

ORIGINAL

**[REDACTED] TRANSCRIPT
PROCEEDINGS BEFORE**

NUCLEAR REGULATORY COMMISSION

COMMISSION MEETING

PUBLIC MEETING

DKT/CASE NO.

TITLE DISCUSSION/POSSIBLE VOTE ON REGULATORY REFORM
TASK FORCE - LEGISLATIVE PROPOSALS

PLACE Washington, D. C.

DATE February 9, 1983

PAGES 1 - 84

8302220132 830209
PDR 10CFR
PT9 7

PDR



ALDERSON REPORTING

(202) 628-9300
440 FIRST STREET, N.W.
WASHINGTON, D.C. 20001

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
DISCUSSION/POSSIBLE VOTE ON REGULATORY REFORM
TASK FORCE - LEGISLATIVE PROPOSALS
PUBLIC MEETING

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

Wednesday, February 9, 1983

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

COMMISSIONERS PRESENT:

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

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

- SAM CHILK
- JAMES TOURTELLOTTE
- MARTIN MALSCH

- - -

DISCLAIMER

This is an unofficial transcript of a meeting of the United States Nuclear Regulatory Commission held on February 9, 1983 in the Commission's offices at 1717 H Street, N. W., Washington, D. C. The meeting was open to public attendance and observation. This transcript has not been reviewed, corrected, or edited, and it may contain inaccuracies.

The transcript is intended solely for general informational purposes. As provided by 10 CFR 9.103, it is not part of the formal or informal record of decision of the matters discussed. Expressions of opinion in this transcript do not necessarily reflect final determinations or beliefs. No pleading or other paper may be filed with the Commission in any proceeding as the result of or addressed to any statement or argument contained herein, except as the Commission may authorize.

P R O C E E D I N G S

1
2 CHAIRMAN PALLADINO: Good morning, ladies and
3 gentlemen.

4 This morning it was initially planned to
5 commence our consideration of the administrative
6 proposals, starting with backfitting as contained in the
7 report of the Regulatory Task Force which was submitted
8 last fall.

9 However, we have items which remain open
10 regarding the legislative package and we plan to take
11 these matters up today.

12 On February 4th of this year, the Office of
13 the Secretary circulated a draft package containing all
14 the necessary legislative documents. Also on February
15 4th we received a draft analysis from Marty Malsch which
16 compares the legislative proposals with existing law.

17 I am hopeful that we can complete our work
18 today on the legislative package. I suggest we try to
19 resolve all Commissioner comments at this meeting and
20 settle on the final language for the legislative
21 documents.

22 Do other Commissioners have any opening
23 comments at this time?

24 COMMISSIONER ASSELSTIVE: No.

25 CHAIRMAN PALLADINO: Then I am going to turn

1 the meeting over to Jim Tourtellotte and suggest he lead
2 us through to see what comments may arise.

3 MR. TOURTELLOTTE: I might recommend that we
4 proceed by taking the draft bill first and seeing if
5 there are any corrections or additions, and then moving
6 to the section-by-section analysis, and finally to the
7 letters of transmittal, if that is all right.

8 And maybe in a summary fashion, if we could
9 for instance move about five pages at a time and cover
10 those five pages. For instance, are there any suggested
11 changes or perhaps typos that were found on the first
12 five pages of the draft bill?

13 COMMISSIONER ASSELSTINE: I have one on page
14 5, second line. I just put a comma after the word "to."

15 CHAIRMAN PALLADINO: I had also one on page
16 5. Under Item No. 4, I suggest the word "only" to be
17 inserted after "invoked."

18 "To assure that adjudicatory procedures are
19 invoked only where a --

20 COMMISSIONER ASSELSTINE: Where a relevant
21 dispute --

22 CHAIRMAN PALLADINO: -- can be resolved with
23 sufficient accuracy.

24 COMMISSIONER ASSELSTINE: Just move the "only?"

25 COMMISSIONER AHEARNE: No, I think you move

1 both.

2 CHAIRMAN PALLADINO: What is that?

3 COMMISSIONER AHEARNE: I thought you would
4 want them both.

5 CHAIRMAN PALLADINO: I think you want them
6 both.

7 COMMISSIONER AHEARNE: The same issue we had
8 before with one versus two "onlys". Yes, pick it up the
9 same on page 4, No. 8.

10 CHAIRMAN PALLADINO: Where would you put it
11 there? Oh, yes.

12 COMMISSIONER ASSELSTINE: Yes, that's right.

13 CHAIRMAN PALLADINO: Just picking up that,
14 okay.

15 COMMISSIONER AHEARNE: Yes.

16 CHAIRMAN PALLADINO: Any others in the first
17 five?

18 MR. TOURTELLOTTE: That is the first five.
19 Now, six through ten?

20 COMMISSIONER ASSELSTINE: Page 8 I would
21 remove the "and" from the first line and insert an "and"
22 in the third line after "regulations." Put a comma
23 after "participation" at the end of the third line. I
24 think it is just a misplaced word.

25 CHAIRMAN PALLADINO: Which "and" did you cross

1 out?

2 COMMISSIONER ASSELSTINE: The one on the first
3 line on page 8.

4 CHAIRMAN PALLADINO: Certifying authority?

5 COMMISSIONER ASSELSTINE: I think it just got
6 put in the wrong spot.

7 CHAIRMAN PALLADINO: Right. I had the same
8 thought about adding one. I can see where we crossed
9 one. Oh, yes.

10 COMMISSIONER ASSELSTINE: I guess on page 8 I
11 would just raise the issue of the state judicial review
12 to just see whether the majority of the Commission is
13 satisfied with saying nothing more than we are not going
14 to preclude state judicial review.

15 CHAIRMAN PALLADINO: What page is that?

16 COMMISSIONER ASSELSTINE: On page 8, the
17 certifications. I still think that we ought to do a
18 little bit more than just say that we are not precluding
19 state judicial review but instead say that there ought
20 to be state judicial review. Since we are eliminating
21 Federal judicial review, we are eliminating any question
22 of the validity of the certifications in our
23 proceedings. I think if we are going to do that, we
24 really ought to assure that there is going to be at
25 least some opportunity to review the validity of those

1 certifications at the state level.

2 That is something we sort of tentatively
3 discussed before and I don't think reached a final
4 conclusion on.

5 CHAIRMAN PALLADINO: Suppose we change that
6 last sentence and said, "However, provisions should
7 exist for judicial review by the state of its own
8 actions."

9 COMMISSIONER ASSELSTINE: I think that would
10 be better, myself. Yes.

11 COMMISSIONER AHEARNE: Let's see now, there is
12 nothing yet in the section by section, is there, that
13 discusses that subject?

14 MR. MALSCH: No. I thought we were going to
15 suggest that we just add a sentence in the section
16 analysis that would paraphrase the last sentence here.

17 COMMISSIONER AHEARNE: Well, I guess I would
18 be a little -- what I was going to ask is, what does
19 that sentence mean?

20 CHAIRMAN PALLADINO: Which sentence?

21 MR. MALSCH: It doesn't mean too much. It
22 simply means that if a state wishes to provide judicial
23 review of its own actions, nothing in this Act would
24 prevent that.

25 COMMISSIONER AHEARNE: But for a state to do

1 judicial review, would it require the state to pass
2 specific state statutes?

3 MR. MALSCH: I think that would depend upon
4 what the state law is now. I suspect most state
5 statutes provide for state judicial review of their
6 agency determinations.

7 COMMISSIONER AHEARNE: Even if the agency
8 determinations are with respect to Federal statute?

9 MR. MALSCH: Well, I think though the constant
10 here is that we would build upon, in most cases, an
11 existing state process for considering need for power
12 and alternative generating sources, and then use that.
13 Or the state would sort of tailor that in some fashion
14 so that we can use it.

15 If the state had to create a special process
16 just to serve our purposes, then I think the state in
17 doing so would need to decide whether they wish to
18 provide for judicial review.

19 COMMISSIONER AHEARNE: Well, let's say in the
20 case where you building upon a current state process,
21 the current state process would not have as part of its
22 process a state certification to the Federal government
23 because that is not done.

24 So that in the absence of that already being
25 in, it is not clear to me what the state court would be

1 reviewing. Would it be reviewing, yes, the state was
2 performing its own internal process? Could it review
3 that certification to the Federal government which is
4 then part of the Federal law, in the absence of the
5 state statutes specifically addressing it?

6 MR. MALSCH: I think the concept here would be
7 state judicial review of that action for the state's
8 purposes. It would not be review of that action from
9 the standpoint of whether it would probably serve the
10 Commission's purposes.

11 COMMISSIONER AHEARNE: That is what I thought.

12 MR. MALSCH: Okay. I think to provide for the
13 latter you would probably need some special state
14 statutes.

15 COMMISSIONER AHEARNE: Yes, that is what I
16 thought.

17 Now, Joe, could you say again what you are
18 proposing?

19 CHAIRMAN PALLADINO: Well, I am not sure this
20 does it, but it would change that last sentence to read,
21 "However, provisions should exist for judicial review by
22 a state of its own actions."

23 COMMISSIONER AHEARNE: Which actions did you
24 have in mind?

25 CHAIRMAN PALLADINO: That is what I have a

1 problem with.

2 (Laughter)

3 CHAIRMAN PALLADINO: I was listening carefully
4 to what you and --

5 In this case I would guess it is hard to know
6 because what I would expect the judicial review would be,
7 as to whether not the state had truly done the
8 things that we give as conditions about it. It is a
9 strange kind of review of its own actions because it
10 says, "set of actions that are being taken" to meet
11 something that we put in Federal law.

12 MR. MALSCH: But state courts do review
13 questions in the Federal law as binding on state
14 courts. So, it is a little unusual but it is not, I
15 wouldn't say --

16 MR. TOURTELLOTTE: What this would do is, it
17 basically would allow them to have judicial review of
18 their own procedures. I don't think that judicial
19 review at the state level any more than at the Federal
20 level would involve a substantive review of whatever the
21 state did in arriving at its decision.

22 MR. MALSCH: I would be careful about that.
23 You know, depending upon the state statute you may have
24 more or less of a state judicial development in the
25 substance of the state agency's determinations.

1 COMMISSIONER ASSELSTINE: You know, there is
2 another interesting situation that is involved in here
3 too and that is, I presume that for TVA, TVA would
4 provide its certification. I do not think they are
5 subject to any state control.

6 And by precluding Federal judicial review, in
7 essence what you have said, there is no review of TVA
8 certification.

9 CHAIRMAN PALLADINO: There is no review of
10 what?

11 COMMISSIONER ASSELSTINE: Of TVA's
12 certifications. In essence what we do is simply accept
13 whatever they send us. I guess that would not be solved
14 by including the state judicial review, either.

15 MR. TOURTELLOTTE: Well, originally this was
16 drafted along the lines of the statement which the
17 chairman made that if the state wants to have judicial
18 review, then that is up to the state, and if they choose
19 not to have judicial review and their citizens believe
20 that is an appropriate way to proceed, that is within
21 the purview of the state and should be within the
22 purview of the state.

23 That is why this was drafted the way it is.
24 But if there is a different objective, then you would
25 need different words.

1 CHAIRMAN PALLADINO: Well, I think Jim
2 Asselstine is bringing up the point tht TVA is a Federal
3 agency and is not subject to judicial review by the
4 state, and this closes out any judicial review for TVA.

5 COMMISSIONER ASSELSTINE: Yes.

6 COMMISSIONER AHEARNE: Well, I think we ought
7 to first solve the problem --

8 COMMISSIONER ASSELSTINE: We have two
9 problems, that is right.

10 COMMISSIONER AHEARNE: -- the general problem.

11 COMMISSIONER ASSELSTINE: That is right, yes.

12 COMMISSIONER AHEARNE: And then we can look at
13 TVA as a separate thing.

14 COMMISSIONER ASSELSTINE: Why not just say in
15 this list of things that the organization has to
16 certify? Add a fourth one and say, 4. - at least in the
17 state situation - that there is an opportunity for
18 judicial review by a state of the state certification.
19 Have that be one of the things that the certifying
20 organization has to verify.

