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NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

PUBLIC MEETING

DISCUSSION OF DEFERRAL OF LICENSES

Place - Washington, D. C.

Date - Friday, 15 June 1979

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1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION

3 PUBLIC MEETING

4 DISCUSSION OF DEFERRAL OF LICENSES

5  
6 Room 1130  
7 1717 H Street, N.W.  
8 Washington, D. C.

9 Friday, 15 June 1979

10 The Commission met, pursuant to notice, at 3:15 p.m.

11 BEFORE:

12 DR. JOSEPH M. HENDRIE, Chairman

13 PETER A. BRADFORD, Commissioner

14 VICTOR GILINSKY, Commissioner

15 RICHARD T. KENNEDY, Commissioner

16 PRESENT:

17 L. BECKWIT

18 C. STOIBER

19 H. SHAPAR

20 L. GOSSICK

21 R. KENNEKE

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P R O C E E D I N G S

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2 CHAIRMAN HENDRIE: Let's go ahead with the second  
3 subject this afternoon. This is discussion of the policy  
4 statement on licensing.

5 We had some discussion of this at an earlier subject  
6 -- at an earlier meeting. At the close of that meeting, I --  
7 we all agreed that it would be useful if, in fact, the Commission  
8 could say something on this subject, although what to say did  
9 not seem to be clear.

10 I directed the Counsel's Office to withdraw to its  
11 chambers and reflect upon what had been said, and see if they  
12 could draft anything.

13 They withdrew, reflected, and have come to us with a  
14 document which -- suppose I don't attempt to characterize it?

15 (Laughter.)

16 CHAIRMAN HENDRIE: But rather suggest that, as an  
17 opening to this discussion, that we ask Counsel to sort of  
18 pace us through the draft.

19 MR. BICKWIT: As the cover memo indicates --

20 COMMISSIONER KENNEDY: Only one of many to come.

21 MR. BICKWIT: -- our review of the transcript did  
22 not reveal to us any consensus within the Commission as to what  
23 policy course was intended by the Commission.

24 CHAIRMAN HENDRIE: I didn't mean for you to look for  
25 a consensus. I thought you would just see what I had said.

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1 (Laughter.)

2 MR. BICKWIT: What we attempted to do was try to  
3 find threads that smacked of consensus and to put together a  
4 statement which was at least consistent with most of what was  
5 said.

6 What the statement does say -- first, let me tell you  
7 that as we proceeded, we saw three options for us. One was  
8 to -- there was a lot of discussion in the session about the  
9 categorization of issues, whether issues should be categorized  
10 as those which would have to be resolved before new licenses  
11 would be issued or would be of such seriousness as to require  
12 shutdown of existing plants.

13 And the options we considered were, one, that the  
14 Commission could proceed to categorize those issues now; two,  
15 that they could ask the staff to do so and then when the  
16 Lessons Learned Task Force report was received, perhaps ask  
17 the staff to do it again; or, three, that the Commission would  
18 commit to categorizing issues after the Lessons Learned Task  
19 Force report was received.

20 The first we regarded as extremely difficult.

21 COMMISSIONER KENNEDY: Is not that one of the  
22 purposes of the Lessons Learned Task Force, as I understood  
23 it? And therefore, the simple procedure of following the  
24 existing plan of going through the Lessons Learned should  
25 result in the categorization.

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1 MR. BICKWIT: That was our conclusion, as the most  
2 logical of the three ways to proceed.

3 COMMISSIONER KENNEDY: It is your understanding that  
4 the categorization referred to in some detail on page 3 of  
5 this draft is that the output of the Lessons Learned Task  
6 Force, am I correct?

7 MR. BICKWIT: Not quite. The Lessons Learned Task  
8 Force would come up -- might well come up with some categories,  
9 but what the Commission would be committing to do would be to  
10 review the Lessons Learned Task Force and arrive at its own  
11 categorization.

12 And of the three --

13 COMMISSIONER KENNEDY: How long did you visualize --

14 MR. BICKWIT: Review process?

15 COMMISSIONER KENNEDY: -- it might take?

16 MR. BICKWIT: It is hard to know, and I think that  
17 is one of the policy issues that you have to resolve today.

18 COMMISSIONER KENNEDY: Now I understand better.

19 MR. BICKWIT: If you were to attempt to categorize  
20 the issues now, our feeling was that that would be a very  
21 difficult enterprise. And I would have difficulty attempting  
22 to advise you to do that.

23 If you were to ask the staff to do so now, and  
24 perhaps again after reflecting on the Lessons Learned report,  
25 we felt that that would not be responsive to the thread in the

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1 meeting that the Commission was to provide some guidance.

2 So that the third option seemed to us the most  
3 consistent with discussion by -- to wait for the Lessons  
4 Learned report and then for the Commission to provide guidance  
5 based upon it.

6 Summarizing what this statement says, it lists some  
7 possible categories that you could put issues into after you  
8 received the report. And then it provides really two basic  
9 possible conclusions, and I will read them.

10 The first would have the Commission saying, "Pending  
11 such categorization and direction by the Commission, it is  
12 expected that the Commission's Licensing Boards will take into  
13 account what the effort discussed, that the effort in this  
14 statement is underway, i.e., the staff Lessons Learned report  
15 and the review by the Commission, and we'll use their  
16 discretion in adapting their proceedings to that effort.

17 "The Boards are encouraged to move forward on and  
18 give priority to the resolution of issues which are unlikely  
19 to be impacted by the staff's Lessons Learned report and the  
20 Commission's Review."

21 The second result which you might reach is to take  
22 that language and add to it the following sentence:

23 "Also pending further Commission direction, it is  
24 policy of the Commission that no new limited work authorization,  
25 construction permit, of full power operating license will be

1 issued except by action of the Commission itself."

2 The central policy issues I think you have to  
3 address, which are inherent in this statement, are: One, the  
4 statement does commit the Commission to make categorization  
5 of issues following that report. And the question that is  
6 raised is that a commitment that the Commission should take  
7 on?

8 And the second policy issue is the issue that results  
9 from the distinction between those two or resulting statements  
10 at the end of the policy statement, which is basically the  
11 issue is until that commitment is discharged, if you want to  
12 undertake it, should licenses be issued by the staff or by  
13 the staff with the concurrence of the Commission?

14 That concludes my statement.

15 CHAIRMAN HENDRIE: I ended up getting two, instead  
16 of four. What did I miss?

17 MR. BICKWIT: I don't remember the number four.

18 CHAIRMAN HENDRIE: Didn't you say four policy  
19 issues?

20 MR. BICKWIT: No; two policy issues.

21 COMMISSIONER KENNEDY: Policy issues for considera-  
22 tion.

23 (Laughter.)

24 COMMISSIONER KENNEDY: A syntactical problem.

25 CHAIRMAN HENDRIE: John, you had the earliest --



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1 COMMISSIONER AHEARNE: Well, no --

2 CHAIRMAN HENDRIE: -- circulated reply to that.

3 COMMISSIONER AHEARNE: It was earliest circulated,  
4 because it wasn't a reply, it was set of comments based upon  
5 having read the transcript.

6 CHAIRMAN HENDRIE: That's right. You weren't here  
7 for that.

8 COMMISSIONER AHEARNE: And having the same  
9 difficulty that OGC had mentioned. I had tried to see what  
10 conclusions I could draw from it, and --

11 CHAIRMAN HENDRIE: Puzzling. There must be something  
12 wrong with the typewriter.

13 COMMISSIONER AHEARNE: The one point that I would  
14 ask to have included -- and I admit that it didn't really  
15 come through very clearly in the transcript -- would be some  
16 mention about what steps we are taking regarding emergency  
17 planning, because if this is a policy statement -- I was  
18 having difficulty in reading the transcript, finding what is  
19 the purpose of the policy statement.

20 (Commissioner Bradford left the hearing room.)

21 COMMISSIONER KENNEDY: I am glad you raised the  
22 question.

23 Did you reach any conclusion after reviewing the  
24 transcript?

25 COMMISSIONER AHEARNE: Well, I had --

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1           COMMISSIONER KENNEDY: I had some difficulty, and I  
2 was present at the discussion.

