

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

PUBLIC MEETING WITH THE NUCLEAR ENERGY
INSTITUTE TO DISCUSS ISSUES RELATED TO
VOLUNTARY INDUSTRY INITIATIVES

Nuclear Regulatory Commission
One White Flint North
Room 0-4-B-6
Rockville, Maryland
Thursday, February 17, 2000

The above-entitled meeting commenced, pursuant to notice, at
1:00 p.m.

PARTICIPANTS:

- B.W. SHERON, Associate Director, NRC/NRR/ADT
- J.R. STROSNIDER, Director, NRC/NRR/DE
- W.H. BATEMAN, Chief, NRC/NRR/DE/EMCB
- C.E. CARPENTER, Lead Project Manager,
NRC/NRR/DE/EMCB
- M.K. KHANNA, Materials Engineer, NRC/NRR/DE/EMCB
- TIMIR MISRA, Engineer, NRR/DE/EMCB
- NOEL DUDLEY, Senior Staff Engineer, ACRS

PARTICIPANTS:

- GARY VINE, Senior Washington Representative, EPRI
- ALEX MARION, Director, NEI
- BOB BISHOP, General Counsel, NEI

ANN RILEY
&
ASSOCIATE
S, LTD.
Court
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

P R O C E E D I N G S

[1:00 p.m]

1
2
3 MR. CARPENTER: Let's get started and take care of some of
4 the miscellaneous stuff.

5 I'm Gene Carpenter. I work in NRR Division of Engineering,
6 and I'm presently working on the voluntary industry initiatives response
7 to the Commission.

8 The reason that we are here today is in response to a
9 telephone call that Brian Sheron and Jack Strosnider had with Mr. Beedle
10 regarding the voluntary industry initiatives. At that time he requested
11 a meeting, and we agreed to meet today.

12 I would like to go around the room.

13 Meena.

14 MS. KHANNA: I'm Meena Khanna. I work in Materials and
15 Chemical Engineering Branch. I am helping out Gene with voluntary
16 industry initiatives.

17 MR. BATEMAN: I'm Bill Bateman, Chief of Materials and
18 Chemical Engineering.

19 MR. STROSNIDER: Jack Strosnider, Director of Division of
20 Engineering.

21 MR. SHERON: Brian Sheron, Associate Director for Project
22 Licensing and Technical Review, or assessment, or whatever it is.

23 MR. MARION: Alex Marion, Director of Programs, NEI.

24 MR. VINE: Gary Vine, EPRI.

25 MR. CARPENTER: As you can see, we are having the meeting
transcribed. That will be something that we put on the external Web
page, which we should have up tomorrow.

ANN RILEY
&

ASSOCIATE
S, LTD.

Court
Reporters

1025
Connectic

ut
Avenue,

NW, Suite

1014
Washingto

n, D.C.
20036

(202)
842-0034

Brian, do you have any opening comments?

MR. SHERON: No, other than I think the issue which we

expressed to Ralph was that we need to go forward with this. This is
DSI-13, which was a Commission directive. We are on the hook to provide

1 them with the guidelines for implementing this program by April. We
 2 were concerned that we did not receive any industry comments on the
 3 Federal Register Notice for this subject.

4 When I talked with Ralph, he seemed to be of the opinion
 5 that the industry was not jumping at this opportunity. The thought was
 6 that if the NRC has a regulatory concern that it should pursue it
 7 through its normal processes. I would argue that's fine, except I would
 8 also point out that the industry complained about that. That is one of
 9 the reasons we did propose voluntary industry initiatives.

10 Just speaking openly, I'm a little frustrated. I don't know
 11 what you guys want. You don't like generic letters. We said fine, we
 12 will give you the opportunity to take these issues on and come back to
 13 us and tell us how you think they should be dealt with. If you don't
 14 want to do that, we have no choice but to go back to the generic
 15 letters. We have agreed to disagree on what constitutes compliance. So
 16 be it.

17 Anyway, with that opening, I think Ralph said there was a
 18 meeting with the industry execs or something yesterday and this issue
 19 was going to be brought up. So I'll let you take it from there, Alex.

20 MR. MARION: Thank you. As always, we appreciate the
 21 opportunity to have these open, candid discussions on the process of
 22 understanding and carrying forward voluntary initiatives within NRC's
 23 regulatory construct.

24 I do want to take a second and apologize for Ralph Beedle.
 25 He is not here, obviously. He had a conflict that came up later this
 morning and does send his apologies.

I do have a letter that was mailed out this morning. I
 ANN RILEY brought copies with me. I can hand the copies out. I don't know if
 & that creates some kind of process issue with you, but I will do that.
 ASSOCIATE S, LTD.
 Court

Reporters This letter is in response to the point you raised, Brian,
 1025 about NRC publishing a request for comments in the Federal Register and
 Connecticut
 ut
 Avenue,
 NW, Suite
 1014
 Washingto
 n, D.C.
 20036
 (202)
 842-0034

1 not receiving any comments from industry. As Ralph indicated in the
 2 conference call you alluded to and as I indicated in the call I had with
 3 Jack a couple week ago, we were going to submit comments articulating
 4 some principles relative to voluntary initiatives, what they are, what
 5 they aren't, and then how they should or should not relate to the NRC's
 6 regulatory process.

7 What we could do is take a few minutes and give you an
 8 opportunity to read the letter. Then what I would like to do is briefly
 9 walk through it and touch on some of the major points, if that's okay.

10 MR. SHERON: Yes, that's fine.

11 You've got a sentence here already that says, an alternative
 12 to NRC imposing new regulatory requirements by issuing a generic letter.

13 We don't impose new regulatory requirements by issuing a generic
 14 letter. Ninety-nine percent of all generic letters have been just
 15 50.54(f) requests for information.

16 MR. BISHOP: Before we start, if I may apologize for my
 17 tardiness. My name is Bob Bishop. I'm general counsel of NEI. I erred
 18 in my timing to catch the right train, and I apologize.

19 MR. SHERON: My reaction based on going through it this one
 20 time is I still think we are missing each other here. We are talking
 21 past each other. We are not proposing voluntary industry initiatives as
 22 a way to impose new regulatory requirements. The issue boils down to
 23 that when we see a technical concern.

24 Let's take the small bore pipe cracking in the HPI line.
 25 There was a question: What does this mean from a regulatory standpoint?

Is there a violation of some regulation or some rule or the like? Is
 this a generic issue? Should inspection programs be enhanced, or are
 they already sufficient and this is just an aberration?

ANN RILEY
 &
 ASSOCIATE
 S, LTD.

1025 Court to write out a generic letter 50.54(f) that says, hey, look what
 Reporters happened over here. They had this problem. We don't have any
 Connecticut

ut
 Avenue,
 NW, Suite
 1014
 Washingto
 n, D.C.
 20036
 (202)
 842-0034

1 information that says this isn't a problem everywhere.

2 Therefore, we would go through the usual words which would
3 say, therefore, we request every licensee to tell us what programs they
4 are putting in place to make sure this doesn't happen at your plant,
5 blah-blah-blah-blah-blah-blah. And everyone would go, ah shit, we've
6 got to put in more inspection programs and everything and the like.

7 What we are trying to do is say we agree. That's probably
8 not the right way to address the issue. It sends a message. It's not a
9 backfit. It just says tell us what you are doing. Most licensees
10 interpret that to mean, if I tell them I'm not doing anything, I'm going
11 to be in big trouble. So they say, well, I had better do something if I
12 don't want to be in trouble with the regulator.

13 In the same sense, we need to address the issue. We're not
14 really in the best position in a lot of cases to address it because of
15 plant-specific nuances and the like. So the thought is we go to the
16 industry and we say, look, you guys are familiar with this event just
17 like we are. We got an itch and we're not sure how to scratch it.

18 We would like industry to take a look at this. You go off.
19 You look across the spectrum of plants. You look at the inspection
20 programs. You do the risk assessment, whatever.

21 You come back and you tell us, we've looked at this, and
22 either we concluded this is an aberration and here's why and here's why
23 the current programs are adequate and why they will catch this in the
24 future.

25 Or maybe you come back and say, you're right. We need to do
something more. We've looked at this, and yes, this inspection program
needs to be tweaked here or there.

ANN RILEY
&
ASSOCIATE
S, LTD.
Court
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

Or maybe you say this is only unique to these kind of
plants. These are B&W plants, and we found out that all the other
operating plants don't have this problem. Therefore, we only have to
worry about these eight or nine plants.

1 You come back and you tell us and you propose what you
2 intend to do about it. As long as it makes sense and it technically
3 addresses the issue, the thought was we'll go, hey, it looks good to us.

4 That's what was intended. It was not new requirements. We
5 do not impose requirements normally through the generic letter, and when
6 they do, they go through the backfitting process.

7 We've disagreed over what constitutes a compliance backfit
8 and we've had discussions out the whazzoo on that, and I think we have
9 just agreed to disagree. The fact is that every generic letter that
10 goes out of here basically is blessed by the Commission. So it's not
11 like it's a matter of the staff is out of control. If you want to say
12 that it's the agency that is out of control, if that is how you want to
13 characterize it. But the fact is that they go through the public
14 comment process, they go through CRGR, and they go up to the Commission
15 before they go out. The Commission has final say. I don't know where I
16 can go with that one.

17 MR. MARION: Let me speak to that point because it caught
18 your attention in the letter, and this in the second paragraph on page
19 2, first sentence. That is taken from your regulatory issues summary
20 letter that communicated the generic communication process. Attached to
21 that ISL were the comments that we had submitted. There was a second
22 attached, which is a table or matrix that articulated dispositioning the
23 comments. One of the comments was along the lines of NRC invoking the
24 regulatory positions via a generic letter. That is the thought we are
25 trying to capture in that statement.

Maybe that was an error, but that is what I picked up on.

If that was an error, then clearly this was an error.

ANN RILEY To get back to your objective in terms of the expectations
&
ASSOCIATE OF voluntary initiatives, in our previous interactions we have
S, LTD.
Court fundamentally agreed that one of the things that has worked very well
Reporters
1025 has been the opportunity to have early and frequent interactions to
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

1 discuss technical issues.

2 I think we all agreed that once we established some kind of
3 an understanding of the scope and magnitude of the technical issue, then
4 oftentimes it became clear what the regulatory action may be as well as
5 a complementary or supplementary action by the utilities. I think we
6 are in agreement on that.

7 I'm not sure that we are talking past each other in terms of
8 that. What we tried to address in this letter is to provide some
9 specific points that relate to the items that were requested in the
10 Commission paper to you dealing with tracking and enforcing commitments
11 as they may relate to a voluntary industry initiative or as they may
12 relate to a guideline document that somebody decides to use within a
13 regulatory construct.

14 We also have our thoughts on inspection and enforcement as
15 it may relate to initiatives in the use of guidelines.

16 That is what we are trying to capture in this letter.

17 In terms of the discussion yesterday with the Nuclear
18 Strategic Issues Advisory Committee Steering Group, we talked about the
19 number of interactions that have been held between stakeholders and the
20 NRC going back to the September 1998 meeting in Chicago, the public
21 meeting that we had in December.

22 We also told them about today's meeting and that we were
23 building on and intending to incorporate in this letter basic principles
24 of the initiative process, basic principles relative to NRC regulatory
25 action that we had already articulated with the chief nuclear officers,
et cetera, and the idea was to package that into this letter and submit
it in response to your request for public comments.

ANN RILEY If you take a second and look at the attachment -- I know
& ASSOCIATE Some of you have seen this before -- this gives a historical perspective
S, LTD. Court of various initiatives and guidelines that have been issued by NEI
Reporters
1025 recently but captures more of the documents that have been issued by one
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

of the predecessor organizations, NUMARC.

I think it clearly demonstrates that there is a relationship of sorts between these guidelines and these initiatives that relate to NRC expectations, whether those expectations take the form of regulatory action, or to go back to your purpose, whether the expectations relate to trying to understand the nature of a technical issue so we can decide what is the best approach to take to resolve it. I think this captures the spectrum from those two perspectives as well as some others.

I think in a way what we need to come to grips with is whether or not there is something broken with the ad hoc process that this represents, and ad hoc because it's not formally captured and written down as a guideline to capture these interactions, but the process has been very successful in the past.

There, of course, have been instances where we have agreed to disagree, but I think for the most part we have agreed that something needed to be done to understand the technical nature of an issue.

There are also examples in here where it was very clear that industry decided through a formal industry position to develop something that would provide some consistency across the industry in implementing a particular regulation or a change to a particular guidance document. What I am referring to more recently is the 50.59 example, and I think that provides a good example.

