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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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PETITION REVIEW BOARD

BUSINESS MEETING

+ + + + +

TUESDAY,

SEPTEMBER 17, 2003

+ + + + +

ROCKVILLE, MARYLAND

+ + + + +

The meeting came to order at 3:00 p.m. in Room
06B2 of One White Flint North, Rockville, Maryland,
Eric Leeds, Chairman, presiding.

Present:

Eric Leeds, PRB Chairman

Mel Field, Petition Manager

Herb Berkow, NRR

Antonio Ferndanez, Esq., OGC

Jon Hopkins, Project Manager

Christine Lipa, Region 3

Monte Phyllis, Region 3

William Ruland, Division of Licensing Project
Management

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Also Present:

Kevin Astroski, First Energy

Paul Gunter, Nuclear Information and Resource Service

Dave Lochbaum, Union of Concerned Scientists

Jim Riccio, Greenpeace

Angela Thornbill, Esq., Representing First Energy

I-N-D-E-X

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Statement of Dave Lochbaum, Union of Concerned Scientists	13
Adjourn	24

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

3:09 p.m.

MR. FIELDS: Let's go ahead and begin. My name is Mel Fields. I've been assigned to be the Petition Manager for this particular request by Greenpeace on behalf of UCS and also the NIRS. We're transcribing the meeting, as you can tell and it would help if anybody is making a statement to first introduce themselves, just give Eric a hand, make sure that he's able to connect the statement with the right person.

The transcript will be a supplement to the petition and we will note that in our process.

And with that I will turn it over to the Chairman of the PRB who is Eric Leeds.

CHAIRMAN LEEDS: Thank you, Mel. Perhaps we should turn off our cell phones.

MS. LIPA: This is Christine Lipa from Division 3. We can barely hear you. If you could find a microphone and move a little bit closer, we'd appreciate it, thank you.

CHAIRMAN LEEDS: We'll try to speak up. Again, my name is Eric Leeds. I'm the Petition Chairman for this petition. My normal job is I'm the Deputy Director in the Division of Licensing Project

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1 Management in the Office of Nuclear Reactor
2 Regulation. The subject of this meeting is a 2206
3 petition submitted by Greenpeace on behalf of the
4 Nuclear Information and Resources Service and the
5 Union of Concerned Scientists.

6 Collectively, we'll refer to you all as
7 the Petitioners and the petition was submitted on
8 August 25, 2003.

9 The purpose of this meeting is to allow
10 the Petitioners to address the Petition Review Board.
11 This is an opportunity for the Petitioners to provide
12 additional explanations or support for their petition.
13 This is also an opportunity for the staff and licensee
14 to ask any clarifying questions.

15 The purpose of this meeting is not to
16 debate the merits of the petition nor whether we agree
17 or disagree with the contents of the petition.

18 The Petitioners have requested that the
19 NRC take enforcement actions against First Energy
20 Nuclear Operating Company, the licensee for Davis-
21 Besse Nuclear Power Station in Oak Harbor, Ohio and
22 the Petitioners also requested that the NRC suspend
23 the Davis-Besse license and preclude plant restart
24 until certain conditions have been met.

25 With that as an introduction, I'd like to

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1 get into the heart of the meeting and seek to
2 understand your petition fully and hear any clarifying
3 information you have for us.

4 We should introduce ourselves. If we can,
5 Herb?

6 MR. BERKOW: Herb Berko, NRR.

7 MR. FERNANDEZ: Antonio Fernandez, OTC.

8 MR. GUNTER: Paul Gunter, Nuclear
9 Information and Resource Service.

10 MR. RICCIO: Jim Riccio, Greenpeace.

11 MR. LOCHBAUM: David Lochbaum, Union of
12 Concerned Scientists.

13 MR. RULAND: Bill Ruland, NRC, Division of
14 Licensing Project Management and I'm also the Vice
15 Chairman of the Davis-Besse 0350 Panel.

