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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BRIEFING ON WASTE CONFIDENCE RULEMAKING

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FRIDAY

MARCH 21, 2014

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ROCKVILLE, MARYLAND

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The Commission met at its Headquarters, One White
Flint North, Commissioners= Conference Room, 11555 Rockville Pike,
at 1:00 p.m., Allison M. Macfarlane, Chairman, presiding.

COMMISSIONERS:

ALLISON M. MACFARLANE, Chairman

KRISTINE L. SVINICKI, Commissioner

GEORGE APOSTOLAKIS, Commissioner

WILLIAM D. MAGWOOD, IV, Commissioner

WILLIAM C. OSTENDORFF, Commissioner

1 EXTERNAL PANEL:

2 Ronald Johnson, Tribal Council President

3 Prairie Island Indian Community⁸

4 John J. Sipos, Assistant Attorney General,

5 State of New York

6 Ellen C. Ginsberg, Vice President, General

7 Counsel, and Secretary, Nuclear Energy

8 Institute

9 Michael S. Callahan, President, CCMSC Corp. on

10 behalf of Governmental Strategies and

11 the Decommissioning Plant Coalition

12 Geoffrey H. Fettus, Senior Attorney, Natural

13 Resources Defense Counsel

14

15 NRC STAFF PANEL:

16 Mike Weber, Deputy Executive Director for

17 Materials, Waste, Research, State,

18 Tribal, and Compliance Programs

19 Cathy Haney, Director, Office of Nuclear

20 Material Safety and Safeguards

21 Keith McConnell, Director, Waste Confidence

22 Directorate, NMSS

23 Andy Imboden, Chief, Communications, Planning,

24 and Rulemaking Branch

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PROCEEDINGS

1:02 p.m.

CHAIRMAN MACFARLANE: Okay, everybody settle in. Great, good afternoon. So, the Commission meets today to hear from an External Panel and the NRC Staff on the topic of Waste Confidence.

I want to thank all the External Panelists for traveling far to join us this afternoon to provide your perspectives. I also want to thank the Staff for their work, and for their preparation for today's meeting.

I'd like to take a moment to put today's meeting in context for the record. I'm going to start by noting where we are in the process of dealing with Waste Confidence. And I'm sure the second panel will discuss some of this in more detail, but I want to sort of lay a foundation here.

So, in response to a remand by the U.S. Courts of Appeals for the D.C. Circuit, the Commission in the summer of 2012 instructed the Staff to update the Waste Confidence decision rule and develop an Environmental Impact Statement. The Staff subsequently initiated a scoping process, and developed the proposed rule and Draft Generic Environmental Impact Statement.

The Commission directed some changes and approved the release of the proposed rule and Draft Impact Statement for comment. The public comment period was open from September of 2013, last fall, until December 20th of 2013. The Staff received more

1 than 30,000 comments through correspondence and it transcribed over
2 1,600 pages of notes from multiple meetings held around the country.

3 One of our goals for this meeting is to be certain that
4 we understand the comments that we received. We recognize that this
5 is a complex policy issue, and many groups have different views on this
6 matter. On behalf of the Commission, we appreciate the significant
7 amount of time that all of these groups have taken in thoughtfully
8 analyzing the Staff=s proposed rule and providing detailed feedback to
9 the NRC.

10 Today we have a good cross section of external
11 panelists to provide a range of perspectives on some key issues that
12 underpin the proposed rule and Environmental Impact Statement.

13 I=d like to note that given where we are in the process
14 so far, and as we noted in our Letters of Invitation to our panelists,
15 we=re not seeking new comments from the external panel. We=re here
16 today to discuss the comments that you=ve already submitted during
17 the public comment period. So, this meeting is an opportunity for you all
18 to highlight and amplify issues you previously raised to help insure that
19 we understand your comments.

20 The external panel will be followed by a Staff briefing.
21 The Staff is in the process of evaluating all those public comments that
22 they received, and is still considering this feedback in their development
23 of the final Rule and Environmental Impact Statement. Ultimately, any
24 final rule will have to be approved by the Commission.

25 Because the NRC has not reached final conclusions
26 on the key issues, we won=t ask the Staff to respond on the merits of

1 what is said today by the external panel, or to explain how they plan to
2 respond to comments that they have received.

3 I=d also like to remind everyone that because Waste
4 Confidence or continued storage contentions are currently being held in
5 abeyance on 21 adjudicatory dockets we will not address site-specific
6 continued storage issues or questions because of our role as judges
7 there.

8 So, we=re going to begin the meeting with
9 presentations from the external panel. We have 50 minutes, so I ask
10 each of you to be mindful of the time, otherwise I=ll help you. I also ask
11 presenters to both external panelists and Staff to try to avoid using
12 acronyms so we all know what we=re talking about.

13 Let me see if any of my fellow Commissioners have
14 any comments? No? Okay. Then to get us started we=re going to start
15 with Mr. Ronald Johnson who is President of the Prairie Island Indian
16 Tribal Community. Mr. Johnson.

17 MR. JOHNSON: Thank you. Good afternoon,
18 Chairman Macfarlane, Honorable Commissioners. My name is Ron
19 Johnson, and I am the President of the Prairie Island Indian Community
20 Tribal Council. I appreciate this invitation to be here today to speak with
21 you about our views on Waste Confidence.

22 Before I begin, I=d like to thank the members of the
23 Waste Confidence Directorate who met with us after the public meeting
24 in Minnesota to answer our questions about the Draft Generic
25 Environmental Impact Statement. Next slide, please.

26 Our tribal members are descendants of the

1 Mdewakanton Band of Eastern Dakota or those who are born of the
2 waters. Our people have lived on Prairie Island, Tinta Wita, for
3 countless generations. Our tribe land base has grown through various
4 federal acts beginning in 1891 and direct purchases by the Tribal
5 Council, and now totals over 3,000 acres. The Prairie Island Indian
6 Community is located between the Vermillion and Mississippi Rivers in
7 Southeastern Minnesota, about 30 miles southeast of the Twin Cities,
8 of Minneapolis and St. Paul. I skipped a slide. There was supposed to
9 be a slide there, I apologize.

10 On Slide 4, this slide focuses in on a portion of our
11 reservation that we call the Lower Island. As you can see, the Prairie
12 Island Nuclear Generating Plant and its independent spent fuel storage
13 installation are right next door to our reservation, and it shows in the
14 photo there. Next slide, please.

15 There=s no community closer to a nuclear power plant
16 than our=s. The independent spent fuel storage installation is about
17 600 yards from our nearest tribal member=s home, and less than a half
18 a mile from our clinic, community center, elder center, education center,
19 and our gaming enterprise. Next slide, please.

20 Our Tribal Council chambers overlook the nuclear
21 power plant. I=m always looking out the window and it=s not just so I
22 can look at the sun, or the birds, or the Mississippi River bluffs, it=s so I
23 can keep a constant eye on the plant. And that=s kind of changed this
24 day because my position changed so I don=t get to look out the
25 window. It does draw my attention, as it does anybody=s. And this past
26 summer, I think it was in September or August, I participated in a

1 radiation exposure conference in Japan. That included an onsite tour of
2 the Fukushima Daiichi facility. I've seen firsthand what happens when
3 two unlikely to worry about accidents happen and the design basis isn't
4 enough. I've seen the devastation and driven to the abandoned
5 villages.

6 My worst fear, and the worst fear of our people is that
7 we'd be forced to abandon our homeland because of an incident at the
8 plant or at the independent spent fuel storage installation. My biggest
9 concern isn't with the plant operations, it's the nuclear waste packed
10 in the spent fuel pool stored above ground in dry casks a half a mile
11 away from our homes. That's why our tribe has been actively involved
12 in Waste Confidence activity. Slide 7, please.

13 What does Waste Confidence really mean? It's just a
14 fancy term. Do we really believe that the best way to deal with spent
15 nuclear fuel is indefinite long-term storage at places like Prairie Island
16 along the flood plain of the Mississippi River? Can the Nuclear
17 Regulatory Commission be absolutely certain that spent fuel will be
18 safe if stored at the site in dry casks for decades or even centuries?

19 I don't want to be too proactive with the third definition
20 on this slide, but sometimes it seems that our Nation's nuclear waste
21 policy is nothing more than a confidence game. While I have great
22 respect for the Commission and the Nuclear Regulatory Commission
23 Staff with whom we've worked with over the years, I don't envy the
24 work you have been asked to do on Waste Confidence. And I worry that
25 the Waste Confidence Rule will be used to continue the false promises
26 of our Nation's failed nuclear waste policy.

1 The defects in the Nuclear Waste Policy Act were first
2 exposed in 1998 when the deadline for removing nuclear waste to a
3 permanent repository came and went. More than 15 years later that=s
4 still the law of the land, but now it=s simply being ignored. Next slide,
5 please.

6 We cannot accept a Waste Confidence Rule that will
7 leave nuclear waste stranded on Prairie Island for decades to come, not
8 for our next generation, and certainly not for the next seven generations
9 of our people, indeed, of all Americans. As Mdewakanton Dakotas we
10 use the term "seven generations" to refer to a length of time, and the
11 successive generations of our people who can be affected by our
12 actions today. But nuclear waste is more than a seven generation
13 problem. Some of the most dangerous toxic substances known to
14 mankind, spent nuclear fuel, must be isolated from the environment for
15 tens of thousands of years.

16 The Dakota people know how the world can change in
17 100 or 200 years. The Dakotas seceded the first tract of land is now
18 what is the State of Minnesota in 1805. At that time, Dakota lands
19 extended from what is now Wisconsin through Minnesota, and into the
20 Dakotas. Fifty-seven years later our people were forcibly removed and
21 exiled from our ancestral lands after the Dakota Conflict of 1862.

22 Our people returned to Prairie Island and a reservation
23 was established in 1936. Today, just 209 years after the first land
24 secession our land base is reduced to 3,000 acres, and along the flood
25 plain of the Mississippi River. That=s a 200-year snapshot of Dakota
26 history, and the federal government thinks it can make a 10,000-year

1 promise to deal with nuclear waste.

2 With respect to the Waste Confidence Environmental
3 Impact Statement or study, we have a number of concerns that we've
4 included in our comment letters. While we do recognize that the Waste
5 Confidence Rule does not explicitly authorize individual licensing
6 actions, it allows for indefinite onsite storage of spent nuclear fuel by
7 stating that onsite storage is safe for 60 to 160 years, or longer. It's
8 because of the Waste Confidence Rule that the Administration can
9 state that all sense of urgency to solve our nuclear waste problems
10 we're further from a national repository than we were in the 1990s.
11 Next slide, please.

12 The NRC's assumption in the Environmental Impact
13 Statement sidestep the D.C. Court mandate to analyze potential
14 impacts associated with long-term onsite storage. On what basis can
15 the NRC or Nuclear Regulatory Commission assume that casks will be
16 reloaded every 100 years? What if they are not? On what basis can the
17 Nuclear Regulatory Commission assume that institutional controls will
18 exist in 100 years, or 200 years, and what if they are not?

19 With regards to the safety of extended onsite storage,
20 the Department of Energy and the Nuclear Regulatory Commission are
21 both working on technical studies involving the long-term storage and
22 eventual transportation of high burn-up fuel. Since high burn-up fuel
23 has been used for almost 25 years, we are alarmed that there are still
24 so many concerns, uncertainties associated with the extended storage
25 and transportation of this fuel.

26 The Department of Energy and the NRC are still

1 researching technical issues as cladding, degradation, and fuel
2 assembly embrittlement. The Final Environmental Impact Statement
3 must be revised to include a discussion of public health and
4 environmental impacts from indefinite onsite storage of higher burn-up
5 fuel.

6 The NRC, Nuclear Regulatory Commission and the
7 Department of Energy studies will be used to support indefinite storage
8 including the full-scale cask storage demonstration of high burn-up fuel,
9 should be completed before the Nuclear Regulatory Commission
10 moves forward with the Waste Confidence Rule.

11 We=re afraid that the Waste Confidence decision
12 simply kicks the can down the road another 60 to 100 years. By that
13 time, the waste will be too unstable to transport. The end result, the
14 waste will still be stranded on site. Next slide, please.

15 We=re also very concerned about the potential cost of
16 developing a dry transfer system and replacing dry casks every 100
17 years. The Draft Environmental Impact Statement contains no
18 discussion regarding the significant cost to fabricate new casks, or to
19 construct a new independent spent fuel, ISFSI, or dry transfer system.
20 What if the state regulatory agencies refuse to allow the utilities to pass
21 these to rate payers or will pay for this?

22 In recent filing with the Minnesota Public Utilities
23 Commission, Northern States Power Company testified that its installed
24 per cask cost at Prairie Island is \$5.6 million. That=s a 734 percent
25 increase over the \$812,500 per cask cost in 1990s. That=s \$584 million
26 in today=s dollars to be reloaded to 98 casks that will be needed if the

1 plant is only licensed to operate for another 20 years. What will the
2 figure reloading costs be if the casks were increased at the same rate
3 they have over the past 25 years? This cost scenario will be repeated
4 across the country. Has the NRC actually calculated or considered
5 costs associated with assumptions? Next slide.

6 The casks at Prairie Island Independent Spent Fuel
7 Storage Installation like every storage facility around the country were
8 meant to be temporary solutions for 20, 25 years. We remain skeptical
9 that these casks could be used for the time period envisioned in the
10 Waste Confidence Environmental Impact Study. It seems like the
11 capabilities of these casks keep increasing while the prospect for a
12 repository decreases. Next slide, please.

13 The Draft Environmental Impact Statement seeks to
14 analyze severe consequences and potential environmental health
15 impacts generically for all facilities. This makes no sense. We are not
16 aware of another Tribal nation whose entire reservation homeland
17 could be rendered uninhabitable by a spent fuel accident. The Nuclear
18 Regulatory Commission must conduct at site-specific analysis of
19 environmental impacts.

20 We can't have any confidence in Waste Confidence
21 Rules that support a failed nuclear waste policy, and that will result
22 indefinite storage of spent nuclear fuel on Prairie Island. The dry cask
23 storage installation will be a threat to our homeland, our livelihood, our
24 way of life until the waste is finally removed.

25 I thank you for your time today. I'll be happy to answer
26 any questions you may have.

1 CHAIRMAN MACFARLANE: Thank you. We're now
2 going to hear from John Sipos, who is the Assistant Attorney General of
3 the State of New York.

4 MR. SIPOS: Good afternoon, Chairman Macfarlane,
5 Commissioners Svinicki, Ostendorff, Magwood, and Apostolakis. My
6 name is John Sipos, and on behalf of Attorney General Eric
7 Schneiderman and the State of New York, thank you for inviting the
8 State to participate in today's meeting on the Waste Confidence Draft
9 Generic Environmental Impact Statement, which I will refer to as the
10 Draft EIS for simplicity sake, as well as the related rulemaking.

11 The State truly welcomes this opportunity to meet with
12 you directly and discuss the State's concerns, and hopes that today's
13 dialogue will lead to improvements in the Draft EIS and proposed rule.
14 Slide 2, please.

15 As you no doubt have gathered from the comments
16 that have been submitted by the States and by last May's petition
17 regarding scope, New York and other states believe that the Draft EIS
18 and the proposed rule are significantly flawed. And I wish to highlight a
19 few of those concerns in my opening statement.

20 First off, the Draft EIS miscasts the federal action. This
21 is a fundamental flaw in the rulemaking. Building off that mistake, the
22 Draft EIS in its analysis of alternatives and severe accidents are also
23 fundamentally wrong. The Draft EIS is critically flawed because it
24 attempts to analyze the consequences of a spent fuel pool accident
25 generically for all facilities based on the modeled consequences of
26 severe accidents at two nuclear power plants located in rural or less

1 populated areas with markedly less building density. Slide 3, please.

2 Accident consequence factors specific to the Indian
3 Point facility, such as the surrounding population, building density,
4 critical and unique infrastructure, and proximity to significant surface
5 drinking water supplies have not been taken into account in the Draft
6 EIS. If we can move to Slide 4, please.

7 There are two reservoirs which are part of the larger
8 New York City watershed and reservoir system, and they are close by
9 to Indian Point. Specifically, the New Croton Reservoir is six miles
10 away, and the Kensico Reservoir is 16 miles away. They were there
11 before the plant was constructed. Several other reservoirs are also
12 nearby, as are Connecticut and New Jersey drinking water resources. I
13 don't want to delay my presentation but I brought a larger version of
14 this map which I'd be happy to share with the General Counsel,
15 Secretary, and the Commissioners. It sets out these water resources in
16 more detail.

