

NUCLEAR REGULATORY COMMISSION

PDR  
ORIGINAL

COMMISSION MEETING

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In the Matter of: DISCUSSION OF INDIAN POINT ORDER  
PUBLIC MEETING

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DISCUSSION OF INDIAN POINT ORDER

PUBLIC MEETING

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

Friday, September 11, 1981

The Commission met, pursuant to notice, at 9:00  
a.m.

BEFORE:

CHAIRMAN NUNZIO PALLADINO  
COMMISSIONER VICTOR GILINSKY  
COMMISSIONER PETER BRADFORD  
COMMISSIONER JOHN AHEARNE  
COMMISSIONER THOMAS ROBERTS

ALSO PRESENT:

S. CHILK  
L. BICKWIT  
M. MALSCH  
A. KENNEKE

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

2                    CHAIRMAN PALLADINO: The meeting will please come  
3 to order.

4                    This meeting will serve as a discussion of the  
5 proposed Indian Point Order.

6                    By way of breakdown, in my memorandum and order of  
7 January 8, 1981, the Commission announced that it would  
8 constitute an Atomic Safety and Licensing Board to consider  
9 long-term safety issues based on and in connection with a  
10 petition filed by the Union of Concerned Scientists  
11 requesting, inter alia, the shutdown of Indian Point Unit 2  
12 and 3 facilities.

13                    The Commission did not follow up with the  
14 appointment of a board at that time and is now in the  
15 process of developing a board; however, since so much time  
16 has elapsed and we have at least two new commissioners  
17 onboard, additional questions have been raised with regard  
18 to the scope of the order, and the purpose of the meeting  
19 this morning is to discuss the questions raised about the  
20 scope of the order.

21                    I had raised two questions and Commissioner  
22 Roberts had raised a number of other questions. Since his  
23 questions include mine, I thought we might proceed, if the  
24 Commission is willing, by going through the items that  
25 Commissioner Roberts identified in a memo that he sent to

1 the Commissioners under date of September 10, 1981.

2 Unless there are other suggestions, that is the  
3 way we will proceed.

4 Perhaps, since these were developed by  
5 Commissioner Roberts, it would be appropriate for him to  
6 introduce each one of these and read them and highlight the  
7 points behind the question.

8 COMMISSIONER ROBERTS: I will start in. It will  
9 take some great degree of detail. I appreciate that a lot  
10 has gone on in this circumstance; however, I think there are  
11 some questions that perhaps should be raised, and I might  
12 continue on that basis.

13 Page 6 of the order: Why do we make gratuitous  
14 statements that talk about 10-, 30- and 50-mile areas?

15 I don't understand the relevance. Are we pointing  
16 the board toward something? In the specific seven  
17 questions, we asked them to limit their consideration to a  
18 ten-mile radius. I don't know why we are interested in 30  
19 and 50 miles.

20 COMMISSIONER BRADFORD: The third question does  
21 allow going beyond the ten-mile radius, possibly, to the  
22 extent that is relevant to the risk posed.

23 COMMISSIONER ROBERTS: It is quite vague. The  
24 language is there. It does say that.

25 COMMISSIONER GILINSKY: Why do you say that the

1 other questions are limited to the ten-mile radius?

2           CHAIRMAN PALLADINO: He is saying, on page 10,  
3 Question No. 3 --

4           MR. BICKWIT: Question No. 3 is, "What is the  
5 current status and degree of conformance with NRC/FEMA  
6 guidelines of state and local emergency planning within a  
7 ten-mile radius of the site, and of the extent that it is  
8 relevant to risks posed by the two plants, beyond the  
9 ten-mile radius?

10           COMMISSIONER GILINSKY: In estimating the risks, I  
11 don't think one is limited to a ten-mile radius. A ten-mile  
12 radius happens to be the radius that we fixed on as a  
13 reasonable limit to how far one should actually implement  
14 planning emergency measures.

15           COMMISSIONER AHEARNE: Emergency planning  
16 addresses about ten miles.

17           COMMISSIONER GILINSKY: Right. That does not mean  
18 that we think there could not be risks to people beyond ten  
19 miles. It is just that we have to pick some reasonable  
20 radius, otherwise you are planning all over the country, and  
21 ten miles seemed to be reasonable.

22           COMMISSIONER AHEARNE: I think in that particular  
23 paragraph that Tom is pointing to we were responding to what  
24 we felt was a statement that the licensees had come in with  
25 and we just wanted to point out how strongly we disagreed

1 with their statement, their statement being that the Indian  
2 Point demography was not different from other sites.

3           CHAIRMAN PALLADINO: I don't think that this  
4 paragraph has any impact on the hearing except insofar as it  
5 is included in the ten specific questions.

6           I would suggest, unless you propose changing the  
7 wording in one of the specific questions, that we not make  
8 that a major issue.

9           COMMISSIONER ROBERTS. Fine.

10          COMMISSIONER GILINSKY: It is really just a  
11 comment in response to a submission we have received from  
12 the licensee and it does not bear on the question of any  
13 others.

14          COMMISSIONER ROBERTS: Let me ask you this: Is  
15 this a similar circumstance to Three Mile Island, to the  
16 extent that the licensing board will report their findings  
17 directly to the Commission rather than to the appeal board?

18          CHAIRMAN PALLADINO: Now you are on Question 2?

19          COMMISSIONER GILINSKY: Yes, two.

20          CHAIRMAN PALLADINO: Yes, I think that is a very  
21 important question and maybe we ought to get a little bit of  
22 history from the commissioners who were present at that  
23 time, and from ROGC, as to what the intent here is and what  
24 the implications of a change might be.

25          COMMISSIONER AHEARNE: I think one thing we ought

1 to ask Marty Orleans to talk about -- and this is a  
2 different type of hearing and that is one of the reasons for  
3 some of the words that go in -- is to talk about the  
4 proceeding. It is really Commission discretion; it is a  
5 novel approach.

6 MR. BICKWIT: What the Commission is doing here is  
7 not holding a hearing that is statutorily required, as was  
8 the case in the TMI 1 proceeding, but, rather, using the  
9 adjudicatory format as a means to investigate a problem and  
10 decide what it really wants to do, whether it wants to  
11 initiate a proceeding. It is a very novel concept, but it  
12 was one that the Commission settled on.

13 COMMISSIONER AHEARNE: You mean, whether it wanted  
14 to initiate any enforcement action?

15 MR. BICKWIT: Whether it wanted to initiate any  
16 enforcement action.

17 In the case of TMI 1, it has taken enforcement  
18 action. Here it has not made any decision that it wants to  
19 take enforcement action above and beyond what has already  
20 been taken by the director.

21 COMMISSIONER AHEARNE: Is it not true that in TMI,  
22 once a request for hearing was made, we had to hold a  
23 hearing? The issue was whether we allowed the plant to  
24 operate or not while the hearing was going on. We said the  
25 plant would have to stay down during the process of the

1 hearing. It was a statutorily required hearing.

2 In this particular case, if we find as a result of  
3 this proceeding that the plant must be shut down, then it is  
4 entirely within our rule that the licensees can then  
5 petition for a hearing on that. Then there would be a  
6 statutorily required hearing.

7 So, it is possible that this entire proceeding is  
8 preliminary to another formal hearing; is that correct?

9 MR. BICKWIT: That is right. The Commission was  
10 distressed to hear that when it was first raised, but that  
11 was the case.

12 COMMISSIONER GILINSKY: Let me say, when talking  
13 about enforcement, it puts a cast on it which does not  
14 entirely describe what we are doing.

