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Title: Viacom Petition 2.206

Docket Number: 70-698; License No. SNM-770

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U.S. NUCLEAR REGULATORY COMMISSION

PETITION REVIEW BOARD

In the Matter of: ||
 || Docket No. 70-698
VIACOM PETITION 2.206 || License No. SNM-770
 ||

Thursday,
February 20, 2003

The meeting commenced at 1:00 p.m. in Room T8F1,
Two White Flint North, Rockville, Maryland, Dr.
Margaret Federline, Chair, presiding.

NRC STAFF PRESENT:

- | | |
|----------------------|----------|
| MARGARET FEDERLINE | NRR/NMSS |
| DEREK WIDMAYER | NRR/NMSS |
| PATRICK ISAACS | NRR |
| ALEXANDER ADAMS, JR. | NRR |
| SHELLY COLE | OGC |
| JACK GOLDBERG | OGC |
| PAUL GOLDBERG | NRC/NMSS |

1 NRC STAFF PRESENT: (cont.)

2 PATRICK MADDEN NRR

3 L.B. (TAD) MARSH DLPM/NRR

4 NICK ORLANDO NRC/NMSS

5 GEORGE PANGBURN Director, Region I (via
6 telephone)

7 MARK ROBERTS Region I

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1 APPEARANCES:2 On Behalf of Viacom, Inc.:

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RICHARD G. MURPHY, ESQ.

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ALSO PRESENT:

A. JOSEPH NARDI Westinghouse

RICHARD SMITH Viacom

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

1:13 p.m.

CHAIRPERSON FEDERLINE: My name is Margaret Federline. I'm Deputy Director of the Office of Nuclear Materials Safety and Safeguards. We are here for a Petition Review Board this afternoon. We thank you all for coming. I just wanted to notice that the meeting is being recorded. Let's first start by going through introductions. Let's just start, Marty, if you would start.

MR. MALSCH: Sure. I'm Marty Malsch. I'm with the Virginia law firm of Egan and Associates, and I'm here representing Viacom.

MR. McBRIDE: My name is Michael McBride with Leboeuf, Lamb, Green and MacRae, on behalf of Viacom.

MR. NOETHIGER: Robert Noethiger, in-house attorney with Viacom.

MR. LAWRENCE: John Lawrence, also with Leboeuf, Lamb, Green and MacRae, representing Viacom.

MR. ISAAC: Patrick Isaac, NRC/NRR.

CHAIRPERSON FEDERLINE: Margaret Federline.

MR. WIDMAYER: Derek Widmayer, I'm NRC/NMSS.

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1 MR. WETTERHAHN: Mark Wetterhahn, Winston
2 & Strawn, Regulatory Counsel for Westinghouse.

3 MR. NARDI: Joe Nardi with Westinghouse,
4 License Administrator.

5 MR. MURPHY: Rick Murphy with Sutherland,
6 Asbill & Brennan, here representing Westinghouse.

7 PARTICIPANT: Keep going?

8 CHAIRPERSON FEDERLINE: Yes, please.

9 MS. POOLE: Brooke Poole, Winston &
10 Strawn, also on behalf of Westinghouse.

11 MR. ORLANDO: Nick Orlando, NRC/NMSS.

12 MR. P. GOLDBERG: Paul Goldberg, NRC/NMSS.

13 MR. ROBERTS: Mark Roberts, NRC Region 1,
14 Westinghouse, the Westinghouse Project Manager.

15 MR. MARSH: Tad Marsh, Deputy Director for
16 the Division of Licensing Project Management. I'm
17 Chair to be for --

18 MS. COLE: Shelly Cole, NRC/OGC.

19 MR. J. GOLDBERG: Jack Goldberg, NRC/OGC.

20 MR. MADDEN: Pat Madden. I'm the Chief of
21 Research in --

22 MR. ADAMS: Bill Adams. I'm the Licensing
23 Project Manager for the reactor.

24 MR. SMITH: Richard Smith with Viacom.

25 CHAIRPERSON FEDERLINE: And we've started

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1 a sign-up list -- could we start a sign-up list
2 around?

3 The subject of the meeting today is the
4 2.206 Petition received from Viacom, dated October 30,
5 2002. Currently, the Office of Nuclear Reactor
6 Regulation is responsible for review of the Petition
7 through the completion of this PRB meeting. You've
8 caught us in sort of a flux when this project is being
9 shifted to NMSS with other reactor decommissioning
10 projects. Patrick Isaac is the NRR Petition Manager
11 sitting next to me. Following the conclusion of this
12 meeting, NMSS will take over the Petition, and we will
13 issue the acknowledgement letter. And Derek Widmayer
14 on this side will be the NMSS Petition Manager, and I
15 assure you there will be a seamless transition here.

16 Section 2.206 of NRC's regulations permits
17 any person to file a petition to request that the
18 Commission take enforcement-related action based upon
19 specified facts that constitute the basis for taking
20 the requested action. The Commission may grant a
21 request for action in whole or in part, it may take
22 other action which satisfies the concerns raised or it
23 may deny the request.

24 You're all probably familiar with
25 Management Directive 8.11, which we follow in

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1 implementing our 2.206 process. Now, in this case,
2 Viacom has requested that NRC issue an order that
3 would require Westinghouse's cooperation in the
4 decommissioning of the Westinghouse test reactor.
5 Specifically, it requests an order that would require
6 Westinghouse to provide certain radiological survey
7 data to NRC and to accept under NRC License SNM-770
8 certain residual byproduct materials now held under
9 NRC License TR-2 by Viacom and located at the
10 Westinghouse test reactor.

11 The Licensee, Westinghouse, provided a
12 response to Viacom's petition on December 20, 2002,
13 and the purpose of this meeting is to allow the
14 Petitioner and the Licensees to address the Petition
15 Review Board. This is an opportunity for the
16 Petitioners to provide additional explanations or
17 support for the Petition and for the Responders to
18 provide additional explanations or support for their
19 response to the Petition. There will be an
20 opportunity to ask questions at the end of the
21 meeting.

22 Now, as normal for our process, following
23 this meeting the PRB will meet to determine whether
24 NRC accepts the Petition or not under the 2.206
25 process or whether the concerns will be dealt with

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1 under another mechanism. The PRB's meeting today will
2 not determine whether we agree or disagree with the
3 Petition; that will be decided later. The recording
4 of the meeting will be converted to a transcript, and
5 we will treat all discussions today as a supplement to
6 the Petition.

7 We've allowed the following schedule for
8 this meeting: Viacom has 45 minutes to make a
9 presentation; Westinghouse then has 45 minutes to make
10 a presentation; Viacom has 15 minutes to make a
11 rebuttal to the Westinghouse presentation;
12 Westinghouse has 15 minutes to make a rebuttal to the
13 Viacom presentation. The PRB has 45 minutes to ask
14 questions for Viacom and Westinghouse, and that will
15 get us to our adjourn time period of four o'clock this
16 afternoon.

17 We'd like you to keep your comments and
18 your discussions within the allotted times if at all
19 possible. This will allow a fair and balanced
20 presentation of the facts for both sides, and it will
21 also leave time for the NRC staff to ask questions at
22 the end for clarification. When we get to the
23 question period, we want to limit the questions and
24 answers to those that are clarifying in nature. We
25 don't want to get into a debate on the merits of the

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1 Petition as part of this meeting.

2 If the PRB decides that the Petition will
3 be considered under 2.206, then an acknowledgement
4 letter will follow. And as I said before, at the
5 conclusion of this meeting, NMSS will assume
6 management of the Petition and within 120 days
7 following the acknowledgement letter, NRC will issue
8 a proposed Director's decision for comment. If we do
9 not accept the Petition under 2.206, we'll document
10 that fact in a letter to the Petitioners. Of course,
11 status reports on the progress of the Petition will be
12 updated monthly and are available on the NRC home
13 page, and the NMSS Petition Manager will keep the
14 Petitioners and the Licensees periodically informed on
15 progress on the petitions.

16 If there are no questions about the
17 process or the way we're going to proceed this
18 afternoon, I'll turn to Viacom and ask you to begin
19 your presentation.

20 MR. MALSCH: Okay. I'll begin. First, I
21 should thank Dr. Federline and the other NRC employees
22 for being here today. I know sometimes it's difficult
23 to navigate around Bethesda and Rockville through snow
24 drifts and giant puddles.

25 This Petition is important to Viacom, and

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1 our purpose today is to be helpful to you and assist
2 you in reaching a proper decision. I think we've all
3 been through introductions, at least briefly. I just
4 want to add that me and Michael McBride and Robert
5 Noethiger and John Lawrence are our lawyers, and we
6 have behind us Richard Smith who is the Vice President
7 for Remediation with Viacom sitting behind me.

8 My plan would be -- for presentation would
9 be first to give a little bit about the background and
10 identity of the parties and why the Petition needed to
11 be filed in the first instance, describe in that
12 connection something about the relationship between
13 the parties, both in prior years and now, briefly
14 describe the Petition and its bases and how it meets
15 the criteria in Managing Directive 8.11 for processing
16 as 2.206 Petition.

17 CHAIRPERSON FEDERLINE: Excuse me, we've
18 had one -- George Pangburn with Region 1 has entered
19 the teleconference.

20 (Off the record discussion.)

21 CHAIRPERSON FEDERLINE: Let's just
22 clarify, is there anyone else on the line besides
23 George?

24 MR. Pangburn: No one else here in Region
25 1.

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1 CHAIRPERSON FEDERLINE: First, do you want
2 to introduce yourself?

3 (Volume very low for George Pangburn.)

4 MR. Pangburn: Of course. This is George
5 Pangburn. I'm the Director of Region 1, Division of
6 Nuclear Materials Safety. We have project management
7 responsibility and licensing responsibility of the
8 Westinghouse site. Mark Roberts from my staff is here
9 in attendance to chronicle progress on the --

10 CHAIRPERSON FEDERLINE: I apologize for
11 the ~~introduction~~ interruption.

12 MR. MALSCH: Okay. No problem. Lastly,
13 let me say that I would like to address, at least
14 briefly, the application which Viacom also filed to
15 terminate the Part 50 portion of its TR-2 license and
16 how it relates to this Petition. We have copies of
17 our slides, our Powerpoint presentation, which I think
18 John Lawrence has just handed around, so that can
19 assist you in following along and also making notes if
20 you want.

21 First of all, let me begin a little bit
22 about the background of the parties. The old
23 Westinghouse -- the so-called old Westinghouse
24 Electric Corporation, the corporation which those of
25 us who've been involved in this field for many years

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1 are most familiar with, was the original licensee for
2 the Waltz Mill site, holding both the TR-2 license for
3 the former Westinghouse test reactor and the SNM-770
4 license. Westinghouse Electric Corporation changed
5 its name to CBS Corporation in 1997, and then
6 Westinghouse Electric Company, LLC, Westinghouse, or
7 new Westinghouse, a newly created subsidiary of
8 British Nuclear Fuels, PLC, acquired CBS' nuclear
9 assets in 1999 and at that time became the SNM-770
10 licensee. CBS remained as the TR-2 licensee. It was
11 merged into Viacom in the year 2000. All of these
12 transfers and changes were approved by NRC in
13 accordance with its regulations.

14 Dr. Federline has briefly summarized the
15 Petition quite accurately. Just to elaborate slightly
16 by way of introduction, the Petition was filed on
17 October 30. It applies to the Waltz Mill site near
18 Madison, Pennsylvania. The site is about 850 acres in
19 total, there's about 85 acres within the controlled
20 area, and about five acres of the site are actually
21 impacted by remedial action activities.

22 Two NRC licenses apply to the Waltz Mill
23 site. First, there is a TR-2 license, which is now
24 held by Viacom. This is a utilization facility
25 license originally issued by the old Atomic Energy

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1 Commission in 1959, pursuant to Section 104(c) of the
2 Atomic Energy Act. There was a fuel failure accident
3 in April 1960, and the facility was shut down in 1962.
4 The TR-2 license has been a possession-only license
5 since March 25, 1963, pursuant to Amendment Number 2.
6 And so since '62 or '63, the facility has basically
7 been in a safe store mode. And so decommissioning of
8 the facility has been able to take advantage of almost
9 30 years worth of radioactive materials decay.

10 Another license is the SNM-770 materials
11 license. It's held by the new Westinghouse. It
12 covers all the Atomic Energy Act materials on the site
13 that are not covered by the TR-2 license.

14 As Dr. Federline indicated, the Petition
15 asks NRC for two orders, one directing Westinghouse to
16 accept transfer of certain residual materials left in
17 the former Westinghouse test reactor after completion
18 of decommissioning and also to provide certain
19 existing data regarding the residual materials in
20 those remaining facilities to NRC.

21 Before I get into details, let me explain
22 a little bit more about the background and how we got
23 involved. This is, in brief, just a quick picture of
24 the affected portions of the Waltz Mill site. There
25 are actually other drawings and schematics in the TR-2

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1 decommissioning plan, which we've attached to our
2 Petition. So you can look at the Petition for more
3 information. This is a little sometimes difficult to
4 read, but it's helpful to give you an idea, generally,
5 of what the site consists of.

6 The background --

7 CHAIRPERSON FEDERLINE: Could you just
8 clarify what part of the facility, the test reactor,
9 still remains?

10 MR. MALSCH: Sure. Let me turn it over to
11 Rick Smith, he can point that out.

12 MR. SMITH: The test reactor, the
13 containment building is shown here, and the footprint
14 of that building is what's still under the TR-2
15 license, and there are also some underground tunnels
16 that go under these adjacent buildings underground to
17 the facility's operation which are still part of that
18 license.

19 CHAIRPERSON FEDERLINE: Thank you.

20 MR. MALSCH: Yes. We also have, I think,
21 attached to our Petition a description of the
22 remaining facilities that would be transferred,
23 including a brief description of remedial actions that
24 have been taken and what their current general status
25 is.

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1 MR. WIDMAYER: And some other of the
2 facilities associated with the reactor have already
3 been transferred to the --

4 MR. MALSCH: Yes. In fact, as I'll
5 mention in a little bit, there's been three license
6 amendments to the TR-2 license over the years, which
7 transferred at various times various parts of what had
8 been covered by that license to the SNM-770 license.
9 So what we're asking for here has been done on three
10 prior occasions, although covering different parts.

11 The background goes back to the NRC's 1994
12 timeliness rule, so-called decommissioning timeliness
13 rule. This rule added 10 CFR 30.36, 40.42 and 70.38
14 and required for the first time that when licensees
15 cease principal activities in any separate building or
16 outdoor area that they notify NRC, prepare a
17 decommissioning plan within about 12 months and then
18 after approval of the plan complete decommissioning
19 under the plan in about 24 months, although provision
20 was made in the rule for extensions based upon site-
21 specific circumstances to both deadlines.

22 This new rule posed interesting issues for
23 the then licensee of the Waltz Mill site for several
24 reasons. First of all, the licensee plan continued in
25 productive use of the site, at least to about the year

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1 2024. And so from the Licensee's perspective,
2 immediate decommissioning for unrestricted release
3 seemed not to be needed. In addition, as I indicated,
4 there were two licenses in effect on the site, the TR-
5 2 license, which covered the former Westinghouse test
6 reactor and the SNM-770 materials license. The TR-2
7 license was not subject to the timeliness rule, but of
8 course the SNM-770 license was.