17 But generic review of accident risk at Indian Point is
18 inappropriate because the consequences of a spent fuel pool accident
19 in the densely developed and highly populated areas surrounding
20 Indian Point are significantly greater than in the rural or less populated
21 areas in which the reference plants are located.

22 The State of New York respectfully submits that either
23 NRC must conduct a site-specific analysis of the environmental impacts
24 of a severe accident at the Indian Point spent fuel pools, or use the
25 Indian Point site, not a rural or less populated site, as the baseline for
26 this Environmental Impact Statement. Slide 6, please. Thank you.

1 So, the State of New York seeks a transparent,
2 objective, and thorough review of site-specific impacts, alternatives,
3 and measures to mitigate such impacts. There are, the State believes,
4 potential alternatives. Slide 7, please.

5 And as part of that analysis, the State has several
6 considerations or several issues that it would like to take B- it would like
7 the Commission to take into consideration. The proposed rule and the
8 Draft EIS, however, seek to prevent the State from pursuing the
9 site-specific concerns and consequences. Hopefully in our system of
10 federalism and under NEPA a host state, and that is what New York is,
11 if a host state wishes it should be able to review, test, and challenge the
12 assumptions and seek review of alternatives to the proposed federal
13 action concerning the storage of spent fuel within that state. And at the
14 multi-unit Indian Point facilities, the inquiry should examine the impacts
15 posed by the entire site. This, as we understand it, is the concept of site
16 risk. I know that has been a discussion at Commission meetings over
17 the past two or three years. If site risk is not taken into account the
18 exercise will inappropriately segment the review.

19 Now, the Draft EIS makes reference to various
20 considerations that, as the EIS states, help control risk, and it cites to
21 the Part 100 Site Selection Criteria, the General Design Criteria,
22 Emergency Preparation Plans. But ConEd selected this site in 1955,
23 and the federal government authorized it in 1956, well before many of
24 these programs were put in place.

25 I was preparing a list of things that were not on the
26 books, so to speak, in 1955 and 1956. That was before there was siting

1 criteria, before seismic criteria, before population criteria, before FEMA,
2 before emergency planning requirements, before security
3 requirements, before 9/11, before recognition of sabotage concerns in
4 the Energy Reorganization Act, it was before the general design criteria
5 became effective for Indian Point. And the Draft EIS even notes that for
6 a class of plants, there are plant-specific criteria, not generic criteria.

7 To finish out the list of what hadn't taken place in the
8 mid-50s, it was before the accidents at TMI, Chernobyl, and the
9 multi-unit Fukushima accidents. It was before the reprocessing
10 program ended in 1975 or 1976, and before concerns about the
11 accumulation of spent nuclear fuel in dense storage configurations
12 began to arise. And it was before the National Environmental Policy Act
13 of 1969 that required federal agencies to take a hard look at the impacts
14 of their actions, and the alternatives to mitigate those actions. It was
15 before the 3rd Circuit 1989 Limerick Ecology decision required NRC to
16 examine severe accidents on a site-specific basis.

17 The State of New York submits that there is not
18 another site in this nation or on this continent that poses the challenges
19 and risks that Indian Point does given its site-specific profile. Could we
20 go to Slide 8, please.

21 In light of these concerns, and if we could also then go
22 on to Slide 9, as well, in light of these concerns, the State also has
23 concerns given its understanding of the coverage of the Price Anderson
24 Act. And I'd just like to quote from the slide, and I hope I may do so,
25 Commissioner Magwood, but as the slide states, "There is no
26 regulatory framework for environmental restoration following a major

1 radiological release. @

2 Given these issues, the State respectfully suggests
3 that NEPA is not a problem. It shouldn't be viewed as a problem, it
4 shouldn't be viewed as a hindrance. And applied correctly, it can
5 contribute to better decisions and address the State=s concerns, and
6 help identify alternatives in mitigation, mitigation alternatives that can
7 protect the environment. Slide 10, please.

8 The State of New York led a 2011 and 2012 challenge
9 to the Temporary Storage Rule because it believed that communities
10 that serve as de facto long-term nuclear waste repositories deserve a
11 full and detailed accounting of the environmental public health and
12 safety risks. And it believes that a full range of alternatives should be
13 identified, evaluated, and truly factored into NRC decision making. The
14 State respectfully submits that the Waste Confidence DGEIS as
15 presented fails to provide such a full and detailed accounting and,
16 therefore, fails our communities.

17 The State hopes that you, the Commissioners, will
18 review the comments by the State of New York and other states and
19 address what we believe are the draft=s deficiencies before the
20 rulemaking process continues on. Again, the Attorney General
21 appreciates the opportunity to present the State=s views to you, and as
22 a fellow government in our system of federalism, and as a host state,
23 the State seeks to present objective information to you, the directors of
24 this agency. Host states do have a critical interest in this Commission=s
25 decisions.

26 Thank you for your attention, invitation, and time.

1 CHAIRMAN MACFARLANE: Thank you. Next speaker
2 is Ellen Ginsberg, who is Vice President and General Counsel, and
3 Secretary of the Nuclear Energy Institute.

4 MS. GINSBERG: Good afternoon, Chairman
5 Macfarlane and Commissioners Magwood, Svinicki, Apostolakis, and
6 Ostendorff. Thank you very much for the opportunity to participate in
7 today=s meeting to discuss the commercial nuclear energy industry=s
8 and NEI=s perspectives on the Waste Confidence proposed rule and
9 Draft Generic Environmental Impact Statement. As did John, I will refer
10 to this as the GEIS. Next slide.

11 NEI submitted detailed comments on the proposed
12 rule and Draft GEIS in December of last year. As requested, I will not
13 reiterate those comments, but instead I would like to provide how those
14 comments respond to some of the issues raised by others. Next slide.

15 Questions have been raised regarding the NRC=s
16 framing of the proposed federal action as a rule to codify the Agency=s
17 generic determination regarding the impacts of spent fuel storage
18 pending disposal. We believe that the NRC has correctly defined the
19 proposed action. The Court of Appeals in its decision stated that the
20 rulemaking in question constituted a major federal action. In fact, I
21 would call attention to the fact that the court itself said, and I quote, *“We*
22 *agree with petitioners that the Waste Confidence rulemaking is a major*
23 *federal action.”* This characterization is consistent with the nature of
24 the Waste Confidence Rule, and the rule itself is not a specific licensing
25 action. Therefore, the alternatives to the proposed action are not
26 alternatives to licensing, but alternatives to a rulemaking, such as was

1 described in the GEIS and a policy statement.

2 Some have advocated that the NRC should consider
3 the alternatives of a licensing moratorium in its Waste Confidence
4 rulemaking. Again, I would note that this type of alternative is
5 considered by the NRC, but it=s not considered, and is considered in
6 individual licensing actions as a no-action alternative, but it=s not
7 considered as an appropriate alternative to this rulemaking.

8 Notwithstanding the differing opinions and positions on
9 defining the proposed action, I would emphasize that the NRC has
10 fulfilled its NEPA obligations and satisfied the court=s remand by taking
11 a hard look at the impacts of spent fuel storage pending disposal. Next
12 slide, please.

13 Regarding the adequacy of the NRC=s assessment of
14 the unlikely scenario whereby a repository does not become available,
15 NEI agrees with the Commission that the 60-year time frame is the
16 most likely scenario for repository availability. It=s wholly unreasonable,
17 which is to say remote and speculative for NEPA purposes to assume a
18 complete failure of the federal government to meet its legal obligations
19 to dispose of spent fuel.

20 With respect to the short-term and long-term time
21 frames assessed in the Draft GEIS, the NRC=s assumptions are quite
22 conservative. For example, the NRC assumes that spent fuel will be
23 repackaged every year. The industry=s operating experience with
24 spent fuel storage systems demonstrates that repackaging at this
25 frequency is not likely to be necessary.

26 Using those types of very conservative assumptions

1 has resulted in a Draft GEIS, and again we would stress one that
2 satisfies NEPA=s hard look mandate. Storage in the short and
3 long-term time frames relies on proven technology and procedures that
4 can be accomplished safely. Next slide, please.

5 For all of the time frames assessed, the NRC
6 reasonably assumed that institutional controls will continue to exist.
7 During the short and long-term time frames, spent fuel storage systems
8 will remain under NRC oversight. I would note that this assumption is
9 consistent with current NRC regulations, such as 10 CFR Part 61. It
10 was reasonable for the NRC to assume the existence of institutional
11 controls, and the failure to establish a permanent repository is already a
12 highly unlikely event which neither NEPA, nor the court requires a
13 piling-on effect of additional conservatism by assuming the loss of
14 institutional controls. Indeed, that would be a worst case and remote
15 and speculative scenario beyond the reach of NEPA.

16 We have noted in our comments, however, that the
17 Department of Energy=s EIS for the no-action alternative for Yucca
18 Mountain does assume that institutional controls would fail after 100
19 years. Although we continue to believe that that is a worst case
20 scenario, we do suggest that the NRC in its GEIS refer to the analysis
21 already done.

22 The Commission has directed the Staff to adopt or
23 incorporate by reference other agency analyses, and this is exactly
24 what we=re suggesting. It=s consistent with COMSECY-12-0016. Next
25 slide.

26 The Draft GEIS also satisfies the court=s direction and

1 meets the Agency=s NEPA obligations to assess the spent fuel pool
2 leaks, and it does so by using a bounding analysis. The GEIS does not
3 simply recite the data from past leaks, or rely solely on the Agency=s
4 regulatory oversight. Rather, it appropriately describes the regulatory
5 regime for spent fuel pool leaks and also explains the industry initiatives
6 for groundwater monitoring and remediation. This analysis of spent fuel
7 pool leaks doesn=t merely hinge on the NRC being on duty. Rather,
8 it requires and recognizes the responsibility and actions of licensees to
9 detect and mitigate leaks. The GEIS also uses information from past
10 leaks to inform its assessment. Information from past leaks is one data
11 point in the Agency=s overall assessment. Next slide, please.

12 The NRC=s approach to spent fuel pool fires is
13 consistent with the federal precedent in the Carolina Environmental
14 Study Group case. The NRC=s recent consequence study of the effect
15 of beyond design basis earthquakes on spent fuel pools further
16 supports the Draft GEIS= conclusion. In that study, I B- or that study
17 found, and I quote, ASpent fuel is only susceptible to a radiological
18 release within a few months after the fuel is moved from the reactor to
19 the spent fuel pool.@ Next slide.

20 On the issue of whether the GEIS should incorporate
21 the environmental impacts into site-specific cost-benefit analyses, there
22 is simply no evidence that either the costs or impacts of spent fuel pool
23 storage will tip the balance of a NEPA cost-benefit analysis for an
24 individual project. As set forth in the GEIS, the environmental impacts of
25 continued spent fuel storage in the short and long-term time frames are
26 small. Moreover, the cost- benefits of specific projects are considered in

1 individual licensing reviews. Whether the small impacts of continued
2 spent fuel storage tip the NEPA balance could be considered an
3 individual case, of course, without the opportunity to litigate in individual
4 proceedings such as the generic issues already addressed in the
5 rulemaking. Next slide.

6 There is ample support in the existing record including
7 from the previous Waste Confidence decisions to make a reasonable
8 assurance finding regarding the availability of a repository, and the
9 safety and small impacts of storage until a repository is available.
10 Consistent with the prior Waste Confidence decisions, the traditional
11 findings should be retained. The court=s remand did not require that the
12 NRC remove or change the findings, only that the Agency remedy
13 certain aspects of its environmental assessment. Next slide.

14 This slide contains NEI=s suggested language for the
15 Waste Confidence Rule. For the reasons I=ve just discussed, we urge
16 the Commission to retain the reasonable assurance findings regarding
17 the availability of a repository, and for the continued safety of spent fuel
18 storage. There is certainly more than ample support in the record to do
19 so.

20 And with that, I=d like to thank the Commission for the
21 opportunity to present the industry=s views.

22 CHAIRMAN MACFARLANE: Great, thank you for
23 saving us a little time. Next we have Michael Callahan who is here from
24 CCMSC Corporation on behalf of Governmental Strategies and the
25 Decommissioning Plant Coalition.

26 MR. CALLAHAN: Well, thank you. The

1 Decommissioning Plant Coalition appreciates the opportunity to appear
2 before you today on the Waste Confidence draft rule and the
3 accompanying Generic Environmental Impact Statement. Slide 2,
4 please.

5 We first want to emphasize our great respect for Keith
6 McConnell and his team for the outstanding work they are performing
7 on this matter. Their efforts bring great credit to themselves and to the
8 Commission as a whole. Slide 3, please.

9 The Decommissioning Plant Coalition or DPC is
10 comprised of a number of standalone former reactor sites where
11 reactor operations have permanently ceased and decommissioning
12 activities have been accomplished, are being accomplished, or lie
13 ahead in the site=s future. This slide shows our current members we
14 originally formed in 2001. Slide 4, please.

15 Our main purpose has been and remains to do
16 everything we can to insure that issues that have unique impact on the
17 permanently shut down facilities are properly addressed, and we have
18 often stated, and I want to convey this again today that our members
19 have kept and will continue to keep the stored spent fuel and greater
20 than Class C waste safe and secure as long as we are the owners and
21 licensees.

22 We=re trying to hasten the day when the federal
23 government will fulfill its contractual obligation to remove the spent fuel
24 and greater than Class C waste from our sites. As the government=s
25 action has stretched on longer than our companies, our states, and our
26 communities ever envisioned, our companies are increasingly

1 interested in insuring that the NRC recognizes that its proposals and
2 actions often, and perhaps usually have a unique impact on our current
3 and soon to be independent spent fuel storage installations.

4 I'm going to summarize our complete statement in the
5 interest of time, and with that let's go to Slide 5.

6 With respect to the draft rule itself, we believe that the
7 scope of the rule is appropriately limited to the deficiencies identified by
8 the court. We believe that the rule firmly and fairly addresses these
9 deficiencies, and that its analysis of short, intermediate, and long-term
10 storage time frames are more than adequate to support the long-held
11 tenet that the U.S. can and will successfully store and dispose of used
12 fuel and reactor-generated high-level waste. That, in summary, are our
13 comments on the draft rule itself. Slide 6, please.

14 Before adding comments on the Draft Generic
15 Environmental Impact Statement and providing information on the four
16 questions that you asked commenters to address, we return again to
17 our primary recommendation in our December 31st, 2012 letter on the
18 Waste Confidence scoping process that the Commission must as its
19 first principle continue to hold to and articulate its long-established tenet
20 that it does not support indefinite onsite storage of spent fuel or greater
21 than Class C waste. Continued default by the federal government in
22 fulfilling its contractual obligations under the standard contract and the
23 resultant indefinite storage at our shutdown reactor sites simply should
24 not be endorsed as acceptable public policy. Please be aware that after
25 the publication of the rule and the GEIS, the Commission and Staff will
26 remain responsible for insuring that NRC regulatory programs and

1 policies do not foster indefinite onsite storage presumably
2 unintentionally.

3 We continue to encourage the Commission to
4 undertake an analysis of best practices regarding storing and securing
5 spent fuel and greater than Class C waste at our sites, and then to
6 articulate those in communications with the Executive Branch and the
7 Congress, and in addressing the public. Slide 7, please.

8 You asked commenters to address the four questions
9 in the FRN that accompany the draft rule and the Staff believes it would
10 be helpful if we did so today. Let us say first that we remain confident
11 that the federal government will meet its constitutional and statutory
12 obligations to protect citizens from safety and security threats. This
13 slide summarizes we don't believe a specific time line is necessary.
14 Please retain ample explanations in the elements of the rule, support
15 the Statement of Considerations, and we do endorse a name change of
16 the rule. Slide 8, please.

17 The draft Federal Register Notice for the proposed final
18 rule states that the analysis in the GEIS provides a regulatory basis for
19 the final rule. It also states that the analyses in the GEIS are based on
20 current technology and regulation. We believe that these two
21 statements require some additional amplification.

22 The storage stick canisters used at our site can support
23 safe storage of spent nuclear fuel and high-level waste for decades to
24 come. Additional research is either underway or will be needed has
25 been identified to specify exactly how much longer these systems can
26 fulfill their safety and security functions with appropriate margins.

