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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

DISCUSSION OF ACTION PLAN (POLICY STATEMENT)

PUBLIC MEETING

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

June 6, 1980

That above-entitled matter came on for meeting, pursuant
to notice, at 2:28 p.m.

BEFORE:

JOHN AHEARNE, Chairman of the Commission

RICHARD KENNEDY, Commissioner

JOSEPH HENDRIS, Commissioner

VICTOR GILINSKY, Commissioner

PETER BRADFORD, Commissioner

STAFF PRESENT:

LEONARD BICKWIT, General Counsel

SAMUAL J. CHILK, Secretary

E. CHRISTENBURY

A. ROSENTHAL

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P R O C E E D I N G S

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2 CHAIRMAN AHEARNE: The Commission continues this after-
3 noon, a meeting -- I guess it was Wedneaday -- in which we were
4 discussing a possible statement of policy for further Commission
5 guidance for operating licenses.

6 As a result of the meeting on Wednesday following that
7 meeting, as I understand it, some of the assistants met and
8 worked out a revised version. Following the suggestion of
9 Commissioner Bradford, we did send that to the boards for
10 comments.

11 I had circulated, this morning, a version taking into
12 account some of their further comments, not yet of the board's.
13 What I would like to do this afternoon is to see if I could not
14 get agreement on policy statements.

15 I think we have all had the policy statement. That is
16 really what I would like to do. Victor?

17 COMMISSIONER HENDRIE: Let me just make sure I have the
18 right version.

19 CHAIRMAN AHEARNE: It is a June 6th --

20 COMMISSIONER HENDRIE: Is that this?

21 CHAIRMAN AHEARNE: That looks like it.

22 COMMISSIONER KENNEDY: This is your memorandum of June
23 6th?

24 CHAIRMAN AHEARNE: Right. My only question is that
25 there was a -- did you have the additional sentence put in?

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1 COMMISSIONER HENDRIE: No.

2 CHAIRMAN AHEARNE: The typist missed a sentence. So,
3 she had to redistribute a revised page 7, which the secretaries,
4 I believe, have.

5 COMMISSIONER HENDIRE: No.

6 COMMISSIONER GILINSKY: Is this it?

7 CHAIRMAN AHEARNE: Yes. I think it was the one -- the
8 sentence that was left out was the one that starts: "Litigation,"
9 the second paragraph, page 7.

10 MR. BICKWIT: "Litigation as to the need for employment"?

11 CHAIRMAN AHEARNE: Right. Got it?

12 COMMISSIONER HENDRIE: Yes. Here are a batch of pages
13 of which I will keep one.

14 COMMISSIONER GILINSKY: This is what I have already.

15 CHAIRMAN AHEARNE: Yes, yes. It was not clear whether
16 anybody else did.

17 COMMISSIONER GILINSKY: Is it absolutely clear what that
18 sentence intends? I wonder if it does not need another sentence
19 that litigation beyond the new requirements will not be permitted,
20 which, I take it, is what you mean.

21 MR. BICKWIT: The following sentence, in effect, says
22 that, but it could say it more clearly.

23 The following sentence deals with necessity for and
24 compliance with the new requirements. It leaves out sufficiency
25 of the new requirements.

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1 CHAIRMAN AHEARNE: I gather from the memo I just
2 received, you do not agree with the policy?

3 COMMISSIONER GILINSKY: What we are talking about here,
4 from what I understand, is a small subset of the total require-
5 ments in the Action Plan, most of which, as I understand it, fall
6 within the existing range contemplated by existing regulations.

7 So, in those cases you would allow litigation of the
8 need for additional requirements, but not whether -- whether it
9 is sufficient. Perhaps additional requirements ought to be needed.
10 Given the fact that these are not rules we are promulgating, and
11 all the problems Peter laid out at the earlier meeting, in effect,
12 that the only groups that have had a chance to participate in
13 the formulation of these new requirements, outside groups, were
14 in fact industry groups who had an opportunity to affect the
15 results and would now be given further opportunity to affect it,
16 because it would be they, presumably, who would be arguing that
17 some of these requirements are excessive.

