



Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

DISCUSSION OF TESTIMONY ON
PROPOSED LICENSING LEGISLATION

(Open to Public Attendance)

May 9, 1978

Pages 1 to 61

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1 UNITED STATES OF AMERICA
2
3 NUCLEAR REGULATORY COMMISSION

4 DISCUSSION OF TESTIMONY ON
5 PROPOSED LICENSING LEGISLATION

6 (Open to Public Attendance)
7

8 Commissioners' Conference Room
9 Room 1130
10 1717 H Street N.W.
Washington, D. C.

11 Tuesday, May 9, 1978
12

13 The Commission met, pursuant to notice, at 1:55 p.m.,
14 Joseph Hendrie, Chairman, presiding.

15 PRESENT:

16 Chairman Hendrie
17 Commissioner Gilinsky
18 Commissioner Kennedy
Commissioner Bradford

19 ALSO PRESENT:

20 J. Hoyle
L. Gossick
21 H. Shapar
M. Malsch
22 E. Case
D. Muller
23 W. Reamer
C. Stoiber
24 A. Kenneke
25

P R O C E E D I N G S

CHAIRMAN HENDRIE: Okay, if we could come to order, I will see if I can figure out what this afternoon's subject is.

We are to continue discussion in the licensing bill. Mr. Shapar was leading us through the bill and had arrived at some appropriate place. I hope we can complete the journey today. This is an open meeting of the Commission because we are discussing the draft bill.

Tomorrow, hopefully we will turn to discussing our collective testimony, such as it is, and what is the recommendation of the counsel on open or closed for that session.

MR. STÖIBER: The Commission has the option of opening or closing. I think the justification would have to be for frustration purpose justification and the Commission is able to determine that it can close on that basis. We really have no recommendation.

CHAIRMAN HENDRIE: Let's see, there was going to be -- we were hoping to get some proposition for some general guidelines on these openings and closings with regard to discussion testimony and discussing that sort of thing.

MR. STÖIBER: We have a paper in the works that should be up shortly, in a day or two.

CHAIRMAN HENDRIE: I think they are delaying it to see

1 what we do on this and then they will follow the precedent.

2 What's your inclination for tomorrow. We may as well
3 decide now so that people will know.

4 MR. STOIBER: I think what we will say in the
5 paper is that in terms of going through testimony in detail,
6 there is a plausible argument to be made in announcing to the
7 public what you are going to say before you announce it to the
8 committees with the jurisdiction. It may well frustrate the
9 purpose behind the Commission's action.

10 MR. SHAPAR: Well, the Commission, indeed in the past
11 has closed such meetings when it was so minded.

12 COMMISSIONER GILINSKY: You would then what, release
13 the transcript after the testimony delivered?

14 MR. STOIBER: Yes.

15 COMMISSIONER KENNEDY: After the testimony had been
16 delivered or after the completion of action on the bill or the
17 conclusion of the session of Congress, whichever comes first
18 as we have so often said in the past?

19 MR. STOIBER: Well, I think you have either option,
20 depending on ---

21 COMMISSIONER KENNEDY: We have never done -- we
22 have never released it immediately after giving testimony,
23 I don't think.

24 MR. STOIBER: I think you would be able to determine
25 after you have had the debate or the discussion on the

1 testimony whether or not to release immediately after
2 issuance would frustrate the purpose behind your discussions.
3 Therefore, you would probably make that judgment on an ad hoc
4 basis after you had completed your discussion.

5 COMMISSIONER KENNEDY: Up to now it is typically
6 what we have said was we would release all of the stuff after
7 the completion of action on a piece of legislation or the
8 termination of that session of Congress.

9 COMMISSIONER GILINSKY: Well, I was just making a
10 point that if your only ground is that you don't want to release
11 the discussion until the testimony has been delivered, then
12 it is hard to argue with ---

13 COMMISSIONER KENNEDY: I agree, you are right.

14 CHAIRMAN HENDRIE: That's right. The other consider-
15 ation was whether in arguing out testimony you went over some
16 ground which you would just as soon hold confidential to the
17 Commission until the legislative action had either occurred
18 or not occurred.

19 I guess the earlier run of hearings -- of Commission
20 meetings on this subject back in September were closed with
21 a note attached to them "For Release After Action by the
22 Congress on the Bill or the end of the 95th Congress, whichever
23 came first."

24 COMMISSIONER BRADFORD: Our motives there might have
25 been a little different, because there we were commenting on

1 administration legislation before it has actually been
2 shaped. We were concerned in part also with the testimony
3 before Congress, but ---

4 CHAIRMAN HENDRIE: We were also shaping our own
5 recommendations and had in that part, where we were working
6 up our own recommendations it had more in the nature of an
7 NRC initiative or legislative initiative in which you might
8 prefer to have a hold on to it for a while longer.

9 I don't much care. What's your pleasure about
10 tomorrow and maybe at the close of tomorrow's meeting we
11 could decide when to release.

12 COMMISSIONER KENNEDY: I have no preference. It makes
13 no difference to me. I would hold it open or closed. Whatever
14 you wish.

15 COMMISSIONER GILINSKY: Me too.

16 CHAIRMAN HENDRIE: I have two votes for open or
17 closed.

18 (Laughter)

19 COMMISSIONER BRADFORD: I suppose that in the
20 absence of any strong sentiment or reason why it ought to be
21 closed, we ought to open it. I basically feel the same way
22 the other two do, but I guess that's my feeling. I come down
23 on the side of open.

24 CHAIRMAN HENDRIE: It sounds to me like three votes
25 for open or closed.

1 This particular piece of testimony and the discussion
2 tomorrow are a little bit different than some other things
3 that we do here. It continues to seem to me, for instance,
4 when we argue here preparing things like settling down to
5 review the arguments of the Congress to convince them of the
6 right and justice of our budget request that those are
7 legitimately held arguments on the Commission side until there
8 has been some action or whatever and so on. Here, we are
9 going to talk about some testimony which is of a fairly
10 general nature, about legislation which is in the public
11 domain and the discussions we had yesterday and today will
12 be public.

13 It seems to me much less likely as a candidate for
14 closure for tomorrow than other -- than we may find at other
15 times where we are discussing testimony.

16 COMMISSIONER KENNEDY: I would certainly think it is
17 not in the nature of a precedent, but then I would have to
18 site the oft-stated premise that everything is within this
19 Commission.

20 CHAIRMAN HENDRIE: Well, I think it is simply too
21 much to try to make a general rule that says when we are
22 discussing testimony we close, whereas if we are discussing
23 something as we are today, the bill itself, I don't think
24 that makes the grade as a guidance rule for the Commission.
25 I think there will be some times when we are talking about

1 testimony where we will want to close on the frustration
2 ground. It seems to me unlikely that tomorrow's discussion
3 will be of that nature, so unlikely in fact that why don't
4 we go ahead and have it open.

5 Let the transcript show, with due caution, that
6 Mr. David Cohen of Common Cause, however, that it is on the
7 grounds that I have mentioned that I suggested we open and
8 I continue to think contrary to the views he has expressed
9 to us in correspondence that there is a perfectly legitimate
10 basis for closing on the frustration exemption. I simply
11 don't think that tomorrow's discussion is one that really
12 meets that standard.

13 Okay, Howard, onward.

14 MR. SHAPAR: The next section is on Page 21, Early ---

15 CHAIRMAN HENDRIE: The smart thing to do is skip
16 7 or 8 pages, you know. I don't know whether you did that, but
17 I missed a bet if you didn't.

18 MR. SHAPAR: That would be wrong.

19 The next section, 193 Early Site Approval.

20 COMMISSIONER KENNEDY: Have you decided not to
21 discuss Hearings or did we take care of all the hearings?

22 MR. MALSCH: I think we finished up Hearings.

23 COMMISSIONER KENNEDY: Oh, yes.

24 MR. MALSCH: The next section is 193, Early Site
25 Approvals.

1 Basically what this does is to authorize the Commission
2 to issue site permits for thermal neutron power generation
3 facilities. Basically what a site permit is, is a device
4 to enable the Commission to make a final decision on site
5 suitability without having before it a construction permit
6 or combined permit and license application before it to actually
7 build a plant on a site.

8 COMMISSIONER GILINSKY: Now, is that the difference
9 from the present situation?

10 MR. MALSCH: That's the essential difference.

11 In the present situation the decision by the
12 Commission on site suitability is treated as a first step in
13 the overall construction permit review and hearing process.
14 Here it would be a completely separate proceeding. The out-
15 growth of that is states who have no intention of applying
16 for permits or licenses could apply for site permits, whereas
17 now that would be kind of awkward since they wouldn't be in a
18 position of actually filing a construction permit application.

