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NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

PUBLIC SESSION

Policy Session 78-2

Adjudicatory Session 78-4

Place - Washington, D. C.

Date - Thursday, 12 January 1978

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

PUBLIC SESSION

Policy Session 78-2

Adjudicatory Session 78-4

Room 1130  
1717 H Street  
Washington, D.C.  
Thursday, 12 January 1978

Hearing in the above entitled-matter was convened,  
pursuant to notice, at 3:00 p.m., JOSEPH HENDRIE, Chairman,  
presiding.

PRESENT:

JOSEPH HENDRIE, Chairman  
RICHARD KENNEDY, Commissioner  
VICTOR GILINSKY, Commissioner  
PETER BRADFORD, Commissioner

James Holloway	Rich Mallory
William O. Miller	Walter McGee
Daniel Donoghue	Don Hassel
Robert Fonner	Samuel Chilk
Lee V. Gossick	
Edson Case	
Trip Rothschild	
Leo Slaggi	
R. Cunningham	
L. Barry	
Dennis Crutchfield	

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P R O C E E D I N G S

2 CHAIRMAN HENDRIE: Why don't we go ahead and  
3 start on the subject we are meeting this afternoon, on the  
4 matter of a new license fee schedule for the Commission.

5 The Commission has had to move forward and look at  
6 its fee schedules pursuant to the Independent Offices Appropria-  
7 tion Act of '52, and assorted other compelling judicial  
8 legislative products.

9 A schedule for these was published for comment  
10 sometime ago --

11 MR. MILLER: May 2nd.

12 CHAIRMAN HENDRIE: -- in May.

13 The Commission had met previously to hear Staff's  
14 summary of comments. We have had in the course of discussions  
15 with architect-engineering firms and nuclear reactor vendor  
16 firms in connection with the standardization policy, the  
17 matter of fees always arises in regard to those particular  
18 things. So we have had a good deal of discussion of fee  
19 schedule.

20 Most recently the Staff was asked at a meeting  
21 late in October, to respond to several questions on the  
22 proposed fee schedule and to make any modifications they  
23 thought appropriate in one way or another.

24 We are gathered here today then to have a briefing  
25 from the Staff to cover the answers to those questions, and

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1 any other updating matters that are appropriate to talk about.  
2 The proposed fee schedule is before us as a consent calendar  
3 item. I don't know that we will want to vote here today, but  
4 I think the discussion with the Staff is an important step  
5 in arriving at a decision.

6 We may leave it as a consent item, which will be  
7 affirmed later on.

8 So, Lee, please add to that background to get it  
9 straightened out, if you will, and go on.

10 MR. GOSSICK: I think you have covered it completely.

11 As you indicated, there were some questions that  
12 were derived after the previous briefing on October 25th.  
13 These questions have been addressed to the Staff, and I believe  
14 Bill Miller is ready to present them in the form of a briefing  
15 here, giving the answers to the questions, and our views.

16 Bill?

17 MR. MILLER: As indicated, there were several  
18 questions. And we will jump right into the questions.

19 Allen, if you will put Vugraph No. 4 up there,  
20 please.

21 (Slide.)

22 The first question that was raised by the  
23 Commission, and for which we have provided an answer, was the  
24 question, should revised fee schedules contain fees for  
25 applications and licenses for breeder reactors and fuel repro



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1 plants.

2 And, as you know, the current policy is to defer --  
3 at least as I understand it -- reviews for such applications  
4 and we discussed this matter with NRR. And NRR recommended  
5 that rather than have a fee schedule specifically for breeder  
6 reactors, we develop a new category called advanced reactors.

7 (Slide.)

8 Now we would define advance reactors as any power  
9 plant or power reactor other than light water reactors, and  
10 HTGR. So we have for power reactors two categories, a light  
11 water reactor -- one category, light water reactor, HTGRs,  
12 and a second category which would be taken to account for  
13 any changes or advance reactors, covering everything else.

14 So that is our recommendation insofar as breeders;  
15 to delete that particular language, and substitute advance  
16 reactors.

17 Insofar as fuel repros --

18 COMMISSIONER KENNEDY: As to that category, your  
19 slide shows actual costs. I assume you mean precisely that?

20 MR. MILLER: Actual costs with an upper limit. The  
21 upper limit being that limit which we specified in the October  
22 25 paper.

23 COMMISSIONER KENNEDY: Good.

24 MR. MILLER: Yes. So there would be the upper limit.

25 In respect to fuel reprocessing plants, there are

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1 two considerations here insofar as the Staff is concerned.  
2 NMSS recommended that we continue the specific fee schedule  
3 or category for fuel repro plants as we currently have in  
4 the regulation, as was provided for in our October 25 paper.

5 COMMISSIONER KENNEDY: What is the rationale for  
6 that? Can you give me the rationale for that?

7 MR. MILLER: I would prefer to let Dick Cunningham  
8 respond to that.

9 MR. CUNNINGHAM: Only for this purpose. Reprocessing  
10 might take place for purposes other than recovery of  
11 plutonium mixed oxide fuel. There is one school of thought  
12 that says it might be processed for more effective waste  
13 management, put it in a glass matrix, for example so it keeps  
14 the options open.

15 COMMISSIONER GILINSKY: Let's see. That is not  
16 likely to happen in the foreseeable future?

17 Some other changes would have to take place before  
18 that would be possible, so you would have plenty of time to  
19 deal with the matter and set up a schedule.

20 MR. CUNNINGHAM: Well it is certainly not going  
21 to take place next year, or the next two or three years.  
22 How far it will proceed in the future, I --

23 COMMISSIONER GILINSKY: Suppose you say the next  
24 next two or three years --

25 MR. CUNNINGHAM: I said it won't.



RMG 1

1                   COMMISSIONER GILINSKY: Right. So why deal with  
2 it here, then?

3                   MR. CUNNINGHAM: There is one exception to that.  
4 There was something left open on possible use of the Barnwell  
5 plant for some purpose. I don't know what that purpose might  
6 be.

7                   I might also add I don't know how to make a clear  
8 distinction between a reprocessing plant, a waste solidification  
9 plant --

10                  COMMISSIONER GILINSKY: Have they paid their fees  
11 already?

12                  MR. CUNNINGHAM: Barnwell?

13                  COMMISSIONER GILINSKY: Yes.

14                  MR. MILLER: They have not paid an operating  
15 license fee.

16                  COMMISSIONER GILINSKY: Well, they can't get an  
17 operating license fee for reprocessing without some major  
18 policy changes taking place.

19                  MR. MILLER: Yes.

20                  COMMISSIONER GILINSKY: So I think there is nothing  
21 to talk about on that score.

22                  You know, why reach that, why deal with this matter  
23 when you can deal with it at some later point when it becomes  
24 appropriate, if it ever does.

25                  CHAIRMAN HENDRIE: What other sorts of activities

RMG 2

1 might the reprocessing fee cover?

2 MR. CUNNINGHAM: I might add that we have always  
3 considered the waste solidification part of the plant as part  
4 of a reprocessing plant. Now, we do -- there is a possibility  
5 that the waste solidification plant would have to be built in  
6 connection with the NMS plant

7 There is a possibility that some of these commercial --  
8 the military wastes that are in liquid form might have to be  
9 solidified. That might be done commercially. I don't know;  
10 it's uncertain.

