

NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

PUBLIC MEETING

NRC LEGISLATIVE PROPOSALS

Place - Washington, D. C.

Date - Tuesday, 20 March 1979

Pages 1-73

7904060048

Telephone:  
(202) 347-3700

ACE - FEDERAL REPORTERS, INC.

*Official Reporters*

444 North Capitol Street  
Washington, D.C. 20001

NATIONWIDE COVERAGE - DAILY

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1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION

3  
4 COMMISSION MEETING

5 on

6 NRC LEGISLATIVE PROPOSALS  
7

8 Room 1130  
9 1717 H Street,  
Washington, D.C.

10 Tuesday, 20 March 1979

11 The Committee met, pursuant to notice at 2:15 p.m.  
12 Mr. Joseph M. Hendrie, Chairman, presiding.

13 BEFORE:

14 JOSEPH M. HENDRIE, Chairman

15 VICTOR GILINSKY, Member

16 RICHARD T. KENNEDY, Member

17 PETER A. BRADFORD, Member

18 JOHN F. AHEARNE, Member  
19  
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P R O C E E D I N G S

CHAIRMAN HENDRIE: Well, the Commission meets this afternoon to discuss, again, legislative proposals.

Commissioner Bradford hasn't managed to get back from his trip north. Commissioner Kennedy is tied up at the moment. And I'm not sure whether Commissioner Gilinsky will be in or not, maybe later.

I'll tell you what my intent would be:

We have a redraft that's been circulated by the Counsel's Office on possible siting and licensing legislation. In writing up what they inferred was the Commission's intent, to the extent it was inferrible, at any rate, there is some language here which differs from previous language in a last year's administration bill or in the draft language the Commission worked on in September a year ago.

And I would like this afternoon to probe some at that and understand the differences and the meanings and so on. I would not expect to, even if we accumulate some more manpower on this side of the table, I would not expect to try to come to decisions section by section, or in any sense.

This afternoon's discussion is to understand what has been drafted here, and how it differs in the effects and so on.

I will also comment, I would like the Commission to have an opportunity later on to have what I trust will be



mpb2

1 a brief meeting, a closed meeting on personnel matters. I  
2 marked it, I sent around word that it was tentative. If we  
3 had all been here and were, you know, gung-ho to hammer away  
4 on this new draft, why, I'd be inclined to put the time into  
5 that. But there are some things that I want to discuss brief-  
6 ly.

7 COMMISSIONER AHEARNE: I am gung-ho to get started  
8 on this draft.

9 CHAIRMAN HENDRIE: Well, I'm ready too, John.

10 COMMISSIONER AHEARNE: In a somewhat different  
11 sense, perhaps.

12 CHAIRMAN HENDRIE: We don't have all of the  
13 parties ready at-hand.

14 COMMISSIONER AHEARNE: Amongst some of the  
15 questions I'd like to explore this afternoon, I carefully  
16 went through the transcript of the meeting I missed, and in  
17 the absence of sign language that may have been passed in  
18 some way, I will be interested in finding where some of the  
19 things came from that are in these things. I could track  
20 them either in the notes from the meetings I had attended nor  
21 the transcript of the one I didn't.

22 CHAIRMAN HENDRIE: Well, I must say, I think the  
23 guidance level was not what you would call very specific in  
24 any sense, and I suspected in a number of cases, why, the  
25 Counsel's Office had scratched their heads and finally decided

mpb3

1 they couldn't make out exactly what the next net thrust  
2 amongst the several Commissioners was.

3 So they went ahead and said Well, let's draft  
4 something maybe the way it ought to be and see what happens.

5 (Laughter.)

6 CHAIRMAN HENDRIE: And if it helps us to move  
7 forward, all right, it's a fair enough basis.

8 Len, why don't I ask you and Carl and Peter to  
9 go ahead.

10 MR. STOIBER: Perhaps I would just briefly  
11 introduce the paper by saying it is meant only as a discussion  
12 draft and certainly there were some points on which we made  
13 some guesstimates about what we thought the --

14 CHAIRMAN HENDRIE: Yes, I noticed you didn't  
15 include a transmittal letter with it.

16 MR. STOIBER: Well --

17 COMMISSIONER AHEARNE: They were afraid you would  
18 sign it.

19 MR. STOIBER: It was one week away and we weren't  
20 prepared to do that.

21 You will have noticed it is a considerably more  
22 restricted proposal than the Commission approved in September  
23 of 1977, down from about 55 pages to a lean and mean 20 pages,  
24 perhaps getting even smaller.

25 The draft was prepared in eight basic sections.

mpb4

1 There are seven sort of operative sections and one findings  
2 and purpose section. Three of the sections amend various  
3 provisions of the Atomic Energy Act. There are four new  
4 sections of the Atomic Energy Act that would be created.  
5 And what we did was to cover the points where we felt from  
6 the discussion that the Commission wanted to retain proposals  
7 to offer to the Congress or to submit to Congressman Dingle  
8 or Udall as possible fodder for their consideration.

9 The areas in which the statute would be amended  
10 are in the ACRS review area, to eliminate the mandatory  
11 nature of ACRS review, the second area is to amend the  
12 construction permit section, 185, to provide for combined  
13 CP-OL.

14 The hearing section, 189, is somewhat amended.  
15 And then the four new sections.

16 The amended sections are Section 182B on ACRS  
17 review, Section 185 on construction --

18 CHAIRMAN HENDRIE: Wait a minute.

19 Section 180--

20 MR. STOIBER: 185.

21 CHAIRMAN HENDRIE: What was the first one?

22 MR. STOIBER: 182B.

23 CHAIRMAN HENDRIE: This was?

24 MR. STOIBER: ACRS review.

25 CHAIRMAN HENDRIE: Yes?

mpb5

1 MR. STOIBER: Section 185, construction permits,  
2 was also amended to deal with combined CP-OL.

3 CHAIRMAN HENDRIE: Yes?

4 MR. STOIBER: The hearing section was somewhat  
5 altered, section 189.

6 And then Section 192 on temporary operating  
7 licensed, which is lapsed, now retitled and made into an  
8 entirely new section entitled "Early Site Approval for the  
9 Utilization of Production Facilities".

10 There is a new section created, 193, on Interim  
11 Operating Licenses.

12 There is a new Section 194 on Intervenor Funding  
13 to establish a pilot program of almost precisely the same --  
14 well, it is precisely the same as the section in 1977.

15 And a new Section 195 on Coordination of Federal  
16 Reviews, which would place NRC in a coordinative role.

17 Now we did omit quite a number of items that were  
18 in the past proposal and in the administration proposal, and  
19 substantially reduced the size of other portions. For example,  
20 the hearing section, 189, was heavily amended in the last  
21 versions. And our changes to that are substantially smaller.

22 There is no separate section on standardization  
23 as such, although it is mentioned in the Findings and Purposes.  
24 There is no section on advanced planning, and there is no  
25 section whatsoever on delegation of environmental or need for

mpb6

1 power reviews to the states.

2 So those are the very large areas that were in the  
3 administration bill and in your last proposal that we cut out.

4 CHAIRMAN HENDRIE: Let me note and sort of re-  
5 iterate my feeling last time that if indeed we stick here  
6 to the proposition that we only suggest changes or additions  
7 to the statute where it's clear that the Commission's  
8 existing authorities do not permit some reasonable accomplish-  
9 ment of the objective through rulemaking or some way under  
10 our existing powers, that nevertheless other things, like  
11 standardization and some of the other things that you mentioned  
12 I think ought to be discussed in more than a trivial way in  
13 the accompanying language that goes along that might furnish  
14 a basis for a conference report if one got to that stage at  
15 some point, because I think it's useful to have in the legisla-  
16 tive history a recognition of these things and the reasons why  
17 they are not in this bill and were in previous proposals,  
18 rather than just to ignore them totally in the legislative  
19 package.

20 By the way, let me ask another question:

21 Out of this, are you at a stage where any progress  
22 could be made toward a draft answer to the Udall-Bingham  
23 letter?

24 MR. STOIBER: We should have that for you later  
25 in the week.



mpb7

1 CHAIRMAN HENDRIE: Okay.

2 So that is coming along.

3 MR. STOIBER: Part of the package --

4 CHAIRMAN HENDRIE: The way some of that is phrased  
5 may indeed depend on discussions still to be held and deci-  
6 sions still to be made by the Commission. But it seemed to  
7 me on a number of items, why, the thrust was clear.

8 MR. STOIBER: There will be several parts of this  
9 package that we have not gotten to yet, including the section  
10 about construction analysis, which could mention some of these  
11 items that you have indicated.

12 COMMISSIONER AHEARNE: Is it true, Carl, that you  
13 do see that this would provide the answer to Dingle?

14 MR. STOIBER: There would be a separate letter  
15 to Congressman Dingle calling attention to the two items that  
16 he was specifically interested in, but this would be the  
17 answer to Congressman Dingle.

18 COMMISSIONER AHEARNE: Okay.

19 MR. STOIBER: Before asking Peter Crane to  
20 perhaps lead you through the specifics of the draft, I did  
21 want to mention also that on the 15th, yet another siting  
22 and licensing proposal was submitted to the Congress by  
23 Senators Johnston, and I believe also Church and Jackson.  
24 And it was included as Title 5 to the Nuclear Waste Policy  
25 Act, which contains waste management features, such as



mpb10

1 away-from-reactor storage and the rest. It appears to me to  
2 be a move on the part of that committee to obtain some  
3 jurisdiction in this area.

4 I would just briefly what's in that Title 5  
5 for your interest, and we will be further analyzing that for  
6 you.

7 Title 5 is entitled Civilian Nuclear Power Plant  
8 Siting, and it has five sections. It's in the Congressional  
9 Record of March 15th.

10 CHAIRMAN HENDRIE: Is that circulating around to  
11 us?

12 MR. STOIBER: We did bring copies up.

13 COMMISSIONER AHEARNE: Now that's what I call  
14 rapid circulation.

15 (Handing documents to the Commissioners.)

16 CHAIRMAN HENDRIE: Go ahead.

17 MR. STOIBER: And if you go back to page -- this  
18 package includes the whole bill, so if you go back to page  
19 S2889, you'll see where it starts Title V.

20 (Commissioner Kennedy arriving at 2:30.)

21 CHAIRMAN HENDRIE: Do you have another one, Peter?

22 (Handing document to the Commissioner.)

23 MR. STOIBER: Commissioner Kennedy, we are  
24 noting the existance of yet another siting and licensing  
25 proposal in the Congress, S685.

mpb9

1 COMMISSIONER KENNEDY: How nice.

2 MR. STOIBER: It was submitted last week by  
3 Senators Johnston, Jackson and Church. And this is basically  
4 part of their Nuclear Waste Policy Act.

5 But Title V, which you will find beginning on page  
6 S2889, includes five sections dealing with nuclear power  
7 plant licensing. And as I was saying, it appears that this  
8 is an effort on the part of the Energy Committee to obtain  
9 jurisdiction over some of this area.

10 The five sections do the following things:

11 Section 501 is an early site approval provision.  
12 It creates a new section 193 of the Atomic Energy Act.

13 CHAIRMAN HENDRIE: Have you read it against the  
14 language of either our old draft or the administration's bill  
15 of last year?

16 MR. STOIBER: We have only quickly gone through it.  
17 Some of the provisions look very close to last year's  
18 administration bill; others are quite different.

19 I'll mention particularly Section 504. It appears  
20 to me that the line of thinking here basically is consistent  
21 with industry thinking as we have seen it in prior testimony  
22 at other bills about what a desirable siting and licensing  
23 floor measure should include.

24 Section 502 would create a new Section 194 of the  
25 Atomic Energy Act entitled Standardized Designs, and it looks

mpbl0 1 very much like the administration's last proposal in that area.  
2 It creates a design good for ten years, which allows modifica-  
3 tion only if there is a substantial improvement to the health  
4 and safety --

5 COMMISSIONER KENNEDY: A decision which the  
6 Commission must find.

7 MR. STOIBER: Right.

8 Section 503 creates a new Section 275 of the  
9 Atomic Energy Act entitled Finality of Determination. This  
10 would make a state submission to the Commission on need for  
11 power or choice of nuclear power over alternate sources or  
12 types of power binding. And that is something I think that  
13 we have not seen before.

14 COMMISSIONER KENNEDY: That? Yes, it says. But  
15 in a sense that's either interpreting or somehow amending  
16 NEPA, really.

17 MR. STOIBER: Yes.

18 CHAIRMAN HENDRIE: It mentions it specifically.

19 MR. STOIBER: Section 504 --

20 CHAIRMAN HENDRIE: Let's see. It says "if such  
21 determination". These would be ones made by the state about  
22 need for power or choice --

23 COMMISSIONER AHEARNE: Or Bonneville or TVA.

24 CHAIRMAN HENDRIE: --"Or by the governing body  
25 of a nonregulated electric utility..."

mpb11

1 COMMISSIONER AHEARNE: Right.

2 CHAIRMAN HENDRIE: Does that mean we have 52 states,

3 53?

4 Anyway:

5 "...if such determination was made  
6 after public hearings in accordance with  
7 administrative procedures similar to those  
8 which would apply to such determinations  
9 if made by the Commission."

10 So I guess there we would find ourselves trying  
11 to establish rules for that.

12 (Commissioner Gilinsky arrives at 2:35.)

