

**UNITED STATES OF AMERICA**  
**NUCLEAR REGULATORY COMMISSION**

**Title: BRIEFING ON INTEGRATION AND EVALUATION  
OF RESULTS FROM RECENT LESSONS-LEARNED  
REVIEWS (INCLUDING 50.59 PROCESS  
IMPROVEMENTS) -- PUBLIC MEETING**

**Location: Rockville, MD**

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**Pages: 1 - 73**

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2 NUCLEAR REGULATORY COMMISSION

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4 BRIEFING ON INTEGRATION AND EVALUATION  
5 OF RESULTS FROM RECENT LESSONS-LEARNED  
6 REVIEWS (INCLUDING 50.59 PROCESS IMPROVEMENTS)

7 \*\*\*

8 PUBLIC MEETING

9 \*\*\*

10 Nuclear Regulatory Commission  
11 Commission Hearing Room  
12 11555 Rockville Pike  
13 Rockville, Maryland

14  
15 Wednesday, December 17, 1997  
16

17 The Commission met in open session, pursuant to  
18 notice, at 2:05 p.m., the Honorable SHIRLEY A. JACKSON,  
19 Chairman of the Commission, presiding.  
20

21 COMMISSIONERS PRESENT:

22 SHIRLEY A. JACKSON, Chairman of the Commission  
23 GRETA J. DICUS, Member of the Commission  
24 EDWARD McGAFFIGAN, JR., Member of the Commission  
25 NILS J. DIAZ, Member of the Commission

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1 STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

2 ANNETTE VIETTI-COOK, Assistant Secretary of the  
3 Commission

4 KAREN D. CYR, General Counsel

5 L. JOSEPH CALLAN

6 SAMUEL COLLINS, Director, NRR

7 DAVID MATHEWS, Deputy Director,

8 Division of Reactor Program

9 Management

10 FRANK AKSTULEWICZ, Chief, General

11 Issues and Environmental

12 Projects Branch

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

[2:05 p.m.]

CHAIRMAN JACKSON: Good afternoon, ladies and gentlemen.

The purpose of today's meeting is to discuss the results of recent lessons-learned reviews focusing on proposed changes to 10 CFR Part 50.59, entitled "Changes, Tests and Experiments."

The last two years have shown a significant level of regulatory action association with this rule as well as industry action and as well as issues of final safety analysis report accuracy and design basis information, which also are the subject of this meeting.

In 1996 we held a Commission meeting to discuss changes to 10 CFR Part 100, entitled "Reactor Site Criteria." I commented at that time that the Commission was reviewing changes to what many considered to be the pillar of our regulations.

I understand that 10 CFR 50.59 is viewed by many in a similar manner. Several people, both from the nuclear power industry and the NRC, have commented to me that we are using 1990s technology in dealing with a 1960s rule. As technology has given new meanings to our phraseology, as in the case of the word "probability," we have been slow to acknowledge its impact on our regulatory process.

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1           It is apparent that industry/NRC agreement on the  
2   interpretations of the various terms in this rule has, to  
3   understate the issue, been lacking. Adequate guidance  
4   related to this rule has similarly been lacking. The  
5   industry in fact and the people talking to me have been  
6   heard to say that the rule has served all parties well for  
7   most of its history and that the current level of tumult  
8   over this issue has arisen only in the recent past.

9           I would tend to agree that the knowledge level and  
10   conservative operating philosophies of a large number of  
11   licensees has contributed to the success of the use of this  
12   rule heretofore, but I do not believe that rules become  
13   outdated overnight.

14           It could be that there has been inadequate NRC  
15   oversight of actions related to this rule over the years and  
16   that there were some inadequacies that were dealt with  
17   through interpretative methods as opposed to direct  
18   solutions. Whatever the cause of the issues, we are now  
19   requiring direct solutions.

20           In my study of this regulation I have noted what I  
21   would describe as the expanding scope of 50.59. The rule  
22   has been applied over the years to a wider scope of  
23   activities and in a more frequent manner.

24           For example, the use of the rule progressed from  
25   justifying minor modifications to its use for steam

1 generator replacement. That's a long way. At the same  
2 time, the scope of the information to which Part 50.59  
3 applies has increased as FSARs have grown larger, in part  
4 due to an increase in our knowledge of accident  
5 phenomenology and in part due to a shift of information from  
6 technical specifications to FSARs.

7 So as we address this important rule it is our  
8 intention to remain mindful of its many uses and the  
9 implications associated with any proposed change to the  
10 rule's content. It is not our intention in any way to  
11 stifle the nuclear power industry's ability to make changes  
12 to their facilities.

13 In fact, concerns over aging and obsolescence and  
14 new understandings of risk derived from probabilistic risk  
15 assessment methodology make it clear that it can be in the  
16 best interest of the public that an efficient change process  
17 be afforded to our licensees.

18 Neither is it our intention that licensees be  
19 allowed to make changes in an environment of minimal  
20 regulatory oversight. Consequently, we seek a balance and  
21 we are interested in rulemaking that makes sense, that  
22 ensures that licensees have the flexibility necessary to  
23 face the future while preserving our right and fulfilling  
24 our responsibility to ensure that the NRC staff has reviewed  
25 changes that may impact on the level of protection afforded

1 the public.

2 The NRC staff has worked diligently to provide the  
3 Commission with a robust set of options to consider in this  
4 regard. We also have received input from the regulated  
5 community on the subject of 50.59 in a formal way through  
6 communication from NEI.

7 We now look forward to what I'm sure will be an  
8 informative and robust discussion of these options. If none  
9 of my colleagues have any opening comments they wish to  
10 make, Mr. Callan, please proceed.

11 MR. CALLAN: Thank you, Chairman. Good afternoon,  
12 Chairman and Commissioners. With me at the table at Sam  
13 Collins, the director of the Office of NRR; Dave Mathews,  
14 chief of the General Issues and Environmental Projects  
15 Branch; and to his left, Frank Akstulewicz, who works for  
16 Dave in his branch.

17 Chairman, as you know, this meeting was supposed  
18 to be in early November. It was delayed to now to provide  
19 adequate time for the Office of General Counsel to interact  
20 with the Commission on some of the regulatory issues  
21 surrounding the various options and recommendations of the  
22 staff.

23 The staff has been monitoring those discussions to  
24 better understand OGC's position and to determine if any of  
25 our recommendations might be affected by the considerations



1 discussed.

2           Given the fact that the Commission has had our  
3 Commission paper for such a long time and also given the  
4 fact that there have been these interactions with OGC, it's  
5 our intention to provide a relative short briefing and  
6 overview of the Commission paper to ensure that there is  
7 plenty of time to respond to questions.

8           Of course the staff is prepared to discuss the  
9 status of any of our actions and to provide the Commission  
10 with our current schedule of the various recommended  
11 actions.

12           I might note that the Commission paper that covers  
13 the subject of this briefing was provided to the Commission  
14 on September 10; it was made public in October. I believe  
15 there are still copies by the entrance to the Commission  
16 meeting room here, and I encourage anybody attending who  
17 doesn't have a copy to obtain a copy of the Commission  
18 paper.

19           Dave Mathews will be the principal briefer,  
20 Chairman, and I will turn the meeting over to him.

21           MR. MATHEWS: Thank you, Joe.

22           As Joe mentioned, I'm David Mathews. I'm now  
23 deputy director of the Division of Reactor Program  
24 Management but was formerly chief of the Generic Issues and  
25 Environmental Projects Branch. That's the branch in which

1 most of these activities have been focused.

2 With me today assisting is Frank Akstulewicz. He  
3 is the chief of the Generic Issues and Regulatory  
4 Improvement Section in that branch.

5 If I could have slide number one, please.

6 [Slide.]

7 MR. MATHEWS: I would like to give you an outline  
8 of the presentation today. I will provide some background,  
9 hopefully in a concise form, and I will be using a graphic  
10 that we have prepared to do that.

11 Following that background, I'd like to give an  
12 overview of SECY-97-205, which is entitled "Integration and  
13 Evaluation of Results from Recent Lessons-Learned Reviews."  
14 Its focus is primary issues surrounding the implementation  
15 of 10 CFR 50.59, the role of the FSAR, because 50.59 uses  
16 the FSAR as its focus, and regulatory process improvements  
17 that are related to those regulatory requirements and  
18 issues.

19 We also are going to present a discussion of the  
20 recommended actions that the staff proposed in 97-205.

21 [Slide.]

22 MR. MATHEWS: This is the graphic that I referred  
23 to. I'd like it to be viewed more as a time line from left  
24 to right. There are some arrows missing, but if you think  
25 of all the arrows that are missing as being ones moving to

1 the right, that will give you an appreciation for the  
2 chronology.

3 50.59 and related process issues. Those issues  
4 were summarized in SECY-97-035, and Millstone  
5 lessons-learned issues, which were regulatory process  
6 improvements stemming from Millstone lessons learned, were  
7 summarized in SECY-97-036, both of which were provided to  
8 the Commission in February of 1997.

9 Along with those two Commission papers was a  
10 memorandum from the staff which reflected our view that the  
11 issues associated with 50.59 and the related regulatory  
12 process issues coming out of Millstone lessons learned in  
13 the area of the FSAR and design basis were so interrelated  
14 that the staff felt that they couldn't be dealt with in  
15 other than an integrated way.

16 We suggested to the Commission and the Commission  
17 agreed that we would endeavor to integrate the many actions  
18 that were indicated in both of those papers, to which the  
19 Commission had responded in SRMs in April and May, and that  
20 we would provide such an integration to the Commission.

21 We did that in September of 1997 in the form of  
22 97-205.

23 CHAIRMAN JACKSON: What is in the box entitled  
24 "Other Regulatory Process Issues"?

25 MR. MATHEWS: In addition to the regulatory issues

1 that were focused on in 50.59 and in what is referred to as  
2 the Millstone lessons learned part 2 report, there were  
3 ongoing improvements in our regulatory processes that didn't  
4 necessarily relate to changes to the regulations or improved  
5 guidance.

6 Some examples would be we had improved our  
7 emphasis on design basis inspection activities. We had  
8 focused some region-based inspections in the area of design  
9 concerns, whereas we had previously emphasized operational  
10 safety issues.

11 We also had initiated what we have referred to as  
12 architect/engineer reviews, vertical slice examinations  
13 using A/E teams.

14 We had initiated something referred to as the NRR  
15 projects process improvement plan, PIP, which addressed  
16 issues in terms of the relationships of the project managers  
17 to the inspectors, the general role of the FSAR in  
18 conducting licensing and inspection activities.

19 We were looking at issues such as commitment  
20 management and the way in which commitments that are relied  
21 upon in making licensing decisions are embraced in the  
22 regulatory process. It was issues of that sort that we  
23 didn't deal directly with in either of the papers I earlier  
24 referred to.

25 CHAIRMAN JACKSON: To what extent have you

1 solicited stakeholder feedback?

2 MR. MATHEWS: In regard to the affected industry?

3 CHAIRMAN JACKSON: There are many stakeholders.

4 MR. MATHEWS: Throughout this whole process, I  
5 would argue that the primary stakeholders have been the  
6 regional offices, the regional inspectors affected by our  
7 changes in policy and procedures and the affected industry.  
8 So in that regard they have been involved every step of the  
9 way.

10 Most of the shorter term process improvement  
11 activities, as we would call them, have had the opportunity  
12 for NEI involvement, and we have included them, I would say,  
13 primarily in just about every action that we have taken.

