

# UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

Title:

BRIEFING ON PROPOSED RULEMAKING ON  
DECOMMISSIONING OF NUCLEAR POWER  
REACTORS

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BRIEFING ON PROPOSED RULEMAKING ON  
DECOMMISSIONING OF NUCLEAR POWER  
REACTORS

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PUBLIC MEETING

Nuclear Regulatory Commission  
One White Flint North  
Rockville, Maryland

Thursday, July 21, 1994

The Commission met in open session,  
pursuant to notice, at 3:00 p.m., Ivan Selin,  
Chairman, presiding.

COMMISSIONERS PRESENT:

IVAN SELIN, Chairman of the Commission  
KENNETH C. ROGERS, Commissioner  
E. GAIL de PLANQUE, Commissioner

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STAFF SEATED AT THE COMMISSION TABLE:

KAREN D. CYR, General Counsel

JOHN HOYLE, Acting Secretary

JAMES TAYLOR, Executive Director for Operations

WILLIAM RUSSELL, Director, NRR

STUART TREBY, Assistant General Counsel for Rulemaking  
and Fuel Cycle

BRIAN GRIMES, Director, Division of Operating Reactor  
Support, NRR

SEYMOUR WEISS, Director, Non-Power Reactor and  
Decommissioning Project Directorate

MALCOLM KNAPP, Director, Division of Waste Management,  
NMSS

CHERYL TROTTIER, Radiation Protection and Health  
Effects Branch, RES

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

3:00 p.m.

CHAIRMAN SELIN: Good afternoon, folks.

Today, this afternoon, we have before us the paper that we're going to be briefed by the Office of General Counsel and the staff on the proposed rule on decommissioning of nuclear power reactors. A year ago the Commission directed the staff and the Office of General Counsel to prepare a notice of proposed rulemaking to amend the decommissioning regulations in Part 50. There are a lot of issues involved in the rulemaking, but they basically come down to a fairly simple set of questions. On the one hand, there's a set of activities that's allowed to an operating reactor and so one could extend and say, if they're allowed to an operating reactor, why should they not be allowed to an operator that's being shut down, that's been shut down? On the other hand, the Commission is committed to a policy of public hearings on decommissioning plans.

So, we have sort of a health and safety consideration and principle of simplification in one direction and in the other direction we have a principle of openness and communication with the public before final decisions are taken on a

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1 decommissioning approach. This is an area in which  
2 there is, depending on where you start, you might come  
3 up with somewhat different results. So, the staff has  
4 done a paper to address this issue. I think they've  
5 illuminated the issue very well.

6 Commissioner Rogers, did you care to say  
7 something?

8 COMMISSIONER ROGERS: Well, I'd like very  
9 much to hear from the staff, but I have some serious  
10 concerns about the approach being taken here.

11 CHAIRMAN SELIN: Commissioner de Planque?  
12 Do you want to vote before or after?

13 COMMISSIONER de PLANQUE: I'll wait.

14 CHAIRMAN SELIN: Mr. Taylor?

15 MR. TAYLOR: Good afternoon. With me at  
16 the table are Sy Weiss, Brian Grimes and Bill Russell  
17 from NRR, Stu Treby from the General Counsel's Office,  
18 Mal Knapp from NMSS, and Cheryl Trottier from  
19 Research.

20 Mr. Chairman, you summed up the bulk of  
21 the staff's position. I would note, of course, that  
22 there are two proposed options. The first option was  
23 to codify the directions previously given to us by the  
24 Commission by SRM and allowing a wide use of the 50.59  
25 process and option 2 was developed by the staff after

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1 a great deal of internal discussion as a means to  
2 provide other -- a different approach. We did keep in  
3 mind how well the work at Yankee Rowe had gone, but we  
4 also recognized that you're writing a rule ultimately  
5 which would apply to decommissioning of many, many  
6 reactors. I would note that some of the  
7 decommissionings, for example the decommissioning at  
8 Fort St. Vrain which has gone quite well, we had  
9 approved a decommissioning plan and had expended many  
10 staff hours in review of that plan. We believe that  
11 it has had some impact on really the safe and  
12 effective manner with which the plan is being  
13 decommissioned.

14 We were cognizant that some plants could  
15 go potentially into SAFSTOR for a period of time and  
16 talent at the site may decrease and then after five or  
17 ten years they might go into decommissioning. So,  
18 some of the aspects of those kinds of problems were in  
19 our mind when we developed option 2 as well, of  
20 course, the concern for public participation.

21 Rather than my elaborating further, I'll  
22 turn to the formal presenters. First, Stu Treby will  
23 go through some of the reasoning of where we are and  
24 then Bill Russell will add to that as needed from the  
25 staff side.

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1 So, Stu, ready?

2 MR. TREBY: Yes. The purpose, as you have  
3 indicated, Mr. Chairman, is to hear from the staff  
4 about a proposed rulemaking package setting forth a  
5 process to be followed by a nuclear power reactor  
6 licensee from the time that the nuclear power reactor  
7 licensee determines to permanently cease operations  
8 through the approval of a decommissioning plan. In  
9 fact, we have one or two provisions that go beyond  
10 that point.

11 (Slide) May I have slide 2, and we will  
12 start with a very brief background for the need for  
13 this proposed rulemaking package.

14 The current regulations provide a  
15 decommissioning procedure. That is the regulations  
16 provide that five years before the licensee expected  
17 end of operation of the plant the licensee is to  
18 submit a preliminary decommissioning plan containing  
19 a cost estimate for decommissioning costs and up-to-  
20 date assessment of the major technical factors that  
21 could affect planning for decommissioning.

22 Then, two years following permanent  
23 cessation of operation, but no later than one year  
24 prior to expiration of the license, the licensee  
25 submits an application to surrender a license

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1 voluntarily and to decommission the facility together  
2 with an environmental report covering the  
3 decommissioning activities. The application is to be  
4 accompanied or preceded by a proposed decommissioning  
5 plan that includes a description of the  
6 decommissioning alternative chosen and a financial  
7 plan to provide assurance of the availability of  
8 adequate funds for completion of the decommissioning.

9 Now, while premature decommissioning can  
10 and has occurred, the regulations and associated guide  
11 with this regulatory scheme that I have briefly  
12 summarized, does not set forth any information with  
13 regard to timing and specific activities that might be  
14 taken between cessation of operation and the approval  
15 of the decommissioning plan.

16 So, the Commission, after the Shoreham  
17 proceeding, requested that the Office of General  
18 Counsel provide them with a report of the lessons  
19 learned from the Shoreham proceeding, which the  
20 Commission did in the SECY set forth in the slide.  
21 Following the public meeting on that presentation, the  
22 Commission issued two SRMs to the staff to direct  
23 these issues. The first SRM was January 14, 1993. In  
24 that SRM, the Commission indicated that after  
25 permanent shutdown of the facility, 10 CFR 50.59,

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1 that's the provision providing for changes, should be  
2 applied on the basis of an assumption that the  
3 facility will not resume operation.

4 It also provided for the use of  
5 decommissioning funds and before approval of the  
6 decommissioning plan, and finally set forth some  
7 guidance as to when licensees should be allowed to  
8 undertake any decommissioning activities. That  
9 guidance was that they should be allowed to do so  
10 provided that it does not foreclose the release of the  
11 site for possible unrestricted use. Two, significant  
12 increase decommissioning costs. Three, cause any  
13 significant environmental impact not previously  
14 reviewed or, four, violate the terms of the licensee's  
15 existing license.

16 Following the issuance of that SRM, a  
17 second SRM was issued on June 30, 1993, setting forth  
18 certain directives to the staff to prepare proposed  
19 rulemaking adopting some of the recommendations that  
20 were set forth in SECY-92-382, but also providing the  
21 staff with specific directions. I think that those  
22 directions could be indicated as concerning timing of  
23 when activities could take place and, secondly, what  
24 kinds of activities could take place between the time  
25 of permanent cessation of activities and the approval

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1 of the decommissioning plan.

2 As Mr. Taylor has indicated, the staff has  
3 proposed two options in the proposed Commission paper  
4 pending before you, SECY-94-179. The first option  
5 sets forth a proposed rule in conformance with the  
6 direction that the Commission provided in the SRM of  
7 June 30, 1993. Option Number 2 provides some  
8 supplemental provisions dealing with possible  
9 restrictions of the use of 50.59 and public  
10 participation, which I will describe further.

11 Before I get further into my presentation,  
12 I'd like to set out briefly some preliminary matters.  
13 First, I've provided a number of slides. The purpose  
14 for those slides is to have ready access to the  
15 Commission for what the SRM requirements were and the  
16 proposed provisions. I don't expect to go through  
17 each of those slides in great detail.

18 Secondly, my --

19 CHAIRMAN SELIN: You've just made good  
20 friends around the table.

21 MR. TREBY: The second point I'd like to  
22 make is that what I propose to do is to go through the  
23 first option 1 and set forth just what that proposed  
24 regulatory scheme would be step by step and then,  
25 after we complete that, then go through the proposed

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1 modifications in option 2.

2 (Slide) So, starting with slide 6, let me  
3 indicate what step 1 would be, which would be the  
4 certification of permanent cessation of operation.  
5 This regulatory process would begin when a nuclear  
6 power reactor licensee determined to cease operations.  
7 The proposed rule would provide that the licensee  
8 shall, that's a mandatory requirement, submit within  
9 30 days a written certification to the NRC.

10 I might add, although I didn't put it on  
11 the slide, that it was recognized that there might be  
12 circumstances in which the licensee may be ordered to  
13 permanently cease operation. For example, by the NRC  
14 or by a state agency such as the Public Utility  
15 Commission. The amendment to this section addresses  
16 this situation by extending the requirement to certify  
17 when a legally effective order to permanently cease  
18 operation has taken effect against the nuclear power  
19 reactor.

20 CHAIRMAN SELIN: Mr. Treby, the questions  
21 of an amendment or the conditions aren't really so  
22 controversial as the conflict between being able to do  
23 50.59 steps one at a time versus having a plan  
24 approved. So, in order to leave enough time for the  
25 discussion, I'd like to suggest you concentrate on

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1 really the basic issues in option 1 and option 2,  
2 since they are very basic issues.

3 MR. TREBY: Right. Well, let me --

4 CHAIRMAN SELIN: Did you want to say  
5 something?

6 COMMISSIONER de PLANQUE: Yes. However,  
7 on that issue, in the paper there's something strange  
8 and I don't know how you would pursue this in  
9 practice. But the point that since this is a license  
10 amendment, if the decommissioning time exceeded the 40  
11 year licensing period, there's an indication that  
12 you'd have to go in for license renewal.

13 MR. TREBY: That is correct because it is  
14 still the same operating license that was originally  
15 granted. And the staff recognizes that that is a  
16 question that begs for some resolution --

17 COMMISSIONER de PLANQUE: Yes.

18 MR. TREBY: -- and we expect to provide a  
19 paper to the Commission addressing that issue in the  
20 near future.

21 COMMISSIONER de PLANQUE: Certainly I  
22 would not expect that to be license renewal under the  
23 license renewal structure.

