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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COLLEGIAL DISCUSSION OF ITEMS OF
COMMISSIONER INTEREST

PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Tuesday, October 31, 1989

The Commission met in open session, pursuant to notice, at 8:30 a.m., Kenneth M. Carr, Chairman, presiding.

COMMISSIONERS PRESENT:

KENNETH M. CARR, Chairman of the Commission
THOMAS M. ROBERTS, Commissioner
KENNETH C. ROGERS, Commissioner
JAMES R. CURTISS, Commissioner

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STAFF SEATED AT THE COMMISSION TABLE:

SAMUEL J. CHILK, Secretary

WILLIAM C. PARLER, General Counsel

P-R-O-C-E-E-D-I-N-G-S

8:30 a.m.

1
2
3 CHAIRMAN CARR: Good morning, ladies and
4 gentlemen. This morning's meeting has been scheduled
5 as a collegial discussion of items of Commission
6 interest. This is the second such meeting we've held,
7 the first being this past August. These collegial
8 meetings are intended to be an open forum for
9 discussion of matters affecting the Agency.

10 Before today's meeting I noted to my fellow
11 Commissioners a few items that I'd like to discuss and
12 there may be topics that other Commissioners would
13 like to talk about.

14 Before we begin, are there any opening
15 comments from my fellow Commissioners?

16 If not, we'll open the meeting. You'll
17 notice coffee is available.

18 COMMISSIONER ROBERTS: Thank you very much.

19 CHAIRMAN CARR: I took care of my
20 responsibility from the last meeting.

21 So, let's start at the left end.
22 Commissioner Cartiss?

23 COMMISSIONER CURTISS: Topics. I got your
24 list, Ken, and I think those are all things that would
25 be appropriate to discuss. I had a couple of

1 additional topics that I thought we might discuss and
2 we can either go into them now --

3 CHAIRMAN CARR: Okay. Start out.

4 COMMISSIONER CURTISS: Okay. One topic that
5 we had raised at the last meeting, Ken, Tom and I met
6 with Herb Kautz and I haven't talked to Tom since then
7 but I actually thought that was a fairly productive
8 meeting. Maybe at some point before the briefing on
9 the EPA performance assessment standards we can take
10 under advisement whether we want to have Kautz come
11 in.

12 CHAIRMAN CARR: Okay.

13 COMMISSIONER CURTISS: Fascinating
14 discussion. It went beyond some of the aspects of the
15 paper and got into questions about the regulatory
16 approach that we're using in general and I thought it
17 was a very useful discussion, the kind of thing that
18 might benefit the Commission as a whole. I guess I'd
19 recommend it, but having heard it once already, I
20 guess for my own personal purposes I've heard what I
21 need to hear. But --

22 COMMISSIONER ROBERTS: Well, I have too, but
23 I'd like to elevate it to a public meeting. I thought
24 it was quite beneficial.

25 COMMISSIONER CURTISS: I thought it was very

1 helpful.

2 CHAIRMAN CARR: Okay. Suits me.

3 Problem with you, Ken?

4 COMMISSIONER ROGERS: No, I think it would
5 be a good idea.

6 CHAIRMAN CARR: Deal. Next item?

7 COMMISSIONER CURTISS: High-level waste
8 budget. A lot of discussion going around about what
9 the DOE might do with its program and at the same time
10 I gather we're taking a look at what we need to do to
11 meet the potential sequestration if it remains in
12 effect.

13 I think it might be helpful at some point,
14 and even though a final decision hasn't apparently
15 been made yet on the budget, if we have the staff take
16 a look at our budgetary program for high-level waste
17 from a broader perspective than just the LSS and
18 perhaps focus on giving us budgetary estimates, both
19 dollars and FTEs for three scenarios that might come
20 out of this discussion.

21 The first would be no change at all, which
22 would assume a 1995 application and a 2003 opening
23 repository.

24 The second would be to assume a two to three
25 year delay in surface-based testing, but the

1 submission of an application in 1995 and operation of
2 repository in 2003.

3 Then I guess the third and perhaps more
4 likely scenario that may come to pass is a two to
5 three year delay in surface-based testing and a five
6 to six year delay in submission of the application to
7 the Commission.

8 It seems to me that given the constraints
9 that we've got staring us in the face, not only as a
10 result of sequestration, but the tightening budget in
11 all of our areas, it would be useful for me at least
12 to see what the staff's resource estimates are for
13 each of those three scenarios and in anticipation of a
14 probable decision at some point coming out of the
15 Department of Energy.

16 CHAIRMAN CARR: Do you have any feel for
17 when DOE is going to make a decision?

18 COMMISSIONER CURTISS: I really don't. It's
19 Greek to me.

20 CHAIRMAN CARR: I guess I personally hate to
21 go through "what if" deals if they don't turn out to
22 be -- when you can go through one of them and get it
23 over with. You know?

24 COMMISSIONER CURTISS: The advantage of
25 doing it now would be that -- I think it's pretty

1 evident that there is going to be some delay in the
2 program. If we do, in fact, have to face the prospect
3 of a final sequestration, it seems to me that one of
4 the options that we might take a look at if there's
5 going to be a stretch-out in the DOE program or a
6 refocus on the MRS would be to minimize the impact of
7 the sequestration in other areas if, in fact, that
8 stretch-out is all but imminent.

9 CHAIRMAN CARR: Why don't I -- I'll agree to
10 call Secretary Watkins up and see if I can find some
11 data --

12 COMMISSIONER CURTISS: Okay.

13 CHAIRMAN CARR: -- so that we can work on it
14 a little --

15 COMMISSIONER CURTISS: Good.

16 CHAIRMAN CARR: -- more definitely. Does
17 that sound all right?

18 COMMISSIONER CURTISS: That's fine.

19 CHAIRMAN CARR: I'll do that.

20 COMMISSIONER CURTISS: That's all I had on
21 my list.

22 CHAIRMAN CARR: Ken?

23 COMMISSIONER ROGERS: Well, I think the
24 topics that you've extracted from the submissions that
25 we sent to you is a good place to talk about Agency

1 priorities.

2 CHAIRMAN CARR: Some of that list, as you
3 noticed, some of the things were picked up, some of
4 them weren't. I didn't really put on the list things
5 that I thought were routinely already underway.