11 CHAIRMAN HENDRIE: I think it leaves a gap with  
12 regard to wastes management.

13 COMMISSIONER KENNEDY: What harm is done by leaving  
14 it there?

15 CHAIRMAN HENDRIE: If you want to qualify the words  
16 a little bit, why, that might be a helpful way to deal with it.  
17 What is the present nomenclature? I don't have the big book  
18 for the present nomenclature.

19 MR. MILLER: "Reprocessing plant complex means a  
20 facility for processing spent fuel and associated facilities  
21 for spent fuel receipt and storage, uranium and plutonium  
22 conversion, and waste solidification." That is the definition  
23 of the --

24 COMMISSIONER KENNEDY: I hope it includes fuel  
25 storage also.

RMG 3

1 COMMISSIONER BRADFORD: In connection with repro-  
2 cessing.

3 MR. MILLER: That's the definition of a reprocessing  
4 plant complex.

5 COMMISSIONER KENNEDY: Question: if Morris were  
6 to come in with a license request to expand their current  
7 storage facilities, where would that have been considered in  
8 our fee schedules?

9 MR. MILLER: That would fall into a separate cate-  
10 gory.

11 COMMISSIONER KENNEDY: Different one.

12 MR. MILLER: A separate category. We did create  
13 in that last paper in October spent fuel storage facility.  
14 So that is separate.

15 As an alternative to -- and I've mentioned this to  
16 Dick, also, and he might care to respond to it -- as an alter-  
17 native, we could put in a category special projects, let it fall  
18 under a special project category. There are a number of special  
19 projects which are not defined, and just put it on an actual  
20 cost basis. Down the road someplace --

21 COMMISSIONER GILINSKY: Anything else from mis-  
22 cellaneous? anything else that might come up?

23 MR. MILLER: Yes. As a catchall --

24 COMMISSIONER GILINSKY: That would simply be a  
25 policy statement that whatever else we do, we would do on an

RMG 4

1 cost basis.

2 MR. MILLER: How do you feel about that, Dick, as  
3 an alternative?

4 MR. CUNNINGHAM: I don't think it's a great issue.  
5 It makes it easier for us if we have, for any applicant, if they  
6 know what the fee is going to be ahead of time.

7 COMMISSIONER GILINSKY: Well, I think actual cost --

8 COMMISSIONER KENNEDY: Actual cost -- would the  
9 ceiling in the October paper apply? Do you have to establish  
10 a different one?

11 MR. MILLER: Not for special projects, because we  
12 don't know what they would be, so we couldn't establish a  
13 ceiling, of course.

14 You know, we -- in the October paper we had a  
15 special project which was a catchall, which would have been  
16 strictly actual cost. We also had a fuel repro complex which  
17 did have a ceiling.

18 Now, if we decide to drop the fuel repro complex,  
19 handle it under special projects, there would be no ceiling  
20 because we --

21 MR. CUNNINGHAM: Well, it certainly would be more  
22 consistent with what NRR is doing with advance reactors.

23 COMMISSIONER KENNEDY: Except that they do have a  
24 ceiling.

25 MR. CUNNINGHAM: Yes.

RMG 5

1 CHAIRMAN HENDRIE: Please carry on, I will be right  
2 back.

3 MR. MILLER: The next question that the Commission  
4 asked us to respond to.

5 (Slide.)

6 MR. MILLER: Should fees for permits and licenses,  
7 for custom-designed power reactors be based on actual cost,  
8 actual cost not to exceed those fees that were set forth in the  
9 October 25 paper, the schedule that was considered at that time?  
10 Should the actual cost proviso, with the upper limit, be ex-  
11 tended to test facilities and research facilities?

12 And we discussed this again with the licensing staff,  
13 NRR in particular, and they recommend and we recommend that we  
14 go to actual manpower cost, to actual cost in lieu of a fixed  
15 fee which we previously had in the paper, and that there be  
16 an upper limit, the upper limit being the limit that was pre-  
17 scribed in the October 25 proposed rule.

18 So that is our recommendation, that we go away from  
19 the fixed fee, go to an actual cost with an upper limit.

20 COMMISSIONER GILINSKY: And what is the upper limit?

21 MR. MILLER: The upper limit is roughly \$900,000,  
22 as I recall, for a construction permit, and about \$1 million  
23 for an operating license. Jim, you can give him an exact --

24 COMMISSIONER GILINSKY: And how do those relate to  
25 the average cost?

RMG 6

1 MR. MILLER: Well, that is the average cost, as a  
2 matter of fact. The upper limit is the average cost, based on  
3 our experience for construction permit for a custom-type plant.

4 Now, we're only talking about custom plants here.  
5 We do have other categories for standardized plants, if you  
6 recall. They are somewhat less than that for a custom plant.

7 MR. CASE: Just let me make sure. At the time we  
8 did this, it was the average cost. Since that time, with the  
9 more recent cases, average actual costs have gone up beyond the  
10 number Bill mentioned.

11 MR. MILLER: Yes.

12 COMMISSIONER GILINSKY: So would it be keyed to the  
13 average cost, or to this number?

14 MR. CASE: To that number.

15 MR. MILLER: The number we have.

16 COMMISSIONER GILINSKY: What is the current average  
17 cost? Is it significantly different?

18 MR. CASE: Yes. High.

19 COMMISSIONER GILINSKY: How much higher?

20 MR. CASE: 50 percent or more.

21 COMMISSIONER GILINSKY: 50 percent or more?

22 MR. CASE: 50. 5-0.

23 COMMISSIONER KENNEDY: 50 percent more than \$1 mil-  
24 lion? You mean \$1.5 million?

25 MR. CASE: Yes.

RMG 7

1 MR. CRUTCHFIELD: \$1.5 million is also composed of other's  
2 time. NRR's contribution to the total manyears is only like  
3 about 6 manyears out of what, I think, I guess, 10.

4 COMMISSIONER GILINSKY: And the rest?

5 MR. CRUTCHFIELD: I&E.

6 MR. MILLER: Quality assurance, ACRS --

7 COMMISSIONER GILINSKY: So, let's see, what is the  
8 justification? I mean, since the point of it was to gear it to  
9 what the average cost was --

10 MR. CASE: The justification was, let's get this one  
11 out, and then next year there will be another fee schedule which  
12 will take into account the differences that have happened since  
13 we made these previous calculations.

14 COMMISSIONER GILINSKY: Do you do this annually?

15 MR. MILLER: Well, if you follow OMB you would.  
16 Their Circular 825 specifies that we review fee structures or  
17 schedules and make adjustment on an annual basis. We have not  
18 done that, but we did at one time. We have not in the last two  
19 or three years.

20 COMMISSIONER GILINSKY: We have or have not?

21 MR. MILLER: Have not.

22 COMMISSIONER GILINSKY: Did we do that formally?

23 MR. MILLER: At one time we did, yes, back beginning  
24 in '70, '71, '72, '73 -- the schedule was adjusted every year.  
25 '73 was the last.



RMG 8

1 I might add that, of course, we are aware of the  
2 recommendation that NRR said -- and, even as I recall, and Ed,  
3 you may correct me -- their recommendation that the ceiling be  
4 increased.

