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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
- - -  
BRIEFING BY NARUC ON UTILITY DEREGULATION  
- - -  
PUBLIC MEETING

Nuclear Regulatory Commission  
One White Flint North  
Rockville, Maryland  
Wednesday, February 28, 1996

The Commission met in open session, pursuant to notice, at 9:30 a.m., Shirley A. Jackson, Chairman, presiding.

COMMISSIONERS PRESENT:

SHIRLEY A. JACKSON, Chairman of the Commission  
KENNETH C. ROGERS, Commissioner  
GRETA J. DICUS, Commissioner

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STAFF PRESENT:

JOHN C. HOYLE, Secretary of the Commission  
MARTIN MALSCH, Deputy General Counsel

PRESENTERS:

CHERYL L. PARRINO, NARUC President and  
Chairman, Wisconsin Public Service Commission  
ROBERT W. GEE, Chair, NARUC Committee on Electricity  
and Commissioner, Texas Public Utility Commission  
EMMITT J. GEORGE, JR., Chair, NARUC Subcommittee on  
Nuclear Issues - Waste Disposal, and Commissioner,  
Iowa Utilities Board  
DUNCAN E. KINCHELOE, Vice Chair, NARUC Committee on  
Electricity and Commissioner, Missouri Public  
Service Commission  
SUSAN F. CLARK, Vice Chair, NARUC Subcommittee on  
Environment - Efficiency and Commissioner,  
Missouri Public Service Commission  
WARREN D. ARTHUR, IV, Member, NARUC Committee on  
Electricity and President, South Carolina Public  
Service Commission  
DAVID ZIEGNER, Member, NARUC Committee on Electricity  
and Commissioner, Indiana Public Utilities  
Commission  
PAUL RODGERS, NARUC Administrative Director and General  
Counsel

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P R O C E E D I N G S

CHAIRMAN JACKSON: Good morning, ladies and gentlemen. I would like to welcome Chairman Cheryl Parrino, President of the National Association of Regulatory Utility Commissioners; Commissioner Robert Gee, whom I have met before, Chair of the NARUC Committee on Electricity; Commissioner Emmitt George, Chair of the NARUC Subcommittee on Nuclear Issues and Waste Disposal; as well as all of the other representatives of NARUC at the table and present today.

The topic of today's Commission briefing, Electric Utility Economic Deregulation, is important to the Commission because of its implications for maintaining high safety standards for operating nuclear power plants as well as for the assurance of decommissioning funding. That is a big issue with me.

During the last public meeting of the Commission, on December 14, 1995, when the Commission heard from representatives of FERC, NARUC, the industry and the financial community, the message to the Commission was to be careful not to act too quickly because of uncertainty about restructuring and deregulation. Nonetheless change is proceeding apace, and the Commission must understand the ongoing activities, how they are affecting nuclear utilities that we regulate and the NRC's regulatory program and what

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is necessary to ensure that NRC regulations remain effective while not being unduly burdensome. Communications with other regulators such as NARUC is vital in assuring that effectiveness.

One of the more complex issues is the direction in which states themselves are headed with respect to economic deregulation of electric utilities and retail wheeling. I understand that today's briefing will provide information on this direction. I don't believe there are any slides.

Do any of my fellow commissioners have any opening comments?

COMMISSIONER ROGERS: It's a great pleasure to see you all here. So often my encounters with NARUC are at the meetings around the country. It is really a great pleasure to be able to welcome you to NRC and to have you all together so closely to us here. I believe this is the first time this has happened quite this way, and I hope that it won't be the last.

CHAIRMAN JACKSON: Commissioner Dicus.

COMMISSIONER DICUS: No.

CHAIRMAN JACKSON: You may proceed, Ms. Parrino.

MS. PARRINO: Thank you very much. Chairman Jackson, Commissioners Rogers and Dicus, thank you very much for this very kind invitation. I agree with the Chairman's comments that in these changing times it is critical that we

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maintain a dialogue, and I hope at the conclusion of our discussion today you will walk away with a very good sense of what the states are doing with regard to electric industry restructuring and that you will be assured that we take the nuclear implications of that restructuring very seriously, and that we are, as we look at options in each of our states, thinking about how we ensure the protection of the collection of decommissioning money so that we are sure that those issues will be taken care of whatever the future holds, as well as the safety issues.

I hope we can share with you some of the information about how we look at issues, how we are dealing with decommissioning, and some of the other items so that you can walk away feeling assured that the states are paying attention to that.

Thank you very much.

MR. GEE: Chairman Jackson and Commissioners Rogers and Dicus, I want to echo the sentiments of President Parrino. Because of the onset of changes in the industry to reflect differences in management and regulatory philosophy to allow for the introduction of more competition, obviously one of the concerns we have as we go about our process in introducing competition is the impact it will have on the nuclear sector of our existing generation. Obviously with that it becomes a concern of all of us with respect to the

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safety implications, which is your job.

I am hopeful today that after we have our dialogue what we will engage in is a beginning of a process between us at the state level and between you at the federal level to achieve a better understanding and an institutionalization of communication between all of us so that you can better understand our role as we attempt to restructure the market, what type of mechanisms we are putting in place to ensure the continued financial integrity of our utilities, to ensure the continued collection of decommissioning costs, and also for us to better understand what concerns you may have with respect to your oversight responsibilities to ensure the continued safety and operation of these plants. I am hopeful that we can gain as much by listening to you as you can gain from us.

MS. PARRINO: The items that you have listed as far as topics, our agendas are very similar. The only item that we would probably add to that is a discussion of the status of spent fuel, which is an issue of great concern to the states.