21 COMMISSIONER AHEARNE: Why? I understand that
22 that be put in. I am not yet convinced that that is
23 something we ought to be requiring. Give me the
24 argument as to why.

25 COMMISSIONER ASSELSTINE: The argument I think

1 for doing that is, if you are going to exclude any
2 review of the certification in our proceeding and in the
3 Federal courts, there ought to be at least some
4 opportunity for review of that certification, whether
5 the certification has been carried out in conformity
6 with these other elements.

7 COMMISSIONER AHEARNE: Why ought that not be a
8 decision to be left up to the state?

9 COMMISSIONER ASSELSTINE: Because I think
10 there is a federal interest in assuring somehow,
11 somewhere, that the certifications that we get are valid
12 ones. That they have been done in accordance with the
13 elements that are laid out here in the statute.

14 And I think that ought not just to be left to
15 the discretion of the state.

16 COMMISSIONER AHEARNE: What is the Federal
17 interest?

18 COMMISSIONER ASSELSTINE: The Federal interest
19 is in making sure that we get valid certifications.
20 That if we are not going to do the certifications and if
21 we are going to rely upon a certification by someone
22 else - either a state or regional, or some other Federal
23 agency - that there is an interest in making sure that
24 those other certifications are done properly. That is,
25 use the same kinds of procedures that we do and consider

1 alternative energy sources as we do.

2 COMMISSIONER AHEARNE: Are you saying -- if
3 validity is the criterion then it would be the procedural
4 steps --

5 COMMISSIONER ASSELSTINE: That is right.

6 COMMISSIONER AHEARNE: -- that would be
7 subject to judicial review.

8 COMMISSIONER ASSELSTINE: That's right.

9 COMMISSIONER AHEARNE: I would not have any
10 problem with a slight variation in your phrasing, Jim,
11 to essentially protect against the point that Marty had
12 raised, that some states without that phrase in might
13 have the courts review the substance as well as the
14 procedures.

15 And I would agree with you, the Federal
16 interest would be the validity of the process, it could
17 be the procedural correctness. I think the substance in
18 the questions really are state questions.

19 COMMISSIONER ASSELSTINE: Well, I think that
20 is right. But you don't normally get - either I think
21 in the state or the Federal courts - the situation where
22 you have a court that is simply substituting its
23 judgment for the deciding organization's. The standard
24 typically, certainly for the review of our decisions, is
25 whether we backed it arbitrarily and capriciously,

1 whether we violated the procedural requirements that
2 apply.

3 COMMISSIONER AHEARNE: I would not want to
4 really get into an argument here as to what standard an
5 appeals court actually uses to ignore a decision.

6 (Laughter)

7 COMMISSIONER AHEARNE: Let me just say that I
8 would agree with the concept that having as a fourth
9 auditing provision that the state provide a mechanism by
10 which the procedural validity, or whatever is the right
11 phrase --

12 COMMISSIONER ASSELSTINE: Okay.

13 MR. TOURTELLOTTE: The whole question is, how
14 are you going to enforce that? And are you going to put
15 yourself in a position as a Commission of overseeing a
16 state?

17 COMMISSIONER AHEARNE: What is the mechanism
18 by which in theory we are supposed to do the mill
19 tailings procedure?

20 COMMISSIONER ASSELSTINE: Well, we look at the
21 validity of the state program and there are procedural
22 elements that are spelled out. One of the elements is,
23 is there in place an opportunity for a hearing and for
24 judicial review.

25 COMMISSIONER AHEARNE: I recognize that.

1 COMMISSIONER ASSELSTINE: I think what we do
2 is, we look at a piece of paper that is submitted by the
3 state as part of their program saying, "We offer an
4 opportunity for a hearing and we offer a judicial
5 review, and here are the state statutes that grant that
6 authority."

7 COMMISSIONER AHEARNE: Yes.

8 MR. TOURTELLOTTE: This is really a classic
9 case of states' rights versus Federal supervision of
10 states. It is a classic case. And whether -- if you
11 want to add it certainly is within the purview of the
12 Commission to do this.

13 If you want to add oversight responsibility in
14 this case then I think you should do something more than
15 what is here. If you don't, then I think what is there
16 is sufficient.

17 COMMISSIONER AHEARNE: Jim, I guess I take
18 exception with the phrase "oversight responsibility."
19 As I understand it, currently there is a Federal law
20 which says for major Federal action - which this
21 licensing-type action is - the Federal agency must do
22 certain things. Now, that is Federal law, it says we
23 have to do certain things.

24 What we are proposing here is, there are two
25 elements in that review which the Federal law says has

1 to be done. The two elements which we are saying, it is
2 much better to be done by the state.

3 And so we are proposing a transfer of that to
4 the state. Now, Jim raises what I think is a perfectly
5 sound point. What is the Federal interest in that? The
6 Federal interest in it is in the validity of the process
7 by which the state is going to go through this action
8 which we are proposing be transferred to them.

9 So, I would not say that we are trying to
10 oversee something. The Federal government is now trying
11 to step in and oversee something on the state. It is
12 really the converse of that.

13 The argument on Federal oversight, I think,
14 would have been a very sound argument back when NEPA was
15 first proposed. But we are not proposing NEPA. What we
16 are trying to do is to say there is this section of it
17 that makes a lot more sense for the state to do than us.

18 MR. TOURTELLOTTE: But the real question of
19 whether there is a Federal interest or not depends upon
20 whether you follow philosophically the idea that you are
21 going to turn it over to the states entirely, including
22 the review of their own processes, or whether you are
23 going to turn it over to them but retain the right to
24 review that process.

25 COMMISSIONER AHEARNE: Well, I think what we

1 are really saying is that we are not trying to raise the
2 question of whether NEPA was right in requiring this to
3 be examined. That would be the issue that you are, I
4 think, really raising is, is NEPA sound law in saying
5 that those ought to be examined because if we say we
6 don't know, then it is perfectly correct to then say,
7 "States, here are some issues you might look at. It is
8 up to you to decide whether or not they should be looked
9 at and at what level."

10 We are not challenging that facet of NEPA.
11 What we are only challenging is, is it appropriate for
12 the NRC to be doing that and our conclusion is, no.

13 So, we are not challenging that it be done.
14 What we are saying is, it ought to be done by the
15 state. And I think Jim Asselstine has a sound point
16 that our Federal interest than is that the process be
17 done validly.

18 So, I have to, albeit probably reluctantly,
19 come down and agree that there ought to be that
20 conclusion.

21 CHAIRMAN PALLADINO: I don't know how you had
22 it worded.

23 COMMISSIONER ASSELSTINE: Well, I was just
24 trying to tinker with it to get to John's point on
25 focusing on the procedures. How about something along

1 the lines that there is an opportunity for judicial
2 review by a state of the state's compliance with the
3 procedures described in this section, or the state
4 organization's compliance?

5 COMMISSIONER AHEARNE: That would do. That
6 sounds about right, yes.

7 CHAIRMAN PALLADINO: I had a slightly
8 different version but if there is agreement on this
9 version?

10 The version I had was that provisions exist
11 for judicial review by the state of the validity of the
12 procedures used., But I think your way is as good.

13 COMMISSIONER ASSELSTINE: Okay.

14 CHAIRMAN PALLADINO: Do you have that?

15 COMMISSIONER ASSELSTINE: I can read it again.

16 MR. TOURTELLOTTE: I will get it from him
17 later.

18 CHAIRMAN PALLADINO: Okay, and then we would
19 cross out that last sentence?

20 COMMISSIONER ASSELSTINE: That's right.

21 CHAIRMAN PALLADINO: And there is an "and", a
22 correction that has to be taken.

23 COMMISSIONER ASSELSTINE: Right. That's right.

24 COMMISSIONER AHEARNE: And then Marty would
25 have to put in --

1 MR. MALSCH: Develop the changes.

2 COMMISSIONER AHEARNE: Yes, in the section by
3 section. And I urge you not just to have one sentence,
4 I think that a little bit more is required.

5 COMMISSIONER ASSELSTINE: Yes, I think that's
6 right.

7 And now we have to decide to deal with the TVA
8 problem, I think, too, or any Federal certification.

9 One way would be to say where we say at the
10 end, "shall not be the subject of Commission proceeding
11 and shall not be subject to Federal judicial review," we
12 could say, "shall not be the subject of a Commission
13 proceeding and shall not, except in the case of a
14 certification by a Federal agency, be subject to Federal
15 judicial review."

16 CHAIRMAN PALLADINO: I think that would fix it
17 up.

18 MR. MALSCH: That would leave it whether an
19 action by someone like TVA is subject to judicial
20 hearing. That would depend upon other statutes in
21 existing law.

22 COMMISSIONER ASSELSTINE: That's right.

23 MR. MALSCH: This would not add anything.

24 COMMISSIONER ASSELSTINE: That's right.

25 CHAIRMAN PALLADINO: Do you have that written

1 down?

2 COMMISSIONER ASSELSTINE: Shall not --

3 CHAIRMAN PALLADINO: I had an "unless" thought.

4 COMMISSIONER AHEARNE: I am uncertain on this

5 one. I had a new idea, a new thought I had about TVA.

6 COMMISSIONER ASSELSTINE: I had not either.

7 Let's think about it.

8 CHAIRMAN PALLADINO: Why don't you read it

9 again?

10 COMMISSIONER ASSELSTINE: "And shall not,

11 except in the case of certifications by a Federal

12 agency."

13 COMMISSIONER AHEARNE: Who reviews TVA's rate

14 setting?

15 COMMISSIONER ASSELSTINE: I don't believe

16 anybody does.

17 COMMISSIONER AHEARNE: Is it reviewable in the

18 court?

19 COMMISSIONER ASSELSTINE: Their rate

20 decisions? I don't know.

21 COMMISSIONER AHEARNE: I guess my position on

22 this one would be, if in the other ways the TVA acts

23 like a state agency, if those are reviewable in the

24 courts, then I would agree with this being reviewable in

25 courts.

1 On the other hand, if they are not, I would
2 not want to extend this as a novel principle.

3 COMMISSIONER ASSELSTINE: Yes.

4 MR. MALSCH: I think as I read this, this
5 simply leaves existing law untouched on Federal judicial
6 review of people like TVA.

7 COMMISSIONER ASSELSTINE: But we ought to be
8 able to find out easily enough how their rate-setting
9 actions are done and whether they are subject to Federal
10 judicial review. I think we can do that pretty quickly.

11 MR. TOURTELLOTT: Is it covered to say,
12 "shall not be subject to Federal judicial review in any
13 action brought under the provisions of this Act?"

14 MR. MALSCH: I am concerned that would raise a
15 loophole for state certifications. It would create some
16 kind of collateral, a judicial review proceeding that
17 was separate from NRC procedure is still in Federal
18 courts.

19 COMMISSIONER AHEARNE: Yes.

20 CHAIRMAN PALLADINO: How did you have it, Jim,
21 again? Could you read the whole phrase?

22 COMMISSIONER ASSELSTINE: Sure. "Shall not be
23 the subject of a Commission proceeding and shall not" -
24 and then I would add in after that - "except in the case
25 of certifications by a Federal agency, be subject to

1 Federal judicial review."

2 CHAIRMAN PALLADINO: And your concern is?

3 COMMISSIONER AHEARNE: My concern is that if
4 TVA is not now subject to Federal judicial review for
5 its other actions in which it acts like a state - for
6 example, it sets its own rates - then I would not want
7 to have us be breaking new ground.

