

NUCLEAR REGULATORY COMMISSION

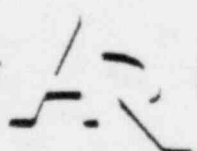
ORIGINAL

COMMISSION MEETING

In the Matter of: PUBLIC MEETING

DISCUSSION AND POSSIBLE VOTE ON MODIFICATIONS  
TO IMMEDIATE EFFECTIVENESS RULE AND, IF TIME  
PERMITS, DISCUSSION OF REVISED LICENSING  
PROCEDURES -- PROPOSED RULE CHANGE TO PART 2

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1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION

3 PUBLIC MEETING  
4 DISCUSSION AND POSSIBLE VOTE ON MODIFICATIONS TO  
5 IMMEDIATE EFFECTIVENESS RULE AND, IF TIME PERMITS,  
6 DISCUSSION OF REVISED LICENSING PROCEDURES --  
7 PROPOSED RULE CHANGE TO PART 2  
8

9 Nuclear Regulatory Commission  
10 Room 1167  
11 1717 H Street  
12 Washington, D.C.

13 Wednesday, September 9, 1981

14 The Commission met, pursuant to notice, at

15 2:05 p.m.

16 BEFORE:

17 NUNZIO PALLADINO, Chairman of the Commission

18 PETER BRADFORD, Commissioner

19 JOHN AHEARNE, Commissioner

20 VICTOR GILINSKY, Commissioner

21 THOMAS ROBERTS, Commissioner

22 NRC STAFF PRESENT:

23 SAMUEL CHILK

24 LEONARD BICKWIT

25 MARTIN MALSCH

WILLIAM DIRCKS

1 NRC STAFF PRESENT: (Continued)

2 HAROLD DENTON  
3 FORREST REMICK  
4 HOWARD SHAPAR  
5 ALAN ROSENTHAL  
6 TONY COTTER

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DISCLAIMER

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

CHAIRMAN PALLADINO: The meeting will please come to order.

The subject of this afternoon's agenda is a discussion and possible vote on modifications to the immediate effectiveness rule, SECY-81-421. The agenda also says if the time permits, discussion of revised licensing procedures, SECY-526.

In order to allow enough time for the discussion on 421 and not keep people waiting who are here specifically for 526, I am going to suggest that we limit the meeting to a discussion of SECY-421 and not cover the discussion of SECY-526, unless the members of the Commission have other feelings.

Also I am going to suggest that to allow time for deliberation on the part of each of us that we not attempt to take a vote today -- of course I could be overruled on that -- but allow each of us to reflect on what we hear.

The suggested method for proceeding I would offer as follows: that we have the OGC highlight for us the features of the two proposals that are included in 421 with any observations he has on the advantages and disadvantages. Then I would suggest that we ask the staff to highlight its views on the pros and cons on both approaches with particular emphasis on the impact on the

1 schedule and the impact on the resources of the Commission  
2 and any observations they have about the perceptions that  
3 the public will have on either action.

4           Then I would like to ask the members of the  
5 Licensing Board and the Appeal Board to add any observations  
6 they might have. In the process the Commissioners will  
7 undoubtedly interrupt and ask questions as we go along. Then  
8 after we have had the individual discussions and  
9 interactions we will proceed with any questioning or  
10 observations that the various Commissioners would like to  
11 make. So unless there is some suggestion to go otherwise, I  
12 would proceed that way.

13           Len, would you like to start off?

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

15           I would like to be brief but I think it might be  
16 helpful just to quickly go through the background here. The  
17 old immediate effectiveness rule was suspended in the fall  
18 of 1979. In its place was put in our rules and an Appendix  
19 B. This called for a review period following the favorable  
20 issuance of an initial decision by a board which was  
21 generally calculated would run about 90 days, 60 days for  
22 the Appeal Board followed by 30 days for the Commission.

23           In April of 1981 the Commission went out for  
24 comment with respect to two alternative rules that were both  
25 designed to cut that period of time down but to differing

1 degrees. One alternative was designed essentially to  
2 restore the immediate effectiveness rule, although it left  
3 the Appendix B review procedure in place to be conducted  
4 immediately following the issuance of the favorable initial  
5 decision. The other took the Appeal Board out of the  
6 process but did not take the Commission out of the process  
7 and that was eventually adopted as a final rule on May 28,  
8 1981.

9           At the licensing discussion with respect to  
10 Sequoyah 2, Commissioner Bradford raised the possibility of  
11 the Commission agreeing on a proposal that would take the  
12 Commission out of the picture as well with respect to  
13 low-power decisions. We were asked to draft a proposed rule  
14 that would have that effect. We were also asked to extend  
15 the period of the time that the Commission would have to  
16 deal with full power initial decisions from 30 to 45 days.

17           In commenting on that particular proposal the  
18 Chairman suggested the alternative of taking the Commission  
19 out of the effectiveness review picture both with respect to  
20 low-power and full-power initial decisions. We have drafted  
21 a proposal that would do that.

22           I would say in comparing the two proposals  
23 essentially the factors that are being weighed are the ones  
24 that were pointed out in the comment period on the earlier  
25 rulemaking that was held in the spring of this year. We are

1 essentially weighing the extent to which you regard  
2 Commission review as beneficial and conducive to public  
3 health and safety versus the degree to which you regard that  
4 review as costly in terms of delay and the consequent  
5 economic costs to the affected utility and the public that  
6 result from that review.

7           At this time I prefer to yield to the staff and  
8 the boards to hear their assessments of the various resource  
9 impacts.

10           COMMISSIONER GILINSKY: Len, you sent a memo up  
11 which discussed whether or not one of these changes could be  
12 made immediately effective. I came to the conclusion that  
13 if we did eliminate an entire review that that could be made  
14 immediately effective. I wonder if you would say a word  
15 about that.

16           MR. BICKWIT: I purposely put the case for        in  
17 detail in memorandum form. The basic conclusion is that  
18 while the matter is not briefed out, we do believe: 1) that  
19 these rules can be made effective immediately, that is can  
20 be made effective without notice and comment; and 2) that  
21 these rules can be made effective upon publication in the  
22 Federal Register, which is a different question.

23           COMMISSIONER GILINSKY: Why is it unnecessary to  
24 issue a proposed rule if we were going to go that way?

25           MR. BICKWIT: I am suggesting that we need not

1 issue a proposed rule.

2 COMMISSIONER GILINSKY: Why is that?

3 MR. BICKWIT: To say that there is no need for  
4 notice and comment is to say that there is no need to issue  
5 a proposed rule. What is issued is a final rule on which  
6 there is no comment.

7 COMMISSIONER GILINSKY: Why is there no need for  
8 notice and comment?

9 MR. BICKWIT: The reasons are two: that we regard  
10 the rule as procedural. The courts have interpreted  
11 "procedural" to mean rules which we generally understand as  
12 procedural minus those which have a substantial impact on  
13 parties. And as you have seen in that memorandum, we do not  
14 regard the impact here as raising to the level of  
15 substantiality to render a procedural rule, a rule that is  
16 not exempt from the notice and comment procedures.

17 COMMISSIONER GILINSKY: Did we not put out for  
18 comment the rule changes taking the Commission out of the  
19 process?

20 MR. BICKWIT: We did, yes.

21 COMMISSIONER GILINSKY: Why did we do that? Are  
22 you saying now it is unnecessary?

23 MR. BICKWIT: I am saying it was not legally  
24 necessary.

25 MR. SHAPAR: The Commission had made it a practice

1 to go out for notice and comment even on rules that have  
2 been clearly procedural in accordance with past practice,  
3 irrespective of the legal question of whether or not that  
4 policy was required.

5 COMMISSIONER GILINSKY: Why do you conclude this  
6 would not have an effect on the parties?

7 MR. BICKWIT: I say it will have an effect on the  
8 parties. I say it does not rise to the level of  
9 substantiality as to take the rule out of the procedural  
10 rule exemption from notice and comment.

11 CHAIRMAN PALLADINO: Did we not go out for comment  
12 on the proposition of taking this out of low power and  
13 extending the operating license deliberation to 45 days?