18 Others who did not have an opportunity to participate
19 in the formulation of the requirements in the first place who
20 might have argued that they were not sufficient will now not get
21 such an opportunity either.

22 I find that odd.

23 CHAIRMAN AHEARNE: I think we would, at the same time,
24 be asking for comments on the Action Plan and those associated
25 requirements in general in a separate process to see whether

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1 those requirements are adequate or not.

2 COMMISSIONER GILINSKY: Well, nevertheless, in the
3 actual cases --

4 COMMISSIONER BRADFORD: What process is that?

5 CHAIRMAN AHEARNE: We would, at least -- somewhere,
6 there was a paper being generated to do that, which I think fell
7 through a crack, which was to ask for comments on the Action
8 Plan and the associated list of requirements as to whether those
9 are adequate, or others be established.

10 As I recall, that was discussed at the previous meeting.

11 MR. BICKWIT: That is correct.

12 COMMISSIONER GILINSKY: In any case, I think I know what
13 concerns you here. You do not want the whole thing -- the whole
14 plan now to become a subject of litigations and everything.

15 CHAIRMAN AHEARNE: No. I think the Commission has
16 devoted a very substantial amount of time to reaching a separate
17 conclusion. I think that, therefore, that should stand.

18 COMMISSIONER GILINSKY: I think it does. As I said
19 in my note, I regard us as having acted in our supervisory capa-
20 city and in interaction with the staff who came up with these
21 requirements. I think these requirements will receive -- let me
22 think what the right word is here.

23 CHAIRMAN AHEARNE: Substantial weight.

24 COMMISSIONER GILINSKY: Substantial weight from the
25 boards, but they are not inviolate. I think they should receive

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1 substantial weight. Everyone understands these are requirements
2 that the Commissioners have reviewed, looked at, and approved.
3 They are not rules.

4 I also wonder whether the practical effect -- what you
5 will achieve by this will be all that great, given -- assuming
6 what we have been told is correct.

7 What we are really talking about is, in fact, a small
8 subset of the totality of requirements. I am reluctant to intro-
9 duce new principles into the way we run these proceedings, at
10 least as I understand them.

11 COMMISSIONER KENNEDY: In principles subject to, perhaps
12 consideration further of some suggestions that have been made
13 by the boards and panels, also to necessity for some editorial
14 work, I am prepared to agree to this proposal.

15 CHAIRMAN AHEARNE: Joe?

16 COMMISSIONER HENDIRE: I have the same view. I would
17 reiterate once more my view that the events of the past 14 or
18 15 months have been extraordinary ones. The accident and its
19 immediate aftermath, the extensive and wide-sweeping inquiries
20 and studies that have been made, the very extensive recommendation
21 and requirements that have been a result of those studies; it
22 seems to me that measures beyond simply ordinary business-as-
23 usual treatment of these things is necessary unless the whole
24 regulatory structure, for which we are responsible, is to bog
25 down in a hopeless morass of varying directions of litigation

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1 and cases all over the place.

2 I think we need this policy statement. I think that it
3 contains the essential elements that we need to provide as gui-
4 dance to the boards, the staff, and everybody in general. I think
5 we ought to get on with it as soon as possible.

6 CHAIRMAN AHEARNE: Is that a way of saying that subject
7 to --

8 COMMISSIONER HENDRIE: I am prepared with the sort of
9 discussion and modifications that Commissioner Kennedy indicated
10 to move on this.

11 CHAIRMAN AHEARNE: Well, to move on it meaning you would
12 vote for it subject to those modifications?

13 COMMISSIONER HENDRIE: Yes, absolutely.

14 CHAIRMAN AHEARNE: I see. Mr. Chilk has pointed out
15 I ought to be very clear in what the transcript shows. Peter,
16 I know you strongly dissent.

