

NUCLEAR REGULATORY COMMISSION

ORIGINAL

COMMISSION MEETING

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In the Matter of: PUBLIC MEETING

DISCUSSION OF DECISION DATES FOR EFFECTIVENESS  
OF LICENSING BOARD DECISION FOR AUTHORIZATION  
OF FULL POWER LICENSES

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
DISCUSSION OF DECISION DATES FOR EFFECTIVENESS OF  
LICENSING BOARD DECISION FOR AUTHORIZATION OF  
FULL POWER LICENSES

PUBLIC MEETING

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

Thursday, June 24, 1982

The Commission met, pursuant to notice, at  
10:05 a.m.

COMMISSIONERS PRESENT:

- NUNZIO PALLADINO, Chairman of the Commission
- VICTOR GILINSKY, Commissioner
- JOHN F. AHEARNE, Commissioner
- THOMAS ROBERTS, Commissioner
- JAMES ASSELSTINE, Commissioner

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

- S. CHILK
- L. BICKWIT
- F. REMICK

AUDIENCE SPEAKERS:

- D. EISENHUT
- A. ROSENTHAL

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DISCLAIMER

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

1  
2 CHAIRMAN PALLADINO: The subject of today's  
3 meeting concerns the Commission's procedure for  
4 approving reactor licenses and the immediate  
5 effectiveness of Board decisions which authorized those  
6 licenses.

7 In particular, we want to consider when we  
8 should make the appropriate decisions and how we should  
9 report the dates to Congress, the industry, and the  
10 public.

11 I call your attention to my memo of June 22,  
12 1982 in which I identified three issues. Should two  
13 separate Commission votes be taken, one within 30 days  
14 if possible on immediate effectiveness of the Licensing  
15 Board's decision on contested issues.

16 The second issue, when should the Commission  
17 vote on unconstested matters.

18 The third issue, how should our voting  
19 practice be reflected in the Bevil Report.

20 Both the General Counsel and the Director of  
21 Policy Evaluation have submitted memos on this subject.  
22 OGC prepared SECY-82-220 at my request, and I would like  
23 the OGC to describe briefly what the proposed rule  
24 change would do.

25 I would also like OGC to summarize the

1 Commission's voting practice as it was set out in Mr.  
2 Bickwit's memo of June 15, 1982. Then I thought it  
3 would be appropriate to have Forest Remick give us the  
4 points made in his June 2, 1982 memo to the Commission,  
5 and I thought on that basis we could provide background  
6 for a discussion.

7           COMMISSIONER AHEARNE: The only point I would  
8 like to add is, I have requested OGC to be prepared also  
9 to address what suggestions they might make for us to  
10 respond to the Appeal Board's recent request for  
11 clarification of how they should interpret our orders.

12           MR. BICKWIT: We will fit that in any way you  
13 like.

14           CHAIRMAN PALLADINO: Well, Len, would you like  
15 to proceed?

16           MR. BICKWIT: First of all, on SECY-82-220.  
17 The proposed change to the Immediate Effectiveness Rule,  
18 as you said, this was prepared at your request. And  
19 while we recommended that it be approved in this paper,  
20 in fact we do not recommend that it be approved.

21           COMMISSIONER GILINSKY: What turned you around?

22           MR. BICKWIT: I find Forest's memo persuasive.

23           COMMISSIONER GILINSKY: You sound like we  
24 ought to be persuaded, too.

25           MR. BICKWIT: What the rule would do is to

1 provide that the goal of 30 days for the Commission to  
2 conduct its effectiveness review would be changed to 30  
3 days or when the licensee is prepared to go above low  
4 power, whichever is later.

5           The purpose of it is to relax the Commission's  
6 schedule when the Commission chooses to take advantage  
7 of the relaxation of the rule, and when that relaxation  
8 will not prejudice the schedule of the applicant for the  
9 license.

10           COMMISSIONER GILINSKY: Unnecessarily.

11           MR. BICKWIT: Excuse me?

12           COMMISSIONER GILINSKY: Unnecessarily.

13           MR. BICKWIT: Unnecessarily.

14           I think it is pretty straightforward and I do  
15 not think it needs any further discussion.

16           COMMISSIONER GILINSKY: You do not seem to  
17 have your heart in it, anyway.

18           MR. BICKWIT: No.

19           (Laughter.)

20           MR. BICKWIT: By the way, I think it is a  
21 close question. I think there is something to be said  
22 for it. I just think the argument is on the other side.

23           COMMISSIONER AHEARNE: You are having  
24 difficulty defining it.

25           (Laughter.)

1 MR. BICKWIT: It has a great surface appeal,  
2 why should the Commission act when the applicant for the  
3 license does not need Commission action? I think I will  
4 defer to --

5 COMMISSIONER GILINSKY: This was your proposal.

6 MR. BICKWIT: Yes, but it was a proposal that  
7 was drafted at the request of the Commission. We  
8 recommended that it be adopted, but it certainly did not  
9 initiate out of our office.

10 CHAIRMAN PALLADINO: To put it in perspective,  
11 during some discussions you and I had you had raised the  
12 question, why should we act on immediate effectiveness  
13 of a Board's decision when it is not needed. I said,  
14 "Well, in part because we have rules saying that we  
15 would do that," and then I said, "Well, why don't we  
16 change the rule."

17 COMMISSIONER GILINSKY: Not when it is not  
18 needed. I thought we should act.

19 CHAIRMAN PALLADINO: That is what I wanted and  
20 I said, "Well, let's prepare it and then see what it  
21 looks like." Then this motivated OPE to generate  
22 comments regarding it that I think are on target and  
23 caused me to write my memo, and I guess influenced the  
24 later thinking of OGC.

25 MR. BICKWIT: I mean, I will take

1 responsibility for this recommendation but I think  
2 everybody ought to understand how it came about. We  
3 were asked to draft a rule. We drafted it under the  
4 format generally used for the recommendation of the  
5 drafter to adopt the amendment he has drafted.

6 Not a great deal of thought went into that  
7 recommendation.

8 Now, as to what the Commission procedures are  
9 --

10 COMMISSIONER GILINSKY: Are we to check in  
11 future papers?

12 MR. BICKWIT: Whether we really mean that  
13 recommendation?

14 COMMISSIONER GILINSKY: No, whether a great  
15 deal of thought went into it.

16 MR. BICKWIT: I see. Well, feel free to ask  
17 that question and I will let you know.

18 COMMISSIONER GILINSKY: I had not thought of  
19 it up to now.

20 MR. BICKWIT: On the Commission's procedures,  
21 what has been the case is that you have  
22 characteristically had briefings by the staff on the  
23 unconstested aspects of things - well, in one case it  
24 was before you took up the contested issues.

25 CHAIRMAN PALLADINO: What was it that we took



1 up before?

2 MR. BICKWIT: The briefing that you had from  
3 the staff on the uncontested issues was before you took  
4 up the contested issues and had your closed session  
5 briefing from OPE. That is in McGuire and Diablo Canyon,  
6 the briefing on uncontested issues came in the midst of  
7 briefings that you were having on the contested issues.  
8 In San Onofre, under the schedule, you had briefings on  
9 the contested issues first with the understanding that  
10 you would later get a briefing on the uncontested issues.

11 So that it is hard to generalize as to what  
12 the order has been with respect to briefings on  
13 contested and uncontested issues.

14 The conclusion that we drew in responding to  
15 your request as to what Commission practice is and what  
16 is required is that while you have only taken one vote  
17 in the past, that vote has to cover both the uncontested  
18 and contested portions of the question under your rules  
19 and under the previous preamble to a rule.

20 If you were to adopt a policy as recommended  
21 by the Chairman that you first have briefings on the  
22 contested portion of the matter and make the decision on  
23 those contested issues effective prior to having heard a  
24 briefing on the uncontested portion of the matter, our  
25 view is that you would then have to take another vote on

1 the issuance of the license.

2 That is all I have.

3 CHAIRMAN PALLADINO: If there are no questions  
4 to Len, shall we proceed with Mr. Remick? OK, Forest.

5 MR. REMICK: Thank you, Mr. Chairman.

6 The Commission has my June 2 memo and I do not  
7 plan to go through that item by item following past  
8 Commission advice, assuming that those things are read.  
9 I would like to focus on one thing that Len provided.

10 CHAIRMAN PALLADINO: Read, but not always  
11 remembered.

12 (Laughter.)

13 MR. REMICK: All right.

14 CHAIRMAN PALLADINO: Go ahead.

15 MR. REMICK: Len raised the question, why  
16 should the Commission decide on the effectiveness of a  
17 Licensing Board decision if the plant is not completed  
18 or the license is not needed.

19 I would like to focus a little bit on that  
20 aspect of the memo by pointing out that the operating  
21 proceedings for which Licensing Board decisions are  
22 being issued in these days, generally the proceedings  
23 have been in existence for a number of years. I just  
24 looked at three or four that are on my desk at the  
25 moment and they go back, the proceeding has been in

1 effect for anywhere from four to seven years.

2           They have involved a number of months of  
3 hearing and decision-writing time, and they involved the  
4 litigation of some relatively new TMI action plan  
5 issues, emergency planning issues, for which the Bords  
6 are imposing a number of conditions on the licenses.

7           So, in short, the applicant, staff, and all  
8 parties have gone through a long period of uncertainty  
9 on the resolution of some novel issues. And prior to  
10 the TMI accident, the Licensing Board decision would  
11 have become immediately effective, and the license could  
12 have been issued shortly thereafter, in fact, ten days  
13 if there was no motion for stay of the effectiveness that  
14 was granted or, if the uncontested portions required  
15 findings that were uncontested, that were resolved.

16           Therefore, except for matters that would be  
17 under appeal, the applicant would have known with  
18 reasonable certainty the resolution of matters that were  
19 in controversy and the Board-imposed conditions. And  
20 thus, the applicant could undertake with a reasonable  
21 assurance of no subsequent modification of any actions  
22 required by the Board decision where a license would be  
23 authorized, he could undertake those with reasonable  
24 assurance.