14 MR. BICKWIT: No, we have not gone out for comment  
15 on that. That is one of the proposals we will have before  
16 you.

17 CHAIRMAN PALLADINO: There was apparently some  
18 discussion though on the issue of whether we should get out  
19 of both or not.

20 MR. BICKWIT: Yes, I am coming to that as an  
21 additional reason.

22 In addition to the fact that we believe this  
23 qualifies for the procedural exemption, we also believe that  
24 a strong argument can be made that because comment has been  
25 received with respect to many if not all of the issues



1 involved in these rules, in these proposals, that the  
2 argument can be made that comment would be unnecessary.

3           The Administrative Procedure Act allows an agency  
4 to dispense with comment in the event that it can determine  
5 that comment would be impracticable, unnecessary or contrary  
6 to public interest. We believe strong argument can be made  
7 that comment is unnecessary here in light of the previous  
8 comments that the Commission has received on these policies.

9           CHAIRMAN PALLADINO: What was the basis for  
10 soliciting the early comments?

11           MR. BICKWIT: As to why the Commission chose to go  
12 out for comment --

13           CHAIRMAN PALLADINO: What was the vehicle around  
14 which we asked for comments?

15           COMMISSIONER AHEARNE: It was modification of the  
16 Appendix B proceeding. We were modifying it and there were  
17 two alternatives that were being proposed for that  
18 modification. What we asked for was comments on those two  
19 alternatives.

20           MR. BICKWIT: Yes. I remember it was my proposal  
21 that the Commission go out for comment on those two  
22 alternatives as the best means to conceivably resolve a  
23 dispute between various factions of the Commission.

24           COMMISSIONER BRADFORD: Perhaps it is worth saying  
25 a word as to what the original rule looked like and what it



1 is that we were modifying. My own memory has begun to fade  
2 on the subject. I think the Chairman's question really is  
3 what was it we had before.

4 MR. BICKWIT: I see. I had mentioned that at one  
5 point in this discussion.

6 It is basically we had an Appendix B which called  
7 for an approximately 90-day preview procedure. It was  
8 proposed to modify that either so as to bring it down to a  
9 30-day review procedure or alternatively a zero-day review  
10 procedure. I am over-generalizing but in the interests of  
11 simplicity I think that is fair.

12 CHAIRMAN PALLADINO: Is that the one that led to  
13 10 and 30?

14 MR. BICKWIT: Yes.

15 COMMISSIONER AHEARNE: I think your argument on  
16 not needing the comment would be that the two proposals we  
17 are addressing now fall within the bounds of the two  
18 alternatives that were proposed.

19 MR. BICKWIT: That is one of the arguments, the  
20 argument that that comment on the rule would be  
21 unnecessary. The second argument is that even if that  
22 finding could not be made, this is a procedural rule.

23 COMMISSIONER AHEARNE: But it is true, is it not,  
24 that the two alternatives that we are discussing here fall  
25 within the bounds of the alternatives?

1 MR. BICKWIT: They are extremely close.

2 CHAIRMAN PALLADINO: Although there were many  
3 comments.

4 COMMISSIONER AHEARNE: There was one of those  
5 Option Bs.

6 COMMISSIONER GILINSKY: -- after decision.

7 CHAIRMAN PALLADINO: I gather there were comments  
8 that addressed the question without having any review.

9 MR. BICKWIT: There certainly were.

10 COMMISSIONER GILINSKY: But that does not do it.  
11 It is the Commission putting all commentaries on notice.

12 MR. BICKWIT: I also agree that we had not asked  
13 for comment on precisely what is at stake here but that we  
14 received a substantial number of comments along those  
15 lines. It does strike me that there was sufficient notice  
16 to commenters that the Commission might in fact go that way.

17 It was to my mind a very modest difference from  
18 what was actually proposed in the earlier ruling.

19 COMMISSIONER BRADFORD: Is there a simple verbal  
20 formulation, the extent to which an agency can adopt an  
21 action different from that which it sought comment on? How  
22 different can it be before you have to seek comment again?

23 MR. BICKWIT: I think you have to ask: are the  
24 commenters reasonably on notice that the agency might take  
25 that step? In this case I would say yes. But as I said,

1 our argument does not rest on that proposition alone. We do  
2 regard this as a procedural rule.

3           The second question that I think is contained in  
4 Commissioner Gilinsky's request involves whether you can  
5 make a rule effective upon publication. The Administrative  
6 Procedure Act apart from the requirement of notice and  
7 comment requires that once comment is received and the  
8 agency goes to final rule that the effectiveness of the rule  
9 be delayed 30 days unless and except an exemption within  
10 Section 553 of the Administrative Procedure Act can be found.

11           In our view there are two reasons why these  
12 particular rules are exempt from the 30-day deferral  
13 requirement. One is that they are procedural rules and not  
14 substantive rules. The 30-day deferral requirement relates  
15 only to substantive rules. Secondly, they relieve  
16 restrictions which is a second exemption which is authorized  
17 from the deferred effectiveness principle.

18           COMMISSIONER BRADFORD: I am not sure I follow  
19 that, but in any case why would we care? What is it that is  
20 coming up within the next 30 days that it would matter one  
21 way or the other?

22           MR. BICKWIT: I do not believe anything is. In  
23 thinking about that question I could not think of any.

24           CHAIRMAN PALLADINO: All right, why don't we ask  
25 Bill Dircks and Harold Denton who represent the staff to

1 give their assessment of the pros and cons of the two  
2 approaches with particular emphasis on what it does to  
3 schedule, what it does to the workload and any observations  
4 you might have with regard to its impact on public health  
5 and safety and the perception to the public with regard to  
6 public health and safety.

7 MR. DIRCKS: I can just start off with a few  
8 comments and Harold can add more details.

9 I think the benefits are that the Commission would  
10 add an additional level of review to the license to the  
11 plant. This is another level of quality control and with  
12 all of the benefits that such an additional quality control  
13 will bring. The public perception is there that the  
14 Commission has involved itself in the most important  
15 decisions made by the agency. I think Len touched on these  
16 benefits.

17 But the benefits do bring costs. The costs in  
18 terms of figuring costs of delay, that will fall mostly on  
19 the near-term 1981-82 plants. Harold can go over those.

20 COMMISSIONER BRADFORD: What delay do you mean,  
21 Bill? We have not delayed one yet.

22 MR. DIRCKS: We are talking about the impacted  
23 plants, the ones that are going to be programmed to be  
24 completed before decision dates.

25 COMMISSIONER GILINSKY: Are you talking about the

1 10-day delay or the 30-day delay?

2 MR. DIRCKS: Do you want to get into those, Harold?

3 COMMISSIONER BRADFORD: In any case there are only  
4 two plants left that fall into that category, San Onofre and  
5 Diablo.

6 MR. DIRCKS: Why don't we get into those right now?

7 MR. DENTON: We are going to talk about the delays  
8 that are either potential delays or real delays. I think  
9 there are about eight plants on our last month's report that  
10 showed a possibility for delay. It is probably unavoidable  
11 in a couple of cases like Diablo Canyon and I understand  
12 this policy would not apply to those. Also I think a couple  
13 of plants are going to vanish from the delay list. So it  
14 would end up even if plants like Summer, Susquehanna,  
15 Waterford maintain their present --

16 COMMISSIONER GILINSKY: What delay are you talking  
17 about?

18 MR. DENTON: The possibility that the plant would  
19 be completed before the Commission would make a decision.  
20 There are like eight impacted plants on the present list.

21 COMMISSIONER GILINSKY: What assumptions are you  
22 making about the rules that would apply? Are you talking  
23 about the current rule or one of the alternatives that we  
24 are discussing?

25 MR. DENTON: I was approaching it from the

1 standpoint that we could only impact --

2           COMMISSIONER AHEARNE: I think your question is  
3 you have an assumption that the alternative you are saying  
4 would cause a delay would be an alternative where the board  
5 would make its decision affirmatively that the plant could  
6 not operate until some action on the part of the  
7 Commission. The delay would be that period of time between  
8 the Board making its decision and the Commission making its  
9 decision. That is the effect.