9 In addition, the Waltz Mill site had been
10 on the NRC's SDNP list since actually the originally
11 list in 1990. You can see that in SECY 90-121. And
12 this was not because of concerns about status of
13 decommissioning the test reactor itself but rather
14 because of concerns about contamination and ground
15 water.

16 So in response to the timeliness rule, the
17 Licensee developed two plans, both premised on the
18 continued use of the site until the future termination
19 of the SNM-770 license, which was then expected to
20 occur in the year 2024.

21 The first plan that was developed was the
22 SNM-770 Remediation Plan, developed and submitted in
23 1996. It covered certain rather carefully defined
24 retired facilities and soil areas on the site. The
25 retired facilities are defined and described in the

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1 plan in Section 2.1.2.1 through 2.1.2.4, and the soil
2 areas were described in Section 2.1.2.5 in Table 2-1.
3 The criteria proposed for remediation of these
4 facilities was based upon ALARA and protection of
5 workers on the site. The plan was specifically not
6 designated as a decommissioning plan, because
7 Westinghouse said it planned to continue productive
8 use of the site till the year 2024, and at that point
9 it would undergo complete decommissioning. And so
10 just to quote from Page 1-1 of the plan, the Licensee,
11 Westinghouse, said that it is not pursuing license
12 termination and will continue to conduct license
13 operations at this facility.

14 The plan has since been supplemented by an
15 August 1999 Revised Soil Plan and a May 2000 Survey
16 Plan. These plans continued with the same fundamental
17 principle that was announced in 1996. So the Soil
18 Plan said, for example, that, on Page 1, and I'm
19 quoting, "The objective of the SNM-770 Remediation
20 Plan has been the remediation of retired facilities
21 and soil areas to the extent considered prudent for
22 the continued licensed operation of the site and
23 therefore to complete the actions necessary to remove
24 the site from the SDNP list."

25 In addition -- I should add that in

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1 addition to the plan being supplemented in August '99
2 and in May 2000 with the Revised Soil Plan and Survey
3 Plan, the remediation criteria were also modified in
4 response to an NRC concern that the criteria that had
5 been proposed were not sufficiently as low as
6 reasonably achievable. In response to that NRC
7 concern, Westinghouse made a proposal for revised
8 criteria, and NRC accepted at least part of that in a
9 letter that came back approving that, and I can get
10 into that a little bit later also.

11 We believe -- Viacom believes that work is
12 now complete under the 770 plan, although we continue
13 to monitor the so-called process drain line, and we
14 recognize that we and the Licensee owe you some
15 further reports on that.

16 With regard to the SNM-770 license and the
17 completion of the SNM-770 Remediation Plan,
18 Westinghouse's response to the Petition raises the
19 issue of whether, as we believe, the plan has been
20 completed satisfactorily. We don't object, and in
21 fact welcome, the staff's consideration of whether in
22 fact this is the case. We believe it would be
23 efficient for the staff to consider this issue as a
24 part of this proceeding, because NRC is already
25 familiar with the status of the completion of both

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1 this plan and the TR-2 Decommissioning Plan. And also
2 from the beginning it has been the objective of both
3 Viacom and Westinghouse to remove the site from the
4 SDNP list in a timely manner. And, certainly, in our
5 view, NRC's consideration of the status of completion
6 of the SNM-770 Remediation Plan, as modified and
7 supplemented, would certainly assist in meeting that
8 goal of removing the site from the list.

9 The next plan that was submitted is the
10 TR-2 Final Decommissioning Plan. This plan -- after
11 the Westinghouse test reactor accident, the fuel, the
12 damaged fuel and other materials, some of them, were
13 removed from the site, but some contamination
14 remained. Under the TR-2 Decommissioning Plan, what
15 was required was removal of designated portions of the
16 shutdown reactor as necessary and sufficient to
17 terminate the Part 50 portion of the license; that is
18 to say to terminate the license for the utilization
19 facility. At that point, the remaining residual
20 radioactive materials would be transferred to SNM-770
21 where they would continue to be controlled under that
22 license.

23 The TR-2 Final Decommissioning Plan did
24 not include or provide for any criteria or provide for
25 any unrestricted release of the facility. In fact, as

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1 was the case for the SNM-770 Plan, the TR-2 Plan
2 recognized, and I'm quoting again from a transmittal
3 letter sending in the plan to the NRC, "recognize and
4 intend to continue the use of the facility for
5 licensed operations." The plan also recognized on
6 Page 2-1, and I'm quoting again, "That no radiological
7 limits apply to the transfer except the limits,
8 possession limits in the SNM-770 license."

9 So the objective of the plan was to
10 terminate the Part 50 portion of the TR-2 license, to
11 terminate the utilization facility license, but there
12 was no intent to terminate all licenses governing the
13 materials. Instead they would be transferred over
14 into the SNM-770 license, which itself was not planned
15 to be terminated until sometime around the year 2024.

16 NRC approved of the plan in 1998. This is
17 pursuant to Amendment Number 8 to the TR-2 license.
18 Upon approval the plan itself became part of the FSAR
19 and then controlled pursuant to 10 CFR 50.59. A
20 change in the plan was made pursuant to 50.59 in
21 January 2000 and that is the Revision 1 to the plan
22 which we've attached to our Petition, although I
23 should add at this point that we believe that the
24 outcome of our Petition would be the same whether the
25 staff focuses on Revision 0 or Revision 1. It

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1 shouldn't make any difference. Both are to the same
2 effect. And we can elaborate upon this later also.

3 Let me go next to a little bit about the
4 relationship between the parties. CBS' sale of its
5 nuclear assets to the new Westinghouse was pursuant to
6 a June 25, 1998 Asset Purchase Agreement between the
7 parties with the rights assigned to Westinghouse. At
8 the time the Agreement was entered into, the SNM-770
9 Plan and the TR-2 Decommissioning Plan were both still
10 pending before the NRC. However, when the deal closed
11 and the sale actually took place on March 22, 1999,
12 the TR-2 Plan had in fact been approved by the NRC.
13 The SNM-770 Remediation Plan, however, was still
14 pending.

15 Under the sale, at most operating sites,
16 Westinghouse became the sole licensee after the NRC
17 approved transfers. And this approach was followed
18 for the active portion of the Waltz Mill site, the
19 SNM-770 license. However, the TR-2 license could not
20 be transferred. The prospective transferee, the new
21 Westinghouse Electric Company, LLC, was a wholly owned
22 indirect subsidiary of a foreign country, and under
23 Section 104 of the Atomic Energy Act, an entity
24 controlled by a foreign company is ineligible to hold
25 a license. So that license could not actually be

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1 transferred, and so it was held by CBS, not Viacom.

2 However, under the Agreement between the
3 parties, Viacom retained the license, as I indicated,
4 for the TR-2 license and agreed with Westinghouse to
5 decommission the test reactor in accordance with the
6 TR-2 Decommissioning Plan, as NRC had approved it.
7 Viacom also agreed with the new Westinghouse to
8 remediate the retired facilities at Waltz Mill as
9 required by the remediation plans to be approved by
10 the NRC, which was expected at the time. As I
11 indicated, the SNM-770 Remediation Plan was pending at
12 the time.

13 It's interesting that NRC's approval of
14 the transfer made clear that the Licensee, in this
15 case, in the case of the 770 license, retain
16 responsibility for decommissioning and financial
17 assurance. What's interesting here is that in the
18 application to transfer, CBS and Westinghouse
19 proposed, actually, that NRC allocate regulatory
20 responsibility to it for decommissioning in accordance
21 with the Agreement between the parties. And so it was
22 proposed in the application that, and this is an
23 application, a letter, September 28, 1998, that NRC
24 should, in the first instance, rely on CBS as long as
25 CBS retained obligations to decommission retired

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1 facilities under the Asset Purchase Agreement.

2 However, in NRC's approval of the
3 transfer, it essentially rejected this proposition.
4 It said in its approval letter, dated March 10, 1999,
5 and I'm quoting here, "NRC will hold the licensees
6 responsible for all requirements and conditions of the
7 respective licenses, including financial
8 responsibility for decommissioning. And so whatever
9 may have been the intent of the parties originally to
10 allocate regulatory responsibility for
11 decommissioning, NRC in its response and in its
12 approval of the transfer basically maintained a
13 traditional position: The licensees are responsible
14 for decommissioning.

15 Now, at the transfer, Westinghouse and
16 Viacom also entered into a project management
17 agreement whereby Westinghouse agreed to act as
18 Viacom's decommissioning project manager to the extent
19 that Viacom had under the agreement decommissioning
20 responsibilities on the site to Westinghouse. This
21 turned out to be necessary from Viacom's viewpoint for
22 the following reasons. As one could tell from the
23 sale, it was CBS' intent in the sale to exit the
24 nuclear business. This was the purpose of the sale
25 itself. With the exiting of CBS from the nuclear

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1 business, those employees familiar with the nuclear
2 business and familiar with the sites all transitioned
3 over into the new Westinghouse. And so there was a
4 very substantial loss of nuclear expertise and
5 experience on the part of the transferor. In fact, I
6 can tell you today that Viacom's entire Nuclear
7 Department consists of Rick Smith, the gentleman
8 sitting behind me. And so NRC needed to contract out
9 for assistance in conducting decommissioning, and
10 that's what it did. You can also see this loss of
11 expertise in the composition of the Radiation Safety
12 Committee under the TR-2 license tech specs. That
13 Committee essentially consists of Westinghouse
14 employees and consultants.

15 Now, I've described briefly just the
16 highlights of the Asset Purchase Agreement between the
17 parties, but I should emphasize that our Petition does
18 not rely on any aspect of that Agreement, and we're
19 not asking NRC, as a part of this Petition or for that
20 matter as a part of our application, to terminate the
21 Part 50 license. To construe or interpret any aspect
22 of that Agreement, our Petition relies solely on NRC
23 requirements, NRC approved decommissioning plans and
24 commitments by licensees to NRC.

25 If you look at Westinghouse's response,

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1 there's an effort there to characterize or
2 recharacterize our obligations as extending to so-
3 called legacy contamination. We wanted to be clear to
4 you that we've carefully reviewed all of the NRC
5 requirements on all of the decommissioning plans, and
6 the term "legacy contamination" does not appear as any
7 sort of requirement. In fact, it doesn't even appear
8 in the Asset Purchase Agreement, for that matter.

9 As Westinghouse would have it, I believe
10 they think that is what the Asset Purchase Agreement,
11 however, requires, but we don't want NRC, thereby, to
12 be drawn into the commercial dispute. What we want
13 NRC to do by this Petition is simply to invoke NRC's
14 own independent judgment as to what its requirements
15 say, what they require and whether they've been
16 satisfied, and that's all we're asking here.

17 Let me briefly explain the Petition. We
18 understand that this is not the time for NRC to decide
19 the merits of the Petition, but we understand that
20 under Management Directive 8.11 it's necessary for the
21 Petition to be processed as a 2.206 Petition that we
22 set forth credible grounds and grounds sufficient to
23 warrant further inquiry. And so I think from that
24 perspective let me begin with just a brief summary of
25 what the Petition is asking for and what it's based

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1 upon.

2 We think, in sum, that its grounds are
3 very explicit, they're well-grounded NRC requirements,
4 and the bases are quite credible. First of all, as
5 Dr. Federline summarized in the beginning, we're
6 asking for two different orders. And also, as I
7 indicated, the Petition relies exclusively on NRC
8 requirements and Westinghouse commitments to NRC.
9 We're not asking NRC to decide the commercial dispute,
10 we're only asking you to decide what your requirements
11 mean and whether they've been satisfied. We suggest
12 that NRC leave to the commercial dispute who pays for
13 it.

14 Now, why did we file the Petition? We
15 took our duties and responsibilities as licensees
16 seriously when the dispute arose and especially after
17 the inspection report, which indicated that two
18 missing items to complete decommissioning were the
19 transfer and the provision of the data. We very much
20 want to complete decommissioning of the former
21 Westinghouse test reactor and exit the nuclear
22 business in a responsible way. We tried to get
23 Westinghouse to agree to accept the materials as we
24 believe they were required to do and they refused to
25 do so. Their refusal is documented in the exhibits

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1 which are attached to our Petition.

2 Westinghouse also refused to provide the
3 data which we think NRC was requesting, the data which
4 we think was contemplated also by -- eventually by the
5 decommissioning plans and their refusal to provide
6 that data, at least on an unconditional basis, is also
7 documented in our Petition.

8 In that regard, Westinghouse's response,
9 at Page 37, their response to our Petition not only
10 expresses again its refusal to accept the materials
11 and supply the data, it also expresses a disagreement
12 with certain NRC inspection findings. We've referred
13 to the -- the industry spec, we referred the staff to
14 the Region 1 inspection report of September 6, 2002.
15 We believe that an inspection report supports our
16 position that the time is right for both the transfer
17 of the materials to 770 and also right for providing
18 NRC with the survey data.

19 Let me first address the transfer. As
20 we've explained in our Petition, we believe
21 Westinghouse is required to and is committed to the
22 NRC to accept the transfer of these materials once the
23 TR-2 decommissioning is completed. They committed to
24 do so in connection with the renewal of their 770
25 license, and they committed to do so when they

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1 accepted the transfer of the 770 license as a result
2 of the existing of CBS from the nuclear business.

3 Clearly, NRC would not have accepted the
4 TR-2 Decommissioning Plan, which itself provided for
5 transfer of the materials, unless it also understood
6 that the Licensee was also committing to receive those
7 same materials. And the NRC in its safety evaluation
8 report associated with the license transfer made it
9 clear that it understood the transaction is not in any
10 way affecting or changing any Licensee commitment, and
11 that included, we believe, the commitment by the
12 Licensee, now the new Westinghouse as the licensee, to
13 accept the residual materials once the decommissioning
14 had been completed in accordance with the plan.

15 We believe that the transfer of the
16 materials is now required to complete the plan, and in
17 fact without the transfer of Viacom, which is very
18 desirous of exiting a nuclear business, it will become
19 a perpetual licensee with no continuing nuclear
20 business and no extensive nuclear expertise and no
21 employees really familiar with the site or actual site
22 conditions. We think that's very undesirable. We
23 think that the time is now right for transfer of the
24 materials to the SNM-770 Licensee.

25 As I indicated in response to a question,

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1 there's a precedent for this. Amendment Number 3 to
2 the TR-21 license transfer, the truck lock to the 770
3 Licensee, Amendment Number 4 to the TR-2 license,
4 transfer of the facility operations building to the
5 SNM-770 license, and Amendment Number 6 to the TR-2
6 license, transfer of the contaminated soil basins to
7 the SNM-770 license. These are easily accomplished
8 transfers in the ordinary course of business with no
9 difficulty on the part of either the transfer or NRC,
10 and we think it can easily be done here again.

11 The next part of our Petition asks for NRC
12 to request Westinghouse to provide certain data. I
13 should add this is data on residual contamination in
14 WTR's structures remaining after completion of
15 decommissioning. So this is data which characterizes
16 what is required to be transferred, it is not just raw
17 data. But the report also describes the pre-
18 remediation status of the facilities, it describes the
19 work that has been done and also describes and
20 explains the level of contamination remaining,
21 including detailed backup materials and figures. We
22 think this is very valuable information, and NRC would
23 want to have it in connection with the transfer.