CHAIRMAN JACKSON: It's of great concern to us.

MS. PARRINO: Do you want us just to proceed?

CHAIRMAN JACKSON: Yes, please.

MS. PARRINO: Maybe to start off with decommissioning and give you a general overview. Currently

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I don't have the statistics on whether every but certainly the majority of commissions are currently collecting the costs of decommissioning through rates the customers are paying today. States deal with those funds a little bit differently.

The state of Wisconsin currently requires the utility to use an external fund. We did that sometime ago. We wanted to be assured that the company was not off spending the money on diversification or other activities

but making sure that the integrity of that fund would be in place at the time we needed to decommission the plant.

So commissions are currently recovering the costs in preparation for the point in time where we will need to decommission.

There are probably two different approaches that are being looked at in the context of industry restructuring to ensure that decommissioning will be viable and that the dollars will still be there and that there are mechanisms to continue to collect the money. There are variations on those two extremes.

One approach is to keep nuclear facilities as regulated plant and deal with it as a regulated facility and continue to collect that money or assurance that participants have to take that generation source out of whatever pool of power. So again keeping the nuclear plant

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under regulation, not putting it into the competitive sector.

The second option would be to spin off nuclear facilities just like all other facilities, but you would assure again the ability to decommission through what we call a wires charge. The view is that the distribution side of the facility would continue to be a regulated monopoly. For anyone to come in and do business or sell power in the state, they would have to pay a wire charge. A component of that charge would include the decommissioning costs that are being recovered currently.

Those are the two avenues that are being debated and variations on those two alternatives. A great deal of attention is being paid at the states to assure that we can continue to recover those funds.

CHAIRMAN JACKSON: Are you aware of any state initiatives that would not track down one path or the other as far as you know today?

MS. PARRINO: I am not aware of any. There may be some minor permutations on those two methods, but I am not aware of a state that is not. We are all dealing with the issue of how do you collect the money and ensure the integrity of the dollars.

MR. GEE: One thing I would like to embellish upon what President Parrino said is that we are at a very

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preliminary stage in introducing retail competition. Right now there are only a few states that have made decisions on how they want to restructure their markets, but even then, with the probable exception of California, which is attempting to restructure its retail markets in a much more majestic way, most of the changes we are seeing are being implemented very slowly and it's incremental and the competition is being introduced quite slowly. We don't anticipate that this is going to be a flash cut event where suddenly, like the Oklahoma land rush, everybody suddenly runs out and all generation is simply cast out into the open market.

Many states right now, at least among those members of our commissions that are active in NARUC that I've talked to, have led me to conclude that many of them are still in an investigative mode trying to determine how best to introduce competition and have not reached the milestone of actually making it happen.

I think it is fair to say that the two methods that President Parrino just described are very actively under consideration and that no decisions have been made just yet over which would be a superior path.

COMMISSIONER ROGERS: I wonder if I could ask a question on the decommissioning funds themselves. Do you receive status reports on those funds once they have been

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started and are being collected, on what the magnitude of the fund is, and do you impose any restrictions on investments that those funds can be placed in?

MS. PARRINO: Maybe I'll start and then turn it over because we all may have a little bit different approach. We do receive information about the status of the fund, how much money is it making, how much interest are we bringing in, at least annually. We have set up the scope of the investment portfolio. We started up with a very strict approach initially, requiring the utilities to invest in what I understand in the tax code was explained as black lung accounts or equities. As the tax code has changed we have loosened up those requirements to some extent, but again, being more cautious and recognizing that by being

more cautious you are not earning as much interest but you are also not risking the money.

MR. GEE: In our state we also receive reports. We have an external trust requirement in our regulations as well and we receive periodic reports of the status of that trust. We also are continuing to impose black lung restrictions on investments. I believe there is a proposal that is pending before our commission whether to liberalize the investment requirements, but to my knowledge, I think we still impose the black lung limitations.

MR. GEORGE: I might add, our processes are

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similar. The selection of the firm that handles the trust, the contract entered by the company and that firm and the terms are reviewed in a contested proceeding. At that proceeding not only is the company involved but the consumer advocate and anyone else that can demonstrate an interest. I think most states review on a regular basis.

One of the requirements that is included in our contracts in Iowa is that funds can't be dispersed for any purpose without an order of the commission. They are fairly closely guarded.

MR. KINCHELOE: To continue the sense of unanimity on that issue, I do want to assure you that certainly in Missouri and my impression is throughout the nation commissions give this direct attention. It is not something that is resolved or monitored only in the bowels of the staff activities; it is something we review. When the black lung restrictions were amended the commission gave deliberation to those new opportunities, but the considerations of conservative and cautious investment were paramount in Missouri.

MS. CLARK: In Florida we regularly review it. It would be part of any rate case. In addition to a regular review, my recollection is we have liberalized the investments beyond, as it is termed, black lung type restrictions because we felt that there was adequate safety

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in those investments and a greater opportunity to earn, and that is a positive benefit to the ratepayers.

MR. ARTHUR: We are more like Florida. These are issues that are involved in rate cases and we don't have a separate fund, but we are concerned about, are interested in it. There are accounts that are set up for this purpose. It is good for us to come here and look at this and examine it and renew our commitment to this. So we thank you for this opportunity.

MR. GEORGE: If I might make one additional comment. In terms of the amount of money that is in the fund and the amount that is collected on a regular basis, it is determined based on a study that usually is the basis of the contested case proceeding that we enter into. One of the backdrops that is used to determine what should be in that fund for a particular facility are the general studies that are done by the Department of Energy on a fairly regular basis. I would indicate to you that the Department of Energy study is probably less conservative than the decisions that we have made on a regular basis.

