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NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

Public Meeting

SECY-78-52

RESPONSE TO MOTION BY STATES OF NEW YORK, WISCONSIN AND
OHIO REGARDING ECONOMIC IMPACTS OF THE URANIUM FUEL CYCLE
IN THE S-3 RULEMAKING PROCEEDING

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Date - Wednesday, 8 February 1978

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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IN THE S-3 RULEMAKING PROCEEDING

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

Wednesday, February 8, 1978

The Commission met, pursuant to notice, at 3:55 p.m.

BEFORE:

DR. JOSEPH M. HENDRIE, Chairman

RICHARD T. KENNEDY, Commissioner

VICTOR GILINSKY, Commissioner

PETER A. BRADFORD, Commissioner

ALSO PRESENT:

L. SLAGGIE

S. EILPERIN

J. MURRAY

W. DIRCKS

H. LOWENBERG

K. PEDERSEN

S. CHILK

F. MIRAGLIA

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P R O C E E D I N G S

CHAIRMAN HENDRIE: We gather now on the subject of Response to Motion by States of New York, Wisconsin, and Ohio Regarding Economic Impacts of the Uranium Fuel Cycle in the S-3 Rulemaking Proceeding.

We have a paper before the Commission from the General Counsel's Office, and I seemed to have signed some sort of a concurrence sheet, but the fact that we are here suggests that not all of us did.

Leo, are you going to take the lead on it?

Why don't you go and give us a two-minute outline of what it is and where we are?

MR.SLAGGIE: Right.

Well, I thought I would give a little bit of historical rundown on how the economic impact got into this proceeding so we can perceive the context from which this motion arises.

Back in October, when all the participants in S-3 submitted written testimony pursuant to the Hearing Board's schedule, New York submitted a 40-page statement by Peter Skinner on the Economic Costs of the Fuel Cycle. And Ohio and Wisconsin submitted about a 15-page statement by Professor Irwin Bupp regarding the Cost Estimates per Kilowatt Hour for the Fuel Cycle in Nuclear Power.

Following this, later in October, Wisconsin submitted

mm3 cec1 certain questions to other participants regarding economic
2 costs.

3 At that point these participants objected to some
4 of the questions on the grounds that they were outside the
5 scope of the proceeding, and outside the scope of the participants'
6 testimony.

7 The Hearing Board sustained the objections to many
8 of these questions, and on December 6th, Wisconsin came back and
9 objected to what the Hearing Board had done. They stressed the
10 need for this proceeding to consider economic impacts, and
11 they asked the Hearing Board to clarify what the scope of the
12 proceeding was insofar as economic impacts are concerned.

13 The Hearing Board did that in a memorandum on
14 December 18. They interpreted what Wisconsin was asking for as
15 a request for a cost-benefit analysis in this proceeding itself.
16 And on that basis they said that the Board would continue to
17 exclude the questions that Wisconsin was asking.

18 At the same time the Hearing Board did find that
19 the question of economic feasibility was a matter within the
20 scope of the hearings. And, by economic feasibility what the
21 Board was referring to was the -- well, exactly that -- the
22 economic feasibility of the models on which the numbers in
23 Table S-3 are based.

24 So the Board directed the Staff to provide "a
25 limited amount of cost data to test the economic feasibility

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1 of these models on which the numbers on Table S-3 are based."

2 The Staff complied. They said they could have this
3 data, I believe, about the last week in January.

4 MR. MURRAY: We have already filed it.

5 MR. SLAGGIE: They have already provided that. That
6 data has been provided.

7 CHAIRMAN HENDRIE: I presume that testing economic
8 feasibility here is in the sense that if one of the models for
9 dealing with these problems proposed, would in any practical
10 application, have a cost of, let's assume something splendid,
11 \$10 billion per metric ton of waste; all reasonable. In fact,
12 even the meanest intellect would agree that it was hardly
13 feasible in any practical sense. And that is the way in which
14 you --

15 MR. SLAGGIE: And the numbers should not be based on
16 that kind of knowledge.

17 In that sense, I think I would interpret it.

18 But the Hearing Board also repeated themselves a
19 little bit in a memorandum of January 6th, and they stressed
20 that the Board had not excluded in any way the testimony of --
21 written testimony of Bupp and Skinner, that I mentioned had
22 been submitted earlier by the States of New York and Wisconsin.

23 The Board made that clear, that that was not excluded.

24 Nevertheless, when the motion came in from the
25 State of New York, the motions we are considering now, they

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1 asked the Commission to do three things:

2 The first of these things, they asked the Commission
3 to direct the Hearing Board to place on record certain testimony
4 regarding economic costs of the fuel cycle, which apparently
5 the State believed was still excluded.

6 They asked the Commission to direct the Hearing
7 Board to require an answer to the written questions to which
8 the Hearing Board had previously sustained objections.

9 And third, they asked the Commission to direct the
10 Hearing Board to develop a record in this proceeding, which
11 would include the economic costs of the fuel cycle for the
12 purposes of amending Table S-3 to include economic impacts.

13 So those are the three things as we understand it,
14 that this motion is asking the Commission to do.

15 We have received several responses to the motion.
16 Two of these came in earlier from Commonwealth Edison and
17 Tennessee Valley Authority, which urged that the Commission
18 deny the States's motion. But they went beyond that. They
19 also moved that the Commission reverse the Hearing Board's
20 decision to take data on economic feasibility, and has been
21 urging this -- these motions, citing the Vermont Yankee
22 decision which they interpret as approving the front end impacts
23 in Table S-3. They noted that Table S-3 didn't include
24 economic impacts and they interpreted the Board's action as
25 approving a table without economic impact.

