

ORIGINAL

PDR

9.7
w 2/encl.

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

PUBLIC MEETING

CONTINUATION OF DISCUSSION OF ISSUES IN RESTART OF TMI-1

POOR ORIGINAL

Place - Washington, D. C.

Date - Tuesday, 31 July 1979

Pages 1-42

842 044

Telephone:
(202) 347-3700

ACE - FEDERAL REPORTERS, INC.

Official Reporters

444 North Capital Street
Washington, D.C. 20001

7908210057

NATIONWIDE COVERAGE - DAILY

DISCLAIMER

This is an unofficial transcript of a meeting of the United States Nuclear Regulatory Commission held on Tuesday, 31 July 1979 in the Commission's offices at 1717 H Street, N. W., Washington, D. C. The meeting was open to public attendance and observation. This transcript has not been reviewed, corrected, or edited, and it may contain inaccuracies.

The transcript is intended solely for general informational purposes. As provided by 10 CFR 9.103, it is not part of the formal or informal record of decision of the matters discussed. Expressions of opinion in this transcript do not necessarily reflect final determinations or beliefs. No pleading or other paper may be filed with the Commission in any proceeding as the result of or addressed to any statement or argument contained herein, except as the Commission may authorize.

842 045

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

PUBLIC MEETING

CONTINUATION OF DISCUSSION OF ISSUES IN RESTART OF TMI-1

- - -

Room 1137
1717 H Street, N. W.
Washington, D. C.

Tuesday, 31 July 1979

The Commission met, pursuant to notice, at 1:10 p.m.

BEFORE:

- DR. JOSEPH M. HENDRIE, Chairman
- VICTOR GILINSKY, Commissioner
- RICHARD T. KENNEDY, Commissioner
- PETER A. BRADFORD, Commissioner
- JOHN F. AHEARNE, Commissioner

PRESENT:

Messrs. Bickwit, Ostrach, and Crane.

PROCEEDINGS

(1:10 p.m.)

1
2
3 CHAIRMAN HENDRIE: Why don't we kick off. The
4 subject is the TMI-1 order.

5 We have some comments from the general counsel to
6 assist us in getting on with the discussion of the order. I
7 think, Len, do you want to tell us where you have gone here,
8 and then we will move on from there?

9 MR. BICKWIT: Yes. In this memo, we have attempted
10 to summarize the results of Friday's discussion and draft
11 some language in accordance with agreements that were reached.
12 Where no agreements were reached, we tried to draft up the
13 options.

14 We have also included some options for the items
15 that were not addressed on Friday.

16 As the first order of business, we suggest that a
17 draft order which would extend the period of time for issuance
18 of the supplementary order to the July 2nd order, on the
19 assumption that you won't finish up by the expiration period
20 or the required period for a new order, which is tomorrow.
21 The draft order is Attachment A to the memo. And we have a
22 few proposed additions to that draft order, if the Commission
23 is included to go ahead with something of that nature.

24 COMMISSIONER GILINSKY: Was that on the assumption
25 that we continue with the research briefing, that you didn't

1 think we could make it?

2 CHAIRMAN HENDRIE: I'm not sure whether we will make
3 it by going through the afternoon. I have had some expression
4 of interest and a little time to think about some of these
5 things, and we might or might not reach a majority decision
6 on an order if we cancel the briefing. But I don't have any
7 place to take the budget.

8 I think we need to go ahead with that briefing, to
9 have such discussion as we can reasonably have between now and
10 2:30, and to continue with TMI-1 meetings, which I will
11 sandwich in. There may be some further work the counsel could
12 do for us leading out of today's discussion, just as the
13 memoranda in hand flowed out of the last discussion.

14 COMMISSIONER GILINSKY: It seems to me there's a good
15 deal to be said. We ought to try to make these deadlines if
16 we possibly can, and I think there is as much money involved
17 here as in the research budget.

18 It would seem to me not inappropriate to push on.

19 CHAIRMAN HENDRIE: Well, since I have reason to
20 believe that there won't be a unanimity of view on the
21 Commission, and since on other occasions and on other subjects
22 we have all variously deferred to one another where somebody
23 wanted more time to mull over circumstances, why, I don't really
24 feel that we can make it.

25 What I do have in mind -- I don't know whether we

1 can manage the meeting tomorrow or Thursday -- we will if we
2 can manage it. But in particular, what do people's schedules
3 look like on Friday afternoon? Now, Peter has got to go away
4 Thursday afternoon and Friday morning, but could be back.

5 COMMISSIONER AHEARNE: I would suggest tomorrow, if
6 we could. We're scheduled tomorrow afternoon for a preliminary
7 budget markup. And I would suggest, as far as I am concerned,
8 before doing any preliminary budget markup, I would at least
9 like to take a half a day to think through, having heard all
10 of the budget reviews. So I would suggest tomorrow afternoon
11 is good.

12 COMMISSIONER BRADFORD: I can't do that. I've got
13 to be in East Lansing tomorrow night -- no, I'm sorry. That's
14 Thursday night.

15 CHAIRMAN HENDRIE: So tomorrow afternoon, as I recall,
16 it is Wednesday afternoon. I think everybody is here. Why
17 don't we try that?

18 Dick, we're talking about further meetings on TMI
19 and an expression of interest on pressing forward. It looks
20 as though we could put in some substantial time tomorrow
21 afternoon by doing without that markup session or all or a good
22 piece of it. Is that too soon for you?

23 COMMISSIONER KENNEDY: I don't know what my calendar
24 shows. Otherwise it's fine.

25 CHAIRMAN HENDRIE: I think if you can manage it,

1 Peter, let me know as soon as you can what the difficulties
2 are on Friday.

3 COMMISSIONER BRADFORD: If the rest of you can be
4 here, I can get back.

5 CHAIRMAN HENDRIE: Okay, let's try and do that.

6 Sam, let us note here that we will go to TMI-1
7 tomorrow afternoon and Friday afternoon.

8 Now, I guess the Friday afternoon session, Sam, why
9 don't we put budget markup session or TMI-1, because if we
10 don't need it for one we will need it for the other. And if
11 you have trouble with that, Peter, why, give me a holler.

