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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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PUBLIC MEETING ON  
DESIGN CERTIFICATION RULEMAKING

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MONDAY

JULY 15, 1996

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ROCKVILLE, MARYLAND

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The Workshop was held in the Auditorium of the  
Nuclear Regulatory Commission, Two White Flint North,  
11545 Rockville Pike, at 2:00 p.m., Jerry Wilson, Design  
Certification Rulemaking Lead, presiding.

PRESENT:

Jerry Wilson, NRC

William Russell, NRC

David Morrison, NRC

Martin Malsch, NRC

James Milhoan, NRC

Russ Bell, NEI

Ron Simard, NEI

Marc Rowden, GE

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1 PRESENT: (continued)

2 Steven Hucik, GE

3 Joe Quirk, GE

4 Charlie Brinkman, ABB-CE

5 Regis Matzie, ABB-CE

6 Joe Egan, ABB-CE

7 David Rehn, Duke Engineering

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

(2:06 p.m.)

MR. WILSON: Let's go on the record.

Good afternoon. On behalf of the Nuclear Regulatory Commission, I welcome each of you to another public meeting on design certification rulemaking for the ABWR and System 80+ designs.

If you haven't already registered for this meeting, please do so. I have an attendance list at the front of the table, and I believe one is also circulating.

I'm Jerry Wilson. I'm the NRC's lead for design certification rulemaking. Also representing the NRC at the head table is Mr. Russell, Mr. Malsch, Mr. Milhoan, and Dr. Morrison.

The proceedings of this meeting are being recorded, and the transcript will be available in the NRC's public document room. To make a statement during the meeting, please use a microphone and identify yourself to the Court Reporter.

Previously, the NRC held public meetings on these design certification rulemakings in July of '92, November of '93, May and December of '95, and again in May of 1996. Also, there have been numerous public meetings on the ABWR and System 80+ applications since 1987.

The purpose of this meeting is to respond to a

1 request from the Nuclear Energy Institute to discuss new  
2 issues raised in SECY-96-077 and the May 2nd public  
3 meeting. This is not an opportunity to negotiate the  
4 design certification rules. If you do have new comments  
5 on the final design certification rules in SECY-96-077,  
6 then you should submit those comments to the Secretary of  
7 the Commission on or before July 23rd.

8           We have prepared an agenda for today's meeting  
9 based on our review of the letters from NEI dated  
10 May 31st, June 18th, and July 8th. This agenda contains  
11 new items identified by NEI as a result of SECY-96-077 and  
12 the May meeting.

13           Now, the agenda is also available at the front  
14 table. We had initially put finality of operational  
15 matters as the first item. I understand NEI would like to  
16 discuss finality of technical specifications first.

17           MR. RUSSELL: I'd just like to comment, for  
18 those that aren't aware of it, the EDO has formed a  
19 steering committee for the purposes of advising the EDO  
20 and the Commission on resolution of public comments during  
21 this additional stage of comments. The four members of  
22 the committee -- that is, Dave Morrison, Jim Milhoan,  
23 Marty Malsch, and myself -- are the members of that  
24 steering committee that will be advising the EDO on  
25 resolution of various comments.

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1 And so we're here also to hear directly your  
2 comments, to the extent we can. Some of them we have a  
3 better understanding on as a result of the written  
4 materials that were passed back and forth.

5 So with those comments, Jerry, we're ready to  
6 go into the first matter.

7 MR. WILSON: Ron, are you the spokesman or --

8 MR. SIMARD: Well, Dave Rehn from Duke  
9 Engineering Services has been our spokesman in the past as  
10 Chairman of the NEI working group on ALWR regulation. And  
11 we expect him to join us, and I know that before we got  
12 into the issues he wanted briefly to thank you for the  
13 opportunity to dialogue with you today on these provisions  
14 in the draft final design certification rules.

15 I'm sure he wanted to stress that these rules  
16 represent an enormous economic and technical investment by  
17 the industry as well as the NRC. And the issues that  
18 we're here to discuss today, many of which relate to issue  
19 finality, are of major importance to the industry in terms  
20 of ensuring the usefulness of these design certification  
21 rules to prospective licensees.

22 You may recall that at the March 8th briefing  
23 of the Commission Dave Rehn was accompanied, as he is  
24 today, by Steve Hucik and Regis Matzie, representing  
25 General Electric and ABB-Combustion Engineering senior

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1 management. And, again, this is an indication of the top  
2 level industry support for this design certification  
3 program, as well as the industry concern that the  
4 objectives of that program will not be achieved unless the  
5 remaining design certification issues are constructively  
6 resolved.

7           We believe that this decade-long  
8 standardization program has been a notable technical  
9 success, and that the designs that have come out of the  
10 NRC's comprehensive review and approval process are at  
11 least 10 times safer than the already safe current plant  
12 designs.

13           The technical success, though, we feel must be  
14 matched by success in adopting the process provisions and  
15 the certification rules, and the position papers that we  
16 have submitted in preparation for this meeting are aimed  
17 at what we hope will be a constructive discussion and  
18 resolution of these key remaining issues.

19           So as Mr. Wilson noted, we'd like to begin the  
20 discussion of these issues today with the subject of the  
21 finality that ought to be associated to the standardized  
22 tech. specs., and we have a representative from ABB-  
23 Combustion Engineering who would like to open the  
24 discussion on that issue.

25           MR. MATZIE: My name is Regis Matzie. I'm the

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1 Vice President of Engineering at ABB-Combustion  
2 Engineering, and I've been associated with the development  
3 of System 80+ and design certification process for  
4 approximately 10 years, primarily as responsible for the  
5 overall program.

6 My remarks are really to start the dialogue,  
7 and hopefully we'll have others jump in, and hopefully  
8 we'll hear from the staff in response to questions that  
9 are posed by the various lead speakers.

10 With respect to the finality of technical  
11 specifications, in response to the staff's directive, both  
12 ABB and General Electric applied substantial resources and  
13 expended a great deal of time in developing and reaching  
14 agreement with the staff on the content of the  
15 specifications, and also on the format. Now we would like  
16 to realize the full value of that effort by achieving an  
17 appropriate degree of finality on the technical  
18 specifications that were developed, reviewed, and approved  
19 by the staff.

20 The industry proposal seeks to treat the  
21 design-related technical specifications as Tier 2 with all  
22 of the attendant change provisions and backfit  
23 protections. However, at the time of COL issuance, these  
24 technical specifications would become part of the license,  
25 and their change provisions and backfit protections would

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1 coincide with those of the site-specific COL technical  
2 specifications, namely the provisions of 10 CFR 50.90 and  
3 10 CFR 50.109.

4           This position by the industry is obviously  
5 different from that articulated by the staff in the  
6 supplementary notice of proposed rule. I have a question  
7 for the staff to try to understand why they have this  
8 position, which is not similar to that of the industry's.  
9 What are the specific objections that the staff has to the  
10 industry's proposal on the treatment of finality of the  
11 technical specifications?

12           MR. WILSON: This is Jerry Wilson. Our  
13 position on this subject is in SECY-96-077, and it's  
14 twofold. First of all, in response to a request from the  
15 industry to have a single change process, we recognize  
16 that in order to do that it would have to be out of  
17 Tier 2. It's kind of -- you can't have it both ways.  
18 You're either in Tier 2 for the duration of the license or  
19 you're not.

20           And second of all, we also had another concern  
21 about the ability to apply future operational requirements  
22 to the technical specifications, and that wouldn't be able  
23 to be done if there was finality associated with technical  
24 specifications. And that's what was in our final rules in  
25 SECY-077, and we alerted the Commission to that point in

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1 our transmittal memo also for that SECY paper.

2 MR. RUSSELL: Let me add to it, because I  
3 think that there is a practical aspect as well.

4 The agency has developed a working process for  
5 standard technical specifications with the industry, with  
6 NEI, and the owners groups, for each of the standard  
7 technical specification sets, which are essentially NUREG  
8 documents. Within those NUREG documents, you have generic  
9 information, and you have information which is plant  
10 specific which is contained in brackets.

11 We have developed a process by which we  
12 incorporate lessons learned and other operating experience  
13 in that process to keep those documents current. Your  
14 proposal would result in freezing, basically, at the  
15 Rev. 0 level the standard technical specifications for the  
16 ABWR and the CE 80+.

17 And yet we have the standard tech. specs. for  
18 CE, which with experience over the next -- you pick a  
19 timeframe -- X number of years, we would expect that there  
20 would be process improvements. There could potentially be  
21 release. So that's one aspect. That is, we reached  
22 agreement with the industry on a change process using the  
23 NUREGs.

24 The other thing that we have done, as you're  
25 well aware, this is a voluntary program. We do not impose

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1 unless we can justify through a 50.109 backfit these  
2 process improvements. So this was, in fact, an activity  
3 that has been going on that both sides have also  
4 substantial resources invested with a process that is  
5 working well. And I don't know what the total dollars  
6 are, but it has been going on for some 10 years. And I  
7 just don't want to have two processes.

8           The second piece is that even in the standard  
9 technical specifications, as you propose them, for the  
10 ABWR and the CE 80+, there is bracketed information which  
11 has not yet been provided. So there are certain matters  
12 that are going to be outside. And as you've indicated in  
13 your opening remarks, you're expecting additional tech.  
14 specs. to come in at the time of the COL.

15           So now we've got the potential for differences  
16 between the standard tech. specs. and the currently  
17 reviewed tech. specs., and you've got bracketed  
18 information, etcetera. We want to have one process, and  
19 the process that we had agreed to was essentially a  
20 process with the industry to maintain the standard tech.  
21 specs. consistent across the industry, where that's  
22 appropriate.

23           So if in the process of meeting with the  
24 industry through NEI, through the owners groups, a  
25 proposed change is made to the CE standard, the BWR-4, the

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1 BWR-6, the Westinghouse, and we reach agreement, we think  
2 from an inspection, consistency, regulatory process  
3 standpoint that those kinds of standards ought to apply  
4 equally well to other tech. specs.

5           And we have been controlling these basically  
6 with NUREGs, which I will characterize are the equivalent  
7 of regulatory guides and that they are out for comment.  
8 The process is a public one. They're not called reg.  
9 guides, but we've done it that way. And so I don't see a  
10 need at this point in time, and the reality is that you're  
11 going to have this issue with an opportunity for  
12 litigation prior to a COL proceeding, prior to investing  
13 cost in construction, etcetera.

14           It's also true that we needed to see what  
15 would be the types of surveillance activities testing  
16 associated with tech. specs. to support the review that we  
17 performed and make judgments as to whether additional  
18 items were needed based upon review or not.

19           So we don't see that the submittal of the  
20 tech. specs. was something that was unnecessary. We felt  
21 it was necessary to complete the technical review. We did  
22 reach closure on many items, and, as you're aware, that  
23 there was a difference in approach taken on relief between  
24 CE and GE, where GE submitted additional information and  
25 got some extended allowed outage times. We left the

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1 option open for subsequent submission of information on  
2 the CE part, to potentially justify at the time with COL  
3 relief under allowed outage times.

4           It may very well be that we have additional  
5 generic work that is done, and we changed the standard AOT  
6 for emergency diesels from 72 hours to seven days or 14  
7 days. We already have a few cases where people have gone  
8 to alternate AC sites where we've justified those kinds of  
9 changes with precedent-setting tech. specs. So these, in  
10 my view, are operational matters that don't relate to the  
11 specifics of the design.

12           We do agree that it would be inappropriate to  
13 impose a tech. spec. that would require a change to the  
14 facility, because the design certification and the  
15 facility hardware -- we agreed that the standard for a  
16 backfit is as described in Part 52. So we don't see the  
17 issue of surveillance activity that it's agreed cannot be  
18 performed because the design feature doesn't permit it.  
19 And some surveillance activity comes out in the future,  
20 the backfit standard of Part 52 would apply. And just by  
21 virtue of that surveillance activity being one that is in  
22 the current regulatory NUREG and/or guidance, we would say  
23 that that would not be backfit because of the need to  
24 change the facility.

25           But at the same time, we have some practical

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1 issues. I just see it's going to be difficult, extremely  
2 difficult, to manage three or more sets of books  
3 throughout this process when we had reached agreement with  
4 the industry on how to approach this.

5 I could see the same precedent being reached.  
6 Then, why have an industry approach? Why not have the GE  
7 standard separate from the CE standard, separate from the  
8 Westinghouse standard? We're trying to do these from a  
9 regulatory process standpoint, such that the inspectors  
10 and the others that are working with these -- and  
11 hopefully within the not-too-distant future the majority  
12 of the plants in the U.S. are all on standard tech.  
13 specs., so that we can get some regulatory process  
14 stability.

15 So I don't want to end up in the situation  
16 where I've got to keep books on several different sets of  
17 tech. specs. depending upon when one set was used. If  
18 there is a valid reason for updating it, we go through the  
19 process, whether it comes out of industry through the  
20 owners with a process to change it. If we reach agreement  
21 through that process we want to be able to incorporate  
22 those changes as it relates to operational matters, which  
23 relates to limiting conditions for operation, surveillance  
24 activity, frequency of surveillance, etcetera. We don't  
25 see putting design features in.

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1           So that's principally the issue, and we want  
2 to have one change process. The opportunity is there to  
3 address the issues at the time of a COL proceeding before  
4 there is significant cost invested, so we don't see a down  
5 side from the standpoint of that aspect.

6           The litigation risk -- we really have not seen  
7 cases where OLs are delayed associated with tech. spec.  
8 issues. And since those issues would be litigated at the  
9 time of a COL proceeding, it's just difficult for us to  
10 see what is the value as compared to the burden, potential  
11 for inconsistency, and not having a constant or a  
12 consistent change process. So that's the rationale.  
13 Those are the issues that the staff considered.

14           MR. WILSON: Any further discussion on that?

15           MR. MATZIE: Yes. Of course, from our  
16 perspective, we're losing the value of the agreement on  
17 the entire set for the future opportunity to modify, based  
18 on experience, a subset of that total technical  
19 specification package. And in the view of the industry,  
20 that opens a large uncertainty door compared to a  
21 voluntary uncertainty which the industry might take to  
22 change some of the technical specification at that future  
23 date based on experience.

24           It seems that we need to try to rationalize  
25 those two issues -- uncertainty on the whole set of

1 technical specifications versus the likely scenario that  
2 you want to update and modify a subset of those. And we  
3 view this as putting more instability into the process by  
4 opening the entire spectrum of tech. specs. for future  
5 review.