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1 The NRC Staff urged denial of the State's motion,
2 if I understand that correctly.

3 COMMISSIONER GILINSKY: No part of the S-3 table
4 considers economic impacts, is that right?

5 MR. EILPERIN: That's correct. Table S-3 itself
6 does not consider economic impacts.

7 MR. SLAGGIE: No, it does not consider economic
8 impacts.

9 The States contend that it should be amended.

10 COMMISSIONER KENNEDY: I want to be sure it was
11 not meant to, because --

12 MR. EILPERIN: Because economic impacts are handled
13 in individual licenses.

14 COMMISSIONER KENNEDY: Exactly.

15 MR. SLAGGIE: Okay. Well, the Staff, as far as I
16 know, has not objected to this consideration of economic
17 feasibility, so they urge that the State's motion be denied.

18 The draft response which OGC has prepared, our
19 recommended response to the Commission on this matter, notes
20 the confusion which presently exists regarding the difference,
21 how far the Hearing Board and the States actually differ.

22 Point 1, the Hearing Board has not excluded any
23 testimony so far. It is unclear what the States have in mind
24 when they direct the Commission to have -- ask the Commission
25 to direct the Hearing Board to include testimony.

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1 Now they do want the Hearing Board to include
2 testimony, they say, for the purposes of amending Table S-3.
3 But in my view, this somewhat misconstrues what the Hearing
4 Board is doing.

5 The Hearing Board has compiled a record. The
6 purpose, what that record is used for, is up to the Commission.

7 So, once the testimony is on the record, it is there
8 for you to do what you want with it.

9 COMMISSIONER KENNEDY: What was the specific charge
10 in this regard to the Hearing Board?

11 MR. SLAGGIE: The specific charge? You mean from
12 the Commission to the Hearing Board? It was merely to develop
13 a record concerning the environmental impact of waste manage-
14 ment and fuel reprocessing.

15 So, to the extent that those environmental impacts
16 would be exactly what that includes, is a matter which is open
17 to some discussion. The Commission did not direct the Board
18 not to include economic impacts.

19 COMMISSIONER KENNEDY: But, if the Table -- if the
20 purpose of the exercise from its inception was to put in place
21 an interim Table 3 or -- this is the final Table 3, it is the
22 final Table 3 -- put in place a final Table 3, and Table 3,
23 S-3 never did include cost estimates or economic feasibility
24 questions --

25 MR. SLAGGIE: The State's answer to that argument

1 is that the Commission's direction also says that the purpose
mm8 2 of these proceedings was to consider whether the Interim Rule
3 Table was adequate as it was, or whether it needed alteration.

4 MR. EILPERIN: We are not recommending that Table
5 S-3 or the proceeding, the scope of the proceeding be exchanged
6 to include economics, to have the table amended to include
7 economic impacts.

8 At this point, in view of the seeming confusion of
9 what is involved, where the States seem to be asking for
10 portions of relief which they have already gotten, we just
11 think that a further clarification from the Hearing Board is
12 in order, and at that point the Commission --

13 COMMISSIONER KENNEDY: Or, is it important to get
14 clarification from the Commission?

15 Perhaps -- is the Hearing Board -- is there any
16 evidence that the Hearing Board is at this point moving beyond
17 what it was expected in the first instance to do?

18 MR. EILPERIN: No, I don't think there is.

19 MR. SLAGGIE: The Hearing Board has specified that
20 the economic data is to be a limited cost data related to this
21 question of economic feasibility.

22 Now as I read that, that implies to me that the
23 Board definitely has limitations in mind. They are not going the
24 whole way.

25 COMMISSIONER GILINSKY: Is this because we are not

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1 dealing here with an environmental statement, but an assessment?

2 MR. EILPERIN: No.

3 It is just that the economic impacts are handled,
4 right now, in individual licensing proceedings. The generic
5 rule can encompass whatever the Commission wants it to encompass.
6 But that means what is not included in the rule, which also
7 must be taken into account in the NEPA statement, must be
8 handled in a different fashion here in the individual licensing
9 proceeding.

10 And the reason I don't think the Hearing Board is
11 going off base, is what Leowæ referring to earlier -- maybe
12 Jim also wants to comment on this -- that economic feasibility,
13 which is all they have asked, is relevant to the environmental
14 values of the table. In other words, you have to have some
15 feeling that the models are in fact practical, so that the values
16 which are based on those models, have some relationship to
17 reality.

18 And that, as I understand it, is the extent of the
19 inquiry which the Hearing Board has thus far directed. And I
20 think that is a proper subject of inquiry. It again limits the
21 S-3 inquiry to the environmental values which have a limited
22 economic feasibility testimony on that, just to verify that
23 those environmental values are realistic.

24 MR. MURRAY: That is precisely my understanding. I
25 would add, however, that the reason that economics are not

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1 required to be considered in this table is that this is a
2 survey, not an Environmental Impact Statement.

3 COMMISSIONER GILINSKY: A survey, right.

4 MR. MURRAY: Yes.

5 MR. EILPERIN: The DC Circuit has said that we
6 have to consider the impacts of the fuel cycle either in a
7 generic proceeding or a licensing proceeding.