12 Vic, you are going to be away Thursday afternoon as
13 well, but you are going to be back on Friday?

14 COMMISSIONER GILINSKY: I don't think so.

15 CHAIRMAN HENDRIE: Well, why don't we go ahead. I
16 think it would be useful as a first step, since, as I say, I
17 am not inclined to think that it will take us a couple of
18 more days discussion. I think we ought to amend as we see fit
19 the extension order to the 10th and agree on the language of
20 that, and turn to the other issues back in the base order.

21 Len, did you say you had things to add to it or
22 subtract from it?

23 MR. BICKWIT: Yes. As drafted, the reference in the
24 first sentence to "further order" may be confusing when it's
25 put together with the reference in the second sentence to

1 further order, since we mean something different by that. So
2 to differentiate, we would say at the end of the first sentence,
3 "further order of the Commission itself permitting restart,"
4 period, and then strike "further" in the second sentence. So
5 that the second sentence would read: "Provided that it would
6 also issue an order within 30 days." And in the third sen-
7 tence strike "further" again.

8 COMMISSIONER KENNEDY: I would have struck most of
9 the sentence. It doesn't even necessarily represent an adequate
10 description of the facts.

11 MR. BICKWIT: Our feeling was that it did.

12 COMMISSIONER KENNEDY: I think all it says is the
13 Commission has not yet completed resolution of all the legal
14 and technical issues involved, accordingly. I don't wish to
15 characterize the progress or lack thereof, nor do I think it
16 relevant.

17 COMMISSIONER AHEARNE: I have no problem with
18 striking that out.

19 CHAIRMAN HENDRIE: Any objection to doing without
20 "substantial practice"? "The Commission has not yet completed,
21 accordingly," et cetera. Good enough?

22 Let's see. Can I ask for a decision of the
23 Commission?

24 COMMISSIONER KENNEDY: Are we finished with that
25 sentence? I have another change.

1 CHAIRMAN HENDRIE: Go ahead.

2 COMMISSIONER KENNEDY: I think verbosity is not
3 needed, either. I think the last sentence need only say:
4 "Accordingly, the Commission hereby extends the period of time."

5 CHAIRMAN HENDRIE: What would you recommend now?
6 "Accordingly, the Commission" --

7 COMMISSIONER KENNEDY: "Extends the period of time
8 until Friday, August 10th.

9 CHAIRMAN HENDRIE: Objections from anyone? The
10 legal staff, Commissioners, what have you?

11 MR. BICKWIT: No, that is perfectly legal.

12 COMMISSIONER KENNEDY: So now it is not only factually
13 correct, but legal.

14 CHAIRMAN HENDRIE: Let's see. Do we have any other
15 additions or subtractions?

16 (No response.)

17 CHAIRMAN HENDRIE: Let's see. We will need this
18 order -- I think we're going to need this order, because by
19 the time you get there, even if we were in complete agreement
20 tomorrow afternoon -- I think we ought to just vote for it with
21 the understanding that if it becomes unnecessary because we
22 all agree with one or another of this this afternoon in
23 15 minutes, why, it won't go out.

24 On that basis, I would ask us to -- all those in
25 favor of the extension in the order as amended, to indicate

1 by saying aye's.

2 (A chorus of ayes.)

3 CHAIRMAN HENDRIE: So ordered.

4 Now, back to substantive matters. Let's see. Of
5 the issues listed we have hacked away at, we had a sort of
6 tentative agreement on the language involved in the Commission
7 review of licensing board decisions on cross-examination. On
8 discovery it was kind of a split proposition. It was a 2-1-1
9 division of the house.

10 Why don't we review that and see if we can either
11 confirm in the way that came out or come to another decision?
12 Len, would you help us distinguish between the options, and
13 let's see where people would like to move.

14 MR. OSTRACH: There are three options on discovery.

15 COMMISSIONER KENNEDY: Before we get to this, one
16 minor thing. In passing by the language which is included in
17 A and B of Roman II, I assume that we are not signifying
18 assent to or acquiescence in this as language. I am not
19 prepared to give that.

20 CHAIRMAN HENDRIE: Certainly not in any finally and
21 irrevocable sense.

22 COMMISSIONER KENNEDY: Fine. That's all I wanted to
23 know. That's fine.

24 COMMISSIONER AHEARNE: But Dick, do you have some
25 significant substantive matters?

1 COMMISSIONER KENNEDY: I want to have the opportunity
2 to look at it, which I have not had.

3 MR. OSTRACH: There are three options for discovery.
4 The first would be to compile a repository of all information
5 about the Three Mile Island accident and to require parties
6 in the TMI proceeding to resort first to that information
7 compilation before resorting to any discovery against one
8 another. Any party who then does wish to employ the
9 discovery process against another party would have to satisfy
10 the licensing board that the information he or seeks is rele-
11 vant to the proceeding, is not available in the data compila-
12 tion, and that permitting the discovery will not result in an
13 undue delay or impose an undue burden on any party.

14 And at the last session we discussed that our
15 intention in using the word "undue" there was delay or burden
16 out of proportion to the relevance of the information sought.

17 The second option would be to provide that the
18 Commission's normal rules for discovery in adjudicatory
19 proceedings would apply to this TMI-1 proceeding. It would
20 also create a compilation which would be available for the
21 parties, and it would also provide that it would be an adequate
22 response to a discovery request to say that the information
23 sought is available in the compilation, provided the person
24 asking for the request provides sufficient information to
25 locate the document.

1 This would then be concluded by saying the licensing
2 board may, and when appropriate should, in the interest of
3 justice, limit the extent or control the sequence of discovery
4 to prevent undue delay or imposition of an undue burden on any
5 party. That is a power that it already has under the
6 Commission's regulations.

7 COMMISSIONER GILINSKY: Is that a direct cite to
8 the regulations?

9 MR. OSTRACH: It is not a direct quotation from the
10 regulations. I believe each of the words is in the sections
11 of the regulations that we refer to. We move them around a
12 little bit.