13 Vic, this Counsel tells us of a recent introduc-  
14 tion on the Senate side, and if you turn back a couple of pages  
15 you'll find that this is a waste -- it's got a lot of things  
16 about waste, but there's a Title V in here which now incor-  
17 porates some sections which at least up through here someplace  
18 are fairly similar to the administration on early site and  
19 standardization.

20 Now this one's a little bit different. We were  
21 just in the process of talking about that, 503.

22 MR. STOIBER: Section 504 creates a new Section  
23 185a of the Atomic Energy Act, and this is essentially the  
24 combined CP-OL section. But the very interesting part of  
25 this statute is Section b there at the bottom of the last

mpbl2 1 column of S2889.

2 And this is what I would describe as a back-  
3 fitting clause. And at the bottom there you will see the  
4 following language:

5 "The Commission may require the  
6 design or construction of a production  
7 or utilization facility to comply with  
8 rules or regulatory standards promulgat-  
9 ed by the Commission subsequent to such  
10 date only if the Commission finds, for  
11 reasons stated in its order, that such  
12 compliance is required substantially  
13 to improve public health and safety or  
14 the common defense and security."

15 COMMISSIONER GILINSKY: This is putting regula-  
16 tions into the law? It's a little stronger, isn't it?

17 MR. STOIBER: It's stronger than that, I think.

18 COMMISSIONER GILINSKY: What does the present rule  
19 say?

20 MR. STOIBER: There isn't anything really compar-  
21 able to this.

22 COMMISSIONER GILINSKY: We have a backfitting rule,  
23 which, of course, we never use.

24 MR. PARLER: There's a backfitting rule in  
25 Section 109 of the regulations, but there is no backfitting

mpb13

1 regulation in the Atomic Energy Act itself.

2 COMMISSIONER KENNEDY: What does the language  
3 say in the rule? Refresh my memory, if you will.

4 CHAIRMAN HENDRIE: You have to find that there  
5 is substantial additional protection which is necessary or  
6 needed. It's either required or necessary.

7 COMMISSIONER GILINSKY: And the Staff never  
8 uses that rule.

9 COMMISSIONER AHEARNE: But this ties into the  
10 date of docketing of the construction permit.

11 MR. PARLER: Well, but the language in the regula-  
12 tion says that the Commission may require the backfitting of  
13 a facility if it finds that such action will provide substan-  
14 tial additional protection which is required for the public  
15 health and safety or the common defense and security.

16 COMMISSIONER AHEARNE: But there you're talking  
17 about backfitting which at least I would have thought would  
18 be something partially constructed or already constructed.  
19 This pins it to the date of docketing for the construction  
20 permit.

21 CHAIRMAN HENDRIE: Yes.

22 COMMISSIONER GILINSKY: There's an element of back-  
23 fitting in any requirement after the issuance of the construc-  
24 tion permit.

25 CHAIRMAN HENDRIE: Well, that's right, or even, for



mpb14

1 that matter, the date of docketing when presumably the  
2 application met all of the requirements, as of that date.

3 This just says that the thing is in effect on  
4 the date of docketing, the regulations and the regulatory  
5 standards are the basis on which the facility will be judged  
6 subsequently unless the Commission issues an order saying  
7 that other things are required to, substantially to improve  
8 public health and safety and the common defense and security.

9 COMMISSIONER GILINSKY: Well, it seems to me  
10 what it does is it forces the agency to actually apply that  
11 rule which is not now being applied.

12 CHAIRMAN HENDRIE: I think that's right. And with  
13 slightly different phrasing.

14 COMMISSIONER GILINSKY: Right. I mean, it may  
15 be a little stronger or less strong.

16 COMMISSIONER AHEARNE: And it requires a public  
17 hearing.

18 COMMISSIONER GILINSKY: Well, but that's probably  
19 the case now.

20 MR. PARLER: The important change which the  
21 language in §85 makes to the pertinent language in the  
22 Atomic Energy Act is this:

23 The present Atomic Energy Act, Section 185,  
24 entitled Construction Permit, says upon the completion of  
25 the construction of the facility, upon the filing of any

mpbl5

1 additional information needed to bring the original applica-  
2 tion up to date, upon the finding that the facility authorized  
3 has been constructed and will operate in conformity with the  
4 application as amended, and in conformity with provisions  
5 of the Act, and any other rules and regulations of the  
6 Commission -- it doesn't say rules and regulations of the  
7 Commission upon the docketing of the application.

8 MR. STOIBER: I think there is another signifi-  
9 cant change too, and that's the addition of the word "only".  
10 The Commission can "only" do this upon the finding of substan-  
11 tial improvement to the public health and safety.

12 MR. BICKWIT: I think that would be the understand-  
13 ing.

14 MR. STOIBER: But it means it's a mandatory  
15 provision that one has to.

16 COMMISSIONER GILINSKY: And the reason, as I under-  
17 stand it, that the current rule is not used is that it gets  
18 the Staff into this question of, you know, if it was safe  
19 before, why do we require it now?

20 CHAIRMAN HENDRIE: If we require it now -- the  
21 regulators --

22 COMMISSIONER GILINSKY: Dilemma.

23 CHAIRMAN HENDRIE: Dilemma.

24 MR. STOIBER: The fifth and last section in Title  
25 V is a section which would designate NRC as the lead agency

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1 for consideration involved in nuclear facility applications  
2 and -- quote:

3 "...for coordination of all Federal  
4 responsibility for such licensing."

5 Now being a lead agency is fine, but there are  
6 really no teeth in this section. It doesn't tell you what  
7 powers you have.

8 COMMISSIONER KENNEDY: It's a lead agency for  
9 consideration of all applications made to the Federal  
10 Government for a licensing and construction.

11 MR. STOIBER: It's a little vague. I'm not  
12 exactly sure what they intended by that.

13 COMMISSIONER GILINSKY: Principal hand-wringers.

14 COMMISSIONER KENNEDY: I guess the answer is we  
15 don't know what that means. For example, does it mean the  
16 Corps of Engineers, or....

17 MR. STOIBER: It doesn't state anything about the  
18 power to establish time-tables or anything.

19 COMMISSIONER AHEARNE: By designation as a lead  
20 agency, would that put us in a particular position with  
21 respect to Executive Orders or laws that are currently cover-  
22 ing EPA and CEQ?

23 MR. STOIBER: We have not looked at that. I  
24 suspect there are -- there are court cases, of course, which  
25 state what the role of the lead agency in the preparation of

mpbl7 1 NEPA statements are, and how other agencies, cooperating  
2 agencies ought to act with respect to those agencies.  
3 And that sweeps that all.

4 CHAIRMAN HENDRIE: I wonder how one would read  
5 "for consideration of all applications made to the Federal  
6 Government."

7 Now it goes on to say "for a license for siting".  
8 We can regard that as the applications -- not construction  
9 and operating license applications, but I would think it  
10 would not extend, for instance, to water quality or anything  
11 like that.

12 COMMISSIONER KENNEDY: It says for siting.

13 CHAIRMAN HENDRIE: Yes, siting and licensing.

14 COMMISSIONER KENNEDY: Doesn't that get -- will  
15 that get water quality and all that other kind of stuff in  
16 there?

17 MR. STOIBER: I think it's unclear. I think we're  
18 going to have to do something else.

19 CHAIRMAN HENDRIE: We could always act as a mail-  
20 box, deliver on to the proper destination.

21 Very interesting.

22 MR. STOIBER: We have sent this out to the Staff  
23 for their comments, and I assume we will be asked for reviews.

24 COMMISSIONER AHEARNE: Probably more than that,  
25 because they said they intend to hold hearings.

mpb18

1 MR. STOIBER: Well, with that bit of new informa-  
2 tion, perhaps the best thing to do would be to proceed through  
3 the draft to be submitted on the 14th, and answer any ques-  
4 tions.

5 Peter, why don't you run this through.

6 CHAIRMAN HENDRIE: Before you start, Peter, let  
7 me comment for the benefit of the Commissioners Gilinsky and  
8 Kennedy, who have just come in, that I said because I think  
9 Commissioner Bradford may not be here for a while, he may  
10 not make the meeting at all, that my intent this afternoon  
11 was to begin to go through this draft, understanding some  
12 of the language in it, and the differences from previous  
13 versions, and that the intent here is not to come immediately  
14 to decisions for and against particular propositions, but to try  
15 to understand and discuss the provisions.

16 Okay?

17 Peter.

18 MR. CRANE: Well, I think rather than give you  
19 the excuses in advance, I'll try to make them t become  
20 necessary, and --

21 CHAIRMAN HENDRIE: I'd just try to brazen it out,  
22 if I were you and say that's what we said last time.

23 (Laughter.)

24 MR. CRANE: I think we may just plod through the  
25 draft starting with the findings and purposes.

mpb19

1 CHAIRMAN HENDRIE: Good. Charge ahead.

2 COMMISSIONER AHEARNE: Could you tell me what's  
3 the general idea that you had in mind in putting together  
4 the findings and purposes? What were you trying to lay out?

5 MR. CRANE: We were trying to follow the previous  
6 draft to a great extent where there seemed to be provisions in  
7 the act that accomplished some sort of change or put some-  
8 thing in the findings and purposes so that it would not come  
9 as a surprise.

10 There would be some relation between the findings  
11 and purposes and the latest actions. And to some extent, to  
12 clean up the findings and purposes where --

13 COMMISSIONER AHEARNE: So that the findings and  
14 purposes should relate to the subsections that are set behind  
15 it.

16 MR. CRANE: More or less. I'm not sure that  
17 they relate on a seven to seven basis, but --

18 COMMISSIONER AHEARNE: Now I know that findings  
19 and purposes in general are for. But I was trying to track  
20 a different thread.

21 I was trying to track these findings and purposes  
22 from what I thought had been said in meetings that led to this.

23 COMMISSIONER GILINSKY: That's a hard test.

24 CHAIRMAN HENDRIE: Okay. Onward.

25 MR. CRANE: Section (a) is the same as findings



mpb20

1 and purposes (a) in the September 1977 draft with one excep-  
2 tion: The earlier draft said "must include an effective  
3 licensing process for nuclear power reactors which meet  
4 applicable safety and environmental criteria". There seemed  
5 to be a suggestion in there that for those which do not meet  
6 applicable safety and environmental criteria, an ineffective  
7 licensing process would be adequate.

8 COMMISSIONER KENNEDY: Good.

9 MR. CRANE: The reference to interstate commerce  
10 stays the same.

11 COMMISSIONER AHEARNE: Why is it there?

12 MR. CRANE: I defer to the wisdom of my elders  
13 who put it in in the 1977 draft.

14 COMMISSIONER AHEARNE: And then why did they say  
15 it was there?

16 MR. CRANE: I think that one of the ways in which  
17 you get jurisdiction is to --

18 COMMISSIONER AHEARNE: Did you ask the elders why  
19 it was in there?

20 MR. CRANE: No, I didn't.

21 MR. PARLER: The only reason I can think of why  
22 it was put there would be to give the broadest constitutional  
23 basis.

24 COMMISSIONER AHEARNE: Well, I know why some elders  
25 put it there. It has been alluded in some quarters that the

mpb21 1 reason it was there was to enable one to get out of a certain  
2 state-Federal Government relationship, and some of the  
3 features of the bill which don't exist in what you have here.  
4 And so I was just wondering why you wanted it there.

5 MR. BICKWIT: I can tell you why we want it there:  
6 Just to provide a constitutional basis for the statute.

7 COMMISSIONER AHEARNE: Are you saying there is  
8 no constitutional basis for the Atomic Energy Act?

9 MR. BICKWIT: No.

10 CHAIRMAN HENDRIE: Look in the beginning of the  
11 Atomic Energy Act and see if you don't find something in there.

12 COMMISSIONER AHEARNE: My question is, as it's  
13 been pointed out in the beginning, we're adding sections to  
14 the Atomic Energy Act --

15 MR. BICKWIT: This is not an addition to the  
16 Atomic Energy Act.

17 COMMISSIONER AHEARNE: I know. We're making  
18 additions to the Atomic Energy Act and we're amending the  
19 Atomic Energy Act. And knowing at least why that appeared in  
20 some previous drafts of a year and a half or so ago, and not  
21 having that reason I thought existent here -- Could you be  
22 more explicit?

23 MR. BICKWIT: I think our reason is a statistic  
24 reason.

25 COMMISSIONER AHEARNE: Well, I had heard in some

mpb22

1 places that the reason it was there was in order to give a  
2 federal agency the right to drive a state agency and all  
3 other federal agencies.

4 MR. BICKWIT: To drive?

5 COMMISSIONER AHEARNE: Yes, in other words, to  
6 have the control over in the process.

7 MR. BICKWIT: Well, you can specify in your  
8 letter of transmittal that that's not the reason. It is not  
9 the reason here.

10 CHAIRMAN HENDRIE: Would you state the reason here?

11 MR. BICKWIT: The reason it is stated here is  
12 that it is often chosen -- the findings are often chosen to  
13 be included so that the express constitutional basis of the  
14 act is right up front when one reads it, and this is not an  
15 amendment to the Atomic Energy Act.

16 COMMISSIONER AHEARNE: I thought all the sections  
17 were.

18 MR. BICKWIT: No.

19 COMMISSIONER AHEARNE: I thought all of the  
20 sections are either amending the Atomic Energy Act or adding  
21 to sections.