1 The results of that research will need to be considered
2 with the results of intervening and ongoing policy, legislative, and legal
3 activities. These will determine exactly how long we should proceed to
4 the future in serial acquisition and operation, and decommissioning of
5 prospective dry transfer systems and ISFSI systems and sites.
6 Therefore, the above language both here and where applicable in the
7 GEIS ought to be clarified and amplified to better explain that the
8 100-year building requirements are being used in recognition that such
9 rebuilding is probably and surely necessary at some point, that 100
10 years is chosen for the purposes of the GEIS as a reasonable surrogate
11 until those future research needs, information needs are complete and
12 that dry transfer systems may well be needed should the period of that
13 reactor storage extend to or beyond 100 years, and is similarly being
14 used as a reasonable surrogate. Refining the language will also lessen
15 any confusion over what the NRC regulations are now or will be after
16 the collection of the analysis and necessary information.

17 We have some additional comments on the GEIS in
18 our full statement, and with that, Slide 9, please.

19 As a final matter, we wish to return to the task you have
20 before you as additional plants shut down and face decommissioning
21 after this rulemaking. The newly shutdown plants in the Agency seem at
22 times to be straining to reach decisions that address matters that were
23 settled when a number of our plants shut down many years ago. We
24 hope the Agency can draw on these precedents and allow the process
25 of modifying and deleting requirements at the newly shutdown sites,
26 where warranted, by the sharply reduced hazards of having the fuel

1 permanently removed from the reactor, and having pledged to cease
2 operating.

3 We are working to inform that process within the
4 shutdown community, and hope the NRC can take advantage of
5 personnel, resources, recorded decision documents, and other
6 measures to facilitate current decision making and provide increased
7 clarity with which the NRC and licensees can address community=s
8 questions. Slide 10, please.

9 In summary, we believe the draft rule addresses the
10 deficiencies found by the court, that the Commission should expand
11 and clarify its written material ancillary to the rule, as well as the GEIS,
12 and that the Commission must seek ways to exercise its safety and
13 security policy role in spent fuel management to insure it does not
14 passively endorse onsite storage.

15 Thanks again for the opportunity to appear today, and
16 be glad to answer any questions.

17 CHAIRMAN MACFARLANE: Thank you. And the final
18 presentation for this panel is from Geoff Fettus who is the Senior
19 Project Attorney at the Natural Resources Defense Council.

20 MR. FETTUS: Thank you very much, Chairman
21 Macfarlane and fellow Commissioners. Thank you very much for having
22 us this afternoon.

23 Rather than read a statement to you and go into our
24 extraordinarily detailed comments, I thought I=d go into more of a
25 30,000-foot range and hopefully be very concise so we can get right to
26 the questions, because I think I have some very different perspectives

1 from my excellent colleague, Ellen, and let=s just get right to it. First
2 slide, please.

3 The three primary points, and I=m not going to read the
4 slides to you either. And, by the way, fortunately you won=t have to
5 read the slides here, a lot of them, because some of them I hope you
6 take back and you pour yourself a coffee or a tea, whatever it is you
7 drink, and you actually do read a few things at some point as you start
8 to deliberate. And the first thing you need to read is the court decision
9 from June of 2012. And the next thing you need to start reading are the
10 range of comments that you got, but always go back to the court
11 decision and look at what they said.

12 And I tried to, in thinking about what I was going to take
13 a very short period of time to talk to you about today in that 30,000-foot
14 level, I thought I=d start with and end with we have a fundamentally
15 different conception of NEPA. And I think that=s evident in our
16 comments and all the particulars, but let=s talk more broadly what we
17 think that is. We also tried to provide you a path forward in our
18 comments, and I=ll get to that. Next slide, please.

19 And then a fourth point just to make sure, there=s
20 nothing new here today that I=m going to bring up, and there=s nothing
21 that adds to the record. We=re going to talk about what we wrote. Next
22 slide, please.

23 Here=s what I think the fundamental disagreement is.
24 And it=s not an EIS that=s focused on a rule per se, it=s that the NRC
25 thinks the proposed action is whether or not it writes a rule. We think the
26 proposed action is the continued licensing of nuclear power plants that

1 allows for the production of nuclear waste then will have attendant
2 environmental impacts as it has to be stored perhaps indefinitely. And,
3 again, this is where I encourage you to go back and read the June 2012
4 decision from the D.C. Circuit. Next slide, please.

5 Here=s your proposed action, there=s the site. Next
6 slide, please. Again, you don=t need to read it. Here=s your purpose
7 and need. I just wanted to make sure that I was quoting directly and in
8 the slide as you guys do go back and take time to reflect. Next slide,
9 please. And here are your alternatives, and they=re very concise, and
10 they=re focused on the rule, and they=re focused on ways of carrying
11 out the rule, or not even doing a rule is one of your alternatives. So, next
12 slide, please.

13 What actually happened? As I said, I=m going to be
14 concise so we can get to the questions. So, by statute a major federal
15 action is one that significantly affects the quality of the human
16 environment. Performing what we called in our comments the minor
17 bureaucratic act of selecting among four alternative ways to complete
18 the NEPA response is not a major federal action that affects the
19 environment. Such an act in and of itself doesn=t rise and trigger
20 NEPA. Next slide, please.

21 We looked broad and far to find any comparable
22 federal agencies that had done such an EIS triggered by a rule and we
23 found nothing even close to comparable in terms of prior federal
24 analyses, in terms of what the alternatives were. There were EISs that
25 were focused on rulemaking, but then they burrowed into actual
26 environmental cost-benefit which this doesn=t do in the alternatives,

1 which is the heart of NEPA. Next slide, please.

2 So, here I simply quoted a bit from our comments just
3 to make sure that there=s no departure today, nothing new that you
4 haven=t heard before. And the focus is on first a major federal action,
5 but we didn=t just criticize what you did, we decided to try and be
6 constructive, as we always try and be constructive, and have a long
7 history with this Agency and others of trying to offer solutions and a path
8 forward, so next slide, please.

9 We actually frame for you a legally compliant definition
10 of a proposed action that actually focuses on a rule. And I=ll read part of
11 it to you. AThe NRC proposes to reinstate as a predetermined stage of
12 its individual licensing actions,@ and by the way, I=ll stop right there. I
13 wanted to parse this for you.

14 Read the 2012 decision and look at how the D.C.
15 Circuit understood the Waste Confidence rulemaking as a predicate for
16 licensing actions. It=s not B- go back to our scoping comments, as well,
17 and the exchange of letters that Ms. Curran and I had with the
18 Chairman in the process prior to the scoping even coming out. So, I
19 guess that was post-scoping/pre-draft to be precise.

20 So, first the NRC proposes to reinstate as a
21 predetermined stage of individual licensing action for nuclear reactors
22 and independent spent fuel storage installations a binding rule that
23 generically considers and determines for the purposes of future
24 licensing reasonably foreseeable, and you can read the rest
25 yourselves. But that would actually frame a federal action that I think
26 would lead necessarily to site-specific EISs at some point down the

1 road, but that would frame a defensible federal action under the law.

2 Next slide, please.

3 And once you actually frame such a federal action you
4 would actually create B- what would flow from it would be a range of
5 alternatives, so we also put that in our comments. And I decided, it was
6 actually an office discussion whether or not I would bring page 32 of our
7 comments with it and hand it across the table again. 32 is if you actually
8 printed the PDF of the comments that we submitted to the Agency, it=s
9 not an 8.5 by 11 piece of paper, it=s 8.5 by 14 because it wouldn=t fit.
10 And, thankfully, computer systems or the word processing systems now
11 allow us to do that. It=s pretty fantastic, so I think it=s page 32. And we
12 actually drew up a matrix of what a proposed action would look like, and
13 then what the actual alternatives would look like. So, next slide, please.

14 And you would actually look and be able to contrast the
15 issues of real alternatives with real environmental costs and benefits.
16 And the alternatives that we selected for you, again we tried to think in
17 terms of what the Agency needs to actually do before it to comply with
18 NEPA, contrasted with the current approach of what we think is a focus
19 on the minor bureaucratic task of selecting whether or not you=re
20 going to do a rule. Next slide, please.

21 On the matrix on page 32 that we hope you reflect on
22 with your coffee or your tea, are relevant time scales, alternative
23 storage modes, safety-relevant classes of spent fuel, the high burn-up
24 question raised by my colleagues, storage cask technology options,
25 and then most important, reliance on erosion of institutional controls as
26 a function of time which B- and, again, there=s a long discussion in our

1 comments on the issue of institutional controls, and DOE=s Scenario 2
2 where they look at the loss of institutional controls at independent spent
3 fuel storage facilities. Next slide, please.

4 When you actually look at the factors we said okay,
5 now what would the NRC actually have to look at? What would a real
6 EIS that burrowed into this look at? Well, we actually came up with a
7 no-action that we think you=re facing which is continued storage. I
8 mean, as far as I know spent nuclear fuel exists and it=s not going
9 away, so its baked in under the existing licenses. Reasonable
10 Alternative 1, license extension only based on current licenses.
11 Reasonable Alternative 2, proposed reactors with COLs B- I=m sorry, I
12 violated the no acronyms, the Construction and Operating License
13 applications received by 2030. Reasonable Alternative 3, current
14 market share scenario of spent fuel production which would be
15 substantial growth for the industry as far as we see going out to 2030, or
16 even Reasonable Alternative 4, a major growth scenario. So, we think
17 all of those would be reasonable alternatives to examine. And none of it
18 would be reinventing the wheel for you. Next slide, please.

19 So, what should happen now in my brief time? This is
20 what we think the court directed you to do, is to identify the major
21 federal action. We think that was done for you in that decision, and you
22 disregarded what the court has said here in the draft thus far. But,
23 number two, you have to evaluate the environmental effects of failing to
24 secure permanent storage, and that=s directly from the decision.
25 Number three, to properly examine the future dangers and key
26 consequences with respect to spent fuel pool fires and leaks, and

1 that=s from the decision. And we think thus far you failed to perform
2 these actions. Next slide, please, final slide.

3 We don=t think B- yes, will this take longer? Yes. But
4 we don=t think a lot of this is reinventing the wheel. There are places to
5 start and work that=s ongoing and analyses that can be incorporated
6 and expanded upon. And we think the Draft GEIS needs to be
7 withdrawn, we think it needs to be rescoped and then reissued along
8 the lines of what I=ve described, and on page 32 we=ve tried to give
9 you a roadmap. And we thank you very much for allowing us this time to
10 speak with you today, and I look forward to your questions.

11 CHAIRMAN MACFARLANE: Thank you. Okay, thank
12 you all for your presentations. We move to the question part and we=re
13 going to start off with Commissioner Svinicki.

14 COMMISSIONER SVINICKI: I want to add my thanks
15 to those of Chairman Macfarlane for certainly your presence here
16 today, and for the aspects of the comments submitted by each of your
17 organizations that you=ve highlighted here today. And I wanted B- I
18 was thinking about Mr. Fettus= comments about the full complement of
19 comments, so I think from just the organizations represented here at
20 the table when we printed those out, and I don=t know if any of my
21 colleagues brought their binders down here today, but it=s a stack of
22 papers, so just from your organizations, not the full comment record. I
23 think it=s three or four inches worth of paper, so I know that we gave
24 you a period of time that is inadequate for you to cover the full range of
25 topics that your organizations developed on Waste Confidence. And I
26 also want to acknowledge, as the Chairman did, that we had a lot of

1 commenters who are not represented here today. We did our best to
2 get a diversity of viewpoints but, of course, you are representative of a
3 much larger comment record, and organizations that B- and individuals,
4 as well, who presented comments both perhaps consistent with those
5 we=ve heard here today, and other perspectives that in the interest of
6 time in this meeting were not able to present. But, certainly, the
7 comment record itself is available for each of you to examine.

8 As Chairman Macfarlane noted, the structure of this
9 meeting is also a little bit confining today because we do both have all of
10 the Waste Confidence proposed contentions that are held in abeyance
11 upon order of the Commission in various proceedings. And then we
12 also are at a phase in this B- in the procedural process that we=re going
13 through that we are in receipt of the body of public comment but the
14 Staff will struggle when they come up here with the fact that they have
15 not yet fully evaluated and gone through that comment record.

16 So with the awkwardness that that presents, I think a
17 question that occurred to me certainly when I=ve been in your position,
18 I have taken a body, a much larger body of information and then I have
19 been confined to present and highlight only various aspects of it, it may
20 be that some of you, if you=re like me, as you listen to other presenters
21 you thought, you know, I considered emphasizing that in my
22 presentation, and I didn=t. So, I wanted to first provide an opportunity if
23 any of you upon hearing your fellow presenters and what they had to
24 say, if there was anything within the four corners of the comments that
25 you submitted from your organizations that you now say I should have
26 emphasized that, and I would like to take a moment to make that point

1 in response to any other commenter. Is there anyone who=s thought
2 about that and wanted to add to anything that they presented already
3 today? Mr. Fettus, if you would like, because you kind of even teed up
4 that thought a little bit, so you mentioned Ms. Ginsberg and some points
5 of departure you take.

6 MR. FETTUS: Well, thank you so much for the
7 opportunity, again. A couple of things I=d like to echo. First, I=d like to
8 echo Mr. Sipos= point that we really believe that this shouldn=t be a
9 hindrance, rather an opportunity to do the analysis right, because this is
10 an analysis the public interest community has waited for B- and I
11 speak for just NRDC, but I can say the public interest community has
12 waited for this analysis for nearly four decades since this process first
13 came out of an NRDC petition for rulemaking in the late 1970s. And I
14 think a strong generic review then triggers initial B- then triggers strong
15 site supplemental reviews is a crucial process for the Agency to
16 undertake, especially to engender public trust in what=s been a long
17 and winding road for the search for repositories.

18 And you=re familiar with my work on Capitol Hill as well
19 from our respective paths and there=s a long public record that both I
20 have and NRDC has on support for a strong science-based repository
21 program. So, we are deeply in favor of a repository program. I actually
22 think it=s going to end up being repositories but, again, you can look at
23 my public testimony before Senators Wyden and Murkowski on these
24 issues. But just the actual act of support for finding a repository and
25 having statements B- and this is responding to Mr. Callahan, having
26 statements of Agency support for finding a repository and against

1 indefinite storage. Well, I think we=re all against indefinite storage. I
2 mean, nobody thinks this is the right way to go. We have different
3 visions on what would constitute a proper repository program, but doing
4 this analysis can help inform that path forward for Congress and
5 everybody else in a way that=s very important.

6 And as a last thing, in doing that analysis there=s a
7 long discussion in our comments which I hope you read on institutional
8 controls and DOE=s Scenario 2 which was its section of its EIS where it
9 looked at the loss of institutional controls at spent fuel pools and
10 independent storage facilities at sites around the country. And we think
11 we raised a number of criticisms of DOE=s Scenario 2, but I=d like to
12 stress something we stressed in our comments.

13 DOE=s Scenario 2 they conducted I think in >99 or
14 2000, so it=s dated but it=s not that dated, it=s a starting point. You
15 don=t have to reinvent the wheel. Just referencing it is inadequate
16 under NEPA. I mean, that=s a meaning that doesn=t remotely
17 constitute a hard look. However, using that as a starting point for the
18 analysis and addressing the issues of high burn-up fuel and a whole
19 bunch of things that will need to be done to improve upon that analysis,
20 that=s NEPA, that=s a start, so thank you for the opportunity,
21 Commissioner.

22 COMMISSIONER SVINICKI: Thank you very much.
23 Did anyone else have any points that they would like to raise? Yes, Mr.
24 Callahan.

25 MR. CALLAHAN: Just very briefly, I shared Ron=s
26 frustration, if you will, about the indefinite storage. Hopefully, that

1 statement, just the very statement itself can survive in whatever product
2 of your work is, that is, you're not endorsing it. And we continue to try to
3 suggest ways, and suggest that you look for ways limited as you are to
4 exercise some analysis to articulate and advance those thoughts. But
5 that's what struck me in Ron's statement.

6 COMMISSIONER SVINICKI: Okay, thank you. Would
7 anyone else like to amplify? Mr. Johnson?

8 MR. JOHNSON: Just from my perspective from
9 outside looking in, as just a general citizen here but I'm an elected
10 official from the Prairie Island Indian Community, my role is to govern
11 and I haven't the capacity to go beyond that as far as in the nuclear
12 industry here. And I think I've kind of encroached on that line, which
13 I'm doing it for the safety of our community. But I'd much rather
14 concentrate some of my duties and responsibilities to governing than
15 having to address an issue that hopefully the NRC, the Nuclear
16 Regulatory Commission, and the Department of Energy who are part of
17 this federal government can help in coming to a corrective solution on
18 our nuclear waste in America here today. So, that's the way I look at it.
19 Thank you.

20 COMMISSIONER SVINICKI: Thank you. And, again,
21 we really appreciate your traveling to be present to communicate that in
22 person.