19 COMMISSIONER GILINSKY: But they can go through
20 a review then can't they?

21 MR. MALSCH: Then can go through a review and get
22 a staff recommendation or staff report.

23 MR. SHAPAR: But not a Commission sign-off after
24 the necessary required hearing.

25 MR. MALSCH: Right. And that's the essential difference.

1 That's what the result is of having a different concept, a
2 concept of having a part of the CP proceeding and the concept
3 of having a separate proceeding. This makes it clearly a
4 separate proceeding.

5 In the Commission's earlier comments to OMB no
6 particular problem was expressed with regard to the general
7 concept of site permits. The Commission did ask the concept
8 be extended to production and utilization facilities other than
9 DOE demonstration plants. Here it is only confined to thermal
10 neutron power generation facilities. This suggestion has not
11 been adopted in the DOE draft.

12 COMMISSIONER KENNEDY: Excuse me. The suggestion
13 was what, I forgot?

14 MR. MALSCH: The suggestion was made that the concept
15 of early site permits ought to be extended to all production
16 utilization facilities except DOE demonstration plants ---

17 COMMISSIONER KENNEDY: Oh, okay.

18 MR. MALSCH: -- not just thermal neutron power
19 generation facilities.

20 MR. SHAPAR: There in vein it would seem to have a
21 generic value.

22 COMMISSIONER KENNEDY: Yes.

23 MR. MALSCH: That's basically what 193a does.

24 193b, on Page 22 specifies the contents of applications
25 and includes a requirement that applications contain information

1 on the number, type or types and thermal power level of
2 the facilities, the boundaries of the site, proposed location
3 of the facilities on the site, maximum levels of radiological
4 and thermal effluents, type or types of cooling systems and
5 then such other information as the Commission may by rule or
6 regulation require.

7 In the Commission's earlier comments to OMB it had
8 suggested deletion of the specific application content
9 requirements in subsection b,) for two reasons:

10 One, the Commission said it had not really thought
11 the matter through and wasn't in the position to recommend at
12 that point in time, which matters were and were not of sufficient
13 importance to actually put in the statute.

14 Secondly, the Commission pointed out that certain
15 of the items, for example, the specification of maximum levels
16 of thermal effluent and type or types of cooling systems dealt
17 with NEPA issues and appeared, because of conflict with the
18 later sections of the statute calling for a NEPA delegation.
19 Presumably if the states are going to perform a NEPA review
20 there will be no need for the Commission to have in its
21 application such things as maximum levels of thermal effluent.
22 But the section is pretty much in the same form as it was
23 when the Commission reviewed it last October.

24 MR. SHAPAR: I might also add that under the present
25 act there is very little specification of what is required in an

1 application for a CP or an OL.

2 MR. MALSCH: That's right. Under this there would
3 be more information specified in the statute for a site
4 permit than for an operating license or a construction permit.

5 COMMISSIONER GILINSKY: What would be the
6 practicality of such a review?

7 MR. SHAPAR: Negligible, I would think.

8 MR. MALSCH: Yes, except for the possible confusion
9 caused by the specific listing of such things as thermal
10 effluent and type or types of cooling systems.

11 COMMISSIONER KENNEDY: Well, how serious a problem
12 is that one?

13 MR. SHAPAR: I don't think it is a very serious
14 problem.

15 MR. MALSCH: Subsection "c" simply calls for --
16 specifies what the decision standard is, on-site permits, and
17 that is simply that if after considering the information
18 the Commission decides to decide it is suitable for a
19 construction or operation on the facility prescribed in
20 the application consistent with the public health and safety,
21 and protection of the environment, it shall grant the site
22 permit and the Commission is required to make specific findings
23 in the matters listed in 193b.

24 In our comments we had suggested that some of the
25 language here was unnecessary and had suggested that some of it

1 be deleted. I think that's primarily an editorial kind of
2 thing. I don't think anything here causes particular problems,
3 but some of it wasn't absolutely required to be said. Some of
4 it was sort of obvious any way.

5 "d" however, deals with the duration of site permits
6 and in general what it provides is that site permits shall be
7 good for a period of 10 years and renewable for additional 10-
8 year periods.

9 In fact, the language on Page 24 in paragraph
10 large (B) there is in fact NRC suggested language dealing with
11 renewal of site permits. What it says is that the Commission
12 shall review site permits unless it finds that there is
13 significant new information and as the result it is not likely
14 that the site will comply with the Commission's regulations.

15 It is possible, although not entirely clear that
16 what this language would do would be to preclude the Commission
17 from denying renewal on the sole basis that there has been
18 a change in regulations or Commission policy. So there has
19 to be -- there appears to be a need for new information before
20 the Commission can decline to renew.

21 Earlier language that also set forth a special
22 standard for revocation or suspension of site permit was
23 suggested be deleted by NRC in its comments to OMB, because of
24 a possible conflict with another section of the Act dealing with
25 revocation and suspension of licenses and permits. And that

1 section was taken out by DOE. So the problem disappears.

2 COMMISSIONER GILINSKY: Let's see, it does say that
3 unless it is likely a site would not comply with the Commission's
4 regulations.

5 MR. MALSCH: Right, but it has to be significant or
6 new information, and as the result of the significant or new
7 information it must be that the site will not comply with the
8 Act.

9 The language is not perfectly clear, but at least
10 it is susceptible to the reading that you need, significant
11 or new information to even trigger an examination of the
12 matter of compliance with the Commission's regulations.

13 MR. SHAPAR: I might add that section 185 of the Act
14 says the "Commission shall" issue an operating license if the
15 amended application comes in and if the plant has been built
16 according to the CP, but the Commission has never had any
17 difficulty in imposing the additional requirements with
18 respect to the issuance of an OL.

19 MR. MALSCH: Well, of course there is language in
20 there that says in the absence of good cause, too, which
21 is a pretty broad authorization to look beyond just a provisional
22 review conducted at the CP stage.

23 Paragraph 3 on Page 24 simply keys in to the contents
24 of site permits in 193b. The Commission had suggested in its
25 comments to OMB that this be deleted, but that was simply a

1 corollary to its suggestion that the contents of applications
2 should also be deleted. If one is in, three doesn't do any
3 harm.

4 "e" is a provision -- paragraph "e" is a provision
5 which authorizes automatic or semiautomatic commencement of
6 construction on a pre-approved site.

7 COMMISSIONER BRADFORD: Marty, let me bring you back
8 to 3 for a moment.

9 MR. MALSCH: Yes.

10 COMMISSIONER BRADFORD: The phrase there which
11 is designed to produce levels of thermal power radiological
12 effluent air emissions no greater than the level specified
13 in the permit. What does the word "design" in that context
14 mean. Why shouldn't that just say "will"? Who makes the
15 judgment about what a facility is designed to produce?

16 MR. MALSCH: Well, I suppose that the first point
17 in time when that issue would come up would be at the
18 construction permit stage when all you had before you was
19 design. And you would be looking primarily to see whether
20 the design fit restrictions on facilities of the site permit.

21 COMMISSIONER KENNEDY: I would have thought that
22 what it meant was since we are talking about a site permit
23 and not a particular plant, indeed it is divorced from the
24 plant, I would have thought what it was talking about was
25 some hypothetical plant, that is a standard plant or a plant

widish

1 which is yet to be designed, but which would have this
2 characteristic. That's different.

3 CHAIRMAN HENDRIE: Well, it has to be designed,
4 Peter, not so much for the thermal power level which is
5 fairly well established as a design level, but for things
6 like radiological effluent and air emissions. The reason
7 is that in your site permit you want to know in order that
8 the normal operating conditions will meet Appendix I and
9 such things, that the plant will be designed to release no
10 more than so much iodine and stuff, and that in turn we find
11 it good and that meets the criteria and so on.

12 You can't say "will" because you can't assure
13 absolutely that there won't be accidental releases that go
14 above it. What you are saying is we agree that this site is
15 okay for a plant, one of whose design features has to be
16 measured to keep down effluents to the following level and
17 then that specifies it. So that's why you need the terminology.

18 COMMISSIONER BRADFORD: Well, that gets at half of
19 my concern, but you could cover that, I think, by saying some-
20 thing like the normal operation of which will ---

21 MR. SHAPAR: Or which is expected to.

22 COMMISSIONER BRADFORD: Yes. The problem that I
23 was having with the word "design" is if an applicant comes
24 before you and says this facility is designed to operate at these
25 levels and the staff in its judgment, or the Board in its

1 judgment says well, it is not going to do that. There is
2 nothing in the ---

3 COMMISSIONER KENNEDY: Well, that means that it
4 isn't designed to do that.

5 CHAIRMAN HENDRIE: Then we win.

6 COMMISSIONER BRADFORD: So I would like to think.

7 CHAIRMAN HENDRIE: I can't think of our loosing
8 one, but ---

9 MR. CASE: I think he is bringing up another point.
10 They say it is designed to it and that's sufficient.

11 COMMISSIONER KENNEDY: No. If the staff says it
12 isn't, it isn't.

13 COMMISSIONER BRADFORD: I wonder if this is
14 susceptible to that reading.

15 CHAIRMAN HENDRIE: I think it is clear that if the
16 applicant says this plant is designed to meet the site permit
17 requirements and the staff says, no, it isn't it needs another
18 set of flim flaps hung on it. This becomes then an argument
19 and if you can't strong arm him into it, why you go into the
20 hearing with him saying it meets it and the staff saying no.
21 And that's what I'm saying. The staff tends to be big winners
22 on those.

