

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 ***

4 MEETING: VOLUNTARY INDUSTRY INITIATIVES IN
5 LIEU OF REGULATORY ACTIONS

6
7 U.S. Nuclear Regulatory Commission
8 One White Flint North
9 Room O-8-B-4
10 11555 Rockville Pike
11 Rockville, Maryland 20852-2738

12
13 Tuesday, December 21, 1999

14
15 The above-entitled meeting commenced, pursuant to notice, at
16 8:30 a.m.

17 PARTICIPANTS:

18 G.E. (GENE) CARPENTER, NRR

19 R.A. HERMAN, NRR

20 DEE JUBB, Westinghouse

21 NOEL DUDLEY, ACRS

22 GARY VINE, EPRI

23 ALEX MARION, NEI

24 DAVE MODEEN, NEI

25 BRIAN SHERON, NRR

PARTICIPANTS: [Continued]

BILL RECKLEY, NRR

JIM SHAPARER, NRR

BOB PALLA, NRR

JACK STROSNIDER, NRR

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DENNIS DAMBLY, OGC
MELVIN FRANK, Scientech
CHARLES BRINKMAN, ABB CE Nuclear Power
DEANN E. RALEIGH, SERCH, Bechtel Power
MEENA KHANNA, NRR
W. H. BATEMAN, NRR
TIMOTHY COLLINS, NRR
BILL DEAN, NRR
JOE COLACCINO, NRR
MARIE POHLDA, NRR
BARRY WESTREICH, OE

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P R O C E E D I N G S

[8:30 a.m.]

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3 MR. CARPENTER: Good morning. I am Gene Carpenter. I am
4 the Lead Project Manager in NRR here for the BWR Vessel and Internals
5 Project work that we have been doing, which is a voluntary industry
6 initiative.

7 Today is the third meeting that we have had on voluntary
8 industry initiatives. The first one was held about a year ago in
9 Chicago, in September. The second one was held approximately six weeks
10 ago now, also in Chicago. This is the follow-on for that.

11 Basically what we are doing here is we are going to be
12 talking about what is a voluntary industry initiative, what the Staff
13 can do to quantify how we handle voluntary industry initiatives, and
14 what the public and specifically NEI would like to tell us that they
15 would like us to do about voluntary industry initiatives. This was at
16 NEI's request that we go ahead and have this follow-up meeting. Before
17 we get through with introductions and everything, I would like to do one
18 housekeeping chore. There is a sign-in sheet going around someplace --
19 if everybody would make sure that they please sign in. Whoever needs a
20 copy of that, please let me know at the end of the meeting.

21 The meeting is being transcribed, so we will have a copy of
22 that available to you shortly electronically. I don't think that there
23 is anything that is going to be proprietary said today, is that correct?
24 No. Very good.

25 Again, my name is Gene Carpenter. Introductions --
introduce yourself.

MR. HERMAN: Bob Herman.

MR. SHERON: I am Brian Sheron.

MR. STROSNIDER: Jack Strosnider

MR. VINE: Gary Vine from EPRI.

1 MR. MARION: Alex Marion, NEI.

2 MR. MODEEN: Dave Modeen, NEI.

3 MS. RALEIGH: Deann Raleigh, SERCH Group, Bechtel.

4 MR. BRINKMAN: Charlie Brinkman, ABB and representing the
5 CEOG.

6 MR. DAMBLY: Dennis Dambly, NRC, OGC.

7 MR. RECKLEY: Bill Reckley, NRR.

8 MS. JUBB: Dee Jubb, Westinghouse.

9 MR. PALLA: Bob Palla -- NRR.

10 MR. DUDLEY: Noel Dudley, ACRS.

11 MR. DEAN: Bill Dean, Inspection Program Manager.

12 MR. SHAPARER: Jim Shaparer, NRR.

13 MR. CARPENTER: Okay, very good.

14 Brian, do you have any comments before we start?

15 MR. SHERON: No.

16 MR. CARPENTER: Jack?

17 MR. STROSNIDER: No, no really. I guess just to reflect on
18 where we were at the last meeting.

19 We had identified a number of areas in which -- that we
20 think need to be addressed as part of the protocol for dealing with
21 voluntary initiatives and we indicated that we would be looking for
22 suggestions, feedback, comments on each of those areas. That will be
23 done more formally or formally through a Federal Register notice which
24 is out, but I think part of the -- one of the main reasons for this
25 meeting is to see if NEI or the industry representatives or anybody else
here has any comments that they want to provide at this time to help us
formulate this thing.

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MR. CARPENTER: Alex?

MR. MARION: Thank you for the opportunity to talk to you in
more detail about the concept involving voluntary industry initiatives.

1 We are hoping today that we can have an open and candid discussion.
2 It's really important for us to come to some understanding in terms of
3 definitions of some of the terms and definitions of some of the elements
4 of this concept. We are hoping that we can leave today's meeting with
5 an understanding or better understanding of NRC expectations relative to
6 the application of voluntary industry initiatives within the regulatory
7 process, and feel that if we achieve that understanding we will be able
8 to move forward in a complementary fashion.

9 I do have to tell you that upon reading SECY 99-063, there
10 were a number of concerns with the content of that SECY paper and I
11 don't know if the NRC is interested in some comments on it, but the
12 basic concerns stem from consistency in terms of our understanding of
13 regulatory decision-making and how that would play out in the voluntary
14 initiative space.

15 So I would just suggest to you that if NRC perceives any
16 benefit in NEI submitting comments on that SECY paper we would be more
17 than happy to do so.

18 Alternatively, we could save that effort and focus on
19 commenting on the Federal Register notice of the Staff's proposal.

20 MR. HERMAN: Just to comment, Alex, on that, that paper
21 before the SRM was issued by the Commission, I believe was sent to NEI
22 and comments were received from NEI by certainly one of the
23 Commissioners and incorporated in the SRM is what our understanding was.

24 MR. MARION: Comments were not submitted to that SECY paper.
25 Anyway, be that as it may, there's an opportunity for us to interact and
develop an understanding.

Let me just begin with --

MR. SHERON: Could you just expand on what you mean by an
understanding of --

MR. MARION: Well, a number of aspects of the SECY created

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1 some concern from the standpoint of the perception that NRC desires to
2 use voluntary industry initiatives as an alternative to the more
3 rigorous decision making process involving the fact that -- that reading
4 the words and that's one of the reactions.

5 MR. SHERON: You saw the paper that was sent on the new
6 generic communications. I forget the SECY number. Jim, if you could
7 help me -- because I think that these are very closely tied, that's why,
8 in my mind.

9 My concept is that the industry did not like the generic
10 letter approach and I am not -- we can discuss the question of whether
11 you thought it was inappropriate backfitting, the use of 50.54(f) or
12 not, but in my mind the issue was the industry did not like the generic
13 letter approach and there were some drawbacks to it, okay, because a lot
14 of times generic letters were not applicable to every licensee and in
15 terms of what they were asking for.

16 The thought was that before we go off and just issue a
17 generic letter saying send us 5000 reams of information or whatever on
18 some subject and the like, we felt it would be better to first identify
19 what is the technical concern that the Staff has and to present that to
20 the industry and to give the industry an opportunity to decide whether
21 they wanted to voluntarily address that concern.

22 The reason is you can address it probably in a much more
23 efficient manner if you basically get to do it from the start, as
24 opposed to just responding to a generic letter. You may have risk
25 assessments for example that can come in and say this is only a problem
for this class of plants and not for this class and that's why. You may
say, gee, I understand you problem but I've got a better way to address
this. That's fine. Okay.

But the idea was to give the industry a cut at it. In other
words, we are telling you what the concern, the safety concern, and it

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1 is not just frivolous in the sense that every time everybody dreams up I
2 got a problem let's go run to the industry and have them spend a jillion
3 dollars on it. That's not the case.

4 We consider the threshold for bringing something up to the
5 industry about as the same threshold as for issuing a generic letter,
6 the thought being that if the industry declined the opportunity to take
7 something on as a voluntary industry initiative we would probably pursue
8 the next step, which would be a generic letter. Our feeling is that
9 this would pass the threshold, and right now the threshold is before the
10 Staff goes off and initiates a generic letter, they bring it before the
11 NRR Executive Team and they make their case, and if the Executive Team
12 concludes that basically the generic letter is the appropriate way to go
13 with the issue from a safety concern as well as procedural aspect, then
14 the Staff is given the go-ahead to prepare it.

15 Recalling that generic letters go through a CRGR review,
16 they go out for public comment draft, and ultimately before they are
17 issued they go to the Commission, okay? -- so that is kind of the whole
18 process that we use generic letters for and the whole idea is that if we
19 are willing, if the Staff believes that the issue is such that we would
20 be willing to pursue that process, then we would first raise it to the
21 industry and give them the opportunity to come back and say we
22 understand what your problem is, your technical concern, and we are
23 willing to go off and address it and come back to you with a proposed
24 resolution.

25 That in a nutshell is what I envision as the voluntary
initiative process.

MR. CARPENTER: And we have had some success with that in
the past, specifically with the BWR Owners Group in the Vessel Internals
& Project that we have come to them with several issues that we had
considered raising generic letters to.

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1 MR. SHERON: I think we have line cracking too. I think
2 with the materials reliability --

3 MR. CARPENTER: HF1 cracking, barrel back bolts, et cetera.
4 We brought that to the industry and the industry, instead of taking it
5 on as a generic letter they took it on as a voluntary industry
6 initiative, and it has been working quite well.

7 MR. HERMAN: I think the other piece of it was the 109 piece
8 that was in there, the discussions of that. That was a binning type of
9 thing for whether or not something is -- we were looking at things
10 whether or not they were within the design basis or outside of the
11 design basis was one set of considerations that were discussed in terms
12 of trying to bin the issue, whether there was any regulatory concern
13 about the issue at all, and those type of things were tied to what kind
14 of involvement and what type of commitment there may have been depending
15 on what the issue was.

16 That was basically the only use of the 109 type of stuff in
17 the whole thing, and I think the other thing that was agreed upon at one
18 of the earlier meetings that Steve Floyd attended was that things that
19 turn out to be questions of public safety, you know, the highest
20 threshold, are outside of the box and what was in the box were things
21 that passed 50.109 in terms of being justifiable, things that were
22 compliance related but I think everything Brian said in terms of the
23 rest of the process, that was part of the process too.

24 MR. VINE: Can I respond to Bob's comment?

25 SECY 90-63 talks about backfits in two contexts. One is the
binning process and the other is in the regulatory decisionmaking
process and there are two references in the SECY to the latter.

Now I don't have any problem with the former, namely how you
use the backfit rule to bin various types of initiatives. I think the
problem with the SECY as it relates to the backfit rule is in the other

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1 two references where you basically go through a logic that says that if
2 an issue comes up, that if the industry volunteers to do something then
3 the NRC doesn't have to do any backfit analysis.

4 Then the issue moves forward with whatever action the
5 industry takes and moves into enforcement space without ever doing an
6 analysis to determine whether or not there was a significant safety
7 issue involved.

8 If you dissect the words in those two locations in the SECY
9 it is almost as if the onus is put on the industry to do the backfit
10 analysis to determine whether or not we should be doing something under
11 the criterion of the backfit rule.

12 MR. MARION: Yes, but Brian made it clear that that wasn't
13 the intent.

14 MR. VINE: Right. That's what the words say.

15 MR. SHERON: A 50.54(f) letter, and this is where we
16 probably part company in terms of interpretation, and we parted company
17 when we had our meeting with Winston & Strawn and we basically agreed to
18 disagree.

19 When you read a generic letter, and probably with the
20 exception of the charcoal filter testing paper, which we agree was a
21 backfit and it was a compliance backfit, most if not all generic letters
22 do not require anything, but we do question.

23 If we have a question on whether or not a Licensee remains
24 in compliance with a regulation because of new information that has come
25 to light, then basically what we do is we ask you to provide information
as to why you, the Licensee, believe you are still in compliance with
the regulation in light of new information.

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It doesn't say you have to change anything or do something
different.

Now most Licensees go "aw, rats" and say, you know, I can't

1 really justify -- because we lay out our information. We say we have
2 all this information that seems contrary to the fact that you are
3 complying with the regulation, but given all this data and this
4 information, we need you to tell us why you still think you comply.

5 Well, most Licensees will go yeah, you're probably right,
6 or, you know, I can interpret it that way, and they will go and they
7 will fix whatever they've got to fix, and they call it a backfit. It is
8 not a backfit.

9 The Licensee has the option to come in and argue and say
10 here is why I believe I still comply with the regulations in light of
11 all this information.

12 If a Licensee, however, takes on a backfit -- I'm sorry, not
13 a backfit but in lieu of a generic letter, where we raise an issue and
14 we say, gee, we have some new information here. We think that it raises
15 a question as to whether or not Licensees comply with the regulations.
16 We would like to turn that over to the industry as a voluntary
17 initiative. The industry comes back and says we are going to propose
18 some new inspection program or whatever, okay? -- and we are going to
19 inspect this or whatever and we are going to monitor it more closely,
20 and that way we will make sure we stay in compliance.

21 Then the inspectors go out and they say, gee, you didn't do
22 an inspection the way you said you were, okay? Well, we would interpret
23 that as that inspection was needed to maintain compliance with the
24 regulation, and if you didn't do it then we're raising the question of
25 compliance.

MR. HERMAN: I am not even sure that you would ever get that
far. I mean you never get to that -- let's take the Duke program for
example of how it was implemented.

There were commitments on the part of the Licensee that said
we are going to follow the programs. They came up with inspection

1 programs, flaw evaluation programs, and alternative type repair
2 programs, okay? They're all part of that.

3 The way that got implemented is the inspection procedures
4 and the flaw evaluation procedures got put in the Appendix B program at
5 the sites, and I mean that is the extent of the regulatory end of it is
6 it is not any different than any other NDE procedure or any different
7 than anything else --

8 MR. SHERON: What was said was that if a Licensee --

9 MR. HERMAN: It is how it is implemented.

10 MR. SHERON: -- implements the BWR VIP programs, topicals or
11 whatever, we would consider that as acceptable compliance with the
12 regulations.

13 Now we did not say, gee, if you don't do it we are going to
14 cite you, okay? What we said is that if you do it that way, no
15 questions asked. That is acceptable compliance. If you don't do it
16 that way, we may challenge. We may ask questions as to why it continues
17 to meet the regulations.

18 The Licensee may have a very good program, an alternative
19 program, and we may say good, we agree, you still meet the regulations.
20 We also may say no, we don't think that does it. In other words, it
21 increases our level of questioning, you might say.

22 If somebody says I've got a program that has been approved
23 by the NRC, we are following it -- it's done. You know, there's no
24 questions. If somebody says they want to do something different, that
25 doesn't mean you are not in compliance. It just means we may have to
scratch the surface a little bit deeper, that's all.

MR. HERMAN: I think what we have done in the past is we
have had all kinds of levels of how formal we have gotten in terms of
& commitments on how the programs have gone.

There was a Westinghouse program on control rod drive

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1 mechanism housings where they had some severe fabrication cracks. The
2 Westinghouse Owners Group addressed that program. The fact is we met
3 with the regulatory response group to kick it off, so it went all the
4 way through our process before the thing ever started.

5 They basically came up with some voluntary inspections. We
6 had some discussions at one point about how far you needed to go, how
7 much inspections you needed to do. There were some statistical
8 arguments made, some risk arguments made on the thing, and basically it
9 was put to bed based on what I will call a risk-informed decision in
10 terms of statistics, deterministic stuff and risk, and that one was done
11 without a commitment.

12 I think what we are looking to do in developing the process
13 on what the Commission asked for, at least in our view, was that we
14 define the process, how you kick something off, and try to do these
15 things consistently. That is part of what the process development is
16 intended to do.

17 MR. MARION: I understand all that, and the concepts seem to
18 be fundamentally straightforward, and I am hoping that we can work out
19 the details, but before we get into the details, let me just make a
20 couple comments.

21 Generic letters have been a necessary tool of the NRC. The
22 thing that we have always argued about or held lively discussions with
23 the NRC about was the scope and magnitude of the problem and the
24 regulatory basis for the action being requested in the generic letter.

25 I submit that if we don't clarify those specifics, we are
going to have the same kind of lively discussions as we move through
this process, so we really need to get this understanding established,
and we are talking about use of the compliance exception.

NRC, as Gary indicated, we believe the NRC is responsible
for the burden of proof to demonstrate the explicit regulation that

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1 needs to be addressed for Licensees to understand what NRC expectations
2 are relative to information being provided.

3 MR. SHERON: Let me submit to you, okay, that the NRC, if
4 anything, has probably erred in the sense that we have issued 50.54(f)
5 letters that have done nothing more than ask for information under
6 50.54(f), which is a different standard than 109, but, trying to be nice
7 guys, we used the words "compliance exception" and that is purple
8 letters, purple words, gets everybody excited.

9 We probably shouldn't have done it.

10 The only one where we did it or I will admit is on the
11 charcoal filter testing. We had enough evidence in front of us from our
12 own studies that basically said if you use the current standard you are
13 not in compliance, period. The case was made and that is why when we
14 said in that paper that the current standard that people were using, the
15 1979 -- whatever it was -- was no longer acceptable, that was a backfit,
16 because we said it doesn't matter what you are doing now, you must -- if
17 you are using that standard you must do something different. That was a
18 backfit and we went through and we took a hard look and we said yeah, we
19 had done enough studies and we believe we had passed the burden of proof
20 test that said if you use that we cannot guarantee -- we have enough
21 evidence to show that a Licensee will most likely not comply with Part
22 100.

23 I mean we can argue whether or not you think that is
24 significant enough --

25 MR. MARION: Yes, but we are not here to discuss that. I
would suggest we move on.

MR. SHERON: What I am saying is that most 50.54(f) letters
did not impose a backfit. They made have used the word "compliance
exception" -- it was probably wrong to do it -- because if you read the
words, they don't say you must do something different.

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1 MR. MARION: Okay. I would like to move on.

2 One more point I wanted to make about generic communications
3 and I agree with you completely that the generic communication process
4 and how it is used in dealing with voluntary industry initiatives is the
5 nexus or the connection between the two, and I would suggest that maybe
6 some time in the future we have a meeting to discuss the comments we
7 submitted on the generic communication process back in May because
8 fundamentally what we were trying to do was work through all of the
9 confusion that we have that the Licensees have in understanding why the
10 NRC is pursuing a particular communication product versus another one
11 and what is their expectation -- do they want action? Do they want
12 information? Are they just communicating information?

13 I think we need to have an open discussion on those concepts
14 because to clarify those understandings in the generic communication
15 process is the same objective we have relative to understanding how you
16 want to apply voluntary industry initiatives.

17 We need to understand how it all fits together, okay, and
18 that is very important.

19 MR. SHERON: Yes, I mean I would just -- for example, we
20 brought up at the last NRR/NEI Senior Management Meeting the question of
21 the switchyard vars, okay? We said we were going to propose that as a
22 voluntary industry initiative, and we'll lay out in that letter exactly
23 what the regulatory concern is with regard to compliance and the like,
24 and now the question is that what can the industry come back and show to
25 us as a program or something that gives us assurance?

In other words, we are not saying that every plant is not in
compliance. What we are saying is that based on what we saw at Calloway
we don't think that plants have enough information to assure they remain
in compliance.

For example, if they don't monitor what kind of vars, what

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1 kind of megawatts or whatever they are cranking through the switchyard,
2 they don't know that if their plant drops offline they are not going to
3 see some unacceptable dip in the offsite voltage, so we are saying that
4 somebody is not in compliance but we are raising the question of, gee,
5 this is something that we never really thought of and it may be a
6 product of a deregulated industry. What can the industry propose that
7 would give us assurance that the plants will remain in compliance with
8 GDC-17, or at least have knowledge or are monitoring something so that
9 they have enough knowledge to say I continue to comply with GDC-17?

10 That is all it's going to say.

11 MR. MARION: And that is perfectly fair, except I would
12 suggest, maybe not in this case -- you probably have the letter ready to
13 go out -- but I would suggest in the future a meeting to discuss the
14 problem and magnitude, because once we get through that discuss and
15 reach an understanding then it becomes very clear what the NRC needs to
16 do and also very clear what the industry can do to help in some
17 complementary fashion to deal with the problem. That is very important.

18 I think the record speaks for itself in demonstrating how
19 successful those early interactions are, so I would just offer that for
20 future consideration.

21 MR. HERMAN: I fully agree with you on that and I think on a
22 lot of the issues that have been what I will call hardware-related type
23 issues where you find something broken, that is exactly what has
24 happened. I would anticipate as part of the process that will develop
25 that part of the process will be to have a communications meeting before
you issue any paper, because we have generally done that on almost
everything we have ever been involved in.

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We have done the same thing with the discussions. One of
the discussions in the stakeholder meeting that you were at, Alex, that
were relevant to the whole thing was those kind of things that come up

1 because of a problem -- you find something broken, okay, and you address
2 something broken.

