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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

COMMISSION MEETING

Licensing Reform

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

Thursday, 20 October 1977

The meeting in the above-entitled matter was convened,
pursuant to notice, at 9:45 a.m.

BEFORE:

- Chairman Joseph H. Hendrie
- Commissioner Victor Gilinsky
- Commissioner Richard T. Kennedy
- Commissioner Peter A. Bradford
- Mr. Martin Malsch, OELD
- Mr. James L. Kelley, Assistant General Counsel
- Mr. William J. Dircks
- Mr. Edson G. Case
- Mr. Albert Kenneke, Office of Policy Evaluation

The initials appearing in the
lefthand margin, i.e., WW and JB
indicating corrections, are those
of Wm. White and Jake Brown
Office of the Secretary.
Reviewed 12/5/78

P R O C E E D I N G S

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CHAIRMAN HENDRIE: Let's see, we have a quorum.

Why don't we go ahead. This is another meeting in the long series on licensing legislation. We will run until about 11:30 and then break and come back to it tomorrow morning.

We've gotten up to, what, page 21.

We've got papers stacked up on the right. If we can find page 21. Yeah, we were in the midst of this section.

MR. MALSCH: We had reached up to but didn't quite get to number 3 at the bottom of the page.

CHAIRMAN HENDRIE: Yes. Okay. We had already decided.

COMMISSIONER KENNEDY: You're on page 34?

CHAIRMAN HENDRIE: We're about to take a final vote on the amendments as --

COMMISSIONER KENNEDY: Great. I have a list of ayes.

CHAIRMAN HENDRIE: We have already decided that in terms of the notice time specifications which run throughout this section, we would go back to an outline more similar to the one that we had previously. Typically, 180 days on everything except an amendment where there was a good reason to keep it at 30 and even to post notice, as we do now, where no significant safety issues arise. We decided, among other

1 matters, we decided to strike the word "factual" matters as
2 a limitation, not out of doubt of the merits of dealing with
3 factual matters, but out of doubt of our ability to define
4 it adequately, I guess.

5 And also we're going to delete, let's see, the
6 exemption for matters in state proceedings?

7 MR. MALSCH: Right.

8 CHAIRMAN HENDRIE: Okay. So now, in part, we've
9 gotten to the bottom of page 21, but in part, we've gone
10 beyond it.

11 MR. MALSCH: That's right.

12 CHAIRMAN HENDRIE: So, okay. Let's proceed now
13 with the other items which differ in this hearing scope
14 section from our previous draft language.

15 MR. KELLEY: Would this be the place to put in
16 some explicit language that this does not apply to the early
17 planning stage, this foreclosure of relitigating matters?

18 MR. MALSCH: Well, I think that you're already
19 covered it. If you take out "or a state," I think that that
20 takes care of it.

21 CHAIRMAN HENDRIE: Right. I think that that was
22 the --

23 MR. MALSCH: Two issues arise immediately because
24 of the language at the bottom of page 21. First of all, this
25 is a so-called track 3 hearing scope, where your reference

1 ^{preapproved}
(inaudible) site and design, and they confine that in this
2 version, again, to thermoneutron power generation facilities
3 versus our production or utilization of sets of demonstration
4 projects.

5 So, again, they have taken out of this so-called
6 track 3 breeder reactors, research reactors, reprocessing
7 plans, enrichment plants.

8 COMMISSIONER KENNEDY: I keep being afraid that
9 we're not going to license research reactors at all any more
10 if we keep pursuing this through the bill.

11 MR. MALSCH: We're safe in that regard because they
12 haven't done that for the other crucial sections.

13 COMMISSIONER KENNEDY: Okay, I see.

14 CHAIRMAN HENDRIE: Let's see, for reasons of a
15 little greater flexibility, we retain production utilization
16 facilities in this language, and that's the way it's read
17 in previous drafts going back several years, I would assume.

18 COMMISSIONER KENNEDY: From the beginning.

19 CHAIRMAN HENDRIE: Inclination of the Commission?

20 COMMISSIONER KENNEDY: I'd put it in.

21 CHAIRMAN HENDRIE: Suggest P and U.

22 COMMISSIONER KENNEDY: P and U except for now.

23 CHAIRMAN HENDRIE: Instead of thermoneutron.

24 It would get to the point where we don't have any more
25 thermoneutron --

1 COMMISSIONER KENNEDY: Thermoneutron (inaudible).

2 CHAIRMAN HENDRIE: Yes.

3 COMMISSIONER GILINSKY: It seems to me that one
4 of these (inaudible) quite true of production and utilization
5 facilities.

6 CHAIRMAN HENDRIE: It's at least classic.

7 COMMISSIONER KENNEDY: What is now an enormous
8 body of law which says what it is --

9 COMMISSIONER GILINSKY: The only person who knows
10 is Joanna Becker, and she's not even here.

11 (Laughter.)

12 CHAIRMAN HENDRIE: I know her address in Vienna.

13 COMMISSIONER KENNEDY: I spoke to her and she
14 indicated that she was free at any time to provide advice,
15 should we ask for it. And she guaranteed that it would not
16 be a conflict of interest.

17 CHAIRMAN HENDRIE: Any inclination to leave thermo-
18 neutron or go back to P and U does save us from having to
19 exclude research reactors.

20 COMMISSIONER GILINSKY: Well, it does sort of
21 bring in fuel cycle facilities. Let's think about that. Does
22 that pose any problem or does that change the rules? I
23 guess it would change the rules of the construction permits.

24 MR. MALSCH: Well, the question is whether you'd
25 expect to see some coming in for early site permits or

1 standardized designs.

2 MR. CASE: Or if you combine CP and OLs for
3 reprocessing plants and enrichment plants.

4 CHAIRMAN HENDRIE: Well, I think that there's
5 certainly merit in early site reviews for a facility of that
6 kind for just the same reason that there's merit in an early
7 site review for the power-generating facilities.

8 COMMISSIONER GILINSKY: Well, what you're saying
9 is that the hearing wouldn't be mandatory. Does anybody
10 want to basically (inaudible)

11 MR. MALSCH: Well, that's true generally in the
12 bill, as amended. The difference would be that if you include
13 our language as opposed to the DOE draft language, you end
14 up with a narrower scope of hearings than CPOL stages than
15 you would ordinarily have, and that's to take account of the
16 fact that you preapproved the site and the plant design.

17 MR. CASE: Of the full scope of this.

18 MR. MALSCH: Yes.

19 CHAIRMAN HENDRIE: I'd recommend that we use the
20 production and utilization, and suggest it not as a table-
21 pounding matter but --

22 MR. CASE: Well, we do have research reactors
23 that have combined -- the only ones that really have the CP
24 and OL combined, ^{is the AGR 201.} (Inaudible).

25 COMMISSIONER GILINSKY: At the same time, you're

1 not opposed to not have pre-approved sites?

2 MR. CASE: No, but unless you've got research
3 reactors in here that wouldn't permit a combined --

4 MR. MALSCH: No, this is just a track 3. We're
5 using the pre-approved site and a pre-approved design.

6 COMMISSIONER BRADFORD: Why don't you say,
7 thermoneutron power generation facility or research reactor?

8 MR. MALSCH: You could ^{just use utilization} ~~(inaudible)~~ facility
9 other than demonstration projects. That would, well --

10 COMMISSIONER BRADFORD: Well, if you don't
11 really need it for a research reactor, then I don't see what's
12 wrong -- yeah, I think realistically nobody's going to be on
13 track 3 for a fuel cycle facility for quite a while. But I
14 don't know why we'd want to raise that spectre.

15 MR. KENNEKE: You're not going to have a designed
16 approved unless you require both site and design.

17 COMMISSIONER GILINSKY: Well, you know, somehow
18 speeding up the licensing of reprocessing facilities raises
19 all kinds of questions, whether or not it has anything practical
20 significance. And if nothing else, it's going to get a lot
21 of people excited.

22 CHAIRMAN HENDRIE: Well, I don't mind.

23 Let's see --

24 MR. MALSCH: We could make it, utilization facility,
25 except demonstration projects. That would include

1 reprocessing plants and the enrichment plants and would include
2 in all reactors except demonstration projects.

3 MR. KENNEKE: Somewhere you're going to need to
4 describe all of these statements.

5 MR. DIRCKS: Could you have a demonstration
6 project in a plant which isn't a standardized facility?

7 MR. MAISCH: I can't imagine ^{it has} ~~(inaudible)~~.

8 COMMISSIONER GILINSKY: Oh, I see, then the
9 facility design is approved?

10 MR. MAISCH: Right.

11 COMMISSIONER GILINSKY; So, suppose you just
12 said utilization facility.

13 MR. MAISCH: You could do that.

14 COMMISSIONER GILINSKY; That would seem to deal
15 with all.

16 CHAIRMAN HENDRIE: Let's see. There's nothing
17 in this language which prevents you from doing, from using
18 the early site review and getting a site permit.

19 MR. MAISCH: No.

20 CHAIRMAN HENDRIE: And saying -- now what I'm
21 talking about for this site is a fuel cycle facility with
22 a processing plant, but you aren't going to have a pre-approved
23 standard design to slap on it eventually, but you would like
24 to get a site permit for it.

25 Can that be done?

1 MR. MALSCH: Well, again, this language, when you
2 get to the site permit section, again, I think it talks about
3 thermoneutron.

4 CHAIRMAN HENDRIE: Okay. So that would be the
5 place to broaden the language to allow the early site review
6 of these other facilities in this place -- we're talking about
7 the track 3, the expedited track 3.

8 In that case, why don't we just leave it?

9 COMMISSIONER KENNEDY: Or change it to utilization
10 facility.

11 CHAIRMAN HENDRIE: Oh, all right.

12 COMMISSIONER KENNEDY: Which would take care of
13 any kind of a reactor.

14 MR. CASE: But I also think that you would change
15 the language described on page 15 to whatever ^{you decide on here.} ~~(inaudible)~~.

16 (Simultaneous discussion.)

17 COMMISSIONER GILINSKY: Well, that problem is
18 raised by any kind of reactor.

19 Marty, is a reactor a production facility, too?

20 MR. MALSCH: If it's a production reactor, like
21 a Hanford would be --

22 COMMISSIONER GILINSKY: But every reactor produces
23 plutonium.

24 MR. MALSCH: Yes.

25 COMMISSIONER GILINSKY: That doesn't make it a

1 production facility?

2 MR. MALSCH: No. It's got to be designed for the
3 production of -- its principal purpose --

4 COMMISSIONER GILINSKY: Here's a real opportunity.
5 (Laughter.)

6 COMMISSIONER GILINSKY: Just start naming things.

7 MR. MALSCH: There are definitions in part 50
8 that must have been in there since 1954. They pretty well
9 understood what's what.

10 COMMISSIONER BRADFORD: But nobody can tell me
11 what the admiral's up to in Pennsylvania under those definitions.

12 MR. MALSCH: We've (inaudible) the utilization,
13 so at least they'll know whether it's thermal or not.

14 COMMISSIONER BRADFORD: That had to go through
15 (inaudible).

16 But you also don't know whether it's production
17 or not.

18 MR. MALSCH: No, it's the utilization facilities.

19 COMMISSIONER BRADFORD: Why isn't it production?

20 MR. MALSCH: It's built for power.

21 COMMISSIONER KENNEDY: Its purpose is to produce
22 power.

23 COMMISSIONER BRADFORD: But it's also a breeder.
24 So its purpose is also to produce fuel.

25 MR. MALSCH: We license a breeder reactor (inaudible)

1 as a utilization facility.

2 COMMISSIONER GILINSKY: A reprocessing plant is
3 a production facility?

4 MR. MALSCH: A production facility and an
5 enrichment plant is a production facility. The Hanford or
6 Savannah type production reactor is a production facility.

7 COMMISSIONER BRADFORD: If the Fermi 1 was a
8 utilization facility, why don't we stay with the language that
9 you've got right here?

10 COMMISSIONER KENNEDY: Fermi 1 was a utilization
11 facility?

12 MR. MALSCH: It was a breeder-reactor.

13 COMMISSIONER GILINSKY: Well, I guess the argument
14 would be that Fermi 1 could never qualify under this section.

15 MR. MALSCH: That's right. It wouldn't be a
16 thermalneutron power generation.

17 COMMISSIONER KENNEDY: That's right, it's not.

18 COMMISSIONER GILINSKY: I guess that I just find
19 thermoneutron power generation facilities sort of an awkward
20 term, but maybe that describes all that we want to do.

21 COMMISSIONER BRADFORD: I don't know enough about
22 it to know whether that's an awkward term or not, since it's
23 not one you run across in most schoolbooks.

24 MR. CASE: That's one definition.

25 COMMISSIONER BRADFORD: It just seems to me to be

1 unnecessary to appear to extent this action, regardless of
2 what the technical realities are at the moment.

3 COMMISSIONER GILINSKY: Well, we're really talking
4 about white water reactors and conceivably (inaudible).

5 COMMISSIONER KENNEDY: Can do a thermonuclear
6 power generation facility?

7 COMMISSIONER GILINSKY: Yeah.

8 MR. DIERCKS: It would have to be a standardized
9 design.

10 COMMISSIONER BRADFORD: Well, it looks like it'll
11 be around for a while.

12 CHAIRMAN HENDRIE: For the near term it's certainly
13 true that we're talking about LWOs only and the broadening
14 for gas reactors to thermal power generation facilities is
15 okay -- I bet you're right; the act will be around.

16 There is a coupling between -- it has to be
17 a standard design to go into this section and that provides
18 a very considerable protection. Not only does it have to be
19 a standard design, but it has to be one approved by the
20 Commission under rules that we would presumably make.

21 I'd be inclined to say a utilization facility,
22 but I'm not very strong on it.

23 COMMISSIONER KENNEDY: I would simply, because I
24 hate to introduce, unless there's some very, very important
25 reason to do so, new language, given the history of 20 years

1 or 25 years, of the legislation which this is amending. One
2 doesn't want to just change language that has specific
3 understood meaning in all manner of litigation that's gone
4 before, all manner of regulations that now exist, unless there's
5 really some cogent reason to do so. So I'd stick with words
6 like "review."

7 COMMISSIONER BRADFORD: I'd agree with that in
8 principle, but the substantive question is whether, in fact,
9 you want to include everything that the term "utilization" --
10 I'm not suggesting changing the definition of "utilization
11 facility." I'm just raising the question of whether utilization
12 facility is really the term that describes what we want to
13 extend track 3 to.

14 I agree with you, Joe. The concern isn't a
15 very practical one because I don't think that standardized
16 breeder reactors are (inaudible).

17 CHAIRMAN HENDRIE: Yes. I look to the standardiza-
18 tion to the fact that the design has to be an approved
19 standard design as the control on what comes down this track,
20 rather than the enumeration of the kind of facility that's
21 considered.

22 MR. KENNEKE: That's where you had limitations
23 on thermoneutron in the standard design section.

24 That's pushing them back. That would control
25 whatever went through there --

1 COMMISSIONER BRADFORD: It's that limitation stage.
2 But I take it if we're removing thermoneutral because we
3 don't like the term, it isn't going to stay in 194 or (inaudible)

4 CHAIRMAN HENDRIE: Yes, but I think that's right.
5 I think that Peter is right. I think we'll be discussing
6 whether we want to open up theirs.

7 COMMISSIONER GILINSKY: Well, if we're keeping it --
8 if it's going to end up staying in the bill, there's no harm
9 in leaving it here.