14 CHAIRMAN JACKSON: What about other stakeholder  
15 groups like UCS representing the "general public"?

16 MR. MATHEWS: Other than the fact that our  
17 guidance documents, our interaction with ACRS, and our  
18 development activities have always been held in a public  
19 forum, and the meetings that we have had with the affected  
20 industry has always been in a public forum, I can't say that  
21 we have taken any explicit efforts to reach out to other  
22 stakeholders in terms of members of the public or UCS.

23 CHAIRMAN JACKSON: Okay.

24 [Slide.]

25 MR. MATHEWS: This is an outline of the contents

1 of 97-205 and in a shorthand way describes what it contains.

2 It provided a preliminary assessment of the public  
3 comments we received on NUREG-1606. In reviewing these  
4 slides, I realized we introduced the concept of NUREG-1606  
5 without explaining it. So I will take a few minutes to do  
6 that.

7 NUREG-1606 was a document generated following the  
8 Commission's receipt of the Commission paper dealing with  
9 50.59 process issues. There was an attachment provided to  
10 the Commission which described the status of the staff's  
11 views on different implementation issues associated with  
12 50.59.

13 Subsequent to that Commission meeting and the  
14 Commission's deliberations on that Commission paper, they  
15 agreed with the staff that we ought to issue these positions  
16 for public comment. A convenient way to do that was to bind  
17 them into a NUREG document, which became NUREG-1606. That  
18 was issued for public comment by means of a Federal Register  
19 notice. The positions themselves and the document was not  
20 included as part of the Federal Register notice. We used  
21 the convenience of a NUREG document.

22 That had an unintended consequence, though.  
23 Because when you put a NUREG cover on a document, even  
24 though it's issued "draft for comment," I think the  
25 expectation of both the public and the industry is that they

1 would expect to see a final copy of that document, thereby  
2 providing the "guide book" for conducting 50.59 reviews.

3 MR. CALLAN: I would also say that it probably  
4 introduced some ambiguity with the NRC staff as well.

5 MR. MATHEWS: Yes. I should say it was received  
6 in a similarly confusing way by some of the NRC staff,  
7 particularly those in the field.

8 CHAIRMAN JACKSON: So if you had to do it again,  
9 you would propagate it in a different way?

10 MR. MATHEWS: I would, most assuredly. It had as  
11 its purpose -- and I will use this pejorative term purposely  
12 -- to be a lightning rod for discussion, and it certainly  
13 was. We wanted to get public comment; we wanted industry  
14 involvement in these positions; we didn't intend for it to  
15 be used as a document for implementation even in the near  
16 term. Had we expected it was going to be received that way,  
17 we would have done it differently.

18 We did provide in 97-205 what I would call a brief  
19 assessment of the public comments.

20 COMMISSIONER MCGAFFIGAN: If I can just stop you  
21 on that. I realize there was a document prior to NUREG-1606  
22 the staff had put out in the spring of 1996. That had many  
23 of the same positions in it that proved to be a lightning  
24 rod in 1606's case. How was that previous document put out  
25 and how is it interpreted by the staff and by industry?

1 MR. MATHEWS: I'm having trouble remembering that  
2 document.

3 MS. CYR: The inspection manual report?

4 MR. CALLAN: When was NUREG-1606 put out?

5 COMMISSIONER McGAFFIGAN: There are previous  
6 positions with regard to how 50.59 was going to be  
7 interpreted that had, as I understand it, the nonconforming  
8 condition problems and all. I can't put my finger on the  
9 document.

10 MR. MATHEWS: You may be referring to the initial  
11 issuance in 1991 of Generic Letter 91-18.

12 COMMISSIONER McGAFFIGAN: No. There was a more  
13 recent one that came up at a previous briefing.

14 MR. CALLAN: April 1996.

15 MR. MATHEWS: There was some guidance generated by  
16 NRR and agreed to by the region that was issued to help  
17 clarify, and it was inspection guidance.

18 COMMISSIONER McGAFFIGAN: That was a public  
19 document?

20 MR. MATHEWS: It was. It was an inspection manual  
21 chapter.

22 COMMISSIONER McGAFFIGAN: It had all of the, from  
23 the point of view of the stakeholders, negative features of  
24 this document.

25 MR. CALLAN: In order to clarify the confusion



1 created by the issuance of NUREG-1606 in draft, we provided  
2 guidance to the regions to go back to the April 1996  
3 guidance, the status quo ante. As you correctly point out,  
4 it didn't help much.

5 MR. MATHEWS: It didn't help, but let me clarify.  
6 The document you are referring to in April of 1996 did not  
7 generate a lot of controversy at the time that it was  
8 issued.

9 COMMISSIONER McGAFFIGAN: I'm trying to figure out  
10 why it didn't.

11 MR. MATHEWS: I think it's an issue of sensitivity  
12 and implementation. Let me give you an example.

13 COMMISSIONER McGAFFIGAN: The reason I asked the  
14 question is I'm not totally sure we made a mistake in  
15 putting this out as a NUREG. If you put out inspection  
16 guidance that says the same thing and nobody notices and  
17 people are off acting on it, that's a problem. If you put  
18 it out as a NUREG and everybody jumps up and down and says,  
19 oh, my God, they're serious, then maybe that's what you have  
20 to do.

21 MR. MATHEWS: So maybe the wider distribution in  
22 the --

23 COMMISSIONER McGAFFIGAN: The fact of the matter  
24 is this position had been out for over a year and was  
25 presumably being acted on by our inspectors and no one had

1 noticed until you put this NUREG out.

2 CHAIRMAN JACKSON: From my historical  
3 recollection, I would not say that no one noticed. I think  
4 there were any number of anecdotal comments being made both  
5 at the regional level and even directly at the Commission  
6 level about that earlier guidance, which in fact suggested  
7 that one had to go back and look at this thing more  
8 holistically. They had been, but it became more of a  
9 cacophony and more formalized response when this was pulled  
10 together into the NUREG-1606.

11 I think this has been a building kind of thing,  
12 but it certainly did not escape notice even in the form of  
13 inspection guidance.

14 MR. MATHEWS: In fact, I will add that the April  
15 document came under increased scrutiny as the confusion  
16 between the use of 50.59 and the resolution in degraded and  
17 nonconforming conditions became intensified and that  
18 relative role played by each of those regulations and  
19 guidance documents started to take on newfound sensitivity.  
20 When we looked back at the April guidance and started to  
21 look at the words, the words were less than clear.

22 In addition to summarizing the comments we  
23 received in NUREG-1606, we did discuss the progress made on  
24 the short-term Millstone lessons learned that we had shared  
25 with the Commission and indicated that we were going to

1 pursue a status report, if you will. Many of the ones I  
2 referred to earlier in response to your question were those  
3 issues.

4 We presented a range of options for regulatory  
5 improvement. This range of options was not constrained in  
6 any way by questions necessarily of feasibility or cost but  
7 in terms of their relative effectiveness in addressing the  
8 regulatory problems.

9 We synthesized from those options in consultation  
10 with the senior management of the Commission and Office of  
11 General Counsel a staff recommended option.

12 [Slide.]

13 MR. MATHEWS: The primary or major comments that  
14 we received in response to the issuance of NUREG-1606 fell  
15 in the following areas:

16 The use of and involvement of 50.59 by the plants  
17 in addressing, as found, degraded and nonconforming  
18 conditions.

19 This was a very troubling facet of the guidance  
20 that had been provided and the staff position that had been  
21 expressed in NUREG-1606 and had earlier been expressed in  
22 April of 1996. We had muddied the waters to a great degree  
23 with regard to the relationship between an unreviewed safety  
24 question and the expected response of the facility to a  
25 degraded or nonconforming condition in accordance with

1 Appendix B.

2 CHAIRMAN JACKSON: What is the staff's position on  
3 the relationship between a USQ, an unreviewed safety  
4 question, and operability?

5 MR. MATHEWS: Operability determinations are  
6 expected to be made upon the discovery of a degraded and  
7 nonconforming condition. 50.59 would only come into play in  
8 two areas.

9 One is if the licensee determined that he was  
10 going to accept that degraded or nonconforming condition as  
11 he found it and thereby change his licensing basis to accept  
12 that condition as is. He would have to do a 50.59  
13 evaluation to determine whether or not that was something he  
14 could do without Commission involvement.

15 CHAIRMAN JACKSON: If in fact operability is the  
16 ability of a component to perform its intended safety  
17 function and that safety function is defined in the FSAR,  
18 would a USQ that relates to that safety function result in  
19 the component being declared inoperable in principle?

20 MR. MATHEWS: It may not.

21 CHAIRMAN JACKSON: It could be declared operable  
22 even if there is an unreviewed safety question?

23 MR. MATHEWS: That's right. It may not be in  
24 conformance with the description he provided in the FSAR,  
25 but it still may be operable and meet its intended function.

1 MR. CALLAN: Probably the most common example,  
2 Chairman, would be an example where supporting equipment or  
3 supporting systems for a safety component are degraded and  
4 that would challenge the operability of the safety  
5 component. A classic example is a room cooler in a high  
6 pressure injection pump room. If the room cooler is  
7 inoperable in December, the licensee could find that the  
8 pump is still operable in December, but to keep that room  
9 cooler in the condition it's in would be an unreviewed  
10 safety question if the licensee opted not to restore it to  
11 its design condition.

12 MR. MATHEWS: And it might affect operability in  
13 the future with a change in conditions.

14 Related to that issue was the second point. The  
15 staff had established a position in the April 1996 guidance  
16 that had been first issued in 1991 as part of the Generic  
17 Letter 91-18 that if a plant were to have a USQ and it were  
18 to either come down or be in a refueling outage and that USQ  
19 was not corrected or responded to by the NRC as being  
20 acceptable through the issuance of a license amendment, that  
21 restart was not viewed to be prudent, and that's how we had  
22 viewed it. Therefore there were many times that USQs were  
23 identified and were an impediment to plant restart.

24 CHAIRMAN JACKSON: So it would not be enough to  
25 shut it down, but if shut down, it could be enough to keep

1 it from starting back up.

2 MR. MATHEWS: Right. That was a policy position  
3 that had been expressed. That was repeated in NUREG-1606,  
4 and that had caused a great deal of consternation.

5 There were also concerns which exist today with  
6 regard to the articulation of the threshold tests in 50.59  
7 relating to probability, consequences and potential  
8 reductions in margin.

9 There was also the issue of malfunction of a  
10 different type. Not to belabor this one, but the issue was  
11 whether or not a piece of equipment or structure, system or  
12 component may be changed in its operation but may not affect  
13 the overall outcome of an accident evaluation.

14 The staff's view had been and still is that such a  
15 change would constitute the possibility of a malfunction of  
16 a different type even if it didn't ultimately affect the  
17 outcome of the analysis. Consequence analysis, for example.

18 Then there came comments with regard to debates  
19 over the definition of change to the facility. This is an  
20 issue. Simply put, is a change to a facility a hardware  
21 change or procedural change to a structure, system or  
22 component or the procedure affecting that, or is it also  
23 potentially a change to an analysis that would support the  
24 relative role or importance of that structure, system or  
25 component in conducting a safety evaluation?

1           CHAIRMAN JACKSON: Is there a question also that  
2 if there is a degraded condition and something is left  
3 degraded but declared operable, that there is an issue of in  
4 fact when does a left-as-is degraded condition become a  
5 change?

6           MR. MATHEWS: Yes. That was one of the issues.  
7 That is referred to generally as the de facto change  
8 problem.

9           MR. COLLINS: It also plays a part in the  
10 corrective action process.

11           [Slide.]

12           MR. MATHEWS: I've outlined in slide five the  
13 process that we utilized to approach the issue of the  
14 integration of these regulatory policy issues and ongoing  
15 commitments that stemmed from Millstone lessons learned and  
16 Maine Yankee.