23 MR. JOHNSON: Thank you.

24 COMMISSIONER SVINICKI: Thank you. Did either of
25 the B- any of the rest of the panel want to say anything?

26 MS. GINSBERG: I'll go next. Thank you.

1 COMMISSIONER SVINICKI: Okay.

2 MS. GINSBERG: And I would endorse what Mr. Fettus
3 said which is there is stark contrast between his view and mine. I think
4 it=s important, though, and this is really the tip of the iceberg, but I think
5 it=s very important to recognize what this rulemaking is and what this
6 rulemaking is not. And this rulemaking is a review of onsite and offsite
7 storage for the period following license termination, license expiration
8 until disposal. It is not a fundamental review of the federal
9 government=s consideration of repositories. It=s not a fundamental
10 view of a variety of other things that were mentioned today, so I just
11 think it=s important in the context of this conversation to remember
12 what the rulemaking focuses on, what the court addressed, and what
13 the court said. Thanks.

14 COMMISSIONER SVINICKI: Okay, thank you. And,
15 Mr. Sipos, I have one and a half minutes but I=ll give it to you if you
16 would like. I have a feeling you might have some contrasting points.

17 MR. SIPOS: Yes. Thank you, Commissioner. One item
18 that Ms. Ginsberg referenced was that there might be a possibility for
19 the states to pursue issues in individual licensing proceedings, and we
20 just don=t see that. We see the rule as an attempt to terminate that or
21 cut that off. And we do think as a government, as a participant in the
22 federal system that the state with, you know, competent attorneys,
23 hopefully, and experienced experts can bring concepts to the
24 Commission=s consideration that can be the basis of alternatives, and
25 possibly cost-effective alternatives, and that that would B- that that is a
26 societal benefit. And we feel very strongly that there must be that

1 opportunity either here or B- we think it should be here, but it has to be
2 someplace. Thank you.

3 COMMISSIONER SVINICKI: Thank you. I thank you
4 all. Thank you, Chairman.

5 CHAIRMAN MACFARLANE: Thank you very much.
6 Commissioner Apostolakis.

7 COMMISSIONER APOSTOLAKIS: Thank you. There
8 are two issues that are not very clear in my mind. One is this generic
9 versus site-specific analysis, and the other has to do with the remote
10 and speculative scenario, so let=s start with the generic.

11 Mr. Sipos, you said B- I think you said that if the NRC is
12 to do a generic EIS picking Indian Point as a case study rather than
13 some other study, of course, that would create problems for other sites
14 that would feel that that=s not representative. And then I believe Mr.
15 Fettus said that you=re for site-specific analysis, or something to that
16 effect?

17 MR. FETTUS: Yes.

18 COMMISSIONER APOSTOLAKIS: Okay. So, I=d like
19 some elaboration on this. What should the Agency do? I mean, there
20 are site-specific features. Can a generic statement cover those, or do
21 you want a generic statement to be supplemented by site-specific
22 analyses? What B- can you clarify that for me?

23 MR. SIPOS: Yes, Commissioner, I will try to do B- I will
24 try to clarify it for you. Each site poses B- has a different profile, and it=s
25 not just is it a BWR or a PWR. It is what is B- what are the
26 characteristics of the human environment within 50 miles of that plant.

1 And a severe pool accident at Wolf Creek would likely lead to different
2 consequences than a severe pool accident at Indian Point. And I
3 viewed many of your meetings, and you've had discussions about risk,
4 likelihood of events, times to consequences. I believe you returned to
5 that in the last meeting in January on the spent fuel pool consequence
6 study. And given the unique profiles of each site, 60, 65 sites, there are
7 likely going to be different environmental consequences, so as the
8 Commission has done elsewhere in other contexts for severe
9 accidents, we in New York State believe it would be appropriate in the
10 context of spent nuclear fuel, which has sort of been off the table for a
11 while going back to NUREG-1150, going back to other examinations
12 have been focused on reactor, what is the reactor risk? And we could
13 also talk about what is the site risk? And I know that's been another
14 topic of conversation, but we believe that through NEPA, through a
15 cost-benefit analysis, through some of the tools that the federal
16 government has developed, that there would be a path to identify
17 cost-beneficial alternatives. And it may not be for every facility, and it
18 may not be that every state wishes to B- there may be many states who
19 don't wish to B- who don't have concerns, but if a state does have a
20 concern we think an adequately resourced, competently staffed state
21 effort, that there should be an opportunity for that. I don't know if I've
22 addressed your question.

23 COMMISSIONER APOSTOLAKIS: We're getting
24 close. You probably have something to say.

25 MS. GINSBERG: Yes. I was just going to add, you
26 know, reasonable scenarios are part of the NEPA analysis. And it's

1 important that we look at the probability times consequences as the
2 Agency did. The recent consequence study just said that for B- it=s
3 only for several months, and several is defined B- is a relatively short
4 period of time, that there=s any risk of a spent fuel pool fire. I needn=t
5 tell you, Commissioner, you=re the PRA expert, but the risk goes down
6 to virtually zero after just a few months when the spent fuel cools in the
7 pool. And then, moreover, it=s moved to casks thereafter.

8 COMMISSIONER APOSTOLAKIS: But how does that
9 address the issue of site-specific versus generic?

10 MS. GINSBERG: There=s nothing unique about the
11 risk of the actual incident or release, if you will, for Indian Point as
12 opposed to anywhere else.

13 COMMISSIONER APOSTOLAKIS: Yes, it=s a
14 statement you have on your Slide 5 that the site-specific cost-benefit
15 analysis will not tip the scale, something like that.

16 MR. SIPOS: And, Commissioner, we think it would.

17 COMMISSIONER APOSTOLAKIS: Now, this other
18 thing, no repository forever. Am I to take it from your comments, Ms.
19 Ginsberg, that you believe this is a remote and speculative scenario?

20 MS. GINSBERG: We believe it=s highly unlikely, and
21 that the Agency has appropriately taken a much more rational and
22 reasonable approach considering various time frames, the 60-year time
23 frame, and then the 100-year time frame. It=s not that the Agency
24 didn=t look at this, which is what NEPA requires. NEPA requires that
25 there be consideration given the court=s decision, with which I might
26 add we take issue, but the D.C. Circuit decided what the D.C. Circuit

1 decided. So, we think that, basically, the Agency has done what needs
2 to be done under NEPA. There=s a hard look that=s been taken at the
3 two earlier periods. If you look at international B- the international
4 experience, there=s reason to believe that within 35 years one could
5 establish a repository, so 60 years, 100-year time frame are very
6 reasonable.

7 The Agency looked at the no repository time frame, or
8 pardon me, scenario, and decided that that wasn=t the likely scenario.

9 COMMISSIONER APOSTOLAKIS: But in your answer
10 you used the word Aunlikely,@ but in your slides you use the word
11 Aremote.@ Am I to take those to the B-

12 MS. GINSBERG: Pardon me?

13 COMMISSIONER APOSTOLAKIS: Remote and
14 speculative?

15 MS. GINSBERG: I would argue it=s remote and
16 speculative. The D.C. Circuit had a slightly different view of it, so I think
17 highly unlikely and remote and speculative here can be considered as
18 representing the same concept.

19 COMMISSIONER APOSTOLAKIS: How does one
20 prove that? Do you have to prove it that it=s remote B- or is it a matter of
21 judgment? I don=t know how I would do that.

22 MR. FETTUS: Oh, I=m happy to talk to this,
23 Commissioner.

24 COMMISSIONER APOSTOLAKIS: Oh, you B-

25 MS. GINSBERG: And I=d probably be happy to
26 respond.

1 MR. FETTUS: First, I=d like to B- this Commission is
2 well aware of its obligations, and I=ve known all of you for a long time.
3 You=re well aware of your obligations, and you work very hard to carry
4 them out. And what the D.C. Circuit wrote in its June opinion of 2012 is
5 law. And the D.C. Circuit invalidated the Commission=s conclusions as
6 a whole, and it didn=t just remand the Waste Confidence Rule, it
7 vacated it. It=s gone, gone in its entirety. And when they vacated it, they
8 vacated everything in it.

9 And I just need to stress so clearly that go back and
10 read B- as I started today with my 30,000-foot proposal, go back to the
11 decision and read that first. And one of the things they talk about was
12 there is no basis for confidence that we will have a repository. And the
13 Agency needs to analyze what that means.

14 It is not wholly unreasonable, remote or speculative to
15 consider that the federal government or B- which we don=t need to go
16 re-litigate the many decades ago decision for the federal government to
17 assume the industry=s burden of the waste. That is as B- but there=s
18 no reason to believe right now, despite the extraordinary efforts of a lot
19 of brilliant people to presume that we will arrive at a repository, or
20 repositories in any near-term future. The Blue Ribbon Commission that
21 Chairman Macfarlane sat on worked very hard on this and tried to chart
22 out a roadmap with the assistance of NEI, with the assistance of NRDC,
23 and many others.

24 COMMISSIONER APOSTOLAKIS: But you are using
25 the word B-

26 MR. FETTUS: And it=s not remote B-

1 COMMISSIONER APOSTOLAKIS: B- A believe, @
2 it=s a matter of belief then. It=s not a matter of proof.

3 MR. FETTUS: What? What is a matter of belief?

4 COMMISSIONER APOSTOLAKIS: That there will
5 never be a repository or that B-

6 MR. FETTUS: I=m not saying I believe one way or the
7 other. I=m talking about what NEPA requires the Agency to look at and
8 analyze. And what NEPA requires the Agency to look at very clearly is
9 the potential for not arriving at a final disposal solution. And what does
10 that mean?

11 And we respectfully suggest to you, you don=t have to
12 reinvent the wheel in starting to look at that. You have DOE started that
13 process. You have a lot more to do, and a lot of things to fix, and we
14 tried to give you a roadmap there on the inadequacies we saw with that.
15 But, again, this is not starting from whole cloth. NEPA requires this
16 analysis.

17 COMMISSIONER APOSTOLAKIS: I must say I=m still
18 perplexed by that. Mr. Johnson here criticized the NRC Staff=s
19 assertion that every 100 years indefinitely we will be doing that. What
20 do you expect the Staff to say? Well, maybe B- I ran out of my time.

21 CHAIRMAN MACFARLANE: Okay. Commissioner
22 Magwood.

23 COMMISSIONER MAGWOOD: Thank you, Chairman.
24 Well, first, let me thank all of you for not just being here today, but for
25 participating in this process. We received so many thousands of
26 comments from across the country, and it=s gratifying to know that

1 people are paying attention to these issues. You know, whatever point
2 of view they bring to it, whatever opinion they have about it, a lot of
3 people took a lot of time and effort to contribute to our analysis, so we
4 really appreciate that, and it=s very important.

5 And I also wanted to particularly thank Mr. Johnson for
6 appearing today. It=s always important, I think, for us to get the
7 perspective from Tribal governments. We did that all too infrequently in
8 these issues, so I appreciate you making the effort to come here today
9 and sharing your views.

10 And since you=re sitting here, let me do an ad for our
11 new Tribal policy initiative that we=ve been working on, and we=ve
12 been receiving comments on. So, I hope you participate in that and give
13 us your views on that.

14 Of course, I also reflect that this is the first Friday of
15 spring. I didn=t think this is how I=d be spending my Friday afternoon on
16 the first Friday of spring, but it=s good to be here with people who care
17 about an important issue.

18 I also wanted to highlight Mr. Fettus. As he pointed out,
19 NRDC provided not just negative comments, but what B- positive
20 comments in terms of not just no, but here=s what we think you should
21 do. And I think that=s very important in all these kinds of debates
22 because all too often NRC receives these just negative comments that
23 we=re doing the wrong thing, we=re bad people, we have bad
24 motivations, and never find that at all constructive. And NRDC, to its
25 credit, often tries to provide its views in a way that can be acted upon,
26 so I appreciate that, and appreciate the extra effort that went into that.

1 So, I have a couple of substantive questions, but I want
2 to ask a process question first of all of you. This process has been going
3 on for several B- for many months now, and I just wanted to see if
4 anyone felt there was anything in our process that either truncated the
5 public dialogue on this, or prevented people from providing their views?
6 Is there something we could have done better? I just ask that blanket
7 question just to start off, and see if anybody has any comment. It was
8 perfect? No. Mr. Callahan.

9 MR. CALLAHAN: Well, I=ve already noted our respect
10 for Keith and his team. I just can=t imagine an effort that=s gone on
11 more B- with more attention to detail and attention to those in the public
12 that wanted to make a comment, and wanted to participate. So, I think
13 it=s been outstanding.

14 COMMISSIONER MAGWOOD: Thank you.

15 MS. GINSBERG: I would add that I=ve been doing this
16 a long time, and I don=t recall a rulemaking where there were roughly
17 13 public meetings throughout the country, multiple Commission
18 briefings, opportunityB- extensive opportunity to submit comments, and
19 availability of Staff the way this Staff has been available, so I really
20 commend B- I echo what Mr. Callahan has said. I commend the Staff
21 because I think they=ve been extremely open, willing to take
22 comments, and very willing to consider each and every one of them as
23 best I can tell.

24 COMMISSIONER MAGWOOD: Great, thanks.

25 MR. SIPOS: Yes, I would echo the comments of
26 Michael and Ellen, and the State has great respect also for the Staff

1 who was involved and has worked on this rulemaking. There have been
2 a number of meetings around the country. I think that is for the good. I
3 would caution that quantity, however, is not always the be all and end
4 all. And the State of New York has tried to present its concerns early
5 and often, if you will, regarding scope, and regarding alternatives, so we
6 are B- we wish B- we very much appreciate being involved in the
7 process. We think it=s very important, and we do think, again, that
8 NEPA can provide a pathway. You talked about providing suggestions
9 and not just negative comments. I think NEPA can provide the
10 solutions, can provide the hard look, and can provide a way forward.
11 Thank you.

12 COMMISSIONER MAGWOOD: Thank you.

13 MR. JOHNSON: Commissioner, I look forward to
14 working with the NRC on the outreach to the Tribal nations. I think
15 that=s really opened the doors, and it also brings in a different
16 perspective of looking into this issue, and the future. And even though
17 other tribes may not be as in the predicament we=re in right now, the
18 proximity of the plant, it opens that avenue for other things that may
19 come down the road for the future of nuclear in the industry, whether it
20 be transportation, storage, or whatever it may be. It does, it opens that
21 door of opportunity for the Tribes to sit down face-to-face,
22 government-to-government.

23 COMMISSIONER MAGWOOD: Excellent. Thank you
24 very much.

25 MR. FETTUS: I=d like to echo my colleagues, that the
26 regional meetings were all to the good in the effort to solicit public

1 comment both at those meetings and by the December 20th deadline
2 was, again, all to the good. And I also echo John=s comments, though,
3 that caution should be taken that I wrote in very early after B- almost
4 immediately after the first scoping document came out with our
5 concerns, so we=ve documented our concerns early and often with this
6 process. But the actual process of attempting we think was certainly
7 good and admirable on the Staff=s part.

8 We think also, though, again with a caution, there were
9 a whole host of ongoing studies that probably should have allowed for a
10 much longer period for Staff to do much more work than it otherwise
11 would have done in the one year it was given to provide a draft.

12 COMMISSIONER MAGWOOD: Okay. Thank you very
13 much. A couple of questions, first for Mr. Sipos. Can you give me the
14 State of New York=s views on institutional control?

15 MR. SIPOS: Yes. And we did attempt to set this out in
16 our December 20 filing, but it is quite difficult to assume that the
17 institutional controls will be around, and that they will be effective. I think
18 it is almost in a way B- it is a way of B- and I don=t mean this to be flip,
19 but it is almost a way of assuming away the problem, because I think in
20 our lives, in our own life span we have all seen dramatic changes. I
21 think back to, you know, when my grandmother was born in, you know,
22 the 1880s, you know, the changes that she had seen.

23 I think it=s very difficult, and that one is getting out on
24 thin ice when one says what we think we know today is going to take
25 place is going to occur for the next 60, 100, 1,000 years. And I do think
26 that=s where NEPA=s hard look can come into play. And I don=t think

1 we=re getting into remote and speculative in that way. In fact, in some
2 ways we=re assuming things will take place when they haven=t even
3 been sort of gone to retail, or they haven=t even come to the market
4 yet.

5 COMMISSIONER MAGWOOD: So, in the State=s
6 internal process, there=s lots of regulatory organizations in the state
7 that do various environmental activities. They assume that institutional
8 control cannot be relied on long-term, they make that general
9 assumption?

