
In the Matter of:

DISCUSSION AND VOTE ON EMERGENCY PREPAREDNESS RULE

DATE: July 23, 1980

PAGES: 1 thru 135

At: Washington, D. C.

ALDERSON  REPORTING

400 Virginia Ave., S.W. Washington, D. C. 20024

Telephone: (202) 554-2345

8007300024

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

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DISCUSSION AND VOTE ON EMERGENCY PREPAREDNESS RULE
PUBLIC MEETING

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

Wednesday, July 23, 1980

The Commission met, pursuant to notice, at
2:35 p.m.

BEFORE:

- JOHN F. AHEARNE, Chairman of the Commission
- VICTOR GILINSKY, Commissioner
- JOSEPH M. HENDRIE, Commissioner
- PETER A. BRADFORD, Commissioner

ALSO PRESENT:

- L. BICKWIT
- S. CHILK
- M. JAYGOCHIAN
- C. GOLLEP
- A. KENNEKE
- M. MALSCH
- K. PEPKINS
- F. PAGANO
- L. JOHNSON

DISCLAIMER

This is an unofficial transcript of a meeting of the United States Nuclear Regulatory Commission held on July 23, 1980 in the Commission's offices at 1717 H Street, N. W., Washington, D. C. The meeting was open to public attendance and observation. This transcript has not been reviewed, corrected, or edited, and it may contain inaccuracies.

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

P R O C E E D I N G S

1
2 CHAIRMAN AHEARNE: The subject of the meeting this
3 afternoon is to address further the emergency planning
4 rule. Let me try to at least give a brief summary of some
5 background. I am sure there are other items.

6 In December of '78 the Commission was briefed on a
7 joint NRC/EP Task Force report. We agreed to issue that for
8 comment and it was sent out in December of 1978. It was
9 issued for public comments. Obviously in March of '79 we
10 had the Three Mile Island accident.

11 In June of '79 the Commission met to discuss
12 emergency planning. Amongst other items, we address the GAO
13 report on areas around nuclear facilities should be better
14 prepared for radiological emergencies. In June of '79 at
15 that meeting requested establishing a task force on
16 emergency planning and we also directed preparation of a
17 notice of our intent to hold a rule-making on emergency
18 planning.

19 In June of '79 we got a briefing on the progress
20 of the task force. In July of '79 we sent out an advanced
21 notice of proposed rule-making. The staff analysis of those
22 comments have been published as a NUREG document. In
23 September of '79 we got a briefing on the report of the task
24 force on emergency planning. In November and December of
25 '79 we hold at least four meetings to discuss the draft

1 emergency planning rule. In December of '79 we published
2 the proposed amendments for upgrading the emergency planning
3 regulations, the draft rule.

4 In January of '80 there were regional workshops
5 held in four sites in the country to describe and discuss
6 the draft rule. In June of '80, early in June this year,
7 the staff submitted their draft final rule, and that then
8 received modifications and changes. In the middle of June
9 we were briefed by the staff on the draft final rule. At
10 the end of June we held a meeting to hear presentations from
11 panels representing a broad spectrum of organizations and
12 individuals concerned and interested in the rule. In the
13 beginning of July we were briefed on the staff response to
14 the panel presentations.

15 Now we have in front of us then a rule that has
16 received a large amount of Commission attention. It has
17 been through the advance notice, public comment, draft rule
18 and public comment. What I would today is to at least try
19 to see whether we can't work through a number of the latest
20 comments that have been received by staff and by the
21 Commissioners on the rule.

22 Prior to do that we have had one other major, I
23 think, piece of advice on the rule, and that is the
24 Congressional Authorization Committees have acted on the
25 conference and have put some language into legislation. The

1 general counsel has been discussing that issue with some of
2 the Congressional staff and perhaps it would be appropriate,
3 Len, for you to describe that.

4 MR. BICKWIT: Thank you, Mr. Chairman.

5 I guess it was approximately two weeks ago I had
6 some telephone calls from the Senate Nuclear Regulation
7 Subcommittee staff from Paul Leventhal and Keith Glazer
8 expressing concern that the proposed final rule as they read
9 it conceivably was not consistent with Congressional intent
10 as it regarded the licensing of new plants. It did not make
11 that representation with respect to the provisions in the
12 proposed final rule related to existing plants.

13 CHAIRMAN AHEARNE: This rule was the draft that
14 had been presented by the staff in June?

15 MR. BICKWIT: That is right.

16 CHAIRMAN AHEARNE: These are members of what
17 committee staff?

18 MR. BICKWIT: This is the Nuclear Regulation
19 Subcommittee staff of the Senate side. Their major concern
20 was that it had been their understanding ---

21 CHAIRMAN AHEARNE: One other question. Do the
22 represent the majority or the minority?

23 MR. BICKWIT: They purported to represent only the
24 majority in this discussion, although they suspected that
25 the minority staff would subscribe to some of the things

1 they were saying.

2 Their concern was that under the rule as drafted
3 it was not clear to them that the Commission contemplated
4 that in the absence of a plan, of a state or local plan
5 which fully complied with the requirements of the rule that
6 the Commission intended to look at the utility's plan to see
7 whether that plan could compensate for the deficiencies of
8 the state and local plans.

9 They said it was a central feature of the
10 agreement reached in conference that that would be the case.

11 CHAIRMAN AHEARNE: Their concern was that our rule
12 was too harsh?

13 MR. BICKWIT: That is true.

14 CHAIRMAN AHEARNE: Their interpretation of the
15 Congressional action was that a more flexible rule was
16 intended by the Congress?

17 MR. BICKWIT: That is correct. I told them, as I
18 have told the Commission, that the way our office has read
19 the legislation that the legislation provides for minimum
20 requirements for a rule and therefore the Commission is free
21 from a legal standpoint to be as stringent as it chooses to
22 be under the law. They disagreed with that assessment.

23 Others I have spoken to on the Hill have expressed
24 agreement with that.

25 COMMISSIONER BRADFORD: With which side?

1 MR. BICKWIT: Agreement with the interpretation I
2 have given to the Commission.

3 CHAIRMAN AHEARNE: Which side of that
4 interpretation? You indicated your view and then the
5 Congressional staff's view.

6 MR. BICKWIT: The view that I have given to the
7 Commission as opposed to the Congressional staff's view.
8 What we have termed the Congressional staff's view may not
9 be in fact the Congressional staff's view. It may be the
10 view of only some among Congressional staff.

11 It was because it was unclear exactly what the
12 staff as a group up on the Hill were saying that I thought
13 it would be appropriate to see if the Members of the
14 conference wanted to express themselves by letter on this
15 particular subject.

16 In suggesting that to the Senate Nuclear
17 Regulation Subcommittee staff they suggested that an
18 alternative arrangement might be possible. This followed
19 from my pointing out to them that there was a phrase in the
20 Commission's rule which I felt would make that rule
21 consistent with the Congressional intent as they understood
22 it. That phrase states that the state and local plan need
23 not comply with the requirements in the rule if alternative
24 compensatory actions are taken with respect to the
25 deficiencies.

1 I told them that I believed it was the
2 Commission's view that one of the alternative compensatory
3 actions that might be looked at would be the actions taken
4 by a utility in any kind of utility plan that might
5 compensate for the deficiencies. I asked them if the
6 Commission were to include language that specifically stated
7 that intent it would make the rule consistent in their view
8 with the intent of the Congress as they saw it, and they
9 said yes.

10 Again, they did not purport to be speaking for all
11 Congressional staff, but they believed that would make
12 things consistent.

13 Now, I want to reiterate my view that whether or
14 not the Commission chooses to do that is not a legal
15 matter. As I read the legislation and the supporting
16 legislative history, the Commission is free to go beyond the
17 minimum requirements set by the Congress. I believe this to
18 be true despite the fact that Congressional staff
19 representations are to the contrary. I believe
20 Congressional staff representations at this point, or even
21 representations by the Members of the Congress themselves,
22 would not have legal weight. So I think that the
23 Commission's options are not limited by these expressions of
24 opinion.

25 However, if it is the Commission's view that

1 alternative compensatory actions would include a look at the
2 utility's plan to see whether that plan was in fact
3 compensatory, then I would suggest stating that in the
4 supplementary information associated with the rule. I have
5 proposed some language which you have before you as
6 closure 1.

7 CHAIRMAN AHEARNE: Len, when you say that you
8 discussed with other people on the Hill and they supported
9 your other position, were these people involved in the
10 conference?

11 MR. BICKWIT: Yes. I am talking about people on
12 the House side. So that it was a somewhat confused
13 communication that I was getting from the Hill. As a result
14 I felt if the Congress were to express themselves on this
15 particular issue it would be best that it be done by
16 letter. At this point I see no need for such a letter. I
17 would see no need for it from a legal standpoint in any
18 event.

19 CHAIRMAN AHEARNE: I am not confused by what you
20 are saying. Are you saying that you talked to staff members
21 who participated in the conference and some had one
22 interpretation and some had another?

23 MR. BICKWIT: That is right. That is what I am
24 saying. I am saying that the only members of the
25 Congressional staffs which have clearly expressed themselves

1 as saying that our proposed final rule was inconsistent with
2 Congressional intent have now agreed that this particular
3 language would make it consistent with that intent. As I
4 finished that sentence I think I have to retract it to some
5 degree ---

6 (Laughter.)

7 MR. BICKWIT: --- because at this point I do not
8 know exactly where the minority staff of the subcommittee
9 stands on this question.

10 CHAIRMAN AHEARNE: So what you are saying is that
11 you are confident that the majority staff of the Senate
12 subcommittee would agree that the language that you have is
13 consistent with the intent of the Congress?

14 MR. BICKWIT: That is right. I have made an
15 inquiry of the minority staff and I have not had an answer.

16 CHAIRMAN AHEARNE: You are not sure also what the
17 opinion would be of either the majority or minority staff on
18 the House side?

19 MR. BICKWIT: I am not.

20 COMMISSIONER GILINSKY: You are now referring to
21 Enclosure 1?

22 MR. BICKWIT: I am referring to Enclosure 1.

23 COMMISSIONER HENDRIE: Enclosure 1, when you say
24 at the end of the first paragraph on page 5, there are
25 several versions ---

1 CHAIRMAN AHEARNE: I would suggest you work on the
2 last ment, the one that SECY distributed.

3 COMMISSIONER HENDRIE: 7/15/80.

4 CHAIRMAN AHEARNE: That at least had all of the
5 previous changes.

6 COMMISSIONER HENDRIE: Oh, I see where it goes.
7 Okay.

8 CHAIRMAN AHEARNE: Now, does everybody have that
9 version.

10 MR. BICKWIT: About six lines down.

11 COMMISSIONER HENDRIE: Would any part of Enclosure
12 1 language then also occur over at the top of page 39?

13 MR. BICKWIT: I don't think that is necessary.

14 COMMISSIONER HENDRIE: Having explained it up in
15 the front end, why there is no need to put the explanation
16 in the actual rule.

17 MR. BICKWIT: That is right. You are explaining
18 what that language means as it is used in the rule.

19 COMMISSIONER HENDRIE: Okay, good.

20 MR. BICKWIT: Again, if that is not what you
21 meant, I see no legal reason for the Commission to adopt
22 that language as a result of these communications. If it is
23 what you meant, I think it would be appropriate to include
24 that language on page 5.

25 COMMISSIONER HENDRIE: Let's see, the language is

1 drawn right out of the Authorization Act, right, section 109?

2 MR. BICKWIT: No, it is not.

3 CHAIRMAN AHEARNE: It is not in the Authorization
4 Act. It is drawn out of the conversations Len has had with
5 the Majority Members of the Senate subcommittee.

6 MR. BICKWIT: That is right.

7 COMMISSIONER HENDRIE: Well, there is a certain
8 parallel. Section 109(2) of Public Law 96-295 says "In the
9 absence of a plan which satisfies the requirements of
10 paragraph 1", i.e., everybody has checked off on it "there
11 exists a state, local or utility plan which provides
12 reasonable assurance that public health and safety is not
13 endangered by operations of the facility itself."

14 This says "In determining the sufficiency the
15 Commission will examine state plans, local plans or licensee
16 plans to determine whether features compensate" et cetera,
17 et cetera. It is not identical.

18 CHAIRMAN AHEARNE: Will you comment on the two
19 points raised?

20 COMMISSIONER HENDRIE: Well, I would be inclined
21 to put in Enclosure 1 as he has suggested.

22 Now, what is the other point?

23 MR. BICKWIT: Enclosure 2 is an entirely separate
24 matter.

25 COMMISSIONER HENDRIE: We ought to settle

1 Enclosure 1.

2 CHAIRMAN AHEARNE: Vic or Peter?

3 COMMISSIONER BRADFORD: I have no problem with
4 Enclosure 1, but I would prefer to say alternative equally
5 effective compensatory action instead of simply alternative
6 compensatory actions. I would still have no problem with
7 using Enclosure 1.

8 CHAIRMAN AHEARNE: Len?

9 MR. BICKWIT: That is a policy question.

10 CHAIRMAN AHEARNE: You are the one who has held
11 these discussions.

12 MR. BICKWIT: I am not sure what your question is.

13 CHAIRMAN AHEARNE: My question is, your
14 presentation of this paragraph was this is a paragraph which
15 I gather Mr. Leventhal and Mr. Glazer would agree tracks
16 with the conference's intent.

17 MR. BICKWIT: They would agree that Peter's
18 language tracks with the conference's intent, if that is
19 your question.

20 CHAIRMAN AHEARNE: Yes, that was my question.

21 Peter, where would you stick those two in?

22 COMMISSIONER BRADFORD: I would just put the words
23 equally effective in between alternative and compensatory in
24 our rule. So it is not really an insert to Enclosure 1.

25 COMMISSIONER HENDRICK: You proposed that kind of

1 langugae in a number of places in the statement of
2 considerations and the rule language itself and I would like
3 to hold and debate that point later on because I have some
4 problems with that terminology.

5 CHAIRMAN AHEARNE: Victor?

6 COMMISSIONER GILINSKY: Yes, that is fine.

7 CHAIRMAN AHEARNE: Who is keeping track? Mike,
8 you are keeping track. I think we all then agree with the
9 inclusion of that paragraph. There is a hold question on
10 Peter's alternative "equally effective" because that, as
11 Peter points out, that is really a phrase that is throughout
12 the rule.

13 Len, why don't you address your second enclosure
14 and then we are going to have to go through a whole set of
15 things Peter has proposed.

16 MR. BICKWIT: The second enclosure is simply
17 designed to conform the supplementary information of the
18 rule with the text of the rule as it is proposed to be
19 adopted.

20 The proposed language in the rule as you now have
21 it before you is not alternative "A" as that alternative
22 existed in the original proposed rule. It is a more
23 flexible version of alternative "A". This simply states
24 that clearly.

25 Our feel was that without a statement of this kind

1 some might be under the misimpression that the Commission
2 had adopted alternative "A" as its choice for language, and
3 the Commission has not done that.

4 Consistent with that change we would also propose
5 that the last sentence on page 3 carrying over to page 4
6 would be deleted.

7 CHAIRMAN AHEARNE: Why?

8 COMMISSIONER HENDRIE: Well, wait a minute. Let's
9 start on page 22.

10 COMMISSIONER BRADFORD: I ought to just note that
11 I had also revised that same paragraph for some of the same
12 reasons, but since some of my changes went in another
13 direction, why my phrasing was slightly different.

14 CHAIRMAN AHEARNE: Perhaps we ought to wait then
15 until we get to page 22.

16 COMMISSIONER BRADFORD: I agree with Len's point.
17 If in fact the rule stays the way it is then I would vote
18 for Enclosure 2 because it is not a straight alternative "A".

19 CHAIRMAN AHEARNE: Yes. I think then we ought to
20 hold that one in abeyance.

21 COMMISSIONER BRADFORD: Fine.

22 COMMISSIONER HENDRIE: Well, I doubt there is much
23 dispute. What we could do is sort of tentatively agree to
24 take Len's recommendation and then when we get to that point
25 we could see what changes he might want to work upon the

1 Enclosure 2 language.

2 Len, you don't mean the first two sentences, do
3 you?

4 MR. BICKWIT: On page 22?

5 COMMISSIONER HENDRIE: yes. You mean the first
6 sentence, don't you?

7 MR. BICKWIT: I think I did mean the first two.

8 COMMISSIONER BRADFORD: You just dropped the
9 discussion of alternative "B" altogether?

10 MR. BICKWIT: No. I think what you are referring
11 to is the Commission's choice is consistent with most of the
12 comments received from state and local governments.

13 CHAIRMAN AHEARNE: And consistent with the
14 provision.

15 MR. BICKWIT: Yes.

16 COMMISSIONER HENDRIE: That continues to be the
17 fact so far as I know.

18 MR. BICKWIT: I am not sure the first part of that
19 sentence is right. I don't know whether most of the
20 comments referenced this particular change in alternative
21 "A".

22 CHAIRMAN AHEARNE: Let me ask. Mike.

23 MR. JANGOCHIAN: I am sorry, I am writing. What
24 was the question?

25 CHAIRMAN AHEARNE: This is on page 22. This is

1 the major paragraph on page 22. It says "After careful
2 consideration," that paragraph.

3 MR. JAMGOCHIAN: Yes.

4 CHAIRMAN AHEARNE: The second sentence, "This
5 Commission choice is consistent with most of the comments
6 received from state and local governments." General counsel
7 is asking is that accurate.

8 MR. JAMGOCHIAN: Yes, sir.

9 COMMISSIONER HENDRIE: Enclosure 2 replaces the
10 first sentence.

11 MR. BICKWIT: The first sentence, right.

12 COMMISSIONER BRADFORD: No, because that is the
13 third sentence that you are talking about now. The second
14 sentence is the one that begins "Alternative B."

15 CHAIRMAN AHEARNE: No.

16 COMMISSIONER BRADFORD: No?

17 COMMISSIONER HENDRIE: You have got the wrong
18 draft.

19 COMMISSIONER BRADFORD: Have I got the wrong
20 draft? I am working from my draft.

21 CHAIRMAN AHEARNE: July 15th.

22 COMMISSIONER BRADFORD: The alternative "B"
23 discussion is gone anyway. I have that also.

24 (Laughter.)

25 COMMISSIONER BRADFORD: I can only work from three

1 drafts at a time.

2 (Laughter.)

3 COMMISSIONER BRADFORD: The sentence I would like
4 to get rid of is the one ---

5 CHAIRMAN AHEARNE: I think we really have to work
6 through page by page and then we will get to yours.

7 COMMISSIONER BRADFORD: Okay.

8 MR. BICKWIT: One other thing. In light of my
9 statement we are all right on leaving that sentence on page
10 3 going over to page 4.

11 MR. JAMGOCHIAN: Actually it should say "similar
12 to alternative "A" if you are going by your Enclosure 2. It
13 would be more accurate.

14 MR. BICKWIT: Has adopted a version similar to ---

15 MS. JOHNSON: Similar to alternative "A".

16 MR. BICKWIT: Similar to alternative "A". I would
17 prefer that.

18 CHAIRMAN AHEARNE: Well, let's start back at the
19 beginning if we can because we have got enough chances on
20 various pages. So let me start with page 1.

21 COMMISSIONER BRADFORD: Let me ask a question
22 about the history of this document. Is this the same as 275
23 as modified by 275-A and B?

24 MR. CHILK: And the comments that were made.

25 COMMISSIONER BRADFORD: Commission office

1 comments, okay.

2 CHAIRMAN AHEARNE: But put into a clean version.

3 COMMISSIONER BRADFORD: Right.

4 CHAIRMAN AHEARNE: As a result a number of the
5 pages now are different.

6 COMMISSIONER BRADFORD: Yes. The page number
7 doesn't trouble me, but it would not be safe even to be
8 using 275-B as identical to what SECY circulated.

9 CHAIRMAN AHEARNE: Right.

10 MR. CHILK: Almost everything that you have can be
11 tracked.

12 CHAIRMAN AHEARNE: Hopefully everything can be
13 tracked.

14 (Laughter.)

15 COMMISSIONER BRADFORD: But one may have to have
16 some things that we don't have to track it.

17 COMMISSIONER AHEARNE: Let me start on page 1.

18 Carl.

19 MR. COLLIER: It would be useful to summarize what
20 that particular copy does include or does not include. The
21 version that was submitted by the staff on the 15th includes
22 all of the changes of the staff recommended to the
23 Commission in SECY 80-275-A and all the changes in 275-B.
24 In some cases one superseded the other. It includes all
25 changes that were suggested in the memo by Mr. Sauter of

1 July 11, 1980, to all of the Commissioners. It includes
2 changes that were indicated to the Commission in a note to
3 the SECY relative to changes that were necessary to conform
4 the rule to the latest FEMA rulemaking. This was noted in
5 detail.

6 CHAIRMAN AHEARNE: That was a note from you.

7 MR. GOLLER: Yes, sir. It also includes a
8 considerable number of editorial changes that were received
9 from a variety of sources, some from the staff, some from
10 Mr. Sauter and some from other Commission offices, none of
11 which, in our opinion, change the intent or the substance of
12 the rule, but all of which are improvements and are truly
13 editorial changes.

14 This version does not include one correction which
15 should have been included in the changes I just indicated,
16 which was a deletion of a phrase on page 49 in item two
17 relating to the provisions that would be made for transients
18 which was identified in 275-A. This was an oversight.

19 CHAIRMAN AHEARNE: It was the deletion of a phrase
20 and the addition of another sentence.

21 MR. GOLLER: The addition of another sentence
22 which went further toward clarifying. This was simply a
23 typographical oversight and a correction that does need to
24 be made. It does not include the two suggested changes by
25 way of enclosures that we have just been discussing that

1 originate from CGC, and it does not include any further
2 changes most recently identified by Commissioner Bradford.

3 CHAIRMAN AHEARNE: That would have been very
4 difficult.

5 COMMISSIONER BRADFORD: That would have been hard
6 to get in.

7 CHAIRMAN AHEARNE: Yes.

8 All right, can we start on page 1. The question
9 on page 1, Peter, you in many places have changed
10 "appropriate" to "effective." Can you describe what the
11 significance of that is?

12 COMMISSIONER BRADFORD: Appropriate just to me is
13 a lazy word. It is sort of a substitute for thought.
14 "Effective" means something. It doesn't mean a whole lot
15 more, but it means that we actually think they will work.

16 CHAIRMAN AHEARNE: Can I ask the Standards office
17 to tell us whether there is any difference from a regulatory
18 standards approach on "effective" versus "appropriate."

19 MR. GOLLER: Yes, sir, we think that there is a
20 substitute difference between those two words.

21 COMMISSIONER BRADFORD: It could be ineffective
22 and still be appropriate?

23 (Laughter.)

24 MR. GOLLER: No, sir, but I think there is a
25 difference in meaning between the two words as used.

1 CHAIRMAN AHEARNE: Could you try to describe the
2 difference?

3 MR. JAMGOCHIAN: In going through your comments,
4 and we only had about a half hour to go through them, in a
5 real quick analysis, when you have an emergency you take
6 appropriate protective measures. Now, you have to consider
7 the weather. You have to consider a lot of things. You may
8 not evacuate because of six or ten-inches of snow outside.
9 You just may take shelter. That would be appropriate, but
10 in some people's minds that may not be totally effective.
11 We have gone all along in our regulations that you take
12 appropriate protective measures. You know, who determines
13 what you have done is really effective?

14 COMMISSIONER GILINSKY: Well, appropriate means
15 you take the right ones. The way you chose the right ones
16 is on the basis of effectiveness. Now, they may not be
17 totally effective.

18 MR. KENNEKE: Mike's point is some measures may
19 reduce your dose further but may increase your risks of
20 other kinds.

21 MR. JAMGOCHIAN: With appropriate you take
22 everything into consideration.

23 MR. KENNEKE: You might save another ten rems by
24 driving through a crowd but it might endanger your life to
25 do so.

1 MR. JAMGOCHIAN: Right.

2 MR. KENNEKE: So that says it would be
3 inappropriate although more radiologically effective.

4 MR. JAMGOCHIAN: Effective, yes, sir.

5 MR. KENNEKE: I think their interpretation of
6 effective means radiologically effective whereas appropriate
7 means effective in an overall risk kind of context.

8 COMMISSIONER BRADFORD: But we are making a
9 finding as to whether a particular plan provides reasonable
10 assurance that effective or appropriate, but I am saying
11 effective measures can be taken. It seems to me if we can't
12 say that the plan provides reasonable assurance of effective
13 measures then we ought to be thinking some more. I mean if
14 in fact the climate is such that it is so likely that the
15 measures which we would consider appropriate would not also
16 be effective, then there are some serious questions about a
17 plan in that climate.

18 MR. JAMGOCHIAN: Isn't effective more inclined to
19 be looked at as after the fact?

20 COMMISSIONER GILINSKY: No, but this has to do
21 with a finding before the fact, as Peter points out. In
22 other words, it may turn out that you were wrong, but in
23 making the finding initially it seems to me that you have to
24 make it on the basis that you think that effective action
25 will be taken, or at least you have reasonable assurance.

1 CHAIRMAN AHEARNE: Mike, why don't you and Carl
2 come up here to the table.

3 MR. GOLLER: Before you take actions which you
4 consider appropriate which might even be anticipatory, it
5 may turn out that they were unnecessary or the accident had
6 taken some different course and the action you took wasn't
7 effective at all.

8 COMMISSIONER GILINSKY: But that is a whole
9 separate question.

10 CHAIRMAN AHEARNE: Mike and Carl, sit down,
11 please. I suspect you will be here a while.

12 (Laughter.)

13 (At this point Messrs. Goller and Jamgochian take
14 seats at the table.)

15 COMMISSIONER GILINSKY: You are talking about
16 findings that one is making in advance of any exercise of
17 these plans or measures.

18 CHAIRMAN AHEARNE: Let me ask the lawyers --
19 really no intent meant, Peter. Let me ask general counsel.

20 MR. BICKWIT: I agree with Standard's that there is
21 a difference.

22 COMMISSIONER BRADFORD: Yes, I agree that there is
23 a difference.

24 CHAIRMAN AHEARNE: What kind of difference?

25 MR. BICKWIT: The difference, I think they hit it

1 on the head, that appropriate entails some interest
 2 balancing, whereas effective is an absolute word. It is
 3 either effective or it isn't effective. So in answer to
 4 your question, it could be ineffective and appropriate in
 5 the sense that it would not be totally effective. It could
 6 be appropriate without being totally effective.

7 CHAIRMAN AHEARNE: Let me ask you, Len, let's just
 8 consider that we are trying to do an assessment of the
 9 emergency planning measures of a plant, any particular
 10 plant. Whether it our staff or FEMA staff that is looking
 11 at that, what kind of a criterion would they be looking at?
 12 Would they be trying to judge whether the measures that are
 13 being proposed, if I say they are appropriate doesn't the
 14 sense of appropriateness carry with it the sense of what is
 15 appropriate is something that would be effective?

16 MR. BICKWIT: Yes, but if you are asking me
 17 whether there is a difference, I think we all perceive a
 18 difference here. The policy judgment is do you want them ---

19 CHAIRMAN AHEARNE: Let's not say "we" because,
 20 unfortunately, my problem is that I am not seeing the
 21 difference.

