

UNITED STATES DEPARTMENT OF TRANSPORTATION

TECHNICAL PIPELINE SAFETY STANDARDS COMMITTEE MEETING

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490 L'Enfant Plaza, S.W.
Ballroom A
Washington, D.C.

Thursday, May 29, 2003
9:10 a.m.

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9:10 a.m.

CHAIRMAN KELLY: Good morning. I would like to recognize that Mr. Nikolakakos has joined us this morning, Steve Nikolakakos, as a member of the Committee.

We are beginning this morning with the direct assessment. And I know that there was one issue that I left open last night regarding identified sites. We will address that after the break. And there will be another matter raised by Mr. Wunderlin regarding the waiver process, and we will talk about that after the break as well.

So, at this point --

(Pause)

CHAIRMAN KELLY: Okay. He's not ready. So what I'll do is I'll take up Mr. Wunderlin's issue.

MR. WUNDERLIN: Okay. Thank you.

Good morning, everyone. As I was studying the L & G -- no -- last night, my homework.

What I'd like to talk about a little bit, I think the legislation as it was approved, there was a -- some statements in there about the -- the impact to customers potentially from part of the rule. And I

1 think the Congress was concerned about having some
2 flexibility as far as dealing with customers taking
3 things out of service, et cetera.

4 I think there was a statement in there that
5 DOT must deal with those impacts through a waiver
6 process. If, say, an operator got to a point where it
7 was a time of year and they had to take out a
8 particular portion of their pipeline system to meet a
9 compliance gate that there may be a large impact to a
10 number of customers.

11 And what I've seen so far, going through the
12 rule, and we were thinking about this last night, was
13 we don't see that we've allowed for a waiver process.
14 I know 192 does have a waiver process for safety items,
15 but -- but is there a waiver process where an operator
16 can -- can ask for some help as far as impacts to, say,
17 a large number of customers? Will the -- the new
18 legislation provide something like that, the new rule?

19 MS. GERARD: I know we have such a provision
20 in the liquid integrity rule, and I know that liquid
21 operators are exercising it, not in great numbers.

22 But I can't actually recall where we had that
23 in this rule.

24 Mike? Mike Israni?

25 MR. BENNETT: I might be able to help you a

1 little bit, Stacey, because we were reviewing some of
2 the material.

3 MS. GERARD: Right.

4 MR. BENNETT: You do have a section. I think
5 it is in Section K of 763. But your -- you do have
6 provisions for a waiver or reassessments. You really
7 didn't have any provisions for the baseline.

8 MS. GERARD: Okay.

9 MR. BENNETT: And then you had -- it was
10 actually very narrow restrictions. It didn't talk
11 about national supply. It was really just for local
12 customers.

13 MS. GERARD: Okay.

14 MR. BENNETT: So, I -- I think the concern
15 is, since it was just for reassessments, you really
16 have that problem of the baseline assessments and the
17 reassessment overlap causing a very high level of work
18 activity. I think, 24 percent.

19 MS. GERARD: Right. And I know we talked
20 about this issue in the next-to-last of the public
21 meetings. It wasn't the last one but the next-to-last
22 one, I think. Maybe it was the last one. But -- so I
23 know it's addressed in the transcript.

24 So, I -- what I would think is appropriate is
25 for the Advisory Committee member to make a

1 recommendation to us. While it's not one of the agenda
2 items, it's certainly within the scope of the rule that
3 you think that you have some view about the need to --
4 or on the language of our rule on the waiver portion to
5 provide for our addressing impacts to supply of a
6 national nature, a local nature, whatever you think.

7 MR. WUNDERLIN: Yeah. Okay. Is there any --

8 MS. GERARD: It's certainly -- it's certainly
9 not our intention to not make that waiver provision
10 very clear and very efficient because we may need to
11 use it a lot.

12 MR. WUNDERLIN: Okay. Is there any other
13 discussion on that?

14 I will go ahead and --

15 MS. GERARD: Well, there might be some other
16 --

17 MR. WUNDERLIN: Yeah.

18 CHAIRMAN KELLY: He can -- you can go ahead
19 and move it.

20 MR. WUNDERLIN: I will make the -- a motion
21 to ask OPS and DOT to consider the waiver process
22 during the baseline assessment process to help
23 operators, you know, with the impacts to customers. I
24 think that's --

25 MR. DRAKE: I would second.

1 CHAIRMAN KELLY: All right. Now, any further
2 discussion on that?

3 MS. GERARD: I have a question. I just want
4 to be really clear about what you're trying to get us
5 to be able to do better than we have provided for. I
6 just want to be clear. You think our waiver is --
7 language is too narrow?

8 MR. WUNDERLIN: Well, I'm not sure the
9 existing waiver language in 192 covers, you know,
10 impacts to customers. I think it's --

11 MS. GERARD: But wasn't there language in the
12 rule?

13 MR. WUNDERLIN: I -- I'm not --

14 MS. GERARD: In the proposed rule?

15 MR. WUNDERLIN: I'm not sure I have that with
16 me. I don't know if you have it.

17 MR. BENNETT: It's in the -- you have the
18 rule language right up there in that one book.

19 MR. WUNDERLIN: In here? I'm going to come
20 grab it.

21 (Pause)

22 MR. BENNETT: Section -- Tab 2, page 23. And
23 it'll be Section 4.

24 MS. GERARD: Okay. You're talking about
25 waiver from interval greater than seven years in

1 limited situations?

2 MR. WUNDERLIN: And reassessments.

3 MS. GERARD: And the reassessments. But what
4 you're saying is that the waiver didn't address --

5 MR. WUNDERLIN: Assessments.

6 MS. GERARD: -- assessments.

7 MR. DRAKE: I think there's an added issue
8 here and that may be needed to be considered in this
9 waiver. And I think that's the general issue of the
10 requirements of this rule on customers' deliverability.

11 There are many fixed response intervals
12 associated with this -- with this rulemaking. For
13 example, the response and remediation time frames for
14 anomalies that are found during investigations.

15 The way that works, in case no one here has
16 thought about it yet, and I can tell we're busy --

17 MS. GERARD: I think we need to hear from
18 counsel on this.

19 MS. BETSOCK: There's a -- there is a reason
20 that the waiver provision is -- is drafted the way it
21 is. And we are bound by statutory limitations.

22 We cannot waive a statutory requirement
23 except in accordance with the authority that Congress
24 gives us. We can't waive it under our own -- our
25 existing waiver authority is for waiver of regulations.

1 So we could waive the regulatory aspects of it.

2 So we could waive -- on the baseline, we
3 could waive maybe the five years, but we couldn't waive
4 10 years because the statute says 10 years.

5 We have some authority to waive the seven
6 years because the statute allows us to waive
7 reassessment periods under certain circumstances. And
8 that's why there is some limitation.

9 But we will certainly take a look at it again
10 in response to comments and -- and concerns.

11 Yeah?

12 MR. DRAKE: I think there are some things
13 that are clearly inside your control, though, and those
14 things need to be amended to this. And I think that
15 may be part of what Jim's point is.

16 The issue about repair time frames can become
17 a very significant event.

18 MS. GERARD: Well, the statute doesn't speak
19 to the repair time frames.

20 MS. BETSOCK: No.

21 MR. DRAKE: Right. And there's no waiver to
22 explicitly address that. And I think it may be
23 appropriate to append that because the way the
24 mechanics of this rule work is that once you inspect --
25 you're basically on rails. You are committed in time

1 to inspections.

2 If you inspect your -- once you inspect let's
3 say in August. You run an in-line inspection to an
4 August, you have a certain amount of time before the
5 log run has to be returned to you from the vendor by
6 the -- by the requirements. And then you have a
7 certain time frame from the time you get those
8 requirements to when you remediate anomalies.

9 It very likely will happen that operators
10 will be running tools in the summer and be required to
11 take pipes out of service in the winter --

12 MS. GERARD: To repair.

13 MR. DRAKE: -- immediately to do repairs.
14 And that is not a good idea.

15 To at least do that, just carte blanche, and
16 I think we need to kind of start getting into this a
17 little bit more thinking mode that that could -- that
18 could warrant at least the need for a more open venue
19 to talk about the real risk, you know. What is the
20 real situation here?

21 MS. GERARD: So what Barbara's saying is,
22 while we can't waive the need for the operator to
23 complete all of the baseline assessments in 10 years --

24 MR. DRAKE: Right.

25 MS. GERARD: -- that as it relates to what we

1 have put in the regulation that isn't specified in
2 statute, you can make a recommendation about other
3 aspects of the rule besides the pure assessments, like
4 the repair or other.

5 MR. DRAKE: And we're going to talk about
6 repairs in a minute, but -- and maybe we can put some
7 of that in there.

8 But I think Mr. Wunderlin brings up a good
9 point, and that is that I think you want to recognize
10 the potential for significant impacts and have an
11 established vehicle to handle those because the --
12 there's going to be a lot of this work going on.

13 MS. GERARD: Right.

14 MR. DRAKE: People aren't going to be able to
15 all pig in April so that they can do their -- their
16 dig-up work in September.

17 MS. GERARD: I think we should have some
18 discussion by the Committee about what types of
19 parameters you think that we should identify so that
20 everybody is prepared and knows how to do this and we
21 have discussed it with the Committee now so that we can
22 do this efficiently. Because I can appreciate the fact
23 that there are certain regions of the country for which
24 this requirement could impose a very adverse effect on
25 supply.

1 So I think we need to hear from you what are
2 the types of factors that we need to be able to
3 consider in the waiver on repair and anything else the
4 statute didn't specifically define.

5 What would impact supply?

6 CHAIRMAN KELLY: Would you prefer to take
7 this up when we discuss repairs? I mean, are there
8 issues that may come up during that discussion that
9 would impact what -- what you're asking the Committee
10 to consider at this point with respect to the waiver
11 process?

12 MR. WUNDERLIN: I mean, we can discuss it
13 there. That's fine.

14 CHAIRMAN KELLY: Is it more appropriate?

15 MR. WUNDERLIN: I don't know if it's more
16 appropriate.

17 MS. GERARD: Let me make one more comment,
18 that what I was thinking about in the liquid rule that
19 is in this proposal is the notification process under,
20 you know, what actions must be taken to address
21 integrity issues, I-3, Schedule for Evaluation and
22 Remediation.

23 "If an operator cannot meet the schedule for
24 any condition, the operator must justify the reasons
25 why it cannot meet the schedule and that the changed

1 schedule will not jeopardize public safety. An
2 operator must notify OPS in accordance with Paragraph N
3 of this section if it cannot meet the schedule and
4 cannot provide public safety through a temporary
5 reduction in operating pressure."

6 So, if you are asking us to expand that, that
7 --

8 MR. DRAKE: Well, the answer -- what I just
9 heard --

10 MS. GERARD: -- that's what I'm saying, is --

11 MR. DRAKE: What I remember from that one I
12 think I just heard, is that if you can't make those
13 responses, you will lower your operating pressure.
14 That directly affects capacity going into the winter.

15 MS. GERARD: Right.

16 MR. DRAKE: It doesn't even allow the
17 operator the opportunity to discuss whether that's a
18 real situation or not. And I think that's what the
19 waiver is about.

20 MS. GERARD: Right.

21 MR. DRAKE: If they've done some work,
22 they've dug up some of those anomalies and they looked
23 at them, they can see that they can last, they're not
24 critical, they can make it to the -- to the spring,
25 there's no provision in here to -- to do that. You

1 just have to derate the pipe, which is taking -- a 20
2 percent pressure cut going into the winter is a very
3 significant event.

4 MS. GERARD: Well, there are the two
5 categories of levels of seriousness. So if it's not
6 that serious, there's the 180-day time frame.

7 Right. So if you can't meet the schedule and
8 you can't do the pressure reduction for that reason,
9 you -- there's a provision for us to -- be notified.

10 But I think what you're saying is that you'd
11 like to -- you'd like to recommend some amplification
12 to that.

13 MR. DRAKE: I don't think anybody's proposing
14 anything reckless here. I think we're just trying to
15 create another alternative to talk about the technical
16 data and, like I said, think through the solution.

17 MS. GERARD: Right. Well, --

18 CHAIRMAN KELLY: Mr. Wunderlin?

19 MR. WUNDERLIN: Another example would be, we
20 do an assessment and we see the pipe is really bad,
21 worse than we thought. We would like to consider a
22 replacement program or some new technology or relining
23 the pipe. And that's not going to be -- we're not
24 going to be able to do that in that time frame. The
25 rule doesn't allow us the flexibility to, you know, go

1 back with a clamp.

2 MS. GERARD: Are you talking about a
3 situation where the defect is so bad that public safety
4 is jeopardized?

5 MR. WUNDERLIN: Well, let's say that the
6 extent of the problem is very large and to repair --
7 you know, to dig the pipe up and recoat it -- you know,
8 it may not be immediate and identified in one spot.
9 It's generalized corrosion. We have some time but it
10 doesn't meet the time frame for the repair criteria set
11 out in the regulation.

12 So, we would like to be able to bring a plan
13 forward that we could have approved by the regulators
14 to repair it over time or replace it over time or use a
15 new technology.

16 MS. GERARD: You use the word "approve,"
17 which takes it in a little different direction. This
18 is simply a notification.

19 MR. WUNDERLIN: Notification, I guess. The
20 liability, I guess, always remains with the operator,
21 but so that we're not cited for not meeting the time
22 frame.

23 MS. BETSOCK: We -- we always have the
24 existing waiver authority where you can come to us with
25 a proposal for an alternative to what is already

1 allowed in the regulations. This allows you to notify
2 us in certain circumstances. If -- if there's other
3 circumstances, the statute does allow you to -- to come
4 and present us with an alternative approach which we
5 could then agree to. There's nothing that would
6 prohibit that on a repair.

7 MR. DRAKE: I think the only point here is
8 that you're just trying to recognize the obvious, that
9 this could happen here. This is a very significant
10 load on the system and that you recognize that that
11 could occur in this specific site and that you
12 recognize that that vehicle may need to be used by
13 operators. And you could even provide some clarity of
14 the kind of technical issues you would like to see
15 addressed if someone were to approach you on a waiver
16 or the kind of conditions, and that's all I'm saying.

17 It's just to help get people oriented and get
18 their ears up that this -- this is a place where you
19 could get a rub. And you recognize it, FERC knows
20 about it, and everybody's on deck.

21 MS. GERARD: I -- I agree with you that it is
22 a likely situation. If we're having it on the liquid
23 side, I'm sure we're going to have it on the gas side
24 even more.

25 So, you know, given that we want to be able

1 to implement smoothly, I would like to have the advice
2 of the Committee on what types of criteria you would
3 like to see us add in here to make it easier for the
4 operators and OPS or states -- Linda, if it's an
5 intrastate line, which it very well may be, and the
6 state has to make the decision -- so that we're all on
7 the same page here.

8 You know, what are some of the types of
9 factors that the operator may face that OPS, you know,
10 should be prepared in our training and development of
11 procedures to address in case we haven't thought about
12 them.

13 Are there -- have you all commented to the
14 docket on this particular point? Because if there's
15 not, then I think it's really important that -- you
16 know, we still have this afternoon and tomorrow, and
17 you can think about it overnight and we could bring
18 this back up.

19 But this provision is the only way we have to
20 deal with this situation. And I want to make sure that
21 we have a really good understanding going in, that
22 we've thought of everything and that we're not messed
23 up by, it wasn't clear in the rule.

24 CHAIRMAN KELLY: Mr. Wunderlin, would you
25 like to table this motion?

1 MR. WUNDERLIN: Yeah, I'd like to bring it
2 back up when we've had a chance to provide some more
3 definitive --

4 CHAIRMAN KELLY: Fine. We'll come back to
5 it. The motion is tabled.

6 Direct assessment.

7 MR. ISRANI: Okay. I'll have the slide up.

8 Direct Assessment

9 (Slide)

10 MR. ISRANI: Direct assessment equivalency.
11 I've given here two cites of the proposed rule where it
12 appears. Goal here is to assure that direct assessment
13 provides an understanding of pipeline integrity
14 comparable to that provided by other assessment
15 methods.

16 And there were two questions. One question
17 was, should the DA be allowed as a primary assessment
18 method contingent only on its applicability to threats,
19 meaning if the DA is suitable for those threats, should
20 we allow DA as a primary assessment method.

21 (Slide)

22 MR. ISRANI: Next question is, should the
23 assessment intervals required for direct assessment be
24 revised to be -- the first question is, I guess,
25 identical.

1 The second question here is, are there
2 opportunities to quickly schedule and assess research
3 demonstrations to provide additional data on which to
4 base judgments about validity?

5 What we are saying here is that there is some
6 research demonstration -- research program going on
7 which have provided data about this, how we can use
8 direct assessment, you know, to increase our confidence
9 level to bring to the same level validity of this
10 direct assessment.

11 Would a longer baseline assessment interval
12 produce data that would lead to early improvements in
13 DA process, thereby increasing the effectiveness of the
14 process in later application?

15 All we're saying, in order for DA to be
16 equivalent to other assessment methods, we like to have
17 some of these things done. And those are
18 simultaneously being done.

19 (Slide)

20 MR. ISRANI: These are the assessment
21 schedules. Let me -- I'll come back to that.

22 (Slide)

23 MR. ISRANI: The comments we received on this
24 direct assessment is, industry strong supports that DA
25 intervals should be the same as smart pig or pressure

1 testing.

2 And the states say that 10-year baseline is
3 suitable for DA, meaning it should be the same as ILI
4 and pressure testing. And five-year reassessment, even
5 if excavate all anomalies. So there was one commenter
6 from state -- one state opposed that. They wanted to
7 have five-year reassessments and to exceed that because
8 they don't still feel confident in DA.

9 And public also had a comment that DA process
10 is still unproven.

11 (Slide)

12 MR. ISRANI: So those are the comments we
13 received. And our current position is to allow DA as a
14 primary assessment method contingent only on its
15 applicability to threats, meaning if it's suitable for
16 those threats. That means we'll remove all the
17 conditions that we have for DA that we have -- we had
18 put in the proposed rule before, conditions like, you
19 know, it can be used only when you cannot use any other
20 method. We're considering removing those conditions.
21 We want to allow DA as a primary assessment method.

22 And second part we're saying is to revise the
23 required intervals for DA to be the same as those
24 required for ILI and pressure testing, meaning, first
25 of all, we are removing conditions and then we're

1 allowing DA to be the same interval as ILI and pressure
2 testing.

3 MS. GERARD: Mike, I want to clarify that,
4 you know, you talked about the public comment. At the
5 public workshop that we had last, we had one of our
6 senior staff present who's Mr. Joyner who's in the
7 audience, and he's -- you know, he's been particularly
8 tracking this issue for us.

9 And I wanted to explain for the record and
10 the -- to the Committee that, you know, that on the
11 record there was quite a bit of discussion about this
12 at the last public meeting and the presentation by
13 Debbie Dimaio and that it was based on quite a bit of
14 data that our staff observed that -- and they commented
15 that the -- you know, the additional information that's
16 coming in, in the opinion of our senior staff, has led
17 us to increase our confidence that that is the basis
18 for our providing these considerations that are
19 different than our proposal. And I wanted to make sure
20 that the record reflected that.

21 (Slide)

22 MR. ISRANI: Just to give you a little
23 information on -- in our proposed rule, we had these
24 different intervals for DA as compared to pressure
25 testing and ILI. We had shorter intervals for DA for

1 baseline. It was seven years under confirmatory, and
2 the reassessment was five years if they don't dig all
3 the -- all the anomalies and 10 years if they dig all
4 the -- if they excavate all the indications.

5 So now we want to match that with what we
6 have here, 10-year, 10-year for baseline and
7 reassessment. That's for pipeline which is above 50
8 percent SMYS. Pipeline which is less than 50 percent
9 will have longer intervals.

10 Pretty much, we are going with what other
11 assessment methods have the intervals and the time
12 frame without conditions. So that's our position.

13 CHAIRMAN KELLY: The floor is open for
14 discussion.

15 MR. WUNDERLIN: I'd like to -- to ask a
16 question of Mike.

17 You're talking about removing all conditions.
18 There is a current condition in the notice of proposed
19 rulemaking about if you -- if you want to use direct
20 assessment you have to justify the reason for it. But
21 if you use ILI and pressure testing, you don't have to
22 justify as a basis. You're saying that that's going to
23 be removed?

24 MR. ISRANI: We're considering to remove
25 that, yes.

1 MR. WUNDERLIN: Considering?

2 MR. ISRANI: Yeah. I'm saying considering
3 because, you know, we -- we are not in the final rule
4 writing yet, but, you know, this is our position.

5 CHAIRMAN KELLY: Dr. Willke?

6 DR. WILLKE: Yeah. Mike, Ted Willke.

7 Are there any conditions under which direct
8 assessment as you're considering it would be treated
9 differently than pressure testing or ILI? In other
10 words, are there any remaining conditions? I think
11 that's a version of the question.

12 MR. ISRANI: The only part where we see that
13 you cannot use is if those threats you cannot address
14 by direct assessment. That's why we said that only --
15 whenever you're doing direct assessment, your first
16 step is pre-assessment. In the pre-assessment, you're
17 determining whether direct assessment can be used for
18 those threats.

19 So if there are certain threats where direct
20 assessment cannot be used, then, obviously, you cannot
21 use that tool there.

22 DR. WILLKE: Does that apply to the other two
23 types of testing, ILI and pressure testing, too?
24 They're limited to just the threats that apply to
25 those?

1 MR. ISRANI: Right. You know, if -- for
2 example, pressure testing is kind of very general --
3 that's a pass/fail type test. But -- and that was
4 before all of these things, even smart pigs, were
5 developed. That was the only test used. So that was
6 pretty much accepted as an assessment method.

7 Smart pigging gives you internal/external
8 corrosion and other anomalies but it won't tell you
9 about material defects and all those, so there are some
10 conditions there.

11 Direct assessment has even more such
12 conditions where you cannot use. Direct assessment is
13 only used for external corrosion, internal corrosion,
14 and stress corrosion cracking. Those are the only
15 three methods that we -- only three threats that we
16 know that you can address with direct assessment.

17 DR. WILLKE: But you understand that there's
18 going to be times and places where the other two
19 methods, ILI and pressure testing, aren't going to be
20 available as choices for the industry and that they're
21 going to be required to use direct assessment as the
22 only viable tool.

23 MR. ISRANI: And that would be acceptable
24 because we are reviewing the conditions.

25 MS. GERARD: I just want to make a comment to

1 make sure that the Committee understands that the
2 question of the operator's choice of tools as part of
3 their framework is a focus of our inspection. You
4 know, so that you should understand and that we would
5 have public meetings on the protocols that we're going
6 to use, just like we've been doing on the liquid side
7 on operator qualification. This issue about basis --
8 process for choosing, you know, that you should expect
9 that we will drill down on that in our inspections.

10 I want to say that to the Committee in case
11 this issue you've said about, well, it may be the only
12 choice, you know, we would expect that to be clear as
13 part of a plan.

14 CHAIRMAN KELLY: Dr. Willke?

15 DR. WILLKE: Yes. As I understand it, I
16 think this is a good proposal, and I too was persuaded
17 by the information that was presented at the last
18 public meeting. There are times when each of these
19 techniques provides special information that you can't
20 get from other techniques, or they may not -- just may
21 not be available, may not be appropriate for above
22 lines or -- or other places.

23 If the Committee would allow, I'd like to
24 move that we accept the position as stated.

25 CHAIRMAN KELLY: Is there a second?

1 MR. DRAKE: I'll -- I'll second.

2 PARTICIPANT: More discussion?

3 CHAIRMAN KELLY: Yes, there's discussion.

4 Mr. Wunderlin?

5 MR. WUNDERLIN: I think we also should
6 consider adopting the NASE direct assessment standard
7 as part of the rule.

8 MR. ISRANI: Yes, that we -- we are
9 contemplating on referencing NASE standard. Only
10 places where we had to compare the language there so we
11 can make it enforceable because NASE is standard what
12 we call -- it's actually recommended practice.

13 So, a lot of language there still is --
14 should be done. We don't want to leave that option.
15 You know, we -- if certain things that we feel are, you
16 know, required, then we want to retain that. But
17 overall, we are not going to change -- you know, we're
18 going to look at our proposal, we're going to compare
19 it with NASE standard, and we're going to adopt as much
20 as possible, yes.

21 CHAIRMAN KELLY: Mr. Drake?

22 MR. DRAKE: Just for clarity purposes, is CDA
23 going to be defined more explicitly in the rule? We're
24 kind of -- it's kind of evolved over the last couple of
25 months as -- as it was introduced in the NPRM, but I

1 think the --

2 CHAIRMAN KELLY: What is the EA?

3 MS. GERARD: CDA.

4 MR. DRAKE: Confirmatory direct assessment is
5 a related cousin to direct assessment here. But it was
6 introduced in the NPRM, but I think it's gotten a
7 little bit more definitive and a little bit better
8 framed over the last couple of months. Is that going
9 to be cleared up in the rulemaking, Mike?

10 MR. ISRANI: Yes. In fact, I was trying to
11 just show them the clear difference between CDA and DA.
12 It's one of the slides here.

13 (Slide)

14 MR. ISRANI: As you can see in this slide
15 here, the direct assessment and confirmatory direct
16 assessment are the same process steps. The only
17 differences are that we -- our requirements are not as
18 stringent as we had in DA.

19 For example, for DA, we use -- we are
20 required to have two tools. In CDA, we -- the operator
21 can use only one tool. And for indications like
22 immediate indications, what we call which are risky
23 indications, both of them require excavations.

24 For schedule indications, we require -- for
25 direct assessment, we require two excavations. For

1 CDA, we require one excavation.

2 And monitored, we require one excavation for
3 regular DA and we do not require any excavation for
4 CDA.

5 So there are -- there is some relaxed
6 requirement in the CDA, but it's a confirmatory direct
7 assessment. It still gives you a good idea on the
8 condition of the pipeline.

9 MS. GERARD: That was all clear in the
10 proposal, though.

11 MR. ISRANI: Yes.

12 MS. GERARD: What I'm not clear about is Andy
13 Drake's comment about fleshing it out more. What kinds
14 of things do you have in mind?

15 MR. DRAKE: Well, I think it just seemed like
16 as we got through the public meetings -- maybe it was
17 just me, but I think there were a lot of discussions
18 that helped provide a little bit more clarity as to
19 what that requirement was and how the process actually
20 worked. And I was hoping that maybe in the preamble
21 some of those public discussions would get commented or
22 would get captured.

23 MS. GERARD: Could you give an example?

24 MR. DRAKE: About the -- the --

25 MS. GERARD: About how it became clearer.

1 MR. DRAKE: That the tool is used to validate
2 the process, that the process is in control, and that
3 functionally it is an assessment. And I think that
4 those kind of discussions were not real clear in the
5 NPRM. And I think that was apparent in some of the
6 public comment.

7 Those kind of things, I think, it's very
8 constructive for us going forward, you know, for a
9 legacy value so that people know what this thing was --
10 its intent was, how it was intended to function,
11 structure, and how it fit into the process control
12 issues that are defined in ASME. Because it's --

13 MS. GERARD: That's pretty specific guidance
14 you're giving us there.

15 MR. DRAKE: Thank you.

16 MS. GERARD: I think I would --

17 (Laughter)

18 MS. GERARD: No, I mean, I -- I mean, you
19 have a motion on the table to accept the position as is
20 and this is the first time I've heard that you think
21 that we really need to clarify this. And so I -- I
22 would prefer to see the recommendation modified to
23 include additional clarification to the extent you've
24 just described it.

25 MR. DRAKE: Well, I would -- we were --

1 MS. GERARD: Mike could get hit by a bus,
2 somebody else could have to pick up the assignment, I
3 just want to make sure --

4 MR. DRAKE: I would make an amendment --

5 MR. ISRANI: I have to watch out, Stacey.

6 MR. DRAKE: -- to the motion on the floor to
7 add that clarity.

8 Toss it back to Ted to see if he still
9 concurs with the original motion as amended.

10 MR. ISRANI: Stacey -- I'm sorry. Go ahead.

11 DR. WILLKE: Yes, I will move for the
12 amendment.

13 CHAIRMAN KELLY: We'll accept it as amended.

14 MR. ISRANI: Okay. Good. And I just was
15 saying that there are some comments on this and we
16 intended to clarify that it's a -- it's a valid
17 assessment but it's more focused. It's a more focused
18 application of principles and techniques, so.

19 CHAIRMAN KELLY: All right. So the motion
20 has been made and seconded. And let me just ask before
21 we go -- just for purposes of the statement and the
22 vote.

23 Mr. Drake, if you would indicate what the --
24 the amendment -- the friendly amendment actually
25 entails?

1 MR. DRAKE: The amendment is just to provide
2 some clarity around the functional purpose of
3 confirmatory direct assessment and how that -- that
4 confirmation of the process or validation of the
5 process and the controls are still functioning or in
6 control and how it fits into the process of the ASME
7 document, the ASME process document.

8 MS. GERARD: Because the ASME document didn't
9 reference it at all, so you want us to put it in
10 context of how it's similar.

11 MR. DRAKE: And how it fits as an assessment
12 tool in that -- in that form -- in that format.

13 CHAIRMAN KELLY: Is there any further
14 discussion by the Committee on this?

15 DR. WILLKE: Yes, I have a question to Andy.

16 If the -- Mike had said that the reference is
17 -- the confirmatory direct assessment is direct
18 assessment but with fewer specific procedural
19 requirements. I'm not certain -- now I'm a little more
20 confused as to what clarification beyond that would be
21 required.

22 MR. DRAKE: CDA requires the same four-step
23 process as regular DA as defined inside NASE. And
24 that's not -- that linkage isn't very clearly defined
25 in the NPRM. And I think those kind of things need to

1 be explicitly noted so that you get this -- this animal
2 more explicitly bound as to how it functions and how
3 it's executed. I think it was more of a conceptual
4 discussion inside the context of the NPRM and it's very
5 constructive, but I think we need to put a little bit
6 more bounds to how to -- how to execute it and how it
7 fits into the process explicitly.

8 And that's the point of my discussion,
9 because I think it is a very constructive tool and I
10 think it's very much a value-added. But it could be
11 also a big point of contention because of people's --
12 who haven't sat around this table for the last so many
13 months aren't familiar with the nuances of how to
14 execute it.

15 MS. GERARD: Another way to look at it is, if
16 we were talking about mapping data, we'd be clarifying
17 the metadata. You know, what's the pedigree of this
18 animal, how accurate is it. It didn't exist before
19 this proposal, so since it's a major tool to meet a
20 statutory requirement, how does it fit in the overall
21 framework of other types of standards.

22 CHAIRMAN KELLY: Yes, Dr. Feigel?

23 DR. FEIGEL: I just have a comment or
24 possibly a question about how you might reference the
25 NASE recommended practice.

1 I would recommend that it not be a -- use not
2 be mandatory, that the language should -- should be in
3 the -- in the sense of presumption of conformity, if
4 you use -- I believe there ought to be alternatives or
5 at least, you know, some space for alternatives rather
6 than just saying that you've got to use the NASE
7 recommended practice.

8 MS. GERARD: You mean like the NASE
9 recommended practice or some other similar standard to
10 guide the execution of the function?

11 DR. FEIGEL: Yeah, and I'm not articulating
12 this very well. I agree with what you said, Stacey. I
13 -- I'd be willing to go on a step further, that there
14 be sort of a presumption of conformity if you use the
15 NASE standard but there be some room to use some --
16 some equivalent approach.

17 CHAIRMAN KELLY: Mr. Israni, did I understand
18 you before that you were not suggesting that OPS would
19 adopt and hold the NASE standard as is but would
20 include certain of its positions?

21 MR. ISRANI: Well, what I was saying was the
22 NASE standard, what we call, is actually NASE
23 recommended practice. And whenever there's a
24 recommended practice, the language is not always
25 enforceable because the language uses a lot of times --

1 you know, it's -- these are more like guidelines.

2 So the way we took the language from the NASE
3 standard when we wrote the DA, we modified the language
4 to make it enforceable. So we want to ensure that when
5 we reference NASE standard, we want to have some of
6 those requirements that we may retain for
7 enforceability point of view.

8 CHAIRMAN KELLY: All right. We've got two
9 issues on the table. One was Mr. Wunderlin's motion
10 and then Mr. Feigel's issue regarding NASE.

11 Let's take care of Mr. Wunderlin's issue. Is
12 there any further discussion on adopting the direct
13 assessment as proposed by OPS with the addition that
14 OPS also provide clarity around the functions/purposes
15 of confirmatory direct assessment? Any further
16 discussion on that?

17 MR. THOMAS: Well, it was discussed, and this
18 question relates to the -- to the equivalency and the
19 -- the possibly conditioning phrases about applicable
20 certain threats.

21 We talked about the fact that each of the
22 three methods has applicability and limitations. And I
23 just want to make sure that that phrase on this slide
24 doesn't somehow degrade DA in relation to the other
25 two, that it's really fully equivalent.

1 CHAIRMAN KELLY: Any other comments?

2 (No response)

3 CHAIRMAN KELLY: Are there any comments from
4 the public?

5 (No response)

6 CHAIRMAN KELLY: All in favor of the motion,
7 say "aye," please?

8 (There was a chorus of "ayes.")

9 CHAIRMAN KELLY: Any opposed?

10 (No response)

11 CHAIRMAN KELLY: That motion passes.

12 Now, there was also discussion by Dr. Feigel
13 that OPS consider in administering this rule a
14 provision that the NASE standard, if acceptable, or
15 some other standard that OPS finds to be equivalent and
16 acceptable.

17 DR. FEIGEL: That's essentially what --

18 CHAIRMAN KELLY: Do we need to -- can we
19 simply adopt that as a consensus position after
20 discussion or is this an item that requires a vote for
21 inclusion? Is this language that we want included or
22 is this a concept that we want them to consider?

23 DR. FEIGEL: -- the former.

24 CHAIRMAN KELLY: Is there further discussion
25 on that?

1 (No response)

2 CHAIRMAN KELLY: Is it fair to say there is a
3 consensus of the body that we want OPS to take this
4 into consideration as it moves forward in producing
5 this rule? Great. Thank you.

6 Repairs.

7 Repairs

8 (Slide)

9 MR. ISRANI: Repairs, dents and gouges. The
10 cite is 192.763(i)(4) in the proposed rule.

11 Goal here is to assure protection from
12 delayed failures associated with dents and gouges while
13 avoiding unnecessary excavation and repair.

14 (Slide)

15 MR. ISRANI: The question -- question was
16 raised at the public meetings, should a repair criteria
17 for dents located on the bottom of the pipeline be
18 different from that allowed for dents located on the
19 top? And should the presence of stress risers or metal
20 loss affect this decision?

21 The second part of the question is, should
22 the requirement to remediate in 180 days be changed to
23 one year?

24 (Slide)

25 MR. ISRANI: The comments we received from

1 the industry are that we should use B31.8 criteria.
2 I'm not talking about B31.8S but B31.8, the original
3 code criteria, which has some information on this dents
4 and gouges.

5 And second comment was to change 180 days to
6 one year.

7 And third comment was that we should monitor
8 bottom-side dents and -- and not require them under the
9 immediate category.

10 There were not any comments or anything for
11 or against from state or public on this issue.

12 (Slide)

13 MR. ISRANI: Our current position on this is,
14 for Part A, any dent with a stress riser or gouges
15 should be repaired immediately.

16 Now, we -- we want to clarify this here. We
17 are saying that any dent with a stress riser or gouges.

18 The question was raised in previous meetings was that
19 it's hard to determine if you -- if you have gouges and
20 a dent on the pipeline. We are not addressing that.
21 We are saying if the operator knows that there is a
22 dent and there is a stress riser, then it should be
23 repaired immediately.

24 And second position we have -- the second
25 part of the -- this question was to revise the

1 remediation criteria to allow one year for repair of
2 dents specified in paragraph such-and-such.

3 So we are going -- we are agreeing to that
4 part, to revise the remediation criteria to allow one
5 year for repairs of dents.

6 This is our current position on the dents and
7 gouges.

8 CHAIRMAN KELLY: The floor is open to
9 discussion. Any questions or comments by Committee
10 members?

11 DR. WILLKE: Tedd Willke. I'm not sure I
12 understand the differences between your composition and
13 all that's recommended that we heard in the public
14 meeting. Can we get some clarification?

15 MR. ISRANI: Well, the -- let me go back to
16 the slide here.

17 (Slide)

18 MR. ISRANI: The original -- original
19 question was that for bottom-side dents, the
20 requirements should not be the same as we have for the
21 top-side dent. We -- now, our proposed rule, we had
22 the dent on the top side or bottom side. If they have
23 a stress riser, gouges, or cracks, they should be
24 repaired immediately.