8 COMMISSIONER GILINSKY: So in other words, the
9 economic impacts of the fuel cycle are handled separately in
10 each proceeding?

11 MR. EILPERIN: That's right.

12 COMMISSIONER GILINSKY: On an individual basis?

13 MR. EILPERIN: That's right.

14 There is a Regulatory Guide which explains t he
15 information the Applicant is supposed to put in.

16 I think one question, later, which the Commissioner
17 might want to consider, is whether or not that sort of
18 situation should continue, or whether the economic force is
19 handled generically. But we are not now suggesting that it
20 be handled generically.

21 But, one, we are not now suggesting be handled
22 generically; and two, we are not suggesting by any means that
23 it should be folded into the S-3 proceeding, and the S-3
24 proceeding be expanded to encompass something else.

25 COMMISSIONER KENNEDY: This proceeding

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1 MR. EILPERIN: That's right.

2 COMMISSIONER KENNEDY: -- is simply a narrowly-focused
3 one to respond to specific enjoiners by the Court.

4 MR. EILPERIN: That's correct.

5 COMMISSIONER KENNEDY: And we are not trying to go
6 beyond that. We will simply respond to the Court's instruction.

7 MR. EILPERIN: That's right.

8 COMMISSIONER KENNEDY: Is that correct?

9 MR. EILPERIN: That's right.

10 COMMISSIONER KENNEDY: Now, if we wish to go into
11 the question of economic feasibility or economic costs on
12 a generic basis, that should be the subject, it seems to me, of
13 a hearing of its own, a proceeding of its own in a rulemaking
14 context.

15 MR. SLAGGIE: That is a perfectly reasonable position
16 and one that is certainly in accord with the law.

17 As far as the economic feasibility goes, I would
18 want to stress that it is our view that that question is
19 properly in this proceeding limited to the scope of feasibility
20 and not going on into detailed cost estimates.

21 Now the actual draft response that we have proposed
22 here doesn't really go as far as what we have been saying. All
23 this would do is to affirm the Hearing Board's consideration
24 of economic feasibility and defer any comment or response on
25 the State's specific motion, pending what we hope will be some

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1 clarification of this issue later.

2 COMMISSIONER KENNEDY: From what you have told me,
3 why don't we just respond to the State's petition now?

4 MR. SLAGGIE: Well, one question that is difficult
5 to respond to is the State's urging that we direct the Hearing
6 Board to have certain questions answered.

7 The State of New York, and the Hearing Board, the
8 Chairman of the Hearing Board discussed this matter on the
9 opening day of the hearing and that discussion reflected some
10 confusion on both sides as to who was doing what.

11 And the State of Wisconsin -- the Hearing Board said,
12 we thought we gave you everything you asked for.

13 The State said, if you gave us everything we asked
14 for, why didn't you direct that our questions be answered?

15 And the Hearing Board said, well, we'll have another
16 look at those questions. And the Hearing Board is now doing that
17 among other things, they are looking at the Staff's economic
18 testimony, and they are reconsidering what their reasons were
19 for sustaining objections to these questions.

20 It would be difficult for the Commission now to
21 intervene in this matter. But there are a number of questions
22 which would, in principle, have to be looked at in detail if
23 we were to secondguess the Hearing Board on whether they
24 should be in or out.

25 We hope that will be cleared up.

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Also, if there is any question of additional testimony, that is something that the Hearing Board can address.

And I think, finally, that the Hearing Board's order will make plain exactly what they mean by economic feasibility and how far they intend to go with it. And after that comes out we will be able to draft a more responsive --

COMMISSIONER KENNEDY: Would it be wise for us at this point, before the Hearing Board issues its order in that connection, for us to say something, at least, to reaffirm our understanding of the limits of this question of economic feasibility examination?

MR. SLAGGIE: I would have no strong objection to that.

I have one practical consideration.

COMMISSIONER KENNEDY: Could we say that in, for example, our own response to the States, providing at the same time guidance for the Board in this regard?

MR. SLAGGIE: I think we certainly could do that.

In fact, I even had a try at drafting some language. One difficulty that occurred to me in doing that, is that whatever we say, if we say it in advance of the Hearing Board's order, we make some positive statement about limiting or otherwise affecting the scope of the hearing, it is quite likely that once the Hearing Board's order comes out, certain of the participants will say, "Well, the Hearing Board has

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1 misinterpreted what the Commission has done." And we will get
2 another round of motions having to reinterpret our interpreta-
3 tion and so on.

4 If we do wait for the Hearing Board's order, we will
5 be in a position to say, yes, this is what we want; or, no,
6 this is not, here is how we want that modified. And I think
7 we may save some confusion.

8 COMMISSIONER KENNEDY: I see.

9 What you would suggest is letting -- it would just
10 be the other way around. You would let the Hearing Board go
11 ahead on the assumption that it does understand what it is
12 that the Commission had in mind --

13 MR. SLAGGIE: Yes.

14 COMMISSIONER KENNEDY: -- and is not going to
15 broaden the scope of this activity beyond the relatively limited
16 scope that was contemplated in the first instance.

17 Only to the extent that it exceeds that and it seems
18 to move out of that context, would it be necessary then for the
19 Commission to act. And in such a case the Commission could then
20 issue an order saying, well, that is not exactly what we had
21 in mind.

22 MR. EILPERIN: That's right.

23 It seems to us thus far this Hearing Board under-
24 stands the limits of their economic feasibility inquiry. There
25 is no need at this point for Commission guidance on it.