6 MR. WILSON: Anyone else on the Board have  
7 questions or comments?

8 MR. RUSSELL: I still don't understand the  
9 comment, because the situation applies equally well for  
10 current operating plants that are operating with the  
11 standard tech. specs., to the extent that the language is  
12 different between these that are certified. If we were to  
13 adopt that approach in those standards, you would have the  
14 implication of why change those standards? Why not hold  
15 the line and keep everything consistent with one set?

16 I mean, essentially, you're talking about is  
17 this an issue between the staff and the industry as to  
18 whether the staff is going to make inappropriate changes?  
19 We have a process that we follow as it relates to that  
20 activity. If this is an issue with respect to a third  
21 party at the time of a COL proceeding raising an issue  
22 with respect to tech. specs., that is going to apply in  
23 the COL proceeding.

24 And so to the extent you have a standard that  
25 is being adopted consistently throughout the United

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1 States, there is some benefit of that standard approach,  
2 if that has been tested in other litigation and other  
3 cases. And we just have not seen the experience where  
4 that has resulted in significant delay. So I just don't  
5 see what the uncertainty is.

6 If someone can help with this -- is this an  
7 issue over litigative risk at the time of the COL  
8 proceeding? You're going to have a proceeding. Is it  
9 related to what issues can be admitted or what contentions  
10 at that point in time? You need to clarify what is the  
11 down side that you see, because the words have not  
12 identified that yet.

13 MR. EGAN: Mr. Russell, I am Joe Egan,  
14 representing ABB-CE.

15 I am encouraged by your statement that you  
16 don't intend to use this as a vehicle to impose design  
17 changes. But I don't see anything in the rule that would  
18 reflect that position right now.

19 MR. RUSSELL: In internal discussions we  
20 agreed that we would revise the rule to make it clear that  
21 it only is with respect to operational matters, and that  
22 the design would apply to the Part 52 adequate protection  
23 standard in that a change in technical specifications that  
24 required a design change to implement would be subject to  
25 the backfit provisions of adequate protection.

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1                   We would agree to make that clarification,  
2 because it was never our intent to use the tech. specs. as  
3 a vehicle for backdoor design requirements.

4                   MR. MALSCH: Now, that would take care of so-  
5 called design-related tech. specs. in that sense.

6                   MR. EGAN: I guess then the question is how do  
7 you draw the line between the two? Because the DCD has  
8 numerous provisions that I think would get close to the  
9 boundary or cross the boundary, one of the things we've  
10 struggled with ourselves.

11                  MR. RUSSELL: Well, we're going to discuss  
12 this in another context in just a minute, as it relates to  
13 outside tech. specs. But what we're trying to do is  
14 differentiate how it is operated, or how frequently it may  
15 be tested. If the testing would require a design feature  
16 to do a test, put in another valve, put in a T, modify the  
17 design to be able to do some future test, we would say  
18 that that would be a backfit that would have Part 52  
19 protection, and there would not be additional design  
20 features added for the purposes of performing a  
21 surveillance test.

22                  On the other hand, if we conclude in the  
23 future based upon operating experience that the  
24 surveillance test, instead of being performed every 24  
25 months, assuming plants go to two-year fuel cycles, that

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1 it should be performed each 12 months based upon operating  
2 experience, we believe that that's appropriate, if that's  
3 what comes out of an industry agreement based upon the  
4 process that we're following for standard tech. specs.

5           What we're trying to do is keep the standard  
6 tech. spec. standard, unless there is a plant-specific or  
7 a design rationale for why there should be a difference,  
8 and that has been justified. So that's basically the  
9 approach we're coming to, and it's important in a broader  
10 context of ensuring well understood and consistent  
11 regulatory requirements as it relates to conduct of  
12 inspection activities and other things.

13           And we are trying to move toward standard  
14 requirements, so that we don't have cases of individual  
15 interpretation. So we see this as a fairly broad policy  
16 issue and one that bookkeeping would be very difficult to  
17 keep track of, separate sets of books where you've got  
18 bracketed information. Something is in this version for  
19 the ABWR, yet we have a later version of the BWR-6 where  
20 something is agreed to generically should be done.

21           You've got potentially these plants going on  
22 sites where you've got other reactors operating. We'd  
23 certainly like to have consistent specs. on the sites.  
24 And so if the COL applicant were to propose to change it  
25 at the time of the proceeding, which they could, you've

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1 still got the same exposure. So we're just having a  
2 difficult time understanding, and we agree that it is not  
3 our intent to make design changes through the vehicle of  
4 surveillance or other operational matters.

5 MR. QUIRK: Bill, if I might, Bill Quirk,  
6 General Electric.

7 What we're concerned about -- well, first of  
8 all, let me say, as you know, that we have provided a lot  
9 of unique features in the ABWR, and it significantly  
10 improved operability, reliability, and safety. And what  
11 we've tried to do with tech. specs. is transform those  
12 features into benefits to the utility operator who will  
13 operate these plants. And we took a very aggressive  
14 posture in translating that into more forgiving, longer  
15 surveillance intervals, and things like that.

16 So my management asked me, what have you  
17 accomplished if the staff will not provide finality to  
18 that information? If they are able to change it, because  
19 of whatever reason, what have you gained with regard to  
20 this interaction? And I really am hard pressed to answer  
21 that.

22 So what we're seeking is for the staff to  
23 provide finality to what is provided in the tech. specs.  
24 And if there is something like bracketed information that  
25 will be provided at the COL stage, then that is open to

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1 discussion at the COL stage. So it seems to hang  
2 together.

3           Nowhere else, by the way, are we leaving major  
4 sections of a plant open for adjustments along the way.  
5 So I think it's inconsistent with what we're doing  
6 overall.

7           MR. ROWDEN: Let me add to that two  
8 observations. Marc Rowden.

9           There are two concerns. I understand what you  
10 characterize, or I will characterize as a bookkeeping  
11 concern, and that is not an insignificant one in terms of  
12 administering the process. I think there is an  
13 institutional concern here, which ought to be borne in  
14 mind, and that is the staff has really backfitted this  
15 position which you have articulated onto a process which  
16 has been underway at considerable cost in terms of  
17 resource and monetary investment over some period of time  
18 in preparing the technical specification.

19           Secondly, from a process standpoint, to  
20 followup Joe Quirk's observation, there is a value to the  
21 industry, which we have identified from the outset and  
22 which the Commission itself has recognized, in taking as  
23 many issues off the table by resolving them at the front  
24 end of the process as we can, and that was an important  
25 part of our consideration and the staff's review of tech.

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1 specs.

2 Now, you may say that based on historical  
3 experience tech. specs. have not been a significant issue  
4 in construction permit or operating license proceedings.  
5 I don't know what -- or the industry doesn't know what the  
6 situation is going to be 10 or 15 years from now, or what  
7 the staff review position is going to be at that point in  
8 time.

9 So weighed against the considerations which  
10 you have identified ought to be weighed these industry  
11 concerns, which from our standpoint are very important to  
12 effective implementation of Part 52.

13 MR. BELL: If I may, this is Russell Bell with  
14 NEI.

15 Of course we share the interest in a single  
16 process, and I just emphasize that after the COL issues  
17 there will under our proposal a single process for  
18 controlling these things, and consistent with the process  
19 today.

20 But I wanted to make the observation -- and I  
21 think we support, of course, the standardized tech. spec.  
22 programs for the current operating reactor, and it has  
23 been effective in terms of it being a voluntary process,  
24 as you pointed out, whereby the NRC has not had to impose  
25 the improvements that have become identified and available

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1 during the tech. spec.

2 I just observe that the proposal -- that given  
3 the tech. spec.'s finality in the design certifications  
4 would not preclude the continuation of that very process,  
5 because just as utilities find it beneficial to  
6 voluntarily incorporate changes to their tech. specs.,  
7 today from the current plants they would be able to do so  
8 in the future for ALWRs.

9 And so I see that process as continuing and  
10 not inconsistent with the experience, as you have  
11 identified, and not a source of concern with respect to  
12 different tech. specs. here, different tech. specs. there.  
13 So I really don't see our proposal as inconsistent with  
14 the process that you've been working out under the -- with  
15 the operating plants.

16 MR. RUSSELL: But the process you're  
17 describing would be a different point in time for each COL  
18 applicant. So that what you're saying is essentially the  
19 process that the staff proposes would be the process that  
20 would be in effect after a COL was issued, which would  
21 mean that that's the process that you would adopt  
22 sequentially with time. So that the issue that you  
23 obtain, at least as I understand it, is some relief in  
24 litigation during the COL proceeding, as it relates to a  
25 tech. spec.

1           The issue, Joe, that you commented on we  
2 recognized and had many dialogues about the additional  
3 features and the need to show some operational benefit  
4 associated with the additional features that were placed  
5 in the plant. And there was an effort made in the course  
6 of the PRA review to quantify what the basis was for the  
7 relief, and we did reach agreement in a documented review  
8 as to what is a reasonable allowed outage time where that  
9 is justified based upon design features. That is  
10 documented.

11           The procedures that the agency has under  
12 Part 50 still requires, for staff positions, that there be  
13 a regulatory analysis with a justification. I mean, that  
14 work is not work that's lost. There is a documented  
15 position on each of those. So for the staff to want to  
16 change from something which had been agreed to and  
17 docketed in a safety evaluation report, and we've issued a  
18 safety evaluation on those, there is clearly a staff  
19 position we would have to justify the need for a change to  
20 that staff position under 50.109 for an operational  
21 matter.

22           So I understand the comments. What I'm trying  
23 to understand is it appears that the potential relief that  
24 is obtained is associated with exposure at the time of a  
25 COL proceeding to potential litigation.

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1 MR. ROWDEN: It's not just potential  
2 litigation. It's staff review. It's one thing to say  
3 that there's a documented staff position. If that was the  
4 case, we wouldn't need design certification going beyond  
5 an FDA.

6 Secondly, there is a material difference  
7 between 50.109 and 52.63. This is part of the underlying  
8 premise of Part 52.

9 MR. RUSSELL: Yes. But at the point we're at  
10 in the review, if you realize we started out with a  
11 standard review plan or a review practice that did not  
12 separate operational and design matters. We are in design  
13 certification. We have not had a COL proceeding yet on  
14 many operational matters.

15 What we're talking about are things that are  
16 at the interface between the two, and we've said that we  
17 don't intend to backfit design changes through an  
18 operational review as it relates to tech. specs. There  
19 may be other matters.

20 When we did the review in another area of  
21 relief from the ASME code, and is there a need for  
22 exemption, we did not want to process a design  
23 certification that required exemptions go out with it at  
24 the same time. Code revisions generally have, to the  
25 extent practical -- obviously, if the design does not

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1 accommodate performing a test pursuant to the code, those  
2 kinds of things aren't required. That's the concept that  
3 we are looking at, as it relates to operational matters.

4               So I think we understand the issue. I don't  
5 want to take a position one way or the other, other than  
6 to say we will attempt to fairly reflect in our proposals  
7 any comments to the Commission, the comments we've just  
8 heard today, and raise these issues to the Commission for  
9 a decision.

10              I do believe that there is value from the  
11 standpoint of training of inspectors and others that have  
12 to act with tech. specs. in having a consistent approach,  
13 and that is another issue that NEI has been looking at  
14 from the standpoint of regulatory consistency.

15              And it is not easy to maintain separate books,  
16 and yet there's a cost associated with doing that,  
17 particularly if the separate books go away at the time of  
18 a COL, based upon an industry observed need that it will  
19 be useful to have them be consistent after that point in  
20 time.

21              Next item?

22              MR. WILSON: Yes. Any more from the Board on  
23 this?

24              MR. MILHOAN: The only question I have is with  
25 respect to the industry position in the wording of the

1 present rule. What specific changes, word changes, would  
2 you see to reflect your position in the rule?

3 MR. BELL: I think our changes were identified  
4 in a June 18th, I think, paper.

5 MR. MILHOAN: I read -- I've got the  
6 June 18th, but I didn't --

7 MR. BELL: I think what happens is in the  
8 definition section of the rule, the tech. specs. -- I  
9 believe that's conceptual information. And, therefore, it  
10 is Tier 2 being proposed, and there would -- we would  
11 propose a change to -- removal of that exclusion.

12 MR. MILHOAN: That's in the definition  
13 section.

14 MR. BELL: In the definition section.

15 We have also proposed an additional provision  
16 -- I believe it also would go in in the definitions area  
17 -- in this regard, again, in the paper.

18 MR. EGAN: Just to summarize, can I make sure  
19 that I understand what the staff is proposing? As I  
20 understand it now, you are saying that your modified  
21 proposal would be that there would be one set of books --  
22 the tech. specs. -- which would be out of Tier 2  
23 essentially, but that you would have a provision in the  
24 rule that would say that you would not impose requirements  
25 on the design unless they met the requirements of 52.63.

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1 MR. WILSON: Don't misunderstand. This isn't  
2 a formal resolution of the matter. We are hearing people  
3 out, and we're just indicating matters that we're  
4 considering at this point. But I think it is clear that  
5 the intent here was to deal with operational matters and  
6 not to change the design matters.

7 MR. RUSSELL: And whatever language is needed  
8 to make sure that intent is captured in the rule, that the  
9 52 design change provisions as it relates to design  
10 features are consistent with the requirements of Part 52,  
11 as articulated, and that we would not be using operational  
12 matters to backdoor design changes.

13 MR. WILSON: Any further discussion on this  
14 first item?

15 MR. QUIRK: Just one. Mr. Milhoan, we are  
16 providing detailed comments on the rule on the 23rd of  
17 this month. And part of those comments will include a  
18 markup of the proposed rule to reflect our comments.

19 MR. MILHOAN: Okay. Thank you.

20 MR. WILSON: Hearing no other comments, let's  
21 move on to the first item on the agenda, which is finality  
22 of operational matters, Section 4(c).

23 MR. HUCIK: This is Steve Hucik, and I am  
24 General Manager of Nuclear Plant Projects for GE Nuclear  
25 Energy. I have been involved in the ABWR design projects

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1 work and also design certification for over 15 years now  
2 and would like to make some comments related to the  
3 finality on operational requirements.

4           The final proposed rule added a new section,  
5 Section 4, as a repository for operational requirements  
6 previously captured as a part of (quote) "the applicable  
7 regulations." Industry is steadfastly opposed to all  
8 applicable regulations, as we've mentioned in the past,  
9 and, as such, believe that Sections 4(a) and 4(b) should  
10 be deleted from the rule.

11           Today's agenda focuses on the newly proposed  
12 Section 4(c). Section 4(c) deprives operational  
13 requirements contained in the DCD of Section 52.63, issue  
14 finality. Further, it allows operational-related backfits  
15 on design matters covered by the DCD without regard for  
16 Section 52.63 backfit constraint.