That is what we tried to capture here but by the same token answer some of those regulatory action process issues dealing with commitments, inspection and enforcement, and that is essentially all rolled up in this letter.

MR. SHERON: I would argue that the ad hoc approach we have been using has worked in many respects. It has got some drawbacks. For example, we really don't have a formal process for involving other stakeholders at this point.

MR. BISHOP: In addition to just seeking comments on generic

ANN RILEY
&
ASSOCIATE
S, LTD.
Court
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

1 letters?

2 MR. SHERON: Right now, when I have a generic letter, their
3 ability to input is through the public comment period of a draft generic
4 letter.

5 MR. BISHOP: And as well in public meetings.

6 MR. SHERON: The public meetings are different. They will
7 argue and they are going to say that's fine as long as they live in
8 Washington and I don't have a nine to five job.

9 MR. BISHOP: But there are a variety of opportunities,
10 including --

11 MR. SHERON: All I am saying is that right now the
12 opportunity for the public is at least they can sit there and they can
13 read something and they know what is going on; they know what the
14 proposal is, and they can submit comments on it. I'm saying right now
15 the ad hoc process really doesn't have any formal mechanism for that to
16 occur.

17 For example, when we go to the industry and we say, gee, we
18 need an industry initiative on something, at some point you may provide
19 us with a document that says here's our plan. At the time we are not
20 sending that out for public comment or anything. That's what I'm
21 talking about.

22 One of the shortcomings is there needs to be a process for
23 meaningful stakeholder input. You may come back and say here's our
24 program to respond to your initiative, and then there may be somebody
25 out there that says this is woefully inadequate and here's why. They
need to have that opportunity to at least be heard. So we need to know
what that process is.

ANN RILEY The process might be that for an industry initiative that
& the industry accepts they will provide us with a report outlining their
ASSOCIATE plan to attack the issue. The process then may say and the NRC will
S, LTD. then notice that in the Federal Register and solicit comments on it, and
Court Connectic
Reporters ut
1025 Avenue,
Connectic NW, Suite
ut 1014
Avenue, Washingto
NW, Suite n, D.C.
1014 20036
Washingto (202)
n, D.C. 842-0034
20036
(202)
842-0034

those comments will be passed back, or whatever, blah-blah-blah.

All I am saying is we need to have a process. All we are looking for is guidelines on how we do this. You don't want any Tom, Dick and Harry in this agency calling you up every time they read the morning report and they see some reactor burping or belching the wrong way, saying, hey, I've got a voluntary industry initiative for you guys.

You need to know there is some discipline on our side.

The guidelines would provide that discipline. That's what the intent was. We've got close to 600 people in NRR. We have a turnover rate of about 50 a year. New people come in. They need to understand what the process is.

The whole idea is we want to lay this process out in a guideline so that everybody knows how we are playing the game; your utilities know how we are playing the game, the public knows how we are playing the game, and we know how we are playing the game.

That is why we are trying to come up with these guidelines.

A lot of these issues that we will raise to you have regulatory concerns associated with them. We are questioning whether or not, for example, on some of them, gee, can I really assume that there is still compliance with some regulation based on this new information?

If you propose a voluntary industry initiative that resolves that issue and say, yeah, we still comply with the regulations because we are going to do this, this and this, fine. Then I need to be able to tell the inspectors here's what you inspect.

MR. BISHOP: Let me interject so you can understand my perspective. I'm not quarreling with anything you said, Brian. As a matter of law, there are things you have to do. Then there are things

ANN RILEY as a matter of policy you choose to do.

& ASSOCIATE S, LTD. As a matter of law, you've got to get public comment if you Court are going to have a rulemaking. If you are going to amend a license, Reporters issue a license, you have got to have an opportunity for a hearing.

1025 Connecticut Avenue, NW, Suite 1014 Washington, D.C. 20036 (202) 842-0034

1 Those are things you have to do. That's all you have to do. Everything
2 else is those things you choose to do because you believe that's the
3 right way to carry out your responsibilities under the law. So there
4 are no real constraints on either the upside or the downside on how you
5 choose to do that.

6 I think that is something we kind of need to keep in mind,
7 that all of these things are your decision on how you can best satisfy
8 your mandate. They are not required by law. They are things you choose
9 to do because you think that's the wise way to make policy, or to make
10 decisions.

11 This meeting, you need not by law have a transcript. You
12 need not have an opportunity for people to comment on the transcript.
13 You need not have videoconferencing, although you can choose to do all
14 those things. So you are not constrained, I think, by the law in any
15 way, or must you do anything else other than that which you concluded is
16 the wise use of resources.

17 I think fundamentally a lot of our comments come down to
18 that: What's the best use of the agency's resources, what's the best
19 use of licensees' resources, and frankly, what's the best use of the
20 public's resources.

21 If I am an individual at a power plant in West somewhere,
22 all of these opportunities for me to participate may be very helpful if
23 it's an issue I feel particularly strongly about, but I may not have the
24 resources to be able to pop into Washington for all these meetings, to
25 go to my local library where there is a computer or whatever else.

I think your responsibility is not to make sure 280 million
people vote in favor of anything; it is to figure out what's the right

ANN RILEY
&
ASSOCIATE
S, LTD.
Court are going to have a very sensitive time factor to them. Some of them
Reporters
1025 are going to clearly have safety implications. Many of them might have
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

1 safety implications, but the best guess going in is probably not, but we
2 need some assurance that they don't. All of those, I think, one would
3 do it differently.

4 I'm hard pressed to think that it's a wise use of resources
5 to say in every case, no matter what, this is the process we are going
6 to follow through with, and that's that. That requires resources, that
7 takes time, and that takes a lot of labor that you may not be able to
8 justify based on the nature of that particular issue.

9 The ad hoc may not be neat, but it seems to be working.

10 MR. MARION: We made the point before, and I think we went
11 through a couple examples to support what Bob just said, that each one
12 of these is unique and different unto itself.

13 Quite frankly, if there was a way to develop a structured
14 process by which the industry through NEI would deal with initiatives
15 and decision making associated with them and decision making associated
16 with particular guidance documents on issues, we would have a structured
17 process that everybody would use. But it doesn't work.

18 I've thought about it for a long time, but it is difficult
19 to establish because the issues are different; the impact of the issues
20 are different; the regulatory aspect of issues are different and unique;
21 and the implementation efforts are different and unique in terms of
22 addressing the problem, whether it's done solely by industry, solely by
23 NRC, or in a complementary fashion by industry and NRC.

24 That's why I asked you to give some thought to that
25 attachment that identifies the historical perspective, because I think
that, quite frankly, demonstrates the point. If you look at those
topics and those guidelines that were developed, each one of them is

ANN RILEY different.

&
ASSOCIATE
S, LTD.

MR. SHERON: I understand. At one point we basically almost

Court
Reporters

1025 remember, as part of our implementing GPRA in this PBPM process, one of
Connectic

ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

1 the things we have done is defined major outcomes, one of which is
2 improved public confidence.

3 We are not trying to get people to love nuclear power. What
4 that means is that we want the public to be able to understand the way
5 this agency operates and how our decisions are made. In other words, we
6 want to operate in a transparent way. You can't really operate in a
7 transparent way if we continue on an ad hoc basis.

8 MR. BISHOP: Why not?

9 MR. SHERON: Because people don't sit down and say, gee, I
10 feel comfortable because I know that NRC is dealing with that problem in
11 some way, shape or form with the industry.

12 As opposed to saying, I understand what their process is in
13 how they deal with these issues. I don't care what the specific issue
14 is, but I understand what their process is and how they deal with it,
15 and I know it will be dealt with in an open and fair manner, because it
16 will get public comment, it will get this, it will do that.

17 As opposed to, gee, there they go again; they are off
18 meeting; they are off figuring out how the hell they are going to get
19 this one off the books, and the like.

20 I'm just telling you what the perception is.

21 MR. BISHOP: I don't mean to challenge you, but I'm not sure
22 that is the public's perception. I think a lot depends on how you want
23 to try to characterize the public. Two hundred eighty million people,
24 they're not concerned or interested, the great majority of them.

25 MR. SHERON: I agree.

MR. BISHOP: To the extent they know, they're okay.

MR. SHERON: I agree. We deal with a very small public:

ANN RILEY
&
ASSOCIATE
S, LTD.

Union of Concerned Scientists, NIRS, Friends of the Earth, Common Cause.
Court this meeting, having the opportunity for those who are interested and
Reporters
1025 can participate to attend or not, to send you their comments. I've
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

1 never tried to do this as a private citizen, but my expectation is if I
2 was out in Missouri and I couldn't come to this meeting but I was
3 interested in this topic and I sent you a letter, or sent Mr. Carpenter
4 a letter, sent Mr. Bateman letter, it would be read; it would be
5 considered in the deliberations of the agency.

6 MR. SHERON: But the person needs to know what is the
7 process. In other words, do I have a concern? Suppose we said, yes, we
8 accept whatever NEI came in and proposed on some issue.

9 MR. BISHOP: Somebody who doesn't understand the process
10 might conclude that, but I'm not sure that's the minority that is worth
11 spending a whole lot of resources to satisfy, because I'm not sure
12 you'll ever know if they are satisfied. I'm not sure how you could ever
13 measure that.

14 My sense is you have to do what you think is the wise use of
15 your resources, and the wise use of your resources implicates the wise
16 use of our resources, to ensure that issues are fairly and openly
17 ventilated, that people have an opportunity to participate to the extent
18 they are interested, that they choose to involve themselves in it, and
19 then go on.

20 MR. SHERON: If you go back and you look at the revised
21 generic communication process that was put forward to the Commission,
22 all we have really done on this is put in place a pecking order. It's
23 no different than what the pecking order was before except we started a
24 little bit further down the line.

25 Down the line the pecking order was generic letter, maybe
bulletin, and if somebody didn't come back with the answer we liked and
we thought there was a safety problem, we could go to an order. All we

ANN RILEY
&
ASSOCIATE
S, LTD.

Court
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

have done is added into that pecking order this thing called voluntary
industry initiatives.

What that does is say, before I go off half-cocked with a
generic letter that says in order to demonstrate compliance with

yadda-yadda, please give me 50,000 pieces of information, or whatever, we are giving them an opportunity by saying, would you like to come in and talk about this, and would the industry like to take a look at this and come forward with a program to address it and either put it to bed or not? And that's fine. All we want to do is have a more defined process for how we will do that.

MR. BISHOP: But under current process, if that occurs, you make summary minutes available. If somebody cares enough to understand what Nuclear Regulatory Commission's stands for, they can find that very readily if they are interested in that issue.

I guess I'm still not sure why documentation under the current process isn't the right way to demonstrate what the process is.

MR. STROSNIDER: Looking at your summary paragraph, it says, In conclusion, we believe voluntary industry initiatives should not be a substitute for regulatory action.

We met with the industry; we identified an issue. Industry came back and said, here's what we are going to do to address it.

Would this sentence suggest that we should still put out a generic letter?

MR. BISHOP: No.

MR. STROSNIDER: That's the way I read it. I can give you examples.

The steam generator framework that we have been working quite successfully for the last couple of years. We had a generic letter that had been through the process and ready to go out the door to say, industry, tell us how you are going to address this. We put it on hold in order to follow this voluntary initiative. It's in substitute

ANN RILEY
&
ASSOCIATE
S, LTD.
Court
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

of that regulatory action which would have been a generic letter.

When I read this, what it tells me is we could go off and we could work the voluntary initiative, but we should have still put the letter out. We had the same thing on the small bore pipes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. MARION: There is a little more background.

MR. STROSNIDER: That's where I don't understand what you are trying to tell us.

MR. MARION: That is a statement of NRC terms. "Substitute for regulatory action" is your terminology. We talked about this at the December meeting.

MR. STROSNIDER: Right, that a generic letter is a regulatory action.

MR. MARION: We talked about that language, and they are offering some comments to kind of bring to your attention the sensitivity with that terminology.

Steam generators is an excellent example. We all know, the three of us, because we have been involved. It goes back to advanced notice of proposed rulemaking to deal with the technical issues and how they play out in the licensing basis of plants.

We all agreed up front that there was a need for us to work together. The industry was willing to do that because of the operational impact of not paying sufficient attention to effective management of steam generator degradation. That is fundamentally what it's all about, and we discuss that concept in the letter as well.

We agreed that we were going to work together and proceed down the path to address resolutions. I think that is what we have done.