22 MR. BICKWIT: I see. Well, I think there ought
 23 not to be a difference. There could be a difference.

24 CHAIRMAN AHEARNE: Well, I don't think there ought
 25 to be a difference.

1 COMMISSIONER HENDRIE: If there is a difference,
2 those people that perceive a difference ought to vote for
3 appropriate.

4 COMMISSIONER BRADFORD: Oh, no.

5 COMMISSIONER HENDRIE: Yes, because the proper
6 action for protection of the public in some circumstances
7 may be no action. Okay?

8 COMMISSIONER BRADFORD: That may also be the
9 effective action.

10 COMMISSIONER HENDRIE: If you perceive a
11 difference and would rule out in some peculiar circumstance
12 zero action as being ineffective on the face of it, then you
13 have to agree that appropriate is the word that is needed
14 here.

15 COMMISSIONER BRADFORD: On the contrary, what I am
16 saying is that at the point where a finding is being made
17 what we are doing here is setting the finding that is
18 necessary for a license or for operation. If you are
19 confronted by a situation in which the only effective action
20 is one of the sort that somebody, perhaps it was Al who
21 hypothesized that people would have to drive through a crowd
22 in a hurry to get away, and you could say, all right, that
23 plan can be licensed because then the effective action is
24 going to be for that person to say where they are and not
25

1 get away. I am saying that is not a standard I am prepared
2 to accept. If at that point in time you cannot make the
3 finding that there are effective actions contemplated by the
4 plan and that you have reasonable assurance of being able to
5 do them, never mind if there is a tornado blowing or
6 something of that sort, then I don't think the finding ought
7 to be made.

8 I do see a difference in the sense that the word
9 "appropriate" -- it is as though you had two circles and
10 then they overlap. There is hopefully a very substantial
11 area in which appropriate and effective mean the same thing,
12 but there is an outer shading to appropriate in which you
13 could rationalize the situation by just shrugging and
14 saying, well, the appropriate action unfortunately is going
15 to do a lot of damage but we still agree it was the
16 appropriate thing to do and the plan should be there.

17 What I am saying is that in that area where the
18 finding could be that the action is appropriate but could
19 not be that it is effective, I would have some doubt about
20 the feasibility of making a finding that would permit a
21 license.

22 COMMISSIONER HENDRIE: You would conclude that
23 even though in a particular case the judgment might be that
24 in 99 percent of what are already not frequent events
25 effective action could occur but that in one percent of such

1 events it might be questionable whether effective action
2 could be taken that would deny a license?

3 COMMISSIONER BRADFORD: No, I don't think so. I
4 am not sure I am following you, but if you have 99 percent
5 assurance that seems to me to be reasonable assurance.

6 COMMISSIONER HENDRIE: Well, it certainly to my
7 view is reasonable assurance in terms of the statutory
8 standard. What I am pointing to here is that the difference
9 perceived between effective and appropriate, the word
10 "effective" to the staff, and I think it carries also for
11 me, the sort of connotation that all of these measures in
12 all cases will have to reduce dose and so on, that we cannot
13 contemplate any circumstance in which that might not happen.

14 You then are confronted with the following
15 situation anywhere north of some reasonable latitude that
16 for one day in every four or ten years or whatever you will
17 have a sufficient snow blockage of the roads so you can't
18 evacuate. If something happens on that day you aren't going
19 to be able to move people out and you take appropriate
20 action. That means telling them to stay inside which they
21 will probably end up doing involuntarily but it is certainly
22 not the most effective action, or may not be the most
23 effective action for people close in.

24 To use the word "effective" throughout the rules
25 suggests that that is an impermissible situation and I think

1 it is that connotation which worries some of us who see a
2 difference between the two words.

3 CHAIRMAN AHEARNE: Let me ask Peter whether that
4 is the connotation he means?

5 COMMISSIONER BRADFORD: It seems to me that for
6 the kind of situation which you are talking about, abnormal
7 weather conditions or sort of a meteorite hitting the plant
8 which produces an instant release of large quantities of
9 radioactivity and thereby denies you all of the warning
10 times, assumptions about warning times that are built into
11 the system, that those are unlikely enough that they get
12 swept away under the reasonable assurance question.

13 What one is worried about is a situation where an
14 accident occurring on what we might call normal weather with
15 normal warning times you would still be unable to make a
16 finding that effective action could be taken. That is the
17 situation which I am saying. If you can't make that
18 finding, there probably shouldn't be a plan.

19 CHAIRMAN AHEARNE: Al, did you have something?

20 MR. KENNEKE: Let me make a suggestion that it
21 seems to me the difference is one of two general approaches
22 to effective action. That is shelter versus evacuation. I
23 think it is evident in the conversation.

24 I guess I would agree with Commission Bradford
25 that if one would say that the typical conditions are such

1 that you can expect people to be unable to reach shelter
2 because of probable weather conditions then I think he
3 definitely has a strong point. If that is not a question,
4 then we really are splitting hairs over the word "effective"
5 because we really choosing between the relatively effective
6 choice of shelter and evacuation. The evacuation may reduce
7 the dose more but it may be an overall greater risk to
8 achieve. So let me suggest a different phraseology that
9 perhaps could split the difference if I may.

10 CHAIRMAN AHEARNE: If we say effective and
11 appropriate that is not splitting hairs.

12 (Laughter.)

13 MR. KENNEKE: I thought about it first, but it
14 didn't go over very well. Let me try it and maybe it comes
15 to the same thing. I don't think so. Reasonable assurance
16 that an appropriate choice of effective protective measures
17 that can be taken will be made. That is a little different
18 than effective and appropriate.

19 COMMISSIONER GILINSKY: There is one qualifier in
20 reasonable assurance. If you put in appropriate there is
21 another qualifier. It is sort of a hedge word.

22 CHAIRMAN AHEARNE: Carl.

23 MR. COLLER: He just touched on the point that I
24 think indicates that "appropriate is the right word. In many
25 case there might be more than one effective way of doing

1 something. There might be any number of effective ways.
2 One best way, that is the appropriate way, that is what you
3 want to ask for.

4 COMMISSIONER GILINSKY: Any one of them would
5 qualify for effective.

6 MR. GOLLER: You don't want any one of them. You
7 want the appropriate one.

8 COMMISSIONER BRADFORD: Wait a minute. There is
9 nothing about appropriate that requires you to choose the
10 best.

11 MR. GOLLER: That I think is inherent in the word
12 "appropriate" is that you want the best.

13 CHAIRMAN AHEARNE: I was going to ask Peter what
14 his reaction to Al's suggestion was?

15 COMMISSIONER BRADFORD: Well, Victor already I
16 think articulated it. I would look for the flexibility in
17 this sentence in the phrase "reasonable assurance." For me
18 it is enough that a reasonable man assessing the plan
19 reasonably would find reasonable assurance of effective
20 protective measures. The blizzard every four years or the
21 bridges being out at the time of the accident I think have
22 to be taken as adding to the original low probability of the
23 accident and not falling within the reasonable assurance
24 question.

25 In the way I have heard the word "appropriate

1 being used would suggest that there really is within it no
2 barrier to siting a plant in a heavily populated area
3 because in that situation the appropriate action will in all
4 likelihood be shelter because evacuation will never be
5 possible.

6 MR. JAMGOCHIAN: What about deleting "effective"
7 or "appropriate"? Reasonable assurance that protective
8 measures can and will be taken.

9 COMMISSIONER GILINSKY: Well, that is kind of weak
10 because that doesn't say much of anything. It is reasonable
11 assurance that the public will be protected is what this is
12 all about. That is what our regulations say that the public
13 will not be endangered, or something like that.

14 CHAIRMAN AHEARNE: Victor, you had a comment.

15 MR. BICKWIT: How about the statutory standard,
16 legal assurance that the public will be adequately protected?

17 CHAIRMAN AHEARNE: In the event of a radiological
18 event.

19 Well, Peter?

20 COMMISSIONER GILINSKY: It seems to me that
21 reasonable assurance of effective protection adds up to
22 adequate protection.

23 MR. KENNEKE: I think the staff's fear is that
24 words as written will drive the reviewer to say that only
25 evacuation ---

1 COMMISSIONER GILINSKY: There is nothing here
2 about evacuation.

3 MR. KENNEKE: No, but I think that is what is
4 behind their concern, that there has to be an option besides
5 evacuation.

6 COMMISSIONER GILINSKY: I mean Joe brought up the
7 question of evacuation versus people staying indoors. Now,
8 as far as I understand your views, you regarded that as
9 effective protective action.

10 MR. BICKWIT: Why don't you strike "reasonable
11 assurance"?

12 (Laughter.)

13 MR. BICKWIT: I don't see how the Commissioners
14 can say that the statutory standard is the wrong standard.
15 I mean, it is the one that we use all the time. So why
16 don't you simply say that onsite and offsite emergency
17 preparedness will adequately protect the public in the case
18 of a radiological emergency?

19 CHAIRMAN AHEARNE: Do you have any problem with
20 that?

21 COMMISSIONER BRADFORD: Well, if the inclination
22 is to go in that direction I would just change effective to
23 adequate in the formulation I have already proposed. Then
24 the phrase becomes adequate protective instead of adequate
25 protection, but I think that is close enough.

1 CHAIRMAN AHEARNE: Any problem with adequate? The
2 difficulty I am having is that I would have always thought
3 that appropriate would have been effective.

4 COMMISSIONER GILINSKY: That is what I thought.

5 CHAIRMAN AHEARNE: But you see I worry because
6 Peter is finding a problem with appropriate. All of them
7 seem to be equivalent to me.

8 COMMISSIONER GILINSKY: Appropriate is a vaguer
9 word.

10 CHAIRMAN AHEARNE: Once the lawyers start telling
11 me, well, no, they are a little bit different, then I feel
12 very uncomfortable because I am not sure what all the
13 nuances really mean.

14 MR. KENNEKE: The implication in Commissioner
15 Bradford's terms as I see his objection, is that you may do
16 literally nothing to reduce the dose. In their case you
17 have only one option.

18 CHAIRMAN AHEARNE: But you see the problem I am
19 having is that the interpretations of the misuse of the
20 language is outside of the -- what is that nice phrase that
21 you introduced at one time -- rule of reason.

22 MR. KENNEKE: Adequate sounds like a good
23 splitting in the middle that both sides could live with. I
24 wouldn't be a code word to either side.

25 CHAIRMAN AHEARNE: Peter, adequate is adequate?

1 COMMISSIONER BRADFORD: Adequate is adequate.

2 CATHY AHEARNE: Joe?

3 COMMISSIONER HENDRIE: I think the word you really
4 want is appropriate.

5 (Laughter.)

6 COMMISSIONER BRADFORD: The word you really want
7 is appropriate.

8 (Laughter.)

9 COMMISSIONER HENDRIE: To the extent that people
10 see some sort of climbing scale of rigor in the requirements
11 then that worries me with regard to moving off suddenly to a
12 new word.

13 Now, if somebody tells me, as you do, John, that
14 it seems to you that the appropriate measures are effective,
15 you know, as they turn out in a given circumstance and they
16 are also adequate in the context of the circumstances, then
17 I can agree with you that any one of the three words would
18 serve because they mean about the same.

19 If we have decided now, having worked on the rule
20 for, what, 15 months, or something like that, that on the
21 day we had hoped to come to a final vote that we are now
22 going to establish a new standard for emergency planning by
23 using "effective" instead of "appropriate", why of course we
24 say, wait, let me think about what that means.

25 You know, are you now driving in the direction to

1 say, let me ask, what do we mean by effective? You said,
2 no, it doesn't mean that. there may not be circumstances
3 where it turns out that what will have to be done is nothing
4 and people just stay where they are. That is all right. If
5 you say, well, if that is the best you can do most any time,
6 why that is a problem. All right, no difficulty with that.
7 So you tell me, no, it doesn't mean every time. Does
8 "effective" mean that people don't get any exposure?

9 COMMISSIONER BRADFORD: No. Incidentally, I think
10 we have gone from effective to adequate, or at least I
11 have. But answering for either one, I wouldn't have said it
12 meant no exposure because the whole rest of our rules don't
13 anywhere take the position that zero exposure is required to
14 assure adequate protection of the public health and safety.

15 COMMISSIONER HENDRIE: As a matter of fact, the
16 whole thrust of the rule as I perceive it is that we do
17 things with plant design and operation to try to keep things
18 from happening. Then you say if something does happen it
19 seems sensible to us to have pre-existing plans and
20 notification means so that we can take whatever measures are
21 practical to be taken in the particular circumstances as
22 they may occur to reduce the radiological hazard. The
23 circumstances may allow that to be extremely attractive.
24 That is, there may be ample warning times, and I have got a
25 feeling that is probably the likely event, and that indeed

1 you could move people out in a considered, you know, not
2 hurried way from around the plant and indeed essentially
3 eliminate the potential high exposures close in.

4 It also contemplates that things may move faster
5 than that and that the best you could hope for is to get
6 word to people to get inside and that some people will hear
7 it and get the word and get inside and some won't, but that
8 there will be some reduction in the exposure by virtue of
9 having gotten some more people inside than would have been
10 the case if you hadn't tried.

11 This whole range of actions that may take place
12 following any given circumstance, what you want is a plan
13 that sort of gives you a reasonable basis for recommending
14 those actions to people and having your local police force
15 attempt to implement them.

16 Now, if there is also as you read the rule some
17 sort of requirement here that this be guaranteed in all
18 circumstances and result in either zero or very low
19 exposures in all circumstances, then I must say that goes
20 well beyond the place that I see emergency planning and in
21 fact to a place that I don't think can be achieved. So I
22 have concern about, you know, the changes proposed from
23 appropriate to effective and I can't quite decide whether
24 adequate is, you know, back down a step or is it at the same
25 level laterally or where it is.

1 It worries me that these words now appear to be
2 coming in late in the stage of consideration of this rule
3 that seem to have an implication that we are establishing a
4 new standard not contemplated in the comment period and the
5 extensive discussions we have had heretofore. Now, maybe it
6 simply reflects final writer focusing and more careful
7 focusing of our individual views on the matter, but I am not
8 all that happy to go through at the last minute and change a
9 lot of words which clearly have implications that I have
10 trouble seeing where they lie.

11 COMMISSIONER BRADFORD: Obviously with the
12 concurrence of others I wouldn't insist on a vote today,
13 although I would like to be able to vote today, but I
14 certainly wouldn't want to do it in the face of feeling that
15 stuffy I have circulated at the last minute puts you under
16 the gun like that.

17 COMMISSIONER HENDRIE: I think it is more than
18 me. What I am trying to discern is, you know, should I
19 perceive this now as presenting a second language in which
20 commenters haven't had a chance to sense what all is here
21 and make comments as they might if they had so sensed. I
22 don't know. I can't tell where you are going with
23 effective. What does it mean.

24 COMMISSIONER BRADFORD: Let me trying that once
25 more. First of all, as to the business of guaranteed that

1 no one would be exposed or that you would be able to
2 evacuate a hundred percent of the time under all conditions,
3 I really think the phrase "reasonable assurance" takes care
4 of that and that there is obviously a difference between
5 having reasonable assurance or something and having a
6 guarantee. No one would say that those were synonymous.

7 For the rest, it is one thing to say that within
8 the framework of the plan you would expect there would be
9 some days in which the best you could do would be to
10 recommend sheltering. I agree that that is true and
11 certainly that the plan should contemplate that under those
12 conditions that that is what would be recommended and
13 shouldn't compel you to try to evacuate when you couldn't do
14 it.

15 COMMISSIONER HENDRIE: As a matter of fact, Peter,
16 there will be some days when you won't be able to execute
17 the plan at least for limited periods because anything like
18 a siron system is bound to have a down time, you know, of I
19 don't know what, but some small fraction.

20 COMMISSIONER BRADFORD: But at the moment you are
21 making the finding about the plan's adequacy for the future,
22 then it doesn't seem to me that the plan has to be found
23 inadequate just because you know that there are going to be
24 some periods of time when you can't do that which you would
25 really like to be able to do whether because of the

1 conditions of the accident or the conditions of the weather.

2 I do think that the finding as to what you would
3 expect to prevail during normal or even somewhat less than
4 normal conditions ought to be of a level of adequacy of
5 effectiveness. What I have gathered from the staff comments
6 with regard to what they perceive as the difference between
7 adequacy and effectiveness on the one hand versus
8 appropriateness on the other is that there really could be
9 situations in which the word "appropriate" would be taken --
10 and by situations I mean at the time the plans were being
11 reviewed -- the word "appropriate" would really be taken as
12 meaning more or less do the best that you can.

13 CHAIRMAN AHEARNE: As a normal mode.

14 COMMISSIONER BRADFORD: As a normal mode. I do
15 think that the word "adequate" or "effective" takes you a
16 level higher than that.

17 COMMISSIONER GILINSKY: That is what I thought I
18 heard Joe say. I hope I misunderstood you, but you seem to
19 be saying that what we need is to have assurance that if
20 something happens they will do the best they can.

21 CHAIRMAN AHEARNE: But you always want to do the
22 best you can.

23 COMMISSIONER GILINSKY: What we are saying here is
24 that that best will be pretty good in most circumstances and
25 that is where the reasonable assurance comes in. In other

1 words, what we really want to do is have reasonable
2 assurance that people aren't going to get irradiated to any
3 unhappy degree. That doesn't obviously cover every
4 circumstance and it doesn't mean that when the plan is
5 generally effective there won't be some people who aren't
6 going to get 'picked up in it, but it does mean that we want
7 them to do a bunch of things that will bring their general
8 level of performance up in most circumstances, doesn't it?

9 COMMISSIONER HENDRIE: I don't think so.

10 CHAIRMAN AHEARNE: I think we all agree that the
11 weight that is in a single word is enormous, clearly. Now,
12 Len has proposed a point which I wonder if it is possible.
13 I don't know where we are going to end up today. In fact, I
14 don't know if today's meeting is going to be the only one of
15 many. Len had pointed out that it might be important to
16 have as a record of decision underlying where we end up the
17 transcript of the meeting.

18 Let us suppose we choose adequate. I think Joe is
19 beginning to be willing almost accept that. I am willing to
20 accept it and I think the other two are willing to accept
21 it. If we choose adequate, just embedding that word
22 "adequate" isn't going to even begin to describe what we
23 meant by it. Whereas, if the transcript of the meeting
24 underlay the decision that might be of help to some people
25 who are trying to figure out what do we mean.

1 MR. KENNEKE: May I try one more time?

2 CHAIRMAN AHEARNE: Wait a minute.

3 COMMISSIONER BRADFORD: The point there being that

4 we would treat this as an official rather than an unofficial

5 transcript?

6 CHAIRMAN AHEARNE: Yes.

7 COMMISSIONER BRADFORD: That also contemplates

8 reviewing it then.

9 COMMISSIONER GILINSKY: I think if we want to make

10 clear what we mean we ought to write it down and agree on a

11 statement.

12 MR. KENNEKE: May I try one more time, Mr.

13 Chairman?

14 CHAIRMAN AHEARNE: I just don't think you are

15 going to get there. If there is this much meaning latent in

16 one word, then there is no way you are going to get

17 everybody to agree on what that means.

18 MR. KENNEKE: Can I crash myself against the rock

19 one more time?

20 CHAIRMAN AHEARNE: Of course.

21 MR. KENNEKE: The staff by their holding out for

22 appropriate, as I read it, they want a choice of measures.

23 Commissioner Bradford wanted to make the point that whatever

24 measure is chosen is effective in significantly reducing

25 dose.

1 COMMISSIONER GILINSKY: In most circumstances.

2 MR. KENNEKE: In most circumstances, not an
3 absolute guarantee. So one other thing you might do is
4 simply put a parenthetical after the word "measures" that
5 says "including sheltering and evacuation" which is at least
6 the minimum choice that they need. It also implies on the
7 face of it that evacuation and sheltering can be effective
8 in the terms that I think you wish without changing any
9 other words. That deals with Commissioner Hendrie's concern
10 about changing the words throughout.

11 COMMISSIONER GILINSKY: Can I ask a question?

12 CHAIRMAN AHEARNE: Go ahead.

13 COMMISSIONER BRADFORD: Go ahead. Yes, by all
14 means.

15 COMMISSIONER GILINSKY: Carl, does appropriate not
16 mean to you that in most circumstances the action will be
17 effective?

18 MR. COLLIER: Yes, in most circumstances.

19 COMMISSIONER GILINSKY: The most circumstances is
20 taken up in the reasonable assurance. Then what is your
21 objection?

22 CHAIRMAN AHEARNE: I could also ask the opposite
23 though of you, Victor. If you agree with that then you
24 should have no problem with appropriate.

25 COMMISSIONER GILINSKY: I don't think so.

1 MR. COLLIER: Let me point out that in following
2 sentences of that paragraph the word "adequate" is used
3 several times in relating it to FEMA's findings. Therefore,
4 the word "adequate" might be the preferred word in that the
5 balance of that sentence goes on to enumerate or define what
6 is meant by adequate.

7 MR. JAMGOCHIAN: Well, if I may approach that. In
8 writing this there was some concern as to whether we should
9 put down adequate, appropriate or effective. In the other
10 sentence that Carl brought up relative to the plan itself I
11 used the word adequate because in writing a plan a licensee
12 and we, NRC, can judge what an adequate plan is. He has got
13 good communications, good notification, good assessment
14 capabilities and good training. That is an adequate plan.

15 I stayed away from adequate and effective
16 protective measures because how do you plan for effective
17 protective measures. You know, that is usually after you
18 have had the accident you then say, yes, those were
19 effective protective measures. How would we judge that a
20 licensee planned for adequate or effective measures? That
21 depends on so many parameters.

22 COMMISSIONER GILINSKY: You have got some
23 standard, and the standard is you want in the event of an
24 accident up want an adequate plan.

25 COMMISSIONER HENDRIE: You want an adequate plan

1 before the event, if there ever is an event. If an event
2 occurs you want to be sure that appropriate measures have
3 and will be taken.

4 COMMISSIONER GILINSKY: You want to be sure,
5 reasonably sure that on the basis of this plan action will
6 be taken that will keep people from getting irradiated to
7 any substantial degree.

8 MR. JAMGOCHIAN: We are on a fine line. I just
9 wanted to let you know what was thought about when drafting
10 this. Also, we wanted to be consistent when the EPA
11 Protective Action Guide Manual. Throughout there they talk
12 about appropriate protective measures as well as the old
13 Appendix E. Emergency preparedness has always been
14 conceived as having reasonable assurance to take appropriate
15 protective measures. I think that is why we are having such
16 a hassle with just one word. It is a significant word.

17 MR. KENNEKE: It is a code word, there is no doubt
18 about it, historically.

19 COMMISSIONER BRADFORD: Well, adequate is an
20 historical code word, too, just in a different context.

21 MR. KENNEKE: Well, I offered a suggestion that
22 would give them their choice for that.

23 COMMISSIONER BRADFORD: I think adequate is broad
24 enough. I don't have the same concern, I guess, that Victor
25 does about the transcript being available as in effect

1 rule-making history. I have a somewhat different concern,
2 which is that it is going to be very hard for anybody to
3 extract from the four different sets of Commissioner remarks
4 anything that they can use very definitively.

5 COMMISSIONER GILINSKY: Well, it is available to
6 read.

7 COMMISSIONER BRADFORD: I would use the word
8 "adequate" and would figure that it is broad enough not to
9 need elaboration.

10 COMMISSIONER GILINSKY: Remind me again about the
11 statutory language that speaks of adequate protection of the
12 public. Is it reasonable assurance of adequate protection?

13 MR. BICKWIT: No. The statutory language is ---

14 COMMISSIONER GILINSKY: Is adequate protection.
15 The regulations speak of reasonable assurance that the
16 public will not be endangered or something like that. I
17 frankly think one puts in reasonable assurance when you are
18 talking about the public will be protected.

19 CHAIRMAN AHEARNE: I would argue for just dropping
20 any modifier and just say the protective measures.

21 COMMISSIONER GILINSKY: Well, that doesn't say
22 anything about what kind of protective measures. You mean
23 reasonable assurance that the public will be protected.
24 Will not be endangered is the standard language of our
25 regulations.

1 CHAIRMAN AHEARNE: Reasonable assurance that the
2 public will be protected in the event of a radiological
3 emergency.

4 Joe, how do you feel about adequately protected?

5 COMMISSIONER HENDRIE: That is not quite what this
6 says, is it? They says you want reasonable assurance that
7 measures, appropriate, effective, adequate or just measures
8 can and will be taken in the event of an emergency. You
9 judge that by seeing that there is what is later called an
10 adequate plan, et cetera.

11 MR. GOLLER: I think you would lose an important
12 part of the plan if you deleted one of these words.

13 (Laughter.)

14 CHAIRMAN AHEARNE: We are not going to get past
15 page one if we don't change one of the words.

16 (Laughter.)

17 MR. GOLLER: On this point the staff would
18 recommend adequate after having heard this entire
19 discussion. At least in my mind an important part of that
20 conclusion is that the word "adequate" is used as a
21 follow-up.

22 CHAIRMAN AHEARNE: In order to move forward I
23 think I will vote for adequate.

24 I am not sure if you ever voted, Victor.

25 COMMISSIONER GILINSKY: I don't think I did.

1 CHAIRMAN AHEARNE: Would you go along with
2 adequate.

3 COMMISSIONER GILINSKY: Well, let me hear what Joe
4 says.

5 CHAIRMAN AHEARNE: Two votes for adequate.
6 Victor would like to hear Joe.
7 Joe?

8 COMMISSIONER HENDRIE: I still think "appropriate"
9 is the right word, but I guess I would settle out if it
10 would get us on. Yes.

11 CHAIRMAN AHEARNE: Okay, we have got three votes
12 for "adequate."

13 MR. GOLLER: Mr. Chairman?

14 CHAIRMAN AHEARNE: Yes.

15 MR. GOLLER: This discussion has been on a
16 paragraph in the supplemental information.

17 (Laughter.)

18 MR. GOLLER: The one that really counts is the
19 regulations. If you look at page 31, for some reason no
20 change was suggested there. I would presume at this point
21 you would want to make the corresponding change in the rule
22 itself.

23 CHAIRMAN AHEARNE: Do you win many arguments, Carl?

24 (Laughter.)

25 COMMISSIONER BRADFORD: You are absolutely right,

1 Carl. Thank you.

2 CHAIRMAN AHEARNE: Thank you, Carl. On page 31
3 you say?

4 MR. GOLLER: Page 31.

5 CHAIRMAN AHEARNE: Where?

6 COMMISSICNER HENDRIE: You are on the wrong one.

7 COMMISSICNER BRADFORD: Page 32. You and I are on
8 the same one.

9 (Laughter.)

10 MR. GOLLER: I must say it was curious to me. I
11 was wondering why the same change wasn't made there.

12 CHAIRMAN AHEARNE: Page 32?

13 COMMISSIONER BRADFORD: Page 32, (a), line three.

14 CHAIRMAN AHEARNE: All right, page 2. Peter, you
15 had some changes to page 2.

16 COMMISSIONER BRADFORD: Just one.

17 CHAIRMAN AHEARNE: Could I ask the general counsel
18 what is meant by a rebuttable presumption of adequacy?

19 MR. BICKWIT: It means that is the way the
20 adjudicator is going to go unless somebody comes in and
21 convinces him not to go that way. If FEMA finds that it is
22 adequate, then the NRC will find that it is adequate unless
23 someone convinces them otherwise.