17 COMMISSIONER BRADFORD: I will try to be clear.

18 (Laughter.)

19 CHAIRMAN AHEARNE: You always are.

20 COMMISSIONER BRADFORD: It seems to me to be the wrong
21 action for a host of reasons. Perhaps foremost, I think it is
22 a complacent act. What it essentially does it say that the NRC
23 has deliberated and spent time on the matter; that therefore the
24 NRC knows best.

25 Others who might have something to tell us who have
no chance to comment on it up to now will not be permitted to
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1 comment in the licensing proceeding. We have been criticized as
2 a result of Three Mile Island for complacency and in the context
3 of the Three Mile Island related actions. It seems to me to be
4 a mistake to return to that.

5 Second, I think it is unfair. I think it is unfair
6 because groups that have not been involved in the comment process
7 now will not be able to litigate. Also, because the industry
8 which has been involved ostensibly in the comment process is
9 still permitted to litigate, whether or not the requirements are
10 unnecessary, at least for this limited subset.

11 I think for reasons Commissioner Gilinsky, it is, in
12 large part, unnecessary. That is, the subset is either small
13 enough that it does not matter all that much and therefore we
14 should not be doing it, or it is large enough that it does matter
15 and therefore we should not be doing it.

16 I think, as I understand this business of putting the
17 Action Plan out to comment, it is also unstable. That is, if
18 the comment process is to mean anything, if we really are open to
19 the proposition that the Action Plan does not go far enough, then
20 in some number of months when those comments come in and we adjust
21 the requirements again, we will be going back to the boards and
22 saying: "Wait a minute, the direction of last June is up for
23 grabs."

24 So, for all of those reasons, I would not do it.

25 CHAIRMAN AHEARNE: If I could just say, it would be no

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1 different, I think, than our process in which we put out any
2 proposal for comment during the time that we have some existing set
3 of policy procedures on the books.

4 COMMISSIONER BRADFORD: The difference is leaving it
5 litigable until we have a firm proposition.

6 CHAIRMAN AHEARNE: I was just speaking to your last
7 point. Well, I think the positions are pretty clear. I think
8 it is 3 to 2 on the basic policy.

9 I would like to then turn to one of the issues, a set
10 of questions from the board. Mr. Bickwit, do you have some
11 advice?

12 MR. BICKWIT: On the evidentiary matters raised by the
13 appeal board, my preference would be to have a discussion of those
14 in a closed session; with respect to everything else raised by
15 the appeal board of the licensing board, I see no problem with
16 continuing in open session.

17 CHAIRMAN AHEARNE: Well then, let us take the licensing
18 board comments first. The other on the appeal board and work
19 through that.

20 I think we all have the comments by the licensing board.
21 Does anyone have any comments on those?

22 COMMISSIONER KENNEDY: I find them sensible and
23 appropriate, clarifying amendments, and would urge their adoption.

24 CHAIRMAN AHEARNE: This, I think, we will be getting
25 back to.

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COMMISSIONER KENNEDY: Yes.

CHAIRMAN AHEARNE: With the exception of that?

COMMISSIONER KENNEDY: Yes.

CHAIRMAN AHEARNE: Vic, are you staying away from the --

COMMISSIONER GILINSKY: I don't know the details of
it. As I said, I suggest you make that --

CHAIRMAN AHEARNE: This is specifically the licensing
board. It came in with several sets of --

COMMISSIONER GILINSKY: I understood they were all --

CHAIRMAN AHEARNE: Joe?

COMMISSIONER HENDRIE: You are trying to go ahead and
deal with the other matters, the licensing board comments, so
we advance, presumably, to the bottom paragraph.

CHAIRMAN AHEARNE: Right.

COMMISSIONER HENDRIE: Which now refers to a paragraph
at the top of page 8 in the policy statement.

