



OFFICE OF THE
SECRETARY

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

July 31, 1980

COMMISSION DETERMINATION REGARDING PUBLIC
DISCLOSURE UNDER THE GOVERNMENT IN THE
SUNSHINE ACT OF:

Transcript of Discussion of Proposed
Congressional Testimony on H.R. 6390
Thursday, March 13, 1980

Pursuant to 10 CFR 9.108(c), the Commission, upon the advice of the General Counsel has determined that the subject transcript should be released to the public.

Samuel J. Chilk
Secretary of the Commission

OFFICE OF THE SECRETARY
D.C.

1980 AUG -1 PM 3:35

RECEIVED

8008070 019



Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

DISCUSSION OF PROPOSED CONGRESSIONAL

TESTIMONY ON H. R. 6390

(Closed to Public Attendance)

Thursday, March 13, 1980

Pages 1 - 106

Prepared by:
C. H. Brown
Office of the Secretary

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 of Proposed Congressional
Testimony on H.R. 6390
(Closed to Public Attendance)

Chairman's Conference Room
1717 H Street, N.W.
Washington, D. C.

Thursday, March 13, 1980

The Commission met, pursuant to notice at
2:15 p.m., John F. Ahearne, Chairman of the Commission
presiding.

COMMISSIONERS PRESENT:

- Chairman Ahearne
- Commissioner Gilinsky
- Commissioner Bradford

ALSO PRESENT:

- W. Dircks
- H. Shapar
- L. Bickwit
- M. Malsch
- W. Parler
- J. Saltzman
- S. Trubatch
- E. Hanrahan
- J. Aron
- C. Kammerer
- F. Combs
- J. Stephens
- K. Cornell
- B. Reamer
- C. Stoiber
- J. Fitzgerald

P R O C E E D I N G S

1
2 CHAIRMAN AHEARNE: This afternoon's Commission
3 meeting requires a vote -- it is a discussion of proposed
4 congressional testimony, it is my understanding -- where
5 is a lawyer --

6 COMMISSIONER BRADFORD: One that is officially
7 practicing.

8 CHAIRMAN AHEARNE: -- that this is closed until
9 we actually go through the testimony?

10 MR. BICKWIT: I think the rationale ---

11 CHAIRMAN AHEARNE: That is correct, isn't it,
12 that once we actually make the testimony that ---

13 MR. BICKWIT: My view is that the rationale of
14 the exemption would allow you to keep it withheld until
15 after the legislation was acted on.

16 CHAIRMAN AHEARNE: But in the past ---

17 MR. BICKWIT: In the past what has usually been
18 done is disclosed it at the time of the testimony.

19 CHAIRMAN AHEARNE: Fine. On those grounds vote
20 to close on the basis of frustration of agency intent
21 which is Exemption 9.

22 All in favor?

23 (Chorus of "Ayes.")

24 CHAIRMAN AHEARNE: Carl, could you first just
25 briefly remind us who is up when, and then, I guess, Len,

1 you might want to lead us through your draft.

2 MR. KAMMERER: I thought this was already
3 affirmed in the session we just came from, the whole
4 custom on it.

5 CHAIRMAN AHEARNE: Sam didn't get to that.

6 COMMISSIONER BRADFORD: Now I know I didn't vote
7 on that.

8 MR. KAMMERER: The agency is up on the 18th, and
9 we are first up -- Cunningham for DOE is going to be there
10 as well. Those are the only two witnesses.

11 COMMISSIONER BRADFORD: DOE is testifying on this
12 testimony?

13 MR. KAMMERER: Yes.

14 CHAIRMAN AHEARNE: On this bill?

15 MR. KAMMERER: On 6390.

16 CHAIRMAN AHEARNE: Now, they will have had
17 two days of testimony prior to that?

18 MR. KAMMERER: They had one today, and Fred
19 attended.

20 MR. COMBS: Today, Representative Hughes from
21 New Jersey testified on behalf of his bill for the
22 moratorium on nuclear power. The select committee had
23 looked at all the issues and decided whether or not we
24 should continue. There were also Bob Pollard and Ellen
25 Weiss of the UCS who gave their views on the bill.

1 A.J. Pfister of Salt River gave his views,
2 David Berick of the Environmental Policy Center and
3 Drew Diehl was the other ---

4 CHAIRMAN AHEARNE: Who was the last?

5 MR. COMBS: Drew Diehl of the Sierra Club.

6 The questions related mostly to what should be
7 done with near-term OLS, whether or not the economic
8 investment justified that it be brought on line.
9 Almost nearly the unanimous answers to that were that
10 all under valve safety issues and all Three Mile Island
11 recommendations should be implemented prior to any
12 additional licensing.

13 Another issue was the state veto for highlevel
14 waste siting, and most people felt that some sort of
15 state participation would be called for, and the safety
16 boards set up like the NTSB was discussed and the need
17 for reorganization in the NRC.

18 There will be a memorandum on this this afternoon.

19 MR. KAMMERER: Who is up tomorrow?

20 MR. COMBS: Tomorrow, Governor Babbit of Arizona
21 is going to start off, along with a panel from EEI and
22 AIF then a panel of insurers.

23 CHAIRMAN AHEARNE: Now, have they been asking
24 people to go through the bill section-by-section or is
25 it more, what comments do you have?

1 MR. COMBS: What comments do you have, and they
2 have been accepting the testimony. The only people who
3 went through it section-by-section was Weiss and Pollard.

4 CHAIRMAN AHEARNE: How much time are we allocated,
5 do you know?

6 MR. COMBS: I don't know. They would probably
7 keep us there for about an hour.

8 CHAIRMAN AHEARNE: That short?

9 MR. COMBS: The way they were going today,
10 there were only three of the Majority Members and no
11 Minority.

12 COMMISSIONER BRADFORD: Who were the three
13 Majority?

14 MR. COMBS: Mr. Udall, Mr. Vento and Kastenmeier.
15 Kastenmeier was particularly interested in the
16 limerick plan which is about 90 percent complete.

17 CHAIRMAN AHEARNE: Carl, any other things to
18 add?

19 MR. KAMMERER: (Nods in the negative.)

20 CHAIRMAN AHEARNE: Len?

21 MR. BICKWIT: As you can see, we have divided
22 this up into the major sections.

23 I would suggest that we go through it with the
24 Commissioners just taking a look at what it says and posing
25 questions.

1 CHAIRMAN AHEARNE: (Nods in the affirmative.)

2 Now, I would propose at least, unless any of you
3 think it is a bad idea, is just to submit this for the
4 record rather than reviewing it all or reading it all.

5 MR. BICKWIT: I agree.

6 CHAIRMAN AHEARNE: And then if any of us have
7 specific points we would like to comment on, but if they
8 are trying to keep us in someth'ng like an hour, I think
9 it would be more useful for any of us, on any specific
10 points we want to make, then be ready for questions
11 from them as opposed to taking up the hour reading the
12 testimony.

13 COMMISSIONER BRADFORD: I'm not sure ---

14 COMMISSIONER GILINSKY: I have had this reduced
15 to several sheets like this, and if you want, I will make
16 copies for them. (Showing the Chairman a document.)

17 CHAIRMAN AHEARNE: Very good.

18 COMMISSIONER BRADFORD: I can start at Page 3.
19 I didn't have anything on 2.

20 CHAIRMAN AHEARNE: And anybody speak up if you
21 have any problems -- Do all of you have copies of this
22 testimony, hopefully? Speak up if you have problems,
23 questions or concerns. This is the time that everybody
24 should raise their issues.

25 COMMISSIONER BRADFORD: I guess I don't feel that

1 I'm -- I'm inclined to oppose the proposition that future
2 CPs ought only to go to plants likely to comply with the
3 outcome of the siting rulemaking. That doesn't seem to
4 me to be a standard that you absolutely have to comply,
5 but by the same token, in the same way that we tend to
6 say we wouldn't license Indian Point today, it doesn't
7 seem that we would want to license a plant that was
8 dramatically at variance with the proposed rules.

9 CHAIRMAN AHEARNE: Well, my comments, I guess,
10 you are addressing down there at the bottom?

11 COMMISSIONER BRADFORD: It is that "however"
12 sentence.

13 CHAIRMAN AHEARNE: It was unclear to me. I wasn't
14 really sure what we were trying to make.

15 I would certainly agree that if we get a proposed
16 rule out, and we compare -- First, I think we should
17 compare any new construction permits to that proposed
18 rule, and if it looks, as you say, drastically at
19 variance then it just doesn't make any sense to go ahead
20 and approve it.

21 On the other hand, I would also agree that if
22 we have the proposed rule out and a construction permit
23 comes in for a new plant and it is slightly at variance,
24 that doesn't mean that automatically it is rejected.

25 COMMISSIONER BRADFORD: I think that's probably

1 right.

2 Are we talking only about CPs received after --
3 applications received after the date the law takes effect?

4 MR. BICKWIT: That's right.

5 COMMISSIONER BRADFORD: Any CP presently in the
6 house wouldn't be affected at all.

7 MR. BICKWIT: Is not affected.

8 CHAIRMAN AHEARNE: Well, realistically, I would
9 think that any CP we have under review is going to be
10 bounced against ---

11 COMMISSIONER BRADFORD: By us.

12 CHAIRMAN AHEARNE: -- by us.

13 COMMISSIONER BRADFORD: Yes. But for purposes
14 of testifying on the hill ---

15 MR. HANRAHAN: It may be a moot point of a new
16 CP before the rule become effective.

17 MR. SHAPAR: I think your planning guidance is
18 '82.

19 MR. HANRAHAN: No, before '82.

20 CHAIRMAN AHEARNE: That's a good point.

21 The way their -- What is it exactly their
22 bill proposes?

23 The bill has a three year moratorium doesn't it?

24 MR. HANRAHAN: Yes.

25

1 MR. BICKWIT: But during the three years, you
2 can't approve a CP that wouldn't conform to the siting
3 regulations.

4 COMMISSIONER BRADFORD: Oh, even if the application
5 is already inhouse?

6 MR. BICKWIT: No. Only with respect to CPs
7 submitted after the date of application. That is a small
8 category, those submitted after the date of enactment.

9 COMMISSIONER BRADFORD: So that this ---

10 MR. BICKWIT: That's right. But you want to
11 focus on the principal item. You could have floor
12 amendments extending it to four years or five years or
13 whatever.

14 COMMISSIONER BRADFORD: More like cutting it back
15 to zero.

16 MR. BICKWIT: You can't cut it back much more,
17 because it applies to so little as it is.

18 COMMISSIONER BRADFORD: In fact, the rulemaking,
19 as I guess Ed has already said, is pretty likely to be
20 completed before we get a new CP application anyway.
21 So even if they extend it out to 4 or 5 years, once the
22 rulemaking is in place, then this becomes a moot point
23 anyway.

24 MR. BICKWIT: This comment does, yes.

25 COMMISSIONER BRADFORD: I don't mind saying

1 like: We would propose to apply a standard roughly like
2 this anyway, but that we have some concern about the
3 legitimacy of putting it in the law, would result in --
4 first because it does leave one trying to judge future
5 applications against future criteria.

6 On the next paragraph, Len, you all have been
7 proposing a review of NRC regulations in any case, I gather
8 somewhat different than what you take the law to be?

9 MR. BICKWIT: Yes.

10 COMMISSIONER BRADFORD: The law compells a review
11 from top to bottom?

12 MR. BICKWIT: Top to bottom in three years --
13 top to bottom before CPs.

14 CHAIRMAN AHEARNE: "... rules, regulations,
15 guidelines, policy statements and other official
16 documents. Do the review, prepare and publish a report
17 as the results of the review. Hold a public hearing,
18 and then certify that such are consistent with the
19 requirements of the Act."

20 That has to be done prior to the issuance of
21 any CP.

22 MR. BICKWIT: Now, what we are committed to,
23 by '84 we have said that if resources are available,
24 we will have gone through all of the rules.

25 COMMISSIONER BRADFORD: Just the rules?

1 MR. BICKWIT: Yes.

2 CHAIRMAN AHEARNE: I thought it was rules and
3 regulations?

4 MR. BICKWIT: Well, yes.

5 COMMISSIONER BRADFORD: But not policy statements,
6 reg guides, branch technical positions?

7 MR. BICKWIT: No.

8 COMMISSIONER BRADFORD: Len, where do we make
9 that commitment.

10 MR. BICKWIT: Press letter.

11 CHAIRMAN AHEARNE: And also in the response to --
12 We made that commitment to Press, and also didn't we
13 reiterate that in the ---

14 MR. BICKWIT: In the testimony.

15 CHAIRMAN AHEARNE: Well, we certainly mentioned
16 it in the testimony several times, and also, I thought in
17 response to the Dingell amendment, made reference to that.

18 MR. BICKWIT: I think it would be worth pointing
19 it out here. You can point that out and nonetheless,
20 express it differently.

21 COMMISSIONER BRADFORD: That's what I was going
22 to say. I would point out commitments we have already
23 made. I wouldn't be inclined to tie it to licensing,
24 but if the Congress does, then we will do it that way.

25 CHAIRMAN AHEARNE: Well, my comment on the

1 testimony is that this provision would have the effect of
2 delaying all construction permits for three years, of
3 course, and I think that that was ---

4 COMMISSIONER BRADFORD: It doesn't delay it
5 for three years ---

6 CHAIRMAN AHEARNE: So I ---

7 COMMISSIONER BRADFORD: Except that again, now
8 this applies to ---

9 CHAIRMAN AHEARNE: New ones.

10 COMMISSIONER BRADFORD: New ones.

11 CHAIRMAN AHEARNE: But, I think as Len points
12 out as it is written it applies to new ones and it would be
13 a small step to amend it.

14 COMMISSIONER BRADFORD: To stretch it out further.
15 But again, if this effort is done in three years,
16 then this also would be a moot point.

17 MR. BICKWIT: I think that is very unlikely though.

18 CHAIRMAN AHEARNE: This is a larger effort,
19 because this extends -- once you have extended it to other --
20 it goes beyond policy statements, it goes to other
21 official documents.

22 COMMISSIONER BRADFORD: But the point, if they
23 pass this bill we will probably have the resources to do
24 it ---

25 CHAIRMAN AHEARNE: Oh, I don't think so.

1 COMMISSIONER BRADFORD: -- as no one would be
2 working on anything else.

3 CHAIRMAN AHEARNE: Oh, I see.

4 No, I guess unless they also have a provision
5 that shuts down all operating plants ---

6 COMMISSIONER BRADFORD: Well -- No, of course,
7 people would still work on the operating plants.

8 MR. BICKWIT: I mean, it is very hard to
9 calculate.

10 From what I understand the Congressman to say,
11 he is not intending to get this thing passed this Congress.

12 CHAIRMAN AHEARNE: Nevertheless, the position we
13 take for the Commission should be the positions that we
14 think are the right ones, independent of whether it is
15 going to pass.

