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NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

POLICY SESSION 78-11

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SECY-78-79 - Amendments to Table S-3 & Addendum
to SECY-77-449, Response to NECNP Petition for
Rulemaking (PRM-51-1) to Amend Table S-3

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

POLICY SESSION 78-11

SECY-78-79 - Amendments to Table S-3 & Addendum
to SECY-77-449, Response to NECNP Petition for
Rulemaking (PRM-51-1) to Amend Table S-3

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

Tuesday 28 February 1978

The Commission met, pursuant to notice, at 9:50 a.m.

BEFORE:

DR. JOSEPH M. HENDRIE, Chairman.

VICTOR GILINSKY, Commissioner.

PETER A. BRADFORD, Commissioner.

RICHARD T. KENNEDY, Commissioner.

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P R O C E E D I N G S

CHAIRMAN HENDRIE: If we could come to order.

Commissioner Kennedy will join us in a moment, as soon as he can detach the telephone from his ear.

The subject this morning Amendment to Table S-3 in response to NECNP Petition for Rulemaking, PRM 51-1 is the docket number.

We have assorted recent legal papers, or rather, papers from the legal staff would be a better way to put it.

Lee, who should start?

MR. GOSSICK: I think Mr. Malsch and Ms. Agnes Axelrad will carry the conversation this morning.

CHAIRMAN HENDRIE: Good, let's start that way and then we'll look to the end of the table for comments.

MR. MALSCH: Thank you.

This paper is a culmination of a long and careful Staff evaluation involving principally three separate Staff offices: our office, OELD, the Office of Standards Development, and the Office of Nuclear Materials Safety and Safeguards. I think all the Staff offices and I think the Commission offices as a whole are in substantial agreement as to what the course of action should be.

It has involved a careful examination and then a re-examination of the proper NRC response to the New England Coalition Petition for Rulemaking, which was filed in late-1975,

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1 and then also an independent and careful examination of the
2 Commission's S-3 rule, an examination which revealed some prob-
3 lems that at least had not, before this time, been fully appre-
4 ciated.

5 When the Table S-3 rule was promulgated, as you
6 will recall, the Table S-3 rule specifies environmental im-
7 pacts of the uranium fuel cycle to be included in the impact
8 statements for individual nuclear power plant licenses and
9 permits. When S-3 was originally promulgated the Commission
10 indicated the rule would be re-examined from time to time
11 as new information was developed. It was expected when the
12 rule was promulgated that the table would be looked at from
13 time to time and that changes would be made based upon new
14 data.

15 There was a re-examination of the rule, but in the
16 proper context of the overall GESMO proceeding, which is now
17 no longer a viable proceeding, however, more recently a
18 separate effort has been underway initiated to re-examine just
19 the Table S-3 rule with a view toward making changes. It's
20 expected that the results of this overall examination would be
21 available in the form of a draft report some time around mid-
22 1979.

23 However, there are some more immediate problems
24 that need to be addressed with the table and that's the subject
25 of the paper here today.

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1 The Table-S-3 rule has been applied in individual
2 cases as if it reflected all the fuel cycle environmental im-
3 pacts, in fact, that was more or less the intent of the rule as
4 it was originally written. Indeed, only in the area of health
5 effects is there any Commission authority for the proposition
6 that the table may be supplemented in individual licensing
7 cases.

8 Yet our examination of the table, our recent examina-
9 tion of the table shows that the line entry for radon does not
10 include radon released from mining and does not include radon
11 releases after the milling activity has ceased. Indeed, current
12 Staff estimates of what the proper radon release numbers would
13 be indicate that the factor presently set forth in the table
14 is off by about a factor of 70.

15 CHAIRMAN HENDRIE: What does it include?

16 MR. MALSCH: It includes only releases from tailings
17 piles during the time when the milling operations are going
18 on. It does not include releases from tailings piles while
19 they're in the process of being stabilized after the milling
20 has ceased and it does not include releases from stabilized
21 tailings piles.

22 COMMISSIONER GILINSKY: What was the logic there?

23 MR. MALSCH: I've forgotten what the logic was,
24 do you recall, Jane?

25 MS. AXELRAD: The logic of not including releases

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1 from stabilized tailings piles was that they could cover them
2 over with dirt and there would not be any significant releases
3 so they did not include -- evaluate the table. There were
4 several studies done, I think there was the Beir report and an
5 EPA study that supported that conclusion, so the original value
6 did not reflect releases from the stabilized piles.

7 COMMISSIONER BRADFORD: Were the piles in fact
8 being covered over with dirt? Do we require that that be done?

9 MR. MALSCH: That was a practice at the time.

10 COMMISSIONER GILINSKY: Why do we think this is
11 not accurate? Does radon get out in fact?

12 MR. MALSCH: Some of it gets out, but actually the
13 new numbers -- Let's see:

14 On Page 5 of the Commission paper there are current
15 estimates of releases and it includes additional entries of
16 over 4,000 caries for mining, which was never included in the
17 original rule.

18 COMMISSIONER GILINSKY: Why wasn't that included?

19 MR. MALSCH: I'm not sure why it was not included
20 originally in the rule.

21 COMMISSIONER GILINSKY: Was there some reason or
22 was it merely an oversight?

23 MR. MALSCH: I think the belief was that there would
24 not be significant releases from mining at the time. This was
25 re-examined when GESMO was developed and it was decided at that

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1 point that it would be significant releases from mining. And,
2 in fact, when the interim rule on reprocessing and waste manage-
3 ment was put out a note was added to the rule to the effect
4 that oh, by the way, the rule does not cover mining releases.

5 Under the current Staff estimates the mining re-
6 leases are the major contributions.

7 CHAIRMAN HENDRIE: It may have had to do with our
8 licensing of mining but I'm not sure.

9 MR. MALSCH: Well, it shouldn't have. The rule was
10 intended to address all the impacts of the fuel cycle licensing
11 or not. For example, it always covered the Richmond plants
12 and yet they were never licensed.

13 CHAIRMAN HENDRIE: But for whatever reason --

14 COMMISSIONER GILINSKY: And where does most of the
15 factor of 70 come from? From mining?

16 MR. MALSCH: From mining, according to current
17 estimates, that's right, at this point.

18 Now, it's also clear that the rule does not cover
19 health effects, as such. It never really -- the table is
20 primarily release values, it doesn't really contain, with some
21 limited exceptions, it doesn't really contain dose numbers or
22 health effects numbers like cancers or premature deaths and
23 things of this sort.