25           Now, under the post-TMI revision to the 2.764,

1 the effectiveness of the Licensing Board decision is  
2 stayed until the Commission has completed its  
3 effectiveness review, and the Commission has set a goal  
4 of 30 days to decide whether the Board decision should  
5 become effective.

6 The Commission's effectiveness review is  
7 generally conducted in closed session, thus there is no  
8 Commission thinking communicated to the parties or the  
9 public. And thus, the period of uncertainty basically  
10 continues.

11 During this period the applicant, and of  
12 course the staff and the parties, are thus not entirely  
13 sure whether or when the Board's resolution of the  
14 issues, including any conditions, will go into effect.  
15 Thus, I believe that the applicant is unsure whether to  
16 take certain further actions that might be called for if  
17 the decision went into effect.

18 Now, it was my position, as I tried to point  
19 out in the June 2 memo, that in order to enhance the  
20 predictability and the orderliness of the licensing  
21 process I think the Commission should avoid any needless  
22 extension of that period of uncertainty. Therefore  
23 should conduct a thorough effectiveness review as soon  
24 as possible; make its effectiveness decision and  
25 communicate its decision to the public.

1           I feel that the Commission decision is an  
2 important communication and signal to the applicant, to  
3 staff, the other parties, and the public. For the  
4 contested issues it can be a means of communication on  
5 the Commission's thinking, especially it will provide  
6 direction or instructions, or comments on the resolution  
7 of the issues. In fact, absence of comment is a signal,  
8 I think, in some instances.

9           Further, as I pointed out in the memo, I think  
10 that by putting behind it those matters which the  
11 Commission finds have been adequately resolved, the  
12 Commission, the staff, and the applicant can then focus  
13 on any remaining significant items that have to be  
14 cleared up before the issuance of the license.

15           One other item that I pointed out, OGC has  
16 pointed out, that the Commission must take action before  
17 the license is issued, must vote. And therefore, if  
18 the Commission does vote on making the Licensing Board  
19 decision effective, this does not mean that the license  
20 itself will issue automatically. The Commission still  
21 does have to take some final action on the uncontested  
22 issues.

23           So, basically those are the points I was  
24 trying to make in the June 2 memo.

25           COMMISSIONER GILINSKY: Let me ask a question

1 here. The Board usually renders a bunch of partial  
2 decisions dealing with particular aspects of the case  
3 and then concludes that the license ought to issue or  
4 not to issue. I do not remember any cases where they  
5 said the license ought not to issue.

6 COMMISSIONER AHEARNE: There is a recent one,  
7 Zimmer.

8 COMMISSIONER GILINSKY: Well, they said they  
9 should issue up to five percent.

10 Are you suggesting that part of the Board's  
11 decision would be made effective but not the overall  
12 conclusion on the license?

13 MR. REMICK: I think it depends on what that  
14 partial initial decision authorized, whether it does  
15 authorize anything or not.

16 MR. BICKWIT: Because you are suggesting that  
17 the authorization for operation ought to come later.  
18 But you said that it would be helpful. Actually, I  
19 would like to hear some examples from you, if a  
20 particular piece of hardware were required and the  
21 Commission said, "Yes, indeed, that is the right answer."

22 That would not extend to the Board's  
23 conclusion that the plant ought to operate.

24 MR. REMICK: Some of the conditions I am  
25 thinking of are some of the ones that are coming up,

1 they are novel issues currently in the emergency  
2 planning area, in which Boards are making decisions.

3 I hesitate to be too specific because they are  
4 before the Commission at the moment and this is an open  
5 meeting.

6 COMMISSIONER GILINSKY: Well, can't you just  
7 mention the issues?

8 MR. REMICK: There are planning types of  
9 issues in which the Board has placed conditions on the  
10 requirements for, let's say, school districts must have  
11 plans in effect; or communities must have certain plans  
12 for transportation of elderly people who are disabled  
13 and so forth. Boards are placing conditions on things  
14 like medical facilities.

15 COMMISSIONER GILINSKY: These do not sound  
16 like back-fitting items that are going to affect the  
17 licensee. He is not going to rebuild the plant.

18 MR. REMICK: Well, if they are conditions that  
19 are going to stay and the applicant does have to either  
20 resolve or they do have to be resolved before  
21 ultimately, let's say, the full power license could be  
22 issued.

23 The point I am trying to make, unless the  
24 Commission says that they find that decision should be  
25 effective, it is unfair to everybody - whether the

1 Commission at some later time may come back --

2 COMMISSIONER GILINSKY: Well, that piece of  
3 the decision, rather than the conclusion that the plant  
4 ought to operate. Is that what you are saying?

5 MR. REMICK: That is right. So, therefore it  
6 could be a delay. In other words, the licensee does not  
7 know whether to act on those conditions or wait for  
8 further Commission word.

9 So, my point is, it just adds additional  
10 uncertainty and confusion on whether the decision that  
11 the Board has rendered in resolving contested issues  
12 will stand or subsequently be modified.

13 COMMISSIONER GILINSKY: What about an issue  
14 such as management competence, would you have the  
15 Commission act on that, even though there may still be a  
16 certain amount of time involved before the plant would  
17 operate and undergo a number of tests with an  
18 opportunity to observe the functioning of the  
19 organization?

20 MR. REMICK: It comes down in my mind to a  
21 question of whether the Commission as part of its  
22 effectiveness review has found what the Licensing Board  
23 has done is reasonable based on that. If the Commission  
24 does not feel it, I think it should speak so that  
25 everybody knows.



1           But if it finds the resolution of the matter  
2 that has been contested and therefore decided by the  
3 Licensing Board as adequate, my argument is that I think  
4 the Commission should speak in effect by allowing that  
5 to become effective so that people know that this is a  
6 resolution and the Commission presumably has looked at  
7 it and they have not spoken to it.

8           So, other than the fact that it might come up  
9 on appeal, the Commission is not going to - one month  
10 later - come in and say, "We don't like what the  
11 Licensing Board has done," and at a subsequent time then  
12 place its own conditions.

13           COMMISSIONER GILINSKY: See, what you are  
14 really proposing is that the Commission say that the  
15 issues that came up before the Board were properly or  
16 improperly resolved, but not deal with the question of  
17 the operation of the plant at that point.

18           CHAIRMAN PALLADINO: Insofar as they have  
19 implications on the operation of the plant.

20           MR. REMICK: That is right, I would agree with  
21 that statement.

22           COMMISSIONER GILINSKY: What does that  
23 statement mean?

24           MR. REMICK: Well because sometimes in the  
25 Board's decision they are authorizing, let us say, fuel

1 loading and low power testing up to five percent. And  
2 to the extent that the Commission agrees that that  
3 decision is correct and therefore does not object, then  
4 I think you are not only saying that basically in the  
5 effectiveness review that you find no major reason to  
6 stay that decision.

7           COMMISSIONER GILINSKY: Insofar as the issues  
8 that came up before the Bard are concerned; right?

9           CHAIRMAN PALLADINO: Insofar as the contested  
10 issues.

11           MR. REMICK: And contested issues. Now,  
12 50.57(a) says there are a lot of findings that the  
13 Commission must find. Certain of these have been pulled  
14 out and litigated, and the Licensing Board - delegated  
15 responsibility from the Commission - has decided those,  
16 made the initial decision of those.

17           On the remaining things that were not  
18 litigated the Commission still must find, but it  
19 basically does this through the staff.

20           COMMISSIONER GILINSKY: But it would not be  
21 doing it at that time.

22           MR. REMICK: That is probably true. That  
23 would be true for the case where the plant was not  
24 finished. That is right, if the plant was not finished.

25           COMMISSIONER GILINSKY: It is not in the

1 hearing.

2 MR. REMICK: I am sorry.

3 COMMISSIONER GILINSKY: It is not in the  
4 hearing.

5 MR. REMICK: It is not in the hearing, the  
6 uncontested issue; that is right.

7 COMMISSIONER GILINSKY: So, you are not really  
8 dealing with the question of whether the plant ought to  
9 operate or not, you are dealing with whether the issues  
10 have been properly or improperly resolved in the hearing.

11 MR. REMICK: That is correct. The Licensing  
12 Board decision just authorizes the director of NRR to  
13 issue the license when he has found that the portion,  
14 the 50.57(a) that are uncontested, are adequate. Now,  
15 the Commission, as OGC points out, has placed an  
16 additional hold that says, "Do not issue that license  
17 until we act."

18 COMMISSIONER AHEARNE: Do not issue the full  
19 power license.

20 MR. REMICK: That is correct.

21 CHAIRMAN PALLADINO: Len, you had a question?

22 MR. BICKWIT: That is the point I was trying  
23 to get in with. In effect, the Board is not saying that  
24 the plant ought to operate. It is saying that on the  
25 basis of the issues before it the Board does not object

1 to operation.

2 COMMISSIONER GILINSKY: But since at that  
3 point the staff has recommended operation --

4 MR. BICKWIT: Not always.

5 COMMISSIONER GILINSKY: I mean not operation  
6 on that day.

7 MR. BICKWIT: No. The understanding is that  
8 the staff often is recommending that the issues in  
9 contest be resolved favorably to operation. The staff  
10 is not taking a position in that hearing on the ultimate  
11 issue of operation.

12 CHAIRMAN PALLADINO: The staff does  
13 independently go ahead with the evaluation of the  
14 uncontested issues and does not authorize operation at  
15 any level until it is satisfied that the issues  
16 appropriate to that level have been resolved.

17 MR. BICKWIT: That is right.

18 COMMISSIONER GILINSKY: Let me ask you this,  
19 why should we deal with contested cases differently than  
20 uncontested cases? That is not a naive question, I hope  
21 you give me credit for that.

22 There are certain legal requirements that we  
23 have to deal with. But from the point of view of the  
24 Commission when it takes up the question of turning on  
25 the plant or not turning it on it ought, I think,

1 insofar as possible deal with the plant as a whole and  
2 to try to deal with plants in the same fashion whether  
3 or not they are contested or uncontested.