CHAIRMAN AHEARNE: Right.

COMMISSIONER HENDRIE: I would suggest the Commission
decide whether in saying no new TMI-related contentions, perhaps
in showing a good cause, et cetera, et cetera, declare whether
or not the arrival on the scene of the requirements list itself is
good cause.

I guess it seems to me that the whole thrust of the
policy statement and of this paragraph that it is not to be
included among the good cause possibilities. How do you read it?

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1 CHAIRMAN AHEARNE: Let me ask general counsel.

2 MR. BICKWIT: I did not read it that way. I read it
3 that you would stick with the application of current rules and
4 that boards would be left to their discretion to determine what
5 was good cause and what was not.

6 You make a point in the statement that you want a strict
7 adherence to the regulations, but I did not read the Commission
8 as expressing a view that the arrival of new OL requirements
9 under this list would be -- would not be good cause.

10 COMMISSIONER KENNEDY: I must say, that is the way I
11 saw it.

12 CHAIRMAN AHEARNE: I would go that way.

13 COMMISSIONER HENDRIE: I withdraw. Let me say that
14 then in order to avoid whatever ambiguity may exist, that there
15 must be some because the licensing board comments that: "Please
16 make it clear."

17 What sort of language -- we need some language to make
18 it clear.

19 CHAIRMAN AHEARNE: Cerainly.

20 MR. FRYE: Mr. Chairman, I am John Frye from the
21 licensing board panel. We did not think this language you inclu-
22 ded in the draft was likely to result in an interpretation that
23 the new requirements would not constitute good cause. We do have
24 a question raised in our mind --

25 CHAIRMAN AHEARNE: I see. I see. In other words, given

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1 the way we had just come out that you would not need revised
2 language. Is that correct?

3 MR. FRYE: The way we understood it was that the new
4 requirements would constitute good cause.

5 CHAIRMAN AHEARNE: Fine.

6 COMMISSIONER HENDRIE: I think this discussion clarifies
7 the matter. The legislative history says that it is good cause.

8 COMMISSIONER GILINSKY: Why would you not, on the basis
9 of your concerns about litigating all these issues and so on,
10 also exclude litigation of whether they are excessive to be
11 consistent?

12 Why not simply restrict the possibilities to whether
13 the requirements are met?

14 CHAIRMAN AHEARNE: I think that will move into the
15 closed session discussion, I suspect.

16 MR. BICKWIT: There are legal questions about such a
17 policy.

18 CHAIRMAN AHEARNE: So, I think we have to hold that to
19 a debate that will end up on a litigation issue.

20 COMMISSIONER GILINSKY: The point being that you owe
21 someone a right to a hearing.

22 MR. BICKWIT: The licensee expected that certain require-
23 ments would be all that was required of him. To now say that
24 something else is to be required of him without promulgating a
25 rule to that effect and denying him the opportunity to litigate

bfml4 1 the new requirement raises a legal question, to say the least.

2 COMMISSIONER GILINSKY: So?

3 CHAIRMAN AHEARNE: Myself, I would have no problem.

4 COMMISSIONER GILINSKY: I see. You regard that as a
5 matter of fairness to the licensee, in effect.

6 CHAIRMAN AHEARNE: I don't think he said "fairness."

7 COMMISSIONER GILINSKY: The law is a reflection of the
8 notion that --

9 MR. BICKWIT: I see where you are going, Commissioner.

10 (Laughter.)

11 CHAIRMAN AHEARNE: With my two years experience here,
12 I would certainly not say the law reflects the question of fair-
13 ness.

14 The law reflects the law.

15 COMMISSIONER GILINSKY: I never got past the LSAT.

16 CHAIRMAN AHEARNE: Pardon me?

17 (Laughter.)

18 On the other issues raised by the licensing board, do
19 you have any other?

20 COMMISSIONER HENDRIE: I would think the suggested
21 sentence with regard to summary disposition procedures sounded
22 reasonable to me. It seemed consistent with where I wanted to
23 go. Unless someone sees some other reason, I propose to adopt it.