8 COMMISSIONER ROBERTS: I don't think TVA sets
9 its own rates.

10 COMMISSIONER AHEARNE: Sure they do.

11 COMMISSIONER ROBERTS: They appear before the
12 Tennessee Public Utility Commission.

13 COMMISSIONER AHEARNE: Do they?

14 COMMISSIONER ROBERTS: Sure they do.

15 COMMISSIONER AHEARNE: I thought they set
16 their own rates.

17 COMMISSIONER ROBERTS: No, absolutely not. I
18 only speak as a Tennessean. I don't know what they do
19 in other states. They do not set their own rates.

20 CHAIRMAN PALLADINO: Well, how long would it
21 take to see whether this would give any problem?

22 COMMISSIONER ASSELSTINE: I would think we
23 could find out real quick exactly how they set their
24 rates and to what extent their decisions -- or how their
25 rates are set and to what extent those decisions are

1 subject to any Federal judicial review.

2 COMMISSIONER AHEARNE: Yes.

3 CHAIRMAN PALLADINO: Can we agree to put this
4 in unless Marty Malsch finds that this interferes with
5 other provisions of the law?

6 COMMISSIONER AHEARNE: Yes.

7 COMMISSIONER ASSELSTINE: Yes.

8 COMMISSIONER AHEARNE: Or strikes new ground.

9 COMMISSIONER ASSELSTINE: That's right, yes.

10 COMMISSIONER AHEARNE: We could always send
11 Jim Asselstine up to explain to the Honorable Senator
12 from Tennessee why it was that we thought it would be --

13 (Laughter)

14 COMMISSIONER ASSELSTINE: I have a strong
15 interest in making sure that we do that one right.

16 (Laughter)

17 MR. MALSCH: We can also say specifically in
18 the section analysis that this is not intended to create
19 any new rights in dealing with Federal courts which do
20 not already exist.

21 CHAIRMAN PALLADINO: I think that would be
22 good to put in.

23 COMMISSIONER ASSELSTINE: That's right.

24 CHAIRMAN PALLADINO: Any more on page 8?

25 COMMISSIONER ASSELSTINE: I have one on page

1 12, the fourth line from the top just change

2 "paragraphs" to "subsections."

3 CHAIRMAN PALLADINO: Somewhere along the line

4 I lost you, insert -- I am sorry, I was not with you. I
5 was looking for something else.

6 COMMISSIONER ASSELSTINE: Yes. On page 12,
7 the fourth line from the top the first word just change
8 "paragraphs" to "subsections" since they are subsections
9 rather than paragraphs.

10 CHAIRMAN PALLADINO: Let's see, I don't know
11 if we had one on page 11. Okay, where are we, in the 10
12 to 15?

13 MR. TOURTELLOTTE: Ten to fifteen, yes.

14 MR. MALSCH: I had a suggested change on page
15 15, paragraph d(2) next to the last line, add language
16 so that it would say, the period of renewal, "any
17 outstanding fee for the renewal application of issuance
18 shall become due and payable by the applicant for the
19 site permit."

20 COMMISSIONER AHEARNE: Yes. Say that one
21 again, Marty?

22 MR. MALSCH: "Any outstanding fee for the
23 renewal application of issuance shall be come due and
24 payable by the applicant for the site permit."

25 That makes it, I think, a little more clear

1 that it is a two-stage kind of operation.

2 CHAIRMAN PALLADINO: There is sort of a
3 related one at the bottom of page 14, the second-last
4 line on the page. It talks about the fee and there may
5 have been fees related to amendments. I was going to
6 suggest using the similar wording and say, "Any
7 outstanding fee shall become immediately due and
8 payable." That would cover all possible fees.

9 COMMISSIONER ASSELSTINE: Yes.

10 CHAIRMAN PALLADINO: Where are we now?

11 MR. TOURTELLOTTE: Sixteen to twenty.

12 COMMISSIONER ASSELSTINE: I have one on page
13 18.

14 CHAIRMAN PALLADINO: Incidentally, I have a
15 similar change on the bottom of page 17, the last line.

16 COMMISSIONER ASSELSTINE: Yes.

17 CHAIRMAN PALLADINO: It says "the fee." I
18 would suggest, "any outstanding fee."

19 MR. MALSCH: Right. I have a similar change
20 on paragraph d(2) on page 18, the same language.

21 COMMISSIONER AHEARNE: Let's see, on page 18
22 where it says, "any outstanding fee?"

23 MR. MALSCH: Right. Again, "for the renewal
24 application or issuance --(Inaudible)

25 COMMISSIONER ASSELSTINE: On paragraph d(1) on

1 page 18 just add the word "a" before "construction
2 permit" in the second line of that paragraph.

3 And the other question I had --

4 MR. TOURTELLOTTE: Excuse me, I am sorry, I am
5 still back here. What was that?

6 COMMISSIONER ASSELSTINE: Page 18, paragraph
7 d(1), the second line of paragraph d(1) just put in the
8 word "a" before "construction permit."

9 Then I had a question on that. Should we also
10 include operating license? Is it possible that you
11 would have the situation where you had a construction
12 permit issued for a design before a design approval was
13 obtained and later on you would want to take advantage
14 of the design approval in the operating license
15 proceeding. It is more a transition kind of --

16 MR. MALSCH: Yes, I had the same question. On
17 the next page we talk about amendments approved the
18 Commission shall apply to application for construction
19 permit or combined CP/OL. I had a similar question
20 whether amendments ought to be able to be applied to OL
21 applications.

22 CHAIRMAN PALLADINO: Where are we again, Jim?
23 I am sorry.

24 COMMISSIONER ASSELSTINE: Mine is on page 18.

25 COMMISSIONER AHEARNE: So, tell me --

1 COMMISSIONER ASSELSTINE: What we say is that
2 you can reference and approve design in a construction
3 permit or the combined construction permit and operating
4 license.

5 COMMISSIONER AHEARNE: Right.

6 COMMISSIONER ASSELSTINE: And my question was,
7 is it possible that you might have the situation for a
8 design where you had the permit, construction permit,
9 issued before the design became an approved design
10 within the meaning of this Act.

11 That is, you might not have as fully a
12 complete design or you might not have the design
13 approval yet, but that the design approval would be
14 granted after the construction permit but before the
15 operating license proceeding.

16 And would you not also want to at least
17 provide the opportunity then to take advantage of the
18 approved design in the operating license proceeding?
19 That is in essence, you would have upgraded the approval
20 of the design between when the CP was issued and when
21 someone would file an application for an operating
22 license.

23 COMMISSIONER AHEARNE: The only difficulty I
24 would think to start with is that since -- you are not
25 talking about a plant that is under construction.

1 COMMISSIONER ASSELSTINE: That's right.

2 COMMISSIONER AHEARNE: And then the design
3 approval is given.

4 COMMISSIONER ASSELSTINE: That's right. For
5 example, say you had one of the combustion plants that
6 is built according to whatever their design, System 80
7 design. Then they come in with the necessary
8 information to get the standardized design approval.
9 Then why should not those applicants that are building
10 the plant according to that design be able to take
11 advantage of that approval?

12 COMMISSIONER AHEARNE: But you would have to
13 have some mechanism, additional review mechanism, though
14 to ensure that any modifications that were made in
15 getting to that design approval were also then made back
16 into that plant under construction.

17 COMMISSIONER ASSELSTINE: That's right.

18 COMMISSIONER AHEARNE: See, I foresee the
19 design approval process as being one of the usual
20 negotiation between NRC and the applicant, which would
21 lead to some modifications.

22 During that process of modification a plant
23 that is under construction with the previous version of
24 that -- they obviously had to have gotten started with
25 plans, et cetera, a lot before.

1 COMMISSIONER ASSELSTINE: Yes.

2 COMMISSIONER AHEARNE: It could be
3 substantially before.

4 COMMISSIONER ASSELSTINE: It could be, and I
5 guess the advantage would only accrue if you basically
6 used the approved standardized design. That is, if they
7 went back and made the changes.

8 COMMISSIONER AHEARNE: Yes, and that is what --

9 COMMISSIONER ASSELSTINE: Otherwise you would
10 not get any advantage. They could reference the design
11 but you would still have open issues whether there are
12 deviations or departures from that approved design that
13 are acceptable.

14 COMMISSIONER AHEARNE: Yes. I would have to
15 re-think through and re-read this stuff to see what kind
16 of credit you are giving to this. I agree with you that
17 in concept that sounds right.

18 I would have to think through what is it that
19 you are now voiding that previously would have been in
20 the operating license hearing by saying, "Ah, but they
21 now have this approved design."

22 COMMISSIONER ASSELSTINE: I think all you are
23 voiding are the issues that really were addressed or
24 could have been addressed in the design proceeding, so
25 that if they conform the design for the plant under

1 construction to the design, they get a benefit. If they
2 don't, then they don't.

3 The thought just occurred to me that from a
4 flexibility standpoint this might be overly rigid.

5 COMMISSIONER AHEARNE: As I say, it sounds
6 right.

7 COMMISSIONER ASSELSTINE: Yes.

8 COMMISSIONER AHEARNE: But I have to look at
9 how it fits.

10 MR. MALSCH: It just occurs to me on a related
11 point, the provision in the bill that prohibits
12 relitigation of issues previously decided would insofar
13 as designs are concerned prohibit relitigation of issues
14 previously decided in a design proceeding under 194.

15 That section does not specifically require
16 that the application reference the design approval.

17 COMMISSIONER ASSELSTINE: That is true, it
18 doesn't.

19 MR. MALSCH: So, as written, even though the
20 OL application has not referenced the earlier design
21 approval, it just so happened that a design issue that
22 arose as a result of the earlier design approval
23 proceeding, it could not be relitigated in a hearing or
24 would not be subject to modification by the agency
25 absent the special showing.

1 COMMISSIONER ASSELSTINE: So it might not be
2 necessary to reference the operating license.

3 MR. MALSCH: It might not be necessary except
4 because you have not referenced (Inaudible) the question
5 as to what the Commission intends in this regard.

6 COMMISSIONER AHEARNE: Yes.

7 COMMISSIONER ASSELSTINE: Yes.

8 CHAIRMAN PALLADINO: You are proposing to
9 leave it alone?

10 COMMISSIONER ASSELSTINE: I think what Marty
11 is saying is, if you don't say "operating license" here
12 you may be creating an ambiguity between the two
13 provisions.

14 MR. MALSCH: That's right.

15 CHAIRMAN PALLADINO: So, how do you want to
16 change it?

17 COMMISSIONER ASSELSTINE: You would just add
18 in, "for a construction permit, and operating license or
19 a combined construction permit and operating license."

20 I am not sure it is a major point.

21 COMMISSIONER AHEARNE: I will have to say
22 tentatively I agree, but I have to think through how
23 that, as you said, fits in.

24 COMMISSIONER AHEARNE: Okay.

25 COMMISSIONER AHEARNE: It is another new one.

1 COMMISSIONER ASSELSTINE: I know it is. Yes,
2 that is right. It came to me last night as I was going
3 through it the last time.

4 COMMISSIONER AHEARNE: It sounds right.

5 COMMISSIONER ASSELSTINE: Yes.

6 CHAIRMAN PALLADINO: Can that be helped in the
7 section-by-section analysis?

8 COMMISSIONER AHEARNE: Sure.

9 MR. MALSCH: Yes.

10 COMMISSIONER AHEARNE: Yes.

11 MR. MALSCH: It is the same issue, really, on
12 the next page in f(1) and (2), except here we are not
13 talking about the application of the actual design
14 approval but the application of amendments to this
15 approval, whether they could be applied to OL.

