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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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BRIEFING ON NUCLEAR WASTE MANAGEMENT ACT

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PUBLIC MEETING

- - -

Nuclear Regulatory Commission
11th Floor Conference Room
1717 "H" Street, N.W.
Washington, D. C.

Friday, March 18, 1983

The Commission convened in open session, pursuant to notice, at 9:35 o'clock a.m., NUNZIO PALLADINO, Chairman of the Commission, presiding.

COMMISSIONERS PRESENT:

NUNZIO PALLADINO, Chairman of the Commission
JOHN F. AHEARNE, Member of the Commission
THOMAS ROBERTS, Member of the Commission
JAMES ASSELSTINE, Member of the Commission

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE

W. DIRCKS
S. CHILK
H. PLAINE
S. TRUBATCH
J. DAVIS
R. BROWNING
B. OLMSTEAD
M. WILLIAMS

AUDIENCE SPEAKERS:

M. BELL
C. GOODWIN

DISCLAIMER

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P R O C E E D I N G S

1
2 CHAIRMAN PALLADINO: Good morning, ladies and
3 gentlemen. The Commission is meeting this morning with the
4 staff to discuss certain aspects of the Nuclear Waste Policy
5 Act which was signed into law last January -- January of this
6 year.

7 The purpose of today's meeting is to focus on major
8 elements of the Act, in particular, those requiring near term
9 NRC actions including changes to our regulations. I understand
10 that during the discussion, there will be delineation of what
11 actions are required of the Commission, which actions the
12 Commission would want to take and which are staff action items.

13 I believe we must come away with a clearer understand-
14 ing of what near term actions the Commission has to take and
15 when our decisions are needed. I also hope that we can handle
16 as many as possible by negative consent or by notation so that
17 scheduling of Commission meetings does not become a source of
18 delay.

19 I also note that Commissioner Ahearne has raised some
20 questions that I hope the staff is prepared to answer. I am
21 sure there are other questions. I am particularly interested
22 in what is the meaning of the June 30, 1983 date whereby
23 contracts are required between the utilities and DOE and what
24 the meaning is if they are missed. Maybe that is enough.

25 Let me see if any of my fellow Commissioners have any

1 comments?

2 (No response.)

3 CHAIRMAN PALLADINO: All right. I will turn the
4 meeting over to Mr. Davis.

5 MR. DAVIS: As you know, Mr. Chairman, we have looked
6 forward for some time to this Act. Now that it is upon us, we
7 have had an extremely busy time. The Act is very complex. It
8 covers a very wide, broad range of waste management areas.

9 The way the staff has been handling this is that
10 basically the areas of interest within the Act fall under two
11 of the offices, NRR for those things that relate to reactors
12 and NMSS for those things that relate to fuel storage and waste
13 disposal.

14 Of course, we are getting our customary support from
15 ELD, State Programs, International Programs and Research.

16 What we intend today as you have said in your
17 opening remarks is to focus in on the near term actions and
18 particularly to discern from the Commissioners what they would
19 like to see from the staff and what involvement the Commissioners
20 would like to have with actions that are underway.

21 Now we have activities, quite naturally, under way.
22 Some of these are actions which are required by this Act and,
23 of course, we do have the continuing activities which were
24 already under way which this Act basically modified to a fair
25 level. The Waste Policy Act did shift and modify schedules.

1 It did shift and modify the program.

2 We have had a very active program of interfacing with
3 DOE to try to sort out what these shifts are. What we would
4 like to do today--and the principal speakers will be Mark
5 Williams from NRR and Bob Browning from NMSS and Bill Olmstead
6 will supply us with our legal interpretations --we would like
7 to walk through the slides which we have and point out those
8 near term actions which we define as roughly within an 18-month
9 envelope, and then discern from you how you would like to
10 interface with these actions.

11 With that, I would like to turn it over --

12 COMMISSIONER AHEARNE: John, in that process will you
13 point out those areas where currently you are still, you,
14 or Bob or Bill, struggling with trying to figure out what is
15 meant or what ought to be done and where are the ambiguities.

16 MR. DAVIS: I am sure that will come up, Commissioner
17 Ahearne.

18 COMMISSIONER AHEARNE: I would like to insure that it
19 does.

20 MR. DAVIS: I am sure that you will. We do intend to
21 point out those areas where things are not quite certain. But
22 I will say this again that we have been on a very accelerated
23 program in trying to one, sort out what this Act does to us,
24 what it does to our interface with DOE and at the same time
25 work with DOE in their new scheduling which, of course, our

1 scheduling is highly dependent on their scheduling. It has been
2 a very busy time, but we will respond insofar as we are capable
3 at this time and, of course, be back whenever you would like
4 us to proceed with this.

5 CHAIRMAN PALLADINO: When you speak of an accelerated
6 schedule, you mean beyond what the bill calls for?

7 MR. DAVIS: In order to meet some of the dates in
8 the bill, DOE has looked at the date of delivery and then they
9 have worked back from that date of delivery to say what must we
10 do to deliver on that date. It is those early points in there
11 which have caused us and them to really have to relook at that
12 schedule.

13 COMMISSIONER AHEARNE: I thought they were also
14 accelerating more than that, getting the guidelines out and
15 getting started.

16 MR. DAVIS: They are, because those things are necessary
17 to meet those delivery dates. They have gone through and are
18 still going through sorting out these are what we must deliver
19 on such and such a date, what are all the actions necessary to
20 give that delivery.

21 I guess we are ready.

22 MR. DIRCKS: More than ready.

23 MR. DAVIS: I was just ready to turn it over to Mark
24 to start on NRR.

25 MR. WILLIAMS: Good morning. There are about five

1 actions in the Act which fall within NRR's program area. These
2 are Section 302 which discusses the advance contracting
3 requirement for the nuclear waste fund, Section 135 which
4 discusses the interim storage of spent fuel regarding the
5 Commission's determination that a person qualifies for interim
6 storage, Section 134 which is the hybrid hearing process for
7 expansions for spent fuel facilities and Section 132 is a general
8 directive to DOE and the Commission concerning their roles
9 in spent fuel storage capability and the training authorization
10 for the NRC is in the bill in Section 306.

11 Since we thought that a lot of interest might be in
12 Section 302(b) which is the advance contracting requirement, I
13 thought we would start with that. The Act generally requires
14 that the issuance of a renewal of an operating license be
15 contingent on either the existence of the contract with the
16 Department of Energy concerning high level waste disposal or
17 good faith negotiations between the Secretary of Energy and
18 the applicant.

19 COMMISSIONER AHEARNE: Mark, are you going to break
20 this down carefully between those plants that already have
21 licenses, research reactors that come up for timely renewal,
22 amendments and then new license applicants?

23 MR. WILLIAMS: We could do it that way. I had it
24 broken down between OL's and OR's or new licenses and existing
25 licenses.

1 COMMISSIONER AHEARNE: You could then expand on those
2 other things.

3 MR. WILLIAMS: We can expand as we go along.

4 CHAIRMAN PALLADINO: You say quite explicitly here
5 existing licenses are required by Section 302(b)(2) to have a
6 contract with DOE by June 30, 1983. It doesn't say anything
7 about good faith there.