24 CHAIRMAN SELIN: I don't even understand  
25 that point. On the materials side, we extend licenses

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1 way beyond the lifetime of the license if it takes  
2 that long to clean up a site. You know, licenses  
3 expire, we reinstitute the licenses. You know, we  
4 say, you have to stay there until you clean this up.

5 MS. CYR: If you're continuing to treat  
6 this as a utilization facility license under 103,  
7 there is a time limit in the statute of 40 years,  
8 which is why we -- into the license renewal.

9 CHAIRMAN SELIN: Right.

10 MS. CYR: So, as long as this is continued  
11 to be viewed by the Agency as a facility license under  
12 103, then the 40 year time limit applies. It doesn't  
13 mean that if it is in a shutdown condition or in the  
14 process of being decommissioned that you would have to  
15 use a process such as we described in Part 54 for  
16 license renewal, but there would be some process to  
17 renew the license, much as you might say for materials  
18 license. But it's a different process we would have  
19 to prescribe than what we have --

20 CHAIRMAN SELIN: So that's just an open  
21 issue to be addressed.

22 COMMISSIONER de PLANQUE: It's an open  
23 issue.

24 MR. TAYLOR: Yes. Yes.

25 CHAIRMAN SELIN: Minimal technical --

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1 MR. RUSSELL: When we talk about it later,  
2 for example the applicability of the maintenance rule,  
3 we're talking about as it relates to the scope of  
4 activities that may be required, for example, for  
5 assuring spent fuel pool cooling, et cetera. Those  
6 are the issues we'd be fundamentally concerned about  
7 and would likely be the focus of any request for  
8 extension of a license.

9 COMMISSIONER de PLANQUE: One can envision  
10 that the technical problems are not significant here,  
11 but the legal ones may be enormous.

12 CHAIRMAN SELIN: The technical ones are  
13 not trivial either. If DOE doesn't take the fuel and  
14 it's going to have to be there for 20 years after the  
15 plant closes down, clearly there has to be a new  
16 status. It's not just the problem of cleaning up an  
17 inert site, but operating systems that are required to  
18 maintain safety after the plant stops operating.

19 MR. RUSSELL: Continuing to maintain them.

20 CHAIRMAN SELIN: Right. Okay. So, there  
21 are more issues than I realized.

22 MR. TAYLOR: We have more coming to you.

23 MR. TREBY: Well, very rapidly, let me  
24 just indicate that there are a number of steps set out  
25 in this procedure. The first step is to certify the

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1 permanent cessation of operation. The second step  
2 would be for the licensee to apply for a possession  
3 only license amendment, which we have discussed. The  
4 third step would be in our regulations we provide in  
5 those circumstances, which we wouldn't expect to be  
6 very often, when they didn't apply for a possession  
7 only license amendment because of the financial  
8 incentives, that we might certify -- that we might  
9 issue a confirmatory shutdown order to assure  
10 ourselves that a licensee who has indicated that it  
11 was going to permanently shut down will not restart  
12 operation without prior NRC approval.

13 The third step was to identify a subset of  
14 Part 50 regulations and clarify the applicability or  
15 non-applicability of those regulations to a possession  
16 only license amendment holder. I might add that with  
17 regard to those which we find the applicability would  
18 terminate, that would be an advantage to the licensee  
19 because it would free him from the burden of applying  
20 for numerous exemptions in license amendments, which  
21 is the current practice.

22 The fourth step in this process would  
23 involve early notification by licensees to the NRC of  
24 post-shutdown plans and activities. Pursuant to the  
25 January 14, '93 guidance, there's a wide latitude of

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1 activities that the licensees can perform. And as I  
2 will discuss further with regard to 50.59, there's  
3 also a lot of activities that could be performed under  
4 that regulation. Accordingly, we thought it would be  
5 important for resource allocation purposes and just  
6 for the general purpose of knowing what the licensees  
7 were planning to do to provide for early notification  
8 to the NRC.

9 We have a two-step process. The first  
10 step would be that after they have determined to  
11 permanently cease operations, the licensees should  
12 come forth with a preliminary report in which they  
13 would set forth those activities which they plan to  
14 accomplish between the period of their permanent  
15 shutdown and the time of the approval of a  
16 decommissioning plan. There would be a mandatory  
17 public meeting held by the staff on that preliminary  
18 report which would be noticed in the newspapers and  
19 appropriate other means of communicating that  
20 information.

21 The main purpose for this early meeting is  
22 to make sure that the people around the facility, the  
23 local population, get some early information as to  
24 what is being proposed by the licensee here. They  
25 will have gotten notice that the licensee intends to

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1 permanently cease operation, but it is hoped that this  
2 report would come out sufficiently promptly after that  
3 certification that there could be early information to  
4 the locally affected population.

5 The second early notification requirement  
6 provided for in this proposed rule would provide for  
7 those significant decommissioning activities that the  
8 licensee submit a more detailed information to the NRC  
9 just as to how they intended to perform those  
10 activities. This information is to be provided 90  
11 days before the licensee intends to perform the  
12 activity to provide the staff an opportunity to review  
13 those things and through a process of sort of negative  
14 consent indicate whether or not it has any  
15 difficulties with what's being proposed. If it has no  
16 difficulties, it won't pass on any concerns to the  
17 licensee and the licensee, after the 90 days, can move  
18 forward with its activities. If the staff does have  
19 some difficulty, then the staff would be able to raise  
20 those difficulties and perhaps require more  
21 information from the licensee.

22 In a way, this is sort of a codification  
23 of the process that we went through with Yankee Rowe  
24 where they did provide us, a little earlier on,  
25 information as to how they planned to go about

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1 performing some of their decommissioning activities.  
2 While it may not have been 90 days, there was some  
3 period for the staff to review and to indicate through  
4 a negative consent format that it had no particular  
5 difficulties.

6 CHAIRMAN SELIN: Didn't you say that --  
7 maybe you didn't say this, that the short-term plan  
8 would accompany a decommissioning plan and that these  
9 would be the steps that would be taken --

10 MR. TREBY: No.

11 CHAIRMAN SELIN: No. They'd be in advance  
12 of the decommissioning plan?

13 MR. TREBY: Yes. The short-term plan  
14 would be prior to any filing of the decommissioning  
15 plan. It would be filed hopefully shortly after the  
16 certification of permanent cessation. However, there  
17 is no time limit set forth in the regulations. We  
18 expected that the licensees, based on past practice,  
19 would file these things daily, soon on, and we didn't  
20 want to set an arbitrary time for them to do that.  
21 The time limit would be at least 90 days before they  
22 wanted to do something significant because of the  
23 second early notification requirement that that  
24 information would have to be docketed 90 days in  
25 advance.

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1           The fifth step in this process is the  
2           applicability of 10 CFR 50.59, which is the provision  
3           which permits licensees to make changes to their  
4           facilities and to conduct tests and experiments  
5           without obtaining prior Commission approval.

6           (Slide)    As noted in slide 29, the  
7           Commission directed the staff to make 50.59 expressly  
8           applicable to holders of licenses not authorizing  
9           operation and, as set forth in slide 31, this would be  
10          done by a simple statement indicating that Section  
11          50.59 shall apply to each applicant and each holder of  
12          a possession only license. There are no restrictions  
13          on the applicability of 50.59 under this option and,  
14          accordingly, most any activity which the licensee  
15          would propose to perform could be done under 50.59,  
16          provided the applicant could make -- or the licensee  
17          could make the necessary findings and provided that  
18          the negative consent format that we just previously  
19          discussed was satisfied.

20          Step 6, or the last step before we get  
21          into option 2, is that the staff and OGC recommends  
22          that the rules be amended to indicate that the  
23          decommissioning plan shall be a supplement to the  
24          final safety analysis report and the requirements for  
25          updating reporting would be extended to the

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1 decommissioning plan. The reason for this is to  
2 assure that the staff is kept informed of any changes  
3 that might be made in the decommissioning plan and it  
4 can do so as it is kept informed of other changes  
5 through amendments to the FSAR.

6 This now brings us to option 2, which  
7 would provide additional provisions to control the  
8 range of decommissioning activities which a licensee  
9 could undertake without Commission approval subsequent  
10 to the permanent cessation of operations and prior to  
11 the decommissioning plan approval.

12 (Slide) If we look at slide 33, that  
13 indicates that the guidance which the Commission set  
14 out in its January 1993 SRM would be codified so as to  
15 indicate the criteria that would be used by the staff  
16 in making a negative determination with regard to  
17 looking at the 50.59 submittal that would be provided  
18 by the licensee.

19 (Slide) If we look now at slide 32, this  
20 slide sets forth the limitations that are being  
21 proposed on any 50.59 activity that the licensee might  
22 suggest.

23 CHAIRMAN SELIN: These are option 2  
24 limitations.

25 MR. TREBY: These are the option 2

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1 limitations, right.

2           There are four. The first one is the  
3 licensee would not be able to modify the structure.  
4 The second is the licensee would not be able to modify  
5 the spent fuel storage system or support system.  
6 Three, they wouldn't be allowed to do any  
7 dismantlement for that involved greater than Class C  
8 waste. And the fourth one is to do any major  
9 structural changes to major radioactive components of  
10 the facilities.

11           Now, the staff and OGC recognized that  
12 notwithstanding the fact that these limitations  
13 identify those activities which we think the  
14 Commission should approve before they are accomplished  
15 by the licensee pursuant to a 50.59 regime in which  
16 they would not require staff approval, we do recognize  
17 that these things may need to be accomplished because  
18 of special circumstances such as a window of  
19 opportunity to be able to dispose of low-level waste  
20 or an opportunity to save the ratepayers some money by  
21 performing the activities sooner rather than later.

22           So, the staff has proposed that a licensee  
23 could come to the staff and make an application to do  
24 principally the fourth item, make a major structural  
25 change, but do so by requesting a partial

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1 decommissioning plan approval from the staff. So,  
2 essentially, what this change is is that when you have  
3 an item such as the fourth one and perhaps an activity  
4 such as removing steam generators, what the staff is  
5 now proposing is that this is an item which should be  
6 approved by the Commission and we are providing a  
7 provision for making that -- for providing that  
8 approval by requesting the licensee to submit a  
9 partial decommissioning plan application to the staff.

10 CHAIRMAN SELIN: And what are the hearing  
11 rights that go with that?

12 MR. TREBY: The hearing rights that would  
13 go with that would be to provide for an informal or  
14 what we call Subpart L type hearing.

15 CHAIRMAN SELIN: And how does that differ?

16 MR. TREBY: It's informal in the sense  
17 that it's usually one administrative law judge instead  
18 of the usual panel of three and the procedures are  
19 different than the more formal adjudicatory process  
20 that we have under Subpart G of Part 2.