15 The question really is, do we want to impose  
16 requirements on this reactor, in view of the fact that it is  
17 sited close to a fairly large population, a much larger  
18 population than most reactors, or do we not?

19 We are really talking about going beyond, whether  
20 or not we want to go beyond, the current regulations in  
21 imposing requirements on this plant, not entirely but at  
22 least in part.

23 COMMISSIONER AHEARNE: We are trying to get a  
24 better feeling, a better handle, on the analyses that can be  
25 done with respect to this plant. There are many

1 investigatory approaches we could take. We ended up saying  
2 we will hold this kind of proceeding as a means of getting  
3 at this.

4 COMMISSIONER GILINSKY: That is why it needs to  
5 come back to the Commission rather than the appeal board,  
6 which is bound by our regulations.

7 MR. BICKWIT: Let me put it this way: You could  
8 have it go through the appeal board. I recommend against  
9 it, but you could if the purpose of the appeal board review  
10 was to review the recommendations of the licensing board to  
11 the Commission as to what the Commission should do, or what  
12 the answers to the questions ought to be, and produce  
13 another set of answers and recommendations.

14 The reason I recommend against it is that you have  
15 already got about the most complicated form of investigation  
16 and recommendations to the Commission that I have ever heard  
17 of. You would just be complicating it further, I believe,  
18 if you had another set of recommendations coming from the  
19 appeal board in addition to those that you will have coming  
20 out of the licensing board.

21 CHAIRMAN PALLADINO: I do think though that we  
22 have to address the practicality of this approach, because  
23 based on the order, as I understand it, it is going to cover  
24 quite a bit of ground. It could be quite extensive in the  
25 amount of testimony brought in.

1           The question is, will the Commission have a  
 2 capability of doing this within a reasonable period of time  
 3 and at the same time carry on its other business? I don't  
 4 know that that has to be overriding, but I certainly think  
 5 that is an important consideration before we make this  
 6 decision final.

7           COMMISSIONER AHEARNE: Isn't this a different type  
 8 of situation? We are asking this board to look into an  
 9 issue and come back with a recommendation. It does not seem  
 10 to me that this is a formal, legal process whereby our final  
 11 decision has to be tightly tuned to that holding on the  
 12 record.

13           We are taking an agency investigatory act and we  
 14 make a conclusion. Now, that conclusion may be that there  
 15 are additional measures going on all the way up to  
 16 shutdown. At that stage the licensee can appeal it and ask  
 17 for a hearing. But this is different from the TMI situation.

18           CHAIRMAN PALLADINO: I don't think we should  
 19 dismiss the fact that we are going to have, I believe, a  
 20 very extensive record. To overlook the existence of that  
 21 record, I think, would be to lessen the value of the  
 22 investigation. I think we have to be prepared to have the  
 23 record examined and the important points extracted and make  
 24 sure that we give attention to it.

25           If the recommendations are clear and succinct,

1 maybe then we can address the recommendations; but I think  
2 we have to have an interplay between our understanding of  
3 the record and the recommendations that come forth.

4 I just want to make the point that I do think we  
5 are going to have an extensive amount of work and we ought  
6 to think now before we conclude that this is what we want to  
7 do, as to how we are going to handle it or what impact it  
8 might have on a decision to go this way.

9 I don't know that we have to decide today how to  
10 handle it, but just the way we want to go, recognizing all  
11 these points.

12 COMMISSIONER AHEARNE: I think Tom's point is an  
13 excellent one, particularly in light of what we did on Three  
14 Mile Island. It did lead me to rethink that question. I  
15 come out the same place, but it is more where the Three Mile  
16 Island case -- what we were going through was the  
17 traditional approach to a set of issues that the appeal  
18 board is well familiar with handling.

19 In this particular case you just described, it is  
20 so novel that I don't see how the appeal board could really  
21 approach it very well.

22 I think, as Len said, we would end up having a  
23 double set of recommendations which would not help our  
24 resolution at all. We would still have to go back and go  
25 through the same kind of examination that we would have to

1 do just getting it directly.

2 I think, realistically, that Peter and I are not  
3 going to be here when this comes. I agree with Tom, it is  
4 going to take more than two years.

5 CHAIRMAN PALLADINO: If we agree that this is the  
6 way to go, I think we should take a separate action to set  
7 up a team that is going to help us follow this and keep us  
8 posted on matters that need to come to our attention and  
9 help us in reviewing the record, so that we are aware of  
10 those points that relate to the recommendation.

11 Can I get an informal indication -- I think I  
12 already have it -- of the Commission's desire on keeping  
13 this particular point in there?

14 COMMISSIONER BRADFORD: I agree with the way John  
15 has pointed it out. I don't think the board of review at  
16 this stage would add much, except time and possibly a  
17 different set of recommendations

18 If, in fact, further enforcement action of any  
19 sort were forthcoming, then the licensee would request a  
20 hearing, in all likelihood, and the appeal board would  
21 review the record of that hearing in the normal course of  
22 events. Anyway, you wind up getting an appeal board  
23 perspective before taking any final action in the case.

24 CHAIRMAN PALLADINO: I gather the applicant would  
25 petition for a hearing if it were told to shut down the

1 plant?

2           COMMISSIONER BRADFORD: Yes, I am sure if the net  
3 result were a show-cause order not to shut down, that there  
4 would then be a hearing and an appeal board review of the  
5 record of that hearing.

6           COMMISSIONER GILINSKY: I would stick with the way  
7 it is in there now.

8           COMMISSIONER AHEARNE: I would, but I agree with  
9 you. I think the three of you who will be here ought to  
10 make sure that there is some group following it.

11          CHAIRMAN PALLADINO: It will take some help for  
12 the Commission's work.

13          COMMISSIONER ROBERTS: Yes.

14          MR. KENNEKE: Mr. Chairman, could I ask if OGC  
15 could indicate to us to what degree the staff will help, or  
16 will they be foreclosed?

17          MR. BICKWIT: As outlined here, the staff would be  
18 available to deal with it.

19          MR. KENNEKE: In its entirety?

20          MR. BICKWIT: Yes.

21          CHAIRMAN PALLADINO: In other words, you mean you  
22 would not be precluded?

23          MR. BICKWIT: Would not be precluded.

24          As a legal matter, there is no prohibition.

25 Beyond that, the Commission, in the order that was drafted,

1 said that normal ex parte constraints will apply to  
2 communications to the licensing board, the Commission will  
3 not be limited in its ability to obtain information with  
4 respect to Indian Point from any source, so that the  
5 Commission would have available to the staff resources if it  
6 chose to use them.

7 MR. KENNEKE: What about individuals who testify?

8 MR. BICKWIT: It would.

9 MR. KENNEKE: They would be foreclosed?

10 MR. BICKWIT: No. There would be no legal  
11 prohibition. The Commission at that stage might decide to  
12 impose some prohibition on itself voluntarily, but there  
13 would be none under the law.

14 COMMISSIONER BRADFORD: What you are saying  
15 applies, I take it, not only to the staff but also if the  
16 Commission wanted to avail itself of any parties?

17 MR. BICKWIT: That is correct.

18 CHAIRMAN PALLADINO: Which staff are you talking  
19 about?

20 MR. KENNEKE: NRC staff.

21 CHAIRMAN PALLADINO: What did you conclude with  
22 regard to those people?

23 MR. BICKWIT: That there is no legal prohibition.  
24 Unlike the usual case there would be no legal prohibition  
25 in this case with free conversations between the Commission

1 and their staff.