8 MR. WILLIAMS: That is correct.

9 CHAIRMAN PALLADINO: So they must have agreements.

10 MR. WILLIAMS: That is our interpretation.

11 COMMISSIONER AHEARNE: And that is what we have told
12 all of our licensees in this letter that we sent out, that NRR
13 sent out in February.

14 MR. WILLIAMS: Yes. We issued a generic letter, 83-07,
15 in which this was discussed.

16 CHAIRMAN PALLADINO: The reason I bring that up is
17 you just made a statement that included the operating licenses
18 with a good faith effort. This says clearly that you have to
19 have a contract with DOE by the utilities. Does the good faith
20 effort apply there?

21 MR. WILLIAMS: For the June 30 deadline, it is our
22 interpretation that the good faith effort does not apply.
23 For the issuance of a renewal, it is our interpretation that it
24 does.

25 COMMISSIONER ASSELSTINE: What we are really talking

1 about, aren't we, is the consequences that flow from not having
2 a contract by June 30, 1983?

3 CHAIRMAN PALLADINO: Yes.

4 COMMISSIONER AHEARNE: I think, first, they will have
5 understand what does and does not apply.

6 COMMISSIONER ASSELSTINE: That's right.

7 COMMISSIONER AHEARNE: What is the distinction you
8 see between a new license and a timely renewal?

9 MR. WILLIAMS: On that point, I think I would like to
10 defer to ELD, Bill Olmstead.

11 MR. OLMSTEAD: I knew that was coming.

12 CHAIRMAN PALLADINO: Which question was that?

13 COMMISSIONER AHEARNE: He just said Mark just said
14 that NRR's position is that June 30 does apply as far as
15 operating licenses but it does not apply to timely renewal.

16 MR. OLMSTEAD: I think what you need to do is we have
17 some flexibility under Section 302. Section 302(b)(1) which is
18 the advance contracting requirement which applies to the
19 Nuclear Regulatory Commission and contains the license or
20 renewal language uses different terms than 302(b)(2) which has
21 the June 30th deadline in it; namely, in 302(b)(2) it says
22 owner or generator of waste and 302(b)(1) says issue licenses
23 or renewals.

24 Now the question that comes up immediately is 302(b)(2)
25 says except as provided in 302(b)(1) and since the language is

1 different, the question is what is the scope of the exception
2 in 302(b)(1).

3 I tried to explain this on page 26 of the paper on
4 the advance contracting requirement. It is enclosure two,
5 I believe it is.

6 CHAIRMAN PALLADINO: What page is it?

7 MR. OLMSTEAD: Page 26 is where the discussion of
8 the issues can be found. If you interpret 302(b)(2) to cover
9 existing licenses and still be subject to the good faith
10 negotiation provisions of 302(b)(1), then you force yourself
11 to interpret 302(b)(1) to include license amendments.

12 There is some legislative history showing that at
13 one point the language was issue licenses or renewals parenthe-
14 tical including amendments parenthetical. That was dropped out
15 without explanation.

16 The problem with interpreting that to include
17 amendments was on January 6th we couldn't have issued any
18 amendments because we didn't have any good faith certification
19 from the Secretary of Energy. That didn't seem very practical
20 to do it that way. So it says well, what do you do under
21 302(b)(2). DOE would like to have all those contracts in place
22 by June 30th. The effect of not having them in place, you get
23 into the waste confidence issues, and Northern States/Minnesota
24 case and what we have to do if you take, just for example,
25 some kind of enforcement action and then in order for the

1 licensee to continue to operate they would have to have a new
2 license, then you could run back up to 302(b)(1), get the
3 certification from DOE and go along. That is a practical
4 example of how you have some flexibility and how you interpret
5 those sections.

6 Since I talk about practicalities, the practicality
7 is we wanted to not disrupt licensing between now and June 30th
8 and DOE wanted to have a lever to get June 30th contracts
9 entered into and resolved. They think they can meet that. They
10 hope to have that done by May. So essentially the practical
11 solution is we are not expecting this to be a problem although
12 from a legal interpretation standpoint, it has all sorts of
13 interesting possibilities.

14 COMMISSIONER AHEARNE: If I try to distill out what
15 you have just said --

16 COMMISSIONER ROBERTS: Succinctly.

17 (Laughter.)

18 COMMISSIONER AHEARNE: I assume that all of that boils
19 down to still is your agreeing with NRR's interpretation.

20 MR. OLMSTEAD: Right. I think that is the simple way
21 to go as long as it works.

22 COMMISSIONER AHEARNE: So you are saying that ELD's
23 interpretation is that an existing license holder of a
24 commercial power reactor license must have a contract by June
25 30th.

1 MR. OLMSTEAD: Right, to continue normal operation.

2 MR. BROWNING: To generate waste.

3 MR. OLMSTEAD: To generate waste, to own or generate.

4 COMMISSIONER AHEARNE: To generate waste that can
5 expect to be disposed of in a repository.

6 MR. OLMSTEAD: That's right. If you read 302(b)(2),
7 DOE cannot enter into a contract with an owner or generator
8 of waste after June 30th.

9 COMMISSIONER AHEARNE: So that on the face of the law
10 a plant that has not entered into a contract that continues
11 running, the law would say you cannot expect that waste to go
12 into any repository.

13 MR. DAVIS: Into DOE's repository.

14 MR. OLMSTEAD: Into DOE's repository by that owner
15 or generator. Now there are a lot of things that owner or
16 generator might do. He might have a contract with some third
17 person who has a contract with the Secretary.

18 COMMISSIONER AHEARNE: It says no high level radio-
19 active waste generated by any person who doesn't have the
20 contract.

21 MR. OLMSTEAD: Right.

22 COMMISSIONER ASSELSTINE: So it doesn't matter whether
23 he tries to get rid of it later on or not, if he generates it,
24 it doesn't go into the repository.

25 MR. OLMSTEAD: I realize reprocessing is a dead issue

1 at the moment. One of the things that the DOE lawyers have
2 suggested to me is that if they sent it to a reprocessing plant
3 and it were reprocessed changing the character of the waste,
4 then it would not be prohibited. I didn't want to get into all
5 that.

6 COMMISSIONER AHEARNE: That doesn't change the
7 character of the waste, Bill. It changes the character of the
8 form in which the waste happens to be packaged, but unless you
9 have a new transmutation reprocessing regime, it will not change
10 the character of the waste.

11 MR. OLMSTEAD: All right.

12 CHAIRMAN PALLADINO: It is still waste generated by
13 that owner.

14 COMMISSIONER AHEARNE: So your position is as NRR's
15 letter went out. That, as I understand it, is different than
16 DOE's position at least as I read their standard contract
17 federal register notice where they say they are interpreting
18 Section 302(b)(2) to mean that the June 30, 1983 deadline
19 does not apply if the Secretary affirms in writing.

20 MR. OLMSTEAD: That is what they say in that piece of
21 paper. That is not what they told us at the time we issued
22 the generic letter. We did it on the basis of discussions with
23 them. I called them about that when I saw it. I said that this
24 is not what you said, they said that we agree with you, that is
25 not what we said and we didn't intend to say what we said.

