

UNITED STATES OF AMERICA  
U.S. NUCLEAR REGULATORY COMMISSION

PUBLIC MEETING TO DISCUSS  
IMPLEMENTATION OF THE ALTERNATIVE DISPUTE  
RESOLUTION PROGRAM  
IN THE OFFICE OF ENFORCEMENT

NOVEMBER 8, 2011

8:30 A.M. TO 3:00 P.M.

TRANSCRIPT OF PROCEEDINGS

Public Meeting

## APPEARANCES

## Panel:

Beth Pickering  
Senior Attorney  
Southern California Edison Company

Ellen Ginsburg  
Vice President and General Counsel  
Nuclear Energy Institute  
Washington, D.C.

Billie Garde  
Partner  
Clifford and Garde  
Washington, D.C.

Chuck Thebaud  
Partner  
Morgan, Lewis, and Bockius  
Washington, D.C.

Karl Farrar  
Regional Counsel, Region I  
Nuclear Regulatory Commission

## Participants:

Nicole Glenn  
Facilitator

Roy Zimmerman  
Director of the NRC Office of Enforcement

Shahram Ghasemian  
ADR Program Manager

Nick Hilton  
Acting Deputy Director  
Enforcement Branch Chief

Dave Solorio  
Office of Enforcement

Branch Chief  
Concerns Resolution Branch.

Maria Schwartz  
Office of Enforcement  
Concerns Resolution Branch

Other Attendees:

Jana Bergman  
Sciencetech

Tara Solomon

Ruth Cook  
OGC,  
NRC ADR Specialist

David Batson  
Senior ADR Specialist  
Environmental Protection Agency.

Suzanne Orenstein  
Director of the Washington, D.C. Office of the  
U.S. Institute for Environmental Conflict Resolution

Patricia Campbell  
GE/Hitachi Nuclear Energy.

Ann Harris  
We the People Foundation  
Tallahassee, Florida.

## 1 PROCEEDINGS

2 NICOLE GLENN: Well, good morning, everyone.

3 MALE SPEAKER: Morning.

4 MALE SPEAKER: Good morning.

5 FEMALE SPEAKER: Good morning.

6 NICOLE GLENN: Thank you for being patient with us this morning,  
7 and welcome to this public meeting, which addresses alternative dispute  
8 resolution. We have included copies of the federal register notice with our  
9 materials. That's something that our folks on the bridge and on the webcast  
10 should have access to as well, which describes the meeting in detail.

11 My name is Nicole Glenn; I am today's meeting facilitator. It is my  
12 role to ensure that this Category 2 public meeting is conducted in a manner  
13 consistent with our standards, which means that as this is a panel discussion,  
14 your input is valued and welcomed. So, it's my role to make sure that everyone  
15 who would like to contribute to this discussion has an opportunity to do so and to  
16 be heard. To that end, we also do have a transcriber in the room, who will be  
17 recording the meeting. Those notes will be available publicly shortly after the  
18 meeting concludes.

19 First, we want to take care of some general housekeeping notes.  
20 For the folks who are in the room, the emergency exits are out the back of the  
21 room to the left. In the case of an emergency, the NRC employees in the room  
22 will be able to find your way out safely. The restrooms are across the hall, and  
23 the ladies and men's room are at either end of the passageway there. Again, any  
24 time any of our visitors would like to exit the room, any one of the NRC  
25 employees here would be happy to help you find your way and escort you.

1 Escorts are also required for any trips to the cafeteria, for example, or other parts  
2 of the campus here.

3           We would ask you to silence your cell phones and any other  
4 devices to make sure that the discussion is uninterrupted. Also, to facilitate the  
5 efficiency of the discussion, especially for the folks who are participating  
6 remotely, we would ask any speaker to identify him or herself and to speak  
7 clearly into the microphones. Also, because this is a dynamic discussion, we  
8 would ask that the people in the room be conscientious that there are people  
9 listening remotely and allow one speaker to complete their thoughts at a time.

10           The order of public comments will be as follows: following the  
11 discussion and brief introductory remarks, we will solicit questions or public  
12 comment from the people who are in the room, then we will go to the bridge line,  
13 and then we will take any comments that are submitted via email. The email  
14 address should have been provided to anyone who is participating remotely, but  
15 if that is something that you do not have, please do let us know. We will make  
16 sure that it is provided to you.

17           And having said that, the agenda is fairly straightforward. We will  
18 be taking some brief comments from the panel that's in the room. Once they  
19 introduce themselves, we will then be addressing the questions that have been  
20 distributed via the federal register notice and also via email to any of the  
21 participants who have registered. Those -- that list of questions is fairly lengthy,  
22 so we are trying to be as efficient as possible. The priority that has been  
23 assigned to those questions has been based on input that was solicited from the  
24 participants of this meeting, but I will also note that as the facilitator, it is  
25 incumbent upon me to make sure that we address as many of these questions in

1 today's meeting as we possibly can, and to that end I may require, or may  
2 request that you be as concise as possible with your remarks and the discussion.  
3 I want to make sure that we cover as much territory as we possibly can so that  
4 we can be of greatest service to this group as possible.

5           Also, it is very important to note because we have condensed the  
6 duration of this meeting -- this meeting was originally planned to be a two day  
7 meeting it has been condensed down to one day -- and given the volume of  
8 material that this group desires to cover, it is also the desire of the NRC to obtain  
9 feedback via email or via the usual communication mechanisms after the  
10 meeting has concluded.

11           So, if there are questions that we do not get addressed via the  
12 discussion today, please don't feel like that is the end of the discussion. The  
13 folks at the NRC would very much appreciate any additional contributions after  
14 the meeting has concluded, and that period of comment extends to January 17th  
15 of 2012. And that is also in the meeting notice.

16           So, having said all of that, because this is going to be a discussion,  
17 we have allowed for breaks and we have allowed for multiple opportunities for  
18 public comment, but those may be slightly flexible as we want to make sure that  
19 the discussion flows to its fullest capacity. So, we will have one break in the  
20 morning. We will be breaking for lunch. We'll have a break in the afternoon, and  
21 then we'll adjourn for the day. But, again, I may take advantage of natural breaks  
22 in the conversation to make sure that we don't shortchange ourselves in the  
23 discussion.

24           Having said that, I will now defer to the panel at the table for  
25 introductions.

1 ROY ZIMMERMAN: I'll kick it off. I'm Roy Zimmerman. I'm the  
2 director of the NRC Office of Enforcement. I'm very glad that you are all here  
3 today. I'll have some other comments in a few moments. We have oversight of  
4 the ADR, the Alternative Dispute Resolution Program, in the NRC. It's largely  
5 implemented by the regions. We are involved primarily in planning for the ADR  
6 sessions, setting a policy for the ADR sessions and directly involved in the  
7 discrimination ADR sessions, so I'll have some more comments in a few minutes.  
8 But, I'm glad you're all here and on the phone.

9 SHAHRAM GHASEMIAN: Shahram Ghasemian; I'm the ADR  
10 Program Manager.

11 NICK HILTON: I'm Nick Hilton. I'm -- what am I now? I'm here for  
12 a variety of reasons.

13 [laughter]

14 DAVE SOLORIO: Wearing multiple hats.

15 NICK HILTON: Wearing multiple hats, probably largely I was the  
16 original program manager and developed and ran the pilot for this, so I have a  
17 historical background on it. That's the main reason I'm here.

18 DAVE SOLORIO: And you're the Acting Director of, Deputy  
19 Director of Enforcement.

20 NICK HILTON: I'm currently the Acting Deputy Director; I'm the full-  
21 time Enforcement Branch Chief. Yeah. There are a variety of reasons.

22 DAVE SOLORIO: I'm Dave Solorio. I work in the Office of  
23 Enforcement. I'm the Branch Chief for the Concerns Resolution Branch.

24 MARIA SCHWARTZ: I'm Maria Schwartz, and I work in the  
25 Concerns Resolution Branch, and I'm working with Shahram on this program.

1           BETH PICKERING: Good morning. I'm Beth Pickering. I'm senior  
2 attorney with Southern California Edison Company with responsibility for giving  
3 labor and employment advice, including advice to the ECP program at the San  
4 Onofre Nuclear Generating Station.

5           ELLEN GINSBURG: Ellen Ginsburg, Vice President and General  
6 Counsel, Nuclear Energy Institute. My members are nuclear licensees as well as  
7 other participants in the nuclear energy sector. I'm responsible for issues that  
8 are of generic import to the industry, and I was present and participated in the  
9 birth of this program. So, I'm here both from a current as well as a historical  
10 perspective.

11          ROY ZIMMERMAN: Great.

12          BILLIE GARDE: I'm Billie Garde. I'm an attorney and a partner in a  
13 law firm of Clifford and Garde. I also was a midwife for the program --

14           [laughter]

15          -- years ago, so, and have participated and utilized it on behalf of  
16 employees over the years. My work is distributed between representing  
17 employees, and I do quite a bit of consulting and training work in the area of  
18 safety-conscious work environment and safety culture for a variety of industries,  
19 this, oil and gas, Department of Energy industries, et cetera.

20          CHUCK THEBAUD: I'm Chuck Thebaud. I'm a partner at Morgan  
21 Lewis and Bockius here in D.C. And I represent, or our firm represents, nuclear  
22 licensees, primarily. And I think -- and Shahram and I actually participated in the  
23 very first ADR after the program came into being a number of years ago on  
24 behalf of a client at the time. But since then I have been representing the  
25 companies in front of the, both the early ADR's as well as the post investigation

1 ADRs, and also individuals who have been, you know, charged with or found to  
2 have committed some violation individually.

3 ROY ZIMMERMAN: Thank you. Go around.

4 NICOLE GLENN: Very good. I'm actually going to the microphone,  
5 so we'll have some additional introductions from the room.

6 ROY ZIMMERMAN: Can you all hear us okay in the back? Thank  
7 you.

8 NICOLE GLENN: Affirmative.

9 JANA BERGMAN: Jana Bergman from Scientech.

10 TARA SOLOMON: Tara Solomon [spelled phonetically].

11 RUTH COOK: Ruth Cook [spelled phonetically], NRC OGC, NRC  
12 Alternate Dispute Resolution Specialist.

13 DAVID BATSON: David Batson, and I'm senior ADR Specialist  
14 with the Environmental Protection Agency.

15 SUZANNE ORENSTEIN: Suzanne Orenstein, director of the D.C.  
16 Office of the U.S. Institute for Environmental Conflict Resolution, looking at  
17 enforcement of dispute resolution here.

18 PATRICIA CAMPBELL: Patricia Campbell with GE/Hitachi Nuclear  
19 Energy.

20 ANN HARRIS: I'm Ann Harris. I'm with We the People Foundation  
21 out of Tallahassee, Florida. I represent and advocate for nuclear whistleblowers  
22 across the nation and around the world, now, thanks to CBS.

23 NICOLE GLENN: Thank you very much. Would the folks on the  
24 bridge line care to introduce themselves?

25 STEVE HAMRICK: This is Steve Hamrick with Nexair Energy.

1 NICOLE GLENN: Thank you. I think we had two more  
2 participants.

3 TRACY MORSE: Tracy Morse, calling from Cornell.

4 NICOLE GLENN: Thank you. Welcome. Was there one other  
5 party?

6 FEMALE SPEAKER: No, there's just --

7 NICOLE GLENN: Okay. Maybe not. I will let you lead off.

8 ROY ZIMMERMAN: Okay. Again, my name is Roy Zimmerman,  
9 and I thank you very much for being here today. We've been looking forward to  
10 this meeting for some time. I apologize for the bit of a late start. You may have  
11 heard, one of our panelists coming down from Region I, Karl Farrar, hopefully  
12 had a minor traffic accident coming down this morning and is still planning on  
13 being here to join us. We just don't have a sense for how long that's going to be,  
14 so hopefully it was nothing more than a fender-bender but we really haven't had  
15 any updates in awhile.

16 But, we're very excited about the opportunity today and to have this  
17 dialogue. I want to particularly thank our panelists that are joining us today. As  
18 the introductory remarks have already shown, we have reached out several times  
19 in the past; I think back in 2001, when the ADR process was just starting to get  
20 off the ground, and then in 2004 when it was being piloted, and now, again,  
21 coming up for air and getting a sense of where we are, we believe the program is  
22 working quite well, but we're all about continuous improvement, and we want to  
23 be able to get your input on testing. You know, how does it look from your  
24 vantage point in terms of how, is it working well, where are the areas where  
25 you've got concerns, where can we improve, and that's what we look forward to

1 doing.

2           We try, as we always do, to get a good cross-section of individuals,  
3 and I think we've achieved that in large part today. We had invited the Union of  
4 Concerned Scientists because we know that UCS has had some views in the  
5 area of ADR that we wanted to be able to have present, to be able to be part of  
6 the exchange, but we were unable to support attendance today, but we do look  
7 forward to their comments that they'll provide us in writing, so we know that they  
8 will be useful.

9           I think when we have these kinds of panel discussions, and I'm sure  
10 today will be no different, I think the energy, the interchange is what it's all about  
11 so that we get the benefit of your views, the things that you think are working  
12 well, the things that you think we need to focus on. We're really looking at areas:  
13 what we can do to make the program more effective, more transparent, more  
14 timely. We're looking at the scope of the program: is it the right scope, should it  
15 be used potentially for other cases beyond what we're using it for now. So, we're  
16 really opening it up after having what we think are a number of years of  
17 successful implementation and it's very important that we get our stakeholder  
18 feedback on that as we contemplate on what we want to do next; and that  
19 applies both to the panelists, and, as Nicole mentioned, those of you that are  
20 here in the audience that we're very pleased that you're in attendance. There will  
21 be opportunities through the day for you to be able to ask questions, share your  
22 comments. We want those as well, please, as well as the individuals on the  
23 phone so we get as much value from this as we can, and then following it up with  
24 written comments would very much be appreciated.

25           I guess that I'll close by indicating that, as I've said a couple of

1 times, we think that we've got a program that is working quite well, that can be  
2 improved with your assistance. It is a program that our Commission does follow  
3 with interest so that, you know, there's awareness that we're having this meeting  
4 today. They're aware of the way the program has been progressing, and they  
5 will continue to follow the types of comments that you all provide us and the  
6 types of improvement enhancements that we look at making after the *Federal*  
7 *Register* notice closes, and we can look -- we continually improve. So, we  
8 couldn't have more interest at a higher level in the agency than exists in the ADR  
9 program.

10                   So, with that, let me turn to Shahram, who will give us some  
11 background, and then we'll get into some of the details. Thanks very much.

12                   SHAHRAM GHASEMIAN: Good morning. This is Shahram  
13 Ghasemian. I echo Roy's sentiments about the ADR program. This meeting is  
14 to continue the collaborative tradition that we had in developing the program  
15 years ago. Our stakeholders' feedback will ensure that we continue to implement  
16 the program in a manner that works for our stakeholders while we continue to  
17 meet our mission. So I urge everyone to also take advantage of the written  
18 comment period, which ends on January 17, 2012.

19                   To ensure a common understanding and for the benefit of those in  
20 the audience -- for those audience members who may be less familiar with the  
21 program, I'll take about five minutes to discuss some of the program's major  
22 elements and the recent changes we have implemented.

23                   The program is divided into two different subprograms. One is  
24 offered prior to an NRC investigation, and the second is offered after the NRC  
25 has concluded its investigation. Both programs are voluntary. Unlike post

1 investigation where the NRC is a party to the mediation, the parties in pre-  
2 investigation ADR are the employer and the employees. In pre-investigation  
3 ADR, the NRC pays for the mediator's fees and expenses, so long as the parties  
4 choose a mediator from Cornell University's roster of mediators contracted with  
5 Cornell University to serve as the program's neutral administrator. In post-  
6 investigation ADR, the mediator's costs, which include the fees and the travel  
7 expenses, are equally shared between the NRC and the party who is the subject  
8 of a potential enforcement action. That party is typically a licensee, or a  
9 contractor, and in some cases, an individual.

10 As for the scope of the programs, the pre-investigation ADR is  
11 limited to the resolution of retaliation allegations commonly referred to as HIRD  
12 complaints, which stands for harassment, intimidation, retaliation, and  
13 discrimination complaints; whereas in post-investigation ADR other wrongdoing  
14 and related matters may be also resolved.

15 If the parties settle the HIRD complaint in a pre-investigation ADR,  
16 the NRC doesn't initiate an investigation subject to reviewing the settlement  
17 agreement. In post-investigation ADR, the settlement agreement is reflected in a  
18 confirmatory order, which is publicly available.

19 To put things in context as far as number of mediations on an  
20 annual basis, we've had an increasing trend in the number of mediations per  
21 year. Although for post-investigation ADR, it's more of a zigzag pattern, but, on  
22 average, we have about 10 to 15 a year, and for 2011 cases, we'll roughly  
23 probably end up similar to the 2010 numbers.

24 In recent years, we've taken several actions to implement that  
25 we've implemented to improve the effectiveness and transparency of the

1 program. In fact, several of the changes are based on feedback we've received  
2 through our outreach activities from our external and internal stakeholders.  
3 Some of those stakeholders are present here today. I'll touch on some of the  
4 changes on this list.

5           We've updated the brochures for both programs to include clear  
6 information about what each program offers and, probably more importantly,  
7 what each program doesn't offer. We've redesigned our ADR webpage to be  
8 more user-friendly and to include more information about the program and its  
9 trends. To streamline our settlement agreement review process in our pre-  
10 investigation ADR program, we've provided some guidance on the type of  
11 provisions the NRC has historically viewed as problematic and provided  
12 suggestions on how to make them compliant with the applicable regulations. We  
13 updated our agreement to mediate forms to remind the parties of the program's  
14 major elements and its expectations. In ensuring that our mediators are familiar  
15 with the NRC and the ADR program, we developed a resource handbook that  
16 makes important information about the program and the NRC readily available to  
17 our mediators.

18           Lastly, we have tried to be more accessible to our stakeholders  
19 while also infusing more oversight into the day to day running of the program.

20           As Roy mentioned, we have a continually improving mindset which  
21 heavily relies on our stakeholders' input. We look forward to a healthy dialogue  
22 during this public meeting, to support us in exploring meaningful and effective  
23 enhancements to the program.

24           With that, I'll go around the table and for our external stakeholders,  
25 maybe we can have some brief, two or three minute remarks, about their views

1 about the program. And we can start with Beth.

2           BETH PICKERING: Yes. We had our 15<sup>th</sup> pre-investigation ADR  
3 on Friday. We've been involved, I think we were one of the first mediations of  
4 pre-investigation during the pilot program. We've had a number during the last  
5 couple of years. I don't know if it is because California employees are more  
6 willing to raise issues, whether they're more willing to mediate them, or they're  
7 just more lawsuit-happy, and this is the first stage to it, but we have a lot of  
8 experience under the pre-investigation program. Our statistics are similar to the  
9 NRC-wise statistics where we resolve by settlement about a third of the  
10 mediations that we undertake. I should start by saying that we have 15 of those -  
11 - we had a 16th offered that I declined for various reasons, but we support the  
12 program. We think there's nothing to lose by going to mediation in the normal  
13 course of events, so we -- in addition to the one-third of the mediations that end  
14 up with a settlement agreement. I would say that we've had another three or four  
15 where there was no formal settlement, but the company and its employee  
16 resolved their differences, even though we couldn't come to written terms. And I  
17 think that would count as a win in addition. So we think the program that -- the  
18 pre-investigation program is a good one. It certainly gets the parties to talk about  
19 their issues much sooner than an OI investigation would be begun, much less  
20 completed, since at least in Region 4 they're so far behind in getting  
21 investigations completed. I think that it supports the NRC's mission because the  
22 technical issues don't go away; they're still going to be looked at. If they're raised  
23 , they're still going to be looked at; they're not going to go away. But early on we  
24 have more information than we might otherwise have about what the issues are,  
25 so that we can initiate our own investigations and look for resolutions before the

1 OI shows up. And the bigger picture is our employees are back to work in  
2 communicating with their supervisors. We've had one post-investigation pre-  
3 enforcement ADR, one other first in the program some years ago, and we call it a  
4 success. I was only peripherally involved, but I have some comments about that  
5 also.

6 ROY ZIMMERMAN: Thank you. Ellen?

7 ELLEN GINSBURG: Beth provided the perfect segue for me  
8 because I have the opportunity to do what I'll describe as taking the long view. I  
9 represent the industry at large and so my perspective is an amalgamation of  
10 views that I receive from industry members. And taking that long view, and  
11 having done an informal call of my members, I can tell you that I went back and I  
12 looked at the comments that we submitted, now, almost six years ago to see  
13 what -- to establish what we thought the objectives of the program should be. At  
14 the time believed, and continue to believe, that they were consistent with the  
15 objectives that the agency had established. And looking back on it, the industry,  
16 I think can fairly describe the program as more effective and more efficient than  
17 the approach that was previously taken through OI investigations and  
18 enforcement more generally. It's, relatively speaking, cost effective and thought  
19 to be somewhat, if not considerably, more timely than traditional investigations  
20 and enforcements. So overall, the industry, I think, can be described as being  
21 generally satisfied with the program, and receptive to its use. And I think that's a  
22 mark -- a reasonable mark of success.

23 Further, going to the NRC's mission -- I won't repeat what Beth  
24 said, but I do think it's -- the program is consistent with the government's overall  
25 initiative to drive toward more mediated resolution, so that there's a limitation on

1 resources or a limitation on the use of resources that could -- where results could  
2 be achieved more quickly. So with that, I think having this as a mechanism for --  
3 as an alternative mechanism -- is both valuable and effective.

4 ROY ZIMMERMAN: Thank you.

5 SHAHRAM GHASEMIAN: Billie?

6 BILLIE GARDE: Yes. I have represented both employees in pre-  
7 investigation ADR, and a number of folks or small companies in post-  
8 investigation ADR. So I have a little experience on both sides of the equation.  
9 And I think that your holding this meeting today is a really good idea; I think it can  
10 help to refine the program. I want to comment that I think ADR as it currently  
11 exists has it has made tremendous advances from a pilot program -- that over  
12 the years there's been a number of meetings, I think I've been to most of them  
13 where we've fleshed out some of the issues that were troublesome, or I thought  
14 were undermining the program. And it's a very successful program for the NRC  
15 in meeting its objectives, as well as helping people who are caught up in an  
16 investigation, either at -- because they are the subject of HIRD, or they've been  
17 accused of either HIRD or some other form of wrong-doing. And I -- as Roy  
18 noted, we've condensed a two day meeting into a one day meeting, so I don't  
19 want to have comments or suggestions that develop during the day be taken as,  
20 "Oh, the program's all screwed up, and it shouldn't be continued." Because we  
21 really only have time, I think, to talk about the things that potentially need to be  
22 fixed or corrected, or where we can make improvements. But I think it's a far cry  
23 from the day where the only option was, you know, full battle dress, and you  
24 know, duking it out at either in the courtroom or in some form of NRC related  
25 disputes.

1 I think that there are things that could be -- continue to be refined,  
2 and I think that there continues to be an issue perception among particularly first  
3 time users as opposed to kind of the lawyers and the regulators that somehow or  
4 another, there's something dirty about the process that means you're selling out  
5 your safety concerns. Or the issues that were important enough to either get you  
6 fired, or that you raised and resulted in your being retaliated against, and that  
7 somehow or another, coming to the table with the doors closed is -- undermines  
8 the importance of either what happened to you, or what you wanted to bring to  
9 the attention of the NRC. And I think there's more work that needs to be done,  
10 which is a combination of things; there's no silver bullet for that. But I think  
11 there's more work that needs to be done so that when people leave the process  
12 on both sides of the issue, whether it's pre or post -- they feel like what they  
13 would have accomplished in a full hearing, even though it's not all been aired out,  
14 they have been either true to their issues, or they've been given a fair opportunity  
15 to defend themselves. And I don't think we're there yet.

16 I think professionals can say, "Okay, this is the art of compromise."  
17 That's why we're here. We're starting at 8:00; at 5:00 we're, you know, leaving  
18 and we're going to have a signed settlement in hand, and then everybody's going  
19 on to their -- with the rest of their lives. And it doesn't work that way for people  
20 who are involved in that. It works that way for the professionals, but not for the  
21 participants. And so I think there's some work that needs to be done in that area.

22 SHAHRAM GHASEMIAN: Thank you.

23 CHUCK THEBAUD: I agree with Beth, and Ellen, and Billie, in  
24 terms of the program -- program's effectiveness. It does work, it's a good  
25 program. Certainly I think we all expect and want it to continue. On a more

1 mundane level, it works. You know, the program itself is administratively easy to  
2 work your way through. It's relatively efficient; it doesn't require a lot of  
3 bureaucracy or heavy filings, or papers to be delivered and filed, and exchanged.  
4 And so it's pretty simple. And I think that's great. And that's good because it  
5 keeps the costs down. It's something that the industry executives understand  
6 and can, you know, work their way through without feeling like the program is  
7 overly legalistic or they're going to court, or fighting in some extraordinarily formal  
8 proceeding. It's less formal than the enforcement proceedings, which I think are  
9 good. And all of that, I think, is helpful to us. It makes the program open and, in  
10 a way, inviting. And it causes our clients, at least, to look forward to resolving  
11 issues with the NRC in this informal way, rather than sitting across from, you  
12 know, an enforcement cop, which is something along those lines. So in general,  
13 I think that the program is good. There are areas that we can work to improve it,  
14 sure. But certainly it's -- I think it's consistent with your mission. It's consistent  
15 with the industry's priorities as well.

16           SHAHRAM GHASEMIAN: Thank you. With that, I think we're  
17 ready to start our kind of formal dialogue on particular areas. As Nicole  
18 mentioned earlier, we'll -- we've discussed it with the panelists, and we've kind of  
19 prioritized some of the questions to focus on, and to save a little time, make sure  
20 that we get a full exchange on the most high priority questions. So I think the first  
21 area that we'll explore -- and let me side step. In the morning, we'll focus on the  
22 pre-investigation ADR, and in the afternoon of our discussion will be primarily  
23 focused on the post-investigation ADR, given that the dynamics for each program  
24 are a little bit different. Although they're -- and when we were talking about the  
25 mediators and the program administration, we'll probably cover both programs at

1 the same time given that it's somewhat the same issues.

2           So with that, let's start with, again, our pre-investigation. And  
3 currently, the scope of the program is limited to retaliation type complaints:  
4 harassment, intimidation, discrimination, retaliation complaints. And especially  
5 excludes resolution of any technical issues or chilling [unintelligible] effect issues.  
6 So what our panelists views on whether we should expand the scope of the  
7 program, and to the extent we should expand it -- what areas, to include what  
8 types of issues? I'll just throw it out to the panelists, whoever that wants to go  
9 first or has any thoughts.

