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1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

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4 MEETING WITH THE NATIONAL ASSOCIATION OF

5 REGULATORY UTILITY COMMISSIONERS

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7 PUBLIC MEETING

8 + + + + +

9 MONDAY

10 FEBRUARY 26, 2001

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12 ROCKVILLE, MARYLAND

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14 The Commission met in open session, pursuant to
15 notice, at 2:00 p.m., at the Nuclear Regulatory
16 Commission, One White Flint North, Rockville,
17 Maryland, the Honorable Richard A. Meserve, Chairman
18 of the Commission, presiding.

19
20 COMMISSIONERS PRESENT:

21 RICHARD A. MESERVE, Chairman of the Commission

22 NILS J. DIAZ, Member of the Commission

23 GRETA J. DICUS, Member of the Commission

24 JEFFREY S. MERRIFIELD, Member of the Commission

25

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1 STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

2 ANDREW BATES, Secretary

3 KAREN D. CYR, General Counsel

4
5 NATIONAL ASSOCIATION OF REGULATORY UTILITY
6 COMMISSIONERS

7 WILLIAM M. NUGENT, Commissioner, Maine Public
8 Utilities Commission and First VA, NARUC

9 PHILIP T. BRADLEY, Commissioner, S.C. Public
10 Service Commission

11 J. TERRY DEASON, Commissioner, Florida Public
12 Service Commission

13 NEAL N. GALVIN, Commissioner, NY Department of
14 Public Service

15 LAUREN "BUBBA" McDONALD, JR., Chairman, Georgia
16 Public Service Commission

17 MICHAEL H. DWORKIN, Chair, Vermont Public
18 Service Board

19 BRIAN O'CONNELL, Director, NARUC, Nuclear Waste
20 Program

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

(2:00 p.m.)

CHAIRMAN MESERVE: Good afternoon. On behalf of the Commission, I'm very pleased to welcome you representatives of the National Association of Regulatory Utility Commissioners to meet with us this afternoon.

As you know, the Commission does not concern itself with the regulation of economic affairs, our focus is on safety performance of nuclear power reactors and other types of licensees, but we are very much aware of the fact that occasionally our interests very much intersect, perhaps as California's situation has brought home to all of us.

We welcome the opportunity to get with you periodically and to explore issues that lie at the intersection of the activities of our respective Commissions. And so we are very pleased to have a chance to speak with you this afternoon.

Mr. Nugent, do you want to proceed?

MR. NUGENT: Thank you, Mr. Chairman. On behalf of NARUC and my colleagues who are here today. My notes have me introducing you to everybody, but on the theory that you all can read as well as we can, I will dispense with that, and if the Recorder wants me

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1 to read them all into the record at some future time,
2 I'll be happy to do that. But you can read, as I say,
3 from left to right here.

4 The organization, as you know, NARUC, is
5 an association of 80 people who are engaged in the
6 practice of regulation, and among those 80 are you.
7 There are 13 Federal commissions, 67 State
8 commissions, some states having more than one. It
9 creates an opportunity for us to meet periodically and
10 educate ourselves on the practice of regulation, to
11 educate ourselves on issues that are current, and
12 issues that are affected by changing technology, to
13 exchange views with other affected individuals,
14 whether they be members of Federal Agencies or people
15 from the private sector.

16 And as part of all that, we conduct also
17 specific training. Two notable things, in addition to
18 more obvious, are that we conduct the type of basic
19 training for economic regulation at Camp NARUC each
20 summer, a two-week program that goes into the various
21 fields that we address which include, beyond energy,
22 water and telecommunications and, at least in my case,
23 ferryboat systems. Some people do taxicabs. But
24 there's all kinds of wrinkles that we get that make
25 life constantly diverse and interesting.

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1 It also presents us with an opportunity to
2 offer our views, to kind of just boil them down, come
3 to a common view, and present them to our colleagues
4 at the Federal level both here and in the Executive
5 Branch and in the Congress.

6 We believe that NARUC has enjoyed an
7 excellent relationship with you and your staff over
8 time. Former Commissioner Rogers had worked closely
9 with NARUC in the past, something I took a special
10 note of because we both went to the same high school
11 and had a chance to sit down and talk about -- there
12 was a few years difference, but not as much as it
13 might seem -- and talk about experiences we had in
14 common in a building that has long since been
15 demolished and was already 75 years old at the time.

16 We also appreciated Commissioner Dicus'
17 having joined us and spoken at our meetings last year,
18 and beyond giving us your views and the Commission's
19 position, also having sat in to listen. I think it's
20 important to have that kind of exchange of views.

21 COMMISSIONER DICUS: Thank you.

22 MR. NUGENT: We also appreciate the
23 frequent and substantive participation of NRC staff,
24 both Spiros Dragodis and Bob Wood have been active in
25 affairs at the organization, at NARUC, and our people

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1 have been involved at NRC activities. Staff
2 Subcommittee Chair Greg White, who is from the
3 Michigan Public Service Commission, has participated
4 in the NRC's regulatory information conference.

5 Now, we've got a broad range of interests
6 here, and that's why we have such a large delegation
7 here visiting with you this afternoon. We've
8 enunciated a series of principles. Those principles
9 are about how we are to relate to the nuclear
10 industry, and those have been provided to you in
11 advance, I am told, and should be in whatever package
12 that has been given to you in advance.

13 We have four areas that we are choosing to
14 address. We are going to talk about the electric
15 industry restructuring. Commissioner Dworkin, who is
16 the Chairman of the Vermont Commission, will offer
17 comments on our behalf there. Commissioner Terry
18 Deason, from Florida, will address nuclear waster. We
19 have comments on the transportation that staffer Brian
20 O'Connell, who is at your extreme right as you look at
21 us, will talk about. As I say, we will talk about the
22 transportation issue. And then the escrow of
23 ratepayer payments into the Nuclear Waste Fund will be
24 addressed by Chairman McDonald of the Georgia
25 Commission.

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1 If I seem rushed in going through here,
2 it's because I really value the opportunity to go back
3 and forth, have you question us, have us question you,
4 for that matter, and just to make sure we have the
5 best exchange of information possible in the brief
6 time that we'll be visiting here.

7 CHAIRMAN MESERVE: Thank you very much.
8 Let me suggest that we go through the various
9 briefings and then, when we finish the statements,
10 then we'll have an opportunity for exchange. That
11 way, we make sure we've covered all the areas and we
12 can focus on the areas that are of greatest concern to
13 us and to you.

14 MR. NUGENT: That leads to Chairman
15 Dworkin.

16 MR. DWORKIN: I suppose we will all repeat
17 our thanks, but they are meant for the chance to talk
18 to you. I'm going to try to really literally talk
19 about electric utility restructuring in less than
20 three minutes -- that will put me right up there with
21 the one-minute specialist on, say, National Public
22 Radio -- but I want to characterize two chief elements
23 of it. One is that it has been an effort to allow
24 retail choice to let the retail consumers of
25 electricity, which is one of the fundamental groups of

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1 our society, have as much as possible and as informed
2 a choice as possible about the generating options that
3 are available for the power that they want to get.
4 And I use the word "generation" advisedly because
5 although it's often referred to as "deregulation" or
6 "competition", it's vital to recognize that there's
7 been very little progress made on opening up to
8 competition either transmission or distribution.

9 So the aspects that allow the choice of
10 generation -- the opportunity to have some direct
11 contact either through aggregated groups in a standard
12 contract offer or through bilateral links through
13 actual choice by an end user between the user and the
14 generator -- is the chief characteristic of this.

15 But there is a secondary characteristic
16 which is vital to how things are playing out now,
17 which has been the effort to create some kind of
18 economically efficient wholesale power market because
19 the concept of each generator contacting each provider
20 has turned out, not surprisingly, to not be workable,
21 and there needs to be some aggregating function, some
22 pooling function -- in essence, a market. The same
23 function that the New York Stock Exchange provides
24 between investors and companies needs to be provided.

25 Wholesale power markets are, I will be

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1 very blunt, in their infant stages and they are not
2 only nowhere near learning how to run smoothly, they
3 are not yet ready to crawl smoothly. We are at the
4 stage that you might equate with what Bill Douglas did
5 with the Securities and Exchange Commission in the
6 early 1930s, we're trying to find a structure to make
7 what needs to happen happen, and we don't even have
8 the option that the Stock Exchange does of stopping
9 trading for a little while when there is a perceived
10 fluctuation or perturbation in the market.

11 If people want electricity and we think
12 there is a market problem, we don't have the option of
13 saying we're going to stop at 3:00 o'clock this
14 afternoon and get things tidied up by tomorrow
15 morning.

16 Electricity is a good with instantaneous
17 demand and extremely inconvenient storage, so the
18 ability to create a wholesale market reflects that
19 issue. The fundamental piece that unites those and
20 springs from it is the end of the vertically
21 integrated utility.

22 The concept that the same utility that did
23 billing and customer contact also did distribution,
24 also did transmission, and also did generation, is one
25 that still exists in parts of the United States, but

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1 it is no longer the norm, no longer the paradigm and,
2 most importantly, no longer the expectation of the
3 people who are making the financial decisions about
4 the operations, so that whatever degree you look at in
5 terms of how much retail choice is there or how much
6 disaggregation of generation is there, the fundamental
7 fact is that the people who make the decisions are
8 expecting that those issues will be disaggregated and
9 treated separately.

10 That leads to an important aspect of what
11 has happened in regard to generation, an unparalleled
12 increase in the concentration of ownership of
13 generating units. We are now at a stage where ten
14 companies control more than half of the generating
15 capacity of the United States, 18 companies control
16 almost three-quarters -- 72 percent of the generating
17 capacity, according to the Department of Energy
18 statistics. That's a degree of ownership which exceeds
19 the previous peak, which was the period of 1929 to
20 1934, the period which led directly to measures to
21 break up the industry, which led to eventually 200
22 utilities being created out of 13 which had existed in
23 the early '30s. The 200 that were created existed
24 from the late '40s until the early 1980s. Now we're
25 moving back to a very high degree of concentration

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1 again, indeed, one that exceeds that of the late
2 1920s.

3 That has significance in a thousand ways.
4 One of them is that the concentration of ownership of
5 generating units is showing up in a concentration of
6 ownership of the nuclear fleet. Now, there are both
7 goods and bads to this. I do not mean to suggest that
8 it's a simple matter of "big is bad", or that the
9 curse of bigness and grandized in testimony.

10 There are benefits in terms of efficient
11 operation. There are benefits in terms of shared
12 knowledge. There is a simple fact that if you own
13 multiple plants and something goes wrong at one and
14 you can tell everybody at the others to fix it before
15 it goes wrong at theirs, that that is a benefit that
16 doesn't exist with a fragmented industry.

17 On the other hand, there are, in fact, a
18 lot of economic implications that people talk about,
19 whether it's full monopoly or monopsony or something
20 less, where the degree of concentration matters.

21 There is also a fact that springs from the
22 disaggregation of the integrated utility that may be
23 of special significance to you, which is that nuclear
24 power plants produce power, but they also use power,
25 and they particularly use power when they are not

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1 running and when they are in a shutdown mode. So the
2 need for reliable, efficient, extremely reliable
3 source of power from offsite is important.
4 Traditionally, that was provided from elsewhere in the
5 system of the same utility that owned the power plant.

6 When the utility that owns the nuclear
7 power plant no longer owns the rest of the system, you
8 have, at a minimum, a diffusion of responsibility and
9 a need to create effective mechanisms for breaching
10 that gap. There used to be an intra-company transfer,
11 and that's a matter that I know is of concern to you,
12 but that we recognize as well.

13 In addition, it means that another part of
14 the total system, the transmission grid, is no longer
15 controlled by, planned by, designed by, constructed
16 by, and implemented by the same people who install the
17 nuclear facility and the other generating facilities.
18 That means that there is at least a potential for a
19 mismatch between the physical location of generation
20 and the load centers that move in predictable but
21 changing patterns around the United States, and the
22 transmission grid is the thing that links those two.