2 CHAIRMAN PALLADINO: If we wanted to explore a  
3 particular issue in depth, even though it might be contended?

4 MR. BICKWIT: That is correct.

5 COMMISSIONER AHEARNE: We could also utilize a  
6 group from the EEO staff to do this.

7 CHAIRMAN PALLADINO: Or we might also use OPE and  
8 OGC. I like John's suggestion.

9 MR. KENNEKE: We called it the staff force. There  
10 were six members, four from the EEO staff and two from OPE  
11 were represented.

12 CHAIRMAN PALLADINO: We will have to investigate  
13 what resources can be brought to bear on that, but that can  
14 be taken up separately.

15 ~~CHAIRMAN PALLADINO:~~ COMMISSIONER ROBERTS: I am going to read from a  
16 footnote on page 7:

17 "Because the Commission, itself, is designating by  
18 this order the issues it wishes to be addressed in the  
19 adjudication, it is particularly important that the  
20 licensing board have discretion to formulate contentions and  
21 subissues, upon the advice of the parties, so as to  
22 effectuate that purpose."

23 I don't understand that, to the extent that, as I  
24 read it, I don't think the Commission is, in fact,  
25 designating the issues it wishes to be addressed.

1 I will touch on something that I have heard Victor  
2 say, at least two times: The easiest thing in the world for  
3 us to do as a commission is to say, "Gee, we think this  
4 should be investigated. We are going to form a board. You  
5 fellows investigate." That is easy.

6 Our responsibility is to delineate those specific  
7 issues that we want them to investigate. Now, that requires  
8 a lot of work on our part, but I think it is irresponsible  
9 to just toss out this nebulous "Gee, fellows, this is a  
10 problem that we want you to look into."

11 I think this is contradictory, even if, in fact,  
12 we were specifically telling them the issues, then we say it  
13 is particularly important for them to go ahead and formulate  
14 contentions and side issues. I think that is a total  
15 nonsequitur, although I don't think we have specifically  
16 told them the issues to be addressed. I don't think that  
17 exists.

18 Even if we had, I think the second part of the  
19 sentence is totally contradictory.

20 I also think, as another point, that we are  
21 getting ready, I think next week, to address sua sponte. I  
22 think the second part of this sentence tells them carte  
23 blanche, "Exercise your powers of sua sponte," and I think  
24 we should consider what actions we are going to take in the  
25 next week or so in regard to sua sponte, and let us not be

1 inconsistent.

2           COMMISSIONER GILINSKY: It is a different kind of  
3 hearing, in the sense that one of the reasons that there is  
4 a concern about sua sponte in the licensing hearing is that  
5 there is a feeling that it takes up time and plants may be  
6 delayed and so on. That is not the issue here. It is not  
7 necessarily inconsistent to have a different standard.

8           On the first point, I guess I can argue about the  
9 desirability of having the Commission be as clear as  
10 possible in its instructions.

11           CHAIRMAN PALLADINO: I took the liberty of  
12 discussing this question with general counsel. He made some  
13 points that helped me understand the situation. Perhaps it  
14 would be worthwhile presenting it again.

15           COMMISSIONER AHEARNE: I would too, because I have  
16 to admit that granted I may have understood it at the time,  
17 because of the time that has passed I am not sure I  
18 understand it.

19           MR. BICKWIT: I am reluctant to take the  
20 responsibility.

21           The purpose of the sentence was to indicate that  
22 the Commission didn't want the board to look at everything  
23 under the sun but, rather, to shape the hearing so that the  
24 questions posed, and only those questions posed, would be  
25 answered; it wanted the board to use its discretion to break

1 down the questions that the Commission has explicitly posed  
2 so that the objectives of the Commission could be satisfied,  
3 that is, to receive answers to those questions, not to stand  
4 on the number of questions as you have interpreted it.

5 I can understand how you would interpret it that  
6 way.

7 COMMISSIONER ROBERTS: I don't see how anybody  
8 could read this and come down any other way.

9 MR. BICKWIT: The context in which it was proposed  
10 was to give the board discretion to narrow beyond what would  
11 be the normal shape.

12 COMMISSIONER GILINSKY: Normally, it would be the  
13 party that would submit contentions.

14 COMMISSIONER ROBERTS: How would the board  
15 reading this order know that?

16 COMMISSIONER GILINSKY: Now that Len has reminded  
17 us --

18 COMMISSIONER AHEARNE: Perhaps the sentence can be  
19 expanded and reworded to make that clear, because I agree  
20 with Tom that it does not come through.

21 MR. BICKWIT: I agree with him also.

22 MR. KENNEKE: You want the board to better focus  
23 the issue?

24 MR. BICKWIT: That is right. That is what the  
25 Commission wants.

1           COMMISSIONER GILINSKY: There were many  
2 discussions of this and there were transcripts, no doubt,  
3 and we assumed this was going to happen fairly soon after  
4 our meeting. So, I think the understanding might have been  
5 there had we done it at the time.

6           CHAIRMAN PALLADINO: I was trying to fix this same  
7 point up, because it related to one of the questions I had,  
8 suggesting words such as this, as I am going to read, be  
9 inserted in amplification of that sentence.

10           I would come on page 7, right after the words "10  
11 CFR Part 2":

12           "The licensing board shall limit its inquiry to  
13 matters that it considers likely to be important to NRC's  
14 ultimate decision" -- and I would like to go on and say:  
15 "with regard to the ten questions raised."

16           COMMISSIONER AHEARNE: That, I submit, does not  
17 limit at all, because the questions they would eliminate  
18 then would be those that they conclude unlikely to be  
19 important.

20           I don't think any licensing board would agree that  
21 they have ever allowed a question to come in that they  
22 viewed as unlikely in importance.

23           MR. BICKWIT: I am not so sure of that, because of  
24 our broad contention factors.

25           COMMISSIONER BRADFORD: I take it that what Tom

1 was after was something that indicated this wasn't a license  
2 for the board to go out and somehow expand on the question  
3 raised. I thought it was seven questions.

4           COMMISSIONER ROBERTS: I only have seven.

5           COMMISSIONER BRADFORD: I have no difficulty with  
6 your language which makes the point clearer, that the issues  
7 that the Commission has delineated or in the questions set  
8 forth are those seven questions. I am not sure though that  
9 I follow the rest of the point, somehow -- not your point  
10 but Tom's -- which somehow seems to suggest that the board  
11 should not frame issues that aren't necessarily framed by  
12 the parties but that it feels are essential to answering one  
13 or more of those seven questions.

14           I would think we would want them, if we felt there  
15 was something missing that was an essential piece of  
16 information with regard to those seven questions, to go get  
17 it.

18           CHAIRMAN PALLADINO: I wonder -- to follow up on  
19 Tom's point -- whether understanding the point that we seem  
20 to be understanding this morning, that we want the board to  
21 focus on issues that help to answer the question, whether  
22 that could not be captured in a revision of that note?

23           MR. BICKWIT: I think the note can be revised to  
24 make that far clearer than it now is.

25           CHAIRMAN PALLADINO: To the extent that this is

1 helpful, feel free to use it. I think it is important to  
2 correct that footnote or to clarify it. I think that is the  
3 point.

4           COMMISSIONER ROBERTS: I understand what this is  
5 an initial procedure, but I don't understand the meaning of  
6 the following two sentences:

7           "In admitting and formulating contentions and  
8 subissues, therefore, the licensing board will not be bound  
9 by the provisions of 10 CFR Part 2. The licensing board may  
10 also, without regard to the provisions of 10 CFR Part 2,  
11 establish whatever order of presentation it deems best  
12 suited to the proceedings' investigative purposes. Except  
13 as provided above or elsewhere in this order, 10 CFR Part 2  
14 will control."

15           I don't understand what that means. If they are  
16 not going to operate under 10 CFR Part 2, how are they going  
17 to operate? We certainly have not told them in this order.