16 MR. BICKWIT: Would it have any effect, that's
17 right.

18 CHAIRMAN AHEARNE: And I think we ought to
19 refer to the commitment we have made and say that we
20 believe that is the appropriate action.

21 MR. DIRCKS: We are doing it now?

22 MR. BICKWIT: This review? I don't know.

23 MR. SHAPAR: We are committed to it.

24 MR. BICKWIT: We are not doing anything.

25 CHAIRMAN AHEARNE: Minogue is supposed to.

1 MR. SHAPAR: Minogue has the action on it.

2 CHAIRMAN AHEARNE: Yes.

3 MR. DIRCKS: You always run into the question and
4 I know it isn't consistent with the requirements of the
5 Atomic Energy Act, but I bet you lurking behind that is a
6 statement of what we consider safety.

7 COMMISSIONER BRADFORD: Well, that comes up later
8 in the same testimony.

9 How can Minogue be doing this without input
10 to either legal office?

11 MR. SHAPAR: Well, I assume in the natural course
12 of events when he has something, he will circulate it to
13 the other offices.

14 CHAIRMAN AHEARNE: But the part of the testimony
15 that his office provided is that he is reorienting his
16 resources on a stepped program ---

17 MR. SHAPAR: And I think the first step is
18 technical, the technical regulations.

19 COMMISSIONER BRADFORD: There really are two
20 separate things that work here. A technical review, but
21 you had taken the position earlier on that if you left
22 out the technical review all together, I thought it would
23 be desirable to do a certain amount of it going through
24 a cleaning up.

25 MR. BICKWIT: The effort that I mentioned earlier

1 on it?

2 COMMISSIONER BRADFORD: Yes.

3 MR. BICKWIT: That would be an effort that if we
4 had adequate resources it would be done in FY-81.

5 CHAIRMAN AHEARNE: But that is the cleaning up
6 effort?

7 COMMISSIONER BRADFORD: Yes. And that is not
8 part of the Commission's --

9 MR. BICKWIT: Minogue's effort.

10 CHAIRMAN AHEARNE: I wasn't really clear what
11 you meant by the last sentence on Page 4.

12 MR. HANRAHAN: My feelings on it is that I said
13 it was a condemnation by a faint praise of standardization,
14 and I think it is better to say that whatever the
15 requirements are for any standardization program, should
16 allow for innovation and safety improvement, and not sort of
17 use that as sort of a negative.

18 CHAIRMAN AHEARNE: I guess, after reading that
19 I was wondering, what is the Commission's current policy
20 on standardization? Are we in favor?

21 COMMISSIONER GILINSKY: Continues to favor it.

22 COMMISSIONER BRADFORD: We testified for it in
23 the Siting and Licensing Act, **but** Victor repeatedly made
24 the point that no one was quite sure what that meant we were
25 testifying in favor of.

1 MR. BICKWIT: We were willing to go with something
2 in the findings policy section, but nothing more than
3 that.

4 COMMISSIONER BRADFORD: In the Siting and
5 Licensing Act?

6 MR. BICKWIT: In the last go-around on this.

7 COMMISSIONER BRADFORD: I guess that's right.
8 When we started in to round two before Three Mile Island,
9 we never really nailed down what we were prepared to go
10 for at the end.

11 COMMISSIONER GILINSKY: No one would define
12 what standardization means.

13 MR. SHAPAR: You got a definition.

14 The definition was sort of along the lines of a
15 plant that could be licensed in several applications. I
16 don't think it satisfied you.

17 CHAIRMAN AHEARNE: And a plant that can be
18 referenced in several applications is a standard plant.

19 MR. SHAPAR: That's right. If you use it more
20 than once it is standard.

21 CHAIRMAN AHEARNE: That does have a certain
22 looseness about it.

23 Well, I guess I would be more comfortable with
24 either saying nothing about standardization or else saying
25 that in the past the Commission has indorsed standardization,

1 there are responsibilities that are to be needed, but I
2 would go on to include that one of the difficulties is, to
3 define what is a standardized design, because that read
4 to me really like we are backing away from standardization.

5 MR. BICKWIT: Well, we are backing away from
6 whatever was there, from saying that only standardized plants
7 can be licensed. I don't think you were ever there.
8 That's all this sentence says. If you are not for that.

9 COMMISSIONER GILINSKY: Where is this?

10 CHAIRMAN AHEARNE: Page 4.

11 I would have read it as: We
12 agree with the people who say you should go to standardization
13 because it impedes innovation, which has been the standard
14 or the usual argument against standardization, and it
15 sounded to me like you were indorsing that and essentially
16 saying it is all right if the vendors want to propose
17 standardized designs but don't expect that we are that much
18 in favor.

19 MR. SHAPAR: Isn't the larger question of
20 whether or not you can really get a final design at the
21 CP stage?

22 CHAIRMAN AHEARNE: Well, I think that's a larger
23 question, should we be in favor of or not, and then that
24 seems to come up later.

25 MR. BICKWIT: I gather the only way you can do it

1 is by standardization.

2 CHAIRMAN AHEARNE: No.

3 MR. SHAPAR: Although I think you are right in
4 saying you will get it in a standardized plant.

5 CHAIRMAN AHEARNE: Right. It is certainly, I
6 think, true that if you went to a system where the whole
7 plant had to be designed at the time of CP, that you would
8 end up with a standardized design. That would be the
9 driving force toward it, but you can design a plant to
10 scratch.

11 COMMISSIONER BRADFORD: What section does this --
12 Which section of the bill is it that you actually find
13 this concept in?

14 MR. HANRAHAN: 101.

15 COMMISSIONER BRADFORD: 101, but which sub-part?

16 CHAIRMAN AHEARNE: Oh, subpart D on Page 6.

17 MR. BICKWIT: Yes.

18 COMMISSIONER BRADFORD: Why not do sort of the
19 same thing we were talking about doing before, that is,
20 the Commission is moving in the direction of requiring
21 more information at the CP stage, if we are talking about
22 the standard review plan. I would like to be able to say
23 we are moving in the direction of defining what an amendment
24 to a CP would be, which would give them more meaning to
25 the whole process.

1 COMMISSIONER GILINSKY: You know, the same
2 level of detail as is required for an operating license
3 may be going too far, but I think something approaching
4 probably is the right thing.

5 COMMISSIONER BRADFORD: One, I suppose could say
6 that there ought to be provision for the Commission to
7 designate -- to exempt certain types of plants from this
8 requirement, but if somebody came in with another HTGR,
9 you probably wouldn't want them to be confronted with this
10 requirement.

11 CHAIRMAN AHEARNE: That's correct.

12 COMMISSIONER GILINSKY: Well, there is a section
13 103 license, section 104 license.

14 COMMISSIONER BRADFORD: At the distinction of if
15 I remember, your trying very hard to eliminate a couple of
16 them. I thought you were in the process of hunting
17 down all section 103 licenses.

18 COMMISSIONER GILINSKY: I think we ought to
19 be in favor of substantially more information ---

20 CHAIRMAN AHEARNE: How about going all the way
21 to one-stop licensing?

22 COMMISSIONER GILINSKY: Well, I think we may
23 have been in favor of that, certainly as a goal, and the
24 question is do you want to require that soon?

25 Certainly that would be the objective of it. To

1 make that possible and it was clearly considered a highly
2 desirable objective.

3 MR. SHAPAR: That's right. This would make it
4 mandatory rather than optional.

5 COMMISSIONER GILINSKY: That's right.

6 MR. BICKWIT: Mandatory, either one step or
7 getting a total design at the CP stage.

8 MR. SHAPAR: Well, the reform legislation had
9 several routes or several tracks, and one of them was a
10 combined CP and OL.

11 MR. BICKWIT: No, I understand that. This doesn't
12 say it must be a combined CP/OL.

13 COMMISSIONER GILINSKY: In the British Columbia
14 Parliament there was an argument about raising the age of
15 consent, and one of the male members said he was prepared
16 to go along with it so long as it was a mandatory effort.

17 MR. SHAPAR: What section of the bill is that?

18 MR. BICKWIT: Well, you want some expression
19 that this is the direction the Commission is heading in.

20 CHAIRMAN AHEARNE: I would be in favor of the
21 direction of the Commission -- and I guess as Victor
22 pointed out, the Commission has in the past, been in
23 favor of going in the direction of the stop ---

24 MR. BICKWIT: But you need more flexibility than
25 this provides?

1 CHAIRMAN AHEARNE: You need more flexibility,
2 and actually though, it would have to be tied -- at least
3 my own position would be at that stage where you require
4 all that detail in the construction permit, that really means
5 that once you have gone through that, a large part of that
6 is not reopenable at the operating license stage without
7 a substantial reason, that the criteria they have here is
8 the bill is very loose criteria in my reading of it.

9 COMMISSIONER GILINSKY: Well, it is not clear why
10 you need more flexibility for lightwater reactors?

11 CHAIRMAN AHEARNE: No. More flexibility for
12 Peter's argument, that if there is an entirely different
13 type of designs. For example, let's suppose that somebody
14 said we want a license we can't do.

15 COMMISSIONER GILINSKY: But in that case it
16 would be reasonable to use the other section.

17 MR. BICKWIT: But this applies to both sections.

18 COMMISSIONER GILINSKY: Well, maybe it oughtn't
19 to.

20 CHAIRMAN AHEARNE: I'm agreeing with Peter.
21 There ought to be some kind of a phrase that
22 enables an entirely different design ---

23 COMMISSIONER BRADFORD: To go through a two-step
24 process.

25 CHAIRMAN AHEARNE: -- for a reactor to go through

1 a two-step process, because I think one would want that.

2 COMMISSIONER BRADFORD: Sections 103 and 104
3 really weren't coming up with that problem in mind,
4 whatever problem it tried not to meet.

5 COMMISSIONER GILINSKY: Well, in any case, you
6 can set something up that would give you flexibility in
7 dealing with new designs.

8 COMMISSIONER BRADFORD: That's right.

9 COMMISSIONER GILINSKY: But even there, it is
10 not clear why you ought to be building a new reactor until
11 you have done a substantial part of the design.

12 CHAIRMAN AHEARNE: Sure, but there are still a
13 lot of questions that you would still have left open,
14 because if -- unless you have built to full size, there are
15 a lot of questions that you are not really going to address
16 until you get further into a building of that size, and
17 I don't ---

18 COMMISSIONER GILINSKY: Well, I think that's just
19 past practice. Maybe there are reasons to do it that way,
20 and it is acceptable in an R&D program in maybe a
21 demonstration plant, but if you are building a commercial
22 power reactor, it is not clear why you oughtn't to design
23 it first.

24 CHAIRMAN AHEARNE: Even if you have designed
25 it, the level of review that you are going to want to go

1 through it for that first system, I think is going to
2 be greater and I would be unwilling to -- I would want to
3 constrain review of operating license for the other types
4 of plants, I would not want to do it for that first
5 design.

6 COMMISSIONER GILINSKY: Now, wait a minute.
7 How does that argue with it? You are saying you want a
8 more detailed review?

9 CHAIRMAN AHEARNE: At the operating license time
10 for that first -- that first of the type.

11 COMMISSIONER GILINSKY: Yes, but that question
12 is, will you allow the thing to be constructed on the
13 basis of merely the outline of the design? That's really
14 what is at issue here.

15 CHAIRMAN AHEARNE: No, I don't think so.

16 I think what ends up being at issue is the one-
17 step licensing process, and what I'm saying is I think
18 that when you move back the construction permit time,
19 a lot of the details, and I think that is sound, require
20 all of those to be done prior to construction permit
21 approval for the lightwater reactor plants. But that
22 removes from the operating license stage, in my mind, a
23 lot of the review that is currently done.

24 COMMISSIONER GILINSKY: Okay, but what you are
25 saying is, let's make sure we don't skip the operating

1 license stage in the first of a kind.

2 CHAIRMAN AHEARNE: That's right.

3 COMMISSIONER GILINSKY: But the question is: Do
4 you also want to go with a relatively skimpy report at the
5 CP stage?

6 CHAIRMAN AHEARNE: No. I would say that I would
7 want more at the CP stage than is currently there, but less
8 than I would want for these other types of reactors, sort of
9 an intermediate level, because I would recognize that at
10 the CP stage, there is a level of information that is not
11 going to be available until you have at least built the
12 design.

13 MR. HANRAHAN: Let me give you a practical
14 argument against that.

15 If someone is interested in undertaking a new
16 reactor, whether it is gas or heavy water or even a ~~local~~ ^{legued}
17 metal reactor, the idea that they will come in with a
18 certain amount of information, less than you would on a
19 lightwater reactor and then during the review of this
20 there is going to be some changes. That leaves that
21 whole project very open to continue ---

22 CHAIRMAN AHEARNE: But, Ed, remember it is
23 more information --- I'm saying I would want more
24 information than currently required.

25 MR. HANRAHAN: Let me finish.

1 --That that would leave that project then open
2 through the whole construction process to continue, you
3 know, to ratcheting additional safety requirements.

4 CHAIRMAN AHEARNE: That's right.

5 MR. HANRAHAN: Now therefore, from the commercial
6 side, would be an unacceptable risk that they would not
7 take. Therefore, that process in essence would inhibit
8 any new reactor type rather than aid them.

9 COMMISSIONER BRADFORD: But there is a counter-
10 argument to that.

11 CHAIRMAN AHEARNE: I'm not trying to aid new
12 reactor types.

13 COMMISSIONER BRADFORD: I think the point there
14 is any new reactor types starts out at a substantial
15 disadvantage from the point view of purchasing utility
16 now anyway, and I guess I would be pretty surprised to
17 see a utility order something other than a BWR or a PWR,
18 unless there were some kind of subsidy involved anytime
19 soon.

20 MR. HANRAHAN: Well, in reality, it is a moot
21 point. Nobody is going to order anything, other than a
22 lightwater reactor.

23 COMMISSIONER BRADFORD: But in this case, we
24 are talking about -- let's see, in this case we are
25 talking about a provision of the bill that is going to be

1 in effect -- if it passed, it would be in effect for
2 nuclear licensing from then on, regardless of what the
3 future holds in store.

4 CHAIRMAN AHEARNE: I just don't see someone
5 who is going into a new system, having gone through all
6 of that, being comfortable, the designer themselves, being
7 comfortable with all the design detail work, having never
8 built a full-sized plant.

9 COMMISSIONER BRADFORD: It is a subject that
10 Joe has mentioned at a couple hearings before.

11 MR. HANRAHAN: My own thinking, you have built
12 a fairly significant sized demonstration plant with
13 perhaps full-sized heat transfer groups, two-loop plant
14 or three-or four-loop commercial size.