23 What used to be an intra-company analysis
24 of how to make those links is now an inter-company
25 transaction, and the mechanisms for making those have

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1 not yet been created. Some of the problems with
2 efficient transmission links between generation and
3 demand are ones that involve siting. Some of the
4 problems are ones that involve environmental problems.
5 But many of the problems are ones that simply arise
6 from the fact that an industry which used to be
7 integrated is now being disaggregated and has not come
8 up with any efficient legitimate mode of pricing which
9 is accepted as legitimate by all the people that pay
10 into it and draw money from it.

11 Those are some of the principal aspects of
12 the restructuring situation that we see, that I see,
13 and that I think you may be seeing. I'd be interested
14 in your thoughts on how it looks from your side of the
15 table.

16 MR. NUGENT: Terry.

17 MR. DEASON: Well, I guess it's my turn.
18 Thank you for the opportunity. It is a pleasure to be
19 here and we appreciate it very much.

20 Let me begin by saying I feel mildly
21 inadequate, being an accountant engaged in economic
22 regulation, to come and address the Nuclear Regulatory
23 Commission on nuclear waste. However, I'm sure that
24 you can appreciate there are economic consequences of
25 the nuclear waste problem, which certainly generates

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1 much interest in the economic regulators, and we wish
2 to share with you some thoughts.

3 I want to take just a moment and give you
4 some background information which you probably are
5 more familiar with than I and, after doing that, I
6 want to briefly review the four principles which NARUC
7 has adopted as we go forward in trying to address the
8 nuclear waste situation.

9 NARUC has been actively interested and has
10 participated for the last 20 years in the nuclear
11 waste situation, dating back to the Nuclear Waste
12 Policy Act of 1982 which set forth the national policy
13 regarding nuclear waste, and the solution at that time
14 that the solution was a geologic repository.

15 NARUC has supported those initiatives.
16 This policy requires the Federal Government -- namely,
17 the Department of Energy -- to take the waste and
18 deposit it in a permanent area, and the consumers of
19 this country are required to pay 1 mill per kWh from
20 all nuclear generated energy in this country. To
21 date, there has been some \$18 billion invested by the
22 electric consumers of this country into this fund.
23 That is not only the principal, but also the interest
24 that has been accumulated on those deposits.

25 The original plan was for the DOE to be

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1 taking the waste beginning 1/31/98. As we know, we
2 are past that date. We are advised now that waste will
3 not be taken sooner than 2010. We are not happy at
4 this situation, but the reality of the question is,
5 how do we go forward from here to best address the
6 situation and the problem?

7 Anytime that there are differences of
8 opinion these days, it appears that too often courts
9 become involved, and this particular case is no
10 different. There has been litigation. The Federal
11 courts have ruled in support of a number of States
12 which have brought the litigation that DOE has
13 breached the contract and that there is a financial
14 liability. The court cases are proceeding, and I
15 don't think there's been a quantification of that
16 liability as of yet.

17 There has also been congressional effort
18 to address the problems. There was comprehensive
19 legislation which passed but was vetoed, and the
20 legislation did not -- there was not an override of
21 the veto.

22 We are optimistic that there will be a
23 recommendation this year on the suitability of Yucca
24 Mountain. That is expected later this year. We are
25 anxiously awaiting that.

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1 In November of last year, the NARUC
2 adopted guiding principles -- and this was adopted in
3 the form of a resolution, and I want to spend just a
4 moment reviewing the four main principles.

5 I. America needs a permanent solution to
6 nuclear waste disposal.

7 NARUC supports the national policy that
8 was adopted with the Act of 1982.

9 We think that it is important that we
10 vigorously pursue the requirements and the milestones
11 that are a part of the Act. We recognize that at this
12 time 2010 is the target date, and we hope that all
13 measures are taken to have 2010 be the target date,
14 and that we hopefully will not see that date
15 continually be pushed out.

16 We believe that the service life of
17 nuclear plants should not be curtailed as a result of
18 this.

19 We also believe that ratepayers should not
20 have to pay twice for the government's failure to take
21 the waste when it was contracted for.

22 We also know that in this process
23 radiation standards have to be developed to protect
24 the public health. We also believe that these
25 standards should be reasonably attainable, and we know

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1 that NRC is going to play a major role in that.

2 We recognize your expertise. We support
3 your standards, and we appreciate all your efforts in
4 this regard.

5 II. The Nuclear Waste Fund must be
6 managed responsibly and used only for its intended
7 purposes.

8 We believe that there should be full
9 access to the Fund to achieve the milestones so that
10 hopefully the 2010 date is achieved.

11 We also firmly believe that the Fund
12 should not be diverted from the intended use either by
13 Congress or DOE to pay settlements for contract
14 damages.

15 III. We need equitable interim measures
16 pending a permanent solution.

17 Obviously, with the fact that the original
18 plan was to have waste taken in 1998 and that date was
19 not met, it is a critical concern that there needs to
20 be an interim measure taken until the permanent
21 solution is achieved.

22 Interim centralized storage is needed. We
23 believe this is superior to the status quo. If we do
24 not have an interim facility of some sort, hopefully
25 in a centralized fashion, it will place additional

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1 cost on the utilities and thus the ratepayers.

2 We note that there has been some
3 discussion concerning the possibility of a private
4 temporary storage facility. We think that this may be
5 a solution. We recognize it will need to be licensed
6 by the NRC, but we also want to emphasize that we
7 realize and hope that it would not become the
8 permanent solution. We feel like at this stage the
9 geological repository at Yucca Mountain, if it meets
10 all the milestones, is the best solution at this
11 point.

12 IV. We think it is important that NARUC
13 continue to be an active stakeholder in this debate.
14 That concludes my remarks. Once again, thank you, and
15 if I can be of any assistance in answering questions
16 later, I would be glad to do so.

17 MR. NUGENT: Mr. Chairman, I'd like to turn
18 now to Brian O'Connell, who would address our views on
19 the transportation matter.

20 MR. O'CONNELL: Unlike the other
21 panelists, I am not a Commissioner, I'm a full-tune
22 staffer at NARUC here in Washington, and my position
23 is actually funded by the Department of Energy to be
24 a facilitator of communications between the
25 Commissions and the Federal agencies involved with the

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1 Nuclear Waste Program.

2 As I got into my position to observe this
3 program of the Yucca Mountain development in
4 particular, I noticed quite a bit of attention was
5 placed on nuclear waste transportation, and so I'd
6 like to focus on that area right now, and start with
7 a problem statement that the opponents of the Yucca
8 Mountain Facility have raised fears of transportation
9 safety as a strategy to broaden opposition to the
10 project.

11 False or distorted claims undermine public
12 confidence. The Federal response so far has been
13 ineffective to some of those charges and claims. We do
14 have a proposed solution, or partial solution. We do
15 recommend that the Commission provide factual
16 information on spent nuclear fuel transportation. The
17 brochure and video being developed by the NRC seems
18 well suited for that purpose. We encourage proceeding
19 with it now.

20 I'd like to talk about Yucca Mountain
21 spent fuel transportation itself. As I understand,
22 that brochure and video is really on the whole subject
23 of nuclear material transportation, but looking just
24 at spent fuel transportation, the record of safety is
25 excellent, but the public doesn't know it.

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1 The Yucca Mountain Draft Environmental
2 Impact Statement provided a very well organized
3 synopsis and detailed information to support what the
4 transportation record has been, and also makes some
5 projections for what the expectations would be for the
6 future as the volume of material to be moved increases
7 by orders of magnitude. But there were critics of
8 that Draft Environmental Impact Statement that faulted
9 DOE for its lack of specifics in the document, namely,
10 that they did not talk about either the mode of
11 transport, rail or truck, and no routes were specified
12 nor was the timetable exactly identified.

13 Now, the basis for that was that the
14 Department of Energy felt that in that Draft
15 Environmental Impact Statement the focus was on the
16 development of the repository at Yucca Mountain and
17 would it be suitable, with the expectation that there
18 would be at least five years after that decision in
19 which all of these transportation matters could be
20 sorted out in cooperation with State agencies, local
21 governments, and so forth. In other words, let's not
22 get everyone stirred up over concerns with
23 transportation until we know we have a site. And we
24 understand that, but a lot of the observers, if you
25 will, found that a little unsettling.

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1 Now, the State of Nevada has developed
2 their own estimates of what routes the material may
3 move from around the country to the site, and their
4 own estimates of risk. I shall just understate this
5 a little bit by saying that they vary from the DOE
6 estimates.

7 Unfortunately, in my opinion, DOE did not
8 respond to any of those distorted claims about safety
9 in particular areas like Atlanta, Georgia, or St.
10 Louis, or Denver, or any of the locations. As you
11 know, they held public hearings on the Draft
12 Environmental Impact Statement that were very well
13 managed, but they were, from the point of view of the
14 attendees, rather unsatisfying in that testimony was
15 received but there was no response. People came to
16 these things expecting a little more give-and-take, a
17 debate if you will, and that's just not the nature of
18 those NEPA processes. So there was some concern
19 exiting from those meetings that the public didn't
20 have the full picture on transportation.

21 Now, the public looks to their levels of
22 government for truthful information that they can use
23 in their decisionmaking process. Unfortunately, let's
24 be candid, the Department of Energy does not have a
25 high level of recognition and trust within the State

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1 of Nevada. That's simply a fact for a lot of reasons
2 owing to the history of nuclear weapons testing and
3 other factors unrelated to this program, but that's
4 simply a fact, so that there is a predisposition
5 within the State to be skeptical at the least.

6 Now, absent the DOE providing details, the
7 State provided some very impressive facts like bits of
8 information that helped, I think, create an impression
9 that this may be the weak link in this whole
10 repository project.

11 Now, if DOE was, in effect, passive, were
12 there other Federal agencies who might have stepped
13 in? You might expect that perhaps EPA could step in.
14 Well, that's simply not their mission. They are a
15 player, but it is not their mission to be in front of
16 this particular train.

17 The transportation agencies, rail or
18 highway, simply didn't know because DOE hadn't told
19 them what modes were chosen. They are participants,
20 but they are not leaders.

21 We think NRC, however, does bear a
22 responsibility to interface with the public on this
23 question. I note that in your Strategic Plan the
24 statement appears that "The NRC views building and
25 maintaining public trust and confidence, that NRC is

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1 carrying out its mission as an important performance
2 goal for the agency " .

3 I did go to the RC2000 meeting last year,
4 and I heard Commissioner Merrifield, as a matter of
5 fact, very eloquently articulate the need for the
6 agency to respond whenever there are distortions and
7 statements about transportation or any other aspect of
8 nuclear matters that instill or erode confidence
9 within the public. So I was very pleased to hear
10 that. Thank you very much for those comments.

11 We are pleased to note some actions taken
12 by the agency. A very thick document, NUREG 66.72,
13 which reexamined the spent fuel risk estimates, was
14 very comprehensively done. It has every kind of
15 impressive set of tables and calculations that lead to
16 the basic conclusion that the earlier estimates of
17 risk from transportation were very conservative, and
18 that is welcome updated information. More
19 sophisticated computer models were used, and so forth,
20 and your agency is preparing now a guideline that
21 distills that highly technical information into a
22 layman-friendly version, and I encourage this to be
23 produced as soon as possible because it's really
24 needed by many segments of the public, not the least
25 of which are State and local governments who get asked

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1 questions about these issues.

2 And, further, I understand a video is
3 being produced that will complement this, that we
4 think is absolutely needed. A full array of tools to
5 help communicate would definitely help. And so our
6 position is that all of these are really needed, and
7 we encourage them to be deployed as soon as they are
8 available because they are going to be needed.

9 Let me read from a report from the State
10 of Nevada. "During the next two years, as Nevada
11 challenges or confronts DOE, Congress, and perhaps the
12 NRC, concerning various aspects of the Yucca Mountain
13 program, it will be equally important to undertake
14 efforts to assure that the issue of radioactive waste
15 shipments, including the routes such shipments will
16 use and the cities and communities that will be
17 impacted is given wide exposure nationally. This will
18 require an effort on the part of the State to identify
19 potentially affected States and communities and target
20 information to reach people, governments and
21 institutions in those places."

22 The Governor followed up on that
23 recommendation and in his State of the State message
24 earlier this year, he asked the State Legislature to
25 provide \$5 million for purposes of launching a

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1 nationwide campaign to inform the public on the risks
2 and dangers -- his word -- of shipping spent fuel.

