

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

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DISCUSSION OF POTENTIAL CHANGES TO THE  
10 CFR 2.206 ENFORCEMENT PETITION PROCESS

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THURSDAY,  
FEBRUARY 8, 2018

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ROCKVILLE, MARYLAND

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The Commission met in the Commissioners' Hearing Room at  
the Nuclear Regulatory Commission, One White Flint North, 11555 Rockville  
Pike, at 9:00 a.m., Kristine L. Svinicki, Chairman, presiding.

COMMISSION MEMBERS:

KRISTINE L. SVINICKI, Chairman

JEFF BARAN, Commissioner

STEPHEN G. BURNS, Commissioner



ALSO PRESENT:

ANNETTE VIETTI-COOK, Secretary of the Commission

MARGARET DOANE, General Counsel

ELLEN GINSBERG, Nuclear Energy Institute

EMILY HAMMOND, George Washington University Law  
School

DAVID LOCHBAUM, Union of Concerned Scientists (UCS)

SAMUEL MIRANDA, Petitioner

NRC STAFF:

ERIC BENNER, NRR, Director, Division of Engineering

DOUG BROADDUS, NRR, Chief, Special Projects and  
Process Branch, Division of Operating Reactor  
Licensing

BRIAN HOLIAN, NRR, Acting Director

VICTOR MCCREE, Executive Director for  
Operations

MARY JANE ROSS-LEE, NRR, Deputy Director, Division  
of Licensing Projects



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PROCEEDINGS

9:04 a.m.

CHAIRMAN SVINICKI: Well, good morning everyone. I call this the Commission's meeting to order.

This morning, the Commission meets in public session to hear perspectives from both staff and a number of external engaged parties and stakeholders regarding the current status of NRC's enforcement petition process which we will refer to a lot as 2.206.

So I apologize to members of the public for sounding like that's a lot of jargon, but it's Title 10 Code of Federal Regulations 2.206 is where the process that we'll be discussing today is located in NRC's regulation.

The NRC staff has been engaged in a systematic look at this process. It had not been done in some time. And, as a result, has developed some proposed changes.

They have engaged, again, external stakeholders on those set of proposed changes and I suspect we will hear -- well, I know we'll hear from the NRC staff a description of those proposed changes, but I think we will, also, in this first panel, hear some external perspectives on the process, perhaps historically and experiences that individuals have had with this process.

And, we'll also hear just, I think, some general views about strengths and weaknesses, perhaps, or what it is that we should seek to include in this type of petitioning process. So, I look forward to that.

So, we will, again, begin with an external panel and be



1 followed by a panel of the NRC staff.

2 Before we begin with that panel, do either of my colleagues  
3 have any opening comments?

4 Commissioner Baran, please?

5 COMMISSIONER BARAN: Well, just briefly to say I'm really  
6 glad we have the opportunity to sit here and have this meeting today and take a  
7 look at these issues.

8 I think the last time the Commission met to look at these  
9 issues was 2000, so 17 or 18 years ago.

10 And, I read the transcript of that meeting and Ellen was there  
11 and Dave was there. And, actually, Steve Burns was there, but he was Deputy  
12 General Counsel at the time.

13 So, we have some familiar faces and some new faces and I'm  
14 looking forward to this meeting.

15 Thanks.

16 CHAIRMAN SVINICKI: Great, thanks.

17 Commissioner Burns?

18 COMMISSIONER BURNS: Yes, I'm also looking forward to  
19 the meeting. This is -- I joined the NRC 40 years ago in my first career and the  
20 Section 2.206 process was one of the things I was assigned early on.

21 In fact, it was at that time the decision in the legal office that  
22 we started to publish the decisions that the staff made along with the  
23 adjudicatory decisions of the Commission and the Licensing Board.

24 So, I have a lot of history with this and I have a lot of



1 questions. So, I'm looking forward to your presentations.

2 CHAIRMAN SVINICKI: Great, thank you.

3 So, for the first panel, I think the best way to proceed is I will  
4 recognize each presenter in the order in which they've been listed on our  
5 scheduling note which has been made public.

6 So, I will proceed in that order and I will begin by recognizing  
7 Professor Emily Hammond who is the Glen Earl Weston Research Professor at  
8 George Washington University Law School.

9 Professor Hammond, please proceed with your presentation.

10 MS. HAMMOND: Thank you.

11 Good morning and thank you for having me today.

12 I'll be focusing my comments on agencies with established  
13 non-rulemaking petition processes for enforcement or oversight purposes.

14 These are processes that are coupled with an ultimate stick  
15 like 2.206.

16 The agencies include EPA, the Office of Surface Mining  
17 Reclamation and Enforcement, FERC and OSHA.

18 EPA, however, is responsible for the greatest number of such  
19 petitions. And, I've conducted extensive research on its petition process, so I'll  
20 focus my initial comments there and, along the way, I'll highlight some  
21 similarities and differences that I understand from the 2.206 process.

22 The background is this, under the major environmental  
23 statutes like the Clean Water Act, EPA authorizes states to implement those  
24 regulatory programs, provided the states meets very specific criteria.



1                   And, once states receive that authority, EPA retains oversight  
2                   authority including the ability to revoke that authorization if the state falls down  
3                   on the job.

4                   That is considered an extreme action akin to revoking an  
5                   operating license and the Agency has almost never taken it.

6                   On the other hand, interested persons, these are typically  
7                   environmental non-governmental organization, routinely petition EPA to revoke  
8                   states' authority.

9                   And, the types of grounds they raise are things like states  
10                  failing to conduct adequate inspections, enforcement proceedings or improperly  
11                  issuing permits.

12                 Most of the petitions are similar here. They're quite  
13                 sophisticated. They do provide factual and legal support for the relief that they  
14                 request.

15                 Once a petition is received, it is actually sent to the regional  
16                 office. So, there's a difference from 2.206, it says the regional office where the  
17                 state is located an acknowledgment of receipt is provided within 15 days.

18                 And, from there, it's a very informal process. Other than  
19                 providing, ultimately, a written response, EPA has no obligation under statutes,  
20                 regulations or even guidance to investigation, to initiate any kind of formal  
21                 hearing or to do anything in a particular time frame.

22                 In fact, NRC's guidance is much more detailed than anything  
23                 that EPA has.

24                 Nearly all of the petitions are denied at that informal phase



1 before ever going to a hearing. And, this does lead to a common perception  
2 that the petitions are not worthwhile.

3 But, quite a lot of activity takes place informally during that  
4 investigatory part of the petition process.

5 The regional administrators and their staff typically conduct  
6 informal investigations. They seek responses from the relevant state. They  
7 independently research the concerns that were raised. They hold multiple  
8 meetings with the petitioners.

9 And, something that happens at EPA regions that seems  
10 especially effective is that the Agency staff will create a tailored protocol for  
11 responding to the petition.

12 What these do is describe precisely what showings the state  
13 must make. It provides a time frame within which the state will do that. And, it  
14 describes all of the points at which the petitioner would have a seat at the table.

15 These protocols seem to be very important to the petitioners.  
16 And, they do help hold the states and the Agency accountable for addressing  
17 the particular concerns that were raised.

18 Ultimately, these petition usually do result in negotiated  
19 outcomes. So, none of the formal hearing process, but something that is  
20 measurable and different from where we were before a petition.

21 So, for example, a state may be committing to more  
22 investigations, more enforcement proceedings, changing how they conduct  
23 their permitting.

24 Indeed, most petitioners that my co-author and I interviewed



1 do say that they don't initiate petitions lightly because it does take a great deal  
2 of time and resources to do so.

3 But, they do feel as though the process can be successful.  
4 Notwithstanding that EPA never wields that ultimate stick, there are results that  
5 we can see that are outcomes from these processes.

6 Just a few considerations from making participation more  
7 meaningful in these types of process, having plain language guidance I think is  
8 a very useful thing.

9 For example, in the mining context, there's a wonderful  
10 two-page brochure that spells everything out for a petitioner in terms of what to  
11 expect and what their rights are along the way.

12 Finding ways to involve petitioners perhaps more than that  
13 initial telephone conference or meeting can be very helpful. Some programs  
14 have statutory mandates that required, for example, petitioners are allowed to  
15 go on investigations and accompany agency personnel.

16 But other possibilities for finding petitioner engagement, direct  
17 engagement can be useful.

18 I mentioned that protocol for response, I do think that the  
19 updates that are available on the website are very helpful to sort of say what's  
20 going on with any open petitions are terrific, but perhaps developing something  
21 that's tailored to the petitioners that lays out what can be expected.

22 In terms of transparency, NRC is excellent, especially  
23 compared with all of the other agencies I've researched in terms of making the  
24 petitions available online, making the responses to them available as well as



1       those updates.

2                       One thing to consider is whether there could be improved  
3       information availability for the types of facts that could form the basis for  
4       petitions.

5                       If you're looking at a petitioner as a partner in ensuring that  
6       the system is working properly, then helping give them access to that  
7       information could be something to consider.

8                       And then, looking at outcomes, a question that I had as an  
9       outsider looking at this process is the Agency's perspective on the usefulness of  
10      these petitions.

11                      Do they help? Do they highlight things that perhaps wouldn't  
12      necessarily be obviously? Do they bolster the Agency's ability to push  
13      particular issues with licensees?

14                      As you conduct this assessment, it would be helpful to know  
15      the Agency's views on the meaningfulness of the process and then perhaps use  
16      those lessons learned as ways to bolster what you have in place.

17                      So, I will stop there but I will look forward to your questions.

18                      CHAIRMAN SVINICKI: Thank you very much, Professor  
19      Hammond.

20                      Next, we will turn to Ellen Ginsberg who is the Vice President,  
21      General Counsel, and Secretary of the Nuclear Energy Institute.

22                      Ms. Ginsberg, please proceed.

23                      MS. GINSBERG: Good morning everyone. Thank you,  
24      Madam Chairman, thank you Commissioners Burns and Baran.



1                                So, I have a set of slides. Could we put them up please?

2                                Okay, thank you very much.

3                                So, my comments this morning are intended to take a holistic  
4                                look at 2.206 and the process. I don't think that we can look at this in piece  
5                                parts, and so, the approach is intended to answer the questions that were  
6                                posed by the staff in its Notice, but they're not so limited.

7                                And, my -- the importance of looking holistically is that it's  
8                                intended to test and also perhaps give a view of what I would describe as the  
9                                legitimacy of the process.

10                               It's intended to also consider the value of the -- that the  
11                               process offers and even perhaps identify some of the perceptions that I think it  
12                               creates among stakeholders.

13                               Next slide?

14                               The ease of the process is really important and I think entry is  
15                               the question. Is this a process that has ease of entry?

16                               I would answer the question by saying yes, there's no  
17                               standing, there's no format requirements and you don't have to be particularly  
18                               sophisticated in your communication. You don't have to be represented by  
19                               counsel and all you do need to provide is a reasonable factual basis and some  
20                               indication of the relief that's being granted.

21                               I also note that it's entirely reasonable for the Commission or  
22                               ASLB referrals to be treated differently.

23                               Next slide, please?

24                               So, in terms of the use of the process, I think it's necessary



1 for the Agency to set forth that this has to be limited in some way. It's intended  
2 to be used as an enforcement tool.

3 And so, I think the idea that it's not intended to substitute for  
4 other processes is important to make note of. It's not intended to be a process  
5 that's used for just evaluating and responding to general concerns.

6 And, further, it's not intended to be used as a process that  
7 replaces fundamental regulatory oversight. And, I think that's a critical point.

8 Next slide, please?

9 So, is the process reasonable? And, I started with that  
10 question looking at the screening criteria. So, one question is, is the screening  
11 criteria fair and is it understandable?

12 And, if you look at the screening criteria, it is focused on this  
13 notion of is there a need for immediate action? Should the licensees -- how  
14 does the licensee respond? Whether this has been identified in other  
15 processes and, therefore, should be consolidated with either another petition or  
16 in another way.

17 Does it focus on an allegation that really doesn't belong in a  
18 2.206 process?

19 Also, when you move from the screening criteria to a petition  
20 that's been accepted, what does that review look like? And, I'll to that in a  
21 second.

22 But, the importance is, it needs to be taken seriously. And,  
23 one way I suggest that it's taken seriously or should be is the broad based  
24 approach that the NRC offices take.



1 OGC is occasionally brought in, Office of Investigations and,  
2 when necessary, OIG.

3 Next slide, please?

4 So, another feature of a holistic look is to determine whether  
5 there's rational decision making, whether this decision making actually makes  
6 common sense, if you will.

7 And, I actually think having an SES chair, I know there may  
8 be disagreement on this point, does make sense. I think that's important. It's  
9 generally a more seasoned member of the staff.

10 And so, I think there's value there. I think you need to avoid  
11 conflict of interest so that the person who looked at the issue initially is not,  
12 again, looking at it.

13 With respect to the Director's decision, I'll get to this in a slide  
14 or two, but I can't stress strongly enough the importance of documenting the  
15 Agency's position.

16 The bases for the Agency's actions and the bases for  
17 conversations, et cetera, need to be documented so that there's a full  
18 understanding by the public who's going to be reading this as to what this  
19 petition was about and how it was resolved.

20 Next slide, please?

21 Notice and opportunity to participate, I think this process -- I'm  
22 running out of time -- so I think this process -- I'll leave it at the point which is  
23 most important, and it has the hallmarks of the -- meeting APA requirements.

24 There should be notice and there is notice and there's an



1 opportunity to comment. And, further, there's a response to the petition on the  
2 record.

3 Next slide?

4 So, are the goals appropriate? Yes, the goals and the  
5 schedule are appropriate. Could they be improved? My guess is they could  
6 be. Seven months seems like a long time to get to an initial decision.

7 And, I'll leave at that because I think the staff may address  
8 that point.

9 Next slide?

10 So, here's the real issue, and the issue with respect to  
11 usability is what an effectiveness it -- whether the relief is granted. Our  
12 position is that about one in three, there is some change in what the NRC does,  
13 some NRC action taken.

14 That's exactly right, because, otherwise, this would be a  
15 substitute for the other NRC regulatory processes. And, if there was a full  
16 breakdown in those processes, you would see a much higher number of these  
17 petitions granted.

18 Next slide? I just went through this so keep going.

19 Okay, so, bottom line, what should the Agency do? All of  
20 these things are common sense and consistent with the APA. They should  
21 continue to improve effectiveness. You need to make sure these are efficient  
22 processes. There needs to be clarity of decision making and timeliness,  
23 periodic reviews make perfect sense. I don't tell you what that period should  
24 be, that's at the Agency's discretion.



1                   And, finally, one plea on the next slide, and that plea is when  
2                   you're making changes, please give the stakeholders an opportunity to better  
3                   understand those changes by either a redline or some other means that's a little  
4                   more obvious about what those changes are.

5                   With that, I thank you for the opportunity.

6                   CHAIRMAN SVINICKI: Thank you, Ms. Ginsberg.

7                   Next, we will turn to Mr. David Lochbaum who is the Director  
8                   of the Nuclear Safety Project at the Union of Concerned Scientists and has  
9                   been noted by my colleague, Commissioner Baran, also a person of long  
10                  involvement in NRC petition processes.

11                  And, David, I wanted to note that, as I reviewed your acronym  
12                  list, it challenged me that I myself do not know -- I can guess what ML stands  
13                  for and all the NRC parlance, but you do get creativity points for guessing that it  
14                  means Mr. Lochbaum.

15                  But, with that, Mr. Lochbaum, please proceed.

16                  MR. LOCHBAUM: Thank you and good morning.

17                  Thanks for this opportunity to share our views on the 2.206  
18                  process. We often use this process and frequently work with others on their  
19                  petitions.

20                  Slide two, please?

21                  We submit petitions because they have been an effective  
22                  means of spotlighting safety problems and, more importantly, achieving safety  
23                  solutions.

24                  Slide three, please?



1 I applaud the staff for identifying ways to improve the  
2 engagement between petitioners and the staff. The existing process  
3 unnecessarily constrains the exchange of information. The proposed changes  
4 will likely remove or lessen those constraints.

5 Slide four, please?

6 But, sometimes, even the best intentions fall short. The NRC  
7 has formal feedback mechanisms such as those for its public meetings and for  
8 its FOIA process.

9 UCS recommends that Management Directive 8.11 include a  
10 comparable feedback mechanism.

11 Slide five, please?

12 USC has yet to find 2.206 petitions mentioned in the  
13 enforcement program annual reports. These annual enforcement reports  
14 would be a swell place for the NRC staff to discuss 2.206 enforcement  
15 petitions.