17           Our goal was to come up with a set of options that  
18 would address and resolve near-term regulatory problems. We  
19 wanted to establish one that would synthesize the issues  
20 that were on our plate, so to speak, in such a way that we  
21 wouldn't undo one by correcting the other.

22           We wanted to establish and develop a process for  
23 evaluating the options from several different perspectives:  
24 cost, time, effectiveness, feasibility.

25           We clearly wanted to have a goal statement and

1 would hope that the options would progress to meeting that  
2 goal statement. So we developed a goal statement in the  
3 course of our integration process.

4 CHAIRMAN JACKSON: To what degree has regional  
5 staff, particularly the inspection staff, been involved in  
6 this process, and how?

7 MR. MATHEWS: The integration process itself did  
8 not involve an active participant from the regions. The  
9 elements of the regulatory process changes, such as the  
10 50.59 action plan and the rulemaking options coming out of  
11 that action plan, the positions described in NUREG-1606 were  
12 developed in concert with the region. We had a regional  
13 representative participating in the development of those  
14 sub-options, if you would.

15 In the area of FSARs, the same thing is true. We  
16 send out and get coordination from the regions on our  
17 proposals associated with the changes to FSAR and the  
18 regulatory processes affecting the FSAR.

19 In terms of the actual integration we did not  
20 involve them directly.

21 CHAIRMAN JACKSON: Let me ask you two other quick  
22 questions. To what extent did your process review past  
23 rulemaking and/or Commission actions to try to determine  
24 what the Commission was trying to achieve in this area?

25 MR. MATHEWS: I would argue that we examined past



1 rulemaking to a great level of detail. We were trying to  
2 infer what had been the underpinnings, and many times it was  
3 very difficult to understand what might have been the  
4 motivation for some of the regulatory changes since some of  
5 them go back to 1961.

6 CHAIRMAN JACKSON: I have a question which you  
7 don't have to actually answer now, but maybe at some point  
8 you can write it down. In its original form, what did 10  
9 CFR 50.59 consider an increase in probability to be and what  
10 did it consider a consequence to be?

11 I don't want to disturb your flow, although I do  
12 it anyway.

13 MR. MATHEWS: Possibly some of the staff that is  
14 here that has examined some of that history might be  
15 thinking about that and will provide an answer later in the  
16 afternoon.

17 CHAIRMAN JACKSON: I'll give you time.

18 MR. CALLAN: As you know, Chairman, the Office of  
19 General Counsel has been very helpful on specifically those  
20 kinds of questions.

21 CHAIRMAN JACKSON: So you want me to ask them the  
22 question.

23 MR. COLLINS: Actually, Janice Moore provided a  
24 wonderful book that goes all the way back with the  
25 statements of consideration for these to help me happen to

1 remember the answer to your questions. They did provide  
2 that service just for that intent.

3 [Slide.]

4 MR. MATHEWS: I have on the next four slides  
5 listed each of the options, but I must admit the  
6 representation is a little bit cryptic. It wasn't  
7 intentional but it's just the way it came out when I looked  
8 back.

9 These options were developed in a hierarchy. They  
10 go from easiest to implement, least costly, most timely, to  
11 an ascending order of difficulty on those criteria.

12 Option 1 would be a small step beyond what we  
13 would refer to as the baseline in terms of what we have on  
14 our plate at the moment.

15 The rulemaking on 50.59 that was proposed to be  
16 considered as part of option 1, if it had been selected,  
17 would have been one very limited in scope, and it would have  
18 been one to permit small increases in probability  
19 consequences or reductions in margin to not requiring NRC  
20 involvement or approval.

21 The rulemaking might still be difficult in terms  
22 of the language that we might develop in the associated  
23 guidance to describe small or non-negligible, but the intent  
24 was that we try to provide some additional flexibility.

25 Also, as part of option 1 the intent was to

1 provide guidance relative to our expectations under 10 CFR  
2 50.71(e) with regard to the updating of SARs. This would be  
3 to improve their accuracy in terms of their reflecting the  
4 as-built facility. That guidance would have proposed that  
5 that updating be conducted on a risk-informed basis, but  
6 that gives it a little too much elegance really that the  
7 most risk-significant safety systems be addressed first in  
8 the updating of that FSAR.

9 We also were going to evaluate the experience  
10 gained in terms of our additional inspection activities on  
11 whether or not additional guidance is needed with regard to  
12 the incorporation of design basis information and FSARs. I  
13 emphasize that we were going to evaluate that, not  
14 necessarily provide that guidance as part of option 1; we  
15 were going to see what the answer was first.

16 CHAIRMAN JACKSON: Option 1 also included a  
17 discussion of commitments, right?

18 MR. MATHEWS: Yes, as part of the ongoing  
19 activities.

20 CHAIRMAN JACKSON: What is the status? Can you  
21 give us a few sentence status update on the efforts aimed at  
22 commitment tracking?

23 MR. MATHEWS: I don't know whether we have an  
24 updated status. The project staff in NRR has been working  
25 with NEI on commitment management. They also have under

1 way, as I understand it, a pilot program involving some  
2 number of plants to assess the difficulties associated with  
3 translating commitments that may have been relied upon by  
4 the staff in making a licensing decision. I'm speaking now  
5 primarily with regard to the review and approval of an  
6 amendment, and how those commitments might be incorporated  
7 in the licensing basis, if not the license.

8 MR. MIRAGLIA: Frank Miraglia, NRR staff.

9 There are two activities, Madam Chairman and  
10 Commissioners, with respect to commitments. One was an  
11 effort for us internally to indicate to the staff if a  
12 commitment is important enough to be put into a tech spec or  
13 a license condition; if it was a fundamental commitment  
14 necessary to make the decision, it needed to be identified.  
15 If it needed to be enforceable, we had to say it in the  
16 FSAR.

17 We have started a pilot program on that with a  
18 number of plants. We have met with NEI on that broad kind  
19 of concept. So we are working in that kind of manner with  
20 respect to identifying new commitments on actions that are  
21 under way right now.

22 If the Commission recalls, in January of, I  
23 believe, 1996 -- it may have been 1997. I may be off by a  
24 year -- we approved an NEI commitment management tracking  
25 system. Last spring we indicated to the Commission we were

1 going to wait for about a year and then we were going to go  
2 and audit that. An audit plan is being developed, and that  
3 is another issue that is ongoing and just initiating.

4 So we have got those pieces ongoing. This leads  
5 into what David had said in terms of we have to evaluate  
6 where we are in FSAR in some of these things. The processes  
7 that are in place, are they sufficient? Do they need to be  
8 bolstered, improved, and if so, how, and what other guidance  
9 may be needed?

10 CHAIRMAN JACKSON: I had my staff break down the  
11 fundamental elements of the different options. So I'm going  
12 to put you on the spot and ask you a couple of questions.

13 Of the two alternatives offered in option 1 for  
14 dealing with probabilities, that is, more than negligibly  
15 increased versus is increased, which does the staff prefer?

16 MR. MATHEWS: At the present time, although, as  
17 you know, we are developing a paper to come to you shortly  
18 on this issue and we haven't had senior management  
19 concurrence, I believe that the staff is leaning towards the  
20 phraseology "is increased." The reasons for that are  
21 related primarily to the difficulty in articulating the  
22 meaning of "negligible" or "more than non-negligible" or  
23 related terms like that.

24 "Is increased" gives the connotation, and we will  
25 be providing guidance to articulate this, that it is an

1 increase that can be identified and articulated without  
2 imparting any value judgment associated with magnitude.

3 CHAIRMAN JACKSON: Where would one find the  
4 "established limits" for accident consequences that are  
5 referred to in the proposed language in option 1?

6 MR. MATHEWS: The first place would be the FSAR.  
7 The second place would be the licensing basis where those  
8 limits may have been articulated. The third place would be  
9 the staff's SER.

10 CHAIRMAN JACKSON: I was going to ask you for an  
11 example of such an established limit. Do you want to answer  
12 that?

13 MR. MATHEWS: If it's related to consequences, it  
14 probably would be something along the lines of a small  
15 percentage of the releases permitted by 10 CFR Part 100. Or  
16 some specific value: no greater than 50 MR received by an  
17 individual at a certain location.

18 CHAIRMAN JACKSON: Have you reviewed NEI's  
19 recommended USQ criteria and made any assessment of those?

20 MR. MATHEWS: We haven't completed our review of  
21 it, but the review is under way. If you mean there was some  
22 proposed regulatory wording which they communicated in a  
23 letter, we are in the process of evaluating that in the  
24 context of our proposed regulatory wording which we are in  
25 the process of finalizing.

1           CHAIRMAN JACKSON: The last question I have, and  
2 then I'm going to defer to Commissioner McGaffigan. This is  
3 the pregnant question here. You can answer it either in the  
4 process of discussing option 1 or at the bitter end once you  
5 have discussed the options.

6           What are your thoughts on replacing the phrase  
7 "safety analysis report" as used in 10 CFR 50.59 with  
8 "current licensing basis"? That's part A.

9           If the shift to CLB was made, would there be a way  
10 to lessen the burden on licensees with respect to FSAR  
11 updating in a risk-informed way?

12           I am going to leave that with you. It basically  
13 rests along the lines of perhaps accepting less in the FSAR  
14 if one had a scope that included the current licensing  
15 basis, provided it was retrievable.

16           Commissioner McGaffigan.

17           COMMISSIONER MCGAFFIGAN: I don't know where to  
18 start. I have grave reservations about changing  
19 terminology, and I think we are doing too much of it  
20 already.

21           This "is increased" as opposed to "more than  
22 negligibly increased" or in the NEI's suggestion, if there  
23 is more than a negligible increase, it's all the same  
24 notion. If you just stick with "is increased," don't you  
25 run into the possibility you are going to get more stuff

1     than you get now?

2                 There is a connotation here. You still haven't  
3 moved that far off the dime that lots of stuff has to come  
4 into us, maybe more than we are getting at the moment. I  
5 don't know whether you have analyzed that.

6                 We are defining "negligible" in other places in  
7 trying to deal with Reg Guide 1061 and PRA implementation  
8 plan space. So why is it such a leap to keep the word  
9 "negligible" or the adverb "negligibly" in a revision to  
10 50.59 and then in reg guidance define it in some way that  
11 you all are comfortable with?

12                One of my metrics for figuring out whether we are  
13 making progress -- I'm told at the moment we get a fair  
14 amount of trivial license amendments even with the current  
15 rule and they get priority level 4 down in NRR and they  
16 never get looked at until the 22nd century.

17                There has always been this tension. I've gone  
18 back and read the history of 50.59. The Atomic Energy  
19 Commission said two things: when in doubt, submit, but we  
20 don't want to deal with trivial stuff.

21                Those are in conflict and we have been trying to  
22 resolve that conflict forever, perhaps. Now we are going to  
23 try to resolve it in a rule. It strikes me that getting  
24 "more than negligibly" in would move the ball further than  
25 "is increased."



1           Any comment that you would have about why, given  
2 all the work you are doing in PRA space, in 1061 space, why  
3 defining the word "negligible" or the adverb "negligibly" is  
4 such a big task that you are backing off from it?

5           MR. MATHEWS: I'll take an initial foray into this  
6 discussion and invite any of my colleagues to help.

7           First of all, I think we are trying to provide  
8 some improvement. We believe the movement from "may be  
9 increased," which has a certain conjectural quality to it in  
10 terms of engineering judgment or "I think it might be"  
11 connotation to "is increased" in terms of providing support  
12 to the increase by means of some form of engineering  
13 analysis and quantifiable assessment we think is going to  
14 reduce the number of, as you would put it, trivial license  
15 amendments.

