

NUCLEAR REGULATORY COMMISSION

ORIGINAL

COMMISSION MEETING

In the Matter of: DISCUSSION OF REVISED LICENSING PROCEDURES

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AT: Washington, D. C.



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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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DISCUSSION OF REVISED LICENSING PROCEDURES

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

Tuesday, April 28, 1981

The Commission met, pursuant to notice, at 10:08 a.m.,

JOSEPH M. HENDRIE, Chairman, presiding.

PRESENT:

JOSEPH M. HENDRIE, Chairman

VICTOR GILINSKY, Commissioner

PETER A. BRADFORD, Commissioner

JOHN F. AHEARNE, Commissioner

ALSO PRESENT:

LEONARD BICKWIT
SAMUEL J. CHILK
WILLIAM J. DIRCKS
ALAN S. ROSENTHAL

TONY P. COTTER
DENNIS K. RATHBUN
HOWARD SHAPAR
HAROLD DENTON

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P R O C E E D I N G S

1
2 CHAIRMAN HENDRIE: Let's come to order. We will turn
3 this morning once again to licensing proceedings and continue
4 a series of meetings on this subject.

5 What I would like to do is look at the rewrite of
6 the proposed policy statement on the conduct of licensing
7 proceedings.

8 The last time we dealt with this subject, we
9 completed a fast pass through the draft and left the room
10 instructing the Counsel's Office to prepare a new version to
11 work on. We have that. It is called SECY-81-202B dated
12 April 24th.

13 We also have a mark-up copy from Vic. I cannot tell
14 whether you worked off 202B or an earlier version.

15 COMMISSIONER GILINSKY: It is an earlier version.

16 CHAIRMAN HENDRIE: Why don't we start down 202B and
17 we will look at your changes as we go along? I have a couple
18 as we go.

19 By way of minor editing, the third line in the middle
20 paragraph on that page, let's change "these hearings" to
21 "the hearings." Let's delete "power" in that sentence. I do
22 not know whether the intent was to be full power. It either
23 has to be full power or delete.

24 Next is two lines below that, "this situation is a
25 direct consequence..." the language here depending upon the

1 inclination of the Commissioners has gone from indirect to
2 direct, a compromise which I propose is to say the situation
3 is a consequence of the Three Mile Island accident.

4 COMMISSIONER AHEARNE: I would buy that.

5 CHAIRMAN HENDRIE: Finally on the last line of that
6 paragraph, "the TMI-related requirements" over which we
7 labored so long were not only for operating reactors but
8 also you will remember for operating license proceedings. I
9 would strike "operating" and specify the TMI-related requirements
10 for reactors.

11 Vic, you wanted to delete the TMI-related requirements
12 and just say "which specified changes necessary..."

13 COMMISSIONER GILINSKY: To reactors as a result of
14 the accident.

15 CHAIRMAN HENDRIE: I do not have any problem with
16 that, "which specified changes necessary for reactors" or
17 "to reactors"?

18 COMMISSIONER GILINSKY: To.

19 CHAIRMAN HENDRIE: I will put down "to." Someone
20 with a better command of the prepositions can tell us what is
21 best.

22 MR. BICKWIT: I do not claim to have a better command
23 but "for" sounds a lot better to me.

24 COMMISSIONER AHEARNE: That is the way you originally
25 wrote it.

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CHAIRMAN HENDRIE: "For reactors."

COMMISSIONER BRADFORD: If you want to use "to," you should invert "necessary" and "changes." If you want to use "for," leave it the way it is.

CHAIRMAN HENDRIE: He sounds like he knows about prepositions. "Changes necessary for reactors as a result of the accident."

You have one on the bottom of the page, "and an unprecedented number of board proceedings ..."

COMMISSIONER GILINSKY: We have "...board proceedings are scheduled for hearing in the next 24 months."

COMMISSIONER BRADFORD: I thought all these changes improved it but I did not notice any of them were changes of substance.

COMMISSIONER GILINSKY: I did not think they were.

COMMISSIONER BRADFORD: Can we endorse them in blanket?

CHAIRMAN HENDRIE: I was going to go through it page at a time and give people a chance to find other things and agree on these and then hopefully with you all in a desperately weary state, I would mumble "all in favor" and say "aye" and "so ordered" and hit the gavel and we would have it!

(LAUGHTER.)

COMMISSIONER BRADFORD: There is something imprudent about a magician explaining the way his tricks work before the show starts.

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1 CHAIRMAN HENDRIE: That is part of the trick.

2 "An unprecedented number of hearings are scheduled
3 in the next 24 months."

4 Is it true that at least half of these proceedings
5 concern operating licenses?

6 MR. ROSENTHAL: Yes.

7 CHAIRMAN HENDRIE: In Tony's original language
8 long ago when he said at least half of these proceedings
9 involved construction permit and operating license proceedings.
10 People then wanted to concentrate on OLs, instruct the CPs
11 and have the fraction.

12 To save someone from counting, how about a substantial
13 number of these proceedings?

14 COMMISSIONER GILINSKY: You could say "many."

15 CHAIRMAN HENDRIE: "Lots." "For operating licenses..."
16 strike "pursuant to the Atomic Energy Act, as amended."

17 What is it, Vic? If these proceedings are not?

18 COMMISSIONER GILINSKY: Concluded prior to the
19 completion of construction.

20 CHAIRMAN HENDRIE: The cost of such delays could
21 reach billions of dollars.

22 COMMISSIONER GILINSKY: I thought our estimates were
23 not that high.

24 CHAIRMAN HENDRIE: I thought we have \$1.5 billion to
25 \$2 billion.

1 MR. DENTON: That is my number, between \$1 and \$2
2 billion. It depended on what assumptions we used about
3 completion dates and whether you went back and picked up
4 so-called embedded costs.

5 COMMISSIONER BRADFORD: I took what Harold cited and
6 extended them forward to other proceedings that are not
7 currently included in the estimates but what would be covered
8 by the policy statement and figured if one did that, the
9 statement was fair.

10 CHAIRMAN HENDRIE: The cost of such delays could reach
11 billions of dollars. The Commission can seek to avoid or reduce
12 such delays. Whatever measures are available that do not
13 compromise the Commission's fundamental commitment to a fair
14 and thorough hearing process. I assume that will be all right
15 with everyone.

16 COMMISSIONER BRADFORD: Yes.

17 COMMISSIONER AHEARNE: Yes.

18 CHAIRMAN HENDRIE: You do not want to admit to
19 contentious?

20 COMMISSIONER BRADFORD: I think what happened is
21 "contentious" never actually got written in there. The word
22 "contentions" was used.

23 MR. BICKWIT: "Contentions" is in the revised version.
24 This is based on the version just before 202B.

25 COMMISSIONER BRADFORD: Are there any significant

1 differences?

2 MR. BICKWIT: No.

3 CHAIRMAN HENDRIE: I do not have any problem with it.

4 COMMISSIONER GILINSKY: I was dealing with contentions.

5 CHAIRMAN HENDRIE: What would you do with
6 "contentious"?

7 COMMISSIONER GILINSKY: I would keep it in.

8 CHAIRMAN HENDRIE: I want to start a new paragraph
9 where it says "individual adjudicatory boards." That was the
10 intent of the original draft. At the end of the paragraph that
11 I have now created, with the greatest fondness in the world
12 for trees and wildlife, I wish we would say "adequately
13 protect the public health and safety and the environment."

14 Len, there is not any difficulty in ignoring the
15 defense and security findings, et cetera. Certainly in the
16 context of our licensing, safety and the environment are the
17 principal points we struggle with.

18 MR. BICKWIT: It is what you are emphasizing.

19 CHAIRMAN HENDRIE: You do not see any problem citing
20 these and not other findings that have to be made?

21 MR. BICKWIT: No.

22 CHAIRMAN HENDRIE: All right.

23 COMMISSIONER GILINSKY: Do we regard sabotage as
24 subsumed under public health and safety?

25 MR. SHAPAR: It is both health and safety and common

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1 defense and security.

2 CHAIRMAN HENDRIE: To the extent it affects
3 electricity supplies, it is common defense and to the extent
4 it radiates people, it is safety.