6 COMMISSIONER ROGERS: Yes.

7 CHAIRMAN CARR: Some suggestions were being
8 done. I didn't pick them up. Some of them were a
9 little hard to define and I didn't feel like I could
10 get a handle on progressing them. And other than
11 that, I think we got quite a few of them. There is
12 a -- I tried to kind of limit it to the -- I think the
13 shorter the list, the more focus you can put on it.

14 COMMISSIONER ROGERS: Yes. One area that I
15 didn't see here that I'd suggested we might just talk
16 a little bit about sometime. I don't know whether we
17 should do it today or not. But I think that the kind
18 of to and fro-ing that we see from time to time
19 between the staff and the Commission on whether
20 they've understood what we've said in an SEM or
21 something of that sort suggests to me that in a sense
22 we haven't really made it clear to the staff, and
23 maybe not clear to ourselves either, in a sense what
24 our regulatory philosophy really is, because there
25 seems to be some confusion from time to time on

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1 interpretation of what the Commission has actually
2 said. And that's a difficult issue to deal with
3 because I'm sure that we don't all five of us, or four
4 of us, see things exactly the same way, as we probably
5 shouldn't.

6 But I would like to see us somehow talk a
7 little bit about what we really think our business--
8 I think we all agree on what it's all about, namely
9 the public health and safety issues. But exactly how
10 one goes about that is a very important matter of
11 philosophy, the degree to which we insist on
12 prescriptive versus non-prescriptive regulation, how
13 we see the future of regulation going.

14 I think if we take a look at just the
15 history of the last couple years with the Commission,
16 that we really have changed the way we regulate,
17 subtly, without saying it so much. We really have
18 been focusing more on results and less on paper.
19 We've been focusing more on results in the plants
20 rather than the files of inspections or actions.

21 I wonder if somehow we shouldn't think
22 individually a little bit more about what we really
23 think good regulation really should be in the future.
24 We are a world leader and what we do influences very
25 much what other regulatory bodies think about and are

1 considering for their own future action. I've seen
2 this in my visits overseas in talking to regulators,
3 as I'm sure others of you have.

4 We, in a sense, do set a standard and an
5 approach that many other countries, as they move into
6 nuclear power commitments are looking at as models for
7 their own use. Even we've seen the Soviet Union is
8 changing very much their whole organizational
9 structure for regulation and I would like to see us
10 think a little bit more about this broad topic. I
11 know it's a difficult thing to get a hold of, but we
12 are, in a sense, changing how we regulate. I think we
13 can see that, our degrees of emphasis.

14 I'm just a little concerned that if we talk
15 only about detailed things that have to be done, we
16 never get around to thinking about the long haul that
17 is really very important for our own purposes and for
18 some signals to the rest of the world.

19 With regard to that, I think that in some of
20 my talks with our own people in the regions, I've
21 found that there is a question about how does one
22 become a good regulator. What does it mean? We start
23 out with very competent, technically qualified people
24 who come to us from industry or from the universities
25 or wherever and they have to become regulators. What

1 does that mean? How do they -- what are the
2 principles that should be guiding the development of
3 the future people of this Agency as they perform
4 regulatory functions? Somehow I'd like to see us
5 devote a little bit of time and effort to talking
6 about some of these matters.

7 CHAIRMAN CARR: I wonder if there's an
8 example of a good regulator that anybody knows. I
9 never heard one talked about.

10 COMMISSIONER ROBERTS: They're about as
11 popular as lawyers.

12 COMMISSIONER ROGERS: I think it depends on
13 who you ask.

14 CHAIRMAN CARR: Does General Counsel want
15 equal time?

16 COMMISSIONER ROBERTS: No, he's one of ours.

17 COMMISSIONER ROGERS: I'd be perfectly happy
18 to have the example of a good regulator come from
19 within the Agency. I don't insist that it come from
20 the regulated community.

21 CHAIRMAN CARR: Counselor, how much leeway
22 do we have under the Act for the way we regulate?

23 MR. PARLER: Whatever is in the creative
24 minds of the four or five persons that compose this
25 body. If you have a quorum present and a majority

1 vote that makes a policy and to accomplish that policy
2 in any innovative way. What you can't do is you can't
3 be programmatically supportive of the industry. That
4 was made clear in the Energy Reorganization Act of
5 '74. But if you look at a particular need, a factual
6 situation, you can come up with whatever policy
7 approach that you might think would be best to deal
8 with the situation.

9 It is correct it has already been indicated
10 here that in the last several years, four or five
11 years ago, there were innovations made. For example,
12 in the approach to training, to some extent in other
13 areas. That certainly has been a change from the
14 prescriptive approach to the non-prescriptive
15 approach, to the performance objectives approach.
16 There has been a drastic change, at least in
17 philosophy, from relying just on papers, ours and the
18 people we regulate, to look at results.

19 So, as long as you're dealing with public
20 health and safety and common defense and security
21 matters for the facilities and the materials that this
22 body is responsible for regulating under the Atomic
23 Energy Act of 1954 and the Energy Reorganization Act
24 of 1974, you have no limits to your imagination, et
25 cetera, et cetera, as to how you can accomplish your

1 objective.

2 COMMISSIONER ROBERTS: May I paraphrase a
3 comment of one of our predecessors, Victor Gilinsky?
4 We were in a discussion about whether we could take
5 enforcement action when there was not a specific
6 prescriptive regulation in place. Victor's answer
7 was, and I think it's a sound one, "If there's any
8 remote nexus to public health and safety, we can do
9 anything we want." He said it in a rather smart-
10 alecky, cutesie way, but I think there's a lot of truth
11 in that.

12 MR. PARLER: Of course anything you want, if
13 it's rational and it's supported by the facts.

14 COMMISSIONER ROBERTS: Sure.

15 MR. PARLER: That's what you meant and
16 that's what he meant, I'm sure. And I would agree
17 with that and I've so advised the Commission on
18 numerous occasions when I've been sitting here and
19 down at H Street and in other places.

20 CHAIRMAN CARR: I guess personally from a
21 philosophical standpoint, I think we ought to -- our
22 duty is to protect the public health and safety and I
23 would add my personal opinion, with a minimum of
24 regulation that does that.