13 COMMISSIONER AHEARNE: Could you explain that a little
14 bit more when you say you move them around?

15 MR. OSTRACH: I can read you the regulations.
16 2740(c) provides for protective orders. It says that "In a
17 discovery proceeding the presiding officer may make any order
18 which justice requires to protect a party or person from
19 annoyance, embarrassment, oppression or undue burden or expense."

20 COMMISSIONER BRADFORD: How has "embarrassment" been
21 defined? No, don't worry. That is just an example that comes
22 to mind.

23 MR. OSTRACH: The licensing board has power to
24 provide the discovery, except certain matters may not be
25 inquired into. The scope of the discovery may be limited to

1 certain matters or the discovery won't be on certain subjects.

2 2740(d) provides that: "The presiding officer, for
3 the convenience of parties and witnesses, and in the interest
4 of justice, may control the order by which methods of discovery
5 or the sequence by which methods of discovery may be used."

6 MR. F. WIT: I think the short answer is when we
7 use the word "may" that is parroting the order; when we say
8 "should" that is going a slight step beyond.

9 COMMISSIONER KENNEDY: What's the difference between
10 the second and third?

11 MR. OSTRACH: The last sentence.

12 CHAIRMAN HENDRIE: No. 3 simply lacks the admonition
13 that the licensing board may and when appropriate, et cetera,
14 et cetera.

15 COMMISSIONER KENNEDY: I know. But I'm asking if
16 that is really a difference, because the regulations call for
17 that anyway.

18 MR. BICKWIT: The regulations say "may." This says
19 "where appropriate, should."

20 COMMISSIONER KENNEDY: You visualize that as a
21 significant difference?

22 MR. BICKWIT: No.

23 MR. OSTRACH: Its only significance might lie in the
24 fact that in normal practice licensing boards, like federal
25 courts, do not participate at all in discovery proceedings

1 unless the parties really bring an issue to them, and they
2 view their role as essentially passive. By pointing out to a
3 licensing board the availability of these alternatives, it
4 might be more willing to take an active role in monitoring
5 discovery.

6 But certainly it already has each of these powers
7 and there was no intent here to give it any powers that it
8 otherwise would not have.

9 COMMISSIONER GILINSKY: It seems kind of odd to be
10 reminding them of the rules, unless we are in fact instructing
11 them to take certain actions. I mean, do you interpret this
12 as an instruction or just a reminder?

13 MR. BICKWIT: An instruction, where appropriate.

14 COMMISSIONER BRADFORD: Where appropriate in the
15 interest of justice.

16 COMMISSIONER KENNEDY: There's an interesting column
17 in this morning's "Washington Post" concerning the word
18 "appropriate." It is instructive in itself.

19 CHAIRMAN HENDRIE: Other comments?

20 Well --

21 COMMISSIONER AHEARNE: Someone writing in to us,
22 bringing the board in into the issue of trying to decide ques-
23 tions of when discovery should be allowed and to what extent
24 would, rather than expedite, could very well just bring on a
25 new morass of paper and slow things down.

1 MR. BICKWIT: We addressed that in our previous
2 memo, and it does add and subtract. In our view, it would
3 speed things up rather than slow them down. It is not as if
4 the board played no function in discovery and the rules are
5 no motions or pieces of paper in the absence of this. It
6 deals with it at a different stage.

7 COMMISSIONER GILINSKY: Let me ask: If this is in
8 fact not a reminder, but an instruction, why would you give
9 different instructions to this proceeding than in other
10 proceedings?

11 MR. BICKWIT: My answer would be that, first of all,
12 it is an instruction that I would be comfortable giving in
13 every proceeding.

14 Secondly, in this case there is no denying that there
15 is sentiment on the Commission to move as quickly as possible,
16 in light of the fact that this plant is down and there is feel-
17 ing that if it should operate, the proceeding ought to move as
18 quickly as possible to so allow it.

19 MR. OSTRACH: There is the point that this is a plant
20 shut down subject to an immediate order. These people have
21 not had the benefit of a hearing before the order ordering
22 shutdown was conducted.

23 This is simply a reminder, if any, to the board that
24 it should keep that fact in mind.

25 COMMISSIONER KENNEDY: That reinforces my thought

842 058

1 that the counsel's acceptance of that principal as a general
2 principal is a wise one. I couldn't imagine distinguishing
3 this from other cases in the interest of justice.

4 COMMISSIONER BRADFORD: That was exactly my diffi-
5 culty. It really does seem to me that unless one is somehow
6 underlining this proceeding and saying, in this one we want
7 you to emphasize this section more than you normally do, there
8 just isn't any reason for including it. Now, I do see it
9 working both ways. That is, if you pick through the right
10 phrases you get something to the effect that the board may,
11 when it's appropriate in the interest of justice, prevent
12 burdens in discovery of any party against any other party.
13 And there are obvious situations where they shall.

14 That doesn't speak to the question of whether the
15 hearing will move more or less quickly, but whether one or
16 more parties will be more or less burdened. But that too is
17 already in the rules.

1 CHAIRMAN HENDRIE: I think there are distinguishing
2 features that make the promptness aspect, bring it a little bit
3 more to the fore here. The normal CP case or OL case, why, the
4 parties are well aware when these things will arrive at appro-
5 priate stages for hearing. So, discovery could be carried out
6 over a reasonable period while other things are going on. That
7 may or may not be the case here.

8 We are sort of starting from scratch, and I at least
9 have expressed on several occasions concern over the length of
10 time that apparently is required in this proceeding or will be
11 required in this proceeding to come to a decision. It seems
12 to me that whether it is up, down, or sideways, that we owe, as
13 expeditious a decisionmaking process to the parties as is con-
14 sistent with fair and adequate treatment of the issues.

15 Let me resound the 2-1-1 split, since there is an
16 additional vote, and see if I can develop a direction out of
17 this.