16 COMMISSIONER ASSELSTINE: That one may be a
17 little different in the sense that the way it is
18 formulated now, once you have gotten your CP or your
19 combined permit and operating license you do not then
20 have to go back and fold in these other amendments
21 unless either you want to fold in the amendments or you
22 can demonstrate that you meet the finality provisions.

23 MR. MALSCH: Oh, I see.

24 COMMISSIONER ASSELSTINE: So, that is one
25 where I don't think you want operating licenses because

1 I think you want to provide that stability.

2 CHAIRMAN PALLADINO: Are you on page 19?

3 COMMISSIONER ASSELSTINE: Yes.

4 COMMISSIONER AHEARNE: Yes.

5 CHAIRMAN PALLADINO: Bill Reamer has a
6 suggestion under (g) in the third line. He wants to put
7 an insert and I will give you his thinking on it.

8 It would read as follows, I will start with
9 the first line of (g), "Any application for a
10 construction permit, an operating license or a combined
11 construction permit and operating license referencing a
12 design approval issued under this section" - and then he
13 wants to insert - "or an application for an amendment to
14 a CP, OL or CP/OL referencing a design approval," and
15 then go on, "may include."

16 COMMISSIONER AHEARNE: Say that again, now?

17 CHAIRMAN PALLADINO: The insert would be, "or
18 an application for an amendment to a CP, OL, or CP/OL
19 referencing the design approval."

20 And he says, "It occurs to me that a CP/OL
21 holder might need a design change during construction.
22 My change extends variance to cover that case."

23 COMMISSIONER ASSELSTINE: Yes. I think that
24 is a good point.

25 On page 19 under paragraph 3 in the next to

1 the last line of paragraph 3 I think where we say
2 subsection (f), that is supposed to be subsection (e).

3 MR. TOURTELLOTTE: Sorry, where are you?

4 COMMISSIONER ASSELSTINE: Page 119, paragraph
5 (f)3, the next to the last line where we say,
6 "requirements of subsection," that is supposed to be
7 subsection (e) rather than (f). The subsection letters
8 changed a couple of times.

9 MR. TOURTELLOTTE: Pages 20 through 25?

10 COMMISSIONER AHEARNE: Before you leave that
11 section, then, just to clarify my position on the
12 addition of the operating license.

13 COMMISSIONER ASSELSTINE: Yes.

14 COMMISSIONER AHEARNE: That for purposes of
15 going forward at this time I will have to say, I am
16 against it, and if I think through it a little bit more,
17 then I could decide if I am for it.

18 COMMISSIONER ASSELSTINE: Okay.

19 COMMISSIONER AHEARNE: But at the moment I am
20 against it.

21 COMMISSIONER ASSELSTINE: Okay. You know, my
22 own view is, I don't think it ought to hold things up.
23 I don't think it is that big a point. But if after you
24 thought through it, if you think it makes sense, I think
25 it is worth doing.

1 COMMISSIONER AHEARNE: Yes.

2 CHAIRMAN PALLADINO: You are on pages?

3 MR. TOURTELLOTTE: Pages 20 through 25.

4 CHAIRMAN PALLADINO: There is one on 21.

5 COMMISSIONER ASSELSTINE: Yes, I have a couple
6 on 21, too.

7 CHAIRMAN PALLADINO: In the middle under
8 section (b) -- or is that (bb)?

9 COMMISSIONER ASSELSTINE: Yes.

10 CHAIRMAN PALLADINO: The last sentence is, "In
11 determining the sufficiency of such a showing, the
12 Commission shall consider only the evidence," and the
13 suggested insert, "of the proponent."

14 COMMISSIONER ASSELSTINE: Yes, that was just
15 left out.

16 I had a couple on 21. First, I would take out
17 the two headings where we say, "Thermal Neutron Power
18 Generation Facility" and "Standardized Design" and
19 instead just put the new heading, "Definitions" between
20 Title II and Section 201, since I think that is what we
21 are talking about in these two sections.

22 And second, on the definition of "substantial
23 evidentiary showing," by having it just in one place
24 rather than in the several different places there is a
25 little bit different formulation for the hearing

1 provision than for the other three.

2 The hearing provision does not talk about
3 proposed modifications or the final determination, it
4 talks about the showing of whether there is new evidence
5 sufficient to indicate that the facility no longer
6 complies with the Act.

7 I think to make the definition fit all three
8 places, if on the third line you change "proposed
9 modification of the final determination" to "action
10 being proposed by the proponent," then that makes is
11 generic and it would fit in all three spots, or all four
12 spots.

13 And I would put closed quotation marks at the
14 end of (bb) and (cc).

15 MR. TOURTELLOTTE: Well, I don't believe that
16 ordinarily quotes are put at the close. They don't
17 appear that way in the Act.

18 COMMISSIONER ASSELSTINE: Well, I think they
19 do when you are talking about a section of a bill that
20 includes new elements to be put in the Act.

21 MR. TOURTELLOTTE: Well, it does not make any
22 difference to me.

23 COMMISSIONER AHEARNE: I will leave that issue
24 to you.

25 CHAIRMAN PALLADINO: To the lawyers.

1 COMMISSIONER ASSELSTINE: But on page 22 the
2 quotes have to come out at the beginning of the
3 Subsection 203 because that is a freestanding provision
4 of this Act.

5 MR. TOURTELLOTTE: Which, on what page?

6 COMMISSIONER ASSELSTINE: Pages 22 and 23
7 there are quotes at the beginning of each of the
8 subsections. Since this is all a freestanding provision
9 of this bill rather than changes to the Atomic Energy
10 Act, those quotes need to come out.

11 MR. TOURTELLOTTE: On page 22 as well under
12 "Implementation," the fourth line down should read,
13 "185(d), 193(f) and 194(e)."

14 CHAIRMAN PALLADINO: Where is this, page?

15 MR. TOURTELLOTTE: Twenty-two.

16 CHAIRMAN PALLADINO: Whereabouts?

17 MR. TOURTELLOTTE: Under "Implementation" the
18 fourth line down, it start off, "185(d)," that is
19 correct. The next one should be "193(f)" - as in Frank
20 - and 194(e).

21 MR. MALSCH: I had another question on that
22 section; 195(b), 193(f) and 194(e) deal -- well, at
23 least two of the sections deal with other than thermal
24 neutron power generation facilities.

25 And so, as drafted it is unclear whether we

1 are talking about two sets of regulations, one
2 implementing generally all the provisions of 185(d),
3 193(f) and 194(e), including those that may apply to
4 non-thermal neutron power generation facilities, and
5 then another set of regulations specifically dealing
6 with thermal neutron power generation facilities.

7 I thought it was the latter and that would be
8 helped by simply striking the word "and" in the fourth
9 line.

10 CHAIRMAN PALLADINO: This is on page?

11 MR. MALSCH: Twenty-two.

12 CHAIRMAN PALLADINO: Fourth line of which?

13 MR. MALSCH: The fourth line of the new
14 section, proposed Section 203.

15 COMMISSIONER ASSELSTINE: Yes.

16 CHAIRMAN PALLADINO: And whereabouts in that?

17 MR. MALSCH: It is the fourth line, about the
18 middle of the fourth line, the word "and" after "Act."

19 CHAIRMAN PALLADINO: Oh, yes.

20 MR. MALSCH: Just strike it.

21 Now, another question under (b). The way it
22 is drafted under paragraph (b) we could not modify a
23 permit or license or approval for a thermo neutron power
24 generation facility until, as I read it, the regulations
25 called for by Section 203 are in effect.

1 So, we are talking about perhaps half a year
2 to a year of hiatus.

3 COMMISSIONER AHEARNE: That is not supposed
4 to be.

5 COMMISSIONER AHEARNE: I think we could --

6 COMMISSIONER AHEARNE: After those regulations
7 are in effect.

8 COMMISSIONER ASSELSTINE: That's right.

9 MR. MALSCH: Yes, I suggest that we say after
10 the regulations referred to in Subsection (a) become
11 effective no license, permit, or approval granted
12 through this Act --

13 COMMISSIONER AHEARNE: Right.

14 MR. MALSCH: And then I think you can simply
15 strike the end of it that says, "promulgated under
16 subsection - blah, blah, blah - until the end.

17 COMMISSIONER AHEARNE: That's right.

18 MR. MALSCH: So, it would read, "After the
19 regulations referred to in Subsection (a) become
20 effective, no license, permit, or approval granted under
21 this Act for a thermal neutron power generation facility
22 shall be modified, except pursuant to such regulations."

23 COMMISSIONER AHEARNE: Yes.

24 CHAIRMAN PALLADINO: That is in paragraph (b)?

25 MR. MALSCH: Paragraph (b).

1 CHAIRMAN PALLADINO: I did not try to get all
2 the wording.

3 COMMISSIONER ASSELSTINE: Yes, it is a good
4 change.

5 MR. MALSCH: And I would add the word "full"
6 before "site permit" in paragraph (c).

7 MR. TOURTELLOTTE: Excuse me, Marty, with what
8 did you end the sentence in (b)?

9 MR. MALSCH: My revised (b) would read this
10 way: "After the regulations referred to in Subsection
11 (a) become effective" - then picking up from the
12 language - "no license permit or approval granted under
13 this Act for a thermal neutron power generation facility
14 shall be modified, except pursuant to" - and then I
15 would say - "such regulations."

16 MR. TOURTELLOTTE: Twenty-five?

17 COMMISSIONER ASSELSTINE: That is all for me.

18 MR. TOURTELLOTTE: And 26?

19 MR. MALSCH: Oh, excuse me, I had a question
20 on page 24. I am not sure how we resolved the question
21 whether there should be mandatory ACRS review prior to
22 commencement of operation of facilities in the case of
23 construction permits and operating license.

24 The statute does not presently, still does not
25 presently provide for - and I am sort of unclear how the

1 Commission decided that. I thought they had been
2 inclined to putting that in but I was not sure.

3 COMMISSIONER AHEARNE: I thought the decision
4 was to put it in.

5 COMMISSIONER ASSELSTINE: Yes. I would favor
6 putting it in.

7 MR. MALSCH: Okay, the language I would add
8 after the next to the last line after the semi-colon
9 after Section 194, simply the phrase, "Any proposed
10 authorization to commence operation under Section
11 185(b)" and then go on.

12 MR. TOURTELLOTTE: Say again?

13 MR. MALSCH: The phrase would be, "Any
14 proposed authorization to commence operation under
15 Section 185(b)."

16 CHAIRMAN PALLADINO: What does that do for us,
17 Marty?

18 MR. MALSCH: That ends up in closing a
19 mandatory requirement for ACRS review prior to operation
20 for those facilities which have received a combined
21 construction permit and operating license.

22 Presumably the review by the committee would
23 parallel the review by the agency's own staff and the
24 agency itself, and cover the same issues.

25 MR. TOURTELLOTTE: That is that. That takes

1 us to the section-by-section analysis.

2 COMMISSIONER AHEARNE: Before you get to the
3 section-by-section analysis I, would like a quick check
4 with Marty on his paper that he sent up on the new
5 authority.

6 MR. MALSCH: Yes.

7 CHAIRMAN PALLADINO: Which paper is this?

8 COMMISSIONER AHEARNE: This is the February
9 8th. Now, as I read what you said, Marty, you agreed
10 with my five items and then you added six and seven.
11 Now, as I read number eight, that is making an
12 assumption.

13 MR. MALSCH: Premised upon the assumption. I
14 don't make the assumption, it is not new authority.

15 COMMISSIONER AHEARNE: So, as far as what is
16 clearly, though, seven, the fee in the burden of proof
17 issue --

18 MR. MALSCH: That is new authority also.

19 COMMISSIONER AHEARNE: And the new authority
20 is waived?

21 MR. MALSCH: To waive and allocate the fees.

22 CHAIRMAN PALLADINO: I don't seem to have that.

23 COMMISSIONER AHEARNE: And then the burden of
24 proof on renewal is?

25 MR. MALSCH: Would also be a change. Under

1 current law we would be required to place the burden on
2 the person proposing the renewal.