15 MR. SHAPAR: There is one factor that would
16 argue the other way and that is the reason for the present
17 two-step thing, and that is the commercial pressures to
18 get a license more quickly than you would otherwise get
19 it. At least one of the major factors of why the present
20 two-step system exists, and I can foresee a situation
21 when you would want a new design, which, I think cuts
22 across your argument, where there would be substantial
23 government money involved, and there is a schedule. That
24 is usually the case. I'm not saying it would be dominant,
25 but it would be there.

1 COMMISSIONER BRADFORD: But Joe was asked this
2 question by the Udall committee about a year and a half
3 ago, during the last hearings on the Siting and Licensing
4 Act, that is, why can't we require a full level of information.
5 This is for LWR's and his answer then was that it would
6 be the end of the nuclear power industry because you can't
7 provide that level of detail at the CP stage.

8 Now, I think he has since moderated that a little
9 bit.

10 (Commissioner Gilinsky departed the meeting. 2:35)

11 CHAIRMAN AHEARNE: Yes, I have heard him in
12 testimony say that he felt most of that information could
13 be provided.

14 COMMISSIONER BRADFORD: Yes. Since that time
15 he has come back from it a little bit, but I think as to
16 the new reactor type, he would feel very strongly the
17 way you have been ---

18 CHAIRMAN AHEARNE: Yes, I think the majority
19 of us ended up keeping that flexibility for government
20 reactors.

21 All right, Page 5?

22 I reiterate again that if anybody here in the
23 room is uneasy with any of the material, speak up. Don't
24 sit there muttering to yourself saying, why are they
25 saying that dumb thing? We may not change, we may even

1 make it dumber, but at least speak up.

2 MR. DIRCKS: Emergency Planning.

3 COMMISSIONER BRADFORD: Now that you put it that
4 way.

5 MR. DIRCKS: There is a lot of shuffling of feet
6 in the ranks. We would like to be sure that the delineation
7 is clear about what our authorities are and what FEMA's
8 authorities are. We have particularly been hearing that
9 FEMA is off-site and doesn't come on to the site.

10 If that's clear to everyone, then I'll ---

11 CHAIRMAN AHEARNE: I hadn't realized it was like
12 that.

13 MR. BICKWIT: You didn't realize it was in here?

14 CHAIRMAN AHEARNE: It was unclear.

15 MR. BICKWIT: Well, at this point, it is unclear
16 in the sense in which we have discussed it with them, but --

17 CHAIRMAN AHEARNE: Yes, but is that on-site or
18 off-site?

19 MR. BICKWIT: -- As we give it in the licensing
20 process, FEMA does not have the authority to make binding
21 decisions even with respect to off-site.

22 CHAIRMAN AHEARNE: Right. I understand that
23 issue. But, Bill, I thought was raising a different point.

24 Bill is raising the concern that ---

25 MR. BICKWIT: That FEMA can come on-site.

1 CHAIRMAN AHEARNE: -- FEMA's authority might
2 extend on-site.

3 MR. BICKWIT: Under existing law it is clear
4 that it can't come under ---

5 MR. DIRCKS: And at Page 8, starting at Line 20
6 and going to the end ---

7 CHAIRMAN AHEARNE: You are talking about Page 8
8 of the bill?

9 MR. DIRCKS: Page 8 of the bill. I have read
10 it and it seems to run in a circle.

11 MR. BICKWIT: I can't understand it.

12 MR. DIRCKS: I just don't know what the meaning
13 of that is?

14 MR. BICKWIT: I don't either.

15 MR. DIRCKS: Shall we have a contest?

16 CHAIRMAN AHEARNE: Who would decide the winner?

17 MR. BICKWIT: On matters such as that, I would
18 suggest that the testimony be silent on those matters. We
19 are not commenting on every feature of the bill.

20 MR. KAMMERER: Clearly, this is just the first
21 opportunity, once they mark up the bill, they will have
22 individuals back in long before it hits the House floor.

23 CHAIRMAN AHEARNE: Yes.

24 My only comment then on the emergency planning
25 part was what is the need for the legislation?

1 MR. BICKWIT: I think you need legislation to
2 make clear ---

3 CHAIRMAN AHEARNE: As written here. What does
4 this legislation do?

5 MR. BICKWIT: First of all, it clarifies roles.
6 Under existing law, I don't think those roles are clarified.
7 I have something of a problem as to how it does it.

8 Secondly, I guess it hedges against the Commission
9 not going through with its proposed rule.

10 CHAIRMAN AHEARNE: Well, that part I can under-
11 stand. I was trying to figure out exactly what does it
12 do ---

13 MR. BICKWIT: On clarifying rules?

14 CHAIRMAN AHEARNE: Yes.

15 MR. BICKWIT: Presently, FEMA cannot bind NRC
16 in its licensing process.

17 CHAIRMAN AHEARNE: What?

18 MR. BICKWIT: This would allow it to do so.

19 CHAIRMAN AHEARNE: Where?

20 MR. BICKWIT: It would say that FEMA makes
21 determinations off-site.

22 CHAIRMAN AHEARNE: Subsection 2. Is that it?

23 MR. BICKWIT: Yes.

24 CHAIRMAN AHEARNE: Okay, then I think we ought
25 to say that explicitly, because in reading through the

1 testimony the problem I had was that it sounds like these
2 are good things to do, our proposed rules do them, which
3 then leaves the conclusion: the only reason for the
4 legislation is to make sure we stick to our proposed rule.
5 I would oppose that. I would rather focus on what does
6 the bill do, and that is a piece which the Commission has
7 indorsed as appropriate.

8 MR. BICKWIT: There is another point on the
9 division of authority. It does keep with the NRC, the
10 authority to cover over-all emergency planning, so you
11 might have the situation where you are in compliance --
12 FEMA says you are in compliance with the state and local
13 plans, then the same issue might have to be litigated before
14 the NRC.

15 It is a question of whether you want that as
16 policy.

17 CHAIRMAN AHEARNE: That's number 3?

18 MR. BICKWIT: Yes.

19 CHAIRMAN AHEARNE: I guess, Bill, your concern is
20 actually embedded in number 1.

21 MR. DIRCKS: Embedded where?

22 CHAIRMAN AHEARNE: Embedded in number 1 there.

23 "Where the licensee has a radiological emergency
24 response plan determined by the Commission in cooperation
25 with..." and I guess that was your concern?

1 MR. BICKWIT: I see, yes.

2 CHAIRMAN AHEARNE: When I read it, I interpreted
3 it as that portion of where the licensee contacts
4 external agencies, but I can see how you could ---

5 MR. DIRCKS: And that's, I think, back on Page 8
6 of the bill, at least, before making any such assessment or
7 determination and before adopting any -- Well maybe not.

8 CHAIRMAN AHEARNE: I wouldn't have any problem
9 making that explicit in the testimony, but our understanding
10 is that on-site emergency response capabilities are solely
11 NRC's responsibility.

12 MR. BICKWIT: Their cooperation should be
13 defined as consultation that would not be binding on the
14 NRC's determination.

15 CHAIRMAN AHEARNE: Yes, I think that probably
16 just to make that explicit, I certainly would interpret
17 it wrong.

18 MR. DIRCKS: It would make us feel better.

19 CHAIRMAN AHEARNE: Now, on your other point.

20 We agree that the on-site is fine, FEMA agrees
21 that the off-site is fine, and we agree that we have to
22 determine that everything is fine.

23 MR. BICKWIT: That gives the NRC a safety valve,
24 but it also took along the process.

25 CHAIRMAN AHEARNE: And it brings in the Federal
agency.

1 What does our rule address? We addressed
2 Federal agency involvement. In drills in the rule, did
3 we put on any requirement for us to make a finding of
4 the application?

5 MR. BICKWIT: I'm sure not.

6 CHAIRMAN AHEARNE: Peter?

7 COMMISSIONER BRADFORD: I just haven't thought
8 that much about it.

9 CHAIRMAN AHEARNE: I think we ought to just comment
10 on that we are uncertain about the effect of that additional
11 provision. We have not thought it through.

12 I guess, given this is most likely, as Carl
13 pointed out and you have pointed out, the first of many
14 times we will have an opportunity to address these issues.
15 I would just rather hold the place and identify those
16 issues as it applies.

17 Safety Objectives:

18 MR. SHAPAR: Let me bring your attention to
19 a statement— 5 or 6 lines from the bottom ---

20 CHAIRMAN AHEARNE: Six lines from the bottom on?

21 MR. SHAPAR: Safety Objectives, yes.

22 CHAIRMAN AHEARNE: In the testimony?

23 MR. SHAPAR: Yes.

24 I just wanted to call it to your attention. It
25 says: "It is unlikely that any entirely satisfactory

1 formulation of safety objection is going to be achieved
2 in the future."

3 I call it to your attention because it was,
4 I believe, a Kemeny recommendation and a Rogovin recommen-
5 dation, and here, I think, you are saying for the first
6 time publicly you really can't do it too fast. Which, I
7 guess, is true.

8 CHAIRMAN AHEARNE: I don't know. I disagreed with
9 this writeup.

10 COMMISSIONER BRADFORD: I would have referenced
11 whatever tentative efforts we do have underway in this
12 area. There is still that money we approved in the
13 Research program.

14 CHAIRMAN AHEARNE: Yes, and we have identified
15 that as an issue, as far as the quantifiable aspects
16 of it, we tasked the ACRS, and they do have a subcommittee
17 working on that. Well, I guess we tasked them six months
18 ago and they said it will take a year.

19 MR. DIRCKS: Well, it is the ACRS that everytime
20 they go near them ---

21 CHAIRMAN AHEARNE: I know, I understand.

22 MR. DIRCKS: How do you justify an action plan
23 if you haven't quantified your position.

24 CHAIRMAN AHEARNE: I know. But if you step back,
25 you see, approximately 8 months ago they first raised that

1 as an objection to our approach, to which we responded:
2 "All right, give us some suggestions on how to go about
3 doing that," and they formed a subcommittee and I think
4 Okrent is working quite hard as I understand it. I know
5 he has had meetings scheduled with people in Germany,
6 California and bringing some other people in. So there is
7 a lot of effort, at least at the beginning motion.

8 My point would have been that I disagree with the
9 way it is phrased in here in that we are to prepare and
10 submit a report on it. I would outline the things that
11 we are doing, we are struggling with that issue, recognize
12 it is an important one, but I think the Congress ought to
13 address it. I think the basic public policy question,
14 the adequate levels of safety and balancing of risks
15 which cut far across just our area of interest. Whether
16 it is in the testimony or whether I would say it directly,
17 I think that it is a congressional ---

18 MR. BICKWIT: I suspect that is the intent of
19 the provision, to get a report up so that the Congress
20 can address it.

21 CHAIRMAN AHEARNE: But the provision has
22 specifically revised safety objectives on nuclear reactors
23 and such.

24 MR. BICKWIT: I read it as the Congress asking
25 the experts for a draft.

1 CHAIRMAN AHEARNE: I didn't see them asking
2 any other experts.

3 MR. BICKWIT: Oh, you are talking about safety
4 objectives throughout the world of safety?

5 CHAIRMAN AHEARNE: That's right.

6 MR. DIRCKS: Because if you confine it to nuclear
7 reactors, then you get into the business of the question of
8 how safe is safe enough.

9 CHAIRMAN AHEARNE: What I would prefer to say,
10 here are the things that we have underway. I certainly
11 would disagree that a useful progress can be made through
12 the preparation of the report. I would say, we have these
13 efforts underway, we can certainly incorporate the
14 results as they come in and provide a report to the Congress,
15 however -- then I would want to go on and say: but I think
16 the Congress really should address the broader question.

17 COMMISSIONER BRADFORD: The broader question in
18 the context of nuclear power or just a societal standard?

19 CHAIRMAN AHEARNE: I think that they ought to
20 address nuclear power in the context of the broader
21 question. And I think that fundamentally the acceptability
22 or non-acceptability of nuclear power has to be said by
23 Congress.

24 MR. DIRCKS: That's a very broad cosmic question,
25 but ---

1 CHAIRMAN AHEARNE: It is not cosmic.

2 MR. DIRCKS: But to come back to our own immediate
3 needs, say when we come up with a list of action plan
4 items, how will we measure these items against an overall
5 criteria, and that's the one that we constantly ---

6 COMMISSIONER BRADFORD: That void is a difficult
7 one to cope with, but in terms of responding to the ACRS
8 it doesn't seem to me to be any harder to have an action
9 plan in the face of that void, than it is to issue reactor
10 licenses, which they have been doing for years, or for
11 which they have been preparing it for years.

12 CHAIRMAN AHEARNE: In fact, if you have a great
13 sense of uneasiness, I would think that the other would be
14 harder.

15 MR. DIRCKS: You think it is easier to do that
16 than to approach things on a case-by-case -- do you think
17 it is easier to define ---

18 CHAIRMAN AHEARNE: No. I would agree with
19 what I think Peter's point is, that if you really feel
20 that if the absence of quantitative safety goals is a
21 fatal flaw, then you ought to be a lot more worried about
22 granting operating licenses than including sections in an
23 action plan.

24 COMMISSIONER BRADFORD: Yes, exactly.

25 MR. DIRCKS: And we are left with our big long

1 pause when they ask us to do this before we come to that
2 item.

3 COMMISSIONER BRADFORD: My only point is that
4 visa-vis the ACRS, they are in the same boat that we are.

5 MR. DIRCKS: They are in the same boat. And
6 we are throwing it to them, and they throw it right back to
7 us.

8 COMMISSIONER BRADFORD: Visa-vis the outside world,
9 it's ---

10 CHAIRMAN AHEARNE: Well, no. We have done two
11 things, Bill. They challenged so we said, okay, see what
12 you can do on it, and we also have the research plan, put
13 monies in and tried to develop some better approach to
14 addressing that. Both of those ought to be referenced
15 here.

16 MR. DIRCKS: Yes.

17 CHAIRMAN AHEARNE: And personally, I don't mind.
18 I resent saying that well, preparing a congressional
19 report is going to be a big help to us. It may be a big
20 help to the Congress, I know certainly it would be a big
21 help to us.

22 MR. DIRCKS: I don't think Congress may feel it
23 will help us.

24 CHAIRMAN AHEARNE: That's true. But I would rather
25 say what we are doing, say that we can respond to this

1 section in that, but I still would like to point out
2 that Congress has as broad a role.

3 COMMISSIONER BRADFORD: In the end, this is going
4 to be a joint effort.

5 CHAIRMAN AHEARNE: Yes.

6 Reactor Siting: We say we generally support
7 this portion of the bill. What does it do that our rules
8 don't do?

9 MR. BICKWIT: Nothing.

10 CHAIRMAN AHEARNE: Then I would want to say we
11 have no problem with it.

12 MR. BICKWIT: No objection, instead of support.

13 CHAIRMAN AHEARNE: Yes.

14 I don't support laws which aren't needed.

15 COMMISSIONER BRADFORD: I generally agree with
16 that except in those areas where I distrust my successors.

17 MR. BICKWIT: Yes, that's right, or subsequent
18 Commissions.

19 COMMISSIONER BRADFORD: Yes, my successors, I
20 said, not my colleagues. There is that problem too.

21 CHAIRMAN AHEARNE: You can add in that Commissioner
22 Bradford agrees with that position, except he questions his
23 successors.