18 Vic, you didn't get your two cents' worth in before.

19 COMMISSIONER GILINSKY: Well, I would think the usual
20 rules would apply. I certainly don't object to a general state-
21 ment in the order saying we would like this to be a proceeding
22 which is handled with some discipline, but as for the specific
23 questions of discovery, I would treat it as we have handled
24 other proceedings.

25 CHAIRMAN HENDRIE: So that would put you at three or

1 perhaps two.

2 Okay, we have managed, then, either a 2-2-1 or 2-1-2.
3 Could I encourage, in the interest of seeing whether we could
4 move this point, would people be interested in converging on
5 Option 2, since it is in the middle?

6 COMMISSIONER KENNEDY: I would not.

7 CHAIRMAN HENDRIE: Let me sample the other side of
8 the thing.

9 COMMISSIONER BRADFORD: What were you doing?

10 CHAIRMAN HENDRIE: I was trying to see whether people
11 would be interested in moving off the extremes toward the middle.

12 COMMISSIONER BRADFORD: Toward Option 3?

13 CHAIRMAN HENDRIE: Toward Option 2. You're trying to
14 count me into a corner. And Commissioner Kennedy will continue
15 to feel that the first option is the right one.

16 Do I get any other sentiment?

17 John has stood there since the beginning, so I guess
18 he will continue.

19 Vic, did you ever decide between 2 and 3?

20 COMMISSIONER GILINSKY: Well, I would go with 3.

21 COMMISSIONER BRADFORD: Are either of you interested
22 in moving up to 2, to see if I can develop a consensus in the
23 middle?

24 COMMISSIONER BRADFORD: I would be interested in know-
25 ing what John is considering.

1 CHAIRMAN HENDRIE: If he goes away, that could develop
2 a majority somewhere else.

3 COMMISSIONER BRADFORD: I guess I should have met with
4 him before the meeting.

5 COMMISSIONER AHEARNE: Yes. 2 still seems to me to be
6 the appropriate approach. Perhaps Peter and I can meet after
7 the meeting. But I would still think 2 is the right way.

8 CHAIRMAN HENDRIE: Well, let's see if I can't pry
9 somebody loose to move toward the center.

10 COMMISSIONER GILINSKY: Well, it's obviously going to
11 be 3, with or without that sentence. We just have to work it
12 out.

13 CHAIRMAN HENDRIE: Or the first option.

14 COMMISSIONER GILINSKY: That seems kind of unlikely;
15 isn't it?

16 CHAIRMAN HENDRIE: I don't know. It is 2-1-2. If
17 you have a reason why it should more likely move down than up,
18 why, help me along.

19 Well, let's leave it 2-1-2, for the moment.

20 How about the satisfactory completion of required
21 actions. We agreed last time that the condition that obtains
22 for an OL is a reasonable way to leave it. And this is counsel's
23 version of the right way to reflect that.

24 The immediate effectiveness question --

25 MR. BICKWIT: Mr. Chairman, before you move on, let

1 me just make two points about that language so you are clear.
2 In the draft there is reference to the fact that this satisfac-
3 tory completion shall not be an issue in the hearing, and we
4 understand this language as modifying that language, so that it
5 would be possible for this to become at issue at the hearing at
6 the board's discretion.

7 And secondly, it is not precisely the same as OL
8 treatment, the way we had drafted it, because the OL rule that
9 we are referencing allows for operation prior to satisfactory
10 completion of some items, and we had understood in your previ-
11 ous discussions that you wanted completion as a condition to
12 operation.

13 COMMISSIONER KENNEDY: That's not what I visualized.
14 As a matter of fact, I wrote in my notes that we were going to
15 proceed on the same basis as with an OL.

16 MR. BICKWIT: It was unclear to us. That is why I
17 raised the point. It was unclear to us exactly where the Com-
18 mission was.

 COMMISSIONER KENNEDY: At least now my view is clear.

19 COMMISSIONER BRADFORD: In the case of an OL, they can
20 proceed without satisfactory completion; that is, completion
21 satisfactory to the staff. So, you're talking here not about
22 having -- or in the OL case, not about having the board be
23 having -- or in the OL case, not about having the board be
24 satisfied, but having the staff be satisfied?

25 MR. BICKWIT: Yes. Unless the board wants to be

1 satisfied, in which case it can be.

2 Let me read from 50.57(b). It says: "Each operating
3 license will include appropriate provision with respect to any
4 uncompleted items of construction, and such limitations or con-
5 ditions as are required to ensure that operations during the
6 period of the completion of such items will not endanger public
7 health and safety. It is contemplated that operation would be
8 allowed prior to completion."

9 COMMISSIONER BRADFORD: The way I understood where we
10 were last time is that we were putting the board on the same
11 relationship to operations as a board in an OL proceeding, but
12 that as a separate matter we have said that the staff had to be
13 satisfied as to the completion of the actions. And in that
14 sense, it would be different from an OL proceeding in which the
15 staff would have some option to permit operation as long as the
16 staff were satisfied that interim steps could be taken.

17 MR. OSTRACH: In one sense, this is different from an
18 operating license proceeding, but in another it isn't, because
19 in a sense, the world of actions is divided into short-term
20 actions and long-term actions. And with respect to the long-
21 term actions, those are like the actions during which opera-
22 tions --

23 COMMISSIONER BRADFORD: What you're saying is that
24 decision is being made at the point at which we can't --

25 MR. OSTRACH: Yes, where the licensing board cuts that

1 up. And once you analyze it that way, I think the parallel with
2 the OL stage is exact. The board approves the taking of certain
3 requirement of certain actions, long and short term. As to the
4 short-term ones, the staff says they are completed, and then
5 with the Commission's review that we discussed, prior operation
6 can begin while the long-term actions are being completed.

7 So, I believe the language is essentially consistent
8 with the OL procedures.

9 COMMISSIONER BRADFORD: Was there any particular
10 reason for saying the board "shall have authority to require
11 staff," as distinguished from requiring all parties to perform
12 detailed steps?

13 MR. BICKWIT: Only that, in the normal case, staff
14 would be the ones certifying completion. The board would
15 naturally turn to staff for such advice.