10           CHAIRMAN PALLADINO: That is the situation we are  
11 discussing now?

12           MR. DENTON: We have provided in the schedules 30  
13 days on every plant between the board decision and the --

14           COMMISSIONER GILINSKY: Under the current rules we  
15 have a process for making a low-power decision within ten  
16 days. We are discussing the possibility of removing that  
17 altogether, in which case the board decision will become  
18 immediately effective. Then you are talking about a 30-day  
19 period during which the Commission would deal with  
20 full-power approvals. Of course there is another  
21 alternative which is to eliminate that altogether.

22           CHAIRMAN PALLADINO: You are making the assumption  
23 that there is a low-power license to be issued.

24           COMMISSIONER GILINSKY: I was going to come to  
25 that. The cases which have already gone through the



1 low-power phase are pretty few and they usually have some  
2 special qualities about them which cause them to fall into a  
3 category which, well, your suggestion was that some of those  
4 might be included, for example Diablo or TMI. I cannot  
5 think of any others really. There was McGuire. As it  
6 turned out that had no effect on the plant either.

7           CHAIRMAN PALLADINO: I wonder if we could separate  
8 the assumptions. I think that is what we are having trouble  
9 with in following the argument. One could have the  
10 assumption that there is no request for a low-power license  
11 and therefore the hearing board would just go through the  
12 operating license phase, then the 30 days or 45 days would  
13 start. That is one case.

14           The other would be where the board hears operating  
15 license and then has a motion by the applicant saying I  
16 would like a low-power license. I guess that could come  
17 even before the hearing, in which case you would have a  
18 low-power determination and then an operating license. I  
19 guess there are variations in that.

20           COMMISSIONER GILINSKY: I do not think it is  
21 necessary that there be an application on the part of an  
22 applicant for a low-power license. I assumed what we are  
23 talking about, at least one of the two options, was that a  
24 board decision would become effective for operation up to  
25 5 percent whether or not the applicant had applied for it.



1 COMMISSIONER BRADFORD: I think that is right. So  
2 your two choices, Joe, I think blend into one.

3 COMMISSIONER GILINSKY: So I would like to  
4 understand under that I think we are pretty well agreed we  
5 are going to make some changes here. I think the sentiment  
6 is to change the current approach.

7 MR. DIRCKS: To go regularly to a low-power  
8 license and a full-power license?

9 COMMISSIONER GILINSKY: No. To make the board  
10 decision or Harold's decision in the case of an uncontested  
11 license immediately effective for operation up to the  
12 5 percent point. There is no 5 percent license. It is  
13 simply effective up to that point.

14 CHAIRMAN PALLADINO: If I understand you  
15 correctly, the hearing would be entirely on operating  
16 license.

17 COMMISSIONER GILINSKY: Yes.

18 CHAIRMAN PALLADINO: Then let's assume there was a  
19 favorable decision from the licensing board on operating  
20 license. Then the staff could immediately issue a low-power  
21 license and the Commission would then take the requisite  
22 amount of time or use as much of it as it needs to determine  
23 whether anything above the low-power would be --

24 MR. DENTON: I think I understand the question.  
25 Let me try to answer it again.

1           Assuming we meet our schedules and production of  
2 documents, assuming the boards meet their schedules in the  
3 issuance of decisions, there are only a handful of plants  
4 which are indicated as potential delays now. So the only  
5 ones on which the Commission would be on the critical path  
6 are the ones that are delayed. If you take one day to do a  
7 review, that is one day on those handful of plants. It is  
8 not very many.

9           COMMISSIONER AHEARNE: No, but see what Vic is  
10 suggesting you consider is how long does it take. Let's  
11 suppose as soon as the board makes its decision and it takes  
12 you a couple of days to make yours, they can now have  
13 authority to go to 5 percent. The plant has now got the  
14 authority to do something it would have to do anyway.

15           So what Vic is really asking is isn't the time it  
16 would take them get to 5 percent likely to equal, at least  
17 be the time it would take us to go through 30 days.

18           MR. DENTON: Yes.

19           COMMISSIONER GILINSKY: Where is the delay?

20           MR. DENTON: Let me explain. You can come up with  
21 scenarios where there is no delay and those where there is  
22 delay. Suppose no board maintains their ten-month  
23 schedule. Suppose the staff does not maintain its  
24 schedule. Suppose low-power licenses do not come into being  
25 somehow that we do not litigate low power, we only litigate

1 full power. You can then come up with that. I will not try  
2 to argue one way or the other.

3 COMMISSIONER GILINSKY: We are not talking about  
4 separate licenses. There is a license which has a condition  
5 which barring a Commission vote you can only use up to  
6 5 percent.

7 COMMISSIONER BRADFORD: It is the same license  
8 that you used to issue before TMI, a process that looks  
9 exactly the same, only visualize the license having stamped  
10 across the top "good only up to 5 percent."

11 MR. SHAPAR: I think there is a potential for  
12 delay that has not been identified. Let me try.

13 I think the assumption of your questions up to now  
14 has been a favorable decision on full power. Let's assume  
15 you are litigating a full-power license. Now the  
16 application for low-power license has occurred in the past  
17 when the litigation on the full-power license is lasting so  
18 long that the applicant does not think he can stand the  
19 delay and the full-power license has not been thoroughly  
20 litigated in the full-power license.

21 The applicant however feels that it needs a  
22 low-power license and can easily prevail because remember,  
23 the low-power application has to be contested too, can be  
24 contested. But the issues are so much simpler because of  
25 the low fission product inventory, et cetera, that it can go

1 ahead and litigate the low-power license much more quickly.

2 COMMISSIONER GILINSKY: We have that case before  
3 us.

4 MR. SHAPAR: You are asking how it will save time.

5 COMMISSIONER GILINSKY: We agree that there are  
6 circumstances of that sort where the applicant already may  
7 have received low-power authorization, gone through the  
8 low-power process but not yet have gotten the full-power  
9 authorization.

10 What I said is those are rare. We happen to have  
11 one in front of us that at least could potentially fall in  
12 that category. And usually there the reason the full-power  
13 license has been held up is that there is some problem that  
14 has taken a long time to deal with and that is the very kind  
15 of case the Commission is going to want to take a look at.  
16 But I dare say that there is not one of those cases in ten.

17 MR. DENTON: But if the ground rule were to issue  
18 this full-power license with low-power limits stamped on it  
19 and if the Commission were to act on full power within 30  
20 days, it certainly is true that under those assumptions it  
21 would normally take longer than 30 days to fully execute a  
22 low-power license before they need it.

23 With those assumptions, then the 30 days is not  
24 pacing. It is the applicant's ability to perform all of the  
25 low-power tests. It usually takes longer. And that is

1 certainly true.

2           COMMISSIONER BRADFORD: Howard, even in your case  
3 if the formulation is such that the Commission does not get  
4 involved in the low-power license, the applicant does choose  
5 to litigate it separately and the board grants it -- I have  
6 not thought about it -- I take it under the formulation that  
7 is before us that, assuming the board does become  
8 immediately effective, under the old immediate effectiveness  
9 formulation unless it is stayed by either the Appeal Board  
10 or us --

11           MR. BICKWIT: No. Under both of the alternatives  
12 that you are considering it does, but not under what you  
13 have in place.

14           COMMISSIONER BRADFORD: That is what I mean. I  
15 meant under the alternative that does not repeal the current  
16 process altogether but repeals it only as to low power.  
17 Then even under Howard's case there is no delay at the  
18 low-power point.

19           MR. SHAPAR: Under those premises.

20           COMMISSIONER BRADFORD: Yes, at the low-power  
21 level.

22           MR. SHAPAR: I guess the confusion in the  
23 discussion maybe stems from the way the proposal has been  
24 formulated because I do not think it was clear to me --  
25 maybe you can answer this, Len -- that the assumption here

1 is that it is mandatory now that a low-power license will be  
2 issued when a board issues a favorable decision on a  
3 full-power license. Is that the way the proposal was  
4 formulated?