21 CHAIRMAN SELIN: You don't have cross  
22 examination and therefore you don't have discovery?

23 MR. TREBY: That's correct.

24 CHAIRMAN SELIN: But what about -- how  
25 does that differ from the procedure that would be

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1 involved in reviewing the entire decommissioning plan?  
2 The hearing procedure is the same procedure basically.

3 MR. TREBY: It would be the same  
4 procedure. However, since it would be a much more  
5 limited request, it presumably would be less.

6 CHAIRMAN SELIN: Could I stop you?

7 MR. TREBY: Oh, certainly.

8 CHAIRMAN SELIN: I think I have stopped  
9 you. But let me just go back a little bit. I'll tell  
10 you what I've learned since the last time the  
11 Commission voted on this piece, what I think I didn't  
12 understand at the time.

13 50.59 is a provision for making small  
14 steps within an operating concept which has been  
15 approved, its in tech specs, it's had public hearings,  
16 an operating license has been issued. These are steps  
17 within an overall philosophy and the idea behind the  
18 50.59 for an operating reactor is that we should be  
19 reasonable about small differences that don't affect  
20 the basic concept which has gone through a thorough --  
21 all right. It's only incidental that they don't have  
22 a safety significance. It's not incidental, but the  
23 main question is not do these points have a safety  
24 significance, but are they within an overall concept  
25 which has had proper public hearings and proper

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1 overall review?

2 When we have a plant that's been closed  
3 down, that's been shut down, we're talking about steps  
4 where there hasn't been an approved decommissioning  
5 plan. The question really isn't is the individual  
6 step of moving the steam generator safe in itself, the  
7 question is are we taking steps within a concept which  
8 has been approved and gone through a proper set of  
9 public hearings, whatever they may be for the  
10 situation, or are we looking at decommissioning as a  
11 sequence of individual steps, each of which is safe as  
12 opposed to looking at it as an overall plan that's  
13 been approved?

14 So, the one thing that concerns me with --  
15 well, a lot of things concern me, but I really think  
16 that there's some very good work in here. But the one  
17 thing that concerns me, and that's not addressed  
18 specifically, is if I'm a licensee and I say, "I just  
19 want to remove the steam generators. I have an  
20 opening. Hanford has decided they'll take steam  
21 generators this week, they have a special on steam  
22 generators for out of compact states and I want to  
23 remove that. So, I just want to have a limited  
24 decommissioning plan," and the staff decides to have  
25 an informal hearing. Is the overall decommissioning

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1 plan something that can be discussed at that point?  
2 In other words, is it SAFSTOR or not or can they only  
3 discuss the safety of removing those steam generators  
4 at that point?

5 I tell you, the answer is very important  
6 to me because I'm not particularly interested in the  
7 local resident's opinion about the safety of removing  
8 the steam generator. I mean I'm interested, but I  
9 believe the staff is expert on that. I'm very much  
10 interested in what they think about the overall  
11 process and how they feel about which decommissioning  
12 approach, what have you. So, if the hearing is very  
13 much constrained to that one point, it's not clear  
14 that the hearing -- to me, it's not clear that the  
15 hearing will accomplish the real objective, which is  
16 to keep from irrevocable steps being taken until  
17 they've had a chance for new discussion of these  
18 steps.

19 MR. TREBY: Let me just make one brief  
20 statement and then I'll let Mr. Russell expand.

21 I guess my answer would be that since  
22 there's a limited activity that's being proposed, from  
23 a safety point of view you would only look at that  
24 limited activity. However, from a NEPA point of view  
25 or what the impacts might be on the environment and

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1 the impacts on the alternatives that are available, I  
2 think it might be a wider scope.

3 CHAIRMAN SELIN: And therefore, what's the  
4 answer? In other words, the hearing would address  
5 other than strict health and safety would attract  
6 environmental questions as well?

7 MS. CYR: The question is whether the  
8 particular -- in terms of looking at whether you've  
9 impermissibly segmented your look under NEPA, is  
10 whether the step that you propose to take has some  
11 independent utility with respect to the ultimate  
12 undertaking that you have here. So, it's something  
13 that you would have to undertake at some point in time  
14 anyway and then you undertake it under any of the  
15 particular options that you would use, which in this  
16 case is getting to unrestricted release of the site  
17 for use.

18 So, I think that in terms of a scope of  
19 NEPA, that you would argue that you would not  
20 impermissibly segment NEPA by carving out this small  
21 piece and looking at it from this standpoint.

22 CHAIRMAN SELIN: Let's take the specific  
23 case of removing steam generators. If you're removing  
24 steam generators, do you still have a SAFSTOR option  
25 or is it, for all intents and purposes, been

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1 preempted? You know, you have hero's paradox. You  
2 can take any step and break it down into an infinite  
3 number of infinitesimal steps and then you never  
4 really address the overall question. No one of them  
5 takes away your option. But you look around and you  
6 say two-thirds of the plant is gone, so do we still  
7 have that option?

8 MR. TREBY: Well, I think it depends on  
9 how many of these steps are taken. I would think that  
10 if it's just one or two, then we have held that  
11 SAFSTOR can accommodate some partial dismantlement  
12 ahead of time. But if it becomes so cumulative that  
13 it's everything except the carting away of the final  
14 containment concrete, then perhaps you have --

15 COMMISSIONER de PLANQUE: What's the  
16 original reason or basis for establishing the SAFSTOR  
17 concept? What is it? It's so that you have some  
18 option other than decommissioning, a full  
19 decommissioning and return to green field.

20 MR. TREBY: That's correct.

21 COMMISSIONER de PLANQUE: But I don't see  
22 that it's necessarily defined as leaving absolutely  
23 everything there and in place. So then it's somewhere  
24 in between.

25 MR. TREBY: Right. That's exactly what I

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1 thought I had tried to say. Maybe I didn't articulate  
2 it well, but I think my point was that you could do  
3 some things but you can't do so many of the things  
4 that there is nothing left to be SAFSTORed.

5 COMMISSIONER de PLANQUE: Yes, but then  
6 you get a point of what's the health and safety basis  
7 for drawing a line.

8 CHAIRMAN SELIN: What about steam  
9 generators? Just take the specific example. If a  
10 licensee wanted to remove two steam generators, is  
11 that a decommissioning plan? No, because then after  
12 two, then there comes two more.

13 MR. RUSSELL: When we discussed this  
14 internally, we looked at the activity of removing  
15 steam generators and that typically removes about half  
16 of the source term that you might have ultimately to  
17 handle. If you start adding to that reactor coolant  
18 pipe being pressurized reactor coolant pumps, the  
19 reactor coolant primary pressure boundary, you can  
20 quickly get to the point where you have essentially  
21 removed all of the activity, or a great bulk of it,  
22 that we're concerned about and how those activities  
23 are accomplished.

24 So, what we didn't want to do is get into  
25 a situation where we were, in fact, allowing

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1 activities to continue such that there was no  
2 meaningful review to a decommissioning plan. Now,  
3 what you do by way of partial review is how many parts  
4 do you have as a function of how much they propose?  
5 If it's a limited proposal and it's something that  
6 would occur under either option and the question is at  
7 what time does it occur, you may be able to review  
8 that and not have an impact on an environmental  
9 assessment. It may be that the activity is so large  
10 that you must look at that and look at it in the  
11 environmental context earlier than you would under the  
12 deferral to a total plan.

13 CHAIRMAN SELIN: Do you think it would --  
14 by the way, I'm not a great aficionado of SAFSTOR or  
15 what have you. So, it's not just a choice between  
16 immediate decommissioning and SAFSTOR. I don't wish  
17 to give that impression. We believe that there's  
18 benefit in looking at an entire decommissioning plan  
19 before major steps go forward, not only to make the  
20 strategic decision whether it's a ten year or a 60  
21 year plan or a three year and a six year plan, but  
22 because pieces come together and the 50.59 process, by  
23 definition, looks at steps one at a time. So, I don't  
24 mean to overstate that it's just once that strategic  
25 decision has been made.

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1                   Now, to follow-up on this question, do you  
2 believe it would be possible -- I guess I ought to ask  
3 you, Mr. Treby, because technically I can see it's  
4 fairly easy. But from a replicable legal point of  
5 view, do you believe it would be possible to have  
6 guidance on when you would allow a sub-decommissioning  
7 plan to Part 4 that would meet the specification that  
8 you laid out, namely it's small enough, it can be  
9 looked on on its merits or it's too big, it should be  
10 in a decommissioning plan? Would you do it on source  
11 term? How would you describe the guidance other than  
12 very broad terms about -- I guess you could just use  
13 the NEPA language basically and say if it doesn't --

14                   MR. TREBY: That was going to be my  
15 answer. You would use NEPA language and you would  
16 determine whether or not it's --

17                   CHAIRMAN SELIN: Which is tested language.  
18 It may not be any good, but it's tested.

19                   MR. TREBY: Well, it's not as prescriptive  
20 or precise as when you're using safety language  
21 perhaps.

22                   MR. RUSSELL: The rationale that we had  
23 when we were discussing this internally as it related,  
24 for example, to the structure of the containment, the  
25 containment provides a boundary such that these

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1 activities go on within the boundary and provide some  
2 protection during cutting operations, et cetera. So  
3 that, we felt, we were fairly comfortable with.

4 CHAIRMAN SELIN: Half of containment is  
5 not too useful.

6 MR. RUSSELL: Correct. Clearly, the spent  
7 fuel cooling systems and the pool, since they are  
8 still providing cooling, we felt that activities  
9 should not be done to modify those that could reduce  
10 their reliability, et cetera. So, that was an area  
11 that we wanted to review. As it related to the major  
12 reactor coolant pressure boundary, that is steam  
13 generators, pumps, large bore piping and internals,  
14 which often the internals can be greater than class C,  
15 we were, in fact, drawing a boundary around most of  
16 the source term.

17 CHAIRMAN SELIN: So, my example is this  
18 doesn't get covered by your == you wouldn't allow  
19 steam generators in your --

20 MR. RUSSELL: No, we said that we would do  
21 that, but it would be through the vehicle of a partial  
22 plan submittal that would be limited to that activity  
23 and then, depending upon how much they proposed to do,  
24 we'd have to make a judgment as to whether that was  
25 something that would be requiring a full NEPA review

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1 or whether we could reach a judgment that that was  
2 acceptable.

3 CHAIRMAN SELIN: Didn't you say that you  
4 would expect these partial plans to be permanently on  
5 the fourth criterion, not the third?

6 MR. RUSSELL: Yes.

7 MR. TREBY: That's right. As a matter of  
8 fact, they originally would not --

9 CHAIRMAN SELIN: But steam generators fall  
10 under the third criterion, right?

11 MR. RUSSELL: The steam generators would  
12 fall into the fourth criterion.

13 MR. TREBY: The fourth.

14 CHAIRMAN SELIN: Yes.

15 MR. RUSSELL: We would not at internals,  
16 the reactor vessel or internals for the spent fuel  
17 pool. It may be that to get the steam generator out  
18 that you would want to modify the containment. But as  
19 long as you maintained the liner, for example, you  
20 might cut a hole in the concrete, take the steam  
21 generator out using some type of temporary barrier and  
22 put the liner back in place for the remaining portion  
23 of the time until you come in with the next portion of  
24 the segmented plan. But that process for removing the  
25 generator and why that's acceptable in light of all

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1 the other considerations would have to be adjudged at  
2 that time.