24 Now, Westinghouse has refused to provide
25 the data to the NRC. Its reasons for refusing have

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1 varied over time and in fact actually vary from page
2 to page of their response. They first claim that
3 providing the data would be misleading. They also say
4 they won't provide the data because we owe them \$3
5 million under the project management agreement.

6 First of all, from our perspective, the \$3
7 million dispute is irrelevant. No commercial dispute
8 can effect NRC's right to acquire information or
9 dilute a licensee's obligation to provide that
10 information to the NRC. We think the commercial
11 dispute is simply irrelevant, and there's no need for
12 NRC to get involved in that.

13 The data can't be misleading because it
14 was generated by Westinghouse. And besides, Viacom is
15 quite confident that NRC has sufficient independent
16 expertise to evaluate the data independently and
17 conclude from it whatever can be concluded and that it
18 will not be mislead.

19 In addition, Westinghouse, although it
20 generated the data, at our expense, I might say, it's
21 now trying to limit its use on the part of NRC. This
22 is rather interesting. The response to the Petition,
23 on Page 37, Note 50, offers to freely provide the data
24 but then argues that NRC has not asked for it. But it
25 also says that it will freely provide the data as long

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1 as NRC agrees in advance that it will not support
2 Viacom's position that the TR-2 license is not right
3 for termination. This is a little bit like, for
4 example, First Energy Corporation agreeing to provide
5 you data about the restart of Davis-Besse except you
6 have to agree in advance that it supports restart. No
7 private party can tie the NRC's hands in providing
8 data and intrude upon NRC's independent authority to
9 decide what the data concludes and what the data
10 supports. So there's no basis for refusing to provide
11 NRC with the data or to condition NRC's receipt of the
12 data upon certain commitments or agreements as to what
13 the data provides before NRC even has a chance to look
14 at it.

15 We believe that once the data is provided,
16 based upon what we know about the site, that it will
17 support our belief that the decommissioning of the
18 former test reactor is complete, that the Commission's
19 criteria have been met and the time is ripe for the
20 license transfer.

21 Let me turn now briefly to Management
22 Directive 8.11. At this stage, as I indicated, the
23 principal purpose or the principal decision for the
24 NRC is whether to process this as a full 2.206
25 Petition. We believe that it clearly is and does

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1 qualify as a valid 2.206 Petition, and let me go over
2 briefly each of the criteria in that respect that are
3 set forth in Management Directive 8.11.

4 There are basically four criteria in the
5 Directive for a valid 2.206 Petition. The first one
6 asks whether the petition contains a request for
7 enforcement action. We think that's clear on the face
8 of the Petition. We're asking for NRC to issue orders
9 which are clearly in the nature of enforcement
10 actions. They are directed against an NRC licensee
11 who is subject to NRC regulatory authority.
12 Westinghouse has refused to provide the data and to
13 accept the transfer, and so enforcement action is
14 needed. Moreover, the Petition is clearly not
15 prohibited by the Atomic Energy Act. Section 221(c)
16 of the Act does say that only the government, the
17 Attorney General, can bring an action under the Atomic
18 Energy Act for a violation, but Section 221(c) also
19 provides specifically that it does not prohibit
20 administrative actions by the Commission. That is
21 what this Petition is asking for. We're asking for
22 administrative action by the Commission. Besides, if
23 this Petition is prohibited by the Atomic Energy Act,
24 then every petition is prohibited, and there's no such
25 thing as a 2.206 Petition, which is, I think, an

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1 absurd result.

2 Criterion 2 in the Directive asks whether
3 the supporting facts are credible and sufficient to
4 warrant further inquiry. I've described what the
5 Petition is asking for and gone over its bases. We
6 think the answer to this criterion is clearly, yes, we
7 have provided sufficient supporting facts, and the
8 Petition is indeed credible and supported well by NRC
9 requirements and regulations. We've cited in that
10 respect to the TR-2 Final Decommissioning Plan as
11 Exhibit 1 to our Petition, although, as I say, I think
12 the result is the same if we simply relied upon Rev.
13 0, the original decommissioning plan. We've relied
14 upon certain conditions in the SNM-770 license. We
15 relied upon certain commitments which Westinghouse
16 made in connection with renewal of that license, the
17 NRC safety evaluation report associated with the
18 license transfer. We've also relied upon the
19 Commission's misconduct rule, and in that respect we
20 have explained carefully that Westinghouse is a
21 licensee contractor, is a contractor by virtue of its
22 project management agreement with Viacom. It
23 knowingly provides nuclear services to Viacom, the
24 Licensee, under that contract. Without the transfer,
25 Viacom will be in violation and unable to comply with

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1 its decommissioning plan, and Westinghouse's refusals
2 to accept the materials and to provide the data is
3 clearly deliberate as opposed to, say, accidental or
4 inadvertent.

5 Westinghouse doesn't challenge the
6 validity of these documents, although they do raise
7 questions about how NRC should be interpreting them.
8 We also rely upon the NRC inspection report, the
9 Region 1 inspection report.

10 I want to emphasize that we have been very
11 candid in acknowledging that our Petition does not
12 present any immediate threat to the public health and
13 safety. However, we think NRC has long acknowledged
14 that issues of compliance with decommissioning plans
15 and issues associated with timeliness of
16 decommissioning raise substantial questions of public
17 health and safety, and all that is required for NRC to
18 grant this Petition is that we present a substantial
19 question of compliance with public health and safety.

20 This is in fact best illustrated by the
21 NRC's 1998 decommissioning rule. This is the rule
22 which first imposed detailed requirements on NRC
23 licensees to develop and implement decommissioning
24 plans. This rule was justified by NRC as an adequate
25 protection backfit, which means that it raised issues

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1 of adequate protection of the public health and
2 safety. And it was justified as an adequate
3 protection backfit even though for most licensees to
4 which it applied decommissioning problems would not
5 arise until years into the future. So, clearly, there
6 can be under NRC's concept of decommissioning a
7 question of adequate protection even though it is not
8 an immediate decommissioning issue.

9 Furthermore, it is absurd to argue that
10 NRC can only take enforcement action when there is an
11 immediate health and safety problem as opposed to
12 merely a substantial health and safety question. I
13 mean think about that proposition for a minute. If
14 NRC could only take enforcement action based upon an
15 immediate problem, it would never be able or
16 authorized ever to take any enforcement action against
17 a construction permit holder, because, as everyone
18 knows, until fuel is received on the site there is
19 never any immediate radiological threat, yet, clearly,
20 NRC has in its history issued many enforcement actions
21 against construction permit holders, recognizing that
22 you can issue an enforcement action based on something
23 less than an immediate threat so long as there is a
24 substantial health and safety question.

25 As I indicated that Viacom is only asking

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1 NRC in this Petition to apply its requirements without
2 regard to the party's contractual obligations and does
3 not ask NRC to decide what those contractual
4 obligations are. We think NRC action on the Petition
5 is in keeping with the highest principles of
6 administrative law. One of those principles
7 recognizes that when a matter is within the special
8 expertise of an agency, that that agency should decide
9 those questions, not somebody else, and that's why
10 we're asking you to decide questions as to what the
11 plans mean and whether they've been satisfied.

12 Criterion 3 asks whether there's another
13 NRC proceeding to which we could seek this remedy, and
14 the answer is clearly no. There is no other
15 proceeding pending in which this enforcement action
16 could possibly eventuate. Moreover, we have filed the
17 related application also to terminate the Part 50
18 portion of the TR-2 license, but that's a license
19 application. That also could not possibly eventuate
20 in any enforcement action against Westinghouse.

21 Now, Westinghouse has tried and urged NRC
22 to consolidate our application into the 2.206
23 proceeding. That is clearly improper. The Management
24 Directive is quite clear that a 2.206 Petition is not
25 the place to raise issues that are properly material

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1 in a pending licensing proceeding. Our application is
2 clearly a pending licensing proceeding; in fact, it
3 was pending when our 2.206 Petition was filed.

4 The Commission's decision in the Indian
5 Point case, 2-NRC-173, curiously cited by Westinghouse
6 itself, provides quite clearly that a 2.206 Petition
7 can't be used to avoid an existing forum. Well, we
8 have an existing forum. We have the license
9 application to the extent that's relevant, but that
10 only raises issues about the application. The proper
11 forum here is clearly our 2.206 Petition.

12 Moreover, if you were to consolidate our
13 application into the 2.206 Petition, you deny Viacom
14 its rights, because NRC action in response to an
15 enforcement petition is inherently discretionary,
16 there's no rights to a hearing, no rights to judicial
17 review. Whereas on an application we have a right to
18 a hearing under the Atomic Energy Act, and we have
19 rights to judicial review. So we ask that NRC
20 continue to keep the application and the ~~202.6~~ 2.206
21 proceeding as entirely separate matters.

22 As I said, continuing with Criterion 3,
23 we're not asking NRC to take sides in the commercial
24 dispute, and we don't think NRC should use the
25 commercial dispute as an excuse or reason not to come

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1 to grips with the issues which we raise in our
2 Petition.

3 Briefly, let me just go to Criterion 4.
4 This asks whether the Petition raises issues that have
5 already been the subject of NRC staff review and
6 evaluation. There is an NRC inspection report, the
7 NRC Region 1 inspection report, dated September 6,
8 2002. We believe that it agrees with our position
9 that decommissioning of the test reactor is complete
10 save only the provision of data to NRC and the
11 transfer of the materials to the 770 license, but that
12 inspection report did not address or come to grips
13 with the possibility of any enforcement action. And
14 so the enforcement action that we're requesting in our
15 Petition is not the subject of any other proceeding.

16 And we next have a series of slides which
17 address our application to terminate the Part 50
18 portion of the TR-2 license. As I said, we want NRC
19 to keep this petition separate from our Petition, and
20 so while we're prepared to discuss them today, we
21 really think that's beyond the scope of the Petition
22 and would prefer not to, although we're here to
23 discuss them if you're interested, and we have people
24 here available to answer your questions.

25 So let me skip then to the last slide,

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1 which I think is the conclusion. We think we have a
2 valid 2.206 Petition. We think that it meets all the
3 criteria in the NRC Management Directive 8.11. We
4 think NRC has jurisdiction to decide the matters
5 raised in the Petition. We think it only raises
6 matters within NRC's particular confidence and
7 expertise, mainly questions of what the plans mean,
8 what they require and whether they've been satisfied.
9 We think that they, as I indicated, satisfy the
10 Management Directive. We also think that if you
11 consider what we're asking you to do, we're asking you
12 to do nothing more than you would do in the ordinary
13 course. In the ordinary course, you would eventually
14 be called upon to review your plans, to decide what
15 they mean and to decide whether they've been complied
16 with. We're simply asking you now to make those same
17 kinds of determinations in the context of looking at
18 our Petition and reaching a decision on it.

19 That concludes our presentation. We're
20 here, as I said, to assist you and to be helpful in
21 reaching a proper decision, and so, obviously, we're
22 prepared to answer any questions that you want. Thank
23 you very much.

24 CHAIRPERSON FEDERLINE: Thank you. Thank
25 you very much for that presentation. Let's next hear

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1 from Westinghouse, and then we'll have a rebuttal
2 period for Viacom, a rebuttal for Westinghouse, and
3 then we'll take some time to ask and answer questions.

4 MR. WETTERHAHN: May I ask for about five
5 minutes to set up our equipment and everything else.

6 CHAIRPERSON FEDERLINE: Sure. Yes.

7 (Whereupon, the foregoing matter went off
8 the record at 2:03 p.m. and went back on
9 the record at 2: 08 p.m.)

10 MR. WETTERHAHN: Good afternoon. My name
11 is Mark Wetterhahn with Winston & Strawn. With me is
12 Brooke Poole. We are NRC regulatory counsel for
13 Westinghouse Electric Company, LLC. To my right is
14 Joe Nardi. Joe has worked for Westinghouse for 35
15 years. He is currently a supervisory engineer and
16 serves as the principal point of contact with the NRC.
17 He has been extensively involved in a number of
18 decommissioning activities at a number of sites,
19 including Waltz Mill, and presently serves on the
20 Radiation Safety Committees for both the TR-2 and SNM-
21 770 license. Also with me, as he introduced himself
22 earlier, is Rick Murphy, with the firm of Sutherland,
23 Asbill and Brennan, who is extensively involved in the
24 commercial dispute between Westinghouse and Viacom.

25 We'll try to be informal in our

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1 presentation. Each of us will give a part of the
2 presentation, and feel free if there are any
3 clarifying questions that you have now or on our
4 slides to interrupt us. We're used to that having
5 given prior NRC presentations.

6 First, I'll go over the parties again. It
7 bears repeating, although Marty talked about them.
8 We'll give a little more detailed description of the
9 Waltz Mill facility and its history, which is, we
10 believe, quite important for your consideration.
11 We'll discuss the Viacom filing, the disputes in
12 arbitration as background for the Petition and your
13 consideration of it. We're not asking you to get
14 involved in the arbitration. We'll give you our
15 position with regard to both Viacom filings and again
16 time for rebuttal, as you discussed.

17 With regard to the parties, I won't repeat
18 what was said, but the Waltz Mill site first was used
19 in the early to mid-'50s under a predecessor to the
20 SNM-770 license. It was used for the development of
21 the Westinghouse Electric Corporation's Nuclear
22 Program leading to the pressurized water reactor and
23 other water reactors. There was the TR-2 test
24 facility and a number of other facilities associated
25 with power generation. The service business was not

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1 there at the time. It did not arrive on site until
2 the 1980s. So there are two eras. There's one for
3 the development of the pressurized water reactor and
4 other reactors, and then there's the service business
5 time. And that makes an -- it's an important
6 distinction which bears on your consideration.

7 Westinghouse acquired CBS. CBS became the
8 license, and there was a single license for the site
9 and made things easy. When two licensees -- when the
10 CBS sold its commercial nuclear business to BNFL in
11 1999 things got a little tricky. And you cannot use
12 history for what happened before when there was only
13 a single licensee as precedent for when there are two
14 licensees. The situations are entirely different.

15 The new licensee was Westinghouse Electric
16 Company, LLC. It's a separate company, it has nothing
17 to do with the original Westinghouse name. They took
18 over the name but that was all. CBS merged into
19 Viacom in the year 2000. So, basically, there are two
20 sides. There's BNFL and Westinghouse Electric
21 Company, LLC. We call our client Westinghouse, and
22 we'll use it in that context for the remainder of the
23 presentation.

24 I'd like to ask Joe to give you some
25 background about the Waltz Mill site, and for this

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1 part could we get the lights?

2 MR. NARDI: The site is an 850-acre site
3 in western Pennsylvania. As Mark mentioned, it's the
4 primary site now for the consolidated work done by
5 Westinghouse for the nuclear utilities. It is the
6 site of the test reactor, that's the possession-only
7 license. Under the 770 license, we have the principal
8 license activity to support the service work, and also
9 have with it the legacy contamination that's related
10 to the other facilities that were on the site at
11 various times. These include the retired facilities,
12 the soil contamination and the allowance for the
13 completion of the test reactor cleanup after transfer.