3 Our conclusion is the NARUC and State
4 Utility Commissions urged the NRC to provide objective
5 and accurate information on spent fuel transportation
6 risks to the public. We recommend this be done in a
7 proactive manner in 2001, and we'd be glad to support
8 you in any way in terms of arranging a forum for doing
9 that. Thank you very much.

10 MR. NUGENT: Thanks, Brian. Chairman
11 McDonald.

12 MR. McDONALD: Thank you very much, Mr.
13 Chairman, members of the Commission. I, too, very
14 much appreciate the opportunity to speak with you this
15 afternoon.

16 Probably one of the most important minutes
17 of my time as an elected commissioner in the State of
18 Georgia, because when we're in the throes of both
19 Federal and State legislation dealing with ethics,
20 dealing with open meetings, and dealing with all the
21 items of line item budgets and things of this nature,
22 we are scrutinized very, very heavily as regulators in
23 our State with our consumers. Usually calls that I
24 receive are prefaced by saying, "Commissioner, I'm a
25 voter and I pay taxes, and this is my problem".

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1 So you've heard the music played here this
2 afternoon about what the issues are, and I guess I'm
3 probably the one that's got to ask that question, and
4 my question will be asked in a formal manner in a few
5 minutes. If we, as State regulators, were to order
6 utilities to pay into an escrow account their Nuclear
7 Waste Fund payments, would this Commission view this
8 action as jeopardizing the utilities' nuclear plant
9 operational accesses?

10 We have worked diligently through NARUC,
11 through our congressional leaders, to try to bring
12 closure to this item. I was in the hardware and
13 building supply business most of my adult life, and
14 dealt with many customers, and contracts were
15 contracts. And when we had an agreement, I was
16 expected to live up to my side of it and the other
17 party was expected to live up to theirs.

18 Our utilities in our States that have
19 nuclear facilities, have lived up to the contract with
20 the Department of Energy. It has been said even in
21 the last couple of days in our meetings that there are
22 those in Congress that say that regardless of what the
23 science says, regardless of what history has said,
24 dealing with spent fuels, that it's a political issue,
25 it will always be a political issue with this

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1 particular leadership, so we only know how to deal
2 with political issues politically. We try to be 80-
3 percent business and sometimes 20-percent politicians,
4 and now we've gotten into the 20-percent aspect of
5 that.

6 Our fight, or our concern, is certainly
7 not with the Nuclear Regulatory Commission, we just
8 need clarity. We just need to know that we are on
9 solid ground with this Commission so that we can take
10 the issue to where the real issue is, and that's with
11 the Department of Energy.

12 The concept of escrowing is consistent
13 really with the goals of the Nuclear Waste Policy Act
14 of 1982. As funds would certainly be preserved for
15 the disposal of commercial nuclear waste, escrowing
16 ratepayer payments into a Nuclear Waste Fund is also
17 consistent with our goals at NARUC. We would set
18 these funds aside in interest-bearing accounts, so
19 that when and if the other party in our contract lives
20 up to their agreement, then those funds would
21 certainly delightfully be transposed right on into the
22 proper place.

23 There has been tremendous, tremendous
24 discussion about the pros and cons and the legality
25 and everything, and those issues will be taken up in

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1 a different playing field. But, really, bottom line,
2 just the most important thing that I see that can come
3 out of a meeting today would be a response from you
4 dealing with this issue.

5 And the formal -- the formal -- question
6 that I would leave with you today in regards to this
7 is, in view of the pending dispute with the Department
8 of Energy as yet unresolved, if utilities were ordered
9 by State Public Utility Commissions to mitigate their
10 damages by escrowing Nuclear Waste Fund payments, the
11 Nuclear Regulatory Commission would not view the
12 utilities' compliance with such escrow orders as
13 jeopardizing the status of their nuclear plant
14 operating licenses.

15 Ladies and gentlemen, I would request of
16 you to honor us and help clear this air from your
17 perspective so that we can continue and get on to the
18 business of doing what the Nuclear Waste Public Policy
19 Act required of us, and I thank you very much.

20 MR. NUGENT: Mr. Chairman, as is obvious,
21 two of our members have not offered prepared comments.
22 I don't know if they choose to add something --
23 Commissioner Galvin from New York or Commissioner
24 Bradley from South Carolina?

25 MR. GALVIN: The only thing I might add is

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1 that this morning, as part of the seminar we are now
2 attending in Washington, the financial picture was
3 given to us by a member of the DOE, and at this point
4 said that the dollars going into the Fund, the Fund
5 now is self-sustaining, that the Fund produces more
6 money than it spends on a yearly basis, and will
7 continue to do so without the inclusion of any new
8 funds, which is the reason we are looking to escrow
9 these funds into a special account where we know where
10 the money is going to be going. We don't want to give
11 Congress millions, hundreds of millions of dollars,
12 and not find out when we do need that it's not going
13 to be there.

14 So, if the Fund is self-sustaining at this
15 point, and we can escrow these monies into an
16 interest-bearing account, Government Bonds, whatever
17 -- Government Bonds I understand are a pretty good,
18 safe bet -- so that we have that money and we know it
19 can be used for the disposal of nuclear waste, which
20 is our primary reason for soliciting your help. Other
21 than that, I know there are going to be multiple
22 problems with transportation of waste, the Yucca
23 Mountain site itself -- I visited Yucca Mountain. I
24 assume that most of the Commissioners, or all of you,
25 have been up and gone into the hole there and taken a

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1 good look at it. It's very impressive. I think it's
2 a solution to some of our problems.

3 So, with that, I thank you for listening
4 to my comments today.

5 MR. BRADLEY: I thank you for giving us an
6 opportunity to have a forum to discuss with you our
7 concerns. I would like just to briefly reiterate what
8 Commissioner Dworkin said. If we're going to have an
9 energy policy in this country, electricity is going to
10 be the key to it, as you well know, and there has to
11 be a generation mix of all fuel types for this to be
12 effective.

13 Nuclear is a key part of that. If we are
14 concerned about the environment -- and I am and I
15 think everybody in this room is concerned about the
16 environment. If we weren't, we wouldn't be sitting
17 here. But as you are well aware, nuclear is probably
18 the cleanest form of generation that there is.

19 So, one of the questions I would like to
20 pose to you all is from the status of where we go in
21 the future as far as new generation is concerned. Do
22 we have to solve the waste problem before we can look
23 at new nuclear generation? It's a legitimate question
24 that I think is of concern to everybody in this room,
25 and certainly people across this country.

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1 The transportation issue is a critically
2 important issue. As you are aware, every day
3 somewhere in this country, high-level nuclear waste or
4 high-level nuclear material is being moved.

5 I live in South Carolina and, as you are
6 well aware, the high-level waste that is coming out of
7 Europe and perhaps out of the Soviet Union is coming
8 into South Carolina. It is shipped. It's delivered in
9 Charleston, put on rail, and it's moved up to the
10 Savannah River site. And that material has been moved
11 safely. It can be moved safely.

12 I understand what Brian was saying about
13 the Governor of Nevada and what they intend to do or
14 maybe what they want to do. I think that issue is
15 going to be blown totally out of proportion because we
16 in South Carolina know that it can be moved safely,
17 and it can be moved safely across this country. And to
18 say that we're going to move that nuclear waste
19 through Atlanta, Georgia or Knoxville, Tennessee or
20 any large metropolitan area is nothing but an alarmist
21 tactic that we need -- we and you -- need to take out
22 of the mix.

23 I think it's important for our
24 association. We, as individual Commissioners, to be
25 involved in all the aspects of going forward with the

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1 Yucca Mountain site. As you well know, I think
2 there's 70-plus locations around this country where
3 high-level spent waste sets, and it's certainly a lot
4 safer to put it in one repository that is properly
5 licensed, and when you get to the licensing process,
6 if we get to that point, I would encourage you to move
7 the license in a safe environmental manner, but move
8 it as fast as possible because if we can turn that
9 2010 date into maybe 2009 or somewhere in that range,
10 it certainly would be a benefit to this country.

11 And I would also like to applaud you and
12 thank you for the process, licensing process, that you
13 streamlined in relicensing or recommissioning some of
14 the facilities -- the one in Maryland and the one in
15 Okonie County, South Carolina, the Duke facility --
16 and I think that it shows to me that you all are
17 concerned, that you do want to move in a timely manner
18 and in a safe manner, and see that the public is
19 protected. And I thank you very much for your time
20 and your attention.

21 MR. NUGENT: Mr. Chairman, our whole
22 delegation thanks you for the opportunity, you and all
23 members of the Commission. We do a lot of hearings
24 ourselves, and this is where it gets interesting,
25 going to the Q-and-A, but, anyway, go ahead. Thanks.

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1 CHAIRMAN MESERVE: Thank you. On behalf
2 of the Commission, I'd like to express appreciation
3 for all of you to take the time to come and visit with
4 us.

5 Our normal protocol at this time is we
6 sort of rotate the opportunity to ask questions, with
7 alternating who goes first, and Commissioner Diaz is
8 the one that's first up at bat today --

9 COMMISSIONER DIAZ: I yield.

10 COMMISSIONER DICUS: Well, that means I
11 get to go last.

12 CHAIRMAN MESERVE: Let me just say,
13 though, before we get launched into that -- and I will
14 turn to you in a minute, Nils -- is that it is -- this
15 is an interesting time that we're in, no doubt
16 precipitated in large part by events in California.
17 It is apparent at the Federal level that there is
18 going to be a very serious examination of energy
19 policy issues in a way that hasn't occurred since the
20 late '70s. And nuclear, I'm comfortable, is certainly
21 going to be a part of that discussion, and I expect
22 that dealing with some of the nuclear waste issues
23 certainly ought to be a part of that discussion. It
24 remains to be seen how it all is going to play itself
25 out, but I know a lot of individuals in the Congress

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1 who are very focused on this issue and have
2 communicated with us, and have communicated publicly
3 about their interest in having legislation in that
4 area. And as I'm sure all of you know, the Vice
5 President is leading a task group on the Executive
6 Branch to similarly examine energy issues.

7 So, I think that this is an area that is
8 going to be one which we will all have a lot changes
9 which we will have to grapple with over the next
10 several months, into the years ahead, and that some
11 aspects of it will touch on nuclear related matters
12 and on many of the things that you have discussed with
13 us today.

14 We're going to have a round of
15 questioning, though. Let me turn to Commissioner Diaz
16 to see if he'd like to --

17 COMMISSIONER DIAZ: Thank you, Mr.
18 Chairman, it's a pleasure to be here with you today.
19 We do appreciate not only you coming and briefing us,
20 but always the interchanges and all of the good things
21 that we always have done with NARUC, and we will
22 continue to do so.

23 There were some interesting questions
24 posed today, I will answer none of them. In the true
25 briefing sense, I will just turn questions to you.

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1 You are the ones in the hot seat now. But there were
2 a few things that came out, and I'll just start with
3 Mr. Dworkin.

4 Obviously, you know much more than I do
5 about deregulation, and you should, sir, because
6 that's your bag. I was wondering when you have been
7 looking at the issues of the stability that
8 deregulation will bring to the grid distribution, are
9 there any particular issues that have come out lately
10 that would lead you to believe that the, as you call
11 it, the reliability of site power might be an issue,
12 or are you satisfied that those issues are being
13 handled well?

14 MR. DWORKIN: I want to strike the balance
15 between what we might call an unduly alarmist view
16 because the simple answer is, no, there is nothing
17 specific that is bothering me, and yet I don't want
18 that to mean the simple leap to the belief there is no
19 problem because institutionally and structurally there
20 are issues that need to be addressed and, to be blunt,
21 I think some of these fall within your bailiwick quite
22 correctly, when what used to be an intra-company
23 transaction becomes an inter-company transaction.