3 CHAIRMAN SELIN: Okay.

4 COMMISSIONER de PLANQUE: Why?

5 COMMISSIONER ROGERS: What my concern is -  
6 - yes. Well, this is sort of my question. It seems  
7 to me that the safety issue should be the primary  
8 issue. What are you doing that raises a safety issue?  
9 There, it seems to me, should be our focus, the focus  
10 of our attention.

11 What troubles me about the approach here  
12 is -- and some of the things that have been said at  
13 the table today, is that safety is not the big  
14 consideration, it's sort of process here. I think  
15 we're losing sight of the technical safety issues that  
16 are primary or must be primary in what we allow and  
17 disallow. I think the whole flavor of this effort, to  
18 me, is basically non-technical, non-safety. It's  
19 process and it's what we would allow and what we  
20 wouldn't allow, but not why or why not, and that's  
21 where I'm having a great deal of difficulty because I  
22 think that we've lost sight of what ought to be our  
23 primary responsibility and that is safety issues.

24 Public participation is a very good thing.  
25 I'm all in favor of it. I think the record shows

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1 that. But I don't think that should be the primary  
2 purpose of what we're looking at here. I think what  
3 we should be looking at is what are the safety issues  
4 from a technical point of view and that ought to be  
5 the starting point, not incidental, the starting point  
6 for everything.

7 Now you talked about the containment, and  
8 that certainly I think is kind of obvious that the  
9 containment does provide, you know, a cover for  
10 anything else, but I -- and certainly the spent fuel  
11 storage system, if there's spent fuel in there, has  
12 got to be kept operable and so on and so forth.

13 But when you start in items 3 and 4, you  
14 begin to lose me. I don't see automatically the  
15 safety issue there in the sense that the licensee is  
16 responsible for safety. It isn't as if there's no  
17 responsibility for safety anymore. They have a  
18 responsibility and we expect them to discharge that,  
19 but it seems to me that we're losing sight of that.

20 MR. RUSSELL: If we follow the process  
21 that you're suggesting, you could end up with a  
22 situation where you would have essentially the source  
23 term removed from inside the containment. You'd have  
24 the containment shell and you'd have the spent fuel  
25 cooling systems and the pool and that would be it, and

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1 so then you would have to question what's the basis  
2 for a decommissioning plan at that point.

3 COMMISSIONER ROGERS: You've got to go all  
4 the way to the end. The decommissioning plan takes  
5 you all the way to the very end, you know, green field  
6 or something of that sort. That's important. And I  
7 don't have any problem with taking the guts out as  
8 long as it's all done safely and disposed of safely.

9 CHAIRMAN SELIN: I agree with everything  
10 Commissioner Rogers has argued, but I think I come to  
11 a different conclusion for a somewhat different  
12 reason.

13 I think it's important to take a look at  
14 why we wanted to approve the decommissioning plan and  
15 have public -- first of all, we all agree health and  
16 safety is the most important point. We wouldn't even  
17 consider allowing anything to go forward that didn't  
18 seem to assure health and safety to individuals who  
19 are around the plant, but we are also responsible for  
20 the environment. And we are subject not only to the  
21 Atomic Energy Act. We're subject to NEPA and to  
22 CERCLA and to the various other environmental rules  
23 and there's supposed to be a course of action which  
24 not only makes health and safety decisions in a narrow  
25 sense but meets all of these objectives that are upon

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1 the Commission. And in fact in some other areas we've  
2 been really fairly severely criticized for not paying  
3 enough attention to the environmental issues in what  
4 goes on.

5 In my opinion, there's no question about  
6 the paramountcy of the health and safety issue, but we  
7 need to meet all of the federal requirements, not just  
8 the Atomic Energy Act ones. And I don't know if this  
9 is historically correct, but, from my point of view,  
10 the reason that I'm so interested in having the public  
11 hearing is not just for the narrow safety issues in  
12 the sense of is this a good plan for taking source  
13 material but because there are environmental effects  
14 and the citizens have a say in the overall  
15 environmental desirability of the plan.

16 And going ahead, removing the material,  
17 I'm quite certain that the staff would not allow  
18 people to take steps that are not individually safe,  
19 but they might not -- you know, we can't avoid an EIS,  
20 for instance. I mean, if an Environmental Impact  
21 Statement is called for, we can't just say since  
22 there's no health and safety impact there's no  
23 environmental impact. We need to meet all of these  
24 requirements and I just don't see a good way of  
25 meeting these requirements without having a

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1 decommissioning plan in hand until steps that could --  
2 you know, unless we could look at the individual steps  
3 and say there's no health and safety impact and  
4 there's no environmental -- what's the proper phrase?  
5 There's no environmental -- you know, the finding we  
6 have to make.

7 MR. TREBY: Significance?

8 CHAIRMAN SELIN: Significance, yes, to go  
9 ahead without it in any items. And I'm really sort of  
10 perplexed, to tell you the truth, that you get  
11 different answers from the top down and from the  
12 bottom up.

13 I guess I'd like to make a somewhat  
14 broader statement. I think you've done a very good  
15 job on this document. I think you haven't put your  
16 best foot forward in that we asked you what should the  
17 rules be and you've told us what the rules should be  
18 and that's a very legalistic document, so you haven't  
19 really explained as much as we're used to seeing in  
20 SECY documents.

21 What's the -- not the legal basis, but  
22 what are the objectives that we're trying to carry  
23 out? What is the problem? What are the  
24 inconsistencies or conflicting objectives that we're  
25 trying to carry out?

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1 But when you get right down to it, you're  
2 basically saying that there are steps in option 2,  
3 there are steps that would lead to a de facto  
4 decommissioning without having done a decommissioning  
5 plan. And, as Commissioner Rogers pointed out, the  
6 first two steps on health and safety grounds, you  
7 would say "we just don't think you ought to do these  
8 steps without being part of a decommissioning plan,"  
9 but the other two are more from a broad area and you  
10 haven't really argued the basis for that.

11 You've come up with what are to me  
12 intuitively satisfying conclusions, but what I was  
13 concerned about -- I think maybe Mr. Treby has  
14 answered it -- is do we have some logic that says what  
15 would we consider and what wouldn't we consider. But  
16 it's all environmental. I mean, it's all NEPA kind of  
17 language, not Atomic Energy Act kind of language, and  
18 as a Commissioner I would sort of like to see this  
19 issue posed in terms of what do we need  
20 to -- you know, with what laws do we need to comply.  
21 What is our approach?

22 Why is it that we want to have the public  
23 have a chance to talk about decommissioning other than  
24 it affects people and they ought to have a chance to  
25 let off steam? I think there are more serious reasons

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1       than that. And how does that apply to these steps?  
2       Because of the way we asked the question, that's not  
3       in the document. The document is a series of steps  
4       that -- which is the bottom line. We do need the  
5       bottom line, but it's a little hard to judge as to  
6       what are the trade-offs we're making. How do these  
7       fit together and what is the policy that we're  
8       implicitly being asked to support?

9               MR. TREBY: Well, perhaps it's not set  
10       forth in the paper, but I think some of my thinking  
11       anyway was that under option 1 where 50.59 had no  
12       restrictions on it at all you could take it to the  
13       ultimate consequence of having the entire facility  
14       decommissioned before you received a decommissioning  
15       plan and that would be a useless activity.

16               Now, it may well be that the most  
17       important point for us to have public participation is  
18       not at the decommissioning plan activity but it may be  
19       at the termination of license activity when we're  
20       determining whether or not everything has been cleaned  
21       up and we can release the licensee from any further  
22       liability and the area is now available for  
23       unrestricted use. However, the reason that we were  
24       recommending that the Commission give consideration to  
25       option 2, which is to have certain restrictions but

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1 with those restrictions have an escape clause, so to  
2 speak, whereby you could still perform activities such  
3 as removing steam generators, the only thing that was  
4 being placed upon the licensee was the requirement for  
5 it to come in and seek an approval of a partial  
6 decommissioning plan. What that gets you is some  
7 review by the staff and the opportunity for public  
8 input.

9 Our experience has been that when you have  
10 public input that sometimes that does help focus the  
11 safety reviews. They can't be quantified  
12 particularly, but when there are more people looking  
13 over your shoulders and they're raising more issues it  
14 does help focus the review a little bit. That's not  
15 to say that we don't do a good review without that,  
16 but --

17 MR. TAYLOR: May I add a little bit and  
18 then perhaps Bill will amplify?

19 I'd like to just say that of course our  
20 public health and safety mission does include the  
21 workers in the plant.

22 COMMISSIONER ROGERS: Yes, absolutely.

23 MR. TAYLOR: And part of number 3 there  
24 was that in my view we have -- although the Yankee  
25 Rowe vessel is a small vessel and so forth, that when

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1 we get into future decommissionings we haven't  
2 dismantled many reactor vessels of the size that would  
3 have to ultimately be dismantled so there's not a  
4 great wealth of experience doing that, as an example.  
5 How are you going to dismantle, cut up, ship reactor  
6 vessels? So, part of that was in the -- the partial  
7 plan was with the full understanding that the utility  
8 experience governs removal of steam generators,  
9 reactor coolant pumps, lots of reactor coolant pipe  
10 that may have had to be -- like recirc pipe through  
11 the years. The wealth of experience is quite large  
12 there, and recognizably so. What has really basically  
13 happened at Yankee Rowe was completely within their  
14 capability. They have well-trained staff.

15 Again, Fort St. Vrain represents a very  
16 different reactor and we wanted to look at that one in  
17 considerable depth as they've disassembled that, and  
18 they're actually disassembling what amounts to the  
19 vessel on that reactor. But those were some of the  
20 logic patterns that got us down. The containment was,  
21 of course, to protect the public, but we also have the  
22 obligation to protect, to understand the process and  
23 the protection of the workers. If there's large  
24 airborne releases inside when they're dismantling and  
25 the appropriate precautions haven't been taken, you'd

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1 have a considerable handful of workers that may get  
2 considerable uptake.

3 I'll ask Bill to pick up on that one.

4 MR. RUSSELL: The issues that we really  
5 discussed most regarding number 3 were the greater  
6 than Class C. We recognized that there are some  
7 components, APRM strings for example, that are  
8 typically cut up to be in smaller quantities and then  
9 they can be disposed of.

10 CHAIRMAN SELIN: Where I grew up we didn't  
11 have any APRM strings, typically or otherwise.

12 MR. TAYLOR: Define that, please.

13 MR. RUSSELL: It's a device that is used  
14 to detect core power. So, it's in the core and  
15 becomes highly activated. It has special nuclear  
16 material in it. They have to be periodically replaced  
17 and these things are typically long, 12 feet or more  
18 in length, and they are typically cut up underwater  
19 into smaller pieces so that they can be disposed of.  
20 We wanted to exclude that. That is something that's  
21 done fairly routinely.