5 MR. BICKWIT: The assumption is that the low-power  
6 license is automatically authorized even if the board has  
7 not spoken to the question. Therefore under the normal  
8 procedures, the staff is authorized to issue that low-power  
9 license.

10 CHAIRMAN PALLADINO: But it is not mandated to do  
11 so.

12 MR. BICKWIT: I think it is mandated to do so  
13 under our rules as soon as it finds that it has no problem  
14 associated.

15 MR. SHAPAR: So with that proposal there would  
16 still be a need to apply for a low-power license.

17 MR. BICKWIT: There would not be.

18 COMMISSIONER GILINSKY: What if you wanted to get  
19 it early?

20 MR. SHAPAR: There would be where he is having  
21 trouble in a hearing and simply cannot face the full-power  
22 contentions quickly.

23 MR. BICKWIT: That is right. I think what is  
24 being said is it is in that circumstance the Commission will  
25 be on the critical path and probably only in that



1 circumstance.

2           COMMISSIONER GILINSKY: In those cases I am not  
3 sure that I would remove the Commission from the process,  
4 because those are the very difficult cases where I think  
5 Commission attention probably is --

6           MR. DENTON: I think that that is the change that  
7 I did not know you were making. Normally we only issue  
8 a low-power where for some reason that has been requested  
9 and litigated as opposed to a new process that we would  
10 automatically issue a low anytime there was an approved full.

11           COMMISSIONER GILINSKY: You would not necessarily  
12 be issuing a separate license. You would be putting a  
13 condition on the license when you issue it that you would  
14 remove upon a favorable rule by the Commission.

15           MR. DENTON: Yes, that is a different approach to  
16 it and that way I agree with our analysis of the delays.  
17 There would be none in most cases.

18           Now occasionally the second unit like Sequoyah 2,  
19 we do not do all of the tests that have been done on the  
20 first unit because we have checked out the procedures and we  
21 have calibrated the simulator and that kind of thing. The  
22 30 days is not quite as obviously a smooth finding there.

23           COMMISSIONER GILINSKY: On the other hand the  
24 Commission in the second unit may not want to take the 30  
25 days.



1           CHAIRMAN PALLADINO: May I ask Len a question?  
2           Do you think the writing of the proposal of the  
3 zero and 45 days is clear enough so that it will be  
4 understood?  
5           COMMISSIONER BRADFORD: I do.  
6           CHAIRMAN PALLADINO: I guess that meant that I had  
7 to be educated to understand it the way it has been brought  
8 out now.  
9           MR. DIRCKS: I do not think it dawned on us. You  
10 are talking about only one license with a condition. You  
11 are not talking about the issuance of two licenses.  
12          CHAIRMAN PALLADINO: You might want to reexamine  
13 it if we go that way to make sure the wording is clear.  
14          MR. BICKWIT: Let me just read this: thus in a  
15 typical case the director of Nuclear Reactor Regulation  
16 would issue a license authorizing fuel loading and low-power  
17 testing within ten days from the date of issuance of a  
18 full-power decision unless a stay motion was granted.  
19          MR. SHAPAR: So there would be two situations in  
20 which low-power licenses would be issued, one applied for  
21 and one not applied for.  
22          COMMISSIONER BRADFORD: That is right. When not  
23 applied for, an example of that situation is the recent  
24 McGuire case.  
25          CHAIRMAN PALLADINO: I would like to ask Harold a

1 question.

2           If we went this way, would the eight months that  
3 we now show as part of the delay, which I presume we still  
4 show, would they still be there? Or conversely if we went  
5 the other way would we eliminate them?

6           MR. DENTON: I think the delays are going to be  
7 like Halley's comet. We have seen the bright glow; now we  
8 are seeing the residual.

9           Some of the remaining of those eight plants that  
10 are presently shown in the last report as delayed I think  
11 are going to go away, like Comanche Peak and Zimmer because  
12 they are not going to meet their construction delays. There  
13 are some like Diablo Canyon and San Onofre which appear  
14 unavoidable so I think they are going to be real. There may  
15 be a case in there like Susquehanna, Summer, somewhere that  
16 also has a very small delay of a month or two.

17           I think very shortly there are only going to be  
18 just two or three plants that will show up in next month's  
19 delay because the plants are not able to meet their  
20 construction schedule.

21           CHAIRMAN PALLADINO: I think you are asking a  
22 slightly different question. It is my impression that the  
23 last report had eight months' delay that was due primarily  
24 to Commission action.

25           COMMISSIONER BRADFORD: Is that one month on each

1 of the eight plants?

2 MR. DENTON: Yes.

3 CHAIRMAN PALLADINO: Assuming that were correct,  
4 if we went the way that Commissioners Gilinsky and Bradford  
5 are proposing, would we get rid of those eight months or  
6 would they stay there?

7 MR. DENTON: My assessment of the table with those  
8 assumptions is you would not get rid of the Diablo Canyon  
9 delays, because I think they are sunk, and you probably  
10 would not get rid of the San Onofre delays. I think you  
11 would get rid of four to six of those months.

12 CHAIRMAN PALLADINO: Even under their proposal.

13 MR. DENTON: No, under the ground rules you said  
14 that there were really eight months that were in there  
15 because we had assumed a month each for Commission action.

16 CHAIRMAN PALLADINO: I am still assuming a month  
17 or even 45 days. Would I still have those eight months in  
18 there?

19 MR. DENTON: No, not under the proposal we have  
20 just been discussing.

21 CHAIRMAN PALLADINO: This is the zero and 45 days.

22 MR. DENTON: That is right, they would go away.

23 CHAIRMAN PALLADINO: They would go away.

24 MR. DIRCKS: If you look on it as a full-power  
25 licensed condition.

1 COMMISSIONER BRADFORD: That is what it is.

2 CHAIRMAN PALLADINO: So then they would also go  
3 away under the other proposal.

4 MR. BICKWIT: I do not understand that. I do not  
5 understand why they go away under each of them.

6 CHAIRMAN PALLADINO: I can understand the one but  
7 not the other.

8 COMMISSIONER AHEARNE: Because the delay is the  
9 time it takes for the plant to start certain activities.  
10 But if you can start the low power, it can start those  
11 activities.

12 MR. BICKWIT: We are assuming there is a one-month  
13 period between the initial decision and the startup of the  
14 plant.

15 COMMISSIONER AHEARNE: No, no, you start the low  
16 power immediately.

17 MR. BICKWIT: I am sorry, between the initial  
18 decision and the Commission decision.

19 COMMISSIONER AHEARNE: Yes, as long as the  
20 operator can begin to go through all those things that are  
21 necessary to go to 5 percent, it would not make any  
22 difference whether the Commission made its decision or not.  
23 So there is no delay.

24 MR. SHAPAR: In other words the plant is operating  
25 while the Commission is exercising its review authority.

1 MR. BICKWIT: For whatever reason you are showing  
2 a month and that month --

3 COMMISSIONER AHEARNE: It disappears.

4 MR. DENTON: In effect, Len, as I see it the  
5 low-power decision becomes effective a few days after the  
6 board decision in every case. As soon as we can issue a  
7 low-power license after the board decision, they would be  
8 able to start and they would not need Commission action  
9 until 45 days let's say and the Commission would be acting  
10 within 30.

11 MR. SHAPAR: What is a typical time period for  
12 low-power operation?

13 MR. DENTON: Probably two to three months on the  
14 first unit.

15 COMMISSIONER GILINSKY: You say two to three  
16 months against 45 days.

17 MR. DENTON: We only have a handful of cases to  
18 choose from.

19 MR. COTTER: It may only be 18 or 20 days' work  
20 but they cannot do it consecutively.

21 CHAIRMAN PALLADINO: Under both of these proposals  
22 however, we would eliminate some of those eight months.

23 COMMISSIONER GILINSKY: I think almost totally.

24 CHAIRMAN PALLADINO: I am trying to understand the  
25 differences between the two and now emphasizing a similarity

1 between the two.