What happened in that generic letter, if my memory serves me right, a number of challenges came up as part of that process, but one of them was when a new degradation mechanism was identified, what is the NRC going to do? We worked out an understanding that, well, maybe it

ANN RILEY
&
ASSOCIATE
S, LTD.
Court
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

would make some sense for NRC to issue a generic letter on the voltage base criteria, et cetera, and industry would do some activity. The Court discussions and interactions consistent with what we were talking about earlier on coming to grips with the technical nature of the problem and

1 understanding what the regulatory and industry base roles could be, I
2 think, played out in the steam generator arena.

3 MR. STROSNIDER: It did. I come back to "voluntary industry
4 initiatives should not be a substitute for regulatory action." We have
5 steam generators, we have small bore piping, we have BWR VIP where we
6 used voluntary initiatives in lieu of putting out generic letters,
7 taking that regulatory action that was successful. When I read this, I
8 think we could have gone and done everything we did, but we should have
9 still put out the generic letter. That's the way I read this.

10 MR. BISHOP: If the purpose of the generic letter was to
11 find out if this is a problem or not. The generic letter goes out to
12 each licensee, and basically -- I don't remember whether you said 95 or
13 99 percent of them are associated with trying to find out if this is a
14 real problem or not. It seems to me in that context -- I'll take your
15 numbers, Brian -- it seems to be the great bulk of them.

16 If individual licensees come back and say, no, it's not a
17 problem, or the industry does an evaluation and comes back and says it's
18 not a problem, there is no value to be gained with sending a generic
19 letter out that says tell us what you just told us.

20 MR. STROSNIDER: They typically say a little bit more than
21 "we want to figure out if this is a problem."

22 MR. BISHOP: What is that little more?

23 MR. STROSNIDER: The steam generator, the small bore piping,
24 those that were ready to go out the door, particularly the steam
25 generator, said we want to verify how plants are complying with their
licensing basis; we need information to verify that.

We told the Commission there are deficiencies in the
technical specifications; we don't think that what is in there is
actually maintaining the licensing basis and some of the regulations.

Quite frankly, the tech specs have some deficiencies.

We put it in terms of the compliance. We recognize it. We

ANN RILEY
&
ASSOCIATE
S, LTD.
Court
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

1 were involved in establishing those tech specs too, but it was an issue
2 that needed to be addressed. The basis for putting it out was provide
3 information so we can conclude you are still in compliance. It wasn't
4 just, is this an issue or not?

5 When we talk about the 90 percent of what had gone out, it's
6 typically provide us information to demonstrate you are in compliance
7 with 51.09 type language.

8 I have a little bit of a difficult time understanding why
9 that is a process that didn't work pretty well and why you wouldn't want
10 to support that as opposed to taking the action to send out those GL's.

11 MR. SHERON: I still don't understand how you reconcile that
12 with what happened on the shutdown rule.

13 MR. MARION: Let's finish on the steam generators.

14 MR. STROSNIDER: One other example that has been pointed to
15 as a very successful area is the BWR VIP work. We had a generic letter
16 that went out on the core shroud when cracking was first found.

17 We never went to the point of writing additional generic
18 letters ready to go out the door like we did on steam generators, but as
19 additional component degradation occurred, and it is pretty clear it has
20 happened, one option would have been for the NRC to look at it and see
21 if there a compliance issue here. If so, we will send out generic
22 letters. But we didn't do that. The industry or that owners group
23 decided to be proactive and come in and say, we're going to address
24 these issues. Here's how we are going to do it.

25 We had discussions on that and said, what is the compliance
aspect of this, what's the enforcement aspect of inspection. Everybody
agreed that this ties into Appendix B. The proposals that were coming

ANN RILEY
&
ASSOCIATE
S, LTD.
Court
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

to us would be an acceptable way to satisfy Appendix B. Not the only
way. You could do other things.

In my mind, and I think in the people who were working that,
we probably avoiding going through a generic letter process. We did

1 that in lieu of taking other regulatory actions, other ways we could
2 have done it.

3 MR. MARION: But that decision making to pursue that course
4 of action or not pursue that course of action was the result of the kind
5 of open, candid discussions we were talking about earlier in terms of
6 the affected industry getting together with the NRC and coming to an
7 understanding of the technical issues. Then the decisions are made
8 relative to what's the industry going to do or not do, or what's the NRC
9 going to do or not do, and why.

10 I think your examples represent that process right now.

11 MR. STROSNIDER: But there was a point there where we could
12 have said, okay, we understand the issue, yes, we agree there is an
13 issue, we've better defined it, now we will put out our generic letter.

14 MR. MARION: That's your decision.

15 MR. STROSNIDER: When I read this sentence, it sounds to me
16 like we should have put out some generic letters.

17 MR. BISHOP: If you need something that you are not
18 satisfied that you have enough information or enough understanding from
19 an individual licensee or the industry trying to sort out a potentially
20 generic issue for all licensees, that is meant to communicate that our
21 job is not to do your job. We're not the regulator. If there is
22 something more that you need, that sentence is to communicate that what
23 you ought to do is whatever it is that you feel you need to do.

24 But we'd like to have the opportunity to be able to continue
25 to work with the staff, to try to resolve issues, and focus down on what
is really important and what is it that you really need to do. Is it a
new requirement that needs to be in place? That is something only you
can do. We can't do it.

That is what that is meant to communicate.

ANN RILEY
&
ASSOCIATE
S, LTD.
Court
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

MR. STROSNIDER: There is some discussion here about
rulemaking, new rules, these voluntary initiatives. Obviously that is

not the appropriate vehicle, and I don't think any of these situations say that typically it's compliance issues we are dealing with.

MR. MARION: To go back to the importance of initial dialogue is to make sure there is an understanding of what the compliance issue is. You need to have that understanding so you can determine what kind of follow-up or subsequent action is necessary to bring information to bear so that a decision can be made by the NRC on what other action is necessary.

MR. SHERON: I would agree that if we have information that to us is pretty clear that, for example, there is a compliance issue that needs to be address, then, yes, we are not going to fool around with a voluntary industry initiative, and we will just issue whatever we have to issue. For example, if something happens, whatever we discover, that someone is no longer in compliance, we are not going to wait around. We're not go to even say, gee, tell us what to do.

MR. BISHOP: We wouldn't be involved anyway if it's not generic.

MR. SHERON: I'm talking even if it's generic. If we come across and we decide something is truly out of compliance and action needs to be taken, it's not going to be a matter of, gee, what should we do; it's going to be a matter of we know what has to be done. You'll get the letter that says you need to come back in compliance and you've got to tell us how you are going to do it.

MR. BISHOP: I think your process works well, and there have been examples where it hasn't worked until we have kind of come to this current process where even then the interaction is helpful so it's clear to the industry, to individual licensees in particular, exactly what it

ANN RILEY & ASSOCIATES, LTD. is that you have in mind, and that open and candid dialogue before the generic letter is issued is very valuable.

MR. SHERON: We can certainly do that. We can have meetings on it when it goes out for public comment, before it's issued. That's

Court Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

1 fine. If you need a meeting to come in and talk with us, I
2 think we can do that.

3 MR. MARION: Going back to this ad hoc process, I think
4 there has been over the past year or so maybe less than a handful of
5 regulatory actions undertaken by the NRC in which the NRC has not taken
6 advantage of either one of the senior management interactions or some
7 interaction to say, hey, I know a number of times each of you have said
8 to me we've just come across a problem on some widget at a plant; we
9 want to set up a meeting with NEI. I'll say fine. I'll get in touch
10 with whoever at NEI is responsible for that widget and follow it up with
11 you staff.

12 That has to continue. That is extremely important. If that
13 results in a regulatory action on the part of the NRC based upon NRC
14 making the determination that they have the basis in the information, so
15 be it, but I don't want to preclude the opportunity for industry and the
16 NRC to talk early and often about these issues as they arise.

17 The industry needs to understand what the issue is and what
18 the impact is hopefully before they receive an official communication
19 from the NRC that says do this in 90 days. That's a benefit to
20 everybody.

21 MR. SHERON: When we agree that the industry will take this
22 on, to go off and explore the issue and figure out what the risk is and
23 figure out what all the plants are doing and the like, that is where we
24 need some sort of a guidance document so that everybody knows what the
25 expectations are. For example, we had some difficulty on the small bore
pipe issue. It took about five months before you guys even put in place
a program.

ANN RILEY
&
ASSOCIATE
S, LTD.
Court
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

MR. MARION: Unfortunately, I don't know the details of

that.

MR. SHERON: Dave does.

MR. MARION: Dave is out of town on business.

1 MR. SHERON: The point is that was frustrating for us. I
 2 think I want to have guidelines that kind of point and say if we're
 3 going to do this, if we're going to hold off going forward with, say, a
 4 generic letter or something, and we want to put this on the industry's
 5 plate, something that they can come back to us on and do an evaluation,
 6 we need to understand up front time lines. We can't sit around for six
 7 months or a year trying to fend off somebody from the public saying,
 8 what the hell are you doing about this issue?

9 Well, gee, we gave it to NEI, but they haven't gotten back
 10 to us yet.

11 When are they getting back to you?

12 Well, we don't know. They didn't give us a schedule.

13 That doesn't sell. You're going to get the letter then no
 14 matter what.

15 Again, every time when you think this through, it comes back
 16 to, gee, if we had some guidelines and guidance documents so that
 17 everybody knew what the expectations were on both sides and we all
 18 played to that same set of rules, then when somebody says, well, what
 19 are doing about that issue, Sheron, I can say, hey, here's the process.

20 We gave it to NEI. They are going to come back to us in so many days.

21 They are going to give us their program plan.

22 We will look at it. If it's acceptable, fine. We are going
 23 to let them go and we'll have a justification for why plants can keep
 24 chugging along while they work on it.

25 If it doesn't sell, the process says there is a generic
 letter that is going to come out, whatever.

All I am saying is I feel like I'm covered in the sense that
 ANN RILEY can explain to anybody what the process is that we are working in, as
 & opposed to, gee, I don't know when they are going to come back. I
 ASSOCIATE S, LTD. Court called Dave the other day and he's out of town and he doesn't call me
 Reporters back, and when I called him, he said, I've got to meet with my
 1025 Connecticut
 ut
 Avenue,
 NW, Suite
 1014
 Washingto
 n, D.C.
 20036
 (202)
 842-0034

1 utilities, and I don't know if they are going to meet on that day.

2 That's the way it went on that one for five months. I was
3 getting impatient to the point I was telling Dave, I said, if you guys
4 don't give me an answer, we're going to issue the letter, because I
5 can't wait this long.

6 MR. MARION: I think, on Dave's behalf, we need to move on
7 to another topic because he's not here to defend himself.

8 MR. SHERON: I'm just trying to give you some examples.

9 MR. MARION: I understand. I don't know the details. I'm
10 sorry.

11 MR. SHERON: I think your words here are conveying a wrong
12 message. When you say voluntary industry initiatives should not be a
13 substitute for regulatory action, I keep going back to, you know, how
14 the hell do I explain the shutdown rule? You guys are running up there
15 telling the Commissioners, hey, we've got all these voluntary
16 initiatives; look at all this voluntary stuff we are doing in the
17 plants; you don't need a rule.

18 The Commission came back and they said, don't issue a rule,
19 staff, but go out there and monitor those guys and make sure they are
20 doing what the hell they told you they are doing.

21 MR. MARION: If industry has done something -- Before I get
22 into that, I would like to make a request right now. I'd like to just
23 move away from voluntary industry initiatives. I think I touched on
24 that at our December meeting, because we have already converted to an
25 acronym of Roman numeral VII. I would suggest we put our minds together
and come up with some other term to capture that concept.

MR. SHERON: Unfortunately, that is DSI-13.

MR. MARION: I understand.

ANN RILEY
&

ASSOCIATE
S, LTD.

Court
Reporters

1025
Connectic

ut
Avenue,

NW, Suite

1014
Washingto

n, D.C.
20036

(202)
842-0034

If the industry has done something or decides to do

something that results in some kind of an enhancement that plays out in
an area of interest to the NRC, and then the NRC decides, you know, we

1 really ought to take regulatory action in this particular area, and then
 2 they realize the industry has already put forth a number of
 3 improvements, so somebody has got to look at what the industry has done
 4 and whether that helps you understand the need and basis --

5 MR. SHERON: Barrel baffle bolting.

6 MR. MARION: Let's finish shutdown risk for a second.

7 MR. SHERON: All right.

8 MR. MARION: Helps you understand what improvements have
 9 been done to address problems that occurred in the past, and if those
 10 improvements meet the intended objectives of the proposed regulatory
 11 action, it seems to me the decision ought to be the regulatory action
 12 isn't warranted because the improvements have already been put in place
 13 and the improvements have taken hold.

