't read all of the comment submittals, but I read
17 a good sampling and certainly from all the presenters
18 we are going to hear from, I felt that the
19 comments in this case were really enhanced
20 by fact that, at least for NRC, we put out our
21 proposed guidance with the rule.
22 That is a good practice, in my view.

1 It is not something that we are always able to do or given
2 our timing and other issues where NRC is not always able to
3 put out draft guidance with a proposed rule.
4 We were able to do it, in this case and I felt, as a result,
5 a blessing and a curse because the commenters had a target
6 rich environment and they could pick out and pick on a lot
7 of things in there, but it is great because they can look at
8 the rule and the guidance and reconcile back and forth.
9 It is another way to unearth this where again we knew what
10 we meant, but maybe people didn't hear it that way.
11 I wanted to point that out. I felt that that
12 was another good practice here, but that
13 brings up something and I will direct this to NRC staff.
14 We just heard from FEMA that FEMA leadership is looking at
15 perhaps a second review and comment on their guide, and I
16 don't know what that does to overall schedules and so
17 obviously that is a decision that FEMA leadership has to
18 make.

19 In looking to NRC staff, we are in this, we have to have
20 alignment here with FEMA because we have this regulatory
21 touch point.

22 Is that something that when we know what FEMA leadership has

1 decided on that we will have to go back and look at our
2 proposed path forward, I'm getting a nod from Mr. Borchardt.

3 MR. BORCHARDT: The worst thing we can do is come
4 out with something that doesn't withstand the final answer.
5 We will be closely coordinated, and if we need to revise
6 schedules we will come back to the Commission to let you
7 know the impacts.

8 COMMISSIONER SVINICKI: Something else for the NRC
9 staff is we do, of course, have a number of COL applicants
10 right now in a pipeline. So, they are probably
11 curious about when we can come to
12 resolution on a final rule.

13 That will be another thing that we are going to have to
14 factor in, in terms of the availability of information to
15 them.

16 We will have some propagating impacts for NRC to consider
17 when we know more about that.

18 I have some other things but we have commenters coming up so
19 I will hold some specifics for that panel. Again, not put
20 you in the bad spot that I wasn't going to put
21 you in anyway, I won't ask you to react to their
22 comments.

1 Thank you Mr. Chairman.

2 CHAIRMAN JACZKO: I am going to ask you to react
3 to their comments.

4 Commissioner Svinicki brought up one of the interesting ones
5 and I think as I look at the language it is the issue on the
6 off-site, the requirements for the off-site, the licensees
7 to require the off-site response organization be prepared to
8 participate in hostile action based drills.

9 Is that language, the new language there in Appendix E., is
10 that specific requirement something new or does that kind of
11 language appear in other places in Appendix E. where we put
12 requirements on states, on localities, and on other places?

13 MR. MILLER: Mr. Chairman, we did base it on an
14 existing requirement, do you know the specific language that
15 you want to bring up, Bob, on Appendix E?

16 MR. KAHLER: The language that is in the Appendix
17 E talks to the need for the licensees to coordinate on-site
18 response needs from off-site agencies, and to have that
19 somehow assured in their emergency plan.

20 What we did was to expand upon that and to provide examples
21 of what those types of on-site needs are for licensees and we
22 identified medical, we identified firefighting.

1 and we included, it also needs to include hostile action
2 events because, prior to 9/11, the hostile
3 action event type of scenario wasn't necessarily included
4 in that type of an on-site need. It was
5 local law enforcement support, but not to the extent of what
6 the design basis threat has been identified since then.
7 We are saying now licensees you need to also make that
8 consideration into your emergency plan for that additional
9 support.

10 We just expanded upon it.

11 MR. MILLER: If I could add, because of the
12 existing requirements for things like medical and fire, there
13 were already memorandums of understanding or agreement that
14 were being implemented for that.

15 We are not asking for anything different, except for this
16 specific parts about hostile action to be considered.
17 It wasn't directly put in the regulations previously and we
18 just want to have it in there.

19 CHAIRMAN JACZKO: It is now directly in the
20 regulations where it hasn't been before.

21 That is helpful and I think this is certainly one as I was
22 reading the comments, there were a lot of comments on it.

1 It does, however, seem like this is probably an area where, as
2 Commissioner Svinicki phrased it, it is good to have other people
3 comment back on what we think we told them. And perhaps this is one
4 where better words will help clarify that intent a little bit better and really
5 get at an issue that perhaps there is not as much disagreement about as
6 there was perhaps just disagreement about the way it was phrased.
7 Perhaps it is something we can explore a little bit more.

8 As we go forward on some of these other issues, one of the
9 issues, as I was looking at the comments, there were
10 certainly a lot of focus on evacuation time estimates and
11 one of the comments from one of the commenters we will hear
12 this afternoon, talked about that in the context of efforts
13 that the staff has on-going on developing performance-based criteria
14 for emergency preparedness.

15 Maybe you could briefly comment on where your efforts in
16 that regard stand right now.

17 My understanding was that was always, this was considered to
18 be the primary work to get done first, and then those would be
19 things that would follow later.

20 I thought maybe you could provide a brief update on where we
21 are with that initiative.

22 MR. MILLER: We have started on that just from

1 conceptualizing where would we go if we wanted to change
2 around the emergency program, the regulations, and the
3 guidance.

4 Where would we go if we wanted to get more performance and
5 risk-based down the road.

6 We've had initial discussions, we actually put it into the
7 budget as something the staff was going to engage on, we
8 have dollars for contract support in the future and staff
9 that specifically focus that for after this rulemaking
10 effort is over.

11 There are a number of things that we can incorporate, a
12 number of new initiatives that are coming down the road that
13 we could pull into that.

14 Things about looking at risk informing emergency action
15 level requirements, things that might come out of the SOARCA
16 Review, things that might come out of other reviews that we
17 have done.

18 We have done some recent studies on protective action
19 recommendations, and what might work and what might work
20 better than the regime that we have right now.

21 There are a number of pieces that the staff is looking at,
22 but specifically pointed it to the timeframe after we get

1 this rulemaking and guidance, because we understand that
2 there is a lot between ourselves and FEMA there are a lot
3 for our stakeholders at the state and local level, but also
4 the licensees to absorb and to take into effect and put in
5 their procedures.

6 We wanted to have that out of the way before we went into
7 this process, which would probably be a several year
8 process.

9 CHAIRMAN JACZKO: I appreciate that and I think
10 certainly in many ways these are some nuts and bolts things
11 that I think will make a real enhancement to the EP programs.
12 In particular, having again now for the first time the
13 requirement to update the evacuation time estimates in the
14 regulations I think is a real enhancement.

15 The guidance about time frames for doing that.
16 I look forward to the resolution and some of the comments we
17 have on that and the efforts to incorporate that.
18 I think it will be an enhancement in the end that becomes
19 even more meaningful as part of a broader look at our
20 regulations.

21 I think this is certainly a good first step.

22 Jim, I was wondering if I could ask you a question on,

1 certainly there were a lot of comments and various positions
2 about the incorporation or the use of NIMS, or the Incident
3 Command System consistently among licensees, among state and
4 local responders, and then ultimately, the Federal assets as
5 well.

6 What is your sense of the right role, were those things
7 originally envisioned to incorporate state and local
8 eventually as part of a truly unified system, or has it
9 always been envisioned more as a Federal level exercise?

10 MR. KISH: It's an interesting question.

11 You almost have to start from a discussion of the formation
12 of HSPD-5 back in the 2002-2003 timeframe when it was the
13 Office of Homeland Security.

14 Hot debate, almost bruised knuckle kind of debates over what
15 system are we going to mandate and adopt for incident
16 command.

17 There are a lot of fan base out there for different systems,
18 but the one essentially that was selected and then became the
19 basis for what was formulated in the Incident Management
20 System, NIMS, was kind of a compromise, if you will.

21 The intent overall and when you start, you put that word
22 National in front of the National Incident Management

1 System, the intent is that it is, over time, adopted so
2 that you have a seamless manner by which Incident
3 Command is formed at every incident. Such that
4 you don't have divergent understandings and people
5 showing up to support a growing crisis that don't understand
6 how to mesh into the Incident Management Structure.
7 So, if you think about it strategically, that is a goal.
8 That is a long-term goal.

9 The problem, again, gets back to the fact that we are
10 talking about change here.

11 In some cases, there is very well formulated and practiced
12 protocols in a manner that might be somewhat analogous to a
13 full adoption of ICS, but it works for the people that are
14 responsible for it.

15 How heavy a hand should we apply to try and force that peg
16 through that shaped hole.

17 It's that balance issue that gets to some of the questions
18 that talk about, should we require people who we have no
19 authority over to do something.

20 I think, when we formed this up and we started implementing
21 the Incident Management System there are some soft power
22 issues that have been compelling its adoption across the

1 country.

2 I know that there are elements, certain states -- most of
3 the states have adopted the National Incident
4 Management System at some level and fielded it across their
5 responsibilities.

6 Is it 100% across the country?

7 The answer to that is no, but it is a goal.

8 It is one you would be wise to consider, especially on the
9 topic of Incident Command, maybe not the full rainbow of things
10 that are part of the NIMS, because that is a pretty
11 extensive system.

12 Where it relates to Incident Command we can
13 have a practice and efficient way that looks kind of
14 standard as you look across the country.

15 That is probably a pretty good goal to consider.

16 CHAIRMAN JACZKO: I appreciate that, and I think
17 one of the things I'm reminded every time we have a meeting
18 on emergency preparedness issues, one of the things that we
19 do tend to hear from localities is that those localities,
20 which participate in the REP Program tend to be localities
21 that have some of the most sophisticated emergency
22 preparedness programs because of the requirements that are

1 in place with the REP Program.

2 It is not surprising that we would be on the forefront of
3 trying to expand that with efforts to put a little bit more
4 of a firmer hand in the adoption of the NIMS or the Incident
5 Command System as we go forward.

6 I certainly think it is a laudable goal and something that
7 if we can -- I think working with all the stakeholders,
8 figure out a way to do that in an appropriate way, and a way
9 that is acceptable and allows it to be adopted and I think
10 it will really be an enhancement to the program as we go
11 forward.

12 Dr. Klein.

13 COMMISSIONER KLEIN: It is good to see you again
14 Jim, it is always good to see two Federal agencies that play
15 well together. I would like to compliment
16 the fact that the NRC and FEMA have been
17 working well together.

18 It was also encouraging, Chris, to hear you say
19 that finally the Web meetings actually worked.
20 We obviously have had a few that didn't.
21 It is nice to have one that wins.
22 We also made a few investments in our digital capabilities

1 so it is good to see that those are coming together.

2 I think it will help facilitate our meetings quite a bit.

3 Bob, in one of your slides, slide 10, you talked
4 about the complete draft final rule and guidance, and your
5 time frames and Bill had mentioned it, we certainly need to
6 move in parallel, both the NRC and FEMA, but your schedule
7 looks optimistic with all of the comments to have some draft
8 final rule and NRC guidance in February 2010, could you just
9 comment on how we are doing?

