

U.S. DEPARTMENT OF ENERGY
OFFICE OF NUCLEAR ENERGY

STANDBY SUPPORT WORKSHOP

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Bethesda, Maryland

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

2 8:30 a.m.

3 Welcoming Remarks

4 R. Shane Johnson

5 MR. JOHNSON: My name is Shane Johnson. I'm
6 the acting director of the Department of Energy's
7 Office of Nuclear Energy, Science, and Technology, and
8 I really appreciate everybody coming out today.
9 Hopefully you won't be here in the morning, so -- the
10 weather.

11 So, anyway, I had just a few remarks I wanted
12 to make before we get started in what I think is a very
13 important discussion. Let me just tell you that the
14 Department is extremely anxious to receive comment from
15 each and every one of you on your thoughts on the
16 implementation of the Standby Support provisions of the
17 Energy Policy Act.

18 Assisting us today is Mr. Doug Brookman, a
19 professional facilitator who some of you may know from
20 other DOE meetings that he has facilitated. I'll be
21 turning to the meeting over to him shortly, and he will
22 introduce the other participants at today's meeting,

1 including Department of Energy staff.

2 While the Nuclear Regulatory Commission
3 doesn't have an official role in the preparation of the
4 rule for Standby Support, we've asked Jerry Wilson from
5 the Nuclear Regulatory Commission to provide a briefing
6 today on the combined construction and operating
7 license.

8 Mr. Wilson will provide you with more detail
9 on the format and logistics related to the -- I'm
10 sorry. Mr. Brookman will provide you with more detail
11 on the format and logistics of the meeting at the
12 conclusion of my remarks.

13 Recognizing the important role that nuclear
14 energy serves as a reliable, safe, and clean provider
15 of base load electricity and yet the reality that no
16 nuclear plants have been ordered or licensed for nearly
17 30 years, in part because of regulatory and financial
18 risk, in 2002 the Department of Energy launched our
19 Nuclear Power 2010 program.

20 As you know, our Nuclear Power 2010 program
21 is a cost-share partnership between government and
22 industry. It has been underway for three years now to

1 demonstrate key regulatory processes associated with
2 siting and licensing new nuclear powerplants. It's an
3 important priority for the Department, and I will tell
4 you it's the Office of Nuclear Energy's top priority,
5 and key to clearing the way for a new generation of
6 nuclear powerplants in the United States.

7 In order to round out our Nuclear Power 2010
8 program and really get to the full -- to close the
9 circle on all the risks associated with new plants, in
10 2004 President Bush proposed federal risk insurance to
11 protect first movers of new powerplants from financial
12 risk due to delays in operation that are beyond the
13 control of industry.

14 In August of this year, the President's
15 proposal became a reality when Congress passed and the
16 President signed the first comprehensive energy
17 legislation in over a decade, establishing standby
18 support in the form of risk insurance, production tax
19 credits, loan guaranties, and other provisions aimed at
20 spurring new emission-free electricity-generating
21 capabilities or capacities in the United States.

22 As Secretary Bodeman has said, standby

1 support or risk insurance for new nuclear plants is a
2 key initiative of the Energy Policy Act of 2005 and a
3 key priority for the Department of Energy. Both the
4 administration and Congress believe that risk insurance
5 will successfully mitigate the potential risk to first
6 movers of new plants.

7 This meeting today is very important to us
8 for at least two reasons. First, it's a key step
9 forward in providing the foundation for a new
10 generation of nuclear plants, enabling us to achieve a
11 vital national goal. The Department is required by
12 statute to issue an interim final rule for standby
13 support by May 6th, 2006, and a final rule by August
14 8th, 2006, the anniversary date of the President's
15 signing of the Energy Policy Act into law. This is a
16 very aggressive schedule.

17 Second, your comments will inform the way we
18 structure the rule and implement the program. Key
19 issues that we are seeking your input on include what
20 constitutes a covered delay, how to determine which
21 plants would be eligible to be covered under risk
22 insurance, how to handle appropriations and funding

1 accounts, the Secretary's contracting authority, and
2 disagreements and dispute resolution, among the others
3 as well.

4 I would like to just briefly introduce Ms.
5 Rebecca Smith-Kevern, our director of Nuclear Power
6 Technology in the Office of Nuclear Energy, and she
7 will serve as our designated federal official today,
8 when I exit. Otherwise she will be the head fed in
9 charge of the proceedings today.

10 So, with that, I will step aside and turn the
11 microphone over to Mr. Brookman.

12 Introductions and Agenda Review

13 Doug Brookman

14 MR. BROOKMAN: Thank you. Thank you very
15 much.

16 Good morning, everybody. I'm Doug Brookman.

17 I'm from a small company in Baltimore called Public
18 Solutions, and we facilitate public decision-making. I
19 wanted to start by giving everyone a chance to
20 introduce him- or herself -- you can hear me okay, yes?

21 Thank you -- and I thought I'd go first to the federal
22 officials at the head table here, and maybe we can just

1 pass this microphone down.

2 Your name and your position, please.

3 MS. SMITH-KEVERN: Rebecca Smith-Kevern,
4 acting director of the -- associate director of the
5 Office of Nuclear Power Technology.

6 MR. WADE: Chuck Wade, Office of Nuclear
7 Energy, nuclear analyst.

8 MR. SHAW: Marvin Shaw. I'm an attorney
9 advisor in the Office of General Counsel.

10 MR. GRANT: Will Grant. I'm an attorney
11 advisor in the Office of General Counsel.

12 MR. BROOKMAN: We have asked that everyone
13 today -- many of you have registered in advance. I
14 think everybody that came in did register, and a list
15 of registrants will be provided either today or shortly
16 following today.

17 So the following introductions right now that
18 I'd like to do may not all be on the record but simply
19 as a matter of courtesy.

20 So, may I start with you? And I'm going to
21 work my way around the tables. If you'd just stand and
22 say your name and your organizational affiliation.

1 (Introductions.)

2 MR. BROOKMAN: Thank you.

3 In your packets there is an agenda. Can
4 everybody pull it out, so you can understand the plan
5 for the day. The packet looks like this.

6 You can see the purpose listed there on top,
7 which is to receive comments on issues that matter to
8 you. I hope you seize this opportunity today to do
9 that.

10 The format for the discussion today is to
11 break the content, the subject matter in the NLI, into
12 chunks and hopefully get rather detailed comments on
13 those segments. So you will see that is reflected in
14 the structure of the agenda that's listed here.

15 We're going to start off this morning with an
16 overview presentation by Jerry Wilson from the NRC. I
17 should probably try not to do acronyms all day. From
18 the Nuclear Regulatory Commission.

19 And following that, we want to entertain a
20 brief summary remarks, overview remarks, from all of
21 you, briefly. Four individuals have requested to
22 present, and we will let them go first since they took

1 the initiative to request.

2 We will take a break mid morning, round about
3 10:15 or so. Round about 10:30, we will move to
4 discussion on Covered and Excluded Delays.

5 For each one of these segments, the
6 Department has prepared a list of questions that they
7 would like for you to respond to. We're going to try
8 and stick with the questions that are there to the
9 extent it's possible. And if other questions emerge,
10 of course we will address those as well.

11 So round about 11:30 or so, we will move on
12 to Contract Authority. Lunch today; when we break for
13 lunch round about 12:15, you're on your own. I have a
14 listing of restaurants here that are local. There are
15 lots of them. Hundreds, I think. But we will talk
16 about that as we get to lunch.

17 When we return from lunch, we will be talking
18 about Appropriations of Funding Accounts. Following
19 that, Covered Costs and Requirements. We will take a
20 break mid afternoon. Following the break, Monitoring
21 and Reporting Requirements, and then Disagreements and
22 Dispute Resolution. Then we will close out the day

1 round about 4:00, 4:30 or so, with other issues, final
2 comments, anything that has not been raised yet that
3 any of you would like to raise. And we will talk about
4 next steps and action items. We intend to adjourn
5 today round about 5:00 or so and have closing remarks
6 by the Department as well.

7 There is quite a bit of concern about the
8 weather. It may have held up some people from making
9 it here on time today. We will try and be flexible and
10 accommodate everybody that needs to be accommodated,
11 and we will try and be very deliberate in pushing
12 through the agenda to see how far we get how fast
13 during the span of the day today, okay?

14 So that's the general plan. Questions,
15 comments about the agenda?

16 (No response.)

17 MR. BROOKMAN: Finally, or almost finally, in
18 your packet you will find several bits of information
19 that are useful: Jerry Wilson's presentation is in
20 here, three brief slide presentations that have been
21 compiled by the individuals that requested to present,
22 a sheet on sample requirements for an application

1 compiled -- or, prepared by Scully Capital Services.

2 And quickly, I draw your attention to the
3 sheet that looks like this. These are the Standby
4 Support Workshop questions. These are the ones that
5 will be flashed up on the screen. This can be a place
6 for you to keep track of where we are and be able to
7 flip back and forth as we are going along today.

8 Let me see if there is anything else. Oh,
9 yes. And then, finally, I'd ask for your consideration
10 to observe a few what I would consider simple
11 courtesies. Please speak one at a time. Say your name
12 for the record. This entire proceeding today, this
13 workshop, will be recorded and there will be a
14 transcript prepared. So, please, every time you speak,
15 say your name for the record. I will be reminding you
16 in the event you forget.

17 Please keep the focus here. Turn off your
18 cell phones, your pagers. If you need to have a side
19 bar conversation with someone, we will understand, but
20 take it out of this room so you don't distract
21 everybody else.

22 All these mikes are active. You need to get

1 probably within two feet of them to make them work, but
2 if you are having a side bar, it will be picked up on
3 the record.

4 (Laughter.)

5 MR. BROOKMAN: So try and stop that from
6 happening and be courteous to the people that are
7 speaking.

8 I'm going to ask you to try and be concise
9 here with the air time. Today is not the occasion, in
10 a workshop format, to read a five-page prepared
11 statement into the record. If any of you have prepared
12 statements you would like to have inserted in the
13 record, you can hand them to me or to the Department
14 and we will have them inserted in the record, so we
15 keep this more of a flowing event.

16 I'm going to be cuing people to speak. I
17 know some of you, not nearly all of you. I will be
18 trying to recognize you and learn your names as the day
19 goes on. I also wish to encourage follow-on comment.
20 Let's try and keep this as unstatic and dynamic as
21 possible.

22 If I drop you out of the queue, don't let me

1 get away with it. Start waving your hands. Let's make
2 sure everybody gets their time to speak here today.

3 I'm going to ask, finally, that you listen as
4 an ally today. There are lots of opportunities on an
5 occasion like this with a new program in the offing and
6 the listening -- the quality of the discussion hinges
7 entirely on the quality of the listening, I have found.

8 I will appreciate all of you doing your best with
9 that.

10 I'm wondering if we need any other additional
11 ground rules?

12 (No response.)

13 MR. BROOKMAN: We're going to keep this
14 moving along today, okay? So that's the plan for
15 today. Questions or comments before we turn this over
16 to Jerry?

17 (No response.)

18 MR. BROOKMAN: So then, one second. Do you
19 want to cue up your slides? You've got them.

20 (Pause.)

21 MR. BROOKMAN: Jerry Wilson is a senior
22 policy analyst in the Office of Nuclear Reactor

1 Regulation at the U.S. Nuclear Regulatory Commission.
2 Mr. Wilson has been with the Nuclear Regulatory
3 Commission since 1975 and is the Nuclear Regulatory
4 Commission's expert on licensing new nuclear plants.

5 Jerry, you have a PowerPoint presentation,
6 and as I understand it, you're real good at this. The
7 reason I'm saying that is because, if people have
8 questions or comments they wish to interject as you are
9 proceeding with your presentation, that's okay with
10 you.

11 MR. WILSON: Yes.

12 MR. BROOKMAN: We will be looking for that.

13 MR. WILSON: Okay.

14 MR. BROOKMAN: Okay.

15 Overview Presentation: Licensing New Nuclear Power
16 Plants

17 Jerry Wilson

18 (PowerPoint presentation.)

19 MR. WILSON: Can you hear me all right?

20 Good.

21 As Mr. Johnson said, there are several issues
22 that the Department of Energy needs to resolve as part

1 of its rule-making. Some of them are dealt with in our
2 licensing process within the Nuclear Regulatory
3 Commission, and so I thought I'd point out some issues
4 in that regard, and hopefully we will facilitate the
5 discussion. I apologize; I'm going to have to leave
6 after the first break this morning, so if you have
7 questions for me, please ask them during the
8 presentation.

9 Now, there have been a lot of companies that
10 have come to the NRC recently and said that we're
11 planning to build and operate new nuclear plants. We
12 expect that everyone is going to apply for a combined
13 license, and so the discussion that I'm going to have
14 this morning is talking about our combined license
15 process.

16 There we go. Just a couple of basic points.
17 In order to authorize construction and operation of a
18 plant, you need to resolve the design, address the
19 environmental impact, resolve site safety,
20 qualifications of the applicant, and operational
21 programs.

22 Now, the key feature and something that is

1 mentioned in this legislation is ITAAC: Inspections,
2 Tests, Analyses, and Acceptance Criteria. It's our
3 verification program. Basically, the process is going
4 to work: the applicant is going to describe how they
5 plan to meet the regulations, they will eventually come
6 into agreement with the NRC on that, and then, if in
7 fact they build the plant and prepare it for operation
8 in the manner in which they have said in their
9 application, it is reasonable to expect they are going
10 to get a license to operate. They are going to get
11 authorization to operate; let me be clear on that.

12 And that verification is going to be done
13 through ITAAC. We will talk a little bit more about
14 that.

15 The company building the plant is responsible
16 for performing 100 percent of those verifications, and
17 the NRC is going to come in and audit them. Based on
18 determination letters from the applicant and our
19 inspections, the Commission will make a finding on
20 whether ITAAC has been met, and that will be the basis
21 for the authorization to load fuel.

22 This is just a flow diagram of the process.

1 I'm not going to talk to this, but I have it here. We
2 may come back to it if we have some questions on this.

3 Now, issues. In the legislation, there is a
4 definition for advanced nuclear facility. My quote
5 here is not exact; I'll apologize for that. But
6 basically, it refers to reactor designs that have been
7 approved by the Commission after December 31st, 1993.

8 I wanted to point out that the NRC has
9 several ways of approving designs. We have a design
10 approval process under Appendix O to Part 52. This
11 process has been used over the years. It is probably
12 our most used licensing process in Part 52. We also
13 approve designs under our design certification process
14 in Subpart B to Part 52.

15 Finally, we could also approve a design in
16 the combined license review that is not referenced
17 either as a final design approval or a design
18 certification. That is what I refer to here as a
19 custom design. So one of the questions that Department
20 of Energy is going to have to answer is how should they
21 define that design approval.

22 What I have included in the handouts is a

1 list of the designs we have approved since '93. You
2 see we have approved -- we have given four final design
3 approvals since that date. We have issued three design
4 certifications, and I expect that we're going to
5 certify that last design very shortly.

6 So far, we haven't received any applications
7 for a combined license, but as I pointed out, there may
8 be design approvals in that process that someone
9 doesn't reference either a design approval or a design
10 certification.

11 So, any questions on that issue?

12 MR. MATTHEWS: Would your view be that --

13 MR. BROOKMAN: Use the mike, please, and say
14 your name for the record.

15 MR. MATTHEWS: John Matthews. Would your
16 view be that if you do not -- if you use a -- reference
17 a design approval application that you would be
18 processing under that custom design rule? I mean, if
19 you are anticipating that there will be a final design
20 before you get your combined operating license but you
21 are referencing an application.

22 MR. WILSON: It's an issue of the moment that

1 the NRC is working on, but we would look at that as in
2 the application if the applicant referenced a design
3 that, let's say, was under review for a design
4 certification, that we would still look at that as a
5 reference application.

6 Now, it gets into the issue of timing. I'm
7 speculating now, but I would assume that that
8 prospective applicant would anticipate that that design
9 certification would be complete before they finished
10 the combined license review process. So it would then
11 become a referenced application as part of -- by the
12 time that combined license was issued. But I'm sure
13 you can anticipate that timing could affect that
14 answer.

15 MR. SABA: Peter Saba with Paul Hastings.
16 The definition also talks about how the design has to
17 be -- such design is not substantially similar to a
18 design that was approved before the date. Have you had
19 any thoughts on that issue?

20 MR. WILSON: I was intrigued by that.
21 Unfortunately, my colleagues at Department of Energy
22 are going to have to resolve that one. But let's take

1 an example. System 80+ design is clearly an evolution
2 of the System 80 design, which was approved long before
3 that trigger date. Now, would System 80+ be
4 sufficiently different to still qualify as an
5 advancement to the facility or would you see that it
6 falls within that definition of -- I can't recall the
7 exact words, but I think that's an interesting and
8 difficult question.

9 MR. BROOKMAN: Other questions at this point?

10 (No response.)

11 MR. WILSON: Another issue is commencement of
12 construction. From the NRC's perspective, in the past
13 when we issued construction permits, that's how we
14 referred to commencement of construction. Now, with
15 combined license, that is an authorization to begin
16 construction. So I think officially, in the NRC's
17 perspective, when we issue a combined license, that's
18 what we would consider commencement of construction.

19 But I wanted to point out, though, that I
20 anticipate some of the applicants for combined licenses
21 are going to ask for authorization to begin pre-
22 construction activities under our Provision 50.10(e),

1 which we commonly refer to as Limited Work
2 Authorizations. There is a wide variety of activity
3 that can be performed under an LWA: site clearing,
4 transmission lines, excavations for foundations. It is
5 an extensive list.

6 So I would say the NRC's view is that does
7 not constitute the official commencement of
8 construction.

9 Now, I neglected to point out in here, and
10 those of you who are reading the regulations carefully
11 will note, that in 50.10(b) there is a definition of
12 construction. I would say that that is a limited
13 definition to distinguish between what we would call
14 site investigation activities. Prior to submitting an
15 application, a prospective applicant would go out to
16 the site and do borings and other investigations on the
17 site to prepare their application and describe their
18 site. The NRC does not consider those activities
19 construction for the purposes of that.

20 We have a definition that fits 10(b). I
21 would caution you in using that definition for this
22 more general case. As I say, I think the NRC's view is

1 that commencement of construction begins when we issue
2 a combined license, or after we issue a combined
3 license.

4 So, any further questions on that?

5 MR. G. MILLER: Yes, I have a question,
6 Jerry. This is Gary Miller with Progress Energy. In
7 the IMC 2502, it describes LWA-1 and LWA-2. The LWA-2
8 definition will take you back to a regulation that
9 talks about in essence SSCs that mitigate the
10 consequences of an accident. So, in essence, it's
11 saying some foundation concrete point, for example,
12 could be done under certain approval authorities. My
13 question to you is, does that represent a start of
14 construction?

15 MR. WILSON: Thanks. The reason I put this
16 up here is -- the answer to this question isn't
17 obvious. Let's go back to LWA-1. Before the NRC would
18 grant a limited work authorization, you would have to
19 get approval of the site and have to do your
20 environmental assessment and the licensing board would
21 have to resolve any issues dealing with siting or
22 environmental assessment issue they're finding. On

1 that basis, we could issue an LWA-1.

2 Now, you can also request an LWA-2, in which
3 case it's possible to get approval for some safety-
4 related activities, such as the base map and the
5 safety-related structure. That means that some
6 additional safety resolutions are going to have to be
7 made, and additional findings possibly, by the
8 licensing board. At what point are you now in
9 construction.

10 I think the answer is not immediately
11 obvious, and so, once again, my colleagues are going to
12 have to consider that point. That is exactly why I
13 brought this up, and I want to thank you for that
14 question.

15 MR. SABA: Peter Saba with Paul Hastings.
16 There is also a part of the statute that makes
17 reference to both issuance of the combined license and
18 commencement of construction. So that would suggest
19 that there is a distinction between the two, but I was
20 hearing you say that the NRC viewed issuance of the
21 combined license as commencement of construction.

22 MR. WILSON: Once again, I think that is a

1 good clarification. The NRC issues the license but we
2 don't control construction activities. That's
3 controlled by the company who holds the license. So
4 when they actually initiate construction, it is an
5 activity that the licensee is going to decide on.

6 I will say that, from the NRC's perspective,
7 we look at this -- issuance of a license is for someone
8 who is prepared to begin construction. So, in the
9 past, companies have begun construction as soon as they
10 have received construction permits. My expectation is
11 that is what is going to happen in the future. But I
12 could see a distinction between those two points.

13 Further questions on this subject?

14 (No response.)

15 MR. WILSON: ITAAC schedules. In the
16 legislation, covered delay has to do with the schedule
17 for review and approval of ITAAC. I want to discuss
18 this point.

19 First of all, looking back on plants that
20 were constructed in the past, the NRC has an inspection
21 program. We inspected construction activities. Both
22 inspection programs did not have hold points. The

1 construction proceeded under the management of the
2 company who was holding the construction permit, and we
3 came in from time to time and inspected those
4 construction activities.

5 In creating Part 52, we have the same vision
6 that there would not be hold points dealing with our
7 inspection. In fact, the standard for verification is
8 the same as it was in the past. I take you back to
9 Section 185 of the Atomic Energy Act, which the NRC
10 implemented with Section 50.57. That was the finding
11 that the NRC made based on those inspection activities.

12 It is basically the same finding that the NRC is going
13 to make for authorization to load fuel under a combined
14 license.

15 So when we created the ITAAC process, you
16 will see that there is nothing in there about hold
17 points as part of our inspection.

18 Now, subsequent to that and during the time
19 that we were working with industry on the first design
20 certification rules, this issue came up again. As you
21 know, when we are doing design certification, we come
22 to agreement on the ITAAC, the verification process for

1 the scope of the design that comes under design
2 certification. The industry pointed out that they
3 wanted assurance that in using the ITAAC there wouldn't
4 be any hold points.

5 So a provision was added to all of the design
6 certification rules that have been issued to date, and
7 I have the section number here. Basically, it says
8 that regardless of whether or not the NRC has agreed
9 that any particular ITAAC has been met, the applicant
10 can proceed at its own risk. The purpose of that is
11 just to make it clear that those findings being made by
12 the NRC would not constitute a hold point on
13 construction.

14 Now, the NRC is doing a rule-making to update
15 Part 52 and the industry has raised this point again.
16 So our proposal that is being considered by the
17 Commission is that we also make this point in the main
18 body of Part 52, not just the design certification
19 rules. So we have a similar phrase that we are
20 proposing to add to that provision in Part 52. It has
21 the same effect and it's just trying to make the point
22 clear that NRC's inspection program does not constitute

1 a hold point during construction.

2 Now, the qualifier in that, of course, is
3 that the NRC has to make a finding -- let me be clear
4 on this. The Commission has to make a finding that all
5 ITAAC have been met before the licensee can load fuel.

6 So there is a hold point there, but at that point
7 construction is complete. So in summary, from the
8 NRC's perspective, there aren't any schedules for
9 ITAAC.

10 Another point I wanted to bring up in here
11 also is that, based on discussions with companies who
12 are considering building new plants, I understand that
13 some companies may want to demonstrate, prior to
14 issuance of the combined license, that some of the
15 ITAAC have been met, ITAAC dealing with long-lead
16 procurement or certain design issues that were not
17 completed during the design certification review.

18 So I'm not sure how that would fit into this
19 whole discussion, but I just wanted to point out that
20 it's possible that some of the ITAAC will be completed
21 before issuance of the combined license, but I expect
22 most will be completed after issuance of the combined

1 license. But in neither case are there schedules from
2 the NRC's perspective.

3 So, questions on that subject?

4 (No response.)

5 MR. WILSON: That's interesting. I thought
6 that was the most controversial.

7 Okay. Getting back to -- as we approach the
8 completion of construction, there is an opportunity for
9 an optional hearing under the combined license process.

10 One of the things we did to change from our past is
11 that we raised the standard for qualification to get a
12 hearing. We anticipate this is going to be viewed as a
13 high standard and I think it is fair to say from NRC's
14 perspective we think it is unlikely there will be a
15 second hearing on a combined license unless there is
16 clearly defects in construction such that the
17 regulation is not being met.

18 The Commission is going to make a decision on
19 whether or not there will be a hearing and also will
20 determine those hearing procedures. So it's not clear
21 at this point in time what the procedure will be or how
22 that hearing will be conducted.

1 Also, I pointed out that there is a provision
2 in 52.103 that there is a petition to modify the
3 combined license. That will be dealt with as a 2.206
4 petition.

5 But the point I wanted to make with this
6 slide is that in the NRC view it is unlikely that we
7 are going to have second hearings under the combined
8 license.

9 Now, another issue is what constitutes full
10 power operation. If you look at past operating
11 licenses issued by the NRC, and I would also suggest
12 you look at our generic combined license that we have
13 set forth in Executive 00-92, I foresee three steps, if
14 you will, in terms of operation under a combined
15 license. As we said before, once the Commission finds
16 that ITAACs are met, that licensee is authorized to
17 load fuel and do what we commonly refer to as zero-
18 power testing.

19 There may or may not be conditions on that
20 license that could restrict that licensee from
21 proceeding into low-power testing that would go up to 5
22 percent power. Some licenses in the past have had

1 those. I can't foresee whether we will or will not.
2 That will probably be determined on a case-by-case
3 basis.