CHAIRMAN JACKSON: Were you each prepared to make a statement or are you prepared to be questioned?

MS. PARRINO: We're prepared to be questioned.

CHAIRMAN JACKSON: Let me then begin with a few questions. My fellow commissioners, I'm sure, have lots.

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Accelerated depreciation accounts have been discussed. I think Mr. Gee is familiar with some of this. It has been discussed as a way of financially strengthening utilities as well as addressing to a certain extent the question of stranded investments. If in fact utilities were allowed to write down the rate base to market value over some shorter period of time than envisioned today, to what extent would that increase or decrease your confidence that decommissioning funds would be adequately covered in a changing market environment?

MS. PARRINO: I will lead off again and then the others can join in.

I guess I look at them as two separate issues. The speed with which you recover the depreciation of the plant can be separated from how you collect decommissioning dollars. Again, if you want to have the dollars recovered at the point the plant is depreciated, what we would do is open an investigation, look at how many dollars we had already collected, how many years we had remaining to

collect, the total amount you needed, and we may consider accelerating that. It doesn't necessarily have to be totally tied, but it could be, if that is what the commission chose to do.

MR. GEORGE: One of the problems that comes up for us as economic regulators in terms of accelerating the

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collection of funds is the inter-generational issue in terms of having those responsible for the costs pay or contribute to the fund. We worry about a rate shock, and that is an issue that is fairly significant politically within our jurisdictions. So when we approach this issue, we approach it with those kinds of concerns. Not so much to ignore decommissioning or safety issues, but balancing those issues.

MR. GEE: I would say that where there have been instances of accelerated depreciation of nuclear plant, one of its principal purposes obviously would be to minimize the utility's financial exposure by recouping those monies now and slowing down depreciation of other assets so that the overall effect of that would be to minimize its current impact on rates.

In the end, it seems what that is intended to do is to posture the utility perhaps to be more competitive with its nuclear generation, and as a consequence, I don't see that there would necessarily be a direct impact on the rate of recovery of decommissioning costs if you assume that it would not have any significant impact on the continued useful life of the nuclear plant. In other words, while you may recover your costs of investment much more quickly, if the useful life is still going to remain static, then you can continue to collect decommissioning costs over a period

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of time that would reflect useful life.

CHAIRMAN JACKSON: I think the argument goes that by allowing this accelerated recovery you would strengthen the balance sheet and therefore at least from an economic viability perspective put the plants in a position to more likely have a useful life that at least corresponds to the time of an NRC license. In that sense the facility would be in the position you are talking about, in which case the decommissioning funds, if not recovered as part of some accelerated payment, the plant would more likely from an economic perspective continue to operate.

MR. GEE: Yes.

CHAIRMAN JACKSON: Therefore one could continue to collect the decommissioning funds under some kind of formula, perhaps one of the two options that you mentioned, Ms. Parrino.

You mentioned rate shock, Mr. George. To what extent are your various deliberations influenced by the financial community's responses to your various state moves? On the one hand there is the rate shock issue. On the other side of it -- some people view it as being the other side of it -- there is the question of what you do to the financial viability of the utilities on that side.

MS. CLARK: I can tell you that that is of ongoing concern to us. Certainly a more financially viable company

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can get better rates in terms of borrowing money from their sale of stock. What we try to do is look at their long-term financial health, but we balance that on, is this a prudent expense. The various things that go into rate-making.

I guess the best thing I think we can do is sort of provide well reasoned, stable regulation over a long term so that the financial community has some competence that decisions made are based on the facts and circumstances and a professional review of the evidence before them.

CHAIRMAN JACKSON: One idea that has come under discussion is to address at the federal level the question of stranded costs, including possibly decommissioning costs, rather than having a 50 state solution. In this case the recognition of decommissioning costs relative to NRC requirements might be easier to handle, some might argue, as part of comprehensive federal legislation. I would appreciate the view of any and all of you on that idea.

MR. GEE: That is a very good question. We have spent a great deal of time this week within NARUC discussing what stance our organization ought to take on proposed legislation. I think it's fair to say that many of us feel that while we don't necessarily see any immediate need for a federal legislative response, I think ultimately there are a number of questions that ought to be looked at by Congress

and ultimately have them play a role as the industry is

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restructuring incrementally state by state because of nonuniform impacts of retail market restructuring that could occur state by state and sort of the patchwork phenomenon could ultimately be upon us over time.

One of the questions obviously is how to treat potential uneconomic investments in nuclear capacity and also ensuring the continued collection of decommissioning costs. I think the jury is still out over whether there is the need for a federal legislative response at this time to ensure the continuity of those practices, because it's unclear just exactly how many states are going to be making moves that would put nuclear generation and subject them to market pressure in an open, competitive market.

I can see that ultimately once that process begins that perhaps it may be worthwhile to take a second look from a federal perspective.

CHAIRMAN JACKSON: I guess there is always the lead/lag phenomenon. You made the point, particularly when you were here earlier, to not have perhaps preemptive, if I might use that word, federal action. On the other hand, as you recall from that meeting, Commissioner Rogers made the point, if I can use your phraseology, that stranded assets, particularly relative to our concerns, don't become stranded responsibilities.

An issue for me is on the one hand not wanting to

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preempt the prerogatives of the states, but when the train has left the station, to then say that in those areas where there may be concerns, that then perhaps there should be some federal action, is one that in some sense one might argue could lead to a messier process.