16 Slide six, please?

17 Decades ago, the NRC determined that some licensees were  
18 not properly answering the questions posed by 10 CFR 50.59. Too often,  
19 licensees merely answered no without providing justifications.

20 The NRC staff almost always addresses the Requests for  
21 Immediate Actions with similar non-answers.

22 Slide seven, please?

23 Following the August 2011 earthquake near North Anna,  
24 Beyond Nuclear petitioned the NRC.



1                   On November 10, 2011, the NRC denied the request for  
2 immediate action based on 10 CFR 100 Appendix A already having it covered.

3                   Slide eight, please?

4                   Then the NRC mandated in March 2012 that North Anna's  
5 licensees expend considerable effort walking down the plant to identify and  
6 correct seismic shortcomings in order to resolve the concerns.

7                   The Commission approved this plan on October 18th, 2011,  
8 weeks before the staff's lame response to Beyond Nuclear.

9                   We are not implying that the staff's determination was wrong,  
10 but the staff did not provide us substantive responses as clearly evidenced by  
11 the SECY paper, it's SRM, and the subsequent demand for information.

12                  Slide nine, please?

13                  UCS believes that Management Directive 8.11 must require  
14 the staff to address Requests for Immediate Action with substantive answers.

15                  Slide ten, please?

16                  Unlike most public meetings conducted by the NRC,  
17 proposed 2.206 meetings would unfairly provide licensees with rights denied to  
18 petitioners and members of the public.

19                  Slide 11, please?

20                  During most public meetings, the NRC shields licensees from  
21 members of the public asking them questions, but gives licensees the option of  
22 answering the easy ones.

23                  Slide 12, please?

24                  More than 95 percent of public meetings recently conducted



1 by the NRC staff denied the public the chance to ask questions of licensees.

2 Slide 13, please?

3 Meetings conducted for Management Directive 8.11 must be  
4 conducted consistently with Management Directive 3.5.

5 Slide 14, please?

6 License amendment requests were submitted for power  
7 uprates at Byron and Braidwood. While reviewing these requests, the NRC  
8 staff determined that the reactors did not comply with several regulations.  
9 Region III asked the owner to fix these safety non-compliances.

10 Slide 15, please?

11 The licensee appealed Region III's decision to the NRR  
12 director. The NRR director affirmed Region III's decision. The licensee  
13 appealed the NRR director's decision to the EDO. The EDO overruled Region  
14 III and the NRR director by granting the appeal.

15 Slide 16, please?

16 Consider the 2.206 process, petitioners can comment on a  
17 proposed director's decision but are expressly denied any appeals for the final  
18 decision.

19 It's unfathomable to us how the NRC can think its directors  
20 are always right when denying enforcement petitions, but might just be wrong  
21 when imposing enforcement actions.

22 This inequity suggests that the 2.206 process is not a fair way  
23 of obtaining proper regulatory decisions.

24 Slide 17, please?



1                   The NRC proposed a white finding last year for a violation at  
2                   Clinton. The licensee contested the white finding, the NRC considered the  
3                   arguments and then issued the final white finding. The licensee has then  
4                   appealed the final white finding.

5                   I fail to find how that process is covered by any existing NRC  
6                   process, yet it's happening.

7                   Slide 18, please?

8                   Preliminary findings are similar to proposed director  
9                   decisions. Licensees and petitions have equal opportunities to contest those  
10                  initial decisions.

11                  The final findings differ from director's decisions. Licensees  
12                  can appeal final findings, but petitions are deprived of such additional appeals.  
13                  That's just wrong.

14                  Slide 19, please?

15                  Given licensees X layers of appeal and given petitioners less  
16                  than X is less than fair.

17                  Slide 20, please?

18                  So, our recommendations are that Management Directive  
19                  8.11 include a formal feedback mechanism and require that determinations  
20                  about Requests for Immediate Action be substantive and documented.

21                  We also recommend that the annual enforcement program  
22                  reports cover 2.206 petitions and that petitions and licensees be treated  
23                  equitably during NRC public meetings and that the appeal process for 2.206  
24                  petitions be comparable to the Agency's other appeal processes.



1 Thank you.

2 CHAIRMAN SVINICKI: Thank you very much, Mr.  
3 Lochbaum.

4 And the final panelist for this external panel will be Mr.  
5 Samuel Miranda who also has significant background and experience as a  
6 petitioner in this process.

7 Mr. Miranda, please proceed when you're ready.

8 MR. MIRANDA: Unlike the -- some other people here, I have  
9 -- it looks like I've been assigned some topics for this -- on this agenda. I'll try  
10 to address them.

11 And, I would like to start off with -- can I have the slide? Do  
12 we have slides?

13 Okay, these are the objectives and basically I just want to  
14 point out that the objectives are process oriented. This is a process and there  
15 are no measurable results in the objectives.

16 The objective here is a prompt and thorough evaluation.  
17 And, I will talk about the prompt and thorough evaluation based upon my  
18 experience with several petitions that I have filed.

19 Next slide, please?

20 So, this is a long process that -- it begins in 1974 when 10  
21 CFR 2.206 was enacted and also about the same time that the NRC was  
22 formed. And, here we are in 2018, we've had several revisions of MD 8.11 and  
23 it seems to me that they've been going around in circles and I'll talk about this a  
24 little bit more.



1 The next slide, please?

2 Here's a more detailed time line. It begins again in 1974, but  
3 I would like to point out, and here I am an engineer talking to lawyers, but I'm  
4 going to bring up the Constitution.

5 It goes back to 1791 when the Constitution was ratified as a  
6 First Amendment and the First Amendment gives -- it protects the right of  
7 people to petition the government for a redress of grievances.

8 And, if you go back even further to 1776, you have the  
9 Declaration of Independence which, after all, contains a long list of grievances.

10 I would also like to point out, on this time line, I'd also point  
11 out that one of my suggestions is to revise and Management Directive 3.5  
12 which governs meetings.

13 This is referenced in MD 8.11. It's an important part of MD  
14 8.11, it deals with transparency and interactions with petitioners. And, I would  
15 point that MD 3.5 expired in 2016.

16 Next slide, please?

17 So, these are the topics that are on the agenda.

18 Next slide, please?

19 And, if we start with effectiveness and efficiency, those are  
20 important topics. I will try to deal with them individually and in turn.

21 But, you can see predictability is also important. And, that  
22 brings in to account things like transparency and accountability.

23 And, the predictability, in this case, from my perspective,  
24 predictability is not a problem. It's 100 percent since no 10 point -- 10 CFR



1           2.202 order has ever been issued as a result of a petition.

2                           So, next slide, please?

3                           So, when you talk about effectiveness, you need to know  
4           what the desired result is. And, the desired result, again, is a process. It's a  
5           thorough evaluation and I maintain that, from my experience with petitions, that  
6           thorough evaluations are very rare.

7                           And, next slide, please?

8                           I'd like to take a little bit of time on this. This is from one of  
9           my petitions. This is an example -- this is just one example, I can give you a  
10          dozen more, of what a thorough evaluation is.

11                          This is a plot of pressurizer pressure and flow rate through a  
12          pressurizer safety valve. The X axis is the pressurizer pressure. The  
13          pressurizer is a tank containing water and steam. It's used to deal with  
14          pressure surges in the reactor coolant system.

15                          And, when the pressurizer safety valve opens, that is depicted  
16          by that green line. It opens at about 2,500 psi. And, I can tell you from  
17          experience, if a reactor gets to 2,500 psi, there are serious problems going on.  
18          It's about 10 times the steam pressure developed in the locomotive.

19                          So, as -- so, you would read this graph from right to left. You  
20          open the valve at 2,500 psi. And, you can see the flow goes down as the  
21          pressure goes down.

22                          And, a standard that is used for this type of analysis which  
23          was established in 1973 defines a leak as a flow that is escaping from the  
24          reactor coolant system that can be made up easily by the normal make up



1       system.

2                   The normal make up system in this case is a charging pump  
3       and that's represented by the blue line. And, you can see that the flow goes  
4       down as the pressure goes up. And, you'd expect this as a pump. We will not  
5       be able to pump as much flow at higher pressures.

6                   The problem occurs, and this was in the petition and it was  
7       reviewed, thoroughly evaluated, the problem occurs when the licensee says,  
8       oh, we're going to use our safe -- pressurizer safety valves to deal with this  
9       accident and they may not reseal completely, they may leak. But, that's all  
10      right, this is just a leak, it's made up by the charging pump.

11                  Well, then the pressurizer fills, and it will fill, it has filled in  
12      several plants. I can name Salem and Millstone, for example, it will fill.

13                  Then, the flow jumps up to where you see the red line. The  
14      red line is a million pounds per hour of water. That is no longer a leak, but  
15      according to the NRC and the licensee, it is a leak. And, how long will it take  
16      to uncover the core at one million pounds per hour, well, that's in the licensee's  
17      final safety analysis report, it's about half an hour.

18                  And, at that point, fuel damage occurs. And, at that point,  
19      you begin to have things like melt down and this is what happened at Three  
20      Mile Island.

21                  And, I've run -- and I would like to go to the next slide.

22                  I would also like to point out that there was an Inspector  
23      General's report issued in August of last year. And, I'd like to see their  
24      recommendations incorporated into your considerations.



1                   And then, back in '95 in a previous version of 8.11, MD 8.11,  
2           I'm afraid my -- I'm over time.

3                   I'll be glad to answer your questions.

4                   CHAIRMAN SVINICKI: If you would like to, just if you want  
5           to summarize perhaps if my colleagues agree, if you wanted to take an extra  
6           minute or two to just to kind of summarize the remainder of your presentation,  
7           please do.

8                   MR. MIRANDA: Okay, I won't go through all the slides then,  
9           in the interest of time and to leave you time for questions.

10                  I would like to -- just I would like to point out that these -- there  
11           were various of MD 8.11 out and we go back to '94 as far as I can tell and the  
12           same observations were made back then.

13                  And, it seems to me that the revisions we're considering  
14           today, they are the same ones we considered in '94 and '95. And, I'm  
15           wondering whether we are trying, we the NRC and the public, whether we're  
16           trying to repeat our actions hoping for a different result.

17                  I would suggest that we go back and look at the basic  
18           requirements of considering the petition. Repetition is important.

19                  First of all, it's constitutionally protected.

20                  And, secondly, it might require immediate action.

21                  And, thirdly, it could affect more than one license.

22                  So, the NRC, as a former employee of the NRC, I know the  
23           NRC staff is used to dealing with license amendment requests coming from  
24           licensees. And, they have metrics for this and they have Requests for



1 Additional Information and meetings, open meetings and so on.

2 So, why not have a new acronym for the NRC, and LAP, a  
3 License Adjustment Petition, LAP? And, that would take precedence over an  
4 LAR, but it would be handled in much the same way and much of the same  
5 procedures could be used.

6 And then, MD 8.11 itself could be reduced to something like a  
7 one-page checklist that basically refers to this process of the petition as if it  
8 were a license amendment request, only this request comes from a petitioner, a  
9 member of the public, a stakeholder and not just the licensee.

10 And, the other thing that I think is important as far as MD 3.5  
11 is concerned, it has a provision in there for drop-in meetings. And, drop-in  
12 meetings I think are antithetical to transparency.

13 It justifies MD 3.5, I can read you the language from it, it  
14 justifies drop-in meetings as meetings that typically involve items of general  
15 interest between senior executives of the licensee and the EDO or senior staff  
16 members.

17 And, they involve general interest and, therefore, they don't  
18 need to be public meetings, it's just the opposite if they involve just general  
19 interest, then there's no reason why they should not be public meetings.

20 And, that's all for now.

21 CHAIRMAN SVINICKI: Okay, thank you very much, Mr.  
22 Miranda.

23 Thank you to all of the panelists and for our question and  
24 answer period, we will begin today with my questions. So, I will lead off here.



1                   Was -- maybe just a general comment. A number of these I  
2 think that if members of the panel want to offer perspectives.

3                   In preparing for this meeting, it caused me to think a lot more  
4 about formal Agency processes versus informal processes.

5                   And so, although I didn't run across any scholarly writing  
6 about the value of each, I think that my experience would say that formal  
7 processes have certain benefits and values and informal processes, although  
8 they may not have all of the ritualistic process of a formal process like the  
9 concepts, you know, where you get into something like demonstrating standing  
10 and having kind of the ability to have interrogatories between various groups  
11 and interests and things like that.

12                  Informal processes I think do have their own benefits. I think  
13 that they can look less intimidating to approach and there are other benefits to  
14 them.

15                  Has there been any of the systematic looks or works or  
16 published writings about the value of these more informal processes in Agency  
17 kind of in outreach and transparency and communication? And, if there are,  
18 do they kind of reach any conclusions on that topic?

19                  Professor Hammond, would you like to offer some  
20 perspectives?

21                  MS. HAMMOND: Yes, thanks.

22                  Indeed, I actually have written an article that studied the  
23 formal processes associated with the Yucca Mountain licensing within this  
24 Agency.



1                   And, largely concluded that formality can -- yes, it does have  
2                   it's place, but, can actually hinder public participation and really hamstring  
3                   Agency flexibility.

4                   And so, then particularly looking at something like a petition  
5                   process, I do think at least the processes that I've studied having an informal --  
6                   structured but informal way of resolving these kinds of concerns gives  
7                   everybody more flexibility and allows for a bit more creativity perhaps in  
8                   resolving the concerns.

9                   So, I would be happy to provide you with what I've written  
10                  about that, but those are my basic conclusions.

11                  CHAIRMAN SVINICKI: Thank you for that.

12                  Would anyone else like to comment on that?

13                  Ms. Ginsberg?

14                  MS. GINSBERG: Yes, I didn't do the survey that Professor  
15                  Hammond just described or write a scholarly article on it yet. But, I would say  
16                  that we look at this process 2.206 as having many of the attributes of a formal  
17                  process, but without some of what I would describe as the weight of it.

18                  So, in terms of a formal process, you have high barriers to  
19                  entry. You have high costs. And, you have longer time frames.

20                  Any of the appellate, you know, when you look at appellate,  
21                  even on a rocket docket, you're talking about somewhere between 18 months  
22                  and 2 years.

23                  So, this, if it's 7 months and then whatever the 45 days kind of  
24                  after comment is, it's still a faster process.



1                   So, I think it's really important not to be focused on whether  
2                   it's formal or whether it's informal but rather does it achieve the results? I think  
3                   there are varying views here about whether it achieves the results.

4                   But, from our perspective, it's important to look at this as, do  
5                   you have the attributes of a fair process? And so, in the context of 2.206, well,  
6                   there are probably some tweaks that could be made, we think generally it has  
7                   the attributes of a formal process and fundamental fairness.

8                   CHAIRMAN SVINICKI: Mr. Lochbaum?

9                   MR. LOCHBAUM: I haven't done a survey either, but when  
10                  we talked with the Inspector General when they were doing their audit, one of  
11                  the things we said was there's a lot of times the 2.206 process is used because  
12                  there's not really another process available.

13                 So, things are -- both us and others use that when and other  
14                 informal process -- if somebody were to write a letter to the NRC asking a  
15                 question about a safety issue, they may get a one-page answer saying thank  
16                 you for your service or whatever.

17                 If you petition, you get a more thorough answer. You may  
18                 not agree with that answer, but you -- if there was a mechanism that you could  
19                 ask a question or raise a concern and get a solid answer from the staff, then I  
20                 think more people would use it because it's easier.

21                 Right now, there's times when you just don't feel confident  
22                 that you'd get that kind of answers short of the petition process.

23                 CHAIRMAN SVINICKI: As a follow up to that, I believe in  
24                 your presentation you made a general comment that the proposed changes to



1 the management directive as a whole you think are constructive. I'm not  
2 asking you to, you know, take an individual view on each one, but I thought that  
3 that's what you had indicated.

4 One of the areas that the staff looked at carefully is providing  
5 greater clarity on how things might screen out automatically to the process.

6 I imagine that if I was a petitioner, it would be very helpful to  
7 know that if something was going to fail immediately upon receipt as not  
8 passing one of those wickets, that would be helpful.

9 Do you share a view that increased clarity there is helpful to  
10 petitioners?

11 MR. LOCHBAUM: I think so because it allows both the staff  
12 and potential rule petitioners and potential petitioners for more efficiently use  
13 the process, use it when it's proper and avoid it when it's not.

14 So, if there's a better understanding of what -- how those  
15 criteria applied, I think it would be more consistently used to everybody's  
16 benefit.

17 CHAIRMAN SVINICKI: Well, I would note that one of the  
18 clarifications proposed has to do with the treatment of the Commission's referral  
19 of matters.

