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NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

PUBLIC MEETING

DISCUSSION OF POLICY STATEMENT ON ALTERNATIVE

SITE EVALUATION UNDER NEPA FOR NUCLEAR

GENERATING STATIONS

Place - Washington, D. C.

Date - Thursday, 7 December 1978

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

PUBLIC MEETING  
DISCUSSION OF POLICY STATEMENT ON ALTERNATIVE  
SITE EVALUATION UNDER NEPA FOR NUCLEAR  
GENERATING STATIONS

Room 1130  
1717 H Street, N. W.  
Washington, D. C.

Thursday, 7 December 1978

The Commission met, pursuant to notice, at 11:15 a.m.

BEFORE:

DR. JOSEPH M. HENDRIE, Chairman  
VICTOR GILINSKY, Commissioner  
RICHARD T. KENNEDY, Commissioner  
PETER A. BRADFORD, Commissioner  
JOHN F. AHEARNE, Commissioner

PRESENT:

L. GOSSICK  
R. MINOGUE  
R. SMITH  
M. ERNST  
H. SHAPAR  
K. PEDERSEN  
M. KELLEY  
G. SEGE



P R O C E E D I N G S

(11:15 a.m.)

CHAIRMAN HENDRIE: All right. If the other bodies who are holding their meetings in the room will come and sit down with us.

The Commission turns now to a briefing by the staff on and a discussion of a policy statement on alternative site evaluations under the National Environmental Policy Act for nuclear power plants. I will comment, before launching the staff on the briefing, that this is a subject which is more than a little complex. And I must confess to feeling very uncertain that I understand even the principal points.

Now, we've run a shade late this morning. Commissioner Kennedy will have to leave before 12:00. The Commission itself cannot run much past noon because we gather again at 1:00.

In view of the nature of this subject, I will warn you all at the start that I regard this morning's meeting as the first of what I think will have to be a series of discussion meetings on this subject, because I'm confident it's going to take more than one for me to get into a position where I feel I can sufficiently command the issues and can vote in good conscience myself on whether to go with the proposed policy statement or it plus some other things or alter it in what way, and so on.



So I will not be asking the Commission for votes this morning, nor do I expect that it will end in one of those situations where we seem well-resolved and have only to look for another month at various words on the paper. I will give fair warning that I think the scheduling of further discussion on the matter --

COMMISSIONER AHEARNE: I think you have concluded that it takes a month for us to reach final conclusions once we have resolved the issue.

CHAIRMAN HENDRIE: That was sort of a gratuitous insult that I slipped in there.

(Laughter.)

CHAIRMAN HENDRIE: And I confess to it. I don't apologize, but I do confess to it.

Okay, Lee. I see the staff all assembled. Please go ahead with your presentation.

MR. GOSSICK: Thank you, Mr. Chairman.

We have two speakers this morning. Ray Smith will start off with a bit of an overview of where we are in this very complex matter, as you've described it; and Mel Ernst will then go into the paper that's been sent up here by NRR on these particular issues.

Ray?

MR. SMITH: Okay. The first slide --

(Slide.)

1 MR. SMITH: -- shows you what we're going to tell you.  
2 I will be brief. I will give a little history, some summary of  
3 what we have done to the policy statement since you saw it last,  
4 discuss -- I was intending to discuss a recommendation on  
5 issuance. Perhaps I can forego that in view of the opening  
6 statement.

7 The substantive, this will only take a very few  
8 minutes. The substantive part of this discussion will be by  
9 Mel Ernst. We'd like very much to get some feedback from the  
10 Commission on the substantive issues that are presented in the  
11 second paper which you have on the information item.

12 COMMISSIONER AHEARNE: Would you tell me the relation-  
13 ship between those two papers? In a sense, is the policy state-  
14 ment a distillation of a resolution of the issues?

15 MR. SMITH: The papers are primarily separated because  
16 the policy statement gives broad philosophical, if you will, on  
17 how we do alternate siting; the other paper mainly goes into  
18 implementation of these broad --

19 COMMISSIONER AHEARNE: But they were together?

20 MR. SMITH: They were closely intertwined, and that's  
21 why in this discussion I don't intend to discuss the substantive  
22 issues. Mel will discuss the substantive issues, both on the  
23 policy issue and on the information, because they are so closely --

24 COMMISSIONER AHEARNE: Your position is that there are  
25 no, at least fundamental or major inconsistencies between the

1 two? They track?

2 MR. SMITH: Yes, they track, and they talk about the  
3 same issues.

4 COMMISSIONER AHEARNE: All right.

5 MR. SMITH: Okay. The next slide.

6 (Slide.)