1 So they are going to change it.

2 COMMISSIONER AHEARNE: You are saying that DOE intends
3 to -- since that is a fairly significant difference, you expect
4 them to be putting out something in writing.

5 MR. OLMSTEAD: Right. When they finalize the contract
6 criteria, they intend to indicate more specifically how they
7 intend to interpret 302(b)(2).

8 COMMISSIONER ROBERTS: When is that going to happen?

9 MR. OLMSTEAD: April, early April.

10 COMMISSIONER AHEARNE: Can do they do that, Sheldon?
11 Can they make that big a change without going back out again?

12 MR. TRUBATCH: The question is who could challenge
13 that. Certainly the licensees would be prejudiced by that.

14 COMMISSIONER AHEARNE: Significantly.

15 MR. TRUBATCH: Who else has commented, I would have to
16 look and see who else has commented on the proposed contract.
17 Those are the only people who could challenge the terms.

18 COMMISSIONER AHEARNE: But they could. If the rule
19 get significantly tougher in the final rule from the proposed
20 rule, don't they have a right to challenge it?

21 MR. TRUBATCH: The initial DOE interpretation
22 included the good faith negotiation. Sure, then the licensees
23 will all be there.

24 MR. OLMSTEAD: They could all be in, but of course to
25 make that argument, they put their license here in jeopardy.

1 COMMISSIONER AHEARNE: That's right.

2 CHAIRMAN PALLADINO: If the utility did not have a
3 contract by June 30th, in principle either they would have to
4 shut down or forever have some other way of getting rid of the
5 waste.

6 COMMISSIONER AHEARNE: I think more than that. The
7 NRC would have some difficulty with a possible waste confidence
8 finding.

9 MR. OLMSTEAD: That is the real issue if that were to
10 happen.

11 MR. WILLIAMS: It is not crystal clear what licensing
12 action would be necessary on June 30th but some action would
13 most likely be necessary.

14 CHAIRMAN PALLADINO: Suppose a utility does shut down,
15 does it have any opportunity to come back?

16 MR. OLMSTEAD: You get into further interpretation
17 of the Act.

18 COMMISSIONER ASSELSTINE: The question is then what
19 is the basis then for the Commission deciding about the
20 continued operation of that facility.

21 CHAIRMAN PALLADINO: Yes, that is my question.

22 COMMISSIONER ASSELSTINE: If they are then forever
23 more foreclosed from having the waste generated by them disposed
24 of in a DOE repository.

25 MR. OLMSTEAD: That is licensed under this Act, that's

1 right.

2 CHAIRMAN PALLADINO: So, Jim, if I understand you
3 correctly, if they don't have a contract by June 30, they can
4 never generate waste again?

5 COMMISSIONER ASSELSTINE: We would then have to face
6 the question of is there some alternate basis that would give us
7 confidence that the waste generated by that plant would be
8 disposed of.

9 CHAIRMAN PALLADINO: If it stops on June 30, it doesn't
10 generate any more waste.

11 COMMISSIONER ASSELSTINE: That's right.

12 MR. TRUBATCH: It wouldn't have to stop generating.

13 CHAIRMAN PALLADINO: I know, but let's take the case
14 where it would stop. Is there any way it can enter into a
15 contract later?

16 COMMISSIONER AHEARNE: They could come in and apply
17 for a new operating license.

18 MR. WILLIAMS: Then we would have a good faith
19 negotiation situation.

20 COMMISSIONER AHEARNE: Then there would be a new
21 license.

22 MR. OLMSTEAD: Right. Then you get into the issue of
23 that covers the waste generated by the new license, but what
24 about the waste generated by the old license. You can go around
25 in circles on this forever.

1 COMMISSIONER AHEARNE: So that is one major problem.
2 Now tell me why the conclusion is that a timely renewal doesn't
3 fall under this. Mark has said that the conclusion is that a
4 timely renewal does not apply.

5 MR. OLMSTEAD: Renewals clearly fall under 302(b)(2)
6 and they need either a good faith negotiation certification or a
7 contract from DOE before we can issue the renewal.

8 COMMISSIONER AHEARNE: My understanding is that
9 research reactors operate on a timely renewal principle.

10 MR. OLMSTEAD: That's right.

11 COMMISSIONER AHEARNE: My question then is that here
12 you have a reactor that is operating, has an operating license,
13 it applies for timely renewal and the June 30 date passes,
14 what must they do? Must they enter into a contract or must
15 they only be in good faith negotiation? I thought Mark said
16 that the good faith negotiation applies to that and I was trying
17 to understand why that should be true.

18 MR. OLMSTEAD: Section 302 (b)(2) says except as
19 provided in 302(b)(1). Section (b)(1) has two provisions.
20 You have a contract or you are in good faith negotiations. Now
21 you, Commissioners, can determine you want a contract in which
22 case the good faith negotiation certification is not good
23 enough.

24 COMMISSIONER AHEARNE: Bill, what I am trying to
25 understand is why the good faith negotiation provision doesn't

1 apply to someone who has a license which continues unabated
2 normally, but you are saying that the good faith negotiation
3 does apply to someone whose license ends in his untimely renewal.

4 MR. OLMSTEAD: Because of the interpretation of
5 302(b)(1) which allowed those licenses who had the 40-year term
6 to continue operating without having to have that contract
7 prior to getting amendments.

8 MR. WILLIAMS: I think the situation is further
9 complicated for research reactors because there are existing
10 agreements on the fuel because DOE owns a lot of the fuel in
11 those instances. I think there are about half a dozen research
12 reactors which will have a specific problem to address.

13 In addition to that, there is the fee problem for
14 non-power reactors. We have discussed this with DOE and there
15 are a number of complications with research reactors that will
16 have to be addressed almost on a case-by-case basis concerning
17 that deadline with existing agreements and the like.

18 COMMISSIONER AHEARNE. I won't belabor this point
19 any longer. I am not following why the research reactor can
20 be thrown up into 302(b)(1) and the power reactor can't.

21 MR. OLMSTEAD: Let me make it clear. It is not that
22 the power reactor can't, it is that we have not been interpreting
23 it that way up to now because if we did, we wouldn't have been
24 able to issue amendments to those reactors after the effective
25 date of the Act and before DOE got the contract out on the

1 street.

2 CHAIRMAN PALLADINO: What is the likelihood that we
3 get contracts with all these utilities so far as power reactors
4 are concerned?

5 MR. OLMSTEAD: My understanding is that the belief
6 is that they will have them all in place.

7 COMMISSIONER AHEARNE: I thought there were some
8 objections to the contracts?

9 MR. OLMSTEAD: There are, but I think what they intend
10 to do is enter into a contract that is silent as to those terms
11 on which the objections have been rendered and amend it later.

12 CHAIRMAN PALLADINO: What sort of things must be in
13 the contract itself if you can keep silent on some things,
14 what is it that you must not keep silent on?