3 The other kind of issues were problems that maybe step
4 outside of the design basis, that pass the 109 backfit, things that I
5 will call -- I won't call them exactly programmatic but things that you
6 might be able to put on your plate at the beginning of the year and say
7 this is an area we are interested in -- severe accidents, whatever it
8 is, okay, and that would be the subject of a once a year or twice a year
9 meeting that was suggested by Mike Tuckman at Duke Power. We thought
10 that was a really good idea, to do it for planning purposes -- both in
11 terms of us, in terms of the industry, and in terms of talking about
12 resources, so I think there's two bins of stuff.

13 One is stuff that you know about, that you can plan for in
14 the beginning of the year and say these are going to be the things that
15 are on the plate for initiatives for the year and then those other
16 things that happen because you will find something during the year.
17 That is what we anticipate anyway, and that is what I think is going to
18 go in the process.

19 MR. MARION: Yes, from a process point of view, it seems to
20 make sense at this particular point. Now whether it really is effective
21 over the course of a year or two we will just have to wait and see,
22 because a lot of issues come up and you need to meet with the industry
23 to engage them all right away, and so there are going to be a number of
24 things that you can't plan and prepare for, but we still have to be
25 responsive.

Let me just -- you brought up hardware issues. They are the
easier ones to deal with, because that is straightforward. You can
develop data. You can do inspections, provide results, et cetera.

MR. MODEEN: Alex, I am not even sure that is necessarily
true. I guess the examples Staff has cited so far are the ones that I

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1 would call the significant issues that, yes, it is easy to reach
2 agreement early on that there is an issue to be dealt with, but I am
3 dealing with several of them that we flat out have disagreements as to
4 whether or not the issue warrants that attention.

5 We agree it warrants the dialogue and evaluation and
6 discussion, and the thing when we get in the details is whether or
7 not -- okay, what if we get to the endpoint and we disagree on the
8 significance, and we are not looking to volunteer for anything. That
9 is --

10 MR. MARION: You're one step ahead --

11 MR. MODEEN: I'm sorry.

12 MR. MARION: That's all right --

13 MR. SHERON: That's all right. If you guys go off, for
14 example, and do a risk study and you come back and show us that from a
15 risk standpoint an issue is a no, nevermind, that's okay.

16 MR. MODEEN: It's hard to get to the no, nevermind gradation
17 sometimes --

18 MR. SHERON: But if there is a compliance issue, and a lot
19 of times I will admit that may be a problem -- something may be very low
20 on a risk scale, but there is a compliance issue. Well, to me that says
21 maybe I ought to change the regulation.

22 If I have got a regulation that is requiring you to do
23 something that makes no sense from a risk standpoint, it is down in it
24 and it is costing you a lot of money, something is wrong with the
25 regulation. We need to know that. That is something else you can bring
to us. That is Option 3 of 99,300.

MR. VINE: What you've said here, I think, is kind of
reassuring because you've described a process where there is going to be
a lot of communication, and where you're going to make the case when you
go to the industry and say, we'd like you to consider this as a

1 volunteer industry initiative.

2 You're going to make the case that shows why there's a
3 regulatory concern, what the compliance issue is.

4 And the problem with the SECY is that it says that as long
5 as the industry steps up and does something to address a concern --
6 without any analysis of the backfit considerations -- that the NRC would
7 never even have to go through those considerations; that's what the SECY
8 says.

9 So, it basically lays out a process where by if the staff
10 comes to an industry group, and the industry groups says, sure, we'll do
11 that, that no one would ever do any of that analysis, and then you would
12 end up in a situation, according to the SECY, where there's enforcement
13 action taken against a voluntary industry initiative and compliance with
14 that, without ever having gone through the rigorous process.

15 MR. SHERON: All right, first off --

16 MR. VINE: You said we're not going to do that.

17 MR. SHERON: Well, first off, I would argue that if it's a
18 true backfit, safety enhancement backfit, we would probably have already
19 done the backfit analysis before we came to the industry. We're not
20 just going to walk in and say, gee, we think it's nice if you paint your
21 containments pink or something, okay, without having done a backfit
22 analysis, okay?

23 We're going to have the backfit analysis in our back pocket,
24 and we're going to be able to say, you know, we think you need to do
25 this, and here's why, okay?

We'll give you the opportunity to see that, all right? And
if we come in with a compliance, we'll explain that to you; we'll
explain why we think it's a compliance, okay?

And, you know, that's the one where you say, gee, we're not
going to do that, all right, then, you know, staff has to fish or cut

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1 bait, you know, which, as I said, we would have most likely have already
2 concluded this, we'd have risen to the level of a 5054, okay?

3 MR. HERMAN: One of the other things that, again, was
4 discussed in the last stakeholder meeting, was the threshold for kicking
5 off initiatives, and who on the NRC side was going to be the
6 kicker-offer, okay?

7 And if you looked at the Commission paper, there were some
8 discussions in there, should that be a Commission responsibility?
9 Should it be an EDO responsibility? Should it be an Office-level
10 responsibility?

11 I guess where we would come out right now is that we think
12 it's probably ET Office level as about probably appropriate for doing
13 it, because that's what we have traditionally done in the past.

14 I mean, I can't just imagine that any staff member is going
15 to get on the phone and call up Alex and say, Alex, I haven't talked to
16 anybody above me in the organization, but I'd really like to have a
17 meeting with you on this issue because I think I need to do this.

18 I mean, it's just not going to happen that way, and the
19 process is not going to be defined that way.

20 I mean, I just don't think how we'd ever get to that point
21 without it going up through the management chain anyway.

22 MR. MARION: I would suggest that the EDO level might be
23 appropriate. The reason I say that is because the more formalized
24 industrywide actions that are undertaken by NEI, are undertaken with the
25 buy-in of the chief nuclear officers.

And when that occurs, we traditionally have sent in the
letter to the EDO, apprising him of that decision, et cetera.

Now, we intend to still do that in the future on those kinds
of actions that are taken through the NEI process.

I'm just offering that as a point of information, relative

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1 to our thinking on the way this has been done in the past.

2 MR. VINE: But this gets us right into the issue of how do
3 you define an initiative? What you just said would never happen, this
4 informal communication between a staff who has a concern and the
5 industry.

6 In fact, it goes on all the time. And in many cases, it
7 goes on in a very healthy way, where you have staffers with information
8 or concerns, and they share it with a group that's working on that
9 issue.

10 And that interaction is healthy because it improves the
11 guideline documents that we're working on at EPRI or wherever, an owners
12 group, and as long as it doesn't rise to the threshold of becoming
13 subject to enforcement action, that's healthy.

14 So I think that the trigger you're talking about where the
15 formal request from NRC management to the industry to do something has
16 to take place, is on this question of whether you're going to take
17 enforcement action.

18 We do a lot of voluntary guideline efforts that remain
19 voluntary; that don't get into inspection and enforcement, where the
20 interactions with the staff are healthy.

21 MR. SHERON: There is going to be no inspection before the
22 process works through. For example, let me give you an example, okay?

23 The way I envision it is, okay, the staff gets a concern
24 like the Varge issue, let's take that one, okay?

25 First off, we raised it and we gave you heads-up at the
meeting, okay? If you guys want to have a meeting on it, okay, before
we send out a letter to you asking you to take it on, that's fine; we'll
be glad to do that, okay?

But, you know, whether we have the meeting or not, okay, we
would send you a letter, basically asking you to take this on as an

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1 initiative.

2 Now, how you respond is kind of your business, okay? You
3 could say either, no, we disagree with you; or yes, we'll take it on;
4 or, gee, we don't think that this is something that's appropriate for
5 NEI to do. Okay, you need to deal with owners groups or you need to
6 deal with individual utilities or something like that, whatever it is.

7 At this point, there's still nothing with enforcement, okay,
8 at this point. Now, if you come back and tell us to pound sand or
9 something, all right, then we've got to scratch our head and say, gee,
10 do we want to continue to pursue this or what, okay?

11 You'll obviously give us your arguments, why you either
12 don't think it's an issue, okay, and the like. If we agree with you,
13 we'll go, gee, yes, we didn't think of that; that's right. The matter
14 is dead; we'll drop it, okay?

15 If after we read your letter we don't agree with your
16 assessment, okay, then our next step is to go, let's say, with a Generic
17 Letter.

18 That Generic Letter then goes through a process that
19 includes the EDO Office, as well as the Commission, okay?

20 So there's -- and the CRGR and possibly the ACRS, so it's a
21 very, very formal review process that gets it before that letter ever
22 comes out in final form. Because, remember, even when we do the Generic
23 Letter, okay, unless it's something that is of super high priority,
24 okay, it's going to come out for public comment anyway, and you're going
25 to get a shot at it, all right?

And most likely there's going to be nothing with enforcement
until it's a done deal, okay, until we finally decide to go out formally
with the letter, okay?

At which point then, okay, I think there's been ample
communication.

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1 MR. HERMAN: I think we need to say something a little more
2 about the enforcement issue. And as to the word, discussions, again on
3 enforcement at the last meeting, and what the scope of things might be,
4 one of the things that was said at the last meeting -- and, Bill jump in
5 -- we've discussed this before with our inspection people.

6 And we've discussed it with OGC and OE, in terms of what
7 falls where in terms of enforcement. And the understanding that we have
8 after talking with the legal staff -- and, Gene, correct me if I get it
9 screwed up because I don't know it that well -- if something gets
10 adopted into an Appendix B type of program, that's what I'll call
11 business as usual type of enforcement.

12 If a licensee adopts something in an Appendix B program, to
13 handle inspections, evaluations, and they become procedure types of
14 things that are in an Appendix B program, they're subject to the normal
15 Appendix B program.

16 NEI agreed with that the last meeting, the both of the
17 owners that were running the voluntary group, Mike Tuckman agreed with
18 it, Lou Sumner agreed with it. And that's pretty clear-cut.

19 Where you get into the cloudier issues, are what's the
20 enforcement base? Where are you from an enforcement viewpoint? If I
21 get into something that's outside of the design basis, there's an
22 industry commitment to do it.

23 And I think the true answer to that is what you've got is a
24 commitment to do it, and if the industry changes its mind, then what
25 you've got is a changed commitment, okay?

26 If the staff won't say anything above that, well, the
27 discussions we had with our legal staff, if we want to fish rather than
28 cut bait, then it's incumbent upon us to write an order to do whatever
29 it takes to put it into place in terms of what the regulations are.

30 And I don't think it's very confusing in terms of

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1 enforcement at all. I think that's the position that we're going to
2 write down, and I don't think you guys disagree with that.

3 MR. MARION: No. We made the point in September that the
4 implementation of initiatives really is part of the threshold in terms
5 of inspection and enforcement, because if the implementation fall within
6 the Part 50 scope, i.e., Appendix B, then what's the issue, okay?

7 MR. COLLINS: It shouldn't be called a voluntary program.

8 MR. MARION: Right, once the licensee decides to implement
9 it. But the fact is that elements of an initiative may fall within that
10 scope while other portions of an initiative may not, okay?

11 But that's why it's really important to have these kinds of
12 discussions so we understand what is and what isn't within the
13 regulatory scope.

14 And we found, once we get that understanding, the rest is
15 easy.

16 MR. HERMAN: But, again, what the original title of VSI-13
17 was this piece of it. It originally -- it's now the Use of Industry
18 Voluntary Initiatives in the Regulatory Process.

19 It used to be Voluntary Initiatives in Lieu of Regulatory
20 Actions. And I think if you're in lieu of regulatory actions, that type
21 of definition, then it's pretty clear, you know, what's the Appendix B
22 stuff.

23 You're developing the program, but it's basically still that
24 when you're done with it, it's an Appendix B-type commitment.

25 MR. VINE: Let me ask you a hypothetical question about this
Appendix B example: Let's say we have an issue that NRC is concerned
about and industry is concerned about because it has some impact on
performance?

But it doesn't meet the criteria. You know, you can't show
that there's a clear compliance case; you can't show cost/benefit

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1 improvement. But the industry is still interested in dealing with the
2 issue because it has some performance implications.

3 So the industry takes it on as a voluntary industry
4 initiative, even though it doesn't meet the backfit rule. What
5 incentive -- and they go through it, wide industry participation and so
6 forth.

7 What incentive would the industry have in putting it in an
8 Appendix B program if that gets them into enforcement space when, in
9 fact, it's being handled properly as an industrywide initiative without
10 putting it in an Appendix B program?

11 MR. HERMAN: I don't know what the threshold of it is.

12 MR. SHERON: There's no requirement that it be an Appendix
13 B, period.

14 MR. COLLINS: But that's one of the understandings to
15 establish on the front end.

16 MR. HERMAN: There were different bins of commitments. We
17 used a different example.

18 I think the one we used was something related to badging.
19 Did the industry want to do something relative to badging to make people
20 get onsite, off and on.

21 And our discussion was that they can put that in place; it's
22 the industry's program, they do what they want. If they want to talk to
23 us and get some input on it, fine, but it's their program.

24 I wouldn't even say that there would necessarily be a
25 commitment associated with a program like that.

MR. MARION: You brought up the point, Bob, about the change
in title of this effort. Could you go over that again, please? Could
you go over what it's being called now as opposed to --

MR. HERMAN: It's what's on the Commission paper. It's the
Use by Industry of Voluntary Initiatives in the Regulatory Process.

1 MR. MARION: Okay.

2 So we're no longer considering it as an appropriate
3 substitute for regulatory action? One of the things that I wanted to
4 talk about was the perception of that terminology.

5 MR. HERMAN: It can be. I think it's -- a regulatory action
6 can be rulemaking. A regulatory action can be a Generic Letter, or a
7 regulatory action can be an information notice, or whatever the new
8 forms are that we've got out there.

9 There is still a broad -- or it might be having a meeting
10 with somebody. Well, not having a meeting, but I think this is just
11 supposed to be broad to cover the waterfront.

12 MR. CARPENTER: Specifically what we said in SECY 99-063, is
13 that the staff has concluded that the current regulatory framework does
14 not preclude implementation of voluntary industry initiatives, and that
15 such initiatives, except in cases where adequate protection is
16 concerned, can be accepted in lieu of, or complementary to regulatory
17 actions.

18 MR. HERMAN: And an example outside of that was, I think, a
19 good example was -- I'm trying to think of one. We developed a Reg
20 Guide and NEI really provided a guideline document for the Reg Guide.

21 MR. MARION: Implementation, station blackout. I mean,
22 there was a whole slew of them.

23 MR. HERMAN: Depending on what the item is.

24 MR. COLLINS: I don't see those as voluntary. If there's a
25 rule out there that says you've got to do something, I don't see that as
voluntary. I see that as an industry program, I don't see that as a
voluntary initiative.

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Let me describe what I see as truly a voluntary initiative:

A couple of years ago, we had a shutdown rule proposed.

The staff went through the entire backfit analysis, okay?

1 And they concluded that a cost/beneficial enhancement was clearly
2 justified by the analysis, okay?

3 Went up to the Commission and the Commission said, no, it
4 looks like what the industry is doing is sufficient, okay, to cover
5 that.

6 So now, in effect, you've got voluntary actions by the
7 industry that are a substitute for putting that shutdown rule in place,
8 okay?

9 Now, when a situation like that comes up again, what's the
10 incentive for the staff not to put in place, that rule?

11 You're asking what's the incentive for putting something
12 under an Appendix B program, what's the staff's incentive for not going
13 forward with a rule?

14 They've gone through the backfit analysis that says it's
15 cost/beneficial, but the industry says it's not an adequate protection
16 issue, it's cost/beneficial and we'll put in place, a program instead of
17 that rule, okay?

18 Now, what's our incentive when we don't have any enforcement
19 tools now because there's not a rule out there? What do we do in the
20 oversight process? What do we do in the --

21 You know, the Commission told us in the SRM on the shutdown
22 rule, monitor through inspection and other means. And that, to me, put
23 this type of meeting together.

24 It's like how do we do that? Right? The industry is
25 saying, we're going to step forward and take care of all of these
issues; you don't need to put the rule forward, okay?

So we says, okay, we'll let you do that, but now where are
we in monitoring, enforcement, oversight space?

MR. HERMAN: We discussed that with Bill Dean earlier, okay?
And one of the things that we said is that the inspection activities

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1 that are going to go out there are going to be part of the new
2 inspection program.

3 And the new inspection program can look at things that are
4 within the rules or outside of the rules in terms of risk significance.
5 And if somebody went out and looked at a shutdown risk program at a
6 plant, and decided that what was being done was a program that wasn't
7 addressing the issue, and there was a question of risk, it could be
8 brought back here.

9 The action would be --

10 MR. SHERON: What would happen is that they would come back
11 and, you know, the Commission says do it by inspection or other means,
12 which could be monitoring, all right?

13 Now, if the inspectors come back and say, hey, you know,
14 gee, the industry said they were doing all these wonderful things during
15 shutdown, and they're not doing it, okay?

16 I'd be the first one to sit down and say, okay, let's send
17 back up the Commission paper and tell the Commission, Dear Commission,
18 remember all those wonderful things that the industry said they were
19 doing voluntarily? They're not, okay?

20 Therefore, we recommend that you implement this rule. Okay?
21 That's how we would proceed? Okay?

22 It's the same thing, okay? Now, if we found that there was
23 something going on out there that was flagrantly violating the
24 regulations, that might be an inspection issue and enforcement, all
25 right?

But if it's something where we don't have a regulation in
place, okay, but we're relying on a voluntary industry initiative, and
we find out that the industry isn't true to their word in doing it, then
we go back to the Commission and say, hey, guess what? These guys lied
to you. All right?

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1 And then we take the appropriate regulatory action, which
2 may be a rule.

3 MR. COLLINS: I think everybody recognizes that's not the
4 cycle we want to go into.

5 MR. SHERON: Exactly.

6 MR. COLLINS: I'm asking, what can you guys do to assure us
7 that we don't get into that cycle?

8 MR. MARION: I think the shutdown is a good example. Having
9 been involved in it in the first cycle when it went to the Commission, I
10 didn't appreciate the philosophy of substitution which is still
11 problematic to me.

12 I think that as I recall, the arguments that industry was
13 using, or the basis that industry was using was performance. Bob
14 mentioned shutdown risk management programs. I submit that's the wrong
15 place to look.

16 Anything somebody puts together in terms of a guideline,
17 whether it's EPRI's -- and EPRI had a piece in that particular effort to
18 support the industry; we had a piece at NEI, and INPO had a piece.

19 None of those documents were developed for purposes of being
20 used during inspection activities. That is a separate question that we
21 need to talk about and resolve in the future.

22 And the thinking was, look at the results in terms of the
23 events that hopefully would not occur while a plant is in a shutdown
24 condition. We think that over the years that kind of speaks for itself.

25 And compare it to what it was like when this was first
brought up. There has been significant improvement.

 If this is an area that warrants further discussion, maybe
we need to talk about it in the future. But right now, our observation
is that the process within the NRC played out, and the decision was made
not to pursue regulatory action.

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1 And this came up at our meeting in September. I forget, but
2 one of the NRC staff people brought it up, and I said, well, help me
3 understand why is it still an issue within the NRC staff if the decision
4 was made not to proceed?

5 Is there something that we don't understand?

6 MR. COLLINS: It's the SRM because the staff is supposed to
7 monitor through inspection and other means.

8 MR. MARION: Okay.

9 MR. COLLINS: That's why for the staff it's still an issue.
10 How do we do that? I thought that's what this -- a big part of this --
11 when I say voluntary initiative, that's the only voluntary one I'm
12 hearing.

13 The other ones I hear are all compliance. You're
14 undertaking a program to me that's a specific regulatory requirement.
15 In this case, the regulatory requirement was not put in place
16 specifically because of the credit we gave you for those actions.

17 MR. HERMAN: But I think there's a difference, okay?

18 MR. COLLINS: There's a big difference.

19 MR. HERMAN: There is a difference in the programs, but I
20 don't think you can characterize the first one as a voluntary program,
21 too, because they're writing the rules of what the program would be that
22 they want to implement, rather than us handing them a generic letter and
23 specifying what we wanted done in the program.

24 To me, that's a big difference.

25 MR. COLLINS: Ultimately there's a requirement that's got to
be met that's on the books. In the case of shutdown, the requirement
was not put there specifically.

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 MR. HERMAN: We said there's definitely two different ones.
But, I mean, one of the things that came down in the Commission guidance
was a discussion about guidance should address how plants that don't

1 fully commit to a particular voluntary initiative, they're not subject
2 to related enforcement action will be handled.

3 So that's part of the things that we've been asked to
4 develop by the Commission. It's in the SRM.

5 MR. MARION: One of the suggestions that I was going to make
6 a little bit later on in our discussion is that as we move forward and
7 thrash out this process and reach these understandings, maybe what we
8 need to do is ask the Commission to take a good, hard look at what's
9 being proposed.

10 I submit that, you know, you have a new set of Commissioners
11 involved now than you had when this decision was made, et cetera, and
12 the thinking and expectations on their part may be entirely different.