24 Page 9?

25 MR. BICKWIT: Well, my answer really related to

1 the first paragraph on Page 8.

2 The second paragraph on Page 8 does do something
3 that our rules don't do.

4 CHAIRMAN AHEARNE: I was talking about the first
5 paragraph.

6 COMMISSIONER BRADFORD: On state authority, I --
7 it would just go off in a completely different direction.
8 I don't like the preemption provisions that exist now, and
9 that's really what I would say.

10 MR. BICKWIT: I don't know where the Commission
11 is on that.

12 CHAIRMAN AHEARNE: I thought that Len had tried
13 to balance where the Commission would come out.

14 COMMISSIONER BRADFORD: This really indorses
15 an extension of preemption into non-radiological siting
16 decisions?

17 MR. BICKWIT: No, it is just that presently
18 there is preemption with respect to the radiological
19 aspects. This bill would take that away. And this is
20 saying maybe that isn't such a great idea.

21 COMMISSIONER BRADFORD: But it says more than
22 that, doesn't it? We are reluctant to indorse the
23 concept that states should be free to enclose their own
24 siting requirements for nuclear plants?

25 MR. BICKWIT: Yes, I guess it does say more than

1 that. It does both of those things. It talks about
2 possible preemption in the non-radiological area, and puts
3 a break on the removal of preemption in the radiological
4 area.

5 COMMISSIONER BRADFORD: You really have two
6 questions. Even if you agree with preemptions ---

7 CHAIRMAN AHEARNE: But Peter, you stopped before
8 you -- you really have to fill in the rest of his statement.
9 Reluctant to indorse without more detailed consideration
10 of the regional and national impacts.

11 MR. BICKWIT: But the point is still there that
12 presently there is no preemption where you are outside
13 the radiological area, and this statement says maybe that's
14 not great.

15 CHAIRMAN AHEARNE: I would have thought that you
16 would disagree with that, because you have in a number of
17 points made a stronger -- I think that Len's draft does
18 reflect where the Commission has come out.

19 COMMISSIONER BRADFORD: I hadn't heard the
20 Commission previously say that it was prepared even to
21 consider preemption on non-radiological health and safety --
22 on non-radiological grounds if consideration of regional
23 or national impacts showed a desirable interest, and it
24 doesn't seem to me it has ever gotten off into the question
25 of whether we should be able to preempt state zoning laws or

1 a state land-use plan if we thought a nuclear power plant
2 was really needed at a particular site.

3 CHAIRMAN AHEARNE: Well, remember in another
4 section of the bill, we say we don't think we ought to be
5 even deciding whether it is needed.

6 Now, I have no problem qualifying in the direction
7 of that.

8 MR. BICKWIT: In other words, leave "existing
9 non-preemption" untouched.

10 CHAIRMAN AHEARNE: We just haven't asked the
11 Commission to address that before, and you might say that
12 this has just not been an issue we have discussed.

13 COMMISSIONER BRADFORD: And I would just say
14 something differently --

15 MR. BICKWIT: Did you address it in any of the
16 previous bills?

17 MR. SHAPAR: No. The Commission has never taken
18 the position defending preemption in any area other than
19 radiological health and safety, as far as I can remember.

20 COMMISSIONER BRADFORD: I guess that's right.

21 We sort of tip-toed around it in the waste
22 repository area.

23 MR. BICKWIT: Now, with respect to the radiological
24 area, what does the Commission want to do with respect to
25 what this bill does to remove the option.

1 CHAIRMAN AHEARNE: Now, tell me again what this
2 bill does?

3 COMMISSIONER BRADFORD: This bill terminates it,
4 I think.

5 MR. CORNELL: How does that impact with the
6 Clean Air Act amendments?

7 MR. SHAPAR: The Clean Air Act amendment is only
8 with respect to emissions. This is a much broader ---

9 MR. BICKWIT: This is siting.

10 MR. CORNELL: The Clean Air removes Federal
11 preemption from radiological emissions.

12 MR. SHAPAR: With respect to air emissions.

13 MR. BICKWIT: This is just a question of where
14 you put the plant.

15 MR. MALSCH: Although it is conceivable it could
16 relate to the air emission control siting in the broad
17 sense.

18 MR. BICKWIT: The question is: do you want
19 the state to make the siting decision?

20 CHAIRMAN AHEARNE: You mean the site suitability?

21 MR. BICKWIT: Yes.

22 CHAIRMAN AHEARNE: Harold -- not here.

23 MR. BICKWIT: I think that would be equivalent
24 to allowing a state to prohibit nuclear power, including
25 the state.

1 CHAIRMAN AHEARNE: In the Siting and Licensing
2 bill, early site provisions was it required -- for the
3 early site location provision in the Siting and Licensing
4 bill, wasn't the state going to do the site suitability?

5 MR. SHAPAR: They were going to take over a
6 delegation of our NEPA authority pursuant to Federal
7 standards ---

8 CHAIRMAN AHEARNE: Right. And decide whether or
9 not the site was suitable.

10 COMMISSIONER BRADFORD: But the law didn't
11 purport to change the preemption.

12 MR. SHAPAR: No. In fact, it made it perfectly
13 clear that it didn't affect preemption.

14 CHAIRMAN AHEARNE: Of the radiological?

15 COMMISSIONER BRADFORD: Of the radiological.

16 CHAIRMAN AHEARNE: But it did make the state --
17 except for ---

18 COMMISSIONER BRADFORD: The difference, I think
19 is this: if under the proposed siting and licensing act
20 the state should have said, no, this means the coastal
21 zone, it can't go here. Under this one the state could
22 say we do not want nuclear power plants in the state,
23 because in our judgment they emit an unacceptable level of
24 radioactivity. And our state is not a suitable -- there
25 are no suitable sites.

1 CHAIRMAN AHEARNE: I think what we ought to do is
2 to be very clear in the testimony on what we think the bill
3 does, and then be neutral.

4 MR. BICKWIT: Just say what the bill does?

5 CHAIRMAN AHEARNE: Be clear that this is what
6 the bill does, changes the current, existing to this, that
7 in the reference in the Siting and Licensing bill which the
8 Commission had indorsed that provision, that gave the
9 NEPA responsibilities to the state, but requiring the
10 states to follow the Federal guidelines.

11 COMMISSIONER BRADFORD: Right.

12 CHAIRMAN AHEARNE: Then as far as whether or not
13 this is acceptable, I think the Commission ought to be
14 neutral. I guess I have difficulty in seeing why we would
15 care one way or another.

16 MR. SHAPAR: You might want to be more helpful
17 in terms of giving the advantages and disadvantages and
18 still being neutral.

19 CHAIRMAN AHEARNE: Well, we could do that.

20 MR. KAMMERER: If you do that here, then you
21 ought to apply it to the other provisions ---

22 MR. SHAPAR: No, but this is really a key
23 position.

24 CHAIRMAN AHEARNE: What are the arguments for why
25 we should take a position?

1 COMMISSIONER BRADFORD: I know why I'm taking
2 a position.

3 CHAIRMAN AHEARNE: No, as far as the NRC. Why
4 should the NRC take a position?

5 COMMISSIONER BRADFORD: Okay, the reason I would
6 like to see the NRC take a position against preemptions,
7 because I think there is an adverse -- historically there
8 has been an adverse effect on the state's ability to
9 discharge its functions in the emergency context, and
10 Pennsylvania is not a bad example of that, because they
11 have not been involved in any of the questions relating to
12 radiological health and safety that would go in the licensing
13 process. I know in Maine, from my own experience as a
14 state official, we just didn't worry very much or think
15 very much about any aspect of that plant, because -- other
16 than its effect electricwise, because the Federal Government
17 had preempted radiological health and safety as we under-
18 stood it. The net result of that, if Three Mile Island
19 had happened at Maine Yankee, it would have been, I think,
20 probably even greater state disarray in the state government.
21 There would have been no equivalent, I think, to the risk ---

22 CHAIRMAN AHEARNE: Yes, but to some extent that is
23 solved by the requirements for the approved emergency system.

24 COMMISSIONER BRADFORD: Certainly the whole upgrade
25 in emergency planning helps.

1 Beyond that, my own position has just been
2 more of a feeling that I can't see why nuclear facilities
3 should be different. From the point of view of the NRC
4 as a whole, I'm not sure that that's a ---

5 CHAIRMAN AHEARNE: That's the difficulty I had
6 in going through it was I can't see why -- I can see how
7 each of us individually, personally might have a strong
8 view one way or another, but I couldn't see why -- what
9 effect it has on the NRC.

10 MR. BICKWIT: I think it could have safety
11 consequences.

12 MR. SHAPAR: With respect to siting, I don't
13 think.

14 In other words, I think a safety argument has been
15 made for preemption before, namely you scarce engineers
16 and experts, and if you had competing authorities, it could
17 cut against safety as a traditional argument. I don't see
18 how you could make it on siting though.

19 MR. BICKWIT: Let's say a utility wants to site
20 a plant in Rhode Island or Connecticut and believes that
21 the better site is Connecticut, but we will go to Rhode
22 Island if Connecticut says no to nuclear power.

23 MR. SHAPAR: That we will license? They still
24 have to get an NRC license.

25 MR. BICKWIT: Well, we may find it an acceptable

1 site, but we don't find it as acceptable as the
2 Connecticut site, we say, of the two sites we would prefer
3 the Connecticut site and Connecticut says, no.

4 I don't know how you can say that doesn't have
5 safety consequences.

6 CHAIRMAN AHEARNE: Because the other one is
7 acceptable and meets our standards.

8 MR. BICKWIT: You have to acknowledge that there
9 are different degrees of acceptability. You can't say
10 that every plant out there is equally safe and is sited in
11 an equally safe place.

12 CHAIRMAN AHEARNE: I know, but we don't require
13 every plant to be as safe as every other plant.

14 MR. BICKWIT: I know. I'm saying here is an
15 example where it is going to be unsafe.

16 CHAIRMAN AHEARNE: For example, many people
17 argue the HTGR is a much safer plant. We don't require all
18 plants to now become HTGRs.

19 MR. BICKWIT: Will you give me that my example
20 has a safety consequence?

21 CHAIRMAN AHEARNE: Oh, a secondary one.

22 COMMISSIONER BRADFORD: In this sense, we don't
23 regulate on that basis today, so that if you changed the
24 preemption scheme, you would not be changing the
25 situation in which the NRC would say, don't build that plant

1 in Rhode Island, put it back in Connecticut, that's a
2 safer site.

3 MR. BICKWIT: Don't we have an obviously superior
4 test?

5 COMMISSIONER BRADFORD: We have a superior test
6 under NEPA.

7 MR. BICKWIT: Yes, well?

8 COMMISSIONER BRADFORD: Which is not -- you
9 couldn't say you were changing the framework within which
10 this had ever happened, into one in which it couldn't happen.

11 MR. BICKWIT: I guess I don't see that.

12 We were inclined to find the Connecticut site,
13 obviously superior, if it is there. It is no longer there
14 under my example, so we have no obviously superior site,
15 we put the thing in -- we allow the thing to be sited ---

16 CHAIRMAN AHEARNE: I think what you are addressing,
17 Len, is that when we return certain -- and we get back
18 into it actually in the NEPA power issue -- in the turning
19 over of some of these review responsibilities to states,
20 the states have to -- there is one difficulty and I think
21 that's where advantages and disadvantages come in. One
22 difficulty that I would want to mention, certainly in the
23 NEPA power, and I think they are correct in this issue is
24 that because power plants tend to serve such large regions,
25 in some state that region would propose it be on the state,

1 and in that case there are -- in the siting cases, that
2 might be a need that the decision has to be more than a
3 single state.

4 Certainly the need for power is going to come up,
5 and I think, for example, that the states are the right
6 people to decide nuclear policy, but the Congress is going
7 to have to construct some mechanism where the state is
8 a plurality.

9 MR. BICKWIT: I understand. My only proposition
10 was that I don't see why the NRC should feel foreclosed
11 from taking a position on this provision, because it does
12 relate to what the NRC does.

13 COMMISSIONER BRADFORD: See, the obvious
14 superiority test is not a safety test. It is an environmental
15 impact test.

16 MR. BICKWIT: Which includes safety consequences.

17 MR. SHAPAR: We haven't really done it that way
18 up to now, though .

19 COMMISSIONER BRADFORD: I'm not sure it does.

20 MR. BICKWIT: That means we ought to.

21 CHAIRMAN AHEARNE: No. I think that the
22 safety consequences of the site is with reference to ---

23 MR. BICKWIT: When you are looking at alternative
24 sites, you look at safety consequences of the site.

25 CHAIRMAN AHEARNE: Frankly, for me, I haven't looked

1 at many new sites. But my theory would be: Is it an
2 acceptable site?

3 MR. BICKWIT: Okay, that's not the theory of
4 NEPA.

5 CHAIRMAN AHEARNE: But NEPA, I don't think applies
6 to safety.

7 MR. BICKWIT: Relates to safety? I don't agree
8 with you.

9 MR. SHAPAR: No, I don't agree with that either.

10 COMMISSIONER BRADFORD: The obvious superiority
11 test on the other hand, I think, has not, as I understand
12 it, been used, at least with safety in any meaningful way.

13 CHAIRMAN AHEARNE: For example, the New England
14 case that you referenced, we go back to the Seabrook
15 arguments, the arguments on all of those sites, I don't
16 recall ever reading anything on that. It was focused
17 primarily on the safety issues of those alternative sites.

18 MR. BICKWIT: Well, I can't tell you that, but
19 it just seems to me as a matter of policy ---

20 CHAIRMAN AHEARNE: Peter?

21 COMMISSIONER BRADFORD: I think that's right.

22 MR. CORNELL: The evacuation measures.

23 CHAIRMAN AHEARNE: Yes, but that's acceptabilities.

24 COMMISSIONER BRADFORD: There was an evacuation
25 issue in the Seabrook case, but I don't remember it was a

1 subpart of the obvious superiority argument.

2 MR. BICKWIT: Okay, I don't think we have to
3 reach the answer to the question of what is common
4 practice. I think, from a policy standpoint, it does
5 make sense to evaluate alternative sites from the stand-
6 point of safety. It just gets in the way.

7 MR. HANRAHAN: The proposed siting rule, one of
8 the options, is to do that.

9 CHAIRMAN AHEARNE: I know.

10 MR. SHAPAR: But I think the basic question here
11 is not so much whether you can make out some kind of
12 a relationship with safety, I think the basis question is
13 whether or not it is enough of an argument to warrant this
14 agency taking a position.