16 MR. HOPKINS: John Hopkins, NRC Project
17 Manager assigned to Davis-Besse.

18 MR. NELSON: Dave Nelson, NRC Office of
19 Enforcement.

20 MS. SKAY: Donna Skay, NRR.

21 MS. RALLEIGH: Kim Ralleigh, License
22 Information Service.

23 MR. HUSTON: Roger Huston, Licensing
24 Support Services.

25 MR. GOLDBERG: Jack Goldberg, NRC OGC.

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1 MR. HORNER: Dan Horner, McGraw-Hill
2 Nuclear Publications.

3 MR. BENNEY: Brian Benney, NRR.

4 MR. BOOTHE: Don Boothe, NRC.

5 MS. BUPP: Molly, OGC.

6 MR. FIELDS: And from Region 2, we have?

7 MS. LIPA: Christine Lipa.

8 MR. FIELDS: And from the Davis-Besse
9 licensee?

10 MR. ASTROSKI: Kevin Astroski.

11 MS. THORNHILL: Angela Thornhill with
12 Morgan & Wood.

13 CHAIRMAN LEEDS: Anyway, why don't we get
14 started.

15 MR. RICCIO: The petition is relatively
16 straight-forward. We're asking for an enforcement
17 action taken against First Energy for failure to
18 comply with the requirements of the 50.54(f) Letter
19 from 1997.

20 There have been repeated instances and
21 NRC's own inspection reports which have identified as
22 many as one thousand deficiencies in the design
23 licensing basis of Davis-Besse. That inspection
24 report was the premise for denying Congressman
25 Kusinich's petition despite the fact that the NRC does

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1 not have, at least at this point the information in
2 hand which would basically provide backup for that
3 finding.

4 When we realized that we filed this other
5 petition in order to address those concerns and
6 address the fact that First Energy has repeatedly
7 missed opportunities to bring themselves back into
8 compliance with their design licensing basis. We're
9 asking that the NRC fine First Energy. We're also
10 asking them for the numerous licensee event reports
11 that they've filed identifying design based
12 deficiencies dating back to the date of licensure that
13 they be held accountable for those failures. And in
14 that process you fine them based upon the days that
15 they've been out of compliance.

16 We are still seeking information from the
17 Agency. I have a Freedom of Information Act request
18 that's in to the NRC on this topic and I've only
19 gotten two cursory responses.

20 Additionally, I've spoken with both Jack
21 Grobe and -- I'm sorry, I'm forgetting the gentleman's
22 name. It's Darryl from Sam Collins' office.

23 CHAIRMAN LEEDS: Darryl Roberts.

24 MR. RICCIO: Yes, seeking the information
25 to back up what was in your inspection reports. They

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1 have been unable to provide us with that information.
2 I'm sure it's now entangled with the FOIA.

3 Our other concerns, basically revolve
4 around the fact that absent compliance with the design
5 licensing basis, it is impossible for this Agency to
6 determine whether or not the operation of that reactor
7 poses an undue threat to the public health and safety.

8 We are still seeking -- there were four
9 bullet points that came out of a meeting at Davis-
10 Besse that talked about how they -- first of all, they
11 were supposedly going to establish a time line for
12 identifying those deficiencies as a thousand design
13 based deficiencies; identify why their previous effort
14 to correct those problems have been unsuccessful;
15 confirm that the previous ones were adequate; and
16 again evaluate why the design basis clarification
17 program had failed to resolve those issues previously.
18 Again, I've not received any of that information.

19 Again, that was the premise for denying
20 Mr. Kucinich's petition, your system health reviews.
21 And so our concern is that again repeatedly, the NRC
22 has missed opportunities to enforce other requirements
23 about the design basis at First Energy dating back
24 from the 1985 event that they had. They were supposed
25 to go back in and check the design basis. Obviously,

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1 didn't cover it.

2 Again, after 1997, after the wake of the
3 Millstone debacle, they went back in and the thing
4 that's truly of concern is that the very system that
5 they inspected during the 1997 time frame is the one
6 that's causing them such a headache now which is the
7 high pressure injection.