13 But I offer that just for your consideration.

14 MR. HERMAN: The process for the paper, Alex, that we've go
15 right now is, we're supposed to get it upstairs in May to the
16 Commission.

17 MR. MARION: Right.

18 MR. HERMAN: They're supposed to come back with an SRM on
19 it. What we're planning to do and what we said all along is, what we'd
20 like to do is, and what we're probably going to ask the Commission as
21 part of the paper, is that we'd like to get your view, get the SRM, and
22 then what we'd like to do is have a public meeting before
23 implementation.

24 Mike Tuckman suggested that at the last meeting, and thought
25 that was a good idea.

MR. MARION: Okay.

MR. VINE: Can I address Tim's example and move it back to
Brian's comment, too, about the industry lying to you about committing
& to something and not doing it.

MR. SHERON: I didn't.

1 MR. VINE: Or whatever. The reality is that in the way most
2 of these scenarios will play out there will be extensive dialogue
3 between the industry and the staff on what exactly the technical
4 solution should be.

5 So, when the industry commits to something, you will have
6 already agreed that in principle, if you do that, it's good enough.

7 And what will likely happen if you find that some utilities
8 aren't measuring up, is that it's down into the level of interpretation
9 of -- I met the intent of this, but not the letter of the law of this,
10 and those kinds of questions that always come up.

11 And those have to be worked out on an individual plant
12 basis, if there are disagreements on what was intended.

13 It's very clear that utilities don't want EPRI, NEI, or INPO
14 getting into the process of enforcing regulatory matters. They believe
15 that we ought to be helping developing the guidance, and when it comes
16 to matters of compliance, those are really up to the NRC.

17 The other point I wanted to make was that was we talk to
18 executives about this issue, take the example of the shutdown rule:
19 There are some utility executives who would say it is sufficient if the
20 case has clearly been made that there's a rulemaking that's justifiable
21 in the case that you cited, that it's sufficient for the industry to
22 develop that program, get it accepted, and then make commitments on
23 individual dockets and by that means commit the industry to something
24 that you could enforce.

25 There are other utilities who say, no. The only acceptable
process, even if the industry assists in defining an adequate program,
to get to enforcement space, you must have a regulatory basis for that.

And it has to -- you have to go through the rulemaking
process, even if -- and that rulemaking process might be pro forma. It
might just simply be something that endorses the industry initiative as

1 a means of addressing the problem, but you have to go through that
2 formal process.

3 MR. SHERON: I'll give you an example: Severe accident
4 procedures, there's no regulatory requirement for it. The industry
5 voluntary said, we will do that.

6 We said fine, we will kind of monitor and watch and see if
7 they're doing it, okay?

8 And presuming that they're all doing it in an acceptable
9 manner, okay, then that's good, we don't need to promulgate a
10 regulation. Nobody's going to come out and inspect, and if they don't
11 find some procedure at a plant, is going to run around and pull out the
12 ticket book and start writing a ticket, okay?

13 They're going to come back and say, guess what we didn't
14 find at such and such a plant? And if we get too many of those, we're
15 going to go, gee, the industry said they were going to do this, but they
16 really didn't do a good job, and then we'll have to decide, do we need
17 to do something more in regulatory space like promulgate a rule, for
18 example, all right?

19 But that's an example of something that is not a
20 requirement. It was an industry initiative, okay, and we're monitoring
21 it, okay?

22 This is as opposed to if the industry comes in, if we raise
23 an issue of compliance, all right? We've got some new information and
24 we don't think you're complying, for example, steam generators, okay?
25 All right?

If somebody is out there inspecting the bobbin coil, all
right, and you know darn well that thing ain't going to pick up
circumferential cracks, all right?

You know, yes, you may cite them against Appendix B, all
right, because they're not using the appropriate methods, all right?

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1 MR. HERMAN: Inadequate procedures.

2 MR. SHERON: Yes, and the like. And even though that might
3 be voluntary in the sense that, no, I don't need a rule that says thou
4 shalt use such and such a type probe or whatever, but it may be a
5 voluntary initiative that follows an NEI guideline, all right?

6 If they're not following it, okay, and we don't think that
7 it meets Appendix B, that may be something that we would cite.

8 MR. HERMAN: The other piece of it is, let's say you have a
9 voluntary program like Brian was describing, outside of the regs and the
10 area Tim's talking about, and a licensee says it's committed to do it,
11 and then says I don't want to do it anymore and take its commitment away
12 for that issue?

13 At that point, there is guidance in terms of what you do in
14 terms of the backfitting. There was a Commission paper that went up
15 following this one that says that if you want to look at things again
16 from a backfit perspective in terms of whether you want to go forth with
17 rulemaking or whatever, if it justifies it, that there's a position that
18 just came down.

19 I don't remember the SRM number, but how much credit you
20 have to give for voluntary actions if somebody changes from those
21 actions. It was the paper up from Research. It came back with an SRM
22 and they re-described the process again.

23 That's also out there, and we're going to incorporate that.
24 It was part of an SRM.

25 MR. MARION: You're talking about crediting a regulatory
analysis?

MR. HERMAN: Yes.

MR. MARION: Okay, all right.

MR. COLLINS: Let me ask a question, though. Say the
inspection people are out and they're monitoring an activity like

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1 shutdown where we decided not to put regulation in place.

2 And they conclude that the licensee X is not following the
3 type of guidance that we thought was in place.

4 Do you think it's appropriate for him to write in a formal
5 NRC inspection report, the discussion of that issue? Is that the
6 appropriate place?

7 MR. MARION: I don't think that's a fair question. I would
8 go back and ask the question, why is the inspector looking this area,
9 given that the decision was made by the Commission, not to pursue
10 regulatory action? I understand the point.

11 MR. COLLINS: They'll go monitor by inspection and other
12 means.

13 MR. MARION: I think -- how can we understand what your
14 expectations are relative to monitoring industry activities in this
15 area? Maybe that's the thing that needs to be discussed.

16 MR. DEAN: Let me weigh in a little bit about the inspection
17 program and where it comes from in terms of a shutdown. We have
18 developed a specific inspection procedure on shutdown activities which
19 embody a number of the concepts that were contained in the NUMARC
20 guidance that we endorsed and that the Commission recognized as being
21 something that would enhance performance in this area and thus we didn't
22 need rulemaking.

23 And they told the staff to go and monitor that.

24 We would take issue that we would find looking at shutdown
25 activities, and we would process them through the significant
determination process, and ascertain what the significance is.

And the end result may or may not be that there is a
violation. But if it's not a regulatory requirement, then it's judged
on the merits of its significance and not on the merits of whether it's
necessary an initiative that the industry said they would do or a

1 regulatory requirement or whatever.

2 We look at the significance of the issue.

3 MR. COLLINS: That would be written up in an inspection
4 report?

5 MR. DEAN: That would be written up in an inspection report.

6 MR. SHERON: That makes a lot of sense.

7 MR. MARION: That makes a lot of sense, but I would still --
8 I hope I don't get in trouble for saying this, but if direction comes
9 from above that makes the job difficult, I hope you look for ways to try
10 to get that clarified or something.

11 If you don't have an understanding of what the expectations
12 are from the Commission, it makes it more challenging for us to have an
13 understanding, whereas the NRC is the organization that it's coming
14 from, if there is a disconnect of some sort.

15 MR. HERMAN: One of the things that we did say at the last
16 meeting was that the enforcement and the inspection on this was going to
17 be consistent with the new Commission policy on doing inspections, and
18 it was going to be basically the risk-significant policy that's this
19 thick and just went out.

20 MR. MARION: All right. Before we go on to other topics,
21 let me just make one point very clear. Our executives don't want -- I
22 can tell you this from a standpoint of NEI activity in this particular
23 area -- their expectation of us is not to become an extension of the
24 NRC. They have no problem in us reaching an understanding on how we can
25 do something to complement NRC's activities.

Historically it has been shown that rulemaking is a great
catalyst for bringing the industry and the NRC together, okay? -- and we
come together under rulemaking issues, which are relatively
straightforward. Everybody has an understanding what we are trying to
do and they are easy to address, but it is all these other things that

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1 take more time and I like the point about open, frequent dialogue and I
2 think we just agree from our perspective we will commit to you to have
3 open, frequent dialogue on these issues in the future, but we are very
4 focused on the concept of complementary action on our part as opposed to
5 a substitute for regulatory action on the part of the NRC.

6 One reason is the public perception that an industry
7 organization or some element of the industry is doing something that the
8 NRC cannot do otherwise. Whether it is true or not, it is the
9 perception and I just feel obligated to bring that up because it works
10 against -- once that perception is out there in the public it creates
11 problems not only for the NRC but also for the industry, so I am
12 suggesting we need to be very careful about these interactions in the
13 future.

14 MR. VINE: Well, it could be a false impression about you
15 abdicating role here that you shouldn't be abdicating.

16 MR. MARION: We are real sensitive to that. That's why the
17 number of times we said, well, if you have done a regulatory analysis
18 and have a basis for a decision then go forward with the decision. That
19 was never meant to be confrontational, but it was meant to be if you
20 have already decided that you have to do something, then don't let us --

21 MR. SHERON: We did that, for example, on the charcoal
22 filter testing.

23 MR. MARION: Right.

24 MR. SHERON: We decided we needed to issue that letter.

25 MR. MARION: Right.

MR. SHERON: There may be issues in the future where for
example if we think there's a compliance problem a lot of times when we
issue a generic letter we will ask you to say what you are doing -- you
know, while you are solving, figuring how to deal with the issue, we may
use words like if you agree with us, what are you doing in the interim

1 to bring yourself into compliance? And it could be a number of things
2 you could put.

3 For example, if it is in fire protection, you could put
4 temporary fire watches or something -- some compensatory measure. That's
5 fine.

6 Now if we bring the issue to you in the form of a letter, it
7 is not a generic letter. It doesn't say you must answer by such and
8 such a date, but if we send you a letter that says here's the issue, all
9 we are doing is we are trying to get away from being prescriptive, all
10 right, by saying you must answer this, you must answer it in 60 days,
11 you must tell us what you are doing to bring it -- blah blah blah blah
12 blah -- you know, the whole drill.

13 Without being very prescriptive, the voluntary initiative is
14 we have got a problem. You understand what our technical and our
15 regulatory concern is. Now can the industry come forward and propose
16 something, all right, that addresses this issue, and the Staff is
17 willing to look at it and work with you, as opposed to in a very
18 prescriptive sense writing this letter which hits you over the head.

19 That is all it is. It is saying in essence -- in the old
20 days we would have sent you a generic letter, no questions asked, but
21 now we are going to send you a letter which says here is the issue, we
22 would like you to come to us and tell us how you would like to address
23 it, how you think you should address it properly, and let us not be the
24 ones that are prescriptive that say answer this in 30 days or 60 days
25 and tell us this and that and the other things.

That is really the way I envision it.

MR. HERMAN: Again, in the SRM though the directions are as
the Staff develops guidelines it should not underestimate the importance
of public confidence. It must be clear to the public that substituting
voluntary initiatives for NRC regulatory action can provide effective

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1 and efficient resolution of issues and will be controlled and monitored
2 so as to ensure plant safety is not compromised and doesn't represent a
3 reduction in NRC's commitment to safety and sound regulation.

4 So we have got to address that part of going back to the
5 Commission with a paper. The other piece of that, there are a couple of
6 things that do come up as questions when you do that. There certainly
7 is a question of noticing and of public participation.

8 One of the things is if we are going to put out a generic
9 letter, we would have given the public an opportunity to comment when it
10 is noticed. I think we are going to have to propose something that gets
11 some kind of public participation in the process. The other thing --

12 MR. SHERON: Maybe your response, the program you propose in
13 response to, say, a letter asking for a voluntary initiative. We put
14 that out for public comment and say here is the issue, here is what the
15 industry proposed, does anybody have any comments on it.

16 MR. HERMAN: The other thing that turns out to be difficult
17 in terms of giving the public sufficient information to be able to make
18 a judgment about what is going on, and one of the things that we ran
19 into the VIP program early-on when we were doing that is a lot of the
20 things are paid for by the industry and there's value in what they are
21 doing and they are proprietary.

22 Getting the right balance in a proprietary and a
23 nonproprietary document to provide sufficient information to be able to
24 let the public participate in the process by maybe not seeing everything
25 that is being paid for to develop something but enough to know what is
going on, and that came up with license, using the VIP documents for the
license renewal. There had to be a rewrite to expand some of that to
put it in the process and to allow participation so it is not easy.

MR. MARION: I think that is a very important element of
this but I would suggest that there be focused concentration on ensuring

1 that the public understands NRC's regulatory decision-making. You have
2 got to start there, and then the details of what documents are used to
3 form the basis for those decisions are a separate issue but the process
4 is the kind of thing that we are trying to get an understanding on
5 ourselves relative to this particular topic.

6 MR. SHERON: You know, as part of your response to a
7 voluntary initiative, you may have to -- for example, if you agree there
8 is a concern that needs to be investigated, you may have to propose some
9 interim actions. Each licensee has agreed to do the following -- for
10 example, post a fire watch or do some extra inspections or something in
11 the interim until we resolve the issue.

12 This is the same kind of thing that we would probably go
13 after in a generic letter -- but you may have some better insights that
14 say, well, only certain plants need to do that or something, okay? But
15 that still allows us to sit down and say, yes, the licensees still
16 comply with the regulations because they have agreed to the following in
17 the interim, but that is voluntary.

18 MR. MODEEN: I want to come back to something I think Tim
19 raised that is kind of interesting. You used two examples -- what
20 really is a voluntary initiative and, first, take steam generators, for
21 instance where -- and obviously we have been in a lot of places since
22 1993 -- but ultimately the industry two years ago decided that based on
23 everything we learned through that interaction that, gee, we needed to
24 what we needed to do from a standpoint of what was put forth in NEI
25 97-06 and move forward with that, continue the regulatory interaction,
but meanwhile we thought we needed a certain level of performance, et
cetera, at the plants, then we continued the dialogue.

That was a voluntary initiative -- in my mind -- that we
committed to each other, the utilities, but not specifically to the
Staff at that time, but to inform the Staff that we took that action.

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1 I think as Tim was indicating, okay, that is a VII there.

2 Then we continued the process, recognizing though that the
3 tangents to specific compliance issues, regulatory requirements of
4 things -- for instance, many people's tech specs said you could get by
5 with -- or not get by but you could have a 500 gallon per day leakage in
6 a steam generator. Well, we were holding ourselves to 150 GPD -- the
7 right thing to do.

8 Ultimately we came to the conclusion that, hey, a license
9 change back incentive -- we ought to reflect it in the licensing basis
10 of each of these plants to have that tighter thing and we are moving
11 forward with the Staff on that.

12 At the point that we execute that, assuming we get the
13 package in and get agreement, et cetera, I would tend to agree with Tim
14 that, gee, that is no longer a VII. I mean we are really saying, hey,
15 guys, everybody's got to change their licensing basis, and it makes it
16 much clearer again, these follow-on activities, the inspection
17 activities, the enforcement activities.

18 I think the thing that kicked off GSI-13 and the SECY that
19 you then put forward is really a recognition that, hey, instead of these
20 false starts on throw out a draft generic letter until you get a ton of
21 comments back that put us back in a do-loop and then we really start the
22 hard dialogue. We are looking for process and we have done a lot better
23 I think the last three, four years to have that process early on and
24 perhaps, as I think Tim had maybe suggested, this VII thing unless we
25 really get it nailed down as to when it is a VII and when does it
transition to something else like is there a need for regulatory action
or the nexus to that regulatory action, we might avoid some of our
concerns where we thing we are kind of going around the backfit at times
and other playing loose with it.

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MR. SHERON: A lot of this VII was in response to the

1 industry complaints.

2 MR. MODEEN: Oh, yes, and we are not here saying that a lot
3 of the dialogue and the early communication, the opportunity to propose
4 things, is bad. I mean we appreciate that. We are spending a lot of
5 resources on it, but we are still tripping over implementation at the
6 licensee -- I'm sorry, I just wanted to contrast that with another
7 example.

8 For instance, in fire protection, where I'm working and
9 circuit failures, you know, it really was very evidence through the
10 early part of '97 and what we thought was very clear direction from the
11 Staff and guidance in SERs, et cetera, that, gee, compliance looked like
12 "x" -- and it was also just as clear to the Staff that compliance looks
13 like "y" and so we got to the point and agree I think last summer
14 through that workshop that, okay, let's set that aside and say what is
15 the significance of this issue? Let's work through that based on risk.
16 Let's get better technical data, et cetera, and let's figure out the
17 right. We are still working through that.

18 But then just yesterday we had a meeting on this. It was
19 real clear again that there's many in the Staff that think because we
20 said we would work through this with the Staff and have that dialogue
21 that we have already say, yes, we agree, there is a real safety issue
22 here and something has got to be done and ultimately -- and, gee, when
23 are you going to get it finished?

24 It is like, well, now wait a sec, we are still in the VII
25 part that kind of says let's have the dialogue, let's figure out what
the right thing to do is, see if we can come to agreement, and if we
can, great -- if we can't, well, then obviously you have your process
and we deal with it accordingly.

MR. HERMAN: But when you are talking about generic letters,
I guess to me a generic letter is not a rule. A generic letter in and

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1 by itself is not an enforceable document. If we go out with something
2 under 50.54(f) and we get an inadequate answer, then again the onus is
3 on the NRC to come up with what is a legal action which is to write an
4 order or take other actions, so from that perspective when there is
5 really not that much of a difference I don't think between a licensee
6 doing something, say under a VIP program and responding to a generic
7 letter, the main difference to it is the front end of the program where
8 the licensee has his destiny in his own hands or the industry does in
9 terms of providing input on what goes into the program there that they
10 want to institute.

11 Okay -- I think in either case the NRC has the option to
12 look at it and say is it adequate in terms of meeting the safety
13 regulations and if it doesn't, you know, the avenue is always open in
14 terms of further actions.

15 I don't see that there is that big a difference.

16 MR. MARION: Let me ask a question. If the issue is one of
17 compliance with the regulations, why should the action be voluntary?

18 MR. STROSNIDER: I think part of what we keep missing here
19 is these are voluntary industry initiatives in lieu of regulatory
20 action.

21 MR. HERMAN: In some case. Some may not.

22 MR. STROSNIDER: In some cases, but in the issue of there's
23 a compliance issue, the NRC can certainly take regulatory action. If
24 nothing else, we could take enforcement, but if there is a generic
25 concern, for example, does it make sense to start going off and citing
one plant at a time, or do you go off and say, look, we think there is a
compliance issue here and can the industry address this issue without us
having to go off and take some other action, as in the generic letter of
something like that.

MR. RECKLEY: Another thing to consider is compliance is not

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1 always worth, not even rarely, black and white.

2 MR. STROSNIDER: That's my point.

3 MR. RECKLEY: The means of compliance might warrant a
4 voluntary industry initiative in lieu of a Regulatory Guide or some
5 other action, and the efficiency gained from the Staff and the industry
6 agreeing on the means of compliance is still justified in the use of the
7 term voluntary industry initiative.

8 MR. SHERON: The whole idea, Alex, was to respond to the
9 industry's concerns about generic letters. If you guys don't want to
10 take it on as a voluntary industry initiative, then the next step in the
11 process is generic letter.

12 I mean the Staff has to address its concerns. We just can't
13 raise a concern and then just let it drop or something, okay? But the
14 idea was if the industry wants to basically be able to control its
15 destiny a little better without getting hit over the head with a hammer
16 called the 50.54(f) letter that says do this, this, this, this in this
17 order and everything, but rather go off, study the issue, come back, and
18 say give us what you believe is the best way to address the issue, and
19 that's fine. We are giving you that opportunity.

20 All I can say is if you don't want to avail yourself of it,
21 we just dig into the toolbox and get the next biggest hammer.

22 MR. MARION: I would just offer we'd like the opportunity to
23 discuss these issues with you in the future --

24 MR. SHERON: We would be willing to do that. We will give
25 you a heads-up before we intend to engage you with any voluntary
industry initiative proposals.

If you want to have a meeting beforehand, to better
understand what the issue is and the like, we will be willing to do that
and the like and get your insight on it.

MR. MARION: Now generic communications have come up a

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1 number of times and I touched on this earlier.

2 We sent in comments to the proposed generic communication
3 process that is right now in effect, and if you will look at those
4 comments from the standpoint of understanding the process and what the
5 expectation is when these communication products are issued, those are
6 the same kind of questions and issues we have with this, so we need to
7 come to grips with this in terms of NRC expectations how this plays out
8 in inspection/enforcement space, et cetera, but it all comes down to
9 what is the regulatory requirement, the explicit regulatory requirement,
10 what is the problem.

11 Once we get through that, then it becomes very clear what
12 NRC's role may be or what industry's role may be, but we need to create
13 that dialogue and continue with that.