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CHAIRMAN HENDRIE: Let's see.

We have a motion -- is the S-3 Board set up so that appeals from its decision come here rather than to the Appeals Board?

MR. EILPERIN: That's correct.

MR. SLAGGIE: The Commission stated they would carefully monitor the proceeding, and we have interpreted that as a commitment to consider at least timely motions that are relevant to the general purpose of this monitoring.

MR. MURRAY: The Appeal Board has never been involved in rulemakings, Mr. Chairman.

CHAIRMAN HENDRIE: Okay.

So this is typical for the rulemakings. I see.

COMMISSIONER BRADFORD: Can you just give me a little bit of the history?

You said that the economics left out -- that this was a survey rather than an impact statement. Nevertheless, the actual conclusions that are reached, if they are adopted by the Commission, will be -- those will then constitute the assessments as well, won't they, for purposes of the Environmental Impact Statements in individual proceedings?

MR. MURRAY: Insofar as the environmental impacts not insofar as the economics are concerned.

The Environmental Impact Statements for individual proceedings, have economics of the fuel cycle in them, separate

mml6 1 from Table S-3.

2 COMMISSIONER BRADFORD: What then is the difference
3 between a survey and something else?

4 MR. MURRAY: Two essential differences:

5 An Environmental Impact Statement has a cost-benefit
6 analysis in it, and has alternatives in it.

7 A survey has neither a cost-benefit analysis, nor
8 alternatives.

9 COMMISSIONER BRADFORD: But as to the economic impacts
10 of the particular factors considered, the environmental impacts,
11 there is no difference between the survey and the conclusion
12 reached in the individual proceedings?

13 MR. MURRAY: I'm sorry, I didn't follow that.

14 COMMISSIONER BRADFORD: Well, whatever the values
15 are in the S-3 -- that are eventually adopted in the S-3 table,
16 then get plugged right into Environmental Impact Statements.

17 MR. MURRAY: Into the costs in the Environmental
18 Impact Statement, that is correct.

19 COMMISSIONER BRADFORD: So that the S-3 conclusions
20 are actually quantified in dollars and cents terms?

21 MR. MURRAY: No. They are strictly environmental
22 terms, not economic terms; curies, acres of land, gallons of
23 water and so forth.

24 COMMISSIONER BRADFORD: Now is that ever translated
25 into dollars and cents terms to come to a cost-benefit

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1 conclusion?

2 MR. MURRAY: It is not translated as such.

3 However, in the cost-benefit analysis into which
4 the S-3 numbers are plugged, is also plugged an economic number
5 for the cost of the fuel cycle.

6 COMMISSIONER BRADFORD: And that is the number that
7 is determined in the individual proceedings?

8 MR. MURRAY: Yes, sir.

9 COMMISSIONER BRADFORD: But is it necessarily derived
10 from the numbers that are arrived at in the S-3 proceeding?

11 MR. EILPERIN: No.

12 No economic cost is given for 12 curies of such and
13 so. I mean it is an economic cost in terms of the expense of
14 yellowcake, the cost per kilowatt hour --

15 COMMISSIONER BRADFORD: All right.

16 So where does the economic cost come from?

17 MR. MURRAY: From the cost of the fuel?

18 COMMISSIONER BRADFORD: Not for the back end?

19 MR. MURRAY: Yes, even for the back end, because
20 the cost of the fuel presumably includes cost of the entire
21 fuel cycle.

22 MR. EILPERIN: Here is the guide of the estimated
23 costs which the Applicant is supposed to furnish in his
24 Environmental Report, and the utility is supposed to furnish
25 economic data for these various aspects of the fuel cycle.

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(Indicating to Commissioner Bradford.)

COMMISSIONER BRADFORD: Yes, but why did we decide that it was useful to go into the environmental impacts in a generic form, but that the related economic impacts should be left to the individual proceedings?

MR. EILPERIN: Well, I can think of one reason off the top of my head. I don't know if it is the reason. But one reason is that economics, I would think, are much more subject to change than are prospective curie doses.

So that each year, each six months you might get new economic figures.

It seems to me that that would be one reason for arguing against the flat-out rule which says the economic cost of uranium fuel cycle is \$38 for this aspect, \$200 for that aspect. It just seems to me much more -- an area much more subject to change than trying to figure out prospective --

CHAIRMAN HENDRIE: Let's see, we have got -- Homer has arrived at the table, hopefully with a contribution to make on this subject.

MR. LOWENBERG: I want to reinforce what Steve said. The original consideration in working up the environmental survey several years ago specifically did not address economics because of the fact that the marketplace variations in economics were changing very rapidly and we felt it was improper to try to quantify economics.

mm 1 A reactor built one year, purchasing fuel one year,
2 contracting for fuel services one year could be markedly
3 different from one procured and purchased even in the same
4 calendar year, but at a different point in the economic cycle.

5 So that the economics are extremely variable based
6 on the marketplace conditions.

7 And it was felt impossible in developing a survey,
8 to come up with any meaningful economic data that would be
9 representative over a period of time.

10 COMMISSIONER KENNEDY: Would a simple case in point
11 be, for example, the land values which will obviously depend
12 largely on the particular facility -- well, indeed, entirely
13 on the particular facility -- the amount of land involved,
14 and that land which is going to be involved in the facility and
15 the cost of getting that land there, is that right?