10           CHUCK THEBAUD: We're talking just pre-ADR?

11           SHAHRAM GHASEMIAN: Pre-ADR, right now it's pre-ADR.

12           CHUCK THEBAUD: I'll go first, Roy. This is Chuck. I -- you know,  
13 I thought about this one, because that's an -- it's interesting and I'm trying to think  
14 -- it's always good to try to resolve things amicably if you can, you know. So my  
15 general premise going in was that, "Yeah, sure, let's try to expand it." But then  
16 that's easy to say. And then how would you do it? What types of concerns or  
17 allegations could you take to mediation, and have it susceptible to mediation?  
18 And it works for discrimination because a person believes that he or she has  
19 been discriminated against, and they're seeking a specific remedy. Okay, well,  
20 then we can talk about what happened and what's the right remedy. But if  
21 they've got a concern that's technical in nature, is that something that's  
22 susceptible to a discussion and a mediation, and a settlement? Obviously not  
23 everything is, but I tried to think about, well, what would be the criteria that we  
24 might use if we wanted to try to expand that? I came up with a couple of things.  
25           The first is that I think the technical issue must be specific to an

1 individual. For instance, this person must have some personal involvement in the  
2 technical issue, as opposed to the plant's unsafe, you know, the RP department  
3 doesn't work. It's something very general. There's nothing -- something specific.  
4 I think also in the nature -- if we're going to mediate something, it has to be a  
5 specific allegation of probably in this conduct allegation, you know, we the  
6 company, or my boss submitted inaccurate information to the inspector. Okay,  
7 that's a specific issue, this person is personally involved. There's something to  
8 resolve, whether the information is accurate or inaccurate. And there's a remedy.  
9 Well, we can fix it by providing accurate information. Or you know, we can  
10 decide that it wasn't inaccurate. So it's specific, it's unique to the individual. It's  
11 something that we can formulate a remedy around. And you know, it just seems  
12 to me that if you have those key things, then it probably ought to be within the  
13 discretion of the NRC to say, "Yeah, that is something that may be susceptible to  
14 mediation; let's consider it for mediation." I don't think you want to ever have a  
15 program that says everything has to be addressed through mediation. But that's  
16 not going to work. But there may be some subset of technical issues where it's  
17 unique, where it's a specific individual, where there's a -- where you can fashion  
18 a remedy that might well lead to a -- one way to do it. And then the alternative is  
19 that they have a long, drawn out OI investigation to find the same things that you  
20 may be able to resolve through a day long discussion. So I would be open,  
21 maybe -- you maybe want to consider a trial program, or something along those  
22 lines, to try to get a better definition of what the boundaries and what the nature  
23 of that technical early ADR program might look like. But I think it's an interesting  
24 idea, so I'd just toss those out as some initial thoughts.

25 SHAHRAM GHASEMIAN: Any reaction?

1           BETH PICKERING: I went through the thought -- same thought  
2 process that Chuck did, and I would be concerned of getting away from  
3 discrimination issues. Because when you have a discrimination issue, the  
4 employee is -- knows very well what he or she believes was done wrong. The  
5 company probably knows who is likely to have made any decisions that impacted  
6 that employee. So you can probably go into the mediation pretty knowledgeable  
7 -- maybe not 100 percent on -- but with some information. Given that, when we  
8 get a call from Tracy Morse at Cornell, we are lucky to get two sentences about  
9 what the issue is. And sometimes the employees have been to our ACP  
10 program, been in our HR programs, been to another agency, so we have some  
11 information. More often than not, we don't -- the call from Tracy is the first time  
12 we know the employee has had an issue. And so I am -- when we get into  
13 mediations where -- and a number of the ones we can't resolve. The employee  
14 is coming in with some kind of [unintelligible] or technical issue, and it is not  
15 amenable to resolution by the parties that are sitting in that room because we're  
16 not going to resolve a technical issue without being sure that we know all the  
17 facts, which cannot be developed during a one-day mediation. Unlike the  
18 discrimination claim, where sometimes it doesn't matter whether there was  
19 discrimination or not; you have an unhappy employee, and our role is to get the  
20 employee back to work in a productive manner, and communicating with his  
21 management. So right or wrong, it doesn't have to be answered. So I would be  
22 concerned about broadening the range of issues.

23           ELLEN GINSBURG: I was just going to say, I might go the other  
24 way. But obviously this needs a lot more thought. We often have talked as -- in  
25 stakeholder meetings in an open forum about how you might address

1 enforcement differently than it currently is. And that's irrespective of whether  
2 there's an OI investigation. So I think we ought to just think about as a future  
3 consideration for the agency itself, whether mediation can play a role as I believe  
4 it does in EPA, but I don't want to speak for EPA since there's a representative  
5 here. As I believe it does in environmental matters, where there are issues of  
6 enforcement that are technical in nature, whether it's an improper effluent release  
7 or something like that, and ADR is used. But again, it's instinctively attractive -- I  
8 think it requires a lot more thought before we get into that, which is also different  
9 than, I think what Beth and Chuck has described, which would relate to pre-OI  
10 investigation ADR.

11 SHAHRAM GHASEMIAN: Right. Billie?

12 BILLIE GARDE: Yeah, I think -- I mean, I think Chuck raises an  
13 interesting idea, and I think it's one that could be explored a little bit. And let me  
14 just pull that string. If in a pre-investigation ADR process you have a worker who  
15 has a technical issue, obviously right now, the answer is the NRC will look at that  
16 technical issue and we will reach the decision about what is in the best interest of  
17 the public health and safety. So you settle with the workers -- let's say you  
18 successfully settle with an employee who has the concern -- as I said in the  
19 beginning, there's still this dissatisfaction about the issue that brought him or her  
20 to the table in the first placed, remains unresolved. And they don't really know  
21 what's going on, generally speaking, and so the answer to just "Trust us. We'll  
22 do the right thing," is not universally accepted. I'd say it's probably universally --  
23 leaves people uncomfortable in the context that we're talking about. And  
24 although you -- I don't think you can ever agree to mediate a specific technical  
25 resolution, I think you could reach an agreement on process. So say a worker

1 raises concerns about breakdown in a quality program, in order to resolve this  
2 HIRD issue, is it worth spending time with that individual to say, "All right, we the  
3 company now are going to come up with a process by which we're going to say,  
4 agree on a third party person who is going to, you know, do the allegation intake,  
5 and a third party expert is now going to go out and look at it. If you agree to that  
6 process and participate in that process so we make sure we understand your  
7 issues." You know, that, I think, does kind of meet both the industry's interest in  
8 being able to solve their own problems, and the worker's interest in knowing for  
9 sure what's happening to the issue that they raised in participating in some way  
10 in the resolution of that issue. Now that -- we're just brainstorming at this point. I  
11 mean, because I really haven't had a chance to think this through. But it is a  
12 technique that I used quite a bit in the work that I do, which is to try to ensure that  
13 the employee has a confidence in how the issue's going to be resolved, and have  
14 some involvement deemed appropriate, depending on the case in that process.

15           SHAHRAM GHASEMIAN: I think actually -- I think it's a good  
16 thought to explore further, but I think it's got -- has many tentacles. But one -- my  
17 initial reaction is: how would that jive with the allegation program that's -- that  
18 captures the technical issues, and looks to resolve it, either through an RFI,  
19 request for information from a licensee, or you know, going through our resident  
20 inspector, or actually sending out inspectors to, you know, look at the particular  
21 issue to resolve the technical issue?

22           BILLIE GARDE: Well, I don't think it's really technically driven on  
23 what you do now. I mean, right now you're saying, "Here's a technical issue, for  
24 the most part. You know, we want you to look at it. And then we'll review what  
25 you did." I don't think you're in any different situation then, except you put the

1 worker in the role of being a participant with the company in addressing the  
2 technical issue, and then you're coming in at the end, or during it, and making  
3 sure that it meets your criteria. But it shifts, I think the -- being with the worker  
4 and the allegor, as part of that process. I mean, it's something you need to talk  
5 about. Because I think that most of the time, that is the dissatisfaction that  
6 people are still taking away from the program, from my experience. And that  
7 would give an opportunity to get somebody involved.

8 ROY ZIMMERMAN: Let me try here to take it into an example,  
9 because I'm not sure that I'm on -- you all were very articulate, but I'm not sure  
10 I'm on the right page yet. So let's see if an example helps. So we've got a kind  
11 of a case that is not discrimination, may not be investigatory in nature, or still is  
12 investigatory in nature. It'd be a case where an individual has a concern about  
13 whether a safety-related pump is sufficiently environmental qualified, and has  
14 gone through the corrective action program, put in their view, and it was not  
15 agreed upon. And you got two parties with a different point of view, and you're --

16 BILLIE GARDE: Technical differences.

17 ROY ZIMMERMAN: Technical differences --

18 BILLIE GARDE: A different technical --

19 [talking simultaneously]

20 ROY ZIMMERMAN: Whether that safety pump is operable or not,  
21 and you're looking for another avenue for that worker, because the worker's not  
22 comfortable, doesn't agree with the response that came back from the  
23 engineering department.

24 BILLIE GARDE: Right.

25 ROY ZIMMERMAN: Is that the kind of case that we're talking about

1 here? And it's not an OI component to that at all. Is that part of what you're --  
2 Chuck, when you gave your example, was that the kind of thing, or were you in  
3 more -- in an OI kind of space?

4 CHUCK THEBAUD: Right, good point. I was more in the OI point  
5 of view, as opposed -- space -- as opposed to the pure technical issue, where  
6 you've got, essentially, different professional opinion at that point. I'm not sure  
7 that's amenable to an early ADR type --

8 ROY ZIMMERMAN: The place where I'm struggling -- like I said,  
9 when I started, I've got a couple years of background in this, but don't consider  
10 myself an expert. I'm surrounded by our experts. So if we're in an OI case, I'm  
11 struggling with the worker being on the offensive, if you will -- the worker's on the  
12 offensive because they feel they were discriminated against, they think the safety  
13 pump is inoperable for environmental reason, that they got a different answer.  
14 They're not happy. When you bring OI into it, now I'm starting to see in the  
15 worker -- this is maybe why I'm having a problem tracking -- I'm seeing the  
16 worker on the defensive, where the worker has -- the OI aspect may be that the  
17 individual was supposed to be taking readings and logs, walking around the  
18 facility, and the Aux operator wasn't really doing that, and was just putting in false  
19 values. That's not what you're talking about either, right? Because in that case,  
20 the worker's on the defense. But that's an OI kind of component. Is the situation  
21 one where there may be an investigative piece, but the worker is still in an  
22 offensive capacity ?

23 CHUCK THEBAUD: Yeah --

24 ROY ZIMMERMAN: Where he doesn't feel -- he or she doesn't feel  
25 that he did fill out the logs incorrectly?

1 CHUCK THEBAUD: No, what I was thinking of is where the  
2 employee has identified what he or she thinks is wrongdoing. I believe that the  
3 company submitted inaccurate information to the NRC. They're alleging  
4 [inaudible] efficiency. I believe that -- my supervisor told me to perform this  
5 maintenance in a way that was contrary to the procedure.

6 ROY ZIMMERMAN: I'm following you.

7 CHUCK THEBAUD: Okay. And there's -- that's the individual. He  
8 or she is not accused of any wrong doing, but they're alleging that there was  
9 some wrong doing committed by the company on a technical issue, a non-  
10 discrimination type issue. That seems to me that might be amenable to an ADR  
11 process. The best way to [unintelligible], you know, but in order for it work, we  
12 would have to know what the actually allegation is, and have some ability to  
13 understand it so we can have a meaningful ADR. As opposed to just, "Hey,  
14 somebody's got a technical issue about procedural work, you know, not  
15 compliance." Well, yikes -- that's not going to be enough.

16 ELLEN GINSBURG: But in that case, the worker is the alleger,  
17 right?

18 CHUCK THEBAUD: [affirmative]

19 ELLEN GINSBURG: So, the enforcement action, assuming that  
20 the allegation was substantiated, would be against the company --

21 CHUCK THEBAUD: Right.

22 ELLEN GINSBURG: So --

23 ROY ZIMMERMAN: It never came to the NRC in this scenario,  
24 though, right?

25 ELLEN GINSBURG: No, it did. I assumed you were saying the

1 allegation did come to the NRC.

2 CHUCK THEBAUD: It would have to in order to --

3 ROY ZIMMERMAN: It's waiting for OI, right?

4 CHUCK THEBAUD: And in order for you all to get us involved,  
5 much like the individual goes to you with a complaint of discrimination.

6 ROY ZIMMERMAN: So the concern has come to us.

7 CHUCK THEBAUD: Right. And in the normal case, today you  
8 would initiate an OI, to see whether there was falsification or violation of  
9 procedure.

10 ROY ZIMMERMAN: Oh, we're saying --

11 ELLEN GINSBURG: But there's discrimination in the case you're  
12 describing.

13 ROY ZIMMERMAN: Right, so it'd have to be a case where the  
14 individual came to the NRC, and is comfortable in making their identity known --

15 CHUCK THEBAUD: Right.

16 ROY ZIMMERMAN: That would be a ground rule for -- because  
17 does it fit in the case where the individual has not yet gone to the NRC, and is  
18 trying to see whether -- if she can get satisfaction on his or her concern with the  
19 company first? And that's something that the NRC supports, is "Have you gone  
20 to your management with your concern?" And they may not be because they  
21 feel that that may have an impact on their career, or whatever else. You know,  
22 that's a personal decision that they make. So is it -- would it also fit the case  
23 where they've not yet made the decision to come to the NRC, and they want to  
24 give their management a crack at it first?

25 ELLEN GINSBURG: Well, then you're not in ADR.

1 [talking simultaneously]

2 FEMALE SPEAKER: You're outside the process.

3 CHUCK THEBAUD: That's just us. That's our PCP, it's our DPO  
4 process.

5 ROY ZIMMERMAN: Right, right.

6 CHUCK THEBAUD: Corrective action management --

7 BETH PICKERING: Actually it's part of the process because you  
8 do except some limited agreements that are under the company sponsored  
9 programs.

10 CHUCK THEBAUD: Right.

11 ELLEN GINSBURG: [inaudible]

12 CHUCK THEBAUD: Right.

13 BETH PICKERING: But it utilizes whatever [inaudible] --

14 NICK HILTON: Let me help by making it very real, just to kind of  
15 help keep it -- one of the things -- the hooks that get involved is -- we pay for the  
16 mediator in early ADR. In order to pay for the mediator, it has to be an action  
17 that the NRC is taking, or will take -- or there will be some action. So what-- one  
18 of the reasons that the ARP has to ensure that there's a prima facie case before  
19 sending the case to Cornell is the knowledge that under normal circumstances,  
20 the next step for us would be an investigation. So we are engaged. If we don't  
21 have a prima facie case, and the NRC would not take any further action, then  
22 we're not engaged and we cannot legally pay for the mediator to resolve that  
23 concern; it's outside of our jurisdiction. So in order for the -- anybody is certainly  
24 capable of using their own mediator through their ECP program, or CAP, or  
25 anything else, but it wouldn't be on our dime. So for talking about expanding the

1 scope of pre -- of an early ADR like -- it has to have come to us somehow  
2 through the allegation program, presumably, but somehow. And it would have to  
3 be an actionable item for us that we would do something with.

4 ELLEN GINSBURG: Nick, can we pull the thread a little bit on the -  
5 - so an allegation comes to you through the allegation program, and it's a strictly  
6 technical issue. In that case, the agency would look to see whether enforcement  
7 action is appropriate, but not necessarily OI.

8 NICK HILTON: Correct, correct. Well, and keep in mind, one of  
9 the big -- and I'm --

10 [talking simultaneously]

11 SHAHRAM GHASEMIAN: Your question was, if it's a strictly  
12 technical issue, right?

13 ELLEN GINSBURG: [affirmative]

14 SHAHRAM GHASEMIAN: I don't think OI gets triggered if it's a  
15 strictly technical issue.

16 ELLEN GINSBURG: That's exactly what I'm saying.

17 MALE SPEAKER: Right, correct.

18 ELLEN GINSBURG: Right.

19 SHAHRAM GHASEMIAN: It just goes through our allegation, and  
20 we look at it through either RFI inspection, and so forth.

21 ELLEN GINSBURG: Right, so --

22 SHAHRAM GHASEMIAN: If it's a wrong doing allegation, then OI -  
23 -

24 ELLEN GINSBURG: And that's exactly the differentiation I was  
25 trying to drive.

1 MALE SPEAKER: Okay, okay.

2 MALE SPEAKER: Right.

3 NICK HILTON: And I can't spit back all the precise allegation  
4 criteria -- too bad Lisa's not here -- but part of the allegation program does  
5 consider the potential for referral for additional information to the licensees. And  
6 they confer with the concerned individual about that possibility. So there is a  
7 nod, at least, to the involvement of the individual about how that concern gets  
8 addressed as well. We could probably work with that some more, but there is a  
9 nugget of that in the process now.

10 BILLIE GARDE: Well, let me take a little bit different perspective on  
11 this. I'm a board member of a -- it's a 15 year pilot project.

12 [laughter]

13 BILLIE GARDE: At Hanford, which is the Hanford Concerns  
14 Council. And its guiding principles, not -- "it's not how to we avoid an OI  
15 investigation" -- it's guiding principle is finding full, fair and final resolution to  
16 issues and you know, raised by employees and the majority of them are heard  
17 but they're heard that that [Aside to Karl Farrar who is entering the meeting] --  
18 you're walking in?

19 BILLIE GARDE: Yes.

20 [laughter]

21 ROY ZIMMERMAN: We're glad to see you in one piece.

22 BILLIE GARDE: Did you come in your car is the question, did you  
23 come the rest of the way in your car?

24 KARL FARRAR: I came in my truck which is a lot safer.

25 BILLIE GARDE: So in that context, when you sit down at the table

1 to figure out how are you going to approach the case, it's guided by a principle of  
2 how are we going to kind of come up with all of the right pieces to get to full, fair  
3 and final resolution so you don't have just a settlement of a retaliation issue or a  
4 HIRD issue and then -- and you know an ongoing saga on a technical issue.  
5 Now obviously the regulator has to be involved, I'm not suggesting in any way  
6 that they're not, okay, but it's a different approach to making sure that the parties  
7 at the table are kind of back to normal as much as it's going to be that maybe a  
8 parting of the waves in which cases, okay I'm leaving the company here's my  
9 concerns, I've been fully debriefed and I trust this third party or this DOE official  
10 or this you know, whatever, process we've agreed upon to look into my issues,  
11 I'm satisfied, this is fair and it's over, so that there's not a constancy of kind of the  
12 frequently bringing up the same issue, it doesn't have a life of its own, the goal is  
13 to make sure it's full, fair and final.

14 Here, it's very narrowly focused and I think that's kind of how it  
15 started, which is the OI investigation process was dissatisfying to everybody, it  
16 was taking too much time, it was disrupting peoples' lives, it wasn't satisfactory to  
17 anyone. For whatever reason, on whatever side of the coin you wanted to -- I  
18 don't mean to be overly harsh, but this is a process to avoid that, that's what this  
19 was originally kind of started as because it wasn't solving the problems and it's  
20 been around a long time and I -- so from my perspective it's like is it time to  
21 consider advancing the program to another level? And I don't know. You may  
22 want to stay just where it is. I'm just saying that there are other models out there  
23 that have kind of different objective, which is a broader perspective, and frankly is  
24 something, I think, does lend itself to the ADR process. You've got some really  
25 good mediation right now, I can very easily see the conversation shifting from,

1 okay, now we've resolved this issue, now let's talk about how are we going to  
2 make sure you're comfortable with the way we're proceeding on the technical  
3 issue. You can't give up the OI investigation if that's something that absolutely  
4 has to be done but then I know that you're at ADR anyway on that.

5 NICK HILTON: It's been sometime since I looked at the Hanford  
6 Model but if I recall right, there's multiple members, something like seven --

7 MALE SPEAKER: Yeah.

8 NICK HILTON: That represent multiple different parties and you  
9 kind of alluded to it, in whole we're talking about here might require the inclusion  
10 of an NRC person at the table --

11 FEMALE SPEAKER: Yeah that's --

12 NICK HILTON: Broaden the perspective to ensure that the NRC's  
13 interests are met in --

14 BILLIE GARDE: And we've always kind of talked about that, their  
15 role and I'm actually not even suggesting that model, as much as I'm talking  
16 about the objective --

17 NICK HILTON: Yeah, yeah, right, right.

18 BILLIE GARDE: And that objective is different; it's a different driver  
19 than what we've got here.

20 ELLEN GINSBURG: But may I offer that I don't think they're  
21 inconsistent --

22 BILLIE GARDE: No they're not.

23 ELLEN GINSBURG: Right, I think that it's interesting because, well  
24 you're describing something that may have more, in all, [unintelligible] bells and  
25 whistles but I think they're fundamental bells and whistles. The objectives of full,

1 fair and final are really here as well and the question is how do you define "full"?

2 BILLIE GARDE: Yeah, I don't agree with that because I think that  
3 here it's we'll take care of the HIRD issue, the technical issue is our business, the  
4 NRC's business, we will decide how it's -- you know, how it's resolved. So what  
5 you have to do is convince the worker to settle their case and abandon their  
6 safety concern, once they've been fully debriefed but they're not really part of the  
7 process and workers have a real hard time with that and in the case where  
8 they're a participant in how do we get to final -- how are you going to be satisfied  
9 that there's a safety -- that your safety concerns have been fully addressed, that's  
10 a different discussion. I don't want to say it's a negotiation, but it is in part a  
11 negotiation to make sure you're going to get to final. That I as the worker am  
12 satisfied, for example, that a third party electrical contractor is going to look at the  
13 technical issue and I agree that. The code committee looks at it, I'm okay with it.

14 ROY ZIMMERMAN: Let me try to summarize a little bit of where  
15 we are for Karl and please join me in that. Hopefully you don't feel like you're on  
16 the road anymore, and you're settling in.

17 KARL FARRAR: I am.

18 ROY ZIMMERMAN: Again, thanks for being here, and Karl's the  
19 senior attorney out of Region 1 and has been through a lot of ADR. The topic  
20 that we're talking about deals where pre-investigative ADR and whether the  
21 scope could be enlarged beyond discrimination and the thought that was raised  
22 is there may be instances where a worker believes that a licensee has entered  
23 into wrongdoing. No discrimination against the individual but is there a potential  
24 avenue of piloting a situation at early ADR where the workers is on the offensive  
25 and feels that he's seen the licensee do something that is improper. And we

1 were trying to see how that would work through and we got to the point of  
2 recognizing that the individual would have had to come to the NRC with the  
3 concern, so that we were aware of it and potentially the licensee, if we had some  
4 process like this, may opt voluntarily to keep the NRC OI at an arm's distance  
5 while they engage the individual and try to convince that person that either they  
6 didn't do anything improper and there's poor communication between them, or  
7 whatever comes out of the mediation session, is there a place for OI and again  
8 OI's not here, but the concept is -- can OI stay at a distance a little bit while that  
9 was worked through in pre-investigative ADR. And Nick raised a question about  
10 it might be the type of thing that if well, if OI is going to cool their heels for a  
11 while, perhaps someone from NRC would need to be in attendance there for that  
12 kind of a case. So did that kind of summarize it, or did I skew it?

13 CHUCK THEBAUD: I think that's -- well, that's accurate as to the  
14 program -- the pilot program that I was talking about, I think Billie is talking about  
15 something slightly different from and I think Billie -- and I don't mean to speak for  
16 you -- I think Billie is where you have also, maybe in addition to that part of the  
17 program, she's adding another piece that says where you have an allegation of  
18 retaliation and she wants that resolved -- or suggests that should be resolved in  
19 ADR as well as the underlying textbook concern, if there is one. That could be --

20 BILLIE GARDE: Or that that's possible. If it meets certain criteria,  
21 is that -- is that something that you know, should be undertaken within the  
22 process? Maybe not all cases are, you know, amenable to that and I -- you  
23 identified a number of criteria, about specificity, et cetera. I think you'd have to  
24 have that kind of --

25 MALE SPEAKER: Yeah.

1 BILLIE GARDE: Checklist to get into it, but assuming it was  
2 possible, you know, is it appropriate?

3 ROY ZIMMERMAN: Billie, what are you describing that's not part  
4 of the existing pre-investigative ADR, what component would you add that's --  
5 [talking simultaneously]

6 BILLIE GARDE: The underlying issue raised by the employee.  
7 The underlying concern, it may be technical, it may be an OI, somebody falsified  
8 a record, somebody submitted it an inaccurate piece of information.

9 ROY ZIMMERMAN: So it would still have the OI component with it.

10 BILLIE GARDE: Well it may --

11 ROY ZIMMERMAN: It's technical, but it's OI [inaudible]

12 BILLIE GARDE: If it's an OI type issue, it may be a technical issue that's  
13 already been carved out through the allegation review process and sent over to  
14 the region, so that now it's somewhere in the line to be considered during the  
15 next investigation, which may not be, you know, for another year, maybe not due  
16 for another nine months, so it's sitting out there, waiting to be looked at by the  
17 staff in some cue, matching some program and you've got a worker who's --  
18 okay, settled their retaliation claim, all right, but still has no idea what's happening  
19 to the underlying issue that got him or her there in the first place, other than  
20 waiting for the letter to come from the allegation review program, he is not  
21 involved and is from my experience, dissatisfied. Mad at the NRC, feels like he's  
22 sold out, feels dirty, you know, I took money, I've avoided my lawsuit but that  
23 thing is still not resolved and I don't know what's happening to it.

24 ROY ZIMMERMAN: We take that case --

25 BILLIE GARDE: That to me is the piece about this process that's

1 still missing. You don't have people leaving it for the most part, for the most part  
2 and just saying "Okay, I'm happy, I'm satisfied and I can get on with my life."

3 ROY ZIMMERMAN: We take that piece --

4 SHAHRAM GHASEMIAN: Yeah we take that technical piece--

5 MALE SPEAKER: Yeah, you do.

6 SHAHRAM GHASEMIAN: You look at it at the allegation program  
7 for --

8 BILLIE GARDE: When it gets there.

9 SHAHRAM GHASEMIAN: Yeah, I think we -- if I may interject  
10 here, just move the discussion forward, we've talked on this subject for half an  
11 hour, and it's great discussion --

12 [laughter]

13 I think we can, frankly, we can have a whole day worth of a public  
14 meeting on this particular issue, which we may, frankly, end up having one in the  
15 long term future.

16 [laughter]

17 But, before we move on, I'd like to get Karl's view on this, to the  
18 extent that he has any views, catch up and then we'll go to the audience and to  
19 the bridge line to see if there's any other views and then we'll move onto the next  
20 question.