18           MR. BICKWIT: Let me try to respond to that.

19           What we are attempting to do here is set out  
20 certain parts of Part 2 which the board needn't apply, and  
21 then specify that every other part of Part 2 governs.

22           Now, in the area where Part 2 does not apply,  
23 there is where you need the kind of guidance that the  
24 Chairman just mentioned, that is, with respect to  
25 contentions you want to tell the board to narrow and shape

1 the focus of those contentions so that they answer the  
2 questions of the Commission, not to apply the normal  
3 contention practice that is dictated by Part 2. That is the  
4 entire concept.

5           COMMISSIONER ROBERTS: Does this order spell that  
6 out?

7           MR. BICKWIT: My impression was that it did, but  
8 that it could be spelled out more clearly.

9           COMMISSIONER GILINSKY: In effect, the board does  
10 not have to admit contentions that would normally have to be  
11 admitted under our rules; it could combine contentions; it  
12 could shape contentions in our system to our purposes in  
13 this hearing.

14           COMMISSIONER ROBERTS: I just submit that as  
15 drawn that is not clearly stated at all.

16           CHAIRMAN PALLADINO: This is, again, referring to  
17 the same footnote?

18           COMMISSIONER AHEARNE: Yes.

19           CHAIRMAN PALLADINO: Perhaps the OGC, in recasting  
20 the footnote, could see what might be done to clarify this  
21 point.

22           MR. BICKWIT: Fine.

23           COMMISSIONER GILINSKY: We are asking the board to  
24 take more initiative than the board normally would, and to  
25 take more of a lead role in the hearing, rather than merely

1 sit back and let the various parties start without it.

2           COMMISSIONER ROBERTS: I think we need to say  
3 that very clearly. I don't think it is clear as stated.

4           MR. BICKWIT: Then we ought to say it.

5           COMMISSIONER AHEARNE: I beg your pardon?

6           MR. BICKWIT: Then we ought to say it.

7           CHAIRMAN PALLADINO: Why don't we try it by  
8 getting a recasting of the footnote, both to show that we  
9 want to focus on those items that help answer the questions  
10 of the Commission and makes sure that this point is  
11 clarified as well.

12           COMMISSIONER AHEARNE: If you could pick up on  
13 page 7 of the order, we do say the board should focus  
14 clearly on the questions asked by the Commission.

15           The footnote definitely could use improvement.

16           CHAIRMAN PALLADINO: You will work on that?

17           MR. BICKWIT: Yes.

18           COMMISSIONER ROBERTS: The first question, you  
19 can interpret that to suggest that an accident beyond the  
20 plant designed basis is assumed to have occurred. Now, how  
21 are you going to determine the risk level?

22           CHAIRMAN PALLADINO: I gather that there has been  
23 a statement of interim policy on nuclear power plant  
24 accident considerations that does guide the action on this.  
25 I had the same problem. I was worried that this was opening

1 up all sorts of accident scenarios, so I suggested adding to  
2 this -- let me find it first -- adding a parenthesis to the  
3 end of Question No. 1 on page 9: "(Although not requiring  
4 the preparation of an environmental impact statement, the  
5 Commission intends a review with respect to this question to  
6 be conducted consistent with the guidance provided the staff  
7 and the statement of interim policy on nuclear power and  
8 accident considerations under the National Environmental  
9 Policy Act of 1969)" with a appropriate reference.

10 COMMISSIONER AHEARNE: Let me say a word, if I may.

11 I felt that if we do go that direction -- I went  
12 back to the Federal Register and noted exactly what kind of  
13 guidance that would be -- I would suggest that if we follow  
14 this, we explain it either in this order or in a note to the  
15 board or to the EEO. Basically that notice directs that  
16 attention shall be given both to the probability of  
17 occurrences of the releases and to the environmental  
18 consequences, and it shall include a reasoned consideration  
19 of the environmental risk attributable to accidents at a  
20 particular facility.

21 Equal attention should be given to the probability  
22 of occurrences of the releases and probability of occurrence  
23 of the consequences, and then such studies will take into  
24 account significant site and plant-specific factors.

25 CHAIRMAN PALLADINO: So, a description of the

1 release scenario would include a calculation of the  
2 probability of such release, with the probability calculated  
3 for this specific Indian Point plant.

4           You would propose either putting this in the order  
5 or sending this --

6           COMMISSIONER AHEARNE: Right.

7           CHAIRMAN PALLADINO: Would not the licensing board  
8 determine the same information by going to the reference?

9           COMMISSIONER AHEARNE: They certainly could.

10          CHAIRMAN PALLADINO: I was thinking so far as the  
11 order this could suffice, and then for their guidance refer  
12 to our understanding of the order.

13          COMMISSIONER AHEARNE: Part of the problem is that  
14 some people have interpreted -- as I found in the Federal  
15 Register notice -- while you automatically just take one of  
16 the characteristic releases after a large-scale release from  
17 containment, and then you calculate the consequences, that  
18 is not what our policy directive said.

19          What we said is that we will take into  
20 consideration both the probability of that release, as well  
21 as the consequences.

22          COMMISSIONER GILINSKY: We say what risks may be  
23 caused by serious accidents, and risk includes both. Let us  
24 put a parenthesis in there, "(probability of  
25 consequences)". You have to calculate each separately, and

1 if you want to multiply them --

2           COMMISSIONER AHEARNE: More than that, the staff  
3 has now gone out and for a number of plants has done this  
4 kind of calculation; so we now have a staff practice being  
5 established on how to implement it.

6           CHAIRMAN PALLADINO: I had problems when I read  
7 No. 1, because I did not know exactly what limitations would  
8 apply in exercising it. Then in conversation with  
9 Commissioner Ahearne I said, "Well, we already have some  
10 guidelines on this" and suggested "Why don't we refer to  
11 them?" I think the reference helps this a great deal; it  
12 certainly helps me. I don't think it waters down what was  
13 intended.

14           Apparently you are confirming that. I would have  
15 no objection to sending a summary in a memo form separate  
16 from the order to the board and indicating this is what we  
17 see in that reference.

18           COMMISSIONER GILINSKY: It does not change what we  
19 have.

20           CHAIRMAN PALLADINO: I gather it does not change  
21 your original intent, but it does clarify it.

22           COMMISSIONER BRADFORD: I do not mind your  
23 revision, assuming John's extraction is factual, I can't  
24 obviously object to that, either. So, in principle it is  
25 fine.

1 I would just like to check with the extraction and  
2 anything else I would extract as well. With that I have no  
3 problem.

4 CHAIRMAN PALLADINO: The order will include this.  
5 The extraction will be a separate item. Of course, in  
6 accepting the reference you need to know what is in there.

7 COMMISSIONER BRADFORD: I suggest making a  
8 footnote of the extraction rather than having two separate  
9 guidance documents.

10 CHAIRMAN PALLADINO: Except I hate to repeat in an  
11 order something that is already in a reference.

12 COMMISSIONER GILINSKY: Does that reference, by  
13 the way, speak of the uncertainties in the calculations of  
14 the probabilities? It says the probability calculated and  
15 so on. Are we going to end up with one number? If there is  
16 such a reference in there, I think we should extract that.

17 CHAIRMAN PALLADINO: Well, I gather there is a  
18 majority that would go along with this modification of the  
19 recorder.

20 COMMISSIONER BRADFORD: By that you mean your  
21 modification?

22 CHAIRMAN PALLADINO: Yes.

23 COMMISSIONER BRADFORD: Yes, and in all likelihood  
24 the separate piece as well, just --

25 CHAIRMAN PALLADINO: You mean including this in

1 the order?