14 I'm just offering that as a scenario in which the shutdown
 15 risk activity played out.

16 MR. SHERON: Still it's the "trust me." When you say the
 17 improvements have taken hold, there are licensees out there that may be
 18 implementing them. We've also seen licensees to drop stuff off their
 19 plate because they go, boy, I've got some cost problems here and that is
 20 costing me a lot of money; I just won't do that.

21 MR. BISHOP: That's why you are issued a hammer.

22 MR. SHERON: Right, and that's why the Commission said, yes,
 23 we are not going to issue this shutdown rule. We are going to let the
 24 industry take credit for those initiatives. But it's like W.C. Fields
 25 says, trust everybody but cut the deck. Go out and look. Make sure
 they are doing it. They told us they are doing it. You find a way to
 go out and monitor these people, and if they aren't doing it, you get

ANN RILEY Back in here and tell us.

&
 ASSOCIATE
 S, LTD.

Court
 Reporters

1025
 Connectic
 ut
 Avenue,
 NW, Suite
 1014
 Washingto
 n, D.C.
 20036
 (202)
 842-0034

MR. MARION: Have you evaluated performance under shutdown
 Court conditions? Had there been an increased number of events?

MR. SHERON: We're working on the issue. We are working on

1 it from the standpoint of the oversight process. How do we incorporate
2 it into the oversight process.

3 MR. BISHOP: That seems fair.

4 MR. SHERON: So we are doing it, but it's basically an
5 inspectable area. Granted nobody is going to run around and say -- we
6 call it an auditable, actually, not inspectable, because there is no
7 regulation.

8 MR. MARION: That's right.

9 MR. SHERON: If we got out and we find out through the
10 audits that the industry said one thing and then we got out and look at
11 the plants and we find out they ain't doing what the industry said, then
12 we expect the inspectors to come back and tell us, and we'll go to the
13 Commission.

14 MR. BISHOP: Wait a minute. I learned a new term.

15 MR. SHERON: What's that?

16 MR. BISHOP: I did not understand that there was a
17 correlation between inspection requirement and audit and other things.
18 Is that true?

19 MR. SHERON: It's part of the oversight process.

20 MR. BISHOP: I understand, but what you said all of a sudden
21 -- inspectors only inspect to requirements? They audit other things?

22 MR. SHERON: They enforce.

23 MR. BISHOP: I understand enforcing requirements. It seemed
24 to me what you were saying is the inspection --

25 MR. SHERON: We're looking to find a way to get into the
inspection program, a way that the inspectors when they are out there to
audit these voluntary initiatives that the industry keeps coming in and

ANN RILEY
&
ASSOCIATE
S, LTD.
telling us they are doing and therefore you don't need to go forward
with some regulatory action.

MR. BISHOP: Right.

MR. SHERON: So we ask the inspectors. The industry told us

Court
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

1 they are doing this. We gave them credit for it. We didn't promulgate
2 that regulation, because they said trust me, I'm doing good. Please go
3 out and verify they are doing good, and if you find out they ain't doing
4 good, you come back and you tell us. We'll go up to the Commission and
5 say, guess who lied to you? That's all.

6 MR. MARION: Brian, you are using terminology that is
7 creating some difficulties.

8 MR. SHERON: I'm just trying to point out that that is what
9 we are doing for voluntary initiatives.

10 MR. MARION: On that particular area of interest, I submit
11 NRC should focus on industry performance in terms of challenges that
12 occur while the plant is in a shutdown condition, and that should speak
13 for itself. If an event occurs while a plant is in a shutdown
14 condition, you folks have to do what you have to do if public health and
15 safety is jeopardized.

16 MR. SHERON: You are telling me if an event occurs, then I
17 do what I have to do.

18 MR. MARION: What is it that you are going to audit to.

19 MR. SHERON: It's like saying I'll inspect the airplane
20 after it crashes.

21 MR. MARION: No, no. What is it you are going to audit to.
22 You talked about audits.

23 MR. SHERON: Whatever the voluntary initiatives were.
24 Whatever the industry said. Hey, you don't have to issue this shutdown
25 rule because we're doing all these good things. So what we audit to is
all those good things.

MR. STROSNIDER: The point Brian is making is you can't
really inspect against those guidelines documents because they are not
enforceable because there was no regulation promulgated.

ANN RILEY
&
ASSOCIATE
S, LTD.
Court
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

MR. MARION: But they weren't written to be an inspection
tool.

1 MR. STROSNIDER: You can go look at them and see if they are
2 being done, but you couldn't write a violation against them.

3 MR. BISHOP: I never heard the verb inspect is limited to
4 requirements. You are both using that term in a way I had never thought
5 of it before.

6 MR. STROSNIDER: If you take it to the next step of inspect
7 and enforce.

8 MR. BISHOP: I understand enforce. Inspect is what resident
9 inspectors do.

10 MR. STROSNIDER: There are a lot of changes going on in the
11 inspection program trying to become more performance-based, but there
12 has always been an inspection and intent to try to control things to
13 inspect against that which is enforceable.

14 Now if you bring voluntary initiatives like the shutdown
15 guidelines into play and you say, we're not going to promulgate a rule,
16 there is not going to be anything to enforce against, then I think we
17 are just trying to use different nomenclature to say, well, we're not
18 inspecting for enforcement purpose because there is nothing there to
19 enforce against.

20 The same inspector? Can you tell the difference? I don't
21 know, except they are out looking now to see if the voluntary
22 initiatives --

23 MR. BISHOP: I never understood the difference between
24 inspect and audit, and this is very helpful to me.

25 MR. STROSNIDER: We've used the word audit where we got out
on vendor inspections and where we don't write violations.

MR. SHERON: There are two things you do with inspection.

ANN RILEY One is you inspect to make sure you have procedures which implement your
& Regulations, and you inspect to make sure you are following your
ASSOCIATE S, LTD. Court procedures.

Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

MR. MARION: Help me understand something. I'm troubled

1 about this discussion on shutdown. The guidance was issued in '91. I
 2 don't remember the exact time frame of the Commission deliberations on
 3 rulemaking, but I would suspect within a couple years after. That has
 4 been years ago. Why are we struggling with this today? What's
 5 happened?

6 MR. SHERON: It was just your term where you said voluntary
 7 initiatives are not a substitute for regulatory action.

8 MR. MARION: Don't take it out of context. That's your
 9 term, but please read the rest of the paragraph.

10 MR. STROSNIDER: Let me ask as simple a question as I can
 11 ask to try to distill this to the essence. Do you think NRC should be
 12 developing guidelines for voluntary initiatives? Should we develop
 13 guidelines or shouldn't we?

14 MR. VINE: Can I make a couple comments here?

15 MR. STROSNIDER: Wait a minute. Should we be going forward
 16 with that or shouldn't we?

17 MR. MARION: I would say no, primarily because we don't see
 18 the value in putting forward a formalized, structured process on
 19 something that has historically worked very well.

20 Of course, there are particular examples that have come up.
 21 The small bore piping was kind of difficult, and this shutdown thing,
 22 but look at the spectrum of things we have interacted with over the
 23 years. I think that indicates a high level of success, but the reason
 24 it is does is because early on we had open discussion on the technical
 25 issue, come to an understanding with that. I submit when you get that
 understanding, then it becomes clear what the roles and responsibilities
 are. That has always been the case.

ANN RILEY There are going to be instances where we agree to disagree.
 & That is going to happen, but I think most of the time we understood the
 ASSOCIATE S, LTD. Court technical nature of the issue and then determined the appropriate course
 Reporters of action.
 1025 of action.
 Connectic
 ut
 Avenue,
 NW, Suite
 1014
 Washingto
 n, D.C.
 20036
 (202)
 842-0034

1 I know there have been discussions that I've been involved
 2 with where I encouraged the NRC to take regulatory action because it
 3 involved safety-related components. We've said that we will deal with
 4 the non-safety-related components. Understandings like that, and then
 5 you move forward.

6 All those discussions and understandings were made in a
 7 public forum, a public meeting such as this, documented in a summary of
 8 the meeting or a subsequent letter to the NRC, saying industry
 9 understands this is the problem, this is what we are going to do to
 10 complement your action in whatever form it takes, whether it's a
 11 bulletin, generic letter or rulemaking. That has worked.

12 That's the basis of my answer to your question.

13 MR. SHERON: There have also been a number of them that
 14 haven't worked.

15 MR. MARION: There have been exceptions, without question.

16 MR. SHERON: What I am saying is we need to have guidelines
 17 or procedures so at least you know where we are coming from and what
 18 rules we are going to play by. If you guys want to be involved, that's
 19 fine, but I look at these as a set of rules the NRC is going to play by
 20 on voluntary industry initiatives. There is going to be stuff in there
 21 like the industry needs to respond by a certain amount of time.

22 MR. MARION: That makes no sense.

23 MR. SHERON: Why?

24 MR. MARION: Because you are basically intimidating the
 25 industry to do something, Brian.

MR. BISHOP: You're suggesting up front you're going to know
 each and every time that 30 days is the right number, or 60 days is the
 right number?

ANN RILEY
 &
 ASSOCIATE
 S, LTD.
 Court
 Reporters
 1025
 Connectic
 ut
 Avenue,
 NW, Suite
 1014
 Washingto
 n, D.C.
 20036
 (202)
 842-0034

MR. SHERON: No.

MR. MARION: Not to tell you what to do, but I would suggest
 a management directive or an office letter, or whatever is the

1 appropriate mechanism, and I don't pretend to have a full understanding
 2 of your internal procedures, but something that says technical issues of
 3 a generic nature, if information is needed from the industry to
 4 understand the nature, scope and impact, et cetera, then obtain the
 5 information from the industry.

6 You have got two ways to do that. One is call 202-739-8000
 7 and ask for the right person at NEI, which has been very successful in
 8 the past. The other is pursue regulatory action, if that's what you
 9 want. It's your choice.

10 We're here to say interaction with the industry has always
 11 worked out in a positive way for both the NRC and the industry as long
 12 as we do that in an open public forum, and we are willing to do that and
 13 work with you on that.

14 MR. SHERON: What I am saying is if we call 202-739-8000 and
 15 somebody picks up the phone says, oh yeah, we'll get on this, and then
 16 we wait five or six months and we don't get what we are looking for.

17 MR. BISHOP: Then you ought to increase the heat.

18 MR. MARION: You know how to do that.

19 MR. SHERON: I've tried that in the past, and sometimes it
 20 doesn't work.

21 MR. BISHOP: Everybody has got a boss.

22 MR. SHERON: All I am saying is that rather than just get
 23 into that mode if somebody doesn't respond, I call their boss and start
 24 jumping up and down, we should have a procedure that everyone
 25 understands.

If we are going to call you and say, do you want to get this
 information for us, do you want to do the study, do you want to figure

ANN RILEY
 &
 ASSOCIATE
 S, LTD.
 Court and such a time frame. Then we can either say that's acceptable or no,
 Reporters
 1025 we are going to need it earlier, or the like.

Connectic
 ut
 Avenue,
 NW, Suite
 1014
 Washingto
 n, D.C.
 20036
 (202)
 842-0034

1 Everybody needs to know up front what the schedule is, how
2 we are playing the game.

3 MR. MARION: We don't disagree with that at all. We talked
4 about this in December. Those are the kind of elements or things of the
5 discussion we had early on that we need to reach an understanding on.

6 MR. SHERON: This is what I'm saying. I'm not trying to say
7 we are going to put up procedures to say that we will call the industry
8 and if we don't get a call back in two weeks and 14 hours and 17
9 minutes, we are going to issue a generic letter. It's a matter of we
10 will call the industry. The industry will propose, maybe within a week,
11 a schedule or something.

12 MR. MARION: No. Very seldom can you reach an understanding
13 of one of these technical issues without having a meeting.

14 MR. SHERON: No, no. We'll have a meeting. In other words,
15 we call you. We have a meeting. We explain what is going on and we
16 reach an agreement on when you will give us your plan of action and how
17 long it will take, assuming you decide you will take it.

18 MR. BISHOP: What's different than just documenting that in
19 the meeting minutes, the summary? It happens now anyway.

20 MR. SHERON: Because everyone will know how we how we are
21 playing the game. That's why.

22 MR. BISHOP: Wouldn't that be in the summary? Anybody else
23 in the outside world that cares about that issue knows to look under
24 that issue, and that's what they will find. Anybody on the staff,
25 anybody in the public, anybody in the industry.