24 CHAIRMAN AHEARNE: Rather than starting on neutral
25 ground that is assumed to be true unless proven otherwise,

1 that issue?

2 MR. BICKWIT: That is right.

3 CHAIRMAN AHEARNE: Now, the other point, Peter
4 that you have raised is that the issues may be raised in an
5 NRC operating license hearing.

6 COMMISSIONER BRADFORD: Yes. That is not a new
7 point. That concept is stated further on in the rule. I
8 don't remember exactly where. That doesn't change anything
9 but it does make it explicit.

10 CHAIRMAN AHEARNE: Standards, any comment?

11 MR. GOLLER: Well, again, I have to look back at
12 the rule itself.

13 CHAIRMAN AHEARNE: Carl, let me ask this issue
14 that is raised on page 2. Is your point that it is not in
15 the rule?

16 MR. GOLLER: The words that are suggested in the
17 rule are different from the words up front.

18 CHAIRMAN AHEARNE: On which page is that?

19 MR. GOLLER: On Commissioner Bradford's comment,
20 page 31, which is the only place these other words appear.
21 We have got to look at that. Page 31.

22 COMMISSIONER BRADFORD: You are quite right. I
23 guess I would use the language on 31 back there is there is
24 a need to have it be identical. I don't think there is any
25 operative difference.

1 MR. GOLLER: There is an additional thought in the
2 old words on page 2 which say that these issue may be raised
3 in an NRC operating license hearing.

4 COMMISSIONER BRADFORD: That thought is in here
5 already. I will have to find it somewhere. I don't think
6 anyone had that before. I certainly had not had the notion
7 that a FEMA finding was not reviewable in an NRC
8 proceeding. I will tell you one place that I derived that
9 from is that somewhere in the discussion of the rule it says
10 that Congress is considering going further and making FEMA
11 findings not reviewed.

12 MR. BICKWIT: It would be illegal if the FEMA
13 findings were not reviewed.

14 CHAIRMAN AHEARNE: I had assumed that it was an
15 issue that could be raised.

16 MR. GOLLER: Well, in the words that you suggested
17 on page 31, in the rule itself you say are preferable. It
18 seems to me that these words are most appropriate in the
19 rule itself. I am not sure you need them in the
20 supplemental information.

21 COMMISSIONER BRADFORD: I will tell you the reason
22 I put them up there, and I agree that they have to be in the
23 rule itself, is that when I read the supplemental
24 information it left me uncertain of what the status of a
25 FEMA finding was in an NRC proceeding and with some question

1 as to whether we contemplated that issue being litigable. I
2 agree with Len that we have to, but I wouldn't think we
3 ought to be requiring people to go off and go through the
4 analysis of the Atomic Energy Act. It leads to that
5 conclusion and we ought to just state it at the beginning.

6 MR. GOLLER: What we are talking about, in the
7 first place, isn't even in the supplemental information. I
8 see now it is in the summary of the Federal Register notice.

9 CHAIRMAN AHEARNE: Yes.

10 COMMISSIONER BRADFORD: Wherever it is, the words
11 would go in where the question is raised.

12 CHAIRMAN AHEARNE: Ken.

13 MR. PERKINS: Ken Perkins from the EDO's office.
14 This or a similar comment appears elsewhere in the comments
15 that we received from you, Commissioner Bradford. In all
16 cases where it talks about constitutes a rebuttable
17 presumption of adequacy it seems to be talking only of
18 favorable findings or findings of adequacy by FEMA. If we
19 are addressing FEMA findings I think we should be addressing
20 FEMA findings whether they are favorable or unfavorable. I
21 believe that is consistent with the language that we worked
22 into the MOU.

23 COMMISSIONER BRADFORD: I thought about that.

24 COMMISSIONER HENDRIE: If they are unfavorable do
25 you want to say that an unfavorable finding is a rebuttable

1 presumption of inadequacy? It seems hardly necessary.

2 MR. PERKINS: I would suggest just saying that a
3 FEMA finding will constitute a rebuttable presumption
4 period. Don't say whether it is adequate or inadequate.

5 COMMISSIONER BRADFORD: That may be perfectly all
6 right. I take it, Len, your advice would be the same way;
7 that is, we couldn't take a negative FEMA finding as an
8 unlitigable basis for rejecting a license?

9 MR. BICKWIT: I don't think you can. It is a
10 closer question. I don't think so.

11 CHAIRMAN AHEARNE: Carl, I am still not really
12 tracking the distinction you see between page 2 and page 31.

13 MR. GOLLER: I am suggesting that you don't need
14 this much detail on page 2 which is a summary.

15 CHAIRMAN AHEARNE: Oh, I understand that. Is
16 there a difference in the thought?

17 MR. GOLLER: No.

18 CHAIRMAN AHEARNE: I have no problem with leaving
19 it in. "These issues may be raised in NBC operating license
20 hearings but a FEMA finding will constitute a rebuttable
21 presumption." Is that, Len, where you were? I guess that
22 is Ken's question.

23 COMMISSIONER HENDRIE: I prefer the positive one
24 because that presumably is where you come out before you get
25 to hearing. It is hard to see us struggling through a

1 hearing uphill against an unfavorable finding, but I don't
2 know the language. The language seems to ring better to me
3 with the ---

4 COMMISSIONER BRADFORD: With the adequacy phrase.

5 COMMISSIONER HENDRIE: Yes.

6 COMMISSIONER BRADFORD: I agree with that.

7 MR. BICKWIT: A FEMA finding will constitute a
8 rebuttal presumption on the question of adequacy.

9 COMMISSIONER BRADFORD: That is fine, a FEMA
10 finding or its absence.

11 CHAIRMAN AHEARNE: Fine.

12 MR. GOLLER: These are the words in the rule, if I
13 may make one more pitch. Unless the Commission feels very
14 strongly of putting this in the summary I would like to ask
15 that it not be put in the Federal Register summary. I don't
16 think it is necessary. The summary is already very long.
17 On this same rule when we published the proposed rule in the
18 Federal Register we received a special notice from the
19 Federal Register that they want the summary to be no more
20 than a half a page long.

21 (Laughter.)

22 MR. GOLLER: It was only as a result of a request
23 for special dispensation that they went ahead and with that
24 rule at the time. If you will recall, this was a summary
25 that was written and very carefully hammered out by the

1 Commission and it got very long in the process. This would
2 again add, and we are already beyond their rule of thumb for
3 half a page.

4 CHAIRMAN AHEARNE: That is just one sentence, Carl.

5 COMMISSIONER BRADFORD: Carl, tell them to call my
6 office.

7 (Laughter.)

8 MR. GOLLER: It may happen. As a matter of fact
9 that is guaranteed.

10 (Laughter.)

11 COMMISSIONER HENDRIE: The supplementary
12 information section which starts at the bottom of page 2,
13 right---

14 MR. GOLLER: Yes.

15 COMMISSIONER HENDRIE: --- ought to come to some
16 similar point where this language could usefully go in. I
17 see what you mean. You ought not to have put the summary on
18 the damn paper and just gone off and made it a half page
19 worth after we figured out what the rule was, frankly.

20 (Laughter.)

21 COMMISSIONER HENDRIE: Isn't there a place in the
22 supplementary information where one would come -- page 3?

23 MR. GOLLER: Yes.

24 COMMISSIONER HENDRIE: --- where one would come
25 naturally to this point that Peter came to at the top of

1 page 2 -- wait a minute. I have got too many papers all of
2 the sudden. Now, page 5 where somebody tell me.

3 MR. KENNEKE: Commissioner Bradford has already
4 put it in there on page 5.

5 COMMISSIONER HENDRIE: Okay, you have got it.

6 COMMISSIONER BRADFORD: Yes, I do.

7 COMMISSIONER HENDRIE: If you put it in the
8 supplementary information, Peter, doesn't that do it? I
9 think, indeed, it is useful to have it up front rather than
10 having to read the rule to find that section. That summary
11 apparently is something that they are scratching and
12 fighting hard on.

13 COMMISSIONER BRADFORD: Certainly the legal basis
14 isn't changed by not including it in the summary. I would
15 have at least kept the thought that the issue can be raised
16 in NRC hearings in the summary even by dropping the
17 rebuttable presumption part if you want. That is one that I
18 think you just ought to sweep the table and votes and move
19 on.

20 COMMISSIONER HENDRIE: Well, I would vote to have
21 it by all means in the supplementary information on page 5
22 where you had indicated and take it out of the summary.

23 CHAIRMAN AHEARNE: I guess on this one I will
24 leave it in the summary.

25 COMMISSIONER BRADFORD: It stays in there.

1 MR. GOLLER: In all three places then?

2 CHAIRMAN AHEARNE: Yes.

3 COMMISSIONER BRADFORD: Yes.

4 CHAIRMAN: I don't have any other suggested on
5 page 3.

6 COMMISSIONER BRADFORD: There is one on page 3.
7 There are a couple on page 3. None of them are of any
8 substantive import. I realized later as I read on that
9 there were in fact two petitions. So I guess I would say in
10 response to two petitions instead of the second line ending
11 the way it does, but it is of no great importance.

12 MR. JAMGOCHIAN: The problem with that is that
13 your addition is really not true.

14 COMMISSIONER BRADFORD: That is a problem.

15 (Laughter.)

16 MR. JAMGOCHIAN: The staff did not begin
17 reconsideration of or rewriting of the regulation or
18 evaluating modifying Appendix E or any emergency planning
19 regulation at the time we received the critical mass
20 petition.

21 COMMISSIONER BRADFORD: You mean it began before
22 or after?

23 MR. JAMGOCHIAN: We began the evaluation primarily
24 as a result of the accident. Then we started getting heavy
25 pressure from other governmental agencies and the VDC

1 Congressional Oversight Committee. At the same time we did
2 get the petition but that was not something that motivated
3 us.

4 CHAIRMAN AHEARNE: Frankly, my reaction is I was
5 going to vote against the petition thing because I didn't
6 remember it having any driving force. I mean the Three Mile
7 Accident very definitely should be in there. That was
8 clearly major.

9 MR. JAMGOCHIAN: Okay.

10 CHAIRMAN AHEARNE: Joe?

11 COMMISSIONER HENDRIE: The Three Mile Accident,
12 okay; ditch the petitions.

13 CHAIRMAN AHEARNE: I have no problem with the
14 editorial ---

15 COMMISSIONER GILINSKY: Do you want to say
16 adequate state and local?

17 (Laughter.)

18 COMMISSIONER BRADFORD: How about effective?

19 COMMISSIONER HENDRIE: Or appropriate.

20 (Laughter.)

21 CHAIRMAN AHEARNE: I have no problem just striking
22 appropriate. I have no problem with the other additions. I
23 would prefer to call them Presidential Commissions.

24 COMMISSIONER GILINSKY: I would take that same
25 position.

1 CHAIRMAN AHEARNE: Any other comments on page 3?

2 MR. BICKWIT: Just that one point raised earlier.

3 Instead of known as alternative "A" it would say ---

4 COMMISSIONER HENDRIE: Similar to.

5 MR. BICKWIT: --- similar to alternative "A".

6 COMMISSIONER BRADFORD: Isn't there another point

7 in there? There are points, aren't there, at which we

8 actually adopted alternative "B"?

9 CHAIRMAN AHEARNE: Yes.

10 COMMISSIONER GILINSKY: Is alternative "B"

11 inconsistent with ---

12 CHAIRMAN AHEARNE: They are different.

13 COMMISSIONER BRADFORD: That is right, they

14 weren't as smooth.

15 CHAIRMAN AHEARNE: There are "A's" and "B's" under

16 different options.

17 COMMISSIONER GILINSKY: No, but on the issue of

18 where the burden lies if the plan is inadequate.

19 CHAIRMAN AHEARNE: One set of "A's" and "B's" had

20 to do with public or public and property.

21 MR. GOLLER: There were six pairs of ---

22 CHAIRMAN AHEARNE: --- "A's" and "B's".

23 COMMISSIONER GILINSKY: I am asking about a

24 particular "A" and "B" which is does the plant get shut down

25 if the plant is not adequate automatically or does the

1 Commission have to act to shut it down.

2 MR. GOLLER: There were three of those. There was
3 a set of three pertaining to operating plants, new plants
4 and plants as plans would fall out of approval in the
5 future, but there were three pairs of them. I think this
6 identifies it directly under the sections.

7 COMMISSIONER GILINSKY: I was going to ask a
8 question about this. My question to the general counsel is,
9 is alternative "B" the one that would have had the plant
10 shut down unless the Commission acted to exempt it? Is that
11 inconsistent with the recent amendments which have been
12 passed by Congress?

13 MR. BICKWIT: No, not under my reading because
14 under my reading the Congress is simply providing minimum
15 requirements for the Commission's rule.

16 CHAIRMAN AHEARNE: Under the staff of the Senate
17 subcommittee?

18 MR. BICKWIT: I think not under the majority staff
19 because they do not believe our options are limited with
20 respect to actions involving existing plants.

21 CHAIRMAN AHEARNE: Just future plants?

22 MR. BICKWIT: Right.

23 CHAIRMAN AHEARNE: We can be tougher on future
24 plants or less tough on future plants.

25 MR. BICKWIT: Less tough.

1 CHAIRMAN AHEARNE: Less tough on future plants
2 than we can be on existing plants; is that correct?

3 MR. BICKWIT: That question has never been put to
4 me.

5 (Laughter.)

6 MR. BICKWIT: I think the only reasonable way to
7 proceed here is to proceed on the basis of the legal advice
8 you are getting. The advice you are getting is
9 unqualified ---

10 (Laughter.)

11 MR. BICKWIT: --- and you can do what you feel
12 like doing. I just think it is counterproductive to try to
13 total up which staff thinks what about this rule.

14 COMMISSIONER GILINSKY: I guess my inclination was
15 toward the stricter option. Actually there is a way of
16 bringing them together which I want to get to, I think it is
17 on the next page.

18 CHAIRMAN AHEARNE: Page 4?

19 COMMISSIONER GILINSKY: Yes.

20 COMMISSIONER HENDRIE: Well, let's see. We never
21 did decide what the appropriate language is down here at the
22 bottom of page 3.

23 CHAIRMAN AHEARNE: Well, I think the point that
24 Victor is about to make raise and Peter has raised has to be
25 addressed first.

1 COMMISSIONER HENDRIE: I agree.

2 COMMISSIONER GILINSKY: Up at the top we say
3 "These rules, when effective, will provide that no power
4 reactor may operation if there is an NRC finding that the
5 overall state of emergency preparedness is inadequate for
6 the reactor in question." It seems to me that we are really
7 saying that no power reactor may operate unless there is an
8 NRC finding of adequacy or adequacy in the circumstances.

9 CHAIRMAN AHEARNE: It is different.

10 COMMISSIONER GILINSKY: Well, let's take new
11 operating licenses. You are certainly saying that for new
12 operating licences.

13 CHAIRMAN AHEARNE: For new licenses now, new
14 plants.

15 Len?

16 MR. BICKWIT: I think that is right.

17 COMMISSIONER GILINSKY: What is right? Well, it
18 is the next line, "No new operating license will be granted
19 unless the NRC can make a favorable finding." So that
20 statement doesn't cover new plants. It seems to me that if
21 put the way I did put it it would be correct for existing
22 plants if the Commission will commit itself in fact to deal
23 with the matter.

24 CHAIRMAN AHEARNE: In what way?

25 COMMISSIONER GILINSKY: Well, simply to consider

1 what it needs to do with the facility.

2 CHAIRMAN AHEARNE: No, it is different.

3 COMMISSIONER GILINSKY: I understand.

4 CHAIRMAN AHEARNE: There is a fundamental
5 difference on the two options where, one, the plant stays up
6 unless the Commission makes a finding; two, the plant goes
7 done unless the Commission makes a finding.

8 COMMISSIONER GILINSKY: What I am suggesting is
9 that you formulate it in a way that the Commission would
10 have to make a finding to bring the plant down, but it
11 commits itself to make a finding to deal with the matter one
12 way or another; in other words, to take up the matter.

13 CHAIRMAN AHEARNE: Exactly what did you have in
14 mind?

15 COMMISSIONER GILINSKY: Precisely that, that the
16 Commission will not simply ignore the fact.

17 CHAIRMAN AHEARNE: Obviously it is up to us
18 whether or not we ignore any fact, but when you say we
19 commit to address the matter what kind of a procedure did
20 you have in mind?

21 COMMISSIONER GILINSKY: They will come to this
22 table.

23 CHAIRMAN AHEARNE: What will come to this table?

24 COMMISSIONER GILINSKY: The question of what to do
25 about the inadequacy of the plant.

1 COMMISSIONER HENDRIE: The language does say that,
2 you know, if there are some problems the Commission will
3 determine the way the language reads now.

4 COMMISSIONER GILINSKY: Right. Well, I want to be
5 sure that means in fact we will take the matter up.

6 COMMISSIONER HENDRIE: The Commission will
7 determine (honest we mean it) ---

8 (Laughter.)

9 COMMISSIONER HENDRIE: Once you have said the
10 Commission will determine I don't know how much more you can
11 bind, you know, the future Commissioners.

12 COMMISSIONER GILINSKY: Well, it is a matter of
13 time. In other words, we will take it up before the end of
14 that period, or something like that.

15 CHAIRMAN AHEARNE: Before the end of what period?
16 It says here "In the case of an operating reactor, if it is
17 determined there are deficiencies that a favorable NRC
18 finding is not warranted and the deficiencies are not
19 corrected within four months of that determination, the
20 Commission will determine whether the reactor should be shut
21 down."

22 COMMISSIONER GILINSKY: Within 30 days?

23 COMMISSIONER HENDRIE: I wouldn't hand numbers on
24 it. As soon as you hang numbers on it like that, why some
25 future group will come rapidly to regret it.

1 COMMISSIONER GILINSKY: Within 60 days?

2 CHAIRMAN AHEARNE: Well, we have been wrestling
3 with this thing for a year and these versions here for about
4 at least two months. There are really two fundamental
5 differences. All the words can be thrown around it. One
6 difference is the reactor stays up unless the Commission
7 makes a finding. The other is the reactor goes down unless
8 the Commission makes a finding. This language here is
9 written on the former. So the reactor would be staying
10 running unless an action is taken by the Commission. The
11 alternative was if the Commission does not act, inaction on
12 the part of the Commission, the reactor goes down. On which
13 of those options did you want to construct the words to
14 follow? The meaning then we can worry about trying to make
15 it clear.

16 COMMISSIONER GILINSKY: I was prepared to build on
17 the option that says that the reactor continues to operate
18 by Commission action, but I would like to make sure that the
19 Commission takes the matter up within a reasonable time
20 interval after this period.

21 CHAIRMAN AHEARNE: So you would like to say the
22 Commission will determine within two months?

23 COMMISSIONER GILINSKY: I would like to say 90
24 days, but two months is fine.

25 CHAIRMAN AHEARNE: We don't do anything in 90 days.

1 COMMISSIONER GILINSKY: Fine. Let's say two
2 months.

3 CHAIRMAN AHEARNE: We can hardly get a Federal
4 Register printed in 30 days.

5 COMMISSIONER GILINSKY: Well, let's say 60 days.

6 COMMISSIONER BRADFORD: Let me raise a question as
7 to when those days are to run because as I understand the
8 way the rule works now a finding is made of inadequacy. Let
9 me start by asking where that gets made? Would you all
10 contemplate that would be a finding that you all would
11 recommend up to us or would that be a finding made by NRR,
12 the initial finding of inadequacy?

13 MR. GOLLER: By NRR, yes, by the staff.

14 COMMISSIONER BRADFORD: Okay. Now, presumably at
15 that point somebody has to make a finding as to whether or
16 not the deficiency is severe enough to merit an immediate
17 shutdown because that commitment is right in here.

18 MR. GOLLER: Yes, right.

19 COMMISSIONER BRADFORD: So right there at the
20 outset there is at least one opportunity for the Commission
21 involvement. As the rule is presently drawn, four months
22 then go by during which the licensee can correct it, and
23 then another finding is made also by NRR that either it has
24 been corrected or it hasn't.

25 CHAIRMAN AHEARNE: You asked if the deficiencies

1 would be explicit?

2 COMMISSIONER BRADFORD: That is right, but then
3 the finding at the end of four months as contemplated here
4 would have to be renewed. Those same deficiencies would
5 still have to be found.

6 MR. GOLLER: I am sure the staff would be involved
7 in this during the four-month period.

8 COMMISSIONER BRADFORD: Right. No, of course,
9 they would be reviewing it and presumably they could make
10 the finding before the end of the four-month period if
11 everything were resolved. But if it isn't resolved at the
12 end of four months then it comes up to the Commission for
13 examination of whether the deficiencies are significant from
14 a safety standpoint and whether alternative measures have
15 been taken.

16 MR. GOLLER: Right.

17 COMMISSIONER BRADFORD: Now, where do these 60
18 days fit into that?

19 CHAIRMAN AHEARNE: At least as it tracks down here
20 it would seem to me that those 60 days would fit in at the
21 end of that four months.

22 MR. GOLLER: I think any such requirement on the
23 Commission, that if the Commission poses such a time
24 requirement on itself would be rather unique. I am not sure
25 what would happen if that were violated.

1 COMMISSIONER GILINSKY: It is like any other rule
2 where we agree we will do something in a certain period, and
3 we obviously can give ourselves an extension, but that does
4 put pressure on to perform in that period.

5 CHAIRMAN AHEARNE: Let me ask general counsel
6 whether he agrees with that interpretation or not?

7 MR. BICKWIT: You would have to give yourselves an
8 exemption. You would be subject to an injunctive relief
9 directing you to make a decision by that date unless you
10 exempted yourself from the requirement or adopted a change
11 in the rule.

12 COMMISSIONER HENDRIE: I just wouldn't bind the
13 Commission up with a specific time period. If you wanted to
14 say the Commission thereafter will determine expeditiously,
15 or something like that as a prod forward, but, you know,
16 once you have said the Commission will determine, why no
17 matter what you say in here if some future group of five
18 finds good reason not to act in any period you name, why
19 they will not act in that period. Similarly if they can get
20 the case before them and they want to move it, why they will
21 move it. I wouldn't go much beyond expeditiously as a prod,
22 and I don't know if I am wildly enthusiastic even about that.

23 CHAIRMAN AHEARNE: Ken.

24 MR. PERKINS: Ken Perkins. I would like to point
25 out also that if you put a finite time limit in there you

1 are not only regulating the NRC but indirectly you are
2 regulating FEMA because we must have the FEMA findings for
3 us to make our overall determination. Though we don't have
4 formally transmitted yet the FEMA's June 30th report, I
5 believe that we should be sensitive to that time frame as a
6 problem or a potential problem.

7 MR. GOLLER: I am not aware of any other rule that
8 puts such a time limit on the Commission. I think you would
9 be setting new precedent.

10 COMMISSIONER BRADFORD: It has been tried before,
11 but you may be right.

12 (Laughter.)

13 COMMISSIONER BRADFORD: Let me approach the same
14 question from a slightly different angle. I am sure that I
15 understand the wisdom of the fourth-month period in here
16 especially as the rule is modified around to say that we are
17 looking at shutdown or other enforcement action. That is,
18 doesn't it, for one thing, simply work to give a four-month
19 period during which no possible enforcement action would be
20 contemplated even if in fact the plan wasn't up to snuff?

21 MR. GOLLER: As you suggested before, as someone
22 was running through the chronology, if it was important
23 enough then the staff could take action when it first
24 learned of the deficiency by way of an order.

25 COMMISSIONER BRADFORD: That is the shutdown and

1 that is the really severe case.

2 MR. GOLLER: Yes, and if it doesn't then it allows
3 a four-month period for correction, a maximum of a
4 four-month period for correction.

5 COMMISSIONER BRADFORD: Well, no. By being in the
6 rule it clearly says it allows four months. It can be done
7 in less time. Well, I suppose the Commission could say this
8 is serious enough that it has to be done in one month.

9 MR. GOLLER: It could always do that. That is an
10 option of the order.

11 COMMISSIONER BRADFORD: How sure are you of that?

12 MR. BICKWIT: Well, under language that we
13 proposed it states in the rule that the Commission is not
14 limited in the time in the time periods under which it can
15 take action. It make it absolutely specific that the
16 Commission can take action within the four-month period.

17 CHAIRMAN AHEARNE: Let me at least try to go back
18 over the reason that the four-month is even ---

19 MR. BICKWIT: Let me see if I can find it.

20 COMMISSIONER GILINSKY: What about dropping the
21 four-month and putting in expeditiously?

22 CHAIRMAN AHEARNE: Let me try to remind you of one
23 of the reasons why there is a month period in there. These
24 aren't reactors to be licensed. They are reactors that are
25 licensed. This process concludes that the emergency plan at

1 one stage either had been or in this review we have now
2 filed is not adequate. We have now put them on notice.
3 Now, if it is a very severe problem the potential is there
4 that they are on notice that they could be shut down.
5 Remember, we are in many cases trying to reach beyond the
6 licensee and trying to reach to the state and local
7 governments. That is the inherent problem in a lot of this.

8 The point was that in doing that reaching we
9 wanted to show we are really serious. The seriousness is
10 that they have got four months to correct that deficiency.
11 It is a fixed period of time. It is not the Commission
12 saying the deficiency must be corrected, which is sort of
13 indefinite, it is that here is a fixed period of time to
14 correct the deficiency. That was the sense of the reason
15 there was a fixed period.

16 COMMISSIONER BRADFORD: It is clear that in many
17 cases there would be some period of time that you might or
18 might not seek a penalty, but you certainly wouldn't
19 automatically shut the plant down here any more than you
20 might for other types of deficiencies.

21 CHAIRMAN AHEARNE: It was an attempt I think to
22 keep the pressure on.

23 COMMISSIONER BRADFORD: What you are really saying
24 then is that you think four months is about as tight as it
25 can reasonably be done given the others who will be involved.

1 CHAIRMAN AHEARNE: Given the fact that you are
2 trying to apply pressure beyond the licensee, that is right,
3 in a system where you get involved with trying to collect
4 monies that aren't immediately available and getting several
5 organizations to cooperate together.

6 COMMISSIONER HENDRIE: You are also doing a
7 first-time determination on a new set of requirements. It
8 is perfectly possible and it will surprise me if it doesn't
9 happen, that there will be cases where the licensee and his
10 consultants read the guidance and they have got it in good
11 shape.

12 Then the FEMA review comes back and says, no,
13 what we really want as we now see it in your case in
14 Sections 42, 51 and 73 is something either different or more
15 or whatever. Now there is a failure to conform with all the
16 guidelines, a sort of technical finding of inadequacy
17 although there is a fair piece of stuff in place and the
18 guy has been trying, and now if you don't have this kind of
19 a period, why the NRC moves immediately to consider a
20 shutdown or other measures.

21 The four months simply says, well, you know,
22 there were some things turned out that aren't good enough on
23 final review, and once we know the results of the final
24 review, why here is a little piece of time for people to run
25 around and try to patch something reasonable together.