10 MR. SIPOS: I don=t know that the State has a program
11 quite like this that involves the time lines such as that we are talking
12 about with waste. I do know B- this is more anecdotal, we recently
13 finished up a program or a proceeding concerning an application for a
14 rate change for a utility, and part of that involved looking out into the
15 future, and taking into account for important long-lived assets, taking
16 into account a horizon of 60 years or more. And taking into account
17 climate change, which I think is another B- which is another issue here.
18 So, again, we may not be looking at an issue that has a 10,000 or
19 longer year life span, but in siting a power plant or similar facility looking
20 out into the future and what will be, for example, the sea level rise, the
21 storm surge, what will be the impacts, what does FEMA tell us about
22 these potentials, what are the different scenarios? So, we do look at
23 B- and it=s not exactly institutional control, but it=s projecting out, and
24 projecting out and taking a hard look at what could happen.

25 COMMISSIONER MAGWOOD: Okay, very well.
26 Thank you very much. I have 32 seconds left so I=ll hold my last

1 question, maybe we'll have another opportunity to talk. But, again,
2 appreciate everyone's participation today. Thank you, Chairman.

3 CHAIRMAN MACFARLANE: Commissioner
4 Ostendorff.

5 COMMISSIONER OSTENDORFF: Thank you,
6 Chairman. I want to add my thanks to those of others for your being
7 here today. I also note, as the Chairman indicated in her opening
8 remarks, that we are at a somewhat, I think the word was used by
9 another colleague as confining or limiting as to what areas we can
10 probe here given our adjudicatory responsibilities on the various
11 licensing actions, and where this rule stands.

12 Having said that, I think we have all greatly benefitted
13 today from hearing your perspectives. I think everyone has presented
14 their perspectives very clearly, and we also acknowledge there may be
15 significant, and in some cases are differences between where you are,
16 and where we may end up. We don't know. But I think everybody has
17 been very articulate and clear in saying where they are coming from.
18 And, Geoff, I really appreciate because we worked before together
19 years ago on the Hill, and I think having B- I=m not saying whether I
20 agree or disagree with your alternative construction going forward, but
21 the fact that you had a proposed solution, irrespective of what my
22 opinion might be of that, I admire and respect the efforts taken to think
23 about it in a constructive, problem-solving way. So, thank you for doing
24 that.

25 I also think we benefit from hearing the phrase, Athe
26 stark contrast@ between different panel members here. That helps us

1 be able to hear the give and take, the challenge in your positions, and
2 the rebuttal of it I think is helpful for our decision making process. So, I
3 do have a few questions. Let me start off with Mr. Johnson.

4 Ron, it's good to you see again. I enjoyed my visit to
5 Prairie Island in November 2012. I sat in your office there on the
6 perimeter and saw out the window that you were talking about, so never
7 having been there until then, it was hard to appreciate the proximity
8 issue. So, thank you for that visit. I think the relationship the NRC has
9 with you and your community is very strong, and very positive, and
10 you've been a very strong leader in trying to take a pragmatic safety
11 approach that benefits everybody.

12 I did want to ask a question of you. I know
13 Commissioner Magwood, I think, asked this question, as well, in New
14 York. Let me ask you in the context of your Slide 9, concern with
15 institutional controls, you know, 100 years in the future, and so forth. I
16 want just to kind of bore down a little bit. Are there particular aspects of
17 institutional controls given your particular community that you think
18 ought to be highlighted? I know you provided comments in this area, but
19 I don't know if there's any particular examples that you wanted to
20 mention.

21 MR. JOHNSON: No, I can go back to when the Nuclear
22 Waste Policy Act was passed, and moving forward. It was, I believe by
23 1995 that casks were supposed to be removed, and the Yucca
24 licensing, in regards to what B- we're just wanting the waste to be
25 removed. But as those time lines have gone and passed, and we're
26 looking at other new avenues with the Blue Ribbon Commission=s

1 recommendation, here we're going down that same avenue again.
2 And what we're trying to do is just make B- just try to move what could
3 be a potential, or may be an issue there down the road.

4 And our B- we fall back on this. The Tribe spends
5 millions of dollars on this issue that could be spent elsewhere to
6 enhance the community as economic growth and everything that we
7 need. But, you know, as we go along I think we're looking for some
8 light at the end of the tunnel that we can at least look at that perspective
9 and give some hope to our next seven generations coming up that this
10 is something they won't have to deal with. And we're kind of leaving
11 something for them to deal with when it's not their responsibility.

12 COMMISSIONER OSTENDORFF: So, it's really your
13 concerns with how the federal government has implemented the
14 Nuclear Waste Policy Act obligations?

15 MR. JOHNSON: It is. It is.

16 COMMISSIONER OSTENDORFF: Okay.

17 MR. JOHNSON: I think that in fairness, that's B- and I
18 think it B- I just think it's the law of the land, and hopefully we can follow
19 that law of the land, unless something else changes that law of the land.

20 COMMISSIONER OSTENDORFF: Okay, thank you.
21 Appreciate that.

22 Mr. Sipos, I appreciated your presentation very much.
23 I've got two adult kids who live in New York City so I've been up there
24 a number of times the last few years and understand the geography,
25 proximity issues you're raising. I was at Indian Point for two days last
26 summer with staffers from the two U.S. Senator's offices, and one of

1 the B- actually, two different Representatives that had equities in the
2 emergency planning zone, and the evacuation area.

3 I do want ask you one question. On your slide, I think
4 it=s your Slide 2, I think this was kind of a clarification. The bottom bullet
5 you said the treatment of severe accidents is flawed. I want to make
6 sure I understand that. In your presentation today I know that there=s a
7 time limit. I think you mentioned specifically concerns on a spent fuel
8 pool accident as being B- that was the example you used. Are there
9 other types of accidents, or is that the one that you=re really referring to
10 there?

11 MR. SIPOS: Given this rulemaking, I was confining the
12 State=s comments to the dense storage of spent nuclear fuel at the
13 pools at Indian Point. Conceivably, there could also be an issue
14 regarding dry casks, but really today we were focusing on the dense
15 storage in the spent fuel pools, and the consequences that could flow
16 from that.

17 COMMISSIONER OSTENDORFF: Okay, thank you.
18 Appreciate that.

19 Let me ask Ms. Ginsberg a question here. On your
20 Slide 10, and you had some proposed revised wording for 10 CFR
21 51.23. I want to make sure I understood one aspect here.

22 Your slide has a proposal, you used the phrase
23 Areasonable assurance,@ whereas, I believe the current wording has
24 been as feasible. I=m curious, is there a significant distinction between
25 those two? Is there B- I want to make sure I understand where you=re
26 coming from.

1 MS. GINSBERG: Sure. Yes, we think it=s valuable to
2 maintain the findings of B- that were previously in the Waste
3 Confidence decision. The other thing is that this demonstrates the
4 substantial record that the Agency has amassed to support this
5 decision, and we think there=s ample basis for a reasonable assurance
6 decision.

7 And, finally, to the extent that there=s any reference
8 whatsoever to the Atomic Energy Act in the earlier decisions prior to the
9 Minnesota v. NRC, we think that this addresses any potential
10 questions that might be asked as a result.

11 COMMISSIONER OSTENDORFF: Okay, thank you.
12 Thank you all. Thank you, Chairman.

13 CHAIRMAN MACFARLANE: Okay, my turn. I=m going
14 to start with Ms. Ginsberg. And on your Slide 4 you=re talking about
15 your assessment of the no repository scenario. And you say B- you
16 said, I think, that it was wholly unreasonable that the federal
17 government would fail to meet its obligations within 60 years or so. That
18 was your view.

19 So, one question I have in trying to understand that is
20 in 1983 would you have thought it wholly unreasonable that the federal
21 government would have failed to meet its obligations under the Nuclear
22 Waste Policy Act as written in 1983 by 2014?

23 MS. GINSBERG: Well, let me answer by saying no, but
24 also follow that with, I think it=s a false construct to assume simply
25 because it=s taken 32 years for us to get to the point where this is really
26 at the forefront of policy maker discussion, to assume that thousands

1 and thousands of years from now it still won't occur. I just B- I don't
2 think that's reasonable. I think NEPA clearly suggests that what you
3 need to assess is B- are reasonable scenarios. And the Agency has
4 gone beyond, in my view, what the court required. It looked at the no
5 repository scenario, but determined that that scenario wasn't likely,
6 and then went to the other more likely scenarios, which are supported,
7 basically, by international experience, as well as the fact that there is
8 still a requirement, a federal statute that requires the federal
9 government to act.

10 CHAIRMAN MACFARLANE: So, you just said, I think I
11 got this right, that right now the discussion of waste policy is at the
12 forefront of policy discussions.

13 MS. GINSBERG: My opinion.

14 CHAIRMAN MACFARLANE: That's your view, or
15 NEI's view?

16 MS. GINSBERG: My opinion.

17 CHAIRMAN MACFARLANE: Your opinion. Okay. You
18 also say that the Commission, your recommendation is that the
19 Commission has a finding that a repository will be available when
20 necessary. What do you mean by Awhen necessary?@

21 MS. GINSBERG: Well, you're looking at a very long
22 horizon here, and we think that the Agency will have ample time to
23 B- actually, there is ample time for the Department of Energy, if that's
24 the entity that ends up building the repository, to have one available by
25 the time you're talking about.

26 CHAIRMAN MACFARLANE: I mean metrics for

1 figuring out B-

2 MS. GINSBERG: Okay.

3 CHAIRMAN MACFARLANE: B- what Awhen
4 necessary@ is.

5 MS. GINSBERG: Okay. You=re talking about a time
6 period following expiration of the current license, plus in some cases 60
7 years, or if you take the long time frame, 100 years. So, we believe that
8 when necessary will be within one of those time frames.

9 CHAIRMAN MACFARLANE: So, the industry=s view is
10 that when necessary is when everything, the clock for everything runs
11 out.

12 MS. GINSBERG: At least for the first two time frames.

13 CHAIRMAN MACFARLANE: Okay. Okay. So, let me
14 ask B- Geoff, let me ask you a couple of questions. On your Slide 14, I
15 think it was, you B- I know you were being timely, and I appreciate that.
16 And you went through a couple of topics here which I would like to hear
17 a little more expansion on.

18 MR. FETTUS: Okay.

19 CHAIRMAN MACFARLANE: So, if you wouldn=t mind
20 elaborating on your position relative to one of the things was alternative
21 cask storage technology, storage cask technologies. What do you
22 mean by that?

23 MR. FETTUS: Alternative configurations. I mean, one
24 of the things that B- in bullets 2 and 3, alternative storage modes and
25 configurations, safety-relevant classes. If you look at the matrix on page
26 32 that we provided sort of setting out what needs to be considered and

1 what potential reasonable alternatives the Agency could consider, we
2 tried to lay out, and it'll make much more sense. We actually don't just
3 have a matrix for you, we have explanatory text for each of the boxes
4 that make sense. So, it's hopefully relatively readable. But by that we
5 meant what if pools are still surviving long into the future, because
6 things fell apart and people stopped caring about the pools, so they
7 were cool enough that they didn't drain and have a fire, but they still
8 drained, and what does that mean?

9 Are we going to need different long-term configurations
10 for different kinds of fuel, which I think the cladding questions we have
11 from high burn-up, certainly lead themselves to questions of
12 configuration. Questions of dual kinds of dry storage configuration,
13 meaning do you have something put into a transportation-ready cask at
14 some point in the future that doesn't currently exist now, but may. So,
15 these are all things that are reasonable considerations that may come
16 to pass. So, it's that kind of thinking that we were talking about.

17 CHAIRMAN MACFARLANE: Okay. So, let me ask you
18 more about the last bullet there, which is reliance versus erosional
19 institutional controls as a function of time. So, can you elaborate a little
20 more on that, what you guys mean by that?

21 MR. FETTUS: Sure. Well, we think B- first, we start
22 with the premise that we share in the court's decision that the Agency
23 has to conduct NEPA and do this environmental analysis, and do an
24 analysis of what would happen if you don't get a final disposal site,
25 because that's what you have to go look at. I mean, Commissioner
26 Apostolakis is shaking his head, but just read the decision.

1 COMMISSIONER APOSTOLAKIS: That=s not on the
2 record.

3 MR. FETTUS: That=s not B- okay, right, that=s true.
4 It=s not on the record. I strike that, and I amend my previous sentence
5 at the request of Commissioner Apostolakis.

6 First, the Agency needs to look at what the courts
7 required you to look at. And we think the question you posed at the very
8 beginning of your time, which is would one have thought when Mo Udall
9 engineered the passage of the Nuclear Waste Policy Act in the 1982
10 time frame that we would be sitting here in 2014 debating this issue.
11 And this issue has ebbed and flowed in terms of public debate, it=s
12 ebbed and flowed in terms of Congressional attention, and it=s going to
13 continue to ebb and flow depending on the life cycle of politics, and
14 science, and everything else. So, we found as we wrote in our
15 comments back in B- when did I write them, 2009? We found no basis
16 for confidence.

17 And I=d like to respond to one thing Ms. Ginsberg said
18 in directly addressing your question of why to not rely on institutional
19 controls, and why we think you need to do the NEPA analysis, is B- and
20 why we work so hard in our Congressional work, in the work I do in
21 terms of testifying before Congress. I=ve laid out what I think, and when
22 I last spoke to the Energy and Natural Resources Committee, and
23 before the EPW, sorry, Environment and Public Works, the
24 fundamental problem facing our nuclear waste program in this country.
25 And it=s B- and with John Sipos here, it=s interesting to hear him hear
26 this, but it=s a lack of state authority. It=s a lack of being normalized

1 with environmental laws. It=s the Atomic Energy Act exemption from
2 environmental laws, but that federalism is going B-

3 CHAIRMAN MACFARLANE: I know, we=ve talked
4 about this before B-

5 MR. FETTUS: We have talked about this directly,
6 Chairman. But that federalism problem that=s inherent in the way the
7 law is currently structured in my opinion is likely going to stymie the
8 progress of nuclear waste for a long time until that=s changed.

9 CHAIRMAN MACFARLANE: I have question for you,
10 Mr. Sipos. I=m sorry, I mispronounced your name before. And maybe
11 you would also like to jump in, but I was wondering if there is a legal
12 view of institutional controls, whether New York State has a legal view,
13 if you=ve added B- if you=ve discussed this in your comments?

14 MR. SIPOS: I think we did discuss it in our comments. I
15 believe some of the other states may have also discussed it. I=m
16 thinking of possibly the Vermont and Connecticut comments that were
17 also submitted.

18 CHAIRMAN MACFARLANE: Okay, I can look at those.

19 MR. SIPOS: But I think the State does have a concern
20 that in this context, these institutional controls, or assuming these
21 institutional controls, one, will exist. And, two, that they will be
22 speculative, excuse me, that they will be effective is, in fact, speculation
23 that there is no basis to assume that they will continue, and they will be
24 effective. In a way, as I said before, it=s almost like assuming the
25 problem away. Oh, we see there=s an issue, but we assume that they
26 will be taken care of; and, therefore, we don=t really have to address

1 the consequences. The State believes that that is speculation, and that
2 it really does not get at the heart of what NEPA is trying to do. And,
3 again, NEPA is a tool here, and it could identify alternatives.

4 And I think what B- none of the five of you
5 Commissioners were around I think when this issue started. Certainly,
6 you have a substantial task on your plates for this. The State
7 recognizes this, but the B- I think what NEPA is B- one of NEPA=s
8 objectives is not to just push a problem down the road. And I think it
9 does, again, provide a pathway to a solution.

10 CHAIRMAN MACFARLANE: Okay. Just very briefly.

11 MR. JOHNSON: I=ll echo what Mr. Sipos said here. I
12 concur with what he=s explaining to you today, and commenting on
13 that, so we=re right along with that comment.

14 CHAIRMAN MACFARLANE: Okay, great. Thank you.
15 Thank you all. Let me see if B- are there additional questions?

16 COMMISSIONER MAGWOOD: I almost hate to do it,
17 but I do have to ask a question. Mr. Fettus, you sort of asked that we go
18 back and look at the court decision. I wanted to give you a chance to
19 really respond to something Ms. Ginsberg said, because I read the
20 court decision. There is clear language that says to petitioners the
21 Waste Confidence decision is a major federal action because it is a
22 predicate to every decision to license or relicense a nuclear plant. And
23 the findings made in the Waste Confidence decision are not
24 challengeable at the time a plant seeks licensure. We agree with
25 petitioners that the Waste Confidence decision rulemaking is a major
26 federal action requiring either a FONSI or an EIS, and how is that

1 consistent with your comment that we've miscast the major federal
2 action?