15 MR. OLMSTEAD: That is really DOE's determination.
16 For our purposes, all they have to do is to have a contract.

17 COMMISSIONER AHEARNE: Right.

18 CHAIRMAN PALLADINO: To do what?

19 MR. OLMSTEAD: To take the waste.

20 COMMISSIONER AHEARNE: I recognize, Sheldon, this is
21 now asking you for your comments on a federal register notice
22 that another agency published, but if they have contract terms
23 in this federal register notice and they have put out for
24 comment, here is the way the contract is going to be, can they
25 then revise that contract in such a way that the utilities can

1 now accept because many of the owner's terms are not there,
2 what happens if some non-utility party objects and says --

3 CHAIRMAN PALLADINO: Changed the contracts.

4 COMMISSIONER AHEARNE: -- significantly changed the
5 contract that you were going to hold this guy to?

6 MR. TRUBATCH: It is a novel question of the law.
7 Off the top of my head and recognizing it as such, if you look
8 at entering into the contract as the parallel to a final rule,
9 then I guess you could make the analogy that substantial
10 changes would suffer the same kind of infirmity as a substan-
11 tially different final rule. That is as far as I am going to go
12 off the top of my head.

13 COMMISSIONER ASSELSTINE: But the real question is
14 whether you can make that type of analogy between entering into
15 a contract and promulgating a rule.

16 COMMISSIONER AHEARNE: Except that the contract is in
17 the rule.

18 MR. TRUBATCH: I guess that to the extent that the
19 contract terms are a matter of public interest.

20 COMMISSIONER AHEARNE: Yes.

21 CHAIRMAN PALLADINO: And I thought PRA was hard to
22 follow.

23 (Laughter.)

24 MR. DIRCKS: This is only the introduction.

25 COMMISSIONER AHEARNE: I think this is the stickiest

1 issue.

2 MR. OLMSTEAD: Let me say, though, that I would like to
3 keep as much flexibility as possible because all of these
4 contingencies you are talking about become important when the
5 real facts get upon us. So you want to keep as much flexibility
6 as possible on the interpretation of the various provisions of
7 this Act until you have the factual situation that you want to
8 apply them to.

9 COMMISSIONER AHEARNE: Sure. I can't speak for the
10 rest of my colleagues but speaking for myself at least to the
11 extent that I am going to be involved in any of this, I would
12 like to have as early an understanding as possible.

13 MR. OLMSTEAD: I don't blame you for that.

14 CHAIRMAN PALLADINO: You said that the utilities,
15 there is a likelihood that the utilities could all have contracts
16 with DOE by June 30. How about all the other people that have
17 reactors whether it is timely renewal or not? If they have
18 operating licenses, is it likely that DOE could get contracts
19 with them?

20 MR. WILLIAMS: As a result of our generic letter,
21 I think a good number of them contacted DOE for interpretations
22 of that provision of our generic letter and I think that is
23 actively being pursued. DOE is optimistic from a discussion
24 that I had with them yesterday that they can go ahead and meet
25 this deadline for power reactors and non-power reactors will be

1 addressed in case specific ways possibly.

2 CHAIRMAN PALLADINO: There seems to be uncertainty
3 on non-power reactors. It would be nice if they had contracts
4 also by June 30 and get away from the uncertainties.

5 COMMISSIONER AHEARNE: What happens if in the non-
6 power reactor area if June 30th comes and some owner of a
7 non-power reactor license that is on timely renewal hasn't even
8 contacted DOE?

9 MR. WILLIAMS: The questions that we were trying to
10 address is when DOE has a contract or DOE owns the fuel for
11 that reactor, how does the Waste Act interface with that. I
12 can't interpret that.

13 MR. ULMSTEAD: Essentially where DOE owns the fuel,
14 they don't have to enter into a contract with themselves. So
15 they don't have a problem when they are the owner of the fuel.

16 MR. TRUBATCH: May I make a suggestion here? It seems
17 to me that what is important to the Commission is DOE's
18 conclusion as to whether the waste from any particular reactor
19 will be acceptable at the repository. Any interpretation to the
20 Act that DOE makes to get to that conclusion would be very
21 difficult, I think, for the Commission to contradict if those
22 provisions are directed at DOE.

23 On the other hand, if DOE were to take an interpreta-
24 tion which we don't agree with but which permits waste to be
25 disposed of in the repository, then that would be sufficient for

1 the Commission, that is as far as it is concerned a sister
2 agency has determined that it will take the waste when the
3 time comes because it reads the Act in some way. That, it seems
4 to me, to be where the Commission's concern lies.

5 I would suggest that the first thing is to get DOE's
6 interpretation of how it is going to operate under its provisions
7 of the Act before we start generating potentially inconsistent
8 interpretations of the Act.

9 CHAIRMAN PALLADINO: For myself, I was not trying to
10 generate interpretations but I would like to understand what the
11 ground rules are because we do play in the game and we have to
12 make decisions.

13 MR. TRUBATCH: Sure, but we are asking a lot of
14 questions about how DOE will eventually come down on
15 interpreting the Act as to whether it will take the waste.

16 COMMISSIONER AHEARNE: No, Sheldon, I really wasn't
17 asking that. What I was asking is how do we interpret this Act
18 and then I was pointing out that my understanding was that DOE
19 was interpreting it differently but I was really focusing on
20 how do we interpret it, what is our conclusion. From that it
21 will have to flow.

22 COMMISSIONER ASSELSTINE: Some of the interpretations
23 are clearly of sections or provisions, such as 302(b)(2), that
24 really are directed at DOE and to us.

25 COMMISSIONER AHEARNE: Yes, that is probably true.

1 COMMISSIONER ASSELSTINE: They may have consequences
2 that flow.

3 COMMISSIONER AHEARNE: They have very strong conse-
4 quences in the sense that I would guess that if the Commission
5 were reaching a conclusion on do we have confidence that the
6 waste will be disposed of and there is a section of law that
7 says the legal position is this and DOE says that we just
8 disagree with that, that is not our reading and our lawyers are
9 just sure that that is the way the legal position is. It seems
10 to me that it would be difficult for the Commission to conclude
11 that we will have confidence that DOE's position which our
12 lawyers say is just incorrect and will withstand court challenge
13 and therefore find that DOE's position gives us comfort in
14 our reaching our confidence finding. I would think that that
15 would be a difficult position for a Commission to be in.

16 So it is not just the fact that it speaks to DOE
17 but we have to understand what we think is the best judgment on
18 that.

19 COMMISSIONER ASSELSTINE: Bu' to a certain extent
20 until we have DOE's position what we are talking about now is
21 very speculative. We don't even know right now what DOE's
22 position is going to be, I take it.

23 COMMISSIONER AHEARNE: It is not completely speculative
24 in the sense that they did put it in writing in the Federal
25 Register.

1 COMMISSIONER ASSELSTINE: That's right.

2 MR. OLMSTEAD: What they put in writing though was
3 contrary to what they told us.

4 COMMISSIONER ASSELSTINE: That's right, both before
5 and after the fact.

6 MR. OLMSTEAD: Right.

7 MR. WILLIAMS: We had to come to grips with these
8 issues early on because we were issuing licenses.

9 COMMISSIONER AHEARNE: I am sorry to belabor this
10 one point but I am still trying to understand. If a research
11 reactor -- put aside DOE owning the fuel, the research reactor
12 people own the fuel, if they are on timely renewal to us or
13 have a license with us and June 30 comes and they have not
14 started to negotiate with DOE, what happens?