24

25

1 COMMISSIONER BRADFORD: When you said it was
2 underestimated by a factor of 70, are you talking about per
3 year?

4 MR. MALSCH: Yes. I think it is average annual
5 fuel requirement is the way the table is expressed; that's
6 right.

7 COMMISSIONER BRADFORD: Isn't there also a
8 question, though, of whether the numbers should be projected
9 out a lot further than they were in the earlier table?

10 MR. MALSCH: That's still an unresolved issue.
11 The Petitioner would request that the integration be carried
12 over a very long period of time. The Staff has problems with
13 carrying out integration of releases over that long a period
14 of time.

15 But that's an unresolved question and would not
16 be -- and acting on this paper the Commission would not be
17 making a decision on how far to carry out the calculation
18 effect.

19 COMMISSIONER BRADFORD: Is there agreement at
20 least, though, that the arbitrary cutting off of it at the
21 end of the reactor life is questionable?

22 MR. MALSCH: I believe it is.

23 COMMISSIONER GILINSKY: Didn't you say earlier
24 the Staff assumption was that the pile would be stabilized
25 and there would be negligible releases after that?

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1 MR. MALSCH: Yes.

2 COMMISSIONER GILINSKY: In which case, what would
3 it matter how long it was --

4 MR. MALSCH: Well, there are still summaries
5 after that.

6 COMMISSIONER GILINSKY: I see.

7 So we're talking about the releases from stabilized
8 piles? You still have the assumption that the piles will be
9 stabilized when covered with dirt?

10 MR. MALSCH: That's generally correct. One of
11 the problems is if you assume you want to calculate -- inte-
12 grate dose effects over, say, 100,000 years, it's difficult
13 to say right now that 100,000 years from now the tailings
14 piles will still be stabilized.

15 So as you go out more in the future you not only
16 have more uncertainty as to whether the stabilizing measures
17 will be in effect, but also questions about population dis-
18 tributions, you know, who will be around to receive the doses
19 and things of that sort. It's very difficult to decide if
20 you're going that far ahead in the future.

21 But it's correct that there really wouldn't be
22 a complete analysis of fuel cycle environmental impacts if
23 one were to stop with either the end of the reactor license
24 or to stop with the activities associated with just the annual
25 fuel requirement. You've got to look further out into the

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1 future.

2 COMMISSIONER GILINSKY: That was a completely
3 arbitrary stopping point?

4 MR. MALSCH: Originally -- well, I guess you've
5 got to make a decision at some point in time as to when the
6 cutoff -- as to when to cut off the integration.

7 I suppose no matter what number you choose there
8 is always going to be some arbitrariness associated with it.

9 COMMISSIONER GILINSKY: Unless you go all the way
10 out.

11 MR. MALSCH: Well, if that's possible. I guess
12 as you go all the way out the various parameters involved in
13 the integration become so uncertain and subject to conjecture
14 that you really wonder if what you've got is really worth all
15 that much.

16 But that is presently an unresolved issue as to
17 how far to carry out the calculation. And the Staff is not
18 recommending in this paper that the Commission make a generic
19 decision on this issue now. We prefer to let that issue be
20 litigated in a couple of cases.

21 COMMISSIONER GILINSKY: How could you assess the
22 impact about making a decision about how far out you carry
23 out the integration?

24 MR. MALSCH: You can't, and the Staff would be
25 in effect making some sort of a decision along those lines

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1 in connection with presently presenting testimony in individual
2 cases.

3 We're not saying that the issue can't be faced
4 at all. We're saying that we don't think the Commission
5 ought to face the issue on a generic basis at this time and
6 make a broadly applicable decision.

7 COMMISSIONER GILINSKY: Why not?

8 MR. MALSCH: The Staff feels we'd like to have a
9 little more experience in handling the issue in cases before
10 we made a firm recommendation.

11 COMMISSIONER KENNEDY: What is it you would learn
12 in handling the cases?

13 MR. MALSCH: In addition to preparing testimony
14 we'd also get questioned in a bunch of cases to hear other
15 intervenors' presentations and perhaps get just a better feel
16 for the issue.

17 COMMISSIONER KENNEDY: Would that be different
18 than the results that would be achieved through the rule-
19 making process?

20 MR. MALSCH: Not terribly different, although
21 the experience would be a little more intensive.

22 COMMISSIONER GILINSKY: It seems to me how far to
23 carry this integration is about as generic a question as you
24 could get.

25 MR. MALSCH: These are all generic questions. One

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1 can't distinguish between the various elements in the table
2 and the issues associated with them on the grounds that some
3 are generic and some are not. They're all generic issues,
4 issues of a type that at least based upon past Commission
5 policy have been handled generically by rulemaking.

6 There's another problem, and that is that there
7 is much new data coming in on -- particularly on the question
8 of radon releases, and we have a generic environmental im-
9 pact on milling in preparation, and that should be issued in
10 draft form around mid-next year.

11 It's quite possible, and in fact a definite
12 possibility is reflected in the paper that once that draft
13 comes out we'll be in a position to actually propose a generic
14 rule for Commission consideration and thereby avoid, say,
15 from beginning to the end of '78 onward, avoid litigating
16 the issue in individual cases any more. So we're really
17 talking about what should be done in individual cases between
18 now and, say, the end of this year.

19 COMMISSIONER BRADFORD: How does that differ at
20 all from the situation the Commission was in at the point
21 in time when the court said the back-end of the S-3 Table
22 was inadequate and should no longer be used as a basis for
23 continued licensing?

24 MR. MALSCH: Well, it's a similar situation,
25 that the Commission at that time could have either litigated

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1 that issue in individual cases or promulgated a rule.

2 As it turned out the analysis had not been done
3 fully at the time. So there really -- and it had yet to be
4 done. So given the time already necessary to do the evalua-
5 tion, the Commission decided to handle the matter by rule.

6 The Staff has already done the evaluation of
7 milling impacts. They prepared testimony for presentation
8 in individual testimony. So there really is no question now
9 about need to do additional work before we could even handle
10 individual cases. We can handle individual cases; there's
11 no need to hold up until we do the work.