 MR. CARPENTER: Can I interject here? I'm still not
understanding why you are objecting so much to us having a formalized

ANN RILEY
&
ASSOCIATE
S, LTD.
Court
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

Procedure. What is the problem with us having something that we can
point to to Congress, to Joe Citizen, to NEI, to any licensee: Yes, if
you want to do something, this is how we are going to do it. By the
way, this is a fairly loose forum of how we are going to do it; it's not

1 extremely structured, but this ensures that we are going to follow the
2 rules that, oh, by the way, you, the industry, agreed to already.

3 MR. SHERON: Process, process.

4 MR. BISHOP: I'd like to reserve judgment until I see it.
5 My fear is the more formal it becomes, the more rigid it becomes, the
6 less workable, the more resource intensive it becomes without benefit.
7 The more informal it is, the more flexible it is, the more it looks like
8 what we are doing now. So why formalize it?

9 MR. CARPENTER: This is why we have asked the industry, why
10 we've asked NEI, why we've asked the public to help us develop this
11 process. You are reserving judgment. Come in and tell us what you
12 think we should do.

13 MR. BISHOP: I'd be happy to write that up. It will take
14 one page. It will describe what we think are the fundamental principles
15 that should be in play.

16 MR. SHERON: Why wasn't that done during the public comment
17 period? That's the problem. We're a month after the public comment
18 period.

19 MR. VINE: Can I make some comments here? I would like to
20 comment first on the process issue and second on this business of
21 substitute for regulatory action.

22 I really think there is a lot of common ground on this
23 question of a process. Here are the givens.

24 There clearly have been a number of successes where the
25 informal process has worked very well.

There are also a lot of examples where it has not worked
very well. I don't think many of them fall within the venue of NEI, but

ANN RILEY
&
ASSOCIATE
S, LTD.
Court not gone well.
Reporters
1025 So there are good and bad examples.

Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

1 The second thing we will all agree on is that whether they
 2 were the good ones or the bad ones, no two have ever been done alike.
 3 They all have different time lines; they all have different levels of
 4 safety significance; they all have different levels of the degree to
 5 which either the NRC or the industry or both have already dealt with
 6 them versus whether they are brand new on the table and we've got to
 7 look at them from scratch; some of them require research before you can
 8 come up with a solution; others it's straightforward. Every one has its
 9 own characteristics.

10 The other givens are that the industry will continue to do
 11 voluntary activities. It will continue to face challenges and continue
 12 to go off and do its own thing and keep you informed when it's
 13 appropriate to keep you informed. That is going to go on no matter what
 14 you do, whether you write a procedure or don't write a procedure.

15 The other thing that is a given is that you have got to have
 16 some kind of response back to the Commission in May, or whatever, on
 17 what you are going to do.

18 MR. SHERON: I haven't heard anything yet I disagree with.

19 MR. VINE: Between all that, and this is maybe a little
 20 different than Alex's answer, but I think that -- and there have also
 21 been a number of cases where there have been what I would consider to be
 22 abuses of the process that more discipline in this thing would greatly
 23 improve not only the process, but the likelihood that the commitments
 24 that industry makes are the things that are risk significant.

25 So there is a value in doing something here, but has to be
 very high level, and it has to be very flexible, and it has to be just
 capturing the fundamental principles of what we are going to do and what

ANN RILEY
 &
 ASSOCIATE
 S, LTD.
 Court
 Reporters
 1025
 Connectic
 ut
 Avenue,
 NW, Suite
 1014
 Washingto
 n, D.C.
 20036
 (202)
 842-0034

We are not going to do and to get the outliers of where it hasn't gone
 well back in bounds.
 To get into time lines, every time line is going to be
 different. You could say that we are going to agree on a time line.

1 That's fine. But every one has to be handled somewhat differently.

2 There are some fundamental things that I think you can agree
3 on that we are not going to do, or things we are going to try to do that
4 will, I think, answer Gene's question and not hurt where we are.
5 Something that is very rigid is not going to work. Something that is
6 extremely formal is not going to work.

7 Let me make a comment on the substitute business. First of
8 all, I would take the shutdown rule off the table as an example of
9 anything, because that predates DSI-13. We are talking modern history
10 here now, not ancient history on how we go forward.

11 You know that flowchart we used a month ago where we had a
12 box that talks about how you guys look at an issue and whether the 51.09
13 criteria are triggered or not triggered. For cases where the criteria
14 are triggered, that is where that sentence best fits.

15 If the criteria are not triggered, it's an irrelevant
16 question, because the industry will have activities for all those issues
17 for which the criteria are not triggered, and there is no need for
18 regulatory action because they are not triggered.

19 So it's a pure matter of voluntary industry activities that
20 you will be kept informed on, but there is no need for regulatory
21 action, so therefore there is no question of substitution.

22 On those cases where the criteria are triggered, that's the
23 case where what the letter says is that there should not be an industry
24 commitment to a new requirement without the NRC establishing the basis
25 for that commitment. In other words, there has to be a one-to-one
correspondence between what you inspect and enforce to and what the
regulation says. That's the point of the letter.

ANN RILEY MR. STROSNIDER: That's the only point that I would respond
& to, which is when we talk about -- take a generic letter as an example,
ASSOCIATE S, LTD. because that's the main thing we had in mind, frankly. That's what it's
Court Reporters going to be in most cases. We can't by our own process put out a
1025 Connecticut
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

1 generic letter unless we tie it to 51.09 to triggering one of these
2 processes we were talking about.

3 MR. VINE: Unless it's just gathering information to be able
4 to make that determination.

5 MR. STROSNIDER: Yes, 50.54(f) to give us information.
6 Maybe I should say it the other way. We are not going out and
7 promulgating new requirements that way. We are getting information to
8 assess relative to existing requirements.

9 The only other thing is the same thing I said earlier, which
10 is what I'm trying to understand is, if we have an issue that satisfies
11 51.09 or 50.54 in the sense that we could send out a generic letter,
12 we've got the basis, we could put it through our process, it can go out,
13 the one thing that we are suggesting is that might not be what we would
14 do in every case, depending on whether there are some industry
15 initiatives out there that satisfy the issue.

16 MR. VINE: Right.

17 MR. STROSNIDER: I was trying to clarify that particular
18 statement.

19 MR. MARION: As the author of that letter and that sentence,
20 please don't take that sentence out of the context of that entire
21 paragraph. That is the lead-in sentence.

22 MR. STROSNIDER: The rest of the paragraph kind of tells me
23 I ought to be putting out generic letters, too. That's the way I read
24 it.

25 MR. MARION: If you want to interpret it that way.

MR. BISHOP: If you need to establish a regulatory
footprint, then you can articulate what you believe the regulation says

ANN RILEY and what you intend to enforce to. We can't do that. Only you can do
& that.
ASSOCIATE
S, LTD.

Court
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

MR. STROSNIDER: We're not trying to give up that
responsibility or authority. We recognize that's ours.

1 I wanted to ask one other questions on this letter. I
 2 recognize this may be a difficult one for you to answer, but at least
 3 you can tell me the process. You had a meeting yesterday with the
 4 Nuclear Strategic Initiatives Advisory Group.

5 MR. MARION: Nuclear Strategic Issues Advisory Committee

6 MR. BISHOP: This is the steering group. This is 12?

7 MR. MARION: Actually about 17 or 18, I think.

8 MR. STROSNIDER: The question I wanted to ask is, to what
 9 extent do we take this as representing the industry's position?

10 I understand it's difficult for you to say, well, everybody
 11 out there signed on to it, but I would at least like to understand the
 12 process that this is going through.

13 MR. MARION: We discussed it with them. We gave them
 14 background; we gave them the current status and told them what our plans
 15 were.

16 MR. STROSNIDER: They represent all the power reactor
 17 licensees?

18 MR. MARION: One of the advisory committees that we have is
 19 the Nuclear Strategic Issues Advisory Committee, and that is comprised
 20 of chief nuclear officers or an equivalent position from utilities with
 21 operating nuclear power plants, architect-engineering firms, and
 22 industry vendors. That is currently a body of approximately, if I have
 23 my numbers correct, 75, 80 or 82 individuals. They meet twice a year.

24 There is a need to have a representative sampling of that
 25 group to meet on a more frequent basis. So we have a steering group
 comprised of 17 or 18 members of the full committee that meet on a more
 frequent basis. That's the smaller group.

ANN RILEY The analogy is a board of directors and an executive
 & Committee, if you will. The steering group meets more frequently, and
 ASSOCIATE S, LTD.
 Court their fundamental job is to give us feedback and input on priorities in
 Reporters terms of issues, give us some direction and guidance on resolution
 1025 Connectic
 ut
 Avenue,
 NW, Suite
 1014
 Washingto
 n, D.C.
 20036
 (202)
 842-0034

1 strategies, time tables. Also that's a forum by which the chief nuclear
2 officers can identify issues that they think NEI should or should not be
3 pursuing.

4 MR. BISHOP: If your question is, did they review this
5 letter, did they vote on this letter, the answer is no and no. That's
6 our responsibility, or it's Ralph's and Alex's responsibility.

7 MR. MARION: Since this was finalized and mailed out to you
8 folks this morning and I gave it to you today, I intend to send this out
9 for broader industry distribution and tell these are the comments we
10 submitted in response to the Federal Register notice and indicate
11 clearly that we are going to have further interactions.

12 I believe in this letter we will submit to you comments the
13 17th of March on the flowchart that was in the February 9 letter to me
14 following our last meeting.

15 MR. SHERON: You're going to submit comments when?

16 MR. MARION: By the 17th. It's in here, in the next to last
17 paragraph.

18 MR. STROSNIDER: What we have indicated we will consider
19 them to the extent we can, depending on where we are in the process.

20 MR. MARION: I understand.

21 MR. STROSNIDER: We have got a deadline that is scheduled,
22 and we are working on it.

23 Let me do a little active listening exercise here. I think
24 the big picture of what I heard today is, number one, suggesting that we
25 don't really need any guidelines, that you can continue with the ad hoc
approach that has been used, but if guidelines are going to exist, that
they should be fairly high level and not very prescriptive, providing

ANN RILEY
&
ASSOCIATE
S, LTD.
Court
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

flexibility that reflects the spectrum of the type of issues that might
come up.

MR. BISHOP: I think that states it well.

MR. MARION: I think Bob made an interesting comment, that

1 this could probably be articulated on one page where you pick up the
 2 elements of the current ad hoc process, schedule a meeting with industry
 3 to discuss, achieve understanding of the technical nature of the issues
 4 and scope, and determine course of action and lay out schedules and
 5 milestones.

6 MR. BISHOP: Summary minutes.

7 MR. MARION: That's basically what comes out of the
 8 discussion, but the key fundamental point, the initial starting point is
 9 interaction with your technical staff and the industry's technical staff
 10 in understanding the problem and determining what needs to be done.

11 MR. BISHOP: And anybody else who cares. It has to be a
 12 public process.

13 MR. MARION: I recognize that you took a quick glance at
 14 this. After you have had an opportunity to digest this, if you want to
 15 meet and talk about or if you just want to call, I'd be more than happy
 16 to discuss this.

17 MR. VINE: As I alluded to earlier, there are hundreds of
 18 EPRI documents and owners group documents that somehow kind of get swept
 19 into this whole voluntary process with the NRC. There are a lot of
 20 cases where those have not been handled in the spirit of Alex's letter.

21 I think it would be useful if whatever you guys produce this spring
 22 captures that situation and helps bring some discipline to that side of
 23 the world as well as the interactions with NEI, because it's a broader
 24 industry discipline that has to be established, not just with the NEI
 25 issues.

I will give you an example. There are literally hundreds of
 documents that you get from EPRI and the owners group, and from NEI as

ANN RILEY
 &
 ASSOCIATE
 S, LTD.
 Court
 Reporters
 1025
 Connecticut
 ut
 Avenue,
 NW, Suite
 1014
 Washingto
 n, D.C.
 20036
 (202)
 842-0034

Well, that come in on the basis of "we would like you to review and
 approve this as one acceptable means of addressing an issue."

After the process of REIs and the SER and everything, we end
 up with a letter back from you saying, yes, that is one acceptable means

of addressing an issue.

The backfit rule never even comes into play in that discussion because your view is "we're not establishing a requirement, we are just approving one acceptable means, and therefore we don't have to meet the backfit rule" on your side.

The reality is that these guidelines become the basis for regulatory decisions, because you then expect people to meet them, and if they don't, then they can't get what they need. If no alternatives are ever submitted as a means other than the one that has been submitted, or if they don't get approved, then that becomes in effect a regulatory requirement.