2           MR. DENTON: It seems important to me that you are  
3 in effect taking 30 days off every one of these OLs rather  
4 than focusing on a few which are in delay. You are actually  
5 shortening the time process between the SSER and the ability  
6 to issue some kind of license from 11 months to 10 months in  
7 both cases, a case being whether you automatically issue a  
8 low power, and what is the other case?

9           CHAIRMAN PALLADINO: There is the case where you  
10 issue the low power and allow the Commission 45 days for its  
11 review. There is the case where immediately you issue the  
12 full.

13           MR. DENTON: Those are clear, so in either case  
14 you are in effect taking a month off the standard  
15 assumptions for every case.

16           CHAIRMAN PALLADINO: So to that extent then they  
17 are not different.

18           MR. DIRCKS: But from the point of view perception  
19 in the reports that we submit, we talk about issuance of  
20 licenses. If we now talk about issuance of low-power  
21 licenses, that is different.

22           COMMISSIONER GILINSKY: But the plant does not  
23 know whether it is a low-power license or not.

24           MR. DIRCKS: The plant does not know but we have  
25 been asked about low-power licenses. If you issue a license

1 with a condition on it, that is different from issuing a  
2 low-power license.

3 MR. BICKWIT: May I make one point. It is related.

4 If the key is when does low-power operation start,  
5 does it not then follow that under the existing rule without  
6 making any change at all we can go back to ten days, since  
7 it is understood under the existing rule the Commission will  
8 authorize a low-power license?

9 COMMISSIONER GILINSKY: Absolutely.

10 MR. BICKWIT: That is why I was asking. We have  
11 already made some progress.

12 CHAIRMAN PALLADINO: I am not sure.

13 (Laughter.)

14 CHAIRMAN PALLADINO: I think Bill has a point.

15 MR. DIRCKS: That is different. Now there you  
16 have some impact because that is then requiring Harold's  
17 people to sit down and write out two licenses. That is  
18 different. We keep talking about the license with a  
19 condition on it. Of course that one has some attractiveness.

20 COMMISSIONER GILINSKY: I have never understood  
21 why these licenses have been all that different. Why were  
22 not these so-called low-power licenses simply full-power  
23 licenses with a condition on them?

24 MR. DENTON: We have had some problems in this  
25 area ourselves. Normally there were some things which



1 needed to be met before initial criticality and during the  
2 low power that we take out of the license when we wrote the  
3 full-power license. So we could write the license to  
4 particularize for the phase of operation we were going to  
5 propose.

6           Then by the time they executed low power we would  
7 remove from the license any condition which had already been  
8 satisfied. There were those kinds of changes to it just to  
9 reflect the status of a plant.

10           They would meet some dated requirements perhaps  
11 during that period. It is a lot simpler to issue a single  
12 full-power license upon a board decision conditioned to not  
13 go above a certain low power. That way the license would  
14 not have to recirculate among the staff to make sure it was  
15 the most up-to-date version we could write.

16           CHAIRMAN PALLADINO: Let me see if I understand  
17 this correctly.

18           If we go to not reviewing the low power, reviewing  
19 only full power, then upon the Licensing Board's favorable  
20 decision you would be authorized to give an operating  
21 license with a stamp that says "not good for more than  
22 5 percent." Then the Commission would go ahead and do its  
23 deliberation and that would enable us to save some time off  
24 your schedule.

25           If we went to taking the Commission out of both

1 the low power and the full power, we would accomplish  
2 essentially the same thing unless the litigation and the  
3 licensing process is so extensive that the applicant comes  
4 and says look, I do not want to wait for that litigation to  
5 be settled, I want to move for a low-power operation. In  
6 that case then they would go after the low-power license;  
7 presumably they get it; the other litigation would go on.

8           Then comes the decision; then comes the  
9 Commission's time. In that case we would save a month or  
10 thereabouts if we had the zero/zero versus the zero/45.

11           COMMISSIONER BRADFORD: That sounds right unless  
12 the issues that have arisen in that more complicated case  
13 are such that the Commission steps in and says this is one  
14 we want to review.

15           CHAIRMAN PALLADINO: Right. They may want to  
16 review that anyhow.

17           COMMISSIONER AHEARNE: At least at one stage there  
18 was a proposal in Congress to authorize going ahead with the  
19 low-power license prior to completion of hearing. What is  
20 the status of that?

21           MR. BICKWIT: They are now both out of committee  
22 on either side of the House and they relate to full power as  
23 well as low power. My understanding is that they should be  
24 considered on the floors of both Houses the middle of this  
25 month or maybe the latter part of this month. People are

1 anticipating a rather quick passage of that authority.

2           COMMISSIONER AHEARNE: Because if we were to end  
3 up having a statute saying that the director of NRR can  
4 issue a low-power license, as I understood it, as soon as he  
5 felt there were no problems, which I believe is one of the  
6 conditions, that would I guess enable the low-power action  
7 to be taken as soon as the plant would be ready.

8           MR. BICKWIT: Yes, after the hearing.

9           COMMISSIONER AHEARNE: No, before the hearing.

10          MR. BICKWIT: You are talking about the  
11 legislation. Yes, I am sorry.

12          CHAIRMAN PALLADINO: What about Commission review  
13 in that legislation? I thought the Commission still had the  
14 option of reviewing while the Licensing Board was doing its  
15 deliberation.

16          MR. BICKWIT: At this point you are dealing with  
17 post-hearing options. The Legislature will take action  
18 before the hearing.

19          CHAIRMAN PALLADINO: In that case the 45 days  
20 would be on the critical path, however not as critical as it  
21 is now.

22          COMMISSIONER BRADFORD: Different paths.

23          COMMISSIONER AHEARNE: Which is a distinct  
24 possibility if that legislation would pass, we would then --

25          CHAIRMAN PALLADINO: But now to be fair, that may

1 be a circumstance in which the Commission might really want  
2 to step in and do a little bit of review.

3 COMMISSIONER BRADFORD: I would think the first  
4 one or two anyway.

5 CHAIRMAN PALLADINO: Can I ask the staff to  
6 address the impact of those alternatives on their workload?

7 MR. DENTON: I tried to estimate the effort  
8 involved in briefing the Commission, preparing for the  
9 briefing and coming down and briefing them. I would  
10 estimate it is not a big effort. It is maybe a man and a  
11 half a year to brief the Commission, total.

12 CHAIRMAN PALLADINO: A man and a half a year.

13 MR. DENTON: That is one and a half man-years over  
14 the next year, in other words 20 man-days because we do it  
15 twice now. We do a low-power briefing and a full-power  
16 briefing and prepare for the briefing times 18 cases. I  
17 have a man and a half as a total effort involved to do this  
18 over the next year.

19 So it is not a big effort and we would obviously  
20 do some of this even if the Commission decided not to do the  
21 review. So I do not think that is a very big effort. It  
22 does involve senior management coming down.

23 The pro is it allows dialogue and communication  
24 between the staff and yourselves so we understand what you  
25 think is required in these cases. I do not think it would

1 be a determinate factor.

2           CHAIRMAN PALLADINO: If we went to no Commission  
3 review of the operating license, would the workload be  
4 significantly less, discounting this one and a half years?  
5 In other words are there other factors that add to your time?

6           MR. DENTON: I think if you eliminated the review  
7 of low power you would cut that one and a half in half.

8           CHAIRMAN PALLADINO: Suppose you eliminated the  
9 operating license, would I only be eliminating half of it?

10          MR. DENTON: I think so.

11          CHAIRMAN PALLADINO: There is no other work except  
12 just preparing for the discussion.

13          MR. DENTON: That seems to be the major effort,  
14 assuming that all of the other work has been done, that we  
15 have been through the ACRS and the boards and have a  
16 decision and that all items are resolved.

17          CHAIRMAN PALLADINO: What I am getting today is a  
18 different feeling than I got from earlier discussions where  
19 it was my impression that if we kept the 45- or 30-day time  
20 for the Commission to review operating license, that that  
21 would have serious impact both on the schedule and on your  
22 resources.