4 But a key point here is, frequently we have
5 had a hold point at 5 percent. That is tied in with a
6 finding by the Federal Emergency Management
7 Administration on whether or not the off-site emergency
8 plans are acceptable. We can authorize operation up to
9 5 percent power in the event there are some
10 deficiencies in the off-site plan, but the NRC does not
11 authorize operation above 5 percent power until all of
12 those issues are resolved and FEMA has told us that the
13 off-site emergency plans are acceptable. So it's
14 possible that there is going to be a hold point at 5
15 percent.

16 Then, once you get the authorization to go
17 beyond 5 percent, the licensee would do their power
18 ascension testing and go up to what the NRC typically
19 refers to as rated power or the power level at which
20 the safety analyses were done at.

21 Another point. Let's assume that there is a
22 pre-operational hearing. The Commission does have the

1 authority to issue interim operation during the course
2 of that hearing, provided they can make certain
3 findings about the safety of that operation.

4 So there is the possibility that plants can
5 begin interim operation before that finding has been
6 made that all ITAACs are met. Just as an aside, the
7 40-year clock starts with the issuance of that interim
8 operation. The other constraints or conditions in the
9 license tend to come into play during that interim
10 operation. It's not clear to me how that would relate
11 to this issue of full-power operation, but I think it
12 is important to keep that in mind, is that there may be
13 some operation under certain circumstances before the
14 findings of all ITAAC are met.

15 So, questions on the full-power operation?

16 (No response.)

17 MR. WILSON: I believe this is my last slide,
18 so I will also open it up to questions in general about
19 licensing under Part 52. I think we are moving along
20 well.

21 MR. BROOKMAN: Please. Yes.

22 MS. KRAY: Marilyn Kray from Exelon. Jerry,

1 so I'm having the delayed reaction to the ITAAC
2 schedule comment. So, if you say there are no
3 schedules for ITAAC in the COL process, wouldn't that
4 make it difficult to demonstrate a delay in the
5 process?

6 MR. WILSON: This is one of those cases where
7 I'm glad I'm with the NRC and not with Department of
8 Energy. I think they're challenged on this.

9 MS. KRAY: And so, now, Part 52 may not state
10 that there is a schedule, but couldn't you develop a
11 schedule? It doesn't prohibit you from establishing an
12 ITAAC schedule, correct?

13 MR. WILSON: That depends on what you mean by
14 "schedule." I think a better way to answer the
15 question is to say how we envision the process working.
16 We have asked Marilyn and other prospective applicants
17 to share with us their detailed construction schedules
18 in advance so that our inspectors can review those
19 schedules and determine when would be the optimum time
20 to go out to the site to look at various things.

21 But based on past experience and based on our
22 current planning, I don't envision that we would hold

1 up construction. Rather, we want to know when things
2 are going to happen so we can go out and do
3 inspections.

4 So from the NRC's perspective, the concept of
5 schedule related to ITAAC really wasn't even in our
6 thinking. That's why it's difficult for me to answer
7 your question. I'm struggling with it.

8 Our view was that the licensee is controlling
9 construction and we're going out there and inspecting
10 when the opportunity presents itself. We do what we
11 can do, given the construction is ongoing.

12 MS. KRAY: Okay. I mean, it seems that there
13 would -- you could impose some kind of reasonableness
14 into this, and that is when an applicant says that
15 based on their analysis and inspection that the ITAAC
16 is complete that there would be some kind of window
17 established wherein the expectation would be that the
18 NRC would attempt to go in and close that.

19 Because, without that, then you could end up
20 in a situation where, whether it be NRC resources that
21 prohibit you or whatever, but an applicant is
22 essentially kind of stuck there thinking ITAAC is

1 closed on their end but not having the confirmation on
2 the NRC end.

3 MR. WILSON: What is going to happen is there
4 are a thousand ITAAC, depending how you count it. As
5 construction proceeds, the company that is building the
6 plant is going to make determinations that they have
7 met various ITAAC and they are going to send
8 notifications to the NRC periodically stating that we
9 have met a particular ITAAC.

10 Now, the NRC is not going to wait for that
11 letter to do the inspection. As I said before, we are
12 going to be out there inspecting throughout
13 construction. That is why we would like to see the
14 construction schedules in advance, so that -- and we
15 know what the ITAAC are going to be and we will make
16 determinations on what we are going to look at.

17 And as the construction proceeds to a point
18 where it's timely to go out and look at things, the
19 inspector is going to go out at that time, later, and
20 that time period we don't know and we are going to find
21 out in the first application. But there is going to be
22 some point -- some additional amount of time before the

1 NRC receives those determination letters from the
2 company that is building the plant.

3 When we receive those, we may also do records
4 inspections. We will go back and look at the previous
5 inspections we did of that particular construction
6 activity. But I don't envision that we would ask
7 construction to hold up while the NRC is reviewing that
8 determination letter. I just don't see that happening.

9 I don't think it happened in the past, and I don't
10 expect it to happen in the future.

11 Now, let's be clear about this. There have
12 been certain projects that have been delayed by the
13 NRC, projects where there have been massive breakdowns
14 in the quality assurance programs. Short of that, I
15 don't see the NRC stopping construction.

16 MR. BROOKMAN: Marvin.

17 MR. M. SMITH: It's Marvin Smith. Isn't it
18 sort of in part this -- tied into this proceeding on
19 risk? In other words, I think what you've said is that
20 the NRC allows you to proceed at your own risk.
21 However, particularly in context of the standby
22 facility, say hypothetically a company decided that

1 there are certain critical ITAAC that they want NRC to
2 resolve prior to proceeding. Could that not establish
3 a schedule for those ITAAC?

4 MR. WILSON: Interesting question. The NRC
5 hasn't had that question in the past. We would have to
6 talk about how we would facilitate such a thing. All I
7 can say is, our general approach would be not to
8 interfere in the progress of construction.

9 Now, what kind of a conclusion the NRC could
10 reach on a particular ITAAC in the midst of
11 construction, candidly I'm not sure. It's something
12 that we would have to think about.

13 MR. BROOKMAN: Additional and perhaps final
14 questions.

15 MR. MATTHEWS: This is John Matthews from
16 Morgan Lewis. I just have a comment. I think that you
17 have put your finger there on precisely where a covered
18 delay could occur. That is, where the company is
19 saying, NRC, you need to complete this ITAAC before we
20 proceed.

21 I think there ought to be a mechanism where
22 within a reasonable time, if the company has sent its

1 determination letter, the company believes the ITAAC is
2 complete, that -- and the company is not willing to
3 take the risk of additional construction until the NRC
4 confirms its agreement that the ITAAC has been
5 completed, one ought to be able to up front at least
6 set some window of time -- I don't know what the right
7 window of time is; whether it's 15 days or 30 days or
8 60 days -- but a window of time within which the NRC
9 should complete that ITAAC, indicate its agreement.
10 And if the NRC fails to do that within that window,
11 then that would be a covered delay.

12 MR. WILSON: I understand what you're saying.

13 A couple points on that. You also have to consider
14 the issue of excluded delays. It sounds like that
15 falls into something under the control of the licensee,
16 but once again, that is a determination for the
17 Department of Energy.

18 Back to your point, I know the NRC has
19 resisted, and I expect they will continue to resist,
20 agreeing to any particular schedule or making
21 conclusions about ITAAC. The other difficulty is what
22 I'm calling -- I'm making this up, but an interim

1 conclusion on an ITAAC. In other words, based on what
2 you know at that time, recognizing the whole
3 construction incomplete, it is going to be difficult.
4 So how much assurance could the NRC give to that
5 licensee under that situation. It would have to be
6 some sort of a conditional conclusion, is what I would
7 expect.

8 So, yes, it's a very difficult problem. Best
9 wishes to my colleagues at Department of Energy.

10 MR. BROOKMAN: You're creating some empathy
11 in the room, I'm certain.

12 MR. WILSON: Yeah.

13 (Laughter.)

14 MR. HOLLAWAY: One quick point on that. You
15 -- as a representative of the NRC, one thing you might
16 be able to take back from this meeting as a way the NRC
17 could participate and help out with this whole effort
18 is to think about and put together a process for review
19 and determination of ITAACs: rather than focusing on
20 what the schedule is, whether a schedule is an absolute
21 requirement, but rather, what is the process. I've
22 heard people talk about a letter of some type being

1 submitted by the applicant and then the NRC responding
2 with something like you would with an application, that
3 it's complete for review, or whatever the process would
4 be.

5 At least having a process would help provide
6 some clarity and some certainty, which is really,
7 really key for this.

8 MR. BROOKMAN: Will you say your name for the
9 record?

10 MR. HOLLAWAY: My name is Bill Hollaway with
11 Skadden Arps.

12 MR. BROOKMAN: Thank you.

13 MR. WILSON: I should have pointed this out.

14 The NRC has a working group made up of senior
15 inspectors, and we are looking at our construction
16 inspection program and adapting that to the realities
17 of inspections using ITAAC and have been working with
18 industry on their proposals for what constitutes an
19 acceptable determination letter.

20 So we are looking at just what you are
21 saying, a process as to how we are actually going to
22 implement this. I'm recalling from memory, but I

1 expect -- I think it's early next year that group is
2 going to put out a report to the Commission on that
3 subject.

4 MR. BROOKMAN: Final questions and comments
5 before we move on?

6 (No response.)

7 MR. BROOKMAN: Okay. Thanks, Jerry.

8 Several of you who weren't here at the very
9 beginning, I would like to give everyone a chance that
10 did not already do so to introduce him- or herself. So
11 if you haven't introduced yourself, if you'd stand up
12 and say your name and your organizational affiliation.
13 Can I start at that side of the room?

14 (Introductions.)

15 MR. BROOKMAN: Thank you. The weather -- I
16 don't know what it's doing out there, but I guess the
17 weather is going to get bad today. So we'll try and
18 accommodate people and their travel schedules.

19 For those of you sitting on the periphery, if
20 you're comfortable there, great. There are more chairs
21 up here in the front if you'd care to join us.

22 Four individuals contacted the Department of

1 Energy and requested to present, and we would like
2 to provide an opportunity to those four individuals now.

3 Following their brief overview and introductory
4 remarks, we would entertain similar
5 overview/introductory remarks -- briefly. Three
6 minutes, four minutes -- for those of you that wish to
7 weigh in at this point.

8 The individuals that wish to speak are Dan
9 Keuter, Joe Turnage, Richard Myers, and Steve Howlett,
10 in that order. Three of these individuals have slides,
11 and they are in your packet, okay? So let's proceed
12 with that.

13 Dan, you're first. Could you say your
14 organizational affiliations?

15 Facilitated Discussion

16 Brief Overview/Summary Remarks

17 Presentation by Dan Keuter

18 (PowerPoint presentation.)

19 MR. KEUTER: Thank you, Doug. Can everybody
20 hear me?

21 My comments are very general. In fact, they
22 were originally -- when I developed them, they were

1 geared towards standby support, but when I started
2 looking at them, they're really applicable to, also,
3 the loan guaranties and production tax credits. In
4 general, all I wanted to do is, you know, kind of give
5 an overview of what we think this -- Entergy thinks --
6 our comments on all three.

7 I am the vice president of nuclear business
8 development for Entergy and live in Jackson,
9 Mississippi.

10 The goal, I think, of all three of the
11 incentives is to give a system to help us get through a
12 first-of-a-kind not only cost but the first-of-a-kind
13 risk. The objectives we think for the allocation
14 process for all three of the incentives, including loan
15 guaranties, production tax credits, and standby
16 support, should be to achieve the following.

17 First of all, it should be an equitable
18 allocation of the incentives to a number of projects,
19 but also, we don't want to spread it so thin that we
20 don't motivate the individual projects to build. So
21 the bottom line objective here is to spread it out but
22 also make sure we actually build something.

1 The second objective is to reward the first
2 movers and to have -- you know, to take action to build
3 new nuclear powerplants, but to avoid a race to the
4 finish that the main concern is to build the first one
5 to get the incentives. Really, what we want to do,
6 though, is, you know, motivate people to build the best
7 plants, to build something that we're going to build 50
8 of or 100 of, not something that we're just going to
9 build one or two of.

10 So, again, we want to motivate the first
11 movers, but we do definitely want to demonstrate the
12 best technology.

13 And third, we want to ensure certainty. You
14 know, to have these incentives work, you know, they
15 have to be given soon enough in the process that we can
16 get permission from our boards, put it into our
17 financial analysis, and ensure that we get financing.
18 So those are the three principles that we propose.

19 As far as how we go about this, I think we
20 look back and we think that the DOE and the Treasury
21 should get together into a bidding process very similar
22 to the bidding process that we used for early site

1 permit and also a co-funding of the COL process.

2 I think we should use a criterion or a
3 weighted criterion, and the amount of the incentives
4 that are allocated to the different bidders should be
5 based on how they meet this criteria.

6 But some of the attributes of the criteria,
7 we think going into this, is, number one, a commitment
8 to build. After all, the whole idea here is to build
9 new nuclear powerplants. And, to evaluate each of the
10 bids on what their commitment to build is.

11 Second is the economics and the safety of the
12 technology. Again, we want to build, you know,
13 something that we're going to build 50 of or 100 of, so
14 we want the best designs both from an economical and
15 from a safety perspective.

16 We want diversity of technology. The whole
17 idea of why we went into new start is we didn't want
18 just one design out there. The whole U.S. economy is
19 based on competition and we want competition. We don't
20 want a monopoly of one reactor vendor out there with
21 one technology. We want multiple technologies, and
22 there are several, you know, technologies out there

1 that are looking very good.

2 Producer diversity. Again, we don't think
3 all the incentives should go to one or two or three.
4 The pie is big enough for everybody. So we think there
5 should be a diversity in who gets the incentives. But
6 again, a minimum amount. It has to be enough, and it
7 could be a combination of production tax credits,
8 standby support, and loan guaranties, but a minimum
9 amount to actually build something.

10 Other incentives. So, you know, these
11 shouldn't get all -- you know, all the incentives, you
12 know. The amount of one incentive, you know, should
13 balance another. There is enough out there for
14 everybody.

15 Proposed timing. I think that is important.
16 After all, we want to build something. But it
17 shouldn't be the all -- most important thing out there,
18 to be the first one. You want to be the best one,
19 also.

20 Likelihood of success. Well, from a
21 technology, financial, and political risk, you know,
22 evaluate the projects. If it is going to an existing

1 site with an early site permit and has strong community
2 support, it is more likely to be successful than
3 something that is going into a green field in an area
4 that is hostile and doesn't want the plant, for
5 example.

6 Endorsements. Again, this is if you have the
7 endorsement of the local community.

8 U.S. technology. After all, this is taxpayer
9 money that is going to this. We want to bring jobs and
10 technology to the United States.

11 And last, you know, does the sponsor of this
12 have a demonstrated leadership in developing this
13 technology. Have they gone out and spent their own
14 money ahead of this and been a leader in developing new
15 nuclear power.

16 A proposed schedule could be, you know, issue
17 the request for proposal by January 1st of '07, receive
18 -- start receiving proposals by July of '07, start
19 awarding incentives by January '08, and close the
20 window probably by mid '09.

21 Again, if there are proposals accepted and
22 they are canceled or prolonged or aren't able to make

1 commercial operations by January of 2001, then those
2 allocations should be given to somebody else in line.

3 So, do we accept questions now?

4 MR. BROOKMAN: I guess we could accept one or
5 two briefly.

6 MR. KEUTER: Okay.

7 MR. BROOKMAN: Any questions right now for
8 Dan?

9 (No response.)

10 MR. KEUTER: Everybody wants to make sure
11 they get out before the snow comes.

12 MR. BROOKMAN: We want to make sure we get
13 the subject matter covered today, so we'll worry about
14 the weather as we proceed.

15 Joe Turnage is our next presenter.

16 Presentation by Joe Turnage

17 (PowerPoint presentation.)

18 MR. TURNAGE: Good morning. I think I know
19 most of the people in the room. Hi. My name is Joe
20 Turnage. I'm a senior vice president in Constellation
21 Energy's Generation Group, and I appreciate being here.

22 Importantly, maybe the statement I would like

1 to lead off with was really to express appreciation for
2 the passage and enactment of the Energy Act itself.
3 Absent that, our company would not be where it is
4 seeking to deploy a fleet of U.S. EPRs. So for those
5 of you here from the Department of Energy and other
6 places who contributed to that legislation, we are very
7 grateful for that. It has literally made it possible
8 for us to go forward with our plans.

9 I have only got a few high-level points to
10 make. They piggyback on Dan's comments.

11 The first one is certainty of project
12 investors. And the word "investor" I mean to include
13 financial investors as well as the sponsors of these
14 projects. Implications for that really have to do
15 with, as Dan pointed out, clarity, assignability to
16 lenders, and we believe these objectives should be
17 achieved through the regulations rather than specific
18 contracts, which would make it more complicated.

19 Next slide.

20 This is about criteria for determining the
21 effectiveness of the contracts. There is no perfect
22 issue -- no perfect answer to the question of when one

1 gets through the queue for the standby default
2 coverage. I will just tell our position is that
3 contract eligibility for a contract should be
4 determined at the time of submitting an acceptable
5 application for the COL to the Nuclear Regulatory
6 Commission. But the queue status should be fixed and
7 determined, we believe, at a time that is absolutely
8 not ambiguous and can't be gained. We believe that the
9 best time to do that is safety-related concrete, and in
10 particular, the reactor vessel base mat.

11 When you are there, you already did it. Up
12 until then, you can do limited work authorizations and
13 proceed at modest cost to position yourself in the
14 queue, which could result in significant opportunity
15 and financial benefit. So our position is, make it
16 very clear, make it absolutely unambiguous, and make
17 the standard that construction is in fact a real
18 commitment to proceed. Our pick for that has to do
19 with pouring the safety-related concrete.

20 We also believe that if one's position in the
21 queue is neither needed or not utilized for other
22 reasons, the opportunity ought to exist not -- keeping

1 in mind we are only talking about six units, to roll
2 that to another unit.

3 What is behind that is a belief that the
4 risks calling for standby default coverage might not be
5 greatest with the first, narrowing the second, third,
6 fourth. In fact, the first one or two might sneak
7 under the radar of forces that would cause regulatory
8 default to be inactive. The third one might be the
9 most significant regulatory risk in this space to be
10 dealt with. Not knowing that and being able to roll
11 forward in the context of a six-pack would be
12 beneficial.

13 Next slide.

14 We believe that regulations should promote
15 the benefits of diversity in reactor design. We
16 believe a really important element to be worked out
17 through the DOE's deliberations here has to do with the
18 scoring of these programs and the budgetary impact of
19 them. I think we ought to avail ourselves of other
20 industry precedents in this regard, particularly the
21 sovereign risk production products.

22 It is possible to create a situation that the

1 value to the industry that was trying to be achieved by
2 the energy legislation is diminished significantly in
3 terms of the source and magnitude of the budgets
4 required to enact these programs.

5 The last slide.

6 We want to make this as clear and attractive
7 to financial investors as possible, so we are back to
8 clearly defined and what is covered should be
9 administered in a way that avoids protracted
10 litigation. So we are going to be looking for some
11 efficient mechanisms for conflict resolution. We think
12 that exclusions from coverage should also be more
13 clearly defined, not ambiguous. What is included and
14 excluded from the coverage of standby default again
15 should be clear.

16 We also believe that the words of the
17 legislation and in particular in the two grant areas,
18 particularly the program grant funds, appear to be
19 inclusive. The words are "include" not "limited to."
20 So we would encourage the Department of Energy to think
21 inclusively about all the sources of financial distress
22 that this legislation is meant to cover and to think,

1 again, inclusively rather than exclusively.

2 That is at the 150,000-foot level. Any
3 questions?

4 MR. BROOKMAN: Questions?

5 (No response.)

6 MR. BROOKMAN: Thank you, Joe.

7 Our next presenter will be Richard Myers.

8 Presentation by Richard Myers

9 MR. MYERS: No slides. You're going to have
10 to rely on my deathless prose.

11 Very briefly, I too hope to stay at a
12 relatively high level. Clearly, many important issues
13 that need to be addressed in the regulations that
14 implement Section 638, but a couple stand out from the
15 rest that I would like to focus on. You have heard a
16 little about some of these.

17 The issue of determining eligibility for the
18 coverage and creating the queue of companies eligible
19 to receive both the \$500 million and those eligible for
20 the \$250 million. Very important to industry. Under
21 the statute, firm contracts to provide that coverage
22 can't be signed until the project sponsor has received

1 its COL and started construction. Years before that,
2 however, companies will be making investment decisions
3 and arranging financing.

4 So the availability of the standby support
5 will be a critical factor in that decision-making. I
6 think I can speak for the industry and really applaud
7 the Department of Energy for recognizing in the NOI the
8 need for what we call kind of a conditional queue of
9 companies that are eligible for coverage. That
10 conditional queue would be firmed up on receipt of COL
11 and start of construction.

12 Second, the cost of the coverage and how the
13 risk insurance is priced is a major issue for the
14 industry. Obviously, there is some cost threshold, and
15 I'm not prepared to speculate about what threshold
16 might be, at which the coverage becomes too costly to
17 be useful and indeed too costly to achieve the
18 legislative intent. In our formal comments, which you
19 will receive on or before the 23rd of December, we will
20 offer some thoughts on how to approach this issue, and
21 my colleague, Steve Howlett from GE, will give you a
22 perspective on this in a few moments.

1 We also think it is important to recognize
2 that the statutory language provides DOE with
3 considerable flexibility in implementation in order to
4 achieve the legislative intent, which is to protect
5 private companies and private investment against risks
6 and delays over which they have no control.

7 We see flexibility with respect to how the
8 insurance coverage is priced, we see flexibility with
9 respect to the allocation of costs between the project
10 sponsor and appropriations, and we see flexibility, as
11 Joe noted, with respect to the definition of covered
12 costs. Again, I would like to commend DOE for
13 explicitly recognizing this flexibility in the NLI.

14 One last thought. We believe that an
15 appropriate evaluation of the risk associated with the
16 licensing process is really essential for many, many
17 reasons, not least in order to determine the risk
18 factors associated with the standby support, which will
19 govern the Credit Reform Act scoring.

20 If implemented appropriately and managed
21 efficiently by both industry and the NRC, and industry
22 bears a significant portion of the responsibility here.

1 But if implemented appropriately and managed
2 efficiently by both parties, the licensing process,
3 including the ITAAC process and the run-up to fuel load
4 and commercial operation should be relatively
5 straightforward.

6 I'm concerned that we may tend to
7 overestimate the complexity and risks associated with
8 this process. There may be, as Jerry Wilson said,
9 thousands of ITAAC, but most of them are quantitative
10 and unambiguous indicators and criteria. There should
11 be little doubt whether an ITAAC has been satisfied and
12 NRC validation and verification of the ITAAC should be
13 relatively straightforward.

14 So I would urge the Department and all of us
15 to bear in mind that this standby support is designed
16 to deal with extremely low probability events. Now,
17 although they are extremely low probability events,
18 they have extremely high consequences if they occur in
19 terms of financial damage to the companies. That
20 really is why the industry needs this risk insurance
21 for the first few plants that navigate a new licensing
22 process.

1 Thank you, Doug.

2 MR. BROOKMAN: Questions for Richard, if any,
3 at this point?

4 (No response.)

5 MR. BROOKMAN: Okay. Thank you, Richard.

6 Steve Howlett is next.

7 Let me just remind you that there is going to
8 be ample opportunity in the remainder of the day, as
9 you look at the content areas described in the agenda,
10 to go into the subject matter in considerable detail.

11 Presentation by Steve Howlett

12 (PowerPoint presentation.)

13 MR. HOWLETT: Thanks. Appreciate it. In
14 case somebody needs an interpreter, you know, I'm from
15 Texas and in Texas, you know, nuclear and oil are both
16 three-syllable words. So you might have to get Doug
17 over here to translate a little bit for us here.

18 I'm with General Electric. I'm from the
19 financing side of GE. Specifically, my group takes
20 care of government financing programs, so principally,
21 U.S. exit mains, the rural utility services, overseas
22 private investment corporation, and others, which is

1 the reason that, in collaboration with Richard and lots
2 of folks from the industry, we wanted to address,
3 really, sort of the back end of the process there.

4 Let's assume that we come up with a really
5 good product, which has got to be an assumption for us
6 that it's going to work, it's going to manage the risk
7 that we are looking to manage on the catastrophic side.

8 And as Richard said, as we all figure out who
9 gets in line first and who's going to get the first two
10 and who is going to get the last four and everybody
11 figures all that kind of stuff out, what we wanted to
12 address is how do you score it and how do you price it.

13 Because, if you price it in such a way that
14 it is too expensive for the type of coverage that you
15 have, then you have an unworkable product from a
16 bankable project point of view. And, if you budget
17 score it in some ridiculous manner, then there is not
18 going to be enough money in Washington. Everybody
19 knows the Congress is running a little short of cash
20 right now. So there is not going to be enough budget
21 available to make the program implementable. So we
22 wanted to kind of focus in on.