1 COMMISSIONER PRADFORD: What I had in the back of
2 my mind was whether it would make more sense to come up with
3 those pieces of time case by case; that is, there might be
4 some situations where a month would seem reasonable and some
5 where more would.

6 I think Len has come at the same question from
7 another direction which is a sentence in the rule somewhere
8 where it says the Commission may take actions during this
9 time period if that seems necessary. I think that takes
10 care of my concern. What I was worried about is that there
11 not just be an automatic four months.

12 CHAIRMAN AHEARNE: My concern is coming from the
13 other side, that I meant to make sure there is a clear
14 threshold that you have got to something in a fixed period
15 of time.

16 COMMISSIONER HENDRIE: I think part of the reason
17 for this configuration is that the staff really won't be
18 very surprised if some fine tuning is required on
19 practically every plan in order to get a full, clean FEMA
20 bill of health. So rather than have to do a whole lot of
21 plants on a case-by-case basis why here is a patch of time
22 which for, you know, for fine tuning offers a good chance
23 that most people will get most things done.

24 COMMISSIONER GILINSKY: I want to return to a
25 point I raised. I am more concerned about our saying the

1 reactor should be shut down or whether some other
2 enforcement action is appropriate. It seems to me what is
3 involved here is not punishment but protection of the public.

4 CHAIRMAN AHEARNE: It is on page 4, "The
5 Commission will determine whether the reactor should be shut
6 down. . . ."

7 COMMISSIONER HENDRIE: I wondered about the word
8 "enforcement" in this kind of language.

9 MR. BICKWIT: I don't think enforcement connotes
10 punishment.

11 MR. GOLLER: For example, Commissioner Gilinsky,
12 this could cover the point that was suggested before. The
13 order could require a submittal or correction in one month
14 or two months rather than four months.

15 CHAIRMAN AHEARNE: Len, I think that was your
16 suggestion.

17 MR. BICKWIT: It was.

18 CHAIRMAN AHEARNE: That is to allow other action.

19 COMMISSIONER GILINSKY: Well, getting back to this
20 time business ---

21 CHAIRMAN AHEARNE: Well, I think the question is
22 do or do we not want to ---

23 COMMISSIONER GILINSKY: You ought to put in
24 expeditiously.

25 COMMISSIONER HENDRIE: Will determine

1 expeditiously.

2 CHAIRMAN AHEARNE: Expeditiously is fine.

3 COMMISSIONER HENDRIE: I have no objection. As I
4 say, you know, I am burning with enthusiasm, but I have no
5 objection. Create the sentence that you want to create here.

6 COMMISSIONER GILINSKY: Let me get back to the
7 sentence at the top. "These rules, when effective, will
8 provide that no power reactor may operate if there is an NRC
9 finding that an overall state of emergency preparedness is
10 inadequate. . . ." Now, that does not apply to new
11 operating licenses.

12 MR. BICKWIT: No, but there is a sentence two
13 sentences down that makes it pretty clear.

14 COMMISSIONER GILINSKY: But isn't that supposed to
15 be a summary sentence covering both cases?

16 MR. BICKWIT: Yes.

17 COMMISSIONER GILINSKY: It seems to me it ought to
18 then refer to both cases.

19 CHAIRMAN AHEARNE: Let me ask Len which way he
20 comes out.

21 MR. BICKWIT: I certainly agree that you will need
22 a favorable finding in order to get a license. That is your
23 point, and this would suggest otherwise if you didn't skip
24 down to the third sentence on the page. So this could be
25 modified.

1 COMMISSIONER GILINSKY: It seems to me either one
2 of two things, either you summarize both in that sentence or
3 say these rules will provide, one, operating license and,
4 two, existing reactors.

5 CHAIRMAN AHEARNE: Len, what is your suggestion?

6 MR. BICKWIT: What is you just struck the sentence
7 since you have got it all included down below.

8 COMMISSIONER BRADFORD: The "No new operating
9 license" sentence?

10 MR. BICKWIT: No.

11 CHAIRMAN AHEARNE: The "these rules" sentence.

12 MR. BICKWIT: Yes. These rules are consistent
13 with the approach outlined by FEMA and NRC." Then, "No new
14 operating license will be granted unless. . . ."

15 COMMISSIONER HENDRIE: Wait a minute. I was off
16 in another corner of the room here. Say that again.

17 CHAIRMAN AHEARNE: He said to strike the sentence
18 that says "These rules." Then the next sentence begins
19 "These rules are consistent."

20 MR. GOLLEP: Strike both sentences?

21 CHAIRMAN AHEARNE: No, one sentence.

22 MR. GOLLEP: One sentence.

23 COMMISSIONER HENDRIE: The Commission has decided
24 to adopt a version, and we will fix that later?

25 CHAIRMAN AHEARNE: Yes.

1 COMMISSIONER HENDRIE: Described in so and so, as
2 modified in light of comments. These rules, you say ---

3 CHAIRMAN AHEARNE: --- are consistent. Then the
4 bottom part.

5 At least on a tentative basis we have agreed to
6 put in expeditiously. I am not sure how we are going to
7 come out on the whole paragraph yet.

8 Now, let's see, we do have to change "appropriate"
9 to "adequate."

10 COMMISSIONER BRADFORD: Right. The other changes
11 there are all editorial except for the one at the end of the
12 paragraph.

13 CHAIRMAN AHEARNE: This is also raised in many
14 other places. What is good faith effort at compliance? In
15 the legal issue what does that mean?

16 COMMISSIONER BRADFORD: Well, I don't think it is
17 a legal term of art especially, but I will tell you what it
18 is there to avoid is a situation where we come up to the end
19 of the period of time and nothing much has happened. Then
20 the licensee come in and says, well, yes, it is true, I
21 haven't done anything yet, but this plant is essential to
22 the regional energy supply.

23 CHAIRMAN AHEARNE: But there are no legal terms of
24 art embedded in that?

25 COMMISSIONER BRADFORD: No.

1 (Laughter.)

2 MR. BICKWIT: It means in law what it means in
3 English.

4 CHAIRMAN AHEARNE: Fantastic! That is a principle
5 that is good enough to support.

6 COMMISSIONER BRADFORD: It is one you either want
7 to have universal or not at all or else a lot of things will
8 slip through. All that it is designed to do is to require
9 that among other things when the licensee comes in and says,
10 here is the justification ---

11 CHAIRMAN AHEARNE: Now, you get into a big, long
12 hassle as to what is good faith.

13 COMMISSIONER BRADFORD: You might have some
14 disagreement, but I would think no more so than with a
15 phrase like "other compelling reasons" or "significant
16 deficiencies." Its only purpose is to state that it is not
17 enough just to come in on the last day and say that you are
18 essential to the regional energy supply.

19 CHAIRMAN AHEARNE: Yes. It sounds okay to me.

20 COMMISSIONER HENDRIE: Who judges the good faith?

21 COMMISSIONER BRADFORD: The same folks that judge
22 the other compelling reasons. I mean ultimately us, but in
23 the first cut it would be NER.

24 COMMISSIONER HENDRIE: Then a hearing board.

25 COMMISSIONER BRADFORD: Let's see.

1 COMMISSIONER HENDRIE: The addition of this
2 provision I think makes it a litigable issue, and I must
3 say, you know, I wonder whether that is a contribution to
4 the public health and safety except to encourage argument in
5 a hearing over whether the applicant showed good faith or
6 not. He said he tried, but did he really. Where was he on
7 Tuesday. What do you mean he went skiing.

8 COMMISSINER BRADFORD: Well, let's see, Joe.

9 COMMISSIONER HENDRIE: Well, doesn't it?

10 COMMISSIONER BRADFORD: Well, let's say that the
11 day comes and an applicant comes in and asserts other
12 compelling reasons and a certain amount of effort and
13 somebody wants to litigate whether or not that is good
14 faith. First of all, if the staff and we agree that it is
15 good faith, the plant remains in operation. If the
16 deficiencies are in fact, as they must be, fixed up during
17 the four-month period or during whatever additional time we
18 allow, then there is nothing left by the good faith, and at
19 that point I should think it would be declared moot and
20 thrown out.

21 CHAIRMAN AHEARNE: I guess the problem we have is
22 that I think we would want NRR and we would want ourselves,
23 if they have a problem we want to make sure they are working
24 on it. The difficulty you are having, Joe, is that if we
25 put that into the regulation then we have made this a

1 litigable issue and we have involved our legal framework,
2 and that now is another one of those.

3 I don't think you would disagree that we would
4 want to make sure the licensee is really trying to fix up
5 things if we find they have got a problem.

6 COMMISSIONER HENDRIE: I think it will be an odd
7 licensee who is out there just saying go to hell on
8 emergency planning at this stage of the game.

9 (Laughter.)

10 COMMISSIONER BRADFORD: Joe, that does overstate
11 the case.

12 COMMISSIONER HENDRIE: Huh?

13 COMMISSIONER BRADFORD: That does overstate the
14 case. We have times before when Harold has come in with
15 deadlines approaching saying I really don't like the way
16 this utility or that is coming at it and I am not sure
17 whether I should be ---

18 COMMISSIONER HENDRIE: You mean if Harold doesn't
19 like their approach that is bad faith?

20 COMMISSIONER BRADFORD: No, not their technical
21 approach. They don't seem to be taking this very seriously
22 and they are going to put it off as long as they can. You
23 have heard that from Harold I think. I am sure I have.

24 COMMISSIONER HENDRIE: Yes, but I still don't know
25 that I care to make it an issue in hearings.

1 MR. BICKWIT: May I say, and I have said it once
2 before, it is not a legal point. It is a policy point. I
3 just want to make it and then I will drop it, that we don't
4 see any reason why this particular rule should be treated
5 differently than other rules under the enforcement
6 sections. We don't see any reason why we should map out in
7 advance constraints on the Commission with respect to when
8 it should apply its enforcement authority. Just as in the
9 case of other rules, we don't say when you can allow a plant
10 to stay up when it is violating the regulation and when you
11 have to shut it down when it is violating the regulation.
12 We don't feel as a matter of policy that it is useful to do
13 that here. We won't say that.

14 COMMISSIONER BRADING: I take it in the context
15 you are saying it you don't think this sentence is a good
16 idea?

17 MR. BICKWIT: That is right. I think this
18 sentence is a good idea and I don't particularly think the
19 four-months sentence is a good idea. I don't think any
20 constraints on the Commission's enforcement authority are
21 good ideas.

22 COMMISSIONER BRADFORD: I am somewhat less
23 concerned about this now that I understand what you have
24 done with the four months; that is, this was really written
25 in when it looked to me as though the four-month extension

1 was virtually automatic. We left ourselves only with the
2 choice of shutting the plant down or else going on for four
3 months. Given that I gather we have preserved the full
4 range of possible Commission actions during the four months,
5 I feel much less need for this sentence both here and the
6 other places it appears.

7 CHAIRMAN AHEARNE: I am sure Joe would be willing
8 to drop it.

9 COMMISSIONER BRADFORD: Yes, I gathered that.

10 CHAIRMAN AHEARNE: Unless, Victor, you feel very
11 strongly, then we will drop it in both places.

12 COMMISSIONER HENDRIE: Say that again.

13 CHAIRMAN AHEARNE: He is dropping the sentence.

14 COMMISSIONER BRADFORD: I think Joe suspects my
15 motives.

16 CHAIRMAN AHEARNE: Counsel is happy, and it gets
17 me off page 4, I think. I am not sure.

18 MR. GOLLER: You skipped over two other changes
19 involved.

20 COMMISSIONER BRADFORD: I had said that unless
21 somebody saw substantive significance to them I had proposed
22 them entirely as editorial.

23 MR. GOLLER: The first change is still open to a
24 basic question. The second one you need in order to make
25 the solution that you determined before, which was insert

1 the word "expeditiously." The Commissioner will determine
2 expeditiously. You have to retain that word.

3 COMMISSIONER BRADFORD: You may be right about
4 that. You don't need them for any other purpose.

5 (Laughter.)

6 COMMISSIONER GILINSKY: Keep them in there.

7 MR. GOLLER: All right. Then the deletion two
8 lines above that, ". . . it is determined that there are
9 such deficiencies that" You need a decision on
10 whether that is in or out.

11 CHAIRMAN AHEARNE: Commissioner Bradford believes
12 that is editorial.

13 COMMISSIONER BRADFORD: I would say that it makes
14 no difference if you drop it. If someone can find a
15 significant difference, but I don't feel strongly ---

16 COMMISSIONER HENDRIE: I would keep it because the
17 first mention of deficiencies gives you a place to anchor
18 the four-month correction of said deficiencies. The
19 language isn't elegant, I will agree, but I think that there
20 is a utility to the phrase.

21 CHAIRMAN AHEARNE: In other words, we say and the
22 deficiencies are not corrected.

23 COMMISSIONER BRADFORD: I would have said that the
24 fact there were deficiencies sprang from the fact that the
25 finding couldn't be warranted.

1 MR. JAMGOCHIAN: It is to me editorial. I would
2 prefer to keep the words in. It flows better.

3 COMMISSIONER BRADFORD: It flows worse, but if
4 anybody feels strongly about keeping the words in I don't
5 mind.

6 COMMISSIONER HENDRIE: I would be inclined to keep
7 them in, I must say.

8 CHAIRMAN AHEARNE: Victor?

9 COMMISSIONER GILINSKY: I didn't think I was going
10 to have to ---

11 CHAIRMAN AHEARNE: --- worry about the words?

12 COMMISSIONER GILINSKY: They don't seem necessary,
13 but I don't feel strongly about them.

14 CHAIRMAN AHEARNE: He doesn't feel strongly. They
15 are editorial. If you prefer to keep them in, we will keep
16 them in.

17 COMMISSIONER HENDRIE: I go back to page at the
18 bottom. Can the staff now tell us what the right language
19 now is?

20 CHAIRMAN AHEARNE: I guess the question is given
21 where we are now, it is a modification, isn't it?

22 MR. GOLLER: I thought that we had decided that
23 the words would be "The Commission has decided to adopt a
24 version of proposed rules similar to alternative A", and so
25 on and so on.

1 COMMISSIONER HENDRIEL Well, but then I asked you
2 is that a reasonable thing to say?

3 MR. COLLIER: I think so.

4 CHAIRMAN AHEARNE: The staff believes so.
5 Len?

6 MR. BICKWIT: I believe so.

7 CHAIRMAN AHEARNE: Peter?

8 COMMISSIONER BRADFORD: It is all right.

9 CHAIRMAN AHEARNE: Okay, similar to.

10 Now, page 5. Peter's is also similar to page 5 of
11 the latest version.

12 MR. CHILK: They are not quite identical.

13 CHAIRMAN AHEARNE: That is where we had already
14 agreed to put in Len's Enclosure 1, but now we do have to, I
15 think, address the question of equally effective.

16 COMMISSIONER HENDRIE: If it is equally effective
17 you have met the rule in which case you don't have
18 deficiencies.

19 COMMISSIONER BRADFORD: Let me come at it another
20 way. Does the phrase "alternative compensatory actions"
21 contemplate action that would in fact result in lower levels
22 of assurance or lower levels of protection?

23 COMMISSIONER HENDRIE: I think that is possible.
24 It was surely one of the things I contemplated.

25 CHAIRMAN AHEARNE: Could you explain that a

1 little, Joe?

2 COMMISSIONER HENDRIE: Well, we have got a system
3 in which we are trying through a nominally voluntary but
4 coercive in the sense that we work against their electrical
5 supply system a system to try to bring along state and local
6 entities, government entities in the preparation of plans,
7 emergency plans, the provision of equipment and of staff
8 when they may very well preclude they would prefer to spend
9 their money some place else.

10 The thing you are coercing them with we are going
11 to shut down your reactor. I think to expect that in all of
12 the states that may be concerned and all of the localities
13 that may be concerned that you are going to get as
14 wholesome, forthright and aggressive adherence to these
15 guidelines as you might hope, it ain't going to work that
16 way.

17 I think that in some places there are going to be
18 plant deficiencies which are going to have to be endured for
19 some time while one works out with those officials means to
20 finance and continue to argue and eventually hopefully to
21 persuade, or if not to persuade, to move up a couple of
22 levels in the government and try to get some pressure.

23 CHAIRMAN AHEARNE: It is a balancing judgment for
24 the Commission.

25 COMMISSIONER HENDRIE: What worries me is that the

1 equally effective says that there is an acceptable level of
2 emergency planning and you either hit or you shut down, and
3 that is the level which is represented by the full rule and
4 the guidelines enunciated in the staff guidance, and you are
5 not going to allow anything which is in any sense less
6 effective. All it allows is some way of meeting guideline
7 15 which the staff hasn't thought of and which after a lot
8 of argument maybe FEMA and the staff could agree was equally
9 effective.

10 What I am saying is you are going to have to
11 contemplate some cases where indeed the alternative
12 compensatory actions are going to result in an emergency
13 plan probably less satisfactory in the sense of probable
14 effectiveness in the case in need. Then you will eventually
15 I trust get at that facility after a while when you are able
16 to work out some of what I see is the inevitable
17 difficulties.

18 I am willing to buy that and to say, yes, indeed,
19 one looks at the plant, at what they have tried to do and
20 what the measures are and how close it comes and how badly
21 you need things and the costs and everything else, and I am
22 willing to buy off on a couple of years of a plant that
23 isn't absolutely up, you know, that still misses by some
24 little bit the full rigor of the rule and its implementing
25 guidelines.

1 COMMISSIONER BRADFORD: Will you be saying when
2 you do that, though, you will have to be saying that the
3 deficiencies are more than insignificant because otherwise
4 you get out under the first one, that the deficiencies are
5 insignificant

6 COMMISSIONER HENDRIE: Well, I will tell you, when
7 people argue what is significant and insignificant in our
8 proceedings, what I find is that no gnat is so small as not
9 to be significant in somebody's eye. I have never met a
10 board yet that was willing to say, no, that is
11 insignificant. So I think any issue people want to raise in
12 differences here are going to be matters that they should
13 raise.

14 COMMISSIONER GILINSKY: Well, you have got
15 something on the end that says whether other compelling
16 reasons exist for reactor operation.

17 COMMISSIONER BRADFORD: The fact is that that
18 would let you ignore even significant deficiencies with no
19 alternative compensatory action. The trouble is we are not
20 stuck with the damn phrase "alternative compensatory action"
21 because it has become essential to define it in such a way
22 as to satisfy the Congressional concerns. It may well be
23 that the last phrase sweeps it up.

24 COMMISSIONER HENDRIE: You know, the other
25 compelling reasons are not going to cut it. That is, I

1 can't see us looking at a plant in which there is
2 effectively nothing out there in the way of emergency
3 planning, you know, above the present level and up to the
4 new guidelines and saying, well, they really need this
5 plant. It is going to cost them a mint on the one hand and
6 a reserve marginal below on the other. If they don't have
7 it, never mind. We are not going to have that situation
8 and, you know, the Governor calling up and saying, don't
9 shut it down, for God sakes, Murtle Beach will go dark and I
10 can't stand it. I just don't think we are going to have
11 those things.

12 I think what you are going to be looking for are
13 ways in which the licensee can carry out some actions that
14 help to compensate for deficiencies in the local plants, in
15 the state plants.

16 COMMISSIONER GILINSKY: What about saying
17 something like sufficiently adequate interim compensatory
18 actions?

19 COMMISSIONER HENDRIE: How about appropriate
20 compensatory?

21 (Laughter.)

22 CHAIRMAN AHEARNE: Listen, Vic is offering
23 sufficiently adequate.

24 COMMISSIONER GILINSKY: Interim.

25 CHAIRMAN AHEARNE: Interim, yes.

1 COMMISSIONER BRADFORD: Why don't you drop
2 sufficiently.

3 (Laughter.)

4 COMMISSIONER BRADFORD: I might even buy
5 appropriate as long as I have interim along with it.

6 (Laughter.)

7 COMMISSIONER GILINSKY: Well, adequate interim
8 compensatory actions.

9 (Laughter.)

10 CHAIRMAN AHEARNE: Adequate interim compensatory
11 actions.

12 COMMISSIONER GILINSKY: I mean, that gets into the
13 fact is this something you put up with for sometime but
14 wouldn't put up with indefinitely. But it has to be
15 something. It can't be nothing. I mean, it has to pass
16 some test, and I hate to say the word "effectiveness."

17 CHAIRMAN AHEARNE: Try appropriate.

18 (Laughter.)

19 COMMISSIONER HENDRIE: I don't have a problem with
20 the injection of a note of in some fashion that one does not
21 contemplate, you know, that such a situation would be
22 satisfactory for 40 years of the stations of existence, just
23 as in the same way that on some of the generic safety
24 issues, why we have got fixes that are satisfactory for the
25 time being on specific plants, but we want to do better for

1 the long term and across the board.

2 What about the staff thrust here? What was the
3 sense in which the rule was prepared with this kind of
4 language in it? Did you contemplate that indeed interim
5 might turn out to be the lifetime of the license?

6 MR. GOLLER: No, I don't think that was the
7 intent. It was expected to be an interim ---

8 CHAIRMAN AHEARNE: Adequate interim solution.

9 MR. GOLLER: To be general. Again, an exception I
10 guess can occur. Generally you would expect these to be
11 interim solutions, but one that is adequate.

12 CHAIRMAN AHEARNE: So the phrase "adequate
13 interim" would be acceptable?

14 MR. GOLLER: Yes.

15 COMMISSIONER HENDRIE: Well, we talked about
16 introducing a temporal element, and you can make it an
17 interim alternative. Where did that language come from
18 anyway?

19 CHAIRMAN AHEARNE: Vic proposed it.

20 COMMISSIONER HENDRIE: No, no, the alternative,
21 the word I can't say action.

22 COMMISSIONER BRADFORD: Compensatory action. That
23 has been in there a long time.

24 MR. BICKWIT: That has been in there from the
25 start.

1 COMMISSONER HENDRIE: Alternative compensatory
2 actions of an interim nation.

3 CHAIRMAN AHEARNE: Why don't we say whether
4 adequate interim compensatory actions?

5 COMMISSONER BRADFORD: Fine.

6 CHAIRMAN AHEARNE: Vic?

7 COMMISSIONER GILINSKY: Come on, Joe. I went along
8 with expeditiously.

9 (Laughter.)

10 MR. PERKINS: I would just like to raise a
11 question. Do we need in all cases for that compensatory
12 action to be interim? Are there not places were we might
13 run into a situation where the compensatory action would be
14 adequate and be satisfactory in the long term?

15 CHAIRMAN AHEARNE: Well, what Carl just answered,
16 Ken, was that the staff did not have in mind that being
17 other than interim, that interim is what in general was
18 meant.

19 MR. GOLLER: In general with exceptions.

20 MR. PERKINS: I think there are exceptions to that
21 is what I am trying to say.

22 COMMISSIONER HENDRIE: If there are exceptions of
23 that kind then over time NBC and FEMA staff will incorporate
24 those particular measures as alternative ways of meeting the
25 guidelines.

1 COMMISSIONER GILINSKY: I would think so.

2 COMMISSIONER HENDRIE: Because they are then up to
3 the standard that you want under the rule and the guidelines.

4 COMMISSIONER BRADFORD: That is right, and at that
5 point you are saying the deficiencies probably aren't
6 significant anyway.

7 COMMISSIONER HENDRIE: And it is a zero deficiency
8 or only a technical one at best.

9 CHAIRMAN AHEARNE: Unless there is a real strong
10 objection, let us stick with adequate interim.

11 Now, the other point, Peter, you had made in that
12 change I would say is that you struck the fact "will be
13 taken promptly" out. So it has been taken.

14 COMMISSIONER BRADFORD: That is right. That is
15 the only other change of substance. It seemed to me since
16 this was coming at the end of the four months that they had
17 had, and they had been on notice that the plant was
18 inadequate, that at that point they really ought to have had
19 the change in place.

20 MR. JAMCOCHIAN: The problem with that, why that
21 was put in there, what if they had to order a communication
22 network. As a result of the exercise it came in and they
23 had a significant deficiency in their inability to
24 communicate properly. They secured the funds in one way or
25 another and had to buy and can show a purchase order for a

1 whole new set of communications networks, or ambulances or,
2 you know, you could think of a whole bunch of things that
3 are on order and will be taken promptly. That is why we
4 threw that in there.

5 MR. COLLIER: I don't see why the Commission would
6 want to make that decision now in general. It say you have
7 the option here to make the choice one way or the other,
8 you, the Commissioner do. This would simply give you that
9 option.

10 CHAIRMAN AHEARNE: Depending upon the
11 circumstances at the time.

12 COMMISSIONER BRADFORD: You have convinced me.
13 Say no more.

14 CHAIRMAN AHEARNE: So you would stay with their
15 language?

16 COMMISSIONER BRADFORD: Yes.

17 CHAIRMAN AHEARNE: Fine.

18 MR. COLLIER: We have got a problem with the first
19 deletion on that page, the third line, for the reactor in
20 question.

21 COMMISSIONER BRADFORD: That one I would have said
22 was absolutely editorial.

23 CHAIRMAN AHEARNE: What is the problem?

24 MR. COLLIER: The deficiencies could be in the
25 state program, but not relative to the reactor in question.

1 This is now an emergency planning rule that is reactor
2 specific.

3 MR. JAMGOCHIAN: There was a big thrust between
4 concurrence and what we have got now. Concurrence used to
5 be statewide. Now we are site specific.

6 COMMISSIONER BRADFORD: Well, let's see. It says
7 in deciding whether to permit reactor operation. So
8 presumably it is being applied reactor by reactor as you go
9 through the new process.

10 MR. GOLLER: It could be deficiencies in a state
11 program.

12 COMMISSIONER HENDRIE: Is it an editorial or a
13 fundamental objection?

14 COMMISSIONER BRADFORD: I had thought it was just
15 editorial, but now I have something that I hadn't
16 realized was there and now I am trying to think that through.

17 COMMISSIONER HENDRIE: I would suggest that unless
18 you see something fundamental in it from your standpoint ---

19 COMMISSIONER BRADFORD: Carl, are you saying that
20 it is conceivable that there are deficiencies in a state
21 plan that would not be significant for any given reactor, or
22 that might be significant for one reactor and not another?

23 MR. GOLLER: Yes, sir.

24 COMMISSIONER BRADFORD: All right, leave it in.

25 CHAIRMAN AHEARNE: All right.

1 COMMISSIONER HENDRIE: I will vote for the next
2 change. I think the pronoun ought to have the same ---

3 CHAIRMAN AHEARNE: We have already resolved that
4 adequate.

5 COMMISSIONER HENDRIE: Its instead of their.

6 CHAIRMAN AHEARNE: Yes. We also made whatever
7 language we had already reached in the beginning should be
8 in their license.

9 COMMISSIONER BRADFORD: Yes.

10 CHAIRMAN AHEARNE: The last change you have on
11 that page is if it is determined that there are such
12 deficiencies such that ---

13 COMMISSIONER BRADFORD: That is the one you all
14 have already kept in earlier.

15 CHAIRMAN AHEARNE: Fine.

16 MR. BICKWIT: There is one more item on that
17 page. The last that we proposed is that enclosure 1 comes
18 after.

19 CHAIRMAN AHEARNE: Right.

20 MR. BICKWIT: I think that has to be changed now
21 in light of your agreement.

22 CHAIRMAN AHEARNE: Yes, it has to be
23 alternative ---

24 COMMISSIONER BRADFORD: The same phrase.

25 CHAIRMAN AHEARNE: Instead of alternative it is

1 adequate interim.