14 MR. WETTERHAHN: I would note that we've
15 defined the term "legacy contamination" and used it
16 consistently throughout our response. It means a
17 certain thing, and it's defined by the relationship
18 between Viacom and Westinghouse. Joe?

19 MR. NARDI: This is a view of the vapor
20 shell for the test reactor. As you can see, it's
21 right now in a deteriorating condition. It's also a
22 very expensive facility to deal with. The insulation
23 on the outside of the vapor shell is a transite
24 material with leaded paint, so any renovation of it is
25 expensive at this point.

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1 We're going to have a problem, we don't
2 need the lights out. I'm sorry, I didn't expect this.
3 We might have to jump the lights up and down. In this
4 next slide, this is a further view of the test
5 reactor, and what you can see in front of it is other
6 parts of the buildings. This is the G Building which
7 houses most of the retired facilities. This is the
8 facilities building which was originally part of it.

9 And over on this side is all the service
10 center operations, and that's more clearly shown here
11 on the easel where the licensed activities for the
12 site are all comprised within this fence line. This
13 is our principal license activities with only a few
14 exceptions. We have a water treatment facility and a
15 calibration lab, and there's a chemistry lab in here.
16 But the retired facilities are primarily those
17 associated with this operation here.

18 All the rest of the site then, this whole
19 area of the site is actually used for non-licensed
20 operations, so its employees are not radiation
21 workers. So the site is a mixture of things.

22 We're going to have to drop this light.
23 What I'm going to try to do is give you a walk-through
24 of the facility and give you a little bit of the
25 pictorial interest or history of -- current status, I

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1 should say, of the facility as it is right now. It
2 would be better if you could take a tour. We invite
3 you to take a tour of the facility to see for
4 yourself, but this might help.

5 This is inside the vapor shell looking to
6 the north, and this big door here is the door that
7 leads out to the ground level. In the reactor
8 terminology, we call this the 32-foot level. We're 32
9 feet above the lowest elevation, which is the bottom
10 of the transfer canal. It is a very small footprint,
11 it's a very big building, but it's tall. That makes
12 it very difficult. It's not air conditioned. It
13 would be difficult to use for other licensed
14 activities. Next slide.

15 To orient you a little bit better, what we
16 were doing there was basically standing at that level
17 and facing that way. The reactor itself, this is an
18 original drawing. What you're going to see in the
19 next slide is that basically the bioshield has been
20 removed down to about this level. This part has been
21 removed, all of the remainder of this building. Next
22 slide, please.

23 This is looking exactly the opposite
24 direction from where I was -- the other picture was
25 taken. So this turning around looking back at the top

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1 of the biological shield. This is the 32-foot level.
2 You have a portion of it remaining here and a portion
3 remaining below. This is the hole. This wooden
4 structure covers the hole where the reactor tank was
5 originally located. Now, what I want you -- in the
6 next slide, we're going to move up closer. This shows
7 the condition of the bioshield as it is today, and
8 note this: This is an example of a major pipe that
9 went from the reactor cavity down to the transfer
10 canal below it, and it has only been covered over.

11 This perspective gives you another view of
12 the bioshield and the size of it. That's the 32-foot
13 level, this is the 16-foot level. I would like to
14 make some points here. This is the transfer canal
15 that runs under the reactor and it goes over
16 underneath the hot cells, which we'll show later.
17 There's other test pits, and this is called the sub-
18 cell room that we're entering into now. Note that
19 there's several penetrations all around which have
20 been just covered over. Next slide.

21 This is standing inside the sub-pile room.
22 That's the access to the transfer canal. The tank was
23 up here, and note that there's several penetrations
24 here. I'd like to get another closeup of those on the
25 next slide. These are typical of what was done with

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1 the embedded piping through the bioshield where only
2 the end was sealed off. These embedded pipes have not
3 been cleaned and not been surveyed their entire
4 length.

5 This is in the adjacent building. This
6 facility here now makes the transition to what is
7 covered by the 770 license. This is the transfer
8 canal. The reactor is over on this side. The hot
9 cells are up -- were originally up at the upper level
10 above this. This is support structure for the hot
11 cells and the transfer canal going the entire length.
12 You can see the results of some of the remediation of
13 the walls. It has not been completely remediated.

14 Let's look inside the transfer canal.
15 This is the wall of the transfer canal. This is a
16 grid marking for surveys. The "E" stands for an
17 elevated reading, and as you can see in this case, the
18 reading results were about two million counts per
19 minute on the survey meter. For the criteria that
20 would be applicable, it would be on the order of
21 something like 2,000.

22 MR. WIDMAYER: Two thousand times the
23 criteria?

24 MR. NARDI: No, 2,000 versus two million.

25 MR. WIDMAYER: Oh.

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1 MR. NARDI: This is another example of a
2 penetration or an embedded pipe that's through the
3 wall. In this case, this is an embedded pipe that led
4 up to the hot cells. In this situation, rather than
5 what you saw in the other where the pipe is just
6 sealed over, it was necessary to put several layers of
7 steel plate over top of the pipe and bolt it to the
8 wall. These are areas of elevated readings yet. And
9 the reason that this was done was the levels were high
10 enough to interfere with the ability to continue to do
11 surveys. Behind that is a pipe, and it has not been
12 cleaned or thoroughly surveyed. It will not meet any
13 release criteria.

14 This wall here leads out to -- this is the
15 outside wall, and there's a penetration through this
16 wall which was part of what we call the process drain
17 line. This is the start of one segment of the process
18 drain line. The interior of that process drain line
19 is reading about 600 mr per hour. So in order to
20 shield this, this massive concrete block was put in
21 place, and it was marked to cut the radiation level
22 down for the process drain line.

23 Now I'm standing outside and if you look
24 over here, this is the reactor, this is the facility
25 building. I'm basically looking at that building, the

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1 facility building. And as was pointed out in the
2 previous, underneath here are a lot of underground
3 tunnels connecting this building, which was originally
4 used for the reactor, to the vapor shell, which is
5 behind me. What I want to really do is focus on this
6 area right here, so we'll move up close to that.

7 This is the north and south test pit.
8 They're part of the retired areas that were remediated
9 partially. There is ground contamination all around
10 here. You'll see that we had to mark it. That ground
11 contamination is part of what we call the other soil
12 areas that have not been addressed by Viacom but are
13 a part of the original remediation plan. You have to
14 forgive me, I have a cold and my voice is breaking.

15 This picture here, walk down to right
16 about in here, down in the buildings, below the
17 service center, this is the service center behind us,
18 part of the service center complex. The process drain
19 line that I showed you in the picture starting up in
20 the one building comes down along underneath the
21 ground here. Remediation was conducted. You can see
22 where it stopped, right at the road. The
23 contamination continues underneath the road but was
24 not completed as required by the plan.

25 Turning around and looking in the opposite

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1 direction, this is the same interface between the
2 remediated area and the road. The contamination also
3 exists up in this area, but the remediation effort was
4 taken up to here and then stopped without completing
5 it.

6 The last picture shows the end. This is
7 the end of the process drain line as it exists today.
8 We put a stand pipe on it to bring it up to the ground
9 surface so that we would be able to monitor what's
10 going on. It turns out that the process drain line
11 did fill up with water, did leak, and it was necessary
12 to do some additional soil remediation around the base
13 because of the spillover of the water. As it is now,
14 Westinghouse has taken the actions to drain the line
15 and keep it dry. The building in the background is
16 the building that supports the ground water
17 monitoring. There are some ground water monitor wells
18 out there in the field that you can see. All the
19 water is processed through here.

20 And with that, I'd like to turn it back
21 over to Mark.

22 MR. WIDMAYER WETTERHAHN: Thank you.
23 There were two filings, as you know already. We ask
24 that they both be treated under 2.206. Westinghouse
25 filed a consolidated response on December 20, and not

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1 only did we respond but we asked for affirmative
2 relief under 2.206 if the NRC accepted the petitions
3 of Viacom.

4 Let's talk about what this dispute is
5 about and what it's not about. It's not about whether
6 the Waltz Mill will be appropriately remediated. The
7 dispute relates to which of the two parties pays for
8 remediation under the plans. The parties got
9 together, they have an agreement, that is agreement is
10 in dispute. The question is who pays? It's as simple
11 as that. If I were cynical, I would say that the two
12 filings were made to gain leverage in the ongoing
13 arbitrations. Rick will talk about the arbitrations
14 and what the criterion is for who pays to inform you
15 as to the background.

16 As you heard, Viacom would ask that you
17 say that its obligations under the decommissioning
18 plan have been completed and, in effect, terminate the
19 license and automatically transfer the residual
20 radioactivity into the 770 license. Viacom would have
21 the NRC find that it need not complete the remediation
22 of the biological shield as it told it would. We
23 believe, as will be explained later, that it's clear
24 that as part of the decommissioning of the TR-2
25 facility, the biological in its entirety was to be

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1 removed. The 50.59 that was discussed did not and
2 could not have changed that situation. That's NRC
3 Licensing 101.

4 Again, we believe this is a contractual
5 dispute. We mentioned survey data. The survey data
6 is also in the midst of that dispute, who owes who for
7 the payment of that information. What's the
8 information about? It's not about information which
9 affects the public health and safety. These areas are
10 clearly under the control of Westinghouse. It's a
11 matter of has the actions under the TR-2 license been
12 completed? Has Viacom completed its contractual
13 obligations.

14 The data, this infamous data, what it does
15 is memorializes the status quo. As you saw, as Joe
16 described, the status quo is there's contamination,
17 there's unexplored region, and that entire pedestal,
18 the biological shield, remains in place and
19 unremediated. So the data is not data for license
20 termination. At most, it states what the status quo
21 is.

22 Viacom has demobilized all activities at
23 the site. What you saw in the pictures is where they
24 stopped. There's no further work going on at the
25 site. Clearly, they started something, they didn't

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1 complete it, they went halfway and they stopped.
2 That's what the dispute is about: Who pays for
3 finishing what they should have finished?

4 Okay. If the NRC, as I said before,
5 considers the petitions, it should consider our
6 affirmative request which I'll discuss later, which
7 are related to their request. We believe that the NRC
8 should deny the petitions. There's no regulatory
9 purpose of getting involved in this commercial
10 dispute. We believe it was filed perhaps to gain an
11 advantage, to get the NRC into that dispute. We
12 believe that the NRC can easily and should stay out of
13 that commercial dispute.

14 With regard to whether Westinghouse has to
15 accept the residual materials in the TR-2 reactor, it
16 is our position, as you can see from the pictures,
17 that the biological shield has not been removed, it
18 has not been remediated. Significant contamination
19 remains, and, more importantly, when the license was
20 to be terminated, the NRC accepted the termination of
21 the license, the TR-2 license, with proposition that
22 seamlessly that remediation would continue under the
23 770 license. It was not to stop there, it was to
24 continue under the 770 license. As I said before,
25 they've left the site, they have not completed the

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1 required remediation under the 770 license, and
2 Westinghouse simply has no confidence that were the
3 license, the TR-2 license, to be terminated, that
4 Viacom would live up to its obligations under the SNM-
5 770 license.

6 Let me address what are its obligations
7 under the 770 license. Mr. Malsch talked very
8 generally about what the NRC required and didn't
9 require with regard to that. It is Westinghouse's
10 view that the NRC approves specific criteria for the
11 what we call retired facilities which we've
12 enumerated, for shorthand, perhaps legacy facilities,
13 but we've called them retired facilities. There was
14 one criterion for unrestricted release. If the
15 Licensee, which is Westinghouse, had no further use
16 for the facility under the timeliness rule and the
17 license termination rule, the NRC approved and
18 mandated unrestricted release according to certain
19 criteria.

20 Those are in the plans, and we believe if
21 Westinghouse determines, as the Licensee, under 770
22 that there's no use for -- no licensed use for the
23 retired facilities, they must be remediated to that
24 criteria. If there is a use for those facilities,
25 they have to be remediated to a criterion which I'll

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1 call for shorthand four times unrestricted use. But
2 the fact is that Viacom has not completed its
3 remediation to either of those criteria. It started,
4 it stopped, and it left the site.

5 Considering all this, Westinghouse
6 believes that it's not appropriate at this point in
7 time for it to accept the residual radiation from the
8 TR-2 reactor. Even if it somehow could accept the
9 radiation, the obligation to continue cleaning up is
10 a financial one by Viacom. While Westinghouse is the
11 Licensee, importantly the NRC asked for and received
12 financial assurance from Viacom for remediation of
13 portions of the site, what we call the legacy
14 operations. So it's not a clean division. It's a --
15 while Westinghouse has ultimate responsibility, it
16 accepted that responsibility based upon Viacom's
17 obligation to clean up the legacy contamination.

18 Clearly, this view of the world is in
19 accordance with your timeliness rule. It's clear that
20 the NRC did not accept that these facilities would
21 merely sit around unused and unremediated for 40 or
22 more years, while the remainder of the site, which is
23 completely separate and apart, would be continued to
24 be used for licensed activities. Really there are two
25 parts of the site, one which is unused and one which

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1 is actively being used for principal activities of
2 Westinghouse.

3 I would like to turn it over, I got a
4 little bit out of order, to Rick who will talk about
5 the disputes in arbitration merely as background to
6 perhaps why this was filed and what an action on the
7 part of the NRC would possibly affect the arbitration.
8 Rick?

9 MR. MURPHY: I will be brief because I
10 know that you don't want to hear too much about the
11 commercial dispute, but it does give you some context
12 to give you some idea of why we are here today despite
13 Viacom's protestations that they don't want the NRC to
14 inject itself into the commercial dispute. Any
15 actions taken by the NRC here could have a profound
16 effect on how the commercial dispute is resolved.

17 When BNFL, Westinghouse's parent,
18 purchased the nuclear service operations from CBS,
19 BNFL and CBS agreed to a very specific division of
20 responsibility for the remediation of the existing
21 contamination of the Waltz Mill, the contamination
22 we've dubbed the legacy contamination. Everybody knew
23 there was contamination at Waltz Mill at the time the
24 sale was negotiated. Everybody knew that then CBS had
25 undertaken to clean up that contamination. So part of

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1 the negotiations were a determination of how the
2 responsibility for completing that cleanup was to be
3 divided.

4 The agreement that finally came out of
5 that -- next slide, Brooke -- resulted in Section
6 8.1(a) of the Asset Purchase Agreement. As you can
7 see, what that says is that with respect to Waltz
8 Mill, and I quote, "CBS shall at its sole cost and
9 expense implement all remedial measures including
10 removal and decontamination activities as may be
11 required or are in accordance with approvals received
12 or to be received from the NRC." Now, at the time
13 this language was negotiated, CBS had already
14 submitted the two plans for approval to the NRC, the
15 TR-2 Decommissioning Plan and the SNM-770 Remediation
16 Plan. Next slide, Brooke.

