

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

**Title: BRIEFING ON LESSONS LEARNED FROM  
ENHANCED PARTICIPATORY RULEMAKINGS -  
PUBLIC MEETING**

**Location: Rockville, Maryland**

**Date: Wednesday, March 29, 1995**

**Pages: 1 - 53**

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1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION

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4 BRIEFING ON LESSONS LEARNED FROM ENHANCED  
5 PARTICIPATORY RULEMAKINGS

6 \*\*\*

7 PUBLIC MEETING

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9  
10 U.S. Nuclear Regulatory Commission  
11 One White Flint North  
12 Rockville, Maryland  
13

14 Wednesday, March 29, 1995  
15

16 The Commission met in open session, pursuant to  
17 notice, at 2:00 p.m., pursuant to notice, Ivan Selin,  
18 Chairman, presiding.  
19

20 COMMISSIONERS PRESENT:

21 IVAN SELIN, Chairman of the Commission  
22 KENNETH C. ROGERS, Commissioner  
23 E. GAIL de PLANQUE, Commissioner  
24  
25

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1 STAFF AND PARTICIPANTS SEATED AT THE COMMISSION TABLE:

2 KAREN CYR, General Counsel

3 JOHN C. HOYLE, Acting Secretary

4 JAMES TAYLOR, Executive Director for Operations

5 KATE-LOUISE GOTTFRIED, IOM Study Director

6 CHARLES E. PUTMAN, Chairman

7 MICHAEL WEBER, NMSS Regulatory Issues Section

8 Leader

9 FRANCIS X. CAMERON, Office of General Counsel

10 BILL MORRIS, Director, Division of Regulatory

11 Applications, RES

12 FRANK CONSTANZI, Deputy Director, Division of

13 Regulatory Applications

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

CHAIRMAN SELIN: Good afternoon, ladies and gentlemen. We're here to receive a briefing from the staff on the lessons that were learned in the conduct of the NRC's enhanced participatory rulemaking. Our first rulemaking involved an unprecedented public outreach effort to elicit comments from representatives of all points of view before drafting proposed rule language.

As the rulemaking has proceeded, the commission has gotten some ideas about the efficacy of the process. I should say and make it clear that this was an extraordinary process, not just because it was the only one we've done to this date, but because it was an unusual situation. We were considering a rule where both the risks and the benefits will be primarily local.

It was not an overriding national health and safety consideration. The question was how to deal with the decommissioning of specific sites where the risk was a local risk, and also the benefits are local benefits, getting rid of a noisome place, and it seemed particularly important that the people who would be most affected would have a full chance to speak about this.

In going through the presentation today, Mr. Taylor, I hope that you and your team will not only talk about what we learned in the sense of what worked and didn't

1 work and what was expensive or wasn't expensive, but how  
2 unique -- well, unique doesn't allow a comparative, but how  
3 nearly unique were the circumstances of the situation.

4 So we're very eager to hear what you have to say  
5 about the history.

6 COMMISSIONER ROGERS: Just on that point, I think  
7 you're right that this particular exercise was one as you  
8 characterized it, but as you know I've been very much in  
9 favor of this approach where it is appropriate, and I think  
10 I'd appreciate any observations you have on its more general  
11 applicability to rulemaking, and where it might not be  
12 applicable.

13 CHAIRMAN SELIN: Okay. Commissioner Putnam?

14 DR. PUTMAN: No.

15 CHAIRMAN SELIN: Okay, Jim?

16 MR. TAYLOR: Good afternoon. This effort was  
17 really the work of several offices with people working  
18 cooperatively. First the office of general counsel, NMSS  
19 and the office of research as a group really worked  
20 collectively on this whole process and worked quite well  
21 together.

22 With me at the table are Frank Costanzi, Billie  
23 Morris, Chip Cameron, Bob Bernero and Mike Weber. There are  
24 a number of things to learn from this and Commissioner, we  
25 thought about the question you asked. I think as the

1 briefing goes forward you'll hear the good lessons we  
2 learned out of the process for the potential future  
3 applicability.

4 It was also a rather expansive process and costly,  
5 so applying it I think in a selective way would be something  
6 that we would recommend, but I think it would depend on the  
7 type of rulemaking we're engaged in as to whether we put an  
8 effort of this size into place, and you'll hear more about  
9 that.

10 Chip will now start the formal briefing.

11 MR. CAMERON: Thank you, Mr. Taylor. Good  
12 afternoon, Dr. Selin, Commissioner de Planque, Commissioner  
13 Rogers.

14 This afternoon we are going to focus on the  
15 enhanced participatory rulemaking process. The substantive  
16 provisions of the site clean-up rule will be the subject of  
17 a future commission briefing. Could I have the first slide,  
18 please?

19 Today we're going to cover five major areas.  
20 First, a description of the process, next some of the  
21 benefits that we believe resulted from the process, the  
22 costs of the process, not only for the enhanced activities  
23 but also for the total site clean-up rulemaking to date.

24 We're going to discuss lessons learned, and the  
25 last part of the briefing is going to be on the electronic

1 rulemaking project. One aspect of the lessons learned from  
2 the enhanced participatory rulemaking was the value of  
3 electronic bulletin boards, and Nick Costanzi from research  
4 is going to address an enhancement of the bulletin board  
5 concept, the electronic rulemaking project.

6 COMMISSIONER ROGERS: Excuse me. When you do come  
7 to the costs, I don't know if you're going to be prepared to  
8 say anything on this, but it does seem to me that the cost  
9 question is not simply the question of how much this  
10 particular participatory rulemaking process costs, but what  
11 might have been the cost of not doing it.

12 It's really not just a question of how much the  
13 participatory part of the rulemaking costs, but what would  
14 have been the cost if later on during the conventional  
15 approach to rulemaking that we had run into some  
16 difficulties with challenges and court actions and so on and  
17 so forth from the folks who had an opportunity to  
18 participate at the front end?

19 It seems to me that that cost balancing is a very  
20 important consideration and not simply to say, well, this is  
21 what it costs and we might not have incurred those costs at  
22 all. You might have incurred more costs at the other end.

23 MR. TAYLOR: I think we understand.

24 COMMISSIONER ROGERS: And so I think it is  
25 important to draw that into the cost consideration.



1 MR. CAMERON: Could I have the next slide, please?

2 In 1991, as the commission may recall, we  
3 attempted to convene a consensus process to revisit the  
4 commission's below regulatory concern policy and we could  
5 not get all of the important interests to the table in that  
6 process.

7 As an alternative, the commission directed the  
8 staff to develop a plan for enhancing public involvement in  
9 the rulemaking process, and this process was termed the  
10 enhanced participatory rulemaking. The objectives of the  
11 process were to obtain early comment on rulemaking issues  
12 before the staff prepared a draft proposed rule.

13 Another objective was to obtain active  
14 participation and joint problem solving by the affected  
15 interests. Finally, an objective was to facilitate  
16 coordination and consistency with EPA positions and this was  
17 particularly important in light of EPA's standard-setting  
18 authority in the radiation area.

19 I would like to emphasize that an objective of the  
20 process was not to try to achieve consensus among all the  
21 affected interests around the table. Our objectives were  
22 the more modest objectives that I just stated. And we  
23 focused here on a single specific problem, the radiological  
24 criteria for site decommissioning.

25 Can I have the next slide, please?

1           In order to achieve the objectives of early and  
2   active participation, we held seven regional workshops that  
3   were facilitated by neutral contractor, the Keystone Center  
4   from Keystone, Colorado. We had a broad spectrum of  
5   interests represented around the table, licensees, clean-up  
6   contractors, professional societies, citizen groups, tribal  
7   interests, state and local government, as well as other  
8   federal agencies.

9           One key aspect of the workshops was the fact that  
10   they were on a regional level. This allowed us to get in  
11   touch with representatives from affected interests at the  
12   local level, which in today's parlance, I guess, is called  
13   getting out of Washington.

14           COMMISSIONER DE PLANQUE: Chip, those at the  
15   table, though, in each case were invited participants. Is  
16   that correct?

17           MR. CAMERON: That's right, Commissioner. And in  
18   that regard we tried to ensure that the participants were  
19   knowledgeable and experienced on the issues. To do that we  
20   selected and invited people who had participated in past NRC  
21   proceedings, and we also did interviews with major groups to  
22   develop additional contacts for invitation.