10 CHAIRMAN HENDRIE: That's right. I think that we
11 may find that we needed some place.

12 COMMISSIONER GILINSKY: Let's leave it for a
13 moment.

14 COMMISSIONER KENNEDY: That's on page 32. It
15 says, you know, you can authorize rule-making or licensing
16 proceeding which hearing shall be (inaudible). It may approve
17 a design for thermal neutron power generation facilities.

18 Let's think about it. If it says that back there,
19 no matter what it says in this section on page 21, all you can
20 do, all you can apply this section to is the thermal neutron
21 power generation facility.

22 So it doesn't make any difference what it says
23 here.

24 So just leave it the way it was.

25 CHAIRMAN HENDRIE: Why don't we leave it as it is?

1 COMMISSIONER GILINSKY: The one on standard
2 design?

3 COMMISSIONER KENNEDY: Yeah.

4 If it says that on 32, you might just as well
5 leave it thermoneutron power generation facility here. It
6 doesr't make any difference.

7 CHAIRMAN HENDRIE: Let's leave it as a practical
8 matter. Why, that will certainly suffice for the next 3.85
9 years.

10 (Laughter.)

11 COMMISSIONER KENNEDY: That's enough for you?

12 (Laughter.)

13 CHAIRMAN HENDRIE: Okay. The next item of difference
14 in this section that we would want to --

15 MR. MALSCH: Okay. The next one is a good one.
16 They committed a blooper here. They allowed you to issue on
17 under this provision in so-called track 3 a noncombined
18 construction permit, or noncombined operating license, because
19 they say the Commission may issue a CPOL or a combined CPOL.
20 However, later on, in defining the options for hearing, they
21 forgot to pick up the noncombined licensing, with the result
22 that under the DOE draft as it presently stands, there is
23 no opportunity for hearing at all, any place on track 3 at
24 the CP or OL stage.

25 COMMISSIONER GILINSKY: That's unintended, you

1 think?

2 MR. MALSCH: I suspect that it's unintended.

3 COMMISSIONER BRADFORD: I noticed the same thing.

4 COMMISSIONER KENNEDY: How splendid.

5 (Laughter.)

6 CHAIRMAN HENDRIE: No opportunity for a hearing

7 *process*
at all. (Inaudible) and I think they've found a way.

8 How about reviewed? Does it say or till the
9 Commission review?

10 MR. MALSCH: They didn't say that.

11 CHAIRMAN HENDRIE: I guess that they leave that
12 to rule-making.

13 MR. MALSCH: It doesn't make a sense because
14 under that scheme, there's more of a review and more of an
15 opportunity for a hearing with the combined CP and OL contract
16 than there is for a noncombined CP or OL, and that makes
17 no sense at all.

18 CHAIRMAN HENDRIE: May I judge the sense of the
19 Commission is that you ought to fix that. We ought to fix it.

20 MR. MALSCH: I guess the thing to do is to make
21 it consistent for both the combined and the separate in terms
22 of the hearing opportunity, whatever *we should decide.* ~~was (inaudible).~~

23 CHAIRMAN HENDRIE: Let's see. The combined has
24 the feature, in general, that we try to erect at the point
25 where the machine is ready to go into operation and where

1 staff checks it out and we make a finding that it's built as
2 in accordance with the design we agreed to and the inspection
3 people inspect it and say it's all built and ready to go and
4 so on.

5 Now at that point for a combined CPOL, we issue
6 a notice that it's getting ready to go into operation. We've
7 extended that notice to 180 days. We offer the opportunity
8 for a hearing, but with a threshold which says new information
9 for which --

10 MR. MALSCH: New information or issue or violation
11 gives ^{rise to} ~~(inaudible)~~ the substantial issue.

12 CHAIRMAN HENDRIE: Yeah. And I think that that
13 threshold for the combined should remain in; whereas, for
14 a thing that goes CP and then OL, I don't, you know, it's
15 sort of what's different from --

16 MR. MALSCH: I think our bill had essentially the
17 same standard.

18 COMMISSIONER GILINSKY: Threshold.

19 MR. MALSCH: Threshold. For both noncombined
20 and combined under track 3.

21 CHAIRMAN HENDRIE: That's because it's a standardized
22 design?

23 COMMISSIONER GILINSKY: These are all standardized
24 designs?

25 MR. MALSCH: These are all standardized designs.

1 They have also changed the threshold here --

2 COMMISSIONER GILINSKY: Presumably, if you're
3 coming in for a separate CP, you don't have a final design.

4 MR. MALSCH: That's right.

5 COMMISSIONER GILINSKY: So at the final design
6 stage --

7 COMMISSIONER KENNEDY: You would get to litigate
8 anything which had not, you know, anything which had been
9 said, well, this is preliminary at the CP stage. You would
10 now have new information which is pertinent to safety. I
11 think that you have a free ride on that.

12 COMMISSIONER GILINSKY: You should have more of a
13 chance there than --

14 MR. MALSCH: That's right.

15 MR. CASE: By the very nature you have more of
16 a chance.

17 CHAIRMAN HENDRIE: Okay, I see. You don't need
18 a difference in the language as to the threshold, but what
19 happens is that where you've only done a preliminary design
20 in the CP stage, at the OL stage you necessarily have new
21 information which is significant to safety and just rides
22 right through the --

23 MR. MALSCH: I think beyond that in our bill, the
24 threshold at the recombined OL stage only applied if you
25 had improved final design. So it was possible under our bill

1 to get, in effect, track 3 at the CP stage because you'd
2 referenced an improved similar design. Just go back like to
3 track 1 at the OL stage because you hadn't gotten improved
4 final design, the theory being that, obviously, if you haven't
5 got an improved final design you should be able to get the
6 opportunity to litigate the final design at the OL stage.

7 COMMISSIONER GILINSKY: I can see in the profession
8 a licensing guide.

9 (Laughter.)

10 CHAIRMAN HENDRIE: I believe it'll be a success
11 with the legal profession.

12 COMMISSIONER GILINSKY: Yeah, I'm sure they'll
13 (inaudible).

14 MR. MALSCH: I think that configuration is what
15 we want, isn't it?

16 COMMISSIONER BRADFORD: Sure. That makes sense.

17 MR. MALSCH: I'd like to think that they would
18 have put that in there is they'd realized what they were
19 doing.

20 MR. KENNEKE: Marty, in effect, what you're
21 *fix is*
~~(inaudible)~~ at the bottom of page 22 just to add CP, comma,
22 OL?

23 MR. MALSCH: Essentially, that's about what it
24 amounts to. We'll have to be careful about the language,
25 but that's essentially what we would have to do.

1 CHAIRMAN HENDRIE: Okay. I think it's clear
2 that that's what we want to do. Please fix it to -- okay.

3 Now, and what else in this section?

4 MR. MALSCH: Also, in effect, expanded the scope
5 of the hearing at the CP stage in track 3, whereas we had
6 confined the hearing to special circumstances. They have
7 a much broader standard that simply talks about a prima facie
8 showing the construction end or operation would create a
9 significant risk to the public health and safety or the
10 environment, and that the issuance of the combined permit
11 license could not comply with the act or rules and regulations
12 of the Commission, which is the whole ballgame.

13 But then, again, it's cut back somewhat by the
14 probation on the relitigation.

15 The net effect is, I think, that, two things:
16 One, in our bill, certain kinds of issues couldn't have been
17 raised at all because they didn't deal with interface. Probably
18 things like financial qualifications. It was no big deal.
19 But they probably could not ^{have been raised} ~~(inaudible)~~ at all in our bill.
20 In this version they could. Secondly, in our bill, you could
21 not raise in the construction permit proceedings generic
22 issues regarding the design or issues regarding the site.
23 The proper place to raise those was in the earlier proceedings.
24 Under this version, you could raise those kinds of issues in
25 the construction permit proceeding if you met the threshold.

1 COMMISSIONER KENNEDY: The threshold being --

2 MR. MALSCH: Being prima facie showing that
3 construction or operation would create a significant additional
4 risk to the public health and safety. So it's broader. The
5 *need for* ~~(inaudible)~~ hearing here is broader than in our bill.

6 MR. KELLEY: What does happen to financial
7 qualifications?

8 MR. CASE: You don't do it in the early site
9 review, do you? You don't do it in the standardized design?
10 You do it here. The staff would do it here,
11 in any event.

12 MR. MALSCH: Yeah, in either case the Commission,
13 as an agency, would do it. But under our bill it could not
14 be raised as a hearing issue in track 3. Under this version,
15 you could raise it as a hearing issue, conceivably.

16 It also allows you, in effect, to reopen the
17 site permit and the manufacturing license or rule approval.

18 COMMISSIONER KENNEDY: It ~~(inaudible)~~ the
19 effect of going through all of those proceedings in the first
20 place, or could.

21 MR. MALSCH: It could. I think the effect of
22 it is since it's confined to -- you're talking about significant
23 risk. The difference is under our version, if someone complained
24 about a significant risk, it would go to the director of NRR
25 to institute a proceeding to amend the site *permit or* ~~(inaudible)~~

1 manufacturing license where the Commission has more control
2 and discretion. In this version it would go to the tribunal,
3 presiding, or licensing board and it would have to be dealt with
4 as a hearing issue.

5 COMMISSIONER KENNEDY: Let's face it. It's
6 going to go to that tribunal whether we like it or not.

7 CHAIRMAN HENDRIE: Peter, this is one that we
8 discussed with them. You remember when we were running down
9 *Handling's*
10 (inaudible) chart and we agreed on balance that it was a toss-up
11 which one of these versions was likely to be most workable
12 and reasonable to all parties, and I think we came down --
13 I've got their version circled, so I think we must have thought,
14 well, on balance, that, you know, if they can cross the
15 threshold, then the broader, you know -- it might be a fair
16 proposition to --

17 COMMISSIONER KENNEDY: Who defines "significant
18 risk"?

19 MR. MALSCH: The Commission would define it.
20 Of course if it's subject to review, in this case the courts
21 would define it.

22 COMMISSIONER KENNEDY: That's exactly the point.

23 *an otherwise*
24 MR. KELLEY: (inaudible) significant change in the
25 thrust.

26 COMMISSIONER KENNEDY: That's right. Exactly.

27 So if you're going to introduce that question

1 essentially twice, you're going to litigate the whole business
2 at least twice.

3 MR. MALSCH: Well, remember now that the prohibition
4 of litigation also applies here. So for practical purposes,
5 we're talking about new information since the prior proceeding.

6 COMMISSIONER KENNEDY: But also, haven't we
7 talked about the necessity of introducing information at
8 the appropriate point? And not having done so, stops you
9 from doing it later.

10 CHAIRMAN HENDRIE: But that applies.

11 COMMISSIONER KENNEDY: That doesn't apply.

12 CHAIRMAN HENDRIE: Yes, it does.

13 MR. MALSCH: No, that would still apply here
14 because the general prohibition --

15 CHAIRMAN HENDRIE: That's a general prohibition.

16 COMMISSIONER KENNEDY: Now let me suggest that
17 the whole thing, it seems to me, is increasingly confusing.
18 What, then, is the real effect of this provision?

19 MR. MALSCH: It allows you -- let's say there's --

20 COMMISSIONER KENNEDY: Find me a case in which
21 this would arise.

22 MR. MALSCH: Okay. Someone comes across a new
23 issue or a new bit of information about the standardized
24 design that applies generically.

25 COMMISSIONER KENNEDY: Which first he -- well,

1 if it applies generically -- it's a new issue he didn't know
2 anything about at the earlier point but which does apply
3 generically, and which is determined by somebody to be
4 significant and involve a significant risk.

5 MR. MALSCH: Now under our bill --

6 MR. CASE: Then he can litigate it.

7 MR. MALSCH: Now under our bill, the only way
8 for him to litigate that would be to go to the director of
9 NRR or the Commission and say, hey, institute a proceeding
10 to amend your earlier rule approving standardized design.
11 He couldn't raise it before the board. Under this bill, he
12 could raise it before the board.

13 COMMISSIONER KENNEDY: If he went to the director
14 of NRR, under our bill, it would not interfere with the
15 licensing process which would be proceeding, these proceedings,
16 whichever ones they were, would be going on.

17 MR. MALSCH: That's true.

18 COMMISSIONER KENNEDY: But his relief would be
19 essentially the same.

20 MR. MALSCH: That's right. Well, I think the
21 Commission would be pretty hard pressed to issue the construction
22 permit under track 3 with a significant unresolved issue
23 about the designs still pending. But they would be separate
24 proceedings, in theory, going along in parallel.

25 COMMISSIONER KENNEDY: Yeah. As I say, the relief

1 would be the same.

2 MR. MALSCH: That's right. Also, the difference is

3 COMMISSIONER KENNEDY: But the delay factor in
4 the proceeding would be less under our bill, or likely so.

5 MR. MALSCH: That's not clear. It's hard to say.

6 CHAIRMAN HENDRIE: I don't think that you could
7 go with the original, with the particular proceeding. You
8 certainly couldn't get to a decision until you had reopened
9 the generic one. Once you reopen the generic one, why, you
10 might have some trouble getting it closed.

11 MR. MALSCH: Well, I think the problem would be
12 a practical one, having the same person participate in two
13 parallel proceedings going along at the same time. I think
14 as a practical matter, you'd be pretty hard pressed to run
15 them in parallel. You'd probably end up running them in
16 series. I think what you lose in ^{the DOE} a ~~(inaudible)~~ draft is that
17 in our version, the Commission has a greater measure of
18 control over institution of the proceeding to amend because
19 it's more or less a matter of discretion to institute a new
20 proceeding. Under this version, it goes directly to the ASLB
21 and I think that the control of the process beginning is
22 a little less.

23 I think that that's really about all that you lose.

24 COMMISSIONER KENNEDY: On balance, I would prefer
25 our own proposal (inaudible).

1 I think it's marginally better.

2 CHAIRMAN HENDRIE: Yes. As I remember the
3 discussion that Peter and I had with the FEA folks, why, we
4 argued back and forth to discern the relative merits of these
5 two things.

6 MR. CASE: This would probably make me feel better.
7 Let's assume that I found a new significant safety issue that
8 changed adequacy of that rule.

9 COMMISSIONER KENNEDY: You would rather go to a
10 board.

11 MR. CASE: Well, I would be in a terrible position
12 if I was bound by the rule and the only way I could change it
13 was to go back to you in a rule-making proceeding, while at
14 the same time I've got witnesses up saying, it's all right.
15 Follow the rule. It must be all right. This gives me an
16 avenue in the proceeding that I ordinarily would not have.

17 CHAIRMAN HENDRIE: I think as a practical matter --
18 why don't we go with the DOE language on this? Okay?

19 Next item in here.

20 MR. KELLEY: Is the Chair entertaining stylistic
21 comments?

22 MR. MALSCH: I have been raising really minor
23 things.

24 CHAIRMAN HENDRIE: Why don't, yeah -- what
25 we're looking for, we've got two guys taking notes so that,

1 hopefully, the comments and decisions are being collected in
2 a way and there be a reply back to OMB and why don't you
3 feed the style stuff right into that process?

4 If we get the Commission involved with style,
5 why, that will confuse the issue probably substantially,
6 I think.

7 COMMISSIONER KENNEDY: Despite the fact that it
8 would probably improve the product.

9 CHAIRMAN HENDRIE: I wouldn't argue that those
10 things were mutually exclusive.

11 (Laughter.)

12 CHAIRMAN HENDRIE: Okay. Onward with other
13 things in this section that we're in and that we ought to
14 comment on.

15 Does that pretty well clean it up?

16 MR. MALSCH: That cleans up up to 4 on page 24.

17 CHAIRMAN HENDRIE: Okay. Now on 4, we're doing
18 what?

19 MR. MALSCH: That, I think, is interim operating
20 license, interim licensing.

21 CHAIRMAN HENDRIE: Okay. At this point we talk
22 about hearing scope and notice on interim licensing and in
23 the next one we'll get to talk about interim licenses
24 themselves. Okay?