22 But if you were talking about the core  
23 shroud, which could be 18 to 19 feet in diameter, 18  
24 to 20 feet high or thermal shields, other materials  
25 that could, shortly after shutdown, have very high

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1 levels of activity, we essentially felt that those  
2 were safer remaining in the vessel with the shielding  
3 and the other materials that you have associated with  
4 it and that cutting those up to dispose of them was  
5 something that we would want to understand what  
6 process is going to be followed and how is it going to  
7 be done to assure that it's being done as low as  
8 reasonably achievable? If the high levels of activity  
9 are associated with short-lived activations, there may  
10 be an option for deferring that for a period of time  
11 until the activity is lower to proceed.

12 Those were the kinds of things we talked  
13 about as it related to number 3.

14 Number 4, you're correct. We have  
15 replaced piping in operating plants. We've replaced  
16 steam generators and other components. This becomes  
17 more a judgment issue. We were looking for -- there  
18 the situation was that a lot of the source term is  
19 contained in the steam generators and in the piping  
20 due to activation, transport, et cetera.

21 So, it was more in the context of if  
22 you're really going to look at the total scope of  
23 decommissioning and your objective is to remove the  
24 radioactive material, it's more in the concept of how  
25 much radioactive material are you removing through a

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1 process other than plan review and approval? Not that  
2 these could not be conducted safely or have been done  
3 safely in the past. That was the type of logic we  
4 went through when we identified the four corners that  
5 we proposed. Whether it's one only, one and two, one,  
6 two and three, or four clearly was a judgment process.

7 MS. CYR: I might add a little bit in  
8 terms of looking at it from how OGC's perspective was  
9 in this. I think our reaction to sort of what's  
10 happened over the last year or so in terms of  
11 implementation under the SRMs, which was still a sort  
12 of ad hoc process, and even the concern that we had at  
13 the time we wrote the original paper, was that we had  
14 written a rule which we thought was going to describe  
15 an orderly process towards getting to decommissioning  
16 facilities. It described expecting that a preliminary  
17 plan would come in, then there would be an orderly  
18 shutdown, they would have a time to prepare a plan and  
19 so on. Our experience to date has not been like that  
20 at all. We're getting so many early shutdowns of  
21 plants and we've been developing a process ad hoc,  
22 which means that we need to sort of step back and look  
23 at the rule.

24 Since we didn't take that full step back  
25 to look at the rule, we were trying to take what was

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1 given to us last year, still try to make some sense in  
2 terms of the existing rule, but preserving what was  
3 the framework of that rule, that we were going to get  
4 to this decommissioning plan which was going to  
5 appear -- the way we had set it up was to be a very  
6 comprehensive look at what were the activities that  
7 were going to be taken at the site and review those in  
8 advance, have some public comment on that, improve  
9 that plan and then the decommissioning would take  
10 place in whatever manner was described, SAFSTOR or  
11 immediate dismantlement or whatever.

12 Our perception was that because that  
13 seemed to be the process that was contemplated, that  
14 was what the public expectations, that's what the rule  
15 seemed to be saying to people. So, we were trying to,  
16 in a sense, eliminate some of that confusion, trying  
17 to add without, in a sense, rewriting the rule as  
18 such, but to preserve the framework of that rule, but  
19 try to add some more clarity to the process so people  
20 would have a better understanding of what it was that  
21 was going to take place in this process.

22 Now, I think you could do it differently.  
23 You could take a bigger step back. You could say the  
24 kind of process that was happened in Yankee Rowe where  
25 we have a step by step process, that be another way to

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1 go. But given the framework that we had in place, we  
2 were trying to give a little more clarity to that  
3 process so that it would be more transparent to people  
4 what was actually happening, what they could expect to  
5 see at what point in time and have an opportunity to  
6 comment on as we would proceed through this process.

7 COMMISSIONER ROGERS: Yes. Well, I think  
8 it's evident that that's what the intent was and I  
9 think that was a good intent. Maybe I'm being a  
10 little flip, but I think you built a boat in the  
11 basement on this one. I think we've got a monster  
12 here, frankly. I just think that maybe it suggests  
13 that we do have to take a step back and look at the  
14 entire process which -- well, we thought we were doing  
15 a pretty good job. We thought we were doing a pretty  
16 good job on some other rules that when we tried to  
17 apply them we found they needed some work. We  
18 weren't really faced with the issue the way we were  
19 faced with it with the premature shutdown plants.

20 When we wrote the rule, the  
21 decommissioning rule, it seemed reasonable. We said  
22 there should be a plan, but we didn't really say  
23 exactly what was going to be in that plan. Now we're  
24 starting to say, "Well, what is going to be in a plan?  
25 What about a preliminary plan? What about an

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1 intermediate plan? What about being able to do  
2 something or not do something?" We really didn't  
3 address those issues at all when we wrote the  
4 decommissioning rule. We thought, "It will take care  
5 of itself when the time comes, and the time is pretty  
6 far out." Well, it's not far out. It's right here  
7 now and I think we are facing these issues and I would  
8 suggest that we take a broader view of this issue and  
9 not try to just simply tinker with the decommissioning  
10 rule, but take a look at what is necessary to do the  
11 job in today's time.

12 Everything I've heard is reasonable, but  
13 I'm not sure it's necessary. From a health and safety  
14 point of view, I'm sure it's not. Some of these  
15 things are not necessary. From a NEPA point of view,  
16 I don't know. That's where OGC has got to give us  
17 some help. But I would like to see a delineation of  
18 what we think are really the safety issues. It seems  
19 to me that Item 3 or Category 3 is a very broad  
20 category. It's got a lot of different things in  
21 there. Some of those things you've mentioned, I  
22 wouldn't argue with you one bit that they ought to be  
23 very carefully considered before one proceeds. I'm  
24 not sure about everything that could conceivably fall  
25 under Category 3, however.

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1           So, I think we need to think through this  
2           thing a little bit more in detail and I suggest the  
3           starting point is safety. And then to see what we  
4           feel might be the implications of a pure safety point  
5           of view and that includes worker safety as well, of  
6           course, of NEPA requirements and see whether -- well,  
7           we've just, to satisfy NEPA, we've got to add some  
8           more restrictions. But I don't see what they are. I  
9           think the thing is woven together here in a way that  
10          we are faced with an outcome that includes  
11          considerations of both types. That's what I hear you  
12          saying, and I'd like to see those disentangled. I'd  
13          like to see what they are and I'd like to start with  
14          safety and, from a purely NRC point of view, then  
15          begin to add in the considerations such as the  
16          Chairman has suggested are also important, that we do  
17          have to operate under environmental considerations,  
18          but I'd like to know what those are and I wouldn't  
19          like to just talk in generalities. I'd like to know  
20          exactly what an environmental issue is that is driving  
21          whatever our requirements are here.

22               CHAIRMAN SELIN: Commissioner de Planque?

23               COMMISSIONER de PLANQUE: Well, I think  
24               you just about said what I was going to say anyway.  
25               Maybe it is indeed time to take a broader look. I

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1 certainly understand the point about the worker doses  
2 and ALARA in some of these and that's clearly a health  
3 and safety issue. But I couldn't find a health and  
4 safety hook anyplace else in here. Based on the  
5 conversation today, I clearly understand why there are  
6 other issues that need to be considered, the  
7 environmental ones and certainly the issues that we  
8 laid out in the SRM, the four issues that we laid out.

9 But I think what we would like to see, or  
10 what I would like to see anyway, is that the process  
11 answer those issues or correspond to what's needed for  
12 each of those issues, be it health and safety, be it  
13 environment or whatever, essentially what Commissioner  
14 Rogers has said.

15 CHAIRMAN SELIN: Before we go off, I  
16 actually would like to ask you a couple of questions  
17 for you to try to answer at the table. I want you to  
18 understand that the next question is a hypothetical  
19 question to understand the limits of the reasoning.  
20 I absolutely do not believe what I'm going to say. I  
21 mean I don't agree with the theory.

22 You know, the background is that we have  
23 a decommissioning rule which has some public  
24 participation in it. Let's say that the Commission  
25 voted to remove the public participation. Would we

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1 violate any law if we did that? In other words, could  
2 you do a decommissioning plan without a public  
3 hearing? Is there any law that would be violated by  
4 doing so? Is this purely because we believe the  
5 public should be heard or is it something that would  
6 not stand up based on either the Atomic Energy Act or,  
7 more likely, one of the environmental laws?

8 I mean, let's say we changed our rules in  
9 a consistent -- our regulations in a consistent  
10 fashion. I'm not asking is there some other  
11 regulation that --

12 MS. CYR: I think there ultimately -- at  
13 some point when the agency terminates the license and  
14 proposes to release for unrestricted use, there has to  
15 be an opportunity.

16 CHAIRMAN SELIN: But that wasn't my  
17 question. My question was why do we require a  
18 decommissioning plan and why do we require --

19 MS. CYR: Well, to the extent that there  
20 is an approval process in there which may be  
21 considered under APA purposes in a license of some  
22 sort, there is an approval process, then there may be  
23 certain hearing rights that may not necessarily be a  
24 189 action, depending on what the nature of whatever  
25 we're doing there, the approval process is. But there

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1 are certain hearing rights or opportunities for public  
2 involvement which may arise to the extent that we  
3 impose an advance approval with respect to certain  
4 activities that take place.

5 CHAIRMAN SELIN: Well, let me posit a  
6 hypothetical different situation. We don't have a  
7 requirement for a decommissioning plan. We really  
8 just tell the licensee that he can do anything he  
9 wants provided that the individual steps we consider  
10 to be consistent with health and safety -- you know,  
11 50.59 decommissioning process, if you will. So,  
12 however, once you're done and we give them a whole lot  
13 of rules, you have to look out for worker safety and  
14 you have to make sure that the environment is  
15 protected, once you're done, before we will terminate  
16 your license, then we need a hearing and we have to  
17 make an environmental assessment, et cetera. Would  
18 that be consistent with your understanding of the  
19 environmental -- we wouldn't be looking at any options  
20 because the options would be all done and he's just  
21 presenting us a fait accompli. The question is can he  
22 then terminate his license.

23 MS. CYR: Assuming there's no intervening  
24 approvals which we believe were necessary, I think  
25 that's right.

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1 CHAIRMAN SELIN: The intervening approvals  
2 would be because --

3 MS. CYR: For a health and safety basis we  
4 concluded that there was some activity that was  
5 ongoing there that we --

6 MR. GRIMES: Change the technical  
7 specifications and --

8 MS. CYR: Right.

9 MR. RUSSELL: There was something that  
10 caused an amendment to be necessary to amend the  
11 license. If it were an activity that could not be  
12 approved under 50.59, that way we'd be into an  
13 approval process and a notice process, et cetera.