2 MR. BICKWIT: But then as you go down through that
3 sentence I think you need to reflect that in the sentence as
4 well. You say, "The Commission will examine state plans,
5 local plans or licensee plans to determine whether features
6 of one plan can compensate for deficiencies in another plan
7 so that the level of protection for the public health and
8 safety is" and I think you have to strike "equivalent" ---

9 COMMISSIONER HENDRIE: And say adequate.

10 MR. BICKWIT: Adequate.

11 CHAIRMAN AHEARNE: Peter?

12 COMMISSIONER BRADFORD: Yes, that is all right.

13 CHAIRMAN AHEARNE: Fine.

14 MR. JAMGOCHIAN: What other change did you make on
15 that Enclosure 1 other than equivalent to adequate?

16 CHAIRMAN AHEARNE: Interim adequate. He was
17 quoting alternative compensatory action. We have now
18 changed those to adequate interim compensatory actions. So
19 that was the phrase.

20 MR. JAMGOCHIAN: Thank you.

21 MR. COLLIER: In the bottom of page 5 there is an
22 editorial change.

23 CHAIRMAN AHEARNE: That we had already previously
24 addressed on page 4 I guess it is.

25 MR. COLLIER: There is another one below that.

1 COMMISSIONER HENDRIE: When you retyped 715 you
2 cleaned that up. Get back in the base copy, goddamnit.

3 (Laughter.)

4 CHAIRMAN AHEARNE: Okay, page 7. I guess the
5 first one is on considered judgment.

6 COMMISSIONER HENDRIE: Is this editorial or does
7 it reflect considered judgment?

8 COMMISSIONER BRADFORD: Purely in the direction of
9 humility.

10 (Laughter.)

11 CHAIRMAN AHEARNE: On the top of page 7 we will
12 accept that editorial comment.

13 Now, in the middle, I am not sure what the
14 striking of "ibid" does.

15 COMMISSIONER BRADFORD: Well, it is consistent
16 with Victor's bias against Latin. It is one thing if you
17 put ibid in a footnote and you are referring back to the one
18 right above it but if ---

19 CHAIRMAN AHEARNE: I am not sure what it meant.

20 COMMISSIONER BRADFORD: That is what was troubling
21 me. If you put it in parentheses and you sort of have to.

22 CHAIRMAN AHEARNE: Mike, does it have some strong
23 meaning?

24 MR. JAMGOCHIAN: The lawyers told me to put it in.

25 (Laughter.)

1 MP. BICKWIT: I am agreeable to revising my
2 position.

3 (Laughter.)

4 CHAIRMAN AHEARNE: Let's strike that.

5 Now, I had a problem, Peter, with your next
6 change. You have the Commission assessing the course of an
7 accident rather than laying the responsibility on the
8 licensee to have the means and procedures to assess the
9 course of an accident.

10 COMMISSIONER BRADFORD: Okay, how about just
11 making that instead of "must be able" go back to "must know
12 that proper means and procedures will be in place."

13 CHAIRMAN AHEARNE: I would have no problem with
14 that.

15 COMMISSIONER BRADFORD: So it reads "The
16 Commission must know that proper means and procedures will
17 be in place."

18 CHAIRMAN AHEARNE: Right.

19 The rest of it is just editorial. What he is
20 striking is "firmly believes" and "in a position." He is
21 saying the Commission must know.

22 Does anybody see that as other than an editorial
23 modification?

24 COMMISSIONER BRADFORD: No. I think once you do
25 that it makes sense to strike the res the chances that I

1 made on down through because of the "know that formulation"
2 is consistent with the "that's."

3 CHAIRMAN AHEARNE: All right.

4 MR. GOLLER: Can we read that sentence?

5 CHAIRMAN AHEARNE: "In order to discharge
6 effectively its statutory responsibilities, the Commission
7 must know that" and then as it is.

8 COMMISSIONER BRADFORD: The proper means and
9 procedures, that is right. Then it is the same all the way
10 down.

11 MR. JAMGOCHIAN: Except down to effective. Do you
12 want that "adequate" protective actions?

13 COMMISSIONER BRADFORD: That is right.

14 CHAIRMAN AHEARNE: Yes.

15 MR. JAMGOCHIAN: Do you still want to delete "can
16 and will be taken"?

17 COMMISSIONER BRADFORD: No, I think I was leaving
18 that back in.

19 CHAIRMAN AHEARNE: Yes, leave everything in. So
20 it really is an editorial change.

21 Okay, page 9 I think is the next change suggested.
22 Any objections to deleting "ample"?

23 (No response.)

24 CHAIRMAN AHEARNE: Hearing none, all right, delete
25 "ample."

1 "The Commission notes considerations generally
2 relate to a one-time decision on siting that tends to
3 obligate future officials."

4 Any objections to "tends to obligate future
5 officials"?

6 (No response.)

7 CHAIRMAN AHEARNE: Hearing none, delete it.

8 COMMISSIONER HENDRIE: What ---

9 COMMISSIONER BRADFORD: What am I up to?

10 COMMISSIONER HENDRIE: What does it mean?

11 COMMISSIONER BRADFORD: That didn't seem to me to
12 be quite the way to say what a one-time decision on siting
13 does. I mean, I guess it does commit the site.

14 COMMISSIONER HENDRIE: It may or may not ---

15 COMMISSIONER BRADFORD: It doesn't really create
16 any ---

17 COMMISSIONER HENDRIE: --- any sense of obligation.

18 COMMISSIONER BRADFORD: That is right. It is a
19 minor.

20 CHAIRMAN AHEARNE: The next change, about the only
21 thing I saw there was that it eliminated Len's word
22 "flexibility." I wasn't sure whether that was a concern.

23 MR. PICKWIT: Not for me.

24 CHAIRMAN AHEARNE: Does anybody else have any
25 questions on the next change?

1 (No response.)

2 CHAIRMAN AHEARNE: The next big deletion, and
3 frankly I am not sure what the significance of it was
4 staying in so I can't really address the significance of it
5 coming out.

6 COMMISSIONER BRADFORD: Well, you have come pretty
7 close to it. The first sentence seemed to me to mean
8 nothing. If anything, it was there simply as a hook to hang
9 the second one on. Somehow it seems to me that that phrase
10 "even if the regulator is less than certain that harm is
11 otherwise inevitable" was more apologetic than I wanted to
12 be.

13 MR. BICKWIT: It is our proposal and we have no
14 problem with deleting it.

15 COMMISSIONER GILINSKY: That is good.

16 CHAIRMAN AHEARNE: All right.

17 COMMISSIONER GILINSKY: What about the intervening
18 pages here?

19 CHAIRMAN AHEARNE: Well, I am going through all of
20 the comments that were given to me and none of those
21 intervening pages have any comments on them.

22 COMMISSIONER GILINSKY: Someone didn't give them
23 to you.

24 (Laughter.)

25 CHAIRMAN AHEARNE: They weren't given to Sam

1 either. We have been through all of these pages many times.

2 The next set of comments I have is on page 19.

3 MR. JAMGOCHIAN: That was deleted from the last
4 version.

5 CHAIRMAN AHEARNE: Yes.

6 MR. JAMGOCHIAN: We received information that that
7 was no longer applicable.

8 CHAIRMAN AHEARNE: Okay. The next is on page 20.
9 Peter, what was the significance of the deletion, or I can
10 ask the staff what was the significance of the inclusion.

11 COMMISSIONER BRADFORD: It just didn't say
12 anything to me that I hadn't either found somewhere else or
13 just didn't find very important to the rule. It wasn't that
14 I had a very strong objection to it if others like it.

15 COMMISSIONER HENDRIE: If the staff is at all fond
16 of it I would tend to leave it in. It seems to me that it
17 is factual.

18 (Laughter.)

19 MR. BICKWIT: I guess it is ours and we don't care.

20 COMMISSIONER BRADFORD: If it turns it is the
21 lawyers instead of the technical staff ---

22 (Laughter.)

23 CHAIRMAN AHEARNE: What did you have in mind, Len?

24 MR. BICKWIT: I don't quite recollect what I had
25 in mind.

1 COMMISSIONER HENDRIE: If some of this is coming
2 up from OGC on the basis that it helps clarify the basis for
3 this rule and thereby perhaps may be useful in turning back
4 some future challenge on the rule in court, why I don't want
5 to be taking out some of your litigators' bricks that he may
6 want to build a base on.

7 MR. BICKWIT: If you want it in there, don't do it
8 for us.

9 (Laughter.)

10 CHAIRMAN AHEARNE: Take it out.

11 (Laughter.)

12 CHAIRMAN AHEARNE: Okay. Twenty-one, I think that
13 was a good change.

14 Any problems anybody?

15 (No response.)

16 CHAIRMAN AHEARNE: All right, 22.

17 COMMISSIONER BRADFORD: I think if we have already
18 settled on the OGC version there may be no point in going
19 back to this. I hadn't in any case caught up with the
20 version in which the discussion of alternative "B" had been
21 modified.

22 CHAIRMAN AHEARNE: This really is the place to get
23 back to Len's version of Enclosure 2.

24 COMMISSIONER BRADFORD: Right.

25 CHAIRMAN AHEARNE: I think his enclosure is

1 adequate.

2 COMMISSIONER BRADFORD: Yes. I don't have any
3 difficulty now with going with Len's version and then
4 picking up the alternative "B" discussion as it appears in
5 the latest draft.

6 COMMISSIONER BRADFORD: So that would be the first
7 sentence. Then Enclosure 2 put in and then continue and it
8 follows on from there.

9 CHAIRMAN AHEARNE: All right.

10 Are you two guys keeping up with all of this?

11 MR. GOLLER: We are trying to keep a step ahead of
12 you.

13 COMMISSIONER BRADFORD: Yes, what they are
14 realizing is that the next page is something more than
15 editorial.

16 CHAIRMAN AHEARNE: Now the bottom on page 22 where
17 we have ---

18 COMMISSIONER BRADFORD: What I am suggesting there
19 in terms of the rule as it stands is they are perfectly
20 right, the Commission's choice was I think alternative "B".

21 CHAIRMAN AHEARNE: Right.

22 COMMISSIONER BRADFORD: I just felt more
23 comfortable with saying that measures -- and I don't want to
24 completely dismiss measures to protect property. I agree
25 that protecting the public health and safety is more

1 important, and I certainly wouldn't ever want the public
2 health and safety to be sacrificed to protect property, but
3 at the same time I don't think that protecting property
4 should be a complete after thought if there are measures
5 that in some way would lessen the property or lessen the
6 extent of the clean-up. I don't know what they are offhand,
7 but I don't see any reason not to require them.

8 CHAIRMAN AHEARNE: The question is when you given
9 directions on developing a protective action approach
10 previously regulations used to have sort of a balancing of
11 protect the public and property and this year was a change
12 and it was going to say protect the problem. That is the
13 primary thing.

14 COMMISSIONER BRADFORD: Yes.

15 COMMISSIONER GILINSKY: How could you take action
16 to protect property?

17 COMMISSIONER BRADFORD: I don't know. If there is
18 in fact no action available then obviously the point is moot.

19 CHAIRMAN AHEARNE: We did go out as one of the set
20 of alternatives and asked the public to address their
21 comments.

22 COMMISSIONER BRADFORD: No, that is also correct.
23 What I am really suggesting here is that I at least in the
24 abstract, not knowing whether there are effective ways to
25 protect property or not, had rethought that question and was

1 no longer as comfortable as I had been with the proposition
2 that we should explicitly say don't worry about protecting
3 property.

4 I certainly wouldn't want to get into the
5 situation where we were telling the reactor operator to
6 trade off considerations about the workings of the plant
7 against the public health and safety. If there were
8 protective measures available to protect property that made
9 sense I didn't see any reason not to tell people -- we are
10 still telling people explicitly not to think about them.

11 COMMISSIONER GILINSKY: It seems to me property
12 protection comes at the reactor end in controlling
13 releases. Once release has taken place, which is the
14 assumption of this rule, I don't really see what measures
15 one can take to protect property.

16 CHAIRMAN BRADFORD: Let me go back to the
17 historical issue here. The previous regulation we used to
18 have had both words in there. The issue was whether we
19 should keep them linked together or not.

20 Can you think of anything, Joe?

21 COMMISSIONER HENDRIE: Well, I voted to take the
22 property out of it and just say, you know, after you have
23 protected public health, why if there are other things you
24 find useful to do that helps the property situation ---

25 COMMISSIONER GILINSKY: We could imagine

1 protecting animals.

2 COMMISSIONER HENDRIE: Well, I don't know. I
3 suppose there are some possible situations where you could
4 get into some kind of a balancing act. Suppose you have got
5 yourself a toot of radioiodine in a containment and you had
6 pulled people out of a sector and you have got a fairly
7 decent, you know, not too strong and not too light wind
8 going out that way and you have cleared people out for five
9 miles or something. Then the question comes up, as long as
10 they are out of the way why don't we get rid of that load
11 rather than have it there and available to leak over the
12 next ---

13 COMMISSIONER GILINSKY: But that is at the
14 reactor. It would be, it seems to me, subject to this rule.

15 COMMISSIONER HENDRIE: Well, when you talk about
16 property I assume that applies on down the line. I am not
17 sure you can really construct a sensible scenario, but at
18 least it appears to me possible that one could construct a
19 scenario.

20 CHAIRMAN AHEARNE: Mike.

21 MR. JAMGOCHIAN: The topic or the heading of the
22 paragraph that talks to this is rationale for the
23 alternatives that were chosen in the final rule. You did
24 choose alternative "E".

25 COMMISSIONER BRADFORD: I understand that, Mike.

1 What I am saying is that I have rethought that.

2 COMMISSIONER HENDRIE: He was changing his mind.

3 COMMISSIONER BRADFORD: If things were in here in
4 the reverse order it would be making more sense to you
5 because you would come to the changes I would prefer to make
6 in the alternative. I didn't in fact make them here because
7 it seemed to me if the Commission didn't agree on this point
8 there wasn't any point in going and rewriting the rule as
9 well. That is I recognize a substantive change.

10 CHAIRMAN AHEARNE: I am still happy with the
11 alternative "B" in this case. Peter, you would rather go
12 with alternative "A" -- I don't want to make it pejorative
13 -- but it would link possibly with public health and safety.

14 COMMISSIONER BRADFORD: That is right. The
15 statement would be alternative "A" that public health and
16 safety should take clear precedence over actions to protect
17 property. I was just saying don't leave it out. I will
18 tell you, if nobody can think of situations in which that
19 makes much difference, then I would withdraw this
20 suggestion. I had assumed that there was some sort of
21 package of property measures that in effect people were now
22 being told to forget about.

23 MR. KENNEKE: The damaging fact is that it is an
24 effort to avoid public exposure. That is why it is
25 damaging. In a sense it is subsumed under the alternative.

1 COMMISSIONER BRADFORD: That is right. that is a
2 linkage I certainly wouldn't want to create. As I say, I
3 had assumed that somewhere behind all this was some
4 discussion of measures that could be taken.

5 CHAIRMAN AHEARNE: I may be completely mistaken,
6 but as I recall what is behind it all is that when we went
7 back and we were going through the original regulations the
8 words were linked.

9 COMMISSIONER BRADFORD: That is right.

10 CHAIRMAN AHEARNE: We phrased the question why
11 keep them so inexorably linked?

12 COMMISSIONER BRADFORD: Right.

13 CHAIRMAN AHEARNE: Why not just concentrate on
14 public health and safety. That ended up in a Commission
15 discussion, well, we will have to make that an alternative.

16 COMMISSIONER BRADFORD: I am sure that is right.

17 COMMISSIONER HENDRIE: I will tell you where some
18 possibilities come in. If you take alternative "A" and it
19 says here licensee to outline corrective measures to prevent
20 damage to onsite and offsite property as well as health
21 protective measures. You are now going to have licensees
22 who are going to be challenged on the basis that they don't
23 have suitable evacuation and sheltering plans for dairy
24 herds. So I think farm animals are in fact a place. I
25 think we ought to protect people.---

1 COMMISSIONER BRADFORD: I must say I hadn't
2 thought of that.

3 COMMISSIONER HENDRIE: --- but I am not convinced
4 that I would hang a plant because he can't show that he can
5 evacuate the guy's, you know, price livestock. It seems to
6 me the livestock loss becomes, what is it, a tort claim? is
7 that a correct way to state it, or whatever.

8 COMMISSIONER BRADFORD: A Price-Anderson claim.

9 COMMISSIONER HENDRIE: You know, never mind having
10 a fleet of trucks that roll up to herd the cattle aboard and
11 get them out. There are a lot of other things to worry
12 about.

13 CHAIRMAN AHEARNE: I gather than you would stick
14 with ---

15 COMMISSIONER HENDRIE: I would stick with "B" and
16 I would stick with it the way it was written.

17 COMMISSIONER GILINSKY: I guess so, yes.

18 COMMISSIONER HENDRIE: Peter, as I said, it is not
19 inconceivable to me that you want to devise a scenario in
20 which there was some kind of balancing, but not much.

21 COMMISSIONER BRADFORD: In that case then the last
22 sentence of the paragraph would go back in.

23 CHAIRMAN AHEARNE: All right. Then the next
24 change ---

25 COMMISSIONER BRADFORD: I am sorry that these even

1 got in here, but about two-thirds of the way through I just
2 got exasperated at the fact that we were capitalizing the
3 word "state."

4 MR. KENNEKE: The NRC style manual capitalizes it.

5 COMMISSIONER BRADFORD: The NRC style manual
6 capitalizes state? Do you know on what basis? It is
7 clearly wrong.

8 COMMISSIONER HENDRIE: I was going to comment on
9 your testimony, John. Now, get those states capitalized.

10 (Laughter.)

11 MR. GOLLER: Page 23, deletion of "proposed" ---

12 COMMISSIONER BRADFORD: That stays in.

13 COMMISSIONER BRADFORD: I will take it up with the
14 style manual.

15 (Laughter.)

16 COMMISSIONER GILINSKY: Are we on page 24?

17 CHAIRMAN AHEARNE: Twenty-five.

18 COMMISSIONER GILINSKY: Well, there is stuff on
19 24. We talked a little bit about possibly shifting over
20 part of one 15-minute period over to the other 15-minute
21 period.

22 COMMISSIONER HENDRIE: Yes, there was talk at one
23 point about trimming things back and forth a little bit. I
24 don't know. The staff talked about it, I know. I think you
25 ended up ---

1 MR. JAMGOCHIAN: I believe it went to 10 to 20.

2 COMMISSINER GILINSKY: Yes.

3 MR. JAMGOCHIAN: It stayed the same.

4 COMMISSIONER HENDRIE: I think you decided it was
5 better off ---

6 COMMISSIONER GILINSKY: Why is that? Why don't
7 you leave them in both the way they were?

8 CHAIRMAN AHEARNE: You mean the 15 minutes?

9 COMMISSIONER GILINSKY: Yes. They shifted, say, 10
10 and 20 or 5 and 25.

11 MR. GOLLEB: I think you are trying to refine
12 precision into these numbers that just doesn't exist.

13 COMMISSIONER GILINSKY: Except that these are two
14 very different periods. One of them involves just an
15 automatic call to a state once you have made a certain
16 determination at the reactor and there is nothing more to
17 think about. If you call and announce a certain kind of
18 emergency you are required to call the state. That is it.
19 I don't see why that ought to take more than five minutes.
20 The other one is a different process which involves the
21 state's apparatus and some judgment on their part. I guess
22 I would shift over at least five minutes and maybe more from
23 the utility's 15 minutes over to add to the state's 15
24 minutes.

25 MR. GOLLEB: Well, the utility has to have some

1 time just mechanically to go through the motions of
2 accomplishing the notification, dialing the telephone and
3 beyond that getting to a telephone.

4 MR. JAMGOCHIAN: The second 15 minutes is a
5 capability.

6 CHAIRMAN AHEARNE: I think what Commissioner
7 Gilinsky is saying is that if 30 minutes was the block of
8 time that you would be more comfortable with the state and
9 local governments having 20 minutes to make their decision
10 and the utilities having ten minutes to decide to notify
11 their ---

12 COMMISSIONER GILINSKY: As a matter of fact, I
13 would even go further than that because the first one of
14 these calls is just an automatic call.

15 COMMISSIONER HENDRIE: It may not be one call. Do
16 we have emergency planners close at hand? Does anybody know?

17 MR. GOLLER: Well, in most cases it would be more
18 than one call because they could be made in parallel in some
19 cases.

20 CHAIRMAN AHEARNE: I guess my unease is that at
21 this stage I find it hard to believe that five minutes is
22 going to be the critical make or break, and it could well be
23 that the difference between 15 and 10 is a major new
24 burden. I guess I am a little uneasy about going ---

25 COMMISSIONER GILINSKY: I find that very hard to

1 believe in the case of the utility, but for the state, as
2 you pointed out, Joe, needs to know what sort of an
3 announcement it is going to make and so on. I think a
4 little more time would be extremely useful.

5 In one case, you know, it is an automatic call
6 that just says we have declared a general emergency.

7 COMMISSIONER HENDRIE: It may be several calls.

8 COMMISSIONER GILINSKY: What is it that they are
9 required to do in the 15 minutes?

10 COMMISSIONER HENDRIE: If, for instance, the
11 difference between 10 and 15 minutes required additional
12 telephone lines and utility people to say things
13 simultaneously, why I would say, wait a minute that is ---

14 CHAIRMAN AHEARNE: There are two separate issues
15 you are raising. One is shouldn't the state and local
16 governments have additional time. The second is why
17 shouldn't the utilities have to respond faster.

18 COMMISSIONER GILINSKY: Well, I don't want to
19 expand this half-hour period.

20 CHAIRMAN AHEARNE: Why?

21 COMMISSIONER GILINSKY: Well, for the same reason
22 you just gave for not wanting to move the 15 minutes. We
23 have been through this for a long time and discussing this.

24 CHAIRMAN AHEARNE: All of our comments we get from
25 state and local people were in the direction of expanding.

1 COMMISSIONER GILINSKY: Expanding their period?

2 CHAIRMAN AHEARNE: Their period.

3 COMMISSIONER GILINSKY: Yes, and I guess I would
4 keep the overall half hour and at a minimum shift over five
5 minutes to the state where I think it would be welcome
6 certainly.

7 CHAIRMAN AHEARNE: Well, I would be willing to add
8 an additional five minutes to the state. I don't see any
9 good reason for it.

10 COMMISSIONER GILINSKY: Well, it is kind of odd to
11 have a 35 minute period. Let's find out. What is it the
12 utility has to do in those 15 minutes?

13 MR. JAMGOCHIAN: I believe it is just a
14 notification to state and local government authorities. I
15 am sure it is more than one call, but that, as you pointed
16 out, can be done automatically. I think they put a card
17 into some sort of thing on the phone and five, seven or
18 eight calls go out automatically. They prerecord a kind of
19 message.

20 COMMISSIONER GILINSKY: You see after they have
21 already made that decision that they are in a general
22 emergency they don't then have to think should we be ---

23 COMMISSIONER HENDRIE: That is right. I just
24 wondered whether there were several calls -- well, just this
25 concern that John voiced, whether there turned out ther to

1 be something of significance in terms of hardware and set-up
2 requirements between 10 and 15 minutes; that is, is there a
3 cut-off in there and that is why I was peering out to see if
4 we had a handy emergency planner in the audience.

5 Do you want to take a crack at it? How bad a pain
6 is it for utilities coming down to 10 from 15 minutes?

7 MR. PAGANO: It depends on the situation there is
8 no easy answer to the problem. It cuts both ways. There
9 are circumstances where the state laws are such that you
10 must notify the state emergency management agency first.
11 That is usually a single call and they get to the
12 surrounding counties, but there are other localities where
13 the local jurisdictions must be notified directly from the
14 utility first. In that case there may be more than five.
15 There may be ten. It depends on the utilities. It depends
16 on the local jurisdictional requirements. It depends on the
17 number of counties in the EPZ. I can't give you a clear
18 answer to this. We took the compromise position.

19 COMMISSIONER GILINSKY: Are these separate phone
20 calls or is this done automatically?

21 MR. PAGANO: Well, here again, that is going to
22 certainly depend upon on the town. You can't always arrange
23 in some telephone jurisdictions to make simultaneous phone
24 calls.

25 COMMISSIONER GILINSKY: Are they required in these

1 15 minutes to make all of those phone calls?

2 MR. PAGANO: Yes, sir. They are required to make
3 the decision to make the phone calls.

4 CHAIRMAN AHEARNE: Mike, I would prefer to keep
5 the 15 to 15. I would go to 15 to 20.

6 MR. PAGANO: Speaking from the practical extreme
7 point of view at the moment we would prefer to stick to the
8 15 to 15 agreement.

9 COMMISSIONER GILINSKY: Okay.

10 MR. JAMGOCHIAN: None of the states came in and
11 really said 25 minutes or 20 minutes would help us out a
12 great deal more than 15.

13 MR. PAGANO: That is true, but you don't have one
14 utility saying that he can get away with five.

15 MR. COLLER: As I recall, the 10 and 20 split was
16 raised by one of the panelists from the state speaking. I
17 personally got the impression it was raised almost
18 facetiously, the point being that it was such a short period
19 of time that an extra five minutes one way or the other just
20 wouldn't affect them.

21 CHAIRMAN AHEARNE: Shall we stick with the 15 and
22 15?

23 COMMISSIONER GILINSKY: I am not sure I follow
24 that, but I will stick with the 15 and 15.

25 CHAIRMAN AHEARNE: Okay, 25.

1 COMMISSIONER BRADFORD: The revised form is all
2 right.

3 CHAIRMAN AHEARNE: Fine.

4 COMMISSIONER HENDRIE: Twenty-five.

5 CHAIRMAN AHEARNE: He hadn't had the new version.
6 The new version is okay with him.

7 COMMISSIONER HENDRIE: What do you mean the new
8 version?

9 CHAIRMAN AHEARNE: It changed.

10 COMMISSIONER BRADFORD: My change is just to 275-B.

11 CHAIRMAN AHEARNE: 27.

12 COMMISSIONER HENDRIE: No, 25.

13 CHAIRMAN AHEARNE: What?

14 COMMISSIONER HENDRIE: The paragraph at the bottom.

15 CHAIRMAN AHEARNE: I am sorry, you are right.

16 COMMISSIONER HENDRIE: I have had a note out since
17 the 18th saying, look, the way that first sentence reads,
18 you have an accident and you get sufficient products in the
19 containment and you say that will warrant immediate public
20 notification. Good. Then it says ". . . and a decision
21 based on the circumstances of appropriate protection
22 action." Wait a minute, you mean you are going to decide to
23 take protective action every time you get fission products
24 in the containment? No. You are going to notify so people
25 can listen to their radios and you are going to consider

1 what you are going to do then.

2 This sentence reads strongly like a compulsion to
3 take protective action if you get a significant amount of
4 fission products in the containment and it is
5 inappropriate. You are certainly going to consider what you
6 are going to do but let's not precommit.

7 Failure of the containment building just creates
8 this splendid image of the whole thing splitting open like a
9 rotten melon and what you are worried about is some leakage,
10 damn it.