14 One example I would like to bring up to just kind of
15 facilitate some thinking about the process is air-operated valves.

16 David and his folks have been meeting with the NRC for some
17 time and the NRC approached the Owners Groups to develop something to
18 deal with NRC's concerns relative to AOV performance and the Owners
19 Group did that, and the product that was developed by the JOG was
20 brought to NEI for possible action that could range from doing nothing
21 with it or making it part of a formal industry initiative and anything
22 you could mention in between.

23 We looked at that and had some discussions, a lot of
24 discussions, with the Owners Groups as well as with INPO and concluded
25 it made a lot more sense for this thing to be picked up by INPO. That
apparently created some consternation on the part of the Owners Groups
as well as I believe on the part of the NRC Staff.

NRC Staff still thinks that something more needs to be done

MR. MODEEN: They are looking for the commitment --

MR. STROSNIDER: Just to fill in that little gap, okay, when

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1 there was a GSI on this issue we went to ACRS and closed this GSI. Part
2 of the logic for the closure referenced the AOV JOG program and that it
3 was going to address some of the technical issues in the GSI, so ACRS
4 said, fine, go close it with that understanding.

5 MR. MODEEN: And then why was the second letter -- I mean
6 the first letter for closing the GSI didn't, hopefully didn't say any
7 words about the industry committing to a job program doctrine that the
8 industry hadn't committed to.

9 MR. STROSNIDER: I am not sure. I would have to look at the
10 letter, but the presentation and the understanding from what I
11 understand from a discussion with ACRS was, yes, we understand that
12 there are some issues here that need to be developed. The Staff has
13 confidence they are being addressed because of the industry initiative
14 in the AOV program. That was addressing some of these issues.

15 Now how that was articulated, how well that was articulated
16 in the close-out letter I would have to go look at it, but that is part
17 of what is driving that.

18 MR. COLACCINO: The thing about that, and you're right, in
19 the first close-out the letter back to the Staff on May 14th, that that
20 was not articulated, but in a July -- what also is happening this time
21 was the first public meeting, which was on June 3rd, I believe,
22 between -- the NEI public meeting presenting to the public the JOG
23 program document.

24 At the time of the June 3rd meeting the status of whether
25 the program would be implemented, put forth as a voluntary industry
initiative, was not decided at that point. NEI had said that we did not
know -- we were still deciding what that was going to be.

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The second letter from the Staff came out on July 2nd and so
at that time we said -- the Staff said that they were working with the
industry, they had this program that they were working on. They also

1 referenced ASME work and then it was not until -- so the Staff sent that
2 out. They didn't say specifically that the industry was going to
3 undertake it, but they did say that we were going to work with the
4 industry and if the industry didn't take adequate action then the NRC
5 would take regulatory action as appropriate.

6 That was on July 19th. NEI sent a copy of the program to
7 the NRC saying -- and that was the further discussion that it would not
8 be undertaken as an industry initiative.

9 MR. HERMAN: This is a perfectly good example of I think why
10 we need uniformity in the process for putting generic letters in place.

11 MR. MARION: Absolutely.

12 MR. MODEEN: I'm sorry I brought it up. I'm sorry -- I've
13 got to add one thing to Joe's comment though that is very important,
14 because I am the one that made the closing remarks on June 3rd and
15 unfortunately we didn't have a transcript, but I will give you my
16 talking points.

17 We knew on June 3rd that we did not want or we were not
18 seeking regulatory credit in accordance with SECY 99-063, and that was
19 the bottom line of the wrap-up conversation there, so understand the
20 letter did not come out because we were not sure at that point whether
21 NEI would issue it, the Owners Groups would issue it, or INPO, but it
22 was very clear that we weren't looking to elevate this to an initiative
23 that we would ask everyone to do.

24 MR. HERMAN: But this sure was not an emergency issue and
25 this sure was something that would have fell into the ranks of the kinds
of things that you might put at the plate at the beginning of the
year --

MR. MODEEN: Oh, yeah -- a perfect example. I mean that's
why we wanted to discuss it.

MR. HERMAN: I just want the context to be accurate, that's

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1 all.

2 MR. MARION: The reason I brought it up was because that
3 it's an interesting example that will help us thrash out the process,
4 because the story continues.

5 ASME is developing a code case, okay? That code case is
6 going to get factored into some future edition of the code. It is going
7 to be picked up by 50.55(a) and become a regulatory requirement.

8 Now we are going to argue about this thing until that
9 happens and until it is implemented, so I submit let's look at this as a
10 case study and try to figure out what can we do to remove those barriers
11 to progress in reaching a common understanding of what complementary
12 action we need to pursue because the perception is NRC went to the
13 Owners Group -- and I am not being critical, let me just give you an
14 optical perception to the extent my optics are working properly -- NRC
15 went to the Owners Group to extract a commitment. They got the
16 commitment, **okay?**

17 The Owners Groups couldn't deliver because they are not set
18 up to make commitments or do anything of that sort on the part of their
19 membership. That is in their bylaws.

20 They come to NEI and say, hey, here is the situation. NRC
21 wants us to do something with this. NEI is the right organization to
22 deal with it, et cetera,

23 We looked at it. We couldn't find the problem that it was
24 trying to solve. We said, well, wait a second. It makes sense -- it's
25 a good practice. Doesn't it kind of fit into INPO's activities? So we
forwarded it to INPO and INPO factored that into their programs --
adequate and sufficient from our perspective.

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Staff is still not -- appears not to be satisfied. You got this ASME
code case process that is playing out. There has to be a better way.

1 That is the reason I identified the example.

2 MR. STROSNIDER: There may well eventually be some
3 additional technical discussions with regard to this issue, but it is an
4 excellent example in terms of the process and what is the understanding
5 from the parties involved on how this thing is going to be used and why
6 it is important and what the Staff is intending to use it for, the
7 industry's perspective on the same solutions.

8 MR. HERMAN: But I think we have to get the process thing
9 straight again, okay?

10 Number one, I think some Owners Groups do make commitments
11 on behalf of their members if it is for a single item. Certainly the
12 VIP did in terms of --

13 MR. MARION: It is not a Owners -- the industry put forth a
14 separate thing to deal with this.

15 MR. HERMAN: They chose to pick EPRI to manage it.

16 The other thing with code cases, code cases are voluntary.
17 The other thing on updating of the rules -- the process that we are
18 going to in terms at least of discussions of nonmandatory updating of
19 the rules. It seems to me that if it went into the code it again would
20 be voluntary if we get to the point of saying that we are not going to
21 be updating 50.55(a), so those are all voluntary actions too.

22 MR. VINE: Could I make a couple comments about the AOV
23 issue, since we are kind of beating up on it?

24 The first comment is specific to something I said at the
25 beginning of the meeting. I think one of the problems with the AOV
issue is we never sat down and talked about the issue and its
significance and we never went through the process of determining is
there a cost beneficial change that can be made here that meets the
& backfit test? Is there a compliance issue here?

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We just bypassed that and went to the industry working on

1 the issue in a technical sense without ever addressing upfront what
2 should have been looked at.

3 The second comment kind of goes along with that, which is
4 kind of an EPRI perspective.

5 When we put together an advisory group on a particular
6 issue, we bring the technical experts to decide what the right solution
7 to that problem is, whether it is VIP, whether it is mid-voltage circuit
8 breakers, whether it is a maintenance guide on some item that is of
9 interest to you or of interest to the utilities. We don't bring in
10 licensing experts.

11 We bring in the technical experts and virtually all of these
12 programs that are coming through EPRI and most of the ones coming
13 through the Owners Groups are being developed on the basis of what is
14 the right thing to do overall, holistically, for this particular
15 functional area or system or whatever, both in terms of safety, improved
16 performance, economics. It is an integrated package of what is the
17 right thing to do that is so convincing on the merits of the effort that
18 every utility would want to do this because he is going to come out
19 better.

20 It is not just selectively looking at fixing something that
21 is of concern to the NRC, so when we put a program together like that
22 and then without licensing expertise involved in its creation and
23 writing the words right so that they can be somehow used in a regulatory
24 process, you end up in a situation where we have, first of all,
25 oftentimes created a guideline document that was written from the
beginning to be a voluntary document and not an enforceable document.

Second, it was an integrated package to deal with both
economics and safety and everything else all together. This is the
cookbook, guys, on how to do it best. Then you bring this into a
regulatory space and you are in a situation where -- how do you decide

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1 which of all of the hundreds of things in this program are significant
2 enough to safety for them to be inspectable, and how many of the things
3 in that document are purely economic and should not get inspected
4 against?

5 I mean how do you decide that?

6 MR. HERMAN: I guess I would have to take a little exception
7 to your characterization.

8 There's clearly some things that EPRI put out, say
9 implementation of the Check Works programs that the Staff wasn't
10 involved in, okay? -- and the ASME wasn't involved in and nobody has
11 looked at it in terms of being an enforceable document. That is
12 certainly written as a guidance document -- it is written very loose, in
13 my opinion, perhaps too loose.

14 On the other hand, if I take the VIP documents, they are
15 developed by a technical committee. They are sent to each of the VIP
16 owners for their approval before they come to the Staff. They come into
17 the Staff. We basically write an SER on them as if they are a topical.

18 They go back to the owners. The owners comment on what we
19 have put in our SER and then we issue a final SER once we have taken a
20 shot at the industry comments, so I think there is a broad scope of how
21 things can be implemented, okay?

22 You can look at it upfront. Those documents for all
23 practical purposes are pretty close to Section 11 where no rules exist
24 for BWR internals.

25 MR. VINE: But they go beyond what would be required to meet
the regulations.

MR. STROSNIDER: I think you make a good point. Perhaps
part of the difficulty here is we agree that a lot of these programs are
developed -- you know, we like the technical work that is going on. We
like it so much we want to see everybody do it.

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1 I think that's what you are pointing out is, well, you know,
2 there may be some things in there --

3 MR. VINE: In enforcement space -- then we don't create
4 these things for them to be turned into enforcement doctrines.

5 MR. STROSNIDER: All right, but this gets back to the
6 process, where if in fact you go off and you have an initiative which is
7 strictly to look at, from the industry perspective, improving economics,
8 efficiency, et cetera, fine. There's nothing safety-related. You are
9 going to maintain safety but you are going to go make things run better.

10 MR. VINE: But that's idealistic. There's always safety and
11 economic implications --

12 MR. STROSNIDER: Sure.

13 MR. VINE: -- to all of it.

14 It depends on what drives it. If it's being driven not by a
15 safety issue, but by economics or something and it's a benefit to the
16 industry, fine. But if there's an issue in there, if there's a nugget
17 of a safety issue, something that NRC does have concern with, something
18 that is perhaps enforceable or that should be regulated.

19 The process needs to identify what that is, and that's what
20 we're talking about. Your example is good from that perspective. When
21 you start off on this initiative, I think what we're all talking about
22 is let's understand the scope of the initiative, understand which part
23 of it is within the regulated purview, all right, and what it's intended
24 to address.

25 And we need to have that understanding up front, because I
think in a lot of this the scope gets broader, and the staff looks at it
and says, yes, those are really good things to do, and the next thing
you know, well, that's part of the issue we trying to address and it
& perhaps gets bigger and then that's part of your concern.

So, but it's all about understanding right up front, what

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1 are the issues that are going to be addressed? And if you add some
2 additional things as part of developing this program because they're of
3 benefit to the industry, fine.

4 But, you know, that's not necessarily our interest.

5 MR. VINE: When we wrote the water chemistry guidelines, we
6 did not intend for them to be regulatory enforceable documents, yet
7 they're referenced in the steam generator initiative, and making that
8 decision --

9 MR. STROSINDER: And I would just, in response to that, just
10 suggest that the industry, NEI, and EPRI might want to consider,
11 depending upon what purpose some of these things are being developed
12 for, all right, you might want to put them more in the form of
13 procedures that a plant could implement.

14 And I understand that plants want to develop their own
15 procedures. So there -- you can only go so far with it, but, yes, we
16 run into these guidelines. Bob suggests, well, some of them are kind of
17 loosely written.

18 How does it get proceduralized? Ultimately, some of this
19 stuff, when we try to credit it in regulatory space, it becomes
20 difficult because of the way it's written.

21 MR. HERMAN: But the example you just provided is maybe one
22 that's worth a little discussion, okay?

23 Environmental effects on crack growth rates are very
24 important issues. Most of the documents that have come out for deciding
25 how quick something is going to crack is related to what the
environmental conditions are that the component is operating in.

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You're talking about internals, you're talking about piping,
you're talking about the rest of it. Most of the testing and most of
the crack growth rates are dependent on people working within the
envelope of what maybe is in the water chemistry guidelines.

1 So --

2 MR. VINE: I'm not saying that water chemistry should be
3 totally out of the regulations, but I'm also saying that you can't take
4 the entire document and treat it as an enforcement document, either.

5 You have to look at it and selectively say what are the --
6 what's the essence of this industry initiative or guideline document or
7 whatever it is that is essential to the safety case? And there may be a
8 half a dozen items in there that are important enough to rise to that
9 level of this the piece that involves a commitment to the regulatory.

10 The rest of them are commitments within the industry to each
11 other.

12 MR. CARPENTER: If the licensee is coming and saying we are
13 using the EPRI water chemistry guidelines, and that is part of our
14 solution to this problem, then obviously that brings it into the purview
15 of what we look at.

16 MR. VINE: I would submit that we have to be very careful in
17 not setting up a process that does that, because that is inviting abuse.
18 We need to be rigorous here and set up a process that allows you to
19 selectively identify or jointly selectively identify those features of
20 an overall industry program that are essential to the regulatory case.

21 MR. HERMAN: But if I were doing the crack growth case that
22 we were talking about, okay, and I was trying to ensure that I was
23 operating within the bounds of the test data or within the bounds of
24 whatever I was doing, I think the people that -- your side, when you
25 wrote the document, 14 -- VIFF-14 on crack growth rates or the ones to
be applied to other areas -- that you could specify whatever you wanted
out of those documents to support the crack growth rate arguments and be
specific.

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If you choose to reference the documents, don't blame us for
it.

1 MR. VINE: I agree.

2 MR. MARION: I think the point is the documents were not
3 written with the objective of supporting inspection.

4 MR. SHERON: You need to take a first cut and identify what
5 you think are the things that are absolutely necessary to say comply or
6 meet a regulation, okay?

7 MR. MODEEN: In fact, the lesson learned on --

8 MR. SHERON: If we agree with them, then that's fine. You
9 should identify them right up in the front of that document, okay?
10 There should be some sort of a forward to the document that identifies
11 and says, you know --

12 MR. MARION: Then we'll get an NRC endorsement if we did
13 that.

14 MR. HERMAN: But this is a perfectly good example. If you
15 came in with something and we didn't like it, you'd sure hear about it,
16 either as part of RAI or part of the response in the SER.

17 MR. MODEEN: In fact, the practical lesson learned from
18 field usage -- and I'm going to go back to the steam generator because I
19 think it's playing out a little further and more clear, is that the
20 underlying EPRI guidelines that certainly weren't written initially
21 thinking of some formal industry initiative, they're in a two-year
22 update cycle -- more frequent if necessary.

23 Several of those that are now in the update cycle, secondary
24 water chemistry, I think is the first one that's gone through that, is
25 that we've done, the industry has done a better job going back there and
flagging, hey, these are the key pieces relative to supporting the
formal industry position, making it nice and clear, and then here's this
other stuff that --

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Honestly, when you know up front, as he was saying, what
you're trying to do with the thing, it's easier to try to address that

1 sort of thing.

2 But we've got to sort of back into some of these things,
3 because --

4 MR. STROSNIDER: We worked very hard, for example, in the
5 steam generator space to maintain the flexibility in these
6 industry-developed guidelines, and not lock it into tech specs or even
7 -- so that -- I think we worked out a solution where licensees can make
8 changes in that as things evolve on their own.

9 In fact, some of our earlier documents trying to address the
10 steam generator issue, you know, we had -- I can't remember if it was in
11 the draft tech specs or in the Reg Guide -- but, you know, we had tried
12 to do, number one, you need to have a water chemistry program.

13 All right, and number two, it ought to address critical
14 parameters, but we didn't try to put any specs on it, we didn't try --
15 and we left that basically to the guidelines.

16 Like I said, that was some of the early stuff. And then as
17 this thing evolved, I would hope -- I think we've got a success story in
18 that one, all right?

19 But that's -- but it all comes back again to process, what
20 it's going to be used for, and having the communications up front so
21 that when these things are developed, we understand how it's going to
22 fit into the regulatory process, if at all.

23 But if it does, you know, where does it fit in and how is it
24 --

25 MR. CARPENTER: There is something to bear in mind here.
It's that just because there is something that's presently in the
regulatory process, it doesn't mean that it has to stay there.

Again -- and I apologize for continuing to use the VIP, but
it's the only voluntary industry initiative that we really have
experience with -- they came in and they told us that they didn't think

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1 there was a safety significance in doing reactor pressure vessel shell
2 weld inspections.

3 We disagreed with them initially, but they came in and they
4 gave us a good technical argument for it, and they're not doing it now.

5 So that's a place where you can do a win/win on getting
6 something that is not technically safety significant taken out and
7 saving the industry a lot of money.

8 So this can be a process that can do a lot of good things
9 here.

10 MR. VINE: We're pretty proud of the initiative. I mean,
11 it's been a success story, we agree with that.

12 But as I said, there's been an element of trust here,
13 because there are a lot of things that we put in that program that go
14 beyond the regulatory requirements; that go beyond what would be a
15 compliance issue; that go into the areas of good practices and those
16 kinds of things.

17 And I think it would be a huge disincentive for the kind of
18 progress we want to see here, if we try to sweep every little good
19 practice into something that's enforceable.

20 If you do that, you're going to discourage the industry from
21 collecting and disseminating good practice information as part of an
22 overall initiative.

23 So we have to have this threshold of what in an initiative
24 is important enough to be -- to get into the inspection and enforcement
25 cycle.

MR. CARPENTER: Let's also make sure that we understand that
even though the industry, per se, the BWR fleet, has committed to
following the BWR VIP guidance, even before we, the staff, approve it,
& if they come into us -- for instance, Plant A comes in and they say, you
ASS know, we've got an outage coming up, and we know that we committed to do
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1 X, Y, and Z, of the VIP program, but we just can't fit it into our
2 outage this season. It's not a regulatory requirement and we're going
3 to defer that.

4 We say, well, okay, you defer it. We don't have a technical
5 or regulatory hook to make you do that; it's something you voluntarily
6 do. What are you going to do next time?

7 And they come back and they tell us what they're going to do
8 next time? So, it's not like we're going to come out and bash somebody
9 over the head.

10 MR. HERMAN: But the implementation of those of programs
11 let's talk a little about just what happened, actually, and not in
12 specifics.

13 But early on when there were questions about cracking
14 internals and cracking shrouds and whatever, okay, the first question of
15 the whole thing was, well, what's the safety significance of it?

16 And the whole game plan for doing that whole program was
17 based on a risk assessment and a qualitative systems review to rank
18 which items to get at in what kind of an order.

19 Okay, so I think that program, although the inspection
20 things and flaw evaluations things are deterministic, the foundation of
21 what was to be done was certainly risk-based in the first place, and it
22 was systems-based in terms of importance.

23 And the problem is that if you don't do some of those
24 things, you can get injunctive issues that you start getting into
25 performance-based regulations. I mean, you get into these things if you
don't have an argument in terms of, say, a structural integrity argument
in terms of components.

Then you can get into what I'll call more esoteric
systems-type arguments in terms of multiple failures of things,
synergistic effects.

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1 Those are all part of the process, too, and --

2 MR. STROSNIDER: We keep going round and round on BIFF and
3 BIFF is the one that's working.

4 [Laughter.]

5 MR. STROSNIDER: So the question we ought to be asking
6 ourselves is why does it seem to work pretty well? I think part of this
7 discussion that Gene was just going through is, I think it works pretty
8 well because we had enough -- and there was good technical work, first
9 of all.

10 But putting that aside, we had enough discussion that I
11 think both the industry and the NRC understand how this thing fits into
12 the process.

13 And basically we took advantage of existing processes, which
14 is something that we said back in the meeting in Chicago that in this
15 voluntary initiative framework, we want to use existing process to the
16 extent possible.

17 The management system is an example of that. These are
18 commitments, licensees know how to interact with the staff in terms of
19 if they want to change commitments, and that's been working, and that's
20 fine.

21 So I think when we look at this, we say, well, you know,
22 what are some of the lessons we can learn to help make things work?
23 That's one of them and I think that's an important thing, that we try
24 not to invent new processes, but try to fit.

25 If you look through that list of things that we need to
address in these voluntary initiative protocols, you know, was we go
through that list, we ought to try to take advantage of and not reinvent
some of these things that we've already worked out.

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 MR. HERMAN: And they don't ever show up in any of the
process development issues to start with on either side.

1 But the thing that makes the VIP work is there is utility
2 management oversight at the vice president level on that program, and
3 there is high attention to it on the NRC level.