16           When we move beyond that level of thinking and  
17 understand this debate is ongoing in the staff now and with  
18 OGC -- and we have not come down on a hard and fast position  
19 -- we see difficulties when we start adding adjectives and  
20 adverbs with the intent of hopefully reducing further, as  
21 you would put it, the number of trivial amendments we get,  
22 because we do have a lot of adjectives and adverbs in our  
23 regulations right now.

24           One of them that is used extensively is the word  
25 "significant." So there is a difficulty in terms of when

1 does "non-negligible" start to approach significant. It  
2 triggers another level of regulatory involvement when it  
3 reaches significant.

4 I guess we are taking one small step at a time.

5 COMMISSIONER MCGAFFIGAN: It strikes me that that  
6 ambiguity is there no matter what, and pretending that it's  
7 not there by avoiding the adverb doesn't necessarily solve  
8 the problem.

9 CHAIRMAN JACKSON: It may be that the adverb is  
10 not so important as what the guidance is that covers the use  
11 of the verb.

12 MR. MIRAGLIA: May I again?

13 CHAIRMAN JACKSON: Please.

14 MR. MIRAGLIA: The point being regardless of what  
15 it says in the rule, guidance is going to dimension what the  
16 words mean. I think, Commissioner McGaffigan, the staff's  
17 approach to this is looking at what should be formulated in  
18 the rule and what should be in the reg guide. That's an  
19 issue. I think they have to be looked at in concert.

20 COMMISSIONER MCGAFFIGAN: My only point is there  
21 should be honesty in rulemaking. If in reg guide space you  
22 are going to introduce the notion of negligible or  
23 thresholds or anything of that sort, then you might as well  
24 do it in the rule. We have had reg guides that are  
25 inconsistent with rules for sometime around here.

1           CHAIRMAN JACKSON: I think that in the end the  
2 Commission is going to have to give the staff some guidance  
3 on it. So we are going to have to think about it ourselves.  
4 They have presented it as an option, and if that is an  
5 option or part of an option that gets adopted by the  
6 Commission, the Commission by definition is going to have to  
7 grapple with it.

8           Commissioner Diaz.

9           COMMISSIONER DIAZ: I think it has really been  
10 spoken to. I believe that for years rules have been made at  
11 the NRC and then the staff tries to expand on them and  
12 describe them and analyze them in reg guides and put  
13 boundaries on it.

14           I think it has worked reasonably well in the past,  
15 but I do personally believe that there is an option -- not  
16 all the time, but particularly in this case -- of making the  
17 rule clear by itself so it doesn't have to be dependent on a  
18 red guide that gets lengthy and that people are working on  
19 it. If the rule could achieve the desired result, then I  
20 believe the rule should clearly stay. This might be one of  
21 those cases.

22           CHAIRMAN JACKSON: Did you have any particular  
23 aspect of it in mind?

24           COMMISSIONER DIAZ: The same issue. How we define  
25 from zero to significant.

1 CHAIRMAN JACKSON: Okay. Got the point.

2 Why don't you go on, Mr. Mathews.

3 MR. MATHEWS: I'm prepared to offer a view on the  
4 issue that you raised with regard to the SAR and current  
5 licensing basis.

6 CHAIRMAN JACKSON: Okay.

7 MR. MATHEWS: We believe that "SAR" should  
8 continue to be the term utilized in 50.59 and that it  
9 outline the range of systems, structures and components to  
10 which 50.59 applies, the reason for that being is we think  
11 the FSAR is a representation of the information that the  
12 staff has evaluated in the context of approving the original  
13 application, and if updated in accordance with 50.71(e),  
14 continues to reflect the information that the staff believes  
15 is the most important information.

16 CHAIRMAN JACKSON: How do you handle the SERs and  
17 non-FSAR commitments?

18 MR. MATHEWS: SERs certainly provide additional  
19 information and an elucidation of what the staff viewed as  
20 important among the information that is in the FSAR, and we  
21 believe a licensee should look to the SER in terms of  
22 determining whether or not an acceptance limit as viewed by  
23 the staff has been exceeded.

24 There still is the issue of if push came to shove  
25 and we were in an enforcement arena what the relative

1 importance is of a SER given that that acceptance limit may  
2 not have been "documented" in the license. So there is  
3 still a problem there, but we think the SER is probably, in  
4 any case, going to provide additional information to help  
5 the evaluation.

6 We are hopeful that if we do 50.71(e) updating  
7 correctly that those important commitments and acceptance  
8 limits that were accepted by the staff in the course of the  
9 review should be reflected in a change to the FSAR.

10 CHAIRMAN JACKSON: Is that something that a la  
11 option 1 you would imagine essentially requiring?

12 MR. MATHEWS: We would imagine providing guidance  
13 in option 1 with regard to what the intent of 50.71(e) is.  
14 That would ensure that the SER would at least be looked at  
15 for possible incorporation of information into the FSAR.

16 COMMISSIONER DIAZ: If the issue of commitments  
17 management were very well defined and organized, and let's  
18 assume that by a miracle of Christmas it was resolved, will  
19 you still be on the SAR, or would you say the current  
20 licensing basis?

21 MR. MATHEWS: I still think we would be in the  
22 mode of recommending that the SAR be the operative document  
23 relative to 50.59.

24 CHAIRMAN JACKSON: How do you deal with the issue  
25 of different SARs having different degrees of coverage?

1 MR. MATHEWS: Complexity? Level of detail?

2 CHAIRMAN JACKSON: All the phraseology, speaking  
3 of adjectives and so forth.

4 By the way, we talked about "negligibly." That's  
5 an adverb. We were speaking of it as an adjective. It's  
6 not. It says more than negligibly increased.

7 COMMISSIONER MCGAFFIGAN: Staff had "negligibly";  
8 NEI had the adjective.

9 CHAIRMAN JACKSON: Right, but we're talking about  
10 the staff's option 1, and "negligibly" is an adverb.

11 MR. MATHEWS: I may have forgotten the question.

12 CHAIRMAN JACKSON: So might I.

13 MS. VIETTI-COOK: It was the level of detail.

14 MR. MATHEWS: Right. I think we deal with what we  
15 have, and we have a varying level of detail and complexity  
16 of these FSARs based upon the different vintage plants that  
17 we have.

18 Our guidance that we are going to be bringing  
19 forward to recommend issuance at least for public comment is  
20 going to address this issue and indicate that we are looking  
21 in 50.71(e) updating for a wholesale revamping of an FSAR  
22 that did not comport with one that was a later designed  
23 plant that might have had 18 volumes instead of three. We  
24 are going to suggest that the updating be commensurate with  
25 the level of detail that had been provided in the original

1 FSAR. This may result in the addition of some information.

2 CHAIRMAN JACKSON: Shouldn't it comport with the  
3 level of risk significance?

4 MR. MATHEWS: It should, and that should be based  
5 on the evaluation of the analysis that was performed, let's  
6 say, many years later, and if it was viewed to be a  
7 significant issue by the agency, then it ought to be  
8 afforded similar treatment in its incorporation in the FSAR.

9 CHAIRMAN JACKSON: Commissioner Diaz.

10 COMMISSIONER DIAZ: It's important to notice that  
11 your risk is increasing proportional to the time in the  
12 meeting.

13 CHAIRMAN JACKSON: Oh no. Let's be nice.

14 [Laughter.]

15 COMMISSIONER DIAZ: It's an interesting question.  
16 I understand the staff level of comfort with the SAR. It's  
17 obvious that that's what they work with. From the  
18 standpoint of safety at the plant, an expert in the area,  
19 would it better serve the safety issue by using the current  
20 licensing basis or by using the SAR?

21 MR. MATHEWS: My view is that the current  
22 licensing basis addresses many, many different levels of  
23 commitments of varying safety significance.

24 CHAIRMAN JACKSON: But if you rank ordered them in  
25 terms of that safety significance.

1 MR. MATHEWS: If you were to do that, if you were  
2 to alter in effect what constituted -- I'll use an adjective  
3 -- the important current licensing basis commitments, that  
4 would change my opinion. The current licensing basis as  
5 defined in Part 54 is very broad.

6 CHAIRMAN JACKSON: Remember, this is Mr. and Mrs.,  
7 but not married to each other, Risk Informed here.

8 [Laughter.]

9 MR. MATHEWS: Maybe I missed that adjective when  
10 you asked the question.

11 COMMISSIONER DIAZ: It's all related to why we  
12 said commitments management. If you can rank these things  
13 by risk, then would an expert in the field, a person that  
14 will be making decisions that better serve the envelope of  
15 adequate protection of health and safety, would it be better  
16 served by a risk ranked current licensing basis where all  
17 commitments are risk ranked?

18 MR. MATHEWS: With that caveat, I would have to  
19 say that it may represent an improvement just as would any  
20 risk ranking even of the FSAR contents.

21 COMMISSIONER DIAZ: The second thing is, assuming  
22 that is true, what would represent the most effective way of  
23 accomplishing what we started doing here?

24 MR. MATHEWS: Effective, not necessarily  
25 efficient?



1 COMMISSIONER DIAZ: Effective meaning the entire  
2 issue is going to be resolved adequately.

3 CHAIRMAN JACKSON: Is that your option 5?

4 MR. MATHEWS: That would be our option 5, whether  
5 you use the term SAR or current licensing basis. It might  
6 be a whole new term that would indicate relative risk  
7 significance of structures, systems and components and  
8 provide some articulation of where the separation lies  
9 between those that the NRC views as so important as their  
10 change requiring NRC involvement or NRC involvement in the  
11 instance you find one degraded or nonconforming.

12 COMMISSIONER McGAFFIGAN: As I believe the staff  
13 pointed out in the paper, this requires a total rewrite of  
14 Part 50, 50.34, 50.36, 50.71(e), 50.59, which may be a  
15 laudable goal for the long term, but there is a fundamental  
16 problem with changing terms this late in the game.

17 COMMISSIONER DIAZ: Again, focusing on something  
18 that we could bite on, if voluntary commitments or  
19 commitments management would be risk informed or would be  
20 risk ranked, would that solve the issue of where they  
21 belong, how they are managed, how we track them, and where  
22 decisions are made?

23 CHAIRMAN JACKSON: Mr. Miraglia.

24 MR. MIRAGLIA: I think what you just said,  
25 Commissioner Diaz, is essentially where we are in terms of

1 commitment management. When we looked at license renewal,  
2 we went out to look to say the licensing basis is broader  
3 than the FSAR; what are the control processes for those  
4 kinds of commitments? That was the NEI initiative, and how  
5 are commitments being controlled.

6 So in that aspect the processes address the  
7 commitment management, and we are going to go out and see  
8 how effective that is. If that is an effective process,  
9 need we do more, and if so, what is that delta? That's what  
10 I was alluding to previously.

11 In terms of how the options were built, the  
12 options were built in terms of moving ahead on 50.59. In  
13 terms of the current status, the current scope, if you look  
14 at the options, part of the options increase the scope and  
15 ask the question about current licensing basis and how  
16 should that be applied, should that be moved towards the  
17 FSAR, or to look for other alternatives.

18 So I think within the range of the options we have  
19 covered all of those, and it's a question of how much do we  
20 move in incremental pieces, over what time to get to the  
21 ultimate vision and goal of what the Commission is  
22 suggesting to cover all of these things, but how much can be  
23 done over what period of time and what burden does that lay  
24 on the industry, the regulated community as well as the  
25 staff, and that's how the options were built.

1           That's what David was alluding to in terms of ease  
2 of doing and more resource intensive. It goes to the  
3 observation that Commissioner McGaffigan made, that certain  
4 things would require lots of other things to happen to make  
5 it consistent. So one has to schedule and time frame these,  
6 and the options are built in that kind of way.