25 MR. PARLER: Well, I've also responded to

1 that question in the past. With a minimum of
2 regulation that's adequate to do the job to carry out
3 your regulatory responsibilities. Now, the Atomic
4 Energy Act for Research and Development Reactors, the
5 so-called 104 reactors, does talk in the national
6 policy about minimum of regulations, but certainly I
7 would think that you would never need an excess of
8 regulations beyond what is necessary to do the job
9 that is called for, from the policy and the regulatory
10 standpoint. That's fairly simple and straightforward.

11 CHAIRMAN CARR: Yes. Go ahead.

12 COMMISSIONER ROBERTS: Can I pick up on it?
13 You covered a lot of ground there and got into some
14 rather philosophical areas. But in the beginning of
15 your remarks you mentioned whether staff requirements
16 memos reflect what we have decided and often times
17 they do not and I'll tell you for a specific reason.
18 It's my understanding, our vote sheets on particular
19 issues are not seen by the staff, only collated by the
20 EDO's Office. I'm not being critical of the EDO's
21 Office per se and how they handle these. But the
22 major --

23 COMMISSIONER ROGERS: All these carefully
24 thought out --

25 COMMISSIONER ROBERTS: No, nobody reads

1 them.

2 CHAIRMAN CARR: I read them.

3 COMMISSIONER ROBERTS: I shouldn't say
4 nobody reads them. Only the EDO staff and the General
5 Counsel --

6 MR. FARLER: I read every vote sheet.

7 COMMISSIONER ROBERTS: All right. I'm sure
8 you do. But major program offices don't read them.

9 COMMISSIONER ROGERS: But it stops at a
10 certain point and just doesn't penetrate down into the
11 organization. I think that's a very good point, Tom.
12 I wonder if there's anything that requires those not
13 to go further or whether somehow we could request that
14 somehow the essence of these, in fact, does get
15 communicated more broadly to the staff.

16 CHAIRMAN CARR: If we don't make them
17 public, it's about the only thing we don't make public
18 in the Agency, I guess.

19 COMMISSIONER ROGERS: I always write them as
20 if they could be read at the local street corner, with
21 the assumption that they will be.

22 COMMISSIONER CURTISS: I guess that's a good
23 point. I do think that the vote sheets represent
24 probably the collective or the aggregate views of the
25 Commission and the SRM is the vehicle by which you

1 collate those into a single point of Commission
2 guidance to the staff that has to carry out that set
3 of Commission views.

4 I guess I've always felt that as a matter of
5 not just the staff, but the public understanding of
6 what it is that we do and how we reach a decision or
7 go from point A to point B, that it would be
8 beneficial for them to understand the process and the
9 collegial nature of the process. To even go a step
10 further and to take the SECV papers, for example, and
11 absent a reason to withhold them, together with the
12 vote sheets, just put them in the PDR when the
13 decision is reached and it would explain, for example,
14 how we get from the stage where the staff makes a
15 recommendation on a particular topic, the views of the
16 individual Commissioners, and I write mine too, to be
17 read not just by the EDO, but there's nothing in there
18 that I put in them that I wouldn't want read anywhere
19 else. But it does seem to me that's a way to open up
20 the process and for people to understand --

21 CHAIRMAN CARR: Mr. Secretary, how did we
22 get where we are?

23 SECRETARY CHILK: Well, I guess we got where
24 we are by at one time sending the vote sheets -- we
25 actually sent the vote sheets down to the staff. Then

1 arose a couple of situations in which it was apparent
2 that your votes were getting out. And so, because the
3 Commission as a whole did not want its individual
4 votes to be disseminated, we asked the EDO to stop the
5 thing, to read it, send whatever directions he wanted
6 down to the staff, but to not let your actual words go
7 any further than the EDO Office. That was the basic
8 reason that we stopped it to the staff.

9 CHAIRMAN CARR: Well, I can see one problem.
10 If it's a split decision, the staff might feel, do we
11 have to respond to everybody or just to the majority?

12 SECRETARY CHILK: Well, we try to spell that
13 out in the SRM on the split decision by using first
14 the majority position saying the Commission directs
15 whatever and then secondly, "Commissioner X would like
16 you to do this or prefer to do this or feels thus and
17 so." So, we do separate between the two to some
18 extent.

19 CHAIRMAN CARR: Counsel?

20 MR. PARLER: Some of the staff requirements
21 memorandums in recent months or years do attach the
22 views of a particular Commissioner if that view is not
23 a part of the majority decision. The only need that
24 I'm aware of to have close controls on Commissioner
25 vote sheets would be with regard to ongoing

1 adjudicatory matters before the final decision is
2 made, at least until the final decision is made,
3 ongoing enforcement matters and ongoing investigative
4 matters. Those are very sensitive actions that if
5 there's premature disclosure of positions, it would
6 not serve the Agency's interests well or the interests
7 of those the Agency regulates.

8 COMMISSIONER ROGERS: Well, I wonder if we
9 might not just revisit this whole thing.

10 SECRETARY CHILK: We could revisit the whole
11 thing.

12 COMMISSIONER ROGERS: I think that the
13 collective thoughts of the Commissioners and the
14 differences between perceptions I think are very
15 important guidance to the staff and important
16 documentation of our thoughts as a collegial body. I
17 would tend to urge that we follow the General
18 Counsel's admonition with respect to sensitive matters
19 and communicate more freely these thoughts.

20 I tend to feel that even if it is a split
21 decision, it seems to me that if I want to know about
22 a split decision, all I have to do is read the
23 publications and everybody else seems to have figured
24 out how the Commissioners have voted already. So

25 COMMISSIONER CURTISS: It would be reported

1 more accurately if we were to disclose it.

2 CHAIRMAN CARR: I guess the --

3 COMMISSIONER ROGERS: Absolutely. Less
4 speculation and --

5 CHAIRMAN CARR: The implication is, of
6 course, that our votes are just taken and whipped into
7 an SRM. My impression is we negotiate more over the
8 SRMs sometimes than we do the vote sheets.

9 COMMISSIONER ROGERS: That's right because
10 there's another party trying to bring this altogether,
11 you see. So, that's another mind at work there that
12 then introduces new elements into the picture that
13 then we have to review to make sure that something
14 hasn't gotten distorted in the process.

15 CHAIRMAN CARR: I can understand the staff's
16 concern about what we really said in the SRM because
17 sometimes I don't understand what we really said in
18 the SRM. That's usually after we've spent two months
19 trying to get it out.