17           As with the rest of Sections 4(a) and 4(b),  
18 Section 4(c) should be deleted from the final design  
19 certification rule. And we invite your comments on  
20 Section 4(c) and what we've said.

21           MR. WILSON: This is Jerry Wilson. With  
22 regard to 4(a) and 4(b), those were taken from previous  
23 sections 3 and previous sections 5, and we believe they  
24 are appropriate and that they define the constraints under  
25 which someone referencing this design could use the design

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1 certification.

2 And I might add that some of that information  
3 is also in the DCD introduction that the industry has  
4 supported.

5 With regard to 4(c), we believe it is clear  
6 that that deals with operational matters, and, in fact,  
7 the first words in 4(c) are "facility operation." And so,  
8 once again, we feel this is a provision that deals with  
9 operation and not design, and, therefore, does not affect  
10 the backfit provisions affecting design matters that have  
11 been resolved in the design certification.

12 MR. MALSCH: Let me ask a question. Do you  
13 think it's possible to resolve this issue differently than  
14 the tech. spec. question, or does the resolution of the  
15 tech. spec. question go hand in hand with the resolution  
16 of this question?

17 MR. ROWDEN: Well, I think they are different  
18 aspects of a common concern.

19 MR. MALSCH: Right.

20 MR. ROWDEN: We have already articulated what  
21 our concerns are as far as tech. specs. are concerned. In  
22 a way, this is even more pernicious than tech. specs.  
23 Tech. specs. involves an area where based on the  
24 considerable expenditure we're deprived of the benefit of  
25 that expenditure and the resolution that we hoped was

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1 going to be achieved during the design certification  
2 process.

3 Here 4(c) opens the door to so-called  
4 operational-related backfits of operational requirements,  
5 and there are some operational requirements contained in  
6 the DCD. And also, as made clear in the staff's SECY  
7 paper, it could result in backfits on aspects of the  
8 design itself. I mean, this opens the door in a way which  
9 seriously undermines the concept of design stability and  
10 licensing predictability.

11 MR. MALSCH: Suppose we did for this one the  
12 same thing that we suggested we'd consider or think about  
13 for the tech. spec. one? Which is to say that the  
14 flexibility to impose changes into paragraph (c) would not  
15 be exercised so as to affect the design.

16 MR. ROWDEN: Well, what about the operational  
17 requirements that are contained in the DCD? See, we jump  
18 from one side of the net to the other. You have  
19 operational requirements contained in 4(a) and 4(b), and  
20 yet when we come to 4(c), you say, "Well, operational  
21 requirements should be outside the scope of this." I  
22 mean, I'm not sure, you know, which ball we're trying to  
23 hit over the net.

24 MR. MALSCH: Well, it's a matter of necessity  
25 versus necessity plus efficiency, is basically what it is.

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1 MR. ROWDEN: Well, I think that we would all  
2 support a functional approach. But we're somewhat at a  
3 loss to understand why, at this juncture, this particular  
4 aspect should be introduced into the process which strikes  
5 at the heart of 52.63.

6 MR. WILSON: Further discussions on this  
7 matter?

8 MR. SIMARD: Could I ask a question that might  
9 help us understand what you have in mind? I'm not sure  
10 how many references there are in the DCD of what you might  
11 consider operational requirements. My impression, based  
12 upon a reading of the DCD, is that there might literally  
13 be hundreds. And they cover the range from things like  
14 equipment qualification through in-service testing through  
15 shutdown risk considerations.

16 And so I'm not sure how you would draw the  
17 line. So the question I'd like to ask is whether you can  
18 give us any further clarification about how you would  
19 define what in the DCD is an operational requirement, and,  
20 therefore, subject to change under this proposed new  
21 process.

22 MR. WILSON: I think you can determine that in  
23 the process of looking at it. Amplifying your point,  
24 while there are certain operational matters that are in  
25 there, on the other hand we haven't dealt with the issue

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1 in a comprehensive manner.

2           So, for example, there is certain license  
3 conditions that may apply that we are unable, at this  
4 point in time, to put down, so we don't want to leave the  
5 impression that we have finalized all operational  
6 constraints on plants that reference these designs. So  
7 those matters are clearly open at this point.

8           MR. ROWDEN: I wouldn't want the lack of any  
9 further comment to be taken as a reflection of a lack of  
10 intensity of our feeling on this subject. I wouldn't  
11 grade the degree of concern we have with regard to the  
12 various issues we're discussing today, but I can say that  
13 this is an issue which really strikes at the heart of what  
14 the industry believes design certification rules were  
15 designed to achieve.

16           And I'm not simply speaking for the vendors  
17 now, but I am speaking for potential users of these  
18 designs in the future. This is a very, very crucial  
19 provision.

20           MR. MALSCH: I guess I can understand the  
21 benefit of having the enhanced backfit standard apply to  
22 operational matters. But I wonder if it was ever in the  
23 contemplation, specifically of the Commission, that a  
24 design certification rule, with restrictions on backfits  
25 of the certified design, was to extend to purely

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1 operational matters, wherever those may be defined.

2 I could find no discussion any place in any of  
3 the legislative history of Part 52 which focused on  
4 operational standardization and operational finality as  
5 opposed to design standardization and design finality.

6 MR. ROWDEN: Well, I'd make two observations.  
7 One, the parameters, the envelope that has been defined,  
8 indeed prescribed, by the staff for the design  
9 certification rule, the DCD concept of that rule, were  
10 presumed to include all matters which the Commission  
11 believed appropriate and necessary to resolve at the  
12 design certification stage. Some of those matters  
13 specifically relate to operation. Whether they should  
14 have been in there or not, they are in there, and they're  
15 intricately related to other aspects of the design. So I  
16 think we have to take that as a given.

17 Now, we have never disputed that matters  
18 outside the parameters of the design certification rule  
19 are not covered by that rule and are subject to separate  
20 treatment by the NRC. The only thing that we have  
21 insisted upon in that regard is to the extent that they  
22 affect or would lead to changes in what is in the DCD they  
23 should be subject to the backfit constraints of 52.63.

24 MR. SIMARD: Well, one other comment that  
25 might apply, Marty, is although maybe you would have

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1 trouble pointing to a specific paper, for example, that  
2 clearly defined what was in the scope of the design  
3 certification, certainly the impression one gets in  
4 recreating the history of the various SECY papers, the  
5 applicable regulations, and so forth, is that so much of  
6 our interactions have revolved around equipment  
7 qualification and in-service testing.

8 I mean, many of the proposed applicable  
9 regulations, many of the SECY papers that the staff has  
10 sent up to the Commission over the years, have necessarily  
11 infringed -- if that's the right word -- into operational  
12 consideration. So --

13 MR. RUSSELL: Well, you used equipment  
14 qualification. My own view is that that is a design  
15 issue. It is not an operational issue. Operational  
16 issues relate to procedures on how equipment will be used.  
17 And I agree in the context of the design review you have  
18 to have some understanding as to how the design is going  
19 to be operated in order to do a meaningful review. You  
20 don't just look at it absent some understanding of how it  
21 will be operated.

22 But the level of detail of description,  
23 operating procedures don't exist yet. If we take the  
24 example of the emergency operating procedures, you've got  
25 guidelines from which plant-specific emergency operating

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1 procedures will be developed. There is a substantial  
2 amount of work to be done, and there is a long list of COL  
3 items. We don't have a standard review plan that says,  
4 "Here is how you review a design, and here separately is  
5 how you review operations."

6 We went into this starting with a standard  
7 review plan that was based upon the old Part 50 process  
8 and issues to be addressed at the time of an operating  
9 license review, where you have the facility and you  
10 understand how it's going to be operated. So, yes, there  
11 were cases that we moved back and forth.

12 An example of an operational matter that did  
13 get looked at in the context of codes and standards, as it  
14 relates to the ASME code and requirements for inspections,  
15 and what the reliefs would be required in the code, and  
16 you'll recall there was substantial discussion of this  
17 during the technical review, we said we did not want to  
18 certify a design that based upon the requirements of the  
19 code that were in effect at the time of the design  
20 certification we would also be issuing exemptions.

21 So we wanted to make sure that it was  
22 physically possible to perform the kinds of inspections  
23 and activities that were required, whether it be in-  
24 service testing or in-service inspection. And we did not  
25 want to have welds buried in pipe if you have to inspect

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1    them, etcetera.

2                   We've said that as it relates to design  
3 matters, we are ready to say that the provisions of  
4 Part 52 apply. As it relates to operational matters that  
5 have not been yet reviewed in detail that are still open,  
6 we believe that there is substantial work yet to be done.  
7 And we are differentiating between design, which is where  
8 cost -- and recall the major items of cost are making  
9 changes to the design after the plant has been built.  
10 That's where your cost exposure is.

11                   A revision of an operating procedure based  
12 upon operating experience for a matter that is not yet  
13 resolved and reviewed, that is clearly not on the table  
14 and I don't think either of the -- any of the spokesmen  
15 have said it should be.

16                   To the extent we did look at operational  
17 matters -- and I think the best example is back to the  
18 tech. specs., where based upon the PRA and additional  
19 design features, extended period of operation in allowed  
20 outage time context was provided because of additional  
21 features -- that is, the additional factors of safety in  
22 the design. That resulted in generally two-week AOTs or  
23 longer, rather than the standard 72 hours that you see on  
24 today's vintage plants.

25                   And I believe there were something like 10 or

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1 11 areas where explicitly we concluded, based upon the  
2 design features, relief in the context of a longer allowed  
3 outage time was appropriate. Didn't get into what kinds  
4 of corrective actions are taken during that period of  
5 time, etcetera.

6           So I understand the comments about operational  
7 matters, but I submit that many are not yet resolved and  
8 there is much work to be done. The issue as to whether  
9 you get credit for the additional design features by way  
10 of operational reliefs, where that is a part of the  
11 review, and how that is captured, is a matter that needs  
12 to be looked at. I understand that.

13           Now, it may not satisfy you to say that it's  
14 the staff position that 50.109 governs, but the reality is  
15 it was a risk assessment in the context of a PRA with a  
16 regulatory analysis which was the basis for why that  
17 operational relief was provided.

18           I would also submit that when you get into  
19 actual operation if you are not meeting the goals for  
20 equipment performance that were assumed -- and those were  
21 assumptions. They were operational assumptions. And we  
22 talked about codifying a reliability assurance program by  
23 having a requirement for a living PRA. Those issues are  
24 operational.

25           If you don't achieve the goals that you've

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1 laid out, and that's not fed back, whether that's within  
2 the maintenance rule and is sufficient now is a question.  
3 So there are many issues that we've not yet dealt with  
4 explicitly that are of an operational nature. What we've  
5 been talking about, generally, is not imposing changes on  
6 the design as a result of a flow through of an operational  
7 matter, to ensure that there is a high threshold for  
8 hardware modifications that may occur after you have the  
9 sunk cost associated with the design or implementing the  
10 designs.

11 MR. REHN: This is Dave Rehn with Duke.

12 I think we concur with the concept, but there  
13 are still many operational aspects that are going to have  
14 to be defined in further detail at the COL stage. Our  
15 biggest concern is obviously those situations, albeit  
16 tech. specs. or other operational characteristics, that  
17 have already been reviewed kind of hand and glove with the  
18 design, and where some of the aspects that you've talked  
19 about in terms of operational considerations for outage  
20 times, because of the changes in the safety systems, to  
21 have those locked in now we believe is appropriate,  
22 because that element of review has been done.

23 You're correct that one of our concerns,  
24 obviously, is a backfitting that could impact design  
25 features, which could translate into cost. But likewise,

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1 many of the overall cost assumptions that will be made on  
2 these plants incorporate not only the construction costs,  
3 but also the 40-year-odd operational aspects. And for  
4 those to undergo some significant change at the COL stage  
5 can have an impact further on those operational  
6 considerations.

7           So what we're saying is where these have been  
8 reviewed to the level that -- whether it's the testing or  
9 the multitude of the safety systems, and what not,  
10 reviewed jointly, that that be recorded in the design rule  
11 and be afforded these backfit provisions.

12           MR. MALSCH: Let me ask, if we were, let's  
13 say, to delete our 4(c) so we no longer reserve to  
14 ourselves broad flexibility to impose operational  
15 requirements, but if we were to recognize that there are  
16 areas of incomplete review, wouldn't that suggest that if  
17 we were to adopt your suggestion we would have to somehow  
18 capture in language in the rule here, perhaps as some  
19 substitute for 4(c), some way to describe where there was  
20 enhanced backfit protection for areas that were reviewed  
21 on matters of operations, and where there were not? And  
22 do you have any concept as to how we could capture that in  
23 language?

24           MR. ROWDEN: One thing I'm having difficulty  
25 understanding is what backfit constraint, if any, does

1 4(c) contemplate? Obviously, it doesn't contemplate a  
2 52.63 backfit constraint. Does it contemplate 50.109?  
3 Well, if one assumes that you're going to apply a backfit  
4 constraint, why do you distinguish between 50.109 and  
5 52.63? What is the problem with applying 52.63, which  
6 seems to us to have a perfectly adequate standard? It's  
7 adequate protection of public health and safety, and it is  
8 in compliance with NRC regulations in effect at the time  
9 of the design certification issuance.

10 Why do you think it is so necessary to add the  
11 additional provision that 50.109 would impose? I fail to  
12 see the functional reason for your resisting application  
13 of 52.63 as contrasted to 50.109.

14 When we first saw this, at least when I first  
15 read it, it seemed that there was no backfit constraint at  
16 all that would be applicable. Now what you're saying is,  
17 no, there would be a backfit constraint, but it would be  
18 50.109. If that's the case, why not 52.63?

19 MR. MALSCH: Well, there would be a question  
20 about it, though. Let's assume there are some areas of  
21 operation that are yet to be reviewed. Conceptually, you  
22 couldn't, under that circumstance, even apply 50.109  
23 because there is no prior staff provision in --

24 MR. ROWDEN: If it's yet to be reviewed, we  
25 understand that. But if the requirement that you adopt

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1 entails a change in some aspect of Tier 1 or Tier 2 of the  
2 DCD, all we're saying is that 52.63 should apply. I think  
3 the two concepts are compatible.

4 MR. MALSCH: No, I understand that. But that  
5 would still require, though, some delineation of the areas  
6 reviewed and not reviewed, in terms of operation.

7 MR. ROWDEN: Well, I don't know why it's -- I  
8 mean, you know, you can say that is the case with regard  
9 to operation, but there are a lot of things that are going  
10 to happen in subsequent stages of the process that could  
11 affect not only operation but have implications for the  
12 design. You have the same problem.