11 CHAIRMAN AHEARNE: I guess I have less problem
12 with your failure. Let me go back to your first.

13 COMMISSIONER HENDRIE: Yes.

14 CHAIRMAN AHEARNE: You are talking about an
15 accident which does have severe fuel degradation and you
16 don't think that that would require some decision?

17 COMMISSIONER HENDRIE: I don't think it would
18 warrant immediately public notification and a decision for
19 protective action.

20 CHAIRMAN AHEARNE: Appropriate protective action.

21 (Laughter.)

22 COMMISSIONER BRADFORD: Now here I think the word
23 "appropriate" is right.

24 (Laughter.)

25 COMMISSIONER BRADFORD: No, it is.

1 MR. KENNEKE: It is not clear to me whose
2 decision. I suggest the wording like any decision by the
3 licensee whether to recommend a protective action.

4 CHAIRMAN AHEARNE: It says here it would warrant
5 public notification.

6 MR. KENNEKE: That they have stuff in the
7 containment, but they also need to know whether it is
8 serious enough, and the first recommendation is going to
9 come from them.

10 COMMISSIONER HENDRIE: You don't need to deal with
11 whether the licensee is going to recommend and so on. The
12 point I am just making is the reason you have got a
13 containment is so you can contain the fission products.

14 CHAIRMAN AHEARNE: Sure.

15 COMMISSIONER HENDRIE: If when you get them there
16 never mind there is a containment, you are going to decide
17 that people should run or even go to the basement. Wait a
18 minute, that is why we put the building there in the first
19 place so they wouldn't have to do that. You would like
20 people notified so they are alert, so that the system is on
21 alert and they are listening to their radios and you then
22 certainly are going to consider what action you take next.
23 Should you start a set or protective action of a
24 precautionary type or shouldn't you?

25 CHAIRMAN AHEARNE: I guess it is a continuum of

1 decisions.

2 COMMISSIONER HENDRIE: That is right, but this
3 language commits you to decide to take protective actions,
4 or I am afraid it appears to.

5 COMMISSIONER GILINSKY: Isn't telling people just
6 to stay alert and tuned in and be ready to go ---

7 COMMISSIONER HENDRIE: No.

8 COMMISSIONER GILINSKY: No what?

9 COMMISSIONER HENDRIE: No, it is not.

10 (Laughter.)

11 CHAIRMAN AHEARNE: I see.

12 COMMISSIONER HENDRIE: If you get these
13 circumstances they would warrant immediate public
14 notification and a decision for appropriate protective
15 action.

16 CHAIRMAN AHEARNE: Your concern is that that seems
17 to lead to requiring a final decision?

18 COMMISSIONER HENDRIE: That is right. What I am
19 saying is it ought to read would warrant immediate public
20 notification and consideration based on the particular
21 circumstances of appropriate protective action because of
22 the potential for leakage of the container.

23 CHAIRMAN AHEARNE: But you would agree that that
24 consideration would could entail initially in the
25 notification a warning of stay inside and listen to your

1 radio?

2 COMMISSIONER HENDRIE: Of course. I just don't
3 want to automatically commit to protective action.

4 CHAIRMAN AHEARNE: Additional protective action.

5 COMMISSIONER HENDRIE: What additional protective
6 action?

7 CHAIRMAN AHEARNE: Well, for example, listening to
8 the radio is protective action.

9 COMMISSIONER HENDRIE: No, I don't regard that as
10 protective action. I regard that as notification and then
11 you go listen to our radio and find out whether you should
12 do anything.

13 COMMISSIONER GILINSKY: Well, I don't know. It
14 certainly requires immediate public notification and
15 consideration of the decision.

16 COMMISSIONER GILINSKY: Absolutely. I guess it
17 sounds reasonable enough. Probably we ought not to be
18 specifying here precisely what one ought to be doing.

19 CHAIRMAN AHEARNE: Peter?

20 COMMISSIONER BRADFORD: It seems reasonable to
21 me. I guess I don't see that much difference in the sense
22 that if you consider something you are then going to have to
23 decide up or down on it. So you are going to be driven in
24 almost the same direction. If this language is in here,
25 that is fine.

1 CHAIRMAN AHEARNE: 27. Now, it is somewhat
2 adjusted, but the section that appears marked up is still
3 the section on the new page 27.

4 COMMISSIONER BRADFORD: I have already retreated
5 from the phrase.

6 CHAIRMAN AHEARNE: Okay.

7 MR. GOLLER: Mr. Chairman, back on page 25 you did
8 say that the word "appropriate" there is the proper word?

9 COMMISSIONER HENDRIE: Yes.

10 CHAIRMAN AHEARNE: On 25, yes, we took Joe's
11 suggestion. We got a suggestion and we took it.

12 MR. GOLLER: I am a little concerned when we go
13 through this entire document after this that we are going to
14 find other uses of the word "appropriate" and so on.

15 COMMISSIONER HENDRIE: If they are appropriate use
16 them.

17 (Laughter.)

18 CHAIRMAN AHEARNE: I think there is one clear
19 place where you should change it and that is we addressed it
20 right in the beginning in that particular phrase that
21 Commissioner Bradford addressed, appropriate protective
22 measures.

23 MR. GOLLER: If we find that anywhere else, having
24 overlooked it ---

25 CHAIRMAN AHEARNE: I think it shifts to adequate.

1 COMMISSIONER BRADFORD: Carl, if it seems to you
2 that it ought to be changed anywhere else I think you ought
3 to check with the Commissioners before making the change.
4 You did find one place where I had missed it but I would be
5 surprised if there were many because I did make the change a
6 number of times.

7 MR. GOLLER: Well, I would be concerned about just
8 one more.

9 COMMISSINER BRADFORD: If you find one more why
10 also change it.

11 CHAIRMAN AHEARNE: Do you have a specific one more?

12 MR. GOLLER: No.

13 CHAIRMAN AHEARNE: Well, that is I think the
14 qualify control assurance review that I guess you guys do at
15 the end on any of these documents.

16 Page 31. I think that was ---

17 COMMISSIONER BRADFORD: John, you have got me.

18 CHAIPMAN AHEARNE: Page 28. What is the
19 significance?

20 COMMISSIONER BRADFORD: It is not a matter of
21 great importance, but it seems to me that there may be
22 situations in which if we were to want to fund the state
23 government in some way related to, I don't know, radiation
24 instrumentation or something of that sort, I wouldn't want
25 to be precluded from that by the argument that that was an

1 emergency preparedness function and was not exclusively
2 related to FEMA. I mean, I agree with the basic thrust of
3 this.

4 CHAIRMAN AHEARNE: All right, 30, states again.
5 That is a style change.

6 Thirty-one I think we have addressed already.

7 COMMISSIONER BRADFORD: Yes, both changes.

8 Thirty-one is the place where Carl caught the "adequate."

9 COMMISSIONER HENDRIE: Peter's 31 appears over on
10 page 32.

11 MR. GOLLER: These words on 31, I think these are
12 the ones you struck.

13 MR. PERKINS: Strike the word "favorable" before
14 FEMA then it will be consistent with our other changes.

15 COMMISSIONER HENDRIE: Strike the word what?

16 MR. PERKINS: Favorable in front of FEMA.

17 CHAIRMAN AHEARNE: Well, actually the language we
18 end up with was a FEMA finding will constitute a rebuttable
19 presumption on the question of adequacy.

20 COMMISSIONER BRADFORD: Whatever Len's language
21 was it should just appear here.

22 CHAIRMAN AHEARNE: Mike, do you have that?

23 MR. JAMGOCHIAN: Yes.

24 CHAIRMAN AHEARNE: All right, 32.

25 COMMISSIONER BRADFORD: Don't even pause for that.

1 CHAIRMAN AHEARNE: Forty-three which is really
2 35. Yes, 35. I think we already addressed that.

3 COMMISSIONER HENDRIE: Right, we put adequate
4 interim in there.

5 CHAIRMAN AHEARNE: And/or will be taken promptly,
6 and we dropped compelling reasons, absence of good faith, I
7 think. Peter?

8 COMMISSIONER BRADFORD: Where are you, John?

9 CHAIRMAN AHEARNE: This is on your page 34 which
10 is really 35. It is 32 with states.

11 COMMISSIONER BRADFORD: No, I am sorry. You had
12 said 33.

13 CHAIRMAN AHEARNE: I am sorry.

14 COMMISSIONER BRADFORD: Yes, that is right. These
15 are taken care of.

16 CHAIRMAN AHEARNE: Now, Carl, I am assuming you
17 had sent up the comments on FEMA and changes and you have
18 already made those in this final version.

19 MR. COLLIER: Yes.

20 CHAIRMAN AHEARNE: Next ---

21 COMMISSIONER BRADFORD: Thirty-seven is again
22 taken care of.

23 CHAIRMAN AHEARNE: Yes.

24 COMMISSIONER HENDRIE: Let's see, that one now
25 appears on what page because there is another adequate

1 interim over here and I am losing track.

2 MR. COLLER: The very last line of 38.

3 CHAIRMAN AHEARNE: Then it goes over to 39.

4 COMMISSIONER HENDRIE: It is just adequate interim
5 instead of alternative for compensating actions at the
6 bottom.

7 COMMISSIONER BRADFORD: Len, does it do anything
8 for the concern that I guess Victor had earlier down toward
9 the bottom of 38 if you say whether other regulatory action
10 is appropriate instead of whether other enforcement action is
11 appropriate?

12 MR. BICKWIT: It doesn't do anything for me. I
13 don't have any problem with regulatory. I just don't think
14 enforcement action is taken only for punitive reasons.

15 COMMISSIONER BRADFORD: I agree with that.

16 CHAIRMAN AHEARNE: Your change on 47 I gather ---

17 COMMISSIONER HENDRIE: It looks to me like these
18 questions of the capitalization ---

19 COMMISSIONER BRADFORD: I think the one in the
20 second line I would insist on.

21 (Laughter.)

22 MR. COLLER: That correction had already been made.

23 CHAIRMAN AHEARNE: I know.

24 Nuclear power reactor.

25 MR. COLLER: That correction had already been

1 made, too.

2 CHAIRMAN AHEARNE: Okay.

3 COMMISSIONER BRADFORD: What page is that on?

4 MR. GOLLER: 49.

5 CHAIRMAN AHEARNE: Yes. Then on what is page 51
6 or your page 48, Peter, you had added a couple of changes.
7 The first change you wanted was adequate provisions.

8 COMMISSIONER HENDRIE: We put adequate every place
9 else.

10 MR. JAMGOCHIAN: It is common sense that you would
11 only list the adequate provisions.

12 COMMISSIONER BRADFORD: It is just a list at this
13 point.

14 MR. JAMGOCHIAN: We have a problem. What did you
15 mean by your new No. 8?

16 CHAIRMAN AHEARNE: Wait. You have problem with
17 putting adequate provisions. I guess my comment would have
18 been I would presume that if we say something the provision
19 must be and it has to be adequate, but I have no problem
20 with putting adequate in.

21 Joe?

22 COMMISSIONER HENDRIE: Yes.

23 COMMISSIONER BRADFORD: I would drop the word
24 "adequate" from No. 6. I think I had written that before
25 and then said why not put it at the beginning. There is no

1
2 reason to have adequate provision for adequate. It is
3 something else. I would leave the "specifically identified."

4 CHAIRMAN AHEARNE: To specifically identify
5 treatment facilities.

6 COMMISSIONER BRADFORD: I am not sure whether that
7 was implicit or not, but did you all contemplate that the
8 plans would have to list the facilities so there is no
9 difficulty?

10 MR. GOLLER: Yes.

11 CHAIRMAN AHEARNE: So that is no problem.

12 COMMISSIONER BRADFORD: Now, No. 6 ---

13 CHAIRMAN AHEARNE: Wait.

14 Joe?

15 COMMISSIONER HENDRIE: Certainly with regard to
16 onsite emergencies why you have to locate some places in the
17 area that could take a contaminated patient and those would
18 then serve for some limited areas. Now, to get to the point
19 where you have got a 10-mile evacuation zone and identify
20 where everybody who might be contaminated is going to go,
21 why you are sort of getting into three-state sweeps, and I
22 am not sure that is ---

23 COMMISSIONER BRADFORD: Well, I know what you are
24 saying, that is, that at some point the numbers of people
25 involved becomes such that you would simply overwhelm the

1 system. As the list is written now it doesn't require the
2 identification of facilities available to treat individuals
3 who were either not on site or weren't injured in support of
4 licensed activities. Somehow it seems to me that that gap
5 between zero and the very large number is too big, that
6 there ought to be some indication of facilities available to
7 members of the general public who were overexposed, and I
8 don't know how to plug that.

9 I agree with you that it would be unreasonable to
10 require the identification of tens of thousands of hospital
11 beds, but somehow it also seems to me to be wrong to come
12 out at zero.

13 CHAIRMAN AHEARNE: It is probably addressing here
14 the question of what is the probability of something
15 happening and what kind of protective action ought you do to
16 match that probability and then what are the costs of trying
17 to arrange for that protective action. We have a lot of
18 concentration on alerting the public on having all these
19 protection measures in place. Here we concentrated on
20 people who have a much higher probability of getting exposed
21 and the people on the site doing activities on the site or
22 people in support of those on the site once again having the
23 potential of much higher exposure.

24 I will let Mike talk in a minute, but I thought
25 the next level down you are setting up warning systems, you

1 are ensuring evacuation planning, et cetera. Farther
2 downstream is the question of protective measures being
3 inadequate which then leads to the requirement for
4 facilities to handle the exposed individuals.

5 Mike.

6 MR. JAMGOCHIAN: I believe what you are really
7 requesting is facilities to treat offsite individuals that
8 are contaminated.

9 COMMISSIONER BRADFORD: That is right.

10 MR. JAMGOCHIAN: That would be appropriately in
11 the state and local emergency response plan whereas this
12 here is part of the new Appendix E.

13 COMMISSIONER BRADFORD: I see what you are saying.

14 MR. JAMGOCHIAN: It is primarily to licensees and
15 not at all to the state and locals.

16 COMMISSIONER BRADFORD: Which would explain why it
17 needn't be in here.

18 MR. JAMGOCHIAN: Documentation and material to the
19 state and local emergency response plan, what is adequate
20 there. You should have a listing of facilities to treat
21 contaminated individuals.

22 COMMISSIONER BRADFORD: How do you deal with the
23 numbers questions? Obviously you wouldn't expect to be able
24 to treat 10,000, but you might reasonable expect ten or
25 twenty or some number if you did get the situation where

1 people sheltered in the plume or went the wrong way.

2 MR. JAMGOCHIAN: To be very honest, I don't know.
3 I would imagine that they draw the ten mile radius and look,
4 first of all, at the numbers of people they have there and
5 identify facilities throughout the state.

6 COMMISSIONER BRADFORD: I gather this isn't for
7 obvious reasons something that hospitals get into casually
8 dealing with people who have been contaminated by radiation
9 so that you wouldn't expect I guess to find very beds
10 available per hospital.

11 MR. JAMGOCHIAN: Well, in the past before we came
12 out with this regulation hospitals did go through training
13 programs to deal with radiological contaminated
14 individuals. I am sure now that this ten-mile regulation
15 has come out and we have expanded it from the LPZ basically
16 to an emergency planning zone of 10 miles then more
17 hospitals will then go through more training programs and
18 get more familiar with the problems associated with this.

19 COMMISSIONER BRADFORD: Where should I look, Mike,
20 to find the requirement as it is now. It is in guidance
21 documents?

22 MR. JAMGOCHIAN: I would imagine it is 0654.

23 CHAIRMAN AHEARNE: Yes, sir.

24 MR. PAGANO: The requirement is in 0654. I can't
25 specifically recall the words, but I can tell you from

1 practical experience in looking at state and local plans
2 they do make such provisions. They do have provisions for
3 decontamination centers to handle large numbers. They do
4 make the same provisions we require of the licensee to get
5 agreements with the local medical facilities to treat
6 injured contaminated.

7 COMMISSIONER BRADFORD: Thanks.

8 CHAIRMAN AHEARNE: So with that, Peter ---

9 COMMISSIONER BRADFORD: It doesn't belong here.

10 CHAIRMAN AHEARNE: Okay.

11 Joe, do you have any problems with that
12 "specifically identified" in No. 6?

13 COMMISSIONER HENDRIE: No.

14 CHAIRMAN AHEARNE: I think your last one was an
15 editorial.

16 COMMISSIONER BRADFORD: Yes.

17 CHAIRMAN AHEARNE: I think that adequately handles
18 all of those.

19 COMMISSIONER BRADFORD: Adequately and
20 appropriately.

21 (Laughter.)

22 CHAIRMAN AHEARNE: There was the change that Carl
23 had mentioned originally that did not get picked up on how
24 transients were handled. There was a phrase put in, signs
25 or other measures shall also be used to disseminate any

1 transient population within the exposure pathway.
2 Appropriate information would be helpful if an accident
3 occurs. That had been in one of the earlier versions, I
4 think 275-A, and did not get picked up in this latest
5 version. I assume that is acceptable.

6 Joe?

7 COMMISSIONER HENDRIE: When did it come out? When
8 did it fall out? Was it in the rule when it went out for
9 public comment?

10 MR. JAMCOCHIAN: Oh, no, sir.

11 MR. GOLLER: It was in A. It was a changed
12 proposed in A in direct response to the Commission's
13 suggestion or request.

14 CHAIRMAN AHEARNE: The previous had notified the
15 public intransient.

16 COMMISSIONER HENDRIE: Give everybody a radio when
17 they come to the county.

18 CHAIRMAN AHEARNE: Right. This was an attempt to
19 recognize the difference between that and ---

20 COMMISSIONER HENDRIE: I have no objection.

21 CHAIRMAN AHEARNE: Fine.

22 COMMISSIONER HENDRIE: Let's vote the damn rule.

23 CHAIRMAN AHEARNE: What I would now like to do
24 then now that we have gone through all the proposed changes,
25 and I believe we have handled all of Peter's changes, I

1 would like to then vote to approve the rule as modified.

2 COMMISSIONER CILINSKY: Aye.

3 COMMISSIONER BRADFORD: Aye.

4 COMMISSIONER HENDRIE: Aye.

5 CHAIRMAN AHEARNE: Great.

6 (Whereupon, at 5:50 p.m. the hearing adjourned.)

7 * * *

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

in the matter of: DISCUSSION AND VOTE ON EMERGENCY PREPAREDNESS RULE

Date of Proceeding: July 23, 1980

Docket Number: _____

Place of Proceeding: Washington, D. C.

were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

Mary C. Simons

Official Reporter (Typed)

Mary C. Simons

Official Reporter (Signature)

Enclosure 1

Add the following at the end of the first paragraph on p. 5:

In determining the sufficiency of "alternative compensatory actions" under this rule, the Commission will examine State plans, local plans or licensee plans to determine whether features of one plan can compensate for deficiencies in another plan so that the level of protection for the public health and safety is equivalent. This interpretation is consistent with the provisions of the NRC Authorization Act for FY 1980, Pub.L. 96-295.

Enclosure 2

Replace the first two sentences of the full paragraph on p. 22 with the following:

After consideration of the public record and on the recommendation of its staff, the Commission has chosen a text for Sections 50.47 and 50.54(s) and (t) that is similar to, but less restrictive than, alternative A in the proposed rule. Rather than providing for the shutdown of the reactor as the only enforcement action and prescribing specific preconditions for the shutdown remedy, the final rule makes clear that for emergency planning rules, like all other rules, reactor shutdown as outlined in the rule is but one of a number of possible enforcement actions and many factors should be considered in determining whether it is an appropriate action in a given case.

7/15/80

NUCLEAR REGULATORY COMMISSION
10 CFR Part 50 and Part 70
EMERGENCY PLANNING

AGENCY: U.S. Nuclear Regulatory Commission

ACTION: Final Rule

SUMMARY: On September 19, 1979 and on December 19, 1979, the Commission published for public comment (44 FR 54308 and 44 FR 75167) proposed amendments to its emergency planning regulations for production and utilization facilities. Extensive comments were received, all of which were evaluated and considered in developing the final rule. The comments received and the staff's evaluation is contained in NUREG-0684. In addition, the NRC conducted four Regional Workshops to solicit comments; these comments are available in NUREG/CP-0011 (April 1980).*

The final regulation contains the following elements:

1. In order to continue operations or to receive an operating license an applicant/licensee will be required to submit their emergency plans, as well as State and local governmental emergency response plans, to NRC. The NRC will then make a finding as to whether the state of onsite and offsite emergency preparedness provides reasonable assurance that appropriate protective measures can and will be taken in the event of a radiological emergency. The NRC will base its finding

*Copies of NUREG documents are available at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555. Copies may be purchased from the Government Printing Office. Information on current prices may be obtained by writing the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publications Sales Manager.

on a review of the Federal Emergency Management Agency (FEMA) findings and determinations as to whether State and local emergency plans are adequate and capable of being implemented, and on the NRC assessment as to whether the licensee's/applicant's emergency plans are adequate and capable of being implemented.

2. Emergency planning considerations will be extended to "Emergency Planning Zones,"
3. Detailed emergency plan implementing procedures of licensees/applicants will be required to be submitted to NRC for review, and
4. Requirements in 10 CFR Part 50, Appendix E are clarified and upgraded.

EFFECTIVE DATE: 75 days after publication

NOTE: The Nuclear Regulatory Commission has submitted this rule to the Comptroller General for review of the reporting requirements in the rule, pursuant to the Federal Reports Act, as amended (44 U.S.C. 3512). The date on which the reporting requirements of the rule become effective includes a 45-day period, which the statute allows for Comptroller General review (44 U.S.C. 3512(c)2)).

FOR FURTHER INFORMATION CONTACT: Mr. Michael T. Jamgochian, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Telephone: 301-443-5966).

SUPPLEMENTARY INFORMATION: In June 1979, the Nuclear Regulatory Commission began a formal reconsideration of the role of emergency planning in ensuring the continued protection of the public health and safety in areas around nuclear power facilities. The Commission began this reconsideration in recognition of the need for more effective emergency planning and in

response to reports issued by responsible offices of government and the NRC's Congressional oversight committees.

On December 19, 1979, the Nuclear Regulatory Commission published in the Federal Register (44 FR 75167) proposed amendments to 10 CFR Part 50 and Part 50, Appendix E of its regulations. Publication of these final rule changes in the Federal Register is not only related to the December 19, 1979 proposed rule changes but also incorporates the proposed changes to 10 CFR Parts 50 and 70 (44 FR 54308) published on September 19, 1979. Interested persons were invited to submit written comments/suggestions in connection with the proposed amendments within 60 days after publication in the Federal Register. During this comment period (in January 1980) the Commission conducted four regional workshops with appropriate State and local officials, utility representatives, and the public to discuss the feasibility of the various portions of the proposed amendments, their impact, and the procedures proposed for complying with their provisions. The NRC used the information from these workshops along with the public comment letters to develop the final rule (more than 170 comment letters and the points made in two petitions for rulemaking were included in considerations).

After evaluating all public comment letters received and all the information obtained during the workshops as well as additional reports such as the NRC Special Inquiry Group Report, the Commission has decided to publish the final rule changes described below.

Description of Final Rule Changes

The Commission has decided to adopt a version of the proposed rules known as alternative A described in sections 50.47 and 50.54 in the Federal

Register Notice dated December 19, 1979, (44 FR 75167), as modified in light of comments. These rules, when effective, will provide that no power reactor may operate if there is an NRC finding that the overall state of emergency preparedness is inadequate for the reactor in question. This is consistent with the approach outlined by FEMA and NRC in a Memorandum of Understanding (45 FR 5847, January 24, 1980). No new operating license will be granted unless the NRC can make a favorable finding that the integration of onsite and offsite emergency planning provides reasonable assurance that appropriate protective measures can and will be taken in the event of a radiological emergency. In the case of an operating reactor, if it is determined that there are such deficiencies that a favorable NRC finding is not warranted and the deficiencies are not corrected within 4 months of that determination, the Commission will determine whether the reactor should be shut down or whether some other enforcement action is appropriate, pursuant to procedures provided for in 10 CFR 2.200. In any case where the Commission believes that the public health, safety, or interest so requires, the plant will be required to shut down immediately (10 CFR 2.202(f), see 5 U.S.C. 558(c)).

The standards that the NRC will use in making its determinations under these rules are set forth in the final regulation. Wherever possible, these standards may blend with other emergency planning procedures for non-nuclear emergencies presently in existence. The standards are a restatement of basic NRC and now joint NRC-FEMA guidance to licensees and to State and local governments. See NUREG-0654; FEMA-REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants for Interim Use and Comment," (January 1980).

In deciding whether to permit reactor operation in the face of some deficiencies, the Commission will examine among other factors whether the deficiencies are significant for the reactor in question, whether alternative compensatory actions have been or will be taken promptly, and whether, consistent with the public health and safety, other compelling reasons exist for reactor operation.

Specifically, the regulation contains the following three major changes from past practices:

1. In order to continue operations or to receive an operating license an applicant/licensee will be required to submit their emergency plans, as well as State and local governmental emergency response plans, to NRC. The NRC will then make a finding as to whether the state of onsite and offsite emergency preparedness provides reasonable assurance that appropriate protective measures can and will be taken in the event of a radiological emergency.

The NRC will base its finding on a review of the FEMA findings and determinations as to whether State and local emergency plans are adequate and capable of being implemented, and on the NRC assessment as to whether the applicant's/licensee's emergency plans are adequate and capable of being implemented. Specifically:

- a. An Operating License will not be issued unless a favorable NRC overall finding can be made.
- b. After April 1, 1981, an operating plant may be required to shut down if it is determined that there are deficiencies such that a favorable NRC finding cannot be made or is no longer warranted

and the deficiencies are not corrected within 4 months of that determination.

- 2. Emergency planning considerations must be extended to "Emergency Planning Zones," and
- 3. Detailed emergency planning implementing procedures of both licensees and applicants for operating licenses must be submitted to NRC for review.

In addition, the Commission is revising 10 CFR Part 50, Appendix E, "Emergency Plans for Production and Utilization Facilities," in order to clarify, expand, and upgrade the Commission's emergency planning regulations. Sections of Appendix E that are expanded include:

- 1. Specification of "Emergency Action Levels" (Sections IV 3 and C)
- 2. Dissemination to the public of basic emergency planning information (Section IV.D)
- 3. Provisions for the State and local governmental authorities to have a capability for rapid notification of the public during a serious reactor emergency, with a design objective of completing the initial notification within 15 minutes after notification by the licensee (Section IV.D)
- 4. A licensee onsite technical support center and a licensee near site emergency operations facility (Section IV.E)
- 5. Provisions for redundant communications systems (Section IV.E)
- 6. Requirement for specialized training (Section IV.F)
- 7. Provisions for up-to-date plan maintenance (Section IV.G)

Applicants for a construction permit would be required to submit more information as required in the new Section II of Appendix E.