10 MR. KAHLER: At this time, the EP rulemaking
11 working group, like Jim has said, it has met with FEMA and
12 we have identified the crosscutting issues, met a couple
13 times with them and outlined our schedule in order to
14 complete that task by early February 2010 in order to have
15 it together and have the final rule updated with those
16 resolutions in place.

17 The other comments that are to the NRC, the 687
18 that we have received, we are currently in the midst of
19 resolving those comments. We have taken
20 a first pass through them, I can say that
21 much. We've taken a look
22 at them and have begun dealing with the

1 comments in a bin type of nature, as to these comments are
2 to this category, this category and trying to do that resolution.
3 We are on our way of doing that, but it has not been to the
4 point of where it is ready for management review.
5 The staff has still their input on the comment resolution to
6 a complete and then it goes to management.

7 Currently with the schedule the way it was laid out, we are
8 still on track to meet the early February 2010 for the final
9 rule and guidance documents to be put together.
10 Mostly the final rule at that point thinking the guidance
11 documents may lag a bit behind, but still to be able to get
12 to the Commission by May 2010 the final rule with its
13 accompanying guidance documents.

14 COMMISSIONER KLEIN: Bill, if you look at the NRC --
15 we have Part 73, we've got Part 72, Part 26, cyber security,
16 we've got EP, all of these activities;, how do you coordinate
17 all of these activities with the rulemaking so that our
18 licensees don't get smothered with all of the activities?
19 How do you do that?

20 MR. BORCHARDT: It's a timely question because it
21 is one of the topics we are beginning to discuss with NEI. NEI is
22 the coordinating function for the industry to look at the

1 integrated impacts, and in all honesty we don't probably do
2 it as much as we ought to.

3 And it is one of the things we are exploring to see if we
4 can assess the integrated impact, provide some input to the
5 Commission to help make the decision-making process on
6 whether some things need to go into series rather than just
7 trying to go on parallel paths and get everything done as
8 soon as possible which has been the historic approach.

9 COMMISSIONER KLEIN: I think a systematic approach
10 would certainly have its advantages, so I hope that process
11 works good so we can do a systematic rather than a shotgun
12 approach.

13 Good luck on that.

14 Jim, I think oftentimes we don't look at our glass
15 as half full and we often look at as half empty instead of
16 half full.

17 If you look at your title with technical hazards division
18 you have a lot of hazards out there, not just nuclear.
19 How do you balance your efforts on emergency planning
20 between the nuclear side versus a chemical side?

21 MR. KISH: Very carefully.

22 I have to tell you that the way in which we execute our

1 programs and I think the Chairman brought this up, some of
2 the communities that surround certain
3 facilities are obviously more sophisticated and the best
4 prepared communities in the world and they are because,
5 certainly with the United States, they are because of the
6 presence of things like the rules that we have for the
7 nuclear power industry and the preparedness associated with
8 that.

9 Another example would be where the military stockpiles their
10 chemical weapons they are in the process of demilitarizing
11 and destroying, those communities have a very extraordinary
12 high level of preparedness because we directly fund, we work
13 very closely with, demonstrably examine their inputs and
14 help them to oversee the implementation of things like alert
15 notification systems and integrated radio systems and all of
16 the emergency operation centers and things along those
17 lines.

18 That, I think, sets us apart from the rest of preparedness.
19 Within my domain, I have a pretty simple way to stratify
20 that.

21 I have two sources of resources.
22 I have money that comes through the radiological

1 preparedness side, and I have money that comes from the
2 Department of Defense Appropriations for preparedness
3 activities surrounding those facilities. The
4 rest of the dominion falls to the National preparedness
5 system.

6 I don't have a great role in the jurisdictions that are not
7 affected by those two areas.

8 COMMISSIONER KLEIN: If we stand back and look at
9 the nation as a whole, how would you compare our emergency
10 planning on the nuclear side to chemical industries, just
11 normal chemical industries?

12 MR. KISH: I would say, again I think the
13 Chairman's observations are correct.
14 I think we have a higher level of preparedness because we
15 instill a periodic review of those plans, and the actual
16 execution of those plans through the exercise activities.
17 Now, I know there is an art, a balance on how we integrate
18 those plans in the all hazards plans that may or may not be
19 directly attributable to our particular programs and that
20 gets to some of the rulemaking and program updates we're
21 dealing with right now.

22 The worst thing I could hear from someone say to me is that,

1 we are doing everything you are telling us to do, but that
2 plant sits over there and if we have a tornado or hurricane
3 or some other natural hazard response, we are not going to
4 rely upon the core values that you have established we are
5 going to go over here and look at this.

6 I am very sensitive to that and it is one of the things that
7 I kind of got a little bit off your question on track, but I
8 think it's an important thing to note that, yes we have
9 evolved this program over time, but now is the chance that
10 we have and the responsibility we have to make sure the way
11 we require our programs is consistent with the all hazards
12 approach that is out there.

13 COMMISSIONER KLEIN: Thank you.

14 If you look on your slide 6 and your proposed REP Manual
15 Program, you have a lot of moving targets it looks like.
16 When you look at updating your documents and a lot of things,
17 how do you coordinate that activity when you have a lot of
18 these guidance and preparedness that are still seem like
19 they are moving?

20 MR. KISH: That is an excellent point, an
21 excellent question.

22 One of the things the radiological program and FEMA has been

1 candidly a bit insulated from the evolution of some of these
2 other programs, and opening the aperture up and developing a
3 more consistent and constant stream of coordination with the
4 owners of some of those other activities benefits both my
5 programs in theirs.

6 A good example would be the homeland security exercise
7 evaluation program.

8 That is out there, it has been formed, it has been deployed
9 it is in the process of being updated and revised.

10 We have a very active voice in trying to help the owners of
11 that process along, so they understand the tenets of our
12 program because I think we bring best practices into this
13 from this 30-year-old, very mature emergency preparedness
14 program.

15 We bring those good best practices into this process for
16 consideration and adoption.

17 Whereas if we didn't have that active a voice, we would be
18 on the backside trying to play catch-up, which is what got
19 us to where we are right now.

20 Strategically, what I am trying to do is work across the
21 whole dominion within the National preparedness division
22 that is working with NIMS, the NRF, to keep an active voice and to

1 share what we do so that we can assess, we can inform what
2 their decisions are and their actions as they take action to
3 try to put their programs out, and then we are also informed
4 by it so we can contemplate what impacts might be to our
5 programs and share that with our colleagues here at the NRC.

6 COMMISSIONER KLEIN: On one of your slides you
7 talked about some comments about waiting for NUREG-0654 to
8 be updated, and then on Slide 12 you talked about some of
9 the states wanted a second review; how will that impact your
10 schedule?

11 MR. KISH: Those are two different issues.
12 The first recommendation I have made to the bosses I haven't
13 heard back on whether they are going to accept the
14 recommendation to come to you and suggest that we take a
15 strategically different approach. I don't know
16 that that will happen.

17 I think that there is enough weight behind what we are
18 trying to do independent of some of the more apparently
19 thorny things that we need to work through with our
20 constituents in terms of HAB and the HSEEP comments which really
21 are the bulk, if you look at those numbers that are in that pie
22 chart. There is so much that we need to do to update the 30

1 years and all of this program guidance memoranda and get to
2 a point where we have a final document not an interim draft
3 that we've had out there for seven years that we are operating
4 on.

5 As a basis for change, I think it is important that we keep
6 that process moving forward.

7 As far as NUREG-0654 is concerned, we haven't even begun
8 that initiative yet.

9 It is one that the joint FEMA/NRC steering committee has had
10 discussions about and in principle we have agreed we need to move
11 forward on such a review, again sequencing things level of effort,
12 bandwidth for change, probably looking at that after the completion of
13 the current document cycle that we are in.

14 That is one thing that I would like to bring back to the
15 steering committee for discussion.

16 Maybe that is one of the things as you were talking with Mr.

17 Borchardt, we might want to work in serial instead of – maybe work
18 parallel instead of sequentially on some of those activities.

19 I would also say that I know several times people have
20 touched that, and it is not an easy thing to contemplate.

21 It will take, it is a lift, it is going to require a very
22 significant active voice from our stakeholders.

1 It is one of those things we will have to be very
2 deliberative about, there are a lot of change documents in
3 the wind, if you will.

4 Things that have been put on us by statute that we have to
5 take a look at and see how the impact the tenets of
6 NUREG-0654, for example, the statutory requirements to build
7 the National response framework and that framework has a
8 compendium of annexes in there.

9 Those annexes have some weight that are helping to guide
10 planning across country, the National planning system would
11 be another one we need to kind of take a look at.

12 Those, as you point out, those are moving targets they are
13 not anywhere near as mature as what our program is.

14 Nobody said it would be easy, but I don't know how with a
15 law in place that says we have to do this, we don't do it.

16 COMMISSIONER KLEIN: Thank you very much.

17 No questions.

18 CHAIRMAN JACZKO: I just had a few more questions,
19 one of the issues that has come up as we look at the
20 comments and I've looked at the comments and I saw the
21 letter we got NEMA about wanting to continue to be involved as we
22 resolve them, I think it is important to understand that part

1 of what we will do is resolve the comments.
2 The draft proposal is a draft for a reason so we
3 can get comments and we can get feedback, and we can perhaps
4 make changes as we listen to the comments that we get.
5 One of the strategies that maybe helpful in this process is
6 to provide public drafts as we are going through. I think the
7 Commission has done this in the past, I almost want to say
8 we did it on the Part 73 rule, or another rule recently, maybe Part 52.
9 To make those available certainly in my mind there's no
10 reason why we wouldn't, if we have a draft final in February
11 there is no reason why that couldn't be made public so that
12 people can start to see how we have addressed some of the
13 comments and some of the concerns may in fact go away.
14 Some of the concerns about the off-site response issue with
15 the incorporation of the hostile action based drills may be
16 resolved in a way that satisfies peoples concerns and that
17 issue then goes away.
18 Other issues that came up about some of the confusion about
19 the six-year scenario, six-year cycle for the exercise
20 scenario versus eight-year scenario for the hostile action
21 based drill.
22 I can understand how that can be confusing, I think I've got

1 a good enough understanding of the rule of what the
2 intent is there, and as we resolve those comments it may
3 resolve the concerns.
4 Those concerns may then disappear.
5 A need for a second round may not actually be as necessary.
6 Again, this is not the final product.
7 I certainly am comfortable with that.
8 I hope that is something the Commission would be supportive
9 of.

10 As we continue to go forward as ACRS does there review
11 again, there's no reason why those things can't be made public and
12 the public can't see what the state of the art is as we go
13 forward.

14 Perhaps that will be something that will also help them
15 facilitate with FEMA as you are working through your
16 resolution of your guidance document.

17 If I could just do one other quick comment or brief
18 question.

19 We have done a really good job up to this point of
20 working collaboratively with the staff and FEMA during the
21 joint meetings, just as we go forward do you see any
22 challenges to that process, or do you think that will be

1 able to continue in the way that we've seen it work to this
2 point?