23           We prepared a neutral rulemaking issues paper that  
24   was used to focus the discussion at the workshops. We also  
25   prepared decommissioning case studies, and a summary of what

1 the decommissioning criteria were on an international level.

2 The rulemaking issues paper emphasized the fact  
3 that the commission had not yet reached a decision on what  
4 the criteria should be. Rather that we were looking to the  
5 comments from the workshops on which to base our  
6 decisionmaking.

7 The Environmental Protection Agency was a full  
8 participant, along with the commission in the workshops,  
9 specifically the EPA's office of radiation and indoor air,  
10 and also at each of the workshops we had EPA regional staff  
11 with it, so we wanted the EPA to hear the comments that we  
12 heard. We wanted them to be an active participant in the  
13 discussion.

14 Next slide, please.

15 The workshops were open to the public and time was  
16 reserved for public comment, not just at the end of the full  
17 day session but throughout the day. We also did an evening  
18 session the night before the workshop began for the public.

19 Our consideration of workshop comments was  
20 thoroughly documented. We wanted to avoid the black hole  
21 syndrome. In other words, someone submits a comment and  
22 they never have any idea of what the commission's reaction  
23 was to it. The office of research had a summary of the  
24 comments, an evaluation of the comments prepared and that  
25 was published as a new reg and it was sent to all workshop

1 participants.

2 We also used an electronic bulletin board to  
3 provide enhanced access to documents and to receive public  
4 comments, and as I mentioned earlier, Nick Costanzi is going  
5 to talk a little bit more about that at the end of the  
6 briefing. Next slide, please.

7 In terms of benefits, the workshop process was  
8 viewed very positively by the participants. To give you an  
9 idea of some of the comments, representative comments we got  
10 from people on that, not only from the industry but from  
11 citizen groups, state governments, one commenter noted that  
12 they appreciated the NRC's attempt to involve the public in  
13 the early stage of creating new rules, and that the enhanced  
14 participatory rulemaking was a good first step to removing  
15 some of the tension and suspicion between the public, the  
16 industry and the NRC.

17 Another commenter applauded NRC's efforts at  
18 enhanced public participation and stated that it produced a  
19 markedly better rule than they had anticipated.

20 Lastly, one commenter said that the NRC's  
21 credibility has been greatly enhanced because of this effort  
22 and we strongly believe that this process should continue to  
23 be used in the future for similarly controversial rules.

24 COMMISSIONER DE PLANQUE: Chip, before you go on,  
25 I was kind of curious. These are kind of sweeping

1 statements on the benefits. Were there any formal surveys  
2 taken after the workshops to elicit people's reactions? How  
3 do we know this? What's the basis for these conclusions?

4 MR. CAMERON: We did not do a systematic survey or  
5 evaluation after the workshops from each of the  
6 participants. We're really basing this on a number of  
7 points, one of which is the comments that we got back from  
8 commenters, not only on the proposed rule but on the staff  
9 draft of the proposed rule in terms of what they said about  
10 the process.

11 I think another thing that we look to is the fact  
12 that generally there is much less anger and much less  
13 hostility not only in the context of this rulemaking but in  
14 a lot of activities across the board at the commission.  
15 There's been much more contact with citizen groups and  
16 licensees all across the country, Indian groups and this is  
17 what the benefits are based on. But not on a systematic  
18 evaluation.

19 Mike might want to add something.

20 MR. WEBER: Yes. I might add that in each of the  
21 workshops, one of the last agenda items was to go around the  
22 table and solicit the views of the participants, not only  
23 from an overall basis but also looking specifically at  
24 process. I would say, my recollection is most of the  
25 participants were either neutral or positive about the

1 workshops.

2 I don't recall hearing from any of the  
3 participants strong negative views. We did hear that from  
4 some of the members of the public that participated and  
5 thought that they were on the outside and really hadn't had  
6 a sufficient opportunity to engage in the discussions, but  
7 it wasn't systematic by any means, and it was done in an  
8 open-type forum. We did pull out that kind of feedback from  
9 the participants.

10 COMMISSIONER DE PLANQUE: I'm kind of curious.  
11 Increased public acceptance of the rule. How would you know  
12 at the point of the workshop that there would be increased  
13 public acceptance of the rule? Certainly from some of the  
14 comments I've read I wouldn't necessarily draw that  
15 conclusion immediately.

16 MR. CAMERON: When we use the term acceptance,  
17 we're not talking about consensus on the issues. We knew  
18 going in that it was going to be difficult to reconcile the  
19 differing points of views on some of the issues, but we did  
20 want to ensure that affected interests had equitable access  
21 to the decisionmaking process, that they felt that they were  
22 listened to, that we did provide a rationale for why we did  
23 or did not adopt particular viewpoint, and that there was  
24 some attempt to balance some of the many competing factors.

25 Again, we don't have any quantifiable measure of

1 benefits here, and I guess that also goes to Commissioner  
2 Rogers' point of view in terms of costs and benefits. A lot  
3 of the benefits cannot be quantified, but if you go back to  
4 the aftermath of the commission's publication of the BRC  
5 policy and the calls for legislation to override the policy,  
6 the general tenor of public interaction and willingness to  
7 engage in some sort of constructive dialogue, we see an  
8 absence of that at this point.

9 We see much more of a willingness to engage in  
10 talking about the issues, even though there is a  
11 disagreement. Often the anger and hostility would prevent  
12 you from even having a discussion on it. No matter that you  
13 might differ in the end on what the conclusion might be.  
14 But that's the basis for the statement that there is  
15 increased public acceptance of the rule. And I should say  
16 it's a proposed rule at this point, so I can't say what's  
17 going to happen in the future.

18 COMMISSIONER DE PLANQUE: How many of these  
19 comments are comments that you've taken from the comments on  
20 the proposed rule as opposed to what you heard during the  
21 workshop? They're two different stages and I think it's  
22 important to keep them separated in terms of how you  
23 evaluate this part of the process.

24 MR. CAMERON: Are you talking about comments on  
25 how people evaluate the process?

1 COMMISSIONER DE PLANQUE: I'm talking about the  
2 comments that you were referring to in substantiating these  
3 conclusions.

4 MR. CAMERON: Oh, they're all on the proposed  
5 rule.

6 COMMISSIONER DE PLANQUE: Which came after the  
7 workshop?

8 MR. CAMERON: That's right.

9 COMMISSIONER DE PLANQUE: So I'm trying to sort  
10 out the comments that are favorable and are seen as benefits  
11 to the workshop process per se versus the outcome further  
12 down the road, being the proposed rule.

13 MR. CAMERON: Right. The comments that I was  
14 talking about that I read from were comments on the workshop  
15 process that were provided in people's comments on the  
16 proposed rule. Those same type of comments were mirrored in  
17 the public comments submitted on the staff draft of the  
18 proposed rule, as well as the comments around the table and  
19 the end of the workshop.

20 We had very few negative comments about the  
21 workshop process. I remember one specifically from the  
22 Philadelphia workshop, but most people were enthusiastic  
23 about getting an opportunity to provide early comment to us,  
24 seeing that the NRC staff seemed genuinely concerned and  
25 interested in what they had to say, as well as also being



1 able to have a dialogue with the other affected interests,  
2 and to try to make them understand what the concerns were  
3 that were behind the positions they might take on a  
4 particular issue.

5 COMMISSIONER ROGERS: At the risk of slightly  
6 disagreeing with a fellow commissioner, I don't really think  
7 you can separate those. I think that the acceptance of the  
8 rule has a great deal to do with the process that led to the  
9 rule, not just the results of the rule. What you are  
10 willing to accept at the end of a process may be very  
11 different from what you would be willing to accept, or think  
12 you would be willing to accept, if that process had not been  
13 followed.

14 So I think that it's not easy to separate those.  
15 In fact, I suspect that it's not even possible to really  
16 separate the end result, namely the acceptance of a rule by  
17 the same people who participated in the workshops versus how  
18 they would accept that rule if they hadn't participated in  
19 them.

20 COMMISSIONER DE PLANQUE: I wouldn't disagree with  
21 that at all. I was just trying to sort out how we came to  
22 these conclusions, whether these were comments that came  
23 immediately following the workshops, or whether they were  
24 extracted from comments on the draft rule, and whether  
25 indeed they were referring to the entire process or just the

1 workshop process itself. I was having trouble sorting those  
2 out.