25 MR. MALSCH: That's right.

1 CHAIRMAN HENDRIE: Okay, let's --

2 COMMISSIONER BRADFORD: Could I just ask a
3 question on page 23? We're told that a violation arising or
4 occurring after the most recent licensing action -- why is
5 that limitation there? Supposing the violation occurred before
6 the most recent licensing action and wasn't discovered until
7 afterwards.

8 Is that a possibility?

9 MR. MALSCH: I don't think so. I think they're
10 talking about, I think, of an instance in which you would
11 have an intermediate Commission proceeding between two others,
12 such as a violation of a license, ^{without raising it.} and (inaudible).

13 The theory was, what I'm really getting at here
14 is quality assurance, inspection, and so forth, at the OL
15 stage when you're talking about possible violations of the
16 construction permit, this facility hasn't been built properly.

17 That's what that was designed to get at.

18 COMMISSIONER GILINSKY: Let's see, would that get
19 picked up by significant new information? In other words,
20 suppose you discovered that some of the bases on which the
21 previous license has been granted were faulty.

22 MR. MALSCH: That would clearly --

23 CHAIRMAN HENDRIE: I would think that it clearly
24 would.

25 MR. CASE: I never understood that violation

1 thing. It's been in there for years.

2 MR. DIRCKS: I know the history. It was back when
3 the original bill was coming in, '72 or '73.

4 *Kelly*
MR. ~~MALSCH~~: It was put in there, I think, CEO
5 and (inaudible). The catch, I think we thought new information
6 was one thing, but if there was anyone who could show that
7 something happened between the construction permit and the
8 time that you could put on the operating license, that could
9 also be made an issue.

10 They were specifically concerned about quality
11 assurance problems. That was the big deal at that time.
12 Midland was still pending and a lot of concern about quality
13 assurance, and they wanted to be sure that people could raise
14 problems about the limitation of the quality assurance program
15 prior to operation. In which case, you would be talking about
16 the violations of the construction permit.

17 COMMISSIONER BRADFORD: And what is that limitation
18 on arising or occurring after the most recent (inaudible)
19 violation designed to present?

20 Might there be violations of permits or regulations
21 or orders that you want to disregard because they --

22 MR. MALSCH: That's what I'm thinking. I can't
23 think of any that would happen, would happen between the
24 CP and the OL.

25 COMMISSIONER GILINSKY: Where would you catch that?

1 On significant new information or what?

2 MR. MALSCH: You could.

3 MR. CASE: But it would be a violation.

4 COMMISSIONER BRADFORD: What I was really wondering
5 is why have the limitation? What good is it doing?

6 MR. CASE: I think the idea must have been that --
7 the one, the particular example that I had in mind surely
8 arose afterwards. It fits the quality assurance violation.

9 MR. DIERCKS: Well, I guess that it was to prevent,
10 assuming that the CP stage -- in those days, we talked about
11 CP and OL, and we thought that CP, we picked it all at the
12 CP stage and we just worried about things and why it happened
13 at the CP stage. And maybe our choice of language wasn't that
14 good.

15 COMMISSIONER GILINSKY: Let's see. Do you have
16 amendments to CPs?

17 MR. MALSCH: Yeah. Well, very, very seldom, though.

18 COMMISSIONER GILINSKY: A very recent one might
19 be a recent amendment.

20 MR. MALSCH: I think you'd have to argue --
21 well, you'd argue that the violation would have to be relevant
22 to the proceeding, I'm sure. I guess that's a possibility.
23 If there ^{were amendments} ~~was a~~ (inaudible) to CP and a violation related to
24 that.

25 COMMISSIONER GILINSKY: There's a good question.

1 I mean why do you need --

2 MR. MALSCH: Offhand, I can't think of a real
3 good reason for having the restriction.

4 COMMISSIONER BRADFORD: I guess if there is no
5 good reason, then I would suggest taking it out.

6 MR. MALSCH: It seems like when I think of it --
7 it's a violation of, let's say, a manufacturing license, which
8 is not picked up at the construction permit stage but is at the
9 operating license stage, in which case should you or should
10 you not be able to raise it?

11 Under this language, you would not be able to
12 raise it because it had not occurred since the most recent
13 licensing action under the construction permit.

14 COMMISSIONER BRADFORD: And it's a little hard to
15 call that significant new information when you have a second
16 category --

17 MR. MALSCH: Code for violations.

18 COMMISSIONER BRADFORD: Code violations. And
19 when you try to bring in a violation, you're likely to fall
20 into a violation section.

21 CHAIRMAN HENDRIE: Anybody see any difficulty with
22 striking the phrase, "arising or occurring after the most --

23 MR. CASE: I guess the only thing that I would
24 be worried about or that must be taken care of, if you had
25 said violation and you've adjudicated it --

1 CHAIRMAN HENDRIE: You now have to do it again.

2 MR. MALSCH: Again, the prohibition of relitigation
3 provision applies.

4 CHAIRMAN HENDRIE: I think that's right. I think
5 the relitigation coverage across the whole thing, you know,
6 cleans out the need for a lot of little phrases.

7 COMMISSIONER KENNEDY: (Inaudible) that there is
8 no question about its universal implications.

9 MR. MALSCH: Well, I'm sure of it. In fact, they
10 stated it twice.

11 COMMISSIONER KENNEDY: That always worries me.

12 (Laughter.)

13 COMMISSIONER KENNEDY: If they thought that they
14 were really sure, they would have left it once.

15 CHAIRMAN HENDRIE: Well, the hazard is that they'll
16 get it stated enough differently to defeat those times.

17 COMMISSIONER KENNEDY: That's exactly what worries
18 me. Once you see them restating something, you figure that they
19 weren't sure about what it was they were stating the first
20 time.

21 MR. CASE: If they did it that way, somebody might
22 take out the first one and forget the second one.

23 (Laughter.)

24 CHAIRMAN HENDRIE: Why don't we take out that
25 phrase which has been under discussion. It doesn't seem to be

1 necessary.

2 COMMISSIONER KENNEDY: It's all right with me,
3 except I guess I'm a little uncomfortable. I'm not sure that
4 we know what the effect is.

5 CHAIRMAN HENDRIE: If somebody finds a difficulty,
6 hopefully, they'll call our attention to it.

7 COMMISSIONER KENNEDY: Hopefully, if they're
8 redrafting over the next days, they can give it a little bit
9 more thought to see if there is --

10 CHAIRMAN HENDRIE: In any case, I regard it as
11 a fairly low level of complaint.

12 Further? Does that take us through the -- okay,
13 up to 4. Now here we are with interim licenses, interim OLs
14 or amendments. The notice, we had said --

15 MR. MALSCH: 30 days for initial license and no
16 specific notice period for amendments.

17 COMMISSIONER GILINSKY: I would like to see that
18 language tied more closely to "urgent public need or emergency,"
19 because up here it says the Commission may (inaudible), and
20 down here it says, let's see, the hearing shall be held --
21 whether such an action is necessary because of the urgent
22 public need or emergency.

23 That doesn't seem to be a limitation as far as
24 I can see.

25 MR. MALSCH: Well, I think the problem is they
chose to have the hearing discussion in 4 and the standards come

1 through clearly in Section 192, which follows. So the
2 standard really hits you hard in 192. It hits you a little
3 soft in 4 on page 24, although they say, the Commission may,
4 subject to the provision of Section 192.

5 COMMISSIONER GILINSKY: I see, I see.

6 MR. MALSCH: So the standards come on pretty hard
7 in Section 192 on page 25.

8 CHAIRMAN HENDRIE: Maybe what we ought to do is
9 to go call Section 192 and see if it's satisfactory and then
10 come back and see about the hearing scope and notice.

11 Now at 192 --

12 MR. MALSCH: The only problem with this is, unlike
13 our bill, it required the Commission itself to make the finding
14 about urging public ^{need or} ~~(inaudible)~~ emergency and specifically
15 ^{says} ~~say~~ the director of NRR is to make the finding on the rest
16 of the act.

17 MR. CASE: Well, the Commission itself, it
18 was in there prior to that.

19 MR. MALSCH: No. In our draft, it could have been
20 delegated. Except if a hearing were to be held, the Commission
21 itself had to preside.

22 COMMISSIONER GILINSKY: I thought that we said it
23 had to be a very --

24 MR. MALSCH: I think it was an opportunity for
25 a hearing.

1 COMMISSIONER GILINSKY: I think it ought to be
2 the Commission --

3 COMMISSIONER KENNEDY: I think that's fair.
4 We're talking about urgent public need or emergency. The
5 Commission could well devote its attention to this.

6 COMMISSIONER BRADFORD: Does the Commission offer
7 hearings to determine that.

8 MR. MALSCH: The last sentence on page 24 provides
9 for a hearing.

10 MR. CASE: The Commission has to find that thing,
11 whether there's a hearing on or not, as I read this.

12 MR. MALSCH: Yes.

13 CHAIRMAN HENDRIE: Okay. Do we have problems
14 with the configuration here where the Commission itself
15 must find that the issuance is necessary because of an urgent
16 public need or emergency?

17 In our version you said that we could have delegated
18 it.

19 MR. MALSCH: The finding, although if the hearing
20 was requested, the Commission itself had to preside at the
21 hearing.

22 CHAIRMAN HENDRIE: Okay. Is there any difficulty
23 with one of the commissioners on being compelled to make the
24 finding, the Commission make the finding?

25 I think that that was rather the sense of our

1 previous discussions on the matter.

2 MR. MALSCH: I think B is going to present the
3 problem.

4 COMMISSIONER GILINSKY: Yes.

5 MR. MALSCH: For one thing, it implies that you
6 couldn't overrule your own director.

7 MR. CASE: I wondered about that.

8 COMMISSIONER BRADFORD: That language, on its face,
9 doesn't contemplate an appeal.

10 MR. MALSCH: That's right. And also --

11 MR. CASE: It also gets mixed up in that (inaudible).

12 MR. MALSCH: Yes, because, again, they extended
13 this to include production facilities, which means --

14 COMMISSIONER GILINSKY: What do we need that for?

15 MR. MALSCH: I don't know. That's an issue that
16 I was going to raise?

17 COMMISSIONER GILINSKY: Why don't we take that
18 out? I just can't imagine --

19 CHAIRMAN HENDRIE: Why don't we combine A and B
20 and just let the Commission itself, shall be found by the
21 Commission itself the issuance necessary because of urgent
22 public need, emergency, and in all other respects other than
23 the conduct or completion of the hearing provided for.

24 MR. CASE: You should take it out, because then
25 you're, the issue about whether it meets the Atomic Energy

1 Act is before the board, and you've made a finding that it does.

2 MR. MALSCH: Yeah, that's a little funny. You
3 might say by the Commission itself, or its "delegee" or something
4 that in all other respects --

5 MR. KENNEKE: What you're saying is that you at
6 least have staff clearance, that there is no problem. Un-
7 confirmed by a board, right.

8 *Mr. Kelley*
9 COMMISSIONER BRADFORD: I don't think you ought
10 to get the Commission into deciding the compliance with the
11 rules. It looks like a nightmare to me.

12 MR. MALSCH: With the pending proceedings, it's
13 going to be very -- staff clearance, I think, is what you
14 want.

15 CHAIRMAN HENDRIE: The language in B, then, ought
16 to be --

17 COMMISSIONER KENNEDY: But think about that. It
18 may well be that they're talking about an enrichment facility.

19 COMMISSIONER GILINSKY: Why would you have to,
20 why would there be --

21 COMMISSIONER KENNEDY: I don't know. I could
22 rule it out.

23 CHAIRMAN HENDRIE: Imagine a way in which we're
24 trying to enrich things (inaudible).

25 COMMISSIONER GILINSKY: Getting back to white
water reactors -- I mean, here you're talking about the light

1 or something. I tell you, I find that hard to imagine, too,
2 but if you're talking about one facility and what difference
3 that's going to make, I don't know.

4 I frankly don't see any being made. But anyway,
5 let's leave that. But when you're talking about a reprocessing
6 plant, enrichment plant -- I don't know.

7 MR. CASE: But don't forget amendments. This
8 also covers amendments. You ought to think about amendments
9 to the plants, to hold up the operations, the hearing on the
10 amendment.

11 CHAIRMAN HENDRIE: Is the title incorrect? Is
12 it just interim operating licenses on Section 192 or is it
13 interim OLs and amendments to OLs?

14 MR. MALSCH: It's OLs and amendments to OLs.

15 CHAIRMAN HENDRIE: I think --

16 *js* MR. ~~KENNEKE~~ ^{Malsch}: I think operating licenses and
17 amendments ought to be.

18 CHAIRMAN HENDRIE: Yeah, I would think so.

19 MR. KENNEKE: Why is the structure this way?
20 Why did they sort of group each type of license into the
21 hearing notice requirements and the hearings?

22 MR. MALSCH: Their objective was to have one
23 section which had all the hearing and notice requirements. So
24 they ended up duplicating a lot of them. ,

25 MR. KENNEKE: It gets to be very -- now that we're

1 getting a bill, that's going to be longer and very complicated
2 to read and very easy to --

3 CHAIRMAN HENDRIE: We've decided the structural
4 question. It's not an issue. Please, let's stick to what
5 we've got at hand.

6 What we need is some language in B, then, which
7 takes out, which keeps the director of NRR from doing something
8 that the Commission can't come down on. Okay? I think that
9 that's the main problem.

10 MR. MALSCH: You could just strike by the
11 director of Nuclear Regulations, and say that it shall be
12 found that in all respects other than the conduct.

13 COMMISSIONER GILINSKY: Well, why don't we just
14 say you can't act without a finding from him? And then you
15 can accept or not accept it.

16 COMMISSIONER KENNEDY: That's what his sugges
17 is. Marty?

18 MR. MALSCH: (Nods in the affirmative.)

19 COMMISSIONER GILINSKY: Marty?

20 COMMISSIONER KENNEDY: Say it shall be found,
21 and then just strike that line, by the Director of Nuclear --
22 so it says it shall be found that in all respects. It doesn't
23 say by whom.

24 COMMISSIONER GILINSKY: Well, I would say --
25 you want to leave open the possibility that you want to overrule

1 them. So you simply say --

2 MR. CASE: That's a very -- you haven't had a
3 hearing. Your staff says that it's not safe. I think the
4 chances of your overruling without having a hearing itself
5 is rather small.

6 COMMISSIONER GILINSKY: I would say so. I think
7 so.

8 You certainly don't want to act without a finding
9 from the Director (inaudible).

10 MR. MALSCH: Well, I think the only danger in
11 the present language is that it's subject to the implication
12 that the Commission could not overrule its Director.

13 Whether or not that's a likely happening in the
14 context of an ongoing contested proceeding, I think it's,
15 it puts us in a very funny position.

16 COMMISSIONER KENNEDY: The other way around, Ed,
17 it could well be that the staff finds that, indeed, the
18 plans have been met and the Commission could say that we're
19 not satisfied with that.

20 COMMISSIONER GILINSKY: This permits that.

21 COMMISSIONER KENNEDY: I think it's extremely
22 unlikely the other way, not very likely this way but perhaps
23 more likely. Yeah.

24 COMMISSIONER GILINSKY: Well; that's permitted.

25 COMMISSIONER KENNEDY: Well, Marty's concern is that

1 it might not be.