Many of these documents, dozens, hundreds of these documents are in place today that are effectively part of the regulatory requirements for decision making on your part and on our part. Many of them don't even have a safety nexus.

So as we continue to work, EPRI and owners group with NRC, in this venue of an acceptable means, we have to be able to bring some discipline to that process and have the safety nexus looked at on both sides before we establish something that is de facto a regulatory requirement.

This is bigger than just the NEI issues.

MR. STROSNIDER: You're making it bigger.

MR. VINE: But these are the problems that have to be dealt with.

MR. STROSNIDER: There are a lot of documents out there developed by EPRI, some of which we receive and comment on, and that's all we do is comment on them. Some of them we endorse through regulatory guides. And they have different degrees of enforceability.

MR. VINE: Some of them are enforced, and that's where the

ANN RILEY
&
ASSOCIATE
S, LTD.
Court problem is.
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

MR. STROSNIDER: Yes, some are enforced. It's beyond the

1 scope of what I think we were originally thinking about in these
2 guidelines. I hear what you are saying, and we will have to give it
3 some thought as to how it fits into what we are talking about here.

4 MR. MARION: We touch on that a little bit in our letter.

5 MR. STROSNIDER: I can look at things like water chemistry
6 guidelines. We talked about how we are going to work that into the
7 steam generator framework. You're right in that we had a lot of
8 discussions to figure out where does it fit in, should it be
9 enforceable, should it not. How do you maintain flexibility to reflect
10 state of the art in those documents, and that sort of thing.

11 MR. VINE: And if they never rise to the level of inspection
12 and enforcement, then it's not an issue. If they get swept into that
13 path, then they ought not to be a bypass around what you set up with
14 NEI. We don't want a situation where if you don't get the right answer
15 from NEI on a particular issue, then you go to the owners groups and get
16 them to make a commitment to something that the NSAIC says we don't
17 think this is an appropriate thing to make a commitment to. It puts us
18 into a divide and conquer mode, and that is not appropriate.

19 MR. STROSNIDER: That helps me understand your concern.

20 MR. VINE: If we are talking inspection and enforcement, it
21 has to be the whole industry.

22 MR. STROSNIDER: My gut reaction to that is when we get
23 involved in those what I will characterize as lower tier documents, we
24 just need to make it clear, everybody involved, what stature or status
25 we are giving it in regulatory space.

MR. MARION: We offer a little bit of a high level construct
for that in this letter.

ANN RILEY
&

ASSOCIATE
S, LTD.

Court make sure we understand. Just the high points.
Reporters

1025

Connectic
ut

Avenue,

NW, Suite

1014

Washingto

n, D.C.

20036

(202)

842-0034

Should we go through the rest of the letter?

MR. STROSNIDER: I think it's worth your going through it to

MR. MARION: I mentioned earlier that we wanted this at a

1 high level principle. We talk a little bit about the type of
 2 commitments that are made to the spectrum of documents and why they are
 3 made, those that relate to regulatory issues, regulatory actions,
 4 orders, conditions, and other action that a utility may decide to
 5 pursue.

6 The commitment management guidelines that were issued by NEI
 7 speak to that entire spectrum of commitment management activity. So I
 8 would encourage you to take a look at that and see if that helps you in
 9 dealing with your internal process.

10 We already talked about the sensitivity in the first
 11 paragraph related to imposing new requirements through generic letter.

12 Again, as a segue into the third paragraph, I am referring
 13 to the comments that we submitted on the generic communication process.

14 The same elements of discussion play out in the voluntary initiatives,
 15 and we need to come to an understanding. It really would help if the
 16 generic communication process itself would be further simplified to be
 17 straightforward. This is a request for action; this is a request for
 18 information; and this is an advisory, or something --

19 MR. SHERON: That's what you got now, right?

20 MR. MARION: No. You've still got the old baggage
 21 associated with bulletins, generic letters, and it is complicated by
 22 regulatory issues summary letter, and it's still convoluted. Clarity
 23 and understanding is my only point. If you want to discuss that
 24 sometime in the future, I will be more than happy to get in detailed
 25 discussion.

MR. STROSNIDER: I suspect that probably is a separate
 discussion, because frankly I think what you are talking about is
 implementation of those regulatory vehicles as opposed as to what their
 defined purpose is.

ANN RILEY
 &
 ASSOCIATE
 S, LTD.
 Court
 Reporters
 1025
 Connectic
 ut
 Avenue,
 NW, Suite
 1014
 Washingto
 n, D.C.
 20036
 (202)
 842-0034

MR. MARION: It's no different than the term "substitute for
 regulatory action." When you see those words, there is an immediate

1 perception in a register in your mind that you react to. Bulletins are
2 the same way; generic letters are the same way. "Regulatory information
3 summary letter" is a mouthful. I don't think anybody has gotten an
4 impression on that yet because not enough have been issued. And I
5 forget the fourth category.

6 You need to keep that in mind in terms of these
7 communication processes, and that's the main theme of what we were
8 submitting in comments. The same issues apply in this particular
9 discussion.

10 MR. BISHOP: Simply stated, our recommendation was if you
11 want action, call it a request for action. Sometimes requests for
12 action are either in a bulletin or in a generic letter. Our suggestion
13 was maybe there is a better way, and that is, what need are you really
14 trying to satisfy?

15 If it's a request for action, call it a request for action.
16 If it's a request for information, call it a request for information.
17 Then right up front in the first line the licensee knows exactly how to
18 bin this: this is something I've got to think about doing; this is
19 something I've got to think about supplying information about. Then the
20 reaction will be, hopefully, more expedited, because there is clarify in
21 the communication of what you want and the licensees better understand
22 what they need to do next.

23 MR. STROSNIDER: You brought this subject in prior meetings.
24 It is separate from the guidelines that we are talking about.

25 MR. MARION: There is a relationship, and we've already
established it with the generic letter discussion as it relates to
voluntary industry initiatives. I think if we are going to provide some
clarity on the interactions on this initiative process, we ought to have
as much clarify as possible in the communication mechanisms.

I think there is an opportunity here that we ought to take
advantage of. In the bottom paragraph dealing with where initiatives

ANN RILEY
&
ASSOCIATE
S, LTD.
Court
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

1 fall with regard to inspection I offered two avenues. We discussed this
2 at our meeting in December and I am just articulating it in writing.

3 I think from our meeting in December there was general
4 agreement that fundamentally there these two approaches. If a guideline
5 is developed as one way of meeting an NRC regulatory requirement and
6 that guideline is endorsed in a regulatory guide as a way of
7 implementing that regulatory requirement, then NRC's inspection and
8 enforcement authority is clear.

9 The other avenue is where it's a guideline document for some
10 operational or system reliability improvement that is implemented within
11 some program that falls within the scope of 10 CFR Part 50. Whatever
12 that is in terms of implementation is subject to NRC inspection and
13 follow up. The question of enforcement may be a little more
14 challenging, but it depends upon the specifics of that improvement that
15 is being implemented.

16 It really comes down to the commitment process that the
17 utility has taken on that guideline or that portion of the guideline and
18 how they are going to implement it in their Appendix B program, for
19 example, or their design control program. That becomes such an
20 issue-specific thing it's hard to get into more detail, but if you will
21 reflect on the past experiences with initiatives and guidelines, I think
22 that would really demonstrate how this would play out. The design basis
23 activity, I think, is a good example.

24 We already talked about the substitute for regulatory action
25 lead-in sentence to that paragraph. So I'm not going to go into that
again.

I did receive your February 9 letter with that flowchart.

ANN RILEY
&
ASSOCIATE
S, LTD.
Court
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

We haven't had an opportunity to digest it. We will do so and submit
comments to you by the 17th. If that submittal allows you to consider
them as you are moving forward in responding to the schedule you have
for the Commission, fine. If not, it's your call, but we are going to

1 send you comments by the 17th.

2 I would ask you to look at the enclosure. I think the
3 enclosure would help you understand the focus and the basis for a lot of
4 the comments that we are making.

5 I see that Gene has put up a flowchart of your process. We
6 are not prepared to discuss it in detail in terms of giving you comments
7 and input.

8 MR. STROSNIDER: This is the same one that you just
9 referenced in the letter.

10 MR. MARION: Right. But it would benefit us if you would
11 take a few minutes and just explain your rationale and thinking in
12 developing this.

13 MR. CARPENTER: You can see we have six boxes here. This is
14 an outflow of what you presented to us in the December 21, 1999,
15 meeting. When we sat down and looked at what you presented, we were
16 trying to determine what it is that we are trying to determine as to
17 what is the process that a VII would be implemented if the industry
18 comes to us with one.

19 We are in basic agreement here that an issue is identified.
20 It is either identified by the NRC or it is identified to the NRC by
21 the industry.

22 Conversely, in box 2 the issue is identified either by the
23 industry or to the industry by the NRC.

24 Whichever way it goes, if the issue is identified by or to
25 the NRC, we the staff will go in and we will evaluate it under 51.09
concerns and determine if a backfit does exist. We will evaluate the
issue and determine if it's adequate protection, if it's a
Safety-enhancement and/or compliance exception.

ANN RILEY
&
ASSOCIATE
S, LTD.
Court immediately go to the industry and we inform them of it and ask to have
Reporters
1025 a meeting. The industry will have a chance to look at this and develop
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

1 some proposed response, and then in box 3 we meet on the issue.

2 This is going to be an iterative process just like you were
3 talking about earlier. We are in full agreement on this. Frequent
4 communications; open lines communication is an absolute necessity in
5 regulating and in running nuclear power plants with the NRC looking on
6 and helping out.

7 MR. VINE: Can I ask a question?

8 MR. CARPENTER: Sure.

9 MR. VINE: First of all, you basically go through a full
10 backfit analysis before we meet, or do we meet before you do the backfit
11 analysis?

12 MR. CARPENTER: It depends whether we have a chance to look
13 at it before we meet and we've had a chance to evaluate it. We will go
14 through and take a look at it under 109. We may not have a very formal
15 109 procedure done, but we certainly will consider it in the background
16 of whether or not it is 109 space.

17 MR. MARION: But that doesn't preclude the example we talked
18 about earlier and in the past meetings where we may need to have a
19 meeting to discuss information that may be necessary to support that
20 kind of decision making. It's more like, okay, you think it's a
21 compliance issue, you think you need some information. That would be in
22 advance of that, right, of that first block, if that were the situation
23 in a particular issue?

24 MR. CARPENTER: If we don't have enough information, this is
25 where the iterative process comes in. It's not necessarily sequential.

MR. MARION: It's just my reaction to processes. I think
they are all structured and it says you can't do this until you do that.

ANN RILEY MR. CARPENTER: This answers your earlier concern, Alex. We
& don't have you follow A to B to C to D. This is, as was put out in the
ASSOCIATE S, LTD. Court letter, a very iterative process that will get through this. Hopefully
Reporters it will be timely.
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

1 MR. STROSNIDER: That's why there are no arrows on any of
2 the lines.

3 MR. VINE: I have one more important question on box 3.
4 Unlike our earlier chart, which is already out of date, we had some
5 yeses and nos and so forth coming out of this box 1. Or it was explicit
6 as you came out of box 1 whether it met or didn't meet the criteria,
7 whether the criteria were triggered or not.

8 My point is you have three lines coming out of box 1, one of
9 which goes to 3. Is that only an issue that meets the criteria, or is
10 it all issues that you look at?

11 In other words, if you get to box 3, you are ending up going
12 down and taking some regulatory action one way or another. I'm assuming
13 that the only thing that gets to box 3 is an issue that meets the
14 criteria, but it doesn't say that anywhere. Are you also bringing
15 issues down to 3 that don't meet the criteria?

16 MR. CARPENTER: I don't think that we explained it very well
17 if you didn't understand that. Everything that we consider to be an
18 issue to take to the industry we will want to meet on.

19 MR. VINE: So box 3 includes issues that don't meet the
20 criteria in box 1.

21 MR. BISHOP: But 4 and 5 would be in A-2 because they don't
22 meet the criteria in box 1.

23 MR. CARPENTER: Right.

24 Let's go to box 4. The NRC determined the issue involves
25 adequate protection and takes regulatory action. That is precisely what
was said in the SRM to SECY-99-063, that if this is an adequate
protection issue, we will take whatever appropriate action is need.

ANN RILEY
&
ASSOCIATE
S, LTD.
Court
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

Conversely, if there is an action that needs to be taken and
the industry can help us along with that and give us some information as
to what they think would be the best way to approach that, we will
certainly take that into consideration as we go forward. So don't think

1 that box 4 just goes out into a space and we never talk to the industry.