20 So, as I guess a petitioner in that sense, referring things, it  
21 was helpful to know that our request would screen in. So, I grant it there was a  
22 fairly low bar for the things that we wanted the staff to do.

23 So, I know that Mr. Lochbaum and Mr. Miranda, you have put  
24 forward in your presentations elements that are not part of the proposed



1           enhancements to the management directive that you would see there.

2                           And, one particular area was I think in comments received  
3           was the desire not to have senior executive service members chairing petition  
4           review boards.

5                           And, I think a key -- a clear objective there would need to be,  
6           you wouldn't want the same person who exactly worked on something to be  
7           chairing a petition review board on that, but I think would fly in the face of some  
8           of the fairness principles that we've heard espoused more generally.

9                           What is the Agency's track record been on that and is it that  
10          the concern about having SES chairs petition review boards, is it because, in  
11          your experience, you've seen that the chair appointed has too much subject  
12          matter proximity or because I guess, as a practical matter, you want somebody  
13          who understands the issue.

14                          But, you don't want someone who is so close to it that they're  
15          not objective about it.

16                          So, has it been the experience of petitioners in the main that  
17          there's a concern there that people are too close to the issue?

18                          MR. MIRANDA: Well, I have some examples.

19                          CHAIRMAN SVINICKI: Thank you, please.

20                          MR. MIRANDA: Referring to that plot that I had in my slides,  
21          that was a petition that I filed in November 2016 regarding the Byron and  
22          Braidwood plants. And, that petition had 20 different errors and omissions.

23                          And, the petition review board chairman who was appointed  
24          for that petition was someone, an SES member from the Office of Research.



1 And, the -- if you look at MD 8.11, research is not one of the offices that's listed  
2 as an eligible office for assignment to review a petition since it does not have  
3 regulatory responsibilities.

4 So, but, the reason given when I asked the director, the NRR  
5 director, why he appointed this person from Research, he said, well, we needed  
6 someone who wasn't involved.

7 I've seen other language in other versions of MD 8.11 which  
8 indicate just the opposite. Maybe someone who should be appointed who has  
9 some knowledge of the issue.

10 My objection to appointing a senior executive service people  
11 to head petition review boards is that this is basically when a petition comes in,  
12 basically, it's a technical question which needs to be judged on the merits of  
13 technical issues.

14 And, if some action is required, then it could be passed up  
15 through management because then you begin to get into policy questions.

16 But, at least in the beginning, it's a technical question.

17 And, I have served on petition review boards in the past when  
18 I was working here. And, I can tell you that every petition review board is  
19 different. It's handled differently. It depends on the chairman. It's not  
20 necessarily a democratic process. It may not be desirable to have a  
21 democratic process.

22 I was appointed to PRBs where I really had no knowledge of  
23 the issue. And, I had not much input. On the other hand, you could have a  
24 petition review board of say nine people and one person might have specific



1 knowledge of the issue.

2 And, if I were the petition review board chairman, I would give  
3 that person's opinion a whole lot of weight, more than the others.

4 So, that example that I showed you, that little graph, I mean,  
5 the petition review board did not accept that petition because there was no new  
6 significant information.

7 They looked at that and they did not consider it to be new  
8 significant information.

9 But, what that graph showed was you had that little red line  
10 that indicated one million pounds per hour of flow coming from the reactor  
11 coolant system, this is water that's needed to cool the core, that is a major  
12 accident.

13 And, they considered -- they brought the licensee's  
14 explanation that it was just a leak.

15 CHAIRMAN SVINICKI: Well, I appreciate those  
16 perspectives, thank you.

17 I just have one more quick question.

18 Mr. Lochbaum, you had indicated that a feedback mechanism  
19 would be helpful. I thought it was interesting that the enforcement annual  
20 reporting you said has no mention or kind of compilation or perspectives on  
21 2.206 petitions.

22 If that were a component of that report, could there be then --  
23 could that be helpful as some sort of maybe feedback and in considering an  
24 annual report on anything is kind of a retrospective look over the year at actions



1 taken and other things.

2 Would it be likely that petitioners would find that useful to say  
3 even if there was some sort of brief kind of retrospective on it, it would say  
4 these were issues that were successfully brought to the Agency's attention or  
5 not?

6 MR. LOCHBAUM: I think that's a good point. I didn't make  
7 that connection, but I think there is -- that would be a feedback mechanism.

8 The other one that exists I alluded to was the Inspector  
9 General does periodic audits which is another mechanism for feedback from  
10 both the staff and other stakeholders.

11 So, I think both of those would help in that regard.

12 CHAIRMAN SVINICKI: Okay, thank you very much.

13 My time's up.

14 Commissioner Baran?

15 COMMISSIONER BARAN: Thanks.

16 Well, thank you for your presentations.

17 I -- as I read the draft management directive, there are  
18 several changes there that strike me as improvements. And, it sounds like,  
19 based on your presentations, there might be some agreement on that.

20 I wanted to just briefly ask about that before I turn to some  
21 other things.

22 Some of the changes I looked at that seem to make pretty  
23 good sense is having the meeting between the petition review board and the  
24 petitioner after the Board has had the opportunity to review the petition and is



1       able to, you know, on a position, engage with questions.

2                   Chairman Svinicki mentioned one which is having more  
3       specificity in the screening criteria. It's also more specificity and detail in the  
4       reviewing criteria and in the criteria for holding a petition in abeyance.

5                   Do the panelists generally see these as improvements? I  
6       read them as improvements and I want to get your sense whether you would  
7       agree about that?

8                   MR. LOCHBAUM: We do, we think that the net effect of the  
9       changes are a positive. And, not just a little bit positive, I think it --

10                  In us talking to the staff before, I think overall the changes will  
11       lead to greater acceptance of the decisions. Not necessarily agreement, but  
12       acceptance because it will be better understanding of whether it was screened  
13       out initially or denied at the end.

14                  And, I think that will be good for all participants. So, I think  
15       there's more benefit than downside from the proposed changes.

16                  MR. MIRANDA: Well, I disagree.

17                  COMMISSIONER BARAN: Okay. Why is that?

18                  MR. MIRANDA: I -- it's in one of my slides as well. I see  
19       these so-called improvements as improvements to efficiency, not effectiveness.  
20       Improvements to make the process go faster, have the initial screening go  
21       faster.

22                  There's a new word in the revised version, abeyance. Then  
23       they've putting the petitions in abeyance for years. But now, it's part of the  
24       process. Now, you have -- now you can put a petition in abeyance and not --



1 I have -- I, for one, have had something in abeyance now for  
2 more than a year.

3 COMMISSIONER BARAN: I guess the way I look at that is,  
4 having some actual criteria around abeyance is better than not having criteria  
5 around abeyance. Right?

6 If we're doing it now, and there's just kind of -- it's vague  
7 about when it's done, I would see it as an improvement to have some specificity  
8 about when it's appropriate to put a petition in abeyance.

9 But --

10 MR. LOCHBAUM: But, except it's a little weird. If the  
11 reason for abeyance is the staff says there's an inspection about to do or some  
12 activity that will provide an answer to inform the decision, then the thing can go  
13 into abeyance.

14 If, on the other hand, the petitioner submitted a FOIA to get  
15 information, it could also inform the thing. That's not considered abeyance.

16 COMMISSIONER BARAN: Okay.

17 MR. LOCHBAUM: If additional information is needed by  
18 either the staff or the petition, then that should be suitable for abeyance. This  
19 -- we can delay but you can't, that just seems improper.

20 COMMISSIONER BARAN: Well, in your presentation, Dave,  
21 you flagged another potential change that I have to say, I wasn't so sure was an  
22 improvement and that's to allow the licensee to ask the petitioner questions  
23 during the meeting in order to clarify the issues raised by the petitioner.

24 But, as you pointed out, the revised management directive



1 would not allow the petitioner to ask the licensee any questions which strikes  
2 me as bit unfair, a little bit inequitable.

3 Do folks have thoughts about this? Ellen, do you have  
4 thoughts or others about, it seems like there should be some kind of  
5 constructive way if we're going to open it up for questions in one direction to  
6 have questions go the other direction as well?

7 MS. GINSBERG: Well, let me return to your former question  
8 about holding petitions in abeyance. I think there's a reasonable basis for  
9 holding petitions in abeyance but it turns out that one of the comments I had is  
10 that, in the revised 8.11, there seems to be some confusion because, at least in  
11 the way I read it, because they talk about the discussion is holding a petition in  
12 abeyance and then it says what wouldn't be held in abeyance.

13 So, I think clarification of that section would be useful.

14 But, in terms of asking questions, I think the idea is that this  
15 process is one where it's really between the petitioner and the Agency to start  
16 with.

17 But, the licensee is involved in the sense that it is its facility  
18 that's at issue or its actions that are at issue.

19 And so, I think it's really important for the licensee to be able  
20 to understand what the issues are. I think further back and forth, you know, I  
21 see midnight, I see noon, I see midnight, I see noon, probably doesn't get us  
22 very far. But, if there is perhaps a means of a written document or a written set  
23 of questions that the Agency wants answers to, I think that would be okay.

24 I just think that you've got to put into context the resources



1           that 2.206 creates in terms of use of resources for the licensee as well as the  
2           Agency and the petitioners.

3                       And, to expand that without reason, obviously, I think we think  
4           wouldn't be an advantage.

5                       COMMISSIONER BARAN: Well, I guess the way I think  
6           about it is, you want kind of -- you want something that is balanced and not  
7           extreme, one or the other. Right?

8                       So, you wouldn't want a petitioner come in and feel like, wow,  
9           I'm subjecting myself to questions for a battery of the licensee's lawyers. That  
10          doesn't seem fair, I'm a petitioner just trying to raise an issue.

11                      I can see from the licensee's point of view, they don't want to  
12          open themselves up to endless questions from a petitioner about the details of  
13          everything thing they're doing.

14                      On the other hand, if it makes sense to have clarifying  
15          questions from the licensee to the petitioner, one could imagine under the  
16          supervision of the PRB that's convening the meeting, you could have questions  
17          go the other way.

18                      You know, well, Dave Lochbaum says this petition, you know,  
19          this, you know, Dave gets to ask the licensee a question to clarify to see if he  
20          understands that correctly.

21                      It, you know, it doesn't -- having some kind of questioning  
22          both ways, it seems like we should just not do questioning both -- either  
23          direction or allow for reasonable questioning in both directions.

24                      MR. LOCHBAUM: I know the current 3.5 process, members



1 of the public can't ask questions of licensees. The way we play the game is  
2 we'll ask the NRC and during the public meeting if they know if the licensee has  
3 X, Y or Z.

4 Sometimes the staff asks the questions, sometimes -- and  
5 sometimes it encourages the licensee to voluntarily.

6 If I was in charge of 8.11, I'd say, you know, licensee can ask  
7 questions of the staff. If the staff felt that information was needed to reach a  
8 decision, the staff can ask the licensee.

9 COMMISSIONER BARAN: Right.

10 MR. LOCHBAUM: So, it's the same protocols in place for  
11 running meetings. This one runs this meeting apart from all other public  
12 meetings and that just seems improper.

13 COMMISSIONER BARAN: Well, let me ask about one other  
14 -- let me ask one other thing and then, Sam, if you want to chime in.

15 Both Dave and Sam suggested having some kind of appeal to  
16 the process. And, this was an issue back when I read the transcript in 2000,  
17 people were saying the same thing.

18 Right now, of course, there's no appeal, but the Commission  
19 can review a director's decision on its own discretions, sua sponte.

20 So, a formal appeal would be one option to think about.

21 I could envision, though, an informal process where a  
22 petitioner who believes the director's decision is inadequate could trigger an  
23 EDO review of the decision.

24 But, instead of being a formal appeal, the EDO could



1 document his or her view of the director's decision and send that view along  
2 with the director's decision to the Commission when the Commission decides  
3 whether or not to take review of the director's decision.

4 On a case by case basis, the Commission could always  
5 extend the 25-day period it has to decide whether to take review of the decision  
6 or to allow the EDO the time necessary to formulate a view on the director's  
7 decision.

8 There may be other informal approaches along these lines  
9 that could fit into the existing regulation. I don't think this type of change would  
10 require any kind of regulatory change.

11 Does anyone have thoughts about whether this concept or  
12 something like this concept is worth exploring?

13 MR. LOCHBAUM: Well, I think, first of all, I think the  
14 proposed changes the staff is making to the management directive will lead to  
15 greater acceptance. So, I think there will be fewer times when petitioners feel  
16 the need or disagree with the need to go beyond the final decision. So, I think  
17 that's a good thing.

18 But, in the times when that doesn't happen, I think that would  
19 be better than nothing that we have now.

20 So, and also, I would recommend if you want to consider that,  
21 maybe do it on a pilot process to see if it's achieving the expectations that the  
22 various parties have for it. And, if it works, then consider doing it more  
23 permanent.

24 MS. GINSBERG: I would just add that I think David is right,



1       that the more expansive and descriptive the documentation of the answer is,  
2       the easier it is to at least understand.

3                   You may disagree, but at some point, the Agency has to say  
4       enough is enough. And, at some point, the use of resources to go one more  
5       round on things that have already been evaluated probably doesn't make  
6       sense.

7                   So, I think it's important that 8.11, if it doesn't say it directly,  
8       results in this very clear documentation of the response as a way of sort of  
9       making sure that, at least with respect to the points that have been brought up  
10      that they're fully understood.

11                  MS. HAMMOND: I do think that some kind of pilot  
12      experience with some sort of informal review would be a good idea, particularly  
13      given it will be a newer procedure with some changes. And so, that's a way to  
14      kind of keep an overall grasp on how those are going.

15                  Also, because this process is within the Agency's discretion,  
16      it's not subject to judicial review because it's enforcement discretion, that  
17      provides just that one last check within the Agency that could be helpful as well.

18                  And, perhaps could even further lead to acceptance of the  
19      process.

20                  I agree that the changes here do help further acceptance, but  
21      having that last check I think could do even more in that regard.

22                  MS. GINSBERG: I'm going to answer one more time. And,  
23      I would just say that, you know, the Commission is a competent base -- the  
24      Commission provides a competent basis for review.



1 COMMISSIONER BARAN: Well, thank you.

2 MS. GINSBERG: The Commission can take -- I mean, I  
3 don't mean that glibly, I mean that very seriously, that the Commission can take  
4 review like, you know, as a reviewing body if it so chooses. There's no reason  
5 to think that that's not being done at this point.

6 COMMISSIONER BARAN: Well, I agree that. You know,  
7 the thought I had was, is there some kind of creative middle ground between  
8 the director's decision that's done with sua sponte review possible versus some  
9 kind of formal appeal akin to what we have in some other processes.

10 And, I could just see as someone who is deciding whether or  
11 not I think we should take sua sponte or review of a director's decision, if you  
12 had a brief look from the EDO who's, you know, EDO may say, I looked at the  
13 director's decision, this makes sense to me. I think it's the right outcome.

14 The Commission's maybe less likely to take sua sponte  
15 review of the -- if the EDO looks at it and says I actually think this has some  
16 problems. I think maybe the Commission would be more likely to take sua  
17 sponte review. It's just an additional, you know, bit of information for us to  
18 make that decision.

19 But, anyway, I'll ask the staff the same question, so they're  
20 getting a little bit of warning about this, is it something worth exploring? One of  
21 the key things in my mind that would be an advantage of this is, it just fits neatly  
22 into the existing regulation. It's not something that requires a rulemaking  
23 change. But, maybe something to think about.

24 Thanks for all your thoughts. Sam, I'm sorry, I'm over, but if



1       you want to just chime in?

2                       MR. MIRANDA: Yes, I had a couple of comments.

3                       In my experience with petition meetings, we had licensees  
4       dial into the meeting and licensees very rarely have questions and, but, you  
5       have to consider also the underground mechanism that is at work for MD 3.5  
6       and the drop-in meetings.

7                       Licensees with questions can just put them on the agenda for  
8       the drop-in meeting. And, after one of my petitions, for example, through a  
9       FOIA request, I found it through the visitors log in the lobby. There were 15  
10      drop-in meetings one week after I filed the petition with a specific legal  
11      representative of that particular licensee.

12                      And, as far as appeals are concerned and review by the  
13      Commission, I suggested in my slides that the appeal process should be  
14      equalized between petitioners and licensees. Perhaps they should entertain  
15      one appeal from each side, for example. And, the appeal would have to  
16      include new information and in case of a disagreement, I think -- I've had some  
17      good experience with the ACRS when they review their reviewers.

18                      And, they review all their license renewals. They review all  
19      of the operating requests. And, they have the technical staff to do a proper  
20      review of competing appeals, for example.