2 MR. MALSCH: That's not so clear because of the
3 distinct'on they drew.

4 MR. KELLEY: Can't you add a sentence that says
5 that the NRR Director determination is subject to Commission
6 review, under some narrow standard?

7 MR. MALSCH: That's possible.

8 MR. KELLEY: It makes for a long sentence but you
9 can do it that way.

10 MR. CASE: Or you can avoid the whole thing
11 by saying (inaudible).

12 MR. KELLEY: Well, but that's, if you just say
13 it shall be found, that sounds like there's a board finding
14 it and that's exactly what you don't want.

15 COMMISSIONER KENNEDY: Well, then, to solve the
16 problem you can put by the Director of Nuclear Reactor Regulation
17 or the Director of NMSS, whichever is appropriate, that --

18 CHAIRMAN HENDRIE: How about by the Commission or
19 its designee?

20 COMMISSIONER KENNEDY: Okay, by the Commission
21 or its designee and then we can --

22 CHAIRMAN HENDRIE: That preserves the power to
23 the Commission and makes it clear that the designee is not
24 going to be privileged to overrule the basic authority.

25 COMMISSIONER KENNEDY: Or we issue a delegation

1 indicating the limits of the delegation.

2 CHAIRMAN HENDRIE: Will that cure your difficulty,
3 Marty?

4 MR. MALSCH: Yes.

5 COMMISSIONER BRADFORD: You do have to be careful,
6 I guess, in delegating it to do it on some terms of reliev-
7 ability, otherwise you'll see the same thing again.

8 MR. MALSCH: You probably want to spell it out
9 in a part two or something, so people would know who to complain
10 to about it.

11 CHAIRMAN HENDRIE: Now with that change, it
12 puts us very nearly, it puts us where we have been previously
13 with our language, although in somewhat different form.

14 MR. MALSCH: That's right. In terms of the
15 findings, I've got some other changes here, too.

16 CHAIRMAN HENDRIE: All right, now let's talk
17 about the other changes.

18 MR. MALSCH: The first one is the one that we
19 discussed just briefly, and that was our bill confining this
20 to nuclear power reactors. This extends it to all production
21 and utilization facilities.

22 COMMISSIONER BRADFORD: That doesn't seem like a
23 very useful change, but do we know why they did that?

24 MR. MALSCH: No. I think they just thought, why
25 not? There could be an occasion where you might have a --

to the
1 (inaudible) amendments, I would say, is the only case I can
2 conceive of a real, demonstrated need arising, an amendment
3 to, let's say, to an enrichment plant license that had to get
4 through, less the plant be shut down for some reason or other.
5 There might be a -- well, I guess it's conceivable you can
6 make the finding. If it's in the public interest, issue the
7 amendment.

8 CHAIRMAN HENDRIE: Well, I don't object to the
9 production and utilization. The fact that it applies across
10 the licensing scope of the Commission is less significant to
11 me than the controls which are built in further down. So
12 whatever it is, why, here are all of these things, urgent
13 public need and emergency, the Commission itself to decide
14 and so on.

15 COMMISSIONER BRADFORD: The amendment situation,
16 I suppose, actually might arise in some situation.

17 CHAIRMAN HENDRIE: Yes. That's why, as Marty
18 says, that's the place that would make it useful to have a
19 little broader probably. If we're talking strictly about
20 reactors, why, then -- if we're talking about interim operating
21 licenses, I think in fact we're talking pretty strictly
22 about reactors and conventional white water machines at that.
23 The amendments make it useful to have a little broader scope.

24 COMMISSIONER KENNEDY: We can change the thing on
25 page 26.

1 MR. CASE: Well, there's another
2 issue on page 26, doesn't it? As I remember our bill, the
3 Commission did not need to make itself, did not need to make
4 the public interest finding for ^{amendments} (inaudible).

5 MR. MALSCH: Under our bill, the only thing that
6 the Commission specifically had to do itself was to hold the
7 hearing on the initial license. Everything else could have
8 been delegated.

9 In the same vein as including in-production and
10 other utilization facilities, they have included out, allowing
11 commencement of operation in the cases of combined construction
12 permits and operating licenses.

13 I don't know why they did that. So in a sense,
14 they expanded it.

15 COMMISSIONER KENNEDY: What specifically did they
16 eliminate?

17 MR. MALSCH: Our provision allowed not only the
18 issuing of an interim operating license, but also to allow
19 interim operation in the cases where you had issued a combined
20 construction permit and operating license. They have not
21 included that in here, for some reason. I don't know why.

22 COMMISSIONER KENNEDY: It sounds like (inaudible).

23 MR. MALSCH: I can't -- the justification for
24 having one is the same as the other. I don't know why they
25 would not include that other one.

1 COMMISSIONER KENNEDY: Yes, I'm trying to distinguish
2 that and I can't see it.

3 Why don't we put our own language back. It
4 seems to me --

5 CHAIRMAN HENDRIE: Will it fit within the framework
6 here in a reasonable way?

7 MR. MALSCH: We'll figure out a way to do it.
8 I'm sure that we can do it.

9 COMMISSIONER GILINSKY: Let me ask you something.
10 It says, at least 60 days prior to the issuance of any such
11 general operating license and so on, the Commission shall
12 publish --

13 MR. MALSCH: Where is this?

14 COMMISSIONER GILINSKY: This doesn't sound like
15 there's an emergency and also, if you've got 60 days, I think --

16 MR. MALSCH: Well, we've changed that to 30 now.

17 COMMISSIONER GILINSKY: 30? Okay. It seems to
18 me that if you've got 30 days, there ought to be a requirement
19 for a hearing.

20 It occurred to me that you might, in the case
21 of an emergency, if you feel that you've got to turn on the
22 switch and you have to do it overnight, then, okay, maybe
23 you would, *seemingly have* ~~(inaudible)~~ seem to have a hearing on a national
24 emergency. But I find that, *hard to believe* ~~(inaudible)~~ written. *h* But the

25 30 days, I think that there ought to be a definite requirement

1 for a hearing.

2 CHAIRMAN HENDRIE: Now what about the -- let's
3 see, I'm getting lost.

4 Okay, let me hold that until we'll get to the
5 scope and notice. Okay? On the hearing, and see if we can
6 finish the 192 section.

7 Is there difficulty with including coming closer
8 to our section on the CPOL on the same standard?

9 COMMISSIONER GILINSKY: Why is that not included
10 already or --

11 CHAIRMAN HENDRIE: Because this talks just about
12 operating licenses. Hence, it would presumably -- are you
13 sure it wouldn't apply to the CPOL case?

14 MR. MALSCH: I'm sure. We had specific language
15 that specifically picked that up.

16 COMMISSIONER GILINSKY: But you're allowing operation.
17 In other words -- let's see, given -- what we're talking about
18 is what? Given a combined CPOL at this point, they finish
19 the plant?

20 MR. MALSCH: Right. We have not called that act
21 of allowing it to go into operation any place in the bill an
22 operating license. Yet, they have confined the authority
23 here to issue interim licenses to issuing operating licenses.

24 COMMISSIONER KENNEDY: What you have here is a
25 technical drafting problem which may, by inadvertence, be

1 eliminating a particular small class of operating licenses.

2 MR. MALSCH: I would say that it would be.

3 MR. KENNEKE: Could you cover that
4 by calling this section authorizing interim operation?

5 MR. MALSCH: Oh, it's an easy fix.

6 MR. KENNEKE: And defining categories for which
7 you would allow such operations?

8 MR. MALSCH: Well, it's an easy fix. We've got
9 the language in our bill. It's just a matter of plugging in
10 some additional clauses.

11 CHAIRMAN HENDRIE: In fact, if you've got a plant
12 which had a full review at the early stage and you're now
13 in a hearing over some piece of new information, it has all
14 of the merits of a plant which went a CP stage and an OL stage,
15 and I think it's just a technical oversight.

16 COMMISSIONER GILINSKY: Suppose you said that the
17 Commission is authorized to permit operations?

18 MR. MALSCH: That's, in essence, what we had
19 done. The language, as revised, would read: "The Commission
20 is authorized to issue an interim operating license or an
21 interim amendment to an operating license, or permit commence
22 of operation, ^{for a facility} (inaudible) which permits a permanent license
23 to be issued upon -- and then track it off.

24 CHAIRMAN HENDRIE: I think it, must be a pretty
25 straightforward -- okay, let's do that.

1 Okay, now what else is in here that --

2 MR. MALSCH: The next thing is in our version
3 we had provided for public comment on interim amendments
4 and opportunity a hearing before Commission hearing on
5 the actual in cense.

6 provides for options for comment in
7 both cases and for a hearing in both cases.

8 CHA HENDRIE: And ours? Say again what
9 ours said.

10 MR. MALSCH: Our had comments on the amendments
11 and an opportunity for a hearing before the Commissioners
12 on the actual license.

13 CHAIRMAN HENDRIE: Required comments?

14 MR. MALSCH: I believe so. Let me see.

15 CHAIRMAN HENDRIE: That's odd.

16 MR. MALSCH: Let's see.

17 (Pause.)

18 MR. MALSCH: In our bill, the Commission published
19 a notice, which, in the case of the actual license, invited
20 people to request a hearing and in the case of amendments,
21 invited people to submit comments. That's on page 14 of our
22 bill.

23 MR. KENNEKE: And ^{specify the need for hearing.} specified (inaudible)?

24 MR. MALSCH: No, the hearing is flexible. In fact,
25 the hearing type is flexible in both bills.

1 MR. KENNEKE: Oh, I see.

2 CHAIRMAN HENDRIE: Now, in this bill, then, just
3 for both cases, why you notice 30 days ahead and there's the
4 opportunity for hearing if somebody raises the issue.

5 Right?

6 MR. MALSCH: That's right. And an opportunity
7 for comments in both cases.

8 CHAIRMAN HENDRIE: And an opportunity for
9 comments in both cases. The difference doesn't strike me
10 as enormous, I must say.

11 Now what about Vic's point that if you've got,
12 you know, if you're attempting to deal here with genuine
13 public emergency cases, can you stand 30 days in a hearing?
14 And do you want to be committed to it in the legislation?

15 COMMISSION GILINSKY: Well, I think it cuts
16 both ways. I mean, if it's really an emergency, you may not
17 be able to stand 30 days (inaudible). If, indeed, we're
18 sticking with 30 days, I think the hearing ought to be mandatory.
19 I think the Commission should have to say publicly why it's
20 doing this and ought to hear out the staff in public.

21 CHAIRMAN HENDRIE: I have no objection to that
22 either.

23 COMMISSIONER KENNEDY: Neither do I, but I think
24 that there ought to be a built-in provision which, in fact,
25 if there were a genuine emergency, the Commission, on its own

1 certification, could weigh the given requirements.

2 COMMISSIONER GILINSKY: Well, you may want to
3 separate urgent public needs and emergency. In the case
4 of emergency, you can do (inaudible).

5 CHAIRMAN HENDRIE: Comments?

6 MR. MALSCH: Well, the hearing is informal. So --

7 COMMISSIONER BRADFORD: Well, the hearing may be
8 informal. So you could --

9 How did we have that? Did we have that same
10 possibility?

11 MR. MALSCH: Yes.

12 CHAIRMAN HENDRIE: Jim, what do you think?

13 MR. KELLEY: Well, this says 60 days?

14 CHAIRMAN HENDRIE: Well, we're going to pull it
15 down to 30.

16 MR. KELLEY: 30? Even so, if it's a real emergency
17 I suppose that you should be able to go faster than that.
18 That's my reaction.

19 COMMISSIONER GILINSKY: Isn't it plausible that
20 you would so need one reactor, because that's what we're really
21 talking about. One reactor out there with a long hearing.

22 MR. MALSCH: I think what we're really talking
23 about is is there the possibility that you would not know the
24 emergency any more than 30 days in advance. And if you knew
25 of the emergency more than 30 days in advance, obviously, you

1 could notice a little earlier and anticipate the time required
2 to, say, hold the hearing.

3 COMMISSIONER GILINSKY: I guess I'm questioning
4 the whole idea.

5 MR. KENNEKE: The emergency may come up suddenly
6 but the fact that you've got this facility ready to go ^{would occur} (inaudible)
7 overnight, that's going to be obviously coming down the pike.

8 COMMISSIONER KENNEDY: It might well be ready
9 to go, or nearly so, and be held up in some kind of litigation
10 or something of that nature.

11 COMMISSIONER GILINSKY: No, but I mean is it
12 conceivable that one reactor will activate --

13 MR. CASE: Yeah, I can conceive that like you have
14 a big flood and, you know, we design our reactors so they're
15 way the hell above a thousand-year flood, but nobody else does
16 and this is the only damn facility that could operate to
17 deliver power --

18 COMMISSIONER GILINSKY: In that area.

19 MR. CASE: In that area.

20 COMMISSIONER KENNEDY: You know, it's to be
21 recalled that last winter the amount of electric generation
22 by nuclear facilities in some of the hardest hit areas in the
23 Northeast and, indeed, even in the South, nuclear power, that
24 in fact there were a whole lot of other generating facilities
25 that were simply down.

1 COMMISSIONER GILINSKY: Right, but what we're
2 talking about --

3 COMMISSIONER KENNEDY: *for all intents and purposes* ~~(Inaudible)~~ and there's
4 no way to get them up.

5 COMMISSIONER GILINSKY: But when we're talking
6 about one plant, would it make a difference if you had one
7 less plant to the point that you want to move really rapidly?

8 COMMISSIONER KENNEDY: Well, I don't know.

9 CHAIRMAN HENDRIE: Look. The power pools range
10 from small ones in the 4,000 to 8,000 gigawatt watt range
11 to big ones in the 40 gigawatt range. A single unit at
12 one gigawatt, then, can be as much as 15 percent of the
13 generating capacity in a pool area. And even in a large pool,
14 is still several percent. And if you're down on your o lers
15 with a loc of units down for one reason or another and the
16 margin is gone, one unit can be very important at this --

17 For instance, if you're at the place where that
18 units allows you to meet your peak load in the afternoon through
19 the evening of the winter, and without it, you can't, and
20 you have to rotate upwards of a thousand megawatts load in
21 brownout condition for six hours every afternoon and early
22 evening, why, I think, you know, that's a fairly severe chunk.

23 So it's not trivial. As time goes on and the
24 grids get bigger and the exchange facilities, you know, the
25 hook-togethers get better, why, that unit gets to be less

1 important.

2 COMMISSIONER KENNEDY: But it's going to depend
3 on a lot of things. In the Far West, for example, the drought
4 conditions having drawn down the ability of a lot of those
5 generating stations to produce the hydropower that they've
6 been producing at 40 percent, the total power going out of
7 the grid coming off of facilities, it can't produce that
8 much power. You're going to have some serious problems that
9 can be caused by relatively short-term but immediate abnor-
10 malities that arise.

11 MR. KENNEKE: Isn't this case true only for, in
12 effect, an amendment to an existing operable plant? You've
13 got the whole business of start-up. For a new operating
14 license, it's not going to be in a position to produce
15 *any power* ~~(handible)~~. So you're really limiting yourself to --

16 CHAIRMAN HENDRIE: No, that's not the case.
17 The reason that we've gone ahead and that I've urged the
18 Commission to accept a provision like this is to avoid being
19 helpless under the basic statutes. We had a plant which
20 was expected to go into operation three months ago, okay?
21 It's sitting there ready to go. It has been sitting there
22 ready to go for three months. But there's been an antitrust
23 hooker held up or something like that, and we're litigating
24 seven unies who want in at cheaper rates, or whatever, and
25 in the meantime, there are a thousand megawatts every afternoon

1 worth a customer load that can't be serviced when they pull
2 the breakers on the subsections.