3           COMMISSIONER AHEARNE: If part of the purpose were  
4 to provide some instruction to Boards, then I thought that we  
5 ought to at least cover the steps that we have underway with  
6 regard to emergency planning, because we both have this task  
7 force, and we also -- at least I hope we are -- are going to  
8 go on for expedited rulemaking on it. And I thought that would  
9 be germane any set of comments we are providing to any boards  
10 if that is one of the purposes of policy statements.

11           MR. BICKWIT: It certainly is appropriate.

12           COMMISSIONER AHEARNE: The purpose.

13           MR. BICKWIT: Unless you take -- it depends on how  
14 you resolve that policy issue. It is the purpose if you decide  
15 to allow the staff to continue to issue licenses. It is one  
16 of two major purposes if you decide that the Commission should  
17 issue licenses.

18           COMMISSIONER AHEARNE: What I am now somewhat puzzled  
19 by is that I thought what the policy issue that you had just  
20 finished describing, it was a commitment on the part of the  
21 Commission to categorize results of Lessons Learned Task  
22 Force?

23           MR. BICKWIT: That's right, and thereby to provide  
24 guidance to the Boards and the staff.

25           COMMISSIONER AHEARNE: Well, the guidance would be

1 in the sense of "Here is what you should expect us to provide  
2 you with sometime in the future."

3 MR. BICKWIT: That's true, but also the knowledge  
4 that that is about to take place would itself provide some  
5 guidance for the Boards now.

6 COMMISSIONER AHEARNE: I would have expected the  
7 Boards to have realized an accident had happened and that we  
8 were probably looking at it.

9 COMMISSIONER KENNEDY: Is there some question on  
10 that score?

11 (Laughter.)

12 COMMISSIONER KENNEDY: I didn't hear an answer.

13 MR. BICKWIT: We took it as rhetorical.

14 COMMISSIONER KENNEDY: We wanted to be sure we were  
15 all thinking in the same terms. My impression is that the  
16 Boards are well aware --

17 CHAIRMAN HENDRIE: In that connection, Howard, under  
18 the staff's notification of Boards about items of interest  
19 and significance for the licensing process, has there been --  
20 have there been staff transmissions through your office?

21 MR. SHAPAR: Yes. All Boards have been notified.

22 VOICE 1: We had said to the Boards early on we  
23 were sending them copies of the bulletin regarding Three Mile  
24 Island.

25 More recently, in response to an inquiry by

1 Commissioner Kennedy, we sent a notification with regard to  
2 the formation of the Lessons Learned Task Force.

3 Specifically, what their mandate would be under  
4 Mr. Denton's memorandum, there are 12 categories they will be  
5 looking into. So all Boards and the parties have been  
6 notified.

7 (Commissioner Bradford returned to the hearing room.)

8 CHAIRMAN HENDRIE: Then that reduces the need --

9 COMMISSIONER KENNEDY: It suggests there is some  
10 redundancy in this paper.

11 MR. SHAPAR: But at some point, if the Commission  
12 speaks, the staff may formulate a position in certain cases  
13 and communicate to the Board. And even looking at that policy  
14 statement, I guess there is nothing in there that tells the  
15 ~~Board not to issue an initial~~ decision if all the parties come  
16 before the Board.

17 I am not suggesting that the staff will and say  
18 the matter is -- and controversies have been resolved to our  
19 satisfaction; unless the Commission speaks in some way, the  
20 Boards can now issue an initial decision, and the staff can  
21 issue a license.

22 COMMISSIONER GILINSKY: Or the Boards may feel, for  
23 example, LWAs are unaffected by what has happened, that only  
24 operating licenses would be affected. They may not even be  
25 sure about that.

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1           It seems to me this Commission ought to tell the  
2 people working for it and other interested persons what it  
3 intends to do and what it thinks about all this.

4           COMMISSIONER KENNEDY: What about LWAs? What do  
5 we intend to do?

6           We suggest that Three Mile Island has an effect on  
7 the way bulldozers operate in holes, digging foundations?

8           COMMISSIONER GILINSKY: I don't think this is a  
9 subject for humor.

10          COMMISSIONER KENNEDY: I'm being perfectly serious.  
11 What is it we are supposed to tell them?

12          COMMISSIONER GILINSKY: The question here, with  
13 respect to LWAs and CPs, is a more limited question. And  
14 whether in some way the characteristics of the site might  
15 indicate difficulty with emergency plans -- it is a more  
16 limited question. There may be some others --

17          COMMISSIONER KENNEDY: A satisfactory emergency plan  
18 for a site which is going to contain a reactor which will come  
19 on-line some 10 years from now?

20          I would not consider that a satisfactory emergency  
21 plan at all. I would want to see one 10 years from now.

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1           COMMISSIONER GILINSKY: It may be for considerably  
2 beefed-up standards for what we expect in the way of emergency  
3 response, that some sites are simply unsuitable from that  
4 point of view. I don't know whether that is the case, but it  
5 may well be. And that is something that I would like to have  
6 a look at before one is committed to a particular site. I for  
7 one would not like to see any licenses granted without the  
8 express approval of the Commission at this point, including  
9 LWAs.

10           Now, it may just require a brief look at it. But  
11 I think that we need to be sure that one isn't committing  
12 oneself to something which is incompatible with conclusions  
13 that one may reach after having examined the circumstances of  
14 Three Mile Island and the implications of that accident.

15           COMMISSIONER AHEARNE: What procedure would you  
16 propose to follow?

17           COMMISSIONER GILINSKY: I think at this point I  
18 would suggest that we wait until the results of this Lessons  
19 Learned study, which is due when, Lee?

20           MR. GOSSICK: There is a briefing the week of the  
21 25th. That is going to be more in the form of a status report  
22 than actual results.

23           COMMISSIONER AHEARNE: Speaking to LWAs, let's say,  
24 and I would agree with Mr. Gilinsky on population density  
25 questions. They are the type of a question which could

1 determine whether or not you would agree with a site. To what  
2 extent will those questions be addressed by your Lessons  
3 Learned Task Force?

4 MR. GOSSICK: As far as population criterion, that  
5 sort of thing?

6 COMMISSIONER AHEARNE: Yes.

7 CHAIRMAN HENDRIE: I don't think the Lessons Learned  
8 group is dealing with that.

9 MR. GOSSICK: That is a separate operation. I  
10 believe we are due to get a report from them the end of June.

11 MR. SHAPAR: June 27th.

12 COMMISSIONER AHEARNE: Wouldn't it come under the  
13 emergency --

14 MR. GOSSICK: That would be involved, but the  
15 actual siting issues -- criterion on population, distances,  
16 that sort of thing -- is the other task force. I think we are  
17 getting close to where that is going to be available to the  
18 Commission in another month or so.

19 MR. KENNEKE: Siting was one of the --

20 MR. GOSSICK: But they don't intend to take over and  
21 do the thing that is already under way with the siting task  
22 force.

23 COMMISSIONER AHEARNE: Do you have in mind -- I have  
24 no idea whether there is any board at the stage right at the  
25 moment about to go into reaching the point of an LWA. But

1 let's say that there is such a one. What sort of a procedure  
2 would you envision? The board reaching that point and then  
3 passing that to us, and then us doing what?

4 COMMISSIONER GILINSKY: Well, I think I would like  
5 to see what staff thinks on the lessons that come out of  
6 this experience. And I would want to ask them whether they  
7 think that anything on that list affects the issuance of an  
8 LWA, for example, or a construction permit.

9 COMMISSIONER BRADFORD: I at least would want to  
10 see somewhere in that process whether we have instructed the  
11 board to make a finding or whether we made it ourselves, that  
12 expressed that there was nothing in either the geography or  
13 the population patterns around site that precluded effective  
14 emergency response plans. I think that planning ought to be  
15 expressed before a CP or an LWA issues.

16 COMMISSIONER AHEARNE: That would be essentially a  
17 requirement -- I am not saying I disagree with it, but that is  
18 a new requirement that you would then lay on for a CP; is that  
19 correct?

20 COMMISSIONER BRADFORD: Yes. That doesn't mean that  
21 the response plan has to be submitted.

22 COMMISSIONER AHEARNE: I understand that. Now, is  
23 there any legal procedure that has to be gone through in order  
24 to place a new requirement, or can we just --

25 MR. BICKWIT: You would proceed by ruling. If you



1 wanted to move quickly, you could either propose a rule and  
2 make it immediately effective or provide by policy statement  
3 that this be done.