5 But we would have a problem, I think, Dan, with  
6 that, because we could not -- we don't feel that we could --  
7 and the lawyers may speak to this point -- we could not go out  
8 with a schedule, if the Commission decided to go forward with  
9 this schedule, and increase the limit, the upper limit, without  
10 going out for comment, as a proposed rule again. We'd have to  
11 start over and go out for public comment.

12 So we would prefer and recommend that the Commission  
13 if they so choose, adopt this schedule and put it in the place,  
14 and then some time later we can reassess costs.

15 MR. DONOGHUE: This schedule really sets the frame-  
16 work for any future, any further reviews, assuming this  
17 schedule will hold up, the concept, if we're tested in court,  
18 would merely be review in the cost to see whether the fees  
19 ought to be raised or lowered, rather than dealing with concepts.

20 COMMISSIONER GILINSKY: I see. You are establishing  
21 a new basis for charging fees.

22 MR. DONOGHUE: Correct. In line with the court  
23 decisions.

24 MR. MILLER: The guidelines that the Commission  
25 furnished us last February, that's correct.

RMG 9

1           The third question dealt with research reactors and  
2 the question was should the Commission continue to exempt from  
3 license fees --

4           COMMISSIONER GILINSKY: The Commission is melting  
5 away here.

6           (Laughter.)

7           (Slide.)

8           MR. MILLER: This was Commissioner Bradford's  
9 question, as I recall. But the question was, should the  
10 Commission continue to exempt research reactors which may be  
11 involved in a commercial venture, reactors were located at  
12 nonprofit education institutions, continue to exempt them from  
13 fees?

14           Now, we did send to the Commission a month or so  
15 ago a preliminary report on this question, and pointing out  
16 that there is some competition, but we were making a survey,  
17 we are working with what was ERDA and their group that provides  
18 grants to some of these universities.

19           So we are suggesting that we hold that question in  
20 abeyance and come back to the Commission with a separate paper  
21 on it because there is a lot --

22           COMMISSIONER KENNEDY: It actually is a real ques-  
23 tion?

24           MR. MILLER: It is a real question and there are a  
25 lot of difficult --

RMG 10

1 MR. DONOGHUE: Policy issues associated with it.

2 MR. MILLER: Right. That's correct. So we would  
3 recommend holding that, considering it separate.

4 The next question that was brought up concerned  
5 topical reports, and the question the Commission asked is the  
6 \$20,000 maximum fee a reasonable fee for topical reports. And,  
7 as you may recall, this was the -- when we came forward with  
8 the paper in October, we pointed out that the Office of  
9 Nuclear Reactor Regulation recommended if there was to be fees  
10 for topical reports, that we set an upper limit of \$20,000 and  
11 a minimum limit of \$5,000.

12 Now, we recommended to the Commission that we go  
13 along with the upper limit of \$20,000, but drop the minimum,  
14 because there are some cases where the cost is actually less  
15 than \$5,000, and therefore we couldn't do that. We wouldn't  
16 have a floor, but we would have a ceiling.

17 Now, after -- based on the Commission's request for  
18 further information, we went back and we looked -- Jim and I --  
19 we looked at 33 topical reports, those 33 that were completed  
20 in fiscal '77. And we found that the manpower required to  
21 complete these reports ranged from 25 hours to more than 700  
22 professional manhours, the cost ranged from roughly \$1,000 to  
23 about \$28,000, as I recall. Most of the reports were under  
24 \$10,000 in cost. The average, as I recall, was about \$5,000,  
25 wasn't it, Jim?

RMG 11

1 Now, this is a very -- as you well appreciate, this  
2 is a very controversial area. Industry feels very strongly,  
3 they've stated, and we've said in our paper last October at the  
4 meeting, that industry feels very strongly that there should be  
5 no fees for topical reports, that this is something that benefits  
6 primarily the Commission.

7 But we feel in the Office of Administration that this  
8 is an area where the activities specifically requested, the  
9 review, there should be fees.

10 Now, we feel that \$25,000 is a reasonable --

11 VOICES: \$20,000.

12 MR. MILLER: \$20,000. \$20,000 is a reasonable fee.  
13 And the proposal that we've --

14 COMMISSIONER KENNEDY: This is for a topical report  
15 requested by --

16 MR. MILLER: Industry.

17 COMMISSIONER KENNEDY: Okay.

18 MR. MILLER: By a vendor.

19 COMMISSIONER KENNEDY: In other words, if NRR  
20 initiates one itself --

21 MR. MILLER: If it is something that is initiated  
22 by the Commission, then we would not charge. An application,  
23 a request comes in from industry. That is correct.

24 So it would be based on actual cost, again, with the  
25 upper ceiling of \$20,000.

RMG 12

1 NRR did propose, or suggest that perhaps what we  
2 should do is consider, rather than the \$20,000 limit, we should  
3 go on actuals, and recover 75 percent of the actual cost.

4 Now, there are some of these -- for example, the  
5 Westinghouse emergency core cooling study, which has not been  
6 completed, the Commission has already spent in excess of  
7 \$150,000. So some of these, there a few of them where the cost  
8 is substantial.

9 And NRR recommended that perhaps we should go 75  
10 percent of actual cost, the Commission absorb 25. But as I  
11 understand it -- Bob, you may speak to this point -- that there  
12 may be some question in defending this kind of a proposal for  
13 an allocation. One of you --

14 MR. FONNER: I will say just a few words, and then  
15 Leo might want to amplify it a little bit.

16 We felt in OELD that absent some kind of justifi-  
17 cation for such a reduction, it would not be a reasonable way  
18 of approaching the topical report fee scale.

19 COMMISSIONER GILINSKY: Why is that any different  
20 from the maximum?

21 MR. FONNER: What we don't -- well, the 75 percent  
22 of actual cost is what I'm addressing.

23 COMMISSIONER KENNEDY: That might turn out to be  
24 a greater return than the \$20,000 maximum.

25 MR. FONNER: For some individual cases, yes. But most

1 of these, as indicated in the answer in the paper, fall below  
2 that.

3 COMMISSIONER GILINSKY: Well, what fraction of the  
4 total expenditures on topical reports would you obtain on the  
5 basis of the first recommendation?

6 MR. FONNER: Bill.

7 MR. MILLER: Well, I don't recall specifically, but  
8 we would recover most of the money, because there were only  
9 a couple that were outside the \$20,000. As I said, the average  
10 was about \$5,000. Most of them 90 percent of them, are under  
11 \$10,000.

12 COMMISSIONER GILINSKY: Would this exempt the  
13 research reactors?

14 CHAIRMAN HENDRIE: As an old research reactor  
15 designer, I think that's a very kind thing to do.

16 MR. FONNER: May I continue?

17 The point is, I think very simply put, that we have  
18 no greater basis to justify a 25 percent reduction here than  
19 has been expressed, and do it here and not do it elsewhere.  
20 We're putting ourselves into a fairly vulnerable position on  
21 the legality of that particular part of the fee schedule. And  
22 I think the consensus among the lawyers is that this adds some  
23 additional increment to the legal risk in the fee schedule.

24 MR. DONOGHUE: What we are getting into is an  
25 apportionment of benefits again, which we've never been able

RMG 14

1 to do across the board. And this is sort of an arbitrary  
2 determination that 25 percent is for the benefit.