22 MR. BICKWIT: The finding and purposes --

23 COMMISSIONER AHEARNE: I mean what we're actually  
24 doing. We have to assume that the issue is going to rest on  
25 the constitutionality of the issue.

mpb23

1 MR. STOIBER: The declaration section 1(c) of the  
2 Atomic Energy Act says:

3 "The process and utilization of source  
4 byproduct and special nuclear material affect  
5 interstate and foreign commerce and must be  
6 regulated in the national interest."

7 One could say in one's transmittal that the  
8 constitutional basis on which your new act, whatever it  
9 becomes entitled in '79 is that constitutional basis.

10 COMMISSIONER KENNEDY: Except that was talking  
11 about material and the Act, the Atomic Energy Act distinguish-  
12 es between material on the one hand and utilization facilities  
13 on the other. And we're talking here about utilization  
14 facilities, is that correct?

15 MR. STOIBER: It just makes it clear that there  
16 is no legal quibble about the legality of this.

17 COMMISSIONER GILINSKY: Well, that's right, but  
18 the Atomic Energy Act deals with that too.

19 COMMISSIONER KENNEDY: But the specific language  
20 there spoke to the question of material being in interstate  
21 commerce.

22 COMMISSIONER GILINSKY: True, but somehow they  
23 managed to get rules for licensing utilization facilities --

24 MR. STOIBER: That's 1(f) -- that's 2(f). 2(f)  
25 also recites that the operation of production utilization

mpb24

1 facilities, the interstate commerce is necessary also.

2 MR. BICKWIT: If the Commissioner has problems  
3 with this language, it is not essential.

4 COMMISSIONER AHEARNE: My general question I'll  
5 be asking is why is something in there, and I'm just looking  
6 for what is the reason.

7 COMMISSIONER GILINSKY: I've always thought there  
8 was a bit of a conflict between that and insisting that the  
9 need for power determinations should be made by one state.  
10 And there are good reasons for that, but they don't flow  
11 from this finding.

12 MR. BICKWIT: That's true. But often states are  
13 given the power to deal with matters that substantially affect  
14 interstate commerce.

15 MR. PARLER: And need for power findings are not  
16 findings that are acquired by the Atomic Energy Act; they're  
17 findings which are required under additional interpretations  
18 of NEPA.

19 MR. BICKWIT: I quibble with that. I don't think  
20 that's entirely correct.

21 MR. PARLER: That's the way I understood it,  
22 anyway.

23 MR. BICKWIT: I refer you to the Strauss-Shapar  
24 memo which was distributed to you last Friday.

25 CHAIRMAN HENDRIE: Oh, that crowd.

mpb25

(Laughter.)

MR. BICKWIT: Is it the Commission's wish that this be dropped?

CHAIRMAN HENDRIE: I don't want it dropped. I think it's a good thing to have it in.

But I said -- you know, I didn't propose that we vote things up and down.

COMMISSIONER AHEARNE: As long as we have a good reason, it's fine.

CHAIRMAN HENDRIE: Two?

MR. CRANE: The second one also represents a change. The earlier version here is the same way in the NRC bill and in HR 117, the administration bill.

It said:

"NRC should continue to exercise its independent statutory responsibilities so as to protect the public health and safety and the common defense and security, taking into account that absolute safety is an unattainable goal for any energy source, that the cost of additional safety requirements should be given consideration, and that adequate protection to the health and safety of the public in accordance with high standards established by the Commission is the paramount consideration."



mpb26

1 And I may have misunderstood something, but it  
2 seemed to me that there was something slightly amiss about  
3 the order of those phrases. As I understood what that  
4 passage meant, it meant that we are obligated to assure  
5 adequate safety and that once that is done any incremental  
6 ratcheting beyond that point ought to be justified in terms  
7 of its cost. And this revised language --

8 COMMISSIONER KENNEDY: Justify taking it into  
9 account as one of the factors of this cost.

10 MR. CRANE: Right.

11 And this revised language tries to say that thought.

12 COMMISSIONER GILINSKY: Well, this is a complicated  
13 question that we've never really dealt with, whether there  
14 is one absolute level that must be met, and beyond that cost  
15 comes in, or whether cost comes in at all levels, or what.

16 COMMISSIONER KENNEDY: If cost comes in at all  
17 levels, presumably it could be a negating factor at any level.

18 Do we take that as given? I wouldn't think so.

19 CHAIRMAN HENDRIE: I guess I'd recommend to you  
20 the commentary again in that in the cited memorandum from Peter  
21 Strauss and Oursbach, I guess, in '76, where it noted that  
22 because the Atomic Energy Act does not speak of absolute  
23 protection, of zero risk, it speaks of adequate protection  
24 and no undue risk and reasonable assurance, and various language  
25 like that, that in spite of the fact that it doesn't spell it

mpb27

1 out in detail, there is clearly some judgment to be made  
2 by the body setting the regulations that would implement what  
3 adequate protection made, and the authors of that memorandum  
4 concluded inevitably that there was some sort of a balancing  
5 that must go on.

6 In principle one can improve safety at progress-  
7 ively larger cost, and that that has not been required. And  
8 so some sort of balancing must go on. So the Shapar-Strauss--

9 COMMISSIONER KENNEDY: Not at the point where the  
10 decision of adequacy is reached.

11 CHAIRMAN HENDRIE: Well, in the following sense,  
12 yes, Dick, the Strauss-Shapar memorandum judges that the cost  
13 in practicality of particular design features, for safety  
14 features, is a factor to be considered in setting the regula-  
15 tory standards and the rules and prescriptions on a generic  
16 basis.

17 But when you come to a particular case, why, it's  
18 not so clear that you sit there and say, Well, it will cost  
19 another \$1000 for this or that.

20 COMMISSIONER KENNEDY: No.

21 What I was getting at is that there is some  
22 threshold below which you do not take the cost consideration  
23 into account. That is, one has to assert that adequate safety  
24 has been achieved.

25 Now, you can increase safety, and the question is

mpb28 1 is it worth doing. And here, you know, there's a whole host  
2 of consideration at that point. But you can't say no, I  
3 will lower the adequacy level because it cost too much, can  
4 you?

5 COMMISSIONER GILINSKY: Well, it seems to me that  
6 this is a nice model. If you had one variable and you could  
7 draw a line and say We're going to require safety up to this  
8 point and from then on it's as low as practical.

9 COMMISSIONER KENNEDY: It's not that way.

10 COMMISSIONER GILINSKY: In reality you are deal-  
11 ing with hundreds and thousands of variables. It's a  
12 complicated problem, it's very hard to define what that  
13 level is and what all that adds up to.

14 In practice you take over some accumulation of  
15 requirements and I guess in practice add to it.

16 COMMISSIONER AHEARNE: This could be a fascinat-  
17 ing discussion, but it doesn't really relate to the bill that  
18 we have.

19 COMMISSIONER GILINSKY: You're saying we don't  
20 need to get into that.

21 COMMISSIONER AHEARNE: Well, we may, but it's a  
22 different issue.

23 COMMISSIONER GILINSKY: Well, but if you start  
24 laying out the findings --

25 COMMISSIONER AHEARNE: This finding has little, if

mpb29 1 anything, to do with these features.

2 COMMISSIONER GILINSKY: -- you do get into these  
3 features.

4 COMMISSIONER AHEARNE: Right. And it's a question  
5 which I think that the memo that Len distributed begins to get  
6 at, and it's one that perhaps might be appropriate for us to  
7 talk about again before we submit legislation.

8 But what we're finding I think at this moment is  
9 that by going through the findings and purposes and focusing  
10 upon them to start with, we've got it backwards from the  
11 normal way I think you construct a bill. You look at what  
12 are you -- the piece of legislation that you're going to  
13 propose --

14 COMMISSIONER GILINSKY: Yes.

15 COMMISSIONER AHEARNE: -- and then after you've  
16 decided that this is what you're going to do, then you construct  
17 the findings and purposes to meet that.

18 And I think the point that you and Dick were  
19 beginning to discuss is a very important one; it just doesn't  
20 happen at the moment to be represented in one of the pieces  
21 of legislation that are being proposed. I don't think the  
22 finding has much to do with the piece of legislation that's  
23 being proposed.

24 MR. BICKWIT: Well, it's there for two reasons.  
25 One, it was there in the previous bill.

mpb30

1 And secondly, so that you could have this  
2 discussion. It flags matters which are very much before the  
3 Commission.

4 COMMISSIONER AHEARNE: You're saying, then, that  
5 there ought to be another piece of legislation.

6 MR. BICKWIT: I'm not saying --

7 COMMISSIONER GILINSKY: The finding really relates  
8 to the question of absolute safety, in other words, dealing  
9 with that explicitly.

10 And we agreed --

11 COMMISSIONER AHEARNE: But, Vic, a lot of those  
12 findings that get carried through into what you proposed and  
13 were massaged out of -- to go on top of the administration's  
14 bill had an entirely different bill that they were sitting  
15 on top of.

16 COMMISSIONER KENNEDY: Yes, but my recollection  
17 was that --

18 CHAIRMAN HENDRIE: I don't think it's that differ-  
19 ent.

20 COMMISSIONER KENNEDY: -- we didn't focus this  
21 at any particular piece of any of those bills that we were  
22 then looking at.

23 This was a sort of a general conception to under-  
24 lay the whole licensing regime to which the bill was address-  
25 ing itself.

mpb31

1 Is that your feeling?

2 COMMISSIONER AHEARNE: But we're addressing a  
3 much broader whole licensing regime at that time.

4 COMMISSIONER KENNEDY: But we still are, because  
5 we're amending those pieces of the act which reflect the  
6 basic licensing regime. It's not only what's here, but all  
7 the rest of those sections of the act to which this has been  
8 addressing itself.

9 COMMISSIONER AHEARNE: Are you saying you would  
10 want this set of findings and purposes embedded someplace  
11 in the act?

12 CHAIRMAN HENDRIE: Let me make some comments  
13 along the line.

14 First of all, the original form of this finding  
15 in the September '77 draft was placed there by the Commission  
16 to reflect what in fact was the real case in the -- what I'll  
17 call the regulatory philosophy as regards safety.

18 It seemed at the time to us to be more than we  
19 would want to tackle, I guess, to amplify it in terms of  
20 subsequent detailed sections of the bill. But there was a  
21 feeling which was unanimous, I think, among the four of us who  
22 were working on it that a reflection of what was indeed the  
23 real world of nuclear regulatory safety philosophy was a very  
24 useful thing and a very appropriate thing to have in.

25 And I continue to feel this way, whether or not



mpb32 1 there would be further amplification of the bill at any  
2 point.

3 Now, having said that, let me go ahead and add  
4 some other thoughts which I've talked about some to Len and  
5 others.

6 I think that it would be very useful if we  
7 could have some discussion, try some draft language, and  
8 see where we come out on a possible subsequent section in  
9 the bill which would deal with the question of what adequate  
10 protection means, and try to provide a little better statu-  
11 tory definition of that standard. I think it would be a  
12 highly useful thing. Whether the enterprise would be  
13 successful here amongst us and then subsequently a presenta-  
14 tion is -- I can't guess.

15 But I think it would be a very useful enterprise  
16 to attempt. Because it would certainly involve a good deal  
17 more discussion than I think a number of us would like to  
18 have to go through before anything moves here, I, however,  
19 would not propose -- votes could be mustered to send this  
20 forward, I would not propose to delay that in order to have  
21 the other piece, but rather to note to our Committees that  
22 we're settling down to try to look at the possibility of a  
23 further section.

24 But in any case, as I say, whether that is attempt-  
25 ed, and if attempted whether successful, whether or not any of

mpb33

1 that occurs, it does seem to me that the phrasing here, which  
2 I think Peter has done useful editorial rearranging and  
3 amplification to make clear, is a very useful recognition  
4 of the real world of nuclear safety regulatory philosophy  
5 and is not only perfectly appropriate, but I think very much  
6 needed.

7 Now whether or not we get any bill out of the  
8 whole thing, of course, you know, views differ, and that  
9 remains to be seen. But if we were, I think it would be  
10 an enormously valueable thing to have.

11 COMMISSIONER AHEARNE: So are you saying that  
12 you think that this kind of language would be necessary in  
13 order to hold a place for that additional section?

14 CHAIRMAN HENDRIE: No, I don't think it would be  
15 necessary to hold a place for such a section, John, because  
16 when you came with that section you could also come with a  
17 proposed finding to go in the front end, or if the bill had  
18 already either passed or failed, why it might be a separate  
19 little legislative proposal of its own.

20 No, I don't think that's the essential. I think  
21 that the reason that it's appropriate here in just this  
22 language -- never mind whether a new section gets added -- is  
23 to reflect, as I say, that real world of practice, which is  
24 not otherwise reflected anyplace in the statute, I don't  
25 think.

mpb34

1 COMMISSIONER GILINSKY: Well, as I remember, we  
2 were trying to deal with the fact that the agency does take  
3 cost into account in some of its decision. At the same time  
4 there is a kind of feeling that this was done in a sort of  
5 under-the-table manner, or that the law didn't explicitly  
6 allow for it --

7 COMMISSIONER AHEARNE: And this is to --

8 COMMISSIONER GILINSKY: -- in a sense bringing  
9 practice and legislation into at least more manifest congru-  
10 ents.

11 But also I think we didn't want to suggest that  
12 we were in any way backing away from current requirements, and  
13 that's where all the paramount language is.