16 MR. LOWENBERG: Well, that is one of the factors.

17 It would be more important to look at, I think, for
18 instance, the yellowcake costs, or reprocessing costs or
19 enrichment costs. They--you know, if a utility contracts in
20 month X for these things, he may get a good deal because some
21 particular reactor vendor has got down time in his shop.
22 Six months later when that shop is filled with work, the price
23 might be 50 or 100 percent higher for the same identical --

24 MR. DIRCKS: The other thing that came about when
25 we went through this exercise back in 1973 -- I was then at CEO,

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1 and I think we were arguing about, for each new reactor you
2 license, what is the environmental impact all up and down the
3 line?

4 Now you can mitigate the impact of the individual
5 reactor by changing its location and changing the design. But,
6 in individual licensing actions, for example, how big a strip
7 mine would you have, or how much land do you strip for the mine
8 back in, wherever it is. Then you look at that as an individual
9 case.

10 The S-3 was only to give you an idea of what the
11 incremental impact is of that particular nuclear reactor you
12 bring on, and not an attempt to mitigate the impact of a mill
13 or mine back where the location is.

14 Now the other way, if you try to factor in costs,
15 I guess you eventually come out with a very large generic
16 thing in the whole fuel cycle, which this S-3 was never meant
17 to be, the whole uranium fuel cycle.

18 But I think the purpose of the S-3 table is to give
19 you an idea of how to plug numbers into the individual reactor
20 licensing effort, to give you an idea of what you are buying
21 when you are getting another reactor.

22 CHAIRMAN HENDRIE: Well in particular, what you are
23 buying in terms of acres of land to be used, tons of mill
24 tailings that will be out on the ground with some kind of
25 cover on it, radon releases, the back end, amounts of wastes

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1 of spent fuel accumulated and such things. Then the costs of
2 those may be very time-dependent.

3 MR. DIRCKS: And location-dependent, too.

4 CHAIRMAN HENDRIE: And location-dependent.

5 COMMISSIONER BRADFORD: Yes, I can see that the costs
6 might be more time-dependent than environmental impact.

7 I am not sure offhand that they would be more
8 location-dependent. I think both would vary with location.

9 MR. DIRCKS: Well, if the reactor is being licensed,
10 it is very difficult to predict over the next 30 years, from
11 which mine or mill you are going to be getting the fuel for that
12 reactor. And that will be dependent on the individual mills
13 that may come on line for the next 30 or 40 years, and that is
14 when you will start mitigating those impacts.

15 COMMISSIONER BRADFORD: That's right.

16 But I should think those would make the environmental
17 assessment as unpredictable to some of the same degree as it
18 would make the cost assessment unpredictable.

19 MR. DIRCKS: But the environmental assessment from
20 the S-3 table is designed to look at the gross impact you are
21 getting from the licensing on additional nuclear reactors. It
22 is not looking at how you are going to reduce the impact of
23 a particular strip mine ten years from now.

24 COMMISSIONER BRADFORD: I understand that.

25 Now, does that mean that we have as the economics

mm 1 associated with, say the back end of the fuel cycle, a vastly
2 different set of conclusions from one proceeding to the next?

3 MR. DIRCKS: I think -- in each reactor licensing
4 case?

5 COMMISSIONER BRADFORD: Yes.

6 MR. DIRCKS: I think the numbers then are used, he
7 absolute terms of releases, effluents and so on --

8 COMMISSIONER BRADFORD: No, just the economics.

9 MR. DIRCKS: The economics, I don't think -- no, we
10 don't plug that in. We are plugging in only the impacts.

11 CHAIRMAN HENDRIE: What Commissioner Bradford is
12 saying, when you do a licensing case, you take, there are so
13 many acres and so many pounds of yellowcake you are going to
14 need, and so many tons of waste, spent fuel that have come out.
15 And you have got to decide what appropriate costs are for
16 this particular reactor to be operated in this particular place
17 in this timeframe, okay?

18 MR. DIRCKS: Right.

19 CHAIRMAN HENDRIE: Then you get a set of economics
20 that go into the cost-benefit.

21 And he is curious in fact that these accumulated
22 fuel cycle costs -- if I look at a whole series of licensing
23 cases, do these go up and down very substantially, or do they
24 tend to be fairly uniform.

25 I can see where he is going. If they tend to be

mm 1 fairly uniform, then maybe there in fact might be a better
2 basis for a generic economic determination than our conversation
3 seemed to indicate.

4 MR. MURRAY: It is my understanding that they do
5 tend to be fairly uniform, they vary only as the cost of
6 fuel varies, because that is where the economic costs are
7 reflected.

8 MR. MIRAGLIA: The cost-benefit analysis does reflect
9 in the fuel cost, the front end and the back end of the fuel
10 supply.

11 And in the cost-benefit analysis within a reactor
12 statement, we use a range of costs to sort of bracket what we
13 think are the marketplace variations.

14 Now the range that we use is fairly wide.

15 CHAIRMAN HENDRIE: Okay.

16 So the range doesn't look greatly different from
17 case to case just because it is a wide range.

18 MR. MIRAGLIA: But the specific fuel cost for an
19 individual reactor would have to be judged, is it in that
20 kind of a range. The specific fuel cost that a utility is
21 paying would probably be less than -- well, within the range
22 of the example.