4 MR. SHAPAR: With the policy statement there is a  
5 problem, because they are not supposed to have the force and  
6 effect of law, depending upon what the substance of the thing  
7 is.

8 COMMISSIONER GILINSKY: We are giving directions to  
9 our staff.

10 MR. SHAPAR: But a new requirement that is legally  
11 binding that says that something else has to be done before a  
12 construction permit can issue; that's why I think it is impor-  
13 tant what the substance is. But if you made the rule imme-  
14 diately effective, you could achieve the same result.

15 MR. BICKWIT: By policy statement, you could --

16 MR. SHAPAR: If it has the effect of impinging on  
17 the rights of third parties applying for licenses, in effect  
18 that is the kind of a thing you have to do by rule.

19 COMMISSIONER AHEARNE: Another question. If we  
20 bring these LWAs up to us and if we want to ask the staff to  
21 examine what is the impact with respect to Three Mile Island  
22 Lessons Learned, does that take on the character of a hearing  
23 where you would then require all parties who are interested  
24 to be able to come and go through their normal proceedings to  
25 address that issue?

1 COMMISSIONER BRADFORD: It may be easier setting the  
2 criteria through the board.

3 Let me come back to your point again for a second.  
4 I think you are probably right. But help me distinguish from  
5 something else.

6 COMMISSIONER AHEARNE: I am just asking questions.

7 COMMISSIONER BRADFORD: I am pursuing Howard's point  
8 about the --

9 CHAIRMAN HENDRIE: Go ahead, but I want to get an  
10 answer to John's question. But go ahead and pursue this,  
11 because it may illuminate it.

12 COMMISSIONER BRADFORD: On something like the  
13 obviously superior standard, the Commission announced that in  
14 an adjudicatory context in the Seabrook case. But then it  
15 became binding on everyone for -- who was then involved in  
16 proceedings before the boards, on all sorts of other cases as  
17 well. And that presumably was neither a rule, it wasn't a  
18 policy statement as such.

19 What is it? What is it about that kind of pronounce-  
20 ment by the Commission that can then become binding in a whole  
21 bunch of cases that weren't involved in that case, that is  
22 different from changing the standards on response planning?

23 MR. SHAPAR: It has the practical effect of a rule.  
24 Each person would be entitled to litigate it in a new  
25 proceeding. But the results would be foreordained unless

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1 the Commission had changed its mind. The new party in the new  
2 proceeding would have the right to litigate it if it wanted  
3 to. But it would know as a practical matter that, the  
4 Commission having reached a certain result in a certain case,  
5 would be most likely to reach the same result in a future  
6 case. But they would still have the right to litigate.

7 COMMISSIONER BRADFORD: But wouldn't those conditions  
8 also surround a policy statement?

9 MR. SHAPAR: The traditional wisdom about policy  
10 statements is that it announces a future course of conduct and  
11 is not binding, like in the same manner that a rule is binding  
12 if you went to impose a rule or requirement that affects the  
13 outside world. I think that is the key point, and to follow  
14 the rulemaking procedures of the Administrative Procedures Act.

15 MR. BICKWIT: I have to -- if you want to impose a  
16 freeze, there is no problem with doing that by policy statement,  
17 just so long as you assume in the rules they entitle a third  
18 party to a license after a given time. The policy statement  
19 would bind employees of the agency, and our conclusion is  
20 there would be no problem whatever with binding them through  
21 that mechanism.

22 MR. SHAPAR: I am not sure I would agree with that.

23 MR. BICKWIT: I will give you the cite.

24 COMMISSIONER GILINSKY: The benefit of having two  
25 lawyers.

1 (Laughter.)

2 MR. BICKWIT: Third Circuit decision in -- it  
3 seems to me the GESMO litigation does stand for that proposi-  
4 tion.

5 CHAIRMAN HENDRIE: It sounds to me as though,  
6 before we get too broad sweeping in forming a set of pronounce-  
7 ments, it might be useful to know a little more what we are  
8 talking about. I think the questions about whether, for  
9 instance, for proposed -- for LWAs of the sort that are in  
10 the mill now, there are, the staff can see, aspects from an  
11 emergency planning side that would affect the basic accepta-  
12 bility of those sites -- is a reasonable proposition to  
13 discuss with the staff.

14 It may be that the kinds of sites that are being  
15 ~~looked at these days that are~~ at that stage are in fact not  
16 the kind where you would say: Gee, this just is never going  
17 to do, you are not going to be able to make any reasonable  
18 emergency plan; and that, having some sense of what after  
19 some discussion with the staff, then I think that would be  
20 helpful to the Commission in seeing what sort of guidance  
21 we want to form.

22 In the absence of specific guidance, I guess where  
23 proceedings are completed, they would go ahead. We could  
24 also, in a much less formal sort of way, simply -- hang on,  
25 I will get myself into trouble. I guess where there is a

1 case upon which there has been a hearing -- wait a minute.  
2 With LWAs, CPs, they have hearings.

3 MR. SHAPAR: In OLs, there is no hearing unless  
4 someone demands it.

5 CHAIRMAN HENDRIE: On the early stage plants, there  
6 is a hearing.

7 MR. SHAPAR: Mandatory.

8 CHAIRMAN HENDRIE: Mandatory hearing. If there are  
9 no issues in contention in those proceedings, are there still  
10 ex parte bars to --

11 MR. SHAPAR: Not as far as the staff and Commission  
12 is concerned, but as far as third parties are concerned, yes.

13 MR. BICKWIT: No issues in contention. I have  
14 problems with that.

15 CHAIRMAN HENDRIE: If there are issues in  
16 contention --

17 MR. BICKWIT: If there are no issues in contention,  
18 I don't think that there is an ex parte bar.

19 CHAIRMAN HENDRIE: If there are issues in contention,  
20 there certainly is.

21 MR. BICKWIT: Yes.

22 MR. SHAPAR: There is a distinction, I know, drawn  
23 in the rules between the right of the staff to approach the  
24 Commission on contested issues and the right of third parties.

25 MR. BICKWIT: This was yesterday. It is the case

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1 that the ex parte rule applies only to any substantive matter  
2 at issue in a proceeding on the record then pending.

3 MR. SHAPAR: The ex parte rule itself only applies  
4 to matters in controversy among the parties. If there is no  
5 matter at all in controversy, then there is no bar.

6 MR. BICKWIT: That's right.

7 CHAIRMAN HENDRIE: I was going around saying we  
8 could ask simply to just -- informally ask the staff to inform  
9 us and check with us on near-term actions. But that is not  
10 a very handy way to handle it, since most of your LWA and CP  
11 near-term actions will be, in fact, contested proceedings, and  
12 there are ex parte bars.

13 COMMISSIONER AHEARNE: What I was trying to get at  
14 in asking my question was, it wasn't clear whether was -- it  
15 wasn't clear to me what you were proposing, Vic, was an order  
16 to all boards and to the staff that no LWAs, no operating  
17 licenses, no construction permits will be allowed until such  
18 time as the Commission turns them back on again, or whether  
19 you are saying that if a board reaches a conclusion that such  
20 should be allowed, that that does not -- that the staff does  
21 not allow that to take effect until -- has come up to the  
22 board -- to the Commission for review. And if it was the  
23 latter, I was trying to understand what kind of a process you  
24 had in mind for that review.

25 COMMISSIONER GILINSKY: Let's let the general counsel

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1 work out the process.

2 (Laughter.)

3 COMMISSIONER AHEARNE: The latter or the former?

4 CHAIRMAN HENDRIE: In most of these cases, it would  
5 have to be a formal one.

6 MR. BICKWIT: After the board reached a decision,  
7 the board would authorize the staff to issue a license. And  
8 you could adopt a procedure that said the staff would not go  
9 ahead and issue it until it conferred with the Commission and  
10 the Commission would make its decision.

11 COMMISSIONER KENNEDY: And what are the rights of  
12 parties at that time?

13 MR. BICKWIT: At that time the staff is not func-  
14 tioning as a party; the staff has simply been authorized to  
15 issue a license.