14 CHAIRMAN SELIN: Yes.

15 MR. GRIMES: So, we have a number of those  
16 in each of these cases.

17 CHAIRMAN SELIN: Okay. But basically what  
18 I interpret you saying -- I mean what you're saying is  
19 very clear, but what I interpret the implications as  
20 being is that the Commission has come up with a  
21 decommissioning process because we believe it's  
22 important that there be a decommissioning plan and  
23 that there be some hearing rights on it, not because  
24 there's a law that requires this to be the case. One  
25 can come up with a counter example where, as several

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1 of you said, we can essentially see a plant  
2 decommissioned without ever going through a  
3 decommissioning plan without ever taking a "dangerous  
4 step."

5 So, what we really have to do is decide  
6 whether we believe or why do we believe it's important  
7 to have a decommissioning plan, why do we believe it's  
8 important to have hearing rights on this plan? There  
9 are at least two reasons. One is major decisions are  
10 made in the plan which affect the public. But whether  
11 that's because we want to hear what they have to say  
12 about it or are required to hear, you need to think  
13 about. And the second is that decommissioning is, in  
14 fact, a whole set of steps. It's not just one step at  
15 a time and even though we're competent to do safety  
16 analyses, when we are forced to defend these in  
17 public, we think a lot harder or people bring up  
18 things. There's two quite different purposes. The  
19 first one is a public policy and environmental issue,  
20 the second is really a health and safety issue that  
21 would say such a major step is decommissioning  
22 reactor. Even the health and safety -- you know, we  
23 can't tell which step we would do better, but  
24 comprehensively having intervenors given an  
25 opportunity would improve the health and safety.

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1 I don't really understand the judge's  
2 logic, the one who threw out the case, if this is  
3 true. You know, the district judge, not the appeals  
4 judge. Was he basically saying that the NRC's rules  
5 call for the public to have a chance and they've been  
6 done out of this chance or was he saying the law  
7 requires the public have a chance?

8 MS. CYR: He wasn't saying that. He was  
9 saying that there wasn't an opportunity. Given the  
10 way that we had proceeded through the process that we  
11 had done, we had not really explicitly told them  
12 whether they had an opportunity or not. He wasn't  
13 saying that we had to have an opportunity.

14 CHAIRMAN SELIN: But they never were told  
15 whether they had an opportunity.

16 MS. CYR: Right.

17 CHAIRMAN SELIN: So, if we should change--

18 MS. CYR: He was complaining about the  
19 fact that we issued documents sort of piecemeal and  
20 after the fact and we didn't get to the point of  
21 saying no and didn't provide them and tell them  
22 clearly yes or no, "You're not going to have an  
23 opportunity here." That's what he was sort of  
24 complaining about the process.

25 CHAIRMAN SELIN: But it would be rational,

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1 it would internally consistent to choose option 1,  
2 reject option 2, tell the public they will not  
3 necessarily have an opportunity ever to comment on the  
4 decommissioning plan because we don't -- you know, if  
5 somebody can break the decommissioning into a set of  
6 50.59 steps, we may never approve a plan. We could do  
7 that from a legal point of view should we choose to do  
8 that.

9 MS. CYR: If the Agency concluded that  
10 from a safety standpoint that it did not -- there were  
11 no approvals necessary, it did not have to have some  
12 kind of advance approval, that what you were concerned  
13 about was the ultimate release at the site --

14 CHAIRMAN SELIN: Take your option 1  
15 without option 2. It's not mandatory that people not  
16 do a plan, but people could. I mean you've said at  
17 the table basically Yankee Rowe has. For all intents  
18 and purposes, they've come in and they've proceeded  
19 well down the line following option 1 to decommission  
20 the plant. So, there's --

21 MR. WEISS: Well, we did have a number of  
22 public meetings in that area, even though we were not  
23 required to let the public know what was going on.

24 CHAIRMAN SELIN: I mean, that even more  
25 strongly makes my point, since whatever you say will

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1 make my point. You know, that basically they could  
2 come up with a set of points -- I mean a set of steps  
3 which are a de facto decommissioning plan without ever  
4 having submitted a plan or having approval. It  
5 doesn't mean that the NRC just says, "Come back in ten  
6 years." You do have this, "Tell us what you have in  
7 mind. We'll have 90 days to look at it," but that's  
8 still basically just bilateral between us and them  
9 step by step.

10 MR. RUSSELL: that's correct.

11 MR. GRIMES: It's certainly been the  
12 staff's understanding for the past couple of years at  
13 least that option 1 is indeed a legal way of  
14 approaching things because that's essentially the  
15 track we've been taking on these things. And further  
16 in terms of decommissioning plan approval, we've also  
17 proceeded with those with environmental assessments,  
18 but without a hearing.

19 CHAIRMAN SELIN: But where did we do --

20 MR. GRIMES: At Fort St. Vrain, for  
21 example.

22 CHAIRMAN SELIN: But in this case, in  
23 Yankee Rowe, let's say they just continued, they  
24 didn't stop. Would there ever have been an  
25 environmental assessment until they came to us and

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1 said, "We're ready to turn this plant back to the --"

2 MR. GRIMES: Theoretically not.

3 CHAIRMAN SELIN: There hasn't been, has  
4 there?

5 MR. RUSSELL: Correct, not to date. The  
6 amendment activities we've been involved in are  
7 generally limited to the scope of the amendment that's  
8 involved and that's handled by our routine process.  
9 It may be one that provides relief under requirements  
10 and is not directly related to the activities of  
11 decommissioning, which could be done under 50.59.

12 CHAIRMAN SELIN: Let's go back to what the  
13 General Counsel said earlier. Here's a case where  
14 it's clearly arguable that the need for an  
15 environmental assessment or environmental impact  
16 statement has been avoided by breaking down the  
17 decommissioning into a set of steps, none of which was  
18 seen to trigger the need for an environmental  
19 assessment. Can that be consistent with NEPA or is  
20 that --

21 MR. RUSSELL: It depends upon what the  
22 major federal activity is. If the major federal  
23 activity is releasing the site and the licensee from  
24 its obligations, then the answer to that is no, that  
25 it would not be contrary to NEPA. If the process by

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1 which you take the plant apart and dispose of the  
2 source term in a safe way, if that has some major  
3 effect on the environment and constitutes a major  
4 federal activity, then I think you would have, in  
5 fact, a segmented review and approval process.

6 CHAIRMAN SELIN: In this posited case  
7 where we're not so much worried about license  
8 amendments because those are -- although they're  
9 federal steps, they really are limited to the reason  
10 the tech spec or whatever was done in the first place.  
11 My speech was wrong basically, that one could do all  
12 of these steps. One could allow a plant to be  
13 decommissioned never having had a decommissioning  
14 plan, never had a public hearing as long as the actual  
15 release of the site had not occurred. So, it's really  
16 a question of what we want to do, not what the law  
17 requires.

18 MR. GRIMES: Yes. The theory had been  
19 that the operating license foresaw all of these  
20 activities as part of the initial environmental  
21 assessment in statement, although those things were  
22 never very explicitly treated in terms of the EIS at  
23 the time.

24 CHAIRMAN SELIN: There are no  
25 decommissioning plans in operating license

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1 applications.

2 MR. GRIMES: Right. Right. You'd have to  
3 just infer --

4 CHAIRMAN SELIN: It's just assumed that  
5 they will be decommissioned, but not --

6 MR. GRIMES: That will be decommissioned  
7 because you're building it.

8 CHAIRMAN SELIN: -- not how they'll be  
9 decommissioned.

10 MR. GRIMES: Right.

11 MR. RUSSELL: But the impacts associated  
12 with constructing and operating it and ultimately  
13 taking it apart, one could argue, were considered at  
14 the time you approved the construction.

15 CHAIRMAN SELIN: All we considered was  
16 that it is feasible to take them apart --

17 MR. RUSSELL: Yes.

18 CHAIRMAN SELIN: -- not which way --

19 MR. TAYLOR: To take them apart.

20 CHAIRMAN SELIN: -- to take them apart.

21 MS. CYR: Just as a note, Yankee was sort  
22 of pre-NEPA. So, there was not EIS for Yankee, which  
23 makes it sort of a sui generis case for this.

24 CHAIRMAN SELIN: Okay.

25 COMMISSIONER ROGERS: I don't want to

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1 interrupt your --

2 CHAIRMAN SELIN: Well, I just had one more  
3 question. Basically, this is a statement and I'd like  
4 to know if collectively you think it's true, that we  
5 are really down to deciding whether the framework that  
6 you've chosen, which is that we do wish to have in  
7 effect a decommissioning plan and that we do wish to  
8 have at least opportunity to comment on that, requires  
9 something like your option 2. If we feel that what  
10 I'll call efficient decommissioning, or whatever you  
11 want to call it, is more important, we could go back  
12 and reconsider this question of requiring a  
13 decommissioning plan and requiring some kind of --

14 But the converse is also true, that if we  
15 are going to require a decommissioning plan and if we  
16 are going to give the public an opportunity to discuss  
17 that, your option 2 is -- I mean, you know, how you  
18 got to 1, 2, 3 and 4, what's in 3 and what's in 4,  
19 there's something. But basically, in your opinion,  
20 that's really the only way to implement such an  
21 approach. In other words, to assert that.

22 MR. RUSSELL: To have something meaningful  
23 to review, you need to put some controls on that which  
24 could be done.

25 CHAIRMAN SELIN: Okay.

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1                   COMMISSIONER ROGERS: I'd like to say what  
2 I recall at the time we went through decommissioning  
3 and what our concerns, at least my concern was.  
4 Certainly to some extent the safety issues with  
5 respect to taking the plant apart, that certainly was  
6 partly it. There was also a very deep concern that  
7 there would not be left a plant to be decommissioned  
8 with no resources to decommission it. That was a very  
9 serious concern. One of the major aspects of that  
10 decommissioning plan in my mind was a demonstration  
11 that there would be adequate financial resources to  
12 decommission that plant and take it back to  
13 something -- a reasonable state, green fields or  
14 something else. And that the important part of the  
15 plan was that one could demonstrate what the things  
16 were that were going to be done or state what the  
17 steps would be and then cost them out and demonstrate  
18 that there would be adequate resources to carry that  
19 plan out.

20                   So, the emphasis in my mind was  
21 principally on making sure that there would be  
22 adequate resources to carry out a proper  
23 decommissioning plan. I don't think we've focused on  
24 the individual steps, the public health and safety  
25 issues that were related to the individual steps.

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1 They would obviously be under NRC's observation and  
2 control. But the big question was will there be  
3 adequate resources so that the public will not be  
4 faced with this shutdown plant with a load of  
5 radioactive material in it and no resources to clean  
6 it up. That was one of the major thrusts of that  
7 decommissioning rule.

8 And also, what would be the final state?  
9 Would it be SAFSTOR? Would it be green fields? So,  
10 there'd be an environmental impact there at that  
11 point. Are you going to leave a big block of concrete  
12 in the middle of a field or are you going to take it  
13 back to a relatively pristine state? These are all  
14 environmental issues.