3 COMMISSIONER AHEARNE: Proposing the renewal,
4 and now the burden of proof would be on either the staff
5 or proponent.

6 MR. MALSCH: Yes.

7 COMMISSIONER ROBERTS: I was dead wrong.

8 COMMISSIONER ASSELSTINE: States do not do it?

9 COMMISSIONER ROBERTS: Absolutely not.

10 MR. MALSCH: Yes, we called the TVA general
11 counsel's office and based upon a brief conversation
12 they said rates are not reviewable. But absent
13 requiring state approvals, for example under the Air Act
14 and Water Act TVA would have to get various kinds of
15 state permits.

16 That would be, that permitting would be
17 reviewable in state courts. But rates and basic
18 decisions to build plants are not, are not judicial
19 reviewable in state courts.

20 COMMISSIONER ROBERTS: I get the same
21 information.

22 MR. MALSCH: Now, I don't know but I expect
23 the situation is the same with regard to the Electric
24 Power Administration and people like that. I suspect
25 they are the same as TVA in this regard.

1 MR. TOURTELLOTTE: Well, their rates are
2 generally controlled by their commitments on bonding
3 authorities, that they have to receive a certain rate of
4 return on the investment and they cannot exceed that,
5 generally.

6 COMMISSIONER AHEARNE: I am very familiar with
7 the way they set their rates. And those rates are set
8 by their power marking administrations, and they are
9 essentially set by the Federal government. And the only
10 review that is done is an internal review within the
11 Energy Department. And FERC does have authority to
12 review the rate, certain elements of the rate. But it
13 is not reviewable in courts. Congress reviews it.

14 CHAIRMAN PALLADINO: So, what does that do to
15 that section that we modified? I guess it was on page 8.

16 MR. MALSCH: I think the section is okay, but
17 I think it emphasizes the importance of explaining in
18 the section analysis that this is not intended to confer
19 any additional rights to Federal judiciary review
20 (Inaudible).

21 COMMISSIONER AHEARNE: Gee, I would have said
22 the conclusion is to put this phrase in.

23 MR. MALSCH: Well, the phrase simply says --

24 COMMISSIONER AHEARNE: See, at the moment I
25 think what TVA has said is that the decision to build

1 plants is not reviewable by the state.

2 MR. MALSCH: Right.

3 COMMISSIONER AHEARNE: And what we are really
4 saying is that that is the fundamental question that we
5 are allowing states or other agencies to examine. And
6 so I don't understand why that phrase should even be in
7 there because it would at least carry the implication
8 that we are saying, "Yes, that is now reviewable."

9 So, that is new authority.

10 COMMISSIONER ASSELSTINE: Are those
11 determinations for TVA reviewable in the Federal courts?

12 MR. MALSCH: I don't know.

13 COMMISSIONER ASSELSTINE: That is the question.

14 COMMISSIONER ROBERTS: I was told not.

15 COMMISSIONER ASSELSTINE: They are not
16 reviewable in the Federal courts.

17 MR. MALSCH: Like decisions within the plant
18 would be reviewable from the sense of the obligation by
19 TVA to do a NEPA impact statement under some other
20 Federal law. I don't know if it is reviewable as a
21 matter of something internal to the TVA statute.

22 COMMISSIONER AHEARNE: My initial conclusion
23 is not to have the phrase in unless there is some little
24 bit more research that leads to the conclusion we are
25 not adding additional. It sounds like we are opening

1 something that is not open.

2 MR. TOURTELLOTTE: So, what do we do on that
3 page?

4 CHAIRMAN PALLADINO: Unfortunately, I did not
5 try to keep -- was that on page 8?

6 MR. MALSCH: Another option would be to simply
7 say, to have the present language, "Shall not be
8 subject, the Commission proceeding, shall not be the
9 subject of federal judicial review," and then provide,
10 however, "that nothing in the section shall affect any
11 existing provisions with regard to judicial review of
12 Federal agency action."

13 COMMISSIONER AHEARNE: That would be fine.

14 CHAIRMAN PALLADINO: That would be fine. You
15 got that?

16 MR. TOURTELLOTTE: No.

17 MR. MALSCH: I am not even sure I have it
18 myself.

19 (Laughter)

20 COMMISSIONER ASSELSTINE: Provide, however?

21 MR. TOURTELLOTTE: We originally had, "except
22 in the case of certification by Federal agencies."

23 CHAIRMAN PALLADINO: They are changing that
24 now.

25 MR. TOURTELLOTTE: And changing that to

1 something else. And what is this something else?

2 CHAIRMAN PALLADINO: He is trying to write it
3 and he is going to give it to you, going to give it to
4 us, all of it.

5 MR. MALSCH: I have something like this,
6 "except that nothing shall affect any provisions, any
7 existing provisions of law other than Section 189(e)
8 which may provide for Federal judicial review of Federal
9 agency action."

10 CHAIRMAN PALLADINO: It did not sound like the
11 first time.

12 COMMISSIONER AHEARNE: He has gotten a lot
13 more complicated.

14 CHAIRMAN PALLADINO: Are you going to work on
15 that?

16 MR. MALSCH: I think I have the idea.

17 MR. TOURTELLOTTE: I hope it does not grow
18 more complicated with more time.

19 (Laughter)

20 CHAIRMAN PALLADINO: It sounded good the way
21 you first said it, Marty.

22 MR. MALSCH: Maybe I thought about it too much.

23 CHAIRMAN PALLADINO: Something like, "Nothing
24 in this Act shall affect the existing --

25 MR. MALSCH: I think I just said, "Nothing in

1 the Act shall affect existing provisions for Federal
2 judicial review of Federal agency actions."

3 CHAIRMAN PALLADINO: Yes. And would that not
4 do it?

5 MR. MALSCH: I think it would. I added an
6 elaboration to make clear that existing law did not
7 include 189(e) because we have a sort of circular
8 operation. That is probably an unnecessary caution on
9 my part.

10 CHAIRMAN PALLADINO: Well, do you have that
11 written down so you can give it to Jim?

12 MR. MALSCH: Yes.

13 CHAIRMAN PALLADINO: Are we ready for the
14 section-by-section analysis?

15 COMMISSIONER AHEARNE: Let me just summarize
16 that. I would conclude that the changes that this bill
17 would make to what is available under existing law then
18 is that you can issue a construction permit without
19 limits on when it starts or finishes.

20 The construction permit hearing would not be
21 necessary if no interested person requested a hearing.
22 We could label a licensing document as a combined CP/OL
23 but it is just a label.

24 CHAIRMAN PALLADINO: What do you mean by that?

25 COMMISSIONER AHEARNE: Well, Marty's paper

1 says that what we could do under current law would -
2 probably rule changes - issue a document to the licensee
3 which would have the same practical effect as its
4 combined CP/OL, but we could not label it as CP/OL.
5 This law would enable us to put this label on it.

6 CHAIRMAN PALLADINO: I think there is a more
7 fundamental difference and that is that the law says
8 there shall be two steps, a CP and an OL.

9 MR. MALSCH: That is true.

10 CHAIRMAN PALLADINO: And it is more than just
11 a labeling. There shall be two steps. And this says we
12 are authorized to have one step. I think that is a
13 fundamental difference, labeling not being the major
14 point.

15 MR. MALSCH: Well, it may be the improper
16 terminology but as we have established in the bill, it
17 is still a two-step process. The second step is not
18 called an operating license, it is called a review prior
19 to commencing of operation.

20 CHAIRMAN PALLADINO: It is a multi-step
21 process. There are many things that have to be done.
22 It is a one-step process that says if there is something
23 you could not have treated before and did not, you can
24 have another hearing. That is all it says. It does not
25 make it a separate step. But it is not a new action, it

1 is not a new license. It is not a new piece of paper.

2 MR. MALSCH: I think --

3 COMMISSIONER GILINSKY: Well, there is a
4 Commission approval involved.

5 CHAIRMAN PALLADINO: Yes, Commission approval.

6 MR. MALSCH: Yes.

7 COMMISSIONER GILINSKY: So, it is a two-step
8 process.

9 MR. MALSCH: Yes. I think under the APA that
10 second step would be called under the APA a license,
11 even though it would not be a type of license that the
12 Department of Energy contemplates, like a construction
13 permit or a design permit. But it is a kind of approval.

14 I think if you have to put it into a category
15 of the Administrative Procedure Act you put it into a
16 license category.

17 CHAIRMAN PALLADINO: I don't understand, the
18 law says here you have to have two steps, and now it
19 says you may have one step, or you may have combined
20 CP/OL.

21 I think there is a fundamental change and I
22 don't think we have the authority under existing law.

23 COMMISSIONER ASSELSTINE: And there is no
24 approval, no formal licensing step that is required in
25 the absence of a request for a hearing that satisfies

1 those requirements. There is a determination that the
2 plant is ready to operate.

3 MR. MALSCH: I thought there was some kind of
4 determination called for.

5 COMMISSIONER ASSELSTINE: Yes, I think you are
6 right, there is.

7 COMMISSIONER GILINSKY: If it is not, in which
8 case it raises a lot of other questions.

9 COMMISSIONER AHEARNE: And then to go on, we
10 can delegate NEPA power and alternative source
11 determinations to other agencies that extends the Sholly
12 provisions to CP amendment, CP/OL, design approval and
13 site permits. It gives authority to issue site permits
14 to anyone that is, rather than just to an applicant to
15 construct a plant.

16 We can therefore issue site permits
17 unconnected to CP completion dates. We can waive and
18 allocate these and it puts the burden of proof on those
19 opposed to renewal.

20 MR. MALSCH: Right. That's right.

21 COMMISSIONER AHEARNE: Those are the
22 fundamental changes.

23 MR. MALSCH: That's right.

24 CHAIRMAN PALLADINO: There are a couple more,
25 though. I think that we have authority to bar

1 relitigation of issues that have been raised.

2 MR. MALSCH: I think it is possible we can do
3 that under existing law. What I have said here is that
4 it resolves -- it is not entirely clear but I think we
5 could probably --

6 COMMISSIONER AHEARNE: Marty's paper goes on
7 to point out that there are a number of areas which
8 would be made clear.

9 COMMISSIONER ASSELSTINE: Right.

10 CHAIRMAN PALLADINO: Well, that was the next
11 point was, it gives no credit for instances in which
12 NRC's current authority is ambiguous and that
13 administrative action runs the risk of judicial reversal
14 with its attendant costs.

15 COMMISSIONER AHEARNE: Yes. But to be fair to
16 Marty, what I had asked him was, give me a list of the
17 items permitted or required under the proposed bill
18 which could not be done --

19 COMMISSIONER ASSELSTINE: Yes, that is true.

20 COMMISSIONER AHEARNE: -- under the current
21 statutes.

22 COMMISSIONER ASSELSTINE: Yes.

23 COMMISSIONER AHEARNE: And his paper does
24 point out, here are these other items, that there could
25 be doubt about and argued.

1 COMMISSIONER ASSELSTINE: Yes.

2 COMMISSIONER AHEARNE: And if the bill were to
3 be accepted, then that would remove that cost argument.

4 COMMISSIONER ASSELSTINE: Yes, it is very
5 true, there really are two categories of items. One
6 where we all recognize that there is not the authority
7 now, and second, whether ambiguities or uncertainties
8 that are involved would be resolved.