8 And I fail to see how two different
9 inspections can reach completely opposite conclusions
10 on the operability of that system. I would guess that
11 the inoperability determination that was the last one
12 that the NRC has made is probably the correct one.

13 I'm at a loss as to understanding how the
14 NRC could have missed it the first time or actually
15 how a licensee could have missed and how NRC could
16 have basically approved it.

17 MR. FIELDS: A couple of times you
18 mentioned a thousand deficiencies.

19 MR. RICCIO: Right, that comes from the
20 NRC's own inspection report.

21 MR. FIELDS: And the inspection reports
22 says at the close of the inspection, 200 had not been
23 corrected.

24 MR. RICCIO: Right.

25 MR. FIELDS: So are you concerned about

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1 the thousand or are you concerned about the 200?

2 MR. RICCIO: Given the fact that NRC had
3 previously determined that the high pressure injection
4 was sound and that it turns out not to be the case,
5 we're concerned about how all one thousand were
6 dispositioned.

7 And given the fact that we're finding that
8 the ones that purportedly have been repaired have not
9 been repaired, that's what gives us concern that
10 perhaps the resolution of the 800 other items was
11 equally as weak.

12 MR. RULAND: You referred to a meeting, I
13 thought you had referred to a meeting that maybe this
14 inspection report would turn to. Do you remember when
15 that meeting occurred? Or did I miss something?

16 MR. RICCIO: I'm sorry, where --

17 MR. RULAND: It was just when you were
18 going over, talking about this inspection report, it
19 sounded like you were referring to a meeting.

20 MR. RICCIO: It wasn't a meeting. I had
21 a discussion with -- once I stumbled across this by
22 comparing different inspection reports, I had
23 conversations with Region 3 and with Headquarters,
24 seeking answers and when I couldn't get answers,
25 that's when I filed the FOIA. When I didn't get the

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1 FOIA information, that's when I filed the petition.

2 MR. RULAND: Okay, I understand.

3 CHAIRMAN LEEDS: But the questions that
4 you had asked Region 3 and of Headquarters, those are
5 the same questions that you're asking here in the
6 petition?

7 MR. RICCIO: When I couldn't get the
8 answers from the Region 3 and from Headquarters,
9 that's what actually made me decide to file this
10 petition because if they didn't have the -- actually,
11 I discussed this with Christine, if she remembers. I
12 found it really problematic that the NRC had denied
13 the Congressman's petition and actually having the
14 documentation in hand that was the basis for that
15 denial.

16 CHAIRMAN LEEDS: Right, and that certainly
17 is documented here in your petition.

18 MR. RICCIO: Additionally, we had asked --
19 in those conversations I was looking for -- and the
20 meeting you're referring to was the meeting that NRC
21 held out at Oak Harbor and that's where I pulled the
22 information about the degraded, but operable. That's
23 one of the tag lines on the -- apparently, the NRC had
24 asked First Energy how many systems they were having
25 degraded, but operable condition at restart and they

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1 were supposed to get back with Christine on that and
2 at least my last phone conversation with Christine,
3 they had failed to.

4 CHAIRMAN LEEDS: And that was your number
5 here, suspend the license and prohibit restart.

6 MR. RICCIO: Yes.

7 CHAIRMAN LEEDS: Of Davis-Besse with any
8 systems in a degraded, but operable condition.

9 MR. RICCIO: Yes, and our perspective on
10 that is after being down for this extended period of
11 time, I see no reason why the NRC should allow this
12 reactor to start with any systems that are degraded.

13 MR. LOCKBAUM: The only thing I would add
14 to what Jim said is our concern about the enforcement
15 action for the incomplete or inaccurate response to
16 the 5054 F letter is that NRC needs to send a message
17 to the industry that the responses to 5054 F letters
18 and the maintenance of design base adequacies is
19 important. If the licensee doesn't do a better job,
20 either by intent or by incompetence, whatever the
21 reason for it, NRC shouldn't treat that with
22 ambivalence. The NRC needs to send a message that
23 that's unacceptable.