3 It's really not the benefit of the public, it's the  
4 benefit of the Commission, which I think introduces a problem  
5 into this thing.

6 COMMISSIONER KENNEDY: It is hopefully of a benefit  
7 to the Commission, thus a benefit to the public, since the  
8 Commission works for the public.

9 MR. DONOGHUE: Right. But I don't think it would be  
10 construed as an independent public --

11 COMMISSIONER KENNEDY: Just a philosophical point.  
12 (Laughter.)

13 MR. MILLER: Well, in any event, our recommendation  
14 is that we go with the ceiling of \$25,000 --

15 CHAIRMAN HENDRIE: \$20,000.

16 MR. MILLER: \$20,000. I don't know why I'm trying  
17 to raise it. But in any event, \$20,000. And then after a  
18 year or so, we can look at this, look at the impact of the fee  
19 and see if it does in fact have an adverse effect to the sub-  
20 mission of topical reports as industry indicated it might very  
21 well do. So this is our recommendation at this time. We go  
22 with the ceiling and then look at it a year or so from now to  
23 see what -- we know what we've been receiving, and the number  
24 of reports, types of reports.



mml

1 COMMISSIONER GILINSKY: Then you are saying you  
2 would only miss the basis of say, the experience of the  
3 last year or two, a couple of reports?

4 MR. MILLER: Costwise, most of them, yes. That's  
5 right.

6 Now there are a lot -- we only looked at those  
7 that were completed in fiscal '77. There were a number in  
8 progress. A lot of them were, of course, done prior to  
9 fiscal '77. But we did look at the 33 that were completed in  
10 fiscal '77.

11 As I indicated, the costs ranged for those that  
12 were completed, from \$1000 to roughly \$28,000. The average  
13 cost was \$5000. Most of them fell under \$10,000 cost.

14 Now there are others, obviously, that were in a  
15 continuing -- the highest one so far was the Westinghouse  
16 one that I mentioned, which we have already put \$150,000 into.

17 COMMISSIONER GILINSKY: Let me ask you, are  
18 these expenditures reasonably predictable?

19 In other words, if someone submits a topical  
20 report, can he have a rough idea at the outset of what it  
21 would cost to review?

22 Is it a matter of entering into some random pro-  
23 cess?

24 MR. CASE: I think it would be very difficult to  
25 predict in advance how much it would cost.

mm2

1 MR. MILLER: I don't think you could tell, the  
2 average cost is such and such, and most of them fall under  
3 it.

4 COMMISSIONER GILINSKY: So that in a way is the  
5 reason for having a ceiling?

6 MR. MILLER: Yes. I would think so.

7 COMMISSIONER GILINSKY: At least you would know  
8 it would be less than that, wouldn't it?

9 MR. GOSSICK: He doesn't have an open-ended  
10 liability.

11 CHAIRMAN HENDRIE: I think he has in other parts  
12 of the fee schedule. Having a ceiling is very helpful in that  
13 regard. Otherwise it is really an open and running cost, and  
14 the guy doesn't have any chance to cut it off without just  
15 saying, you know, stop, I withdraw, in which case it becomes  
16 waste, total waste.

17 COMMISSIONER GILINSKY: You don't provide an appli-  
18 cant with any kind of an estimate, then?

19 MR. MILLER: No.

20 OF course we have never charged for this before.  
21 This is the first time around.

22 COMMISSIONER GILINSKY: Oh, there wasn't any  
23 reason to do so.

24 MR. MILLER: This is the first time it has ever been  
25 proposed.

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Shall I go on to the next one?

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(Slide.)

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The fifth question that was raised, what method of fee assessment should be adopted by the Commission for reactor vendors filing standard NSSS designs and AEs filing standard BOP designs.

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And in an earlier paper, which as I recall came in early October to the Commission, we did provide five alternatives for assessment of these plants and we recommended alternative number one, which provided that the Commission would assess an application fee of \$50,000 and take the remaining cost with an upper limit here again for the PDA or FDA, take the remaining cost up to that limit and divide it over the first five units sold.

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COMMISSIONER KENNEDY: Excuse me, what was the limit?

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MR. MILLER: The limit for a preliminary design is roughly \$450-, \$500,000. The final design is roughly the same. So you are talking combined, about \$1 million, yes.

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COMMISSIONER KENNEDY: Okay.

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MR. MILLER: So in a nutshell, we are talking about an application fee, the remaining cost up to this limit would be spread across the first five units sold, if the Commission did not -- if the vendor or AE didn't sell the units, then the Commission would lose these costs, of course.

mm4

1 So it would be they recover 20 percent.

2 And we still feel that this is the best approach  
3 of the alternatives that we have looked at and we discussed  
4 previously with the Commission.

5 NRR, that was one of the alternatives that we  
6 mentioned last October, which we felt there were problems with  
7 and I think the legal staff agreed.

8 They have recommended we collect an application  
9 fee and pass the cost, the remaining cost on to the utility.  
10 And I think there are some legal problems, as I understand,  
11 with that, because the utility was not the applicant for the  
12 review.

13 We indicated that in our discussion last October.

14 Isn't that basically about it?

15 MR. FONNER: Yes.

16 We felt that the requirement of the Independent  
17 Offices Appropriation Act as explained and interpreted by the  
18 Court of Appeals and the Supreme Court, would preclude passing  
19 of a fee that would be due from the applicant, recipient of  
20 services, to a third party.

21 CHAIRMAN HENDRIE: Or at least collecting it from  
22 the third party. What the second and third parties do by way  
23 of exchanging, that's their business.

24 MR. FONNER: That is an economic and commercial  
25 relationship.

mm5

1 CHAIRMAN HENDRIE: And at this level I believe it  
2 turns out that there is a slight saving for a utility that  
3 uses standard design. If he uses an architect-engineer's  
4 standard design, the reduction for the whole, sort of like  
5 the whole plant proposition, which would include then a  
6 standardized NSSS, the reduction in the utility's construction  
7 permit fee --

8 MR. MILLER: Was about \$230,000.

9 CHAIRMAN HENDRIE: -- is just about awash with that  
10 one-fifth of the standard review fee that the AE is going to  
11 have to pay.

12 So we have here constructed a system which does  
13 not provide any notable dollar incentives for standardization,  
14 but at least appears not to have constructed any substantial  
15 monetary disincentives to standardization. I have always  
16 to that as an important sort of minimum position to be taking  
17 if we are, in fact, trying to encourage people to go in that  
18 direction.

19 MR. MILLER: The other factor, too, along that  
20 line, based on what Ed Case has said, the upper factor or the  
21 upper limits for standard plants -- in other words the  
22 maximum fee for standard plant is based on a high learning  
23 curve.

24 Theoretically these costs should come down, the  
25 actual costs should come down, and I think that is the way

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1 you feel, isn't that right?

2 MR.CASE: Yes.

3 MR. MILLER: So there would be greater savings as  
4 we gain experience in this area, since we have a maximum fee,  
5 of course for standard plants, as we do for custom now. So  
6 there should be a greater saving in the future.

7 The sixth question:

8 (Slide.)