3 MR. FETTUS: It's a fundamental predicate to
4 licensing. This is B- it does not license a particular plant, it allows the
5 licensing of every plant. You cannot separate it from the licensing
6 action. You cannot separate this and treat it as B- there's an enormous
7 effort made in the draft GEIS to treat this as not a licensing action.

8 COMMISSIONER MAGWOOD: So, this is analysis
9 that you've put in beyond the actual court language.

10 MR. FETTUS: Yes. We B- no, it's not an analysis
11 beyond the actual court language. We hew precisely to the court
12 language. I encourage you to read our detailed comments on just this
13 issue. I don't - we actually don't use words beyond what the court
14 said, but it's a fundamental predicate, and the court agreed with
15 petitioners, which was NRDC, et al.

16 COMMISSIONER MAGWOOD: Okay, thank you. I
17 guess I should give Ms. Ginsberg a chance to react. She's at the
18 button there.

19 MS. GINSBERG: Yes. For the record, I just want to
20 make clear that we are B- we have a distinct difference of opinion with
21 respect to what Mr. Fettus just said. That's obvious from everything
22 that's been said today, but I want to reinforce it because his emphasis
23 on the court's decisions is important, and we agree with that, but we
24 think hewing to the court's words are equally important.

25 COMMISSIONER MAGWOOD: Okay, thank you.

26 CHAIRMAN MACFARLANE: Anybody else? No?

1 Okay, we=re going to now take a five-minute break, and then we will
2 hear from the Staff.

3 (Whereupon, the proceedings went off the record at
4 2:47 p.m., and went back on the record at 2:55 p.m.)

5 CHAIRMAN MACFARLANE: Okay. Now we are going
6 to hear from the NRC Staff, so Mike Weber, who is the Deputy
7 Executive Director for Materials, Waste, Research, State, Tribal, and
8 Compliance Programs, one of the longest titles in the Agency, will
9 begin.

10 MR. WEBER: Thank you, Chairman. Good afternoon,
11 and good afternoon, Commissioners. I think this is the first public
12 meeting since Commissioner Magwood=s announcement came out, so
13 we wanted to congratulate you on your new position. We look forward
14 to continuing to serve with you in your current capacity until such time
15 as you assume a new position, and then we=ll work with you again. So,
16 congratulations.

17 The Agency established a clear priority on the Waste
18 Confidence matter at the direction of the Commission. I would want to
19 just make a few brief comments and then turn it over to Cathy Haney,
20 the Director of the Office of Nuclear Material Safety and Safeguards.

21 It was clear from the direction from the Commission
22 that this needs urgent attention, so we have taken some of our most
23 experienced and most talented environmental specialists from across
24 the Agency to work diligently and in a high-quality way on the Draft
25 Generic Environmental Impact Statement, and now on the Final
26 Generic Environmental Impact Statement, as well as the proposed rule,

1 and preparing for the final rule. So, all the offices, the Nuclear Reactor
2 Regulation, Office of Nuclear Regulatory Research, et cetera, have
3 made a significant contribution.

4 While the Waste Confidence Directorate resides within
5 the Office of Nuclear Material Safety and Safeguards, it really reflects a
6 concerted effort by multiple offices, including the Office of General
7 Counsel. And I think Cathy will touch on those aspects in her remarks.

8 You heard in our first panel, and you are quite aware
9 from the SECY paper that we transmitted to the Commission that we
10 received a large number of divergent and complex comments on the
11 proposed rule and the Draft Generic Environmental Impact Statement,
12 and we heard that in the first panel. So, the Staff really has its work cut
13 out for us as we go about diligently, thoroughly reviewing those
14 comments and then deciding what changes to propose in the final
15 statement and the draft final rule for the Commission=s consideration.

16 And I would end my remarks by just emphasizing it=s
17 really your decision. The Staff is trying to do our best in providing to you
18 quality documents that reflect a thorough and thoughtful consideration
19 of the comments that we=ve received, and this is a matter that I started
20 working on when I first came to the Agency, so I, too, have a fair bit of
21 experience with it, and recognize its significance to our mission. So with
22 that, let me turn it over to Cathy Haney.

23 MS. HANEY: Thanks, Mike. I=ll pick up on a couple of
24 the points that Mike made this afternoon. We were tasked to develop a
25 Waste Confidence Rule with associated Environmental Impact
26 Statement within two years. To do that we stood up a Waste

1 Confidence Directorate within my office of the Office of Nuclear Material
2 Safety and Safeguards. There are a couple of specialties that we
3 brought to bear in addition to the environmental policy professionals
4 that we had. We also used individuals with expertise in rulemaking,
5 health physics, and various skill sets under the engineering category.
6 And then one that often doesn't get recognized, we also brought into
7 the group highly skilled communication professionals. And I think that's
8 one of the reasons why we were successful with some of the outreach
9 efforts that we did, because we brought those individuals skilled with
10 those aspects into the group, and did a lot of brainstorming on how we
11 could enhance the communication on this effort.

12 The Waste Confidence Directorate is staffed by many
13 full-time individuals, but we also have several individuals across the
14 Agency that are helping us on a part-time basis, temporary basis as we
15 need that skill set. We reach out to other offices and ask them to come
16 and help us for maybe a day, for a week, for a month, but we're using
17 definitely a matrixed approach as we approach this project.

18 Mike referenced some of the offices that we're using,
19 but there are a few that I'd like to highlight that have supported us with
20 several resources, and then some again just on that part-time basis, but
21 sometimes go unnoticed. The ones that in the full-time staff we have
22 invited individuals to work with us from Federal, State, Materials, and
23 Environmental Management Programs, the Office of Nuclear Reactor
24 Regulation, Office of New Reactors, Office of Congressional Affairs,
25 Office of General Counsel, Office of Nuclear Security and Incident
26 Response, and also the Office of Nuclear Regulatory Research.

1 As I noted earlier, we did have some spots where we
2 just needed to reach out to people for that week or maybe a couple of
3 week effort, and in those cases we had individuals from the regions that
4 helped us. Also, during a lot of the public outreach meetings, as you=ll
5 hear from Andy, we had regional staff that attended those meetings,
6 and some coming from the localized plants to support us.

7 Then also, as I said, there were a few that are the
8 behind the scenes, it=s the Office of Administration, and also the Office
9 of Information Services. And that=s where we had Guard Service
10 working with local law enforcement that helped us, and then also with
11 the Office of the Chief Human Capital Officer. With all that movement of
12 individuals they quickly responded to our needs and helped that.

13 Lastly, we have support from two laboratories, the
14 Pacific Northwest National Laboratories, and the Center for Nuclear
15 Waste and Regulatory Analysis. And that=s support that has been to
16 help us with the public comments, as well as getting ready and getting
17 into the scoping period, and preparing the draft and the final
18 Environmental Impact Statement. So, from this I think you can see it
19 truly has been an Agency-wide effort. I=m very thankful to all the other
20 offices, my peers across the Agency that have helped support me in
21 this effort, and support Keith=s team as he moved forward.

22 We=re 18 months into the project. We=re roughly 75
23 percent through that schedule that we started with. The Staff is working
24 extremely hard, and I think it=s very much a credit to Keith and his staff
25 for how far they=ve been able to move the project along with the time
26 that we=ve had so far. We=ve made substantial progress, and we=re

1 working towards meeting the prescribed schedule. And with that, I=d
2 like to turn it over to Keith.

3 MR. McCONNELL: Thank you, Cathy, and good
4 afternoon, everyone.

5 I=m going to start off with a summary of the progress
6 today to develop the Generic Environmental Impact Statement and rule
7 for continued storage. And then I=ll turn it over to Andy Imboden to talk
8 about some specifics regarding the five policy issues that the
9 Commission identified, and that we then put in the proposed rule for
10 comment. Andy will also provide a look forward in terms of what we=re
11 looking at as we move into this final stage of the process.

12 This diagram depicts in general terms the status of our
13 efforts to develop an updated Waste Confidence Rule supported by a
14 Generic Environmental Impact Statement. We have completed three of
15 the four phases, as Cathy just mentioned. And as you know, the Waste
16 Confidence Directorate began scoping this Generic Environmental
17 Impact Statement to support the updated Waste Confidence Rule on
18 October 25th of 2012. The scoping process included four public
19 meetings which included two webinars, and a public comment period
20 that ran for 70 days, or until January 2nd of 2013. The NRC Staff=s
21 analysis of those public comments was provided in the Scoping
22 Summary Report that was issued in March of 2013.

23 Subsequent to that and following Commission review
24 and approval, we published the Draft Generic Environmental Impact
25 Statement and proposed rule for public comment on September 13th of
26 2013 for what turned out to be a 98-day public comment period.

1 Although the public comment period was to have lasted for 75 days, or
2 until November 26th, due to the government shutdown and the need for
3 us to postpone and then reschedule five of our public meetings, it was
4 extended until December 20th of 2013. We are currently involved in the
5 process of considering and responding to the comments that we
6 received in the public comment period.

7 That concludes my summary of the efforts to date, and
8 the rest of my presentation is going to focus on our efforts to allow for
9 ample opportunity for the public to participate in our efforts to update
10 the Waste Confidence Rule. Next slide.

11 Throughout our efforts to develop the Generic
12 Environmental Impact Statement to support an updated Waste
13 Confidence Rule, we've attempted to implement to a high degree
14 NRC=s philosophy on open government. In that regard we approached
15 the Waste Confidence effort with a view that an updated Waste
16 Confidence Rule was, to quote the NRC=s open government plan, @the
17 public=s business.@ Both prior to and during the public comment period
18 we undertook an aggressive effort to invite and solicit comment. We
19 aligned our efforts with the three pillars of NRC=s open government
20 plan, transparency, participation, and collaboration.

21 In that regard, we attempted to be transparent in our
22 efforts by having the monthly facilitated conference calls to insure that
23 interested parties were prepared to respond to the issuance of the draft
24 documents. We informed interested parties of important events through
25 our WCO outreach email LISTSERV, and we actively updated our public
26 website. And, finally, we attempted to take full advantage of the

1 Agency=s social media options to get the word out.

2 In terms of participation, we encouraged involvement
3 in the rulemaking process by providing multiple venues for parties to
4 participate in a meaningful way, including conducting the 13 public
5 meetings that you=ve heard about, and meeting informally with any and
6 all parties that were interested in the activities we had underway.

7 In terms of collaboration, we collaborated with
8 interested parties including working with other federal agencies,
9 including the Environmental Protection Agency, and as you heard
10 earlier from the External Panel, we did hold government-to-government
11 meetings with the Prairie Island Indian Community. And I would like to
12 thank Ron Johnson for his hospitality. He saved us from having to drive
13 through a driving snowstorm to get to one of our
14 government-to-government meetings.

15 Given the opportunity and the resources that the
16 Agency has provided us, our goal is to make the Waste Confidence
17 effort a positive example of NRC=s commitment to open government.
18 Next slide.

19 In the course of the Waste Confidence public outreach
20 effort we learned a great deal, and we implemented a variety of
21 approaches that proved to be successful. Some of these may be useful
22 in future significant Agency actions, and that=s why we raise them here
23 for your attention.

24 In particular, the Waste Confidence Directorate was
25 able to emphasize public interaction to a great extent. That resulted in a
26 robust public participation in our activities. We had a dedicated,

1 topic-focused communication team that along with support from our
2 Office of Public Affairs allowed us to maximize public participation.

3 We had a goal, an overall goal of being open and
4 transparent, and we tried in everything we did to meet that goal. In
5 addition, the staff was open, accessible, and flexible at the public
6 meetings. This included having the authors of the documents available
7 at pre-meeting open houses. This provided an opportunity for
8 interested parties to actively engage the NRC Staff members with direct
9 and specific knowledge of the draft documents. We allowed all
10 interested parties who wanted to present comments at the meetings to
11 do so. And we insured that there were opportunities for those that
12 couldn't physically attend one of our meetings in the region to
13 participate via three facilitated telephone conference calls that we had
14 during the public comment period.

15 Finally, our staff hosted the monthly status
16 teleconferences that provided regular updates to members of the
17 public, and allowed them to ask questions about our efforts.

18 It's also worth noting that along with our Office of
19 Public Affairs we did experiment with some of our social media options.
20 And one approach that we tried was not highly successful, and that was
21 our Waste Confidence online chat that we conducted with the Office of
22 Public Affairs as part of their pilot project.

23 We found that a complex subject like Waste
24 Confidence was challenging to address in the context of a realtime
25 typed exchange with a moderator format. The Directorate Staff who
26 participated would have liked to have provided more complete

1 responses but we were just constrained by the chat format. Next slide.

2 We're currently in the process of reaping the benefits
3 of our outreach activities. We're reviewing and responding to the
4 nearly 9,000 unique comments that we delineated from the
5 approximately 500 transcribed statements collected at the public
6 meetings, and the approximately 1,500 unique written submissions.

7 It is worth noting, as others have mentioned, that we
8 received a total of approximately 33,000 written submittals; however,
9 the vast majority of those were form letters.

10 I do think it's important to state or restate what we said
11 at the beginning of each of our public meetings. Our work on the Waste
12 Confidence Rule benefits from public input and participation. We thank
13 all the parties for their participation in the meetings, including the
14 members of the External Panel that you met with earlier today, all of
15 whom participated in one or the other of our public meetings. We thank
16 them for providing either oral or written comments on the Draft Generic
17 Environmental Impact Statement and proposed rule.

18 I'd also be remiss if I didn't mention the cooperation
19 the Directorate has received from some of the less recognized
20 contributors to our effort. In particular, NRC's Office of Administration,
21 the Office of Information Services, and the Office of the Secretary to the
22 Commission who took on the consuming effort of uploading all the
23 comments. In addition, as Cathy mentioned, we received strong
24 support from the staff of the Pacific Northwest National Laboratories,
25 and the Center for Nuclear Waste Regulatory Analyses who helped us
26 with further processing the documents and the comments into our

1 comment response database.

2 I'll now close my part of the presentation by identifying
3 some of the comments, concerns, and themes in the verbal statements
4 and written comments. And you've already gotten some insight from
5 that from the External Panel, so next slide.

6 This slide depicts the most common topics, or in other
7 words those we heard most frequently at the public meetings, or we've
8 read in the written comments. As you saw from the External Panel,
9 there was a great range and diversity to the comments. We heard
10 comments supporting the Generic Environmental Impact Statement
11 and proposed rule, and comments that passionately opposed what was
12 in those two documents. The greatest number of comments we
13 received expressed either a concern with or an opposition to nuclear
14 power.

15 Second to that was the feasibility of safe storage of
16 spent fuel particularly storage for long time frames, and the indefinite
17 storage period that was analyzed in the Generic Environmental Impact
18 Statement.

19 After that were comments or concerns about the range
20 of alternatives. Again, you heard that at the External Panel regarding
21 what was presented in the Generic Environmental Impact Statement.
22 And then following up were comments that either supported or
23 challenged the notion of the availability of a geologic repository when in
24 a specific time frame. Next slide.

25 Other examples of topics we heard that may be of
26 interest to the Commission and the frequency with which we heard

1 them or read them in the written comments are noted on this slide. They
2 included spent fuel pool fires. Many of the issues raised with respect to
3 the recent spent fuel pool consequence study were also raised in the
4 context of Waste Confidence.

5 Certainly, as the External Panel noted, our approach to
6 treating the durability of institutional controls was of particular interest to
7 a number of groups in the context of the indefinite storage scenario.
8 Also, the likelihood and impacts from spent fuel pool leaks was a
9 popular topic as was the storage of high burn-up fuel, particularly for
10 longer periods of time.

11 It is worth noting that the U.S. Environmental
12 Protection Agency in its statutory role as a reviewer of Agency
13 Environmental Impact Statements also identified both institutional
14 controls and high burn-up fuel as issues that the NRC should address in
15 more detail in the Final Generic Environmental Impact Statement.

16 We note here that there is a significant body of
17 information on these topics currently available to the Staff from sources
18 both internal and external to the NRC. It is our intent in moving forward
19 to rely on this large body of existing work. We're considering several
20 options for responding to comments on these topics in the Final
21 Generic Environmental Impact Statement. To the extent warranted, this
22 could include adding additional appendices that focus more
23 expansively on the topics much like what was done for spent fuel pool
24 fires and spent fuel pool leaks in the Draft Generic Environmental
25 Impact Statement.

26 Other possible outcomes could include reconsidering

1 the approach taken, providing additional supporting, or depending on
2 the circumstances, making no changes at all. So, with that, that ends
3 my part of the presentation, and I'll turn it over to Andy Imboden.