24 Many of us have some experience with the
25 telecommunications industry. Fifteen or 18 years ago,

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1 we saw, for example, that relatively well publicized
2 failures such as the loss of telecommunications to
3 Kennedy Airport and the eastern side of New York for
4 two days occurred not because of a technology problem,
5 not because of a lack of infrastructure, not because
6 of a lack of capital, not because of a regulatory
7 problem, but simply because what used to be handled
8 within a single company now needed to be handled
9 between two companies and the people who needed to
10 talk to each other hadn't figured out who should call
11 who. That is a structural thing which is now going
12 on, and you are going to need to make sure that the
13 nuclear generating stations that you regulate have a
14 person who knows who to call, and that the old
15 assumption that the physical requirement of two
16 independently redundant power feeds adequate to
17 provide a shutdown exist just as you've always
18 required it, but the knowledge of who is at the other
19 end of it and their readiness, willingness and
20 capability to deliver what that physical link can
21 provide is established in a way that makes it work.
22 Whether it's a bilateral contract, whether it's an
23 automated system, I don't really care, but what does
24 matter is that it works when it is needed. And the
25 old assumptions that the physical link solved the

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1 problem needs to be replaced with a new assumption
2 that a business relationship plus a physical link is
3 necessary.

4 MR. NUGENT: Could I offer a comment?
5 Michael and I operate in the same region, the New
6 England region. And the facilities that provided safe
7 and reliable power the day before we started our
8 restructuring are still there. The same people are
9 dispatching it. They've been reorganized out of NEPO
10 into the Independent System Operator of New England.
11 I'm sure there's been changes in personnel, but
12 essentially it's the same group of people.

13 The challenge that comes now is that the
14 power they deliver to the system is being determined
15 by the bidding process, so it may not be the same
16 generators at any one time. Now, this stresses the
17 system in different ways, but the people who are
18 operating it are competent. They are aware of the
19 changes. And we are aware of the need to strengthen
20 the transmission system to support a competitive
21 market, and no one is certainly intentionally moving
22 in any precipitous way that would risk the reliability
23 of the system or any of the important components that
24 are on it.

25 We know we need that power at all times,

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1 and we're very careful and very conscious of
2 experiences else where in the country about the
3 inadequacy of supplies. We're trying to make sure
4 that the whole system is more than adequate, but you
5 do have to give attention to the details, as Michael
6 has outlined.

7 COMMISSIONER DIAZ: I think that's an
8 excellent point, one we will certainly take into
9 consideration. On the more broad side of it -- I just
10 can't help but ask the question -- do you see, after
11 the California problems, deregulation accelerating or
12 decelerating?

13 MR. DWORKIN: Well, I think that none of
14 us know, but I think we all expect that it will be
15 decelerating, that the willingness to brave new waters
16 is sometimes a little less after you've seen a few
17 folks in liferafts, that the likelihood of major leaps
18 forward, many more states moving swiftly to retail
19 choice markets is less.

20 I do not think it will stop, I think there
21 will still be some, but what I think is frankly more
22 important is that the Federal effort to create
23 meaningful competitive wholesale markets not only
24 won't stop, it has already happened -- the genie is
25 out of the bottle, if you will -- and that the

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1 existence of the competitive wholesale providers,
2 independent from a distribution obligation, is an
3 established fact. The understanding of how to work
4 with our situation is not an established fact, so that
5 if I say to you there will be less leaping forward on
6 retail choice, but the disaggregation of the industry
7 and the volatility of the wholesale power markets are
8 not likely to stop, just like the California
9 situation, at least in the near future.

10 COMMISSIONER DIAZ: Thank you.
11 Commissioner Dicus, would you --

12 COMMISSIONER DICUS: If I could follow up,
13 we've looked at this, and States have come in and said
14 to us -- and thank you, Commissioner Diaz -- that they
15 are going to go forward with deregulation, they are
16 just not going to make the same mistakes as
17 California. Would you care to comment on that?

18 MR. DWORKIN: Well, I guess I want to make
19 a two-part comment, that I think that looking at the
20 question of whether States move forward to retail
21 choice really is not as important as looking at the
22 degree of disaggregation of the integrated industry
23 and the significance of the wholesale markets.

24 Having said that, I think that although
25 many states have many people in them who say they are

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1 going to move forward, the real fact of life is that
2 many state legislatures are running scared and that
3 the principal impetus for retail choice was large
4 industrial user groups, many of whom are no longer
5 happy with the risks that they face in a deregulated
6 retail environment, and they are not pushing hard for
7 it -- in comparison to what they were a few years ago,
8 anyway. So, although many people are still moving on
9 momentum, I think a lot of the push is gone.

10 COMMISSIONER DICUS: Thank you.

11 COMMISSIONER DIAZ: Commissioner Deason
12 talked about the nuclear waste, a subject that is very
13 deal to this Commission because we are not only facing
14 it, but we will face it for many years to come in this
15 very slow and systematic manner, I might add.

16 You brought, I think, two issues -- and
17 also Mr. McDonald -- which I think are kind of
18 separate issues. One is the issue of your support for
19 a permanent repository as the solution that is needed
20 for this country, and something that this Commission
21 has gone on record as saying that we support a
22 permanent repository on the grounds of public health
23 and safety, and we should do so. And I think that's
24 one of the issues you are addressing, you actually
25 want to have that.

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1 The other issue gets a little bit outside
2 of the Commission, and that's the issue of whether the
3 escrow or not, and I will not get into that issue, but
4 there is a parallel issue to it, and that issue is if
5 we look at a permanent repository and we look at where
6 we are, the issue that you people face -- and which we
7 sympathize with -- is how to best utilize the funds of
8 your consumers, the ones that are paying for it, and
9 that is an issue that I think is a large issue.

10 I would like to say personally there is no
11 immediate -- year 2001 and 2002 public health and
12 safety issue with the spent fuel where it is, it is
13 not something that we have to face this year. It is
14 a larger national issue that we will have to face as
15 time goes on, but it is not an immediate issue, and I
16 think it is something that is important. We don't see
17 that, we don't have an issue with the way that it is.
18 But if you want to comment on any of those points,
19 I'll be happy to --

20 MR. McDONALD: Just one comment,
21 Commissioner. In some jurisdictions, though, we can't
22 wait -- looking at the time frame of the experience
23 that we've had, we can't wait until we get to a point
24 where we do not have the capability of onsite storage.
25 We've got to go ahead and prepare for it, and the

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1 problem that faces me is a fiduciary responsibility to
2 the utility, as well as a responsibility to the 8
3 million consumers in Georgia, is the fact that the
4 ratepayers are going to be paying twice for what has
5 already supposedly been taken care of. And, again, the
6 time factor is not -- really, the issue is -- and I
7 hope that I may have heard you correctly, and I want
8 to revisit a statement you made that you don't see --
9 maybe my question is a part of something that you need
10 to possibly answer --

11 COMMISSIONER DIAZ: I don't think we can
12 answer your question, but we might be able to answer
13 it not in this forum, but a Commission forum, whether
14 there isn't an issue of public health and safety
15 related to the escrow, but I would refer to our
16 counsel. Karen?

17 MR. McDONALD: I mean, even if this is a
18 nonissue with you, that can help satisfy me a little
19 bit.

20 COMMISSIONER DIAZ: I know, but we always
21 see this as an issue, but I didn't want to get
22 involved in it. I thought that maybe, Karen, you
23 might want to make a comment.

24 MS. CYR: We've looked at this. We
25 haven't discussed it with the Commission in terms of

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1 the extent to which, if such escrow payments were
2 made, what the impact of that would be on our view of
3 the ongoing viability of the license. We looked at
4 that in some depth, but not a completed thing in terms
5 of looking at it, and we haven't had a chance to
6 discuss that with you in the past. It's something we
7 clearly can and will do.

8 COMMISSIONER DIAZ: I think the answer is
9 that we will certainly look at it, but I don't think
10 we can -- I can't -- give you an answer in this forum.
11 I don't know if any of my fellow Commissioners would
12 like to tackle that. But we do understand how it is
13 important for you to protect your consumers and to
14 assure that there is a solution, and that we
15 understand, however, the other issue is not --

16 MR. McDONALD: You know, as it was
17 reported, the expenditures to the project far, far go
18 to the level of the collection of -- and I consider it
19 as a hidden tax. It's a hidden tax for Congress to
20 balance the budget with, or Congress to do whatever
21 other projects with, but I get to the place where --
22 that I communicate to my congressional delegation --
23 and say, "Look, folks, you all do the budget process,
24 you all fix it, or I'm going to tell on you". I mean,
25 you've got a hidden tax going on to the consumers of

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1 the State of Georgia.

2 COMMISSIONER DIAZ: We understand. We
3 understand. Thank you.

4 MR. DEASON: If I may, could I answer the
5 first part of your question? Let me say that I feel
6 strongly, and I think I speak for my fellow
7 Commissioners, that we have confidence that as long as
8 the nuclear generating facilities are in compliance
9 with the licenses that you issue, that there is no
10 immediate threat.

11 I do agree with Commissioner McDonald,
12 though, our concern is in the longer view and if there
13 are going to be economic consequences. There is a
14 finite amount of onsite storage, and we know that
15 there are going to be units that are going to have to
16 look at alternative means of storage other than the
17 2010 permanent solution, and there are going to be
18 economic consequences.

19 We want it to be that safety be
20 maintained, but it be done in the most cost-effective
21 manner. That's one of the reasons we mention the
22 possibility of an interim solution.

23 COMMISSIONER DIAZ: Thank you. Lastly --
24 and I'm probably going through every point -- but on
25 transportation there are a series of issues, but I

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1 think the main issue I'd like to focus on is our
2 obligation to be factual, and I think we are trying to
3 do that.

4 We always had a difficult time in the NRC
5 because of the clear separation between being a
6 proponent and being a regulator. However, I believe
7 this Commission has taken in the last few years the
8 clear position that if we can clarify an issue of
9 public health and safety, that we will, or we should,
10 because we take the protection of public health and
11 safety in a broad sense not only for somebody to do
12 something, but to actually inform the public of the
13 facts. And I think the transportation area is one
14 that we have been looking at, and will continue to do
15 so, and I think it is one of the areas that we will be
16 working clearly in the future.

17 With that, Mr. Chairman, I think I have
18 exceeded my time. Thank you so much.

19 CHAIRMAN MESERVE: Thank you, Commissioner
20 Diaz. Commissioner Merrifield.

21 COMMISSIONER MERRIFIELD: Thank you very
22 much, Mr. Chairman. I agree with my fellow
23 Commissioners, this is a good opportunity for us to
24 interact, and I appreciate the time you're taking to
25 meet with us today.

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1 I'll sort of go in reverse order with Mr.
2 McDonald and see if I can address your question. I'll
3 do it sort of like my fellow Commissioner and start by
4 asking a question of my own, but I want to get to the
5 heart.

6 I postulate to you if you had -- I presume
7 you are all appointed by your governors --

8 MR. McDONALD: Elected by the people.

9 COMMISSIONER MERRIFIELD: You are elected
10 by the people.

11 MR. McDONALD: Yes, sir.

12 COMMISSIONER MERRIFIELD: We're appointed
13 by the President, and I know at least some of your
14 fellow commissioners are appointed by governors.

15 If you were in a circumstance where you
16 had a fund that was under the control of the governor
17 and the legislature, and a local mayor came in and
18 said, "I don't think that the governor and the
19 legislature are managing that fund appropriately, so
20 we're going to put in a local bank and we're going to
21 manage it real well, and then when the governor and
22 the legislature get their act in gear, we'll free up
23 that money to go towards what the legislature
24 originally intended".

25 Now, I think if that mayor came in and

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1 asked you that question, I think you'd feel somewhat
2 reticent about answering it. And the same notion, to
3 be perfectly honest, in my eyes, I would be somewhat
4 reticent about directly answering that. I think you
5 raise legitimate questions, but those questions, I
6 think, are directed to the President and Congress, and
7 are they appropriately or not appropriately utilizing
8 the trust funds that are collected from the fees paid
9 by all of us, including you and me.

10 I know when I worked up in Congress, the
11 very same issues came up relative to the airlines and
12 Airways Trust Fund, which again is being used to
13 balance the budget. Those are generic issues
14 associated with a number of trust funds out there.

15 Now, the question, I think, if it came
16 from Congress is, would we feel it was safe if the
17 states went ahead and held that money and it didn't go
18 into the Federal Trust Fund. If Congress asked us
19 that question, in my own eyes, obviously we're going
20 to answer to Congress, and ultimately we are approved
21 by the Senate. But I think it is a very direct
22 question. I think it is a very difficult one that,
23 honestly, would be a very difficult one for us to
24 answer.