13 MR. MALSCH: Sure. Except hopefully we could  
14 take care of that conceptually by saying it is not the  
15 intent of paragraph 4(c) to enable the NRC to backfit on  
16 design matters.

17 MR. ROWDEN: Well, I don't think -- as a  
18 matter of fact, I don't think we ought to try and write  
19 the provisions of the rule here. I think the only thing  
20 we can do is to make plain a) our concern, which I think  
21 we have, hopefully abundantly so, and b) to pursue the  
22 matter of what is the appropriate backfit standard.

23 I'm not saying that there is going to be a  
24 bright line that one can draw to determine when that  
25 backfit criterion should apply. All we're saying is that

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1 whatever that line is, and it may never be a bright line,  
2 it ought to be 52.63 that governs. That's the principle  
3 that is embodied in Part 52, and we see no reason for  
4 reverting to 50.109.

5 And I'm not even sure that there is that great  
6 a benefit for the staff in having the so-called  
7 flexibility of 50.109. What sort of flexibility does it  
8 give you?

9 MR. MALSCH: Well, it gives you enhanced  
10 protection backfit flexibility, whatever that is worth.

11 MR. ROWDEN: Well, that's right. It is  
12 subject to a rigorous and difficult standard.

13 MR. MALSCH: But just to clarify, though, it's  
14 not your position that we ought to be applying the 52.63  
15 enhanced backfit standard to operational matters that are  
16 yet to be reviewed.

17 MR. ROWDEN: If it's outside what I have  
18 characterized as the envelope, the DCD, the answer to that  
19 is no, if and -- but let me add to this, if, on the other  
20 hand, the requirement that you adopt leads to a  
21 modification of something that is in the DCD, yes, then  
22 the backfit standard should apply. That seems to us to be  
23 a reasonable benchmark.

24 MR. SIMARD: If I could ask a clarifying  
25 question. Marc Rowden just described the criteria in

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1 52.63 that we've always accepted as imposing constraints  
2 on both the ability of the NRC and the industry to make  
3 changes to certified design.

4 Now, we've been speaking here about those  
5 operational matters that have found their way into Tier 2  
6 of the proposed certified design. If 52.63 no longer  
7 constrains the NRC from making changes in these areas, do  
8 you mean to imply that licensees are now free of the 52.63  
9 constraint to make changes in the same operational areas  
10 in Tier 2? What process do you see preventing a licensee  
11 from making changes?

12 MR. RUSSELL: We've indicated earlier that a  
13 licensee at the time of a COL application that wishes to  
14 make a change may make a proposal, incorporate that at the  
15 time of the application, and the 50.90 process applies if  
16 they already have a COL. And if it's not, it's in the COL  
17 proceeding. So that issue is unchanged. They would have  
18 to justify it either during the initial proceeding or  
19 subsequently justify it through a 50.90 amendment process.

20 But the issue that I think is still -- and  
21 it's difficult, it's a gray line, it's not bright, and  
22 there are cases where operational matters, as it relates  
23 to a conclusion on the part of the staff of the capability  
24 to perform the operational activity, i.e. perform in-  
25 service inspection, perform in-service testing, look at

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1 the reasonableness of the emergency operating procedure  
2 guidelines, etcetera, understand what you assumed by way  
3 of human reliability in your PRA analysis.

4 Those operational matters we looked at in the  
5 context of the reasonableness of that activity, as it  
6 relates to an insight associated with a design, such that  
7 we could accept the design. That is, manual action versus  
8 automatic action, etcetera.

9 We have yet to do the bulk of what I would  
10 characterize as the operational review. So it's not clear  
11 to me that the uncertainty that was talked about with  
12 respect to this being a major issue at the time of a COL  
13 proceeding. My own view is that that uncertainty will  
14 exist until such time as there is actually a COL  
15 proceeding and these operational matters are addressed,  
16 and there is some type of precedent.

17 So I'm still questioning, what is the benefit  
18 given the scope of the review, because I'm sure the staff  
19 would point to it and say, "Well, the scope of the review  
20 of that operational matter is as described in the staff  
21 safety evaluation associated with that particular issue."  
22 So to the extent there is some other issue that is  
23 pointing to words and have operation in them, if we didn't  
24 review it in the context of that operation, and there's  
25 nothing that describes it, you've got the same issue and

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1 the potential for debates back and forth.

2 MR. ROWDEN: Maybe functional realities  
3 dictate that all we can do at this stage is establish, in  
4 some appropriate way, the concept. I've tried to  
5 articulate the concept.

6 In a thumb-nail sort of way, it would be  
7 matters outside the scope of the DCD are not constrained  
8 by backfit considerations, except in cases where adoption  
9 of these new requirements results in a change to the  
10 contents of the design certification document. I mean,  
11 that's a simplistic way to describe it, but that in a  
12 sense is the industry view of the applicable concept. And  
13 I'm not saying that it's a blueprint that is going to give  
14 us the details as to how it is going to be applied in the  
15 future. I think the comments that you have made are very  
16 apt in that regard.

17 But at least at this stage we ought to  
18 identify what the governing concepts should be, just as we  
19 have with regard to certain other matters, such as ITAAC  
20 verification. And these matters will be fleshed out in  
21 the course of fuller development.

22 MR. WILSON: Further discussion on that?  
23 Questions?

24 MR. MILHOAN: No. I assume we'll see that in  
25 the industry comments, your last statement.

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1 MR. RUSSELL: It would be helpful if between  
2 now and the close of the comment period if you could  
3 provide explicit words. We understand what your first  
4 position is. But if based upon this discussion there is  
5 some revised language which would help address this issue,  
6 the particular language would be most useful.

7 MR. WILSON: Are we ready for the next issue?

8 The next item on the agenda is the -- deals  
9 with the review procedure for renewal of design  
10 certifications.

11 I'm sorry, Bill.

12 MR. RUSSELL: Let me go back to the last  
13 issue. Do you see any role for the staff safety  
14 evaluation report as it relates to whether a matter that  
15 may be discussed or text may appear in a DCD, whether it  
16 was in fact reviewed or not reviewed?

17 That is, the fact that there is text there, if  
18 the text indicates that this operational matter is closed,  
19 but the safety evaluation is either silent on it or  
20 indicates that it has not been reviewed, what is the  
21 relationship? And what I'm focusing on now is the extent  
22 of the review that was actually done. That is, is there a  
23 sufficiently documented basis -- and I now am focusing on  
24 the kinds of examples where we did reviews against the  
25 code to make a determination as to whether exemption from

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1 design was needed when that review was done as compared to  
2 how would you operationally implement a 10-year ISI/IST  
3 program that you would be expected to describe in the  
4 future to show that you are meeting the code with respect  
5 to the types of volumetric and/or visual examinations to  
6 be performed?

7 And so just think about that in the context of  
8 the review.

9 MR. ROWDEN: Well, I'm not sure there's a  
10 universal answer to that, and it may -- I'm sorry.

11 MR. QUIRK: Well, I don't think the -- you  
12 said SER. Would that be a good gauge?

13 MR. RUSSELL: No, I'm asking. Because at this  
14 point in time we've separated the SER out. The SER is a  
15 history of how we did the review, but it has no legal  
16 standing per se.

17 MR. QUIRK: I understand. And your question  
18 is?

19 MR. RUSSELL: The question is, is it an  
20 interpretive document I'm relying back to? If there are  
21 words in the DCD that indicate or could be interpreted  
22 that an operational matter had been looked at, but you  
23 find in the safety evaluation it had not been, which is  
24 governing? Are we going to get into those types of  
25 debates?

1 MR. QUIRK: Yes, I don't think the SER was  
2 intended to document everywhere it reviewed and approved  
3 things. I think it kind of highlighted some areas, and  
4 others it didn't. So I wouldn't want to use the SER for  
5 that.

6 MR. EGAN: Our presumption is that everything  
7 in the DCD has been reviewed and approved, and I guess I  
8 would be real uncomfortable with the notion that there may  
9 be things in the DCD that are less approved than others.  
10 We are operating under the presumption that that whole  
11 document has the same legal status, at least across each  
12 of the individual tiers.

13 MR. WILSON: Anything further on this item?

14 Okay. Item number 3, the review procedure for  
15 renewal of a design certification.

16 MR. QUIRK: Yes. Industry has worked to  
17 ensure that the design certification rule provides  
18 finality. That's a word we've used a lot today. Apply  
19 finality -- we mean that matters resolved by design  
20 certification rule will not be reopened in later  
21 regulatory proceedings.

22 The proposed final rules do not give finality  
23 to the DCD and design certification renewal proceeding.  
24 Instead, we understand from the May 2nd workshop that the  
25 staff anticipates a de novo review of the standard design

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1 at this stage. Could you explain what such a review would  
2 consist of?

3 MR. MALSCH: Let me begin by answering that,  
4 because I ended up sort of raising the issue.

5 To be more precise, let me just quote from  
6 what the Commission said about this certification renewal  
7 process in its proposed rulemaking. It said, "Section  
8 52.59 contains the criteria for evaluating an application  
9 for renewal. The initial burden is on the applicant to  
10 show that the design complies with the Atomic Energy Act  
11 and all of the Commission's regulations, other than design  
12 certification itself."

13 So I think all I was trying to reflect, in  
14 retrospect somewhat imperfectly, is the concept that there  
15 are no legal limits on the scope of review, except as the  
16 standard itself suggests. And as the Commission itself  
17 indicated in its rule, the burden is on the applicant, as  
18 in any other case, to prove compliance with the  
19 regulations in the Act at the renewal stage. Otherwise,  
20 what you have is really not a design certification of any  
21 particular duration, because it would extend automatically  
22 through the renewal stage.

23 I didn't find the slightest indication any  
24 place in the regulations or in the history of the  
25 regulations that the Commission's review at the time of

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1 the certification renewal was confined to changes  
2 suggested by the certification applicant or holder.

3 At the same time, I don't see the rulemaking  
4 as in any way spelling out the scope of the staff review.  
5 That would be, I suppose, up to the staff to decide at the  
6 time the renewal application came in. So I think all I  
7 intended to say was that there were no legal limits on the  
8 scope of the staff review, but that what the staff would  
9 actually look at would have to be worked out some time in  
10 the future. So maybe that's some clarification.

11 MR. BRINKMAN: This is Charlie Brinkman, ABB-  
12 Combustion Engineering.

13 Given the parameters that you've just  
14 described, they seem consistent with the last time we  
15 talked about it. After a remark that it cost  
16 approximately \$100 million to get the design approved this  
17 time, and if there are no legal limits, we don't know what  
18 we're getting into. We're going to ask for a renewal  
19 proceeding. And to wait until it's about time to do that  
20 doesn't give a vendor a very good feeling.

21 We need some definition now as to what would  
22 be anticipated, because I think a renewal proceeding is  
23 really part and parcel of this entire design  
24 certification. We're not only getting 15 years, but  
25 according to Part 52 we should be able to renew this. As

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1 I read the Part 52, and the statements of consideration  
2 with it, it sounds like a reasonable procedure, you know.  
3 I don't think anybody ever envisioned that the staff could  
4 completely rereview this design.

5 So I'd like to state that we feel as though we  
6 need, at this point in time, some definition of the  
7 limitations of what a renewal proceeding entails.

8 MR. RUSSELL: Well, let me suggest that at  
9 this point in time this particular rulemaking is not the  
10 vehicle to do that because the dialogue has not occurred  
11 back and forth as to what would be, in fact, the scope of  
12 a renewal.

13 Let me postulate an example scenario, because  
14 the design certification continues in effect beyond  
15 15 years from plants that are in, in fact, in operation.  
16 And let's suggest that there are a number of plants that  
17 are built and are operating and that you have some  
18 operating experience prior to a request for renewal of a  
19 new design. That operating experience may be the basis  
20 for concluding that some aspect of a design should be  
21 changed for generation 2 of the design certification.

22 But we have not had technical dialogue, nor  
23 policy dialogue, on that matter. We haven't certified the  
24 first one, let alone how one does a renewal. But it's  
25 clear that the rule intended a 15-year life, not a 30-year

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1 life, for matters that are reviewed and approved.

2 Now, if there is no adverse operating  
3 experience, and there are no significant changes to the  
4 rules and regulations, and the basis upon which you  
5 concluded it was acceptable is unchanged, there is no new  
6 information, then it should be a relatively  
7 straightforward review to accomplish.

8 If on the other hand there is new information  
9 that is adverse, or there is a change in a regulation that  
10 requires some new consideration, the current process  
11 provides that that's not considered during the duration of  
12 a certified design, or the operating life of a plant which  
13 references the certified design.

14 But that does not say that the design  
15 certification renewal may not look at new operating  
16 experience or have to look at new rules that are  
17 promulgated that don't apply to the original design  
18 certification because they are after the date of the  
19 certified design but are in effect thereafter.

20 MR. ROWDEN: Well, we have never disputed, and  
21 as a matter of fact 52.59 is quite explicit that  
22 regulations which weren't in effect at the time of the  
23 initial design certification can be the basis for the  
24 staff imposing modifications if you meet the enhanced  
25 standard which is specified in 52.59. It is also open to

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1 the applicant to propose changes against a somewhat  
2 different standard.

3 I think also it has to be borne in mind that  
4 if there is intervening operational experience which would  
5 show that the plant no longer provides adequate protection  
6 or no longer is in compliance with the regulations  
7 applicable and in effect at the time of design  
8 certification issuance, backfitting would be called for  
9 under 52.63. In other words, that plant is no different  
10 on the day that the design -- the rule is no different in  
11 that respect on the day that it expires and the following  
12 period of time when the staff is undertaking a review.

13 To a certain extent, this is somewhat  
14 analogous to licensing renewal in terms of, you know, what  
15 do you look at? What are the parameters of what you look  
16 at? Obviously, the rule contemplates -- at least it's  
17 obvious to me that the rule contemplates that you take  
18 into account intervening experience. The question is,  
19 what is the basis for taking that into account? Do you  
20 start at ground zero and rereview the whole application?  
21 I mean, as Mr. Brinkman stated, you're talking about very  
22 substantial table stakes.

23 And, you know, this is something, again, which  
24 you may not be able to resolve in detail, but I think  
25 there are certain things that can be laid down at this

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1 stage which would provide some degree of assurance that  
2 what you're dealing with is not a new application, which  
3 52.59 also talks about, if there are substantial changes,  
4 but a renewal in which you do have some benefit of the  
5 determinations that were made at an earlier point in time.

6 MR. MALSCH: I guess my question is, where do  
7 you find any place in the regulations, any place, the  
8 concept that the Commission, in its renewal review, would  
9 be bound in any way by prior compliance determination?