15 So, there were environmental  
16 considerations, but in my view, and this is just my  
17 recollection and the way I was thinking about it at  
18 the time, it was really what the end point was. What  
19 was going to be the environmental impact of the final  
20 end point of this decommissioning process and were  
21 there going to be resources, adequate resources to do  
22 that job? Therefore, you had to have some kind of a  
23 plan to demonstrate that those resources would be  
24 adequate.

25 Now we're talking about a very different

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1 kind of situation. We're talking about somebody who  
2 clearly has the resources because they want to go and  
3 do it and they want to start under some reasonable  
4 plan taking the plant apart. I think you need a  
5 decommissioning plan to know where they're going to  
6 wind up and I think that there are the same  
7 environmental considerations. But we're talking now  
8 about applying some of the thinking and concerns that  
9 led to the decommissioning rule at the front end of  
10 the process now, in a micro way and I'm having trouble  
11 with that. That's where my difficulty is.

12 I think we're proceeding along in a  
13 somewhat reasonable way, but I have a feeling that  
14 we're introducing more here than needs to be the case  
15 at this -- for the kinds of situations we're now  
16 faced, where there is a licensee with resources to do  
17 the job, wants to get on with the job and we're  
18 beginning to worry about the environmental impact of  
19 carrying out operations that they can carry out right  
20 now without any hearings or any special environmental  
21 considerations that aren't already in our current  
22 regulations. That's where I'm having trouble.

23 MR. RUSSELL: I think there's one  
24 additional factor and that is there's a significant  
25 financial incentive, at least in the short-term, to

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1 get on with it based upon what's happening with low-  
2 level waste and uncertainty as to future cost  
3 associated with low-level waste disposal. So, it very  
4 well may be that it's in the public interest to  
5 proceed to defer cost or reduce costs in the long-  
6 term.

7 COMMISSIONER ROGERS: Yes.

8 MR. RUSSELL: So, we've seen a change in  
9 circumstance over what existed at the time that the  
10 rulemaking went forward.

11 COMMISSIONER ROGERS: The only thing is I  
12 get a little antsy when we start to get into cost  
13 because cost can drive things the wrong way too, you  
14 know. We want to be sure that somebody is not running  
15 pall mall into a decommissioning effort to -- a  
16 dismantlement effort to avoid some costs that really  
17 should be incurred to do the job properly. So,  
18 there's some restraints on this. But I do agree with  
19 you.

20 MR. RUSSELL: That's a very good point  
21 given that we've got a clock running on the time for  
22 some of these activities as to when costs would go up  
23 substantially --

24 COMMISSIONER ROGERS: Right.

25 MR. RUSSELL: -- to make sure that we

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1 follow them closely as they're being done now.

2 COMMISSIONER ROGERS: Absolutely.

3 CHAIRMAN SELIN: Let me just make sure  
4 basically that you believe what you said on page 11,  
5 because that's really what it comes down to. It says,  
6 "Consequently" -- this is in the SECY, not in the  
7 attachment, "Consequently, the staff and OGC recommend  
8 that if the Commission decides" -- well, you split an  
9 infinitive. I know you didn't mean to do that -- "to  
10 adopt fully option 1, the Commission direct the staff  
11 to amend the regulation 50.82 to delete the  
12 requirement for NRC review and approval of the  
13 decommissioning plan."

14 So it seems to me that we can really  
15 question this at one of two levels. One is we can  
16 question whether we really want to have a  
17 decommissioning plant and an informal hearing on that  
18 or not. And the second is, if we do want to have such  
19 a plan, are there variations of your proposal that are  
20 either more precise or more cost-oriented or have a  
21 little more rationale and then that would accomplish  
22 that plan.

23 Now, the reason I want to make that that  
24 way is that I have some questions about the specific  
25 thing, you know, why 3, why 4, et cetera, but I'm

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1 really talking to my fellow Commissioners. I think  
2 that we as a Commission have to decide whether we want  
3 to keep the decommissioning plan and the hearing, the  
4 optional hearing -- I mean, not optional, but the it's  
5 not automatic, it has to be requested, informal  
6 hearing to go with it -- or do we want to go back and  
7 drop that proposal.

8 Because, the General Counsel of the  
9 Nuclear Regulatory Commission is effectively saying  
10 you can't square the circle. You can't do both of  
11 these at the same point. And once we decide that,  
12 which is the major decision, then next comes, if the  
13 answer is yes, do we polish this a little bit more?  
14 And if the answer is no, do we go back and review that  
15 commission.

16 I do have a different question that  
17 Commissioner de Planque brought up earlier. How do  
18 you handle a situation where a licensee has a  
19 decommissioning plan that will take 20 years or 40  
20 years to go out? I mean, do they --

21 MR. WEISS: We have granted a  
22 decommissioning order. We've extended the license for  
23 20, 30 years to account for this.

24 MR. GRIMES: But we also expect a more  
25 detailed plan just before the activities are taking

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1 place.

2 CHAIRMAN SELIN: Is that an amendment to  
3 the license?

4 MR. WEISS: Yes.

5 CHAIRMAN SELIN: And we can do that even  
6 though it carries the total --

7 MR. WEISS: Well, actually it's an order.  
8 We issue a decommissioning order.

9 CHAIRMAN SELIN: Does that effectively  
10 carry the license beyond 40 years?

11 MR. WEISS: Yes.

12 CHAIRMAN SELIN: And is that something in  
13 which people have hearing rights?

14 MR. GRIMES: No, I don't think so.

15 MS. CYR: If you're amending the license  
16 to extend the time, yes.

17 CHAIRMAN SELIN: Okay. So it can be done  
18 and that would be yet another reason, if somebody  
19 wanted to do this, to do it real quick and not get  
20 into any such issues.

21 Commissioner Rogers?

22 COMMISSIONER ROGERS: Yes. There's just  
23 one other aspect of this question that I wondered if  
24 you could comment on and that is the  
25 interrelationship, the NRC and the states with respect

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1 to jurisdiction in decommissioning.

2 Oregon, as you know, has some new state  
3 regulations with respect to the decommissioning of  
4 Trojan and some very specific requirements. How could  
5 they square with our authority? Which takes  
6 precedence if there is some issue there?

7 MS. CYR: Well, as I understand what the  
8 state of Oregon has done, I mean, they've had a fairly  
9 extensive sort of coextant relationship with the NRC  
10 under an MOU in terms of what they --

11 COMMISSIONER ROGERS: Yes.

12 MS. CYR: -- oversight of the facility,  
13 and then that states are permitted to undertake  
14 certain activities in promoting their economic  
15 regulation and that's really what they're doing in  
16 this case. I mean, they're looking at the efficient  
17 shutdown of the facility.

18 COMMISSIONER ROGERS: No, they've got  
19 very -- now they have, I think, legislation on this  
20 that actually spells out things like we have in our  
21 items 1, 2, 3, 4 of what you can do and what you can't  
22 do. I know the containment, you cannot open the  
23 containment, for example, without state approval. I  
24 don't remember what the other items are, but it's  
25 quite technical, and the question is how do our

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1 requirements and theirs, how must they fit together?  
2 It's another state-federal issue here, I think.

3 MS. CYR: If it comes down to that there  
4 clearly is a clear conflict on a safety issue between  
5 ours and theirs, then ours would be the preempt one.  
6 But from what I understand of what they're doing, I  
7 mean, they are -- although they are doing it from an  
8 economic basis and at this point it doesn't conflict  
9 with ours, I mean, they have certain issues that they  
10 want to look at and they're doing it against sort of  
11 an efficient need and efficient and effective pursuit  
12 of the orderly shutdown of the Trojan facility and  
13 what they have here so far doesn't seem to conflict  
14 with what we're doing. They've tied it to that hook  
15 and that is a permissible hook.

16 I mean, we haven't ever explored the full  
17 range of how far that kind of a hook can carry you in  
18 certain kinds of stuff, in activities by the state.  
19 They also have certain authority under the Clean Air  
20 Act to set more stringent standards, as you know, for  
21 air emissions and effluents and so on, so there may be  
22 some aspect of that which is involved also.

23 I'm not familiar with the particulars of  
24 what they've actually said here, but I don't believe  
25 anything they've taken is in direct conflict with any

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1 activities we've taken so far.

2 COMMISSIONER ROGERS: Well, I mean, this  
3 is only a proposed rule.

4 MR. GRIMES: If I could comment, there are  
5 some specific words in the Oregon rule, proposed rule,  
6 for actual --

7 COMMISSIONER ROGERS: It's in place, I  
8 believe.

9 MR. WEISS: June 24th.

10 MR. GRIMES: Yes, on June 24th it's been  
11 made final now. That says if there is any direct  
12 conflict with the NRC, then the NRC rule prevails.  
13 They feel, I believe, that if they do something which  
14 is, say, more conservative, results in less effluents  
15 or things like that than the NRC regulations require,  
16 then they are within their bounds. I'm not sure if  
17 that would stand up in a court test, but they've been  
18 very cooperative in all these areas and they have  
19 agreements with the licensee also to abide by these  
20 things, so we have not found any problem in practice  
21 with cooperating. And indeed, their public  
22 participation in this area looks, at least to me, like  
23 it would be very effective.

24 COMMISSIONER ROGERS: Oh, I think it was  
25 quite good, yes.

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1 MR. GRIMES: Quite good.

2 COMMISSIONER ROGERS: Well, I'm not  
3 raising the question with respect to Oregon so much as  
4 an example of a situation that we now have seen  
5 develop and it could develop in a different way in a  
6 different state on a different plant, and I think it's  
7 worth starting to take a look at what our concerns  
8 might be with respect to any state decommissioning  
9 programs, requirements.

10 MS. CYR: We can look at more details, the  
11 actions undertaken in that particular case.

12 COMMISSIONER ROGERS: I appreciate very  
13 much hearing from OGC on this because it's the kind of  
14 thing that might come up at NARUC meetings and I'd  
15 like to have some of your thoughts on that.

16 MS. CYR: Fine, we'll look at that.

17 MR. TAYLOR: That's it, sir.

18 CHAIRMAN SELIN: Thank you very much.

19 (Whereupon, at 4:34 p.m., the above-  
20 entitled matter was adjourned.)

21

22

23

24

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**DECOMMISSIONING OF NUCLEAR  
POWER REACTORS:  
PROPOSED RULE**

**Briefing of the Commission**

**July 21, 1994**

## BACKGROUND

- SECY-92-382 "Decommissioning - Lessons Learned" (November 10, 1992).
- Staff Requirements Memorandum for SECY-92-382 (January 14, 1993).
- Staff Requirements Memorandum for SECY-92-382 (June 30, 1993).