4           It happens that certainly, when a case is  
5 contested, certain issues are dealt with by means of a  
6 Board, and a hearing, and so on. But when it all comes  
7 up here it is a question of safety. I think we ought to  
8 take a look at the plant as a whole and decide, Yes, the  
9 plant ought to operate or something else needs to be  
10 done, or perhaps the plant ought not to operate.

11           MR. REMICK: I do not see it necessarily that  
12 you are treating them differently. You could say that  
13 by having two votes you are, but I think you have to go  
14 back to what was pre-TMI, how a Licensing Board's  
15 initial decision was handled.

16           COMMISSIONER GILINSKY: Well, but we have  
17 changed the practice pre-TMI. In fact, that is one of  
18 the things that led to TMI.

19           MR. REMICK: That is right, and you are  
20 reviewing them now.

21           But basically the point I am trying to make,  
22 you have indicated that you will do the review within a  
23 period of time. I am not arguing whether it should be 30  
24 days, 35 days, 25 days or what. I would argue that the  
25 Commission should make its decision as soon as possible

1 because I think by not doing that it adds uncertainty  
2 for the whole process and what is going on.

3 I think the staff and the applicant need to  
4 know how the Commission comes out on those particular  
5 issues. There are things that still have to be done  
6 many times when those issues are resolved. The Board  
7 will resolve it by placing conditions which require --

8 COMMISSIONER GILINSKY: Do you have any  
9 examples other than -- I must say, the business of  
10 making clear where the Commission stands on specific  
11 issues is, I think, a good point you raised.

12 But do you have any examples other than these  
13 emergency planning matters from recent cases that you  
14 can offer?

15 MR. REMICK: The ones that come to mind are  
16 mostly the emergency planning, but I think there have  
17 been some hardware issues. But the one that comes to  
18 mind is one before the Commission, is very specific, and  
19 I hesitate --

20 COMMISSIONER GILINSKY: Well, you can  
21 certainly mention the issue. You cannot urge us to go  
22 one way or the other.

23 MR. REMICK: Vessel level instrumentation is  
24 the issue that I had in mind.

25 CHAIRMAN PALLADINO: We have had issues also

1 on seismicity.

2 COMMISSIONER GILINSKY: Which we have not  
3 taken on.

4 CHAIRMAN PALLADINO: What? I said there have  
5 been issues on seismicity.

6 I think on the contested issue once the Board  
7 has given its partial initial decision on a subject it  
8 represents, their exploration is as thorough as we are  
9 going to get, the exploration of the issues; and  
10 delaying it is not going to bring any new information to  
11 bear on it.

12 COMMISSIONER GILINSKY: You know, you talk  
13 about delay --

14 CHAIRMAN PALLADINO: Did I mention the word  
15 "delay?"

16 COMMISSIONER GILINSKY: I would say so.

17 MR. BICKWIT: We will check it tomorrow  
18 morning.

19 (Laughter.)

20 CHAIRMAN PALLADINO: What I thought I was  
21 saying is that it is as much information as we are going  
22 to get on that particular issue.

23 COMMISSIONER GILINSKY: Nobody wants to delay  
24 anything.

25 CHAIRMAN PALLADINO: Delaying it -- I am

1 sorry, delaying attention to the issue does not add  
2 anything.

3 COMMISSIONER GILINSKY: Nobody wants to delay  
4 anything unnecessarily. If there is a qualified plant  
5 you certainly want the thing to be operating. No one  
6 wants to have a qualified facility standing around.

7 CHAIRMAN PALLADINO: I was talking about  
8 delaying attention to the issue.

9 COMMISSIONER GILINSKY: The question, it seems  
10 to me is, what is the best way for the Commission to  
11 approach the decision on turning a plant on.

12 As I said, I think Forest raises a good  
13 point. I think I have urged in the past that the  
14 Commission reach in and clarify issues where there is  
15 uncertainty and make clear where it stands so that the  
16 whole system does not flounder around. That point may  
17 come well before a Board decision.

18 But I do not know that the typical Board  
19 decision raises questions of that sort.

20 But from the point of view of the Commission  
21 we ought to decide what sort of process makes sense. At  
22 what point do we get the best effect in terms of the  
23 public health and safety, and do we have enough data,  
24 experience, and information before us to make a sound  
25 decision.



1           The point is not to get credit in the Bevil  
2 Report. I think that is a very important point.

3           CHAIRMAN PALLADINO: But still I am saying,  
4 when you have gotten the results of the hearing Board's  
5 action you have as thorough an investigation or  
6 examination of the issues as you are going to get.  
7 Waiting to give attention to those issues does not  
8 provide you more information.

9           COMMISSIONER GILINSKY: Well, it is hard to  
10 talk about without getting into specific cases. Often  
11 it is not so easy to separate the contested issues from  
12 the uncontested issues.

13           I mean, if the Commission wants to deal with  
14 specific issues earlier and clarify them, I guess I can  
15 hardly object to that if you want to have a series of  
16 meetings.

17           What I am concerned about is a kind of rush to  
18 approve plants as early as possible when I think that we  
19 have decided that a reasonable point -- in fact we  
20 decided we would not take up the issue of low power  
21 testing and operation, we delegate that to the staff as  
22 being a reasonable division of responsibility, I thought.

23           But we did decide that going beyond  
24 five-percent power was an important step and one that  
25 required Commission approval. I think we ought to make

1 that decision when some experience has been gathered.

2 CHAIRMAN PALLADINO: But wait a minute, you  
3 are implying rushing, and nobody is talking about  
4 rushing. As a matter of fact, if you read my memo it  
5 says, "We still have to address the issue when we want to  
6 discuss it.

7 COMMISSIONER ROBERTS: I do not think this  
8 agency rushes to do anything.

9 (Laughter.)

10 CHAIRMAN PALLADINO: As a matter of fact, the  
11 point of suggesting two steps is so that we can deal  
12 with the issues on which there has been examination when  
13 it is fresh in everybody's mind and we can provide some  
14 certainty to the status of that issue, and then we come  
15 ahead and deal with the other issues later.

16 I do not sense a rush. The whole point of  
17 putting this matter up for discussion is so that we can  
18 agree on the process we want to use.

19 COMMISSIONER GILINSKY: Well, right at the  
20 outset you bring up how we are going to proceed.

21 CHAIRMAN PALLADINO: Commissioner Ahearne was  
22 trying to get a couple of points in.

23 COMMISSIONER GILINSKY: By all means, let him  
24 get something in.

25 (Laughter.)

1 COMMISSIONER AHEARNE: Thank you.

2 One simple question and then a second one.  
3 First, Forest, do you propose that this action should  
4 take place after every partial initial decision?

5 MR. REMICK: Not every partial initial  
6 decision, no. I would follow what 2.764 says, which is  
7 basically an initial decision authorizing an operating  
8 license, I believe to that effect.

9 There are certain Board decisions that do not  
10 authorize anything. The one in point that was mentioned  
11 this morning, I think - as I read it - does not  
12 authorize. So, I would not call it an initial decision.

13 COMMISSIONER AHEARNE: But I thought your  
14 argument was that you wanted to enable the licensee to  
15 have clarified where the Commission was coming out on  
16 some of the issues.

17 MR. REMICK: Yes.

18 COMMISSIONER AHEARNE: And I would think that  
19 logic would then extend to having the Commission follow  
20 this 30-day process after each partial initial decision  
21 because the Licensing Board at that state will have  
22 addressed to completion the issues in the partial  
23 initial decision.

24 MR. REMICK: I must admit, if by the  
25 Commission not considering that or performing its

1 effectiveness review that means that that decision was  
2 stayed and therefore any instructions that are in there  
3 to the staff and the applicant are stayed, then, I guess  
4 where I would come out is, I would say I would encourage  
5 the Commission - if it is required to make an  
6 effectiveness decision - to make it as soon as possible  
7 in that case.

8           COMMISSIONER AHEARNE: I was trying to  
9 separate the current rule because I thought one of the  
10 issues we are discussing here is whether the rule should  
11 be changed. So, put the rule aside and just look at the  
12 logic of the argument being presented.

13           I think the logic of the argument would lead  
14 to that we ought to make that kind of a review after  
15 each partial initial decision.

16           MR. REMICK: Within reason.

17           MR. BICKWIT: Would not the logic of the  
18 argument - I think this was the point that you were  
19 getting at - would not the logic of the argument also  
20 extend in the case of uncontested matters that the staff  
21 come down piecemeal when they got a specific issue  
22 resolved?

23           COMMISSIONER AHEARNE: Not necessarily.

24           MR. BICKWIT: I see "a" distinction.

25           COMMISSIONER AHEARNE: The major distinction

1 is the fairly voluminous piece of paper that comes out  
2 on a much more quantized time frame from the Licensing  
3 Board, as opposed to the probably more or less piecemeal  
4 resolution the staff faces making.

5 MR. BICKWIT: Yes, but I have heard  
6 Commissioners say, "Don't come down here until you are  
7 ready to recommend issuance of a license." I wonder,  
8 having heard this and been convinced by it, whether that  
9 might be subject to an exception or two.

10 COMMISSIONER AHEARNE: Oh, I think that is  
11 probably true, if there is a major modification the  
12 staff intends to require in its uncontested issue, then  
13 I would think that that certainly would be true.

14 COMMISSIONER GILINSKY: Well, would that be  
15 part of the proposal?

16 COMMISSIONER AHEARNE: Which proposal? I am  
17 asking questions, I don't have a proposal.

18 COMMISSIONER GILINSKY: I am asking about  
19 Joe's proposal.

20 CHAIRMAN PALLADINO: Why don't we get the  
21 answer to the question first?

22 COMMISSIONER GILINSKY: Sure.

23 COMMISSIONER AHEARNE: A related issue. I  
24 note that in Len's summary that Susquehanna has been  
25 somewhere on the 10th floor since April - and this is

1 not just an idle question, it is going to lead to the  
2 next one. What is occurring with Susquehanna?

3 It says, "The Susquehanna immediate  
4 effectiveness review is in progress. The Licensing  
5 Board issued an initial decision on April 12."