MS. PARRINO: If I could jump in, I need to make it clear. As Bob has said, NARUC has not taken a position as of this point. So I am speaking with my Wisconsin hat, not with my NARUC hat. I think it's important to allow the states to have flexibility. A number of reasons. Rates are at different levels in different states. States have different nuclear situations.

In our state in particular we feel we are in pretty good shape and we are actually thinking we may not have stranded costs; we may have assets that are valued less on the rate base than they would be in the marketplace. We are sensitive to balancing rate impact, yet the impact on the financial community if we were to say we aren't going to allow you to recover any of these costs.

I think another difference that needs to be factored in is the role that each state played in those decisions. Again, Wisconsin was very much involved and very much a partner in deciding whether or not the nuclear facilities were built. We had two plants on the drawing board and the Commission said there is no longer a need for

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these two plants.

So I feel very much committed given the role that the Commission played in the partnership that we have a responsibility to recover those stranded costs. Now our rates are very low. So we can afford to do that.

I think it's important for the states to balance the differences and the issues that they are dealing with, and if the federal government feels that states are not acting appropriately or responsibly, maybe then the federal government should take some action. Short of that, I would say you need to leave it to the states. They know their local climate; they know the state economics; they know their customers.

MR. GEORGE: Chairman Jackson, I had hoped that Commissioner Fessler from California might be here today. Most of us have not gotten far enough along, but we have to address the issues associated with nuclear in the transition. California has gone forward and has, I think, handled the issue fairly responsibly. I can't describe the process. Maybe there is someone else at the table who can. But as I understand it, they have established a manner of collecting the costs associated with nuclear from the wires, as has been considered generally, or at least at the federal level by FERC.

CHAIRMAN JACKSON: Commissioner Rogers.

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COMMISSIONER ROGERS: On this subject, or shall we move to another subject?

CHAIRMAN JACKSON: Whatever you choose.

COMMISSIONER ROGERS: I've had the benefit of listening to the discussions at NARUC meetings on the nuclear waste issues, and I think that is something that I would like to give you an opportunity to say what your thoughts are. This weekend at the Electricity Subcommittee meeting there was, I think, a rather subdued atmosphere, which is perhaps the best way to put it, on the high level waste issue and the questions that related to what to do about the spent fuel at plants and what the costs might be to the utilities from keeping that fuel on site and postponing decommissioning until some later date. I think those numbers are quite large that came out of the report, but also rather uncertain, a very wide range, a factor of ten between the smallest and the largest numbers in the report.

I wonder what the commissions are thinking about with respect to the complications arising from the disposal of the low level wastes that comes about from the decommissioning of the plants. It seemed to me that that is a very big issue. Well, there are very big uncertainties in that issue. It might be big or it might not be big, but at the moment if one simply extrapolates the disposal costs

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currently in effect forward on the basis of their growth in the past, these costs could be enormous. Of course we don't know that that will be the case.

I would just invite your comments with respect to the questions of decommissioning costs of the plants as they relate to the problems of disposal of low level waste and also the problems of getting spent fuel off site. I know it's a very big issue nationally and certainly under intense discussion right now, but I wonder whether any of you folks would like to give us some of your thoughts on those matters.

MS. CLARK: I guess I would comment that I have during my tenure more focused my efforts on high level and then about a year ago began thinking more about the low level issue too because of the compact involving the Southeastern states in the continuation of the Barnwell site as opposed to opening a new site in North Carolina, and at that point talked to my counterparts in state government who have responsibility for safety with respect to low level waste, and as I understand it, they do it somewhat under your auspices.

So we began talking and I am now educating myself and inquiring of our utilities in terms of what they are planning with respect to low level waste: Are they endeavoring to minimize how much waste will be produced and

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specifically what are they doing in terms of advancing the assurance of having a site for low level disposal?

I feel somewhat that in Florida we are in a better position than some states since we do have a compact and we do have a site. I understand there are some difficulties within that compact, especially with perhaps transitioning from the Barnwell site to a site in North Carolina.

I am beginning to educate myself and realize that that is a concern and a piece of the decommissioning puzzle too.

MR. ARTHUR: She really doesn't have a site. We do.

[Laughter.]

MR. ARTHUR: They are all looking to bring it to us. It is my understanding that South Carolina is basically first come first served; if you've got the money, we'll take it.

There is a limit. The design capacity of Barnwell is limited, and the real question that will come when we reach capacity is whether or not we are going to expand the capacity of the site. That is going to be a real difficult political question for the general assembly to answer. I would imagine that when decommissioning starts, if there is a lot that has to come or people want to bring, then it will fill up fast.

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I understand that North Carolina has really got serious problems. I talked to somebody yesterday and they thought it would never open in North Carolina. Hopefully that is not the case.

We want to do our part, but the real issue will be the political situation at the time when the site reaches its capacity.

MS. PARRINO: We are very much concerned about

this issue as well, both low level and high level. We do not have a place for low level to go.

One thing that ties into the safety issue that you mentioned earlier and is a concern of ours if you are having sites all across the country at every nuclear facility is the number of young individuals who are choosing nuclear engineering, the safety technicians. They view it as not a career growth industry, and the numbers at least at the University of Wisconsin going into those fields is decreasing. A safety concern I have if we are storing low level and high level at a number of facilities around the country is, are we going to have the expertise ten years from now because individuals are not going into those fields? I think that is another issue that ties into the safety concerns that you raised.

CHAIRMAN JACKSON: Let me backtrack a minute. Give me some of your thoughts relative to FERC's actions in

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the wholesale arena, and to what extent do you feel any of the methodology to address deregulation that FERC is putting forward is applicable at the state level, or at least how does it interact with your various regulatory arenas?