12 When the decision came down by the court we had
13 to do the evaluation.

14 COMMISSIONER BRADFORD: But the Commission
15 specifically chose not to do it in individual cases in the
16 back end of the fuel cycle.

17 MR. MALSCH: That's right.

18 But, see, given the fact that it would take
19 four months to do the evaluation, whether it was done in
20 individual cases or by rule, if you're going to take four
21 or five months to do the evaluation anyway you might as
22 well handle the matter by rule.

23 COMMISSIONER BRADFORD: But if the evaluation
24 has already been done in this case why isn't it also better
25 to have an applied rule?

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1 MR. MALSCH: It would be if the Staff were
2 certain that the values they are presently using would be
3 the values that we'd still be advocating six or eight months
4 from now.

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5 The problem is we have a generic impact state-
6 ment in preparation on milling which is going to have new
7 information on radon releases. If we proposed a rule now
8 it's very likely that in June or so when we would otherwise
9 be in a position to promulgate a final rule, we would have
10 a whole new bunch of data in. It would have to be re-
11 examined, sent out for public comments, and then perhaps,
12 depending upon the extent of the new data or information,
13 propose the new rule and get public comment on it.

14 So regardless of how you proceed, since you're
15 going to have a big blob of new information coming in around
16 June, whether you propose a rule now or propose a rule in
17 June, you're really not going to be in a position to recommend
18 the final rule until after the data has been evaluated and
19 the public has had an opportunity to comment on it.

20 That brings us until around late '78, which is
21 what the Staff is recommending.

22 COMMISSIONER BRADFORD: But then how would you
23 know you've done the right thing in any of those individual
24 reactors that may be licensed between now and the time the
25 new data becomes available?

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1 MR. MALSCH: Well, that's a question of how
2 confident the Staff really is in presenting testimony in
3 individual cases. I gather from talking with them that
4 they're fairly confident that what they're doing is correct.
5 But there will be new information coming in.

6 It just seemed to the Staff that when you know
7 new information is coming in it really is beneficial for
8 the Commission to sit back and say, Well, let's wait and
9 see what that looks like before we step in and promulgate a
10 rule of broad generic applicability.

11 COMMISSIONER GILINSKY: We're always in a posi-
12 tion where new information is coming in.

13 MR. MALSCH: That's true, but this is an area
14 where we had a definite planned program for producing the
15 information, and it should be available on a reasonably close
16 time frame.

17 COMMISSIONER GILINSKY: What would you think of
18 an interim?

19 MR. MALSCH: Well, you could do that. There'd
20 be difficulties in making it immediately effective because
21 you need to get public comment on the proposal.

22 If we proposed -- let's say right now, tomorrow
23 we published in the Register a proposed new value for the
24 radon entry in the table, and that's the most serious problem
25 being discussed in the paper. There'd be like a 60 day period

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1 for public comment.

2 Around the time that the Staff will be proposing
3 to the Commission adoption of a final rule this whole new
4 blob of information will be coming in. It would have to be
5 addressed in any recommendation to the Commission on what
6 to do about a final rule.

7 It's also something the public would have to be
8 given an opportunity to comment on. In fact, I would expect
9 that maybe in commenting on the proposed rule they would
10 say well these are our comments, but we'd really like to
11 get a further opportunity to comment once we see all the new
12 information in your draft EIS on milling.

13 So if we delay putting out a final rule until we
14 get a chance to look at the new data and got public comments
15 on it, the earliest we can probably have a final, let's say,
16 interim rule with the new radon rule would be late 1978.

17 In that light it really doesn't make -- there
18 really is not much of an advantage to proposing the rule now
19 as opposed to in June.

20 COMMISSIONER BRADFORD: Now how is it going to
21 work out much differently in an individual proceeding; say
22 that we approve that course of action now? Then what's the
23 next step in a case in which the matter is currently in
24 question; the Staff puts in testimony?

25 MR. MALSCH: It puts in testimony. The intervenors

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1 will put in testimony. Applicants presumably will put in
2 testimony. And the Board will decide the matter.

3 COMMISSIONER BRADFORD: And the Staff witness
4 goes on the stand and the intervenors say -- they cross-
5 examine on the basis that isn't it true as of June you expect
6 to have much better information on it. It just seems to me
7 it's going to play itself out the same way in the individual
8 proceedings that it would in a generic approach.

9 MR. MALSCH: Well, it's simpler, except that --
10 I guess it really depends upon how confident you are about
11 the data you have.

1.225 12 I guess I can see sort of three levels of
13 confidence. One is if we're not confident or we can't
14 handle the issue at all, something has got to be done. That's
15 like the situation the Commission was presented with when
16 the court came down with a decision on the backend of the
17 fuel cycle. We had to do an evaluation. That's not the
18 situation here.

19 The Staff feels fairly confident they can handle
20 the issue in individual cases.

21 The next level is we're very confident of the
22 results we have. We have more information coming in. But
23 we're sufficiently confident with the information we do have
24 that we're prepared to go forward in individual cases.

25 The third level of confidence would be that not

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1 only are we so sure we're right, but we're also sure we're
2 going to remain right, and remain right for a period of time
3 sufficient that it would be a worthwhile thing to do to have
4 the Commission speak on the issue on a broad generic basis.
5 I think we fall sort of inbetween.

6 COMMISSIONER BRADFORD: Well, then, when the
7 Commission promulgated the interim rule as to the backend
8 of the cycle, you're saying it was at a state of mind when
9 it was in the first state of mind, when it could not be
10 confident at all that its testimony would standup in indi-
11 vidual cases?

12 MR. MALSCH: No. I think when the court's
13 decision came down there was no detailed evaluation at all
14 of the impacts from waste management, particularly -- not in
15 general, but particularly impacts from long-term problems in
16 handling the high-level wastes. An evaluation had to be
17 done. There wasn't any choice at that point of launching
18 forward immediately in individual case to litigate the issue.

19 MR. KELLEY: There was a brief moratorium, wasn't
20 there, Marty?

21 MR. MALSCH: There was in fact, until at least
22 the Staff had done its evaluation and a rule had been proposed.

23 COMMISSIONER BRADFORD: And then the Staff went
24 from your stage one to your stage three in a period of six
25 weeks?

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1 MR. MALSCH: That's because there was new --
2 there was no big program underway that promised to produce
3 significant new data within the time frame of interest.