23 CHAIRMAN HENDRIE: Well, it seems to me that one
24 might want to reexamine at some point whether indeed a
25 generic proceeding to establish some sort of --

1 COMMISSIONER BRADFORD: You're doing much better
2 than I was.

3 CHAIRMAN HENDRIE: -- some sort of general
4 guidelines, at least, with regard to the economic costs of
5 these environmental effects, whether that wouldn't be a
6 reasonable thing to do. And I think that's a question, you
7 know, that we might want to address at some time.

8 My own feeling would be, having established the
9 S-3 proceeding in order to repair, in a full and careful
10 way, the S-3 table which the court in Vermont said was
11 inadequately justified, and having put the staff in motion
12 to prepare the material for that, I would have some hesita-
13 tion about now, you see, expanding into a new area, even
14 though that -- even though that new area might be a perfectly
15 reasonable one to be contemplated for generic study and
16 proceeding at some point.

17 You know, aside from whether it is or is not
18 reasonable and practical to consider the economic costs on
19 a generic basis, there's the further question: Well,
20 suppose you decided, you know, yeah, we recognize these
21 things about variability, but nevertheless you can make a
22 reasonable crack at it -- there's still a question whether
23 we ought to hang it into S-3.

24 My own impression is that it would be -- Well,
25 I expect it would send the staff back for a fairly substantial

1 piece of preparation, I would guess, to be on a firm footing
2 from the standpoint of the staff's testimony.

3 I think I'd prefer not to do it.

4 COMMISSIONER BRADFORD: The countervailing
5 consideration, I suppose, would be that we would have a lot
6 of the players -- maybe not all of them -- who would be
7 interested in doing that.

8 CHAIRMAN HENDRIE: Well, that's another considera-
9 tion. We've started down one track, and if we now broaden
10 it, why it's in some ways a little unfair to the people who
11 in the beginning might have said "well, I would come in if
12 it were broader, but I won't this way."

13 COMMISSIONER BRADFORD: And I assume we'll have
14 a chance to think about it a little more.

15 One thought that occurs to me is the possibility
16 of a sort of "phase I, phase II" exercise; because everyone
17 is all geared up to look at the subject now there may be
18 something to be said for trying to deal with it all at once,
19 but let me not pursue that more right now.

20 CHAIRMAN HENDRIE: I think it would be useful,
21 before we went too far, to have some, you know, probings and
22 understand what all might be involved -- at least from the
23 staff's standpoint, in feeling that they were on firm
24 grounds to deal with it.

25 I must say, the proposed motion that Leo has

1 outlined seems to me to have considerable merit. I think the
2 sort of decision that the Board has made -- at least my own
3 view -- is that the decision the Board has made on the
4 economic feasibility question is a reasonable one.

5 If there are models for dealing with certain things
6 in the proceeding, I suppose I could come in and say:
7 Now, I have this model, and you put bad stuff in here and
8 good stuff comes out here, and the question is: How do you
9 do that? They say: Well, it's magic.

10 Well, I would think the Board would say "nonsense;
11 that's not feasible, and practical," and throw it out, you
12 know.

13 In a sense, the economic feasibility is the same thing.
14 As I say, if it costs staggering -- would cost, clearly,
15 staggering amounts to do some step, then that's not a
16 practical thing to appear in the table.

17 So, I agree with their conclusion and this motion would
18 support that.

19 With regard to the other things, the motion gives the
20 Board -- recognizes that the Board has certain steps underway,
21 and that clarification may well result from those steps,
22 and that there isn't a particular need for the Commission
23 to go stomping into the proceeding, but reserves the
24 question of doing so later if it feels necessary.

25 I think, on balance, it's a fairly, you know, sort of

1 a prudent and conservative sort of step.

2 COMMISSIONER KENNEDY: You're talking about the
3 draft order?

4 CHAIRMAN HENDRIE: Yes.

5 COMMISSIONER KENNEDY: Could I ask two or three
6 specific questions about the order itself, which otherwise,
7 it seems to me, is well drafted?

8 I still don't see why, in the sort of preambular
9 paragraph of that order, we couldn't in a sentence express
10 what we have all agreed indeed is the posture of the S-3
11 hearing -- that is, it is not nor was it ever intended as a
12 generic rule making, encompassing a full economic analysis,
13 which would be at least that much of a signal to all parties.

14 It would seem to me that that would be a useful
15 thing, because my sensing of what the states were suggesting
16 is that's what they were really talking about. And we ought
17 to at least disabuse them of that notion.

18 Because right now, without that kind of guidance,
19 I ask what it means when we go over to the other side, you
20 see, and talk about a "Board Order," which I'll come back to,
21 and anticipating this order will contain material to clarify
22 whether the states concerned do in fact present a case or
23 an occasion for our intervention, we decline now to act on
24 their motion.

25 If my supposition about what's in the mind of the

1 states is correct, this sort of signals that in fact we may
2 think they're right.

3 Well, to that extent, we don't think they're
4 right; isn't that correct?

5 MR. EILPERIN: That's right.

6 MR. SLAGGIE: I think we do not think they are
7 right; that this should be done in Table S-3.

8 COMMISSIONER KENNEDY: But, you know, what I --

9 MR. SLAGGIE: But whether generically --

10 COMMISSIONER KENNEDY: -- we ought to say some-
11 thing like --

12 MR. EILPERIN: I think, at that point, we could
13 add a --

14 COMMISSIONER KENNEDY: Okay?

15 MR. MURRAY: I might point out that the States'
16 motion does in fact state that it's legally required that
17 the S-3 table contain -- under the NEPA -- contain a
18 discussion of economics.