20 SECRETARY CHILK: Figure out what it is.

21 MR. PARLER: If somebody has a question
22 about what an SRM means, they certainly should raise
23 the question early on because this is obvious. With
24 the resource limitations that are here certainly, I
25 guess, across the board in the legal area, a false

1 start is not very useful.

2 CHAIRMAN CARR: We can't afford to waste
3 manpower in the wrong direction.

4 COMMISSIONER ROGERS: Well, I wonder if I
5 could raise another question then that sort of relates
6 to this to some extent. That is, the extent to which
7 we are bound by the ex parte requirements, it's my
8 impression that we tend to be isolated from the staff
9 to a degree which is unnecessary in many matters. I
10 recognize that there are matters where that's quite
11 proper, that we should not --

12 CHAIRMAN CARR: They're getting narrowed
13 down to nothing practically.

14 MR. PARLER: Well, that's the answer.
15 Certainly the point that Commissioner Rogers --

16 COMMISSIONER ROBERTS: I can sense Simpson's
17 argument. Be careful.

18 MR. PARLER: Point that Commissioner Rogers
19 has raised --

20 COMMISSIONER ROGERS: That is Senator Simpson's
21 argument. Be careful.

22 MR. PARLER: -- was particularly valid some
23 years ago because the ex parte rule and the
24 separation of functions requirements were used as an
25 excuse or a crutch to limit communications more

1 severely than they perhaps needed as a matter of law
2 or desirable policy to be limited.

3 The ex parte and separation of functions
4 rules were revisited by the Commission several years
5 ago and except for contested issues in adjudicatory
6 proceedings, there is no -- or potential adjudicatory
7 proceedings such as enforcement matters, there are no
8 limitations on the extent to which the Commission can
9 have discussions with its technical staff, for most of
10 our rulemaking proceedings are informal rulemaking
11 proceedings. But there I think that the common sense
12 rule would satisfy legal requirements.

13 Obviously, if a member of the deciding body
14 on a rule gets information say ex parte from a source
15 which is relied on by the Commissioner in reaching his
16 position on a proposed rule, that information should
17 be disclosed and be made a part of the rulemaking
18 record. Those are the basic requirements, but there
19 should not, at this point, be any severe limitations
20 on communications with the technical staff.

21 Obviously in the Seabrook proceeding at this
22 point, until the Commission makes its final decision,
23 it would be inappropriate to have non-public
24 discussions with the technical staff about the issues
25 that are being adjudicated in Seabrook.

1 COMMISSIONER ROGERS: Well, I tend to feel
2 that somehow the staff is reluctant to share with the
3 Commissioners' offices their tentative thinking on
4 issues, not with respect to adjudicatory issues, but
5 just in practical matters that are going to come up in
6 a SECV or something in the way of a proposal and
7 prefer to get their thoughts altogether and then give
8 them to us. And then sometimes they're surprised by
9 our response.

10 MR. PARLER: That may well be because of
11 history, practice, style or method of operation. But
12 I would like to emphatically state that's not because
13 of any legal requirement, either explicit or legal
14 requirement that would get us close to the boundary
15 line that we don't want to get to.

16 COMMISSIONER CURTISS: Yes. My impression
17 is that the separate of functions rules, when they
18 were revised recently, have been streamlined pretty
19 extensively and perhaps to the point where we've gone
20 about as far as we can under the EPA.

21 But I do think, Ken, that the points you
22 raised may be a fair one. I don't think it's a
23 function of the separation of functions rule, but

24 COMMISSIONER ROGERS: I think it's come out
25 of it.

1 COMMISSIONER CURTISS: Yes.

2 COMMISSIONER ROGERS: You know, it's a way
3 of thinking and acting within the staff in its
4 relationship with the Commissioners that I feel is too
5 distant.

6 COMMISSIONER CURTISS: I thought on the
7 question of the staff's thinking before they reached
8 the stage of formulating a SECY paper or before the
9 views have been fully decided down in the bowels of
10 the Agency, that -- the briefing, for example, we had
11 last week on emerging technical issues was a useful
12 briefing for a couple of reasons. First, we got a
13 sense of what technical issues the staff was looking
14 at right now that had not reached the point that the
15 staff had decided that any action was appropriate or
16 necessary and they made it very clear at the briefing.

17 Secondly, they came up and they explained to
18 us in some considerable detail the issues in five or
19 six areas that were under consideration by the staff
20 right now that are in some cases reported in the trade
21 press and we all see it, but simply took a slice out
22 of the staff level in maybe a pre-decisional way would
23 be the way to put it. I thought that briefing -- I
24 don't know about Ken or Tom, but I thought it was the
25 most productive briefing for that reason and it got at

1 the kind of thing I sense you're raising, which is to
2 find out early on exactly what's going on.

3 CHAIRMAN CARR: Well, let me make a proposal
4 in order to move along here. Why don't you give us a
5 draft philosophy statement and we'll shoot at it.

6 COMMISSIONER ROGERS: Okay. I'd be happy
7 to.

8 CHAIRMAN CARR: Maybe we can work something
9 out of that. I'm not sure what we can get out of it,
10 but maybe we can get something out of it. In the
11 meantime, why don't we revisit the vote sheet issue
12 and see what we really want to do with that.

13 COMMISSIONER ROGERS: Good.

14 COMMISSIONER CURTISS: Good.

15 CHAIRMAN CARR: What else you got on your
16 platter?

17 COMMISSIONER ROGERS: Oh, I guess it just
18 also relates to the item, improve internal quality
19 assurance/quality control over Agency work. I think
20 probably I'm putting it a little too harshly if I put
21 it this way, but I don't quite know how else to say
22 it. That is that we insist on palpable, demonstrable
23 quality assurance/quality control programs of our
24 licensees that we do not even think of imposing upon
25 ourselves. I think that we ought to think a little

1 bit about whether the processes that we employ really
2 examine all of the matters that relate to a high
3 quality product from a number of different directions.

4 CHAIRMAN CARR: I think the EDO's got some
5 ongoing efforts in this regard. Why don't I lay on a
6 little brief so he can tell us what he's doing along
7 these lines and so on?