15 CHAIRMAN AHEARNE: Yes, and I come out neutral,
16 although I want to put in the points that you make.

17 MR. BICKWIT: Also, there may be safety arguments
18 for this thing. I mean, if your experience with the
19 states would demonstrate they are going to be more
20 protected ---

21 CHAIRMAN AHEARNE: As I say, primarily, I
22 think the Commission ought to be neutral. There are
23 enough pros and cons (inaudible)

24 MR. BICKWIT: Okay, I have no problems with
25 the Commission being neutral, I just have a problem with

1 the Commission having to be neutral.

2 CHAIRMAN AHEARNE: I see.

3 COMMISSIONER BRADFORD: Indeed, once all five
4 votes are in, the Commission may turn out not to be neutral,
5 but I'm at least tentatively willing to suppress my
6 personal feelings, because I think the net result will
7 come out of it so the position will be better off. It
8 has always been before.

9 CHAIRMAN AHEARNE: I see.

10 Early Site Permits.

11 COMMISSIONER BRADFORD: What is the standard
12 that is set up once the site has received early site
13 approval? What is the standard against which -- that one has
14 to be met to reopen the siting questions?

15 MR. BICKWIT: Marty, what is this?

16 MR. MALSCH: Significant new information.

17 COMMISSIONER BRADFORD: Have we got things like
18 res judicata hanging around and collateral estoppel?

19 MR. MALSCH: Although I think even the Commission's
20 application of those documents would admit free litigation --

21 COMMISSIONER BRADFORD: Significant new issues,
22 how did they handle the thing that was so troublesome
23 last time in terms of whether there has to have been an
24 opportunity for hearing versus actual resolution of an
25 issue?

1 MS. HARDING: What's the difference?

2 COMMISSIONER BRADFORD: No, but I mean in this
3 law?

4 MR. SHAPAR: Isn't this one just a copy of the
5 NRC bill?

6 CHAIRMAN AHEARNE: No. The state can reopen on
7 this bill. The state can reopen if the state determines
8 the change/circumstances justify reexamining the site in
9 question. So it is a fairly loose standard.

10 COMMISSIONER BRADFORD: I see, so it is a
11 different standard all together. Okay.

12 MR. BICKWIT: We don't --

13 COMMISSIONER BRADFORD: I will pass on this one.

14 MR. BICKWIT: -- As I look at it, we don't really
15 point out the difference between our rule and the -- this
16 bill, which, as I understand it is, that under this bill
17 you can apply for the site independent of an application for
18 construction ---

19 CHAIRMAN AHEARNE: Is that the early site?

20 MR. BICKWIT: Yes. And we don't say that, and
21 I think there is some advantage to that.

22 CHAIRMAN AHEARNE: Our siting rule didn't address
23 early siting?

24 MR. BICKWIT: No, but our current rule allows you
25 to apply for a site in conjunction with an application for

1 construction permit. This says you can apply for a site,
2 even without regard ---

3 CHAIRMAN AHEARNE: Yes, this is a typical early
4 site permit.

5 MR. BICKWIT: Yes, but we don't point out that
6 there is any difference between this proposal and what is
7 now on our rule books.

8 MR. SHAPAR: And we should.

9 MR. BICKWIT: And we should

10 MR. MALSCH: Well, except that I think this
11 confines the early site ---

12 CHAIRMAN AHEARNE: It does, it does, and it would
13 add a new section that would permit site approval apart
14 from facility design. It permits the site to be approved
15 by the state, similar to a governor of a state deciding for
16 themselves.

17 MR. BICKWIT: So you have to be a genius to
18 figure out what the difference is between our rule ---

19 CHAIRMAN AHEARNE: Or have lived through that
20 early site permit thing.

21 I would like to point out that it does provide
22 a very loose criterion for the state to reopen the issue,
23 because I think it does.

24 MR. BICKWIT: Our rule permits site approval
25 apart from facility design. But separate and apart from

1 an application for a construction permit.

2 MR. MALSCH: Well, my only trouble is that I
3 thought the rule in some place said that the only people
4 who could file for these were people who intended to
5 build a plant. So we would be talking about potential
6 CP holders anyway in this case.

7 MR. SHAPAR: Our rule does that?

8 MR. MALSCH: No, it is in this legislation, it
9 says so.

10 MR. BICKWIT: Oh, does it?

11 MR. MALSCH: In this case, I'm not sure there is
12 much of a difference at all.

13 MR. BICKWIT: Except then under this they --
14 if they intend to build a plant sometime far off in the
15 future, they can build up site banks and ---

16 MR. MALSCH: I think you could maybe do it under
17 our present rule.

18 MR. BICKWIT: But you would have to file a
19 construction permit application?

20 MR. MALSCH: But just call that phase one of the
21 CP application as long as the person is actually intending
22 to build a plant.

23 MR. SHAPAR: But isn't the point -- if this
24 bill doesn't allow a state to get a site approval, I think
25 you have all felt before that they should.

1 CHAIRMAN AHEARNE: Marty, what it says is that
2 an application submitted by any person, seeking a site
3 permit for approval of a site as the location for one or
4 more utilization facilities ---

5 MR. MALSCH: I haven't got the bill.

6 MR. CHOPKO: Subsection A-1 says a person may
7 be issued a permit under this section. Such person would not
8 be eligible for a license. That is under 103(d).

9 MR. BICKWIT: Yes, but it doesn't say that you
10 have to apply for a license under 103(d) in order to get
11 the site permit. And our current rule says you do.

12 COMMISSIONER BRADFORD: Yes, I think you are
13 saying the same thing, aren't you?

14 MR. CHOPKO: Right.

15 MR. SHAPAR: Well, doesn't the point remain that
16 if this bill doesn't allow a state to get an approved site,
17 we would like it to be able to do it.

18 CHAIRMAN AHEARNE: Yes. So it certainly ought to
19 be clarified.

20 It looked very similar to a lot of that old
21 stuff. When a state goes to the EIS the state accepts it,
22 the state has to defend it.

23 MR. SHAPAR: Yes.

24 I guess I would make the point, the bill that you
25 are referring to is something you had some adverse comments

1 on, and I guess it might be well to go back and check
2 the comments you previously approved on the Administration
3 bill to see whether or not you still want to make them
4 again.

5 CHAIRMAN AHEARNE: Me personally, or the Commission?

6 MR. SHAPAR: No, I'm referring to the Commission.

7 COMMISSIONER BRADFORD: Let's see, not so much
8 I think on the early siting for which we ---

9 MR. SHAPAR: Well, I remember one precisely, and
10 that was standards for the granting of the site permit.
11 One of the Commission's comments in the bill was take them
12 out.

13 CHAIRMAN AHEARNE: Do you mean what should we
14 specify?

15 MR. SHAPAR: Yes.

16 CHAIRMAN AHEARNE: Why do they want to take them
17 out?

18 COMMISSIONER BRADFORD: I don't remember that.

19 MR. SHAPAR: Flexibility.

20 COMMISSIONER BRADFORD: Is that right?

21 MR. SHAPAR: Uh-hum.

22 CHAIRMAN AHEARNE: I don't think that's right.
23 I mean this sounds like a very sound ---

24 MR. SHAPAR: I wasn't saying you should reiterate
25 them, I was just saying maybe you want to take a look at them.

1 CHAIRMAN AHEARNE: The stuff that it listed
2 here, really sounded very good.

3 MR. SHAPAR: I think I know why you say that.

4 COMMISSIONER BRADFORD: I had some adverse
5 comments on this standard for reopening, but that's
6 different here, anyway. Then there was a lot of comment
7 on the question of delegation as far as need for power to
8 NEPA and how that was to be done, which course would the
9 questions for review be ---

10 CHAIRMAN AHEARNE: Carl, how does this bill --
11 this particular section fit with Mr. Mathis' bill, which
12 seemed to be just early site approval?

13 MR. KAMMERER: I haven't looked at that.

14 CHAIRMAN AHEARNE: Mathis is a member of the
15 Udall committee, and about a month after -- three weeks
16 after Udall introduced this, he introduced a bill,
17 Early Site Approval.

18 (Commissioner Bradford departed the meeting. 3:30)

19 MR. SHAPAR: My recollection is that it was very
20 close to the Administration's provisions on licensing
21 reform.

22 CHAIRMAN AHEARNE: I guess somebody ought to take
23 a look at it, as we might be asked at the hearing what
24 we think about the relative advantages or disadvantages
25 of Mr. Mathis' early site approval versus that contained in

1 the bill.

2 MR. KAMMERER: Mr. Chairman, if you start doing
3 that there are at least 20 other bills ---

4 CHAIRMAN AHEARNE: By members of the committee
5 that we testify in front of?

6 MR. KAMMERER: No.

7 MR. COMBS: There are 35 other bills referred to
8 the subcommittee.

9 CHAIRMAN AHEARNE: No, I'm just concerned that
10 here is a member -- he may very well ask, if he attends. I
11 hope he doesn't attend.

12 MR. KAMMERER: He is running to be a senator.
13 He is more than likely to attend.

14 CHAIRMAN AHEARNE: Consolidation of Certain
15 Licensing Issues?

16 Attrition is setting in.

17 MR. HANRAHAN: You have a single administrator.

18 CHAIRMAN AHEARNE: Oh, I wish that were true,
19 but it isn't.

20 Consolidation Procedures: I'm not sure whether
21 this -- some of you with more skill -- it looked to me like
22 it didn't do very much because of the changed circumstances
23 phrase.

24 MR. BICKWIT: Well, when you are going to the
25 operating license stage, isn't everything a brand new

1 ballgame under existing law?

2 MR. SHAPAR: Collateral estoppel and res judicata
3 to a limited extent.

4 MR. MALSCH: But it is limited. If they are
5 different parties they can raise the exact same issues
6 all over again, and we have to decide.

7 MR. BICKWIT: And this is saying we can't.

8 MR. SHAPAR: No significant new information.

9 CHAIRMAN AHEARNE: Well, it says they can't -- no --
10 or change circumstances. Is that a term of art that is
11 sufficiently well defined so that ---

12 MR. SHAPAR: No.

13 MR. BICKWIT: But it is obviously a tighter
14 standard than you have now.

15 Now, you wouldn't have to make a showing of
16 changed circumstances, just raise the issue again. It
17 seems to be a helpful ---

18 CHAIRMAN AHEARNE: Is it really a tighter ---

19 MR. BICKWIT: Sure.

20 MR. SHAPAR: I would say only conceptually.

21 CHAIRMAN AHEARNE: I guess I would like to
22 incorporate that thought, that theoretically it looks as
23 thought it might tighten it up. I mean, I notice that
24 the phrasing that the testimony has: ..."significant new
25 information or significant policy change..." I would have

1 no problem with that, if that requires -- at least to me,
2 I would think it would be a little more harder to prove
3 that something is really significant. Changed circumstance
4 sounds like a very loose phrase.

5 MR. SHAPAR: One changed circumstance is that
6 you have got a final design for the first time.

7 MR. BICKWIT: Well, do you want to tighten it?

8 CHAIRMAN AHEARNE: Yes.

9 MR. BICKWIT: I see. That's the drift I see.

10 CHAIRMAN AHEARNE: I think that would be consistent
11 with the earlier discussion when Victor and Peter were here,
12 when we were trying to push towards getting this one-step
13 system, but everything laid out at the time of the
14 construction permit.

15 Well, if you do that, then it really has to be
16 something significant.

17 MR. BICKWIT: So you want to think about getting
18 rid of the changed circumstances?

19 CHAIRMAN AHEARNE: Yes.

20 Okay, Waste Management.

21 MR. BICKWIT: How does the majority feel about
22 that?

23 CHAIRMAN AHEARNE: I don't know.

24 MS. ARON: Last year, it seemed to me we spent
25 a lot of time identifying circumstances.

1 MR. SHAPAR: Not so much identifying them as
2 arguing about them.

3 CHAIRMAN AHEARNE: On the scope of operating license,
4 that's covered in the same --

5 Radioactive Waste: Bill can you provide an
6 alternative schedule?

7 MR. DIRCKS: We've got one, yes.

8 CHAIRMAN AHEARNE: We are concerned about the
9 schedule they lay out.

10 MR. DIRCKS: They say repository final licensing
11 out by January and we say December.

12 I think the point in here we consider an
13 important one, that if you happen to slip one of these
14 milestones, does that really mean everything should stop.

15 CHAIRMAN AHEARNE: Yes, I agree with that one.

16 My initial question though was, they have placed
17 a bunch of schedules on here, not later than January '81,
18 not later than February, et cetera, and since our schedule
19 is different, that we think it is going to be met.

20 MR. DIRCKS: Again, the 1996 date, we think is
21 a date that we will all meet, but when you try to
22 backfit to come down on ours ---

23 CHAIRMAN AHEARNE: Our testimony says the deadline
24 should be changed to provide a somewhat more realistic
25 schedule. And I wondered whether we wanted to say there

1 should be no deadlines, or the deadline should be changed
2 and here is our best estimate. Now we think that we have to
3 either do one or the other. We have to either say no
4 deadline, or here is a better estimate for the deadlines.
5 Then I agree we should go on to say -- I wouldn't just
6 question, I would say we oppose. I don't think that failure to
7 meet it ought to be significant evidence is adequate.

8 This is legislative direction to Federal agencies,
9 "you must do something by..." so I think that's appropriate,
10 than to go on to say that doesn't meet it, then that is the
11 obvious test I would disagree with. Can you provide them
12 with a statement?

13 MR. DIRCKS: We will get that, but I think the
14 point you made, if you go with deadlines (inaudible).

15 CHAIRMAN AHEARNE: Participation for States.

16 We say that in-hand state participation in the
17 regulatory process, we provide the state. What did you
18 have in mind, what more -- Page 14 of the testimony,
19 last sentence.

20 MR. BICKWIT: What I had in mind was states
21 getting into the fray a bit more in the hearings.

22 CHAIRMAN AHEARNE: Okay, then don't you mean
23 that -- wouldn't it be better to say that state partici-
24 pation in the regulatory process could provide a state
25 with substantial opportunity. The word "inhand" seemed to

1 me we have some other mechanism ---

2 MR. BICKWIT: I see.

3 MR. TRUBATCH: It was my understanding that
4 there was an attempt to involve the states earlier, before
5 the formal adjudication, to get them more involved when the
6 staff actually reviews the license application.

7 MR. BICKWIT: Oh, that's true, the characterization.

8 MR. TRUBATCH: The bill would propose that by
9 allowing a state to go to DOE anytime, which would be
10 sort of a start, because once they made a proposal and
11 say we don't like what you are doing here, we think you
12 should do it this way. Instead of having to go to DOE
13 and set up this cumbersome ---

14 CHAIRMAN AHEARNE: But, Sheldon, this says:
15 "enhance participation in the NRC regulatory process."

16 MR. BICKWIT: Yes, and you are referring to
17 states getting into it in the characterization process.

18 CHAIRMAN AHEARNE: We have already said that
19 our process has in mind the states being involved with DOE
20 in the element of that site characterization plan.