21                      COMMISSIONER BARAN: Thank you for your thoughts.

22                      Thank you.

23                      CHAIRMAN SVINICKI: Thank you.

24                      Commissioner Burns?



1                   COMMISSIONER BURNS:   Thank you all for your  
2 presentations.

3                   Just a quick reflection on the issue because I think  
4 Commissioner Baran raises an interesting point.

5                   But, I will say this and I know lawyers like to -- will start  
6 trembling in their boots when I say this, is that, frankly, over the years, a lot of  
7 folks who didn't like the staff decision just wrote in to the Commission.

8                   And, it's, you know, and, you know, I can't say I wasn't sitting  
9 in their shoes at that point and they may or may not have been taken into  
10 account. So, there is, as they say, it's not formality but, of course, then, again,  
11 we have an informal process.

12                  But, just, you know, my own -- for my own perspective, I do  
13 look at the petitions that are decided and the underlying petition. I probably not  
14 go in as deep a dive as the staff would do or is expected to do, but still I have  
15 that sort of fidelity.

16                  One thing, just sort of reflecting on the process now that,  
17 again, was started in 1974, a couple things is, one, we've talked about formality.

18                  And, one of the things I would note is when this rule was adopted actually, a  
19 law firm, LeBoeuf and Lamb, and I don't know what they've become now, if they  
20 even exist anymore in any form, but LeBoeuf and Lamb actually petitioned the  
21 Commission, the Atomic Energy Commission, to make the process more  
22 formal.

23                  You would have had to meet the standing requirements, in  
24 effect, contention requirements and make it more a formal process than it has



1       been in years over the years.

2                   The second thing I would note is we talked a lot about this  
3       management directive and this petition review process is really something that  
4       goes from the 1990s when the Commission and the -- had the staff and actually  
5       through the Office of General Counsel, I think because I think actually Chip  
6       Cameron led the sort of the engagements, looking at the 2.206 process and  
7       introducing, in effect, this interim or intermediate -- I'll call it more formalized,  
8       but process of achieve -- of having an interaction with the staff, having this  
9       petition review board, having the ability to -- for the petitioner to come to the  
10      staff, talk to the staff, have some engagement.

11                  I don't recall when the circulation of the draft decision actually  
12      began. It may have gone back to that time, Dave may know -- recall.

13                  But, it was certainly by the late '90s or early 2000s.

14                  And, those, if you look at the original regulation, are actually  
15      nothing -- those aspects are not in the original regulation which is not changed  
16      much since its promulgation other than account for we're now NRC and no  
17      longer AEC.

18                  But, those things, I think, have overall, from my impression,  
19      were good improvements and say the discussion today really we're sort of  
20      focusing on how, you know, are there areas where we can make the things go  
21      better and make the process go better, be more responsive.

22                  I found interesting, actually, Professor Hammond, I think you  
23      were kind to us, you didn't call it the nuclear option like you did in your -- you  
24      called the big stick, but that would have been okay, although, you know, we



1 have nothing to do with Kim Jong-Un.

2 But, nonetheless, I take the point. I thought -- I read your  
3 article, it was very interesting.

4 One thing I find very interesting is that actually this process  
5 began at a time and in a -- from a perspective I think the Agency had is that  
6 these decisions would be reviewable in accord. And, it wasn't until Heckler v.  
7 Chaney and then the DeLorean case that it really came to the point and it says,  
8 no, this Agency discretion.

9 But, the process, and I think some of this formality, I'll call it  
10 the formality of how decisions were issued, you know, you can go and find back  
11 to, as I say, 1979, you can easily find decisions in the reported decisions of the  
12 Commission.

13 So, I find it very interesting that we began there, but, you  
14 know, I take your point and I appreciate your reflection on the four points that  
15 timeliness, transparency, variability and the need for a substantive metrics.

16 Now, on the last one, I may -- you may have addressed that,  
17 but there is -- is there something you say in terms of how, on that last point  
18 which I got from your article, about substantive metrics that you might suggest  
19 that we do based on your understanding of our process?

20 MS. HAMMOND: Yes, and that is a challenge I think  
21 because, of course, whether something is successful is very much in the eye of  
22 the beholder.

23 A petitioner may not every be fully satisfied and a licensee  
24 might not either.



1                   And so, it is difficult if the metric ultimately is the extent to  
2                   which a licensee is conforming to the statutory and regulatory requirements of  
3                   holding that license, how well that takes place is always difficult to measure.

4                   But, I do think that's where having some kind of retrospective,  
5                   having some kind of Agency issued discussion of the outcomes of these more  
6                   prominently.

7                   And, particularly in a way that describes what is useful about  
8                   the petition and how they can make a difference could be very helpful in terms  
9                   of sort of bolstering the legitimacy of the process or the perceived legitimacy of  
10                  the process and ultimately the acceptance of it.

11                  COMMISSIONER BURNS: Okay, thank you.

12                  Yes, it's -- I think it's something to think about but I appreciate  
13                  reading your article in terms of these criteria. It's good to sort of come back to  
14                  us. And, I think we've had a discussion about that.

15                  CHAIRMAN SVINICKI: And, just for the record --

16                  COMMISSIONER BURNS: Oh yes.

17                  CHAIRMAN SVINICKI: -- the article to which the discussion  
18                  now refers is a published writing of Professor Hammond and Mr. David Markell  
19                  entitled Administrative Proxies for Judicial Review Building Legitimacy From the  
20                  Inside Out.

21                  Thank you.

22                  COMMISSIONER BURNS: I think that was in the Harvard  
23                  Environment Law Review in 2013.

24                  Good, one of the things I'll ask Mr. Lochbaum and Mr.



1 Miranda, in anticipation of the staff's presentation, to some extent, it seemed to  
2 me that there are some areas where the staff in the management directive may  
3 be more restrictive in terms of what is a petition that screens in or out.

4 I don't know if you had a sense of that or any comment on  
5 that.

6 MR. LOCHBAUM: We do. It goes back to communication.  
7 There are probably times, there are definitely times, when things are admitted  
8 into the process. It probably shouldn't be handled through that process.

9 So, I think that was the next -- or the genesis for that part of  
10 the proposed revisions.

11 And, I think if those are appropriate, then that's fine. What  
12 we're concerned about is we've seen the NRC basically say, this is screened  
13 out because it doesn't meet the criteria.

14 Mark Leyse has submitted petitions that have been denied  
15 because they say they didn't raise any new issue. Mr. Leyse said, well, where  
16 has it been covered before? And, the answer is, in the regulations.

17 That's kind of vague. So, if you're going to screen it out  
18 because it's been asked and answered, just tell us where it was answered.

19 COMMISSIONER BURNS: Okay.

20 MR. LOCHBAUM: Don't -- this vague answer just as a get  
21 out of jail free card is not going to work.

22 COMMISSIONER BURNS: Yes.

23 Mr. Miranda?

24 MR. MIRANDA: Yes, I agree with that and I would like to



1 point out that in the old MD 8.11 and the new one that we're considering now, it  
2 has some language in there, and I quote, new significant information.

3 New significant information, there's no conjunction, there's no  
4 comma, no semicolon, there's no way to know whether they're talking about  
5 new or significant or new and significant.

6 And, this is boilerplate language that's used in PRB  
7 evaluations that are used to not accept a petition. Oh, it has no new significant  
8 information.

9 And, I pointed out during one of my meetings that, if you say  
10 that there's no new information, then give me an ADAMS reference number and  
11 show me where you've considered this issue and you've resolved it.

12 In another petition, I was told that, yes, this is new  
13 information, but it's not significant. Well, if it's new information, how do they  
14 know it's not significant if they haven't evaluated, how do they know it's not  
15 significant?

16 But, this is -- it seems to be a form letter that goes out with  
17 this phrase in it.

18 COMMISSIONER BURNS: So, this kind of goes to the point,  
19 as I say, Professor Hammond's -- the four criteria, it goes to the transparency.  
20 It certainly goes to the transparency criterion. It says, what's the, in effect,  
21 what's the basis for this screening out or the exclusion?

22 I mean, we know when you get to the petition -- when you get  
23 to say it's screened in and we get to a decision on the petition, that one is fairly  
24 -- I mean, this is like, I think, Dave's praise is that the nice thing about 2.206 I



1 get a fairly robust answer. I may not agree with it, but a fairly detailed answer.

2 What I don't -- what I think I hear is that, on that screening  
3 out, you may -- you're not, again, you may -- I don't think it's a question  
4 expecting the same detail you might get in a petition decision, but you're at  
5 least saying, you're saying, you know, if that is something that's been covered  
6 or you've made a determination on, just help me along, give me the, you know,  
7 sprinkle the crumbs on the road so I can get to the end. That's what I -- that's  
8 -- I think that's what I hear you guys saying.

9 MR. LOCHBAUM: Yes, if it's in ADAMS, that ML, it's mine.

10 COMMISSIONER BURNS: Yes, yes, okay.

11 MR. LOCHBAUM: So --

12 COMMISSIONER BURNS: Oh, it's yours? Yes.

13 So, it was actually your fault then, because it's ML, it's yours.

14 No, all kidding aside.

15 One thing, in terms of feed -- my last question I think for you  
16 all is, what would you say -- the suggestion with respect to a feedback  
17 mechanism, tell me how you would have that, how that would work?

18 And, I, you know, I like Dave and Mr. Miranda talked, but  
19 maybe you weigh in, too, what you might see as well if we had that.

20 MR. LOCHBAUM: Well, I think the Chairman's point about  
21 including that in the annual report would give the staff a change to talk about  
22 the effectiveness, the timeliness and some of these other factors.

23 I thought that -- I didn't -- that was the Chairman's  
24 recommendation. Well, I think that was a good way to address the feedback



1 mechanism that we wanted, a better way than the ones we proposed.

2 So, try that and see if that meets the expectations.

3 Also referred to the OIG. OIG's audits, I think, are a very  
4 good way of seeing whether the Agency's hitting the mark.

5 COMMISSIONER BURNS: Okay.

6 MR. LOCHBAUM: And, I think the continued OIG audits will  
7 continue to serve that function.

8 COMMISSIONER BURNS: Okay.

9 MR. MIRANDA: Well, I'm sorry to say that some of the  
10 evaluations I've received from the PRB are -- were just wrong. Okay?

11 I'm speaking as an engineer with 40 years experience. Their  
12 evaluations were wrong, demonstrably false statements and there's no way,  
13 you know, given that kind of feedback is useful because now I know what  
14 they're thinking and how they're trying -- how desperately they're trying to make  
15 the petition go away.

16 But, then, I have no recourse. I have no way to answer  
17 those. I can't say, no, you're wrong because you didn't factor in critical  
18 two-phase flow or you didn't factor in the reactivity excursion, blah, blah, blah.

19 I have written such letters and they just get lost because the  
20 petition is closed and they don't show up in ADAMS.

21 COMMISSIONER BURNS: The petition?

22 MR. MIRANDA: They don't show up in ADAMS.

23 COMMISSIONER BURNS: What doesn't show up in  
24 ADAMS?



1                   MR. MIRANDA: My response to petition review board  
2 evaluations that are patently wrong.

3                   COMMISSIONER BURNS: Okay. Well, we might want to  
4 talk to the IG about that.

5                   Ellen, do you have anything you want to add?

6                   MS. GINSBERG: Yes, I would just say, listing the 2.206  
7 activity and enforcement report seems perfectly reasonable.

8                   I also note, though, that it seems to be lost in the conversation  
9 that the NRC does publish in the Federal Register 2.206 petitions.

10                  So, there's not a lack of public knowledge, it may be that it's  
11 not in one place and so the enforcement report may be a good place to collate  
12 that.

13                  But, I want to make clear that I think there is a real effort on  
14 the Agency's part perhaps to go further than other agencies do with respect to  
15 publication in the Federal Register.

16                  The other point is that, the IG pointed out, and I think it's not  
17 unreasonable, but the periodicity would be at the Commission's discretion, a  
18 look at the process every few years, I don't think you can do it every six months,  
19 for example, but every few years whether it's three to five kind of thing would  
20 make sense.

21                  And, it would allow both the petitioners, the other  
22 stakeholders who are interested in the process to come and do exactly as we're  
23 doing right now, which is offer some additional ideas and identify places where  
24 perhaps the process is working extremely well, which is the -- you've heard



1       some agreement here as to places where the process is valuable and working  
2       well.

3                       COMMISSIONER BURNS: Thank you.

4                       Thank you, Chairman.

5                       CHAIRMAN SVINICKI: Well, I just want to close with a  
6       comment because my colleagues I think have had an opportunity to make  
7       some reference to the Commission's opportunity to take up sua sponte review  
8       of director decisions.

9                       I want to chime in to add that that is not just some kind of  
10      paper tiger, both this Commission and the Commission I have served on over  
11      the years take that very seriously where there is a request for an extension of  
12      the Commission's time to review those.

13                      I can testify that that is directed by members of the  
14      Commission who have additional questions or needed additional time. So,  
15      that's a very real procedural step in my experience over the last ten years. So,  
16      that's a very sincere look, I think, that those decisions get by the Commission  
17      itself.

18                      So, with that, again, I thank all members of the panel.

19                      We will now take a break until 10:25 and reconvene for the  
20      staff's presentation at that time.

21                      Thank you.

22                      (Whereupon, the above-entitled matter went off the record at  
23      10:17 a.m.)

24                      CHAIRMAN SVINICKI: Well, good morning, everyone, I call



1 the meeting back to order. Next we will hear from the NRC Staff regarding the  
2 same and similar topics as the previous panel. And we will lead off with our  
3 Executive Director for Operations, Victor McCree. Victor, please begin.

4 MR. MCCREE: Thank you. Good morning, Chairman,  
5 Commissioner Baran, Commissioner Burns. It's our pleasure to be here this  
6 morning to discuss our efforts to update and improve the Agency's guidance for  
7 implementing 10 CFR Part 2.206.

8 As you know, our enforcement petition process provides  
9 stakeholders an opportunity to petition the Commission to take enforcement  
10 action through an order issued under 10 CFR Part 2.202 to modify, suspend, or  
11 revoke a license or for what other actions may be appropriate.

12 The guidance we use to implement the 2.206 requirements is  
13 provided in the NRC Management Directive 8.11. The last revision to this  
14 Management Directive was in 2000. And as you'll hear today, we've  
15 accumulated substantial experience in implementing the 2.206 process, and it's  
16 our intent to improve and update the Management Directive guidance to reflect  
17 our lessons learned.

18 As we improve this guidance, our goal will continue to be to  
19 ensure that we implement the requirements of the rule in such a manner that  
20 we properly identify requests for enforcement action on issues that could  
21 present a safety or compliance concern, and therefore enabled NRC to take  
22 appropriate actions. Next slide, please.

23 Here with me at the table today are Brian Holian who's the  
24 acting Director of the Office of Nuclear Reactor Regulation. Brian will briefly



1 comment on the value of the 2.206 process and our efforts to improve it.

2 To Brian's right, Eric Benner, currently the Director of  
3 Engineering in NRR, but who has recent experience with the 2.206 process  
4 from his previous position as the Deputy Director in the Division of Operating  
5 Reactor Licensing (DORL). Eric will give an overview of the 2.206 process and  
6 our direction.

7 Mary Jane Ross-Lee, to my left, MJ, Deputy Director for the  
8 Division of Licensing Projects will provide her recent experience serving as a  
9 Petition Review Board Chair, and highlight changes to the PRB process.

10 And finally, Doug Broaddus to MJ's left is the Chief for the  
11 Special Projects Branch in dual that owns this process, and he'll discuss at a  
12 greater level of detail the changes we propose to make to the Management  
13 Directive.

14 I would note, before turning it over to Brian, with all due  
15 respect for Dave Lochbaum, that ML actually stands for Main Library. But if it  
16 makes Dave feel better, we'll continue to refer to it as Mr. Lochbaum. But with  
17 that, Brian?

18 MR. HOLIAN: Good. Thank you, Vic. And we did have to  
19 look that up, though.

20 CHAIRMAN SVINICKI: What's interesting is that was not  
21 either of my guesses. So, okay, it was main library. And not Maine as in the  
22 state of, but main as in the main library. Okay, thank you. I didn't want  
23 anyone to travel to Portland looking for these documents.

24 MR. HOLIAN: Well, good morning, Chairman and



1       Commissioners.   Pleasure to be here.   You know, as a manager with  
2       experience both at headquarters and in the regions with oversight for  
3       enforcement and our inspection programs, I personally value and place a lot of  
4       significance both in the allegation process and the 2.206 process.

