

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

- - -
MEETING WITH DOE ON EXTERNAL
REGULATION OF DOE FACILITIES

- - -
PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Monday, March 31, 1997

The Commission met in open session, pursuant to notice, at 2:30 p.m., Shirley A. Jackson, Chairman, presiding.

COMMISSIONERS PRESENT:

- SHIRLEY A. JACKSON, Chairman of the Commission
- KENNETH C. ROGERS, Commissioner
- GRETA J. DICUS, Commissioner
- NILS J. DIAZ, Commissioner
- EDWARD McGAFFIGAN, JR., Commissioner

STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

- JOHN C. HOYLE, Secretary of the Commission
- KAREN D. CYR, General Counsel
- THOMAS GRUMBLY, Under Secretary, DOE
- RAY BERUBE, Deputy Assistant Secretary for Environment
- RAY PELLETIER, Director, Office of Environmental Policy and Assistance
- MARY ANNE SULLIVAN, Deputy General Counsel for Environment and Civilian and Defense Nuclear Programs

P R O C E E D I N G S

[2:30 p.m.]

CHAIRMAN JACKSON: Good afternoon, ladies and gentlemen.

Today, the Commission will be briefed by officials of the U.S. Department of Energy on its proposal to have its nuclear activities to be regulated externally by the Nuclear Regulatory Commission. The Department made an announcement on December 20 of 1996 that it intended to submit legislation to the Congress to transfer oversight of nuclear safety to the NRC. The DOE announcement was made after the completion of a study by an independent advisory committee and a follow-up study by a DOE working group on external regulation.

The Commission considered the matter of NRC's oversight of DOE nuclear safety as part of its strategic assessment and rebaselining initiative. Public comment was solicited on the issue and the public strongly encouraged

the Commission to pursue the external regulation of DOE nuclear safety.

The DOE's working group recommendation that NRC be given regulatory oversight of DOE nuclear facilities, along with the strong public support that NRC should have that oversight responsibility, influenced the Commission's final decision, which was issued just this last Friday on this

4

matter and should be available here.

Following the release of the Commission's final decision on Friday, March 28, I did have the opportunity to speak with Secretary Pena. At that time, he had not been briefed on the subject but felt that there was a lot of forward momentum for this proposal as well as Administration support. Both the Secretary and I agreed that we will be in contact very shortly. In fact, we will meet to discuss the next steps in this initiative.

The Commission endorses NRC's taking responsibility for the regulatory oversight of certain DOE nuclear facilities. The Commission has directed the NRC staff to establish a task force to identify the policy and regulatory and legislative issues that need to be resolved for this initiative to be successful. The Commission has also instructed the staff to develop a joint memorandum of understanding with the Department of Energy to establish the framework for the legislative and follow-on phases of the project and I, myself, will be writing a letter to the Secretary, which I indicated to him in our discussion, laying out the Commission's endorsement and basic position in these matters, as well as some specifics as to how we might go forward.

Many administrative, technical and legal issues will have to be resolved if NRC is to carry out the

5

Department's proposal. Today's briefing will be a first step in gaining a better understanding of the issues as DOE sees them that need to be resolved between the two agencies if the proposal moves forward. We are looking forward to hearing more details about the DOE proposal.

If none of my fellow commissioners have any comments, Mr. Grumbly, would you please proceed? And it's good to see you.

MR. GRUMBLY: Nice to see you, Madam Chairman. And I would like to express appreciation to you and to the rest of the Commission for the opportunity to meet this afternoon to talk about this particular proposal.

I am pleased to be able to announce that subsequent to the phone call that you had with Secretary Pena that we were able to brief him last Friday and that we came away from the briefing with his general support for the concept of NRC regulation of DOE. He encouraged additional efforts between DOE and NRC to further define the scope, time frame and other elements required for a smooth transition to NRC regulation but I wanted to emphasize his continued support of the Administration's position in this area.

We acknowledge receipt of the Commission's March 28, 1997, memorandum on this matter. We welcome, obviously, the Commission's endorsement. We understand and agree with

6

the conditions that were set forth by the Commission in that memorandum and we look forward to working with the NRC task force being created by the Commission to resolve many of the policy, legal and technical issues in this very ambitious

but, I think, right proposal to improve the credibility and safety of our activities.

I believe each of you has a briefing in front of you with some briefing charts that I am going to use. That and hopefully this will not take too long and we will have plenty of opportunity to respond to questions. Let me just say it is quite odd to look up and see my own picture.

[Laughter.]

CHAIRMAN JACKSON: That's the way we do things around here.

MR. GRUMBLY: What we are going to cover here today is a little bit about the current regulatory framework, the historical context, some of the key considerations that went into our views as we put this proposal together. The specific NRC phased regulation proposal, how we see this happening in a context of regulated facilities in the DOE becoming many fewer over the next five to ten years, talk a little bit about our perspective of the annual cost to NRC, summarize the benefits of external regulations as we see them, lay out a future schedule and then talk about the legislation that we . 7
see happening.

I think you and probably most of the people in this room understand that DOE has changed dramatically in the last 10 years, that operating from what was just about 10 years ago or the end of 1986, from an environment in which we were totally self-regulated, we have changed rather dramatically over the last decade.

In the environmental area, we are almost entirely externally regulated at the moment by a combination of the United States Environmental Protection Agency, state and state regulatory agencies. In the worker protection area, we are still currently self-regulated although we have a proposal that has just come from the National Academy of Public Administration that reinforces a decision that Secretary O'Leary made early in her administration and that is that we ought to work together with the Occupational Safety and Health Administration there.

And in the nuclear safety arena, we are still self-regulated with some exceptions. For example, as you know, the geologic repository is currently regulated by NRC, lucky you.

COMMISSIONER DICUS: Noted.

MR. GRUMBLY: But I think, you know, the main thing to understand is that we have been slowly but surely emerging from the cocoon of self-regulation over the last . 8
several years. What we did not mention here, obviously, is that in 1989 the Defense Nuclear Facilities Safety Board was established to actually oversee but not regulate many of DOE's defense nuclear facilities. That establishment happened at a time when the Cold War was still under way and we believe that the world has continued to change over the last seven or eight years and that it's appropriate now to begin moving in a different direction.

The historical context for this, you summarized a little bit, Madam Chairman, in your opening remarks, but just so that we get it all on the record, beginning in March of '94, there were some initial congressional proposals initially put forward by Congressman George Miller from the state of California, who was then chair of the House Natural Resources Committee, that would have resulted in external

regulation of DOE nuclear facilities.