4 The technical grunts go do their thing, and before it goes
5 out and becomes policy and before both sides commit to it, there's a
6 buy-in by management on both sides that this is an adequate way to go
7 after these things, and both people make commitments in terms of what
8 they're going to do and they both stick to them.

9 I think that makes this kind of stuff work better than
10 anything else.

11 MR. MARION: Also, it helps to find problems when you do
12 inspections. I mean, let's be realistic. I'm relating back to the head
13 nozzle cracking issue where inspections were done and they couldn't
14 identify anything.

15 So I suggest that contrasted to the basic differences, and
16 not so much the bodies involved in technical expertise, as what was
17 coming out of the inspection results.

18 MR. CARPENTER: That's another example where we had proposed
19 to the industry that they do a voluntary industry initiative. The
20 industry decided that they didn't see the need for that, and we went
21 ahead and put out a generic letter anyway.

22 So the process does work. And on that note, if I might
23 suggest, we've been at this for about a hour and a half now. How about
24 we take about a ten-minute break and then resume for a final two hours.

25 MR. SHERON: What else do we have to do?

 MR. MARION: We have a preliminary conceptualization of a
flow chart that the three of us put together, primarily with Gary Vine
being the primary individual helping us.

 When we reconvene, I'd like to let Gary walk you through
this.

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1 MR. MODEEN: I don't think that we have more than a half
2 hour for some of the process protocol issues, and it relates to that
3 chart.

4 [Discussion off the record.]

5 [Recess.]

6 MR. CARPENTER: Is there anyone else who would like copies
7 of the meeting attendance sheets?

8 [Show of hands.]

9 MR. CARPENTER: Hopefully we have enough.

10 MR. SHERON: I'll stick this out for about 30 minutes and if
11 you guys need to keep going, keep going.

12 MR. MARION: Let me try to summarize a couple of key point:
13 Number one, we really support the concept of NRC being an objective,
14 strong, credible regulator. And we don't want to --

15 [Laughter.]

16 MR. MARION: Good, I'm glad to hear that. We don't want to
17 get involved in anything that would cast doubt on that.

18 We talked about the perception idea and substituting for
19 regulatory action, so we're kind of sensitive to that. I think the
20 industry, through NEI and other industry organizations, has demonstrated
21 an ability to solve problems in a direct manner.

22 Hopefully, the NRC has been satisfied where industry has
23 pursued something in a complementary fashion. And I think that success
24 in itself suggests that we look forward to opportunities where we can
25 determine a complementary relationship; it's very important.

And we made the point earlier about open discussion, once
the issue is identified; the importance of getting an understanding of
the regulatory requirements and expectations; problem definition, et
& cetera.

We need to be careful because NEI does not want to be

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1 perceived as an extension of the NRC in any process, in any way, shape,
2 or form, and I don't think that would serve the NRC's interests either.

3
4 But more importantly, to go back to the earlier discussion,
5 NEI will not inspect the industry and will not enforce the industry to
6 any kind of guidance that NEI may develop, whether it's just a guideline
7 document or if it's part of a formal industry initiative.

8 MR. MARION: I thought you guys had a process, whereas if 80
9 percent vote for something --

10 MR. SHERON: We do.

11 MR. MARION: Would you have process where the chief nuclear
12 officers agreed to take a certain position on a policy matter, or to
13 implement a particular guideline that we may develop, et cetera?

14 MR. SHERON: My understanding is that that's a binding
15 commitment.

16 MR. MARION: That's a binding commitment within the
17 industry.

18 At best, we identify a schedule by which that implementation
19 will be completed. We'll gauge the level to which that schedule has
20 been satisfied, but we will not go out and inspect or enforce. We'll
21 communicate with the chief nuclear officers, get the information,
22 request the information.

23 If they come back and say, yes, I implemented this --

24 MR. SHERON: Well, what does mean? If NEI writes a letter
25 and says that the industry has agreed to, for example, adopt and
implement a certain NEI report, all you're saying is that, gee, that's
what they told us.

MR. MARION: Hopefully, as a result of the discussions we've
had on this concept of voluntary initiatives, we will also tell you in
our interactions, that certain aspects of that guideline may fall within

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1 NRC's regulatory scope.

2 MR. SHERON: Yes, but what I'm worried about is that you're
3 not telling me. You can't make a commitment for every licensee.

4 MR. MARION: Right.

5 MR. SHERON: You're going to go out and ask every licensee
6 to make a commitment.

7 MR. MODEEN: Brian, let me give you an example: For
8 instance, you haven't asked us to do that on like steam generators,
9 although we're working on something we think everyone will adopt and
10 then you probably have that count.

11 In the case of severe accident management, I think a lot of
12 the history and the footprint and all that, all the money spent, we
13 actually were asked by the staff, although after we informed you or I
14 guess it was Bill Russell, by letter, that, yes, the industry voted
15 binding commitment, et cetera, we were asked by the staff, gee, we would
16 appreciate it if every licensee would put it on the docket. We created
17 a template and everyone did in that case.

18 So obviously there is some flexibility that, depending upon
19 the situation, the need, or otherwise, we generally haven't done that.
20 Again, that's been a letter from us.

21 I think the bigger point, as Alex is saying, we are not the
22 policeman for a formal position; we are the communicator of it, and we
23 also periodically --

24 MR. SHERON: It's very important, okay? I'm not asking you
25 to go out and enforce and say, you know, we've inspected every licensee
and we've guaranteed that they're all doing this.

ANN But I need to understand what it means when you come forward
RIL and say that every licensee has adopted something. For example, your
EY & Y2K guideline.
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OCI We've been running around advertising to the Congress and
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1 the public that all the utilities have agreed to follow that, okay?
2 Based on your -- what you're telling us, I mean, now it has to have some
3 credence. You have to have some credibility when you make a statement.

4 If we go out and find out that there are licensees playing
5 fast and loose, saying, we never agreed to that, or whatever, you know,
6 then you have no credibility.

7 We can't -- you know, anything you write into us would be
8 like, well, that's nice, but --

9 MR. MARION: We understand, we recognize that, and we take
10 that action and those kinds of communications to the NRC very seriously
11 from that perspective. We fully understand.

12 However, if that particular initiative topic requires some
13 kind of regulatory commitment, and you folks make that clear, then one
14 of the things we could do is encourage licensees to submit something on
15 their docket that says we will do this or portions of this guideline,
16 whatever the case may be.

17 But we need to get that understanding right up front so
18 you're not disappointed at the tail end of the process, and we're
19 surprised because you've got a new expectation you've given us.

20 And we've done them both ways over the years.

21 MR. HERMAN: But it really needs to get defined up front.
22 Let me give you an example, okay?

23 If I took the inspection guidelines and the flaw evaluation
24 guidelines and considered what I had as a commitment to doing something
25 on some schedule, but not to follow what's in the document, okay?

I mean, the documents -- a VIP type of thing for doing flaw
evaluation is very specific stuff. I mean, it's to the point of
brushing something to do a visual exam, versus not brushing it.

It's coming up with uncertainty values on measurements with
agreed upon methods. And those aren't loose, I'm going to go out and

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1 make a commitment in terms of everybody is going to meet Y2K.

2 I mean, it's not the same ball park. They need to get
3 defined in the process of what needs to be defined.

4 And if you can't reach that and if you can't get commitments
5 that an owner is going to follow that program, I don't see where we have
6 any other alternative, other than go out and write regulatory documents.

7 MR. MARION: Okay.

8 MR. STROSNIDER: Just for the record, though, I want to make
9 it clear that the Y2K guideline were a little bit more substantive than
10 that, too.

11 [Laughter.]

12 MR. STROSNIDER: From a Y2K point of view, there was a lot
13 of detail in that guidance.

14 MR. HERMAN: We'll find out.

15 MR. MARION: Let me go back to the point we made earlier
16 about concerns with the SECY paper on this topic, as well as some of the
17 language in the SRM.

18 Fundamentally, if NRC believes regulatory action is
19 appropriate, then pursue regulatory action. We've had this discussion
20 from time to time.

21 That, we think, is NRC's fundamental statutory
22 responsibility. We think an aspect of that that's been very beneficial
23 to both the NRC and the industry is, at the time you get your thoughts
24 together on what the issue is and what your options are, if you want to
25 talk about it, we're available to discuss it with you.

We demonstrated in the past that there are things that we
can do that can help deal with the problem, okay? So that communication
is very important.

From the standpoint of applying voluntary industry
initiatives in the regulatory process or giving credit for voluntary

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1 industry initiatives in the regulatory process, I think there's probably
2 a very limited set of initiatives that fall within that scope.

3 We could decide to undertake an initiative tomorrow on
4 something that utilities may decide to implement under their Part 5
5 program, whether it be under Appendix B or under the maintenance rule or
6 whatever.

7 That puts it within NRC's regulatory scope. So I submit
8 that that's the arena where inspection and enforcement takes place.

9 Inspection and enforcement are going to be two points that
10 are going to be discussed extensively on the front end of the process,
11 unless we have a clear understanding of the problem and the regulatory
12 requirements and expectations.

13 And sometimes we may not have a sufficient understanding on
14 inspection and enforcement until the initiative is developed, the
15 documents are thrashed out and people get a better sense of
16 implementation. I just offer that for your consideration.

17 MR. STROSNIDER: Let me make sure I understand something you
18 said there. If I heard you right it was that if the NRC concludes that
19 there is a need and a basis for taking regulatory action, that we should
20 take regulatory action.

21 All right, that's opposed to pursuing the voluntary
22 initiative. Now, let me -- and to understand that, if we, for example,
23 conclude that here's an issue that warrants a generic letter and we put
24 it through our generic letter process, and whether it's compliant or
25 whether it's cost-beneficial, but we put it through 51.09 and say this
is a legitimate generic letter.

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Would you prefer that we put that generic letter out, or
that we come to the industry and say, before we put this generic letter
out, here's the issue, and do you want to take it on through a voluntary
initiative in lieu of the generic letter?

1 MR. MARION: I would prefer a public meeting to discuss the
2 merits of the issue, to make sure we understand what the NRC concerns
3 are, and you understand what our concerns may be relative to the
4 problem.

5 I think we ought to agree to do that right up front when one
6 of these issues are identified. And if NRC has already done the
7 background work to support a regulatory analysis, then one of the
8 questions we're going to raise -- and we've done this in the past -- is,
9 well, if you can justify it, then why don't you go forward with
10 regulatory action?

11 Fundamentally, that's the expectation of the NRC as a
12 regulatory agency.

13 MR. STROSNIDER: I understand that, but I think I'm asking a
14 little different question, which is, what is your preference? Would you
15 prefer to see the generic letter come out the door, or would you prefer
16 -- if we went all the way to that point, and said, before we issue this
17 generic letter, let's go let the industry take a shot at it on their
18 own?

19 MR. SHERON: We're doing this, Alex, because we've heard so
20 many complaints about the generic letter process. Oh, gee, we don't
21 like you citing 50.54(f) because, you know, it says, you know, you know,
22 tell us what why we shouldn't bend, fold, or spindle or mutilate your
23 license or something. And, gee, you guys never do that, you know?

24 Yes, the reason we do it is because most of the times,
25 licensees pay heed to the generic letter, okay? If a licensee came back
and said, sorry, we're not going to do this, okay? We might bend, fold,
spindle, and mutilate their license with an order, all right?

But the point is that we heard nothing but complaints about
the industry from the utilities, okay? Gee, all we get is these generic
letters from the vice presidents, the plant managers, okay?

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1 They don't put a risk perspective on them; they don't do
2 this, they don't do that, you know, blah, blah, blah, on and on, okay?

3 The objective here is, good, let's engage the industry right
4 up front, okay, and let them come back and tell us what they think,
5 okay, is the right response, within certain bounds, okay?

6 I mean, obviously it's not a blank check, just as you know,
7 it's not a problem, we'll let this thing ride for a five years, okay?

8 That's not the point. We're going to express to you what
9 the concern is, what we think the urgency might be, okay, and the like,
10 all right?

11 But the idea is to let the industry look at the issue and
12 say what do we think is the appropriate response that we can do that
13 makes sense?

14 MR. STROSNIDER: But I think your concern -- and let me say
15 what -- let me state what I think it is and you tell me if I'm right.

16 I think your concern is that if we just talk about voluntary
17 industry initiatives, that you're going to be getting a letter every
18 other week from NRC saying here's another initiative, and that it won't
19 have --

20 If you look at the generic letter process as an example, it
21 has the controls of 51.09 and our committee for review of generic
22 requirements, and there's a process, all right?

23 And correct me if I'm wrong, but I think maybe part of your
24 concern is that if we just talked about voluntary initiatives without
25 going through that process, we're just going to send these saying
address this, address this, address that without some level of
involvement.

MR. VINE: The concern gets to the way you worded the
question.

I think the right answer to your question is that it's not

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1 an either/or; that it's both. That when there is an issue that's
2 appropriate for the industry to take a look at and develop guidelines
3 for, we'll do that, whether there is a regulatory problem or whether
4 it's just an economic issue.

5 The question is, if the issue that you are concerned about
6 has safety significance to the level of the backfit rule, then what I
7 think we would prefer to see is a -- and we'll show you this in the flow
8 chart -- is a parallel process where the industry takes on the job of
9 studying the issue, defining what the appropriate action should be,
10 getting your approval to those as the appropriate approach.

11 And then if you're satisfied with that, and you don't see a
12 need to go in and get into enforcement action, then we're done.

13 But if enforcement action is required, then you have to have
14 a regulatory basis for that, and the regulatory basis ought not to be
15 just an industry guideline document turned into a regulatory
16 requirement.

17 MR. STROSNIDER: We're mixing some things in here in my
18 mind, because --

19 MR. MODEEN: One clarification before we get in there. I
20 think from the discussion of that in the past, is the concern that --
21 and we definitely want the communication up front -- but if we get to
22 the point that the solution, however we have crafted it, really requires
23 either a new regulatory requirement or what we view as a new regulatory
24 position, well, then we believe the NRC process has to be followed to
25 establish that whether it's adequate protection, cost/benefit under 109
or whatever that might be.

That's really the thing where we don't want to --

MR. SHERON: You're forgetting what I said before, okay? If
it's a backfit, if it's a true cost-enhanced backfit, okay, that has no
underling regulatory basis, all right, for example.

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1 Then, first off, I'm not going to come to you and ask you to
2 do it unless I've got in my back pocket, you know, a 51.09 analysis that
3 says I can justify this.

4 It's a pretty high threshold to cross, okay? So, you know,
5 and I can't even remember too many things in the past, okay, where we've
6 come to you and said, we have a cost -- a safety enhancement that's
7 cost-beneficial, okay?

8 Compliance is a different thing, all right? And I'm saying
9 that I look at the vessel head, okay? Again, it was an issue where we
10 could come out with a generic letter and just tell every licensee, tell
11 us what you're going to do to inspect your vessel heads?

12 And I can have 103 plants out there or whatever it is,
13 inspecting vessel heads. Or we can go to the industry and say we've got
14 a concern, and the industry comes back and says, good, we're going to
15 propose to you, a program.

16 Everybody doesn't have to inspect; we're going to sample,
17 we're going to bid them, okay, in terms of some category and the like,
18 and we're going to do representative samples. And it's going to save
19 the industry a hell of a lot of money, all right?

20 And you can do that in other areas where we have a problem.
21 Rather than us going out and beating each individual licensee over the
22 head with a hammer, the industry can come back and propose a program
23 that samples or whatever, all right, and doesn't cost.

24 So there are big cost savings that we see with voluntary
25 industry initiatives.

MR. MODEEN: I was afraid Jack was saying, gee, I think you
just told me I don't want to do anything with VIIs and this type of
thing.

MR. STROSNIDER: I think that what I heard was that if we go
to the point of saying we've got a backfit analysis, whether it be

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1 cost-beneficial or compliance, that basically what you want is a lot of
2 perhaps enhanced communications on how we're going to deal with it, but
3 that you want us to put the letter out.

4 MR. MARION: No, a public meeting to discuss and understand.
5 Basically, if you've done all the legwork, then why would we want to
6 prevent you from carrying forward with your mission.

7 MR. SHERON: We've done the legwork, okay, where we can put
8 out the usual generic letter that says send in gobs of information,
9 justify your existence.

10 MR. MARION: You keep talking about how we don't like
11 generic letters. The thing we don't like, fundamentally is to use them
12 to impose new regulatory positions without a sound basis. If you look
13 at the generic letters and the comments that we've provided in the past,
14 that's where we've been arguing.

15 MR. SHERON: Alex, I will agree to disagree on that point.

16 MR. MARION: But I would suggest, since we brought up
17 generic communications, we've got to come to closure on your new generic
18 communication process. The same issues apply in your use of voluntary
19 initiatives -- understanding and clarity and expectations, and we've got
20 to find a way to get through all this.

21 MR. STROSNIDER: Just not to go too far off, when you talk
22 about generic communications, because you brought that up earlier,
23 you're talking just generic letters, or are you talking about
24 information notices?

25 MR. MARION: Yes.

MR. STROSNIDER: Are you talking about risks? Are you
talking about the whole --

MR. BATEMAN: I'd just like to get one thing on the record
here. My sense is that with these voluntary industry initiatives, one
of the flies in the ointment is this concept of inspection and

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1 enforcement.

2 What I hear is that your position is that if the NRC wants
3 to inspect and enforce something, they need to pursue the regulatory
4 process with whatever it might be.

5 On the other hand, if the NRC is willing to establish a
6 voluntary industry initiative, your expectations are that the NRC would
7 not inspect and enforce, by definition, because it is a voluntary
8 industry initiative, unless it reached some threshold of noncompliance
9 that we'd, I guess, have agree upon what that is.

10 But if it didn't meet that, there would be no NRC inspection
11 and enforcement. And so I think we're kind of at an impasse here in
12 that the Commission has asked us to investigate and report back to them
13 in a Commission paper.

14 At least one aspect is, how do we relate enforcement to
15 voluntary industry initiatives? I think we're at a point where you guys
16 are saying, if you're going to give us a voluntary industry initiative,
17 you're not going -- we don't think it's right that you inspect and
18 enforce.

19 And if you want to inspect and enforce, then go through
20 rulemaking and do it.

21 MR. MARION: That's why I posed that question.

22 MR. BATEMAN: We've got to figure out how we're going to get
23 around this.

24 MR. MARION: If it's a compliance issue, then how can the
25 voluntary initiative be voluntary.

 If it is a compliance issue, then inspection and enforcement
should be clear.

 MR. STROSNIDER: I keep coming back to these things are not
voluntary.

 MR. MARION: Right.

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1 MR. STROSNIDER: They're voluntary initiatives in lieu of
2 the NRC -- of a regulatory action.

3 I mean, we can come tell you to do it, or you can recognize.

4 MR. MARION: I'll tell you right now, leveraging a potential
5 generic letter is counterproductive. I think the greatest successes
6 have been had where we haven't tried to be heavy-handed, and tried to
7 focus on the technical issues as they relate to the current regulatory
8 requirements and get that understanding.

9 So, I would suggest that we proceed.

10 MR. VINE: Let me try to answer those questions again. It's
11 part of the chart here.

12 MR. MARION: It's covered by this, Gary.

13 MR. VINE: Yes, okay.

14 MR. MARION: Isn't it?

15 MR. VINE: Yes, let's go through this, and then I'll make
16 the point. But what's going to be very clear is that it's not an
17 either/or; that we're not saying that if you have a clear case of an
18 issue that clearly meets the backfit criteria, that we aren't going to
19 establish and industry initiative.

20 We're going to do that, and all we're saying is that when it
21 comes time to establish inspection/enforcement procedures, you have to
22 go through a regulatory process in addition to --

23 MR. BATEMAN: You don't want us coming and inspecting and
24 enforcing against what you've done.

25 MR. VINE: Our full-scope guidelines. Maybe we sit down
together with our guidelines and figure out what portion of those are
appropriate for inspection and enforcement.

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That's what this chart basically shows. and I think we've
talked about so many of the points here that I'm not going to belabor
each and every box.

1 But conceptually what it says is that when an issue comes up
2 from whatever source, that one of the first things we do is, we end up
3 in a joint public meeting that really goes over the issue, and not just
4 to understand it technically, but also to understand the implications in
5 terms of safety and cost, what are the likely options that we might
6 consider or you might consider, so you have a big picture of the whole
7 thing, all the way to some likely endpoints in terms of whether or not
8 this is ever going to rise to the threshold of backfit criteria, whether
9 or not we're going to end up with inspection/enforcement at the end of
10 this or not.

11 It's an overall, big-picture look at the issue up front and
12 early.

13 After you have that, then the industry is going to take on a
14 process to decide whether or not it wants to undertake an initiative.

15 If the issue is so straightforward that there's no
16 value-added and the industry is sitting down and working through our
17 consensus process, then -- and a regulatory requirement that just says
18 do X is what everyone agrees needs to be done, then we don't have to do
19 this.