Rationale for the Final Rules

The Commission's final rules are based on its considered judgment about the significance of adequate emergency planning and preparedness to ensure adequate protection of the public health and safety. It is clear, based on the various official reports described in the proposed rules (44 FR at 75169) and the public record compiled in this rulemaking, that onsite and offsite emergency preparedness as well as proper siting and engineered design features are needed to protect the health and safety of the public. As the Commission reacted to the accident at Three Mile Island, it became clear that the protection provided by siting and engineered design features must be bolstered by the ability to take protective measures during the course of an accident. The accident also showed clearly that onsite conditions and actions, even if they do not cause significant offsite radiological consequences, will affect the way the various State and local entities react to protect the public from any dangers associated with the accident (Ibid). In order to discharge effectively its statutory responsibilities, the Commission firmly believes that it must be in a position to know that proper means and procedures will be in place to assess the course of an accident and its potential severity, that NRC and other appropriate authorities and the public will be notified promptly, and that appropriate protective actions in response to actual or anticipated conditions can and will be taken.

The Commission's organic statutes provide it with a unique degree of discretion in the execution of agency functions. Siegel v. AEC, 400 F.2d 778, 783 (D.C. Cir. 1968). See Westinghouse Electric Corp. v. NRC, 598 F.2d 759, 771 & n.47 (3d Cir. 1979). "Both the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974 confer broad regulatory

functions on the Commission and specifically authorize it to promulgate rules and regulations it deems necessary to fulfill its responsibilities under the Acts, 42 U.S.C. § 2201(p)." Public Service Co. of New Hampshire v. NRC, 582 F.2d 77, 82 (1st Cir.), cert. denied, 439 U.S. 1046 (1978). See 42 U.S.C. 2133(a). As the Supreme Court stated almost 20 years ago, the Atomic Energy Act "clearly contemplates that the Commission shall by regulation set forth what the public safety requirements are as a prerequisite to the issuance of any license or permit under the Act," Power Reactor Development Co. v. International Union of Electrical Radio Machine Workers, 367 U.S. 396, 404 (1961). Finally, it is also clear that "Congress, when it enacted [42 U.S.C. 2236]..., must have envisioned that licensing standards, especially in the areas of health and safety regulation, would vary over time as more was learned about the hazards of generating nuclear energy. Insofar as those standards became more demanding, Congress surely would have wanted the new standards, if the Commission deemed it appropriate, to apply to those nuclear facilities already licensed," Ft. Pierce Utilities Authority v. United States, 606 F.2d 986, 996 (D.C. Cir. 1979).

In response to and guided by the various reports and public comments, as well as its own determination on the significance of emergency preparedness, the Commission has therefore concluded that adequate emergency preparedness is an essential aspect in the protection of the public health and safety. The Commission recognizes there is a possibility that the operation of some reactors may be affected by this rule through inaction of State and local governments or an inability to comply with these rules. The Commission believes that the potential restriction of plant operation by State and local officials is not significantly different in

kind or effect from the ample means already available under existing law to prohibit reactor operation, such as zoning and land-use laws, certification of public convenience and necessity, State financial and rate considerations (18 CFR 50.33(f)) and Federal environmental laws. The Commission notes, however, that such considerations generally relate to a one-time decision on siting that tends to obligate future officials, whereas this rule requires a periodic renewal of State and local commitments to emergency preparedness. At least until more experience is gained with this rule in actual practice, however, the Commission will retain the flexibility of not shutting down a facility until all factors have been thoroughly examined. The Commission believes, based on the record created by the public workshops, that State and local officials as partners in this undertaking will endeavor to provide fully for public protection. Thus, upon consideration of all relevant factors, including its own evaluation of the TMI accident, the Commission promulgates the above-described final rules. In doing so, the Commission adopts the view of the U.S. Court of Appeals for the D.C. Circuit in addressing EPA regulations, that "the statutes -- and common sense -- demand regulatory action to prevent harm, even if the regulator is less than certain that harm is otherwise inevitable." Ethyl Corp. v. EPA, 541 F.2d 1, 25 (D.C. Cir.), cert. denied, 426 U.S. 941 (1976).

Summary of Comments on Major Issues

The Commission appreciates the extensive public comments on this important rule. In addition to the record of the workshops, the NRC has received over 170 comment letters on the proposed rule changes. The following major issues have been raised in the comments received.

Issue A: NRC REVIEW AND CONCURRENCE IN STATE AND LOCAL RADIOLOGICAL PLANS.

1. FEMA is best suited to assess the adequacy of State and local radiological emergency planning and preparedness and report any adverse findings to NRC for assessment of the licensing consequences of those findings.
2. The proposed rule fails to provide objective standards for NRC concurrence, reconcurrence, and withdrawal of concurrence.
3. In the absence of additional statutory authority, the proposed rule frustrates Congressional intent to preempt State and local government veto power over nuclear power plant operation.
4. Procedures and standards for adjudication of emergency planning disputes are not adequately specified in the proposed rule.

Issue B: EMERGENCY PLANNING ZONES (EPZs).

1. Regulatory basis for imposition of the Emergency Planning Zone concept should be expressly stated in the regulation.
2. Provisions regarding the plume exposure pathway EPZ should provide a maximum planning distance of ten miles.
3. References to NUREG-0396 should be deleted to avoid disputes over its meaning in licensing proceedings.

Issue C: ALTERNATIVES A & B (In 50.47 & 50.54)

1. Neither alternative is necessary because the Commission has sufficient authority to order a plant shut down for safety reasons, and should be prepared to exercise that authority only on a case-by-case basis and when a particular situation warrants such action.

2. No case has been made by the Commission for the need for automatic shutdown, as would be required in Alternative B, and certainly no other NRC regulations exist that would require such action based on a concept as amorphous as "concurrence in State and local emergency plans."
3. The idea that the Commission might grant an exemption to the rules that would permit continued operation (under Alternative B) has little significance, primarily because 10 CFR Part 50.12(a) already permits the granting of exemptions.
4. The process and procedures for obtaining such exemptions are not defined, nor is there any policy indication that would indicate the Commission's disposition to grant such exemptions.
5. The Commission, in developing this aspect of the proposed rule, must consider its own history. There was time when regulation was characterized by the leaders of the agency by simple and very appropriate expressions. The process was to be "effective and efficient." The application of regulatory authority was to be "firm, but fair." Regardless of the outcome of the "concurrence" issue, the Commission must appreciate that Alternative B is not fair. It is not effective regulation.

Issue D: PUBLIC EDUCATION.

Only information required to inform the public about what to do in the event of a radiological emergency need be disseminated. There

should be flexibility, in any particular case, as to who will be ultimately responsible for disseminating such information.

Issue E: LEGAL AUTHORITY.

1. A few commenters felt that NRC had no authority to promulgate a rule such as the one proposed.
2. Other comments were of the nature that NRC has statutory authority only inside the limits of the plant site.
3. Some commenters suggested that NRC and FEMA should seek additional legislation to compel State and local governments to have emergency plans, if that is what is necessary.

Issue F: SCHEDULE FOR IMPLEMENTATION.

The schedule for implementing the proposed rule was considered to be unrealistic and in some cases in conflict with various State schedules already in existence. A sampling of the comments on the implementation schedule as unrealistic follows:

1. The 180 days in the schedule is an insufficient amount of time to accomplish tasks of this magnitude; the Federal government does not work with such speed. States are bureaucracies also; there is no reason to assume they can work faster. It took years of working with States to get the plans that are presently concurred in. It is just insufficient time for new concurrences and review. Also, to get a job done within that time frame means a hurried job, rather than an acceptable and meaningful plan.

2. The time provided is inadequate for States to acquire the hardware needed. States must go out for competitive bids just as the Federal government does. Between processing and accepting a bid and actual delivery of equipment, it may take a year to get the hardware. Also, the State budgets years ahead. If a State or local government needs more money, it may have to go to the legislature. This is a time-consuming public process that may not fit the Federal schedule.
3. NRC and FEMA could not review 70 or more plans and provide concurrence by January 1, 1981. The Federal government moves slowly. Commenters did not think that NRC and FEMA can review all the plans within the time frame scheduled. If the Federal government cannot meet its schedule, why or how should the States?
4. Funding could not be appropriated by State and local governments before the deadline. It was suggested that the Commission use H. Rept. #96-413 ("Emergency Planning U.S. Nuclear Power Plants: Nuclear Regulatory Commission Oversight") for the time frame rather than that in the proposed rule or use a sliding-scale time frame since States are at various stages of completing their emergency plans.

Issue G: IMPACT OF PROPOSED RULE.

1. The proposed regulations were considered by some commenters as unfair to utilities because it was felt they place the utilities in the political and financial role that FEMA should be assuming. NRC is seen as in effect giving State and local

governments veto over the operation of nuclear plants. It was questioned whether this was an intent of the rule. In addition, it was felt that utilities, their customers, and their shareholders should not be penalized by a shutdown (with a resulting financial burden) because of alleged deficiencies or lack of cooperation by State and local officials.

2. It was suggested that NRC's Office of Inspection and Enforcement conduct the reviews of the State and local governmental emergency response plans in order to ensure prompt, effective, and consistent implementation of the proposed regulations.
3. One commenter noted that the public should be made aware of the issue of intermediate and long-term impacts of plant shutdowns. Specifically, people should be informed of the possibility of "brownouts," cost increases to the consumer due to securing alternative energy sources, and the health and safety factors associated with those alternative sources.

Issue H: PUBLIC NOTIFICATION.

1. Ultimate responsibility for public notification of a radiological emergency must be placed on State and local government.
2. The "fifteen minute" public notification rule is without scientific justification, fails to differentiate between areas close in and further away from the site, and ignores the technical difficulties associated with such a requirement.

Issue I: EMERGENCY ACTION LEVELS.

Applicants, in cooperation with State and local governmental authorities, should be permitted the necessary flexibility to develop

emergency action level criteria appropriate for the facility in question, subject to NRC approval. Inflexible NRC emergency action level standards are not necessary.

Issue J: TRAINING.

1. Mandatory provision for training local service personnel and local news media persons is outside of NRC's jurisdiction and is not necessary to protect the public health and safety.
2. Public participation in drills or critiques thereof should not be required.
3. The provision regarding formal critiques should be clarified to mean the licensee is responsible for developing and conducting such critiques.
4. Definitive performance criteria for evaluation of drills should be developed by the licensee, subject to NRC approval.

Issue K: IMPLEMENTING PROCEDURES.

NRC review of implementing procedures is only necessary to apprise the NRC staff of the details of the plans for use by the NRC during the course of an actual emergency.

Issue L: FUNDING.

1. Nuclear facilities, although located in one governmental tax jurisdiction and taxed by that jurisdiction, affect other jurisdictions that must bear immediate and long-term planning costs without having access to taxes from the facility.
2. As the radius of planning requirements becomes greater, few facilities are the concern of a single county. The planning

radius often encompasses county lines, State lines, and in some instances, international boundaries.

3. As new regulations are generated to oversee the nuclear industry and old ones expanded, there is an immediate need to address fixed nuclear facility planning at all levels of government, beginning at the lowest and going to the highest. All levels of government need access to immediate additional funds to upgrade their response capability.
4. It is well understood that the consumer ultimately must pay the price for planning, regardless of the level in government at which costs are incurred. It becomes a matter of how the consumer will be taxed, who will administer the tax receipts and what is the most effective manner in which to address the problem.
5. The basis for effective offsite response capabilities is a sound emergency preparedness program. Federal support (funding and technical assistance) for the development of State and local offsite capabilities should be incorporated into FEMA's preparedness program for all emergencies.

Issue M: GENERAL.

The States support Federal oversight and guidance in the development of offsite response capabilities. However, many States feel the confusion and uncertainty in planning requirements following Three Mile Island is not a proper environment in which to develop effective capabilities nor does it serve the best interests of their citizens. The development of effective nuclear facility incident response

capabilities will require close coordination and cooperation between responsible Federal agencies, State government, and the nuclear industry. An orderly and comprehensive approach to this effort makes it necessary that onsite responsibilities be clearly associated with NRC and the nuclear industry while deferring offsite responsibilities to State government with appropriate FEMA oversight and assistance.

In addition to these comments, two petitions for rulemaking were filed in reference to the proposed rule. These were treated as public comments rather than petitions and were considered in developing the final rule.

The Commission has placed the planning objectives from NUREG-0654; FEMA-REP-1 "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants for Interim Use and Comment" January 1980, into the final regulations. Comments received concerning NUREG-0654 were available in developing the final regulation. The Commission notes that the planning objectives in NUREG-0654 were largely drawn from NUREG-75/111, "Guide and Checklist for Development and Evaluation of State and Local Government Radiological Emergency Response Plans in Support of Fixed Nuclear Facilities" (December 1, 1974) and Supplement 1 thereto dated March 15, 1977, which have been in use for some time.

The approximately 60 public comment letters received on NUREG-0654 were not critical of the proposed planning objectives. The Commission also notes that at the May 1, 1980 ACRS meeting, the Atomic Industrial Forum representative encouraged the use of the planning objectives from

NUREG-0654 in the final regulations in order to reduce ambiguity and provide specificity to the final regulation.

Based on the above, the Commission has decided to modify the proposed rule changes in the areas discussed in paragraphs I through X below.

I. FEMA/NRC Relationship

In issuing this rule, NRC recognizes the significant responsibilities assigned to FEMA, by Executive Order 12148 on July 15, 1979, to coordinate the emergency planning functions of executive agencies. In view of FEMA's new role, NRC agreed on September 11, 1979, that FEMA should henceforth chair the Federal Interagency Central Coordinating Committee for Radiological Emergency Response Planning and Preparedness (FICCC). On December 7, 1979, the President issued a directive assigning FEMA lead responsibility for offsite emergency preparedness around nuclear facilities. The NRC and FEMA immediately initiated negotiations for a Memorandum of Understanding (MOU) that lays out the agencies' roles and provides for a smooth transfer of responsibilities. It is recognized that the MOU, which became effective January 14, 1980, supersedes some aspects of previous agreements. Specifically, the MOU identifies FEMA responsibilities with respect to emergency preparedness as they relate to NRC as the following:

1. To make findings and determinations as to whether State and local emergency plans are adequate.
2. To verify that State and local emergency plans are capable of being implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualification, and equipment).
3. To assume responsibility for emergency preparedness training of State and local officials.

4. To develop and issue an updated series of interagency assignments that delineate respective agency capabilities and responsibilities and define procedures for coordination and direction for emergency planning and response.

Specifically, the NRC responsibilities for emergency preparedness identified in the MOU are:

1. To assess licensee emergency plans for adequacy.
2. To verify that licensee emergency plans are adequately implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment).
3. To review the FEMA findings and determinations on the adequacy and capability of implementation of State and local plans.
4. To make decisions with regard to the overall state of emergency preparedness (i.e., integration of the licensee's emergency preparedness as determined by the NRC and of the State/local governments as determined by FEMA and reviewed by NRC) and issuance of operating licenses or shutdown of operating reactors.

In addition, FEMA has prepared a proposed rule regarding "Review and Approval of State Radiological Emergency Plans and Preparedness." (44 FR 42342, dated June 24, 1980) According to the proposed FEMA rule, FEMA will approve State and local emergency plans and preparedness, where appropriate, based upon its findings and determinations with respect to the adequacy of State and local plans and the capabilities of State and local governments to effectively implement these plans and preparedness measures. These findings and determinations will be provided to the NRC for use in its licensing process.

II. Emergency Planning Zone Concept

The Commission notes that the regulatory basis for adoption of the Emergency Planning Zone (EPZ) concept is the Commission's decision to have a conservative emergency planning policy in addition to the conservatism inherent in the defense-in-depth philosophy. This policy was endorsed by the Commission in a policy statement published on October 23, 1979 (44 FR 61123). At that time the Commission stated that two Emergency Planning Zones (EPZs) should be established around each light water nuclear power plant. The EPZ for airborne exposure has a radius of about 10 miles; the EPZ for contaminated food and water has a radius of about 50 miles. Predetermined protective action plans are needed for the EPZs. The exact size and shape of each EPZ will be decided by emergency planning officials after they consider the specific conditions at each site. These distances are considered large enough to provide a response base which would support activity outside the planning zone should this ever be needed.

The Commission recognized that it is appropriate and prudent for emergency planning guidance to take into consideration the principal characteristics (such as nuclides released and distances likely to be involved) of a spectrum of design basis and core melt accidents. While the Commission recognizes that the guidance may have significant resource impacts for many local jurisdictions, it believes that implementation of the guidance is nevertheless needed to improve emergency response planning and preparedness around nuclear power reactors.

III. Position on Planning Basis for Small Light Water Reactors and Ft. St. Vrain

The Commission has concluded that the operators of small light water cooled power reactors (less than 250 Mwt) and the Ft. St. Vrain gas-cooled reactor may establish small planning zones which will be evaluated on a case-by-case basis. This conclusion is based on the lower potential hazard from these facilities (lower radionuclide inventory and longer times to release significant amounts of activity in many scenarios). Guidance regarding the radionuclides to be considered in planning is set forth in NUREG-0396; EPA 520/1-78-016, "Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants," December 1978.

IV. Rationale for Alternatives Chosen

In a few areas of the proposed rule, the Commission identified two alternatives that it was considering. Many public comments were received on these alternatives; based on due consideration of all comments received as well as the discussions presented during the workshops, the commission has determined which of each pair of alternatives to retain in the final rule.

In Sections 50.47 and 50.54(s) and (t), the alternatives dealt with conditioning the issuance of an operating license or continued operation of a nuclear power plant on the existence of State and local government emergency response plans concurred in by NRC.* The basic difference between alternatives A and B in these sections was that under alternative A, the proposed rule would require a determination by NRC on issuing a license

* See Section V for a discussion concerning "concurrence."

or permitting continued operation of plants in those cases where relevant State and local emergency response plans had not received NRC concurrence. Denial of a license or shutdown of a reactor would not follow automatically in every case. Under alternative B, shutdown of the reactor would be required automatically if the appropriate State and local emergency response plans had not received NRC concurrence within the prescribed time periods unless an exemption is granted.

After careful consideration, the Commission has chosen alternative A for Sections 50.47 and 50.54(s) and (t), primarily because alternative A provides more flexibility to the Commission. This Commission choice is consistent with most of the comments received from State and local governments and is consistent with the provisions of Section 109 of the NRC FY 80 Authorization Bill. Alternative B was seen by some of the commenters as potentially causing unnecessarily harsh economic and social consequences to State and local governments, utilities and the public. State and local governments which are directly involved in implementing planning objectives of the rule strongly favor alternative A since it provides for a cooperative effort with State and local governments to reflect their concerns and desires in these rules. This choice is responsive to that effort. In addition, the industry was unanimous in its support for this alternative.

In Appendix E, Sections II.C and III, alternative A would require an applicant/licensee to outline "...corrective measures to prevent damage to onsite and offsite property," as well as protective measures for the public. Alternative B addresses only protective measures for the public health and safety. The Commission has chosen alternative B because public health and safety should take clear precedence over actions to protect

property. Measures to protect property can be taken on an ad hoc basis as resources become available after an accident.

In Appendix E, under Training, alternative A would provide for a joint licensee, Federal, State and local government exercise every 3 years whereas alternative B would provide for these exercises to be performed every 5 years at each site. The Commission has chosen alternative B because the Commission is satisfied that the provision that these exercises be performed every 5 years for each site will allow for an adequate level of preparedness among Federal emergency response agencies. In addition, under these regulations, each licensee is required to exercise annually with local governmental authorities. Furthermore, Federal emergency response agencies may have difficulty supporting exercises every 3 years for all of the nuclear facilities that would be required to comply with these rule changes.

V. Definition of Plan Approval Process

The term "Concurrence" has been deleted from the proposed regulations and replaced with reference to the actual procedure and standards that NRC and FEMA have agreed upon and are implementing. According to the agreed upon procedure, FEMA will make a finding and determination as to the adequacy of State and local government emergency response plans. The NRC will determine the adequacy of the licensee emergency response plans. After these two determinations have been made, NRC will make a finding in the licensing process as to the overall and integrated state of preparedness.

It was pointed out to the Commission at the workshops and in public comment letters that the term "concurrence" was confusing and ambiguous.

Also, there was a great deal of misunderstanding with the use of the term because, in the past, the obtaining of NRC "concurrence" in State emergency response plans was voluntary on behalf of the States and not a regulatory requirement in the licensing process. Previously too, "concurrence" was statewide rather than site specific.

VI. Fifteen Minute Notification

The requirement for the capability for notification of the public within 15 minutes after the State/local authorities have been notified by the licensee has been expanded and clarified. It also has been removed as a footnote and placed in the body of Appendix E. The implementation schedule for this requirement has been extended to July 1, 1981. This extension of time has been adopted because most State and local governments identified to the Commission the difficulty in procuring hardware, contracting for installation, and developing procedures for operating the systems used to implement this requirement.

The Commission is aware that various commenters, largely from the industry, have objected to the nature of the 15-minute notification requirement, indicating that it may be both arbitrary and unworkable.

Among the possible alternatives to this requirement are a longer notification time, a notification time that varies with distance from the facility, or no specified time. In determining what that criterion should be, a line must be drawn somewhere and the Commission believes that providing as much time as practicable for the taking of protective action is in the interest of public health and safety. The Commission recognizes that this requirement may present a significant financial impact, and that the technical basis for this requirement is not without

dispute. Moreover, there may never be an accident requiring using the 15-minute notification capability. However, the essential rationale behind emergency planning is to provide additional assurance for the public protection even during such an unexpected event. The 15-minute notification capability requirement is wholly consistent with that rationale.

The Commission recognizes that no single accident scenario should form the basis for choice of notification capability requirements for offsite authorities and for the public. Emergency plans must be developed that will have the flexibility to ensure response to a wide spectrum of accidents. This wide spectrum of potential accidents also reflects on the appropriate use of the offsite notification capability. The use of this notification capability will range from immediate notification of the public (within 15 minutes) to listen to predesignated radio and television stations, to the more likely events where there is substantial time available for the State and local governmental officials to make a judgment whether or not to activate the public notification system.

Any accident involving severe fuel degradation or core melt which results in significant inventories of fission products in the containment would warrant immediate public notification and a decision, based on the particular circumstances, for appropriate protective action because of the potential for failure of the containment building. In addition, the warning time available for the public to take action may be substantially less than the total time between the original initiating event and the time at which significant radioactive releases take place. Specification of particular times as design objectives for notification of offsite authorities and the public are a means of ensuring that a system will be in

place with the capability to notify the public to seek further information by listening to predesignated radio or television stations. The Commission recognizes that not every individual would necessarily be reached by the actual operation of such a system under all conditions of system use. However, the Commission believes that provision of a general alerting system will significantly improve the capability for taking protective actions in the event of an emergency. The reduction of notification times from the several hours required for street-by-street notification to minutes will significantly increase the options available as protective actions under severe accident conditions. These actions could include staying indoors in the case of a release that has already occurred or a precautionary evacuation in the case of a potential release thought to be a few hours away. Accidents that do not result in core melt may also cause relatively quick releases for which protective actions, at least for the public in the immediate plant vicinity, are desirable.

Some comments received on the proposed rule advocated the use of a staged notification system with quick notification required only near the plant. The Commission believes that the capability for quick notification within the entire plume exposure emergency planning zone should be provided but recognizes that some planners may wish to have the option of selectively actuating part of the system during an actual response. Planners should carefully consider the impact of the added decisions that offsite authorities would need to make and the desirability of establishing an official communication link to all residents in the plume exposure emergency planning zone when determining whether to plan for a staged notification capability.

VII. Effective Date of Rules and Other Guidance

Prior to the publication of these amendments, two guidance documents were published for public comment and interim use. These are NUREG-0610, "Draft Emergency Action Level Guidelines for Nuclear Power Plants" (September 1979) and NUREG-0654/FEMA-REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants for Interim Use and Comment" (January 1980). It is expected that versions of these documents revised on the basis of public comments received will be issued to assist in defining acceptable levels of preparedness to meet this final regulation. In the interim these documents should continue to be used as guidance.

VIII. Hearing Procedures Used in Implementation of These Regulations

Should the NRC believe that the overall state of emergency preparedness at and around a licensed facility is such that there is some question whether a facility should be permitted to continue to operate, the Commission may issue an order to the licensee to show cause, pursuant to 10 CFR 2.202, why the plant should not be shut down. This issue may arise, for example, if NRC finds a significant deficiency in a licensee plan or in the overall state of emergency preparedness.

If the NRC decides to issue an order to show cause, it will provide the licensee the opportunity to demonstrate to the Commission's satisfaction, for example, that the alleged deficiencies are not significant for the plant in question, that alternative compensating means are being or have been taken to protect the public health and safety, or that there are other compelling reasons to permit continued operation. Finally, pursuant to 10 CFR 2.202(f), the Commission may, in appropriate circumstances, make the order immediately

effective, which could result in immediate plant shutdown subject to a later hearing.

IX. Funding

In view of the requirements in these rule changes regarding the actions to be taken in the event State and local government planning and preparedness are or become inadequate, a utility may have an incentive, based on its own self interest as well as its responsibility to provide power, to assist in providing manpower, items of equipment, or other resources that the State and local governments may need but are themselves unable to provide. The Commission believes that in view of the President's Statement of December 7, 1979, giving FEMA the lead role in offsite planning and preparedness, the question of whether the NRC should or could require a utility to contribute to the expenses incurred by State and local governments in upgrading and maintaining their emergency planning and preparedness (and if it is to be required, the mechanics for doing so) is beyond the scope of the present rule change. It should be noted, however, that any direct funding of State or local governments for emergency preparedness purposes by the Federal government would come through FEMA.

X. Exercises

On an annual basis, all commercial nuclear power facilities will be required by NRC to exercise their plans; these exercises should involve exercising the appropriate local government plans in support of these facilities. The State may choose to limit its participation in

exercises at facilities other than the facility (site) chosen for the annual exercise(s) of the State plan.

Each State and appropriate local government shall annually conduct an exercise jointly with a commercial nuclear power facility. However, States with more than one facility (site) shall schedule exercises such that each individual facility (site) is exercised in conjunction with the State and appropriate local government plans not less than once every three years for sites with the plume exposure pathway EPZ partially or wholly within the State, and not less than once every five years for sites with the ingestion exposure pathway EPZ partially or wholly within the State. The State shall choose, on a rotational basis, the site(s) at which the required annual exercise(s) is to be conducted; priority shall be given to new facilities seeking an operating license from NRC, which have not had an exercise involving the State plan at that facility site.

The Commission has determined under the criteria in 10 CFR Part 51 that an environmental impact statement for the amendments to 10 CFR Part 50 and Appendix E thereof is not required. This determination is based on "Environmental Assessment for Final Changes to 10 CFR Part 50 and Appendix E of 10 CFR Part 50, Emergency Planning Requirements for Nuclear Power Plants" (NUREG-0685, June 1980). Comments on the "Draft Negative Declaration; Finding of No Significant Impact" (45 FR 3913, January 21, 1980) were considered in the preparation of NUREG-0685.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Section 552 and 553 of Title 5 of the United States Code, notice is hereby given that the following amendments to Title 10, Chapter I, Code of Federal Regulations, Parts 50 and 70, are published as a document subject to codification.

PART 50 - DOMESTIC LICENSING OF PRODUCTION
AND UTILIZATION FACILITIES

1. Paragraph (g) of Section 50.33 is revised to read as follows:

§ 50.33 Contents of applications; general information.