At that time, the Administration and the Secretary responded with a counterproposal saying that we would like to put together an advisory committee in the department to take perhaps a less fevered look at this issue than sometimes can be given by the Congress. So we put together an advisory committee that was headed by former NRC Acting Chairman John Ahearn. And people, with people from around really the nuclear complex including Joe DiNunno, one of the members of the Defense Nuclear Facilities Safety Board.

9

That advisory committee reported in December 1995, crossed the Rubicon with respect to the decision that in fact we ought to be regulated by an external entity in this area but like, I suppose, many advisory committees, they didn't come up with the recommendation that we asked them for, which was what should be the agency that should do this.

So in January of '96, the then-Secretary O'Leary asked Ray Berube, on my right, the Deputy Assistant Secretary for Environment, Safety and Health, specializing in the environment, to work with me and a group of my colleagues in the department to come up with a recommendation to her on, all right, which entity, which combination of entities should actually get into this external regulation area.

In December we reported and the former Secretary selected the phased NRC option that we are going to discuss today and, as I indicated, just this past Friday we had the opportunity to brief Secretary Pena and he supports the direction in which we are going.

The key considerations, and these are really your key considerations that you sent to us I believe in early 1996 or late in 1995, I can't remember, about some of the considerations that you thought we ought to consider and we took these very seriously as we went through the process of coming up with our own proposal.

10

First, that there be a single nuclear facility regulator, once we got to the end of this process. We think that that is the right place to be. I think the issues of how quickly one can get there are things that we had to consider very much in the forefront of our deliberations. That there be a flexible regulatory approach. And I must say one of the things that we emphasized with the new Secretary on Friday and that he was very clear about in discussions with us is that it would be necessary for this proposal to be successful that both the NRC and the DOE probably had to change some together, if this were going to work. That the sort of facilities that the Commission is used to regulating most thoroughly, the sort of commercial nuclear facilities, are somewhat different than some of our more exotic facilities, such as Rocky Flats and a few other places that we have --

CHAIRMAN JACKSON: Having been to Hanford.

MR. GRUMBLY: Right.

Nonetheless, I think the notion that there probably is room for us both to improve our approach is something that we need to keep in mind. Clear legislative authorities, who can argue with that? Obviously, we need to do that. I think one of the issues that is on the table now is whether even to get started whether we need some

11

additional legislation to get started in this.

Adequate transition planning, I have to say that Ray and I and the rest of the task force, having lived for some time with the transition from DOE self-regulation on the environment to the kind of regulatory situation that we have now, felt very strongly that we did not want to get into the same type of situation that we encountered early on in the environmental area, which is to say on day zero you are self-regulated, on day one you are externally regulated, on day two you are so out of compliance that you have to sign up to all of these onerous agreements that then tie up your budget for the next 37 years.

So we were very clear in thinking about this that we needed to achieve adequate transition planning and have a realistic time frame and scope so that we could bite this apple in a way that we could all digest.

You obviously also talked about the need for adequate resources and, of course, that's on both sides of the fence. That is both in terms of the Commission's ability to have the resources to do the kind of regulation that is necessary so that you can be the kind of credible regulators that you need to be and, also, the resources for us to actually make whatever improvements to come into compliance with what would need to be done.

Then, finally, opportunities for public

. 12

involvement. This is one of those opportunities for public involvement but I really took this as a much -- we really took this as a much wider piece than that. That is that we believe, and I certainly believe very strongly in this, that the time is past when the federal government can operate under the covers of secrecy, that everything that gets done has got to be done out in the bright light of day. It makes it harder sometimes but that's just the way it is. So having this sort of accountable public environment in which we are all responsible for what we do is absolutely a sine qua non to moving forward.

We came up with a phased regulatory plan in which we have tried and, of course, there were a lot of different options that we considered in putting this together, ranging from do it now, don't do it at all, do it with the Defense Board, do it with the NRC. You know, a variety of options that expanded and contracted and we finally came up with this, around which we got substantial consensus in the DOE.

I mean, when I say substantial consensus, I really don't think there was maybe but one person on the Committee who had a different view ultimately when we came out, that this was the right option to propose at that time and place. And just to not be too long-winded about it, the options are that this would be a 10-year -- the selection was that this would be a 10-year phase in. We can talk about whether 10

. 13

makes sense or not but you will see that there is some analytic basis for it when we get to the next slide.

In the first five years, the Commission would pick

up selected defense programs, environmental management and all energy research and nuclear energy, nuclear facilities for regulation. That in the six- to ten-year time frame, there would be regulation of selected defense program nuclear facilities and all environmental management, energy research and nuclear energy, nuclear facilities by the NRC. After 10 years, the total package would be here.

With respect to the Defense Board recognizing the

really substantial expertise that the Defense Board and the staff had, we felt that it would be appropriate that over the next five years that we retain current oversight by the Defense Board of the current DP and EM facilities while we got them into shape to actually transfer them to NRC.

We don't want to have a situation where we have a huge cliff on the day when most of these facilities are taken over. We want to try to work over the next five years, just to pick the number, five years plus whatever amount of time it takes to get legislation in this area so that really by the time most of these facilities, however many there are, switch to the NRC, there really will be a relatively smooth transition and not a huge gradient in terms of what's needed to make things happen.

14

In the 6 to 10-year period of time the Defense Board would oversee only the defense programs at nuclear facilities. Nuclear explosive safety, by the way, would stay under all of these options with the Department of Energy. We're not asking you to regulate the actual development and testing, whatever form that testing would take, of DOE's nuclear weapons facilities, and I suspect that one of the areas that our working groups will have to explore is exactly which facilities fall into that category and which would fall into other defense programs facilities, but I think that's something that's not totally clear yet and something that we need to get straight.

And finally, after the 10-year period of time, the very talented members of the Defense Board staff would in fact merge with your colleagues at the NRC and the Defense Board itself would dissolve, having I think in that period of time been in existence for about 18 years, gone through several different transformations, really helped improve dramatically the safety in the DOE complex, and I think really unlike many organizations in the world, can be said to have done the job that it was set up to do.

If you look at the next slide, one of the reasons why we decided that it was important to pick a 10-year period was we took a look for cost purposes and for, you know, how big is this elephant. We took a look at how many

15

facilities were we actually talking about here, and one of the things that we discovered as we went through this -- and this is based on data from the DOE field, so this is not data that's been, you know, invented by some staff person back here at headquarters, but rather came in from the field complexes -- well, how many nuclear facilities would there be over x period of time?