10 MR. ROWDEN: It's not a question of whether  
11 the Commission would be bound by it, but whether it makes  
12 sense from a functional standpoint to take into account  
13 the determinations that had been previously made if there  
14 is no intervening experience that would obviate that.

15 Now, that -- you know, maybe there's a burden  
16 on the part of the applicant to come in and to show that  
17 the intervening experience doesn't obviate the earlier  
18 determinations. But that doesn't entail a complete  
19 rereview of the design.

20 MR. RUSSELL: I don't know that there has been  
21 a dialogue on what is the scope of a design certification  
22 renewal review. There is not a regulatory guide. There  
23 is not a white paper. We have had discussion at two  
24 meetings. The issue has been raised. This is not the  
25 rulemaking to resolve that issue.

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1 I think that would be a preferable approach  
2 over the staff taking and attempting to develop review  
3 guidance for how to handle this. But until such time as  
4 something is written down, and we have a chance to react  
5 to it, or you have a chance to react to something we've  
6 written down, we're talking about an issue that is at best  
7 in the future, and one which does not really impact the  
8 immediate design certification of these designs.

9 We're really talking about either  
10 clarification or information related to Part 52 itself,  
11 not the particulars of the ABWR design certification or  
12 the CE 80+ design certification, with the exception of the  
13 vendors' apprehension about what they might have to do 15  
14 years from now and how big a box would they have to bring  
15 in by way of information.

16 MR. EGAN: Except that from a policy point of  
17 view I don't think there is any single issue that has  
18 greater potential to vitiate the benefits of design  
19 certification than this one, because you may be five years  
20 down the road, 10 years down the road, before anyone  
21 avails themselves of this process. And the first big  
22 uncertainty they're going to have is, do I have five years  
23 of finality, or do I have 30 years of finality?

24 And to the extent that we can agree now that  
25 there are certain bounding parameters in principle that

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1 would constrain the review to new regulations, or,  
2 i.e. bulletins, generic letters, info. notices, whatever  
3 the body of regulations is that comes out against which  
4 you're performing what is essentially a due diligence  
5 review, I think if we can achieve that now it would be a  
6 real good thing to do. If we can't, we're leaving a huge  
7 gaping hole in the uncertainty associated with the  
8 duration of the design.

9 MR. MALSCH: Well, I mean, insofar as we're  
10 talking about, you know, legal constraints -- the review  
11 -- I think you're asking for an amendment to Part 52.  
12 You're just simply dissatisfied with the duration of the  
13 design certification and the standards set forth renewal  
14 in the regulations. That's perfectly okay, but I think  
15 that may be a separate rulemaking.

16 MR. EGAN: Well, no, I think it's more of a  
17 process issue. You quoted language that said the initial  
18 burden is on the applicant. If the applicant came forward  
19 and you had some guidelines that said what you're trying  
20 to show us is in the intervening time between when you got  
21 your certification and today, the renewal day, has there  
22 been changes that occurred in the body of NRC regulation  
23 against which you should be backfitted, essentially. That  
24 you already haven't done it. I mean, it's a blue sky  
25 thing, because as Marc pointed out you've got the

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1 obligation to do that anyway if it raises an adequate  
2 protection issue.

3           So this is almost a check and balance  
4 procedure that you're going through. And no one is  
5 disputing that with respect to changes proposed by the  
6 vendor they've got to be reviewed de novo. No one is  
7 proposing that changes that NRC makes don't have their own  
8 separate criteria that is basically a cost-benefit  
9 criteria to judge them against.

10           We're talking about the stuff that you're not  
11 going to review, that hasn't been changed, that really we  
12 have all assumed has a high level of finality. And we're  
13 talking about within that body of design things that would  
14 have had adequate protection backfits if there was a real  
15 safety issue associated with them at an intervening time.  
16 And now all we're simply requesting is can we put limits  
17 on what it is that the applicant has to come forward with  
18 in their renewal application?

19           Certainly, the word "de novo review" that was  
20 used in the last session, that has to be a gross  
21 overstatement between what you expect and what we expect,  
22 I would hope. And somewhere between de novo review and no  
23 review there is this issue that you've pointed out, Marty.  
24 NRC has to make a finding. And on what basis do they make  
25 the finding?

1                   We're proposing that there be some definition  
2 attached to that now, at this stage, so that we can know  
3 when somebody gets a design certification that we're not  
4 going to be spending another \$100 million at the 15-year  
5 mark.

6                   MR. WILSON: Earlier you had said five years  
7 versus 30. Could you clarify that? I didn't understand  
8 where the five years came from.

9                   MR. EGAN: No, I'm just saying that if  
10 somebody got a COL five years before the expiration of the  
11 renewal, they might be concerned about what sort of  
12 backfits would be applied to the design.

13                   MR. WILSON: I don't see the relevance. You  
14 still need to clarify it. I don't see how it applies to  
15 the COL applicant.

16                   MR. RUSSELL: Let me suggest that what -- I  
17 believe Marty was correct based upon what you've just  
18 described now, and that is that you're probably talking  
19 about an amendment to Part 52. In the following context,  
20 even if you -- if the staff were to reach agreement now on  
21 what would be the scope of a review, that has not been  
22 noticed. The whole process, as it relates to rulemaking,  
23 has not been addressed.

24                   And it sounds like you also want to have  
25 protection against third parties raising an issue that

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1 resolved per Section 52.63(a)(4).

2           Notwithstanding NRC staff's statements at the  
3 May 2nd public meeting, final rule should reflect this  
4 revision.

5           MR. WILSON: A concern that we have on this  
6 matter is -- and it goes in line with some of the earlier  
7 comments about finality -- is how can special backfit  
8 protection be applied to something that hasn't been  
9 reviewed by the NRC?

10           MR. QUIRK: We are applying the 50.59-like  
11 process, which does a number of things. It ensures that  
12 the change doesn't affect Tier 1. It ensures that the  
13 change doesn't affect Tier 2\*. It ensures that the change  
14 does not result in an unreviewed safety question and, as  
15 such, is appropriate to be made under 50.59 and,  
16 therefore, should have finality.

17           MR. WILSON: But you're dealing with a  
18 significance test. My question is procedural. That  
19 information hasn't been reviewed by the NRC under the  
20 rulemaking, therefore, how could we apply the backfit  
21 protection of the rulemaking to it?

22           MR. ROWDEN: I guess I'm somewhat at a loss to  
23 understand the staff's position, which was embodied not  
24 only in the revisions of the draft final rule, but in what  
25 I called at an earlier meeting a rather elegant

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1 explanation of the reason for those provisions.

2           Now, this isn't to say that the staff  
3 shouldn't be in a position of eating its own words. We've  
4 been asked to do it in a number of other instances. But  
5 it seemed to us that the explanation given by the staff  
6 fully justified the treatment to be given to this issue.

7           This is, by definition, as Joe indicated, a --  
8 you know, not an unreviewed safety question, and it meets  
9 all of the other criteria of 50.59. The rule can provide  
10 for giving it finality. The rule can provide for making  
11 it subject to 52.63.

12           MR. MALSCH: You know, we had proposed in the  
13 rule a special review process for challenges.

14           MR. ROWDEN: Right.

15           MR. MALSCH: And I thought in your latest  
16 comments you indicated that appeared to provide an  
17 appropriate --

18           MR. ROWDEN: That's right. And once that  
19 opportunity has been exhausted, or has not been utilized,  
20 it would seem to me that the 50.59 changes should have the  
21 degree of finality that is provided for in the draft rule.  
22 It's only at that point in time that it would be entitled  
23 to backfit protection. I really don't see the logical  
24 difficulty or legal difficulty, if the two don't coincide,  
25 in adopting that position. You had it right the first

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1 time.

2 MR. MALSCH: Well, let me raise an issue that  
3 really is an issue that comes out of something the  
4 Commission said in its design certification rules. When  
5 you look at the Commission's discussion of 52.63, and the  
6 reason why it was adopting a special backfit rule for  
7 certified designs, that reason was to prohibit  
8 encroachments on standardization, not issue finality.

9 If you assume that the principal reason for  
10 the enhanced backfit standard is not issue finality, which  
11 can be achieved by the COL process entirely separate from  
12 design certification, but instead, as the Commission said  
13 in the rule, preventing encroachments upon  
14 standardization, the question is raised as to whether when  
15 an applicant or a utility departs from the certified  
16 design rule, so that standardization no longer applies,  
17 whether the rationale for the enhanced backfit rule no  
18 longer applies as well.

19 MR. ROWDEN: Well, I'm not sure it's a  
20 departure from the rule. The rule specifically provides  
21 for this, and if you're within the envelope of the  
22 approved design it would seem to me that the  
23 standardization concept is not compromised. But we have  
24 another problem here.

25 I'll tell you, the change process already

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1 looks like a jigsaw puzzle. Forget about who is  
2 responsible for that. People will say, "We made  
3 proposals." We say that the staff made modifications to  
4 it. But it becomes a maze. It becomes increasingly  
5 difficult to understand, let alone apply. And we are very  
6 concerned about having different aspects of this design  
7 subject to a whole array of differing change provisions.  
8 And this is one element which I think is appropriate to  
9 take into account from a policy standpoint.

10 I have no difficulty in answering your  
11 standardization argument. I think your argument is  
12 probably more compelling when it deals with exemptions,  
13 which is a related issue. And there I would reinforce the  
14 concern we have about applying different change processes  
15 to different components of the design. But it certainly  
16 doesn't have any -- I don't think it has any real  
17 justification as far as 50.59 changes are concerned.

18 MR. MALSCH: I agree it's a more compelling  
19 argument for exemptions.

20 MR. RUSSELL: Let me ask a couple of  
21 questions, because the earlier drafting was based upon the  
22 premise that the reviewed 50.59-like process, if it were  
23 properly implemented, would not, within the context of  
24 design basis, create an unreviewed safety question, nor  
25 within the context of severe accident resolution create a

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1 substantial increase in consequences or create a new type  
2 of challenge to the design, and we reached agreements on  
3 those process issues.

4           So the premise is that if that process is  
5 implemented correctly, then the safety significance of the  
6 matter being changed is small and would not impact the  
7 conclusions which were available at the time of review.  
8 So the question then becomes one that the challenge to  
9 that on the part of the staff would be a burden to show  
10 that the 50.59 process was not implemented properly or for  
11 a third party to argue that it had not been implemented  
12 properly. And that that would be the context in which  
13 some type of a challenge could be raised, either through  
14 the normal enforcement process that the staff would use.

15           And I believe that's maybe not legally  
16 characterized the way we have in some of the papers back  
17 and forth. But at least from some of the earlier  
18 meetings, that was conceptually what I thought we were  
19 trying to achieve.

20           That is, to the extent a change was made, if  
21 the change violated 50.59, then a challenge that it was an  
22 impermissible change, so either you go back to the way it  
23 was before, or you request an amendment, or whatever the  
24 process is. And if it's an amendment, then hearing rights  
25 to others evolve from the amendment. And whether it is or

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1 is not a significant change is one that is governed by  
2 50.90 and the amendment process.

3 Is that a reasonable description of where I  
4 thought we were before the various comments went back and  
5 forth?

6 MR. ROWDEN: That is a reasonable description,  
7 and we read that as being the underlying ethic of what is  
8 contained in the SECY paper and justify giving this type  
9 of finality to 50.59 changes, within the context of that  
10 process framework that you've just described.

11 MR. RUSSELL: So the predicate is if the 50.59  
12 change process was properly implemented, then the  
13 resulting change would have the same finality as if it had  
14 been reviewed initially.

15 MR. ROWDEN: Right.

16 MR. RUSSELL: Okay. And now I understand  
17 that. I'm still trying to figure out how we fell off of  
18 this railroad, because I am missing something. We seem to  
19 be making a very big deal over an issue that I had at  
20 least the impression had been resolved for some  
21 substantial period of time. So could somebody explain,  
22 because what we just discussed is I thought what we had  
23 accomplished in the package.

24 MR. QUIRK: We are worried about someone  
25 saying that the COL -- what changes have you made? And

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1 then they are ripe for litigation.

2 MR. ROWDEN: Well, that's one aspect.

3 MR. RUSSELL: They may be ripe for challenge.

4 If the COL --

5 MR. QUIRK: Only if it can be shown that the  
6 process wasn't implemented correctly.

7 MR. ROWDEN: Look, we may be ships that are  
8 passing in the night, but I don't think so. This is an  
9 issue which came up in a sort of back-handed way at the  
10 May 2nd meeting, in which the staff took issue with a  
11 provision in its own draft rule and the explanation given  
12 for that provision, both of which we accepted. We thought  
13 it was perfectly proper.

14 The misunderstanding, Bill, is not on our side  
15 of the table, if indeed there is a misunderstanding. I  
16 accept your explanation of the way the process should  
17 work. I think we accept; not just I. We accept the stage  
18 at which finality is to be accorded. But once the process  
19 has been completed, or the opportunity for completion of  
20 the process has been exhausted, then it does have finality  
21 as an issue. Then, it does have protection of 52.63.  
22 That's all we're contending should be the case.

23 MR. RUSSELL: And as it relates to an  
24 applicant for a COL, we also have an earlier Commission  
25 decision that indicated that the 50.59-like process does

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1 apply to an applicant.

2 MR. ROWDEN: Yes.

3 MR. RUSSELL: Okay. And so the approach that  
4 we described, there has to be some vehicle for an  
5 applicant periodically notifying us and others of what  
6 changes have been made, such that there is a meaningful  
7 way to challenge whether --

8 MR. ROWDEN: Yes.

9 MR. RUSSELL: -- it's an appropriate change  
10 under 50.59.

11 MR. ROWDEN: That's right. The staff has to  
12 be notified. There has to be identification so that  
13 potential intervenors can --

14 MR. RUSSELL: So that the mechanics of that  
15 process are also not in dispute. That's my understanding.

16 MR. ROWDEN: No, I don't think there's any  
17 dispute about that. Is there? In terms of --

18 MR. RUSSELL: On notification?

19 MR. ROWDEN: Maybe that was one that just --  
20 this text or discussion when we look at the transcripts  
21 will clarify that we've been in agreement all along.

22 MR. RUSSELL: I think we're in violent  
23 agreement with you --

24 (Laughter.)

25 -- and with the SECY paper. And I think that,

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1 Marty, with the explanation I gave as to the point in time  
2 at which finality is achieved, I'm not sure that you're in  
3 disagreement.