4 MR. IMBODEN: Thank you, Keith. It's my pleasure to
5 recap the four policy issues and the public comments we received on
6 these issues, and then I will conclude my presentation with the Staff's
7 plan for the path forward. We should be on Slide 8.

8 These four policy issues began as questions the
9 Commission directed the Staff to include in the Statements of
10 Consideration for the proposed rule. We made a special effort to raise
11 attention on these issues.

12 In response to the Commission direction, the Staff
13 published these issues in Section 4 of the Federal Register Notice. We
14 specifically mentioned it in our presentation that began each of our
15 public meetings, and we developed a one-pager to highlight these
16 issues to the public. We made all these materials available on our
17 website, and in hard copy at our public meetings.

18 On February 28th, the Staff provided the Commission a
19 synopsis of the public comments on these four issues in the information
20 paper entitled, "Waste Confidence Continued Storage of Spent
21 Nuclear Fuel Proposed Rule Public Feedback on Specific Issues." In
22 the following slides I will identify each issue in turn, summarize the
23 public comments, and then provide the Staff's insight into potential
24 responses to these comments.

25 Ultimately, it will be the Commission's decision as
26 which way to go on resolving these policy issues when we provide you

1 with recommendations to the Draft Final Generic Environmental Impact
2 Statement and draft final rule for review. Next slide.

3 For issue number one, the Staff heard a fairly clear
4 message from those commenters that the NRC should remove a
5 statement regarding the repository availability time line from the rule.
6 Reasons cited for this support varied, but commonly included a lack of
7 NRC control over repository time lines and previous failures in
8 accurately predicting when a repository would become available.
9 Commenters also noted that a time line should not be included
10 because, as they assert, that it is unnecessary to provide a repository
11 time line in an Environmental Impact Statement, or that it is more
12 appropriate to go back to the language that was used in the 2010 Waste
13 Confidence Rule, which stated the repository capacity would be
14 available when necessary.

15 Other commenters wanted the NRC to remove the
16 statement about repository availability because they assert that siting a
17 repository is impossible, and that including a statement about
18 repository availability ties the United States to repository disposal of
19 spent fuel, to the exclusion of other options, such as reprocessing.

20 The commenters who expressed support for retaining
21 a statement regarding the time line for repository availability did not
22 always provide a supporting rationale, but when one was given
23 commenters stated that the time line is an important element of a
24 contract that that commenter asserted the public has with the nuclear
25 industry, or that having a time line for repository availability in the rule
26 affirms the importance of repository disposal.

1 At this time in the current state of the Directorate's
2 review, we believe that removing a specific policy statement regarding
3 the time line for repository availability from the rule text may be
4 warranted. This is mainly because it is not within the NRC's
5 responsibility or control to define when a repository might become
6 available. Next slide.

7 On issue number two, the Staff heard a general
8 message of support from commenters for retaining a policy statement
9 regarding safety of continued storage of spent fuel in the rule text.
10 Supporters gave diverse rationales. Some commenters noted that
11 including a statement about safety would enhance openness and
12 transparency, or would indicate that storage is, in fact, safe. Others
13 indicated that a safety statement should be included because such a
14 statement, one commenter claimed, and I quote, "It would give people
15 that are opposed to industry bases to make opposition," or that the
16 safety statement appropriately addresses the issues raised in
17 *Minnesota v. NRC*, or *New York v. NRC*, or commenters asserted that
18 safety determinations are more important to NRC decisions and to
19 members of the public in spent fuel matters rather than environmental
20 issues are.

21 One commenter who expressed support for the policy
22 statement indicated that the statement could alternatively be moved to
23 the Statements of Consideration rather than in the rule text.

24 Commenters who expressed opposition to making a
25 policy statement regarding safety of continued storage in the rule text
26 provided several reasons, including that providing such a statement is

1 unnecessary in the rule, that the Generic Environmental Impact
2 Statement is unable to support such a statement, and assertions that it
3 is not possible to project the future safety of spent fuel storage.

4 One commenter neither supported nor opposed this
5 issue, but asserted that technical issues identified as part of the NRC=s
6 long-term Waste Confidence update must be resolved before the NRC
7 issues its Final Environmental Impact Statement. And although we are
8 not making a safety determination as part of this rulemaking, a specific
9 policy statement regarding the safety of continued spent fuel storage
10 has been a consideration in the past Waste Confidence rulemakings,
11 and given the number and breadth of concerns expressed about spent
12 fuel storage safety, the Directorate Staff is at this time in the current
13 state of our review inclined to retain a specific policy statement
14 regarding the safety of continued spent fuel storage in the rule text.
15 Next slide.

16 For issue number three, in contrast to the prior two
17 issues where there was a clear public preference, commenters who
18 responded to issue number three were split on the issue. Some
19 commenters expressed support for streamlining the discussion portion
20 of the Statements of Consideration, while others opposed such a
21 streamlining.

22 Commenters who supported streamlining did so most
23 commonly because it would improve clarity or reduce redundancy. Other
24 commenters suggested that lengthy Federal Register Notices are
25 burdensome to search, and that streamlining could remove
26 anachronisms. Most commenters who opposed streamlining indicated

1 either that either the information in the discussion portion supports the
2 rule, or it provides a plain language explanation of the matters in the rule
3 text.

4 Other commenters who opposed streamlining stated
5 that it would introduce changes upon which the comment did not have an
6 opportunity to comment. Additionally, some commenters indicated that
7 the Statements of Consideration should address findings that the NRC
8 has historically included as part of the Waste Confidence decision. And,
9 finally, one commenter stated the Federal Register is more readily
10 available and easier to search than the Generic Environmental Impact
11 Statement.

12 At the current state of our review, the Staff believes that
13 some streamlining of the discussion portion of the Statement of
14 Consideration is warranted where it repeats information that is in the
15 Draft Generic Environmental Impact Statement. The extent of that
16 streamlining is yet to be determined, but the Staff notes that the
17 Statement of Considerations must retain enough content to adequately
18 support the rule and the changes that have been made. Next slide.

19 Commenters who responded to issue number four
20 expressly near unanimous support for changing the title of the rule.
21 Commenters provided an array of reasons to support changing the rule
22 name, and specifically these reasons included that the name is an
23 anachronism, the name provides no useful description of the rule's
24 purpose or its intent, historical findings of confidence in the availability of
25 a disposal site have proven incorrect, and confidence in the ability to
26 manage or dispose of waste does not now exist, or that the 2012 ruling

1 from the U.S. Court of Appeals for the District of Columbia Circuit
2 invalidated confidence as a basis for the rule, or that the term "Waste
3 Confidence" is not meaningful enough without an explanation of how
4 the term originated, and confidence can only be obtained if all fuel is
5 transferred to dry casks.

6 One commenter who responded to this issue expressed
7 opposition to revising the title, and that commenter asserted that
8 removing the term "Waste Confidence" would be shortsighted because
9 the term ties the rule to the need to establish basic confidence in ultimate
10 waste disposal.

11 Many other commenters who did not specifically
12 comment on issue number four, but that we heard at our public meetings
13 expressed views related to the term "Waste Confidence." Those
14 commenters indicated that waste confidence is an oxymoron, the term
15 does not describe the rule's purpose, or it refers to confidence in a
16 repository that they indicated was misplaced based on experiences with
17 Yucca Mountain, or with other attempts to dispose of nuclear materials.

18 So, at this point in our review the Staff believes that the
19 title of the rule warrants changing. The Staff does not make a specific
20 recommendation for the new title right now, but as we move forward we
21 would be recommending a title change that accurately reflects what the
22 rule does, noting the fact that in contrast to previous rulemakings which
23 were accompanied by a Waste Confidence decision and policy
24 statement and five findings, the rule we're developing now is
25 fundamentally different because the regulatory basis for the rule is now
26 an Environmental Impact Statement, whose purpose is to put forth the

1 environmental impacts of spent fuel storage. Next slide.

2 Finally, I wrap up the Staff=s presentation with a
3 discussion of the path forward. The Staff is currently processing and
4 developing responses to the public comments. Our next steps are to
5 complete that effort, make changes to the Generic Environmental Impact
6 Statement and the final rule, and to provide a high-quality set of
7 documents to the Commission in the summer of this year. And as Cathy
8 said in the outset, we intend to make every effort to produce a
9 high-quality product and finalize it within the prescribed schedule. Thank
10 you. Mike.

11 MR. WEBER: That concludes the Staff=s presentation.
12 As we prepare to address your comments and questions, I would
13 emphasize that as I said in the beginning, the Commission is the ultimate
14 decision maker here, so while you=ve heard some previews of the
15 directions that the Staff is currently thinking about, there are no final
16 decisions on the Staff=s part. And, clearly, it would be up to the
17 Commission to make the final call with respect to the rule and the Final
18 Generic Environmental Impact Statement.

19 And I would be remiss if I didn=t call out that we have in
20 our audience several members of the Waste Confidence Staff, but you
21 will not see them all here because many of them are toiling on analyzing
22 the public comments and figuring out what changes, if any, are
23 appropriate for the analysis. So, with that, that concludes our
24 presentation, and we=ll be happy to hear your comments and respond to
25 your questions.

26 CHAIRMAN MACFARLANE: Okay, thank you guys very

1 much for the presentations. We will turn to questions immediately
2 starting with Commissioner Svinicki.

3 COMMISSIONER SVINICKI: Well, thank you all for your
4 presentations. And I was wondering a little bit as I looked around the
5 room if everybody was here today. I know there=s a scene in B- the
6 famous scene in the Christmas Carol, not the film adaptations but the
7 actual literary work itself which I=m a fan of, where, of course, the ghost
8 of Jacob Marley visits Scrooge early in it, and he=s explaining that after
9 your death you will wander the world, so Scrooge remarks that his
10 B- because Jacob Marley was his partner in business, he says you=ve
11 been dead these seven years. Have you traveled much in that time? And
12 the ghost of Jacob Marley says something to the effect of I have, and
13 many weary journeys lay before me. So, I feel like when I think about the
14 Waste Confidence Directorate Staff, although they have journeyed far,
15 many weary journeys lie before them. So, I want to thank you for all the
16 work that you=ve done to those of you who are here in the room. Keith,
17 to you and your team. And, you know, I think any time you work in a large
18 organization people say the good news is you get to work on a
19 high-priority project, and then the bad news is that you get to work on a
20 high-priority project, so I think you and your folks have done a
21 tremendous job.

22 And I might ask, I know there have been a couple of
23 statements made in the Staff panel to the effect that you have every
24 intention of being able to conclude your work on the time line that you
25 have publically discussed, the summer time frame. Is your confidence
26 now since you have had some time with the public comment record, you

1 know some sense of the journeys that lie before you? Is that schedule
2 still achievable? And if there were a question about it, what would occur
3 to make that something that you would have some lower probability of
4 achieving? Keith, maybe you want to take a cut at that.

5 MR. McCONNELL: I would characterize it as we=re
6 cautiously optimistic of meeting the established schedule. We=re
7 cautious because we=re respectful of the volume of comments that
8 we=ve got, and the need to address them comprehensively. But we=re
9 optimistic because as Mike and Cathy have indicated, this is an
10 Agency-wide effort. All the offices have put their shoulder to this. And,
11 also, I=d note that it=s basically within our control. It=s a matter of the
12 NRC Staff performing in this particular instance, but there is a great
13 challenge in the sense that we B- I think all of us want to produce a
14 high-quality document. And that takes time, and it takes working smart,
15 so we=re attempting to do that. So, I don=t know if I responded
16 completely to your question.

17 COMMISSIONER SVINICKI: No, I think that is
18 responsive, and you=re still pulling in that direction. But, of course, you
19 control much, but you don=t control everything, and doing the job right is
20 going to be balanced against the schedule that=s been laid out for you.
21 So, that=s what I take from your answer, and I appreciate that. And I
22 think that that=s appropriate.

23 And, again, as Chairman Macfarlane indicated in her
24 opening, we do have these constraints around this meeting where since
25 you=re still in the process of analyzing the public comment record we=re
26 not going to ask you specifically to respond. I appreciate that you leaned

1 forward a bit and gave us at least where preliminary indications might
2 take you on some issues. Mike Weber was clear again at the open and
3 close of the Staff=s presentation, appropriately so, that that is and needs
4 to be caveated as a preliminary view. But I do think that that=s helpful.

5 So, in light of that, and the fact that you will continue
6 your work, and the Commission will see whatever product you provide to
7 us, I think the only question, other question that I=m going to ask you is
8 that the NRC=s Inspector General had a report, an audit of NRC=s
9 compliance with 10 CFR Part 51 that=s relative to the preparation of
10 Environmental Impact Statements. Have those recommendations been
11 factored into your approach to the work you did here on the EIS? And, if
12 so, could you talk a little bit about how that was done?

13 MR. McCONNELL: Yes. We=re aware of the OIG=s
14 report. In fact, some of us were interviewed by the OIG Staff. They made
15 six recommendations, and they basically boil down to three because one
16 is develop guidance, and the other is to implement. And they related to
17 doing a ROD according to 51.102 and 103. Sorry, Record of Decision, I
18 apologize. And we intend to do that, but that would occur at the end of
19 the process when the rule is published. So, we haven=t done that step.

20 The other two related to scoping of the Generic
21 Environmental Impact Statement, which we did do in accordance with
22 what the OIG recommended. It wasn=t required but we did it because
23 we thought it was the right thing to do. And the other dealt with the format
24 of the Generic Environmental Impact Statement in relation to Appendix A
25 to Part 51. And our Draft Generic Environmental Impact Statement is
26 consistent with that appendix, and the IG=s recommendation.

1 COMMISSIONER SVINICKI: Okay, thank you. And I
2 guess I'll just close by once again saying take heart in how far you've
3 come. You keep pulling in that direction. And, again, in any number of
4 fora in Q&A, you know, I've been asked how I feel about the NRC
5 Staff's efforts in this area and, you know, I just respond that I think it's a
6 really proud effort on the Agency's part, so I want to thank all of you for
7 your commitment to this, your devotion. And you're closer to the end of
8 this miserable endeavor than you think, so don't worry about it. You'll
9 get there. Thanks.

10 CHAIRMAN MACFARLANE: Okay. Commissioner
11 Apostolakis.

12 COMMISSIONER APOSTOLAKIS: Well, in a previous
13 life I used to submit papers to technical journals and then I would get
14 comments from peer reviewers, and I didn't know where they were. And
15 I remember that as the number of comments approached ten or more, I
16 would get very annoyed.

17 (Laughter.)

18 COMMISSIONER APOSTOLAKIS: So, I must say that
19 you guys have a herculean task ahead of you, and I have complete
20 confidence that you will do your best to respond to these comments,
21 more than 1,000 comments I understand. And given the constraints of
22 today, back to you, Madam Chairman.

23 CHAIRMAN MACFARLANE: Okay. Commissioner
24 Magwood.

25 COMMISSIONER MAGWOOD: Thank you, Chairman. I
26 should note that Commissioner Apostolakis' previous lives sound very

1 boring to me. I was expecting him to have been an Egyptian pharaoh, or
2 perhaps a Bolivian midwife, or something interesting.

3 (Laughter.)

4 COMMISSIONER MAGWOOD: The target is so rich.
5 Well, first, let me thank you. We've been through this little journey from
6 the very beginning. I've talked with all of you at one point in time or
7 other, and Cathy rather frequently about this effort. And it always
8 impresses with me the NRC Staff how when given some massive
9 challenge, which when you sort of think about conception, you think how
10 is all this going to get done in this time frame? Somehow they always
11 seem to manage to pull it together, so I'm always quite impressed with
12 that. And particularly since unlike a lot of agencies, most of this work was
13 done in-house, all the comment resolutions were all done by NRC Staff,
14 not with the use of a lot of contracts. Well, they had the labs helping us,
15 so that's more to be lauded.

16 From the previous panel, one item I wanted to give you
17 a chance to react to was the comment that we heard from all the
18 panelists about how successful the public outreach was. And you
19 highlight that in your presentation. And as I hear that, and I hear how
20 Keith pointed out that there were some lessons learned from this. How
21 do we incorporate that going forward? I mean, we're going to have
22 opportunities to do these sorts of things, and Keith won't be running all
23 of them, or maybe he will. I don't know. What are we doing to make sure
24 that the rest of the Staff benefits from what we've learned here?