Of course what you see is that right at about that 10-year point you get a relatively -- you go from nearly 600 facilities to roughly a little over 200. The vast majority of those are facilities that will be going through the so-called EM process, the environmental management process, so when you look at the chart, and I don't think we've brought that chart with us, but if you take a look at how this big blue line breaks up to the different programs, the reason why it drops off so dramatically primarily is because of the reduction in environmental management facilities that will have to be regulated.

This assumes that the decontamination and decommissioning of facilities will occur under the aegis of the Environmental Protection Agency, not under the NRC, so the actual, you know, knocking the buildings down would not be proposed to be part of the NRC responsibility as opposed

to the actual operation of DOE facilities that are there.
That's again another subject for conversation, but our

16

conception and the reason why the line goes down so dramatically is once you're in the D&D area, you're outside of the nuclear safety regulatory environment. That's consistent with where we've been with the Environmental Protection Agency for the last several years. So what we wanted to do was bring on the number of regulated facilities in such a way over time so that essentially the lines met at an appropriate place.

In terms of annual costs to the NRC this is something that I may let my colleague, Mr. Berube, talk to more, if you're interested in it, but we had a low estimate and a high estimate. We believe that there's pretty good consensus between the two agencies about what it would cost you, although this is obviously something that's much more in your bailiwick than ours, people are obviously concerned about the costs of this enterprise, but if you take a look at this costing, once you get out to the 10-year period of time, an increment of no more than \$75 to \$80 million a year, and you take a look at the declining number of facilities that the DOE has to regulate, fundamentally what we're going to do is -- as a government, now -- is, and we can, you know, there's all kinds of ways to decide how to do this, but as a government what we're going to do is fund your regulatory activities over the money saved from the closure in part of the DOE facilities as well as funding the

17

incremental costs of improving the DOE facilities by virtue of the fact that we're getting out of so many.

So the way in which we're able to deal with the budget baselines that we're presented with over the next 5 to 10 years is driven very greatly by our ability to get out of the number of facilities that we're talking about here. So this, the chart that has the blue and the red lines, the number of regulated facilities, has a tendency to drive the overall capability of the system to absorb the costs in a tough Federal budget situation, although I would have to say that, you know, to me, I'd be willing to make the case straight up to the Congress and to the OMB that an incremental 75 million a year, if that was all we were talking about, would be worth doing anyway. As we went through the process, because -- why is that? -- because of the tremendous benefits I think that the society will derive in an area that we all know to be quite divisive and problematic.

And the first is obvious, and that is that this proposal eliminates the inherent conflict of interest from the current self-regulation that we have. I think all we have to do is look at the situation that we've encountered in the last several months at the Brookhaven National Laboratory on Long Island to see how people's perceptions are problematic in an environment where you have the same

18

entity regulating itself that's supposed to be operating essentially the facility, and I think that it's just really a continuation of where we've been over the last 25 years of regulation to try to separate the regulated from the operator -- or the regulator from the operator at the same time. So I think that this is a very powerful argument that the public can understand and can fundamentally agree with. We actually believe that this proposal, taken together with

our own efforts to improve DOE's internal safety and health program, will in fact enhance the safety and health of the complex.

And one thing I want to be quite clear about. We are not talking here in this proposal about deeding over the responsibility for making DOE safe to you. That's our responsibility. The responsibility of the men and women who work for the Department of Energy is to ensure that our organization, our facilities, are safe, in the same way that it's the responsibility of the Du Pont Corporation, any of the other corporations in America, to be safe, it's our responsibility to do that, and in fact being able to emphasize the line safety responsibility of our managers to be able to ensure that they understand that it is their responsibility and not to look over the shoulders at the environment, safety, and health organization inside DOE that in fact can make our place better, our managers need to know

. 19

that they have the responsibility on the line for having these facilities be safe.

Your job is to essentially set the rules of the road so that consistently over time without regard to changes in administration, without regard to changes in the flavors of the month, safety policies that any particular administration might come up with, is to ensure the kind of consistency, predictable and stable environment within which our men and women can do their job. I'm absolutely convinced that the combination of our improving our own safety capabilities inside plus you setting fair, flexible, reasonable rules of the road, will in fact make the DOE complex safer than it is today.

I think also this particular proposal will increase the public trust and confidence because it will lead to much greater stakeholder involvement through open regulatory processes. We spend enormous sums of money complying with recommendations that are essentially developed by extraordinarily fine technical people but are developed outside of the light of day. To me that's just not where the public wants us to be these days. People need to know the whys, the wherefores, and in a budget environment that's increasingly constrained, we need to identify why we need to make certain kinds of safety investments, and those safety investments need to be open to

. 20

public comment and review.

I also think actually that enhanced safety will provide for real savings. We've seen that in a number of places that the ability to solve a problem once rather than to Band-Aid it over time really makes our places safer rather than less safe.

In terms of the future schedule, the first -- we were pessimists when we put this together. Our Secretary asked me on Friday, well, why do you think it'll take two years to get through the process, and I said well, hey, put our shoulders to the wheel, we'll probably be done a lot quicker than that. But we made an assumption that the entire process of developing, submitting, and passing legislation would take an entire Congress, and obviously we've just lived through a transition, so we've -- I won't say lost, but we've been essentially in neutral for a couple of months while we went through the process of getting a new Secretary, thereby, I think, reinforcing the fact that it could take two years to actually come up, get, and pass legislation, assuming we can rally the kind of public and

congressional support for this idea that we need. And then you can see the time line for implementation of the two phases.

In briefing people on the Hill about this, what we've really gotten I suppose is -- and I don't mean this as

21

a term from psychiatry -- we've gotten bipolar responses to this proposal. Actually we've gotten a lot more support on the Hill for advancing the pace of this exercise than I certainly would have expected going in, and obviously there are some people who believe that the DOE is somehow giving up its responsibility by going in this direction. I think that there's a path that can be charted through the Congress that will in fact result in legislation here, but I'm not going to sit here and tell you that I think that it's a slam dunk. It's going to be something that if we're serious about it is going to have to be worked at.

What I can assure you of is that Secretary Pena's support will be quite meaningful in the administration, that there is very solid support for this inside all of the councils of the executive branch, at the moment, and that there's really a good opportunity to make progress on this at this point.

What we'd like to do is -- and have been involved, and now we will get much more deeply involved in it again -- is develop the legislative proposal, and that may be proposals, that could be plural, because there may be some things that need to be done in the near term as well as in the long term about this. We'll obviously need to work together to identify the very specific facilities -- and by facilities I mean building by building, in some cases in

22

some of our complex -- that will have to be regulated. We'll want to move as quickly as we can on the energy research side of the equation, because we think there are real near-term opportunities there. We'd also like to work as quickly as we can to bring any new facilities that we're building under this arena as quickly as possible. We don't see any advantage to building new facilities and having them operate under an old regulatory or oversight framework if we're going to move to a new one.