24 It's not simply a matter of collecting
25 money because you don't get it, we don't get it, the

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1 Treasury gets it. We're not concerned about that, but
2 in license renewal space, 10 CFR part 54, the NRC
3 changed its regulations on license renewal from the
4 licensees showing that the current licensing basis, or
5 could demonstrate that the current licensing basis is
6 met to acknowledge that the presumption going into
7 license renewal that plants meet the current licensing
8 basis. If the licensees know that they can send in a
9 bogus answer or don't have to do a very good job to
10 ensure that it's a good answer, that assumption, that
11 presumption for license renewal space is very suspect.
12 Don't be surprised if you don't see that raised again
13 in license renewal space at this plant and elsewhere.

14 We haven't seen the NRC either discipline
15 or elsewhere when there are signs that design basis of
16 those 5054 F responses were inadequate doing much
17 other than say just fix a few things that you've been
18 caught on. That doesn't seem to be doing very good.

19 CHAIRMAN LEEDS: To make sure I
20 understand, let me repeat back to you and it's
21 interesting that you tie it to part 54 because it does
22 assume, part 54 does assume that the licensing basis
23 is met.

24 MR. LOCKBAUM: It didn't use to. It was
25 revised.

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1 CHAIRMAN LEEDS: Right, it was revised.
2 I remember when that happened. And the issue here is
3 and I think the words that you used were sending a
4 message to the industry that the industry needs to
5 understand that they have to meet their design basis
6 and meet the requirements of the 5054 letter that we
7 sent on design basis. And that anything else is not
8 acceptable.

9 MR. LOCKBAUM: Absent that, the
10 presumption in 10 CFR 54 is the NRC doesn't have much
11 grounds to do that. It's when you send out the 5054
12 F and you do other inspections and the licensees know
13 they can take it seriously or not take it seriously
14 with no difference, no impunity, then --

15 CHAIRMAN LEEDS: It's undermining part 54.

16 MR. LOCKBAUM: Exactly.

17 CHAIRMAN LEEDS: That's not the way we
18 want the industry to operate.

19 MR. LOCKBAUM: Or even throughout the part
20 54 --

21 CHAIRMAN LEEDS: Right, even without part
22 54. We understand.

23 MR. RULAND: You referred to it as the
24 part 52 here. Is it 52 or 54? Does anybody remember?

25 CHAIRMAN LEEDS: No, part 54 is license

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1 renewal.

2 MR. RULAND: Okay, so that's a correction
3 to the letter.

4 MR. FIELDS: You itemize five specific
5 requests.

6 MR. RICCIO: Correct.

7 MR. FIELDS: And I pretty much understand
8 the basis for at least four of them. The fourth one
9 you say suspend the license and prohibit restart until
10 First Energy has updated the PRA to reflect the flaws
11 in its design and licensing basis.

12 I got the impression that you want them to
13 correct the flaws in their design basis before the
14 restart, but now you're saying don't let them restart
15 until they have a PRA that reflects the flaws. What's
16 the tie there? I don't understand.

17 MR. LOCKBAUM: Today, the PRA reflect
18 operator errors, equipment failures and other things
19 that happen. The PRA at Davis-Besse doesn't reflect
20 design errors, configuration management errors of the
21 kind that are typified by the list of LARs that were
22 cited in the petition.

23 It's unrealistic to assume that all of
24 those have been identified. There are no other design
25 errors existing at that plant. The PRA should reflect

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1 that fact.

2 MR. FIELDS: They can reflect the ones
3 that they found, but how could they -- if you're
4 saying there are ones they haven't found, how could
5 they be reflected in the PRA.

6 MR. LOCKBAUM: Same way they handle
7 operator errors and equipment failures. You don't
8 assume that a valve failure will only affect valves in
9 that system any more. You look at what's the rate of
10 equipment failures. What's the rate of coolant
11 performance problems and you apply that in your PRAs.