25 MR. McDONALD: Commissioner, thank you for

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1 that question. I served as Chairman of the House
2 Appropriations Committee for the State of Georgia
3 House of Representatives for eight year, and during my
4 20 years in the Georgia General Assembly -- and those
5 were my last eight years -- we passed acts that, for
6 historic preservation, put a tax on real estate
7 transfers, and we even raised fees for hunting and
8 fishing licenses, for green space, for hunting
9 preserves and this type thing. And I was charged with
10 the responsibility of making sure that those revenues
11 that were collected for those specific items were
12 appropriated to those specific items. And even though
13 maybe there were times when we would question as to
14 whether they were going to go to that particular area
15 or not, I certainly wouldn't hold it against my mayor,
16 or a mayor, that may have had an application in with
17 community affairs to seek funding out of the trust
18 fund for infrastructure for water and sewage projects
19 -- and we established a \$500 million trust fund and
20 then had a loan application to cities and counties to
21 do that with -- it was just a clarification in making
22 sure that I followed the agreement that they had.

23 Our problem with Congress is they are not
24 appropriating the money as even the Department of
25 Energy has requested to complete the project.

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1 Congress has held them short. That's not your fault,
2 that's not your issue. That's our issue and Congress'
3 issue. But I'm just saying, just not do us, that
4 you're not going to slap us, because I don't want my
5 two nuclear facilities that will come to your presence
6 to be -- they are nervous right now because I've got
7 a docket in the State of Georgia for this purpose, and
8 they are literally nervous. And I don't need a
9 written statement or a wink or a nod for getting me on
10 my way.

11 COMMISSIONER MERRIFIELD: I'm not even
12 going to give you smoke signals. I'm just trying to
13 be direct here. The law of the land is that the funds
14 are collected and go into the trust fund, and we were
15 all sworn in to protect and defend the Constitution of
16 the United States. And so to think that we can come
17 out and say, well, we think it's okay and safe for you
18 to violate the law of the land, I don't think I'd be
19 in a position to answer that, especially if any of us
20 ever wanted to be on a commission again.

21 MR. McDONALD: I'm really not asking you
22 to answer that question, I'm really asking you to say
23 that our issue is the safety, that is our issue.

24 COMMISSIONER MERRIFIELD: Well, the
25 question is, are there safety consequences from the

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1 states going ahead and doing that. I think that would
2 be a question, if directed to us by Congress, that we
3 would wouldn't be in a position to answer.

4 MR. McDONALD: He's already stated, you
5 know, that the interest that's owned off of the
6 present balance in the fund exceeds the appropriation
7 needs.

8 COMMISSIONER MERRIFIELD: You talk about
9 the 20 percent in politics that we all are concerned
10 about and are dabbling in. I think we are concerned
11 about that very same 20 percent.

12 MR. GALVIN: Well, Commissioner, the tale
13 you come up with about the mayor coming in and saying,
14 "I'm not going to pay you anymore money because you
15 haven't done this thing", if a particular city was
16 taxed to put a bridge in across the Hudson River, and
17 they paid enough money in to have the bridge built,
18 and year after year they keep saying, "Send us more
19 money or we're not going to build the bridge", after
20 a while everyone is going to say, "We're not going to
21 send you anymore money, not until we see the bridge up
22 there. Well, that's the position we're in right now.

23 COMMISSIONER MERRIFIELD: I understand.
24 I understand. I'm not disagreeing with your concern,
25 I'm just saying I think it's awkward for us to answer

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1 that question.

2 MR. BRADLEY: May I comment one quick
3 second?

4 COMMISSIONER MERRIFIELD: Absolutely.

5 MR. BRADLEY: In relation to this issue,
6 the lack of proper funding that has been requested is
7 one of the reasons now we are looking at 2010. If we
8 could get the funding that is designated to this -- or
9 that is directed towards this project from the
10 consumers, and use that money in an efficient way,
11 which I presume they are, then this project wouldn't
12 be 2010, we'd probably looking at a lesser date. And
13 so all the conversation I've had is that very thing.
14 If we could get the funding, if we had been getting
15 the funding, and using it appropriately, then this
16 project would have been on a whole different time
17 schedule. So, I share my fellow Commissioners'
18 concern, but I certainly understand where you're
19 coming from, and I have no problem understanding.

20 COMMISSIONER MERRIFIELD: On that same
21 issue, the role that is crafted for us by Congress,
22 what we're supposed to do relative to Yucca Mountain,
23 is thumbs-up or thumbs-down. I mean, in essence,
24 that's the role. And a legitimate question is, has
25 Congress been providing money to the project in the

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1 right amount, at the right time, and has the
2 Administration been requesting the amount in the right
3 time and the right amount?

4 COMMISSIONER MERRIFIELD: I presume all of
5 you are going to be meeting with your congressional
6 delegations on the Hill this week, those are very
7 legitimate questions to be asked of them.

8 I want to get to a couple other issues
9 quickly. Mr. Dworkin, you mentioned issues of offsite
10 power. I think that's, as was mentioned by a couple
11 of Commissioners -- I mean, I think those are fair
12 questions to ask. There are two that come to mind
13 that I think are worth postulating. It's not just
14 relative to plants that are off-line that may need
15 that offsite power, it's also the effect of grid
16 stability on plants that are operating.

17 We've had instances at the Calloway Plant,
18 for example, out in Missouri, where as a result of
19 transmission through the switch yards attendant to
20 that plant, there have been some possibilities and
21 they have had to invest heavily -- I think, \$40-50
22 million worth of equipment -- to make sure that that
23 plant can continue to operate and giving the varying
24 loads that are being wheeled through that area, I
25 think that's something that we've looked at, I think

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1 it's something that the folks at the Nuclear Energy
2 Institute and their members have also looked at, and
3 I think that's a concern.

4 The other one relative to deregulation, I
5 think, goes to the issue of the amount of power
6 available in an individual area. It is easy to
7 postulate that in a circumstance in which you have
8 insufficient generating capacity -- and I'm from New
9 Hampshire, so I've got two neighbors straddling me on
10 the other side of the table. In the New England
11 region, there are times in the summertime you get real
12 close, and you don't want to be in a position where
13 there's so little capacity left that there's
14 additional pressure put on operating nuclear power
15 plants to keep running in a circumstance where
16 normally you'd want to take those plants out. And
17 from our position, if there's any question about the
18 safety of the plant, the plant should be shut down.
19 And so that's out there.

20 And as you all are dealing with the issues
21 of sufficient capacity, that's obviously something
22 that I think plays into that as well.

23 MR. DWORKIN: I'm happy to comment on
24 that. First, I should say one of those things which
25 are sometimes so important, that the most important

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1 things in life are the ones you take for granted. If
2 there's any doubt about the safety of the operation of
3 a nuclear power plant, it ought to be shut down and
4 worked on, period. If we're running tight in the
5 reserve margins in a region, that's tough. You still
6 ought to take down the plant and work on it, period.

7 With that -- which I think we all accept,
8 that if there's any doubt --

9 COMMISSIONER MERRIFIELD: Right, I think
10 that's a fundamental principle.

11 MR. DWORKIN: It is worth noting that
12 there are lessons we are learning in the operation of
13 regional power pools which have been moderately
14 painful in the Northeast and very painful in the West.
15 And one of those lessons is that we can predict to a
16 certain degree when there will be high demand, but not
17 fully.

18 Two years ago, the New England Power Pool
19 assumed that the peak demand would be in July and
20 August, and it therefore scheduled a whole lot of
21 operational work in June. Guess what? Two years ago
22 it was hot in June. Last summer, they extended their
23 summer to June, July and August and scheduled a lot of
24 maintenance work in May. We had an extremely hot
25 early week in May, and found that the absence of power

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1 plants was a serious problem leading to a period of
2 more than four hours where prices went from \$30 per
3 unit to \$6,000 per unit. That effect significantly
4 affected the yearwide cost of power in New England.

5 This year they are predicting for next
6 summer the last week of May plus June, July and
7 August, and heaven only knows what we can learn from
8 protocols about this, but what we can learn is that
9 when your power comes from a few large chunks, that
10 you are very vulnerable to and need to be careful
11 about the scheduling of your maintenance. And a
12 serious concern about the deregulation of the industry
13 that I'll put into a little phrase again -- the
14 proponents for deregulation said for many years that
15 reliability was a given. I 100 percent disagree.
16 Reliability is not a given, it's a constraint. And the
17 difference between a given and a constraint is whether
18 you let it limit your operations, limit your options,
19 limit your choices, and whether you respect it instead
20 of taking it for granted. Reliability has to be seen
21 as a constraint consciously and directly addressed.

22 The price that we pay for power is
23 extraordinarily sensitive to the degree of demand on
24 the margin for the fairly simple principle that we
25 turn on the cheap stuff first, and the medium

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1 expensive stuff next, and the really expensive stuff
2 after that. It's not all that sophisticated except
3 that when you look at the numbers, you find that in
4 cases such as both the New England and the California
5 power pools, periods of as little as four hours,
6 periods of as little as a day or two, have had
7 contributions that have had as much as 5 percent of
8 the total cost of power for the year. A 2 percent
9 reduction in demand for New England in that peak
10 period last year for a period of one day would have
11 led to a reduction in total cost for the year of
12 almost 5 percent. And that year-round reduction of 5
13 percent for a one-day reduction of 2 percent, it is
14 worth noting that, as in everything else we do, a
15 significant investment in energy efficiency is very
16 cost-effective in a situation. And although it is not
17 your primary responsibility, it is only one of many
18 responsibilities we have. And when we talk about the
19 balance, when we talk about reducing the pressure on
20 running every generating unit flat-out and to the
21 level where we worry about whether we're pushing it
22 too hard, it's worth noting that a cost-effective
23 investment in energy efficiency can radically reduce
24 the stress on the generating and transmission grids,
25 and that should be part of any integrated assessment

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1 of the situation. And anytime anybody comes to you and
2 says that a nuke needs to be run more than it
3 otherwise would be run because of a need for power in
4 that area, you've got all your safety reasons that I
5 hope you've got the guts and gumption to stick to, to
6 say no. But you also have the option of saying, "And
7 have you checked for whether an efficiency investment
8 would avoid the need to do that? Have you checked for
9 whether an increased use of the transmission ties to
10 another power pool would avoid the need to do that?
11 Have you checked for whether there are other options
12 besides this?" And those alternative options are part
13 of what any, I'll call it, "rational and economically
14 correct" assessment of the overall situation would do.

15 You mentioned the example of Calloway, and
16 it's funny, I was thinking of Davis Bessie which about
17 three years ago in a storm lost one its transmission
18 leads, and it took quite a bit of time before it came
19 back. During that time, the plant came off at the
20 margin when it was expected, that had significant
21 effects on the price throughout the entire power pool.
22 I think that that's always an issue. Frankly, I think
23 that it's the ordinary working course of business to
24 come up with ways of making sure that those leads are
25 in place, and that doing the job right by the

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1 operators of the facilities, and doing the job right
2 as you look over the shoulders of the operators of the
3 facilities, involves making sure that that's in place
4 and works smoothly.

5 I think that there's nothing particularly
6 special about it except that in an industry which is
7 in transition, there are times when it's as simple as
8 that they lose phone number of who they should talk
9 to, and you need to be sure that the mechanics are
10 tested through people doing it, through drills, and
11 not just assumed to work because they did a few years
12 ago.

13 COMMISSIONER MERRIFIELD: I'd like to make
14 a comment, and I know Commissioner Diaz does, too. I
15 understand the comment you're making about the phone
16 calls. I think there's up sides and down sides to all
17 that in the deregulated marketplace, and the changes
18 that we're seeing relative to our licensees -- we've
19 had a lot of license transfers. We've had a lot of
20 plants that have been bought and sold over the course
21 of the last couple of years.

22 In the region that we are from, from New
23 England, the Yankee arrangement was a typical way of
24 running these plants. You had multiple owners. You
25 had 10 or 15 owners --

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1 MR. DWORKIN: But they operated as a
2 fleet.