Obviously we'd have to work together to develop the standards to be applied to each facility, with you all ultimately having the last call on this, develop the schedules for regulation, do some pilots, develop whatever draft rules are needed to regulate, and then train up the people who are necessary to do this job.

In sum, this is not an easy task to undertake. None of these things ever are, but it seems to me that whether you pick a five-year period of time or a ten-year period of time, the time is today to start working on this. So we appreciate the opportunity to chat with you.

CHAIRMAN JACKSON: Thank you, Mr. Under Secretary.

Let me begin by asking you a few questions and then I'll defer to my Commission colleagues.

This ten-year schedule, is this related to a specific plan that DOE has relative to decommissioning or

23

closing?

MR. GRUMBLY: No. No, this is not for example related to the Environmental Management Ten Year Plan that's been out on the street.

I mean it happens to coincide but it wasn't

developed that way. It was simply the Task Force's best estimate at the time of what it would take to get from here to there in a way that was orderly and that could meet the demands that we have, but it is not written in stone. There are certainly ways to accelerate it, if we should want to do that, and we think that that would be feasible too.

Frankly, if we get the sense mutually that there's sufficient political support for this, we could advance the time period quite considerably.

CHAIRMAN JACKSON: I am looking at this number.

This is on page 7 of the regulated facilities, and you reference a decreasing number of facilities.

MR. GRUMBLY: Right.

CHAIRMAN JACKSON: And I guess I am interested does this relate to a known plan for the closure of --

MR. GRUMBLY: This represents, as I understand it, and Ray Pelletier is here -- why don't you jump in, since you put the number together? -- this relates to a roll-up of an information call that we made from our field offices based upon the best currently available targets estimates

. 24

that we have from the Office of Management and Budget, but fundamentally the views of our people is that a lot of this is not related to -- within certain bounds it's not related to whether the department has 5.4 or 5.7 or 5.9 billion that, you know, while there's -- I wouldn't want anybody to hold me to a point estimate in any given year that roughly how this is how things are going to be, right?

MR. PELLETIER: That's accurate, Tom.

We simply ask the sites in five years which facilities will be expected to be shut down, which facilities you expect to continue operating for some time, and they gave us back numbers and we just plugged them into the graph.

CHAIRMAN JACKSON: Okay. Could you give me -- you mentioned D&D facilities -- facilities under Decommissioning and Decontamination would be under EPA and not NRC with the knocking down of buildings, so I would take it that the Hanford Tank Waste Remediation project is not a knocking down of buildings?

MR. GRUMBLY: No, we would envision that being one of the early entrants into this program.

CHAIRMAN JACKSON: Okay. Then if I am looking at page 8. I am going to try to go fast here. These costs are on an ongoing basis and therefore do not include what the transition costs would be?

. 25

I mean --

MR. GRUMBLY: Well, these are costs to you, now. These are not costs to the DOE system, right?

MR. BERUBE: That's right. When the Advisory Committee that Mr. Grumbly mentioned earlier was conducting its study, it requested from NRC Staff an estimate of the costs and what we did was adjust that cost estimate to reflect the decreased universe of facilities, down from 600 to roughly just a little over 200, and then we ran that very rough estimate by NRC Staff, and so there is general agreement that that is order of magnitude correct.

CHAIRMAN JACKSON: No, I understand. I guess what I am really trying to get at though is the following.

You mentioned not having cliff regulations.

MR. GRUMBLY: Yes.

CHAIRMAN JACKSON: And therefore, you know, one would have some transition period, and so you imagine during

that transition period all of the costs would be borne by DOE, is that correct?

MR. GRUMBLY: Right.

MR. BERUBE: Right. This chart is merely NRC costs, not DOE costs associated with the transition.

CHAIRMAN JACKSON: Right, but -- okay. With the transition itself --

MR. BERUBE: Getting the facilities --

26

MR. GRUMBLY: In shape.

MR. BERUBE: -- upgraded --

CHAIRMAN JACKSON: In good shape.

MR. BERUBE: -- so that we can transfer them over to external regulation by NRC.

CHAIRMAN JACKSON: Okay.

MR. BERUBE: There is a separate estimate of costs associated with those upgrades, and it is a rough estimate that we have used. It's 10 percent of the amount that we spend on safety and health within the DOE complex.

MR. GRUMBLY: Just to give you a sense of this, we -- our current, if you look at the President's budget for fiscal year 1998, you'll see for example an environmental program estimate that goes out through -02 of about \$5.5 billion.

CHAIRMAN JACKSON: Yes.

MR. GRUMBLY: Steady, right? We expect that sum -- but then you can look at the facility aspect and see the number of facilities going down in that period of time.

CHAIRMAN JACKSON: Right.

MR. GRUMBLY: So conceptually what we are going to be doing is funding whatever improvements that we have on the difference between, as we bring facilities out of service, how we have to shift funding to improve those facilities that still exist.

27

We don't want to be in the business of making major upgrades on facilities that are not going to be operational by the time you get around to them.

CHAIRMAN JACKSON: Yes. I guess all I am really trying to understand is what we mean by annual costs to NRC. Let me explain to you what I mean.

Today if we in our regulation of a reactor site -- I don't know -- you know, we are 100 percent fee-based. I think this is all in the public domain. We're talking roughly \$3 million per reactor site.

So if I look at this viewgraph that says 200 facilities and realizing that they are different, okay, you know, out at some 10 year window after the legislative phase, then you are talking 200 facilities for \$75 million, and so my mathematics -- that is what I am trying to talk about when you talk about the apportionment of costs, you know, what do we mean?

Do you mean some kind of infrastructural cost to NRC on which other costs would be added? See, that is all I am really trying to find out.

MR. BERUBE: Okay, and let me answer by indicating that again when the Advisory Committee was doing its study it came to NRC Staff, which applied these cost factors by the different types of facilities.

CHAIRMAN JACKSON: Okay.

28

MR. BERUBE: Now we have lumped all of the facilities together but -- and then just simply pro-rated

down, but we think it's still a representative estimate of the cost that includes all of the things that you did mention.

CHAIRMAN JACKSON: Okay, so let's round this up to \$100 million -- so we are saying \$100 million for 200 facilities, so you are basically talking about some kind of averaged, amortized -- you know, annualized cost of on the order of a half million, where some could be more and some could be less. Is that the point?

MR. BERUBE: Yes, although I feel fairly comfortable with the \$75 million.

[Laughter.]