21 MR. BICKWIT: What "enhanced" means is more than
22 in a typical situation. More than in a typical licensing
23 situation where we are telling the states to come in well
24 in advance of even a construction authorization.

25 CHAIRMAN AHEARNE: Well, then I would prefer to

1 strike "enhance" and go on to explain that, because, at
2 least, I read it as we had to find some way to modify
3 our regulatory procedure, because there had been a
4 proposal at one stage to make a state member on each of
5 the Licensing Boards that would be addressing the license
6 application, and we have rejected that ---

7 MR. BICKWIT: I remember that.

8 CHAIRMAN AHEARNE: -- and I thought that's
9 what was coming back up again.

10 MR. SHAPAR: I think an easy way of handling it
11 is say, "believes that early and active state participation..."
12 and I think that would carry it.

13 CHAIRMAN AHEARNE: Yes.

14 Now, in the State Veto section I found some
15 problems with the way it was written. I had much preferred
16 the way we have already testified. Now it may be the same,
17 but I preferred what we had said before.

18 We really, carefully stayed away from a state
19 veto. Instead, we tried to describe that we thought the
20 right thing for the state to do was to participate in
21 the regulatory process, to, at the end of that stage, if
22 the state still disagreed, that that would issue -- then
23 go to the President which would then go to the Congress,
24 rather than saying ---

25 MR. BICKWIT: If a veto were provided, that's the

1 way you would do it?

2 CHAIRMAN AHEARNE: Yes.

3 I thought we stated that. I thought we ended
4 up saying we thought it was appropriate.

5 MR. BICKWIT: I don't believe so.

6 CHAIRMAN AHEARNE: Bill?

7 MR. DIRCKS: If at the end of the process, the
8 state ---

9 CHAIRMAN AHEARNE: Still disagrees ---

10 MR. DIRCKS: -- still did not agree ---

11 CHAIRMAN AHEARNE: Then it would go to the
12 President, and then if he --

13 MR. BICKWIT: We actually came out for it?

14 CHAIRMAN AHEARNE: Yes. See, what we have done
15 is stayed away from veto, and I'm addressing a straight
16 question: Are we in favor of veto, the answer has been
17 "no".

18 MR. TRUBATCH: That does not -- after that, this
19 does not give or propose that a state should have a veto.
20 It still proposes that a state should come to Congress
21 and request it, if we stop construction or operation
22 activities. So I don't see where you are objecting ---

23 CHAIRMAN AHEARNE: Sheldon, I'm objecting to
24 the description of, for example, if a provision is made
25 for a state-initiated veto and then the timing of the state

1 veto request, and your point is that that's congressional
2 action. My point is that I prefer to address this section
3 by, instead, referencing what we have already said we
4 believe is the right way the procedure should be run.
5 We have testified to that, and that's what I would prefer
6 to go back to.

7 MR. TRUBATCH: Which particular testimony are
8 you referring to?

9 MR. KAMMERER: We testified before Glenn and
10 Hart and Udall, exactly in that same way.

11 MR. TRUBATCH: That came right out of the report,
12 then.

13 MR. BICKWIT: You must have changed your
14 testimony since the report.

15 CHAIRMAN AHEARNE: Which report?

16 MR. BICKWIT: Since the report on state
17 participation.

18 CHAIRMAN AHEARNE: It was that testimony I gave
19 in January.

20 MR. BICKWIT: That report didn't commit you to ---

21 CHAIRMAN AHEARNE: It is further, it is a further
22 development.

23 MR. BICKWIT: Yes, okay. That's my point.
24 This was taken from the report.

25 CHAIRMAN AHEARNE: No, it is a further development

1 as this issue -- in fact, we had a series of hearings
2 specifically focused on the state involvement in this
3 process. And that's where the Commission came out.

4 Disposal Sites for Low-Level Waste:

5 Bill, do you or does NMSS agree with the idea
6 of co-locating the low-level waste with chemical waste?

7 MR. DIRCKS: Well, we think it is a pretty good
8 idea, I mean, I have talked it over with people.

9 CHAIRMAN AHEARNE: Okay.

10 Do you have any problem with ---

11 MR. DIRCKS: Is that still tied to the grant
12 program that Udall has? Somewhere in this sanitary land
13 fill is a chemical waste. EPA had a grant program
14 attached to it. Is that still linked?

15 CHAIRMAN AHEARNE: Yes, yes. There is a grant
16 program.

17 It is authorized to provide financial assistance
18 to each state for pre-construction activities involved
19 in the establishment of --- Page 59 of the bill.

20 Mr. Udall is a piker compared to Mr. Lujan.

21 MR. DIRCKS: What?

22 CHAIRMAN AHEARNE: He is a piker compared to
23 Mr. Lujan. Lujan has a similar bill which he has
24 proposed that treats the same issue, except that he has
25 \$100 million that he appropriated for us to dispense.

1 MR. DIRCKS: Can we put some of that into the
2 administrative expenses of the agency? We could build
3 a headquarters at each site.

4 CHAIRMAN AHEARNE: Do you have a question about
5 the grant program, though?

6 MR. DIRCKS: No. I knew EPA had a grant
7 program, and I knew he was trying to make a linkage here
8 between that program and hazardous waste sites, and now,
9 what it is is that we are going to have our own grant
10 program.

11 CHAIRMAN AHEARNE: Fred, do you know? Is the
12 only difference between the Lujan's bill and this bill
13 the money? It sort of looks like it.

14 MR. COMBS: (Inaudible).

15 CHAIRMAN AHEARNE: You want to be thinking about,
16 if they ask if this kind of a bill were to be approved,
17 what would be the right amount of money.

18 MR. DIRCKS: I guess there will be some compli-
19 cations in its grant-making, but that's a technicality
20 one.

21 MR. STEPHENS: Are we already giving technical
22 assistance to things like low-level waste?

23 MR. DIRCKS: To low-level waste, we are.

24 MR. STEPHENS: Well, we have got a sentence
25 in here saying: "However, to avoid conflict with NRC's

1 regulatory responsibility, such incentives should be
2 administered by DOE." Do we mean that to include
3 provision of technical assistance if we are already doing
4 it?

5 CHAIRMAN AHEARNE: Where is that?

6 MR. STEPHENS: Top of 16 of the testimony.

7 MR. DIRCKS: Oh, it is the business of pre-
8 construction costs, I think.

9 MR. STEPHENS: As the two sentences follow one
10 another it would appear we are suggesting that we ought
11 not be doing any technical assistance.

12 CHAIRMAN AHEARNE: Yes.

13 MR. DIRCKS: Oh, I agree. What it is if we
14 are writing technical assistance on the pre-construction
15 phase of it, then we turn around and regulate it to see
16 whether it meets the requirement. There is that change.

17 CHAIRMAN AHEARNE: So you would agree that the
18 technical assistance ought not be provided by us?

19 MR. DIRCKS: The technical assistance we provide
20 to the states now, is in the regulations criteria and the
21 inspection and so on.

22 MR. SHAPAR: And NEPA.

23 MR. DIRCKS: And NEPA. But we don't provide
24 them assistance in locating sites and constructing of sites.
25 This looks like it is ---

1 MR. TRUBACH: Well, if we struck out "such"
2 and replaced it with "specific pre-construction costs" ---

3 CHAIRMAN AHEARNE: Well, why do we refer to
4 provision of technical assistance?

5 MR. TRUBATCH: That was also proposed in the bill.

6 MR. DIRCKS: There, page 59 of the bill.

7 "The Commission is authorized to provide financial
8 assistance to much of the state..." ---

9 CHAIRMAN AHEARNE: I'm looking through technical
10 assistance and I don't see it.

11 MR. HANRAHAN: Page 49. Line 10.

12 CHAIRMAN AHEARNE: Okay, then we ought to clarify
13 and separate those two. You don't have that exception,
14 Bill, do you or do you, in technical assistance as far
15 as the regulatory program?

16 MR. MALSCH: Except I don't think the bill is
17 so clear that technical assistance is confined to regulatory
18 problems.

19 CHAIRMAN AHEARNE: Yes.

20 MR. MALSCH: It just says technical assistance
21 for resolving problems. It could be either construction
22 or ---

23 MR. HANRAHAN: Want to limit it to the regulatory.

24 CHAIRMAN AHEARNE: Yes. I guess, why don't we
25 just do that. Go on to say that the incentives by DOE,

1 except technical assistance on regulatory issues would
2 be appropriate for us to provide.

3 CHAIRMAN AHEARNE: Anything else on low-level
4 waste?

5 Okay, Spent Fuel -- Spent Fuel Storage.

6 MR. BICKWIT: This last paragraph we really didn't
7 understand.

8 CHAIRMAN AHEARNE: Which paragraph?

9 MR. BICKWIT: Page 18.

10 CHAIRMAN AHEARNE: Do you mean why would it
11 be inappropriate?

12 MR. BICKWIT: Yes.

13 MR. DIRCKS: Where is that on the page?

14 CHAIRMAN AHEARNE: It is page 63 of the bill.

15 MR. SHAPAR: I don't know who suggested it, but
16 I think I understand the rationale, since we have to look
17 at it in our NEPA process anyway, we ought to get in bed
18 with DOE in the early part of it so we can reserve our
19 independent role.

20 MR. BICKWIT: Why can't we concur as part of
21 our licensing process.

22 MS. HARDING: For example, full core reserve
23 is something we are interested in so we can certify
24 (inaudible)

25 MR. HANRAHAN: Isn't the operative word Federal?

1 It goes back to the sentence above where it says we have
2 no position of whether it should be private or Federal.
3 (inaudible) needs of the Federal capacity. The point
4 that a facility needs the capacity to store fuel would
5 be very relevant for NRC to participate in.

6 CHAIRMAN AHEARNE: So you say, it would or would
7 not?

8 MR. HANRAHAN: Would be relevant.

9 CHAIRMAN AHEARNE: I would think that
10 reading through on page 63, what would be, is that we are
11 asked to comment on, what seems appropriate to us ---

12 MR. BICKWIT: I'm sorry, I didn't hear.

13 CHAIRMAN AHEARNE: I said, reading this
14 subsection of the bill, it would seem appropriate for us
15 to concur.

16 MR. DIRCKS: That a need exists at a particular
17 facility.

18 CHAIRMAN AHEARNE: Because these issues that
19 we would be concurring on are the things that we have to
20 license.

21 MR. TRUBATCH: Well, then that means that an
22 alternative proposal would be that we should do all
23 concurring without having DOE involved. Now, we should
24 do the determination without having DOE first make a
25 determination.

1 CHAIRMAN AHEARNE: Well, except the bill is
2 focused upon DOE doing something. DOE has to take an
3 action, and I am in favor of having all of the responsibility
4 for an action on one person.

5 We have to agree, we have to concur with that
6 particular piece of it.

7 MR. TRUBATCH: Well, on an alternative to
8 a licensee you could initiate that action, for us to
9 determine that in fact, it does have a need.

10 CHAIRMAN AHEARNE: But the licensee can't follow
11 through with this action. The action is that DOE is
12 to provide storage, at least as I understand for this
13 provision of the bill, it is for DOE to provide the storage,
14 so they are the ones to take the action. So I would agree
15 to drop that paragraph.

16 MR. HANRAHAN: Do you want to say you would
17 welcome legislation ---

18 CHAIRMAN AHEARNE: Pardon me?

19 MR. HANRAHAN: On 18, it says we would welcome
20 legislation.

21 CHAIRMAN AHEARNE: Yes, I thought we had already
22 said that.

23 MR. BICKWIT: Yes.

24 CHAIRMAN AHEARNE: Public Participation Funding.

25 MR. HANRAHAN: Does that relate to intervenor

1 funding?

2 MR. BICKWIT: No.

3 CHAIRMAN AHEARNE: I notice no amount is
4 authorized, which I guess I would suggest we comment on.

5 MR. BICKWIT: What amount would you propose?

6 CHAIRMAN AHEARNE: Well, I would guess a million
7 and a half dollars. It is a 3 and a half year program.

8 MR. HANRAHAN: Three times \$500,000?

9 CHAIRMAN AHEARNE: That's right.

10 MR. BICKWIT: I don't know what you are talking
11 about.

12 MR. SHAPAR: This is just general authority to
13 fund, isn't it? The amount comes in a later bill?

14 CHAIRMAN AHEARNE: Well, except they have authorized
15 amounts elsewhere, for example, in the -- the \$4 million
16 for the state, and make that commitment.

17 MR. BICKWIT: I think we are going to get trimmed
18 down.

19 CHAIRMAN AHEARNE: We say that the program
20 shouldn't be confined to rulemaking and CP and OL
21 proceedings. I think if we believe it should be broader
22 than that, we ought to give them examples.

23 MR. BICKWIT: Waste ---

24 CHAIRMAN AHEARNE: I'm just saying, we ought to
25 give an example.

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

MR. BICKWIT: All right.

CHAIRMAN AHEARNE: Now, at the end of that paragraph we say, "Under the recent recommendations from the Administrative Conference, the standard could invite consideration of applicant's priorities..." and I feel that we ought to go on -- there is a sense that -- there is a "therefore" and what is the "therefore"?

MR. BICKWIT: Therefore, there are complications. What you are pointing out is this may be a complicated standard to administer.

CHAIRMAN AHEARNE: And therefore, do we have a better standard to recommend?

MR. BICKWIT: No, because the position that we are taking is that we are satisfied with -- we are willing to live with the complications, that is, that's the thrust of it. We could make that clearer, I agree.

CHAIRMAN AHEARNE: Yes.

Anything else on that?

State Authority on Need for Power. As I mentioned earlier, we have got to go on ---

MR. STEPHENS: Before you go on to that.

CHAIRMAN AHEARNE: Sure.

MR. STEPHENS: Does the majority really want to say that it doesn't want to be reviewed in court?

CHAIRMAN AHEARNE: Yes, I think so.

1 MR. SHAPAR: I hope so.

2 MR. BICKWIT: We don't want to tie this thing
3 up.

4 (Simultaneous voices.)

5 CHAIRMAN AHEARNE: I already had that.

6 MR. STEPHENS: You will undoubtedly have it
7 again after this testimony.

8 CHAIRMAN AHEARNE: We don't want to tie up the
9 licensing process.

10 Need For Power: As I mentioned earlier, I
11 think we have got to go on to point out that need for
12 power is a regional consideration in many cases, and
13 at least for myself, I'm in favor of having the states
14 do the determination on need for power, but I think as we
15 tried to point out, I don't know where the Commission
16 came out on it, on the Siting and Licensing bill, but
17 I thought the Administration, at least, was commenting
18 on the regional -- trying to get the regional addressal
19 of that issue.

20 I don't think it is an NRC area, but restricting
21 you to a single state just doesn't address the real use of
22 this.