17 CHAIRPERSON FEDERLINE: Could you just
18 point on to the area that's the subject of this part
19 of the Agreement?

20 MR. MURPHY: Well, all of the retired
21 facilities are subject to this part of the Agreement.
22 The TR-2 is here, and that's the TR-2 Decommissioning
23 Plan, and then there are other retired facilities
24 associated with it along with the process drain line
25 that runs roughly through here down to the facilities

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1 that have been remediated that were part of the
2 retired facilities. There is a list attached -- as
3 well as the soil site, I dare not forget the soils
4 throughout the site.

5 CHAIRPERSON FEDERLINE: This seems to
6 suggest in areas of the Waltz Mill Service Center.

7 MR. MURPHY: Right. Well, the whole --
8 the Waltz Mill Service Center was a defined term for
9 the whole site.

10 CHAIRPERSON FEDERLINE: Oh.

11 MR. MURPHY: That's the whole 850-acre
12 site --

13 CHAIRPERSON FEDERLINE: Okay.

14 MR. MURPHY: -- that BNFL, now
15 Westinghouse, was going to lease from Viacom, then
16 CBS, as part of the deal.

17 CHAIRPERSON FEDERLINE: Okay. Has that --
18 you've got an outline around an area that says Service
19 Center. Is that just --

20 MR. MURPHY: That's just to delineate what
21 is now covered by the SNM-770 license that was
22 transferred by CBS to Westinghouse and closed. When
23 we refer to the Waltz Mill Service Center what we
24 refer to now is Waltz Mill that was covering the whole
25 site.

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1 MR. WETTERHAHN: Let me interject. Under
2 NRC, the entire site is covered except for the TR-2
3 reactor under the 770 license. There are two
4 different activities: One, clean up the legacy
5 operations and the other one is the principal
6 activities of the service business. And those take
7 place in the area marked Service Center. Viacom did
8 undertake a lot of soil remediation in other areas,
9 because it was affected by its earlier operations and
10 was required to do so under this Agreement.

11 So that there's no misunderstanding, let
12 me read into the record here what the retired
13 facilities are: The process drain line, the hot cell
14 door wells and floor, transfer canal, west annex area,
15 north/south storage pits, process waste tunnel,
16 primary coolant tunnel, metalagraphic lab, hot cell
17 loading area, former low-level waste storage pad, sub-
18 cell room and sub-cell fan room. And it was also
19 required to continue its remediation of the TR-2
20 facilities after transfer.

21 MR. MURPHY: And the soils.

22 MR. WETTERHAHN: And the soils.

23 MR. MURPHY: Most of those things on the
24 list are here in this vicinity. The former low-level
25 waste pad is down here, the process drain line runs

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1 through the site.

2 Now, Section 8.1(a) tells us that CBS
3 agreed to clean up the contamination then existing at
4 Waltz Mill in accordance with approvals received from
5 NRC with respect to the project CBS proposed when it
6 submitted the TR-2 Decommissioning Plan and the SNM-
7 770 Remediation Plan. Included among approvals that
8 were received over time from the NRC with respect to
9 those remediations were the criteria that Mark has
10 told you about a few minutes ago that was criteria to
11 decontaminate the retired facilities and the old TR-2
12 facilities to unrestricted release if there was no
13 future license use for the facilities or four times
14 unrestricted release if there was a future license use
15 for the facilities. They've not made it on any of
16 that before they walked off the site.

17 The TR-2 Plan covered the old test
18 reactor, what's green here. The SNM-770 Plan covered
19 the list of retired facilities and the soils, the list
20 that Mark just read to you. In short, what CBS
21 agreed to do was decommission the test reactor and
22 remediate retired facilities including the soils of
23 the site to the criteria that the NRC approved.

24 Westinghouse, on the other hand, and this
25 was in agreement, part of the agreement between the

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1 parties, Westinghouse agreed that it was going to be
2 responsible for decommissioning the entire site at the
3 end of its useful life, remediating at that time any
4 contamination that survived the decommissioning in
5 accordance with approvals -- decommissioning and
6 remediation in accordance with the approvals of the
7 two plans. So Westinghouse is not suggesting that it
8 doesn't have the obligation to decommission this site
9 at the end of its useful life; it absolutely does.

10 Westinghouse takes its responsibility as
11 a licensee here very seriously. And there I should
12 make the point that as Mark said, this dispute is not
13 about whether this site gets cleaned up, this dispute
14 is about who pays for the cleanup. The site will be
15 cleaned up by this Licensee regardless of who pays for
16 it, but we want to have the opportunity to get that
17 question resolved. Thirty-two.

18 Now, I might also note that when the Asset
19 Purchase Agreement was negotiated, the parties
20 recognized sensibly that a dispute might arise with
21 respect to the work that CBS was agreeing to complete,
22 and they specifically agreed in Section 8.8 of the
23 Asset Purchase Agreement, and I quote, "That any
24 dispute as to the matters concerning the Waltz Mill
25 Service Center described in Section 8.1(a) shall be

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1 settled by arbitration."

2 After Viacom demobilized the cleanup
3 project and did so despite Westinghouse's objections,
4 Westinghouse, following the procedure that was called
5 for under the Asset Purchase Agreement, initiated
6 arbitration. The issue in that arbitration is whether
7 Viacom has done what CBS promised to do with respect
8 to the cleanup. That arbitration is well underway.
9 A panel has been appointed, the parties have selected
10 arbitrators. It's going to have its first meeting in
11 about two weeks, and there is no reason to believe
12 that there won't be a hearing in that arbitration
13 within the next eight to ten months.

14 And let me give you a note about timing.
15 This is arbitration, it is not litigation. It is not
16 going to drag on forever. For example, because it's
17 arbitration, there's not going to be an appeal. Once
18 the arbitrators rule about who has to pay for this,
19 that will be it, and one of us will pay for it.

20 Now, despite the agreement to arbitrate
21 all the disputes relating to the cleanup, Viacom,
22 apparently in an attempt to create leverage here
23 despite the protestations, initiated the proceedings
24 that bring us here today. As I said before, there's
25 no doubt that if the NRC were to grant any portion of

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1 the relief that Viacom has requested, it would have a
2 profound outcome on the outcome -- profound effect,
3 rather, on the outcome of that arbitration proceeding.

4 Now, you've also seen reference to a
5 second arbitration proceeding. As you've heard,
6 Westinghouse served as manager of the remediation
7 project, pursuant to a contract with Viacom. Viacom
8 has demobilized, told Westinghouse to cease work with
9 respect to the remediation, and Westinghouse has
10 initiated an arbitration proceeding trying to collect
11 approximately \$3 million that Viacom owes Westinghouse
12 for work done before the project was demobilized. And
13 most of that \$3 million relates to money Westinghouse
14 has already spent to pay the prime subcontractors on
15 the project for work that they did for Viacom. That's
16 what that arbitration is about. We have a panel also
17 empaneled there that does not have a direct impact on
18 this dispute, but that one will proceed as well.

19 And I'll turn it back over to Mark to talk
20 about Westinghouse's position.

21 MR. WETTERHAHN: Clearly, we believe this
22 is a contractual dispute. Arbitration is the forum
23 contractually chosen by the parties. Any NRC
24 pronouncement could affect the dispute. There is
25 absolutely no reason for the NRC to get involved at

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1 this point in time. These are two large companies,
2 both able to pursue the arbitration and both able to
3 pay any award by the arbitrator. It's who pays.

4 There are no health and safety issues
5 here. The NRC should exercise its discretion not to
6 become involved. I say there are no health and safety
7 issues because the TR-2 reactor is being carefully
8 controlled by Westinghouse under contract to Viacom.
9 The entire site is being maintained by Westinghouse.
10 The ground water is being treated. The process drain
11 line is being treated and monitored to assure no
12 ongoing health and safety problem exists while it's
13 decided what Viacom has to do under its responsibility
14 to complete the appropriate remediation under the
15 line.

16 However, it's our view that if the NRC
17 does decide to consider one or more of the issues
18 under the petitions, it should do so in an overall
19 context. As we say in our Petition, it should require
20 Viacom to complete the decommissioning of the TR-2
21 license, as we'll explain later, decommission and
22 decontaminate the TR-2 facilities to free release
23 standards under the SNM-770 license where Westinghouse
24 has determined they are not appropriate for use in the
25 ongoing service business. That's clearly a decision

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1 by the Licensee, Westinghouse, as to whether it has
2 any principal use in the business.

3 I might say that Viacom declined to be a
4 licensee under the 770 license. So that decision is
5 not Viacom's, that decision, as I understand the NRC
6 rules, is that of the Licensee, and it's exercised its
7 decision. As you can see by the pictures, a picture's
8 worth 1,000 words. These really do not have a use in
9 the principal activities of the service business going
10 forward.

11 And we would ask that the NRC require
12 Viacom to complete the remediation of the contaminated
13 soil and ground water as well as the other legacy
14 facilities, the retired facilities, to the standards
15 which were submitted to the NRC and approved by the
16 NRC. I'd like to go through that in more detail.
17 I'll turn that over to Joe with regard to what we're
18 asking in our portion of the 2.206 Petition. Joe?

19 MR. NARDI: What I'd like to do now is to
20 discuss the three areas of the dispute. They
21 basically are the test reactor status, the completion
22 of the retired facility remediation and the completion
23 of the contaminated soil. What I'm going to try to do
24 in each one of these is to talk about what is required
25 and what is the current status.

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1 First of all, it's clear that both
2 Revision 0 and Revision 1 of the Decommissioning Plan
3 envisioned that the entire biological shield would be
4 removed. The 50.59 analysis that is discussed in the
5 Petition did not change that requirement and cannot
6 change that requirement. That is something that's
7 certainly outside the scope of the Licensee to make a
8 change to the criteria for completion of the
9 remediation or decommissioning.

10 In this room, I'm the only person who sat
11 in on that Committee and was part of it. We took a
12 long time looking at those 50.59 change process. We
13 analyzed very carefully the process for removing the
14 tank. There were two options in the original plan; we
15 picked a third option. We did that in accordance with
16 the 50.59 process. We were very careful about how we
17 did it. If you look at the minutes of the meeting,
18 and much of that is in the response, you'll see that
19 our entire deliberation was focused on the process for
20 removal of the tank. We did not address, we never
21 discussed any concept that we change the criteria for
22 completion from removal of the bioshield to removal of
23 a portion of the bioshield. That is simply wrong.

24 MR. WETTERHAHN: Let me also add that, as
25 we said in our response, that's also a requirement of

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1 the technical specifications for the facility, and,
2 clearly, if it's in the technical specifications, it
3 can't be changed by 50.59.

4 MR. NARDI: That is right. It's basically
5 -- as I point out, it was an inappropriate avenue for
6 changing the decommissioning criteria. And we never
7 tried to change the decommissioning criteria for using
8 that procedure. Any presumption that that was the
9 purpose of the 50.59 change is wrong.

10 The current status, as you've seen, is
11 that Viacom has ceased work and demobilized large
12 portions of the biological shield, and the
13 contaminated penetrations, the embedded piping remain.
14 The actions required by Viacom to complete it are two
15 actions. One is to complete the biological shield
16 removal, but, more importantly, what they don't bring
17 out is there is a clear commitment in the
18 Decommissioning Plan that upon transfer of those
19 facilities to the 770 license, the remediation will
20 continue to the criteria established in the 770
21 remediation to those criteria. That is what is
22 required, and that is what Westinghouse is concerned
23 will not be done and Viacom has stated they will not
24 do.

25 Let me turn to the retired facilities.

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1 The criteria were established in a letter of June 19,
2 1998. This was before the signing of the Agreement
3 between BNFL and Westinghouse, or CBS at the time, and
4 it was approved prior to the formal signing. But this
5 established specific criteria at the request of the
6 NRC to what would be the end point for the completion
7 of the retired facility remediation under the plans.
8 We established two criteria. The first one was what
9 we call unrestricted release, and, very quickly, what
10 we were pinning ourself to was that in the license we
11 have an unrestricted release of facilities and
12 equipment in accordance with the August '93 document.
13 I'm sorry, I forget the full title, but that is a
14 standard NRC document for material licenses. It
15 defines unrestricted release of facilities and
16 equipment.

17 Since that was an approved document in the
18 license, we tied ourselves to that. If we had no
19 plans for license use for that area, whether it's a
20 separate building or anything else, if it's an area
21 and it's being remediated, it would go to the
22 unrestricted release criteria in that document.

23 CHAIRPERSON FEDERLINE: Could I just
24 clarify, does anybody on our staff know is that the
25 ~~SDNP~~ SDMP Action Plan?

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1 MR. NARDI: It's referenced in the ~~SDNP~~
2 SDMP Action Plan.

3 (Marsh answers off-mike.)

4 MR. ~~MARSH~~ ROBERTS: It's the same criteria
5 that's in the ~~SDNP~~ SDMP Action Plan. It's the 1993
6 guidelines for determination of byproducts, especially
7 -- and it's --

8 CHAIRPERSON FEDERLINE: Okay. Thank you.

9 MR. NARDI: The second criteria was that
10 if there were plans for continued licensed use of the
11 area, then we would be allowed to go to four times
12 that number, and there were other criteria, other
13 requirements under that regarding embedded piping or
14 anything else, but those were very specific criteria.
15 It was not nebulous, we're only going to take it far
16 enough to leave it for end of license use. These were
17 criteria established to complete the remediation.

18 The decisions as to who makes the plans
19 for future license use can only be made by the
20 Licensee. This is a necessity because it has to be a
21 principal licensed activity. We cannot just simply
22 plan to use it sometime in the future undefined.
23 Status, Viacom has ceased work without completing
24 remediation to either criteria. And to reemphasize,
25 actions required by Viacom are to complete the

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1 remediation of the retired facilities to those
2 criteria and to complete the remediation of the
3 remaining reactor facilities upon transfer. Mark has
4 already read in the list of retired facilities, so I
5 won't discuss them.

6 Let me turn quickly to the soil
7 contamination. The criteria in the Revised Soil Plan,
8 what happened was that we had the initial SNM-770
9 Remediation Plan. We had criteria for the soil and
10 criteria for the buildings. You already heard that
11 the criteria for the buildings were not accepted. We
12 changed them; we worked under that. For the soil, the
13 criteria we had in the plan, which covered the entire
14 site, were not accepted. We wrote a Revised Soil
15 Plan, Viacom prepared it, to remediate certain areas
16 of the site to reduce the soil and ground water
17 contamination and built into that was an agreement to
18 look at eventual unrestricted use of the site in 20
19 years or 25 years based on the problem of the ground
20 water contamination.

21 The status, however, right now is that
22 Viacom ceased work without completing all of the
23 remediation required by that Revised Soil Plan. That
24 Revised Soil Plan only encompassed a portion of the
25 site. The initial plan encompassed the entire site.

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1 There was a commitment made as part of the submittal
2 of the Revised Soil Plan that the other areas of the
3 site would -- a plan would be submitted for approval
4 and implementation at that time.

5 Okay. This is a specific extract from a
6 Licensee response to an NRC question and said that
7 these specific areas -- the question related to what
8 are you going to do about the other soil areas. These
9 specific areas will be addressed in a separate
10 submittal to be made by July 31, 2000. That submittal
11 has never been made. It was started by Viacom and now
12 they refuse to complete it.