25 Industry felt that bottom side should not be

1 considered same as top side because they are supported,
2 they are more constrained, so there's a less chance of
3 those failing. So their -- their interval should be
4 longer.

5 But the -- the main point in this is that if
6 you have a dent and you already know there's a stress
7 riser in the bottom-side dent, no matter how you found
8 out -- you found out through the smart pig by running
9 different kind of tools to determine these conditions.

10 But once you found out, we think the risk is there and
11 they should be repaired immediately.

12 For the bottom-side dent, our concern is that
13 if -- if there's a rock or something and the pipe has
14 buckled over that, you know, if the ground has given
15 away and there's a sharp angle there on the pipe, then
16 you have a stress riser there on the bottom. And the
17 pipeline failure is still likely, just like you may
18 have on the top-side dent that has a stress riser. So
19 that's why we want to retain that position the same, to
20 repair immediately.

21 And the second part of our increasing from
22 six months to one year, that part we are agreeing with
23 the industry comment.

24 DR. WILLKE: But the industry position
25 appeared to be to monitor dents on the bottom side, and

1 it's really not the bottom half, it's really the bottom
2 third or something.

3 MR. ISRANI: Right.

4 DR. WILLKE: The industry recommended
5 monitoring but not repairing.

6 MR. ISRANI: They said monitoring for dents
7 which were just dents, not with gouges and stress
8 risers.

9 DR. WILLKE: Okay.

10 MR. ISRANI: That part we --

11 DR. WILLKE: You're recommending extending
12 the repair interval to a year but still requiring
13 repair?

14 MR. ISRANI: For remediation criteria to
15 allow one year. We're saying remediation, and
16 remediation is a general term. It is a repair or it
17 could be any mitigative action. We're using the term
18 "remediation" for one year.

19 DR. WILLKE: The other question I've got, and
20 I'm going to put both on the table at the same time,
21 is, how do you know when you have a stress riser?
22 Because the presumption could be that any dent that you
23 find is presumed to have a stress riser and therefore
24 trigger that repair anyway. Maybe I'm misunderstanding
25 something here.

1 MR. ISRANI: Well, stress risers you would
2 know if you have excavated and looking at the condition
3 or you run the smart pig, for example. You -- you saw
4 that there is a kind of a -- some kind of like a
5 certain buckle position or, you know, method of --
6 there are different methods of finding. And the
7 experts who read these data, they can determine that
8 this condition looks serious. Mostly, you'll find
9 after excavation of those conditions.

10 But our -- our concern here is that once you
11 found out, then you should repair it. The original
12 concern was that it's hard to find that. So we are
13 just honing on that one issue that once you know
14 there's a stress riser and there is gouges there in the
15 -- in the dent, then you should fix it regardless if
16 it's top or bottom.

17 CHAIRMAN KELLY: Yes, Dr. Feigel?

18 DR. FEIGEL: Let me ask what I think was
19 Ted's question maybe a little bit differently.

20 Do we have a well understood and widely
21 accepted definition of stress riser? Because, quite
22 frankly, anything other than a right circular cylinder
23 is going to have some kind of engineering stress riser,
24 if you will. I mean, that's -- that's a fact.

25 MR. DRAKE: I think that Keefner and

1 Associates were assigned this responsibility to help
2 define this inside the ASME document, not the "S"
3 document, the B31.8, the standard, the real one, the
4 main one.

5 And they added a strain calculation which is
6 a very -- requires a great deal of rigorous -- you
7 know, use of a lot of rigorous tools to define that
8 strain in the pipe.

9 And I think that -- that -- I think this is
10 an opportunity for us to actually move the bar up here.

11 And I don't think anybody here at this table or in the
12 audience can really just flat out dismiss that we don't
13 need to look at any dents anywhere any time. The thing
14 here is I think that we need to try to avoid digging up
15 a great deal of benign events and creating non-benign
16 events in the process.

17 The constrained dents have demonstrated a
18 very safe behavior pattern for a very long period of
19 time in our operating world. I think the statistics
20 illustrate that very clearly. I don't think any of us
21 are confident in how those benign events will react
22 once the constraint is removed, which could be the
23 fall-out of some of this provision if we're not very
24 careful, is that you get a lot of people out there
25 digging around and taking the constraint out of the

1 dent and putting them back in service or digging around
2 it while it's in service, none of which is advisable.

3 I think something I would offer as perhaps a
4 technical -- you know, some sort of way to resolve this
5 is amending what you have there for constrained dents
6 in particular, given an alternative that operators that
7 are willing to run a strain calculation and can pass
8 the strain provisions as provided by ASME for dents --
9 it was specifically designed for dents -- and can
10 define based on their tools and their inspections that
11 there are no -- there is no corrosion, no stress
12 risers, or, you know, concerns in the dent area for
13 constrained bottom-side dents only, that those dents be
14 allowed to be moved into the "monitored" category.

15 And that is no low-flying hurdle. What
16 you're saying is the operator has to take a very
17 considered rigorous inspection of that specific event
18 to make sure that there's no local events happening
19 inside the dent, corrosion or stress risers, and that
20 the strain calculation for that specific dent is below
21 the strain criteria defined in ASME, which was
22 specifically defined for dents.

23 I think that that at least gives people who
24 are willing and -- to try to use their -- their brain
25 and -- and all the tools that they can find a

1 constructive way to -- to not dig up a host of these
2 defects that are -- that aren't the bad guys.

3 What I'm saying is, it gives them a way -- it
4 gives an operator a very clear albeit high venue to
5 characterize the bad guys and leave the benign ones
6 alone. But it isn't a low-flying hurdle. I'm
7 certainly warning anybody in the audience, that is not
8 a -- not an easy task.

9 CHAIRMAN KELLY: Dr. Feigel?

10 DR. FEIGEL: I would look at this not -- not
11 in the sense of whether it provides relief or not. To
12 me it's -- it's the use of appropriate, current, modern
13 engineering tools to do the best we can to analyze the
14 potential impact or absence of impact of what we're
15 looking. That's not an issue of whether, you know,
16 somebody's passing some bar or not. We're just --
17 we're using the best tools we have available and which
18 I believe in the main we should be doing.

19 CHAIRMAN KELLY: Dr. Willke?

20 DR. WILLKE: I have a -- if Andy could help
21 us put together a motion that would incorporate that,
22 something to the effect that revised remediation
23 criteria to allow one year of repair of dents that meet
24 certain criteria. And I'm not sure I know how to
25 phrase that, Andy.

1 MR. DRAKE: I would propose that you -- you
2 just add to Mike's words that for -- under B, and that
3 is, revise remediation criteria to allow one year for
4 repair of dents specified in Paragraph 192.763, on and
5 on and on -- and I assume that that's the paragraph
6 that refers to bottom-side dents --

7 MR. ISRANI: Right, yeah.

8 MR. DRAKE: -- unless an operator runs the
9 tools necessary to validate that that dent that passes
10 the strain criteria as defined in ASME B31.8 and can --
11 can -- and the dent does not indicate any presence of
12 corrosion or cracks in the dent area.

13 MS. GERARD: I'm the layperson here. How do
14 you know the dent's constrained?

15 MR. DRAKE: By the -- basically, by the
16 presence of its -- of its location on the bottom side.
17 The weight of the pipe, the earth, the -- holds those
18 bottom-third dents in place. It would almost --

19 MS. GERARD: And we assume that the pipeline
20 is always sitting on earth?

21 MR. DRAKE: Well, I think you could add the
22 caveat that if the operator -- the operator has to
23 verify that the pipe is buried. I mean, --

24 MS. GERARD: No, I meant --

25 MR. DRAKE: -- if it was in an area --

1 MS. GERARD: -- there could be soil -- some
2 sites --

3 MR. DRAKE: -- or something, that would --

4 MS. GERARD: I mean, there would -- there
5 couldn't be -- there couldn't have been any soil
6 subsidence that would have removed the constraining
7 dirt? I mean, I just -- how do you know? You just
8 assume?

9 MR. DRAKE: Just -- I'm open to anybody in
10 the audience. I'm kind of a little bit at a loss for
11 words here.

12 It would -- I think it would be very apparent
13 if the pipe lost bottom-side support --

14 MS. GERARD: It would?

15 MR. DRAKE: -- and it was buried. Yeah.

16 MS. GERARD: Okay.

17 CHAIRMAN KELLY: These are bottom-side dents
18 only that you're interested in?

19 MR. DRAKE: And that's the -- that's the
20 qualification for his -- his paragraph reference there.

21 DR. WILLKE: Is the reference to constrained
22 dents or to bottom-side dents?

23 MR. DRAKE: It is to bottom --

24 MR. ISRANI: Bottom-side.

25 MR. DRAKE: -- third dents, which we refer to

1 as constrained dents.

2 And I think -- you know, I know this seems
3 like a very concernable issue. We're trying to
4 establish that it's a very technical approach to ferret
5 out where the problem is and action on those, but
6 statistically, over the 45 years that we've had this
7 requirement or had operating pipes under the federal
8 regulations, bottom-side dents have accounted for far
9 less than one percent of the incidents that have been
10 reported.

11 And I think that's -- that's an important
12 point to note. These -- these guys don't cause that
13 much problem. So I -- I guess what I'm a little
14 concerned at here is that with a very open requirement,
15 we could now put a great deal of resources into an
16 event that has proven over time to not be a very
17 significant failure phenomenon in our pipelines. We
18 could literally pour huge amounts of resources chasing
19 dents which have been present on pipes for decades just
20 because we're -- we're not able or willing to think of
21 a way to define the bad guy.

22 CHAIRMAN KELLY: Are there any other --

23 MS. GERARD: The reason I was asking the
24 question was because of experience in the northwest and
25 thinking about northwest pipeline and installation of

1 strain gauges and geologic monitoring and that sort of
2 thing, and changes in weather patterns, you know,
3 moving earth. And you know, if that pipeline was --
4 was putting in strain gauges to give an early warning
5 of earth movement and there's been problems up there,
6 as I recall, I'm just wondering how you know if you
7 don't have some sort of gauge to monitor the earth has
8 moved?

9 MR. DRAKE: Dents -- dents are one criterion
10 for repair. Outside force on the pipe is a threat unto
11 itself that the operator is obligated to address
12 whether there are dents present or not. Don't -- let's
13 not get apples in our orange basket here.

14 Outside force, which you're referring to as
15 landslides and land movement and things like that, that
16 is a threat that the operator has to deal with
17 explicitly inside this requirement regardless of the
18 presence of dents, regardless of a lot of things. And
19 dents aren't necessarily an indicator of outside force
20 because a lot of the concern that you have in an
21 outside force environment is lateral displacement, not
22 downward displacement.

23 As a matter of fact, that is usually the
24 primary concern, is lateral displacement, the pipe
25 moving side to side.

1 CHAIRMAN KELLY: Any further comment by --
2 yes, Mr. Israni?

3 MR. ISRANI: I -- one point, I want to
4 clarify what Ted mentioned about whether this cite that
5 we have, 192.763(i)(4)(ii) refers only to bottom-side
6 dents, which I think even Andy wanted to know.

7 Actually, that -- that one refers to both
8 bottom- and top-side dents, but we could always
9 consider adding a third paragraph for bottom-side dent,
10 the amendment that Andy recommended. But for the top-
11 side dent, we retain as we have in B.

12 CHAIRMAN KELLY: Any further comments or
13 questions by Committee members? Yes, Mr. Thomas?

14 MR. THOMAS: Yeah, a comment, and I agree
15 with Andy's position.

16 My comment, really, is on the tools and what
17 you can see with them. I have no problem with the
18 gouges because I think we got tools that can read metal
19 loss and we can find the gouges.

20 The stress riser I'm less sure of. The
21 geometry tools can show certain things about the
22 geometry of a non-conformity in the pipe wall, but when
23 we say stress riser, that's somewhat of an undefined
24 thing.

25 We've talked in terms of percent of --

1 percent dents before to talk about the severity of the
2 dent. But stress riser, to me, may imply something
3 about angularity, for instance, instead of a
4 smoothness. I'm a little -- little -- yeah, sharp,
5 sharp area. And I'd just say I'm uncertain whether the
6 geometry tool will actually show that very well or not.

7 The industry can only do what it -- what it
8 can see on the -- on the logs of the tool that's run.
9 So in -- in doing what Andy talks about and running
10 calculations, we'd have to use the data that's
11 developed from the tool that's only as good as it is.

12 MR. DRAKE: I agree. The -- most of the
13 geometry tools are not equipped at this time to do the
14 strain modeling, but there is a tool that's available
15 called a slope deformation tool that is now on the
16 market. And that tool has been used extensively to
17 define strain in dents. And certainly, with the advent
18 of this rule, that tool will become much more popular,
19 but -- if this amendment was put into the regulatory
20 requirement.

21 But I think that that's the kind of -- the
22 kind of data that you need to bring in to make sure
23 that you are protecting, you know, the integrity of the
24 pipe, that you need to know the slope deformation so
25 that you can run the strain curve because the current

1 -- you know, just a caliper tool -- you're right,
2 Eric -- a caliper tool does not map slope deformation
3 enough to map strain. And so we'd have to --

4 Like I said, it's a very high hurdle. It's
5 not a low-flying hurdle. But at least it gives
6 operators a way to think through this problem and then
7 minimize the amount of excavation on benign anomalies
8 if they can characterize them. And I think that we
9 need to have that because it -- it will change -- it
10 will change the culture. It will change the tools on
11 the market, it will change the type of things that
12 people do in a matter of course to -- to address this
13 issue. And we're giving them in essence guidance on
14 how to characterize the bad guys. And that's what you
15 want.

16 CHAIRMAN KELLY: Dr. Feigel?

17 DR. FEIGEL: Again, just --

18 CHAIRMAN KELLY: Dr. Willke?

19 MS. GERARD: I just want to be clear. What
20 we're talking about is an amendment that Andy's
21 proposing that for the first time in this meeting would
22 -- the Advisory Committee is considering recommending a
23 change to the OPS stated current position that's --
24 relaxes the NPRM proposal. Your amendment would
25 further relax the NPRM proposal to negate required

1 repair of constrained bottom-side dents unless
2 accompanied by stress risers to a monitoring position,
3 not a repair. Is that -- do I understand that
4 correctly?

5 CHAIRMAN KELLY: Dr. Feigel?

6 DR. FEIGEL: Stacey, I would object to your
7 characterization of that as a relaxation. I mean, as I
8 tried to convey 10 minutes ago, to me, if -- if we are
9 employing the best analytical -- the best inspection
10 and -- and analytical tools to judge whether a -- an
11 action is appropriate or not or whether it's, quite
12 frankly, given the full range of knowledge that we can
13 develop out of that, that mitigation activities --
14 physical mitigation activities, repairs, might in fact
15 be more damaging. That's not a relaxation. That --
16 that's a technical advance.

17 MS. GERARD: I thought he said monitor, not
18 mitigate.

19 DR. FEIGEL: But that -- that decision is
20 only made as a result of -- of employing the
21 appropriate analytical tools. And -- and then you --
22 then you get the decision for it. Depending on the
23 outcome of that, you either repair or you monitor. But
24 you've got a very firm engineering basis for making
25 that decision, so again --

1 MS. GERARD: I understand, but the reason I
2 use the word "relaxation" because the original proposal
3 was that bottom-side constrained dents would be
4 repaired in 180 days, correct? And what the
5 consideration of the new proposal was that we were
6 extending the repair time to one year. And now what
7 we're saying is rather than repair it, you'd perform
8 good engineering analyses and decide whether to repair
9 it or to monitor it?

10 I'm just trying to --

11 MR. ISRANI: Stacey, may I make a correction
12 here?

13 Even though my slide here shows, you know,
14 allow one year for repair, actually, in the proposal we
15 say allow one year for remediate. So that makes the
16 difference.

17 If we change the language of what we -- what
18 I show here for repair of dents to remediate, remediate
19 allows other mitigating options.

20 MS. GERARD: Like monitoring?

21 MR. ISRANI: Like monitoring.

22 MS. GERARD: Okay.

23 CHAIRMAN KELLY: Is there a formal monitoring
24 category?

25 MS. GERARD: Monitoring is part of

1 remediation.

2 MR. ISRANI: Yeah, it's a part of -- yeah.

3 Right. So in the --

4 MS. GERARD: All right. So now I understand.

5 We are not --

6 MR. ISRANI: Yeah.

7 MS. GERARD: The -- the proposal was not

8 repair but remediate.

9 MR. ISRANI: Remediate.

10 MS. GERARD: And remediate includes

11 monitoring?

12 MR. ISRANI: Right.

13 MR. DRAKE: Right. And you're just trying to

14 characterize -- you're giving the operators an

15 alternative. If they are willing to characterize the

16 dent better, then they can move it into the "monitored"

17 category. That's -- that's all you're really talking

18 about.

19 MS. GERARD: So it's a higher standard of --

20 MR. DRAKE: Yes.

21 MS. GERARD: -- definitive -- defining it?

22 MR. DRAKE: Yes. You are expending a great

23 deal more energy characterizing it so you can move it

24 into a monitored category. That doesn't mean you don't

25 pay attention to it.

1 MS. GERARD: Okay. It's a lot clearer to me
2 now.

3 MR. DRAKE: It means you keep looking at it.
4 But you're not going to go out and dig it up and --
5 and remove it. I mean, obviously, if you dig it up
6 you're going to remove it.

7 MS. GERARD: There is some difficulty with
8 matching up the exact words on the slides which were
9 shorthand with the actual language.

10 CHAIRMAN KELLY: And thus, are you suggesting
11 that industry make this determination on its own or
12 that industry must indicate to OPS that these various
13 criteria exist and therefore monitoring is appropriate?

14 MR. DRAKE: I'm certain in their audits
15 they're going to want to know if we find a dent that we
16 have -- and it meets these criteria, that we have
17 characterized it to move it to that category. Because
18 if we don't, we're going to be in obvious -- it would
19 be like a corrosion anomaly that wasn't remediated, in
20 essence.

21 So it fits -- there's the framework of the
22 repair criteria basically holds the operator
23 accountable to how did you close that positive. And
24 they either remove it or they characterize it to move
25 it into the "monitored" category.

1 CHAIRMAN KELLY: Any further -- Dr. Willke?

2 DR. WILLKE: That seems -- I don't want to
3 split too many hairs here, but that seems a little bit
4 different than the position that you spoke about
5 originally, which is you would -- what you're
6 suggesting now is that you decide based on certain
7 criteria in the B31.8 as to whether or not this is --
8 has enough strain or -- or enough stress in it that
9 it's going to require remediation in one year.

10 The position as I understood you stated
11 originally, the burden of proof would be on the
12 company, the operator, to make that -- to prove that it
13 does not meet to be remediated.

14 MR. DRAKE: That's correct.

15 DR. WILLKE: That's different, I think. In
16 other words, the presumption on your first time around
17 was that it has to be remediated unless the operator
18 can prove that it meets certain criteria under B31.8.

19 MR. DRAKE: I agree with the latter, but I
20 don't understand the differentiation between what you
21 just said and the previous --

22 DR. WILLKE: One is that --

23 MR. DRAKE: I don't understand the
24 differentiation.

25 DR. WILLKE: One is that you're applying a

1 set of criteria to determine whether or not this is a
2 condition that needs to be remediated. The other is
3 that you assume that everything that you indicated
4 needs to be remediated unless -- unless you can
5 demonstrate that it meets the conditions of B31.8.

6 MR. DRAKE: In the interest of the high
7 hurdle, and I think preserving everybody's confidence
8 here, it was intended that unless you are willing to do
9 this extra rigor that you will remove them.

10 PARTICIPANT: That's what I thought.

11 CHAIRMAN KELLY: So then, with respect to
12 bottom-side dents, the position that's before us now is
13 that unless that section of pipe passes the strain
14 criteria in B31.8S and the dent does not indicate the
15 presence of corrosion and cracks, that it would be
16 moved to the "monitored" category.

17 MR. DRAKE: Just for clarity, the strain
18 criteria is just in B31.8. Just for --

19 CHAIRMAN KELLY: Thank you.

20 Does that fairly state --

21 MR. ISRANI: One question. Andy, when I --
22 that --

23 CHAIRMAN KELLY: Let him answer the question.

24 Does that fairly state what is currently on
25 the table?

1 MR. DRAKE: Could you just reread that?
2 Since I was concentrating on the "S" part there and
3 lost the focus.

4 CHAIRMAN KELLY: That with respect to bottom-
5 side dents, if a section of pipe passes the strain
6 criteria of B31.8 and the dent does not indicate the
7 presence of corrosion or cracks, it is to be moved to
8 the "monitored" category.

9 MR. DRAKE: Yes, that was the intent of the
10 motion.

11 CHAIRMAN KELLY: Mr. Israni?

12 MR. ISRANI: I have a question from Andy if
13 he knows that -- when I read about this remediation --
14 question about dents in the B31.8, it was in the
15 proposal stage. Was it already put in the code about
16 this -- you know, the dents to be repaired or
17 remediated in a certain time frame? I thought there
18 was a proposal to B31.8 and it was still not in the
19 code part or you think it's already in the code?

20 MR. DRAKE: The strain modeling is in the
21 current B31.8. It is an approved appendix in B31.8.

22 The issue of looking for corrosion inside the
23 -- the dent area as another criteria is something that
24 they are currently considering.

25 MR. ISRANI: Okay.

1 MR. DRAKE: Basically, that work is being
2 ponied with the technical project between Duke and the
3 OPS. So that's why I feel pretty comfortable about
4 talking about it, is that -- and Keefner is the -- is
5 the contractor that's doing that work for us. So that
6 part will be considered by B31.8 currently as this work
7 is completed.

8 MR. ISRANI: Okay.

9 CHAIRMAN KELLY: Time frame on that?

10 MR. DRAKE: What part of it?

11 CHAIRMAN KELLY: The last part, the -- the
12 Duke and Keefner and OPS.

13 MR. DRAKE: The OPS-Keefner-Duke part is in
14 progress right now, and I think that Jim O'Steen
15 certainly probably is as familiar with the schedule as
16 well as I am, you know. But I think that by the end of
17 this year we will have that work completed, hopefully,
18 and that then Keefner is to make that proposal to
19 B31.8. And B31.8 has an -- has an action item open on
20 this issue. There --

21 MS. GERARD: So we won't -- we won't have an
22 ability to reference that in this?

23 MR. DRAKE: No. The standard -- that -- what
24 you're -- well, you do have the opportunity to
25 reference the strain part of it.

1 MS. GERARD: Right. But not the --

2 MR. DRAKE: That's done. But the other part
3 of it is currently work in progress.

4 CHAIRMAN KELLY: All right. I think the
5 motion has been made and seconded to amend the position
6 -- the current position of OPS with respect to bottom-
7 side dents.

8 Is there any further discussion on that?

9 (No response)

10 CHAIRMAN KELLY: All in favor?

11 (There was a chorus of "ayes.")

12 CHAIRMAN KELLY: Any opposed? Mr. Cotton.
13 One opposition.

14 Any abstentions? Is that an abstention, Mr.
15 -- is that an abstention?

16 PARTICIPANT: (Off mike)

17 CHAIRMAN KELLY: Oh, I see. All right. One
18 -- one vote "no."

19 So this -- that amendment passes.

20 Any further discussion on dents and gouges?

21 (No response)

22 CHAIRMAN KELLY: Any discussion or comments
23 from the -- the public, the audience? Yes, sir?

24 And identify yourself and your affiliation
25 for the record, please.

1 MR. LINN: Craig Linn with Williams Gas
2 Pipeline.

3 Just a comment that was made about ground
4 movement and how it relates to this issue of repair of
5 dents and gouges. I just wanted to make sure it was
6 understood -- I think Andy addressed it -- that it's
7 understood they're really two separate issues. And the
8 ground movement issue really doesn't interface with
9 this dents and gouges.

10 CHAIRMAN KELLY: Thank you.

11 Any further comments from the audience?

12 (No response)

13 CHAIRMAN KELLY: Is the Committee ready to
14 take a position on the recommended position by OPS on
15 dents and gouges?

16 PARTICIPANT: I thought we just did.

17 CHAIRMAN KELLY: No, we just voted on the --
18 an amendment to it.

19 Is the balance of the dents and gouges
20 acceptable to the Committee or do you not want to take
21 a position on it?

22 PARTICIPANT: I thought we just amended B.

23 CHAIRMAN KELLY: Are we adopting A? We only
24 amended B.

25 (No response)

1 MR. LEISS: I move that we adopt A as well
2 and -- and to the extent it hasn't been moved, if it
3 hasn't been, that we adopt B as we've already voted
4 upon.

5 CHAIRMAN KELLY: Well, let me just check
6 because I wasn't looking behind myself.

7 Did we -- did we accommodate both A and B in
8 the amendment that we just voted? Did we take care of
9 both?

10 PARTICIPANT: I think it was --

11 CHAIRMAN KELLY: All right. All right. Then
12 we -- that is the -- the Committee's position with
13 respect to dents and gouges.

14 Prevention and mitigation.

15 Actually, I've just been reminded -- I've
16 been reminded we should take a break. Fifteen minutes.

17 (Brief recess)

18 CHAIRMAN KELLY: We'll begin with Jim
19 Wunderlin and ask him to speak to that, please.

20 MR. WUNDERLIN: Yes. There was some
21 conversation during the break, and I believe OPS,
22 Roger, is going to address the Committee to explain
23 that there may be a process that already exists in the
24 proposed rule that may cover our concerns about the
25 waiver.

1 CHAIRMAN KELLY: All right. Identify
2 yourself for the record, please.

3 MR. HUSTON: My name is Roger Huston. I'm
4 with Cyclone Corporation, supporting OPS.

5 The issue that Mr. Wunderlin raised this
6 morning and Andy Drake also talked to was the question
7 of requirements establishing specific time schedules,
8 like the repairs, and what happens when an operator
9 can't meet that schedule. There was the suggestion and
10 the need for a waiver.

11 I wanted to point out that the proposed rule
12 does include a provision that allows an operator to
13 notify OPS and does not then require that OPS approve
14 that action. It becomes something OPS can review and
15 inspect, but an approval is not required.

16 In the case of repairs, the notification is
17 required if the repair cannot be made in the
18 established time frame, the time frame in the rule, and
19 pressure cannot be reduced, which -- addresses Andy's
20 point. If an operator can't reduce pressure, cannot
21 for whatever reason make the repair within the required
22 time, whether that be 180 days or a year, the operator
23 then can submit a notification to OPS describing the
24 basis for its plans, why it continued operation, will
25 it be acceptable, and when it will be able to do the

1 remediation.

2 That's a similar notification process exists
3 for hazardous liquids, as in that rule, and that
4 process is currently be exercised and operators are
5 submitting notifications when they can't make repairs.

6 OPS has a process by which they review those
7 notifications, decide whether or not the additional
8 provisions suggested by the operator, when their --
9 what their schedules are are acceptable. If not, OPS
10 will get back and talk to the operator and possibly
11 conduct an inspection. But if no objections are noted,
12 the operator is just allowed to continue.

13 MS. GERARD: I just want to be real clear
14 about this because Jim Wunderlin used the term
15 "approval." When we receive the notifications, they're
16 received and they are reviewed. We're not approving
17 them. And if we have an issue, the way to address that
18 issue is through an inspection.

19 Now, an inspection can be by a phone call,
20 correct, Barbara? But it's not -- we're not approving
21 them. We would follow up on our review by a phone
22 call, but it's not an approval.

23 MR. HUSTON: And the operator does not need
24 to wait for any such approval. There is no approval.

25 MS. GERARD: Right, right. That you'd hear

1 from us if we had a problem. But I just -- I just want
2 to make sure people -- you know, you can't say that
3 you've received an approval. You've notified us, and
4 if we have a problem, we would get back to you.

5 CHAIRMAN KELLY: Mr. Wunderlin?

6 MR. WUNDERLIN: Yes. I was just going to
7 relate the example that I gave earlier, how we find an
8 extensive area of pipe that we have decided to replace
9 rather than go in and do a number of repairs. We would
10 put together an engineering study, put together a
11 replacement program. We would file a notification to
12 what we were doing with that segment of pipe, and that
13 would -- if you can't say approve, then OPS wouldn't
14 necessarily approve, but that would satisfy the concern
15 for the time being.

16 MR. HUSTON: That would satisfy the
17 requirements in the rule to have submitted a
18 notification of the operator's plans to do something
19 different other than simply remediate within the time
20 frame. It would then trigger the review that Stacey
21 talked about within OPS where OPS would determine --

22 MS. GERARD: -- inspection.

23 MR. HUSTON: -- if there was a need to come
24 back and talk further or to conduct an inspection. And
25 if not, you -- you have met the requirements and you

1 just proceed.

2 CHAIRMAN KELLY: Any other questions or
3 comments by Committee members? Yes?

4 MR. HERETH: Hi. I'm Mark Hereth with PIC.

5 Could counsel clarify the constraint that
6 might still exist because of the legislative
7 requirements under the waiver provisions? How do those
8 two work in concert?

9 MS. BETSOCK: We're not constrained with
10 respect to repair criteria. The statute doesn't --
11 doesn't restrict us in that regard. Therefore, we can
12 provide variances for the repairs in regulation.

13 MR. HERETH: But you -- you still would have
14 the constraint for assessments, correct?

15 MS. BETSOCK: We still have --

16 MR. HERETH: Not for the baseline.

17 MS. BETSOCK: -- constraints for the baseline
18 assessment. We can't vary the 10 years.

19 MR. HERETH: Okay. I just wanted to make
20 sure that we were clear on that.

21 MS. GERARD: And I would like, Barbara, to
22 clarify what the process would be for the waiver, which
23 is only specified in law for the gas transmission
24 lines. What would be necessary for an operator if they
25 could not meet the reassessment schedule? What would

1 be the burden on the operator and what would be the
2 burden on OPS as our -- as we currently practice the
3 waiver?

4 MS. BETSOCK: We -- the operator would -- if
5 an operator could not meet the reassessment criteria,
6 the seven years, they can come in and seek a waiver of
7 that. They should do it enough in advance that we have
8 sufficient time to act on it.

9 I think OPS is willing to try to expedite
10 those, and they'll probably develop some expedited
11 review for them. However, I can't see them being done
12 in much less than six months. You probably would have
13 to allow at least six months of notice to OPS that you
14 wouldn't be able to meet the seven years.

15 We are required to put the proposed waiver
16 out for public comment and that we would -- we would
17 act on it.

18 MS. GERARD: I think you're saying six months
19 is going on our past experiments with processing
20 waivers.

21 MS. BETSOCK: I think that's probably the
22 minimum amount of time you could expect a government
23 agency to act on one.

24 MR. HERETH: Because you do have to notice it
25 in the "Federal Register," right?

1 MS. BETSOCK: We have to notice it in the
2 "Federal Register," so it takes a little more time than
3 needed. I mean, we may be able to -- to move them
4 faster, but right now I'd say six months is probably
5 the minimum time that you could reasonably expect.

6 CHAIRMAN KELLY: Any further comments? Mr.
7 Bennett?

8 MR. BENNETT: We have one other comment -
9 this is Phil Bennett -- on the same situation. When
10 you look at a hypothetical for an operator looking at
11 his baseline assessments, he may do his initial risk
12 assessment and decide that instead of going through in-
13 line inspection, hydrotesting, he's actually going to
14 do a replacement project. And this is kind of the
15 example that Jim Wunderlin talked about.

16 He may offer a plan to replace pipe but a
17 long pipeline replacement project may extend out five
18 or 10 years for hundreds of miles of pipe.

19 MS. GERARD: This is, you said, after he did
20 his baseline assessment?

21 MR. BENNETT: No, not the baseline
22 assessment. You do your -- your plan and rather than
23 hydrotest or doing an in-line inspection, you say, I am
24 going to replace the pipe. So --

25 MS. GERARD: I don't think that we have the

1 option of waiving the baseline assessment.

2 MR. BENNETT: Even if you put in a
3 replacement project?

4 MS. GERARD: I don't think the law allows for
5 a waiver of the baseline assessment.

6 MS. BETSOCK: We don't have the option. The
7 most we could do would be possibly agree with you that
8 it looked like a good -- a good approach, and I -- but
9 that doesn't get you out of the requirement. We cannot
10 waive it.

11 MR. BENNETT: Well, when you do a replacement
12 project, say for hypothetically you have bare pipe.
13 You say the best thing for safety is a long-term
14 replacement project, and once you do a replacement, the
15 new pipe has been hydrotested. So your plan is to
16 hydrotest all this new --

17 MS. GERARD: And you're going to get that
18 done in 10 years?

19 MR. BENNETT: Ten years, but then are you --
20 do you have to do five years because your -- your
21 highest-case pipe is actually five years? So that's a
22 unrealistic expectation sometime. The 10 years does
23 sound logical.

24 MS. GERARD: I would think that if you
25 decided that you're going to replace a pipe and you

1 have a plan as part of your integrity plan to replace
2 the pipe, as long as that pipe is tested in 10 years,
3 you've met the statutory requirement.

4 MR. ISRANI: Stacey, I'd interject in here to
5 clarify something. What Phil Bennett is saying, when
6 they're replacing a pipe and we by our code require
7 that any replaced pipe had to be pressure tested. So
8 once they're pressure testing, then they're meeting the
9 baseline.

10 MS. GERARD: Right. And it -- by virtue of
11 the fact that you have a plan to replace it, it's no
12 longer going to pose the highest risk. You know, I
13 mean, so you should get it going as soon as you can.

14 MR. BENNETT: I think that does answer the
15 question. Really, you're looking at 10 years doing it
16 within the statutory time period.

17 MS. GERARD: Right. You know, the question
18 will be how the highest risk pipe at five years test is
19 defined. You might want to make some --

20 MR. BENNETT: Any other questions on that?

21 One other related question, and when we
22 looked through the regulation for -- actually, it was
23 written up "cut off local supply," and you have to go
24 in for a waiver for reassessments. When you compare
25 that to the statute, the statute didn't say cut off

1 local supply, it really said maintain local supply.
2 And those are really two different concepts.

3 If you reduce the pressure 500 miles away on
4 major transmission lines, you are impacting maintaining
5 local supply, and that happens during the winter at
6 times.

7 And so the -- the regulation looks like it is
8 more stringent than the statute as far as cutting off
9 customers. That's done -- like local distribution
10 companies cut off customers, and that's different from
11 maintaining supplies.

12 MS. GERARD: Okay. Then, are you -- are you
13 asking the Committee to consider making a
14 recommendation that we word it differently so that it's
15 more consistent with the way the statute is written?

16 MR. BENNETT: Yes, yes, we are. Because we
17 do feel you really should be consistent with the
18 statute.

19 MS. GERARD: Do you want to say it one more
20 time? We said -- OPS's proposal said --

21 MR. BENNETT: The OPS proposal says that
22 waivers are available if the supply of gas will be cut
23 off to customers whereas the statute was more broad and
24 said maintaining supply to customers. And we think the
25 final rule should reflect the broadness of the statute.

1 MS. GERARD: So that in our -- in our
2 reassessment language that the waiver language should
3 be rewritten to say that waivers can be obtained so
4 that operators can maintain supply?

5 MR. BENNETT: Yes.

6 CHAIRMAN KELLY: Mr. Hereth, you had a
7 comment?

8 MR. HERETH: There's -- there's a subtle
9 distinction also that you may want to consider, which
10 is that when you -- when the legislation uses the
11 phrase "maintain local supply," if you look at trunk
12 link systems which you have a bunch of in this -- in
13 this country, maintaining local supply can also mean
14 impacting regional supply, which is -- information was
15 provided in the EEI study, for example, from INGAA.

16 The concern is that if your language says
17 "local supply" that you will only look at local supply
18 impacts and that you won't consider regional impacts.
19 For example, when you take a 36- or a 40-inch trunk
20 line down somewhere in the country, that impacts
21 multiple local areas.

22 MS. GERARD: I would just say that by the
23 time we move into implementation on this rule, OPS is
24 going to need assistance by way of studies or enhanced
25 information flow between federal agencies so that we're

1 in a position to understand when that happens.

2 We raised this question a few years ago at
3 the time that we were committed to the EEI study, and
4 that doesn't really give us the basis that we were
5 looking for, and we've said so, to be able to make the
6 decision about whether or not the operator is able to
7 maintain supply. How do we expect to get into a
8 position to be able to make that judgment.

9 MR. HERETH: And I think it's appropriate to
10 wait until you move into that -- writing protocols and
11 stuff, but I think Mr. Drake pointed this out before.
12 It's important that the record reflect, particularly
13 for FERC, that you're aware of the potential for local
14 and regional disruption and that FERC is -- is aware of
15 that from the record you've created here so that we
16 don't get into issues as we did with MAOP in the El
17 Paso case and other situations.