6 MR. BICKWIT: This is a matter I am recused  
7 from, naturally.

8 COMMISSIONER AHEARNE: All right.

9 MR. REMICK: I can give you the OPE analysis  
10 on it, but basically the decision is stayed because the  
11 Commission has not acted on its effectiveness review.  
12 So, the decision is stayed and our analysis has been to  
13 you for a month and-a-half at least.

14 COMMISSIONER AHEARNE: So, that for some  
15 reason the Commission has not taken action, although we  
16 have it.

17 CHAIRMAN PALLADINO: As a matter of fact, is  
18 is one of the issues that raised this question. They  
19 kept trying to put it on the agenda and we did not get  
20 it on there on the basis that we don't really need it  
21 and I kept saying, "Well, but you know, we have a 30-day  
22 rule, why don't we do it."

23 COMMISSIONER GILINSKY: We don't need it.

24 COMMISSIONER AHEARNE: Wait, let me just  
25 finish. So that as far as the OPE/OGC was concerned,

1 they were able to complete their review in about two  
2 weeks, three weeks?

3 MR. REMICK: Roughly two weeks. But that was  
4 an embarrassing case where the decision was in and we  
5 did not know about it for about a week. So, we ran by  
6 our target of two weeks by a week or so.

7 COMMISSIONER AHEARNE: But still.

8 MR. REMICK: That is right.

9 COMMISSIONER GILINSKY: I thought we did not  
10 know about it for two weeks.

11 MR. REMICK: I don't know the exact number.

12 COMMISSIONER AHEARNE: Now, in that light, you  
13 mentioned for us when you were discussing your paper a  
14 thorough effectiveness review, and you mentioned that  
15 one of the reasons that we ought to go ahead and reach  
16 our decision is because that would be a signal that the  
17 matters have been adequately resolved.

18 Now, it sounds to me your description is that  
19 you view the review that is done on that Licensing Board  
20 decision - and there is probably a much better legal  
21 definition - but it sounds like the review is on the  
22 merits.

23 MR. REMICK: No, I did not mean to imply that,  
24 only consistent with what the Commission intends to do  
25 as part of its effectiveness review - which is less than

1 a review.

2 COMMISSIONER GILINSKY: That is an interesting  
3 point.

4 COMMISSIONER AHEARNE: I think underlying this  
5 discussion really is, what is meant by this review that  
6 we do. If one goes back over the last two years, the  
7 debates that have been occurring on this I think really  
8 reflect two different interpretations of what does the  
9 Commission do at this stage.

10 If what we do is a thorough review to ensure  
11 the matters have been adequately resolved, that sounds  
12 to me - to the layman - that it is a review of the  
13 merits of the issue, and the Commission is then reaching  
14 a conclusion as to whether that issue has been  
15 adequately resolved; as opposed to doing a preliminary  
16 review to find out whether there is anything obviously  
17 wrong with that decision so that it should be stayed.

18 The second interpretation then says, pending a  
19 review of the merits by the Appeal Board and then a  
20 later possible review by the Commission.

21 I think that depending upon which side you  
22 come out, you then decide whether or not one does go  
23 through a relatively rapid - 30-day, 20-day - review or,  
24 you take it carefully until it is absolutely needed.

25 I would argue that what we have tended to do



1 is speak as though it is the second, and act as though  
2 it is the first.

3 MR. REMICK: Well, from my perspective I think  
4 the Commission intended less than a merits review. In  
5 fact, I raised that question myself, what is this review  
6 all about, several times. And it said, "The Commission  
7 review provided for in this amendment will focus  
8 narrowly on significant policy issues. The Commission  
9 does not intend to review the entire record that is  
10 developed during the licensing proceeding."

11 I must admit, in actuality in performing our  
12 analysis for the Commission we go beyond that. We try  
13 to give you a complete capsule what went on in the  
14 decision. It is a little bit more than perhaps at least  
15 the words indicate that the Commission intended when it  
16 changed 2.764. This was back in May of '81.

17 COMMISSIONER GILINSKY: So, where does that  
18 lead you?

19 CHAIRMAN PALLADINO: I have had this question  
20 almost from the day I came on board, what is an  
21 effectiveness review. It seems to me that you cannot  
22 make an effectiveness review without revealing the  
23 merits.

24 MR. REMICK: I still go back to what was it  
25 before you changed it, and that is that the Licensing

1 Board decision became immediately effective.

2 COMMISSIONER GILINSKY: Well, the Commission  
3 was not involved in the process at all.

4 MR. REMICK: That is right.

5 COMMISSIONER GILINSKY: I mean, that is the  
6 way it was. That was not a good system and we decided  
7 to change it.

8 MR. REMICK: I do not differ with that. But  
9 what I am pointing at, now the Commission says that it  
10 will review these before they become immediately  
11 effective. They will look at it, look over the policy  
12 issues and so forth.

13 Then I think if you look at it from that  
14 perspective --

15 COMMISSIONER GILINSKY: I think it was closer,  
16 in talking about it, it was closer to the way that John  
17 described it. We said we would take a look at these  
18 decisions to make sure there was nothing that leaped out  
19 that we felt was just inconsistent with public safety.

20 MR. REMICK: And then I assume that if you  
21 found there was nothing contrary to public safety, that  
22 you would allow the decision to become effective, as it  
23 would have prior to that change. That is my point.

24 That is the point I am speaking to. I do not  
25 think you should hold off on making that decision once

1 you have decided that --

2           COMMISSIONER GILINSKY: But why would you  
3 treat contested issues differently than uncontested  
4 issues? Would you have the staff come down here  
5 piecemeal on an uncontested case?

6           See, I have no objection --

7           MR. REMICK: No.

8           COMMISSIONER GILINSKY: Why not? That would  
9 be consistent with your suggestion.

10           Now, actually I think, as I said, I think the  
11 point you raise about early resolution of issues, or at  
12 least making clear that the Commission has no objection  
13 to some resolution or whatever, is a weighty point. I  
14 would have no objection to the staff, or General Counsel  
15 or whoever - as the case may be - pointing out to us  
16 particular issues and cases that would be helpful to  
17 resolve early and could be factored out of the case. We  
18 ought to be doing that all the time.

19           But in terms of the Commission taking a look  
20 at the plant and saying, "Yes, we think it is OK to go  
21 forward, there is nothing that looks as if it is sharply  
22 at odds with the public safety" - or even at odds with  
23 the public safety - I think we ought to look at the  
24 thing as a whole and look at it at a point when  
25 experience has been developed. And that period of plant

1 start-up is a very, very important period in a plant's  
2 life. That is when everything comes together.

3           They have been building this thing; the people  
4 have been trained. You are fitting it all together and  
5 you are going to see if it works. And to turn the thing  
6 on and just say, "Sure, go ahead" before you have even  
7 gone through that process, I think is irresponsible.

8           MR. REMICK: Well, that is not being  
9 proposed. If I just may respond to that.

10           I do not think you are precluding yourself at  
11 all from looking at the plant before the license is  
12 issued in raising those questions. However, part of the  
13 point I am trying to make, in the Licensing Board  
14 decision there are many times conditions of actions that  
15 have to be completed. And many times in our analysis  
16 for that we will say, OPE recommends that the Commission  
17 ask the staff at the time that they are briefing you on  
18 the uncontested issues, on the status of this issue."

19           So, you do have at a later point a chance to  
20 review the status of anything that is still open in the  
21 contested area, to have the staff address what is the  
22 status of the uncontested issues. But the thing is that  
23 by allowing the decision to become effective, you find  
24 no problem with it in general from a policy standpoint.  
25 People have been working on those conditions and the

1 staff is then in a position to report on the status of  
2 it.

3           COMMISSIONER GILINSKY: It seems to me both of  
4 those concerns can be accomodated. I am all for taking  
5 up cases. If the Commission wants to work a little  
6 harder, I am all for that. I think to have more  
7 meetings on each individual case, that is fine, and  
8 picking out those items that need attention and giving  
9 them attention.

10           But I do not think the Commission ought to be  
11 hanging on by its fingernails. It ought to render its  
12 judgment all at once.

13           (Laughter.)

14           CHAIRMAN PALLADINO: You are using some words  
15 that I don't understand, and imply positions on the part  
16 of others that I don't think --

17           COMMISSIONER GILINSKY: Well, I may have  
18 misinterpreted it.

19           CHAIRMAN PALLADINO: I wonder if we might give  
20 Commissioner Asselstine a chance to make his comments.

21           COMMISSIONER GILINSKY: Sure.

22           COMMISSIONER ASSELSTINE: First, as I read the  
23 existing rule, the 30-day requirement is in effect a  
24 goal, it is not any kind of a binding commitment that in  
25 any event we are going to make a decision within 30 days.

1           CHAIRMAN PALLADINO: I think it says we are  
2 going to try.

3           COMMISSIONER ASSELSTINE: That is right. I  
4 guess my own view is, I am persuaded by Forest's  
5 argument that it would be a good idea. In fact I would  
6 use the negative side more so even than the positive  
7 side, if we see problems - whether they are of a policy  
8 nature or a legal or perhaps even a factual nature in  
9 these Board decisions, serious problems - it seems to me  
10 that it is a good idea to make a decision fairly quickly  
11 and to get that word out and back on a rapid basis. .

12           Second, I do not think what we have in mind  
13 here is the same kind of thorough review of the record,  
14 of the case, that we might otherwise or would otherwise  
15 contemplate in the ordinary course of the appeal after  
16 the Appeal Board has had an opportunity to render its  
17 decision, and the appeal comes to us in the normal  
18 course of things.

19           So, I am not troubled by this notion of  
20 leaving the 30-day time period as a goal in place for  
21 reviews of the initial decisions, the immediate  
22 effectiveness reviews, or even dealing with them  
23 serially, quite frankly, if there are a number of  
24 partial initial decisions or it is just a couple.

25           But at the same time I feel very strongly that

1 there ought to be a requirement that before the  
2 operating license is issued - in every case - that we do  
3 have a review of the uncontested issues and that we have  
4 an opportunity before we sign off on the issuance of an  
5 operating license to look at the plant in totality. I  
6 do not think we are foreclosing that by necessarily  
7 dealing with the initial decisions in advance of that  
8 time.