5                 And both processes enable us to interact with stakeholders  
6       on different views and interpretations of our regulations and our oversight.   So  
7       both myself and many of my colleagues, we invest a lot of time in both of those  
8       processes.   We're here today to focus on the 2.206 process.

9                 And you know, it's important to highlight, first slide of mine,  
10      that we believe our transparent processes are open and have served us well  
11      over the years.   Just like we try to improve our processes from internal  
12      stakeholder feedback, we also similarly do that with external stakeholder  
13      feedback, and we're glad to improve the process.

14                You've heard some this morning, and we've heard it in public  
15      meetings, that some stakeholders have expressed an expectation that the  
16      2.206 process be, in my words, wider or more far-reaching.   You know, just in  
17      the Staff's view, just to revisit an issue that was already addressed by open and  
18      transparent processes can be viewed by the Staff as not an efficient use of our  
19      resources.

20                And so this speaks to the number of non-acceptances.  
21      However, if the petitioner provides new facts, and there is a significance aspect  
22      to that, the Staff is glad to reconsider the issue.   And that is warranted.

23                It is also important to note that the process itself is important,  
24      and that even when we may deny an enforcement aspect at the end of the



1 process, that actions are often taken still to address the underlying concern.

2 So one I remembered from my previous time as an office  
3 direction in the materials area was we denied an enforcement issue that was  
4 not appropriate. However, we did go ahead and after that modify and clarify a  
5 materials license to make it more clear. So those often don't get highlighted,  
6 those kind of improvements.

7 I would also like to highlight that the Staff and the Petition  
8 Review Board, the makeup of the Petition Review Board enters the process  
9 with an expectation that we should look at it with a new and a fresh. And so  
10 we do spend a lot of the time on that. I ask the Staff to calculate, and a  
11 minimum of 240 staff hours are spent on each petition. Next slide, please.

12 As Vic mentioned earlier, our overriding objective regarding  
13 the process is that any safety or security or compliance issues, that we do  
14 effectively evaluate them and ensure that we take subsequent action.

15 We believe that our current process accomplishes this  
16 objective, and Eric will provide more details to back this up. However, we do  
17 seek to make improvements. And two of the items, at least two of the items I  
18 heard this morning resonate with the Staff.

19 There is a sense of boilerplate to some of our responses that  
20 we can improve upon. In particular, on immediate actions, those should not be  
21 short descriptions, and the Staff has already talked that we should clarify those,  
22 and similarly on the depth of our response when we don't accept. So we can  
23 improve those.

24 The highlights and the bullets on this slide were some of our



1 goals that we went into this Management Directive update process to. We can  
2 improve our efficiency and our timeliness. Some of that is by the Management  
3 Directive revisions. But honestly, some of that is just our management  
4 oversight.

5 I looked back over the times, and we have in years past  
6 averaged a five-month review. And it's worked its way up to seven to twelve  
7 months on time. So we can improve that and set metrics to help us with that.

8 The petitioner participation is a very important aspect of the  
9 process. And as was noted on the first panel, we have taken steps to improve  
10 that.

11 And finally, as Doug will discuss later, we can believe that  
12 aspects of the Management Directive can be updated to clarify even how the  
13 Petition Review Board operates, and we think that will help. With that, I'll turn it  
14 over to Eric.

15 MR. BENNER: Thanks, Brian. Good morning, Chairman  
16 and Commissioners. Next slide. Implementing guidance for the process as  
17 discussed is contained in Management Directive 8.11, which I'll discuss using  
18 the flow chart on the next slide, please.

19 This process ensures a rigorous review. Upon receipt, a  
20 petitioner is assigned to the appropriate licensing office, typically NRR, NRO, or  
21 NMSS. Then, a Petition Review Board, or PRB is assigned. That PRB is  
22 chaired by a senior manager designated by the appropriate office director and  
23 includes a petition manager, the appropriate technical experts, and usually an  
24 NRC attorney.



1                   The PRB engages the petitioner to ensure it fully understands  
2                   the petitioner's concern, and assesses any immediate actions that are  
3                   requested. It determines whether the petition meets the criteria for  
4                   acceptance, and if the petition is accepted, it develops an evaluation plan and  
5                   schedule.

6                   Once its evaluation is complete, it makes a recommendation  
7                   to the appropriate office director to either grant or deny the petition. A  
8                   proposed Director's Decision is provided to the petitioner for comment, after  
9                   which a final Director's Decision is issued which the Commission, as you well  
10                  know, may choose to review.

11                  If the Commission does not choose to review it, the Director's  
12                  Decision becomes final after 25 days. Next slide, please.

13                  So, so far, we've discussed the current process which we  
14                  believe has been implemented effectively. However, we have great  
15                  opportunity to update it based on many lessons learned. So the rest of these  
16                  presentations will focus on how we intend to make this process better.

17                  First, as previously stated, the Management Directive was last  
18                  revised 18 years ago to incorporate lessons learned up until that time, enhance  
19                  petitioner interaction, and add detailed implementation guidance. So it's the  
20                  right time. Some would say it's past the right time to revisit the effectiveness of  
21                  those changes.

22                  Second, the NRC's Office of the Inspector General recently  
23                  completed an audit of the 2.206 program. The audit found that the program  
24                  was performing adequately, but made recommendations to clarify acceptance



1 criteria and perform periodic assessments. We agree with both of those  
2 recommendations.

3 Third, the time to complete petitions now averages over 12  
4 months for some recent petitions. We attribute this to several reasons,  
5 including the recent tendency for petitioners to couple petitions with Freedom of  
6 Information Act requests, petition reviews being perceived as lower priority than  
7 other activities, and the addition of an additional meeting with the petitioner in  
8 the 2000 Management Directive revision.

9 Lastly, as would be expected with 18 years of run time, we  
10 have a significant body of experience and feedback from both internal and  
11 external stakeholders, including the Commission, on which to base  
12 improvement, some of which I'll now elaborate on. Next slide, please.

13 So in 2010, we explicitly sought comment on the  
14 Management Directive to begin the process of updating it. Those efforts were  
15 put on hold due to reassignment of Staff to Fukushima-related activities. We  
16 recently restarted that effort and sought updated feedback.

17 We felt that a better way to get informed feedback would be to  
18 hold a public meeting to communicate our proposed changes to the  
19 Management Directive and actively seek public feedback on those changes.

20 We held that meeting in December of last year, and we're  
21 pleased at the diversity of participants, including representatives from  
22 non-governmental organizations, petitioners themselves, and industry. They  
23 provided extensive constructive feedback, much of which was repeated in the  
24 earlier panel.



1                   And I've listed the most significant items here, and we believe  
2                   our proposed updates to the process effectively address these issues. Next  
3                   slide, please.

4                   So although we conclude that the process continues to fulfil  
5                   its purpose, we believe there's room for improvement. One of the lessons  
6                   learned is that although the 2000 Process Revision provided for more  
7                   interactions between the Staff and the petitioner, some of those interactions  
8                   were not as meaningful or as constructive as they could be, which we're trying  
9                   to improve.

10                  We're also setting explicit timeliness goals in the Management  
11                  Directive and believe that the process changes will support and improve  
12                  timeliness because the steps are now more focused on achieving resolution of  
13                  the underlying issue.

14                  As previously mentioned, the Office of the Inspector General  
15                  made a specific recommendation regarding clarity of acceptance criteria.  
16                  Additionally, we believe that overall clarity of the process can be improved by  
17                  structuring the Management Directive to follow the process flow and focusing  
18                  on those process aspects of most importance to petitioners, which has resulted  
19                  in us relocating some implementation details to a separate supporting  
20                  procedure.

21                  This procedure will be publically available and will allow for  
22                  lower-level process improvements to be made without having to revise the  
23                  Management Directive.

24                  Lastly, another area raised by the petitioners to us and today



1 is what they refer to as an appeal. We are not recommending creation of such  
2 an appeal because we believe that both the current and proposed process  
3 fulfills its purpose and provides for sufficient independent review through the  
4 opportunity for comment on the draft Director's decision and the Commission's  
5 power to review Director's decisions.

6 One important element of the process is the PRB meeting  
7 itself. And our experience with these meetings has been important to  
8 informing our changes to the process. So MJ Ross-Lee will not discuss her  
9 experience as a PRB chair and some of the process improvements we're  
10 making there as most relevant to her role.

11 MS. ROSS-LEE: Thank you, Eric. Chairman,  
12 Commissioners. Next slide, please. Thank you for inviting me to share my  
13 experience as a PRB Chair. Chairing petitions has been a valuable learning  
14 experience personally because it has allowed me to see the public's point of  
15 view of NRC's action in a variety of areas.

16 I would like to briefly focus on how my experience with three  
17 recent petitions is relevant in illustrating lessons learned and how we have used  
18 them to address the process within the constraints of the guidance.

19 In response to feedback we received in the 2014-2015  
20 timeframe, we focused on improving the quality of our Director's decisions.  
21 During that period, three Director's decisions, including one for which I was a  
22 PRB Chair, were reissued.

23 We undertook a comprehensive assessment of the causes  
24 that led to the reissuance of the Director's decisions and determined that they



1        were symptomatic of a reduction in the level of rigor we applied to ensure the  
2        quality of our 2.206 documents and communications.

3                        Based on the lessons learned from these examples, we  
4        reinforced the need for greater management oversight of our 2.206  
5        communications, and developed additional internal guidance in the form of a  
6        checklist.

7                        The checklist has reminders important to quality that must be  
8        completed and concluded, excuse me, and included with a concurrence  
9        package for all proposed and final Director's decisions.

10                      Use of the checklist has improved the quality and consistency  
11        of our Director's decisions to ensure each decision contains current and  
12        accurate information, clearly communicates the basis of the decision, and  
13        identifies actions taken by the Staff related to the concern even when the  
14        petition is denied.

15                      Enhanced management oversight has also led to the  
16        identification of other issues that could degrade quality and that an element of  
17        additional internal guidance to ensure we continue to issue quality 2.206  
18        documents.

19                      A second lesson learned through my experience as a chair  
20        regards how to consistently address issues that are referred to the 2.206  
21        program from the Commission or Licensing Boards. The current guidance is  
22        unclear about how such referrals should be evaluated against the criteria for  
23        accepting or rejecting petitions, and has resulted in inconsistent outcomes.

24                      The revised Management Directive incorporates new



1 guidance to ensure that the petitions referred by the Commissioner Licensing  
2 Boards are screened into the 2.206 process and consistently evaluated by the  
3 PRB against simplified acceptance criteria which Doug will discuss in more  
4 detail.

5 Another lesson learned concerns screening of items not in  
6 scope of the process. During the PRB review of a petition regarding fracking,  
7 the petitioner raised an additional concern regarding controlling the civilian use  
8 of drones around power reactors.

9 The concern was evaluated by another PRB as a new  
10 petition, and the PRB determined that the petition could not be accepted for  
11 review because the civilian use of drones is under the purview of the FFA, or  
12 outside NRC's jurisdiction.

13 The revised process will address the situation by including  
14 criteria for early screening out of petitions that address issues that are outside  
15 the jurisdiction of the NRC.

16 A third lesson learner concerns request for action that would  
17 not be implemented through a proceeding under 2.202. The 2.206 regulation  
18 allows any person to file a request to institute a proceeding pursuant to 2.202.

19 We received a petition requesting that the NRC issue a  
20 Demand for Information, or DFI, pursuant to 10 CFR 2.204 for the licensee to  
21 explain why its license amendment requests failed to include all the information  
22 needed by the NRC staff to complete its review, and measures it will implement  
23 to comply with 10 CFR 50.9.

24 Although the petition was accepted by the PRB, a DFI is an



1 example of an action that cannot be requested through 10 CFR 2.206. A DFI  
2 is issued under Section 2.204 and is a means for the NRC Staff to determine  
3 whether an order should be issued.

4 The revised Management Directive will specifically include  
5 criteria for screening out a petition that requests an action that cannot be  
6 implemented through a proceeding under 2.202.

7 Finally, interactions between the PRB and the petitioners  
8 have not always been as productive and meaningful as they could be. For  
9 example, the current guidance does not allow the PRB to meet with the  
10 specifics, excuse me. The current guidance does not allow the PRB to meet to  
11 discuss the specifics of a petition until after the initial meeting with the  
12 petitioner.

13 This can hinder effective interactions between the PRB and  
14 the petitioner because the PRB has not yet had the opportunity for its members  
15 to discuss and share perspectives on the petition before initially interacting with  
16 the petitioner.

17 On the next slide, I'll speak to how this initial interaction can  
18 be more valuable when the PRB first has an opportunity to meet and discuss  
19 the petition. Next slide, please.

20 My experience as Chair of three PRB has reinforced my view  
21 that the process can be changed to further enhance the interaction between the  
22 Petition Review Board and the petitioner. Similar to the allegations program,  
23 we are revising Management Directive 8.11 to have the Petition Review Board  
24 hold an internal meeting to discuss and assess the petition as submitted



1       against the acceptance criteria before it meets with the petitioner.

2                       This change will allow the PRB to hear perspectives of all  
3       Board Members, develop questions and topics to address with the petitioner,  
4       and provide the questions to the petitioner prior to the meeting.

5                       Likewise, sharing the PRB's feedback will help the petitioner  
6       identify and focus its presentation on information the PRB needs, and to  
7       address areas where the petition may not meet the acceptance criteria. The  
8       petitioner can also supplement the petition before and during the meeting to  
9       ensure the PRB has all the information it needs regarding the petitioner's  
10      concerns.

11                      This approach will better prepare both the PRB and the  
12      petitioner to discuss the petition in an open manner, and ensure the PRB fully  
13      understands the scope and basis of the petitioner's concerns prior to making its  
14      recommendations to the Director.

15                      Additionally, prior to closing the meeting with the petitioner,  
16      the PRB will restate its understanding of the petition, request the petitioner  
17      confirm whether the PRB's understanding is correct, and provide an opportunity  
18      for the petitioner to provide feedback on the interaction with the PRB.

19                      The Board would then meet internally to consider all  
20      information provided by the petitioner to develop a recommendation for the  
21      Director on whether to accept the petition. I will now turn to Doug who will  
22      discuss the revised guidance in more detail.

23                      MR. BROADDUS: Thank you. Good morning, Chairman,  
24      Commissioners -- and unfortunately we're missing one right now. We



1 conducted a comprehensive reassessment of the guidance and  
2 manage -- Directive 8.11 -- and have looked for innovative changes that  
3 address lessons learned and feedback from both internal and external  
4 stakeholders. A major focus area has been identifying changes to increase  
5 the clarity of the guidance. Key changes include restructuring the guidance to  
6 enhance the understanding of the process, more clearly conveying the intent of  
7 the evaluation criteria using screening and acceptance criteria, and simplifying  
8 the management directive to reduce confusion and inconsistent  
9 implementation. These will be discussed more in the next slides.

10 Another focus area has been to identify ways to improve the  
11 timeliness of program implementation, and in particular, the initial evaluation to  
12 determine if a request should be accepted into the 2.206 -- as a 2.206 petition.  
13 The approach for interacting with petitioners that MJ discussed will allow the  
14 PRB obtain the information it needs to make its acceptance recommendation  
15 earlier in the process. In addition, an initial screening process will allow for the  
16 quick identification and notification of the petitioner when a request -- requests  
17 should be handed in another process or clearly do not meet the criteria  
18 specified in the management directive. These changes in the initial evaluation  
19 stage will allow the staff to promptly make and communicate to a petitioner its  
20 decision whether the request should be handled under this or a different NRC  
21 program. This in turn will allow the -- the appropriate NRC to staff to promptly  
22 focus on the concerns raised and whether actions should be taken.

23 To maintain attention on the timely completion of the initial  
24 evaluation, we believe it is appropriate to establish in the management directive



1 a performance goal to issue an initial acceptance decision within 90 days.  
2 Next slide, please. Management Directive 8.11 currently contains substantial  
3 guidance that not only addresses the structure of the program, but also  
4 provides detailed, step -- step-by-step implementing instructions for the NRC  
5 staff. Because of the significant public participation in the program, it is  
6 important that the guidance is clear and straightforward so that it is understood  
7 both by internal and external stakeholders. Our goal is to ensure that the  
8 public understands the intent of the program, how it is implemented, the  
9 requirements to submit a petition, and how the NRC will respond to those  
10 requests.

11 We identified several key revisions to the management  
12 directive that can increase its ease of use and understanding. First, we are  
13 relocating the detailed implementing instructions to a companion guidance,  
14 such as a desk guide or office instruction, to reduce the complexity of the  
15 management directive. This will also allow the guidance in the companion  
16 document to be updated as needed to reflect stakeholder feedback, lessons  
17 learned from periodic assessments we would perform and changes in other  
18 NRC programs and procedures.