16 COMMISSIONER KENNEDY: What I am saying is, if a  
17 proceeding has occurred and all rights have been conferred to  
18 the parties, they have exercised those rights, presented their  
19 case, the board has concluded that on the basis of the record  
20 and the evidence presented a license should issue; now the  
21 Commission, in its wisdom, elects not to do so. Doesn't --  
22 don't those parties who presented the case which merited the  
23 issuance of the license have a right to participate in that  
24 decision? Or is that an arbitrary decision?

25 MR. BICKWIT: All the board has done is authorize

1 the issuance. The staff at that time, under the immediate  
2 effectiveness rule, would have to issue it in the case of  
3 a construction permit. In the case of an operating license,  
4 it would have time to deal with these various issues. At  
5 that point, it could decide, in the case of the operating  
6 license, it could decide not to issue the license.

7 COMMISSIONER KENNEDY: But not in the case of the  
8 construction permit?

9 MR. BICKWIT: No, unless you suspended that rule.

10 COMMISSIONER AHEARNE: You disagree, then, with  
11 Harold's position the other day?

12 MR. BICKWIT: With Harold's position?

13 COMMISSIONER AHEARNE: About a week ago, we -- two  
14 weeks ago, we had that discussion here in which there was a  
15 floating opinion as to whether or not Denton could refuse to  
16 issue a construction permit if the board reached a conclusion.  
17 His position seemed to be he would not issue it during the  
18 intervening period.

19 MR. BICKWIT: Unless you suspend the rule, he must  
20 issue the construction permit within ten days of the board's  
21 decision. But suspending the rule is not a difficult under-  
22 taking.

23 COMMISSIONER AHEARNE: You mean suspending the  
24 immediate effectiveness rule?

25 CHAIRMAN HENDRIE: Further, doesn't he have the --



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1 some recourse in terms of going back to the board to say: Wait,  
2 the staff, don't issue your decision. The staff would like  
3 to think a while longer about this.

4 MR. SHAPAR: I think that was the point, although  
5 the immediate effectiveness rule seems to say in terms of  
6 construction permits that he must issue the permit on direction  
7 of the hearing board after initial decision. He can, of course,  
8 go back to the board and move to introduce new testimony, or  
9 go to the appeal board, depending upon the circumstances of  
10 the case.

11 Beyond that, of course, the Atomic Energy Act says  
12 that the Commission can revoke a license on any grounds on  
13 which the original license was issued. If new information came  
14 to mind, he would have authority to revoke a license that had  
15 just been issued. So in a sense, it is an academic discussion.

16 If the immediate effectiveness rule were suspended,  
17 what would he be obligated to do?

18 MR. SHAPAR: Treat it like every other agency in  
19 Washington.

20 COMMISSIONER AHEARNE: I would rise to that. Just  
21 answer the question.

22 MR. BICKWIT: He would not be obligated to issue  
23 the license. But if you don't suspend it and he goes back  
24 to the boards and he can't convince the boards, then he has  
25 got to issue that. But at that point, the course is to revoke

1 the license immediately upon its issuance.

2 COMMISSIONER AHEARNE: Does Harold or the Director  
3 of NRR have any role in the LWA?

4 MR. SHAPAR: It issues the LWA.

5 COMMISSIONER AHEARNE: Is that also immediately  
6 effective?

7 MR. STOIBER: Yes.

8 COMMISSIONER AHEARNE: If you suspend the immediately  
9 effectiveness rule, it suspends both aspects of that, the LWA  
10 and the CP?

11 MR. SHAPAR: If you want to suspend it, it would  
12 be a situation that would indeed do that.

13 COMMISSIONER AHEARNE: Getting back to my other  
14 question, had you in mind the complete turnoff or had you  
15 in mind the turnoff --

16 COMMISSIONER GILINSKY: Nothing will happen until  
17 we hear from Roger Mattson and company and get a report on  
18 their examination of the various issues they are looking at.  
19 As I understand it, that is not going to take a very long  
20 time.

21 MR. SHAPAR: Week after next week.

22 Beyond that, I think for some period -- and I don't  
23 know how long -- all licenses should be passed on by the  
24 Commission, all major facility licenses. Obviously, the look  
25 that one would take in connection with LWAs and CPs would be

1 a much more limited one than in connection with operating  
2 licenses. In fact, there may be nothing to look at, depending  
3 on what the staff tells us. It may not be an issue at all.  
4 I would like to be satisfied that there aren't any issued in  
5 the preliminary time.

6 MR. SHAPAR: There is one factual matter that has  
7 some relevance. I requested Denton by memorandum to have his  
8 staff review all staff evidence in pending cases to see if it  
9 needs to be supplemented or changed based upon the occurrence  
10 of the Three Mile Island incident. This is something that we  
11 have an affirmative obligation to do, but I specifically drew  
12 it to Harold's attention. And he is in the process of doing  
13 that.

14 This reflects the affirmative obligation that the  
15 staff has as a party to the proceedings not to let testimony  
16 that doesn't hold up after a point in time remain in the  
17 record without being changed or supplemented. This would have  
18 to be done under any circumstances, and is taking some time.  
19 I think this is relevant to the discussion that is taking  
20 place here right now in terms of the imminence of anything  
21 occurring on the part of these proceedings.

22 MR. GOSSICK: How would this procedure affect or  
23 involve the appeal process?

24 CHAIRMAN HENDRIE: It seems that the Commission is  
25 dipping down and saying that we will take this case, and

1 somehow I find it difficult to believe that, for a case in  
2 which there -- it may be adjudicated, in which there are  
3 parties in contention, that we are going to sit here and have  
4 a 20-minute report from the staff to find out that everything  
5 is okay with regard to the ability to do future emergency  
6 planning, and we check that off and out it goes.

7 I can see us here with parties lined up an demanding  
8 to be heard, being besieged to allow 45 days for the parties  
9 to file their briefs, and 20 more to comment on each other's  
10 briefs, and so on, on every blasted LWA.

11 COMMISSIONER KENNEDY: And to whom would they appeal  
12 a decision? The federal courts, I guess, under the Commission's  
13 rules.

14 MR. SHAPAR: Beyond that, I would have to point  
15 ~~out that whatever decision the Commission makes under the APA~~  
16 has to be made on the record. You wouldn't have one proceeding  
17 going here and then have a matter come before the Commission  
18 and the Commission considering it aside from a record which  
19 a court could review. You would have to develop a record  
20 that would support whatever decision you reached, the same as  
21 the hearing board, appeal board and the Commission itself does  
22 right now.

23 Of course, all of these things could be taken care  
24 of in terms of the objective by rulemaking, fixing the imme-  
25 diate effectiveness rule.

1 MR. BICKWIT: After -- let me ask a question of staff.  
2 After the licensing board makes its initial decision and the  
3 matter is presented to the staff for its action, how does the  
4 staff function?

5 MR. SHAPAR: A ministerial action after the board  
6 issues the initial decision.

7 MR. BICKWIT: It is not done through adjudicatory  
8 procedures, on the record?

9 MR. SHAPAR: A hearing pursuant to the APA. There  
10 has been one in which a decision has been reached and which  
11 determines a future course of action. So the direct response  
12 to your question, the staff action is a ministerial action,  
13 essentially determined in substance by the hearing board after  
14 all the parties have been accorded their procedural rights.

15 MR. BICKWIT: But staff resolves issues not dealt  
16 with by the hearing board?

17 MR. SHAPAR: That is in the limited case of the  
18 operating license.

19 MR. BICKWIT: Does it resolve them in a ministerial  
20 position rather than an adjudicatory position? Does it -- is  
21 it holding on the record --

22 MR. SHAPAR: That is a different situation. There  
23 is no right to a hearing at all at the operating license stage,  
24 except when one is demanded. The construction permit situation  
25 is different.

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1 MR. BICKWIT: The point I am leading to is after the  
2 board makes its decision on the record, with the parties'  
3 rights, cross-examination, the staff then performs a ministerial  
4 action and is functioning not as an adjudicator. I see no  
5 problem with the Commission functioning in the same way that  
6 the staff functions.