9           The only question I had about your memo, Mr.  
10 Chairman, was the reference to the second vote, when  
11 appropriate, on uncontested matters. I guess my feeling  
12 would be, I would like to see that in each and every  
13 case to make certain that we do have an opportunity to  
14 look at the plant in totality before we make the  
15 decision to allow the issuance of a full power license.

16           CHAIRMAN PALLADINO: Yes, I could cross out  
17 "when appropriate."

18           COMMISSIONER ASSELSTINE: And the question I  
19 had is whether right now, under or present procedures,  
20 we are obligated to review the uncontested issues and to  
21 affirmatively sign off in essence.

22           MR. BICKWIT: Yes, you are.

23           CHAIRMAN PALLADINO: On uncontested issues?

24           MR. BICKWIT: On uncontested issues you are  
25 obligated. It is not in the rule, it is in the preamble

1 of an earlier version of the rule.

2           It was always understood that as we went  
3 through this process, as I remember, it was always  
4 understood that an affirmative vote of the Commission on  
5 the unconstested matters would be required.

6           COMMISSIONER ASSELSTINE: So, dealing in  
7 advance with the contested issues, even with an advisory  
8 30-day goal or time period, would not in any way affect  
9 the Commission's opportunity to review the whole plant  
10 in totality after hearing about the uncontested issues,  
11 nor would it change the affirmative obligation on the  
12 part of the Commission to vote before a full power  
13 license can be issued.

14           MR. BICKWIT: That is correct.

15           COMMISSIONER AHEARNE: Jim, could I follow  
16 that question?

17           COMMISSIONER ASSELSTINE: Yes.

18           COMMISSIONER AHEARNE: Len, I think what you  
19 said is that an understanding is an obligation.

20           MR. BICKWIT: I think when the Commission  
21 writes a policy statement or puts a statement in a  
22 preamble of its rule --

23           COMMISSIONER AHEARNE: Did we explicitly say  
24 that we would vote on uncontested matters?

25           MR. BICKWIT: Yes.



1           COMMISSIONER AHEARNE: And that was not  
2 modified by the changes in September?

3           MR. BICKWIT: No, it was not. What we said --

4           COMMISSIONER AHEARNE: Because we did change  
5 the wording substantially in the September rule.

6           MR. BICKWIT: That is right. But we made no  
7 changes in the uncontested aspects of things.

8           And in the earlier version, what we said with  
9 respect to uncontested matters - and this is the most  
10 explicit place where we have said it, is this, we said,  
11 "When no formal adjudicatory proceeding has been  
12 conducted on an application for an operating license for  
13 a power reactor, and insofar as issues have not been  
14 placed in controversy or determined by the Licensing  
15 Board or Appeal Board in a formal adjudicatory  
16 proceeding on such application, the Commission will  
17 informally review the recommendations of its staff on  
18 license issuance, and any such license will be issued  
19 only after action of the Commission itself."

20           CHAIRMAN PALLADINO: Where are you reading  
21 from?

22           MR. BICKWIT: I am reading from --

23           COMMISSIONER AHEARNE: The May Rule?

24           MR. BICKWIT: From the preamble of the rule  
25 change of November 9, 1979.

1           COMMISSIONER AHEARNE: But that preamble was  
2 changed in May.

3           MR. BICKWIT: There was a preamble to  
4 subsequent changes.

5           COMMISSIONER AHEARNE: Yes.

6           MR. BICKWIT: That did not constitute a change  
7 in this preamble.

8           COMMISSIONER AHEARNE: I will take your word  
9 for it, assuming that you have --

10          MR. BICKWIT: Not only that. I mean, when we  
11 went through this process I remember asking the  
12 Commission, "Is it understood that you want to take a  
13 vote on uncontested matters," and the answer invariably  
14 was, yes.

15          COMMISSIONER AHEARNE: I cannot really speak  
16 for people no longer here. I was not necessarily sure  
17 that was an agreement.

18          MR. BICKWIT: I was clear on it. In fact, I  
19 remember it so clearly because certain people that I  
20 thought would vote the other way on that question, did  
21 not vote the other way on that question.

22          COMMISSIONER ASSELSTINE: Assuming that is the  
23 case, then I have - for myself - I have very little  
24 difficulty in saying that we are going to try and deal  
25 with these initial decisions at least in terms of

1 addressing or what may well be a fairly cursory review  
2 of the contested issues within a fairly limited time  
3 period. If we need more time than 30 days to review or  
4 address a particular issue, a particular case, we  
5 certainly have the flexibility to do that.

6           CHAIRMAN PALLADINO: I think the words are  
7 something like, we will try to do it in 30 days. The  
8 problem I was having was that we were not even trying to  
9 do it in 30 days. As a matter of fact, we were not  
10 trying to do it in any given time frame on some of the  
11 issues, in some of the cases.

12           COMMISSIONER ASSELSTINE: I think for myself  
13 the far more significant issue is the one we have not  
14 gotten to yet, and that is the one John raised which is,  
15 when we issue these immediate effectiveness orders what  
16 do they mean and how do we intend them to apply to the  
17 normal field process.

18           COMMISSIONER AHEARNE: Yes. I guess my  
19 comments are, I come out the same place Jim has come  
20 out. I feel that if we really revise it much more, we  
21 go back to what I was trying to get to when I dissented  
22 from the September change. I disagreed with it at the  
23 time.

24           COMMISSIONER GILINSKY: What was that  
25 September change?

1           COMMISSIONER AHEARNE: The September change,  
2 we were facing at that time the issue of going to --

3           COMMISSIONER GILINSKY: Dropping the Appeal  
4 Board.

5           COMMISSIONER AHEARNE: Right, and we were also  
6 looking at whether we should go to making the order  
7 immediately effective by modifying Appendix D.

8           I felt that we would find ourselves in a  
9 situation where we were implicitly doing a merits  
10 review.,

11          COMMISSIONER GILINSKY: And how did you come  
12 out on that?

13          COMMISSIONER AHEARNE: Well; I felt that we  
14 ought to go back to, on balance let the decision become  
15 immediately effective and then just to the full review.

16          COMMISSIONER GILINSKY: In other words, take  
17 the Commission out of the line again.

18          COMMISSIONER AHEARNE: Yes because basically I  
19 think that the basic safety review is done by the staff,  
20 it is not done by the Boards and it is not done by the  
21 Commission. I think the Commission's role in that is  
22 ensuring that the staff's practices, policies, and the  
23 Commission's rules provide the adequate protection. I  
24 have no problem with continuing --

25          MR. REMICK: Let me interrupt and say I agree

1 with that point of view. I do not think the Commission  
2 makes the safety determination.

3 COMMISSIONER GILINSKY: If often does.

4 COMMISSIONER AHEARNE: It is probably true  
5 that often --

6 COMMISSIONER GILINSKY: You may think it  
7 should not.

8 COMMISSIONER AHEARNE: No. It may be that the  
9 Commission's determinations affect safety.

10 MR. REMICK: That is saying it a little  
11 differently.

12 COMMISSIONER AHEARNE: I will leave it as an  
13 open issue, which way.

14 (Laughter.)

15 COMMISSIONER GILINSKY: Do you think the  
16 Commission is undermining safety?

17 COMMISSIONER AHEARNE: That is another long  
18 answer.

19 (Laughter.)

20 COMMISSIONER AHEARNE: Not deliberately.

21 COMMISSIONER GILINSKY: Well, do you think it  
22 is?

23 COMMISSIONER AHEARNE: As I have said several  
24 times, I think some of our actions have not helped it.  
25 They could have hurt it, yes.

1 COMMISSIONER GILINSKY: For example?

2 COMMISSIONER AHEARNE: For example the very  
3 large amount of regulations and rule changes that we  
4 were swamping the system with.

5 COMMISSIONER GILINSKY: Proposed by the staff.

6 COMMISSIONER AHEARNE: Oh, I think driven by  
7 the Commission.

8 Now, I suspect that if we go into a very  
9 lengthy review, four or five months, which basically  
10 evolves, as far as it is a detailed review of the record  
11 and we explore some of the issues at length, I think  
12 potentially it is a way of addressing implicitly the  
13 explicit decision to remove the Appeal Board because in  
14 essence that is what we would really be doing when we  
15 are taking a Licensing Board decision and doing the full  
16 review on not reaching that conclusion.

17 So, I would prefer to support, as Jim said - I  
18 have no problem with having us explicitly take that  
19 final vote, recognizing that my confidence in going  
20 ahead with any license has to be based upon  
21 fundamentally, I believe, that the staff has done an  
22 adequate job.

23 CHAIRMAN PALLADINO: I come down in about the  
24 same place. As a matter of fact, I was proposing that  
25 we do have the two votes; one within our 30-day target

1 area and the second when the staff is ready with its  
2 uncontested issues.

3 COMMISSIONER GILINSKY: Now, why do you want  
4 to treat contested cases differently than uncontested  
5 cases?

6 COMMISSIONER ASSELSTINE: Vic, I don't think  
7 we are. I don't think we are because in the uncontested  
8 cases, before we allow the issuance of an operating  
9 license we review the plant in totality; we review all  
10 of the uncontested issues. We affirmatively sign off  
11 before the full power operating license is issued.

12 I think what the Chairman is proposing is  
13 exactly the same thing for the contested cases, with the  
14 sole exception that when we have initial decisions we  
15 will go ahead and try and clear away our immediate  
16 effectiveness review of the contested issues earlier on.

17 But we will still require an affirmative  
18 action by the Commission before we sign off on the  
19 issuance of a full power operating license. I don't  
20 really see much difference between the treatment of the  
21 two.

22 COMMISSIONER GILINSKY: Well, would the first  
23 vote be on the Board's resolution of the various issues?  
24 When they talk about immediate effectiveness the Board  
25 is saying, "Turn it on."

1 I know you have this quibble about their  
2 saying the staff is free to turn the plan on when the  
3 staff is ready. But that is not really the gist of the  
4 decision, it's OK to go ahead.