8 COMMISSIONER ROGERS: Good.

9 CHAIRMAN CARR: Schedule that in the near
10 future and we can find out what's going on.

11 COMMISSIONER ROGERS: Well, I think I've
12 said enough for the morning.

13 CHAIRMAN CARR: Tom?

14 COMMISSIONER ROBERTS: I'm happy with your
15 list.

16 CHAIRMAN CARR: Well, let's look at it and
17 get the easy ones out of the way first.

18 John Abearne has finished a book on risk
19 communication with his panel. As I understand it,
20 he's volunteered to come over and give us a briefing
21 if we're interested. I think risk communication is
22 one of the problems we're going to have in the coming
23 days that we might want to get that brief. I think we
24 ought to see if we can do something about it when we
25 are moving our BRC rule into the public. We're

1 probably going to have to involve ourselves a little
2 bit in communications with the public.

3 So, if you all are in agreement, we might
4 ask him to come over and --

5 COMMISSIONER ROGERS: I think it would be
6 very good.

7 CHAIRMAN CARR: -- get the briefing.

8 COMMISSIONER CURTISS: Good idea.

9 COMMISSIONER ROGERS: I don't know if you
10 other folks have had a chance to look at that. I
11 haven't read the whole book, but I've read part of it.
12 It's a very interesting study. I have some big
13 questions about the cost of the approach that comes
14 out of that study. It's a big item the way it comes
15 out. It's not simply improving the way you put out
16 press releases. It's a total system that has a number
17 of elements that all have to work together in it.

18 CHAIRMAN CARR: You'd like that. You're a
19 systems approach man anyway, right?

20 COMMISSIONER ROGERS: Well, yes, but there
21 is a price tag on everything.

22 CHAIRMAN CARR: We'll get him over and find
23 out --

24 COMMISSIONER ROGERS: I think it would be
25 very good to hear from him.

1 CHAIRMAN CARR: Okay. We'll do that.

2 The next one let's look at is the
3 Commission's briefings from the staff. I got out our
4 appendix that says, "Procedure for Staff Presentations
5 at Commission Meetings." I don't know if we routed
6 that around. Does everybody not -- let me read you
7 what it says.

8 "In the interest of conserving time, the
9 following procedures apply to all staff members
10 presenting information at Commission meetings. The
11 presentation should be based on the assumption
12 Commissioners have read the background papers and are
13 familiar with the contents. Briefings should cover
14 approximately one-half the allotted time. The
15 remainder should be reserved for Qs and As. At the
16 outset, briefers should clearly identify the focus of
17 the briefing, indicate whether there are any health or
18 safety implications, describe any potential new
19 resource requirements, both personnel and financial.

20 "Briefers should summarize background
21 history through emphasis only on the important events.
22 Briefers should not read slides and handouts verbatim
23 and should discuss only the high points to which they
24 wish to focus the Commission's attention. The
25 briefing should be completed within the allotted time."

1 Those are good rules. We ought to follow
2 them.

3 COMMISSIONER ROBERTS: We? we don't. When
4 is that dated?

5 CHAIRMAN CARR: I don't have a date.

6 COMMISSIONER ROBERTS: How many meetings
7 have you sat here and listened to somebody read those
8 slides? Dozens, if not hundreds.

9 CHAIRMAN CARR: Three plus years.

10 COMMISSIONER ROBERTS: Yes.

11 COMMISSIONER ROGERS: That's the standard
12 operating procedure.

13 CHAIRMAN CARR: I like it.

14 COMMISSIONER ROBERTS: I like it.

15 CHAIRMAN CARR: Shall we ask them to do it?

16 COMMISSIONER ROGERS: Yes.

17 CHAIRMAN CARR: Okay. I think that's a good
18 idea. But there is some feeling that a briefing is
19 here to inform the public. I don't feel that. The
20 staff is briefing us to inform us so we can do our
21 business. If the public doesn't get informed, then
22 when they get the handouts of the briefings they can
23 read those. But we need to save as much time as we
24 can. So, we'll just ask the staff to take note of
25 the -- see if we can get back on track.

1 COMMISSIONER ROGERS: Good.

2 CHAIRMAN CARR: New item. Okay. We've
3 kicked around the Agency priorities a little bit.
4 That list needs work, but it's just kind of something
5 we'll monitor.

6 COMMISSIONER ROGERS: What are the dates on
7 those? What's the significance of those dates?

8 CHAIRMAN CARR: I think they're
9 insignificant about right now since most of them are
10 passed, but we'll try to update it and see if we can
11 keep it in a little better shape. Some of them are
12 still working, but we'll get it in a little better
13 shape and try to get some realistic dates on what
14 we're doing **there**. But generally speaking, that's what
15 I plan to do for the next -- at least while I'm here.

16 ACRS responsibilities. I don't know -- did
17 we send you the things on the ACRS out of the regs?

18 COMMISSIONER ROGERS: I don't have it here
19 if you did.

20 CHAIRMAN CARR: Well, it's in the Atomic
21 Energy Act. It's also in our regulations in 1.13. I
22 guess my concern is whether we're really getting the
23 effectiveness out of the ACRS and the ACNW that we
24 want. But particularly this was an ACRS issue.

25 Basically it says, "The committee reviews

1 safety studies and applications for construction
2 permits and operating licenses for production
3 utilization facilities and makes reports thereon,
4 advises the Commission with regard to the hazards o.
5 proposed or existing nuclear facilities and the
6 adequacy of proposed reactor safety standards, reviews
7 matters specifically referred to it by the Commission,
8 including generic issues and proposed amendments or
9 changes to facility construction permits or operating
10 licenses. Upon request from the Department of Energy,
11 performs reviews, provides reports and advises DOE
12 with regard to the hazards of DOE nuclear activities
13 and facilities."

14 This one we stuck in as a Commission, or our
15 predecessors. "On its own initiative, may conduct
16 reviews of specific generic matters or nuclear
17 facility safety-related items." That's not in the
18 Act. That's one we added.

19 "Conducts studies of reactor research and
20 prepares and submits annually to the Congress a report
21 containing the results of such studies."

22 Then there's a lot of specifics in our
23 manual. But as the licensing business slows down, the
24 ACRS, like any good organization, tends to expand on,
25 "What do we do now that we don't have anything to do?"

1 So, I think -- and I guess what I'd ask you
2 is that you take a look at what they're doing and take
3 a look at what you think we want them to do and see if
4 those things are coinciding. I'm not saying they're
5 not, but I guess -- for instance, in the fitness for
6 duty policy, my feeling is that's Commission policy.
7 I'm not sure the ACRS has a role to play in policy
8 that we set. I'm not trying to shut them out of that
9 because we think that has a role in safety.