18 MS. GERARD: Well, we've advised FERC about
19 this about the same time as that case came up and, you
20 know, we will remind them about it. But we're working
21 more closely with FERC and we have, you know, written
22 to EIA and tried to discuss the problem with them and
23 Energy.

24 And you know, it's just we don't really have
25 a good methodology to address this kind of problem

1 because there really hasn't been this type of pressure
2 caused by a regulation. So we need to work on that.

3 CHAIRMAN KELLY: Any comments by the
4 Committee?

5 (No response)

6 CHAIRMAN KELLY: All right. Prevention and
7 mitigation.

8 MS. GERARD: So there's no other
9 recommendation from the Committee on that? That's just
10 -- we'll just take that under advice from the
11 Committee.

12 The Committee accepts that comment? I mean,
13 that was the public talking, so to speak.

14 CHAIRMAN KELLY: With respect to the issue of
15 being consistent with the statute, I believe that was
16 the underlying aspect.

17 MS. GERARD: I think it would be -- I think
18 it would be a good idea to bolster the comment with a
19 recommendation from the Committee.

20 MR. DRAKE: I think you have a motion on the
21 floor regarding this -- this issue. Is that motion --

22 CHAIRMAN KELLY: Thank you for reminding me.

23 MR. DRAKE: -- not appropriate at this point?

24 CHAIRMAN KELLY: Mr. Wunderlin's motion?

25 MR. WUNDERLIN: Could you read the motion

1 back? Is that the motion on the waiver?

2 (Laughter)

3 CHAIRMAN KELLY: I don't think it was
4 expressed quite the same way. It seems like -- no, I'm
5 not --

6 MS. GERARD: You're talking about --

7 CHAIRMAN KELLY: It was different.

8 MS. GERARD: -- revising the language on the
9 waiver to provide for a more clear depiction of the
10 need to consider the operator's ability to maintain
11 supply consistent with the statute and that that's
12 different than understanding when the operator might
13 cut off supply to a local area. It's really more of a
14 national and a regional issue. Something along those
15 lines.

16 CHAIRMAN KELLY: Well, I guess the question
17 is, is your motion still on the table?

18 MR. WUNDERLIN: If the motion is what Stacey
19 just described, I think that should be accepted by this
20 Committee and voted on by this Committee. The -- the
21 previous discussion I had regarding waivers I think was
22 satisfied --

23 MS. GERARD: By the notification.

24 MR. WUNDERLIN: -- by Roger's description of
25 the notification.

1 CHAIRMAN KELLY: Okay. What is the current
2 motion again, please?

3 MR. WUNDERLIN: That the waiver process -- I
4 may need some help -- take into account the maintaining
5 supply to customers on a regional or local basis and in
6 addition to, I think, the -- which talked about cutting
7 off supplies. And the difference is maintaining supply
8 versus cutting off supply.

9 MS. GERARD: And that is for regional --

10 CHAIRMAN KELLY: And to use language
11 consistent with the statute. That was the bottom line.
12 And I don't happen to have that language in front of
13 me, but assuming --

14 MS. GERARD: I think we get the idea.

15 CHAIRMAN KELLY: -- that it's probably
16 representative that the language of the rule should --
17 should -- the language of the statute.

18 Any further discussion on that?

19 (No response)

20 CHAIRMAN KELLY: All in favor?

21 (There was a chorus of "ayes.")

22 CHAIRMAN KELLY: Any opposed?

23 (No response)

24 CHAIRMAN KELLY: Any abstentions?

25 (No response)

1 CHAIRMAN KELLY: Prevention and mitigation.

2 Prevention and Mitigation

3 Third-Party Damage

4 (Slide)

5 MR. ISRANI: The prevention and mitigation
6 measures, the item is treatment of third-party damage.

7 Goal -- goal here is to protect against delayed
8 failures from third-party damage in a cost effective
9 manner.

10 (Slide)

11 MR. ISRANI: What we had in the proposed
12 rule, we require that for third-party damage, operator
13 has to use either some smart pig or some direct
14 assessment method to look for those third-party damage.

15 And a lot of comments and questions were raised about
16 requiring separate assessment methods to look for
17 third-party damage.

18 So we are asking the question, should the
19 additional third-party damage prevention methods be
20 utilized instead of explicit assessment for third-party
21 damage? And what methods should be used in conjunction
22 with other assessment methods to detect delayed third-
23 party damage? And what role should data integration
24 play in determining whether significant potential
25 exists for delayed failure from third-party damage?

1 (Slide)

2 MR. ISRANI: There was a lot of discussion on
3 this in our previous meetings. And the majority felt
4 that we should not have a separate assessment method
5 but we should have preventive and mitigative measures
6 to address this issue.

7 So comments that we have received on this
8 issue from industry is, majority of them commented --
9 in fact, quite a lot in the written comments as well --
10 that prevention is the best method to address third-
11 party damage and assessment should not be required for
12 this threat.

13 States also support that -- the one who
14 commented on this -- to rely on preventive measures for
15 third-party damage and not have any specific assessment
16 method.

17 And public comment was that we retain
18 approaches that foster development of technologies to
19 -- to identify these kind of threats.

20 (Slide)

21 MR. ISRANI: Our current position on this,
22 what we're considering, is to require enhanced
23 prevention and mitigative measures where vulnerable to
24 delayed failure from -- following third-party damage.

25 We -- we are retracting back or considering

1 to retract back from what we had in the proposed rule
2 where we required them to have an assessment to look
3 for this third-party damage. And we're going to
4 propose -- we're going to require enhanced prevention
5 and mitigative measures to address this issue.

6 CHAIRMAN KELLY: Any comments or questions by
7 Committee members?

8 DR. WILLKE: Question.

9 CHAIRMAN KELLY: Dr. Willke?

10 DR. WILLKE: Mike, what kind of mitigation
11 measures are you considering? Does this mean after
12 you've detected the -- a defect or is this mitigation
13 measures -- I'm not sure what I understand you to mean
14 by "require enhanced mitigation measures."

15 MR. ISRANI: Well, what we mean, "enhanced
16 mitigative measures" like more patrols, more, you know,
17 enhanced program or requirement that, you know, one
18 call system. All of them have to follow -- you know,
19 things that they could look for, more markers, or --
20 you know, a number of other methods. More surveys of
21 that area, or if they have any information of any
22 construction activity going on, there should be some
23 person there to observe that.

24 So these are the kind of methods to prevent
25 third-party damage. Those are what we mean instead of

1 having to require them to have a testing done after the
2 fact.

3 DR. WILLKE: Is that -- will those mitigation
4 measures be understood in the regulation? Or is there
5 something explicit that describes what those are?

6 CHAIRMAN KELLY: Mr. Thomas?

7 MR. THOMAS: Yeah. Related to that, there is
8 an INGAA submission which has fairly specific -- it's
9 Tab 13 in the INGAA book.

10 I guess my question would be, has that been
11 considered? Do you think those words are the ones that
12 would be more explicit and be in the rule?

13 MR. ISRANI: Oh, you know, we at this stage
14 cannot tell you exactly what will be in the final rule
15 language, but we are certainly considering all the, you
16 know, the suggestions or recommendations given in this.

17 MR. THOMAS: Yeah, I think that would be an
18 answer to Ted's question. If these were or something
19 like them were adopted, that would be the specifics
20 that Ted was looking for.

21 MR. ISRANI: Generally, we form the position
22 after we hear all the comments and recommendations on
23 the subject.

24 DR. WILLKE: I could certainly break those
25 out if you want, but the real question is whether or

1 not OPS has agreed to this set of -- to this language
2 here for mitigation measures.

3 MS. GERARD: These pages don't have them --

4 DR. WILLKE: No, they --

5 MS. GERARD: The language that's on the back
6 side of the page, facing the page titled "Change in the
7 Cost Benefit due to Third-Party Accident," where
8 there's the use of qualified personnel for work
9 conducted by employees and contractors, and it includes
10 direct supervision of excavation, collection of data on
11 third-party damage variables in HCAs in a central
12 database, participation in one call systems in HCAs,
13 monitoring of -- and adopt applicable parts of the
14 consensus standard that enhance public communication.

15 I think this is the type of thing that we're
16 considering.

17 MR. ISRANI: I would say, you know, these are
18 there from INGAA, and we also had to look at all other
19 comments -- written comments that we have received on
20 this subject. And, you know, we had to form our
21 opinion based on all of them. So we certainly
22 considered these but we cannot tell you this is the
23 language it's going to be.

24 MS. GERARD: But the concept, I think, for
25 the board -- the board, the Committee, is that there's

1 an enumerated list. The way INGAA worded it, it looks
2 like they're suggesting that we -- that all of the
3 following must be done. It's not an "or."

4 On the collection of data on third-party
5 damage variables in a central database, for -- in my
6 personal view, and we haven't really discussed this one
7 specifically -- the collection of data is one thing but
8 the application of that data isn't mentioned. And I
9 think that, you know, we had the presentation that I
10 asked that Bob Kipp make on the program of the CGA.
11 And Commissioner Kelly identified that the data program
12 that the CGA is developing hasn't been thoroughly
13 discussed with the states.

14 But the concept there was -- that we had up
15 for discussion was that by collection of this data that
16 you would be able to have a better basis for knowing on
17 a county-by-county basis what the experience with third
18 party was. And the purpose of that is to be able to
19 target places where experience with third-party damage
20 is kind of an anomaly on your system from other places.

21 So the idea isn't just the collection of the
22 data but the use of the data to be able to take more
23 directed prevention and educational methods. And so I
24 would want to see something along those lines.

25 CHAIRMAN KELLY: Yes, Mr. Comstock?

1 MR. COMSTOCK: Mike Comstock. On the page
2 previous to that under "Recommendations," the last line
3 in there talks to add the requirement that known
4 excavations of covered segments be monitored. Flipping
5 back to 2-I, the word "known" is not in that text. And
6 if you consider that, I think that ought to be added,
7 "known excavation."

8 MS. GERARD: Where are you, Mike, exactly?
9 You're on the page that says "Recommendations"?

10 MR. COMSTOCK: Yes, the last bolded statement
11 right above "Recommended Rule Language." The
12 terminology is "known excavations of covered segments
13 be monitored."

14 If you turn to the page after that under 2-I,
15 "Direct Supervision of Excavation," the word "known" is
16 not in that.

17 CHAIRMAN KELLY: 2-I?

18 MR. COMSTOCK: I would recommend adding the
19 word "known."

20 CHAIRMAN KELLY: Well, it says "by employees
21 and contractors." I think that assumes that the
22 company is responsible for it. No?

23 MR. COMSTOCK: Although some companies have
24 monitoring programs that they may -- may put into place
25 at some point for this process, you have to know that

1 the excavation work is going on to be able to monitor
2 it.

3 CHAIRMAN KELLY: Any other comments or
4 questions?

5 MR. WUNDERLIN: Yes, I have a comment on the
6 same page, the -- the last italicized sentence.
7 Towards the end, it talks about "but are not limited to
8 increasing the frequency of aerial and foot patrols or
9 other types." I would like to -- to include other
10 types of mobile patrols other than aerial and foot
11 patrols. They may be in a vehicle or they may be on an
12 ATV or they may be on a horse in some cases in the
13 southwest.

14 So I'd say "other types of mobile."

15 MR. DRAKE: The wording says -- I mean, we
16 don't -- I don't think we want to get into the wording
17 this detailed. But it says, "These inspections include
18 but are not limited to." These are just examples.
19 It's not intended to be all-inclusive. And I really
20 don't know that -- the point here is I don't know how
21 much you're willing to endure, you know, ongoing, you
22 know, detailed wording of this proposal because you're
23 going to go back and do the wording.

24 CHAIRMAN KELLY: But to the extent that
25 they're concepts that members of the Committee

1 specifically want to have on the record, this is the
2 time to do it.

3 Mr. Wunderlin?

4 MR. WUNDERLIN: Yes. I appreciate Andy's
5 comment, but I've heard from some members of, you know,
6 other industries they're concerned that we're not being
7 limited to aerial and foot patrols even though the
8 language may --

9 CHAIRMAN KELLY: Now, what we're reviewing --
10 the comments that we're taking right now are on the
11 AGA-INGAA proposal. So should we assume then that the
12 Committee would like to see OPS, while it is looking at
13 the various criteria, that it use in this regard to
14 include within that at least the language that is put
15 forth here on this page that we've been discussing?

16 MR. DRAKE: Just in response to Stacey's
17 question that she was asking, I think, earlier about
18 the sub -- 2-I thing there, I-2, whatever you call it.

19 MS. GERARD: On the collection of data?

20 MR. DRAKE: Yes. The intention of that was
21 to try to respond to the discussion at the Dulles
22 public meeting about the use of the -- of the CGA.
23 There was some concern about specifically explicitly
24 referencing CGA, but I think that was the intent. And
25 we -- as -- and I think there is certain, you know,

1 latitude that the DOT has in putting the words down,
2 which is certainly what we're all dancing around here.

3 But the issue was about the clearinghouse of
4 CGA, gathering the data, just like they're doing in
5 Colorado with that model, is gathering data for the use
6 and application. And -- and it wasn't intended to be
7 left out conceptually. It was just maybe a wording
8 issue to try to capture the concept of CGA without
9 saying the words "CGA."

10 But just to answer your question, it was not
11 intended to not apply the issue. It is intended to do
12 -- it is intended to be CGA.

13 MS. GERARD: Right. I'd like to --

14 MR. DRAKE: Which includes application.

15 MS. GERARD: Okay, good. I had a couple
16 other points about the CGA that are initiatives that
17 they have that, you know, I would consider at least
18 discussing with Mike. And that is, there -- the work
19 that they've done in improving locating practices.
20 They've -- they have written three documents that we
21 have forwarded to the NTSB and NTSB has closed three
22 recommendations to us based on these locating practices
23 being able to be promoted and used.

24 And in addition to that, we're working with
25 CGA and supporting them in building regional and local

1 common ground alliances that work to get alignment in a
2 community on best practices. And you know, to the
3 extent that there's a interest in a community and we as
4 OPS as working with the CGA to help support the
5 development of a regional alliance or a local alliance,
6 that I would like to see the operators include that in
7 their enhanced prevention and mitigation practices
8 where third party is a risk for the operator.

9 MR. DRAKE: That is the intent of this
10 section.

11 MS. GERARD: Okay.

12 MR. DRAKE: And to that degree, we are
13 supportive of it. And the Common Ground Alliance has
14 made a lot of positive moves forward, and we should try
15 to incorporate those into this particular threat
16 management.

17 CHAIRMAN KELLY: Just for -- because Stacey
18 did mention earlier that I had raised some concerns
19 regarding the states' involvement in the data project
20 at the Common Ground Alliance. And their plan is to
21 increase and improve the communication on that. So
22 while, at least from my perspective, the collection of
23 data makes sense, by saying that -- and in fact,
24 looking at all of this, it's more than conceptual --
25 it's not saying specifically, at least from my

1 perspective, that it is the CGA model.

2 Yes?

3 MR. ANDREWS: On the issue of monitoring
4 during all excavations, I think that I would request
5 that the Office consider some language in there that
6 allows some discretion on the part of the operator if
7 they get into an area. This language says all right-
8 of-ways. Some of the lower-stress pipe in particular
9 may have not have a defined right-of-way.

10 I think that the operator should have enough
11 discretion to look and see if he needs to have a
12 monitor of the actual excavation. The fact that it's
13 in proximity to the pipeline does not require
14 monitoring at all times.

15 CHAIRMAN KELLY: Any further comments or
16 questions? Yes, Dr. Feigel?

17 DR. FEIGEL: A point of clarification. We're
18 saying in 192.763 that we're going to enhance damage
19 prevention program requirements that are already in
20 192.614. Is there enough difference in the intent and
21 coverage of these two paragraphs that we shouldn't
22 possibly collapse or, you know, make those -- make sure
23 they're consistent?

24 MS. GERARD: Well, these only apply to high
25 consequence areas.

1 DR. FEIGEL: Okay.

2 MR. ISRANI: Right.

3 DR. FEIGEL: That answers that question.

4 Thank you.

5 CHAIRMAN KELLY: Yes, Mr. Thomas?

6 MR. THOMAS: You've asked a question what to
7 make of the INGAA submission, and I would propose that
8 OPS use it as a basis for the further definition of
9 what the actions are, realizing they're going to have
10 to write it into the rule. It won't be exact, but they
11 use it as a basis.

12 CHAIRMAN KELLY: Is there a second?

13 MR. THOMAS: I also have -- if we can endure
14 a little bit of wording here -- three things that the
15 industry would like to change. Very small items, but
16 wordsmithing.

17 On this third page -- third sheet, which is
18 the sixth page, we were looking at --

19 MS. GERARD: On the INGAA document?

20 MR. THOMAS: Yes. There's a paragraph in the
21 middle of the page called "Third-Party Damage and
22 Outside Force Damage," several italicized under that.

23 And Italics 2, it says, "Collection of data
24 on third-party damage." We think that should be more
25 general to say, "collection on data -- collection of

1 data on excavation damage" because the damage is not
2 only third party, it's first party, second party. So
3 it's a more general statement of damage.

4 I'm just doing this to get it into the
5 record.

6 Roman numeral -- I mean, excuse me,
7 Italicized 4, we would put "monitoring of known
8 excavations," the same point that I think Ben made. We
9 can only monitor what we know.

10 Finally, at the bottom of the page, there's
11 an italicized paragraph where it says, "An operator
12 must take measures," go down to the third line, "These
13 measures include." We would like to put "may include"
14 simply to convey that it's -- some of those, not
15 necessarily all of those.

16 With those additions then, we would propose
17 that this be used at least as a basis for the OPS
18 write-up.

19 MS. GERARD: Eric, do you have any problem
20 with my expanding this list to include consideration of
21 the new practices that CGA is promoting on improving
22 locator techniques and the development of regional and
23 local CGA operators supporting CGA efforts to build
24 regional and local alliances?

25 MR. THOMAS: I'm not familiar with all the

1 specifics, but we very much support the Common Ground
2 Alliance and the things that it's trying to do. So I
3 think I would say yes.

4 CHAIRMAN KELLY: Is there a second to the
5 motion?

6 PARTICIPANT: I'll second.

7 CHAIRMAN KELLY: Did you have a comment?
8 Is there any further discussion?

9 (No response)

10 CHAIRMAN KELLY: I would just add that, in
11 looking at these -- and I believe this is the position
12 of the Committee -- we're not indicating by this action
13 that this is all that. It was that -- you indicated
14 that OPS take this as the basis for developing the
15 criteria, and the Committee is satisfied with the
16 additions and corrections made with the criteria that
17 have been set forth here in this provision.

18 Any further comments or questions? Mr.
19 Wunderlin?

20 MR. WUNDERLIN: Just one. I think Eric went
21 through a reiteration of the changes -- I would also,
22 if Andy will bear with me, add other mobile type
23 methods.

24 CHAIRMAN KELLY: Right. We had that comment
25 --

1 MR. WUNDERLIN: Like I talked about.

2 CHAIRMAN KELLY: Ready for the vote? All in
3 -- oh, public comment. Yes?

4 MR. GUSTILO: Paul Gustilo with AGA.

5 Just to -- in the low-stress proposal, we did
6 have -- it's in the -- I don't know what tab number it
7 is, 13 or 14. But we did address what Ben Andrews said
8 about the option. If you can't do stand-bys, we have
9 proposed that you do patrolling, more patrolling, to
10 address the issue if you can't do stand-by monitoring
11 on all excavations on transmission pipe in HCAs. So I
12 just want to make -- put that in for consideration,
13 too.

14 CHAIRMAN KELLY: Thank you.

15 MS. GERARD: I have one question.

16 CHAIRMAN KELLY: Yes?

17 MS. GERARD: On the reference to the
18 "qualified personnel," is this qualified as we define
19 it in the OPQA rule?

20 PARTICIPANT: I would hope so.

21 MS. GERARD: You would hope so? Okay. Just
22 checking.

23 CHAIRMAN KELLY: Any other questions or
24 comments?

25 (No response)

1 CHAIRMAN KELLY: All in favor?

2 (There was a chorus of "ayes.")

3 CHAIRMAN KELLY: Any opposed?

4 (No response)

5 CHAIRMAN KELLY: Any abstentions?

6 (No response)

7 CHAIRMAN KELLY: Thank you. Pass that with
8 the changes.

9 Segments outside HCAs.

10 Segments Outside HCAs

11 (Slide)

12 MR. ISRANI: Application of integrity lessons
13 outside HCA. What we're talking about here is that if
14 -- if an operator finds that there -- there are some
15 defects or some corrossions or some other problems in
16 the pipeline system, what they've found from the
17 assessment, and they have a pipeline segment outside of
18 HCAs which may be having similar conditions, then
19 operators should address those issues. It's the
20 wording of that language which was challenged and also
21 this requirement.

22 Our goal is to assure protection of entire
23 pipeline from problems identified through assessment
24 activities in high consequence areas.

25 This was also one of the strongest

1 recommendations from NTSB that we should look beyond
2 our high consequence areas.

3 (Slide)

4 MR. ISRANI: And the question is, how can the
5 requirement be clarified for situations when an
6 operator should look beyond the segment in a high
7 consequence area, when segments outside the HCA are
8 likely to have similar integrity concerns as those
9 found inside the HCA, as I explained before.

10 (Slide)

11 MR. ISRANI: Comments we received on this
12 from the industry are that the proposed requirements
13 are unwarranted --

14 PARTICIPANT: Are what?

15 MR. ISRANI: That they are not warranted and
16 -- and that they -- they go beyond the legislative
17 language because the Act required in the high
18 consequence areas, and that this tends to bring all
19 pipe under the rule, and that it diverts the attention
20 to lower risk pipeline. And also, their comment was
21 that B31.8S risk assessment process is a means to
22 address this.

23 Comments for this from the state we heard
24 was, use this data but treat it differently, meaning,
25 you know, you use the data from the pipelines in the

1 high consequence areas but you don't ever treat them
2 the same way, like timing and other things.

3 What we have -- public had no comment on this
4 issue.

5 (Slide)

6 MR. ISRANI: Our current position on this,
7 what we're considering is to require that operators who
8 identify problems during the assessments use that
9 information to update their risk assessment and take
10 actions in other areas potentially at risk, including
11 outside HCAs, as appropriate. That's underlined. As
12 appropriate.

13 We had the language in our proposed rule
14 where we required them to do certain assessments or --
15 so we have removed the term "assessment." We are
16 saying here to -- to, you know, take all of that into
17 consideration and take the appropriate action on this.
18 And no time frame has been given, which we had not
19 proposed even before.

20 MS. GERARD: Mike, could you clarify what --
21 the previous slide. Go up -- back up one. And I know
22 we discussed this at the last public meeting.

23 (Slide)

24 MS. GERARD: The industry comments that the
25 requirements are unwarranted.

1 MR. ISRANI: Yeah.

2 MS. GERARD: But that B31.8S risk assessment
3 process is a means to address it. Those two seem
4 somewhat contradictory.

5 Does the industry believe that the -- it
6 makes sense to have the requirement but it should be
7 guided by the rational approach to prioritization
8 espoused in B31.8S?

9 MR. DRAKE: I don't know if I can speak for
10 the entire of industry, but I think you're dealing with
11 different sets of comments here that have happened over
12 time.

13 I think the position that was taken is that
14 in its unbridled state you could get those kind of
15 things happening. And the way we felt that it was most
16 constructively channeled is to bring the information
17 into the risk assessment process.

18 So the two, I think, comments kind of
19 happened at different times by different --

20 MS. GERARD: Understood.

21 MR. DRAKE: -- maybe even by different
22 people.

23 The current position is that the most
24 constructive use is to not -- you cannot dismiss things
25 that are learned in the HCA inspections, you know, as

1 far as their applicability to areas outside the -- you
2 cannot do that. And we're not advocating that. But we
3 can't, you know, just go chase all, you know, all of
4 the pipe at the same rigor that you're trying to chase
5 the HCAs.

6 So you need to try to bring the information
7 into the risk assessment process that's defined in
8 31.8S to evaluate the level of the risk, the level of
9 threat, and the urgency of the response. And that --
10 at least that provides some sort of process and
11 controls on how to incorporate that information into an
12 action item rather than just giving it the same weight
13 as, you know, urgently jumping off the HCA issues and
14 chasing things that we're not even sure are there, you
15 know.

16 MS. GERARD: Well, you used two words and
17 Mike did a third. You used the word "evaluate" and
18 "action item" and Mike said "as appropriate" and
19 removing the word "assessment." And I -- to me, these
20 words are very specific with very particular meanings.

21 And I just wanted to be real clear about this because
22 this does potentially extend the requirements of this
23 rule to other mileage outside the HCA.

24 And I -- I don't know why Mike said removing
25 the word "assessment" and why you said "evaluate." I

1 just want to be real explicit.

2 One thing is to assess, and that means
3 certain things to certain people, including the
4 Congress. "Evaluate," you may mean the same as
5 "assess." Other actions, you mean -- I just want to
6 know exactly what you mean here.

7 MR. ISRANI: Let me -- let me clarify this
8 part. This requirement for going beyond HCA and
9 outside areas, we had in three or four different
10 locations in the proposed rule.

11 One area we had that they should be assessed.
12 That's the issue what we are saying here, that instead
13 of "assessment" we should say "as appropriate."

14 MS. GERARD: What's the verb? What is the
15 requirement?

16 MR. ISRANI: Requirement -- requirement, I'm
17 saying the proposed rule was that if they find portions
18 of the pipeline in HCA and outside HCA having similar
19 conditions as we found within the HCA through the
20 assessment, they should take the same action outside
21 those areas.

22 MS. GERARD: As what they take inside the
23 HCA?

24 MR. ISRANI: Inside. We did not put a time
25 frame, but we said they should be assessed. We used

1 the term "assessed."

2 What I'm saying is that we are considering to
3 remove that term "assessed" and instead --

4 MS. GERARD: Why?

5 MR. ISRANI: Because the -- first of all,
6 outside areas do not have the same consequence as
7 inside the HCA.

8 Secondly, if they are -- they can monitor
9 there and they can fix that by some other means which
10 -- which will be fine because there's less
11 consequence to, you know -- say, from the point of view
12 if it was delayed or -- or whatever reason. It's not
13 as urgent as the one inside HCA.

14 MS. GERARD: I can see that it's not as
15 urgent, but I don't see why we would remove the word
16 "assess."

17 CHAIRMAN KELLY: Dr. Feigel has his hand up.

18 DR. FEIGEL: No, --

19 MR. DRAKE: I think the word "assessment" has
20 a lot of luggage attached to it, and we may be just
21 dicing with words here.

22 But the issue of assessment includes the
23 issue of inspection. I mean, the word "assessment"
24 includes -- has some attachment to the word
25 "inspection." And I think that was exactly what we

1 were trying to add another step in between there to
2 help differentiate between an HCA and these other
3 areas.

4 And the point was is that we should take the
5 information that was gained from the HCA and we should
6 put it back into the risk assessment, not the
7 inspection, to determine the urgency and the prevalence
8 of that particular site or these areas outside the HCAs
9 to that condition based on their specific data.

10 So you are doing a risk assessment, and
11 that's why I think we use the words like "evaluation."
12 Because the -- when you back off and you say
13 "assessment," in the global term, assessment means risk
14 assessment and inspection. They're together in the
15 terms of the context of HCAs.

16 Here, you're saying we want to try to do the
17 risk assessment part, bring the data in from the HCA,
18 and apply it to the specifics of these other segments
19 outside the HCA, and determine their -- their
20 disposition to that condition in their specific
21 environment, and then decide, do you need to do --

22 MS. GERARD: Whether or not.

23 MR. DRAKE: -- an inspection. If so, when.
24 Which is a little different than what's under HCAs.

25 That's the nuance, I think, that you're

1 catching here, is that --

2 MS. GERARD: I think it's very important that
3 we express it in a manner similar to what you just said
4 and then decide whether or not additional assessment
5 and inspection is needed.

6 CHAIRMAN KELLY: Dr. Feigel?

7 DR. FEIGEL: Let me try to synthesize this.
8 I think, really, the sense of all you're trying to say
9 is evaluate in accordance with your risk management
10 program. That gets away from -- from the -- the loaded
11 term "assessment" and it adds more specificity than "as
12 appropriate," which can be interpreted any way.

13 CHAIRMAN KELLY: Mike?

14 MR. ISRANI: Yeah. I would like to clarify
15 that part. Right in the beginning when we started the
16 integrity management program, started writing for the
17 liquid rule, we were wondering, you know, whether we
18 can use the term "inspection" or "testing." And we --
19 a number of places we started using
20 "testing/inspection." "Inspection" was referring to
21 smart pigging, "testing" was referring to pressure
22 testing part.

23 So we decided in-house at OPS to use
24 "assessment" term for both of these. So -- so literal
25 meaning and the dictionary meaning of "assessment" is

1 also evaluation.

2 But we are referring -- when I'm saying that
3 we want to remove the "assessment," I'm talking about
4 testing part. But risk assessment, which is the risk
5 evaluation, will remain.

6 MS. GERARD: I just want to express my very
7 strong preference for wording it the way that Andy
8 worded it and not the way that Gene worded it because
9 we have a very clear recommendation on this from the
10 National Transportation Safety Board following the
11 Carlsbad accident. And I think that in those
12 recommendations they're specifically drilling down to
13 the potential for internal corrosion.

14 If, for example, there was an indication
15 through testing of internal corrosion inside the HCA
16 and the operator knew of other circumstances outside
17 the HCA where the conditions were similar, I would
18 support that a risk assessment, if necessary, and an
19 evaluation to decide the extent to which this was
20 relevant. And if it was, then you would go forward
21 with a more full assessment.

22 And it's very important to me that this rule
23 goes there because I am trying to address the
24 recommendations of the NTSB on such a very important
25 accident.

1 MR. DRAKE: I think the key take-away here is
2 that we need to differentiate the different elements
3 that are under the global term "assessment" into risk
4 assessment or evaluation --

5 MS. GERARD: Right.

6 MR. DRAKE: -- and subsequent inspections.
7 If we can make that differentiation here, I think --

8 MS. GERARD: I think we can.

9 MR. DRAKE: -- a little more actionable.

10 CHAIRMAN KELLY: Dr. Feigel?

11 DR. FEIGEL: I don't think there's any
12 inconsistency.

13 MR. DRAKE: There's not.

14 MS. GERARD: There may not be between you,
15 but there's other people who slice the salami in
16 different ways. And I think if we word it the way that
17 Andy said it, we're -- we'll be more successful
18 addressing the concerns of outside agencies.

19 MR. ISRANI: One more point I want to make
20 clear is that on the second bullet under the industry
21 comment, which Andy already explained that this was to
22 take the data and analyze that.

23 We had -- when we mentioned go outside HCA,
24 in other areas we did say for the data collection.

25 MS. GERARD: And evaluation.

1 MR. ISRANI: And evaluation. So this second
2 comment was for that, that the industry is suggesting
3 that we should go to -- you know, get -- collect all
4 the data from the previous assessments and outside
5 whatever information we have from their inspections and
6 to get that data. And that -- they're saying B31.8 --

7 MS. GERARD: And evaluate it.

8 MR. ISRANI: Yeah.

9 MS. GERARD: And evaluate it.

10 MR. ISRANI: And evaluate it.

11 MS. GERARD: And in the liquid rule, we make
12 the explicit distinction between assessment and
13 evaluation, and we say there's a requirement in the
14 liquid rule to do an evaluation on the entire pipeline.
15 And I'm trying to keep some parity here.

16 CHAIRMAN KELLY: Further discussion?

17 (No response)

18 CHAIRMAN KELLY: Do we have a second to Mr.
19 Drake's motion? Would you like to restate it?

20 (Laughter)

21 CHAIRMAN KELLY: Would you like for me to try
22 to restate it?

23 MR. DRAKE: Do you really want me to restate
24 it?

25 (Laughter)

1 MS. GERARD: I think what Mr. Drake said that
2 for areas outside the HCA that we should clarify the
3 language to indicate that operators are required to use
4 the information that they draw from their assessment
5 experience inside the HCA to apply to their risk
6 assessment process for the other site and do an
7 evaluation, bring that data together, and apply it to
8 the specifics of the situation outside the HCA, and
9 then determine the disposition of the -- of those
10 conditions, and then decide whether or not more full
11 assessment and inspection is warranted.

12 MR. DRAKE: Can I second my own --

13 (Laughter)

14 CHAIRMAN KELLY: That is Mr. Drake's motion.
15 Is there a second?

16 PARTICIPANT: Second.

17 CHAIRMAN KELLY: We have a second. Is there
18 any further discussion? Yes?

19 MR. THOMAS: Yeah, I would just comment.
20 Maybe it's unnecessary, but that's what we've got to do
21 anyway. And maybe that goes back to the unwarranted.
22 Regardless of where the information comes from, any
23 information gained has to go into risk assessment
24 models already. So we're really just restating
25 something that we already are supposed to be doing

1 anyway.

2 MS. GERARD: We think so too, but as it
3 relates to a requirement of this rule, it will be a
4 fact that the application of this rule applies to other
5 segments outside the HCAs, outside those half radiuses
6 we added yesterday and to this, and that's how I would
7 answer the question how we are raising the standards
8 for public safety.

9 CHAIRMAN KELLY: Any further discussion?

10 (No response)

11 CHAIRMAN KELLY: All in favor?

12 (There was a chorus of "ayes.")

13 CHAIRMAN KELLY: Any opposed?

14 (No response)

15 CHAIRMAN KELLY: Any abstentions?

16 PARTICIPANT: Full radius.

17 MS. GERARD: What was that?

18 PARTICIPANT: The full radius is the intent.

19 MS. GERARD: A full radius?

20 PARTICIPANT: You said --

21 MS. GERARD: Oh. I'm still -- I still need
22 remedial training on that.

23 (Laughter)

24 MS. GERARD: And whether it's two times or
25 three times the length. Math is my short suit.

1 CHAIRMAN KELLY: All right. This is a great
2 time for us to break for lunch. We will come back at
3 1:00 and pick up on performance measures.

4 (Whereupon, at 11:52 a.m., the proceedings
5 were adjourned for lunch, to reconvene at 1:00 p.m.,
6 the same day.)

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

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1:25 p.m.

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CHAIRMAN KELLY: We're going to start out with Stacey Gerard restating the issue and letting us know where we stand at this point.

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MS. GERARD: I can't tell you exactly when in the discussion the question about the identified sites came up or in what context, but my understanding of the problem was that there were some questions that were raised in a petition after we wrote the HCA rule which we identified in the preamble to this rule. We were attempting to address some of the questions from the petition in this NPRM. And we were attempting to address all of them.

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And one of the questions dealt with dealing with the difficulty in implementing the rule as we wrote it for operators, the difficulty in identifying sites where there were mobility impaired people, hard-to-evacuate people, and places where people congregate.

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And we asked the question in the preamble, currently, pipeline operators are required to conduct liaison activities with public safety officials or emergency safety officials. We would like comment on whether the term "public safety officials" or

1 "emergency response officials" will cover the persons
2 having the relevant information about these identified
3 sites.

4 And I think what the discussion was earlier
5 was that in the HCA rule we mention a number of sources
6 of information besides these people, including
7 registries, web sites, and lists. And by asking this
8 question, I was picking up on the discussion we had two
9 Advisory Committee meetings ago when we said, you know,
10 you have to do these liaison and -- and patrols.

11 If we asked you to collect the information
12 about the known places where people congregate and
13 places where there are people who are hard to evacuate,
14 hard to exit the building if they knew there was a
15 problem, if we identified those public safety officials
16 as the source -- the source, the definitive, required
17 source -- that you would go to to ask them, do you know
18 of any places where people congregate in the time
19 frames we've specified and do you know of places where
20 people live who have -- who mobility impaired, and they
21 said no, that the operator would meet the obligation to
22 have identified these people.

23 And I think that there -- I think that we
24 haven't been clear about this within OPS. The
25 question's not clear. But what I'm asking the

1 Committee to advise us on -- and I know that there was
2 language that different people put on the docket about
3 this -- is I'm asking the Committee, if we made it
4 crystal clear that the requirement to identify areas
5 where people congregate in the time frame that we
6 mentioned -- which was not the five days a week but the
7 50 days a year -- and places where mobility impaired
8 people live, if we made the requirement that you must
9 ask this question of fire or police officials along the
10 right-of-way and the answer you got would determine the
11 identification, would the Committee feel that that was
12 a reasonable way to clarify the previous ambiguous
13 language in the HCA rule?

14 So that would mean that lists, registries,
15 and other sources of information might be ways to
16 further amplify but they -- they wouldn't be required
17 to be used as the basis for determining known sites.
18 The definitive known answer we would rely on the public
19 safety officials.