5 MR. BICKWIT: I can't buy that. I mean, there  
6 may be only two contested issues.

7 CHAIRMAN PALLADINO: Excuse me. I think  
8 Commissioner Roberts had a question to understand and  
9 follow.

10 MR. REMICK: Len was shaking his head. I want  
11 to know why you are shaking your head.

12 MR. BICKWIT: Oh, with respect to treating  
13 uncontested and contested issues?

14 Yes, I think you are treating them  
15 differently. I think, as I said before, I think if you  
16 applied this reasoning to the uncontested license you  
17 would have staff coming down here every now and then  
18 when it had an issue that it felt was of some great  
19 importance and asking to brief the Commission so we get  
20 that one out of the way - with the understanding, of  
21 course, that down the road you would take a final vote  
22 on the entire uncontested license.

23 So, I think there is a need to try to  
24 reconcile what appears to me to be a distinction. I see  
25 a way to reconcile that partially. I see a slightly



1 different situation.

2 CHAIRMAN PALLADINO: But I think Commissioner  
3 Asselstine said we are treating them the same except to  
4 the extent that as the Licensing Board comes up with a  
5 partial initial decision, we address that.

6 MR. BICKWIT: But you have to answer the  
7 question, if you are willing to do that in a contested  
8 case, why are you not willing, or why don't you want the  
9 staff down here --

10 CHAIRMAN PALLADINO: He just made a statement  
11 to which you took exception, and I thought he had  
12 covered the case all right the way he said it.

13 I think one of the main reasons you would have  
14 that difference is the fact that in the Licensing Board  
15 situation they have concentrated on specific chunks of  
16 major magnitude and come out with a decision.

17 COMMISSIONER GILINSKY: So has the staff.

18 CHAIRMAN PALLADINO: And the staff.

19 COMMISSIONER AHEARNE: Joe, can I ask a  
20 question? I would like to ask Darrell Eisenhut a  
21 question.

22 Darrell, with respect to uncontested issues,  
23 do you see any problem, or have you in the past thought  
24 about if you reached a point where there was a major  
25 item uncontested in which the staff resolution is going

1 to have significant impact on a licensee, have you  
2 thought about coming down and talk to us, or has that  
3 come up?

4 MR. EISENHUT: Well, let's see. I guess if  
5 historically we look at it there may well have been  
6 things such as -- we do them generically, though, we do  
7 not do them plant specific.

8 It really has not come up per se in a  
9 particular case. I guess in theory it is possible.  
10 Generally the approach we take is that the review is so  
11 integrated in most cases - it is just like, we don't go  
12 to the ACRS until we have gotten it down to a workable  
13 number of open issues so that you have good confidence  
14 in the review package, that it is well put together.

15 I have been asked by the ACRS, "What is  
16 workable?" I have used a standard rule of thumb. If I  
17 am down to 20 or 30 issues, something in that  
18 neighborhood, of isolated individual issues then in fact  
19 we go ahead and say, "The review is pretty well  
20 together." We go forth and say, "We can recommend  
21 something."

22 In theory, there would be nothing wrong with  
23 looking at, for example, Mark II containments on a  
24 plant, or Mark III containmens at a plant. Where they  
25 came up, I think we have done that. We had considerable

1 discussion on a Mark III containment issue, the hydrogen  
2 issue.

3           So, I think we do it in essence on some  
4 selected cases. But we do it generically. But there  
5 would be nothing wrong with doing it, in theory, on a  
6 project where the project is far enough along that we  
7 are ready to make a bottom line on a large hunk of the  
8 plant. It is just that that is very integrated-type  
9 package.

10           CHAIRMAN PALLADINO: Commissioner Roberts?

11           COMMISSIONER ROBERTS: Yes, I would like to  
12 know, how do define an uncontested issue?

13           COMMISSIONER GILINSKY: One that is not  
14 contested.

15           COMMISSIONER ROBERTS: All right, but tell me  
16 what threshold or what level, how do you proscribe it?

17           COMMISSIONER GILINSKY: The contested ones are  
18 issues in a hearing.

19           COMMISSIONER ROBERTS: I understand.

20           CHAIRMAN PALLADINO: But don't they go  
21 through, the people that are contesting it, bring the  
22 Board some contentions that are either admitted then or  
23 not admitted, and they become the basis for the  
24 litigation.

25           COMMISSIONER ROBERTS: My question is much

1 more basic. How do you define an uncontested issue.

2 MR. REMICK: Can I attempt to answer? My  
3 understanding of it is - it is not a legal  
4 interpretation - that is, 50.57(a) says that before an  
5 operating license is issued the Commission must make  
6 certain findings. One of them is that the plant had  
7 been constructed in accordance with the construction  
8 permit, and there are other things like that. Those are  
9 the findings this Commission has to make.

10 Now, certain issues come up under contentions  
11 that are litigated and therefore pulled out and given to  
12 the Licensing Board to resolve those certain aspects.  
13 Anything that is not contested and therefore handled by  
14 the Licensing Board. When it is necessary to make those  
15 50.57(a) findings, in my definition, is what we mean by  
16 uncontested issues.

17 COMMISSIONER AHEARNE: If there is an issue,  
18 if there is an argument.

19 COMMISSIONER GILINSKY: It seems to me we  
20 ought not even be talking about uncontested issues.

21 COMMISSIONER ROBERTS: What was that, Vic?

22 COMMISSIONER GILINSKY: We ought not even be  
23 talking about uncontested issues and parceling things  
24 out that way. There are contested issues and there is  
25 everything else?

1           MR. BICKWIT: What is the limit of everything  
2 else?

3           COMMISSIONER ROBERTS: He just answered it.

4           COMMISSIONER GILINSKY: The reason I say this  
5 is, you know, there has often been the criticism that  
6 the process is overly judicial and overly legal, and  
7 this just accentuates it. We have often heard from this  
8 side of the table about how we don't want the hearings  
9 to distort the safety review process and so on and so  
10 forth. I don't either.

11           I mean, certain issues have to be dealt with  
12 in hearings, but that ought not to, it seems to me,  
13 drive the way we come to our decision about the  
14 acceptability of a plant. I think we ought to treat  
15 them all as close to the same way as we can.

16           Now, to comment on what Jim said, I don't have  
17 any difficulty with the General Counsel pointing out to  
18 us that there are certain issues in a decision that  
19 really would be very useful for the Commission to act on  
20 quickly, and there may well be reasons for doing that,  
21 and then we ought to do it because guidance is needed on  
22 those particular issues.

23           But as a general practice I would like us to  
24 treat these plants equally, democratic regulation.

25           (Laughter.)

1           COMMISSIONER AHEARNE: Is that a small "d" or  
2 a capital "D"?

3           COMMISSIONER GILINSKY: It is a small "d".

4           CHAIRMAN PALLADINO: Well, do I understand you  
5 now to side with Jim Asselstine?

6           (Laughter.)

7           CHAIRMAN PALLADINO: Victor, I am really  
8 having trouble understanding what you would propose we  
9 do. The proposal is that --

10          COMMISSIONER GILINSKY: I would propose that  
11 we go with the course initially recommended by Len.

12          CHAIRMAN PALLADINO: Which is what?

13          (Laughter.)

14          MR. BICKWIT: I did not know when it was  
15 coming, but I knew whether.

16          COMMISSIONER GILINSKY: You know, as I said, I  
17 have no difficulty with our agreeing that if there are  
18 particular issues that need to be acted on earlier, we  
19 will take them up.

20          COMMISSIONER AHEARNE: What is the difficulty  
21 with passing on -- I am not sure I understand what the  
22 difficulty is on passing on a partial initial decision  
23 because that is not approving the plant for operation.

24          COMMISSIONER GILINSKY: No, I understand. You  
25 are still hanging onto the approval. but I think it

1 distorts the Commission decision-making process. It is  
2 the same reason that we have often asked the staff not  
3 to come in here with too many open items or piecemeal,  
4 or whatever because you see it all laid out before you  
5 and you take a different view of it.

6           Now, I am not saying that there are not  
7 sometimes reasons for departing from that general  
8 practice. But I think as a general rule that is the way  
9 we ought to handle it. And I don't believe it impacts  
10 on the licensees because, as you say, the approval would  
11 be -- we would have a final vote in any case.

12           What I don't want us to do is to take these  
13 decisions in a kind of piecemeal fashion.

14           CHAIRMAN PALLADINO: I still have a problem,  
15 Victor. You come to a decision and there are a whole  
16 bunch of issues to be addressed. You do not really save  
17 any time, if that is what you are looking for,  
18 Commission time. It is not that you have one single  
19 meeting and you deal with them. It takes whatever time  
20 it is going to take to discuss each of the issues.

21           If you have an issue that has been identified,  
22 has been litigated and we want to make a decision whether  
23 or not it is to be stayed, I see nothing wrong with that.

24           COMMISSIONER GILINSKY: Well because these  
25 issues interact and are complicated.

1           CHAIRMAN PALLADINO: Well, at the end you have  
2 a chance for the total interaction picture that we  
3 explored.

4           COMMISSIONER GILINSKY: Well, except that you  
5 factor parts of it out and then go back to them.

6           CHAIRMAN PALLADINO: No, all you have done is  
7 decided whether or not you are going to continue the  
8 stay, the effectiveness of the rule, of a decision.

9           COMMISSIONER AHEARNE: In fact, I think it is  
10 a distortion of the decision-making process not to take  
11 those as they come along because the reason that they  
12 come along in those segments is that some group of the  
13 participants in the whole process - be they the Board,  
14 or the intervenors, or the staff, or the licensee - has  
15 carved out a particular chunk where there is either a  
16 disagreement or it is a package that the Board has  
17 concluded ought to be decided in that way. They put a  
18 lot of effort into looking at that.

19           I would think the agency decision-making  
20 process is less distorted if, when the people coming to  
21 us, have completed their portions we turn to it and  
22 handle it.

23           I would agree with the Chairman that the final  
24 review, the final decision, can take into account any of  
25 this synergetic effect that may exist between those



1 positions.