10 But Counselor, have you got some words?

11 MR. PARLER: Sure. They can give any advice
12 as a statutory advisory committee on nuclear safety
13 matters that they wish.

14 CHAIRMAN CARR: And I'd like them to do
15 that.

16 MR. PARLER: I don't know how you would
17 necessarily sort out that from what is policy and what
18 is not. So, they certainly, as a statutory advisory
19 committee, can do that. They have to, under the
20 Atomic Energy Act, review certain applications for
21 nuclear facilities, of which they are few and far
22 between now, as you've already pointed out. But short
23 of those two things, you can suggest to them whatever
24 focus it is that the Commission thinks would be best
25 for that advisory committee to assist this Commission

1 in its work.

2 CHAIRMAN CARR: Well, I guess the kinds of
3 things that I would think that they're there to advise
4 us ^{are} on things like the implications of the LaSalle
5 incident or the -- when people try to reduce the
6 margins that were designed in the plant or increase
7 power levels. I look for those people to be
8 specifically technically oriented for the things that
9 we're not technically there for.

10 But all I'm saying is I guess how about
11 taking a look at it and if you think we ought to
12 change anything, the way we're doing business, why let
13 me know. If you want to make any comments, why feel
14 free to do that too.

15 COMMISSIONER ROGERS: Well, I've just had
16 the impression that basically we look to them for
17 technical expertise, not for basic policy guidance,
18 but technical expertise that relates to Commission
19 policy and practice.

20 Now, the General Counsel has raised an
21 important question in my mind in the sense that they
22 are free to advise us on any matters that they
23 perceive to be safety related. That's more or less
24 what I heard.

25 MR. PARLER: That's what I said.

1 COMMISSIONER ROGERS: And that's pretty
2 broad.

3 COMMISSIONER ROBERTS: It is that.

4 COMMISSIONER ROGERS: And I think we feel an
5 obligation to --

6 CHAIRMAN CARR: Is that statutory,
7 Counselor?

8 MR. PARLER: That's my interpretation of
9 Section 29 of the Atomic Energy Act of 1954 as
10 amended.

11 CHAIRMAN CARR: Thanks.

12 COMMISSIONER ROGERS: Well, it's my
13 impression that we really have a very strong
14 obligation to listen to them very carefully on
15 technical matters because they are the technical
16 experts and they are to give some validation, by
17 contrast, to our own staff recommendations. But I
18 don't see that they should be playing a role in
19 suggesting to us what our policies should be. It
20 seems more to me they should suggest to us what our
21 practices ought to be.

22 I'm a little uncomfortable about the
23 directions that sometimes I think ACRS has started to
24 move with respect to trying to influence the
25 Commission in what I think are some basic policy

1 questions. They're, I guess, perfectly free to do
2 that, but I look to them for technical expertise
3 rather than basic philosophy with respect to policy.

4 CHAIRMAN CARR: Well, we should not avoid
5 the wise counsel of good people.

6 COMMISSIONER ROGERS: No, no.

7 CHAIRMAN CARR: You've got to pay some
8 attention to that.

9 COMMISSIONER CURTISS: It does seem to me
10 that, as the General Counsel pointed out, it's
11 difficult to draw a clear line between what's policy
12 and what's technical. The technical issues that we
13 address, for example in the safety goal area, you take
14 a look at the ACRS' letter on safety goal and I guess
15 you could extract some things that are purely
16 technical and some things that are policy guidance.

17 It seems to me that the benefit of the way
18 the ACRS operates now is really three-fold. One, it's
19 a fairly uninhibited exchange of views by some folks
20 who perhaps can step back from the trees and look at
21 the forest and perhaps provide confirmation or
22 additional suggestions with regard to what the staff
23 is proposing.

24 Secondly, it seems to me that on questions
25 that really fall on the policy line of the spectrum,

1 that perhaps we think the ACRS is less well qualified
2 to address. The answer to that is when they send up
3 the letters, just take that into account and recognize
4 that that is policy guidance. There is a tendency
5 that I think when we look at the ACRS letter and to
6 some degree the ACRS letters are viewed with a
7 particular perspective, depending upon where one comes
8 down. They either support what you're doing or they
9 don't and sometimes they're not as clear as that. But
10 they have on questions like maintenance and fitness
11 for duty and degrees for operators and safety goals,
12 taking some very sharp positions, maybe crossing over
13 the policy line.

14 Third, it seems to me that particularly
15 since the Office of Policy Evaluation was abolished
16 some time back, that while that may not be a function
17 that we want the ACRS to perform all the time or in
18 lieu of the Office of Policy Evaluation, that to
19 constrain their advice in that area. Where there may
20 not be the ability to draw the line between technical
21 and policy issues, it may mean that the Commission
22 doesn't get that kind of advice at all.

23 CHAIRMAN CARR: I don't suggest that we
24 constrain it. I just wonder if we could focus it a
25 little better.

1 COMMISSIONER CURTISS: I do think your
2 suggestion recently on focusing the ACNW topic that
3 you had raised here as well was exactly the kind of
4 thing that will provide, I hope, some focus for their
5 activities. It did seem to be spread fairly thinly.

6 CHAIRMAN CARR: Counselor?

7 MR. PARLER: I'd just like to point out
8 again that it's hard, at least for me, to draw lines
9 between what is policy from the Commission standpoint
10 and what is not. The common sense approach will take
11 care of a large percentage of the problem. But you
12 have that percentage which remains which the common
13 sense approach will not take care of.

14 . And as a matter of fact, under the
15 reorganization plan of 1980, which this Agency
16 operates under, what is policy is what a majority of
17 the Commission decides at any particular time is
18 policy or is not policy. And once a decision is made,
19 that's fairly easy, but it's in some areas difficult
20 to predict where a majority will decide to draw the
21 line.

22 CHAIRMAN CARR: Okay. I suggest we move on
23 to the next one, which is --

24 COMMISSIONER ROBERTS: Well, just let me
25 make a quick statement.

1 CHAIRMAN CARR: Excuse me, sure.

2 COMMISSIONER ROBERTS: Don't lose sight of
3 the fact they're an advisory committee.

4 CHAIRMAN CARR: Right.

5 COMMISSIONER ROBERTS: And we may take their
6 advice or we may not take their advice.

7 MR. PARLER: That's true.

8 COMMISSIONER ROBERTS: But I certainly think
9 we should review it and have the benefit of their
10 advice. Whether we choose to follow it is another
11 matter.