3 What I'm saying is that when the governor comes
4 around and says to the President, you've got to do something,
5 I don't want him to turn to this Commission and us to sit
6 here fat, dumb, and happy and say, we weren't bright enough
7 to think of this and to suggest to the Congress that it be
8 considered.

9 (Simultaneous conversation.)

10 COMMISSIONER GILINSKY: That sounds like you
11 can't stand the 30 days.

12 CHAIRMAN HENDRIE: The 30-day question is a
13 good one. We thought 60. I think, on balance, you probably
14 can't. That is, if you get into this configuration, you
15 probably have to be regarded as kind of dumb if you weren't
16 able to anticipate that it might occur, you know, two months
17 ahead of time. And I have no -- if we come down to 30 days
18 and you want a mandatory hearing, I think that's perfectly
19 fair.

20 COMMISSIONER KENNEDY: I think that's fair, too.
21 But I would say --

22 CHAIRMAN HENDRIE: That's certainly consistent
23 with the way we've talked here that this would be a rare
24 and a real emergency situation and the Commission itself
25 ought to sit down and face up to it.

1 COMMISSIONER KENNEDY: I do not think, however, that
2 we should, for the same reasons that you're saying that this
3 basic concept should be recognized in this legislation, I
4 don't think that we should rule out the possibility that this
5 extraordinary circumstance should arise, where in fact it
6 could not have been really foreseen that far; indeed, perhaps
7 everyone had tried very hard not to allow the circumstance to
8 develop to that point and at some point it did.

9 Now I don't know what that circumstance is, but
10 it seems to me that we ought to allow ourselves the ability
11 to waive, if we had to do it, only we could do it, but
12 waive the 30-day requirement.

13 CHAIRMAN HENDRIE: It's at least a thought. I
14 don't know.

15 COMMISSIONER KENNEDY: I would hate for the
16 same reason that you suggest, to say, I'm sorry, Mr. President.
17 You'll have to go pass a law.

18 CHAIRMAN HENDRIE: Well, you'll have to wait 30
19 days plus hearing time.

20 COMMISSIONER KENNEDY: Or see if you can get some
21 legislation through the Congress in the next --

22 CHAIRMAN HENDRIE: You know, you raised the question,
23 if you're going to talk about emergencies, whether we
24 shouldn't, in fact, have built in here the ability to act
25 faster than the 30 days. And indeed, if we had 30 day sorts

1 of times, or people could live through 30 day sorts of times,
2 then why not make the meeting mandatory. I think that making
3 the meeting mandatory before the Commission, I think that
4 that's fine. If we're going to do anything of this kind,
5 indeed, you're right. We're going to sit here in full public
6 view and say that's it.

7 Now what about the provision about the emergency?

8 COMMISSIONER BRADFORD: Are there situations in
9 which the second finding, public health and safety finding,
10 is likely to be possible to be made in less than 30 days,
11 much less than 30 days?

12 COMMISSIONER KENNEDY: The Chairman is looking
13 at the question. For example, he raises one where the
14 health and safety findings already have been made.

15 CHAIRMAN HENDRIE: And where it's not an issue
16 in the reason for the ^{recent development} ~~(inaudible)~~.

17 COMMISSIONER GILINSKY: Well, but, I mean there's
18 a certain built in ^{so that you --} ~~delay (inaudible)~~. I think that maybe Al
19 has a good point. Maybe you want to have this kind of
20 ability on amendments or something.

21 MR. KENNEKE: How about this distinction? To
22 say 60 days and your criterion is urger public need, and
23 then parenthetically say that the Commission may waive the
24 notice period in cases of emergency? That is, it distinguishes
25 the case from one where you need it now by an event that you

1 had not anticipated from a situation in which it's been building
2 up and it's just a matter of having it sitting there and being
3 held up by a technicality of some kind.

4 COMMISSIONER KENNEDY: I think distinguishing
5 between the two cases is useful, and I certainly agree with
6 Vic's view that if it is possible to do so, there is that time,
7 30 days or 60, that a hearing ought to be mandatory.

8 COMMISSIONER BRADFORD: But why shouldn't the
9 hearing be mandatory in any case. As long as there's the
10 time it takes to start up the reactor, you can always hold a
11 hearing.

12 COMMISSIONER KENNEDY: But the stack-up time
13 begins only when you authorize it to begin.

14 COMMISSIONER GILINSKY: Well, but not much is
15 happening even there, and you can hold a hearing but nobody's
16 shutting down again.

17 MR. KENNEKE: But the hearing concerns you only
18 if it turns out to be it's a formal hearing. If you can
19 control the form of the hearing, you can limit the time it
20 takes.

21 CHAIRMAN HENDRIE: I think that's right. If we
22 had a real unexpected and really urgent situation, we would
23 presumably control the form of the hearing to be one in which
24 we could move forward in a new days, get people in, open the
25 room and get people in, hear the essential arguments, to

1 perceive that, indeed, it's justified.

2 So I think that mandatory hearing, regardless
3 of notice, is not a bad proposition.

4 Do you see any difficulty with it?

5 MR. MALSCH: No, You still have the built-in
6 30 days, plus hearing time, which may be only a few days.

7 CHAIRMAN HENDRIE: Well, we're talking about the
8 possibility of relieving the 30 days.

9 COMMISSIONER KENNEDY: Waive it. If you waive
10 the 30 days, but still call for a hearing.

11 CHAIRMAN HENDRIE: But still call for a hearing.

12 MR. MALSCH: That's no problem because if you
13 control the type of hearing, you can control the time that
14 the hearing takes.

15 CHAIRMAN HENDRIE: Okay. So let's settle on
16 mandatory hearings. Okay, apart from anything else. Good.

17 The second thing, the second question now is
18 should we separate emergency situations out and allow a
19 breaching of whatever notice we are going to require otherwise?

20 MR. KENNEKE: May I say one thing in support of
21 that notion? Again, it occurs to me right now it juxtaposes
22 the urgent public need and the emergencies. I think it
23 would help to see emergency as simply a subset under urgent
24 public need. And that was the difficulty that I think you
25 were having with the plant sitting there. With the juxtaposition

1 of the two, somebody will read this and say what they really
2 meant was emergency when they're talking about urgent public
3 needs rather than some larger category.

4 COMMISSIONER KENNEDY: Yeah, urgent public need
5 and emergency.

6 MR. KENNEKE: Perhaps both. Right.

7 I argue additionally that it would be helpful
8 to separate the two.

9 CHAIRMAN HENDRIE: Well, let me see what the
10 sense of the Commission is. Do you feel that it would be
11 useful, desirable? Should we try to draft it that way or
12 simply let it stand and take the 30 days plus hearing time,
13 or whatever?

14 COMMISSIONER GILINSKY: Well, I guess I wonder
15 whether we really need to change it for operating licenses,
16 in the sense that you're not going to be turning the plant on
17 full blast anyway, and probably, if you had to, it would
18 speed up the normal process of starting.

19 CHAIRMAN HENDRIE: I agree with that view and
20 that's the reason that I hadn't previously in this section
21 argued for pulling the required notice time down to zero or,
22 you know, something like that.

23 COMMISSIONER GILINSKY: In the case of amendments,
24 I think that that may enter, too.

25 CHAIRMAN HENDRIE: In the case of amendments, it

1 certainly makes a lot more sense.

2 All right. Could we agree, then, that for interim
3 operating licenses there will be a notice period. For
4 interim amendments, we will allow the possibility that in
5 emergencies we may move directly to hearing.

6 MR. MALSCH: In fact, we already did that by
7 agreeing earlier in connection with notices to have a 30-day
8 notice for the interim license and no specific notice period
9 for amendments.

10 CHAIRMAN HENDRIE: Okay.

11 MR. MALSCH: That's a little different than
12 waiving notice altogether, however. You want to have --

13 CHAIRMAN HENDRIE: No, I don't want to waive
14 notice altogether, but not put in a specific period. Okay.
15 So that the structure is there for --

16 COMMISSIONER KENNEDY: Let's talk about the
17 30-day period. You're sure that we're clear on what we're
18 doing? The governor comes in and says, I've got to have this
19 power. The plant is here and essentially ready to go, ready
20 for the issuance of an operating license. There are no health
21 and safety questions unresolved.

22 COMMISSIONER GILINSKY: As far as the staff is
23 concerned?

24 COMMISSIONER KENNEDY: As far as the staff is
25 concerned. We then say, okay. We're going to notice this for

1 30 days and we're going to have a hearing. Now let's take the
2 shortest hearing time and visualize how many days do we add
3 to the 30, Marty?

4 MR. MALSCH: Maybe a week.

5 COMMISSIONER KENNEDY: A week, yes.

6 MR. MALSCH: We need to give some advanced notice
7 of the hearing. The hearing could be only a day, yeah.

8 MR. CASE: You ought to give 30 days advanced notice of
9 the hearing.

10 COMMISSIONER BRADFORD: Well, you don't give
11 30 days advanced notice of the hearing, but why can't the
12 hearing take place within the 30 days?

13 MR. MALSCH: Well, presumably, you need to take
14 into account at the hearing --

15 COMMISSIONER KENNEDY: 30 days prior to the
16 issuance of the license, that you shall publish in the Register
17 the notice.

18 COMMISSIONER BRADFORD: Well, then, if the notice
19 said we contemplated issuing the license 30 days from now and
20 the hearing will be 20 days from now, and it were a one-day
21 hearing, you could do it all within that.

22 COMMISSIONER KENNEDY: Yes, you could.

23 MR. MALSCH: If it were clear that the 30-day
24 notice provision didn't give people a right to send in comments
25 up until the 30th day.

1 COMMISSIONER BRADFORD: Well, as long as you
2 stuck to the notice itself in such a way that that (inaudible).

3 COMMISSIONER KENNEDY: But you'd also have to
4 structure this to make that possible.

5 CHAIRMAN HENDRIE: It says 30 days prior to
6 issuance.

7 COMMISSIONER KENNEDY: Yeah.

8 CHAIRMAN HENRIE: And leaves to the rule of the
9 Commission what the notice, why one time your comments, it's
10 a 15-day comment period, hearing on the 20th day to round things
11 up and go, presumably.

12 So that configuration within the present language
13 is possible. The whole thing could be completed in 30 days.

14 COMMISSIONER KENNEDY: So it could be by 30 days?

15 CHAIRMAN HENDRIE: Yes, I guess that's right.

16 COMMISSIONER KENNEDY: All right. Now suppose that
17 within, say, three days of day one of this 30-day period it
18 were possible for the Commission to go ahead and grant the
19 license. What would occur technically from that point forward?
20 How soon would that reactor actually have been putting out
21 substantial amounts of power onto the grid?

22 Ten days, right? No? Not that soon?

23 What would actually be produced by the end of
24 that period?

25 MR. CASE: I don't think you could guarantee

1 producing any megawatts in the grid in 30 days.

2 COMMISSIONER KENNEDY: In 30 days. But my point
3 is you're going to add 30-day increments.

4 COMMISSIONER GILINSKY: But, you know, the percent-
5 age change is a lot more. In other words, it isn't like
6 turning a switch or waiting 30 days to turn the switch.

7 COMMISSIONER KENNEDY: No, I realize that. It's
8 a gradual --

9 COMMISSIONER GILINSKY: That's right. You've
10 got another built-in delay. Now you might at the same time
11 be able to speed up normal procedures somewhere.

12 COMMISSIONER KENNEDY: What I was trying to see
13 is there ways in which those things can overlap rather than
14 follow sequentially? And if you can, can you save enough
15 time to make it worthwhile?

16 That's the important question.

17 MR. CASE: I put the authority in do it in an
18 emergency. You've got emergency in there and it's hard to
19 conceive what it might be. I think it ought to be in there
20 and be able to waive the 30-day period for the emergency.

21 COMMISSIONER KENNEDY: Emergencies, by their very
22 natures, are almost never foreseen.

23 COMMISSIONER GILINSKY: Well, let me ask you.
24 How long does the start-up take? In other words --

25 MR. CASE: The normal start-up is a couple of

1 months.

2 COMMISSIONER GILINSKY: A couple of months?

3 CHAIRMAN HENDRIE: Even pressing, we'd be hard
4 put to make it (inaudible).

5 COMMISSIONER GILINSKY: So it's a difference, at
6 best, between a month and two months? And possibly between
7 two months and three months?

8 COMMISSIONER KENNEDY: Yes.

9 COMMISSIONER GILINSKY: It's not unreasonable to
10 have a --

11 MR. CASE: You act like you can always think of
12 everything.

13 COMMISSIONER GILINSKY: We also don't want to
14 make it too easy for the governors to come on in and --

15 CHAIRMAN HENDRIE: I'll tell you. A 30-day
16 process from the necessary ^{trigger} (inaudible) to notice this
17 procedure is such an enormous improvement in ability to react
18 over having the statute just flatly not allow you to do a
19 damn thing about it, that I think it's not unreasonable to
20 expect people to plan a little bit ahead, and as they foresee
21 a configuration arising where they're going to really need the
22 power and we are in a hearing and it's clear that the
23 proceeding just isn't going to resolve itself in any timely
24 fashion, that people are going to have to go forward, and
25 if they can get the governor and the appropriate state

1 authorities to agree that it is an urgent matter, why, I
2 don't feel badly about the 30 days. Particularly since we
3 can configure, as has been pointed out, within this language
4 we can configure things so that there's quite a fair, quite
5 a high likelihood of completing deliberation and coming to
6 a decision within the 30 days.

7 So I don't feel that bad. That is, I don't feel
8 that much of a need for --

9 COMMISSIONER KENNEDY: I guess that my point is
10 the 30 days out of a 90-day total is one-third. And if we
11 are using the word "emergency" as I visualize that word --
12 that is, some kind of cataclysmic situation utterly and
13 totally unforeseen, not planned on, and emergencies do occur
14 of this kind -- 30 days out of 90 is one-third of the total,
15 and that could be important.

16 COMMISSIONER GILINSKY: What we're saying, really,
17 is that reactors can't respond --

18 (Simultaneous conversation)

19 COMMISSIONER KENNEDY: I would rather have it in
20 60 than 90 in such a case. That's exactly the point I'm
21 trying to make.

22 *Mr. Case:*
~~COMMISSIONER BRADFORD:~~ Under our regulations now,
23 if nobody objects, including any party, and the plant can
24 operate up to 99 percent of power, then you can litigate the
25 rest.

1 So, clearly, an intervenor could stipulate, a
2 plant could go through its normal start-up and be ready to
3 deliver power but would want to continue to litigate the
4 deliverance of power.

5 MR. MALSCHA: I think those (inaudible) are
6 stipulated testing up to 20 percent of power but insisted
7 on litigating the remaining 80 percent.

8 Also, in some cases, the staff has been successful
9 in getting summary disposition of issues at lower power levels,
10 because it just didn't seem to be relevant. The (inaudible)
11 issue would still be hanging --

End gsh

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1 MR. MALSCH: -- either by summary disposition or
2 by stipulation, have a license issued for 20 or 30 percent
3 power; have, I guess, most of the lower power testing out of
4 the way, and be very -- not too far away at all from full
5 power operations.

6 CHAIRMAN HENDRIE: To move ahead, I really propose
7 we do hang with the 30 to issuance -- 30 day notice to issuance
8 mandatory hearings for the license, and give us -- on the
9 amendment side, the ability to act quickly, because there,
10 indeed, we presumably have a facility which in 12 hours
11 could be back at full power, or something close to it.

12 COMMISSIONER KENNEDY: Would you also, for my
13 benefit, see what language, taking care of my concern, might
14 say, independently?