15 MR. WILLIAMS: I will defer to Bill again. This is a
16 fairly complicated point.

17 MR. OLMSTEAD: We cannot issue a renewal to them
18 until they have either a contract or a certification from the
19 Secretary.

20 COMMISSIONER AHEARNE: Now timely renewal is not --

21 MR. OLMSTEAD: Timely renewal is a legal interpretive
22 device to give you time to act to the application for renewal.

23 COMMISSIONER AHEARNE: Yes. I know. Does that mean
24 that comes that date that we tell them you can no longer operate
25 or we just don't tell them anything?

1 MR. OLMSTEAD: The date that is important is the date
2 on which you chose to act.

3 COMMISSIONER AHEARNE: So you are saying that although
4 the law would say we cannot renew their application, we can by
5 not telling them we can't renew it, allow them to continue
6 running?

7 MR. OLMSTEAD: As long as it doesn't amount to an
8 abusive discretion on the part of the Commission. If you were
9 using that solely for the purpose of avoiding the consequences
10 of 302(b)(1), then I would have to tell you no, you can't do
11 that. But if what you are doing is conducting business as
12 usual and you have not scheduled your determination on the
13 issuance of the license, that doctrine allows you to continue
14 the license until you can make the determination.

15 COMMISSIONER AHEARNE: I think what you just said
16 is that as soon as you notice that they are on timely renewal
17 and do not have that good faith negotiation, then you must stop
18 their operation.

19 MR. OLMSTEAD: That would be the preferred way of
20 approaching the problem.

21 COMMISSIONER AHEARNE: A last question on this subject,
22 you mentioned that if DOE owns the fuel, it is different. Can
23 you explain then the section seems to talk about generated or
24 owned, so even if DOE owns the fuel if the research reactor
25 people are generating the fuel, why doesn't it apply to them?

1 MR. OLMSTEAD: The key word is "or." You can go
2 either way. There are some interesting problems out there
3 where DOE generated the waste, owned the facility, then they
4 turned it over to a private utility, the utility has continued
5 the operation of the facility and you get into the question of
6 whose waste is the waste that was first generated, whose waste
7 is it that is generated now and all of that.

8 COMMISSIONER AHEARNE: I am sorry for being thick,
9 Bill, if the word had been "and," I would have followed you.
10 If they don't own it, then the "owned by" section drops out
11 and then it would seem to me what would be operative is "no
12 spent nuclear fuel generated by a person..."

13 MR. OLMSTEAD: I was addressing the question where
14 DOE owns the fuel but it is generated by a private entity.

15 COMMISSIONER AHEARNE: It is generated by a private
16 entity and this is now the spent nuclear fuel generated by
17 someone that does not have a contract.

18 MR. OLMSTEAD: That is one way to do it. The other
19 way is spent fuel owned by somebody and they don't need a
20 contract.

21 COMMISSIONER AHEARNE: But that fuel element that has
22 now been used to generate waste is a fuel element being used to
23 generate waste by someone who does not have a contract.

24 MR. OLMSTEAD: I agree with you but the fuel was owned
25 by DOE and the waste is owned by DOE.

1 COMMISSIONER AHEARNE: That is irrelevant. Fortunately
2 you are the lawyer and I am not.

3 COMMISSIONER ASSELSTINE: Bill, let me go back to one
4 other point which you mentioned earlier. Are you reading
5 302(b)(1) as requiring either the contract or the good faith
6 negotiation for license amendments?

7 MR. OLMSTEAD: That was the way that I started off.
8 DOE was unhappy with that and for the reasons that Sheldon
9 mentioned, since 302(b)(2) is the essence of the section, we
10 deferred to their desires on interpretation.

11 COMMISSIONER ASSELSTINE: All right. It seems to me
12 there is an equally strong basis for their view.

13 MR. OLMSTEAD: There is. It can be interpreted either
14 way and the consequences now are significant if you say it
15 includes amendments because you can't issue the amendment until
16 you have the affirmation.

17 COMMISSIONER ASSELSTINE: That's right.

18 MR. OLMSTEAD: The consequences are severe on June 30
19 if they don't have the contract if you don't read it to include
20 amendments.

21 COMMISSIONER ASSELSTINE: Yes.

22 COMMISSIONER AHEARNE: I guess I am puzzled by why
23 following the principle which Sheldon was espousing that one
24 should be deferring to the agency to which the Act speaks, that
25 section speaks to us. It says the Commission shall not.

1 COMMISSIONER ASSELSTINE: That one does speak to us.

2 COMMISSIONER AHEARNE: I don't understand why then if
3 Sheldon's philosophy is correct on (b)(2), why our interpretation
4 then --

5 MR. OLMSTEAD: Because the significance of our
6 interpretation of (b)(1) affects very much what (b)(2) allows
7 the Secretary to do.

8 COMMISSIONER AHEARNE: Fine.

9 MR. OLMSTEAD: You clearly can direct us to interpret
10 it the other way and we can do that.

11 COMMISSIONER ASSELSTINE: Could you run through the
12 basis for the interpretation that (b)(1) covers amendments as
13 well as licenses and renewals since the words of the statute
14 speaks expressly to licenses and renewals?

15 MR OLMSTEAD: It speaks of licenses issued pursuant
16 to 103 and 104. We issue license amendments pursuant to 103
17 and 104 of the Act, the Atomic Energy Act. The Atomic Energy
18 Act does not include the word amendments in there except with
19 regard to a latter day amendment involving emergency planning.

20 We have to abide under the Atomic Energy Act with the
21 Administrative Procedure Act and if you look at the definition
22 of license in the Administrative Procedure Act, it includes
23 amendments.

24 COMMISSIONER ASSELSTINE: But it would also include
25 renewals?

1 MR. OLMSTEAD: Yes.

2 COMMISSIONER ASSELSTINE: So to follow that logic then
3 what you would assume is that by saying licenses and renewals,
4 that they knew what they were doing and they wanted to
5 expressly exclude amendments.

6 MR. OLMSTEAD: Right, plus you go back to the Boquard
7 Committee which had included the parenthetical which says
8 including amendments and they dropped that out when they took
9 it to 3809.

10 COMMISSIONER ASSELSTINE: I guess for myself that
11 brings me to the conclusion that perhaps the stronger argument
12 is the DOE argument that amendments should not be included.

13 MR. OLMSTEAD: Which is the way that we are operating
14 at the moment.

15 CHAIRMAN PALLADINO: Shall we try to go on for a while?

16 MR. WILLIAMS: All right. In our early positions,
17 we took the position that for issuance and renewal we needed an
18 affirmation by the Secretary that the applicant was in good
19 faith negotiation.

20 CHAIRMAN PALLADINO: This is for renewals?

21 MR. WILLIAMS: This is for issuance of license
22 concerning the new licenses or full-power authorizations. We
23 are taking the interpretation that a full-power authorization
24 by the Commission or the issuance of a license by the
25 Commission --

1 CHAIRMAN PALLADINO: Does that apply to all applicants
2 for operating licenses forever? Let's assume there is a utility
3 that expects to get an operating license in 1985, what must
4 that utility have done by June 30, 1983?