24 CHAIRMAN AHEARNE: Fine. The last --

25 COMMISSIONER HENDRIE: They want to put in the Action

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1 Plan -- it seems to me a helpful clarification.

2 CHAIRMAN AHEARNE: Peter, I gather you really --

3 COMMISSIONER BRADFORD: Yes. I have no further
4 objections to those actions beyond the ones already stated.

5 CHAIRMAN AHEARNE: All right. If we move then to --

6 COMMISSIONER HENDRIE: You are willing to help us
7 perfect the position which you would then object to?

8 COMMISSIONER BRADFORD: In all seriousness, it is
9 important to have it as clear as possible, regardless of what I
10 may think of it.

11 COMMISSIONER GILINSKY: In that vein, I suggest you
12 clarify the paragraph on --

13 CHAIRMAN AHEARNE: We are going to get to that paragraph.
14 Now, Len, you had felt in the issued raised by the comment by the
15 appeal panel, which was the part you felt we could discuss openly?

16 MR. BICKWIT: I think what when we are talking about
17 evidentiary burden, I would be more comfortable if we did that in
18 closed session. There is a good bit in this that does not talk
19 about evidentiary burdens. There, I would not advise closing.

20 CHAIRMAN AHEARNE: Then, I think you will have to lead
21 us through that because I found it a magnificent paragraph.

22 MR. BICKWIT: The other objective -- the objective does
23 not relate to evidentiary burdens in the first two -- the first
24 paragraph is basically editorial.

25 I, for one, found it very helpful. They are very diffi-

bfml6 1 cult legal concepts. I thought they spelled things out more
2 intelligently than we have been able to do here.

3 CHAIRMAN AHEARNE: That is --

4 COMMISSIONER KENNEDY: The paragraph in its entirety,
5 starting at the bottom of page 1 and running over through the
6 top third of page 2?

7 MR. BICKWIT: Yes.

8 CHAIRMAN AHEARNE: SO, you would find that paragraph
9 both acceptable and an improvement?

10 MR. BICKWIT: Yes.

11 COMMISSIONER KENNEDY: So would I.

12 MR. BICKWIT: Although I have one additional comment.
13 Where the reference is in the sentence in the second to the last
14 sentence. It reads: "Specifically, the boards may entertain
15 contentions asserting that the supplementation is unnecessary,
16 in full or in part."

17 I think the words "or that the new requirements are
18 not complied with" ought to be added if we are to stick with the
19 Commission's intent here.

20 CHAIRMAN AHEARNE: Now, Vic, would that paragraph
21 clarify the point that you were raising?

22 MR. BICKWIT: I think that is responsive to your concern.
23 It spells it out much more clearly.

24 COMMISSIONER KENNEDY: Fine.

25 CHAIRMAN AHEARNE: Joe?

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1 COMMISSIONER HENDRIE: Fine with me. I think it is
2 a good paragraph.

3 CHAIRMAN AHEARNE: All right.

4 COMMISSIONER HENDRIE: Why is the author frowning?

5 MR. ROSENTHAL: I thought this was -- the paragraph was
6 dealing with the question or the extent to which the requirements
7 were subject to challenge specific requirements, not with the
8 matter of whether the requirements, assuming they have been
9 accepted, are being complied with.

10 I did not think that there was any room for question,
11 that the issue of compliance with the requirement was an entirely
12 appropriate one.

13 Again, in so far as we were concerned, what your para-
14 graph was dealing with and what we tried to put in what we thought
15 was a little more precise language was the question of the extent
16 to which, if any, the requirement itself was subject to challenge.

17 If you feel it necessary to indicate that the question
18 of compliance with a requirement is always up for grabs, I would
19 do that outside of this paragraph. I would let this paragraph
20 stand as simply guidance on the question to which the requirement
21 itself is subject to challenge.