23 MR. BICKWIT: Agreed.

24 CHAIRMAN AHEARNE: Now, on Price-Anderson, I'm
25 going to have Howard testify.

1 MR. SHAPAR: I have one comment.

2 CHAIRMAN AHEARNE: Yes.

3 MR. SHAPAR: On page 23. Bottom of the page,
4 "The Commission takes no position on the exclusion of
5 claims-associated costs from financial protection." I would
6 think that we should take a position, and that our position
7 would be that we are in favor of excluding claims-
8 associated costs from financial protection.

9 What this is, a shorthand way of saying is, there
10 was an amendment to the Price-Anderson Act called the
11 Hathaway Amemdment, which got very badly screwed up in
12 the drafting. Everybody thought ---

13 CHAIRMAN AHEARNE: That's right.

14 MR. SHAPAR: -- all claims-associated costs were
15 excluded and the drafting was so bad that we went to
16 Justice, and they said, unfortunately that may have been
17 the intent, but that is not what it says. I would think
18 that we would want to take a stand and support excluding
19 costs. It is a motherhood position and I think it is --
20 why not take it.

21 CHAIRMAN AHEARNE: Why?

22 MR. SHAPAR: Because we have got a statute that
23 we are administering now that's very very badly drafted.
24 We have exceeded very reluctantly to the Justice Departments
25 position.

1 CHAIRMAN AHEARNE: Okay, so from the standpoint
2 that we have to administer and it is a ---

3 MR. SHAPAR: Even there, I would say if it
4 makes more -- We are responsible for administering the
5 Price-Anderson regime and if this means a better system
6 or making funds available to the public, it seems to me
7 this is part of our legitimate role to comment on it.

8 CHAIRMAN AHEARNE: In that case, it is a better
9 system? Was it excluded?

10 MR. SALTZMAN: I'm sorry. I thought you were
11 talking to Len.

12 Yes, I think so. We have always assumed that
13 what happens -- what we agreed with was that all of the
14 money in the Price-Anderson would be available to claimants,
15 and none to the cost for ---

16 CHAIRMAN AHEARNE: Okay.

17 Len, why didn't you want to take a position?

18 MR. BICKWIT: I'd like to come back to our
19 cover memo on this.

20 This may be -- I think the Commission ought to
21 consider not taking positions -- not with respect to this
22 issue, but in general with respect to Price-Anderson.

23 MR. SHAPAR: I think the Commission has few
24 opportunities to look good, and this is one of them.

25 MR. BICKWIT: No. I don't have any problem with

1 taking a position on this kind of issue, but I think, on
2 the gut issues here, I think the Commission ought not to
3 take a position.

4 CHAIRMAN AHEARNE: Like what issues?

5 MR. BICKWIT: Meaning lifting the limits and
6 keeping some limits, getting rid of ENO's. In effect,
7 you can't comment on those questions without commenting on
8 the extent to which you want to subsidize the industry

9 CHAIRMAN AHEARNE: Yes.

10 MR. SALTZMAN: Except that the basic legislation
11 proposes protection of the public as well as the industry,
12 and you can't get away from that second feature.

13 MR. SHAPAR: I don't know why the Commission
14 shouldn't take the position; it is in favor of more protection
15 for the public.

16 MR. BICKWIT: It's economic effect.

17 I just think what you are really dealing with
18 is a question of allocating lawsuits between -- safety
19 losses which are admitted, allocating those losses as
20 between the public and the nuclear industry, the government.

21 MR. SHAPAR: I think if the Commission feels, as
22 a matter of policy, it leans in the direction of protecting
23 the public, it should say so.

24 MR. BICKWIT: Giving them economic protection.

25 MR. SHAPAR: That's correct. On the other hand,

1 if it were a question of going the other way and favoring
2 the industry, I think the Commission should remain neutral
3 on the situation.

4 MR. BICKWIT: It is one or the other.

5 It is a question of when you are talking about
6 whether liability is limited it is either -- if it is
7 limited then the public pays, if it is not limited, I guess
8 the nuclear industry pays.

9 MR. SHAPAR: I guess I don't see it that way.

10 The Commission now has statutory responsibility
11 for administering the Price-Anderson Act. The Price-
12 Anderson Act is up for grabs. It seems to me if the
13 Commission has a policy position that favored better
14 financial protection for the public it should say so ---

15 MR. BICKWIT: More efficient, yes.

16 MR. SHAPAR: What do you mean more efficient. I'm
17 talking in terms of raising the limit on liability. That
18 is protecting the public. Why shouldn't the Commission
19 say so, it administered the Price-Anderson regime.

20 CHAIRMAN AHEARNE: Len, why do you feel that
21 that isn't a sound argument?

22 MR. BICKWIT: My feeling is that you are supposed
23 to be out of the promotion of nuclear power. You can't deal
24
25

1 with these questions without cranking into the equation
2 the extent to which you want to promote nuclear power.

3 It is true that you are talking about protecting
4 the public in an economic respect. I don't think the
5 Commission should be taking a position on whether the
6 public gets paid or the nuclear industry gets subsidized.

7 MR. MALSCH: One possible issue is the only
8 Commission concern is protecting the public, why are we
9 in favor of any limits on liability?

10 MR. SHAPAR: Well, we are asked to comment on
11 this bill.

12 MR. MALSCH: We could, in theory comment on
13 the limits all together ---

14 MR. SHAPAR: We could in theory, but we could
15 in theory comment about anything. But the bill in front
16 of us is whether we got to \$5 billion. I don't see why
17 the Commission can't address that point.

18 MR. MALSCH: I'm only saying, the reason for
19 our taking a position is protecting the public, only.
20 We are not interested in speaking on the public versus
21 this equation ---

22 CHAIRMAN AHEARNE: A step at a time.

23 First, does anybody believe that this is a
24 safety question?

25 MR. SHAPAR: It has been argued that the limitation

1 on liability cuts against safety. Now, this has been
2 argued fairly frequently in the past. It has been denied,
3 and it has been controversial, but the argument has been
4 made.

5 MR. BICKWIT: I have no problem commenting on
6 that argument.

7 CHAIRMAN AHEARNE: In what way?

8 MR. BICKWIT: Well, I don't know what the answer
9 is, but if the Commission has a position, I think if what
10 we are doing here is going to increase or decrease safety,
11 I think the Commission ---

12 CHAIRMAN AHEARNE: It seems to me that the
13 issue isn't physical health or safety.

14 MR. BICKWIT: It certainly is not the basic
15 issue.

16 CHAIRMAN AHEARNE: Want to try it Howard?

17 MR. SHAPAR: You have to be selective, Mr. Chairman.

18 CHAIRMAN AHEARNE: So I guess we should at least
19 start out by saying that we administer this law to some
20 extent, therefore, we would address points that relate to
21 the efficiency with which this law is administered.

22 I guess I would then go on to point out that
23 the underlying, real question which has arisen many times
24 is: Who does this link -- whether or not this is linked
25 to promotion of nuclear power, and we certainly continue to

1 believe that we should not be involved in the promotion
2 of nuclear power. There is a question about the protection
3 of the economic -- I don't know if that's the right word
4 to use, economic impacts on the public and in that light,
5 there are some comments to be made, because I think that
6 there are some of these changes, corrections that we
7 addressed.

8 MR. BICKWIT: Well do you want to comment on
9 the limits? Which category does that fall under?

10 CHAIRMAN AHEARNE: Yes.

11 I think on that one, you are going to have to
12 get each Commissioners vote. My view is that it ought at
13 least to go up to the amount of inflation, since \$560
14 million was established.

15 MR. SHAPAR: So that takes it to \$1.3 billion.

16 MS. HARDING: Does it have an escalation clause?

17 CHAIRMAN AHEARNE: Yes.

18 MR. SALTZMAN: But that can be done completely
19 through raising the retro if we are taking taking it to \$1.3
20 billion.

21 CHAIRMAN AHEARNE: Yes. I think that's
22 completely consistent. The basic policy of limit or no
23 limit, I don't have a position on, and I think that's a
24 congressional issue. But if there is a limit, if a
25 \$560 million was established, personally it is illogical

1 to me not to have been that consistently rose with ---

2 MS. HARDING: (Inaudible)

3 CHAIRMAN AHEARNE: I know, but once having
4 taken an arbitrary number, then everything else is relative.

5 MS. HARDING: The problem is that it has no
6 relationship (Inaudible) and it doesn't matter if it
7 changes relation.

8 CHAIRMAN AHEARNE: It has relationship with the
9 cost of capital money at the time of the --

10 MR. SHAPAR: I wouldn't say it has no thorough
11 relationship with anything. It had a slight relationship
12 with Texas City.

13 MR. BICKWIT: You are saying, if Congress was
14 right the first time, then in order to be right this time ---

15 CHAIRMAN AHEARNE: I'm saying, this is just my
16 own personal view. But I think that that issue is one
17 you have to qualify to people.

18 MR. STEPHENS: What is the effect of taking
19 out the ENO? Isn't ENO tied to ---

20 MR. BICKWIT: Waiver of defenses. That's right.
21 Taking it out means that the ---

22 MR. STEPHENS: There is no waiver of defenses.

23 MR. BICKWIT: No, that there is waiver. You are
24 automatically waived.

25 MR. STEPHENS: And we are going to support just

1 doing away with it entirely?

2 MR. BICKWIT: I don't think we should. I mean,
3 I don't think we should support anything in this area.

4 CHAIRMAN AHEARNE: I think what you are saying is
5 you don't see we should take a position.

6 MR. BICKWIT: Right.

7 CHAIRMAN AHEARNE: I would argue that we ought
8 to take a position on that if, from the standpoint of
9 applying the law -- the bill to apply the law.

10 We are an administer of a particular congressional
11 law. How do you apply that, and you will point out that
12 we have recent experience in applying that provision, but
13 if the people who have gone through that believe that
14 it would be a good thing to keep --

15 I thought the phrasing here was all right the
16 way it was described.

17 MR. SHAPAR: I think you are going to have
18 difficulty in making that position. You are saying that
19 because the bill was as difficult to administer, without
20 examining the other repercussions, advantages and dis-
21 advantages and just based on the difficulty of administration,
22 we would recommend this and so. I think you are going
23 to find it hard to defend that kind of a position. You are
24 just looking at one segment of the circle.

25 CHAIRMAN AHEARNE: Well, but you see, if we argue

1 that the advantages and disadvantages with respect to
2 our area of responsibility aren't relevant.

3 MR. STEPHENS: At the very least then, if the
4 testimony is going to suggest that something ought to be
5 dropped, we ought to talk about concentrating on that
6 and dropping it. But if we take a position on whether
7 they are good or not, that's something else.

8 MR. SHAPAR: There are really two kinds of
9 questions on dropping it.

10 Number one, the so-called nuisance suits will
11 have the waivers applied to them. That has been the main
12 argument for having an ENO to begin with, to knock out
13 the nuisance suits.

14 The other effect will be to impose strict
15 liability across the board, in effect, but although there
16 may be complications, most people generally feel that
17 strict liability in one form or another would be applied
18 anyway, so the consequences probably aren't all that
19 great.

20 The main thing, though, that will be controversial,
21 will be exposing nuisance suits to strict liability.

22 MR. BICKWIT: So your position then is to point
23 out the difficulties of administration, say there are
24 obviously arguments as to the underlying concept and on
25 those you don't want to take a position.

1 CHAIRMAN AHEARNE: I didn't have any problem
2 the way this was phrased. Having just recently gone
3 through that ENO effort that we went through ---

4 MR. BICKWIT: Okay, then you are in ---

5 CHAIRMAN AHEARNE: If someone can come up with
6 some good reasons why we should either strongly indorse
7 or strongly oppose, I'm quite willing to listen to them.

8 MR. BICKWIT: Okay, I thought your position was
9 that you didn't want to get into this promotional end of
10 things. That's what you are talking about.

11 CHAIRMAN AHEARNE: The ENO concept is promotional?

12 MS. HARDING: It is quid pro quo.

13 MR. BICKWIT: Depending on how you go, it is
14 either helping -- it is designed to help the utility or
15 to hurt the utility.

16 CHAIRMAN AHEARNE: Well, the only difficulty
17 with that, Len, is that I keep on hearing the argument
18 from both sides at various times that it is a help or
19 a hindrance, and I have had public interest groups argue
20 for and against, and industry for and against, before and
21 after TMI. So I, at this stage don't know whether it is a
22 help.

23 MR. BICKWIT: Getting rid of it is a hindrance
24 to the utility, getting rid of the concept. It is imposing
25 strict liability on the ability, whereas, now it is not

1 imposed except under certain circumstances.

2 CHAIRMAN AHEARNE: Yes, but the circumstances
3 are going to have to be agreed upon anyway.

4 MR. BICKWIT: The threshold question is whether
5 you want to get in to these kinds of arguments, and
6 apparently you do.

7 CHAIRMAN AHEARNE: Since we apply it, we have
8 just gone through our third exercise, so, yes, I'm
9 interested in addressing the difficulty of applying it,
10 absolutely.

11 MR. BICKWIT: But one way to address that
12 difficulty is to say ---

13 MR. SHAPAR: Are you referring to the result
14 or the process as being observed?

15 CHAIRMAN AHEARNE: Oh, I would never fault
16 the process.

17 MR. BICKWIT: Well, one way to address the
18 difficulty is to say the defenses are never waived.
19 Defenses are always there. That's one way to get rid of
20 the difficulty.

21 I say, once you start talking about the difference
22 between that choice and the choice of getting rid of the
23 concept entirely, so that they are always waived, you
24 are talking about the kind of question that I don't think
25 you should be talking about.

1 (Commissioner Bradford returned to the meeting.
2 4:20)

3 CHAIRMAN AHEARNE: Ah, Peter, we have a legal
4 issue.

5 MR. SHAPAR: No, it is really a policy issue.

6 COMMISSIONER BRADFORD: Well, if you are looking
7 for somebody who has practiced, John ---

8 CHAIRMAN AHEARNE: But see then, Len, the situation
9 that that leads you to or you would lead us to is that
10 in spite of the difficulty we have in applying the
11 criteria you don't address ---

12 MR. BICKWIT: I would say, why don't you simply
13 say that the concept is not a workable one or you have
14 had difficulty in applying it, and you would like to see
15 it eliminated. There are two basic ways to do it. You
16 don't want to comment on which is proper.

17 CHAIRMAN AHEARNE: I see. I would have no problem
18 with that. That would be fine.

19 It is the unworkability that ---

20 MR. BICKWIT: I think you should comment on
21 efficiency questions.

22 CHAIRMAN AHEARNE: But I think on that, you
23 really have to get five people, because as I remember
24 in the past the Price-Anderson tends to be an issue that
25 some people have strong feelings about.

ACRS? No problem, right?