9 Is the proposed fee scheduled in conflict to some  
10 extent with other federal statutes such as the Small Business  
11 Act, where the question was raised, real estate licensees  
12 may have some advantage, antitrust laws, or any other class  
13 of laws or policy directives?

14 And, should the Commission continue -- should the  
15 Commission set fees below the cost of rendering service for  
16 certain classes or categories of licensees?

17 And is there a basis for setting certain fees  
18 below cost?

19 Well, in discussing this of course with the legal  
20 staff, they advise us that this proposed schedule is not in  
21 conflict with either the Small Business Act, or with other  
22 federal statutes.

23 That the overriding statutes for licensees for  
24 cost recovery for agencies such as NRC is Title V of the  
25 Independent Offices Appropriation Act.

1           The legal staff also advises us that fees cannot  
2 be cut arbitrarily for one category without providing the  
3 same kind of benefit for other license categories. In other  
4 words, you can't arbitrarily cut one category unless there is  
5 some particular regulatory obligation or unique situation  
6 which, in discussing this with the lawyers, we have not been  
7 able to come up with any particular unique situations, nor  
8 can we find a regulatory obligation. For example, like  
9 standardization is not a regulatory obligation, there is  
10 no statute providing for standardization, or regulations, as  
11 I understand it, which would make that a unique case for  
12 cutting fees.

13           So we do not see that this proposed fee schedule  
14 is in conflict with any federal statutes.

15           Also, another question which was asked, could  
16 one tie fees, cost recovery to, say, the volume of business,  
17 to the size of the licensee.

18           And here again we are advised by the legal staff  
19 that we can't do that under Title V. So there does not  
20 appear to be a basis, as I understand it, for cutting fees.

21           And in a nutshell, we recommend, right, Dan, that  
22 fees be based on cost recovery. They reflect cost.

23           Shall I go to the next question, Mr. Chairman?

24           CHAIRMAN HENDRIE: There seems to be a certain  
25 lack of --



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1 COMMISSIONER KENNEDY: Not at all, I'm listening  
2 with avid interest to this. It is being done so beautifully,  
3 there are no questions.

4 (Laughter.)

5 CHAIRMAN HENDRIE: Well that makes me uneasy when  
6 there are no questions.

7 (Laughter.)

8 COMMISSIONER KENNEDY: Very effective presentation.

9 MR. MILLER: That makes me happy.

10 CHAIRMAN HENDRIE: I keep looking around to see  
11 if we still have a quorum.

12 (Laughter.)

13 Please go on.

14 (Slide.)

15 MR. MILLER: The last question, the seventh question,  
16 should the fee schedule be somewhat more simply drawn or more  
17 arbitrarily drawn?

18 And the answer to that, as far as we felt is no,  
19 because this is one of the areas where, for example FCC got  
20 into difficulty. They lacked specificity and ended up in  
21 court, and they had problems. They lacked specificity and the  
22 Court of Appeals and so forth has said that these fees, and  
23 the costs should be specifically drawn, you have to show the  
24 basis for, you know, what you are putting into your fee  
25 schedule, the cost you are putting into your fee schedule.

mm9

1 And so we see no basis -- we think we are on the  
2 right track, in other words, in this schedule. And I think  
3 the General Counsel and the Executive Legal Director  
4 advise that we are.

5 CHAIRMAN HENDRIE: As a lay observer of the legal  
6 scene, I must say that the complexity in this schedule certainly  
7 must offer the benefit that if sued, we can retreat into it  
8 and the court will have hell's own time sorting this out.

9 (Laughter.)

10 MR. ROTHSCILD: This is not a seat you want to  
11 lose. I see there is something in this morning's paper about  
12 the FCC was ordered to refund fees, and apparently they have  
13 told the court it is going to take at least two years to  
14 refund fees, to unsort their schedule.

15 COMMISSIONER BRADFORD: Yes, but they made a  
16 serious mistake. They are in the wrong business. They were  
17 collecting \$4 fees from people all over the country. When  
18 we collect one fee, it is a good one.

19 (Laughter.)

20 COMMISSIONER KENNEDY: We have done that as well,  
21 have we not?

22 Will we get them all refunded?

23 MR. MILLER: We refunded about \$7 million.

24 CHAIRMAN HENDRIE: To how many people?

25 MR. MILLER: Somewhere in the neighborhood of 4000.

mm10 1 MR. BARRY: We have not refunded all of them,  
2 everyone. Because a lot of the people who were due a refund  
3 are no longer in business, and there was nobody to refund it  
4 to.

5 We have refunded everyone that has requested, and  
6 we think we are probably close to closing up everyone who is  
7 eligible.

8 CHAIRMAN HENDRIE: Yes.

9 Most of those would have been byproduct license  
10 people, wouldn't they?

11 MR. BARRY: That's correct.

12 CHAIRMAN HENDRIE: You are quite right with  
13 regard to reactors. Those are more easily counted.

14 MR. MILLER: Going on then into the recommendations,  
15 Staff's recommendations:

16 (Slide.)

17 We recommend that the Commission approve this  
18 schedule that we discussed with you last October with the  
19 following modification.

20 One, of course, we delete the term breeder reactor  
21 and substitute advanced reactors in accordance with our earlier  
22 discussion.

23 That fees for custom power plants go on an actual  
24 cost basis with an upper limit.

25 COMMISSIONER GILINSKY: Can I just ask you, how do

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1 the fees in category 1 differ from the fees in category 2?

2 CHAIRMAN HENDRIE: There is a factor of about two  
3 difference.

4 COMMISSIONER GILINSKY: I see.

5 The first one being higher.

6 MR. MILLER: CPP is roughly \$2 million.

7 And it is very likely it may be considerably  
8 higher than that as time passes.

9 Going on then, we would delete there or we would  
10 go on actual for custom plants, and we would do the same for  
11 research and test reactors.

12 We would recommend that vendors and AE pay an  
13 application fee of \$50,000; that the cost, remaining cost  
14 with an upper limit be spread over the first five units sold,  
15 if they are sold.

16 And we would recommend that the schedule become  
17 effective in 30 days.

18 I list that as one of the items, simply because in  
19 the earlier paper when we talked to you last October, we  
20 suggested 90 days rather than 30 days. And talking to Bob  
21 Fonner and to the lawyers, they felt that there might be  
22 some problems extending it out for a longer period of time.  
23 And we can be ready if the Commission decides to go, within  
24 30 days.

25 MR. DONOGHUE: We would be concerned whether we

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1 would be geared up to make the changes and actually start  
2 implementing the schedule in less than 90 days, but since  
3 that time we have been able to --

4 CHAIRMAN HENDRIE: Okay.

5 Let's see, the proposal as you make it -- what was  
6 the thing about university reactors?

7 COMMISSIONER GILINSKY: That was taken as a  
8 separate item.

9 MR. MILLER: We mentioned that earlier. We would  
10 consider that -- set that aside. We would continue the  
11 exemption until the Commission makes a decision later.

12 CHAIRMAN HENDRIE: Okay.

13 And in the event we ever get one again, we  
14 can include HTGRs with the light water machines?

15 MR. MILLER: That's right, we would include that.

16 CHAIRMAN HENDRIE: Okay. It is a clear enough  
17 proposition to me.

18 How do you feel about it?

19 COMMISSIONER KENNEDY: It looks like a reasonable  
20 proposition to me, too. I do have one question, and that  
21 pertains to, I think we got a letter late in December from  
22 the radiography outfit raising a number of interesting  
23 questions, and I just am not clear as to the answers.