9 COMMISSIONER AHEARNE: Yes.

10 CHAIRMAN PALLADINO: Also, it gives us
11 authority to consider costs. And I am not sure --

12 COMMISSIONER ASSELSTINE: Again, that is one
13 of the areas where there is some uncertainty.

14 CHAIRMAN PALLADINO: It gives us authority to
15 clear up uncertainties.

16 COMMISSIONER AHEARNE: Yes.

17 COMMISSIONER ASSELSTINE: That is true, yes.

18 MR. MALSCH: I have also appended two other
19 categories, new restrictions, things that we could do
20 now that we would not be able to do; and new
21 requirements, things that we are not required to do.

22 COMMISSIONER AHEARNE: Right.

23 MR. MALSCH: (Inaudible)

24 COMMISSIONER AHEARNE: Yes. My question was,
25 I just want to make sure that I understood the answer

1 because I am certain that that is going to be a question
2 we will be asked.

3 COMMISSIONER ASSELSTINE: That's right.

4 COMMISSIONER AHEARNE: And we ought to
5 understand it.

6 COMMISSIONER ASSELSTINE: Yes.

7 MR. MALSCH: The only other additional item is
8 the question about hearings, how you view the current
9 statute.

10 COMMISSIONER AHEARNE: But again, that is one
11 of these areas where it is unclear, and this would clear
12 up the ambiguities.

13 MR. MALSCH: People may differ as to whether --

14 COMMISSIONER ASSELSTINE: It is unclear, that
15 is true.

16 COMMISSIONER AHEARNE: That is characteristic
17 of anything that is unclear.

18 (Laughter)

19 CHAIRMAN PALLADINO: Incidentally, we should
20 not give the appearance that clearing things up is not a
21 desirable thing to do.

22 MR. MALSCH: Oh, no, in some areas it is
23 highly desirable. In many of the areas covered by this
24 bill there might be a substantial reluctance to proceed
25 in the absence of some firm clarification (Inaudible)

1 COMMISSIONER AHEARNE: That's right, yes.

2 CHAIRMAN PALLADINO: Okay. Now are we ready
3 for the section-by-section analysis? Do you want to go
4 by five pages again?

5 MR. TOURTELLOTTE: If we can. The first five
6 pages.

7 COMMISSIONER ASSELSTINE: There is one on page
8 2, the third line, just take the "s" off the end of
9 "completions."

10 I have one on page 5. The third line up from
11 the bottom, "Evidentiary showing as defined in Section
12 201 of the Act," rather than "this subsection."

13 COMMISSIONER AHEARNE: All right. My question
14 really relates to the explanation that is given here and
15 then it is picked up again in several other places. I
16 had a lot of problems with the explanation that is given.

17 CHAIRMAN PALLADINO: What pages are you on?

18 COMMISSIONER AHEARNE: This is now page 5 and
19 runs on to six and seven. And I guess basically I can't
20 accept this explanation.

21 The way I read this, it is expanded the
22 concept of a proceeding which we are talking about to
23 informal NRC staff reviews. It goes on to say that the
24 Commission and therefore the staff cannot initiate
25 efforts absent the substantial evidentiary showing which

1 includes that the information they can have accessible
2 to them is that which a court of the United States can
3 use in taking judicial notice of it.

4 I think that this is, the strictures that are
5 placed upon the staff or its ability to review issues as
6 described here, are so tight that it would be very, very
7 difficult for them to review new issues., And I for one
8 cannot accept that.

9 CHAIRMAN PALLADINO: What makes it difficult
10 for them to review new issues?

11 COMMISSIONER AHEARNE: Page 5 to 6 of the
12 section-by-section analysis.

13 It is expanding the concept of what is covered
14 to informal staff reviews. What the staff does whenever
15 it looks at new issues to start with is an informal
16 review. It restricts the initiation of efforts. It
17 says, "The Commission shall not initiate efforts to
18 consider modifications."

19 Initiating an effort to consider a
20 modification is the staff beginning to review a new
21 issue. And prior to the staff initiating this effort,
22 in other words, prior to them starting an informal staff
23 review, they have to have made the substantial
24 evidentiary showing. They have to start using the
25 standards of judicial notice.

1 I can't accept that.

2 MR. TOURTELLOTTE: I don't know that that is
3 accurate, is it?

4 COMMISSIONER AHEARNE: Well, it is what it
5 says.

6 MR. TOURTELLOTTE: Well, I mean, is it not
7 more accurate to say there that the Commission shall not
8 commence a proceeding?

9 COMMISSIONER AHEARNE: It doesn't say that.

10 MR. TOURTELLOTTE: I know it doesn't.

11 COMMISSIONER AHEARNE: It says the Commission
12 shall not initiate an effort.

13 MR. TOURTELLOTTE: Well, what I am suggesting
14 is perhaps the way to fix it is to take out the words
15 "not initiate efforts or," because I do not think that
16 is what is intended.

17 COMMISSIONER GILINSKY: You mean initiate
18 efforts or?

19 COMMISSIONER AHEARNE: Yes.

20 COMMISSIONER ASSELSTINE: Yes, that is right.
21 Shall not commence a proceeding.

22 MR. TOURTELLOTTE: I am sorry, "initiate
23 efforts or?"

24 COMMISSIONER AHEARNE: Now, you are
25 expanding. That same concept is embedded in three other

1 places. I guess I am more concerned at this moment by
2 how well embedded in the section-by-section analysis is
3 that concept because whoever wrote those words certainly
4 had in mind a much, much tighter constraint on the
5 staff than I had thought we had in mind when we were
6 discussing it at the table before.

7 I am not sure how pervasive that is in the
8 section-by-section analysis. But I know there are at
9 least two other places where that same --

10 COMMISSIONER ASSELSTINE: Yes, it is in three
11 places; that is right.

12 COMMISSIONER GILINSKY: Let me ask you, what
13 do you mean when you say a prior proceeding would
14 include any informal NRC staff review of an application
15 which has resulted in final determinations with respect
16 to that application?

17 MR. MALSCH: That would mean that a decision
18 made by the Commission, let's say, in an uncontested CP
19 case --

20 COMMISSIONER GILINSKY: on the basis of a
21 review?

22 MR. MALSCH: Yes, a decision, let's say, by
23 the Commission to grant a CP in an uncontested case
24 would be entitled to the same weight in terms of
25 preventing relitigation as would a decision made by a

1 licensing board in a contested proceeding.

2 COMMISSIONER AHEARNE: Why isn't it merely
3 restricted to uncontested -- frankly, the phrase
4 "informal staff review" has caused me to get a little
5 concerned. It seemed to be an odd way of saying what
6 you just said.

7 MR. MALSCH: I just thought of putting in here
8 exactly what I have just said.

9 COMMISSIONER AHEARNE: Yes.

10 COMMISSIONER ASSELSTINE: That was my
11 impression of what intended is something that
12 constituted a final determination where you did not
13 otherwise have a formal proceeding such as, for example,
14 in an uncontested CP proceeding.

15 That would be a proceeding, but under the
16 formulation of this bill you would not have a hearing or
17 anything, it would be that final staff review.

18 COMMISSIONER AHEARNE: Well, are you
19 essentially saying that this covers contested hearings,
20 uncontested issuances of certain categories and
21 rule-making?

22 COMMISSIONER ASSELSTINE: Let's see --

23 MR. MALSCH: It would cover design approval
24 rule-making.

25 COMMISSIONER ASSELSTINE: Yes, that's right.

1 It wouldn't cover other rule-makings.

2 MR. MALSCH: Well, other rule-makings would be
3 covered by our existing provision.

4 COMMISSIONER ASSELSTINE: That's right.

5 MR. MALSCH: So, you can leave the rule in, in
6 a licensing proceeding.

7 COMMISSIONER ASSELSTINE: That's right, yes.
8 And that would be it.

9 COMMISSIONER AHEARNE: Well, wait. Remember,
10 this goes far beyond what you cannot challenge in a
11 proceeding. Really, this would say that the staff cannot
12 --

13 MR. MALSCH: That's right.

14 COMMISSIONER AHEARNE: So, I guess I would
15 like to see more clearly spelled out what it is, what
16 kinds of determinations are now those that the staff has
17 to make this substantial evidentiary showing before they
18 are allowed to (Inaudible)

19 MR. MALSCH: Now, basically it would appear
20 from prior discussions and soundings as though the staff
21 could initiate actions to gather information.

22 COMMISSIONER AHEARNE: That is what I thought.

23 COMMISSIONER ASSELSTINE: I would agree with
24 that.

25 COMMISSIONER AHEARNE: That is not what this

1 says.

2 COMMISSIONER ASSELSTINE: Yes.

3 MR. MALSCH: It the licensee involved insisted
4 on a formal order, then at that stage the staff would
5 have to meet the evidentiary burden.

6 COMMISSIONER AHEARNE: Not if the licensee
7 said, "Hey, do you know that your staff is looking at
8 this issue?" That is not what --

9 MR. MALSCH: No, right.

10 COMMISSIONER AHEARNE: It is the staff wanted
11 to have an action taken.

12 MR. MALSCH: Yes.

13 COMMISSIONER AHEARNE: That is if the licensee
14 balks then they have to make a -- I would agree with
15 that part.

16 CHAIRMAN PALLADINO: I'm sorry, go ahead.

17 COMMISSIONER GILINSKY: Well, if a proceeding
18 includes a staff review, then it does not help to remove
19 the words "initiate efforts" in the first sentence.

20 COMMISSIONER ASSELSTINE: Yes. That is right,
21 you have to spell out what is included.

22 COMMISSIONER GILINSKY: Because commencing a
23 proceeding could mean initiating a staff review.

24 COMMISSIONER ASSELSTINE: That's right., You
25 need both things.

1 COMMISSIONER AHEARNE: As I prefaced this
2 remark, I found I can't accept this. And I feel it has
3 to be rewritten. And rather than just retooling it
4 here, I would just like to see a rewrite that focuses on
5 what I had thought we had discussed before.

6 COMMISSIONER ASSELSTINE: Yes.

7 CHAIRMAN PALLADINO: And what is that?

8 COMMISSIONER AHEARNE: That was that the staff
9 can look at issues and review issues, but at the stage
10 where they wish to have an action taken with respect to
11 licensees, that is when they have to be able to make
12 this showing.

13 COMMISSIONER ASSELSTINE: That's right.

14 CHAIRMAN PALLADINO: As a matter of fact, that
15 first step is necessary so they can offer the
16 evidentiary information.

17 COMMISSIONER ASSELSTINE: That's right.

18 COMMISSIONER AHEARNE: Well, I think so.

19 CHAIRMAN PALLADINO: Yes.

20 COMMISSIONER ASSELSTINE: This was in the last
21 draft, by the way, of the section by section.

22 COMMISSIONER AHEARNE: We did not discuss the
23 section by section.

24 COMMISSIONER ASSELSTINE: Yes, that is true.
25 But it is the one that was in the draft. Yes, that is

1 true.

2 CHAIRMAN PALLADINO: How far does this go, all
3 the way to --

4 COMMISSIONER AHEARNE: Well, that goes up to --

5 CHAIRMAN PALLADINO: Page 7?

6 COMMISSIONER AHEARNE: -- page 7, and the same
7 concept comes up, I guess Jim said, two other places.

8 COMMISSIONER ASSELSTINE: Two other places,
9 design approvals and site permits, yes.

10 MR. TOURTELLOTTE: So, we are going to get a
11 rewrite of that?

12 CHAIRMAN PALLADINO: Well, now let's see who
13 is going to do the rewriting, Marty?

14 MR. MALSCH: I will volunteer for that.

15 CHAIRMAN PALLADINO: Marty, in the middle of
16 page 6 I have a suggested insert, and I think it will
17 still stand. This is after the line that says,
18 "Reasonable inferences that can be drawn from that
19 evidence." The suggested insert was, "However, any
20 party can present and the Commission can consider
21 argument on the validity of sufficiency of that
22 evidence."