1 First of all, the program itself, when you
2 price and budget score it, it's got to be reflective of
3 actual risk, not some sort of ambiguous kind of risk
4 out there. Oh, well, you know, these things had
5 problems back in the '60s and '70s and everybody is all
6 unhappy with them, and those kind of things. That may
7 not be reflective of the risk of the actual coverage of
8 the policy.

9 So you have to take a disciplined approach
10 like any sort of insurance company and you have got to
11 write into the risks that are associated directly with
12 the policy in the current atmosphere. You've got to be
13 able to make it reflective of what has been happening
14 in Europe, what has been happening in Asia,
15 construction techniques, delays, even what's the
16 climate and what's the perception of risk.

17 It should also be modeled after successfully
18 run government programs that exist right now. U.S. Ex-
19 Im Bank, the Overseas Private Investment Corporation,
20 these are programs where if you were to take one of
21 these projects, put it into their budget model and
22 everything, it would spit out the appropriate risk

1 assessment. You already have a precedent that exists
2 in the federal government. I would strongly encourage
3 DOE and others not to recreate the wheel or make the
4 wheel something different.

5 MR. BROOKMAN: Marvin, use a microphone,
6 please.

7 MR. HOWLETT: Oh. I have his mike there.
8 Uh-oh.

9 MR. BROOKMAN: Go ahead, Marvin.

10 MR. SHAW: Marvin Shaw with DOE. In addition
11 to OPIC and the U.S. Export-Import Bank, do you -- are
12 you aware of any other federal government programs that
13 are similar to these in budget scoring, things that
14 could help us in our process?

15 MR. HOWLETT: Rural Utility Services, of
16 course, have a budget scoring program. They have a
17 program. There is also the Defense Export Loan
18 Guaranty Program which was created as part of
19 Agriculture a few years ago, under the Commodity Credit
20 Corporation. They created their own version of an ex-
21 im bank.

22 So there are a number of different types of

1 risk assessment programs that exist out there. I think
2 for the standby support, the best example of that would
3 probably be an OPIC type program, and for the loan
4 guaranty program, U.S. Ex-Im Bank, because both are
5 involved in actually building and constructing
6 powerplants. So, that's probably the closest apples-
7 to-apples or oranges-to-oranges comparison that you
8 would find. But there are other programs that exist
9 out there that might do similar things as far as
10 financing projects or a product.

11 I would also suggest that because the federal
12 government has -- it's the opposite of a moral hazard.

13 I'm not sure what the technical term would be. But
14 since you are part of the issues that you're trying to
15 insure against, then you should reflect the pricing
16 accordingly. You do have some control over the federal
17 government's own ability to cause an unnecessary delay.

18 Because of that, you have sort of a moral
19 responsibility to essentially lower the premiums.

20 In other words, if GE were insuring against a
21 part of GE itself, we would actually lower the premiums
22 because we have some control over some of the risks

1 that we are actually covering.

2 And then, in the second part of the projects,
3 we wanted to make sure that because there is a time lag
4 written into the project that that be reflected
5 accordingly. The sponsors are taking on a
6 disproportionate amount of risk in those projects and
7 therefore should be scored and budget scored
8 accordingly.

9 When you look at it, you should look at net
10 of fees. I think the industry fully expects that there
11 are going to be fees charged with this type program.
12 But it also has to be net of both fees and recoveries.

13 What is the likelihood of then, if a project goes into
14 a catastrophic default on the loan guaranty program,
15 you have to pay out both under the loan guaranty
16 program and under the standby support program. What is
17 the likelihood of the federal government being able to
18 go in, complete the project, and then recover off of
19 the project.

20 So you have to have a real actuarial table
21 that's going to go in there and say, what is going to
22 be net of fees and recoveries. And then, of course,

1 you have to use some of the lessons that we have
2 learned as part of the Budget Scoring Act under Credit
3 Reform since 1990.

4 If you look at U.S. Ex-Im Bank for example,
5 in 1990 their budget was six or seven times bigger than
6 it is now because everyone went out and said, "Oh my
7 gosh, you know. We are lending to Trashkanistan and
8 all of these places. Oh, you know, we are going to
9 lose money left and right." What they have found is
10 over time that hasn't proven to be the case. Every
11 time they have done a budget review, they have scored
12 lower and lower and lower and lower, realizing that the
13 actual risk of loss is far less than the perceived risk
14 of loss was at the beginning of the problem. So you
15 should take that into consideration.

16 We'll go to the next slide and we'll just --
17 my last slide here is just to show you a couple of
18 examples. Let's just say we were going to build a
19 BSTWR plant in Mexico. We could go to U.S. Ex-Im Bank
20 and go through all the proper Mexican authority, U.S.
21 Ex-Im Bank authority, and get to all of the
22 environmental assessments and impact studies and other

1 things done. Licensing procedures, et cetera.

2 The cost of that for a loan guaranty program,
3 for example, which would be full comprehensive,
4 unconditional risk, would be less than 60 basis points.

5 That is a super-conservative estimate on my part. If
6 you were to go and do a powerplant with an overseas
7 private investment corporation in Mexico, you would be
8 charged less than 100 basis points on a per annum
9 basis. All of that would be budget neutral. It would
10 have zero impact on the federal budget.

11 So, as you can see, the fees should be very
12 reasonable and reflective of risk because if you can do
13 it in Mexico, you ought to be able to do it in New
14 Mexico, okay?

15 Just to give another example of risk
16 insurance, let's just say you were going to go out and
17 build a wind farm in Bulgaria. You could get 20-year
18 financing, 20-year risk coverage, in Bulgaria at 80
19 basis points or less on a per-annum basis, and that
20 also would score budget neutral and budget zero.

21 So one of the things I would really strongly
22 encourage DOE is to work with OMB and say, hey, let's

1 use your existing risk models, not trying to create one
2 that's based upon some difficult types of assumptions
3 to make. Let's just plug it into some of the existing
4 risk models and see where it comes out so that we can
5 achieve both a balanced approach and not trying to give
6 it away. You should charge a market rate of risk
7 assessment, but by the same token, you are going to get
8 a budget scoring that is going to make this palatable,
9 I think, to the Congress.

10 So that would be my encouragement, and I
11 appreciate very much DOE taking on this important topic
12 because, as a financial institution, GE Capital is
13 looking at this as some tremendous opportunities, as
14 are our colleagues at Citibank and others on the
15 street. This is a critical element to make this a
16 bankable process.

17 We appreciate it. Thanks.

18 MR. BROOKMAN: Thank you.

19 Questions for Steve, if any, at this point?

20 (No response.)

21 MR. BROOKMAN: I see none. Thank you.

22 So right now would be the occasion for any of

1 the rest of you that wish to make brief overview
2 remarks, summary remarks at the outset here before we
3 launch into the details of the day.

4 So, any of you that wish to speak, pull up a
5 microphone and please say your name for the record.

6 (No response.)

7 MR. BROOKMAN: None at this point? No
8 additional comments?

9 (No response.)

10 MR. BROOKMAN: We are a little ahead of
11 schedule. It's almost 10:00. What would be your
12 preference: do you want to take a break or do you want
13 to launch into the first subject matter? I see a few
14 of the women in the room want to take a break.

15 Let's take a break. It's 9:55.

16 PARTICIPANT: (Off mike.)

17 MR. BROOKMAN: That's all I heard from.

18 (Laughter.)

19 MR. BROOKMAN: Truth should be told. It's
20 now 9:55 by my watch. We will resume in 15 minutes.
21 That makes it, by my watch, 10 minutes after 10:00.
22 Please consult your watch. Fifteen minutes back here

1 we will be starting. Thank you.

2 (Brief recess.)

3 MR. BROOKMAN: We'll begin. The first
4 discussion topic is on Covered and Excluded Delays.
5 You will note in your packets the questions that the
6 Department has prepared on in your packet. They look
7 like this. Do you want to flash up that first set of
8 questions?

9 Marvin Shaw from the Department is going to
10 provide a few introductory comments.

11 Discussion: Covered and Excluded Delays

12 MR. SHAW: Right. As several of the earlier
13 speakers noted, Subsection (c) of the statute really
14 goes to the heart of what's covered by the Standby
15 Support Program. As the speakers noted, it states
16 specifically what will be covered -- what are covered
17 costs -- there are three categories -- and also what
18 are excluded costs.

19 Obviously, we have been talking about the
20 failure -- that is the statutory term -- of the NRC to
21 comply with the ITAAC schedules and then there is the
22 pre-operational hearings.

1 Also, an area that wasn't covered too much
2 early, but litigation delays. So we're going to be
3 asking or discussing specific comments there. NOI does
4 that as well.

5 And then, in Section (c)(2), there are three
6 categories that are expressly excluded from the statute
7 for covered delays. One is Subpart (a), failure of
8 response or to take any action required by law or
9 regulation. We're going to discuss that one and ask
10 for questions on that.

11 These events within the control of the
12 sponsor. That was addressed a little bit by the
13 earlier speakers. Also, normal business risks.

14 Then, also, we would like to point out, in
15 Subsection (e) there is a provision that says if the
16 sponsor fails to use due diligence to shorten and end
17 delay covered by the contract, that also comes into
18 what is covered and what is not covered. We will be
19 defining in the regs, hopefully, what we view as due
20 diligence. We would appreciate comments on that either
21 in this forum today or in the written comments.

22 Now Doug will take us to the specific

1 questions that we have in the slide presentation.

2 MR. BROOKMAN: So you can see the first page
3 of questions that are up here on the screen. As was
4 mentioned earlier, the actual notice from the Federal
5 Register, also in your packet, may provide some
6 additional useful information.

7 Okay. So then, the first question reads,
8 "How can the Department establish whether the NRC
9 failed to comply with ITAAC schedule when they have no
10 established schedule?" So let's receive comments on
11 that question first.

12 MR. MATTHEWS: We need a schedule.

13 (Laughter.)

14 MR. BROOKMAN: Please state your name for the
15 record.

16 MR. MATTHEWS: John Matthews from Morgan
17 Lewis. I mean, I really think we need to --

18 MR. BROOKMAN: Get close, please.

19 MR. MATTHEWS: We need to have an agreed-upon
20 schedule with some hold points during the construction
21 process where the NRC will be providing its notice of
22 the completion of ITAAC under 10 CFR 52.99. I mean, if

1 the NRC won't agree to the schedule, then I think the
2 DOE and those signing a standby support agreement need
3 to agree to a schedule.

4 MR. BROOKMAN: Do you think it's viable for
5 the Department to sign -- the Department of Energy to
6 sign a schedule in the absence of NRC signing a
7 schedule?

8 MR. MATTHEWS: I think we should try to get
9 the NRC to agree to a schedule, but if we can't, we
10 need to have one.

11 MR. BROOKMAN: Other comments? Yes, please.

12 MR. M. SMITH: Marvin Smith.

13 MR. BROOKMAN: Go ahead, Marvin.

14 MR. M. SMITH: Sorry. Marvin Smith. I just
15 wanted to comment, I guess, that Jerry pointed out that
16 the regulations permit you to proceed at your own risk.
17 I think what really needs to be recognized here under
18 the standby facility is that the risk actually isn't
19 solely that of the person -- the company building the
20 plant. If you have this standby facility, the risk is
21 really that you will proceed and then find out that you
22 have a -- let's say you have a disagreement later with

1 the NRC that requires a very substantial amount of time
2 to go back and resolve.

3 So, potentially, I think it needs to be
4 understand that if you don't have a schedule and you
5 don't have an agreed-upon process for ensuring that
6 you have completed your ITAAC, it really, again, is
7 actually pushing risk into this default coverage. So
8 when it says "proceed at own risk," it is actually not
9 in that case solely at the risk of the company building
10 the plant if they have the default coverage -- or, the
11 standby facility.

12 MR. BROOKMAN: Okay.

13 MR. HOLLAWAY: Bill Hollaway, Skadden Arps.
14 I note that the legislation itself actually says the
15 covered delays include the failure of the Commission to
16 comply with schedules for review and approval of ITAAC.
17 One could read the legislation as having the intent of
18 Congress to be that there shall be schedules for review
19 and approval of ITAAC. That is certainly what Congress
20 envisioned and what their intent is.

21 Now, how to go about making such schedules
22 happen through cooperation between industry and the NRC

1 and the DOE, there is time to think through that. But
2 certainly, the intent of this legislation is clearly
3 that there should be schedules for review and approval.

4 It's right in there.

5 MR. BROOKMAN: Okay. Thank you. Additional
6 comments on this? How can the Department establish
7 whether the NRC failed to comply with ITAAC schedule
8 when they have no established schedule? Additional
9 comments on that?

10 (No response.)

11 MR. BROOKMAN: I'm going to request and
12 expect that you're going to keep focused and moving
13 ahead with these questions. If you sit there and don't
14 say anything, then I'm going to move on to the next
15 one. Just so we're clear about the defaults here.

16 Please.

17 MR. KEUTER: Dan Keuter. I guess the pre-
18 operational testing that I'm used to --

19 MR. BROOKMAN: Please get close to the mike.

20 MR. KEUTER: I guess the pre-operational
21 testing that I'm used to is, you set up a schedule --
22 the utility sets a schedule up to do the testing, and

1 then there's a review and approval process behind that.
2 So I feel, if you set up a schedule, and especially if
3 it's within -- you know, coming up to 180 days and the
4 NRC isn't able to meet that where review and approval
5 schedule, then it's a delay. I guess it's up to the
6 utility or whoever is building the plant to set that
7 schedule. If the NRC can't meet it, then it's a delay.

8 MR. BROOKMAN: Additional comments on this
9 one?

10 (No response.)

11 MR. BROOKMAN: Then the next question is,
12 "Are there unambiguous triggers the Department can
13 include in its regulations to determine that a delay
14 has occurred?" So we've heard a little bit of this
15 already. Additional comments on this? Unambiguous
16 triggers.

17 MR. MATTHEWS: John Matthews, Morgan Lewis.
18 One unambiguous trigger is the point at which at least
19 180 days prior to the loading of fuel that the NRC
20 needs to issue a Federal Register notice providing the
21 last opportunity for a hearing to members of the
22 public. I would argue that to the -- the intent of

1 that notice is to complete that hearing process within
2 180 days and to make then the loading of fuel after 180
3 days has elapsed so that a delay will have occurred if
4 you are unable to load fuel because of that process.

5 MR. BROOKMAN: Okay. Other unambiguous
6 triggers or perhaps slightly ambiguous triggers?
7 Richard Myers.

8 MR. MYERS: I'll get there in a minute.

9 (Pause.)

10 MR. MYERS: This may go to the first bullet.

11 I heard Jerry Wilson say earlier that NRC has resisted
12 in the past, and I suspect will continue to resist in
13 the future, any schedules on ITAAC. That's a perfectly
14 legitimate point of view if the world had not changed,
15 but I would suggest that the world has changed by
16 virtue of this legislation being in place. I think the
17 intent and purpose of this legislation is, at least for
18 these first six months, to create a presumption that
19 what NRC has done in the past and is likely to do in
20 the future under business as usual is no longer
21 acceptable.

22 So I think that, to Marvin's point, that

1 proceeding at your own risk, it's just not the
2 licensee's risk. You're pushing the risk into the
3 Department of Energy and into the standby support.

4 I think that argues for some kind of
5 relatively uncompromising negotiation between the
6 Department and the NRC that requires schedules to be
7 set and unambiguous triggers within some zone of
8 reasonableness as to timing and timetables for review
9 of ITAAC.

10 But I don't think for NRC to say, well, we
11 don't like to do this, we've never done it and I'm not
12 inclined to do it in the future, I find that sort of a
13 comment from a parallel reality. That just doesn't
14 work.

15 MR. BROOKMAN: Other comments on triggers and
16 other realities?

17 MR. MATTHEWS: This is John Matthews from
18 Morgan Lewis once again. I just would make a point
19 that, if it's not clear already, but the schedule also
20 should be part of the contract. So we need something
21 that's agreed upon and that then becomes a part of the
22 standby support agreement.

1 MR. BROOKMAN: Okay. Thank you.

2 Moving on. "Should such a situation be
3 addressed through Section 638 regulations or through
4 standby support contracts?" Do you want to weigh in on
5 that one first? No?

6 Who's got a perspective on this? Yes,
7 please.

8 MR. HOWLETT: Steve Howlett with GE. The
9 real intent of any sort of standby support when you are
10 talking about political risk insurance or insurance
11 against actions of a government entity has to be looked
12 at in sort of two ways. You can write the coverage so
13 that it provides for catastrophic coverage, which I
14 think is good for financial institutions and investors
15 because what they're concerned most about is a
16 situation where the federal government or the courts or
17 the local governments or others intervene and cause a
18 project to either be completely scrapped or the delays
19 cause such cost overruns that it destroys the economics
20 of the project.

21 So I believe that that's the true intent of
22 this standby support, is to cover kind of the

1 catastrophic events.

2 Now, part of that is how do you assess
3 written loss. And then, in assessing the loss of a
4 catastrophic event so that you set standards with the
5 policy as to when you actually call upon the policy,
6 you have to be able then, when you go to arbitration or
7 whatever the dispute mechanism resolution board is, is
8 you have to be able to establish, you know, when did we
9 start incurring loss, what triggered it, and other
10 things.

11 I think it was clearly the intent of the
12 Congress to make these sort of routine delays which
13 would be additive toward those costs to be part of that
14 coverage. I think if you deal with it in such a way so
15 that you guys -- the government doesn't want to be
16 paying claims on this stuff willy-nilly. "Oh, we're
17 \$280,000 over because, you know, somebody lost the Fed
18 Ex in the mail room at NRC."

19 I mean, just -- they're not talking about
20 silly stuff here. We're talking about how we protect
21 ourselves against big catastrophic coverages and then
22 what are some reasonable -- I think Richard's use of

1 that word is the most important one that we're looking
2 for today -- reasonable approaches to this.

3 So if it is reasonable to establish
4 schedules, which I think most people would concur with,
5 then I think the NRC should devise some processes to
6 establish reasonable schedules and then reasonable
7 trigger mechanisms that those schedules are not
8 conformed with so that there is a sharing of a loss.

9 MR. BROOKMAN: Okay. Thank you.
10 Peter.

11 MR. SABA: Peter Saba with Paul Hastings.
12 Just because this is the first time it comes up here is
13 this issue of, you know, regulations reported in the
14 contracts and just the contracts generally. I would
15 just like to make the point that I think it's important
16 that the proposed rules come out with a proposed
17 contract. There should be -- you know, we'll talk
18 about this, I think, in later parts of this, but there
19 should be standard terms, the things that will differ.

20 And I agree completely with the comment that
21 a schedule should be part of that and should be agreed
22 upon and attached to that contract, made part of its

1 effectiveness. So there will be aspects of it that
2 will change, but in the basic things like coverage and
3 the like, matters of equity and everything else, those
4 should be standard coverage. That's what OPIC and Ex-
5 Im have, and that should be part of the rule-making
6 process.

7 MR. BROOKMAN: Additional comments on this
8 one? Situation to be addressed through Section 638
9 regulations or through standby support contracts.

10 (No response.)

11 MR. BROOKMAN: "How should the Department
12 treat delays by other government entities?" We've
13 heard something on that. Are there other suggestions?

14 Yes.

15 MR. SABA: Again, this is Peter. I believe
16 the intent of Congress is clear here. What they want
17 to cover is regulatory or litigation delays. It's the
18 risk -- U.S. government political risk of the whole
19 process. So whether this was because of FEMA or the
20 state, those are just -- a state would just be another
21 litigant in this process. It is the result of the
22 regulatory process and should be covered. I don't

1 think there should be any differentiation that you
2 couldn't start operations because the FEMA process
3 wasn't finished to allow the NRC to complete its
4 process. In the end, it was because of a regulatory
5 delay and it should be covered.

6 MR. BROOKMAN: Thank you. Let me note, as I
7 reflected upon what I think the Department hopes to get
8 from this workshop, if those of you wish to concur with
9 your colleagues, it's useful to do it on the record.
10 If you disagree as well, it's useful to get that on the
11 record so that the Department has a sense of the weight
12 in addition to the content matter itself.

13 MR. KEUTER: This is Dan Keuter from Entergy.
14 I concur. A delay is a delay no matter what arm of
15 the government is.

16 MR. BROOKMAN: Thank you.

17 Other comments on this one? Yes, please.
18 Yes. If you'd find a microphone there.

19 MR. GALLO: Maybe I don't need it.

20 MR. BROOKMAN: No, we need to have it on the
21 record. How about this? Here.

22 MR. GALLO: Thank you.

1 MR. BROOKMAN: You're welcome.

2 MR. GALLO: My name is Joe Gallo. Addressing
3 the question about other government entities that not
4 -- might be responsible for delays, I interpret that
5 to mean state and local governments as well. A delay -
6 - the term "delay" suggests that the actor is
7 attempting to cooperate, achieve an objective. Local
8 governments and state governments sometimes just refuse
9 to issue necessary licenses or emergency plans. That I
10 don't think is a delay. I think maybe you might want
11 to cover that.

12 MR. BROOKMAN: Thank you.

13 He said his name. Joe Gallo.

14 So, additional comments on this? We're
15 moving right along here. I want to make sure we give
16 everybody a chance to speak. Any other thoughts on how
17 the Department should treat delays by other
18 governmental entities?

19 (No response.)

20 MR. BROOKMAN: Okay. Then, "When should a
21 regulatory delay be considered a covered delay?" Key
22 issue.

1 MR. MYERS: Always.

2 MR. BROOKMAN: Richard Myers says, "Always."
3 Maybe we can have a little more specificity.

4 MR. MYERS: Richard Myers at NEI. Unless the
5 regulatory delay can be traced directly to some failure
6 of the licensee to meet a regulatory requirement, then
7 it would seem to me -- perhaps I'm excessively
8 simpleminded -- it would seem to me that that
9 regulatory delay is a covered delay.

10 MR. BROOKMAN: I see several heads nodding up
11 and down in the room. Four or five industry
12 representatives, I think. Are there any additional
13 perspectives? I see -- no, actually, I see eight heads
14 nodding up and down.

15 Additional comments, supportive comments or
16 different perspectives on this? Steve.

17 MR. HOWLETT: Steve Howlett, GE. I think,
18 again, we are not trying to box in the NRC or DOE with
19 this. You know, a regulatory delay would be considered
20 a covered delay, again, after a reasonable, you know,
21 waiting period or whatever for resolution. So that
22 we're not trying to say that, boy, you know, if you

1 missed a deadline by 30 days we're going to call on the
2 policy. Nobody wants that. What everybody wants is to
3 say, you know, if you drag the bloody thing out for two
4 and a half years and you can't get any good solid
5 answer because there's been a change of administration,
6 then, you know, that should be a covered delay and
7 should be subject to triggering the policy.

8 So we're really not talking about an
9 unreasonable standard here, I just -- I'd like to
10 emphasize that, from our perspective.

11 MR. BROOKMAN: Thank you. Richard Myers.

12 MR. MYERS: I think some of these -- I think
13 there's a danger trying to answer all the what ifs
14 either in the regulations or the contracts. I think
15 some of these judgments about what might or might not
16 constitute a regulatory delay need to be and perhaps
17 properly should be left to the claims management
18 process.

19 I think clearly there is going to have to be
20 a claims management process associated with the standby
21 support. That process exists in the commercial
22 insurance world. It exists within our own industry.

1 Captive Mutual Electric Insurance has a claims
2 management process, and there should be some form of
3 dispute resolution or arbitration associated with the
4 claims management.

5 I fear that we will get into sort of an
6 intellectual death spiral if we try and anticipate
7 every conceivable thing that might go wrong and come up
8 with a technique to contain it. Again, going to
9 Steve's point, and others that have used the word,
10 "reasonable." I think there needs to be a reasonable
11 degree of confidence and specificity either in the
12 regulations or the contracts.

13 But some of these "Well, if this happens,
14 then what should we do?" really is a claims management
15 issue.

16 MR. BROOKMAN: Steve, do you wish to make an
17 additional comment?

18 MR. HOWLETT: I would very much concur with
19 that.

20 MR. BROOKMAN: Okay. Thank you.

21 MR. MATTHEWS: This is John Matthews from
22 Morgan Lewis. I would add to that that what I would

1 envision, I think, that would be very useful is, let's
2 assume we do have a schedule, and a reasonable
3 schedule. A reasonable schedule is going to have built
4 into it contingencies to cover the 30-day delay in
5 schedule here and there. But we then need to manage
6 that schedule.

7 So we ought to have a claims management
8 process, somebody at DOE that periodically, perhaps
9 tied to the quarterly reports that need to be made from
10 -- to Congress under the statute, that at least no less
11 than quarterly the party to the standby support
12 agreement has an interaction with someone at DOE
13 whereby they make adjustments to the schedule.

14 If the project manager is delaying the
15 schedule by three months because of some decision of
16 their own, when they are ordering certain equipment or
17 things to facilitate their schedule, they would then
18 notify DOE and explain that that is not a regulatory
19 delay but it's an adjustment to the schedule that the
20 project manager has directed.

21 Or, if the party to the standby support
22 agreement believes that the delay is the cause of some

1 regulatory action or something beyond their control
2 that ought to be a covered delay, then you would have
3 notification of that.