4 COMMISSIONER GILINSKY: They did it faster because
5 there was no program?

6 MR. MALSCH: No, between the time the Staff made
7 its recommendation that the Commission publish a proposed
8 rule and today, for example there has been no new significant
9 information produced on the subjects and in fact when the
10 interim rule was proposed and adopted by the Commission it
11 was not anticipated that in the immediate future there would
12 be new data generated.

13 So there was every indication at the time that
14 the rule that the Commission would publish would withstand
15 some reasonable test of time. The Staff is just not so
16 confident that that's going to be the case here.

17 COMMISSIONER BRADFORD: But then how are the
18 individual licenses going to withstand the test of time?

19 MR. MALSCH: Well, in individual licensing cases
20 there's more flexibility to, first of all, to treat new
21 information as it's developed during the course of the
22 proceeding. For example, if there are, say, five proceedings
23 still pending before a board or the appeal board or the
24 Commission at the time new information is generated, it's
25 perfectly reasonable for people to request the record be

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1 reopened to consider the new information if the information
2 really indicates the values the Staff recommended were wrong.

3 Beyond that I think that handling issues on a
4 case by case basis as opposed to by rule carries the kind of
5 a connotation of more flexibility in dealing with the issue
6 than would be the case if the Commission were to choose it-
7 self to address the matter on a broad basis and put out a
8 rule.

9 Now I think it is a fairly close question as to
10 whether -- of the questions presented in the paper I think
11 the closest question is the one that you're mentioning,
12 whether we should right now elect to proceed by rule as
13 opposed to handling it on a case by case basis. I think
14 there's no question something has to be done now.

15 The most difficult issue is whether what should
16 be done is to proceed to correct the rule now or to proceed
17 to litigate the matter in individual cases.

18 By the way, there are, I would say that in
19 average nuclear power licensing cases the substantial majority
20 of the issues are in fact generic, that is to say, common
21 to other power reactor applications. So there's nothing
22 unusual about handling generic issues in individual cases.
23 And I think the Staff and the boards would be fully equipped
24 to deal with them.

25 COMMISSIONER BRADFORD: I understand this issue

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1 did come up in September, or thereabouts, in an earlier forum.
2 But how did we get all the way from November of '75 to
3 September of '77 with an issue of this magnitude hanging
4 over the S-3 table without having faced up to it before?

5 MR. MALSCH: All I can say is that in connection
6 with, say, the last four or five months taking a very
7 careful look at the New England Coalition petition, but
8 more so taking a careful look at the S-3 rule itself, we
9 realize that there were these problems. Now they were
10 really surfaced in connection with the Purple Book and the
11 Gray Book, the backend interim rule.

12 COMMISSIONER GILINSKY: Were these deficiencies
13 in the radon numbers and the other matters, were they first
14 noticed by the petitioners?

15 MR. MALSCH: No, I think they were first noticed
16 by the Staff.

17 Several people raised it at about the same time.

18 MR. KENNEKE: I don't believe the issue was joined
19 until the intervenors brought it up.

20 COMMISSIONER GILINSKY: And it was brought to our
21 attention by the petitioners?

22 MR. MALSCH: Originally so, yes, fully realized
23 in connection with the Staff in connection with the re-
24 examination of the backend of the fuel cycle.

25 COMMISSIONER GILINSKY: In other words, it really

mpbl5 1 wasn't taken seriously until we got the Purple Book?

2 MR. MALSCH: I believe that's a fair statement to
3 make.

4 And also, we realized also there were problems
5 when we put out the GESMO rule.

6 COMMISSIONER KENNEDY: What period of time was
7 that?

8 MR. MALSCH: '74.

9 COMMISSIONER GILINSKY: That antedates the
10 petition.

11 MR. MALSCH: In fact, the original course of
12 action for acting on the petition was that well, there's no
13 need to act on this as a separate matter. We're already
14 addressing all these issues in GESMO.

15 When it became obvious GESMO was not going to
16 produce a result in the immediate future we had to switch
17 and decide the issues and deal with the petition as a separate
18 matter.

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1 COMMISSIONER KENNEDY: It was being considered in
2 the context of GESMO?

3 MR. MALSCH: Yes.

4 COMMISSIONER BRADFORD: But the parties themselves
5 were not involved in GESMO?

6 MR. MALSCH: I don't know. Do you know whether
7 they were, Jim?

8 MR. KELLEY: I would have to check the list. I
9 don't know.

10 MR. MALSCH: They might have been. I've forgotten.

11 COMMISSIONER KENNEDY: That shouldn't be hard to
12 check while we're sitting here. Maybe somebody could call
13 down to the Counsel's office and ask them.

14 MR. MALSCH: It's the New England Coalition on
15 Nuclear Pollution.

16 MR. KENNEKE: I think what you have is
17 evolving value judgments as to the significance you put
18 on the factor of extrapolating doses into the future. That's
19 only becoming one of growing awareness in the last couple of
20 years. It's hard to say precisely when it becomes an issue
21 of the magnitude for Commission decision and when it is still
22 more or less a professional concern.

23 COMMISSIONER GILINSKY: But there seem to be
24 significant other areas. Marty was mentioning the fact that
25 the mining seems to have been left out.

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1 MR. MALSCH: Let me also say that the rule also,
2 as I mentioned, does not include health effects as such. In
3 recent months, substantially as a result of the Appeal Board's
4 decision in the Hartsville case, the Staff has been carrying
5 out its evaluation of the comparative fuel cycle impacts
6 from the nuclear fuel cycle and the fossil fuel cycle, and in
7 an effort to reach a common basis for comparison, it has been
8 actually calculating the impacts out to reach health effects
9 numbers; as opposed to stopping short with just having re-
10 leases, we're going one step further and having dose numbers.
11 The table is principally composed of release numbers and not
12 either dose numbers or health effects numbers.

13 We think it will be useful at this point to
14 clarify in the rule, and we have recommended that the rule
15 be clarified, that it does not itself include for the most
16 part any dose numbers or health effects numbers, and that it
17 would be perfectly permissible for the Staff and other parties
18 in individual cases to proceed with the release values in the
19 table and to calculate, using them, dose numbers and then
20 health effects.

21 In fact, the Staff is now doing that in pending
22 cases pursuant to the Appeal Board's Hartsville decision.

23 COMMISSIONER GILINSKY: By the way, in GESMO,
24 what rule did the Staff adopt for the length of time over
25 which these releases were considered?

eb3 1 MR. MALSCH: I don't know.