7 MR. SMITH: Let me go very briefly through some  
8 history. The policy statement was requested by the Commission  
9 in January of '77 as one of a number of topics that they wanted  
10 policy statements on. We gave you the draft of that statement,  
11 then, in August. We got some feedback from the Commission, and  
12 after some rewriting and a dissenting view, we gave you another  
13 version in March of this year. In May OGC suggested that a  
14 decision on that paper then be deferred.

15 And on the next slide --

16 (Slide.)

17 MR. SMITH: -- in August, then, the Commission  
18 requested that we take it back up again, review it in light of  
19 the Seabrook decision. Other things happened, where we issued  
20 this preliminary statement on general policy, which looked at  
21 alternate sites as one of ten issues that we wanted comments  
22 on for rulemaking.

23 In October there was an Appeals Board decision on  
24 the Sterling project, which has some bearing on this because  
25 the wording of the statement is somewhat different from the



1 earlier versions.

2 Now, in December -- what you have before you now is  
3 these two papers. The first paper, as I said, analyzes the  
4 decisions, revises the policy statements to clarify the intent.  
5 We didn't, in the policy, statement, go into the details which  
6 the Commission requested us to, mainly because we thought they  
7 went beyond the decisions at Seabrook and they had to be dis-  
8 cussed in more detail and submitted to rulemaking. Therefore,  
9 the information paper is now separate and does go into those  
10 details.

11 We'd like very much today -- we wanted two things from  
12 you: a recommendation on issuance, which we've already got;  
13 but now we'd like very much to have some feedback on these other  
14 issues from the Commission, to help focus the staff's further  
15 discussion of the issues.

16 On the next viewgraph --

17 (Slide.)

18 CHAIRMAN HENDRIE: Is it premature to ask -- let's  
19 see, your recommendation was to issue the policy statement?

20 MR. SMITH: Yes.

21 CHAIRMAN HENDRIE: But not 163(b), a policy statement  
22 for comment.

23 MR. SMITH: We've changed that recommendation. The  
24 earlier papers were to issue the statement, period. We are now  
25 saying we should go out for comments rather than issuance,

1 partly because we already have this paper out that identifies  
2 alternative sites as one of ten issues for comment. And if we  
3 go out now, we are abrogating the comment period on that.

4 Also --

5 CHAIRMAN HENDRIE: You weren't proposing to put  
6 163(b) --

7 MR. SMITH: We were not. But after the review of the  
8 OPE memo that we saw this morning and some discussion in the  
9 staff, we think it is a good idea that we would put the policy  
10 statement out referencing the NUREG report, which is basically  
11 the information paper, saying these are the issues that the  
12 staff has in mind, this is where the staff stands on these  
13 issues.

14 So any commenters on the policy statement would have  
15 that document for guidance.

16 MR. ERNST: No commitment of positions, but just an  
17 indication of opening dialogue, various options, and pros and  
18 cons in judgments.

19 CHAIRMAN HENDRIE: It's good to understand the sort  
20 of amended proposition before the house. Now, eventually one  
21 would want to close on that issue.

22 Okay. Onward.

23 MR. SMITH: Okay. Let me just summarize for you very  
24 quickly what we did to the policy statement since you saw it.

25 We reviewed it in view of these decisions that are listed here

1 on this viewgraph. We've made some changes to clarify it in  
2 view of this. We also, in the paper itself, will be flagging  
3 some issues that the Commission should focus on, as well as the  
4 statements in the information paper.

5 You should all realize that we view the policy state-  
6 ment as a broad framework and that the problems we're having,  
7 the complexities come up in the implementation of that policy.  
8 The substantive issues, then, we believe are primarily involved  
9 in the implementation rather than in the statement of the  
10 policy.

11 On the next slide --

12 (Slide.)

13 MR. SMITH: Well, the next two slides give the pros  
14 and cons for the recommendation to issue. Basically, the staff  
15 feels that it's useful to issue it at this time, to make one  
16 step forward in our thinking, provide guidance to the staff  
17 and notify everybody where our thinking is at this point, in  
18 preparation for a more detailed rulemaking later. This would  
19 be a little place to hang your hat, even though it doesn't go  
20 as far as most people would like. It is an interim step.

21 On the next slide --

22 (Slide.)

23 MR. SMITH: -- the problems with that, primarily with  
24 ELD. They have some trepidation about confusion in the public's  
25 mind because of issuing this. It doesn't have the force of law.



1 They worry that we would be using it as such. They think  
2 rulemaking is a better way to go.

3 We agree with that, but on the other hand, we'd like  
4 to have this interim statement out during the rulemaking process.