20 And why I -- why I think that's a good idea
21 is that we've embarked on a number of programs in OPS
22 since the time we wrote this original rule to improve
23 our working relationships as OPS with state and local
24 officials. We created a new type of a position called
25 a community assistance and technical services

1 inspector. We have five of them already employed, with
2 one of their responsibilities being to acquaint state
3 and local officials with roles they can play to assist
4 us in pipeline safety.

5 And you know, we could put in the guidelines
6 for these people, our employees, to further amplify the
7 need for them to know where places are so that when
8 pipeline operators ask them they could say, yes, we
9 know that there's a mobility impaired family here or
10 there's a prison here or, yes, I know that people do
11 congregate here 50 days a year, approximately.

12 The CATS people could help with that, plus we
13 have a cooperative agreement with the National
14 Association of State Fire Marshals which is being
15 guided by an industry group and a government group.
16 The industry group includes, for example, Dan Martin
17 from El Paso is part of the advisory group guiding the
18 fire marshals on this curriculum.

19 So there's a few representatives from the gas
20 industry, a few from the liquid industry, and AT & T is
21 -- the vice president of AT & T is part of the group
22 that's advising the industry -- advising the fire
23 marshals on the curriculum that they need to have that
24 we are funding to help the fire service know how to
25 respond to scenarios that involve pipelines. That does

1 include responding to an incident, but it also includes
2 helping with damage prevention, helping with permits,
3 and a variety of other activities.

4 So we have an ongoing program. It's going
5 very well. It's -- you have input as industry. States
6 have input, we have input, and we can produce a
7 curriculum that emphasizes the importance of public
8 safety officials knowing where places are that people
9 congregate and knowing where there are mobility
10 impaired people.

11 So, with that further amplification, I would
12 like to ask for the Committee to support the concept
13 that we -- we keep the HCA definition as it is with the
14 modification that public -- public safety officials or
15 emergency response officials are the primary source of
16 information about where people congregate and are
17 mobility impaired. And the only obligation on the
18 operator to identify those as sites would be to survey
19 those people as part of their ongoing patrols.

20 CHAIRMAN KELLY: Comments from Committee
21 members? Yes?

22 MR. PEVARSKI: Rick Pevarski. I would just
23 like to make sure that in defining the public safety
24 officials or emergency response officials that it's not
25 just the police and fire, that you can go off into, you

1 know, FEMA groups, emergency coordinators, and to be
2 able to at least expand that a little bit.

3 My concern was with honing in on fire, you
4 get into, especially into some of the rural areas,
5 you're going to have a lot of volunteer fire
6 departments. Huge turnover rates there. So you know,
7 you're relying on that information and it might not
8 quite be there.

9 MS. GERARD: But they are at least local,
10 which, you know -- I mean, FEMA's connection is usually
11 with state. I guess there's local emergency
12 coordinators. But -- well, let's hear what the rest of
13 the Committee thinks.

14 MR. PEVARSKI: I think it's covered in what
15 you're saying, but I think it's just the intent that
16 you have to open it up.

17 CHAIRMAN KELLY: Is this only state officials
18 or state and local?

19 MS. GERARD: No, state and local.

20 CHAIRMAN KELLY: All right. Other comments
21 by the Committee? Yes?

22 MR. ANDREWS: I think you're going to have
23 some difficulty in identifying all of them in rural
24 areas. If you say we've got to contact every one of
25 them, volunteer fire departments come and go, the

1 departments themselves, let alone individual chiefs.

2 And --

3 MS. GERARD: Well, you may have some
4 difficulty but that is why we are developing these two
5 programs so that we can assist you by reaching them
6 ourselves. So these are full-time jobs that these
7 inspectors we've hired have to identify people who can
8 help share the responsibility for pipeline safety.

9 You know, so it's a two-pronged approach
10 we're taking, from within the federal government and
11 going to the state fire marshals to assist us with the
12 state fire academies and police academies.

13 I didn't say it would be easy, but we are --
14 we're definitely making steps to assist you.

15 CHAIRMAN KELLY: Has this been given to other
16 public officials who are not specifically designated
17 public safety officials?

18 MS. GERARD: No, we're specifically trying to
19 limit it to people who have a mission, organization,
20 and capability to protect life safety. And the issue
21 of mobility impaired, I think, you know, rests with a
22 public safety official.

23 MR. ANDREWS: Are you including EMS in that?

24 MS. GERARD: We could. I was -- you know,
25 some -- in some fire departments EMS is inside and in

1 some it's outside.

2 MR. ANDREWS: Right. So we're concentrating
3 on fire service?

4 MS. GERARD: I would say fire and police.

5 CHAIRMAN KELLY: Did you say emergency
6 response officials as well?

7 MS. GERARD: Yeah. Yeah, we did. We said
8 public safety or emergency response. So EMS is an
9 emergency response.

10 MR. ANDREWS: You're asking us to contact a
11 lot of organizations. I think you have a chief law
12 enforcement officer of every jurisdiction. I don't
13 think you could have two chief --

14 MS. GERARD: Right.

15 MR. ANDREWS: -- law enforcement officers. I
16 think that would be a good clean contact to do. But I
17 think in a lot of rural areas you're going to have a
18 lot of difficulty contacting fire chiefs who change and
19 addresses never change. I know that from personal
20 experience. I was once a -- one of the -- local
21 emergency planning agency chief in a place where I used
22 to work. I still get letters from people with
23 hazardous materials telling me what -- how much they've
24 got. That's been three years.

25 MS. GERARD: Well, they do -- they do change,

1 but the location of the firehouse that's a volunteer
2 firehouse is usually pretty stationary. You know, so
3 as part of the surveying, I would think that you could,
4 you know, once a year -- I'm just -- this is just my
5 thought. Once a year, stop by and say, you know, we're
6 checking to see what you all know about the existence
7 of any mobility impaired people that live within this
8 -- you know, show them a map -- within this distance
9 of our pipeline.

10 MR. ANDREWS: I guess my fear is that we
11 would omit one with the best efforts that we've got if
12 you -- if you write the rule so broad that you have to
13 contact every one of them.

14 MS. GERARD: I didn't say we would contact
15 every one. You'd be responsible for surveying
16 emergency response officials along the right-of-way to
17 see what they know, that that's how we would determine
18 known places where they're mobility impaired.

19 In a lot of communities, mobility impaired
20 people, you know, have some sort of a symbol so that
21 emergency responders know where they are so they can
22 get to them in the event of an emergency.

23 MR. ANDREWS: I don't disagree with the
24 concept. I'm just looking at, okay, if you -- if you
25 have an incident and you happen to omit one, a lot of

1 burden is going to come back on you, a lot of liability
2 is going to come back on you.

3 MS. GERARD: Well --

4 MR. ANDREWS: As an operator.

5 MS. GERARD: I'm -- I'm suggesting this as
6 the -- as an alternative to what has been proposed on
7 the docket that we limit the high consequence area
8 definition to buildings where there is at least 50
9 mobility impaired people. And I don't consider that a
10 significant raising of the standard, which is what we
11 were trying to achieve here.

12 So I'm trying to find a way to address the
13 problem of the difficulty of locating and identifying
14 them, which is what we thought the petition went to.
15 And so by limiting it to a survey of emergency response
16 and public safety officials along the right-of-way
17 about the existence of residences or other types of
18 occupancies, nursing homes, prisons, along the right-
19 of-way, that -- you know, and it shouldn't change that
20 much from year to year. You're already required to do
21 these types of patrols -- that we're trying to clarify,
22 you know, which as Linda said was our objective, is to
23 try to make this clear, easy to understand, easy to
24 implement, easy to enforce.

25 You know, you would have some record of your

1 -- of your survey. You know, and it -- you know, it
2 may not be 100 percent perfect, but if, you know,
3 there's a good faith effort to survey along the right-
4 of-way and you can show, you know, you spoke to so-and-
5 so.

6 I -- you know, I think this is consistent
7 with what was two Advisory Committee meetings ago. We
8 had this discussion in the DOT building. And I thought
9 the Committee at the time thought that was a basic
10 concept, but I don't think that our explanation was as
11 clear as it could have been. And so I'm sort of going
12 back to that concept as a way to solve this problem.

13 CHAIRMAN KELLY: Further comments? Yes, Mr.
14 Lemoff?

15 MR. LEMOFF: Stacey, I have a question. I
16 think you're on the right track. I do want to -- do
17 you intend that this go down to a single family
18 residence?

19 MS. GERARD: Yes, if it's within --

20 MR. LEMOFF: Well then, --

21 MS. GERARD: -- the HCA.

22 MR. LEMOFF: Then, what about the person who
23 has surgery and comes home and is convalescing and for
24 two weeks is mobility impaired?

25 MS. GERARD: I would say permanently mobility

1 impaired.

2 MR. LEMOFF: You understand the question.

3 MS. GERARD: Right. How did we -- how did we
4 see it, Mike?

5 MR. ISRANI: Stacey, on that point, on Ted
6 Lemoff's point, it -- it would be difficult to bring it
7 down all the way to residential homes because we don't
8 expect 20 people to be there.

9 MS. GERARD: Right.

10 MR. ISRANI: So this issue is only about --

11 MS. GERARD: Twenty didn't apply. The 20
12 building criterion didn't apply to the mobility, did
13 it?

14 MR. ISRANI: No, but the -- for the mobility
15 where we -- we said those are licensed and registered
16 and all those things. We wanted them to be licensed or
17 registered by federal, state, or local agencies.
18 Residential homes are not.

19 MS. GERARD: We said an identified site is a
20 building or outside area identified by one of several
21 means, and then houses -- people who are difficult to
22 evacuate or who have impaired mobility. Church, day
23 care, or where there is evidence that 20 people or more
24 congregate at least 50 days a year.

25 It's the mobility question, the impaired

1 mobility. My -- I guess the point I'm arguing is that
2 there's a higher consequence to people who can't get
3 out of the building, that the 20 person test is -- I
4 mean, the 20 building test, that's regular people. You
5 know, people who are not -- you know, who can smell gas
6 and leave.

7 MR. DRAKE: Is there -- at the risk of just
8 cavitating this entire discussion, in the search for
9 clarity, I think we illustrated that there is a lot of
10 confusion here. Is there some lower bound? The
11 thought of chasing residential sites with one
12 wheelchair-bound person is just unimaginable to me.

13 MS. GERARD: Okay. Well, suggest something
14 that would be another boundary.

15 MR. DRAKE: I'm asking -- I don't know that
16 -- the way I read it was that these were facilities
17 that as a matter of business had these kind of -- these
18 people as part of the business resident in there, not a
19 home where one person was -- was difficult to, you
20 know, mobility -- whatever you want to -- difficult to
21 evacuate. Because that could be almost impossible to
22 find.

23 MS. GERARD: Well, that's why --

24 MR. DRAKE: Somewhere this rule has to be
25 practical. I mean, we have to be able to do it.

1 MS. GERARD: I realize it's difficult to
2 find, so that's why I was making the test really
3 simple. If the police and fire chief knows --

4 MR. DRAKE: And I appreciate that.

5 MS. GERARD: -- about it. That's the only
6 test.

7 MR. DRAKE: I appreciate that, but I think --
8 I think in a community where you're dealing with
9 subdivisions or a lot of people, you know, the
10 likelihood that the fire chief is going to know every
11 single person that could be in their house that's
12 mobile or, you know, immobilized is -- is not real.
13 They could know where day cares are. They could know
14 where registered or licensed facilities are that have
15 those kind of people in -- convalescing in there. They
16 could know where prisons are. They could -- you know,
17 but a house with one person in it --

18 MS. GERARD: If they don't know, you're not
19 required to --

20 MR. DRAKE: But the point is, is that you're
21 going to get a huge amount of turbulence in how this is
22 applied. A fire chief might know, oh yeah, my neighbor
23 is. So they get to be an HCA just because the fire
24 chief knows about his neighbor. But three houses down
25 or next street over or the next -- this is not being

1 applied with any kind of continuity.

2 MS. GERARD: Well, it may not be now.

3 MR. DRAKE: I think you need to help -- and I
4 don't think that -- it doesn't seem like it was the
5 intent of this to chase a person. It doesn't seem
6 consistent with what we've talked about for years, a
7 person. It was a type of facility that had a lower
8 bound but a bound, and the threshold wasn't one.

9 MS. GERARD: I understand that we really
10 haven't talked about it as a household. You would
11 define it as a business?

12 MR. DRAKE: I think you have to put
13 precedents in place. I think you have some of those
14 precedents in place, and that's I think what Mike was
15 alluding to.

16 MR. ISRANI: Right.

17 MS. GERARD: Okay.

18 MR. DRAKE: Put the two together, and I think
19 it's doable.

20 MS. GERARD: Okay.

21 MR. DRAKE: But to drop --

22 MS. GERARD: It's not a house. If it's not a
23 house but it's a facility that houses people that are
24 mobility impaired, such as. So it's not a house, it's
25 a facility. Something like a facility. But it has to

1 be -- the test for known is, does -- is it known to
2 public safety officials, emergency response officials
3 along the right-of-way.

4 MR. DRAKE: I think it's an "and" clause.
5 Mike, I think, was trying to get those --

6 MR. ISRANI: Right.

7 MR. DRAKE: -- conditions in there. What
8 you're trying to say, is it known by the fire chief and
9 meets these conditions. If that's the case, then it's
10 -- it makes sense. But when it's --

11 CHAIRMAN KELLY: Mike, why don't you tell us?

12 MR. ISRANI: Yeah. Stacey, I was saying that
13 -- I was saying, in the final rule on the high
14 consequence areas, we did say an identified site is a
15 building or outside area that is visibly marked; two,
16 is licensed or registered by a federal, state, or local
17 agency; three, is known by public officials or is on
18 the list or map.

19 So going beyond these -- these --

20 MR. DRAKE: What I would propose, Stacey --
21 and I just throw this out here as a straw man -- is
22 that to pick up, I think, the direction you seem to be
23 headed, was -- Mike has in there four even conditions
24 that are "or" statements.

25 MR. ISRANI: Yeah.

1 MR. DRAKE: And what you're saying is, is
2 known by the fire chief, the local officials, one
3 stand-alone condition, and then say some of these other
4 conditions should be "and" conditions, that he knows --
5 this person knows about them and any of these other
6 ones, that it is not -- that way, if the fire chief
7 knows of a person but it would fail the other tests --

8 MS. GERARD: Right, right.

9 MR. DRAKE: -- it's not -- it's not an issue.
10 You're just repackaging the four items he just read.

11 MS. GERARD: Exactly. Right. It shouldn't
12 be a house. It should be --

13 MR. DRAKE: That seems reasonable.

14 CHAIRMAN KELLY: What's the proposal?

15 PARTICIPANT: Did you express it as a
16 proposal, Andy?

17 MR. DRAKE: Maybe we should enlist just some
18 comments here. I think --

19 What I was proposing is -- to try to meet the
20 intent of your direction was to say that, take the four
21 conditions that currently exist in the NPRM and provide
22 precedents to the one that you want to focus on, and
23 that is the issue about known by the local emergency
24 responder, whoever -- whatever clarity you want to give
25 to that role.

1 MS. GERARD: And.

2 MR. DRAKE: And meeting these other
3 conditions. That -- that cues up the focus of the
4 operator on that entity as the focal point for
5 definition. But it also -- once that person declares
6 one, then they look to see, does it also meet these
7 criteria? And if it does not, then it falls out.

8 And that's -- I think that should be easy to
9 pass. I'm looking to people like Paul Wood and others
10 that have been involved to see does that make sense.
11 We're making a little steering maneuver here, you know,
12 on course, but --

13 CHAIRMAN KELLY: Do the Committee members --
14 any Committee members have any comments or questions on
15 this? Yes?

16 MR. PEVARSKI: I have one question, and I
17 guess it stems more from -- you know, I realize we're
18 moving off of the residential property. But even a
19 small -- if something was certificated, you know,
20 housing -- you know, so mobility impaired people.

21 If that place loses its certification, moves,
22 then that piece of pipeline then would no longer be
23 identified, is the question. Would it no longer be
24 identified as an HCA? And even though you may have
25 identified some reassessment measures for it, then that

1 would no longer be a place?

2 MR. ISRANI: I was thinking more from the
3 point of view that if you add "and" in this, as Andy
4 suggested, we'll have other problems. Like, you know,
5 some areas which are licensed and everything but public
6 -- public safety officials may not know it yet. And
7 then that would be excluded, which was not the intent.

8 You know, I can see that using -- changing
9 the term "public officials" to "public safety
10 officials," but that should be "or." It should not be
11 "and."

12 MR. DRAKE: Well, the problem with that is I
13 think you fall in the hole of a neverending search,
14 that you never know when you cross the finish line.
15 And that's where you've got to defer. And I think
16 that's what Stacey's talking about. You have to defer
17 that this person who is locally present is the leading
18 resource, you know.

19 MS. GERARD: That's the issue we were trying
20 to address when we said, will these people cover the
21 persons have the relevant information about the
22 identified sites. There's places in here where we had
23 talked about that the petition had raised the question
24 that it was ambiguous and it was hard to know. What we
25 were trying to do was fix the simplicity of how to

1 know. And so --

2 MR. DRAKE: And I think there's some
3 complement here in that the efforts that you're making
4 on it involving these people and engaging them helps
5 define that we're looking for them to bear that
6 responsibility so that over time they start championing
7 that that is their role.

8 CHAIRMAN KELLY: Are you looking at using the
9 public officials in lieu of the other several criteria
10 that are listed there?

11 MS. GERARD: It would be the dominant way,
12 and the other ways could further amplify. But we -- I
13 mean, what our objective here is to make it clearer to
14 know where these places are.

15 We don't -- we've said over and over again we
16 don't want to chew up time with gathering data. Our
17 focus is on being able to prioritize. Where are the
18 places that the protection needs to go? We're trying
19 to be as practical as possible and get this thing going
20 so that the protections can be put in place. It's not
21 gathering oodles and oodles of data. It's having a
22 starting point to begin the plan.

23 And so this is the -- what we're saying is,
24 this should be the primary source and the other ones
25 amplify or -- or guide. And from an enforcement

1 standpoint, if the operator can demonstrate that they
2 have conducted the surveys along the right-of-way and
3 they have information that, you know, they can show,
4 we've done this, we've talked to so-and-so and so-and-
5 so, we would consider that a compliance test. The
6 other places are sources of information.

7 CHAIRMAN KELLY: And do we know the public
8 safety officials as part of their duties do receive
9 information on licensed facilities and the other
10 categories that were listed?

11 MS. GERARD: Yes. Now, there's a mix of them
12 and we've heard about the mix of them. You know, so in
13 every area it's a little different. If you have an
14 EMT, they probably know more than somebody else.

15 But what we're saying is you're already
16 required to have liaison with emergency response
17 officials. So we're adding a little bit more to that
18 by saying this. And then we're backing it up through
19 our educational programs and our outreach.

20 You know, so I'm sorry for the confusion
21 about the point on the -- on the house. That was an
22 error on my part. I shouldn't have said that. It's
23 focus on the official as the source that we were
24 focusing on in this document.

25 What will cover -- what's the way to cover

1 the people who have the relevant information about the
2 identified sites? And there's lots and lots of
3 comments about how hard it is to know, you know, what's
4 known because the lists change and that sort of thing.

5 And so we were trying to zero in on the primary way to
6 know. And we've talked about this in two committee
7 meetings already.

8 CHAIRMAN KELLY: Mr. Thomas?

9 MR. THOMAS: Yeah. I think there's two
10 things going on. One is the identified site and the
11 definition and the other is just the methodology part
12 for finding it. And I think industry has struggled
13 with the methodology part of it being open-ended and
14 little criteria. And I think what Stacey has specified
15 I would think of as kind of a minimum standard for the
16 methodology. If the industry follows these steps that
17 she's outlined, then we will have done at least the
18 minimal. And many of us will do more than that in
19 trying to find it.

20 But at least if we do those things, it would
21 satisfy the reasonable standard for -- if we do what we
22 could to find that particular facility.

23 Now, the facility itself will still qualify
24 for whatever standard is in there if it's a facility
25 certificated, et cetera, et cetera, as well as any

1 other site.

2 So I -- I mean, I support this as -- as a
3 much more definitive place to be than we have been
4 before.

5 CHAIRMAN KELLY: Any other comments?

6 (No response)

7 CHAIRMAN KELLY: Any comments by the public?

8 (No response)

9 CHAIRMAN KELLY: Good.

10 MR. JOHNSON: Dave Johnson, Enron.

11 Stacey, I've got some real concerns about the
12 -- again, how we would compile this -- this database
13 and this list. It kind of sounds to me like one of the
14 -- the things that you're doing here is attempting to
15 involve these public officials more closely in pipeline
16 safety. And -- and we have said for quite some time
17 that we thought that they ought to be more involved in
18 pipeline safety.

19 If that's the case and you are -- and -- but
20 I do see some -- some huge compliance issues. Our
21 ability to demonstrate that we're in compliance with
22 this -- with this kind of rule and have it done
23 consistently. So --

24 MS. GERARD: You mean this issue we're
25 talking about right now?

1 MR. JOHNSON: This issue that you're talking
2 about right now. Not -- not the whole rule. There
3 are, you know, a lot of parts of this rule. I think
4 the recommendations that have been made today have --
5 have been very clarifying and -- and have been very
6 positive.

7 But on -- on the issue that we're talking
8 about right now, I see some real -- some real
9 difficulties from an operator's standpoint in being
10 able to -- you know, especially when you talk about a
11 primary way and secondary ways.

12 So, just as consideration, since you kind of
13 offered the use of the CATS staff and those folks,
14 something that -- that you might consider that would
15 help us as far as compliance is if your folks
16 interacted with the local officials, got the
17 information from them, and then you provide it to us,
18 much the same way you provide the HCAs to the liquid
19 folks.

20 CHAIRMAN KELLY: Thank you. Any other --

21 MS. GERARD: Well, we could try.

22 CHAIRMAN KELLY: Any other comments? Mr.
23 Moore?

24 MR. MOORE: Daron Moore from El Paso
25 Corporation out of Houston, Texas.

1 I'm still a little confused over what we're
2 discussing here. I'm not even sure how to address my
3 comments directly.

4 But number one, in the existing definition of
5 the HCAs which was published on August 7th or so of
6 2002, there's quite a bit of discussion about 300 feet,
7 660 feet, and 1000 and 1000-plus feet. I'm supposing
8 that this definition would incorporate something
9 resembling the PIC C-FER model circle as being the
10 applicable areas inside the sites and not having these
11 threshold radii attached to it. That's the initial
12 comment that I have.

13 Second, when we're talking about the number
14 of people inside a licensed facility known by public
15 safety officials that may be visibly marked and meet
16 the other criteria, I still can clearly envision four
17 or five individuals being inside that facility
18 triggering an HCA.

19 An example of that is I had my first
20 overnight long-term multiple night backpacking trip.
21 It was with an uncle who suffered a head -- who
22 suffered a head injury and was in a private home,
23 unmarked, almost certainly not known by public safety
24 officials, with anywhere from two to four individuals
25 inside the home.

1 I don't think that's what we're trying to
2 offer additional protections to, but if it were known
3 by a public safety official, that's what we would do if
4 it were inside the circle.

5 So I'm seeing an inconsistency here that's
6 bothering me that in one case we're offering
7 protections only for -- I'm assuming we're still having
8 the 20 or more people in a well-defined outside area.
9 But we're talking about maybe as little as three people
10 inside a licensed public safety official-known
11 building.

12 MS. GERARD: I confused --

13 MR. MOORE: -- how many people?

14 MR. ISRANI: We didn't establish that. The
15 reason we did not establish number of people for these
16 facilities is because they're mobile. People come and
17 go. We could not establish any number there. And that
18 we explained in the HCA final rule already. HCA, the
19 final rule, we did address that issue.

20 And in regards to your first question that we
21 have still some parts of HCA definitions which refer to
22 660 feet, 1000 feet, which will be contrary to what we
23 are referring now as C-FER model.

24 So, yes, those will be corrected. So we'll
25 clarify that so that we match with our C-FER model.

1 MR. MOORE: I'm glad we clarified that here.
2 I assumed that's what we'd do, Mike, but I wasn't
3 sure.

4 MR. ISRANI: Yes, we'll have to do that.
5 Yes.

6 MR. MOORE: Very good.

7 MR. ISRANI: Yeah.

8 MR. MOORE: Further comment past the number
9 of people being protected, whether it be five or 20 or
10 some 20-plus or whatever.

11 Dr. Johnson mentioned a moment ago primary
12 mechanism for determining where these sites are versus
13 secondary mechanism. There's going to be, as I
14 understand it as I stand here, a major problem for
15 pipeline operators in determining, okay, I have a
16 primary device for finding these locations, but if it
17 says in the rule book that these other mechanisms are
18 in place as well, in the rule book they're going to be
19 equal. And we've seen that repeatedly during
20 inspections.

21 It doesn't matter what the intent was in this
22 Committee. Secondary and primary does not matter once
23 you get out in the field and are enforcing a rule.

24 So all of them are going to be held equal,
25 and we wind up with something that's going to be

1 difficult to comply with because, one, we're going to
2 have to step up beyond what the rule currently
3 discusses with public officials and engage them more
4 heavily, which is not a bad thing. But we're also
5 going to have to do our surveys and continual
6 surveillance along these pipeline facilities looking
7 for these other signs of identified sites, visibly
8 marked.

9 What were some of the others? Licensed or
10 registered.

11 MR. ISRANI: Or, yes.

12 MR. MOORE: Lists or maps.

13 What I thought I understood at one time was
14 that we'd have the question go to the public safety
15 officials. They would tell us where these facilities
16 were and then we'd go out and investigate to see if
17 they had these other criteria: visibly marked, some
18 other -- licensed, registered, et cetera. And it would
19 have to meet both criteria or it would have to meet the
20 public safety officials and then of the others. At one
21 time that's what I thought I heard.

22 MR. DRAKE: That was the motion on the floor.

23 MR. MOORE: Okay. If that's the motion on
24 the floor, but that's not what I thought I heard from
25 OPS.

1 MR. DRAKE: -- construction. The use of the
2 "and" between the primary of the -- of the local
3 official and the other three, which are connected by
4 "ors." The regulatory construction would be a primary,
5 would be secondaries. I mean, based on regulatory
6 construction. What the motion is exactly what you just
7 described.

8 MR. MOORE: So I would have to meet the
9 primary and then I would have to meet one of the
10 secondaries in addition?

11 MS. GERARD: Well, that's the problem that
12 we'd like to try and find a way to solve. We've asked
13 the question, is whether the term "public safety
14 officials or emergency response officials" will cover
15 the persons having the relevant information about these
16 identified sites. What we were trying to do was keep
17 you from having to go to a lot of places to get
18 information about the relevant information. What we're
19 trying to do is keep you from having to go place to
20 place to place.

21 Will emergency response officials and public
22 safety officials cover the persons having the relevant
23 information of the identified sites? And what we're
24 trying to say is, do you think that they can cover
25 having the relevant information?

1 I'm suggesting I think that they can cover it
2 because we're going to amplify what they know now
3 through our curriculum and through the outreach
4 activities of our CATS people that these people can
5 cover having the relevant information. That's the
6 question.

7 MR. MOORE: If the first filter is public
8 safety officials and there is no random looking, I
9 agree with what you're saying, Stacey. I did not
10 understand it that way at first.

11 MS. GERARD: Okay. Well, it's a peculiar
12 sentence. We'll cover the persons having the relevant
13 information.

14 I -- what I was hoping to have clear is that
15 they are the definitive way that you know. You don't
16 have to keep looking and looking and looking. That was
17 the problem we were trying to address in the petition.

18 MR. HERETH: Are you placing the
19 responsibility on that person? The question --

20 I'm sorry. Mark Hereth of PIC.

21 This gets to be very difficult when you go to
22 enforce this, doesn't it?

23 MS. GERARD: All we are enforcing is what you
24 do. If you ask the people that we say have the
25 relevant information -- the requirement is to go to the

1 people who have the relevant information -- that is the
2 public safety officials -- and ask them the questions
3 as part of your ongoing liaison activities. You're
4 already required to have a liaison. How do you -- how
5 do you comply with that?

6 MR. DRAKE: It's just a compliance metric
7 inside our liaison's activity.

8 CHAIRMAN KELLY: Is there --

9 MS. GERARD: So, let me just say that, you
10 know, if the -- and I know how it's been done in the
11 past when our inspectors ask the questions, how you
12 demonstrate that you've liaised with emergency response
13 officials. But we can improve that in the future by
14 discussing what the protocols are that -- inspection.
15 And I would say that there would be some question --

16 MR. HERETH: Participate -- I'm sorry. But
17 participating in one call programs, doing outreach,
18 sending out calendars, distributing pot holders.
19 There's physical evidence. Those are all very
20 important things in prevention.

21 MS. GERARD: But you also have to surveil the
22 pipeline.

23 MR. HERETH: Right.

24 MS. GERARD: And we talked about this before.
25 When you surveil the pipeline, you can add to that

1 activity talking to emergency response officials and
2 asking them, what do you know about places where people
3 congregate and places where there -- or facilities with
4 mobility impaired people.

5 CHAIRMAN KELLY: Let me try to understand
6 where we are in the meeting.

7 Right now, the proposal on the floor was to
8 include in the criteria the public safety officials and
9 one of the three remaining on the list.

10 Now, is the current discussion saying that
11 there are problems with that?

12 MS. GERARD: I think what we're trying to
13 say, what we're trying to get the Advisory Committee to
14 say, is, do they agree that the public safety officials
15 or the emergency response officials are the persons who
16 we can say cover us in having the relevant information
17 about the identified sites.

18 CHAIRMAN KELLY: And do what with the other
19 --

20 MS. GERARD: That's the question we asked.
21 Do they cover us as having the relevant information.

22 MR. DRAKE: I think that in my intended --
23 (Interruption)

24 MR. DRAKE: That was kind of divine.

25 MS. GERARD: Sounds like divine intervention.

1 MR. DRAKE: We had music.

2 (Laughter)

3 MS. GERARD: Okay.

4 MR. DRAKE: Music from above, but I think
5 that the motion on the floor was about those folks
6 being the primary source of that information. But to
7 help normalize it as it goes into implementation across
8 the country, some of the other filters help provide a
9 normalizing influence, that they couldn't just know
10 about a neighbor who was -- you know, and so now you've
11 --

12 MS. GERARD: The neighbor wouldn't qualify as
13 --

14 MR. DRAKE: I know, I know, I know. But
15 that's the point.

16 CHAIRMAN KELLY: We need to take a -- a brief
17 break because Commissioner Matthews, who is a member of
18 the Committee, will be joining us by telephone. So
19 don't go anywhere because I know you won't come back.

20 We're just going to take five minutes off the
21 record so that we can provide the hook-up. In the
22 meantime, we can, you know, give some thought to --

23 MS. GERARD: Do not leave.

24 (Pause)

25 CHAIRMAN KELLY: Commissioner Matthews from

1 Texas has now joined us.

2 Commissioner Matthews?

3 MR. MATTHEWS: Yes, ma'am.

4 CHAIRMAN KELLY: Hi. Good Afternoon.

5 MR. MATTHEWS: How are you?

6 CHAIRMAN KELLY: Fine, thank you.

7 MR. MATTHEWS: I appreciate you all allowing
8 me to do this. The legislature doesn't leave town
9 until Tuesday, and it's a little dangerous right now
10 for all of us who are involved in state government.

11 CHAIRMAN KELLY: Good. And we're certainly
12 happy that you're able to call in because these are
13 some very, very important issues and we're interested
14 in having the comments of all members of the Committee.

15 I understand that you'd like to comment on
16 some matters that we have already acted on, but we'd
17 still be interested in your comments. And so if you
18 would proceed? I understand it's Number 1 and Number
19 7?

20 MR. MATTHEWS: Yes, ma'am.

21 So, Number 1, I -- I've been reading all of
22 the comments that everybody has -- has submitted, and
23 particularly I've been concerned about the comments the
24 pipeline industry has made about the additional cost
25 that either the -- the -- the straight-line Class 3 and

1 4 locations come up with or the -- or the circles that
2 we're talking about, the cost of trying to -- of trying
3 to calculate all of that. I know it's going to add
4 costs to the pipeline operators, and of course, that
5 cost will eventually be passed on to the consumer.

6 And I wanted to suggest that we -- that we
7 allow a third option for people to use, and that is to
8 -- to allow them to -- to use a direct assessment where
9 they could -- you know, they could put in place a -- a
10 integrity management program.

11 In other words, it would just be a third way
12 they could go so that particularly the smaller
13 intrastate pipelines that are -- that are particularly
14 worried about some of these costs, they could opt out
15 of those -- out of those other methods and could use
16 the integrity management program. And of course, that
17 would mean it would be on the entire length of the
18 pipeline.

19 We do that currently in Texas, and we think
20 that's a good way -- good way to go. I'm not
21 suggesting that that's the only way that the federal
22 government may want to do it, but I do believe that it
23 should be a third option for you to consider for the --
24 for the pipeline.

25 And I believe a bunch of them, particularly

1 the smaller ones, will -- will agree to use it because
2 the cost will be so much -- so much less. And I --
3 over and over again as I read the information that
4 people have submitted to me, that -- that idea of cost
5 come -- comes up. And this might be a better way. So
6 that's my comment on that.

7 On the Issue Number 7, which is the direct
8 assessment, the -- the -- I believe that I disagree
9 with the Office of Pipeline Safety's current position
10 given the weight of these direct assessments in terms
11 of the inspection frequency.

12 As the rule is now proposed, we're talking
13 about if somebody chooses a DA that they don't have to
14 come back again for 20 years. I think that's -- I
15 think that's way too long. The -- that whole idea of
16 how to do direct assessment, Texas is just in the early
17 stages of trying to work through that issue, and we are
18 not yet totally comfortable with it. And I would
19 suggest that if we -- if we allow people to do direct
20 assessment that it -- that it be no -- no less than --
21 than every five years rather than -- rather than 20. I
22 think that -- that is a better -- is a better position
23 to have. I think 20 years is just not long enough.

24 After we get more comfortable with the --
25 with the technology that's out there and the

1 information and comfortable with -- with going through
2 several of -- some years of experience using DA, well
3 then we may want to -- we may want to change our mind.

4 But I think at the beginning that I certainly would be
5 in favor of a short -- shorter frequency period.

6 And those are my comments.

7 CHAIRMAN KELLY: Well, thank you. We have
8 them on the record now.

9 Is there anyone on the Committee who has any
10 questions or comments based upon these comments?

11 (No response)

12 CHAIRMAN KELLY: Thank you very much, and
13 welcome to our meeting.

14 MR. MATTHEWS: Thank you very much. Bye.

15 CHAIRMAN KELLY: Don't hang up.

16 MR. MATTHEWS: I'm not -- I won't hang up.
17 I'm just getting out of the way.

18 (Laughter)

19 CHAIRMAN KELLY: We're moving the agenda
20 around a bit. We have with us today the fire chiefs --
21 I mean, I'm sorry, the -- all right, representatives
22 from the International Association of Fire Chiefs. We
23 have the director from the National Fire Department,
24 who is Chief Steve Halford, and Alan Caldwell, the
25 director of government relations. And they are here to

1 talk to us today from their perspective about excess
2 flow valves.

3 So, I will turn the meeting over to them at
4 this point.

5 Stacey, did you want to --

6 Excess Flow Valves (EFV)

7 Presentation by Fire Chiefs

8 CHIEF HALFORD: Ladies and gentlemen, good
9 afternoon. On behalf of the International Association
10 of Fire Chiefs and my home organization, the National
11 Fire Department, I thank you for the opportunity to
12 speak to you today about the topic of excess flow
13 valves.

14 I'm a little bit out of turn. I know
15 tomorrow is when you're going to speak on the subject.

16 However, I do appreciate the opportunity to get in.
17 We're having a National Hazardous Materials Conference,
18 and it was nice of the Committee to rearrange the
19 schedule so I could speak today.

20 So I'll be the first to talk about the
21 subject and maybe -- that'll have to wait.

22 In a letter dated May 6th, 2003, Gary Breeze,
23 the executive director of the International Association
24 of Fire Chiefs, an organization that represents the
25 leaders and managers of America's fire service,

1 responded to Docket RSPA 03014455, Notice 1 regarding a
2 cost benefit study of excess flow valve installation on
3 gas service lines. That correspondence is now a part
4 of your record on this topic.

5 Executive Director Breeze, on behalf of the
6 International Association of Fire Chiefs, offered seven
7 specific comments on the Volpe cost benefits study.
8 The IAFC believes the Volpe study validated cost
9 effectiveness of the excess flow valves and continues
10 to support a mandatory application to mitigate the risk
11 of injury and death to our citizens and our nation's
12 fire departments.