5 "Fairness to all involved in NRC's adjudicatory
6 procedures requires that every participant fulfill the
7 obligations imposed by applicable law."

8 MR. BICKWIT: I would like to speak to that.

9 CHAIRMAN HENDRIE: All right.

10 MR. BICKWIT: I think some of these obligations
11 will be imposed not by the regulations or the law but by
12 boards in accordance with such law and regulations. I would
13 prefer the original language, or "by and in accordance with
14 applicable law and Commission regulations."

15 COMMISSIONER AHEARNE: I agree.

16 CHAIRMAN HENDRIE: I will buy that. What about "the"
17 instead of "its"?

18 MR. BICKWIT: "The" is fine.

19 MR. COTTER: "Obligations" and "imposed" are redundant.

20 CHAIRMAN HENDRIE: Ignore that. OGC has struck
21 "also."

22 Let's come to who informs on the staff when they are
23 delayed. This point was not well settled the last time we
24 went around. I finally instructed the next draft to read the
25 way 202B reads in order to have something.

1 Vic has proposed the Board informs the EDO. There
2 was discussion last time which convinced me the staff members
3 engaged in a hearing ought to report themselves into the EDO
4 when they are going to run late in any appreciable fashion.

5 What is the opinion up and down the table?

6 COMMISSIONER AHEARNE: I will agree with Vic.

7 COMMISSIONER BRADFORD: I will apply the reverse of
8 Victor's "you-me" principle, a converse, a reciprocal.

9 COMMISSIONER AHEARNE: You have now confused me as to
10 what the rules could end up being.

11 CHAIRMAN HENDRIE: You had a problem with this last
12 time. Do you want to state it before this majority view goes
13 down and stays there?

14 MR. COTTER: I guess my passion on the subject has
15 subsided somewhat. My original objection was it seemed to be
16 sort of making a managerial tattletale out of the boards. It
17 seems to me if the staff has problems, they are certainly
18 sufficiently independent and mature enough to deal with them
19 in the fashion the Commission directs.

20 MR. BICKWIT: I never had any passion on this. Our
21 conclusion was the same as Tony's. Our recommendation initially
22 was it should be the staff informing the EDO rather than the
23 board.

24 MR. SHAPAR: I think there was some widespread passion
25 for a footnote.

1 COMMISSIONER GILINSKY: What are we trying to do?

2 CHAIRMAN HENDRIE: Maybe we can put it in the fine
3 print. Anybody who wants the board in there care to reconsider
4 on the basis of the last five minutes of conversation?

5 COMMISSIONER BRADFORD: My preference would have been
6 for the board to inform the Commission and then us to inform
7 the EDO.

8 COMMISSIONER GILINSKY: That is the arrangement that
9 sounds more logical to me. I assume those responsible for the
10 hearings do inform the EDO. If you want to go further, you have
11 to have the board who is acting on behalf of the Commission
12 inform the Commission which is managing the rest of the
13 organization.

14 I put in the "board" because I thought that was what
15 was intended. It was in the nature of a correction rather than
16 a substantive change. The only system that makes any managerial
17 sense to me is to have the board inform the Commission and the
18 Commission to act in its managerial capacity.

19 COMMISSIONER AHEARNE: I would agree with the board
20 informing EDO but my next preference would be the staff informing
21 the EDO.

22 COMMISSIONER GILINSKY: I realize the staff is a
23 special sort of party but you do not have the board informing
24 the vice president of some company that his lawyers have not
25 been as prompt as they should be.

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MR. ROSENTHAL: The genesis of all of this was a question which reached an appeal board as to whether the licensing board had the authority to tell the staff that it must produce a particular document by a date certain. What the appeal board held at that time was that authority was lacking but the licensing board was of the view that the staff was dilatory, that if the licensing board could see to it this was brought to the attention of the Commission.

That approach commends itself to me. I do not think we ought to be in the business of going to the EDO and telling him that we think their subordinates are not acting with the proper degree of promptness. It seems to me if the staff is unable to meet deadlines which it is aware of, it deals with EDO itself.

It does seem to me that if the licensing board is of the view that a proceeding is being unnecessarily delayed because the staff is not meeting these obligations, the licensing board should be telling it to the appeal boards and the case may go to the Commission which is the ultimate controller of the adjudicatory process.

COMMISSIONER AHEARNE: My view is many times the staff will be in a situation where they will not be able to meet schedules because of competing priorities. I think the way the Commission is structured is the staff works for the Chairman through the EDO and I think this should be called to the

1 EDO's attention that there is this board view that this is now
2 a problem. I do not think the staff can attempt accurately
3 to portray what the board's opinion is of its not being able to
4 meet a particular schedule whether it is serious or not. The
5 board calling it to the EDO's attention would then highlight
6 that in this particular case the board is saying that is a
7 serious problem and that is another important piece of
8 information for the EDO to address in terms of allocating his
9 resources.

10 MR. COTTER: I am concerned about even handed operation
11 of a board. Might a more palatable compromise be in the form
12 of directing the board simply to send copies of orders granting
13 extensions to any party, the Commission or the EDO, whoever
14 you thought was appropriate?

15 COMMISSIONER GILINSKY: I think in itself that does not
16 do much. There may be good reasons for extensions. There
17 would be copies of extensions floating all over.

18 MR. COTTER: It informs you when there has been a
19 requirement to extend a date.

20 COMMISSIONER AHEARNE: I think the real issue is
21 if the staff is not meeting a requirement that another
22 extension of the Commission believes to be important, then it
23 has to be called to the attention of the managerial line.

24 Where Vic and I disagree is where up that managerial
25 line that attention ought to be called. It really is a problem

1 for management process and management of agency resources.

2 MR. COTTER: The solution is to have that component
3 of management which is running into the delay to inform its
4 managers.

5 COMMISSIONER AHEARNE: Except the fact that there is
6 a delay does not necessarily mean it is significant. With the
7 constrained resources the EDO has to apply across the many
8 things that their resources have to be applied to, there are
9 going to be delays in many projects, whether it be inspection,
10 research, review, licensing. The juggling process of trying
11 to keep as few things delayed, it is not a process of keeping
12 nothing delayed.

13 MR. SHAPAR: Beyond that, the EDO has the authority
14 to redirect the resources himself if he thinks it is justified.
15 When it comes up to the Commission, the problem in effect has
16 been solved and the Commission gets the explanation and the fix
17 is in.

18 COMMISSIONER GILINSKY: Presumably if they are running
19 into trouble --

20 CHAIRMAN HENDRIE: Please don't use that language!

21 COMMISSIONER GILINSKY: When you are running into
22 trouble, you tell Bill about it, if it gets beyond your ability
23 to cope with it. There is a mechanism for redirecting effort.

24 If it gets to the point where the board feels all
25 of this has not worked sufficiently, the board is working for

1 the Commission.

2 MR. DIRCKS: A basic rule of management is you do not
3 elevate things to the top that can possibly be resolved at the
4 lower levels of management. If Howard has problems, he can go
5 to Harold and try to work it out at that angle. He does not
6 necessarily come to me on every issue he has a problem with
7 NRR on. If he cannot resolve it there, he will come to me.

8 COMMISSIONER GILINSKY: The board is not part of
9 this same management perview.

10 MR. DIRCKS: It is on the same level. It is two
11 components under one agency. What you try to do is work out
12 things between components before you elevate everything to
13 the top of the apex.

14 MR. ROSENTHAL: The board is accountable to the
15 Commission. The board, if a proceeding is delayed, it is the
16 Commission to which the board must explain the delay, not the
17 EDO. It seems to me it is for that reason that if the board
18 regards there is a reasonable delay which is making it difficult
19 or impossible for it to fulfill the responsibilities it has
20 to the Commission, it ought to be telling the Commission about
21 it and not the EDO.

22 COMMISSIONER GILINSKY: Presumably the board has
23 expressed itself to the lawyers and there is a certain amount
24 of back and forth discussion. I would not expect the board
25 to send up notices about delays every time something got held up.

1 MR. DIRCKS: If you are looking at management
2 principles, you do not elevate everything to the top. What you
3 are saying is there are other considerations than management
4 and if that is the case, you swallow the medicine.