23          There must be something different or new that is  
24 bringing about a different answer. Is it the fact that you  
25 are now recognizing that the operating license could be an

1 operating license with stamped limits? Or is there some  
2 other factor involved?

3 MR. DENTON: I think originally we were thinking  
4 that the most manpower intensive would be to require your  
5 review of both low power and full power, require briefings  
6 on each and require us to issue two licenses. That took up  
7 the most effort.

8 When you remove yourself from one, that really did  
9 in my view reduce the amount of effort it would take by a  
10 factor of two. By getting off the critical path for most  
11 plants, then the delays issue was solved. And then the  
12 manpower one is the degree to which the Commission needs to  
13 have us answer detailed questions in the review and how many  
14 of my staff need to be present for the Commission review.

15 CHAIRMAN PALLADINO: Let me make sure I  
16 understand. When we were just having individual dialogues  
17 and you were talking about the impact on resources, were you  
18 talking only about one and a half man-years?

19 MR. DENTON: I was talking about meeting with the  
20 Commission twice on every plant projected for the next  
21 year. There were 18 plants. We have two meetings.

22 CHAIRMAN PALLADINO: Maybe we did not have a  
23 common understanding of the assumptions. I was assuming in  
24 either case that we were going to get rid of Commission  
25 review on low power.



1 COMMISSIONER AHEARNE: I expect the biggest  
2 resource impact difference is in OGC and OPE.

3 CHAIRMAN PALLADINO: That may be.

4 MR. DENTON: I guess I was seeing 36 Commission  
5 meetings coming up in the next year and having to have my  
6 senior staff present for each one of those meetings, both  
7 full and low and for every possible application. That is a  
8 considerable amount of talent that would be used in this  
9 process when I was talking about the size of the impact.

10 CHAIRMAN PALLADINO: Maybe we ought to ask OGC and  
11 OPE whether the workload is any different between these two  
12 alternatives, at least on your part.

13 MR. BICKWIT: The workload would be substantially  
14 different. If the Commission is out of the business, then  
15 we are out of business.

16 COMMISSIONER GILINSKY: That is a tempting  
17 prospect.

18 (Laughter.)

19 MR. BICKWIT: I find it tempting.

20 As to how much in the way of resources this is  
21 taking, I think we regarded it from our office as something  
22 in the neighborhood of one to two staff-years or something  
23 along those lines.

24 I do not know whether Forrest has had a chance to  
25 look at that question.

1           MR. REMICK: OPE some months ago made an estimate  
2 that it would take two man-years on the contested cases.  
3 Our experience has been with Diablo Canyon and TMI-1 that  
4 that is probably conservative and that probably should be  
5 upped a little bit. If you went to the case where the  
6 Commission --

7           CHAIRMAN PALLADINO: Were you talking two  
8 man-years per case?

9           MR. REMICK: No, total for the cases anticipated  
10 in the coming year.

11          COMMISSIONER BRADFORD: That I take it included a  
12 separate low-power review.

13          MR. REMICK: That is correct, in other words each  
14 contested case that we would do the review for the  
15 Commission.

16          If the Commission removes itself entirely from low  
17 power and full power, we would not need to do that so it  
18 would save something like two to three man-years. We would  
19 be out of business too.

20          If you went part way, I do not think we would  
21 split it half and half. I would say if we still had the  
22 full power, that would probably be about two-thirds of the  
23 former expenditures.

24          CHAIRMAN PALLADINO: So between the two of you,  
25 you have a year and a half saving. If we went zero/zero as

1 opposed to zero/45 you might save one year.

2 ~~CHAIRMAN PALLADINO:~~ *Commissioner Bradford!* Depending always on how many  
3 you decided to take up under the option that left you the  
4 discretion to take up the hard cases.

5 CHAIRMAN PALLADINO: Yes, that is really the limit  
6 based on these estimates.

7 COMMISSIONER AHEARNE: Of course the impact of the  
8 year and a half is much more severe on them for their size  
9 staff than Harold's.

10 CHAIRMAN PALLADINO: I think these are interesting  
11 and relevant items.

12 Did you have more?

13 MR. DIRCKS: I think that is all.

14 CHAIRMAN PALLADINO: Tony, you had your hand up.

15 MR. COTTER: I thought you were giving me a  
16 birthday present. You were getting out of business; he was  
17 getting out of business.

18 (Laughter.)

19 CHAIRMAN PALLADINO: We are keeping you guys in  
20 business.

21 MR. COTTER: The only impact I can see of  
22 immediate effectiveness on us is that for those plants which  
23 might run the risk of being impacted, the board in question  
24 would generally expect to see a motion for a 5 percent  
25 license and consequently would have to hold an additional

1 hearing to deal with that issue and write an additional  
2 decision.

3 COMMISSIONER GILINSKY: How is that affected by  
4 the Commission's decision to act one way or another?

5 MR. COTTER: If you restored full immediate  
6 effectiveness, the likelihood of the 5 percent motion being  
7 made is decreased.

8 COMMISSIONER GILINSKY: Because of the additional  
9 30-day Commission review? That is a little hard to believe.

10 CHAIRMAN PALLADINO: Why would the likelihood  
11 change?

12 MR. COTTER: Because it would take the Commission  
13 out of the path for the issuance of the license.

14 CHAIRMAN PALLADINO: But it still would be an  
15 operating license review unless the applicant specifically  
16 filed a motion for low power.

17 COMMISSIONER GILINSKY: You are saying a 30-day  
18 change in the overall ten-month schedule is going to lead an  
19 applicant to get involved in a whole separate hearing which  
20 slows up the full-power hearing?

21 MR. COTTER: I have forgotten exactly how the 30  
22 days is phrased.

23 COMMISSIONER AHEARNE: It is a goal.

24 MR. COTTER: It is a goal as I recall.

25 MR. SHAPAR: I do not think it will have any

1 impact on the number of applications that you have for  
2 low-power licenses. I think what you have done is in effect  
3 in context restored immediate effectiveness at least in  
4 terms of allowing low-power operation.

5           The only times you had motions for low-power  
6 licenses in the past I think are the same situations in  
7 which you will continue to get them, where the applicant is  
8 hung up on a bitterly contested case on full power and can  
9 see it is going to last for months and he feels he can deal  
10 with the issues for full power and he will continue to  
11 submit his low-power license.

12           So I do not think what you have done here is going  
13 to affect the number of times you will get low-power  
14 applications in the future.

15           COMMISSIONER GILINSKY: I agree with that.

16           CHAIRMAN PALLADINO: Tony, do you have anything  
17 more?

18           MR. COTTER: That is all I have.

19           CHAIRMAN PALLADINO: Alan?

20           MR. ROSENTHAL: It would be no impact at all on  
21 the appeal panels one way or the other, other than at the  
22 present time there is a certain awkwardness and, if I may  
23 put it, amusement in some circles over: what is this, the  
24 supreme court, i.e., the Commission passing upon the  
25 immediate effectiveness and at the same time the lower



1 tribunal, to wit, the Appeal Board has got a motion for a  
2 stay before it. People who are accustomed to the judicial  
3 hierarchy and how the pieces fit do not understand this.

4           There also is a healthy amount of skepticism over  
5 whether an appeal board would grant a stay of an  
6 operating license authorization in circumstances where the  
7 Commission had decided to allow the decision to become  
8 effective. Even if you point out to people that the  
9 standards that are being employed are different, that  
10 skepticism continues.

11           So all I can say is that we do not really care one  
12 way or the other in terms of our resource utilization. It  
13 is just that we have to deal with what is regarded by most  
14 of the observers of the passing scene as a rather odd  
15 situation.

16           CHAIRMAN PALLADINO: Alan, are you saying that if  
17 we did not participate in the immediate effectiveness and  
18 just let it happen that we would be in a better posture with  
19 regard to the point you are making?