22 COMMISSIONER KENNEDY: You are not questioning, Allen,
23 the wisdom of simply reasserting the fact that compliance is --

24 MR. ROSENTHAL: I would prefer to see it in a separate
25 paragraph.

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1 COMMISSIONER HENDRIE: A separate sentence?

2 MR. ROSENTHAL: Rather than freight that concept under
3 this parapgraph, which is really dealing with an entirely differ-
4 ent question.

5 CHAIRMAN AHEARNE: Fine.

6 MR. BICKWIT: That is fine.

7 COMMISSIONER HENDRIE: Now, let me ask, Len, where
8 would the substitute parapgraph with its -- with the further
9 clarifying sentence about compliance with the requirments go in
10 and what would it replace?

11 MR. BICKWIT: I think on page 7, the first full para-
12 graph.

13 COMMISSIONER KENNEDY: "Parties may litigate"?

14 MR. BICKWIT: Yes.

15 COMMISSIONER KENNEDY: Excpet for the last sentence,
16 which is the one we just addressed.

17 MR. BICKWIT: That is right. Well, the last sentence
18 would have to be revised so that necessity came out and compliance
19 stayed in.

20 COMMISSIONER KENNEDY: Right.

21 CHAIRMAN AHEARNE: You could say issues were -- the
22 issue of compliance with these requirements will be properly
23 before the boards.

24 COMMISSIONER KENNEDY: Yes.

25 MR. BICKWIT: In addition to what you have here?

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1 CHAIRMAN AHEARNE: Yes.

2 MR. BICKWIT: Then the other point made in this memo-
3 randum, I also agreed with, which was that the Commission should
4 be explicit about whether it wanted boards, on their own initia-
5 tives, licensing boards and the appeal board, to pick up issues
6 on their own that were different from the resolution of the TMI
7 issues that you arrive at in the OL list.

8 That is a policy question before the Commission.

9 MR. ROSENTHAL I might say in that connection, we were
10 not thinking in terms of the question of compliance with the
11 requirements. I would assume that the Commission would want the
12 board to exercise its 2.760(a) authority in connection with
13 compliance.

14 The question we were raising was with respect to the
15 matter of the sufficiency of the requirement. That was all in
16 terms of category one, where it is a classification interpretation
17 or refinement.

18 We were hypothesizing the situation where none of the
19 parties to the proceeding raises the question as to whether this
20 particular requirement is sufficient to represent compliance with
21 the broad regulation standard.

22 A board member has that question. A board member
23 believes that there is cause to consider whether the quantifica-
24 tion of a particular adequacy standard is sufficient or not;
25 whether -- just using a hypothetical -- whether five fire-fighters

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1 would be enough to provide adequate protection, if you had one of
2 these requirements that said five fire-fighters.

3 As we indicated in this paper, we think that the
4 Commission could go either way on this. It is a policy judgment
5 for the Commission to make. Our concern simply was that if we
6 made explicit, one way or the other, that the board's understand
7 whether they do, or on the other hand do not have the authority
8 to raise the questions with respect to category one, in the event
9 that no party raised it.

10 COMMISSIONER HENDRIE: It seems to me since we have
11 struggled at this table for many months over precisely these
12 questions, and having adopted a set of requirements and approved
13 the Action Plan, it seems to me that the senior adjudicatory
14 board at the Agency has settled that.

15 I propose to say that the boards themselves will refrain
16 from that initiative.

17 COMMISSIONER KENNEDY: I understand Commissioner
18 Hendrie's point. On the other hand, it has been my intention
19 throughout to adhere as closely as possible to all of the
20 procedural rules, all the procedural steps which normally are
21 followed by the boards.

22 It seems to me that no important effect is had upon
23 the Commission's intention by retaining that sua sponte authority
24 in this particular instance on the part of the boards.

25 Thus, I would guess, I would not change it.

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1 COMMISSIONER GILINSKY: Are we in on this, too?