5 COMMISSIONER GILINSKY: Aren't they really saying  
6 that it doesn't do anything?

7 MR. SMITH: Yes, they are.

8 COMMISSIONER KENNEDY: And they're saying it's not  
9 supposed to do anything, but in fact it would do something.

10 MR. SMITH: It would help guide the staff in its  
11 licensing decisions in the interim.

12 COMMISSIONER AHEARNE: Do you mean the staff?

13 MR. SHAPAR: Our view is the staff would certainly  
14 follow it or try to follow it. After all, the Commission issued  
15 it, no matter what you call it, even though there's a disclaimer  
16 there that it isn't intended to prescribe a rule of conduct.  
17 The staff will gravitate toward any policy position articulated  
18 by the Commission.

19 The basic theory is that this has been studied for a  
20 year and a half. We have awfully good guidance from the  
21 Commission at Seabrook. The options are laid out pro and con,  
22 and now is the time, in my opinion, to bite the rulemaking  
23 bullet and articulate policy with the force of law.

24 COMMISSIONER AHEARNE: What kind of a schedule would  
25 the rulemaking be on, and then realistically?

1 MR. SMITH: Optimistically, we would expect an  
2 effective rule next December, a year from now.

3 COMMISSIONER AHEARNE: And realistically?

4 MR. SMITH: Probably two years.

5 MR. SHAPAR: I don't agree with that. I think the  
6 Commission could vastly compress that schedule by asking the  
7 staff to comment soon. That's my own judgment.

8 COMMISSIONER AHEARNE: What would you say it could be  
9 done in?

10 MR. SHAPAR: I would say it could be done in six  
11 months.

12 MR. SMITH: There are too many differing opinions in  
13 the staff to iron that out. I really believe that you're smoking  
14 something strange in your pipe if you think you can get this  
15 thing out.

16 (Laughter.)

17 MR. SHAPAR: Just because there are disagreements  
18 among the staff, I don't think it's reason to surface those  
19 disagreements and decide them.

20 COMMISSIONER AHEARNE: I certainly hope that the  
21 staff's view isn't that they don't bring their position up to  
22 the Commission until all disagreements are ironed out on the  
23 staff. I think there's a fairly widespread opinion here --

24 (Laughter.)

25 COMMISSIONER AHEARNE: I was more interested in the

1 message --

2 MR. SMITH: As you'll see in Mel's presentation, these  
3 are very complex issues. They're very hard to get hold of.

4 COMMISSIONER AHEARNE: Let us try.

5 (Laughter.)

6 CHAIRMAN HENDRIE: That's very difficult to do.

7 (Laughter.)

8 CHAIRMAN HENDRIE: I comment, John, that there was a  
9 time, in fact, when the staff tried very hard not to have things  
10 come to the Commission -- in fact, the AEC practice, you know,  
11 before the general managers presented their thing to the  
12 Commission, if it had any dissenting staff views which were  
13 discernible from the table, you know, people went into deep  
14 shock if it appeared that might be the case.

15 We've tried to steer toward a more reasonable proposi-  
16 tion, which is that not every initial differing staff office  
17 view needs to come forward, that there ought to be a certain  
18 amount of scrubbing of those views in argument, and the EDO  
19 tries to get that down, try to get down to sort of the essentials  
20 of the matter; but then, good, then those things could come  
21 forward.

22 I think there are a number of papers. We're aware of  
23 the different views. So there is -- a fair answer is that we  
24 would like to have some reasonable degree of scrubbing, but that  
25 the Commission, I don't think, can stand every shade of opinion.



1 But certainly, as you get through to essential differences,  
2 then those things indeed ought to come forward to the Commission.

3 MR. SMITH: I think our December schedule would assume  
4 that. I think that's about the best we can do, really.

5 COMMISSIONER BRADFORD: I would urge, on my part,  
6 that they send things forward rather than scrubbing too much.

7 CHAIRMAN HENDRIE: Yes. And that also helps to move  
8 things on up. On the other hand -- well, I'm not sure. You  
9 know, Commissioners have a great facility for discovering  
10 objections and different views on the subject anyway. So I'm  
11 not sure that it really adds all that materially to the number  
12 of items of discussion here at this table.

13 COMMISSIONER AHEARNE: All the more reason not to wait  
14 until they're ironed out.

15 CHAIRMAN HENDRIE: As I say.

16 MR. PEDERSEN: Mr. Chairman, while we're on the  
17 slide of CONS, I'd just like to add one thing. The proposal to  
18 go out for public comment before we get the statement out really  
19 had two goals in mind: One, that you're giving additional  
20 guidance to the staff. Howard has spoken to that. The other  
21 would be the benefits of the comment. And I guess my view on  
22 reading the statement was that I'm not sure it would be clear to  
23 the public what they were commenting on or what the issues were.  
24 The guts of the issues are in that information paper.

