



Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

DISCUSSION OF UNION OF CONCERNED SCIENTISTS'

PETITION FOR RECONSIDERATION

(Open to Public Attendance)

May 31, 1978

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Prepared by:
C. H. Brown
Office of the Secretary

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
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5 DISCUSSION OF UNION OF CONCERNED SCIENTISTS'
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7 PETITION FOR RECONSIDERATION
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9 (Open to Public Attendance)
10

11 Commissioners' Conference Room
12 Room 1130
13 1717 H Street, N.W.
14 Washington, D. C.

15 Wednesday, May 31, 1978
16

17 The Commission met pursuant to notice at 3:15 p.m.,
18 Joseph Hendrie, Chairman, presiding.
19

20 PRESENT:

21 Chairman Hendrie
22 Commissioner Gilinsky
23 Commissioner Kennedy
24 Commissioner Bradford
25

ALSO PRESENT:

21 L. Gossick
22 S. Chilk
23 H. Shapar
24 J. Kelley
25 K. Pederson
B. Snyder
E. Case
R. Mattson
J. Scinto
J. Fitzgerald
W. Shields

P R O C E E D I N G S

CHAIRMAN HENDRIE: Could we come to order.

The subject this afternoon is Discussion of Union of Concerned Scientists' Petition for Reconsideration.

The Commission published a Memorandum and Order on the original Petition in this case, the 13th of April. We now have UCS Petition dated May 2nd.

Mr. Pederson and Mr. Kelley have a joint memorandum to the Commission outlining various matters. Jim, I take it you will represent OGC. Somewhere between the two of you, would you care to take up the discussion and outline the proposition for us, please.

MR. PEDERSON: I'll start off.

You have in your hands a memo jointly prepared by OGC and OPE, as you note. This memo attempts to provide you with a series of procedural decisions that we think need to be taken as soon as possible.

Before I start, I would like to make one slight correction, because I don't want to do a disservice to UCS or to the Commission in terms of the reading of this memo.

On page 2 at the top there is a sentence that says: "No emergency or immediate actions seem necessary, nor are any requested by UCS." I think in the sense that UCS's Petition is not titled as the earlier one was in a request for emergency action, nor does it end in any specific request for emergency action. I think that is a fair statement.

1 On the other hand I would note that on page 12
2 of their Petition for Reconsideration, at the bottom, they
3 do reiterate their desire that the plants, in this case
4 the operating plants in the discussion should be ordered shut
5 down until compliance with these regulations has been
6 demonstrated.

7 Now, although this statement appears only once and
8 it is in the middle of the text as opposed to being a specific
9 request at the end of the Petition. It does have the appearance
10 in the context of a request for some immediate action. So I
11 want to clarify that that statement at the top of page 2, to
12 be completely accurate, should probably be modified somewhat.
13 No specific emergency action or at least as titled as such
14 is requested. But I think it is fair to say that UCS at one
15 point in their Petition does reiterate their request for the
16 plants to be shut down.

17 Having said that, then I would like to briefly discuss
18 with you the three decisions that we think need to be made
19 now and outline them for you.

20 The first is whether or not you should seek further
21 input or formally request a review of the Petition by the various
22 line offices that are involved. In the Petition for Reconsider-
23 ation the actions of certain line offices and staff is criticized
24 and is brought into question. Particularly NRR, Research and
25 IE. The original Memorandum and Order which was drafted for and

1 issued by the Commission was based to a large extent on papers
2 provided to you by the line offices, put in the Public
3 Document Room and so forth.

4 It seems to us, OGC and OPE, only fair and proper
5 that the line staff be asked to provide you comments, analysis
6 and their conclusions and recommendations as appropriate on
7 this latest Petition for Reconsideration. We have recommended
8 that you so formally request and that you ask them to provide
9 you with a detailed analysis within one month's time.

10 Now, let me say that in my mind one month seems
11 reasonable based on the complexity of the issue and based on
12 our experience in the first Memorandum and Order. However,
13 I cannot and will not say to you that the one month is based
14 on any magic formula. It seemed to us what appeared reasonable.
15 I think it requires a judgment by you as to the urgency of the
16 situation here and what is reasonable to ask of the staff.

17 Secondly, the question is raised whether public
18 comment should be invited. We asked for public comment on the
19 first Petition. Seeking public comment is a more or less
20 standard procedure with regard to petitions. We had fairly
21 active comments the last time, I believe 46 comments were
22 received from various individuals, organizations and so on.

23 We think that since this can be done concurrently with
24 the staff review, if you choose to ask for such a staff review,
25 that it would not represent a critical path item nor would it

1 represent necessarily a delaying factor and that it is in
2 keeping with good practice and with normal practice on the
3 part of the Commission. So we recommend that the public
4 comments be solicited. Here, we recommend again a one-month
5 turnaround that is to be concurrent with the staff review.
6 Again, that figure is not something that I would want to
7 fall on my sword over. It seems reasonable.

8 All of these, by the way, are predicated on the assumption
9 that you choose to take up this Petition for Reconsideration.
10 You, of course, have the option of not taking up the Petition.

11 The third issue was how should the Petition for
12 Reconsideration be reviewed at the Commission level? As you know,
13 the Commission chose to take the original Petition up unto
14 itself and to deal with it on a first order basis. This
15 appears to argue for having the re-review done at the
16 Commission level in some way or other. We have recommended
17 to you that OPE and OGC jointly review, analyze and draft
18 for Commission consideration an opinion, based of course,
19 in part upon the information we would be getting or input we
20 would be getting from the staff and their analysis as well as
21 public comments, as well as, of course, the comments and
22 concerns of the Commission.

23 This does have some downsides and we recognize that
24 in taking this into consideration. OPE and OGC had the lead
25 role in this similar situation on the original Memorandum and

1 Order, to the extent that that Memorandum and Order is being
2 questioned here and its completeness and so forth is being
3 brought under scrutiny. An argument could be made that it
4 would be improper to have OPE and OGC play that role again
5 even though we would obviously be doing so under the scrutiny
6 of the Commission.

7 We think that this is not unlike, however, that it
8 is not a conflict of interest here, and it is not unlike having
9 a judge's law clerk or even the judge himself consider a
10 Petition for Rehearing or a new trial even when he in fact was
11 the judge that sat in that trial.

12 But, nonetheless, we did consider some other alter-
13 natives which we list there including an independent review
14 by your own assistants or a task force of your own assistants
15 of some sort, or convening an ACRS panel or a staff panel
16 of some sort. For various reasons we felt these were not the
17 best choices and we list some of the concerns there and I would
18 be more than happy to go into them in more detail if you wish
19 to discuss that.

20 Finally, I would note that in their Letter of
21 Transmittal to you, UCS suggested that the Commission might
22 profit from an informal roundtable discussion of the issues
23 raised here.

24 We have briefly reviewed the Petition and in our
25 judgment the issues are clearly stated by UCS. And their

1 concerns are adequately documented. We see no benefit right
2 now, necessarily at having a roundtable at this time and would
3 suggest that you defer a decision on having such a discussion.

4 In your considerations of this, if you choose to
5 consider such a discussion with them now you might want to
6 take into your thinking some of the things that you thought
7 about in your first go around on this Petition.

8 First, if UCS is entitled to participation in some
9 sort of roundtable with you, it would seem that both the
10 staff and previous commenters on the original Petition would
11 have to be given the same opportunity.

12 Secondly, in your Memorandum and Order you made
13 an expressed statement to indicate that earlier participation
14 by UCS in the form of Mr. Pollard meeting with you and making
15 a presentation was not to be construed as a precedent. This
16 was written in the Memorandum and Order because of the
17 concern that you had. I leave it to your judgment as to whether
18 a second meeting along these lines would serve to weaken that
19 concern about limiting or walling off precedents here, but
20 it certainly is a factor that I would want to call to your
21 attention.