13 From the perspective of the fire service,
14 when we looked at studies of cost benefit for -- in
15 terms of requiring or mandating the use of excess flow
16 valves, you can imagine, we were just a little bit
17 taken aback because we know the frequency of breakage
18 of gas lines and the damages can be significant. And
19 the cost appears to be reasonable.

20 However, sometimes you have to do something
21 -- criticality of an event. For instance, let's look
22 at the police officers across our country, a police
23 officer who's been issued a gun. There's a cost for
24 those weapons. I'm sure it's a significant cost to
25 train people in the use of the weapons. But if you

1 looked at how many times a police officer would
2 actually draw the weapon and discharge the weapon, the
3 frequency would be so low that if you just looked at it
4 from a cost benefit point of view, we wouldn't give the
5 police officers guns.

6 Sometimes we have to look at cost benefit as
7 a balance against the criticality of the event.
8 Obviously, we would never take guns away from our
9 police officers because of the criticality of what can
10 happen when he needs that gun, even if it's an
11 improvement.

12 Every year in the United States, fire
13 departments respond to numerous natural gas leaks.
14 While some of these emergencies can quickly and
15 appropriately be controlled, results of some natural
16 gas leaks are deadly for our firefighters and those
17 they protect. In addition to the injuries and deaths,
18 economic and psychological impact of the affected
19 communities it damages can be devastating.

20 What's particularly frustrating about the
21 potential disaster as a result of natural gas leaks is
22 that the majority of such releases could be quickly
23 controlled or at least the risk greatly reduced before
24 the fire department and the local gas utility service
25 even respond. Most natural gas leaks to which the fire

1 department responds could be prevented by the
2 installation of excess flow valves on the lines that
3 bring gas service into U.S. homes and businesses.

4 Every year, a natural gas line failure forces
5 evacuations of thousands of persons in the United
6 States. When leaking gas is ignited, it results in
7 explosions and fires that do kill or maim people and
8 destroy millions of dollars in property. Several
9 examples are as follows:

10 In September 2002, less than a year ago, a
11 gas explosion at a Maryland home put six firefighters
12 in the regional burn center, three of them in critical
13 condition. Seven other firefighters and three
14 civilians were injured, and a gas company worker was
15 killed.

16 In July of 2002, two sisters ages four and
17 five were killed when the Massachusetts multiple
18 dwelling that they called home collapsed on top of them
19 after a gas explosion destroyed the structure. Several
20 of the buildings' 14 other residents were injured.
21 Rescue efforts had to be halted more than 90 minutes
22 after the initial collapse while utility workers
23 searched for a way to cut off the gas.

24 In mid 1988, a mother was killed and three of
25 her relatives were injured when a gas leak explosion

1 destroyed their home in Virginia.

2 A few months after that, in St. Cloud,
3 Minnesota, four people were killed, 15 injured, and the
4 lives of firefighters on the scene were greatly
5 jeopardized. The blast destroyed three buildings and
6 damaged five others so severely that they had to be
7 demolished.

8 Less than a month later, three people were
9 killed in a gas explosion in which three buildings were
10 destroyed in Bridgeport, Alabama.

11 In 1993, two firefighters in Clay County,
12 Georgia were severely injured by the explosion of gas
13 leaking from a line damaged when a car drove into a
14 home. The explosion occurred 21 minutes after they had
15 responded to the report of the accident.

16 In 1989, Capt. M.M. Wallace in the Houston,
17 Texas, Fire Department, responding to reports of an
18 odor of gas, was credited for saving a school full of
19 children. He had plugged an open gas line with paper
20 towels and his hands while utility workers located the
21 shut-off valve.

22 All the aforementioned senseless tragedies,
23 and there are scores more, could have been avoided had
24 excess flow valves been installed.

25 Excess flow valves were developed in the

1 1960s at the urging of the gas industry as a means of
2 quickly stopping leaks from lines ruptured by
3 excavation. The earliest valves were problematic and
4 gained a reputation for being unreliable.

5 In a few short years, however, the design and
6 the procedure for picking the proper size valve and
7 installing them correctly were improved to make them
8 reliable. As you are aware, excess flow valves are
9 designed to allow the normal operation of a gas line
10 but to automatically close it off when the flow of gas
11 exceeds the design limits. Its activation on a
12 ruptured line can prevent the build-up of a dangerous
13 level of gas and destruction. Thus, in most instances,
14 including explosions, fire, and incapacitation of the
15 occupants.

16 More than 2 million excess flow valves -- and
17 I understand it's raised to 4 million now -- have been
18 installed voluntarily by gas companies and have worked
19 reliably for 30 years. But there are more than 60
20 million gas lines in service in the United States. The
21 number of excess flow valves installed simply is not
22 enough.

23 After accidents involving ruptured gas lines
24 killed 18 people back in the 1970s, investigators for
25 the U.S. National Transportation Safety Board called

1 upon the federal Department of Transportation to
2 require the installation of excess flow valves. Gas
3 industry officials countered that the valves weren't
4 reliable, that they might interfere with the normal
5 operation and maintenance of gas lines, and that they
6 were too costly.

7 More than 20 years of debate has ensued,
8 intensifying in the aftermath of each new gas leak
9 accident and fatality.

10 In 1999, the U.S. Department of
11 Transportation's Office of Pipeline Safety finally
12 acted on safety investigators' recommendations by
13 making rules that gave gas companies two options. They
14 could voluntarily install excess flow valves on new gas
15 lines and for customers whose gas lines were severed.
16 They -- excuse me, for customers whose gas lines were
17 removed. If they did not, the gas companies had to
18 notify customers of the benefits and availability of
19 excess flow valves and then to give the customers the
20 option of paying for the installation and maintenance
21 on those valves.

22 The rule was not what the International
23 Association of Fire Chiefs wanted, but it would be a
24 start. And in fact, it was a good start. In fact,
25 today more than half of U.S. gas companies have stepped

1 up to the plate and are installing hundreds of
2 thousands of additional excess flow valves without
3 significant cost to the gas customer.

4 There are problems, however, with the federal
5 requirement. Obviously, not all gas companies are
6 installing the valves. Beyond that, not all residents
7 are receiving excess flow valves on their gas service
8 lines and many other lines that could benefit from the
9 safeguards are not covered under the federal rule.

10 The existing federal regulation falls short
11 because it doesn't specify whom the regulator is that
12 the gas company must advise. In the case of newly
13 constructed residences, it is not the people who are
14 going to buy the home and thus benefit from the gas
15 valve, it's the building.

16 Additionally, in some instances, those gas
17 companies who are not voluntarily installing the valves
18 may have provided -- may not have provided adequate
19 information as to the benefits of the valves. Still
20 others may have indirectly dissuaded the customers from
21 purchasing the valves.

22 Residential lines are not the only problem.
23 The federal requirement only applies to residential gas
24 service. Many gas leaks and explosions involve lines
25 to businesses and commercial operations because gas

1 service is similar to those of the residences. These
2 gas lines pose the same risk, if not greater ones.
3 They operate well within design parameters of excess
4 flow valves but there is no requirement for the gas
5 companies to offer valves to these customers or to make
6 them aware of the valve's safety benefits.

7 That means many of these lines remain
8 unprotected and the individuals occupying or visiting
9 these businesses as well as firefighters responding to
10 these fires are at risk.

11 Any time the fire service lobbies for life
12 safety changes that affect the pocketbooks of
13 businesses and/or citizens, we must as a practical
14 matter consider the fiscal impact of our suggestion to
15 those who must bear the cost.

16 In the case of excess flow valves, however,
17 cost is clearly not a legitimate barrier to the
18 installation. Excess flow valves for residential gas
19 line service cost five to 15 dollars, and the gas
20 companies can include their cost in the price of the
21 gas service. Excess flow valves to larger lines
22 servicing high-use business and commercial customers of
23 course cost more, but these valves are just as
24 effective and reliable and necessary for public safety.

25 The cost of not installing excess flow valves

1 in terms of the death and destruction from a single gas
2 explosion makes the relatively modest expense of
3 mandatory installation a no-brainer. Why shouldn't we
4 all be protected in the same way from meaningless gas
5 explosions?

6 As we all know, the danger to persons and
7 property at the scene of a gas leak isn't the only cost
8 that's suffered. Price and pressure resources are tied
9 up for considerable periods of time -- while local gas
10 utilities attempt to locate the shut-off valves. No
11 fire department in the United States is so rich in
12 staffing -- in budget -- that we can spare units to
13 cover gas leaks that are entirely preventable in the
14 first place.

15 Critics who have called for wider use of
16 excess flow valves argue that they're not necessary
17 because efforts have been made through the adoption of
18 One Call and Miss Utility Programs in different states
19 to reduce the risk of utility through striking gas
20 lines. Not all excavators make the necessary call.
21 Many leaks occur in lines that are hit after the
22 location was identified. Other leaks occur because gas
23 line locators are sometimes incorrectly identified.

24 We simply can't predict how or when a gas
25 line will be breached. In addition to excavation crews

1 hitting them, vehicles run into gas meters.

2 Earthquakes and other earth movements also loosen their
3 joints. In one case in Grand Rapids, Michigan, a chunk
4 of falling ice off a house broke the gas line.

5 Although our local gas utilities do their
6 best, the response time for leaks can be considerable.

7 Federal studies have put the average response time at
8 20 minutes, but in some cases it is an hour or more.
9 In that time, gas can enter adjacent buildings at
10 higher levels before the first responders realize it,
11 causing them to be working in a danger zone that is
12 much larger than previously believed. Responders could
13 be in the midst of pockets of gas that, when ignited,
14 could send bricks and boards into the sky.

15 The fire service and communities we serve can
16 no longer continue to accept the potential disastrous
17 consequences of natural gas leaks. These risks can be
18 easily mitigated. The fire service knows it and the
19 gas industry knows it.

20 We'd also ask that you take a look at the
21 initiative of the California state legislature. Last
22 fall, they passed a bill instructing the state to
23 mandate excess flow valves in their state. And I think
24 they're the leader in this country for that.

25 On behalf of the citizens of our communities,

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1 our public safety responders, our gas and electric
2 utility service workers, our cable and home-building
3 tradesmen, and anyone else who may suffer the
4 devastating consequences of natural gas leaks, I beg
5 you to use the Volpe study as a springboard to action
6 that will lead to mandatory installation of excess flow
7 valves.

8 Thank you.

9 CHAIRMAN KELLY: Thank you very much.

10 Before you leave, perhaps members of the
11 Committee may have questions or comments?

12 (No response)

13 CHAIRMAN KELLY: Do members of the public
14 have any questions?

15 (No response)

16 CHAIRMAN KELLY: Well, thank you for that
17 presentation. As you said, we'll be taking the issue
18 up again later on in our agenda. We appreciate your
19 coming.

20 MS. GERARD: I'd like to ask a question on
21 another matter that the Committee was discussing.

22 (Laughter)

23 MS. GERARD: While you're here, are you in a
24 capacity representing the entire organization of the
25 International Association of Fire Chiefs or just the

1 City of Nashville?

2 CHIEF HALFORD: Yes, I am at that capacity.

3 Al Caldwell --

4 MS. GERARD: Which?

5 CHIEF HALFORD: -- he's the government
6 relations director for the IAFC and he has worked on
7 this issue for years. Has -- represent the
8 International on this issue.

9 MS. GERARD: Okay. Well, this might not be
10 fair to ask you a question on another topic that the
11 Committee is considering today because we are
12 discussing -- we're discussing the protection --
13 additional protections on transmission pipelines. This
14 is a distribution issue.

15 But on the transmission pipelines, we're
16 trying to figure out how to identify places on the
17 transmission pipeline where there may be areas where
18 people congregate and where there's places that there
19 are facilities that house people who mobility impaired.

20 And one of the things that we were debating
21 was whether or not we should require operators to, as
22 they surveil the pipelines -- and they are -- they're
23 already required to have liaison activities with
24 emergency responders -- whether or not it's fair to ask
25 emergency responders, fire service, police officials,

1 EMTs, about what they know about places where people
2 congregate, like parks, outdoor areas, and places where
3 there are facilities like nursing homes.

4 I apologize for asking you this question
5 cold.

6 CHIEF HALFORD: No, it's --

7 MS. GERARD: We're working on a program with
8 the National Association of Fire Marshals to develop a
9 curriculum that would be distributed to the fire
10 service to help educate the fire service about how they
11 can help us at the community level with damage
12 prevention and better responding to pipeline accidents.

13 And one of the things that we were thinking
14 about was making as the primary source of information
15 for the operators the results of their -- their surveys
16 and discussions along the right-of-way with emergency
17 response organizations.

18 Do you think that most emergency response
19 organizations or in every community that at least one
20 emergency response organization would be a good source
21 on where there are areas where people congregate along
22 a pipeline and/or places where there are facilities
23 that house mobility impaired, like prisons and nursing
24 homes? Is that something that you think that would be
25 information that generally an emergency responder

1 agency would have?

2 CHIEF HALFORD: I think, first, I would
3 commend this organization for encouraging that -- that
4 flow of information. I think that you'll find that the
5 Fire Service generally would welcome the opportunity to
6 assist in identifying some of the -- what we would call
7 target hazards or areas where population centers could
8 be potentially endangered or endangered in a great way
9 if there was a leak at a transmission site along the
10 pipeline or something of that nature.

11 Most -- I'm sure the Fire Service in any
12 community is a good place to begin to access this
13 information. Probably within any municipality or
14 county government, another resource should be those
15 agencies' planning departments, who are aware of there
16 -- where their population get congregated and can
17 clearly identify those sites that are most vulnerable,
18 such as nursing homes, hospitals, and things of that
19 nature.

20 So I think it's a good approach to identify
21 these and it's even better prospectively as communities
22 are developed to perhaps have the local gas industry be
23 involved in the development phase and aware, if it
24 looks -- if a developer thinks this is a good piece of
25 property, I'm going to build a housing development here

1 or a shopping center or a mall, perhaps if some of the
2 local gas utility folks were on planning committees
3 that they -- they typically would have, they would say,
4 well, we have a transmission site there or that's where
5 a high-pressure line is.

6 So I think both retroactively and
7 prospectively you could do those things. I think the
8 Fire Service is a good source, the local fire service,
9 of information and they could help identify and even do
10 some risk analysis, the fire prevention departments of
11 the divisions of those departments.

12 But also, I think that the -- the local
13 government planning department would be a good resource
14 also.

15 MS. GERARD: Okay. Well, I'd like to follow
16 up with you at the IAFC to see what we can do to
17 provide information that you might distribute to help
18 us from the DOT side get the word out that you might be
19 asked this question.

20 CHIEF HALFORD: Okay. I would only add that
21 -- Al, do you think that's a good analysis?

22 MR. CALDWELL: Yeah.

23 CHIEF HALFORD: If you'll like to add to
24 that?

25 MR. CALDWELL: Local emergency planning

1 committees --

2 CHAIRMAN KELLY: Please use the microphone,
3 please. Because we're recording.

4 MR. CALDWELL: I'm Alan Caldwell from the
5 International Association of Fire Chiefs.

6 The only other organization I would add would
7 be local emergency planning committees per se. That's
8 got all of your first response agencies in it plus the
9 local emergency management agencies.

10 MS. GERARD: Great. Thanks very much.

11 MR. CALDWELL: And as far as assisting you in
12 your work on this, you have my card and we will help.

13 MS. GERARD: Thanks very much.

14 MR. LEMOFF: I have a question, if I may. A
15 question to the chief or either of the speakers.

16 To the chief specifically, does your answer
17 include volunteer fire departments? Because that did
18 come up, and I just would like it for the record, if
19 you don't mind.

20 CHIEF HALFORD: Yes, I think that would
21 include volunteer fire departments. Again, Mr.
22 Caldwell's answer is that every state is mandated to
23 have a local emergency planning commission. That would
24 be a good source. But the fire service consists of
25 career and volunteer fire departments. Sometimes, in

1 very rural areas, a local fire department may not even
2 be -- a volunteer fire department may not even be an
3 instrument of the government but still is your best
4 resource for planning within a local community.

5 Yes, include the volunteer fire departments.

6 CHAIRMAN KELLY: And when you mention the
7 town planning departments, is it that they would -- may
8 have information that you don't have or you would have
9 the same information?

10 CHIEF HALFORD: They -- they -- they may have
11 more detailed information. Typically, your planning
12 departments are going to know the demographics of -- of
13 a city or a county. They're a population center.
14 They'll know your projected population growth based
15 upon plan reviews that have been submitted. So they're
16 going to know where -- the state of the community in
17 terms of demographics and where it's going to -- where
18 it's going.

19 They would provide more detailed -- I would
20 say the fire department is assisting -- is type of a
21 safety consultant to advise -- in an advisory role to
22 the gas industry.

23 MS. GERARD: I've never met you before, and I
24 really appreciate your being willing to take that
25 question on the mike on the record without any

1 preparation at all. Thank you very much.

2 (Laughter)

3 CHAIRMAN KELLY: Thank you for your
4 presentation.

5 (Applause)

6 CHAIRMAN KELLY: All right. Now we'll get
7 back to the discussion that we were having on
8 identified sites.

9 And I think it's clear -- we've spent quite a
10 bit of time on it -- that there's some concern from OPS
11 legal staff as to just how -- how much of this can be
12 addressed and, to the extent that we address it, how
13 much of it can be implemented based upon the
14 appropriate notice requirements, whether or not a
15 docket has been opened or reopened, and so forth. But
16 those are issues that I believe we can leave to the
17 legal staff at OPS to deal with subsequent to the
18 meeting.

19 But to the extent that there has been
20 discussion, that there is a question -- I believe
21 everyone has agreed that the one question that is
22 before us is whether the term in the regulation should
23 be "public official" or "public safety official and
24 emergency response official."

25 So why don't we respond to that particular

1 issue now? Is there a recommendation?

2 MS. GERARD: One comment from what they made
3 available as the IAFC, International Association of
4 Fire Chiefs.

5 Public safety officials or emergency response
6 officials. The comment that that might include the
7 local emergency planning committee, that was the third
8 comment they made. That would not really fall within
9 public safety officials or emergency response officials
10 necessarily. The fire and the police are on the LEPC,
11 but so are a lot of other people. You know, so I don't
12 know whether or not -- you know, because of the
13 question about the volunteer -- the volunteer fire
14 department may be hard to contact, but if you knew
15 somebody on the LEPC, I would find that an acceptable
16 alternative to the fire chief, the police chief.

17 Sometimes, you know, like an area like
18 Houston in Harris County, the LEPCs there, for example,
19 have had an enormous interest in what we've been doing
20 in the pipeline safety program. So, you know, you
21 might broaden that to include "or a representative from
22 the LEPC, the local" --

23 CHAIRMAN KELLY: What is LEPC?

24 MS. GERARD: It's the local emergency
25 planning commission -- committee, which is a -- the

1 local version of a state emergency response commission.
2 It's a creation of SERA, Title III.

3 CHAIRMAN KELLY: I think the purpose here was
4 to identify or to limit the number of public officials
5 or the types of public officials that would be
6 approached for this information, is that correct?

7 MS. GERARD: For covering the people having
8 the relevant information about the identified sites.

9 CHAIRMAN KELLY: And by adding this local
10 emergency planning committee to the public safety
11 official and the emergency response official, is that
12 comprehensive? Would that cover every community? Mr.
13 Andrews?

14 MR. ANDREWS: Yes. That'll -- every
15 community has to have a -- have one under the SERA
16 laws.

17 But I think my -- my concern is still that
18 we've got so many agencies listed here, I'm afraid that
19 we're going to miss one and be held in violation. If
20 -- if we -- you know, "LEPC or" or something like
21 that would be great.

22 MS. GERARD: Our objective here was to try to
23 clarify what would adequately cover the people who have
24 the relevant information. And we are very supportive
25 of the goal that Linda mentioned in the beginning,

1 which was clarity. And as Barbara's pointing out,
2 within the discussion about the proposed rule, there's
3 only so many places where we can take an action as we
4 identified something in the preamble, and this is one
5 of those areas.

6 Besides the comment on the rule itself -- I
7 know we're focusing on clarity in the rule, but one of
8 the reasons we're focusing on clarity is to be able to
9 move smoothly into implementation, compliance for the
10 operator, oversight for us.

11 And I just want to remind the Committee that
12 in the discussions over the past several meetings,
13 we've talked about, as we move into implementation,
14 that we have public meetings on the protocols that
15 we're going to use to inspect whether or not you comply
16 and that once we get the rule done, we will start
17 having public meetings on the protocols that we're
18 going to use.

19 And this protocol approach has been commented
20 on by NTSB when they gave their report on Bellingham.
21 The GAO has done an evaluation on our preparedness to
22 implement the integrity program, and they also said
23 positive things about the protocol approach.

24 And one of the things that's relevant here is
25 that the public discussion of the protocols that we're

1 going to use, I believe, would clarify what everybody's
2 understanding was of what the tests of compliance are.

3 So I'm suggesting that perhaps the answer to
4 the problem that we're trying to solve here, after we
5 get past the exact language on "public safety official
6 or," you know, or "LEPC," is that now we have and we're
7 committed to this approach to publicly posting
8 protocols, taking comments, having discussions on them,
9 and that that may be where we solve the problem of how
10 you as operators know what the test is for compliance.

11 Clearly, on the record, what we're saying is
12 we're -- we're trying to find a way to make it clear
13 how you know where to go to get the information about
14 these sites. And you know, I think you just heard good
15 evidence of why it is a good idea to clarify that
16 public safety officials or emergency response officials
17 are a good source of information.

18 Perhaps, you know, we would make it even more
19 clear that we would be looking for some interview
20 question as part of your surveillance or patrolling,
21 that you would seek information from them, and that
22 that would be a good way of knowing the answer to the
23 question about the facilities where there are mobility
24 impaired people and areas where people congregate,
25 meaning the test that's in the rule.

1 CHAIRMAN KELLY: Mr. Pevarski?

2 MR. PEVARSKI: The way I understand the
3 proposal, is -- is it would be an and/or. If -- if an
4 operator opted to go to an LEPC, then that would be
5 all-inclusive -- you'd have police and fire as part of
6 that -- that that would suffice. In a lot of
7 communities, that would be the way to go.

8 MS. GERARD: Well, are you recommending as a
9 member of the Committee that we add "or local emergency
10 response" -- I can't remember if it's committee or
11 commission. Committee. Are you recommending we add
12 that "or LEPC"? If the volunteer fire department might
13 not be that strong, if you went to the LEPC, that would
14 certainly suffice as far as I would be concerned.

15 MR. PEVARSKI: Yes, ma'am.

16 CHAIRMAN KELLY: So that is that the "public
17 official" language be substituted with "public safety
18 official, emergency response official, or local
19 emergency planning committee"?

20 MR. PEVARSKI: Correct.

21 MR. ANDREWS: I'd second that.

22 CHAIRMAN KELLY: Motion's been made and
23 seconded. Any further discussion?

24 MR. DRAKE: Just for clarity, the motion that
25 I had on the floor has been withdrawn, in essence,

1 because of the legal ramifications of it, is that
2 correct?

3 MS. BETSOCK: That's correct. It's not that
4 it's not going to be considered but that it may not be
5 considered in the context of the current final rule.

6 MR. DRAKE: Okay.

7 CHAIRMAN KELLY: I think it's appropriate to
8 withdraw it, but I also believe that the discussion
9 that the Committee has had may be helpful to OPS as it
10 works on the protocols and other issues surrounding how
11 that element of the rule would be implemented.

12 MR. DRAKE: Okay. I just want to make sure
13 that's clear, that that motion is in essence terminated
14 because of the discussions with -- with counsel. But I
15 think, just for the record, I think that it's essential
16 that the outstanding petition for reconsideration be
17 addressed to close this issue at some point before
18 implementation. In this Committee, nothing that we are
19 talking about on this current motion addresses that
20 petition for reconsideration. I just want to make sure
21 we're clear on the record.

22 CHAIRMAN KELLY: Thank you.

23 MS. GERARD: Any aspect of the petition? Are
24 you saying that nothing in this NPRM addresses that
25 petition or this one issue of the petition?

1 MR. DRAKE: This single issue could be
2 construed to address a very, very tiny part of that
3 petition for reconsideration. It does not under any
4 circumstance address the breadth of the issues that
5 were brought up in that petition for reconsideration.

6 Rural churches is another issue that was
7 brought up in the petition for reconsideration. It is
8 on the agenda, but it also does not address the breadth
9 of the issues that were brought up in the petition for
10 reconsideration. And I think at some point the breadth
11 of those issues has to be dealt with, and that's all
12 I'm saying.

13 CHAIRMAN KELLY: Is there any further
14 discussion?

15 This is for Committee members. Did you want
16 to speak to our vote? Something that we perhaps need
17 to consider in our vote?

18 MR. BENNETT: I thought the vote is
19 withdrawn.

20 CHAIRMAN KELLY: No. We still have a motion
21 on the floor.

22 MR. BENNETT: This is really on the petition
23 for reconsideration.

24 CHAIRMAN KELLY: Is everyone familiar with
25 the vote? Should I repeat it?

1 All right. All in favor?

2 (There was a chorus of "ayes.")

3 CHAIRMAN KELLY: Any opposed?

4 (No response)

5 CHAIRMAN KELLY: Any abstentions?

6 (No response)

7 CHAIRMAN KELLY: Thank you. That vote
8 carries regarding the definition of "public official."

9 And the record is clear with respect to the
10 motion by Mr. Drake having been withdrawn.

11 Mr. Bennett, you had a comment?

12 MR. BENNETT: The -- following up on the
13 issue of identified sites, AGA filed a petition for
14 reconsideration because --

15 CHAIRMAN KELLY: No, Mr. Bennett, I don't
16 mean to cut you off, but we're not going to go any
17 further on the petition for reconsideration.

18 MR. BENNETT: That's fine. I guess I was
19 trying to say that the issue was we thought it was
20 vague and confusing, and I think the discussion
21 demonstrated what we said in the petition. There is a
22 lot of confusion about the identified site.

23 And we didn't open up the discussion for the
24 public on identified sites. That's -- that's what I
25 was trying to say. The petition is consistent with the

1 confusion that still exists with identified sites.

2 And OPS gave -- answered our petition in
3 their notice of proposed rulemaking just by saying that
4 the notice of proposed rulemaking would provide
5 clarity. And you have demonstrated here that clarity
6 is just not there yet. And so, we think the -- the
7 notice of proposed rulemaking really wasn't a
8 sufficient answer to the petition and some -- as Andy
9 said, some time before the final rule comes out, we
10 really do have to close the issue of -- that were
11 raised in the petition.

12 CHAIRMAN KELLY: Thank you.

13 MS. GERARD: Could you enumerate what those
14 issues were, please?

15 MR. BENNETT: Well, I can -- some of the
16 issues -- the main issue was that the definition of
17 identified sites as was written was not legally
18 sufficient because it was vague and over broad and it
19 was impractical for compliance. And that is really the
20 same discussion that we're having today.

21 Operators are really willing to go and find
22 the identified sites, but they're confused. And we're
23 really trying to find some clarity, and we thought the
24 answer was the -- the language that was submitted for
25 the HCA definition did try to make a very narrow and

1 legally sufficient identified site definition. And
2 that was not on the agenda, and we really -- since this
3 rulemaking may be closed pretty soon, some time that
4 issue really has to be addressed because it wasn't
5 addressed in the notice of proposed rulemaking.

6 MS. GERARD: So just to get this straight, in
7 response to this question about the emergency response
8 officials and other references to the petition in this
9 document, you put on the docket a response that has
10 been provided to the members of this Committee and it
11 included very specific language to attempt to clarify
12 the problem you raised in the petition. And that
13 included things like identifying the buildings as
14 having so many number of people in them, it included
15 the emergency response official in it.

16 So it took the emergency response official
17 and added a couple things to it, as I recall?

18 MR. BENNETT: Right. That -- the state --
19 emergency response official was one issue. Beaches,
20 identified sites like that that were vague were other
21 issues.

22 So, I think -- I think we have made some
23 progress in this Committee by narrowing the issue of
24 how to identify an identified site. But there really
25 needs to be further work done on that because that was

1 a big expense. And actually, not just the expense,
2 it's really the success of the program depends on
3 identifying the sites first before you do any work.

4 CHAIRMAN KELLY: We're going to have a 15-
5 minute break.

6 (Brief recess)

7 CHAIRMAN KELLY: Now, obviously, it's clear
8 that during the break we were trying to resolve issues
9 in terms of how to proceed regarding the identified
10 sites issue.

11 I mentioned before the break that there were
12 some legal concerns in terms of what is legally before
13 the Committee for ruling on, but also it's clear that
14 one of the things that the Committee does want is that
15 when the rule is implemented and it's finalized that it
16 is finalized in such a way that it can be effectively
17 implemented.

18 While -- our counsel has some advice on how
19 we might proceed with this within our authority and
20 provide some guidance to OPS, and I'll let her indicate
21 how we can do that.

22 MS. BETSOCK: We have a couple different
23 options. One is, we can move pretty quickly and try to
24 develop some protocols on providing -- which would
25 provide guidance to the industry on how we intend to

1 enforce this, which would provide some of the clarity.

2 MS. GERARD: On HCAs.

3 MS. BETSOCK: On HCAs. It would be protocols
4 strictly on how we would implement HCAs.

5 The other option is, we can simply come out
6 with a guidance document -- we've done things like this
7 in the past -- which would provide that guidance
8 directly. And that could be published in the
9 "Register" and be out there pretty quickly, which would
10 provide clarification. And it would kind of let the
11 operators off the hook because once we say how we will
12 enforce it and that we will not hold you to a higher
13 standard at this point, that gives us time to evaluate
14 the need to change the rule.

15 It also would have the -- there would be a
16 benefit in publishing it in the "Federal Register." We
17 would publish it as quickly as we could because at that
18 stage we may get enough -- particularly if we sought
19 comment on that guidance -- we might comment as to
20 whether we should proceed to rulemaking to -- to
21 include it.

22 We may get enough information that would
23 justify us to change the rule rather rapidly. And we
24 --

25 MS. GERARD: The HCA rule.

1 MS. BETSOCK: The HCA rule.

2 And in any case, we could get the guidance
3 out very quickly, clearly well before the final rule.
4 And we might even be able to -- if we --

5 PARTICIPANT: The final rule on --

6 MS. BETSOCK: The final rule on IMP. We
7 would -- certainly -- before you would need to
8 implement that.

9 We might even be able to do a rule change, if
10 that were decided that it were needed or advisable. We
11 could move quickly on that after we get the guidance
12 out.

13 CHAIRMAN KELLY: So I'll ask the Committee,
14 does anyone object to further review of this particular
15 matter based upon the representations by Counsel
16 Betsock?

17 MS. GERARD: I, for one, would like to hear
18 from the Committee about --

19 CHAIRMAN KELLY: This is so I can determine
20 whether we can even take it up.

21 MS. GERARD: Right.

22 CHAIRMAN KELLY: That's why I'm asking. Does
23 anyone object to taking this up for discussion at this
24 point?

25 (No response)

1 CHAIRMAN KELLY: All right. No one objects.
2 Please go forward.

3 MS. GERARD: So I would like to hear from the
4 Committee about how it would feel about providing
5 clarity for implementation via a guidance to the HCA
6 rule; a protocol such as we have for liquid integrity
7 and operator qualification using the process we use,
8 you know, where we -- we draft something, we put it up,
9 there's comments, we discuss it; or some combination of
10 the two.

11 And if you think that either guidance or
12 protocols or both is viable, then I would like to hear
13 you discuss the guidance that you would like to see.
14 And you could draw from some of the thoughts you put on
15 the docket or other thoughts that you've had based on
16 our discussion today.

17 So I would like to, first, focus on your view
18 about guidance or protocols or guidance and protocols
19 as a way to provide clarity on what our expectations
20 would be for how you would identify the sites as
21 expeditiously, effectively, and cost effectively as
22 possible.

23 CHAIRMAN KELLY: I think the matter on
24 whether you choose a guidance or a protocol is
25 something for OPS staff and counsel to -- to decide.

1 But if it's on the substance of the matter, I think we
2 should put the substance on the table for the Committee
3 to offer its views on.

4 Mr. Drake?

5 MR. DRAKE: At the risk of just pulverizing
6 this issue, I think we stand on a slippery slope here,
7 and that is the slope of the petition for
8 reconsideration of which the Committee is not very well
9 apprised. And it is fundamentally integral to this
10 discussion.

11 So I think I can appreciate the difficulty
12 that many of the Committee members are having on trying
13 to define the boundaries of this discussion. And it
14 seems like we get some sort of critical mass moving on
15 an issue and then we take a break and we come back and
16 it's changed direction again.

17 But I -- I can speak only for myself, you
18 know. I can't speak for -- we haven't even had a
19 chance to caucus on this since this proposal just came
20 out just 30 seconds ago.

21 But I would not be concerned necessarily
22 about the venue, whether it is a guidance document or
23 necessarily a protocol. I think the key is, is that we
24 -- I think you sense that frustration in many people
25 that have come to the microphone to talk about this.

1 We have been trying to get this clarified for quite a
2 while, many, many public meetings in a row. And it's
3 continued to not -- not now, you know, not now.

4 Well, now we're at the last public meeting
5 and we're kind of saying, if not now, when? And this
6 is it.

7 And so if we have decided here that we cannot
8 address it definitively because the Committee is not
9 apprised of the petition for reconsideration or it may
10 not -- the scope of the questions that are asking for
11 clarity inside the IMP rule are not as broad as we
12 interpreted them, which we interpreted them to be broad
13 enough to address and bring up the issues of the
14 petition for reconsideration.

15 If that's not the case, then we hope -- I
16 think it's essential that a public venue be called to
17 discuss this. I don't want to see the whale phenomena
18 here where we talk about it here very elusively and we
19 don't get to see it again, talk about it again, figure
20 out how it's going to work, wrestle down the issues,
21 until it surfaces as a final rule, guidance document,
22 protocol nine months from now. We will have tremendous
23 opportunity to collide with each other once again at
24 high speed in public, which is not constructive to
25 anybody at this table.

1 I think the -- just as Mr. Bennett brought
2 up, the turbulence around this issue, the lack of
3 clarity, I think, has been evidenced just by the volume
4 of discussions and the -- and the ranging solutions
5 that were on and off the table many times over the last
6 couple of hours or two days now.

7 So, I would -- I just hope whatever venue we
8 choose, I think that is certainly your discretion,
9 which you think is the most appropriate.

10 But I hope that somehow we are able to engage
11 in a -- in a public environment where we can fully vet
12 this issue to make sure that we resolve it before we
13 try to put the ball into motion here. And that's, you
14 know, before we finalize whatever venue you choose and
15 that perhaps that's the best that we can do at this
16 point with -- with what information everybody around
17 this table has.

18 CHAIRMAN KELLY: Any further comment?

19 MR. MATTHEWS: Linda?

20 CHAIRMAN KELLY: Yes, Commissioner Matthews.

21 MR. MATTHEWS: This is Charles Matthews.

22 I think Andy's right on. I -- the only other
23 thing that I would say is that, you know, my experience
24 has been that -- that whatever we decide to do here, it
25 should be part of the -- part of the rule rather than

1 some other kind of document. It's just -- it just
2 makes it so much easier for the regulating community,
3 in my opinion, to work if it -- if it is there.

4 But I -- and I agree with Andy that -- that
5 we should have some sort of public forum where
6 everybody gets to -- gets to talk about this. But --
7 but the thing that I would -- that I would, you know,
8 feel really strongly about is making sure it's part of
9 the rule rather than some other kind of document.

10 CHAIRMAN KELLY: Thank you.

11 Any further comment?

12 (No response)

13 CHAIRMAN KELLY: Any comment from the public?

14 MR. BIANCARDI: I'm Paul Biancardi with Duke
15 Energy. As some of you know, I'm an attorney. So
16 people asked me to offer some comments, and I apologize
17 for not being here when the break occurred, but I
18 understand, I think, the issue around this being a
19 conflict between ex parte considerations with respect
20 to a petition for a reconsideration and a discussion at
21 this Committee.

22 Now, Stacey pointed out that this was likely
23 to be the last opportunity for the Committee to address
24 this issue. That's, I think, what's creating this
25 problem. There ought to be some vehicle for getting

1 this petition for consideration off the table, if it's
2 supposed to be off the table, and perhaps publicly
3 renounce issues that were raised in that petition.

4 Maybe procedurally, Barbara, this is one way
5 to go about it, is to say, we haven't answered the
6 petition for reconsideration. We're not obligated to
7 do it within the statutory period or within the
8 regulatory period we've prescribed. But we tried to
9 address it in the NPRM here.

10 I don't think we can overlap both sides of
11 this issue if it's integral to the rulemaking. Maybe
12 the thing to do would be to say in a public document,
13 the "Federal Register," say, we're not going to respond
14 in the petition for reconsideration, or we're not going
15 to respond to a lot of issues that need to be vetted.
16 And we'll -- this is one issue that we're going to
17 announce. Here's what we discussed. Give the public
18 another opportunity to comment, which is the whole
19 purpose of meeting the ex parte criteria.