7 MR. SHAPAR: I guess I do, for the reasons I have  
8 pointed out.

9 The answer to your question is that no one has  
10 demanded a hearing on certain issues at the OL stage, and  
11 therefore it is handled as an administrative review procedure.  
12 But once a matter has been in issue and has been adjudicated  
13 before a hearing board, the situation is obviously quite  
14 different.

15 MR. BICKWIT: Following the hearing, in a situation  
16 where someone has asked for a hearing, the staff, as I under-  
17 stand the procedure, resolves those issues which have not been  
18 placed in controversy and resolves whether or not it chooses  
19 to issue a license it has been authorized by the board to  
20 issue.

21 Under those circumstances, why cannot the  
22 Commission function in the same procedural mode as the staff?

23 CHAIRMAN HENDRIE: With regard to those issues.

24 MR. BICKWIT: Yes, and with regard to the final  
25 issue of whether or not to issue a license.

1           CHAIRMAN HENDRIE: But in the great bulk of cases,  
2 that will not be the case.

3           MR. SHAPAR: No, not at all.

4           CHAIRMAN HENDRIE: That would be the rarest of  
5 circumstances. It seems to me if you have a case which is  
6 being contested, you have some difficulty in waiting through  
7 the process, watching out past the appeals board, to make a  
8 Commission review and decide whether the license should issue,  
9 without the paraphenelia and so forth that goes with the parties'  
10 rights in these adjudicatory proceedings.

11           After all, the parties at that point, if the  
12 Commission hadn't reached down, would have recourse to the  
13 appeal board available to them, and so on. That is, I don't  
14 know how we would come at that point to have a fairly  
15 straightforward, all right, what about this, that and the  
16 other, in a discussion here in half an hour, and understand  
17 what the essential safety issues were in the case and say:  
18 Okay --

19           COMMISSIONER GILINSKY: It seems to me the first  
20 question to ask oneself is whether we would like to take  
21 control of the process, at least temporarily. Now, if we  
22 don't there is nothing more to talk about. If we do, then we  
23 ask the lawyers to work out a sensible and reasonable course.  
24 If there isn't any, I guess we won't do it. If there is, we  
25 go forward.

1 COMMISSIONER AHEARNE: Except that to some extent --

2 COMMISSIONER GILINSKY: We can't believe that --

3 COMMISSIONER AHEARNE: In theory, the agency process  
4 is one in which we are in complete control of the process.

5 COMMISSIONER GILINSKY: Exactly, in theory.

6 COMMISSIONER KENNEDY: I think it is somewhat more  
7 than just pure theory. At least I certainly don't have that  
8 awful feeling of being Olympia detached from the rest of the  
9 world. I think the staff understands where we are and the  
10 staff knows perfectly well what we want and expect. And I  
11 think the staff is responsive.

12 And let me just suggest that I think a little bit  
13 more recognition of that on our part would be helpful both to  
14 the staff and the public.

15 COMMISSIONER GILINSKY: As far as understanding what  
16 we want, that is not the way I hear the staff talking.

17 COMMISSIONER KENNEDY: You must talk to different  
18 people in the staff. I guess there are a lot of them.

19 COMMISSIONER AHEARNE: Could I ask general counsel  
20 a question?

21 CHAIRMAN HENDRIE: Please do.

22 COMMISSIONER AHEARNE: If we suspended the immediate  
23 effectiveness rule, which would place LWAs, CPs and OLs, I  
24 guess, in the same type of context, the Director of NRR then  
25 reviews it before it goes out. And if we request the



1 Director of NRR to come and discuss that with us before he does  
2 it, does that set up a hearing process arrangement?

3 MR. BICKWIT: No, it does not. You have had the  
4 hearing. The hearing is over.

5 MR. SHAPAR: What about the ex parte bar and the  
6 rules in effect?

7 MR. BICKWIT: My feeling is that there would be no  
8 problem at that point.

9 COMMISSIONER KENNEDY: So long as the parties still  
10 have a right to appeal under our rules. Are we also going  
11 to repeal -- suspend those --

12 MR. BICKWIT: There are no issues in controversy  
13 at that point. The ex parte rule relates only to those issues  
14 which are in controversy before a board.

15 MR. SHAPAR: How do you know that if somebody appeals  
16 immediately?

17 MR. BICKWIT: Somebody could appeal. But if you  
18 have the staff function being brought to the Commission, the  
19 Commission can operate without the ex parte rule going out.

20 COMMISSIONER AHEARNE: I am asking the situation  
21 where it is more that we would be saying no rather than yes.  
22 In other words, Harold would come to a situation and if he  
23 wasn't going to release it he would never come; if he were  
24 going to release it he would com and go through. And if we  
25 would disagree, we would say no; if we didn't say no, he

1 would go ahead and release it.

2 And I guess one of the things I am asking is that --  
3 would that enable the appeal board to still be in the process?

4 MR. BICKWIT: Yes. You are simply substituting  
5 yourself for the staff in the procedure.

6 COMMISSIONER AHEARNE: Well, I don't like --

7 COMMISSIONER KENNEDY: Excuse me. You can't do that  
8 if there is an appeals process that is still in effect. There-  
9 fore, the appeals process itself has been waived.

10 MR. BICKWIT: I see, yes. The appeals process would  
11 go forward as it would on any --

12 COMMISSIONER KENNEDY: Not if the Commission had  
13 stepped in. It couldn't.

14 COMMISSIONER AHEARNE: I am asking, in that kind of  
15 a construction, Harold comes up and says: Let's take an  
16 operating license case. And he goes through this process.  
17 And for whatever reason, we have heard enough information from  
18 Roger Mattson and other people, and we think we have understood  
19 everything well enough that we don't say, Harold, you are  
20 wrong. We just thank him for coming.

21 He goes ahead and issues. And can someone then take  
22 that to the appeal board?

23 MR. BICKWIT: Yes.

24 COMMISSIONER AHEARNE: And the issuance of the  
25 operating license --

1 COMMISSIONER BRADFORD: On the same issue, John?

2 COMMISSIONER AHEARNE: On the issuance of the  
3 operating license. In other words, the licensing board would  
4 have said; We have resolved in favor, and the operating  
5 license can issue as far as this is concerned. Harold has  
6 gone through this process I have just described. Can someone  
7 who disagreed with the licensing board actions still take that  
8 to the appeal board?

9 COMMISSIONER BRADFORD: I think it depends upon  
10 what the Commission has actually done. If what we have done  
11 is to say that if the response planning component of this is  
12 all right --

13 COMMISSIONER AHEARNE: I don't see what the  
14 Commission would be saying. It would not be disagreeing with  
15 Harold, with the proposal to issue the license or Harold's  
16 decision to issue a license.

17 MR. BICKWIT: Yes, you could still go to the appeal  
18 board.

19 COMMISSIONER AHEARNE: After which you could still  
20 come to the Commission?

21 MR. BICKWIT: Yes, that's right.

22 COMMISSIONER AHEARNE: It sounds like -- if that  
23 could be constructed, I wouldn't find any real problem with  
24 that.

25 MR. SHAPAR: I have legal reservations about that

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1 process.

2 COMMISSIONER KENNEDY: Would you discuss those?

3 MR. SHAPAR: The Commission has a set of rules now  
4 in effect. Let me say initially that I think the basic idea  
5 can be done, but it is going to involve rules changes. I  
6 think one has to differentiate between those points. But the  
7 idea is to stop a license from being issued while the lessons  
8 from Three Mile Island are considered. There is no question  
9 that can be done.

10 One easy way of doing it -- and I am not suggesting  
11 it is the right way of doing it as a matter of policy -- is  
12 to suspend the immediate effectiveness rule and no license  
13 gets issued, if there is an appeal, until the Commission has  
14 reviewed the case. That accomplishes what you want.

15 ~~Now, the problems we have been discussing here, I~~  
16 don't think there is any really basic difference between Vic  
17 and me except on some, let's say some minor technical matters,  
18 is where the ex parte rule applies and what the appeals rights  
19 of the parties are.

20 Now you have got an appeals process on your books.  
21 You have got an ex parte rule on your books. And it says  
22 that staff, which is a party to the case, doesn't discuss a  
23 contested issue with the Commission. We can't tell whether  
24 some of these matters going to be discussed have been contested  
25 or not.