4 MR. WILSON: Any further discussion on this  
5 item? The next item on the agenda is --

6 MR. RUSSELL: I guess there's a corollary that  
7 I'd like to make sure is understood, and that is we see  
8 the 50.59 like process as -- if properly implemented, as a  
9 mechanism to ensure that the safety that's been built into  
10 these design certifications is not voluntarily eroded by  
11 implementing changes over the life of the plant by either  
12 an applicant or a licensee.

13 And that's a very important issue. The other  
14 part of that is that we are currently having a great deal  
15 of difficulty with some 50.59 change process as it relates  
16 to currently operating reactors. My comments are  
17 predicated upon the fact that we're going to fix that  
18 problem soon such that increase in probability or  
19 consequences and the other words where regulatory guidance  
20 is needed there is in fact an understanding of what that  
21 means practically in implementation standpoint.

22 So we are proceeding down a path which the  
23 implications of the current issues on 50.59 which are  
24 applicable to operating reactors are applicable here. And  
25 I highlight that because my premise is that regulatory

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1 guidance, not rule change, is going to be the appropriate  
2 vehicle for resolving this because we have comparable  
3 language in Part 52. Either that, or we may be opening  
4 both proceedings at the same time if you conclude the rule  
5 making isn't needed.

6 MR. MALSCH: I think it's open as to whether  
7 we'll eventually need rule making to more precisely define  
8 the 50.59 review process. But that's an issue that goes  
9 well beyond this particular design certification.

10 MR. QUIRK: We agree with your comment that  
11 the 50.59 process is to ensure the true life of the plant.  
12 Changes do not undermine the regulatory basis on -- we  
13 wholeheartedly agree and support that. And that's where  
14 we are.

15 MR. WILSON: Okay, no further discussions on  
16 that? Let's move then to item five, which is  
17 applicability of these design certification rules in a  
18 possible Part 50 proceeding.

19 MR. BRINKMAN: I'd like to address that. And  
20 I'd like to start by reading Section 4(d) of the  
21 supplemental notice of proposed rule making. This new  
22 provision says, "The Commission reserves the right to  
23 determination whether" -- and I emphasize the word whether  
24 -- "and in what manner this appendix may be referenced by  
25 an applicant for a construction permit or operating

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1 license under 10 CFR Part 50."

2           While we're optimistic that Part 52 will best  
3 facilitate the technical advantages of our designs, we  
4 cannot be certain that this will be the case because there  
5 have been no licenses issued to date under Part 52.  
6 Therefore, it's imperative that we be able to retain the  
7 option to offer these two designs, certified designs, to  
8 an applicant who might choose to realize the technical  
9 benefits of these advanced designs in a Part 50  
10 application.

11           Part 52 unequivocally provides for using the  
12 rule in construction permit and operating licensing  
13 proceedings. So the question that I have is why is it  
14 necessary now to put into this rule language which  
15 modifies Part 52 by bringing into question whether it can  
16 be referenced in Part 50?

17           MR. MALSCH: So your concern would be  
18 alleviated by simply deleting the word whether?

19           MR. BRINKMAN: That's correct.

20           MR. WILSON: Any other comments or questions  
21 by the board?

22           MR. BRINKMAN: Can I get a response, or have I  
23 had a response?

24           MR. MILHOAN: I think I understand your  
25 comment. What else do we need to say on this one?

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1 MR. BRINKMAN: We have a hard time addressing  
2 our comments to this if we don't understand why you would  
3 raise that. Thank you.

4 MR. RUSSELL: I think this applies to the  
5 earlier one also, and that is to the extent there's --  
6 consideration of applying a certified design in a Part 50  
7 licensing process, then I would suggest that you ought to  
8 describe to us what you would envision that process to be  
9 such that we would then have had the benefit of some  
10 dialogue. At this point in time, we have not addressed  
11 how ITAAC works, what's it mean in the context of a two  
12 step licensing process, etc. -- a COL.

13 There are other matters that have not been  
14 addressed. We agree that those have not been addressed  
15 yet. They need to be to understand fully how it would be  
16 applied, because this is not simply an FDA taking design  
17 approval, but there are other elements that are unique to  
18 the Part 52 process. So I would suggest that if there is  
19 actually serious contemplation of this that the industry  
20 ought to be -- move it, and put a piece of paper on the  
21 table that describes how this may be done such that we can  
22 react to it.

23 And then based upon reaching those agreements,  
24 either look at codifying it within a Part 52 change or  
25 whatever the appropriate process is for doing it.

1 MR. BRINKMAN: Okay, in keeping with our  
2 earlier comments that we believe the entire Section 4 is  
3 unnecessary, I think we would like to see this handled in  
4 the statement of considerations and this concept of  
5 whether deleted. Because what you've just described can  
6 be covered in the phrase "and in what manner."

7 MR. MALSCH: From a logical standpoint -- I  
8 mean, if we can sit down now and think of at least one way  
9 in which it can be referenced in Part 50, we don't need  
10 the word whether.

11 MR. BRINKMAN: So are you suggesting that in  
12 our comments of July 23rd we need to provide something?

13 MR. MALSCH: No, I'm saying that as long as  
14 anybody in this room can imagine one way to do it, the  
15 word whether is unnecessary.

16 MR. RUSSELL: No, but I am suggesting that if  
17 this is something you're seriously contemplating, you  
18 should submit something to us that we'll react to because  
19 I don't intent to spend my limited resources on this issue  
20 absent either somebody proposes to apply it, at which time  
21 it would be on a case review; or reacting to something  
22 that you submit for us to review.

23 MR. BRINKMAN: Fine.

24 MR. WILSON: Any further discussion on this  
25 item? We've covered all the new items that have come up

1 since --

2 MR. RUSSELL: What about the July 8th --

3 MR. WILSON: Well, I was going to say we've  
4 covered the new issues. We have about ten minutes left in  
5 the meeting. Does NEI want to raise any other issue then  
6 in this time period?

7 MR. QUIRK: Yes, we'd like to raise the next  
8 issue, Chapter 19, the 50.59-like change process. The  
9 issue here is the discussion -- and I would like to  
10 provide a little background on this one. It may help the  
11 discussion. Kind of like the SSAR's for Part 50 plant,  
12 the DCD's contain evaluations of severe accidents and  
13 other conditions that are beyond the design basis.

14 These evaluations are contained in Chapter 19  
15 of the DCD. My question deals with the extent to which  
16 the 50.59 like change procedure should apply to Chapter  
17 19. Industry initially proposed that the 50.59-like  
18 change process be applied to important features discussed  
19 in Section 19.8 of the ABWR and Section 19.15 for the  
20 System 80+. In meetings with the staff, Mr. Russell  
21 proposed that a substantial increase standard apply to all  
22 of Chapter 19.

23 Now, however, the draft final rule would apply  
24 that standard only to Section 19(e) for the ABWR and  
25 Section 19.11 for the System 80+. Industry continues to

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1 believe that the 50.59-like process should be applied only  
2 to the important features section. Further, whatever the  
3 scope, it should be governed by the substantial increase  
4 standard.

5 MR. RUSSELL: Let me comment on that. And  
6 I've gone through and the staff looked at some of the  
7 comments. The issue is that the 50.59-like change process  
8 under Part 52 does address severe accident issues. And we  
9 did agree that because of the uncertainty associated with  
10 that and the way we did the review that there should be a  
11 substantial increase in consequence or challenges which  
12 were previously determined to be not credible are now  
13 credible, which another way of saying it means it's a  
14 substantial increase in the probability of that event.

15 What we are not interested in is to the extent  
16 design basis information is discussed in Chapter 19 that  
17 that higher substantial increase standard be applied to a  
18 change to something which would normally be within the  
19 context of the design basis. And there clearly is  
20 interaction back and forth between the two.

21 For example, depressurization systems are  
22 within the design basis in a significant change in the  
23 reliability of the depressurization system such that you  
24 had a more probably high pressure core melt scenario would  
25 be one that we would want to make sure the standard used

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1 for review is associated with the normal 50.59 increase in  
2 probability or consequences for something which is within  
3 the envelope of the design basis.

4 On the other hand, it's clear that when we're  
5 talking about core on the floor or challenges to  
6 containment from ex-vessel core melt, etc., that the  
7 standard we intended was a substantial increase, not just  
8 an increase in probability or consequence. And that is in  
9 fact the way it's characterized.

10 Now I submit it's relatively straightforward  
11 to look at a particular write up within Chapter 19 and say  
12 whether that is related to a severe accident or that  
13 particular change you're dealing with is really something  
14 contained within the design basis. The challenge is to  
15 make sure that it's clear, and it may be better to do this  
16 in the SOC to describe it and go to the approach that you  
17 recommended because there were clearly examples where  
18 you're looking at ultimate strength of containment and  
19 failure of non-critical elements within containment to  
20 ensure the containment function is there under a severe  
21 accident challenge.

22 That is not design basis. I mean, we don't  
23 expect walls to fall down even if they're sacrificial  
24 walls. But in fact, we did do things in the evaluation of  
25 loadings and capacity that are beyond design basis type

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1 calculations. But I think it's pretty clear when you read  
2 in context the discussions which ones are talking about  
3 severe accidents where that standard applies and when  
4 you're talking about something that is also containment  
5 design basis.

6 Another way of looking at it is if it's in 19  
7 and also in some other chapter, you're probably talking  
8 about the normal 50.59 process. If it only appears in 19  
9 and it's dealing with ex-vessel core melt and core, in  
10 some instances melt within the vessel -- and I've got to  
11 recognize that there are other reviews that are under way  
12 where the approach is to try and keep it within the vessel  
13 even though it is beyond design basis.

14 But I think that we can describe the context  
15 as to when the two apply without getting into the  
16 particulars of it's this section and this piece of this  
17 chapter. And it's the same problem. That is, 19 has both  
18 features that are required by our current regulations  
19 where the margins are such that we're taking credit for  
20 those features existing and we're just evaluating them  
21 with a more best estimate calculation to say it's  
22 sufficient so you don't use the same conservative analysis  
23 methods.

24 So we may be into an area where simply  
25 language in the statement of consideration is encompassing

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1 19 with that clarifying language may be sufficient.

2 MR. QUIRK: I think we're a lot closer. You  
3 know, I listened very carefully to what you said and  
4 didn't have a problem with that. I think that Section  
5 19.8 of the ABWR was created with the specific intent to  
6 identify the feature or assumption that came out of the  
7 PRA on severe accident evaluation in one column and a  
8 rationale as to what it did, and for the very reason that  
9 we're grappling with today.

10 So, you know, we felt that that section was  
11 provided explicitly with this purpose in mind. Therefore,  
12 would be the proper screen for 50.59-like changes in  
13 Chapter 19.

14 MR. WILSON: Well, that's not correct. In  
15 fact, it's even clear in the DCD. 19.8 in the ABWR and  
16 19.15 for System 80+ are in such in the PRA -- they were  
17 created to assist in the discussion over how to divide  
18 tier one from tier two and what to put in the ITAAC. And  
19 they were used for that purpose. They weren't created to  
20 identify the design features used to resolve severe  
21 accidents.

22 That discussion is another section of Chapter  
23 19, and that's the --

24 MR. QUIRK: Well, wait a minute. It can refer  
25 to -- and Mr. Russell on the subject, and I'd like to

1 defer to his answer to this question. But what we were  
2 trying to do, and I'd like to direct this question to him,  
3 was to keep from evaluating second and third order issues  
4 that could relate to severe accident, not waste that time  
5 but focus on the primary assumption or key feature that  
6 came out of the PRA study.

7 And we created this section specifically for  
8 this purpose. Am I correct, Mr. Russell?

9 MR. RUSSELL: Well, both of you are correct in  
10 part. And that is, Chapter 19 was to document how  
11 insights from PRA and severe accidents were captured  
12 appropriately in various aspects of the change. In some  
13 cases, it resulted in something going before ITAAC. In  
14 other cases, it went under the design description. In  
15 other cases, it was held in a different fashion.

16 I submit that when you are discussing features  
17 of the design that relate to the resolution of severe  
18 accidents, that it's pretty clear when you're doing an  
19 evaluation you're not following the standard review plan's  
20 criteria, you're doing typically best estimate  
21 calculations, we're looking at margins that exist and are  
22 those margins sufficient to accommodate the phenomena.  
23 And you're generally talking about ex-vessel phenomena  
24 such as high pressure core melt ejection, hydrogen  
25 ignition -- excuse me, hydrogen detonation.

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1                   Because in some cases, we want it to be, you  
2 know, burned. Core on the floor, core concrete  
3 interactions, etc. And I think it's pretty clear in  
4 context where those are discussed both in the SAR and in  
5 the staff safety evaluation. The concern is if we get to  
6 be so precise in the bookkeeping to say that they're  
7 describing this section or that section, I think we're  
8 going to end up missing them.

9                   Your comments came in and identified that  
10 there were structural analyses that were done to show  
11 capability to mitigate a severe accident in the content of  
12 the two designs that were not contained in that particular  
13 chapter. We don't want to apply 50.59 design basis type  
14 analysis when we're doing best estimate margins analyses  
15 to look to at capability to handle events that are beyond  
16 the design basis.

17                   So I'm not sure that we have progressed a long  
18 way. I'm personally more in favor of the industry  
19 recommendation to cite Chapter 19 and then make it clear  
20 in the SOC that the kinds of events we're talking about  
21 are challenges that are beyond the design basis as  
22 currently used in Part 50.

23                   If we're looking at containment performing its  
24 function for approximately 24 hours under the conditions  
25 of severe accidents and you're looking at all of the

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1 challenges of containment, we're back at the EPRI white  
2 paper when we agreed on what the challenges were at the  
3 containment. That was January 1990-91 time frame. And  
4 then we systematically went through and evaluated those.

5               So we do have -- I mean, the text write up is  
6 in 19.2 where we started looking at how these various  
7 challenges -- which ones were credible, which ones  
8 weren't. So I believe in context both the DCD and the  
9 staff's evaluation clearly indicate when we are in design  
10 space using standard review plan with the kinds of  
11 deterministic requirements that are used there and when we  
12 are in severe accident space when the heightened standard  
13 should apply.

14              So I think that the proposal, which was to use  
15 all of 19 and then clearly articulate in the SOC that  
16 within 19 there may be some things that are within the  
17 design basis; and what we're not interested in doing is  
18 using the heightened standard of Chapter 19 and applying  
19 it to something that's within the design basis that just  
20 happens to be discussed in 19.

21              So if it is in the design basis and it's  
22 discussed in some other chapter, the normal 50.59-like  
23 process applies.

24              MR. MALSCH: Let me raise an issue. Does the  
25 language in the rule already take care of that? Because

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1 it talks about the special severe accident type 59 change  
2 process as being one that applies -- it says here a  
3 proposed departure of -- well, affecting resolution of  
4 severe design accident issues in Section 19(e). Does that  
5 already capture the idea?