22 Finally, I would make one more statement that is
23 not in the paper. This Petition for Reconsideration arrived,
24 or at least was dated, I see the Secretary stamp is May 3rd.
25 Our memorandum to you is dated May 25th. That's approximately

1 three weeks. I think that it is a fair question to ask:
2 is that too long to take action on this Petition even though
3 it was not titled a Petition for Emergency Action?
4 I think one of the problems here is that we had no guidelines
5 on how to deal with this kind of Petition.
6

7 It came into the Secretariat, to the best of my
8 knowledge it was not suspended, it was not sent to anyone for
9 action. I have not been able to find that it was in any case.

10 OPE had it, OGC had it, the Commissioners had it.
11 I had a concern that since we had been involved in the
12 original Memorandum and Order and since this was a Petition for
13 Reconsideration of that, I wasn't sure that it was appropriate
14 for us to take it up on our own initiative. Nonetheless, I
15 think that it is something that you might want to consider
16 even though this is somewhat unique in two senses. That the
17 Commission took up the original Petition itself to begin with,
18 and secondly, a Petition for a Reconsideration both of which
19 are somewhat rare events; nonetheless you may want to think
20 about some kind of guidelines in this regard in terms of
21 more expeditious handling if you feel that this was not handled
22 rapidly enough. I'm not sure that three weeks is necessarily
23 unreasonable, but on the other hand, I think that had there
24 been clear guidelines as to who should have done this and what
25 time frame it might have been done more rapidly and I take
some of the blame for that.

1 COMMISSIONER GILINSKY: On what basis did you take
2 this up?

3 MR. PEDERSON: Did we finally write a memo?

4 I had talked to several Commisssoners informally,
5 met them in the hall and said, you know, we have this
6 Petition in-house and something really ought to be done with
7 it. Then I believe, and Bernie may want to fill this in
8 further, I believe that Commissioner Bradford's office called
9 us within approximately a week or a week and a half after the
10 Petition was received and asked us, "What's going to happen?
11 What are we going to do on this?" We then had a staff
12 meeting and I said, well, we really ought to prepare a paper
13 and tell the Commissioners it is in-house and here are some
14 options as to what to do with it.

15 So I guess I would have to give the credit to
16 Commissioner Bradford's office in a way, although even at that
17 point it wasn't clear to me that I was the appropriate office
18 as I was not given that formal assignment or that OGC and OPE
19 were the appropriate offices, but that's how this actually
20 happened.

21 COMMISSIONER GILINSKY: And you invited OGC to
22 participate?

23 MR. PEDERSON: No, OGC ---

24 MR. FITZGERALD: We were getting paralleled.

25 MR. PEDERSON: They were getting paralleled.

1 Commissioner Bradford is an equal opportunity
2 telephoner and they were getting the same message. Also,
3 we had jointly done the original memo. Our concern was that
4 if I took the lead in a memo or if we took the lead in a
5 Petition for Reconsideration about a Memorandum and Order that
6 we had been actively engaged in originally drafting, I myself
7 wasn't sure how appropriate that looked. So I am anticipating
8 that one of you may have a question about why did it take so
9 long and I hope I have anticipated the question. I maybe have
10 not answered it to your satisfaction, but I assumed that it might
11 be a question on your collective minds.

12 I have nothing more to add, Mr. Chairman.

13 CHAIRMAN HENDRIE: Thank you Ken. Jim, from the
14 counsel's side do you have anything that you would like to add
15 or subtract?

16 MR. FITZGERALD: I second Ken's presentation.

17 CHAIRMAN HENDRIE: Peter, do you ---

18 COMMISSIONER BRADFORD: Well, how do you want to
19 proceed on it, Joe? I do have a couple of questions and a
20 couple of points.

21 CHAIRMAN HENDRIE: Why don't you go ahead and
22 exercise them and then we will see, other Commissioners may
23 chime in or have their own line of inquiry to follow.

24 COMMISSIONER BRADFORD: I have gathered from the
25 sentence at the top of page 3 that as to the Petition itself

1 you are recommending that we -- the phrase is "consider it".
2 I guess I'm not clear myself on what the term of art is for
3 a Petition for Reconsideration. If you reconsider it, are
4 you in effect granting the Petition to Reconsider without
5 prejudice to your end result or are you taking some
6 preliminary step and is granting the Petition to Reconsider
7 something that happens at the end?

8 MR. PEDERSON: I think, Commissioner, that that
9 more appropriately -- well, what you are saying is that we
10 think that the Petition has sufficient merit that it deserves
11 for you to assign staff to it, to have it analyzed and then
12 on the basis of that analysis make a decision.

13 It is not clear enough on the fact that we can
14 recommend to you that you simply deny it out of hand. So it
15 was meant to imply that we find sufficient merit there or
16 we believe that there is sufficient merit that you may want to
17 in fact look into it. I don't think it presupposes the
18 result of your consideration to go either way. That was what
19 the intent was.

20 COMMISSIONER BRADFORD: But just as a procedural
21 matter, this is probably more for the lawyers than you.

22 When one considers reconsidering is that the same
23 as reconsidering? In other words, if the court grants a
24 Petition to Reconsider something and then goes ahead and
25 reaches the same results is it deemed to have reconsidered it or

1 is it deemed to have denied the Petition for Reconsideration?

2 MR. FITZGERALD: I think when a court gets a
3 Petition for Reconsideration, and they do get these things
4 with some frequency either for a panel or en banc, that they
5 make an initial decision as to whether they are going to
6 even entertain it -- a discretionary act of whether they
7 want to take it up again. Once they determine that they will
8 take it up again, they -- regardless of what the ultimate
9 results will be, either because some novel or intriguing argu-
10 ment is made on this Petition for Reconsideration, they
11 then invite briefs and actually take up the merits.

12 As to what goes on in the first instance in the
13 judge's chambers, I don't know, but ---

14 COMMISSIONER BRADFORD: But when it issues that first
15 order does it say Petition for Reconsideration granted?

16 MR. FITZGERALD: I don't know that.

17 MR. KELLEY: I don't think you need a vote at this
18 juncture. They just say look at it and they look at it and
19 do whatever you are going to do.

20 COMMISSIONER BRADFORD: I asked it because we have
21 had one communication recently, not from UCS, but a curve
22 suggesting that we have a habit of doing a de facto granting
23 petitions, but then at the end of the proceeding saying that
24 now that everything the Petition has asked for is done, we
25 will deny the Petition. And I wanted to avoid that type of

1 suggestion here.

2 MR. PEDERSON: This is a little unique. Usually
3 your Petition is to ask you to take certain specific actions.
4 This Petition is a Petition to Reconsider and in a way, by
5 agreeing to look into this you are reconsidering. I see the
6 thrust of your question. It is not clear -- they are also
7 asking you to reconsider your decision in the earlier Memorandum
8 and Order, and I think you are not at the stage you want to
9 grant that.

10 COMMISSIONER BRADFORD: No, I understand. Obviously
11 the Commission hasn't reached that stage. I am just wondering
12 what this first step technically is.

13 It seemed to me that I remembered some time when
14 the question of whom we should and shouldn't meet with on
15 pending petitions and a rulemaking proceeding came up, that
16 Jerry Nelson, at least, was very strongly of the opinion that
17 the Commission could meet with whomever it wanted to meet with
18 in a rulemaking proceeding, and that while obviously it should
19 as it would in any matter endeavor to be fair, there were no
20 due process requirements or legal requirements that it had
21 to meet with anybody or everybody or any combination thereof.
22 Is that a fair statement of the OGC position?