21 KARL FARRAR: For technical issues, if it's brought to the  
22 allegation review board --

23 FEMALE SPEAKER: Yeah, they do.

24 KARL FARRAR: In the region, we want to put our regulatory  
25 footprint on it. There are timeframes, there are milestones that we have to meet

1 so I don't know if it's actually 90 days before we actually get out and do  
2 something, usually it's less. So if there is a technical issue we would want --

3 MALE SPEAKER: Great.

4 KARL FARRAR: Our inspectors to put an eye on that so we could  
5 put a regulatory footprint on that. So in that sense I don't know that we'd want  
6 just to be sitting at the table during the ADR, we want to be able to put some  
7 people on the ground so they can look at the technical issue, that would be our  
8 point, or our view.

9 ROY ZIMMERMAN: That's our process now.

10 KARL FARRAR: That's our process now, is that we want to put a  
11 regulatory footprint on the issue as soon as we get it. We do it within a number --  
12 we get -- for instance, or allegations we have to actually acknowledge those  
13 within 30 days of receiving them and then we usually try to have them resolved  
14 within a certain number of days also.

15 ROY ZIMMERMAN: Your concern is the timing of this -- the  
16 timeliness.

17 BILLIE GARDE: Yeah, I mean it's not just the timeliness, although  
18 timeliness is an issue, I mean my experience is we're not resolving things in 90  
19 days; what we're doing is it comes in, it gets reviewed and it gets slotted for the  
20 next -- unless it's an imminent safety issue, it's slotted for the next inspection that  
21 is going to cover that issue and there isn't usually -- it doesn't usually get into a  
22 special investigation unless it's a high profile issue.

23 KARL FARRAR: It also depends -- we have the resident and if it's  
24 a reactor issue and we have residents on site, we may send a residence out  
25 before the next available --

1 BILLIE GARDE: Right, and I'm not taking any -- I'm not  
2 complaining about any --

3 KARL FARRAR: No, I understand that.

4 BILLIE GARDE: Okay, what I'm saying is -- and I know you want to  
5 move on because you already had too many questions and we're only on one, so  
6 I understand.

7 [laughter]

8 So what I'm saying is, if you're going to look at continuous  
9 improvement, is there a way to improve the program so that you have person  
10 who believes they've been retaliated against for raising an electrical issue and a  
11 submission of false information issue. Can you sit down and make a list of those  
12 issues and figure out an alternative way to get them addressed so that by the  
13 time you get to them what you're doing is reviewing what the company's already  
14 done and maybe the worker's already satisfied with it and you've advanced the  
15 ball and you've had a discussion with the employee to say, okay? On this  
16 technical issue, if we pull all of these things and we look at all these documents,  
17 does -- will that satisfy your concern? Yes, that'll satisfy my concern. On the --  
18 you know on the technical aspect of it, if we have a third party, you know, review,  
19 if I have this guy come from this company and he reviews it, will that satisfy your  
20 concern that it's not a safety issue and he says yes, so that by the time the NRC  
21 gets around to looking at it, you've not only got them doing their check on the  
22 technical issue but you've got an employee who's much more satisfied with the  
23 resolution of the issue, their technical issues and not feeling like they just took  
24 the money and settled their case and you know, it's over. That -- I'm not  
25 complaining about the actions the NRC's taking; I'm saying is there another level

1 you can add there? Okay we're done. [laughs]

2 SHAHRAM GHASEMIAN: Clearly, if we're going to explore this  
3 area we're going to have to get allegations program folks involved, OI folks and  
4 have a full-fledged, kind of day long discussion on this probably, but this is a  
5 great start and it's a good foundation for future dialogue.

6 NICOLE GLENN: With that we'll take any questions or public  
7 comment from the folks who are in the room with us. I'm seeing a lot of heads  
8 shaking back and forth. [laughs].

9 ANN HARRIS: This is Ann Harris again. This action of sending  
10 allegations through a channel, it goes back to the company and then is -- results  
11 back to the allegor on a NRC letterhead does not promote trust. And in this  
12 whole process trust is industry and the regulator's problem. I deal with it on an  
13 almost daily basis and the big thing that Ms. Garde is speaking to here is the fact  
14 that there's a lack of communications with the allegor when information is needed  
15 from that employee, it goes down the black hole drain at the NRC. Once the --  
16 that person signs on a dotted line that they agree to the mediation of whatever  
17 comes out, in those instances nothing happens to those safety issues and that's  
18 left hanging out there at the company because the NRC writes it off and  
19 considers it. This goes on all the time in Region 2, that's how I know about this  
20 and the time lapse that is promoting this distrust because the company has gone  
21 out and fixed the problem and now all is okay and that makes the employee look  
22 bad during the ADR process and the employee has not -- or usually they've been  
23 fired or removed from their position and they're sitting over here in a corner  
24 somewhere and they're not given the information in a timely manner to help  
25 promote and to fix this and keep them out of the newspapers and off the TV

1 whenever they know that there's a serious safety problem out there.

2           So this idea of excluding this person that brought this issue up to  
3 begin with, that's a major mistake. It's a major mistake and it's a big gap in you  
4 building trust back with these employees because they're not going to come to  
5 you they're going to come to me and I don't need any more. Seriously, I'm too  
6 old for this. I'd be sitting in a corner watching TV and keeping up with my great-  
7 grandchildren if you would involve these employees but there's an almost action  
8 of attack whenever you go to these employees from OI that they're already -- we  
9 already know that you're stupid and you have stuck your neck out so this has --  
10 there has to be more communications of a kind that is giving the employee a  
11 sense of comfort that you're listening to what they're saying, not just the industry,  
12 because I'm hearing some things here today from the industry that makes me  
13 want -- just jump up on the table and do a rain dance because it's just not true. I  
14 see a whole different world than what I'm hearing here at this table.

15           NICOLE GLENN: Thank you. Are there any comments from the  
16 panelists?

17           ROY ZIMMERMAN: Yeah I guess I'll start because I'm very  
18 interested in what you said. And I listened very carefully but I just wasn't in the  
19 same place because I'm sort of looking at it from two different vantage points and  
20 I'm not indicating that your vantage point is not accurate, it's me trying to get on  
21 your wavelength to understand it better because as I was listening, I was looking  
22 at it that we do contact the allegor and we do reach out to the individual and try to  
23 keep that individual aware, first to make sure our backs are straight and we're  
24 looking at the right thing, and we communicate with that person on a certain  
25 periodicity so it doesn't go into a black hole.

1           So I'm trying to take what you're indicating and putting it together  
2 with as I understand the way we do our interactions and they don't -- they're not  
3 lining up so it's -- again we have to figure out logistically -- and maybe we can  
4 talk more on the -- more on the break, I don't want to lose your thought, I want to  
5 understand your thought better and I know I'll get help from my friends to my  
6 right, these are a lot of areas you want us to cover but I don't want to lose your  
7 comment so I'll be more than glad to continue the dialogue and wherever we end  
8 up, putting your comments in writing is something I'd really ask you to do, to  
9 make sure that if there's something going on out there that we're missing, please  
10 -- I love great-grandkids as well but you know, set them aside for a few moments  
11 to play in the corner and write us that letter and communicate with us so that we  
12 get the benefit from your knowledge, please. Thanks for raising the issue, I don't  
13 know if either of you want to raise -- or Karl, anybody else wants to respond.

14           KARL FARRAR: Well, I will say that -- only that repeat what Roy  
15 said. We want to hear these comments and we want to know when we're not  
16 doing things the way people expect them to be done. I know that that we do  
17 reach out to people and we do have contacts. I know OI sometimes -- I don't  
18 want to speak for OI but I know OI goes to the individual -- the individual who  
19 raises the allegation first to try to get -- tries to get as many details as possible so  
20 they can investigate those. I don't know if they're challenging these people, how  
21 they're challenging these people, I know that generally they don't do that, they're  
22 trying to gather information. So if we're not doing those things, if they're coming  
23 off kind of heavy-handed, we'd like to know that so that we can actually correct  
24 those things and do better.

25           ROY ZIMMERMAN: The truth typically lies somewhere in between

1 and I don't know whether you've had interactions with some like Region 2  
2 particularly. Have you had interactions and dialogue with them and you just kind  
3 of agree to disagree or -- but you have been engaging us on the concern, this  
4 hasn't -- they haven't been satisfactory to you?

5 ANN HARRIS: Some of these allegeders and employees have even  
6 been through the ADR process and they're still getting -- there seems to be such  
7 a convoluted way of dealing with this whole process and it's building up a major  
8 wall of distrust that I'm having difficulties even coming into this room today  
9 because a lot of the allegeders that I talked with, they didn't even want me to bring  
10 this up, because they feel like the industry threatens them that if you don't sign  
11 the bottom line, we'll black ball you, you will never work in this industry again.  
12 And that's generally true, they're not going to work in it again, but the idea that  
13 the safety of the plant is sacrificed bothers me greatly and the Region 2 OI and  
14 the ADR process seems to be miles apart and I don't see how the OI -- I just  
15 don't see how this process is helping anything except to protect the NRC from  
16 doing its job through the OI process. That worked for years, this process is  
17 taking a whole other level of activity that has not worked for the workers and I'm  
18 wondering who -- who's it working for? Because it -- OI has been -- I'm not  
19 always their biggest fan; I deal with -- a lot with the inspectors. I deal with the  
20 whole chain, I deal with Bob Haag in Region 2, I deal with some of the people out  
21 in Region 4, I don't care, as long as the safety of the plant is not compromised --

22 MALE SPEAKER: Sure.

23 ANN HARRIS: In some instances, I feel that the plant's  
24 compromised because these safety issues are not being addressed because  
25 nobody -- once they go ADR, there's people in OI that take the position that we

1 don't have anything else to do with it. And these people are desperately -- and  
2 like Ms. Garde said, these people are not happy. I mean I'm not here to make  
3 you happy, them happy, or anybody happy. My concern is the safety of the  
4 plant, that's the only problem that -- that's the only issue that I have with any of it  
5 and the safety of the plant is being compromised whenever the ADR process is  
6 not working for them and the issue is still sitting at the plant unresolved and OI  
7 does not have a feel or a contact with that person and I think that's a big gap in  
8 this whole process.

9 ROY ZIMMERMAN: I appreciate your comment, thanks again for  
10 being here --

11 ANN HARRIS: Is that clear enough to what --

12 ROY ZIMMERMAN: It helps me and maybe we can chat in a little  
13 bit --

14 ANN HARRIS: We will.

15 ROY ZIMMERMAN: Through the person --

16 ANN HARRIS: It's good to see you again.

17 ROY ZIMMERMAN: Likewise.

18 KARL FARRAR: Roy can I ask a question?

19 ROY ZIMMERMAN: Sure.

20 KARL FARRAR: Maybe this is to some of the panel members, but I  
21 haven't done -- I haven't dealt with a lot of early ADR agreements in a long time  
22 but I know at the beginning they made sure -- the NRC made sure the individuals  
23 have the right to bring issues to the NRC and that there was no restrictive  
24 language in the ADR agreements, is that still the case?

25 ROY ZIMMERMAN: Yes.

1           KARL FARRAR: So if individuals do sign an early ADR agreement,  
2 they can still bring those issues to the NRC.

3           MALE SPEAKER: Safety concerns.

4           KARL FARRAR: Safety issues to the NRC and not be subject to  
5 retaliation.

6           SHAHRAM GHASEMIAN: Right and in fact some of the changes --  
7 changes that I mentioned earlier on was based on comments from some of the  
8 panelists a year or two ago about the clarity -- whether there may be some  
9 confusion out there with allegers that their safety concerns may be settled and  
10 we took several actions to emphasize and to reiterate in various forms that safety  
11 concerns cannot be settled in early ADR. We -- the brochure that we revised, it's  
12 -- we've clarified it and made it in bold in a couple of areas to make sure it jumps  
13 out. We modified the settlement agreement close out letter that specifically says  
14 this only closes out your discrimination allegation to the extent there's any other  
15 technical issues that will be addressed through our allegation program.

16           We've updated our agreement to mediate form basically telling folks  
17 if they didn't read the brochure, they have to sign that agreement to mediate and  
18 in that agreement to mediate it also says that this mediation is solely focused on  
19 discrimination and does not include technical issues so we've taken the approach  
20 that's at essentially every step of the process, we remind folks what's within the  
21 scope and what's outside of the scope so that if somebody misses it the first  
22 time, at the first stage, they'll get it at the second so -- and that particular issue  
23 about technical issues -- I think we've gone a little bit overboard as far as trying to  
24 ensure that there is no confusion about whether it's included or not.

25           BILLIE GARDE: But the problem is, Shahram, that -- I understand

1 everything you're saying and I'm -- let's assume everything that you've done is  
2 absolutely increased clarity, increased the communication, it's a view that says  
3 you know, we're institutionalizing the procedures of our programs so you've got  
4 to be -- this is the way we're doing our programs so you and your life have got to  
5 fit within our silos and you're talking to one person, so you're talking about one  
6 person who's outside the merits, has been retaliated against for raising safety  
7 concerns, so you're engaging with them on the -- in an ADR process to try to  
8 solve their safety concerns, or just try to solve their HIRD issue and hopefully try  
9 to get them back to work or get them money or get them settled and walked  
10 away and it's not okay that you're just saying "And here's where your safety  
11 concern is resolved, that's in that silo. That's somebody else's responsibility."  
12 That's the height of bureaucracy and you're dealing with real people.

13           SHAHRAM GHASEMIAN: I understand what you're saying and I  
14 think my point of going through that was to address that so long as people are  
15 clear about what's within the scope, I think we've tried to address that. What  
16 you're talking about is just maybe the process that's we need to change --  
17 change that scope or have a different process which is a different issue in my  
18 mind than whether people are confused about what the program offers. I think  
19 you've --

20           BILLIE GARDE: Well I think what Ann said is the people are -- this  
21 part of this is dissatisfying to people. That they're in the spot that they're even  
22 talking to you in the first place because they believe that they have suffered  
23 retaliation for raising safety concerns and they're already as a prima facie case  
24 that's been established by the initial review. Okay, so we don't have just  
25 somebody off the street, we got somebody who has established in a prima facie

1 case of retaliation for raising safety or other kind of concerns. So it -- I agree,  
2 everything you've done has increased and improved communication. It's just that  
3 you've got to have a participant who's willing to be "siloed." Say okay, I get it and  
4 some are. Some are very sophisticated, they get it, they understand this is  
5 where this goes, this is where that goes. But I'd say the majority of the workers,  
6 and certainly the non-professionals -- this is really hard for them. And as I'm  
7 talking to the NRC, what do you mean? That's handled in that office. You know,  
8 my talking to you as an agent of the NRC means you're the whole deal. You go  
9 home at night, and think, "Okay, I did my piece of this." They go home at night  
10 and they're still into thinking about safety concerns of the NRC. Now what's  
11 happening with them? And, you know, I don't want to say it's an inside the  
12 beltway mentality, but it's definitely a bureaucracy mentality that doesn't work  
13 with all workers. And --

14 ROY ZIMMERMAN: I'm sorry.

15 BILLIE GARDE: No, I just -- in the context of -- I'm glad I have an  
16 opportunity to have people get their cases resolved, instead of the way it used to  
17 be 10 years ago, which was just wait, and you know, starve, basically.

18 ROY ZIMMERMAN: Yup.

19 BILLIE GARDE: I don't want to have anything I say be taken to  
20 think I want this program to go away. It serves a very powerful, important  
21 purpose, and I think it's done that. Now we're talking about making it better.

22 ROY ZIMMERMAN: Right.

23 BILLIE GARDE: And that's the piece that I don't think we've got  
24 right. And that's not a reflection on, "Have you done a good job with your  
25 brochures, explaining what the scope is?" I think you have, but I think you've

1 done a better job. But it's just -- other people don't -- workers don't necessarily  
2 get that.

3 ROY ZIMMERMAN: I'm trying to figure out what we would do  
4 differently. Is it the fact that we need to communicate more?

5 BILLIE GARDE: I think it's -- you could always communicate more,  
6 okay?

7 ROY ZIMMERMAN: But what's the fix that -- what's the --

8 DAVE SOLORIO: I think the point is that once they sign the dotted  
9 line from the attorneys to take their settlement, they don't hear anything else.  
10 And they want to be a part of finding out how it got resolved.

11 [talking simultaneously]

12 MARIA SCHWARTZ: Even what's built into the process when  
13 they're sitting at the table. You have a technical issue, and this is how we're  
14 going to address this, and this is how we're going to get back to you. Not  
15 necessarily the technical issue's been established -- I mean, has been resolved.

16 BILLIE GARDE: Right, and the NRC has a very sophisticated  
17 process for dealing with allegations. So if you get rid of the ADR piece of it, then  
18 they're back into the regular allegation program, which has a regular process. We  
19 send you letters, give you an update, blah blah blah blah. And it -- just that has  
20 some -- that has got some real dissatisfaction for people that walk away from the  
21 process, and don't feel like their safety concerns are getting attention. And for  
22 the people who are in ADR, they paid, you know, the ultimate employment price  
23 for it.

24 ROY ZIMMERMAN: They're not getting attention, or they're not  
25 getting attention fast enough for their desires?

1 NICK HILTON: It's probably a little bit of both.

2 BILLIE GARDE: Yeah.

3 NICK HILTON: Billie's kind of -- it's not fast enough, and it's largely  
4 invisible to the individual.

5 BILLIE GARDE: That's a better way to say it.

6 NICK HILTON: Ann's point is, perhaps, not so much at all in some  
7 cases.

8 BILLIE GARDE: Right.

9 NICK HILTON: But what we probably perhaps glossed over the  
10 Hanford's discussion really quick -- is that the idea of finality is that you would do  
11 at least the bulk of the inspection/investigation function at that same setting, so  
12 that the individuals -- all of their issues are addressed that day or two they're  
13 sitting there.

14 BILLIE GARDE: What if a worker says, "I don't care anymore. I've  
15 turned it over to you, I trust you, I'm done with it."

16 NICK HILTON: But that actually goes to what Ann was talking  
17 about --

18 BILLIE GARDE: Right.

19 NICK HILTON: In terms of -- that way they would be aware and  
20 participatory of how and what the resolution to their issues are. And so they  
21 would be much more knowledgeable about that.

22 ANN HARRIS: In some ADR processes that I have been involved  
23 in personally, I know that the -- it was clearly stated, and I won't say who, but it  
24 was clearly stated that, "Now we don't need you anymore, and you -- we will not  
25 have contact with you, and we don't want any." So that person feels like they've

1 been thrown out to the wolves after they went to a -- what they considered a  
2 safety process, going to the resident inspector at a job site is a job killer.  
3 Because if the wrong person sees you going through that door -- because the  
4 idea is that you didn't come through employee concerns. Well, yeah, you did.  
5 But employee concerns flipped you off. And they're going through this chain of  
6 command, and when they get to the resident inspector, generally, they are  
7 delirious. They feel they have nowhere else to go besides home. And then  
8 Region 2, they get the allegation, and then they put it through the process, and  
9 nobody's communicating with this employee.

10 ROY ZIMMERMAN: That's my biggest disconnect from this whole  
11 thing.

12 ANN HARRIS: That is where there are major lengths that you have  
13 opportunities. And the company has major opportunities here also, to fix a lot of  
14 these things without this process ever even being acknowledged or dealt with.  
15 And so there's, somehow or another -- and I don't know what -- I feel like that  
16 there should be more of these kinds of meetings in -- where there's 300 or 400  
17 employees in a room, instead of somebody like me in this kind of room where  
18 those employees know what the process is. This is a well kept secret. It's a well  
19 kept secret. I shouldn't have to be here telling an employee that, "Look, here's  
20 some processes." Once an employee comes to me, I automatically contact -- I  
21 want to know what their issue is. That's the first thing I do. Because a lot of  
22 times, they don't realize what the problem really is. And the safety issue is what  
23 I'm digging out of them. And so then -- now, I either call the NRC -- if I can't get  
24 somebody there that is a -- that knows that I deal with these issues, then I try to  
25 contact the company. And the company generally will speak with me. But I'm

1 not always comfortable revealing who this person is. A lot of times I don't have  
2 to; they already know, because they've been through the process, and  
3 everybody's flipped them off. I'm not here to save anybody's career; I'm here  
4 about the safety of the plant. So that way, I automatically get the attention that I  
5 need to see these. But then the person wants relief. Well, they've moved me  
6 over here, and I'm never going anywhere. So the communications from the  
7 NRC, through this process and what it means, and for OI to take their job back,  
8 and do what they need to do, instead of saying, "Oh, they signed, so we don't  
9 have to." And then sending out letters that misstates and convolutes the words  
10 so badly that the person gets really irritated, because they're going through six  
11 months. By then, the company's fixed the problem, so then they're going to look  
12 stupid again. And that's not -- that's not conducive to getting the reality of this  
13 dealt with.

14 ROY ZIMMERMAN: Thank you.

15 ANN HARRIS: You're welcome.

16 SHAHRAM GHASEMIAN: Let's go to the bridge line -- if there's  
17 any comments from the folks on the phone, and then we can maybe take a very  
18 quick break and come back for the next round.

19 NICOLE GLENN: Very good, are there any comments from the  
20 participants on the bridge?

21 STEVE HAMRICK: I have none, no.

22 NICOLE GLENN: All right, thank you.

23 SHAHRAM GHASEMIAN: Okay, should we take a 10 minute  
24 break, and then come back? So it's about 10:26 -- how about you come back  
25 about --

1 NICOLE GLENN: 10:36 [laughs].

2 SHAHRAM GHASEMIAN: Yeah, 10:36.

3 FEMALE SPEAKER: Okay, 10:36.

4 [laughter]

5 [talking simultaneously]

6 [break]

7 NICOLE GLENN: I think we'll come back to order, and let him  
8 catch up when he returns.

9 MALE SPEAKER: Yes, yes.

10 NICOLE GLENN: So for the folks on the bridge, I think we've  
11 completed one question. We'll try to tackle the next topic. We're still going to  
12 shoot for a 12:00 break for lunch, so we'll try to pack as much material in as we  
13 can.

14 SHAHRAM GHASEMIAN: I guess the next area which is kind of  
15 related, so hopefully we won't dwell on it too long. But it's a good topic to have a  
16 dialogue about. Still pre-investigation ADR. The way it's set up for pre-  
17 investigation -- if the parties settle their discrimination complaints, NRC does not  
18 conduct an investigation to close out that complaint. Whereas if there's no  
19 settlements, NRC continues in the normal course and investigates it, and  
20 reaches a conclusion on the merits of the allegation of discrimination. Should  
21 this aspect of the program be changed, or is it effective as is? I just open it up to  
22 the panelists, on their views. Beth?

23 BETH PICKERING: Well, I think the avoiding of an OI investigation  
24 is what gets us to the table, because -- I don't know about other licensees in  
25 other states, but it's not unusual for us to have an OI investigation, which -- with

1 an offer of ADR, with the same discrimination facts being in front of the  
2 Department of Labor as a Section 211 claim. And we may also be in state port  
3 [spelled phonetically] forum, or EEOC, or one of the state agencies. So that if  
4 you took away the -- are looking forward to avoiding the expense, and the time,  
5 and the risk of an OI investigation on the HIRD claims, there's probably no  
6 reason to be at the table because we already have other internal processes for  
7 looking at employee concerns, both through the San Onofre's employee  
8 concerns program, and the corporate HR grievance process -- union grievance  
9 process, and other ways of employees to resolve their concerns.

10 SHAHRAM GHASEMIAN: Okay. Any other thoughts?

11 CHUCK THEBAUD: I agree completely, Shahram. I think if you  
12 were to do away with it, there would be almost zero participation by the industry  
13 in early ADR. And that is truly the biggest benefit that the companies see out of  
14 it.

15 SHAHRAM GHASEMIAN: Billie, any views on that?

16 BILLIE GARDE: Well, I agree.

17 SHAHRAM GHASEMIAN: You agree?

18 BILLIE GARDE: [affirmative]

19 SHAHRAM GHASEMIAN: Okay.

20 ELLEN GINSBURG: And the program is established on that basis.

21 SHAHRAM GHASEMIAN: Yeah.

22 ELLEN GINSBURG: I mean, it was up front; there was nothing  
23 hidden about that objective.

24 KARL FARRAR: Now just -- not to be the negative person in the  
25 room, but I think they're -- that you're absolutely right on the day-to-day

1 discrimination issues; they're a problem. Because of the way the program's set  
2 up, there probably should be an OI investigation. But there are certain  
3 circumstances where the NRC has an interest in looking into issues when they  
4 become bigger than usual. So to just say, "Absolutely, we're not going to ever do  
5 an OI case involving early ADR" -- I don't know if that's completely accurate. I  
6 think that there may be instances where the NRC may want to look into an issue,  
7 and have OI look into an issue, under certain circumstances. Now what are  
8 those circumstances? I would think it'd be high profile discrimination case,  
9 because wide-spread media attention, congressional attention, may get  
10 Commission attention. OI may have to -- may insist that they be involved. And  
11 under their statutory authority -- independent -- they can initiate investigations on  
12 their own.

13 ROY ZIMMERMAN: But it's still voluntary.

14 KARL FARRAR: It's -- I'm sorry?

15 ROY ZIMMERMAN: It's still voluntary.

16 KARL FARRAR: Yes, it is still voluntary.

17 ROY ZIMMERMAN: So if OI decides that they're going to step in --

18 FEMALE SPEAKER: But this is the investigation.

19 NICK HILTON: It'd be after the settlement.

20 KARL FARRAR: After the settlement.

21 MALE SPEAKER: It wouldn't be voluntary at that point.

22 MALE SPEAKER: Oh, after the settlement.

23 NICK HILTON: And I'll just add onto what Karl said -- it is

24 Commission policy that there's no OI investigation. So the Commission can

25 change that policy. And if the Commission directed an investigation to be done,

1 it would be done today.

2 KARL FARRAR: And I know that there was one case where that  
3 was almost --

4 NICK HILTON: There was discussion of that.

5 KARL FARRAR: There was discussion of that, so --

6 NICK HILTON: But it's -- so it's not impossible. But the  
7 Commission policy does keep it at the Commission decision level to do that.

8 BETH PICKERING: I'd like to comment on that. I think that that is  
9 problematic, if we accept ADR in the belief that we can resolve the issue, and  
10 have it be put to rest. That if -- that that kind of evaluation of whether there's  
11 congressional interest, whether there's a bigger Commission interest, or some  
12 other reason for an OI investigation of a HIRD claim, it should be done before the  
13 ADR was offered because you don't automatically offer it. And so if that is a  
14 possibility, ADR shouldn't be offered, so we don't go down the road. I think  
15 you're going to cause suspicion with the program if you tell us that at the end we  
16 might still have an investigation of the HIRD claim.

17 KARL FARRAR: Beth, you're right. But it is offered. ADR is  
18 offered in all prima facie cases. It's routine that we provide the individual who  
19 raised the allegation the ability to have an OI investigation on a participating  
20 ADR, if the licensee agrees. And you're also right that we could make a choice  
21 at that point not to do -- offer -- to send that letter to the individual where we offer  
22 ADR. And that would probably be a Commission decision if that were to happen.  
23 But I do know that there were -- at least in my remembrance -- there were --  
24 remembrance -- there was at least one case where that was -- there was  
25 discussion on is OI going to engage although the individual did participate in an

1 early ADR, or pre-investigation ADR.