20 But if it's an issue where there's some real value-added,
21 and the industry is grappling with the issue for awhile, building some
22 consensus on what the appropriate actions might be, then we're going to
23 come down this side and do some things.

24 They could come in a variety of different formats. There
25 could be some voluntary guidelines that could rise to more formal levels
of commitment and so forth, depending on the significance of the issue.

 But I want to reiterate something I said earlier: The
significance of the issue is not determined solely by its regulatory
& significance.

 There are very significant issues that NEI has taken on, and

1 they even had 80 percent votes on, that have no regulatory significance.
2 They have to do with economics, they have to do standardization in the
3 industry to get things done consistently.

4 So there are a lot of things that we're going to take on,
5 independent of whether or not the NRC --

6 MR. STROSNIDER: And we have identified, I think it was
7 Definition 4 where you talked about --

8 MR. VINE: Option 4.

9 MR. STROSNIDER: Option 4, industry initiative, in some
10 cases it might require some NRC cooperation in terms of if we need to
11 change, but we recognize that that goes on, and I think we were trying
12 to accommodate that.

13 MR. MODEEN: Our Personnel Access Data System required some
14 things to interact with the staff to make sure we could do it.

15 MR. SHERON: The first thing you need to do on this is that
16 you need to have a dotted line from the issue identified, over to NRC
17 evaluates against adequate protection.

18 We're not fooling around, you know, set up a meeting and
19 have a discussion. If we have a safety issue that comes up that's
20 important, that's adequate protection, we're going to take action right
21 away.

22 MR. MARION: This could be, depending on the issue, could be
23 a brief heads-up at the one of the EDO meetings that we have
24 periodically, and say, oh, by the way, we've come across this and we're
25 going to pursue regulatory action. We've made the case; you'll see it.

MR. SHERON: If it's important, we can get an order out here
in a day.

MR. MARION: We don't you want to schedule a public meeting
in that kind of situation.

MR. HERMAN: I really think we need to pursue this a little

1 further before we get into this, okay?

2 If you took the issue on the CRDM mechanisms, okay -- I'm
3 not talking about the ones on the stub tubes; I'm talking on the
4 mechanism issue.

5 There was a problem found on a plant that had a very large
6 flaw in it, okay?

7 MR. VINE: That's the Prairie Island problem?

8 MR. HERMAN: That's the Prairie Island problem. It didn't
9 meet the criteria in terms of safety margins, okay?

10 Nobody knew how it got there, why it got there, whatever,
11 okay? And it was something that something had to get done pretty quick
12 on that thing.

13 I don't think it was an adequate protection issue, myself.
14 If you looked at it from a risk perspective, it would be important
15 because it could be a small loca, but on the other hand, probability, I
16 don't know.

17 If I get into this process and you say, well, that's pretty
18 clear-cut, go write a generic letter, if I start at that point in time
19 to write the generic letter, I have no choice to write that generic
20 letter any way but say go out and inspect the fleet at the next
21 refueling outage, if I have a justification to make it go that long,
22 okay?

23 What we ended up with was a program that was interactive
24 with the industry. We did some inspections, the industry proposed some
25 other things along the road like at statistical approach to it and the
rest of it.

And I think there was one big benefit to the industry by
doing it the way we did it, versus us issuing a generic letter. And I
& think --

MR. STROSNIDER: I would just make one comment about it. I

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1 think maybe we do have options other than say go inspect everyone. You
2 know, we can write a generic letter that says come back and tell us what
3 corrective action you're going to take with regard to this issue.

4 And maybe the response is an integrated program.

5 But to get to your process here, to get to your chart, I
6 guess actually it does answer one my questions.

7 You really don't like generic letters because that's not on
8 here anywhere.

9 MR. VINE: This is a simplified version.

10 MR. STROSNIDER: But to be serious about it, though, it gets
11 back to the question I asked earlier. Where do you see the generic
12 letter fitting into this?

13 I think that's --

14 MR. VINE: I'll explain that as we go along.

15 I want to make one more point about the open communication
16 at the top. It's not necessary to say that the staff has to have done a
17 thorough backfit analysis before we have that discussion.

18 If there is an issue that comes up that your management
19 believes or the industry's management believes has the potential of
20 being a significant issue, but we're not yet sure what tests it might or
21 might not meet in terms of safety significance, or where it sits in the
22 regulatory scheme of things, but it's likely to be something that we
23 need to air and discuss, we have the meeting.

24 You don't have to have all the answers before you have the
25 open discussion. I think we've sometimes made the mistake of not having
the discussion early enough, and there are some fundamental
misunderstandings about the issue that result in the different paths we
take.

Having this up-front meeting, even without all the answers,
is probably worth having. Then if there are some holes, you identify

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1 them and go and find the answers to them.

2 Anyway, as you come down the left-hand side, what we're
3 suggesting is that the NRC at some point -- and maybe you do this to
4 some degree before you have the public meeting -- but at some point, you
5 have to go through the rigorous process of looking at protection and the
6 51.09 criteria and determine whether or not the particular issue
7 triggers those criteria.

8 If they trigger the criteria, then you come down a path that
9 really splits and does two different things: One is, it talks about
10 rulemaking.

11 The other is that it talks about there being an industrywide
12 initiative. And whether there or not there is, there are certain things
13 we'll do if the industrywide initiative does go forward.

14 You will notice that those are parallel paths.

15 MR. SHERON: That should be a decision point there, okay?
16 Does the industry agree? If the industry doesn't agree, okay, then you
17 get this arrow that goes off here that says generic letter, big hammer,
18 and the rest.

19 MR. VINE: But even if we agree that rulemaking is
20 appropriate because it's a clear compliance issue, that doesn't mean
21 that all these values that you've talked about of the industry taking
22 the issue on in terms of consensus-building, the analysis, basically
23 working the issue to have a proposal we're ready to live with, shouldn't
24 take place anyway.

25 Those values still occur in a case where you ultimately have
to go to rulemaking. So that's why I keep arguing that there's a
parallel path there where we're still going to look at it in terms of
coming up with what we think the best solution to the issue is.

 And then you can embody that in either a rulemaking activity
or a generic communication. The reason generic communications don't

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1 show up on this more simplified list is that there's still, I think,
2 within the industry, some disagreement as to whether or not it's
3 appropriate to include a generic letter in this process, if, in fact,
4 the criteria are triggered.

5 I think a lot of the industry and utility execs believe that
6 if you've triggered these criteria of either adequate protection or
7 51.09, that you have to go to rulemaking, and not just issue a generic
8 letter.

9 MR. SHERON: No, see, that's where we disagree.

10 MR. VINE: That's a fine point.

11 MR. SHERON: Triggering 51.09 is compliance, okay? And
12 that's where we get into this disagreement.

13 We write out generic letters a lot of times, okay, that
14 basically question compliance.

15 MR. VINE: Right.

16 MR. SHERON: And you guys disagree and you claim that's a
17 backfit.

18 MR. VINE: Right.

19 MR. SHERON: And we've had this one out, okay? We interpret
20 this entirely different.

21 MR. VINE: This process will work, whether or not we agree
22 on that particular point or not. That is the whole essence of this.

23 MR. MARION: There will be times when we agree and times
24 when we don't.

25 MR. VINE: Right.

MR. MARION: But we still want to talk about it and try to
work it out.

MR. SHERON: What I'm saying is that there is no arrow going
off saying, disagree-generic letter or staff does their thing; industry
does their thing.

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1 MR. HERMAN: I'd like to see a clarification that says where
2 it says 51.09 criteria, a paren that says compliance exception or
3 justified backfit.

4 MR. MARION: We would like you to take a look at this and
5 give us comments. You can send us a markup or call us. This is just a
6 preliminary conceptualization of the process as we see it. Have a good
7 holiday.

8 MR. SHERON: Thank you.

9 MR. VINE: Before we get to the bottom box on the left-hand
10 side, let me just follow through the criteria-not-triggered line.

11 In many of these cases, there will still be an industry
12 initiative of some kind at a guideline level or whatever.

13 And the commitment in this process, of course, is that the
14 industry is going to keep you informed and show you what we're doing,
15 even if those criteria are not triggered.

16 And that deals with this piece of the case that we were
17 talking about before where if you don't -- if you can't meet the backfit
18 criteria, or you don't really see a need for taking enforcement action,
19 but you really want to be satisfied the industry is doing the right
20 thing, this process takes care of that.

21 It shows -- keeps the NRC fully informed of what we're doing
22 and the progress we're making on dealing with that particular issue.

23 And if you're satisfied with the voluntary nature of that,
24 where there's no enforcement process, but there is industrywide
25 participation, then we're home free on those cases.

MR. BATEMAN: That's where the rub comes.

MR. HERMAN: Let me make a comment. I don't think this is
one iota different than what was proposed in the criteria. I wouldn't
get down -- with the criteria not triggered department, that was the
last item that we had on the list.

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1 The other ones would all trigger the criteria.

2 MR. VINE: Okay, let's do this: You're questioning the --
3 I'll answer the question.

4 If you look at SECY 90-63, again, there are two places --
5 and this gets back to my comment at the beginning -- where what the
6 letter -- what the SECY says is that if an issue is identified, there
7 will be no regulatory -- no backfit analysis required.

8 The NRC does no backfit analysis if the industry goes ahead
9 and does what you want them to do.

10 MR. HERMAN: I think what you heard is that --

11 MR. VINE: Well, I heard from Brian something entirely
12 different; that you will do that analysis and you will tell us what you
13 found, which is not what the SECY says.

14 MR. STROSNIDER: This is what I asked earlier. If your
15 concern was that you expected that sort of analysis before any issue is
16 determined to be an industry initiative or requested to be an industry
17 initiative --

18 MR. VINE: It doesn't have to be determined at the very
19 beginning. It only has to be determined before we get into enforcement
20 space.

21 The industry is going to move ahead and deal with the issue
22 technically.

23 MR. HERMAN: I think what Brian told you earlier is that the
24 process for getting something in to being an industry initiative, would
25 be running it up the chain, at least through the Office level.

 Prior to doing that, it's got to have at least some
expectation, if not a full-blown analysis, that either the thing is a
compliance issue or it is something that's an adequate protection issue,
& or it's a safety enhancement.

 I don't think it would get to you unless people had at least

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1 made a preliminary determination.

2 MR. STROSNIDER: But I think what they're saying is that
3 that is not consistent with what the SECY says.

4 MR. VINE: The SECY doesn't say that.

5 MR. STROSNIDER: Point understood.

6 MR. HERMAN: We put it in the process.

7 MR. VINE: When we sat down to decide how to deal with the
8 issue, we looked at an NRC flow chart, and that's how we got the idea of
9 doing this flow chart.

10 We sat down and checked all the references, and one of the
11 references you cite on background is SECY 97-303. And in there, there's
12 a flow chart on how you deal with voluntary industry initiatives.

13 And it starts at the top, issue identified; industry comes
14 in -- it's very simplified. Staff determines whether it's acceptable or
15 not, whatever the industry has proposed.

16 And it moves down to what it calls NRC followup activities.
17 And SECY 97-303 defines followup activities as tracking, inspection, and
18 enforcement.

19 And this SECY identifies followup activities with those same
20 three words. So, that's a process where the 51.09 considerations never
21 even enter the picture.

22 It was issue identified, industry volunteers to do
23 something, go to enforcement. And that's why we decided to take --

24 MR. HERMAN: I think you have to take into account, the very
25 first SECY, 97-033, probably was put together by RES, whose probably not
into licensing every day.

And some of the things may have got put in the second paper.
I think the intent of what will go in the process will be certainly the
& screening you asked for in terms of how it fits in the 109 thing.

I thought that was clear enough in the paper. I guess it

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1 wasn't.

2 MR. STROSNIDER: I think there's an interesting point here,
3 because the concern that I keep hearing you express is with regard to
4 enforcement. You know, that 51.09 type analysis or however you want to
5 characterize it, needs to be done before the NRC goes off and inspects
6 and enforces against any this stuff.

7 And I agree with that, all right, that, you know -- I'm a
8 little curious as to why that's perceived as a big problem. I wouldn't
9 expect to go out and be able to pick up a whole lot of violations that
10 read contrary to this voluntary initiative.

11 You know, they're usually cited against something other than
12 that. But to get to the bigger picture in terms of this process, what
13 I'm curious about is if you don't think -- we need to think about the
14 question of at what point does that sort of 51.09 analysis happen?

15 To me, enforcement is way down in this process. That's
16 implementation.

17 What I'm questioning is, at what point up earlier in the
18 process does it need to happen?

19 Some of this preliminary discussion you're talking about, I
20 think is to get a handle on some inputs that could be used in terms of
21 cost/benefit, in terms of compliance, in terms of those things to make
22 this determination.

23 And that determination might well -- you know, some for of,
24 is this -- and we talked in the paper about we need to define an
25 initiative that we're proposing, does it fall into the bin of
compliance? Does it fall into the bin of cost-beneficial?

Is there an analysis that goes with that before this thing
ever becomes a legitimate issue to be addressed?

Or if it doesn't pass some sort of evaluation, does it just
-- do you throw it out, or does it perhaps fall into that Category 4,

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1 which is, yes, there are some good things here to do that would, you
2 know, enhance good practice, and that the industry might want to take it
3 on on their own?

4 So, I'm not arguing that this sort of evaluation needs to be
5 done; in fact, what I'm questioning is, does it need to be done sooner?

6 MR. BATEMAN: Right, but the point is this says while the
7 industry is evaluating the technical aspects of the issue, we're
8 evaluating the regulatory aspects of the issue.

9 MR. MARION: I do think the two things work in parallel, and
10 we know when the technical resolution is come up with, we already know
11 at that point, is this a legitimate regulatory issue, or is it just
12 effectively an economic issue?

13 MR. BATEMAN: Yes, but the industry may not want to go off
14 and spend any resources developing a technical resolution to this
15 problem if it's not a legitimate regulatory issue.

16 MR. MARION: In which case you've got to do that earlier.

17 MR. BATEMAN: My sense is the Commission wants to have a
18 regulatory hook in voluntary industry initiatives. We've got to get by
19 that some way.

20 Maybe we recommend to them that having an enforcement hook
21 in voluntary industry initiatives isn't mandatory.

22 MR. MODEEN: I guess I come back to -- you should have that
23 hook if the backfit criteria or adequate protection are triggered.

24 MR. BATEMAN: I said this earlier. If it fits the existing
25 process. You do not want to modify -- we don't want to invent a new
enforcement and inspection process. We don't want to modify the
existing one.

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What happens is that in the case of the BWR VIP -- we come
back to that example again -- the safety evaluations that we're writing
say this is an acceptable way to satisfy Appendix B, all right? And you

1 can go through the criteria and say, yes, you found cracking and you
2 need to take corrective action.

3 All right, what the staff is saying is that we've looked at
4 this and this is an acceptable corrective action. That doesn't say the
5 licensee can't do something else.

6 But if they choose to do something else, we may come out and
7 inspect it, and we may ask the question, how does this satisfy various
8 criteria?

9 All right, we've tried to keep it in the context of a
10 well-defined, know process, all right, and that's just one example.

11 When you come through this thing, when you go through an
12 analysis, a 51.09 analysis, you ought to be able to fit to here's the
13 regulatory hook, based on the 51.09 analysis. And that's what you
14 inspect and enforce against.

15 MR. MARION: What about NEI 97.06? How does that fit here?
16 How does that fit here?

17 MR. BATEMAN: You go back and look at the SECY papers we've
18 written, we've laid out compliance arguments in terms of meeting the
19 licensing basis for the factors of safety and for leakage during
20 accident conditions, et cetera.

21 The one twist that came in there that we had to acknowledge
22 was that our own licensees' tech specs didn't really address these
23 issues effectively.

24 So the NRC acknowledge that the tech specs we had approved
25 really didn't get there all the way either.

MR. MARION: So the sooner the NRC approves the tech specs
proposal, then the real hook will be in the implementation of those tech
specs.

The question was asked by you folks in one of our more
recent meetings, what are the enforcement aspects of this? Do you guys

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1 think you're going to be able to enforce against these guidelines,
2 because if you think so, we're going to back out of this because we
3 didn't write our guidelines from the point of view of enforceability.

4 MR. MODEEN: Yes, and we think we've worked through that,
5 and as I mentioned, as we were updating the lower tier guidelines, we're
6 flagging the pieces that are specifically relevant to the overall
7 initiative, plus we've addressed it in the --

8 I mean, one reason we came to the conclusion, although two
9 years ago we really didn't want to modify tech specs, said, you know,
10 they're so inconsistent with current practices and our formal position,
11 we really need to bring it up to date.

12 If I could just point one other thing, though, you asked how
13 do steam generators fit, and if you remember back five or six years ago,
14 one of the issues we were looking at is, well, what about thermal
15 induced steam generator tube rupture?

16 And there, you're into, gee, that's a new staff position,
17 obviously, and can you make the case? No, couldn't make it generically;
18 yes, things come up like Calloway's sleeve and electrosleeves or
19 something to deal with that case-by-case, but here we also went through
20 the process and concluded that, no, rulemaking wasn't required because
21 there really wasn't the basis to establish a new position, and our
22 initiative doesn't address it.

23 That's a fallout that kind of gets thrown by the side, and
24 we didn't know that in 1993. We had to take awhile.

25 MR. HERMAN: Obviously things like steam generators or
paristeam generators clearly are covered under 50.55(a). There's a code
case out there for doing the sleeves. The margins that are there are
there as part of the original designs.

MR. MODEEN: I'm not trying to argue.

MR. STROSNIDER: We've been through all that in the details

1 of working this thing out. But, again, when -- I think one of the
2 reasons that this appears to be on a success path is that we tried to
3 fit all this within an existing framework.

4 We agreed that the tech specs needed to be improved, all
5 right? And that's a generous thing. The NRC staff told the Commission
6 that the tech specs really didn't do what they were supposed to do. But
7 we agreed they needed to be approved, so there are tech spec amendments
8 that are going to come in.

9 In terms of the guidelines, we agreed that if we have the
10 technical requirements manual that says you need to have a program, then
11 you can go off and develop that program and incorporate those guidelines
12 in plant procedures or however the plant sees fit, like they do with any
13 other program, all right?

14 But then when you start looking at it in terms of
15 enforcement, all right, we're looking in terms of tech specs?

16 Any other enforcement that would happen with a good program
17 would probably be Appendix B, and those are the same issues that we deal
18 with in any other maintenance program or anything else that's going on.
19 Industry guidelines are used all the time in those.

20 So we tried to put it into the same framework. All right,
21 again, not inventing something new that, here's some new enforcement
22 approach where, you know, we're going to try to hold people to, you
23 know, an industry guideline document. We, in fact, tried to avoid that
24 completely.

25 MR. BATEMAN: But, Jack, I'm not clear in my own mind -- and
you guys asked the question -- if I'm an inspector, because I was an
inspector for ten years before I got into this end of the business, and
I'm out walking around your site, and I'm looking at what you're doing
with your steam generators.

And I see you're not following a guideline, what am I as an

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1 inspector going to do?

2 MR. MODEEN: I don't know exactly what you'd be looking at.

3 MR. BATEMAN: Well, that's probably not the way we want to
4 go in the new oversight process. I think one of the action items we
5 still have is relative to the more performance-based, risk-informed
6 inspection processes. We agreed we need to now look at steam
7 generators.

8 And where he starts is with the performance criteria and
9 three key areas. And then he drops.

10 MR. MODEEN: Say there was some reason why I got into loca,
11 and failed to meet 3-delta-P two times in a row or whatever.

12 So I go out and start looking to see what you guys are
13 doing, and I see you're not following some of your guidelines. Are we
14 saying here, Jack, that we've agreed that the inspector can't enforce
15 against this kind of an issue because it's a voluntary industry
16 initiative? I think that's what you guys want.

17 MR. VINE: If you go to the bottom line of this chart,
18 you'll see where I think the industry has to make some adjustments, as
19 well as the NRC, to make this really work the way it should.

20 And one of the adjustments we have to make is, we have to be
21 a bit more formal as we develop guidelines to decide what we think is
22 appropriate for inspection and enforcement.

23 Now, part of that is going to come out naturally in the new
24 oversight process where you've got a risk-informed, performance-based
25 approach to decide what goes in the baseline.

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But part of it's going to 959 be our job, too. And right
now, we've put a lot of stuff in these guidelines that are simply good
practices that have no significance in terms of being critical to
compliance with the regulations.

They're simply there because it's a good place to put them

1 along with everything else to help these guys do the best job they can.
2 And we don't want to discourage that.

3 So the only way out of this box is to do what we show at the
4 bottom of this chart. As we develop these comprehensive, full-scope
5 initiatives and guideline documents, that we take the time to decide
6 what I worded here as NRC and industry joint determine the minimum
7 subset of specific actions and/or performance-based standards that
8 address the adequate protection or triggered backfit criteria.