13 The actions then required by Viacom are to
14 complete the remainder of the soil remediation under
15 the Revised Soil Plan, to develop the Soil Remediation
16 Plan, pursuant to the commitment made in January 11,
17 2000. And that's only one example. There were many
18 other examples of where that commitment was made for
19 the other soil areas, to implement that plan upon
20 approval and to complete the commitment for the
21 process drain line that was made in another letter of
22 August 12, 1998. There's also another element of the
23 remediation of the site that has not been completed.
24 This is not currently in dispute, but there's a need
25 to develop and implement a long-term plan for ground

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1 water remediation on the site.

2 With that, I'd like to turn it back over
3 to Mark.

4 MR. WETTERHAHN: Very quickly, based upon
5 what we've told you and what you've seen, the NRC
6 should deny the petitions and allow the matters to be
7 resolved in arbitration proceedings as those
8 proceedings were chosen by the parties as the
9 appropriate venue for dispute resolution. At most,
10 NRC should defer a decision on the petitions pending
11 the outcome of the binding arbitration proceedings.
12 There's no reason that you cannot wait the relatively
13 short time that these proceedings will take to reach
14 their conclusion. However, if you do decide to
15 consider these in your discretion, it should consider
16 the full balanced picture and take affirmative action,
17 as we've outlined previously, requiring Viacom to
18 fulfill its responsibilities.

19 As a last point, again I invite you, the
20 remainder of the Board, and we encourage you to see
21 the site, and that way you'll be able to understand
22 Westinghouse's perspective even better. Thank you for
23 your time.

24 CHAIRPERSON FEDERLINE: Thank you very
25 much for that presentation. Let me just turn to

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1 Viacom and ask if you have any clarifying remarks that
2 you'd like to make?

3 MR. MALSCH: Just a few things, just six
4 points I'd like to address very briefly. First, we
5 very much enjoyed the slide presentation and the
6 pictures of the facility that Westinghouse has
7 provided, but, as I'm sure the NRC would think, the
8 pictures themselves and a lawyer's description of what
9 the levels of residual contamination are are no
10 substitute for actually providing NRC with the data.
11 If Westinghouse is willing to give NRC its pictures of
12 the facility and to provide lawyers' descriptions of
13 what contamination remains, certainly they should be
14 willing to provide you with actual data that you can
15 evaluate. Clearly, no one can tell the real actual
16 status of the facility by merely looking at pictures
17 and listening to lawyers, and that's why we ask you to
18 ask them to provide you with the data.

19 Secondly, Westinghouse says this is all
20 about money. We've been very clear we are not
21 interested in having NRC decide who pays for the
22 remedial action or the decommissioning. That is the
23 proper subject of the arbitration dispute. We're not
24 asking NRC to construe any aspect of the Agreement
25 between the parties. We're not asking NRC to become

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1 a party to the arbitration. What we are saying is
2 that we are raising the question who decides, who
3 properly decides what NRC requirements are, what the
4 decommissioning plans require and whether they've been
5 satisfied. That is a matter peculiarly within NRC's
6 expertise.

7 And just imagine, if you will, if, in
8 accordance with Westinghouse's suggestions, that
9 should be decided by an Arbitration Panel. An
10 Arbitration Panel deciding what NRC requirements mean
11 and whether they've been satisfied? What good would
12 that do? Suppose they decided the matter in favor of
13 Westinghouse or us? That wouldn't be binding on the
14 NRC. That couldn't possibly lead to a license
15 transfer, it couldn't possibly lead to NRC requiring
16 provision of data. Only NRC can decide finally what
17 its requirements are and whether they've been
18 satisfied. It will do us no good to have the
19 Arbitration Panel address the matter of compliance
20 with NRC decommissioning plans if in the end NRC makes
21 the final decision and reaches a decision that is
22 different than the Arbitration Panel reaches. What
23 good would that do? It would do the parties no good
24 whatsoever.

25 Finally, I should say that their argument

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1 really proves too much. If you think about it,
2 practically everything the NRC does has commercial
3 implications, and I think it is true here that the NRC
4 action and response to our Petition would have an
5 effect on the arbitration. It would have an effect on
6 the arbitration in the sense that NRC would be
7 deciding what its requirements mean in the first
8 instance as opposed to the Arbitration Panel and then
9 having the NRC reconsider those matters under its own
10 independent authority.

11 When the NRC grants an operating license,
12 for example, that has profound implications for a
13 commercial dispute between the applicant and an
14 architect engineer over whether the designs are
15 satisfactory. If NRC should take enforcement action
16 against the licensee for, let's say, improper
17 implementation of its quality assurance program, that
18 would have profound implications for a commercial
19 dispute between the applicant or licensee and its
20 contractor. But that doesn't mean that in doing those
21 actions and in taking that enforcement action and in
22 issuing the operating license NRC is becoming unduly
23 involved in the commercial dispute. It would only
24 become unduly involved if it gets sucked up into
25 construing purely commercial documents and deciding

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1 purely commercial matters. We're not asking NRC to
2 construe commercial documents, we're only asking you
3 to construe your own requirements and decide whether
4 those requirements have been satisfied.

5 Thirdly, clearly, this is a very old
6 facility. The license was issued, the original TR-2
7 license was issued in 1959. But it is also clear that
8 it was never the intent of either of the plans to
9 achieve final decommissioning for unrestricted
10 release, and NRC never mandated that that would be the
11 case. The original 770 Remediation Plan provided very
12 clearly that the retired facilities, even after
13 transfer, would be continued to be controlled in
14 accordance with the Radiation Protection Program
15 applicable to that license.

16 And so it was always the intent of the
17 plans that remediation would be done consistent with
18 continued licensed use of the facilities and
19 consistent with the continuing treatment of the
20 retired facilities as being within the restricted area
21 and controlled for radiation protection purposes.

22 Now, that brings us to the actual
23 remediation criteria that has been discussed here.
24 The criteria actually were in response to an NRC
25 letter to Westinghouse expressing reservations about

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1 the criteria that had been proposed. The criteria
2 that had been proposed talked about remediation only
3 to the extent of eliminating the need to treat the
4 areas as high radiation areas over airborne
5 radioactivity areas. This was consistent with the
6 concept that these would continue to be controlled
7 areas under the Radiation Protection Program and that
8 criteria were then designed primarily to protect
9 workers.

10 NRC said in its letter, I think it's a
11 letter dated June 10, '98, not that it had problems
12 with the concept of treating the retired facilities as
13 continuing to exist in restricted areas and continuing
14 to be controlled, but rather had a problem with
15 whether this was really ALARA, whether more really
16 could practically get done.

17 In response to that, Westinghouse proposed
18 on June 19, 1998 a revised remediation criteria. Two
19 things were -- two successive criteria were proposed.
20 One, were it to be applicable to inactive retired
21 areas which may be used for future licensed
22 activities, and the other were to be applied to
23 inactive areas which will not be used for future
24 licensed activities. And, in particular, these would
25 be areas within buildings and separate areas within

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1 buildings that are being converted over from inactive
2 retired areas to unrestricted areas.

3 So two sets of criteria were proposed by
4 Westinghouse, one that would apply to facilities that
5 were to remain retired facilities and in accordance
6 with the plan to remain within restricted areas and
7 another to apply to those which Westinghouse might
8 decide would be converted over from retired facilities
9 into unrestricted areas.

10 NRC responded on August 21, 1998, and what
11 it said was is follows: "This letter does not amend
12 License Number SNM-770 nor approve the Waltz Mill
13 facility SNM-770 Remediation Plan." That actually
14 happened later on. "The letter is intended to clarify
15 the scope of activities that can be performed in the
16 retired areas to remain within buildings that are
17 currently in use at the facility." And so, actually,
18 what NRC reviewed and approved was the application of
19 restricted release criteria to areas that were
20 continuing to be within the restricted areas of the
21 facility. There was never any requirement by NRC to
22 remediate any areas so that it would be suitable for
23 unrestricted release.

24 Now, clearly, that will be ultimately the
25 responsibility of Westinghouse as the SNM-770 Licensee

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1 at the end of the useful life of the SNM-770 license.
2 And, clearly, if Westinghouse should decide that it
3 will not ever use any of these facilities anymore in
4 the conduct of principal license activities, their the
5 Licensee, that's their decision. It's just not the
6 plan, that was not the concept of the original plan.

7 On the biological shield matter, let me
8 just address that briefly. There are two plans here,
9 there's Revision 0 to the TR-2 Decommissioning Plan
10 and Revision 1 made pursuant to 50.59. Revision 1
11 described two ways to remove the reactor pressure
12 vessel. Both ways, both option 1 and option 2, are
13 described as first removing the majority of the
14 biological field, that was option 1, clearly implying
15 that some remained. And option 2 stated specifically
16 that the remaining contaminated portions could be cut
17 away or decontaminated in place. So, again, option 2
18 contemplated that part of the biological field might
19 remain.

20 If there was any doubt about this at all,
21 if there was any doubt at all about whether the plan
22 contemplated removal of all or only part of the
23 shield, it was clearly resolved by the environmental
24 report which Westinghouse submitted along with Rev. 0
25 to the plan. That report states no less than four

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1 times, at Pages 2, 6, 8 and 12, that removal of only,
2 quote, "portions of the biological shield," closed
3 quote, is all that is required for license termination
4 and transfer to SNM-770. And I have a copy of this
5 report I can refer to you if you're interested. The
6 environmental report also states that a portion of the
7 shield will in fact be transferred to SNM-770 which is
8 exactly what we contemplate.

9 On the soil plans, it is true the 1999
10 Revised Soil Plan addresses only some of the possibly
11 contaminated soil areas of the site. And, yes, it was
12 also the case that when the plan was submitted there
13 was a commitment to submit -- come back to the NRC
14 with additional information, additional plans to
15 remediate other soil areas. But this was to be, in
16 accordance with the commitment, a separate submission.
17 That's a separate plan. We're only here talking about
18 the 770 plan as revised and supplemented and approved
19 by the NRC, not some separate plan. This may indeed
20 by Westinghouse's responsibility, but it is not our
21 responsibility in accordance with the Agreement and is
22 not what we understand to be contemplated by the plan
23 that the NRC approved. It may have to be done at some
24 point, but that point is not necessarily now. We do
25 think, however, that there's been sufficient

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1 remediation of ground water and soils that the site is
2 now ripe for removal from the ~~SDNP~~ SDMP list. We
3 think substantial progress has been made, and we think
4 if NRC were to visit the site and look at the data, it
5 would agreed with us in that respect.

6 MR. McBRIDE: Let me, if I may, add just
7 one other matter about the commercial disputes, which
8 we did not seek to bring up but because Mr. Murphy
9 did, and this is in the category of rebuttal, I'd just
10 like to clarify for you. He indicated there were two
11 disputes. The second one he discussed was actually
12 the first one that was filed, and he did concede
13 properly, these were his words, I wrote them down,
14 that that matter, the first one filed, second one he
15 discussed, does not have a direct impact on this
16 dispute that we're describing today.

17 The other matter, the one that he said did
18 have an impact was actually filed after we filed the
19 Petition and the application with the Commission. We
20 filed those on October 30. That second arbitration
21 dispute was filed by Westinghouse on November 8, so it
22 could hardly be said that we filed this Petition and
23 the application with the NRC in order to somehow
24 affect the dispute that hadn't even begun when those
25 filings were made.

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1 Mr. Murphy also indicated that he would
2 expect that that dispute would be over within eight to
3 ten months. He quite accurately said a panel has been
4 selected. The Panel has not actually sat yet. We
5 have no determinations of any kind by that Panel. The
6 Panel will sit on March 4 for the first time. He
7 quite right in saying that that would happen in the
8 next couple of weeks. And one would certainly
9 anticipate that the Panel will be interested in the
10 status of matters pending before this Commission.

11 So when he said that he would expect that
12 the proceeding would be over in eight to ten months,
13 that may be somehow analogous to other arbitration
14 proceedings in which he's participated, I don't doubt
15 that, but there's absolutely no way to know that about
16 the arbitration dispute that he's referring to,
17 because the Panel may well decide to defer to the
18 exclusive jurisdiction of this Commission over matters
19 affecting public health and safety under the Atomic
20 Energy Act.

21 So I don't want you to make any
22 assumptions about when that proceeding might be over
23 or what the proceeding might engage in. So when
24 Westinghouse urges you to defer your ruling until that
25 proceeding takes place, it may be in fact just the

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1 reverse, that the Panel in that arbitration may decide
2 to defer to you, and I would expect it properly should
3 defer to you.

4 MR. MALSCH: Yes. And just a small point
5 to follow up on that. We would think that the
6 Arbitration Panel when it comes to questions about
7 what NRC requirements and whether they've been
8 satisfied would be interested, in the first instance,
9 in asking NRC, well, what does NRC think about this?
10 Well, how does that get accomplished? One way would
11 be for NRC to send up some poor NRC witness who would
12 have to testify before the Panel about what its
13 requirements mean. Wouldn't it be more regular and
14 proper to do that in a formal way in response to our
15 Petition and avoid all that necessity? Just follow
16 your procedures, follow the 8.11 Management Directive,
17 and in the ordinary course of business, like you
18 usually do as if there had never been an arbitration,
19 decide what NRC's requirements mean and whether
20 they've been satisfied. That's what we're asking for
21 here.

22 MR. McBRIDE: And if I may just finally
23 conclude with our Slide 22, and you don't need to put
24 the electronics back up to see this, but you have the
25 slide there in front of you. It so happens that the

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1 third arbitrator who will preside over our Panel is a
2 former judge of the United States Court of Appeals for
3 the D.C. Circuit, Judge Patricia Wald. And in the
4 case we've cited at the bottom of Slide 22,
5 Consolidated Rail Corporation v. ICC, in fact Judge
6 Wald wrote that opinion, and in that case it was
7 determined that the Interstate Commerce Commission
8 should not invade the exclusive jurisdiction of this
9 Commission or the Department of Transportation but
10 rather that it should defer to this Commission and to
11 the Department of Transportation. So I think we have
12 some confidence in expecting that when this Commission
13 is given exclusive jurisdiction by Congress other
14 bodies will honor it.

15 CHAIRPERSON FEDERLINE: Thank you very
16 much. Take about 15 minutes.

17 MR. MURPHY: I will be very brief. Since
18 Mr. McBride spoke last, I will speak first. First
19 off, I appreciate the heads up on what the first move
20 is going to be in the arbitration proceeding, which is
21 they ask the arbitrators to defer so that the NRC
22 ruling can crawl out if the commercial dispute is
23 resolved.

24 Secondly, I appreciate Mr. McBride's
25 suggestion that we are so capable that we could have

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1 gotten up an arbitration demand within less than a
2 week after the first NRC filing. The truth of the
3 matter is this dispute had been simmering for about 18
4 months, and both parties were well on their way to
5 determining how to resolve it at the time Viacom came
6 here with its NRC petition. The arbitration demand by
7 Westinghouse was in no way a response to the
8 arbitration -- to the NRC Petition and application
9 filed by Viacom here.

10 And I also would like to point out, I'm
11 sure Mr. Malsch was just shorthanding it, but in the
12 context of how we define parties here, I want to make
13 sure everybody understands that the criteria upon
14 which Westinghouse relies were approved by CBS before
15 new Westinghouse even existed. Mr. Malsch referred to
16 it as Westinghouse proposing those criteria. That's
17 not the case. These were CBS' criteria proposed to
18 the NRC before the Asset Purchase Agreement was even
19 signed and approved by the NRC shortly after the
20 Agreement was signed but almost ten months before the
21 transaction closed. They were CBS' proposed criteria
22 for the remediation. Joe?