23 MR. FITZGERALD: My recollection when this came up
24 in the first instance in the previous, incarnation of the UCS
25 Petition that we were, and Jerry included, persuaded by

1 Mr. Connor's argument that as a matter of elemental fairness
2 the other side, to wit, the people who commented and who
3 represented licenses that might be in jeopardy, that they
4 should be given some time too. I think he was persuaded by
5 that fundamental fairness argument that Mr. Connor advanced.

6 COMMISSIONER BRADFORD: Where does this stop
7 any way, if you have 40 commentators do you hear from all
8 40 of them if you hear from one?

9 MR. FITZGERALD: They way that it was agreed to
10 and set it up in the past was that the commenters were to be
11 accorded the same amount of time as had been accorded to the
12 UCS, and we encouraged, I believe under your direction or
13 Chairman Hendrie's direction that the 46 folks strive to
14 consolidate their presentations, if any there were, to maximize
15 the 45 minutes or whatever that would be accorded them. And
16 that message did go forth to those parties and they ultimately
17 did get together and decide not to take up the Commission's
18 kind offer. But that type of information was given out to
19 them. Otherwise, if they exercised their independent and
20 individual right they would have each gotten about 45 seconds
21 or the equivalent.

22 COMMISSIONER BRADFORD: That is of some relief to me.
23 I did in fact meet with the UCS people between our Memorandum
24 and Order and their filing the Petition for Reconsideration
25 before, in fact, we knew any such petition would be forthcoming,

1 but it is a relief to know that that meeting which lasted an
2 hour or an hour and a half will not require me to spend an
3 hour and a half with 45 additional petitioners one at a time.

4 Ken, what do you see as likely to be forthcoming
5 from public commenters on the types of issues that you see
6 that is raised here. Are we just sort of going through the
7 motions on that?

8 MR. PEDERSON: Obviously, Commissioner, I can't say
9 with certainty. I certainly wouldn't want to say we are
10 merely going through the motions.

11 My guess is, based on the fact that my preliminary
12 review of the Petition for Reconsideration is it raises and
13 advances many of the same issues, that the comments that you
14 get from the public may be very similar in that regard to the
15 kinds of comments you got earlier.

16 On the other hand we have advanced somewhat since
17 the Memorandum and Order was issued. Some things have
18 transpired and taken place and these are alluded to in some
19 cases by UCS and I would suspect that there is the possibility
20 that you may get some public comment on these events on
21 progress or lack thereof, that is alleged by UCS even since
22 the Memorandum and Order came out that might shed additional
23 light.

24 I simply can't say for sure. I would expect that
25 it would parallel with the comments we got earlier, however.

1 But since UCS does address some things and specifically
2 since UCS talks about things that were not in the Memorandum
3 and Order or things that were left out of the Memorandum and
4 Order there may be some public comment on that may be of
5 some value, you know, just that the quality of the Memorandum
6 and Order in terms of substantive quality or its completeness
7 or whatever.

8 Moreover, I guess I feel that if you choose to follow
9 this path, in other words, if you choose to also ask the
10 Bethesda staff to make a formal submission to you, I don't
11 see that going out for public comment would result in a
12 delay and I guess I have always felt that where you are
13 not talking about a critical path item, public comment is
14 probably a good way to proceed. In some cases even when you
15 are talking about delay it is a good way to proceed.

16 I can't find a good strong reason against it, I guess
17 is what I'm saying, Commissioner.

18 COMMISSIONER BRADFORD: Are there particular items
19 among the seven that you picked out, I had somehow only counted
20 six in the UCS Petition itself, but obviously you are just
21 breaking them down because they are all there; that seem more
22 compelling than others?

23 MR. PEDERSON: I would like to ask Bernie Snyder
24 to respond to that, he has done the detailed review.

25 MR. SNYDER: This is as far as the public comment
goes, your question is in that context?

1 COMMISSIONER BRADFORD: No, I'm sorry, I meant just
2 in terms of your analysis. In terms of your recommendation
3 that we should consider this Petition, that goes to all of
4 the point in it, that recommendation?

5 MR. SNYDER: Yes, yes. I think the whole think should
6 be considered. I think the staff should have the opportunity
7 to comment.

8 MR. PEDERSON: Were you asking, Commissioner, were
9 some of the points raised by USC, in our judgment, were they
10 stronger, more compelling, more convincing?

11 COMMISSIONER BRADFORD: Yes, well ---

12 COMMISSIONER KENNEDY: More deserving of consider-
13 ations than others?

14 MR. PEDERSON: Yes, was that your question?

15 COMMISSIONER BRADFORD: On the one end of the scale,
16 I suppose one could ask are there those that you could simply
17 drop further consideration, and are there any that are
18 deserving of special consideration?

19 MR. SNYDER: Well, we have only made a preliminary
20 review of this Petition from UCS and in my judgment, I
21 couldn't rank them in an order that one might suggest.

22 I would say that the points that they have raised ought to
23 be addressed and I don't know any that ought to be ignored or
24 dismissed out of hand, you know that they aren't pertinent.

25 COMMISSIONER BRADFORD: The problem is -- and granted

1 there was a lot of material involved -- I guess the reason
2 this is here is that they feel we have already ignored them
3 once and one of the things I take it that is part of the
4 recommendation is the judgment that we were somehow -- that
5 our original order was somehow deficient in not picking these
6 points up and dealing with them.

7 MR. PEDERSON: On the contrary, Commissioner, I think
8 our feeling is quite strong that all of these points, including
9 the ones UCS specifically feels were not given adequate
10 treatment were in fact covered. Now the judgment of
11 adequacy is a judgmental matter and I think that's one of the
12 things this review would want to look at.

13 I wouldn't want to imply that by suggesting this
14 be rereviewed that we are suggesting that their allegations
15 or concerns are valid in terms of these things being overlooked
16 or not treated. I think in this case where you are talking
17 about the kinds of charges they are making, you are talking
18 about serious staff deficiencies, you are talking about the
19 Commission letting things happen that are a direct contravention
20 of its own regulations and so on, that there may be some value,
21 if you judge it, to go back over this and convince ourselves,
22 convince you, convince the public that in fact these points
23 were adequately looked at. It is our judgment that in fact
24 none of these points were given cavalier treatment or were
25 left unaddressed. So I wouldn't want to leave that impression

1 with you. In fact, we have mentioned in our memo very
2 specifically that we do not see any new substantive issues
3 that have been raised by UCS.
4

5 So I think in your judgment as to whether to take
6 this Petition up, I want to make it clear that in doing so
7 we are not recommending that the UCS Petition has merit in
8 terms of having found the Memorandum and Order that you issued
9 to be grossly defective. The question is: do you feel that
10 public confidence, that your support for your earlier Memorandum
11 and Order warrants this kind of investigation, that you
12 have nothing, one would hope, to hide and are willing to
13 undergo this; and the resources that it would entail. That is
14 a judgment that you have to make.

15 I would not want it to be read as me saying,
16 Commissioner, that we have read this and UCS has really
17 raised some serious defects in your earlier Memorandum and
18 Order. That is simply not our judgment at this time.

19 COMMISSIONER BRADFORD: Well, for example, at the
20 beginning of the Petition they say that, "The Staff has
21 eventually admitted to you in these proceedings that UCS was
22 correct that, as to at least some presently operating plants,
23 a fire could today have the same effect." And that
24 refers back to the Browns Ferry fire. Is that in fact, a
25 fair statement?

MR. SNYDER: Yes, as far as it being fair, they

1 have made the statement before and in their submission in
2 January of the proposed Memorandum and Order as you recall,
3 the made that contention before. It was discussed in one of
4 the subsequent Commission meetings.