2 Homer, do you know what the cutoff was that was
3 chosen?

4 MR. SCINTO: Didn't we use a 26-year window -- a
5 26-year period from now until 2000-something, and 40 years
6 thereafter?

x 7 MR. KENNEKE: That's once the person inhaled it?

8 MR. SCINTO: No, the environmental dose commitment.
9 We followed it in the environment for 40 years. I think we
10 used the standard ICRP 50-year impact on the person who
11 received it.

x 12 MR. KENNEKE: So you assumed radon releases for
13 a period of 40 years after the close of the mill?

14 MR. SCINTO: No, the radon releases for the 26-
15 year period of the window. The radon is followed in the
16 environment for 40 years thereafter.

17 MR. KENNEKE: It only lasts a few days, though.

18 MR. SCINTO: I'm sorry, wrong isotope.

19 MR. KENNEKE: That's the one of concern.

20 MR. SCINTO: Yes.

21 COMMISSIONER GILINSKY: So it's 26 years plus two
22 days?

23 MR. SCINTO: I'm pretty sure that's the way we
24 came out for radon. For the other isotopes they're followed
25 in the environment for a 40-year period.

eb4

1 COMMISSIONER GILINSKY: Where did the 26 years
2 come from?

3 MR. SCINTO: That's the period covered by the
4 GESMO --

5 MR. KENNEKE: It's the life of the mill I believe.

6 COMMISSIONER GILINSKY: Is this up to the 2000?

7 MR. SCINTO: Up to the year 2000.

8 (Pause.)

9 CHAIRMAN HENDRIE: While that conference goes on:

10 Marty, if we start some sort of generic proceed-
11 ing on these radon releases now, the effect in the individual
12 licensing cases is what?

13 MR. MALSCH: If we propose the rule now, we would
14 still have to litigate the rule in individual cases until the
15 rule became effective. And we're probably talking about an
16 effective rule some time the end of this year, so in effect
17 there would be-- Assuming that we propose a rule now and had
18 an effective rule the end of the year, there would be 14
19 proceedings affected in which the Staff would have to litigate
20 the issue in the proceedings where the NEPA review has not
21 been completed, and there are 12 proceedings as to which the
22 NEPA review has either been completed and it is pending
23 before a Board or in which the NEPA review has been completed
24 and the license has been issued and it's pending before the
25 Appeal Board or the Commission. So a total of 26 cases would

eb5

1 be impacted.

2 COMMISSIONER BRADFORD: What do you do on some-
3 thing like this when the plant is already in operation? If
4 there is some point in time in which there's a need to change
5 the S-3 table, do you just go back and the Staff proposes
6 an amendment -- for what? Is it a Board decision in those
7 cases?

8 MR. MALSCH: If an operating license had been
9 issued and there were no pending proceedings before a
10 Licensing Board, Appeal Board, or Commission, what I expect
11 would happen would be the Commission would promulgate let's
12 say a new effective rule, let's say the end of this year.
13 Let's suppose that it increases the radon number from the
14 present value of about 75 curies to let's say -- oh, for
15 purposes of argument, 5,000 curies.

16 The issue then would be what do you do about all
17 these operating licenses that have been issued? I think if
18 the Commission were to become convinced that this was a real
19 serious environmental impact problem, it could, on its own
20 initiative, initiate on a broad basis proceedings to re-
21 examine all existing licenses to see whether they ought to
22 be suspended or modified.

23 If it were a matter in which it was clearly not
24 a significant environmental impact, I think the Commission
25 could state in connection with the rule that there's no need

1 to reexamine the existing licenses.

2 If it fell somewhere in between where you might
3 want to say there might be a case you could say where the
4 original issue of the license were so close to question that
5 had they known then what they know now they might have reached
6 a different result, the Commission could say while we're not
7 prepared ourselves to institute a blanket enforcement
8 proceeding, we would be prepared in individual cases to
9 entertain requests by petitioners; we think this result might
10 actually affect the earlier decisions. And it would be acted
11 on in the ordinary course of business under the Commission's
12 regulations under 2.206 which provide a procedure for acting
13 on these kinds of petitions.

14 COMMISSIONER BRADFORD: Will the Staff itself
15 undertake some kind of a review to see whether there were
16 cases in which it might have an impact on the original deci-
17 sion?

18 MR. MALSCH: I think the Staff would only do that
19 if it thought there were a real serious question in this re-
20 gard. I think the Staff would on its own initiative under-
21 take a reevaluation. I think it's more likely, if it looked
22 like the impacts were not all that significant, that the
23 Staff would really conclude that there was no need itself to
24 look at the issue, but if someone felt strongly about it,
25 they'd be perfectly prepared to reexamine the issue in detail

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1 on a case-by-case basis.

2 If someone filed a petition that would let's say --
3 let's say a year from now, let's say mid-next year after we
4 promulgated the new rule -- and say "Hey, I just read your
5 new rule. My God, if I'd known this I never would have
6 imagined you could have issued the operating license. What
7 are you going to do about it?"

8 The Staff would take a look at the earlier Impact
9 Statement and see how close the situation was, decide in its
10 mind how it would have come out at the time if it had used
11 the new number, and then reply to the petitioner, and then,
12 in a fairly detailed evaluation of what the original basis
13 for the license issuance was and how it might have been
14 affected by the new rule, reply back to petitioner.

15 If he were dissatisfied, he could appeal. In fact,
16 that's what we're recommending be done now in the case of
17 completed proceedings but still existing licenses.

18 There is clearly no need for a licensing mora-
19 torium because you have the option of handling the issue
20 either by rule or on a case-by-case basis. The real question
21 is what do you do about existing licenses where there is no
22 proceeding pending and in that case, I think the matter could
23 be handled adequately under 10 CFR Section 2.206.

24 COMMISSIONER BRADFORD: Explain to me just a
25 little about the-- In a matter like the radon release, what

mpbl

1 is the distinction between the environmental impact and the
2 health impact?

3 MR. MALSCH: Well, there really shouldn't be that
4 much difference. I think we've always included within the
5 overall scope of environmental impacts, health and safety
6 impacts. The question is how you choose to express these
7 impacts.