25 Now, I think linking the information paper with the

1 statement putting them both out is useful. And I'm glad the  
2 staff agrees. I guess my own judgment is, though, that we  
3 might be in a little bit better position shortly, when these  
4 issues have been worked on a little more and more sharply  
5 defined, to get even better and more meaningful public comment.  
6 I just don't think we think we can go racing out too frequently.  
7 We ought to give the public the clearest understanding of the  
8 options and the choices possible, and that was the basis of the  
9 recommendation that I had made in terms of accelerating it and  
10 getting a more finished information paper out with the policy  
11 statement.

12 MR. SMITH: I guess our view is there's not too much  
13 more the staff can do without some guidance from either the  
14 Commission or the public. And we'd like to get into that mode  
15 at this time.

16 MR. PEDERSEN: I would assume the added guidance of  
17 the Commission.

18 MR. ERNST: There is a point, I think, and that is the  
19 SECY-485 paper on rulemaking will not be in the Federal Register  
20 'til the 14th of December, because we're awaiting publication  
21 of the NUREG.

22 CHAIRMAN HENDRIE: What's the comment period there?

23 MR. ERNST: 60 days. So it would be my view that --

24 CHAIRMAN HENDRIE: You didn't want to do this in any  
25 event until after that had run out.

1 MR. ERNST: I'm not sure that a complementary time  
2 frame would not be useful, if, for example, we went out with a  
3 policy statement and a NUREG which had the information paper  
4 available to the public to enhance their thought process in the  
5 same kind of time frame as SECY-485, and advertised that this  
6 is further thinking on the staff's part in this area. To facili-  
7 e-3 tate comments on the 485 might not be a bad way to go.

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#4 1 MR. SMITH: You'd get better comments on 45 if you  
2 had this out concurrently.

3 COMMISSIONER AHEARNE: That would seem to be true  
4 if you had the issues paper out.

5 MR. SMITH: Right.

6 MR. ERNST: That's another option, to put the  
7 information paper out as a sort of further guidance on 483.

8 CHAIRMAN HENDRIE: Need it go out as a Commission  
9 policy statement for which public comment is being asked? In  
10 fact, it's been also published, it would seem to me, as a  
11 NUREG staff document on alternative site review matters --  
12 Part A being: Staff saying, "Now that we've been thinking  
13 about it, it seems to us that this is the sort of policy  
14 statement which the Commission might eventually consider, and  
15 we'd be interested in comments on it."

16 Part B of the NUREG is: To hear a discussion of  
17 some of the substantive issues within the staff, including a  
18 number which we think the Commission ought to pay attention  
19 to and on which we'd be glad to have public comment. But it  
20 seems to me, from the standpoint of putting the material in  
21 163A and B out, and saying: Hey, there. People are interested  
22 in this subject. Let us know what you think.

23 But it need not necessarily go as a proposed  
24 Commission policy statement; but could in fact be totally a  
25 staff document. You know, the eventual goal of the thing could

1 be made quite clear in the introductory remarks.

2 I make the comment only because it seems to me that  
3 Commission input and agreement that it constitutes a policy  
4 statement which the Commission is willing to expose as its  
5 own product, even for public comment, seems to me likely to  
6 require, as I say, several meetings and discussion and circula-  
7 tion of papers and head scratching.

8 I can see the process at the Commission level  
9 stretching, in view of the pending holidays, two months down  
10 the line.

11 On the other hand, as a staff statement of current  
12 thoughts and directions on alternative site review matters  
13 published with a view to informing people where the staff  
14 currently stands and is thinking about, it seems to me perhaps  
15 publishable, as fast as you can write the introductory words  
16 and run the printing machines.

17 And I'm not sure what the Commissioners feelings  
18 about such a course might be --

19 COMMISSIONER AHEARNE: Well, I guess first I would  
20 prefer to give them a chance to at least cover some of the  
21 issues part of the paper. Then I'd have to rethink that policy,  
22 rather than going out in any guise at this stage with some-  
23 thing called a "policy document."

24 CHAIRMAN HENDRIE: I promised in the beginning I  
25 wouldn't ask you to vote, so I indeed won't ask you to vote

1 even on that matter.

2 COMMISSIONER GILINSKY: I understood Howard had  
3 been saying that this would not provide more specific guidance  
4 than the Seabrook decision, or significantly --

5 MR. SHAPAR: The policy statement might be.

6 COMMISSIONER GILINSKY: Therefore, what is the point  
7 of going forward with it?

8 CHAIRMAN HENDRIE: What about the 163 B discussions?

9 MR. SHAPAR: That flushes out the issues and gives  
10 us the pros and cons. It's useful in getting people to focus  
11 on the issues and decide which way they want to go.