CHAIRMAN JACKSON: I know your point. Okay. Let me just ask you a couple quick questions about the legislative phase, and then I'll defer to --

MR. GRUMBLY: Because if it gets to the \$600 million phase we can forget about this.

CHAIRMAN JACKSON: What assistance or working relationship would DOE expect from NRC during the next two years while we're in the legislative phase.

MR. BERUBE: I think that the task force that the Commission is proposing to create and deal with all of these issues, the policy, legal, technical issues, is exactly the .

29

thing that we need at DOE to interact then with NRC.

I think we need to work on identifying likely pilots, the additional MOUs that will allow NRC to work with DOE in all of this over the time that it takes to get the legislation enacted.

CHAIRMAN JACKSON: Have you yourself created a task force that would be -- have you identified a group and a point person that would work with our task group to move things along in this phase?

MR. GRUMBLY: Well, you can bet that Dr. Berube here is going to be central to that as well as Ms. Sullivan in the General Counsel's office, but really we were -- you know, we have had a Secretary for 17 days now and actually I think that the fact that this was on his agenda as early as it was is interesting, but we'll be identifying a task force now that we have his direction to move forward so that we can do the kind of interaction that you are talking about.

CHAIRMAN JACKSON: Okay. Let me ask you this.

Has DOE developed any preliminary legislation that would in any sense transfer a regulatory responsibility or be enabling in any way at this point, and if so, can you describe it?

MR. GRUMBLY: We have a draft but it is very much a preliminary draft at this point and I think we would probably prefer --

30

CHAIRMAN JACKSON: Not to have to --

MR. GRUMBLY: -- not to embarrass ourselves by describing it in detail at the moment.

Mary Anne?

MS. SULLIVAN: I have not actually even seen the draft. It's in a very preliminary stage.

CHAIRMAN JACKSON: So you have not had an interaction with NRC attorneys on this --

MS. SULLIVAN: Not yet.

CHAIRMAN JACKSON: -- this draft.

MR. GRUMBLY: No. We have really been waiting for this little watershed to make that happen.

CHAIRMAN JACKSON: Then one last thing. I want to revisit the question of the sense of Congressional support

for this proposal.

You mentioned this was, as you say, in non-psychiatric terms a bipolar response.

But there was support for in some sense advancing things. Is this response bipartisan where it is positive?

MR. GRUMBLY: Yes, I think I can say that.

It's actually been quite surprising to me to go up on the Hill to committees like -- and this was just at the staff level -- I want to emphasize that. I haven't talked about this with any of the principals so far, but at the staff level of several of the committees there's been a fair amount of interest in accelerating the proposal.

31

I think, you know, the interest really stems from trying to get as clear as possible a sense for who is really regulating DOE.

One of the problems that we have, Madam Chairman, is a lack of clarity sometimes about roles and responsibilities, and if you have too many people engaged in giving too much direction to the same people, what we end up having is multiplying costs rather than eliminating them.

Actually, a lot of the interest is driven by a desire to drive down the costs of health and safety regulation in the Department, so, you know, we certainly still have all the support that we had from Congressman Miller and other people who initially suggested this who came from the Democratic side of the equation, and what I have been surprised at is how much support has been building for this from the Majority side of the equation at the moment.

CHAIRMAN JACKSON: You mentioned having not so many different regulators but you do reference EPA, OSHA and then there is the issue of the states.

MR. GRUMBLY: Just like any other corporation.

CHAIRMAN JACKSON: Okay, so you are thinking of delineation of responsibility in a way not unlike there would be delineation today for private entities between --

32

MR. GRUMBLY: Yes.

CHAIRMAN JACKSON: -- between OSHA, EPA --

MR. GRUMBLY: Yes. The basis for this support, frankly, inside the Administration rests on a simple premise: the Department of Energy should be treated as much like corporate America as possible.

Recognizing the difference that we get our money the old-fashioned way -- it's appropriated -- but nonetheless the intellectual model is behave and be seen as much like the private sector as possible.

CHAIRMAN JACKSON: Okay. Commissioner Rogers.

COMMISSIONER ROGERS: Well, just coming back to the cost question, I know you've got a lot of things rolled together here in the facilities definition, but what is a facility?

MR. BERUBE: It's everything from a reprocessing canyon to a hot cell. And we actually do have a detailed list of facilities that we would envision as our next step, sitting down with NRC staff and working through this in a very detailed manner.

COMMISSIONER ROGERS: Well, I was just trying to make a little sense out of, you know, trying to correlate the schedule on page 6 of what happens in the first five, the next five, and after that years, and the types of facilities that NRC would be taking over regulation of and

how that might relate to the cost question. In the first five years what do you see as the mix of hot cells to larger facilities? What is that, and how does that compare with the next five years?

MR. BERUBE: Okay. In fact the phasing program that we came up with reflected the different types of facilities as well as the numbers. And Ray, help me on this, but as I recall, given that total universe, the ER -- energy research -- and nuclear energy facilities account for about 20 percent of the total universe currently of nuclear facilities. Now in addition that population includes things for which NRC currently regulates in the private sector, some research reactors, for example, and other things like that. So it seemed to us to make sense that that's where we should start this transition.

Now in addition, though, given that the end point here, this anticipated, this NRC regulation of everything, anything new, any new nuclear facility, would just seem to make good, common sense to start NRC involvement in that on day 1 as opposed to doing it some other way and then running into a major obstacle. So that's the terminology on selected DP and EM facilities. What we have in mind there are the new nuclear facilities.

Now, that second phase then, what's happening there, as Mr. Grumbly indicated, is the second phase really

picks up all of the environmental management facilities, but what's happening over time with those, a lot of them are being shut down, and more important with respect to nuclear safety, the nuclear hazard, hopefully will be redressed at that point in time.

Now that's the concept generally. I think again we need to work out site by site and facility by facility with NRC staff whether that in fact is the case, and to the extent it's not, then we're going to have to make some contingency plans for those.

MR. GRUMBLY: It's probably worth noting that part of the proposal, at least in the report that Secretary O'Leary accepted, is that if you were to follow this model at the end of the five-year process you would have to lay a proposal on the table really with the Congress to flip to the next round, which is to say the President would get another bite at this apple. So either on a facility-by-facility or groups of facilities, the -- you know, we don't envision just tossing these over the transom at somebody before they're ready to be regulated by somebody else. There has to be some fail-safe systems built into this.

MR. BERUBE: And then the third phase picks up what's left of the defense weapons complex at that point in time, which may not -- definitely will not include the sort of nuclear facility production facilities we had in the

past. So that's the general concept behind this phasing. And as Mr. Grumbly is pointing out and what we tried to depict in this chart on page 7 is that what's envisioned here is a ramping up and not a sudden step function. And during the first phase where we're moving toward external regulation of the energy research and nuclear energy facilities, we'd be planning for all of the environmental management facilities, laying out detailed schedules for getting those facilities that will come under external regulation upgraded. So it's all a phasing approach to this transition.