20 Otherwise, the Committee is going to be
21 deprived of the opportunity to vet this issue in what
22 appears to be its last -- last chance to do so.

23 So, I mean, I don't know, Barbara, what the
24 best legal vehicle is, but I would agree that if this
25 is so important -- and I've been here two days and

1 there's been a lot of time spent on it -- there's got
2 to be a way to get this petition for reconsideration
3 issue off the table through some device through the
4 legal devices at OPS. Either deny the petition and say
5 we've picked up some new issues, here they are. Put
6 them out for a workshop, if that's what you need, or
7 some other protocol device. And then at least the
8 Committee members would have an opportunity outside of
9 this specific forum to see what's being proposed. And
10 the public will have had their opportunity to comment.

11 CHAIRMAN KELLY: Thank you.

12 Any further comments from the public?

13 MR. MOORE: Daron Moore with El Paso. I've
14 worked extensively on the Operator Qualification II
15 effort where we have a rule in place and we're trying
16 to develop protocols, and we've successfully done that.
17 Now we're working on guidance material, and we've
18 clarified specifically what the purposes of these two
19 documents are for.

20 Protocols is to assist inspections of
21 regulators out in the field and in headquarters looking
22 at operators' plans. Guidance material is examples of
23 clarifying how these things could look so everyone has
24 an idea what the expectations are.

25 In neither one of those cases, protocols or

1 guidance material, are they actual rule language. Not
2 at all. That's not their intent.

3 It would seem to me that we should fix this
4 rule and get it right the first time through and not
5 have to rely on other avenues that aren't designed to
6 do that at all.

7 Unfortunately, we tried twice, on August 6th
8 or 7th of last year and then again on the NPRM on
9 January 28th of this year, to get the rule right, and
10 we failed both times, at least in the opinion of many
11 people, the lack of clarity, et cetera.

12 So I'd hate to see us accept what we have now
13 and dance around the edges and then try a new rule next
14 year because I'm not confident we'd get it right then,
15 either.

16 What I'd like to do is -- is, like I've heard
17 from others in the room, let's fully vet this thing.
18 Let's get the issues on the table. If we have to
19 address the petition for reconsideration, I don't
20 understand the legal issues around that necessarily,
21 but let's get it right the first time. Let's find a
22 way to make that happen before the IMP final rule is
23 issued sometime in 2003.

24 Thank you.

25 CHAIRMAN KELLY: Thank you.

1 Any further comments?

2 MR. WUNDERLIN: I have one, just to the
3 discussion. Could I ask Paul, the attorney, to come
4 back up and maybe just rephrase what you said?

5 MR. BIANCARDI: Someone else said they were
6 confused by what I was saying.

7 All right. I'll -- I'll start fundamentally
8 what I understand. The petition for reconsideration is
9 supposed to be granted within a specified period of
10 time or responded to, but it's not required by OPS
11 under DOT regs. And when the petition is going to go
12 beyond I think it's a 90-day period from when it's
13 filed, notice is supposed to be given to the applicant
14 that we can't do it. Just often, they do that with
15 waivers. You're not required, but you have to give
16 notice that we're going to take a little longer to do
17 this.

18 Well, first of all, that wasn't done in this
19 instance. Now, all the well-intentioned effort to
20 bring the specific issue of the identified sites into
21 the rulemaking are -- are good ideas, but the problem
22 is this petition is sitting out there with this legal
23 lock on discussing something that wasn't specifically
24 proposed in the NPRM.

25 In a sense, the petition for reconsideration

1 is kind of part of the NPRM but it's being -- in a lock
2 box where you can't talk about it, and that's what's
3 causing all this problem. Do you understand that?

4 Now, what I'm suggesting is we find some way
5 to get the petition for reconsideration resolved. Deny
6 it and say we don't agree with a lot of the things and
7 we're not going to address them. It's over, it's dead,
8 the petition has been responded to, but we'd appreciate
9 a couple of new ideas, one of which may be the
10 identified sites. Throw it back out to the public.
11 But you're not going to be able to do it today before
12 the Committee because that petition for reconsideration
13 is still sitting out there.

14 So I'm suggesting and putting a challenge to
15 Barbara to find a vehicle, appropriately legal vehicle,
16 to try to get that off your back.

17 MS. BETSOCK: Paul, I'd like to disagree with
18 you slightly. The petition for reconsideration, the
19 fact that it's pending, does not preclude this
20 Committee from discussing the substance of it.

21 Typically, with petitions for
22 reconsideration, the public and this Committee never
23 even see them. In -- for the most part in government,
24 petitions for reconsideration of final rules are acted
25 upon only with the respondent. Very commonly, they

1 never get published in the "Register," the response to
2 the petition, so the public usually doesn't even know
3 the petitions exist. Those rules are final.

4 The only time that the public usually gets
5 involved is if the agency wants some additional public
6 input on it or if the agency decides they want to
7 change the rule. If they want to change the rule, they
8 have to use the normal method, but they don't -- they
9 don't preclude.

10 What precludes us -- nothing precludes this
11 Committee from talking about the substance of the
12 issues, and the substance that INGAA has already put
13 something on the record before this Committee which has
14 some -- some items in it which you could offer -- you
15 could suggest that the Committee offer as guidance to
16 us as what we will consider doing. Then we can take
17 that and we can decide whether to propose a change to
18 the HCA rule, which may not be done that quickly. We
19 could issue a guidance document, or we could issue --
20 we could use it to develop protocols for enforcement
21 until we can look to changing the rule.

22 It doesn't preclude -- issuance of a guidance
23 document does not preclude changing the rule. It may
24 help us change the rule because we will -- we can use
25 that as partial justification if we get substantial

1 buy-in to that as being an appropriate approach.

2 MR. BIANCARDI: I had the impression that one
3 of the difficulties here was that the discussion on the
4 identified sites, because the context and the details
5 were not specifically part of the NPRM, could not be in
6 effect adopted as part of the final rule.

7 MS. BETSOCK: They cannot be adopted as part
8 of the final rule.

9 MR. BIANCARDI: Correct, correct. Right.

10 MS. BETSOCK: That is absolutely correct.

11 MR. BIANCARDI: So in order to do that, you
12 would have to, in effect, amend the existing notice to
13 say, here's something else we're proposing, which would
14 be a big delay.

15 MS. BETSOCK: No, we would issue a new
16 notice.

17 MR. BIANCARDI: A new notice. But in any
18 event, it would be another notice to the public about

19 --

20 MS. BETSOCK: That is correct.

21 MR. BIANCARDI: -- the specifics of the
22 identified sites?

23 MS. BETSOCK: That is correct. However, if
24 we -- we could issue a guidance document on how we
25 would enforce the HCAs, which might be guided by this

1 Committee's advice to us as to how we should be -- how
2 we should clarify the current HCA definition. That
3 would not be unhelpful to the agency.

4 That may form the basis for a subsequent rule
5 change, which might, after guidance is out there and
6 there's substantial buy-in, might enable us to truly
7 facilitate the change to the rule. So there would be
8 some benefit in this Committee giving us some guidance
9 based on what INGAA has already proposed as being
10 appropriate changes. You may have some other ideas.

11 MR. BIANCARDI: And what will happen to this
12 petition for reconsideration, just as a matter of
13 reality? It's sitting out there without a response,
14 and I just didn't -- I'm wondering --

15 MS. BETSOCK: No --

16 MR. BIANCARDI: -- is this going to come
17 around to haunt us again, this unresponded-to petition
18 for reconsideration?

19 MS. BETSOCK: We have already in the NPRM
20 addressed many items in the petition. At least, we
21 thought we had. We didn't address them all.

22 We obviously will need to close the loop on
23 the petition for reconsideration, and I would hope that
24 we will be able to do that before the final rule. Then
25 we will be absolutely clear. Maybe at the same time

1 that we do guidance material, if -- if this Committee
2 thinks that's appropriate and we decide that it's
3 appropriate to do that.

4 MR. BIANCARDI: So you basically have two
5 choices: go the guidelines route, which is protocol
6 stuff, and I've been down that road already and I --

7 MS. BETSOCK: No. We can -- we can use the
8 guidance document that we publish in the "Federal
9 Register." We've done that many times in the past.
10 Many agencies do that. They issue guidance for how
11 they will -- how they will be enforcing this rule or
12 how they expect the operator to comply with it. And
13 that -- that provides clarity.

14 We did that pretty successfully with the
15 appendix in the -- in the liquid IMP rule. We've got
16 guidance material in there.

17 CHAIRMAN KELLY: Let me ask the Committee at
18 this point, or maybe even ask Stacey. What
19 specifically -- perhaps you can just state an issue so
20 that the Committee will have something to respond to.
21 What is it specifically that you're looking for from
22 the Committee?

23 MS. GERARD: I would like as much advice from
24 the Committee as possible about how to respond to the
25 concern that they have expressed in the petition and in

1 this meeting about resolving the problems of clarity.

2 CHAIRMAN KELLY: The Committee can't respond
3 to issues that were raised in the petition that were
4 not raised in the meeting. We don't have the petition.
5 We only know what's been raised here.

6 MS. GERARD: On clarity. On clarity. We
7 have two issues that were in the NPRM that deal with
8 the rural churches-emergency responder issue and
9 there's -- there's advice that they -- that has been
10 forwarded to the Committee that's on the docket that's
11 in Chapter 9-11 or 11-9 that I think, you know, goes to
12 this issue.

13 That -- you know, if we could hear about how
14 to clarify, you know, what -- what it is that -- that
15 it is you're looking for because I, for one, felt that
16 we had responded in the NPRM or what we put up on the
17 -- in the document on what we're considering, that we
18 have responded to a lot of what's in the petition.

19 CHAIRMAN KELLY: Does the Committee have any
20 recommendations?

21 I mean, I think we either need to say that we
22 do and make them or move on with the balance of the
23 agenda. I mean, clearly, there's a lot the Committee
24 doesn't know. There are a couple of things the
25 Committee does know.

1 Yes, Dr. Willke?

2 DR. WILLKE: It's difficult to respond to the
3 question for two reasons. One is we don't have a road
4 map for walking our way through it, and secondly, I'm
5 not sure I know completely what the substance of the
6 issues are. And hanging over this is the suggestion
7 that some parts of this are appropriate for discussion
8 and some are not.

9 So I need a little help and a road map for
10 getting through this issue. I'm perfectly willing to
11 hear the issues as they come up. I don't -- can't
12 anticipate them.

13 MS. GERARD: I thought that Barbara said that
14 it was appropriate to talk about guidance, that you
15 could talk about guidance.

16 DR. WILLKE: Then, if the time allows and if
17 it's appropriate for the agenda, I would be pleased to
18 hear some of the issues of substance here and then be
19 given an opportunity to discuss them.

20 MS. GERARD: As far as what's left on the
21 agenda for the integrity rule that we haven't
22 discussed, there's still a couple of issues that are
23 kind of relevant. One is the rural church issue.

24 CHAIRMAN KELLY: All right. Then what we'll
25 do is we will move on with the items in the agenda.

1 Let's go to performance measures.

2 And this isn't dead to be resurrected again,
3 Mr. Drake. It's just that if at the end of the meeting
4 someone has, as Dr. Willke has suggested, a road map,
5 something that we can react to, then we'll go on with
6 the discussion. It's been mentioned that there were a
7 couple of issues that were raised that are still on the
8 agenda. Let's take care of those that are on the
9 agenda and then see what's remaining.

10 So let's take up performance measures.

11 Performance Measures

12 (Slide)

13 MR. ISRANI: In the -- in the proposed rule
14 under performance measures, we had indicated four oral
15 performance measures which are required of all the
16 operators to be -- to make it available to the federal
17 government and state through a real-time system,
18 meaning electronic accessibility to those four oral
19 performance measures. And those performance measures
20 were miles assessed versus program requirement, number
21 of immediate repairs completed, number of scheduled
22 repairs completed, and number of leaks, failures, and
23 incidents.

24 Question -- the goal in this real-time
25 reporting is to provide current information to state

1 and federal regulators regarding effectiveness of our
2 IM programs.

3 (Slide)

4 MR. ISRANI: The question has been raised in
5 the public meetings, should we require monthly,
6 quarterly, or yearly electronic reporting of these
7 performance measures?

8 (Slide)

9 MR. ISRANI: And the comments that we
10 received, industry feels that periodic reporting
11 quarterly for program progress and annual for the
12 events should be required and not continuous or monthly
13 or quarterly as we have indicated in the question. And
14 they also object to electronic access because of
15 security reasons and other reasons.

16 States have commented on this that
17 information would be collected through inspections.
18 This was one of the states which mentioned that, you
19 know, they would be collecting this information. So
20 they were not really concerned about electronic access
21 to this.

22 Public -- public comment on this was, the
23 information should be available to public. This was
24 from Lois Epstein, who mentioned that this information
25 should be available -- these four oral performance

1 measures should be available to public.

2 (Slide)

3 MR. ISRANI: Our current position on this,
4 what we are considering, is to require that operators
5 maintain the four performance measures and update the
6 information quarterly. Operators must maintain the
7 information in a manner that allows OPS and state
8 regulators to access it electronically.

9 Now we are ready for any comments from the
10 Committee members.

11 MR. DRAKE: They're kind of busy, so I'll
12 just jump in here.

13 I think the issue --

14 CHAIRMAN KELLY: I'm sorry.

15 MR. DRAKE: That's okay. I was just waving.
16 Don't want to violate the protocol.

17 But the issue about operators maintaining the
18 information in a manner that allows OPS and state
19 regulators to access it electronically, is there a
20 concern about periodically submitting some sort of
21 formatted e-mail or something, electronic information,
22 to you that you can post it?

23 I think a lot of operators are going to have
24 a concern about the need to create some sort of web
25 site or something that has information on it. Maybe

1 it's not a big deal. I just -- just wanted to get --
2 have that -- just --

3 MS. GERARD: A web site that's public to
4 everybody? I mean, you said web site.

5 MR. DRAKE: No, no, no, no, no. Not publicly
6 available to anybody. Just any kind of web site.
7 We're talking about four pieces of data. And is there
8 a value of an operator going to some gymnastic of
9 creating a web site to have four pieces of data that's
10 periodically updated or can they just submit a report
11 to you electronically in some sort of format that --
12 that you can update your global database, you see what
13 I mean?

14 It might be a lot easier for smaller
15 operators in particular just to -- rather than have
16 some sort of web site that they maintain if they just
17 sent this to somebody.

18 I just brought that up to see if that's a
19 problem.

20 MS. GERARD: I hadn't really heard that there
21 was much of a problem about this up until now. There
22 was for the liquid industry. They commented at the
23 public meeting last month that they would have a
24 problem with this, but I hadn't heard any gas people
25 say that they had a problem with this.

1 And as far as whether or not you could send
2 it to us, we were trying to make it easy to find a way
3 where you could post it somewhere and we could just,
4 you know, swipe it somehow.

5 Why don't you -- you know, if it's an
6 implementation issue, it's difficult to do it where the
7 operator maintains this some way that we can go access
8 it electronically. You know, I think you could
9 recommend that an easier way to get the same
10 information transmitted might be --

11 MR. DRAKE: I think, just for a little bit of
12 history here, when this discussion was started, the --
13 the issue of performance measures was a much broader
14 subject and there was -- and it wasn't well understood.

15 And there was a great deal of concern about FOIA-
16 bility, you know, that if this information was provided
17 physically to the DOT that this information would then
18 be FOIA-able and some of which we didn't know if that
19 was constructive or not to have this publicly
20 available.

21 But I think with -- as the performance
22 measures have become more definitive in regards to
23 integrity management -- I want to make that special
24 qualification. I'm sure Dr. Willke will pick up on
25 that at some moment here, but -- in regards to the

1 specific application of integrity management, those
2 four metrics, I don't think it's a big concern about
3 FOIA, Freedom of Information Act.

4 And so the -- the issue about not having the
5 DOT take ownership of the data is not relevant here in
6 the context of the metrics as they have evolved. And
7 we don't have a problem with, I don't -- I don't think
8 the industry that we caucused with has a concern about
9 providing this information to the public as long as it
10 is -- is in the context of those four and it's not
11 specific to an HCA or a site because of the issues
12 about concern about, you know, identifying HCAs in
13 public venue, which could create some security
14 problems.

15 Other than that, there's no concern about
16 identifying this information for public.

17 MS. GERARD: I think, now that you mention
18 it, the reason why we had set it up the other way,
19 because we thought at the time that -- that the
20 industry might have had a concern with making that
21 information FOIA-able. But now that we know that there
22 isn't really a problem with the specific performance
23 measures being made publicly available, and if it would
24 save everybody time and money to simply submit those
25 electronically four times a year, you know, at a date,

1 you know, we could decide, you know, e-mail or
2 whatever, I think that'd be fine.

3 I know that there is a number of
4 representatives of the public that have participated in
5 the Advisory Committee or are members of the Advisory
6 Committee who would consider it, you know, a victory
7 for them to be able to have access to those four
8 performance measures.

9 DR. WILLKE: I guess it would be our home
10 page on the web, you know, where customers go, you
11 know, to access our stock price or how you get service,
12 or something like that. It would be another expense
13 in, you know, how do we create a secure site and all
14 this kind of stuff.

15 I don't think we're concerned about
16 submitting the information to you. I think that it'd
17 be preferable.

18 One thing I wanted to add, I was at the last
19 public meeting when this was discussed, and I know we
20 discussed about the frequency of the reporting. And
21 what I remembered was it seemed like the majority of
22 the people at the meeting were leaning towards annual
23 reporting rather than quarterly reporting for a number
24 of reasons. You know, the industry has, you know,
25 seasonal type activities where we think that the value

1 to OPS getting this information on a quarterly basis
2 may not be as important as an annual basis. I guess
3 that would be up to you to weigh.

4 I mean, we can do it either way, but it's the
5 rest of the information that DOT reports, et cetera, we
6 do want an annual basis. It'd certainly be a lot more
7 convenient and probably less expensive, one less thing
8 we'd have to worry about, doing it on a quarterly
9 basis. That's what I'd like to add.

10 MS. GERARD: Well, we've learned a lot since
11 the time this proposal was written, and the original
12 concept of this was to be able to look at how things
13 were going with the operator, and that's why the
14 quarterly. But you know, as we've learned more about
15 how this would actually roll out, we've learned that it
16 would really -- you know, with the way test results
17 come in and how you review them and make decisions and
18 all that, quarterly is really a little soon to be able
19 to capture that type of progress, so.

20 And we've talked about this within OPS and
21 with the regional directors, and I think that it's not
22 our most important issue that it be quarterly.

23 CHAIRMAN KELLY: Dr. Willke?

24 DR. WILLKE: How is it that Andy beat me out?

25 (Laughter)

1 DR. WILLKE: It's probably not an issue as
2 was mentioned now because you're talking about four
3 measures that are not particularly sensitive in the
4 sense of how they would be delivered to the public,
5 Freedom of Information Act. But you have to anticipate
6 the time when you'll have performance measures which
7 are going to be sensitive and you have to ask yourself,
8 in what format do you want to deliver that data or
9 access it or make it available, and how often? You've
10 got to do it in the context of far more sensitive
11 information than you're delivering now.

12 MS. GERARD: What information is that that
13 are performance measures that are going to have to be
14 teed up that are far more sensitive?

15 DR. WILLKE: Let me suggest, and this is not
16 germane to the particular question but I need to bring
17 it in in order to make the point, Stacey, you were
18 asking about.

19 There's going to be another incident at some
20 point in which -- which is going to reach the public
21 and the Congress, and they're going to ask the
22 question, is the integrity management rule effective?
23 Is the public better protected for having the integrity
24 management rule or not? And at that point, if we're
25 unable to point to a connection between the actions

1 we've taken in this rule, the actions the industry
2 takes as a result of the rule, and improved public
3 safety, then they're going to come back and either
4 reexamine the whole rule or ask for more data.

5 At that time you may get far more sensitive
6 data, such as, what is the nature of the repairs that
7 you've made, or what is the nature of the condition of
8 your pipe, things that would be far more sensitive to
9 an operator, it would appear to me.

10 MR. DRAKE: To build on that, and having gone
11 through the rigor of the performance metrics team and
12 the agony of looking at all this information, I think
13 for -- for brevity and for the purposes of this rule,
14 we've pared it down to the four that were needed to
15 talk with the public about the success of this program
16 as far as executing physical accomplishments.

17 But we also realize, and I know Bernie Selig
18 is in the room and he was the, basically, the lead on
19 that project, that we -- we recognize that there is a
20 need for better data management not just in the
21 identifying threats for the physical actions of the
22 operator, but statistics and better data management as
23 far as trends and -- and root cause analysis and impact
24 on customers to try to help better manage and guide the
25 industry strategically over a long period of time.

1 But that -- that initiative is quite
2 significant and it involves certainly the DOT, the
3 industry for sure, the public, and a host of very
4 qualified contractors that have dealt with this issue
5 on issues such as the nuclear industry and the chemical
6 industry and others. But it's not something that we
7 need to solve right now to make this rule work, but it
8 is another agenda item perhaps even for this Committee
9 to talk about strategically what kind of things should
10 we be looking at and tracking to prepare ourselves to
11 answer that question and to guide the industry
12 strategically as far as future rulemakings or
13 technological needs or other data needs.

14 But that's -- it's another initiative unto
15 itself, and that's why I teed up, because I know that's
16 a very -- a project that Dr. Willke's very -- is a
17 champion of, and I think it is a good project. But
18 it's not necessarily needed to be resolved to deal with
19 short-term issues of putting this final rule into
20 place. It's an overarching issue that we need to
21 address on another agenda.

22 But it isn't going to go away. I agree with
23 Dr. Willke, it isn't going to go away. And to some
24 degree, shame on us if we ignore it and don't address
25 it because it will come to bite us some day and we're

1 better to be proactive in managing it than wait for it
2 to find us.

3 MS. GERARD: We are on the record in the
4 preamble to the integrity management rulemakings saying
5 that communication about integrity management would be
6 another regulatory issue. And of course, we have the
7 1162 standard developed now, which has happened since
8 we did the preambles to this rule. And the 1162
9 standard touches on the subject on guiding operators as
10 how they should communicate about integrity management.

11 As far as the DOT is concerned, the DOT looks
12 at performance measures in a fairly standard way that
13 are common across all modes of transportation. And
14 then we drill down a little bit more into causes and
15 failure. And as far as we're concerned, in this rule
16 we drill down even more.

17 So I think it will be a while before we would
18 recommend even more public performance measures than
19 this, and it would certainly be the subject of a whole
20 new, you know, public record process.

21 MR. DRAKE: I think I agree with you with the
22 exception of one word, and not to be overzealous here,
23 but the issue about "public." These are -- these
24 issues that we're dealing with inside this regulation
25 at the moment are for the public as well. The metrics

1 that Dr. Willke is talking about are not necessarily
2 for public consumption on a day-to-day or quarterly
3 basis. They are for the strategic purpose of the
4 industry -- the operator, the industry, and the DOT to
5 ensure that their regulatory directives are
6 constructive. And that's a very different purpose than
7 talking to the public about, things are okay.

8 MS. GERARD: Well, we did not propose these
9 measures to be public. These measures were for us to
10 use to gauge within our organization about how well
11 things were going in our oversight approach. The fact
12 that we're now talking about making them public, you
13 know, I think is great, but they were not proposed that
14 way. This was originally the real-time view concept.

15 MR. DRAKE: I understand, and that's the
16 point about the need to continue to make it, you know,
17 a web site accessible by DOT, that it has evolved over
18 time, and that's the point about the history.

19 But I don't -- I don't think we want to spend
20 a lot of time here. Certainly, we're all pretty tired,
21 having gone through some pretty exhaustive
22 conversations on things that weren't even on the agenda
23 formally.

24 But I do think we want to go on the record
25 here of a need to keep this performance metrics issue

1 in front of us. Reports, like the Trench Report, the
2 Allegro Report, those statistical analyses of our
3 performance, have taught us a great deal about where to
4 focus, and I don't think we want to lose the momentum
5 that's building on those kind of efforts. As a matter
6 of fact, I think we need to focus on them and try to
7 expand them. And I think that's what Dr. Willke's
8 point is.

9 CHAIRMAN KELLY: Are there any recommended
10 changes to the current position of OPS? Dr. Willke?

11 DR. WILLKE: If I understand the sense of
12 this conversation and taking off all the things that
13 are not -- not germane to it, let me suggest a change
14 that suggests that the operators must maintain the
15 information and submit it electronically as opposed to
16 -- change the wording to "submit it electronically."

17 I think, Andy, that would satisfy the
18 concerns that you and I both have.

19 MR. WUNDERLIN: And if it's not a big issue
20 on an annual basis?

21 MS. GERARD: You're welcome to make that
22 recommendation as the Committee. That's -- that's your
23 role.

24 MR. WUNDERLIN: I would have --

25 CHAIRMAN KELLY: Any further comment by

1 Committee members?

2 (No response)

3 CHAIRMAN KELLY: Then, do we have a -- is
4 that a motion to accept the position of OPS with the
5 changes that the operators submit the information
6 electronically to OPS and that the information be
7 submitted annually? Mr. Lemoff?

8 MR. LEMOFF: So moved for the -- the subject
9 for getting it to a discussion.

10 CHAIRMAN KELLY: And is there a second?

11 PARTICIPANT: So moved.

12 CHAIRMAN KELLY: All right. Mr. Lemoff?

13 MR. LEMOFF: The -- the change -- proposed
14 change to annually from quarterly, I would like to hear
15 some reason why that's being done before I can
16 intelligently vote on it.

17 CHAIRMAN KELLY: Mr. Wunderlin, do you want
18 to speak to that?

19 MR. WUNDERLIN: I may not have all the
20 reasons. One of the reasons is, a lot of the data that
21 is submitted now that we submit to DOT, the annual --
22 data is based on an annual basis. A lot of the work
23 that will be done, especially the -- the companies in
24 the colder weather climates, will be done on a seasonal
25 basis. The -- you're just not going to be able to get

1 through the frost to do some of the repairs we're going
2 to be scheduling where non-heating periods where
3 there's less impact to the customers, that type of
4 thing.

5 What DOT is looking for, as I understand it,
6 is progress in some of the reports. If they're done on
7 a quarterly basis, it may not be giving a true
8 indication of the progress of the integrity program
9 because, based on the seasonal basis, you may be skewed
10 as far as your data. If you're giving it on an annual
11 basis, it levelizes the information and gives a better
12 feel for what the data actually is.

13 CHAIRMAN KELLY: Dr. Feigel?

14 DR. FEIGEL: Yeah. I think I just want to
15 agree with Jim.

16 I think, as I understand, what you're trying
17 to accomplish with this reporting is there'd be a
18 smoothing effect by having it reported annually and you
19 wouldn't be faced with trying to interpret what are
20 intrinsic anomalies that you're having reported fairly
21 frequently. Just by the nature of the beast, they're
22 going to give you a skewed picture of whether there is,
23 quotes, "progress," whatever that means.

24 MS. GERARD: Because you might have the test
25 -- the assessment done in one year but based on when

1 the data comes back and, you know, it's -- it's lags
2 and not -- doesn't -- certainly doesn't neatly fall
3 into quarters.

4 CHAIRMAN KELLY: Dr. Willke? Your light was
5 on.

6 Mr. Thomas?

7 MR. THOMAS: I'll assume that the annual
8 would not prevent an operator from submitting more
9 frequently if they chose to, right?

10 MS. GERARD: Right.

11 MR. THOMAS: Okay.

12 CHAIRMAN KELLY: Is Commissioner Matthews
13 still on the phone?

14 MR. MATTHEWS: Yes, ma'am.

15 CHAIRMAN KELLY: Did you have a comment on
16 this?

17 MR. MATTHEWS: You know, we think quarterly
18 is better but, you know, we're not all hung up on it.
19 I mean, you -- you -- these are pretty simple reports
20 that are coming in as we -- as we read it. And
21 quarterly -- quarterly would give you some idea what's
22 going on.

23 We're just thinking about annual reports and
24 time that stuff that gets in, I mean, you know, it's
25 not a very good reporting system. If it was more

1 complicated, maybe.

2 But anyway, we would prefer -- we would
3 prefer quarterly, but it's not a -- it's not something
4 we'd go to the mat on.

5 CHAIRMAN KELLY: Mr. Thomas?

6 MR. THOMAS: Yeah. Further comment-question,
7 I guess, is that there's at least three different
8 methods which are approved and they do different things
9 and they take different ways to evaluate.
10 Particularly, one of these, the pig run, takes some
11 time to get the log back, look at it, evaluate it
12 correctly, and make decisions that culminate -- get
13 valid data out of it.

14 So the timing of the information that should
15 be submitted, I would say, should be after the operator
16 has validated by whatever method, whether it's the
17 hydrotest, DA, or the in-line inspection has validated
18 the results. In other words, the clock would start
19 then for submitting the information, not at some prior
20 time. Because all that can take several months.

21 CHAIRMAN KELLY: All right. Are you speaking
22 to frequency or just commencing?

23 MR. THOMAS: No, no, I'm talking about the --
24 the timing of when a event should be reported. I'm
25 saying the definition of that should be when the

1 operator has validated the data which has been
2 indicated by the method. That's an operator decision,
3 actually.

4 CHAIRMAN KELLY: Are you -- all right. I'm
5 losing you on this. Are you suggesting --

6 MR. THOMAS: Well, let me -- I'm not even
7 talking about language. I just want to clarify that
8 that's what we mean.

9 MS. GERARD: I think what you're saying is we
10 would need to put out more guidance on how the
11 reporting should be done.

12 MR. THOMAS: I think that would be finding
13 guidance, yes.

14 CHAIRMAN KELLY: Any other comments or
15 questions by Committee members?

16 I would just add that I believe also that one
17 year is a long time to go without getting information
18 in, just for the record.

19 Any comments from the public?

20 MS. GERARD: Could we go to semi-annual?

21 CHAIRMAN KELLY: I think semi-annual would be
22 better than quarterly.

23 MS. GERARD: Can we act like it's a real
24 estate transaction and split the difference?

25 (Laughter)

1 MR. LEMOFF: Semi-annual. I'll modify my
2 motion to -- part of it to semi-annual.

3 MS. GERARD: Are you comfortable with that?

4 CHAIRMAN KELLY: All right. Any other
5 comments or questions?

6 (No response)

7 CHAIRMAN KELLY: All right. So the motion we
8 have on the floor is to accept the performance measures
9 as submitted by OPS except that the operators are to
10 submit electronically to OPS and it would be on a semi-
11 annual basis. All in favor?

12 (There was a chorus of "ayes.")

13 CHAIRMAN KELLY: Any opposed?

14 (No response)

15 CHAIRMAN KELLY: Thank you. That passes.

16 Next item, moderate risk areas.

17 Moderate Risk Areas

18 (Slide)

19 MR. ISRANI: Rural churches falls under the
20 identified site that we had under the high consequence
21 area definition. In the high consequence areas
22 definition, we had identified sites as a place where 20
23 or more people gather at least 50 days in a 12-month
24 period. And the example of such gathering places we
25 included religious facilities.

1 Questions were raised at these public
2 meetings and in the comments that this is quite broad
3 because it'd be very difficult to identify and also
4 it's very difficult to know if there are 20 or more
5 people gathering in these places.

6 So in the proposed rule, in the preamble
7 part, we posed this as a question. Here, the goal is
8 to identify those segments of pipeline that present the
9 greatest potential to hazard to people in order to
10 focus integrity management effort on those segments.

11 The question is, should the rural buildings,
12 such as rural churches, be designated as moderate risk
13 areas requiring only CDAs, which are the confirmatory
14 direct assessment, or enhanced preventive and
15 mitigative measures?

16 We are trying to relax the requirements for
17 such facilities. This was a question posed for these
18 facilities because we consider them to be -- have less
19 consequences than the high consequence areas. We
20 consider them as moderate risk areas.

21 (Slide)

22 MR. ISRANI: Our position -- our current
23 position on this is that we treat it like any other --
24 where people congregate, meaning we consider them as
25 HCA. And the reason we formed this position is based

1 on that now we are going into C-FER circle, which is a
2 radial circle, and are not going to identify more
3 facilities as we have before. Secondly, we are also
4 allowing direct assessment as one of the options for
5 our condition. So if you allow direct assessment as
6 one of the options, we would like -- we think that this
7 would not be as burdensome as originally it was
8 considered because of the comments were that we'd be
9 assessing miles and miles of pipeline for this small
10 segment, a small portion of this pipeline.

11 So other -- what we are considering
12 strategic, just like HCA, where people congregate,
13 assuming that most operators will use direct assessment
14 option for such facilities.

15 I'm open to comments.

16 MS. GERARD: One other point. That is that
17 because there was public comment about the priority on
18 protecting the unsheltered, we -- we tend to think that
19 rural churches' outdoor areas have a lot of activities
20 where people congregate, you know, bazaars, bingo, that
21 sort of thing. And so that's why we were putting them
22 in this category in this proposal.

23 CHAIRMAN KELLY: Comments?

24 (No response)

25 CHAIRMAN KELLY: Any comments from the

1 members of the public?

2 (No response)

3 CHAIRMAN KELLY: Is the Committee comfortable
4 with the position proposed by OPS? Is there a motion?

5 MR. DRAKE: So moved.

6 PARTICIPANT: Second.

7 CHAIRMAN KELLY: Any further discussions?

8 (No response)

9 CHAIRMAN KELLY: All in favor?

10 (There was a chorus of "ayes.")

11 CHAIRMAN KELLY: Any opposed?

12 (No response)

13 CHAIRMAN KELLY: Commissioner Matthews?

14 MR. MATTHEWS: Yes, ma'am. I'm in favor.

15 CHAIRMAN KELLY: Thank you.

16 Yes?

17 MR. THOMAS: Yes, I have a question related
18 to I think it's analogous situation to the rural
19 church. Hopefully, I'm not out of bounds here. This
20 is about off-shore platforms.

21 Now, I guess my question is to what extent
22 has OPS considered off-shore platforms as a special
23 place or is it simply within the rule that we survey
24 them and count bodies like we would another place?

25 MS. GERARD: I think we had this question

1 come up at the last meeting. And given the amount of
2 facilities that are being considered for certificate by
3 FERC, deep-water ports, and the like, I would think we
4 would use the straight population test.

5 MR. THOMAS: You'd treat it just like any
6 other place?

7 MS. GERARD: Yeah.

8 MR. THOMAS: -- designated facility?

9 MS. GERARD: Well, in other words -- what do
10 you recommend?

11 MR. THOMAS: Well, if that's the case, then
12 we'll have to survey all the platforms on which we have
13 pipelines departing, which is a task. And if that's
14 the case and if -- there won't be many. I mean, to
15 tell you that it's not going to be a lot doesn't
16 fulfill the requirements because there could be a few.

17 And where that happens, there will be a
18 difficulty, I believe, in fulfilling the requirements
19 of the rule in that the only mechanism I know that's
20 realistic is -- is -- would be direct assessment. And
21 it would only be on the riser and it would only be down
22 to the floor of the -- practically down to the floor of
23 the sea. And you'd have above -- above-water and
24 below-water portions. Even the DA we've talked about
25 so far, I think, would require further development to

1 you know, do the job.

2 Now, we're always surveying risers and
3 keeping up, but I mean enhance it more.

4 So I think it is a special situation that
5 maybe requires more thought.

6 CHAIRMAN KELLY: Any other comment on that?

7 (No response)

8 CHAIRMAN KELLY: Thank you.

9 Mr. Israni, were there other areas that OPS
10 is recommending changes to the original proposal that
11 we have not discussed?

12 MR. ISRANI: I would like to call some of the
13 comments that we received on other issues and written
14 comments that came to the docket. I'll just briefly
15 mention those, what comments we received, just
16 headlines, not details, if I'm allowed to --

17 CHAIRMAN KELLY: Why don't we do that later?

18 Mr. Drake had mentioned that there were three
19 issues -- maybe we've covered them already -- that --
20 maybe changes in the original proposal that we should
21 discuss, overlap, prior inspection, and performance-
22 based compliance?

23 MR. DRAKE: Yes. I was hoping that perhaps
24 the DOT could give some indication of their position on
25 those. We've talked about them at, you know, at

1 different meetings here, but you know, and we weren't
2 very contentious, I don't think. We're just looking
3 for some clarity of how those things were closed.

4 Overlap -- the overlap of the baseline period
5 with the reinspection period. And I know that, you
6 know, certainly there's some concern about
7 interpretation of the law. And the intent from
8 Congress -- and I know Graham Hill has spoken on this
9 issue and Bill Cooper and others that were integral to
10 the writing of it have spoken on it, but I don't know
11 -- has that clarified it, or where are we? It went
12 under water, and I don't know where it went.