16 MR. OSTRACH: Actually, there is another reason, as
17 well. We were considering a situation where the board was going
18 to order certain actions to be taken, contingent only on staff
19 certification, and the board might want to know, since the staff
20 would have that authority, what staff was going to view as the
21 steps that it was going to approve.

22 For comparison purpose, the parties might want to com-
23 ment on what staff proposed as the detailed steps necessary to
24 effectuate it, but it is only the staff, it is describing what
25 they intend to require. That is why it is only the staff that

1 is asked, and the parties would then comment, "No, that won't
2 be enough."

3 COMMISSIONER BRADFORD: The only reason I think it
4 may matter is: In this case, it's at least possible that emer-
5 gency preparedness could play a larger role than it does in most
6 OL situations, and you have at least a possibility of parties
7 such as the surrounding towns or the state or others who are
8 going to have a role to play in the programs. That might be
9 of value, too.

10 MR. OSTRACH: We did not intend to prevent those par-
11 ties from giving their views on what they thought would be
12 sufficient steps. We thought that would be best done in terms
13 of commenting on what staff felt it was going to accept as
14 satisfactory completion.

15 MR. BICKWIT: In the second sentence it says: "With
16 respect to any uncompleted items, the board shall have authority
17 to take such actions or impose such limitations or conditions."
18 By this reading, it will be capable of going to anyone it wants
19 in order to guide it in the imposition of such limitations and
20 even to have a hearing on the question.

21 CHAIRMAN HENDRIE: Other comments?

22 (No response.)

23 CHAIRMAN HENDRIE: If we leave the last phrase on
24 there, indeed, the short-term actions which are specified in
25 the order are aimed at completion before restart.

1 COMMISSIONER KENNEDY: Those are consistent with the
2 actions from the other B&W reactors.

3 COMMISSIONER AHEARNE: Except in that table.

4 CHAIRMAN HENDRIE: They are consistent, Dick, provided
5 we recognize that there has been a sort of an ongoing develop-
6 ment, and that because this one comes later it has more in the
7 initial stages. The other plants will have to do the same
8 things.

9 COMMISSIONER KENNEDY: I thought that the words
10 "short-term actions" had a generic sort of meaning.

11 CHAIRMAN HENDRIE: The short-term actions here are
12 not limited to an identical with. There are some more of them.

13 COMMISSIONER KENNEDY: But if an order ala the Rancho
14 Seco or Davis-Besse or any other is going out in this case, it
15 would have included those, anyway.

16 CHAIRMAN HENDRIE: Yes, except for such specific ones
17 that show that you don't get mixed up with TMI-2.

18 COMMISSIONER KENNEDY: But they are the sort of class
19 of short-term actions that we talked about in the past. So that
20 seems to me to be wholly appropriate and, indeed, necessary.

21 CHAIRMAN HENDRIE: I will note the short-term actions
22 include complying with the A regulations of NUREG-0573, and I
23 think it is clear enough from the table, but I will point out
24 that, for instance, that one of the Category A items in that
25 table is a commitment to a relief and safety valve testing 842 967

1 program, which is going to take an extended period of time.
2 And the requirement for completion before filling, checking this
3 box on a possible restart decision is that the commitment to the
4 program, a program description and schedule, and commitment to
5 it, be made and not that the relief and safety valve testing
6 be completed.

7 COMMISSIONER AHEARNE: Is that what the words would
8 mean, Len?

9 MR. BICKWIT: Now, you're saying, under these words,
10 you are saying that completion of the short-term items is a
11 condition.

12 CHAIRMAN HENDRIE: Well, that's why I bring it up.
13 I had better point out that the so-called "short-term items" in
14 Table B-1 include specimens as follows: Short title emergency
15 power supply requirement, position description, complete imple-
16 mentation. That is unambiguous: You do it before you check
17 that box for restart.

18 Next,, relief and safety valve testing is the short
19 title. Position description is submit program description and
20 schedule. It appears to me that one conforms with Table B-1
21 Category A items if you submit the program showing a program
22 description and schedule and commit to a program that you are
23 indeed not under this language required to complete the testing
24 of the valve. But I think we need to understand that.

25 MR. BICKWIT: Yes, I think that is a reasonable

1 interpretation. It could be read otherwise in this language.
2 But I think that is a reasonable interpretation, if that is your
3 understanding.

4 COMMISSIONER KENNEDY: If it could be otherwise, then
5 I suggest that we fix the language so it can't.

6 MR. OSTRACH: Actually, Commissioner, the short-term
7 actions that are defined here, the short-term action that the
8 licensing board is going to order, which may well differ from
9 the short-term actions as described in the notice of hearing
10 and to the extent that the licensing board, the staff presents
11 to the licensing board that issue that the Chairman was just
12 describing, I am sure that they would present to him such terms
13 as "submit a recommendation," and the licensing board would then
14 order that there be some bidden such proposed plan that was
15 taken care of.

16 COMMISSIONER AHEARNE: Steve, are you saying then that
17 the board, when it says there, "short-term actions," it does
18 not refer to the term "short-term actions" as referenced in the
19 order?

20 MR. BICKWIT: No. It may change the actions.

21 MR. OSTRACH: These are the ones the Commission is, in
22 effect, proposing but the ones the board orders will depend on
23 how the hearing turns out.

24 CHAIRMAN HENDRIE: I must say I don't see a need to
25 change the words. I think they are all all right. I just want

1 to make sure we all understand.

2 COMMISSIONER KENNEDY: I am getting confused about
3 what kind of an order this is. This order appears to be an order
4 by the Commission we are sitting and discussing now, reads: "The
5 licensee shall take the following actions with respect to TMI-1,"
6 and then it lists all of these things.

7 I assume, since one of them was that the licensee
8 shall comply with Category A recommendations as specified in
9 Table B-1, that he was being ordered to do it and that the
10 licensing board wasn't going to change all that. Yet, that is
11 what I thought I was just hearing.