20           MR. ROSENTHAL: Again, the thing is that whether  
21 you are in or out of the immediate effectiveness review  
22 business, we get plugged in in the same way. If someone  
23 files a motion for a stay under 2.788 of the Rules of  
24 Practice, we entertain the motion and act on it. If there  
25 is no motion filed, then we are not concerned at all with



1 effectiveness.

2           It really does not make much difference to us  
3 whether the Commission is in or out of that process. Our  
4 role is the same in either event.

5           CHAIRMAN PALLADINO: I understand that. But if  
6 you were giving a more general picture --

7           MR. ROSENTHAL: I was just saying that there is a  
8 good deal of puzzlement. That is not a reason to pull out  
9 of your immediate effectiveness review if you think there is  
10 good and sufficient reason for doing it.

11           It is just that people find this a rather strange  
12 animal where at one and the same time the Commission and a  
13 subordinate tribunal are looking at the question as to  
14 whether this operating license is to go into effect or not.  
15 People can just remain puzzled and we will continue to give  
16 our estimation and they may accept it or they may not as the  
17 case may be.

18           COMMISSIONER BRADFORD: Alan, it is not as though  
19 all was perfect clarity under the old system. There was a  
20 different group of people who were puzzled as to how a plant  
21 could have started up in their hometown without the  
22 Commissioners having any familiarity at all with what the  
23 issues were in that case.

24           The groups that you hear from of course are the  
25 people who are intimately familiar with our process and with

1 the judicial model. But as far as larger puzzlements in the  
2 community --

3 MR. ROSENTHAL: I recognize that. I would say  
4 though with due respect that you are dealing with a heavily  
5 contested operating license proceeding which has generated a  
6 record of many thousands of pages and a decision of a  
7 licensing board covering 100 plus pages and disposing of  
8 maybe six, seven, eight or ten issues, that these people in  
9 the countryside really think that in the space of 30 days  
10 the members of this Commission are going to be able to come  
11 to grips with those issues against the background of the  
12 adjudicatory record on which they were decided.

13 Recognizing the gentlemen's capabilities, I would  
14 say that they are unrealistic.

15 COMMISSIONER BRADFORD: That is not what we are  
16 saying. What we are saying is we would at least look at the  
17 issue to the point that we are satisfied that it does not in  
18 our view pose an immediate threat to them while a more  
19 detailed review is going on. Under the old system we did  
20 not know what the issues really were.

21 MR. ROSENTHAL: The reason I made this observation  
22 is I understand that your review is in a different sphere.

23 But again I would think that what most of these  
24 people in the area of the reactor, particularly if they have  
25 been involved in the adjudicatory proceeding, are concerned

1 about are the matters which they raised in that proceeding  
2 and either the evidence that they presented and which was  
3 rejected by the Licensing Board or what they think was a  
4 devastating cross examination of the witnesses for the staff  
5 or applicant which did not persuade the Licensing Board.

6           As to that, they really have no reason to come --  
7 this is the point that I was trying to make -- that in the  
8 space of 30 days the Commission will have focused on their  
9 concerns, on their beliefs as to what the Licensing Board  
10 should have decided on the basis of the record. There may  
11 be some measure of comfort knowing that the Commission has  
12 taken a look at it.

13           Again in candor I would have to say that for at  
14 least those participants in the proceeding that measure of  
15 comfort is not going to be that large.

16           MR. COTTER: My board's experience certainly would  
17 endorse that in that they are the people on the spot and  
18 have to look out for the period of time that evidence is  
19 being taken and a record is compiled. Certainly the  
20 commentary in the local press that I have seen focuses on  
21 the meaningfulness that those individuals can bring to the  
22 questions which are presented to them and the concern that  
23 they can demonstrate.

24           While my perspective may be a little biased, I  
25 think for purposes of that plant and that contest the

1 Commission is that board.

2 COMMISSIONER BRADFORD: I do not think so. I  
3 think that is an illusion.

4 MR. COTTER: That is the statutory delegation of  
5 authority.

6 COMMISSIONER GILINSKY: I understand that. But  
7 what we are talking about -- Bill I think put it pretty well  
8 in the beginning -- is that these are the most important  
9 decisions the Commission makes. The question is will the  
10 Commissioners deal with them, take responsibility for them  
11 or not. The man-years we have talked about here seems to me  
12 inconsequential if we are talking about helping the  
13 Commissioners make decisions on the most important questions  
14 before this agency.

15 MR. COTTER: I understand your position. I would  
16 take it from a different standpoint. To me it is impossible  
17 for the Commissioners to do what you are saying because of  
18 the other responsibilities they have.

19 COMMISSIONER AHEARNE: I agree with you almost all  
20 the way except for one phrase, "take responsibility for."  
21 That is independent to the level of review that you take.

22 COMMISSIONER GILINSKY: It is clear when the  
23 President makes a decision he does not spend as much time on  
24 it, not that I want to compare ourselves to the President,  
25 but when any chief executive of a company or whatever makes

1 a decision he obviously does not spend as much time on it as  
2 the people who prepared and did the ground work.  
3 Nevertheless he makes that decision, takes responsibility  
4 for it. I think that is what we are talking about here.

5 MR. COTTER: There is another analogy. Frequently  
6 the decision he makes is to delegate that authority to a  
7 competent group to take the action.

8 COMMISSIONER GILINSKY: You have to know what to  
9 delegate. A great deal of it is delegated.

10 CHAIRMAN PALLADINO: As I understand the situation  
11 then and I might use a shorthand, so far as the impact of  
12 these two, the difference is perhaps one staff-year in your  
13 operation and one and a half staff-year collectively between  
14 OGC and OPE. The places where the impact could exist on the  
15 schedule would be if we had the interim licensing rule, then  
16 we would be on the critical path to the extent of one month  
17 but it would be on a different path. I recognize that.

18 However if there were strong litigation on the  
19 operating license hearing by the Hearing Board, the  
20 applicant might then choose to move for a low-power license  
21 and in that case we could be on the critical path. However  
22 you do point out that that might be the very case in which  
23 we would like to make a ruling.

24 Before you summarized I forgot to ask Forrest and  
25 Howard if they had any comments they wanted to make.



1 MR. REMICK: No, I do not think from the  
2 standpoint of OPE. There is a difference between the two  
3 from the standpoint of other resources. A resource  
4 expenditure is not considerable although for a small office  
5 it is relatively --

6 CHAIRMAN PALLADINO: What are your total  
7 staff-years?

8 MR. REMICK: There are about 14 and so if we are  
9 talking say an estimate of currently three man-years, it is  
10 3/14.

11 CHAIRMAN PALLADINO: Cut it in half.

12 MR. REMICK: If the Commission takes itself out,  
13 we would not be expending those three man-years. If the  
14 Commission takes itself out of low power, we would probably  
15 be expending two man-years of continuous effort per year.

16 CHAIRMAN PALLADINO: So my total one and a half  
17 was not quite right for the difference.

18 MR. REMICK: Not quite.

19 COMMISSIONER BRADFORD: But it may be pretty close  
20 because I cannot believe there are not going to be some  
21 cases the Commission is going to take anyway. And I think  
22 the minute you start, you will get the bulk of the  
23 man-months right away.

24 COMMISSIONER GILINSKY: At the risk of repeating  
25 what I said before, even if it is several man-years I just



1 cannot imagine anything more important for the Commission  
2 and staff to be working on.

3 CHAIRMAN PALLADINO: I am not arguing that. I am  
4 just trying to assess the situation.

5 Howard, do you have any comments?

6 MR. SHAPAR: No.

7 CHAIRMAN PALLADINO: Are there any other comments  
8 to be made at this time?

9 (No response.)

10 CHAIRMAN PALLADINO: I suggest we not vote on it.  
11 I personally would like to deliberate a little more. We may  
12 get closer to the issue.

13 I did want to raise one other question. There is  
14 another part to your proposal and that is to extend 30 days  
15 to 45. I was wondering whether you might indicate the  
16 rationale.