2 ROY ZIMMERMAN: Do you know offhand if our procedures  
3 articulate that possibility?

4 SHAHRAM GHASEMIAN: No, I mean the program is set up as  
5 Ellen and --

6 KARL FARRAR: Beth.

7 SHAHRAM GHASEMIAN: And others -- Beth --

8 ROY ZIMMERMAN: Yeah.

9 SHAHRAM GHASEMIAN: And other may have -- it was -- and it's  
10 very explicit, actually, in the comments, in our deliberations, that is the number  
11 one factor for the industry supporting the program.

12 KARL FARRAR: Right.

13 SHAHRAM GHASEMIAN: Is that that ambiguity as, you know --  
14 was kind of taken out of the program. That if the issue is settled prior to  
15 investigation, then we would close it out. The only -- so that's pretty clear, there  
16 is no --

17 KARL FARRAR: Yeah, and let me also --

18 SHAHRAM GHASEMIAN: There is no ambiguity.

19 KARL FARRAR: And let me also clarify a little bit more, is that it  
20 wasn't the actual -- it was the circumstances surrounding the bigger -- it was a  
21 bigger issue than just this one allegation of HIRD discrimination. It was bigger  
22 than just that. It was a larger issue. It had a lot of tentacles, and involved a lot of  
23 different things.

24 SHAHRAM GHASEMIAN: Right, well, this may be a good -- do you  
25 have a thought on --

1 FEMALE SPEAKER: Go ahead.

2 SHAHRAM GHASEMIAN: This may be a good segue to one of the  
3 other questions, number three, where we are talking about abuse of the program.  
4 That was one of the -- that was the -- kind of the -- one of the exceptions to  
5 offering early ADR when the program was developed and that -- so is there -- are  
6 there criteria? I mean, right now, that abuse of the program is not necessarily  
7 written in our enforcement policy, or you know, in any other document. So,  
8 should we develop a set of criteria initially not even offering ADR? If -- for  
9 example, if it meets certain, you know, prescribed criteria, as maybe Karl was  
10 talking -- alluding to, or maybe some other kind of criteria that we developed.  
11 Right now, it's pretty much automatic. We -- you know, we get an allegation of --  
12 a HIRD allegation. If it meets the prima facie elements, we offer early ADR, and  
13 you know, we are off to the races. So should there be kind of an interim step in  
14 that process to decide whether there is any other criteria for not offering early  
15 ADR to the allegor?

16 ELLEN GINSBURG: Can I go back to one thing that Karl said?  
17 And I know you were just identifying criteria off the top of your head in terms of  
18 the high profile cases, et cetera --

19 SHAHRAM GHASEMIAN: [affirmative]

20 ELLEN GINSBURG: I think you need to -- we need to be cognizant  
21 of and perhaps reluctant to allow the process to be politicized. And I think the  
22 danger in lots of publicity or a Congressional investigation of some sort that are  
23 driving what otherwise is a process that's both well established and objectively  
24 applied more or less. I just would like to leave that as a comment because I think  
25 the industry, and perhaps, I won't certainly speak for the other participants,

1 appreciate the fact that it's a fairly straightforward process. You know what the  
2 entry points are, you know what the process once you get into it and you know  
3 what the outcome objective is, so I just leave that there because I do think that  
4 that's problematic.

5 KARL FARRAR: I understand that and I will also say I think the  
6 industry -- because you actually agreed to the ADR --

7 ELLEN GINSBURG: [affirmative]

8 KARL FARRAR: And there are certain circumstances where it may  
9 be in everyone's interests not to engage in ADR, and so that you can have a  
10 either individual like Morgan Bockius or an OI or some other party review that  
11 issue so that you can have an unbiased view of the issue and there are  
12 circumstances where that's important.

13 ELLEN GINSBURG: I think what Beth was saying and what I  
14 would just say is you've got to be careful about bait and switch. So if what you  
15 sign up to is an agreement that if you participate in this process, it -- put aside  
16 whether we or the NRC adds in addition another component to it, with respect to  
17 the underlying issue that was -- that brought the ADR forward. It seems to me  
18 that you need to be true to that process, so if you say that ADR is a process that  
19 settles this issue, that's where you leave it and OI doesn't come in later because  
20 that's not what --

21 KARL FARRAR: What I'm saying -- I'm not saying --

22 ELLEN GINSBURG: What you signed up to.

23 KARL FARRAR: I'm not proposing a bait and switch [laughs], but  
24 what I am indicating is that -- and most of you have been involved in issues, you  
25 know what the big issues are and you know that resolving it in ADR is not going

1 to satisfy your interest and there are certain circumstances where if -- even if you  
2 -- I don't want to call it a abuse of a program because I don't believe it's that, but I  
3 don't think that people should use ADR as a way to quit something, to close  
4 something down that may actually be a big issue.

5 BILLIE GARDE: But it's voluntary.

6 KARL FARRAR: It is voluntary.

7 BILLIE GARDE: So --

8 KARL FARRAR: You're absolutely right. Absolutely right, it is  
9 voluntary.

10 BILLIE GARDE: So if it's where your head is at right now then you  
11 would say no, I decline, I don't want the whole line investigation.

12 KARL FARRAR: Right.

13 ROY ZIMMERMAN: That's where I'm struggling as well, and again  
14 I can get overruled and it wouldn't be the first time, but in my mind if we have --  
15 and we're probably not quite on the same wavelengths, as I recall the particular  
16 case and maybe I should, but in my mind if we think that we may not -- we may  
17 have work to do after early ADR, I don't think we should enter into early ADR. I  
18 think --

19 KARL FARRAR: I agree.

20 ROY ZIMMERMAN: I think we should stay out of it because I have  
21 the concern that's being expressed here that there's a lot of trust that goes into  
22 this and all it takes is an example of us deviating from a process that procedurally  
23 doesn't even address it. We need to do our homework and prepare and if we  
24 think that we need to deal with this outside the ADR, ADR doesn't -- you know, it  
25 doesn't always -- doesn't always fit but you're talking about early ADR, we're not

1 involved anyway, that's --

2 KARL FARRAR: Right.

3 ELLEN GINSBURG: Right.

4 [talking simultaneously]

5 ROY ZIMMERMAN: You're saying that it's early ADR, we're not  
6 involved anyway but our agreement is we're not going to engage but if we think  
7 that we are, potentially, then maybe we owe it to the participants to let them know  
8 that we may be entering into it.

9 NICK HILTON: Let me help --

10 ROY ZIMMERMAN: Does that -- does that make sense to you?

11 KARL FARRAR: It makes a lot of sense to me.

12 ROY ZIMMERMAN: Okay.

13 KARL FARRAR: It absolutely does.

14 ROY ZIMMERMAN: Because I wouldn't feel good if we didn't do  
15 that, because then I'd feel like I need a shower. And I take them periodically.

16 [laughter]

17 It would be a special shower.

18 NICK HILTON: Let me help a little bit. Part of the problem, these  
19 are the two questions are tied together actually. Sometimes because early ADR  
20 is designed to be timely and to move forward quickly, sometimes in a case facts  
21 and well whatever, we'll call them facts, trickle in overtime and an offer of ADR  
22 has been made and we're down the road and then there's that continuing  
23 heightened increase that happens on down the road. That's not exactly what  
24 happened in the case Karl's talking about. In the case Karl's talking about there  
25 was no relief valve, if you will, in the policy because there was no abuse of the

1 program and there was no reason via the ADR policy to not offer them ADR in  
2 terms of well, it says you know, here's what it says. We normally offer it, unless  
3 there's abuse of the program and there's none of that so why wouldn't we offer it  
4 to them in a course.

5 So I think to address the issue that Karl's talking about we would --  
6 and would not -- and would be consistent with the industry's interest, is the  
7 development of that criteria for when we would not offer early ADR. That's not so  
8 troublesome for the industry, as the idea that you would go to ADR settle it and  
9 then find out there's an investigation.

10 FEMALE SPEAKER: Right.

11 NICK HILTON: Correct?

12 [talking simultaneously]

13 So the question really on the table that everybody's bantering about  
14 is what are the additional criteria, in addition to abuse of the program, that should  
15 we include in the policy as a consideration for not offering early ADR?

16 SHAHRAM GHASEMIAN: Should we or should we not, but I think  
17 that's -- I don't think we're predisposed to come up with criteria, just to kind of  
18 have a dialogue but I think Ellen's point, I think one downside of that is, even to  
19 come up with the criteria, what I heard, what your comment was Ellen that it's  
20 kind of -- may infuse certain degree of politics or kind of subjective kind of  
21 oversight that -- that's not there right now. Right now the process is pretty clear,  
22 it's pretty objective and you follow the process, whereas if you come up with that  
23 type of criteria, that's kind of a --

24 ELLEN GINSBURG: Well I was just --

25 [talking simultaneously]

1           KARL FARRAR: Maybe I should clarify somewhat, is that it  
2 wouldn't be politics, it would be an issue, technical or -- say not just technical, say  
3 safety culture, which we --

4           MARIA SCHWARTZ: Chilling effect.

5           KARL FARRAR: I'm sorry?

6           MARIA SCHWARTZ: Chilling effect --

7           KARL FARRAR: Chilling effect.

8           MARIA SCHWARTZ: That you find out it's really pervasive.

9           KARL FARRAR: Pervasive and we're looking -- we find out that  
10 there's been early ADR agreement, all right. We offered early ADR because the  
11 prima facie case was established. And then this issue becomes bigger than  
12 initially thought. We're going to look into that and how we look into that, if it's -- it  
13 might not be discrimination, it may be the technical issue that morphs into  
14 something or this chilling effect. We need to look into that.

15           SHAHRAM GHASEMIAN: Well, we do that. I mean, just for clarity,  
16 that process, I mean, again.

17           KARL FARRAR: No, I know we do that.

18           SHAHRAM GHASEMIAN: We do that and we have, I think, the  
19 case that's I think you're thinking about, we did actually do a full investigation on  
20 the chilling effects side of it but just not on the particular --

21           BILLIE GARDE: And was ADR done on that?

22           SHAHRAM GHASEMIAN: On --

23           KARL FARRAR: One piece.

24           SHAHRAM GHASEMIAN: One piece as far as the individual --

25           BILLIE GARDE: And did both of the -- did both the individual piece

1 and the potential chilling effect arise from the same incident, like a supervisor  
2 publicly terminating somebody, I mean were the facts --

3 SHAHRAM GHASEMIAN: No.

4 BILLIE GARDE: See that's where I think you've got a problem and  
5 you and I talked about that a little bit under your question five, because your --  
6 well finish your discussion and then I'll [inaudible].

7 SHAHRAM GHASEMIAN: But the point was that the chilling effect  
8 issues, we had the right and we do investigate it whether this is an early ADR  
9 settlement or not so there are two separate paths.

10 KARL FARRAR: I'm not talking about turning over to ADR during  
11 an investigation. I don't want anyone to think that, those ADR agreements are  
12 agreements and they should be valued because that's what they are, but we also  
13 have things like chilling effect, and technical issues that we need to look at but  
14 that are derived from those issues and I don't think that they should be -- that  
15 anyone should think that that's going to be closed down by early ADR  
16 agreement.

17 ROY ZIMMERMAN: They're not.

18 BETH PICKERING: Oh they're not, but -- and the brochure that's  
19 on the internet now, it clearly states that for the allegor.

20 ROY ZIMMERMAN: That we're going to continue to look at it.

21 BETH PICKERING: We'll continue looking at technical issues and  
22 SCWE [spelled phonetically] issues.

23 MALE SPEAKER: Right, SCWE issues.

24 ROY ZIMMERMAN: So maybe we're in alignment?

25 KARL FARRAR: Yes, I think so.

1 ROY ZIMMERMAN: Yes, we are in alignment.

2 [laughter]

3 KARL FARRAR: Absolutely.

4 ROY ZIMMERMAN: If we say so.

5 SHAHRAM GHASEMIAN: Lets --

6 ROY ZIMMERMAN: Is everybody comfortable with leaving the  
7 topic where we are is there some concern that maybe we're talking past each  
8 other? We okay?

9 CHUCK THEBAUD: I think we're okay.

10 SHAHRAM GHASEMIAN: I think we're all on the same page. Let's  
11 move on to less glamorous topics, we'll talk about --

12 KARL FARRAR: Switching from abuse?

13 SHAHRAM GHASEMIAN: Yeah, I think we're okay. And talk about  
14 transparency of early ADR. Clearly the confidentiality of the process and the  
15 mediation and the settlement agreements are major, you know, factor in the ADR  
16 but at the same time we have an interest in having as transparent of a process  
17 as possible. So recognizing that potential tension, the way we've tried to share  
18 information about the program has been by making the process, explaining it as  
19 clearly as possible, frankly making me and Cornell more accessible to allegeders to  
20 explain the process, sharing more information about the process and the  
21 program on our webpage and sharing more statistical information about the  
22 program. Is there any other ways in your views that we could take additional  
23 steps to make the program any more transparent than that? Beth?

24 BETH PICKERING: It's really an issue that we've had in -- when I  
25 look at the majority of cases where we could not come to an agreement with the

1 employee in any part and in some cases the mediators within the first 20 minutes  
2 said we're not going to go anywhere. It's when the -- despite your statements, in  
3 writing and I presume are provided verbally to the allegor that we're only going to  
4 be handling the HIRD issue and we're going to be settling the issues that's  
5 personal to the individual. We still have the individuals coming in believing that  
6 the purpose of the meeting is to discuss their technical issue or their SCWE issue  
7 wanting us to, with very -- us having very little information, maybe having no  
8 information about what the allegor is well, claiming. The allegor says I'm not  
9 going to talk about my personal issues, I'm not going to talk about my  
10 discrimination issues until you agree to change your CAP program or your  
11 emergency planning program or something major that I don't even have the right  
12 person in the room to even address it.

13           So in terms of -- and then the -- so they have been disappointed  
14 that the mediation isn't doing what they want them to do and we see it as a waste  
15 of time on our front and the mediator is frustrated because there's nothing really  
16 for the mediator to work with but sometimes the mediator even tries to mediate  
17 those technical issues. So I think that there needs to be some more clarity to the  
18 allegor, I think we're clear because the allegors need to be clear when they come  
19 into the mediation on what can be dealt with in the mediation because they go  
20 away very frustrated and as Billie talks about very distrustful of the process then,  
21 but they've come in with unrealistic expectations and I'm talking about allegors  
22 that come in with and without attorneys.

23           ROY ZIMMERMAN: So this has been a mediator to talk to the  
24 allegor to make sure they understand what this meeting is about?

25           SHAHRAM GHASEMIAN: Well, I'm you know --

1 ROY ZIMMERMAN: I mean it sounds like it's an inefficient meeting  
2 and there's no reason for it. People could even be attending; I don't know what  
3 the boundaries of what they're going to talk about.

4 SHAHRAM GHASEMIAN: And I think -- and this isn't probably the  
5 right forum to explore whether we can do more because the letter that goes out  
6 in the allegation, through the allegation folks at the region, it's very, it goes  
7 through the whole process and it's very prescriptive as far as what the  
8 individual's rights are, what the concern is, what the process is, what their venues  
9 -- what venues they can go through, EOL or NRC so that goes through that.

10 So that's the first time they get that letter and then there's the  
11 brochure that's included that goes through the same thing and then the  
12 agreement to mediate form, that kind of lays out somewhat the same thing, so  
13 you know, what more can -- I guess and this is more of a question. What more  
14 can be done to ensure that the people going into the mediation have the right  
15 mindset as far as what the mediation can offer and cannot offer? Now what one  
16 party may be seeking from a bargaining perspective, that's -- nobody has control  
17 over that except the mediating parties. So if somebody has very unrealistic goals  
18 as far as what they can get for settling their discrimination, complaint or vice  
19 versa, whether the company may have an unrealistic goal as far as what actions  
20 they may or may not take, or what monetary settlement they want to reach, may  
21 be unrealistic so that's -- I mean I don't know from a programmatic perspective  
22 what we can do with, that's --

23 ROY ZIMMERMAN: Well the mediator talks to the --

24 SHAHRAM GHASEMIAN: Well yeah --

25 ROY ZIMMERMAN: Why can't this be part of what the mediator

1 goes over with the --

2                   SHAHRAM GHASEMIAN: They do, they do. I mean that's part of  
3 the whole mediation --

4                   ROY ZIMMERMAN: Okay.

5                   SHAHRAM GHASEMIAN: They exercise that and I think to the  
6 extent that -- to the extent that I've talked to the mediators, sometimes in that  
7 caucus areas of the mediation, they have frank discussion with the licensee --  
8 with the companies and the individuals to the extent that they view that one party  
9 or the other has kind of really unrealistic kind of expectations. So that happens  
10 but that's -- I don't think that's anything that we can kind of impose or kind of  
11 mandate from a programmatic perspective and I could be wrong, that's -- and  
12 Chuck...

13                  CHUCK THEBAUD: No, I don't think you need to do it  
14 programmatically. It's a function of the mediators before you get to the  
15 mediation. You know, in that pre-mediation call and most of them have pre-  
16 mediation calls to say, look -- for people who've not been involved if it's an  
17 attorney on the other side who's never gone through one of these things -- here's  
18 what this is all about; these are the types of things we're going to mediate; these  
19 are the types of remedies that are going to be on the table.

20                  ROY ZIMMERMAN: Here's what's not going to be on the table.

21                  CHUCK THEBAUD: Exactly, yeah. And then everyone knows  
22 going in, maybe they walk out of that point. I've never really had that problem, I  
23 can see it being a problem in early ADR. It's not a problem in the post-  
24 investigation.

25                  MARIA SCHWARTZ: It's early ADR where you might not have an

1 attorney with you --

2 CHUCK THEBAUD: That too.

3 MARIA SCHWARTZ: And it might settle it.

4 ROY ZIMMERMAN: If you're talking early ADR.

5 BETH PICKERING: I'm talking about the early ADR process and  
6 that I think that some of the people that requested ADR or agreed to ADR may  
7 not have if they realized that we're not going to negotiate our CAP program with  
8 them; we're not going to negotiate our emergency preparedness program with  
9 this. That they need to be coming in but the purpose is for them to look at a  
10 remedy personal to them. They may say no to ADR.

11 Secondly, I've not had a recent experience with mediators having  
12 extensive discussions with the employees before they come to mediation and so  
13 the -- and the employees have clearly come in with unrealistic expectations.  
14 From our part, again, since we get very little information about what the  
15 employees complaints are, what they're alleging or what they want, it's hard for  
16 us to compare to come in with, I don't know, sometimes an appropriate level of  
17 authority, come in with the appropriate person to address the concerns of the  
18 individual. We do our best but it's a guess work. And so I think that there is  
19 some more work that can be done up front.

20 MALE SPEAKER: Between mediator --

21 BETH PICKERING: Before we decide to go to mediation and  
22 before the mediator shows up. You know, for example, when we -- by the time  
23 the EEOC offers us mediation we have a pretty good statement of what the  
24 alleged discrimination was. So an opportunity to get some facts behind it and we  
25 might say "Oh my gosh, you know, we have a manager that screwed up and we

1 better do something about it or we may say this is the communication problem.” I  
2 can also make a decision on who I bring to the mediation based on what the  
3 claims are and who the employee thinks is the wrongdoer because I've had  
4 situations where we thought the mediation wasn't going to come off because the  
5 business person I was going to bring turns out was the person that the employee  
6 was mad at and that the employee was not going to be comfortable being in the  
7 same room with.

8           SHAHRAM GHASEMIAN: How prevalent is that kind of -- how  
9 often does that happen as far as the unrealistic expectation as far as what the  
10 mediation offers?

11           BETH PICKERING: I counted up about at least four or five of the  
12 15 that we --

13           SHAHRAM GHASEMIAN: That you guys took on.

14           BETH PICKERING: Yeah and they are most of the ones that we --  
15 not only could we not come to an agreement, we couldn't even talk in mediation  
16 so here we'd meet with the employee, come in and say I don't know where to go  
17 with this.

18           ROY ZIMMERMAN: Can a fix to this be that the mediator has a  
19 more detailed dialogue with the concerned individual before they sit down so that  
20 the expectations are clearly understood and the individual can -- can decide "yes,  
21 I want to proceed" or "this is not really the path I want to go down ," because  
22 otherwise they're going to get disappointed in the meeting and it's going to be a  
23 waste of everybody's time. They need to understand what the ground rules are  
24 going to be but the mediators aren't -- in some cases may not be going over that  
25 sufficiently and everybody's getting together for a meeting that it sounds like is

1 doomed for failure.

2           BETH PICKERING: It is, and then everyone leaves with a bad  
3 taste in their mouth unlike the mediations that I mentioned earlier where we didn't  
4 come to a settlement agreement but people went back to work after having  
5 shook hands and have approved the communications have been able to move  
6 forward. I see that as a big difference. I think there are several places where it  
7 can be addressed. One is that I've looked at what you have on the website and  
8 your letters and you state that the mediation is to address discrimination claims  
9 and not -- and that the technical issues and the chilling effects issues would be  
10 separately looked at by the NRC, but it doesn't talk about the remedies and it  
11 doesn't specifically say things like changes in corporate programs are not likely  
12 remedies that will come out of a mediation.

13           SHAHRAM GHASEMIAN: Yeah.

14           ELLEN GINSBURG: Actually, going with the maxim never overlook  
15 the obvious, you actually do state this in the brochures but even I -- and I'm  
16 reasonably familiar with them, had to look hard to find the language. It's in  
17 relatively small print, it's bolded but it might be valuable to simplify the brochure  
18 and state this very directly where you don't have to look for it too hard. I mean  
19 it's on the -- I'm not sure what the fold is but it's on the bottom of one of the third -  
20 - and in the middle of the other and where we talk about disputes, maybe you  
21 want to talk about the employment dispute as opposed to the body of the dispute,  
22 which may in the mind of the allegor include more than just the HIRD -- the HIRD  
23 related issues.

24           SHAHRAM GHASEMIAN: That's a fair -- Chuck do you have a  
25 thought?

1 CHUCK THEBAUD: No.

2 SHAHRAM GHASEMIAN: My reaction to that and these are all  
3 good thoughts, one of the interests that we have going into the mediation and  
4 many times in the parties going to mediation and having very different views of  
5 what they want to get out of it and what the issues are sometimes and through  
6 mediation you kind of explore areas you hadn't thought about and you kind of  
7 address -- you know, by virtue of going through the mediation hearing, the other  
8 party, having the mediator help you as far as thinking through the issues, you  
9 may come up with -- to a position or a place where you would have never, kind  
10 of, envisioned prior to the mediation so --

11 BILLIE GARDE: But Shahram when you even say it -- just the way  
12 you just said that. When you're talking about the issues in dispute and the  
13 disagreements between the parties, even just the way you said that raises the  
14 expectation that my issues are about discrimination, electrical quality control, the  
15 CAP program, the chilling effect, I got all these issues. Unless you are very  
16 specific, this program will only settle your employment dispute, you're creating --

17 SHAHRAM GHASEMIAN: Right.

18 BILLIE GARDE: The idea that issues are -- these are all the  
19 issues.

20 SHAHRAM GHASEMIAN: Here's the nuance that I think we may  
21 be overlooking. In my view, you may go into a -- you may have a technical issue,  
22 okay; your concern may be the CAP program is deficient in some way, that's your  
23 technical concern, and may have a discrimination concern. Now, to settle your  
24 discrimination concern, instead of wanting money, you may say, change your  
25 CAP program --

1 BILLIE GARDE: [unintelligible] remedy.

2 SHAHRAM GHASEMIAN: Yes, but it's a remedy to settle your  
3 discrimination complaint, it's not to settle your technical concern. I mean those  
4 are in my view, you're bargaining and the company may say we're not going to  
5 change our CAP program and that --

6 BILLIE GARDE: I think you're wrong. I think that is too subtle for  
7 the audience you're reaching.

8 SHAHRAM GHASEMIAN: Okay.

9 BILLIE GARDE: Okay, we -- I don't know how many people who  
10 use this program are professional engineers but the majority of the folks that I've  
11 represented are inspectors, welders, leads, that degree of subtlety is lost on  
12 them.

13 SHAHRAM GHASEMIAN: So --

14 BILLIE GARDE: And they walk in the door thinking they can  
15 bargain for something they can't, or they're nervous about being -- selling their  
16 safety concerns for money. They don't want to be seen as a person who's willing  
17 to settle their case and give up their safety concern.

18 SHAHRAM GHASEMIAN: So I guess -- I'm just trying to explore --  
19 pull the string a little bit. So it sounds like we may be going down a path, as far  
20 as having a prescribed list of things that the company, you know, in advance, a  
21 generic list you'll get your job -- potential to what you can get to settle your  
22 complaint, to get your job back, to get the promotion that you wanted.

23 BILLIE GARDE: No, I think the mediator can do anything they want  
24 to do in terms of trying to come up with an issue, a way to resolve an employee's  
25 case. And if the employee says I'd like you to relook at your CAP program and

1 the company says great, we're already looking at the CAP program so that's fine,  
2 that's between -- that's what the mediators helping them do.

3 SHAHRAM GHASEMIAN: Yeah but that's what I'm talking about.

4 BILLIE GARDE: Yeah and we're saying make it clear. That's  
5 employment related, you're mixing up issues and remedies.

6 MARIA SCHWARTZ: You talked about the silo issue again.

7 BILLIE GARDE: Yeah, you're siloing it again.

8 SHAHRAM GHASEMIAN: Okay.

9 BETH PICKERING: You know, the way Billie put it, but we can  
10 agree to -- the process for resolving --

11 BILLIE GARDE: The process --

12 BETH PICKERING: And we've done that and that isn't -- is  
13 appropriate to do, but that's an agreement with the employee, that's different than  
14 the employees not -- going into it, the mediation thinking that they can say this is  
15 the fix, and I'm going to insist on it and I'm not even going to talk about my  
16 individual issues until you've changed your process the way I wanted it to be.  
17 They shouldn't go into it with an expectation that that's what's happening. And  
18 these are high level employees, that I've been involved with, that come in with  
19 that kind of expectation.

20 ROY ZIMMERMAN: So you're saying --

21 BETH PICKERING: And so I think it starts with your written  
22 documentation and then it goes to maybe when Tracy talks to the allegor or at  
23 least by the time the mediator -- the mediator should be required to have a  
24 conversation with the employee. My experience more recently is that they are  
25 not. I've had three mediators that haven't even asked me what our position is.