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1 I have got a basic problem with the fairness of the  
2 process of letting the staff come in and talk to the Commission.  
3 There is a formal appellate rule set forth in the regulations.  
4 It can be done, but it requires rules changes.

5 COMMISSIONER KENNEDY: You would have to suspend  
6 that rule, too .

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1 MR. SHAPAR: You can do it in terms of the objective;  
2 but doing it with the rules in place, leaves me a lot of  
3 trouble.

4 COMMISSIONER BRADFORD: If one suspended the  
5 immediate effectiveness rule, wouldn't you then have a situa-  
6 tion in which not only the particular issues that might be  
7 related to Three Mile Island could result in the holding up a  
8 license, but an appeal on any issue that was alive and well in  
9 the case, so that that would be whether a broad-brushed --

10 MR. SHAPAR: We could get a finer brush, depending  
11 on your objective.

12 There is no question about our ability to fashion  
13 a rule.

14 COMMISSIONER BRADFORD: The immediate effectiveness  
15 rule could be written in such a way that only certain classes  
16 of issues --

17 MR. SHAPAR: Yes.

18 COMMISSIONER AHEARNE: If you are prepared to define  
19 what the lessons from Three Mile Island are going to be  
20 restricted to.

21 COMMISSIONER BRADFORD: Then one comes back to Vic's  
22 preference to waiting to hear from Roger.

23 COMMISSIONER AHEARNE: I doubt that Mattson's task  
24 force is addressing all of the lessons that are going to have  
25 been learned. Their focus -- we had pointed out, not emergency

1 planning, for example.

2 MR. GOSSICK: Just limited parts of it, not the total  
3 picture.

4 COMMISSIONER AHEARNE: Yes.

5 MR. SHAPAR: You have touched three points that are  
6 all -- or we've all been around -- that the business is usual,  
7 which I don't think anybody wants.

8 COMMISSIONER KENNEDY: Aha. Now you define "business  
9 as usual," you define it in some way that is perjorative  
10 in character. I do not. I consider the business of this  
11 outfit to be the health and safety of the public. That is  
12 what the law says; that is what we do; and that is "business  
13 as usual."

14 MR. SHAPAR: I will pick my words more carefully.

15 COMMISSIONER KENNEDY: Thank you.

16 MR. SHAPAR: A moratorium at the other end of the  
17 spectrum -- you have discussed this in various ways -- and I  
18 think in the middle is some kind of intermediate point that  
19 gets around the immediate effectiveness rule, which is the  
20 major stumbling block.

21 Those are the three main points that the discussion  
22 has revolved around. They are all accommodatable in terms of  
23 rules changes. It is basically a policy option at this point.

24 COMMISSIONER KENNEDY: As a practical matter, aren't  
25 they essentially the same? It is a moratorium. It is only a

1 question of how long it runs.

2 MR. SHAPAR: No, because if the Commission can work  
3 quickly, even with the immediate effectiveness rule suspended,  
4 you are pretty close to business as usual.

5 MR. BICKWIT: I think one of your options is that  
6 you suspend the immediate effectiveness rule and staff is  
7 left to its own devices. Staff is not left to it's own  
8 devices if you keep that rule in place.

9 MR. SHAPAR: How is that? You have the -- all it  
10 means is if you suspend it, the Appellate's process goes the  
11 present route, without the license been issue. When the  
12 process is completed, the license issues.

13 MR. BICKWIT: Staff will have to issue the license  
14 under the immediate effectiveness rule if they can't persuade  
15 the Board to reopen the matter; once the Board has arrived at  
16 an initial decision to suspend the immediate effectiveness  
17 rule, staff is not compelled to issue the licence.

18 CHAIRMAN HENDRIE: As Peter points out, you then  
19 commit every case to go the full length of the appeals process,  
20 provided somebody wants to make an appeal, and on any subject  
21 whatsoever, whether it has any relation to the Three Mile  
22 Island-related matters, safety matters, or not.

23 And I must say, since the appeals process has a time  
24 that may run from a minimum of three or four months to a maxi-  
25 mum of that many years, it is not clear to me that I care to



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1 join in gratuitously, adding to LWAs and construction permits  
2 that kind of time increment without being pretty thoroughly  
3 convinced that, by God, that was necessary for the public  
4 safety.

5 (Commissioner Gilinsky left the hearing room.)

6 CHAIRMAN HENDRIE: It seems to me that it is a  
7 trifle strong medicine to deal with what I consider the rather  
8 unlikely possibility that some license will issue precipitously  
9 without adequate consideration of at least the short term, the  
10 things the staff feels ought to be done in the short term  
11 related to Three Mile Island.

12 The nature of the process is a little bit -- you  
13 remember that rule that people first proposed in part in  
14 jest in high energy physics, but it appears, in fact, to be  
15 a law of nature that everything that is not prohibited is  
16 compulsory. You know, there isn't reasonable middle ground;  
17 you either have the immediate effectiveness rule, but you  
18 remove that and, Christ, you have grafted onto the whole  
19 procedure literally a compulsory, many-month to many-year  
20 increment.

21 COMMISSIONER BRADFORD: When I started to advance  
22 that proposition, Howard pointed out, rightly I suspect, that  
23 one could limit the subject on which the immediate effective-  
24 ness rule was being modified.

25 CHAIRMAN HENDRIE: Just removing immediate

1 effectiveness, you could, in effect, rewrite it.

2 COMMISSIONER KENNEDY: And you suspend it for a  
3 certain class of matters.

4 MR. SHAPAR: There is another option that relates  
5 to that that you might want to think about, and that is --  
6 I guess I would put it in terms of A and B: A, you could have  
7 your General Counsel's Office monitor these cases, and any  
8 case where it looked like an initial decision was about to  
9 issue, about which you had Three Mile Island worries, you could  
10 order the Board to refer that matter up to the Commission for  
11 decision. You have that option under APA. Or you could is

12 Or you could issue an order to each Board in each  
13 case, asking that certain Three Mile Island issues -- which  
14 you would have to identify, I would think -- be referred to  
15 you or certified up to you for decision.

16 CHAIRMAN HENDRIE: Don't do that, because they we  
17 will have to deal with them in precisely the format that we  
18 don't want to have to deal with them, namely as part of the  
19 formal process, as I understand.

20 Now that he has gone, I can interpret what he means,  
21 I guess, pretty freely.

22 (Laughter.)

23 CHAIRMAN HENDRIE: But as I understood Vic, he was  
24 saying, "Look, LWAs, you would at least like to have the sense  
25 that for that particular site staff felt that there were not

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1 overriding geographical or demographic considerations which  
2 made it extremely unlikely that a satisfactory emergency  
3 planning array could be put in place in due time."

4 Now that is not something -- I suppose we could  
5 consider that in -- in each case, in the full adjudicatory  
6 framework, with parties making arguments, filing briefs, having  
7 cross-examination and all kinds of great things, but it wasn't  
8 my sense that that was the sort of examination that he had in  
9 mind.

10 I think it is reasonable for the staff to look at that  
11 kind of a thing and to make that kind of judgment. If we want  
12 to --

13 COMMISSIONER KENNEDY: It is equally reasonable for  
14 Boards to do the same thing.

15 CHAIRMAN HENDRIE: If the Boards want to consider it,  
16 why okay, we can look at it. I think, generally, from the  
17 Commission's standpoint, and the times involved in the overall  
18 process, it is helpful if the Commission's look at things can  
19 be a fairly efficient and focused way on a point like that  
20 without having to become embroiled in all kinds of procedural  
21 requirements and so on.

22 And it may be that we are not all that far from being  
23 able to have some discussions with the Staff, and not on  
24 specific cases, but on a generic basis.

25 What is your judgment, looking at the sorts of sites

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1 that are now -- might be eligible for LWAs in the near term?  
2 What is your judgment, as a class? Do they seem to fall  
3 clearly into a class where there seems little doubt that a  
4 satisfactory set of emergency plans can be worked out, or at  
5 least in principal can be worked out; or are there some that  
6 are one way, and some another?

7 So I think we at least might get to that -- some  
8 of those issues on a discussion with the staff on a sort of  
9 generic basis. That I think would be useful, and we ought to  
10 do.