23 This would enable consideration of arguments
24 pro or con on the validity of sufficiency.

25 COMMISSIONER ASSELSTINE: I think you are

1 almost getting to the point where you beginning, then,
2 to have a hearing on whether to have a hearing, a little
3 bit.

4 What you are going to do then is say, "Well,
5 anyone else who is interested at that point can submit
6 whatever arguments they want to make." Then you are
7 almost into a two-step process rather than just focusing
8 on what has been submitted by the proponent.

9 CHAIRMAN PALLADINO: Well, you may get some
10 benefit from it.

11 MR. MALSCH: There is no problem with the word
12 "sufficiency," it is the word "validity or" that raises
13 that question.

14 CHAIRMAN PALLADINO: What?

15 MR. MALSCH: I say there is no problem in that
16 regard with the word "sufficiency," you can argue about
17 the sufficiency of the evidence. I guess the question
18 is raised about the word "validity."

19 COMMISSIONER ASSELSTINE: That's right. I
20 guess I would accept it with the deletion of "validity."

21 CHAIRMAN PALLADINO: All right, on the
22 sufficiency.

23 COMMISSIONER ASSELSTINE: Yes.

24 CHAIRMAN PALLADINO: Well, you are going to
25 rewrite that whole section.

1 COMMISSIONER AHEARNE: I can accept the
2 "sufficiency."

3 CHAIRMAN PALLADINO: All right. Let's see,
4 where are we now?

5 MR. TOURTELLOTTE: We are on page 6, page 7
6 through 10.

7 COMMISSIONER AHEARNE: There is a question on
8 page 9, the discussion of 189(a)(1)(D). Down about the
9 middle of the page it starts, "Present practice."

10 I am a little bothered by describing that as
11 presesnt practice. It might be true but if you recall,
12 recently in the San Onofre case the Licensing Board
13 clearly took a different position. The Appeal Board
14 overruled the Licensing Board and the Commission in
15 addressing the Appeal Board decision very explicitly
16 said, "We are not at the moment taking a position on
17 whether the Appeal Board was right or wrong on that."

18 So, I would, I guess, argue that the present
19 Commission position is, this is no question because we
20 explicitly did not endorse the Appeal Board's statement
21 here.

22 COMMISSIONER ASSELSTINE: How about "present
23 practice may not preclude?"

24 COMMISSIONER AHEARNE: No, I would say
25 "present practice may preclude." The Licensing Board

1 precluded --

2 MR. MALSCH: Well, there is a large body of
3 practice which, you know, says something. I think it
4 says this.

5 COMMISSIONER ASSELSTINE: Yes.

6 MR. MALSCH: In fact I am very sure it says
7 this.

8 COMMISSIONER AHEARNE: Yes, but Marty, the
9 Licensing Board says, "No, that is not correct."

10 MR. MALSCH: I agree. I am saying there is a
11 large body of Commission and Appeal Board practice which
12 I think says this.

13 COMMISSIONER AHEARNE: The last time the
14 Commission spoke to this issue it says, "We are not
15 saying whether this is right or wrong," and I think that
16 is significant because if we had agreed with the Appeal
17 Board we would have said, if we were positive we agreed
18 with the Appeal Board we would have said we agreed with
19 them. It was the opposite.

20 MR. MALSCH: Yes. Normally speaking, strictly
21 speaking to undue past practice, you have to say not
22 that the question is open (Inaudible)

23 I agree there is some uncertainty.

24 COMMISSIONER AHEARNE: But you see, I am not
25 sure why you put this in. We are adding this additional

1 statement into othis section by section as an
2 explanatory.

3 MR. MALSCH: Right.

4 COMMISSIONER AHEARNE: Well, I think that if
5 you want to explain, then you should go on to say, "In a
6 recent case the Licensing Board disagreed with this.
7 The Appeal Board said they disagree with the Licensing
8 Board and the Commission said that we are not deciding
9 yet." Which of those is right if you are going to add
10 this explanation.

11 MR. MALSCH: Maybe we should simply say that
12 in a recent case current practice will be re-examined or
13 is being re-examined, or has been questioned, or
14 something like that.

15 CHAIRMAN PALLADINO: Why do we need this in,
16 Marty?

17 MR. MALSCH: Well, actually I was asked to put
18 it i.

19 (Laughter)

20 MR. MALSCH: It is to explain how it is that
21 the bill differs from what we are doing now.

22 COMMISSIONER ASSELSTINE: That's right.

23 MR. MALSCH: That is why I added it in. It is
24 not necessary in the section analysis.

25 COMMISSIONER ASSELSTINE: But it really is

1 clear that there is a Commission position on this issue
2 in terms of the Commission actually having decided cases
3 on this issue that is consistent with this practice.

4 COMMISSIONER AHEARNE: Yes, but it is also
5 clear that at the most recent time, when the Commission
6 addressed this question, we chose not to endorse that
7 position.

8 COMMISSIONER ASSELSTINE: But what Marty is
9 saying is, from the standpoint of Commission precedent
10 that is not enough to overturn the former Commission
11 position on it. If we are going to overturn it, that
12 will have to await some action, affirmative action, by
13 the Commission to say that past practice was wrong.

14 COMMISSIONER AHEARNE: Absolutely.
15 Absolutely. But I think it is misleading to put in here
16 what I think is now --

17 COMMISSIONER ASSELSTINE: Yes, this alone.
18 Okay.

19 COMMISSIONER AHEARNE: You see, I believe the
20 Commission is questioning whether that is --

21 MR. MALSCH: I think we should add in here at
22 least that much, that current practice has recently been
23 called into question and may be re-examined in a future
24 case, or something like that.

25 COMMISSIONER AHEARNE: And you might explain

1 what that is that has been called into question.

2 COMMISSIONER ASSELSTINE: Yes.

3 CHAIRMAN PALLADINO: Are you going to expand
4 that?

5 MR. MALSCH: Yes, I will add some explanation
6 that is a little more up to date, I guess.

7 CHAIRMAN PALLADINO: Okay, we are still going
8 up to page 10? At the bottom of the page on page 10, I
9 believe, the last line I think you need the word "by"
10 between "enforcement action" and "members."

11 "Request for enforcement action by members of
12 the public."

13 MR. TOURTELLOTTE: Ten to fifteen?

14 CHAIRMAN PALLADINO: On page 11, in the bottom
15 full paragraph, the fifth line down the suggestion that
16 the word "proceedings" be put after the word
17 "adjudicatory" just before the parentheses, so that,
18 "there have been entirely on the record adjudicatory
19 proceedings."

20 COMMISSIONER ASSELSTINE: Yes.

21 CHAIRMAN PALLADINO: John, you are going to
22 pick up along the way other places?

23 COMMISSIONER AHEARNE: Well, I was going to
24 leave that up to Marty.

25 CHAIRMAN PALLADINO: Could we identify them

1 even though we don't have to dwell on them, as we go?

2 COMMISSIONER ASSELSTINE: There is one on page
3 12 in the middle paragraph, the fourth line just add
4 "formal" before "adjudication."

5 CHAIRMAN PALLADINO: Before what?

6 COMMISSIONER ASSELSTINE: "Formal" before
7 "adjudication", "which must be resolved as formal
8 adjudication."

9 MR. TOURTELLOTTE: Are we at 15 now? Try 16
10 through 20.

11 COMMISSIONER ASSELSTINE: I have one at page
12 19, in the large middle paragraph, the fourth line up
13 from the bottom, "Showing is made pursuant to Subsection
14 (f)" rather than (h).

15 CHAIRMAN PALLADINO: Which paragraph?

16 COMMISSIONER ASSELSTINE: The middle paragraph.

17 CHAIRMAN PALLADINO: I got it. What was your
18 comment?

19 COMMISSIONER ASSELSTINE: Just change
20 Subsection (h) to Subsection (f).

21 MR. MALSCH: I had a small change on page 17,
22 and it is the reference on the bottom of the middle
23 paragraph, the two sentences beginning, "Any licensing
24 fees resulting from the granting from..." to move that
25 to page 20 because when we wrote this, this was part of

1 Subsection (b). It is now a different subsection.

2 So, I would simply move the comment to a later
3 part of the section analysis.

4 COMMISSIONER AHEARNE: I am sorry, Marty,
5 which?

6 MR. MALSCH: It is the last two sentences of
7 the full paragraph on page 17, I would simply move that
8 to page 20 at the end of the first full paragraph.

9 COMMISSIONER AHEARNE: Before the subsection
10 d(2)?

11 MR. MALSCH: No, after that. It would be
12 after those two sentences.

13 And I would make the same change in the design
14 approval section analysis, the same language, the same
15 kind of movement of the two sentences.

16 COMMISSIONER AHEARNE: Joe, you asked me to
17 identify the next time that comes up. It is on page 20,
18 the subsection (f).

19 CHAIRMAN PALLADINO: I have one just above
20 that on page 20. The paragraph that starts just about
21 the middle of the page, the Subsection (a) assures that
22 the site approved under this section may be used for an
23 alternative type of energy facility or for any other
24 purpose. However, the validity may be affected.

25 Somehow it seems to me the Commission needs to

1 be notified that they should change. I was going to
2 suggest that the first sentence as now written end with
3 a semicolon and then add, "the Commission is to be
4 notified by the licensee."

5 COMMISSIONER AHEARNE: Do we have that
6 requirement in there?

7 COMMISSIONER ASSELSTINE: It is not in the
8 bill.

9 CHAIRMAN PALLADINO: Not in the bill.

10 MR. MALSCH: We have existing regulations that
11 would authorize us to impose that requirement. We could
12 say the Commission intends to -

13 COMMISSIONER AHEARNE: Yes.

14 CHAIRMAN PALLADINO: Do what?

15 MR. MALSCH: "The Commission intends in
16 connection with promulgating regulations to require
17 that."

18 CHAIRMAN PALLADINO: Yes because if we have a
19 license outstanding and they have decided to use the
20 site for some other use, we could be left in the lurch.
21 We should be notified.

22 COMMISSIONER ASSELSTINE: Yes.

23 MR. TOURTELLOTTE: We are on 20 to 25.
24 Twenty-six to thirty?

25 COMMISSIONER AHEARNE: Page 26 is the

1 Subsection (d) of 194, the same.

2 MR. MALSCH: I just picked up on page 22.

3 CHAIRMAN PALLADINO: Page 22?

4 MR. MALSCH: Yes, the middle paragraph. I
5 think we agreed that we should not say "could be used at
6 most sites," that we wanted to say "could be used at
7 more than one site."

8 CHAIRMAN PALLADINO: Yes.

9 COMMISSIONER AHEARNE: Yes.

10 CHAIRMAN PALLADINO: I thought we picked all
11 those up.

12 MR. MALSCH: And then on page 23 on the first
13 full paragraph, line 6, we are talking about litigating
14 the so-called "match-up" issues. And I think that calls
15 into play the provision on 189. So, it should read not
16 "issues previously examined" but it should read, "issues
17 which were or could have been decided would not trigger
18 new opportunities."

19 COMMISSIONER ASSELSTINE: Page 23?

20 MR. MALSCH: Page 23, yes.

21 MR. TOURTELLOTTE: Twenty-six to thirty?

22 CHAIRMAN PALLADINO: On 28 there is a
23 suggestion by Bill Reamer that on the second line on the
24 top of page 28 after the word "variance" add, "submitted
25 in connection with an application for a license."

1 So that it reads, "Except that any request for
2 a variance submitted in connection with an application
3 for a license will be considered as part of the
4 proceeding."

5 Now, this makes it clear that a variance can
6 be sought after a license is issued.

7 COMMISSIONER AHEARNE: When you say "submitted
8 with," you mean during the time of the proceeding for
9 the license application; don't you?

10 CHAIRMAN PALLADINO: Submitted in connection
11 with an application for a license.

12 COMMISSIONER AHEARNE: Yes.

13 MR. MALSCH: We will need to conform the
14 bottom paragraph to the changes we made in the bill
15 regarding regulations, implement those listed sections.