5 MR. WILLIAMS: I think practically speaking right now
6 we would expect them to have a contract.

7 CHAIRMAN PALLADINO: Let me take one in 1990,
8 expects to have a plant done, must they have a contract by
9 June 30?

10 COMMISSIONER AHEARNE: Doesn't the provision, the date
11 on which such generator commenced generation--

12 MR. WILLIAMS: Not by June 30, no, absolutely not.
13 I didn't understand.

14 CHAIRMAN PALLADINO: Suppose a utility plans to get
15 an operating license by December of this year. It doesn't have
16 to get a contract by June 30?

17 MR. WILLIAMS: No.

18 COMMISSIONER AHEARNE: It is when it starts to generate.

19 MR. WILLIAMS: That is correct.

20 COMMISSIONER AHEARNE: But you are interpreting the
21 holder that has a low-power, the amendment of the license to go
22 to full-power, you are treating --

23 MR. WILLIAMS: As an issuance of a license.

24 COMMISSIONER AHEARNE: Rather than an amendment.

25 MR. WILLIAMS: Yes, sir.

1 COMMISSIONER AHEARNE: Why?

2 MR. WILLIAMS: We just took the conservative point of
3 view that the Act spoke to the issuance of a license meaning
4 Commission authorization for operation of the facility and we
5 took the low-power license and the full-power license and put
6 them into that category. We conservatively took that position.

7 COMMISSIONER AHEARNE: So there are some amendments
8 that are amendments and there are other amendments that are not
9 amendments.

10 MR. WILLIAMS: There is one amendment that requires
11 Commission authorization for full-power operation of the
12 facility.

13 CHAIRMAN PALLADINO: Do I understand you correctly,
14 are you saying that some utility that has a low-power, less
15 than five percent license, must have a contract by June 30?

16 MR. OLMSTEAD: Let me address that. Essentially it
17 is not going to make any difference because you couldn't issue
18 either one of them without the affirmation of a contract except
19 for a few of those which had a fuel load license but have not
20 yet received Commission authorization and we wanted to capture
21 those that the Commission had not acted on yet within 302(b)(1).

22 CHAIRMAN PALLADINO: What must be done for them?
23 Suppose there is a utility that has a fuel load?

24 MR. OLMSTEAD: They have gone to DOE and have received
25 their affirmation, is essentially what has happened. So it has

1 mooted the point.

2 CHAIRMAN PALLADINO: They got their affirmation.

3 MR. OLMSTEAD: Right.

4 MR. WILLIAMS: There are three plants that have
5 received the Secretary's letter.

6 CHAIRMAN PALLADINO: To them, you only need a good
7 faith.

8 MR. OLMSTEAD: Right, and even after June 30, you
9 only need a good faith unless you exercise your authority to
10 say that we are not going to act on good faith after June 30,
11 we are just going to require a contract. You have the discretion
12 to always require them to have a contract before you issue the
13 license.

14 COMMISSIONER AHEARNE: Would it be possible to get
15 from the EDO a table that breaks down --

16 CHAIRMAN PALLADINO: A chart.

17 COMMISSIONER AHEARNE: Yes, a chart. Here is one
18 class of licensees and here is another class of licensees and
19 another class of licensees and here is what has to be. Our
20 current interpretation is that this is what it means and then
21 note if DOE disagrees.

22 CHAIRMAN PALLADINO: Yes, that would be very helpful.
23 That is what I was trying to do. I still don't understand
24 whether the utility that has a license limited to five percent
25 can be working on good faith or must have a contract with DOE by

1 June 30.

2 MR. OLMSTEAD: Either one. He must have something from
3 DOE. He must either have a contract or he must have a
4 certification --

5 CHAIRMAN PALLADINO: A certification is enough.

6 MR. OLMSTEAD: -- of good faith. It is enough as long
7 as the Commission doesn't require more.

8 CHAIRMAN PALLADINO: Yes, I understand that. I
9 think it would be very valuable to have that. Shall we give
10 it another try? Are we following the handout?

11 MR. WILLIAMS: We are. Section 135 of the Act
12 discusses the interim storage of spent fuel by the Secretary
13 and it provides the Secretary of Energy may enter into a contract
14 with a person provided that the Commission makes a finding that
15 the owner or the generator of the waste cannot adequately dis-
16 pose of the waste compatible with continued orderly operation of
17 the facility, and that the owner is pursuing, it says diligently
18 pursuing licensed alternatives.

19 Research has developed a proposed rule and right now
20 the proposed rule is on schedule. It was reviewed at the CRGR
21 on the 9th of March and it should be at the Commission early
22 next week for your approval.

23 CHAIRMAN PALLADINO: When must that be issued?

24 MR. WILLIAMS: The statutory deadline is April 7
25 which means that it will have to be at the Federal Register

1 probably about April 4. It will be a fairly short lead item.

2 CHAIRMAN PALLADINO: What happens if we miss that date,
3 not that we intend to?

4 MR. OLMSTEAD: You miss the statutory deadline, the
5 same thing that will happen if you miss the Sholley deadline.

6 MR. DAVIS: I guess we will fall into the company of
7 the EPA and other agencies.

8 COMMISSIONER ASSELSTINE: Which we should avoid at all
9 costs.

10 (Laughter.)

11 CHAIRMAN PALLADINO: We have gotten things out on
12 time, but occasionally we have problems with words at the last
13 minute.

14 MR. WILLIAMS: This is a proposed rule.

15 CHAIRMAN PALLADINO: Where does it stand now?

16 MR. WILLIAMS: It should be at the Commission early
17 next week.

18 MR. DIRCKS: I think you are in more danger of
19 missing Sholley than you are missing this one.

20 MR. BROWNING: In the information letter which we
21 sent down earlier this week, there is a chart or table as one of
22 the attachments which lists all of the things that will be
23 coming down to the Commission in the near future. That is one
24 of them. It presently is on schedule. The research people are
25 the ones that are actually doing the work to develop the

1 proposed rule. It shows that it will be coming down in March
2 to the Commission and the schedule was intended to allow you
3 sufficient time to review it, to comment on it and make changes
4 if necessary.

5 CHAIRMAN PALLADINO. Is that enclosure three?

6 MR. BROWNING: I think it is the last one, Mr.
7 Chairman. No, it is the second to the last. It is enclosure
8 four, right in front of the bill.

9 CHAIRMAN PALLADINO: All right, thank you.

10 MR. WILLIAMS: The last issue is Section 134 which
11 provides for the hybrid hearing process in the licensing of
12 facilities' expansions and transshipments. Basically it
13 introduces a new process for applications filed after enactment
14 which is January 7 and we need Part 2 rules to implement this
15 process. ELD expects that the Part 2 rules should be at the
16 Commission in the beginning of May, conservatively.

17 Right now we expect that Trojan will be the first
18 plant to come in probably around August for facility expansion.

19 CHAIRMAN PALLADINO: Is that for all amendments?
20 Does that include ones that go from fuel load to low-power or
21 low-power to full-power?