12 CHAIRMAN CARR: I agree.

13 MR. PARLER: That's true across the board,
14 even with respect to matters for particular
15 applications that they have to review. And indeed,
16 historically the traditional ACRS letters on nuclear
17 power plants have just been taken as an advisory
18 letter and are noted as such in the records of these
19 proceedings. So they're advisory across the board.

20 CHAIRMAN CARR: All right. The last issue
21 I've got is the use of SALP grades. I've noticed. I
22 guess, continuing in increasing use I think by the
23 licensees and others concentrate strictly on the
24 grades instead of the analysis report and reading the
25 words in the report. I've heard people come in and

1 talk to me from the licensees and say, "Well, gee, we
2 got a 1.6 or a 1.7," and they average out the grades.
3 And I worry about that's the only thing in the reports
4 they read.

5 Now I've got another worry, since BECO's
6 settlement with the state kind of ended up with SAMP
7 grades as part of the settlement agreement. So I just
8 thought I'd throw that in for a little discussion. I
9 guess my curiosity is what do you think would happen
10 if we quit giving the numerical grades, and do you
11 think that's a good idea or not?

12 COMMISSIONER ROGERS: Well, I think you need
13 some kind of a succinct statement that allows you to
14 measure some progress in some way. And while I'm not
15 totally wedded to making everything quantitative, I do
16 recognize that there is a value to putting rough
17 quantitative measures on things to give a little bit
18 of guidance in interpretation.

19 I think that I'd prefer to keep the grades,
20 but still hammer away at the misuse of them very
21 vigorously. I believe that the position that Chairman
22 Zech took about two years ago --

23 CHAIRMAN CARR: I think that was a
24 Commission position. We took that as a Commission.

25 COMMISSIONER ROGERS: Yes. Well, he

1 communicated it, at any rate, to I guess the state of
2 New York with respect to our concerns regarding the
3 use of SALPs. It was excellent. I thought it was a
4 very clear statement of our concerns and how we felt
5 about the use of these grades for other purposes, and
6 made the point that it's not an intention to focus on
7 the numerical ratings themselves, and the staff has
8 been generally successful in focusing the SALP
9 meetings on the issues most relevant to plant
10 operation.

11 It's really the same kind of an issue that
12 INPO raises with respect to the use of maintenance--
13 the use of performance indicators, the misuse of the
14 number instead of getting at the basic underlying
15 questions. And I think that's the position that I
16 feel most comfortable --

17 CHAIRMAN CARR: Of course, the BECO
18 settlement took all the above into effect.

19 COMMISSIONER ROGERS: Yes. Well, I didn't
20 read it. Put it does seem to me that there is some
21 value in the numerical ratings, although they don't
22 have to be numerical. They could be A, B, C, D, but
23 just at any rate some categorization that puts things
24 in some rough boxes and then one can watch for some
25 progress in some way other than in just very fine

1 details.

2 My concern about the SALP question, ratings,
3 is that I think we've very substantially changed what
4 those categories mean. And I'm a little concerned
5 about that, because the accompanying document that
6 went with the Chairman's letter in 1987 that defined
7 what the categories meant, category I, II, and III,
8 the wording in there is quite different from what we
9 now use for definitions of categories I, II, and III,
10 in my opinion. And I prefer the old statement, very
11 much prefer it over what the present statements are in
12 defining categories I, II, and III, because I think
13 the changes have introduced some new problems in the
14 interpretation of what a SALP rating is, and in fact
15 have caused some difficulties in some instances at the
16 Public Utility Commission level in the states as to
17 what these things mean.

18 So I've asked Mr. Taylor to give me a little
19 study on how we got from the statements of 1987 of
20 what the categories meant to what the statements in
21 1989 seem to mean. I just asked him for this just
22 yesterday or so, so I don't expect to have a response.
23 But I'd raise the issue of whether the statements of
24 the meaning of the categories is what it used to mean
25 and why we've changed it and whether we really are

1 comfortable with those changes, because I'm quite
2 uncomfortable with them myself, to tell you the truth.
3 So that's another issue that relates to SALP ratings.

4 CHAIRMAN CARR: Well, I'm concerned that in
5 the case like Boston Edison where their profits, if
6 you will, are going to hinge on a numerical grade on a
7 SALP. Many of our SALP grades are kind of subjective,
8 and you notice lots of times they are changed by the
9 regional administrator. Just after a study, he
10 decides to move them a little.

11 COMMISSIONER ROGERS: Yes.

12 CHAIRMAN CARR: And I don't want them to be
13 influenced by moving them a little, costing somebody a
14 lot of money either way. And you could say -- you
15 could use it as a penalty.

16 If you move in one direction you can cost
17 him money and say, "Well, he should have listened to
18 me better."

19 If you move it the other way, why you say,
20 "Gee, he really hasn't done that bad. I don't see any
21 reason we should dock him," which puts a completely
22 different view on the purpose that we're using those
23 grades for.

24 So I'm kind of worried about the trend in
25 general. Of course, New York asked us and we

1 responded to them and they didn't do it. We didn't
2 get asked in the negotiation in Boston Edison.
3 They're a private organization. They can make any
4 deal they want. But I guess I don't like to be a
5 party to their deal.

6 COMMISSIONER ROGERS: Well, I agree with
7 you. I wonder if there is any recourse to the misuse
8 of our findings by another government agency.

9 General Counsel, could you comment on that?
10 Is there any --

11 MR. PARLER: My position --

12 COMMISSIONER ROGERS: -- way that we have to
13 be frustrated in this regard?

14 MR. PARLER: -- on that subject from the
15 legal standpoint is covered as an enclosure to the
16 document that has already been referred to, Former
17 Chairman Zech's response to the New York Public
18 Service Commission, Enclosure 1.

19 CHAIRMAN CARR: Yes, Enclosure 1.

20 MR. PARLER: But for something like this, it
21 seems to me that the initial approach would be one of
22 dialogue with the responsible officials, which I
23 understand that perhaps we are engaging in to the
24 regulatory community, what our concern is as folks try
25 to do with the New York Public Utility Commission

1 members. It is clear, under the Atomic Energy Act,
2 that economic regulatory matters are within the
3 jurisdiction of others, not this Agency.