1 I've sent it to them; they haven't asked me for our position.

2 BILLIE GARDE: You know, there are just some cases that can't  
3 be settled, you know, there are just -- there are some disputes that aren't going to  
4 be resolved and I think when an employee doesn't have a lawyer who is willing to  
5 sit down or is able to sit down with them and say if your real goal here is an OI  
6 investigation that may -- has the potential to send the bad guy to jail and that is  
7 more important to you, holding him accountable in a public way than a resolution  
8 that's going to, you know, resolve your employment related issue, get some  
9 money on the table, allow you to go on with your career, then mediation isn't the  
10 right avenue for you, then you should -- you know, even though it's offered, we  
11 should decline it because you're not going to be satisfied. And I'm not saying all  
12 lawyers have the right discussion with their clients, but if they're not represented  
13 there's nobody having that discussion unless it's a mediator. And I've had really  
14 good mediators who I could see would undertake that role but if they're not  
15 represented and the mediator doesn't have that, and they're walking into  
16 mediation, there's a real risk that -- they don't trust the NRC, they don't trust the  
17 mediator, they don't trust the company and anything you put on the table is going  
18 to feel to them like they're offering me money for silence.

19 So yeah, I'll sell my safety concerns if it's going to be \$5 million, not  
20 \$5,000. And you get in a really bad place and send really bad messages and I  
21 just reviewed a case where somebody went through mediation by themselves  
22 without a lawyer and had that -- basically that very experience and you know, if  
23 you want to get this right, that's the piece I think really all of us keep going back  
24 to, is the tension between issues and the employment piece that can be  
25 resolved.

1           BETH PICKERING: When I looked at what the -- tried to look at  
2 the 15 that we've done of whether the outcome -- whether or not it was settled,  
3 whether we were better or worse off for it and I mean, by better both the  
4 company and the employee and in the cases I'm talking about, clearly everyone  
5 was worse off.

6           CHUCK THEBAUD: So just one thought -- I think those are good  
7 comments. The -- it seems to me clarifying the literature that you have is  
8 probably important. But even with that, that's not going to be the complete fix,  
9 because there are so many individual cases. You're not going to be able to  
10 describe them, or have a list of the types of remedies. And that's not going to be  
11 -- frankly, I think it would be counterproductive to try to do that. The real solution  
12 is in having that effective conversation before you get to mediation.

13           MALE SPEAKER: Right.

14           CHUCK THEBAUD: So that the individual employee knows exactly  
15 what to expect, how it's going to happen, what are issues, and then you can  
16 begin to have that discussion beforehand. And then hopefully when you go to  
17 mediation, you're productive.

18           ROY ZIMMERMAN: Yeah, if you walked into the session, and you  
19 don't have a meeting of the minds as to what you're going to discuss, and the  
20 concerned individual thinks you're going to talk about, you know, a meaty  
21 technical issue, and be able to get something done there -- they're not going to  
22 come down from that very easily if that was successful dialogue. That's a good  
23 comment.

24           KARL FARRAR: I agree with Chuck. It sounds like the issue is  
25 more communication between mediator and the expectations for the mediation.

1 And a lot of those conversations take place before the mediation, and that helps  
2 in terms of getting the mediation to go forward in a very good way.

3 ROY ZIMMERMAN: I'm getting the sense that you're all aligned on  
4 this topic. That you're all saying we can improve the pamphlet, we can improve  
5 what the mediator does in the dialogue with the individual before going in, so  
6 everybody understands what's going to be talked about.

7 BILLIE GARDE: Yeah, I think the way that Karl said it is that there  
8 should be some -- I think we all agree that there should be an improvement in the  
9 expectations --

10 ROY ZIMMERMAN: Right.

11 BILLIE GARDE: For mediation. And all the things around that, so  
12 that people go in with the right expectations.

13 ROY ZIMMERMAN: Okay. And I think every time we have a --  
14 we're talking about it, I always ask myself the questions, "Now is this person  
15 talking pre or post, or both?" And I think you just --

16 CHUCK THEBAUD: We're talking pre, I think it's just early ADR.

17 [talking simultaneously]

18 CHUCK THEBAUD: I don't think it's a problem in the post --

19 MALE SPEAKER: Post is all clear, it's pretty clear.

20 SHAHRAM GHASEMIAN: Yeah, this is pre. I think Ann had a --  
21 wanted to make a comment.

22 ANN HARRIS: The thing that's missing here is that the NRC is  
23 letting the mediator do this. You should not let the mediator have full control over  
24 what is being told. Because you have a better understanding, you've been in the  
25 processes in the ADR process where the mediator didn't have a clear

1 understanding of what is going on in a plant that would even cause this. So they  
2 think -- we spent a lot of time, and none of it worked, because the mediator didn't  
3 know what was going on. Not that the mediator was not good or bad, they just  
4 didn't have a clear understanding. And you can do that, because you need a  
5 sales person to come to me and say, "Look, this is in everybody's best interest,  
6 and here's why." We have a -- the NRC has a -- they have a valid position, the  
7 industry has a valid position, and the employee has a valid position. And as long  
8 -- and when you deal with the employee, up front, and tell them what they're  
9 expectations are, you're going to come out way ahead because then the  
10 mediator could -- they could have access to the meeting with the employee also.  
11 So sometimes attorneys are not involved; they don't involve the client. And that's  
12 -- I think that's a problem, too.

13 ROY ZIMMERMAN: So if I twist that a little bit, you're sort of  
14 suggesting that we have a discussion between the concerned individual -- a  
15 three way -- the concerned individual, the mediator, and the NRC on the phone  
16 at the same time?

17 ANN HARRIS: Yeah, call me up and say, "Look, this is what --  
18 we're submitting this to you. And this is what -- we're giving you this opportunity."

19 ROY ZIMMERMAN: Yeah, we wouldn't want to cut the mediator  
20 out, because they need to get on the same page.

21 ANN HARRIS: Well, that's true. But you need to sell it, not the  
22 mediator. Because the mediator doesn't really -- and a lot of times, doesn't know  
23 what they're selling. So all it's going to do is, you're just going to have to get  
24 involved. You're just going to have to be part of the process.

25 ROY ZIMMERMAN: We're not against getting involved to a certain

1 degree, to really -- you know again, I came into this thinking that this was not a  
2 problem, that the mediator, you know, had this stuff down, and you're telling us  
3 that's not necessarily a reality of it.

4 ANN HARRIS: We've been in mediation over security issues at  
5 TVA. And a mediator just was off in left field, didn't have an idea of how security  
6 works.

7 ROY ZIMMERMAN: Okay. Just hypothetically, if we end up going  
8 down this path, this -- again, it's built upon the NRC keeping its distance from  
9 this. I don't know if you have a reaction that on this particular aspect just to be on  
10 that call, to make sure there's not false expectations of what's going to occur.  
11 Are you having concerns about that in any way?

12 ELLEN GINSBURG: I was contemplating whether or not the  
13 licensee should be able to observe, to listen into the call even if there's not a  
14 participatory role. But I don't have an objection, I think initially, to the NRC  
15 explaining the process, explaining what the expectations can be and should be,  
16 and what the limitations of the process are. I think some -- we've been talking  
17 around this issue of expansive expectations. And if the NRC is sponsoring the  
18 process in the context of early ADR, the NRC could well serve a useful purpose  
19 by explaining what is and isn't contemplated by the process they've established.

20 ROY ZIMMERMAN: Well, let me toss this out, and let everybody  
21 share their views on this. Is there -- we don't want to cast 1,000 on the phone  
22 call. Is there dismay about having a phone call that includes the individual, and  
23 the mediator, and the NRC, and the licensee? And it's expressed that, you know,  
24 the purpose of this call -- we're going to stick to it, just to make sure everybody  
25 understands what's to occur on -- you know, what's going to occur when this

1 mediation takes place. NRC is not involved with it; we're only on this call just to  
2 be able to set the expectations. We want the licensee to understand it, we want  
3 the allegor to understand it; we want to make sure we're all on the same page.

4 I mean, for me, I don't have a problem with the licensee being on  
5 that call. Others may, but it doesn't bother me. All it is is a prep call to make  
6 sure that when we have these kinds of -- everybody putting in their time, and  
7 we're not making progress because the expectations are not clear, we should be  
8 able to handle that. I mean, that's not good. You know, that's an avoidable  
9 issue.

10 ANN HARRIS: When you establish those kinds of ground rules,  
11 you'll get better participation, and you'll get better activity out of the employee, I  
12 promise you.

13 ROY ZIMMERMAN: My only concern is I just don't -- you know, we  
14 have to make it really clear that, you know, we're not looking for the licensee and  
15 the allegor to engage in anything. They're just listening; they can ask us  
16 questions, but we're just trying to make sure there's an understanding. We don't  
17 want to have a mediation before we have the mediation.

18 ANN HARRIS: Well, that's true. But you're not --

19 ROY ZIMMERMAN: We'll just start chewing on each other --

20 ANN HARRIS: You're not asking for information --

21 ROY ZIMMERMAN: No, we're just trying to explain how it goes.

22 [talking simultaneously]

23 ANN HARRIS: And you just keep laying down basically what the  
24 ground rules are, and why they're there. Because the industry should already  
25 know what is going on.

1 ROY ZIMMERMAN: I agree. This is something that's very foreign -  
2 -

3 ANN HARRIS: And I find that --

4 ROY ZIMMERMAN: To the concerned individuals. It's very  
5 foreign; you can understand how they could have different expectations even  
6 when our pamphlet says a certain thing. They're not living and breathing this on  
7 a regular basis, so we need to walk them through it. You doing okay with this?

8 SHAHRAM GHASEMIAN: Yeah, yeah, absolutely.

9 ROY ZIMMERMAN: You didn't shift under the table or anything  
10 when I said that.

11 CHUCK THEBAUD: I don't think that's a bad idea, but I would  
12 make it optional, because in most of the cases that I've been involved in, we  
13 don't need it. If you particularly have an experienced attorney on the other side,  
14 if Billie's on the other side, we don't need a call with the NRC to be a mediator -- I  
15 mean, that's wasting everybody's time.

16 ROY ZIMMERMAN: So you'd just build it in as optional --

17 CHUCK THEBAUD: Design it as an option, if desired. Sometimes  
18 it helps -- I had a case against someone who had never done one of these. I  
19 explained the process to the opposing counsel, but then I think I referred this  
20 person to the Shahram. I said, "Talk to the NRC. They'll explain it to you. You  
21 know, don't take my word for it, but get it from the horse's mouth, the guy who  
22 runs the program. He'll tell you how it works." And I think Shahram had that  
23 conversation, and all marched in unison knowing now how the process works.  
24 So I think having it as an option is a good thing, and can clarify misunderstanding  
25 before you get there.

1                   SHAHRAM GHASEMIAN: Did you have a comment?

2                   KARL FARRAR: I would just think that you ought to include Cornell  
3 in this, in that Cornell should be providing directions to the mediators to probably  
4 engage licensees and individuals prior to the mediation --

5                   ROY ZIMMERMAN: They're the fourth leg of the three legged  
6 stool.

7                   KARL FARRAR: That's right.

8                   BILLIE GARDE: But didn't you say that it would be a call with --  
9 include the mediator?

10                  KARL FARRAR: Yup.

11                  BILLIE GARDE: And I had better experience --

12                  ROY ZIMMERMAN: Car accident today.

13                  BILLIE GARDE: Yeah, that's right.

14                  [laughter]

15                  BILLIE GARDE: I've had much better experience with the  
16 mediators of late. I had a lot -- in the very beginning, I had a lot of issues with  
17 mediators who didn't have a clue what was going on. And they had some really  
18 awful experiences. But that was early in the program, and I think they've done a  
19 lot better. But every time a new -- they use a new mediator -- the NRC is such a  
20 unique, different world that just because you had great mediator experience in  
21 another industry, does not necessarily translate to the NRC world. And I -- you  
22 know it's -- it really is a very important prerequisite in terms of the program being  
23 successful. And you take somebody who's already distrustful, and you put them  
24 in a room with a mediator who doesn't even understand the process. And  
25 particularly, if you've got a mediator who doesn't understand the process, and an

1 unrepresented employee, it'd be disastrous.

2           SHAHRAM GHASEMIAN: Yeah, and to your point of taking -- and I  
3 think we've come a long way. So our mediators are much better informed about  
4 the NRC and the program, and the steps that we're taking to ensure that that is  
5 ongoing, even with the newer mediators. That the resource handbook to which I  
6 referred earlier -- that has a vast amount of information about the NRC, and  
7 about the program.

8           BILLIE GARDE: Is that publicly available?

9           SHAHRAM GHASEMIAN: No, I mean, I provide them to the  
10 mediators. But I mean I can make the -- I mean, a lot of the documents are  
11 publicly available, but I haven't compiled them to say, "This is what we give to  
12 them." But I can do that. That's --

13          BILLIE GARDE: Yeah.

14          MALE SPEAKER: I'd like to see --

15          SHAHRAM GHASEMIAN: I mean, I can even send you guys a  
16 copy of it.

17          ROY ZIMMERMAN: Put it on the website, or --

18          SHAHRAM GHASEMIAN: Yeah, they're on our website. Yeah.

19          FEMALE SPEAKER: The resource handbook is on your website?

20          SHAHRAM GHASEMIAN: No. A lot of the documents in the  
21 resource handbook are available on our website. But I haven't compiled them as  
22 a resource handbook for our mediators, which I can do in the future. At least I  
23 can send you a copy of what I give them. But the second part of that is, at least  
24 once a year, Cornell provides a week long training to mediators, to new  
25 mediators -- well, they're professional mediators, but to get --

1 BILLIE GARDE: New to the NRC.

2 SHAHRAM GHASEMIAN: For the NRC. And I go -- and actually,  
3 next week is when I'm going up to New York for that training --

4 BILLIE GARDE: But is there a prerequisite that before --

5 SHAHRAM GHASEMIAN: It is.

6 BILLIE GARDE: A mediator does an NRC related mediation, they  
7 attend that class?

8 SHAHRAM GHASEMIAN: Exactly, they do. They can't get on their  
9 roster without attending that class. And that class -- it's a weeklong class, and I  
10 go up there and give a, you know, couple hour presentation about the, you know,  
11 about the program, the elements, talk about the NRC, and you know, you have a  
12 dialogue. There's a lot of questions. And you know, so I do that at least once a  
13 year. And the next one that's coming up is next week. There's about 30 new  
14 mediators that are going through the class.

15 So I think we've tried to address that the mediator competency, as  
16 far as knowing the NRC and the program, by these two steps -- and also, the  
17 mediator that have already done mediations -- obviously they've gained some  
18 knowledge based on what the program is. So as a result, I think overall our  
19 mediators are really, really good.

20 KARL FARRAR: Yeah, I would echo what everyone else said.  
21 Meetings have -- are very good. My point was that -- Beth was raising an issue  
22 with regards to communication prior to the ADR, and making sure that  
23 expectations -- everyone knew what the expectations were. And it may be a  
24 simple question that Tracy -- or when you go next week, you say, "Well, we've  
25 had this issue where we're hearing that there are individuals that were involved in

1 pre-investigation ADR, aren't understanding the process -- the concerned  
2 individuals aren't understanding the process, individuals -- concerned individuals  
3 aren't. You may have to actually engage them prior to the mediation session.”

4 SHAHRAM GHASEMIAN: Right.

5 KARL FARRAR: It may be something just as simple as that.

6 SHAHRAM GHASEMIAN: Yeah. We'll explore how to best  
7 address that.

8 BILLIE GARDE: Yeah, and I don't want to go out of protocol, but  
9 Ann, let me say that I did have some very bad experiences with some of the early  
10 mediator -- the mediators. And I -- when I gave that information to Nick, who had  
11 the program at the same, we really dealt with that. I mean, we gave him specific  
12 information about mediators that did -- they just didn't understand the NRC, and  
13 made some really bad mistakes in the context of their case, just kind of wasted  
14 everybody's time. And I thought that you were responsive and the program was  
15 responsive in terms of dealing with those issues.

16 NICK HILTON: Yeah, we did -- we initially did a couple one or two  
17 time sessions. I didn't know that they were doing a periodic -- that's a good thing.  
18 Because it is unique. And the mediators will tell you that, too; they know that.

19 ROY ZIMMERMAN: Beth, I think you kicked off this dialogue. Are  
20 you comfortable with how this is done?

21 BETH PICKERING: Yeah, I don't know whether there's one right  
22 answer. I'd be interested in hearing mediators take on it. And I didn't come in  
23 with a preconceived notion whether it should be the NRC that should have the  
24 dialogue, whether it should be someone like Tracy from Cornell, or the mediator.  
25 I think anyone or any combination can assist that, so that the -- you know, as an

1 example, whatever uses that --

2 ROY ZIMMERMAN: Did you to ask Cornell [unintelligible] --

3 BETH PICKERING: The person doesn't come in thinking that an  
4 impossible end product is that someone's going to end up in jail, or that a chief  
5 nuclear officer is going to be fired. These are just unrealistic --

6 ROY ZIMMERMAN: Right, right.

7 BETH PICKERING: And that's all they want, and they don't want  
8 anything else. We should know that, and the mediation shouldn't take place.

9 SHAHRAM GHASEMIAN: We've heard the issue, and I think  
10 there's various ways to kind of attack it. And we'll explore that, and definitely  
11 address it. This may be a -- kind of a good segue. It's 11:35, I think our goal is  
12 to break at -- for lunch at noon.

13 NICOLE GLENN: Right, but before we move on, we just want to  
14 survey to make sure if any other public comments on this. So do we have any  
15 other comments in the room?

16 SHAHRAM GHASEMIAN: Yeah, there's a couple.

17 DAVID BATSON: This is David Batson, with EPA. I appreciate the  
18 discussion, because it points out one of the inherent tensions and problems that  
19 all of the agencies have had when we're sponsoring mediations where we are not  
20 a party to the discussion. There will be inherently -- it happens with FIRC, it  
21 happens with EPA, it happens with Fish and Wildlife Service -- where we are  
22 paying for and sponsoring the use of a neutral in someone else's dispute. There  
23 is an inherent presumption that we have to rebut, on the part of the participants in  
24 that discussion that we're sponsoring, that we, in fact, will do one of two things.  
25 One, we will participate. Or two, we will quality check the outcome.

1           And yet be very specific up front that you are hands-off; all you're  
2 doing is providing the bucks. You have no oversight of the outcome, and you  
3 have no input. That is merely the discussion within the completely arbitrary limits  
4 that the two parties was to set for where they want to go in that discussion. And  
5 that you are not going to influence either party in where they go, or where they're  
6 willing to go. And there will be a presumption, particularly on the part of a  
7 complainant in this situation that you will do that. That you, in fact, will influence  
8 the industry to do the right thing, regardless of what the right thing is.

9           I mean, so the clearer you can be up front -- and I have found, as a  
10 consultant with different agencies, that you have to be there, that someone with  
11 the ADR program within NRC has to be the person that states that. The  
12 mediator can't stay with credibility, because they're not the people that are  
13 sponsoring. They're not the people that the presumption is aimed toward. But  
14 that presumption has to be rebutted by the agency, saying "The only thing we're  
15 doing here is giving bucks. It's completely your negotiation, and we're not going  
16 to influence it one way or the other, in any way, shape or form. Our game is in a  
17 different set. I mean, to the extent that we influence part of this -- it's over in LI  
18 [spelled phonetically], it's over in some other thing, but not in this negotiation.  
19 And so I appreciate this discussion around the need for that clarity. I would just  
20 suggest it needs to be by the ADR program with NRC that's actually the sponsor.  
21 I'm making that statement.

22           BILLIE GARDE: And I just want to kind of correct one thing, is that  
23 in this process, the NRC actually does have to approve the settlement.

24           DAVID BATSON: Right.

25           BILLIE GARDE: So there is that piece of oversight. And I think

1 that's different than a lot of places, but here they do have to approve the  
2 settlement.

3           DAVID BATSON: Right. But are you, during the negotiation, going  
4 to influence the outcome? No. And that's the presumption. I mean, you have to  
5 -- and that's different than saying after the fact, having no input into that, that in  
6 fact it meets the public good. The presumption is that you will be an active  
7 participant or an influential player, and that's just not the case. But people will,  
8 in fact, walk in -- just merely the fact that you're sponsoring it -- thinking that you  
9 will have an active role. And you need to -- you have to very specific in rebutting  
10 that, early and often.

11           ROY ZIMMERMAN: It sounds like you're agreeing there with the  
12 dialogue you listened to in terms of -- we need to perhaps be clearer about what  
13 our role --

14           DAVID BATSON: Yes.

15           ROY ZIMMERMAN: What our role is, and what it isn't.

16           DAVID BATSON: And I appreciate the discussion about the idea  
17 that having the NRC actively stating in a very personal way, beyond just what's in  
18 paper that folks may, you know, misinterpret. Is -- can be very useful, and  
19 maybe not in all circumstances, but clearly in ones where there's a perception  
20 that might be wrong.

21           ROY ZIMMERMAN: Do you all do that?

22           DAVID BATSON: We do. Yeah, when we are sponsoring dialogue  
23 between community and state, where we have a delegated program, where we  
24 can over file, the step later. Where we're providing sponsorship, we'll go in and  
25 explain that, you know, the overall process is there, but we're not going to

1 influence this outcome. You know, if we can agree with it, we'll sue the crap out  
2 of everybody later. But, you know, it's your agreement. And we're not going to  
3 influence one way or the other in your agreement, just take the risk that you'll be  
4 wrong.

5 ROY ZIMMERMAN: Thank you.

6 NICOLE GLENN: Okay, thank you. Are there any other comments  
7 from the public in the room? No? Are there any comments from the public on  
8 the bridge? Okay, we take silence as a no.

9 SHAHRAM GHASEMIAN: So how about the program -- is it  
10 generally timely in your views?

11 CHUCK THEBAUD: Sure, I'll answer. I mean, I have -- I think it is.  
12 And I haven't run into timeliness problems. When you say timeliness, are you  
13 asking about from the time that the decision is made to go to ADR until the  
14 resolution, or are you asking about are the issues being brought to ADR that are  
15 timely, in the sense we're not -- you're not raising issues that happened three or  
16 four years old?

17 SHAHRAM GHASEMIAN: No. Time when basically you enter into  
18 ADR program -- you know, moving from one step to the next, are they generally  
19 in a timely manner, or are there steps that you feel frustrated, or you think it's  
20 taking too long, or for whatever reason.

21 CHUCK THEBAUD: I don't -- just in terms of that aspect of the  
22 timeliness, I think it works fine. It's relatively expeditious. I mean the issue is  
23 always schedules. So that's just the nature of the beast, you're going to have  
24 that regardless of any program that you set up. I -- you know, I think that's it  
25 done reasonably quickly. I don't like being put on an artificial clock that says we

1 have to have them done within the -- we're going to meet within 45 days of the  
2 decision being made, or the election being made to go to mediation. Sometimes  
3 that's not realistic, I mean, given schedules, and also given the fact that you do  
4 want to get a mediator who's good. And you're going to have to work with that  
5 mediator's schedule. And those good mediators are going to have a tighter  
6 schedule than the ones who are sitting around waiting for work. And so I don't  
7 like being -- I don't think it's helpful to the program, to say we have to have this  
8 done within 45 days. I mean, it's not a big deal if it's 45 days or 60 days in the  
9 big picture. It's more important to get the right mediator, and get the settlement  
10 reached.

11 But generally, I don't -- I haven't had a problem with them dragging  
12 out for months and months. I really don't -- just don't see that as a problem.

13 ELLEN GINSBURG: The only piece of information that I would add  
14 to that, is that the back end, after there's an agreement in principle, our  
15 calculation shows it's about 69 days for the NRC to issue the confirmatory order.

16 SHAHRAM GHASEMIAN: You're talking about the post --

17 [talking simultaneously]

18 [laughter]

19 ELLEN GINSBURG: I'm sorry. I didn't have anything [inaudible].

20 MALE SPEAKER: Yeah, we're still in pre.

21 BETH PICKERING: Yeah, I would comment that we did -- initially  
22 we had some issues with the taking what seemed to be an inordinate period of  
23 time to get approval of agreements on the pre, but now they're very quick. And  
24 we appreciate that.

25 CHUCK THEBAUD: Yeah, I agree with that. You all are fast on

1 those.

2 BETH PICKERING: Yeah. That's not been an issue for us. I  
3 generally tell the allegor 30 to 60 days, and we rarely get even into the 30 day  
4 problem anymore, so we appreciate that. But that's worked out.

5 The two pieces where the timeliness has been a pressure point for  
6 us are -- one is the time it takes to decide whether or not to agree to mediation,  
7 and the second one is getting to mediation. And I agree with Chuck that I tend to  
8 let the allegor choose who the mediator is, but sometimes I think the mediator for  
9 a particular reason would be good knowing what the issues are, and what I know  
10 about the allegor. And so we would rather wait and have a good, potentially  
11 successful mediation, than be put on an artificial time limit, as long as the  
12 employee is agreeing.

13 The other pressure point is we've had some issues where I've  
14 gotten calls from Tracy saying, "They're pretty pressure on -- are you going to go  
15 to ADR or not?" We need to have flexibility there, because again, I don't want to  
16 harp on it, but sometimes we have very little information, and the decision for me  
17 as the attorney to get my client to agree to mediation is, I have to have some  
18 facts, and believe there is something that the site is willing to do for the allegor.  
19 And so sometimes that takes a while to develop.

20 SHAHRAM GHASEMIAN: Okay. Billie, do you have thoughts?

21 BILLIE GARDE: I don't have an issue with timeliness. I agree with  
22 what Chuck said. I think that once it's in and the process gets started, it's  
23 reasonable, it accommodates people's schedules. I think it's sometimes hard for  
24 the employee, who's -- if the employee's out of work, and waiting for resolution.  
25 But the practical reality of getting, you know three busy professional's schedules

1 together, and getting prepared for, you know -- and the employee travel. I think  
2 it moves right along.

3 SHAHRAM GHASEMIAN: Yeah, okay.

4 KARL FARRAR: Our only issue has ever been is that the  
5 concerned individual sometimes doesn't contact us and tell us that they're going  
6 to elect early ADR. And we have to go back to the individual and find out if the  
7 individual is going to engage in the process, or do they want an OI investigation?

8 SHAHRAM GHASEMIAN: Right, right.

9 KARL FARRAR: That's the only problem that we've had.

10 SHAHRAM GHASEMIAN: Yeah, and that's -- we've tried to kind of  
11 address that, but for licensees, that's kind of transparent to them, because  
12 they've had -- started there, kind of -- it's not on their radar screen.