3 Chris or Jim, do you want to comment?

4 MR. MILLER: Chairman, I think you hit the nail on
5 the head.

6 We have maybe more than any other project in the last few
7 years have been really closely tied on this, and I am
8 talking not just weekly meetings but probably daily meetings
9 with Bob and his staff and Jim's staff so it has been a very
10 close collaborative effort.

11 I don't see as we go forward that we want to do anything
12 different, and the reason as Mr. Borchardt mentioned is that
13 it is very important to us to have the on-site and the
14 off-site just linked together, so if Jim tells us later on
15 that we have an issue and we have to address it we are
16 certainly going to sit down at the table and discuss it and
17 we have the steering committee we are working through to do
18 that and other avenues.

19 It has been a daily and weekly collaborative effort and we
20 intend to fully keep it that way.

21 MR. KISH: I think I would echo those comments and
22 I don't see it as an impediment as much as I see it as a

1 strength.

2 At the same time we're coordinating with the NRC on these
3 really important touch points that affect both of our
4 dominions, I think that it is equally .
5 important that we have an effort to reach out
6 to our stakeholders. While we are looking in one
7 direction we also have to kind of go the other way and make
8 sure that we are given enough attention to the state and
9 local communities that are really our dominions, as far as
10 our responsibilities to make sure that their equities are
11 represented.

12 I'm not exactly sure how I would modify our relationship
13 with the NRC to strengthen and continue that role.
14 I just didn't want lose it. I thought it was
15 a very important point.

16 CHAIRMAN JACZKO: We appreciate your being here
17 and we appreciate the collaborative relationship we have had
18 so far.

19 I want to thank you all for your good work.
20 I think there is certainly momentum behind this effort and I
21 think this is a good, in the end I think we have a real
22 opportunity here to make enhancements to these programs in a

1 meaningful way and look forward to the continued process.
2 There is change so there will be a need to work with our
3 stakeholders and trying to address those concerns that have
4 been raised and move forward in an efficient and effective
5 manner.

6 We look forward to seeing the product of your comment
7 resolution as we go forward, and we will hear from the
8 stakeholder panel.

9 We will take a quick 5 minute break, and then hear from the
10 next panel.

11 Thanks.

12 CHAIRMAN JACZKO: We will get started with our
13 stakeholder panel.

14 We heard a lot from the staff and FEMA about what has been a
15 very good effort to involve stakeholders in our
16 decision-making process, this panel will give us an
17 opportunity to continue -- for us to hear directly from many
18 of you who commented and to hear your comments on the rule
19 and your areas for improvement and areas of support for the
20 rule as well.

21 We will begin with Mr. Mulligan.

22 MR. MULLIGAN: Good morning.

1 I want to thank the Commission for the opportunity to
2 participate in the stakeholder outreach program.
3 I know that there is not one way that anyone can say we
4 haven't had the opportunity to have input in this process.
5 As far as transparency in the process, that is a step in the
6 right direction that I don't think anyone can dispute.

7 I had the opportunity to represent the Conference
8 of Radiation Control Program Directors, Committee on
9 Emergency Response Planning and in that I solicited comments
10 from all the members, and the comments that we submitted
11 represent a culmination of 14 different states input in this
12 process so that's what I will be speaking to today.
13 What I've done in the interest of time, is pick out four
14 issues that I think we believe are critical issues that
15 really need to be addressed before we move forward in this
16 process.

17 The first slide, please.

18 The first one needs to do with more work that really
19 needs to be done, the recognition that 0654/FEMA/REP-1 is
20 the basis document for the 16 planning standards and
21 the evaluation criteria.

22 And knowing that the current rulemaking guidance has

1 expanded and added to those 16 standards,
2 we need to critically take a look and address the
3 revision of that document which has not been done.
4 In the same manner, going back to the FEMA changes to their
5 REP Guide Program Manual, that incorporates 44 CFR 350 as
6 their basis document for their regulation, and that has not
7 been updated to reflect the changes in the REP Program
8 Manual Evaluation criteria supplement 4.
9 We believe that FEMA needs to take a look at that as well.
10 That becomes particularly important when we're looking at
11 the impacts of the HSEEP integration into the REP Program
12 and the reasonable assurance criteria.

13 Next slide, please.

14 With regard to the hostile action based drills
15 there was some confusion to many of the people
16 that were reviewing this, what their
17 exercise cycle is going to look like.
18 In many instances, in reference to the hostile
19 action based drills an eight-year program cycle that was
20 referred to, the FEMA guidance looks
21 at a six-year exercise cycle that we
22 are used to, and we don't believe that we are clear on what

1 that actually will look like as far as what the exercises are
2 going to be as we move forward with these hostile
3 action based drills and with the FEMA exercise cycle.
4 More than that, we want to take a look at it, and if the
5 intent is unclear then I may be miss speaking here, if we are
6 looking at an eight-year exercise cycle at each site for these hostile
7 action based drills for states with a single power plant,
8 you are looking at exercising every eight years.
9 Whether or not you are going to build a meaningful core
10 group of people with the experience and the preparedness you
11 need to do that once every eight years, I don't know whether
12 we can accomplish that.

13 Certainly if there was another state, for example my state
14 has two nuclear power plant sites we will be exercising more
15 frequently.

16 For other states, such as Illinois with many, many sites the
17 frequency of the time that they may be exercising may become
18 a burden for that state.

19 There needs to be a balance when we are putting this
20 together that we build the right amount of preparedness and
21 expertise at the local levels without overburdening the
22 states with too many exercises and suffering from what we've

1 tried to address through this process as exercise burnout.
2 I think we need to do a little more work on the exercise
3 cycle and frequency to accomplish what we really want to
4 accomplish with those exercises.

5 Next slide, please.

6 The next point I would like to bring up is the
7 incorporation of HSEEP into the REP Program, and in going
8 through some of these documents I know that the HSEEP
9 guidance is very specific in that process and the policy and
10 guidance how that does that and that goes to much like
11 the NRC's process that they use with the licensees that
12 there is a method of self-evaluation, self critique,
13 identifying areas and coming up with after action reports
14 and corrective action programs, so that it will be from a
15 state perspective would be self evaluating.

16 That is under HSEEP, and under the current process there is
17 other issues in place, or other processes in place that take
18 care of the exercise evaluation.

19 I don't know what I have read as far as the
20 FEMA rules and guidance for the changes they made.
21 They go one way or the other, I think I am seeing a hybrid
22 of HSEEP and old REP, and I don't know if that will work

1 when you're trying to take the best of both worlds, fine,
2 but how that will be applied, I think there.
3 is a consistency issue as that gets rolled
4 out, are we going to be doing it the old way or doing it the
5 new way, and I think we need to reconcile that as to what
6 that process will look like because there was no guidance on
7 how that process would take place. How the agency
8 would be incorporated and what methods they
9 would be using as far as how that would be implemented.
10 I think we need further guidance on how HSEEP will be
11 integrated into REP so that we understand how that will
12 work.

13 Finally, last slide, please.

14 The language used in the REP Program Manual, a lot
15 of commenters came back to me and told me it was
16 overly prescriptive in that the original
17 document that was out there, in general
18 terms, used more broad descriptions that described what
19 would meet the exercise criteria from the state perspective.

20 The new criteria are very prescriptive and very detailed in
21 how their criteria will be met.

22 I believe Mr. Kish spoke to that before, but what that does

1 there needs to be recognition that state and local and
2 Tribal jurisdictions have very different legislative
3 mandates on how they do things at those levels.
4 And that there needs to be a flexibility in how they
5 develop their plans in order to meet the criteria that is
6 laid out.

7 We believe that the prescriptive nature of the new REP
8 Program Manual does not allow for that flexibility to work
9 with any local jurisdiction, legal mandates, and
10 organizational processes.

11 That will hinder actual creativity in coming to what can be
12 the best resolution at the local level for that
13 jurisdiction.

14 Keep in mind that it should be a living document, if you get
15 too prescriptive, five years from now it may not be
16 relevant.

17 We don't want to keep going back and changing this document
18 every five years as technology changes, nor do we want to
19 lock us in to old technology as that happens.

20 To use the most prescriptive terms in how we can meet this
21 criteria, we don't believe it's going to be beneficial for
22 people to resolve their own particular jurisdiction issues, it

1 will hinder us in our planning process.

2 Those are the four issues that I wanted to bring up and
3 again, thank you for the opportunity and if there is
4 any way we can assist in moving forward, the CRCPD is always
5 willing to help.

6 CHAIRMAN JACZKO: Thank you, we appreciate those
7 comments.

8 Mr. Payne.

9 MR. PAYNE: Good morning Commissioner Jaczko and
10 members of the Commission.

11 My name is Steve Payne, I am the radiological emergency
12 preparedness, or REP Program Manager for the state of North
13 Carolina and on behalf of our state we thank you for the
14 privilege of being able to address the Commission.

15 Next slide, please.

16 As the program manager, I am responsible for the
17 coordination and response for four, 10-mile EPZ nuclear
18 facilities, Brunswick, Harris, McGuire, and Catawba
19 facilities and seven, 50-mile IPZ facilities around the
20 state.

21 Next slide.

22 To sort of help you in familiarizing you with how

1 North Carolina prepares for and responds to a disaster, I
2 would like to briefly touch on how we're organized.
3 Our authority comes from the North Carolina Emergency
4 Management Act, state statute 166 A, which delegates the
5 responsibility for disaster response from the Governor to
6 the Secretary of Crime Control and Public Safety.
7 As the Secretary's representative, the Director of
8 Emergency Management coordinates the activities of the State
9 Emergency Response Team, or the SERT, which I know,
10 Commissioner you have had the privilege of coming down and
11 viewing us during an actual REP exercise and we thank you
12 for your taking the time to come down and take a look at how
13 we operate.

14 Although the division incorporates the four missions of
15 emergency management, those of preparedness, response, recovery
16 and mitigation, the were initial response to any event is at
17 the local level.

18 For North Carolina, we are a home rule state, which means
19 that the county is in charge of the response until either
20 the Governor takes charge and declares a state of disaster,
21 or we have the request for taking charge.

22 Next slide, please.

1 As part of our preparedness for an event at a
2 nuclear power plant, North Carolina has established task
3 forces at each of the 10-mile facilities.

4 These facilities are composed of state, local, and Federal
5 agencies along with the utility representatives.

6 You see on the slide, an example of the Brunswick nuclear
7 power plant task force.

8 Together these task forces work to ensure currency in response
9 plans in preparation for exercises and addressing issues of
10 interest of all of the task force members.

11 One of the major issues of interest has been the NRC's
12 emergency preparedness regulation enhancement discussed
13 here.

14 Next slide.

15 One of our concerns is the manner in which the NRC
16 has chosen for making the enhancement to emergency
17 preparedness regulations as they apply directly to the
18 nuclear power generation sites.

19 We feel that this activity goes beyond the scope of the Code
20 of Federal Regulations, or the current NRC MOU
21 documentation.