15 CHAIRMAN HENDRIE: Yeah, I expect it would. Why
16 don't you draft some alternate --

17 MR. MALSCH: So the label would apply to both?
18 Okay.

19 COMMISSIONER BRADFORD: Then under Dick's concern
20 it never really is 30 percent. Because there's some minimum,
21 from the moment of the emergency to the moment where you've
22 got the -- the 60 days begin. So that it's always going to be
23 more like 20 days to 30, say, even if you had enough power.

24 MR. CASE: If you would say 20 or something like
25 that (inaudible).

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1 COMMISSIONER KENNEDY: He's talking about -- you've
2 got a plant in partial operation. But you will know to that
3 by litigation --

4 MR. KENNEKE: There is a provision on page 26, just
5 to remind you of your options there, that -- shall contain
6 such conditions as the Commission deems appropriate (inaudible).
7 So you've got the option (inaudible).

8 CHAIRMAN HENDRIE: Now, Marty, is it clear enough
9 what to do with this?

10 MR. MALSCH: Let me recapitulate. We've got
11 comments and mandatory hearings; waiver of the advanced notice
12 per amendments, or alternatively, for both.

13 CHAIRMAN HENDRIE: Yes, separate language for that.

14 MR. MALSCH: Yes, right.

15 And you want to have the emergency as the standard
16 for waiving notice -- by urgent public need as a standard for
17 issuing (inaudible) licenses, is that right? That was Al
18 Kenneke's suggestion.

19 MR. CASE: No, no. Your standard for issuance is
20 right. But it was only Commissioner Kennedy who wanted the
21 standard --

22 MR. MALSCH: Oh, that's right. So your language would
23 incorporate that.

24 CHAIRMAN HENDRIE: And 30 days notice --

25 MR. MALSCH: Okay.

dkw 3

1 CHAIRMAN HENDRIE: And flexible control of the
2 hearing -- type of hearing.

3 MR. MALSCH: Yes, that's in there already.

4 MR. KELLEY: I suggest a compromise. If you wanted
5 to be able to waive hearing on an emergency (inaudible), you
6 could make it a feasible amendment short of transporting.
7 Because this says, once you get this amendment out, it's good
8 for a year.

9 Say in a case where you waive the hearing, you'd
10 have to have one within 30 days after you (inaudible). And
11 if you did that, you could march on. You could do that sort
12 of a compromise.

13 CHAIRMAN HENDRIE: Okay. That might throw out the
14 alternate, but for the moment I'd like to --

15 (Simultaneous discussion.)

16 MR. MALSCH: You would have a post-issuance hearing?

17 MR. KELLEY: On a quick time frame.

18 MR. MALSCH: On a quick time frame?

19 ~~MR. KELLEY: Yes.~~

20 MR. KELLEY: Marty, the language "sole discretion,"
21 on what kind of hearing is that? And can (inaudible)
22 judicial review?

23 MR. MALSCH: I assume so, yes.

24 MR. KELLEY: That also highlights the problem earlier
25 where they don't reference the exceptions.'

dkw 4 1 MR. MALSCH: That's correct.

2 MR. KELLEY: It should be pointed out, I think.

3 MR. MALSCH: Also, we ought to probably reference
4 the other sections that we need flexibility -- probably say,
5 "sole discretion" and "discretion".

6 MR. KELLEY: They're in sole discretion; I'd rather
7 just put in a line that says, "shall not be reviewable in
8 any court." That's close enough.

9 MR. MALSCH: Okay.

10 COMMISSIONER BRADFORD: We did in ours -- we also
11 had decided whether it would be formal or informal?

12 MR. MALSCH: That's right. We said, "the
13 Commission so shall preside, and the hearing, whether in
14 accordance with 504 or Bakke 6 or Bakke 7 or otherwise, shall
15 be determined by the Commission by the nature of the factual
16 issues of the dispute."

17 COMMISSIONER KENNEDY: Well, you don't need all that.

18 MR. MALSCH: No, but I think in our version there
19 was probably more of an implication that a court can review
20 our choice of procedures to see whether they aligned properly
21 with the major factors in the dispute. Here we draft --
22 it's much more in terms of our discretion (inaudible).

23 CHAIRMAN HENDRIE: Onward.

24 MR. MALSCH: I think that wraps up the interim
25 section.

dkw 5

1

CHAIRMAN HENDRIE: Good.

2

COMMISSIONER KENNEDY: We are now satisfied with

3

a 44-page draft, page (inaudible)?

4

CHAIRMAN HENDRIE: I think it cleans up page 24

5

as well as page 25.

6

COMMISSIONER KENNEDY: And 26.

7

CHAIRMAN HENDRIE: And 26. We're now on 27 with

8

early site approval.

9

On early site approval, what is the --

10

MR. MALSCH: Okay. First issue is, again, the old

11

issue of confining it to thermal neutron power generation

12

facilities, versus our version, which had production or

13

utilization facilities.

14

CHAIRMAN HENDRIE: Now, here I think there's real

15

merit, because this is just the early site proceeding, and

16

that's just what you want to do, whether it's a standard

17

design, or something you're going to rush forward with, or

18

something you're going to be very deliberate and cautious with.

19

So I would recommend that we go to production or

20

utilization.

21

MR. MALSCH: Now, do you -- in our version, we have

22

again here, I think, excluded demonstration plants. Yes, we

23

have. Do you want to still exclude those, or (inaudible)

24

production and utilization facilities?

25

CHAIRMAN HENDRIE: I don't much care, as a matter

dkw 6 1 of fact. It seems to me that the early -- the merits of settling
2 the land-use question early is, is that the --

3 COMMISSIONER BRADFORD: Some of the standards and
4 concepts involved in early siting would be very hard to square
5 with demonstration; that is, at the state planning process,
6 state energy funds, state determination of need.

7 CHAIRMAN HENDRIE: I think if we wanted to put a
8 demonstration, you were thinking about a site as a potential
9 place for a demonstration, it would be in those terms that
10 you would say, I want a site review on this site, and what
11 I plan to put there is a demo project of the following
12 dimensions. And it would seem to me --

13 COMMISSIONER KENNEDY: It would seem to me that we
14 are likely -- that regional arrangements are a mistake; with
15 that sort of thing in mind.

16 COMMISSIONER BRADFORD: Where the problems -- and
17 let's say you wanted to do an early siting review, wanted to
18 a few years ago. Any indication that the state could make a
19 need-for-power -- what you're saying for a demonstration
20 facility is that there is no need for power calculation involved?

21 CHAIRMAN HENDRIE: Yes, I think that's right. It's
22 a -- a demo project has to be justified on the positive side,
23 on the benefit side, in terms of the fact that it's an
24 appropriate necessary step in the progression of the
25 technology, and once implemented, that technology has benefits.

dw 7 1 But this particular plant may or may not produce anything
2 useful in the way of electricity.

3 However, there is a fair question in saying, look,
4 if you're going to talk about site permits with 10-year lives,
5 maybe that is just too long ahead to try to anticipate what a
6 demo plant might look like. And it might be just as well to
7 reocognize that difficulty.

8 There are some practical difficulties in scoping
9 the envelope to represent the plan, or a demo plan, which is
10 only a misty vision.

11 So I don't know, I guess I wouldn't have much
12 difficulty with pulling demos out of it if you wanted to.

13 MR. MALSCH: That would make it consistent with the
14 section on combined permits and licenses, which --

15 CHAIRMAN HENDRIE: Why don't we do that?

16 COMMISSIONER BRADFORD: If there's any -- I don't
17 have a strong feeling the other way, either, because if you
18 always have that dichotomy -- we're sitting here, we know it's
19 fairly unlikely, or whatever the conflict involved. So really
20 what we're talking about -- with the exception of other
21 people looking at this bill (inaudible).

22 CHAIRMAN HENDRIE: Yes.

23 COMMISSIONER GILINSKY: Thermal neutron, or --

24 COMMISSIONER BRADFORD: Yes, but not so much that,
25 as whether it could be production and utilization, or excluding

dkw 8 1 demos and including demos.

2 CHAIRMAN HENDRIE: We just excluded demos, after
3 thoughtful deliberation.

4 Other commentary here?

5 MR. MALSCH: I've already pointed out, that unlike
6 our version, this bill calls for mandatory formal hearings
7 on issuance of site permits.

8 I'm not sure it appears here, but -- but I'd be
9 (inaudible).

10 MR. KENNEKE: Didn't they say that earlier?

11 MR. MALSCH: I think they say it again in this section.

12 COMMISSIONER GILINSKY: And we did what?

13 MR. MALSCH: We provided opportunity for a formal
14 hearing, upon request of interested third --

15 CHAIRMAN HENDRIE: I don't think that's much of a --

16 MR. MALSCH: (Inaudible) going to be asking for
17 hearings anyway, so --

18 CHAIRMAN HENDRIE: I don't think it matters, because
19 90 percent of all cases will have requests, and whether or
20 not requests, it doesn't seem to me -- well, you do have to
21 convene a board, and go forward, and the staff presented
22 arguments, and get the question by the board. But that's
23 generally a procedure which works through in, you know, not
24 excessive time, so --

25 MR. MALSCH: Yes, I think the comment is just that

dkw 9 1 the concept of mandatory formal hearings, when there are no
2 issues, are kind of silly.

3 On the other hand, there's an advantage in saying
4 that, by God, there's going to be a hearing (inaudible) without
5 having to give a lot of qualifications about people requesting
6 and stuff like that.

7 It sounds natural to say that, even though as a
8 matter of administrative law, it sounds silly to hold one. I've
9 been through a number of them that are pretty silly.

10 Okay, D -- on page 27.

11 COMMISSIONER KENNEDY: The thrust of which is?

12 MR. MALSCH: What it does is, the first time it
13 specifies contents of a site permit application.

14 MR. KENNEKE: It doesn't really apply completely
15 to production and utilization facilities?

16 MR. MALSCH: No.

17 MR. KENNEKE: This is really keyed to reactors.

18 MR. MALSCH: Yes. For example, thermal power level;
19 you wouldn't have power level, you'd have thruput or something;
20 seismic geological, or --

21 COMMISSIONER GILINSKY: Well, did you change this
22 to production and utilization facilities?

23 MR. MALSCH: Yes, except for demonstration plants.

24 CHAIRMAN HENDRIE: I can fix the -- all you'd need
25 to do in 1 is say, and thermal power level or production rate,

kw L0

1 would be --

2 COMMISSIONER GILINSKY: Or the capacity.

3 CHAIRMAN HENDRIE: Yes, or production capacity
4 of the facilities, and that would fix that.

5 Now, looking down the list --

6 COMMISSIONER GILINSKY: Actually, you could just
7 say, capacity of the facility; cover them all. Something --

8 CHAIRMAN HENDRIE: Good. How about that?

9 Now, with regard to the list -- in previous drafts
10 this is where we were scratching our heads and saying, here
11 for the first time in the Atomic Energy Act is mention of
12 thermal effluent, I think.13 MR. MALSCH: Because of drafting problems, it's
14 crept in in prior versions, too. I think we've got to keep it
15 separate. Otherwise you end up being very fancy and saying,
16 except in the case where the site is doing NEPA review --
17 surely we don't want to have the implication in this section.
18 Notwithstanding the fact that the state is doing a NEPA
19 review, the Commission still has to ask for thermal effluent
20 in (inaudible).21 CHAIRMAN HENDRIE: So we really ought to strike
22 4(b)?

23 MR. MALSCH: I'd strike 4(b) and 5.

24 CHAIRMAN HENDRIE: And 5.

25 That -- we strike not because we don't want the

dkw 11 1 information, but because it gets complicated having (inaudible)
2 Atomic Energy Act. There's no other --

3 Then the question is, is the list of much use?

4 COMMISSIONER GILINSKY: Let's see, I don't understand
5 this. I mean, don't we worry about all kinds of effluents?
6 Not just radiological effluents?

7 MR. MALSCH: Oh, we are. Except, though, in
8 some circumstances the state will be doing the NEPA review
9 rather than us.

10 COMMISSIONER GILINSKY: And?

11 MR. MALSCH: So you would have to avoid the
12 implication that in those circumstances, we have to get the
13 application to us information on nonradiological impact.
14 More properly, that would go to the state.

15 COMMISSIONER GILINSKY: Why do you have to indicate
16 what's in the application?

17 CHAIRMAN HENDRIE: You don't. The question is
18 just, whether you -- whether -- why we don't put a period up
19 under (b), each application under subsection (a) shall be
20 in writing and contain such information as shall be required
21 by the Commission to determine the suitability of the site for
22 its intended purpose, period.

23 How about that?

24 COMMISSIONER GILINSKY: Good.

25 COMMISSIONER KENNEDY: That has the advantage, also

dkw 12 1 of making it shorter.

2 COMMISSIONER BRADFORD: I would note, though, that
3 in the letter describing that, that there are also concerns
4 about some of the individual criteria, so that someone looking
5 at it just doesn't say, well, that's the commission taking
6 out the specific, figuring they'd rather redesign. We'd have
7 at least those specifics in, and just put it back in casually.
8 Because they ought to know that if they want to put it back
9 in, they still ought to get back to it, talk about some of
10 the individual items.

11 CHAIRMAN HENDRIE: Okay. Is that fair, Bill and
12 Marty? Really, the reason for taking it out is, if you're
13 going to have a list, why, one ought to think whether this is --
14 you know, we just haven't studied whether this is really --
15 touches all the major elements or not, and then there is the
16 difficulty of mixing the Atomic Energy Act with NEPA with
17 regard to the -- and those are the reasons we think it better
18 to leave to rule-making or staff the information.

19 MR. KENNEKE: In our current usage, suitability is
20 strictly (inaudible), right? That's the term, the code work
21 to the staff, at least.

22 MR. MALSCH: As it appears in the Act and as it
23 appears in the regulations, it means safety. Suitability.

24 COMMISSIONER GILINSKY: What does it make you do?

25 MR. KENNEKE: Only safety, right?

dkw 13 1 COMMISSIONER BRADFORD: Do courts construe it that
2 way?

3 MR. MALSCH: No, but the way we'd use it in
4 context, it's clear that's what we've meant.

5 COMMISSIONER BRADFORD: Well, I suppose NEPA
6 more or less for review, but I would be a little surprised if
7 the court took the same -- it's not the normal use of the
8 word "suitability."

9 MR. MALSCH: Oh, expect -- where we have used it,
10 we've always been clear that what we're talking about was
11 suitability from the safety standpoint. If you just used the
12 word "suitability," you wouldn't know whether it was safety,
13 or environmental, or both.

14 MR. KENNEKE: So you're still left with a question
15 here of whether you wanted to include NEPA?

16 MR. MALSCH: No, because it's in the Atomic Energy
17 Act, and that has been construed as not applying on that
18 matter. It's only a safety matter -- by the 5th Circuit.
19 Pre-NEPA, 1968 case.

20 CHAIRMAN HENDRIE: Onward.

21 Okay, anything in C? Because C is all new.

22 MR. MALSCH: It's also unnecessary. They added
23 been --

24 They've added in what appears to be a standard
25 briefing --

dkw 14 1

2 COMMISSIONER KENNEDY: Now, here, we're talking
3 about suitability. And we're saying, the Commission determines
4 the proposed site is suitable for the construction and operation
5 of the facility described in the operation, consistent
6 with public health and safety, and protection of the environ-
7 ment.

8 MR. MALSCH: That would be a problem; that would
9 have to come out.

10 MR. KENNEKE: And isn't it inconsistent with the
11 bottom of page 29, number 4? Why have they limited it just
12 to thermal --

13 MR. MALSCH: Well, we have to make some formal
14 changes, on the top -- on the bottom of page 29, and on the
15 top of 30.