13 KARL FARRAR: It's after --

14 SHAHRAM GHASEMIAN: Right.

15 KARL FARRAR: -- they're involved, but -- for NRC, that's our only  
16 issue.

17 ROY ZIMMERMAN: I want to take a step back. I'm sort of reliving  
18 our conversation from 10 minutes ago. It seems like this area is going well. But  
19 when we get into dialogue about the mediator, and the mediator, perhaps, really  
20 not having the expertise, and not explaining what to expect when you go into the  
21 mediation and the concerned individual has a, you know, completely different  
22 expectation of what's going to occur. And if you've gone through multiple ones  
23 like that -- and again, don't take this wrong, I'm just trying to learn. Why -- has  
24 that been brought to our attention previously? If we weren't having this meeting,  
25 how would we know that, to realize that you all are having meetings that you feel

1 are very ineffectual, to make sure that -- you had a good recommendation, you  
2 know. Maybe the NRC needs to play a role in this. Has it not risen to that level,  
3 that it's come up before, or you knew this meeting was coming or -- I'm just  
4 curious, and just trying to learn.

5 BETH PICKERING: Yeah, good question. About 18 months ago,  
6 Shahram and I met each other at one of the Employee Concerns conferences.  
7 And I expressed to him at that time concerns. This was not an issue at the time,  
8 but we've had a number of mediations in the last 12 months, and I started seeing  
9 a trend. I would have discussed it with the NRC --

10 ROY ZIMMERMAN: Okay, it's relatively recent?

11 BETH PICKERING: But he wasn't there.

12 ROY ZIMMERMAN: Okay.

13 BETH PICKERING: And so this came up. But to be truthful, it was  
14 when I was asked to be on the panel -- you know, I had this feeling, but when I  
15 was asked to be on the panel, and researched, and wrote down every mediation  
16 we've had, and my feelings for the -- was there a good outcome or not, were we  
17 better or worse off, was it settled? And it was then that I really saw the trend.

18 ROY ZIMMERMAN: That's more recent. It's been -- the answer I  
19 was expecting that you normally would answer usually internally, but it could  
20 happen here. But don't you remember that I brought it up to you two years ago?

21 [laughter]

22 [talking simultaneously]

23 BETH PICKERING: There were different issues that were resolved  
24 after -- when I last saw him.

25 SHAHRAM GHASEMIAN: And one step that I haven't mentioned

1 that I instituted probably three, four months ago is there's a -- you know, I call it  
2 the mediator one pager. In the NRC, we have a lot of one pagers, you know, to -  
3 -

4 NICK HILTON: That are three pages long.

5 SHAHRAM GHASEMIAN: Yeah, that are -- yeah, exactly.

6 [laughter]

7 SHAHRAM GHASEMIAN: So actually this one I tried to generate  
8 as much information on that one page. It's really a -- it's for Cornell. Any time  
9 the mediators, so like the -- basically Cornell sent it -- certain documents to the  
10 mediator. This one pager kind of -- you know, it's -- a lot of the information I'm  
11 hoping that they already know, and this is -- it serves as a reminder to kind of  
12 refresh their mind about what the program is, and what it offers, and you know,  
13 kind of those nuances. But also it has a section about things that they should  
14 actually reiterate at the mediation, so that when people are at the mediation,  
15 they're all on the same page.

16 For example, the three day revocation. Sometimes people know  
17 about, sometimes they don't. But that's one of the items that I've asked the  
18 mediators to kind of reiterate at the mediation, so that the allegor, the  
19 complainant knows that he or she has that right. And conversely, that the  
20 licensee -- if they're not thinking about it, then they're put on notice that whatever  
21 agreement that's signed on the spot, at the end of the mediation, there's three  
22 days that the person can still back out.

23 So there's items like that that goes to -- it kind of sets the  
24 expectations a little bit. I don't think it goes all the way, but that's, you know, that  
25 is -- it scratches that itch. But that's another thing that we've done.

1           DAVE SOLORIO: Could I just pull a string on what Chuck said, so I  
2 can understand him. I'm not an attorney, so I don't understand. But why would  
3 you say 45 days isn't enough time? I think Beth gave me a hint with her  
4 comment about, "Well, sometimes we only know two sentences from Cornell, so  
5 we don't even know what the issue is. Many times we have to research it." But  
6 from your perspective, why isn't 45 days enough time?

7           CHUCK THEBAUD: Usually it's just scheduling, to be honest with  
8 you. I mean, that's the primary driver. It just takes time to, you know, figure out  
9 when everybody's available

10           That and you've got other things that are taking place.

11           BETH PICKERING: If you have any employee who's no longer  
12 with you -- most of ours are current employees, but we've had some that have  
13 other jobs, and so the employee doesn't want to put their new job in jeopardy by  
14 scheduling sooner rather than later. I had one, for example, that the employee  
15 was only available on Fridays. Well that puts a limit on people's schedules.

16           DAVE SOLORIO: Thank you.

17           SHAHRAM GHASEMIAN: And we've touched on this and I think  
18 this will be the last topic before lunch. It's 11:49. And let's talk about -- again  
19 we've talked about our mediators and our third party administrator Cornell.  
20 Generally, speaking, any views on their effectiveness and areas of improvement  
21 or areas that they're doing a good job? I mean, we have touched on the  
22 mediators a little bit, so maybe we don't have to kind of rehash that. But just  
23 gently, is the program being administered in an effective way, in your views?

24           CHUCK THEBAUD: Yeah, Chuck, I think it is. I haven't had a  
25 problem in the administration of the program at all. It's very predictable. Tracy's

1 available. Very helpful, very valuable, accurate assistance when you need her.  
2 You know, gets all the forms to you in the right time sequence. So it's easy to  
3 work with. As I said originally I think this program works because it's so simple  
4 and I think Tracy and Cornell do a good job with it.

5 And I think, regarding the quality of the mediators, starting off,  
6 there were some that were really questionable but that's going to be expected. I  
7 think now you've got a pretty good stable. But some are very good. Even some  
8 that I've seen recently are not so good, but you dodge those and go with the  
9 people that you really know and know well. There's a good bank of them I think  
10 [unintelligible].

11 ELLEN GINSBURG: Can I ask a question? You asked about the  
12 feedback looped to the NRC. It occurs to me that there may be value in perhaps  
13 anonymously, I'm not sure what process you want to employ, but in providing  
14 Cornell where they could look through the information they receive and make  
15 sure that it's credible, et cetera. But, they --

16 BILLIE GARDE: They used to do the feedback cards. Do they do  
17 them anymore?

18 CHUCK THEBAUD: Not recently.

19 [talking simultaneously]

20 ELLEN GINSBURG: Well I wondered about something that's more  
21 --

22 BILLIE GARDE: No, for the first couple years they did do them.  
23 They did do feedback cards. But from my perspective, if I have a particularly  
24 good or bad experience I usually give NRC feedback, not necessarily [inaudible].

25 ELLEN GINSBURG: Right, and what I'm thinking is that there may

1 be value to the NRC stepping out of evaluating the mediators but Cornell itself  
2 taking a look at the mediators and making sure that those that aren't stepping up  
3 -- I had one example where apparently a mediator was in a rush and basically  
4 started the mediation by saying, "I got to be out of here by 5:00, so we need to  
5 get on with it."

6 BILLIE GARDE: That's not unusually, actually.

7 [laughter]

8 ELLEN GINSBURG: It may not be and --

9 NICK HILTON: I think that's part of the mediation technique.

10 ELLEN GINSBURG: It may be a technique used. In this case this  
11 guy wanted to be on a plane and so gave short shrift apparently, and I don't  
12 know whether it was a man or a woman, so whoever that person was gave short  
13 shrift to the mediation, at least from the impression that I received. So the  
14 question is, if there's a feedback loop that we can provide to -- "we" meaning  
15 the stakeholders -- can provide to Cornell, that might be valuable.

16 SHAHRAM GHASEMIAN: Yes.

17 ROY ZIMMERMAN: We didn't just do that. We didn't have one  
18 that we were going to --

19 SHAHRAM GHASEMIAN: No, I think we had the forms earlier on  
20 and they can speak to it, because it was a new program and we wanted to --

21 NICK HILTON: Pilot program, and none of you folks care but it  
22 requires OMB approval. There are big government hoops to jump through to do  
23 that kind of thing. So feedback's part of why it's not a continuous -- yeah.

24 ELLEN GINSBURG: But again, giving it to Cornell should make  
25 that somewhat easier and you can do it web-based, et cetera. So there are

1 probably --

2 ROY ZIMMERMAN: They probably want that kind of feedback.

3 ELLEN GINSBURG: I will assume.

4 SHAHRAM GHASEMIAN: We'll look into it and we'll --

5 DAVE SOLORIO: If we're not using it and Cornell's using it then  
6 there is no hurdle with OMB if they're using it.

7 [talking simultaneously]

8 BETH PICKERING: I have given feedback to Tracy and I don't if  
9 it's just coincidental, she'll have to tell me, but the mediator that I tried twice and  
10 was not satisfied with the mediator's demeanor hasn't been on our list since.

11 SHAHRAM GHASEMIAN: Right. When we do get feedback we  
12 take action and I'm aware of that. But as far as a formal, kind of, as part of the  
13 program after conclusion of each mediation to get kind of -- give out forms to get  
14 feedback, we don't have that and we can kind of come up with something like  
15 that.

16 KARL FARRAR: I would say Cornell's pretty good. I've enjoyed  
17 working with them. I've had a couple of things where I didn't like a group of  
18 mediators. They got me through almost immediately. We actually did a  
19 mediation in that area and they allowed us to use the rooms. So, I've not had  
20 any problems with anything.

21 SHAHRAM GHASEMIAN: And this discussion about -- it's for both  
22 post-investigation and pre-investigation.

23 ROY ZIMMERMAN: But we're agreeing is that if we have a bad  
24 experience we want to be able to pass that information on to Cornell.

25 SHAHRAM GHASEMIAN: And folks, I mean generally folks know

1 me and you guys aren't bashful about picking up the phone and telling me issues  
2 that you've had or calling up Tracy and I think you've done that in some cases.

3           KARL FARRAR: I will also say that mediators in any service,  
4 you're going to get some that are good; some aren't going to be good. Some are  
5 going to be great. And generally it's what you put into the process beforehand  
6 that you get people educated on what you want, and then those people allow you  
7 to have a good mediation.

8           ROY ZIMMERMAN: Is there anything on early ADR that we  
9 haven't talked about that anybody wants to raise before we make the transition  
10 this afternoon?

11           BETH PICKERING: Yes. Let me first comment that -- Nick I think  
12 you were in the session of ECP conference where some other licensees did  
13 complain about the timeliness of Cornell responses. I think that those were  
14 mostly about a year and a half ago when Tracy was on maternity leave. I was  
15 actually surprised with Katrina filling in during that period, I had no issues. The  
16 worst part dealing with them is the three hour time difference. I'll get a call -- I'll  
17 come into the office and there'll be a call from Tracy, but we've always been able  
18 to hook up and email has been very timely.

19           One thing I would like to have considered is there have been times  
20 when we've not reached a settlement but after the mediator's gone, maybe even  
21 a month later, the employee has gotten over the emotional part of their issue.  
22 They felt like they've been heard, they've been talking to their managers and we  
23 might be able to come to some agreement at that point in time. And yet under  
24 the current process, once you've notified OI that we haven't reached a settlement  
25 we are bound to have an OI investigation. If I could have that part of it

1 reconsidered, that there may be appropriate times to still say we don't need an  
2 OI investigation of the discrimination claim, which could potentially reenergize  
3 emotions that have been resolved.

4           SHAHRAM GHASEMIAN: Yeah, that's -- under the current policy,  
5 it's early ADR or licensee sponsored ADR is available prior to the initiation of an  
6 investigation by OI. So when OI initiates that investigation which is typically  
7 when they interview the alleged, at that point it's really not a ADR program or  
8 enforcement's decision whether to continue the investigation or not. That's an OI  
9 decision, according to their policies. So that's something that's, I guess we can --

10           DAVE SOLORIO: But I think what she's saying is, let's just say it's  
11 two months between the time the ADR didn't work out and the time OI goes out.  
12 Can we turn off OI?

13           SHAHRAM GHASEMIAN: Yeah, exactly. If we could -- well,  
14 actually, we do. If they're in that period, somebody sends a settlement  
15 agreement saying, "Oh, we reached a settlement." I usually -- well, not usually --  
16 I always check with the regions, with OI, and ask them, have you guys initiated  
17 your investigation? And if they say no, so long as they are internally -- the  
18 stakeholders, they're in agreement that we would accept that agreement, then  
19 we'd accept it even though it was like a month later. So -- but, you know, at the  
20 end of the day the whole purpose of -- we have to go the premise of early ADR.  
21 It's for timely and quick resolution of things. So if things drag on for a long time,  
22 and you define what that long time may be, then it kind of undermines the whole  
23 purpose of early ADR. So in a way, I think the program is very flexible and very  
24 accommodating, in my view, as far allowing -- to the extent [inaudible] have the  
25 will, are willing and have the will to mediate then I think we are very

1 accommodating to do whatever we can to foster that good will.

2 But at the same time we need to kind of push folks a little bit to do  
3 that in a timely manner, because we don't want it to stick around and hang out for  
4 a year or two for people to get to their mediation. So it's kind of a fine line. Go  
5 ahead.

6 CHUCK THEBAUD: But, Shahram, recognizing what time it is I  
7 won't go into it right now, but I can submit it to you in written comments. But just  
8 in terms of the licensee sponsored ADR, one thought that I will write up for you  
9 all is to add some flexibility to those programs and not to define them exclusively  
10 as a licensee sponsored ADR program that resulted in a settlement document.  
11 Documents signed that includes a relief. And where an individual came to  
12 Employee Concerns Program, the company investigating substantiated the issue  
13 provided complete and total relief didn't ask the fellow to sign a settlement  
14 agreement because it wasn't a settlement, it was a "We did the right thing, we  
15 fixed your problem."

16 But yet down the road we picked up an OI investigation because  
17 there had been no release. That seems to me to be the wrong signal to send to  
18 a licensee who had done the right thing. And maybe not in that particular case --  
19 there were some odd circumstances I'm aware of. But generically I think that  
20 might be a good area to look at for consideration as licensee sponsored ADR,  
21 such that that would not trigger an OI down the road. Even though [inaudible]  
22 generating formal settlement documents. Anyway, there's a lot more to be said  
23 and more than --

24 SHAHRAM GHASEMIAN: Any other thoughts on that issue?

25 BILLIE GARDE: I agree. I mean, I think if it's done -- self initiated

1 and appropriate corrective action has been taken, I don't see how that serves the  
2 agency goals or the people involved to then continue with an OI investigation if  
3 you're going to just get back to the same place anyway. Now maybe not, maybe  
4 that's -- but anyway, I think that you need to look at the program from the  
5 perspective of are we doing things that will disincentivize the licensee from taking  
6 the right corrective action. And if they're going to we should incentivize that.  
7 Encourage them.

8 ELLEN GINSBURG: I would agree. I think you want to drive to the  
9 right behaviors.

10 SHAHRAM GHASEMIAN: Okay, believe it or not it is 12:01 and I  
11 think we've covered all the questions for pre-investigation. So, thank you all.  
12 Let's go for lunch. What time should we come back?

13 ROY ZIMMERMAN: Schedule says --

14 NICOLE GLENN: 1:01.

15 SHAHRAM GHASEMIAN: What time does it say?

16 MALE SPEAKER: It says --

17 MALE SPEAKER: 1:00

18 MALE SPEAKER: It said 1:30.

19 SHAHRAM GHASEMIAN: It says 1:30.

20 NICOLE GLENN: We're slightly ahead of schedule so let's take our  
21 hour.

22 [talking simultaneously]

23 SHAHRAM GHASEMIAN: Yeah, let's say 1:15.

24 NICOLE GLENN: Before we adjourn, just for the folks who have  
25 webcast or are going to be abridged. This concludes our pre-investigation on

1 ADR discussion. However, we encourage additional comments and additional  
2 contributions via the [www.regulations.gov](http://www.regulations.gov) mechanism. And your comments will  
3 be open until January 17th. When we return it will be post-investigation ADR  
4 discussion.

5 SHAHRAM GHASEMIAN: And we'll be back at 1:15.

6 [break]

7 SHAHRAM GHASEMIAN: We're going to start the afternoon  
8 session and talk about the post-investigation ADR, but before we start I just  
9 wanted to announce that we have Lisa Jarriel physically present here, she's the  
10 Agency Allegations Adviser and she oversees the allegation program which is  
11 implemented throughout the regions and through the program offices so to the  
12 extent there are any questions or issues, she is here to answer them.

13 Okay. So the first -- we'll go through the questions on post-  
14 investigation ADR and let's start out with the scope question again. Right now  
15 the post-investigation ADR program is limited to wrongdoing cases and  
16 sometimes we include the related technical issues that go along with the  
17 wrongdoing case in addition to the discrimination cases. So are there any views  
18 on whether the program should be expanded to cover other types of issues?

19 BILLIE GARDE: Well, let me just say in post-investigation ADR the  
20 issues are really quite laid out as a result of the, you know, investigations and  
21 have been pretty well defined and identified so my experience is they're all pretty  
22 much already on the table.

23 SHAHRAM GHASEMIAN: How about if you strictly have a  
24 technical issue, they're not within the scope and maybe that's one area that's  
25 could be considered.

1 CHUCK THEBAUD: I think Shahram, what you're asking is  
2 whether we should go to ADR for incidents or concerns that have not been the  
3 product of an OI meeting.

4 SHAHRAM GHASEMIAN: Exactly, exactly.

5 MALE SPEAKER: I didn't understand that then.

6 MALE SPEAKER: That's exactly what that is.

7 CHUCK THEBAUD: That's hard to know, isn't it; you've got a  
8 regular inspection process that would normally account for that or an allegation  
9 process that would normally bring that into the fold. I have a hard time coming  
10 up with a good answer to that question that says it's a good idea or a bad idea. I  
11 guess some technical issues might lend themselves towards a discussion and  
12 resolution, which is really what you'd be looking at, it's really a licensee having a  
13 discussion, presumably with the NRC since it's now not an early ADR stage to  
14 resolve a technical issue, I guess. Right?

15 NICK HILTON: Maybe not the technical issue but the corrective  
16 action or --

17 CHUCK THEBAUD: Right.

18 NICK HILTON: So what might be on the table is \$100,000 civil  
19 penalty and the pump shafts broken, you know we know, we both got to -- got to  
20 fix the pump shaft, so that's really not negotiable but things around that. You  
21 know, extent of [spelled phonetically] condition is certain one step about the root  
22 cause and how far you go and other things, would that be in -- would that be up  
23 for discussion? Could there -- is there -- or anything else associated with that?

24 CHUCK THEBAUD: And that's what I was thinking, so that does  
25 take you towards those issues that would not normally be seen in an ADR

1 setting, but those are things that certainly things need. We could discuss those  
2 with the NRC and try to come up with a plan to go forward, because if you're in a  
3 position where you had a violation and that's -- I guess that's the triggering,  
4 there's been some sort of a violation. Right, and arguably enforcement action is  
5 on the table.

6 ROY ZIMMERMAN: We're not thinking something that goes into  
7 ROP space here; we're looking at more traditional enforcement and one of the  
8 things that the agency sees a clear benefit in ADR is the additional broader,  
9 corrective actions that we see for what we ultimately give us, which may be a  
10 severity level change or civil penalty amount or civil penalty depending, again, on  
11 how much we get for it.

12 A lot of the actions that we get are fleet wide and we have more  
13 fleets than we had in years gone by, and this is beyond what's required by the  
14 regulations, responding to notices of violation, in terms of what's being done to fix  
15 that pump shaft and a lot of times there's good creative thinking that goes into  
16 that and being that we have felt that we have seen success through the ADR  
17 process, notwithstanding the areas for potential improvement that we talked  
18 about this morning, again we think we're on a continuous improvement curve. So  
19 we're contemplating whether we want to pilot something in ADR that addresses  
20 traditional enforcement for the reasons that I indicated that for -- for a corrective  
21 action.

22 So again, it may need a -- it's not something that you'd really  
23 thought about but it will just -- it will take initial reactions and it also plants the  
24 seed for when we provide your comments to us and in writing. You know, what's  
25 in it for the public, what's in it for the NRC, is the broader -- the broader corrective

1 action that we tend to think has a benefit in it.

2 BILLIE GARDE: How would the public know about that, if it's all in -  
3 - I mean, it's all going to all be confidential under -- in the context of an ADR  
4 process so if it's a technical issue and it's not anywhere within the record, you  
5 know, of inspections or activities then I think you're missing that.

6 NICK HILTON: Well the -- yes but the inspection report would be  
7 issued with the issues in it and --

8 BILLIE GARDE: Okay.

9 NICK HILTON: And much like the investigation, you come up to a  
10 choice letter --

11 BILLIE GARDE: Yeah, yeah.

12 NICK HILTON: And have all the record behind it.

13 BILLIE GARDE: All right.

14 NICK HILTON: And my pump shaft was probably a bad example --

15 BILLIE GARDE: No, no, I understand.

16 NICK HILTON: ROP's world but it would be something traditional  
17 of course, except there are fuel cycle and materials that might be in the scope of  
18 expanding.

19 ELLEN GINSBURG: I guess -- I think it's extremely important we  
20 talked this morning a little bit about driving behavior and so if they ultimate  
21 objective is to drive to more positive behavior, you need to -- I describe it as  
22 carrot and a stick but you need to have a creative carrot and that's what you're  
23 really describing which is enlarging the opportunities for behavior of the sort that  
24 you're looking to drive to and making it more voluntary. And I think there's  
25 benefit in being open to that. I can't speak for the industry yet because I think

1 you'll need to flesh out what the process looks like, what the real incentives are,  
2 and how you apply those, but I think conceptually the industry would be  
3 supportive of that and I think a lot of it would be public already so the  
4 communications piece, you might have to add some pieces but most of the  
5 communications pieces, in terms of availability of information are already there,  
6 to some greater or lesser extent.

7           ROY ZIMMERMAN: Yeah, the reports would be there, the  
8 confirmatory order would be there, the press release would be there, you know  
9 they would all be that type of information, and an overall summary that it  
10 addresses as much information, again, part of what we're meeting on today is  
11 openness. And so we're -- this initiative is not in any way aimed to walk away  
12 from openness. We still can look at what we can do to stay as open as  
13 possible in a mediation type of forum. But again, we get actions that we have  
14 seen, both in headquarters and the regions, that are beyond what we get through  
15 the traditional enforcement programs. So our thought is, this could be a more  
16 enlightened approach. I tend to look at things conservatively, and not jump too  
17 far too fast, just the way this program started. If there was interest and the  
18 Commission supported it, you know, we'd have to address it obviously with them.  
19 There's the aspect of pilots. And we do it for a little while, and we take a  
20 temperature of the water, of our internal and our external stakeholders, and see if  
21 we think this has merit or not. And that will drive whether it catches on, is  
22 something we want to do, or not.

23           CHUCK THEBAUD: I don't think it's a radical departure from what  
24 we do in the traditional post-investigative ADR, anyway. Because there we are  
25 resolving some wrong doing issue, but it gave rise to an OI. But it often involves

1 somebody doing something inappropriately, or some sort of a technical issue.  
2 And then we develop mutually corrective actions to solve the problem, and then  
3 also, perhaps more broadly, to prevent it from reoccurring in the future, which is  
4 not different from what you do in a traditional inspection leading to a violation  
5 need for enforcement space. I don't think it's a huge stretch.

6 KARL FARRAR: Yeah, I think where you're going to have your  
7 biggest impact on material licenses.

8 CHUCK THEBAUD: Yes. Right.

9 KARL FARRAR: They use traditional enforcement more than the  
10 reactor licenses.

11 CHUCK THEBAUD: Right.

12 KARL FARRAR: Reactor licenses, generally, they default into ROP  
13 space. So where the impact would be would be like the material license  
14 difference; they lose the gauge, and don't report it in time to that nature, which  
15 would probably fall in traditional enforcement space. Those licensees probably  
16 would want to utilize this process.

17 ROY ZIMMERMAN: Probably would not, or would?

18 KARL FARRAR: Would.

19 ROY ZIMMERMAN: Would, right.

20 KARL FARRAR: I think they would want it.

21 ELLEN GINSBURG: I think that's accurate. I think they would want  
22 to use --

23 MARIA SCHWARTZ: And then within our own current process,  
24 there might be other places where we would -- we have certain points where we  
25 decided we'll engage in ADR. We might want to see if there are times we might

1 want to extend that as well.

2           SHAHRAM GHASEMIAN: Yeah, there's three different junctures  
3 during -- in the process that we allow for post-investigation ADR, and I think that's  
4 another area we can see if there's any other junctures that we can consider ADR.  
5 Okay, moving on to -- you know, we talked about transparency.

6           ROY ZIMMERMAN: As we move on with -- as you put together  
7 your input in writing on it, in addition to what you've shared with us here, as you  
8 give it more thought, if you're able to provide, you know, as much detail on that  
9 as possible, because if we move down that path, I think your comments are  
10 going to be important to this. What you see as the pros and the cons, and you  
11 know what you like about it, if you see it more enlightened, and what you worry  
12 about, how do you think it might get, you know, not accomplished at the intended  
13 goal. Sorry, Shahram.

14           SHAHRAM GHASEMIAN: That's fine. So on the topic of  
15 transparency, obviously, that's an area that we're very focused on, and we want  
16 to be as transparent as possible, as I mentioned earlier this morning. So in post-  
17 investigation ADR, we -- in a typical pre-decisional enforcement conference case,  
18 we issue the choice letter, we engage in mediation, and then we conclude the  
19 process by issuing a confirmatory order, which is publicly available. And in most  
20 cases, we also issue a press release with that confirmatory order. The  
21 confirmatory order lays out how we got to where we are.

22           So those are the major ways that we kind of externally make the  
23 process and the program transparent. We're also -- one of the initiatives that we  
24 implemented in the last few months, has been to issue a public closed meeting  
25 notice about a forthcoming mediation, which will kind of inform the public of a

1 future mediation. So that's one additional step that we've taken to make the  
2 process a little bit more transparent. And so the question for our discussion is  
3 what your views are about the level of the program's transparency, and if there  
4 are ways to improve it, or enhance it -- and what those areas may be.

5           KARL FARRAR: Well, what do you mean by transparency? You  
6 don't mean having the mediation session open.

7           SHAHRAM GHASEMIAN: That's, well -- no. But transparency, you  
8 know, is a subject that's very subjective and that's a very good question. How do  
9 we define that? I mean, you could -- it could be the transparency of the process,  
10 it could be the transparency of the actual mediation. And in my personal view,  
11 the actual mediation -- it needs to stay confidential as is, because if we make it  
12 like a public meeting, it would undermine the whole purpose of, you know,  
13 mediation. So I think that would be the limitation.

14           But as far as transparency of the process, there may be other steps  
15 that we could take to make this process more transparent. Although Billie may  
16 have some other thoughts about actual -- the mediation itself.