## SRM Directive

Staff to prepare a  
recommended definition  
for "permanent cessation  
of operations".

| Proposed Requirement                                     | Proposed Citation  | Current Regulations  |
|--|--|--|
| Licensee certifies to permanent cessation of operations. | <p>1. Defined in § 50.2.</p> <p>2. § 50.82(a)(1) - 30 days to certify.</p> <p>3. Written communications requirement in § 50.4(b)(8).</p> | None - "permanent cessation of operations" exists in § 50.82 but is undefined. |

## 10 CFR 50.2

Permanent cessation of operations means, for a nuclear power plant reactor, a certification by a licensee to the NRC that it has ceased or will permanently cease reactor operation.

10 CFR 50.82(a)(1)

- Any licensee may apply for authority to surrender a license voluntarily.
- When a nuclear power reactor licensee has determined to permanently cease operations, the licensee shall, within 30 days, submit a written certification to the NRC.

## SRM Directive

Staff to define a "possession-only license".



| Proposed Requirement  | Proposed Citation  | Current Regulations   |
|---|--|---|
| <p>Licensee <u>may</u> apply for a possession-only license amendment (POLA) .</p> | <ol style="list-style-type: none"> <li>1. POLA defined in § 50.2.</li> <li>2. § 50.82(a)(2) .</li> </ol> | <p>Neither a possession-only license (POL) or POLA is defined or expressly provided for in current regulations. However, past Commission practice has been to issue a POL upon application by a licensee.</p> |

## 10 CFR 50.2

Possession-only license amendment means, for a nuclear power reactor, an operating license amendment which permanently removes the authority to operate the reactor or maintain or place fuel in the reactor vessel.

10 CFR 50.82(a)(2)

Upon certification of permanent cessation of operations, a nuclear power reactor licensee may apply for a possession-only license amendment.

## SRM Directive

Staff to define and provide for (but not require) prompt issuance of a confirmatory shutdown order after the permanent cessation of operations.

| Proposed Requirement   | Proposed Citation                                       | Current Regulations                   |
|--|---|---------------------------------------|
| Commission<br><u>may</u> issue<br>"confirmatory<br>shutdown<br>order". | 1. Defined<br>in § 50.2.<br><br>2. § 50.82<br>(a) (3) . | Not<br>explicitly<br>provided<br>for. |

## 10 CFR 50.2

Confirmatory shutdown order means  
an order prohibiting resumed operation  
of the reactor without prior NRC  
approval.

10 CFR 50.82(a)(3)

The Commission may issue a confirmatory shutdown order following the receipt of the nuclear power reactor licensee's certification under § 50.82(a)(1).

## SRM Directive

Staff to clarify regulations  
in Part 50 as to their  
applicability to  
possession-only licenses.



| Proposed Requirement  | Proposed Citation  | Current Regulations  |
|---|--|--|
| Upon issuance of POLA - Part 50 requirements clarified as to (Non) applicability. | 1. § 50.36,<br>§ 50.36(a),<br>§ 50.44,<br>§ 50.46,<br>§ 50.49,<br>§ 50.54,<br>§ 50.59,<br>§ 50.60,<br>§ 50.61,<br>§ 50.62,<br>§ 50.63,<br>§ 50.65,<br>§ 50.71,<br>Part 50<br>Appendix I. | None of these Sections are explicitly nonapplicable to POLA holders. |

## SUMMARY OF 10 CFR PART 50 APPLICABILITY REVISIONS

| <u>Regulation</u>  | <u>Scope of<br/>Revision</u> |
|--|------------------------------|
| § 50.36     Technical specifications.  | Extends<br>applicability     |
| § 50.36a    Technical specifications on<br>effluents from nuclear<br>power reactors. | Extends<br>applicability     |

SUMMARY OF 10 CFR PART 50 APPLICABILITY REVISIONS (Cont'd)

|         | <u>Regulation</u>  | <u>Scope of<br/>Revision</u>   |
|---------|--|--|
| § 50.54 | Conditions of licenses.<br><br>Section (y): Emergency<br>Authority                             | Extends<br>emergency<br>authority to<br>the certified<br>fuel handler. |
| § 50.65 | Requirements for monitoring<br>the effectiveness of<br>maintenance at nuclear<br>power plants. | Extends<br>applicability   |

## SUMMARY OF 10 CFR PART 50 APPLICABILITY REVISIONS (Cont'd)

|            | <u>Regulation</u>  | <u>Scope of Revision</u> |
|------------|--|--------------------------|
| Appendix I | Numerical Guides for Design Objectives and Limiting Conditions of Operation to Meet the Criterion "As Low As Is Reasonably Achievable" for Radioactive Material in Light-Water-Cooled Nuclear Power Reactor Effluents. | Extends applicability    |

SUMMARY OF 10 CFR PART 50 APPLICABILITY REVISIONS (Cont'd)

|         | <u>Regulation</u>  | <u>Scope of<br/>Revision</u> |
|---------|--|------------------------------|
| § 50.44 | Standards for combustible gas control system in light-water-cooled power reactors.             | Terminates applicability     |
| § 50.46 | Acceptance criteria for emergency core cooling systems for light water nuclear power reactors. | Terminates applicability     |

## SUMMARY OF 10 CFR PART 50 APPLICABILITY REVISIONS (Cont'd)

|         | <u>Regulation</u>   | <u>Scope of<br/>Revision</u> |
|---------|---|------------------------------|
| § 50.49 | Environmental qualification of electric equipment important to safety for nuclear power plants. | Terminates applicability     |
| § 50.54 | Conditions of licenses.<br><br>Section (o): Containment Leak Rate Testing                       | Terminates applicability     |

## SUMMARY OF 10 CFR PART 50 APPLICABILITY REVISIONS (Cont'd)

|         | <u>Regulation</u>   | <u>Scope of Revision</u> |
|---------|---|--------------------------|
| § 50.60 | Acceptance criteria for fracture prevention measures for light-water nuclear power reactors for normal operation. | Terminates applicability |
| § 50.61 | Fracture toughness requirements for protection against pressurized thermal shock events.                          | Terminates applicability |

SUMMARY OF 10 CFR PART 50 APPLICABILITY REVISIONS (Cont'd)

|         | <u>Regulation</u>   | <u>Scope of<br/>Revision</u> |
|---------|---|------------------------------|
| § 50.62 | Requirements for reduction of risk from anticipated transients without scram (ATWS) events for light-water-cooled nuclear power plants. | Terminates applicability     |
| § 50.63 | Loss of all alternating current power.  | Terminates applicability     |



## SRM Directive

Staff to provide that licensees be required to inform the NRC at an early stage of their plans for post-shutdown activities at the facility.

| Proposed Requirement   | Proposed Citation    | Current Regulations |
|--|----------------------|---------------------|
| 1. Licensee to submit a preliminary report to NRC <u>after</u> permanent cessation of operations - no <u>time</u> requirement. | 1. § 50.82(a)(4)(i). | 1. No Requirements. |
| 2. Public meetings <u>shall</u> be convened - OPTION 1 and OPTION 2.   | 2. § 50.82(a)(4)(i). | 2. No Requirements. |

10 CFR 50.82(a)(4)(i)

- Following permanent cessation of operations, the licensee of a nuclear power reactor shall submit a preliminary report.
- The preliminary report shall be docketed and copies placed in Public Document Rooms.
- The NRC shall schedule and hold an informal public meeting.
- The NRC shall publish notice of the meeting.

| Proposed Requirement  | Proposed Citation                                       | Current Regulations |
|---|---|---------------------|
| <p>1. 90-Day Report - before any significant decommissioning activity.</p> <p>2. Public meeting <u>may</u> be held - OPTION 2 public meeting <u>shall</u> be held - OPTION 1.</p> | <p>1. § 50.82(a)(4)(ii)</p> <p>2. § 50.82(a)(4)(ii)</p> | <p>None.</p>        |

10 CFR 50.82(a)(4)(ii)

- Licensee shall inform the NRC of its plans for significant decommissioning activities 90 days prior to the commencement of the planned activities at the facility.
- These 90-day reports shall be docketed and copies placed in Public Document Rooms.
- The NRC shall (may) schedule and hold an informal public meeting.
- The NRC shall publish a notice of the meeting.

## SRM Directive

Staff to amend § 50.59  
to make it expressly  
applicable to holders  
of licenses not  
authorizing operation.

| Proposed Requirement   | Proposed Citation  | Current Regulations                                |
|--|--------------------|--|
| <p>Option 1 -<br/>§ 50.59.<br/>Expressly made applicable to POLA holders - no restrictions on licensee activities after POLA.</p>          | <p>§ 50.59(d).</p> | <p>Not expressly applicable.</p>                   |
| <p>Option 2 -<br/>§ 50.59.<br/>Expressly made applicable to POLA holders - restrictions on licensee activities codified in § 50.59(d).</p> | <p>§ 50.59(d).</p> | <p>Not expressly applicable - no restrictions.</p> |

10 CFR 50.59 (d)

The provisions of this section shall apply to each applicant for and each holder of a possession-only license amendment.



10 CFR 50.59(d)(1)

- (i) modify the structure of the containment;
- (ii) modify the spent fuel storage system and/or support system;
- (iii) require the dismantlement for immediate or future shipment of components (with the exception of equipment that normally contains special nuclear material) containing greater than Class C waste; or
- (iv) result in major structural changes to major radioactive components of the facility.

10 CFR 50.59(d) (2)

- (i) foreclose the release of the site for possible unrestricted use, or
- (ii) significantly increase decommissioning costs, or
- (iii) cause any significant environmental impact not previously reviewed, or
- (iv) violate the terms of the licensee's existing license (i.e, operating license, operating license with a possession-only license amendment, or operating license with a confirmatory shutdown order).

| Proposed Requirement   | Proposed Citation | Current Regulations |
|--|-------------------|---------------------|
| Partial decommissioning plan approval to lift the § 50.59(d)(1) restriction - subpart L hearing opportunity provided.<br>OPTION 2. | § 2.1201(c) .     | None.               |

| Proposed Requirement   | Proposed Citation | Current Regulations |
|--|-------------------|---------------------|
| Decommissioning plan approval.<br>Subpart L - hearing opportunity provided.<br>OPTION 2. | § 2.1201(c).      | None.               |

| Proposed Requirement           | Proposed Citation            | Current Regulations |
|--------------------------------|------------------------------|---------------------|
| Decommissioning-plan updating. | § 50.71(f) ,<br>§ 50.82(b) . | None.               |

10 CFR 50.71(f)

The provisions of this section shall apply to each applicant and each holder of a possession-only license amendment.

10 CFR 50.82(b)

Each application for termination of license must be accompanied, or preceded, by a proposed decommissioning plan, which shall be a supplement to the FSAR.

| Proposed Requirement            | Proposed Citation | Current Regulations             |
|---------------------------------|-------------------|---------------------------------|
| § 2.206<br>rights.<br>OPTION 2. | § 50.82(h) .      | Already<br>implicitly<br>exist. |



10 CFR 50.82(h)

Any person who has reason  
to believe that the license  
should not be terminated  
may file a petition  
pursuant to 10 CFR 2.206.

## RECOMMENDATION

The Commission adopt Option 1 as supplemented by provisions set out in Option 2.