COMMISSIONER ROGERS: Well, what I was looking at is the annual cost to NRC, and I noticed that, you know, there's a slope change between the first five years and the second five years, and there's also a slope change in the cost and also in the number of facilities. Are they disproportional. In other words, is it the same cost per facility in the first and the next five, and the only change in the slope of the cost is because the number of regulated facilities is going up more rapidly?

MR. BERUBE: Yes.

COMMISSIONER ROGERS: So that doesn't take into account anything about the nature of what might be different in the next five from the first five?

MR. BERUBE: That's right. It does not. And we

36

envison, again, this cost estimate --

COMMISSIONER ROGERS: It's a very rough cut.

MR. BERUBE: That's right. It was prepared just to answer the general question how much is this going to cost, how much will it cost NRC, how much will it cost DOE? And we acknowledged the need to get down to a finer level of precision with respect to budget requests.

MR. GRUMBLY: Am I right, Ray, to emphasize again that this cost estimate was one that was developed with the NRC staff?

MR. BERUBE: We took the original NRC staff estimate that was done for the advisory committee and then made a pro-rated adjustment to it and explained to NRC staff that that's what we had done. There was general agreement that this was ballpark okay.

COMMISSIONER ROGERS: I think that the ballpark characterization should be emphasized.

MR. GRUMBLY: Having said that, I think it's important to emphasize that I was not being facetious before. If the cost of this starts to get up in the quarter of a billion dollars a year category, we can forget about getting that money from the Congress. So I don't know where the notch point is in this, but speaking as a short-timer, it's something that people better take into account and not let the cost of this grow dramatically or, you know --

37

CHAIRMAN JACKSON: Let me make a comment, actually, which may relate to the notch point. You know, you talked about facilities, your new facilities, or facilities that look like or are like facilities the NRC currently regulates. You also talk about the legislative phase activities in terms of initiating pilots. So the question I was going to ask is kind of a follow-on in terms of this, it falls into the financial part, is do you consider the initiatives to first of all include the pilots, rather to include initiatives already under way, such as the Hanford.

MR. BERUBE: Yes.

CHAIRMAN JACKSON: Secondly, would you intend for the pilots to be risk-informed, that that would be a selection mechanism out of a possible universe, because in principle that could be a model and would define a notch point, so to speak.

MR. GRUMBLY: I certainly think that would be one of the major considerations, yes, perhaps not the only one.

COMMISSIONER ROGERS: Yeah, well I think that, I don't know, I don't know exactly what the NRC staff took up with you in detail, although we did see preliminary

estimates of this over a year ago or so, and they were very rough, I mean, they were very rough. So my only point is without being unkind I would be cautious about how

. 38

comfortable you feel with that \$75 million.

MR. GRUMBLY: I just want to --

COMMISSIONER ROGERS: You know, there's a lot of review has to go in as to what kinds of facilities, and even so, I don't think probably our staff would be willing to say that, you know, that's a final number that they support at this point. I think you have to see how the analysis comes out.

MR. GRUMBLY: I want to be clear, Mr. Rogers, that the first draft, as I understand it, numbers that you saw had an assumption in it that you were going to regulate 630 facilities. So one of the major drivers in the initial staff estimate was the numbers of facilities, and that's been changed quite a bit.

COMMISSIONER ROGERS: Well, you take the 600 and divide it by some total -- to take some total number and divide it by 600 and then take that number and start using it when you get down to the smaller number of facilities, you're going to be in real trouble.

CHAIRMAN JACKSON: I think though that it's clear that we're not going to work out a number here at this table, and therefore the actual wiggle room is somewhere between perhaps this initial slice and what the Under Secretary refers to as the notch point, and so we work at it.

. 39

MR. GRUMBLY: I would just urge you to consider the fact that for whatever its problems, the defense nuclear facilities safety Board oversees the entire DOE complex for \$16 million.

CHAIRMAN JACKSON: Well, as I say, we'll stay where we were.

COMMISSIONER ROGERS: It's irrelevant.

MR. GRUMBLY: Not irrelevant to them.

COMMISSIONER ROGERS: Well, it is to me.

At any rate, let's turn to slide 10, and what happens at the end of five years in the little vertical dotted line between partial external regulation and complete external regulation? What do you see happening at that point, and who do you see involved in deciding whether that's ready to happen to go from phase 1 to phase 2?

MR. BERUBE: Okay, what we had envisioned is basically a status report reporting back on how phase 1 went in terms of the transition, the associated cost, problems that were encountered, and then it provides for the Secretary to make a recommendation to the President as to whether or not to continue into phase 2, and the President turn to Congress and, as I recall, we have a few different options on how that legislation could work. It could be a lie-before-Congress mechanism where the -- unless the two Houses of Congress -- and Mary Anne, maybe you can help me

. 40

with this one -- objected, the implementation program would go forward if that were the President's decision.

MR. GRUMBLY: Right.

MR. BERUBE: There's an element of that that's related to the cost, because there was concern -- and again I think this has to do with the total universe of facilities that we originally were talking about, the 630-plus -- concern that if you tried to have all those facilities

operate under NRC regulation, there wasn't enough money in the Treasury to do that, and of course that isn't what the plan is, and it wouldn't make a whole lot of sense to develop a regulatory structure for facilities that are out of operation and going to be D&D'd. So to address that concern we provided this relief provision that would allow a revisit of cost in other aspects of this before going to the next phase and then finally the same thing for the final phase.

CHAIRMAN JACKSON: Commissioner Dicus.

COMMISSIONER DICUS: Yes, let's go to slide 5 on the key considerations, and it's a question that the chairman has already addressed with you, but I want to take it a step further or get it clarified. This is on the single entity regulating nuclear safety, and together with what the role of the States may be. As we all know, you have activities at the facilities, such as accelerators, X-rays, which we do not regulate. So is it clearly understood that that would not necessarily change, but you would work with the States for that regulatory --

MR. BERUBE: Yes. Yes, it is.

COMMISSIONER DICUS: That would be coordinated in some way with this 10-year plan?

MR. BERUBE: Yes, ma'am.

COMMISSIONER DICUS: Then go to -- and not to beat a dead horse -- but go to slides 7 and 8. Just a couple of points that I want to make.