19 Second, we are reorganizing the management directive to  
20 more closely align with the actual steps in the process to provide a more  
21 consistent and predictable implementation and increase petitioners'  
22 understanding of -- of what to expect throughout the process. Third, consistent  
23 with the findings of the OIG audit, the existing criteria for accepting and  
24 rejecting petitions have been a source of confusion. To better convey its intent



1 and application, the petition acceptance determination process will include an  
2 initial screening using defined criteria and examples in the PRB's evaluation  
3 against simplified acceptance criteria. Upon initial receipt of a request, staff  
4 will quickly assess it against the screening criteria, which include specific  
5 examples of requests that are addressed under other NRC programs, such as  
6 allegations or -- just since -- for rulemaking -- and other requests that clearly do  
7 not meet the criteria -- basic criteria of a 2.206 petitions such as a general  
8 statement of opposition through our licensed facility or an action that cannot be  
9 implemented through a proceeding under Section 2.202.

10 Requests will only be screened out if they are clearly -- do not  
11 meet the intent of the 2.206 process. This approach is similar to the initial  
12 assessment for allegations that staff make when they receive a safety concern.

13 The screening process enables the PRB to then focus its efforts on evaluating  
14 requests against simplified criteria that are consistent with the intent of the  
15 2.206 process. The -- the PRB will first consider whether facts are provided to  
16 support the requested action. Next, the PRB determines whether the NRC has  
17 previously addressed the concerns, and if so, whether the same facts provided  
18 in the petition were considered. Consistent with the current criteria new issues  
19 that -- and those that have not been previously resolved would be accepted by  
20 the PRB for consideration under 2.206. Next slide, please.

21 This slide identifies some of the areas where feedback from  
22 external stakeholders has helped to identify additional improvements and  
23 clarifications to the guidance. Consistent with the feedback we've -- you heard  
24 this morning, these changes are focused primarily on enhancing the quality and



1 timeliness of communications with petitioners and ensuring petitioners have  
2 opportunities to interact with the NRC and provide feedback on the program.  
3 To address a concern regarding the oversight of the screening process, we are  
4 adding a guidance in the management directive to inform a petitioner of the  
5 basis for why a petition is screened out. And our disk guide will document our  
6 existing process to obtain concurrence from management, as well as review by  
7 appropriate other organizations, such as OGC, prior to screening out a petition.

8 We are updating the management directive to provide  
9 guidance and criteria for when a petition can be held in abeyance. The need  
10 to hold a petition in abeyance has occurred when issues raised related to a  
11 petition are under review in another NRC process. The review will take an  
12 extended time, but the PRB needs the information from that -- the result of that  
13 process to reach its decision. Based on stakeholder feedback, the  
14 management directive will require the staff to notify petitioners of the abeyance  
15 decision and basis and reach agreement with the petitioner on how frequently  
16 we're going to have interactions after that.

17 Several other changes are being made to ensure that  
18 petitioners have a greater opportunity to provide and receive feedback at  
19 several other key steps in the process. For example, the PRB will develop a  
20 specific set of questions to solicit direct feedback from the petitioner at the  
21 completion for their meeting and provide a form that can be used to provide  
22 feedback after the meeting. Management Directive revision will clarify the  
23 guidance on a streamlined director's decision, including a notification to the -- to  
24 ensure that the petitioner does not have information the PRB has not



1 considered prior to issuing the decision.

2 The desk guide will also include a guidance to ensure that  
3 communications with the petitioner that are specified in the management  
4 directive are timely and that staff clearly informs petitioners of the basis for all  
5 decisions on a petition. The next slide, please. So going forward, we expect  
6 to submit the revised management directive to the executive director for  
7 operations for approval by the end of March, and to the Chairman for final  
8 approval in April. In parallel, the staff will continue to develop its desk guide  
9 and issue a publicly available document at the same time as the revised  
10 management directive. So upon approval of the revised management  
11 directive, related -- external webpages in the public procedure when the 2.206  
12 process will be updated to inform the public of the revised guidance.

13 Finally, we committed in our response to the Office of  
14 Inspector General Audit findings that we will finalize our procedures for  
15 conducting periodic assessments of the program and plan to conduct an initial  
16 assessment within one year of the issuance of the revised guidance. With  
17 that, I'll turn it back to Vic for his closing remarks.

18 MR. McCREE: Thanks, Doug. Chairman, commissioners,  
19 as you've heard this morning we believe we've effectively implemented the  
20 requirements of 10 CFR part 2.206, but -- but more importantly, our ongoing  
21 efforts to improve the guidance for implementing 2.206 by making the process  
22 more timely, more transparent, more rigorous and more fair and clear is an  
23 example of where we're continuing to strive to improve the effectiveness,  
24 efficiency and agility of all our agency processes.



1                   We have learned from our experience in implementing 2.206  
2                   and we've obtained some valuable insights from external stakeholders that are  
3                   being factored into our proposed update to the management directive. And  
4                   accompanying him -- that concludes -- concludes our remarks. And we're  
5                   ready for your questions.

6                   CHAIRMAN SVINICKI: Well, thank you very much to the  
7                   NRC staff for those presentations. We'll begin again the questioning of this  
8                   panel with my questions. Professor Hammond described -- she had studied an  
9                   EPA process -- and she used a terminology. She stated that they used a  
10                  tailored protocol upon acceptance of something of the -- a petition of the nature  
11                  that she was studying in her work. Is it the staff's assessment that if these  
12                  changes are adopted or as the process exists right now, that an individual  
13                  petition review board upon the acceptance of a matter has the freedom and  
14                  flexibility within the process that is the PRB itself analyzing the issue -- do they  
15                  think that they have some liberty there to have it a -- kind of a tailored protocol  
16                  in terms of their assessment? And again, when you adopt these changes I  
17                  think they'll be even more a description of exactly how they go about their work.

18                 And then secondarily, is it NRC's assessment that the PRB  
19                 members have access to whatever they need in order to fully evaluate an issue,  
20                 whether that be external expertise or needed subject-matter experts? What  
21                 would be the assessment? And MJ might have some views, since she's  
22                 chaired a number of PRBs.

23                 MR. HOLIAN: Well, Chairman, I'll start. And then MJ and  
24                 Eric both have a lot of experience with a number of petitions more current than



1       myself. But one, I do believe the Petition Review Board or the process itself  
2       would provide the openness to look for experts, look for other additions to their  
3       expertise that they might have. I was just talking yesterday about a differing  
4       professional opinion where the staff had -- similarly went outside to get experts  
5       to help on an individual staff review. So I believe that's available and would be  
6       appropriately used. I don't have any examples. And I'll turn to other staff if  
7       they have anything else.

8                   CHAIRMAN SVINICKI: And let me just clarify that by tailored  
9       protocol, I acknowledge that you would not want to have just an ad hoc process  
10      for each one. I -- I am not suggesting that the management directive or the  
11      changes proposed there to -- which, for example will allow the PRB to meet  
12      prior to hearing from the petitioner. I am just kind of indicating is -- you know,  
13      is it so regimented that in order to come to an appropriate enquiry over the  
14      issue posed by an accepted petition, are we leaving the breathing room in there  
15      for the PRB to stylize that? Although, I guess that could sound a little ad hoc.  
16      But are they able to tailor it to get to the bottom of what they need to?

17                  MR. BENNER: Yes, as both the -- the previous process  
18      owner and -- and a chair of two PRBs, I feel like the PRB is enabled to use  
19      whatever arrows are in the NRC's quiver to get the information it needs. I  
20      mean, we've -- you know, we have done demands for information. We have  
21      done, you know, supplemental inspections. Like, we -- at the beginning we  
22      assigned what we think are the right technical experts, but I have never felt  
23      constrained about, you know, bringing in other staff to help support. I don't  
24      know how frequently we've gone external to the NRC. So -- I mean, we could



1 look at whether that's -- you know, that's something we -- we would consider  
2 more strongly.

3 CHAIRMAN SVINICKI: But more importantly, you  
4 don't -- you wouldn't as the PRB chair have felt that that -- if you -- that was  
5 singularly needed. You're not aware of any barriers to that?

6 MR. BENNER: No.

7 CHAIRMAN SVINICKI: If -- if they wanted to pursue it, the  
8 sense of a chair is that they would have access to what they need?

9 MR. BENNER: No, I think -- again, both as when I was a  
10 PRB chair I've never felt that constraint. And -- and as the process owner, you  
11 know, and -- and either the PRB chair or the petition manager have come to  
12 Doug or I and talked about, hey, here's what we need. You know, we've tried  
13 to enable whatever the petition -

14 CHAIRMAN SVINICKI: Okay. MJ or Doug, would you like  
15 to add anything in your experiences?

16 MS. ROSS-LEE: Only that I would agree with Eric that while  
17 there is a process, there -- there is considerable flexibility. And as a chair I  
18 have experienced where a particular area may not -- the answer to it may not  
19 be there in the room and we have simply been able to reach out across the  
20 agency to bring in the people that have the information that we need. So I do  
21 believe it has that flexibility and I have exercised it as well as a chair.

22 CHAIRMAN SVINICKI: Are the time frame metrics -- is  
23 something that you feel chairs would give so much weight to the need to come  
24 to a decision that they might short-cycle the exploration of issues? Has that



1       been something that is difficult for a chair to navigate? Getting through the  
2       process in a timely way versus pursuing any line of enquiry that you felt you  
3       needed to have?

4                       (No audible response.)

5                       CHAIRMAN SVINICKI: And again, you can remark on your  
6       experiences. I mean, there does need to be a balance between the two --

7                       (Simultaneous speaking.)

8                       MR. BENNER: Right, we have --

9                       CHAIRMAN SVINICKI: The management directive as a  
10      measure does try to have some timeliness built in.

11                      MR. BENNER: We haven't been as timely as we'd like to be,  
12      so I don't think those timeliness goals have overly constrained us. We want to  
13      be more timely, but I think it goes back to -- as Brian alluded to -- you know,  
14      focus and management attention. I mean, all these -- all the people who are  
15      participating have other activities, so I can tell you that scheduling  
16      meetings -- you know, we've had periods where weeks have gone by when we  
17      can't schedule a meeting. So I -- I don't -- I think even with the time frames  
18      we're putting in, I don't think those are artificial constraints. I think with the  
19      expectation of the right priority of these activities and the right management  
20      oversight -- I -- I think we'll easily be able to do the work we need to do to, you  
21      know, thoroughly evaluate these petitions.

22                      MS. ROSS-LEE: And I would agree with that. And my  
23      experience has been that staff has always wanted to take the time to get the  
24      right answer. So I've never felt like we've been constrained as far as doing



1       that. Again, as Eric pointed out, we haven't been as timely perhaps overall.  
2       But I have never on the opposite side felt like staff was being rushed to make a  
3       decision.

4                   CHAIRMAN SVINICKI: Okay, thank you for that. Brian, I  
5       think you were the one who presented a metric and said that by the staff's  
6       analysis, to date, in general an average of staff hours per petition was 240  
7       hours. Is that -- did I jot that down correctly?

8                   MR. HOLIAN: Yes, you did. And I didn't expand on that to  
9       say that's direct hours, kind of, by staff members. The numbers would be  
10      higher if you included management oversight and PRB that we don't track  
11      specific to a petition. Branch chief and time and above would add maybe 100  
12      hours to that. So I --

13                  CHAIRMAN SVINICKI: With the caveat that predictions are  
14      fools' errands, if the changes that the staff is contemplating are made to the  
15      management directive, do you think that average would go up or down?

16                  MR. HOLIAN: I wouldn't predict. Eric might have a better  
17      view. I would -- I would --

18                  CHAIRMAN SVINICKI: I should give a classic engineer's  
19      answer of --

20                  MR. HOLIAN: Yes.

21                  CHAIRMAN SVINICKI: Well, it will go up for some and down  
22      for others.

23                  MR. HOLIAN: Yes. And it will average the same.

24                  (Laughter.)



1 MR. HOLIAN: I -- you know, I don't know. Eric?

2 MR. BENNER: I would agree with Brian. I don't know the  
3 exact outcome, but I think the distribution will be much different because we'll  
4 be looking at screening things out. So the -- the -- you know, those will be  
5 much less. And we're looking on focusing more on those that, you know,  
6 there's more there there. So it may very well be those go up. So back to your  
7 question -- some will go down, some will go up. But overall -- overall, would  
8 likely go down. But I -- I wouldn't want to make any predictions in that regard.

9 CHAIRMAN SVINICKI: That leads to my next question. In  
10 terms of issues that would migrate to other agency processes as a result of the  
11 increased specificity and the acceptance criteria that the draft management  
12 directive would put in place, are there any companion activities that the staff is  
13 undertaking to say how might we have greater transparency and -- reporting  
14 what happened to an issue once it went to these other areas? Or was the look  
15 at this petition process narrowed in scope just to this process? So, where the  
16 management directive would indicate, wow, it doesn't pass the wicket here, but  
17 it moves over to this other process. Have you thought about that next kind of  
18 logical extension to say how could we say maybe the same communication  
19 steps for other things to let petitioners know it's more of a flavor of this, and it's  
20 going over here? I don't -- across the agency, did we have that discussion or  
21 engagement?

22 MR. BENNER: We have. And the biggest -- the biggest  
23 intersection, I would say, is with the allegations program. These things come  
24 in the door and, you know, there's oftentimes a judgment call of does it fit here?



1 Does it fit there? Can it be bifurcated? We have worked with the Office of  
2 Enforcement to, particularly on those, ensure that the communications that go  
3 out are linked. So we -- I mean, for that part we've done an -- an explicit, you  
4 know, tie to -- for something that we would screen out just because it's better  
5 handled by another process, we typically -- that's the end of it. And then the  
6 individual is -- can utilize that process. So I think this process wouldn't take a  
7 hold of that. The -- the one which we heard a little bit today that maybe  
8 we -- we need to think more about is abeyance, and that's where it's a hand off  
9 to another process as an intermediate step with the intention of it coming back  
10 in. And we could maybe look at better the communications expectations and  
11 responsibilities for those sorts.

12 CHAIRMAN SVINICKI: Within our own organization, you  
13 mean?

14 MR. BENNER: Right, right.

15 CHAIRMAN SVINICKI: Just because the one -- and with the  
16 periodicity of communication with the petitioner during the abeyance period you  
17 would need to have some sort of internal communication so that you accurately  
18 --

19 MR. BENNER: Touch point.

20 CHAIRMAN SVINICKI: Represented -- yes, you would have  
21 a -- a touch point there. And on the -- there's been some discussion in the  
22 previous panel on reassessments over time. It looks like this topic was active  
23 in 2000, but before that maybe 1994. So maybe it had six years between  
24 being re-looked at and then 18 years -- I don't know what the -- the sweet spot



1 is there. Eighteen years seems like a kind of a long period of time. And then,  
2 as a practical matter, it is usually good to do a quicker reassessment after you  
3 implement a set of changes because you want to know if those are returning  
4 the result that you had intended.

5 There's been mention of the Inspector General. Of course,  
6 the Inspector General is independent, so that measure of independence means  
7 that it isn't for the agency to stipulate any kind of routine frequency for the IG's  
8 review. He can take that up on the -- the frequency that he feels is  
9 appropriate. It's my perspective that in terms of routine reassessment of  
10 agency processes, the Reactor Oversight Process is the most rigorously  
11 reassessed. Other agency processes, I think that there are different things  
12 that trigger the staff to re-look at it.

13 I was noting this in particular in preparation for one of our  
14 business line meetings recently on the material side where I -- I don't think that  
15 there is the triggers necessarily always in place to re-look at things on the  
16 materials side. I don't mean to give them short shrift. But does the  
17 staff -- beyond perhaps if these changes are put in place and you did a quick  
18 assessment in one year -- do you have any general instinct for what would be  
19 the right frequency for re-looking at something like the 2.206 process?

20 MR. HOLIAN: Well, Chairman, I'll start. I -- you know,  
21 I -- the time frame that was mentioned on the earlier panel, that's probably  
22 between official looks and update to the management directive. That might be  
23 time -- I know the staff discussed that we made some changes within what we  
24 could do in the management directive five or six years ago to try to beef up our



1 thoroughness of our responses. So we have made changes on our own that  
2 aren't highlighted kind of officially and publically. So that's one comment.

3 I think an earlier panel talked about, you know, a three-year  
4 look. Remember, we average maybe -- maybe one a month. So yes, you  
5 want to get some -- some numbers up to give you some good feedback. So,  
6 you know, a two-year look would be an appropriate for me -- in my mind after  
7 this management directive goes out for an internal look. And I -- it is  
8 something that the IG recurringly looks at. And we value that. So that would  
9 be another aspect.