3 MR. CAMERON: I think those comments are  
4 representative and consistent of everything that we heard,  
5 beginning with the workshops and all the way through the  
6 comments on the proposed rule. I guess the only other thing  
7 I would add here in relationship to this discussion, and  
8 particularly in regard to Commissioner Roger's point, is  
9 that we do think that the workshop discussions did result in  
10 a more enlightened approach to the rulemaking issues.

11 There are things in the rule, and who knows  
12 whether they'll survive or not, but at least at this point  
13 the workshop process led us to consider the restricted  
14 release of sites, the use of such mechanisms as site-  
15 specific advisory boards in the process. We explored the  
16 feasibility, at least, of a return to background standard of  
17 some type, and I think it is the consensus of the rulemaking  
18 team that was involved that if we would have just done this  
19 the ordinary way that we would not have given much  
20 consideration to concepts like that.

21 Not that those are the only issues that we would  
22 have considered because there is amplification on issues  
23 that we would have considered that we were informed by by  
24 the workshops.

25 COMMISSIONER DE PLANQUE: I think that's indeed

1 the beauty and the purpose of the process, to get input and  
2 ideas that you wouldn't otherwise have come up with.

3 MR. CAMERON: Exactly.

4 COMMISSIONER DE PLANQUE: Clearly a key value to  
5 the process.

6 MR. CAMERON: That's right.

7 I mentioned that we think there's more credibility  
8 for the agency now, and I think that's demonstrated by the  
9 comments we've received, and also the interaction that we're  
10 having with the public on --

11 CHAIRMAN SELIN: I think it was a great rulemaking  
12 process. I think it really fit the situation. I think it's  
13 a different rule from what we had. But if it had 100  
14 millirem in it instead of 15 millirem through exactly the  
15 same process, we would not be getting these results. So I  
16 think you've got to be really quite careful about what you  
17 attribute to the process versus what you attribute the rule  
18 that came from the process.

19 I really supported the process in the beginning.  
20 I support it now. I don't want to be seen as undercutting  
21 it, but you've got to be very careful on a qualitative  
22 evaluation of the process. I think the NRC's credibility  
23 was good, I think all those things are true, but I think  
24 it's as much from the result that came out as the process.

25 If we listened to all these people say they want

1 some place between 3 and 15 millirem and came out with a  
2 rule at 100 millirem, we'd have no credibility at all,  
3 having gone through the same process, or conversely -- in  
4 other words, the results have a big impact.

5 MR. CAMERON: I think the process influenced the  
6 results.

7 CHAIRMAN SELIN: That's different from crediting  
8 the process with -- all I'm saying is these are very broad  
9 statements. There's a kernel of truth in all. They're not  
10 supportable, they're not testable, but as we look ahead from  
11 a very, very successful process, we've got to be very  
12 careful what we document and say what did we learn and how  
13 do we go.

14 I think substantively I certainly agree with  
15 Commissioner Rogers about the success of the process, but  
16 from an evaluation of what we're doing, I think Commissioner  
17 De Planque's questions are really right. What do we know,  
18 when did we know it. What do we know here and how do we  
19 make a basis? I think the written version's got to be much  
20 more tough-minded in evaluation of the process than this  
21 discussion has been.

22 COMMISSIONER DE PLANQUE: I'm not against using  
23 the process where it's usable at all because I think it is a  
24 wonderful mechanism for getting ideas and hearing the range  
25 of opinions, but I do think you have to be very careful in

1 how you characterize the success of the process. This was  
2 not a scientifically devised result here and maybe if we're  
3 to do this again, doing a little more at the end of the  
4 workshop in terms of a more formal evaluation may be  
5 appropriate at that stage.

6 MR. CAMERON: Right, and this was sort of an  
7 exceptional effort in the sense of the backdrop that it came  
8 out of, too, and I agree with what you're saying on that.

9 Could I have the next slide, please?

10 There are several other benefits here. I'll only  
11 note two of them. We do think that the process did result  
12 in better cooperation between NRC and EPA. There's a  
13 continuing dialogue on the rulemaking issues at this point,  
14 and also on the technical underpinnings for the rule. We  
15 think the relationship has been good on this particular  
16 rulemaking.

17 Lastly, this is more quantifiable, I guess, is  
18 that we have established a network of contact for future  
19 interactions and we have used those contacts that we  
20 developed through this rulemaking all over the country for  
21 participation in workshops that succeeded the enhanced  
22 participatory rulemaking workshops.

23 So I think that we began building some  
24 relationships here. Could I have the next slide, please?

25 In terms of cost, this slide displays the cost of

1 the major elements of the enhanced aspect of the rulemaking,  
2 but in order to provide some perspective for the commission  
3 we do have another slide that shows the overall cost for  
4 this rulemaking.

5 As you'll see from this slide, this is an agency-  
6 wide cost estimate for the rulemaking up to this point, 12  
7 FTE's, \$5.5 million, and what I would like to emphasize is  
8 that this includes the development of the models for the  
9 implementation.

10 CHAIRMAN SELIN: The \$5.5 million is in addition  
11 to the cost of the 12 FTE? It's out of pocket. It's  
12 contract and travel cost.

13 MR. CAMERON: That's right. While it's contractor  
14 cost for preparation of the environmental impact statement.

15 CHAIRMAN SELIN: So if we were doing this as a  
16 resource allocation, we would take hundred some thousand  
17 dollars in FTE and give them \$1.5 million to add to the 5.5  
18 out of pocket and say it's a \$7 million rulemaking?

19 MR. CAMERON: Yes.

20 The other thing I'd emphasize here is that this  
21 has been a multi-year effort and does include some extensive  
22 GEIS and modeling work.

23 There are a couple other things I'd like to say  
24 about this just to put it in perspective.

25 CHAIRMAN SELIN: You're going to go back to slide

1 8 at some point, aren't you?

2 MR. CAMERON: Yes. Thank you.

3 CHAIRMAN SELIN: I just want to make sure that we  
4 know the base from which we're talking.

5 MR. CAMERON: As I mentioned before, this was an  
6 ambitious effort. It needed to be because of the history of  
7 the BRC policy and also because of the fundamental nature of  
8 the issue involved. We did seven workshops around the  
9 country. Future enhanced participatory rulemakings could be  
10 more modest than a seven workshop effort.

11 Second, some of the activities that we have  
12 labeled as part of the enhanced process as opposed to just  
13 part of the rulemaking, generally it's arguable that some of  
14 those activities -- for example, preparation of the  
15 rulemaking paper, would be replicated in a normal, non-  
16 enhanced rulemaking. For example, through the preparation  
17 of the rulemaking plan under the commission's new management  
18 directive.

19 Third, the cost for the enhanced aspect of this, I  
20 think as you can see from the previous slide we had a small  
21 percentage of the total cost for any of this. Just going  
22 down through some of the bullets, there were travel costs.  
23 We did pay for some of the participants to attend the  
24 workshop, and this turned out to be lower than our original  
25 estimates for that.

1           We had the facilitation costs, and the  
2 facilitator's crew did all the logistics at the various  
3 locations in terms of audiovisual, rooms, communication with  
4 the potential participants, things like that. All this  
5 attendance at workshop, preparing the rulemaking issues  
6 paper, the convening time, working on the agenda used up 2.5  
7 FTEs.

8           We had staff travel to the workshop. There was a  
9 comment analysis done of the workshop comments and the  
10 public comments that were submitted in response to the  
11 rulemaking issues paper, which was available through us but  
12 it was noticed in the Federal Register. That was  
13 approximately \$290,000 to do that.

14           CHAIRMAN SELIN: That was all contract work? No  
15 staff time spent on that analysis?

16           MR. CAMERON: Bill, you may want to comment on  
17 that but the oversight of the contractor would be staff time  
18 spent on it, and also we didn't defer to the contractor's  
19 analysis in terms of conclusions, if that's the point.

20           CHAIRMAN SELIN: To understand the costs, though,  
21 look at this.

22           MR. CAMERON: That was all contract.

23           It was a one year workshop planning and  
24 implementation process. We began in July 1992 with the  
25 beginning of the workshop process and we finished in May of



1 1993 and then August of '94 we had the proposed rule out.  
2 So it did add some time to the rulemaking process, assuming  
3 this commission gets it right the first time. Otherwise  
4 this all adds up to about 15 percent increase in cost  
5 compared to the standard.