24 Did you review those?

25 MR. MILLER: Yes.

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1           As I recall, it is a technical operations problem.  
2 They asked a number of questions. One of the questions, of  
3 course, was concerned with evaluation of containers and  
4 casks.

5           And we did in the final rule -- and I mentioned  
6 this last October -- we did set aside a category of containers  
7 to make what we think a more reasonable basis for assigning  
8 fees for evaluation of shipping casks and other forms of  
9 containers which would benefit them.

10           Another question they asked, of course was, they  
11 were concerned about, I guess their customers, primarily,  
12 operating in agreement states. These are radiographers.  
13 Unfair competition was the argument. That those in the agreement  
14 states, they say, do not pay fees; where here, in the non-  
15 agreement states, they would have to pay fees.

16           Now that is not completely the case, of course,  
17 because there are five agreement states that do assess fees.  
18 Some are very minimal, like \$50. California, as I recall, is  
19 \$200 or \$300, depending on the quantity. It can go to \$500.  
20 It could even be more than ours.

21           Many of the states, I am informed by Ryan's group,  
22 state programs are moving in the direction of assessing fees  
23 as a basis for revenues, if for no other reason.

24           And so I guess that problem will resolve itself  
25 in certain cases.

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1 CHAIRMAN HENDRIE: On that point, I have some  
2 concerns, because I noticed some rather high fees in several  
3 areas; you know, the order of \$100,000. And if you have got  
4 a guy in an agreement state who doesn't -- you know, who pays  
5 \$100 for the same operation, but a guy in a nonagreement state  
6 has to pay \$100,000, that is why I raised the issue.

7 You know, if there is something in the Small  
8 Business Act or something that says don't do that to people.

9 But on looking closer with the Staff, what they  
10 point out to me is that the places where the fee is of that  
11 magnitude are limited to, let's see, low-level, commercial,  
12 waste burial grounds, which are not what I call a thriving  
13 business, a thriving industry with a large population of  
14 operators.

15 MR. MILLER: Mills is another.

16 CHAIRMAN HENDRIE: Uranium mills. But I think they  
17 are all -- you said they are not all.

18 MR. MILLER: There are some in Wyoming.

19 COMMISSIONER GILINSKY: What about UF-6 plants?

20 MR. MILLER: Your fuel cycle, it doesn't make any  
21 difference because they are all under Commission -- anything  
22 we have -- S&M, critical quantities, it is all under  
23 Commission jurisdiction.

24 (Simultaneous discussion.)

25 MR. CUNNINGHAM: Six conversions.



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1 MR. MILLER: Oh, conversions. The same thing applies  
2 as mills.

3 MR. FONNER: I think both of the UF-6 conversion  
4 plants that we license, that are active, we license. The  
5 Sequoyah plant in Oklahoma, and the Metropolis Plant in  
6 Illinois.

7 CHAIRMAN HENDRIE: So that those two are licensed.  
8 Well, to sort of summarize, what I found then, my  
9 concern that we were affecting a large number of the smaller  
10 commercial enterprises in byproduct material use, or radio-  
11 graphers, was not the case. That there the fee levels  
12 were typically \$100 or a few hundred dollars for a five-year  
13 license.

14 And for even a small radiographic operation, why  
15 \$400 for a five-year license, the fee does not seem to me  
16 that that is sort of a break or make economic issue.

17 So my concern was considerably relieved by those  
18 statistics.

19 MR. MILLER: Your area of big fees, most of them  
20 are commission retained. Your fuel cycles, there are few  
21 of those. Commission retains jurisdiction. The mills are  
22 the exception, waste disposal like Dr. Hendrie has mentioned.

23 CHAIRMAN HENDRIE: Low level. High levels we  
24 license, and everybody would get the full benefit of our  
25 charges.

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1 MR. FONNER: As an additional element of fact, on  
2 the low-level commercial burial ground, there are only two  
3 companies in the business; Nuclear Engineering Company and  
4 Chem Nuclear.

5 And Nuclear Engineering is the only licensee that  
6 we have, but it is the only company also operating -- it also  
7 operates two burial grounds in agreement states. And the  
8 other company operates only one in an agreement state.

9 So, it is both an advantage and a disadvantage  
10 at the same time.

11 CHAIRMAN HENDRIE: There were some other things  
12 you were about to add on about answers?

13 MR. MILLER: I don't remember all of Dr. Clark's  
14 questions now.

15 COMMISSIONER KENNEDY: Well, one of them pertained  
16 to -- and I was looking up a footnote. He said he was curious  
17 as to why -- I am too -- why a multiple location radiographer  
18 licensee should pay a higher inspection fee for a location  
19 than a single location licensee would pay.

20 MR. MILLER: Well we have two types of radioagrapper  
21 licensees. They are licensed on two bases. Dick's shop  
22 licenses them under two circumstances; one as indicated is  
23 a fixed location, a single location; and multiple location.  
24 The reason the fee is higher for multiple locations is  
25 because people have to travel, our inspectors have to travel

mm17 1 around, you know, run around to follow these guys in the  
2 fields.

3 COMMISSIONER KENNEDY: But his allegation, if I  
4 read this correctly, is a single location is only \$700 per  
5 year.

6 MR. MILLER: Yes.

7 COMMISSIONER KENNEDY: Whereas multiple location  
8 licensees would pay \$980 per year, per location.

9 MR. MILLER: No, that's not the way it works.

10 I know Dr. Clark, I will write to him. That was  
11 not the intent.

12 COMMISSIONER KENNEDY: I would think not.

13 Thank you.

14 MR. MILLER: Although where you have multiple  
15 locations -- and there was a lot of discussion about this  
16 subject. For example, just pick out of the air, there is  
17 Magnaflux, or Pittsburgh Testing, none of these companies that  
18 do run around the country, have a lot of laboratories about  
19 the town, they will have to pay a fee for these facilities  
20 where you go to Indianapolis to inspect versus Dayton, Ohio,  
21 because there is a facility that the Commission's inspectors  
22 would have to visit, and they will have to pay for that.

23 So the bigger you are, in that case, the more  
24 laboratories you have, the total cost will be higher as far  
25 as inspection is concerned.

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1 MR. GOSSICK: For laboratory costs, you would stay  
2 the same.

3 COMMISSIONER GILINSKY: I would -- you are asking  
4 me what I think?

5 CHAIRMAN HENDRIE: I think so.

6 COMMISSIONER GILINSKY: I would not include the  
7 reprocessing category merely because the President has asked  
8 that commercial reprocessing be deferred. Some people might  
9 get the idea we were just raring to go. And it doesn't seem  
10 to be necessary. It can be taken up at some later point if  
11 that seems appropriate.

12 We could have an "other" category that simply  
13 deals with whatever may come in the way of solidification  
14 facilities or whatever, simply indicate that that would be  
15 on a reimbursed basis, possibly with some maximum?

16 MR. MILLER: We have a special projects category,  
17 we did have in October, and that would cover solidification  
18 or other areas.