10 MR. McCREE: Chairman, I agree with Brian that given the  
11 scope of the changes we're making now, maybe a quick look assessment after  
12 a couple of years -- two years -- would be appropriate. Maybe a deeper  
13 assessment in another five. I also note that we began this current assessment  
14 or review eight years ago in 2010 -- of course, the March 11th event in Japan  
15 may have affected the resources -- the bandwidth, if you would -- that we had to  
16 conduct a thorough assessment. And I guess even back in 2000 of course we  
17 had the Davis Besse in the 2004, 2005 time frame that may have affected our  
18 focus on the need to assess programmatic issue like this. Having said that,  
19 again, I -- I agree with Brian that taking a look at another two years, given the  
20 scope of the changes we're making now, would be the right thing to do.

21 CHAIRMAN SVINICKI: And I will just close by stating that  
22 I -- I really don't have the confidence to advocate for any period of time myself.  
23 I have been questioning the agency's -- the agency has some systematic  
24 metrics, like directives should be looked at every x-number of years. I actually



1        have begun to question that because I don't think that all processes should  
2        trigger the same frequency. And I think that's the easiest thing to do is to say  
3        every five years you have to look at a management directive and say if it needs  
4        to be updated. I think that there may be some inefficient use of resources  
5        along those lines. So I -- I ask the question most sincerely. I really don't know  
6        the answer and I thank you all for your answers. And Commissioner Baran,  
7        please proceed.

8                        COMMISSIONER BARAN: Thank you. Well, I wanted to  
9        start by asking about this question we -- this potential change of allowing  
10       licensees to ask questions of the petitioner during the PRB meeting, but not  
11       having the opposite be true, then a -- that a petitioner could ask questions of  
12       the licensee. Could someone talk a little about what the thinking was behind  
13       that potential change and whether there were any concerns about whether it  
14       was equitable or not?

15                      MR. BENNER: Yes, and -- and what we've -- and this is  
16       another area where clearly need to have discipline because our philosophy on  
17       this is while we've been asked, you know, to take an action against the  
18       licensee, there's a potential safety issue here. And the licensees have the  
19       primary responsibility for the safe operation of their facilities. So we have a  
20       side objective of this process of we want the licensee to fully understand the  
21       issue in case they feel it's appropriate to take some sort of corrective action  
22       prior to us doing any sort of official action. So with that, you know, we have  
23       thought that we've communicated that. Clearly we haven't adequately and we  
24       need to make sure that if we continue doing that, that it's done in a manner that



1 is purely seeking understanding versus trying to challenge or rebut what the  
2 petitioner is trying to say.

3 COMMISSIONER BARAN: That thinking makes a lot of  
4 sense to me. I can understand why you'd want to have that ability to clarify.  
5 I -- between you and MJ it sounds like you've chaired about five -- or maybe  
6 more -- of these -- of PRBs. Do you think it's realistic or helpful to have a  
7 situation where under the control of the PRB chairman you could allow limited  
8 questioning in either direction to facilitate either a better understanding by the  
9 licensee of the concern raised by the petitioner? Or, you know,  
10 conversely -- you know, additional clarity for the petitioner about whether or not  
11 there is or is not an issue or the extent of the issue? Is that something you see  
12 as manageable?

13 Obviously you'd want to avoid situations where, like, there's a  
14 debate going on. And that's not really serving anyone. But if -- if you had  
15 clarifying questions potentially going both directions, under the supervision of  
16 the PRB chairman, that seems like it could be useful. Do you have thoughts  
17 about that?

18 MR. BENNER: Yes, I don't -- I don't really see any problem  
19 with, you know, setting up some ground rules to having a -- a dialogue about  
20 that.

21 COMMISSIONER BARAN: Do you have thoughts about  
22 that, MJ, since you've done a few of these too?

23 MS. ROSS-LEE: So in my experience it -- with the ones that  
24 I have chaired, typically there hasn't been even a lot of exchange from the



1        licensee back, for instance, to the petitioner. And I felt that staff has done a  
2        good job of listening to the petitioner's questions and making sure that they're  
3        answered in -- to whatever they're directed. But is there a -- pointed out, you  
4        know, under some sort of controlled process I would -- I would say we could  
5        offer that up as a possibility if there was to be value, you know, garnered from  
6        that in doing so.

7                    COMMISSIONER BARAN: Well, I guess maybe something  
8        to think about as you're -- as you're working on it. In that same vein I have this  
9        thought on the first panel that we talked about -- a little bit about, is there some  
10       middle ground between no appeal with sua sponte Commission Review and  
11       some kind of formal appeal to someone? The EDO or whoever -- where -- and  
12       maybe it would make sense to have some criteria around it. Under certain  
13       circumstances an EDO review, an informal review could be triggered and then  
14       the EDO's thoughts could accompany the petition -- or, the director's decision  
15       when it comes to the commission for a decision about whether to take review  
16       on it.

17                   Do you folks have thoughts about whether that's feasible,  
18       would be helpful? See any immediate pros and cons? Is that something  
19       worth exploring? The downside -- the only downside that is readily apparent to  
20       me is that the EDO has a little bit more work to do, which might be really -- EDO  
21       might not be thrilled about it. But I think, given the value of these as being not  
22       terribly high and that there I think would be some number that would likely not  
23       be triggered because folks are satisfied or the staff took enough action that  
24       people didn't want to pursue it further, I wouldn't imagine it would be a



1 significant amount of work. But, anyway, let me just open it up to thoughts  
2 about that.

3 MR. McCREE: Commissioner, thank you. And I appreciate  
4 your recognizing that there would be potentially some burden associated  
5 with -- with such an approach and in an environment where we're focusing on  
6 streamlining and focusing on resources in areas where there a -- a most return  
7 on our investment. I think we would need to think about that. And it just  
8 reminds me of a -- you know, important philosophically to understand when we  
9 are making decisions to insert a process -- or a step that would provide quality  
10 control, that we balance that with quality assurance. In other words, what are  
11 we doing within the current process to get to the -- the right answer?

12 And to the extent that that's such a -- an additional step is  
13 necessary for quality control. I just think we need to be very thoughtful around  
14 that. And certainly understand what the -- the threshold, if you would, such in  
15 an appeal would need to satisfy to -- to merit, if you would, further appeal. I  
16 think that's something we'd need to consider as well. And I don't know if there  
17 are any legal factors that would come into play, but that's certainly something I  
18 would want to consult with OG -- OGC on as well.

19 COMMISSIONER BARAN: Okay. Anyone else have  
20 thoughts about that? And -- I guess I -- I'd just encourage you to think about it  
21 as you're, you know, continuing to work on this. Is it something that's worth  
22 exploring? Is it -- you know, is there -- is there something there that would  
23 make sense?

24 MR. HOLIAN: Yes, just one additional thought. I agree with



1 everything Vic said. And I -- as acting director, I view that the commission  
2 review does serve in a way that purpose. That they're questioning -- they  
3 rightly have set themselves up to oversee a well thought out decision -- and  
4 well documented by that point on the decisions that we've accepted. And we'll  
5 beef up the ones that we deny.

6 But -- so I -- I look at that and I wanted to say one other thing.

7 Mr. Miranda mentioned at the earlier morning meeting that they still have the  
8 opportunity to write a letter in to us. And for even the director, then, or NRR to  
9 view with comments. The staff has taken an action to look on whether, you  
10 know, those are accessible on items they should be. They should be a letter in  
11 there. They might not be coupled to the petition, so it might be hard to find.  
12 So we -- we've taken that action to follow up with Mr. Miranda on that.

13 COMMISSIONER BARAN: Well and I appreciate your  
14 comment, too, about -- in response to Dave Lochbaum's comment about, you  
15 know, there have been cases where a request for immediate action was denied  
16 and there's not a lot of explanation there. I think, you know, if that's -- if that's  
17 something the staff is looking at beefing up, I think that makes sense. Let me  
18 ask about one other topic that we didn't talk about, I don't think, on the first  
19 panel which is that there's -- there's a standard also in here for when a  
20 streamlined director's decisions is appropriate.

21 And that's basically a situation where the standard  
22 that -- that's there is -- if the petition meets the criteria for acceptance but does  
23 not raise any new safety or security issues that have not been addressed by the  
24 staff, and for a -- as I understand it, the streamline process is basically instead



1 of having a proposed director's decision that then goes out for comment and  
2 then foregoing final, you skip the proposed and the comment and you go right  
3 to final. It -- the standards struck me as very broad.

4 And I just wondered if people have thoughts about that. I  
5 wouldn't want a situation where we have a, you know, potentially large  
6 loophole. It's pretty -- you know, you can see almost any petition even  
7 meritorious petitions able to be characterized as raising a safety issue that the  
8 staff already knew about, or already addressed in some manner. So  
9 it's -- what's the thinking there? And is that an area where some additional,  
10 you know, detail in the standard makes sense? Or -- or not?

11 MR. BENNER: Yes, we -- and we can certainly talk about  
12 additional detail. The -- the other thing that was looked at here was  
13 broadening, actually, the screening criteria to cover some of these and just not  
14 screen them in. But in discussions with OGC we felt it was more faithful -- and  
15 this is a situation where essentially, you know, it's a -- it's a legitimate issue.  
16 But we've really already done all the homework and evaluation. And it's just a  
17 matter of -- of capturing that and -- and documenting it.

18 So we -- you know, we went through the pros and cons of just  
19 screening those out. But then we felt like, okay, we're going to be putting so  
20 much, you know, justification in why we screened it out that it -- it just seemed  
21 to be a more honest thing to say this screens in. And we'll -- we'll give you the  
22 information that we already have, but maybe you don't already have because it  
23 wasn't necessarily publically available. So it's more a mechanism to ensure  
24 that, you know, this adequate information to disposition the issue which maybe



1 was not publically available is made publically available through this process.

2 COMMISSIONER BARAN: I appreciate the thought behind  
3 that. So that's -- it -- are there particular examples you had in mind  
4 where -- that kind of would fall into this category from your point of view?

5 MR. BENNER: You know, particularly in today's day and  
6 age, our inspection reports, we try to streamline the content --

7 COMMISSIONER BARAN: Okay.

8 MR. BENNER: In those inspection reports. So an issue  
9 may have been looked at and dispositioned in an inspection report, but the level  
10 of detail is so short that an independent look couldn't diagnose how, you know,  
11 the petitioner's concern was resolved. So this gives us an opportunity to -- to,  
12 you know, work with, you know, the folks who did that inspection -- to go  
13 another level of -- of detail deep and get that on the record to provide this, you  
14 know, this rationale for why, you know, additional enforcement action isn't being  
15 taken.

16 COMMISSIONER BARAN: I could see that. So I guess -- I  
17 guess, you know, what I'd maybe encourage you to think about there is -- and  
18 there is some reference in the -- the management directive to situations where  
19 it's -- you know, there's an inspection report and it's based on inspection report.  
20 I could see having a little more detail there to kind of flesh that out a little bit.  
21 Because on its face, the standard is pretty broad. You have a certain kind of  
22 situation in mind that, as a reader of the revised management directive, I wasn't  
23 really getting.

24 You know, if there was a little more clarity about that, I think it



1 would be useful. Because I -- I appreciate that what you're trying to do is kind  
2 of tailor the level of review and the level of the kind of written product to how  
3 significant the issue is, how new the issue is -- whether the staff has or has not  
4 really looked at it or done something in response previously. And so I -- I could  
5 see the -- I could see the value of that. Okay, thank you.

6 CHAIRMAN SVINICKI: Thank you. Commissioner Burns?

7 COMMISSIONER BURNS: Well, thank you for the  
8 presentations. And a couple of areas -- just following up on Commissioner  
9 Baran's is -- yes, I -- I definitely would encourage you to -- to look at that  
10 because -- and I'm going to get to this toward the end of my questions -- is this  
11 screening in and out, this separating the sheep from the goats so to say.  
12 But -- I would say historically, where you have -- other than, let's say, a  
13 petitioner comes in and said you only issued a -- a notice of violation. You  
14 should have issued an order on -- on these facts. Those might have been  
15 screened out. But where it comes in and says, you've had an inspection report  
16 that said X-Y-Z. You had a licensee respond and say A-B-C. And I see no  
17 action from the commission. I'm requesting that you take appropriate  
18 enforcement action. That would have been screened in.

19 Let me -- I am going to get back to this screening -- screening  
20 process a couple minutes. Here -- couple simple questions -- or, another  
21 observation. As I appreciate Brian's comments in respect to, I think, lessons  
22 learned on -- on the question of dealing with the request for immediate action.  
23 Way I look at it, it's sort of the reverse of what we have to do. Our obligation  
24 when we might impose an order on a licensee on an immediate effective basis.



1       We have to give a brief but factual or -- and related -- and other related factors  
2       need to be articulated as to why we would take that action on an immediate  
3       basis. In the same way, I think a petitioner's request is not unlike a stay  
4       request. You have to articulate. And we -- you know, we got this in the  
5       adjudicatory process. You have to articulate, you know, briefly but with -- with  
6       relevant facts, or denoting relevant facts, why we wouldn't take the action. So I  
7       appreciate, you know, effort to -- to deal with that.

8                   One of the question -- things Professor Hammond  
9       recommend is a -- whether we have a brochure. And I think years ago we  
10      might have had a brochure. I don't know if we do now.

11                   MR. BENNER: Yes, we -- we do. But it --

12                   COMMISSIONER BURNS: And when was it last updated?

13                   MR. BENNER: Back in 2000.

14                   COMMISSIONER BURNS: Okay. All right.

15                   MR. BENNER: So we need to -- we do already have a  
16      commitment to update that brochure as part of the revision.

17                   COMMISSIONER BURNS: Okay, good. Because  
18      as -- again, we have a lot of brochures which are actually, you know, very  
19      useful. I used to use them when I was over at NEA to give to folks to -- to  
20      explain NRC processes. But those are good.

21                   One thing I observed in the management directive -- and at  
22      the very end of the management directive -- the process for commission review  
23      is actually only indirectly accounted for. Because it really ascribes to the  
24      secretary responsibility for informing the commission of the availability of a



1 partial or initial director's decision. And doesn't clearly articulate the  
2 responsibility of the staff to ensure that the secretary has that decision. And  
3 I -- I raise this not as a small point because there have been a couple instances  
4 in the last two or three years where the decision has taken a, let's say the slow  
5 boat, into the commission and has either -- either required, or required an  
6 extension of the time -- which is something it's up to us anyway to do. But you  
7 know, in some circumstance we've been able to do it in a -- say, we had 18  
8 days instead of the 25 days. But I would consider whether you really need  
9 something to reflect that when -- whoever it is, the project manager, whoever is  
10 responsible for issuance or processing of the thing -- that it is -- that one of  
11 those tasks is to get it to Madame Secretary. Okay?

12 Okay. Let me go to the one area of concern I have. And  
13 that is about screening. And Mary Jane's presentation talks about  
14 we -- this -- the new criteria would screen out demands for information. And I  
15 guess I'm not quite sure I understand why that is. Partly because if I read  
16 Section 2.204, Demand for Information, one of the purposes of a demand for  
17 information is to determine whether an order under Section 2.202 should be  
18 issued, or whether other action should be taken. And then finally, an answer  
19 from a licensee may consent to the entry of a -- well, it -- may consent to an  
20 entry of an order under 2.202, but more importantly, upon review of the answer  
21 filed under this section, 2.204, or if no answer is filed the commission may  
22 institute a proceeding pursuant to 2.202 to take such action as may be proper.

23 So my question is, why are we screening out demands for  
24 information? And what other -- and it seems to be we are now relying on the



1 reference to 2.202 as an exclusionary boundary for actions under 2.206. And  
2 let's start with that. I'd like to hear about that.

3 MR. BENNER: And I think -- and we -- we could clearly do a  
4 better job articulating this because -- because really the ones we're focused on  
5 is if -- if we just have a request for a demand for information without the -- you  
6 know, the outcome sought. And that -- and that rarely happens, but it does  
7 sometimes happen that it just says NRC, you need --

8 COMMISSIONER BURNS: Let me hold you there. It says, I  
9 could be a petitioner and come in and say, I've observed X-Y-Z in this licensee  
10 report. And you've been looking at this issue. So I understand there's a  
11 problem with soil liquefaction at this site, or a potential problem. I believe that  
12 you should demand for the licensee, under Section 2.204 -- or 50-54(f) -- an  
13 analysis of soil liquefaction, and on the basis thereof, take whatever action is  
14 appropriate. So -- would that get screened in, or would that be screened out?