5 What you try to do in any organization is avoid
6 getting everything floating into the top of the agency and try
7 to resolve things at the lowest possible level.

8 COMMISSIONER GILINSKY: I am familiar with that
9 principle.

10 CHAIRMAN HENDRIE: With the benefit of this
11 enlightening discussion, let's count heads again. With regard
12 to whether when the staff is responsible for a delay, the
13 staff tells somebody to be decided or the board tells
14 somebody to be decided. Do I have any changes in the vote?

15 I vote for the staff to do the telling.

16 COMMISSIONER AHEARNE: The board.

17 COMMISSIONER GILINSKY: I would say the NRC staff
18 should inform the Executive Director. If the board feels the
19 system is not working and changes are not forthcoming to its
20 satisfaction, it needs to inform the Commission.

21 COMMISSIONER BRADFORD: I would agree with that
22 split formulation, that is, in the normal case the staff should
23 inform EDO. I would say in extraordinary cases, the board
24 should inform the Commission.

25 CHAIRMAN HENDRIE: Along the lines where significant

1 delays may occur.

2 COMMISSIONER BRADFORD: I do not know what the standard
3 is for extraordinary cases, where the normal process does not
4 seem to be working.

5 In the run of the mill case in which the staff
6 requests an extension, it is presumed the staff will be letting
7 the EDO know through its own internal workings and it is only
8 in situations where the board really feels something out of the
9 ordinary is going on. Obviously that is not very fine
10 guidance, it is the kind of standard the board members will
11 know when they see it.

12 MR. COTTER: It does ask them to make a distinction
13 between ordinary delays and extraordinary delays.

14 COMMISSIONER BRADFORD: Yes.

15 COMMISSIONER GILINSKY: In the first instance, we
16 apply Bill's principle. If the board is sufficiently unhappy,
17 it can inform the Commission.

18 MR. COTTER: That is a discretionary judgment when
19 the board thinks the delay is going beyond what one would
20 normally expect in a hearing proceeding.

21 COMMISSIONER GILINSKY: Or an explanation that is
22 satisfactory.

23 MR. DIRCKS: We are not going to swallow it the way
24 it is worded here. We are not going to sit on something. We
25 will inform the Commission that we have a problem with

1 resource allocation or --

2 COMMISSIONER GILINSKY: The board notification is
3 something which comes if somehow that process has not worked.
4 It is assumed it would work.

5 COMMISSIONER AHEARNE: I again disagree. The board
6 sees one proceeding. EDO sees all across the staff area. EDO
7 has a broader prospective than the board does.

8 COMMISSIONER GILINSKY: We are in charge of two
9 pyramids. There is a bureaucratic pyramid in the best sense
10 of the word and an adjudicatory pyramid. They are competing
11 interests. We have to decide or Joe has to decide.

12 MR. ROSENTHAL: If you go to the Commission, if it
13 is necessary in a critical sense, if you take the Seabrook
14 proceeding where staff informed the appeal board on the
15 seismic remand it would take four months to get its evidence in
16 because it had a resource problem, I do not think there would
17 have been anything wrong there if an appeal board had been
18 concerned about whether the Commission expected it to complete
19 that remand expeditiously, coming to the Commission, not being
20 critical of the staff but saying, we have this proceeding before
21 us as you are aware and this is the situation that confronts us,
22 the staff cannot get the testimony in for "x" number of months
23 and it has a resource problem.

24 That is not an appeal board trying to judge an overall
25 situation which it obviously cannot. Then the Commission, not

1 the EDO because the EDO was not the one who remanded that case
2 to the appeal board, and it is not the EDO the appeal board
3 reports to but it is the Commission. Then the Commission
4 decides whether it wants to take some action, reallocation of
5 resources to speed that up, to tell the board that the staff
6 has to commit its resources in the short term elsewhere and
7 we want the appeal board to know we are accepting that situation.

8 That is what I have in mind when I suggest the
9 appeal boards or licensing boards should deal with the
10 Commission and not the EDO.

11 COMMISSIONER AHEARNE: My belief is that kind of a
12 problem ought to be brought to the EDO because that is staff
13 allocation of resources issue.

14 COMMISSIONER GILINSKY: Presumably it is. Howard
15 is going to tell Bill.

16 MR. SHAPAR: We tell Bill when the staff is delinquent
17 and when the boards are delinquent, even handedly.

18 MR. DIRCKS: Once it is raised, I could do something
19 about it. One way or another, if it comes directly to you,
20 you are going to come back to me --

21 COMMISSIONER GILINSKY: The idea is it is raised first
22 with Howard.

23 MR. DIRCKS: Harold will get one viewpoint and I guess
24 if Al raises another viewpoint and maybe Harold did not respond
25 fast enough, maybe I can do something with it. Maybe Harold is

1 not aware of another aspect.

2 All I am saying is you ought to be able to resolve it
3 before it gets up here. One way or another if it gets up here,
4 you are going to ask me to go back and look at it and I have
5 to come back to you again. All I am saying is give the system
6 some time to work.

7 COMMISSIONER GILINSKY: I assume it is going to happen.

8 COMMISSIONER BRADFORD: That is what I thought I was
9 suggesting with the extraordinary circumstances. Do you take
10 issue with that?

11 MR. DIRCKS: No.

12 COMMISSIONER AHEARNE: It is the point staff will not
13 make deadlines because of limited resources. The issue is when
14 a board feels it is really a serious problem, a serious delay of
15 some kind, who do they tell that to. One of the issues in the
16 end getting Bill into a box is he is going to have to start
17 asking the boards to tell him. He has these five notices
18 and ask the boards which ones are really serious.

19 COMMISSIONER GILINSKY: There may be a significant
20 difference in point of view between the board and the staff.
21 Bill may think you do not need to do any more than x, y, z or
22 whatever.

23 COMMISSIONER AHEARNE: He ought to be able to find
24 that out without first going up to us and coming back down.

25 COMMISSIONER GILINSKY: He is going to find out because

1 Harold is going to tell him.

2 MR. DIRCKS: What are you going to do when you get it?
3 Are you going to call me up and say, do something about it?

4 COMMISSIONER GILINSKY: Are you suggesting we should
5 not hear from Tony and Al?

6 MR. DIRCKS: The way this is working, I am going to
7 say, we have a problem in delay, here are the implications,
8 here is where the resource constraints are. I cannot do
9 anything about it. I am going to have to inform you anyway
10 and you are going to say, forget about that priority, do this
11 priority. At least you are going to have the facts before you.

12 What you are saying is you are going to get one case
13 that is a delay and you are going to have to come right back
14 down to me and say, give me the facts of the case.

15 COMMISSIONER GILINSKY: We will certainly come back to
16 you.

17 MR. DIRCKS: It is better to come back to me after
18 you get the case laid out before you come up with a complaint.

19 MR. COTTER: The thing I am concerned about is
20 involving in the proceeding the ultimate review body in the
21 agency. I think that can run the risk however remote of putting
22 Commissioners in the position by action they take in response
23 to a report from the licensing board, put them in the position
24 of possibly being charged with having prejudged some aspect
25 of the operation or the hearing.

1 The second consideration is you do now have a fairly
2 extensive monitoring system through the General Counsel's Office.
3 It might be more appropriate to look for some report of delay --
4 I may be stirring something up that I should not --

5 MR. BICKWIT: We could use another option.

6 (LAUGHTER.)

7 MR. COTTER: A report of delay through that source
8 so that you are not injecting yourself prematurely into the
9 function of the hearing and review and the final decision.

10 CHAIRMAN HENDRIE: Let's back up. Let's take up your
11 two part proposition. You would leave the paragraph as it
12 stands. You would add a sentence or two and I do not know
13 quite how to frame it but along the lines where the board
14 perceives a staff delay --

15 COMMISSIONER GILINSKY: Not getting resolved.

16 CHAIRMAN HENDRIE: Extensive. Do you want to leave
17 it optional or compulsory? May wish to inform the Commission.

18 COMMISSIONER AHEARNE: That is a current practice.

19 CHAIRMAN HENDRIE: Simply the board will inform.

20 COMMISSIONER GILINSKY: Have Peter write it.

21 CHAIRMAN HENDRIE: Peter?

22 COMMISSIONER BRADFORD: Have Victor write it.

23 CHAIRMAN HENDRIE: You are for the proposition as long
24 as you do not have to write it. John?

25 COMMISSIONER AHEARNE: It is the current practice.

1 COMMISSIONER GILINSKY: Did anyone instruct the boards
2 not to communicate with us about delays?

3 COMMISSIONER AHEARNE: They do. The issue was to give
4 the board some mechanism of getting to the guy who is responsible
5 for staff resources that there is a problem in a proceeding.