2 COMMISSIONER BRADFORD: I would append  
3 way, rather than have it separately.

4 CHAIRMAN PALLADINO: I would have no o  
5 except we are going to have to have some staff w  
6 sure that we got the right extraction.

7 COMMISSIONER AHEARNE: This was a quick

8 CHAIRMAN PALLADINO: Will you and OPE  
9 so that will be part of the clarification that y  
10 submit?

11 Let us go on to the next point.

12 COMMISSIONER ROBERTS: Perhaps this h  
13 answered:

14 "A contention by a party that one or m  
15 safety measures, in addition to those identified  
16 referenced by the director, should be required as  
17 of operation of the facility or facilities, woul  
18 the scope of this inquiry."

19 Good gracious, I think that is absolut  
20 vague.

21 CHAIRMAN PALLADINO: I had the same fe  
22 anybody proposed a core-catcher, it has to be co  
23 If somebody proposed double containment, that sh  
24 considered. If somebody says there ought to be  
25 valves on top of the pressure vessel, that has t

1 considered, and that gives me a lot of problems.

2 I have been trying to cope with it. I had one  
3 correction which I agree did not work too well. I have  
4 another one that I would like to try on my fellow  
5 commissioners, to see if this will help the situation:

6 That would be to replace the present parenthetical  
7 with the following: "(A contention by the party that one or  
8 more specific safety measures in addition to those  
9 identified or referenced by the director should be required  
10 as a condition of operation of the facility or facilities,  
11 because there exists the significant risk to public health  
12 and safety, notwithstanding the director's measures and the  
13 additional measures sought by the party would significantly  
14 reduce the risk, would be within the scope of this inquiry.)

15 In other words, not keeping it wide open but  
16 saying that an individual who wants to propose another  
17 device has to show that there is a significant risk because  
18 of the lack of that device, and this device will  
19 significantly reduce that risk.

20 COMMISSIONER GILINSKY: It is to contend.

21 CHAIRMAN PALLADINO: It is to contend, yes.

22 I am anxious to put some limit on this. I don't  
23 know how to do it without getting very specific. With the  
24 help of some of my staff people, this is one way we might  
25 attempt to handle it.

1           MR. BICKWIT: If you just have to contend it, I  
2 must say I don't really see that it will make much of a  
3 difference.

4           COMMISSIONER GILINSKY: Well, it does. You have  
5 to contend that it is dealing with an important problem. I  
6 assume that there is a summary of positions up here, and if  
7 that contention does not stand up, pass muster, it is not  
8 going to stand a hearing or will not be included by the  
9 board.

10          COMMISSIONER AHEARNE: Let me ask -- Tom had  
11 suggested the contention should at least state with  
12 specificity why safety measures are required and what safety  
13 benefits will be derived from their implementation. I was a  
14 little more comfortable with Tom's version, because I think  
15 it perhaps goes a little bit further, requiring something to  
16 be provided.

17          COMMISSIONER BRADFORD: I am sorry; I don't see  
18 Tom's words on here.

19          COMMISSIONER AHEARNE: The last sentence,  
20 paragraph 7, page 3.

21          CHAIRMAN PALLADINO: That is somehow impracticable  
22 at this point. The contention should at least state with  
23 specificity what safety measures are required and what  
24 safety benefits will be derived.

25          COMMISSIONER GILINSKY: I think, in fact, Joe's is

1 more restrictive. He has "safety benefits have to be  
2 substantial."

3 CHAIRMAN PALLADINO: Would you go along with  
4 is? We have to get this back because we are going to work  
5 on Footnote No. 7.

6 MR. BICKWIT: The footnote is very relevant to  
7 this particular parenthetical statement, because whether or  
8 not this works depends on what kind of threshold the board  
9 is going to be setting with respect to contention, how  
10 likely does it believe that this is the case when this  
11 allegation is made.

12 If it is simply a case of our normal contention  
13 practice, I must say, I don't really feel that this proposal  
14 is going to make much of a difference. But if the board  
15 makes use of the exception from Part 2 and our normal  
16 contention practice, and applies this, then it can make a  
17 rather substantial difference.

18 The Commission is going to have to focus on that  
19 question.

20 COMMISSIONER AHEARNE: Do you see any difference  
21 between the Chairman's approach and Commissioner Roberts'  
22 approach?

23 MR. BICKWIT: I regard the Chairman's approach as  
24 more restrictive.

25 COMMISSIONER ROBERTS: I am happy with that.

1 COMMISSIONER AHEARNE: I should like the OGC to  
2 try to break it into at least two sentences.

3 CHAIRMAN PALLADINO: We came up with this emergency.

4 COMMISSIONER BRADFORD: Supposing someone comes in  
5 with a contention that says the following set of  
6 circumstances is in violation of the Commission's  
7 regulations, is it that you do not intend to rule that out,  
8 you are not going to impose on them a further duty of  
9 showing how the violation of Commission regulations affects  
10 risks?

11 COMMISSIONER AHEARNE: Which regulations?

12 COMMISSIONER BRADFORD: I don't know which  
13 regulation.

14 COMMISSIONER AHEARNE: The point is, as you both  
15 know, when new regulations are put in, many times they are  
16 not applicable to plants already licensed.

17 COMMISSIONER BRADFORD: You could not make a  
18 showing that the regulation is being violated if the plant  
19 is in specific possession of an exemption from it.

20 COMMISSIONER AHEARNE: You recall some of the  
21 petitioners said that those plants ought to be held to the  
22 existing regulations that exist now.

23 COMMISSIONER BRADFORD: That is a different thing;  
24 that falls under what Tom stated, which the existing  
25 proposition was designed to address. At some point we are

1 going to have to show that there is a safety significance in  
2 a situation like that. I am talking about the situation  
3 about a contention that says this is a violation of the  
4 regulations from which the plant is not exempt.

5           COMMISSIONER AHEARNE: Peter, are you saying that  
6 would be independent? The specific issue, as Victor pointed  
7 out earlier, we are addressing this because it is in a very  
8 high-population area.

9           COMMISSIONER BRADFORD: It still has to be within  
10 the question that the Commission has set forth.

11           COMMISSIONER AHEARNE: For example, if they came  
12 in and said it is in violation of a regulation having to do  
13 with some facet of the way part of the building is  
14 constructed, but is not directly related to the kind of  
15 accident sequence that might have to do with high density  
16 population, that would be able to be excluded because it  
17 would not be directly germane to the question we have asked?

18           COMMISSIONER BRADFORD: That is right. You have  
19 to be able to reply with respect to any contention. One of  
20 the first showings you would have to make is that it is  
21 within the scope of the questions that the Commission has  
22 propounded.

23           My only point is that as long as you make that  
24 showing, a contention to the effect that a regulation is  
25 being violated, I would not think it ought to carry a

1 separate burden of a showing as to safety significance.

2           We assume our regulations have safety significance  
3 and if someone is not meeting that situation, it has to be  
4 corrected.

5           COMMISSIONER AHEARNE: The safety significance we  
6 have assumed oftentimes is a secondary one; for example,  
7 that we have regulations which apply to reporting, and lack  
8 of meeting that regulation does not mean that they are not,  
9 that not reporting that item is automatically a safety  
10 significance. It is the fact that they don't report  
11 indicates something about the manner in which the plant is  
12 being operated by the management, and that could potentially  
13 have safety significance.