15 MR. BENNER: You -- you gave us enough of an underlying  
16 technical concern that the technical concern would get screened in. But then  
17 we would reserve the judgment for what we would do to evaluate that technical  
18 concern. We could do a DFI. We could do an inspection. But we could --

19 COMMISSIONER BURNS: Well, that's always the case.

20 MR. BENNER: Right.

21 COMMISSIONER BURNS: Would you screen it into the  
22 2.206 process?

23 MR. BENNER: Yes.

24 COMMISSIONER BURNS: You would?



1 MR. BENNER: Yes. But if someone said, I don't know  
2 what's going on with that licensee. You need to issue a demand for  
3 information to find out what's going on with that licensee -- without some sort of  
4 technical or regulatory concern, we would screen that out.

5 COMMISSIONER BURNS: I would take a look at your  
6 language --

7 MR. BENNER: Okay.

8 COMMISSIONER BURNS: -- because your language  
9 doesn't say that.

10 MR. BENNER: And --

11 COMMISSIONER BURNS: Because what I think the  
12 language says is a 2.204 demand for information is not within the scope of  
13 2.206. And I raise this because frankly narrowing the aperture in my view is  
14 inconsistent what 40 years, almost 50 years of practice under 2.206 where we  
15 have accepted petitions; one from Mr. Lochbaum from 2000 that requested a  
16 DFI that was accepted under 2.206, where we've asked -- we have accepted  
17 petitions that ask for things other than strictly a 2.202 order.

18 Now I realize we could get probably in an argument about the  
19 Oxford comma here because of the way this is set up in 2.206. But we  
20 accepted petitions requesting DFIs.

21 MR. BENNER: Yes.

22 COMMISSIONER BURNS: We have accepted petitions that  
23 ask for imposition of civil penalties against licensees, we have asked for -- or  
24 other such action as may be appropriate.



1                   So what I'm concerned with is is I think the beauty of this  
2           process is it allows people to bring these concerns articulated,  
3           well-articulated -- and I don't mean that they -- that they're showing every  
4           engineering angle, but that they do bring it to us, that we consider it and we  
5           consider it in the scope of our enforcement process. Because my view of our  
6           enforcement process is not a narrow one based only on Section 2.202.

7                   It is part of the oversight through inspection, through orders,  
8           through civil penalties, through the ROP, through notices of violation, through  
9           confirmatory action letters. And those outcomes may be the right answer to  
10          those particular petitions.

11                   MR. BENNER: Okay.

12                   COMMISSIONER BURNS: But what I'm very concerned  
13          about is getting -- because that's how I read it. It's a very narrow -- if you ask  
14          for this type of relief, sorry, you're not within scope, whereas 2.206 was not  
15          meant to be what we will all call code pleading.

16                   MR. BENNER: Yes.

17                   COMMISSIONER BURNS: It's meant to be notice pleading.  
18          You tell me -- and you have a responsibility as a petitioner to tell me what facts  
19          or other considerations on which -- for which you claim a basis I should take  
20          action --

21                   MR. BENNER: Yes.

22                   COMMISSIONER BURNS: -- and then I take action. And  
23          we screen out, yes, things that are really should be --

24                   MR. BENNER: Yes.



1 COMMISSIONER BURNS: -- in the licensing area and the  
2 rulemaking area that don't have any articulation of fact or are the responsibility  
3 of other agencies. But anyway --

4 MR. HOLIAN: Oh, Commissioner, we'll --

5 COMMISSIONER BURNS: -- this was one reaction I had.

6 MR. HOLIAN: Yes, Commissioner, we'll work with OGC to  
7 continue to fine tune that language. It's not our intent to minimize the scope for  
8 things that should be in there.

9 COMMISSIONER BURNS: Okay. Finally, in terms of the  
10 abeyance, I just try and understand what are the factors that would call us to  
11 hold a petition in abeyance?

12 Now, again, because I think about historic examples. There  
13 might be a rulemaking. And then actually you can question whether that's  
14 really a 2.206 versus a rulemaking petition, although it might be if it depends on  
15 what happens at a particular licensee.

16 Obviously I think the example Dave Lochbaum gave was if  
17 you have an ongoing -- you have an upcoming inspection or something like that  
18 that will address that issue, an immediate decision is not necessary. But I'm  
19 trying to understand what you view as the abeyance. What are the types of  
20 things you would hold in abeyance --

21 MR. BENNER: And I think --

22 COMMISSIONER BURNS: -- now or would be?

23 MR. BENNER: -- the classic case was truly Fukushima  
24 where we got a lot of 2.206 requesting enforcement action. Separate from



1       those we had set up a process to look at the information from Fukushima,  
2       assess what sort of enforcement action was necessary. So we -- the 2.206  
3       wasn't going to get ahead of that. It was going to say, okay, we have this other  
4       thing looking at that exact information to make a determination of what kind of  
5       enforcement action we should take against licensees.

6                   COMMISSIONER BURNS: Okay. All right.

7       My --

8                   MR. BENNER: So we have to wait for that to pop to get --

9                   COMMISSIONER BURNS: No, and that's --

10                  MR. BENNER: -- to resolution to answer the 2.206.

11                  COMMISSIONER BURNS: -- depending on -- again,  
12       depending on what the --

13                  MR. BENNER: Correct.

14                  COMMISSIONER BURNS: -- nature of the petition is, what  
15       the facts are --

16                  MR. BENNER: Right.

17                  COMMISSIONER BURNS: -- under that type of example  
18       may be useful. Thank you, Chairman.

19                  CHAIRMAN SVINICKI: All right. Thank you. And with the  
20       indulgence of my colleagues, just quickly I -- the conversation has been very  
21       rich, the discussion has been good, and I wanted to just have two points of  
22       clarification to be sure that I understood the staff's answers to others.

23                  On this discussion regarding whether or not the petition  
24       requests action that would result in an order and the discussion about demands



1 for information, I understood that, Eric, a little bit of what you're saying is kind of  
2 the lacking more thing, like if it just were to suggest, hey, you ought to find out  
3 more about this by asking some questions.

4 When you say that Commissioner Burns gave you an outcome, it was that he  
5 suggested the technical problem, like if you look into it, NRC, I think you'll  
6 substantiate X, Y and Z.

7 And so it's really that the two thing are companions and then it  
8 screens in, but just a suggestion that we take a regulatory action to inquire  
9 about something is not modifying, suspending or revoking a license. So, but if  
10 the petitioner perhaps in the cases that had DFIs and other things historically,  
11 they might have elaborated to include the technical issue. Is that how I should  
12 understand the differentiation you're making?

13 MR. BENNER: Commissioner Burns and I are in violent  
14 agreement that it's the facts of the case that will render our judgment.

15 CHAIRMAN SVINICKI: Okay.

16 MR. BENNER: So we -- and we will work with the  
17 appropriate people to clarify that language.

18 CHAIRMAN SVINICKI: Okay. Thank you.

19 MR. BENNER: We really view that as a very small kick-out,  
20 but if in the way we've written it is it could be -- appear to be a big kick-out, we  
21 will narrow that.

22 CHAIRMAN SVINICKI: Okay. Thank you for that.

23 And on the some sort of appeal process that could be  
24 informal, I know in the prior panel some parallel was drawn to the recent events



1       having to do with a second-level appeal to the Executive Director for Operations  
2       on a backfit matter, and I just wanted to know if I was correct about this.

3               In order for that to be a semi-independent look by the EDO,  
4       that necessitated the impaneling by the EDO of a separate group, did it not?  
5       And so as the EDO looked at the resources, I guess I'm -- to have an informal  
6       appeal process, that would be part of your consideration, would it not?  
7       Because in order for a second-level appeal to have meaning, it has to be a  
8       separate appellate look at the matter.

9               And as the apex of the civilian staff here at the agency, the  
10       EDO is also engaging in the director's decisions in your supervisory capacity.  
11       Those people report to you. So if you had misgivings or inquired about the  
12       thoroughness of what they were doing, you wear that hat as well. But in this  
13       case in order to make that a true appeal, you impaneled a separate group.  
14       And so while it sounds informal, it really had a certain level of formality. Is that  
15       accurate?

16              MR. McCREE: Thank you, Chairman. It is the reference to  
17       the differing professional opinion appeal in the Byron and Braidwood case. In  
18       that instance I did impanel a separate panel, if you would, to, quote,  
19       "independently review" the appeal and decision by the director of NRR, which  
20       was warranted in that case given the complexity, the importance of the matter.

21              The DPO guidance does provide me the flexibility to either  
22       make the decision unilaterally based on the information presented or obtain  
23       whatever expertise needed to facilitate a decision. So there is a resource  
24       question in mind whenever such a matter would be appealed to the EDO, and it



1 would only be fair and appropriate to give it that level of a review. So I think  
2 any decision to build an appeal process for 2.206 decisions ought to consider  
3 the resource -- potential resource implications of that.

4 CHAIRMAN SVINICKI: And you had mentioned that. I just  
5 wanted to be sure that that was some of the parallelism you were thinking of  
6 there, because again to be purportedly an appeal it would have to have -- be  
7 somehow divorced from the underlying supervision you give to these processes  
8 as the executive director. So I just -- with that that was just a point of  
9 clarification.

10 Do either of my colleagues -- Commissioner Baran?

11 COMMISSIONER BARAN: I just has a couple questions,  
12 one just to follow up on that.

13 As EDO to what -- how involved are you in reviewing a draft  
14 director's decision?

15 MR. McCREE: I am not.

16 COMMISSIONER BARAN: So you're not weighing in on a  
17 director's decisions at the point before it's issued?

18 MR. McCREE: No, I do not.

19 COMMISSIONER BARAN: Okay. And so if you -- if it were  
20 an informal process, let's not called an appeal, but an informal process where  
21 you are asked to review a director's decision to then express your views about  
22 that decision to the Commission, it would be the first time you were looking at  
23 that question?

24 MR. McCREE: That is correct.



1                   COMMISSIONER BARAN: Okay. And then, Eric, I had a  
2                   question for you, or it could be for anyone, but I was very interested in the back  
3                   and forth on the abeyance issue. And what struck me about it -- and you gave  
4                   kind of the prime example is Fukushima. And so, we had -- I think probably  
5                   had a number of 2.206s coming around that time. That was before my time,  
6                   but I think there were probably several. And how do you -- how does the staff  
7                   assess whether that's a situation where you would hold it in abeyance or you  
8                   would just grant or grant in part?

9                   So if someone came -- it's hard I know to talk about this a little  
10                  bit in the abstract, but if someone came after Fukushima and said you really  
11                  need to look at seismic data on these plants now. Is this really up to date?  
12                  And we obviously have a whole process for seismic hazard reevaluations. So  
13                  one way to approach that I guess would be you hold it in abeyance until all  
14                  that's done and then you provide an answer to the 2.206.

15                 Alternatively you could say we agree with you. We think  
16                 that's an issue. We would grant that. Here's what we're going to do. Or we  
17                 would grant it in part. Here's what we're going to do. It's not exactly what you  
18                 suggested in your petition, but we're going to do this thing instead.

19                 How do you assess whether it goes into abeyance or you  
20                 actually can give an answer? It would not -- the process would not have been  
21                 complete at the point you're granting or granting a part, but you would be  
22                 expressing fundamental agreement with what the petitioner was raising in his  
23                 concern.

24                 MR. BENNER: And you're absolutely right. This may be a



1 place where we've self-limited because I think there's been a perception  
2 amongst the staff that we're talking about enforcement action and we know that  
3 we have things set up that may result in enforcement action down the road.  
4 And so there's an anxiety about calling this thing done and just kicking over to  
5 that versus holding this open until the final answer.

6 MR. HOLIAN: Yes, Commissioner, I'd just add one point to  
7 that. When I did due diligence acting in this job, taking this job months ago, I  
8 looked at the 2.206s and I found one that was in abeyance. And now because  
9 of Fukushima -- and I asked that same question. And is it just because it's one  
10 plant? Was there anything new here we should have or could have acted on?  
11 And, no, the staff's answer was this is in a population of plants. The fact that  
12 we had one come in was, even as Mr. Lockbaum stated, kind to highlight that  
13 issue, which is sometimes how the petition process is used, as he has stated.

14 So that was a view and I just wanted to let you know that.

15 COMMISSIONER BARAN: All right. Well, this is maybe not  
16 something that you really can put into a management directive, but if I were a  
17 petitioner, I would probably have a lot more confidence in the -- if a process that  
18 said, yes, we -- the concern you raise is a valid one. We're granting this or  
19 granting it in part and here are all the things we're doing to evaluate this or  
20 address this concern versus, yes, yes, we're looking at it. You're in abeyance  
21 for the next four years. We'll get back to you when we complete all this other  
22 stuff.

23 I think one process really -- one outcome makes you feel like  
24 you've been listened to and people are taking your concerns seriously and



1 another outcomes makes you feel like maybe not so much.

2 So that's -- I know it's hard to kind of put into a management  
3 directive. It's more of a kind of how you -- that the staff approaches it and the  
4 way they think about it. But thank you for your thoughts on that.

5 CHAIRMAN SVINICKI: Thank you.

6 Commissioner Burns?

7 COMMISSIONER BURNS: One last question. Ms.  
8 Ginsberg suggested; and maybe some of our other panelists, first panelists  
9 suggested -- is there available like a redline/strikeout of the changes?

10 (Laughter.)

11 MR. HOLIAN: Well, if not, we can make that happen and --

12 COMMISSIONER BURNS: Because it would be helpful to  
13 me, too.

14 MR. HOLIAN: Yes. No, if we can -- we should be able to  
15 make that happen.

16 COMMISSIONER BURNS: Okay.

17 MR. HOLIAN: Right?

18 MR. BROADDUS: Yes, we --

19 MR. HOLIAN: Okay.

20 MR. BROADDUS: We'll -- our plan is to make sure -- make  
21 one available, definitely. We have those internally. It's really difficult to follow,  
22 but we're going to clean that up and make it available.

23 COMMISSIONER BURNS: And that's Microsoft's fault, not  
24 ours.



1 MR. HOLIAN: No. Yes, we can do that. And,  
2 Commissioner, there was one other clarification I had when you mentioned Ms.  
3 Ginsberg's comments; and Mr. Lockbaum brought it up also, that -- where to  
4 put the 2.206 petition summaries in the Enforcement Manual. We didn't get a  
5 question to that, but we do publicly publish the 2.206s with a summary that  
6 goes to the Commission and it does -- it's very evident on our web page. So I  
7 just wanted to get that on our record.

8 Is there some value in putting it with the Enforcement Annual  
9 Report? The staff would look at that, but we think we adequately published  
10 that information.

11 COMMISSIONER BURNS: Well, yes, I would agree in terms  
12 of the publication. I think the suggestion -- if -- a brief synopsis or something  
13 like that as to the thing we said, because frankly it's probably easier to find  
14 2.206 decisions because you'd actually -- at least the lawyers know the secret;  
15 and I'm happy to tell you afterwards, is because they are published with the  
16 agency decisions in what is it, NUREG-750.

17 So if you're looking for the Commission decision say on  
18 Fukushima or an appeal in such and such licensing case, you get those  
19 Commission decisions there. And you also can get the 2.206 decisions.  
20 They're published and bound and all that. They're on the legal research stuff,  
21 which is easier than ADAMS. But there's no question about the availability of  
22 the decisions. It's just something to consider.

23 I think the suggestion is a good one about providing a  
24 synopsis. It also provides you the statistical -- there's some -- the statistical



1 issues or sort of -- not analysis, but the value of the potentially looking at we  
2 experienced it statistically. And this goes to the sort of the principles, which I  
3 think we do pretty well at, that Professor Hammond sort of -- what -- the  
4 principles that emerged from her study on the EPA process. Thank you.

5 COMMISSIONER BARAN: Can I just mention one other  
6 thing? We -- Anne Boland, who is the Director of the Office of Enforcement,  
7 reminded me during the break that there are also these quarterly reports on  
8 2.206 petitions. And I guess one thing to look at there is how easily accessible  
9 are those on the web site? Do folks know about those? How helpful do they  
10 find them?

11 I knew that those existed. I had kind of forgotten about it  
12 though when we were having this conversation. And it may be that rather than  
13 coming up with some new annual type reporting, we just make it really easy for  
14 folks to access the quarterly reporting that's already happening. Thanks.

15 CHAIRMAN SVINICKI: Okay. Well, again, thank you  
16 everyone and thank you for the good dialogue with the Commission. And with  
17 that, we are adjourned.

18 (Whereupon, the above-entitled matter went off the record at  
19 11:43 a.m.)

20