6 CHAIRMAN HENDRIE: John wants the board to talk to the
7 EDO. You want the board to talk to the Commission but you are
8 willing to have this two part proposition.

9 COMMISSIONER GILINSKY: Are they precluded from
10 talking to the EDO?

11 CHAIRMAN HENDRIE: I don't want them to talk to
12 anybody!

13 (LAUGHTER.)

14 CHAIRMAN HENDRIE: Strike that.

15 COMMISSIONER GILINSKY: Would it help, Bill, if the
16 board goes to you directly?

17 MR. DIRCKS: I think it would because it would at
18 least flag the issue. I am not getting everything.

19 MR. SHAPAR: I just tell Bill what he needs to know.

20 MR. DIRCKS: It gives us a chance to resolve it at
21 a level where a solution can be worked out fairly readily. If
22 we cannot work out a solution and if the case is going to be
23 delayed, I am going to come up to you anyway and say we have a
24 problem, the board says this, here are the resource problems
25 and we have reached an impasse.

1 You can be sure that if I don't work out a solution,
2 the board is not going to hesitate in coming to the Commission
3 and telling you the EDO just will not work with them, they are
4 being uncooperative or something, I will not give the resources
5 to the case.

6 One way or another you are going to find it out.

7 COMMISSIONER GILINSKY: You are saying it helps
8 if the board will go to you.

9 MR. DIRCKS: I think so.

10 COMMISSIONER GILINSKY: Let's put it in.

11 CHAIRMAN HENDRIE: If you stick with your original
12 proposal --

13 COMMISSIONER BRADFORD: Which was based on a
14 misunderstanding of what "it" refers to.

15 CHAIRMAN HENDRIE: If you return to your original
16 proposal, Peter was inclined to go with it.

17 COMMISSIONER BRADFORD: When I thought a little more
18 about it, I came down much more on the side of what came to
19 be the two sentence formulation, that is in the ordinary course
20 of events, the staff should go to the EDO and in the
21 extraordinary situation, the board should come to us. That would
22 be my preference. I can live with this.

23 COMMISSIONER GILINSKY: It seems to me the conceptually
24 clear approach but apparently Howard is not telling Bill.

25 COMMISSIONER BRADFORD: What is really behind all this?

1 Are there a lot of situations which at the moment the staff
2 is perceived to be delaying proceedings and the EDO does not
3 know about it?

4 MR. DIRCKS: I do not think that is the case. What
5 happens is there are a lot of things going on that I think
6 could be worked out at the right level. If it is not worked
7 out, it comes to me, if it is serious enough. A lot of people
8 will claim delay or a lot of people claim resource problems
9 but until you really see the issue laid out before you, you
10 can't say let's come down one side or the other. Many times
11 these things are just developed where the delay disappears.

12 CHAIRMAN HENDRIE: I think the reason the language
13 of this kind and on this point has moved in and out of these
14 drafts is the feeling on the part of at least some members
15 of the boards that the staff is a major party to these
16 proceedings and if the staff is not ready to go forward, it is
17 very hard to go forward.

18 I think it was the feeling that if you are going to
19 talk to the various aspects of trying to move these proceedings
20 to ignore that point, it was not very sensible. I do not know
21 that the language provided here, that staff inform the EDO
22 or the board inform the EDO or somebody informs the Commission
23 or any combination thereof -- that there is anything we are
24 going to say that is going to solve a fundamental resource
25 problem.

1 If you have two sizemologists and three hearings
2 that need a sizemologist at the same time, one is going to do
3 without.

4 Since the general nature of this document is to try
5 to encourage forward motion -- we are not proclaiming we are
6 solving problems.

7 COMMISSIONER BRADFORD: I thought it might be helpful
8 to get a feel for something more specific. I prefer the two
9 tier. My second purpose would be the original language with
10 the "it" referring to staff. I can swallow having the board do
11 it. That does seem to me to create a reporting pattern we have
12 not had.

13 COMMISSIONER GILINSKY: That is what concerned me,
14 that there is some suggestion there is some infringement on
15 the role of the reporting relationship in terms of the board
16 and the Commission. As long as it is understood that is not
17 the case.

18 MR. COTTER: I am concerned with the adjudicator
19 being directed to go outside of the adjudicatory process to
20 put pressure on one of the parties. Would it be acceptable
21 if the exchange were between perhaps myself as to the extent
22 I have managerial responsibilities and the EDO?

23 COMMISSIONER BRADFORD: The board ends up notifying
24 you and you go to the EDO?

25 MR. ROSENTHAL: I make my monthly status report to

1 the Commission in which any kind of slippage is necessarily
2 reported. When I reported last fall on Seabrook, I called to
3 the Commission's attention that the schedule had been set up
4 for testimony and the reasons for it.

5 CHAIRMAN HENDRIE: Do you want to try to make it
6 explicit? The chairmen of the panels will tell EDO and if
7 there are significant delays, he will explain in a memo that
8 goes to all hands and so on.

9 COMMISSIONER BRADFORD: If that happens, I guess I
10 would like to see it in the report from the panel that comes
11 out to us.

12 MR. COTTER: I think that is reasonable.

13 CHAIRMAN HENDRIE: Who is prepared to redraft along
14 this line? Hi, Tony!

15 COMMISSIONER AHEARNE: Just say the chairmen of
16 the boards --

17 COMMISSIONER GILINSKY: I think in the course of
18 this conversation I have supported every possible answer.

19 CHAIRMAN HENDRIE: I think you have. I think I have
20 opposed every possible answer.

21 COMMISSIONER AHEARNE: Yes, and I think you are
22 still doing it.

23 CHAIRMAN HENDRIE: My only interest is to see where
24 something reasonable can come down. Let's ask Tony to do a
25 real quick redraft.

1 COMMISSIONER AHEARNE: Why not just say the chairmen
2 of the boards should inform?

3 CHAIRMAN HENDRIE: Should inform the Executive
4 Director and the rest of it follows. Do you want to add
5 anything further?

6 COMMISSIONER AHEARNE: It seems fine.

7 CHAIRMAN HENDRIE: We understand the chairmen of
8 the panels will take note of those kinds of circumstances
9 in a monthly summary. I was going to say you could put that
10 in.

11 COMMISSIONER BRADFORD: No, as long as it is
12 understood.

13 COMMISSIONER GILINSKY: They do not feel inhibited
14 by informing us.

15 COMMISSIONER AHEARNE: They have not in the past.

16 CHAIRMAN HENDRIE: Should it read "chairmen"?

17 MR. ROSENTHAL: Yes.

18 CHAIRMAN HENDRIE: Of the adjudicatory panels. I am
19 glad we got rid of that because that was sort of a trivial
20 point!

21 The Commission has now designed its bicycle shed.

22 The next item, time.

23 COMMISSIONER AHEARNE: That is one way of saying you
24 disagreed with the result.

25 CHAIRMAN HENDRIE: Under "Time," Vic has a short

1 insert. I would like to offer for your consideration the
2 proposition that this is where we might want to throw a
3 prototypical schedule or a suitable version of it in here.

4 COMMISSIONER GILINSKY: I held up on that. I did have
5 a version of your paragraph which I did not circulate because
6 it is part of the package we put out.

7 CHAIRMAN HENDRIE: I do not have at hand at the
8 moment the schedule I would propose to go with this. We are
9 going to have to decide when we consider the Part 2 business
10 and continue to consider this whether we want to consider
11 offering a prototype schedule at either place, and if so, at
12 which place and if so, what we do with the schedule.