16 MR. KENNEKE: Well, I guess my question is, if they
17 had drafted it as being thermal neutron power to begin with,
18 up in A, why way down there say that (inaudible) is valid
19 only for thermal power?

20 MR. MALSCH: Yeah, just for emphasis, I guess.

21 COMMISSIONER BRADFORD: Why are we so anxious
22 to keep the environment out of the Atomic Energy Act?

23 MR. MALSCH: Well, the only problem with it is,
24 since we've treated it separately historically, we've enabled
25 ourselves to have a separate NEPA delegation section, without
dispersing it all throughout the Atomic Energy Act. Once

dkw 15 1 you start interspersing it throughout the Atomic Energy Act,
2 then the NEPA delegation section gets awfully fancy to try to
3 make, to try to do. It has an advantage in keeping your
4 (inaudible) Atomic Energy Act on the one hand; NEPA on the
5 other hand.

6 It really would get very fancy to try to have a
7 NEPA delegation section at the same time internal throughout
8 this bill reference to the environment.

9 CHAIRMAN HENDRIE: You'd have to cite every
10 section where it appears in the Atomic Energy Act.

11 MR. MALSCH: Or every place it appears, you have to
12 add, "except as provided in" section whatever it is, which
13 refers to NEPA.

14 It's just unnecessary.

15 CHAIRMAN HENDRIE: A structural matter, but the
16 recommendation is to keep the separation.

17 All right --

18 MR. MALSCH: The big question is , do you want C
19 at all?

20 CHAIRMAN HENDRIE: Does it have any advantage?

21 MR. MALSCH: I don't think so. It has a standard,
22 but the standard is loosely --

23 COMMISSIONER KENNEDY: What does it do?

24 MR. MALSCH: -- the standard is so loose, it
25 doesn't tell you anything.

dkw 16 1 MR. KENNEKE: What about item 3, top of page 29?

2 MR. MALSCH: That should probably be kept.

3 MR. KENNEKE: That's a useful --

4 MR. MALSCH: Yes.

5 MR. KENNEKE: That's a key item of this fall reform
6 legislation that become final --

7 COMMISSIONER GILINSKY: What does that mean?

8 MR. MALSCH: That just means that site permits
9 (inaudible) review just as construction permits and operating
10 licenses. We had done it a little differently in our bill,
11 but the effect, I think, is the same.

12 COMMISSIONER GILINSKY: Well, let's take out
13 anything that doesn't need to be in there.

14 MR. KENNEKE: Put that up under A, then.

15 COMMISSIONER BRADFORD: Wait, well, what happened
16 to 2?

17 CHAIRMAN HENDRIE: I am entertaining a recommendation
18 to strike C-1 and C-2 and put C-3 at an appropriate -- retain
19 it and put it in an appropriate place.

20 MR. MALSCH: You don't need -2, because you've said
21 these proceedings are on the record. And the AEC already
22 requires, in such cases, the Commission will make specific
23 findings. So again, you don't need it.

24 In fact, that might have caused a problem with
25 what -- by this Congress intended thereby to amend APA

dkw 171 section (inaudible).

2 CHAIRMAN HENDRIE: D?

3 MR. MALSCH: D is the duration question: how long
4 site permits are good for.

5 COMMISSIONER BRADFORD: 10 years are recommended,
6 unless extended.

7 MR. MALSCH: I think we said, up to 10 unless
8 extended; they say, 10.

9 COMMISSIONER BRADFORD: Which I think doesn't make
10 a lot of difference.

11 MR. MALSCH: No.

12 CHAIRMAN HENDRIE: I don't think so either, and I
13 think their provision for a renewal subject to the rules and
14 regulations that the Commission may deem appropriate is fair
15 enough.

16 MR. CASE: I've got a problem with the renewal.
17 I think the way it's written -- because I think it makes
18 somebody to make application for a renewal, and at the
19 time of the renewal, and the site permit continues in
20 effect until the staff has finished its evaluation.

21 COMMISSIONER KENNEDY: It says, no less than 12
22 nor more than 18 months before the expiration.

23 So you've got a 12 month period for review.

24 CHAIRMAN HENDRIE: Yes.

25 COMMISSIONER GILINSKY: Why do we need this, no

dkw L8 1 more than 18?

2 MR. CASE: The timely renewal is a problem.

3 COMMISSIONER KENNEDY: They don't want them to
4 come in and apply, and say, at the end of ten years, say,
5 now we'd like a five-year renewal added onto that.

6 COMMISSIONER GILINSKY: But that would get sort
7 of taken care of by the fact the staff won't do anything
8 for 9 years, unless somebody wants the site.

9 (Simultaneous discussion.)

10 MR. CASE: Suppose you don't agree with it, and
11 you're fighting (inaudible). Who do I have prove this, now
12 that the site is no longer any good?

13 COMMISSIONER GILINSKY: Well, we'd have to go through
14 a hearing.

15 MR. CASE: While we're litigating, this site permit
16 remains good.

17 COMMISSIONER GILINSKY: Why do you say it remains
18 good? Where does it say that?

19 MR. CASE: Because it's a timely renewal.

20 MR. MALSCH: Under the EPA, if you have a license of
21 a -- for an activity of a continuing nature, and you apply,
22 in a timely fashion, for renewal, you can continue the
23 activity until the Commission disposes of your renewal application.
24 For example, let's say an operating license that expires on
25 June 1st; you apply, let's say, in a timely fashion --

dkw 19

1 COMMISSIONER KENNEDY: We've got lots of materials
2 licenses --

3 MR. MALSCH: That's right. And by June 1st you
4 haven't heard, you don't shut down; you just keep going until
5 you hear from the Commission.

6 I think Ed's problem is, supposing that they make
7 a timely application here. The staff says, oh my God, this is
8 awful. The permit, we just can't extend (inaudible). Okay,
9 we're in the middle of the hearing, and we haven't finally
10 disposed of it. It's now beyond ten years. But someone files
11 an application referencing it. I think it's maybe kind of
12 unlikely. But if it happened, then technically --

13 CHAIRMAN HENDRIE: It seems to me if you had a case
14 strong enough so that, you know, you felt very concerned
15 about it, and so on, wouldn't you have enough of a case
16 to do something else about it.

17 MR. MALSCH: What you do is issue an immediately
18 effective order (inaudible).

19 MR. CASE: You can't run it before the Board. You
20 know I haven't got the authority when --

21 CHAIRMAN HENDRIE: Well, but you can take the
22 argument to the Board and ask them to revoke it.

23 I would think having it continue, if you need a
24 little more than a year to complete the review, might be a
25 desirable circumstance.

dkw 20 1 MR. CASE: Yes, it might be.

2 I guess what I ought to focus on is how it seems
3 that I want the application (inaudible). At least a year before --

4 MR. MALSCH: (Inaudible) not more than 18 months
5 prior.

6 COMMISSIONER GILINSKY: Well, first of all, what's
7 wrong with them coming in a year later and asking for a ten-
8 year extension? I mean, that'll only take them to year 11.
9 I mean, they're not going to --

10 CHAIRMAN HENDRIE: I'll be a rare bird that does
11 that.

12 COMMISSIONER GILINSKY: Well, somebody may want
13 to come in after year 5 and get to year 15. He's not going to
14 get to year 20.

15 CHAIRMAN HENDRIE: The suggestion then is what?
16 to remove the 18?

17 COMMISSIONER BRADFORD: Well, don't you think the
18 review of the suitability ought to come fairly close to the
19 end of the period?

20 COMMISSIONER KENNEDY: I would think so.

21 COMMISSIONER BRADFORD: You shouldn't be able to
22 come in in year one and get the extension from -- I think
23 the extension really doesn't work that way, that if you come
24 in in year 1 and get a 10-year extension, that doesn't mean
25 you're getting a year (inaudible) to year 20.

dkw 21 1 COMMISSIONER GILINSKY: Well, you ought to be able
2 to get only 10 years ahead. And that strikes me as not
3 unreasonable.

4 In other words, suppose you were at 6, and you'd
5 like to get to year 16.

6 COMMISSIONER KENNEDY: Yeah, I know. The trouble
7 with that is, that that gives you -- if you allow that,
8 you're going to have to put some kind of language in to
9 prevent them from coming and filing one every year.

10 COMMISSIONER GILINSKY: Well, there are (inaudible)
11 and so on.

12 CHAIRMAN HENDRIE: Yeah, I see what you mean. In
13 order to keep a site viable, 10 years -- about 10 years
14 from the date, whenever the date is.

15 COMMISSIONER GILINSKY: Yes. And I would say,
16 if they're paying their -- you know, if the fee is right, why
17 not do it?

18 MR. MALSCH: Well, this says, you can only get
19 renewal for additional project hearings.

20 CHAIRMAN HENDRIE: That sounded faintly commercial.
21 Do you think we could make this business pay?

22 COMMISSIONER KENNEDY: Well, the trouble with that
23 is, you're going to have staff tied up who are essentially
24 senseless exercises continually, to say nothing of the fact
25 that every year -- every time this happens, it's going to be

dkw 22 1 litigated, or could be.

2 MR. CASE: Mandatory hearing.

3 COMMISSIONER KENNEDY: Mandatory hearing, exactly.

4 COMMISSIONER GILINSKY: That's what they're going to
5 have to think about.

6 But on the other hand, I couldn't imagine --

7 CHAIRMAN HENDRIE: Certainly not every year, but
8 every three or five years, you might just find a guy who'd
9 like to keep protecting his site out there, figuring that the
10 renewal would be substantially easier than letting the permit
11 die and starting over again. And that it's worth it to him
12 to (inaudible).

13 COMMISSIONER KENNEDY: Well, you know, he's got
14 that authority now. He's got that authority essentially now.
15 I'm beginning to think the 18 months is probably too short,
16 given Ed's concern. Say 24 months, which is close enough to
17 the end, certainly in light of what you're saying, Rick,
18 certainly close enough to the end. And giving two years
19 ought to be able to get the thing through. And if it didn't,
20 then I'd be prepared -- after two years, meantime -- I'd be
21 prepared to accept the rules of the APA that it would continue.

22 COMMISSIONER GILINSKY: I guess I wouldn't like it
23 into --

24 CHAIRMAN HENDRIE: A time frame?

25 COMMISSIONER GILINSKY: That's right, in ten years --

dkw 23

1 CHAIRMAN HENDRIE: Okay.

2 COMMISSIONER GILINSKY: So you ought to be able to
3 get 10 years ahead of where you are.

4 CHAIRMAN HENDRIE: I've got to go to Gaithersburg.
5 I foolishly agreed to go and talk to a lunch which I'm not
6 going to be able to eat. It's probably just as well for my
7 lunch.

8 The not less than 12 months, I think, is okay. We
9 could also do this in a rule, but if they'd like to put it in
10 here, why, grand. Not less than 12 months to file for renewal.
11 I think you'd make at least that much time.

12 COMMISSIONER BRADFORD: Yes, and from Ed's point
13 of view, 24 months (inaudible) --

14 COMMISSIONER KENNEDY: Not less than 24 months.

15 CHAIRMAN HENDRIE: Okay, now let's decide -- let's
16 first of all decide what the not less than ought to be. I
17 give you choices: 12, 18, or 24?

18 MR. CASE: 24.

19 MR. MALSCH: 18.

20 CHAIRMAN HENDRIE: Not less than 18.

21 Okay, now second question: do you want to put any
22 limit on the other side? Those in favor of a downside limit,
23 vote aye.

24 [One "aye".]

25 CHAIRMAN HENDRIE: Those opposed?

dkw 24 1 (No audible response.)

2 CHAIRMAN HENDRIE: What do we do on two to two?

3 COMMISSIONER GILINSKY: But I would also add

4 (inaudible) ten years from the time they get it.

5 COMMISSIONER KENNEDY: Yeah, but that's a rolling,
6 every year exercise.

7 COMMISSIONER BRADFORD: My other concern with that
8 is that the -- to the extent that there are concerns that might
9 be raised against the renewal, I assume they'll be one of
10 two sorts: either that the site is, for some reason, no longer
11 suitable; or that, for some reason, the plant -- the state's
12 energy outlook is somehow changed, and that their planning
13 process (inaudible).

14 For that to have any meaning, I don't think you could
15 come five years before the proposed expiration -- well, maybe
16 you could. Well, then you see, what happens is, that instead
17 of a look every ten years at the site, the state's got to
18 determine five years in advance of the expiration.

19 COMMISSIONER KENNEDY: Which is five years after
20 it made its original --

21 COMMISSIONER BRADFORD: Which is five years after
22 it made its original -- I just don't know that that process
23 is very meaningful, if you wrote it on that basis, in
24 order to be applicable.

25 COMMISSIONER KENNEDY: Not just 5 years. It could

dkw 25 1 be two years after its original determination, and 8 years
2 before the determination of the original decision, and still
3 extending on 10 years from the time it makes its second one.

4 COMMISSIONER BRADFORD: Well, but Vic's point is, Vic
5 would change that so it would only go out -- it would only
6 go after 12.

7 COMMISSIONER KENNEDY: No, no, it's always 10 years
8 in advance of the date.

9 COMMISSIONER BRADFORD: Well, the way it reads now
10 that's right.

11 COMMISSIONER KENNEDY: No, no, I'm talking about
12 Vic's concept. Yes, it would go on to year 12, and then to
13 year 13, and then to year 14, and so on.

14 It would just roll forward. I mean, I could see
15 the advantage to this. But I can see it as an administrative
16 nightmare. And I'm not sure -- and I'm concerned about what
17 you're saying, Peter, I'm not sure that the decision-making
18 process would have much meaning.

19 COMMISSIONER GILINSKY: Well, except somebody who
20 did this ten times would have to pay ten times the fee.

21 COMMISSIONER KENNEDY: I know. But, you know, I
22 don't care what the fees are.

23 CHAIRMAN HENDRIE: I perceive an opportunity for
24 gain, here.

25 COMMISSIONER KENNEDY: It has nothing whatever to do

dkw 26 1 with our salaries. But whatever-- hopefully -- but whatever --
2 but seriously, the question I have, if you're going to do this,
3 what is the -- the decisions that could be made along that line
4 could be incrementally small enough that you'd never come to the
5 kind of re-examination of the fundamental planning conceptions
6 that you're talking about.

7 CHAIRMAN HENDRIE: How about not less -- 18
8 months before, but not more than -- no more than 5 years?

9 COMMISSIONER BRADFORD: Yes, okay.

10 COMMISSIONER KENNEDY: I'm not sure I can swallow
11 5, but I can go to 3.

12 COMMISSIONER BRADFORD: I don't care. I mean, I
13 could be happy in that range.

14 COMMISSIONER KENNEDY: I really don't care; 4.

15 COMMISSIONER GILINSKY: Well, but where -- are we
16 adding 10 to the original 10.

17 CHAIRMAN HENDRIE: No, when we redo it it reissues
18 and it's a 10-year from date of the receipt.

19 COMMISSIONER KENNEDY: Well, no, this one said 5,
20 didn't it? This was a renewal for 5 years.

21 CHAIRMAN HENDRIE: No, it's 10 years.

22 COMMISSIONER GILINSKY: I guess I would not put
23 any downside limit --

24 COMMISSIONER KENNEDY: You could only renew it for
25 five years.

dlkw 27 1 COMMISSIONER GILINSKY: I would make it for as long
2 as what it says.

3 CHAIRMAN HENDRIE: Okay, not less than 18 months
4 nor more than 4 years prior to the expiration, and its additional
5 10 year periods.