12 MR. BICKWIT: You were just hearing that.

13 COMMISSIONER KENNEDY: What is it he's supposed to do,
14 then, during the process of the hearing?

15 MR. BICKWIT: Ultimately, what he's supposed to do
16 are these actions plus or minus those recommended by the board
17 and ultimately approved by the Commission. He must do those
18 actions as a condition to restart in his plant. If he chooses
19 to do those that are in this order now, it may be that he is
20 doing the wrong actions.

21 We will not know that until a conclusion --

22 COMMISSIONER KENNEDY: That's the same discussion we
23 had with respect to the long-term actions.

24 MR. BICKWIT: That's right.

25 COMMISSIONER KENNEDY: Well, why don't we just go back

1 to my earlier statement?

2 CHAIRMAN HENDRIE: It may be a more agonized situation
3 here in many ways, but it's not all that different from either
4 the CP or OL stages. At the CP stage, the applicant has pre-
5 sented an application, he's done a lot of engineering work and
6 invested a lot of money and engineering hours, if not hardware,
7 on the basis that he understands what is required of him, and
8 that he is carrying out those things he understands to be
9 required. And he believes that he can make a case for that.

10 And at the OL, he has built a plant on the basis that
11 he believes meets the requirements and will be licensed for
12 operation.

13 But after all, in neither case does the permit of a
14 license issue in fact through a proceeding, if there is one at
15 the OL stage. There always is one at the CP stage. Until the
16 proceeding in question is completed, the initial decision is
17 issued, and, in fact, until whatever appeals are made are worked
18 out.

19 COMMISSIONER KENNEDY: I think there is a difference.
20 The Commission has just said -- the Commission which is appoint-
21 ing the board has just said -- in order -- he must do these
22 things.

23 MR. BICKWIT: We haven't said that. What is contem-
24 plated is it would not say that. It would say as a condition
25 to restart, do whatever the following tells you and whatever the

1 Commission ultimately says, you do.

2 COMMISSIONER KENNEDY: I am glad we have extended to
3 August 10, because we have a good deal of discussion to go
4 through here.

5 MR. BICKWIT: It says these are our best estimates as
6 to what you must do as a condition to restart.

7 COMMISSIONER KENNEDY: Okay.

8 CHAIRMAN HENDRIE: Recognizing discussion to come
9 further on this point, with regard to the language under com-
10 pletion of required actions, I guess it still looks all right.

11 COMMISSIONER KENNEDY: Except for the fact that the
12 counsel suggested that the words might have been read differently
13 from the way we understand them. And my suggestion, in that
14 case, they ought to be rewritten so they will be understood in
15 the way we understand them.

16 MR. BICKWIT: That can be done, but I just want to add
17 that that may not have any consequence in the end, because, as
18 Steve points out, it will be the board and, finally, the Com-
mission that determines what actions are required and what
19 constitutes completion of those actions.

20 COMMISSIONER KENNEDY: That is a different question
21 that we come to. But first we ought to get these words corrected

22 CHAIRMAN HENDRIE: I think we ought to have a little
23 tag-in with regard to the B-1 table, just to avoid the implica-
24 tion that where the B-1 table says "commit to a program," the
25

1 order isn't read as saying "complete the test program."

2 Okay. Immediate effectiveness of long-term actions.

3 Now, let's see, Len, would you or Steve review the bidding for

end#2

4 us?

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 MR. BICKWIT: You've got two options before you as
2 a result of the last meeting, a third that our office is put-
3 ing forward.

4 The first would not require the licensee to begin
5 work immediately on implementing the long-term actions and
6 would permit the board to set a date for their completion
7 based on the time after restart allowed to other B&W facilities.

8 The second would be the most immediately effective:
9 an order requiring the licensee to implement all long-term
10 actions that are now required of the other B&W facilities,
11 and would provide that when other long-term actions are
12 required of the other facilities, they would be required at
13 TMI-1.

14 Now, our option is in the middle of those two, but
15 clearly not squarely in the middle. It is much closer to the
16 second option, but it would differ slightly. We would not
17 require the licensee to begin work on the long-term actions,
18 but we would make restart conditional on a board finding that
19 the licensee had implemented those actions as promptly as
20 practicable, and would permit the board to recommend that the
21 restart be delayed an appropriate amount of time if those
22 actions had not been so implemented.

23 This would avoid placing the Commission in the
24 posture of actually ordering work done while at the same time
25 it was deliberating on whether to permit the facility to

1 operate again. It would allocate risks between the licensee
2 and the public in a manner similar to the way in which it
3 would be allocated for the short-term actions, except that
4 the stakes would be higher, in that we assume that the long-
5 term actions would take a longer time to implement. So that
6 if the licensee chose to wait in the hopes of persuading the
7 board and the Commission that it did not have to perform these
8 long-term actions, it could significantly put off the restart
9 of its plant if it were ultimately determined that those
10 actions had to be required as a condition to restart, or that
11 implementation had to be far along as a condition to restart.

12 So that in each case the licensee is free not to
13 perform, and in each case if he fails to persuade the board
14 and the Commission, in the last analysis, that he ought not
15 ever be required to perform, then the penalty for him would
16 be a delay in restart.

17 CHAIRMAN HENDRIE: Well, your memo notes that, at
18 first blush, at least, Commissioners Kennedy and Bradford lean
19 toward the first, Commissioner Ahearne toward the second, and
20 as I remember my own position, I leaned both ways, although
21 not at the same time. There is nothing equivocal about my
22 position.

23 Are there druthers? Vic, you missed this the first
24 time around. This was one of the high points of the day.

25 COMMISSIONER GILINSKY: I think the general counsel's

1 proposal seems all right.

2 CHAIRMAN HENDRIE: Let's see, 2-1-1.

3 I have to sample up, because we have a third option.
4 We have to choose one, two, or three.

5 Peter, you initially chose one. Why don't you think
6 about it while I query the other end of the table.

7 What is the feeling down here?

8 COMMISSIONER KENNEDY: I have already expressed mine.

9 CHAIRMAN HENDRIE: You are still on the first option.
10 John?

11 COMMISSIONER AHEARNE: I still like two.

12 COMMISSIONER GILINSKY: If I understand what you're
13 saying, the Commission is not ordering these long-term actions
14 to be undertaken, but at the end of this proceeding the board
15 will consider the progress on these long-term actions in
16 deciding.