13 My thought here was I am inclined to think it fits
14 better in the policy statement. I would say the schedule that
15 goes with this language remains to be discussed. I would not
16 propose to look at a schedule now but just the idea of hanging
17 it in here and using the kind of language proposed here to
18 make clear it is not a hard and fast sort of requirement.

19 MR. BICKWIT: Is your proposal to go forward with
20 language on this order prior to determining what the schedule is?
21 Later on, attach a schedule? Is it your purpose to first
22 decide what the schedule is and then put it in the policy
23 statement?

24 CHAIRMAN HENDRIE: I think determine what the
25 schedule is and then put it in.

1 MR. BICKWIT: I am inclined to think as you do that
2 it would be better if it were here, the cost associated with
3 that is to await the determination of the schedule before you
4 send out this policy statement.

5 CHAIRMAN HENDRIE: We are going to turn fairly soon
6 to Part 2 rule changes that have been published. It has been
7 my feeling that we would work our way through those and see
8 where the Commission wants to go and that it would not take
9 all that much arguing and time and we would see what we are
10 really to adopt out of the Part 2 changes, what effect that
11 had on the prototype schedule and discuss the prototype schedule
12 one more time.

13 MR. BICKWIT: It is a delay of putting this statement
14 out by at least a week and perhaps longer.

15 COMMISSIONER GILINSKY: In the absence of having
16 gone through the discussion on the Part 2 items, I described
17 this as a standard schedule which is now the basis for
18 allocating staff effort, which I believe it is, rather than
19 saying it is the right schedule.

20 CHAIRMAN HENDRIE: Your language is fine.

21 COMMISSIONER AHEARNE: I would be in agreement to
22 putting a statement in. I think I prefer Vic's description
23 of the way of allocating staff resources.

24 In favor of putting it in, unless it turns out it
25 begins to look like it is going to be many weeks before we can

1 get it out.

2 CHAIRMAN HENDRIE: In that case, I would agree.

3 We are getting some copies of Vic's language.

4 COMMISSIONER AHEARNE: Peter, could you explain again
5 what bothered you about at least three working days, why you
6 wanted to change it to 12?

7 COMMISSIONER BRADFORD: The best I can do is tell you
8 what would bother me about it at the moment. It was in the
9 original draft.

10 COMMISSIONER AHEARNE: The original draft was request
11 for extension of time should generally be in writing.

12 COMMISSIONER BRADFORD: I made a number of changes
13 where it seemed to me that document simply was too specific in
14 terms of taking items that really should in each case be
15 resolved by the board and resolving them ourselves. It seemed
16 to me not only in that case but a number of the other changes
17 I made, we ought to be giving the board a generalized guidance
18 and let them decide the specific number of days or specific
19 other techniques depending on the change I was making that
20 ought to be employed.

21 I cannot imagine this formulation would work out to
22 be less than three days, except in some situation where a last
23 minute emergency arose and in many cases it would tend to be
24 more than three days.

25 MR. COTTER: I think it sounds like a good deal more

1 than three days.

2 COMMISSIONER AHEARNE: Whenever we have a situation
3 where the words are very general, then it is very easy to
4 claim an exemption. I did not know whether that was in there
5 because the legal group felt it was a time that was needed,
6 an explicit requirement.

7 MR. COTTER: I think I was the originator of the three
8 days.

9 COMMISSIONER BRADFORD: It was in your original draft.

10 MR. COTTER: My thought was I do not think the rules
11 specify any time limits like that and it established a
12 meaningful timeframe in a place where there is none and where
13 there is a general practice of waiting until the absolute last
14 minute. I did not see it as too restrictive because the
15 statement in which it is contained is precatory and reserves
16 to the board the judgmental element.

17 COMMISSIONER BRADFORD: I do not mind you or the
18 boards themselves deciding that needs at least three days.

19 MR. COTTER: My thought was the three days was a
20 message to the parties.

21 COMMISSIONER BRADFORD: I have no difficulty with
22 you or the individual boards advising the parties that is what
23 it means. You all are the ones conducting the proceedings and
24 not us. It seemed to me to be a sounder principle to give you
25 the general thrust of what we expect and let you fill in the

1 numbers.

2 COMMISSIONER AHEARNE: Except in this case a chairman
3 of the licensing board panel has proposed a statement to that
4 effect. I would conclude that is because he thought it would
5 be of some help.

6 COMMISSIONER BRADFORD: It is sound management
7 principles, setting the general policy and letting the people
8 who have to carry them out give the specific contents.

9 COMMISSIONER AHEARNE: There is another part that
10 says it is an advantage to the people carrying it out to have
11 something more specific and good management says to give them
12 something more specific.

13 You have something in the appeal board regulations
14 that says one day?

15 MR. ROSENTHAL: Yes. We require motions for
16 extensions to be filed no later than the day before or the
17 date upon which the particular paper is due.

18 CHAIRMAN HENDRIE: I do not mind going back to three
19 days.

20 COMMISSIONER GILINSKY: I was hoping this conversation
21 would just float away.

22 COMMISSIONER BRADFORD: That is in the appeal
23 boards' rules of practice?

24 MR. ROSENTHAL: In the appendix to Part 2 or somewhere.

25 COMMISSIONER BRADFORD: Is it something we can change

1 in a policy statement? Is it something that is presently part
2 of the regulations?

3 MR. SHAPAR: It is in Appendix A to Part 2, I believe,
4 which is called a statement of policy and procedure. I think
5 Alan has handed down a ruling in which he has not accepted the
6 full validity of that document as a regulation.

7 MR. BICKWIT: I do not see any problem from a legal
8 standpoint in going either way.

9 (LAUGHTER.)

10 CHAIRMAN HENDRIE: Three or well. Peter is going to
11 vote for "well." If you vote weekly for "well" and I vote
12 weekly for "three" and those two are strong for "well" and
13 strong for "three," we are in a very neat symmetrical here.

14 Let's leave it "well", John.

15 COMMISSIONER AHEARNE: You may leave it "well."

16 CHAIRMAN HENDRIE: Looking at B; nobody seemed to
17 have any comments. C, nothing. For D, Vic wanted to put
18 another "so that" in there. It does not seem to fit. Do you
19 want to take it out?

20 COMMISSIONER GILINSKY: Take it out.

21 CHAIRMAN HENDRIE: Further in D where the
22 Commission "again endorses" rather than "re-endorses."

23 F, Vic wants to take out a sentence starting
24 with "In other words..."

25 COMMISSIONER AHEARNE: That was already taken out.

1 CHAIRMAN HENDRIE: It is in 202B.

2 COMMISSIONER GILINSKY: It was just repetitive.

3 CHAIRMAN HENDRIE: Are there any problems with it?

4 Do you feel sad over its loss? Strike it.

5 Next you wanted to strike "in order to prevent
6 detriment to the public interest or expense..." Let's strike
7 it, there may be other reasons.

8 G, H, I. Where did we end up on discussions on
9 the powers of the boards?

10 MR. BICKWIT: You had various expressions of opinions.
11 John did not want to express his until he received an
12 evaluation of the hearing process from the licensing boards.

13 COMMISSIONER AHEARNE: Tony is applying an
14 interesting approach in this one.

15 COMMISSIONER GILINSKY: What is it you are waiting for?

16 COMMISSIONER AHEARNE: Tony had agreed some time ago
17 to give me his view of an equivalent kind of paper that Alan
18 did, addressing sua sponte and role of the boards. I was
19 waiting until I got that.

20 COMMISSIONER GILINSKY: Do you have it?

21 COMMISSIONER AHEARNE: No. It was promised to me by
22 the end of this week.

23 MR. COTTER: Yes.

24 COMMISSIONER AHEARNE: I just thought I should put
25 that on the record.

1 CHAIRMAN HENDRIE: I am going to pass over any
2 statement about sua sponte. Vic's K, filing of proposed
3 findings of fact, no change. Initial decisions, no change.

4 I declare we have agreement on a great part of this.
5 There are two places we need to sort out, both are under
6 specific guidance, Section A, which at the moment looks as
7 though --

8 COMMISSIONER AHEARNE: I prefer Vic's version.

9 CHAIRMAN HENDRIE: It looks like Vic's original
10 two sentences with his second thing that starts "A standard
11 schedule" stuck in the middle.