4 And then I would add, at the end of this
5 process, we have this Federal Register notice, which
6 under 10 CFR 52.103 has to be published at least 180
7 days prior to fuel load, and this is where I would
8 perhaps disagree with my colleague from GE. I would
9 draw the line in the sand at that date because, when
10 you get to the point of the schedule where the NRC has
11 agreed to publish that notice, we now have a 180-day
12 clock. Under the statute, the statute provides for a
13 waiting period for the four -- after the first two
14 reactors, for the next four, there is a 180-day waiting
15 period.

16 I would say, for the first two contracts, you
17 hit that point after 180 days. If there is a 30-day
18 delay from that point in fuel load, that ought to be a
19 covered delay. I would draw that line in the sand. If
20 you are under one of the second set of four contracts,
21 then that is the point to start counting the 180-day
22 delay period.

1 But once that Federal Register notice is
2 published, I ought to be able to load fuel in 180 days
3 and any delay from that point on ought to be a covered
4 delay.

5 MR. BROOKMAN: Thank you for those specifics,
6 by the way. Other specifics like that?

7 Yes.

8 MR. HOLLAWAY: Bill Hollaway, Skadden Arps.
9 On the subject of covered delays, I note that in the
10 legislation itself there are only two categories.
11 There is (c)(1)(a) and (c)(1)(b). (c)(1)(a) is the
12 Commission and (c)(1)(b) says the "litigation for
13 delay." So everything else is going to have to fit
14 within this "litigation that delays" language.

15 One of the things that has come to mind based
16 on one of the other comments would be failure of a
17 governmental entity to issue a required permit that may
18 necessitate litigation by the applicant. In other
19 words, it may not just be litigation against, it may be
20 litigation by, for failure of a necessary governmental
21 permit to be issued, which would clearly be the type of
22 delay that would drag out the opening of a nuclear

1 powerplant that is ready to go but some permit is just
2 being held up because somebody won't issue it because
3 they want to stop the plant.

4 That is the type of risk and the type of
5 delay that this sounds like it is intended to get at.

6 So you will have to think about how to cover that
7 sort of thing within (c)(1)(a) and (c)(1)(b) covered
8 delays.

9 MR. BROOKMAN: Thank you, thank you.

10 Additional comments on this particular
11 question? Regulatory delays being considered a covered
12 delay.

13 (No response.)

14 MR. BROOKMAN: Okay. Let's move to the next
15 set of questions. Covered and excluded days under NRC
16 ITAACs. "How can the Department best interpret
17 'failure' by the sponsor that caused a delay?" You can
18 see several bulleted items: "What areas of law and
19 regulations are likely to be involved? What events
20 should be considered within the control of the sponsor?
21 What events should be considered beyond the control?
22 What should be considered a normal business risk? How

1 should these exclusions be implemented with respect to
2 the expressly covered delay caused by the 'conduct of
3 pre-operational hearings'?" So those can be kind of
4 all one cluster. Perhaps a big cluster.

5 (Laughter.)

6 MR. BROOKMAN: Who wants to start this off?
7 Yes, please. Peter.

8 MR. SABA: Peter Saba again. I think I'd
9 like to make two basic points here. One goes back to
10 the point that was made before, which is that neither
11 the regulations or the contracts should try and figure
12 out all the different permutations. It's just not
13 going to be possible. You know, what should be said is
14 a standard that should be made as clear as possible and
15 then left to the claims and arbitration process if
16 there is going to be any dispute about that. We're
17 just not going to be able to come up with all the
18 variations on this.

19 On that point, I think that once a sponsor,
20 applicant, contract holder has established that there
21 was a delay that resulted from one of the covered
22 items, then the burden is on the government to

1 demonstrate that it should be excluded. So that, the
2 initial burden is on the sponsor to demonstrate that
3 the delay resulted from, you know, a covered risk but
4 then the burden should shift onto the government to
5 exclude that. I think that is pretty standard practice
6 in this kind of area.

7 MR. BROOKMAN: Thank you. How can the
8 Department best interpret "failure" by the sponsor that
9 caused the delay? So there were some specifics there.
10 Additional comments?

11 MR. MATTHEWS: John Matthews. Oh, I'm sorry.

12 MR. BROOKMAN: Yes, please.

13 MR. MATTHEWS: I was just going to -- John
14 Matthews from Morgan Lewis -- offer a few normal
15 business risks are mismanagement of construction,
16 delays in component manufacture, flaws in design,
17 construction flaws. Those are the kinds of items that
18 ought to cause an adjustment to the schedule that would
19 not be considered a covered delay.

20 MR. BROOKMAN: Okay. Thank you.

21 Richard.

22 MR. MYERS: Richard Myers at NEI. I don't

1 know enough about insurance practices and insurance
2 law, but it would seem to me that many of these terms
3 and phrases are -- have sort of standard, commercially
4 reasonable definitions within that context. To the
5 extent possible -- I think, to the extent possible, if
6 the Department can use commercially available standard
7 terms and definitions, that is probably an advantage.

8 MR. BROOKMAN: We have begun to address what
9 events should be considered within the control of the
10 sponsor, events that should be considered beyond the
11 control.

12 Yes, please. Your name?

13 MR. TWILLEY: Bob Twilley. I want to go back
14 to kind of a previous couple of points and pull them
15 together. There was discussion about essentially an
16 act of omission on the part of some government entity,
17 for example, to issue a permit. It was pointed out
18 that the only two categories are regulatory actions or
19 litigation under which this stand-by facility could be
20 triggered.

21 What comes to mind is that that kind of
22 indicates that on the part of -- in the case of an act

1 of omission, that would require the applicant to
2 initiate litigation in order to trigger the standby
3 facility. That seems to me like it's jumping through
4 an extra hoop or two or three that I don't think was
5 the intent.

6 So I think it's important to be careful on
7 the part of the Department that you don't set up
8 requirements to get the standby facility triggered that
9 aren't intended, if you will. You know, two or three
10 extra actions shouldn't be necessary. I don't know how
11 you go about fixing the legislation, but it just seems
12 to me that's too much effort, not what was intended.

13 MR. BROOKMAN: Do you think the flaw is in
14 the legislation? Did I interpret your comment --

15 MR. TWILLEY: I think that if --

16 MR. BROOKMAN: Because the Department --

17 MR. TWILLEY: -- as I understand the
18 legislation, it is constrained to regulatory action or
19 litigation, okay. If I'm an applicant and the county
20 won't issue me the final water permit and that's what's
21 holding up this thing, I think everyone agrees that
22 compensation under the standby facility is in order.

1 The question becomes, do I have to initiate litigation
2 with the county in order to trigger that.

3 I don't think that should be, but I think
4 perhaps that's what the language indicates, and I'm
5 just kind of wondering if we ought not be careful or
6 perhaps take steps to keep it as simple as possible.
7 That's my comment.

8 MR. BROOKMAN: Okay. Thank you.

9 Yes.

10 MR. HOLLAWAY: Just a quick point. Bill
11 Hollaway with Skadden Arps. One of the things this
12 points out is that we will all have to think carefully
13 about how to define the term "litigation" and what it
14 means. Certainly, when you are getting a permit, they
15 don't just appear out of the sky. Someone has to put
16 in an application to get the permit and there is a
17 whole process and procedure for permits.

18 We probably have to look at how to find the
19 term litigation within the intent of what this
20 legislation is trying to do because we are probably not
21 going to see an amendment to this anytime soon. So we
22 probably have to work within this.

1 And certainly the Department has to work
2 within the language here, so that may be the nub of our
3 focus at this point.

4 MR. BROOKMAN: Thank you.

5 We're going to -- go ahead. Yes, please.
6 Steve.

7 MR. HOWLETT: Well, and the standard
8 typically is, when you are talking about sort of
9 creeping expropriation or bad acts by governments, it's
10 -- action shall not be reasonably withheld. So if a
11 permit is unreasonably withheld because, you know, if
12 you could go and get it for a gas-fire powerplant but
13 they won't issue one for this type of powerplant, then
14 you could argue that that's being unreasonably
15 withheld.

16 So I think, again, if you write it according
17 to, as Richard indicated, standard kind of commercial
18 language, you will be able to capture it. Then any
19 arbitral body or whoever is deciding the claims process
20 will be able to, again, apply it according to plenty of
21 precedent. You don't want to go far afield of
22 precedents here, but I agree with that comment. Just

1 make sure that within the legislation you apply a
2 standard of reasonableness.

3 MR. BROOKMAN: Okay. Thank you.

4 John earlier started to describe some of the
5 normal business risk factors. I'm wondering if there
6 are others you would like to list at this time, before
7 we move on to the next point. Normal business risk
8 factors that -- no? Okay.

9 Then, how about the final bullet: "Should
10 these exclusions be implemented with respect to the
11 expressly covered delay caused by the conduct of pre-
12 operational hearings?" What does that mean?

13 MR. MATTHEWS: This is John Matthews from
14 Morgan Lewis.

15 MR. BROOKMAN: Yes.

16 MR. MATTHEWS: I'll offer a thought on the
17 subject. I think within the meaning of the statute it
18 seems to me if, as a result of a pre-operational
19 hearing -- and I believe we're talking about there the
20 potential hearings that could take place once the NRC
21 issues this Federal Register notice 180 days before
22 fuel load, the final pre-operational hearings.

1 If the result of that hearing were a finding
2 by the board or a court that the project manager had
3 failed to comply with NRC regulations or had, you know,
4 failed to build the facility as required, then that
5 would seem to be a failure of the project manager to
6 meet regulatory requirements that would be an excluded
7 risk.

8 MR. BROOKMAN: Thank you.

9 Additional thoughts on this one?

10 (No response.)

11 MR. BROOKMAN: Okay. We're moving on, then.

12 "How should DOE define 'due diligence' under
13 Section 638(e), which requires, quote, 'the sponsor to
14 use due diligence to shorten and to end the delay
15 covered by the contract'?" end quote.

16 MR. MATTHEWS: This is John Matthews again
17 Morgan Lewis.

18 MR. BROOKMAN: Yes.

19 MR. MATTHEWS: Can I back up and add one more
20 thought to thinking through that kind of exclusion.
21 It's possible that as a result of litigation there
22 could be a finding by a court that an NRC regulatory

1 requirement was not in compliance with other law or the
2 laws of the United States.

3 It seems to me that if that's the outcome in
4 litigation that the project manager had complied with a
5 regulatory requirement but a court later ruled in favor
6 of someone who opposed that requirement or that
7 regulation and found that that regulation was not in
8 accordance with law, that that ought to be a covered
9 risk because that's not a failure on the part of the
10 project manager. It's a failure on the part of the NRC
11 to have adopted regulations in compliance with law.

12 So we need to parse the difference in terms
13 of litigation of what should be excluded and what
14 should be covered. If it's a failure that is the fault
15 of the project manager, then that would be an excluded
16 risk, but if it's a failure of the regulations
17 themselves that the NRC promulgated, then that should
18 be covered risk.

19 MR. BROOKMAN: Okay. Thank you.

20 Additional thoughts about due diligence to
21 shorten and end the delay covered by the contract?

22 (No response.)

1 MR. BROOKMAN: "How should DOE interpret the
2 phrase, quote, 'construction is commenced,' as used in
3 Section 638(d), which is a trigger for determining the
4 percentages of covered costs of delay that the
5 Secretary will pay under standby support contracts for
6 the first two reactors and the subsequent four
7 reactors, respectively?"

8 Who wants to start us off? Yes, Richard.

9 MR. MYERS: I would suggest that commencement
10 of construction needs to be an unambiguous
11 demonstration of intent to move forward and that
12 pouring -- first pouring of safety-related concrete
13 might be an appropriate unambiguous trigger.

14 MR. BROOKMAN: Thank you.

15 On the record, please.

16 MR. MATTHEWS: This is John Matthews from
17 Morgan Lewis. I think there are a lot of people that
18 agree with that.

19 MR. BROOKMAN: Yeah. Please.

20 MR. G. MILLER: This is Gary Miller with
21 Progress Energy. I would also suggest that, to be more
22 specific, the way the statute is written is, you have

1 the COL plus you start the construction. Safety-
2 related construction should be that associated with
3 once you have your COL in hand, which gets back to this
4 issue before of LWA-2. Doing a little bit of work in
5 advance of receiving the COL I don't believe met the
6 intent of this -- of what this energy bill was supposed
7 to do.

8 So I believe it is the COL you have in your
9 hand and you've started substantial construction,
10 safety-related construction, after having the COL in
11 your hand.

12 MR. BROOKMAN: Okay. Thank you.

13 Additional thoughts on this, or points of
14 affirmation? Yes, Peter.

15 MR. SABA: I agree with the discussion. What
16 we have to be careful about is that we don't end up
17 creating a gap period where there is litigation that
18 then, you know, would, once the COL has been issued,
19 that holds up that construction or at least that that
20 litigation had commenced before, that that still be
21 covered.

22 So, again, we go back to litigation. I don't

1 think that the -- we need to be careful about not
2 excluding litigation that started, you know, after a
3 COL that is in any sort of a gap period that then
4 delays final operation. So you have the coverage but,
5 you know, there's been ongoing litigation that
6 subsequently causes the delay, that litigation should
7 still be covered.

8 And if I could just take a moment on the due
9 diligence, I think we didn't have comments there
10 because people were basically saying the due diligence
11 should just be defined in a commercially reasonable
12 standard. That's -- you know, an effort to go through
13 and define due diligence in some sort of detailed
14 manner isn't possible.

15 MR. BROOKMAN: Okay. Thank you. Thanks for
16 doubling back on that one.

17 Other comments on the definition of
18 "construction is commenced" or the interpretation of
19 "construction is commenced"?

20 (No response.)

21 MR. BROOKMAN: Okay. Then let's proceed.

22 So the next slide is Contract and Authority.

1 Marvin?

2

3 Discussion: Contract & Authority

4 MR. SHAW: Yes. Marvin Shaw again.

5 MR. BROOKMAN: Marvin, you've got to get
6 close to that thing.

7 MR. SHAW: Marvin Shaw again from DOE. Our
8 next area of discussion is Subsection (b) of Section
9 638, which authorizes the Secretary to enter into these
10 standby support contracts. This provision also
11 requires that sufficient funding to pay covered costs
12 be placed in the designated departmental accounts. We
13 will be talking about that issue in the afternoon.

14 As we discussed in the NOI, the Department --
15 we have significant discretion to implement this
16 provision in terms of timing and the when, how, and who
17 is going to participate. Some of the commenters
18 earlier today viewed that -- agreed with that point of
19 view, and as one commenter said, one of the goals when
20 you talk about this in the NOI is to maximize
21 opportunities for sponsors to enter into contracts as
22 early in the process as possible to avoid some of the

1 timing delays.

2 MR. BROOKMAN: Thank you.

3 So you see the first question, "Should
4 sponsors be required to enter into a binding agreement
5 with the Department before entering into a standby
6 support contract?"

7 Steve.

8 MR. HOWLETT: Well, again, it goes to intent.

9 I mean, I think, again, this is designed to capture
10 serious players. So, you know, just like the reason
11 you charge an application fee or any other kind of fee,
12 you would want people entering into -- by the way, the
13 reason you charge an application fee is just to keep
14 out the crazies. I remember when I worked at U.S. Ex-
15 Im Bank, we had a guy that wanted to build a train
16 across the Atlantic, but he couldn't pay the \$100
17 application fee, so. He was in a mental institution in
18 Ohio. So, yes, I would encourage an application fee.

19 But, also, I would encourage that the
20 sponsors should have some sort of agreement with the
21 Department before they enter into serious negotiations
22 on this type of coverage. You're looking for serious

1 players here.

2 MR. BROOKMAN: Thank you.

3 Peter.

4 MR. SABA: Hi. Peter Saba here. I guess,
5 briefly, on the application fee, I think the cost that
6 would be incurred in getting a COL application filed
7 and docketed at the NRC is a high enough barrier. And
8 so I think we're beginning to slip into these other
9 issues and so I'll come back. But I just wanted to
10 touch on that.

11 On the first question, I think from
12 Constellation's perspective and I believe from some of
13 the other industry participants, we -- we heard before,
14 we applaud the idea of a two-step process. It is
15 critical to have something in hand in order to move
16 forward with both the financing and all the other
17 prerequisites before you can get to that stage of
18 commencing construction. And so having a two-step
19 process with a binding agreement is a good way to
20 achieve that.

21 But then it needs to be binding on the U.S.
22 government. So in that regard, it can't be subject to

1 appropriations. It's got to be specifically
2 enforceable and it needs to have -- and it can't be an
3 agreement to agree on that subsequent standby support
4 contract. The form of the contract needs to be
5 attached. And again, that's a good reason for having a
6 standardized contract there.

7 MR. BROOKMAN: Thank you.

8 MR. M. SMITH: Marvin Smith. I guess I would
9 turn the first question around, which would be to -- in
10 other words, should the Department be required to enter
11 into a binding agreement with the sponsors that would
12 define all of the terms of the support agreement. My
13 answer to that question is yes. So I think it really
14 is a two-way street.

15 MR. BROOKMAN: Thank you.

16 MR. MATTHEWS: This is John Matthews from
17 Morgan Lewis. I would suggest that that be in the
18 nature of, you know, a contract. I would agree
19 wholeheartedly that the terms of the standby support
20 should be in the contract, the agreement that the DOE
21 is going to agree to when the conditions are met. So
22 it should be in the nature of essentially an option

1 that once I've satisfied the conditions -- that is, I
2 have a COL and I've commenced construction and I'm now
3 eligible to enter into the agreement -- that then I
4 notify DOE of that and pay my premium and DOE then
5 certifies that, yes, I've met the conditions and DOE
6 has otherwise met its conditions as required under the
7 statute and the standby support is in place.

8 I would also suggest that these binding
9 agreements that are entered into include a schedule
10 with a tentative queue showing which companies are
11 likely to get which policies and that that tentative
12 queue be from time to time updated by DOE so that folks
13 that have these agreements have at least an
14 understanding of the viewpoint of DOE as to where you
15 stand in the queue.

16 But I would argue that all six or even more
17 contracts that are entered into by DOE -- DOE could
18 enter into as many as seven or eight of these --
19 provide that once the conditions are met, you know, if
20 I happen to be the first two, I get the \$500 million
21 policy and that should have a set premium amount. And
22 if I happen to get one of the next four slots, I have

1 the \$250 million policy and that should have a set
2 premium amount, with that premium again being paid when
3 I believe that I qualify.

4 The periodic updating of this schedule with
5 the tentative queue I think would be helpful to the
6 industry so that folks knew where they stand, and DOE
7 could accomplish that through periodic consultations
8 with the Nuclear Regulatory Commission.

9 MR. BROOKMAN: Thank you.

10 MR. M. SMITH: Marvin Smith. I'm not sure if
11 this is exactly the right time to make this particular
12 comment. You were talking about the two different
13 types of coverage, the one without a waiting period for
14 higher money and the other with a waiting period for a
15 lower amount of coverage. I would also suggest that
16 there might be some basis for an applicant to select
17 the lower tier of coverage if in fact, depending on
18 what the cost of that coverage is, et cetera.

19 You know, in other words, there are six
20 policies available and if you were eligible for one of
21 the first two, you might actually have the option to
22 select one of the other four if in fact that provided a

1 better package of coverage for what you're interested
2 in and relative to whatever that cost might be.

3 MR. BROOKMAN: Thank you.

4 Other broad comments like that? The next
5 three bullets all relate to the application process.
6 Should one be implemented? Should a fee accompany the
7 application? We've heard some on that already. How
8 much should the fee be? Should it be refundable? I
9 don't think we've addressed that yet. Should an
10 application process be open to all sponsors or should
11 there be criterion to exclude certain entities or to
12 select among applicants. Maybe we can dwell on those
13 for the moment.

14 Chuck Wade.

15 MR. WADE: Chuck Wade, Office of Nuclear
16 Energy. I think at this point we were thinking that we
17 would show you a sample of the types of things that
18 would be in an application. We have our contract to
19 Larry Scully that would provide that to you at this
20 point.

21 MR. BROOKMAN: Excellent. Let's hand the
22 microphone to Larry.

1 MR. SCULLY: Just two seconds of background.
2 With respect to application processes, the Department
3 has actually talked to Ex-Im already and to OPIC and
4 the TIFU group. There are a number of federal credit
5 programs that -- in operation, I think, taking from the
6 comments to make sure we don't reinvent the wheel and
7 sort of learn what's out there.

8 We've been doing that work already, and this
9 discussion is really on sort of things you would see in
10 an application rather than ones you would actually see
11 in this application.

12 Just starting with kind of -- and actually,
13 some of the points made earlier on like, why do you
14 want to have the application for screening and for
15 getting the right information on people? So that you
16 can, you know, go through the criteria and then pick
17 the right folks.

18 Applicant background. Just the legal entity
19 history and lender information. Kind of like who's
20 there, screen out some of the folks that were mentioned
21 earlier.

22 Kind of a plan of finance. Sources and uses.

1 Sort of generally, do the folks know what they are
2 doing. Have they thought through the entire period and
3 the entire financing, both equity and debt. Financial
4 projections. You know, where are they going to sell
5 the power, things like that. Capital structure,
6 working financial model, and collateral loan terms.
7 Just, they have a financing package ready to go. I
8 think one of the issues that did pop up earlier is when
9 in the cycle do these applications start coming in and
10 how does it dovetail in with the whole COL process and,
11 you know, when do we enter into a binding agreement and
12 then when is the contract signed. So this would be
13 sort of the earlier on application stuff.

14 Project information. What's the purpose,
15 design, construction plan. I think here's where you
16 start getting kind of the schedule information. What's
17 your schedule of construction, being -- having the
18 licensee put that out. Understanding the regulatory
19 requirements. It's a long list of regulatory
20 requirements, making sure they realize how many of
21 those are in front of them.

22 Feasibility study/business plan, meaning just

1 that they've looked at the location and their
2 customers' financial and technical information. The
3 technical information will be, again, through the COL
4 process. There will be a design certification that
5 would occur. What is the market, obviously, for the
6 power.

7 Then, just sort of the legal structure,
8 contractual framework of the entity, whether it's a
9 consortium or a single company. Is it backed by a
10 utility. Is it a project financing kind of a project.

11 We're just trying to get an understanding of who's
12 coming to the window, basically, with the application.

13 So, again, we can do it as a pretty important
14 job, which is to screen through and make sure that the
15 first two contracts and the other four contracts are --
16 there's a high probability that that project would go
17 forward and that indeed the people that were in the
18 queue would be -- would stay in the queue and would
19 just go forward rather than having a lot of queue
20 jumping. So I think that's an important reason for
21 some of this information.

22 I have to say, there is a balance on, you

1 know, do you -- is this application 50 pages or five
2 pages or 500. That obviously varies in some of the
3 federal agencies, but you want to strike a balance to
4 get enough information so you can make these
5 determinations without putting such a burden on the
6 applicant.

7 MR. BROOKMAN: Are there questions or
8 comments following what Larry said?

9 Marvin, you're first.

10 MR. M. SMITH: It's Marvin Smith. I'd really
11 like to kind of go back to what Dan Keuter presented
12 this morning in his opening remarks, which is, you
13 know, this is not conceptually a lot different than
14 what Dan has suggested as a process here. I think we
15 at Dominion would certainly support what Dan had said
16 here earlier this morning.

17 Again, I think the -- and this really sort of
18 highlights the importance that the standby facility
19 itself is not the sole issue here. In other words, to
20 do all of this and to have this process work correctly,
21 you have to really simultaneously address all three
22 things -- that is, the standby facility, the loan

1 guaranties, and the production tax credits -- in some
2 meaningful, consistent manner.

3 For example, under feasibility study/business
4 plan, you can't define the economic, financial,
5 technical, market issues, et cetera for a standby
6 facility alone without understanding what other
7 incentives might be available to you and what the terms
8 and conditions of those would be.

9 So I don't disagree with the process you're
10 talking about here as long as it's fully understood
11 that it has to be completely integrated to cover all
12 three areas simultaneously.

13 MR. BROOKMAN: Thank you.

14 Additional questions? Yes, Peter.

15 MR. SABA: Peter Saba. Larry, I guess I'd
16 like to step back and kind of understand, you know,
17 what -- I think there needs to be a focus on what the
18 objective is here. As you said, there needs to be a
19 balance, and what we don't want is creating another
20 process that becomes, you know, one more barrier to
21 entry or is increasing the cost and creates delay in
22 and of itself.

1 So, you know, there is -- clearly, one
2 objective is getting enough information to provide --
3 to be able to figure out the cost and -- of the standby
4 support and to be able to execute the contract.

5 But I'm also hearing, you know, talk about
6 screening. I guess my question would be, isn't it
7 sufficient that the screen is -- that you don't get the
8 second step contract until you have gotten your COL and
9 you've commenced construction. That, to me, seems that
10 that is a sufficient screen unless there are some other
11 objectives in trying to allocate these contracts, which
12 I'm not sure there is.

13 So I'm seeing a lot of this application
14 process having been addressed by the concept of having
15 two steps. I see a lot of these things up there as
16 more applicable to like what you would want to see in
17 the loan guaranty when you try and decide on a project.

18 MR. BROOKMAN: Of course, as Larry said, this
19 is a sample. So the Department would like your
20 comments on what level of detail and rigor would be
21 there, would be necessary.