6 I don't think there's anybody that feels the  
7 anecdotal -- that the increase in cost was a lot more than  
8 15 percent. I wondered if you might consider, in doing the  
9 evaluation, to actually somewhat rigorously lay out the  
10 scenario if we hadn't done this, because this was a very  
11 complex rulemaking. You can't compare it with a much more  
12 straightforward rulemaking.

13 Maybe we might have had an extra comment period  
14 afterward, including Commissioner Rogers' comments, and if  
15 we didn't get it right the first time we'd have to recycle  
16 it. I think it would be very helpful -- I don't doubt that  
17 the cost accounting is right but I do have some question  
18 about how much is attributed to the participatory as opposed  
19 to what it would have been otherwise and the only way to  
20 tell that is to go through a pro forma contrast, a scenario  
21 that got a more or less linear arrival at a rule, and then  
22 an assumption that, oops, we were challenged and had to  
23 recycle it, to get some feeling for how much the incremental  
24 cost was.

25 This is really not a question about whether this

1 rule cost this much and was it worth it, but to understand  
2 lessons learned so that when one considers a similar  
3 rulemaking in the future, we do have a pretty good rule of  
4 thumb of whether it's 15 percent or 25 percent or 50 percent  
5 incremental to go through such a process, rather than just  
6 the normal notice and comment.

7 COMMISSIONER DE PLANQUE: Perhaps another way to  
8 look at it would be what would have happened had you put out  
9 an ANPR and let public comments come in, as opposed to the  
10 workshops and then the draft rule and the public comments.

11 MR. CAMERON: I don't have a strong feeling about  
12 what the alternative is. I just think one ought to be  
13 realistic. We've been using a lot more workshops than we  
14 did in the past, something we had done three years ago was  
15 probably underestimating.

16 CHAIRMAN SEILN: I was just going to observe, I  
17 don't think it should be compared to the BRC effort because  
18 --

19 CHAIRMAN SELIN: As long as I'm here, I don't want  
20 anything compared to that. Let me make that clear.

21 [Laughter.]

22 CHAIRMAN SELIN: You really have to show some art  
23 in figuring out what the alternative was because it was a  
24 complicated rulemaking. I assume we would only be looking  
25 at these in places where questions of science are not the

1     only questions to be addressed.

2                 There are a lot of parties and there are  
3     complicated pieces. How you do that, Commissioner de  
4     Planque has good suggestions. There may be some other ways  
5     to say what do you think we would have done if we hadn't  
6     done it this way, but I think that's an important question  
7     to take a look at.

8                 MR. MORRIS: One perspective to try to remember as  
9     you look at these numbers is that this would have been an  
10    expensive rule under any circumstances because the basic  
11    technical challenges that are presented from day one, and we  
12    went back several years and have been working on it for a  
13    number of years to develop the technical modeling, that's  
14    the single most expensive part, this model to help you  
15    transfer the residual contamination levels into a dose.

16                Our estimates that were given before, that the  
17    work absent the enhanced participation would have been about  
18    a \$5 million effort and about 10 FTEs. So the increment  
19    that Chip has put on this --

20                CHAIRMAN SELIN: You think you've done this  
21    analysis, basically? Analyzed the alternative?

22                MR. MORRIS: I want to clarify that that was just  
23    for the technical work that would have been needed without  
24    an ANPR or enhanced participation or anything else, if you  
25    just wanted to do this job without these enhancements. I

1 believe what you're saying is, if we went through and  
2 analyzed an ANPR or possibly a follow-on proposal for  
3 another round of public comments, what would the balance be.  
4 That would have been offset against --

5 CHAIRMAN SELIN: Does the technical work have no  
6 salvage value? Is it a one-shot technical work that was  
7 specific to this rule? If we weren't doing this rule, would  
8 we never have done this technical work?

9 MR. MORRIS: I think I would put it in this  
10 perspective. We had before us when we decided that we  
11 wanted to go into the rulemaking literally thousands of  
12 sites to decommission, so one of the objectives was to come  
13 up with a way to get that done efficiently and if we had had  
14 to do these on a case-by-case basis, the time probably would  
15 have come that we would have had to develop a better  
16 technical tool.

17 CHAIRMAN SELIN: I really want you to think about  
18 this really hard. I'm not prepared to accept without some  
19 questioning that \$5 million of technical work was going to  
20 be involved in doing this rule regardless, and therefore the  
21 increment is only 15 percent. I mean, that's some basic  
22 research that's relevant to a lot of stuff that we do and  
23 I'd like you to think about it really hard and extrapolate.

24 What you've convinced me is I didn't ask the  
25 question right. The extrapolation is what's complicated.

1 In a situation where we have both technical work and  
2 rulemaking to be done, if you will, and the technical work  
3 in support of rulemaking is a big deal, so how much more  
4 does it cost to do the rulemaking in a participatory  
5 fashion.

6 But it also is, how much would it have cost from a  
7 paperwork and analysis point of view if we had the technical  
8 work in hand because it's not always the case we're going to  
9 have to do \$5 million worth of technical work on a new rule  
10 when we're trying to figure out do we do a participatory. I  
11 mean, it's \$1.5 million out of pocket for the pages 8 and 9  
12 and I don't know what to compare that to. I really would  
13 like to know what to compare that to.

14 MR. TAYLOR: We'll come back.

15 COMMISSIONER DE PLANQUE: In a way that's why an  
16 ANPR comparison might be useful because what you're really  
17 looking for here is what is the value added of this process,  
18 and not just in this particular situation but how can you  
19 extract characteristics or factors that tell you when you  
20 should apply this process again?

21 What are the elements that make it successful to a  
22 particular type of rulemaking and worth the investment. I  
23 think that's one of the things I would be looking for.

24 MR. CAMERON: And one of the difficulties there is  
25 trying to speculate in terms of some of the benefits. In

1 other words, if we didn't do the workshops, would we have  
2 come out with 100 millirem, and would that have led someone  
3 to litigate --

4 COMMISSIONER DE PLANQUE: You don't really believe  
5 that, do you, Mr. Cameron?

6 MR. CAMERON: I just listen to the technical  
7 staff, Commissioner.

8 CHAIRMAN SELIN: It's a complicated question and  
9 we're not trying to hash out how to do. What we're looking  
10 for is not the best way to dissect this rulemaking but what  
11 kind of generic lessons you can use for a class of  
12 comparable rulemakings in the sense that rulemakings where  
13 it's not just the opinion of our engineers and somebody  
14 else's engineers but is by the local participation there's a  
15 lot of interest.

16 We're not cynical. We're not looking at this as  
17 just a way to push a rule over on some activist opposition.  
18 It's a way to get the opinion of a lot of people in  
19 situations where that opinion is clearly very relevant.  
20 These were tradeoffs between more complete clean-ups and  
21 longer times that a site would have to be off-limits, and we  
22 are trying to get a mechanism so that the individuals who  
23 would be involved would in fact have a say as to how the  
24 tradeoff might go.

25 So in situations like that we need some feeling,

1 some kind of classification or some feeling what the  
2 incremental costs might be.

3 MR. CAMERON: Okay. Why don't we go to the  
4 lessons learned slide on page 10. This is a collection of  
5 various things, big and small, that we think that we did  
6 learn from the process.

7 One is the value of using a facilitator. We found  
8 conflict resolution skills important in this process, and it  
9 also allowed the staff to concentrate on the issues rather  
10 than on some of the dynamics that were political dynamics  
11 that were going on in the workshop.

12 We think that we need a more effective procurement  
13 mechanism for obtaining facilitation services. Although we  
14 are appreciative of the EPA's good offices to allow us to  
15 use their facilitation contract, it would have been much  
16 more efficient if we were in control of the process.

17 We do have a paper that's being drafted at this  
18 point that will discuss various procurement options,  
19 facilitation.

20 CHAIRMAN SELIN: In light of the flexibility  
21 available to federal agencies that was not available when we  
22 did this procurement. I mean, we're doing a procurement  
23 workshop. There are a whole lot of things going on that are  
24 supposed to make it easier for us to do procurements in  
25 general.