3 COMMISSIONER MERRIFIELD: -- that operated
4 as a fleet. One of the issues associated with that
5 type of operating structure was it was -- when you add
6 multiple owners to that arrangement, it is easy to
7 have everyone agree not to spend money. It is
8 difficult to have everyone agree to spend money.

9 And so in those circumstances, obviously
10 one would hope, and one would expect, that those
11 owners in a collaborative sense would spend the money
12 to do what was necessary to meet the regulatory
13 requirements in safety.

14 From an operating perspective, that may
15 not always necessarily be the case, and one need only
16 look at the capacity factors of some of the Yankee
17 units in New England to see that. And the New York
18 Times article two weeks ago talked about the changes
19 that had occurred at Pilgrim as a result of a change
20 in ownership structure which is instructive, the fact
21 that you can bring in experts from other plants, and
22 that you can also -- there's a greater willingness and
23 ease to wish to spend money --

24 MR. DWORKIN: I hope that my comments have
25 not led you to think I'm taking a generic position

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1 that utility plants -- I'm sorry -- that nuclear
2 plants should be owned as part of an integrated
3 operation of a distribution utility. There are some
4 good things about that and there are some bad things
5 about it. And the split-off to an independent
6 specialized manager has many attractions and some
7 costs as well.

8 I'm taking much less a philosophical
9 approach on this than I am a pragmatic nuts-and-bolts
10 approach, which is that if those transfers do occur,
11 there are an awful lot of pieces of making it go
12 smoothly that need to be very carefully checked in a
13 nuts-and-bolts working like way that sets ideological
14 questions to the side.

15 COMMISSIONER MERRIFIELD: I wouldn't
16 disagree. I mean, obviously, we, as a Commission,
17 need to opine on each and every one of the license
18 transfers that comes before us. I think, for my part,
19 a couple that we've already done, but obviously going
20 forward, each one of those is going to have to be
21 viewed on its individual characteristics, and we'll
22 see where it goes.

23 COMMISSIONER DIAZ: I'd just like to
24 thank, Commissioner. Just a quick comment -- I'm sure
25 you know this, but just in case it's not very

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1 widespread -- we now know that in many occasions the
2 safest thing for a nuclear power plant is not to be
3 shut down, that we have now -- we don't know all there
4 is to know about it. Ten years ago, something
5 happened a little bit out of a tech spec, down you go.
6 Now the Commission has taken a -- let me use the best
7 word -- risk-informed approach, and we now realize
8 that in many, many, many situations, sometimes
9 including weather, it is safer to keep them operating,
10 even if sometimes reducing power, than actually to
11 shut them down.

12 And I think we are going to be improving
13 in that sense because I think it is vital to grid
14 stability and to the power plants themselves to know
15 when do they have to continue to operate, even if they
16 have a minor problem that years ago we would have said
17 "shut it down", we now know that it is better to keep
18 them operating.

19 COMMISSIONER MERRIFIELD: I share that
20 clarification. I agree with Commissioner Diaz.

21 MR. DWORKIN: I just hope it's clear that
22 my sensation is that if you think that it's better
23 operating, it's clear that the plant will be better
24 operational status, then that's one question. If you
25 think that it's better to keep it operating because

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1 somebody thinks they need the power for the grid,
2 that's a very different one.

3 MR. NUGENT: If I could offer a comment
4 which I think is appropriate at this point, you are
5 properly exploring the question of whether
6 restructuring represents an increased threat to the
7 operation of the nuclear plant that you've got your
8 principle responsibility for, but at the same time
9 restructuring is having some positive effects which
10 are making the system more robust and more reliable.

11 I want to assure you that you can come
12 back to New Hampshire this summer and your power will
13 stay on. Of the --

14 COMMISSIONER MERRIFIELD: I have no doubts
15 about that, nor do my parents, who still live there.

16 MR. NUGENT: Well, we thank you for your
17 confidence in our ability, but the New England market
18 and Texas are two that are forecast to have
19 substantial surpluses in the short- and mid-term
20 future, and other areas are moving, I think, to
21 improve their own situation.

22 My own experience in Maine -- just to do
23 a quick numbers thing here -- is we had 3100 megawatts
24 of generating capacity against a peak demand of 1800
25 when Maine Yankee was still with us. We closed that

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1 down, as you are well aware, taking us down to 2200.
2 Because of restructuring opportunities and prompt
3 permitting -- not my role -- we are now at about 3700
4 megawatts. New generators are in, and we have another
5 1,000 that have sought permitting, with the idea of
6 being in operation within two to three years.

7 So, there is a response that's coming from
8 there. Your nuclear plants are not being asked to
9 carry the entire load, and this additional generating
10 capacity and the transmission improvements that will
11 be made to support that will help to ensure a
12 continued safe environment for the operation of the
13 plants that you are most concerned about properly.

14 CHAIRMAN MESERVE: I'd like to step back
15 for a minute. All of you have made very helpful
16 comments to us, but it would be helpful for me to hear
17 something more from you about what things we're doing
18 wrong. I mean, you've all been very complimentary --
19 aside from the question in which you'd like a
20 semaphore signal of some kind -- we don't have much in
21 the way of guidance from you on things that are
22 creating problems for you that we're doing, areas
23 where we have -- you have some suggestions for us to
24 perhaps undertake our interactions with our licensees
25 even with you in ways that would be more helpful.

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1 MR. NUGENT: I have an answer that for
2 that, but it is the kind that could undercut other
3 comments that someone wants to offer.

4 MR. O'CONNELL: I just have one on the
5 radiation standard. I just applaud the work of the
6 Commission in articulating the position that lower
7 numbers is not always an indicator of higher safety.
8 We agree that your thoughtful understanding, deeper
9 understanding of the effects of radiation on life is
10 well articulated and valued, and we just encourage you
11 to persist.

12 COMMISSIONER MERRIFIELD: Tell that to
13 Congress, too.

14 MR. NUGENT: I mean, reasoned attention to
15 risk analysis is appropriate, and I think that we all
16 deal with that, and we all know that we deal in a
17 public environment.

18 Actually, I think this delegation, as a
19 group, generally applauds the work you've done and the
20 interaction we've had. To some extent, the pitch has
21 to be thrown at you, and that has to come from the DOE
22 with the report, then you have to do your reaction to
23 that. We know that that's not served up to you, and
24 we expect that you'll act as promptly as the law
25 requires you to and you feel your professional

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1 responsibilities require you to. But we're going to
2 watch closely, as you might imagine, and a lot of
3 other people will, and we'll offer -- if we think
4 there is a shortcoming there, we'll offer -- you know,
5 much the same as we talk among ourselves when we get
6 together at these NARUC meetings, we all understand
7 the problems you've got in both the process and the
8 things served up to you, and we also understand the
9 situation that we've put you in with Chairman
10 McDonald's question to you. We are searching for
11 proper tactics to advance the public interest as we
12 think we have an obligation to do. We're concerned
13 about what your reaction may be. We've all been asked
14 those same questions at public hearings ourselves, and
15 I would say that at least I have responded in similar
16 fashion, and I wouldn't be surprised if Chairman
17 McDonald has as well, but that doesn't mean we don't
18 push you.

19 MR. DWORKIN: There's one thought I have
20 which might be helpful, and I offer it from my own
21 experience and in part I put on my old law professor
22 hat, and I'll put on my old businessman hat, too.
23 Predictability is nice, particularly in a capital-
24 intensive industry. That's the business answer.

25 The law professor answer is that we go

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1 back 50 years to whatever you can do by rule instead
2 of by case-by-case adjudication is attractive.

3 The combination of the two is a very
4 sympathetic comment that as you're dealing with
5 relicensing and renewal items, it's possible that --
6 you know, just take them one at a time in a kind of
7 common law of relicensing will emerge, and people will
8 look at the examples and try to make the best guesses
9 about what will happen. However, if you believe it is
10 feasible to develop some general principles, general
11 guidance that would have predictive capability, it
12 would be extremely useful to the people in the outside
13 world to be able, with as much probability of success
14 as possible and with as little resource cost as
15 possible, to be able to assess the likelihood of
16 renewal of facilities.

17 And so I make that in a very sympathetic
18 -- as I know how hard it is to do -- comment, and yet
19 with a recognition that both legally and businesslike,
20 it's an extremely valuable undertaking.

21 CHAIRMAN MESERVE: Let me just say on that
22 point that we do recognize that issue. The staff has
23 generated what we call a generic aging lessons learned
24 report, which has been an effort from the first set of
25 plants that we've examined for license renewal to see

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1 how we should deal with the issues, develop a report
2 that would be available not only to ourselves, but to
3 our licensees as to model ways in which to deal with
4 common issues. And it's our hope that we get
5 efficiency from that and that the tasks of examining
6 license renewal will be diminished for subsequent
7 plants as a result of that kind of an exercise. And,
8 of course, it's informative to the licensees as well,
9 if they know what sorts of things are ones that pass
10 muster here. It enables them to focus their
11 resources. I's sure we can do much more in that area,
12 but that is something that we do recognize.

13 MR. DWORKIN: I confess my ignorance
14 you've got the project, and I express my pleasure that
15 that's the kind of thing you're doing.

16 CHAIRMAN MESERVE: Let me turn to you,
17 though, I must admit that your presentation on
18 restructuring suggests that there are many problems,
19 including very many subtle problems, with which we
20 have to deal in order to deal with this revision that
21 we're all having to deal with in the electric
22 generation business.

23 What is your estimate as to when this is
24 going to stabilize? Is there anyone out there who is
25 doing it right? We know we have a model of what not

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1 to do. Are there lessons we should learn from airline
2 deregulation or other areas that has not been applied
3 in this area that we should be applying? You
4 obviously are much more deeply into this than we are,
5 but I'm interested in when a lot of the confusion that
6 is currently -- we're all currently confronted with is
7 going to dissipate.

8 MR. DWORKIN: Let me draw a parable or
9 metaphor for starters. Sometimes you're in whitewater
10 going down a river, and you go through some rapids,
11 and then you get a nice, clear spot and you take a
12 breath, and then you're in an eddy trying to stop and
13 have lunch. Other times you're in whitewater and it
14 keeps on going, and it keeps on going, and it keeps on
15 going. Having lived in a fair amount of detail
16 through the telecommunications industry, there are big
17 and little waves, but there was always a lot of
18 whitewater.

19 This is going to go for a while, is my gut
20 reaction. I think that change is a fact of life, that
21 in this industry there's going to be continuing effort
22 to try to figure out how to have successful wholesale
23 markets. We do not know what to do about the clash
24 between the extraordinarily rapid concentration of
25 control of generation that has occurred in the last

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1 eight years, when that is contrasted against the
2 national policy of desiring to have a competitive
3 wholesale market.

4 We do not know the lessons of how to
5 develop a functioning -- efficiently functioning
6 market with legitimacy to the people that play in it
7 and the people that are affected by it before a
8 commodity which is instantaneously demanded and very
9 hard to store, and which is provided by very few
10 players and used by a great many. Those are issues
11 that are comparable, as I say, to the effort that took
12 the Securities and Exchange, that turned the New York
13 Stock Exchange into the most efficient commodities
14 transaction of finance in the world, but it was an
15 effort that went from the early 1930s to the '50s
16 before it had really achieved itself, and even now it
17 isn't a done task.

18 I think that this is a long-term effort,
19 and I've spent the major part of my life dealing on
20 the interface with technology, and I believe that it
21 is likely that just as we get to some stable set of
22 business relationships, there will be a technological
23 change that we can't predict that will upset them all
24 anyway.

25 So, I think that we can't help that it's

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1 all going to get simple in a few years. I'm sorry
2 that's not a tidy, workable answer. I will say that
3 there's one piece that I think --

4 CHAIRMAN MESERVE: Well, you did say
5 something, that our prospect was continuing whitewater
6 or maybe some pools rather than a waterfall, a Niagara
7 Falls.

8 MR. DWORKIN: Yes, and I'm glad you fed
9 that back to me because I do not believe we have a
10 disaster. I have great qualms about making the
11 restructuring of the industry work well, but first I
12 believe it's a reality that we have to work with
13 whether we like it or not. And, secondly, I think it
14 has many positive elements that may well emerge as we
15 work with it. And I don't want to suggest that this
16 is a bad thing, all it is is a hard, challenging
17 thing.