8 Then the rule was originally promulgated they
9 were expressed in terms of release numbers, curies per year,
10 things of this sort. In fact, even now many entries in the
11 table stop short of actual health effects data.

12 You could go one step further and carry the
13 curie release numbers out and do a calculation and produce
14 doses, you know, rems, many-rems, 1000 man-rem within 50
15 miles or something like that.

16 You could go one step further and actually
17 carry out the health effects calculation of what deaths or
18 premature deaths or cancers would result from those numbers
19 of man-rems. So there are three different levels to which
20 you could carry it out.

21 In point of fact, its cost-benefit balances
22 are always comparing apples and oranges. It isn't really
23 necessary to carry the calculation out to reach a common
24 level of comparison. You're always going to be looking at,
25 you know, kilowatts per year versus ten acres committed over

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1 40 years versus 87 rem, I mean, you never reach a point where
2 you've got an exact equation. Except, though, that in view
3 of the appeal board's recent Hartsville decision calling for
4 an evaluation of the fuel cycle impacts of both fossil and
5 nuclear, it is very helpful to carry out the impact calcula-
6 tion to health effects numbers. so you do have a common basis
7 for comparison.

8 COMMISSIONER BRADFORD: But if you were assess-
9 ing the impacts of radon in terms of health and safety and
10 environmental you would not be citing any environmental
11 impacts that weren't health and safety impacts as well, I
12 gather from what you say.

13 MR. MALSCH: I think we're talking about health
14 environmental impacts, if I may use that kind of a term.

15 CHAIRMAN HENDRIE: The environmental impact
16 of the radon is a health and safety impact. It has gross
17 sort of physical or chemical effects from the natural environ-
18 ment, the wildlife, and so on.

19 MR. MALSCH: There are other things, for example,
20 a tailings pond uses land area. But that's, you know, not
21 the big issue associated with tailings and radon.

22 MR. KENNEKE: Assuming the views of people changed
23 to give greater significance to these health effects from
24 mill tailings, isn't the logical path a feedback to the mill
25 tailings practices and isn't the issue therefore really going

mpb3

1 to be resolved over whatever we do about mill tailings? That
2 is, that's the mechanism by which we can reduce radon?

3 MR. MALSCH: That's true. The Staff does have
4 underway the reexamination of the whole question of millings
5 and tailings stabilization. It's quite possible that as a
6 result of the uranium milling generic environmental impact
7 statement that measures would be proposed by the Staff for
8 Commission consideration that would have the effect of
9 reducing radon releases from tailings piles.

10 So the place to deal with the problem is really
11 in the generic EIS and in uranium milling license activities,
12 not in the table. But once action is taken, if action is
13 taken to further reduce tailings pile releases as a result
14 of rulemaking carried on as a followon to the GEIS that in
15 turn would have an impact on what you might do in the table.

16 COMMISSIONER GILINSKY: Let me ask you:

17 Suppose you did integrate out to 80,000 years,
18 does the Staff have a view on whether that would change the
19 cost-benefit balance?

20 MR. MALSCH: We've done some calculations along
21 those lines in the paper. Let me see if I can locate it.

22 (Pause.)

23 There's some information on that on page 13,
24 where we carried out for a 10,000 year period.

25 MR. SCINTO: Some of that information is in a

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1 record that's being submitted on appeal. The Staff has filed
2 testimony in the Three Mile Island proceeding which gives its
3 estimate of the impacts after 1000 years in terms of health
4 effects.

5 But you have that on appeal before you. It's in
6 the record that was filed by the Staff.

7 COMMISSIONER BRADFORD: What are the implications
8 of all this for mill licensing apart from power plants? What
9 do we use for these values in the environmental impact state-
10 ment when we license a mill?

11 MR. MALSCH: I don't know.

12 We just recently issued the uranium milling
13 impact statement. We did one on Bear Creek.

14 Do you know what the values were we used?

15 MR. LOWENBERG: I understand the mill operators
16 were requested to design down to twice the background.

17 In other words, an increment of one from the
18 tailings piles in addition to natural background.

19 COMMISSIONER GILINSKY: Double the natural back-
20 ground?

21 MR. LOWENBERG: That's correct.

22 COMMISSIONER BRADFORD: What assumption was made
23 as to the correct period of time to use?

24 MR. LOWENBERG: I really don't know.

25 COMMISSIONER GILINSKY: Is this by and large the

1 major health impact of the fuel cycle?

2 CHAIRMAN HENDRIE: I can recall some calculations
3 of this kind that we were attempting to make in connection with
4 the academy study which has yet to yield its report.

5 MR. MALSCH: We're drafting up a legislative
6 proposal to deal with control over tailings. EPA does have
7 jurisdiction over tailings under its statutory authority.
8 So there are other agencies also involved here. They don't
9 actively exercise that authority today.

10 CHAIRMAN HENDRIE: Do I get to a recommendation
11 in this paper eventually?

12 MR. MALSCH: Oh, yes.

13 CHAIRMAN HENDRIE: There's a recommendation from
14 the Staff that says -- would you summarize for us, please?

15 MR. MALSCH: Briefly, the recommendation is as
16 follows:

17 First, to delete the entry in the table for
18 radon, and therefore let the issue be litigated in individual
19 cases.

20 And then further hold out as a definite possibility
21 the promulgation of an interim rule to add a new entry follow-
22 ing examination of the generic impact statement, the draft
23 generic impact statement on milling.

24 Secondly, to defer that aspect of the New England
25 Coalition petition to ask that a new radon number be inserted

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1 in the table. We can't grant it because we don't really
2 agree with the number petitioner proposes. On the other
3 hand, it really isn't fair to deny it because we agree with
4 them that the number in the table that is presently set forth
5 is in error. So we'd defer that part and inform him that
6 this matter will be looked at in detail in connection with
7 the GEIS on milling and then much later on with the overall
8 Table S-3 update. than to deny the petition insofar as it
9 requests a moratorium on pending and future cases. There's
10 no need for a moratorium clearly when you have the option
11 of handling the issue in individual cases and not by rule.
12 There's no need for a moratorium.

13 To also deny the petition insofar as it requests
14 amendments to the table dealing with the backend of the fuel
15 cycle. Here it will be denied on the grounds that the issue
16 has already been dealt with with the Purple Book and the Gray
17 Book and the interim rule on reprocessing and waste manage-
18 ment. The issues raised by petitioner were also raised at
19 that proceeding and disposed of in that proceeding.