23 COMMISSIONER BRADFORD: But the standard the Board
24 then has to apply is this standard of whether or not it is
25 designed to produce rather than whether or not the normal

1 operation will produce, and I'm sure the staff would win or
2 would be likely to win on the latter. If you were applying
3 the former, then you would have to come up with some reading
4 of design which meant something more than just what the
5 designer expected. You would have to read into it the word
6 "reasonably" or something.

7 MR. SHAPAR: I guess the intent is that it is nothing
8 more than expected.

9 CHAIRMAN HENDRIE: Where there is a design of
10 specification that matters in safety analysis the applicant is
11 expected to show that the design proposed or indeed produced
12 the expected performance. The staff either concurs or doesn't
13 concur in that analysis or requires other things or whatever.

14 COMMISSIONER BRADFORD: The difference between that
15 situation and this one is that this language on its face, at
16 least, doesn't key in to performance level. It simply keys
17 in to the expectations that someone has about the design.

18 If it were clear that the relevant expectations
19 were the staff's and the Board's expectations, I'd be comfortable
20 with it. I'm just not sure this language doesn't blend
21 itself to the reading that the relevant expectation is the
22 designer's expectation.

23 MR. STOIBER: That is something that is usually
24 cured in legislative history.

25 CHAIRMAN HENDRIE: I guess you could read it that

1 way, Peter, but if you did it would be a reading different
2 than all of the places where the same terminology -- we use
3 this sort of terminology in guides, other regs, various
4 regulations and so on.

5 COMMISSIONER BRADFORD: Yes, and I can see why you
6 would do it in a guide, because there you want -- a guide ---

7 CHAIRMAN HENDRIE: You don't use it because you want
8 flexibility.

9 MR. MALSCH: I think when we say something shall be
10 designed such that, if it looks like to us that it will not in
11 fact do that we would conclude it has in fact not been
12 designed that way.

13 MR. SHAPAR: It is an objective standard in which
14 each party can take its own position.

15 COMMISSIONER KENNEDY: In that view, as the Chairman
16 says, if the staff says your review notwithstanding the fact,
17 is in our judgment, it is not designed to do that. The meaning
18 of that is it won't do it. I think.

19 CHAIRMAN HENDRIE: We never treat the other interpre-
20 tation -- we have never done it that way before, and this
21 sort of language is used other places and with the meaning
22 that staff concurrence in the design is going to be necessary
23 and safety related in order to get staff approval.

24 COMMISSIONER BRADFORD: Would I be safe in saying
25 that the radiological effluent and the air emissions of power

1 plants now are normally within their design doubles?

2 CHAIRMAN HENDRIE: Yes.

3 COMMISSIONER KENNEDY: If they are, they are
4 reportable occurrences.

5 CHAIRMAN HENDRIE: If when you say design levels
6 you mean those designs which are agreed upon for licensing
7 purposes presented to the applicant and argued over with the
8 staff and would withstand that test and then go forward as
9 part of the license design. As a practical matter I think they
10 are, aren't they Ed?

11 COMMISSIONER BRADFORD: And are they phrased like
12 air pollution standards and other types of industrial plants,
13 that is, is there some sort of average emission that is
14 allowable with a variance for 15 minutes out of a 24-hour
15 period?

16 CHAIRMAN HENDRIE: Yes, typically annual average,
17 quarterly average and et cetera.

18 MR. CASE: In other words, the design objectives
19 have a connotation of the performance objectives as distinguished
20 from what a particular party thinks or asserts how it is going
21 to come out. If the word were expected, well, I guess you would
22 say well, that's fine; rather than design. Really, you could
23 have the same argument over expected; by whom?

24 COMMISSIONER BRADFORD: Yes.

25 If design has become something of a term of art and

1 we have always read it to mean in effect licensed or normal
2 operation of which will produce, then I don't have a problem
3 with it.

4 CHAIRMAN HENDRIE: I think that is the case.

5 Why don't you speedy on.

6 MR. MALSCH: Okay.

7 Subsection "e" authorizes an applicant for a
8 construction permit or a combined permit and license for a
9 thermal neutron power generation facility which is to be
10 located on a site, which has been approved and a site permit
11 upon a certain notice to the Commission and to the state in
12 which the plant is located, and upon publication in certain
13 newspapers commence construction at his own risk, unless he
14 is otherwise ordered to stop or not commence construction by
15 the Commission or a state.

16 In earlier comments to OMB the Commission hadn't
17 expressed any objection to this. It is a little different
18 from the version the Commission saw before. The language
19 regarding 30 day prior notice to the state and the Commission
20 has been added since the Commission saw it last.

21 The Commission had two significant comments to OBM
22 on this version as it was last October. One, as I indicated
23 yesterday there was a request that there should be as a
24 requirement prior to commencement of construction a specific
25 need for the plant certification, just as there is in the case

1 of the full construction permit or combined permit and license.
2 We had also expressed concern about the language about the
3 activities being conducted to the risk of the applicant. Here
4 the concern was rather the Seabrook decision on the sum cost
5 was being modified. The same issue which occurs earlier
6 in connection with the so-called LWA rule in LWA provision
7 section 185b.

8 On Page ---

9 COMMISSIONER BRADFORD: We did request a need for
10 power finding at this point in time?

11 MR. MALSCH: That's right.

12 COMMISSIONER BRADFORD: Do you remember what number
13 among our test that would be?

14 MR. MALSCH: Here it is, it is number 8 on Page 2 of
15 our OMB comments, bottom of the page.

16 We say the Commission has no objection to the
17 requirement of a state certificate of need for the facility
18 as a precondition to NRC's issuance of a construction permit
19 for nuclear power reactors if all the states have authority to
20 issue such certification. Indeed -- and here's our comment:
21 "we have added similar language to later provisions of the
22 bill authorizing site preparation and limited construction
23 activities, 185b" which is the LWA section and 193e which is
24 this section.

25 COMMISSIONER GILINSKY: Is this section on Page 25

26

1 almost identical to what you find on Page 11?

2 MR. MALSCH: Eleven is the LWA provision?

3 COMMISSIONER GILINSKY: Yes.

4 MR. MALSCH: In terms of scope of work authorized,
5 it is intended to be identical, but there is no specific
6 review called for before this work can commence.

7 COMMISSIONER GILINSKY: Beyond the early site permit
8 itself.

9 MR. MALSCH: Beyond the early site permit itself and
10 the notification to the Commission.

11 COMMISSIONER GILINSKY: And the previous case ---

12 MR. MALSCH: There has to be a complete NEPA review
13 of the application before the Commission, before the Commission
14 can authorize that kind of activity.

15 COMMISSIONER GILINSKY: Including the specific reactor?

16 MR. MALSCH: That's right.

17 COMMISSIONER GILINSKY: But here you have had a NEPA
18 review.

19 MR. MALSCH: On the site.

20 COMMISSIONER GILINSKY: On the early site.

21 MR. MALSCH: That's right.

22 MR. CASE: But you don't have a NEPA power finding
23 need for the facility as part of that do you?

24 MR. MALSCH: You presumable have what's called for
25 in subsection "f", a so-called generic -- finding of generic

1 future need for electric power. What, whatever it means, has
2 been made.

3 COMMISSIONER GILINSKY: But you don't have a finding ---

4 MR. MALSCH: At this specific facility as needed.

5 Presumably you have a finding that there is a need
6 for 1,000 megawatts, not necessarily by this plant, but by
7 some plant. What you don't have is they find that this plant
8 is the one that is needed.

9 COMMISSIONER GILINSKY: You are talking about the
10 earlier finding in connection with the site permit?

11 MR. MALSCH: Site permit, as opposed to the construction
12 permit finding.

13 COMMISSIONER GILINSKY: But that's a general
14 projection into the future looking some years ahead.

15 MR. MALSCH: That's right.

16 In fact, in earlier comments to OBM the Commission
17 had expressed some concern about exactly what was meant by
18 a so-called finding of generic future need for electric power.

19 COMMISSIONER GILINSKY: But the state is free to
20 prevent the construction of a plant should they choose to do
21 so?