9 What is this -- this is kind of a necessary versus
10 sufficient question. What are the necessary elements of that
11 initiative, that broader initiative that meet this?

12 And those are the pieces of that guideline document that
13 have to be committed to the NRC, either in whatever process we use,
14 whether it goes on individual dockets or whatever.

15 The broader scope is either going to remain voluntary or in
16 some cases, as you follow through this chart -- and this is an important
17 distinction because the more complicated flow chart really describes how
18 the industry goes through its process.

19 And there are a lot of factors that determine whether or not
20 the industry makes a commitment to a guideline, independent of the NRC
21 side, just within our own process.

22 And it's very rare that the industry makes a formal
23 commitment to itself, but sometimes it does, to follow a guideline.
24 There are a couple of cases: One that had no regulatory was access
25 authorization; one that does have regulatory significance is the steam
generator issue where the commitment was made before we got through a
final determination of what really is appropriate in the regulatory
arena.

But the industry will have its own bases for deciding
whether or not to make a formal commitment. And sometimes through the

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1 process, there will be a formal commitment to the full scope of those
2 guidelines, but that full scope commitment is made to the industry by
3 the industry to itself, not to the NRC.

4 What the commitment is to the NRC is, again, to that
5 carefully defined scope that's appropriate for the triggered criteria.

6 MR. STROSNIDER: I think what you're saying makes perfect
7 sense. I guess the -- it probably should be a separate discussion, but
8 I'm also a little curious as to what drives the concern.

9 Like I say, I don't think we're out siding against
10 commitments. If anything, you know, deviation from commitments, and I
11 don't think we're doing much of that anymore; we've got a new commitment
12 control process.

13 MR. MODEEN: I came here when NUMARC was -- much like Alex
14 and from some of the post-
15 TMI, and we were still kind of reeling from the imposition through the
16 communication process of what were either new positions or seemed like
17 requirements but really weren't et cetera.

18 You know, all that has changed dramatically during the last
19 ten or 11 years. I think, again, in some of the things Gary was
20 pointing out in the SECY document, there was this concern that, gee, if
21 we're not careful, we're going to lose the discipline in that process,
22 that either one established a new position or established a new
23 requirement.

24 Brian wants to keep focusing on just compliance issues, but
25 we see others, you know, since we don't always agree on compliance
exception characterizations and things that really do look like new
requirements and positions.

MR. STROSNIDER: I agree that we do need to be clear in the
guidelines that we develop here that these issues of what's -- how this
-- how a particular initiative is going to be treated within inspection

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1 and enforcement space needs to be clearly identified.

2 And we had that as one or two of the topics that need to be
3 discussed. If nothing else, the guidelines need to say there needs to
4 be -- it needs to be written down someplace that this is the part of
5 this that is necessary to comply with a certain regulation, and the rest
6 of this is good practice or whatever.

7 So that needs to be captured, and we agree with that.

8 MR. VINE: Part of the issue, in answer to your question
9 about what the concern is, you have to kind of take a step away from the
10 arena that you guys deal with and that NEI deals with all the time where
11 there is a sophisticated understanding of both the technical and the
12 licensing side of all these issues.

13 There are lots of industry groups out there, special issue
14 groups. There are owners groups, there are all the EPRI committees.

15 We don't have that sophistication on the licensee side. All
16 these groups are really focused on one thing only, and that's doing the
17 right thing.

18 And they're vulnerable if you set up a process that is --
19 that could be abused, to sweeping a lot of stuff like good practices,
20 into enforcement.

21 And even though that won't happen when you're developing an
22 NEI guideline, I think the process you set up has to be rigorous enough
23 so we can go to the utility execs and say this is good enough so that
24 one of these groups that just wants to do the right thing isn't going to
25 get trouble on the licensing side.

We've got a rigorous enough process where we're watching out
for that -- the commitment and inspection and enforcement side of this
through the NRC and NEI interactions.

MR. HERMAN: I think that you've got to recognize that the
Commission -- the industry is a bunch of big boys. And when they have

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1 significant issues, I can't believe that they are going to be that naive
2 as to not have management oversight of what they're doing.

3 To have a thought that a technical group is going to go out
4 there and do their thing, and cut a deal with the NRC on this is what
5 we're going to do to address an issue, without having oversight of
6 relevant utility management, to me, is totally naive.

7 And it's absolutely --

8 MR. STROSNIDER: I don't think --

9 MR. VINE: But why not have a rigorous process.

10 MR. STROSNIDER: I agree with what you said. I mean, take
11 yes for an answer. This needs to be well defined in enforcement,
12 inspection, compliance space.

13 The protocols, the guidelines, need to say how that's going
14 to happen.

15 MR. BATEMAN: In terms of doing that generically, it might
16 be, to the extent -- in these up-front get-together's on each one of our
17 individual issues, that we make the decisions at that point, what's
18 going to be --

19 MR. STROSNIDER: That's right. What we're trying to do here
20 is put together a process. And as we just discussed, for different
21 initiatives, all right, they're going to fall into different bins in
22 terms of what's driving them, and what the compliance is, et cetera.

23 And from a process point of view, all right, what we need to
24 do is make sure we've got a step in here where we all agree that that's
25 going to be defined and how it's going to be defined.

Is it going to be written down? Is it going to be sent to
NEI? And does NEI distribute it to the industry? And the industry
looks at it and says, yes, we understand it, we agree with it, and it
& comes back, and everybody has a mutual understanding.

So, because -- and we will try as hard as we can to make

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1 this thing general so that it will capture all the different situations
2 that could come up.

3 Actually, I'd say take yes for an answer. I think I
4 understand the issue and that we need to make sure that we address those
5 issues of inspection and enforcement; that there's a process here for
6 make sure that we characterize it.

7 MR. BATEMAN: Jack, am I clear now that any -- that in terms
8 of voluntary industry initiatives, we're going to need to address
9 inspection and enforcement? We're only talking about those initiatives
10 that relate to adequate protection, 51.09.

11 MR. VINE: That's the basic foundation for that. Or are we
12 really talking about things that maybe don't meet that threshold, but
13 yet we still -- like, I don't know if BWRVIP would meet that threshold.

14 MR. STROSNIDER: I think that's part of the concern that's
15 raised here.

16 MR. VINE: Part of it does; part of it doesn't.

17 MR. BATEMAN: I'm not sure that we've come to that agreement
18 in this meeting that we've had, that that's going to be the basic
19 foundation. We're going to be limited to considering inspection and
20 enforcement only for those issues, or are we really still back where we
21 were before where for some yes, for others, maybe?

22 MR. STROSNIDER: We have to work out and come back to the
23 flow chart idea here, which is always, I think, a good idea. Start with
24 what we had in the SECY.

25 We identified four different definitions, all right. And so
we said here's four different areas in which could bin voluntary
initiatives.

 Now, if you started with those four, at some point, all
& right, then you come down with each one of those. It's a more detailed
OCI chart.

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1 But one of those was, here's industry initiatives that
2 enhance good practice that have no regulatory compliance or backfit at
3 all. And when you follow that down and you get to the box that says how
4 do I treat this in inspection and enforcement space, you basically say,
5 this thing had nothing to do with complying with the regulations.

6 It doesn't need to be inspected; it doesn't need -- it's not
7 going to be enforced against.

8 Now, there's another one over here that says if we
9 identified a compliance issue, and when you come down on that one and
10 you get to the box on how do you inspect and enforce, the process is,
11 you need to identify very clearly what regulation or requirement it is
12 that you have to comply with, all right, and how does that fit into the
13 oversight process?

14 MR. BATEMAN: You can say Appendix B.

15 MR. STROSNIDER: It may be Appendix B in some cases --

16 MR. BATEMAN: My understanding is that that isn't the
17 concept that they're presenting here. Well, one is to be able to say
18 that they didn't follow their procedure, but therefore it's in Appendix
19 B, but it doesn't meet the proof test here of being an adequate
20 protection, or 51.09.

21 MR. HERMAN: It's not just 51.09; it's a compliance
22 exception to 51.09.

23 MR. STROSNIDER: Let me ask the industry the question then.
24 What Bill is suggesting is that there is no enforcement against Appendix
25 B. I think what I heard is --

 MR. BATEMAN: I don't know.

 MR. STROSNIDER: I think what I heard is that you need to
some clear understanding of what you're doing that's satisfying Appendix
& B, versus what you're doing as what I'll characterize as good practice.

 And do we have agreement, I think, with the industry in BWR

1 VIP space. We had discussed this at public meetings with regard to why
2 are we writing these safety evaluations? What's the purpose of these?

3 And we talked around that and we concluded that, well, this
4 is really something that we're saying is an acceptable way to satisfy
5 Appendix B.

6 Now, if you push hard on those reports, there is some stuff
7 in there which I'm sure if we came out and cited you against Appendix B,
8 you'd say, wait a minute.

9 MR. VINE: Not in the spirit of the --

10 MR. STROSNIDER: And Appendix B, unfortunately, always has
11 those shades of gray in it and we're not going to fix that here.

12 But in general we said this is an initiative which has
13 elements in it that satisfy Appendix B, all right? It's not 50.55(a);
14 it's not some GDC. It's not this; it's not that, it's Appendix B.

15 MR. MARION: The key point is that you had a discussion with
16 industry to reach that understanding and agreement.

17 MR. STROSNIDER: Yes.

18 MR. MODEEN: They may not be hard to do, Alex, up front,
19 before you ever get down --

20 MR. STROSNIDER: In some issues it's going to be easier than
21 others.

22 MR. MODEEN: It's the same thing in doing a regulatory
23 analysis. You might have an inkling of it, but you may not have it till
24 you --

25 MR. STROSNIDER: It will be hard to do, but we need to force
ourselves to do it up front.

MR. VINE: Or at least have a tentative answer to the
question.

MR. STROSNIDER: We didn't start dealing with this issue as
hard as we should have on the VIP initiative until we were already down

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1 the road writing some of these safety evaluations.

2 Senior management said, why are we writing the safety
3 evaluations? Why are spending all these resources looking at this?
4 What's the point here? What's the regulatory nexus?

5 And that's when we started thinking about it and we had the
6 discussions and we came to a mutual understanding.

7 MR. HERMAN: I'll go back to where I think we are in terms
8 of enforcement, again. And I agree with you that you need to do it up
9 front, et cetera.

10 That is clearly compliance, okay? It's things that are
11 within the design basis, and typical compliance type of approach to
12 things.

13 This is things like severe accidents that if you'd ask me,
14 the only basis for enforcement the NRC has is to write an order if we're
15 dissatisfied with what's going on at the site.

16 There's not citing against Appendix B for this kind of a
17 thing.

18 This is the other stuff, and this is adequate protection
19 that is outside of the scope of the thing.

20 And I don't think there's a problem with the definitions.

21 MR. MARION: We talked earlier about the terminology in
22 terms of the substitute for regulatory action. We also talked about
23 generic letters.

24 And whether we want a letter or not, we've got to resolve
25 the generic communication process. Clearly you're thinking of generic
letters as one way of communicating the agreements and understandings
relative to these voluntary industry initiatives.

MR. VINE: Can I talk to some points on Bob's slide? Let me
& take the bottom one first about adequate protection.

The point on adequate protection is worded differently in

1 different parts of SECY 90-63. On statement that is correct is that --

2 [Laughter.]

3 MR. VINE: I said that wrong. I'm sorry. Where in the SECY
4 it says that if there is an adequate protection issue, the NRC must
5 address it. That's a true statement.

6 There is another place in here that says if there's an
7 adequate protection issue here, it cannot be dealt with the voluntary
8 industry initiative.

9 That's not true because if there is an adequate protection
10 issue, there's an interest on the part of both the NRC and the industry
11 in fixing it, and the industry will likely propose some things.

12 But you can accept or reject those. You have to take
13 regulatory action, but the industry is not prohibited from proposing
14 some solutions.

15 MR. HERMAN: I think you're misinterpreting what was meant.
16 I think what was meant is the definition that if things are a regulatory
17 -- are an adequate protection issue, it's our responsibility.

18 MR. VINE: Right.

19 MR. HERMAN: The way for addressing that issue might be
20 something like a complementary guide from the industry.

21 MR. VINE: On the first bullet, within the design basis, I'd
22 again get back to the statement of consideration of the backfit rule.

23 It's not just that if it's within the design basis, I'd
24 again get back to the statement of consideration of the backfit rule.

25 It's not just if it's within the design basis that it's
automatically a compliance issue. If this is just a new interpretation
of what the design basis requires, that does not qualify as a compliance
issue. It has to be a new finding of fact as opposed to a new
interpretation.

MR. HERMAN: That's in the eye of beholder, that one.

1 MR. VINE: I understand. But it's an important distinction.

2 MR. STROSNIDER: I just want to make a point, and you may
3 have some more to say here, Gary, but I just want to make the point that
4 we would encourage comments on these definitions, all right?

5 We'd encourage comments on these definitions in the context
6 of how they fit in the rest of the process, okay? I think the SECY
7 paper, some of the earlier definitions tried to follow the logic of
8 51.09 much more explicitly, all right?

9 Now, I said earlier we need to make sure we're making use of
10 existing processes, et cetera, bringing design basis into this when
11 we're off having all these discussions about what the design basis is.

12 You know, you may have some comments on that.

13 MR. VINE: Right.

14 MR. STROSNIDER: Whether you think that's good or bad, or
15 that you think paralleling 51.09 makes more sense.

16 But I think, in general, the point here is that we do know
17 there are some different categories of voluntary initiatives, and we
18 need to come to some agreements on how we define what they are and the
19 process by which we deal with each of those will be somewhat dictated by
20 what the nature of the issue is.

21 MR. VINE: And the points on the second and third bullets, I
22 guess, are pretty obvious. The second bullet point would be that
23 justifiable as a safety enhancement is, of course, as defined by the
24 51.09 process.

25 And the third bullet is certainly the industry will take on
these issues because of the savings involved. But those initiatives
don't meet the 109 criteria, and therefore we're not into any kind of
inspection/enforcement space on the third bullet.

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MR. HERMAN: That's on another slide somewhere.

MR. VINE: I guess another point on that last area is, in

1 the SECY you have the four bins that you create based on the definitions
2 in 51.09.

3 There is one bin that's kind of missing, and it's a very
4 important bin. The first three bins all have to do with either adequate
5 protection or issues that clearly fall within the 51.09 criteria.

6 And the fourth bin is of no regulatory interest.

7 There is this middle area that we really need to deal with,
8 and that is issues that are of real concern to the staff, but don't meet
9 the criteria.

10 That's what this whole center piece of this flow chart is
11 all about, items that don't meet the criteria, but you still have
12 concerns about them or some members of the staff have concerns about
13 them.

14 And this whole process is to show you what the industry is
15 doing with those on a voluntary basis. After all, VII -- we forget the
16 word, voluntary, in here.

17 The crux of this ought to be what the industry is doing on a
18 voluntary basis to deal with those issues, and we'll keep you informed.
19 But there is no way that inspection/enforcement come into play in those
20 areas, unless you go through the more rigorous process at the bottom.

21 MR. BATEMAN: Well, I thought we had just agreed that in
22 those multitude of areas where the staff has concern, that there's -- as
23 you just characterized, but that we may not want to totally give up all
24 of our enforcement rights, and that we would agree in up-front
25 discussions for each one of these voluntary initiatives, where those
areas would be.

My sense is -- and maybe we're off base here. Maybe the NRC
is off base, but my sense was, we're going to have more than a few
voluntary industry initiatives.

I seem to get the sense you think there's only going to be a

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1 very few voluntary initiatives.

2 MR. VINE: There are lots of them that fall below the
3 threshold of formal SIAC commitments. There are things that are going
4 on all the time in the owners groups at EPRI that are developing
5 guidelines where we're taking staff input.

6 But they don't rise to the level of meeting the 51.09
7 criteria.

8 MR. HERMAN: But I think the difference is that if we have
9 this process up front, okay, these may not get formalized in this
10 protocol in that process. Either they're kind of in the bottom or there
11 is something that will make it on the top for the 1.09 criteria, and
12 they're just outside of the more formal approach.

13 MR. MARION: It seems to me there are fundamental concepts.
14 I'm really getting sensitive to continually bring this up.

15 There are comments on the generic communication process.
16 What we tried to do is get down to basics.

17 What is your expectation with these various products? And
18 we're here talking about basics again.

19 What is the basis for your expectation of inspecting and
20 enforcing voluntary industry initiatives? I submit that there are two
21 fundamental bases for your expectation:

22 One is the 51.09 criteria, very disciplined, rigorous
23 process; the other is, if a voluntary industry initiative is implemented
24 by a licensee within your 10 CFR Part 50 regulatory framework.

25 It could be like the VIP where they implemented it under
Appendix B. That's fair game for inspection and enforcement.

And those are the two fundamental concepts, the way we see
them. And I would ask you to consider that. Anything else outside of
those two, I'd have difficulty rationalizing in my mind.

Is there some other consideration?

1 MR. STROSNIDER: I agree with what you say, okay. To give a
2 bigger picture of what our considerations in establishing what this
3 framework is, all right, I'll come back, and I think there was some
4 discussion earlier in the meeting: maintaining safety and 51.09.

5 MR. MARION: Absolutely.

6 MR. STROSNIDER: Reducing burden. Part of what we're trying
7 to accomplishing by doing this, we think, is to reduce burden on the
8 industry, all right?

9 And I can go through the list: Public confidence, you know,
10 we need and Bob was talking earlier about we need to have some steps in
11 here about how are we going to allow other stakeholders to have input
12 and to see what's -- keep them informed and see what's going on.

13 Efficiency and effectiveness, also when we go through this
14 process, we want to make sure that we've got the minimum number of boxes
15 so that it's efficient and that we're working on the right thing.

16 So, from the big picture, we come back to our four outcome
17 goals. But what you said, Alex, I don't think anybody would disagree
18 with in terms of implementation; that they're going to fall out in those
19 area.

20 MR. HERMAN: I think that second one that's up there falls
21 in that other category. It's really not --

22 MR. MARION: Maybe we need to get back to articulating these
23 fundamental concepts as part of the process. I can tell you, people are
24 reacting to terms, substitute for regulatory action. People are
25 reacting to --

MR. HERMAN: How about some --

MR. MARION: It's outside the design basis, well, if it's
outside the design basis, then what's the issue?

MR. HERMAN: How about providing some alternate wording?

MR. STROSNIDER: We're interested in feedback. There is a

1 set of definitions in the SECY. This was some more recent thinking that
2 reflects some 51.09. It's got some other ideas in it.

3 MR. HERMAN: This is only one slide out of the process.

4 MR. STROSNIDER: I'm just talking about the definitions.

5 MR. MARION: We'll take that as an action and provide you
6 with some comments.

7 MR. CARPENTER: What is your definition of what is a
8 voluntary industry initiative? This is what we thought it was. What
9 does the industry think it is?

10 MR. HERMAN: If you want to provide a revised definition for
11 these things, we're perfectly amenable to doing it. We might probably
12 revise them anyway, based on today's discussions.

13 But I sure would like to have it writing.

14 MR. MODEEN: Yes, that's a great idea, and we've got some
15 things. But I think just in light of that, I'm not going to give you
16 the definition, but again I keep -- I think Tim raised an interesting
17 thing again.

18 When you transition from voluntary to otherwise, then my
19 sense is most of the reasons, issue groups and NEI and EPRI, when we
20 have the interactions with the staff, it's to try to figure out what's
21 an acceptable way to resolve the issue, whatever the issue is or the
22 concern?

23 And we get to the end of that process and we figure out
24 where does it fit in regulatory space? Well, oftentimes, you kind of
25 lose that voluntary. The industry initiative was to help go figure out
what the right solution was.

Well, then maybe we get to the endpoint and we say, gee,
it's not longer a VII. I mean, when I get this license change package

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MR. MARION: It's Roman Numeral VII.

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1 MR. MODEEN: Yes, Roman Numeral VII. It's no longer a VII
2 from that piece.

3 MR. STROSNIDER: I mean, I keep coming back to -- and I'm
4 going to make two comments on that.

5 All right, we keep dropping off the part, in lieu of
6 regulatory action. Where we talk about substitute there, that's what
7 we're talking about doing.

8 That was our concept, and we're open to discussion and
9 comments on that. We clearly would have to explain that to our other
10 stakeholders, that in lieu of our putting out a generic letter, as an
11 example, we're going to rely on this industry initiative, all right?

12 But the other thing is, so, when you look at that and you
13 say, well is that really voluntary, well, it's -- the only thing is that
14 it's voluntary that you're going to do that as opposed to have us send
15 out some generic communication or whatever form it takes.

16 And if we have something which meets one of the 51.09
17 backfit criteria, all right, then clearly, you know, we could take that
18 action and it's not voluntary. You've got to bring yourself back into
19 compliance or you've got to do the cost-beneficial enhancement or
20 whatever.

21 But the one category that in the SECY paper definition at
22 least, or in here, things that are just outside NRC interest, purview,
23 those are voluntary. You can go do it if you want; we don't care, fine.