7           I think the flexibility is there to respond to the  
8 Commissioner's vision and goal of how to get to a complete  
9 risk-informed set of commitments that we could all agree we  
10 understand, we can identify and know what the change  
11 processes are, whether that's 50.59 for a change process,  
12 whether they are in an FSAR or another licensee document  
13 somehow, but to circumscribe the playing field. I think  
14 that's the ultimate goal. I think the options can get us  
15 there, and it's a question of how fast and over what period  
16 of time.

17           CHAIRMAN JACKSON: Thank you.

18           We need to step through the various options, but I  
19 think it would be helpful as you are stepping through them,  
20 Mr. Mathews, if you could go back to page 4, which is the  
21 key issues from the comments, and talk about aside from the  
22 specifics of what the options would do how they actually go  
23 about facilitating addressing the key issues that in fact  
24 came from the comments, that is, the use of 50.59 for  
25 degraded and nonconforming conditions, and some of what I

1 think you are hearing about, whether 50.59 references an  
2 FSAR or something other than that, relates to its use there;  
3 the plant restart if a USQ has evolved as well as the  
4 threshold and the definition of a change to a facility.

5 If you could just comment briefly on these four  
6 points as you discuss each of the options, I think that  
7 would be helpful.

8 MR. CALLAN: Chairman, before we go, I want to  
9 have maybe a brief interaction with Frank just to clarify a  
10 point. My sense is that the way we treat commitments is  
11 linked to the binding nature of the commitment, not to the  
12 risk significance.

13 Let me give you an example. In response to an  
14 event where an operator manipulates a component incorrectly,  
15 the licensee commits to the violation that is written  
16 against that, commits to add a caution statement in a  
17 procedure.

18 That commitment has a high risk significance,  
19 because the failure to do that led to an event that had  
20 consequences. So that's a high risk-significant commitment,  
21 but that commitment is not binding in nature.

22 The licensee can then modify that procedure,  
23 modify that caution statement, and as a courtesy, quite  
24 frankly, notify the NRC; they are not even really bound to  
25 notify us that they are changing it.

1           CHAIRMAN JACKSON: Does that not get to his  
2 question?

3           MR. CALLAN: There are binding comments that may  
4 have very high risk significance. For example, commitments  
5 in SERs.

6           Do I have that right?

7           MR. MIRAGLIA: That's right. The options would  
8 say we would have to levelize with time.

9           CHAIRMAN JACKSON: The point is, I think people  
10 look at the things in a certain sense as you have just  
11 described them, as either or. There is this dichotomy  
12 between what is a binding commitment versus what is a  
13 risk-significant commitment.

14          MR. CALLAN: Exactly. I just wanted to clarify  
15 that.

16          CHAIRMAN JACKSON: The whole point is that if you  
17 had a scope that includes those but you had a categorization  
18 of them that related to the risk significance of them, then  
19 have you not deal with both of those issues?

20          MR. COLLINS: The answer is yes, but presently we  
21 do not have an infrastructure that would lead us that way.

22          MS. CYR: We also don't have a legal framework to  
23 deal with that.

24          CHAIRMAN JACKSON: You don't have an  
25 infrastructure for even option 1 completely at this point.

1 One obviously with these is talking about developing an  
2 infrastructure of whatever option and over whatever time  
3 makes sense, right?

4 MR. COLLINS: Now everything is geared essentially  
5 to the SAR, and under the broadest option here we go away  
6 from the SAR; we just go to the tiered safety aspects.

7 CHAIRMAN JACKSON: I understand your point.

8 MR. MATHEWS: Let me point out in reference to  
9 your suggestion, as I'll mention when we get to option 5,  
10 the first two "key issues" from the comments, the first two  
11 bullets, use of 50.59 for degraded and nonconforming  
12 conditions and plant restart if a a USQ is involved, that  
13 has been resolved by the issuance of Supplement 1 to Generic  
14 Letter 91-18. That took place in October of this year. The  
15 feedback we have been getting is it has successfully  
16 resolved that problem.

17 With regard to the remainder of those issues  
18 listed on the key issues, our view is again as part of the  
19 proposed rule change to 50.59 and guidance attendant thereto  
20 that we are going to bring forward to the Commission in  
21 context of option 5 we'll successfully resolve the remainder  
22 of those issues.

23 CHAIRMAN JACKSON: But the generic letter is how  
24 you solved the bullet one?

25 MR. MATHEWS: Bullet one and two. That was a

1 policy issue, and it was resolved by the generic letter.

2 CHAIRMAN JACKSON: It was resolved as a short-term  
3 solution to the policy issue.

4 MR. MATHEWS: Right.

5 COMMISSIONER MCGAFFIGAN: Could I also clarify  
6 that it's really the option 1 and 2 elements of option 5,  
7 the short-term elements of option 5, that resolve all of  
8 this?

9 MR. MATHEWS: That's right.

10 COMMISSIONER MCGAFFIGAN: You don't need to do the  
11 long term.

12 MR. MATHEWS: To respond to the salient comments  
13 on NUREG-1606 and the interrelationship between 50.59 and  
14 degraded and nonconforming conditions, the role of the FSAR  
15 and its scope, those are addressed in the short-term  
16 actions.

17 CHAIRMAN JACKSON: So let's walk through the  
18 options.

19 MR. MATHEWS: I will do that by not necessarily  
20 articulating all the nuances of the options but the salient  
21 distinctions.

22 CHAIRMAN JACKSON: That's fine. As you point out,  
23 we've had the paper forever.

24 [Slide.]

25 MR. MATHEWS: Option 2 represented a departure

1 from our current way of doing business. It's not  
2 necessarily captured by the phrasing, as I suggested to you,  
3 on page 7.

4 The major difference between option 2 and what  
5 came before was that we were going to explore alternative  
6 50.59 review and approval methods. This means understand  
7 existing 50.59 puts you in the mode of you don't need to get  
8 NRC's involvement to make the change; we'd like to hear  
9 about it at your periodic FSAR updating. Or you need to get  
10 a license amendment under 50.90.

11 We were going to explore other alternative  
12 regulatory options that hadn't been utilized as yet to  
13 minimize the impact on the staff associated with those  
14 approvals. This would be something along the line of, if  
15 you don't hear from us in a certain period of time, do it.

16 Another one might be a mere letter approval by an  
17 appropriate signature authority in the agency as opposed to  
18 a license amendment when indeed it didn't require the actual  
19 modification of a tech spec or a license condition in order  
20 to just reflect an approval for something they were going to  
21 change in their FSAR that represented an unreviewed safety  
22 question.

23 We were going in option 2 to address the issue of  
24 removal of information from the SAR. That had not been  
25 addressed as part of our proposal in option 1. This would



1 be done preferably, in our view, by guidance, but we are  
2 finding that there may be some regulatory constraints that  
3 exist to removal of information. That may mean rule change  
4 might be the only avenue.

5 COMMISSIONER McGAFFIGAN: Could you clarify that  
6 and perhaps comment on the November 14th paper you got from  
7 NEI with regard to their thoughts as to how material should  
8 be taken out of the SAR?

9 MR. MATHEWS: I can summarize it. For one thing,  
10 the November 14th NEI paper is being staffed throughout the  
11 agency in terms of getting review both in the legal arena  
12 and from regional and NRR and NMSS staff. So we haven't got  
13 a final answer.

14 There is a disparity between our view of what can  
15 be removed under existing regulations and their view of what  
16 can be removed. We don't believe there is very much that  
17 can be removed without an associated at least interpretive  
18 rule change.

19 COMMISSIONER McGAFFIGAN: Where would the  
20 interpretative rule change be placed in our regulations? Is  
21 it something that would go to 50.34?

22 MR. MATHEWS: We haven't found a place necessarily  
23 yet.

24 MR. COLLINS: The question is, are we dealing with  
25 the basic regulation of what is required to be in the FSAR,

1 or are we dealing with the ability to remove information  
2 from the FSAR in concert with the update?

3 MR. MATHEWS: I think we have to deal with both.

4 COMMISSIONER McGAFFIGAN: The interest is both,  
5 and at the moment we are potentially going to give lots of  
6 guidance as to what needs to be added consistent with  
7 50.71(e). We are finding constraints that I don't totally  
8 understand legally to taking items out. If it is subject to  
9 an interpretative rule change, that probably means it's a  
10 practice. I'm not the lawyer here.

11 CHAIRMAN JACKSON: Is OGC involved?

12 MS. CYR: We're involved heavily with the staff in  
13 reviewing the NEI proposal.

14 CHAIRMAN JACKSON: When do you think that review  
15 is going to be done?

16 MS. CYR: I think we are on a fairly fast track.

17 MR. MATHEWS: We are on a fast track. We want to  
18 be able to address the relationship between the staff's  
19 recommended actions with regard to FSAR updating, and that  
20 includes the issue of removal, and our views on NEI's  
21 guidance in that regard in the same package. That package  
22 is undergoing senior level review in the agency and OGC.

23 CHAIRMAN JACKSON: So by early next year?

24 MS. CYR: Yes.

25 MR. MATHEWS: Yes. I was going to get to

1 schedules, but our hopes are, barring any redirection, that  
2 we would be moving to you at the end of January.

3 COMMISSIONER McGAFFIGAN: Are there two different  
4 documents at the moment, one a generic letter that you are  
5 all working on to clarify what needs to be in the SAR, and  
6 the second this NEI document that is seeking to do something  
7 very similar, and is this paper that is going to come to us  
8 in January going resolve which document we work off of?

9 MR. MATHEWS: It's going to propose how we might  
10 resolve with your help.

11 COMMISSIONER McGAFFIGAN: I might go back to 1606.  
12 In the case of 1606, we have 1606, we have 97-06 from NEI,  
13 which has now been endorsed. Which document is the staff  
14 working off there? Is it 97-06 with our caveats as we did  
15 in the maintenance rule, or are you still trying to update  
16 1606 separate from NEI 97-06?

17 MR. MATHEWS: 1606 is not on the table.

18 COMMISSIONER McGAFFIGAN: It's not on the table?

19 MR. MATHEWS: No. The two documents that are  
20 being discussed within the staff are a draft generic letter  
21 which addresses this issue and the extent to which the staff  
22 believes we can move forward in this area through guidance,  
23 and as an option, further work with NEI and their proposed  
24 document, which doesn't have a number, that we received on  
25 November 14th and have had two meetings on.

1 COMMISSIONER McGAFFIGAN: 97-06?

2 MR. MATHEWS: 97-06 is associated with 50.59.

3 COMMISSIONER McGAFFIGAN: I brought you back to  
4 50.59. Is 1606 still on the table for interpreting 50.59 or  
5 an update of 1606?

6 MR. MATHEWS: No.

7 COMMISSIONER McGAFFIGAN: The paper when it came  
8 to us in September said by about this time you would resolve  
9 all the comments.

10 MR. MATHEWS: Right. What we are going to  
11 recommend is a rulemaking activity associated with 50.59 to  
12 resolve the remaining issues out of 1606.

13 COMMISSIONER McGAFFIGAN: In the interim, are you  
14 going to use NEI's document with some caveats as you used to  
15 use in 125 with caveats? You are an inspector out in the  
16 field. The april document is no good; 1606 is no good; you  
17 have the generic letter that clarified a couple things; but  
18 what am I supposed to be working off of?

19 MR. AKSTULEWICZ: What we are doing is we have  
20 distributed the draft 96-07 document to the regional offices  
21 and to headquarters staff for their specific purpose of  
22 identifying areas where they believe they cannot support the  
23 use of that document. It's our intent then to provide  
24 correspondence back to NEI that cautions them in the  
25 application of that document in those particular areas in

1 the interim until we resolve this issue by rulemaking.