4 On the other hand, it is also clear that
5 this Agency has the responsibility, the complete
6 responsibility under our structure, for regulating
7 public health and safety matters, radiological public
8 health and safety matters for nuclear power reactors.

9 So if you have a situation such as in the
10 BECO matter or other matters where we have a rationale
11 for believing that what the economic regulators are
12 doing conflicts and takes away from what we're trying
13 to accomplish by carrying out our regulatory mission,
14 it seems to me that somebody should speak up, be
15 specific about the facts and come up with a solid
16 rationale.

17 If that specific approach along with the
18 general dialogue does not work, there is still a
19 practice where we are concerned. This Agency is
20 concerned about the affect of this practice on this
21 Agency's regulatory responsibility. It seems to me
22 then that there are two courses: either to seek
23 legislation, which my judgement tells me would
24 probably not be productive because it would get into
25 the area of federal/state allocation of powers, and

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1 traditionally, as I understand it, economic,
2 regulatory matters for the most part have been a state
3 function; or if a particular utility is being
4 adversely affected from the standpoint of being put in
5 a position so that they are not in a manner
6 satisfactory with them able to comply with this
7 Agency's regulatory requirements, I suppose somebody
8 could initiate a lawsuit.

9 Typically, in the area of federal preemption
10 in our regulatory area, such lawsuits are initiated by
11 the utilities, by the private party whose interest is
12 affected, and the government at least up to this point
13 has not participated.

14 CHAIRMAN CARR: Well, let me ask your
15 opinion. How about we ask the staff to take a short
16 look at the pros and cons of doing away with the
17 grades and if they have any alternative suggestion to
18 accomplish the job to send us a little short piece of
19 paper? I don't want to make a big long study out of
20 this, but if there's something that -- there are ideas
21 that they've got that might solve this problem we ask
22 them to come forth with pros and cons and any ideas.

23 Does that sound all right?

24 COMMISSIONER CURTISS: It seems to me that
25 there are two questions that you've raised. One, how

1 does the SALP process function in a day to day way,
2 questions that have to do with the grading and the
3 body of the report is ignore because the grades
4 capsule what it is that we've said in the report.
5 Ken's point about the definition of the categories and
6 the question about whether we've got enough categories
7 to distinguish with one, two and three. The
8 question's been raised before about the uniformity of
9 the SALP process between the regions.

10 I guess I'm not sure how long the SALP
11 process has been in effect or whether we've ever
12 stepped back and said -- taken a look at how it's
13 functioning. Maybe the time has come to do that.

14 I'm not sure from the standpoint of grading
15 that I've got a position on that. In fact, I'm sure I
16 don't at this point. It does seem to me that if the
17 grades are in fact, leading to people not reading the
18 reports and getting at the problems that we've
19 identified in the reports, maybe that's something that
20 can move it in the right direction.

21 The second question that, of course, comes
22 up in the context of the BECO agreement is one that
23 I've been concerned about in a broader way. The use
24 of SALP scores is only one example of instances where
25 either through fuel adjustment clauses or capacity

1 levels of use of performance indicators, it seems to
2 me that we ought to take a careful look at just what's
3 going on out there. These issues crop up periodically
4 and it seems to me at this point that we tend to
5 address them in a case by case or an ad hoc way.

6 Maybe the thing that we need to do after the
7 staff comes back with its report in January on the
8 subject is to sit down and see if in the whole range
9 of what we've called performance and civil regulation
10 there's enough there to establish a Commission policy.
11 I do agree with the General Counsel that our legal
12 remedies are somewhat limited given the nature of the
13 problem that we're facing.

14 But the first question in my mind is should
15 there be a Commission policy in this area rather than
16 addressing these in an ad hoc way as they come up. If
17 there should, maybe the thing to do is sit down with
18 the people from NUMARC or INPG and NARUC and start
19 jawboning about the thing, make sure we understand
20 what their position is and where they're coming from
21 on some of these issues. To the extent that we can
22 formulate a policy, come up with some

23 CHAIRMAN CARR: I don't know that NARUC has
24 taken a position.

25 Have they, Ken?

1 COMMISSIONER ROGERS: No, not that I'm aware
2 of. It's a matter that I want to take up --

3 CHAIRMAN CARR: Maybe we should help them
4 take a position.

5 COMMISSIONER ROGERS: -- I want to take up
6 with them. We're looking at when the most appropriate
7 time would be to do that. That would be a little bit
8 later, after the first of the year, I believe. Mr.
9 Karman and I have been talking about trying to make
10 a -- my making a presentation to a NARUC meeting, the
11 full-blown meeting, on NRC's concerns on some of these
12 matters. We've been just feeling our way along a
13 little bit to get a sense of what the issues are that
14 we want to present there. I think I'd like some
15 guidance from my fellow Commissioners --

16 CHAIRMAN CARR: I guess we could exercise
17 our prerogatives and show up with five votes, right?

18 COMMISSIONER ROGERS: Yes.

19 COMMISSIONER CURTISS: The report from the
20 staff, I think, is due January 15th, which is right
21 before the next problem plant briefing. I'm almost
22 certain that they'll take into account the veto
23 arrangement because it's the most evident and most
24 recent example where I think it stretches the use of
25 performance indicators and SALPs to the point where

1 while it may be difficult to identify just what it is
2 that we don't like about that, there's something
3 visceral, but I think we all feel creates the
4 potential for abuse in a process like that.

5 Maybe the thing to do is when we get the
6 staff's report in January, to sit down with them and
7 in a meeting talk about this and see if there's a need
8 to formulate a policy and then approach --

9 CHAIRMAN CARR: Okay. Why don't we leave it
10 like that.

11 COMMISSIONER CURTISS: Okay.

12 COMMISSIONER ROGERS: Yes.

13 CHAIRMAN CARR: Any problem?

14 Any other items?

15 COMMISSIONER ROGERS: I think we've had a
16 good meeting.

17 CHAIRMAN CARR: We stand adjourned.

18 (Whereupon, at 9:28 a.m., the above-entitled
19 matter was concluded.)
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DATE OF MEETING: OCTOBER 31, 1989

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