MR. GEE: I think many states, if not all, are looking to see how FERC is going to respond on questions such as the method they use for stranded cost recovery, for wholesale stranded cost. The method that they prescribe is this net, non-mitigable level of cost that can be recouped. How they spread those costs out, what percentage they arrive at is going to be a very instructive decision to those of us at the state level who are looking at the same questions with respect to potential retail stranded costs.

Also, one of the concerns, none that has an immediate safety impact, is the jurisdictional question over how broadly FERC is going to be construing its jurisdiction over the wires and whether it's transmission jurisdiction does extend into portions of what we would consider to be the state's jurisdiction over distribution. That is going to be a key question that will significantly influence the pace and the rigor of competitive reforms in the industry and also influence in certain respects the discretion and the flexibility of states to undertake reforms in their own respective jurisdictions, because presumably if their jurisdiction over a grid is smaller, then obviously it would

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limit opportunities to potentially impose commonly charged fees such as wires charges or stranded benefits charges. I guess in that sense it may have some implications with respect to how we restructure our own markets but only indirectly impact anything with respect to nuclear safety.

CHAIRMAN JACKSON: Except to the extent of the two approaches that Ms. Parrino outlined and the one that in fact did involve what you might call a wires charge, and therefore it would impact the ability of the state commissions to load such a charge relative to decommissioning onto that.

MR. GEE: Yes. In that sense it would limit the options and probably prevent the state from moving its nuclear generation to a more competitive market and induce it to keep it under a regulated scheme.

CHAIRMAN JACKSON: Any of the others?

MR. KINCHELOE: I might just mention that, having attended hearings in the House Commerce subcommittee yesterday, the issue of the stranded costs and the issue of jurisdiction between transmission and distribution were both items of interest. I think this is going to be a matter very consciously deliberated in Congress.

I believe the states would welcome support in assuring that there is a mechanism by which every retail transaction could be reached by states in assuring that any

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charges on distribution wires would reach all those transactions.

Apart from the question of transmission jurisdiction, and so forth, which might be more contentious, I would think that perhaps from your perspective the potential of the capacity availability of both state jurisdictions and whatever jurisdiction the FERC might have or might develop coming out of new legislation that is possible there could be advantages in making sure that both of us could reach as many transactions as possible. When I say both of us, I mean the FERC in terms of whatever stranded cost mechanisms it might develop and states.

CHAIRMAN JACKSON: What do you think of some of



the impacts, negative or positive, from adjacent states?  
How is that going to affect the process where there might be significantly differing degrees or types or modalities of economic regulation?

MR. GEE: I can give you a speech on that.

CHAIRMAN JACKSON: Good. Why don't you give me a one minute or two minute speech.

MR. GEE: I think that is the most burning question that confronts us when we are trying to sort out what is the role of the states versus the federal government. Obviously when you have one state that makes a decision to open its market, restructure its retail markets,

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it inevitably would or could have an impact on not only the states that are contiguous to it, but even beyond, because many states, as we know, are served by a common utility system or common grid or common power pool.

What I think will eventually happen is that there will ultimately have to be some new regulatory structure at the regional level that will be superimposed upon individual states over the long term. When that occurs is subject to debate, but ultimately it seems unlikely that you could have one state simply open its markets and not have other states somehow not be affected. In fact we are hearing just the opposite. Most of our states that are active in NARUC are telling each other that they began their investigation of retail competition because of what the other state just did. So it is having something on the order of a domino effect.

MR. ZIEGNER: It is beginning to be couched, at least from what we've heard from Congress, in terms of economic development. A low cost state that opens up its market, as Chairman Gee said, is going to be able to attract a business. That's a great concern. It is difficult on the one hand for states to argue we want the ability to determine our own destinies and then have that question on a national level.

MS. PARRINO: It's a very serious issue in economic development. The state of Wisconsin has been

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fairly successful in getting businesses to move out of the state of Illinois and into the state of Wisconsin. My colleague Dan Miller isn't very happy about that. Neither is the governor of Illinois. But one of our draws is our low electric rates. If that becomes a larger market, then the state has got to look for other draws, an economic development incentive or whatever to bring business to the state.

CHAIRMAN JACKSON: Some of the utilities themselves have been parts of power pools and are forming what one could call their own regional structures. One could argue that if it works, perhaps the market should drive it, and that that would be a way to flatten the relative advantage that one state has over the other. Do you have any comments about that?

MS. PARRINO: I would agree. I think that is what you will see as an equalization of some sort. My hope is that all prices are going to come down, not that Wisconsin's customers are going to pay the average of all the rates around our region. That is a question left to be answered.

CHAIRMAN JACKSON: I'm saying when the utilities themselves form these regional pools, then the thought would be to remove them from direct economic regulation.

MS. PARRINO: Yes.

CHAIRMAN JACKSON: Therefore the rates that

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different states charge would not be the governing factor but in fact it would be a market driven process.

MS. PARRINO: Right, and what's the differential between that market driven rate and what customers pay today.

MR. GEE: If you happen to live in a state or do business in a state that has high rates, they come down by virtue of averaging it across the grid. Then you're fine. But if you are in a state that has relatively low cost power now, say, for instance, through provision of hydroelectric power, then you could see a very pronounced impact when those prices ultimately reflect what the market would bear. We know that is a common concern for those states that continue to enjoy that advantage, and they are probably going to be a lot less willing to enter into a competitive market, but I don't know whether they have much of a choice in the long run.

COMMISSIONER ROGERS: I have a little question

here that relates to this from a more technical point of view rather than an economic point of view.