22 We feel that there is a definite difference between the

1 emergency planning guidance provided to us by FEMA for our
2 Ores and the legally established regulatory planning
3 standards dictating from the NRC for the nuclear power
4 facilities.

5 What we feel is that with what is currently written, that
6 the distinction between these two activities have become
7 very blurred with the current wording.

8 The proposed rulemaking states that once adopted the NRC
9 through the individual licensee will determine the adequacy
10 of ORO emergency planning and response capabilities.

11 This approach, we feel, would extend the NRC's influence
12 beyond that of merely regulating the nuclear power industry.

13 As written, when combined with the proposed rulemaking
14 changes, would put both FEMA and the NRC through the REP
15 program in a position to review and determine the adequacy
16 of any ORO emergency planning and response capability.

17 Next slide.

18 We are concerned, as we said, in the manner in which
19 NRC has chosen for making the enhancements.

20 In section 4 you say that you are going to "direct
21 licensees to review emergency plans to ensure sufficient
22 numbers of personnel would be available in a hostile action

1 event."

2 We have questions on those.

3 In this you say emergency plans, whose emergency plans are
4 you looking at reviewing, ours or the licensees?

5 Then, second is how does the licensee ensure that the ORO
6 has sufficient personnel to respond to a hostile action
7 event?

8 Along the same lines we are concerned with the staff
9 guidance, which says we require the NRC inspectors to verify
10 ORO in mutual aid resources, verify mutual aid agreements to
11 include notification, activation, training and maintenance of
12 duty rosters, and to verify the agreements in the ORO plans.
13 Our question for you all would be under what authority is
14 this to be done?

15 It then places the NRC inspectors, as we said, earlier in
16 the role of evaluating the Ores.

17 Next slide, please.

18 One of our questions, how is the licensee to
19 determine what is an adequate response?

20 Currently, the NRC and FEMA have an MOU which says FEMA will
21 determine this.

22 The other question is, again, under what authority does the

1 NRC take these actions?

2 Next slide, please.

3 In summary, with the rulemaking as written, North
4 Carolina has an especially high level of concern and
5 disapproval for this action as written and recommended.
6 We are taking exception to the requirements as listed in
7 Section 4 and what is written for 10 CFR Part 50 in Appendix
8 E.

9 We feel that these actions are an intrusion by the NRC into
10 how the states and locals respond to an emergency.
11 Daily activity with our Federal, local, and private sector
12 partners in this area allows us to best protect the citizens
13 of North Carolina.
14 I think this goes for us all.

15 We thank you again for the opportunity to speak with you
16 this morning, and I would like to introduce Mr. Anthony
17 Maranon, the Operations Officer for Will County, Illinois
18 Emergency Management Agency.

19 Thank you, sir.

20 CHAIRMAN JACZKO: Thank you Mr. Payne.
21 Mr. Maranon.

22 MR. MARZANO: Good morning Chairman and members of

1 the Commission, it is really a privilege to be speaking here

2 with you today, so thank you for the opportunity.

3 We're going start on my second slide.

4 For those that may not be familiar with Will

5 County and where we are as a local jurisdiction, we're just

6 southwest of Chicago.

7 We have experienced quite the population growth, so looking

8 at ETE revisions we certainly feel some of those might apply

9 in our particular part of the world.

10 We are also one of the few counties impacted by multiple

11 plants as you see, so that gives a little bit of a unique

12 impact and perspective to the scheduling question of how

13 often should we exercise and we have some comments there.

14 Next slide, please.

15 Pertaining to that drill and exercise schedule, we

16 think the NRC's vision of more challenging drills and

17 exercise is a very worthy goal.

18 We derive the most value from exercises when they engage

19 participants in a way which makes their actions in

20 anticipation of, or response to, unfolding events

21 seem to be a real demonstration of actual actions they would

22 take when faced with a given situation.

1 Varying exercises will help break the preconditioning we
2 often experience when the emergency classifications always
3 escalate to general emergency, the release always occurs,
4 the wind always shifts, and the same actions are always
5 taken.

6 It is hard to realistically respond during an exercise when
7 you know those critical actions, such as evacuation, are
8 inevitable.

9 It is often difficult for emergency responders to truly
10 dedicate themselves to participation in a full scale
11 exercise scenario when, no matter how well they respond and
12 how well they implement the training they have dedicated
13 themselves to, there is no way to win because that release
14 has to occur.

15 Within the six-year cycle, if we had a plume release last
16 time and a hostile action event before that, there is a
17 certain degree of predictability that I know I am up for an
18 ingestion this time.

19 The Illinois Emergency Management Agency made comments for
20 consideration of an eight-year cycle. In our situation I
21 certainly think that is a potential solution and it bears
22 being looked at.

1 Finally, this is I think very important to note that we
2 consider REP to be one of the primary most important hazards
3 that we plan for.

4 That being said, I have tornadoes, I have two oil refineries
5 in my county, I have a major snowstorm from time to time,
6 which may, in fact, impact me getting back to Chicago
7 tonight, and it's foremost on my mind.

8 We have dams, school violence, weapons of mass distraction,
9 many other hazards the list could go on, that we have to
10 train and exercise for as well.

11 In a two-year period where we had our biannual REP exercises
12 for Braidwood and Dresden, and we were working on the
13 initial roll out of the hostile action based exercises, that
14 was a situation where I had to have my EOC officials,
15 department heads, and elected officials in twice for
16 exercises each year and twice for training.

17 The elected officials and department heads who staff our EOC
18 have many other responsibilities, and while they are very
19 good at participating when asked to, there will be a
20 point where I get pushback.

21 There will be a point where too many exercises will be a
22 time issue, a budget issue, and that is not to even mention

1 that I haven't had a tornado exercise in a few years.
2 I haven't had a WMD exercise in a few years.
3 Those are challenges that are very real to us at the local
4 level.

5 Next slide, please.

6 Like many others, we are very anxious for our
7 first hostile action-based exercises. Expectations
8 were of a challenging and unique exercise that
9 would test us in new ways.

10 In fact, when we were done we felt that it was kind of just
11 like another REP exercise.

12 At the local level our full-scale field exercises tend be
13 very realistic.

14 We had a lot of firefighters and a lot of SWAT guys that
15 were ready to go play, and after the scenario with one fire
16 truck going into the PA to do something with the fire
17 brigade and all the SWAT guys dressed up with nowhere to go,
18 they somewhat questioned why they were there and they didn't
19 understand.

20 The real value of that exercise was the ability to actually
21 staff up the on-scene incident command component.
22 That was extremely valuable, that tested things from which

1 we learned valuable lessons, the first being unified
2 command. Between fire, law enforcement,
3 SWAT, emergency management
4 and the utility, the station personnel.

5 The second being the inner relationship between the
6 emergency operation center, which is traditionally played in
7 these exercises and that incident command component.

8 Next slide.

9 I will expand that into how that works with NIMS and ICS from our
10 perspective. We talked about HSPD-5 a little bit, and how that
11 mandates Federal compliance with NIMS.

12 DHS has made compliance with NIMS a requirement for many of
13 the emergency preparedness and homeland security grants that
14 we have taken advantage of going back many, many years at
15 the local level.

16 Loss of those grants and funding mechanisms has caused the
17 overwhelming majority of state and local jurisdictions to
18 adopt NIMS, but nevertheless this remains their choice and
19 option.

20 As long as there remains no Federal mandate for those
21 jurisdictions to adopt NIMS, we question whether it's
22 advisable or not to direct or require the licensees to adopt

1 it, where it might not be adopted locally.

2 Notwithstanding my previous comments, concerning the
3 totality of NIMS and if our intent is to, in essence, move
4 everyone in that direction, the answer might be different,
5 but the licensees on scene responders such as fire brigade
6 members, security officers, those that are going to function
7 in that unified command role they should have an
8 understanding of NIMS.

9 They should have training in ICS, they should be able to
10 exercise it with us so that they can truly work side-by-side
11 with us fighting the fires, addressing the security threats,
12 and making those critical decisions.

13 Next slide, please; my final slide deals with just a comment
14 on backup alert notification.

15 I think the Commission's desire to move, and we've
16 heard some discussion on capability-based versus
17 performance-based criteria, I think that is particularly
18 well advised.

19 Many jurisdictions have a wide variety of alerting and
20 warning tools in their toolbox. Warning sirens,
21 total alert radios, text messaging, reverse
22 911, the list goes on and on.

1 Performance-based criteria allows a jurisdiction to use
2 methods which fit best for their demographic that are
3 understood by their populace and will be effective in their
4 own community.

5 We should seek to leverage the advantages of new technology
6 and performance-based allows us to do that as Mr. Mulligan
7 mentioned without having to change the regulations to do so.
8 The last position an emergency manager wants to be placed in
9 is when they are forced by regulation to do something they
10 don't believe is going to be the most effective way to go.
11 I may be required, for example, to plan for mobile alert
12 routing as an ANS backup, but if I think reverse 911 is
13 going to be most effective, that's what I will do in an
14 actual emergency, and if we find ourselves with a disparity
15 between what's in our plans and what we actually intend to
16 do, we have a real problem.

17 Again, I want to thank you for the opportunity to comment,
18 and I would like to introduce Ms. Lampert.

19 MS. LAMPERT: Hi there, it's great to be here.
20 I'm Mary Lampert, Director of Pilgrim Watch in
21 Massachusetts. Also I review for the town of Duxsbury the
22 Radiological Emergency Response Plan and Standard Operating

1 Procedures each year, and I have done this
2 each year since 1987, so I will speak from those
3 experiences..

4 My main point to you is the assumptions underlying Emergency
5 Preparedness in plans are flawed, and until they are
6 updated, changed the public will not have reasonable
7 assurance.

8 We will start first with slide 3, projected release.

9 NRC and FEMA both minimized the biological impact
10 and amount of radiation expected to be released in a
11 disaster.

12 For example, impact is based upon EPA PAGs, and EPA has not
13 updated their PAGs for BEIR VII.

14 We know that NRC is encouraging EPA to further weaken, not
15 strengthen the PAGs, and we hope that you will correct this.

16 Research since BEIR VII of nuclear workers by Cardis and on the
17 Techa River, for example, show even a greater sensitivity to
18 cancer from exposure than BEIR VII.

19 Also, the amount of radiation projected to be released it
20 does not take into consideration credible accidents of the
21 spent fuel pool fire, or the interaction and accident
22 scenario between the spent fuel pool and reactor, or a

1 serious reactor accident.

2 And what I see really is stemming from a continued
3 misrepresentation of actually what was released at TMI by
4 NRC and its biological impact.

5 Slide four, please. Another serious misconception
6 is the affected area that is planned for, the assumption that
7 the plume will travel in a straight line which it forms the
8 basis of the key hole.

9 NRC has known since the early 70s that this simply isn't
10 true in complex sites. That the straight-line
11 Gaussian plume model that the keyhole
12 is based upon, is not suited for complex sites, it is
13 non-temporal, non-spatial, and in the written document that
14 I prepared for you December 1, I listed page after page
15 after page of NRC documents going back to the early 70s up
16 until this year.