6 MR. RUSSELL: 19(e) is not complete. There  
7 are some aspects --

8 MR. MALSCH: Suppose we made it broader than  
9 19(e) and said 19 but still talked about it as affecting  
10 resolution of a severe accident issues.

11 MR. WILSON: That's right. 19(3), for  
12 example, describes all the issues that Mr. Russell  
13 identified or resolved. And so, if it was a design  
14 feature that you were changing, it was mentioned in 19(e)  
15 as resolving the severe accident issues, and it also  
16 discussed other places.

17 If it was a feature that was there solely to  
18 resolve the design severe accident issue, then it would  
19 have that special provision. That is, as Mr. Russell said  
20 earlier, if it happens to be a feature that was there for  
21 more than one reason, then it would fall under the  
22 traditional 50.59 which is explained in the statements of  
23 consideration.

24 MR. MALSCH: Okay.

25 MR. BELL: I suppose this feature is defined

1 in Chapter 19 and the change you're contemplating -- it's  
2 described in Chapter 19 and in -- and other chapters?

3 MR. WILSON: Six.

4 MR. BELL: Six. And the change you're  
5 contemplating affects the severe accident function of that  
6 feature but not the design basis function of that feature  
7 described at Chapter 6 or 15. I would think I would  
8 evaluate that change under 50.59 as to the design basis  
9 function of that feature, and evaluate that change in  
10 terms of the heightened criteria with respect to a severe  
11 accident function described in Chapter 19.

12 MR. RUSSELL: That's what was intended, and we  
13 had dialogue along that in the course of the review that  
14 that -- for example, when you're doing the best estimate  
15 evaluation of performance of containment, you show that  
16 you're still meeting the design basis, code, standards,  
17 etc. of AISC and etc.. But you have some change in  
18 operation that could impact timing or duration. You may  
19 have to evaluate that in the context of the best estimate  
20 evaluation of the containment performance given the timing  
21 of the loading, etc. where it may not impact the design  
22 basis at all.

23 So you may pass the design basis but not pass  
24 the severe accident basis. And we would expect that both  
25 would be -- it may be that you pass both as well. But we

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1 would expect that both would be evaluated. As compared to  
2 today where the argument is severe accidents are not part  
3 of the design basis, I don't need to evaluate them at all.

4 MR. WILSON: That takes care of severe  
5 accidents. But that provision wouldn't apply to flood  
6 analysis or fire analysis or other items that may happen  
7 to exist in Chapter 19.

8 MR. ROWDEN: Yes, internal flooding, for  
9 example; fire analysis, shut down risk. Those are not  
10 severe accident issues. They may be events which lead to  
11 core damage. Yeah, the scope of incurred review -- today,  
12 we look at internal flooding. Today we look at fires  
13 within the context of design basis.

14 MR. QUIRK: Yes, I hope I'm not -- for 19.8 --  
15 let me read you the seven sub-sections that it contains.  
16 The first is important features from Level 1 internal  
17 event analysis; features from seismic analysis; features  
18 from fire analysis; features from suppression pool bypass  
19 and ex-containment LOCA analysis; features from flooding  
20 analysis; features from shut down events analysis; and  
21 features from severe -- features to mitigate severe  
22 accidents.

23 I mean, we rounded up all of the vital  
24 external events and severe accident crucial items and  
25 stacked them and said here's what's important to the

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1 severe accident evaluation.

2 MR. RUSSELL: Then we did the bookkeeping to  
3 show where each one came out.

4 MR. WILSON: And we agree those are important  
5 features, but that doesn't mean all of those features fit  
6 under the special provisions for severe accident  
7 resolution though. There's a difference.

8 MR. RUSSELL: The issue, Joe, to put it  
9 simply, is we don't want to have a heightened standard  
10 apply to something which is part of the design basis.

11 MR. QUIRK: That is not a problem.

12 MR. RUSSELL: Okay, then let's stop at that  
13 point and figure out how to fix it.

14 MR. QUIRK: Okay, all right.

15 MR. RUSSELL: I think we've gotten down into  
16 the details of what sections you cite, etc. And the real  
17 issue is if the matter relates to severe accidents, the  
18 heightened standard applies. If it relates to something  
19 within the design basis, the 50.59 process applies.

20 MR. WILSON: Okay, it's after 4:00. We're  
21 going to have to adjourn the meeting.

22 MR. RUSSELL: I thought there was one other  
23 item.

24 MR. MATZIE: Could I request that we continue  
25 for 20 to 30 minutes with this assemblage of people with

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1 relevance to this subject and not terminate at 4:00?

2 MR. WILSON: Bill, you're the one that --

3 MR. RUSSELL: No, I'm the one that has to  
4 catch an airplane, so I can stay for about 20 to 25 more  
5 minutes and then that's my drop dead time for getting to  
6 the airport. Were there other issues in particular in the  
7 July 8th submittal that you wanted to discuss?

8 MR. REHN: Yes, Bill, this is Dave Rehn. Let  
9 me cover one quickly with you. This is the post design  
10 certification change process. It's likely that many of,  
11 when Part 52 was originally written, participated in the  
12 design phase with design certification -- through some  
13 level of detail sufficient to support that certification  
14 of rule making, and then continued again once the COL  
15 holder began to flush out the final details of that  
16 design.

17 It has become more apparent to many of us that  
18 in all likelihood much of that detail design may now be  
19 carried out either by the original vendor or that vendor  
20 in conjunction with other AE and a series of industry  
21 utilities and what not as a group. And there may indeed  
22 not be a true applicant. We recognized -- NRC recognized  
23 recently the desire for an applicant to have the ability  
24 to make some design changes ala the 50.59-like process.

25 What we're suggesting is that we not preclude

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1 the possibility that a vendor in some sort of a consortium  
2 taking this design forward would have the opportunity to  
3 act like an applicant so that that process could continue  
4 and be handed off to an applicant at some point in the  
5 future. The desire being that this would enhance not only  
6 the standardization aspects, but to take this design to  
7 some point where indeed it may be complete and be a  
8 package then that the applicant would then utilize.

9 So I think what we're requesting is that we  
10 not preclude that option in this rule making at this time.

11 MR. RUSSELL: It's neither included nor  
12 precluded. But the current approach with the policy  
13 guidance we've had from the Commission is it applies to  
14 COL applicants and licensees, and does not apply at this  
15 point in time to the vendors. So to the extent a vendor  
16 does that activity, you need to collect it and keep -- on  
17 it; and once you have an applicant, the applicant has to  
18 come forward with the proposed changes consistent with the  
19 processes that apply to an applicant at the time of  
20 application.

21 There are, in my view, significant resource  
22 and regulatory issues taught with this. For example, the  
23 enforcement aspects of 50.59-like change processes and is  
24 there in fact a licensee. When you get into that issue,  
25 the precedent that exists in dry casks -- as a certificate

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1 holder, the licensee -- or as the general licensee, the  
2 licensee.

3           And who's responsible, who can make changes  
4 under 72.48? In some cases, a particular certificate  
5 authorizes a certificate holder to make changes. But  
6 that's not clear the 50.59-like change process applies  
7 because the updated applications are submitted and  
8 reviewed, etc. What you're talking about is a process  
9 that you want to run essentially independently from NRC  
10 oversight and review first of a kind engineering, etc.  
11 with the vendors working with an industry group, etc., and  
12 the record is fairly complete that you don't see a need at  
13 this point in time for NRC inspection activity in that  
14 area.

15           And yet, the 50.59-like process is predicated  
16 on the NRC's ability to ensure that that was done  
17 appropriately. And if not, to use the appropriate  
18 enforcement tools. So what you're really talking about is  
19 an issue that is somewhat beyond the scope of this  
20 proceeding. But if you wish to implement that, you need  
21 to come forward with a proposal with a proposed change to  
22 the rule, because we have to make the vendor a certificate  
23 holder -- come within the scope of the 50.59-like change  
24 process, which means that that brings forward inspection,  
25 oversight review, enforcement -- did they implement 50.59

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1 properly or not?

2           Because they're neither an applicant -- the  
3 approach we have for an applicant is to reject the  
4 application. The approach we have for a licensee once  
5 they are a licensee is enforcement enforcing them to make  
6 -- back to what we reviewed before.

7           So there are a number of regulatory issues  
8 which have not been laid out. I don't preclude that from  
9 being done, but this particular instant change process is  
10 one that has not considered all those ramifications and  
11 implications. Who, for example, is going to pay the fees  
12 for the NRC inspection of those activities? And there  
13 just are a number of issues associated with that.

14           The current approach is essentially if you do  
15 that, collect those 50.59-like changes, and whoever  
16 becomes the first applicant is the one that's got to bring  
17 them through. And we know how to deal with that, and  
18 we've got Commission guidance that said, you know, during  
19 pre-application review, you have an applicant and that  
20 process applies.

21           And so you identify it at the time of the  
22 application. You identify what the changes were that were  
23 made pursuant to the 50.59-like process, and we review it  
24 and consider it as a part of the application. We've got  
25 to put it in one frame work or the other, and right now a

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1 vendor is not an applicant; nor is a vendor a licensee.

2 But I don't preclude your coming forward with  
3 a proposal that would amend Part 52 with the implications  
4 that both from a resource, inspection and oversight  
5 process are fairly substantial.

6 MR. SIMARD: Just for clarification, what we  
7 are asking is that -- we're not asking for that language  
8 to be changed at this point, but the statement of  
9 considerations in this draft final rule would seem to  
10 preclude it, Bill. Right now, the statement of  
11 considerations in summarizing the comments that we have  
12 submitted on the notice of proposed rule making where we  
13 suggested this process rule out the ability that statement  
14 of considerations seem to point to the existing mechanism  
15 and do -- what we were asking is that they reflect what  
16 you just said, namely that this rule does not preclude  
17 that.

18 There are a number of questions that you  
19 raised. But we would like to preserve the option of being  
20 able to comment later.

21 MR. RUSSELL: The current rule with the  
22 proposed rule making would not provide for that option.  
23 So you identified it, --

24 MR. SIMARD: That's correct.

25 MR. RUSSELL: This would be something that

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1 would be a subject of a future rule making for which the  
2 details would have to be worked out. But in this  
3 particular case, there has not been either a review of all  
4 of the implications that may fall from this, how they  
5 would fit into a regulatory process, etc. So it's not  
6 right to make that decision.

7           It's not appropriate to say this rule making -  
8 - it will never happen in the future. But these issues  
9 are ones which have just not been completely developed.  
10 And it would be, I think, a different rule than the one we  
11 have.

12           MR. MALSCH: Let me ask one question. Is it  
13 necessary for your concept to work that the changes made  
14 by the vendor not be optional by the COL applicants? In  
15 other words, they have to take the package with the  
16 changes?

17           MR. ROWDEN: There are a variety of different  
18 approaches which we have thought about.

19           MR. MALSCH: Okay.

20           MR. ROWDEN: We made a specific proposal to  
21 you which you found unacceptable at this point in time.  
22 You raise a number of good points. This is at some of the  
23 earlier meetings. We recognize that. And we had a number  
24 of different alternative approaches that we wanted to  
25 discuss with you.

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1           Rather than have the statement of  
2 considerations reject a concept, I think we would find it  
3 preferable if you said this is outside the scope of the  
4 current rule making. That's all that has to be said.  
5 Then it's incumbent upon us to make a proposal and for us  
6 to discuss it with you -- one or more proposals.

7           MR. WILSON: Any further discussion on this  
8 item? Bob, did you have any other item you wanted to  
9 cover?

10           MR. MATZIE: Yes, Regis, again, I'd like to  
11 open up the dialogue on the expiration date for Tier 2\*.  
12 Tier 2\* change restrictions pertaining to detailed design  
13 methodologies for areas which, as we've discussed, didn't  
14 have sufficient design detail for a number of reasons or  
15 the technology was changing rapidly. However, by the time  
16 of first full power operation, the detail of the design  
17 for all of these areas would be fully developed in  
18 accordance with the Tier 2\* provisions.

19           Hence, the Tier 2\* change restrictions will  
20 have served their purpose and should therefore expire.  
21 That is, they have done the purpose that they were  
22 intended because the detailed design would have been done  
23 and the plant built under all the normal requirements  
24 including oversight by the NRC staff, 50.59 provisions for  
25 change, whatever.

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1 In the original notice of proposed rule, there  
2 was a question to the public on how this should be  
3 treated, this whole issue of Tier 2\*. And the staff  
4 developed their position on -- based on that response and  
5 submitted it in the supplementary notice to proposed rule.  
6 The position that the staff took on all the Tier 2\*  
7 changes regardless of whether they raised unreviewed  
8 safety questions are treated as amendments and are given  
9 no finality.

10 These are inconsistent with the staff's own  
11 provisions for Tier 2/50.59 changes. The combination of  
12 this change provision coupled with its imposition for the  
13 full life of the plant creates an incredibly onerous  
14 burden for the licensee, and an enormous consumption of  
15 resources for both the licensee and the NRC throughout the  
16 life of the plant for what appears to be no safety  
17 benefit.

18 And for the original notice of proposed rule,  
19 ABB submitted a number of comments related to this issue.  
20 These comments -- or some of these comments anyway  
21 describe why we felt that the -- that this was not needed  
22 to have an indefinite expiration of these Tier 2\* issues  
23 because of the oversight that ends up through the  
24 collection of the NRC's existing abilities to do this and  
25 the industry's interest in things like standardization,

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1 etc.

2 We'd like you now to, if possible, to describe  
3 or amplify on why you believe it is necessary that the NRC  
4 maintain its current position of an indefinite expiration  
5 of a number of Tier 2\* issues.

6 MR. WILSON: That's described in the  
7 statements of consideration as we said in there, and it's  
8 different in how you characterized it. It's evolved from  
9 the process of deciding what should be in Tier 1 and Tier  
10 2. And there was a disagreement between the staff and the  
11 industry on information in Tier 1. And resolution of that  
12 issue -- there's some information that the staff felt  
13 should be in Tier 1.

14 We agreed to put Tier 2 with the understanding  
15 that we could review that information if the applicant who  
16 referenced the design proposed to change it. And that's  
17 how we finished up the actual review. And so, it in  
18 effect had the duration like any other Tier 1 information  
19 which would go on for the duration of the license.

20 Now, subsequently, industry brought up, well,  
21 similar to what you said, that some of that information  
22 once it's built may not need that. So we went back and  
23 relooked at that and concluded that there was some  
24 information that could have an expiration at the  
25 completion of construction. And that's what's in the

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1 final rule. But we also felt that there was other  
2 information consistent with the initial intent that we  
3 should look at and review before change was made, and  
4 that's how the final rule is set out.