22 MR. MALSCH: That's right, and so can the Commission.

23 MR. SHAPAR: The Commission can establish it on
24 its own.

25 MR. MALSCH: That's right, but the authorization is

1 expressly stated as unless otherwise ordered by the Commission
2 or the state. So the Commission has 30 days and the state has
3 30 days in which to stop.

4 COMMISSIONER GILINSKY: On what grounds could the
5 Commission ---

6 MR. SHAPAR: On any reasonable grounds related to
7 health and safety or environmental protection.

8 MR. MALSCH: Yes, there is no specific grounds stated.

9 COMMISSIONER BRADFORD: What about need for power?

10 MR. SHAPAR: That would be unusual in terms of the
11 way this thing is drafted as that's dealt with.

12 COMMISSIONER GILINSKY: On health and safety grounds,
13 to use them, you would have to say that this reactor just
14 doesn't fit on this site.

15 MR. SHAPAR: I guess, to cut through the trees and
16 get the forest, some grounds it would indicate that the general
17 rule isn't good enough for the situation. There is something
18 particular about this application would dictate not applying
19 the general rule. Certainly the thrust is they would be allowed
20 to do it. We have the reserve right to stop it and I would
21 think it would be rather unusual circumstances where we would
22 want to stop it.

23 COMMISSIONER KENNEDY: Can I ask: what is meant by
24 the statement "safety-related construction activities shall
25 not proceed more than one year from the commencement of such

1 activity"?

2 MR. SHAPAR: I think that parallels the LWA rule
3 now and I think it relates to components of a plant that would
4 actually bring health and safety considerations in to it and
5 it would be reviewed by the staff. As I indicated, that does
6 parallel the present LWA paperwork.

7 MR. MALSCH: Okay, I already mentioned "f" which is
8 a reference here to a so-called finding and generic future
9 need for electric power. The intent here is to -- apparently
10 to provide for some kind of need for powers finding at the
11 site permit stage without requiring what would appear to the
12 DOE, I guess, would be impossible; namely, a specific find
13 that a particular facility is needed on this site at a particular
14 period of time.

15 COMMISSIONER BRADFORD: Marty, come back. I'm sorry
16 to pull the process backwards, but in section "e" it says
17 they can go ahead unless ordered by the state. Where in the
18 bill does the Congress specify what form or order the state
19 should take?

20 MR. MALSCH: It isn't specified.

21 COMMISSIONER BRADFORD: Any conceivable state official
22 might have authority to issue such an order, could write a
23 letter to the company saying stop?

24 MR. MALSCH: I think so.

25 COMMISSIONER BRADFORD: Now, that's an intriguing

1 possibility.

2 MR. MALSCH: Well, I presume he would have to be
3 authorized under state law to issue such an order, and in
4 fact the last sentence of the section says nothing in the
5 subsection affects the authority of a state or local government
6 over preparation of the site and construction activities.

7 MR. SHAPAR: You must remember what the consequence
8 would be, he would be held up for a few months until he got his
9 site permit or construction permit rather.

10 He wouldn't get a head start automatically, it would
11 be the consequence of the state order of that kind.

12 COMMISSIONER BRADFORD: It could come, at least
13 probably from the public utilities commission, the siting
14 board or probably the environmental board. I would mention
15 the governor's office.

16 MR. SHAPAR: I would mention the governor first.

17 COMMISSIONER BRADFORD: Well, he may have the least
18 clear authority of any one under the statutory mandates, but it
19 is hard to see what would stop him from issuing the order as
20 a practical matter. In most states it would be at least four
21 agencies, well, five. The attorney general in a lot of states
22 certainly wouldn't want to be left out.

23 MR. SHAPAR: I suppose in some states the states
24 would have that authority now on nonradiological, health and
25 safety grounds. Zoning or other authority the state might have.

1 COMMISSIONER GILINSKY: Would the state have to act
2 within a 30-day period?

3 MR. SHAPAR: I think so. Let me check the language.

4 MR. MALSCH: I don't think the language is clear
5 on that. I think the language specifically calls for a 30-day
6 advance notice, but doesn't necessarily require the notice
7 be within 30 days.

8 MR. REAMER: The last sentence in the subsection
9 is it might give the state the authority ---

10 MR. MALSCH: Even after 30 days, yes.

11 I think that brings us to a new section, 194
12 Standardized Facility Designs.

13 Just to summarize briefly, what this section does
14 is to give the Commission specific authority to approve the
15 preliminary or filed designs of thermal neutron power generation
16 facilities or major subsystems of thermal neutron power
17 generation facilities. And it can do so in one of two ways,
18 either by issuance of a rule or by issuance of a manufacturing
19 license. The approvals would be good for five years, renewable
20 for additional three-year periods.

21 In its comments to OMB, again the Commission had
22 indicated there was no basic problem with the concept. In fact,
23 some of the language in the section was added by DOE at NRC's
24 request. For example, the reference to both preliminary and
25 final designs, and subsection A was added at NRC's request.

1 The language in paragraph "c" on Page 27 that no
2 application, ~~of~~ filing nor issuance fee should be required for
3 application for approval of standardized designs, but instead
4 the cost would otherwise be defrayed by fees of applications
5 under this section would be allocated among applicants for
6 permits and licenses. In other words, the user. That was
7 added at NRC's request.

8 Some of the language of renewal of approval of
9 designs in paragraph "d" was also added at NRC's request.

10 MR. SHAPAR: Well, I think this had to be tied to
11 another section. Of course, the Commission has authority now
12 to issue manufacturing licenses. It also has authority now
13 to issue rules approving standardized designs. What is
14 significant about this in the context of other provisions is
15 that an adjudicatory hearing is required for the rule making
16 in order to get full advantage of the provisions of the act.

17 There is a requirement now that any rule-making done
18 by the NRC be done after adjudicatory treatment. There was
19 a question about that before and, of course, it was resolved
20 by Vermont Yankee. So this is a rather different direction,
21 but it was in the earlier versions and the Commission focused
22 on it before.

23 COMMISSIONER BRADFORD: You could still have a
24 standardized design that was approved through rule making, but
25 if you did it that way you wouldn't be eligible for some parts

1 of this bill?

2 MR. SHAPAR: That use to be that way, but it is
3 no longer true.

4 MR. MALSCH: I think if we are to approve preliminary
5 or file design of a whole thermal neutron power generation
6 facility or major part, we would have to follow these
7 provisions. We couldn't do it some other way and have some
8 different consequences attached.

9 MR. SHAPAR: But the bill originally read the way
10 you just suggested it.

11 MR. MALSCH: Right.

12 There is a savings clause on the end which reserves
13 our authority to approve the designs of minor systems or
14 designs of other kinds of facilities or to promulgate standards
15 or criteria without following procedural requirements of this
16 section 189.

17 So, for example, even with this section on the books
18 the Commission could still promulgate like ECCF's criteria or
19 part 20 criteria without going through the formalities of this,
20 but it couldn't approve a whole or major part of a design of
21 a thermal neutron power generation facility without going through
22 the procedures here.

23 In fact, that savings language in here, which is
24 in subsection "f" on Page 28 was added at our request so as
25 to leave our other authority unaffected.

1 CHAIRMAN HENDRIE: Is there a problem with the times
2 in here versus manufacturing licenses currently, i.e., the
3 particular proceeding we have got going forward with offshore?

4 MR. MALSCH: The appendix now ~~sdon't~~ specify a
5 duration, I don't believe, for the manufacturing licenses.

6 MR. CASE: They have asked for more than five in
7 the application we have before us.

8 MR. SHAPAR: There was some discussion when that rule
9 went out as to whether or not there ought to be a time period.
10 The conventional wisdom at that time was, it was better to leave
11 it unspecified.

12 MR. MALSCH: And the rules require that the applicant
13 specify the latest date for completion of all units to be
14 manufactured, but there is no restriction on when that date
15 would be.

16 CHAIRMAN HENDRIE: Does d2 affect that?

17 MR. MALSCH: Well, this is a provision for renewal
18 that is very similar in concept for the provision for renewal
19 of site permits, namely, you would renew unless there is
20 significant new information that suggest that the plant won't
21 comply with the Commission's requirement.

22 CHAIRMAN HENDRIE: In d1, this thing says that a rule
23 or license issued under this section and the section starts
24 out talking about manufacturing license proceedings as one of
25 the pieces of it. This thing says, any rule or license issued
under this section is valid for a CP for five years. And I

1 believe the offshore application is too short of time. I
2 think we haven't had comment back, DOE has had and we have
3 had comment that that language is too restrictive because
4 their schedule would not put those things in process in time
5 to ---

6 MR. CASE: It wouldn't be economically attractive
7 for a number of units they could manufacture within five years
8 is what it would say.