1           The paper will assume some improvements out of  
2 these.

3           MR. CAMERON: Some improvement out of that, but  
4 there's also some improvements that will result from the  
5 acquisition streamlining act that was passed last year that  
6 may help in the future once the regulations are in place for  
7 those.

8           There's various mechanisms, though, that we might  
9 be able to use in the meantime until those are developed.

10          COMMISSIONER DE PLANQUE: I'm sorry, I'm missing  
11 something. What was the reason why we couldn't have used  
12 our own procurement process?

13          MR. CAMERON: Well, there wasn't time to do a  
14 procurement of this magnitude without going through the  
15 competitive bid process for a contractor, which would have  
16 added at least a year to the process.

17          COMMISSIONER DE PLANQUE: And the reason it was  
18 more efficient by using EPA's was?

19          MR. CAMERON: Was they have an umbrella contract  
20 for facilitation services. In other words, that umbrella  
21 contract was let through the competitive bid process, but  
22 then once it was in place, they have a list of providers of  
23 facilitation services that they just turn to, so we did an  
24 interagency agreement with them that allowed us to tap into  
25 it, but all of the disbursement of money was done through



1 the EPA process and that caused us some difficulty and the  
2 contractor some difficulty.

3 MR. TAYLOR: But it worked.

4 MR. CAMERON: But it worked.

5 We believe that useful discussions can occur  
6 without seeking or achieving consensus, that you don't need  
7 a consensus process to identify the issues or to identify  
8 potential problems, or to find out what the interests are  
9 that underlay the various concerns of the parties or where  
10 the areas of agreement and disagreement are.

11 The issues paper was particularly valuable in  
12 terms of focusing discussion, and also providing some  
13 educational value to the participants in terms of what the  
14 overall context for the rulemaking problem was.

15 We need to have staff involved that are broad-  
16 minded and flexible on these issues in terms of the  
17 willingness to listen, professional, courteous, a  
18 willingness to try to understand people's positions, and to  
19 explore what the basis for those positions are.

20 We think that the process was very valuable in  
21 terms of the cooperative effort with the EPA. We have a  
22 good working relationship with them on this rule, and  
23 despite the fact that once again we'll have to see whether  
24 the good process, the good relationship results in something  
25 that's going to be substantively acceptable to us.

1           There was a value to having a special public  
2 meeting the night before to give people who couldn't attend  
3 the daytime workshop an opportunity to hear about the  
4 issues. These sessions were casual. We were in a circle  
5 sort of format and we had some good face-to-face discussions  
6 with the public in these night-before sessions.

7           One of the biggest criticisms of the whole effort  
8 that we faced throughout the process was that we needed to  
9 give more advance notice to the workshops. It's one of  
10 these typical things where you're sort of run out of town on  
11 a rail if you said, well, it was in the Federal Register.  
12 It did not wash with people.

13           MR. ROGERS: Rightly so.

14           MR. CAMERON: Very true. So what we tried to do  
15 was to use the newspapers, but I think in any of these  
16 processes we need to see if we can get on the public  
17 educational TV channel, to have notices posted at libraries  
18 to try to put out the word as broadly as possible and as  
19 well in advance as possible.

20           We did try to avoid artificial barriers to  
21 communication in terms of locations, hours, things like  
22 that, although there's a lot of things that could be done  
23 there, too, in terms of evening hours for the meetings.  
24 Some places are more politically acceptable to have  
25 meetings, as we found out, than other places.

1           We could have incorporated the EIS scoping  
2 meetings with the workshops. We did four additional scoping  
3 meetings that in retrospect we probably didn't need to do.  
4 We could have called the workshops the scoping meetings  
5 because indeed they did look at all of the issues that you  
6 would take into account into an environmental impact  
7 statement.

8           MR. WEBER: But if I could add, we did not, you  
9 may recall, notice that we were going to use the workshops  
10 for that purpose and that's the reason why we had to go back  
11 and do separate scoping meetings.

12           One of the concerns the commissioners had at the  
13 time was, look at in the future if you can merge the two  
14 functions together. I think our sense is you can do that,  
15 but you've got to provide up front notification that that's  
16 your intent.

17           MR. CAMERON: We got some comments on that issue,  
18 saying, don't try to tell us that these are going to be the  
19 scoping meetings now.

20           The number and location of workshops is dependent  
21 on the nature of the rulemaking issue. If we would have  
22 ever proceeded, for example, to the sub-part I workshops,  
23 they always do that when you mention sub-part I, I guess.  
24 If we would have proceeded to those workshops, we were  
25 looking at a two-day workshop. One workshop in Washington,

1 D.C. with the same group of participants, obviously.

2 We believe that there's a need to establish  
3 criteria for funding for participant travel to ensure that  
4 the proper people get the travel and that we have the budget  
5 for it and there's a need for it. We do have some draft  
6 criteria in preparation now that we are going to provide Mr.  
7 Taylor at some point on this issue.

8 One of the other sort of constants that we got  
9 throughout the workshops was the fact that we needed to more  
10 broadly consider Native American interests in selecting  
11 participants for the workshop. We had used national Native  
12 American groups such as the National Congress of American  
13 Indians, to coordinate participation for us. We got a lot  
14 of comments about you should have the individual tribes  
15 there as much as possible.

16 Also, just like there are citizen groups that we  
17 know of, there are Native American citizen groups that have  
18 a different viewpoint in a lot of cases from tribal  
19 government. Native Americans for Clean Environment is an  
20 example of one of those Native American citizen groups.

21 We found out that we should be more disciplined in  
22 limiting the total number of participants at any one  
23 session, although you have to have some flexibility there in  
24 terms of when you invite people and who you invite.  
25 Generally speaking you probably could cut down on the number

1 of participants to have a more constructive, productive  
2 dialogue on the issues. I think the site-specific advisory  
3 board workshop that we just had emphasized that particular  
4 point.

5 We also found that there's a lot of confusion  
6 about NRC's mission and legal authority. A lot of people in  
7 the public thought that we had responsibility for all the  
8 DOE sites and they couldn't understand why our statutory  
9 authority didn't put us in charge of deciding the economic  
10 feasibility of using nuclear power rather than just ensuring  
11 that it was safe to use.

12 There was a limited understanding of the  
13 technological and scientific fundamentals for nuclear  
14 regulation, and that there was a need for some type of  
15 advanced educational work on this level. The rulemaking  
16 issues paper filled some of that gap but not really  
17 adequately.

18 One of the things that we have attempted to do on  
19 a site-specific case, the decommissioning of what's called  
20 the shallow land disposal area in Parks Township,  
21 Pennsylvania, is we did do a session. Mike Weber prepared  
22 it and did it on fundamentals of radiation protection.  
23 Basic, but still much more than people had heard before  
24 that. That was received very well.

25 COMMISSIONER DE PLANQUE: This is not an uncommon

1 problem. We heard about it just this morning in connection  
2 with the National Academy briefing on the medical  
3 regulation. Do you have any further ideas as to how this  
4 problem could be approached?

5 MR. CAMERON: No, we really haven't explored  
6 anything other than trying to build that education component  
7 into the site-specific decommissioning processes. We  
8 haven't talked with, for example, Bill Beecher and his  
9 people about how we might try to do that.

10 Then at the same time, not running afoul of being  
11 considered promotional, or at least that's one caution that  
12 is always raised when we think about doing these educational  
13 programs.

14 COMMISSIONER DE PLANQUE: It certainly seems to be  
15 a serious problem out there on all fronts, however.

16 MR. CAMERON: It is, and the citizen groups that  
17 were at the table talked to us time and time again about why  
18 don't we have some advanced sessions to really learn about  
19 this. So we did talk about it generally but we really  
20 haven't developed any more specific proposals on it.

21 COMMISSIONER DE PLANQUE: And certainly you can  
22 get more beneficial input from these groups if they do have  
23 a better understanding of the basics before coming to the  
24 table.

25 MR. CAMERON: Exactly. There were several times

1 during the workshops where someone was making an impassioned  
2 plea about something, only to find out that your frying pan  
3 might have radiation in anyway and was sort of crestfallen  
4 about the whole business. So it would be valuable.

5 We found that the roundtable format was very  
6 useful and we thought it could also be used in addressing  
7 site-specific issues, and I just mention the Parks Township  
8 facility. One of the things that we implemented at that  
9 facility, so to speak, is the use of an information  
10 coordinating group where we would get the important leaders  
11 from the various affected interests in the community around  
12 the table to focus the discussion on the issues.