12 COMMISSIONER AHEARNE: Or at the end.

13 COMMISSIONER GILINSKY: The question mark on the left
14 is important! I thought if we were going to attach a schedule,
15 we should describe it.

16 CHAIRMAN HENDRIE: John likes your description. I
17 would vote to attach.

18 COMMISSIONER BRADFORD: I have no objection to the
19 principle of attaching a schedule assuming we can agree on it.
20 I must say I preferred your language.

21 COMMISSIONER GILINSKY: There are two differences.
22 There is the first sentence which describes what the schedule
23 is. I think I prefer mine there. On how you react to the
24 schedule, I am not sure I do not prefer Joe's also.

25 COMMISSIONER BRADFORD: The only difficulty I had

1 with the business about allocating staff effort is it does seem
2 to reinvolve the boards in the management side of NRC operations.
3 What we are really interested in having them have is our
4 notion of what a fair and reasonable schedule is, if it is
5 also the basis for allocating staff effort, fine. That is
6 as it should be.

7 That is something I would put in a memo we send to Bill
8 and not a memo we send to the boards.

9 COMMISSIONER AHEARNE: The reason I like Vic's
10 description is I have no problem agreeing with it. I think
11 it is a schedule which is the basis for allocating NRC staff
12 effort. I think that is a factual description of it.

13 I do seem to get the impression that you think that
14 this puts more pressure on the boards somehow.

15 COMMISSIONER BRADFORD: It puts them on the wrong
16 track again. It is kind of like having them report to the EDO.
17 It is not that it has a pressure effect one way or the other.

18 MR. BICKWIT: I do not really see that but it does
19 seem to me to be a back handed way of telling the board to
20 stick to this kind of schedule if possible.

21 COMMISSIONER AHEARNE: I viewed it as a milder
22 statement of what the schedule was.

23 MR. BICKWIT: If you want to apply pressure to the
24 boards to conform to this where justified, it does strike me
25 the best way to do that is state that in a straightforward way

1 rather than to indicate this is the schedule for staff
2 allocation.

3 COMMISSIONER BRADFORD: Maybe that is involved in it,
4 too. Somehow we are saying to them, the train is running on
5 this track and you should not derail it because this is a
6 convenient way to schedule staff resources. The point is the
7 schedule we are laying out for them should be the most
8 consistent with running a sensible proceeding and then we
9 should be allocating staff resources in accordance with that.

10 COMMISSIONER GILINSKY: The reason I went to this
11 is because we have not had discussion on Part 2.

12 MR. BICKWIT: Why not defer it?

13 COMMISSIONER AHEARNE: Why not wait to see the
14 schedule?

15 CHAIRMAN HENDRIE: All right. We will settle III
16 and A when we struggle with the schedule and we still have
17 to touch on III, J, the sua sponte matters but we have
18 postponed that discussion until John hears from Tony.

19 COMMISSIONER AHEARNE: You will get copies.

20 COMMISSIONER BRADFORD: I still owe you a Part IV
21 conclusion which Victor delegated to me in accordance with
22 sound management principles after the last meeting which
23 essentially recaptures whatever the flavor of my original
24 beginning can be salvaged and put at the end and I will send
25 that around today.

1 CHAIRMAN HENDRIE: All right.

2 I have 35 minutes, where should I put it, on Part 2?

3 MR. BICKWIT: I would put it on Part 2.

4 CHAIRMAN HENDRIE: Good, start.

5 MR. BICKWIT: You have two papers before you, the
6 analysis of the comments on proposed rule included in
7 SECY-81-252 and a memo from the EDO relating to the discovery
8 aspects of the proposal.

9 I do not think it would be productive to go through
10 all the arguments made in either the SECY paper or in the EDO's
11 memo although I would leave that to the EDO and the Executive
12 Legal Directive. I simply want to point out what we have in
13 the SECY paper is a series of joint recommendations on most
14 of the recommendations in the proposal but I think all would
15 agree the recommendations are on the least significant proposed
16 changes to the present rules.

17 With respect to the most significant, i.e., the
18 proposal involving discovery, what you have is a statement --

19 COMMISSIONER AHEARNE: A punt!

20 MR. BICKWIT: I would not describe it as a punt.
21 That is really the reason I bring it up. You have a statement
22 of cost and benefits which is subscribed to by our office
23 and the adjudicatory boards, the licensing board and the chairmen
24 of the appeal boards, and the reason I do not regard that as
25 being characterized in the way you characterized it is basically

1 what you have in the discovery proposal is a weighing in our
2 view of rather serious costs and rather serious benefits and
3 with respect to the other proposed changes, the four offices were
4 able to come up with technical fixes which we regarded as really
5 costing very little and having some benefit.

-2A 6 The cost is one that at least three offices agree
7 is substantial. The benefit is also substantial. In a case
8 such as this, it struck me that the lawyers are not the ones
9 to advise the Commission. We can tell you that the proceedings
10 will be impacted, the proceedings will not be as thorough as
11 they would be if you took the action proposed.

12 In essence, what you are weighing against a thorough
13 proceeding is the need to get various plants on line at an
14 earlier stage.

15 I think it is fair to say that we have reached the
16 conclusion that prohibiting discovery against the staff will
17 get plants on line at an earlier stage. We disagree with the
18 comments to the contrary. There are many comments to the
19 contrary. We reject them in the majority of cases we can
20 foresee.

21 What you are really talking about is how much do
22 you want to get those plants on line. That to my view is not
23 a question that is appropriately addressed by the Commission
24 lawyers.

25 With respect to the staff position on that, I think it

1 is appropriately addressed by the Commission staff. The
2 Commission staff has addressed it and has come out strongly in
3 one direction.

4 CHAIRMAN HENDRIE: It seems to me the way Part 2
5 proposition is shaped is there is a substantial question of
6 mandatory discovery from the staff. Leave it unchanged; take
7 it out or adjust it. There are a batch of other Part 2 rule
8 changes for which we have recommendations of the reviewing
9 group that on balance seem to me reasonable although I am
10 under no illusion they are going to make any radical difference
11 in at least the time aspect of these proceedings.

12 Having gotten comments and having had the reviewing
13 group consider the comments and think about the whole process,
14 I am inclined to take their recommendations for these minor
15 adjustments.

16 There is a question of what we do about the schedule.
17 We would like to deal with that also because of the policy
18 statement where I still would prefer to put it.

19 What about the section about alternative means to
20 expedite the process? People seem to come back and suggest
21 there were other things we were looking at or should be
22 looking at that were more significant than most of these Part 2
23 items.

24 I do not seem to find any recommendation from the
25 reviewing group under IV of your paper. You simply point out

1 some of the comments ran in this direction. Is that the way
2 I read it?

3 MR. BICKWIT: That is true. Implicit in my not
4 making a recommendation is the notion that I think the
5 Commission in on the right tracks already.

6 CHAIRMAN HENDRIE: It looks to me as though I can
7 come very rapidly to the issues before us in Part 2. For
8 myself, I would support curtailing mandatory discovery against
9 the staff. I would support the recommendations of the group
10 as set forward in this paper for changes to Part 2 and depending
11 upon how we all vote on those things, then we sit down with
12 counsel and work through that schedule.

13 My own feeling is the chances are after the
14 Commissioners have read the paper and considered the comments
15 would have a fairly good idea where they would come out. It does
16 not seem to me to be something which is going to require hours
17 of meetings and discussion amongst us.

18 COMMISSIONER AHEARNE: I have a few questions.

19 CHAIRMAN HENDRIE: Please ask your questions. If you
20 would like to indicate how you come down on these things, we
21 would like that also.

22 COMMISSIONER AHEARNE: On the bottom of page seven,
23 you have under the present rules 103 days provided for any
24 contested discovery required after issuance of the JSER.

25 Is the key there to contested -- where do you get

1 103 days?

2 MR. BICKWIT: That assumes there are motions to
3 compel discovery which is not undertaken under the voluntary
4 discovery concept. It assumes also that there are no cross
5 interrogatories which are off the critical path and it assumes
6 that the motions to compel are granted.