14 COMMISSIONER KENNEDY: That's right. We discussed  
15 trying to find precisely the word and decided on paramount  
16 for that reason.

17 COMMISSIONER AHEARNE: The impression I get from  
18 the way it's worded is that you first set up adequate health  
19 and safety standards and that everything is required to meet  
20 an adequate standard to provide adequate health and safety.  
21 Beyond that, the Commission may then require even more,  
22 beyond what is --

23 COMMISSIONER GILINSKY: Well, I was concerned  
24 about that formulation when we became more explicit with  
25 Peter's changes.

mpb35

1 I don't know that it was -- that it had that  
2 explicit a model.

3 CHAIRMAN HENDRIE: As a matter of fact, I don't  
4 recall a discussion of just this point.

5 COMMISSIONER GILINSKY: There were two points  
6 basically:

7 One, that cost is an allowable consideration; and  
8 the other was that safety was paramount, that we weren't  
9 backing away --

10 COMMISSIONER AHEARNE: I can understand both of  
11 those.

12 The part that I'm puzzling over is the part that  
13 really says cost is a factor considered in evaluating addit-  
14 tional requirements beyond those that are required for guidance  
15 in the section that refers to adequate.

16 So it has inherent that we then consider, after  
17 having established what is adequate and require them to meet  
18 those, that we then look at making additional requirements on  
19 them beyond what is adequate.

20 COMMISSIONER GILINSKY: Peter, could you read what  
21 we had before?

22 MR. CRANE: "The Nuclear Regulatory  
23 Commission should continue to exercise its  
24 responsibilities...taking into account that  
25 absolute safety is an unattainable goal for

mpb36

1 any energy source, that the costs of additional  
2 safety requirements should be given consideration,  
3 and that adequate protection of the health and  
4 safety of the public in accordance with high  
5 standards established by the Commission is the  
6 paramount consideration."

7 COMMISSIONER GILINSKY: It doesn't get into  
8 the problems of this version.

9 I guess I would stick with the older one.

10 COMMISSIONER AHEARNE: But does it not get into  
11 them because they were there and they just didn't come into  
12 focus as Peter put them into focus, or --

13 COMMISSIONER GILINSKY: It slips by.

14 (Laughter.)

15 MR. STOIBER: And that phraseology "additional"  
16 does not modify it; it's just there.

17 COMMISSIONER GILINSKY: Yes.

18 MR. STOIBER: And one wonders, if they ask the  
19 question, what will the answer be.

20 MR. BICKWIT: Additional to anything, I think that's  
21 what that means, additional to anything. And that is a diff-  
22 erent formulation from the one we now have.

23 MR. CRANE: And that leaves open, for example, if  
24 you assume that for any new safety requirement you evaluate  
25 cost, what about when you reevaluate an old requirement.

mpb37

1 COMMISSIONER GILINSKY: Well, as the lawyers say,  
2 we do not write today on a blank slate.

3 (Laughter.)

4 CHAIRMAN HENDRIE: I haven't focused on that  
5 business. You're right.

6 COMMISSIONER KENNEDY: It seems to me that --

7 CHAIRMAN HENDRIE: That will require some  
8 mulling, I guess, before I decide between the new one or the  
9 old one.

10 MR. BICKWIT: The new one is different from the  
11 Strauss-Shapar method.

12 CHAIRMAN HENDRIE: Yes. No, when I say the old  
13 one I mean the '77 draft.

14 MR. BICKWIT: I understand.

15 But just to point out that this particular draft  
16 takes the position, as Commissioner Kennedy was outlining,  
17 that there is a level below which cost is not relevant.

18 COMMISSIONER KENNEDY: Whatever it is, it's that  
19 standard which we judge based upon the high standards that  
20 we've established to provide adequate protection.

21 MR. BICKWIT: You call that adequate protection.  
22 In the Strauss-Shapar memo, adequate protection is determined  
23 with regard to cost.

24 COMMISSIONER GILINSKY: I'm more inclined to that  
25 view because if in fact that minimum level provides adequate



mpb38

1 protection, then why are we going beyond it?

2 COMMISSIONER AHEARNE: That's the problem that  
3 stuck out.

4 COMMISSIONER KENNEDY: I could rationalize that.  
5 It is true, for example, simplistic view, it  
6 was judged when the first DC-3 airplane came off the line  
7 back in 1940, I guess, and maybe a little bit earlier, '39,  
8 maybe, '40, that that airplane met whatever the standards  
9 were for adequate safety and protection of the life and  
10 property involved. That's a rather different airplane than  
11 the DC-3 model X that came off the line in 1946 or '47.

12 No one ever said you've got to take that earlier  
13 DC-3 out of the sky. It adequately met safety standards.

14 That doesn't go to say that if you find another  
15 way later to even improve that situation, you ought not to  
16 do it. What it does say is you don't have to go back and  
17 rebuild everything else.

18 COMMISSIONER GILINSKY: Well, but it may turn  
19 out that the wings are weaker than you thought on the old  
20 one.

21 COMMISSIONER KENNEDY: And then you make the  
22 determination whether it's so weak indeed that you ought  
23 to go back and fix it, or that it's still, even though  
24 they're weaker than you would now build the new ones, they're  
25 still going to fly.

mpb39

1 COMMISSIONER AHEARNE: Dick, I think you're  
2 arguing an opposite case, the way it actually ends up. I  
3 think the examples you're using are much more towards the  
4 end balancing of how much safety for how much money.

5 COMMISSIONER KENNEDY: Above a certain threshold  
6 where you have said, yes, that's adequate safety.

7 COMMISSIONER GILINSKY: The trouble is, it's hard  
8 to find that threshold.

9 COMMISSIONER KENNEDY: Sure. That's right. The  
10 first one that comes along presents you with that problem.

11 COMMISSIONER AHEARNE: I don't understand the  
12 finding.

13 MR. STOIBER: I should note that Senator McClure  
14 has asked you precisely this question, and he also stated  
15 that he didn't necessarily want a draft statute to cure it,  
16 but he would like you to comment upon it. This was in the  
17 appropriation hearings on the Senate side.

18 So you will have an opportunity to visit this  
19 issue in that response.

20 MR. BICKWIT: A lot of people are asking that.

21 COMMISSIONER KENNEDY: A lot of people were asking  
22 this, as I remember, back in January, 1975, pretty early on.

23 MR. CRANE: To your questions, Mr. Gilinsky, it  
24 seems to me in 1975 the Commission adopted at least on an  
25 interim basis a \$1 per man-rem rule. It was later abandoned.

mpb40

1 But that was an attempt to quantify how much additional safety  
2 requirements above adequacy are worth.

3 How do you determine the cost-effectiveness?

4 COMMISSIONER GILINSKY: I don't think it was  
5 adequacy. It was simply a rule for arriving at a require-  
6 ment, and the fact that you start with a certain level doesn't  
7 mean that that level is adequate and the rest of it is just  
8 icing on the cake.

9 You know, the rule has two components: it has a  
10 constant plus a times something.

11 CHAIRMAN HENDRIE: I think that one may have  
12 had a little more helpful context. The Commission's regula-  
13 tions before that and after, I don't know, about '70 or '72  
14 or '-3 or something like that, said exposures are -- this  
15 was with regard to personnel exposures and exposures to the  
16 public.

17 It said they will be below a certain level set  
18 in tables in Part 20 and so on, and beyond that were to be  
19 kept as low, in those days, as low as practicable, now as  
20 low as reasonably achievable. And the rulemaking was to  
21 decide on what basis you would establish a particular set  
22 of equipment which represented as low as reasonably achievable  
23 or as low as practicable at the time.

24 COMMISSIONER KENNEDY: But that was above the  
25 threshold.

mpb41

1 CHAIRMAN HENDRIE: Well, you had to get down to  
2 the Part 20 limits, certainly, but beyond that --

3 COMMISSIONER KENNEDY: But cost is not a question.

4 CHAIRMAN HENDRIE: Well, but the Part 20 limit --  
5 Well, as a practical matter, the Part 20 limits were pretty  
6 well up, at least with regard to the general public. Why  
7 you really had to run a pretty dirty plant to impinge on them.

8 The question was, you know, whether it's going to  
9 be 20 million millirem at the boundary per year or five or  
10 three or two or one, or something like that. And in Part 20  
11 it was 170. And the rulemaking ended up saying well you keep  
12 on adding equipment until the cost gets up to \$1000 per  
13 man-rem.

14 And at that point you're putting in enough stuff  
15 and boy, that's as low as is reasonably achievable. And  
16 there's been argument since about whether the dollar figure  
17 was too high or too low.

18 MR. KENNEKE: It's been irrelevant, in fact,  
19 because the number was chosen ostensibly on a cost-benefit  
20 basis, but it has never been found to be overridden by the  
21 \$1000 per man-rem figure. So one might argue that the  
22 previous set was supposedly set on a cost-benefit basis, and  
23 in fact it was not. It was overly done.

24 COMMISSIONER KENNEDY: Isn't it correct that when  
25 we decided on the \$1000 figure we recognized that to be the

mpb42

1 upper figure of all the data that we got, that was the top  
2 number? We just selected it for overconservatism, isn't that  
3 right?

4 And so obviously --

5 MR. KENNEKE: While the purpose may be different,  
6 it does seem to be a perfectly analogous situation. If you  
7 have the situation, you're establishing a ceiling on risk  
8 and you're reducing the ceiling below that based on the cost-  
9 benefit impact value assessment kind of approach.

10 Even though the terms are difficult to define, it  
11 does seem to me that that's in fact what we do. And we ought  
12 to recognize this and differentiate the two situations of  
13 one that says Yes, we do require safety regardless of cost  
14 up to a point, and we'll even go beyond that if we can  
15 justify it in economic cost-benefit terms.

16 COMMISSIONER GILINSKY: Well, but, first of all, the  
17 single number that you start with is not chosen irrespective  
18 of cost. There's a cost consideration that enters into that  
19 one.

20 CHAIRMAN HENDRIE: Well, that's what the Shapar-  
21 Strauss memorandum says, that in establishing those generally  
22 establishable standards they believe that practicality and  
23 cost are legitimate considerations, obviously not controlling,  
24 but considerations.

25 MR. KENNEKE: That's not to say there isn't an



mpb43 1 element in that, I agree.

2 COMMISSIONER GILINSKY: The other point about  
3 this example it seems to me is that you're dealing with  
4 essentially one dimension here. In other words, it's  
5 relatively simple to apply the sorts of models.

6 MR. KENNEKE: It's difficult to express. How do  
7 we do it? It's not a simple thing like \$1000 per man-rem to  
8 deal with a broad range of regulatory problems. But concept-  
9 ually it's there --

10 COMMISSIONER GILINSKY: All of this would be  
11 helpful if in fact WASH-1400 could be done in a way that  
12 your errors were so small that you could just regulate on  
13 the basis of it. And, you know, then you could just say --

14 MR. KENNEKE: But we can do, even with the  
15 industry bounding analyses, that we do use those to take  
16 into account the range of uncertainties, and use those in a  
17 comparable way.

18 But you do have to have something that says there's  
19 a level of safety that we don't bother to analyze. It's fixed;  
20 it's required; and we shouldn't even spend our time trying to  
21 analyze it without saying that we will not require still more  
22 review, but in a much more explicit and justified way.

23 COMMISSIONER GILINSKY: Well, but what I'm saying  
24 is that all of that is an element when you are expressing  
25 what adequate --



mpb44

1 MR. KENNEKE: Yes, true.

2 CHAIRMAN HENDRIE: Yes.

3 MR. KENNEKE: Both elements.

4 MR. BICKWIT: Mr. Chairman, I think the threshold  
5 question is whether you want to confront this issue in this  
6 legislation.

7 CHAIRMAN HENDRIE: I certainly think we need at  
8 least a finding of the '77 version and the '79 version. We  
9 have a bit of a head-scratcher between them at the moment.

10 But I think -- and I think the question of going  
11 on, trying to work out -- if this Commission decides something  
12 we don't like, we'll just veto it.

13 (Laughter.)

14 We're closer to the Reporter, so we get on the  
15 transcript and they don't, so don't worry about what they  
16 say.

17 (Laughter.)

18 COMMISSIONER KENNEDY: We may be on the wrong  
19 subject for this afternoon anyway.

20 COMMISSIONER AHEARNE: We're just about to reach  
21 a conclusion on adequate and inadequate, but it's lost.

22 (Laughter.)

23 COMMISSIONER KENNEDY: We saved the diagram.

24 CHAIRMAN HENDRIE: I'll have to puzzle through that.  
25 Look, I think we need something like this in here,

mpb45

1 and the exact language we're going to have to argue about.

2 I recommend that as soon as the Commissioners get  
3 a chance, they make commentary on it briefly, and we make it  
4 to each other in the Counsel's Office. And as we gather  
5 again we'll focus in and make decisions on the matter.

6 Why don't we scan on forward through the findings  
7 section to see what else we've got in here?

8 MR. BICKWIT: Mr. Chairman, just one further ques-  
9 tion.

10 This is so basic to what you're doing and what  
11 the Commission is doing and what the Congress is focusing on,  
12 I think the Commission ought to consider the option of whether  
13 they want to go with a finding like this or whether they  
14 want to leave it out and deal with it in a separate package,  
15 or whether they want to address it more directly by a  
16 section of the Atomic Energy Act.