12 I guess my own feeling is that, in terms of the  
13 average difficult policy decision, there's probably been more  
14 generated on this, more thought given to it, and I'm for  
15 accelerating the process and coming to grips with decisions on  
16 these issues, and going out with rule making.

17 CHAIRMAN HENDRIE: So your aim would be: How much  
18 more work on this thing, 163 A and B, are needed before they're  
19 ready to constitute a basis for a rule making.

20 I'm asking for comments.

21 MR. SHAPAR: Of course the staff was asking you for  
22 your input on some of those substantive decisions.

23 CHAIRMAN HENDRIE: But of course the Commission has  
24 to indicate some directions before the staff can go forward.

25 MR. SHAPAR: It doesn't have to be that way. One



1 option is that you tell the staff to come up with recommenda-  
2 tions as to how they would go on these issues. And if there  
3 are dissenting views on it, that's fine, too.

4 COMMISSIONER GILINSKY: Do you want to go forward  
5 with the rule making?

6 MR. SHAPAR: It could go either way.

7 COMMISSIONER GILINSKY: And then move into a rule  
8 making?

9 MR. SHAPAR: Yes. Go out and get public participa-  
10 tion on the proposed rules.

11 COMMISSIONER GILINSKY: How rapidly could you go  
12 forward on that?

13 MR. SHAPAR: That's where we differ. I say we  
14 could do it in six months.

15 COMMISSIONER GILINSKY: Completing it? Or starting  
16 it?

17 MR. SHAPAR: A proposed rule before the Commission  
18 in six months; but that depends on whether or not --

19 MR. SMITH: I'll agree with you on that.

20 I was thinking, "effective rule."

21 MR. ERNST: We're talking about an effective rule  
22 in December.

23 MR. SMITH: I think we could meet it, if we really  
24 break our necks.

25 CHAIRMAN HENDRIE: That's the normal state of

1 activity in the staff, isn't it?

2 MR. SMITH: There is a limited number of items on  
3 which you can do that, however.

4 COMMISSIONER GILINSKY: It seems like a reasonable  
5 approach.

6 COMMISSIONER KENNEDY: It seems so, to me.

7 CHAIRMAN HENDRIE: Let me avoid developing a  
8 decision, however, on that procedural aspect and ask --

9 MR. SMITH: I'm finished. Let's go with Mel.

10 CHAIRMAN HENDRIE: I was about to go forward and  
11 cite some issues. Let's hear sort of the introduction to that  
12 subject.

13 I think I ought to reschedule this subject at a  
14 fairly early time before it decays from our memories, and then  
15 we'll try to deal with the procedural questions, and the rule-  
16 making policy statements.

17 Let the staff publish what they have, and comment,  
18 or whatever. Okay?

19 Mel?

20 MR. ERNST: A little bit of the Commission's  
21 pleasure in this.

22 (Slide.)

23 What I had originally planned on doing was lightly  
24 covering the issues in the information paper which you have  
25 before you, and then concentrate more on the questions raised

1 in the policy paper regarding whether, or how to issue a  
2 policy statement. That was the original intent.

3 CHAIRMAN HENDRIE: I've got a notion you're not  
4 going to get much more than the first summary part of the  
5 questions, by the time we get a few questions along the way.

6 And I think you'll have to develop, and both review  
7 that, and pick up the rest of the argument at a subsequent  
8 meeting, because I am going to bang the gavel promptly at high  
9 noon.

10 You've sort of got 20 minutes.

11 MR. ERNST: Would the Commission find it more  
12 profitable to just have an overview of what's in the information  
13 paper, and not focus on the possible changes, or questions  
14 raised with regard to the policy statement?

15 CHAIRMAN HENDRIE: I would think so, at this stage.  
16 Because I think the other business comes appropriately when we  
17 have the time at the next meeting. Hopefully, we can discuss  
18 some of the procedural aspects that it will be necessary to  
19 cover those subjects at that time.

20 MR. ERNST: All right.

21 As an opening statement, I think it's clear that  
22 consideration of alternatives is the linchpin of NEPA. The  
23 particular questions before the Commission right now regarding  
24 alternative sites, however, really is about 100 percent of  
25 NRC's siting policy.



1           It's -- the detailed investigations of impacts  
2 normally reflect on changes in operating procedures, changes in  
3 design at the site, or a compensation of impacts, rather than  
4 change in the site.

5           So basically from a siting standpoint, we look at  
6 the alternatives as about 100 percent of the siting policy, as  
7 far as NRC is concerned. So it is extremely important.