7 With those assumptions, and the assumption of the
8 period of time specified in the rules that is taken advantage
9 of by every party.

10 COMMISSIONER AHEARNE: Under the present rules, as
11 much as 103 days can be used?

12 MR. BICKWIT: I think actually more could be used if
13 cross interrogatories take you beyond the critical path. If
14 any of these assumptions are not correct, 103 is the wrong
15 number.

16 MR. SHAPAR: That is for one round of
17 interrogatories and the complete schedule of all the intermediate
18 points as set out in the memorandum to the Secretary dated
19 April 7.

20 MR. BICKWIT: If the motion to compel under that
21 schedule is not granted, right then and there that chops two
22 weeks off the 103 days. I guess it should also be pointed out
23 in the proposed schedule, you had 25 days assumed for discovery
24 post-SSER so that the appropriate saving should be the number
25 that you come up with when you subtract 25 from whatever number

1 of days you settle on under this analysis.

2 COMMISSIONER AHEARNE: Are you saying the 25 days
3 is the savings you would see from this?

4 MR. BICKWIT: No. I am saying let's assume 103 days
5 is what you can expect, that those assumptions are reasonable
6 and 103 days is what you could expect. If you leave the rules
7 as they are, you have to recognize the difference between
8 leaving the rules as they are and what was contemplated in
9 the original schedule is 103 minus 25.

10 MR. SHAPAR: Isn't discovery usually concluded
11 against the other parties by the time the SSER is issued?

12 MR. BICKWIT: I would say no. It need not be because
13 you may have a situation especially in the near term where the
14 applicant's fix with respect to TMI is really known about only
15 about 30 days before the SSER is issued. You may have some
16 discovery going on against the applicant post-SSER. I think
17 that is a very possible situation.

18 The point I was making is under our schedule, we
19 had assumed that 25 days would elapse for discovery of some
20 sort and therefore, the difference between this assumption and
21 that is 103 minus 25.

22 COMMISSIONER AHEARNE: That is a potential savings,
23 not automatic in every case.

24 MR. BICKWIT: Certainly not. Those assumptions are
25 going to vary from case to case.

1 COMMISSIONER AHEARNE: On page ten you talk about
2 things that would be required, would need to be provided,
3 would be required, would have to be extended.

4 Under "Costs" you say if we go to removal of the
5 staff from discovery that a substantial expansion of the local
6 public document room program would be required and at a
7 minimum, NRC would have to provide to the local public document
8 rooms and additional travel money would be required and staff
9 resources would have to be expended.

10 I am kind of puzzled by why you say that so strongly.

11 MR. BICKWIT: It is all hinged to the first sentence
12 of the not full paragraph on page nine which is the Commission
13 must also recognize that a major premise of the proposal is
14 staff will make available pertinent documents on a voluntary
15 basis.

16 Obviously if you want to drop that premise and live
17 with the current state of the LPDRs, that is within the
18 Commission's authority.

19 COMMISSIONER AHEARNE: Making voluntary distribution
20 of the documents does not necessarily automatically follow
21 your need of expansion and the LPDRs are in pretty sad shape
22 in many cases right now, the availability of documents
23 and cataloging of documents.

24 They are poor now so adding something else to them
25 does not automatically mean because of this additional problem

1 that they now have to get healthy. They should have been
2 healthy anyway.

3 MR. BICKWIT: We presently have a poor set of LPDRs
4 plus discovery against the staff. We are assuming that if the
5 Commission wants to eliminate discovery against the staff, that
6 it will want to beef up the LPDR system.

7 COMMISSIONER AHEARNE: We have not in the past and
8 it does not automatically follow that if we do this we would
9 want to.

10 MR. BICKWIT: It does not automatically follow, that
11 is right.

12 COMMISSIONER AHEARNE: Your words seem to imply it
13 would have to.

14 MR. BICKWIT: Our words were not meant to imply the
15 Commission had no choice but to beef up the LPDRs.

16 COMMISSIONER BRADFORD: It might have been better if
17 they had.

18 COMMISSIONER AHEARNE: On the issues with respect to
19 elimination of discovery, in your development of that concept
20 originally, did you ever address perhaps not going quite that
21 far and say limiting interrogatories against the staff?

22 MR. BICKWIT: That is one of the alternatives.

23 COMMISSIONER AHEARNE: I gather that is something
24 some Federal courts use.

25 MR. BICKWIT: In our initial discussions, we considered

1 that. That is certainly one of the options before the
2 Commission. I think in fact the differences between limiting
3 interrogatories or eliminating interrogatories and eliminating
4 discovery are not all that great.

5 COMMISSIONER AHEARNE: I said limiting.

6 MR. BICKWIT: What did you have in mind?

7 COMMISSIONER AHEARNE: You have that as an option.
8 My understanding was in some Federal courts, they do limit the
9 interrogatories to some number, say five, and going beyond that
10 requires permission from the court.

11 MR. BICKWIT: That is certainly an option.

12 COMMISSIONER AHEARNE: On the question on the licensing
13 boards rule on written letters orally, do you see that as being
14 a major change?

15 MR. BICKWIT: No.

16 COMMISSIONER AHEARNE: As you say, to a large extent
17 it codifies this practice that is existing.

18 The prohibition on motions to reconsider pre-hearing
19 orders, you have ended up with proposing a modification.

20 MR. BICKWIT: Yes.

21 COMMISSIONER AHEARNE: That modification I gather
22 the licensing board has no problem with?

23 MR. BICKWIT: These are jointly proposed.

24 COMMISSIONER AHEARNE: As I recall there was some
25 concern on part of some of the members of the licensing board

1 as to an absolute restriction.

2 Given this change, do you expect that to be
3 significant?

4 MR. BICKWIT: A major time saver? No.

5 COMMISSIONER AHEARNE: You concluded you would not
6 want to go to the licensing board chairman ruling on these
7 items.

8 To file a reply, et cetera, my problem is it
9 appeared to be a small savings but it did have the appearance
10 of unfairness.

11 MR. BICKWIT: There was some unfairness associated
12 with our recommendation?

13 COMMISSIONER AHEARNE: The way the restriction you
14 have, if you want to cut time off, why don't you cut time off
15 the board, writing time?

16 MR. BICKWIT: That was a subject that we dealt with
17 when we put together the proposed schedule. I think the general
18 conclusion of our group was writing a decision in less than
19 two months would be burdensome on the process. The licensing
20 board originally proposed three months. We hammered them down
21 to two.

22 We did not propose a rule change to accomplish what
23 was the general conclusion of the group which was 60 days
24 was a reasonable period of time.

25 COMMISSIONER AHEARNE: The last one on the summary

1 judgment no later than 45 days, how would you expect the board
2 to apply this unless it would unduly divert the other parties'
3 resources? Give me an example.

4 MR. BICKWIT: If it is obvious that one party is
5 having resource problems, without any particular reason, the
6 proponent of summary disposition offers that motion within
7 five days of the hearing, I would regard that as an undue
8 invasion of the other party's resources. If there was some
9 particular reason why it could not be offered at an earlier
10 stage, I would be inclined to say it is not unduly.

11 COMMISSIONER AHEARNE: At the top of page 21, you have
12 in lieu of the board's deciding on an ad hoc basis how much time
13 for responses should be provided, a ten day response period
14 should be provided.

15 Does this establish a right to a second response?
16 My understanding was at the present time it was up to the board.

17 MR. BICKWIT: Our intent was not to change existing
18 rights but where a right existed to make ten days the period
19 of time.

20 COMMISSIONER AHEARNE: My understanding was there
21 was no right to that second response, it was up to the board.

22 MR. BICKWIT: I think that is right. My response
23 was we did not intend to create a right where none exists.

24 COMMISSIONER AHEARNE: If the board so chooses, then
25 the ten days.

1 MR. BICKWIT: Yes.

2 COMMISSIONER AHEARNE: I would agree with Joe
3 on number six where flexibilities would be useful. On number
4 five, I would be opposed.

5 CHAIRMAN HENDRIE: Six was yes and five was no.

6 COMMISSIONER AHEARNE: Yes. Yes or no with respect
7 to the recommendations. On four, yes, with respect to the
8 recommendations, which is a "no" with respect to the proposal.