18 In that context, just one more thing that
19 I am disturbed by has been a significant trend towards
20 the classification of a great deal of information that
21 used to be public, as proprietary. I know that the
22 most successful wholesale markets in the world right
23 now -- I'd say that Britain is probably -- are ones
24 that operate with great transparency of information
25 about all transactions. The fact that the wholesale

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1 transactions within the U.S. right now are generally
2 private for at least six months, often for a year, and
3 sometimes forever, makes the policing of the efficient
4 operation of those markets extremely difficult, and it
5 makes the establishment of the legitimacy of the
6 transactions a very difficult issue for public
7 acceptance, and I believe that it's very important
8 that we move not towards more proprietary information
9 about negotiations, but considerably more public
10 awareness and transparency about them. And I'll say
11 again that the posting of trades is an important
12 element of what keeps the NASDAQ and the NYSE
13 functioning well.

14 I'm sorry, Bill.

15 MR. NUGENT: No. And I don't take issue
16 with that last point. Certainly, we, in doing our
17 work, as you do, need access to information and the
18 basis on which you get it, of course, is -- in some
19 cases, there have to be grants of confidentiality, in
20 other cases not. You want as much as possible in the
21 public sector.

22 I just want to make the point here that as
23 we go through this restructuring, it seems to me that
24 an important focus is the safety, that you guys have
25 to be assured that the plants are running right.

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1 I think the broader question of how long
2 restructuring will take is one that doesn't directly
3 and necessarily affect the safety. We have different
4 models. In five of the New England States have
5 restructured. Michael has yet to get there, but he
6 may. But we all depend on a wholesale market that
7 requires some disciplining and some shaping so that it
8 can be reliable. In each of the five New England
9 States that has restructured, they have already all
10 made changes, so it's a continuing process. It will
11 probably continue for many, many years. It should
12 achieve some sort of stable state in -- I would say,
13 in the mid-term future. But that goes to questions of
14 markets and codes of conduct among players and so on,
15 things of that sort, but the reliability is something
16 that none of us is intentionally trying to undercut.

17 CHAIRMAN MESERVE: Before I turn to
18 Commissioner Dicus, I have just one comment I'd like
19 to make on the issue of transportation and the need
20 for information.

21 We do have, as one of our strategic goals,
22 an effort to restore/establish/maintain public
23 confidence, and I think we all see that as being
24 something that is encouraged by being open in dealing
25 with the public and being straightforward and

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1 obviously being truthful and accurate in what we say.

2 The challenge we have is that we go too
3 far, it is seen as advocacy, and it in fact undermines
4 what we're trying to establish as "we're going to call
5 them as we see them" on the basis of the safety and on
6 the merits. So I think that is something I'd just ask
7 you to bear in mind as we approach this. This is not
8 quite so simple as us being out in front of the
9 Department of Energy on certain issues, or whoever on
10 certain issues. Our role is not to be an advocate,
11 one way or another, with regard to Yucca Mountain or
12 any of the other matters that are in front of us.

13 We try to generate information that we
14 think will inform our deliberations, provide guidance
15 to the public and guidance to our licensees.

16 MR. NUGENT: We walk that line, too, Mr.
17 Chairman, on many issues within our own State, and I
18 think you will find no more understanding a forum in
19 that regard than the NARUC itself. And if you have a
20 particular view that you would like to advance in that
21 regard, or staff, we would welcome you into that
22 forum. And I think many of the State Commissions
23 would welcome your or your staff's appearance in their
24 states, or regionally as we often work, to present
25 your views as well in that regard. You'd get an

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1 active response from your colleagues in NARUC.

2 CHAIRMAN MESERVE: Thank you very much,
3 appreciate that. Commissioner Dicus.

4 COMMISSIONER DICUS: Thank you, Mr.
5 Chairman. First of all, let me tell you how much I
6 appreciate your coming, taking time out of your
7 meetings in Washington, to be here to testify before
8 us. It's been some years, so it's good to have you.
9 I don't know if we need to have you every year, but
10 we'd like to have you a little more frequently than we
11 have because I think you can tell from the interchange
12 we've had that this has been very useful to all of us,
13 and I think you know that I'm the NRC's Liaison to
14 NARUC, and I've been to many meetings, and I've
15 testified before you. I've been on that side of the
16 table when you were sitting on this side of the table,
17 and your questions were always gentle, so mine will be
18 as well. But I do appreciate your coming here and so
19 forth. And I'm happy also you have no issues with the
20 NRC. We like that.

21 I want to turn to the transportation issue
22 which you've heard most of us talk about, and I think
23 you probably know that when I was on the Southern
24 States Energy Board, I did serve on a couple of
25 committees, and one of them was on transportation.

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1 And we dealt with the issue of transportation of
2 radioactive material, spent fuel and other radioactive
3 materials, and I know, as a health physicist, that
4 it's not a technical issue, and it's not a health and
5 safety issue, but it is a political issue. It is a
6 public perception issue, and we have to deal with it.

7 When DOE was sitting over there at one of
8 the briefings we had, I brought it up to them, that I
9 didn't think they were addressing the transportation
10 issue like they should, given the fact it's not a
11 health and safety issue, but you're going to have to
12 deal with it because the States are going to deal with
13 it.

14 Now, my question to you -- and one of you
15 can answer, or all of you, or whatever -- is, as
16 Public Utility Commissions, are you dealing in your
17 States with the transportation issue?

18 MR. McDONALD: We very definitely are in
19 Georgia. I mean, it's because of our relationship
20 with my friend in South Carolina, the Savannah River
21 Project, and we have a person on our staff that
22 basically is the captain of -- Bruce is designated,
23 and teaches, and works with all the agencies from the
24 Emergency Response Systems to law enforcement to the
25 general public itself in trying to shore up that

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1 public confidence that these can move safely. And
2 very honestly, we've had a legislator in Georgia that
3 served two terms in the Georgia House of
4 Representatives, and her key issue day in and day out
5 was the alarmist on transportation, and that was her
6 single issue as a legislator, and kept that fire
7 burning. Fortunately, or unfortunately, she was not
8 sent back this year to the General Assembly, but it is
9 very, very much of an issue with us.

10 COMMISSIONER DICUS: Is it being
11 effective?

12 MR. McDONALD: I think so, yes, I really
13 do. You know, there are those that are going to
14 listen --

15 COMMISSIONER DICUS: Of course.

16 MR. McDONALD: -- and then there are those
17 that are absolutely not going to listen, and you can
18 show all the science and all the facts and figures
19 that you can, but if they are not going to listen,
20 they are not going to listen.

21 COMMISSIONER DICUS: A few months ago, we
22 had several Canadian Senators in to see us, and we met
23 with them. One of the questions they put to me had to
24 do with transportation and, you know, whether we
25 thought, if we did -- and I say "if", that's a big

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1 "if" -- do get a license application for Yucca
2 Mountain and do approve it -- another big "if" --
3 would we ever be able to transport the spent fuel.
4 And I said, yeah. And they said, "No, you won't be
5 able to". As of the first few shipments, I expect
6 people laying in the road -- I mean, the whole thing
7 you go through -- but look at the shipments going to
8 WIPP now. There was some controversy for the first
9 few shipments, and now they are going all the time.
10 So, I think you can do it, but I think we need a very
11 active public perception, and it may not be us. We
12 have some problems. We need to correct wrong
13 information -- and I agree with Commissioner
14 Merrifield that maybe we don't do as much as we should
15 to correct wrong information, but there needs to be a
16 public information on what the real risks are. And I
17 would suggest that the PUCs do have a significant role
18 in that regard.

19 MR. McDONALD: Commissioner, let me
20 parallel it by this brief statement. It has not been
21 near the issue, public issue, as was changing the
22 State Flag.

23 COMMISSIONER DICUS: I watched the news on
24 that one, that was a big issue. But you got the State
25 Flag changed.

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1 MR. McDONALD: Yes, ma'am, and we can
2 transport nuclear spent fuel, too.

3 COMMISSIONER DICUS: I'm pleased to hear
4 that.

5 MR. BRADLEY: Commissioner, if I may,
6 right quick, the way the material is transported
7 through South Carolina, it's unreal the law
8 enforcement people that are involved. The South
9 Carolina Law Enforcement Division, which is the State
10 equivalent to SLED, they have a division that is
11 specifically trained to deal with this. I think their
12 biggest fear in moving it is something from the
13 public, somebody trying to derail a train or take
14 track out and this kind of stuff. So, I'm kind of
15 like Bubba, with the track record we've got, it's no
16 longer a thing with the public. I mean, they notify
17 people that it's coming in, and all this kind of
18 stuff, and it's just --

19 COMMISSIONER DICUS: When I was back in
20 Arkansas, one of my jobs was to be the person notified
21 of shipments and tell the Governor's office about it.

22 Let me ask -- someone else want to make a
23 comment about the transportation?

24 MR. O'CONNELL: I had a chance to go to a
25 DOE outreach workshop in Portland a few weeks ago, and

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1 I found myself amongst the emergency preparedness,
2 public safety people, and I came away very confident
3 that they will know what to do when they know what the
4 routes are, and what the forecasts are and so forth,
5 and they express that. These are professionals who
6 have confidence in what they are doing.

7 COMMISSIONER DICUS: Let me --

8 MR. NUGENT: It will be an issue in Maine,
9 it is right now, but right now it is not front and
10 center because stuff isn't likely to move in the near-
11 term future. As Commissioners, as you know, we, as
12 you do, have multi-year terms. I've now been
13 appointed Commissioner by three Governors, and you
14 work to maintain the credibility, your own credibility
15 and the credibility of the institution, and when those
16 issues come up we will try to deal with them directly.
17 I can't say which way you go until you see what the
18 plan is, and schedule, and so on. Assuming it's well
19 thought out, I think we would be on the side of
20 support and reason.

21 MR. GALVIN: I don't think there are
22 enough dollars spent on public education.

23 COMMISSIONER DICUS: No, there are not.

24 MR. GALVIN: You have to find some way to
25 reeducate the people as to what nuclear means and

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1 allay most of their fears. My wife -- here I am, I'm
2 trying to get nuclear plants built in New York, and
3 she's telling me, "If you get another plant built
4 there, you move out of my house". She can't stand it.
5 She's scared to death of it. No matter what I try to
6 do or how I try to explain it, I can't make any
7 headway with her. Of course, being a woman, you'd
8 understand that.

9 COMMISSIONER DICUS: I'm not going to
10 touch that.

11 MR. GALVIN: I had to throw that out
12 there. But there really is a lack of education of the
13 general public on nuclear, nuclear waste, nuclear
14 energy, what it provides, how environmentally safe it
15 is, and I think that we've got to find some way to get
16 more dollars out there and reeducate people on the
17 whole problem.

18 MR. McDONALD: There's a lack of -- rather
19 than a lack of education, there is a lack of desire to
20 know about it, but what will elevate that point is
21 when, as we are experiencing right now, the increased
22 cost of energy. And when it's all relative, the
23 pocketbook is going to have a tremendous educational
24 factor and acceptance factor over a lot of other
25 things that are emotional or whatever.

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1 COMMISSIONER DICUS: Yes. I need to talk
2 to the Maryland Public Utility Commission to get gas
3 prices down, from my last natural gas bill.

4 One final question, if I could, has to do
5 in November, your resolution which you discussed, on
6 high level nuclear waste -- in particular, that we
7 get reasonably attainable radiation standards for our
8 repository.

9 Could I ask what NARUC, as an
10 organization, is doing with activities to support
11 that, particularly with Congress, or with other
12 agencies?

13 MR. O'CONNELL: Well, we did make our
14 comments on the Draft Environmental Impact Statement
15 as well as the Proposed Rule --

16 COMMISSIONER DICUS: Ours or --

17 MR. O'CONNELL: No, the EPA Proposed Rule.
18 And I must say, as an engineer with several degrees
19 unfamiliar with this field, that was some of the most
20 difficult reading I have ever attempted in my life,
21 and I said that at the hearing that EPA held on those
22 Proposed Rules, that you, as an agency, need to do a
23 better job in communicating what this is all about
24 because that rule was incomprehensible to the
25 nonexpert. The issue of volume of water flowing

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1 underneath the desert, for example -- way over my head
2 as to what that was all about.