It seems as though these cost considerations, and we all know we can't come up with a figure, and we're not interested in doing that, but we're interested in looking at trends, and some concepts here. I'm very much keyed on this number of facilities going down. Now what is this doesn't happen, this schedule is not made? That changes obviously the slope and everything else here, and I simply want to make that point.

The second point, I think you said you're considering in the neighborhood of 10-percent increase in cost over what the facilities are costing now to bring them up to a standard, did I hear that right, for roughly that's --

MR. BERUBE: Ten percent.

COMMISSIONER DICUS: Is that across the board?

MR. BERUBE: Yes.

COMMISSIONER DICUS: For all of the facilities, or some will be more and some will be less?

MR. BERUBE: We used a rough approximation of 10 percent, and we based that on a limited benchmarking study, we went to some NRC-regulated entities to get an indication of what sort of cost increases they believe are related to NRC regulation. Interestingly, some of them pointed out, by the way, that they think actually they have cost reductions associated with NRC regulation. But it ranged from 4 percent to 24 percent, but a strong grouping around 5 to 10 percent. Then we used the 10 percent to be conservative in trying to develop our estimates, and we applied that against what the Department is currently spending for health and safety. The Department of Energy does not budget separately for health and safety, so all you can do is come up with estimates.

COMMISSIONER DICUS: Okay. I was a little concerned about the 10 percent and how you arrive at the

figure. Having had experience in dealing with the gaseous diffusion plants, you know, there were some -- a lot of money had to be spent to bring those in.

MR. BERUBE: We also looked at the experience with the gaseous diffusion plants to try to validate the estimates, and I don't think it would have been correct to

. 43

use the uranium enrichment plants, the gaseous diffusion plants, as representative for everything in the Department.

COMMISSIONER DICUS: And I would agree.

MR. BERUBE: We ran a rough validation.

COMMISSIONER DICUS: What about also, one final point, and then we can give up the mike, as it is, but what about unknowns, for example, the Brookhaven Laboratory problem. Those considerations are out there. Is that built in -- that has to be built in.

CHAIRMAN JACKSON: Do you have a contingency --

COMMISSIONER DICUS: A contingency plan.

CHAIRMAN JACKSON: For emergent issues.

MR. GRUMBLY: No, we don't have a contingency for emergent issues. What we have is -- for example, what we have to do at the moment is take a look at all of our programs across the Department and see where we could put the money together for the appropriate reprogrammings to deal with this situation at Brookhaven. But I actually think that that situation actually argues this case, in that my very strong belief is that if you all had been regulating Brookhaven over the last 10 years that at the very least the pool -- the fuel pool leak is something that (a) would have been identified sooner and, two, would have been remediated sooner. So I'm hopeful that -- actually we use Brookhaven as an example of what we can avoid rather than what we have

. 44

to budget for.

COMMISSIONER DICUS: Well, I tend to agree with you, but, you know, the point is if we --

COMMISSIONER ROGERS: I understand.

COMMISSIONER DICUS: Already taken Brookhaven over and then discovered this problem.

MR. GRUMBLY: Well, but let me emphasize the necessity to, I think, get into the ramp up so that we really are planning beforehand with some degree of certainty so that we encounter whatever additional problems are going to be before we make it subject to your regulatory authority. Now I can't guarantee that if you were to take over energy research reactors tomorrow the rest that you wouldn't have found this problem. Obviously you would have, and that would have been some difficulty.

CHAIRMAN JACKSON: That's why it's a ramp up.

MR. GRUMBLY: Yes, yes.

CHAIRMAN JACKSON: Anything else?

Commissioner Diaz.

COMMISSIONER DIAZ: Yes. You talked earlier about work protection and OSHA and I guess the report from the National Academy of Public Administration recommends that radiation protection be given to OSHA. Has DOE revised that position to consider that actually we do radiation protection?

. 45

MR. GRUMBLY: I think that we recognize that we have to reconcile that position. We haven't done so yet.

CHAIRMAN JACKSON: Anything else?

Commissioner McGaffigan?

COMMISSIONER MCGAFFIGAN: I'm going to beat on the

dead horse, the cost horse. That slide number eight, one thing that I think is clear is the slope that the intercept at year zero isn't zero. We're already looking forward to Hanford tanks, we're budgeting \$2 million this year to just do something that we don't really have authority to do yet until we get some legislative -- that we wouldn't be able to do if you returned to us in 1999 or 2000.

So there is some number, and it may well be close to \$10 million, as you start to think about a bunch of sites that you have to -- we have to get our regulatory framework in place and work with you and we will have very complex sites like the Hanford tank vitrification and then we will have some much less complex sites. So I think there is an intercept there above zero and maybe the staff can work out what it is.

I also am impressed. Commissioner Dicus referred to the USEC case and we all have to hope that that isn't going to be typical but that -- your report refers to an enlightened compliance regime and we did something with the gaseous diffusion plant short of full licensing

46

certification and it was intensive on our part. The staff could give you the dollars. And it was terribly -- the number, I think, that has been cited to me is it took \$200 million to get those plants -- DOE cost, not NRC cost -- to get those plants up -- or USEC costs -- to get those plants up to where they needed to be; 170 of that was what they had to spend to get them up to the place where they should have been and 30 of it was whatever additional costs we imposed through the licensing process. At least that's what I have heard.

So my sense is, looking at your complex and having some experience with it, there may well be a few others like that out there that are going to be outliers where this 10 percent is going to prove to be just way, way off. Ten percent may well be accurate for many of the less complex facilities but for these, you know, I can think of several other cases which are likely to be ongoing which may surprise us sharply on the upside and I just make that point.

MR. GRUMBLY: I take that point as the same one that Commissioner Rogers was making, that there is going to be quite a bit of variability in terms of what it costs to get in compliance. We do have some numbers and maybe I can submit these for the record but just to put the gaseous diffusion plant costs into some kind of perspective, the

47

operating costs over four years for the gaseous diffusion plants is about \$2.4 billion. Our best estimate on the corrective action costs were 105 million on top of that.

The NRC certification costs were 3 million and the DOE certification costs were 35. So if you actually look at the corrective action costs, as a percent of the total operating costs of the facility, it actually is inside that 10 percent range that we were talking about.

Now, you're right, we can't afford at every facility, I mean, gosh, if each facility were to cost that amount of money, we would be cooked. So that is not certainly what we envision.

I do think that the gaseous diffusion experience points out the necessity for another point that was made here. We talked about flexible regulatory approach. It does seem to me that there are a lot of lessons that can be

learned on both sides from the gaseous diffusion experience

and we ought to spend some time making sure that we have learned all those lessons so that we don't have an unduly expensive process as we go forward.