22 PARTICIPANT: Actually, just on that point,

1 if you go back in history, I mean, early site permits -
2 - this whole thing drops in time into a lot of
3 activities the Department has been doing already in the
4 same way of gathering data and selecting people and
5 going forward. So I think that process would basically
6 just continue. Again, because the COL process is kind
7 of a big process, you know, you will have people get
8 through that and hopefully this will just be part of
9 this rather than a giant addition.

10 MR. BROOKMAN: Let's leave this slide up here
11 for the moment. Richard, do you want to comment?

12 Larry, thank you very much.

13 MR. MYERS: Richard Myers at NEI. I really
14 would leave it to my member companies to comment on the
15 specifics of this, but as a general matter, I tend to
16 agree with Peter Saba's comment that there are natural
17 governors and screens in the system already. Imposing
18 an additional requirement I'm not sure is completely
19 necessary or desirable.

20 If it's a relatively simple pro forma that
21 doesn't require a significant expenditure of resources,
22 then I think that's acceptable. But anything that

1 becomes essentially a shadow COL I think would begin to
2 be problematic for the industry. Much of what is on
3 this -- in order to obtain a license to build and
4 operate a nuclear powerplant, my understanding is that
5 you have to demonstrate financial qualifications, you
6 have to demonstrate sources and uses of funds for
7 construction. So this is, I believe, somewhat
8 duplicative of what would already be in the COL.

9 MR. BROOKMAN: I guess the Department is
10 looking for your advice on what -- in addition to what
11 you said, the specifics about what kinds of things
12 should be sought in an application process, that kind
13 of thing.

14 MR. SABA: This is Peter. And just to
15 reiterate, I agree that a lot of this information the
16 company should have and it should be readily available.
17 My concern is more one of a time in decision process
18 and, again, what's the objective and how does that fit
19 with the statute if you're trying to -- is the
20 Department now trying to pick the winners and losers or
21 what is the objective that they're trying to achieve
22 and what would be the Department's decision-making

1 process and does that cause a delay in getting one of
2 these contracts, especially at the first stage.

3 MR. BROOKMAN: Okay. Yes, please. And then
4 come back to you, Marvin. Go ahead.

5 MR. MATTHEWS: This is John Matthews from
6 Morgan Lewis. I would -- it's not -- the DOE does --
7 it's not DOE's place to choose the winners and losers.
8 That's dictated by the statute. So I would think that
9 this application process should be a fairly minimal
10 kind of process because in order to get a combined
11 operating license, the Nuclear Regulatory Commission,
12 under Section 182 of the Atomic Energy Act, is going to
13 have to make a statutory finding that the applicant is
14 in fact financially qualified to construct the plan.

15 So I think, you know, the agency is already
16 fully protected and need not duplicate that effort.
17 Rather, I would think it more useful for there to be
18 some general information that would assist the DOE in
19 trying to assess, for example, what the tentative queue
20 is, what the likely first six plants or contract
21 holders are to be and to assess that, because I think
22 that that would be useful feedback, for the industry to

1 know where they stand.

2 MR. BROOKMAN: Thank you.

3 Marvin?

4 MR. M. SMITH: Again, I'd just like to
5 reiterate that, you know, an application that simply
6 determines where you stand in the queue relative to a
7 standby support facility is of extremely limited value
8 if at the same time you are not resolving your ability
9 to obtain the loan guaranty and some portion of
10 production tax credits.

11 So whatever the application content is -- and
12 I think frankly there was more content up there than
13 perhaps necessary, and I would sort of go back more to
14 what Dan Keuter's slides showed and suggest that -- but
15 again, knowing where you are on a standby facility but
16 not also knowing where you are on the other types of
17 support is, in our view, of very low value.

18 MR. BROOKMAN: There are some specific
19 questions here on this slide. One relates to fees and
20 how much, for example -- yes. Go ahead.

21 MR. KEUTER: I'd like to go ahead and comment
22 on this, too. I agree with what Marv said.

1 MR. BROOKMAN: This is Dan speaking.

2 MR. KEUTER: Dan Keuter from Entergy. You
3 know, we do need this information to get the COL but
4 we're kind of a chicken-and-egg situation. We have to
5 know we're going to get the incentives, not only the
6 standby support but production tax credits and/or the
7 loan guaranties. An applicant that has more of the
8 information I showed on the slide this morning I think
9 would be more applicable than this information because
10 this information is going to be required by the COL.
11 But to get to this information, we're going to have to
12 know if we're going to get any of the incentives.

13 So I don't disagree with this, and we're
14 doing to definitely need it for the COL. But I would
15 like to see it expanded to more of the stuff that I
16 showed this morning.

17 MR. BROOKMAN: Thank you.

18 Other comments on this? Because there are a
19 few specifics I'd like to go toward there as well.

20 Would you hand that microphone over to him?

21 Your name, please, for the record?

22 MR. HEZIR: Thank you. Joe Hezir of the EOP

1 Group. I'd just like to add one additional point to
2 the comments made by Marv and Dan Keuter. In looking
3 at this, I find it interesting because when you look at
4 this long list of questions, one of the questions that
5 DOE did not ask is, how does this program get
6 coordinated, or how does the process for application
7 and approval get coordinated with the other incentives.

8 The question is not even raised here. I
9 think that that in itself, I think, is an indication
10 that there is an issue here that needs some further
11 discussion, as Dan and Marv referred to.

12 The other point I would just like to make is
13 that, going back to the sample of the application
14 requirements, that was -- when I first -- when it first
15 flashed up on the screen, my initial reaction to that
16 was that that looked like what would be a -- what would
17 be required for a loan guaranty. And again, it gets
18 back to this same question. So the application
19 requirements need to be tailored to what it is that's
20 being requested and being decided upon.

21 If a company were applying for some
22 combination of risk insurance and a loan guaranty, then

1 I think that sample looks like it would be an
2 appropriate outline. But if a company were only
3 applying for risk insurance and was going to get the
4 COL and go through all of those hoops and it maybe was
5 not looking for coverage for purchase power or
6 whatever, I would think the application requirements
7 should be a lot narrower, because I don't know why DOE
8 would need to go through the same scope of analysis if
9 the request is for something that's much narrower.

10 MR. BROOKMAN: Chuck Wade.

11 MR. WADE: Chuck Wade, Department of Energy.

12 I forgot your name, but that is a question that is
13 asked later on as far as the relationship between
14 standby support, production tax credit, and the loan
15 guaranty. So you will see that question.

16 MR. BROOKMAN: Okay. Thank you.

17 So, additional comments? Yes, please.

18 MR. G. MILLER: Gary Miller, Progress Energy.

19 I agree with the discussion that Peter and Richard
20 said. The requirements of an application, those
21 components associated with the feasibility study and
22 business plan, market, et cetera, all that seems to be

1 sort of a worthiness determination. I don't believe
2 the statute -- that's not what was intended. It reads
3 very clearly the first two reactors that have the COL
4 and construction is commenced.

5 MR. BROOKMAN: Worthiness is being determined
6 by someone else?

7 MR. G. MILLER: Well, the application -- some
8 of the details in there appear to suggest that DOE is
9 looking at eligibility and making some worthiness
10 determination on, does your market support your doing
11 this, for example. And I don't think that's necessary.

12 I do believe, for all of us, in terms of our
13 COL applications for the financial depth of our company
14 and, obviously for regular utilities like us, all the
15 prudence of our decisions, all those have to be done.
16 But for this, I believe the statute the way it's
17 written suggests that if you're the first two reactors
18 and you've got your COL and your construction has
19 commenced, then you're eligible and you should be able
20 to get the money.

21 MR. BROOKMAN: Yeah. I'm guessing that the
22 Department is hoping to hear from you what kind of the

1 minimum should be. What kind of makes this kind of
2 real or, you know, that sort of thing.

3 Marvin, louder, please.

4 MR. SHAW: Marvin Shaw from DOE. We would
5 appreciate comments in the written comments about these
6 issues, especially here in the application process:
7 what commenters view as relevant, what might not be
8 relevant, what we can incorporate by reference from the
9 NRC, COL application process. Things like that would
10 be very helpful in providing better interim final
11 regulations on this topic, and other topics, too.
12 Throw out anything that you want to -- that you discuss
13 here in this forum. If you elaborate in your written
14 comments and provide as specific examples as possible,
15 it will be very helpful in helping us write the
16 regulations.

17 MR. BROOKMAN: Thank you.

18 Yes, please. Richard.

19 MR. MYERS: Richard Myers at NEI. Again, I
20 think we need to try and keep this as simple as
21 possible. The fact is we would propose that this
22 conditional queue be established when companies file

1 COLs. I think that demonstrates a serious and earnest
2 intent, and I'm not persuaded yet that there is any
3 need for any screening or application beyond that.
4 Preparation of a COL is a \$50- to \$100 million
5 undertaking. I think that represents an earnest desire
6 to actually build a nuclear plant.

7 MR. BROOKMAN: Thank you.

8 So then, Richard, do you have a perspective,
9 or do any of the rest of you have a perspective on this
10 third bullet about fees?

11 Yes, please.

12 MR. WILLIAMSON: Clint Williamson with the
13 Senate Energy Committee. Building upon the application
14 process and how the implementers should implement it, I
15 would say it's not something that we had considered the
16 couple of days or weeks that we were doing this.

17 But just listening to everybody here, the
18 first fear I have that comes to mind, and maybe I'm
19 just beating this issue to instantly have fears more
20 than anything else, is that after the final rules are
21 promulgated and they're ready to take effect and there
22 are three or four applications that are received,

1 realistically when somebody hears that someone is
2 sending in an application, you may get three or more
3 in.

4 One, can the Department handle four coming in
5 at one time? Are your reviewers who are going through
6 the application process? If somebody didn't like
7 what's on line 6 of this application and line 7 of this
8 application, but two others advanced while these two
9 are being held up through whatever process it takes for
10 you to question the utilities, that would cause some
11 serious heartburn, I think, all the way around.

12 So my question is, is the Department setting
13 itself up for failure through a detailed application
14 process? Something to consider.

15 MR. BROOKMAN: Okay. Thank you.

16 MR. MATTHEWS: John Matthews from Morgan
17 Lewis. I'd just add to that, the eligibility for the
18 contracts is statutory. If I build -- if I'm a plant
19 that, you know, gets issued a COL and commences
20 construction, as already defined by DOE. If DOE
21 decides to enter into a contract with somebody else and
22 not me, I believe that I would sue DOE and I would win

1 because I'm entitled under the statute to that
2 contract. So, I mean, if you qualify, you qualify. If
3 you qualify, the NRC is already going to have made a
4 statutory finding as to your financial qualifications.

5 So I think the DOE application process should
6 be fairly simple and should be, you know,
7 straightforward, carrying off of the fact there are
8 requirements just simply to file a COL application.

9 MR. BROOKMAN: What about the issue of fees?
10 That's one of the specific bulleted points up here.
11 How should fees be addressed? Should there be fees?
12 How big should they be?

13 Marvin.

14 MR. M. SMITH: Marvin Smith. Again, I would
15 just like to say, sort of building off a lot of these
16 other comments, clearly if you filed a COL application
17 you've undertaken a seriousness of intent and you have
18 already paid fees associated with that. I would see no
19 reason whatsoever that you would have any fee
20 associated with simply applying for this coverage.

21 Again, I look at it that it's fairly clear in
22 statutory language as to who gets the coverage.

1 However, what I think you're talking about here is in
2 advance of getting the coverage, having an agreement in
3 place defining the terms and conditions in a
4 preliminary eligibility for coverage.

5 So I don't think this really, as I see it,
6 has anything to do with the actual contract itself that
7 occurs after you've got your COL and start
8 construction. I'm assuming that this entire -- even
9 though this is called Contract and Authority, I'm
10 assuming this is really referring to a process entering
11 into, as it says, a binding agreement well in advance
12 of actually having the standby support contract signed
13 and in place that would define the terms and conditions
14 of that, et cetera.

15 Certainly, if that's the only thing that
16 you're looking at, it would seem very clear that filing
17 a COL application should be fully adequate to -- you
18 will have already had to have shown to the NRC, you
19 know, a seriousness of intent, and all of the
20 information that was on somebody's previous slides that
21 the NRC would look at.

22 So I see no reason for DOE to replicate and

1 have its own process of looking at something like that
2 outside of the context of what NRC would do.

3 MR. BROOKMAN: So, how would you make that
4 happen? Would then the applicant or the sponsor take a
5 portion of the COL and walk it over to the Department
6 of Energy?

7 MR. M. SMITH: I would just send the
8 Department of Energy a letter showing that they filed.
9 That's it.

10 MR. BROOKMAN: Please.

11 MR. TWILLEY: Bob Twilley from Areva. There
12 are some COL applications, I think, that are being
13 discussed or perhaps in the works where there is no
14 real commitment to build. There are COL applications
15 that the Department is funding that are part of a
16 demonstration, a process demonstration.

17 So I think there is some question as to how
18 those would be viewed versus a COL application from
19 someone who is not trying to demonstrate the process
20 but who is actually going ahead and building a plant.

21 Secondly --

22 MR. BROOKMAN: Would you offer for the

1 Department consideration on how they ought to view
2 them?

3 MR. TWILLEY: Well, I'm raising it as a
4 question because I don't know the answer to that.

5 MR. BROOKMAN: Okay.

6 MR. TWILLEY: But secondly, assuming that
7 there is, I'll say, the intent to build and that can be
8 demonstrated -- and I think that that's fairly
9 straightforward because of contracts with vendors and
10 constructors and what not. Listening to the
11 discussion, it seems to me that it's -- we're not
12 talking about a process of application. I think we're
13 talking about a process of notification. The question
14 becomes, what is the basis for notification and then
15 what does the Department do with that notification to
16 assure that the queue is lined up as it is intended by
17 the legislation.

18 MR. BROOKMAN: Does that notification require
19 some qualification?

20 MR. TWILLEY: I agree with all the discussion
21 prior. Those qualifications have already been
22 determined because of the COL that is referenced in the

1 embedded qualification process that is part of the COL.

2 MR. BROOKMAN: Thank you.

3 Marvin?

4 MR. M. SMITH: I somewhat disagree with what
5 you're saying. Again, I think the -- clearly, you are
6 not going to get the standby support contract and
7 coverage unless you get a COL and start construction.
8 The real issue here to me is not that but rather, as
9 this first sentence says, about a binding agreement
10 with the DOE that would occur several years ahead of
11 actually having a standby support contract.

12 So I think certainly someone who was
13 approaching a COL purely as a demonstration process
14 with no potential intent to build -- and I'm not sure
15 if that will even occur. But if they were, they might
16 elect not to go to the DOE and ask for this kind of
17 binding agreement.

18 But even if they did, you know, it really
19 should be up to whatever that entity is because all
20 that would give them is an understanding of, if they in
21 fact do decide to go ahead and build, what the terms
22 and conditions would be.

1 So, again, I would get back to a very simple
2 thing, that if you've filed for a COL application,
3 you've shown seriousness and sufficient interest here
4 that that ought to be everything the DOE would need to
5 understand that they should be able to enter into this
6 kind of binding agreement and at least define the terms
7 and conditions and conditionally say that you are
8 eligible for this queue. Whether you actually are in
9 the first six depends on whether you go ahead and build
10 or not. DOE really doesn't need, in my view, to be
11 concerned about or involved in that because that will
12 automatically happen or not, as the entities go
13 forward.

14 MR. BROOKMAN: The Department can form the
15 queue and whether they follow through or not, that will
16 determine --

17 MR. M. SMITH: Yeah.

18 MR. BROOKMAN: Okay.

19 MR. M. SMITH: Could be a dozen people in the
20 queue, and obviously, the first six, again, will be
21 determined by who starts construction first.

22 MR. BROOKMAN: John?

1 MR. MATTHEWS: I agree with that. There is
2 no cost to enter into the agreement to agree. The
3 binding agreement is simply setting forth what the
4 terms the contracting party will receive if they
5 qualify under the statute.

6 One additional point that I wanted to make
7 is, the application process will also need to identify
8 the reactor technology. The Department is going to
9 need to -- as part of the process of certifying who
10 actually gets a standby support contract, the
11 Department is going to have to review the reactor
12 designs because there is a statutory limitation of only
13 three reactor designs that can qualify for standby
14 support.

15 So I think it would be perfectly acceptable
16 for the Department to enter into a binding agreement to
17 enter into standby support with, you know, 10 different
18 entities and five different reactor designs. However,
19 when that company comes and says, you know, "Now, I'm
20 the fourth plant" and the DOE certifies that you meet
21 the requirements of the statute, if you happen to be
22 the fourth reactor design under the statute, you're not

1 going to get a standby support agreement and it's going
2 to have to go to somebody else that meets it.

3 You know, I'm assuming the first three
4 reactors just by happenstance happen to be three
5 different reactor designs. In order for Plants 4, 5,
6 and 6 to get a standby support, they're going to have
7 to match one of those first three reactor designs.

8 MR. BROOKMAN: Do you agree with the other
9 comment that what's needed here is notification, more
10 than a detailed application?

11 MR. MATTHEWS: I agree that you don't need a
12 detailed application. I think the information you need
13 is the reactor design and some -- I think if you choose
14 the criteria of having filed a COL, by definition
15 you're going to have a qualified applicant that ought
16 to get an agreement.

17 MR. BROOKMAN: Okay. Then, just one quick
18 departure, kind of a process note. We've been fiddling
19 with the thermostat all morning long. I think we're
20 finally getting it in the right zone. Am I correct in
21 that? I think we're -- yes? Everybody okay? Good.

22 Now, so, we've been kind of moving all around

1 in this series of questions here. I think we've kind
2 of landed on them pretty well. Pretty good coverage on
3 those. Any additional comments on these? There is one
4 more half-page of bullets -- two bullets -- related to
5 Contract and Authority. But any additional comments on
6 these before we move on?

7 Yes, please. Peter.

8 MR. SABA: Peter. Just going back, there was
9 a lot of good discussion. The one point that was
10 raised that again gives me some concern is having DOE
11 come up with the projected queue because that has a lot
12 of implications for the project sponsors.

13 Again, the statutory criteria is clear, and
14 so going forward with, you know, the DOE proposal of
15 having kind of an initial binding agreement that's kind
16 of open to anyone that's met the first statutory
17 criteria, which is a docketed COL application, and then
18 let the queue be determined by the second set of
19 statutory criteria, which is actually getting the COL
20 and commencing construction.

21 And then the third step, that we haven't
22 talked about, that comes up later is, you know, what

1 happens if, you know, one of those -- because it is a
2 scarce resource, the six contracts, what happens if
3 someone who has gotten one of the six then abandons, or
4 what's the test there.

5 So combined with this concept of having a
6 standardized contract so that it is -- there is not a
7 lot of effort on DOE's part, then it should be -- that
8 first step should be clearly open to all people that
9 meet that sponsor definition.

10 MR. BROOKMAN: Okay. Additional comments
11 related to what Peter was just saying?

12 MR. SABA: I'm sorry. On the, you know,
13 proposed queue thing, let the market and the sponsors,
14 you know, be the judge of that instead of, again,
15 having some DOE process try to guess who is going to
16 meet those -- the second set of statutory criteria.

17 MR. BROOKMAN: Yes, please.

18 MR. WILLIAMSON: Clint Williamson, Senate
19 Energy Committee. What does the fourth bullet mean?
20 Can someone from DOE tell me what kind of question
21 you're asking there?

22 MR. BROOKMAN: That bullet reads, "Should an

1 application process be open to all sponsors or should
2 there be criterion to exclude certain entities or to
3 select among applicants?"

4 MR. WILLIAMSON: What do you mean by
5 "exclude"? Who are you excluding?

6 MR. BROOKMAN: Maybe the word would be
7 "qualify"?

8 MR. WILLIAMSON: So, DOE is making a decision
9 on qualification?

10 MR. BROOKMAN: I mean, I think that's --

11 PARTICIPANT: (Off mike.)

12 MR. WILLIAMSON: Oh. Well, just based upon
13 the wording, I would say our original intent was to
14 exclude no one. I mean, the word "exclude" makes me
15 incredibly nervous.

16 MR. BROOKMAN: That's helpful. Thank you.
17 Thank you for that comment.

18 MR. WILLIAMSON: Fair, open process to all.

19 MR. BROOKMAN: Yeah. Okay. Thank you.

20 Then I'm about to move to the next slide.
21 Final comments on these -- one, two, three, four --
22 five bullets?

1 (No response.)

2 MR. BROOKMAN: We're moving on. The final
3 two bullets on Contract and Authority: "Should the
4 applicant be required to submit an analysis showing the
5 standby support contract's cost structure for the
6 proposed reactor facility?" and "Should the Department
7 reserve the right to cancel a contract if a sponsor
8 does not proceed diligently in the construction of a
9 reactor facility?"

10 We have kind of made a little bit of a foray
11 into some of those, but specific comments.

12 Yes, Peter.

13 MR. SABA: I'm not shy today.

14 MR. BROOKMAN: That's good.

15 MR. SABA: As I mentioned at the end of the
16 last set of comments, because this is a limited
17 resource of six, there should be a process to, you
18 know, come up with the right to cancel and make that
19 queue position available to someone who is able to
20 proceed.

21 Now, clearly, that should not occur easily.
22 I think there should be a fairly high threshold: a

1 project is abandoned or construction is suspended for
2 some extended period of time. It could only be for
3 reasons other than covered delays or force major. Then
4 this should all get tied into the whole funding process
5 as well where funds that were obligated for those
6 contracts should then be able to be deobligated and
7 made available for the new contract.

8 So I think the -- our perspective is the
9 basic answer is yes, but it needs to be a fairly high
10 threshold or else you're not going to have that
11 bankability, the financial certainty that is going to
12 be required. And in that line as well, lenders should
13 have appeal rights that you would typically step in and
14 avoid termination of contract.

15 MR. BROOKMAN: Thank you.

16 Additional comments? Yes, please. Marvin.

17 MR. M. SMITH: Marvin Smith. I just -- I
18 don't understand at all what the first question is. If
19 DOE could attempt to explain it.

20 MR. BROOKMAN: That question being, "Should
21 the applicant be required to submit an analysis showing
22 the standby support contract's cost structure for the

1 proposed reactor facility?"

2 MR. M. SMITH: Can DOE explain what they
3 meant by that question?

4 MR. BROOKMAN: Make sure it's turned on.
5 Marvin.

6 MR. SHAW: Right. Marvin Shaw, DOE.

7 MR. BROOKMAN: Marvin, get close, please.

8 MR. SHAW: Throughout the NOI, we posed a
9 number of questions to try to ascertain the ability of
10 a various sponsor to be able to complete the contract
11 because it is a scarce resource. These are just
12 initial questions. It's not tied to a definite course
13 of action. We were just trying to ascertain and obtain
14 possibly detailed information about a project. It
15 didn't go beyond that issue.

16 MR. M. SMITH: Well, again, I would ask, if
17 that's the case -- and I don't see how that is at all
18 relevant because, again, the projects that are the
19 first six automatically obtain the coverage. So I
20 don't -- again, I guess I don't -- the answer is no, if
21 I understand the question correctly.

22 MR. BROOKMAN: Okay.

1 MR. MATTHEWS: This is John Matthews.

2 MR. BROOKMAN: Yes?

3 MR. MATTHEWS: John Matthews from Morgan
4 Lewis. If I could throw out an idea. This isn't
5 something that I had thought about previously, but the
6 question causes me to put an idea on the table, which
7 is one way that might minimize disputes under the
8 standby support, certainly as to what the payment would
9 be, would be if up front the contract were for a, for
10 example, weekly indemnity, or you could use it monthly
11 or operate pro rata.

12 But, that you could determine up front what,
13 for example, on the debt service coverage being
14 provided, what that amount is and then just provide in
15 the contract, okay, well, I'm going to have X amount of
16 debt and the coverage will be for, you know, \$50
17 million a month, or whatever that number is, and
18 provide that up front. I could conceive of maybe that
19 being something that could be part of the application
20 process.

21 MR. BROOKMAN: Okay. Yes, please.

22 MR. MATTHEWS: You're shaking your head no.

1 MR. HOLLAWAY: Bill Hollaway, Skadden Arps.
2 Listening to all this has made me think that maybe
3 there are actually three steps here, three things going
4 on. One is the notification or application, that
5 entities are interested in pursuing this.

6 But a second and separate part is a binding
7 agreement with conditions precedent, that would have
8 all the details, all the specifics, and it would say
9 this is the deal and this will become effective upon
10 COL commencement of construction, assuring that you're
11 one of the first three types, and that you have paid
12 your premium. But whoever has that now has in hand the
13 very specific terms and they know that when these
14 conditions are met it will become effective. And then
15 the third is, finally, when those conditions are met,
16 the contract actually becomes effective.

17 It's not clear that at the time of this
18 notification step people will be ready to sign up to a
19 specific agreement with all the terms in place. There
20 may be negotiation and discussion on this. You know,
21 what are the costs and how are they done. But by the
22 same token, I don't think people could wait until

1 they've got their COL and they start pouring concrete
2 to say, okay, what's the agreement. They're going to
3 have to know that earlier.