One of the issues which has been a bit of a concern to me, although I don't pretend to understand it but have been thinking a little bit about it, is that as you open these grids up to competition and there is some kind of a free market going on here, what about the technical

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capabilities of the grid to deliver reliable electricity to any particular customer in the grid?

The current flows on these grids are extremely complicated. The management of grids is a very, very sophisticated business. It's my understanding that some very strange things can happen with respect to various parts of the grid when new customers suddenly come on that perhaps were not anticipated in the design of the grid.

The reason I am interested in this is the possibility that it might have an effect on the availability of offsite power to nuclear power plants. It does seem to me that is an issue that maybe has been dealt with but I think at some point we need to understand it from our point of view. All the discussion now is on economics. It's all dollars, costs, rates, and so on and so forth. That's fine.

But there is another issue, and that is the provision of reliable power to the customer. My concern is when that customer is a nuclear power plant that relies upon external electrical power for its safe operation and whether the reliability of that somehow could be impacted by a changing environment of customer loads and demands on the local grid.

I wonder to what extent NARUC is thinking about this, because it does relate to this interface between states and different utilities, and it does seem to me there

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is at least a safety question that has to be answered.

Whether it's a problem or not, I'm not really sure, but I know that this is a difficult technical question. At one of the technical meetings that I attended I heard a discussion by a professor, I think at the University of Illinois, who is doing some studies on grid behavior under different load assumptions and changes and found that there were some rather troublesome behaviors in local spots on the grid. You have circulating currents in loops, and sometimes these things can in fact get much larger than what is assumed to be the current coming in and going out in some portion of the grid.

I don't intend to get into a technical discussion on this today, but it does seem to me that this is an area that I'm sure has had attention in the past, grid reliability, and what not. When you start to change the customer base to possibly a rapidly changing situation, maybe from month to month or day to day or hour to hour, if there is really a free market approach to who you are going to buy your electricity from, there is a possible safety problem with respect to reliability of supply to nuclear power plants.

MR. KINCHELOE: If I might respond briefly to that, first of all, to give you assurance that all the talk is not just about the economics of it. Certainly we have

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been through an exercise and are currently involved in an exercise in NARUC about principles by which any restructuring and transition in the industry ought to take place. In doing that we have looked at the principles that have been developed in various states that are generally furthest along in those developments. I think consistently the states that are looking at this are looking at reliability as a paramount consideration. I know the association is as well.

Beyond that, and perhaps more importantly, I think the industry certainly has its eye on this. First of all, even from an economic point of view I think there is a recognition that nothing could set the whole process back and give the industry a black eye and give the idea of any transition or restructuring a death knell than to have substantial or significant reliability problems that arose out of it. I think the public simply would not stand for it. I think there is a tremendous sensitivity to that.

Finally, I would just say the North American Electric Reliability Council, NAERC, is certainly giving this issue very focussed attention in the context of the industry changes going on now from the point of looking at its internal structure and who is involved. New industry

participants are being included on the NAERC board of trustees and the operating and engineering committees. I

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think there is a sensitivity that more players need to be brought to bear and have their attention focused on the reliability issue, and that is happening. The security processes are being reviewed.

I think there are potential advantages as well as risks to be managed on the reliability issue, but the fact that markets are going to be larger means that security processes, I think, also will be more widely interconnected, and there are positive opportunities there. The issue is being closely looked at though, I think, and it certainly needs to be. As you point out, it needs to be a paramount consideration.

MR. GEORGE: Commissioner Rogers, being acquainted with my fellow colleagues who are scientists and engineers, as I look up and down the table today I don't think there is much of a chance that we are going to get into a technical discussion.

[Laughter.]

MR. GEORGE: I would be interested in knowing whether it's the rule or the exception that nuclear facilities rely on outside power.

COMMISSIONER ROGERS: Every nuclear power plant requires offsite power to get started and relies on it. However, it also has standby power in case that fails. So should the external power fail, the plant has to have a

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capability of a safe shutdown in the event that all offsite power is lost, and we have regulations that require that. Nevertheless, one would not like to see inadvertent challenges to that system unnecessarily.

The design is a defense in depth approach but with the idea that normally there will be offsite power available. While all these backup systems are there and checked from time to time to make sure they are operable, there is always the remote possibility that somehow they are not operable in the event that offsite power is lost. We do everything we can to see that that does not take place, but nevertheless one would not like to see offsite power become unreliable through complications in the loading of the grid.

MR. ARTHUR: We in South Carolina are somewhat concerned. We're in a low cost area too. One of our companies has already made a deal with somebody outside the region. Of course we are going to watch very closely the stability of our supply. I think one of our primary roles as state regulators is to try to protect the integrity of the system in the state. That would certainly include having that backup supply available for nuclear.

MS. CLARK: I would just say in Florida we already sort of deal with that issue in our broker system. We have a system where at least with respect to those people who participate in the broker system the next unit dispatched is

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the one that is the next least cost, and we require our utilities to share their power. They split the savings in effect, so they have an incentive to participate.

There is a responsibility on the group operating the broker system, which I understand FP&L does it but under the auspices of -- I can't remember what the name of the group or association is of the utilities, but they are responsible for ensuring the reliability of the grid and making sure that the dispatch does not adversely affect the reliability.

I can say that the open access NOPR has called into question the broker system in that it appears that other entities who are not part of the broker system now will be able to upset that dispatch to the disadvantage of the people who are gaining the advantage now.

It is an issue with us in terms of reliability, but I would expect it can be handled.