13 Since we've done that, and Mike could confirm  
14 this, I think we've had a much more constructive dialogue  
15 with the people in that community. That constructive  
16 dialogue, I think, has led to a lot more confidence in what  
17 the NRC staff was doing there.

18 The last bullet here is on we think that this  
19 approach could be useful in addressing other generic and  
20 complicated issues, and I realize that we've heard from the  
21 commission about some cost benefit analysis that we need to  
22 do in that regard. Generally I think cases where it's  
23 important to get early and active discussion of the issues,  
24 this technique is potentially useful. It may be because  
25 it's a fundamental area of regulation. It may be because

1 it's a new are of regulation and you really don't have a  
2 handle on what all the issues are.

3 It could be an area where the issues are complex,  
4 or as Dr. Selin pointed out, where there's mixed technical  
5 and policy issues involved, or it could be areas where  
6 there's controversy. I don't think there's any single  
7 litmus test here in terms of where it's valuable to use it.  
8 You have to take a look at all the factors to see whether  
9 it's really worthwhile, for example, to sit down and have  
10 the same people telling you the same things again, for  
11 example, on a particular issue.

12 That concludes this portion of the presentation,  
13 and I'm going to ask Nick Costanzi to take us through the  
14 rest of the slides on the electronic bulletin board.

15 MR. COSTANZI: Thank you, Jim.

16 As the commission is aware, one of the techniques  
17 that we used to further our access to participation in the  
18 rulemaking by the public was the use of an electronic  
19 bulletin board for this rulemaking. This bulletin board was  
20 established about two years ago in April of '93, and at that  
21 time various supporting documents were posted on the  
22 bulletin board and people were asked to call in and view  
23 them, download them, comment on them.

24 In that two year period on this rulemaking we've  
25 received about 6,600 calls made by about 2,500 callers.



1 That averages about 10 a day but actually sometimes calls  
2 were much more frequent than that. Individuals who have  
3 contacted us indirectly or directly by phone or left  
4 messages on the bulletin board indicated that they on  
5 occasion had trouble getting in, which means that for a  
6 rulemaking like this, a single phone line, which was all we  
7 had at the time, is probably not adequate. I'll talk a bit  
8 more about that in a minute.

9 The decommissioning rulemaking, the whole process  
10 from beginning to end, we've received some 300 comments from  
11 some 300 commenters. About 100 of those were on the  
12 proposed rule but of all those comments received, only about  
13 18 were actually received electronically on the bulletin  
14 board. About 10 pertained to the rule.

15 What we've concluded from this is that although  
16 people obviously are using the bulletin board, they're  
17 looking at what's there, they're downloading it into their  
18 own computer systems. They seem to be somewhat reluctant to  
19 give us that kind of feedback. They will still write in  
20 letters to SECY but they don't seem to want to upload  
21 things.

22 We suspect that people who are using this are just  
23 not that comfortable with the medium as yet. We think this  
24 will change, but that's where we are today.

25 We have found, as one would expect, that the usage

1 is heaviest toward the end of a comment period. This is  
2 confirmed by the very limited experience we've had to date  
3 on the bulletin board we've established on Fed World, which  
4 I'll talk about in a moment.

5 COMMISSIONER DE PLANQUE: If someone does send in  
6 comments electronically, do they get any acknowledgement of  
7 receipt of those comments?

8 MR. COSTANZI: Yes, they do. The same as if they  
9 sent them in by mail. And all comments that were sent in by  
10 mail were scanned and posted on the bulletin board so that  
11 individuals looking at the bulletin board would be able to  
12 see those comments as well.

13 This essentially was kind of an electric PDR.  
14 That was our intent.

15 The callers that come in on the bulletin board  
16 essentially are characteristic of the people that write in  
17 comments on rules and the whole spectrum from private  
18 citizens and people associated with the industry, states,  
19 environmental groups.

20 One of the things that we were pleased at is that  
21 the callers on the bulletin board also looked at comments  
22 that others made, so they made use of that facility.

23 In conclusion, the number of people who have used  
24 the bulletin board have led us to conclude that this is  
25 effective. We do think that people are using it. They do

1 see what's going on. It's another good way of communicating  
2 with the public.

3 Where are we today? Well, in November of last  
4 year we established a rulemaking bulletin board on Fed  
5 World. Fed World is a service operated by the National  
6 Technical Information Service, in the Department of  
7 Commerce, which contains a gateway into a vast store of  
8 federal information. It has everything in it from weather  
9 maps to job listings.

10 In particular what we're concerned with is that it  
11 has an area in which the NRC can post various things, and  
12 which is public to view and comment, in particular rules.  
13 Since November we have had two rulemakings posted on the  
14 bulletin board. The slide says four and it was in  
15 anticipation of getting two more on there.

16 The files and all the material are there but Fed  
17 World has yet to unlock the door for the public to come in.  
18 We expect that to happen this week.

19 The rulemakings that we've had on there, one has  
20 been a burden relief rulemaking and had to do with reporting  
21 results, contained leak-free testing by power plants. One  
22 rulemaking had to do with retention of records pertaining to  
23 decommissioning, and dose records.

24 The two rulemakings which will be shortly, one is  
25 the proposed rule for changing the site criteria for power

1 plants. This has to do with the new seismic criteria for  
2 earthquake design, and the other rules, performance-based  
3 rulemaking for containment testing.

4 As I mentioned comments that are received, either  
5 electronically or by mail are loaded onto the bulletin board  
6 for the public to view. On the federal system, to date  
7 we've really had only one comment that was electronically  
8 uploaded by a caller. That was by the state of Colorado, I  
9 might add.

10 However, the public has viewed that comment as  
11 well as other comments that were received by mail that we've  
12 posted on the bulletin board.

13 We've also provided a special area for the states  
14 and a letter to the agreement states providing them  
15 instructions on how to access that area and passwords, so  
16 that, for example, the state of Texas in providing comment,  
17 the comment would be attributable only to the state of Texas  
18 and someone else couldn't say this is from the state of  
19 Texas when it's not. That has been established and will be  
20 operational as soon as those letters are received and  
21 agreement states begin using them.

22 May I have the next slide, please? That's where  
23 we are today. Where are we going? We're taking -- and  
24 since this is very new to us, we're taking things very  
25 slowly and very small steps, but we think that each step is

1 significant in terms of the degree to which the public will  
2 have access to what we do and how we do our jobs.

3 The next step is to put a rule on the bulletin  
4 board which will facilitate a dialogue amongst people who  
5 wish to comment. A particular rule is being prepared, a  
6 draft rulemaking plan is being prepared in accordance with  
7 the new management directive 6.3. The rule is the continued  
8 NRC regulatory authority under areas of exclusive federal  
9 jurisdiction.

10 Briefly what this is is that right now the  
11 regulations are silent as to what responsibilities and  
12 requirements are imposed on agreement states. Licensees  
13 that are operating on, for example, are the Department of  
14 Defense installations or VA hospitals or the like.

15 This rule was selected because it involves the  
16 states or agreement state licensees. Also because the rule  
17 is not really a critical rule. We are functioning here,  
18 it's not a major safety issue, so if something goes wrong,  
19 it's not going to be the end of the world. We'll still be  
20 able to learn whatever needs to be learned from this kind of  
21 a process.

22 What we plan to do with this rule is when the  
23 rulemaking plan, which will contain information about what  
24 we're trying to achieve, why we're doing this, what we view  
25 as the cost benefits of the rulemaking action, is placed on

1 the bulletin board, we will open a dialogue area using the  
2 message area of Fed World, inviting the public to comment on  
3 those issues, and to not only comment themselves on what  
4 they think about the material that we've posted, but also  
5 what others have commented.

6 We expect this to be open to callers for about a  
7 period of four weeks or so.

8 The project manager for this rulemaking will act  
9 as a facilitator and the questions about materials or  
10 availability of materials, technical issues will be  
11 answered, but the project manager will really not engage in  
12 the dialogue. The dialogue will be among the participants,  
13 among the callers who come in to the bulletin board.

14 At the close of the four week dialogue period, the  
15 material on the bulletin board will be removed and be  
16 discarded because we will essentially use that information  
17 in the preparation of the proposed rulemaking, and we will  
18 indicate when the proposed rule gets posted on the bulletin  
19 board what came out of that dialogue and how it was used.