8           We have a number of questions before us and issues,  
9 and it is a complex paper -- somewhat a complex paper -- because  
10 the subject is complex.

11           In my view, however, there are a couple of critical,  
12 overriding questions that I think we should keep in mind as we  
13 go through.

14           One is basically the role of the NRC in this process,  
15 and this involves questions as to how independent should our  
16 reviews be? Or how much should we rely on a so-called "QA  
17 check" of applicant information.

18           What kind of scope and depth should the staff  
19 employ in the investigation of the alternative site question?

20           Second -- again in my view -- the overriding criti-  
21 cal question that permeates the entire process is the use of  
22 standards, and perhaps threshold criteria in the implementation  
23 of our review process.

24           And this kind of question raises itself in a number  
25 of areas. The definition of the "region of interest" can

1 you use, threshold kinds of criteria, or importance criteria,  
2 or some kinds of standards to reasonably define the area;  
3 the type of screening methodology; the implementation of the  
4 obviously superior criterion. When is an impact sufficient  
5 enough to alter the standard?

6 The definition of the NRC interest in the site  
7 selection process, as opposed to the comparative evaluation of  
8 sites after the candidates are identified.

9 The question of reevaluation of the alternative  
10 site question at a later time; and how much information is  
11 enough?

12 All these, I think, tie very closely to the kinds  
13 of threshold criteria that the Commission might feel appropriate  
14 in making decisions in this area.

15 There's no real problem with technical evaluation  
16 of information. The real problem comes in the thresholds of  
17 concern and how we make decisions in the area.

18 The first slide --

19 (Slide.)

20 -- was the original scope of the presentation,  
21 which will be slightly amended now. What I will cover this  
22 morning, very briefly, is the four issues addressed in Mr. Chilk's  
23 memo of August 15, where the Commission asked for a start of  
24 discussion on certain issues critical to the alternative-site  
25 question.

1           Also, I will give a brief overview of three other  
2 issues that were identified by the staff. The mechanism for  
3 this identification, I might state, was that representatives  
4 of standards NRR and EOD form what you might call a  
5 task force, and very productively, in my view, generated the  
6 information paper.

7           So in all, there are seven issues that the staff  
8 feels are fundamental to the particular question at hand.

9           I was also going to cover the questions identified  
10 in the policy paper which bear on whether or how to issue the  
11 policy statement, but I will let that pass this morning. There  
12 may be a more opportune time to address that.

13           Next slide, please.

14           (Slide.)

15           The four issues that were addressed by the Commis-  
16 sion in the August memorandum are on this particular slide. And  
17 I'll briefly talk your way through the four.

18           I will not be talking about the alternatives that  
19 the staff developed, or the detailed considerations that are  
20 important to the consideration of alternatives -- pros and  
21 cons, things of that nature.

22           I will try to set the stage, however, as to the  
23 subissues involved in each one of these, and a general staff  
24 consensus, where there was a consensus, as to staff feelings in  
25 the area.



1 In the "obviously superior" area, issues appeared to  
2 be the question asked by the Commission: When is a site  
3 "obviously superior"?

4 As I mentioned before, I think this is very closely  
5 tied to threshold criteria for decision making. Also in the  
6 staff's view, the question of use of the term "obviously  
7 inferior quality" I think is important to this particular  
8 question.

9 The rationale behind the generation of this term  
10 is basically what is likely to turn you off about a site, is  
11 some identified poor characteristic of that site. And if you  
12 find no poor qualities on a site, you're certainly less likely  
13 to find an alternate that's "obviously superior."

14 So that was sort of the philosophical train of  
15 thought that the staff has followed in this area.

16 Another subissue is a question of: When should the  
17 NRC consider alternate sites, as opposed to those developed by  
18 the applicant in his site-selection process?

19 COMMISSIONER GILINSKY: I must ask you something.  
20 How frequently does this process result in a site being picked  
21 other than the one that the applicant selected?

22 MR. ERNST: I think -- if anybody can refresh my  
23 memory, I'd appreciate it, in the room. I don't think it's  
24 happened more than a couple of times.

25 COMMISSIONER GILINSKY: But that's pretty clearly a

1 matter of population density, isn't it?

2 But let's say, apart from population density --

3 MR. GOSSICK: There was a Puerto Rican reactor,  
4 wasn't there?

5 MR. SHAPAR: Seismically.

6 MR. ERNST: Definitely.

7 COMMISSIONER GILINSKY: So in fact, environmental  
8 conditions, other than population, have never played a role in  
9 shifting the site?