2 COMMISSIONER HENDRIE: Of course.

3 (Laughter.)

4 I would not hesitate to help you perfect your position.
5 I hope you will not refuse to help me perfect mine.

6 COMMISSIONER GILINSKY: Let me address it.

7 (Laughter.)

8 COMMISSIONER BRADFORD: I will speak just for myself,
9 but in the hope of convincing as many people as possible.

10 (Laughter.)

11 It seems to me this is basically a part two. It is
12 somewhat distinct from what has gone before. I certainly would
13 not restrict the board's authority in this area. In fact, if any-
14 thing, having restricted everyone else's authority, I would feel
15 more strongly than usual to feel it was important to leave that
16 portion of the rules as they are.

17 If the board saw a need to exercise their own authority
18 that they should feel free to do so.

19 COMMISSIONER GILINSKY: I take that to be support for
20 Dick's position. I think I stand with Dick, too.

21 CHAIRMAN AHEARNE: I guess I would stand with Joe. I
22 guess we put it in a sentence to explicitly follow Commissioner
23 Kennedy's view. All right.

24 MR. ROSENTHAL: For the purpose of clarification, is
25 that just with respect to the first category?

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bfm22 1 COMMISSIONER KEN' EDY: That is what I thought we were
2 discussing.

3 MR. ROSENTHAL: Okay, because --

4 COMMISSIONER KENNEDY: The second category needs to be
5 discussed in a broader context, it seems to me, doesn't it?

6 COMMISSIONER BRADFORD: I would have applied it to both
7 categories, but of course, again --

8 CHAIRMAN AHEARNE: I have to defer to the majority.

9 COMMISSIONER HENDRIE: We might get a new majority on
10 the second.

11 CHAIRMAN AHEARNE: I see.

12 COMMISSIONER HENDRIE: Sometimes it is that way.

13 (Laughter.)

14 I will take the same position on category items.

15 CHAIRMAN AHEARNE: As will I.

16 COMMISSIONER HENDRIE: As will you.

17 COMMISSIONER KENNEDY: I must say that I think there
18 is a difference. I think that Allen has rather well pointed it
19 out. I do think it is different. Thus, I agree -- I guess I
20 agree with Joe in this one, which does not, in my view, invalidate
21 my reasoning on the first one.

22 COMMISSIONER BRADFORD: I agree, there is a difference.
23 I just agree with myself all the way through.

24 (Laughter.)

25 CHAIRMAN AHEARNE: You?

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1 COMMISSIONER KENNEDY: So do I. I guess that's the
2 difference.

3 CHAIRMAN AHEARNE: All right. Now, your remaining
4 point.

5 MR. BICKWIT: That is right. I would advise the
6 Commission on the remaining point issuing this paper to vote to
7 close the meeting.

8 COMMISSIONER HENDRIE: This is on the basis of?

9 MR. BICKWIT: On the basis of exemption ten of the
10 Sunshine Act, relating to potential litigation.

11 CHAIRMAN AHEARNE: I'm willing.

12 (A chorus of ayes.)

13 COMMISSIONER BRADFORD: I suppose that while I have no
14 wish to see this policy prevail, it would be unfair to try to
15 undo it to have you discuss your litigation topin in public?

16 (Laughter.)

17 I will defend my own views on this. I hope in the long
18 run they will prevail, but not to the process --

19 CHAIRMAN AHEARNE: Just so that the people who have to
20 leave understand where the process is, what I would propose to
21 do is after we discuss that piece -- however we come out, or
22 however the closed session piece goes, is to ask the general
23 counsel to draft a final version which would pick up the editorial
24 comments and hope to have that for either affirmation or
25 affirmation discussion early next week. All right?

bfm24

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So, I guess then we have to close the meeting.

(Thereupon, at 3:08 p.m., the meeting in the above-entitled matter was closed and went into Executive session.)

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