11 The business of rules and beginning now to deal  
12 with each specific case before the Commission continues --

13 COMMISSIONER KENNEDY: Isn't this --

14 CHAIRMAN HENDRIE: It's the one that worries me.

15 ~~COMMISSIONER KENNEDY: Isn't this the sort of thing~~  
16 contemplated by the categorization discussion that is in this  
17 draft paper? That was my understanding of the draft paper,  
18 of what it was trying to say.

19 CHAIRMAN HENDRIE: That is the way I read it, that  
20 Roger would come up, and other people who have been working  
21 in other sections would come up as soon as they are ready, and  
22 we would have some discussions that might go on for some time,  
23 that we have some discussions and see what kind of issues fall  
24 where.

25 And it has always been my intent, furthermore, to --

1 to give some kind of recognition that plants that are 10 years  
2 -- in perspective of operating date, are in a different status,  
3 than plants that are, as far as construction is concerned at  
4 least, are a couple of weeks from being allowed to put some  
5 fuel in, et cetera, and be ready to operate; and that you might  
6 cut your list, depending on what stage the plants were, and you  
7 might indeed have a different short-term, long-term list  
8 for the plants that are close to operating licenses than you  
9 would for others.

10 It seems to me that would perfectly reasonable.

11 MR. BICKWIT: Mr. Chairman, one comment that was  
12 received in our office on this, other elements of the staff  
13 feel that the Lessons Learned Task Force may not -- their  
14 report may not represent the report of the entire staff --  
15 maybe the report simply of the NRR portion of the staff.

16 Under those circumstances, to resolve that, you can  
17 have them come in also, other elements of the staff.

18 CHAIRMAN HENDRIE: I would presume so.

19 I think we will need to do that, in any event, to  
20 develop the full range of subjects, because I don't think  
21 Roger and his immediate are necessarily dealing with all  
22 aspects of -- particularly in the emergency planning area.

23 COMMISSIONER AHEARNE: I am not sure how we are  
24 going to end up today, but I would like two items, if I could  
25 request, first -- and it is probably more from Lee's side -- I

1 would like a list of the -- and it is similar to what Roger  
2 is going to put together for the LWA, CP, and DL, the earliest  
3 possible date that the Boards might reach a conclusion over  
4 the next six months.

5 So, just to have it narrowly focused, what are the  
6 specific ones we are looking at?

7 And for the -- those that are in that six months,  
8 could I have the population zones around them?

9 And then, second, I would like, I guess, OGC to give  
10 me a procedure how one could extend the immediate effectiveness  
11 in such a way that they Director of NRR would have an opportu-  
12 nity to come to the Commission and review the issuance of  
13 whatever it is, each of three, in such a way that the Commission  
14 would have the ability to say no with regard to TMI-related  
15 items.

16 MR. BICKWIT: With regard to extending immediate --  
17 suspending -- you have received that, as to how to extend --  
18 how to suspend the immediate effectiveness rule.

19 COMMISSIONER AHEARNE: In other words, it is not so  
20 much as suspension of it as it is an extension of the time.

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1 MR. BICKWIT: All right.

2 COMMISSIONER AHEARNE: The distinction is that  
3 after you extend the time and you go through this review with  
4 us, the effectiveness rule still goes into place.

5 COMMISSIONER KENNEDY: When you do that, I would  
6 like you to append to it, however, an analysis then of the  
7 effect of that procedure on the appeals process and the rights  
8 of the applicant and other parties who have participated in  
9 the process up to that time.

10 COMMISSIONER AHEARNE: Yes.

11 MR. BICKWIT: That you have not received.

12 COMMISSIONER KENNEDY: How does the immediate  
13 effectiveness rule operate as to response planning now.  
14 Response planning of the type Vic is talking about is not an  
15 issue in these cases now.

16 COMMISSIONER AHEARNE: No, because the Commission  
17 took the position that -- I mean, the only case where it is  
18 an issue is the operating license.

19 CHAIRMAN HENDRIE: It is just whether they have  
20 an emergency plan that meets Appendix E.

21 COMMISSIONER AHEARNE: That is an operating license  
22 issue, isn't it?

23 COMMISSIONER BRADFORD: You see where this is  
24 taking you. If you suspend the immediate effectiveness rule  
25 as to response planning, it isn't going to make any difference,

1 because response planning --

2 COMMISSIONER AHEARNE: What I am trying to do is to  
3 construct a situation where -- that Harold has an opportunity  
4 to -- that before any of these things issue, that Harold has  
5 an opportunity to come before us and discuss that particular  
6 case, and we have an opportunity for Three Mile Island-related  
7 matters, such as the areas located, to say no.

8 COMMISSIONER BRADFORD: As to response planning alone,  
9 now -- and so far I don't think I have heard any other issues  
10 discussed that would apply to LWAs and CPs.

11 COMMISSIONER AHEARNE: That is not response planning.  
12 That is the ability to construct --

13 COMMISSIONER BRADFORD: I understand what you are  
14 saying. I am wrestling with a slightly different problem,  
15 which is, if the only issue we cared about was, with LWAs and  
16 CPs, was response planning --

17 CHAIRMAN HENDRIE: Which is upon the present  
18 Appendix E.

19 COMMISSIONER AHEARNE: It would be site location.

20 COMMISSIONER BRADFORD: That's right.

21 COMMISSIONER AHEARNE: For a plant that is going  
22 to come into operation ten years later.

23 COMMISSIONER BRADFORD: I am not saying the plan has  
24 to be there. It is a question of whether there can ever be  
25 an effective --



1 COMMISSIONER AHEARNE: That's right.

2 COMMISSIONER BRADFORD: Then there is another way  
3 to go about it, which is to say that, as to LWAs and CPs, we  
4 would simply require from now on a finding by the licensing  
5 board that in fact there be --

6 COMMISSIONER AHEARNE: The ability to do that.

7 COMMISSIONER BRADFORD: Yes. And then suspend the  
8 immediate effectiveness rule as to that finding.

9 COMMISSIONER AHEARNE: The only possible problem  
10 with that is that until such time as we have clarified what  
11 it is that we want --

12 CHAIRMAN HENDRIE: It is hard for them to --

13 COMMISSIONER AHEARNE: We can't, I think, make a  
14 subjective judgment. It is very difficult to tell the board,  
15 you must make this finding, without having fleshed out what  
16 it is that they have to find.

17 CHAIRMAN HENDRIE: Or what sort of things that  
18 response plan may have to have in it.

19 COMMISSIONER AHEARNE: Yes.

20 COMMISSIONER BRADFORD: There may be a few similar  
21 areas in which they face that, a few areas in which they face  
22 a similar problem.

23 COMMISSIONER KENNEDY: It seems to me, Peter, that  
24 that is the reasonable way to look at the problem. It depends  
25 entirely upon how one visualizes the problem. And if one

1 defines it in terms of a specific need that must be met in  
2 order -- prior to the issuance of a particular category of  
3 license, then that's fine. One can define that, decide what  
4 it is and instruct the board accordingly, and all boards will  
5 then proceed in that way and will reach a conclusion, make a  
6 finding in this regard, and then things proceed as they would  
7 under the rules.

8 Now, if that isn't the purpose, if the purpose is  
9 for the Commission itself to directly involve itself in the  
10 issuance of licenses, then that is a different question, and  
11 there is no sense in mixing the two things up. I think if  
12 the latter is the whole point, then we need to suspend certain  
13 rules and call for certain things to be done. And trying to  
14 mix the two things up and pretend that you are doing one thing  
15 while you are doing the other doesn't do anything but confuse  
16 the issue, and I think create a legal morass which is going  
17 to create serious problems, A, for the boards, B, for the  
18 Commission, and, C, then in the courts.

19 CHAIRMAN HENDRIE: I tell you what. The longer-term  
20 direction of this line of discussion is not so clear to me at  
21 the moment. I think it would be useful to have the things  
22 that John has requested from the counsel's office. And then  
23 I think we can schedule some further discussion. It seems to  
24 me impractical that, at 4:29 on a Friday afternoon, in view  
25 of the assorted directions this discussion has gone, for me

1 to attempt to discover a consensus and ask for actions here.

2 Furthermore, I must admit that, although the body has  
3 not made it, I am in spirit with Vic, wherever he may have gone.