MR. GEE: Also, I think the question of reliability is significant in terms of what would be its overall impact by virtue of market pressures and economic behavior that may be different from today, but I think it's important to stress that as this debate moves forward the goal among all is that you keep the reliability concerns and the reliability imperatives paramount and coexisting with whatever you introduce in terms of new market mechanisms and

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market clearing mechanisms so that you don't have economic decisions dictating or influencing what is necessary from a

reliability standpoint.

I think over the long term what we are looking at is ensuring that from a reliability standpoint there be a sufficient planning process to envision what new needs for new transmission capacity are necessary to accommodate power flows across the grid. If there is additional siting of new generation, where those ought to be sited from a reliability standpoint, but at the same time having a new market mechanism that coexists side by side where trades can be made on an open, real time basis and power can be sold on a spot basis, but not have that be driving the decisions that you have to make for reliability purposes.

So I guess I would see the arrangement as one being superimposed upon the other but not allowing the market mechanism to influence or to impair the reliability decisions. Those can exist side by side.

COMMISSIONER ROGERS: They have to be interlocked.

MR. GEE: They have to be integrated. I agree.

But one will not impair the other. I guess that's the goal.

CHAIRMAN JACKSON: Are there discussions within NARUC about this on a broader basis? When I asked the question about the impact of neighboring states on a given state's situation, I got individual state answers relating

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to economic development, et cetera. The question becomes one, since this is the national group, is this group developing a position relative to some of these issues, particularly from the reliability issue, but more broadly? If you are talking true grid management -- you may have a different point of view, Mr. Gee. My understanding is that Texas is its own grid.

MR. GEE: Right. That among other features of our state that are independent, yes.

[Laughter.]

CHAIRMAN JACKSON: And Texas is its own country.

[Laughter.]

MR. GEE: Some believe that, yes.

CHAIRMAN JACKSON: But that is not in general the case, and therefore how this issue gets addressed is not specifically a one state issue.

MR. GEE: It's not.

CHAIRMAN JACKSON: I think it is important that this group, since you all come together, perhaps develop a perspective on that.

MR. GEE: One new mechanism that has been proposed and actually adopted is this notion of what we call an independent system operator, which is sort of the mechanism that manages the power flows and keeps an eye on reliability. That function is divorced from the power

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dispatch function. That has economic impacts to which plants get put on line from an economic standpoint, but obviously there has to be integration between the two. The whole goal of the independent system operator is to remove the direct control from an economic standpoint from those that own the transmission so that they don't use it to their economic advantage.

I guess the short answer is, yes, this is something that is under consideration and is actively being looked at by our member commissions as a potential means of moving to a more competitive market while at the same time continuing the reliability imperatives that are necessary to keep the power flowing.

CHAIRMAN JACKSON: That also means perhaps giving up some state-specific regulatory control.

MR. GEE: Yes. I think under the California scheme, as I understand it, they would have this new entity, what they call an independent system operator, come under FERC jurisdiction.

MS. PARRINO: The difficulty we have there is there are many debates and much dialogue currently in NARUC trying to come up with a policy position, but the Executive Committee of the organization has not acted on anything, so the organization doesn't have a position to put forward. It is actively being debated and all of the permutations and

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issues related to restructuring are being brought up and discussed and debated.

MR. GEORGE: One of the difficulties that we have individually as states is that we are constrained by the policies that are set by our legislatures. At the retail level power is not crossing state lines now and there is not an immediate threat of that occurring because of our

franchise territories. I think that we are not discussing the issues because that really is a policy that we can't make, although we might influence it.

CHAIRMAN JACKSON: The PJM grid does have power flowing across state lines.

MR. GEORGE: At the wholesale level.

CHAIRMAN JACKSON: Right.

MR. ZIEGNER: Chairman Jackson, I was going to dovetail what Chairman Gee said on the ISOs. I think there is a recognition on the utilities' part that reliability is in all of our statutes. It's the second word in our statute, to provide safe and reliable service at reasonable cost. There is a group of investor owned utilities in Indiana that are forming an ISO. Obviously that is not the main driver, reliability, but it's certainly a recognition on their part, I think, that this is of paramount concern. To a certain extent, as Commissioner George points out, a lot of this may be ultimately out of our individual hands,

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but it obviously is of great concern to us.

CHAIRMAN JACKSON: Let me take you back to the NRC for a second. Are you aware of any NRC imposed antitrust conditions which are inconsistent with the various pro-competitive initiatives?

MR. GEE: I think it is safe to say that many of us are not generally aware of the NRC antitrust conditions.

CHAIRMAN JACKSON: Then I shouldn't have brought it up.

[Laughter.]

MR. GEE: It's something that came up in the context of our discussions. Quite frankly, I was not aware it existed until I first heard it discussed last December. I guess that touches on the area that I was getting at where we would like to hear more from you folks to tell us, and I would like to learn more about what the history of those conditions was and what its purpose is intended to fulfil today.

CHAIRMAN JACKSON: He knows that I always put him on the spot. I just want to introduce you to Mr. Bill Russell, who is our director of nuclear reactor regulation. While we are not going to ask him to speak today about it because it's a treatise, I invite you to interact with him.

MR. GEE: I think to the extent that that does have some influence over market structure and ownership that

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would be something that we would be very much interested in learning more about, because obviously we are going through a period right now of utility mergers and many of us are addressing those in our individual states as well where we have a number of utilities that have already merged or in the process of merging. So, yes, I personally would be very interested in knowing what those antitrust provisions carry, and I think all of our members would as well.