5 We have not gone into that question in detail, but
6 we have reviewed it a bit. My understanding is that of all
7 the plants that have now sent in their fire protection plans
8 and review by the staff in every case there are modifications
9 that are needed. So it isn't one or two or a few plants, and
10 steps are underway to modify them. There are alternative
11 approaches to make the fixes as needed. And in the meantime
12 there are many compensatory measures that are being taken
13 to insure that until these modifications are made that we
14 are under safe conditions.

15 I think the staff can give better detail on it
16 than I can, but basically I understand from the review of this
17 that there are -- there is no one or two or a few plants
18 involved. So they asked the question, "Why didn't you ask
19 which ones are they?" and we answered that question, I believe,
20 as all. There are modifications required for all.

21 COMMISSIONER BRADFORD: And this a fundamentally
22 different type of situation from the one we discussed
23 yesterday with regard to the Mark 1 containments?

24 MR. CASE: I don't think so.

25 COMMISSIONER BRADFORD: It is that same zone between

1 what is required for licensing and what is required for
2 continued operation and the need for standards and definitions
3 for this type things?

4 (Mr. Case nods in the affirmative.)

5 COMMISSIONER GILINSKY: Let me ask you, you are
6 suggesting that the staff have a chance to respond to this
7 Petition you would simply turn the Petition over to the staff?

8 MR. PEDERSON: No, no. Not at all.

9 Your earlier Memorandum and Order, in the process
10 of developing it, on several occasions, I couldn't even count
11 actually, you formally wrote to the staff and asked them to
12 supply information about the Petition, to provide their
13 response to that earlier Petition and allegations made in it.
14 All we are doing here is recommending that with regard to
15 this Petition for Reconsideration that you keep it to yourself,
16 just as you did the first Petition, but that you formally
17 request from the staff, a response or their analysis of this
18 Petition, their response. They themselves in here are
19 criticized in many cases fairly strongly and I would think
20 you would want to have that.

21 Now, the alternative is for us in OGC to go for them
22 and ask them for it. I think it is better, I think it is more
23 proper and I think in terms of documentation, it is better
24 that you ask them formally for this analysis. But they would
25 not be doing your Memorandum and Order for you.

1 COMMISSIONER GILINSKY: No, no. I understand that.
2 So you would be just ---

3 MR. PEDERSON: Consistent with what you did on the
4 first Petition.

5 COMMISSIONER GILINSKY: -- turning the Petition over
6 for their response.

7 MR. PEDERSON: That's correct.

8 COMMISSIONER GILINSKY: Is it clear to you what is
9 being asked of this hearing?

10 MR. PEDERSON: Well, they are suggesting -- first
11 they are asking us to reconsider your earlier decision. Now ---

12 COMMISSIONER KENNEDY: And to shut down the plant.

13 MR. PEDERSON: Yes. On page 12, as I mentioned
14 at the outset, on page 12 in the middle of the text -- unlike
15 most Petitions this doesn't end with a specific set of
16 requests of you. There is only one place ---

17 COMMISSIONER GILINSKY: Well, there are six points.

18 MR. PEDERSON: Yes, and we have detailed those.

19 But these are -- what you are being asked to do
20 is to say you made a series of statements in your Memorandum
21 and Order that you issued, and they want you, as I read it,
22 in addition to reconsidering your decision not to shut them
23 down, to reconsider your reasoning and whether in fact your
24 reasoning was sound; whether the information you had at hand
25 was complete, adequate and proper. There is a series of things

1 they are asking you to do over and above these specific
2 issues.

3 COMMISSIONER GILINSKY: Yes, I mean, it goes beyond
4 the operation of these plants. It has to do with ---

5 MR. PEDERSON: Yes, Bernie reminds me of one other
6 thing. And whether we adequately considered their input or
7 USC's various documents they provided. That's another question
8 they have raised.

9 Particularly their draft Memorandum and Order that
10 they supplied us. Whether that was given adequate attention.

11 COMMISSIONER GILINSKY: Well, that's point number
12 one that UCS's draft Memorandum and Order was virtually
13 ignored.

14 MR. PEDERSON: Yes, but I'm saying that that doesn't
15 appear in the bullets as -- on the first page of their
16 contentions. Those go to the -- in our memo those go to the
17 specific technical contentions that they say were not correctly
18 dealt with, but over and beyond that there are these
19 broader questions, one of which is did we give adequate attention
20 and, I suspect one would say credit in some cases, to UCS's
21 submissions.

22 COMMISSIONER GILINSKY: Well, obviously there are
23 two kinds of items here, and in a way we are being asked to
24 rethink, as I recall, our regulatory doctrine.

25 MR. PEDERSON: You were asked to do that in the first

1 Petition too, Commissioner.

2 COMMISSIONER GILINSKY: Well, I guess we are being
3 asked to rethink it again.

4 MR. PEDERSON: Yes..

5 COMMISSIONER GILINSKY: And also, there are a number
6 of specific matters. I don't know that they are really
7 specified in your memo here.

8 MR. SNYDER: We didn't attempt to track their
9 specific six points. There was no attempt on our part to do
10 that.

11 MR. PEDERSON: Commissioner, the primary purpose of
12 our memo was to suggest basically ways of proceeding. We
13 didn't attempt to give you in the memo an analysis of the
14 Petition. Those bullets on the first page were an attempt
15 to give you a sense of the kinds of things they were raising.
16 But you are correct, our memo is not exhaustive in terms of
17 detailing the issues that are raised.

18 If your decision might be or if you want to consider
19 dividing the Petition up with the possibility of considering
20 portions of it and not considering others or something, then
21 I think it would be appropriate to be more specific. But that
22 was not our intent in this memo.

23 I might also say, Commissioner, that my reading of
24 the Petition of these various issues, both the broader ones
25 in terms of how we proceed in our philosophy and the specific

1 technical ones, are in some cases so inextricably intertwined,
2 it is difficult to look at treatment of single failure
3 criterion without getting into the whole question or our
4 philosophy of regulations. It is very difficult to separate
5 those things out.

6 COMMISSIONER BRADFORD: There is also a reference
7 on page 4 which states the Commission should adopt the relief
8 requested by UCS as detailed in their draft Memorandum and
9 Order of July 9, which does contain the kind of relief
10 paragraphs at the end that you said aren't present here.

11 MR. PEDERSON: That's correct. If you wish to go
12 back and make the judgment that what they asked for in their
13 draft Memorandum and Order was what they are now asking for
14 in a way here, then, yes, that is correct.

15 COMMISSIONER BRADFORD: Yes, that seems to be what
16 it says.

17 MR. PEDERSON: But that requested relief, of course,
18 very closely parallels with what they ask for in there, in
19 the initial Petition.

20 I mean, if it is not completely clear what UCS
21 wants, one could always solicit further information from them,
22 I suppose, but it is not clear in this Petition for
23 Reconsideration, precisely what they are asking for other
24 than their request to shut down the plants, on page 12.

25 COMMISSIONER GILINSKY: Well, there are some points

1 raised about the confirmatory assessment program, after
2 being checked.

3 MR. PEDERSON: Yes. But they aren't nicely
4 itemized, one has to go through there to pick them out and
5 you can get 7 or 8 or 9, depending on how count and how
6 you divide.

7 MR. SNYDER: If I may on that point, they have
8 raised a few questions that I think probably if you decided
9 to take this little thing, are worthy of clarification.

10 There is some confusion on that particular item,
11 that is the rerun of the Sandia tests. That could be
12 clarified. I must say, what the staff is planning to do
13 on that and it told you this in a recent memo the first part
14 of the month, covers both ends of the spectrum, both the '71
15 qualified components and the '74 qualified components. We
16 didn't ask for the '71.