20 Also, to deny the petition insofar as it asks
21 the Commission itself to promulgate a rule dealing with
22 doses and health effects. As I indicated, we prefer to,
23 at least for the present, handle this issue in individual
24 cases with the option of maybe proposing a rule in this
25 matter later on after we've had a little bit more experience.

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1 That's the recommendation.

2 We've also got some detailed provisions in the
3 notice as to exactly what this recommendation's impact would
4 be on pending cases so as to remove any doubt in that regard.

5 CHAIRMAN HENDRIE: Okay.

6 MR. MALSCH: There's no pretense in the paper
7 that this is anything resembling a long term solution to the
8 problem. It's an effort to do the best we can with an
9 immediate problem and reach the most acceptable solution we
10 can think of in the sort term, recognizing that in the long
11 term the best solution is almost certainly going to be to
12 propose a new rule and a new radon entry.

13 MR. KENNEKE: In this connection, what
14 kinds of new information do you expect to become available in
15 the next six months or so as a result of the ongoing studies?

16 John, do you want to answer that?

17 MR. LEROHL: With respect to mining, present
18 estimates derived during GESMO are based on measurements
19 of the radon in the air released from underground mines in
20 New Mexico.

21 We are currently going to do more of the same.
22 Teams are ready to start the measurements within weeks; so
23 there will be more measurements of that type.

24 With regard to mill tailings, measurements have
25 been taken for the last three to four months, again in

mpb8

1 New Mexico at various distances from tailings piles measur-
2 ing both radon concentrations at various distances and the
3 particulates that arrived there.

4 That information is reaching the productive stage.
5 That should be available in three or four months. It's
6 becoming available now and should be pulled together nicely
7 within three or four months.

8 MR. KENNEKE: Will any of this information
9 touch on the matter of the appropriate period of dose
10 integration into the future?

11 MR. LEROHL: Except in this extent:

12 EPA is addressing this question in several open
13 hearings through the country which started over a year ago,
14 and a meeting was held in -- out on the West Coast, a third
15 meeting is scheduled for Denver at the end of this month.
16 And they have proposed treatment of how to handle these long
17 term commitments and what the criteria should be.

18 So public attention has been focused and papers
19 have been written. And since this applies as well to waste
20 management disposal, permanent disposal as well as mill
21 tailings, it is generic and it's being addressed by several
22 groups.

23 I think the thinking on it is it is being pulled
24 together.

25 MR. KENNEKE: EPA specifically excepted radon

mpb9

1 from its 40 CF 190. Have they got a position with regard
2 to the period of integration?

3 MR. LEROHL: Not precisely. They view the ques-
4 tion as when we disturb nature in a way not to create new
5 radioactive material, but to enhance and release that which
6 is already there, that's a certain category in which radon
7 applies.

8 The general thinking is now one should return
9 that to its pristine condition. And in terms of integra-
10 tion time, in terms of -- and again in regard to that which
11 we manufacture might be something different, but in terms of
12 integration time they can think of 1000 years as being a
13 reasonably foreseeable period as an upper limit to which
14 one can project people, resistance to disease, susceptibility
15 to disease, and economic institutions that can control it.

16 CHAIRMAN HENDRIE: Even that fails to deal with
17 the sort of developments that might occur in medical treat-
18 ments to the health effects.

19 I know in the COENAY study one of the uncertain,
20 the very uncertain propositions was what sort of discount
21 factor might you want to apply to health effects as you went
22 forward into the future to take account of developments in
23 this line, and obviously a difficult proposition to settle
24 down, but clearly an important consideration.

25 We are, as a race, not constrained on the one hand

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mpb 10 1 either to let tailings piles continue to emit their radon
2 if we don't want that, or, on the other hand, never to improve
3 our ability to treat the health effects that may accrue.

4 It's a very difficult sort of a proposition to
5 deal with. And I must say, my own feeling is that there has
6 been an increase in interest in the matter. There have been
7 a number of discussions. Bob Poole at Cornell raised this
8 question about radon several years ago. There have been
9 arguments both ways about the integration time and how you
10 might treat discount factors.

11 I have a notion that the discussion is going to
12 go on for some time and that we should not dilute ourselves
13 that a crisp six month rulemaking effort here is going to
14 settle anything for the long term. Obviously the Commission
15 has to have reasonable postures and bases for believing
16 what it's doing is sensible in the interim.

17 But I think we have to recognize that there will
18 be evolution for some time to come in the way in which
19 society regards these effects. It's not clear how it will
20 settle down for the long term.

21 Okay.

22 Well, let's see. We understand what the Staff
23 recommendation is.

24 MR. MALSCH: Let me also add: They were also
25 clarifying the rule to indicate that what had always been

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1 understood to be the case is not that it does not address
2 economic or socioeconomic impacts, that there are no dollars
3 as such. So in addition to deleting the radon number we're
4 also clarifying exactly what is the scope of the table, and
5 that should be very helpful in many cases.

6 CHAIRMAN HENDRIE: Now, Jim and Leo, there was
7 a paper from -- a late running paper from OGC. Would you
8 summarize it very briefly, and just the essential points?

9 It seemed to me as I read it that it agreed, but
10 objected simultaneously with the Staff's proposal.

11 MR. KELLEY: I think we can be brief.

12 We do support the substance of the Staff proposal.
13 I believe virtually all of our comments go to the Federal
14 Register notice, the draft notice, and we have some concern
15 about the justifications that are being offered for the
16 various things that are being done.

17 Let me answer an earlier question about the
18 New England Coalition and GESMO. I got the service list
19 and they're not on it, so I would infer they were not a
20 participant in that proceeding.

21 Leo, I think, can summarize the main points that
22 we want to make.

23 MR. SLAGGIE: Well, actually, the main point, as
24 Jim said, is we agree with what the Staff is recommending
25 under the circumstances. We feel that the draft notice

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1 should make very clear the justification for what the Commission
2 is doing and what the Commission has in mind.

3 A number of questions have been asked this
4 morning by the Commissioners, which indicates to me that the
5 papers they read did not explain to them what the justifica-
6 tion was, and that therefore they would also not explain to
7 the public what the justification was. So rather than go
8 over these point by point, I think the draft notice --

9 CHAIRMAN HENDRIE: You may be right, Leo. But
10 it is excessively kind of you to note the alternate sugges-
11 tion to that the Commission has not carefully read the
12 paper.