20 MR. TAYLOR: That concludes our presentation.

21 CHAIRMAN SELIN: I gather that the conclusion  
22 we're supposed to draw is that to participate in rulemaking,  
23 we need a well-expanded bulletin board, but the bulletin  
24 board would be of value in many other rulemakings. So  
25 there's an overlap but they're clearly not identical issues,

1 right?

2 MR. COSTANZI: We are trying to use the bulletin  
3 board routinely now. The reason I say trying is because we  
4 still have some start-up problems, but as a routine matter  
5 now the boilerplate is going into the Federal Register  
6 notice that indicates that the rulemaking is on the bulletin  
7 board.

8 We are sending rules down to Fed World to have  
9 them posted on the bulletin board.

10 CHAIRMAN SELIN: So this is a highly desirable way  
11 to facilitate all of our rules, basically without exception.

12 MR. COSTANZI: That is correct, yes.

13 CHAIRMAN SELIN: Commissioner Rogers?

14 COMMISSIONER ROGERS: Yes. I wonder if you have  
15 heard of any experience aside from ours in using this  
16 participatory process in rulemaking, say from EPA or any  
17 other organizations that have tried to -- have adopted this  
18 approach for some purposes. Do you have any feedback from  
19 other sources?

20 MR. CAMERON: EPA primarily uses negotiated  
21 rulemaking where they try to achieve consensus and we've had  
22 some difficulty getting the parties to the table on some of  
23 those efforts.

24 COMMISSIONER ROGERS: Has anybody not tried to  
25 achieve consensus but simply to try to do what we've tried

1 to do here?

2 MR. CAMERON: I believe EPA has had what they call  
3 policy dialogues that are similar to this, but as far as I  
4 know, at least from talking to other people around town,  
5 we're the only agency that has really labeled a process as  
6 an enhanced participatory process with these types of  
7 objectives, although obviously some agencies are doing ANPRs  
8 and having workshops associated with those also, but perhaps  
9 not done as systematically as we tried to do it.

10 COMMISSIONER ROGERS: Well, I think a number of  
11 questions have been raised today that I think are very good  
12 questions. I think we have to keep in mind this was the  
13 first of its kind. We hadn't tried anything like this  
14 before and it's obviously the first time you do something is  
15 not going to be the best way to do it. It does look to me  
16 as if in this particular case it worked reasonably well.

17 I feel that there are a number of non-  
18 quantifiable aspects of benefits of this process that I  
19 think are extremely important. I think that our ability to  
20 deal with public interest groups on sensitive topics has  
21 been, I think, a very rocky road at best in the past.

22 I think when we looked at the subject whose name  
23 we cannot mention in these hallowed halls, we found that we  
24 had absolutely no bridges with the opponents. None  
25 whatsoever. We couldn't get them to even come and talk to



1 us at all, informally. No dialogue was possible.

2 It was my feeling at that time when that became  
3 obvious that we just had to do something about that and this  
4 was our first step. My impression is that it has, if not  
5 built bridges, at least thrown some ropes across the canyon  
6 anyhow that you go over hand-over-hand.

7 I think there are intangibles to what we have done  
8 here that are extremely important but I also recognize  
9 concerns about costs, and whether one simply replicates that  
10 without a great deal of thought in other matters is  
11 something I think that's subject to real question.

12 However, I have to say that I hope that the  
13 process itself somehow or other can be evaluated not only on  
14 its cost, not only its incremental cost but what we believe  
15 to be very substantial benefits that are very difficult to  
16 quantify. We do that all the time in making judgments in  
17 other matters, and everything -- I'm a great one for  
18 quantifying.

19 I know that when you can put reliable numbers on  
20 decisions, it's a very powerful adjunct, but there are other  
21 situations where numbers just don't -- you can't use them.  
22 They're not reliable and they don't give you the right  
23 result and you have to make some judgments.

24 I'm a little concerned that with the climate of  
25 the times, which is really very much concerned with cost,

1 dollar cost and FTE costs, which are important, that we do  
2 not lose sight of non-quantifiable benefits of an approach  
3 such that we've taken here that have to be evaluated on a  
4 cost basis. I'm not denying that that shouldn't be done,  
5 but it's not the only basis.

6 It just seems to me that we have to be a bit  
7 careful here, that this is, I think, an experiment. We've  
8 learned a great deal from it. We wouldn't do it exactly the  
9 same way again and we probably wouldn't use exactly the same  
10 technique in another situation. But I think it has been  
11 very valuable to establishing new ties, new dialogue.

12 I do believe that it has enhanced NRC's  
13 credibility. I've been at one workshop, not all of them,  
14 and I just tried to be as invisible as possible and I heard  
15 some remarkable things being said by the people who  
16 participated in that workshop. I could see a dynamic. The  
17 position the people took at the start of the day was very  
18 different from positions they took at the end of the day.

19 So it was a learning process for them and it was a  
20 learning process among themselves. It wasn't that we were  
21 the teachers. They were teaching each other what the  
22 realities of life were that had to be dealt with some of  
23 these difficult questions.

24 How do you put a cost on that? How do you  
25 evaluate a cost benefit of that? It's extremely important

1 and yet I don't know how to put a dollar value on it. So  
2 I'm just making the argument that, yes, we must do as good a  
3 job as we possibly can in looking at the incremental costs  
4 of this approach versus another approach and be prepared to  
5 look at that in an unemotional way.

6 I also think that that has to be supplemented by  
7 an analysis of what other intangible benefits that we have  
8 some reasonable basis to believe can be achieved through the  
9 use of a process something like this. Not necessarily  
10 identical.

11 I think the electronic approach here is very  
12 interesting. I'm a bit skeptical of it achieving the same  
13 kinds of things. I saw the fact that you were not getting  
14 comments uploaded, many, many people reading it. So it has  
15 a value but this face-to-face contact that took place in  
16 these sessions I don't think can be achieved with the  
17 present technology. Maybe a teleconferencing type of  
18 technology, where there is a full dialogue with looking at  
19 the other individuals and so on possible, but not just  
20 ordinary electronic communication as we do it today. That's  
21 too sterile, I think, for achieving some of the benefits  
22 that I could see developing out of this process.

23 So all I'm saying is that I think we must be very  
24 careful about not expecting it or measuring it entirely on  
25 quantitative basis. Yes, that must be done, but there are

1 some very important benefits otherwise that in a sense may  
2 be lasting. You achieved it once and you really have to do  
3 something bad to destroy it.

4 So it's a building process. It's building  
5 bridges. I think it is consistent with the approach that  
6 the White House has asked us all to try to follow in being  
7 more open and getting out of Washington. The electronic  
8 communication doesn't get you out of Washington. That's  
9 very much Washington.

10 I think there are many, many things here that are  
11 extremely interesting but not quantifiable. So I just ask  
12 us all to keep that in mind as we proceed along in the  
13 future on how we consider using this process again, or in  
14 another situation.

15 COMMISSIONER DE PLANQUE: A couple of comments.  
16 First, a quick question. The commenters, you said there  
17 were about 300 comments. Was there any check to see if  
18 those individuals had indeed downloaded the information from  
19 the electronic bulletin board? Do we have any way of  
20 knowing that?

21 MR. COSTANZI: I don't know who in particular  
22 downloaded anything, but given the number of downloads, I'd  
23 be very surprised. In fact, we do know that in one case  
24 when we had a telephone call from a commenter, this wasn't  
25 on the decommissioning rule but on the record retention

1 rule, they did call in and comment. They had downloaded a  
2 comment and wanted some more information.

3 COMMISSIONER DE PLANQUE: All right. Back to the  
4 workshops. We could have a long and interesting discussion  
5 about how you evaluate these, I'm sure. I would agree with  
6 Commissioner Rogers that some of the benefits are indeed  
7 very difficult to quantify. But on the other hand, social  
8 scientists have been at work evaluating these things for  
9 many generations.

10 In retrospect, it would have been nice to maybe  
11 have an exit poll that the facilitator took, not only of  
12 those at the table, but those in the back of the room,  
13 because I think I understood you to say the reaction from  
14 those who were just watching might have been a little bit  
15 different from those who were indeed around the table.