2 We knew we had to do something. We couldn't just  
3 let the document sit out there as part of an NEI initiative  
4 without us taking some posture on the document and clearly  
5 stating areas where we had conflict issues.

6 COMMISSIONER MCGAFFIGAN: Some of which we may be  
7 trying to resolve by rulemaking.

8 MR. AKSTULEWICZ: That's correct.

9 COMMISSIONER MCGAFFIGAN: Which package is going  
10 to give us the proposed staff letter to go out to NEI?

11 MR. AKSTULEWICZ: That letter will be separately  
12 done. The review process for the 96-07 document expires at  
13 the end of January. So we won't be getting the inputs back  
14 from the regional offices or the headquarters staff until  
15 late in January.

16 The industry does not implement 96-07 as an  
17 initiative until June or July of next year. So we did have  
18 some time to put our positions on the street if we had to.

19 CHAIRMAN JACKSON: Why don't you go on.

20 MR. MATHEWS: And I would just argue that a  
21 similar process is under way associated with the FSAR  
22 updating issue. That's the one I was responding to.

23 As a last point on option 2, based on our  
24 assessment of whether additional guidance is needed to  
25 clarify the relationship of the design basis and that

1 portion of the design basis which is reflected in the FSAR  
2 and its relationship to reporting requirements, let say in  
3 50.72, that relate to when somebody is outside their design  
4 basis, we were going to work with industry to develop  
5 additional guidance in that regard under option 2.

6 [Slide.]

7 MR. MATHEWS: Option 3 would represent "radical  
8 departure" from what has been described before. It would  
9 propose an overall risk ranking of structure, systems and  
10 components. We would have a "risk-informed" SAR content  
11 that would be based upon the relative importance of those  
12 systems.

13 50.59, which would apply to that same document,  
14 would also have a process for making risk-based  
15 determinations of the presence or absence of an unreviewed  
16 safety question.

17 In that regard, it would be a significant  
18 departure from where we are, and if you viewed that the  
19 ultimate goal would be to evolve to a risk-informed, I would  
20 even argue possibly risk-based way of evaluating structures  
21 and systems and components, this would be it.

22 I know you winced at risk-based, but the fact of  
23 the matter is --

24 CHAIRMAN JACKSON: He didn't. He did.

25 MR. MATHEWS: The 50.59 process that would be

1 envisioned there would like have to be risk-based.

2 CHAIRMAN JACKSON: Option 3 would require  
3 licensees to perform and apply a level 2 PRA. What would  
4 that require of the agency's infrastructure?

5 MR. MATHEWS: It probably would require at least  
6 serious consideration of a PRA rule.

7 CHAIRMAN JACKSON: As well as an inspection  
8 program that would be focused on inspecting licensees' PRAs  
9 and a PRA rule that would require some certification of  
10 PRAs.

11 MR. COLLINS: Including a technical review as well  
12 as an inspection of application.

13 CHAIRMAN JACKSON: If you had an FSAR that was  
14 risk-informed, would you imagine that it would be stable  
15 over time or that it could change as the PRA content  
16 changed? That's a loaded question.

17 MR. MATHEWS: I think it would have to change.

18 CHAIRMAN JACKSON: So it's a living document.

19 MR. MATHEWS: It would have to be living document,  
20 I would believe, particularly as the facility might be  
21 changed.

22 MR. MIRAGLIA: It would have to have the elements  
23 in the guidance that we had with respect to the SRP in the  
24 reg guide; some way of monitoring to be sure that it remains  
25 bounded.

1           CHAIRMAN JACKSON: The option 3 also discusses  
2 changes in equipment reliability. Is this the same  
3 definition of reliability as in the maintenance rule?

4           MR. MATHEWS: I would have to defer to somebody  
5 more familiar with the maintenance rule.

6           MR. BERGMAN: I used to work on the maintenance  
7 rule. I'm sorry. My name is Tom Bergman.

8           CHAIRMAN JACKSON: You can step to the microphone.

9           MR. BERGMAN: The maintenance rule uses a proxy  
10 for reliability of the MPFFs, maintenance preventable  
11 function failures. It's not itself a direct measure of  
12 reliability though in the PRA sense of the word.

13           COMMISSIONER MCGAFFIGAN: The staff in the  
14 detailed discussion of option 3 recommends that if the  
15 Commission desires to pursue this method it be established  
16 as a voluntary alternative to existing regulation rather  
17 than a required approach. If this were a voluntary  
18 alternative to existing regulation, how many licensees would  
19 be knocking at the door and trying to participate? Would it  
20 be a null set, or would there be anybody?

21           MR. MATHEWS: That would be a very hard question  
22 for me to answer. The staff hasn't even begun to assess its  
23 relative attractiveness.

24           COMMISSIONER MCGAFFIGAN: You might ask NEI at  
25 some point how big a set of licensees would be interested.



1           COMMISSIONER DIAZ: Would it be fair to say that  
2 the number of licensees interested will be directly  
3 proportional to the definition of the processes? The more  
4 defined the processes, the more certain that you are going  
5 to be inspected and assessed and enforced in a manner that  
6 is clearly understood and defined, the more people there  
7 would be?

8           MR. MATHEWS: I think that would be a major factor  
9 in their decision, but I think the cost of moving to it  
10 would also be a major factor.

11          MR. COLLINS: I think that would be a minor  
12 factor. The significant factor would be the resources  
13 necessary to arrive at that point, and the results of  
14 implementation of that process would be secondary to the  
15 licensee.

16          COMMISSIONER McGAFFIGAN: I might comment that if  
17 I were a licensee, which I'm not, I would be a little  
18 skeptical about our ability to achieve clarity in this area  
19 having not achieved it for 40-odd years in the existing  
20 structure.

21          CHAIRMAN JACKSON: Hope springs eternal.

22          COMMISSIONER DIAZ: We are very hopeful that with  
23 you and the Commission the clarity will be increasing.

24          [Slide.]

25          MR. MATHEWS: The significance of option 4 is what

1 I will phrase as the adoption of a two-tiered regime. The  
2 two-tiered regime would be based on risk considerations and  
3 risk significance.

4 It in effect would establish, possibly through the  
5 vehicle of an FSAR or some other document, what we would  
6 refer to as a description of the essential systems,  
7 structures and components. These would be the ones that the  
8 NRC would want to be involved in their change or in  
9 instances where they were identified as being inoperable,  
10 because of their safety significance.

11 The other regime, of course, would be that  
12 category of information and structure, systems and  
13 components that the NRC views that the licensee would have  
14 the flexibility to evaluate the significance of the changes  
15 and make an assessment of whether the change can be made or  
16 not.

17 Each of those tiers would have to have associated  
18 with them 50.59-like processes.

19 CHAIRMAN JACKSON: Right, because that's how you  
20 would monitor whether some important information might  
21 migrate into the essential category.

22 MR. MATHEWS: Correct.

23 They would have to have also processes for dealing  
24 with instances of inoperability, degradation and  
25 nonconformance. So you would see a two-tiered regime that

1 would have two associated regulatory endorsed processes for  
2 responding to changes.

3 CHAIRMAN JACKSON: But this option does not  
4 explicitly deal with commitments.

5 MR. MATHEWS: No. You could view the lower tier  
6 as also including commitments.

7 CHAIRMAN JACKSON: That would have to be defined.

8 MR. MATHEWS: Right.

9 COMMISSIONER MCGAFFIGAN: Could I also assume that  
10 this is a case where it would have to be established as a  
11 voluntary alternative given the scope of the changes?

12 MR. MATHEWS: I think it would be.

13 COMMISSIONER MCGAFFIGAN: So you would have the  
14 two tiers, plus you would have the parallel system.

15 MR. MATHEWS: You would have the choice.

16 COMMISSIONER MCGAFFIGAN: Right, but we would have  
17 both.

18 MR. MATHEWS: Yes. We would end up having to deal  
19 with both.

20 COMMISSIONER MCGAFFIGAN: Unless it was a null set  
21 of people chomping at the bit to join.

22 MR. MATHEWS: Right.

23 [Slide.]

24 MR. MATHEWS: With regard to option 5, which  
25 represents a synthesis of pieces of the earlier options,

1 item (a) on option 5 is the generic letter which I made  
2 reference to, and it is has been issued.

3 With regard to the remaining items on option 5,  
4 I'd like to turn to an individual slide dealing with each.

5 [Slide.]

6 MR. MATHEWS: With regard to rulemaking on 10 CFR  
7 50.59, the essential elements of that rulemaking are  
8 described on the slide. Most importantly, I'd like to talk  
9 about our progress with regard to this rulemaking activity.

10 The schedule has been affected by extensive  
11 coordination and interaction with stakeholders. We have had  
12 ongoing activities with NEI that relate to this issue, some,  
13 very pointedly, in the form of 96-07, which is the NEI  
14 document associated with changes, tests and experiments.

15 Related to that, of course, given the scope of  
16 50.59, is design-bases issues raised in NEI's document  
17 97-04, and then they also provided us an FSAR update  
18 document on November 14th, which we are also reviewing. So  
19 the staff has been involved in that activity.

20 We have committed to participate in a workshop  
21 that NEI is holding in January relating to all of these  
22 issues. But notwithstanding, we have a rulemaking package  
23 in concurrence. It is with the senior managers of NRR and  
24 OGC. In fact we are expecting to meet to gain a consensus  
25 on that rulemaking package in early January with the hopes

1 of bringing it to the Commission, barring any redirection,  
2 by the end of January.

3 CHAIRMAN JACKSON: How do you define margin of  
4 safety today?

5 MR. MATHEWS: Margin of safety today is viewed to  
6 be that margin established by the acceptance limit reflected  
7 in the FSAR.

8 CHAIRMAN JACKSON: Or the SER.

9 MR. MATHEWS: Or the SER in the event that it  
10 provides more clarity and definition than the FSAR.

11 The difficulty with that definition in some  
12 instances, particularly with regard to radiological  
13 consequences, is that many times we assessed the  
14 acceptability of a plant based upon staff-conducted  
15 independent consequence analyses rather than examine the  
16 models, methods and procedures they utilized for themselves.  
17 So the first place they ought to look is whether or not it's  
18 changed the way they evaluated it, and the first visit  
19 should be their FSAR.

20 CHAIRMAN JACKSON: What in this would prevent a  
21 licensee desiring to make a change from removing or changing  
22 information in the FSAR prior to proposing a change to  
23 better their argument that a USQ does not exist?

24 MR. MATHEWS: We know of no process for them to do  
25 that given that the FSAR is a document that was submitted as

1 part of their original application and has been hopefully  
2 updated consistent with 50.71(e). They in effect would be  
3 altering a document that they had previously provided to the  
4 Commission upon which we based a licensing decision. So we  
5 don't believe there is a method for them to do that under  
6 our regulations legally.

7 CHAIRMAN JACKSON: If you eliminated the term  
8 "unreviewed safety question," are there other regulations  
9 that would require conforming changes?

10 MR. MATHEWS: There are several paragraphs in 10  
11 CFR that use that phraseology also.

12 MS. CYR: It may stand alone. I think the  
13 language is carried forward into 50.90.

14 MR. COLLINS: I think the answer is 50.66, 50.71  
15 and 72.71 all contain reference to USQ.

16 MR. AKSTULEWICZ: And there is work under way for  
17 part 70, I believe, a rulemaking proposal that would also  
18 draw in this kind of language.

19 MR. MATHEWS: And that will be viewed as one of  
20 the collateral impacts, but we are proposing elimination of  
21 the term as we know it.

22 CHAIRMAN JACKSON: The rationale for that being?

23 MR. MATHEWS: That it doesn't reflect the  
24 significance of the issue in all instances. It imparts  
25 safety significance to issues that might be purely of a

1     licensing nature.