17 COMMISSIONER GILINSKY: You did not?

18 MR. SNYDER: We did not in the decision you made.

19 That's what I mean, that's the point at which some
20 clarification ought to might be made profitably. It has to
21 be made in another formal decision, but ---

22 COMMISSIONER BRADFORD: Well, isn't the problem there
23 in part that it is not all clear, that there are components
24 qualified to the '74 standard installed in plants?

25 MR. SNYDER: Except for some of those that replaced

1 components that were found not to be qualified during this
2 whole process.

3 COMMISSIONER BRADFORD: But there is not much point
4 in testing those?

5 MR. SNYDER: No, they have already been tested.

6 The reason for the '74 request was that the Sandia
7 tests were a total failure. And they were intended to test
8 for the '74 components, the latest version on the standard.
9 That's the way the tests were set up. Essentially your
10 request was to do it over again.

11 COMMISSIONER BRADFORD: It is not clear whether
12 the tests were a failure or the components were a failure.

13 MR. SNYDER: Well, the tests were inconclusive
14 because the components failed, right. But it is true that
15 there are no operating plants today except for these few
16 isolated replacement pieces where there are anything other
17 than '71 components to the '71 standard at most. Some of
18 the older plants, of course, predate even that.

19 MR. FITZGERALD: Bernie, just as a point of
20 clarification, didn't the Commission's paper or Order direct
21 that these tests on the components were to also use a
22 representative sample of those in use in nuclear power
23 reactor safety systems?

24 MR. SNYDER: That's the point of confusion. That
25 probably could have been worded more clearly. That is exactly

1 the point at which I would suggest that a clarification be
2 made.

3 I must say the staff seems to be proceeding to
4 cover both sides of the question.

5 CHAIRMAN HENDRIE: Peter, do you have other things
6 you would like to exercise at this time on the matter?

7 COMMISSIONER BRADFORD: No.

8 CHAIRMAN HENDRIE: Well, in the discussion of the
9 UCS Petition there is a certain amount of procedural matter
10 of discussion with the limited amount of discussion of the
11 one points or another, I think there are certain procedural
12 matters to decide.

13 These appear to array themselves to me as follows:
14 I think the memorandum that OPE and OGC got up is helpful in
15 this context. I suggest to you as first a basic question
16 before the Commission of whether to consider the Petition or
17 simply to deny it out of hand. It seems to me that we might
18 well come to a decision on that this afternoon if you felt
19 ready and able to come up to it. On the other hand we could
20 also postpone it.

21 It seems to me that following that, unless the
22 Petition is denied out of hand, then the three questions raised
23 in the OPE memorandum are useful things to consider. Whether
24 further input from the NRC line offices on the merits that the
25 UCS Petition should be sought, whether public comment should be

1 invited, and finally, the question of who should review the
2 material thus gathered.

3 In the first instance their recommendation is that
4 OPE and OGC undertake this. I'm glad they have volunteered.
5 I must say we tend to run out of bodies to review things, it
6 becomes impractical to find at each round a new and previously
7 uninvolved group of capable people to gather up and summarize
8 the material for the Commission.

9 So there are sort of four questions, a principal one
10 and then those three to follow, it seems to me. How do you
11 feel on the question of considering the Petition matters
12 further or denying outright?

13 If I call for a vote, will I be hustled out of the
14 room in outrage, or do people feel ready to vote?

15 COMMISSIONER GILINSKY: Well, I think, you know, I
16 regard this as UCS engaging us in a dialogue and I think
17 is a useful exercise. I willing to go forward.

18 CHAIRMAN HENDRIE: I detect a willingness to vote,
19 at least.

20 COMMISSIONER KENNEDY: I vote to consider, to have
21 the staff comment, to have public comment, have OGC and OPE
22 review the matter and defer any decision as to whether we should
23 have a roundtable discussion with UCS and other parties.

24 CHAIRMAN HENDRIE: Okay. As a matter of fact, I
25 neglected that last point. I'm glad you brought it up.

1 Okay, I've got registered "yes" vote down the line.
2 How about the rest of you on consideration of the matter,
3 a request that you are simply denying the Petition.

4 (Commissioner Gilinsky nods affirmatively.)

5 CHAIRMAN HENDRIE: I got a nod here, Peter?

6 COMMISSIONER BRADFORD: I will vote the same way.

7 CHAIRMAN HENDRIE: Okay, so we will consider the
8 matter.

9 Now, on the question of should we ask the staff for
10 comments on the matters raised in the Petition for Reconsider-
11 ation.

12 I have a "yes" from Commissioner Kennedy. I will
13 vote "yes" on it.

14 COMMISSIONER BRADFORD: I would certainly also vote
15 yes. What do you have in mind for a vehicle, that is, some
16 sort of separate -- there is the Order here which sort of is
17 a general request for comment.

18 COMMISSIONER KENNEDY: It directs the staff to
19 evaluate issues and provide a detailed report to the Commission,
20 at the bottom of the page.

21 COMMISSIONER BRADFORD: Yes, I guess I am just trying
22 to avoid that and then further questions from us on the basis
23 that issues that we thought were important weren't addressed,
24 and I wonder if there is anything that could be said for being
25 more specific as to the questions on we would like to staff to

1 to take. I suppose in any case there is no difficulty with
2 having this Order go out and there are certain specific
3 questions that we need addressed it can be sent along afterwards.

4 CHAIRMAN HENDRIE: We can request the staff to
5 evaluate the specific issues raised in the Petition for
6 Reconsideration. If there are other words or additional
7 words that ---

8 COMMISSIONER GILINSKY: Your concern is points are
9 going to get missed or they won't be focusing on.

10 COMMISSIONER BRADFORD: Ah ---

11 COMMISSIONER GILINSKY: I guess I would be more
12 concerned about the latter.

13 COMMISSIONER BRADFORD: Well, I was just trying to
14 avoid a point where in 30 days from now we get the documents
15 back and it would seem to us to miss important points that we
16 wanted the staffs to point out and then ask for further comment
17 on those. I think the answer to that is going to be that, I
18 know I have a couple in mind and I will just see whether it
19 would be worth putting them together and forming a memo saying
20 please particularly address the following.

21 MR. PEDERSON: Commissioner, I could add something
22 slightly to that.

23 COMMISSIONER KENNEDY: That's the way it ought to
24 be. If we have any such thoughts, provide them and the
25 Chairman can send a letter on behalf of the Commission

1 requesting staff's ---

2 MR. PEDERSON: Also in dealing with the first
3 Petition, as we were going along new questions inevitably
4 emerged. OPE and OGC, if you decide the question that you
5 have to be decided, to have us do this, we would be doing our
6 initial work concurrent with comments being gotten from the
7 public and the staff. And during the last go around several
8 questions from ourselves and including follow-up questions
9 from the Commissioners were sent to the staff, I believe via
10 communication from the Secretary. So there are ample ways
11 of doing this. You have by the Chairman, by the Secretary,
12 whatever. I think there is a certain evolutionary process
13 to this and I think it is inevitable.

14 Questions are going to be raised by the very act
15 of analysis, to a certain extent.

16 CHAIRMAN HENDRIE: Okay, we will certainly ask the
17 staff for comments. Public comments, Commissioner Kennedy, I
18 think people commented before, I think it is a reasonable
19 proposition and I will vote for that too.

20 On the next item, which is to accept the recommen-
21 dation of the Counsel's office and Policy Evaluation that
22 they jointly take up the staffing burdens on the matter, the
23 law clerk's burdens. I recommend approval since I don't seem
24 to have anyone else at hand. I don't propose that our assistants
25 be told to do it.