* * * * *

(g) If the application is for an operating license for a nuclear power reactor, the applicant shall submit radiological emergency response plans of State and local governmental entities in the United States that are wholly or partially within the plume exposure pathway Emergency Planning Zone (EPZ)¹, as well as the plans of State governments wholly or partially within the ingestion pathway EPZ.² Generally, the plume exposure pathway EPZ for nuclear power reactors shall consist of an area about 10 miles (16 Km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 Km) in radius. The exact size and configuration of the EPZs surrounding a particular nuclear power reactor shall be determined in relation to the local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries. The size of the EPZ's also may be determined on a case-by-case basis for gas-cooled reactors and for reactors with an authorized power level less than 250 MW thermal. The plans for the ingestion pathway shall focus on

¹Emergency Planning Zones (EPZs) are discussed in NUREG-0396, EPA 520/1-78-016 "Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants," December 1978.

²If the State and local emergency response plans have been previously provided to the NRC for inclusion in the facility docket, the applicant need only provide the appropriate reference to meet this requirement.

such actions as are appropriate to protect the food ingestion pathway.

2. A new section 50.47 is added.

§ 50.47 Emergency plans.

(a) No operating license for a nuclear power reactor will be issued unless a finding is made by NRC that the state of onsite and offsite emergency preparedness provides reasonable assurance that appropriate protective measures can and will be taken in the event of a radiological emergency.

The NRC will base its finding on a review of the Federal Emergency Management Agency (FEMA) findings and determinations as to whether State and local emergency plans are adequate and capable of being implemented, and on the NRC assessment as to whether the applicant's onsite emergency plans are adequate and capable of being implemented.

(b) The onsite and offsite emergency response plans for nuclear power reactors must meet the following standards:²

²These standards are addressed by specific criteria in NUREG-0654; FEMA-REP-1 titled "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants for Interim Use and Comment," January 1980.

1. Primary responsibilities for emergency response by the nuclear facility licensee and by State and local organizations within the Emergency Planning Zones have been assigned, the emergency responsibilities of the various supporting organizations have been specifically established, and each principal response organization has staff to respond and to augment its initial response on a continuous basis.

2. On-shift facility licensee responsibilities for emergency response are unambiguously defined, adequate staffing to provide initial facility accident response in key functional areas is maintained at all times, timely augmentation of response capabilities is available, and the interfaces among various onsite response activities and offsite support and response activities are specified.

3. Arrangements for requesting and effectively using assistance resources have been made, arrangements to accommodate State and local staff at the licensee's near-site Emergency Operations Facility have been made, and other organizations capable of augmenting the planned response have been identified.

4. A standard emergency classification and action level scheme, the bases of which include facility system and effluent parameters, is in use by the nuclear facility licensee, and State and local response plans call for reliance on information provided by facility licensees for determinations of minimum initial offsite response measures.

5. Procedures have been established for notification, by the licensee, of State and local response organizations and for notification of emergency personnel by all response organizations; the content of initial and followup messages to response organizations and the public has been established; and means to provide early notification and clear instruction

to the populace within the plume exposure pathway Emergency Planning Zone have been established.

6. Provisions exist for prompt communications among principal response organizations to emergency personnel and to the public.

7. Information is made available to the public on a periodic basis on how they will be notified and what their initial actions should be in an emergency (e.g., listening to a local broadcast station and remaining indoors), the principal points of contact with the news media for dissemination of information during an emergency (including the physical location or locations) are established in advance, and procedures for coordinated dissemination of information to the public are established.

8. Adequate emergency facilities and equipment to support the emergency response are provided and maintained.

9. Adequate methods, systems, and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency condition are in use.

10. A range of protective actions have been developed for the plume exposure pathway EPZ for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place, and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

11. Means for controlling radiological exposures, in an emergency, are established for emergency workers. The means for controlling radiological exposures shall include exposure guidelines consistent with EPA Emergency Worker and Lifesaving Activity Protective Action Guides.

12. Arrangements are made for medical services for contaminated injured individuals.

13. General plans for recovery and reentry are developed.

14. Periodic exercises are (will be) conducted to evaluate major portions of emergency response capabilities, periodic drills are (will be) conducted to develop and maintain key skills, and deficiencies identified as a result of exercises or drills are (will be) corrected.

15. Radiological emergency response training is provided to those who may be called on to assist in an emergency.

16. Responsibilities for plan development and review and for distribution of emergency plans are established, and planners are properly trained.

(c) Failure to meet the standards set forth in paragraph (b) of this subsection may result in the Commission declining to issue an Operating License; however, the applicant will have an opportunity to demonstrate to the satisfaction of the Commission that deficiencies in the plans are not significant for the plant in question, that alternative compensating actions have been or will be taken promptly, or that there are other compelling reasons to permit plant operation.

Generally, the plume exposure pathway EPZ for nuclear power plants shall consist of an area about 10 miles (16 Km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 Km) in radius. The exact size and configuration of the EPZs surrounding a particular nuclear power reactor shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries. The size of the EPZs also may be determined on a case-by-case basis for gas-cooled nuclear reactors and

for reactors with an authorized power level less than 250 MW thermal. The plans for the ingestion pathway shall focus on such actions as are appropriate to protect the food ingestion pathway.

3. Section 50.54 is amended by adding five new paragraphs, (q), (r), (s), (t), and (u).

§ 50.54 Conditions of licenses.

* * * * *

(q) A licensee authorized to possess and/or operate a nuclear power reactor shall follow and maintain in effect emergency plans which meet the standards in 50.47(b) and the requirements in Appendix E of this Part. A licensee authorized to possess and/or operate a research reactor or a fuel facility shall follow and maintain in effect emergency plans which meet the requirements in Appendix E of this Part. The nuclear power reactor licensee may make changes to these plans without Commission approval only if such changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of 50.47(b) and the requirements of Appendix E of this Part. The research reactor licensee and/or the fuel facility licensee may make changes to these plans without Commission approval only if such changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the requirements of Appendix E of this Part. Proposed changes that decrease the effectiveness of the approved emergency plans shall not be implemented without application to and approval by the Commission. The licensee shall furnish 3 copies of each proposed change for approval; if a change is made without prior approval, 3 copies shall be submitted within 30 days after the change is made or proposed to the Director of the appropriate NRC regional office

specified in Appendix D, Part 20 of this Part, with 10 copies to the Director of Nuclear Reactor Regulation, or, if appropriate, the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(r) Each licensee who is authorized to possess and/or operate a research or test reactor facility with an authorized power level greater than or equal to 500 kW thermal, under a license of the type specified in § 50.21(c), shall submit emergency plans complying with 10 CFR Part 50, Appendix E, to the Director of Nuclear Reactor Regulation for approval within one year from the effective date of this rule. Each licensee who is authorized to possess and/or operate a research reactor facility with an authorized power level less than 500 kW thermal, under a license of the type specified in § 50.21(c), shall submit emergency plans complying with 10 CFR Part 50, Appendix E, to the Director of Nuclear Reactor Regulation for approval within two years from the effective date of this amendment.

(s) Each licensee who is authorized to possess and/or operate a nuclear power reactor shall submit to NRC within 60 days of the effective date of this amendment the radiological emergency response plans of State and local governmental entities in the United States that are wholly or partially within a plume exposure pathway EPZ, as well as the plans of State governments wholly or partially within an ingestion pathway EPZ.^{1,2} Ten (10) copies of the above plans shall be forwarded to the Director of

¹Emergency Planning Zones (EPZs) are discussed in NUREG-0396; EPA 520/1-78-016, "Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants," December 1978.

²If the State and local emergency response plans have been previously provided for inclusion in the facility docket to the NRC for applicant need only provide the appropriate reference to meet this requirement.

Nuclear Reactor Regulation with 3 copies to the Director of the appropriate NRC regional office. Generally, the plume exposure pathway EPZ for nuclear power reactors shall consist of an area about 10 miles (16 Km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 Km) in radius. The exact size and configuration of the EPZs for a particular nuclear power reactor shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries. The size of the EPZs also may be determined on a case-by-case basis for gas-cooled nuclear reactors and for reactors with an authorized power level less than 250 MW thermal. The plans for the ingestion pathway EPZ shall focus on such actions as are appropriate to protect the food ingestion pathway.

For operating power reactors, the licensee, State and local emergency response plans shall be implemented by April 1, 1981, except as provided in Section IV,D.3 of Appendix B of this Part. If, after April 1, 1981, the NRC finds that the state of emergency preparedness does not provide reasonable assurance that appropriate protective measures can and will be taken in the event of a radiological emergency and the deficiencies are not corrected within four months or that finding, the Commission will determine whether the reactor shall be shut down until such deficiencies are remedied or whether other enforcement action is appropriate. In determining whether a shutdown or other enforcement action is appropriate, the Commission shall take into account, among other factors, whether the licensee can demonstrate to the Commission's satisfaction that the deficiencies in the plan are not significant for the plant in question, or that alternative compensating actions have been

or will be taken promptly, or that there are other compelling reasons for continued operation.

The NRC will base its finding on a review of the FEMA findings and determinations as to whether State and local emergency plans are adequate and capable of being implemented, and on the NRC assessment as to whether the licensee's emergency plans are adequate and capable of being implemented. Nothing in this paragraph shall be construed as limiting the authority of the Commission to take action under any other regulation or authority of the Commission or at any time other than that specified in this paragraph.

(t) A nuclear power reactor licensee shall provide for the development, revision, implementation, and maintenance of its emergency preparedness program. To this end, the licensee shall provide for a review of its emergency preparedness program at least every 12 months by persons who have no direct responsibility for implementation of the emergency preparedness program. The review shall include an evaluation for adequacy of interfaces with State and local governments and of licensee drills, exercises, capabilities, and procedures. The results of the review, along with recommendations for improvements, shall be documented, reported to the licensee's corporate and plant management, and retained for a period of five years. The part of the review involving the evaluation for adequacy of interface with State and local governments shall be available to the appropriate State and local governments.

(u) Within 60 days after the effective date of this amendment, each nuclear power reactor licensee shall submit to the NRC plans for coping with emergencies that meet standards in Section 50.47(b) and the requirements of Appendix E of this Part.

4. 10 CFR Part 50, Appendix E, is amended as follows:

* * * * *

APPENDIX E--EMERGENCY PLANNING AND PREPAREDNESS FOR
PRODUCTION AND UTILIZATION FACILITIES¹

I. Introduction

Each applicant for a construction permit is required by § 50.34(a) to include in the preliminary safety analysis report a discussion of preliminary plans for coping with emergencies. Each applicant for an operating license is required by § 50.34(b) to include in the final safety analysis report plans for coping with emergencies.

This appendix establishes minimum requirements for emergency plans for use in attaining an acceptable state of emergency preparedness. These plans shall be described generally in the preliminary safety analysis report and submitted as a part of the final safety analysis report.

The potential radiological hazards to the public associated with the operation of research and test reactors and fuel facilities licensed under 10 CFR Part 50 and 70 involve considerations different than those associated

¹NRC staff has developed two regulatory guides: 2.6, "Emergency Planning for Research Reactors," and 3.42, "Emergency Planning in Fuel Cycle Facilities and Plants Licensed Under 10 CFR Parts 50 and 70;" and a joint NRC/FEMA report, NUREG-0654; FEMA-REP-1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants - For Interim Use and Comment," January 1980, to provide guidance in developing plans for coping with emergencies. Copies of these documents are available at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555. Copies of these documents may be purchased from the Government Printing Office. Information on current prices may be obtained by writing the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publications Sales Manager.

with nuclear power reactors. Consequently, the size of Emergency Planning Zones² (EPZs) for facilities other than power reactors and the degree to which compliance with the requirements of this Section and Sections II, III, IV and V is necessary will be determined on a case-by-case basis.³

II. The Preliminary Safety Analysis Report

The Preliminary Safety Analysis Report shall contain sufficient information to ensure the compatibility of proposed emergency plans for both onsite areas and the EPZs, with facility design features, site layout, and site location with respect to such considerations as access routes, surrounding population distributions, land use, and local jurisdictional boundaries for the EPZs as in the case of nuclear power reactors as well as the means by which the standards of 50.47(b) will be met.

²EPZs for power reactors are discussed in NUREG-0396; EPA 520/1-78-016 "Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants," December 1978. The size of the EPZs for a nuclear power plant shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries. The size of the EPZs also may be determined on a case-by-case basis for gas cooled nuclear reactors and for reactors with an authorized power level less than 250 MW thermal. Generally, the plume exposure pathway EPZ for nuclear power plants with an authorized power level greater than 250 MW thermal shall consist of an area about 10 miles (16 Km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 Km) in radius.

³Regulatory Guide 2.6 will be used as guidance for the acceptability of research and test reactor emergency response plans.

As a minimum, the following items shall be described:

A. Onsite and offsite organizations for coping with emergencies and the means for notification, in the event of an emergency, of persons assigned to the emergency organizations.

B. Contacts and arrangements made and documented with local, State, and Federal governmental agencies with responsibility for coping with emergencies, including identification of the principal agencies.

C. Protective measures to be taken within the site boundary and within each EPZ to protect health and safety in the event of an accident; procedures by which these measures are to be carried out (e.g., in the case of an evacuation, who authorizes the evacuation, how the public is to be notified and instructed, how the evacuation is to be carried out); and the expected response of offsite agencies in the event of an emergency;

D. Features of the facility to be provided for onsite emergency first aid and decontamination and for emergency transportation of onsite individuals to offsite treatment facilities.

E. Provisions to be made for emergency treatment at offsite facilities of individuals injured as a result of licensed activities.

F. Provisions for a training program for employees of the licensee, including those who are assigned specific authority and responsibility in the event of an emergency, and for other persons who are not employees of the licensee but whose assistance may be needed in the event of a radiological emergency.

G. A preliminary analysis that projects the time and means to be employed in the notification of State and local governments and the public in the event of an emergency. A nuclear power plant applicant shall perform a preliminary analysis of the time required to evacuate various sectors and distances within the plume exposure pathway EPZ for transient and permanent populations, noting major impediments to the evacuation or taking of protective actions.

H. A preliminary analysis reflecting the need to include facilities, systems, and methods for identifying the degree of seriousness and potential scope of radiological consequences of emergency situations within and outside the site boundary, including capabilities for dose projection using real-time meteorological information and for dispatch of radiological monitoring teams within the EPZ's; and a preliminary analysis reflecting the role of the onsite technical support center and of the near-site emergency operations facility in assessing information, recommending protective action, and disseminating information to the public.

III. The Final Safety Analysis Report

The Final Safety Analysis Report shall contain the plans for coping with emergencies. The plans shall be an expression of the overall concept of operation; they shall describe the essential elements of advance planning that have been considered and the provisions that have been made to cope with emergency situations. The plans shall incorporate information about the emergency response roles of supporting organizations

and offsite agencies. That information shall be sufficient to provide assurance of coordination among the supporting groups and with the licensee.

The plans submitted must include a description of the elements set out in Section IV for the Emergency Planning Zones (EPZs)² to an extent sufficient to demonstrate that the plans provide reasonable assurance that appropriate measures can and will be taken in the event of an emergency.

IV. Content of Emergency Plans

The applicant's emergency plans shall contain, but not necessarily be limited to, information needed to demonstrate compliance with the elements set forth below, i.e. organization for coping with radiation emergencies, assessment action, activation of emergency organization, notification procedures, emergency facilities and equipment, training, maintaining emergency preparedness, and recovery. In addition, the emergency response plans submitted by an applicant for a nuclear power reactor operating license shall contain information needed to demonstrate compliance with the standards described in Section 50.47(b),⁴ and they will be evaluated against those standards. The nuclear power reactor operating license applicant shall also provide an analysis of the time required to evacuate and for taking other protective actions for various sectors and distances within the plume exposure pathway EPZ for transient and permanent populations.

⁴These objectives are addressed by specific criteria in NUREG-0654; FEMA-REP-1 titled "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants for Interim Use and Comment," January 1980.

A. ORGANIZATION

The organization for coping with radiological emergencies shall be described, including definition of authorities, responsibilities and duties of individuals assigned to the licensee's emergency organization and the means for notification of such individuals in the event of an emergency. Specifically, the following shall be included:

1. A description of the normal plant operating organization.
2. A description of the onsite emergency response organization with a detailed discussion of:
 - a. Authorities, responsibilities, and duties of the individual(s) who will take charge during an emergency
 - b. Plant staff emergency assignments
 - c. Authorities, responsibilities, and duties of an onsite emergency coordinator who shall be in charge of the exchange of information with offsite authorities responsible for coordinating and implementing offsite emergency measures
3. A description, by position and function to be performed, of the licensee's headquarters personnel who will be sent to the plant site to augment the onsite emergency organization.
4. Identification, by position and function to be performed, of persons within the licensee organization who will be responsible for making offsite dose projections, and a description of how these projections will be made and the results transmitted to State and local authorities, NRC, and other appropriate governmental entities.

5. Identification, by position and function to be performed, of other employees of the licensee with special qualifications for coping with emergency conditions that may arise. Other persons with special qualifications, such as consultants, who are not employees of the licensee and who may be called upon for assistance for emergencies shall also be identified. The special qualifications of these persons shall be described.
6. A description of the local offsite services to be provided in support of the licensee's emergency organization.
7. Identification of, and assistance expected from, appropriate State, local, and Federal agencies with responsibilities for coping with emergencies.
8. Identification of the State and/or local officials responsible for planning for, ordering and controlling appropriate protective actions, including evacuations when necessary.

B. ASSESSMENT ACTIONS

The means to be used for determining the magnitude of and for continually assessing the impact of the release of radioactive materials shall be described, including emergency action levels that are to be used as criteria for determining the need for notification and participation of local and State agencies, the Commission, and other Federal agencies, and the emergency action levels that are to be used for determining when and what type of protective measures should be considered within and outside the site boundary to protect health and safety. The emergency action levels shall be based on in-plant conditions and instrumentation in addition to onsite and offsite monitoring. These emergency

action levels shall be discussed and agreed on by the applicant and State and local governmental authorities and approved by NRC. They shall also be reviewed with the State and local governmental authorities on an annual basis.

C. ACTIVATION OF EMERGENCY ORGANIZATION

The entire spectrum of emergency conditions that involve the alerting or activation of progressively larger segments of the total emergency organization shall be described. The communication steps to be taken to alert or activate emergency personnel under each class of emergency shall be described. Emergency action levels (based not only on onsite and offsite radiation monitoring information but also on readings from a number of sensors that indicate a potential emergency, such as the pressure in containment and the response of the Emergency Core Cooling System) for notification of offsite agencies shall be described. The existence, but not the details, of a message authentication scheme shall be noted for such agencies. The emergency classes defined shall include: (1) notification of unusual events, (2) alert, (3) site area emergency, and (4) general emergency. These classes are further discussed in NUREG 0654; FEMA-REP-1.

D. NOTIFICATION PROCEDURES

1. Administrative and physical means for notifying local, State, and Federal officials and agencies and agreements reached with these officials and agencies for the prompt notification of the public and for public evacuation or other protective measures, should they become necessary, shall be described. This description shall include identification of the appropriate officials, by title and agency, of the State and local government agencies within the EPZ.²

2. Provisions shall be described for yearly dissemination to the public within the plume exposure pathway EPZ, including the transient population, of basic emergency planning information, such as the methods and times required for public notification and the protective actions planned if an accident occurs, general information as to the nature and effects of radiation, and a listing of local broadcast stations that will be used for dissemination of information during an emergency.

3. A licensee shall have the capability to notify responsible State and local governmental agencies within 15 minutes after declaring an emergency. The licensee shall demonstrate that the State/local officials have the capability to make a public notification decision promptly on being informed by the licensee of an emergency condition. By July 1, 1981, the nuclear power reactor licensee shall demonstrate that administrative and physical means have been established for alerting and providing prompt instructions to the public within the plume exposure pathway emergency planning zone. The design objective shall be to have the capability to essentially complete the initial notification of the public within the plume exposure pathway EPZ within about 15 minutes. The use of this notification capability will range from immediate notification of the public (within 15 minutes of the time that State and local officials are notified that a situation exists requiring urgent action) to the more likely events where there is substantial time available for the State and local governmental officials to make a judgment whether or not to activate the public notification system. Where there is a decision to activate the notification system, the State and local officials will determine whether to activate the entire notification system simultaneously or in a graduated or staged manner. The responsibility for activating

such a public notification system shall remain with the appropriate government authorities.

E. EMERGENCY FACILITIES AND EQUIPMENT

Provisions shall be made and described for emergency facilities and equipment, including:

1. Equipment at the site for personnel monitoring;
2. Equipment for determining the magnitude of and for continuously assessing the impact of the release of radioactive materials to the environment;
3. Facilities and supplies at the site for decontamination of onsite individuals;
4. Facilities and medical supplies at the site for appropriate emergency first aid treatment;
5. Arrangements for the services of physicians and other medical personnel qualified to handle radiation emergencies onsite;
6. Arrangements for transportation of contaminated injured individuals from the site to treatment facilities outside the site boundary;
7. Arrangements for treatment of individuals injured in support of licensed activities on the site at treatment facilities outside the site boundary;
8. A licensee onsite technical support center and a licensee near-site emergency operations facility from which effective direction can be given and effective control can be exercised during an emergency;
9. At least one onsite and one offsite communications system; each system shall have a backup power source.

All communication plans shall have arrangements for emergencies, including titles and alternates for those in charge at both ends of the communication links and the primary and backup means of communication.

Where consistent with the function of the governmental agency, these arrangements will include:

a. Provision for communications with contiguous State/local governments within the plume exposure pathway emergency planning zone. Such communications shall be tested monthly.

b. Provision for communications with Federal emergency response organizations. Such communications systems shall be tested annually.

c. Provision for communications among the nuclear power reactor control room, the onsite technical support center, and the near-site emergency operations facility; and among the nuclear facility, the principal State and local emergency operations centers, and the field assessment teams. Such communications systems shall be tested annually.

d. Provisions for communications by the licensee with NRC Headquarters and the appropriate NRC Regional Office Operations Center from the nuclear power reactor control room, the onsite technical support center, and the near-site emergency operations facility. Such communications shall be tested monthly.

F. TRAINING

The program to provide for (1) the training of employees and exercising, by periodic drills, of radiation emergency plans to ensure that employees of the licensee are familiar with their specific emergency response duties and (2) the participation in the training and drills by other persons whose assistance may be needed in the event of a radiation emergency shall be described. This shall include a description of

specialized initial training and periodic retraining programs to be provided to each of the following categories of emergency personnel:

- a. Directors and/or coordinators of the plant emergency organization.
- b. Personnel responsible for accident assessment, including control room shift personnel.
- c. Radiological monitoring teams.
- d. Fire control teams (fire brigades).
- e. Repair and damage control teams.
- f. First aid and rescue teams.
- g. Medical support personnel.
- h. Licensee's headquarters support personnel.
- i. Security personnel.

In addition, a radiological orientation training program shall be made available to local services personnel, e.g., local Civil Defense, local law enforcement personnel, local news media persons.

The plan shall describe provisions for the conduct of emergency preparedness exercises. Exercises shall test the adequacy of timing and content of implementing procedures and methods, test emergency equipment and communication networks, test the public notification system, and ensure that emergency organization personnel are familiar with their duties. Each licensee shall exercise at least annually the emergency plan for each site at which it has one or more power reactors licensed for operation. Both full scale and small scale exercises shall be conducted and shall include participation by appropriate State and local government agencies as follows:

1. A full scale exercise which tests as much of the licensee, State and local emergency plans as is reasonably achievable without mandatory public participation shall be conducted:

a. For each site at which one or more power reactors are located and licensed for operation, at least once every five years and at a frequency which will enable each State and local government within the plume exposure pathway EPZ to participate in at least one full scale exercise per year and which will enable each State within the ingestion pathway to participate in at least one full scale exercise every three years.

b. For each site at which a power reactor is located for which the first operating license for that site is issued after the effective date of this amendment, within one year before the issuance of the operating license for full power, which will enable each State and local government within the plume exposure EPZ and each State within the ingestion pathway to participate.

2. The plan shall also describe provisions for involving Federal emergency response agencies in a full scale emergency preparedness exercise for each site at which one or more power reactors are located and licensed for operation at least once every 5 years.

3. A small scale exercise which tests the adequacy of communication links, establishes that response agencies understand the emergency action levels, and tests at least one other component (e.g., medical or offsite monitoring) of the offsite emergency response plan for licensee, State and local emergency plans for jurisdictions within the plume exposure pathway EPZ shall be conducted at each site at which one or more power

reactors are located and licensed for operation each year a full scale exercise is not conducted which involves the State(s) within the plume exposure pathway EPZ.

All training, including exercises, shall provide for formal critiques in order to identify weak areas that need corrections. Any weaknesses that are identified shall be corrected.

G. MAINTAINING EMERGENCY PREPAREDNESS

Provisions to be employed to ensure that the emergency plan, its implementing procedures, and emergency equipment and supplies are maintained up to date shall be described.

H. RECOVERY

Criteria to be used to determine when, following an accident, reentry of the facility would be appropriate or when operation could be resumed shall be described.

V. IMPLEMENTING PROCEDURES

No less than 180 days prior to scheduled issuance of an operating license for a nuclear power reactor or a license to possess nuclear material, 3 copies of each of the applicant's detailed implementing procedures for its emergency plan shall be submitted to the Director of the appropriate NRC Regional Office with 10 copies to the Director of Nuclear Reactor Regulation or, if appropriate, the Director of Nuclear Material Safety and Safeguards. In cases where a decision on an operating license is scheduled less than one year after the effective date of this rule, such implementing procedures shall be submitted as soon as practicable but before full power operation is authorized. Prior to March 1, 1981, licensees who are authorized to operate a nuclear power facility shall submit 3 copies

each of the licensee's emergency plan implementing procedures to NRC Headquarters and to the Director of the appropriate NRC Regional Office with 10 copies to the Director of Nuclear Reactor Regulation. Three (3) copies each of any changes to maintain these implementing procedures up to date shall be submitted to NRC Headquarters and to the same NRC Regional Office with 10 copies to the Director of Nuclear Reactor Regulation or if appropriate the Director of Nuclear Material Safety & Safeguards within 30 days of such changes.

PART 20-DOMESTIC LICENSING OF
SPECIAL NUCLEAR MATERIAL

2. Section 70.32 is amended by adding paragraph (i) to read as follows:

§ 70.32 Conditions of licenses

* * * * *

(i) Licensees required to submit emergency plans in accordance with § 70.22(i) shall follow and maintain in effect emergency plans approved by the Commission. The licensee may make changes to the approved plans without Commission approval only if such changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the requirements of Appendix E, Section IV, 10 CFR Part 50. The licensee shall furnish the Director of Nuclear Material Safety and Safeguards, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, with a copy to the appropriate NRC Regional Office specified in Appendix D, Part 20 of this chapter, a report containing a description of each change within six months after the change is made. Proposed changes

that decrease the effectiveness of the approved emergency plan shall not be implemented without prior application to and prior approval by the Commission.

(Sec. 161 b., i., and o., Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); Sec. 201, as amended, Pub. L. 93-438, 88 Stat. 1242, Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5341.)

Dated at Washington, D.C. this _____ day of _____ 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk
Secretary of the Commission