2                 CHAIRMAN JACKSON: Except that if this is being  
3     done as an element of option 5, or a foundational piece  
4     where you are talking to development of a risk informed  
5     framework, or whatever, and its use was within that context,  
6     then it shifts the argument, doesn't it?

7                 MR. MATHEWS: It wouldn't do any harm to a future  
8     adoption of a more risk-informed regulatory basis. I don't  
9     think its elimination at this juncture would prevent us from  
10    then focusing 50.59 at some later date on the more  
11    safety-significant issues.

12                CHAIRMAN JACKSON: What are you going to replace  
13    it with, better commenting?

14                MR. MATHEWS: One that has been suggested is a  
15    better look at this. But I think we may eliminate it  
16    altogether and just indicate that this is the type of change  
17    that we need to see without putting a label on it.

18                COMMISSIONER McGAFFIGAN: If you eliminate it  
19    altogether, then you've got all these dangling references.

20                MR. MATHEWS: We would have to make conforming  
21    changes.

22                COMMISSIONER McGAFFIGAN: The conforming changes  
23    are easy to make?

24                MR. MATHEWS: I can't say that yet. We are in the  
25    process. Alternative wording that has been suggested is

1 something like "licensing change requiring review" or  
2 "change requiring licensing review."

3 [Slide.]

4 MR. MATHEWS: With regard to enforcement policy,  
5 as indicated on slide 12, the October 1996 policy revision  
6 did address the issue of the significance of 50.59  
7 violations and gave examples which would have reflected that  
8 the significance of any 50.59 violations represents a  
9 significant regulatory concern and therefore ought to be  
10 considered for severity level 3.

11 It also indicated that with regard to resolving  
12 discrepancies between the as-found plant and the FSAR that  
13 there was a period of discretion that the agency would  
14 utilize through October of 1998.

15 CHAIRMAN JACKSON: Has there been any movement on  
16 the part of licensees to update their FSARs? I'm told  
17 anecdotally that there has been little movement.

18 MR. MATHEWS: Little movement in terms of  
19 conforming to the requirements of 50.71(e).

20 CHAIRMAN JACKSON: Right.

21 MR. MATHEWS: I believe they all have a process  
22 associated with the accuracy of their FSAR insofar as the  
23 existing plant is concerned. That, of course, as you may  
24 recall, was the focus of that enforcement discretion when it  
25 was first initiated. We have expanded the concept to



1 include this issue of 50.71(e) updating.

2 As part of each of the packages, one of which I've  
3 referred to in terms of 50.59 and I will refer to on the  
4 next slide with regard to FSAR updating, we are going to  
5 address the enforcement implications of the position  
6 suggested by the staff and make proposals to you with regard  
7 to that.

8 In the meantime, though, we have established an  
9 enforcement review panel through an official enforcement  
10 guidance memorandum issued by Mr. Lieberman. It was issued  
11 in October of 1997; it became effective the first week in  
12 November; to review all 50.59 evaluations, to impart,  
13 hopefully, consistency and an appreciation for safety  
14 significance to any resultant enforcement actions.

15 I believe they had 15 to 20 cases so far. Mr.  
16 Akstulewicz serves on that committee, as do the regions, of  
17 course, as their participation in the enforcement process,  
18 and a member of Mr. Lieberman's staff.

19 We believe that will address some of the  
20 short-term anxieties associated with differing  
21 interpretations of the significance of 50.59 violations.

22 [Slide.]

23 MR. MATHEWS: With regard to guidance and  
24 rulemaking on the content of the SAR, the staff has proposed  
25 a draft generic letter, or is in the process of proposing

1 one. We have developed it. We have briefed it to the ACRS.

2 We also have undertaken a review of the NEI draft  
3 guidance. It doesn't go by any number at this point in  
4 time.

5 On this same subject, some criticism has been  
6 offered that a draft generic letter may have NUREG-1606 type  
7 implications if we were to put it on the street, and  
8 therefore, why do we want to go through that? Why shouldn't  
9 we just at this point in time engage in an active discussion  
10 with NEI and the industry and affected stakeholders relative  
11 to this guidance with the hope of eventually endorsing it?

12 Part of the difficulty is that while that process  
13 may bear fruit in some areas, we think rulemaking is  
14 probably indicated to resolve some of the discrepancies and  
15 problems we still see, or at least an interpretative  
16 rulemaking associated with the statement of consideration of  
17 50.71(e). So we are going to propose in a paper several  
18 options for the Commission to consider on how to resolve  
19 this issue and time frames associated with each of those  
20 options to get an appreciation for what we see as the task  
21 ahead of us.

22 In effect, the schedule that I described for the  
23 50.59 rulemaking packages is consistent with our schedule  
24 expectations with regard to this package as well, although  
25 this one is a little further along in terms of staff review.

1           Our hopes had been to get it to you by the end of  
2 the year, but because of some of the complications  
3 associated with the NEI guidance and our coordination with  
4 them on that, we believe that probably a more reasonable  
5 date is the end of January.

6           [Slide.]

7           MR. MATHEWS: Turning now to the last element of  
8 option 5, which is the development of an overall  
9 risk-informed framework applicable primarily to nuclear  
10 reactors, we would propose as part of adopting this  
11 risk-informed framework, or at least adopting a regulatory  
12 proposal in this area, to evaluate the relationship of all  
13 of the parts of Part 50 to 10 CFR 50.59.

14           We would suggest revisions to the established  
15 regulatory processes to grade those requirements on a  
16 risk-informed basis. In other words, we would be asking the  
17 question and trying to answer it: what should be regulated  
18 and to what degree?

19           We would build on the approaches that we have  
20 initiated as part of the PRA implementation plan, and the  
21 explicit considerations of risk that have been imparted to  
22 the individual licensing requirements through our  
23 discussions with the industry and the publication of Draft  
24 Guide 1061.

25           There has been less progress made in the

1 development of this option. Frankly, we have had a great  
2 deal of emphasis on providing stability in the near term on  
3 many of these issues, and we are also awaiting Commission  
4 direction in this area.

5 We had tentatively proposed an advance notice of  
6 proposed rulemaking in February, but whether that is  
7 achievable or not again will be strongly affected by your  
8 desires in this regard when they are shared with you and the  
9 ability of the staff at that time to put an ANPR in place.

10 With that, that concludes my prepared remarks.

11 CHAIRMAN JACKSON: Thank you very much.

12 How would you reconcile the concepts of  
13 risk-informed corrective action timeliness and tech spec  
14 allowed outage times?

15 MR. MATHEWS: I am going to also turn to my  
16 colleagues on this one, but I believe that the tech spec  
17 allowed outage times definitely have a risk component to  
18 their development. I would argue that their risk was a  
19 consideration. Whether it was an explicit consideration  
20 that was articulated and well defined in terms of relative  
21 risk, I wouldn't make that claim, but I think there is a  
22 relationship.

23 CHAIRMAN JACKSON: Would you anticipate doing a  
24 systematic or asking the licensee to do a systematic review  
25 of the tech specs vis-a-vis the risk significance in that

1 area?

2 MR. MATHEWS: I think you would probably see that  
3 as a consequence of identifying the most risk-significant  
4 structure, systems and components and deciding at what point  
5 their significance would justify tech specs. In other  
6 words, I would see a hierarchy. So, yes, I think eventually  
7 you would get to that analysis.

8 CHAIRMAN JACKSON: Would you apply Appendix B  
9 requirements to the full scope of SSCs to which operational  
10 rules would apply?

11 MR. MATHEWS: I believe I would, but you may have  
12 to again provide a graduation in Appendix B, which I think  
13 is there implicitly, but I think you would have to be much  
14 more explicit with regard to the time frames associated with  
15 correction.

16 CHAIRMAN JACKSON: To what extent would you employ  
17 numerical acceptance criteria?

18 MR. MIRAGLIA: Very judiciously.

19 CHAIRMAN JACKSON: What did you say? Maliciously?

20 MR. MIRAGLIA: Very, very judiciously.

21 CHAIRMAN JACKSON: I thought you said maliciously.

22 [Laughter.]

23 MR. MATHEWS: I was going to answer reluctantly  
24 and judiciously.

25 CHAIRMAN JACKSON: Commissioner Diaz.

1           COMMISSIONER DIAZ: I just have a comment. I  
2 believe that you guys are chewing on these things in the  
3 right time frame, meaning the most important things first.  
4 I appreciate that process. There are certain things,  
5 though, that eventually when you put it all together they  
6 should be clearly separated.

7           I think there might be things I'm not sure are  
8 simpler, like separating commitments into risk informed.  
9 There are two different time frames. Maybe the Commission  
10 should hear the differences as part of the decision-making  
11 process.

12           CHAIRMAN JACKSON: Say that again. I missed that.

13           COMMISSIONER DIAZ: Looking at the entire issue,  
14 it is very difficult to provide timely answers. There are  
15 some parts of it that may be able to be addressed,  
16 especially the issue of how can, for example, commitments be  
17 risk informed.

18           CHAIRMAN JACKSON: Exactly.

19           Commissioner McGaffigan.

20           COMMISSIONER MCGAFFIGAN: One of the points made  
21 in the paper with regard to options 1 and 2 -- I'll read it  
22 when it comes on to option 2: "Implementation of this  
23 option may sufficiently improve SAR compliance to obviate  
24 the need to pursue more resource-intensive and high impact  
25 activities in the longer term." The same sort of context

1 comes out in option 1.

2 It's the fifth part of option 5 that seems to be  
3 the problem for the staff and for me, in all honesty, in  
4 trying to figure out what it is and how ready we are to  
5 proceed with any part of it now. The next sentence here  
6 says that pursuing options 1 and 2 would allow the staff an  
7 opportunity to gather and evaluate data in order to make  
8 informed decisions about where future improvements are  
9 needed and how others should be prioritized.

10 The time frame for the first four elements of  
11 option 5, as opposed to the fifth element of option 5, if I  
12 read this sentence right, you would all like to do the  
13 rulemaking, get all these documents out, which may also  
14 require an interpretive rulemaking in 50.71(e) and whatever,  
15 get some data, and then figure out what the risk-informed  
16 approach might be.

17 How long a period is that? Is that two or three  
18 years, or is it potentially never?

19 MR. MATHEWS: The schedule moves into the early  
20 2000s that we had proposed, and I think it was consistent  
21 with what you just described. We allowed as how you could  
22 start the ball rolling in terms of getting feedback on it  
23 from a conceptional standpoint.

24 I think the staff views that the shorter term of  
25 the first four actions of option 5 need to be in place and

1 implemented, which adds another factor of delay, in order to  
2 be able to assess how close we have come to a stable  
3 regulatory environment that achieves the balance that the  
4 Chairman mentioned at the beginning in terms of our  
5 involvement in the issues that we think we should be and the  
6 public has an expectation that we be involved in and our  
7 oversight of processes that the utility develops to take  
8 care of less significant items.

9 I think we need some feedback as to the  
10 effectiveness of that overall process that we can only get  
11 based on industry self-assessment and our inspection program  
12 to be able to determine whether we got it close enough.

13 COMMISSIONER MCGAFFIGAN: My last comment really  
14 is more for the Commission to consider. I think we have  
15 benefited by having this paper out since October for people  
16 to comment on and see where the staff is. I think there are  
17 two that we are going to be getting in January that might  
18 also benefit from being out fairly rapidly. But that's  
19 something that we will have to decide. Out before we finish  
20 voting on them so that people know what it is we are voting  
21 on.