2 CHAIRMAN PALLADINO: Let me ask you a  
3 question. Do you want to vote on this now, or do you  
4 want to vote on this --

5 COMMISSIONER ROBERTS: What are we voting on?  
6 I don't want to vote on just some conversation.

7 CHAIRMAN PALLADINO: I have three proposals.

8 COMMISSIONER GILINSKY: You and I both, Tom.

9 CHAIRMAN PALLADINO: I have three proposals to  
10 vote, Tom. One, taking two separate Commission votes.  
11 One, within the 30 days on the immediate effectiveness  
12 of a Licensing Board's decision. A second, upon  
13 completion of the review of the uncontested matter.

14 COMMISSIONER AHEARNE: Well, Len points out  
15 that is what the rules currently provide.

16 CHAIRMAN PALLADINO: And therefore I would  
17 propose that we not approve SECY-220.

18 COMMISSIONER ROBERTS: OK.

19 CHAIRMAN PALLADINO: So, my final conclusion  
20 is that I would not approve SECY-220.

21 COMMISSIONER AHEARNE: And maintain the  
22 current practice.

23 CHAIRMAN PALLADINO: Yes, maintain the current  
24 practice.

25 COMMISSIONER ASSELSTINE: I understand the

1 current practice is consistent with what you just  
2 described.

3 CHAIRMAN PALLADINO: I have a current issue  
4 that maybe we have a complete understanding on it, maybe  
5 we don't.

6 I would also propose that our decision, our  
7 vote on contested issues, come after fuel loading and  
8 initial criticality.

9 COMMISSIONER AHEARNE: Wait a minute, slow  
10 down. Contested issues?

11 COMMISSIONER GILINSKY: The final vote.

12 MR. BICKWIT: The final vote.

13 CHAIRMAN PALLADINO: That the final vote to  
14 grant an operating license come after fuel loading and  
15 criticality. I don't feel as strongly on this  
16 personally.

17 COMMISSIONER GILINSKY: I think that is a very  
18 good suggestion.

19 MR. BICKWIT: If the Board decision comes  
20 first.

21 COMMISSIONER AHEARNE: Yes.

22 CHAIRMAN PALLADINO: I am making the  
23 assumption that we would have acted on the Board  
24 decision and on the contested items. Yes, I am making  
25 that assumption.

1           And then I also raise what I will call an  
2 administrative matter related to it. I would be inclined  
3 to show both dates in our Bevil Report so that there is  
4 no confusion about where we stand.

5           (Laughter.)

6           CHAIRMAN PALLADINO: But that is not as  
7 essential.

8           COMMISSIONER GILINSKY: But you see, that is  
9 in a way what I was getting at, Joe. It seems to me  
10 that is driving the process, and I find that  
11 disappointing.

12           CHAIRMAN PALLADINO: Excuse me. I think you  
13 can't avoid administrative questions when you have  
14 direction to have such a thing as a Bevil Report. Now,  
15 how you treat it is a question that I think is in the  
16 Commission's province to answer, make a proposal  
17 regarding that. That is not driving.

18           As a matter of fact, what drove the issue, as  
19 you well remember, was our discussion on when we ought  
20 to be treating the Board's partial initial decision.

21           COMMISSIONER GILINSKY: Well, I do think your  
22 suggestion about when we vote on the approval to go  
23 beyond five-percent power is a good one. I think we may  
24 find that you set up a process which is sounder in the  
25 uncontested cases than the contested cases.

1           COMMISSIONER ASSELSTINE: I just have one  
2 question.

3           COMMISSIONER AHEARNE: I think they already do.

4           CHAIRMAN PALLADINO: What is that?

5           COMMISSIONER AHEARNE: I think the process in  
6 the uncontested cases is sounder.

7           CHAIRMAN PALLADINO: You are saying he does  
8 not believe we voted properly.

9           COMMISSIONER AHEARNE: No, no.

10          COMMISSIONER ASSELSTINE: I just have one  
11 question. Your proposal was to take the final vote on  
12 allowing full power operation after the point of initial  
13 criticality. Could there be situations in which you  
14 would have an extended period of time of low power  
15 operation?

16                 I guess what I am getting at is, I would  
17 assume that we would want that vote nearer to the point  
18 when they were ready to exceed five-percent power so  
19 that we have the initial recourse.

20          CHAIRMAN PALLADINO: Requiring that the  
21 Commission do it, but that the Commission not do it  
22 before that time.

23          COMMISSIONER ASSELSTINE: OK, fine.

24          CHAIRMAN PALLADINO: The Commission not make  
25 the decision until all fuel has been loaded to initial

1   criticality.

2                   COMMISSIONER ASSELSTINE:   Because I think it  
3   is useful to have that information.

4                   CHAIRMAN PALLADINO:   But the Commission has a  
5   privilege of waiting longer if it finds a reason for  
6   doing it.

7                   COMMISSIONER ASSELSTINE:   Fine.

8                   CHAIRMAN PALLADINO:   So, we can proceed  
9   several ways.  One, we can make our vote sheets on 220,  
10   saying whether we approve or disapprove.  I would be  
11   inclined to add my point about the conditions we would  
12   like to at least see when we give our full power  
13   authorization.

14                   I would also add the comment on the Bevil  
15   Report, and if people saw fit to make similar comments  
16   it would be helpful in reaching a decision.

17                   COMMISSIONER AHEARNE:   I would agree with the  
18   first two and as far as it goes on the report, you send  
19   the report, I will leave that up to you.

20                   CHAIRMAN PALLADINO:   That is the Commission  
21   report.

22                   COMMISSIONER ASSELSTINE:   I agree with all  
23   three of your points, Mr. Chairman.

24                   CHAIRMAN PALLADINO:   Well, if you want to take  
25   a vote now?

1 COMMISSIONER AHEARNE: I am prepared to.

2 CHAIRMAN PALLADINO: Well, let's take a minute.

3 COMMISSIONER AHEARNE: Except I think Tom had  
4 wanted something in writing to vote on. So, why don't  
5 we just vote on the vote sheets so you can add your  
6 comments?

7 CHAIRMAN PALLADINO: Sure.

8 COMMISSIONER ASSELSTINE: That is the easy way.

9 CHAIRMAN PALLADINO: I would like to come back  
10 to the question.

11 COMMISSIONER GILINSKY: This is the McGuire  
12 information?

13 COMMISSIONER AHEARNE: It is flowing from the  
14 McGuire, the Appeal Board request for us to -- I would  
15 ask the General Counsel to look into that issue.

16 CHAIRMAN PALLADINO: Could you restate the  
17 issue?

18 COMMISSIONER AHEARNE: The issue was, in a  
19 McGuire Appeal Board decision the Appeal Board asked us  
20 to clarify how they ought to treat statements made in  
21 these immediately effectiveness orders of the Commission.

22 COMMISSIONER GILINSKY: Tell them to pay  
23 attention to them.

24 (Laughter.)

25 COMMISSIONER AHEARNE: Len?

1 MR. BICKWIT: Yes. My own feeling is that  
2 these are in the nature of stay decisions and not only  
3 did you intend that they would not be binding on the  
4 Appeal Boards in their appellant review process, but as  
5 a legal matter in many instances they cannot be binding  
6 on the Appeal Board.

7 I think you ought to provide -- I think your  
8 rule ought to make clear that they are not to bind the  
9 Appeal Board unless you so state.

10 The rule at this point is confusing. there is  
11 one part of the rule that says that these decisions are  
12 without prejudice to subsequent actions of the Appeal  
13 Board and the Commission, but there are also parts of  
14 the rule which say that the Commission shall give policy  
15 guidance in the course of this effectiveness review.

16 I think you ought to clarify that the  
17 Commission can make these binding, but that the intent is  
18 that they are not to be binding unless the Commission so  
19 provides.

20 COMMISSIONER AHEARNE: Now, you mentioned  
21 earlier that there are some cases where you do not think  
22 we could legally make them binding.

23 MR. BICKWIT: That is right. I think in the  
24 case of questions of policy and law, and questions of  
25 fact, in both cases you will need to allow for the

1 filing of exceptions and argument on those exceptions if  
2 you are going to bind the Appeal Board.

3 In the case of questions of fact, as distinct  
4 from policy and law, in addition you will have to make  
5 those decisions on the record that you receive from the  
6 Licensing Board.

7 COMMISSIONER AHEARNE: Or expand it.

8 MR. BICKWIT: No, on the record.

9 COMMISSIONER AHEARNE: No, what I am saying is  
10 that for example - and I was not here at the time of  
11 that McGuire decision - but I gather that you did read  
12 the transcript. There was a discussion, I thought, in  
13 an open meeting with all parties involved.

14 MR. BICKWIT: That is right. And matter came  
15 in that was not in the record.

16 COMMISSIONER AHEARNE: Well, what I am asking  
17 is, when you said make it on the record, does it have to  
18 be made on the record that existed in front of the  
19 Licensing Board ?

20 MR. BICKWIT: Yes, unless you choose to have  
21 the record re-opened and either have the Licensing Board  
22 add to it or add to it yourself - under the normal  
23 constraints - cross-examination.

24 COMMISSIONER AHEARNE: I see.

25 MR. BICKWIT: The way a record must be put



1 together under the Administrative Procedure Act.

2 COMMISSIONER AHEARNE: So, in other words, the  
3 Commission meeting on McGuire would not have met that.

4 MR. BICKWIT: The Commission did not intend to  
5 bind -- I did not read the Commission as intending to  
6 bind the Board.

7 CHAIRMAN PALLADINO: To bind who?

8 COMMISSIONER AHEARNE: I think the only  
9 Commissioner here at the time, Vic, you did intend it;  
10 is that correct?

11 COMMISSIONER GILINSKY: I think our  
12 conclusions ought to be binding unless there is  
13 information that we have not dealt with.

14 MR. BICKWIT: I think if we want to go into  
15 this more thoroughly we should close the meeting.

16 COMMISSIONER AHEARNE: Go into McGuire more  
17 thoroughly, but as to the general issue --

18 MR. BICKWIT: No, on the general issue what I  
19 am saying is, if you take information that is not  
20 contained in the record and you want to make a factual  
21 finding, you cannot make that binding on the Board.