17           BILLIE GARDE: Well, I mean, I think the mediation itself has to be  
18 confidential. People aren't going to come to the table in a room like this and have  
19 a mediation and be able to have the kind of healthy dialogue necessary to, you  
20 know, accomplish what you need to accomplish. On the other hand -- and I  
21 talked to you about this a little bit yesterday -- I've had frustration in the context of  
22 a recent case, where, you know, the enforcement order and the agreement was  
23 ultimately made public, and press released. But when you read it, you know, it  
24 also -- the details are in this underlying document, and then that was not  
25 available to the public. So I think the agency really lost an opportunity to have

1 others learn from the event because you had to read between the lines.

2           Now you could read between the lines pretty well, but you know,  
3 not entirely. And so you've got people like me making assumptions about what  
4 this meant, or what were the underlying facts that made a difference. And it was  
5 particularly annoying because the order referred to this underlying letter -- it kept  
6 referring to the letter, and then you couldn't get the letter.

7           SHAHRAM GHASEMIAN: But the letter was made public -- but it is  
8 public, now?

9           BILLIE GARDE: Well, it wasn't --

10          SHAHRAM GHASEMIAN: At the time.

11          BILLIE GARDE: It wasn't at the time, so it was -- took a while for  
12 that to happen. And that -- I think that was frustrating for me, and I think kind of  
13 defeated the purpose of trying to make these things transparent. In theory, when  
14 you're issuing these public documents, you are trying to inspire lessons learned  
15 throughout the rest of the industry. I think that's part of the purpose of being able  
16 to publicly disclose it. And I think that all of the licensees learn from each other.  
17 So then they see somebody else going through it, they want to learn the lessons  
18 of that particular incident and event, and so it's really important for as much  
19 information to be public as possible. So I think in the context of creating the  
20 documents that ultimately announce the agreement, there really needs to be  
21 thoughtfulness about how can we make sure that there's sufficient information  
22 out there to enable people to make this useful.

23          ROY ZIMMERMAN: Your frustration, I'm hearing, was more of a  
24 timing issue. You kind of bait the reader that the information going to be there  
25 and --

1 BILLIE GARDE: Yeah.

2 ROY ZIMMERMAN: -- click on it. Had it been available, then you  
3 would have had a different reaction that we're providing --

4 BILLIE GARDE: Right, and I don't -- I got it under FOIA, but I don't  
5 know that it was ever made public and posted. I mean, I had to go and --

6 SHAHRAM GHASEMIAN: We changed that designation to -- it  
7 should have been made public in ADAMS a little bit earlier. So your FOIA kind of  
8 --

9 BILLIE GARDE: Prompted that.

10 SHAHRAM GHASEMIAN: Prompted that.

11 BILLIE GARDE: So it was --

12 SHAHRAM GHASEMIAN: It would have been normal course of  
13 business, it probably would have been, you know, publicly available prior to your  
14 FOIA. So --

15 NICK HILTON: I'm sorry. Did it happen to be a security related  
16 case?

17 SHAHRAM GHASEMIAN: No, it was not.

18 NICK HILTON: Because I know we've done exactly that in a  
19 security related case or two -- for the reference document, we kind of want to  
20 reference the document. But it was security related.

21 BILLIE GARDE: Yeah, that's going to be difference.

22 [talking simultaneously]

23 SHAHRAM GHASEMIAN: Yeah, this was --

24 NICK HILTON: So it sounds like somebody may have gotten the  
25 idea based on that.

1 ROY ZIMMERMAN: But this may be the kind of case where if we  
2 know it's not going to be out for another week or two, but the other document's  
3 going out, that that response is expected. We can always add something that  
4 says, "Expect it to be issued within the next few weeks." [unintelligible] it was  
5 going to be issued within a couple of weeks, at least you understand the timing.

6 SHAHRAM GHASEMIAN: I think really -- I think that kind of  
7 exasperated Billie's concern, and you correct me Billie, but even if that letter was  
8 available when you were looking for it, I think you would have still had the  
9 concern that you have now.

10 BILLIE GARDE: Yes. Because it was -- you still had to read  
11 between the lines.

12 SHAHRAM GHASEMIAN: Yeah, and there's constraints as far as  
13 how much information that we can share about the underlying causal events, so  
14 that's partly why sometimes --

15 BILLIE GARDE: Yeah, we could have a whole tangential  
16 discussion about that, but --

17 SHAHRAM GHASEMIAN: Right. But that's the -- okay.

18 KARL FARRAR: What we used to try to do, is we tried to -- in the  
19 cover letter, the grievant principle, and the order -- we try to lay out all the facts.  
20 And kind of show the history of the event, or what lead up to the ADR. And we  
21 also try to link to ADAMS and different documents, so the people [inaudible].

22 BILLIE GARDE: Right, and I don't want the conversation to get --

23 KARL FARRAR: No --

24 BILLIE GARDE: Go in a different direction because of one case.  
25 But in this case, that didn't happen. And I think that was a big loss, because

1 there were real opportunities to use those lessons in the right form, at the right  
2 time.

3                   SHAHRAM GHASEMIAN: Yeah, and since I have a little bit  
4 familiarity with this, I think, Billie, your suggestion is on this particular case, it  
5 would have been good if -- other viewers would have a better sense of what the  
6 casual event was, so that they could appreciate --

7                   BILLIE GARDE: Yes.

8                   SHAHRAM GHASEMIAN: -- better the corrective actions --

9                   BILLIE GARDE: Right.

10                  SHAHRAM GHASEMIAN: -- that the licensee agreed to take in the  
11 confirmatory order.

12                  BILLIE GARDE: Right, there was a lot more facts that were not in  
13 there. And it was a really significant piece of work by the agency, and I think it  
14 had a lot of lessons for Employee Concern Programs that, you know, needed to  
15 be learned. But for the reader, you didn't get that until you understood facts that  
16 were not out there. And there was no intention to embarrass anybody -- these  
17 are always embarrassing to somebody. They're always difficult. But part of, I  
18 think, the whole purpose of having a public element to these post-investigation  
19 ADR's and, you know, announcement is so that people who learn lessons can  
20 teach the rest of us so we don't have to make the same mistakes. That's the  
21 whole point.

22                  SHAHRAM GHASEMIAN: Right.

23                  BILLIE GARDE: So you can be sensitive, and you can be  
24 respectful, but you still got to learn the lesson.

25                  CHUCK THEBAUD: But there is that other side of it, too --

1 BILLIE GARDE: Yes.

2 CHUCK THEBAUD: From the licensee's perspective.

3 BILLIE GARDE: Yeah, and I think you could accomplish that.

4 CHUCK THEBAUD: You can't go all the way into the entire record,  
5 and reveal people's names and events that identify them. And that's going to be  
6 counterproductive, because that's going to make it very difficult for licensees to  
7 go forward with [unintelligible]. But transparency is good, but there's also this  
8 counter -- need to ensure that we're not, you know, invading the privacy of others  
9 or embarrassing --

10 ROY ZIMMERMAN: You're both aligning that we have to protect --  
11 that that is the reason why we do it. But Billie, you're saying that maybe we could  
12 go a little further than we did, and not cross the line.

13 BILLIE GARDE: Right, at least in this case. And that's why I don't  
14 want to spend a lot of time on the specifics, because it may have been a one off  
15 because I think generally you do a pretty good job about that. This particular  
16 one, I thought you could have done more, and I think you could have  
17 accomplished that even with issues that Chuck points out in terms of honoring  
18 confidentiality -- I think you could have done more than you did. But I'm also  
19 prepared to accept that's a one off, so I don't want to get too caught up on it.

20 SHAHRAM GHASEMIAN: So with that in mind, from a  
21 programmatic perspective, from a transparency of the process, is there any  
22 thoughts as far as, not necessarily content of, you know, the events that gives  
23 cause to the ADR, but as far as the ADR process. Is it viewed as, you know, as  
24 transparent, in the sense that the public is knowledgeable about, you know,  
25 what's going on in the ADR process?

1 BILLIE GARDE: Well, I did an ADR with Karl, and I thought Karl  
2 beat me up pretty good about it [laughs]. I mean, in terms of maintaining the  
3 argument that I have to be able to tell the public, you know, "Your client did these  
4 bad things." And your client has to be able to say he did these bad things, or  
5 none of us would -- you know, we won't learn. We won't accomplish what we  
6 would otherwise accomplish. And we spent a lot of time on that in that particular  
7 session. But ultimately I think, you know, what we worked out really was in the  
8 best public interested. But I don't get the sense of that from every one of these.  
9 Some of these, I think, are very circumspect, and it's like, "What was this about?"  
10 So I don't know how -- I mean, you got a different team in there every time, so it's  
11 hard to say there's consistency. Make Karl do them all.

12 [laughter]

13 KARL FARRAR: Well, I wouldn't mind doing some of them, but not  
14 all of them -- but I think what we might be able to do is give it a little more  
15 presence on our website when we have these ADR agreements. As -- not that  
16 you can't -- I can find them all, and when I send someone to the website to find  
17 out what we've done before so they can kind of get a sense of where corrective  
18 actions are, because then they should -- they find them. But if you want to make  
19 it a little more transparent, you might want to include all the documents in the  
20 package. You know, have a link to all the documents, you know, if they're  
21 ADAMS documents, for example, a pre-decisional enforcement conference or a  
22 a choice letter. And you may want a link to that so that people can find that  
23 document, and keep it all in one package. And that may be something that can  
24 give people a sense of more transparency if they can see all the underlying  
25 documents in one package of ADAMS, or however we -- however we're going to

1 make them public.

2 NICK HILTON: The like -- the factual summary help?

3 BILLIE GARDE: You mean more than you're already putting in  
4 there?

5 NICK HILTON: Well, they're not always public, right? I think some  
6 end up being something else.

7 KARL FARRAR: The OI summaries?

8 NICK HILTON: Yeah. Well, the one that we write to include on the  
9 choice letters is what I'm specifically referring to.

10 KARL FARRAR: Ones to the licensees are usually made public.  
11 But ones to the individuals are probably not.

12 NICK HILTON: Yeah. So they're out there -- if they get -- is there  
13 any part of this that's one stop shopping, that -- kind of like you're talking about it,  
14 if we included the factual summary as an enclosure with the cover letter on the  
15 order, kind of thing.

16 SHAHRAM GHASEMIAN: Well, right now the confirmatory orders  
17 are actually in two different sets, are in two different places. One is on the  
18 enforcement page, where you can actually -- there is the summary and  
19 everything. As a redundancy, the thing that we've done is on the ADR page, we  
20 have a list of all the confirmatory orders. So you can actually go to two places to  
21 get the same documents, from a redundancy perspective. So we're trying to that  
22 kind of one stop shop approach.

23 What we haven't done in the ADR page, at least, is haven't -- we  
24 just have the confirmatory order, we don't have it linked to the underlying choice  
25 letter, which we can do. But that choice letter is presumably available in ADAMS.

1 MALE SPEAKER: It should be in ADAMS.

2 SHAHRAM GHASEMIAN: So we can also kind of maybe -- the  
3 thing to do is do a ML number so that people can --

4 BILLIE GARDE: Can you do it with links?

5 SHAHRAM GHASEMIAN: Yeah, you can do it with links, and you  
6 know, let the IT folks figure out how to do that. But at least reference the ML  
7 number next to the confirmatory order for the choice letter.

8 KARL FARRAR: That may help with the transparency, but with  
9 individuals, you still have --

10 SHAHRAM GHASEMIAN: Right, with the individuals, it's --

11 KARL FARRAR: It's a little different.

12 SHAHRAM GHASEMIAN: It's kind of a little different proposition.  
13 But for companies, I think we can do that. Any other thoughts as far as what  
14 steps we can take further in the area of transparency? Okay. How about the  
15 timeliness? Any views or thoughts on timeliness?

16 KARL FARRAR: There have been times when we've had trouble  
17 scheduling ADR's. In my view, in a timely matter, what we've done to try to  
18 alleviate that problem is contact the licensee, come up with a date, and then go  
19 to Cornell. In the past, it's been the exact opposite. We would go to Cornell, get  
20 the mediator, and then we'd try to arrange a date with the mediator and everyone  
21 else. The way we do it now is, I'll contact Chuck or Billie, and I'll say, "When can  
22 we do this?" And we'll come up with a date, and I'll request to Tracy, and say --

23 SHAHRAM GHASEMIAN: Find us a mediator.

24 KARL FARRAR: Find a mediator and do it this date.

25 [talking simultaneously]

1           SHAHRAM GHASEMIAN: Right, exactly.

2           KARL FARRAR: Find us three that can do it this date.

3           SHAHRAM GHASEMIAN: And I think that's the way -- at least, I  
4 know Region 4 does it that way.

5           KARL FARRAR: Yeah.

6           SHAHRAM GHASEMIAN: Region 1, and I think Region 3 and 2  
7 may hopefully be moving that direction, too because it does save a lot of time.

8           KARL FARRAR: Yeah, like what Chuck said earlier, scheduling the  
9 times for attorneys, and the vice-president of the company, and the regional  
10 administrator is difficult. And trying to get those calendars to match becomes  
11 difficult. It's easy if you come up with a date beforehand, and then move forward.

12           CHUCK THEBAUD: Having said that, Karl, I agree with that; that's  
13 exactly what the problem is. I'm not nuts about the idea of finding the date, and  
14 then having a mediator slotted into that date, because to me it's more important  
15 to get the right mediator. You're more likely to have success if you have a  
16 mediator that both sides agree to, that you know is good because we don't want  
17 to get the one or two people that are out there that are duds, but that are  
18 available on that date. I'd much rather back off to accommodate a good mediator  
19 that both sides want to agree to, and get it done, and get it done right, as  
20 opposed to having to fit it in to that --

21           KARL FARRAR: And we've had this discussion.

22           CHUCK THEBAUD: Yeah.

23           [laughter]

24           SHAHRAM GHASEMIAN: And that's something hopefully it doesn't  
25 happen that often, but that's something I would imagine we can work that

1 through. I mean, if --

2 KARL FARRAR: Yeah, you work that out.

3 CHUCK THEBAUD: You work it out.

4 SHAHRAM GHASEMIAN: Internally we embarked on a lead Six  
5 Sigma project about a year ago, which was completed in March of earlier this  
6 year on the ADR program to make it -- to go about making it more effective,  
7 transparent, and timely. It was a group of representatives from various internal  
8 offices, the program offices, and the regional offices. And the team made several  
9 recommendations in that regard, and that -- so we have taken many steps  
10 internally on how to make it a little bit more effective, and particularly more timely,  
11 as far as review of the cases, and -- so hopefully, I think some of the  
12 recommendations have already shown us some benefits as far as, you know,  
13 processing the cases a little bit faster.

14 So it's only been five, six months since we've implemented the  
15 recommendations. So we'll see if whether the actions will survive for the long  
16 term. But they're -- they've definitely made us do things a little bit faster, at least  
17 in recent cases.

18 Now as far as the -- after the settlement, after the mediation, are  
19 you guys okay with how long it takes to issue the confirmatory order?

20 ELLEN GINSBURG: I'll speak to that. I started to do it earlier.

21 SHAHRAM GHASEMIAN: Yes.

22 [laughter]

23 SHAHRAM GHASEMIAN: That was [unintelligible] benefit.

24 ELLEN GINSBURG: So anxious to get this on the table. The  
25 calculations we've done is that it takes about 69 days, and there's some

1 suggestion that that could be shortened since it's from the agreement in principle  
2 to the confirmatory order. So it's nothing more than that that we just think --  
3 bluntly stated, 69 days is just too long.

4 SHAHRAM GHASEMIAN: That's -- we -- I think we definitely share  
5 that we need to do that a little bit quicker, so that's a focus of ours.

6 CHUCK THEBAUD: I'm frankly surprised at that number, to be  
7 honest with you. In my experience with -- wouldn't say that they take typically  
8 that long. I didn't look to see in the cases that I've handled how long it's taken,  
9 but --

10 SHAHRAM GHASEMIAN: That last one was with me, so that's --  
11 that one was fast.

12 [laughter]

13 CHUCK THEBAUD: I really don't think that they've been more than  
14 30 days.

15 BILLIE GARDE: Is that an average? Have you got some real  
16 outliers out there?

17 ELLEN GINSBURG: My guess is it is an average, but I don't think -  
18 -

19 CHUCK THEBAUD: Then they have to go all the way back, too.

20 MALE SPEAKER: Yeah.

21 MALE SPEAKER: Right, recently I just haven't had --

22 SHAHRAM GHASEMIAN: Yeah, we have, I mean --

23 ELLEN GINSBURG: No, the trend, at least -- I think this is more  
24 recent.

25 MALE SPEAKER: Really? Okay.

1 ELLEN GINSBURG: I don't think it goes back to --

2 [talking simultaneously]

3 NICK HILTON: Let me put a little footnote on your data?

4 ELLEN GINSBURG: Sure.

5 NICK HILTON: It's possible, especially early on, and Karl knows a  
6 couple of these cases, that depending on how you mark your data, if you mark  
7 your data from the date of mediation, until the day the order is taken, it may not  
8 recognize a couple three months of continued negotiation before there was  
9 actually an agreement in principle. We've had a couple cases that are real  
10 outliers, and we got 80 percent of the way or at least a chunk of the way, but not  
11 all the way, and it drug on quite a while. And if those couple cases got through  
12 and in there, it might really skew your data. But just a footnote there, of exactly  
13 how the calculation is done is sometimes important.

14 ELLEN GINSBURG: I think it came off the -- I'm pretty sure it came  
15 off the trend data. The trend information, and I don't know what -- I can't cite a  
16 page because they weren't numbered. But I think it's the NRC's, and I  
17 encourage you to look at the numbers on your own trend map. That's where it  
18 comes from.

19 SHAHRAM GHASEMIAN: Yeah, and those are probably the  
20 mediation dates to the confirmatory order.

21 ELLEN GINSBURG: Confirmatory -- yes, from mediation, not from  
22 [inaudible].

23 SHAHRAM GHASEMIAN: Mediation, yeah, exactly. Because  
24 those are easy, you know, milestones to kind of measure, you know.

25 ELLEN GINSBURG: [affirmative]

1           SHAHRAM GHASEMIAN: Whereas what Nick is referring to, which  
2 happens regularly enough, it's tough to kind of figure, "All right, when was the --  
3 you know, when did the negotiations complete?" And so for ease of kind of  
4 keeping track of it, we -- I just went with mediation to confirmatory order. But  
5 even 69 days, in my view, is a little bit long, even if we take into account the other  
6 ones, even if I was 60 days, or you know. So our goal is, I think, about 45.  
7 That's our goal, so.

8           ROY ZIMMERMAN: I think in -- at a high level, timeliness of  
9 escalated enforcement action is something that I think we would all be in  
10 agreement with. We want to get it done as quickly as we can. We've changed  
11 our metrics, and we're stretching ourselves in what we report to Congress on, on  
12 how were doing on escalated enforcement actions, and we've reduced that  
13 timeframe. So we're trying to improve our processes to be as timely as we can  
14 on all escalated enforcement actions, and ADRs. Part of the process of why we  
15 did Lean Six Sigma to try to look for areas where we get -- have positive results  
16 that I think it's probably too early to speak with a lot of authority on what we've  
17 accomplished in Rule Six Sigma. But the initial signals indicate that we should  
18 be able to shave, you know, a fair amount of time off of the ADR process. And  
19 we're working on it on both OI, and non-OI type escalated enforcement actions to  
20 cut the time down.

21           SHAHRAM GHASEMIAN: I think we're moving along rapidly  
22 through the questions. Now we kind of spoke about it for early ADR this  
23 morning, but are there any circumstances that the NRC should consider not  
24 entering into an ADR for?

25           KARL FARRAR: I know that we've talked about that a little bit in

1 the region, and our view is that if there's circumstances where you don't believe  
2 an individual's going to enter ADR in good faith, or if there's a lack of trust, or that  
3 used a process in the past and haven't actually lived up to previous ADR  
4 agreements, situations like that, we would not want to have to enter into another  
5 ADR agreement or an ADR session, if we have some --

6 MALE SPEAKER: A track back. Right.

7 KARL FARRAR: -- facts that kind of support those kinds of things.  
8 Other than that, if -- I don't see why we would not at least contemplate doing  
9 mediation, if you don't have factors like that.

10 SHAHRAM GHASEMIAN: Ann?

11 ANN HARRIS: During the ADR process, if criminal activities are  
12 identified, I don't think I'd sign anything to agree to it, because that puts you back  
13 into a court of law and that you don't want to be in; that's criminal activities,  
14 because that means that you would be supporting the activities, it seems to me.

15 SHAHRAM GHASEMIAN: Yeah. I don't think we would --

16 ANN HARRIS: Because we've had that to happen in an ADR  
17 process, and, of course, we backed out of it. We wouldn't, we wouldn't, we didn't  
18 agree to it. We didn't sign on the dotted line. We left it. That's the industry and  
19 the regulators' area, because we -- to me whenever you sign that agreement with  
20 the purpose of this being a done deal and how this process has worked, and  
21 everybody's happy and there's identification of the criminal activities, I don't -- I  
22 can't support that and I don't think that you should either as an agency. If  
23 industry wants to support it, that's their decision, but I don't think that's a good  
24 idea because if criminal activities are identified or come forth that they have  
25 happened and are still happening, that's -- I wouldn't be a party to that.

1 ROY ZIMMERMAN: Is there a potential DOJ, Department of  
2 Justice intervention, those types of cases, or --

3 ANN HARRIS: Well --

4 ROY ZIMMERMAN: -- beyond that?

5 ANN HARRIS: -- whenever you support documents to the  
6 Department of Justice that you -- how do you reconcile that with supporting an  
7 ADR and signing off on the dotted line of it, and in agreement with it.

8 SHAHRAM GHASEMIAN: Ann, I think it's in our enforcement  
9 policy, if, on a -- if there's a violation where the Department of Justice is  
10 considering taking action, then, generally speaking, our policy is not to engage in  
11 ADR with that entity or individual. So I don't think we would engage in ADR with  
12 the person if DOJ is -- has taken, you know, action, or is contemplating. And, if  
13 we do anything along those lines, I think we would do it in very close  
14 coordinations in DOJ, in my experience, but --

15 NICK HILTON: Yeah. Just to be clear, by definition, all these  
16 cases have been reviewed by Department of Justice and declined, so, in terms of  
17 potentially subject to criminal prosecution, all these cases are there from the  
18 Atomic Energy Act. I assume you're talking about other types of criminal activity  
19 that may not be directly involved with, and the confidentiality provisions don't  
20 apply to those cases, that type of revelation, and, yeah, I don't believe --

21 SHAHRAM GHASEMIAN: Actually --

22 NICK HILTON: -- we would be involved in --

23 SHAHRAM GHASEMIAN: Yeah, we wouldn't be involved in --

24 NICK HILTON: -- one like that.

25 SHAHRAM GHASEMIAN: -- it, and actually specifically --

1 ANN HARRIS: I don't think that you'd intentionally --

2 SHAHRAM GHASEMIAN: -- crossed that out.

3 ANN HARRIS: -- be involved, but if it comes out during the  
4 mediation process is what I'm saying.

5 NICK HILTON: Right. That's --

6 ANN HARRIS: In the room, where we're all bolted in.

7 NICK HILTON: Yeah. Yeah. This question is in -- and that would  
8 be an issue, and -- but this question is beforehand, when we're looking at a case,  
9 should we not offer ADR, and under what circumstances? So, not when we're  
10 sitting in the room. That's a little different scenario, and I think we agree with  
11 you, if that kind of thing became evident we would have to do something, but --

12 ANN HARRIS: But, you're supposing that the employee is the one  
13 that's -- that I'm speaking of, instead, because we have defined on a couple of  
14 occasions where it was the utility that was -- there was practicing, criminal  
15 practices going on with the utility, not with us. We don't know if anything ever  
16 happened about it or not. We're supposing not, because nothing ever showed up  
17 in the criminal reports anywhere.

18 FEMALE SPEAKER: I don't --

19 NICK HILTON: You can't, you can't --

20 ANN HARRIS: SO, I don't know what to do with those.

21 FEMALE SPEAKER: -- those aren't helpful, Ann.

22 NICK HILTON: I'm not sure I'm following what you're referring to  
23 other than --

24 ANN HARRIS: Oh, I don't, that's as far as I'm willing to go.

25 ROY ZIMMERMAN: It sounds like there's somebody on the phone

1 that had something they wanted to offer to this discussion. Okay.

2           NICOLE GLENN: Otherwise, the folks on the bridge can mute their  
3 own lines by hitting Star-6, and that will keep the background noise to a  
4 minimum.

5           SHAHRAM GHASEMIAN: Maybe this is a good juncture to go to  
6 the phone lines, maybe get feedback on what we've discussed so far.

7           NICOLE GLENN: Sure. Well, let's --

8           SHAHRAM GHASEMIAN: Or to the group.

9           NICOLE GLENN: -- survey the room first. Do we have any public  
10 comments from the folks who are in the room with us? Ann, I know that -- that's  
11 okay. That was allowed. Do you have anything else that you want to add?  
12 Okay. Anyone else in the room? I think we lost some folks from this morning.  
13 Okay. Do we have any public comments from the folks who are on the bridge,  
14 who are participating remotely? Okay. And I trust we have no emails coming in?  
15 No? Okay. Looks like we have closure to that segment, so we can go onto the  
16 next question.

17           SHAHRAM GHASEMIAN: Okay. For the most part, I think we  
18 have run through the topics. Are there any areas of discussion that we haven't  
19 explored that the panelists want to explore? Chuck?

20           CHUCK THEBAUD: Well, we -- I thought we may be getting close  
21 to it a moment ago. We were talking about how much do you disclose in --  
22 during the course of a post-investigation ADR. One of the problems that I've run  
23 into on occasion -- it's not with all of them, but it's happened more than once, is  
24 we'll get an allegation of, or we'll get a notice that, you know, the NRC has  
25 concluded that there was some wrongdoing, and they invite us to go to ADR

1 enforcement action, or the allegation itself is vague to the point where we don't  
2 know precisely what the wrongdoing is. For instance, in the context of a 50.9  
3 allegation, the company, or an individual specifically, provided false information  
4 to the NRC, but yet, there's no date, there's no specific communication, nor is the  
5 specific inaccurate information is disclosed.

6           That's a difficult thing to respond to either in enforcement -- you  
7 can't do it in enforcement, actually, you have no way of responding to that -- or  
8 even in an ADR. And, so, as a result, you know, that's a tough position to be in.  
9 You want to try to engage, but when we talk to the NRC and ask for more  
10 specifics, you know, we don't get that information on a couple of occasions, and  
11 that's a real challenge for us, and I don't know why that is, to be honest with you,  
12 because when we get to the stage of enforcement, whether it's an ADR or  
13 traditional enforcement action, it seems to me we have to know the specific  
14 charges, who did what to whom and when, so that we can either rebut it or agree  
15 to it or and then find the way forward. But, when they're vague and very non-  
16 specific, it makes it a very challenging exercise. It's not fair. It's fundamentally  
17 not fair.