16 CHAIRMAN PALLADINO: There are a couple of
17 typos also on page 28.

18 On page 29, the top small paragraph, Bill
19 Reamer suggests adding at the end of the pararaph, "once
20 these regulations are promulgated."

21 COMMISSIONER AHEARNE: Yes, right. That is
22 revised to pick up the point --

23 MR. MALSCH: I think we pick up most of the
24 points we agreed on earlier. I will have to look at the
25 whole thing and make sure it is consistent.

1 COMMISSIONER AHEARNE: Right.

2 MR. MALSCH: I think it probably is with that
3 change, but we ought to make sure.

4 CHAIRMAN PALLADINO: In the next paragraph, in
5 the third line you are talking about impact statement
6 prepared for any site approval. I think the word "full"
7 site approval is needed.

8 COMMISSIONER ASSELSTINE: Yes.

9 MR. TOURTELLOTTE: Now to the letter.

10 CHAIRMAN PALLADINO: This is letter
11 transmittal to?

12 MR. TOURTELLOTTE: Bush.

13 CHAIRMAN PALLADINO: Bush. I had one comment
14 on the letter on page 1 of the letter, and I am using
15 the one to Bush.

16 MR. TOURTELLOTTE: Incidentally, an identical
17 letter would be sent to the Speaker as well.

18 CHAIRMAN PALLADINO: In the second paragraph,
19 about two-thirds of the way down, there is a sentence
20 that says, "This type of review process is no longer
21 needed," which I would like to suggest we cross out, and
22 I will tell you why.

23 Just before that it says, "Accordingly, the
24 process was structured to allow licensing decisions to
25 be made while design work was still in progress and to

1 focus on case-specific reviews of individual plant-site
2 considerations. This type of review process is no
3 longer needed."

4 I think it still is needed. If you cross it
5 out, however, you don't lose anything because you go
6 along, "With the maturation of the industry, it is not
7 possible to describe."

8 COMMISSIONER ASSELSTINE: Yes.

9 CHAIRMAN PALLADINO: And I think if you cross
10 it out we improve the letter.

11 COMMISSIONER ASSELSTINE: I agree.

12 CHAIRMAN PALLADINO: That is the only comment
13 I had on othe letter.

14 MR. MALSCH: I had two changes. One was on
15 page 2, to add at the top of the page to have the
16 sentence which begins, "At the same time, since..." have
17 that run before "accordingly."

18 CHAIRMAN PALLADINO: You want to what?

19 MR. MALSCH: Have the sentence which begins on
20 the top of page 2, "At the same time, since the early
21 '50s and '60s," have that sentence go before the above
22 sentence rather than after it.

23 COMMISSIONER ASSELSTINE: Yes.

24 MR. MALSCH: I think it reads better that way.

25 COMMISSIONER ASSELSTINE: Yes, I agree.

1 MR. MALSCH: And then I had a question whether
2 we would want to -- we have outstanding requests for
3 comment on the DOE bill. I wonder whether you wanted in
4 connection with the letter to OMB on this bill include
5 comments on the DOE bill, or whether you wish to treat
6 that as a separate matter.

7 CHAIRMAN PALLADINO: Say this again?

8 COMMISSIONER AHEARNE: I would treat it as a
9 separate matter.

10 COMMISSIONER ASSELSTINE: Yes, I would too.

11 COMMISSIONER AHEARNE: It is going to take us
12 some time, I would imagine, to develop comments on the
13 DOE bill.

14 COMMISSIONER ASSELSTINE: Yes.

15 CHAIRMAN PALLADINO: What was your question?

16 MR. MALSCH: We also have in this general
17 package an OMB transmittal letter saying, "Here is our
18 bill."

19 CHAIRMAN PALLADINO: I would like to make that
20 just a short one and say, "Here is our bill."

21 MR. MALSCH: Okay.

22 COMMISSIONER ASSELSTINE: Yes, I agree.

23 CHAIRMAN PALLADINO: And say we sent it on to
24 Congress and want to make sure you have a copy.

25 MR. TOURTELLOTTE: If you are through with the

1 Bush letter you might want to turn your attention to the
2 OMB letter.

3 CHAIRMAN PALLADINO: All right, that is at the
4 back.

5 MR. TOURTELLOTTE: At the very back, yes.

6 CHAIRMAN PALLADINO: I think it is going to
7 take some work. Is this the one to Khedouri?

8 MR. TOURTELLOTTE: Yes.

9 I could say the description that is given of
10 the changes is intended to be very broad so that we do
11 not have to get into the specifics of the bill. And the
12 close simply reflects that I understand the Commission
13 agreed upon before that this is being transmitted
14 simultaneously to Congress and OMB.

15 CHAIRMAN PALLADINO: Okay, let me see where we
16 stand. It is my impression - if I am wrong I ought to
17 be corrected - it is my impression that we have pretty
18 good agreement on the bill.

19 COMMISSIONER ASSELSTINE: Yes.

20 CHAIRMAN PALLADINO: And we have pretty good
21 agreement on the letter of transmittal. We do not seem
22 to have -- we are not ready to vote on the
23 section-by-section analysis.

24 COMMISSIONER ASSELSTINE: Right.

25 CHAIRMAN PALLADINO: Is it possible to send

1 forward the bill and say we still have some work to do
2 on the section-by-section analysis and that will follow?

3 MR. TOURTELLOTTE: I don't think that is a
4 very good --

5 CHAIRMAN PALLADINO: What?

6 MR. TOURTELLOTTE: That would not be a good
7 way to approach the problem.

8 CHAIRMAN PALLADINO: How would you do it?

9 MR. TOURTELLOTTE: Because it is all part of
10 an integrated package and I don't think you can break it
11 out that way. You can probably break it out for your
12 purposes at this time to give a degree of finality to
13 the bill and say, as suggested today with today's
14 suggested changes, that you agree that that bill should
15 be sent to the hill, and agree that the letter as
16 drafted or with those changes should be sent as letters
17 of transmittal.

18 And then perhaps say for your vote on the
19 section by section for some special meeting or notation.

20 CHAIRMAN PALLADINO: Well, can we get a little
21 feel between you and Marty? When might we have a
22 revised section-by-section analysis?

23 MR. MALSCH: Well, I think we will have a
24 revised section analysis in a couple of days.

25 CHAIRMAN PALLADINO: Well, let me ask the

1 Commissioners, would they be willing to treat it by
2 notation vote unless they find such major questions that
3 they feel a meeting is needed?

4 COMMISSIONER AHEARNE: Unless that section
5 comes back again not close to where I thought we were,
6 sure.

7 CHAIRMAN PALLADINO: Well, let's see, is the
8 Commission willing to vote on the question of approving
9 the bill as now modified, based on the comments? As
10 modified based on the comments we received today. And
11 is the Commission prepared to approve also the proposed
12 letters of transmittal with the understanding they would
13 not be transmitted until we have voted on the
14 section-by-section analysis?

15 Can I have a vote?

16 COMMISSIONER ASSELSTINE: Yes.

17 COMMISSIONER AHEARNE: With the assumption
18 that the changes that we talked about today in the bill
19 are made.

20 COMMISSIONER ASSELSTINE: Are made, that's
21 right.

22 CHAIRMAN PALLADINO: Are what?

23 COMMISSIONER AHEARNE: Are made.

24 CHAIRMAN PALLADINO: Are made, yes.

25 COMMISSIONER AHEARNE: So we get at least a

1 chance to look at the bill.

2 Yes, I will be in favor of that.

3 CHAIRMAN PALLADINO: All those in favor
4 indicate by saying aye.

5 Aye.

6 COMMISSIONER ASSELSTINE: Aye.

7 COMMISSIONER AHEARNE: Aye.

8 COMMISSIONER ROBERTS: Aye.

9 CHAIRMAN PALLADINO: Opposed?

10 COMMISSIONER GILINSKY: Aye.

11 CHAIRMAN PALLADINO: You will go ahead and
12 prepare the new section-by-section analysis and we will
13 set that up for notation vote. And if any Commissioner
14 feels that there is an item, that there is a part of
15 that that they feel needs discussion, then we would hold
16 a meeting.

17 Now, can I also ask about additional remarks
18 that any Commissioners had planned to have? I do not
19 plan to have any.

20 COMMISSIONER AHEARNE: Nor do I.

21 COMMISSIONER ROBERTS: I will.

22 CHAIRMAN PALLADINO: You will?

23 COMMISSIONER GILINSKY: What is the sense in
24 your remarks?

25 (Laughter)

1 CHAIRMAN PALLADINO: Well, the reason for
2 bringing it up is so that we can try to get them
3 prepared while we are getting this redraft and circulate
4 them among the Commissioners. I was just trying to get
5 the sense of how many people will have remarks.

6 COMMISSIONER AHEARNE: Or when.

7 CHAIRMAN PALLADINO: Well, I was hoping that
8 they could have them by Monday, or even Friday.

9 (Laughter)

10 COMMISSIONER GILINSKY: Let's see, when are
11 you planning to send this up now?

12 CHAIRMAN PALLADINO: We would not send it up
13 until we get Commission concurrence on the
14 section-by-section analysis.

15 COMMISSIONER ASSELSTINE: I think it could be
16 early next week.

17 CHAIRMAN PALLADINO: And I expect that will be
18 sometime early next week.

19 COMMISSIONER ASSELSTINE: Yes.

20 COMMISSIONER ASSELSTINE: And what about
21 Commission views?

22 CHAIRMAN PALLADINO: Well, I am suggesting
23 that if you have Commissioner additional views that they
24 be prepared by Friday of this week and submitted to the
25 other Commissioners to see if they stimulate any other

1 remarks.

2 COMMISSIONER GILINSKY: Fair enough.

3 CHAIRMAN PALLADINO: You expect you might have
4 some.

5 COMMISSIONER GILINSKY: I don't at the moment.

6 COMMISSIONER ROBERTS: I might stimulate you,
7 Victor.

8 COMMISSIONER GILINSKY: Tom might stimulate me
9 to have some comments.

10 (Laughter)

11 CHAIRMAN PALLADINO: Jim, do you plan to have
12 any?

13 COMMISSIONER ASSELSTINE: I don't think so.

14 MR. TOURTELLOTTE: For informational purposes
15 I will circulate a corrected and marked-up copy of the
16 draft bill this afternoon.

17 COMMISSIONER GILINSKY: Incidentally, by way
18 of explanation of my vote, it is simply that I don't see
19 the need for legislation at this point.

20 CHAIRMAN PALLADINO: Well, I was hoping you
21 would vote for it because you were interested in
22 standardization and there is a feature of
23 standardization in there that I think can be quite
24 helpful.

25 COMMISSIONER GILINSKY: Well, some parts of it

1 I think are very useful. Others, I am less enthusiastic
2 about.

3 CHAIRMAN PALLADINO: Well, if you want to
4 write in your additional remarks how good standardizatin
5 is --

6 (Laughter)

7 CHAIRMAN PALLADINO: Excuse me. Any others
8 commewnts?

9 MR. TOURTELLOTTE: I think that's it for the
10 legislation.

11 CHAIRMAN PALLADINO: Well, we thank you very
12 much, Jim and Marty, for bringing us to this point. We
13 will look forward to the new section-by-section analysis.

14 Anything more by the Commissioners? We stand
15 adjourned.

16 (Whereupon, at 11:55 a.m. the meeting of the
17 Commission was adjourned.)

18

19

20

21

22

23

24

25

NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

COMMISSION MEETING

in the matter of: PUBLIC MEETING- Discussion/Possible Vote on Regulatory Reform Task Force - Legislative Proposal

Date of Proceeding: February 9, 1983

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)