19 COMMISSIONER GILINSKY: Whatever. It is not even  
20 clear whether we would be licensing those facilities. But if  
21 we do, we could certainly cover it on that basis and they  
22 presumably would be run -- wouldn't these be run by DOE?

23 COMMISSIONER KENNEDY: I would think so.

24 COMMISSIONER GILINSKY: Not to put a maximum on the  
25 fee, then.

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1 CHAIRMAN HENDRIE: It could be. I suppose it could  
2 be a contractor operation, but that would still make it a DOE  
3 facility.

4 MR. DONOGHUE: I don't think we would have authority  
5 for that kind of a facility, even for a licensing to charge  
6 a fee. I think we are limited to power reactors only, aren't  
7 we?

8 COMMISSIONER GILINSKY: Would there be a fee, say  
9 for a waste depository?

10 MR. FONNER: Well I think the question is that if  
11 you are talking about, say, solidification of the material at  
12 Hanford, the military waste --

13 COMMISSIONER GILINSKY: That is what we are talking  
14 about.

15 MR. FONNER: Then we do not license that at the  
16 present time, and I imagine we would not license the solidifica-  
17 tion of material in those plants.

18 COMMISSIONER GILINSKY: It is conceivable that  
19 Congress, in appropriating money for that, might indicate --

20 MR. FONNER: Yes, but that's a different -- that  
21 is looking into the future, and I can't respond to that.

22 CHAIRMAN HENDRIE: And also there is another  
23 point here, and it doesn't appear all that likely at this  
24 moment, but it is not out of the question that a contractor  
25 might be taken on to do that solidification process, and we

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1 would end up having to license him. After all, we licensed  
2 the Admiral -- to our regret, we license the Admiral's  
3 fuel processing plant.

4 MR. MILLER: We license all contractors, we always  
5 have.

6 COMMISSIONER GILINSKY: Well, why don't we get a  
7 catchall

8 MR. CUNNINGHAM: A better case in point would be  
9 NFS certification.

10 COMMISSIONER GILINSKY: Well fine, why not have a  
11 catchall category?

12 CHAIRMAN HENDRIE: Just so it doesn't look as though  
13 we have omitted the possibility, could we include some words  
14 in the description which takes note of the fact that for  
15 such things as possible waste solidification facilities that  
16 we might find occasion to license and so on, that the fees  
17 for these, if they were commercial licenses, would be treated  
18 under the "other projects" category.

19 COMMISSIONER GILINSKY: Sure.

20 CHAIRMAN HENDRIE: Okay.

21 COMMISSIONER BRADFORD: As I understand it, for  
22 some, I take it, good reason, this whole structure does not  
23 address the costs and any possible fees that would come out  
24 of the export license process.

25 MR. MILLER: That's correct.

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1 We have never assessed fees for export licensing.  
2 It was a Commission decision which we affirmed, as I recall, a  
3 year or two ago.

4 COMMISSIONER GILINSKY: Does Commerce charge fees?

5 MR. MILLER: They do not.

6 When I say the Commission, I am speaking merely  
7 of the AEC. It was asked not to by the Department of Commerce,  
8 not to assess fees a number of years ago, as kind of a policy  
9 to encourage exporting and so forth. So the Commissioners  
10 went along with it.

11 (Laughter.)

12 CHAIRMAN HENDRIE: I think we just may have a new  
13 arrow in the quiver.

14 COMMISSIONER BRADFORD: Well, did the OMB directive,  
15 pursuant or whatever it is, pursuant to which we assess other  
16 fees and so forth, in any way exempt the export process?

17 MR. MILLER: OMB does not, not that I am aware of.  
18 It was just a decision of the Commission so far as I am con-  
19 cerned, based on consultation.

20 There was a couple -- General Counsel came up with  
21 a constitutional -- there was some constitutional questions  
22 here in that area.

23 MR. FONNER: We wouldn't push that point too strongly,  
24 but I believe the export program is administered today, and  
25 I would stand to be corrected, I don't work directly in it, in

mm22  
1 OELD. But I think the amount of effort that goes into the  
2 processing of the applications within the agency is fairly  
3 minimal. There may be a great deal of time spent on other  
4 policy considerations, and at the time the fee schedule was  
5 developed, this was one of the considerations that was  
6 involved.

7 COMMISSIONER BRADFORD: And NMSS does spend a  
8 certain amount of time inspecting some of the facilities to  
9 which some of these exports are bound?

10 MR.FONNER: Overseas, there have been some joint  
11 inspection efforts in the past in conjunction with ERDA  
12 for physical security.

13 MR. GOSSICK: We have a real problem in trying to  
14 allocate those costs for application, because they generally  
15 apply to more than one export.

16 COMMISSIONER KENNEDY: Apply exports over time?

17 MR. GOSSICK: Over time, yes.

18 COMMISSIONER BRADFORD: There is nothing about the  
19 OMB directive that compels the application of a fee  
20 schedule to export licensees?

21 MR. MILLER: No. The OMB Circular 825 does not  
22 deal with the question.

23 MR. ROTHCHILD: The other agencies involved, such  
24 as Department of State, Department of Energy also involved  
25 in some of these processes, they do not charge a fee.



mm23

1 If we were to were to do so, we'd be the only agency to charge.

2 CHAIRMAN HENDRIE: I wonder how much business we  
3 could discourage that way?

4 (Laughter.)

5 COMMISSIONER BRADFORD: Some of the reasons advanced,  
6 such as the difficulty and the low cost anyway, made some  
7 sense. I am not sure I would reasonably subscribe to it on  
8 the rationale that you wanted to encourage filing of these  
9 things.

10 (Laughter.)

11 MR. HOLLOWAY: There was one other finding that  
12 the Commission makes with respect to export licenses, and  
13 that is whether or not it is inimical to the common defense  
14 and security rather than the health and safety.

15 And again the legal thinking at the time is if  
16 you make a finding of common defense and security, you would  
17 not charge fees for that.

18 COMMISSIONER GILINSKY: But aren't we charging fees  
19 for safeguard costs now?

20 MR. MILLER: Only the safeguards licensing and  
21 inspection, but not the -- I know what you are saying, but  
22 yes, we are.

23 COMMISSIONER GILINSKY: Could we have this matter  
24 just examined and reviewed in a brief paper?

25 MR. MILLER: Yes.

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1 As a matter of fact, we did write a paper on this  
2 subject, as I recall, a year or two ago.

3 Yes, I will be very happy to do so, dealing with  
4 that very question.

5 CHAIRMAN HENDRIE: Do you feel able to vote for  
6 this thing as amended?

7 Take out the reprocessing category, move some  
8 language into the general discussion and say, look, the waste  
9 treatment sorts of things treated under other projects, the  
10 advanced reactor, the name change there on the category of  
11 advanced reactors and so on?

12 If you feel -- maybe we will just go ahead and  
13 vote on this. There is nothing that bars us. It would give  
14 me a certain satisfaction not to see this again.

15 Those in favor, say aye.

16 COMMISSIONER KENNEDY: Aye.

17 COMMISSIONER GILINSKY: Aye.

18 COMMISSIONER BRADFORD: Aye.

19 CHAIRMAN HENDRIE: So ordered.

20 MR. ROTHSCHILD: May I ask one quick question?

21 Procedurally, you asked for this paper on export  
22 fees. I assume that would be treated in a separate paper  
23 like the education research?