17 MR. BICKWIT: Yes, whether the plant can restart.

18 COMMISSIONER GILINSKY: Assuming other actions have
19 been taken and the board is otherwise satisfied.

20 MR. BICKWIT: Yes.

21 COMMISSIONER GILINSKY: Which it would do in any
22 case, isn't that right?

23 MR. BICKWIT: If the order were not immediately
24 effective, my guess is in many cases the licensee would not do
25 that. He would contest the order, and only when he lost the

1 contest would he get going on these required actions.

2 COMMISSIONER GILINSKY: Wouldn't the board in any
3 case taken into account what progress is being made toward
4 dealing with the long-term issues?

5 MR. BICKWIT: Not if none has been required. If all
6 you have out with respect to long-term issues is, in effect, a
7 proposed action, which is an order which is not made immediately
8 effective, and an invitation to the licensee to contest that
9 proposed action, I would think it would be highly unfair for
10 the board to condition restart on performance of that action.

11 MR. OSTRACH: I would expect the board would look to
12 the amount of time it would have to decide how long a time
13 can be allowed for long-term actions to remain outstanding.
14 If it had seen that the applicant had not begun them, then it
15 could say the Commission allowed other licensees, to the extent
16 that long-term actions were similar for them, a certain period
17 of time, say from whenever the orders were issued until
18 January 1st, 1981, we ought to give a somewhat similar amount
19 of time to this licensee.

20 That would be because the board would not count
21 against the licensee the time spent in the hearing during which
22 the orders were contested.

23 COMMISSIONER BRADFORD: That is what they do between
24 options one and three. Three says to the board, you can't do
25 that?

1 MR. OSTRACH: Three says the board can do that.

2 COMMISSIONER BRADFORD: I thought three said you
3 can't start up again -- can start up again?

4 MR. BICKWIT: Three says you can't start up again
5 unless you have completed these actions.

6 COMMISSIONER GILINSKY: it says the board will take
7 into account.

8 COMMISSIONER BRADFORD: So what is the practical
9 difference between one and three?

10 MR. BICKWIT: You mean between two and three? Three
11 is very much closer to two than it is to one, in that under
12 two you are actually formally required to get going.

13 COMMISSIONER BRADFORD: Right.

14 MR. BICKWIT: Under three you are not required to
15 get going, but you risk -- your risk is substantial if you
16 don't and you do not persuade the board in the end and the
17 Commission in the end that you should not have been required
18 to do it.

19 COMMISSIONER BRADFORD: But under one you are also
20 not required to get going. And the penalty, it seems to me,
21 under one and three is the same, that is, at the point at which
22 the board tells you you could restart.

23 MR. BICKWIT: I have been assuming under one that
24 there really is no penalty.

25 COMMISSIONER BRADFORD: Unless the board thinks some

1 of the long-term actions should be preconditions to restart.

2 MR. BICKWIT: There is always that.

3 COMMISSIONER GILINSKY: I guess I am troubled about
4 requiring that long-term actions be completed unless these are
5 Commission requirements.

6 MR. BICKWIT: But you are not making the short-term
7 actions Commission requirements, either. You are treating
8 this -- this proposal is to treat the long-term actions very
9 similar to the way you treat short-term actions, which is to
10 say you don't have to do them, but if you don't do them either
11 their completion or their implementation on route to comple-
12 tion may be made a condition.

13 COMMISSIONER GILINSKY: The board can take them into
14 account, depending on how it regards their importance.

15 COMMISSIONER BRADFORD: I must say, I think one and
three are very much alike, at least as I intended one.

16 COMMISSIONER AHEARNE: Then you should have no
17 trouble with three.

18 COMMISSIONER BRADFORD: Exactly. I'm not having
19 trouble with three.

20 CHAIRMAN HENDRIE: In that case, let's see if I can
21 get John to split a vote here. Where would you like to take
22 up a stand on this one?

23 COMMISSIONER BRADFORD: I guess I still prefer one
24 as I understood it. But three is acceptable. I may be missing
25

1 something, because Dick once agreed with me on one and now he
2 doesn't agree with me.

3 COMMISSIONER KENNEDY: I don't think they are the
4 same at all.

5 COMMISSIONER AHEARNE: It may be that both of you
6 had agreed on one, seeing one differently.

7 COMMISSIONER KENNEDY: I don't think so. It is that
8 I don't believe one and three are all the same. They are quite
9 different.

10 MR. BICKWIT: I agree with that.

11 COMMISSIONER BRADFORD: Counsel agrees with you.

12 Well, what do you see the licensee doing under three?

13 MR. BICKWIT: I see him, in all probability, doing
14 the action, starting right away to complete the actions. And
15 under one I see him not doing so. In two I see him doing so
16 because he's required as a matter of law to do it.

17 COMMISSIONER BRADFORD: But even though under one,
18 first of all, there's a certainty he's going to have to have
19 them done, or a strong likelihood he's going to have to have
20 them done some day.

21 COMMISSIONER AHEARNE: At least my reading of one
22 is that his clock on the long-term actions starts at that
23 point that the board says, all right, do these short-term.

24 COMMISSIONER BRADFORD: Well, his clock is what the
25 board says it is.

1 COMMISSIONER AHEARNE: But at least my interpretation
2 would be that is the way you would read number one.

3 MR. BICKWIT: We may have drafted this harder than
4 you intended it. We have it drafted as there being virtually
5 no penalty for doing nothing.

6 COMMISSIONER AHEARNE: In a sense, it is a deferral.

7 COMMISSIONER BRADFORD: Okay, but you do have more
8 time. A licensee who has a presently shut down plant that
9 he hopes to start, faced with the possibility when he restarts
10 it, he could get a timetable which could conceivably require
11 that he shut it down again in order to take some particular
12 steps in it, that if he seriously thinks he's going to restart
13 it, it would seem to me that he would be very likely to take
14 at least those actions that he didn't violently object to
15 taking, while the plant was shut down.