10 MR. ERNST: I think that's a fair statement.

11 COMMISSIONER GILINSKY: Which makes it sound like  
12 someone's turning another crank.

13 MR. ERNST: I think there's an observation to be  
14 made here. We may be skipping ahead, but let me make it.

15 It appeared to the staff, after a lot of experience  
16 in this area, that if you have a reasonably well-founded  
17 screening process, you're likely to come up with a number of  
18 sites that are, one might say, "functionally or environmentally  
19 rather equivalent."

20 And it's rather difficult to find substantial  
21 differences. And that assumes that a reasonable site-selection  
22 process has been employed.

23 There are many selection processes the staff has  
24 found that may well yield good products. So it's difficult to  
25 say that this is the stile crank you should always turn in a

1 site-selection process.

2 So that may well be the reason why the end product --  
3 after close evaluation by the staff --has very seldom, if ever,  
4 found any substantial problems.

5 Now there have been areas where we've found problems,  
6 and there's been litigation required. Useful litigation is  
7 certainly an alternative that should not be dismissed.

8 COMMISSIONER GILINSKY: But somehow the comparison  
9 with other sites doesn't seem to play much of a role in this  
10 process.

11 I mean, either there's no problem and the applicant  
12 is always picking the right site; or we don't do much with the  
13 problem.

14 MR. SHAPAR: But it's a litigated issue, in some  
15 cases. Part of the reason for that litigation is because the  
16 ground rules are not clear.

17 COMMISSIONER GILINSKY: Now clearly we want to  
18 clarify the ground rules.

19 MR. ERNST: There's two elements of this thing, I  
20 think. One is a technical element. What I stated before is  
21 basically a technical conclusion. If you've done a reasonably  
22 responsible selection process, it's very difficult technically  
23 to perceive major differences between sites.

24 To say the submission should be at the other site --

25 COMMISSIONER GILINSKY: There's the point of the



1 "obviously superior" standard.

2 MR. ERNST: There's the procedural or legal matter,  
3 though, of proving that in a credible way. I think this leads  
4 the staff down towards the procedural approach in looking very  
5 carefully at the process and really worrying about how one can  
6 demonstrate that the process which has been found -- that  
7 somewhere in the woodwork there's not an "obviously superior"  
8 site.

9 That's really the crux of the problem. This proving,  
10 reasonably, that even though you can't find perhaps an  
11 obviously superior site amongst the identified candidates, that  
12 somewhere there's not one that was not overlooked.

13 (Commissioner Kennedy leaves the hearing room at  
14 11:50 a.m.)

15 MR. ERNST: As a matter of fact, we are in a  
16 statistical process. We don't look at every square mile, and  
17 neither does the applicant. We are in a screening mode, which  
18 is basically a statistical kind of process.

19 Statistically you can't say, with certainty, that  
20 there's not an "obviously superior" site that had been over-  
21 looked. So there's sort of a procedural problem.

22 COMMISSIONER GILINSKY: We do expend a great deal of  
23 effort on a process that doesn't seem to have any visible  
24 results, other than that it satisfies certain legal requirements.

25 MR. ERNST: Staff is frustrated by the same question.

1 And that is: What is a useful regulatory effort in this area  
2 that will reasonably find fault with an improper site selec-  
3 tion process, but not require extensive effort that in m  
4 cases doesn't result in changing it.

5 COMMISSIONER AHEARNE: Does the staff feel that the  
6 current process allows sites to be selected that should not be?

7 MR. ERNST: The current process? I do not believe  
8 so.

9 COMMISSIONER AHEARNE: So that you're saying that  
10 staff's concern that you're just describing is more because  
11 the process is cumbersome, and perhaps requires too much review,  
12 or too much procedure, without any significant benefit?

13 MR. ERNST: That's certainly a consideration. The  
14 staff feels -- at least technically -- sort of compelled,  
15 because of the process, to demonstrate superiority to the  
16 proposed site, which is difficult to do.

17 Many times we get into a trap like that. In  
18 "functionally equivalent" or "environmentally equivalent" sites,  
19 you're almost led to try and demonstrate why the proposed site,  
20 if it's rational to do so, is better.

21 But typically speaking, maybe in 5 or 6 total  
22 candidates, including the proposed site --

23 COMMISSIONER GILINSKY: But the standard is: You  
24 wouldn't pick another one unless it were.

25 MR. ERNST: But I'm just saying that past practice

end #4

beg #5

1 has sort of led -- and it's frustrating.

2 COMMISSIONER BRADFORD: What kind of a sense do  
3 you have of a difference in having an alternative process out  
4 there has made in the applicant's own internal procedures?

5 MR. ERNST: I think I have not been that close with  
6 the specific casework. Maybe an observation can be made by  
7 people who have.