23 MR. NARDI: I'd like to respond to the
24 issue of the transfer of the TR-2 to SNM-770.
25 Throughout the presentation made by Viacom they act as

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1 if this is a transfer of radioactive material. That
2 is not in accordance with the guidance that we were
3 given by the NRC staff that this is no longer a
4 transfer of radioactive material as it would have been
5 if we were one licensee. We would have been able to
6 very simply transfer the material from one license to
7 another license. In the situation as it exists now,
8 it is a transfer of control of facilities. That was
9 what we were told to treat it as. That is what we
10 were preparing for the application to transfer it
11 before Viacom said they would not proceed.

12 That's a very important thing because what
13 it means is that it's not just simply a matter that we
14 can transfer it from this license to the other
15 license. There are several things done -- have to be
16 done. We have to have all of the questions that are
17 related to transfer of control answered, and it's
18 necessary, despite what they said, to amend an SNM-770
19 license to incorporate that material and those
20 facilities into the license. They're explicitly
21 excluded from the license now. So the transfer is
22 indeed not a simple matter but a complex matter
23 between two parties, and it has to be a willing party
24 on both sides.

25 MR. MURPHY: Thank you. I would might

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1 quickly point out, although Mr. Malsch suggested that
2 the staff and the Commission shouldn't be swayed by
3 lawyers arguing about what the criteria was. We're
4 giving Mr. Nardi here a lot of gray, although we
5 sometimes think he's one. Joe's an engineer, a
6 nuclear engineer, and he's the guy who's interpreting
7 the criteria for us.

8 MR. WETTERHAHN: If I get the last word,
9 what I've heard it's all about money. It's all about
10 who pays. Again, I start off by saying it's not
11 whether this is going to be completed at the end of
12 the life, it's who does it, who's responsible for
13 paying for it? And that's what the arbitration is
14 deciding. It's clear that the NRC could proceed or it
15 could wait until the Arbitration Panel proceeds. I
16 can't decide your regulatory priorities, but I've got
17 to believe you have better things to do than to get
18 embroiled in a controversy.

19 Here we have three lawyers from our side
20 and four or five lawyers from their side, and this is
21 just the beginning. This will turn into a legal
22 argument, and this is not the place for it. The
23 parties decided that arbitration is the place for it.
24 Let's wait till the arbitrators decide. If they want
25 to rely on the NRC, so be it, but let the Panel there

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1 speak. That's what they're being paid for. That's
2 why the parties have said this is the expeditious way
3 of resolving it. We're not going to court, we're
4 going to the arbitrators. It's a distinguished panel.
5 They have NRC expertise on the Panel. It was selected
6 by Viacom. Let them do their job.

7 Let's end there. Let's say, clearly, the
8 NRC has discretion here. It has to look at accepting
9 this considering its other priorities. Again, I've
10 got to believe there are other priorities which are
11 more important to the NRC at this time than getting
12 involved in what's clearly a commercial dispute.
13 Thank you and we'd be happy to answer any questions.

14 CHAIRPERSON FEDERLINE: Thank you very
15 much. I appreciate both groups presenting
16 comprehensive presentations and helping us to
17 understand. I just want to ask the people that are in
18 the room, let me start with Ted to see if he has any
19 questions, and we'll go around to others on the staff.

20 MR. MARSH: I'm going to wait and see
21 where the staff goes. I've got a couple possibilities
22 here.

23 CHAIRPERSON FEDERLINE: Okay. Anyone have
24 any questions that they'd like to explore, any
25 clarifying points?

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1 MR. ADAMS: I just want to make sure I
2 understand correctly. Where both sides believe the
3 transfer material, whatever you want to -- the
4 responsibility to transfer over, if I understand what
5 Westinghouse is saying is when either the unrestricted
6 release criteria or the four times the release
7 criteria when the TR-2 facility is cleaned up to that
8 point, then your position is then it can be taken from
9 -- the reactor material can go from the reactor
10 license to the materials license, whatever mechanism
11 that would take, direct transfer perhaps. Is that
12 correct?

13 MR. WETTERHAHN: Yes, but let me clarify.
14 We're not drawing a line in the sand between the TR-2.
15 It's for purposes of who pays for decommissioning and
16 who's responsible. The parties agreed that after
17 certain criteria were met, the TR-2 license would
18 terminate and after that, additional remediation would
19 occur under the 770 license, under the category,
20 "retired facilities," end quote. So that's how the
21 parties agreed to it. We would accept the
22 contaminated material represented presently in the TR-
23 2 reactor -- under the TR-2 reactor license if the
24 biological shield were completely decontaminated and
25 removed and, in essence, that's it, there would be a

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1 license transfer process. But those are the
2 preconditions.

3 The other conditions is, hey, they've
4 committed to do certain things, both to us and to the
5 NRC, under the 770 license. We want an indication
6 that they will proceed with those actions. So that's
7 -- we're not drawing a line in the sand, but there's
8 a contemplated continuing cleanup to the specific
9 standards that you mentioned.

10 MR. ADAMS: So what you're saying is that
11 you can see the main material being transferred in a
12 condition that doesn't match the release criteria with
13 the realization that there would be more work to be
14 done. The material might be sitting on the
15 Westinghouse license, but the financial responsibility
16 would be with Viacom to get that facility in a
17 condition that meets the Westinghouse license release
18 criteria.

19 MR. WETTERHAHN: That's correct.

20 MR. ADAMS: Again, I'm just trying to
21 understand.

22 MR. WETTERHAHN: You're absolutely
23 correct.

24 MR. ADAMS: And if I could ask the same
25 question to Viacom, I'm not trying to put words in

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1 their mouth.

2 MR. MALSCH: Well, we say if you look at
3 the TR-2 Decommissioning Plan, either Rev. 0 or Rev.
4 1, it's very clear that that plan consisted of various
5 removals -- removals of equipment, removal of the
6 pressure vessel, removal of pressure vessel internals,
7 removal of, we believe, portions of the biological
8 shield. The Plan is very, very clear that upon
9 completion of those removal actions at that point the
10 material is transferred. There's nothing in the TR-2
11 Decommissioning Plan which conditions the transfer of
12 materials on any further remediation.

13 Now, it is true that once transferred
14 these will be, in sort of a general sense, retired
15 facilities under the SNM-770 license. The question
16 then arises whether under the SNM-770 Remediation Plan
17 further remediation is necessary. And we believe not.
18 Consistent with our concept, the Plan envisioned that
19 these would be retired facilities maintained in
20 restricted areas. But that's a separate question.
21 That deals with compliance with the 770 Plan, not
22 compliance with the TR-2 Decommissioning Plan.

23 MR. ADAMS: And so you believe that you
24 meet the TR-2 Decommissioning Plan requirements --

25 MR. MALSCH: For the transfer.

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1 MR. ADAMS: -- at this point for the
2 transfer.

3 MR. MALSCH: Absolutely. And your
4 inspection report said the same thing, in Region 1.

5 MR. ADAMS: Do you agree or disagree that
6 there's a -- well, I think what the TR-2 Plan says is
7 finality and where the SNM-770 license calls finality
8 are two different things.

9 MR. MALSCH: They're two different things.
10 For example, the TR-2 Plan is quite clear. It says
11 specifically that no radiological limits apply to the
12 transfer of the materials, because it was simply a
13 removal plan, not a decontamination plan. Whereas the
14 770 Plan is not -- is a decontamination plan. So
15 they're two separate things.

16 I might say that Westinghouse has said
17 that we don't satisfy -- the transferred facilities
18 will not satisfy the 770 remediation criteria. In one
19 respect -- well, first of all, we disagree as to what
20 the criteria imply, but putting that aside, they have
21 us at a disadvantage -- they won't give us the data.
22 So they said in their response to the Petition that
23 they believe we don't even satisfy the four times
24 criteria, but they won't give out the data to support
25 that.

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1 CHAIRPERSON FEDERLINE: Do you have a
2 clarifying question?

3 MR. MURPHY: Just a clarifying point. The
4 TR-2 Decommissioning Plan does say quite specifically
5 that once the material is transferred to the SNM-770
6 license remediation will continue in accordance with
7 approved acceptance criteria under the SNM-770 Plan.
8 So the TR-2 Plan does contemplate remediation to the
9 SNM-770 Plan criteria of all materials transferred
10 from one license to the other.

11 MR. MALSCH: I think that's true. It's
12 just not a condition of a transfer.

13 MR. WETTERHAHN: Let me clarify too. You
14 saw the picture of the biological shield, and you saw
15 where they covered it up and didn't clean up inside.
16 They know it doesn't meet the four times criteria or
17 any other criteria. You don't need the data for that.
18 I think Rick Smith can tell you there are parts of
19 that biological shield that don't meet it, that don't
20 meet any criteria, and they've walked off the site.
21 Whether they clean it up under the TR-2 Plan or the
22 770 Plan is really academic now. They've ceased any
23 cleanup whatsoever. There's nothing going on at the
24 site; they've walked off. So whether you say it's
25 under the TR-2 Plan or the 770 Plan, it wasn't done,

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1 it's not being done. They haven't met the applicable
2 criteria. You don't need the data. The picture shows
3 the answer there.

4 MR. ADAMS: Let me ask one more question
5 and the same question to both sides. The 50.59 change
6 of the Decommissioning Plan, whether it be Revision 0,
7 Revision 1, I'll ask Westinghouse first, do you
8 believe that changed the pinendpoint commitment, so to
9 speak, of the Plan where this material transferred?

10 MR. NARDI: Absolutely not, and that's the
11 point I tried to make in my presentation. The
12 Revision 1 did three things. It incorporated two
13 license amendments that were approved by the NRC, and
14 it incorporated the 50.59 change. The 50.59 change
15 was explicitly limited to the consideration of how we
16 remove the reactor tanks, and that's all it did. At
17 no time did we ever approve a change in the end point
18 criteria. And the end point criteria, despite what
19 they say, was very clearly stated in the objective, to
20 remove the vessel internals, the vessel and the
21 biological shield. All three items were to be
22 removed, not a portion.

23 MR. ADAMS: I'll ask the same question to
24 Viacom. Did the 50.59 change change what you saw as
25 the end point?

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1 MR. MALSCH: No. I think whether you look
2 at Rev. 0 or Rev. 1, I think in both cases it's very
3 clear that the license transfer was to take place
4 after removal of a portion of the biological shield.
5 It's clear that you can't make a change in the FSAR in
6 a way that's inconsistent with the tech specs.

7 Just to point out as an aside, the only
8 tech spec they pointed to was an introduction. You
9 can't violate the introduction. The only purpose of
10 the provision they cited was to describe the scope of
11 the tech specs which later apply to various aspects of
12 the Plan. But, again, to answer your question
13 directly, I don't think it makes any difference which
14 version of the Plan you consider. We think both
15 versions call only for removal of part of the
16 biological shield.

17 MR. ADAMS: I'm sorry, let me ask one more
18 question. It's interesting, you both agree that 50.59
19 change really didn't change the end point, but you
20 still -- I assume you disagree on what the end point
21 is, that you read it to be portions of the biological
22 shield and your position is the entire biological
23 shield needs to be removed.

24 MR. NARDI: It's interesting that the
25 statement doesn't agree with the Petition, as stated.

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1 The Petition, as stated, puts all of its emphasis on
2 the 50.59 change as the process for changing from
3 remove everything to remove a portion.

4 CHAIRPERSON FEDERLINE: Let me ask a
5 question if you're -- are you -- have you finished?

6 MR. ADAMS: Yes. I'm done.

7 CHAIRPERSON FEDERLINE: What I hear --
8 does anybody -- I guess I'd like to hear from each
9 side if there's clarity about what NRC requires to
10 terminate the site and what you believe your
11 obligations are under our timeliness rule? Let's
12 start with Viacom.

13 MR. MALSCH: Sure. Well, we're -- I mean
14 the timeliness rule, as such, doesn't apply to the
15 Part 50 utilization facility license. However, it
16 clearly would apply to the 770 licensee. We're not
17 the licensee, so that's really not our regulatory
18 responsibility to you. It might affect Westinghouse.
19 Our point was, though, that if you look at the plans,
20 we think the contemplation and the premise of the
21 plans has always been that until some later date when
22 Westinghouse decides to cease operations on the site,
23 these facilities will be maintained for possible
24 future use within restricted areas and will be
25 decontaminated in accordance with criteria consistent

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1 with their restricted use status. Now, that's how we
2 read the plans.

3 If there's going to be a change in the
4 plans, a change in the proposal, for example, if
5 Westinghouse decides that it absolutely will never use
6 these facilities for any licensed purpose whatsoever,
7 then I think the timeliness rule would affect them,
8 but that's a different plan.

9 MR. NARDI: If you go back to the criteria
10 as they were written, you'll see that I very carefully
11 structured that around the being consistent with the
12 timeliness rule. Those criteria do not apply to
13 separate buildings, and TR-2 is a separate building.
14 The criteria apply to areas within buildings, because
15 the way we wrote that was to establish the criteria
16 for the end point of the completion of the
17 remediation, recognizing that we also have the
18 timeliness rule that would impact us regardless of
19 anything else related to it.

20 It's interesting now to hear that option
21 2 of the criteria is not applicable at all, because
22 the concept is that we are going to hold these
23 facilities until sometime in the future if we might
24 use them. That was never intended, that was never
25 planned, it was not part of the way we wrote it. We

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1 wrote it to say at the completion of the remediation
2 these are the two options, which now option 2 they
3 throw away and say that's not that. And we were very
4 explicit about it. This is CBS. I'm not talking as
5 Westinghouse now, I'm talking as CBS, because that's
6 who I worked for at the time.

7 The concept of holding out facilities to
8 just hold them for some possible use for ill-defined
9 future is completely inconsistent with the time issue.
10 It is completely inconsistent with what the NRC and
11 Westinghouse Electric Corporation in the early '90s
12 discussed with what are we going to do? We've got all
13 these retired facilities, we've got all this soil
14 contamination. Westinghouse Electric Corporation made
15 a commitment that they would go forward in those plans
16 and to complete the work under those plans. That is
17 being redefined now.

18 CHAIRPERSON FEDERLINE: Okay.

19 MR. WETTERHAHN: Let me, from a legal
20 perspective -- or let me ask the question, if
21 everything was to be left in place for 20 or 30 years,
22 which I believe to be contrary to what NRC timeliness
23 rules would require, why did Viacom come in and start
24 remediating portions? If everything was to be left
25 fallow, so to speak, for 30 or 40 years, why did

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1 Viacom come in and, as you saw, do partial
2 remediation? The answer is they started remediation
3 in accordance with the criteria, we believe, but when
4 they saw it was getting expensive they just stopped.
5 So it's not a matter of what the criteria are, it's a
6 matter of completing the remediation to the required
7 criteria. And putting on shielding, just closing up
8 pipes is not remediation, as I understand it, as I
9 understand the NRC has defined it.