19 MR. SLAGGIE: The States' motion, you say?

20 MR. MURRAY: Yes, on page 8 of the States'
21 motion.

22 MR. EILPERIN: I think we can add a sentence at
23 that point.

24 COMMISSIONER KENNEDY: To take care of that
25 problem.

1 MR. EILPERIN: Sure.

2 COMMISSIONER KENNEDY: There's a -- I assume, in
3 the sentence, we will note that the Board has requested, on
4 page 2 of the order, you will want to change that,
5 obviously, just editorially to take account of the fact
6 that, since this was drafted, the material actually has been
7 submitted.

8 Could I go down a little bit farther and look at
9 the sentence that says: "The Board has indicated that,
10 following review of this material, it expects to issue an
11 order scheduling further proceedings regarding economic
12 questions."

13 Now, does that mean what it seems to mean? That
14 in fact the Board will issue an order calling additional
15 hearings to discuss that subject?

16 MR. MURRAY: Yes, sir.

17 MR. EILPERIN: In other words, it won't -- In
18 other words, the question of economic feasibility will not
19 be ended simply by the staff's submission.

20 COMMISSIONER KENNEDY: Well, may I then suggest
21 that the word "questions" should be supplanted by the word
22 "feasibility"?

23 MR. EILPERIN: I've lost you on the page.

24 COMMISSIONER KENNEDY: It's right in the center
25 of the page -- page 2 -- "The Board has indicated that,

1 following review of this material" --

2 MR. EILPERIN: Right.

3 COMMISSIONER KENNEDY: --"it expects to issue an
4 order scheduling further proceedings regarding" --

5 MR. EILPERIN: -- economic feasibility.

6 COMMISSIONER KENNEDY: -- "economic feasibility."

7 Because "economic questions" goes beyond that; right?

8 MR. EILPERIN: Right.

9 COMMISSIONER KENNEDY: Okay?

10 MR. EILPERIN: That's fine.

11 COMMISSIONER KENNEDY: All right.

12 And one more small matter, which is the last
13 sentence of the order, which begins at the very bottom of
14 the page: "The Commission notes that inclusion of the
15 material in the record of this proceeding is not necessarily
16 indicative of the scope of the final rule" -- Now I don't
17 know what that's intended to imply, but --

18 CHAIRMAN HENDRIE: I hope it doesn't imply that
19 we might write a rule which goes outside material placed
20 in the record of the proceeding.

21 COMMISSIONER KENNEDY: Do we need this sentence
22 at all?

23 MR. EILPERIN: I guess we don't. But what we
24 were trying, perhaps, to cryptically get across there was
25 the fact that the Board has allowed in some economic

1 testimony does not mean that the scope of the S-3 proceeding
2 must be expanded to publish a rule based on economic values.

3 CHAIRMAN HENDRIE: I like that statement.

4 COMMISSIONER KENNEDY: That's comforting.

5 CHAIRMAN HENDRIE: I like that statement better
6 than this one.

7 (Laughter.)

8 MR. EILPERIN: It's too cryptic.

9 CHAIRMAN HENDRIE: Steve, I remember within the
10 year promising to stick to what's on the record before the
11 Commission in making these decisions. I don't want, so
12 soon, to be --

13 MR. MURRAY: In rule makings, Mr. Chairman, you
14 shouldn't feel yourself so bound.

15 MR. EILPERIN: That's true.

16 COMMISSIONER KENNEDY: I would suggest only that
17 either we be must more precise about what the sentence means,
18 or just drop it off.

19 MR. EILPERIN: Yes, we can knock this sentence
20 out.

21 CHAIRMAN HENDRIE: Vic, comments?

22 COMMISSIONER GILINSKY: No.

23 CHAIRMAN HENDRIE: Peter, comments?

24 COMMISSIONER BRADFORD: No -- I would like to chew
25 a little more on what I have learned in the last half hour

1 or so, but I have no further comments now.

2 CHAIRMAN HENDRIE: I recommend that --

3 COMMISSIONER GILINSKY: One question.

4 CHAIRMAN HENDRIE: Yes, sir.

5 COMMISSIONER GILINSKY: "Environmental surveys,"
6 is that something other people do, too? Or is that something
7 that we devised for these circumstances?

8 MR. MURRAY: I am not sure I can answer that
9 question, Commissioner Gilinsky. It's my understanding that
10 we, of course, did devise this.

11 The court explicitly took recognition, in the
12 Vermont Yankee decision, that this was a "survey," and not
13 an impact statement. In the oft-quoted language which is
14 quoted before you, they found that generally the process
15 worked well. It was just in the areas of the back end that
16 they felt were inadequately justified.

17 So, I'm not familiar, really, with what other
18 agencies might do in the survey area, but I do know that
19 this one has some sort of affirmation.

20 MR. EILPERIN: The court thought it was a
21 sensible idea, when you have a generic problem, to handle it
22 with a rule; and that environmental -- quantification of
23 environmental values was not something wholly distinct from
24 other types of rules -- it was a reasonable way of handling
25 it.

1 Could I suggest, then, that the counsel's office
2 redraft? Commissioner Kennedy's been very helpful about
3 the drafting here, and let us see a proposed order.

4 Now, could I -- because on other occasions
5 sometimes I find -- some time goes by, and I find myself
6 circulating through the halls hunting for Commissioners whom
7 I can corner on these subjects.