9 CHAIRMAN HENDRIE: I understand.

10 COMMISSIONER AHEARNE: On three, yes to the
11 recommendation. On two, yes to the recommendation. On one,
12 I will hold until I hear comments from my colleagues.

13 CHAIRMAN HENDRIE: Vic?

14 MR. BICKWIT: On five, are you saying you want to
15 leave the existing situation or you want to go back to the
16 proposed rule?

17 COMMISSIONER AHEARNE: I would leave the existing
18 situation at the moment. I could not persuade myself this
19 would really help.

20 COMMISSIONER GILINSKY: On the elimination of
21 compulsory discovery against the staff, I would not approve.
22 I would take a proposal made in a comment from Westinghouse
23 which would at least not make it mandatory for the staff to
24 be a party. My feeling is it is not necessary for the staff
25 to be a party in every proceeding.

1 COMMISSIONER AHEARNE: Westinghouse went further.
2 They said not have the staff be a party at all.

3 COMMISSIONER GILINSKY: Yes, I would not go that far.

4 CHAIRMAN HENDRIE: Could they mail in their safety
5 report?

6 COMMISSIONER GILINSKY: I can see you like that
7 proposal.

8 On two -- I attended part of a hearing the other day
9 and it seemed to me the applicant was perfectly capable of
10 presenting his own case. It was not a licensing hearing. It
11 really was not clear to me why the staff was there. It could
12 be savings in other proceedings and the net effect could be
13 to free up a lot of lawyers to work on the proceedings where
14 they are needed.

15 On number two I would go with the recommendation.
16 On three, I would go with the recommendation. On four, I would
17 not change the rule. I guess that is also going with the
18 recommendation. Number five, I would not eliminate applicant's
19 right. Number six, I would allow a more flexible schedule.
20 Number seven, I guess we have not really dealt with that yet.

21 CHAIRMAN HENDRIE: There was not a seven!

22 Five, you disagree with the recommendation?

23 MR. BICKWIT: You disagree with the proposed rule.
24 You do not want to eliminate the right of reply. Do you want
25 to agree with the recommendation which is to allow five days

1 for the right of reply?

2 COMMISSIONER GILINSKY: Yes, that is fine.

3 CHAIRMAN HENDRIE: Peter?

4 COMMISSIONER BRADFORD: I can save time by saying I
5 am basically in agreement with where Victor came out on each
6 one. I am interested in having the question of the staff's
7 role in the hearing discussed. I do not know I would be
8 prepared to endorse a major rearrangement without more work
9 than we have done on it to date.

10 I am not sure on five that I would swallow the
11 entire recommendation although I am also not sure I grasped it.

12 I do not have a problem with changing the time period.

13 Len, what do you mean by there is also no reason why
14 parties other than the staff should have the opportunity to
15 review the applicant's proposed findings before filing their
16 submissions?

17 MR. BICKWIT: We mean whereas presently the standard
18 schedule is for the applicant to file on day 20 and intervenors
19 to file on day 30. We are advised by the boards that the
20 applicants really cannot be expected to file on day 20 so we
21 suggest everybody but staff file on day 30. We say in
22 justification that there does not seem to be any inherent reason
23 why that is unfair to intervenors.

24 COMMISSIONER BRADFORD: You go on with the
25 applicant's right to file a reply being preserved. I assume

1 if the applicant tried to file a reply, it originally flowed from
2 the fact that they had to get their first filing in earlier
3 and in effect the other parties were then given their chance
4 to file a reply because they already had access to the
5 applicant's findings and that is why they were only given one
6 shot.

7 MR. BICKWIT: I do not think it flowed from that. I
8 think it flowed from the notion that the applicant has the
9 burden of proof and therefore should have a right to reply
10 to anything he has seen in the pre-file testimony.

11 COMMISSIONER BRADFORD: I would think there would be
12 an element of both. If I were a board member, I would find
13 findings that in some measures spoke to each other to be more
14 valuable than a set that were all filed simultaneously and
15 then only one party had a right to comment on what laid before
16 me. Whatever the logic, I think there is real benefit for
17 having findings that come in sequence and really join on the
18 issues rather than have that happen simply by chance with
19 everybody filing at once.

20 I would be inclined to preserve a structure in which
21 there was some time differential.

-2.
22 MR. BICKWIT: Fair enough. It is the conclusions of
23 the boards that the series of filings cannot realistically be
24 expected to start on day 20, but expected on day 30.

25 COMMISSIONER BRADFORD: I would be talking about

1 30 to 40.

2 MR. BICKWIT: Yes.

3 CHAIRMAN HENDRIE: On five, you would want some
4 different times?

5 COMMISSIONER BRADFORD: There is another time savings
6 in there that I do not think I object to but I do have a
7 problem with eliminating the sequential filing.

8 COMMISSIONER AHEARNE: Peter, you said you agreed with
9 Vic on essentially all but Vic, I was not clear where you came
10 out on number one.

11 COMMISSIONER GILINSKY: I would not approve the
12 proposal and I suggested an alternative which is not to make
13 it mandatory the staff be a party in each proceeding.

14 CHAIRMAN HENDRIE: All right.

15 What we find amongst ourselves is we have tentative
16 agreement on the rule changes as recommended in the counsel's
17 paper, recommended by the review group on items two, three,
18 four and six. We will need more discussion on item five because
19 I suspect if we juggle some of these times, the majority
20 position would develop, which would maintain some of the
21 things Peter and John have mentioned and also take note of
22 the fact that the current times as laid down in Part 2 are
23 not being made. I think we need discussion on that.

24 On number one, to relieve the staff of the requirement
25 to respond to discovery on a voluntary sort of basis, we have

1 one to do that and two not to do that but discussion for
2 another proposition about the staff's role in hearings. John
3 will wait for further information.

4 COMMISSIONER AHEARNE: It does not make much difference.

5 CHAIRMAN HENDRIE: As a practical matter unless
6 Peter and Vic change their minds, if you agree with me, it
7 is a 2-2 proposition.

8 COMMISSIONER AHEARNE: I would like to comment on
9 Vic's proposal.

10 CHAIRMAN HENDRIE: What I propose to do with regard
11 to Part 2 is thrash out number five and get straight on the
12 dates because I think we can have some agreement on that and
13 we can have discussion on Westinghouse's proposal that the
14 staff stay home.

15 COMMISSIONER GILINSKY: You can see how the lines
16 are forming.

17 MR. BICKWIT: I do not think you need much discussion!

18 (LAUGHTER.)

19 COMMISSIONER AHEARNE: I have some questions to ask
20 you, Len.

21 CHAIRMAN HENDRIE: We need to turn to the schedule.
22 I think a majority of us if we can agree on a standard
23 schedule will want to see it in the policy statement. I would
24 propose to attack these several items as well as the remaining
25 items in the policy statement the next time we meet on this

1 subject which I believe is Thursday, May 7, 1981, at 2:00 p.m.

2 MR. BICKWIT: Mr. Chairman, may I suggest at that
3 time we might want to consider some alternatives on the
4 discovery end?

5 CHAIRMAN HENDRIE: We need to talk some about that
6 in connection with the schedule. It may turn out you do not
7 have very much of a useful schedule unless you provide some
8 kind of post-SSER control on discovery. If it runs 103 days
9 after the SSER, I think shooting for an eight to ten month
10 hearing process may not be practical.

11 In the meantime I think you can get yourself gathered
12 up on the items on which we have agreed for the Part 2 rule
13 changes. One will look forward at some point to a Part 2 rule
14 change package which the Commission could affirm.

15 Thank you very much.

16 (Whereupon, the Commission meeting was adjourned
17 at 12:00 p.m.)
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NUCLEAR REGULATORY COMMISSION

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This is to certify that the attached proceedings before the
Nuclear Regulatory Commission

in the matter of: DISCUSSION OF REVISED LICENSING PROCEDURES

Date of Proceeding: Tuesday, April 28, 1981

Docket Number: _____

Place of Proceeding: Room 1130, 1717 H St., Washington, D.C.

were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

Marilynn M. Nations

Official Reporter (Typed)

Marilynn M. Nations

Official Reporter (Signature)