13 CHAIRMAN KELLY: What's the OPS current
14 position?

15 MS. BETSOCK: The law stands as -- as it was
16 written and there's nothing much we can do to change
17 it. I'm unaware of any moves afoot by the Hill to
18 change the language of the law.

19 We hope to be able to address most of the
20 issues that a company may have with respect to
21 difficulties through the waiver language. We did look
22 at that and decided that that will -- we will try to
23 get an expedited method to grant waivers where a
24 company needs it. Not all companies may need it.

25 MR. DRAKE: Just for clarity, it's not our

1 impression, and I guess this is where we rub, is that
2 the law needs to be rewritten. We think it's the
3 interpretation of the law.

4 To close this with some constructiveness, the
5 issue will not surface for some time. And I know the
6 folks at FERC are going to have their ears up about
7 this because there's a potential for a significant
8 volume of pipe, twice as much pipe, to go out of
9 service in any one year as there is during either the
10 baseline or reassessment. And the impact on the
11 consumer could be catastrophic, quite frankly.

12 And we have a little bit of time, seven years
13 to be precise, to resolve this issue. But I think it
14 is incumbent on us to at least keep it in front of us.

15 And just for clarity, I want you to know we don't
16 think it necessitates a rewrite of the law. It is --
17 and they've gone on record at your own meetings saying
18 that was not their intent, but.

19 MS. BETSOCK: Congress did not appear at our
20 meeting. Let me put that to bed.

21 We had a questionable staffer appear at one
22 meeting and was not clear about the issue.

23 We -- it will take a change in the law, but
24 there's plenty of time, if indeed it is seven years, to
25 get that change in the law if it's needed and if people

1 believe that it is needed

2 CHAIRMAN KELLY: Any further comments on that
3 by members of the Committee?

4 MR. BOSS: I guess we were wondering if there
5 had -- Terry Boss with INGAA -- if there had been any
6 additional discussions about the matter.

7 CHAIRMAN KELLY: There have not been.

8 MS. GERARD: That was one of three. One was
9 the credit for prior assessments.

10 MR. DRAKE: How prior inspections are
11 considered in this rulemaking going forward, and that
12 may be more of an enforcement protocol, but the rule
13 language sounds like it precludes inspections prior to
14 a certain date. And I think fundamentally that doesn't
15 -- technically, it doesn't make any sense, and we have
16 not gotten any response from DOT clearly resolving why
17 or what the final position is.

18 MR. ISRANI: The proposed rule clearly says
19 that you have to go five years back for the prior
20 assessment, and that's the date we put. This was five
21 years -- I believe it's five to act or it is -- let me
22 confirm that. But five years we did mention going
23 back.

24 MS. GERARD: Andy, are you saying that you
25 think that crediting assessments that go back five

1 years from X date is an unreasonable position, it's not
2 going that far enough?

3 MR. DRAKE: It may be another nomenclature
4 problem here. And that is, are you counting
5 inspections five years back as valid baseline
6 inspections to the degree that no other inspection
7 needs to be conducted during the baseline period?

8 MR. ISRANI: If the assessment done within
9 the last five years from the date that we had specified
10 in this meets our baseline assessment requirements,
11 then it'll be considered as an excitu baseline, yes.

12 MR. DRAKE: I don't -- but when does the
13 reinspection of that come into play?

14 MR. ISRANI: The reinspection of that would
15 be subsequent to that. But if you're looking for
16 performance -- if you're looking for --

17 MS. GERARD: Seven years from the date --

18 MR. ISRANI: Date --

19 MS. GERARD: -- of the baseline.

20 MR. ISRANI: Right.

21 MR. DRAKE: I guess you just have to -- if
22 that's the case, I think we would need to back away
23 from the tree here for a minute and figure out what in
24 the hell are we doing here. What is the value of that?
25 What moron is going to take that option? Because he

1 just obligated --

2 MS. GERARD: We didn't write the seven-year
3 interval.

4 MR. DRAKE: He just obligated himself to
5 inspect that pipe, which has been inspected and is
6 obviously a low-threat issue if it's been inspected and
7 remediated, to inspect it in the next two years. That
8 doesn't even make any sense.

9 MS. GERARD: We're not the people who wrote
10 the law that said that seven years from the baseline
11 the pipeline needs to be reinspected.

12 MR. DRAKE: We've talked about this at length
13 and we've made proposal after proposal, we just haven't
14 got much feedback. But inspections have been occurring
15 for a long period of time. And it seems -- it seems
16 counterant to the very purpose of this rule to
17 disregard those inspections and not count those
18 inspections as valid baseline inspections regardless of
19 when they were conducted. If those inspections were
20 conducted in accordance with the ASME standard, they
21 should count as baseline whether they were done five
22 years ago --

23 MS. GERARD: You mean beyond five years?

24 MR. DRAKE: Yes. It doesn't matter. And
25 then, the reinspections should be scheduled according

1 to their threat profile inside the confines of the law.

2 I mean we're not trying to violate anything. No one's
3 trying to get around anything. But the point is, is
4 what you want to try to do is bring -- encourage
5 bringing as much information into this rule in the
6 decision-making process as you can.

7 Do not create disincentives for people to
8 bring previous data into this rule. And currently,
9 your language would disincentivize me from bringing any
10 inspections that I've currently done -- and we have
11 pigged our whole system in many cases two and three
12 times into this rulemaking -- because it just predicts
13 on a very tight frame when I have to do a reinspection.

14 Otherwise, I could have up to 10 years to decide when,
15 correct?

16 MS. GERARD: But your seven-year test can be
17 a CDA.

18 MR. DRAKE: Could be.

19 MS. GERARD: What is your recommendation?

20 MR. DRAKE: But if I'm already piggable --

21 MS. GERARD: Right, yeah.

22 MR. DRAKE: -- it's not a big deal.

23 MS. GERARD: Well, what is your
24 recommendation to incentivize you?

25 MR. DRAKE: To reshape the language of the

1 rule to say prior inspections that were conducted in
2 accordance with the standards should count for
3 baselines.

4 MS. GERARD: Regardless of how old they are?

5 MR. DRAKE: Regardless of how old they are.
6 And that for the issue about reinspections and
7 inspections during the baseline period, that those
8 should be scheduled based on the risk assessment as of
9 the status of the pipelines on December 17th, 2004, or
10 whenever this rule goes into effect, which is what
11 you're looking for.

12 It doesn't violate the law. It doesn't
13 violate anything. You're just scheduling the next
14 inspection, but you're trying to encourage operators to
15 bring the data into the discussion. That's valuable.

16 MS. GERARD: I'm not sure I follow you about
17 what doesn't violate the law when you used the word
18 "inspection," bring the inspections in.

19 I can understand the issue that we should
20 credit inspections that are older than five years if
21 they meet the standard and I think you should, you
22 know, make a recommendation on that. What I don't
23 understand is the second part of what you're saying
24 about --

25 MR. DRAKE: That inspections during this

1 baseline period --

2 MS. GERARD: You mean baseline inspections?

3 MR. DRAKE: No, no. We have a nomenclature
4 problem. This 10-year period should be scheduled based
5 on the risk assessment and the prioritization of that
6 site with regard to the other sites that an operator
7 has.

8 MS. GERARD: We're with you there.

9 MR. DRAKE: That complies with the law.

10 MS. GERARD: We're with you there. Where do
11 you think --

12 MR. DRAKE: But the value that you bring in
13 doing that is how you can get into the performance side
14 of the equation, which is the other issue that's on the
15 table here. You have to have two inspections, right,
16 two full-blown inspections, not CDA inspections. Two
17 full-blown inspections to qualify for the performance
18 venue.

19 Well, many of us already have two full-blown
20 inspections.

21 MS. GERARD: And you can't count them if we
22 don't go over them --

23 MR. DRAKE: Can't go back more than five
24 years.

25 MS. GERARD: Okay. Well, why don't we take

1 the five-year issue -- take the five-year issue and
2 discuss that? I mean, it seems to be your first
3 question is, crediting of older inspections.

4 MR. DRAKE: And I don't know if you want to
5 say crediting. I just say counting them.

6 MS. GERARD: Counting them.

7 MR. DRAKE: It's trying to include them as
8 data in this rulemaking.

9 CHAIRMAN KELLY: Mike Israni?

10 MR. ISRANI: Yeah. I want to clarify that
11 part. I know Andy's referencing this performance
12 option to be given to the companies which have
13 integrity program more matured and have done the
14 assessments based on the way integrity program is being
15 developed. I know in the -- in the rule language that
16 part was not clear whether the -- you know, unless they
17 take the baseline only five years, the prior
18 assessments will -- they can be considered as a
19 reassessment.

20 We had intended two inspections done prior to
21 this rule going into effect and that those two
22 inspections, meeting the criteria we have, to be
23 acceptable for performance option. And we intend to
24 clarify that part. So we would accept two inspections
25 done prior to this rule going into effect.

1 But we have to follow the Act for five years
2 going back for the baseline initial assessment. We
3 could consider one done prior to that as one of the
4 assessments done to meet the criteria for two -- two
5 assets done total.

6 MS. GERARD: Mike, what do we have to follow
7 in the IM on five years?

8 MR. ISRANI: The Act does have a language for
9 we should allow going back five years for prior
10 inspections.

11 MS. GERARD: It does?

12 MR. ISRANI: It does.

13 PARTICIPANT: I do not agree with that.

14 MS. GERARD: No, I don't think so.

15 MR. ISRANI: Well, we have that in the --

16 (Pause)

17 CHAIRMAN KELLY: While he's looking, comments
18 from other Committee -- did you find it? Comments from
19 other Committee members on the issue of the prior
20 inspections, those that occurred prior to the five-year
21 period? Any comments?

22 MR. LEISS: I'll just ask, Andy, you're
23 talking about allowing it to go back ad infinitum. I
24 mean, is there a practical length of time when you
25 would consider that they had to be reanalyzed or do you

1 feel that an analysis done 15, 20 years ago should
2 still be adequate?

3 MR. DRAKE: That's a very good point, and I
4 think there is -- one, there is value in bringing
5 information in regardless of how old it is because it
6 tells you something about the pipe and how it has
7 responded to its age from when it was installed to that
8 point. Is there a prolific corrosion issue, not -- you
9 know, what's going on there.

10 But there is a technical, you know, envelope
11 of how far back you can really go back and actually
12 take physical credit for it, and that is the issue
13 about the envelope of applicability as defined inside
14 ASME B31.8. They are very definitive, based on the
15 stress level and the type of tool that you use and the
16 remediation criteria that you use, how long you can
17 make reasonable projections about the current state of
18 the pipe. And I think you just plug those in.

19 You know, if you're outside that envelope,
20 it's really more like FYI. It's not used to justify
21 going a longer time. It's just information that you're
22 bringing to make a good decision. The pipe was or
23 wasn't real bad when we dug it up 50 years ago.

24 CHAIRMAN KELLY: Dr. Willke, you had a
25 comment?

1 DR. WILLKE: Two comments. One is, I don't
2 know what period would be reasonable, five years or 10
3 years, to go back, but it would seem to me that the
4 pipe that has been put in the ground and constructed
5 with modern techniques, high-strength steel and other
6 -- and FBE cutting and so on that goes back even as
7 far as 10 years or even more, would probably easily
8 satisfy the need for the intent of the law. So I could
9 see going back earlier for, certainly, new pipe. I
10 don't know about other pipe.

11 Let me drop that and then I'll come back.

12 MR. DRAKE: Inside Tab 9, inside this package
13 that you've been overwhelmed with, it -- it goes into
14 this issue. And I think the proposed language may cut
15 through the chase a little bit.

16 It has -- regarding prior assessments -- it's
17 on page 3 under Tab 9. Really just the second page of
18 text. It says right in the middle, it says,
19 "recommended language." It says, "An operator may use
20 integrity assessments conducted prior -- conducted
21 before December 17, 2002, as baseline assessments and
22 reassessments if the integrity assessments method
23 substantially meets the requirements of this section."

24 And it doesn't trim you out of doing an
25 inspection during the next period. It doesn't trim you

1 out of meeting the law. It doesn't say you're not
2 coming back within seven years. It just says you're
3 using that data. That's all it says. It doesn't try
4 to create some -- it's not a -- I don't see the
5 downside of this language because it's not trying to
6 say we're not going to follow the law or we're going to
7 skirt the law. It's not that at all.

8 It's saying use this information, bring it
9 in, it has value. But you have to bring it in in
10 context. Just as John Leiss brought up, how long ago
11 it was, what tool was used, what repair criteria, those
12 are all germane issues to how you should use that.

13 But what you're really trying to do, right,
14 what you're really trying to do as of December 18,
15 2004, is stack your priorities so you go after the bad
16 stuff first, right? This is information that helps you
17 stack the bad stuff and the good stuff. If you just
18 say, no, we don't want to bring that in here, I think
19 you're ignoring the obvious. This is information
20 that's very germane in making that decision.

21 CHAIRMAN KELLY: Dr. Willke?

22 DR. WILLKE: Well, I'm getting more and more
23 confused, but it doesn't seem that the rule or the law
24 prohibits you from bringing in data from prior
25 assessments under any case.

1 I think the real issue to start with is the
2 question of when are you triggered for reassessment. I
3 mean, that becomes the fundamental issue. If you
4 accept -- I know there's two issues on the table. One
5 is how far back to go and the other is what does this
6 trigger.

7 But the question as I understand it is
8 whether or not a company has a disincentive for
9 bringing in past data from past inspections if that
10 automatically triggers a reassessment theoretically
11 within two years.

12 MR. DRAKE: I think what you want to try to
13 do -- this is just sort of a logic test -- that if you
14 use any prior inspections, you must complete your
15 reassessment no later than seven years from the date
16 the law is passed or from the date the rule is passed.
17 That protects the law, and that's what you're trying
18 to do.

19 But what -- the way it's worded now, it
20 disincentivizes anybody from bringing this information
21 in. And that's not -- I don't think that's what you
22 want to try to accomplish. It's very counterant
23 fundamentally what the goal of this whole effort is.

24 CHAIRMAN KELLY: Barbara Betsock is going to
25 answer the question that was raised about the legal

1 requirement.

2 MS. BETSOCK: The five-year issue. Mike,
3 you're not quite correct on that. That may have been
4 in an earlier version of the statute and that may be
5 where -- what you were thinking of.

6 The current statute, Congress was not
7 anticipating us allowing anyone to go back five years.

8 However, they didn't preclude us from doing that.
9 What they did anticipate was that we would go back to
10 the date of enactment and allow assessments done
11 between date of enactment and date of issuance of the
12 regulations. That's what they were talking -- that's
13 what they were considering.

14 We went beyond that and went back five years.
15 So we've allowed more than -- than Congress would have
16 allowed or would have required us to allow.

17 MS. GERARD: Shouldn't we hear from the rest
18 of the Committee about whether or not they feel that we
19 should go -- modify the language to go beyond five
20 years as the first issue, then if you go beyond five
21 years, you know, what period of time, and then if it's
22 -- if it is 10 years and the operator has a second
23 inspection maybe the second -- whether the second
24 inspection since the 10-year-old one would count as the
25 reinspection. Take those two issues.

1 Mike's already told you that for the
2 performance question he agreed with you that he was
3 going to clarify that language. So it seems like we
4 only have two issues right at the moment, whether or
5 not we should extend the eligibility of inspections
6 that are older than five years if they meet the ASME
7 criteria. And then if you do that, take the next
8 question about what's the -- on what basis do you
9 decide if the reinspection is a later inspection that
10 occurred, you know, since that one.

11 CHAIRMAN KELLY: If I understood you
12 correctly, you were saying, Mr. Drake, that we start
13 with the -- that you allow the prior assessment to be
14 counted as long as it meets the appropriate criteria
15 and that the first reassessment would occur seven years
16 after the date of enactment of the law?

17 MS. GERARD: No, from the inspection.

18 CHAIRMAN KELLY: No, he said of the law.

19 MR. DRAKE: No, the law. Which is what
20 you're required to do.

21 MS. GERARD: I thought the law required the
22 seven years from the inspection.

23 CHAIRMAN KELLY: But his point is to put it
24 within the context of the law and therefore assuming
25 that everything that occurs prior.

1 Is there any further comment on that
2 particular provision?

3 MR. ANDREWS: Is the statute -- I guess
4 that's the question. Is it seven years from the
5 statute or is it seven years from the first inspection?

6 MS. BETSOCK: Seven years from the first
7 inspection.

8 MR. ANDREWS: And that's in the law?

9 MS. BETSOCK: Yes, from the baseline. As I
10 say, Congress was really anticipating we would only go
11 back to the baseline to the date of enactment of the
12 law. Remember, this bill was a compromise bill and
13 there were people on both sides that -- people that did
14 not want the seven years and the 10 years and people
15 that did. And it was -- it was not publicly debated,
16 it was -- it was one of those bills that wasn't debated
17 on the floor.

18 CHAIRMAN KELLY: So, are you saying that in
19 terms of the regulation we would have no choice, that
20 if a proper inspection were done three years ago or,
21 say, six years ago, the next year they'd have to do
22 another one?

23 MS. BETSOCK: That is correct. However, if
24 they had -- we would also be able to accept an
25 inspection done as the baseline 10 years ago if they've

1 done another inspection in the interim, and we could
2 accept that as their seven-year, the reassessment.

3 MS. GERARD: What Andrew has proposed?

4 MS. BETSOCK: Right. That would be
5 acceptable because we try to be as flexible as we can.
6 That obviously depends upon what we think of as under
7 the safety aspect of it.

8 CHAIRMAN KELLY: Mr. Andrews?

9 MR. ANDREWS: If you had done an inspection
10 10 years ago and you did not do a reinspection seven
11 years, do you -- do either qualify?

12 MS. BETSOCK: We might be able to accept -- I
13 think that's a question of whether we will accept that
14 for 10 years, 10 years in the past, but you would have
15 to -- we obviously would require the reassessment
16 pretty quickly. But the confirmatory reassessment is
17 all that would be required.

18 CHAIRMAN KELLY: Mr. Drake?

19 MR. DRAKE: Chairman Kelly, you were on the
20 exact right track. This is an IQ test. If you have a
21 date -- if you have an inspection six years ago, okay,
22 what you're saying is that does not count, okay? So as
23 I enter into the rule, what am I obligated to do?

24 MS. GERARD: You're obligated to decide --

25 MR. DRAKE: I'm obligated to inspect it

1 within 10 years.

2 MS. GERARD: -- where that pipeline would
3 fall in the RSPA --

4 MR. DRAKE: Inside the 10 years, I can
5 inspect it anytime within the 10 years, is that not
6 correct?

7 MS. GERARD: Depending on what you think of
8 as riskiness.

9 MR. DRAKE: Exactly.

10 MS. GERARD: If it's really risky, it has to
11 be done in the first half.

12 MR. DRAKE: But it's not because I just
13 inspected it six years ago. So when is it going to
14 fall?

15 MS. GERARD: Probably 10 years out.

16 MR. DRAKE: At the 10th year. Yeah, I think
17 we're all square on that, right?

18 MS. GERARD: Right.

19 MR. DRAKE: Okay. Now, under what I just
20 told you, if you count that as a baseline inspection,
21 you're obligated to inspect that site within seven
22 years of enactment of the rule. How does that hurt
23 anybody?

24 MS. GERARD: No, seven years from your
25 inspection, not from the --

1 MR. DRAKE: No. This is not that hard, this
2 is not that hard.

3 MS. GERARD: Make your proposal.

4 CHAIRMAN KELLY: I think you just disagree,
5 that's all.

6 MS. GERARD: No, just make the proposal that
7 you want the other members to consider.

8 MR. DRAKE: Take the site that's six years
9 old. What do you do with that site? And play that
10 scenario out.

11 PARTICIPANT: You should put it on the chart.

12 MR. DRAKE: Put on a chart, I don't care.
13 That's fine. I mean, this is not that hard.

14 MR. ISRANI: Let me --

15 MR. DRAKE: Just not doing a very good job
16 explaining it. But what's happening under your current
17 proposal is that inspection is discounted, okay? I'm
18 -- okay, it's not a baseline, it doesn't count
19 anymore. Now --

20 MS. GERARD: Because it's over five years
21 old.

22 MR. DRAKE: Right. Now I enter into the
23 discussion with you about scheduling that site. It's
24 going to be at the 10th year, I guarantee you, okay?
25 Just because --

1 MS. GERARD: We understand.

2 MR. DRAKE: -- it can.

3 MS. GERARD: Right.

4 MR. DRAKE: If you count that baseline, one,
5 you get to bring that data into -- into this
6 discussion, and two, because you are using that
7 previous data, the operator is restricted to reinspect
8 within seven years, which brings it forward.

9 MS. GERARD: Do we look like we're arguing
10 with you? We said you made a proposal. Is there
11 anybody else who agrees with you?

12 CHAIRMAN KELLY: Let me ask --

13 MR. DRAKE: Well --

14 CHAIRMAN KELLY: Commissioner Matthews, do
15 you have any comments?

16 (No response)

17 CHAIRMAN KELLY: Commissioner Matthews?

18 (No response)

19 CHAIRMAN KELLY: All right. Are there any --
20 any other comments?

21 MS. BETSOCK: Yeah. Could I -- could I just
22 address that one point?

23 Recognize that there's still an ability for
24 us to waive the requirement for reassessment. If your
25 original assessment truly made the line less risky and

1 you've taken such steps that that line is truly a lot
2 less risky and you can justify under the waiver
3 provisions, you could -- we could waive that
4 reassessment period.

5 MR. DRAKE: Just -- just for clarity
6 purposes, inside this proposed language it says, if the
7 integrity assessment method substantially meets the
8 requirements of this section, and certainly we think
9 that this section is rigorous enough or we wouldn't be
10 supportive of it. What you're saying is, those --
11 those guys -- those previous inspections had to meet
12 this standard. De facto, that should be good enough,
13 right?

14 DR. WILLKE: I understand the proposal to be
15 an interpretation that goes something like this. You
16 are required to conduct a baseline assessment within 10
17 years, and the proposal is, are we allowed to accept
18 valid inspections for the moment that were conducted
19 within the last five years as satisfying that baseline
20 assessment requirement, which does not change the date
21 at which you start reassessments. It starts at seven
22 years from the date of enactment.

23 MS. BETSOCK: That's not correct. It's seven
24 years from the date of the baseline.

25 MS. GERARD: Andy, could you make your

1 proposal again? With a straight face and a willing
2 attitude.

3 (Laughter)

4 CHAIRMAN KELLY: Would you like for me to
5 repeat it for you?

6 MR. DRAKE: You're really raising the
7 standard here at the end of the day, I mean.

8 MS. GERARD: You ain't seen nothing yet.

9 (Laughter)

10 MS. GERARD: Wait until we talk about the
11 4:00 issue.

12 MR. DRAKE: Yeah. We still have op qual to
13 go as I see on the agenda.

14 I think what seems to be logical to me, and I
15 think in discussion with industry counterparts at
16 length, many of which have spent a great deal of energy
17 inspecting their pipes, don't want to come in here not
18 bringing all of the data that they have. And we don't
19 want to see -- and we don't want to incentivize
20 gainsmanship here, quite frankly.

21 We've put a very high standard on this on
22 ourselves and I think we want to carry that forward of
23 trying to pass the red-face test. It doesn't seem to
24 pass the red-face test, that you enter this rule not
25 incentivizing the inclusion of as much data as possible

1 about the integrity of that pipeline to make decisions
2 about the integrity. And so that's the fundamental
3 premise here.

4 But the motion follows the track of that an
5 operator may use integrity assessments conducted before
6 December 17, 2002, as baseline assessments and
7 reassessments if the integrity assessment method
8 substantially meets the requirements of this section.
9 If an operator elects to use those inspections prior to
10 -- pick a day -- the operator is required to reassess
11 that section within seven years.

12 MS. GERARD: Of?

13 MR. DRAKE: Of the rule's effective date.

14 MS. GERARD: All right.

15 MR. DRAKE: And that's the best that's going
16 to happen physically with that section of pipe under
17 any scenario that you play out. Just keep picking
18 examples and we can go through them.

19 CHAIRMAN KELLY: Dr. Feigel?

20 MR. DRAKE: You'll keep seeing that's the
21 best thing that's going to happen to that piece of
22 pipe, is encouraging more data and a tight
23 reassessment, and it's the best thing that happens on
24 that piece of pipe in every scenario. And that's --
25 that's the proposal and that's the thinking behind the

1 proposal.

2 DR. FEIGEL: Andy, if I understand what the
3 issue is, you want to take credit for a prior
4 assessment by dating back some arbitrary number of
5 years because you want to use that evaluation for a
6 position. But you don't want that date to trigger the
7 seven-year cycle to force you to do -- now, wait a
8 minute. Let me -- let me -- in effect, that's what
9 you're saying.

10 Then, let's find some way at least to put
11 that in plain English so we're not -- so the battle is
12 not largely semantic. I mean, there's -- there's two
13 levels of where we are. One is, what's your proposal
14 here? It does not clarify your point at all. You've
15 only got half of it here. Now we need to figure out
16 some way to say what you're saying on the printed page
17 so then we can get to the level of the technical
18 argument, first of all, and then see whether that in
19 fact complies with the intent of the statute.

20 So we're just going around in circles on
21 this.

22 MR. DRAKE: You're correct.

23 CHAIRMAN KELLY: The part that's not there is
24 --

25 MR. DRAKE: You're correct. The printed page

1 doesn't have the second sentence that I've added about
2 requiring operators to reassess seven years from the
3 rule. It doesn't have that. But I think you need to
4 add that because that controls the gainsmanship and I
5 think that's very important.

6 The key here is, just back away from the
7 trees for a little bit. The key is, try to get as much
8 information on these pipes as you can to make as good a
9 decisions as you can and minimize the amount of
10 gainsmanship that's incentivized into the program,
11 right?

12 MS. GERARD: You can make your proposal that
13 way without worrying about the rule language and say
14 you recommend to us that we improve the safety here by
15 encouraging the bringing of data from prior assessments
16 by accepting the fact that if they meet the standard
17 they're credible no matter when they were done if they
18 meet the standard. And to eliminate the problem that
19 we have in the rule today of creating a disincentive to
20 do that by moving the requirement for the seven-year
21 retest to be seven years from the day the rule was
22 effective.

23 MR. DRAKE: Right.

24 MS. GERARD: And that gets your intent
25 without telling us how to write the language.

1 CHAIRMAN KELLY: Is there any -- is there a
2 second to that motion?

3 You can't second it, Mr. Moore.

4 (Laughter)

5 CHAIRMAN KELLY: All right. It's seconded.
6 Is there any further question or comment from the
7 Committee? Is everybody clear on this? I mean, to be
8 honest, it was actually said some time ago but
9 everybody had to be on -- on board and understand
10 exactly what the recommendation is.

11 So, are there any other questions or
12 comments? Mr. Leiss?

13 MR. LEISS: Well, my -- I have no question.
14 I think I may have actually understood this a little
15 while back. But I hope I'm not in the dunce category
16 that Randy was talking about, but anyway.

17 The -- my only question is, in voting on this
18 motion is -- is to the extent that ultimately it's
19 decided whether or not the statute allows it. Because
20 it seems to me that's been the only question here. I
21 don't think anybody's been disagreeing with what Randy
22 has said so far and Andy has said.

23 MS. GERARD: Randy-Andy.

24 MR. LEISS: You're Andy-Andy now. Anyway.
25 Sorry about that, Andy.

1 (Laughter)

2 MR. LEISS: But you know, I think it's -- the
3 whole issue here has been whether or not it can be done
4 under the statute. If that's done, I have no problem.

5 MS. GERARD: Yeah. We believe that what he
6 -- what he proposed couldn't be done under the
7 statute that way, but what could be done would be that
8 we would give credit for older but standard-worthy
9 tests but he could apply for a waiver from the
10 reassessment. We could allow a waiver for the
11 reassessment on the basis that he's substantially met
12 the requirement by having tested and retested.
13 Technically, that would be how he would be -- we would
14 allow for operators to apply for a waiver in that
15 situation.

16 CHAIRMAN KELLY: Yes, Mr. Lemoff?

17 MR. LEMOFF: I think that I'm starting to get
18 the gist of this and I don't really oppose it. But I
19 would like to express my concern that because it could
20 be read that this is kind of giving a special deal -- I
21 choose my words carefully -- that that's very carefully
22 covered and the preamble explain why it's being done.
23 That's all.

24 MS. GERARD: Special deal to whom?

25 MR. LEMOFF: To the pipelines that choose to

1 say they're kind of taking an extra time period from
2 when they did the pre-effective date inspection and now
3 they get seven years from the effective date. So it
4 could have been five years ago. They're go to the
5 seven, they're getting 12 years. That's --

6 MS. GERARD: It would apply -- I mean, I
7 thought what he meant was it would apply to those
8 operators that had done something a while ago that
9 qualified and that since then they had reassessed it.
10 And based on the fact that there have been more than
11 one, there's a basis to say it's been checked. A
12 period of time has gone by and it's been rechecked, and
13 so we know what the effects of time -- how the effects
14 of time are acting on this pipeline.

15 CHAIRMAN KELLY: What we can do, if there are
16 concerns about the legality, unless it's absolutely
17 clear. If it's absolutely clear that it's illegal, it
18 doesn't make sense for us to vote. If something needs
19 to be looked into, we can preface the vote with, to the
20 extent allowed by law.

21 All right. Do you accept that as an
22 amendment to your motion?

23 All right. Are there any other comments or
24 questions on the motion? You'd like to make a comment
25 before we vote?

1 MR. MOORE: Yes, thank you. Daron Moore with
2 El Paso.

3 The proposal that's on the table, as long as
4 it's deemed legal, does meet the bounds of credible
5 science. That's what we said we wanted to do. That's
6 what we said earlier today. It's what OPS has said
7 earlier today. It does offer additional protections
8 and it's credible in the bounds of anyone's eyes in the
9 technical sense.

10 Unfortunately, what we have been talking
11 about in the legal sense, the way it's been framed by
12 -- by counsel from RSPA, does not meet the technical
13 basis for what we're trying to accomplish inside the
14 overall bounds of this rule. It's not technically or
15 scientifically sound.

16 It's a legal issue there, so that's the way
17 it is, but it's not technically sound as what's being
18 proposed to the table right now.

19 CHAIRMAN KELLY: Okay. You're saying the
20 proposal is not technically sound?

21 MR. MOORE: The interpretation from RSPA's
22 legal staff on the interpretation of the law is not
23 nearly as technically sound as what's currently being
24 proposed right now on the table as an alternative
25 solution to that interpretation of the law.

1 CHAIRMAN KELLY: You're saying that waiving
2 the requirement for a retest, which is legal, on the
3 basis that it's already been retested --

4 MR. MOORE: No. My comments are not
5 addressing the waiver at all at this point. I have a
6 comment toward that as well.

7 If the waiver were to be used, then yes, that
8 avenue would work well. I caution the Committee,
9 however, that when OPS states that we can use waivers
10 to make this work well, it would be unprecedented for
11 OPS to use waivers in any large scale fashion. Waivers
12 are very infrequent, have been offered virtually never
13 in the history of the agency, and to make that sea
14 change now in respect to the law would be a very big
15 leap. And so the Committee needs to keep that in mind
16 as they address that as being a go-forward strategy
17 because there are no technical standards justifying a
18 waiver. It's technically sound to do so, and we've
19 shown that inside the former risk management programs
20 as some of the waivers we granted there. But those
21 literally took up to two and a half, three years to get
22 those four or five waivers granted.

23 CHAIRMAN KELLY: We're not voting on the
24 waiver. That's not the language that's before us right
25 now.

1 MR. MOORE: I understand. I'm trying to give
2 some information to the Committee on historically.

3 CHAIRMAN KELLY: Right now we only want that
4 that relates to what we're about to vote on, and we
5 have it. So, thank you.

6 MS. GERARD: I didn't understand what he was
7 saying wasn't technically sound.

8 MR. MOORE: The proposal on the table, as I
9 understood it to be addressed by Mr. Drake, is more
10 technically sound than the interpretation of the law by
11 RSPA's legal staff. That's a statement.

12 CHAIRMAN KELLY: Thank you for your comment.

13 MR. MOORE: Thank you.

14 MR. DRAKE: Could I add just one point,
15 maybe?

16 CHAIRMAN KELLY: Yes.

17 MR. DRAKE: Just a historian point. I'm
18 turning more into a historian than I would like to
19 think I am at this age.

20 But -- but the rule was -- the law was
21 written in the context, almost the frame, that this
22 practice was not being done, this in-line inspection
23 practice was not being done, and that the operating
24 community as a whole would only start doing it when the
25 law required it or at the advent of, you know, on the

1 cusp of the law. That is not what's really happened.

2 There are many, many operators that have been
3 doing this for a very long time and the law is
4 intercepting their practices that have been going on
5 for a long time.

6 CHAIRMAN KELLY: I have one area that I'd
7 like to ask you to clarify, and I think Mr. Leiss had
8 raised it earlier. And that was, how far back -- now,
9 is there -- should there be a date beyond which the
10 prior tests should not be applicable?

11 MR. DRAKE: I think there's a practical
12 limit, and that is the envelope of practicality as
13 defined in ASME B31.8S. Because the -- the
14 applicability is defined by the type of tool that you
15 use, the type of threat that you're dealing with, the
16 repair criteria, and then it defines a time frame, how
17 long that lasts.

18 If you fix everything that's out there,
19 obviously, you'd have a pretty long time frame. If you
20 only fix the most significant, pretty short time frame.

21 So ASME defines how that -- that matrix --
22 how that works, and the operator has to go back to that
23 matrix to define that applicability.

24 CHAIRMAN KELLY: Are there any other
25 questions or comments by Committee members? Yes?

1 MR. NIKOLAKAKOS: Would it help if you can
2 provide an example of time? Let's say you take one
3 case where you inspected your line five years ago.
4 Let's assume the effective date is today. And then go
5 ahead and retest it at seven-years intervals. And take
6 one line that you don't take credit and then see how it
7 falls. I think maybe your approach is more
8 conservative than what we have in the rule.

9 MR. DRAKE: I'm glad to do that. I can do it
10 on the board in a few minutes. And I think it might
11 help illustrate what Daron's point was about,
12 technically valid. And it's not an insult to Barbara.

13 It's just that the law might be creating it to take a
14 less conservative position than what we're really
15 talking about here. And I'm glad to illustrate that if
16 you wish. If the other Committee members don't feel a
17 need, I will pass.

18 CHAIRMAN KELLY: I'll leave that up to you.
19 Would you like to --

20 PARTICIPANT: I would like to see it.

21 MR. BOSS: If I could make a comment while
22 he's going to the board? Terry Boss with INGAA.

23 I think it's a sad state of affairs when a
24 lot of voluntary work to do a lot of integrity is
25 essentially being punished. You're not getting a sweet

1 deal. The people that went out and did things ahead of
2 time and did a lot of work on this stuff is essentially
3 being punished if this isn't taken into account.

4 MR. DRAKE: I've got an example here. This
5 kind of shows the regulatory time frame that we're
6 talking about. This is 2002, the law, the passing of
7 the law. 1997, which is five years prior, and 2012,
8 which is the completion of the "baseline," quote,
9 unquote, period. I only use quotes on baseline because
10 it's a nomenclature problem. This is this inspection
11 window as required by law.

12 Now, if you have a five-year inspection, you
13 can count it -- and somehow you're supposed to schedule
14 it seven years later under the rule. I used a
15 different color for the different -- this is Barbara.
16 If you use currently a '98 inspection, you're required
17 to reinspect basically seven years later, which would
18 be '05.

19 If, on the other hand, you had a '96
20 inspection, I can't use that inspection on the red
21 scenario, right? So that I come to 2002, this pipe has
22 no inspection that is counted in this rulemaking.

23 As I look at that section, I have to decide
24 when to reinspect that section. Because it's been --
25 because it's been inspected, I guarantee you it's going

1 to fall out here. It is. It's going to be really low.
2 It's going to be way outside that envelope.

3 What you want to try to do, I think, the
4 point is, is you want to try to bring some of these
5 earlier inspections in. How you bring them in is only
6 value added. Just keep in mind what just happened to
7 this one, okay? All these are the same thing.

8 They're outside the seven-year envelope as
9 far as '02. They're not going to reinspect them --
10 certainly, this one. Unless you reinspected this
11 today, you reinspect it in seven years.

12 If you discount this one, okay, take the
13 baseline off, I can still put that section of pipe in
14 '11. I can do that, period. You can't stop me.

15 If you take this inspection -- what I'm
16 saying is, take this inspection, count it for whatever
17 it's worth, and require that this section be inspected
18 somewhere between now and '09, which is seven years.