9 MR. SHAPAR: Because it could be renewed under two.

10 MR. KENNEKE: It says the application is filed. The
11 plant could be done later. It doesn't exclude that possibility.

12 MR. MALSCH: Well, but even still there might be
13 a problem. Would you have to take the current pending application
14 as an example, if you have application for construction permits
15 filed for all 8 units within five years after a final decision
16 on the current pending license. That is just one way of
17 expressing the five year period for design approvals, to key
18 it into the date when the applications --utilizing the design
19 to be filed.

20 CHAIRMAN HENDRIE: It is a party to the nuts and
21 bolts enterprise. You had better look up their complaint and
22 understand it against this language.

23 MR. CASE: Marty, in light of the fact there is no
24 revocation standard here or in the site permit, do you revert
25 to some ---

1 MR. SHAPAR: Yes. Your general revocation provision
2 of 186 of the Atomic Energy Act and that was one of the points
3 of discussion in drafting this bill.

4 MR. MALSCH: In fact, there is a conforming change
5 made to 186a and the conforming changes in the bill, Page 49
6 to add site permit in there, and also to add a reference to 193
7 in there.

8 Okay, as I indicated, the renewal provisions parallel
9 almost exactly the renewal provisions on site permits. This
10 is the language at the bottom of 27 and top of page 28. As in
11 the case of site permits, earlier language that impose special
12 requirements for revocation and suspension of design approvals
13 has been deleted pursuant to an NRC request in the OMB comments.

14 One problem the NRC had was with paragraph "e" on
15 Page 28 which appears to say that certain designs that are
16 presently referenced and pending construction permit act
17 applications can qualify as standardized designs under this
18 section. In our earlier comments we had suggested that the
19 provision be deleted because we didn't think it would be
20 particularly useful. We also questioned whether in order to
21 qualify under this paragraph those same designs referenced in
22 CP pending applications had to be the subject of the notice
23 requirements and mandatory hearing requirements that would
24 otherwise apply in the case of standardized design.

25 MR. SHAPAR: Also, we are not sure what the language

1 really means.

2 MR. MALSCH: Right. The language is unchanged from
3 what it was last October.

4 MR. KENNEKE: Marty we have asked the question and
5 battled it around on the three-year period, why the Commission
6 picked three years for a renewal period. Bottom of the last
7 line on 27.

8 MR. MALSCH: I don't think we picked it. I think that
9 was in the bill that was before us and we didn't comment one
10 way or another on it.

11 As I indicated, the last section or the next-to-the-
12 last section, subsection "f" was added at our request to
13 preserve our present authority to promulgate standards and
14 criteria by rule and to approve preliminary or final designs
15 of systems of facilities other than thermal neutron power
16 generation facilities and to approve the preliminary or final
17 designs of minor subsystems. So this means that design
18 approvals and criteria are in two categories.

19 Design approvals for other than thermal neutron can
20 be done by notice and comment rule-making or by manufacturing
21 licenses, I suppose, and then for thermal neutron power
22 generation facilities and major subsystems this section applies.

23 That brings us to Title II of the bill ---

24 COMMISSIONER GILINSKY: Let me ask you. What is the
25 significance of "g" the final determinations of the Commission

1 for facilities. What constitutes final determinations?

2 MR. SHAPAR: They may sue us.

3 MR. MALSCH: That makes it clear it is subject to
4 judiciary review just like a construction permit or an
5 operating license.

6 Section 201 amends the provisions in the
7 Act in section 182b dealing with ACRS reviews. It does
8 principally two things:

9 One, it changes the name of the advisory committee
10 on the reactor safeguards to advisory committee on reactor
11 safety.

12 CHAIRMAN HENDRIE: Could we refer to that as the
13 Gilinsky amendment.

14 COMMISSIONER GILINSKY: I'm trying hard to disassociate
15 myself from it.

16 COMMISSIONER KENNEDY: It will turn out to be the
17 only thing enacted in the bill.

18 MR. MALSCH: The other thing it does is to remove
19 the requirement for mandatory ACRS reviews except for
20 standardized design approvals and construction permits and
21 operating licenses for facilities other than thermal neutron
22 power generation facilities.

23 MR. SHAPAR: I might note that the recent GAO
24 report recommended that ACRS review for all custom plants be
25 mandatory. That was one of their recommendations.

1 MR. MALSCH: That brings us to the next section
2 which is section 195, State Environmental Reviews.

3 Let me summarize first. What this does generally is
4 that it provides that all or part of NRC's NEPA environmental
5 impact statement functions may be delegated to a state within
6 an approved NEPA program. It only applies to applications for
7 thermal neutron power generation facilities. And if a state
8 does have an NRC approved program the Commission couldn't
9 issue a license or permit without getting the NEPA input from
10 the state. The Commission is required to promulgate
11 guidelines ---

12 COMMISSIONER KENNEDY: What constitutes an approved
13 state program?

14 MR. MALSCH: Well, there are provisions in the bill
15 later here which detail -- which require the Commission to
16 promulgate guidelines in evaluating the programs and they
17 include a number of requirements.

18 COMMISSIONER KENNEDY: And the Commission is the judge
19 as to whether the program is an approved one?

20 MR. MALSCH: That's right.

21 The guidelines include a requirement that state comply
22 with NEPA, hold hearings comparable to the kind of hearings
23 which NRC hold which would be this new class of hybrid hearings.
24 Consent to jurisdiction of the Federal Courts and do a number
25 of other things. Those are the principal features.

1 There is also a provision authorizing Commission
2 technical assistance to states with approved programs and
3 grants for the development or administration of the state
4 programs.

5 MR. SHAPAR: And use of national labs.

6 MR. MALSCH: Well, that would be included in the
7 category of technical assistance. The use of national
8 laboratories on the site to help the states perform the NEPA
9 evaluations.

10 COMMISSIONER GILINSKY: And how do you get this
11 assistance?

12 MR. MALSCH: Presumably by request through the
13 Commission or another Federal agency. The grant program is
14 administered by the Commission. I think the request for
15 technical assistance could come to DOE. I think that applies
16 to all Federal agencies. Yes, subsection "h" on Page 40
17 says: "states with approved programs may request and receive
18 the assistance of Federal agencies including national laborator-
19 ies." So it is a broad authorization across-the-board to all
20 Federal agencies and national laboratories as well.

21 COMMISSIONER GILINSKY: What would they do, sort of
22 retain the labs on some basis and partial this out to the states?

23 MR. MALSCH: Presumably.

24 COMMISSIONER KENNEDY: Or would the states go to the
25 labs or through DOE and request their services directly.

1 MR. SHAPAR: That remains to be worked out. The bill
2 itself it not clear as to the mechanism that would be used.

3 COMMISSIONER KENNEDY: It would not be necessary that
4 they come to us any more than they would go to the labs,
5 would it or would it? I wouldn't think so.

6 MR. SHAPAR: I think it would be a discretionary
7 matter that you would want to focus on.

8 COMMISSIONER KENNEDY: Yes.

9 MR. MALSCH: The language says assistance of Federal
10 agencies including national laboratories. So you could say ---

11 COMMISSIONER GILINSKY: That means free assistance.

12 MR. MALSCH: I believe that's right.

13 But by saying agencies including national laboratories
14 they are presumably treating national laboratories as sort of
15 an arm of some Federal agency or other as opposed to some
16 independent entity that would be subject to the bill.

17 COMMISSIONER GILINSKY: But somebody is going to have
18 this put in their request.

19 MR. MALSCH: That's right.

20 CHAIRMAN HENDRIE: I think it will have to end up
21 having to be us to the extent that funds aren't available
22 or as much as people might want. There will have to be
23 an apportionment.

24 MR. MALSCH: Now, the Commission had a general
25 observation about the programmatic NEPA turnover concept that

1 was in this bill and was in the October bill. It noted in its
2 OMB comments that this programmatic approval as opposed to the
3 NRC proposed case-by-case use of state determinations was
4 a little more complex in that the case-by-case use of state
5 determinations in NRC's view then provided for better
6 control, organization and was better understood and preserved
7 the Federal Government as the overall NEPA coordinator and
8 the overall NEPA overseer.

9 COMMISSIONER GILINSKY: Which was more complex?

10 MR. MALSCH: The provisions in this bill is more
11 complex. But it said that it understood that some states
12 may prefer this version, that it did not have any strong
13 objections to it, but pointed out that the promulgation of the
14 guidelines for approval of state programs would be quite
15 complex and it would take a major effort on the part of the
16 Commission.

17 COMMISSIONER GILINSKY: Does anybody have any
18 notion as to how long that would take?

19 MR. MALSCH: I don't think that has been thought
20 through in detail. I don't recall there is any time limit
21 specified in the bill.