5 Are there comments on that?

6 MR. BRINKMAN: Well, it was also subsequent to  
7 all this that you made the determination that this should  
8 be -- any changes should be treated as an amendment. And  
9 while we were in the negotiating period as to what would  
10 be in Tier 2\* and how long that particular Tier 2\* item  
11 would exist, it was not at all clear. And in fact, we had  
12 the opposite impression, that if it didn't raise an  
13 unreviewed safety question, then it would not be treated  
14 as an amendment.

15 It was only in the end here that you made that  
16 --

17 MR. RUSSELL: We made it very -- my  
18 recollection is we tried to make it very explicit that  
19 this could be handled if it was a change to Tier 2\* during  
20 the application process where the applicant would identify  
21 something different than the agreed upon approach. And we  
22 consider it as an applicant change similar to a 50.59-like  
23 change. Or, if it was post-COL issuance but before  
24 authorization to operate at power, that it would be  
25 handled through an amendment process.

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1           The reason we're highlighting seismic  
2 qualification, piping design acceptance is because there  
3 may be a need to either refurbish or reanalyze later.  
4 Let's say that you have erosion in piping and you want to  
5 say that the eroded piping is still capable of performing  
6 its function. You redo the analysis based upon the same  
7 way it was originally done.

8           That's acceptable. But that means that those  
9 methods continue, so it becomes a part of the design basis  
10 until it's changed. And if you wish to change the design  
11 basis -- and we've seen that recently where we're had  
12 licensees submit revised criteria under seismic design for  
13 certain things, and we do that through an amendment  
14 process.

15           So all we're saying is that until such time as  
16 these areas are changed, they are important enough; and  
17 because the design is not finalized, we don't know all of  
18 the details of the design methods, etc. that we want to  
19 apply Tier 2\*. And they do continue. And so, it does not  
20 fall under the 50.59-like change process if you wish to  
21 make a change -- another way of saying is that we've  
22 determined that for this small subset of areas based upon  
23 the limited information we have that these are issues we  
24 want to see.

25           We're not going to put this in the USQ.

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1 Another way of doing it would be to take these items and  
2 say fuel burn up limit, licensing, acceptance criteria  
3 which we've generally handled through the COL report  
4 through tech specs, that until such time as we see those  
5 even through the -- report or some other type of approval,  
6 that they're not resolved.

7           That that would be through an amendment  
8 process to go to a different fuel design that stays within  
9 the four corners. And generally those are handled through  
10 tech specs. So the way you do that is you get the core  
11 operating limits and consider the tech specs; provided you  
12 do it consistent with the core operating limits reports  
13 and the fuel limits, that's acceptable.

14           That's the generic reload process.

15           MR. BRINKMAN: That's a good example. How  
16 could we --

17           MR. RUSSELL: Here's an item that I would  
18 expect that the Tier 2\* item could be at the time of the  
19 COL application with the tech specs bounded. That is,  
20 when the actual tech spec comes in for what they're going  
21 to use for fuel limits etc., that would take care of this  
22 issue and supersede it.

23           MR. BRINKMAN: But there should be a provision  
24 for superseding it.

25           MR. RUSSELL: No, there is. That's in the

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1 application. Right now the information we have on the GE  
2 design, I believe it's the barrier fuel which is the  
3 current fuel that's being used. Let's say that at the  
4 time of a COL application they've got a new fuel design.  
5 It's improved, higher enrichment, etc., and they've done  
6 some testing for higher burn ups.

7           Simply says that submit that stuff at the time  
8 of the application, we'll put the appropriate tech spec in  
9 for fuel design, and then you can make changes to the fuel  
10 design provided you stay within those parameters and those  
11 methods. That's what I consider is an operational matter.  
12 It was also necessary to review a fuel design in the  
13 course of this review.

14           So we started with the current GE barrier fuel  
15 to do the review. But that's exactly the kind of thing in  
16 the Tier 2\*. Based upon an amendment, the star would go  
17 away and you would do it this way. And so you'd just do  
18 that at the COL application.

19           MR. MALSCH: I guess the issue is --

20           MR. RUSSELL: We just don't have the details  
21 now.

22           MR. MALSCH: I guess the issue is whether in  
23 this first category that Tier 2\* items could ever go away.  
24 Is that the issue?

25           MR. BRINKMAN: Yes, we don't have the ability

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1 to make it go away simply by --

2 MR. MALSCH: Okay, okay. I think that may not  
3 be accommodated in the language we have here. It seems to  
4 be perpetually Tier 2\*.

5 MR. MATZIE: Correct.

6 MR. RUSSELL: That was not the intent. If you  
7 don't change it at all, it stays. If, on the other hand,  
8 you submit an amendment such that there's no longer a need  
9 for future review provided you stay within certain  
10 parameters, the Tier 2\* would go away. But --

11 MR. BRINKMAN: I think the language definitely  
12 has to be changed to accommodate that.

13 MR. RUSSELL: Another related example -- let's  
14 say that Applicant 1 goes through and does the complete  
15 control room design, human factors engineering; and they  
16 actually test it and it goes into operation. Later,  
17 Applicant 2 comes along. We've said it's acceptable to  
18 incorporate by reference that which has been reviewed and  
19 accommodated through an earlier review provided they are  
20 in fact identical.

21 If, on the other hand, Applicant 2 wants to do  
22 a different design process and incorporate new features  
23 into the control room which aren't in control room one,  
24 then you have to conduct the review consistent with the  
25 Tier 2\* and the step wise ITAAC development.

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1 MR. BRINKMAN: We're not objecting to that,  
2 Bill, because that's in the initial construction of the  
3 plant. And each of these plants does have the Tier 2\* up  
4 to their first full power. That's where we'd like to see  
5 all of them terminate, because after that it becomes  
6 extremely onerous with little or no safety benefits so far  
7 as we can determine.

8 MR. WILSON: Well, as I said, the decision was  
9 on the basis of whether the staff needed to see the change  
10 or not. But going on from the example, it wouldn't make  
11 any sense to arbitrarily put expiration on the fuel burn  
12 up at this point in time. It wouldn't make any sense to  
13 expire that at the completion of construction. It's not  
14 even an issue at that stage.

15 MR. MATZIE: There are other oversight  
16 vehicles for fuel burn up. High burn up topical puts a  
17 limit on -- and as you approve, amend, whatever, you are  
18 continuing your limitation on burn up.

19 MR. RUSSELL: We understand that. But that  
20 also gets captured in the tech specs with respect to the  
21 core operating limits, etc. And when you say that this is  
22 acceptable for the incorporation by reference in license  
23 applications, etc. -- so it just allows us to do the  
24 generic review; and then provided you do it consistent  
25 with that generic review, it's acceptable.

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1           So fuel and control rods -- if you talk about  
2 Marathon blades, that's the way they've been handled.  
3 These issues could go away depending upon what information  
4 is submitted at the time. And I can envision cases where  
5 they would go away if information is submitted that we  
6 find acceptable.

7           If, on the other hand, nothing is submitted,  
8 then these limits would continue. That is, if you chose  
9 on the first ABWR to continue to use the barrier fuel,  
10 then that's predicated upon that review. If you choose to  
11 do it differently, then we'd need to understand what it is  
12 you're doing differently.

13           What we did is we wanted to provide  
14 flexibility in the fuel control blade design equipment  
15 qualifications in a similar context. There's some unique  
16 aspects for CE because of the different source terms and  
17 how some things were intended to show no loss of function  
18 under severe accidents.

19           But we've reached agreement on pieces of  
20 what's done. This piece of equipment qualification  
21 relates to seismic qualification methods. That may be a  
22 function of what you're doing for siting, and recall we  
23 didn't want to have a qualification method in that was so  
24 robust and that enveloped everybody. You wanted to have  
25 the capability of using something slightly less for some

1 sites depending upon what the site characteristics were.

2           So until we know what that is, we can't do  
3 another -- it is one that could go away, but it's subject  
4 upon submitting information that allows the staff to  
5 conclude that Tier 2\* is no longer needed through an  
6 amendment process. And I think you can probably fix the  
7 words to indicate that if we review it and accept it and  
8 conclude Tier 2\* is no longer required, that it can go  
9 away based upon that particular proceeding.

10           MR. EGAN: The final topic area would be a  
11 very short one. It's an introduction to the DCD. We had  
12 appeared to have general agreement with the NRC staff that  
13 the substantive provisions of the DCD introduction should  
14 be incorporated into the rule language and made  
15 prescriptive requirements.

16           We identified several instances where that --  
17 the substantive provisions were not incorporated. We had  
18 some dialogue on that at the May 2nd workshop with the  
19 NRC. I think pretty productive dialogue. And  
20 subsequently, we submitted proposed ways of addressing  
21 some of the omissions that were originally in the proposed  
22 rule and some of the concerns that NRC had expressed at  
23 the May 2nd workshop.

24           Our question now is, does the staff have any  
25 reaction to the industry's most current proposal on

1 reincorporating those substantive provisions in some cases  
2 with changed language?

3 MR. WILSON: Well, when we originally did  
4 that, we believed we incorporated the substantive  
5 provisions in the rules and other information, the  
6 statements of considerations. And in fact, we did that.  
7 I recall about two years ago we stated to the industry  
8 that if they felt that there were things that should be in  
9 the rule, they should identify them and give the rationale  
10 why.

11 This is the first time we've gotten that, so  
12 we'll consider that in your comments.

13 MR. EGAN: We were particularly concerned  
14 about the one that dealt with the post-COL status of  
15 ITAAC.

16 MR. RUSSELL: That's the one I want to come  
17 back to for clarification.

18 MR. EGAN: Okay.

19 MR. RUSSELL: The other ones, I think, it's in  
20 the context -- I mean, if it doesn't conflict with the  
21 rule and it's consistent with the process as we  
22 implemented it, then I don't have a problem with putting  
23 it in and giving it some specific words and look at those  
24 specific words and see whether that accommodates.

25 The one issue with the ITAAC that I think is

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1 a needed clarification is we did intend that ITAAC  
2 essentially with the time of the full power operating  
3 authorization, we would have made findings that each had  
4 been satisfied. The one clarification of that, I would  
5 say, is if the ITAAC is challenged.

6 Even though an operating authorization goes  
7 forward and if an ITAAC is under a court challenge even  
8 because the Sholly process applies, and so it could be one  
9 where authorization to load fuel and commence power  
10 ascension is going on and there's a proceeding going on.  
11 Obviously that ITAAC is not resolved as to how you did the  
12 testing, etc., until such time as the proceeding  
13 associated with that particular ITAAC is resolved.

14 However, other ITAAC which are not challenged  
15 for which the staff has made the finding would be  
16 considered completed and would go away as of the time of  
17 the full power authorization.

18 MR. EGAN: That was our understanding too.  
19 But the language that came out restricted the disappearing  
20 act to subsequent plant modifications, and we could  
21 envision a lot of those instances, and we included in our  
22 letter where you deliberately left out numerical values  
23 and so forth because of age related factors and so forth.

24 So we felt it was real important to have a  
25 provision that says they don't constitute requirements for

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1 any aspect of the COL.

2 MR. RUSSELL: We believe that the rule on --  
3 the structure of the rule made that clear. All you're  
4 asking for is a clarification.

5 MR. EGAN: Okay.

6 MR. RUSSELL: We were very careful to make  
7 sure that the design descriptions that got captured in  
8 Tier 1, which is the piece that continues after fuel load  
9 authorization, is captured in Tier 1. We went through all  
10 those details. So I think this is simply a statement of  
11 what was the practice during the technical review with the  
12 clarification that because the authorization of load fuel  
13 can occur even though a matter is being challenged in a  
14 proceeding, that that matter is not resolved during the  
15 pendency of it being before an NRC proceeding.

16 MR. EGAN: We'll propose rule --

17 MR. RUSSELL: It could be operating and still  
18 be with that issue in litigation. If the challenges in  
19 ITAAC had not been adequately implemented, the staff can  
20 conclude notwithstanding that, you can go forward.  
21 That's the revision to the legislation that basically says  
22 the Sholly no significance as a process applies to ITAAC  
23 as well as -- you could have authorization to proceed even  
24 though a matter is still open pending litigation.

25 That was the only clarification that appeared

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1 to be needed based upon the review of the words, although  
2 there may be some as we go through to look at the actual  
3 words -- there may be some need for further clarification.

4 MR. BRINKMAN: I think we'd like to propose a  
5 rule language which would be that explicit.

6 MR. MALSCH: Yes, I thought some of your  
7 suggestions here were helpful and took care of some of the  
8 problems.

9 MR. WILSON: Anything further on that item?

10 MR. RUSSELL: Let's close the record and I'll  
11 head to the airport.

12 (Whereupon, the proceedings were adjourned at  
13 4:34 p.m.)

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This is to certify that the attached  
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Name of Proceeding: SENIOR MANAGEMENT MEETING WITH THE  
NUCLEAR ENERGY INSTITUTE ON DESIGN  
CERTIFICATION RULEMAKING

Docket Number: (NOT ASSIGNED)

Place of Proceeding: ROCKVILLE, MARYLAND

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July 15, 1996

## Attendance List

### Public Meeting on Design Certification Rulemaking

| <u>Name</u>         | <u>Affiliation</u>      | <u>NRC Mailstop</u> |
|---------------------|-------------------------|---------------------|
| Jerry N. Wilson     | NRC/DRPM/PDST           | 0-11 H3             |
| Charles B. Brinkman | ABB-CE                  |                     |
| RON SIMARD          | NEI                     |                     |
| Brian A. McEntyre   | Westinghouse Electric   |                     |
| BARTON Z. COWAN     | ECKERT SEAMANS          |                     |
| Joseph R. Egan      | EGAN & ASSOCIATES (ABB) |                     |
| Regis A. Matzie     | ABB-CE                  |                     |
| Terry G. Rudek      | ABB-CE                  |                     |
| MARC ROWDEN         | FRIED, FRANK (GE)       |                     |
| Steven A. Hucik     | GE                      |                     |
| Joseph F. Quirk     | GE                      |                     |
| Ron Simard          | NEI                     |                     |
| Russ Bell           | NEI                     |                     |
| DAVE REHN           | DUKE                    |                     |
| GARY VINE           | EPRI                    |                     |

DCR lead AGENDA  
July 15, 1996

2:00 Introduction

- Finality of Operational Matters (Section 4(c))
- Finality of Technical Specifications
- Renewal Review Procedure
- Finality of the 50.59-like Procedure
- Part 52 applicability in the Part 50 Licensing Process

4:00 Adjourn

Enclosure 1