17 We also have EPA DOE, attesting to this very fact that what
18 is needed are advanced models and also off-site,
19 appropriately placed meteorological towers.

20 I can leave this with you, the National Academies of
21 Sciences talk about atmospheric dispersion of hazardous
22 material releases, which simply says the same thing I am

1 saying.

2 Then we can move, next to slide 5 another

3 assumption -- another assumption is dispersion assumed that

4 the radioactive releases will rapidly disperse to safe

5 levels and that is the basis of the 10-mile EPZ.

6 This ignores current meteorological research, geography, and

7 ignores the sea breeze, for example, that holds plumes close

8 to the ground and extends it beyond 10 miles.

9 It ignores gravity drainage in valley areas, it ignores the

10 behavior plumes over water where they remain concentrated due

11 to the lack of turbulence, and hence, when they arrive at a

12 distant, more distant than 10 miles shore they will not be

13 dispersed but will be compacted.

14 Therefore, until these are dealt with, we are dealing not

15 with current science, we are dealing with mist.

16 Now I will move to notification on slide 6.

17 There is a false assumption that all we need for a primary

18 method of notification of the public are sirens and that

19 they don't need backup power.

20 I can tell you, I don't hear the siren in my house nor do my

21 neighbors.

22 Hence, although we are economically strapped in the town of

1 Dicksbury we gave up on the Federal government and got our
2 own reverse 911 telephone system, specifically for this
3 purpose and paid for it ourselves. We know
4 redundancy is a hallmark of safety for the nuclear
5 industry.

6 Where is the redundancy?

7 Technology allows for, let's say, battery powered road
8 signage, reader boards, which would be very valuable to
9 notify people in their automobiles, it allows for rapid
10 telephone dialing. GAO was critical of FEMA for not getting
11 their act together on IPAWS, and there are multiple systems
12 that should be required as primary because notification is
13 so key to response.

14 Clearly, the siren, which is very valuable for outdoor
15 warning systems, must have battery backup power, because
16 there are many instances of numerous sirens in a EPZ failing
17 and also for the case of a loop loss of outside power that
18 can be a precursor to an accident will also take out the
19 sirens.

20 The backup or secondary system should have the same
21 capability as the primary.

22 Slide seven, please. As far as evacuation time

1 estimates go, it is important that they will be updated with
2 population changes.

3 However, there are other variables that should also be
4 considered.

5 For example, the increase in percent of the transportation
6 dependent, particularly children, this is a real issue that
7 is developed in the Pilgrim EPZ, for example.

8 Other triggers would be problems with the major egress
9 routes, or if a bridge that is used as an evacuation route is
10 in a long-term repair.

11 Also, it is important that the ETEs have performance-based
12 standards.

13 I have and I've analyzed it for you, looked at the KLD ETEs
14 prepared for Pilgrim for many many years, and what they do
15 is base their estimates on best case scenarios, not on peak
16 traffic periods.

17 Essentially, they are worthless.

18 I think that is where we need a real standard that by which
19 they should be judged.

20 Another important area --

21 CHAIRMAN JACZKO: We appreciate very much your
22 input here, I'm looking at the number of slides and we have

1 asked people to try and stick to five minutes, so perhaps if
2 you could summarize the high points that you have.
3 That will give us an opportunity to have dialogue.

4 MS. LAMPERT: I don't mean to be selfish at all
5 about this.

6 Another important point is perception of a public response
7 that the Sandia survey indicated, because of methodological
8 flaws that the public knew what to do and was satisfied.
9 We know that local responders, local responders and the
10 public believe the plans won't work and this is clear from
11 the fact of a refusal to certify the plan by many
12 communities, certainly in Region I.

13 Flexibility, we believe that we need performance-based
14 standards and benchmarks, not flexibility in emergency
15 planning, biannual exercises we agree fully for an
16 eight-year cycle, so there can be very variability and not
17 predictability.

18 All should have a general emergency so you practice and can
19 fix off-site responses before, not after, the fact.

20 Hostile Action-based Exercises, slide 11, include
21 them instead in the triennial force-on-force drills.
22 Once in eight years is not enough, certainly for attractive

1 targets like Pilgrim and America's Hometown, or Indian
2 Point.

3 Going forward, slide 13, I hope you will respond
4 to the written comments that I made December 1, and we're
5 looking forward in the future for equal participation which
6 regrettably has not been the case in the past.
7 Thank you very much.

8 CHAIRMAN JACZKO: Thank you for your comments.

9 MS.BRANCATO: Hello, my name is Deborah Brancato,
10 I am from Riverkeeper, I am a Staff Attorney there.
11 For those who may not be aware of what Riverkeeper is, we are a
12 grassroots not-for-profit environmental advocacy
13 organization dedicated to the protection of the Hudson
14 River. Due to the unique location Indian
15 Point Nuclear Power Plant, located on the eastern shores of
16 the Hudson River, just 24 miles north of New York City,
17 we have played an active role in raising and addressing
18 environmental and safety concerns related to the operation
19 of the facility.

20 Since the terrorist attacks of September 11, Riverkeeper has
21 become increasingly concerned about the adequacy of
22 emergency preparedness regulations to protect the public in

1 the event of an actual radiological release from the plant.

2 We've had the privilege of being a part of the ongoing

3 dialogue about emergency preparedness regulations, and have

4 the privilege of hosting the now Honorable Chairman of the

5 Commission back in early 2006 to express our concerns.

6 At that meeting and in subsequent comments to the Commission

7 we have consistently expressed concern about the workability

8 of the emergency plan for Indian Point in light of

9 several new factors, including a very high

10 surrounding population density there are approximately

11 20 million people within 15 miles of the plant, intense

12 traffic congestion, and the impacts of what a large

13 radiological release from an intentional attack on the

14 facility and the nuclear waste storage facility would have

15 on emergency planning.

16 Also notable the lack of confidence in the Indian Point

17 emergency plan from local governments which is example five

18 by the refusal of the emergency planning zone counties

19 consistently to approve the emergency plan for Indian Point.

20 Despite these concerns and the tangible obstacles that would

21 affect effective emergency evacuation around Indian Point,

22 the plan is consistently approved every year by the NRC and

1 FEMA.

2 We feel, go to the second slide, today I want to
3 focus on a fundamental problem that would allow this
4 unworkable emergency plan to be approved year after year.
5 That is that the current regulatory regime is procedural in
6 nature.

7 That is, there is a lack of performance-based standards to
8 assess and ensure the effectiveness of nuclear power plant
9 emergency plans.

10 In our respectful opinion, the proposed
11 regulatory changes that are the subject of the meeting today
12 would remain deficient for failure to institute such a
13 regime.

14 I am glad to hear from the earlier panel the NRC and FEMA
15 that NRC intends to pursue a performance-based standard
16 approach.

17 However, we remain disappointed that they have not been
18 considered in the instant rulemaking, and I will go over a
19 few examples of areas in the proposed rule that would
20 benefit from performance-based standards and more specific
21 measurable criteria.

22 Slide three. For drills and exercises we

1 appreciate the regulatory inclusion of security-based
2 scenarios and the intended goal of the NRC to vary the
3 spectrum of scenarios.

4 However, we do not feel that the proposed changes go far
5 enough toward ensuring that future drills would actually reflect relevant
6 credible threat scenarios and related circumstances.

7 We believe there should be more measurable and forcible
8 criteria to ensure that important site specific
9 considerations are taken into account.

10 For example, there must be a requirement that fast-breaking
11 release caused by intentional attack on a spent fuel pool
12 and other nuclear waste storage facilities on-site be
13 considered.

14 A loss of offsite power, damage to critical infrastructure,
15 plume travel beyond the 10-mile emergency planning zone,
16 etc..

17 A perfect example would be a drill that occurred at Indian
18 Point in 2004 which did involve a hostile event in the
19 parking lot and no radiological release was reported.

20 Under the proposed regulatory changes, that scenario would
21 remain compliant to the law, so we just don't feel that the
22 changes go far enough toward assuring that the concerns

1 listed that I discussed earlier would be addressed.

2 Slide five. Another good example would be the
3 proposed changes with ORO coordination and I will take the
4 Commission to the opposite side of the spectrum from the
5 comments you discussed earlier that from local governments
6 that ORO coordination is not the place of the NRC to
7 require.

8 In contrast to those comments, Riverkeeper feels that
9 the proposed changes are largely procedural in nature.
10 For example, they would require identification of
11 alternative resources and maintenance of additional rosters
12 of names and updating license arrangements.

13 These are on paper requirements that, in our opinion, would
14 not actually ensure proper coordination would occur.
15 We feel that the goal here would be much better served by
16 enforceable performance-based criteria requiring licensees
17 to demonstrate various capabilities.

18 Having criteria specifying the roles of local and state law
19 enforcement during differing hostile based events,
20 demonstrates the ability of local law enforcement agencies to
21 respond to varying types of hostile scenarios.

22 Slide six. In regards to alert notification

1 systems, I agree with the comments of my colleague Mary
2 Lampert on the necessity of a backup power requirement and the
3 equal effectiveness of backup systems and additionally, we
4 also feel that performance-based standards could be well
5 served in this area as well.

6 Licensees should be required to demonstrate functionality of
7 alert notification system.

8 This would not be to the detriment of allowing a variety of
9 technologies as others have commented upon.

10 Lastly, the next side; in relation two evacuation
11 time estimates studies, once again I agree with all the
12 methodological flaws that my colleague Mary Lampert has
13 spoken about, I will just focus on the overarching concern
14 that the lack -- the non-meaningful role ETEs actually play in
15 emergency planning.

16 For example, the most recent ETEs for the Indian Point
17 Nuclear Power Plant, which again are likely an
18 underestimation due to severe methodological flaws,
19 they already demonstrate that many residents would not be
20 able to evacuate in time to avoid exposure to high doses of
21 radiation.

22 Despite that fact, the fact that Entergy, the owner of

Indian Point has completed that study is compliance with the law and doesn't reflect the non-workability of being able to evacuate the public in a safe manner. We feel that ETEs should be instituted as a performance based standard in order to ensure that they play a meaningful and effective role in emergency planning for example demonstrate that you could evacuate X percent of the population within whatever amount of time it would take to ensure public safety.

On my last slide just a concluding remark that overall the proposed rule would not guarantee the workability of emergency plans for example, the plan for Indian Point, in light of realistic site specific factors and we would encourage the NRC to adopt a performance based approach to ensure the effectiveness of emergency plans. Thank you for your time.

CHAIRMAN JACZKO: Thank you. Mr. Butler.

MR. BUTLER: My name is Ralph Butler, Director of the University of Missouri Research Reactor and immediate past chair of the Research and Test Reactor Community. Thank you for the opportunity to express opinions about the three areas of the proposed enhancements that potentially impact university research reactor's staffing, reporting criteria and hostile action related emergency action levels. The university research community views these proposed enhancements as unnecessary, let me briefly explain why.

The university research reactors pose little or no risk to the safety and health of the public. If I may excerpt from ANSI-ANS 15.16 "for some research reactors no credible accidents are postulated which result in consequences matching the least severe class of emergency action." Even for the largest of the

university research reactors, the University of Missouri reactor, there is no credible accident that takes to the site area emergency.