25 MR. IMBODEN: Okay. Well, both Cathy and Keith have
26 asked the Staff to produce a document at the end, a lessons learned, so

1 that way we could see what other B- what wasn't highly successful and
2 what was, what we'd like to do more, better, and different the next time
3 an opportunity like this presents itself that has the high degree of public
4 interest on it. And we're not B- we haven't set a deadline for that. We
5 are planning on accomplishing that in the summer, as well. The first
6 priority right now is getting the documents to the Commission.

7 MR. WEBER: Yes, I would only add, of course, one of
8 the benefits of the Directorate approach that we took to prepare this set
9 of analyses is that the Staff have come from across the Agency, so now
10 that this team when it's completed will disband and people will go back
11 across the Agency, they will take with them the good insights that
12 they've gained through this public process.

13 And on the feedback we heard from the first panel on
14 the process, you know, what I took away was kudos on the process, but
15 a qualification of well, we'll determine how good it is based on what the
16 product is from this process. And I think that's fair, you know. And I
17 think, you know, at a certain point process and product intersect, and
18 I'm sure what we come up with, what you come up with will not please
19 everyone. And then those who took the time, and energy, and committed
20 to participate in the process will have an opportunity to reflect upon well,
21 how did what we did contribute to or detract from that final outcome?
22 And, hopefully, they'll be equally forthcoming in sharing those views
23 with us so that we can look at this kind of in its totality, and not in a
24 segmented way.

25 COMMISSIONER MAGWOOD: I appreciate that. Mike,
26 do we B- I think there's so many training courses, and I don't have a list

1 of all of them, but I imagine there=s a training course that speaks to this
2 kind of process. If there is, are we going to be able to fold your lessons
3 learned document into that training? Is that something the Staff would B-

4 MR. IMBODEN: Yes, prior to the public meetings we
5 had everyone who was going to go on those meetings take specific
6 training to be able to respond. That=s definitely a lesson that I=d like to
7 share with my colleagues so we could B-

8 COMMISSIONER MAGWOOD: Fold that back in.

9 MR. IMBODEN: Yes.

10 COMMISSIONER MAGWOOD: Fantastic.

11 MR. WEBER: And, of course, we=re also responding to
12 the Chairman=s tasking memorandum on public involvement. And one
13 of the tasks in that is to look at the comprehensiveness of our training,
14 and is it focused on the right aspects? So, we=ll have that opportunity to
15 reflect on that, as well, including other Agency initiatives, not just what
16 we=re doing on Waste Confidence, but other licensing actions, the
17 Reactor Oversight Process. So, we=ll use any and all insights.

18 MS. HANEY: I would just add one more thing as a best
19 practice I think that came up was encouraging Staff to think outside the
20 box with regards to public outreach. Sometimes we tend to limit
21 ourselves to what=s been done before, and what=s been successful
22 before. And when given this task several months ago to take on, really
23 bringing together the team and allowing our Staff to brainstorm on ideas,
24 and how to do things differently was, I think, one of the biggest benefits,
25 and what really got us to going with as extensive an outreach as we did.
26 So, again, it=s one of those intangible lessons learned, but I think it=s

1 just continuing to send the message to all of our Staff and managers that
2 it=s okay to think outside the box.

3 COMMISSIONER MAGWOOD: Thank you. One last
4 question for Jacob Marley, otherwise known as Keith McConnell for the
5 record. After going through this rulemaking effort in this compressed
6 time frame, you must have learned some lessons about how to manage
7 an activity like this. And you had to take a disparate workforce and
8 quickly bring them together and harmonize that. Anything you want to
9 share about your experience that you think is a unique lesson that
10 you=ve taken from this exercise?

11 MR. McCONNELL: Just two things. I think one thing is I
12 actually believe that firm deadlines are your friends. And I think in this
13 particular instance the Commission=s prescription of a deadline is
14 actually, in my view, a very positive thing.

15 In terms of bringing Staff together, you know, I heard my
16 name mentioned a couple of times but that=s really misdirected. It=s the
17 people behind me who are doing all the work, and in the audience, and it
18 just what B- it probably goes away from your question, but it just
19 demonstrates, I think, the quality of not only the technical staff, but the
20 rulemaking staff, and the communication staff in this particular instance.
21 And the legal staff, I=m sorry. Sorry, I include them with the technical
22 folks.

23 COMMISSIONER MAGWOOD: Right. And SECY, as
24 well. Right. Well, again, appreciate all the work on this. Obviously,
25 there=s still some critical steps to go. As this goes forward, if anything
26 comes up that could interfere with your completion on schedule, you=ll

1 please highlight it to the Commission as soon as possible. All right.
2 Thank you very much. Thank you, Chairman.

3 CHAIRMAN MACFARLANE: Okay. Commissioner
4 Ostendorff.

5 COMMISSIONER OSTENDORFF: Thank you,
6 Chairman. My good friend and colleague, Commissioner Svinicki, being
7 the student of film that she is, I thought that rather using the Christmas
8 Carol, she might pick a couple of other movies to select from,
9 Groundhog Day could be one.

10 (Laughter.)

11 COMMISSIONER OSTENDORFF: Die Hard II, Death
12 Wish IV. So, I appreciate Kristine=s keeping this light a little bit this
13 afternoon with her movie choice, and I think the comment was very
14 appropriate.

15 You know, I=m not sure I have any questions. I know
16 that we are limited to what we can say today, and I know that you=re still
17 working on forming opinions, so I would B- I think Commissioner
18 Magwood=s line of questioning on lessons learned, and how to capture
19 that, I completely agree with those points that he has made, and I think
20 that=s important to capture.

21 I would comment, I=ve also B- I=ve been pleased to see
22 the willingness with which various office directors have supported
23 people. I ran a Combined Federal Campaign in the Baltimore-Annapolis
24 area back in 1999 through 2002, for three years I did that for the Navy,
25 and the giving and organizing that, this, and so forth and so on, look to
26 my friend B- well, where did Glenn go, because Glenn Tracy=s been

1 back here. He was here a few minutes ago. I know the NRO has been, in
2 particular, with the B- assisting their workload has been a big contributor
3 to help attainment, as well as all the other offices. And I appreciate your
4 mentioning those, both Cathy and Keith, across the board for the NRC,
5 and the people behind you. So, I'll add my thanks and encouragement
6 for the rest of the marathon here for the group, and I have no further
7 questions. Thank you all.

8 CHAIRMAN MACFARLANE: Okay, thank you guys. I
9 have questions, so I'm going to ask a bunch of questions. And I will say
10 thank you, and I will say, Andy, I guess it was okay that you left my staff
11 to do this. Good job.

12 I was glad to hear, Keith, you say that there's a large
13 body of work to draw on as you start to address these comments, not
14 only work internal, but external work which echoes some of the stuff I
15 was saying at the RIC. I do encourage you very strongly to look at the
16 large body of work that exists on a number of the areas in which you
17 received comments that's not produced from within the Agency, but
18 that's produced outside the Agency. And the degree to which we don't
19 reinvent the wheel, but we use what's out there is very helpful, I think.
20 So, more encouragement in that area.

21 There have been a lot of discussion about the public
22 comment process, and I appreciate that you guys traveled around.
23 When Andy was thinking about leaving me, we talked about the
24 importance of getting around the country and talking to folks personally
25 about this issue, and I'm glad you guys were able to accomplish that.
26 I'm wondering if there were comments, if you received comments about

1 the public comment process that you're going to address?

2 MR. IMBODEN: Yes, in the scoping period we
3 requested from the public input on where should we have these
4 meetings. Waste Confidence is a nationwide issue, there's no one
5 place you go to talk about Waste Confidence. It affects everybody. And
6 we got all kinds of input on that. We couldn't make everyone happy, we
7 couldn't be everywhere, but we B-

8 CHAIRMAN MACFARLANE: Sure, obviously.

9 MR. IMBODEN: B- did our best to B-

10 CHAIRMAN MACFARLANE: But did people comment
11 on the process itself, what they thought would be helpful, or what they
12 thought wasn't helpful?

13 MR. IMBODEN: We got good public comments, notes of
14 appreciation and that kind of thing from our meetings, how they were
15 conducted with the actual authors of the documents there, people
16 appreciated that access to the NRC Staff, and the NRC scientists and
17 engineers that went to those meetings did a wonderful job embracing
18 that role, and the meetings themselves because the purpose was to get
19 public comment. The NRC's presentation was very brief, people said
20 they appreciated that because that allowed us to, even though some of
21 the meetings did go long, to hear everyone who wanted to make a
22 comment, had the opportunity to do so. And even though nobody likes a
23 time limit, you know, our facilitator helped. It was fair to everybody and
24 that allowed us to do that, and we did get good feedback on that.

25 CHAIRMAN MACFARLANE: So, other questions about
26 the comments that you got. So, in regards to comments that you

1 received on institutional controls, what were the types of comments that
2 you received related to long-term financial capacity?

3 MR. IMBODEN: And the institutional controls, that=s
4 one of the assumptions in the Generic Environmental Impact Statement
5 that seemed to attract a lot of comments, as did costs. The cost analysis
6 that the Staff did in the draft was an analysis of the proposed action, the
7 rulemaking, or its alternatives. And we did get a lot of comments. We
8 heard some of this from the first panel. Well, what about the cost of the
9 storage itself, or which fund is going to be used to pay for this and that?
10 So, we=re still deciding what the best approach is on those things.

11 CHAIRMAN MACFARLANE: Yes, I=m not interested in
12 where you=re going with it. I=m interested in understanding the detail of
13 the comments.

14 MR. IMBODEN: Yes, institutional control was B- going
15 into it, it was something that was very B- kind of a narrow B- it was one
16 assumption in a large Generic Environmental Impact Statement.

17 CHAIRMAN MACFARLANE: Can you remind me what
18 the Draft GEIS, Environmental Impact Statement and the proposed rule
19 assumed regarding financial assurance of long-term storage? Do you
20 guys B-

21 MR. McCONNELL: Well, we assumed institutional
22 controls were in place. We also assumed that the industry would be
23 there, and so the finances would be there, as required by regulation.

24 CHAIRMAN MACFARLANE: Okay. And our finance
25 B- our regulations go beyond the 60-year safe store period for financial
26 assurance? Am I missing something here?

1 MR. McCONNELL: There would still be a possession
2 license. They would still need to decommission any independent spent
3 fuel storage installation. And, therefore, there still would be a need for
4 financial assurance for those activities. They still need to fund the safety
5 and security aspects of the operations of those facilities.

6 CHAIRMAN MACFARLANE: Okay.

7 MR. WEBER: That=s what exists today.

8 CHAIRMAN MACFARLANE: Right.

9 MR. WEBER: Right. So, they=re not done until we say
10 they=re done and the license is terminated.

11 CHAIRMAN MACFARLANE: Right. I=m just trying to
12 B- I don=t remember what was in the Draft GEIS, and the rule, so I=m
13 just trying to understand where B- you know, what our benchmark was.

14 MR. IMBODEN: Yes, it was a continuation of our
15 existing regulations.

16 CHAIRMAN MACFARLANE: Okay. According to your
17 Slide 7, you received more than 150 comments on high burn-up fuel?
18 And you noted that the B- well, in your writeup you noted that the EPA in
19 their statutory role as a reviewer of NRC Environmental Impact
20 Statements said that this topic should be addressed in greater detail.
21 Right? In the Final Generic Environmental Impact Statement, so what
22 were some of the major technical comments about high burn-up fuel?

23 MR. IMBODEN: Oh, high burn-up fuel was included in
24 the Draft Generic Environmental Impact Statement. It=s part of our
25 analysis.

26 CHAIRMAN MACFARLANE: Right. The clear B- they

1 wanted more detail, but that was their comment. I'm interested in other
2 comments that you received.

3 MR. IMBODEN: Yes, that was B- there was a lot of
4 comments on that issue, so we heard different things in different parts of
5 the country.

6 CHAIRMAN MACFARLANE: Okay, interesting.

7 MR. IMBODEN: It was a little bit different in the meeting
8 we had in the Boston area than the one we did in Southern California.

9 CHAIRMAN MACFARLANE: So, what were the
10 concerns raised?

11 MR. IMBODEN: The concerns B- one of the lines that
12 was surprising to me was the feeling that high burn-up fuel would be
13 licensed in a way that somehow wasn't forthcoming, you know, by the
14 Agency when we would approve it. It kind of surprised some folks that,
15 you know, does my plant near me that I'm concerned about, does that
16 have high burn-up fuel? And that kind of concern, so that was a little
17 surprising to me because, you know B- and in our documents we
18 absolutely consider high burn-up fuel.

19 CHAIRMAN MACFARLANE: Were there other technical
20 comments on high burn-up fuel?

21 MR. IMBODEN: And then how B- during the period that
22 Waste Confidence is concerned with after the license life for operation,
23 how aging mechanisms might occur on high burn-up fuel. That was one
24 comment. Another line of comment was kind of like there's a lack of
25 research here. You guys need to do more before you could come to a
26 conclusion.

1 MR. McCONNELL: I might add, I think the focus of most
2 the comments, and from a technical perspective were on aging
3 management activities and also the uncertainty that exists with how
4 degradation might occur in dry storage with high burn-up fuel. And that
5 there might be greater uncertainty in that particular instance than there is
6 with storage of the other fuel, so it=s mostly on B- I think, focused on the
7 uncertainty that exists with high-burn-up fuel for long periods of time, or
8 periods of time beyond 20 years.

9 CHAIRMAN MACFARLANE: Okay, thanks. I=m
10 interested in your use of the term feasible. On Slide 6 you talk about, you
11 know B-

12 (Off microphone comment.)

13 CHAIRMAN MACFARLANE: Yes, so to me feasible
14 means B- you know, this is a complete connotation but it means
15 technically feasible, not necessarily politically or societally feasible, so
16 I=m wondering if you share that B- if you would just explain what feasible
17 means.

18 MR. McCONNELL: I think from the perspective of the
19 Draft Generic Environmental Impact Statement we saw it to be both
20 technically feasible based on the Department of Energy=s work, and
21 also our own Staff=s work on the Yucca Mountain review. But also
22 looking internationally, we also thought that feasibility could be
23 expanded to include the societal and political will to get the job done. So,
24 I think from the Draft Generic Environmental Impact Statement feasibility
25 covered both.

26 CHAIRMAN MACFARLANE: Okay. Okay, thanks for

1 that clarification. I appreciate that. What kind of comments did you guys
2 receive on dry transfer capabilities, safety and feasibility, there=s the
3 feasibility word again, of dry transfer of spent fuel?

4 MR. IMBODEN: Yes, that was our assumption that
5 came into play in the long-term and the indefinite scenarios in the
6 Environmental Impact Statement. And we heard comments about the
7 B- in particular, the Staff assumed that that would have to be done every
8 100 years for the purposes of the Environmental Impact Statement. We
9 got some comments that that was a very, very conservative number, that
10 cask would be longer. We heard other comments that because of things
11 you don=t know about, you should assume more frequent replace, so
12 that=s with how often it had to be done, the frequency. We also got
13 comments on people=s opinions on what the environmental impacts of
14 the construction of a dry transfer facility would impose on, such as it
15 would cause B- it was a ground disturbing activity, so it may have
16 impacts to cultural and historic resources, or terrestrial life, that kind
17 thing, and worker exposure, those kind of concerns. It got a lot of
18 attention.

19 CHAIRMAN MACFARLANE: Okay. Do you want to add
20 something on that?

21 MR. McCONNELL: Well, we also got comments on the
22 fact that there hasn=t been a dry transfer facility even proposed for
23 nearly 20 years which was B- it was in the mid-1990s, I think, that DOE
24 and Transnuclear came in with a topical report, or something similar to
25 that. So, there is a great deal of concern that while it might be feasible,
26 nothing exists on paper at this point.

1 CHAIRMAN MACFARLANE: Okay. Okay, thanks,
2 thanks for expanding on all of that. And I=m way over my time now, so
3 I=m going to ask if anybody has additional questions or comments? No?
4 Then I will thank you all. I know you are working very hard but there is
5 light at the end of the tunnel. There is, Andy, there=s light at the end of
6 the tunnel.

7 So, I know this is an issue of great interest to many
8 people, as clearly demonstrated by the number of comments that we=ve
9 received, and the amount of input that we=ve gotten. And, of course, we
10 are paying a lot of attention to it here at the Agency, and will continue to
11 do so and follow its resolution.

12 We appreciate all the comments and the hard work,
13 again, that folks outside have provided to us. And, clearly, based on our
14 discussion right now, they were very precise and technical, so we really
15 appreciate that, and we will go forward with this. Thank you all very much
16 for your attention. We=re adjourned.

17 (Whereupon, the proceedings went off the record at
18 3:53 p.m.)
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