2 Again, this is very much an iterative process of constant
3 communications going on back and forth.

4 Going on to box 5, the NRC and industry agrees on a
5 voluntary industry initiative. As we said in box 3, if the industry
6 presents their proposed actions to the staff, we sit down with them. We
7 take a look at what they have presented to us.

8 We go back and forth a couple of times and say, okay, we
9 agree that you should do this. A, B, C, D and F look good. However, we
10 think action E and possibly G could be fine-tuned such that this will
11 make it a little bit better and meet the intent of the safety issues a
12 little bit better.

13 Industry comes back to us. They say, yes, we agree, or no,
14 we disagree, and this is why. We will go back and forth a couple of
15 times on that and hope we come to an agreement.

16 As we say in box 5 here, those actions could be somewhat
17 far-ranging, everything from no immediate action, just long-term
18 surveillance a la what we were initially proposing in Generic Letter
19 9701 with the top head cracking issues for PWRs, with future actions as
20 appropriate and applicable.

21 Or they could propose the VII that would be either
22 industry-wide, a specific owners group, or even just multiple licensees,
23 multiples being two or more, that would commit to some specific actions
24 and/or performance-based standards that address the issue. These would
25 be thing that they the licensees, they the owners group, they the
industry in toto would address and would take into effect and would
commit to do, and we would agree and we would monitor it to ensure that

ANN RILEY that was taking place.

&
ASSOCIATE
S, LTD.

Box 6 is one that I hope we never get to, that being that
Court the industry and the staff cannot agree on some actions that need to be
Reporters taken. If we do get to the point where we have determined that this is
1025 Connecticut

ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

1 either a safety enhancement or a compliance exception and we cannot
 2 agree on something, then we will naturally go forward and take whatever
 3 appropriate regulatory action is necessary.

4 We are not asking you to regulate for us. We are asking you
 5 to help us get to the right safety resolution in a timely manner.

6 MR. BISHOP: That's our goal, too.

7 MR. CARPENTER: That is why I'm having a problem
 8 understanding why you are disagreeing with -- this is about as formal a
 9 process as what we are trying to put together.

10 MR. MARION: But you were going to say why we were
 11 disagreeing with what? The guideline thing?

12 MR. CARPENTER: I'm sorry.

13 MR. MARION: You were saying that's why you couldn't
 14 understand why we disagree.

15 MR. CARPENTER: In terms of the other guidelines.

16 MR. MARION: I think we should have made a point about the
 17 guidelines. I think on box 6 you need to keep that there because there
 18 are going to be situations where we are going to agree to disagree.

19 MR. BISHOP: Frankly, going just to the chart for a moment,
 20 I can't see a scenario where the straight line goes down. We're never
 21 going to know that we can't agree unless we have met and talked about
 22 it.

23 MR. MARION: The line that you have coming out of box 3 is
 24 probably more appropriate. The one from 1 to 6 seems like a quantum
 25 leap.

MR. CARPENTER: I understand.

MR. BISHOP: I think those are the right principles.

ANN RILEY MR. MARION: The one thing that we talked about in December
 & ASSOCIATE I'm trying to think who from the staff was at that meeting. He had
 S, LTD. Court the same reaction to the idea of inspection and enforcement. During
 Reporters 1025 these iterative discussions on the front end of this process, if there
 Connecticut Avenue,
 ut NW, Suite
 1014
 Washingto n, D.C.
 20036
 (202)
 842-0034

1 is an expectation by the NRC that the action by industry -- I'm trying
 2 to get away from Roman numeral VII, so bear with me -- that the action
 3 that is agreed to by industry is inspectable somehow and it's outside of
 4 the regulatory construct that I identified in the letter, and it may be
 5 in some instances, then it is longer voluntary.

6 MR. VINE: That was Joe Collins' comment.

7 MR. MARION: Yes. The obvious question is, well, if that's
 8 the case, then it suggests this isn't something that you want people to
 9 do voluntarily on their own, so why not just jump to a regulatory
 10 action.

11 I think that is one of the questions that needs to get
 12 thrashed out here.

13 MR. CARPENTER: For instance, a couple of years ago there
 14 was a small problem with some BWRs and their jet pump elbow cracking.
 15 We put together an information notice and sent that out. We were also
 16 in the process of putting together a generic letter requesting
 17 information and possible actions by the industry.

18 Instead, some members of the BWR owners group came to us and
 19 followed a process somewhat similar to this. They told us what they
 20 wanted to do in lieu of regulatory action by the staff.

21 We went back and forth with them a couple of times over
 22 their proposals, and we agreed to those. Instead of us issuing a
 23 generic letter telling the industry what they should do, the industry
 24 came to us voluntarily, which is what we are trying to stress here, the
 25 voluntarily nature of voluntary industry initiatives.

They came to us to tell us what the safety significance of
 the issue was and how they could ensure that their plant would be

ANN RILEY maintained safely. We agreed to it.

&
 ASSOCIATE
 S, LTD.

Court
 Reporters

1025
 Connectic

ut
 Avenue,

NW, Suite

1014
 Washingto

n, D.C.
 20036

(202)
 842-0034

MR. VINE: I think Alex's point is that there is a Catch-22

here in the word "voluntary." If what you just described takes place
 and it remains voluntary, then it can be in lieu of regulatory action

1 because there is not regulatory action; it's all voluntary action.

2 MR. BISHOP: It satisfies a regulatory concern.

3 MR. VINE: Right. But when you start talking about
4 commitments and inspection and enforcement, it's no longer voluntary.
5 That is the tough one we have to get through.

6 MR. STROSNIDER: I don't want to speak for the industry, but
7 from the industry's perspective, I guess the voluntary is, well, how
8 voluntary is it, because if I don't do it, you're going to send me some
9 regulatory action like a generic letter.

10 MR. BISHOP: If it's a generic letter, going back to Brian's
11 earlier comment, with which I agree as well, you can't impose a new
12 requirement. If it's a requirement, there are other ways to do that.

13 MR. STROSNIDER: You're right. We wouldn't be imposing a
14 new requirement that way, but we might be requesting action, collection
15 of data, or something else, providing of information.

16 I think the problem with the "V" in VII is how voluntary is
17 it. If you say, well, if we don't volunteer to do it, you're going to
18 send us a letter and ask us to give it some attention anyway.

19 MR. BISHOP: There is a certain tension there.

20 MR. MARION: The solution lies in different terminology than
21 Roman numeral VII. I just leave that for your consideration.

22 MR. STROSNIDER: It goes back to DSI-13, as Brian mentioned
23 earlier. It may not be the best choice.

24 MR. BISHOP: As long we can make sure we all understand the
25 concept, then I think the future becomes brighter. I guess, Brian, my
sense is if this is what you had in mind in terms of describing the
process you are going to use other than a few minor things that we just

ANN RILEY mentioned, I think that is well on the right way and the right
& direction.
ASSOCIATE

S, LTD.

Court
Reporters

1025

Connectic

ut

Avenue,

NW, Suite

1014

Washingto

n, D.C.

20036

(202)

842-0034

MR. SHERON: I still don't see where the public gets

involved here.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. BISHOP: Every place.

MR. CARPENTER: That's working in the fine-tuning. For instance, when we put up the voluntary industry initiatives Web page -- I apologize in advance, Alex -- that will allow the industry to be involved with this.

MR. SHERON: I go to box 5, NRC and industry agrees on VII program; NRC monitors or inspects, as appropriate, industry actions. Are they documented actions, or what?

MR. BISHOP: To the extent anything the NRC does is documented.

MR. SHERON: No, no, no. After you get in through box 3 and you have the meeting, and the industry says, yes, we're going to buy this, we're going to take this on as an initiative, are you going to submit documentation of a program saying the industry commits to do the following, or the industry agrees we're going to study the following?

MR. BISHOP: I think if you look at the attachment you will see in those kinds of areas the answer is yes. They ended up being a tangible piece of paper.

MR. STROSNIDER: But Brian is right. In looking at other stakeholders' interests, we have to factor that in here. In terms of keeping people informed of what we are doing, allowing them the opportunity to be part of the process, we have to reflect that in here.

It could range from things like meeting summaries and notice of public meetings, up to Federal Register notices, or our Web sites or press releases.

Those are things that we have to factor into this to make sure that all the stakeholders who are involved on a particular issue

ANN RILEY
&
ASSOCIATE
S, LTD.
Court
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

have information about what it going on and whatever the appropriate extent is that they have the opportunity to be part of the process.

MR. BISHOP: I would encourage you again to keep in mind the general principles and having with it appropriate flexibility. If it's

1 something that requires immediate action, you ought to deal with a far
2 different way than something that is not nearly as immediate in terms of
3 interactions on every measure.

4 As a matter of fact, if it's immediate action, you may feel
5 the need, and appropriate so, for much more interaction with the public.

6 Let's assume for a moment the unfortunate tube leak at Indian Point 2
7 has some dramatic significant impact. We missed something. We didn't
8 know. I would expect that there would be a lot of public involvement,
9 information, comment received just because of the nature of the beast
10 and the potential safety significance.

11 MR. MARION: I appreciate the importance of the ability of
12 NRC to allow stakeholders an opportunity to understand and provide input
13 to the NRC's decision making process, because I think that fundamentally
14 is the core. That is a little bit different than stakeholders providing
15 comment and input to some action that the industry takes. There is a
16 distinction.

17 I don't know what else to say about it, but as we go through
18 future interactions on issues we need to keep that clear and maintain an
19 understanding, because that's an important element.

20 MR. VINE: I hate to do this. Well, I'm going to say it
21 anyway. You got a pretty positive response from Bob on this chart and I
22 haven't had a chance to talk to Bob and Alex yet, but I have some real
23 concerns about the chart. We're not going to go through them now, but
24 suffice it to say that you can envision a number of very easy ways where
25 you could flow right through this chart with an issue that has no safety
nexus and end up with commitments on the part of the industry without
ever meeting the backfit rule requirements, without ever having

ANN RILEY established regulatory requirements that govern those commitments and
& still beat this flowchart.
ASSOCIATE
S, LTD.

Court
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

MR. SHERON: No, I disagree with that.

MR. VINE: I think you can

1 MR. SHERON: You have the meeting. You guys got an issue.
 2 I don't know if it's in the mail or whether Sam signed it or not. It's
 3 coming on Calloway with the degraded voltage.

4 MR. MARION: We've been waiting for that.

5 MR. SHERON: I don't know where it is. I concurred in it
 6 somewhere.

7 MR. MARION: That's a good example.

8 MR. SHERON: We are putting that on the plate. We are
 9 basically saying you come back, let's meet with you, and let's discuss
 10 what's a good way to proceed with this. You need to go out and take a
 11 look. What's the risk significance of this?

12 Why shouldn't we, the NRC, worry about it? That's really
 13 what we are asking. Why shouldn't we be worried? Why shouldn't we go
 14 out with a 50.54(f) letter, saying what are you guys going to do about
 15 making sure that you don't have degraded voltages and you are not
 16 wheeling too much power through your switchyards and you are going to
 17 monitor it, and what kind of monitoring program? And on and on and on
 18 and on.

19 We will sit down and have a meeting with you. Maybe you
 20 decide, okay, we'll take this on. We're going to go look at it.
 21 Hopefully we will reach some agreement that you'll get back to us by a
 22 certain date that says, you know, at that time we'll come back and we'll
 23 tell you what we found.

24 Suppose you come back and you say, well, we looked at this
 25 and this was a strange case, and we don't see this across the industry
 at all. They just happened to be wheeling a big pot of power through
 the switchyard that day, and that was a strange day. The weather was
 ten below zero, and whatever.

ANN RILEY
 &
 ASSOCIATE
 S, LTD.
 Court
 Reporters
 1025
 Connectic
 ut
 Avenue,
 NW, Suite
 1014
 Washingto
 n, D.C.
 20036
 (202)
 842-0034

MR. BISHOP: Once in a lifetime.

MR. SHERON: Yes.

Therefore, based on all the data and what we have looked at

1 from all the other plants and what is going on, we don't see a problem
 2 at this time; we don't recommend anything. Or maybe you just say, we
 3 will monitor it, and if we see anything, we will come back to you in six
 4 months or a year, or whatever. As long as you have got a good technical
 5 basis, we might go, yeah, okay, that suffices.

6 If you come in and you say, yeah, you're right. We went out
 7 there and we looked and we found all these guys wheeling power through
 8 their switchyards, and a lot of them may have had the voltage dip way
 9 the hell below where it's supposed to be, and we are going to propose
 10 the following.