12 If you look at design errors, what's the
13 duration and frequency of having design errors that
14 compromise equipment operability. You then apply that
15 in your PRAs. It's not going to be a huge number,
16 hopefully, but it's not zero either as it is now.

17 The PRA should reflect the reality that
18 they're reporting.

19 MR. FIELDS: So if the flaws in the design
20 and licensing basis are indeed corrected, you still
21 would like to see those flaws reflected in their PRA?

22 CHAIRMAN LEEDS: No --

23 MR. FIELDS: Yes, that's what he's saying.
24 That's the part I was a little confused about.

25 CHAIRMAN LEEDS: Then I'm sorry, I'm

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1 confused.

2 MR. LOCKBAUM: If you look today, if an
3 operator makes an error or equipment breaks at a
4 plant, you still have to fix that. You don't get to
5 say well, my PRA covers it so no big deal. So the
6 corrective action program is required under that 10
7 CFR part -- appendix B requires those things to be
8 fixed. Design are the same way. If they happen, you
9 have to fix the design error that you've identified,
10 but the PRA should reflect that there can be other
11 ones out there.

12 CHAIRMAN LEEDS: There can be other ones,
13 maybe not specifically the ones that they've
14 identified, corrected, those are fixed. But what I
15 heard you say was that there should be some rate of
16 design errors assumed in the PRA, just like you would
17 for operator error. Just like you would for an
18 equipment failure. Assume that there's a slightly
19 different --

20 MR. RICCIO: It's slightly different than
21 the way we would have worded it.

22 CHAIRMAN LEEDS: So how do you want that
23 one identified? There's a request to have a PRA and
24 probably not just a Davis-Besse PRA, but PRAs to have
25 in it a component that would reflect the design

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1 errors. Or do you want this specific request and then
2 the question is well, what is to be used for? Is it
3 a historical look? For this particular PRA to have
4 the flaws, the purpose of that PRA would be --

5 MR. LOCKBAUM: Well, first of all, what
6 we're asking for is that the PRA be reflected, be
7 revised to reflect the fact that design and licensing
8 flaws exist in the past and are likely to exist in the
9 future that haven't yet been identified and corrected.
10 So there's still some uncorrected design errors at the
11 plant. The PRAs need to reflect that reality as they
12 do the reality of operator error and equipment
13 failures.

14 The reason it's important going forward is
15 that the PRAs continue to be used to justify NOEDs,
16 STBs, significance and a lot of other risk informed
17 decisions, regulatory decisions that this Agency
18 makes.

19 If the PRAs are flawed due to any reason,
20 then the value of those regulatory decisions is
21 impaired. So we want to upgrade the value of those
22 regulatory decisions by improving the quality of the
23 PRA or removing some of the poor quality of the PRA,
24 however you want to characterize it.

25 CHAIRMAN LEEDS: Interesting. All right,

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1 thank you.

2 MR. LOCKBAUM: Is that rewording --

3 MR. RICCIO: It's a little bit of
4 rewording, but it works.

5 MR. RICCIO: I appreciate you asking the
6 question because we thought it was clear, but in
7 hindsight we see that it didn't convey what we really
8 wanted, so I appreciate it.

9 MR. RULAND: Do you know of any example
10 where something like this is attempted, either in the
11 nuclear industry or elsewhere?

12 MR. RICCIO: No, we've been kind of
13 harping on the fact that the industry needs to redo
14 their PRAs for quite some time. I don't -- we don't
15 know that it's been done yet and this is why we raised
16 it, routinely raised it.

17 MR. RULAND: And this is really kind of a
18 derivative of that. It's a piece of the PRA quality.
19 It's not the total PRA quality question, right, it's
20 just a piece of it, right?