24 We may have to support you on some of those things. It may
25 require a change in the regulations, some change in the code or
whatever.

MR. HERMAN: Would you think that that first definition
could be improved by adding for issues within the design basis and
triggering the 10 CFR 51.09 criteria? We would have no problem adding
that.

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1 MR. VINE: The problem is that you're talking at this from
2 the NRC's perspective. The industry has a lot of initiatives that
3 aren't linked to a regulatory requirement.

4 And you almost have to define voluntary industry initiatives
5 in some groupings or categories. There this type and there's this type
6 and there's this type.

7 MR. BATEMAN: It's my sense from this meeting that your
8 position is that a voluntary industry initiative is not something that
9 the NRC could otherwise regulate. You don't want a voluntary industry
10 initiative to be something that's a substitute for a regulatory action.
11 You said that earlier.

12 If there is a regulatory action that we feel we need, we
13 ought to go do it through rulemaking or whatever, not turn it over to
14 you guys instead of doing that.

15 MR. MARION: We still may do something, but you then embody
16 that.

17 MR. VINE: We still may do something, but you still expect
18 us to do something in a regulatory perspective -- in the mode of
19 thinking that, hey, we could do something from the regulatory view
20 position, but we're not going to because you guys are volunteering to do
21 something in lieu of that.

22 I think we're still disconnected there.

23 MR. HERMAN: We've turned it into the cup is half full or
24 the cup is half empty.

25 MR. MODEEN: If I could, I guess it's part of this in lieu
of that's maybe hanging things up. I ultimately -- everything we've
done that would initiate a formal industry position, ultimately there is
some regulatory action and that might be that you accept the solution
that the industry identified.

And so I think we've very much onboard on a lot of these

1 things, early and often, and let's not just get the generic letter
2 thrown out there, but let's work on the issue and figure out the
3 process.

4 Oftentimes it's easy to come to the solution; other times
5 it's very difficult, but we eventually come to some solution. And then
6 there really is a regulatory action.

7 I may not be anything more than under the new Regulatory
8 Information Summary Letter, acknowledging that here was the issue, here
9 was the concern, there is the outcome, this is what's agreed to be done
10 or something like that.

11 That's opposed to, gee, you had to do a GAL asking everybody
12 for action when we're not trying to get right to that piece. But it
13 just seems like ultimately the staff does need to take some sort of
14 action.

15 MR. CARPENTER: The bottom line question here is, which
16 would you rather have take place? We, the staff, come out and tell you
17 what it is we think you need to do, or you, the industry, come back to
18 the staff and say here is the issue that you have identified or that
19 we've identified, and these are the things that we want to do? And we,
20 the staff, say, yes, that's good enough.

21 MR. HERMAN: But they're saying to back off on enforcement
22 effects.

23 MR. VINE: We're saying it's the latter with one caveat.
24 And the caveat is if it rises to the level of 1.09, you guys need to
25 take additional action over and above our voluntary actions to codify
what is necessary for inspection and enforcement.

MR. STROSNIDER: There are a couple of issues bouncing
around here. And I think one is that the main thing that NRC was trying
to address when we started working on this was the issue of generic
letters, 51.09 compliance, and how do we deal with issues in that arena.

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1 We did acknowledge that there are other industry initiatives
2 that fall outside of all that. But I think you've raised a whole
3 different question of a whole different set of initiatives and whether
4 we want to put them in this process or not.

5 To try to think of an example which is maybe -- EPRI has
6 programs to develop improved repair methods for components, whatever it
7 is.

8 Now the NRC, we are not out there saying, gee, you need to
9 improve repair methods in order to satisfy -- to comply or for any of
10 these other reasons, but it is something that you want to do.

11 The NRC is involved in it. You come in, periodically brief
12 us when you are working on these various methods. Maybe at some point
13 if they find themselves in code cases or whatever, you would like us to
14 endorse them, and we have got a role in that, but you have got a whole
15 lot of initiatives going on which are not directly related to
16 maintaining compliance or 51.09 type activities.

17 What you are saying is you don't want to be held -- that
18 every one of those things doesn't result in something that is
19 enforceable. Now in some cases it does and the example I picked
20 perhaps, a repair on a primary system component, is --

21 MR. HERMAN: Is an alternative repair.

22 MR. STROSNIDER: -- is an alternative repair, a new repair
23 method. Maybe it does, but I am sure there's other examples you could
24 give where it doesn't. It's just practice in the plant. You mentioned
25 water chemistry before.

 We try to stay out of the issue of secondary water chemistry
in steam generators. I think rightfully so.

 MR. HERMAN: But design of mechanical repairs that are
clearly alternatives under 50.55(a)(3), those are clearly regulatory
actions under an existing rule.

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1 MR. STROSNIDER: But nonetheless, just to make the big
2 picture point that there is a set of industry initiatives out there and
3 EPRI probably is doing a lot of these, a lot of this type of work which
4 is not of interest in the context of 51.09.

5 MR. COLLINS: I would like to go back to Bill's point
6 though -- I mean Bill's point in the shutdown rule again.

7 Remember when we did the shutdown rule backfit analysis that
8 says cost beneficial safety enhancement. The Commission said yeah, but
9 it looks like the industry is already putting into place most of the
10 things that the rule would require, and if we codified it that's going
11 to add the additional burden of being in the regulatory process.

12 Why should we add that additional burden to the industry to
13 accomplish the same level of safety we have already got? That's
14 basically the Commission's thinking, so they say don't put the rule out
15 there, but they say in the SRM however you have proven that this would
16 be a cost beneficial enhancement in terms of strict regulatory space.
17 How are we going to assure that the industry continues to do these
18 things that we have given them credit for, for making this decision? So
19 the SRM says figure out a way to do inspection -- I don't know if they
20 said enforcement or not in the SRM --

21 MR. HERMAN: Inspection.

22 MR. COLLINS: Inspection, okay, and so I think that part of
23 the question, I don't see that that is necessarily being addressed here.
24 How do we do that inspection part of the process where we have gone
25 through the cost benefit analysis, shown that this would be a justified
regulation. In the interests of unnecessary regulatory burden it says
we don't need to put this in place formally. Now how do we keep the
monitoring processing, which would be there --

MR. STROSNIDER: I'm glad you brought up that example --

[Laughter.]

1 MR. HERMAN: Let me try -- because we talked about that with
2 the enforcement people, and what you are talking about is inspecting
3 something that isn't clearly -- that isn't a regulation.

4 MR. COLLINS: Right. That is the problem.

5 MR. HERMAN: Well, I'll give you the answer that we got and
6 we got it from the lawyers -- same thing. I think you heard it from
7 Dean earlier this morning. It is within the current scope of what that
8 new regulatory program is -- if it is risk significant they are going to
9 look at it.

10 MR. MARION: Right. Events, not the program processes or
11 anything like that -- the events that occur while the plant is in that
12 condition.

13 MR. HERMAN: I am not sure whether that's right. What Bill
14 said is they go out and look at what somebody is doing for severe
15 accidents and if somebody is not doing anything, they would come back
16 and say they are not doing anything, and I think what Brian said was
17 that it would come back to Headquarters and then you decide it's time to
18 write an order or not write an order.

19 There is no enforcement there. What it is is go out and
20 either put the rule in place or write an order. I think that is where
21 you stand on this stuff. Do you guys disagree with that?

22 MR. MARION: No, I thought it was kind of interesting, the
23 perspective that Tim offered relative to the dilemma the SRM has created
24 for the Staff. It's the first time it was brought to my attention and
25 it is an interesting program. I am curious about your solution.

[Laughter.]

MR. STROSNIDER: When you take it to the point of justified
a backfit under 51.09 and then you say, okay, but we are not actually
& going to do that, we are not actually going to change the regulation or
OCI whatever, and then you try to inspect and enforce against it, you have
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1 got a disconnect.

2 MR. HERMAN: But that was a particular issue that was
3 discussed at an enforcement meeting that we did internally with OGC and
4 OE. Tim, I think you were at the meeting, the early one, and you know,
5 what I think I conveyed was the position that came out of our legal
6 staff.

7 MR. STROSNIDER: Well, sure. You always have the option of
8 coming -- of the region coming back to Headquarters and saying this is
9 what we have observed, do we want to revisit the process, and do we want
10 to issue -- take some action at this point because we are not happy with
11 what it going on, but that is not inspection and enforcement. That is a
12 different process.c

13 MR. HERMAN: That is rulemaking.

14 MR. BATEMAN: I would like to clarify something, a
15 conclusion I think I have come to. I just wrote it down here. It says
16 it is not clear to me if NEI wants us to do a voluntary industry
17 initiative if it is in lieu of a regulatory requirement.

18 That is kind of the gist I got out of it, so if that is the
19 case, then what is a voluntary industry initiative.

20 MR. MARION: That is the question I asked you earlier.

21 [Laughter.]

22 MR. BATEMAN: We laid on the table what we thought a
23 voluntary industry initiative is. You guys said nah -- because what we
24 said -- what we thought a voluntary industry initiative would be would
25 be something that would be in lieu of a regulatory requirement. Now you
are saying no, we don't want voluntary industry initiatives of that
type, so therefore I am confused as to what the heck a voluntary
industry initiative is.

26 MR. HERMAN: Let me try -- since I think we have about
killed this --

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1 MR. MARION: We will send you a comment letter.

2 MR. HERMAN: That is what I was going to say, and
3 specifically what I would like, I think I would like to see in the
4 comment letter is address that. You have that from the last meeting.
5 What we are going to do as part of the meeting summary is include our
6 comments on this and put them in the meeting summary.

7 Does that sound like a vehicle of getting them to you? We
8 can do it that way.

9 MR. MARION: We value that too for purposes of discussion
10 interaction, so give us your comments and feedback.

11 MR. HERMAN: Well, we were going to stick it in the meeting
12 summary.

13 MR. MARION: That's fine. Anything else?

14 MR. STROSNIDER: I think the other thing is that whether it
15 is in your -- whenever, however you want to get this to us, if you want
16 to send us a letter as a result of this meeting, or in response to the
17 Federal Register notice, that's probably the best way to do it.

18 Again, to come back to the big picture, you know, we were
19 trying to take on an initiative here, an NRC initiative --

20 MR. MARION: Voluntary --

21 MR. STROSNIDER: -- where we thought that we could come up
22 with some mechanism again for reducing unnecessary burden and having a
23 more efficient, effective process. Maintaining safety is a given in
24 what we are going to do here, but that is really what we thought we
25 could accomplish.

We need your perspective on those kind of questions like if
we come to a conclusion that we could issue a generic letter based on
compliance or whatever, from the industry's perspective, is it better
for us to go ahead and issue that letter given that we have had upfront
discussions on what it is we are trying to accomplish and how we will

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1 accomplish it, or is it better that we not issue it and have discussions
2 about the industry taking on that action without having the letter in
3 hand? Again, we are trying to accomplish what is a more efficient
4 process for doing this.

5 It may be that, gee, once we get to the point if we have
6 enough upfront discussion, and everybody agrees that, yes, there is a
7 compliance issue here, and maybe the generic letter helps somehow, maybe
8 you want to tell us yes, put the letter out -- given that it has gone
9 through the right process.

10 If that is the answer, okay. We need your feedback because
11 we are trying to make things better.

12 MR. MARION: It starts with taking that generic
13 communication process to its fundamental form. Same issues. Take a
14 look at that letter. It is like deja vu all over again -- and I quote
15 Yogi Berra.

16 MR. HERMAN: Okay, but what we would like to agree that we
17 have at least agreed to is that we have agreed that early in the process
18 development one thing that will be in there will be a meeting between
19 NRC and NEI and at that point we will have gone to the point to do the
20 best job we can in terms of running things through our internal process
21 and characterizing things in terms of 109, adequate protection, or
22 whatever other criteria -- you know, those type of criteria, to bring it
23 at the meeting.

24 It is not a final determination, but we will do that upfront
25 and that will be the starting point.

MR. STROSNIDER: For NEI and other stakeholders.

MR. HERMAN: Yes, it is a public meeting.

MR. MARION: You mentioned the Federal Register notices.

MR. CARPENTER: Yes, anybody who would like a copy of that,
see me after the meeting.

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1 MR. MARION: What is the date of it?

2 MR. HERMAN: December 13th. It is Federal Register, Volume
3 64, No. 238 and page 69,574.

4 MR. MODEEN: The topic is development of guidelines for
5 voluntary industry initiatives and notice of public meeting with the
6 Nuclear Energy Institute.

7 MR. CARPENTER: Well, that is the meeting notice.

8 MR. MODEEN: Oh, is that the meeting notice?

9 MR. CARPENTER: It is combined.

10 MR. MARION: Oh, it is combined.

11 MR. CARPENTER: Yes.

12 MR. MARION: So are you asking for comments?

13 MR. CARPENTER: Yes, we are.

14 MR. MARION: And what is the timeframe?

15 MR. CARPENTER: We were supposed to operate this meeting
16 until Noon and we are five minutes of. Let's go ahead and start
17 wrapping things u here.

18 Basically we have on our schedule that we put out a Federal
19 Register notice, which we did, a couple of days late, requesting
20 comments by January 15th.

21 Obviously if you get it in after that time we will look at
22 it as much as possible, but we are trying to get the guidelines drafted
23 and put together by March 30th of the Year 2000, so that we can meet our
24 commitment to the Commission to have it in their hands by May 24th,
25 2000.

If we need to have a meeting between now and March 30th once
further comments come in from you guys, please let us know. We will
certainly set one up.

For those in the audience who would like to participate and
send in comments, yours are more than welcome also.

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1 MR. STROSNIDER: I understand. I think the way this is
2 working now, the guidelines go into the Commission on the 24th. Those
3 are guidelines we propose to put out for public comment.

4 MR. CARPENTER: We will have the comments out after the
5 Commission gets it.

6 MR. HERMAN: After the Commission does it.

7 MR. STROSNIDER: That's what I said. We are telling the
8 Commission this is what we propose to put out for public comment.

9 MR. CARPENTER: Yes.

10 MR. HERMAN: Give us your input.

11 MR. STROSNIDER: Yes -- and the Commission agreed that we
12 should put these out --

13 MR. MARION: I would encourage you to release the SECY at
14 the time that it is developed and forwarded to the Commission, because
15 fundamentally you are trying to articulate a process by which you are
16 going to inspect and enforce voluntary initiatives developed by the
17 industry, and I think it is proper for them to request -- to have an
18 opportunity to comment on what you are recommending before the
19 Commission decides.

20 MR. STROSNIDER: That's what this says, but -- the point I
21 was trying to made though is there's a relatively short timeframe,
22 January 15th I guess, which isn't on there, of 14th did you say?

23 MR. VINE: The 15th, so we would like to have this thing and
24 the best recommendation we could send up in term of having industry and
25 stakeholder input --

MR. HERMAN: I would say we could deliver them by the end of
January perhaps, but I think if it starts dragging much later than the
end of January, very early in February, then it is going to give us real
& problems in terms of getting the paper ready.

MR. STROSNIDER: The point I was going to make is that is

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1 not the end of the discussion. This is so we can put together the
2 proposal to go up to the Commission, get their feedback, and then there
3 will be another round of discussion on this, but we want to send up
4 something that reflects the main issues and some of these things we were
5 talking about are very fundamental and so that kind of input -- we would
6 really like to have that so we can reflect it.

7 MR. HERMAN: Even if we don't come to agreement on the
8 issues, okay, at least we can provide both sides in the paper.

9 MR. STROSNIDER: We said back in Chicago and I would
10 reiterate that the ultimate voluntary initiative is for the industry to
11 come in with the framework for the voluntary initiatives. I mean we are
12 open to the --

13 MR. MARION: That's a start.

14 MR. STROSNIDER: -- to that degree that if NEI on behalf of
15 the industry wants to say here is a straw man, whether it is in the form
16 of a flow chart or whatever level of detail you think you can support,
17 we are interesting in soliciting that kind of input.

18 MR. HERMAN: Just one other thing before we wrap up. We did
19 go through the Staff and one of the other things we were asked to do in
20 terms of looking at this whole process was see the interest in other
21 places. We did go through it with the other offices and at this stage
22 of the game it is mostly NRR interest.

23 MR. MODEEN: One thing I almost brought up and then
24 didn't -- when you were talking about what is the right place to do the
25 51.09 evaluation of backfit or otherwise and maybe you can get a sense
but then you'd do it in more detail later. The thing that occurred to
me is when you look at things like the GSIs that we are involved and
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industry is involved with Research, looking at performance or otherwise
and one of the issues we are trying to scope out, and the Staff is too,
is what is the significance of that issue? What is the value gained

1 taking some sort of actions?

2 I would think there are some lessons perhaps in also the
3 interactions that the industry has had with RES in addition to our focus
4 on --

5 MR. HERMAN: Let me -- Research is interested in what is
6 going on.

7 MR. CARPENTER: NMSS --

8 MR. HERMAN: NMSS doesn't feel that they have enough
9 groups -- cohesive groups -- to be able to do things generically. I
10 think that is really why they --

11 MR. CARPENTER: And just to summarize for a moment what we
12 are doing here in the immediate future, as we said, is we are trying to
13 gather up all the comments from the public so that we can put together a
14 draft guidelines.

15 If anybody would like to have a meeting at some point after
16 we get the comments in and have had a chance to digest them, please let
17 us know. We will go ahead and try to arrange a meeting at the earliest
18 possible date to get yet more comments in on the guidelines before they
19 are completely drafted and put through the concurrence chain.

20 Something else that we are also going to be doing is putting
21 up a webpage on the NRC Home Page that will have all of this information
22 available for instant reference so that you don't have to go out and try
23 to find it.

24 That will include the meeting summary from today's meeting
25 and from the previous meetings that we have had, the slides, and
whatever else that we are working on at the time that we can share with
the public.

MR. HERMAN: But that is going to be somewhat bureaucratic
to be able to get that because our process now requires us to go up
through what level?

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1 MR. STROSNIDER: 18th.

2 MR. BATEMAN: Bureaucratic?

3 [Laughter.]

4 MR. HERMAN: The other thing to keep in mind is that process
5 that we have developed at your request in terms of meetings, it presents
6 a problem with the timeframe for the things we have got up here if we
7 get comments to be able to schedule a meeting because of the noticing
8 guidance.

9 It is almost, what, three working weeks or three calendar
10 weeks? It is a long time.

11 MR. STROSNIDER: Well, if you let us know early, we can
12 notice meetings, and we don't like to cancel meetings, but we can notice
13 them and if it doesn't materialize, then that is easier to do than to do
14 it --

15 MR. HERMAN: If you really think that you really want to
16 have one before the stuff goes upstairs, let us know pretty soon, and
17 then we will do that.

18 MR. MARION: We will probably want one.

19 MR. HERMAN: Okay.

20 MR. MARION: I will give you a call.

21 MR. HERMAN: Maybe think about what a date is.

22 MR. MARION: Let me just make one observation. This is
23 extremely important, because if it is not done right, it is going to
24 have a chilling effect across the industry on future activities that
25 elements of the industry or EPRI or Owners Groups, NEI, are going to do,
so we have to put forth the time and effort to get it done right and
make sure that we understand what the ground rules are.

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That is what we have been talking about today, with some of
this fundamental concepts, and the sooner we can thrash that out, the
better off we will be in terms of the road to success.

1 MR. HERMAN: Agreed.

2 MR. STROSNIDER: We have a commitment to the Commission, all
3 right, and of course that is important for us to meet.

4 On the other hand, if there's input from industry and
5 stakeholders that there needs to be more discussion, there needs to be
6 more something -- for example, if the industry wanted to develop some
7 guidelines in this area and that is going to take more time, I think,
8 you know, you could probably go to the Commission and say this is how
9 the discussion has progressed and we will give you a status report.
10 There is more to come later. We think it is appropriate because there's
11 an initiative to go off and develop this.

12 With good reason we can adjust this, but it is important
13 from our perspective to meet our commitments to the Commission, so
14 absent something like that, we are going to sit down, take a shot at
15 writing this --

16 MR. HERMAN: This is the third external stakeholder meeting
17 and I think we understand what your issues are somewhat, okay, but I
18 think to get them down and make sure that we have got the essence of
19 what is bothering you, I think we need to get them in writing.

20 MR. MARION: You have a number of suggestions that are
21 directly applicable to this, and that is the comments we have provided
22 on the generic communication process.

23 MR. STROSNIDER: We'll be happy to look at it.

24 MR. MARION: Okay. Anything else?

25 [No response.]

MR. MARION: Mr. Chairman, thank you very much. We have
appreciated the opportunity and we will submit comments on the FRN, et
cetera.

I think the meeting was productive in terms of talking about
some of the issues but we need to work through them.

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1 I would like to wish you all a happy holiday.

2 MR. STROSNIDER: Yes, thank you very much and happy holiday
3 to everybody.

4 [Whereupon, at 12:05 p.m., the meeting was concluded.]

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