1 COMMISSIONER BRADFORD: May I ask one question of the
2 staff that I should have asked sooner.

3 CHAIRMAN HENDRIE: All right, ask it and then I will
4 come back and pick up the rest of it.

5 COMMISSIONER BRADFORD: Joe, picking up on Ed's
6 agreement that this wasn't fundamentally different from the
7 Mark 1 problems of yesterday, what is the legal status of
8 the plants that there is general agreement to meet the changes
9 in the fire protection; that is, is a waiver in order in that
10 situation for the same reasons it would have been in order
11 yesterday?

12 MR. SCINTO: I think in our December 15 memorandum, we
13 went into some discussion on that and felt that with the more
14 general terms of General Design Criterion 3 applicable to fire
15 protection, that one could consider, and this is what we did
16 consider that the present status with the administrative control
17 the higher degree of manual fire protection to minimumally
18 satisfy that General Design Criterion 3 requirement.

19 On the other hand, the long term adequacy of
20 protection we did not want to rely on, personnel and these
21 type of administrative procedures, but we would want them wired
22 in to hard systems to satisfy more than minimal General Design
23 Criterion 3, just satisfy the General Design Criterion 3 without
24 question. That is discussed at some length in our December
25 15th memorandum.

1 COMMISSIONER BRADFORD: And how is it that the
2 Mark 1 situation is different?

3 MR. SCINTO: The Mark 1, the -- there was some
4 discussion about whether it was debatable, as I recall.
5 But with respect to the Mark 1, the requirement of that
6 regulation by implication, by incorporation of the codes
7 called for a margin. Now, this can be considered as a
8 deviation with respect to the cause portion or the effect
9 portion. That is, the code talking about what the stresses
10 on the loads can be. It can be an exemption from that.
11 We thought it more properly that it was an error in the load
12 calculation, the load calculation is covered by General
13 Design Criterion 50, which again, uses the same kind of general
14 words, sufficient margin, but by history, by high tradition,
15 by practice, sufficient margin has met the code requirement.
16 We haven't done this distinction between short terms and long
17 terms over history.

18 That's why I said, in this case it looked like what
19 we were saying is this did not meet what we thought to be the
20 requirements of what we had always meant by sufficient margins.
21 And that is an exemption.

22 COMMISSIONER BRADFORD: So it is that difference
23 between 3 and 4 times that existed in the code and was a hard
24 numerical standard and the absense of any comparable standard
25

1 backing up the General Design Criterion 3?

2 MR. SCINTO: Yes, General Design Criterion 3 does
3 not have an external place to go to to give you more substance
4 for what is quote "adequate fire protection." That has been
5 historical development. We have been developing that over
6 a course of time. The external place that puts in substance
7 on General Design Criterion 3, unfortunately was Browns Ferry.

8 COMMISSIONER BRADFORD: There isn't an IEEE standard
9 that keys into General Design Criterion 3?

10 MR. SCINTO: There are IEEE standards which are
11 related to it, but I don't think there is any set of
12 industrial standards that you can establish which we would
13 characterize as of themselves, providing the kinds of
14 protection that we think are required in light of the experience
15 at Browns Ferry. We might have before Browns Ferry, but the
16 Browns Ferry experience was a rapid step-wise increase in
17 knowledge.

18 MR. SNYDER: I believe there are ANSI standards
19 under development though. Correct me if I'm wrong Roger, as
20 the result of that. Is that correct?

21 MR. MATTSON: Yes.

22 MR. SHAPAR: You are perhaps asking for further
23 rulemaking.

24 COMMISSIONER BRADFORD: Not yet.

25 CHAIRMAN HENDRIE: Let me hustle us back to the

1 Petition for Reconsideration matters.

2 It seems to me that we have agreed then, with the
3 recommendations of OPE and I wonder then, as a general
4 proposition the draft Order language isn't a fair represen-
5 tation of where we want to go. I would ask if you would not
6 also concur in the decision to defer the question of
7 roundtable discussion. It does seem to be premature at this
8 time, I believe.

9 COMMISSIONER BRADFORD: There may be some slight
10 addition of language needed in that Footnote to reflect the
11 OGC position we are talking about as sort of an equal time
12 to the parties rather than allowing the same privilege to
13 anyone who might ask for the same. But other than that, ---

14 CHAIRMAN HENDRIE: All right, would you undertake
15 to fix that Jim?

16 MR. FITZGERALD: Yes.

17 CHAIRMAN HENDRIE: Would you like to see the Order
18 and think about it further, or is the language here -- has
19 everybody looked at it and not found much difficulty with it.

20 COMMISSIONER KENNEDY: I agree with it.

21 CHAIRMAN HENDRIE: For myself, I will just simply
22 ask OGC to fix the Footnote, as you indicated, Peter, and ask
23 that it not come back to me, at least. If you would like to
24 see it, why by all means.

25 COMMISSIONER BRADFORD: That's all right, if you would

1 show it to Tom for review.

2 CHAIRMAN HENDRIE: Vic, I don't know if you want to
3 see it? Check with Peter.

4 Okay.

5 MR. CASE: Could I comment on this 30 days in there.

6 CHAIRMAN HENDRIE: All right.

7 MR. CASE: It is doable, but only at the expense
8 of other high priority matters. I think 60 days would be more
9 appropriate.

10 MR. MATTSON: We can throw away the analysis of
11 the public comments, which you will probably ask us for any how
12 like you did last time.

13 COMMISSIONER KENNEDY: What other high priority
14 projects?

15 MR. MATTSON: Generic Task A-24,
16 Qualification of Class 1-E Electrical Equipment. I have to
17 essentially take the resources off that generic task and put
18 them on this task. It means the industry has no definitive
19 guidance on what our current thinking is for the implementation
20 of 32371 or 74.

21 COMMISSIONER KENNEDY: How is that going to change
22 if you stretch it out to 60 days?

23 MR. MATTSON: I have got an interim task force
24 approach to Generic Task A-24 which begins on Monday and ends
25 six weeks from Monday, which is tailored to provide some

1 interim statement of our current requirements on qualification
2 procedures.

3 COMMISSIONER KENNEDY: Therefore, if you need 60
4 days instead of 30, you could do the job in two weeks? So ---

5 MR. MATTSON: No, that's not quite right.

6 There is some front-end loading on that six-week
7 effort where I could get the technical people in and out in the
8 first three or four weeks and then get them on to the Petition.
9 Sixty days is a much more reasonable time. It would also allow
10 us to consider the public comments which will be received in
11 30 days and factor those into our thinking as we prepare our
12 analysis.

13 COMMISSIONER BRADFORD: Roger, which of these points
14 is it that is going to require a lot of technical man hours?

15 MR. MATTSON: There is a lot of -- as Joe has just
16 characterized in my ear -- who shot John arguments in the
17 Petition for Reconsideration. I think we would like to go
18 through those.

19 The full documentation of environmental qualification
20 for plants now going into operation, I think D.C. Cook was
21 a case at point raised in the Petition for Reconsideration
22 and I would like to go through that in some detail and explain
23 what were the facts of the D.C. Cook instance.

24 The treatment of the single failure criterion and
25 whether it was correct or incorrect, we have made a considerable

1 filing on that subject in the course of the first Petition.
2 Evidently ~~it is not adequate~~ and we will have to go back and
3 go through that again.

4 COMMISSIONER BRADFORD: Well, I'm not sure that
5 that's the case. To the extent that you all feel that you have
6 given comprehensive answers on these points, it is not my
7 feeling in any case that you have got to go back and redo,
8 reword and switch the paragraphs around.

9 MR. MATTSON: But I think you agree with OGC and
10 OPE though, Commissioner, there are no new technical points
11 raised in the Petition for Reconsideration, and despite that
12 fact and the volumes of material which we supplied on the
13 original Petition, the Commission has decided to grant the
14 request for reconsideration, so I would think we would want to
15 go back through the thing in some details and make the arguments
16 specifically tuned to the wording of the Petition for
17 Reconsideration. That takes time. To ask you to corollate
18 the Petition for Reconsideration, which is structured
19 differently than all the material we filed, will not solve
20 your question at this point at all.