14           I would disagree that we assume that every  
15 regulation has safety significance.

16           COMMISSIONER BRADFORD: Let me put it the other  
17 way: It has been explicit always in saying that you cannot  
18 countenance a violation of our regulations --

19           COMMISSIONER AHEARNE: That is true.

20           COMMISSIONER BRADFORD: -- through any risk  
21 assessment process, saying it doesn't matter.

22           COMMISSIONER AHEARNE: That is true, but this is a  
23 investigatory hearing on a separate issue; it is not a  
24 licensing hearing on these plants.

25           COMMISSIONER BRADFORD: No. My point, I think,

1 is, for me anyway and it would still hold, that if someone  
2 poses a contention regarding a violation of regulations that  
3 falls within the scope of the hearing, I think it ought to  
4 at least survive the contention process.

5           CHAIRMAN PALLADINO: My intent was basically  
6 silent on that point. Now you are raising the question, I  
7 think, if the violation of the regulation is relevant to the  
8 issue, and is relevant to the question, one of the questions  
9 we are addressing, I would expect that that would be an  
10 admissible -- I mean, the fact that the applicant was not in  
11 compliance with that -- I would expect -- would be  
12 admissible if it is relevant to the question at hand.

13           COMMISSIONER BRADFORD: That is where I would come  
14 out.

15           MR. BICKWIT: That is not how I would read it.

16           CHAIRMAN PALLADINO: How would you read it?

17           MR. BICKWIT: I would read it that the issue would  
18 have to be relevant to the claim of deficiency to affect  
19 those answers, independent of whether or not --

20           CHAIRMAN PALLADINO: I was trying to separate two  
21 things. I still want this. You might have a different  
22 circumstances that I can't find an example for at the  
23 moment, that maybe I would say would go along with that.

24           COMMISSIONER GILINSKY: I thought that this point  
25 really dealt with contentions that equipment ought to be

1 added and beyond what is now required by the regulations. I  
2 assume that what is required by the regulations is a fit  
3 subject for the hearing.

4 COMMISSIONER BRADFORD: What other paragraph?

5 MR. BICKWIT: It is both.

6 COMMISSIONER GILINSKY: If the regulations require  
7 you to have an emergency cooling system, you don't need to  
8 pass a test here to contend that the plant ought to have an  
9 emergency cooling system.

10 MR. BICKWIT: I read this as still setting up a  
11 test, but in your example the test is passed.

12 COMMISSIONER GILINSKY: I think when we formulated  
13 this the idea was that Harold, in adding requirements on  
14 this plant over and beyond what is required of other plants,  
15 has come up with a collection of hardware fixes.

16 I think the point is that they go beyond what is  
17 required in the regulations. The question is, is there  
18 something else that ought to be required?

19 MR. BICKWIT: You also are dealing with whether  
20 the regulations are complied with in this proceeding.

21 COMMISSIONER AHEARNE: They don't necessarily go  
22 beyond the regulations. In some cases, as you know, we have  
23 a set of regulations and they have regulations that say do  
24 this, and the regulation is met. I think in some cases this  
25 is an additional requirement that may still be within those

1 regulations for these plants that have to be met.

2           CHAIRMAN PALLADINO: I think to one extent Vic is  
3 right.

4           Question No. 2 says, "What improvements in the  
5 level of safety will result from measures required or  
6 referenced in the director's order to the licensee dated  
7 February 11, 1980?" And this would follow.

8           COMMISSIONER BRADFORD: As a parenthesis. The  
9 parenthesis maybe should have been set out as a separate  
10 item instread of simply lumped into No. 2. It was  
11 originally designed in part to pick up the language on page  
12 8, to the effect that in resolving specific contentions in  
13 the UCS petition to the effect that some of our regulations  
14 are not met in one or both units, the parenthesis is now  
15 going through an evolution which seems to be losing that  
16 flavor.

17           COMMISSIONER AHEARNE: I agree that it was a  
18 resolution of that issue. At least the tracking back that I  
19 did in going into the history of that particular question,  
20 there was originally a question that the issue was, to what  
21 extent do the two units comply with an applicable  
22 regulations, regulatory guides and technical position, that  
23 was one of the original questions.

24           There was a lot of debate, as you recall, in the  
25 Commission as to whether that type of question ought to be

1 allowed. Commissioner Kennedy ended up proposing adding as  
2 a footnote what is now the parenthetical expression, and  
3 that ended up being the parenthetical expression and, as I  
4 recall, in going back to some of the transcripts, that,  
5 Peter, your point was that it was not quite what you wanted,  
6 but we all are compromising some of our positions, and so  
7 you agreed to the extent possible that would be embedded in  
8 there, but I don't think it quite got to are the regulations  
9 satisfied.

10           COMMISSIONER BRADFORD: In the order itself we  
11 say, on page 8: "The Commission is also interested in the  
12 current state of emergency planning in the vicinity of the  
13 Indian Point site and in future improvements in that  
14 planning, as well as in resolving the specific contentions  
15 in the UCS petition to the effect that some of our  
16 regulations are not met in one or both units."

17           Having said that, we are bound to reflect it  
18 within the seven propositions as set forth in the scope of  
19 the hearing. The only one that I was confident did that was  
20 the parenthesis in no. 2. Since there was no disagreement  
21 on this --

22           COMMISSIONER AHEARNE: There was an inconsistency  
23 between any other interpretation of that question and in  
24 doing the research to get ready for this meeting all I could  
25 come up with was an inconsistency. I agree with you; you

1 have a good point.

2           COMMISSIONER BRADFORD: It is an inconsistency  
3 that is resolved by interpreting No. 2 my way.

4           MR. KENNEKE: I note that page 8 talks about  
5 current emergency planning. The flavor, it seems to me, in  
6 Question 2 has to do with what I call physical devices as  
7 opposed to planning devices.

8           On page 8 I would have read that now as the kind  
9 of problem we are going through elsewhere. I mean, to what  
10 degree do we firmly require everything in the emergency  
11 planning rule has to be met?

12           CHAIRMAN PALLADINO: That is an important point.  
13 As I was reading No. 2, it was hardware oriented. Now,  
14 maybe I missed something.

15           The point being made here is the paragraph on page  
16 3.

17           COMMISSIONER BRADFORD: The planning point you  
18 picked up somewhere else.

19           CHAIRMAN PALLADINO: He is pointing out that the  
20 regulations referred to here may be referring to emergency  
21 planning.

22           COMMISSIONER BRADFORD: No, but the contentions.

23           CHAIRMAN PALLADINO: Okay, yes. I guess I don't  
24 find that it is inconsistent. I think that in Question 2 we  
25 are talking about specific measures and I took those to be

1 hardware measures, primarily. I wanted to limit the scope  
2 so that the board has some guidance. I was not intending  
3 to interfere or had not thought about the fact that some of  
4 the regulations, whether or not they were being met.

5           COMMISSIONER BRADFORD: I appreciate that. I  
6 think there is some way to draft that thought into the paragraph  
7 that you proposed, or the one that Tom proposed, then I  
8 think I could accept that.

9           CHAIRMAN PALLADINO: You would not buy it the  
10 way it is?

11           COMMISSIONER BRADFORD: I think Len seems to  
12 confirm the way it is, that it does seem to impose a  
13 significant test on top of a violation of the regulation.

14           CHAIRMAN PALLADINO: If a violation of the  
15 regulation does not have a safety issue involved, then  
16 I would agree, I would not want it.

17           MR. BICKWIT: You read it the way I do.

18           CHAIRMAN PALLADINO: If you did not get a report  
19 in on time and that report did not contribute, I would  
20 think that is not the subject of this hearing.

21           COMMISSIONER BRADFORD: I think though that in  
22 something you can necessarily decide at the contention  
23 stage; that is, granted you could take an extreme example  
24 of something that everyone could agree was trivial.