17 There are really three options. Depending on how  
18 you go, I think this bill will look very different. And I  
19 think it would be useful to have some guidance.

20 COMMISSIONER AHEARNE: Particularly in the context  
21 of the high congressional interest with respect to the closing,  
22 the shutdown of the plants. This kind of a finding obviously  
23 directly impacts upon whether we conclude as our -- quote --  
24 philosophy or our flexibility and our operating policy. And  
25 I think we've got to address it more directly than just putting

mpb46

1 it in a finding.

2 So I would go for a discussion of your third  
3 option.

4 MR. BICKWIT: Which was that?

5 COMMISSIONER AHEARNE: That was a separate section.

6 In other words, I would go for a discussion of  
7 what that section should look like if there were to be one.  
8 But it's an issue I think that ought to be addressed directly.

9 CHAIRMAN HENDRIE: I think if you're willing, I  
10 have some thoughts on the general shape of it, and I could  
11 talk to Counsel and we could have some rough draft things to  
12 argue over to provide at least a kicking off of that discus-  
13 sion.

14 COMMISSIONER AHEARNE: As a working basis for the  
15 discussion, that would be fine.

16 At that discussion we would have to address the  
17 kinds of questions that were raised in the Shapar-Strauss.  
18 memo.

19 (Commissioner Gilinsky departed at 3:10.)

20 CHAIRMAN HENDRIE: Or provide some reasonable  
21 compatibility if one judges that that memo reflects in fact  
22 the practice that's going on.

23 COMMISSIONER AHEARNE: Well, I thought rather than  
24 reflecting the practices early, the practice, I thought it was  
25 raising possible interpretations of operating philosophy.

mpb47

1 CHAIRMAN HENDRIE: It seemed to me it was reflect-  
2 ing practice in fact.

3 COMMISSIONER AHEARNE: You would know that better  
4 than I.

5 CHAIRMAN HENDRIE: Well....

6 MR. KENNEKE: It reflects a point of view that  
7 ELD takes a fairly regular occasion to point out, that you're  
8 on weak legal ground when you take economics into account.

9 MR. PARLER: I think that has been true since the  
10 first major interpretation of the Atomic Energy Act by the  
11 Supreme Court in the PRDC decision, which certainly suggested  
12 at least to this lawyer that if you took economics into  
13 account to do less than was required in the judgment of the  
14 Commission to be done, provide adequate protection to the  
15 health and safety of the public, it was questionable whether  
16 such legal authority existed under the present law.

17 CHAIRMAN HENDRIE: I don't think the Strauss-Shapar  
18 document argues that in fact you should do that.

19 MR. PARLER: I don't so interpret it, Mr. Chairman.

20 CHAIRMAN HENDRIE: It seems to me that it says  
21 only that in establishing the rules, regulations, and Staff  
22 practices that constitute our judgment of adequate protection  
23 that inevitably and properly under the Act there are questions  
24 of practicality and cost that enter into those judgments, and  
25 that that is not an inappropriate or unlawful proposition.

mpb48

1 Now when you get down to dealing with a specific  
2 case against those regulations, why then I think we've always  
3 pretty well held the view that you had to meet the regulations,  
4 and if that was expensive, why that was tough.

5 In fact, we had, as I remember -- was it the  
6 appeal board in Maine Yankee that threw some language in  
7 which said we could....

8 COMMISSIONER AHEARNE: Well, even there I think  
9 the point of view you expressed is basically what is done,  
10 and I think it's basically the right thing to do. And then  
11 there's a hierarchy of decisions, and there are points at  
12 which it's more appropriate to consider costs and others  
13 where it's less appropriate to consider costs.

14 And as you work your way toward specific cases  
15 or enforcement actions, it's less appropriate.

16 On the other hand, you know, exemptions have been  
17 granted from ECCS criteria, and it seems to me that cost has  
18 been a consideration, given the size of the reactor and possible  
19 harm, and the cost of meeting these criteria, all these things  
20 entered into the decision.

21 (Commissioner Bradford arrived at 3:20.)

22 COMMISSIONER KENNEDY: The question really is  
23 was cost taken into account in your determination of whether  
24 an adequate level of safety was being assured. That's the  
25 real question.



mpb49

1 And it seems to me the answer can't be yes. I  
2 don't see how it could be, because that would imply that  
3 you could come down ultimately to a point where, as my  
4 colleague and I were discussing with the chart, you know, one  
5 can run a, you know, a sort of a spectrum of adequacy from,  
6 you know, fantastically adequate to barely adequate. But  
7 below barely adequate it gets to be inadequate at some point.  
8 And conceivably you could drive yourself with cost down to  
9 that, at least to that inadequate level, and if cost gets  
10 so high on that rationale you might even lower the level and  
11 say what we thought was inadequate really probably was adequate  
12 given cost considerations.

13 And I don't think one can rationally do that.  
14 That's the problem.

15 CHAIRMAN HENDRIE: Isn't it also true that in  
16 granting an exemption to regulations one is not granting an  
17 exemption from the requirement that there be adequate protec-  
18 tion of the public health. That's in a statute and I don't  
19 think it's within the Commission's power.

20 So when you grant an exemption the finding you  
21 make to put it in sort of engineer's terms is we think that  
22 this plant needn't meet the particular regulation that says  
23 microphones have to have this shape; we think in this particu-  
24 lar case there is adequate protection even though their micro-  
25 phones are square, or whatever. Indeed, the square microphones



mpb50 1 don't meet the general regulations, but even without that  
2 there is still adequate protection. We find good cause to  
3 allow this exemption.

4 I don't think you give away that statutory --

5 COMMISSIONER AHEARNE: Well, but is that because  
6 you conclude that your original regulation --

7 CHAIRMAN HENDRIE: Was above that level?

8 COMMISSIONER AHEARNE: Yes.

9 CHAIRMAN HENDRIE: Possibly. I think that's  
10 possible, or that there are other ways to get there.

11 COMMISSIONER AHEARNE: Or that in balancing the  
12 cost of getting there one concluded that you could, in Dick's  
13 spectrum, that while the other was perhaps a little more to-  
14 ward the higher end of adequacy and you could backoff a  
15 little bit toward the lower end of adequacy -- still adequate  
16 -- but back down because of the cost.

17 MR. KENNEKE: More likely it was that it just  
18 didn't fit those circumstances. You could not anticipate all  
19 possible circumstances, and what you're looking for is an  
20 equivalent degree.

21 COMMISSIONER KENNEDY: That's a different dimen-  
22 sion all together.

23 MR. KENNEKE: Yes.

24 I would hate to think that we would be saying  
25 that not meeting the regulations -- meeting the regulations is

mpb51 1 more than adequate. Certainly they define a level, and your  
2 decision to grant an exemption from that ought to be on the  
3 basis that you're providing some other equivalent for raising  
4 to that level.

5 Reg Guides, yes; in most cases Reg Guides go --  
6 well, not most cases -- they're the places where you go beyond  
7 the regulations, choosing the Staff's option they go beyond  
8 what literally needs to be done.

9 COMMISSIONER BRADFORD: All of this would be  
10 relevant if in fact you could in some precise way define  
11 what all these levels are.

12 Now I can't believe that if the failure to grant  
13 exemption in a number of these cases would have zero cost  
14 attached to it or trivial cost, then the exemptions would  
15 have been granted.

16 COMMISSIONER AHEARNE: Your description implies,  
17 or at least I infer an ability to make a precision -- a precise  
18 engineering or technical calculation with almost no uncertainty  
19 to it.

20 MR. KENNEKE: I think you're still relying on  
21 judgment, that you have something that provides a comparable  
22 -- if you want to call it comparable to express a band of  
23 uncertainty, but surely not something that fundamentally is  
24 different.

25 COMMISSIONER AHEARNE: Well, no, not fundamentally

mpb52 1 different, but I would suspect that the comparability that  
2 you talk about ends up being pretty --

3 MR. KENNEKE: It's imprecise.

4 COMMISSIONER AHEARNE: Right. And it could mean  
5 that there's a band around that which then falls back, so  
6 therefore you end up having a cost balancing on some of  
7 those. Or if it's not cost-balancing it's practicality  
8 balancing.

9 MR. KENNEKE: Well, if you're uncertain in the  
10 lower direction, I believe you'd turn around and back up that  
11 uncertainty with some other kind of requirement, so that you  
12 will backup to something with which you comfortable with  
13 the band of uncertainty being on the right side.

14 I think that's a general principle in practice.  
15 Bounding analyses is typical regulatory practice. If you  
16 don't know, guess on the high side, or whichever side is  
17 more conservative.

18 CHAIRMAN HENDRIE: Let me suggest we go ahead  
19 and scan through the rest of the findings quickly.

20 MR. BICKWIT: And we will produce a draft, you say?

21 CHAIRMAN HENDRIE: Let's have a chat and see if  
22 we can get some directions to get started on drafts.

23 COMMISSIONER BRADFORD: With some trepidation,  
24 let me ask how far you've got.

25 COMMISSIONER KENNEDY: Not far enough.

mpb53

1 CHAIRMAN HENDRIE: We're arguing over the  
2 transmittal letter. The bill is all set.

3 (Laughter.)

4 COMMISSIONER KENNEDY: We had some considerable  
5 discussion, Peter, over the words at the beginning of the page.

6 COMMISSIONER BRADFORD: To amend the Atomic  
7 Energy Act?

8 COMMISSIONER KENNEDY: No, no -- or the bill.

9 (Laughter.)

10 MR. CRANE: Number three, and here I amend my  
11 previous answer to Commissioner Ahearne. This doesn't track  
12 anything in the bill. This came from something in the  
13 discussions in which, if I remember correctly --

14 COMMISSIONER AHEARNE: You certainly answered my  
15 question.

16 MR. CRANE: Since there is not going to be anything  
17 in there about the states, there was some suggestion that a  
18 certain amount of pleasant temperate language indicating our  
19 high regard for the states and their important role might be  
20 appropriate.

21 COMMISSIONER AHEARNE: I would think that would  
22 better go in a transmittal letter to indicate our high regard,  
23 but....

24 It's a very good finding. I certainly agree with  
25 it, but it just doesn't have anything to do with the bill.

mpb54

1 COMMISSIONER KENNEDY: It recognizes a fact of  
2 life which will make the bill either workable or unworkable.  
3 To that extent, it has something to do with the bill.

4 MR. CRANE: Mr. Parler pointed out that the words  
5 "and licensing" in there might create some incorrect message.

6 CHAIRMAN HENDRIE: At least as presently framed.

7 MR. CRANE: Yes.

8 CHAIRMAN HENDRIE: Previously when we had the NEPA  
9 transfer section in there -- Let's see, what are we doing  
10 here about need for power? It doesn't go to the states here,  
11 does it?

12 MR. CRANE: No, except with regard to the interim  
13 operating license where we were asked to come up with some-  
14 thing to bring the certification of need from the states.

15 MR. PARLER: It seemed to me that the words "and  
16 licensing" would open the door completely as far as the state  
17 roles in the radiological determination. That's why I raised  
18 the question.

19 CHAIRMAN HENDRIE: It's a good question.

20 COMMISSIONER AHEARNE: Once again the problem of  
21 making a finding that doesn't link to....

22 MR. CRANE: And that could be cured simply by  
23 dropping out the words "and licensing".

24 COMMISSIONER KENNEDY: I think that's a large step  
25 forward.



mpb55

1 CHAIRMAN HENDRIE: A gem of an idea.

2 COMMISSIONER BRADFORD: I've never had any  
3 objection to state involvement in the radiological end of  
4 things, so....

5 (Laughter.)

6 CHAIRMAN HENDRIE: Why don't we scan forward.

7 Peter, as I've told everybody else as they've  
8 come in over time, why, my aim was to try to discuss some  
9 of the things in this draft and move across it looking at  
10 some of the things rather than to make decisions as we go  
11 along. In part that was because I was not at all sure I  
12 would have very many of you here. John and I started out.  
13 But we've built up to a full Commission.

14 MR. CRANE: The fourth one, I gather that there  
15 was a skit of --

16 COMMISSIONER AHEARNE: Where does that section, by  
17 the way, come from, the federal coordination?

18 MR. CRANE: For that -- where did Mark go?

19 CHAIRMAN HENDRIE: Well, he went for the door.

20 COMMISSIONER BRADFORD: Didn't it have a genesis  
21 in the original administration?

22 COMMISSIONER AHEARNE: I mean as far as our  
23 administration. I didn't recall us --

24 MR. BICKWIT: We deliberated on coordination and  
25 we came to no conclusion. That's why this is bracketed as a



mpb56

1 section here.

2 MR. STOIBER: The tone of the discussion was if  
3 there were a federal coordination section, NRC ought to be the  
4 federal coordinator. If there were not, then....

5 MR. CRANE: This was discussed in the January 23rd  
6 meeting. It appears in the transcript at about page 55.

7 COMMISSIONER AHEARNE: And what was the conclusion?

8 MR. CRANE: And according to -- yes, the Chairman  
9 expressed the view that language similar to that proposed last  
10 year would be sufficient to begin legislative support for  
11 NRC's efforts to coordinate timely federal action. Commissioners  
12 Kennedy and Gilinsky noted preference for expression of  
13 support for timely coordination in the hearing record and  
14 perhaps the findings and purposes section.