8 What sort of time restraints do we have here,
9 please?

10 MR. EILPERIN: Well, it would be useful if the
11 Commission's order came down before the Board's order of
12 clarification --

13 CHAIRMAN HENDRIE: Which is anticipated, when?

14 MR. EILPERIN: Do you have any ideas, Jim?

15 MR. MURRAY: I only deal with that Board on the
16 record.

17 (Laughter.)

18 COMMISSIONER KENNEDY: Mr. Chairman, may I suggest --

19 MR. EILPERIN: I am told by Leo that it may come
20 down early next week. I don't see any problem with us
21 circulating an order sometime tomorrow morning.

22 COMMISSIONER KENNEDY: May I suggest, Mr.
23 Chairman, that if we're so inclined -- as I certainly would
24 be -- to vote approval of the order, subject to -- subject
25 at this time to approval of final language changes, as

1 redrafted by the counsel?

2 CHAIRMAN HENDRIE: Would that be agreeable?

3 COMMISSIONER BRADFORD: Well, one of the things I
4 want to think a little more about -- maybe -- I don't know
5 if we can take the time to go into it now. It's just
6 exactly what are we gaining by issuing an order now, instead
7 of waiting until after -- instead of simply waiting?

8 MR. SLAGGIE: We do have the economic feasibility
9 question, which I do think we ought to have a prompt response
10 to their motions asking the Commission to take "economic
11 feasibility" out; and I think we ought to make plain, as
12 soon as possible, that "economic feasibility" is in, and
13 that the tack the Hearing Board has apparently been sailing
14 is all right with us.

15 COMMISSIONER KENNEDY: I would agree. On the
16 other end of the spectrum, we ought to make clear to all
17 parties that we are not talking about a full economic
18 analysis, in a generic sense, which Table S-3, up until now,
19 has never contemplated.

20 Whether in the future we look at that question as
21 a generic rule making matter is a different question.

22 COMMISSIONER BRADFORD: Yes, and I think I agree
23 with the immediate result of what you're saying. I'm not
24 sure how I would want to say it, at this point in time, as
25 to whether we ought to approach the subject generically in

1 the future, and that's the only thing I am having difficulty
2 with now.

3 I have no difficulty with the first half of what
4 they have just outlined at all and can certainly clear that
5 off quickly; and it's possible that, on looking at the
6 draft, I can accommodate my concerns on the second half, as
7 well.

8 COMMISSIONER KENNEDY: Well, why don't we
9 circulate a draft, and if we have got the draft we ought to
10 be able to meet together five minutes, hopefully, to affirm
11 it or further amend it, or whatever.

12 CHAIRMAN HENDRIE: Let's see. We are going to
13 meet tomorrow afternoon. There will be an affirmation
14 session -- a brief one -- but that seems awfully pressed
15 for time, just from this afternoon until tomorrow morning.

16 COMMISSIONER KENNEDY: It's only a page, a page
17 and a half, and we already have read it.

18 CHAIRMAN HENDRIE: If it were the only item of
19 business in counsel's office, or any of our offices, why it
20 would be a breeze. But I'm afraid that's not quite the
21 case.

22 I am wondering if that isn't pressing a little
23 hard.

24 MR. EILPERIN: I see no reason why we can't get
25 something to you tomorrow morning. That won't be a problem

1 for us. What the Commission's scheduling is is another
2 matter.

3 CHAIRMAN HENDRIE: Do you know whether you're
4 likely to have time to talk to counsel?

5 COMMISSIONER BRADFORD: I will try. I would
6 hesitate to guarantee it, but I will try. I won't be here
7 Friday.

8 CHAIRMAN HENDRIE: That was something I was going
9 to ask you.

10 Well, let's see if it doesn't come out all right
11 by tomorrow afternoon, and then we can affirm it then.

12 I note that next week we will be meeting on
13 Tuesday and Thursday.

14 COMMISSIONER BRADFORD: Procedurally, if we can
15 continue this meeting until tomorrow afternoon, are we then
16 covered for Sunshine Act purposes?

17 CHAIRMAN HENDRIE: If we need discussion tomorrow,
18 then I think we would have to vote a short-notice meeting.
19 It would be an open meeting, surely, but we would have to
20 vote for short notice. If it's an affirmation item, I guess
21 we would still have to vote it as an affirmation item.

22 MR. EILPERIN: I can read the Commission, now, the
23 suggested changes.

24 CHAIRMAN HENDRIE: I'll tell you what. Why don't
25 we vote it on to tomorrow afternoon's agenda. That's at

1 24 hours notice. It's not very satisfactory, but it's better
2 than none.

3 COMMISSIONER KENNEDY: Aye.

4 COMMISSIONER BRADFORD: Especially since most of
5 the people interested in the problem have had a chance --

6 CHAIRMAN HENDRIE: May very well be here. I ask
7 for your votes to put it on the agenda.

8 COMMISSIONER GILINSKY: Aye.

9 CHAIRMAN HENDRIE: So ordered, just before the
10 affirmation item, Sam, and then we'll see whether there's a
11 discussion meeting or whether it's become an affirmation
12 item by that time, and cross our fingers.

13 I will meet with -- I will be meeting in the
14 morning back down on the Hill, but there seems to be no need
15 for the rest of you to come, although I cordially invite each
16 and every one of you to join me and the other members.

17 (Whereupon, at 4:45 p.m., the hearing was
18 adjourned.)

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