COMMISSIONER MCGAFFIGAN: Your report refers to a workable, enlightened compliance regulatory framework. I don't expect that is again something the staff may flesh out a bit. But what do you have in mind?

Do you believe that any of your sites, take the

. 48

ones that you are proposing the first few years, the NE and ER sites, do you think that they can come in and apply for broad scope license and really be licensed or even the less complex, familiar sites do you think will have to make adjustments?

MR. BERUBE: I think there is potential there but we have to work a lot more details out with NRC staff. The concept of the enlightened compliance was not ours; we stole that. We borrowed it from NRC. It is basically doing things better and smarter and, yeah, there is always opportunity for that. Performance based.

CHAIRMAN JACKSON: They got it from the certification process.

COMMISSIONER MCGAFFIGAN: Nick Timbers may have some views on that.

The enforcement aspect, once we have this regulatory framework in place, and this is really following up again on one of Commissioner Dicus's questions, and we have a problem arise and it is not the current contractor's fault perhaps or, I don't -- you know, it will depend on some fairly complex contract clause as to whether you guys try to blame the contractor or they try to blame you. How do we enforce at a site or facility, it's facility by facility, as I understand it, not site by site, where we, as the regulator, find you and your contractor going like this.

. 49

MR. GRUMBLY: Mary Anne, why don't you talk about how we are enforced against in the environmental arena at the moment.

MS. SULLIVAN: There is some variability. At many of our facilities, both DOE as owner and the contractor as operator are on a permit, on a license and the state regulators are free to enforce against either or both. Whatever contract disputes may exist between DOE and its M&O contractor should not have the NRC entangled.

Whoever you hold liable will be liable and then we fight out with our M&O contractor whether they are responsible for a fine or penalty or corrective action or we are. But you will have clear regulatory authority to enforce against whoever is on the license or the certification.

CHAIRMAN JACKSON: You realize that part of what happens in enforcement space is not just civil penalties but the ability to shut a facility down for cause.

MR. GRUMBLY: We have that now.

COMMISSIONER MCGAFFIGAN: In the area of pilots --

MR. GRUMBLY: From the public's perspective, that has to be the case. If you don't have that capability with respect to us, this is a paper tiger.

COMMISSIONER MCGAFFIGAN: In the area of pilots, again looking at these early phase projects, the NE and ER,

. 50

you currently regulate them through contract clauses

largely, is that -- I mean, contract clauses and various orders that come out through the DOE system. How -- if you try to do one, earlier, Tom, you talked about doing something as quickly as possible at some of the ER sites. How quickly could you -- are you going to have to renegotiate contracts and take some of those contract clauses out or how complex is the interaction between this regulatory change that you are proposing and your contracting system?

MS. SULLIVAN: We will have to renegotiate contracts because we do currently regulate through our contracts. But there will be a period required to draft and implement legislation and any contract amendments could be accomplished during that time frame.

I will tell you that particularly at the NE and the ER facilities, our contractors are champing at the bit to be regulated by NRC. So we would expect to be able to move through the contract negotiations expeditiously. Certainly I would not expect that to be the lagging item.

COMMISSIONER MCGAFFIGAN: So that might take -- that would have to wait for the legislation to be completed and then very quickly negotiated after that? Or could you do them ahead of time?

MS. SULLIVAN: My assumption is we could be

51

working in parallel, recognizing that final action on a contract would have to await the shape of the final legislation.

MR. BERUBE: Related to that, we have already initiated within DOE, but we need to work this with NRC staff a comparability study, looking at the DOE orders and seeing how they compare with NRC requirements. To the extent there is close comparability, that is going to make that transition a whole lot easier.

MS. SULLIVAN: In fact, in our recent rulemakings, as we have developed our rules, we have looked to the NRC rules as a major source of learning.

CHAIRMAN JACKSON: Being the lawyer, do you have any particular caveats or thoughts about the legislative phase that we need to hear about? I mean, I know you said you are not comfortable, that the draft is so much a draft, nor have you seen it, that you would not like to comment. But we --

MS. SULLIVAN: I have been involved in discussions toward the development of the draft. I just think our own thinking has been evolving about what's needed. As the lawyer, I would only say we need the legislation to be clear so that everybody knows what the rules of the road are. But I have been working with this working group for over a year now and I think that this can only improve nuclear safety in

52

DOE facilities so I strongly support it.

CHAIRMAN JACKSON: Any response from our lawyer?

MS. CYR: I think she's right. It would certainly add clarity to the situation.

CHAIRMAN JACKSON: Commissioner McGaffigan?

COMMISSIONER MCGAFFIGAN: That is all I had.

Although speaking as a former congressional aide, if you expect clear legislation --

[Laughter.]

MS. SULLIVAN: We can always hope.

CHAIRMAN JACKSON: That's right. Hope springs eternal.

Well, thank you very much, Mr. Grumbly, and your colleagues for a most informative briefing.

As I had indicated in my opening remarks, the Commission does endorse the department's proposal for external regulation of nuclear facilities and believes that external regulation by the NRC would serve the best interests of the public and contribute to protecting facility workers, the public and the environment. Today's briefing was a good start for the many interactions that will be needed between our agencies if this initiative is to succeed.

In the staff requirements memorandum that the Commission issued last Friday, the Commission directed the . 53
staff to complete several of its directives by June 30 of this year. Perhaps the Department of Energy as well as the NRC task force can brief the Commission in that same time frame on the status and progress that has been made on the initiative at that point.

The Commission encourages the staffs of both agencies to work together openly and cooperatively on a project that the Commission believes will be challenging to both agencies. But even though the Commission recognizes the complexity of the tasks that lie ahead, we have confidence that the external regulation of DOE's nuclear facilities by the NRC can succeed in a manner that serves the public well. To that end, I would say that both DOE and NRC need to develop on an expedited basis an MOU, a memorandum of understanding, to establish the framework for the legislative and follow-on phases to identify key regulatory and technical issues, to identify candidate facilities.

Also, both agencies need to work with the OMB to get relief from personnel ceilings, particularly for us. But have you work with us for both the legislative and the follow-on phases.

In the interim, I would ask DOE if you would study the staff requirements memorandum from the Commission to the staff because it is fairly detailed and prescriptive with . 54
respect to the issues we feel need to be addressed as well as the approach that NRC would propose to take. I would also urge you to form a corresponding working group with a designated point of contact. The designated point of contact for us will be Dr. Carl Paperiello, who heads our Office of Nuclear Materials Safety and Safeguards.

I would thank the Secretary and urge Secretary Pena's continued support of this initiative.

So, unless my fellow commissioners have further comments, we are adjourned.

[Whereupon, at 3:42 p.m., the meeting was concluded.]