16 That leads me into another word of caution. I  
17 think we have to be careful about maintaining a set list of  
18 participants that we keep inviting back to these things.  
19 After a while the group can get a little incestuous and you  
20 don't get the fresh ideas or the range of opinions that  
21 you're really seeking.

22 I guess if it were to be used again, I think the  
23 idea of a truly neutral issues paper with a clean slate  
24 coming in is important, not to show a bias one way or the  
25 other that either intimidates or directs the direction of

1 the conversation.

2 In the line of caution, one of the things that  
3 concerns me is that we maintain the view of the workshop in  
4 its proper perspective. I truly see it as a very useful  
5 tool for getting information up front, for getting the range  
6 of opinions, for getting advice, for getting ideas that we  
7 wouldn't have thought of ourselves.

8 However, the participants at the workshop are  
9 selected. They are not self-selected to any degree. It  
10 doesn't truly represent the range of comments that could be  
11 brought to the table. I think we have to put it in its  
12 place with respect to the comments that later come in on a  
13 draft proposed rule. I don't think we should give any less  
14 weight to the public comments that do come in on a proposed  
15 rule because we've had the workshop.

16 I see it as two entirely different functions, and  
17 I would just set up that cautionary flag that we can't  
18 dismiss readily comments because there may have been a  
19 different view in the workshop.

20 In the public comments, they are all self-  
21 selected commenters. Nobody is excluded, and I think we  
22 have to remember that as we go through the process. But  
23 again, I think it was a wonderful effort. Obviously there  
24 were some clear successes there and now it's time to try to  
25 evaluate when and how we might use that again.

1                   CHAIRMAN SELIN: I have no further comments.  
2       Thank you very much. It was a very good effort. I'd like  
3       to see an equally tough-minded evaluation as we have a  
4       tough-minded design.

5                   [Whereupon, at 3:20 p.m., the above-entitled  
6       meeting was concluded.]

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CERTIFICATE

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

TITLE OF MEETING: BRIEFING ON LESSONS LEARNED FROM  
ENHANCED PARTICIPATORY RULEMAKINGS -  
PUBLIC MEETING

PLACE OF MEETING: Rockville, Maryland

DATE OF MEETING: Wednesday, March 29, 1995

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

Transcriber: Margaret Herbers

Reporter: Mark Mahoney





# **ENHANCED PARTICIPATORY RULEMAKING LESSONS LEARNED**

**Briefing for the Commission**

**March 29, 1995**

**Francis X. Cameron  
Office of the General Counsel**

# OVERVIEW

- **Description of the process.**
- **Benefits.**
- **Costs.**
- **Lessons-learned.**
- **Electronic Rulemaking Project.**

# **HISTORY AND OBJECTIVES**

- **Grew out of Commission efforts to convene a consensus process on the BRC Policy.**
- **Objectives:**
  - **Early comment on the rulemaking issues.**
  - **Active participation and joint problem-solving by affected interests.**
  - **Coordination with EPA positions.**
- **Focussed on the radiological criteria for decommissioning.**

## **DESCRIPTION OF THE PROCESS**

- **Seven regional workshops facilitated by neutral contractor.**
- **Broad spectrum of affected interests represented.**
- **Participants were knowledgeable and experienced.**
- **Neutral "Rulemaking Issues Paper" used to focus discussion, along with case studies and international summary.**
- **EPA was a full participant with NRC in the workshops (EPA Office of Radiation and Indoor Air; EPA Regional Staff).**

## **Continued - DESCRIPTION OF THE PROCESS**

- **Open to the public and time reserved for public comment.**
- **NRC consideration of workshop comments was thoroughly documented.**
- **Electronic Bulletin Board used to provide enhanced access to documents and receive public comments.**

# **BENEFITS**

- **Workshop process was viewed very positively by the participants.**
- **Resulted in a more thorough NRC evaluation of the Rulemaking issues.**
- **Resulted in a more enlightened approach to the Rulemaking issues.**
- **Increased public acceptance of the rule.**
- **Increased NRC credibility.**

## **Continued - BENEFITS**

- **Opportunity to hear directly from affected interests at the local level.**
- **Promoted the sharing of information and concerns among participants on an equal basis.**
- **Began a dialogue between opposing viewpoints.**
- **Facilitated cooperation and consistency between NRC and EPA.**
- **Established a valuable network of contacts for future NRC interactions.**

## **COSTS - ORIGINAL SEVEN WORKSHOPS**

- **Participant travel - \$35,000.**
- **Facilitation - \$150,000.**
- **Logistical support (meeting rooms, A-V, communications) - \$20,000.**
- **Additional staff time - 2.5 FTE.**
- **Additional staff travel - \$30,000.**
- **Workshop comment analysis, evaluation and summary - \$290,000.**
- **One year workshop planning and implementation process.**



## **COSTS - WORKSHOP ON SITE SPECIFIC ADVISORY BOARDS**

- **One staff FTE.**
- **\$10,000 participant travel.**
- **\$110,000 comment summary.**

# **LESSONS LEARNED**

- **Value of using a facilitator.**
- **Importance of establishing an effective procurement mechanism for obtaining a facilitator.**
- **Useful discussions can occur without seeking or achieving consensus.**
- **Value of neutral issues paper and advanced preparation on the part of NRC staff.**
- **Involved staff need to be broad minded and flexible and to adopt a probing approach in workshops.**
- **Value of cooperative effort with EPA.**
- **Value of a special public meeting the night before the workshop.**

## **Continued - LESSONS LEARNED**

- **More attention needed to advance notice of the workshops.**
- **Avoid artificial barriers to communication (e.g., location, hours, transit, room arrangement).**
- **Need to incorporate, as appropriate, the EIS scoping meeting with the workshop.**
- **The number and location of workshops is dependent on the nature of the rulemaking issue.**
- **Need to establish criteria for funding of participant travel.**
- **Need to consider Native American citizens groups and individual tribes in selecting participants.**

## **Continued - LESSONS LEARNED**

- **Need to be more disciplined in limiting the total number of participants at any one session.**
- **Confusion about NRC's mission and legal authority.**
- **Limited understanding of technological and scientific fundamentals for nuclear regulation.**
- **Roundtable format may also be useful in addressing site-specific issues.**
- **Enhanced Participatory Rulemaking approach may be useful in addressing other generic and complicated issues.**

# **ELECTRONIC BULLETIN BOARDS**

- **What we have learned.**
- **Current status.**
- **Future use.**

## **WHAT WE HAVE LEARNED**

- **Frequency and duration of calls (e.g., over 6,660 calls from 2,500 users) indicates need for multiple phone lines.**
- **Eighteen comments were received.**
- **Significantly many more individuals will view and download materials than are likely to comment either by mail or electronically.**
- **Usage is likely to be heaviest towards end of comment period.**
- **Callers represent a broad spectrum of the public.**
- **Callers will download comments of others placed on the BBS.**
- **The number of individuals who have used the BBS suggests that it is an effective means of providing the public with rulemaking information.**

## **CURRENT STATUS OF BBS**

- **In November, a rulemaking area BBS was established on FedWorld. Since that time four proposed rules have been made available for comment on the BBS.**
- **Comments received, either by mail or uploaded on the BBS, have been posted for viewing and downloading on the BBS.**
- **Only one comment has been uploaded by a commentor on the new BBS so far. However, that comment and other comments received by mail have been downloaded by callers many times.**
- **A special area for commenting has been provided to the Agreement States on the BBS.**

# **FUTURE USE OF BBS**

- **A draft plan for Rulemaking will be prepared in accordance with MD 6.3 for a rule dealing with continued NRC Regulatory Authority in areas of exclusive federal jurisdiction within Agreement States.**
- **The Draft plan will be posted on the BBS. An "electronic dialogue" will be opened on the BBS inviting "discussion" on the plan.**
- **Callers will be invited to use the message area as well as file uploads to comment on material contained in the plan, and comment on the comments and observations of other callers.**
- **Callers will be requested to focus on the intent, safety significance, and cost effectiveness of such a rulemaking, and the potential impact on States and their licensees.**



## **Continued - FUTURE USE OF BBS**

- **The Rulemaking Project Manager will participate in the "discussion," as a facilitator only, responding to questions and providing additional information as appropriate.**
- **The "discussion" period will last approximately 4 weeks.**
- **The information obtained during the "Discussion Period" will be factored into the final rulemaking plan.**