3 COMMISSIONER DICUS: But it makes a very
4 big difference.

5 MR. O'CONNELL: That's correct, and I
6 respected that. And I read your staff's review, which
7 was also difficult reading, but it had to be
8 scientifically precise, and that's why my earlier
9 comment that I support the position you took and
10 encourage you to persist in it. We have not taken a
11 proactive role, but we made a comment just the other
12 day, as we get ready to deal with a new Administration
13 and a new Congress, it might be well for us to express
14 our views to the new Administrator of EPA.

15 CHAIRMAN MESERVE: We welcome that.

16 COMMISSIONER DICUS: Yes, we absolutely
17 would. One final thought, and I have one more very
18 short question that can be answered yes or no. You've
19 mentioned that you weren't sure -- one of you, I can't
20 remember who now -- that the level of trust for DOE in
21 Nevada may not be that high. How about the level of
22 trust for the NRC? Do you have a readout on that?

23 MR. GALVIN: Well, because of what
24 happened in New York with our nuclear plant, Indian
25 Point 2, and the fact that the NRC was found out to be

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1 a little delinquent in the way they reported the
2 safety factors of the plant, the general feeling in
3 the area is that "you can't believe them just like you
4 can't believe your congressman, it doesn't make any
5 difference". But when they came out with their first
6 statements which were found to be inaccurate and then
7 corrected it, it didn't play well at all. And the
8 congress people and Senators still are of a mind that
9 the NRC really is in a tough spot right now in order
10 to improve that.

11 COMMISSIONER DICUS: And that would
12 transfer to Nevada?

13 MR. GALVIN: I don't know whether it would
14 transfer to Nevada or not. Nevada -- the Mayor of
15 Nevada just had a special on TV, yesterday or the day
16 before it came out, and although he mentioned that he
17 was the chief counsel for the Mafia -- and he came
18 right out with it -- when they first started in Las
19 Vegas, and he pointed to an empty parcel of land where
20 he wanted to build a sports center, sports complex, et
21 cetera, et cetera. He also mentioned that it's not
22 that close to Yucca Mountain. So, it's there. He
23 didn't expound on it in any other way, it's just that
24 he did mention it. So, I don't know what's been
25 transferred or what hasn't been transferred.

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1 COMMISSIONER DICUS: My general feeling
2 is, from feedback from staff and from other folks in
3 Nevada, is that probably our credibility is certainly
4 going up. Now, I went about a year and a half ago --
5 I guess it's almost two years now -- I went out and I
6 spent a day meeting with anyone in Nevada who wanted
7 to meet with me. And we started like 8:00 in the
8 morning, I think we finished at 5:30 that afternoon,
9 and I met with state and local governments, I met with
10 individual citizens, and I learned that we were not,
11 as NRC, as an agency, representing ourselves
12 particularly well in public meetings. In fact, some
13 people didn't know that we were not part of DOE. And
14 some people didn't know that we were the regulator.

15 So, I came back here to the agency and I
16 talked to our folks who were going out, and we made a
17 few changes, and it was simple things, just some of
18 the slides we were using -- they weren't wrong, but
19 they simply sent a message that the public saw
20 differently. So, my feedback from staff that goes out
21 is that things are doing much better now, but it would
22 be interesting to hear that.

23 MR. DWORKIN: Well, I guess I could
24 comment with a limited degree of knowledge, with a
25 three-part response. First, there's a general

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1 background which I think many people have that Ronald
2 Reagan encapsulated as "Government is not the
3 solution, Government is the problem", and the NRC is
4 a piece of that Government that he characterized that
5 way, and it rung in a lot of people's minds, and
6 you've got a lot of pushing the noodle uphill to get
7 from behind that.

8 There's a second piece, which is that
9 people don't know a lot about science, but nuclear is
10 scary and it goes boom. And it kills you by going
11 boom and it kills you in a silent way that you can't
12 suspect. And that is inherent in the word "nuclear"
13 in American perception, and has been for 56 years now.

14 You've got both of those -- if you will,
15 two strikes -- against you when you go into the
16 batter's box. Then when you start to swing, my
17 perception is that the NRC's credibility is higher
18 than it was 20-25 years ago. I need to adjust for
19 whether this is a change between me as a college
20 student, and me as somebody close to the industry, but
21 whether it's me or the real world's perception out
22 there, it's changed.

23 I think that in part the split from the
24 old Atomic Energy Commission and the focus on being
25 the regulator rather than the advocate has slowly,

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1 incrementally, bit by bit, but ultimately in a
2 meaningful way, begun to be part of the perceptions of
3 people that deal with this, at least professionally if
4 not incidentally, and I believe that the technical
5 quality of the Commission's work by people that come
6 and testify in my hearing room has been regarded as a
7 pretty good technical quality. Now, that's not a
8 public perception of 200 people in a town meeting,
9 it's what kind of witnesses do you walk into a hearing
10 room that have somebody to pay them to testify, and I
11 don't think it will give you the assurance that every
12 coffee shop in America is going to think that you've
13 done it right if you do what you think is right, but
14 I think it does suggest that walking into the batter's
15 box with two strikes against you, it looks like your
16 swing is relatively level to at least the batting
17 coaches, if not to the fans.

18 COMMISSIONER DICUS: Thank you. That's
19 all, Mr. Chairman.

20 CHAIRMAN MESERVE: Commissioner Merrifield
21 wanted to make a brief comment.

22 COMMISSIONER MERRIFIELD: Yes. I just
23 wanted to close out -- because I know the others have
24 talked about transportation -- I did want to make a
25 brief mention as well. I have, as was quoted by Mr.

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1 O'Connell, I have said in public that our agency has
2 acted very much like the Maytag repairman where he's
3 somewhat reticent of getting out in front and saying
4 too much. And I, in my own respect, do believe we can
5 do a little bit more.

6 It is, however, a careful balance, as the
7 Chairman has alluded, from our origins in the Atomic
8 Energy Commission where we were split apart and seen
9 as being the one who should be the regulator. I think
10 it is important to us, as Commissioner Dicus has
11 pointed out, to maintain our credibility, or enhance
12 our credibility relative to Nevada, so that at the end
13 of the day, whatever decision the Commission makes
14 relative to Yucca Mountain, that there is a high
15 degree of credibility behind that ultimate decision.

16 Now, in light of that, obviously we have
17 regulations and are applying them relative to spent
18 fuel storage casks, and I think it's incumbent on us,
19 not in a promotional way but in an educational way, to
20 make information available on our Website and through
21 public documents, so that the public who want to
22 become aware of what these casks are, how they are
23 designed, how they are regulated, and whether or not
24 they are safe, can find that information. I think
25 that is our obligation to do that.

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1 Does that put us in a position of going
2 door-to-door from St. Louis to Atlanta to elsewhere to
3 tell people how great these casks are and the extent
4 to which they should be used to transport fuel,
5 wherever that ultimate location is, I think the answer
6 to that is no.

7 Ultimately, the responsibility for
8 communicating to the public is the responsibility of
9 the Department of Energy. The Navy, for its part, has
10 had I don't know how many thousand shipments of spent
11 fuel over the course of the last 50 years, hundreds of
12 them from my home State of New Hampshire. I'm very
13 proud of Portsmouth Naval Shipyard -- and my Maine
14 colleague probably would disagree about where
15 Portsmouth is located -- but we're very proud of that
16 shipyard and there have been many, many shipments from
17 there. That is a role undertaken by the Navy, and
18 they go out with their slide show and with their films
19 and they talk about that. In my eyes, that's not
20 appropriate for us to do. We should provide public
21 information on our Website and elsewhere, we should
22 answer questions where they are appropriate but,
23 ultimately, I think DOE has got to be the one out
24 there educating people.

25 We're going to have a new set of people,

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1 there's no question about it. We are regulating 103
2 operating nuclear power plants right now. They are
3 located in, I think, all of the states represented at
4 this table, as well as others. And we have the public
5 surrounding those plants who have some degree of
6 comfort. They know where the plants are at this point.
7 They may have doubts about safety, but the plants have
8 been there operating for a while.

9 When it comes to the transportation of
10 spent fuel, we're going to have people in cities, in
11 towns across America who have never really come into
12 contact with nuclear materials of this age, and so we
13 will have a whole new level of stakeholders that all
14 of us will be grappling with. It will be difficult
15 for us and the group for whom we will have to provide
16 good and accurate information. It's going to be a
17 significant task, one that I think we obviously need
18 to do the best we can but, as I said, I think DOE has
19 also got its role in that process as well.

20 MR. NUGENT: Well, I take issue with you to
21 some extent now. We both make decisions that,
22 generally speaking, the public doesn't understand, or
23 oftentimes doesn't understand. I mean, they
24 understand the bottom line, but a lot of stuff in the
25 middle they don't understand very well. And I will

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1 readily grant that you've got 280 million constituents
2 -- through elected representatives you've got them,
3 and I've got a million and a quarter -- but I think to
4 some extent you've got to maintain public credibility.
5 A way to do it is to go out and meet the public in
6 various forms. And you go out there -- and I do it
7 periodically -- and just let the public set the
8 agenda. I take PUC on the road. Every few months, I
9 go out and I find a place we don't normally go to for
10 hearings, and I go in there and give the public the
11 chance to just question me on anything they want to
12 question me about. Now, this is a little different
13 than your situation, I have a broader responsibility.
14 Typically, they start out very quiet. And then I'll
15 tee-up some issues for them, and you get a discussion
16 going. I think they want to know whether you're
17 smart, you're not in somebody's hip pocket, and you're
18 working hard, and once you can establish that, they'll
19 cut you some slack.

20 Now, admittedly, we're a lot more
21 grassroots than you are, and -- I think this is public
22 education, but it is not trying to persuade them of a
23 certain issue. The public is understanding of the
24 fact that matters come before you and you can't give
25 them the answer to a matter before you've heard the

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1 thing. They understand the fairness that you're
2 giving.

3 I would encourage you to meet with people.
4 I don't know how you'd do it with 280 million people,
5 and I'm sure you guys can figure that out. There are
6 forums you'll find, and do it, but the public will
7 really appreciate your leveling with them.

8 COMMISSIONER MERRIFIELD: I don't
9 necessarily disagree with you. I guess the point I
10 was trying to make was, I think we do have an
11 obligation to make ourselves available and to answer
12 the questions of the public, and it's going to be
13 difficult to do that given all the different
14 transportation routes. What we can't do is be the
15 ones out there introducing the idea of the cask and
16 the fact that they're going to be utilized. That's
17 really the distinction we need to make. There's a
18 very careful line we need to tread to make sure that
19 our credibility on the regulation of these casks is
20 upheld because that's the important thing, and that
21 was the only point I was trying to make.

22 CHAIRMAN MESERVE: I'd like to thank you
23 all for joining with us this afternoon, this has been
24 a very helpful exchange. Let me say that, on behalf
25 of the Commission, as there are issues that arise

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1 before NARUC that you'd like to raise with us, we'd
2 very much welcome the opportunity to interact with you
3 and to learn from you and, if there are problems that
4 we're creating, please do not hesitate to let us know.

5 MR. NUGENT: We thank you for the
6 opportunity to visit with you. We know you've given
7 us more time than you had originally planned, that may
8 squeeze your agenda somewhere else. We also left with
9 you, as some of you noted, these are our the directory
10 of probably several hundred people -- there are the
11 280 Commissioners, Federal and State, who are involved
12 in regulation, and the important staff people there
13 that will answer, and we do respect ex parte
14 communications, we understand that rule. We live by
15 it ourselves.

16 MR. McDONALD: That's not the best picture
17 of me, by the way.

18 CHAIRMAN MESERVE: Thank you very much.

19 MR. BRADLEY: Might we just say that, as
20 well, there are issues that we might can help you
21 there with, we would appreciate hearing from you, too.
22 It needs to be a two-way street.

23 CHAIRMAN MESERVE: Thank you very much.
24 We'll count on this being a two-way street.

25 (Whereupon, at 4:00 p.m., the meeting was

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concluded.)