15 COMMISSIONER AHEARNE: All right. It's you guys.

16 COMMISSIONER KENNEDY: We're well known to favor  
17 basically good, sound government. That was just an expression  
18 to that principle. Coordination among federal agencies is  
19 useful, and so little achieved.

20 CHAIRMAN HENDRIE: Let's see. Now tell me once  
21 again -- as my attention wanders my mind grows mushy, and it's  
22 only Tuesday. It is Tuesday? It is Tuesday.

23 There is or is not a coordination section?

24 MR. CRANE: I believe there is a coordination  
25 section.

mpb57

1 COMMISSIONER AHEARNE: It is the third section  
2 on page 7.

3 CHAIRMAN HENDRIE: Yes.

4 Anything else? Can we plunge forward?

5 COMMISSIONER BRADFORD: Does it say there that  
6 they don't have the authority we do now? I mean, we set a  
7 schedule for our proceedings now.

8 MR. BICKWIT: They set a time limit for other  
9 agencies involved in the process.

10 COMMISSIONER BRADFORD: But do we have the author-  
11 ity to do that?

12 MR. BICKWIT: To set time limits?

13 COMMISSIONER BRADFORD: Besides to say that the  
14 hearing will be held on such and such a day.

15 MR. BICKWIT: Oh, no time limits for other  
16 agencies.

17 COMMISSIONER BRADFORD: But it seems to me,  
18 working backward from our power to set a hearing date, we  
19 must also have the power to establish deadlines.

20 COMMISSIONER AHEARNE: It tells us to establish  
21 dates for others.

22 MR. BICKWIT: For an EPA determination, for  
23 instance.

24 COMMISSIONER BRADFORD: Oh, you mean, for example,  
25 in Seabrook the determination for cooling towers would be a

mpb58

1 determination --

2 COMMISSIONER AHEARNE: We can't require them.

3 CHAIRMAN HENDRIE: It's a hunting license for  
4 jobs is what it is. All of these sections down through the  
5 earliest ones, none of them have ever contemplated the  
6 enormous complexity of commanding people in view of all the  
7 statutes they operate under or anything else. But they have  
8 been a -- I've always regarded them as a useful license to  
9 jawbone, and useful in the sense that if you don't have  
10 anything like that, why you might very well get told, not  
11 even very politely, to go mind your own business.

12 This at least allows the director of licensing to  
13 regulation to write letters saying Dear Agency, I call to your  
14 attention that pursuant to such and such Section....

15 COMMISSIONER BRADFORD: Let's see. To the extent  
16 that this involves a determination that isn't involved, that  
17 isn't a part of our own proceeding, such as the cooling  
18 towers, presumably the setting of that deadline in a fair way  
19 is going to involve having some appreciation of what's involv-  
20 ed in the task --

21 CHAIRMAN HENDRIE: On the other agency's part to  
22 be sure.

23 COMMISSIONER BRADFORD: So that for us to write  
24 a letter to the Historic Site Preservation Commission or  
25 whatever would involve somebody going out and spending some

mpb59

1 time learning what their task was.

2 CHAIRMAN HENDRIE: We do that now.

3 Part of the project management task is to under-  
4 stand the things that the people have to do and is there  
5 anything we can do to help, and try to take into account in  
6 our plans when they can act and so on. And I think all the  
7 coordination authority, whether it's -- all it does is say  
8 you ought to put these schedules together and try to  
9 coordinate, and it gives us, as I say, a license to jawbone  
10 when they run late.

11 COMMISSIONER AHEARNE: Have we tried to do it?

12 CHAIRMAN HENDRIE: Yes. The Staff doesn't  
13 hesitate to call up. But as the project manager calling a  
14 lower level staff or EPA or whatever to say couldn't you get  
15 that out, no, we've got to work on something else.

16 COMMISSIONER AHEARNE: Well, what I'm asking is  
17 have you tried to do what this bill is saying we should do  
18 and found that we didn't get anywhere?

19 COMMISSIONER BRADFORD: One of the three examples  
20 we give when some congressman says what projects in the  
21 past would lead you to think that this provision is needed.

22 COMMISSIONER KENNEDY: I could write you up a  
23 whole flock of them.

24 COMMISSIONER AHEARNE. I've been trying patiently  
25 from the beginning of January to get these kinds of examples

mpb60

1 for each of the provisions we're putting in, and I have not  
2 got them.

3 COMMISSIONER KENNEDY: Make a note and just call  
4 up Harold Denton. And I think he can probably give you a  
5 dozen of these. I've been hearing about them since 1975 with  
6 constant regularity.

7 COMMISSIONER AHEARNE: But there's a difference  
8 between hearing about somebody who has been holding a hear-  
9 ing and we're waiting for their result and we haven't told  
10 them how that impacts on us from this kind of a procedure.

11 COMMISSIONER KENNEDY: That's right. But I don't  
12 think that's the case, that in fact they have tried very hard  
13 to press on on people. Because of the press of their own  
14 business and their own priorities and schedules, they just  
15 won't be able to.

16 COMMISSIONER AHEARNE: I'd be delighted to support  
17 this kind of a provision.

18 COMMISSIONER KENNEDY: Your point is a very good  
19 one, it ought to be supportable.

20 MR. BICKWIT: And your point that you haven't  
21 received it in a reasonable time is a good one too.

22 COMMISSIONER AHEARNE: What does provision b  
23 relate to about the lead agency?

24 It's on page 8, b at the bottom of the page.

25 MR. CRANE: Well, the one things that occurs to me



mpb61

1 immediately is that if there's any ambiguity under the new  
2 CEQ guidelines which have an elaborate procedure for designat-  
3 ing lead agencies, coordinating agencies, and on appeals to  
4 CEQ for designations where agencies disagree, though I frankly  
5 find it very hard to imagine that --

6 COMMISSIONER AHEARNE: Well, I can assure you that  
7 I can never support -- at least from my vote on this, if  
8 my answer, when asked in Congress was it due, well, it appears  
9 to me maybe. You've got to have a darn good reason for why  
10 it's there.

11 MR. CRANE: Commissioner, the person who's expert  
12 on coordination isn't in the room. He might not have expected  
13 that we'd have gotten this far right now. I can certainly ask  
14 him to come up.

15 COMMISSIONER AHEARNE: Neither did I.

16 CHAIRMAN HENDRIE: I think we really haven't gotten  
17 that far.

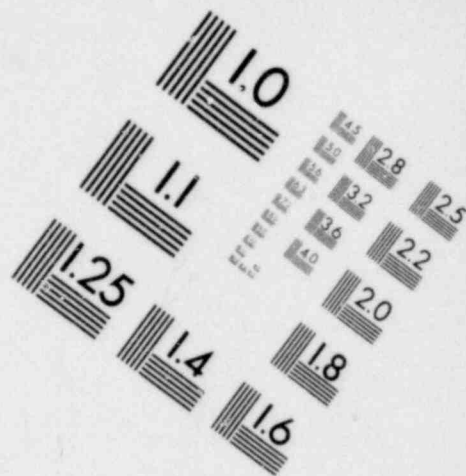
18 COMMISSIONER KENNEDY: It was a giant leap forward  
19 we took.

20 CHAIRMAN HENDRIE: Why don't we, the next time  
21 around, let us have him in the room.

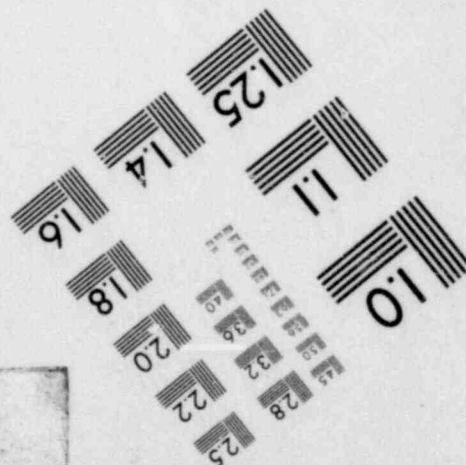
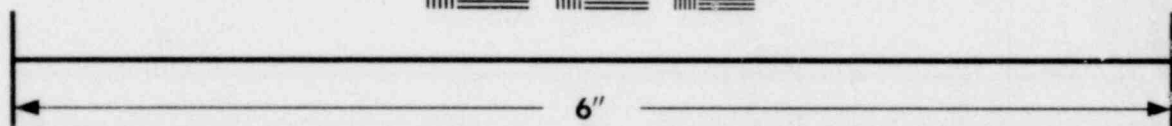
22 What about the rest of these things? We've got a  
23 standardization finding in here, but of course we decided we  
24 won't have a section in the bill.

25 COMMISSIONER KENNEDY: But we also said that some





A resolution test chart featuring several groups of horizontal and vertical lines of varying thicknesses. Each group is accompanied by a numerical value indicating the resolution. The values include 1.0, 1.1, 1.25, 1.4, 1.6, 1.8, 2.0, 2.2, 2.5, 2.8, 3.2, 3.6, 4.0, 4.5, 5.0, 5.6, 6.3, 7.1, 8.0, 9.0, 10, 11.2, 12.5, 14, 16, 18, 20, 22.5, 25, 28, 31.5, 36, 40, 45, 50, 56, 63, 71, 80, 90, 100, 112, 125, 140, 160, 180, 200, 224, 250, 280, 315, 360, 400, 450, 500, 560, 630, 710, 800, 900, 1000, 1120, 1250, 1400, 1600, 1800, 2000, 2240, 2500, 2800, 3150, 3600, 4000, 4500, 5000, 5600, 6300, 7100, 8000, 9000, 10000.



mpb62 1 conformitory language should be in there to suggest a desir-  
2 able course.

3 CHAIRMAN HENDRIE: I think that's reasonable.

4 MR. BICKWIT: I wasn't clear that the Commission  
5 did decide that the language would go in the bill. That's why  
6 we bracketed this.

7 CHAIRMAN HENDRIE: UP in this section, I think  
8 it's -- it gives us a basis for discussing it section by  
9 section.

10 COMMISSIONER KENNEDY: We did not wish to commit  
11 ourselves to anything that would sort of try to encourage it  
12 in the sense that it provided incentives in the industry to do  
13 it.

14 MR. BICKWIT: Well, as I remember Commissioner  
15 Gilinsky objected even to that language in the bill.

16 COMMISSIONER BRADFORD: The concern had to do with  
17 the fact that he never received a definition of standardiza-  
18 tion.

19 MR. BICKWIT: So we simply marked it for Committee  
20 discussion.

21 CHAIRMAN HENDRIE: Well, I'd be glad to forward  
22 my testimony to him. I've defined "standardization" before  
23 assorted bodies of the Congress of the United States. You  
24 can't very well object that you haven't had anything. He may  
25 not like what you get or agree with it, but....

mpb63

1 COMMISSIONER BRADFORD: We have endorsed it  
2 certainly. I may be sorry I asked.

3 (Laughter.)

4 Is there ever in there a sentence about what sort  
5 of standardization they're following?

6 CHAIRMAN HENDRIE: Yes, someplace down in the  
7 depths of these mighty ventures.

8 COMMISSIONER AHEARNE: The phrase "the more  
9 efficient use of private resources", is that a real concern  
10 for us? As a citizen it might be a real concern, but as far  
11 as the NRC, is there a concern?

12 CHAIRMAN HENDRIE: Well, you know, you share in  
13 the grammatical difficulties here.

14 I'm sorry, John, I missed that.

15 COMMISSIONER AHEARNE: I'm saying as a citizen  
16 I'm interested in the more efficient use of private  
17 resources. I'm not sure that the NRC should be stressing  
18 the concern about more efficient use of private resources.

19 CHAIRMAN HENDRIE: Now wait a minute. I'm lost.  
20 Where am I?

21 COMMISSIONER AHEARNE: Finding 5.

22 MR. CRANE: This is number 5 of the current draft.

23 CHAIRMAN HENDRIE: Where they apply to a regulated  
24 monopoly industry, why, I think the whole concept of utility  
25 regulation by public service commissions is on the basis of

mpb64

1 effective use of the private resources of interest to the  
2 society and so on, is that the kind of -- you did that sort  
3 of thing, Peter.

4 COMMISSIONER BRADFORD: What? This one?

5 CHAIRMAN HENDRIE: No, I'm sorry. Let me not  
6 attempt to fill you in on that. There are too many conversa-  
7 tions going on.

8 COMMISSIONER KENNEDY: Let me suggest that the  
9 statement you made was one of statesmanship and a normal level  
10 of brilliance.

11 CHAIRMAN HENDRIE: Generally to be applauded.

12 COMMISSIONER KENNEDY: Without a doubt.

13 COMMISSIONER AHEARNE: Are you through with 5?

14 CHAIRMAN HENDRIE: Yes.

15 COMMISSIONER AHEARNE: Okay, number 6.

16 We're saying that in the sense of the early site  
17 as a mechanism to permit meaningful public participation, as  
18 I recall there are a number of groups that took exception to  
19 that.

20 Do we have a counter-argument, if people argued  
21 that the early site provision is a mechanism in which the  
22 site itself is being proposed and reviewed sufficiently far  
23 in advance of when there might be a potential for a plant to  
24 be built, that you don't really get any large collection of  
25 people who are concerned in the area. It's sort of a

mpb65

1 lambasting in that the strong public participation comes when  
2 there's an actual proposed plant to be built.