4 But at the same time, that agreement won't be
5 effective because the conditions won't have been met.
6 So maybe there are three different things. The timing
7 of when those occur I'm not sure, but maybe there are
8 three things going on to think about.

9 MR. SHAW: That was one of the intents that
10 DOE had, and we were looking at the TIFU regs that have
11 this three-step process, including the conditional
12 binding agreement. So that was something we're
13 considering, and we suggest that potential commenters
14 look at the TIFU regs and see how they can be applied
15 to what we're doing here.

16 With the understanding TIFU is a very
17 different program in which they are dealing with scores
18 of projects and there is much more of a selection
19 criteria, where here we have a much more finite number
20 of projects that we are going to be letting.

21 MR. BROOKMAN: That last comment was from
22 Marvin Shaw.

1 Yes, okay. Now, so, additional comments on
2 these two bullets? Yes, please. Can you --

3 MR. G. MILLER: Gary Miller, Progress Energy.

4 I would suggest to you, to make this effective in the
5 decision-making process, this -- the timeline we're
6 talking about is somewhere between I've already
7 submitted a COL and now, some years later, I'm going to
8 secure the capital funding. To get that, I'm going to
9 have to show the worth and the value of that standby
10 support. So I will need that agreement and what the
11 details of those are.

12 And then, I get my capital funding and then
13 time proceeds on. I get my COL. I start construction.

14 Then I -- immediately I'm eligible and I'm -- what's
15 the word. It triggers that I'm now active because I
16 met the eligibility criteria.

17 So I think the timeline you're talking about
18 is between I've submitted a COL for NRC review and I'm
19 securing the funds. I need this information to be able
20 to defend the worthiness financially of my project.

21 MR. BROOKMAN: Okay. Thank you.

22 Other comments on these? We're getting good,

1 specific, and articulated process responses to these
2 questions. Are there others? Please.

3 MS. KRAY: Marilyn Kray with Exelon. On the
4 second bullet, to the extent that it is to protect
5 against the gaming of the system, and I think --

6 MR. BROOKMAN: May I read it so it's in the
7 record? "Should the Department reserve the right to
8 cancel a contract if a sponsor does not proceed
9 diligently in the construction of a reactor facility?"

10 MS. KRAY: Okay. I would support that to
11 prevent the situation wherein if we were to adopt
12 pouring of safety-related concrete as the triggering
13 event, that somebody says, well, I can at least invest
14 in that to reserve my right in line, and then put a
15 project on hold indefinitely.

16 So to the extent that it would protect
17 against that gaming, I would support it. However, it
18 would have to be very well defined what "proceed
19 diligently" refers to because I would not want to see,
20 if somebody encountered issues with just production
21 delays or delivery delays or something other than that,
22 not because of a conscious decision on their part, and

1 you are not invoking the regulatory delay in it,
2 either. But I would consider that still proceeding
3 diligently even though they may be falling behind
4 schedule.

5 MR. BROOKMAN: You agree with the concept of
6 a high threshold?

7 MS. KRAY: Yes.

8 MR. BROOKMAN: Yes, okay. Other comments
9 along these two bullets here? Are we ready to move on
10 to the next set?

11 Did you have an additional comment? No,
12 okay.

13 Let's move on to the next set: Appropriations
14 and Funding Accounts. Marvin, did you want to provide
15 overview on these? Will?

16 Discussion: Appropriations and Funding Accounts

17 MR. GRANT: Actually, this is Will Grant with
18 the General Counsel's Office. The section -- this is
19 particularly dealing with paragraph (b)(2), which is
20 setting up the two nuclear funding accounts, program
21 accounts and grant accounts. We're interested in
22 comments about --

1 MR. BROOKMAN: Hey, Will. Sorry, you have to
2 start again. The mike is still not on. Thanks. Start
3 again.

4 MR. GRANT: Sorry.

5 MR. BROOKMAN: That's okay.

6 MR. GRANT: Will Grant, Office of General
7 Counsel at DOE. This particular point, the
8 Appropriations and Funding Accounts; as you know, the
9 statute sets up two different accounts: a program
10 account and a grant account, both of which are to cover
11 two different types of covered costs. The first,
12 principal and interest; the other, these incremental
13 delay costs with the price of energy. How those -- how
14 the interplay happens between those two accounts and
15 what not is what we are seeking comment on in this
16 particular period.

17 In addition, to the particular questions that
18 have been posed, I wanted to raise a couple others just
19 for -- because we would like to get some additional
20 comments. We have started the review of the process of
21 our Title 17 loan guaranty program, knowing what the
22 interplay is between this particular section, 638, and

1 the Title 17 provisions. I would especially draw your
2 attention to the 1702(d) criteria for when a Title 17
3 loan guaranty would be issued.

4 How would an application process for the loan
5 guaranty program affect this particular one, the
6 Section 638 program. How would it affect it if loan
7 guaranty were simply an open process, if it were a
8 once-a-year-process, if it were quarterly. Would that
9 be part of getting your combined operating license.
10 Would this be a simultaneous process, seeking a loan
11 guaranty and the risk insurance. Which one -- would
12 you tap one or the other or both, and would this be --
13 would getting one of the Title 17 loan guaranties be a
14 way to help the Department determine how we should
15 allocate the amount of coverage between the two
16 different grant and program accounts.

17 MR. BROOKMAN: We're going to try and do
18 something about that feedback.

19 (Pause.)

20 MR. BROOKMAN: Okay. So you said a lot
21 there. You referenced specifically 17(d).

22 MR. GRANT: 1702(d).

1 MR. BROOKMAN: Thank you. 02(d). And so, in
2 addition to the questions that are on the screen,
3 you're asking for comment on --

4 MR. GRANT: Right. And I don't anticipate
5 that people would necessarily be able to spout forth on
6 those here, but in the written comments we would be
7 very interested in getting that. These questions -- we
8 are getting things together for a potential NOI on
9 Title 17 as well right now, and those questions will
10 probably appear in that as well. But to the extent
11 that they affect 638, we would be interested in hearing
12 your comments on that.

13 MR. BROOKMAN: Okay. Thank you.

14 So then, comments as they relate to what Will
15 just said and also these first three bullets, the first
16 one being, "If a sponsor contributes to the standby
17 support program -- accounts automatically transfer to
18 the general treasury at the end of the project, how
19 would this affect participation in the program?"

20 Steve.

21 MR. HOWLETT: Steve Howlett, GE. What's the
22 intent of the question? I don't understand what you're

1 trying to get at here. Of course the money is going to
2 go back to the treasury. I don't think Mr. Snow would
3 approve of it otherwise. I mean, were we thinking
4 about keeping it and doing what with it otherwise?

5 MR. BROOKMAN: So, thank you for your
6 comment.

7 Yes. Marvin?

8 MR. SHAW: Marvin Shaw, DOE.

9 MR. BROOKMAN: Make sure it's on.

10 MR. SHAW: I'm sorry. Marvin Shaw, DOE. We
11 just wanted to highlight that issue for a potential
12 comment because it's not clear to everybody who doesn't
13 have detailed appropriations knowledge like you and
14 Will. I wasn't aware of that until Will went through
15 that. So it was just to provide some information and
16 statutory citations dealing with that issue.

17 MR. BROOKMAN: So then, maybe we should move
18 on to the second bullet, which is, "What is the
19 appropriate mix between government appropriations and
20 sponsor payments, or is there an appropriate mix?"

21 Peter.

22 MR. SABA: Yeah. Just, if I take a second on

1 the first one, I agree with the general perspective
2 that this would be viewed by sponsors as risk insurance
3 premium, and if you don't use it, you know, that's --
4 you know, then it goes back. The insurance company got
5 it or, in this case, treasury.

6 The real issue, though, is -- so I don't
7 think it would affect participation in the program just
8 because the money goes back to the Treasury or goes to
9 the Treasury. I think the real issue is the one we
10 talked about earlier, which is participation could be
11 affected and the statutory objectives would not be
12 achieved if we estimate the cost of the program as too
13 high and we require too great a portion of that cost to
14 be borne by the sponsors, which gets us to the next
15 question.

16 You know, this is government risk insurance
17 against a government risk. The government created that
18 risk, and they should be paying for it. We've carved
19 out, you know, the things the sponsor controls or the
20 costs. So I think the right answer is the appropriate
21 mix is that this is a risk that the government has
22 created and it's a political risk that they control.

1 They should be the ones paying for that risk, and that
2 was the intent.

3 MR. SHAW: Marvin Shaw, DOE. One question on
4 that. How about litigation risk which might not
5 necessarily be caused by the government?

6 MR. SABA: Again, the litigation risk relates
7 to the licensing process that the government created.
8 So from that -- now, obviously, we live in a budget-
9 constrained world, but from the policy perspective and
10 the issue of, you know, who is best able to control the
11 risk and the process between the sponsor and the
12 government, this is government risk. So that should be
13 the starting point. Then we work the budget from
14 there.

15 MR. BROOKMAN: Other comments, additional
16 comments? Yes.

17 MR. HEZIR: This is Joe Hezir from the EOP
18 Group. I'd like to address the second and third
19 bullets. Really, when you're talking about the mix
20 between government appropriations and sponsor payments,
21 that is really another way of saying the point that was
22 mentioned very early on this morning about the

1 difference between pricing and scoring.

2 Budget scoring of this program is the cost
3 that the government needs to budget for, and then
4 pricing has to do with how much of that, if any, gets
5 charged to the company entering into the contract.
6 Obviously, the difference, as Peter was alluding to a
7 moment ago -- if the price that's charged is zero or
8 some number less than what the budget score is, that
9 difference has to be made up through an appropriation.

10 And it seems that -- and again, one other
11 comment I wanted to make, getting to the third bullet,
12 is that with respect to the methodology, I think that
13 the Department really doesn't have much flexibility on
14 the methodology for the budget scoring issue because
15 the language in 638 is fairly clear, I think, that it
16 has to be scored using the methodology in the Federal
17 Credit Reform Act. That act -- I mean, obviously,
18 there's a lot of judgment that goes into that, but the
19 methodology is fairly well prescribed for how to score
20 that.

21 But that doesn't necessarily mean that the
22 price that the government charges on the contract has

1 to be based on that same methodology. It could be
2 based -- as Peter suggested, it could be zero, or it
3 could be some other number based on some other
4 methodology.

5 So I think that we need to kind of think
6 about the two concepts a little separately here. One
7 is the scoring, which I think DOE doesn't have much
8 flexibility on, and the other one is the pricing that
9 the companies would have to pay, which I think DOE does
10 have a lot of flexibility on.

11 MR. BROOKMAN: Thank you.

12 Yes, Richard?

13 MR. MYERS: Richard Myers at NEI. Just to
14 add to that, I'd go back to Steve Howlett's comments at
15 the head end of the meeting that the pricing should
16 reflect comparable sovereign risk insurance programs
17 that are provided by the federal government for similar
18 types of risks.

19 MR. BROOKMAN: Thank you.

20 So we have kind of addressed all three of
21 those bulleted questions. Are there additional
22 comments on these three before we move on?

1 Please, Steve.

2 MR. HOWLETT: Yes. Steve Howlett, GE. One
3 thing to always keep in mind. Remember, if we're being
4 risk underwriters here, maximum liability under this
5 program, you got a billion for the first two projects
6 and a billion for the last four projects. So you're
7 really only underwriting \$2 billion worth of risk. You
8 know, Mr. Rumsfeld kind of sneezes away \$2 billion
9 worth of risk every day.

10 So in pricing this, again we have to do the
11 right thing with the Credit Reform Act. I absolutely
12 would encourage DOE and others to use the existing
13 models that are out there. If you plug this stuff in
14 with OPIC, I tell you, you'd come up with a very
15 reasonable price that the market could accept, the
16 sponsors could accept, and it would be scored at or
17 near budget neutral. And then you don't have to go up
18 to the Hill and try to be begging for some program that
19 wouldn't matter all that much. I mean, this is a \$2
20 billion program that can be reasonably priced and
21 budget scored at or near budget neutral. So I think
22 it's a very worthwhile exercise.

1 MR. BROOKMAN: Thank you.

2 Additional summary comments before we move on
3 to the next slide?

4 MR. MATTHEWS: Can I comment on -- this is
5 John Matthews from Morgan Lewis. I'd like to comment
6 on the interplay between the loan guaranty program and
7 the standby support, which is, I think the question
8 that the gentleman from the Office of General Counsel
9 was asking that's not on the slide.

10 I think we need to recognize that these
11 programs address two different issues. The loan
12 guaranty program, you know, is going to guaranty my
13 payments to lenders, and it has that function. My
14 understanding of the way that works is if, you know,
15 the government pays out money on that program, it
16 ultimately can come back to the project and get that
17 money back from the project.

18 The standby support program is addressing a
19 different issue. That is, these specific risks that
20 are not the fault of the project sponsor. So in my
21 view, the standby support coverage, if it there is a
22 covered delay, the standby support coverage should pay

1 out and the project manager will then be able to make
2 the debt service payments that are necessary and will
3 not need to call on the loan guaranty. I think that's
4 how the two programs should interrelate.

5 MR. BROOKMAN: Okay. Thank you.

6 Then, let's go to the next slide. This is
7 the last slide on Appropriations and Funding Accounts.

8 The title is "Continued." Perhaps, as it's getting on
9 towards noon, this is what we will cover and then we
10 will break for lunch, provided that makes sense.

11 "What factors should be considered in
12 determining both the overall amount of funding and the
13 portion, if any, required from the sponsor?" Let's
14 deal with that one first.

15 Yes.

16 MR. SABA: This is Peter. I think we've
17 generally talked about the, you know, issue of how we
18 score the overall amount when we look at the comparable
19 programs at OPIC and Ex-Im and those, you know, should
20 reflect kind of the ceiling or something that is a
21 comparable program. If one was to go score this
22 specifically on the risk, then I think there's a couple

1 of factors that need to be taken into account. One is
2 the probability of the risk event, the second one is
3 the expected length of the risk event, and then the
4 third factor is, you know, whether it's the principal
5 and interest or the replacement cost, the power, the
6 amount.

7 So those are the factors that would be
8 calculated in to make the determination of, you know,
9 what is the subsidy cost or the scoring cost of the
10 program.

11 If you're going to take that approach, I
12 would encourage that you spend a lot of time talking to
13 industry about those issues. As some of the
14 commentators had noted before, you know, let's not look
15 at, you know, what happened years back but, you know,
16 what is the current probability and the expected length
17 of the delay.

18 So that's to the specific factors that would
19 go into this risk analysis from an OMB scoring
20 perspective.

21 MR. BROOKMAN: Additional comments?

22 (No response.)

1 MR. BROOKMAN: You can see the two additional
2 bullets on that page: "What, if any, are the
3 relationships between the standby support program, the
4 80 percent loan guaranties under Title 17, and the
5 production tax credits under Section 1306?" And,
6 "Should there be any adjustments in the amount paid to
7 the Department by the sponsor who participates in more
8 than one program?"

9 MR. MYERS: Doug?

10 MR. BROOKMAN: Yes, Richard?

11 MR. MYERS: Richard Myers at NEI. On the
12 second question, the relationship between the standby
13 support, the Title 17 loan guaranty authority, and the
14 PTCs, I think that one needs to look at that in two
15 contexts. In terms of corporate decision-making -- and
16 I think Marvin and Dan Keuter both made this point. In
17 terms of corporate decision-making, clearly there is a
18 very, very tight linkage. As you evaluate the economic
19 viability of a project, obviously you will consider the
20 potential availability of any of these three forms of
21 investment stimulus or investment protection that you
22 choose to avail yourself of.

1 In terms of government implementation,
2 however, which is a separate issue, and the regulations
3 and guidance pertaining to that implementation, I do
4 not think there is a linkage, and I would prefer not to
5 see a linkage. I don't think that, for example, a
6 company that avails itself of the standby support
7 should de facto face some cutback in their eligibility
8 for or ability to obtain a loan guaranty or a
9 production tax credit.

10 These are different sections of the statute.
11 They're on different timetables with respect to
12 implementation, and I think it would be misguided to
13 create a direct linkage among them.

14 MR. BROOKMAN: Steve.

15 MR. HOWLETT: Steve Howlett from GE. From
16 Wall Street's perspective, don't anybody get it wrong.
17 The horse that's pulling this wagon is the loan
18 guaranty program. Now, we're bringing along the little
19 guard dog here, which is the standby support in this
20 wagon train. They have two different functions.
21 They're all part of the same project, part of the same
22 process, but the horse that's pulling the wagon is

1 going to be the loan guaranty program. That is what's
2 going to make these things successful. The standby
3 support is the guard dog that we have around here to
4 make sure that everybody does the right thing while
5 we're all protected.

6 So let's -- I would like to make sure that
7 everyone understands that the loan guaranty should not
8 be reduced or any way affected by what happens with the
9 standby support or the PTCs. I mean, it's all an
10 integral part of the same venture, but they have
11 different roles and functions in putting this together
12 as far as the Street is concerned.

13 MR. BROOKMAN: Thank you, thank you.

14 Please. Joe.

15 MR. TURNAGE: Joe Turnage. The guard dog
16 does have a purpose, however. I would like to expect
17 at least that the standby support program would allow a
18 lower scoring risk perspective on the loan guaranties.

19 MR. BROOKMAN: Thank you, thank you.

20 So, yes, please. Go ahead.

21 I'd like to get you on microphone.

22 MS. ALEX: Aileen Alex, Department of Energy,

1 CFO's Office on Loan Guaranties. I just had a
2 question. We're trying to identify the amount of work
3 that would be coming in under loan guaranties and not
4 for attribution. We're looking at somewhere in the
5 range of about \$30 billion worth of projects that might
6 be applying to us for loan guaranties.

7 Are there any nuclear projects that would be
8 looking for the insurance standby support or production
9 tax credits that will not be applying for loan
10 guaranties? Is that always part of the mix? Is there
11 any kind of combination of those three programs that
12 would just be one and not the other?

13 MR. BROOKMAN: She followed on from your
14 comment. If you wish to go first, then use the mike.
15 And then Steve, if you wish.

16 MR. TURNAGE: It's Joe. I think we need all
17 three of these things. The most economically efficient
18 is the loan guaranties. That's the biggest piece of
19 this. But there are people that will not invest
20 without the standby support program.

21 MR. BROOKMAN: Steve, do you want to add on
22 there?

1 MR. HOWLETT: Yeah, and that's correct. I
2 think the one that might be the least likely to be in
3 the trio might be the production tax credit because you
4 actually have to have a tax appetite and a risk
5 appetite to be able to do that. So unless you can
6 penetrate the AMT and some of the other tax issues, you
7 may not have a full appetite for the PTCs, although
8 everyone is going to try to use them because they are
9 really, really -- they enhance the economics of these
10 projects tremendously.

11 But for the first six projects, I would
12 venture a guess that there will not be anyone that will
13 apply for loan guaranty that will not ask for the
14 standby support and vice versa. So I think you can
15 rest fairly assured that they will be hand in glove
16 together.

17 MR. BROOKMAN: Thank you.

18 Marvin.

19 MR. M. SMITH: This is Marvin Smith. I have,
20 really, sort of a question, I guess, in terms of
21 potential relationship between --

22 MR. BROOKMAN: Marvin, before you move us on,

1 did that answer your question?

2 MS. ALEX: Yes, thank you.

3 MR. BROOKMAN: Thank you.

4 Marvin, please.

5 MR. M. SMITH: Really, a question, I guess I
6 would like, perhaps, others to consider in terms of how
7 the standby support and loan guaranties might
8 interrelate. First, just a simple question of
9 presuming there is some type of a premium charged under
10 the standby support program, would that premium be a
11 cost that would be subject to being a cost that you
12 would be using the loan guaranty to pay. Fairly simple
13 question.

14 Secondly, you know, you are looking at a
15 situation where, as you've indicated, you may have loan
16 guaranties issued for a lot more projects than you
17 would have -- the six that would be subject to the
18 standby support program. You may not even know up
19 front, for example, when you start this, are you going
20 to get just the loan guaranty or would you get both.

21 So an interrelationship might be that, again,
22 under a loan guaranty I assume that you will be

1 allowed, for the -- to include in your loan guaranty
2 certain contingencies and certain potentials for
3 project cost that -- let's say, for example, that you
4 would look at the loan guaranty and say, I'd like to be
5 sure that if I don't qualify for the standby support
6 program that the loan guaranty would be adequate to at
7 least allow you a loan to cover the kinds of delays
8 that might otherwise be covered by the standby support
9 program.

10 So that's, to me, something that you would
11 need to be addressing and, again, one of the reasons
12 why you would kind of have to address all of these as a
13 package rather than in isolation from each other.

14 My comment on that as far as how you would
15 look at that from a loan point of view as well.

16 MR. BROOKMAN: >From your perspective, the
17 Department needs to consider them all together, but
18 from the sponsor's point of view, the Department should
19 not be looking at them all together.

20 MR. MYERS: I think what I was trying to say
21 is that the sponsors would look at them all together.
22 There is no statutory basis or even discretion for the

1 Department to consider them together.

2 MR. BROOKMAN: That was Richard Myers.

3 You're next.

4 MR. GOLDBERG: Steve Goldberg from Argonne.

5 Just a point to be made. There was a point earlier
6 made about the relative value of production tax credits
7 and loan guaranties. We had done a previous study that
8 showed what the impact would have on the levelized cost
9 of electricity for new plants. So, just as a point of
10 reference.

11 As a point of process, it seems to me there
12 is some gray area here involving scoring issues, both
13 from the standpoint of loan guaranty as well as standby
14 support. To ferret out this gray area, we heard the
15 Credit Reform Act that Joe was talking about and we
16 heard that we should bottle it under the export
17 corporation.

18 I think it's important that that clarity be
19 up early in the process, particularly as it is shown
20 when these support contracts have got to be signed.
21 They have to have funding behind it. So all that needs
22 to be clarified early in the process so people

1 understand clearly what the scoring issues are, what
2 the pricing issues are, so that that can go forward.

3 There may be a need to have some sort of a
4 generic treatment early on before you get down to
5 specific contracts so that people are aware of how they
6 are going to approach this. Because, if they wait
7 until the end, that end could take a long time before
8 people can ferret out all the scoring issues.

9 MR. BROOKMAN: Thank you.

10 Dan, did you have a comment?

11 MR. KEUTER: I guess -- Dan Keuter from
12 Entergy. I guess, you know, from my presentation this
13 morning, these are all intertwined. A company that's
14 going to go forward is probably going to have a
15 combination of all three. That doesn't mean they need
16 100 percent of all three. I think that might be a
17 little piggish.

18 Also, depending on if you're going to build
19 this as a regulated unit or an unregulated unit. If
20 you're going to build it as a regulated unit, probably
21 your production tax credits are more valuable than non-
22 regulated. Non-regulated, you probably definitely need

1 some kind of loan guaranty.

2 So if you can make a proposal that covers all
3 three, you're going to have assurance that you get all
4 three, then you're going to have a higher assurance
5 you're going to actually build something.

6 If you make applications to three different
7 companies, you might get one, get part of another, and
8 none of the other. Then it doesn't do you any good
9 because you're still not going to build. Just keep in
10 mind, the strategy here is to actually build something,
11 but the other strategy is, you know, build something
12 that isn't going to cost the government an arm and a
13 leg.

14 So if the company itself can come up with the
15 best combination of these three incentives, that's
16 probably the best for the company and also best for the
17 government.

18 MR. BROOKMAN: Thank you.

19 Yes, go ahead.

20 MR. HEZIR: This is Joe Hezir from the EOP
21 Group. I'd like to just say something to follow on
22 from Dan and also maybe propose a slight modification

1 or clarification of what Richard said earlier.

2 I think, clearly, from a company standpoint
3 and their decision-making process, these incentives are
4 all integrated. They can't -- they're going to have to
5 consider all three at the same time. I think from the
6 government's perspective, I think the issue is that
7 from a procedural standpoint, from a decision-making
8 standpoint, the government is going to have to be
9 prepared to act on any or all three of these in some
10 integrated fashion.

11 I think Richard's point may have -- was going
12 more to the point that if a company is applying for
13 more than one incentive that they somehow shouldn't be
14 discounted on Incentive No. 2 because they are approved
15 for Incentive No. 1. I think what we're saying is that
16 the decision-making process on the incentives needs to
17 be integrated, but I think what Richard was really
18 saying is that the company shouldn't be penalized in
19 one area because they are asking for assistance in more
20 than one. I think it has to be looked at as an
21 integrated package and evaluated as such.

22 So I think that gets back to what I was

1 saying earlier about the application process, that if a
2 company is looking for or applying for more than one
3 incentive, that application may need to be more
4 comprehensive than if it's just for a more narrow form
5 of incentive.

6 MR. BROOKMAN: So your comment goes in part,
7 if not a lot, toward answering the third bulleted
8 question on this page, correct?

9 MR. HEZIR: Right. Both second and third.

10 MR. BROOKMAN: Yes. Second and third.

11 So, are there any other additional comments
12 at this time on the second and third bullet? Richard.

13 MR. MYERS: I always hesitate to disagree
14 with Joe because he knows -- he's forgotten more about
15 these issues than I will ever know.