22 MR. DAVIS: It is just for extending fuel storage
23 capacity.

24 CHAIRMAN PALLADINO: Oh, I am sorry. What is the
25 deadline for that?

1 MR. WILLIAMS: The deadline for that will be
2 dictated by our need to use it and we expect that Trojan will
3 be the first plant to come in. There isn't any specific dead-
4 line in the Act addressing the implementation of that section.
5 It is after enactment that we will use the opportunity for this
6 new process.

7 COMMISSIONER ASSELSTINE: Are there some rule changes
8 that need to be made to be in a position to use the hybrid
9 procedures?

10 MR. OLMSTEAD: We want to add a new subpart to part 2
11 which would have the hybrid procedure in it.

12 CHAIRMAN PALLADINO: Who would decide whether a hybrid
13 is used or any other format or what format would be used?

14 MR. OLMSTEAD: A party to the proceeding who requests
15 an oral argument mandates these hybrid procedures.

16 COMMISSIONER AHEARNE: That would include currently
17 the NRC staff, couldn't it?

18 MR. OLMSTEAD: Currently, yes.

19 COMMISSIONER AHEARNE: Could the Commission direct
20 the NRC staff to request it?

21 MR. OLMSTEAD: You can direct the staff to do as you
22 wish.

23 COMMISSIONER ASSELSTINE: So for all intensive purposes,
24 it could be mandatory if the Commission directed the staff to
25 request one in each case.

1 MR. OLMSTEAD: I might add that it is not at all clear
2 if you look at the debates that the Commission has had with the
3 Regulatory Reform Task Force, it is not at all clear that the
4 Commission couldn't require this anyway. But you haven't
5 resolved all of those issues yet.

6 COMMISSIONER AHEARNE: But certainly to the extent
7 if we wanted to have it in every hearing, we could direct the
8 staff to do that.

9 MR. OLMSTEAD: Yes.

10 COMMISSIONER AHEARNE: If we did not want it in every
11 hearing, then we could direct the staff never to request it
12 and then it would be up to one of the parties.

13 MR. OLMSTEAD: Right.

14 MR. WILLIAMS: The next section of the Act is the
15 NRC training authorization, section 306.

16 CHAIRMAN PALLADINO: What happened to 132?

17 MR. WILLIAMS: Section 132 of the Act is a general
18 directive to the Commission and the Department of Energy to take
19 the necessary actions to expedite and encourage the expansion
20 of available storage. Generally under this Act, we are
21 continuing to license spent fuel storage facilities, applica-
22 tions for expansion and the like. In addition, under this
23 section, there are special activities, for example, DOE
24 has the statutory responsibility under section 218(a) of the
25 Act for research for rod consolidation and we have met with them

1 and we are going to identify some licensing issues which would
2 benefit from such research to fulfill that need.

3 COMMISSIONER AHEARNE: I gather, Mark, what you are
4 saying is at least we have decided that there is nothing in
5 that section that requires us to do other than what we would
6 normally be doing?

7 MR. WILLIAMS: That is our initial interpretation of
8 that section.

9 MR. OLMSTEAD: I think the major impetus that the
10 Commission puts on that is under 135 (b) and (g) when you
11 promulgate the rules that establish the criteria for DOE
12 storage. That is really how you satisfy this section.

13 The next section is 306. It is a one-year lead time
14 item. We have to report to the Congress the year after
15 enactment. The training authorization requires the NRC to
16 develop regulatory guidance or requirements for simulator
17 training, for instructional requirements for training programs,
18 requirements governing the administration of NRC requalification
19 examinations and the requirements for operating tested plant
20 simulators and it also has the requirement to report to the
21 Congress.

22 Generally the Division of Human Factors plans to meet
23 those with a combination of proposed rules and regulatory
24 guidance. The present plan is to have a proposed rule package
25 changing part 55 to the Commission around September of this year.

1 The proposed rule package would address the training
2 requirements for plant operators, supervisors and other operating
3 personnel, in addition to that, the NRC examination and test
4 requirements including the simulator usage and requalification
5 examinations.

6 Right now the tentative plan calls for revision of
7 Reg Guide 1.8 which is personnel qualifications and training.
8 Around September of next year we should be seeing these.

9 COMMISSIONER AHEARNE: Your schedule here says July.
10 Maybe I misunderstood what you were saying. I thought the first
11 thing you mentioned that was coming in September was the draft
12 rule.

13 MR. WILLIAMS: Right now they plan to have a proposed
14 rule package. I think there is a representative from Human
15 Factors here to discuss this item on a detailed schedule.

16 MR. BROWNING: But you are right, the schedule that we
17 sent down does indicate the draft rule making would be down
18 in the month of July.

19 COMMISSIONER AHEARNE: I was just wondering whether
20 you were just informing the Commission of a several months slip.
21 I think it is more realistic.

22 MR. OLMSTEAD: I think it is a difference between
23 draft and final. The word here is promulgate. The word on the
24 chart is draft in July.

25 COMMISSIONER AHEARNE: Yes, but the final is November.

1 MR. OLMSTEAD: I thought Mark said December.

2 MR. WILLIAMS: No, I said September. The best we can
3 do is to say that the original schedule was tentative and we can
4 go ahead and firm up these estimates with the Commission and
5 finalize the dates a little bit better in the near future. This
6 is the most recent estimate as of yesterday afternoon.

7 COMMISSIONER ASSELSTINE: Let me ask a question on that.
8 My impression was that within the one year period, some things
9 we would be able to do and say that these are the things that
10 we want to see done whether by regulation or by other guidance.
11 There were other things that were on a longer track under our
12 existing program in the Human Factors area that probably would
13 not be resolved by the end of this year. Is that still the
14 case, some things would be farther on, those things, for
15 example, that is still more directly related to the job task
16 analysis kind of things?

17 MR. WILLIAMS: I think so and basically the Act
18 directs us to define what requirements we are going to do.

19 COMMISSIONER ASSELSTINE: If that is the case, I think
20 at some point during the next few months it might be useful
21 to send Mr. Weiker a letter, for example, and say, here is the
22 way we are interpreting the provision, here are the things that
23 we think we will accomplish by the one year period that will
24 be included in our report and here are some other things where
25 we can give you some more general indication of where we are

1 going within the one year period, but they depend on things
2 that go beyond the one year period and then we will follow it at
3 some point down the road. I think it would be useful to do
4 since one could read the Act as saying that we are supposed to
5 do everything in these areas whether by regulation or by
6 guidance within the one year period.

7 CHAIRMAN PALLADINO: What is on this training? Are we
8 getting a draft in September?

9 MR. WILLIAMS: Clare is here to discuss the details.

10 MS. GOODWIN: Clare Goodwin from the staff. In
11 response to the Human Factors plan, we have a Commission paper
12 that we are sending down to you very shortly which addresses the
13 expedited schedule and it does cover the schedule for the exam,
14 proposed rule and the training proposed rule. That will be down
15 to you in the fairly near future and that does lay out a proposed
16 rule to be down to you August 30th. That is at the moment what
17 it says as a draft proposed rule.