21 COMMISSIONER GILINSKY: I wonder if we ought not
22 be more specific on what we are asking the staff.

23 COMMISSIONER KENNEDY: I urge that we allow the
24 staff to review this Petition in whatever detail the staff
25 believes is appropriate and necessary to resolution of the

1 issues raised in it. Otherwise, we are going to have another
2 Petition indicating, just as this one does, the questions
3 raised in the Petition were not adequately discussed.
4

5 So it seems to me in fairness to the staff, in
6 fairness to the Commission and in fairness to Petitioner
7 the staff should review the matter in as exhausted detail
8 as is required to put the questions to rest.

9 CHAIRMAN HENDRIE: What about the 60-day question,
10 Peter?

11 COMMISSIONER BRADFORD: Well, I don't disagree with
12 what Dick has just said, but I also don't feel that the staff
13 should feel that it is under any compulsion to rearrange
14 arguments that are already made, that is, it would be fine
15 with me if you really felt it were the case on any one of these
16 points to say this point is fully covered in our submissions
17 of December 15 and whatever the other relevant dates are,
18 pages 39 and 43 in one and 46 to 48 in another. We do have
19 all of those things up here, and in any case where you feel
20 that the point has been completely answered already, I wouldn't
21 feel you ought to take the time to have somebody just
22 rearrange the arguments.

23 MR. MATTSON: We can try that. The difficulty is
24 lacking the description of what causes us to reconsider the
25 information we have already supplied and force us to go back
and reconsider the information we have already supplied to

1 force us to go back and reconsider the information we have
2 already supplied to decide whether or not it addresses the
3 point. That's a fair amount of work.

4 COMMISSIONER KENNEDY: It is to be recalled that as
5 someone read earlier on page 4, I don't want to beat this
6 dead horse too much, but I don't want to have to go over the
7 subject again, hopefully. The decision largely ignores the
8 series of filings made by the UCS subsequent to the filing of
9 the Petition. The UCS draft Memorandum and Order has been
10 virtually ignored, thus, I can't imagine a statement coming
11 back from the staff saying, no, that's not true. See pages
12 23 to 27. I would only expect them to receive another
13 comment from the UCS on it and if I were the UCS I certainly
14 would make one, saying, we know what we said on pages 23 to 27,
15 we read it. That's why we wrote you this on page 4 of our
16 latest Petition.

17 MR. MATTSON: Well, that's a good case in point of
18 the uncertainty that I feel at the moment as to what the
19 Commission is asking me for.

20 The draft Memorandum and Order filed by the Union of
21 Concerned Scientists' was reviewed by the staff under some
22 fairly explicit guidance from the Commission, which said if
23 there are new technical points raised in that draft Memorandum
24 and Order, please address them. We did and it was a rather
25 cryptic addressing of the draft Memorandum and Order.

1
2 Now, are you asking me to go back and reconsider
3 in all of its detail, the draft Memorandum and Order, which
4 you didn't ask me to do the first time? or did you review
5 the draft Memorandum and Order in some detail and OGC and
6 OPE and make decisions on it? If you did, I'm not aware of
7 them because you didn't ask me to supply you input to that
8 consideration. That may be the problem that UCS does not
9 see paper of the sort that we filed on the other points on
10 that issue.

11 COMMISSIONER KENNEDY: It seems to me that that is
12 precisely the problem. And it is that problem that I would
13 rather not see come back to us again. And I'm sure you wouldn't
14 either.

15 COMMISSIONER GILINSKY: Well, I wonder if we really
16 are being fair to the staff in turning this Petition over to them.

17 COMMISSIONER KENNEDY: Well, what it seems may have
18 been the case, we have have been somewhat less than fair with
19 the staff the last time. Had we not given them the explicit
20 instructions we might not now be faced with the point raised
21 with UCS that says, "but you didn't answer our Petition."

22 So what I'm saying is: I think we ought to say to
23 the staffs, answer the Petition.

24 COMMISSIONER GILINSKY: Well, but some of it is
25 addressed to us, I mean, it urges us to take certain matters
out of the staff's hands.

1 MR. MATTSON: As it did in the first instance.

2 COMMISSIONER GILINSKY: Okay, but I don't know---

3 COMMISSIONER KENNEDY: We will take care of those.
4 That's not this point.

5 COMMISSIONER GILINSKY: All right.

6 COMMISSIONER KENNEDY: All I want to be sure of is
7 that we don't truncate this procedure in the interest of
8 hurrying it along, only to make it possible for us to revive it
9 again in another 60 or 90 days. Because we would be faced with
10 precisely the same problem that Roger is faced with now.
11 Constantly devoting resources to this issue at the cost of
12 something else. I think this issue needs to be dealt with
13 and should be dealt with and has certainly right to be dealt
14 with, but it ought to be dealt with right once and for all.

15 COMMISSIONER GILINSKY: Sure, but I don't think it is
16 a matter of just hurrying it along. I think it is a matter of
17 indicating clearly what it is we expect of them.

18 MR. MATTSON: Yes, sir. That would help.

19 COMMISSIONER KENNEDY: That's all I expect.

20 MR. MATTSON: One other thought and then I will
21 retire the discussion.

22 Between Victor Stello and I we probably have six to
23 eight experts in the environmental qualification of electrical
24 equipment on the staff. Those are the people who are making
25 the decisions: operating plants, the systematic evaluation

1 program, operating licenses, construction permits, standards
2 plants, technical activities A-24. Those are the same people
3 who will be working on this Petition. So that's the resource
4 implication that I feel.

5 COMMISSIONER KENNEDY: I would rather have them
6 work on this Petition once in the depth necessary to dispose
7 of it in one way or the other, once and for all, than to hear
8 you say that to me again, rightly, by the way, 90 days from
9 now.

10 MR. MATTSON: That's my point.

11 COMMISSIONER BRADFORD: I think it might be worth
12 taking another day or two to try and see if we can formulate
13 a more detailed guidance to the staff on the questions we really
14 would feel are important in disposing of the Petition for
15 Reconsideration than just giving them a list of specific
16 questions rather than just leaving it to them to guess what
17 matters to us and what doesn't.

18 I don't mind ---

19 COMMISSIONER KENNEDY: In the first instance, I'm
20 not nearly so concerned as to what matters to me as I am as to
21 what matters to UCS and that is fairly clear. I would like
22 the staff's views on those matters. Then I can sort out what
23 is of relative higher or lower importance to me. I just do
24 not think that we are being fair either to the Petitioner or the
25 staff if we sort out those things from the UCS Petition which

1 we propose the staff shall comment on and form the basis, then,
2 for whatever judgments we may wish to make, because we are
3 going to get back another one. I would certainly urge them
4 to do so, indeed, saying the decision largely ignores a series
5 of filings.

6 MR. GOSSICK: Mr. Chairman, is there sort of a middle
7 ground here where it would be very helpful to the staff if
8 the Commission, OGC, OPE could line out or rule out the things
9 which they will comment on and the staff is not being asked
10 to comment on? I think that was part of the problem.

11 COMMISSIONER KENNEDY: Are there any such?

12 MR. GOSSICK: Well ---

13 MR. PEDERSON: I would be reluctant to follow that
14 course. I think the staff ought to have the opportunity to
15 comment on all. Now, what I think could be done is a memo
16 to them that says, you should address all those issues that
17 you feel need to be addressed and then it could go on to say,
18 but these should include, and then if there are certain things
19 the Commission really is concerned about not be overlooked, we
20 could do that.