11 We will look at it and say, well, does that make sense to
 12 us? Does that look like a reasonable way to deal with this? If the
 13 answer is yes, good. That may be voluntary.

14 You could come in anywhere from we're going to change our
 15 tech specs to we're going to have this voluntary thing going on, and we
 16 will respond accordingly. If it's tech specs, obviously it's
 17 inspectable.

18 If you say we're going to have this voluntary thing; the
 19 industry is going to monitor their transmission voltages at the site, or
 20 whatever, and the like, good. Maybe we will go out and tell the regions
 21 you need to kind of look and make sure they are doing that.

22 The whole process is that we are not going to go out there
 23 and force you to do something that doesn't go through the backfit rule.

24 If you come in, if you the industry come in and say, we've looked at
 25 this, and by God, to protect our investments we are going to do this, or
 we've looked at this, and we are not in compliance, and we are going to
 do this, that's not a backfit that's missed it. You've made the

ANN RILEY decision yourself.

&
 ASSOCIATE
 S, LTD.

Court
 Reporters

1025
 Connectic

ut
 Avenue,

NW, Suite
 1014

Washingto
 n, D.C.

20036
 (202)

842-0034

However, if you come back and you say, we're not going to do
 anything and we look and we say, gee, you didn't provide any information
 or any data or anything, then we go through our process.

1 If we don't like what you come back with, we go through the
 2 process, which says we are going to go out with a 50.54(f) letter that
 3 says we need information. If we are going to put out a requirement in
 4 place that says you now got to go out and monitor your switchyard
 5 voltage, or whatever, that's backfit. I've got a process to deal with
 6 that.

7 MR. STROSNIDER: I was not our intent to put together a
 8 process that is going to allow non-safety- significant issues to then --

9 MR. BISHOP: I'm taking on faith that you go through one and
 10 what happens in one determines what comes out of one.

11 MR. VINE: What Gene said was that issues will flow from 1
 12 to 3 whether or not they meet the criteria, because we are going to talk
 13 about all of the issues that are of some concern whether or not they
 14 meet the backfit criteria or not. The point is that once they get down
 15 to 3 and we have that discussion, how does the critical question of is
 16 this a compliance issue, is this a cost-benefit safety enhancement, is
 17 this adequate protect --

18 MR. SHERON: We'll explain to you why we are concerned about
 19 it.

20 MR. VINE: How does that question get answered in getting
 21 down to 5? The things that don't meet those shouldn't get to 5.

22 MR. STROSNIDER: And there needs to be some detail to go
 23 with this flowchart. There may be the need for a meeting and there may
 24 be a need to request some additional information or something to help
 25 make that determination.

MR. VINE: That's the point. There will be a lot of issues
 that don't meet the criteria that the industry will still take on an
 initiative for. The point there is that they shouldn't be enforceable.

ANN RILEY
 &
 ASSOCIATE
 S, LTD.
 Court
 Reporters
 1025
 Connectic
 ut
 Avenue,
 NW, Suite
 1014
 Washingto
 n, D.C.
 20036
 (202)
 842-0034

There are simply us doing what we want to do for the right reason.

MR. SHERON: You're on barrel baffle bolting. We're not
 involved in that.

1 MR. MARION: To go back to your example on the degraded
2 voltage question, one of the possible actions from industry is to say,
3 you know, we looked at this and there are certain things that we think
4 we could do, but you've got to take regulatory action to address this.
5 We may come back and tell you you need to take regulatory action.

6 MR. SHERON: Fine. That's an appropriate recommendation.

7 MR. MARION: So it's not always going to be a case where we
8 don't agree.

9 MR. BISHOP: I think it goes back to where we started, that
10 there needs to be some flexibility in the process, because each of these
11 issues are different.

12 MR. SHERON: We'll just write out a letter saying, Dear Mr.
13 Licensee, NEI recommended we impose this new regulation on you.

14 MR. MARION: Look at the circuit breaker issue. That's what
15 we did on that one. We recommended that you issue a bulletin for the
16 safety-related applications.

17 MR. SHERON: That's fine. That can be an acceptable
18 outcome.

19 MR. MARION: I think that worked out very well.

20 MR. SHERON: Just for Gary's concern, first off, we already
21 said, just like our internal process right now for a generic letter,
22 before the staff can even put pen to paper to start to draft the generic
23 letter, they come to the executive team. They get on our calendar.
24 They brief the executive team. They say, here's what I want to do;
25 here's the generic letter I want to write; here's the information I want
to request; here's why I want to request it; here's why I have a
problem; here's my safety issue.

ANN RILEY There has got to be a logic that says reasonable people
& would say, yeah, there is a potential issue here. It's the same thing.
ASSOCIATE S, LTD.
Court We're saying, first off, with a voluntary industry initiative, nobody
Reporters is going to write that letter to NEI saying here's another one for you
1025 Connecticut
Connectic ut
ut Avenue,
Avenue, NW, Suite
NW, Suite 1014
1014 Washingto
Washingto n, D.C.
n, D.C. 20036
20036 (202)
(202) 842-0034
842-0034

1 unless it has gone through the management process and everyone agrees
2 there is a potential safety concern.

3 We may not have all the information and the answers. That's
4 the whole objective here. We may not be able to establish the safety
5 significance because we need plant-specific information that we don't
6 have available to us.

7 The idea is to come to the industry and say there is a
8 potential safety concern here. We think you are in a better position to
9 assess it and tell us whether there is a real problem here or not.
10 That's the voluntary industry initiatives: is there a real problem here
11 or not?

12 You come back and you tell us. If we think you've laid out
13 the case and you've got all the data and everything and you say, no,
14 there is not a problem, we're reasonable; we'll accept it.

15 If you come back and say, we didn't really look at much, but
16 we don't think it's a safety problem, we not be too comfortable with
17 that.

18 MR. BISHOP: And occasionally there may be a difference of
19 opinion what whether it fits under the compliance exception or not.
20 Again, that will benefit from dialogue.

21 MR. VINE: Just a couple comments. There are cases going on
22 where industry is being approached by staff saying "we'd like you to put
23 this under a voluntary industry initiative" where it hasn't gone through
24 that process and you're probably not even aware of it.

25 MR. SHERON: Who is doing that?

MR. VINE: I don't want to get into specifics.

MR. SHERON: No. I've got to know that, because they are
not supposed to be doing it. That's my point.

MR. VINE: I want to do some further checking.

ANN RILEY
&
ASSOCIATE
S, LTD.
Court
Reporters
1025
Connectic
ut
Avenue,
NW, Suite
1014
Washingto
n, D.C.
20036
(202)
842-0034

MR. STROSNIDER: To try to put that in perspective, the
staff is hearing a lot about voluntary initiatives. It's in the Reg

1 Info Conference. We are having all these meetings. They come in and
 2 say, what is it? We say this is what it is. Yeah, that's what I'm
 3 supposed to be doing. So they ask the question.

4 You ought to come back to management when you get those kind
 5 of requests. Until we get the process laid out and the staff basically
 6 trained in it, that could happen.

7 MR. SHERON: The only voluntary industry initiative requests
 8 you're going to get should come from a signed out letter from Sam. I
 9 don't even want to sign them myself. Right now I want Sam to sign them
 10 until he decides he wants to delegate. If you get phone calls, if
 11 anybody does, that says, hey, I've got one for you, you tell them no,
 12 thank you very much. I appreciate it, but you've got a process there.
 13 You go take it to Sheron.

14 MR. STROSNIDER: It's staff trying to implement change.

15 MR. VINE: It's fine when it stays voluntary. We have lots
 16 of day-to-day interactions where the staff says, we think you ought
 17 consider doing this. As long as it remains part of a guideline document
 18 that is voluntary, that input is useful and welcome. It's the case
 19 where "we want you to volunteer to do this so we can get in inspection
 20 and enforcement space" that it's a problem.

21 MR. MARION: Let's say this is one of our meetings and I'm a
 22 regulator, and I say, I've got a generic letter here and if the industry
 23 doesn't do something, I'm going to have to issue this. That doesn't
 24 help. We've got to get beyond that and get back to the kind of
 25 discussion we've had, open, candid, understand the technical issues,
 scope, magnitude. I submit the great majority of times once you come to
 that understanding, everything else kind of falls out.

ANN RILEY & ASSOCIATES, LTD.
 Court Reporters
 1025 Connecticut Avenue,
 NW, Suite 1014
 Washington, D.C.
 20036
 (202) 842-0034

There are going to be the more complicated issues that make
 it a little more challenging.

MR. STROSNIDER: I suspect there are more subtle things
 going on here: Well, yeah, we could find this approach to this issue

1 acceptable if you were commit to this or commit to that. And it's a
2 voluntary initiative.

3 MR. BISHOP: It's the opportunity for management to manage.

4 MR. MARION: It's the barter system.

5 MR. SHERON: In terms of schedule, I don't know to what
6 extent we can accommodate stuff by the 17th. I don't know if you can
7 get comments in any quicker.

8 MR. MARION: We'll try.

9 MR. SHERON: That will be helpful.

10 What date is it due to the Commission?

11 MR. CARPENTER: May 24.

12 MR. SHERON: That means we have got to get it into
13 concurrence in April to get it up there on time.

14 MR. BISHOP: I think you have got a sense of what our
15 approach is going to be, and hopefully that will help you in thinking
16 about it.

17 MR. STROSNIDER: We appreciate today's meeting and
18 discussions. There was clearly some frustration on our part when we
19 talked to Mr. Beedle and in the letter that we sent. Quite frankly, we
20 were trying to come to grips with going back to the transcripts and
21 thinking back on the discussions. We think we are hearing on the one
22 hand don't really need guidelines, don't want guidelines; on the other
23 hand, here's some principles for how to put them together.

24 It just wasn't clear to us what the message was. I think
25 today's discussion helped to focus that somewhat. We will have to study
the letter some more, and if we have some questions on that, obviously
we will get back to you.

ANN RILEY MR. MARION: If you need some structure to your internal
& process, then that is your decision. We don't think guidelines are
ASSOCIATE S, LTD. Court warranted. Like we said before, the ad hoc process has served us well.
Reporters 1025 If you need for formalize something like this for your own internal
Connectic ut Avenue,
NW, Suite
1014
Washingto n, D.C.
20036
(202)
842-0034

controls, that's your call.

MR. STROSNIDER: And we may feel we need to do it from other stakeholders' perspectives. But I appreciate that feedback.

MR. SHERON: Just like any other guidance document, it could be a reg guide or a standard review plan for voluntary initiative, whatever, I still look at as this is going to lay out for the world our expectations, how we are going to do business, how we plan to do business. To the extent it lays out what the expectations are of the staff as well as what our expectations are of the industry, all our stakeholders can see how we are going to play the game.

MR. BISHOP: As you described in your active listening summary, I think that well stated our position. My only concern, Brian, is even internal guidance to the staff ends up being a requirement to the staff, and the staff then says, I can't vary. This is what I've got to do. This is what my boss and my boss' boss said I've got to do. I would use that as an example to highlight that you need to keep it at the principled level rather than you put prescriptive things down there and, by God, there will be no exceptions, and that's the way it's got to be.

MR. SHERON: The idea is not to make it prescriptive. It's a guideline.

MR. BISHOP: My only point is, however you label it.

MR. MARION: Are you going to look for a commitment from your staff?

MR. SHERON: I don't have to ask for a commitment. I do their appraisals.

MR. BISHOP: You understand my point.

MR. SHERON: Yes.

MR. BISHOP: It goes back to Gary's point. If you describe Court it in terms of principles and intent, that's where I think it could be productive.

1 MR. SHERON: There are fundamental steps that we are going
2 to have to outline.

3 MR. BISHOP: I'll take the opportunity to say I think if you
4 start putting arrows in about where this is going to have to wait until
5 there is an interaction with the public or a 30-day comment period, this
6 process becomes a problem, and it's not going to be responsive enough to
7 what needs to happen.

8 MR. CARPENTER: We specifically didn't put time lines in
9 this. As you pointed out very rightly throughout the discussion today,
10 each situation is unique, and at some point you may want to exceed the
11 time line of what you did last time. Or you may say, well, this is an
12 issue but it's a long-term issue. We understand that. Believe it or
13 not, we really understand that.

14 MR. BISHOP: I'm terribly encouraged.

15 MR. SHERON: Some issues are going to take two weeks and
16 others are going to take three days.

17 MR. BISHOP: And some might even take longer.

18 MR. CARPENTER: Thank you very much.

19 [Whereupon at 3:10 p.m., the meeting was concluded.]
20
21
22
23
24
25