24 CHAIRMAN HENDRIE: Yes, indeed. Completely  
25 separate.

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MR. MILLER: We will go ahead and get this ready,  
making the changes and cleaning up for the Federal Register.

CHAIRMAN HENDRIE: Thank you.

(Pause.)

RMG 15

1 CHAIRMAN HENDRIE: Get us on the way to affirming.

2 MR. CHILK: One of the affirmations deals with

3 SECY. 77-538, which is a proposed amendment to 10 CFR,  
4 Parts 19 and 20 for controlled radiation exposure to transient  
5 workers. This is a proposed rule to prevent possible radiation  
6 doses above the limits of 10 CFR, Part 1.

7 You were briefed by the Staff on this early in  
8 January, and subsequent to that Commissioner Kennedy has ap-  
9 proved it; Mr. Bradford approved it; Chairman Hendrie approved  
10 it, to ask for comments in the proposed rule, but indicated he  
11 would like to consider the cost-benefit aspects before agreeing  
12 to implementation; and Commissioner Gilinsky noted without  
13 objection.

14 CHAIRMAN HENDRIE: Those in favor?

15 (Chorus of ayes.)

16 COMMISSIONER GILINSKY: I guess I would like to  
17 associate myself with for comment only for this.

18 MR. CHILK: For comment only.

19 COMMISSIONER KENNEDY: My concurrence on that is  
20

21 COMMISSIONER GILINSKY: Well, it's all for comment.  
22 (Laughter.)

23 COMMISSIONER GILINSKY: But somehow it doesn't  
24 commit you --

25 MR. CHILK: You would like to reconsider the matter

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1 after the comments have been --

2 CHAIRMAN HENDRIE: Yes.

3 MR. CHILK: The second item deals with SECY-  
4 77-627, which is a proposed rule to implement Commission policy  
5 and Public Law 95-209 on the avoidance of contracts of organ-  
6 izational conflicts of interest. This is required by our  
7 authorization legislation, and the proposed rule would super-  
8 cede our present policy statement.

9 It contains a number of categories in which pro-  
10 spective contractors must indicate that they don't oppose.

11 The Chairman and Commissioner Kennedy and Commissioner  
12 Bradford have approved it; Commissioner Gilinsky has again  
13 voted without objection.

14 May I have your affirmation on it?

15 COMMISSIONER KENNEDY: Aye.

16 CHAIRMAN HENDRIE: I give mine through gritted  
17 teeth.

18 COMMISSIONER GILINSKY: (Affirmatively raised hand.)

19 COMMISSIONER BRADFORD: (Affirmatively raised hand.)

20 CHAIRMAN HENDRIE: So ordered.

21 MR. CHILK: One other matter which has come up  
22 deals with SECY-A-78-4. This is a Commission review of ALAB  
23 in which the general counsel propose that the time for review  
24 be allowed to expire without Commission action. The paper was  
25 late coming to us. I understand that all of you have

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1 requested additional time for that consideration, and if you  
2 would like to comment, if you would like to handle it, I need  
3 a vote to consider it on short notice. And then I need a vote  
4 to extend the time as recommended by the general counsel until  
5 January 19.

6 May I have the vote to consider it?

7 COMMISSIONER KENNEDY: Aye, aye, on both scores.

8 MR. CHILK: Aye on both scores for both of you?

9 Mr. Chairman?

10 CHAIRMAN HENDRIE: (Nods affirmatively.)

11 I'm agin it.

12 But, it is 3 to 1, let it go.

13 This is the one where we've abolished the proceeding.

14 MR. HASSEL: No.

15 CHAIRMAN HENDRIE: No? 78-4?

16 MR. HASSEL: Yes. Oh, I'm sorry. I thought you  
17 meant S-3.

18 MR. CHILK: We're not deciding it; we're just  
19 extending the time. We're just extending the time to review  
20 it, to make the decision.

21 COMMISSIONER KENNEDY: All we are doing is extending  
22 the time to decide it.

23 COMMISSIONER GILINSKY: So you're saying there is  
24 no point in bothering with it?

25 CHAIRMAN HENDRIE: Yes. This is a proceeding we

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1 have terminated. I do not know what we would do if we extended  
2 the time for review. That's why I didn't see, why I wasn't  
3 enthused about the extension. But I don't care.

4 COMMISSIONER BRADFORD: I suppose what they are  
5 contemplating would be filing a petition for reconsideration?

6 MR. CHILK: Commissioner Kennedy started by re-  
7 questing additional time for the Commission to consider it.

8 CHAIRMAN HENDRIE: No, this is the Commission's  
9 review on its own discretion.

10 VOICE: The purpose is to give you time to  
11 review the paper, which we got out late.

12 COMMISSIONER GILINSKY: I have seen the wisdom of  
13 the Chairman's argument.

14 COMMISSIONER KENNEDY: I can't vote. I haven't  
15 even had time to read the damn thing. And let me make note  
16 for the record that I informed the general counsel of this,  
17 and informed him that I would abstain on all such matters.

18 I will not accept papers in my office in which I  
19 am required to vote within the next 24 hours. I read them.  
20 Every last word of them.

21 MR. CHILK: I think that's a growing concern, ..  
22 Mr. Chairman, and all of you have complained about it lately.

23 COMMISSIONER KENNEDY: I received two of them in  
24 the same afternoon with the requirement to act on them within  
25 24 hours. I don't intend to do that.

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1 COMMISSIONER GILINSKY: Actually, that has happened  
2 a number of times.

3 COMMISSIONER KENNEDY: Regularly.

4 COMMISSIONER GILINSKY: And particularly from the  
5 general counsel's office.

6 MR. CHILK: From the general counsel, and also from  
7 the Staff.

8 CHAIRMAN HENDRIE: Please note, general counselors.

9 ~~NOTE CHILK~~ COMMISSIONER KENNEDY: Note that up till now I have  
10 registered my unhappiness in this regard orally. If necessary,  
11 I shall begin to reduce my unhappiness to writing.

12 MR. ROTHCHILD: We will inform Mr. Nelson.

13 CHAIRMAN HENDRIE: Well, if people don't have a  
14 chance to read it, why, I don't know --

15 COMMISSIONER KENNEDY: I am not suggesting that we  
16 do anything with it; I don't know. I would like to have the  
17 opportunity to read it and come to that conclusion. That's all.

18 CHAIRMAN HENDRIE: Why don't we vote to extend a  
19 week just to allow people a chance to read it?

20 COMMISSIONER KENNEDY: Then there will probably  
21 be nothing needed but an affirmation.

22 COMMISSIONER GILINSKY: Just a week.

23 MR. CHILK: That is the only thing.

24 CHAIRMAN HENDRIE: Okay, so we need to vote --

25 MR. CHILK: You have voted to consider it and you --



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1 unless you want to revote now to extend the time.

2 CHAIRMAN HENDRIE: Vote to consider, vote to  
3 extend for one week. Okay?

4 (Show of hands.)

5 CHAIRMAN HENDRIE: Okay.

6 (Whereupon, at 4:10 p.m., the hearing was adjourned.)

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