16 I don't see in the statute any requirement
17 for this integration that you speak about. I mean, as
18 I said, from a corporate decision-making point of view,
19 I totally agree that a company is going to look at all
20 three of these incentives. I don't even consider the
21 standby support an incentive. It's a protection. But,
22 will look at the investment stimulus and the investment

1 protection provided by the Energy Policy Act in these
2 three areas, will look at them as an integrated
3 package.

4 But I see nothing in the statute that -- and
5 I certainly agree that companies shouldn't be penalized
6 in any fashion for applying for one, but I don't see
7 anything in the statute that provides for an integrated
8 process, Joe, or an integrated application process,
9 which, if I understood you, is what you're suggesting.

10 MR. BROOKMAN: Joe, a follow-on?

11 MR. HEZIR: Yeah. What I was suggesting is
12 that -- I agree with what you're saying, Richard, that
13 there is no requirement for it, but I'm looking at it
14 from a company's perspective. If a company is applying
15 for both a loan guaranty and standby support and you
16 have a situation where DOE approves one and doesn't act
17 on the second one, I'm not sure that the company is
18 then in a position that it can proceed.

19 So, I mean, I think the company could get
20 kind of whipsawed if one of the actions proceeds and
21 the other one doesn't.

22 MR. BROOKMAN: Richard.

1 MR. MYERS: Richard Myers at NEI. I agree
2 with that. Maybe we're arguing over how many angels
3 can dance on the head of a pin. On the other hand, the
4 production tax credit, once the allocation process is
5 established by the Department of Treasury and those
6 rules were clear, is essentially self-implementing.
7 The standby support, once the regulations are developed
8 and the process is in place, I don't want to say it's
9 self-implementing but it is -- there is a high degree
10 of certainty that it will be implemented.

11 The loan guaranty authority is subject almost
12 completely to the discretion of the Secretary. I can
13 fairly easily imagine a Secretary of Energy in an
14 administration that, for ideological reasons or
15 otherwise, doesn't support the use of loan guaranties
16 or doesn't support the use of loan guaranties for
17 specific types of projects, simply refusing to
18 acknowledge and accept and deal seriously with an
19 application.

20 So again, I'm struggling with this idea of
21 integrated implementation from the government.

22 MR. BROOKMAN: That sounds like a discussion

1 you could have over lunch.

2 A final comment or two. Yes. And then to
3 here, and then to Will. After you.

4 MR. HOLLAWAY: Bill Hollaway, Skadden Arps.
5 For purposes of today's meeting and the NOI, the NOI is
6 focused on 638 and standby support. The question that
7 is asked in the NOI and here again is, should -- to
8 paraphrase, should there be some limitation on the
9 ability to take advantage of standby support if you're
10 getting one of the other incentives.

11 To echo what Richard said, I saw nothing in
12 the legislation that says there should be any
13 limitations on eligibility under 638 if you're using
14 one or the other incentives. The intent, rather, was
15 to have multiple incentives to try to get something
16 built.

17 MR. BROOKMAN: That is eligibility. What
18 about the amount paid?

19 MR. HOLLAWAY: Same with regard to 638. When
20 you do the NOI on loan guaranties, you may be asking
21 other questions, but for purposes of 638, it seems very
22 clear on who is eligible and for how long.

1 MR. BROOKMAN: Will.

2 MR. GRANT: One last question. We do have,
3 in both of the categories, the first two, the
4 subsequent four, we have limits on how much we can do,
5 but we have two different types of accounts that we can
6 split this between: the program account and the grant
7 account. We would be interested in any comments on how
8 we should determine how those -- how that amount should
9 be allocated between the program account and the grant
10 account, and if it would be possible to offer the
11 entire amount in one versus the other.

12 You know, would we -- under the way the
13 statute is written, would we be able to offer, for
14 example, the entire \$250,000 in -- or, \$250 million,
15 sorry, in the program account as opposed to splitting
16 it between the program and the grant account.

17 MR. BROOKMAN: Comments on that specific
18 question? Joe, do you want to start? Joe, get the
19 microphone.

20 MR. TURNAGE: It's Joe. If I had to pick, it
21 would be the program account.

22 I will point out with regard to these three

1 things, let me tell you how they motivate us, just to
2 calibrate. The standby support program, okay, the
3 guard dog is absolutely necessary for us to go forward,
4 but not sufficient, okay. We need the loan guaranties
5 to create the economic platform so, as they say in the
6 south, this dog hunts, okay.

7 Now, I will tell you the production tax
8 credit opportunity is causing us to accelerate our
9 expenditures in '06 and '07 beyond what we might
10 consider otherwise. So it's pretty motivational, but
11 the effect is different.

12 MR. BROOKMAN: Thank you.

13 Additional comments related to -- did you
14 have a follow-on, Will? No. Additional -- yes,
15 please. Peter.

16 MR. SABA: Peter Saba again. Just on the
17 program grant account, there is a technical issue with
18 that where the program account is clearly within the
19 Federal Credit Reform Act. While there is some
20 uncertainty on the grant account, you know, I would
21 encourage either -- if there -- either a technical fix
22 or, if there is no technical fix, seeing whether DOE

1 could interpret that cost language to build in the
2 whole expected cost notion of the Federal Credit Reform
3 Act.

4 Because, otherwise, the grant account is
5 completely useless because no one, whether it's the
6 federal government or any sponsor, would put in a
7 dollar of coverage today. So we should see if we
8 could, you know, interpret that language in a way that
9 does bring in the Credit Reform Act, expected cost
10 concepts.

11 And just briefly, because I know we want to
12 get to lunch, on the issue of a penalty or an
13 adjustment, I would go further than what our speaker
14 said about congressional intent. You know, there is
15 clearly nothing in the statutes that would indicate
16 that. Congress has clearly, in other instances where
17 they have wanted to limit or penalize, written that
18 into the statute.

19 So I think there is no basis whatsoever to
20 reduce the 638 coverage because of the availability of
21 the others.

22 MR. BROOKMAN: Additional comments on these

1 three bullets?

2 (No response.)

3 MR. BROOKMAN: I think we've covered them
4 pretty adequately for the time being.

5 It's now about 12:17. We're at least an hour
6 ahead of schedule. So let's head to lunch. It
7 probably is going to be hard to get back here is less
8 than an hour, so I'm going to suggest we resume at
9 1:15, and we'll keep pressing ahead at the same pace.

10 We'll also try and evaluate what the weather
11 is doing over the lunch period so we can let you know
12 about that.

13 But thanks for a good morning. We'll go into
14 even more depth as the afternoon proceeds. We'll start
15 again at 1:15.

16 (Whereupon, at 12:17 p.m., the proceedings
17 were adjourned for lunch, to reconvene at 1:15 p.m.,
18 the same day.)

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A F T E R N O O N S E S S I O N

4

1:15 p.m.

5

MR. BROOKMAN: Just kind of a process note.

6

We have a weather forecast on the way, and so we will

7

have that in another half an hour or so. We will try

8

and figure out what that means, if anything.

9

I wanted to, as the agenda reflects, move to

10

discussing covered costs and requirements, but before

11

we do -- too quick on the draw -- I wanted to make sure

12

that everybody that had things to say on these final

13

points on Appropriations and Funding Accounts, if you

14

got everything said that you wanted to say before we

15

headed to lunch, just as a matter of completeness.

16

(No response.)

17

MR. BROOKMAN: Okay. So I see nothing

18

additional, so let's move on.

19

Marvin, are you going to provide some

20

overview remarks on this one?

21

MR. SHAW: Yes.

22

Discussion: Covered Costs and Requirements

1 MR. SHAW: Marvin Shaw, DOE. Now we turn to
2 Covered Costs and Requirements. That is in Subsection
3 (d), which talks about providing coverage of costs that
4 result in the delay during construction in gaining
5 full-power operation. The statute lists two primary
6 areas. One is debt support, which is the principal and
7 interest, and then the other one is the incremental
8 costs of purchasing power to meet contractual needs.

9 With that in mind, Doug will take us to the
10 questions here.

11 MR. BROOKMAN: Thank you.

12 You can see the first bulleted item: "How
13 should 'debt support' and 'incremental difference
14 between fair market price of purchase power...' be
15 documented, especially to the extent to which they are
16 used in calculating the funding needed prior to
17 entering into a contract?" Comments on the first one?

18 (No response.)

19 MR. BROOKMAN: Certainly some of you have
20 thought about this. John, do you have a comment on
21 this one? You looked like you could be persuaded, is
22 what it seemed like to me.

1 MR. MATTHEWS: I guess --

2 MR. BROOKMAN: Say your name.

3 MR. MATTHEWS: John Matthews, Morgan Lewis.

4 My thought is that the purchase power coverage does not
5 appear to be particularly valuable in its link to the
6 grant account and the requirement from the face of it
7 for full appropriations or payment of premium to cover
8 it. That makes it fairly -- not very useful. So my
9 best guess is that most folks are going to focus on the
10 debt support coverage, and I would think that there is
11 sufficient statutory authority to issue a policy for
12 the full \$250 million or \$500 million in any case for
13 debt support.

14 The one idea that I floated earlier today and
15 I'm becoming increasingly convinced that probably is
16 not a bad idea, would be if project sponsors are able
17 to give justification or some -- be able to truly know
18 what their, you know, weekly debt support or monthly
19 debt support payments are likely to be. To agree up
20 front as to what that amount will be might be useful.
21 It might be very useful in calculating, for example,
22 under the Credit Reform Act the net present value of

1 that future potential liability if you know up front
2 that it's likely to be, you know, \$5 million a week or
3 whatever it is, some fixed indemnity. It also would
4 eliminate any litigation or disputes over how much
5 would be paid in debt service.

6 So as part of the application process, or if
7 that's not feasible for the industry or for sponsors to
8 come up with that information prior to execution of the
9 standby support, having a fill-in-the-amount for what
10 the weekly coverage would be for debt service if you
11 have a covered delay it seems to me would be useful.

12 MR. BROOKMAN: Okay. Thank you.

13 Other comments? Pardon me. Other comments
14 following that one?

15 (No response.)

16 MR. BROOKMAN: No thoughts on the incremental
17 difference between fair market price of purchase power
18 and how it would be documented? It's all forecasting,
19 right?

20 MR. MATTHEWS: I think for that coverage --
21 this is John Matthews again. For that coverage, you
22 would need to decide what indicator are you going to

1 use for fair market price. But I assume in a
2 particular region you could choose an objective
3 criteria as to what the spot market price is of energy
4 at a given point, designate that, and then compare it
5 to a contract price.

6 But I'm not sure -- it depends upon how folks
7 structure their projects. They might not have a fixed
8 contract price. It's entirely possible that these
9 would be done on a cost contract kind of basis, or if
10 they're done in rates, that there wouldn't necessarily
11 be a purchase power cost. That's another reason why
12 that coverage doesn't seem to be particularly useful.

13 MR. BROOKMAN: Okay. Other comments,
14 thoughts, before we move on to the second bullet?

15 (No response.)

16 MR. BROOKMAN: So then, "Should standby
17 support contracts be restricted from covering other
18 delay costs?"

19 Yes, Richard.

20 MR. MYERS: Richard Myers at NEI. I really
21 applaud and support the language in the NOI, or the
22 implication in the NOI, that the covered -- that the

1 agency has the flexibility and discretion to take an
2 expansive and inclusive view of what constitutes
3 covered cost under the -- at least under the debt
4 support program account, that it includes debt service
5 principal and interest but is not limited to debt
6 service principal and interest. If Congress had
7 intended to so limit it, Congress would have so stated.

8 It clearly does not include incremental
9 power, or the incremental difference power purchase
10 because that's covered separately. But I would think
11 that all other costs are eligible to be supported --
12 all other delay costs are eligible to be supported out
13 of that program account.

14 MR. BROOKMAN: Follow-on comments? Yes,
15 John.

16 MR. MATTHEWS: I'd just simply add -- John
17 Matthews again. I would add that at a minimum the debt
18 support coverage -- I think DOE should acknowledge that
19 the debt that is covered would be the project cost and
20 that the project cost includes or can include
21 significant contingency factors. It would be
22 reasonable for the project to include potential costs

1 from the construction period taking longer than
2 originally anticipated. Even though that might not be
3 a covered delay for purposes of the policy, those kinds
4 of contingencies would typically be built into any
5 project and the debt support coverage should allow for
6 a certain amount of contingencies.

7 MR. BROOKMAN: Okay. Other comments on these
8 first two bullets, which you can see are Covered Costs
9 and Requirements.

10 Yes, please. Joe.

11 MR. HEZIR: Joe Hezir, EOP Group. In
12 thinking about this concept of the covering of the debt
13 service, I think there is another dimension to it that
14 maybe should be considered, which is sort of the time
15 dimension.

16 Let's say a project goes into a delay that is
17 a covered delay. There will be increased sort of
18 carrying costs or increased financing costs on carrying
19 the costs that have already been incurred. So you have
20 that one set of debt service costs.

21 Then, secondly, you have certain costs that
22 now will be incurred during the period of the delay due

1 to the delay. And if those costs are financed as John
2 was suggesting, through some sort of a contingency, and
3 they were then financed through debt, it would seem
4 that those could be eligible costs as well.

5 And then, thirdly, you have prospective costs
6 that, because of the event of a delay, once that event
7 is cured there still may be an increased cost to
8 complete. If that cost is also financed, that cost
9 potentially could be eligible because the test in the
10 statute is costs attributable to the delay. It doesn't
11 necessarily just imply that those would be past costs.

12 They could be past current or future. I think the
13 test would be whether or not they are part of the
14 project financing and how they are part of the project
15 financing package.

16 MR. BROOKMAN: Thank you.

17 So, the top two bullets, before we move on.
18 Yes, please.

19 MR. KEUTER: For example, you know, if you're
20 going to have staffing that's going to be standing
21 around doing nothing and increased O & M, I definitely
22 think that kind of charge should be included.

1 MR. BROOKMAN: Okay.

2 MR. KEUTER: Dan Keuter from Entergy.

3 MR. BROOKMAN: Thank you, Dan Keuter.

4 Okay. So then, let's move to the next
5 question. "Are two contracts needed for a sponsor that
6 builds a two-reactor facility in order to receive up to
7 \$500 million in coverage?" How does it work with the
8 COL? Do you need one for each reactor in a two-reactor
9 facility?

10 PARTICIPANT: Basically, on a COL, you will
11 get a COL probably to build two reactors, and then you
12 will -- the other decision point is starting
13 construction on probably the first reactor. There is
14 nothing that would prevent you from at least pouring
15 safety-related concrete on the second reactor just to
16 get the coverage. Now, would that be one or two
17 policies.

18 You know, what we don't want, I don't think,
19 is -- the first reactor is going to have the biggest
20 risk. The second reactor probably isn't going to have,
21 you know, the political or litigation risk as the first
22 one. So I think the one that should be covered should

1 be the first one duly on the site and not the second
2 one.

3 MR. BROOKMAN: Would you imagine, then, that
4 two contracts are not needed?

5 PARTICIPANT: I'm not sure what that means.
6 I mean, you have -- there are going to be six of them,
7 six that would be covered. Would a two-reactor unit be
8 covered for both units?

9 MR. BROOKMAN: Do you have advice for the
10 Department on this?

11 PARTICIPANT: To me, since you're limited to
12 only six reactors, I think it's pretty clear -- it says
13 "reactors" -- that only the first one would be covered
14 under the standby situation.

15 MR. BROOKMAN: Peter.

16 MR. SABA: I guess I'm in partial agreement.
17 I think there should be a separate contract for each
18 reactor. Doesn't mean that if you've got two reactors
19 at one site that you are precluded from getting those
20 two contracts. It just depends on when you meet the
21 criteria of having gotten the COL and commenced
22 construction. That will determine where you are in the

1 queue. But there should be a separate contract for
2 each reactor.

3 MR. BROOKMAN: Peter, your last name is Saba?

4 MR. SABA: Yes.

5 MR. BROOKMAN: Thank you.

6 Other thoughts on the third bulleted item
7 related to contracts?

8 MR. G. MILLER: Yes. This is Gary Miller
9 with Progress Energy.

10 MR. BROOKMAN: Yes.

11 MR. G. MILLER: One thing to consider under
12 that scenario; I believe we will -- for example,
13 Progress Energy, we will send one application for two
14 units, but I suspect, and there's not -- from the NRC
15 here, that they will actually issue the amount as two
16 different licenses that will be triggered based on fuel
17 load and those -- all the -- whatever other hearings
18 necessary for actually full power operation.

19 So, in theory, you will end up with two
20 licenses for a two-unit facility. There is a scenario
21 where you could say, well, I'll go out and pour the
22 base concrete for both of them and then stop on the

1 second unit. So, just, that is a scenario that could
2 play out in terms of timing.

3 MR. BROOKMAN: And in terms of standby
4 support provision.

5 MR. G. MILLER: That's correct. Because the
6 timing of your second unit you have a lot of
7 flexibility on, certainly if you're trying to leverage
8 the commercial aspects of it. There is a window of
9 time that optimizes the stagger between the two units,
10 but in theory you could have both holes dug, pour the
11 mats for both, and then stop on the second unit.

12 MR. BROOKMAN: And would you advise the
13 Department to do anything as a consequence of that
14 possibility?

15 MR. G. MILLER: Well, I think it's more of a
16 matter of you need to acknowledge that that's a
17 scenario that could play out. I'm like Dan. I believe
18 the scenario will probably be that the first six will
19 be taken by the first units at all the various stations
20 across the U.S. and it will soon be a moot point
21 because it will play out that way, before the second
22 ones are done. But I would just acknowledge the fact

1 there is a scenario you could trigger the second unit
2 quicker. But I don't think that was the intent of the
3 statute, to do that.

4 MR. BROOKMAN: Do you want to say something,
5 John?

6 MR. MATTHEWS: Well, yeah. This is John
7 Matthews. I mean, I agree from a policy perspective
8 that spreading this coverage around for plants that are
9 actually going to be built is an important policy
10 objective of the statute. I mean, the statute is what
11 it is and it does use the term "reactors." So,
12 technically, you could qualify.

13 I guess one thing, maybe, that DOE could
14 consider is could it have a definition of commencing
15 construction for a second unit at a site than it does
16 for the first unit. Maybe that's a way to address this
17 issue, that simply pouring safety-related concrete for
18 the purposes of getting this coverage when you don't
19 intend to proceed forth with the construction on the
20 same schedule as the first unit perhaps can be defined
21 as not qualifying as commencing construction under the
22 statute. I think DOE needs to consider whether or not

1 it has the authority to do that.

2 MR. KEUTER: Or consider it in the definition
3 of what a delay is. If they just pour safety-related
4 concrete and they basically are waiting for the two
5 years for when it starts work, then that should be,
6 maybe, under the delay words. This is Dan Keuter.

7 MR. BROOKMAN: Thank you.

8 Okay. Other thoughts on that question? I
9 read that for the first time, and the second time I saw
10 it four different ways. Okay. Other comments on that
11 bulleted question? We're about to move on.

12 (No response.)

13 MR. BROOKMAN: "Should a sponsor be precluded
14 from entering into a contract that includes more than
15 one reactor?" We've kind of touched on that, but let's
16 make it overt.

17 MR. KEUTER: This is Dan Keuter. I think if
18 a sponsor has, you know, two reactors at two different
19 sites, they could -- either one could qualify.

20 MR. BROOKMAN: Richard?

21 MR. MYERS: As I read the question, I think
22 the plain language of the statute is one contract, one

1 reactor. So, yes, you are precluded by the statute
2 from entering into a contract that includes more than
3 one reactor. But you should not, as a project sponsor,
4 be precluded from entering into more than one contract
5 for more than one reactor. Does that make sense?

6 MR. BROOKMAN: I saw a few heads nodding, in
7 a sense.

8 MR. MYERS: Maybe I'm right. It happens.

9 (Laughter.)

10 MR. BROOKMAN: That may not be the acid test.
11 But a few agreed with you.

12 MR. G. MILLER: This is Gary Miller with
13 Progress Energy. We certainly agree with that. There
14 is nothing in the statute that precludes us, if we
15 built two stations, that we would not be eligible at
16 both stations for this standby coverage.

17 MR. BROOKMAN: Okay. Any additional
18 perspectives on this, or different perspectives?
19 Anything else to be said on Covered Costs and
20 Requirements? I know, for example, a few of you were
21 not in the room when we talked about the first two
22 bullets. I wanted to give you a chance before we move

1 on to make sure you take a peek at those and make sure
2 you don't have any additional comments.

3 Yes, Richard.

4 MR. MYERS: Coming back to the first bullet,
5 I don't think we answered the question, which is how --
6 it seems to me there are two questions there. One is,
7 how should the documentation be handled. It seems to
8 me that there clearly needs to be documentation, and
9 that's probably part of the claims management process.
10 And I don't know that it needs to be hugely
11 prescriptive in the implementing regulations.

12 The second part of the question is the extent
13 to which those amounts, i.e. the debt support and the
14 purchase power, are used in calculating the funding
15 needed. I think that's getting to the Credit Reform
16 Act issues, which we've already, I think, discussed
17 fairly well. Those scoring protocols are well
18 established.

19 MR. BROOKMAN: Yes. Peter.

20 MR. SABA: This is Peter Saba. I think
21 Constellation, at the beginning, in its opening
22 comments made it clear that we thought the statute was

1 -- needed to be inclusive and is inclusive and that
2 there are other costs. When I walked in, I heard, you
3 know, a number of those being discussed. Our list was
4 -- and maybe we're better -- but includes costs of
5 demobilization and remobilization, idle time costs
6 incurred in respect of equipment and labor, increased
7 general and administrative costs, and escalation costs
8 for the completion of construction.

9 MR. BROOKMAN: That's the kind of detail I'm
10 certain the Department would like to see in your
11 written remarks.

12 Okay. So then -- yes, John.

13 MR. MATTHEWS: Could I just add one more
14 thought? When we were discussing this before, I
15 mentioned the notion of a weekly indemnity to cover the
16 debt support. I would point out that the Nuclear
17 Electric Insurance Limited, NEIL, has a NEIL 1
18 Accidental Outage Policy that is a weekly indemnity.
19 The way that is established is simply industry -- an
20 insured under that policy fills out a worksheet to be
21 able to justify what the weekly indemnity is and then
22 NEIL issues a policy that has that amount. You may

1 want to consider looking at that as a model if you
2 pursue that weekly indemnity idea.

3 MR. BROOKMAN: That's called again?

4 MR. MATTHEWS: NEIL, Nuclear Electric
5 Insurance Limited.

6 MR. BROOKMAN: Okay.

7 MR. MATTHEWS: The NEIL 1 Accidental Outage
8 Policy has a weekly indemnity component.

9 MR. BROOKMAN: Thank you. Okay.

10 So then, I'm about to move off Covered Costs
11 and Requirements. Yes, can we go? Okay. Here we go.

12 Discussion: Monitoring and Reporting Requirements

13 MR. BROOKMAN: Then, on to Monitoring and
14 Reporting Requirements. You see two bulleted items
15 there, the first one being, "What reporting
16 requirements should the Department impose?" Maybe we
17 should start with that one, that one alone.

18 Peter.

19 MR. SABA: Peter Saba. I think that the
20 Department should have standard kind of notice
21 provisions that you would see in a loan agreement or in
22 an insurance contract, the notice of the occurrence of

1 an event or either a regulatory delay or litigation.
2 But as far as additional reporting requirements, we
3 don't think that there is -- that any additional
4 reporting requirements basically would be duplicative
5 and unnecessary. You should work out with the NRC, you
6 know, access, the extent of reporting that is being
7 provided there, and not create additional duplicative
8 reporting requirements but have these notice provisions
9 in the event of, you know, the insurance policy being
10 triggered.

11 MR. BROOKMAN: So, would that be a burden on
12 the Department, to seek it out from the NRC, or a
13 burden on the applicant to -- the sponsor, to provide
14 some form of notice, whatever, to the Department of
15 Energy?

16 MR. SABA: I think there should be
17 requirements in the standard form contract for notice
18 of events, but as far as regular reporting on the
19 progress of construction and all of that, that's
20 provided to the NRC and they should just -- you know,
21 it should be between the Department and the NRC, if the
22 Department believes it needs additional information in

1 that regard.

2 MR. BROOKMAN: Additional -- Richard.

3 MR. MYERS: In the statute, there is a
4 requirement -- I think it's Subsection (f) for the
5 quarterly reports to Congress. I would urge the
6 Department to take a relatively active role in trying
7 to -- and we can certainly provide you with some
8 thoughts. Specifying -- I know there is an NRC report
9 to Congress, but given that you are the insurer, it
10 seems to me that it's within your prerogative to
11 specify the kinds of information that you would like to
12 see in those quarterly reports to safeguard the
13 taxpayers' legitimate interest here.

14 MR. BROOKMAN: Do any come to mind for you
15 that pop out?

16 MR. MYERS: Well, no. I think Peter has put
17 his finger on it. Anything that might conceivably be a
18 leading indicator for what will turn into a covered
19 delay, the sooner that that gets surfaced and the more
20 transparent the ITAAC approval and review process, I
21 think the better off the licensee is, the better off
22 the insurer is. I'm not sure where that leaves NRC,

1 but I think all parties -- I take it as a ruling
2 assumption that all parties to this will want to
3 behavior responsibly. So I think it's to everybody's
4 benefit.