4 (Laughter.)

5 At least to the extent of his getting out of the room.

6 (Laughter.)

7 COMMISSIONER BRADFORD: I missed a couple of minutes.  
8 It seems as though we were discussing mainly the last sentence  
9 in brackets at the end of the policy statement.

10 CHAIRMAN HENDRIE: That's right, you weren't here  
11 when we agreed to issue the seven year term operating licenses.

12 (Laughter.)

13 I knew it.

14 COMMISSIONER BRADFORD: I'm sure you didn't do  
15 anything like that.

16 COMMISSIONER KENNEDY: Mostly because they weren't  
17 here.

18 COMMISSIONER BRADFORD: Much of the rest of that  
19 statement was all right with me, but I assume we have reached  
20 no position on any of it?

21 CHAIRMAN HENDRIE: Yes.

22 I think for most of us, much of that statement  
23 was not objectionable. But to a considerable extent that may  
24 be true because it also didn't go very far in any direction.

25 (Laughter.)

1 As a Commission policy statement, perhaps it is  
2 only -- the information content was that the Commission did --  
3 it didn't offer very clear guidance in the future, and --

4 MR. BICKWIT: In defense of it -- and I don't feel  
5 obliged --

6 CHAIRMAN HENDRIE: I don't see why you need to defend  
7 it.

8 (Laughter.)

9 MR. BICKWIT: It seems to me that the two options  
10 mentioned in the statement are the two options that the  
11 Commission has been discussing, and that the relevance of  
12 what we are being asked to do, as I read it, is relevant at  
13 least for some, as to which of those two options would be  
14 taken.

15 ~~COMMISSIONER KENNEDY:~~ You mean the last sentence?  
16 I have already stated my view. I would delete it and add  
17 earlier --

18 CHAIRMAN HENDRIE: I never gave you a chance to --

19 COMMISSIONER KENNEDY: It doesn't matter. When and  
20 if we ever come to the subject, we will.

21 CHAIRMAN HENDRIE: We will do that the next --

22 MR. BICKWIT: I assume that Commissioner Ahearne's  
23 assignment had something to do with the position he might be  
24 inclined to take on those two options.

25 COMMISSIONER AHEARNE: It is probably a dangerous

1 conclusion to reach when I ask a question it means that that  
2 indicates a position I will take. It does indicate that I am  
3 interested in the answer to the question.

4 I guess it becomes very difficult. I was thinking  
5 about Peter's suggestion that what you are asking, are trying  
6 to make, one way or the other, either on a judgment basis by  
7 the Commission with advice from the staff or whatever, it's  
8 the question whether -- and this is for LWAs and CPs and the  
9 early stage things -- whether there is anything about a given  
10 site, the geography, the demography, that are such as to make  
11 it rather unlikely that effective response plans can be even-  
12 tually worked out.

13 And I guess, just trying to think whether that is  
14 a practical charge to lay -- the answer to that is a practical  
15 thing to lay upon the boards, and I guess if I were a board  
16 member, why, I would have to ask: Give me some idea what you  
17 think is an effective response plan. And I guess the difference  
18 between our belief that we might be able to make that on a  
19 judgment basis and the difficulty boards would have is that  
20 I think, from the discussions we have had, we, I think, are  
21 beginning to form, each of us, to form some sort of gut  
22 feeling as to what is likely to be wanted in those things;  
23 whereas the boards I doubt are in that position and would need  
24 some kind of construction.

25 I am wondering whether you felt it useful to think

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1 about that kind of an approach. Maybe not.

2 COMMISSIONER BRADFORD: That opens the question for  
3 discussion before the boards, and presumably the staff would put  
4 on the case --

5 CHAIRMAN HENDRIE: Yes.

6 COMMISSIONER BRADFORD: And other people would put  
7 on cases, so that before the board had arrived at an opinion  
8 there would have been at least a thorough airing --

9 CHAIRMAN HENDRIE: They would have factored in the  
10 question which Vic's feeling, at least --

11 COMMISSIONER KENNEDY: And at that stage, it would  
12 not be judging a plan, but only the feasibility of constructing  
13 such plan and some foundation at some time long into the  
14 future. For one thing, it would probably involve highway  
15 networks and roads that don't even exist at the time the ques-  
16 tion is being raised.

17 CHAIRMAN HENDRIE: It still seems to me that one  
18 would have to provide with that at least certain minimum ele-  
19 ments that we all thought would be in the effective response  
20 plan and that may be very difficult to frame at this particular  
21 time with -- we are trying to move forward with a proceeding on  
22 that matter.

23 Would we be prejudicing that proceeding in improper  
24 and unfortunate ways if we attempted to set out some of the  
25 elements of the response plan?

1 COMMISSIONER BRADFORD: We could certainly call it  
2 "interim."

3 MR. BICKWIT: There would be no legal propriety.

4 COMMISSIONER KENNEDY: There is already in existence  
5 a whole series of considerations and conditions for such  
6 plans.

7 COMMISSIONER BRADFORD: But those are required --  
8 they are not really the elements of determining whether or  
9 not --

10 COMMISSIONER KENNEDY: Agreed.

11 CHAIRMAN HENDRIE: Well, one might contemplate such  
12 a thing, but I think the difficult part -- I can write the  
13 question to ask the boards to ask themselves, but providing  
14 that what I think is essential guidance on what an effective  
15 response plan ought to contain, so they can make the judgments  
16 about whether the site is a hopeless one to ever get there or  
17 not. I think that is the hard part.

18 I don't know whether to ask you to think about that  
19 or not.

20 MR. KENNEKE: It is pretty hopeless. We have the  
21 checklist. And the question is, you also have a rule to put  
22 in place to allow thinking beyond the LPZ. All the boards are  
23 supposed to take that into account?

24 CHAIRMAN HENDRIE: We are talking -- we are, in  
25 effect, asking the boards to make a horseback judgment on the

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1 practicalities of the requirements not yet formally laid down.

2 COMMISSIONER AHEARNE: That is what the rulemaking  
3 will end up laying down.

4 COMMISSIONER KENNEDY: They probably can make the  
5 gross judgment and the no-go or go sorts of terms. They can  
6 say it is perfectly clear that if you put the plant in Camp Hill,  
7 Pennsylvania, which happens to be exactly on the outskirts of  
8 Harrisburg, and immediately across the river from the city  
9 itself, indeed, right across from the capitol, you are probably  
10 going to have a much more serious problem on your hands than  
11 if it is down river 20 miles.

12 And at some point they can say: No, if you must  
13 consider evacuation in a low population zone, the answer is no;  
14 it is not feasible because you couldn't do it.

15 I am not suggesting that particular example means  
16 anything.

17 MR. KENNEKE: The crucial element is demography.  
18 The siting task force has been looking at this. Before the  
19 siting task force, the staff has been looking at the question  
20 of the need for a population density limit.

21 COMMISSIONER BRADFORD: Geography is a factor, too.  
22 You could put a plant at the head of a peninsula with population  
23 at the end of it, and it would have to come toward it to get  
24 away from it.

25 MR. KENNEKE: That was the issue in connection with



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1 the ALAB 390, Seabrook, that led to the need for the rule to  
2 look beyond the LPZ. But the point that has always come back  
3 is that, since the staff adopted internally the guideline of  
4 looking seriously at plants over the 500 per square miles,  
5 there has not been a submittal of a case of that sort. So now,  
6 if you are talking realistically, by looking at these things  
7 for some factor that might look up, you would be looking first  
8 at that and then, second, at the geographic situation. But you  
9 have had the population to begin with, because they are already  
10 looking at the geographic as a separate issue.

11 I don't see anything new coming up. And as I under-  
12 stand where the siting policy task force is, they would be  
13 talking about whether or not to have fixed guidelines or not,  
14 but they are not prepared at this point to say what that  
15 number would be. If you went in that direction, you would  
16 be embarking on a very vague process here.

17 CHAIRMAN HENDRIE: Let's get the answer to John's  
18 questions, and you might think between you a little bit further  
19 about this question of whether in fact it might be possible  
20 to map out a few elements and do the job that way. I don't  
21 know. Maybe not.

22 All right. Thank you very much.

23 (Whereupon, at 4:40 p.m., the meeting was adjourned.)

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