13 I don't know that the questions prove the point
14 one way or the other.

15 MR. SLAGGIE: Well, to those of you who have
16 latent guilt feelings, it is my view that if you had read
17 the paper you would still have asked the same questions.

18 (Laughter.)

19 CHAIRMAN HENDRIE: Okay.

20 But then there are some matters of language in
21 the draft notice which you would like to make some suggestions
22 and perhaps in fact, in view of discussion this morning, the
23 Staff might have some too, I don't know.

24 MR. MALSCH: Well, let me say there will be no
25 harm in adding language into the notice as suggested by OGC.

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1 We might disagree as to whether it's absolutely essential
2 that we do so. But there's no harm in adding some language
3 in the notice where they have suggested it be done.

4 So we're not really disagreeing on what must
5 be or must not be included in the notice.

6 CHAIRMAN HENDRIE: Okay.

7 Then let me suggest a proposition to the
8 Commission and see whether -- how the sentiment lies here.

9 The proposition would be to ask Counsel's office
10 and ELD to please come together on the draft of this notice
11 and agree on some language. Now that goes in the direction
12 of accepting the general thrust of the Staff recommendation,
13 of course, and I would like to hear how -- see what the
14 Commission sentiment is there, that is, if the sentiment is
15 to accept that thrust, then I think the working out of these
16 details is something that can be done by the offices, and
17 we could then see some jointly recommended language.

18 But first let's see whether the thrust is in
19 that direction.

20 Peter?

21 COMMISSIONER BRADFORD: I am still puzzled by
22 the justification for treating this differently from the
23 backend question. I don't -- seeing the additional language
24 may have a soothing effect on me, but I think a pretty strong
25 case could be made for requiring that we follow the backend

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1 format, the promulgation of the generic standard on an
2 interim basis and then abiding by that.

3 The concern I have is it just looks to me as
4 though these individual proceedings that are being proposed
5 will essentially follow or fall prey to precisely the same
6 sorts of delays that the Staff foresees for the generic
7 proceeding.

8 CHAIRMAN HENDRIE: My understanding is that
9 the alternative -- that even if we go with an interim
10 generic proceeding that on the assorted licensing cases in
11 process at the moment that one's choice is either to shut
12 them down pending completion of that generic proceeding or
13 to allow litigation of the individual case anyway on the
14 point.

15 MR. MALSCH: Even if we propose the rule now
16 and had an effective interim rule, let's say, by the end
17 of the year, there would still be the need to litigate the
18 issue in about 26 -- as much as 26 cases.

19 CHAIRMAN HENDRIE: But let me for the moment
20 count you as at least reluctant to accept that.

21 Vic, what about you?

22 COMMISSIONER GILINSKY: I would like to think
23 about it a little bit more.

24 I am inclined toward some generic approach, but
25 I'm not sure how one goes about dealing with the complications

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1 of the individual proceedings.

2 CHAIRMAN HENDRIE: I will vote myself in favor
3 of the Staff recommendation.

4 Dick?

5 COMMISSIONER KENNEDY: I share the feeling which
6 I think both of our colleagues have. There obviously is need
7 to deal with this in a generic sense, and my concern is only
8 that we move to that end as rapidly as possible.

9 Meanwhile it seems to me, however, that the
10 Staff recommendation effectively deals with the interim
11 situation, in particular cases in-hand in a litigative sense,
12 and indeed it seems to me in that process may well be helping
13 us move more rapidly to the generic issue because data which
14 is being developed and produced in the individual situations
15 and litigated there will be examined and tested and we'll get
16 more data from that than we might otherwise have sooner than
17 by going through a rulemaking.

18 MR. MALSCH: You've got to litigate in some
19 individual cases, no matter what you choose to do because
20 the only alternative is to suspend the licensing. You've
21 either got to deal with it immediately by rule or deal with
22 it immediately by litigating it in individual cases. There's
23 no way we can deal with it at least immediately by rule. We
24 may be able to deal with it by rule later on this year.

25 CHAIRMAN HENDRIE: Let's see.

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1 The Commission is clearly not gathered solidly
2 on one consensus point, and I think I would not want to try to
3 press the issue. I think it would be helpful to think about
4 it some more and return to it as soon as we are able, and in
5 the interim it allows a chance for some further discussions.

6 And I will ask the Staff as well as counsel's
7 office and OPE to see if you can please meet particularly
8 with Commissioner Bradford and with Commissioner Gilinsky.
9 And we'd like for some further thrashing out of these things.

10 I sense, Peter, that you're sort of -- that there
11 are still a number of questions to straighten out and some
12 discussion like that might be helpful in seeing where you want
13 to go.

14 COMMISSIONER BRADFORD: Let me just try and focus
15 again on a particular problem that I'm having, that is, in
16 this case you're prepared to go forward in individual licens-
17 ing. You have sufficient confidence in the state of your
18 knowledge that you're willing to put witnesses on the stand,
19 have them cross-examined, and have licensing boards reach
20 decisions on the materials you have in-hand now.

21 In the backend situation you weren't in that
22 position. You didn't go to the individual cases. You held
23 off for six weeks, then promulgated an interim rule in which
24 you must have had sufficient confidence. So it only took
25 six weeks to get from being less confident than you are now

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1 to being confident enough to have an interim rule applicable
2 to all licenses issued anywhere in the country.

3 MR. MIRAGLIA: The period was from July 21st
4 until October --

5 COMMISSIONER BRADFORD: Ten weeks, then; but the
6 same idea.

7 CHAIRMAN HENDRIE: It's precisely getting some
8 of this straightened out that I would hope -- if we go on and
9 try to do it here at the table this morning, why, you won't
10 get on to the other things, you know. There are certain
11 complexities here, and I think perhaps some of the Staff
12 who've been dealing with S-3 and the health effects and so
13 on ought to join the discussion, give it a fair exercise.
14 So I think we really have to leave this subject
15 at this point. It's a sort of a halfway situation. We'll
16 reschedule, unless it looks like -- I think we probably ought
17 to reschedule again on it, but I think some more time for
18 thrashing out some of the details and further explanations
19 and so on would be helpful.

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20 (Whereupon, at 10:50 a.m., the hearing in the
21 above-entitled matter was concluded.)

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