22 MR. MULLER: The initial states - would be something
23 on the order of a year. But then to get a good system going
24 it would take quite a bit of time.

25 COMMISSIONER GILINSKY: What do you mean by the
initial states?

1 MR. MULLER: Well, we thought if one or two states
2 wanted to do this initially right at the beginning ---

3 COMMISSIONER GILINSKY: Oh, you mean to get it
4 started?

5 MR. MULLER: To get it started it would probably
6 take on the order of, as I recall, a year.

7 CHAIRMAN HENDRIE: To approve the program?

8 MR. MULLER: For the first one, yes.

9 MR. SHAPAR: To approve the program and put out
10 guidelines or both?

11 MR. MULLER: To approve the program.

12 CHAIRMAN HENDRIE: This thing says put guidelines
13 out how fast?

14 MR. MALSCH: I don't think it specifies a time table.

15 MR. MULLER: I would say about 15 months for the
16 initial ones.

17 COMMISSIONER GILINSKY: Does the bill indicate anywhere
18 what the purpose of shifting these responsibilities out to the
19 states is?

20 MR. SHAPAR: Yes, I think in the findings by minimizing
21 duplication.

22 COMMISSIONER BRADFORD: Well, there is also something
23 in there about having decisions appropriately made -- local
24 decisions appropriately made at local levels.

25 MR. MALSCH: It says they should be made by competent

1 state or regional authorities and should not be duplicated by
2 the Federal Government. That's Finding 4.

3 COMMISSIONER GILINSKY: But it also talks about an
4 efficient process and it is not clear that this is it.

5 MR. MALSCH: Well, it is not clear that this is going
6 to speed things up, because for example, there are no time
7 limits on the state input to the NRC. Although there are other
8 provisions in the bill apart from this that require, for
9 example, state certificates of need. So even apart from this
10 provision if a state is bound and determined to hold the plant
11 up it has already got, quite apart from section 195, Federal
12 leverage to do that.

13 MR. SHAPAR: The other answer is that if states do
14 indeed take longer, that if they go into the early approach
15 of early site approval that won't be critical at that time.

16 MR. REAMER: Does subsection "e" on Page 51 deal
17 with the timing question about rules and regulations?
18 "Specifically shall be effective as to all applications filed
19 with the Commission on or after that date."

20 Presumably we would have to have a mechanism for
21 approval of a state program in place by that time.

22 MR. MALSCH: Yes, I think you could argue that.

23 MR. REAMER: Would you win?

24 MR. SHAPAR: I don't know. What do you say?

25 MR. MALSCH: It is not so clear because you would

1 ordinarily expect that the intent of the time limit to have it
2 in the statute which talked about the Commission promulgating
3 guidelines.

4 There are other provisions, for example, in section
5 202 that are not dependent upon Commission promulgation and NEPA
6 guidelines.

7 COMMISSIONER GILINSKY: I don't know whether you
8 referred to this, but are you referring to Page 51?

9 MR. MALSCH: Yes. That's the effective dates
10 provisions and 202 is this provision. As I said, there are
11 some provisions in 202 which are not dependent upon the
12 Commission promulgation of guidelines and don't need guidelines
13 to have some meaning.

14 MR. MULLER: But the bulk of 202 being the transfer
15 to the states so that certain environmental authorities surely
16 does require improved programs under 195.

17 MR. MALSCH: That's correct.

18 COMMISSIONER BRADFORD: Marty, are you familiar at
19 all with the attorney general's opinion in California to the
20 effect that their law is unconstitutional?

21 MR. MALSCH: I have not read it.

22 MR. SHAPAR: I have read it.

23 COMMISSIONER BRADFORD: Would that opinion, in your
24 opinion, have to come out differently if this legislation were
25 in force?

1 MR. SHAPAR: I don't think so because that is
2 addressed to the radiological health and safety preemptive
3 authority of the NRC and this bill does not purport to turn
4 that over to the states. So having looked at it quickly,
5 my answer would be no.

6 MR. REAMER: Subsection B of 202 -- actually 195
7 seems to say that the existing situation with regard to public
8 health and safety between the NRC and the states has not
9 changed by this action.

10 MR. SHAPAR: That provision was deliberately crafted
11 to be neutral on preemption. That wouldn't affect it one way
12 or the other.

13 MR. MALSCH: Although it does do one thing that
14 people have debated about for years, and that is it does
15 authorize the Commission to take radiological impacts that
16 have been assessed by the Commission and factor those into its
17 overall balancing judgment as to where the plant should be
18 permitted or not. There has been a lot of debate whether that
19 is or is not a violation of the preemption that bridges the
20 Atomic Energy Act. This would clearly authorize the state
21 to presumably take the radiological impact as evaluated by the
22 Commission and argue it up that that would be the straw that
23 broke the camel's back, and you know, was close to no, but not
24 quite no without it, but with it, it is no.

25 MR. REAMER: But it requires them to take our

1 evaluation of the radiological impact, right?

2 MR. MALSCHER: That's right.

3 They are to take our evaluation without independent
4 state evaluation or without challenging it.

5 One interesting thing here, the bill is not clear as to
6 whether our evaluation -- it will be in turn used by the state --
7 is subject to challenge in our hearings. That's on Page 36.

8 MR. REAMER: Is there any significance to seeing
9 the "d" provisions to radiological safety but not mentioning
10 radiological health?

11 MR. MALSCH: I don't think there is any significance.

12 Okay, going back to the beginning again, "a" is the
13 basic program. Two is a provision which says the Commission
14 can issue site permits or construction permits or combined
15 permits and licenses without getting the state input.

16 One slight glitch in this is that on Page 32 it is
17 drafted so as to not require a finding of need for power in
18 connection with issuance of site permits. Yet the earlier
19 provision on the site permit section talked about something
20 called a generic NEPA need for power. I think those two
21 need to be reconciled.

22 CHAIRMAN HENDRIE: You say you don't need that
23 site permit?

24 MR. MALSCH: See, it says that in a case of
25 permits or a combined permits and licenses -- beginning on line

1 three, that the Commission can't issue the permit unless it
2 is notified that it is environmentally acceptable or needed.
3 But when it references site permit it just references
4 environmental acceptability.

5 See, the only place you see need is in big paragraph
6 B, beginning on line 11. There is no reference to "need" in
7 paragraph A which deals with environmental acceptability.

8 So they have to make a finding as to environmental
9 acceptability for site permits, construction permits and
10 combined permits of licenses, but it only specifically requires
11 to make a finding of need as to permits or combined permits
12 and licenses.

13 Now, the major features of the program are: one, as
14 specified in Paragraph 4 in the middle of 33 that the state
15 evaluations have to be in compliance with NEPA; and paragraph
16 B which says where the state is going to make those evaluations
17 that those evaluations will discharge the Commission from its
18 NEPA responsibilities.

19 Now, two things are noteworthy about this: In the
20 version that the Commission saw when it was commenting to OMB
21 last October the state evaluation and determination under this
22 section not only discharged the Commission from its NEPA
23 responsibilities, but also discharged all other Federal agencies
24 from their NEPA responsibilities in connection with the plant.

25 In the present version it only discharges the Commission

1 from its NEPA responsibilities. So it is possible that there
2 could still be some duplication between other agencies in the
3 states even though the duplication between the Commission and
4 the states has been taken care of, although, to address that
5 problem there is a new provision in the bill which says that
6 the Commission or states acting under this section shall be the
7 lead agency under NEPA.

8 So presumably the net effect is that while other
9 Federal agencies may indeed still have some residual NEPA
10 responsibilities they do not go so far as to require those
11 agencies to independently prepare their own statement. It may
12 be sufficient if they are reviewed, the lead agency statement
13 prepared by the state.

14 Also, that Commission environmental responsibilities
15 under Federal laws, aside from NEPA are not affected. For
16 example, we would have some responsibility apart from NEPA
17 to look at impact on historic sites as one example. We would
18 have some obligation probably to look at impacts on fish and
19 wildlife pursuant to the fish and wildlife coordination act
20 apart from NEPA. It is only our NEPA responsibilities that
21 would be discharged.

22 On Page 34, paragraph 3 two-thirds of the way down
23 on the page says that if the states aren't going to perform
24 these reviews then the Commission shall have the exclusive
25 authority to determine whether the facilities will be needed

1 or whether the facilities will be in compliance with NEPA.
2 This has been drafted so as to avoid any impression that states
3 are preempted if they elect not to participate in the program.

4 MR. SHAPAR: This takes care of the comment that
5 the Commission made on the earlier version.

6 MR. MALSCH: That's right, we had expressed concern
7 that whatever language is developed it not preempt the states
8 in the event the states chose not to participate in the
9 program.