21 MR. LOCKBAUM: That's correct.

22 CHAIRMAN LEEDS: Thank you. Other things
23 we should know about?

24 MR. RICCIO: That's basically it. Like I
25 said I wish I had more information for you to add to

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1 this, but my FOIA request has not been thoroughly --

2 CHAIRMAN LEEDS: Responded to.

3 MR. RICCIO: Responded to and I suspect
4 that I'll be having more stuff come in.

5 CHAIRMAN LEEDS: Okay.

6 MR. BERKO: When your FOIA request is
7 responded to, do you anticipate submitting a
8 supplement?

9 MR. RICCIO: In the conversation we had
10 yesterday, I said I want to at least hold that off.
11 It may be a possibility, given what I've seen so far.

12 MR. FIELDS: Our process allows for it, of
13 course.

14 MR. RICCIO: Yes.

15 MR. FIELDS: A couple of process kind of
16 questions --

17 MR. RULAND: Could I ask a question before
18 you ask those. I think you said something about, Jim,
19 a cursory response to your FOIA?

20 MR. RICCIO: It's a partial response.

21 MR. RULAND: Okay. It's not that you have
22 a problem with the way it was responded to --

23 MR. RICCIO: Oh no, no, no. FOIA branch
24 is one of the best parts of the Agency.

25 MR. RULAND: I'll make sure to pass that

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1 along. We've got it on the record.

2 MR. RICCIO: They've been wonderful.
3 It's just that I've only gotten a partial response.

4 MR. RULAND: I just wanted to -- thanks.

5 MR. FIELDS: As we send out
6 communications, providing you the status, it can be --
7 PRB decides to treat this as a 2.2 petition, we like
8 to maintain routine communications. Shall I treat you
9 as a point of contact and you would disseminate the
10 information to the other two interested parties or do
11 you want me to contact all three?

12 MR. RICCIO: Why don't we, just because
13 I'm going to be out of town quite often in the next
14 couple of months, so why don't we put all three, no
15 offense guys.

16 MR. FIELDS: We'll start with that and it
17 becomes cumbersome, you guys can adjust it. How's
18 that?

19 CHAIRMAN LEEDS: Does anyone else have any
20 questions?

21 MR. RULAND: How about the licensee? Does
22 the licensee have any questions?

23 MR. ASTROSKI: No questions or comments.

24 MR. RULAND: Region 3?

25 MS. LIPA: Nothing here, thank you.

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1 MR. RICCIO: Christine, have you gotten a
2 response yet from First Energy.

3 MS. LIPA: Let me tell you what I know,
4 Jim. You had asked about the list to prevent degrade
5 had been put on hold?

6 MR. RICCIO: Right.

7 MS. LIPA: I didn't have it in hand, but
8 the senior resident has been provided that list.
9 Subsequently, I do have a list and the changes as they
10 work things off the list. So that's the current
11 status of that.

12 Does that answer your question?

13 MR. RICCIO: I suppose. Is NRC going to
14 allow them to restart in a degraded condition?

15 MS. LIPA: That's going to be determined.

16 MR. RICCIO: I tried.

17 MR. FIELDS: The PRB will meet on the PRA,
18 but -- and first paper trail is the acknowledgement
19 letter and the goal is within 5 weeks of the date of
20 the petition and we hope to meet that or be close to
21 it.

22 MR. RULAND: When's that date?

23 MR. FIELDS: early October.

24 CHAIRMAN LEEDS: Any other questions,
25 comments, requests?

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1 MR. BERKO: So I guess we can establish
2 that all three want to be on the service?

3 MR. FIELDS: Communications on the
4 petition itself, but we usually add Petitioners and of
5 course, we're assuming it's Petitioners to the
6 distribution for all communications we have with the
7 licensee.

8 MR. RICCIO: Dave's already on it. I
9 would like to added to that list. All three.

10 CHAIRMAN LEEDS: All right, if you have
11 nothing further. I think the business portion of the
12 meeting has been concluded.

13 Anything else for the business portion?
14 Thank you, gentlemen, thank you very much for coming.

15 MR. HOPKINS: We've concluded the business
16 portion of the meeting, so we're going to hang up now.
17 Okay?

18 CHAIRMAN LEEDS: We're off the record.

19 (Whereupon, at 3:35 p.m., the meeting was
20 concluded.)

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