21 COMMISSIONER GILINSKY: I think that is really
22 putting a burden on them and really giving them an open-ended
23 assignment to the staff. I think we ought to be specific
24 about what it is we want.

25 MR. GOSSICK: Well, if there is a question of

1 subsequent filings that the staff has not seen which OGC and
2 OPE, I gather or the Commission did, I mean ---

3 MR. PEDERSON: No, no.

4 MR. GOSSICK: That's not the case?

5 MR. PEDERSON: No, no. They saw everything. I'm
6 not aware of any filing ---

7 MR. SNYDER: They not only saw everything, they
8 responded to everything.

9 MR. GOSSICK: Okay.

10 MR. PEDERSON: So there is a complete documented
11 record and it is in the Public Document Room.

12 COMMISSIONER KENNEDY: If they responded to everything
13 and yet the UCS is not satisfied with the response, further
14 failure to respond is not going to be helpful to the process.

15 COMMISSIONER GILINSKY: Well, take point 3 which
16 deals with the use or probabilistic analysis. It seems to
17 me that that's something that raises questions that go really,
18 to the policy the Commission wants to promulgate.

19 COMMISSIONER KENNEDY: Of course.

20 COMMISSIONER GILINSKY: And it is not clear to me
21 that the staff is in a position to answer these questions.

22 MR. SNYDER: Well on that one, though, I don't think
23 the Commission was promulgating the UCS position that we will
24 use probabilistic analysis. All we were doing there, Commissioner,
25 was to cite the histories and how we got to where we were.

1 In fact, the Browns Ferry group did consider and had
2 performed for them by a WASH-1400 group main probabilistic
3 analysis.

4 Our citing of that in the Memorandum and Order is
5 more in the way of background than anything else. We rested
6 our case on it.

7 COMMISSIONER GILINSKY: Well, they are asking the
8 Commission to articulate the pertinence of the quoted analysis
9 and so on. Well?

10 MR. SNYDER: I'm not sure. That might be one that
11 only the Commission can answer.

12 MR. SHAPAR: May I point out that page 2 of the
13 OGC/OPE Memorandum states: "We have conducted only a cursory
14 review of the petition so far and our preliminary view is that
15 no new substantive issues have been raised by UCS."

16 Following up on your thought and a point made by
17 Commissioner Bradford before, it might be useful, if you are
18 thinking of giving the staff advice to transmute that cursory
19 opinion by OGC and OPE to tell you whether or not after further
20 look at it, they believe that is their final view. Then the
21 Commissioner would know, at least from the standpoint of OPE and
22 OGC whether or not, indeed, no new substantive issues are
23 raised. With that knowledge, I think you would be in a better
24 position to formulate any guidance you want to give to the
25 staff. It is an option any way.

1
2 MR. PEDERSON: The difficulty is that many of the
3 UCS question posed, don't go so much to substantive issues
4 as to how the staff and the Commission dealt with those
5 substantive issues. How adequately, how completely, how
6 candidly, and these tend to be the questions.

7 COMMISSIONER BRADFORD: I think that is certainly
8 true with the characterization of the Petition for Reconsider-
9 ation, but what underlies that, I think, is the premise that
10 if these issues were dealt with full then the result would have
11 to be different so that the allegations are not dealt with
12 fully which is a gentle way of satisfying the results.

13 MR. PEDERSON: I'm not sure it is even gentle. It is
14 clear, but my point, Commissioner, was that our statement that
15 there were no new substantive issues went to the fact that there
16 no big technical issues raised. It is really a question of
17 how we dealt with it from the adequacy of our handling the
18 matter.

19 COMMISSIONER KENNEDY: And that is precisely the
20 impression I gained from reading the Petition.

21 CHAIRMAN HENDRIE: Well, I find a spread in view
22 along this side of the table as to the instruction that the
23 staff should have on the matter.

24 COMMISSIONER BRADFORD: Is it more than a day's work
25 to try and draft a more specific guidance memo?

MR. PEDERSON: (Nods in the negative.)

1 CHAIRMAN HENDRIE: You could probably ---

2 MR. PEDERSON: We could certainly take a crack at it.
3 There is no question about that.

4 CHAIRMAN HENDRIE: They can certainly take a crack
5 at it. Are you willing to look at the proposition like that?

6 COMMISSIONER KENNEDY: I have never refused to look
7 at anything.

8 (Laughter)

9 COMMISSIONER KENNEDY: Far ahead of anyone else.

10 CHAIRMAN HENDRIE: Always editorializing.

11 Now, Dick's view seems to me to be to say that the
12 staff ought to look at this Petition for Reconsideration and
13 file such remarks to the Commission on it as it, the staff,
14 deems necessary to cover the full sweep of the Petition.
15 And that by issuing either specific questions for the staff to
16 answer or trying to provide guidance in limited areas, why
17 that may deter the staff, in fact, from speaking to some area
18 which should be spoken to -- I don't know.

19 COMMISSIONER GILINSKY: Well, I think they are free
20 to add almost anything they want to add.

21 CHAIRMAN HENDRIE: Well, with that sort of an
22 understanding, eventually, why the probably will in any event.

23 COMMISSIONER KENNEDY: I would note, however, in
24 answer to that or in addition to that, Roger's comment which
25 was: certain of these matters were not dealt with -- they were

1 dealt with, but dealt with in response to specific instructions
2 from the Commission, precisely the issues that are now being
3 raised in the Petition. So that doesn't help very much.
4 That is precisely what I want to avoid. I understand Roger's
5 problem about the use of his resources. It doesn't help him
6 in the use of resources to be constantly, every three months
7 called upon to devote those same resources again. Nor,
8 indeed, is that fair to the Petitioner who has to be coming
9 back to us asking the same questions over again; nor indeed,
10 is it fair to the Commission to be consistently reviewing
11 them. It ought to be done right; done once.

12 CHAIRMAN HENDRIE: There may be a combination of
13 these things, recognizing indeed that the staff can always
14 add comments as the see fit.

15 Let me ask the following: Unless he is going to
16 pull his people off the generic item, he is going to need 60
17 days for staff comments compared to 30 for the public comments.
18 Is that all right?

19 COMMISSIONER BRADFORD: Well, what I was hoping to
20 do by narrowing focusing the issues and to avoid the 60 day
21 run, what I gathered from our discussion is that was caused
22 from large part by the fact that he felt he would have to go
23 through it sentence-by-sentence and respond to anything that
24 you felt needed responding to. It seemed to me that if we
25 could narrow that a little bit, perhaps you can save the 30 days.

1 COMMISSIONER GILINSKY: Why don't we defer that
2 decision until we see the memorandum.

3 COMMISSIONER KENNEDY: But let's be sure that that
4 premise is correct, that was not the way I understood what
5 Roger was saying, which was that he was beginning, yet this
6 very week, I believe, a task force effort involving the very
7 people who would be involved in dealing with this petition,
8 and it would be 3 to 4 weeks before the engineers would be
9 relieved sequentially from that process to get started at the
10 petition. So it wouldn't make any difference in the first
11 three or four weeks.

12 CHAIRMAN HENDRIE: Well, if we can knock it something
13 he can do overnight himself, why that would solve all our
14 problems.

15 (Laughter)

16 MR. MATTSON: We could always do this one first.

17 CHAIRMAN HENDRIE: And we could always do this one
18 first. But let's talk about the staff time. We will either
19 incorporate this expanded material in the Order or refer to it
20 in the Order and have it appended to the memorandum. And we
21 can see at that point whether in fact we have made enough
22 of a dent so that the time should stay the same. Fair enough?

23 (No response)

24 CHAIRMAN HENDRIE: Thank you very much.

25 (Whereupon, the meeting was concluded at 4:25 p.m.)