MS. PARRINO: We have been doing some thinking about how to continue the dialogue and do a better job of sharing information and helping each other do our jobs better. One suggestion that we came up with is that at the commissioner level there is a subcommittee on nuclear waste. We thought it might be worthwhile to develop a staff level nuclear subcommittee and reach out to the staff at the NRC so that we can begin to share expertise from both sides. If that is something you would be interested in, we would be very interested in that.

COMMISSIONER ROGERS: We have talked about something like that in the past. I think there has always been an interest of both organizations. It's just that somehow we never really brought it off. Maybe this is something that we ought to work at a little harder.

I think it is important that it be at the staff level, for two reasons. One is, of course, the staff knows

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everything. The other is that the staff is around longer than either NRC commissioners or NARUC commissioners in general. The continuity is very important in these things. It would also be, I think, a very informal kind of relationship. We might schedule things, and so on and so forth, but it would be clearly a voluntary, informal connection. Nevertheless, once it starts to work and if it is maintained, it can be very valuable. It is difficult to jump start it when it doesn't exist, and I think that is what we are seeing.

Perhaps one thing that could come out of this meeting today is a kind of mutual commitment to try to get

together and find some way in which we could establish some regular contacts between our staffs to provide a mechanism for a channel for communication that is there on a more or less permanent basis.

MR. GEORGE: It certainly would be valuable from the standpoint of our knowing something about antitrust provisions that are within your regulations.

CHAIRMAN JACKSON: Could you speak into the microphone, please.

MR. GEORGE: It would give us an opportunity to have a bit more knowledge about your processes and regulations, but also it would work the other way as well in terms of what we do in terms of rate-making, which is

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something that would probably not be familiar to your staff.

MS. CLARK: Madam Chairman, I would have this suggestion. I know our staff gets together through conference calls like the electricity committee does. I certainly think that we can ask your staff to participate in those conference calls and perhaps be a member of the staff committee. I don't know what NARUC's rules provide for, but certainly I think the questions and the conversations we are having now can form the basis of areas that they would explore and then bring to us to educate us and also educate you in terms of what we are doing. That would be very helpful.

I have found that those conference calls are very helpful because they take place almost every two weeks. So there is that ongoing contact that provides the continuity you need to make it an effective liaison.

MR. GEE: I think that is an excellent idea and would welcome your staff's participation in that. Commissioner Rogers and I had talked about this ongoing institutional problem of transient commissioners interfacing with one another and the lack of continuity between state commissioners and the NRC over a period of time.

Cheryl Parrino's suggestion to have an express staff subcommittee created to be an NRC liaison would go a long way to institutionalizing an arrangement between state

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commissions and the NRC by having a permanent staff subcommittee whose designated purpose is to act as liaison, and that could be made up of some of our current staff members already who are active together but for the fact that they don't have an express purpose on an ongoing basis. I think that is one of the things that maybe we can achieve today along with continued dialogue between our staff and yours through conference calls or through any other means.

CHAIRMAN JACKSON: During a period of great evolution I think the communication is important, to have it ongoing and to have it be fruitful and useful. I have already introduced you to Mr. Russell. A lot of this falls on his plate. He and I will be talking as part of the follow-up, but I would urge you to introduce yourselves to him before you leave.

Commissioner Dicus, do you have any comments?

COMMISSIONER DICUS: As the new kid on the block I am free of questions, at least on this trip. I appreciate your being here. It has been very, very helpful to me to hear your thoughts and concerns. Thank you.

CHAIRMAN JACKSON: I would like to thank all of you for coming and taking the time to come and brief the Commission today on developments on electric utility deregulation. The session has been very informative and reflects, I think, the healthy and continuing dialogue that

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exists and can be potentiated between the NRC and NARUC. I know that Commissioner Rogers has had a long history of interacting with your group. We will be continuing to gather information about developments in this area in order to improve the effectiveness of our regulatory regime.

As part of the information gathering, I don't know if you know the Commission is currently considering an advance notice of proposed rulemaking on nuclear power reactor decommissioning financial assurance. If this rule is published for publication in the Federal Register for comment, I would encourage NARUC and others to provide the NRC feedback so that we can have a wider information base in considering any proposed rule.

Although there is still uncertainty about the economic environment within which electric utilities will operate, as I pointed out at the beginning, utilities have already embarked themselves on restructuring to position

themselves for the future. Also, as I've said before, during this restructuring NRC's primary focus will continue to be on high safety standards so that they are maintained, that adequate resources for safe operation are available, and that decommissioning funds are adequately funded, and we welcome your continuing input.

Before I close I would like to recognize a former NRC commissioner. Mr. Peter Bradford is here in the

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audience, and I would like to ask him to stand and be greeted.

Thank you. Good to see you.

If there are no further comments or questions --

MS. PARRINO: If I could make a closing remark as well, I would appreciate that.

CHAIRMAN JACKSON: Of course, but I'll still have the last word.

[Laughter.]

MS. PARRINO: As it should be.

I would like to thank you as well for the extension of this hospitality and hope that we can continue the dialogue. Another offer from the states. When you come out to visit or if you are in our state, please feel free to give us a call, and we would be happy to host you at our facilities or we would be happy to join you. If you happen to be out touring one of the nuclear plants in our state, we would be happy to join you.

I would also like to offer the services of NARUC as you begin drafting your notice of proposed rulemaking. If you have specific questions, please feel free to give Paul Rodgers, our executive director, or Chuck Gray a call, and they would be more than happy to provide you and pull from the states whatever information you may need.

CHAIRMAN JACKSON: Okay. The last word. We're

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adjourned.

[Whereupon at 10:48 a.m. the meeting was

adjourned.]