10 CHAIRPERSON FEDERLINE: Okay. Thank you.

11 MR. MALSCH: Just to speak briefly on
12 that, if that were the case, I just ask you to look at
13 what the plans themselves say. When the TR-2 Plan was
14 sent to the Commission, the Licensee said specifically
15 that this was consistent with the ALARA concept along
16 with, quote, "the intent to continue the use of
17 facility for licensed operations." And the Plan also
18 said that, specifically, that upon completion of
19 decommissioning activities in the WTR reactor
20 building, all Access Control Program requirements will
21 be transferred to the Access Control Program for the
22 remainder of the Waltz Mill site. That is to say that
23 retired facilities will be subject to the Access
24 Control Program and Radiological Protection Program in
25 the SNM-770 license. Why would they have said that if

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1 the intent was in the Plan to decontaminate to
2 unrestricted release?

3 The question is really what was the
4 contemplation of the original plans? Now, if
5 Westinghouse wishes to change its position and its
6 intended use of the facility, that's fine, but that's
7 a different plan.

8 CHAIRPERSON FEDERLINE: Let's not get into
9 the debate.

10 MR. MALSCH: Okay.

11 CHAIRPERSON FEDERLINE: I think I
12 understand the answer to my question. Let's see if
13 anybody else on the staff has any question. George
14 Pangburn in Region 1, do you have any questions to
15 raise?

16 MR. Pangburn: Not today. And I express
17 my appreciation to the parties' presentations. I'm
18 sorry I couldn't be there.

19 CHAIRPERSON FEDERLINE: Jack?

20 MR. J. GOLDBERG: Yes. I have some
21 questions. I think it was only a couple years ago, I
22 don't have the date or the cite with me, but I can
23 provide it if anybody's not familiar with it. They
24 issued a policy statement on joint and severally
25 responsibility of licensees. The only controversy

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1 about that policy statement was in connection with
2 very small licensees, licensees that owned a very
3 small portion of a large facility and whether they
4 should be jointly and severally responsible for
5 complying with NRC requirements, given their very
6 limited resources and very limited ownership share of
7 the facility. Is there any reason why either Viacom
8 or Westinghouse believes that that policy is not
9 applicable to Viacom and Westinghouse in connection
10 with this site?

11 MR. MALSCH: I can address that first. I
12 think what you're referring to is the policy statement
13 on restructuring of the electric utility objectives.

14 MR. J. GOLDBERG: No. There's a separate
15 policy statement on joint and several responsibility.

16 MR. ~~J. GOLDBERG~~ MALSCH: Yes. It was in
17 connection with that. But what that statement said
18 was that the Commission would consider imposing joint
19 -- oh, joint liability, I think that means joint
20 responsibility to the NRC for decommissioning only in
21 our rare and unusual circumstances in which there is
22 no other option. And the only case in which I can
23 think of in which NRC actually imposed a kind of joint
24 liability was in connection with a situation where one
25 of two co-licensees in a site was bankrupt and not

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1 commercially viable. So we had to look at the other
2 licensee to pick up the missing share. In this case,
3 there are two viable licensees, and they clearly have
4 a viable option, and that is to grant our Petition.
5 So I don't think the criteria that the Commission has
6 issued in its policy statement are really satisfied
7 here, otherwise we'd agree that in theory the criteria
8 might be applicable.

9 MR. WETTERHAHN: Jack, I have a very
10 slightly different view of the world. The TR-2
11 license was never transferred. It never was in
12 Westinghouse LLC's hands. So as to that license,
13 that's completely Viacom or CBS' responsibility,
14 whatever has to be done. With regard to the 770
15 license, and we're only talking about retired
16 facilities, soils, ground water and process drain
17 line. We're not talking about any other joint several
18 liability for the remainder of the Service Center.
19 We're only talking about what the parties agreed to.

20 We believe that while Westinghouse is the
21 Licensee, the NRC did look to Viacom or CBS for
22 continuation and completion of certain actions. As
23 evidenced by these financial qualifications advanced
24 by CBS, Viacom for completion of their requirements
25 for the retired facilities. So I don't call it joint

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1 and several liability. What I see is as to the 770
2 license, as to the legacy operations, there is some
3 joint liability. Once, as we said in our slides, we
4 don't shrink from our responsibilities as the
5 Licensee. Once they filled their commitment, as we've
6 seen it, and determined by the ~~arbitrary~~ arbitrator,
7 we are responsible for license termination at the end
8 of the licensed life of the site.

9 But as to legacy facilities, while I don't
10 call it joint and several liability, we believe that,
11 to put it succinctly, Viacom is on the hook.

12 MR. MALSCH: I want to focus on the same
13 thing. Indeed, it was proposed in the application for
14 the license transfer specifically that there be joint
15 liability for decommissioning. In fact, Westinghouse
16 and then CBS proposed specifically that NRC look to
17 both of them for decommissioning in the first
18 instance, to Viacom, CBS with respect to what it
19 obligated itself to do under the Asset Purchase
20 Agreement and then when that was done look to the
21 Licensee. That was rejected by the NRC. It said
22 specifically in the approval of the transfer it would
23 look to the Licensee to be responsible for all
24 requirements of the NRC, all license conditions,
25 including decommissioning to natural assurance. So

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1 the idea of joint liability under the SNM-770 license
2 was actually proposed at one time by the parties and
3 rejected by the NRC.

4 MR. McBRIDE: Citing from our Graphic 25,
5 Jack.

6 MR. J. GOLDBERG: With respect to the
7 transfer of the material from the TR-2 license and the
8 770 license, I would like both Viacom and Westinghouse
9 to, as succinctly as possible, state what they believe
10 to be the criteria that needs to be satisfied as a
11 condition precedent to the transfer in terms of the
12 timing of the transfer and the conditions that must
13 exist in order for the transfer to take place, either
14 according to NRC requirements, if that's what governs,
15 or according to the agreement of the parties, if
16 that's what governs. First Viacom and then
17 Westinghouse.

18 MR. MALSCH: Well, I think you can look at
19 the TR-2 Plan where this requirement of transfer is
20 contained. It's very specific. It says that upon
21 completion of removal of the reactor pressure vessel,
22 the internals and portions of the biological shield,
23 the materials will be transferred. So, in our view,
24 the Plan is very clear. The only precondition to a
25 transfer is to, b, completion of the Decommissioning

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1 Plan, and we believe that the Plan has been completed.

2 MR. WETTERHAHN: But for the word,
3 "partial," we believe that the license transfer will
4 occur under the agreements when the biological shield
5 has been removed. And at that point in time, there
6 will be a transfer. As I said before, it's not an end
7 point in time, and it doesn't say those are all the
8 criteria that apply to it, but remediation will
9 continue under the 770 license. And under those
10 conditions, we, Westinghouse, are willing to accept
11 the residual radiation contemplated presently within
12 the TR-2 license under the 770 license, again, as I
13 said before, with a condition that remediation
14 continue to the selected criteria.

15 MR. J. GOLDBERG: The data that Viacom
16 says Westinghouse will not provide it or the NRC is
17 there any legal or technical reason why Viacom can't
18 do its own surveys and generate data and submit the
19 data to the NRC?

20 MR. MALSCH: Well, we have. I mean as I
21 explained, our entire Nuclear Department consists of
22 Rick Smith here, and so we had to contract out to
23 people to do that. Our Decommissioning Project
24 Manager is Westinghouse. They did this work for us.
25 We paid them for it. So we've already done that.

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1 They just won't give us the results or you the
2 results.

3 MR. J. GOLDBERG: I recognize that. What
4 I'm asking is given that they won't give it to you and
5 assuming that we don't require that that data be
6 submitted to us or to you or both, is there any reason
7 why you can't do surveys and generate data yourselves
8 to demonstrate what the conditions are at the site
9 with respect to the TR-2 reactor?

10 MR. MALSCH: We could. We would have to
11 go out and contract with someone else to duplicate the
12 work. It would be an additional and unnecessary
13 expense from our standpoint since the data's already
14 there. But, yes, in theory, we could do that. Or for
15 that matter, we could not be provided with the data,
16 NRC could not be provided with the data, the transfer
17 could take place, and you could ask Westinghouse, as
18 the SNM-770 Licensee, for the information since at
19 that point it would be their materials. But either
20 way we think you're entitled to the data, as are we.

21 MR. WETTERHAHN: We agree there is no
22 prohibition against the Licensee bringing a contractor
23 in and performing the required survey that's needed.
24 It's a money dispute, it's all it is.

25 MR. J. GOLDBERG: Speaking of money

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1 disputes, the arbitration has been characterized as
2 purely a monetary dispute. On Slide 30 of
3 Westinghouse's presentation, it identifies as one of
4 the disputes in arbitration overall division of
5 responsibility for the cleanup. Does Viacom agree
6 with that?

7 MR. MALSCH: You mean that that's an issue
8 in the arbitration?

9 MR. J. GOLDBERG: Yes.

10 MR. MALSCH: That is an issue in the
11 arbitration.

12 MR. MARSH: So it's a monetary issue as
13 opposed to just a responsibility issue, that's what
14 you're saying?

15 MR. WETTERHAHN: Yes. It's who's got to
16 pay for it? How do the plans divide up the
17 responsibility? They've left, so it's not a question
18 of them coming back for good, it's a question of who
19 pays for the responsibility that they've left undone.

20 MR. MARSH: It's not going to be Viacom or
21 Westinghouse that goes in and does it. Someone's
22 going to hire a contractor and who pays the
23 contractor, that's all that's involved here.

24 MR. J. GOLDBERG: It's not an issue about
25 it being done, it's an issue about who's going to pay

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1 for it to be done.

2 MR. WETTERHAHN: Absolutely.

3 CHAIRPERSON FEDERLINE: Okay. Jack, are
4 you finished?

5 MR. J. GOLDBERG: I'm finished.

6 CHAIRPERSON FEDERLINE: Anybody else?

7 MR. WIDMAYER: Yes. I have one.

8 CHAIRPERSON FEDERLINE: Yes.

9 MR. WIDMAYER: Going back to the TR-2
10 Plan, it seems like there's general agreement that if
11 the -- what's called for in the TR-2 Plan is
12 completed, then the license can be terminated or the
13 materials, the remaining materials can be transferred
14 over to the SNM license. Okay. Just from purely a
15 technical standpoint, when I look at the Revision 0
16 and the Revision 1 of the TR-2 Plan, it's not clear to
17 me exactly what defense the biological shield and how
18 much of it is going to be removed. For option 2 there
19 are schematics that show down to an elevation the plan
20 for how much of the bioshield is going to be removed.
21 In option 1, it uses the word, "majority," and then it
22 also has a description of what would get pulled if it
23 got remediated that way. And it's a little difficult
24 to tell how much of the bioshield would be left but
25 some.

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1 Okay. Then when Revision 1 of the TR-2
2 Plan was prepared, there doesn't seem to be any change
3 to the schematics or a technical description of how
4 much of the bioshield's going to be removed or how
5 much of it's going to be remaining. So what I wanted
6 to know from each party was where is it in the
7 Decommissioning Plan that demonstrates how much of the
8 biological shield is going to be remaining for that
9 Plan to be called complete, considering that you've
10 got sort of three options and the description of them
11 is incomplete in all three cases.

12 MR. NARDI: You want me to go first?

13 MR. WETTERHAHN: Yes, please.

14 MR. NARDI: Okay. I agree, it's not clear
15 as to how far down it would go. It is also very clear
16 that both parties agree that not all of it has been
17 removed. The difference is that the objectives of the
18 Decommissioning Plan said it would be removed. It
19 didn't define it exactly, but it said it would be
20 removed. We both agree it was not all removed.

21 I don't know how to define it. The entire
22 shield, the structure above the 16-foot level was
23 shielding needed for biological protection of the
24 people walking around it. I considered the entire
25 biological shield above the 16-foot level to be the

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1 biological shield.

2 MR. WETTERHAHN: Let me just add that if
3 you look at how much the biological shield is going to
4 be removed, it's talked about in the context of how we
5 get the tank or the vessel out. So the
6 Decommissioning Plan at that point was focused on how
7 do we get the vessel out? How much do we have to chip
8 away at it to get the vessel out whole or in parts or
9 through one hole or another hole? That didn't
10 determine what had to be removed. That was in the
11 objectives of the Plan when it said, "the biological
12 shield." Option 1, 2 and 2 had to do with another
13 subject, getting the vessel out. But the object of
14 the Decommissioning Plan was to get the biological
15 shield out, I'll call it in its entirety, as defined
16 by Joe just before me.

17 MR. MALSCH: One thing I might add that I
18 would be a little bit helpful, if you step back and
19 consider what was the ultimate objective of the TR-2
20 Decommissioning Plan, which was to terminate the
21 utilization facility license. And so ask yourself
22 then what constitutes a utilization facility? What
23 are utilization facility components? I think it's
24 pretty clear that once the coolant pipes, the pressure
25 vessels and the internals have been removed, pretty

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1 much regardless how much of the shield remained, this
2 was no longer a utilization facility. If you look at,
3 for example, the Commission's regulations in 10 CFR
4 Part 110, which lists what are, what consists of
5 utilization facilities, you won't see a biological
6 shield but instead you'll see primary coolant pumps,
7 pressure vessels and the sort.

8 So I think from the standpoint of the
9 drafters of the Plan, the objective was to render the
10 former Westinghouse test reactor no longer a
11 utilization facility. That clearly took place when
12 the vessel internals will be removed, and so I think
13 the drafters, while being very clear that some parts
14 of the biological shield would remain, for the
15 purposes of the Plan, exactly how much remained is
16 really not all that important. What was important was
17 that the vessel and internals were removed, and so it
18 was no longer a utilization facility and therefore the
19 Part 50 license could be terminated.

20 MR. NARDI: I just want to go back a
21 little bit. When we proposed or started talking with
22 the NRC in the early '90s about doing this
23 remediation, we proposed at that time that the
24 facility is not a utilization facility, transfer it to
25 770 right now, let us do everything under one plan.

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1 That was rejected explicitly and they said, "No, we
2 have to do something." And so we came up with what
3 would we do, and we set the objectives of the plan to
4 be three items: remove the vessel, remove the
5 internals, remove the biological shield. Those were
6 the things that were told, "Okay, you do that much and
7 we'll let you transfer it over to 770 and finish the
8 job under that." That was the agreement.

9 CHAIRPERSON FEDERLINE: Okay. Anybody
10 else have any questions? Seeing none, we certainly
11 appreciate your being here today and spending the time
12 with us. Your presentations were very thorough, and
13 I think you've helped us with clarifying some of our
14 questions. So as I said, we're not going to -- there
15 will be no decision today, but we will get back to you
16 when the Board decides whether it will or will not be
17 handling this Petition. Thank you very much.

18 MR. WETTERHAHN: One housekeeping issue.
19 We have a small version of the Waltz Mill drawing
20 which we'll give to the NRC --

21 CHAIRPERSON FEDERLINE: Great.

22 MR. WETTERHAHN: -- so it's included with
23 the record.

24 CHAIRPERSON FEDERLINE: Thank you.

25 MR. WETTERHAHN: Thank you.

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1 (Whereupon, at 3:56 p.m., the Petition
2 Review Board meeting was concluded.)

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