22 CHAIRMAN JACKSON: I think we will do that as part  
23 of the decision-making process.

24 My only comment is that if you really are talking  
25 about risk-informed updating of SARs and you are talking



1 about a risk-informed approach to looking at enforcement of  
2 50.59, which is the point of the panel, let's not kid  
3 ourselves that we are not de facto starting down that path  
4 and ending up having to grapple with many of the issues that  
5 are part of the so-called longer range option 5 issues. I  
6 think that we shouldn't be naive.

7 MR. MATHEWS: I agree. In fact we have always  
8 viewed this as a stepwise approach in that direction of  
9 becoming more risk informed. I think the issues of schedule  
10 relate to just how fast you move there vis-a-vis how much  
11 experience you've gained.

12 CHAIRMAN JACKSON: Right. My only other comment  
13 in that line is simply that I hear comments that the  
14 industry gets discouraged because we are not really moving  
15 along to a risk-informed framework. So when you are  
16 stretching things out into a time horizon that runs up  
17 against the retirement age of some of the people involved,  
18 you also run the risk that you'll never get there.

19 I think it's a balance here that one has to try to  
20 strike. If you really are going to do what you intend to do  
21 if we supported option 5 and the short-term options and then  
22 the longer term, you really are going to have to grapple. I  
23 find it interesting how much people think that we can do  
24 such surgical or simple changes to things when in the end  
25 these things all are connected. I think we should not leave

1 here today with the idea that things are as simple as they  
2 are, just picking the so-called short-term options.

3 MR. MATHEWS: By characterizing these as two  
4 separate papers it might not give the appreciation that is  
5 needed, that these are very closely related activities.

6 CHAIRMAN JACKSON: One may be the foundational  
7 elements or a module or a piece of the other. I don't see  
8 how you are going to get at the FSAR update, for instance,  
9 and the 50.59 without addressing some of these issues up  
10 front.

11 I would like to thank you. It has been a very  
12 good discussion and useful briefing. You've actually shown  
13 by the briefing just how much work you've done. I  
14 personally want to thank you for that.

15 I know that it has been a long road even to get to  
16 this point. We are not at the end of it yet, starting with  
17 the 50.59 reviews and lessons learned two years ago and  
18 looking at the Millstone lessons learned. To come out of  
19 that with some recommendations and short-term improvements  
20 and then to have to go back and reassess them and try to  
21 come to some integration is a tremendous effort. So I want  
22 to compliment all of the staff on that even as we continue  
23 to push you.

24 MR. MATHEWS: Thank you, for all the staff.

25 CHAIRMAN JACKSON: I understand that the technical

1 and policy issues that have made this discussion so  
2 interesting are the same ones that have made resolving the  
3 issues with respect to 50.59 so difficult. The difficulties  
4 have become increasingly clear over the past year. For  
5 instance, the importance of clarifying and updating 10 CFR  
6 50.59.

7 In fact, as I visited the regions, both resident  
8 and regional inspectors in each of the regions have very  
9 almost emotionally expressed frustration with not only  
10 implementation problems while inspecting in this area, but  
11 with what some perceive as NRC's lack of a willingness to  
12 tackle the tough issues.

13 I think this Commission is very interested in  
14 tackling the tough issues, and in doing so on the parts that  
15 make sense, on as expedited a basis as possible. So we are  
16 going to weigh in on your options and we'll give you our  
17 guidance soon.

18 Unless there are any other edifying comments, we  
19 are adjourned.

20 [Whereupon at 3:50 p.m., the meeting was  
21 concluded.]

22  
23  
24  
25

CERTIFICATE

This is to certify that the attached description of a meeting of the U.S. Nuclear Regulatory Commission entitled:

TITLE OF MEETING: BRIEFING ON INTEGRATION AND EVALUATION  
OF RESULTS FROM RECENT LESSONS-LEARNED  
REVIEWS (INCLUDING 50.59 PROCESS  
IMPROVEMENTS -- PUBLIC MEETING

PLACE OF MEETING: Rockville, MD

DATE OF MEETING: Wednesday, December 17, 1997

was held as herein appears, is a true and accurate record of the meeting, and that this is the original transcript thereof taken stenographically by me, thereafter reduced to typewriting by me or under the direction of the court reporting company

Transcriber: Michael G. Paulus

Reporter: *Michael G. Paulus*  
Michael G. Paulus



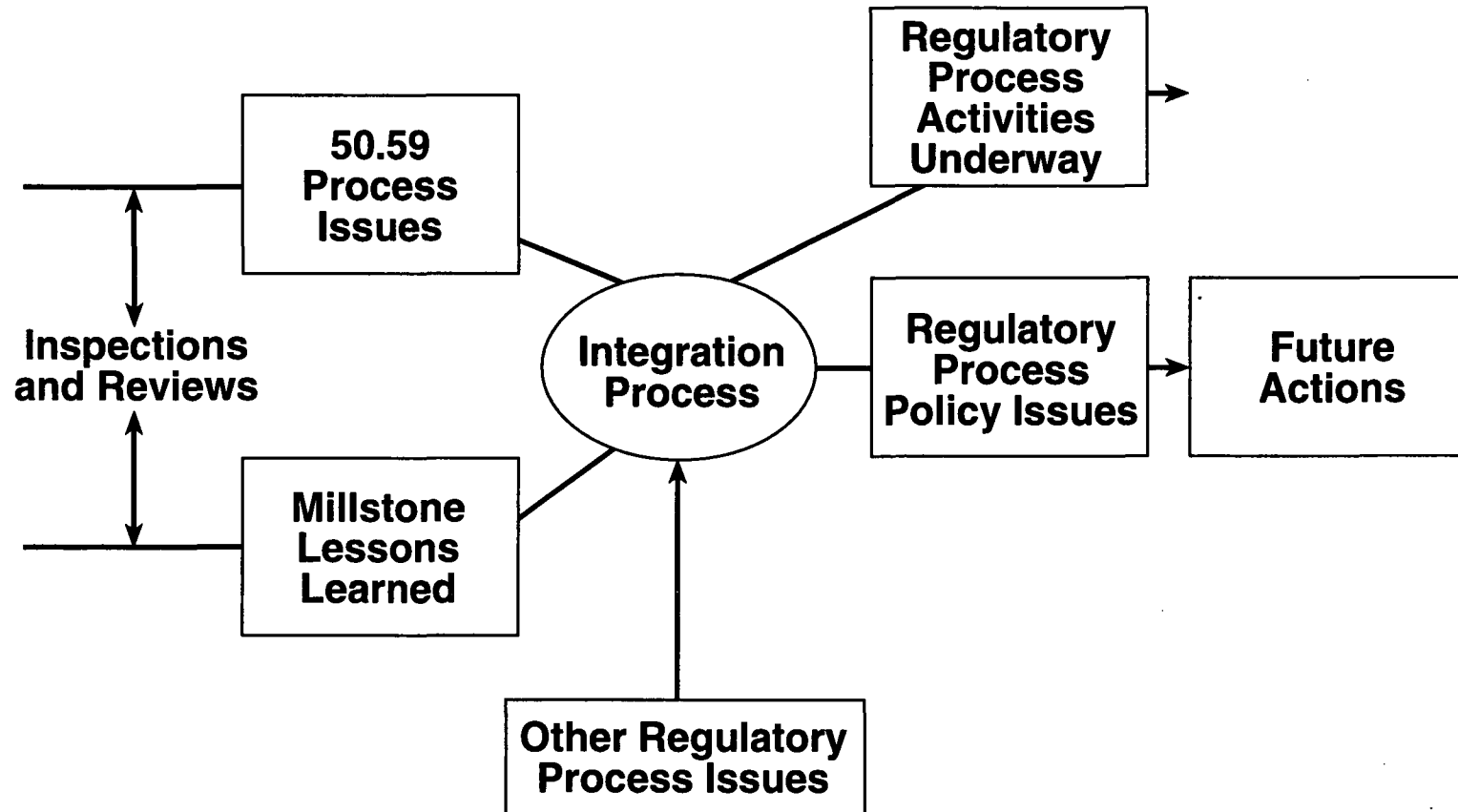
# **INTEGRATION AND EVALUATION OF RESULTS FROM RECENT LESSONS-LEARNED REVIEWS**

**December 17, 1997  
Office of Nuclear Reactor Regulation**

# **BRIEFING OUTLINE**

- **Background**
- **Overview of SECY-97-205**
  - **public comments on NUREG-1606**
  - **integration process**
  - **development of recommendations**
- **Discussion of staff recommended actions**

# INTEGRATION



# **COMMISSION PAPER (SECY-97-205)**

- **Contains an assessment of public comments on NUREG-1606**
- **Discusses progress made on short-term Millstone Lessons-Learned actions**
- **Presents options for regulatory improvements**
- **Provides a recommendation on how to proceed (Option 5)**



# **KEY ISSUES FROM COMMENTS**

- **Use of 50.59 for degraded and nonconforming conditions**
- **Plant restart if a USQ is involved**
- **USQ threshold criteria**
  - **margins and bases for any TS**
  - **probability may be increased**
  - **consequences may be increased**
  - **malfunction of a different type**
- **Definition of a change to the facility**

# **INTEGRATION PROCESS**

- **Identify NRR Commitments/Issues**
- **Resolve near-term regulatory problems**
- **Establish process for synthesis of issues**
- **Establish process for evaluation of options**
- **Develop options that target regulatory issues in a cohesive and comprehensive manner**

# **OPTION 1**

- **Ongoing activities**
- **Rulemaking on 50.59 for USQ criteria**
- **Expectations on updating of SARs**
- **Evaluation of experience information on SAR and design bases**

## **OPTION 2**

- **Ongoing activities and Option 1 actions**
- **Alternative 50.59 review and approval methods**
- **Process for removal of information from SAR**
- **Guidance on design bases**

## **OPTION 3**

- **Ongoing activities and Option 2 actions**
- **Revision to make 50.59 process more risk-informed**
- **Risk-informed SAR content**

## **OPTION 4**

- **Ongoing activities, possibly with some actions from other options in near-term**
- **Predefine essential information that cannot be changed without NRC approval**
- **Other information may be revised, followed by documentation update**

## **OPTION 5**

- (a) GL 91-18/IMC 9900 Guidance on 50.59 role in resolution of degraded or nonconforming conditions**
- (b) 10 CFR 50.59 Rulemaking**
- (c) Examination of enforcement policy for 10 CFR 50.59**
- (d) Guidance/rulemaking on SAR updating**
- (e) Development of risk-informed framework to revise existing regulations**

# **RULEMAKING ON 10 CFR 50.59**

- **Purpose is to provide stability and clarity**
- **Elements being developed for proposed rulemaking:**
  - **revision to USQ threshold criteria**
  - **clarification of definition of margin of safety, including “basis for any technical specification”**
  - **elimination of term “USQ”**
  - **clarification of “change to the facility as described”**



# **ENFORCEMENT POLICY**

- **October 1996 Policy revision established examples of severity levels for 50.59 and SAR update violations**
- **Re-evaluation of policy on severity levels for violations of 50.59 involving USQs and need for discretion**
- **Enforcement Review Panel for 50.59 violations**

# **GUIDANCE/RULEMAKING ON SAR CONTENT**

- **Staff proposed to develop approach on SAR updating:**
  - **to incorporate changes since initial licensing**
  - **to include a process by which information could be eliminated from SAR**
  - **to update more risk-significant information first**
  - **to consider enforcement discretion for full completion**
- **Current Status**
  - **NEI Draft guidance on SAR updating submitted; under staff review**
  - **Staff developing generic letter for public comment**

# **RISK-INFORMED FRAMEWORK**

- **Increased use of risk-informed regulatory approaches and graded requirements**
- **Develop common scope of systems, structures and components subject to operational rules**
- **Requirements for corrective action processes, promptness and closure**
- **Staff to provide framework and ANPR to Commission to issue for public comment**