1 COMMISSIONER BRADFORD: Victor, for years has
2 supported the changing the "s" from safeguards to
3 safety, but I don't think ---

4 CHAIRMAN AHEARNE: I noticed that Udall did it.

5 COMMISSIONER BRADFORD: Did he?

6 CHAIRMAN AHEARNE: Well, he didn't in the bill,
7 but on the Notice for Hearing, and then when he announced
8 at our hearing who we were going to be followed by,
9 we were going to be followed by the Advisory Committee
10 on Reactor Safety.

11 COMMISSIONER BRADFORD: Breaking us in slowly.

12 CHAIRMAN AHEARNE: What happened to the Nuclear
13 Safety Board?

14 COMMISSIONER BRADFORD: That's next.

15 CHAIRMAN AHEARNE: Oh, yes, I see.

16 Agreement States Program: Here is a situation
17 where our testimony is not in the bill.

18 Now, is the real issue this striking out
19 "compatible with"? Because the other provisions aren't --

20 MR. MALSCH: The procedural provisions are also
21 significant.

22 CHAIRMAN AHEARNE: They are?

23 "The determination of adequate, technical and
24 financial ability"?

25 MR. MALSCH: No, not that part. I was referring to

1 MR. DIRCKS: Procedural requirements imposed
2 on states.

3 CHAIRMAN AHEARNE: Now, I gather the way it is
4 phrased here in the testimony, you don't believe that
5 the thing such as the maximum extent practicable and
6 the Commission deeming adequate in relation to -- aren't
7 at all sufficient qualifiers, whoever is commenting on
8 this.

9 The testimony speaks in absolutes. The bill
10 has qualifications.

11 MR. BICKWIT: I think that is right. We
12 don't regard it as a problem. It is a more stringent
13 standard however you read it.

14 CHAIRMAN AHEARNE: Now, we would reach those ---

15 MR. BICKWIT: The testimony says, "... to the
16 maximum extent practicable." About 7 lines down.

17 CHAIRMAN AHEARNE: Yes, but it says that --

18 How do you reach the conclusion that we have
19 to meet minimum Federal standards?

20 The testimony refers to requirements,
21 statements (inaudible).

22 MR. REAMER: That's why the modification to the
23 introduction to that subsection which requires -- which
24 causes it to apply to all agreements as opposed to agree-
25 ments just referring to mill tailings.

1 CHAIRMAN AHEARNE: Which -- Bill, now what ---

2 MR. BICKWIT: Which page are we on?

3 MR. REAMER: Okay, it is on 77-78. The
4 introductory language to the section on any agreement
5 entered into under this section shall provide, it is
6 my understanding that the current law applies only to
7 uranium mill tailings agreements.

8 MR. SHAPAR: That's right.

9 CHAIRMAN AHEARNE: I see, so it is by striking
10 something ---

11 MR. REAMER: It is by substitution.

12 CHAIRMAN AHEARNE: Okay, I guess that -- I would
13 appreciate that being made clearer.

14 MR. REAMER: The way in which that happens?

15 CHAIRMAN AHEARNE: Yes.

16 MR. DIRCKS: That brings into play the
17 environmental reviews and so on we go through in
18 state programs too.

19 MR. BICKWIT: Yes.

20 CHAIRMAN AHEARNE: Okay, isn't the issue here:
21 We are saying, we believe it is appropriate to put in
22 place these tighter restrictions, which is a logical
23 conclusion, because we believe the current procedure
24 with respect to agreement states are leading to inadequate
25 protection?

1 MR. BICKWIT: Certainly not as tight as
2 nonagreement states under the law.

3 CHAIRMAN AHEARNE: Oh, no. It is not regulations,
4 it is ---

5 MR. BICKWIT: Both the regulations and the
6 procedures.

7 CHAIRMAN AHEARNE: I know. We are saying
8 that we support making these changes. They are two types
9 of things though.

10 MR. BICKWIT: That's right.

11 CHAIRMAN AHEARNE: Isn't the "therefore" we
12 must have reached the conclusion that the current looser
13 procedures and standards are leading to inadequate
14 protection?

15 MR. BICKWIT: I certainly haven't reached
16 that -- I'm not familiar with the situation as a practical
17 matter, but as a conceptual matter, I think it is bad
18 policy to allow some states, simply by their willingness
19 to conclude in agreement with us, to allow for lacks of
20 procedures or lacks of standards.

21 MR. SHAPAR: Wait a minute. Standards have to
22 be compatible with ours now.

23 MR. BICKWIT: They have to be compatible, they
24 don't have to be equivalent.

25 MR. SHAPAR: And they have to be adequate to

1 protect the public health and safety.

2 I think what the real question is what the
3 record shows. Has the experience in the agreement states
4 been as good, better or worse than in the nonagreement states.

5 MR. DIRCKS: I don't follow that too, because
6 the Commission just said, let's have environmental
7 review when we do radionuclide licensing. They must have
8 had a reason for that. You didn't do it before, and we
9 are doing it now.

10 MR. SHAPAR: No, but we are segmenting the --
11 I thought the question was, was it directed to radiological
12 health and safety.

13 MR. DIRCKS: Well, I guess if it is important
14 in one case, it is important in another case.

15 CHAIRMAN AHEARNE: If we reach the conclusion
16 that the agreement states are providing inadequate ---

17 MR. BICKWIT: You are talking about as a factual
18 matter?

19 CHAIRMAN AHEARNE: Yes.

20 MR. BICKWIT: I don't know.

21 COMMISSIONER BRADFORD: Well, if we concluded
22 that any one agreement state were providing inadequate
23 protection, we would have to ---

24 MR. REAMER: Initiate a proceeding.

25 COMMISSIONER BRADFORD: -- determine the status.

1 CHAIRMAN AHEARNE: I guess then, I would want
2 the testimony to address these changes, and the Commission
3 ending up supporting them, are ones we support because
4 in theory it makes sense to have this consistency, but
5 in practice we don't have evidence to support the
6 necessity ---

7 COMMISSIONER BRADFORD: Yes, it is mixed. My
8 concern really is that we are not sure what the overall
9 experience has been, but there are individual cases that
10 give rise to some concerns. It is not too hard to list
11 them over the last year, year and a half.

12 CHAIRMAN AHEARNE: But unfortunately, we can
13 find different cases in the nonagreement states.

14 So there is a weakness in the argument and
15 we have to make sure they do things the way we do it.

16 COMMISSIONER BRADFORD: Did I say that.

17 CHAIRMAN AHEARNE: This says that the solution
18 is to make them do it the way we do it.

19 COMMISSIONER BRADFORD: And I guess what goes
20 with that is the sense that there is a general tightening
21 up in nuclear regulation going on at the Federal level
22 and this assures that it will transmit through the
23 agreement state program as well.

24 MR. STEPHENS: Len, what does "at least
25 equivalent" numbers mean. Is it going to be at least

1 equivalent numbers of people, at least equivalent numbers
2 in your regulations of emissions or whatever. What does
3 that "at least equivalent" program going to mean? How
4 is it going to mean something different from a compatible
5 program? I mean, you say it is tighter. How is it going
6 to be tighter?

7 MR. BICKWIT: The definition of it is tighter.

8 MR. STEPHENS: That doesn't mean anything to me
9 unless I know what ---

10 MR. SHAPAR: I think the answer to your question
11 may be that under compatibility as interpreted, probably
12 means generally the same level as we have. It can't be
13 too much higher, and it certainly can't be too much lower.
14 This would let them go above. In other words, at least
15 equivalent, be at least the key words.

16 COMMISSIONER BRADFORD: That's an interesting
17 point. Has any state ever been reined in by somebody
18 arguing to them that you are no longer compatible with the
19 NRC because you are too strict?

20 MR. SHAPAR: Not within the memory of man.

21 MR. BICKWIT: There was concern about that,
22 according to our testimony, that was the concern that
23 lead to the agreement state concept.

24 MR. SHAPAR: So I think the answer to the question
25 here is that you don't focus so much on the word "equivalent."

1 I personally don't think that's much different than
2 compatible, but it would clearly let the states go above
3 the level that the NRC has required.

4 COMMISSIONER BRADFORD: It is the phrase "at
5 least" rather than ---

6 MR. SHAPAR: I think so. That's the way it hits
7 me.

8 MR. STEPHENS: In fact, we would not expect this
9 to mean any of the agreement states by virtue of this
10 standard, which would, in fact, be better than they are
11 now, unless they happened to want to make much stricter
12 standards than we have.

13 MR. BICKWIT: No, I wouldn't say that.

14 MR. SHAPAR: They have the potential for being
15 better.

16 MR. STEPHENS: Then there is a difference?

17 MR. BICKWIT: There is a difference, and I
18 agree with Howard's point, but I don't think it is the
19 only point.

20 MR. STEPHENS: Well, then what is the other
21 difference?

22 MR. BICKWIT: It just seems to me -- I can't give
23 you an example ---

24 CHAIRMAN AHEARNE: I tell you, John, what I
25 interpret it as meaning is that a program that is compatible,

1 is it judged much more on the overall program. I would
2 have interpreted equivalent to meaning that you get
3 down in to separate pieces and you track piece-by-piece-
4 by-piece.

5 MR. STEPHENS: Well, that is sort of what we
6 think the difference is, if, in fact, that's what the
7 Commission thinks it is. By all means, I think we ought
8 to tell the committee that's what we think, because they
9 are going to be giving us this language to deal with.

10 MR. BICKWIT: You say, does the Commission want
11 to take the position that some of the specifics need not
12 be equivalent?

13 CHAIRMAN AHEARNE: No, I agree with John. If
14 we are going to indorse some language, we ought to
15 understand and explain what we think we are indorsing.

16 MR. SHAPAR: Yes. Of course, another way of
17 looking at it, you have got two modes of operation.
18 You have got the traditional mode we have just been
19 talking about and you have got the mode under the Uranium
20 Mills Tailing Act. What this does is to discard the old
21 mode and apply the Uranium Mills Tailing Act approach
22 across the board. That's really what is the main step
23 that is being taken.

24 COMMISSIONER BRADFORD: By the time this passes,
25 the Uranium Mill Tailing Act will be in relatively old mode

1 too.

2 MR. MALSCH: Well, we do say that we just support
3 these kinds of changes. We don't go so far as to indorse
4 them.

5 CHAIRMAN AHEARNE: Well, yes.

6 I would like to expand a little bit on what we
7 think they are, and I would also like to make a point, the
8 reason we are for them is conceptually they consist of
9 the approach which we believe should be taken. But I
10 wouldn't want to -- unless we got some good examples,
11 why we think our procedures and approaches are shown to
12 provide better protection with the agreement states.

13 Nuclear Safety Board: I should point out here
14 we are getting into unchartered grounds.

15 MR. BICKWIT: Yes, a fine line.

16 COMMISSIONER BRADFORD: And the Board is subject
17 to a Sunset provision and the Commission is not. That is
18 sort of odd.

19 Let me say, my inclination is -- I'm not
20 entirely trusted with it, it doesn't seem to be my natural
21 inclination, I'm just a little opposed to this -- we
22 have just put this group together under Michelson and
23 if the Congress wants to enact this, fine, but if we don't
24 feel that the Michelson group is capable of filling the
25 void that this is aimed at, then we ought to be doing

1 something more ourselves. I guess I would have to feel
2 more strongly than I do that this group provides an
3 additional ---

4 CHAIRMAN AHEARNE: I would go along with that.

5 MR. BICKWIT: This group is directed at a different
6 matter than the Michelson group is.

7 COMMISSIONER BRADFORD: How so?

8 MR. BICKWIT: Well, this group is designed to
9 audit the rest of the agency.

10 COMMISSIONER BRADFORD: They are going to audit us,
11 okay.

12 MR. BICKWIT: But it is also designed to investi-
13 gate accidents.

14 COMMISSIONER BRADFORD: In that case though --
15 Your reference to the Lewis recommendation is somewhat
16 misplaced then, because the Lewis Board was much more
17 like that function, more similar to the Michelson.

18 MR. MALSCH: I think we say that at the top of
19 Page 29.

20 MR. BICKWIT: As I say, this is a new concept.

21 COMMISSIONER BRADFORD: Ah, okay.

22 CHAIRMAN AHEARNE: I think we ought to separate,
23 though, the two functions. The one set of functions, which
24 is the first approximately 5. Duties of the Board are
25 really the kinds of things that we have requested

1 Michelson's office to handle. And I think that I would
2 indorse Peter's view on that one, which I gather was also
3 ACRS's comment to Udall.

4 COMMISSIONER BRADFORD: Did Lewis concur?

5 CHAIRMAN AHEARNE: He wasn't there.

6 Then the second set which are with regard to
7 assessing the effectiveness of the NRC. I would pass and
8 say that's really a congressional choice. My own comment
9 probably would be that if they feel it necessary to establish
10 a board because of the lack of oversight ---

11 MR. SHAPAR: How about if they held more hearings
12 it wouldn't be necessary.

13 COMMISSIONER BRADFORD: How are the Board members
14 appointed?

15 MS. ARON: By the President.

16 COMMISSIONER BRADFORD: I like the part which is
17 under the Board but which says, "Notwithstanding the law,
18 the Commission may accept gifts and donations."

19 It is on Page 84.

20 MR. SHAPAR: With impunity?

21 COMMISSIONER BRADFORD: That's what it says.

22 MR. BICKWIT: And investigative accidents ---

23 CHAIRMAN AHEARNE: That's the Board as a group,
24 it is not members to the Board.

25 COMMISSIONER BRADFORD: They also refer to the Board

1 as a Board everywhere else and here, as the Commission,
2 which technically would mean us and not the Board.

3 CHAIRMAN AHEARNE: So that's what I would do.

4 Any other issues? Questions?

5 Len, are you still the revisor?

6 MR. BICKWIT: (Nods in the affirmative.)

7 CHAIRMAN AHEARNE: All right.

8 What is the day we have to have something
9 together, Carl?

10 MR. COMBS: By the afternoon of the 17th.

11 CHAIRMAN AHEARNE: I would guess that -- How
12 long do you think it would take to do the revisions?

13 MR. BICKWIT: I would -- What's today?

14 CHAIRMAN AHEARNE: Thursday.

15 MR. BICKWIT: Okay, we will try to get it done
16 by the end of the day.

17 CHAIRMAN AHEARNE: Today?

18 MR. BICKWIT: No, by the end of tomorrow.

19 CHAIRMAN AHEARNE: If you can't, can you send it
20 out to the Commissioners on Saturday?

21 MR. BICKWIT: Yes.

22 CHAIRMAN AHEARNE: Because I think that in order
23 for us to have a chance to make one more shot at it and
24 still get it to them at least sometime during Monday ---

25 MR. COMBS: Yes, around noon would be better.

1 CHAIRMAN AHEARNE: We would have to get it
2 by Saturday night, okay?

3 MR. BICKWIT: Fine.

4 CHAIRMAN AHEARNE: Thank you all for your
5 attention and willingness.

6 (Whereupon, the meeting was adjourned at 4:40 p.m.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25