25           What you are more likely to get is something

1 is in the area in which there is no dispute over whether it  
2 has safety significance and the board might resolve it at  
3 the end by saying, "We find at least sometimes in the past  
4 this regulations has not been complied with."

5           They might recommend any number of possible  
6 actions to the Commission that should be taken in light of  
7 the safety significance. We would be doing the wrong thing  
8 if we permitted an allegation that our regulations were not  
9 safety significant to govern the handling of contentions at  
10 the beginning of the proceeding.

11           You make all sorts of decisions on what you do at  
12 the end of a proceeding like this or any other important  
13 proceeding when you find regulations are not being complied  
14 with. I would not foreclose the raising of that question.

15           COMMISSIONER GILINSKY: Suppose there is a  
16 regulation on fracture toughness of pressure vessels, would  
17 you require the contender to demonstrate the safety  
18 significance of that regulation? It seems to me the  
19 Commission has found that by imposing the requirement.

20           CHAIRMAN PALLADINO: No. I think we are getting  
21 away from the issue. The issue is, the staff has proposed  
22 certain steps that say we believe now this makes the plant  
23 appropriately protected. Now, somebody comes along and  
24 says, "Oh, but I think if you put this widget on there in  
25 addition, it will be better." And somebody has some other

1 items. I was trying to foreclose getting a whole litany of  
2 contentions. That is all I intended to deal with.

3           Now, there may be other issues where perhaps the  
4 violation of one of our orders has a safety significance. I  
5 would say I have no problem with that being introduced. I  
6 have to trust to the judgment of the hearing board to handle  
7 the contentions. If the hearing board comes and says,  
8 "Well, the mere fact that they were two weeks late on  
9 reporting this information is not germane to this issue," I  
10 would say that is probably a pretty good judgment; but there  
11 may be others where they might, and I would still think it  
12 would be good judgment.

13           I am not trying to foreclose it. I think we have  
14 enough flexibility between your sentence on page 8 and the  
15 parenthesis so that we could live with it, even though it  
16 does take some judgment on the part of the board of where to  
17 apply each. These being appended directly to those items  
18 that the director has referred to, I think, limits it to  
19 that issue.

20           If it were a separate item, then you might have a  
21 basis for worry.

22           COMMISSIONER GILINSKY: What you are doing, in  
23 effect, is making that sentence one of the questions. Since  
24 somewhere else we were saying that the board ought to stick  
25 to the questions, if you want to have that point included,

1 it ought to be a question.

2           COMMISSIONER AHEARNE: I don't think he is making  
3 that sentence a question.

4           CHAIRMAN PALLADINO: The question is, does this  
5 clarify the extent to which somebody can bring up other  
6 suggestions?

7           COMMISSIONER GILINSKY: I understand that. I am  
8 satisfied with that solution of the problem we are dealing  
9 with.

10          COMMISSIONER AHEARNE: Making that sentence one of  
11 the questions was one of the questions that we debated and  
12 excluded.

13          COMMISSIONER GILINSKY: How does one under this  
14 list of questions raise the fact that an important safety  
15 regulation is not complied with?

16          MR. BICKWIT: I don't read this as precluding  
17 that. I don't read it, however, as adopting Peter's  
18 concept, which would be that if it is phrased in terms of  
19 compliance with the regulations, then it is acceptable.

20          COMMISSIONER GILINSKY: I understood Joe's remark  
21 that this paragraph here was dealing with the problem of  
22 people suggesting that we have a double containment or extra  
23 this or that above what is required now.

24          What about the other problem, which is the  
25 contention that the regulation is not complied with?

1 MR. BICKWIT: What I read this as saying is that  
2 in addition to alleging that the regulation is not complied  
3 with, the proponent of the contention wants to allege that  
4 there is some safety significance.

5 COMMISSIONER GILINSKY: Joe was saying that those  
6 kinds of things come through that sentence on page 8 and  
7 says somehow in combination with the sentence in parentheses  
8 --

9 COMMISSIONER ROBERTS: Which sentence on page 8  
10 are you speaking of?

11 COMMISSIONER GILINSKY: The middle paragraph.

12 COMMISSIONER ROBERTS: I have some questions  
13 about that.

14 Now, are we saying we are giving the board seven  
15 specific questions? What are we saying when we say the  
16 Commission is also interested in resolving the specific  
17 contentions in the UCS petition?

18 CHAIRMAN PALLADINO: That is the petition from  
19 which this whole hearing developed.

20 COMMISSIONER ROBERTS: I understand. What I am  
21 trying to convey is if the petition brought some thoughtful,  
22 valid considerations that we should pursue, I think we  
23 should accept that, but we, the Commission, are issuing the  
24 report and I think we should reply from our piece of paper.

25 This is an important philosophical point. If

1 there are valid considerations in the petition, let us  
2 acknowledge them and let us state them, but they are stated  
3 by the Commission. There is a considerable difference, in  
4 my judgment.

5           CHAIRMAN PALLADINO: The Commission is interested  
6 in resolving the specific contentions in the USC petition to  
7 the effect that some of our regulations are not met in one  
8 or both units; in other words, one of the contentions in the  
9 petition is that we don't enforce our regulations or at  
10 least so far as these two units are concerned.

11           COMMISSIONER BRADFORD: I don't think that is it,  
12 basically.

13           CHAIRMAN PALLADINO: Perhaps that is too strong,  
14 that we are not doing it in every case in these two units.

15           COMMISSIONER GILINSKY: How with these seven  
16 questions does the board come to that?

17           COMMISSIONER AHEARNE: The only way I follow what  
18 Tom has suggested, as I recall dimly we have gone through  
19 this before, because I think we tried to get what are the  
20 specific contentions; let us take a look at those  
21 regulations that they are claiming are not met and let us  
22 see whether we should incorporate that.

23           COMMISSIONER ROBERTS: That is what I am saying,  
24     t to take the petition and work philosophically, who is  
25 conducting this hearing? It is at the direction of the

1 NRC. Then let us exercise our proper responsibilities and  
2 we will issue the order. We don't take directions from  
3 other people. That is my whole point, and it is a  
4 significant one.

5           We should acknowledge and accept valid and proper  
6 considerations and acknowledge them, but we are issuing this  
7 order. I think there is a perception here that we are  
8 operating under other people's instructions, and I have some  
9 difficulty with that.

10           COMMISSIONER BRADFORD: We would have to rewrite  
11 an awful lot of orders if we were to rule out all outside  
12 parties.

13           COMMISSIONER ROBERTS: I did not suggest that.

14           COMMISSIONER GILINSKY: We either ought to make it  
15 a question that the board should deal with, or not make it a  
16 question.

17           COMMISSIONER AHEARNE: I think we ought to refer  
18 back to the meeting of November 26th. I think we discussed  
19 this. The only issue that we seemed to be able to come up  
20 with was diesel generators, single-barrier criteria, and  
21 then the fire protection question.

22           COMMISSIONER BRADFORD: That is a different  
23 point. With regard to the hearing itself, the real question  
24 is whether one can come in with the contention that the  
25 regulations are not violated. The only regulations at issue

1 here regarding Indian Point are those three. That is one  
2 thing.

3 My point -- and the point I thought was captured  
4 in the original Question 2 -- was that the contention was, if  
5 one could frame a contention to the effect that a regulation  
6 was not being met, in all likelihood that it got in.

7 COMMISSIONER AHEARNE: I agree that was your  
8 point. I was addressing more Tom's point on this particular  
9 sentence, which was the specific contention in UCS's  
10 petition.