19 What that does is it brings this data into
20 the decision model and it puts a limiter about how far
21 they can go forward before they have to reinspect,
22 knowing that they can go that far. If they -- if they
23 just go like this, they can go all the way out to '12.

24 You're actually requiring them by bringing
25 this information in, given that -- you know, given that

1 they're using it, they have -- they can't exceed the
2 reg limiter of seven years, which is the law. The date
3 of the law is seven years out.

4 That's all we're talking about.

5 CHAIRMAN KELLY: Any questions by the
6 Committee on this chart? Is everybody clear?

7 Is your comment pertaining to this so that we
8 can vote?

9 MR. HUSTON: Yes, it is.

10 CHAIRMAN KELLY: All right.

11 MR. HUSTON: Roger Huston from Cyclone.

12 I believe there's an implicit assumption
13 here, and it was most obvious in Terry Boss's comment,
14 about penalizing good work. And that assumption is
15 that if an earlier assessment, such as the ones in
16 green out there on Andy's chart, is not credited as a
17 baseline, that an operator is not allowed to consider
18 the information that was generated in that assessment,
19 and that's not correct. That is information that is
20 knowledge about the pipe which, whether or not that
21 assessment is called a baseline, fits into the
22 information integration that is part of the risk
23 assessment establishing the priorities.

24 Andy's absolutely correct. That segment of
25 pipe can be done in 2011, but that's because of the

1 knowledge that was gained from the earlier assessments.
2 And that knowledge can be used. There is nothing that
3 penalizes an operator in terms of having to forget
4 about what knowledge has been gained about the pipe
5 just because an assessment can't be credited as a
6 baseline.

7 MR. DRAKE: I disagree, and the red line is
8 that penalty.

9 CHAIRMAN KELLY: All right. Are we ready for
10 the vote?

11 MR. DRAKE: The red line is the penalty that
12 shows you have to do it in '05.

13 CHAIRMAN KELLY: Are we ready for the vote?
14 Is the Committee ready?

15 Mr. Andrews, you had a question?

16 MR. ANDREWS: Is the -- do we have on the
17 record that if it's legal?

18 CHAIRMAN KELLY: Yes.

19 MR. ANDREWS: Okay.

20 CHAIRMAN KELLY: We agreed that the motion
21 would be preceded by "to the extent permitted by law."

22 MR. ANDREWS: That covers the question.

23 CHAIRMAN KELLY: All in favor?

24 (There was a chorus of "ayes.")

25 CHAIRMAN KELLY: Any opposed?

1 (No response)

2 CHAIRMAN KELLY: Any abstentions?

3 (No response)

4 CHAIRMAN KELLY: Thank you.

5 You had a question?

6 MR. SELIG: I have a legal question. What
7 the -- what the law -- the statute has said has been up
8 for interpretation for some time. And my question is,
9 is the legal counsel of OPS or RSPA, the final word on
10 that? Because there has never been a discussion on
11 that. There's been some discussion but no finality on
12 that.

13 I can interpret that statute one way which is
14 very different from what Barbara Betsock would
15 interpret it. And to my knowledge, that has never been
16 put to bed.

17 CHAIRMAN KELLY: Thank you. Your question is
18 on the record.

19 Mr. Drake, was that -- was that all of your
20 items, including that second inspection for the
21 performance? Was that --

22 MR. DRAKE: Actually, it's interrelated with
23 the issue about performance venue. And I think we're
24 just going to try to -- Mike said that the -- the five
25 -- the Committee just voted and adopted the changes to

1 that, so that might take care of part of it.

2 But the other issue is about performance, and
3 I think it centers around two words in particular, and
4 that is "state-of-the-art." And we've talked about the
5 use of those words and we'd like to recommend -- I
6 guess, I'll make a motion to get this done here -- that
7 the words "state-of-the-art" in the performance venue,
8 the performance avenue of this rulemaking be
9 substituted with specific section references to ASME.
10 Because there are specific sections inside ASME B31.8S
11 that talk about how to do performance level venue --
12 how to do the performance venue kind of caliber of
13 work. And there's all kind of words in there about
14 extraordinary performance and things that are very
15 elusive and nebulous. Nobody can find that finish
16 line.

17 And I think we've had agreements and intent
18 on that throughout these meetings but -- this is our
19 last chance. I just want to make sure that's been
20 resolved because there are sections in ASME B31.8 that
21 address how to do that state-of-the-art stuff. And I'd
22 much rather give people that clarity so they know where
23 the finish line is and how to do it.

24 MS. GERARD: I'm still back on this, and I'm
25 just wanting to make sure that since this was a chart,

1 I'm wondering if the transcription got the sense of
2 what the recommendation was. The recommendation was --
3 could you repeat the recommendation, Linda? To the
4 extent allowed by law?

5 CHAIRMAN KELLY: It's in the transcript
6 several times. I'll -- I'll read -- do you need it
7 again?

8 MS. GERARD: We --

9 CHAIRMAN KELLY: To the extent allowed by
10 law, prior assessments, those which meet the criteria,
11 will count. Reassessments will occur seven years from
12 the date of enactment of the law.

13 PARTICIPANT: The rule.

14 MS. GERARD: The rule is the law.

15 CHAIRMAN KELLY: The law.

16 MS. GERARD: That would be through the
17 waivers, I guess.

18 CHAIRMAN KELLY: No, the vote did not say
19 through the waiver mechanism.

20 MS. GERARD: It said --

21 CHAIRMAN KELLY: You'll have to --

22 MS. GERARD: -- to the extent allowed by law.

23 CHAIRMAN KELLY: And certainly, you can pull
24 that picture off and keep it with the record.

25 Andy, you should sign it.

1 (Laughter)

2 CHAIRMAN KELLY: Now, did we have another --

3 MS. GERARD: All right. He has another --

4 MR. ISRANI: Yeah. I want to answer that.

5 Andy's second question was about removing some of these
6 terms. We have state-of-the-art and other things which
7 we had for the performance options. And we intend to
8 clarify that and not put the words which would be hard
9 to enforce.

10 CHAIRMAN KELLY: Any further discussion on
11 that?

12 (No response)

13 CHAIRMAN KELLY: Are there any other items
14 that members of the Committee want to raise with
15 respect to the rules that we have not discussed?

16 I have to raise one that my pipeline safety
17 official brought to my attention, and that is that
18 throughout the rule there are various places where
19 reports are required. And he wants to be sure that we
20 recognize, and to the extent that you can put it in the
21 rule, put in the rule that reports would go to the
22 state pipeline officials where there are intrastate
23 pipelines, and where there are state-certified agents
24 on interstate pipelines, that those reports would be
25 available also to the state pipeline officials.

1 Are there any comments on that from members
2 of the Committee? Is there general agreement?

3 (No response)

4 CHAIRMAN KELLY: All right. We can show then
5 that there is a consensus that OPS also take that into
6 consideration.

7 Now, the only other item that is kind of open
8 and hanging here has to do with those issues that are
9 partly part of the IMP rule before we do our final vote
10 and partly not.

11 Now, when we last opened it, there were no
12 additional comments providing guidance to OPS, and I
13 have to admit and maybe even apologize to the Committee
14 for pulling the -- the discussion on that out so long.

15 What we do want to do as the Committee is
16 provide the guidance to OPS to get the job done and to
17 get it done -- get it done well. And to the extent
18 that they are looking for guidance that we can provide,
19 and it doesn't violate any -- any rule -- and
20 certainly, I would like for us to be able to do that,
21 and that's one of the things that I and I think many
22 people around the table have struggled with during the
23 course of the discussion, want to provide the kind of
24 guidance that would help OPS provide clarity to the
25 industry in implementing this rule.

1 I'm not sure at this point if there's a lot
2 more that, as a Committee, we can provide, particularly
3 with the issues -- there are some issues that are not
4 for us to decide that relate to the petition, that are
5 not on the table, and haven't even been put on the
6 table.

7 But, you know, I'll hear from the Committee
8 as to what you would like to do with that issue.

9 DR. WILLKE: The question seemed to me to be,
10 are there a set of issues -- Barbara opened up the door
11 and said that if we wished to discuss any of the issues
12 in the context of this rule that that discussion could
13 take place. The question is, can someone identify
14 narrowly the specific issues that are still open that
15 are appropriate for this discussion?

16 MR. DRAKE: Yes. That's succinct enough.

17 I think -- I got a message from Paul who
18 talked to Barbara just a few moments ago and said that
19 Barbara is looking for someone to stand up and
20 summarize the petition for reconsideration.

21 I'm -- I also apologize to the Committee on
22 behalf of everybody who's involved with this, but the
23 Committee has not been provided this information.

24 The petition for reconsideration is not
25 boundless and it is not so nebulous that it cannot be

1 actioned against. The issues of the rural churches was
2 one of those issues. It has been resolved by this
3 Committee. The issues of the public official was one
4 of those issues. It has been resolved by this
5 Committee. There aren't an infinite number of
6 additional items.

7 And I think perhaps we can get Terry to walk
8 through, at the Committee's preference, whenever,
9 tomorrow morning, tonight, whenever, what those issues
10 are. And then the Committee can just provide guidance
11 as requested by counsel on the remaining issues.

12 Some of them are closed, but I think Barbara
13 has requested us, because this is our last public
14 meeting, to try to vet this issue here because she
15 doesn't want to call another public meeting to talk
16 about the petition for reconsideration. And I think
17 that's the new piece of information that I just got
18 handed by Paul, is that they want to try to resolve the
19 petition for reconsideration here.

20 So in that interest, I can get Terry to try
21 to walk through the balance of the issues on the
22 petition for reconsideration that the Committee has not
23 resolved that are still open as requested by Dr. Willke
24 today, tomorrow, whenever you would like.

25 CHAIRMAN KELLY: Let me ask the will of the

1 Committee. Would you prefer to take this up in the
2 morning?

3 MR. COMSTOCK: I'd like to read it.
4 Certainly, it can be read to us, but if there's a
5 written document, I'd like to have that in front of me.

6 MS. GERARD: I apologize. I thought we were
7 looking for a copy of the written document for
8 everybody.

9 CHAIRMAN KELLY: You included the petition in
10 your book?

11 PARTICIPANT: No.

12 MR. DRAKE: In Tab 11 --

13 MS. GERARD: I think Barbara was looking --
14 we were trying to get a copy of the petition over here.
15 I don't know whether --

16 MR. BOSS: We can make copies right now.
17 We're just making copies.

18 MS. GERARD: Okay.

19 MR. BOSS: Let me give you some background on
20 what -- this is Terry Boss with INGAA.

21 Okay. The petition for reconsideration has
22 been on the docket for a long time. It's been
23 available for public comment. It was available at the
24 public meeting we had April 20th and 21st. That's the
25 INGAA book that we put together for that meeting that

1 was down in Houston. That was included in that
2 package.

3 There was a discussion about some of these
4 items. The 50 people was discussed at the TPSSC
5 meeting on March 27th. We've got the transcript on
6 that where we talked about that. It was also discussed
7 in the public meeting on April 25th. We've got the
8 transcript on that. Yes, repeated again on the 50
9 people.

10 We filed information on this in the docket,
11 INGAA and AGA did, and some of the solutions to getting
12 the clarity are in Tab Number 11 of your book and Tab
13 Number 1 of your book. And what is in Tab 11 is a
14 slightly different proposal than you talked about
15 today, but it does give you a lot of background. And
16 Mark Hereth is making a copy of the original petition
17 for reconsideration.

18 CHAIRMAN KELLY: But could you just indicate
19 what the issues are? It's the 50 persons, it's the
20 identified sites, which we've already dealt with.

21 MR. BOSS: Fifty days versus five days --

22 CHAIRMAN KELLY: Right, right.

23 MR. BOSS: Yeah.

24 CHAIRMAN KELLY: Is that the only -- is that
25 the only issue?

1 MR. DRAKE: The issue that we broached this
2 afternoon and pulverized with the "ands" and "ors" is
3 one of them. And we appreciate Stacey in particular's
4 drive to try to close that and clarify it.

5 CHAIRMAN KELLY: Are those the only two
6 issues?

7 MR. BOSS: There was a commercially available
8 database, but the and/or affects that.

9 CHAIRMAN KELLY: Right.

10 MR. BOSS: And I think -- I mean, Mark took
11 --

12 MR. DRAKE: There was some concern about
13 providing clarity on vague land use areas, like beaches
14 and public parks, national parks.

15 We really -- all the purpose of the petition
16 for reconsideration really was to try to help provide
17 clarity to operators so they can execute that the
18 current language is literally impracticable. It's
19 unobtainium and we can't exercise against that. We
20 need -- we need more clarity, and that's what the
21 petition was about. It was to provide some actionable
22 criteria that we can cross the finish line on.

23 CHAIRMAN KELLY: Okay. One thing that should
24 be clear here -- and as I said, while the Committee
25 wants to provide guidance to Stacey Gerard and OPS, the

1 Committee does not resolve petitions. And so, by
2 raising issues to the extent that they affect the rule,
3 and we definitely want clarity for the rule, we're in a
4 position to render advice or opinions on that, but that
5 does not necessarily bring -- don't expect that that
6 brings closure to your petition because it does not.
7 That is not our role.

8 MR. DRAKE: I absolutely agree, Chairman
9 Kelly. That is exactly the intent and purpose of this
10 whole discussion.

11 The only reason that it's coming up in here
12 is that in the NPRM for the integrity management rule,
13 there was an explicit effort and many questions asked
14 in the preamble to try to resolve the issues associated
15 with the -- with the petition for reconsideration.
16 They didn't explicitly say that's what they were doing,
17 but I think we've heard through these discussions that
18 was the intent.

19 And so, to the degree that the questions were
20 asked in this rulemaking, which we are voting on, it's
21 an issue that we're trying to provide clarity. And
22 that is germane to us, not in regards to the petition
23 for reconsideration because that's a legal matter, but
24 to the issue that the OPS was seeing clarity in this
25 rulemaking to augment the HCA rulemaking it is germane.

1 And that -- I appreciate that nuance because we don't
2 want to cross the line and try to resolve the petition
3 for reconsideration. That's not the Committee's job.

4 CHAIRMAN KELLY: Dr. Willke?

5 DR. WILLKE: Just to bring closure to this, I
6 would like to see an enumeration of the issues that
7 should be considered. I'm willing to consider any
8 additional material overnight that might illuminate
9 that, and then we could have the discussion and a
10 consideration tomorrow.

11 CHAIRMAN KELLY: That sounds like a good way
12 to proceed. Is everyone comfortable with that?

13 All right. So then, we will hold off on our
14 final vote for the IMP rule because this would have to
15 come under our integrity management rule discussion, is
16 that correct? And we vote separately.

17 MS. GERARD: I don't think there's discussion
18 about the petition -- the discussion about the petition
19 should not come under the IMP rule discussion, right?
20 There's no -- it didn't say it covered everything that
21 was related to the IMP rule.

22 CHAIRMAN KELLY: If not, I'll close out the
23 IMP rule.

24 MS. BETSOCK: I would go ahead and close out
25 the IMP rule. And if we can discuss the substance

1 because we were seeking some guidance with respect to
2 industry's position on --

3 MS. GERARD: The --

4 MS. BETSOCK: -- that the -- that one issue,
5 the identified sites. We were -- we were seeking the
6 suggestions of this Committee on what kind of guidance
7 or rule changes we should consider with respect to that
8 based on the petition and also what the industry has
9 already put into the record as proposed additional
10 language and identified sites, which is in your
11 package. But that is separate from the rule.

12 MS. GERARD: While you were out of the room,
13 the Committee addressed two issues of which the
14 petition was concerned, the rural churches and the
15 emergency responder issues, that those were two issues
16 that have been -- that there are recommendations made
17 by the Committee which they -- the industry believes
18 would address the petition, rural church and emergency
19 responder. They're okay with the recommendations that
20 the Committee made, that what the Committee made, I
21 believe you said, would address those -- those items in
22 the petition. And that the other --

23 CHAIRMAN KELLY: All right. So we'll take
24 this up as an item separate from the integrity
25 management rule.

1 MS. BETSOCK: I think that's appropriate.

2 CHAIRMAN KELLY: All right. Then let's
3 finish on the integrity management rule. Are there any
4 other changes that OPS is going to have from the
5 original rule or anything else that Committee members
6 want to have considered before we close that out?

7 MR. ISRANI: Other comments that we received
8 on these are not significant. Most of them addressed
9 these 12, 13 issues, and others needed more
10 clarification kind of thing.

11 CHAIRMAN KELLY: Thank you.

12 All right. Then we have taken the final --
13 actually, we have taken the final vote on the rule
14 because, if you recall, we started -- when we started
15 the discussion yesterday, we adopted the rule subject
16 to the changes that would occur as we went through the
17 listed items, and we have addressed all of them.

18 And therefore, you ought to be congratulated.

19 You just made your way through all of the issues, the
20 outstanding issues, involving the integrity management
21 rule.

22 I'd just like to say because it is such a
23 monumental effort on the -- on the part of OPS and the
24 industry and everyone involved with this. There have
25 been a series of meetings, a lot to get the Committee

1 informed on this matter, public interest groups have
2 been present, environmental interests have been present
3 at various meetings. Obviously, the industry,
4 government, and states have all weighed in. And having
5 inputs from all of those areas and all those
6 stakeholders, I think, has added to the deliberations
7 that this body could make, this Committee could make,
8 in making its own recommendations.

9 I will simply emphasize that we hope and
10 actually want OPS to write these rules with clarity.
11 We want them to make sure that they are consistent with
12 preexisting rules, that preexisting rules be reviewed
13 in the context of what you're putting in place here as
14 a final rule so that you don't create any unintended
15 hardships nor unintended loopholes.

16 What we want as a result of this rule is that
17 industry spends time, the bulk of its time, not seeking
18 interpretations but complying and that the Agency spend
19 its time with oversight and enforcement.

20 MS. GERARD: I need to say that there are
21 some -- you know, once this rule is finalized, there
22 are some policies within this rule that will not be
23 consistent with the way we're enforcing the existing
24 class location requirements. And there have been
25 questions that OPS has wrestled with that we've talked

1 about in an Advisory Committee meeting a couple of
2 meetings ago, and we have discussed that what we would
3 want to do is to make our interpretation of how we
4 would enforce class location existing requirements
5 consistent with this as opposed to the other way
6 around.

7 And I need to just say that because it
8 differs from what you said, Linda. You said, make this
9 consistent with the existing rules. We'd prefer to
10 make that existing rule consistent with our policy on
11 this because we think we've learned a lot from
12 experience that we're going to do correctly in this
13 rule.

14 CHAIRMAN KELLY: Oh, I agree. Certainly, I
15 did not mean to tie your hands. I just -- consistency
16 is what I'm seeking and what I believe all parties
17 involved would be seeking.

18 Any other comments by Committee members on
19 that? With -- I'm sorry? No?

20 With respect to tomorrow's agenda --

21 PARTICIPANT: The vote is done.

22 CHAIRMAN KELLY: With respect to tomorrow's
23 agenda, I just --

24 MS. GERARD: I think we need a vote on --

25 CHAIRMAN KELLY: The vote is done.

1 (Laughter)

2 MS. GERARD: (Off mike) -- for its hard work
3 on this, all of you who contributed to it from the
4 Committee, from the public.

5 I would especially like to thank Paul Wood
6 and Roger Huston for all the invaluable assistance
7 they've given in trying to summarize the -- and Cheryl
8 Whetsel for trying to get all this information to you
9 on time so that you could review it. I think that is
10 -- so thank you all very much.

11 CHAIRMAN KELLY: And your mike was off the
12 whole time.

13 MS. GERARD: And thank you, Linda Kelly, for
14 your -- your graciousness, your talent, and your
15 leadership in guiding us through this for the last
16 meeting because I don't think we could have done it
17 without you.

18 CHAIRMAN KELLY: Thank you. Thank you, thank
19 you.

20 For tomorrow's agenda, one of the items on
21 here is the cost benefit analysis for the rule that we
22 have just acted on. And what I have -- I spoke to a
23 few Committee members, but what I'd like to propose is
24 because the document that we have before us is a
25 document dated January and obviously does not take into

1 account all of the changes that we have recommended
2 here, I would suggest that we have a limited discussion
3 tomorrow, have Marvin Fell do a brief presentation to
4 us, but that we ultimately then will have him go back
5 and adjust the cost benefit analysis taking into
6 account the recommended changes -- we know it won't be
7 the final rule, but taking into account the recommended
8 changes -- from this meeting and get information to us
9 so that we can then meet by telephone to take a final
10 vote.

11 Is that satisfactory to the Committee
12 members? All right.

13 All right. We have approximately a 10-minute
14 presentation before we adjourn tonight, and that has to
15 do with operator qualification.

16 MR. ISRANI: Stacey, I just want to get some
17 clarification here. Do we have time frame on when
18 these changes we are to complete in the cost benefit?

19 CHAIRMAN KELLY: I believe that your counsel
20 will work that out with staff so that you can make sure
21 that it's all done in time for you to get your rules
22 out and comply with all statutory requirements.

23 MS. GERARD: It needs to be about two to
24 three weeks.

25 Operator Qualification

1 MS. GERARD: Okay. I wanted to advise the
2 Committee of an important advice that I've gotten from
3 the National Transportation Safety Board on our
4 progress with our operator qualification initiative.

5 I bring this up because the NTSB has had an
6 unsatisfactory mark on our record for some time and
7 they've testified in the reauthorization hearings about
8 our need to make improvement in this area. Then, when
9 the Pipeline Safety Act passed, the Congress asked us
10 to -- there were some changes in the law in this area
11 and the Congress asked us to create a standard for how
12 we would evaluate the adequacy of those plans that have
13 been required by regulations that have been in
14 existence for a couple of years.

15 We developed some protocols in public
16 meetings as our way of addressing the congressional
17 mandate for the standard by which we would use to
18 evaluate -- which we would use to operate -- evaluate
19 operators' plans. And we've had NTSB review those
20 protocols to see whether they think that the use of
21 them might be a basis for them to decide they might be
22 able to close the -- close the action on it
23 satisfactory as opposed to unsatisfactory, which is how
24 it's currently closed.

25 In the last couple days, I heard from the

1 NTSB that while we were making great progress, that the
2 protocols are good, and they want to look at the
3 inspection reports to see how consistently they're
4 being filled out, that there remains issue of
5 unenforceability in the area of operators' use of
6 training as a way to meet qualification.

7 And what I would like to get the Committee's
8 advice on is this: The Pipeline Safety Act requires us
9 to make a change in the rule on op qual to provide for
10 operators to notify us when there is a change in the
11 plan. So we must take up a rulemaking on this very
12 soon, although it's a very short rulemaking.

13 I would like to hear from the Committee
14 whether they think it's a good idea for us at this time
15 to make one or two more clarifying changes in the rule.

16 Since the statute requires us to evaluate all the
17 operators on this new standard by three years from
18 December '05, and we're actually out there engaged in
19 doing this, and since we've had a lot of public
20 meetings in which we've shared views about it, I would
21 think that we could relatively easily make some changes
22 in the regulation consistent with the discussions that
23 we've had in public about operators' use of training to
24 meet the qualification requirements.

25 My thought would be that we might be able to

1 have some discussions about this and you might come
2 back to us in a phone call. We might check in with you
3 in sometime about in a month or so to see what you
4 think about how we might do this.

5 But for me, it's very important to address
6 this unsatisfactory on the record and since we've
7 worked so hard to develop an understanding about our
8 expectations and how everybody is meeting the
9 requirements of the regulation. When we developed
10 those protocols, there were just two places in the
11 protocols where we said that actions pertaining to
12 training were guidance only and not enforceable.

13 And what I'm asking you is if you would agree
14 that it's a good idea to make a couple clarifying rule
15 changes of about a couple of sentences that would
16 clarify that operators' use of training to meet the
17 qualification requirements is something that the
18 operator should provide some information on in their
19 program.

20 Yes?

21 MR. DRAKE: Ever the historian here of late,
22 you know, this rulemaking, the op qual rulemaking, is a
23 rulemaking that's in effect. And certainly, most of
24 the Committee members haven't had the opportunity to
25 review it, as members of the Committee anyway.

1 The rulemaking was written under a different
2 time and a different philosophy, prior to the integrity
3 management efforts. And I think that there's now a lot
4 of learning that's taken place to close the gap between
5 the rulemaking as it exists in a very performance-
6 oriented language and the real world of application,
7 especially given all we've learned through integrity
8 management and how to provide standards and clarity to
9 operators.

10 I know that there's been a lot of effort
11 specifically since the public meeting here three --
12 five months -- four months ago in San Antonio about the
13 direction of op qual and how to land it successfully
14 and bridge between the current performance rule and the
15 congressional intent and the notice -- the open
16 unsatisfactory issue of NTSB, and apply it to the real
17 world.

18 And there was a team put together, a
19 regulatory team of -- you know, a working cross
20 functional team of industry folks and federal DOT folks
21 and state folks and contractors and all kind of folks
22 to figure out how to close that gap. And I think that
23 group has very successfully come up with a host of
24 protocols on enforcement that provide a great deal of
25 clarity of how to practice this rule.

1 And I think it's most constructive -- at
2 least my recommendation would be to reengage that team
3 with the expressed purpose of reviewing the gap as
4 identified explicitly by NTSB and given their work over
5 the last four or five months back in that same setting
6 with those same team members, as much as we can get.
7 And we have the chairman sitting here in the room, so
8 we can see if he thinks we can reengage them -- and
9 Mike Comstock was on that team as well -- and see if we
10 reengage that team for that express purpose in some
11 short time frame.

12 Because I think if we were to start another
13 effort independent of that effort, the likelihood that
14 those efforts would -- would flange up is very poor,
15 especially given the turbulence of the -- of the
16 solution at this time.

17 And so, I guess that would be my
18 recommendation. I think it's -- I would abide by what
19 that committee came up with. And if it included some
20 modifications to the current rule and they felt that
21 was constructive, my concern would be not to undermine
22 the long-term plan and strategic plan that they've
23 compiled which involves national consensus standards
24 and all kind of additional protocols and guideline
25 material. I'd hate to see something come out to get

1 through the short-term bump that undermined their long-
2 term plan. And that's why I think it's fundamentally
3 important for that group to be reenlisted to make sure
4 that there's some continuity in how to deal with the
5 short-term issue and maintain our course on our long-
6 term strategic plan.

7 So that would be my take, and I'd turn it to
8 Mike as well. I think he's certainly on that team as
9 well.

10 CHAIRMAN KELLY: Mr. Israni? Oh, I saw your
11 "Michael."

12 Mr. Comstock?

13 MR. COMSTOCK: This Mike.

14 CHAIRMAN KELLY: Yeah.

15 MR. COMSTOCK: I couldn't agree more with
16 Randy -- I mean Andy's statement.

17 (Laughter)

18 MR. COMSTOCK: The OQ2 team and the Tier 1
19 group that was put together is exactly the place to go
20 back to for this issue because of our background on
21 this and our works in San Antonio.

22 I think that this can be taken care of very
23 quickly. We can come to resolution and move forward
24 with our work towards the standards committee. I don't
25 think we should undermine that. That is exactly where

1 the rule needs to be addressed, and I think we can work
2 as the OQ2 Team towards that.

3 Daron may want to speak a little bit on that
4 as the chairman of that committee, if you'd like.

5 MS. GERARD: That would be you, Mr. Moore.

6 (Laughter)

7 MR. MOORE: It's not "Raron." I guess it's
8 Daron in this case.

9 MS. GERARD: Raron-Daron.

10 MR. MOORE: For the record, I don't chair the
11 whole effort. I'm just helping lead the industry side.
12 Richard Sanders and Paul Wood are leading the
13 regulatory community side. Just to give credit where
14 credit's due, they've done a fantastic job on this and
15 deserve a lot of credit. So just to start off with
16 that.

17 This group has been working since mid January
18 -- the San Antonio meeting has been mentioned --
19 extremely hard. We've come up with -- some extremely
20 aggressive timetables that were given to us by OPS
21 because they had some aggressive timetables given to
22 them by the law signed on December 17 of '02. We met
23 those timetables together, industry and the regulatory
24 community. And by virtually all accounts, the
25 protocols are in very good shape. They're something

1 that everyone can agree on, work from, and move forward
2 with.

3 We're currently working on supplementary
4 guidance and FAQs, and we hope to have those done by
5 the end of June and May, respectively.

6 So this group is still active and still
7 working very hard and still formed and still able to
8 meet this call. I agree with Andy and with Mike's
9 comments that I think it's best that this group stay
10 formed together and that we see what this group wants
11 to do going forward, which very likely could be a
12 couple of sentences added onto this rulemaking that
13 Stacey mentioned.

14 But I would hate to see our hands tied
15 because we agreed back in February between industry and
16 the regulatory community that we would have a long-term
17 strategy which meant we would, one, finish the
18 protocols by a date certain and get these inspections
19 started to meet OPS's goals. We did that. We get
20 supplementary guidance and FAQs finished by a date
21 certain, we're going to meet that.

22 To meet the problems of the rule overall,
23 which there are a couple that have been longstanding,
24 et cetera, we have agreed to write a national
25 consensus-based standard. Bernie Selig has extreme --

1 a lot of experience in this area. He's in the room as
2 well. He will be assisting us with that. And we are
3 going to finish that standard by summer of next year.
4 We believe we can do that.

5 That will form the foundation for a -- a
6 large operator qualification rulemaking which will be
7 more holistic in nature and hopefully incorporate the
8 standard by reference. That's our goal. It's been
9 agreed to by the regulatory community.

10 It would be very short-sighted, I think, to
11 short-circuit, like Andy mentioned. That process has
12 been agreed upon and worked very diligently and
13 actively and successfully on to try to meet this short-
14 term solution.

15 My advice would be to let this committee
16 reconvene, decide what the proper course of action
17 should be going forward. We can do this very quickly
18 in the next couple of weeks, I firmly believe, and at
19 that point we can report back to you, the TPSSC and
20 OPS, at what our guidance would be if you allow us to
21 take that step.

22 Thank you.

23 MS. GERARD: And that's what it would need to
24 be, is that the members of the TPSSC would -- would
25 basically get information from this resource group,

1 basically, and then, you know, we'd probably schedule a
2 call to hear, you know, what you said.

3 Dr. Cooper is in the room, and we were
4 talking as the Gas Committee, and this issue does
5 involve the liquid industry as well. And you know, I
6 have a feeling he could comment --

7 DR. COOPER: Well, I just -- thank you for
8 letting me talk because I am with -- Ben Cooper and I
9 don't need an adjective in front of Ben, so. I'm with
10 the Association of Oil Pipelines. We have members on
11 the group that's being referred to.

12 Let me just say one thing about our
13 perspective, sort of change -- maybe it's a little
14 different than what you've heard.

15 As one who tried to -- has tried to work on
16 legislation and the public image of pipelines, one of
17 the -- the propagation into the public and to Congress
18 of the notion that people who work on pipelines are not
19 properly qualified or trained or don't fully understand
20 their job has been an enormously damaging, and of
21 course we believe incorrect, assumption, but it's one
22 that the public rightly or wrongly -- probably rightly
23 -- turns to their government, either to the OPS or to
24 the NTSB in the case of the federal government, for
25 advice on whether this is a proper allegation or not.

1 And so the open unacceptable or whatever the
2 classification is of the NTSB recommendation with
3 respect to operator qualification is enormously
4 damaging to the industry and has cost my company
5 millions of dollars when you talk about -- when you
6 think about the delay in projects that are -- people
7 are trying to get done. And you think of the reaction
8 to incidents and accidents that end up costing more
9 than they would otherwise cost as a -- as a result of
10 the fact that this recommendation is unsatisfactory.

11 And so reporters and members of Congress and
12 members of the public can reasonably conclude that
13 pipeline operators are not qualified.

14 So we have -- my members have a very, very
15 strong interest in getting this closed. And so, I
16 would say that we ought to charge this group with
17 getting back to you quickly. And if it is the judgment
18 of the counsels -- counsel of RSPA that -- that this in
19 fact is not enforceable without a change in the rule,
20 then I don't think we should -- we should spend a lot
21 of time arguing about it. We should get into the
22 rulemaking and target what we're trying to do and get
23 this done.

24 It's been years since we've been able to put
25 this issue behind us, and it's still not behind us.

1 And it's one of those issues that is tremendously
2 frustrating when you're trying to explain the position
3 of the pipe -- the reputation of the pipeline industry
4 to laypeople.

5 So I would just urge -- I think I'll second
6 what Daron and Andy have said as to employing this
7 group. I've had some conversations with the folks that
8 represent the liquid pipelines in that group, and we
9 believe that -- those people and I believe that -- that
10 it is entirely possible to get language together which
11 would deal with training as appropriate in the
12 inspections of pipelines and would address -- the other
13 issue as I recall it is the requalification issue and
14 whether it would be a basis that operators would be
15 required to present for their choice of a qualification
16 interval.

17 And you know, speaking for liquid pipelines,
18 I think we could work that out pretty quickly. But I
19 would urge us not to put this off.

20 CHAIRMAN KELLY: Yes?

21 MR. CAVE: Bob Cave, American Public Gas
22 Association.

23 I'd like to second Andy's recommendation, and
24 I applaud the work that the group has already been
25 done. I was sitting here listening to the word

1 "training," and Richard and I went through -- and
2 several others in this room went through the reg neg
3 process and the word "training" was discussed for most
4 of the year, and it was not included.

5 But, Stacey, good luck. It's quite an
6 effort. But I think doing it the way you're suggesting
7 is super.

8 Just to let the Committee know, there's a
9 second group that's also looking at these protocols.
10 It's called the Small Operator OQ2, and that is going
11 in parallel with the main -- main emphasis. And it's
12 an attempt to try and put together some guidelines and
13 suggestions for small operators. It's on schedule. We
14 hope to have it done sometime around the June time
15 frame as well. And this group would also be addressing
16 the same issue, I'm sure.

17 So that's on schedule, and it should be to
18 you in June.

19 CHAIRMAN KELLY: Any other comments? Yes?

20 MR. NIKOLAKAKOS: I'd just like to know if
21 anything has been published on the work of the
22 committee that's something maybe we can look at.

23 MS. GERARD: We could give you the protocol.

24 MR. MOORE: There's a large amount of
25 information, Steve, on the SGA web site, Southern Gas

1 Association. There's also a large amount of
2 information, much of it identical, on either the OPS
3 web site or the Cyclone web site. I'm not sure which
4 one it is in this case, but there should be links
5 between them. And the TSI, Transportation Safety
6 Institute, web site.

7 There's a lot of information out there,
8 including presentations, work products, protocols, and
9 the final protocols were issued on April 6th of this
10 year.

11 MR. NIKOLAKAKOS: Do you intend to summarize
12 those and somehow come up with recommendations? Or
13 everything's all inclusive in there?

14 MR. MOORE: The protocols?

15 MR. NIKOLAKAKOS: The protocols, I assume,
16 are going to be public?

17 MR. MOORE: They're public now. They're on
18 the Internet now, and they've been public since April
19 6th or so.

20 MR. NIKOLAKAKOS: Okay.

21 MR. MOORE: Of this year.

22 CHAIRMAN KELLY: Thank you.

23 And I would ask if Stacey Gerard would just
24 summarize what the future actions would be based upon
25 the discussion we've had.

1 MS. GERARD: I think that we would ask the
2 group that's been -- the groups that have been
3 referenced that are working on other things to give us
4 an idea of when they might be able to think about this
5 and prepare some advice to give to the members of the
6 Committee and -- and hope that it could be, you know,
7 within the next few months, six weeks.

8 And then we would -- we already need to
9 notice that we have to call you on the phone and
10 discuss the matter of the cost benefit. We also need
11 to discuss the research plan that's required by the
12 statute to be discussed with you, and then hopefully,
13 at the same time, get some specific advice from you on
14 how we might clarify a regulation when we do the -- the
15 required change to provide a requirement to notify us
16 when there's a plan change. So we have to take some
17 regulatory action on this and do it in such a way that
18 we still would have the regulation amplified by the
19 consensus standard that we asked be developed.

20 So we'll -- we'll set a date for a conference
21 call with you and put a notice in the "Federal
22 Register" that we'll be having that call. And I would
23 expect, you know, about six weeks or something like
24 that. Does that sound reasonable?

25 We have to get the information together on

1 the research plan and the cost benefit. So perhaps --
2 perhaps as soon as a month, but not later than six
3 weeks.

4 CHAIRMAN KELLY: Okay. Thank you.

5 Please note that we begin tomorrow at 8:30.

6 Thank you very much.

7 (Whereupon, at 6:00 p.m., on May 29, 2003,
8 the proceedings were adjourned, to reconvene at 8:30
9 a.m., on May 30, 2003.)

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