Emergency planning zones typically, for the smaller reactors, do not extend beyond the housing that contains the research reactor. For the less than 2 megawatt reactors this is the operating boundary of the EPZ. For the 4 university research reactors that are 2 megawatts to 10 megawatts the guidance is only 100 meters. As the largest we have taken the conservative position of 150 meters. Even in that area of 150 meters, outside our own staff there is only perhaps 50 individuals located in our EPZ, so the significant difference between an EPZ of 150 meters and 10 miles.

So why is that. It primarily deals with the little amount of radioactivity material that is house in these reactors and the lack of energy to drive the release. Even for our reactor at 10 megawatts, we operate at 80 lbs and 130 degrees. Very little energy driving a release of radioactive materials.

The community does believe that the current regulations and guidance are sufficient to protect the safety and health. There is Reg Guide 2.6 and ANSI-ANS 15.16 that give very strong guidance as to what is necessary for emergency planning.

The Research Reactor Community, our reactors really haven't changed although this guidance was developed in the early 80's the credible accidents haven't really changed. We do believe the hostile environment has changed since then. But the operating scenarios and the design of these reactors really have not changed any.

Regarding staffing levels, the NRC inspects our facilities and our staffing levels on a routine basis. Staffing not only from the operations but from review of emergency preparedness. They review not only our on-site staffing but our off-site staffing and support systems. They review the hospitals, they review the local fire departments, they review the local law and enforcement agencies.

These are not complex machines. Typically they only operate during the normal working hours. Only MIT and University of Missouri operate 24 hours, 7 days a week. So they are limited in size, limited in complexity, there are not vast amounts of emergency core cooling systems and the things you typically associate with the power reactors. These are simple machines.

The 15 minute timeliness criterion is really unwarranted. We see little benefit from this in that there is so little impact or no impact from an accident at a university research reactor. We don't understand how this would improve the level of protection for the public and the environment.

Next slide. Under emergency action levels for the hostile action area on size does not fit all. These facilities are unique and different in size. At Missouri we do have an emergency action level for hostile action and secure related event but it really is not appropriate for some of the smaller facilities, our sister facility at the University of Missouri-Rolla with a 200 Kw unit, it really is not appropriate or necessary.

We have had hostile action scenario drills at the University of Missouri reactor although it was a city drill it was the university reactor that was the center of the focus of the drill.

In conclusion, let me just state that the small size and simplicity of operations we believe that the existing emergency and security plans are adequate. To do additional reviews and staff adequacies only takes away vital resources that would be used for research and education that we desperately need to focus on. Thank you.

CHAIRMAN JACZKO: Mr. Joyce

MR. JOYCE: Good morning, my name is Tom Joyce and I am the President and Chief Nuclear Officer of PSEG Nuclear and I currently chair the NEI Working Group for Emergency Preparedness and Event Communication. In keeping with the principle of transparency during the rulemaking process the industry would like to share our concerns that we have identified during our review of the proposed rulemaking. A companion background document or material that we have provided you with is the NEI transmittal letter that summarizes the industry's key concerns with specific rulemaking areas and the proposed changes.

Next Slide. My presentation this morning will focus on two topics. The first I would like to address is what we see as a deviation from the structured regulatory process and secondly our viewpoint that there are new regulations being proposed without sound basis.

Next slide. Although we are not adverse to enhancement of emergency preparedness regulations, the significant nature of this rulemaking with the associated guidance document amplifies our longstanding concerns with what we see as a deviation from the structured regulatory process. We see evolving requirements in advance of the rulemaking in the form of the Regulatory Issue Summary RIS-2005-2 clarifying the process for making the emergency plan

changes and the draft NRC interim staff guidance in emergency planning for nuclear power plants. We object to the staff's ongoing effort to compel licensees to prepared license amendment requests in connection with emergency plan changes in advance of the completion of this rulemaking via the proposed changes to the RIS. Such action improperly predetermine or assume the outcome of this rulemaking, violate the Administrative Procedures Act and are clearly inconsistent with the Commission's Principles for Good Regulation.

Further the NRC has decided to impose the changes proposed in the draft RIS prior to the proposed rulemaking comment period has run its course. NEI is concerned about the reliance on interim staff guidance to promulgate new rule related requirements. The ISG presents more a point of view as opposed to acceptable methods of implementation. We also contend that the ISG may not be developed and maintained with the same level of staff management review and oversight that is incorporated in the traditional regulatory guidance documents such a Reg Guide or NUREG. In addition, as we more forward we request that the NRC approve the process for comment evaluation. If the NRC chooses not to accept or consider incorporation of stakeholder comments there should be an explanation as to why the comment was not incorporated other than simply stating staff does not agree. The latter is counterproductive to our shared interest in enhancing the transparency of the regulatory process.

NEI also believes that is also necessary for NRC senior management to remain actively engaged as this rulemaking approaches implementation to prevent inconsistencies in inspection and the reactor oversight process.

Next Slide. Lastly I would like to highlight some of the specific rules that further illustrate our overarching concern with process by introducing new regulation without sound basis. Examples do include the licensee coordination with off-site response organizations, challenging drills and exercises, on-shift multiple responsibilities. Regarding the OROs, while the NRC is not proposing to directly compel action by the OROs in this rulemaking, proposed modifications to the rule and the associated guidance in the ISG and in NUREG 0654 Supplement can be read to attempt to directly do so. I think that we heard that from some of the folks today. While licensees are responsible for ensuring that their emergency plans can be executed, responsibility for identifying and ensuring the correction of deficiencies in ORO resources properly lies with FEMA, not NRC licenses.

In the area of drills and exercises, although we agree that the goal to make evaluated emergency response exercises less predictable, more challenging, and more valuable to participants we believe the proposed changes will have the opposite impact. The proposed rule and commanding guidance documents are so prescriptive detailing specific scenario elements that must be demonstrated over an exercise cycle, or all three evaluated exercises, that scenarios will in fact be more predictable by scheduling and tracking these scenario elements. Further both NRC and FEMA propose that consecutive hostile action based scenarios cannot have a no release or minimal release component. Thus every other hostile based exercise will be required to have radiological release, thus predictable.

We have several concerns with the proposed requirements that are outlined in NEI transmittal letter and detailed comments. In the interest of time, let me just briefly summarize our concerns with the proposed requirement. First, specifying

the sequence of the radiological release component is counter to the goal of minimizing predictability in the scenarios and secondly, most importantly, there is no viable regulatory basis for a scenario to include a radiological release associated with a hostile action event at a nuclear power plant.

Proposed amendment to Appendix E of Part 50 requiring licensee to provide detailed analysis demonstrating on-shift personnel are no assigned any responsibilities that prevent timely performance of their functions specified in the emergency plan is unnecessary because 10 CFR 47B2 already requires adequate on-shift staffing. Moreover, the proposed amendment inappropriately specifies process or a detailed analysis for demonstrating compliance with the existing regulation. Acceptable processes of that detail would be better in the NUREG or a Reg Guide.

In closing, next slide, I would like to amplify one of my opening statements in that the industry is no adverse to enhancement in emergency preparedness regulations. In fact, the tremendous effort invested in the hostile action based drill pilot is testimony to our steadfast commitment to continuous improvement and raising the bar in our emergency preparedness programs. However, we do oppose a departure from the established regulatory process and proposed regulations that are not supported by sound basis.

On behalf of the industry I would like to thank you for the time to share our perspectives on the proposed rule. Thank you.

CHAIRMAN JACZKO: Thank you Mr. Joyce and thanks to everyone for comments. We certainly appreciate hearing from all of you and we will start with Commissioner Svinicki with her questions.

COMMISSIONER SVINICK: Thank you. I think all of you began by saying you appreciated the opportunity to be here. I want to thank all of you for your written more formal submittals that are obviously available in the public record and Ms. Lampert, I think that you wanted to emphasize that you were given a brief period of time so that in no way is meant to supplant, and I think that is true of everybody. I appreciate you all knowing that in order to accommodate hearing from a number of commenters you all I'm sure not given time enough to do justice to all, but please know that we have in front of us your more formal submittals which I've looked at and thank you all. One thing that I am struck by is there is a lot of effort that goes into, there's a lot of documents for you all to look at and so your participation really strengthens this process and so please know that although you had to highlight just a few issues that were important to you or your members, that we will look and certainly we heard staff talk about 687 comments so they will be going through all of them and we will be hearing back from them on that.

I would like to although it seems like a long time ago now but the last panel I touched on this ensuring the adequacy of the offsite responders, is there anything that any of you heard in terms of the NRC staff response on that of clarification in response to my question that you would like to comment on or have the opportunity to say yes I appreciate what they said but our comment is we're still concerned about x, y, or z when it comes to the NRC's reach with those organizations particularly I'm looking at our state and local representatives, is there anything that you would like to add?

MR. PAYNE: I think that on that one it would go to as we said earlier to the wording and what I'm looking at here and I'll quote from the writing here where you

wanted to change CFR Part 50, Annex E, Section 4A7, it says: "To require licensees to confirm that ORO resources such as local law enforcement, fire fighting, medical services, are available to respond to an emergency including hostile action event at the plant site. Currently regulations do not explicitly require the licensee to take action to ensure that the OROs are capable of adequately responding to the site during a hostile action event." With these words that you are requiring the licensees to confirm that they are available, licensees to take action to ensure adequacy of response, this to us sounds like you are directing the licensee to ensure or direct the off-site counties to ensure that they have personnel available, regardless of what is going on in their county at that time to respond to the nuclear power facility. This puts the nuclear power facility in a somewhat unique position such that you must have a designated set of responders that will be going strictly to the power plant, again somewhat walled off from anything else that is going on.

For the State of North Carolina we have a state-wide mutual aid agreement which all 100 counties and the eastern band of the Cherokee Indians have signed. If we need additional resources to handle an event, we can go out and get them and to go along with that we have developed what we call expedient training something that can be given to the law enforcement officer that would let him know what he has to do in handling an evacuation, the fire fighter to help him in doing his job as a survey person. We can bring these people in from outside, train them in a very short amount of time as such so that the licensee doesn't have to be concerned. That's our concern to protect our citizens.