3 CHAIRMAN HENDRIE: Well, that's a comment which  
4 can be made. And let me add another one.

5 There has been complaint that the early site  
6 review and site permit provisions to the extent that they're  
7 implemented, they create a predisposition on the part of the  
8 utility or the state that's banked those sites to go nuclear  
9 when the time comes. And all I can say is I'm sorry, it's  
10 a hard world.

11 You can't simultaneously try to deal with these  
12 matters before there's a multi-million dollar project  
13 barreling down the road and also not do it before the multi-  
14 million dollar project comes down.

15 COMMISSIONER AHEARNE: I was not raising whether  
16 the early site was the sound thing; I was raising the question  
17 is it correct to say that early site -- one of the advantages  
18 is it permits meaningful public participation early.

19 CHAIRMAN HENDRIE: I think it does. If you get  
20 in at a time before the guy has got all this momentum behind  
21 a project, I think citizens who have comments to make about  
22 land use aspects or site detailed locations and so on have  
23 got a substantially improved chance of having an impact.

24 Now, as you say, there is the down side, that  
25 maybe five or ten years before a specific plant is planned to

mpb66

1 come in, you know. there's news in the paper, they're hiring  
2 people to work on the sites, maybe at that early time there  
3 is more -- people are less likely to be interested in it.  
4 But -- I don't know how far you can go to get the citizenry  
5 against themselves.

6 If somebody comes along and says Look, we're going  
7 to turn that pasture over there into a potential site for a  
8 power plant, would you like to come around, you say, no, no,  
9 as long as you don't have any plans to build anything  
10 immediately, I don't care. I think that's the citizens'  
11 problem.

12 COMMISSIONER BRADFORD: I think -- I don't have  
13 a difficulty with the statement apart -- as long as it's  
14 tied to a sense of early siting regimen. If you tied that  
15 sentence to an early siting provision which allowed 25 year  
16 permits and foreclosed further hearings under any circumstances,  
17 then it would seem to me that you had a mismatch.

18 But I don't mind the sentence as long as I don't  
19 mind the siting provision that goes along with it.

20 CHAIRMAN HENDRIE: I don't know whether "permit"  
21 is exactly the right word; to facilitate and --

22 MR. CRANE: Allow.

23 CHAIRMAN HENDRIE: -- allow or encourage.

24 COMMISSIONER AHEARNE: I was just uneasy that one  
25 of the advantages -- there are a lot of advantages and that



mpb67 1 didn't seem to be one of them.

2 COMMISSIONER KENNEDY: It's the rest of the  
3 phrase.

4 COMMISSIONER AHEARNE: The rest of the phrase?

5 COMMISSIONER KENNEDY: No, the rest of the phrase--  
6 is it possible that it can be most effective early on rather  
7 than later?

8 COMMISSIONER AHEARNE: I don't know.

9 COMMISSIONER KENNEDY: The argument is often made  
10 that that's the time when the public, if it wants to involve  
11 itself, could most effectively do so, before a lot of commit-  
12 ments have been made which have melded plant to site.

13 COMMISSIONER BRADFORD: And in fact that the  
14 point at which the standard has become obviously superior  
15 instead of whatever, whatever standard one might apply.

16 COMMISSIONER KENNEDY: Right.

17 CHAIRMAN HENDRIE: Do you want to delete 7?

18 Nevermind. Strike that from the record.

19 MR. CRANE: 7 came out much too strong. It ought  
20 to be changed to something on the order of a pilot program  
21 for public funding of participants, where those participants'  
22 ability to take part is limited by financial considerations,  
23 can help determine the capability of such funding to  
24 contribute to a fair and full determination of the issues in  
25 those proceedings.

mpb68

1 COMMISSIONER BRADFORD: I don't see anything  
2 wrong with that.

3 COMMISSIONER AHEARNE: I would agree that the  
4 revision is closer to what you're drafting.

5 COMMISSIONER BRADFORD: The revision is closer to  
6 the actual....

7 COMMISSIONER AHEARNE: And I guess I have to  
8 apply the same standard that I have been trying t apply,  
9 so I would accept the revision.

10 COMMISSIONER KENNEDY: That is the fundamental  
11 fairness segment. Let's flaunt it.

12 CHAIRMAN HENDRIE: I'm certainly willing to accept  
13 that when it flows that way.

14 (Laughter.)

15 COMMISSIONER AHEARNE: I noticed a reluctance on  
16 your part.

17 (Laughter.)

18 MR. CRANE: Mr. Parler raised a question about  
19 the sentence where those participants' ability to take part  
20 is limited by financial considerations.

21 MR. PARLER: The question I have raised is whether  
22 that particular consideration was a significant or an over-  
23 riding consideration in the authority for the pilot program  
24 which appears later on.

25 COMMISSIONER KENNEDY: It's on page 17, item 2.

mpb69

1 It's certainly one of the things that we have, all of us, I  
2 believe, have always felt was a major consideration, that is  
3 whether indeed the intervenor, whoever he may be, has a  
4 contribution to make, and our own proceeding would suffer  
5 from his not making it.

6 MR. PARLER: My question was whether the financial  
7 considerations point is such an important point that that  
8 should be emphasized at the outset in this legislation. It  
9 may well be, I don't know. I just didn't read the legisla-  
10 tion, the draft legislation back on page 16, and thereafter,  
11 that way.

12 But it's not a major point.

13 COMMISSIONER AHEARNE: It seems fair.

14 COMMISSIONER BRADFORD: No problem.

15 CHAIRMAN HENDRIE: All right.

16 Now let me raise a question of tactical deployment  
17 of the resources of the body here.

18 We have had interesting and I think in the long  
19 run useful discussion. Dealing with a subject like this one  
20 tends to make slow and heavy weather of the initial phases  
21 and then pick up, I think, what we've said here as a part of  
22 the essential discussions we need to have to close on the  
23 issues. So I'm not discouraged. But I want to get to page 3.

24 We are at four o'clock. I think it would be use-  
25 ful if I could have a brief closed meeting on the other

mpb70

1 matters this afternoon.

2 I know you just got back into town. Other people  
3 have a lot of things to do. And I wonder if this wouldn't  
4 be a place to adjourn this discussion and have the closed  
5 meeting, and then try to have the rest of the afternoon for....

6 COMMISSIONER AHEARNE: That's fine.

7 I would like to take one minute and just summarize  
8 some of the concerns I have with this, so that at least I  
9 will have mentioned it to the Staff at this point.

10 CHAIRMAN HENDRIE: All right.

11 COMMISSIONER AHEARNE: I gather the early site  
12 approval one is introduced for Mr. Dingle's request. Some  
13 of it seemed to be a little stronger than I thought we had  
14 talked about. The combined CP and OL --

15 COMMISSIONER BRADFORD: Too strong or stronger  
16 than we had discussed?

17 COMMISSIONER AHEARNE: I felt stronger than we had  
18 discussed.

19 The combined CP and OL, I couldn't understand what  
20 the section -- what the purpose of some of the sections that  
21 were in here were. They seemed to track so close to the  
22 existing sections in the law that it was -- I was mystified.

23 The federal coordination we already talked about  
24 in Section B. Unless I can see why it's there, I couldn't go  
25 on with it.

1 The hearings one I will have to have talked  
2 through, have someone to talk through it.

3 CHAIRMAN HENDRIE: You need a guide.

4 COMMISSIONER AHEARNE: What is it that's really  
5 being done here? What's the reason for it?

6 I was having real difficulty tracking that.

7 The interim operating license, fine, I understand  
8 that.

9 The intervenor funding one, I guess is fine.

10 The interim operating license one, there seems  
11 to be a very cumbersome approach for going through the  
12 Department of Energy thing, and I would have to understand  
13 how's that supposed to work and is that what they said that  
14 they needed.

15 CHAIRMAN HENDRIE: I must say, John, it was just  
16 some of the things like that that made me feel I needed a  
17 marching through the document. I wasn't quite sure about  
18 even marking up the draft and sending a copy back because it  
19 seemed to me that what I had come up with, I eventually want  
20 to mark up a good deal on some discussion and better under-  
21 standing of it.

22 So I'll try to get to that as soon as we can and  
23 get those discussions in.

24 MR. BICKWIT: There are some quick answers to some  
25 of those questions, if you want them now, or if you would prefer

mpb72

1 to wait.

2 CHAIRMAN HENDRIE: Why don't we take them next  
3 time, so we've got them in mind when we go?

4 And I'll ask the Commissioners to please just  
5 withdraw with me to the meeting room. And, Sam, will you  
6 please notify Commissioner Gilinsky immediately that we are  
7 having a brief personnel meeting. And I'll try to get you  
8 all out in short order.

9 (Whereupon, at 4:05 p.m., the conference in the  
10 above-entitled matter was adjourned.)

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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

March 14, 1979

MEMORANDUM FOR: Chairman Hendrie  
Commissioner Gilinsky  
Commissioner Kennedy  
Commissioner Bradford  
Commissioner Ahearne

FROM: *EB* Leonard Bickwit, Jr., General Counsel

SUBJECT: DRAFT SITING AND LICENSING LEGISLATION

Attached is our latest draft of a possible Commission-sponsored siting and licensing proposal. While some of it will require additional redrafting, we believe it is in such form as to provide a reasonable basis for Commission discussion. ELD has reviewed most of the sections. Time has not permitted us to have the benefit of their review on some.

Attachment: Draft Bill

cc: OPE  
SECY

Contact:

Peter G. Crane  
634-3288

A BILL

To amend the Atomic Energy Act of 1954 to permit determinations on sites for production and utilization facilities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Nuclear Regulatory Reform Act of 1979".

Sec. 2. Findings and Purposes. --

(a) The Congress, recognizing that a clear and coordinated energy policy consistent with sound safety and environmental controls must include an effective licensing process for nuclear power reactors, finds and declares that:

- (1) interstate commerce is substantially affected by the siting, construction, and operation of nuclear power reactors;
- (2) the Nuclear Regulatory Commission should continue to exercise its independent statutory responsibilities to protect the public health and safety and the common defense and security, taking into account that absolute safety is an unattainable goal for any energy source, that adequate protection to the

health and safety of the public, in accordance with high standards established by the Commission, is the paramount consideration, and that cost is a factor to be considered in evaluating additional requirements beyond those necessary to provide such protection;

(3) the States have an essential role to fulfill in making determinations with respect to the siting and licensing of nuclear power reactors, and cooperation and coordination between Federal and State agencies should be enhanced;

[(4) the national interest in the timely completion of environmental and other reviews and determinations warrants that Federal exercise of the authority to make these determinations be coordinated by the Nuclear Regulatory Commission;]

[(5) the standardization of nuclear power plant designs can enhance safety and the more efficient use of both private and public resources;]

(6) early Commission decisions on the acceptability of potential sites for nuclear power reactors, even before a particular power plant has been proposed for the particular site, can facilitate advance planning by States and utilities and permit meaningful public participation early in the planning process, when it can be most effective; and

(7) public funding of participants in Commission proceedings, where those participants' ability to take part is limited by financial considerations, can help contribute to a full and fair determination of issues in those proceedings.

(b) The purposes of this Act are:

(1) to improve the effectiveness of the nuclear power reactor licensing process, consistent with sound environmental, safety and safeguards principles;

(2) to provide for early Commission determinations on site suitability, to facilitate advance planning, increase the efficiency of the licensing process, and permit early and effective public participation in siting determinations;

(3) to provide incentives for early submission of final designs for nuclear power reactors, including standardized designs, by authorizing in such circumstances the issuance of combined construction permits and operating licenses;

(4) to permit more effective utilization of resources by the Advisory Committee on Reactor Safeguards;

[(5) to provide for a more effective allocation of nuclear power reactor review responsibilities and for cooperation and

coordination at the Federal level;]

(6) to provide that hearings on applications to construct and to operate production and utilization facilities shall be held when requested by any person whose interest may be affected;

(7) to authorize public funding of qualified participants in Commission proceedings, and other purposes.

Sec. 3. Section 192 of the Atomic Energy Act of 1954 is amended to read as follows:

"Sec. 192. EARLY SITE APPROVAL OF UTILIZATION AND PRODUCTION FACILITIES. --

a. Any person may file with the Commission an application for approval of a site for one or more utilization or production facilities, notwithstanding the fact that no application for a construction permit or a combined construction permit and operating license has been filed with the Commission. Each such site permit application shall be in writing and shall specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide the suitability of the site for its intended purpose. The Commission, on the basis of such siting criteria and other requirements as it may establish by rule, regulation, or order, may issue the site permit, refuse to issue the site permit, or grant the site

permit with such conditions as it deems appropriate. The Commission shall, by rule or regulation, prescribe the period or periods during which site permits issued pursuant to this subsection shall be valid. Except for good cause shown, the period shall not exceed ten years. Nothing in this subsection shall preclude a determination that particular aspects of the site are suitable for its intended purpose.

[b. Unless otherwise ordered by the Commission or the State in which the site is located, any applicant for a construction permit or a combined construction permit and operating license for a utilization or production facility to be located on a site approved pursuant to subsection a. may prepare the approved site for construction and perform such limited construction activities at the site as the Commission may determine to be permissible by rule or regulation, upon prior written notice to the Commission and to the State and publication twice in major newspapers serving the affected area. Such activities shall be conducted at the risk of the applicant and shall be subject to modification or revocation by the Commission at any time. Safety-related construction activities shall not proceed beyond a one-year period unless the Commission extends such period upon good cause shown. Nothing in this subsection shall relieve any applicant from complying with any



provisions of State law applicable to such site preparation or limited construction activities."]