8 My personal perception is that NEPA has made a  
9 difference; that we are seeing better quality sites than we  
10 were seeing perhaps 10 years ago.

11 I think there has been an impact.

12 COMMISSIONER GILINSKY: I would think that there  
13 would be an impact.

14 My question is: Is it in proportion to the amount  
15 of effort expended? In other words, we go to great lengths  
16 to examine sites and, you know, in great detail, and yet the  
17 result seems to be that the original site is chosen every time  
18 except for one or two cases where population density affected  
19 the choice.

20 MR. ERNST: Some of these areas -- if I'm saying  
21 things that people in the room disagree with, I think they  
22 should speak up, because I'm a little bit further afield.  
23 But I do feel that NEPA has been good for the site-selection  
24 process, and we are seeing better sites.

25 I also think, personally, that you can't fall back



1 too far in our regulatory oversight functions. Otherwise, the  
2 gains that have been made in past years will be lost.

3 So I think there is a responsible job that can be  
4 performed by a regulatory agency in this area. Just exactly  
5 what that job is, and how to implement it, is a good question.  
6 I think that's the one before us.

7 What is the ratio of staff and contractor --

8 COMMISSIONER GILINSKY: Just how ought we to go  
9 about our business in examining these choices.

10 MR. ERNST: That's right. I think we're at an  
11 opportune time to do this. We've had seven years' worth of  
12 experience under NEPA. There is a lot to look at.

13 A lot of experiences have been had, and I think it's  
14 time to take stock and see what we've done, and see what's use-  
15 ful or not useful.

16 MR. SHAPAR: To answer your question, alternative  
17 site reviews are a rather small fraction of the total NEPA  
18 review estimates performed by the staff.

19 MR. ERNST: Another good point. We estimate probably  
20 2 percent or so of the pages, for example, if that's a measure,  
21 of the environmental statement; and the bulk of it --

22 COMMISSIONER GILINSKY: -- goes on that particular  
23 thread.

24 MR. SHAPAR: As a detailed look at that.

25 COMMISSIONER GILINSKY: As the particular, yes.

1 COMMISSIONER AHEARNE: Many times in the discussion  
2 of the technical --

3 CHAIRMAN HENDRIE: What fraction of this sort of  
4 litigation does it represent, out of the total NEPA load?

5 MR. SHAPAR: I guess somewhere between 10 and 12  
6 percent. That's what I would guess.

7 COMMISSIONER AHEARNE: On the technical side, we are  
8 often told that the staff does extensive work with the appli-  
9 cant, and resolves a number of issues during the development of  
10 the plant design, prior to filing for the license or construc-  
11 tion permit.

12 One of the points that's being made is that many  
13 times the applicant's original proposal is modified in this  
14 process. Does that occur also in the siting? Or does the  
15 applicant come in with: Here is the site we want to place,  
16 and there is not that type of modification of proposed site?

17 MR. ERNST: Do we understand the question talking  
18 about before docketing? Or are you talking about before  
19 issuance of the construction program?

20 COMMISSIONER AHEARNE: Before docketing.

21 MR. ERNST: Before docketing, there is little if any  
22 interplay. The interplay is more on an informational base  
23 coming in, and here's the site. Staff is taking some initia-  
24 tives in this area, too, once we find out about a pending  
25 application that we feel, from a community-impact standpoint,

1 this might be a good time to get out and start talking to the  
2 community to let them know what we do, how we do it, what the  
3 kinds of impacts that you might expect from the community  
4 standpoint. But that's about all.

5 COMMISSIONER AHEARNE: But you don't then have the  
6 situation where the staff may have convinced the applicant  
7 to use an alternate site, prior to that actually becoming any  
8 type of formal procedure?

9 MR. ERNST: We do have discussions with the appli-  
10 cant, usually before he comes down. And there are some cases  
11 where a site may have some untoward characteristics, and the  
12 applicant may well consider an informal staff viewpoint in this  
13 area before filing.

14 MR. SHAPAR: I note that that's one of the elements  
15 in the siting bill. Of course, it's open to advanced planning.  
16 It's been sort of an ethic that's been pushed for years,  
17 with no discernable results in terms of that process being  
18 pushed through.

19 CHAIRMAN HENDRIE: It seems to me that, although we  
20 have not -- we've only broached the first of several issues,  
21 summarized, the clock nevertheless advances to a point where  
22 discussion seems to me to have reached a stage where if it  
23 goes on and on we'll have a severely shortened chance to  
24 tend to some things and eat some lunch.

25 I think we ought to adjourn at this point, and take



1 this conversation up on a rescheduled basis, and get it on the  
2 agenda fairly soon.

3 (Whereupon, at 12:00 o'clock, the meeting was  
4 adjourned.)

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