10 There is a small drafting problem in the sense that
11 it is kind of silly to say the Commission shall have exclusive
12 authority to determine compliance of NEPA as against the
13 states when the states aren't required to comply with NEPA
14 any way. But in any event, it is clear there is no preemption.

15 On Page 35 we have already discussed Paragraph "d".
16 That is the preemption savings provision which says that the
17 present preemption in the Atomic Energy Act is perserved and
18 that the Commission, rather than the state, has the respon-
19 sibility to assess environmental impacts or radiological
20 safety.

21 MR. SHAPAR: This would not affect then, the
22 amendments to the Clean Air Act.

23 MR. MALSCH: That's right.

24 On Pages 36 thru 39 are the guidelines which the
25 Commission is to promulgate for approving state programs and

1 they include, as I mentioned, provisions to assure compliance
2 by the state with NEPA, including consent by the state
3 official to assume the status of a responsible Federal
4 official within the meaning of NEPA and consent to the juris-
5 diction of Federal Courts.

6 In our comments we had expressed some concern about
7 whether states might find objectionable a requirement to
8 assume the status of a responsible official and assume juris-
9 diction of the Federal Courts, although in the earlier
10 version it appeared that the jurisdiction of the Federal Courts
11 was exclusive and the state courts were also the jurisdiction.
12 That is no longer so clear.

13 On the other hand, there is the same problem here
14 as there is with the state certificates of need. It isn't
15 clear exactly which court is suppose to have jurisdiction over
16 the state NEPA determinations. Presumably without saying
17 anything it might end up in a district court and you might have
18 two proceedings pending at the same time. One in the District
19 Court and one in the Court of Appeals and that may not be
20 such a hot idea.

21 New provisions are added in paragraph 2 to require
22 the state to give reasonable consideration to economically
23 feasible alternative sources of power, including conservation,
24 solar energy, et cetera. These are pretty much a codification
25 of what the existing law provides.

1 Finally, there are provisions on Page 38 in
2 paragraphs (5) ---

3 COMMISSIONER GILINSKY: Let me ask you about
4 provision 3. How many states would you say now have that
5 sort of expertise and have the resources to conduct these
6 kinds of reviews. Are we talking about a handful of states
7 or a lot of states?

8 MR. MULLER: It is more like a handful. New
9 York and California apparently in pretty good shape now.

10 COMMISSIONER GILINSKY: So the others would have
11 to crank out and develop the resources and the institution
12 and so on.

13 MR. MULLER: That's right.

14 MR. SHAPAR: At least crank it up to the level that
15 would meet the guidelines that we haven't established yet,
16 because some of them are doing it now. I guess what, 25
17 states have NEPA statutes or something like that?

18 COMMISSIONER GILINSKY: My question was, how many
19 are able to do it more or less the way that we do it.

20 MR. SHAPAR: If the guidelines reflect the way
21 we are doing it now, I would guess that very few states do
22 a job that is comparable to the job that the NRC does.

23 MR. MALSCH: Although the bill does provide something
24 that they have not -- do not have, namely, technical
25 assistance and financial assistance to do an adequate NEPA

1 review.

2 COMMISSIONER GILINSKY: Yes, but to pull all of that
3 together and have somebody to produce it takes time.

4 MR. MALSCH: Right.

5 MR. REAMER: But a program might cover only some
6 determinations.

7 MR. MALSCH: That's true. It could be all or part
8 of the NEPA reviews. It need not immediately perform the
9 entire function. They could choose to just look at the NEPA
10 power for example.

11 MR. SHAPAR: There is a third option as well, and
12 that is that it explicitly gives us the authority to use data
13 that we get from a state that isn't part of an approved
14 program, although that can be attacked in our proceedings
15 and in courts.

16 MR. MALSCH: In fact, that was added at our request
17 because it is an approach away from the programmatic NEPA
18 turnover in a direction of the case-by-case reliance that we
19 had originally thought was a better idea.

20 COMMISSIONER GILINSKY: Now, where is that
21 provision?

22 MR. MALSCH: It is in (i) I believe, on Page 40,
23 bottom of Page 40 to the top of Page 41. That was added at
24 our request.

25 Although as this provision provides while we can

1 rely upon the data analysis and conclusions of the state,
2 those data analysis and conclusions are subject to challenge
3 in our hearings, unlike the determinations made by a state
4 under an approved NEPA program.

5 COMMISSIONER GILINSKY: This was in effect our
6 recommended approach?

7 MR. MALSCH: Well, not quite, because our recommended
8 approach would have provided in some circumstances for no
9 challenge before NRC. So this doesn't go quite all the way
10 in the direction of our earlier recommendation, but it is a
11 strong step in that direction. It doesn't quite go that far.

12 CHAIRMAN HENDRIE: Well, it picks up the alternate
13 state review section that we drafted back in September or
14 October.

15 MR. MALSCH: I think it does.

16 CHAIRMAN HENDRIE: It is just recognition of what
17 I believe already to be the case, that is our authority to
18 use state work products within our own system.

19 MR. MALSCH: Yes.

20 One thing that is missing from this that could
21 conceivably be helpful is it isn't clear from this subsection
22 (i) who defends in the NRC hearing the state data analysis
23 conclusions. Presumably it would be the state that would
24 have the responsibility to defend it, and some helpful
25 legislative history along those lines would further the intent

1 or the original intent of the section.

2 COMMISSIONER BRADFORD: Would that be whether we
3 rely on it or not?

4 MR. MALSCH: Presumably it wouldn't be an issue.

5 COMMISSIONER BRADFORD: If we rely on it it would
6 be somewhat erroneous wouldn't it?

7 MR. MALSCH: Well, that's the question. If we rely
8 on it it would become our own, but who is ours, the staff or
9 the Commission or the Board's or who? It is not inconsistent
10 to have the Commission rely upon a state conclusion, yet not
11 have any independent evaluation of it by itself, but instead
12 have relied upon cross examination of state officials or the
13 experts who developed the analysis for the state.

14 In any event, that matter could be something that
15 could be clarified in the legislative history.

16 There are three other things noteworthy in the
17 guidelines. One is provisions in guideline 5 and 7 on
18 Page 38 that calls for something in the program to assure
19 coordinated and timely decision and coordination with related
20 federal reviews. And then in Paragraph 9 on Page 39 some
21 provisions to assure consideration of Regional factors. I'm
22 looking at the environmental and facility need. These are
23 designed to accommodate comments to the effect that if a
24 state as opposed to the Federal Government is to do the NEPA
25 reviews there has to be some mechanism to consider interstate

1 impacts, impacts that would occur beyond the boundaries
2 of a particular state. These provisions are designed to
3 accomplish that.

4 The same, subsection "f" on Page 39 also has that
5 same ---

6 COMMISSIONER GILINSKY: Do you have any notion of
7 what kind of provisions these may be?

8 MR. MALSCH: Well, presumably you would take them
9 into account by having some mechanism for input from
10 adjacent states and consideration of their views and comments
11 as a part of the state decision process.

12 COMMISSIONER KENNEDY: And they can use their
13 existing regional compacts.

14 MR. MALSCH: Right, in fact, that is subsection "f" .
15 It specifically says can and are encouraged to use regional
16 organizations to perform the NEPA reviews as opposed to doing
17 it all by their lonesome.. That would probably be the ideal
18 way of factoring and understanding their pacts. To have the
19 actual evaluation done by some interstate organization.

20 COMMISSIONER GILINSKY: Well, except these
21 organizations tend not to have the staff or literally
22 coordinating groups.

23 MR. MALSCH: Some compacts are substantial regulatory
24 bodies in their own right. For example, the Susquehanna
25 River Basin Commission is its own regulatory agency in its own

1 right and has a staff and actually has licensing and
2 permit authority.

3 As a general matter the kinds of interstate
4 organizations you see under, for example, river basins, the
5 normal river basin commission doesn't have any big regulatory
6 clout, but some do. Susquehanna is an example. Delaware
7 River Basin Commission is another example of an agency that---
8 interstate agency that has clear regulatory authority and a
9 staff to accomplish it.

10 Page 40 authorizes -- subsection "g" authorizes the
11 Commission to terminate or suspend financial assistance to
12 a state and terminate or suspend its approval of a program
13 if the state isn't adhering to the program as originally
14 approved by the Commission.

15 We had discussed subsection "h" which is a provision
16 whereby states with approved programs can receive and request
17 federal assistance.

18 We discussed "i" which is the providing enabling
19 NRC to rely upon state analyses data conclusions and findings.

20 Subsection "j" is the grant authority, the Commission
21 grant authority for two states for organization, development
22 and administration of a NEPA program. One thing noteworthy
23 here is a provision which authorizes but does not require
24 a state to use a part of its grants to fund intervenors in
25 state NEPA proceedings and if the state wishes to do so, this

1 funding would be in accordance with the same standards and
2 criteria as would be applied by the Commission under its
3 intervenor funding authority.