22 CHAIRMAN PALLADINO: You cannot make that  
23 binding.

24 MR. BICKWIT: You cannot make that binding on  
25 the Board.

1           CHAIRMAN PALLADINO: Which Board?

2           MR. BICKWIT: On the Appeal Board. If you  
3 want to make a policy or legal judgment you can take, in  
4 my view, you can take extra record material so long as  
5 you observe ex parte constraints, and you can bind the  
6 Appeal Board.

7           But you have to give some notice that you may  
8 do that to the parties, and you have to give them an  
9 opportunity to file exceptions and comment on those  
10 exceptions.

11           COMMISSIONER GILINSKY: Let's see, why do you  
12 think that our meeting in McGuire failed that test?

13           MR. BICKWIT: Well, on that I would prefer, if  
14 we want to discuss that more specifically, I would  
15 rather close the meeting.

16           CHAIRMAN PALLADINO: Do you want to do that  
17 now?

18           MR. BICKWIT: Maybe we could close it at the  
19 very end.

20           COMMISSIONER AHEARNE: Yes, I think at the  
21 very end.

22           So, your reading - and I must admit, that was  
23 more my recollection as we went through this meeting,  
24 that affected this development. I thought we had  
25 consistently taken the position that it was not going to

1 be a mechanism to bind the Appeal Board because the  
2 issue, I thought, had come up several times. In what  
3 way would this interfere with and moderate any actions  
4 taken by the Appeal Board. And I thought the answer  
5 was, well, they would be doing their review just as  
6 though we had not taken ours.

7 MR. BICKWIT: So, I guess on balance I would  
8 propose that what is called an interpretative rule be  
9 issued by the Commission, clarifying that the Commission  
10 does not intend to bind the Boards unless it so states  
11 in its decision.

12 I am advising you as a separate matter when  
13 you can and when you can't, and I don't think it is  
14 necessary to reflect that advice in the rule.

15 But there will be times when yo might want to  
16 bind the Board where you might get advice that in order  
17 to do that you are going to have to enter into a more  
18 formal arrangement than we ordinarily enter into on our  
19 effectiveness reviews.

20 CHAIRMAN PALLADINO: Do you have more?

21 COMMISSIONER AWFARNE: Before we close I would  
22 like to ask Alan Rosenthal for any general comments. I  
23 realize he is restricted somewhat on what he can say on  
24 the specific issue. He has someone to keep him honest,  
25 I think.

1           COMMISSIONER ASSELSTINE: Just before Alan  
2 does that, if I can just raise one other question, too,  
3 that Alan might want to comment on.

4           Whether it is sufficient to clear up the  
5 uncertainty that now exists simply to deal with the  
6 issue of under what, when, if at all, the Appeal Board  
7 is affirmatively bound by what the Commission says in  
8 the immediate effectiveness rule.

9           Is there also a question about to what extent,  
10 if at all, the Appeal Boards of their own volition can  
11 rely on what is in the immediate effectiveness orders?

12           That is a concern, it seems to me, that goes  
13 beyond the question of whether the Commission intends by  
14 its order to affirmatively bind the Appeal Board on a  
15 particular item. There may be some uncertainty about  
16 that as well.

17           MR. BICKWIT: I would say you ought to  
18 instruct the Appeal Board to give no weight whatever to  
19 your decisions unless you state to the contrary in the  
20 decision. Actually, I gather this is a proposal that  
21 you have made, also. I arrived at it independently.

22           CHAIRMAN PALLADINO: Do you have a question  
23 for Alan Rosenthal?

24           COMMISSIONER AHEARNE: Yes.

25           MR. ROSENTHAL: I will be very brief. I might

1 say, as Commissioner Ahearne indicated, Christine Cole,  
2 a member of our panel and also a member of the McGuire  
3 Board, came down with me this morning to keep me honest.

4 (Laughter.)

5 COMMISSIONER AHEARNE: A difficult task.

6 (Laughter.)

7 MR. ROSENTHAL: For openers I was going to  
8 make the same point that Commissioner Asselstine made  
9 for me, that I did not think the issue was whether we  
10 are bound or not, it is how much weight we should give  
11 it.

12 In that connection I would just make this one  
13 observation, and that is that even if the Commission  
14 solemnly declared that the Appeal Board should pay no  
15 attention to what the Commission has said --

16 (Laughter.)

17 MR. ROSENTHAL: -- treat it as if it did not  
18 exist, I tend to think that in the real world there  
19 might just possibly be members of the Appeal Board that  
20 feel under some obligation - not necessarily to treat it  
21 as binding but to give it some weight and to put some  
22 reliance on it.

23 I would say, maybe that is unavoidable. I  
24 would say, however, in that connection that the  
25 Commission, when it does make statements in the course

1 of this immediate effectiveness determination, should  
2 probably bear that in mind. I think that is the real  
3 world.

4           You know, this is all a very difficult  
5 business. I think when this particular amendment to the  
6 rules was being discussed at some length last year, I  
7 expressed some concerns about this interrelationship  
8 between the Commission and the Appeal Board. It is, as  
9 we all can recognize, a very unusual process where the  
10 Supreme Court is acting on a particular matter before  
11 the Court of Appeals has dealt with the precise same  
12 matter.

13           In think in addition to the specific question  
14 that arose on McGuire - the first one out of the barn -  
15 we still have, or I still have some problems with the  
16 interrelationship between the immediate effectiveness  
17 review of the Commission and the 2.788(e) stay  
18 consideration by the Appeal Board because, while it is  
19 quite true that the standards which the Commission  
20 utilizes in its immediate effectiveness review are not  
21 identical with the standards that the Appeal Board  
22 applies under 2.788(e), there is a very substantial  
23 overlap.

24           Both of those standards, the Commission's  
25 immediate effectiveness standard, the 1.788(e)

1 traditional stay standard involve, for example, a  
2 judgment as to the likelihood of success on the merits  
3 of any appeal that may be taken. They are phrased  
4 differently in the two rules but basically there is a  
5 merits consideration.

6 I just tell you, gentlemen, that it is quite a  
7 perplexing problem for an Appeal Board, sitting with a  
8 stay application, to deal with it - particularly if  
9 prior to its acting on that stay application the  
10 Commission has given the green light.

11 We are told, that is all without prejudice,  
12 you know, that even if the Commission says, "Go  
13 forward," that that still leaves the Appeal Board free  
14 to "pull the plug," figuratively speaking.

15 But again, you can say "without prejudice" and  
16 you can say "your determinations are not binding" and we  
17 should not even rely on them, but it is very hard for an  
18 intermediate appellate tribunal to simply treat as if  
19 they did not exist things which the Commission has seen  
20 fit to say.

21 So, I just make these random observations.  
22 What I am really, of course, seeking here is some form  
23 of guidance. We will follow that guidance, whatever it  
24 may be. I just do not want a repetition of what  
25 happened in McGuire when my colleagues --

1 (Laughter.)

2 MR. ROSENTHAL: -- spent some several hours in  
3 rather heated disagreement as to how to treat the  
4 Commission's pronouncement on hydrogen mitigation  
5 systems.

6 MR. BICKWIT: Mr. Chairman, I would like to  
7 make one point related to Alan's sphere of influence.

8 One of the reasons that I ultimately came  
9 around to Forest's suggestion is that since the  
10 Commission at times will want to bind the Appeal Board  
11 in its effectiveness reviews, and since the appeals  
12 process starts after the initial decision is issued, I  
13 think it is valuable for the Commission to move quickly  
14 with regard to its effectiveness review rather than to  
15 hit the Appeal Board four months into its appellate  
16 review with some binding guidance as to what the Appeal  
17 Board should do in the course of that.

18 CHAIRMAN PALLADINO: Any more questions in  
19 open session? Is it the Commission's desire to enter  
20 into a closed session on the subject at this time?

21 COMMISSIONER AHEARNE: I have no driving  
22 concern.

23 COMMISSIONER ASSELSTINE: Nor do I.

24 CHAIRMAN PALLADINO: I gather there is no  
25 driving force.



1           May I ask one question with regard to the vote  
2 sheet on this SECY-82-220? Was it anticipated that I  
3 would set forth the questions on which we are voting? I  
4 was intending it.

5           I can set forth --

6           COMMISSIONER AHEARNE: Your position.

7           CHAIRMAN PALLADINO: I can set forth my  
8 position and that would be guidance.

9           COMMISSIONER GILINSKY: Since you are  
10 proposing to do nothing, what is the point?

11          CHAIRMAN PALLADINO: Well, first you have to  
12 vote "yes" or "no" on 220. I would propose you vote  
13 "no" on 220.

14          Then I would also add the additional comment  
15 that when we make our decision on an operating license,  
16 that we should not make such a decision prior to going  
17 to fuel loading and criticality.

18          I would also add what I propose to do on  
19 Bevil. Then each person can comment on those three  
20 items and I think we will have guidance.

21          COMMISSIONER AHEARNE: Yes. In the way of  
22 handling the other issue, I gather --

23          CHAIRMAN PALLADINO: Which is the McGuire?

24          COMMISSIONER AHEARNE: Well, it is getting the  
25 clarification. I guess I would propose that Len draft

1 some clarifying statement.

2 CHAIRMAN PALLADINO: I think that would be a  
3 good idea, interpretative.

4 MR. BICKWIT: I would suggest an  
5 interpretative rule.

6 CHAIRMAN PALLADINO: All right. Are there any  
7 other matters to come before us at this time?

8 COMMISSIONER AHEARNE: Alan, would such an  
9 interpretative rule provide the guidance, basically, that  
10 you are asking for?

11 CHAIRMAN PALLADINO: Thank you all, we will  
12 stand adjourned.

13 (Whereupon, at 11:40 a.m. the meeting of the  
14 Commission was closed.)

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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 of Decision Dates for Effectiveness  
of Licensing Board Decision for Authorization of Full Power Licenses

Date of Proceeding: June 24, 1982

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.

M. E. Hansen

Official Reporter (Typed)

M. E. Hansen

Official Reporter (Signature)