16 MR. BICKWIT: Unless he thought he could persuade
17 the board that they wouldn't be required.

18 COMMISSIONER KENNEDY: The prospect which it seems to
19 me is highly remote, given the fact that every other plant of
20 that type has been ordered to do the same thing.

21 Now, what could motivate this guy to think that he
22 would be unlike all the others in respect to the need to do
23 these things? Now, he might wish, just because he's got an
24 excess of legal fees and too little other monies, to go spend
25 his money on his lawyers to protest these particular matters

1 and contest them with the Commission.

2 COMMISSIONER GILINSKY: Why do you think one and
3 three are different, then? Aren't you making the case that
4 they are the same?

5 COMMISSIONER KENNEDY: No, I don't think so.

6 MR. OSTRACH: Commissioner, I think the difference
7 is in the timetable. If the licensing board does order the
8 long-term actions, makes them required, it would allow a
9 certain amount of time. Now, it can either -- there are two
10 main time periods to choose. One of those time periods is the
11 amount of time which other B&W plants would be given to
12 complete the long-term actions.

13 COMMISSIONER BRADFORD: Three is okay for me.

14 CHAIRMAN HENDRIE: Let me ask about three.

15 COMMISSIONER BRADFORD: I'm sorry, I thought you
16 said 3:00 o'clock for the research briefing.

17 In that case, I would like to have Steve explain to
18 me once more the difference between one and three.

19 CHAIRMAN HENDRIE: Peter has to decide whether it is
20 really a one or really a three.

21 COMMISSIONER BRADFORD: If you will just let me
22 listen to Steve for a minute, I might be able to do that.

23 Start again.

24 MR. OSTRACH: The board is going to order a decision
25 requiring that long-term actions -- to be long-term actions

1 are to be complete. There are two dates, two logical dates
2 that it could choose.

3 One is the date at which the Commission required
4 the long-term actions to be completed by other B&W plants.
5 I'm assuming that they order essentially the same long-term
6 actions as were imposed in the other one. That would be a date,
7 perhaps, let us say, January 1st, 1981, 17 months from now,
8 15 months from now. That would, assuming the hearing doesn't
9 finish until March or something like that, that would mean the
10 licensee would only have nine months in which to complete
11 those actions. Other plants were given 17 months to handle
12 them.

13 The board might also choose a different date. It
14 might choose a date 17 months after its decision, believing
15 that, just as the Commission gave these people 17 months
16 after imposition of the requirement, so it should give 17 months
17 after imposition of requirements.

18 I believe that under the first option that would be
19 the way the board would most likely go since it would not
20 assume that the licensee was obligated or should be held to
21 have been obligated during the period of time it was contesting
22 the provisions. So the difference is in three the board would
23 be told basically, to the extent applicable in the circum-
24 stances, use the date the Commission selected for those
25 long-term actions to be completed as the date that you're

1 going to hold the licensee to, which means that right now the
2 licensee should be moving as promptly as practicable.

2 In the first option, the board would choose the
1 amount of time the Commission gave, which would mean the
5 licensee could begin then. That is the main distinction
6 between one and three.

7 COMMISSIONER BRADFORD: It really would be a matter --
8 I think that is probably right. Depending upon, A, what the
9 board did with its discretion, and, B, what the license chose
10 to do in anticipation of the situation, that the two really
11 could work out quite similarly. If you've stated the extremes,
12 the extreme for one is further out and the extreme for three
13 is probably further in.

14 Well, three is acceptable to me.

15 CHAIRMAN HENDRIE: Is one still acceptable?

16 COMMISSIONER BRADFORD: Review the bidding for me.
17 Do we have two votes for one and two for three?

18 CHAIRMAN HENDRIE: Yes.

19 John, will you withdraw from two?

20 COMMISSIONER AHEARNE: Sure.

21 CHAIRMAN HENDRIE: John had originally said either
22 two or three are all right. But he slid down to three because
23 he sees a force gathering there. 842 084

24 You had indicated that either one or three were okay,
25 and that leaves me the dilemma, if I go up and vote with you

1 on one, I can't tell whether I've got a split Commission 3-3.

2 (Laughter.)

3 CHAIRMAN HENDRIE: Which is going to be hard to
4 explain in some quarters; or whether it is 3-2. And if you've
5 got a preference between the two, why, that helps settle it.

6 COMMISSIONER BRADFORD: I have a preference for
7 deciding the question. My intellectual preference is one.
8 But I would much rather get this settled. So I would vote
9 for three.

10 COMMISSIONER KENNEDY: Let's not let principle get
11 in the way.

12 COMMISSIONER BRADFORD: If it were a principle, I
13 would stay with one.

14 CHAIRMAN HENDRIE: If you will stay with one, I will
15 vote for one and we will outvote these folk.

16 COMMISSIONER BRADFORD: I will stay with one.

17 CHAIRMAN HENDRIE: I'm just trying to find somewhere,
18 if I leap in, it will be a clearcut majority. And I can'
19 tell.

20 COMMISSIONER KENNEDY: You just did.

21 COMMISSIONER AHEARNE: 3-2 seems to be a clearcut
22 majority.

23 COMMISSIONER KENNEDY: There's only five. Whichever
24 way you voted, you're the swing vote.

25 CHAIRMAN HENDRIE: I will vote for one because it

1 seems clearer-cut to me. I still have some problems with the
2 language in three, which seems to run back and forth. "Be
3 performed as promptly as practicable as a condition to restart."

4 I don't know, I will vote for one and declare that
5 Peter will still stand there, and we have a quavering slight
6 edge for option one. And I will furthermore declare we have
7 gone as far as we can reasonably go today. And the
8 Commissioners are asked to please return in 15 minutes, i.e.,
9 at 20 minutes to 3:00, to hear the Research budget.

10 (Whereupon, at 2:25 p.m., the meeting was adjourned.)

e-3

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25