COMMISSIONER SVINICKI: And I appreciate your elaboration on that. It is always fair to quote and confront people with their own words. It sounds like staff based on their response in the first panel will certainly looking at, as I termed it before, they know what they intended to convey but it is fair to look at those words Mr. Payne and I appreciate you mentioning that. I think that it takes me to another point that you mad and Mr. Mulligan as well, which is that for state and local authorities they arise from sometimes different legislative mandates and bases and it is something that the Commission has heard when we meet with our Agreement State representatives when they talk to us when we change something in our regulations and they are required to be compatible with that. Even their legislative cycles and other things, it take time and Mr. Payne you even had what I call a wiring diagram of how authorities flow in your state and it takes us back to the discussion I had with Mr. Kish which is at the state and local level there is not a one size fits all. There is not a one size fits all authority model here and there is maybe not a one size fits all solution as well. I might ask, I don't mean to put Mr. Joyce –

MS. LAMPERT: Can I make a comment. My comment would be the opposite. There would be an example of the necessity of performance based requirements. I'm speaking from the past maybe two months ago there was a hostile action drill at Pilgrim which indicated the importance of knowing and having a responsibility, a tick off list, on who are the off-site responders, who are they, where are they, how long is their response time and a focus on communication being interoperable and then who is backup number two. I know our fire chief was very concerned about in Duxsbury that the police and fire were brought into Plymouth and supposedly there was no off-site notification but there were guns

going off, fires, and those in Ducksbury were not going to just sit and have a drink, they were going to be bang out of town. So who is then going to be responsible for transportation to deal with the evacuation that will in fact occur. So there was all these levels off-site that were not coordinated. I think it would be incumbent on the NRC to list off specifically what are those responsibilities and what are the performance criteria.

COMMISSIONER SVINICKI: I was just going to turn to anyone else who wants to make a response on that. I don't know, Mr. Joyce if you had, I don't think it was one of the issues you highlighted, but it was in the written response.

MR. JOYCE: Yes it was. It's right along the same lines. We read it as it is a change from the agreements that we have with the locals in the past for emergency planning in addition to that where now we need to go in and verify and confirm their ability, which we believe is FEMA's responsibility during the exercise.

COMMISSIONER SVINICKI: Anyone else?

MR. MARZANO: Commissioner, I agree it's more a language thing. I think there seems to be a pretty almost unanimous sense of this at least across our side of the table and I was a little more reassured hearing your staff response to kind of go back and look at that. I just don't want to see the utility be put in the situation of being asked to ensure something that they really have no power to correct. And that is know of what I see if you put it up to the utility to in essence tell local government whether or not their response is acceptable, well okay, whether it is or isn't what position or authority does the utility have to do about it. I think that kind of puts everybody across the board at a disadvantage and in a tight situation.

COMMISSIONER SVINICKI: Mr. Marzano I did actually have a question, on your slide 4 you had talked about needing to improve the structure and conduct of the hostile action based exercises and in my limited time is that something that was in the written submittal of the comments I don't recall that any recommendations for that specifically. I can go back and look for it there if it is there.

MR. MARZANO: Not as overtly as I drew them out here. We submitted through our state so there are no comments specifically from Will County. We are part of a collaborative process of comments that there submitted through the Illinois Emergency Management Agency. But the comment that I can make to follow up or clarify is the first responders really didn't feel like there was a lot that they could do. They are interested, we are interested in working through full scale exercises. Now being on the REP side of the fence I understand the need for having security at the plant and for safeguards and that force-on-force addresses security in other aspects. That is not really, and it would be on our end, but that really was not made aware to our SWAT people. They came ready to play in a full scale exercise as they know it. I think balancing the need of day to day operations and now the regulations are currently structured with a worthy intent of wanting to engage those responders and give the fire fighter and the cops something to do, I just think that we have a longer way to go. What we learned and what we demonstrated that was beneficial in the hostile action based exercises actually could have been demonstrated in a conference room down the hall from our emergency operations center.

MR. PAYNE: Just to follow up with what Mr. Marzano said this is one of the things that we in North Carolina found to be very beneficial from the hostile action

based exercises as NEI recommended them were the table top exercises that preceded the actual demonstration. Many, many comments were made that these were very beneficial to have all the players in the room looking at each other, talking about what would be done in an event and was probably the best portion of what was requested by the NRC and then put on paper by NEI. We fully intend in North Carolina to continue to use this table top method in doing both hostile action based exercises for the future and maybe looking at doing some of our normal REP exercises preceding them with some sort of table top where we put all of our folks together. That is one of the things that we appreciate and would confirm as being a best practice.

COMMISSIONER SVINICK: Thank you. I'm sorry I went over my time.

CHAIRMAN JACKZO: Just on this issue of the, I think Mr. Payne, you asked the question about authority and I think it is a very good question and I think it is one that we must always be mindful of. I would note 50.47 and Appendix E have always difficult language for us as an agency to structure because of the relationship between the off-site response and the relationship with the licensee. We do have lots of language spread throughout Appendix E that does, for instance, put requirements on states, this is Appendix E, F2C, "Off-site plans for each site shall be exercised biannual with full participation by each off-site authority having a role under the Radiological Response Plan." Again there is language that we obviously not regulate the off-site response, but we have language in Appendix E that puts some onus on the recognition that these kinds of plans would be in existence and they would be exercised. Even more direct language in D, which says "a state should full participate in the ingestion pathway

portion of exercises at least once every six years. In states with more than one site the state should rotate this participation in the exercise.” We have examples of where we have this language in here which I think puts kind of gives the impression that we are putting requirements on the states, when in fact ultimately these are really requirements on the licensees but it involves then that active participation of both the on-site and off-site individuals. Of course, in this one, we have a final kind of out clause which says that if the state and local governments do not participate than the applicant has certain responsibilities, or the licensee, to actually conduct the exercises without those entities that are due to participate.

There is a bit of confusion in the existing Appendix E. I think that with this intent on this one provision I think the intent was perhaps not captured well by the language. It is one of the challenges we face in dealing with how we capture these kinds of requirements and responsibilities throughout. As I have always looked at this I think that what this comes down to is you only have a REP program because you have a plant. If you don't have a plant you don't have a REP program so in the end it comes down to the license. In the end that is our ultimate authority to issue the license. Without that ultimately our responsibilities go to the licensee. But as part of that there has to be this good integrated program. I think that you heard this morning certainly there is a lot of effort on the part of FEMA and NRC to work together so that FEMA is working closely with us as we make our changes so that their changes where they do have authority with you will be comparable. I don't think the intention of the NRC is to try and expand our authority into regulating states and locals, but it is just one of the challenges in

the language in trying to describe this program. Sometimes we get into that grey area and the guidance can help to clarify that.

MR. PAYNE: Maybe we were a little bit strong on that but we understand that wording and that is one of the areas we want to say maybe we can – we understand the intent lets see if we can wordsmith it to come up with a better wording.

CHAIRMAN JACZKO: I appreciate that and I think that is a very good point and I think that certainly if the staff hasn't gotten that sense from the Commission I hope they have at this point. I think it is one where everyone's intentions are good here we just have to get the words right because in the end they do matter.

I wanted, Ms. Lampert, to ask you a question. At the end of your slides you mention a concern about equal participation in the process. I'm wondering if you could give some concrete efforts how you think we can make this process even better with public participation. I tend to think, quite frankly, that EP efforts we've had have been probably the best we have ever had in soliciting public comment and soliciting public involvement. But any ways we can make that better, I would certainly enjoy hearing.

MS. LAMPERT: This was summarized very well in a letter dated June 2008 which I included in my December 1st by David Lochbaum when he was UCS for NGOs. It pointed out certainly the technology, being able to participate on the telephone is terrific. You have made a lot of strides, no question. However, clarity in the time schedule, what's going on. For example, in the license renewal process you have for each reactor site what the job is, documents, date to be completed. That type of schedule would be very important. Very important on

equal participation. I think what was the biggest problem was when comments – there is a due date – the final exam. There should be a final exam for everybody. In this case it was not a final exam for everybody as David Lochbaum pointed out. There was a final exam for us but there wasn't for the industry. That was called in for discussion for the final language. That certainly isn't what you want, isn't what we want. We have full confidence in a new page and we all learn. Not to take so much time which I have a habit of doing, the letter David Lochbaum submitted summarizes and provides documents.

CHAIRMAN JACZKO: Thank you I appreciate that. Mr. Butler, certainly I think there was a common theme throughout your slides. One of the questions that I would ask and in particular on the 15 minute notification criteria, and I suggest that this is not intended to be a punitive element, but this is sometimes actually can be a helpful element for us. I recall there have been several incidents, I believe it was at a research reactor in Kansas, where there was a tornado that came through and did some minor damage to the building there. Notification in that situation would have been extremely helpful to the NRC because it provides us with accurate information because we live in a world in which information travels faster than almost anything else. Having that kind of timely information from the licensee can help us provide better information to the public as we're getting inquiries and we're getting requests for information. That's one in which I think I certainly understand and recognize that the research and test reactors do pose a very different hazard from the power reactor community. I'm wondering if that isn't one where we might be able to make some progress. And so the question I have for you would go in the context more what are the

challenges for you to have that 15 minute notification. If you are operating 9 to 5 or not a 24 hour cycle, is it an extra individual or is it something that you could proceduralize that somebody makes a phone call to the NRC and off-site authorities and is that a real kind of burden on you and the operators to make that call or have that kind of effort proceduralized?

MR. BUTLER: From our facility the 15 minute is primarily the burden. We do have it in our procedures to notify the NRC. I think that where some of the issue comes with the small facilities where if they are operating they shut down the reactor then pick up the phone and dial 911. Where to you put the burden on the small facilities to have a time line when they should notify the NRC. I'm certainly a proponent that there should be some time line, my own personal opinion, whether that's 15 minutes or not, I'm not sure for the small facilities. Even for our facility that becomes a burden when your trying to respond to 911 and the off-site response organizations coming. There should probably be a timeliness criteria. Should it be 15 minutes or not is probably the more appropriate question.

CHAIRMAN JACZKO: I appreciate that and I think that is certainly helpful and something that we can look at if there is a way to address that other than 15 minutes. As I said I think that that communication can be an enhancement and it helps us as we are responding to have the information in a relatively timely fashion.

MR. BUTLER: I think we fully agree with that.

CHAIRMAN JACZKO: Mr. Joyce, perhaps I could ask a question of you. I have to say that my bias going into this question is that I'm not sure that I necessarily agree with your statements but I'll give you an opportunity perhaps to

express them or expand on them a little bit. You talked about in your comments that the NRC's proposed this regulation without a basis. Can you give perhaps more of an explanation of what you mean by that. We are essentially modifying an existing exercise planning basis for the most part, the hostile action based drill in an addition that has been piloted with many facilities. In think that in general the feedback is that it is a good program. There may be disagreements here an there about the effectiveness, but maybe you could talk more specifically, there are some specific areas in the rule that you think don't have a basis for them or if it's just the entire initiative.

MR. JOYCE: I think that just in a couple of areas when I look at it when we talk about the large radioactive release from a hostile action based drill. We presume that the adversaries have control of the facility for a very long time with no help from the outside. I don't think that that is correct.

CHAIRMAN JACZKO: Isn't that similar scenario in most of our exercises when we do any kind of release there is often a magical inability of operators to mitigate whatever release scenario. I don't know that that is anything unique to the hostile action based drill scenario.

MR. JOYCE: I would agree with that statement. But what it would really take for them to be in control of the facility for a long period of time would be beyond the design basis threat. This is now all of a sudden there is no basis for being beyond the design basis threat. It's elements along those lines.

CHAIRMAN JACZKO: It's not that necessarily the NRC – some elements in your mind may not be fully justified but we have a basis for the rulemaking.