6 How about that?

7 COMMISSIONER GILINSKY: Is it clear that it's from
8 the time of the granting of the new --

9 CHAIRMAN HENDRIE: It says, may renew a site
10 permit for additional ten year period, so I think that's pretty
11 explicit.

12 MR. MALSCH: We could be more explicit.

13 COMMISSIONER BRADFORD: I would suggest being explicit
14 on that, from the date of renewal.

15 COMMISSIONER GILINSKY: From the date of renewal.

16 What was the argument for having this limit, that
17 the lower -- it's to avoid people coming in over and over
18 again.

19 COMMISSIONER BRADFORD: Yes, and the reason for
20 avoiding that was, it seemed to me that at least to the
21 extent that there's a state process involved here, too, for
22 that process to -- for there to be a meaningful review of the
23 premises on which the site was originally found suitable, a
24 certain amount of time would have to pass (inaudible).

25 (Simultaneous discussion.)

dkw 28 1

CHAIRMAN HENDRIE: Gentlemen, I leave to
2 Commissioner -- Dick, will you provide over the balance of
3 this session, and see if we can get to the end of the rest
4 of this.

5 Marty, you've probably got a few more things to
6 mention, and if you can manage it, that would be highly
7 desirable. I will withdraw, and don't forget to make a ruling
8 on the Sunshine aspects.

9 COMMISSIONER KENNEDY: We're trying to get through
10 this Section 193.

11 CHAIRMAN HENDRIE: Right, if possible.

12 COMMISSIONER KENNEDY: All right. Marty, where
13 are we?

14 CHAIRMAN HENDRIE: I'm sure you won't get beyond
15 that.

16 MR. MALSCH: We're up to number 3 on 29. This
17 is added.

18 COMMISSIONER KENNEDY: Shall we look at 3 on page
19 29?

20 MR. CASE: I need something on which to (inaudible)
21 a 10 year period.

22 How about the environment, Marty?

23 MR. MALSCH: Well, the environment would have to --
24 again, would have to come out to make it consistent, but --

25 COMMISSIONER BRADFORD: Now, wait a minute, Marty,

dkw 29 1 if you take the environment out of there, too, then NEPA doesn't
2 give any basis for revoking a license.

3 MR. MALSCH: Oh, I think we'd argue it does.

4 COMMISSIONER BRADFORD: What would your basis for
5 revocation be if you decided the thing would, in fact, have an
6 adverse effect on the environment?

7 MR. MALSCH: The legal theory?

8 COMMISSIONER BRADFORD: Yes.

9 MR. MALSCH: It would be that NEPA has read into
10 the overall act that whatever remedies you have (inaudible)
11 section on public health and safety, you also have them for
12 protection of the environment.

13 COMMISSIONER BRADFORD: You mean public health
14 and safety includes the environment because NEPA --

15 MR. MALSCH: That's sort of the way we read it in.
16 There are some limits to that. But I think we could extend
17 (inaudible).

18 COMMISSIONER KENNEDY: Can't the NEPA section deal
19 with precisely that point?

20 MR. CASE: In other words.

21 COMMISSIONER KENNEDY: To make it explicit -- it
22 seems to me perfectly logical they would be one of the
23 fundamental considerations, either by a state or by us,
24 or both. And can't it be dealt with?

25 MR. MALSCH: The only reason why I have reservations

dkw 30 1 is, the way the NEPA section is presently drafted, it's in
2 terms of not giving us additional authority to do things, but
3 rather, giving us authority simply to turn stuff over to some-
4 body.

5 COMMISSIONER BRADFORD: How does it (inaudible)
6 with the state. In order to get a revocation based on
7 environmental considerations, if in fact you want that, the
8 state would have to make a NEPA finding that, somehow,
9 things have changed, the environment has been changed. They
10 would then present that to us in the form of a request for
11 revocation, because the public's health and safety was in
12 danger.

13 MR. MALSCH: No, they would simply -- well, the bill
14 later on doesn't go into that amount of detail. I think what
15 would happen would be that since we turned over the NEPA
16 function to the states, the states would, in their procedures,
17 have procedures for revoking, suspending or amending, because
18 of environmental reasons.

19 And since they have the overall NEPA function, if
20 they notify us that they have decided the permits revoked
21 on environmental grounds, I think that's it, as far as we're
22 concerned.

23 COMMISSIONER BRADFORD: Well, what permit have they
24 granted?

25 MALSCH: Well, they'd probably be granting a

dkw 31 1 permit. But literally, the control would be on our permit.

2 COMMISSIONER BRADFORD: They can't notify us they've
3 revoked -- unless it's a separate (inaudible) -- they can't
4 notify us they've revoked it.

5 MR. MALSCH: Right. The notification would be that
6 they --

7 MR. KELLEY: They make determinations, don't they?

8 MR. MALSCH: They determine that it should be
9 controlled.

10 MR. KELLEY: You mean in terms of cooling towers
11 or something like that?

12 MR. MALSCH: Something like that.

13 COMMISSIONER BRADFORD: Okay, they determine that
14 it should be revoked --

15 COMMISSIONER KENNEDY: And we are bound by such a
16 determination, are we not?

17 COMMISSIONER BRADFORD: Well, except that Ed then
18 has to proceed under the revocation section, which talks only
19 about public health and safety, common defense and security.

20 MR. MALSCH: Oh, I see your problem.

21 I guess maybe the better suggestion would be to
22 take care of this in the later NEPA section.

23 COMMISSIONER BRADFORD: Okay, (inaudible) take care
24 of it?

25 MR. MALSCH: Yes.

dkw 32

1 MR. CASE: How important is that "only" in there?
2 "Only" (inaudible).

3 MR. MALSCH: That means you've got to find that or
4 you can't do it.

5 MR. CASE: What does it add -- how is it different
6 if you take it out?

7 MR. MALSCH: Well, if you take it out, it's the
8 implication that you can only do it, if that's the case. If
9 you leave it in, there's just no doubt about it.

10 COMMISSIONER BRADFORD: What do you have in mind, Ed?

11 MR. CASE: Well, you see, it puts a burden on the
12 staff if something comes up. And I'm just trying to figure out
13 what the (inaudible).

14 COMMISSIONER KENNEDY: I don't see that it makes
15 any different.

16 MR. CASE: I have to show somebody that it's a
17 major new consideration and it has a significant impact on
18 public health and safety.

19 MR. MALSCH: There's a drafting problem here, and
20 that is -- remember now, the one instance in which a question
21 would likely come up as to, let's say, amending or modifying a
22 site permit would be, in a construction permit proceeding
23 referencing the site permit.

24 Now, in that case, the provision on re-litigation
25 of issues applies. And that is differently worded than this.

dkw 33 1 When I read this, the problem that occurred to me
2 is, there's the implication that if you're in a construction
3 permit proceeding and you want to raise a site issue, you've
4 got one standard to meet; if you're not, you're just in midair;
5 you've got this standard to meet; and why should there be any
6 difference?

7 This is a little stronger than the relitigation
8 section.

9 MR. DIRCKS: Is the word, "major" and "significant,"
10 the troublesome aspects?

11 MR. MALSCH: Yes, but on the other hand, they're
12 what makes the section significant.

13 MR. KENNEKE: New is -- health (inaudible) and
14 significant is elsewhere.

15 MR. DIRCKS: It's like the national (inaudible)
16 where they try to give major action a significant impact.

17 COMMISSIONER BRADFORD: You're certainly better
18 off with major, for God's sake. If you came up with a minor
19 new consideration that still had a significant impact on the
20 public's health --

21 COMMISSIONER KENNEDY: How could it be a minor
22 new consideration if it had a significant impact, you know?
23 Let's delete the word "major."

24 And why is the word "only" -- well, if it doesn't
25 say "only," it implies that there is some other consideration

dkw 34 1 unstated.

2 MR. MALSCH: It could be taken to define (inaudible)

3 COMMISSIONER BRADFORD: Yes, if the Congress took
4 the word "only" out, then you could argue from the legislative
5 history, that were the case. But if the bill simply passed
6 without the word "only" in there, I think you'd still have a
7 hard time revoking on any other grounds (inaudible).

8 Were you thinking, Ed, that there might be
9 (inaudible) --

10 MR. CASE: Well, I'm looking (inaudible) on page
11 21. Isn't that where it is, Marty, page 21?

12 Why does this 3 on page 29 have such a higher
13 barrier than that?

14 MR. MALSCH: Well, it's just that there aren't
15 major new considerations -- which may sound a little stronger
16 than some of the language in the middle of 21.

17 MR. CASE: But I have to find a significant impact.

18 MR. MALSCH: That's right.

19 MR. CASE: Rather than, it just doesn't comply
20 with the Commission's regulation.

21 MR. MALSCH: Maybe just strike "major".

22 COMMISSIONER KENNEDY: That's what we did.

23 MR. KENNEKE: Marty, as I understand it, now,
24 you've gone back to this in every place where protection of
25 the environment appears, like page 21; you'd still be deleting it.

dkw 351

MR. MALSCH: I'd be deleting it.

2 MR. KENNEKE: Okay, that may want to -- in each
3 place, you'll have to make a decision whether to recommend
4 that that particular concern be dealt with in the NEPA
5 section, or whether it should simply be deleted.

6 I take it the letter-- the ultimate letter will
7 spell out what you're deleting and what you're not.

8 MR. MALSCH: What we'll have to -- yes, we'll have
9 to, as we do it, think about it, and make sure we're not
10 losing something in the process, that we don't pick up, by
11 virtue of NEPA as it stands, or the NEPA section in here,
12 as it will be when we're finished with it.

13 Is the decision then (inaudible) the language?

14 COMMISSIONER KENNEDY: Right, 21.

15 COMMISSIONER BRADFORD: Well, that's right, although
16 subsection C isn't actually the section that you issue the
17 permit pursuant to, is it?

18 COMMISSIONER KENNEDY: Well, it was.

19 COMMISSIONER BRADFORD: Yes, now I guess it's
20 subsection A.

21 MR. MALSCH: Now it's A, as in our draft.

22 COMMISSIONER BRADFORD: So I think probably you
23 want to take that out anyway, because we've already decided
24 we wanted to refer to production and utilization facilities.
25 But the reason is, because subsection C is (inaudible).

dkw 36 1

2 COMMISSIONER KENNEDY: Well, not only that, but
when you get to the next page, there's reference again --

3 MR. MALSCH: To seismic, meteorological, hydrologic,
4 which we took out.

5 COMMISSIONER KENNEDY: Okay.

6 MR. MALSCH: Now, we need something that looks like
7 7. And we've got that in our bill already.

8 COMMISSIONER BRADFORD: Looks like what?

9 MR. MALSCH: It indicates clearly that the
10 Commission can ask for information at a site permit, that's
11 all. Top of 28.

12 COMMISSIONER KENNEDY: Oh, okay.

13 MR. MALSCH: Okay, now the E.

14 COMMISSIONER BRADFORD: I have some fairly
15 substantial problems on E, I think. (Inaudible) want to
16 hold on that. I also have to go.

17 MR. MALSCH: Okay. E is a separate part, anyway.
18 We've finished the site permits discussion; we're not into
19 construction and (inaudible) sites.

20 COMMISSIONER KENNEDY: Well, can we go forward to
21 F and G without havin g dealt with E?

22 MR. MALSCH: We can go F, G, H.

23 COMMISSIONER KENNEDY: All right, let's do so.

24 MR. MALSCH: Okay. F, we've discussed. This is
25 the section of the bill that ties in the generic need for

dkw 371 power determination as a part of the long-range planning
2 of section 111 to the site permits.

3 I think we discussed this the day before yesterday.
4 This is where the tie-in is.

5 MR. DIRCKS: And this is consistent with our own
6 draft, is it?

7 MR. MALSCH: Well, I drafted it, and had this
8 concept. But it's consistent with what -- we believe this
9 thing is consistent with the authority (inaudible) the other
10 day.

11 COMMISSIONER BRADFORD: Is it defined what a
12 generic future need is?

13 MR. MALSCH: No, not specifically.

14 COMMISSIONER BRADFORD: Do we know even vaguely
15 what it is?

16 MR. DIRCKS: This would not allow DOE to make a
17 finding for production and utilization facilities?

18 MR. MALSCH: No, because I think those earlier
19 sections have been trying to (inaudible).

20 MR. KENNEKE: Why do we look here and in the
21 earlier section to electric power facilities generally in
22 what is purported to be a nuclear licensing bill?

23 MR. MALSCH: I think it's because it didn't make
24 much sense to the drafters, in the long-range planning session,
25 to confine all the long-range planning stuff (inaudible).

dkw 38

1 We need advanced planning with regard to the
2 early site approval, and now the whole idea of early site
3 approval does that. It creates --

4 COMMISSIONER KENNEDY: No, this is before early
5 site approval.

6 MR. CASE: This is before that.

7 MR. MALSCH: I know. But as far as we're concerned,
8 for nuclear licensing aspects --

9 COMMISSIONER KENNEDY: Yes. But look -- unless
10 there's -- unless -- I defer to my colleagues -- unless
11 there's something about this that raises issue unlike --
12 differing from those that we discussed the other day, and
13 which we agreed, it seems to me there's no sense in rehashing
14 it all.

15 MR. KENNEKE: Well, there is -- there will be a
16 tie-in later to the funding of -- states.

17 COMMISSIONER KENNEDY: (Inaudible) caught in the
18 crossfire.

19 COMMISSIONER BRADFORD: Does this say that if a
20 state makes a finding that there's a need -- I don't know --
21 3,000 megawatts of additional capacity, and then seek them,
22 and then for some reason the utility sets out to set aside
23 5 sites, each for 1,000 megawatt plant; does that 3,000
24 megawatt determination -- can be used at each of the 5 sites?

25 MR. MALSCH: I imagine you'd have to have the two

dkw 39 1 coincide. You couldn't have the generic mean more than it
2 says.

3 COMMISSIONER BRADFORD: Why couldn't they just keep
4 coming in and presenting you with that same finding and
5 leaving you -- and you'd say, well, what the hell could you
6 possible need 5,000 megawatt plants. And they'd say, that's
7 not yours to worry about.

8 MR. KELLEY: Even a 1,000 projection --

9 COMMISSIONER BRADFORD: I mean, there maybe something
10 to be said for allowing them to set aside more sites.

11 MR. KELLEY: May be. But rather than (inaudible)
12 of the generic powers (inaudible).

13 COMMISSIONER KENNEDY: Well, okay, does anybody
14 want to change this?

15 MR. KENNEKE: Does this imply that if their finding
16 were made that -- that finding is then made once and for all,
17 that is, when they come in later for construction permit,
18 *they ought to have an*
(inaudible) automatic LWA?

19 MR. MALSCH: We've taken care of that. That's
20 fixed.

21 MR. CASE: By saying, we need it again, is that it?

22 MR. MALSCH: Well, we fixed it another way; but we
23 fixed it so that won't happen.

24 MR. CASE: You have to define the need for the facility.

25 MR. KELLEY: For an LWA.

DKW 40

1 MR. MALSCH: No, but they could be related. The
2 way it stands now, they're not related.

3 COMMISSIONER BRADFORD: Let me try to sharpen that,
4 okay? Will we meet on this again tomorrow morning?

5 COMMISSIONER KENNEDY: Okay. It's a quick thing.
6 G and H -- (inaudible) what can we say to that?

7 Okay, we need a Sunshine Act.

8 MR. KELLEY: Yes, we'll need a Sunshine vote to
9 withhold these transcripts until the end of the Congress --

10 ALL: Aye.

11 (Whereupon, at 12:00 o'clock, noon, the meeting
12 was recessed.)

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