Sec. 4. Section 185 of the Atomic Energy Act of 1954 is amended to read as follows:

"Sec. 185. CONSTRUCTION PERMITS AND OPERATING LICENSES. --

a. All applicants for licenses to construct or modify production or utilization facilities shall be initially granted a construction permit, if the application is otherwise acceptable to the Commission. The construction permit shall state the earliest and latest dates for completion of the construction or modification. Unless construction or modification is completed by the stated date, the construction permit shall expire, and all rights thereunder shall be forfeited, unless the Commission extends the completion date, upon good cause shown. Upon completion of the construction or modification, and upon filing of any additional information needed to bring the original application up to date, and upon finding that the facility authorized has been constructed and will be operated in conformity with the application as amended and in conformity with the provisions of this Act and the rules and regulations of the Commission,

and in the absence of any good cause being shown to the Commission why granting a license would not comply with the provisions of this Act, the Commission shall thereupon issue a license to the applicant. For all other purposes of this Act, a construction permit is deemed to be a 'license'.

b. Notwithstanding any other provision of this section, the Commission may issue a combined construction permit and operating license for a thermal neutron power generation facility to the applicant, if the application contains sufficient information to support issuance of both a construction permit and operating license in accordance with the Commission's rules and regulations and to enable the Commission to make the determinations relating to the common defense and security and the public health and safety required by sections 103 and 182."

[Sec. 5. The Atomic Energy Act of 1954 is amended by adding a new section 195 to read as follows:

"Sec. 195. FEDERAL COORDINATION. --

a. With respect to any application for a site permit, for approval of a standardized facility design, for a construction permit and/or operating license, or for a manufacturing license, the Commission shall establish a schedule for the conduct and completion of all required Commission reviews and decisions.

The Commission is authorized to cooperate with other agencies with review and/or decisionmaking authority regarding the siting, licensing, construction, or operation of nuclear power reactor facilities in order to eliminate duplication of effort, establish a common data base for similar reviews and decisions, and assure timely decisions. After consultation with the interested agencies, the Commission shall establish target dates consistent with the Commission schedule for completion of agency reviews and decisions. All Commission cooperative efforts, including establishment of schedules and target dates, shall be accomplished in a manner consistent with the statutory obligations of all Federal agencies, and the Commission shall have no authority to require any agency to reach a particular decision on the merits of any matter pending before it. Neither the establishment of a schedule or target date by the Commission nor the failure of any affected agency to meet a schedule or target date shall be subject to judicial review, whether in a proceeding to review or set aside an individual affected agency decision, or otherwise.

b. The Commission shall be the lead agency for purposes of the preparation of any environmental impact statement required by section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, for any action taken under this act." ]

Sec. 6. Subsection 182b. of the Atomic Energy Act of 1954 is amended to read as follows:

"b. The Advisory Committee on Reactor Safeguards shall review each application under section 103 or section 104 b. for a manufacturing license for a facility, each application under section 103 or 104 b. for a construction permit and/or an operating license for a testing facility, any application under section 104 a. or c. specifically referred to it by the Commission, any application for a site permit under section 192 a., and any application for an amendment to a manufacturing license or construction permit or an amendment to an operating license under section 103 or 104 a., b., or c. or an amendment to a site permit under section 192 a. specifically referred to it by the Commission, and shall submit a report thereon: Provided, however, That unless the Commission specifically requests a review and report on an application or portion thereof, the Committee may dispense with all or part of such review and report by notifying the Commission in writing that all or part of such review by the Committee is not warranted. Any such notice that review is not warranted shall include a brief statement of the basis for this conclusion. Any report or notice required by this subsection shall be made a part of the record of the application and available to the public except to the extent that security classification prevents disclosure."

Sec. 7. Section 189 of the Atomic Energy Act of 1954 is amended to read as follows:

"Sec. 189. HEARINGS AND JUDICIAL REVIEW. --

a. In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license, construction permit, or site permit pursuant to subsection 192 a., or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees or holders of site permits pursuant to subsection 192 a., and in any proceeding for the payment of compensation, an award, or royalties under section 153, 157, 186 c., or 188, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. With respect to each application under section 103 or 104 b. for a license to manufacture a facility, each application under section 103 or 104 b. for a construction permit and/or operating license for a facility, any application under subsection 104 c. for a construction permit or operating license for a testing facility, any application for an amendment to a license to manufacture or to a construction permit and/or operating license for such facilities, and any application under subsection 192 a. for a site permit or for an amendment thereto,



the Commission shall publish a notice that consideration is being given to granting any such application once in the Federal Register and twice in major newspapers serving the affected area, at least one hundred and eighty days (sixty days for operating license applications and thirty days for applications to amend manufacturing and operating licenses, construction permits and site permits) prior to granting any such application. The Commission may dispense with the thirty days' notice and publication of any application for an amendment to a manufacturing license, a construction permit and/or an operating license, or a site permit pursuant to subsection 192 a., upon a determination by the Commission that the amendment involves no significant additional risk to the health and safety of the public: provided, that the Commission shall publish notice of issuance of such an amendment once in the Federal Register and twice in major newspapers serving the affected area.

b. Any final order entered in any proceeding described in subsection a. above, or with respect to the issuance of an interim operating license under section 193, shall be subject to judicial review in the manner prescribed in the Act of December 29, 1950, as amended (ch. 1189, 64 Stat. 1129), and to the provisions of section 10 of the Administrative Procedure Act, as amended."



Sec. 8. The Atomic Energy Act of 1954 is amended by adding a new section 193 to read as follows:

"Sec. 193. INTERIM OPERATING LICENSE. --

a. Notwithstanding any other provisions of this Act, the Commission may issue, in the case of a nuclear power reactor, an interim operating license or an interim amendment to an operating license, or may allow interim operation of a facility for which a combined construction permit and operating license has been issued under section 185, in advance of the conduct or completion of any required hearing. The Commission may not issue an interim operating license or allow interim operation of a facility for which a combined construction permit and operating license has been issued unless it determines that such action is necessary because of an urgent public need or emergency. The Commission may not issue an interim amendment to an operating license unless it determines that such action is [necessary in the public interest] [necessary owing to a demonstrable public need for the power from the facility]. Any operating license or amendment so issued shall contain and any interim operation shall be subject to such conditions as the Commission deems necessary to assure that any subsequent findings and orders of the Commission with respect to the

subject matter of the proceeding will be given full force and effect and in all other respects the requirements of the Atomic Energy Act of 1954, as amended, including, but not limited to, matters of public health and safety, shall be met. Prior to issuance of any such interim license or prior to allowing any such interim operation, the Commission shall publish in the Federal Register a notice of intent to do so which provides that any person whose interest may be affected may request a hearing on whether such action is necessary because of an urgent public need or emergency. The Commission itself shall preside at any such hearing and the nature of the hearing on urgent public need or emergency, whether in accordance with sections 554, 556, and 557 of Title 5 of the United States Code or otherwise, shall be determined by the Commission in light of the nature of the factual issues in dispute. Prior to issuance of any such amendment the Commission shall publish in the Federal Register a notice of intent to do so requesting comments from interested persons on whether such action is [necessary in the public interest][necessary owing to a demonstrable public need for the power from the facility]. No such interim license or amendment may be issued or interim operation allowed for a period to exceed twelve months, unless the Commission extends such period for good cause shown.

[b. The Commission shall not make a determination pursuant to subsection a. that issuance of an interim operating license or amendment, or authorization of interim operation, is necessary without prior written certification from the Secretary of Energy that an urgent public need or emergency, in the case of an interim operating license or interim operation, or a demonstrable public need for the power from the facility, in the case of an interim operating license amendment, exists: Provided, however, That the Secretary of Energy shall delegate such certification authority to qualifying States pursuant to subsection c. of this section.

c. The Secretary of Energy shall establish procedures by which States may designate a certifying authority, and demonstrate a capability to perform the certifications of public need or emergency specified in subsection b. of this section. Upon determining that a State qualifies, the Secretary shall delegate authority to make such certifications with respect to all facilities located within its borders and intended to provide 50% or more of its generated electrical power within its borders. In the event that no single State is intended to use 50% or more of the electrical power from the facility, or that the facility is not located within the State intended to use

50% or more of such power, certifications of need shall be by agreement of the two or more States in question, or by agreement of the State or States and the Secretary of Energy, where one or more of the affected States has not received a delegation of certification authority under this subsection: Provided, however, That no such certification of need shall be required with respect to any State, other than the State in which the facility is located, that is intended to use less than 10% of the power from the facility. Where the licensee is not a public utility regulated by a State, such certification of need shall be made by the Secretary of Energy. In the event<sup>t</sup> that affected States fail to agree, the Secretary of Energy shall forward his views to the Commission, together with the views of the affected State or States. Certifications of need by the affected State or States or the Secretary of Energy shall be weighed by the Commission in making its determination whether to grant the requested interim operating license or amendment or permit interim operation.]

Sec. 9(a). A new section 194 is added to the Atomic Energy Act of 1954 to read as follows:

"Sec. 194. FUNDING OF INTERVENORS. --

a.(1) There are hereby authorized such sums as may be necessary for establishing a pilot program for funding intervenors in initial or renewal licensing proceedings, including site permit, operating license and amendment proceedings, and in rulemaking proceedings in which an oral hearing is held by the Commission or a presiding officer designated by the Commission, conducted by the Commission pursuant to the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, as amended.

(2) This section does not authorize funds for merely attending, as opposed to participating as a party intervenor in, Commission proceedings, or for proceedings where the cost of participation is minimal.

(3) This section does not create any new right to participate in any Commission proceeding not authorized by other provisions of law.

"b. The Commission shall pay for all or part of the cost of intervention of a party, including attorneys' fees, in Commission proceedings of the type described in subsection a., upon request and subject to available appropriations. The amount paid, if any, need not cover all the costs of intervention and shall be determined with due consideration to procedures

and criteria established by the Commission by rule or regulation for selection and payment of intervenors. The rules shall stipulate criteria for determining the eligibility of intervenors for funding and the amount of funds to be provided. These criteria shall include the following:

- (1) that the intervenor's interest in the matter is one that entitles such intervenor to participate in the proceedings;
- (2) that the intervention would not occur or its effectiveness would be significantly limited in the absence of funding;
- (3) that the intervenor's participation is likely to lead to presentation of views that would not otherwise have been presented; and
- (4) that presentation of such views is likely to be necessary in order that a fair determination be made.

The Commission shall by rule, regulation or order, allocate available funds for costs of intervention to types or classes of proceedings.

"c. The amount of payment shall be based on rules, regulations, or orders promulgated pursuant to subsection b. and the intervenor's contribution to the proceeding. Payments



shall be made following the proceeding unless the intervenor establishes to the satisfaction of the Commission that advance payments are required in order that its participation not be substantially impaired.

"d. The Commission may decline to pay all or part of the costs of participation of a party who is otherwise eligible for payment under this section if the Commission determines that the party has acted toward any other participant or the Commission in an obdurate, dilatory, mendacious, or oppressive manner. A party who receives advance payment pursuant to subsection c. shall be liable for repayment of part or all of such payments actually received whenever the Commission determines that --

- (1) the party clearly has not provided the representation for which the payments were made, or
- (2) the party has acted toward any other participant or the Commission in an obdurate, dilatory, mendacious, or oppressive manner.

"e. The amount of costs of intervention awarded under this section for a particular proceeding shall be based upon

the appropriations available and the prevailing market rates for the kind and quality of the services furnished, except that no expert, consultant or attorney shall be compensated at a rate in excess of the highest rate of compensation for experts, attorneys and consultants paid by the Commission.

"f. Whenever multiple applications for payment under this section are submitted, the Commission may require consolidation of duplicative presentations, select one or more effective representatives to participate, offer compensation only for certain categories of expenses, or jointly compensate parties representing identical or closely related viewpoints.

"g. A party may obtain judicial review of a Commission action denying in whole or in part a request for payment under this section in the appropriate court of the United States having jurisdiction of an appeal from the proceeding in which the party participated notwithstanding that such Commission action may be interlocutory in nature: Provided, however, That no order to stay the proceeding in which application for payment of fees and costs under this section was made shall be entered by that court in such an action; And provided further, That no Commission action under this section may be vacated, enjoined, set aside, or suspended by a court except where there has been a clear abuse of discretion.

"h. The Commission shall, within ninety days after the date of enactment of this section, propose regulations to implement the provisions of this section. Such regulations shall be adopted by the Commission and take effect no later than one hundred and eighty days after the date of enactment of this section.

"i. This pilot program for intervenor funding shall be limited to applications for funding filed with the Commission before December 31, 1984, in proceedings for which the Commission has issued a notice of opportunity for hearing by that date. By December 31, 1983 the Commission shall prepare and transmit to the Congress a report on the impact and effectiveness of this pilot program for funding intervenors. In the event that there is enacted into law legislation providing generally for the funding of participants in agency proceedings, this pilot program shall terminate on the date upon which the funding program authorized by such general legislation becomes effective."

(b) Section 189 b. of the Atomic Energy Act of 1954 is amended by adding a new sentence at the end to read as follows: "Orders by the Commission pursuant to section 194 denying in whole or in part requests for funds shall be subject to judicial review as provided in section 194, and shall not be subject to judicial review as part of the final Commission order in the proceeding."