4 COMMISSIONER BRADFORD: Do you mean there is no
5 ceiling on the overall amount under this section by just
6 intervenors in general?

7 MR. MALSCH: No, although there is a ceiling on the
8 type of grant that can be made to individuals to the type of
9 money the Commission would pay for its own employees or own
10 consultants, but there is no overall ceiling, except that
11 there would be an overall ceiling in terms of available
12 appropriations. And the Commission is authorized within
13 the level of appropriations to allocate money among various
14 classes of proceedings. So it is conceivable as a matter of
15 practice that there would be actual limits to Commission
16 financial assistance to certain classes of proceedings.

17 MR. SHAPAR: I would think the authorization and
18 the appropriation committees at the time our budget came up
19 might have some ---

20 COMMISSIONER KENNEDY: This is a general authorization
21 isn't it?

22 MR. MALSCH: Right.

23 COMMISSIONER KENNEDY: It does not provide any funds
24 to carry it out?

25 MR. MALSCH: That's right.

COMMISSIONER KENNEDY:

1 COMMISSIONER KENNEDY: Or even indeed authorizing
2 specific funds for carrying it out.

3 MR. SHAPAR: It authorizes sufficient funds for
4 carrying it out though for fiscal year '79.

5 "There are authorized to be appropriated for this
6 purpose such sums as may be necessary for the fiscal year
7 ending September 30th '79."

8 COMMISSIONER KENNEDY: Right.

9 But then, presumably the authorizing committee would
10 take a look at that again in conjunction with the appropriating
11 committee to decide what that amount is.

12 MR. SHAPAR: Right.

13 MR. MALSCH: I think that completes the NEPA
14 program in the bill.

15 The next is section 196, Federal and State
16 Coordination. The Commission has not had any significant
17 comments or problems with this in the version before it last
18 October.

19 What it does, it authorizes the Commission to establish
20 a schedule for completion and comment of all of its reviews
21 and is authorized to cooperate with other Federal, state or
22 regional agencies with decisionmaking authority with an idea
23 to establish target dates for completion of their reviews.

24 The section is very carefully drafted so as to
25 avoid any implication that agencies have an obligation to meet

1 target dates and to avoid any implication that the Commission
2 would intrude upon the substantive decisionmaking authority
3 of any of the other Federal or state agencies.

4 MR. SHAPAR: Of course, there is floating around
5 a draft executive order in which, I guess, you all were asked
6 to comment and give counterpart or similar authority to DOE.
7 That, I guess, has not gone any vast place up to now.

8 COMMISSIONER BRADFORD: What is the status of that
9 in terms of timing? Will it simply await enactment of this
10 legislation?

11 MR. SHAPAR: I don't know the answer to that
12 question.

13 MR. REAMER: It seems that certain provisions
14 in that sense, I think were finalized prior to the enactment
15 of the act.

16 MR. SHAPAR: In any event, it is probably going to
17 run into trouble.

18 MR. MALSCH: Also, this provision doesn't give DOE
19 any particular authority. It is addressed to Commission
20 authority, not to DOE.

21 Okay, I have mentioned paragraph "b" here, that is
22 simply the lead agency concept incorporated into a statute
23 and would say that the Commission or state would be lead
24 agency under NEPA and I think that was intended to take care
25 of the problem of other federal agency NEPA responsibilities.

1 Page 44 contains a provision at the top of the
2 page which is a savings clause which was added at the request
3 of the Antitrust Division in the Department of Justice to
4 preserve the present division of state and federal authority
5 over any trust matters. It may possibly be worded too broadly
6 because some people have argued this would not permit, for
7 example, a state to withhold a NEPA need for power certification
8 on the grounds that to do so within the meaning of this section,
9 impose a burden on interstate commerce. But while the language
10 may have some slight problems, the concept was simply to
11 preserve the existing state of law on antitrust matters.

12 MR. SHAPAR: And it is probably not needed.

13 MR. MALSCH: It is probably not needed, that's right.

14 That brings us to intervenors, funding of intervenors,
15 Section 197. This for the most part almost -- well, in fact
16 almost entirely reflects language which the Commission itself
17 drafted which in turn was based upon a legislative proposal
18 by Senator Kennedy.

19 MR. SHAPAR: I think with the exception of one
20 comment that Commissioner Bradford made it is not accommodated,
21 the extend to or something like that.

22 MR. MALSCH: Well, there were four or five comments
23 that we made that were not accommodated. Most of them are
24 not terribly significant.

25 COMMISSIONER BRADFORD: I hope you are not including

1 mine.

2 MR. MALSCH: No.

3 (Laughter)

4 The one important difference between this version
5 and the Kennedy bill is that this does not authorize any
6 funding of intervenors in judiciary review proceedings.
7 The Kennedy bill would have. This only applies to administrative
8 proceedings before the Commission.

9 MR. SHAPAR: But the general model when this was
10 first drafted, I think, was the Kennedy bill with the emendations
11 that the Commission wanted in the earlier review process.

12 MR. MALSCH: That's right.

13 It has been -- a couple of things were added at
14 NRC's request. For example, the discretionary authority to
15 extend funding and rulemaking proceedings was added at NRC's
16 request. Some of the criteria on ----

17 COMMISSIONER KENNEDY: That's essential in the light
18 of if we are going to have this sort of thing in light of
19 the standard review plan in the standard plant, which would
20 be rulemaking.

21 MR. SHAPAR: And it is a pilot program.

22 MR. MALSCH: That's right, it is described as
23 a pilot program and has a fixed termination date of, I think,
24 1983. Let me see -- no, December 31, 1982. Although funding
25 could be extended to proceedings underway on that date.

1 The criteria are pretty much the same as the
2 Commission saw it. The Commission had suggested in its OMB
3 comments that criterion two on page 45 be deleted as redundant
4 with criterion three, but I don't think the two of them together
5 cause any harm. The criterion that would have required the
6 person requesting assistance to describe the impact the inter-
7 vention would have on the proceeding was deleted at NRC's
8 request and a provision that candidates for funding must show
9 some special significant interest in the proceeding beyond
10 ordinary standing to intervene was also deleted at NRC's
11 request.

12 The rest of it is as NRC had seen before. NRC
13 has suggested deletion of the termination date in paragraph
14 "i" expressing in that regard a concern about proceedings
15 under way on that date. However, Commissioner Kennedy
16 suggested language that would simply preserve the authority
17 for pending proceedings and that provision was adopted. So the
18 concern NRC had expressed about that, I think, has been largely
19 taken care of.

20 CHAIRMAN HENDRIE: Anything spicy in the Conforming
21 Amendments?

22 MR. MALSCH: No.

23 COMMISSIONER KENNEDY: I notice subsection "g"
24 on the bottom of Page 47 would provide one further alternative
25 for the courts to extend matters before the Commission not

1 heretofore available to them.

2 MR. MALSCH: Well, except it is drafted so as to
3 limit judiciary review. Without this provision, I think the
4 review would have been even broader than it is with the
5 provision and it says some things that are very useful, for
6 example, a Commission -- a court can't stay a proceeding on
7 the merits solely because of an error made in funding. A
8 provision which is kind of useful.

9 There is nothing fancy or unusual about the
10 Conforming Amendments. There is one thing you ought to be
11 aware of about the effective dates, and that is that the
12 site permit and standardization provisions are effective right
13 away, but the intervenor funding provisions are not effective
14 until 180 days after enactment. So there could very well be,
15 under this bill, a number of significant site permit and
16 standardized design proceedings as to which there would be no
17 intervenor funding. I don't know why they chose the effective
18 dates as they did.

19 COMMISSIONER BRADFORD: Well, you did say you didn't
20 know why, but we did call it to their attention.

21 MR. MALSCH: We have called it to their attention
22 informally. I don't think the version that we had last October
23 had the same kind of effective date and I don't recall that
24 the Commission addressed them specifically.

25 And that's it.

1 CHAIRMAN HENDRIE: It was to allow us to get some
2 rules written wasn't it?

3 MR. MALSCH: There is a requirement in the funding
4 provision that we promulgate rules.

5 MR. SHAPAR: And a specified date then.

6 MR. MALSCH: I think that's right, yes.

7 CHAIRMAN HENDRIE: The regulation should be
8 adopted by the Commission shall take effect no later than
9 180 days after the date of enactment and then Section 301
10 becomes effective at that point, so it allows for rules to
11 come in effect. Otherwise, we are going to have to decide
12 for financial assistance on an ad hoc basis if the thing
13 went or wasn't effective.

14 Other comments?

15 Good, thank you very much.

16 (Whereupon the meeting was concluded at 3:20 p.m.)
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