MR. JOYCE: And the other part I would say, just another example in my mind, is the detailed analysis of the on-shift collateral duties when we are already required to have the appropriate staffing and so to require that detailed analysis I think, especially in a rule form versus in a Reg Guide or guidance document that can be changed as we evolve.

CHAIRMAN JACZKO: And again for that one the – as I recall the staff provided examples of where they had identified individuals and I think maybe been in an actual exercise or actual response situations where individuals were not able to perform their functions because they had multi-hated. So that in your mind is not a sufficient basis for that particular change.

MR. JOYCE: That's not rulemaking that an accountability.

CHAIRMAN JACZKO: Thank you I appreciate those comments. Dr. Klein.

COMMISSIONER KLEIN: Thanks.

I appreciate all of your comments and, Patrick, I will start with you. On your slide 4 you talked about the HSEEP was not reflected in proposed REP. Is that mainly a consistency issue where you talked about the integration of the homeland security exercise was not reflected in a proposed REP manual, is it just a consistency issue?

1

2 MR. MULLIGAN: I believe right now it is a
3 consistency issue, yes.. If FEMA's
4 intent is to bring the REP program 100% under the
5 HSEEP concept, then the REP program manual as it is written
6 right now does not reflect that policy and guidance of
7 HSEEP.

8 I believe there is a lot of elements still left in the REP
9 program manual from what their current operation is.
10 For example, the terms of deficiency in ARCA, when you're
11 looking at an exercise that we are under right now were used
12 in REP program and REP specific, they don't exist under
13 HSEEP.

14 To bring those two documents or philosophies of exercise
15 evaluation and planning together under HSEEP, there needs to
16 be more work done on the REP program manual to make sure
17 that the language is consistent with HSEEP.

18 COMMISSIONER KLEIN: Thanks.
19 Steve, I appreciated your frank comments about the wordings,
20 one of the challenges I think we have as the Commissioner
21 read some of the documents, there is a big difference
22 between "should" and "is required."

1 Unfunded mandates, so I appreciate you making comments and
2 working with our staff on words, because words can be
3 important when it becomes an unfunded mandate.

4 MR. PAYNE: As we well recognize the difference
5 between "should" and "will".

6 COMMISSIONER KLEIN: I assume that you've gotten
7 your comments in and the staff, I assume, will appropriately
8 respond to this.

9 MR. PAYNE: They have been written and provided to
10 your staff. I must compliment your staff, especially I had a
11 family emergency the passing of my mother just at the time
12 things were to be presented to you and your staff was most
13 gracious in allowing me a week to get the information in and
14 I thank all of you and your staff for providing me with that
15 opportunity.

16 COMMISSIONER KLEIN: We always say, work with
17 the government, we are here to help.

18 MR. PAYNE: Thank you, sir.

19 COMMISSIONER KLEIN: Tony, for all of us that have
20 participated in exercises, we get an opportunity to do that,
21 I really can relate to your comments.
22 They always escalate, you're always going to have a release,

1 you always have this magical thing that occurs, whatever it
2 is, that results in a radiation release.
3 I recently participated in an exercise that did not involve
4 a radiation release, and I was stunned, because they always
5 go for a radiation release, so I guess we are predictable in
6 that area.

7 How do you coordinate through all of the plants in your area
8 that you are responsible for in terms of does Exelon do a
9 good job of coordinating their exercises with your office,
10 so that you are not overwhelmed?

11 I mean, you do have a day job that you do and not just
12 exercise everyday.

13 MR. MARZANO: It is tricky and there is a lot of
14 calendars that come out and we work with our state, a
15 variety of conferences, whether it's Exelon, FEMA, NRC at our
16 scheduling meeting.

17 We followed our scheduling meeting, which we had about a
18 month ago, very shortly thereafter with a state planning
19 meeting where we brought everybody in all the different
20 counties together, it's difficult

21 In Illinois with the amount of plants, Illinois emergency
22 management pretty much finishes with one exercise and starts

1 working on another, so that is a challenge that we have,
2 it's a challenge we try to respond to.

3 We certainly have an appreciation for the importance of this
4 and wanting to demonstrate our reasonable assurance.
5 We are ready whenever our Federal partners would like to
6 come and evaluate us, we look forward to being able to
7 demonstrate.

8 Many of the things that we've worked on for so long we want
9 the regulatory agencies as well as our public to have
10 confidence in our ability to respond, but as I mentioned in
11 my comments by the same token, we have a lot of other,
12 nuclear power plants aren't what keep me up at night.
13 We've got a number of other hazards that probably do suffer
14 a little bit because of the focus that we have because of
15 REP, and it is not only because FEMA shows up at our door
16 every other year to physically evaluate it, but also that we
17 receive a lot of funding for those types of activities
18 whereas we might not receive funding to prepare for snow
19 storms or other types of things.
20 It is really a balance that we have to work out.

21 COMMISSIONER KLEIN: I appreciate your comment on
22 what keeps you up at night, because I do think the nuclear

1 industry does do a lot of planning at their robust
2 facilities.

3 What kinds of things do you do for your chemical plants for
4 emergency planning, do you have exercises, do you have
5 plans, procedures? I should say, do the companies
6 have plans and procedures?

7 MR. MARZANO: All of the above and that gets into
8 SARA, Title III, and the emergency planning, community
9 rights no act all the things that they are responsible to
10 do, we have a staff member, whereas I am primarily
11 responsible for REP and a few other things. We have a staff
12 member who is primarily responsible for chemical plants.
13 and dealing with well over 100 regulated facilities that we
14 have in the County, which does include 2 major oil
15 refineries, a number of different chemical companies. We've
16 got 27 different pipelines because we are on the south end
17 of Lake Michigan.

18 So, a lot of pipelines wrap around. We just got a tremendous
19 amount of railroads, pipelines; those facilities do submit
20 annually to us, they submit their annual emergency plans. We
21 have someone who looks through those, audits those,
22 standardizes those.

1 We do exercises and drills, we do an annual drill with our
2 River Spill Co-op dealing with just oil response on the
3 river. We do an annual exercise generally either with one or
4 both of the refineries in some way or another.
5 Then I can also look at my 28 municipalities, and I have to
6 evaluate their exercises, and we participate in it. So we
7 could very easily get exercised to death, and that is not to
8 say that exercises are bad. There are also
9 real emergencies that pop up, too, and there
10 are all these other things.

11 I was having a good conversation with Mr. Kish a few weeks
12 ago at our REP scheduling conference and I said, we are kind
13 of the convergence point where everything meets in one
14 place.

15 I would love to be able to just spend all of my time dealing
16 with REP, and if I could spend all of my time dealing with
17 REP I'm sure I would be able to find additional things that
18 we could do, but at the local level budget, personnel, people. The
19 same people looking at REP are the same people looking at
20 chemical, and are the same people that run out the door at
21 2:00 a.m. when there is a catastrophe out on one of the
22 highways.

1 It's a juggling act.

2 COMMISSIONER KLEIN: It probably would not be good
3 if you had a real emergency to say, I can't respond, I've got
4 an exercise I'm conducting.

5 MR. MARZANO: That doesn't work too well, never
6 tried it but I don't think that would go over very well.

7 COMMISSIONER KLEIN: Thanks.

8 Deborah, I noticed on your Slide 7, you had commented on a
9 need to impose ETEs as a performance based standard. What
10 performance based standard do you recommend?

11 MS.BRANCATO: That question really exemplifies the
12 problem with evacuation surrounding Indian Point.
13 Whatever amount of time that would result in the safe
14 evacuation protection of the public against unacceptable
15 doses of radiation should be imposed, and that would bring
16 to light the obstacles against evacuation at a plant like
17 Indian Point with such a high population density surrounding
18 the area and the nature of the road system prone to heavy
19 traffic congestion, significant shadow evacuation and other
20 factors.

21 COMMISSIONER KLEIN: So, you don't have a specific
22 value that you are trying to target, you're just saying

1 whatever that target is, you can't meet it?

2 MS.BRANCATO: Whatever, it would depend upon the
3 radiological plume, and as my colleague Mary Lampert
4 discussed the problem with that methodology, and so making
5 a realistic view of how plumes move and how you have to
6 evacuate which populations you would have to evacuate beyond
7 the 10 mile zone in the event of a large-scale radiological
8 release.

9 There would have to be varying realistic scenarios during
10 high traffic periods, etc., so outlining an array of
11 realistic scenarios, then analyzing what the appropriate time
12 to evacuate would be and that should be the basis for the
13 performance-based standard.

14 MS. LAMPERT: I had specific ones also in my
15 written document.

16 For example, you could specify, you could not have your time
17 estimates for best case scenarios.

18 For example, in tests for snow storms that can not be done
19 midday. It's obvious because the traffic tie-ups are during
20 the commuter hours.

21 You can not have tests, and you can specify this, it's not
22 rocket science, but I think it should be specified, you can

1 not be testing evacuation from resort areas, beaches by
2 doing traffic surveys midday, mid-week, because the
3 primetime, and that's what you want to prepare for, is on
4 weekends, in the morning, at the end of the day when
5 the sun goes down.

6 So, you look through it all and you look through the
7 assumptions of KLD that does most of them, and you see what
8 are they assuming, no shadow evacuations, they are assuming
9 the key hole, they are assuming a shadow evacuation of X percent
10 from 2 to 5 miles.

11 They are making all of these unrealistic assumptions that I
12 talked about, but you can have a tick-off list to see
13 whether they make sense or not.

14 It seems you can start with the answer and then work
15 backwards, I know that would be a cynical way of looking at
16 it, but I think you can do a proper job by requiring it.

17 COMMISSIONER KLEIN: Thanks.

18 Well, I assume that one of your last slides, Tom, when you
19 went through it, you talked about that we had deviated from
20 our regulatory process, could you comment on what, why we
21 did that?

22 MR. JOYCE: Our view of it is that there should be

1 a REG Guide, or the rule, then the REG Guide, and then
2 instructions or the inspection plan.

3 We seem to be moving more toward interim staff guidance,
4 which may be a viewpoint and part of that comes up with the
5 wording issues that we were struggling with earlier as we
6 get into one person looking at it or a few people looking at
7 it.

8 That is sort of a process that we would like to stay in,
9 versus the rush to implementation.

10 COMMISSIONER KLEIN: Thanks.

11 No more questions.

12 CHAIRMAN JACZKO: I want to thank everybody. I
13 think this has been a very interesting meeting and we heard
14 a lot of good input and a lot of good issues, I think the
15 staff will be working very hard, they have an aggressive and
16 ambitious timetable to make some progress and I certainly
17 encourage them to continue to proceed in a manner in which
18 they started, which is really to have a very open and
19 collaborative work product for the rule.

20 I think on such an important area of emergency preparedness
21 it is crucial that we continue to involve the public, that
22 we continue to do this in a transparent way, and I think

- 1 that in the end that will make for the best product.
- 2 Again, I want to thank everybody and thank the staff and
- 3 FEMA for the earlier participation and we are adjourned.
- 4 Thank you.

5 (Whereupon the briefing was concluded)

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