5 MR. BROOKMAN: Other comments on reporting
6 requirements? This is your chance to specify what you
7 think should be in or out. John.

8 MR. MATTHEWS: The schedule.

9 MR. BROOKMAN: The schedule?

10 MR. MATTHEWS: Yeah. Updates to the schedule
11 that we talked about before.

12 MR. BROOKMAN: We've heard that before today.
13 More than once. Yes, okay.

14 Other thoughts; additions or things that
15 should not be included?

16 (No response.)

17 MR. BROOKMAN: No? Okay. Let's move on,
18 then. "In what monitoring activities should the
19 Department engage to ensure that the project is
20 progressing as scheduled?" Richard addressed that at
21 least in part. Your schedule addressed that at least
22 in part, John.

1 Other comments related to the second
2 question? You looked like you had a comment? No? Not
3 at this time.

4 No additional comments based on this
5 particular question and in what monitoring activities
6 should the Department engage to ensure that the project
7 is progressing as scheduled? Maybe we've covered it
8 adequately.

9 MR. G. MILLER: Doug, this is Gary Miller. I
10 think the issue is, you could come to the applicant and
11 you can see what our schedule is, but based on the
12 NRC's comments earlier, what their schedule is is what
13 you would really like to see to be a leading indicator
14 that there is not going to be a tidal wave of ITAACs
15 left right before fuel load that's going to slow you
16 down and put you in a pause. Without a schedule
17 published by the NRC that they stand behind, it's hard
18 to do this. Because you will just be seeing the
19 applicant's schedule.

20 MR. BROOKMAN: Do you have a perspective?
21 Would you prescribe what the role of the Department of
22 Energy would be with respect to that?

1 MR. G. MILLER: Well, if you go back to the
2 way it's written -- the statute is written, it talks
3 about -- the key wording is the -- "the failure of the
4 Commission to comply with schedules for review and
5 approval of ITAACs established under combined license."

6 So the way it's written, it says that they have to
7 make a judgment that the Commission has failed to
8 comply with the schedules. And so we get back into
9 this impasse of, well, what schedule are we talking
10 about.

11 MR. BROOKMAN: Without a schedule.

12 MR. G. MILLER: Right. I've read this many
13 ways, but the way I read this is, the Commission to
14 comply with schedules for the ITAAC, which are
15 established under the combined license. The first time
16 I read it, it was to comply with schedules that are
17 established under the combined license. In your
18 license applications, you will submit a schedule for
19 construction. But after I read it several times,
20 trying to think of where the logic statements were, I
21 believe it to be -- it's failure to comply with the
22 schedules for review of the ITAACs.

1 So, getting back to this premise, you can
2 come and ask the applicant what our schedule is, but we
3 will not be able to tell you what we anticipate for the
4 NRC review of that without a schedule on their behalf.

5 The current concern, obviously, is ITAACs piling up
6 right before fuel load.

7 MR. MATTHEWS: This is John Matthews from
8 Morgan Lewis. I mean, the statute says review -- with
9 schedules for review and approval of ITAAC. So that
10 has to be a schedule for the NRC to review and approve.
11 It can't be anything else. It can't be the licensee's
12 schedule.

13 MS. KRAY: Right. Marilyn Kray from Exelon.
14 So, obviously, Part 52 was written well in advance of
15 the Energy Bill, and clearly the NRC staff couldn't
16 have been expected to anticipate this. But then -- so
17 that's why it doesn't now say these are the
18 requirements for the staff to establish a schedule.
19 But now that the statute and the Energy Bill provisions
20 are out, I think it then causes them to say, well, gee,
21 part of that implementation will require a schedule to
22 be developed.

1 So that's where I think the change is needed
2 to address the fact that something new has come along,
3 and just, I think, in the way of practice. I'm not
4 referring to any kind of rule-making requirements or
5 anything like that, but rather, gee, how is it that we
6 can measure progress. I think the only time you can
7 measure delays is by having a reference schedule.

8 MR. BROOKMAN: Is the burden on the NRC or
9 the Department of Energy?

10 MS. KRAY: I would think it would be on the
11 NRC.

12 MR. DAVIS: I'd like to make a comment on
13 that.

14 MR. BROOKMAN: Please say your name.

15 MR. DAVIS: Ed Davis, Pegasus Group. I just
16 might add, there is a lot of history here that goes
17 back a few years before the licensing reform
18 legislation was passed in '92 as part of the first
19 energy bill.

20 But the NRC used to publish schedules called
21 Rainbow Books and there was a time not too long after
22 Three Mile Island where there was an incredible number

1 of powerplant licensing delays.

2 I would think that under this standby support
3 facility the Department has an obligation that they
4 should carefully and actively monitor the NRC schedule.

5 They should assume a role of an ombudsman to make sure
6 that these plans for the license are on a timely basis,
7 predictable, timely basis. That would be my comment.

8 MR. BROOKMAN: Thank you.

9 Additional comments? Please. John.

10 MR. MATTHEWS: John Matthews. I would add
11 that it seems to me that if DOE is going to write \$2
12 billion worth of coverage keyed off of an NRC schedule
13 for review and approval of ITAAC that the Department
14 should have significant leverage to convince the NRC
15 that that requires the NRC to have one.

16 MR. BROOKMAN: Okay. Additional comments on
17 that subject or any different view? Either one would
18 work. No? Okay.

19 So then, I think -- have we covered them
20 both? I think we have. Okay. So I'm moving on, then,
21 to Disagreements and Dispute Resolution.

22 We have already had some comment on dispute

1 resolution mechanisms already this morning. People
2 have mentioned arbitration activities, made reference
3 to other kinds of dispute resolution programs that are
4 done elsewhere that might be a model. So we should try
5 and develop this as best we can for the Department's
6 benefit.

7 Dan, did I see -- yes, Dan.

8 MR. KEUTER: I guess, just on the schedule
9 issue, I guess my concern is, if we are going to force
10 the NRC to have a schedule and they want to make sure
11 that they are never critical path, I'm afraid they
12 might have too much fat in that schedule and it might
13 actually backfire on us.

14 To me, the schedule should be whatever the
15 utility -- you know, that the ITAAC should keep up with
16 the construction completion plan, and if the NRC can't
17 meet that schedule, then it's a delay.

18 MR. BROOKMAN: I see, I see. Now I get it.
19 I understand what you're saying.

20 MR. KEUTER: So, I mean, I think the sponsor
21 should set the schedule.

22 MR. BROOKMAN: Should establish the schedule.

1 MR. KEUTER: Based on construction,
2 completion, and testing. And then, if the NRC, for
3 whatever reason, can't meet that schedule, then it's a
4 delay.

5 MR. BROOKMAN: Does that work for you, John?
6 Does that satisfy your need for a schedule?

7 MR. MATTHEWS: We definitely need to have a
8 schedule that DOE and the sponsors agree to under the
9 standby support.

10 MR. BROOKMAN: Okay. Whoever brings the
11 first schedule to the table.

12 MR. MATTHEWS: I think it would be a good
13 idea if we got NRC on board with that schedule.

14 (Laughter.)

15 MR. BROOKMAN: Okay.

16 MR. KEUTER: This is Dan Keuter. I think the
17 onus should be back on NRC of why couldn't they meet
18 that schedule.

19 MR. BROOKMAN: After there is a schedule
20 that's established?

21 MR. KEUTER: Correct.

22 MR. BROOKMAN: Yes.

1 MR. KEUTER: And that schedule could be
2 updated and should be in the quarterly report, because
3 if there are construction delays due to our own fault,
4 then, you know, that should be the revised schedule.

5 MR. BROOKMAN: Okay. I'm not sure -- that
6 was Dan Keuter.

7 Okay. So then, I appreciate those additional
8 comments. You raised it back up again. Any other
9 issues related to monitoring and reporting before we
10 move on to dispute resolution?

11 (No response.)

12 Discussion: Disagreements and Dispute Resolution

13 MR. BROOKMAN: Okay. So I see none. So now
14 we're moving to Disagreements and Dispute Resolution,
15 which is the last series of questions, I think. I
16 think the Department would really benefit from your
17 description of the models that have been used elsewhere
18 that have been effective, the different ways that
19 things like this get resolved.

20 You can see the two bulleted questions: "How
21 should the Department resolve disputes under the
22 standby support contract?" Quite broad. And, "What

1 dispute resolution provisions should be included in the
2 applicable regulations or contracts?"

3 So I hope that -- yes, please.

4 MR. GALLO: Joe Gallo again. The dispute --
5 I don't want to use the word "dispute." The
6 disagreement procedure should be simple and quick. The
7 most obvious approach to handling disputes under a
8 contract with the Department of Energy is to use the
9 disputes clause that's provided for in the regulations.
10 Litigation under the disputes clause is neither simple
11 nor quick, as both the Department and the utilities who
12 are involved in lawsuits well know.

13 So I think a different approach has to be
14 taken. I'm not enamored with the process of
15 arbitration. I think there are two possibilities that
16 I would suggest the Department look into. One is for
17 the Secretary to refer to FERC the job of deciding
18 disagreements under this support agreement process.

19 MR. BROOKMAN: To the commissioners
20 themselves?

21 MR. GALLO: Well, no, the commissioners have
22 all kinds of ALJs who do fact-finding, but an ultimate

1 decision of the ALJs are advisory, and they are
2 provided to the commissioners for final decision. But
3 they have the benefit of being disengaged from normal
4 DOE activities and, secondly, they know the utility
5 industry well, since they handle rate-making on an
6 interstate commerce basis. I think that would be a
7 better option.

8 The other benefit that it has, of course, is
9 that it could be -- if one assumes that the head of
10 FERC and the secretary would agree on this process, it
11 could be handled rather quickly.

12 One other approach that I would suggest to be
13 considered is establishing the equivalent of the
14 Defense Nuclear Facilities -- Safety Facilities Board.

15 The function of the board would not be safety matters
16 but instead it would be the subject matter of the
17 support agreements. That would have the benefit of
18 being staffed by both government and non-government
19 people knowledgeable about these issues who could come
20 from both the private sector and the utility industry
21 and elsewhere, and the reactor construction people, as
22 well as government people involved with these kinds of

1 activities.

2 The bottom line is, is that the disputes
3 clause should be forgotten as an option.

4 MR. BROOKMAN: Thank you.

5 Yes, please.

6 MR. TWILLEY: Bob Twilley from Areva. Before
7 we get to discussing disputes, I think perhaps we
8 should be discussing a claims process because what
9 we're talking about is an insurance program. Before
10 you get to disputing anything, first you have to make a
11 claim and you have to substantiate that claim. So I
12 think maybe that deserves some discussion before you
13 worry about how you dispute it.

14 MR. BROOKMAN: Would you like to start on
15 that? Would you mention a model for claims?

16 MR. TWILLEY: Being a disaffected insurance -
17 -

18 (Laughter.)

19 MR. BROOKMAN: Would you like to withdraw --

20 MR. TWILLEY: No, no, no.

21 (Laughter.)

22 MR. TWILLEY: I point that out. I think

1 there needs to be some written mechanism where the
2 Department is put on notice, if you will, that a claim
3 is being made. The claim has to be quantified and
4 substantiated in some manner in terms of time, in terms
5 of money. And then the Department has to have, in
6 turn, a process for processing that claim and turning
7 around and making a payment or making the insured whole
8 for the loss.

9 I guess I would recommend -- you know, that's
10 something that is done every day, whether it is health
11 insurance, automobile insurance, life insurance,
12 whatever. There is a ton of models out there, and in
13 fact there are models in the construction industry.
14 Perhaps that should be looked at and then taken on
15 board and integrated into a process.

16 MR. BROOKMAN: Thank you.

17 Peter.

18 MR. SABA: Peter Saba. Picking up on the
19 comments that have been made, I agree with Bob.
20 Firstly, we need to do the claims process. There needs
21 to be a defined timeline for the Department once it's
22 been -- once a complete claim has been submitted where

1 there has to be, again, a timeline, whether it's 30, 60
2 days, or whatever it is, for them to make a decision on
3 the claim. And then, if there is a dispute on the
4 claim, that's when we get into the topic here.

5 I agree that the disputes clause is not where
6 we want to be, but similarly, anything else that is,
7 you know, a government administered administrative and
8 litigation process will make this, in my view,
9 unbankable. It's not going to be financeable. You
10 know, what we're looking at is payment of principal and
11 interest to the investment community, and if they think
12 they are in for the multi-year dispute process, then
13 it's not worth what we are doing.

14 So I think that only leads us to fairly
15 standard commercial arbitration. There are, you know,
16 lots of arbitrators that are experienced in
17 construction and insurance type issues like this, non-
18 governmental, non-sponsor-related, and that would be
19 the best way to move forward.

20 MR. BROOKMAN: Thank you.

21 Yes, Bill.

22 MR. HOLLAWAY: The trouble with arbitration

1 is that it's supposed to be binding on both parties.
2 That is, the decision of the arbitration group query --
3 if the government agency, like the Department, will be
4 willing to commit to that.

5 I agree with a lot of the comments,
6 especially over here, about initially initiating a
7 claim process.

8 One thing I forgot to mention is that
9 typically there is a contracting officer under a
10 government contract. I don't think the person in
11 charge of handling the claims that might be submitted
12 for substantiation should be a procurement person. It
13 ought to be a program person who understands generally
14 what the objectives are under this section, and more
15 importantly, is willing to engage in a meaningful
16 resolution of the process.

17 MR. BROOKMAN: Thank you.

18 Yes, John.

19 MR. MATTHEWS: John Matthews from Morgan
20 Lewis. Put me down for voting for fast-track binding
21 arbitration by a third party. Department of Energy
22 does have an interim policy on alternative dispute

1 resolution as required under the statute that permits
2 agencies to agree to binding arbitration.

3 I think that that is what we ought to use
4 here, and have an independent third party panel of
5 arbitrators quickly selected and go through a fast-
6 track policy -- process, rather, to disposition claims
7 so that the payments can begin to be made to lenders.
8 I think that is the only way you are going to have a
9 bankable standby support program.

10 MR. BROOKMAN: Okay. Thank you.

11 Additional comments on the process and the
12 sequencing of claims and disputes being addressed?

13 (No response.)

14 MR. BROOKMAN: So then -- yes, John.

15 MR. MATTHEWS: I have one more comment. That
16 is, it seems to me that there is a burden of production
17 to make a claim or a prima facie case of a claim that
18 the sponsor has in that binding arbitration. It's my
19 understanding, under traditional insurance law, it's
20 the insurer's burden to prove an exclusion.

21 So, for example, here it should be the burden
22 of -- the burden of proof should be on DOE to prove

1 that the delay is an excluded delay as opposed to a
2 covered delay, once the sponsor has made the requisite
3 prima facie showing.

4 MR. BROOKMAN: Any other thoughts along those
5 lines about where the burdens lie and how those would
6 unfold?

7 MR. DAVIS: I would just agree with the point
8 that was just made. Pegasus Group, Ed Davis. I think
9 it is a very good point. The burden ought to be on the
10 Department for their exclusion.

11 MR. BROOKMAN: Thank you.

12 Okay. So, to the last question, then, which
13 is, "What dispute resolution provisions should be
14 included in the applicable regulations or contracts?"
15 We've addressed that at least in part. I want to give
16 everybody a chance to weigh in finally on this subject.

17 PARTICIPANT: We've addressed it.

18 MR. BROOKMAN: Yeah, I think we've addressed
19 it. Have we addressed it fully? Everybody has had
20 their say on the subject? I see a lot of heads nodding
21 up and down "yes." Okay.

22 MR. MATTHEWS: I just have --

1 MR. BROOKMAN: John, please.

2 MR. MATTHEWS: One quick point is that -- and
3 I think we will provide some specifics in writing on
4 some recommendations for what procedures should be in
5 place. But I would suggest that either in the
6 regulations or the contract there should be specific
7 procedures in place for, for example, if it's binding
8 arbitration, as to, you know, the number of -- the
9 amount of time it's going to take to get resolution,
10 how long the hearing would be, the limitations on
11 discovery and what not.

12 I think that one can build several criteria
13 that ought to be in the contract and in the regulations
14 and also key off of American Arbitration Association
15 rules for fast-track arbitration as well.

16 MR. BROOKMAN: Okay. Thank you.

17 Additional comments?

18 (No response.)

19 MR. BROOKMAN: Okay. So then, I think we're
20 finished with this slide.

21 The next few items on the agenda are as
22 follows. I wish now to hear from any of you, if you

1 have any additional issues, any additional comments
2 that didn't fit effectively into the structure of the
3 day's work. So we'll take those in just a moment.

4 Following that, I'm going to look to the
5 Department to describe next steps, when they think the
6 transcript for this meeting might be available, when -
7 things such as that. Then -- and any other action
8 items. Then I will turn it back to the Department for
9 closing remarks, after we hear from you first.

10 Discussion: Other Issues and Final Comments

11 MR. BROOKMAN: Any other issues that you
12 collectively wish to raise at this time for comment?

13 Peter.

14 MR. SABA: Peter Saba. We discussed this
15 generally, and I want to just reiterate that the
16 Department's focus needs to be not just on sponsors and
17 this issue of, you know, causation and fault, but to be
18 thinking about this in the broader context of, you
19 know, what this insurance is going to be used for,
20 which is to be able to go out and get financing from
21 third parties that aren't going to be a party to the
22 initial contract because the contract is with the

1 sponsors.

2 So there is, you know, that issue of making
3 that bankable, and then what comes out of that also is
4 that those third party lenders will want to be able to
5 have an assignment of the contract and may in fact
6 actually want to get a consent or direct agreement with
7 the government with respect to that as part of that,
8 you know, ability to make these contracts financeable.

9 MR. BROOKMAN: Thank you.

10 Any other comments, points of emphasis,
11 things that didn't get covered sufficiently already?
12 Yes.

13 MR. HOLLAWAY: Bill Hollaway with Skadden. I
14 wanted to talk a little bit about a process. I was at
15 a meeting with David Hill last week or the week before,
16 and this issue came up about how we proceed. Comments
17 are going to go in in about eight days, and the NOI
18 asked a lot of very broad questions because the statute
19 leaves a lot to be developed. You will get a lot of
20 comments. But as I understand it, the next step is an
21 interim final rule. As I understand it, there is not a
22 plan to be a noper before that point.

1 Therefore, at the point we're at, there is a
2 lot to be defined to get to the interim final rule.
3 What I would like to propose and hope that you think
4 about would be additional industry involvement in the
5 development of what you will ultimately come out with,
6 including, for example, the type of contract that might
7 be attached.

8 I know that in other proceedings -- I work
9 with the FERC as well -- that we have had rule-makings
10 where similar types of things were done and industry
11 actually went off and put together the types of
12 agreements that would work, identified where issues
13 were that people could come to resolution on, and those
14 were submitted to the agency, at which point the agency
15 could throw them away or take them or use them or
16 whatever. There was no binding requirement on the
17 agency.

18 But it allowed in this case the Department to
19 get from where you will be on the 23rd of December to
20 where you need to be with the interim final rule, to
21 have something that when you float it people will look
22 at it and go, that makes a lot of sense.

1 So what I'd like to propose as a process is
2 continued industry development where there is possibly
3 some sort of a group of a number of these people,
4 through NEI or through some other group, where we sit
5 around in a room and hash some of these things out.
6 What are the specifics. You've heard a lot of good
7 ideas, but have people that think about and work on
8 these issues where it really matters to them and come
9 up with something that they can put into the
10 Department.

11 I hope you will think about that as a
12 process. From our end, Richard, maybe you can think
13 about how we come back to the Department and propose
14 how to make that work. Again, it's a one-way street.
15 You can take it or not take it, but it would be very
16 useful to both the Department and the industry.

17 MR. BROOKMAN: Thank you.

18 MR. SHAW: Marvin Shaw, DOE. DOE is amenable
19 to any input we get from industry. Of course, the
20 sooner you get it, the better. We have a pretty tight
21 time frame. Some of you are aware, some not, that
22 after we draft the rule at the staff level, there is a

1 concurrence process throughout the agency, and then it
2 goes to OMB, which, on a major rule, takes at least 90
3 days. We're hopefully going to expedite that, but now
4 it sounds from here to May. It's a very extensive time
5 period, but in fact with OMB review things have to move
6 pretty quickly. So the sooner, the better.

7 We greatly appreciate any input. We'll look
8 at it very seriously, and hopefully we can go from
9 there.

10 MR. BROOKMAN: Any additional final comments?

11 Richard.

12 MR. MYERS: Could I -- if I could follow up
13 on that, and I appreciate, Marvin, your willingness to
14 consider input. I was -- as this language was being
15 developed, I was concerned about the process that was
16 laid out of the interim final rule and then straight to
17 a final rule, because we have, in other proceedings,
18 had some difficulty, once an interim final rule is
19 promulgated, persuading the Department to change that
20 interim final rule.

21 I'm thinking of the guidelines on the 1605(b)
22 Voluntary Greenhouse Gas Reporting Program, where we

1 failed completely to influence the interim final rule.

2 I would like to propose to you and suggest to
3 you that we find a way in an open forum, rather than
4 just you saying give us your input, to create, perhaps,
5 a more structured process where the comment period
6 closes on December 23rd and you take a month or
7 whatever the appropriate period of time is to reflect
8 on the comments.

9 I'm not suggesting have a workshop, but it
10 may be a meeting in your offices with interested
11 parties -- and we can certainly facilitate industry
12 input -- would be appropriate so that we can ventilate.

13 You can come back to use with "You can't surely have
14 meant that" or, you know, an opportunity to explore
15 areas of ambiguity.

16 I think more formal engagement rather than
17 just a period of quiet between the 23rd of December and
18 the 8th of May I would feel more comfortable with. We
19 will certainly do whatever we can to accommodate your
20 schedules and the constraints you are operating under.

21 We certainly don't want to do this behind closed
22 doors. In fact, I would almost, as would you I know,

1 insist that this be publicly noticed and available to
2 everybody. But it may be that we -- even though the
3 statute doesn't require it, that we want a more --
4 somewhat more formal process of interaction.

5 MR. BROOKMAN: Thank you.

6 MR. SHAW: Marvin Shaw, DOE again. As you
7 are aware, the statute expressly required the interim
8 final rule. We really can't vary from that. We
9 considered doing a notice of proposed rule-making, but
10 given the time constraints we thought that this NOI
11 served a lot of those purposes and having the workshop
12 here also provided some open-ended process to provide
13 -- allow you folks to provide a lot of input.

14 Of course, that was not required in the
15 statute or anything like that. We decided that it
16 would be worthwhile to have this type of input.

17 Given the time constraints, we will consider
18 any requests for meetings and such. As Mr. Myers said,
19 you know, we have to have things open to the public and
20 it can't be behind closed doors. Any meeting would
21 have to be docketed in the public rule-making docket so
22 that other people would have a chance to look at that.

1 And also, at our level here, we really can't
2 make those decisions. So that's something that at some
3 point you can make the request and the decision-makers
4 at DOE would consider those requests.

5 MR. BROOKMAN: Additional comments? Richard.

6 MR. MYERS: You would not be offended if we
7 registered that request formally with the Department?

8 MR. SHAW: You can answer it.

9 (Laughter.)

10 MR. WADE: Chuck Wade, DOE. No.

11 MR. BROOKMAN: Thank you. He had the
12 microphone.

13 So then, additional and perhaps final
14 comments before I turn it back to the Department?

15 (No response.)

16 MR. BROOKMAN: Okay. I see none additional.

17 Then, Rebecca Smith-Kevern.

18 Next Steps/Action Items and Closing Remarks

19 Rebecca Smith-Kevern

20 MS. SMITH-KEVERN: Thank you all for coming,
21 especially sticking it out. It's snowing and icing,
22 for those of you who are catching planes and things

1 like that.

2 Your input is sincerely appreciated. We
3 anticipate a tough road. There is a lot of stuff here.

4 You pointed out the interaction between the other
5 parts of the act. Lots of things to be considered,
6 especially given the objective -- I think it was
7 pointed out several times -- of the policy is to get a
8 new plant built. So that's -- I appreciate all of your
9 time.

10 I want to emphasize, as Doug has been doing
11 throughout the meeting, that your written comments are
12 also solicited. They're extremely important. The
13 specificity -- the more specificity, the better.

14 We have given you the address for e-mailing
15 the comments, standbysupport@nuclear.energy.gov. There
16 is also an address to mail them. In the interest of
17 time, it might be helpful -- it would be helpful if you
18 would e-mail us your comments. If you also want to put
19 them in the U.S. mail, that's fine. But we will
20 definitely get them faster by e-mail. The comment
21 period closes next Friday, the 23rd.

22 The transcripts of this meeting are going to

1 be posted on our website, probably not until the middle
2 of next week, until we get them from the court
3 reporter, and you know, do the necessary computer
4 things.

5 The other thing we're going to be doing is
6 publishing -- posting the handouts from this meeting on
7 the website.

8 I think that's about it. Again, thank you
9 all for coming. I'd like to thank Doug for doing a
10 wonderful job, and the team that set this up, and our
11 attorneys.

12 So, thank you all for coming, and we look
13 forward to moving forward with you on this.

14 (Whereupon, at 2:17 p.m., the meeting was
15 concluded.)

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