11 COMMISSIONER BRADFORD: Right. They are relevant  
12 here because they are sort of in the category of examples of  
13 contentions regarding the regulations and specific ones, we  
14 did want one. I don't think we restricted it to those areas  
15 alone.

16 You made a point earlier that by excluding the  
17 specifics, the original question asked about regulations,  
18 regular guides and other requirements, I thought I  
19 understood you to say the Commission had dropped that  
20 concept. I guess I would not agree with that.

21 From my point of view, what we did was to subsume  
22 a more generally worded phrase that for other reasons other  
23 members of the Commission were more comfortable with.

24 COMMISSIONER AHEARNE: A better way of saying that  
25 is that we compromised on that language, recognizing that

1 each of us might have a slightly different interpretation.

2 MR. BICKWIT: You see why this is a confusing  
3 order.

4 CHAIRMAN PALLADINO: Peter, I wonder if you might  
5 try to phrase something just for discussion here. I am torn  
6 between maybe not understanding your point too well and how  
7 it relates to this particular issue. I gather it does not  
8 relate to this particular issue?

9 COMMISSIONER BRADFORD: No, it only relates to  
10 this issue to the extent, as Victor phrased it earlier, he  
11 would not want someone coming in with a contention to the  
12 effect that general design criteria dealing with fire  
13 protection or fracture toughness or what have you was not  
14 being met, period, and having the board rule that out  
15 because they had failed to state the safety significance in  
16 our general design criteria.

17 I think we afford our general design criteria  
18 safety significance by enacting them, and contention to the  
19 effect that they are not being met should not have the  
20 effect of reestablishing the safety significance of the NRC  
21 regulations.

22 CHAIRMAN PALLADINO: I will say for many items I  
23 will go along with you. It might be a report that was two  
24 weeks late that did not satisfy our regulations and did not  
25 have any safety significance. I think on those items that

1 the Commission has ruled as having safety significance, they  
2 would automatically have safety significance.

3           COMMISSIONER GILINSKY: I guess we have to rely on  
4 the board not to spend a lot of hearing time on this.

5           COMMISSIONER AHEARNE: As it stands now, it does  
6 rely on the board and there is a threshold of safety  
7 significance the board has to find.

8           MR. BICKWIT: You have not come down on the extent  
9 to which the board has to find that at the contention stage.

10           COMMISSIONER BRADFORD: In most proceedings, one  
11 worries about delays in the form of frivolous contentions,  
12 because the plant is not licensed. As a practical matter,  
13 that is the way the parties are going to behave here. The  
14 people who are going to be raising contentions are the ones  
15 who want a change rather than preservation of the existing  
16 state. It compels them very little to stretch the  
17 proceeding out with frivolous contentions while both units  
18 are operating if their goal is to shut them down.

19           The intent does not really exist to come in with a  
20 bunch of frivolous allegations relating to minor  
21 regulations, the way it might in the case when the plant is  
22 shut down during pendency of the hearing. I don't think you  
23 will see much of that. It will be in the participant's  
24 interest to focus on items that really can produce results.

25           CHAIRMAN PALLADINO: I am inclined to try

1 something, but it sounds so obviously when I try it that I  
2 am having trouble with it; that is, if the contention is  
3 based on violation of a regulation of the Commission, that  
4 the board may accept the fact that it has a safety  
5 significance on the basis that the board passed it. It does  
6 not obligate them but it points out. I use the word "may".

7           Let me make a suggestion: Would you try to phrase  
8 something that you think could accommodate your thoughts or  
9 your feelings in maybe this kind of approach?

10           COMMISSIONER BRADFORD: Yes.

11           CHAIRMAN PALLADINO: In other words, if the  
12 contention is that we have violated a regulation, the mere  
13 fact that the regulation exists can be used as a basis for  
14 establishing the safety importance. I don't think we want  
15 to work on it in a Commission setting.

16           COMMISSIONER GILINSKY: The board certainly is not  
17 obligated to accept the contention. It ultimately shapes  
18 the contention. Even here we say "within the scope of the  
19 inquiry."

20           CHAIRMAN PALLADINO: I am not putting all the  
21 rights words in there.

22           COMMISSIONER GILINSKY: At most, we would be  
23 saying that at the contention stage the presumption is that  
24 the Commission regulation is of safety significance. That  
25 does not mean that the board is shaping its contentions that

1 it wants to deal with, will include it or will keep it in  
2 the way it is phrased. It has the discretion that we talked  
3 about before. But I think we have to say that these  
4 regulations have safety significance, otherwise we ought to  
5 revoke them.

6           COMMISSIONER AHEARNE: I would disagree with that,  
7 because our regulations don't all (a) have safety  
8 significnace and (b) don't all have direct safety  
9 significance. This is not a hearing to license a plant; it  
10 is an investigatory hearing to look into some specific  
11 issues.

12           COMMISSIONER GILINSKY: I think they all have  
13 degrees of various safety significance. Some are more  
14 important and some are less important. If they have no  
15 safety significance, they ought not be there.

16           CHAIRMAN PALLADINO: I think we should put some  
17 wording in there that will draw the attention of the hearing  
18 board to this issue and cause them to exercise judgment  
19 which I think we have to rely on in the end.

20           COMMISSIONER GILINSKY: They shape the contention.

21           CHAIRMAN PALLADINO: I gather in putting together  
22 a revised order you will include a proposal that we can  
23 discuss; is that correct, Peter? If you circulate it, we  
24 will have a chance to sift through it.

25           COMMISSIONER BRADFORD: Yes. When did you plan to

1 come back?

2           CHAIRMAN PALLADINO: We are getting a lot of  
3 pressure to get this thing underway. Today is Friday. I  
4 would like to settle it within the next week.

5           We are not through yet. We have one other item  
6 and that is the date which was brought up.

7           COMMISSIONER ROBERTS: Obviously, the date has to  
8 be revised.

9           CHAIRMAN PALLADINO: We will revise that by saying  
10 we want it one year hence, or is that not sufficient? I  
11 would rather not get into a detailed schedule; just say one  
12 year hence.

13           COMMISSIONER GILINSKY: I think it will be  
14 sufficient. The board will simply have to tailor the  
15 hearing to that time. It could go on indefinitely.

16           CHAIRMAN PALLADINO: Then, of course, we also have  
17 to get the members of the hearing board established.

18           COMMISSIONER AHEARNE: At a minimum, it is going  
19 to have to be scheduled based upon when the board gets  
20 started. I think our unfortunate experience with Three Mile  
21 Island shows that the Commission is woefully off in its  
22 ability to forecast how long a proceeding is going to take.

23           Still, we should indicate when we want to have a  
24 target date for the recommendation. I gather OGC is going  
25 to revise Footnote 7 to accommodate the points brought out.

1           There is a variation on Question No. 1.  
2 a variation on Question No. 2, with further clari  
3 that Commissioner Bradford is going to work on w

4           Have we covered all the points that the  
5 commissioners would like to bring out?

6           I thank you all for coming.

7           We stand adjourned.

8           (Whereupon, at 10:30 a.m., the meeting  
9 above-entitled matter was concluded.)

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NUCLEAR REGULATORY COMMISSION

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

in the matter of: Discussion of Indian Point Order - PUBLIC MEETING-

Date of Proceeding: September 11, 1981

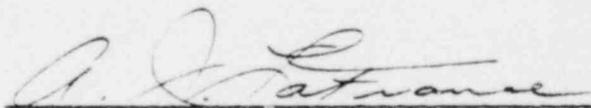
Docket Number: \_\_\_\_\_

Place of Proceeding: Washington, D. C.

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

A. J. LaFrance

Official Reporter (Typed)



Official Reporter (Signature)