18           ROY ZIMMERMAN: When you asked the question about why can't  
19 you provide, "Why, NRC, can't you provide some additional information," what  
20 did they say?

21           CHUCK THEBAUD: "I'm giving you all that I can." And, one, and,  
22 yeah, that was, it was unsatisfactory. And another time it was, "That's security-  
23 related information." Yeah, well, we've got safeguards, you know, and we're --  
24 and the meeting is going to be either enforcement or ADR, we'll have it equipped  
25 so that we can deal with safeguard information. Ultimately, in that instance, it

1 ended up going to an enforcement action where on the day of the enforcement  
2 action I finally saw what the actual allegation was. That's two, three months  
3 down the road. That's really -- it's unsatisfactory.

4 SHAHRAM GHASEMIAN: On the day of the enforcement action --

5 CHUCK THEBAUD: Yeah.

6 SHAHRAM GHASEMIAN: -- being issued?

7 CHUCK THEBAUD: On the day of the enforcement conference,  
8 I'm sorry.

9 SHAHRAM GHASEMIAN: Enforcement conference, okay.

10 CHUCK THEBAUD: Yeah.

11 BILLIE GARDE: So, was this OI making the decisions? Were  
12 these OI reports? Because I --

13 CHUCK THEBAUD: There were OI reports --

14 BILLIE GARDE: Because I've had that experience with OI reports.

15 CHUCK THEBAUD: Yeah, well there were OI reports, but it was an  
16 enforcement action.

17 BILLIE GARDE: Yeah, well --

18 NICK HILTON: You had a factual summary in your hand that --

19 BILLIE GARDE: But not the details.

20 NICK HILTON: -- did not provide the specific -- didn't provide that  
21 much information?

22 CHUCK THEBAUD: I probably had no information. I mean, no.  
23 that's an extreme. It provided some information, but it didn't provide the specifics  
24 such that we could really -- we didn't -- honestly, we didn't know what the alleged  
25 false information was that we were supposed to have provided, just didn't know.

1           KARL FARRAR: I am -- to add, I will say that I have had questions  
2 about OI reports. We don't provide OI reports, so what we try to do is come up  
3 with a pretty decent OI summary that we create -- not the OI, but the -- our  
4 enforcement people create -- that lay out all the facts of the OI summary. We  
5 also give individuals, licensees, in the choice letter a pretty detailed explanation  
6 of what the allegation is or what the violations are, and some generally have a lot  
7 of details that have -- they won't have individual's names, but they will have titles.  
8 And, so, we try to make sure that individuals -- that licensees have as much  
9 information as possible without violating someone's privacy.

10           CHUCK THEBAUD: And most of the time, we'll know what it is,  
11 and that's not an issue. But, there are occasions, and it's more than infrequently,  
12 where you don't know, and I understand the need for you all to do what you do,  
13 and you write it up in such a way that it is, should be enough, you think for us to  
14 know; but, where we don't know, and when we do ask for more information so  
15 that we can make an informed decision. I mean, I think there needs to be a little  
16 more forthcoming from the NRC on that.

17           KARL FARRAR: Yeah. And my experience in reviewing some of  
18 the OI transcripts, a lot of times, licensee's attorneys are in the --

19           CHUCK THEBAUD: Not always.

20           KARL FARRAR: But, most of the time, they're in the interviews,  
21 and --

22           CHUCK THEBAUD: But not all of them.

23           KARL FARRAR: Not all of them.

24           CHUCK THEBAUD: Not all the time.

25           KARL FARRAR: You're absolutely right. Not all the time.

1 CHUCK THEBAUD: And if we know the answer, if we know the  
2 information, we're not going to ping you for it.

3 KARL FARRAR: That's right.

4 CHUCK THEBAUD: We're going to ask for it. But --

5 KARL FARRAR: That's right.

6 CHUCK THEBAUD: -- if we don't truly know, you know, we should  
7 know that.

8 KARL FARRAR: I think you should be, you should have enough  
9 information. I think you're absolutely right. You should have enough information  
10 so that you can answer --

11 CHUCK THEBAUD: Yeah.

12 KARL FARRAR: -- answer the question. CHUCK

13 THEBAUD: Yeah. Exactly right. That's --

14 KARL FARRAR: We try to do that, and, as an agency, I know we  
15 try to do that, and we do it pretty decently. But the one place we do have some  
16 difficulties are with security --

17 NICK HILTON: Security.

18 KARL FARRAR: -- information.

19 NICK HILTON: Right.

20 KARL FARRAR: Because we can't release that information  
21 publicly, and a lot of letters are publicly available, but even in the security cases -  
22 - even if your security individual contacts our security individual, they talk about  
23 these things, and they'll get them the information, because they are both  
24 safeguard accessible, so.

25 NICK HILTON: Right.

1           KARL FARRAR: There are ways to do some of that. I think it's -- I  
2 think you're absolutely right, though. We should give you enough information so  
3 that you can at least answer the mail.

4           NICK HILTON: And just to be clear so that we're -- just in case  
5 we're not talking past each other, we may not -- our threshold for what we think is  
6 reasonable includes providing you enough information that you can go figure it  
7 out, because it -- and, while that -- while you may want us to lay out the entire  
8 thing, we may not be able to do that because it then may very well fingerprint the  
9 individual, and if that's a public document, it, you know, lays down.

10           So, hopefully we've provide enough information so that you can  
11 figure it out. It may not serve it up to you on one document, but you can go pull  
12 up a couple three, talk to the right people, figure out by title who they are, it, you  
13 know, it may take a little work.

14           CHUCK THEBAUD: I'm good to do that homework.

15           NICK HILTON: Okay.

16           CHUCK THEBAUD: I'm telling you a couple of items --

17           NICK HILTON: There's been a few that doesn't get that.

18           CHUCK THEBAUD: I had no clue, and talked to everybody that  
19 might have been able to fill in the blanks --

20           NICK HILTON: Yeah.

21           CHUCK THEBAUD: -- and we still couldn't do it.

22           NICK HILTON: Yeah. Well, that's not --

23           CHUCK THEBAUD: I just didn't know what the charges were.

24           BILLIE GARDE: Well, what's the process, I mean, because I've  
25 had that happen twice.

1 NICK HILTON: Yeah.

2 BILLIE GARDE: All right? So, twice out of, you know, maybe two  
3 dozen cases. I don't know exactly how many, but what's the process? Right  
4 now, its' basically just you're on your own.

5 CHUCK THEBAUD: Yeah.

6 BILLIE GARDE: There's nobody to go to.

7 ROY ZIMMERMAN: Well, and I had several reactions. I mean,  
8 one is sticking it up the regional flagpole by the licensee or by yourselves, you  
9 know, to indicate that you're having difficulty being able to prep for this. But, if  
10 you give us the examples, you know, offline, because it sounds like it's never  
11 really been resolved. It's still a sticking issue for you both. If you give us the  
12 examples, we'll work to run them down and try to understand them and see if  
13 there's a process change that we need to make and we'll also get you feedback.  
14 So, if you share that with us, we'll --

15 CHUCK THEBAUD: I could do that.

16 ROY ZIMMERMAN: -- be glad to do that.

17 CHUCK THEBAUD: The case has been resolved, so it's not --

18 ROY ZIMMERMAN: But, it sounds like it -- the case may have  
19 been resolved, but you didn't get a chance to prepare the way you wanted to.  
20 You never got an understanding of why you couldn't get more information. And it  
21 sounds like even after the fact you still don't understand why you couldn't get  
22 more information. And then the question that Billie is asking is, "Okay, what's our  
23 process?" So, that when you run into that, who do you call, how do you try to get  
24 that information at the right level on the -- in the NRC to advocate for you?

25 BILLIE GARDE: Well, who's there to understand that you can't be

1 in an, you can't do an informed educated --

2 MALE SPEAKER: Sure.

3 BILLIE GARDE: -- good job on behalf of your client if you don't  
4 know something, and it's just, it leaves everybody feeling it's so fundamentally  
5 unfair.

6 ROY ZIMMERMAN: Right. So, let us deal with it. Let us deal with  
7 it. Give us the examples, the specifics of it, and we will run it down, understand  
8 them, and give you all feedback. And if it looks like changes that we need to  
9 make to our program, we'll make changes to the program, so it's good feedback.  
10 Thank you.

11 NICK HILTON: Sure. To answer your question, fundamentally,  
12 they're drafted and then reviewed by usually three other people knowledgeable to  
13 the case, so there is -- it's not a one person and out kind of thing, but --

14 ROY ZIMMERMAN: Right.

15 NICK HILTON: -- it is an art, if you will, trying to write --

16 BILLIE GARDE: So, maybe it should be reviewed by someone who  
17 doesn't know the case.

18 NICK HILTON: Well, that's an idea. That's an idea.

19 [laughter]

20 BILLIE GARDE: See if they get it.

21 NICK HILTON: And that's a problem.

22 BILLIE GARDE: Yeah.

23 NICK HILTON: Yep.

24 SHAHRAM GHASEMIAN: Any other good thoughts?

25 ANN HARRIS: We want the industry and we want you guys to

1 have a level playing field with us as the public and with the employees. So, I  
2 think that any time that the industry does not have all the information that's  
3 available through the ADR process, I'm on his side, and I'm -- that -- I'm one of  
4 those people, I would go to him and tell him, "Look, you've got a problem, and  
5 here's what it is. I can't give you names and specifics, but here's how you need  
6 to find out. I wouldn't bother with you. I would go directly to him if it was in my  
7 situation, which I have done in the past. That shouldn't have to happen. That's  
8 something that where he has a problem, and he wants to fix it as he says he  
9 does, and I believe that, and I trust him to do it, he needs to know. He can't fix a  
10 problem he doesn't know he has.

11 ROY ZIMMERMAN: Fair.

12 ANN HARRIS: So I'm --

13 ROY ZIMMERMAN: I think I'm agreeing with you.

14 ANN HARRIS: I'm open for him to have that information, because,  
15 basically, as an attorney, he's an officer of the court, and he has a responsibility  
16 under the ethics statute to make sure that it doesn't go into the public purview if  
17 it's not -- that's not what's needed.

18 ROY ZIMMERMAN: Well, even a more basic approach is going  
19 into any meeting when you don't have all the information. You have surprises,  
20 and you're not going to have a very effective meeting.

21 ANN HARRIS: I don't want surprises.

22 ROY ZIMMERMAN: You're not going to build trust, you know. So,  
23 there may be reasons behind this, but let us go find out why it was that way. It's  
24 good feedback, and we appreciate it.

25 SHAHRAM GHASEMIAN: I think we've run through that question

1 unless there is any other topics that anybody wants to talk about.

2 ROY ZIMMERMAN: The only issue that I would raise is the one  
3 that I raised before on post-ADRs. We are looking, you know, hard, and we think  
4 this is a successful program. Where else can we use it, because we come back  
5 from our ADR sessions and, you know, we don't give up our enforcement  
6 approach lightly, but if we think that we're getting things that are going to  
7 enhance public health and safety, we work that out, and have a very formal  
8 process for doing that. And we're looking at expanding. And, again, I don't know  
9 where all the commissioners stand on it. I know where some do, but I, you know,  
10 we'll appreciate you all here as panelists and spreading the word that that's an  
11 area that we're looking at doing some pilots, so where would you like to see  
12 them? And, if you think that's a bad idea then give us those reasons so we don't  
13 go down the wrong path. But, right now, I've got momentum to go down that path  
14 -- just -- other thoughts?

15 KARL FARRAR: I'd like to ask, just generally, where do you see  
16 the corrective actions going, and how do you view the ones that you've seen on  
17 the ADR agreements, things like, you know, the outreach to the public through  
18 letters, things of that nature, and where do you see them in the future? Just  
19 wondering how you, what your views are on that.

20 CHUCK THEBAUD: Just preview of tomorrow's ADR, Karl.

21 [laughter]

22 BILLIE GARDE: Well, I don't, I'm not the best person to understand  
23 everything that you guys have tucked into your website and where to find it. I  
24 usually ask Sandy. Go find this.

25 CHUCK THEBAUD: Yeah. That's what I do.

1 BILLIE GARDE: But, I don't know, is there anywhere that you're  
2 posting that the corrective actions that are announced have actually been  
3 completed and deemed successful, or does that show up, if at all, in, you know,  
4 regular inspection reports?

5 KARL FARRAR: You know, we do. We close out the ADR  
6 agreements after all the corrective actions have been taken.

7 BILLIE GARDE: I know you do with a letter with the person, but  
8 what about public?

9 KARL FARRAR: We make those letters public --

10 BILLIE GARDE: Where are they?

11 KARL FARRAR: -- for licensees. They usually are on, in ADAMS,  
12 and that's why he probably should link those documents --

13 MALE SPEAKER: Try to package them --

14 KARL FARRAR: -- package them like I said earlier.

15 BILLIE GARDE: All right. Well, that you should do, because  
16 otherwise --

17 KARL FARRAR: Well, we do close them out. Sometimes, you  
18 know, it takes a while for all the corrective actions to be completed. May be a  
19 year, sometimes a little longer, when you're talking about people doing -- taking  
20 third party surveys of --

21 BILLIE GARDE: Yeah.

22 KARL FARRAR: -- and things of that nature, that takes a little bit  
23 longer, but we do close those out after they've, all have been complete, and we  
24 don't close them out if they haven't been completed properly.

25 BILLIE GARDE: Okay. But they're not linked to the action?

1                   KARL FARRAR: No. They put ADAMS as a closeout letter, and  
2 maybe that's something that we probably should --

3                   BILLIE GARDE: Yeah.

4                   KARL FARRAR: -- try to figure out --

5                   BILLIE GARDE: Well I --

6                   KARL FARRAR: -- how to do that.

7                   BILLIE GARDE: -- definitely recommend that so you see that  
8 whole story.

9                   KARL FARRAR: Yeah.

10                  BILLIE GARDE: Because I don't know that people are going to go  
11 digging around to look for it, and so it looks -- I know, does the people get the  
12 closeout letters --

13                  KARL FARRAR: Yes.

14                  BILLIE GARDE: -- but I didn't know if they were posted anywhere.

15                  KARL FARRAR: The individual closeout letters are also posted  
16 because the confirmatory orders for the individual is also made public, so we  
17 close out --

18                  BILLIE GARDE: In the -- in -- on the enforcement page, in the  
19 director of --

20                  MALE SPEAKER: No.

21                  BILLIE GARDE: -- in the enforcement part of ADAMS? Where are  
22 they?

23                  SHAHRAM GHASEMIAN: Let's keep that -- as far as the  
24 individuals -- let's keep the individuals discussion versus companies discussion  
25 separate, because I think we may treat individuals a little bit differently. You're

1 absolutely right that we send them a letter, but that letter isn't necessarily going  
2 to stay on our website to eternity because, you know, it may --

3 NICK HILTON: But, it doesn't.

4 SHAHRAM GHASEMIAN: It doesn't, and we take that off, just  
5 because it's an individual, and it impacts, you know, there's a lot of kind of policy  
6 decisions behind that as far as it's an individual and it impacts their livelihood and  
7 --

8 BILLIE GARDE: Does the enforcement action come off, too?

9 SHAHRAM GHASEMIAN: The enforcement action? Yeah.

10 BILLIE GARDE: For individuals?

11 SHAHRAM GHASEMIAN: For individuals.

12 NICK HILTON: When it expires. When it's, you know --

13 BILLIE GARDE: So, then, it all goes away?

14 SHAHRAM GHASEMIAN: Right.

15 NICK HILTON: Provisions one, three, five years, NOV's about a  
16 year or so.

17 BILLIE GARDE: Well, nobody's going to remember those  
18 anymore.

19 DAVE SOLORIO: Whether it was a public document, Billie, it's  
20 going to still be available in NRC's public document room.

21 NICK HILTON: Yeah.

22 DAVE SOLORIO: It just, it'll be highlighted on our website.

23 BILLIE GARDE: And if they're not connected, you'd have to go  
24 search for it in a --

25 MALE SPEAKER: Yeah.

1 BILLIE GARDE: -- different place.

2 MALE SPEAKER: Right.

3 BILLIE GARDE: So, my comment is that they should be together.

4 NICK HILTON: Should be in a pack.

5 BILLIE GARDE: Easily together.

6 DAVE SOLORIO: I think the reason we were doing that is because  
7 we've had individuals call us and say, "Look, I paid my --"

8 BILLIE GARDE: Dues.

9 DAVE SOLORIO: "-- dues. Can you please get it off your website  
10 so that I can find a job? So, that's kind of why we don't tie it up there in the  
11 website, although if it's publicly available, it's still an ADAMS, so there's, it still  
12 can be found. But that's just for the individual.

13 SHAHRAM GHASEMIAN: Yeah.

14 BILLIE GARDE: I know, but I'm talking about the letter that says  
15 you've served your time, it's done. This is a closed action. Is that also posted?

16 DAVE SOLORIO: Well, see that would be the same problem. You  
17 would be reminding everybody that so-and-so was punished for whatever it was,  
18 and there it is for everyone to see on our enforcement page. But, if it's publicly  
19 available --

20 KARL FARRAR: It is publicly available in ADAMS --

21 DAVE SOLORIO: -- but then it's in ADAMS.

22 KARL FARRAR: -- but it is not posted on the webpage.

23 SHAHRAM GHASEMIAN: Right. Right. So, I just wanted to kind  
24 of keep the discussion of individuals with, you know, with companies, yeah, we  
25 can do as we're discussing, you know, we can link the documents and so on, but

1 with individuals, there's other kind of considerations that may not have us do the  
2 same thing exactly as we do with companies.

3           DAVE SOLORIO: But, I didn't, just to answer more of your  
4 question, I think we do inspection report closeouts, so for the licensee, for  
5 whatever they were supposed to do, that can be found in an inspection report.

6           BILLIE GARDE: That's where I thought it was.

7           SHAHRAM GHASEMIAN: Right.

8           BILLIE GARDE: So, I, they --

9           SHAHRAM GHASEMIAN: And that's where we can link it to the  
10 confirmatory order.

11          BILLIE GARDE: Yes.

12          SHAHRAM GHASEMIAN: Right now --

13          BILLIE GARDE: So --

14          SHAHRAM GHASEMIAN: -- it's basically you got to know where --  
15 what inspection report --

16          BILLIE GARDE: Right, right.

17          SHAHRAM GHASEMIAN: -- it's in, and that's, I agree with you.  
18 That's tough to find.

19          BILLIE GARDE: So, I think, my comment in the corrective action is  
20 to make -- to link those things --

21          SHAHRAM GHASEMIAN: That's it, right.

22          BILLIE GARDE: -- and I'm not saying to skip the considerations  
23 you talked about for persons, and I'm not trying to talk the whole thing through  
24 here, but I don't think that's linked very well.

25          SHAHRAM GHASEMIAN: Okay.

1 BILLIE GARDE: So, you know when it's over, and that people  
2 actually did or companies did what they were supposed to do, and it's a closed  
3 matter. And, I guess, just to reiterate in terms of the closing comments, the thing  
4 we talked about this morning, which is if you're going to do some expansion and  
5 pilots, either you to think -- think a little bit broader than what got us here 10  
6 years ago, which is how do I get out of an OI investigation, with all due respect,  
7 okay, to how can we get full, fair, resolution, even if you don't use those words?  
8 How can we actually come to closure on an issue, which may and likely does  
9 include at least a part an employee allegation, and part a technical issue or  
10 chilling effect, how can we actually come to closure on that so we can move on,  
11 and we're not spending, you know, five years on the same issue with the same  
12 person, just going over and over again? What does closure look like, and how  
13 can we get there?

14 ROY ZIMMERMAN: Agreed. I mean, for me it's very basic. You  
15 got to have been in that position for a couple of years, been with the NRC for a  
16 very long time, but, and then dealing with ADR for a couple of years, didn't have  
17 any experience with ADR until coming in to office of enforcement, and I think the  
18 public is making out with the way we're doing this. Otherwise, we would just go  
19 ahead and issue traditional enforcement. We would just do what we were doing.  
20 If we didn't think we were getting more for public health and safety, we wouldn't  
21 be doing this. We wouldn't be thinking about expanding. It doesn't mean the  
22 Commission's going to go along. We'll have to see where that goes. But, from a  
23 staff standpoint, we think that we're getting more for the public through this  
24 method than -- it's a more enlightened approach than the traditional is.

25 There's still room for the traditional, depending on the cases. You

1 know, if there's a need to send a message through a civil penalty, we're going to  
2 send a message through a civil penalty. So, it's good to have the different tools  
3 at our disposal, but I think the few years that we've been doing ADR, it's met with  
4 not only NRC support but stakeholder support. We really haven't seen, you  
5 know, table-pounding, say, "This is really, you know, not working." This -- most  
6 of what we hear, or, perhaps everything we hear, it's positive. Let's continue to  
7 make it better, but it's a positive program. Other thoughts, other comments on  
8 where we're at?

9 DAVE SOLORIO: Phones – you want to check the phones?

10 NICOLE GLENN: If there are any comments from the bridge?

11 [inaudible].

12 ROY ZIMMERMAN: Okay. We'll close it out?

13 NICOLE GLENN: Yeah.

14 ROY ZIMMERMAN: All right. We'll adjourn. Thank you very  
15 much. Really do appreciate, particularly the folks that traveled long distances  
16 today and engaging the way you did. It was just the way we were hoping it would  
17 be: where you spoke your mind and we clearly benefitted from it. Don't short-  
18 change the comments, though. I mean, from our perspective, you know, we took  
19 a lot of notes, and we'll go through those, but we'll still benefit and look forward to  
20 your written comments. Thanks.

21 MALE SPEAKER: Thank you.

22 MALE SPEAKER: Thank you.

23 ROY ZIMMERMAN: Have a good rest of your week.

24 FEMALE SPEAKER: Thank you very much.

25 MALE SPEAKER: Thank you.

1

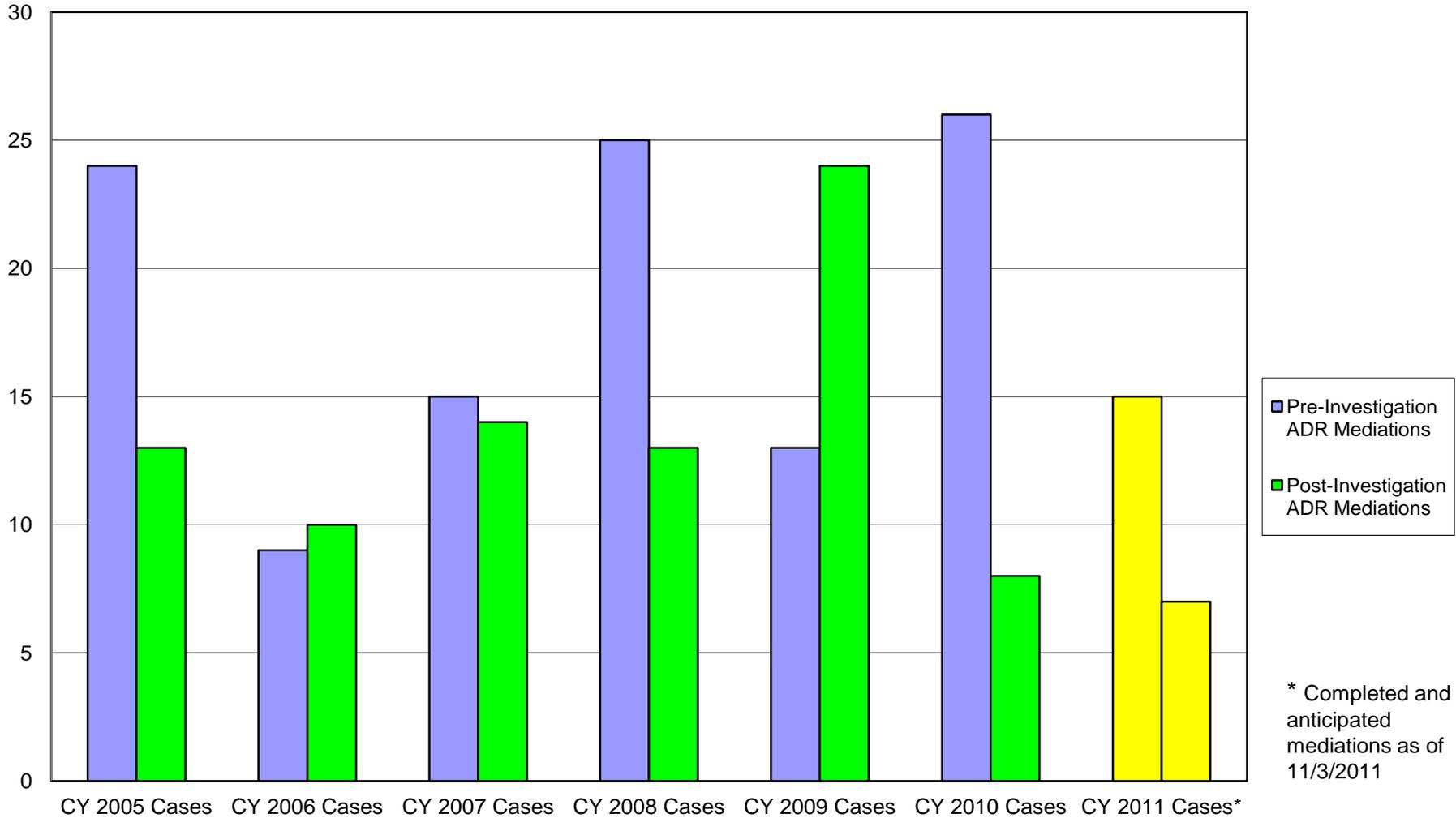
[Whereupon, the proceedings were concluded]



# ADR Program – Major Elements

- Pre-investigation ADR
  - Voluntary
  - Confidential mediation and settlement agreement
  - Between employer and employee
  - HIRD allegations only
  - After NRC review of settlement agreement, no investigation if consistent with applicable NRC regulations (e.g. 10CFR50.7(f))
  - NRC investigation if no settlement or if one party declines ADR
- Post-investigation ADR
  - Voluntary
  - Confidential mediation
  - Between the NRC and a licensee/contractor/individual
  - Wrongdoing and HIRD cases
  - Public confirmatory order reflects the parties' settlement agreement

## Number of Mediations





# Major Recent Public Initiatives

- Revised Pre-investigation ADR brochure
- Revised Post-investigation ADR brochure
- Redesigned ADR webpage
- Published trending data
- Published guidance document re: Examples of Restrictive Covenants
- Revised Pre-investigation Settlement Agreement Close-out Letters
- Updated Form 3 reference to ADR program
- Revised Agreement to Mediate Forms
- Developed a Resource Handbook for Mediators
- Increased outreach activities
- Infused greater oversight