17 COMMISSIONER GILINSKY: I think I had originally  
18 suggested the 45 on the grounds --

19 COMMISSIONER BRADFORD: I thought I did.

20 COMMISSIONER GILINSKY: Peter did. At least I  
21 supported it.

22 -- on the grounds that if we were dropping the  
23 low-power review that in fact 45 days was probably a minimum  
24 period anyway. I do not regard that as unreasonable.

25 COMMISSIONER AHEARNE: I think we should stick to

1 30 days.

2 CHAIRMAN PALLADINO: In view of the fact that we  
3 might get legislation to give us interim authority maybe  
4 that would be --

5 COMMISSIONER GILINSKY: We may want to rethink  
6 that.

7 COMMISSIONER BRADFORD: The 45 I think was one of  
8 Harold's estimates that the low-power phase tends to run a  
9 couple of months anyway and therefore it did not seem to  
10 matter very much. But I do not feel strongly about that in  
11 a case that is sufficiently tangled.

12 COMMISSIONER AHEARNE: It is on hold anyway.

13 CHAIRMAN PALLADINO: There are a lot of  
14 perceptions to be satisfied and I was thinking of  
15 perceptions that were particular --

16 COMMISSIONER BRADFORD: I am amenable to 30.

17 COMMISSIONER GILINSKY: One thing we have not  
18 talked about is whether this is a useful process. Aside  
19 from the fact that it has a basic usefulness in that it has  
20 the Commission taking responsibility for the important  
21 decisions, it also is a very important opportunity for the  
22 Commission to become educated on the details of the  
23 licensing process in the various cases.

24 But it seemed to me that yesterday's experience  
25 was evidence of that, that the process is useful. Things

1 come up in this review that for one reason or another have  
2 not come up before, whether it is the fact that the  
3 Commission is asking the questions or people have had more  
4 time to think about it.

5           COMMISSIONER AHEARNE: I think we have had this  
6 dialogue several times before. I would disagree with the  
7 implication or at least I would not draw the inference that  
8 the items that come up for example in Sequoyah would not  
9 have come up in the absence of our examination. I think it  
10 came up in the normal staff review process.

11           COMMISSIONER GILINSKY: Yesterday's experience I  
12 think at least substantiated the point about educating the  
13 Commission and getting more informed about what is  
14 happening. I think you would not normally be informed to  
15 that extent if you were not conducting that review.

16           COMMISSIONER AHEARNE: I agree.

17           MR. DENTON: I think the communication between the  
18 Commission and the staff is useful. It is a chance for the  
19 senior officials to understand what you think underlie these  
20 and the way you would like to see these problems  
21 approached. I think once we come to agreement on how to  
22 approach some areas which are not well defined, then we  
23 could do them again that way.

24           I would comment that it is probably the most  
25 audited part of the Commission's process because of the

1 automatic audit by the ACRS and largely by the boards. You  
2 could to some degree achieve that knowledge that you are  
3 seeking by auditing rulemaking, by auditing in more detail  
4 some other aspect of the Commission's activity.

5 COMMISSIONER GILINSKY: Our experience is not,  
6 that this is the place where you really begin to understand  
7 what is happening. In fact I think the Commission cannot  
8 exercise its rulemaking function if it is not intimately  
9 involved in the licensing process, because it is very hard  
10 to understand the impact of the rules, what rules are  
11 needed, the effective rules unless you see the application  
12 of it in the licensing process.

13 I have found it very useful.

14 CHAIRMAN PALLADINO: I think as far as keeping the  
15 Commission apprised of what is going on, it is a good  
16 vehicle. I am not sure that we actually do contribute to  
17 the decision.

18 COMMISSIONER GILINSKY: We have in a number of  
19 cases, for example hydrogen control in a couple of cases.

20 MR. DENTON: It is true that the Commission is the  
21 only group in the auditing process that is able to go beyond  
22 its rules where it sees a need to. The staff and the boards  
23 would stick strictly to the rules as they understand them.

24 COMMISSIONER GILINSKY: Right. And if confronted  
25 with a problem we can decide well, we are just going to have

1 to do something more or less.

2           MR. DENTON: I would propose also that even with  
3 the delegation issue of low-power license, if there were  
4 some unusual circumstance that I thought warranted the  
5 Commission's attention in one of those, I would bring it to  
6 your attention in those cases if it was not a contested part.

7           MR. REMICK: Mr. Chairman, could I add something?

8           If the Commission did decide to remove itself from  
9 the full power OL effectiveness review, we would assume the  
10 Commission would want OPE to still monitor such things as  
11 the staff SERs, the ACRS meeting on that SER and the ACRS  
12 letter. So if there were something unusual, we would be in  
13 the position to bring this to the attention of the  
14 Commission at an early stage so to alert the Commission to  
15 that particular case. They might want to consider  
16 effectiveness review on their own position.

17           We just assume that that would still be the  
18 function that the Commission would want us to carry out.

19           CHAIRMAN PALLADINO: Would that reduce the  
20 difference in staff?

21           MR. REMICK: Considerably because we would be  
22 focusing in on several specific documents, the SER and ACRS  
23 letter, as keys to significant and technical issues being  
24 brought up by the staff or ACRS, where currently it is  
25 reviewing entire records of the proceeding.

1 COMMISSIONER BRADFORD: I think the Chairman's  
2 question was the reverse. It was whether you were including  
3 the monitoring time in your estimate.

4 MR. REMICK: We estimate that monitoring to be  
5 some small fraction of a man-year for the number of cases  
6 coming along. We just assume that you would want us to  
7 continue to do that that type of thing.

8 CHAIRMAN PALLADINO: In the accuracy of our  
9 estimate it does not matter which way.

10 Are there any other points that the Commissioners  
11 want to bring up or anyone else?

12 (No response.)

13 CHAIRMAN PALLADINO: I have appreciated this  
14 discussion. I think all of us have. I will suggest that we  
15 not vote today so that each of us can reflect on the issue.

16 Unless there is anything else to come before us we  
17 will stand adjourned.

18 (Thereupon, at 3:25 p.m., the hearing adjourned.)

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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the  
COMMISSION MEETING

in the matter of: PUBLIC MEETING - Discussion and Possible Vote on Modifica-  
tions to Immediate Effectiveness Rule and, if time permits Discussion of -----  
of Revised Lic- Date of Proceeding: September 9, 1981  
ensuing procedures

Proposed Rule Docket Number: \_\_\_\_\_  
Change to Part 2

Place of Proceeding: Washington, D. C.

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

Judith F. Richard

Official Reporter (Typed)

  
Official Reporter (Signature)

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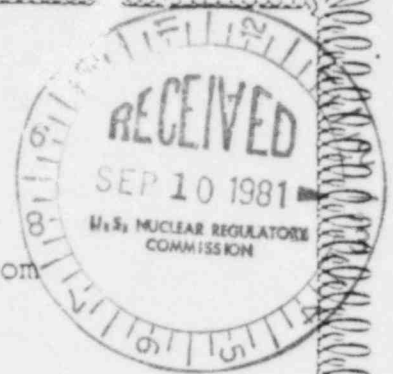
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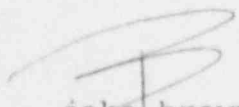
DATE:

September 10, 1981



Attached are the PDR copies of a Commission meeting transcript/s/ and related meeting document/s/. They are being forwarded for entry on the Daily Accession List and placement in the Public Document Room. No other distribution is requested or required. Existing DCS identification numbers are listed on the individual documents wherever possible.

1. Transcript of: Discussion and Possible Vote on Modifications to Immediate Effectiveness Rule, and if time permits, Discussion of Revised Licensing Procedures -- Proposed Rule Change to Part 2.  
Sept. 9. 81. (1 copy)
  - a. Memo to the Commissioners from S. Chilk dated Sep. 2. 81., Subj: Proposed Alternative Modification to Immediate Effectiveness Rule. (1 copy)
  - b. SECY-81-421 - RULEMAKING ISSUE (Affirmation) dated July 17, 1981, subj: Modifications to Immediate Effectiveness Rule With Regard to Fuel Loading and Low-Power Operating Licenses. (1 copy).

  
jake brown  
Office of the Secretary