18 CHAIRMAN PALLADINO: So that is July. Does that cause
19 any other slippage?

20 COMMISSIONER AHEARNE: Realistically, yes.

21 MR. WILLIAMS: That completes the items that fall
22 within our program area.

23 MR. BROWNING: The next slides get into the areas of
24 the Act which cover the high-level waste management part of the
25 Act plus other areas in the area of waste management. The three

1 areas are high-level waste repository, test and evaluation
2 facility and other waste management-related provisions that
3 were included in the Act but are not directly related to high-
4 level waste necessarily.

5 On slide 7 one of the requirements of the Act in
6 section 112(a) is that DOE is to publish with NRC concurrence
7 guidelines for the selection of sites for characterization
8 as repositories within 180 days and that translates to July 6
9 of this year.

10 We have indicated some of the milestones that DOE
11 has already implemented, specifically they have published
12 the proposed guidelines in the Federal Register Notice on
13 February 7 and as of today have a close to the comment period
14 of April 7.

15 We plan to comment on those guidelines as they were
16 proposed in the Federal Register Notice and will be sending
17 down to you for information before we send the comments our
18 proposed comments. That will be coming down to you next week.

19 MR. DAVIS: We had intended to send that down as a
20 negative consent item.

21 MR. BROWNING: Then DOE would take our comments and
22 all of the other comments that they will be receiving from EPA,
23 USGS and all these interested states, Indian tribes and the
24 public in an attempt to resolve those comments and then resubmit
25 the proposed final guidelines to us in time for us to develop

1 our final position before the beginning of June.

2 The reason for this scheduling is to allow us and you
3 sufficient time to come to a conclusion as to whether we can or
4 can not concur in the guidelines. The degree to which we are
5 successful in trying to squeeze down on that time frame would
6 be a great help to DOE because that gives DOE more flexibility
7 in terms of extending the public comment period and they have
8 received a lot of requests to extend the public comment
9 period. They have already extended it for two weeks beyond
10 what they had originally requested in the Federal Register
11 Notice.

12 So we will be trying to work very closely with you
13 and your staffs to make sure that as this process goes on, we
14 are well aware of what the comments are. For example, we have
15 been attending the public meetings that DOE has been having.
16 We have an agreement with DOE that as they get comments, they
17 will send them to us so we could be looking at them in parallel
18 with the DOE review because this is a relatively short lead time
19 thing and we are going to have to do as much as we can in
20 parallel with DOE.

21 COMMISSIONER AHEARNE: Bob, the way you have
22 described in this final stage of time, it leads me to believe
23 that perhaps you can see some of our comments in the guidelines
24 as being significant comments.

25 MR. BROWNING: No. Based on our preliminary review of

1 what they have so far and the comments that were generated so
2 far, we don't expect that it would be very significant, but we
3 have included enough time to give you the standard length of
4 time for your review. If the process evolved in this, we can
5 squeeze down on that time, that would be very useful.

6 COMMISSIONER AHEARNE: So at the moment you are
7 reasonably satisfied with DOE's proposed guidelines?

8 MR. BROWNING: Yes, that is my understanding. I
9 haven't finished going through all the staff's comments at this
10 point.

11 MR. DAVIS: The way it has been described to me
12 no show stoppers yet.

13 CHAIRMAN PALLADINO: We have to concur in DOE's
14 repository siting guidelines by July 5?

15 MR. BROWNING: No. The NRC position on the final
16 guidelines really would have to get to DOE by June 24 in order
17 for them to be able to go through the process of actually
18 promulgating the guidelines by the statutory date of July 6.

19 CHAIRMAN PALLADINO: All right. Now you have described
20 the process where we gave them initial comments.

21 MR. BROWNING: We have not given them to them yet.

22 CHAIRMAN PALLADINO: No, I say you described the
23 process.

24 MR. BROWNING: Yes.

25 CHAIRMAN PALLADINO: The public's comments, and there

1 seems to be a cycle in there and then we come back and we give
2 more comments. Is there enough time so that we can meet our
3 requirement by July?

4 MR. BROWNING: We believe there is enough time
5 in here to be able to meet the date. It is tight. It depends
6 to some extent on the degree of change that DOE has to make
7 as a result of other people's comments.

8 CHAIRMAN PALLADINO: That is what I was wondering
9 about. Let me ask John and maybe my fellow Commissioners
10 on the negative consent. Maybe four Commissioners find that
11 it looks okay and they are not going to say anything and one
12 Commissioner says they want to change it a lot. I guess then
13 that has to come back in the way we do all our other questions.
14 In other words, SECY or whoever is following it would come back
15 and let the others know and then we may say, no, we don't want
16 to change it or yes, we do.

17 COMMISSIONER AHEARNE: I think that is correct. The
18 problem that I foresaw and the reason that I sent a note down
19 saying that it would be a good idea for us to be informed
20 about it is that it is better for us to understand that there
21 are some significant problems either we or the staff have with
22 those guidelines now, to find that out now in March, as opposed
23 to finding it out in June in which case the Commission may not
24 be able to concur one week before the date.

25 CHAIRMAN PALLADINO: I agree but we do get hung up

1 sometimes on words.

2 MR. DAVIS: Let me emphasize this wasn't our plan.
3 Unfortunately we had not revealed to you our plan. We had
4 always intended to bring it down. Now we have been operating
5 on the basis that this concurrence would be at staff level
6 not at Chairman level.

7 COMMISSIONER AHEARNE: You are reading the law to
8 say that when the Commission concurs that the staff concurs.

9 MR. DAVIS: Well, if you are going to take every
10 action called out in this bill for the Commission, you are
11 going to be exceedingly busy. This is the way we have been
12 going and here again, however the Commission wants it is,
13 of course, the way it will be.

14 COMMISSIONER ASSELSTINE: There is nothing to prevent
15 the delegation of some of these functions but the concurrence
16 and the site selection guidelines is one that, I think, for
17 myself I would prefer that we do that one ultimately.

18 MR. DIRCKS: I think that is one of the things that
19 we want out of this meeting because as we go through it, there
20 is going to be a whole list of actions in here and we would
21 like to know which ones you want to get into and which ones
22 you don't.

23 CHAIRMAN PALLADINO: I would like to clear up what
24 you are saying, Jim. You are saying this one, the concurrence
25 and the DOE guidelines, you want to come to the Commission.

1 COMMISSIONER ASSELSTINE: I think so. I think those
2 guidelines are significant enough.

3 CHAIRMAN PALLADINO: Not on a negative consent?

4 COMMISSIONER ASSELSTINE: Yes, I think on that one
5 I would prefer not.

6 COMMISSIONER AHEARNE: I have no problem with the
7 staff's comments coming on negative consent.

8 COMMISSIONER ASSELSTINE: I agree with that.

9 MR. DAVIS: That is the first piece we send out?

10 COMMISSIONER AHEARNE: Yes.

11 COMMISSIONER ASSELSTINE: The one that I am concerned
12 about is the affirmative concurrence by the Commission the end
13 of June.

14 COMMISSIONER AHEARNE: But this first one, we could
15 do that by negative consent.

16 COMMISSIONER ASSELSTINE: That would be fine with
17 me as well.

18 MR. BROWNING: In that regard then I would like to
19 make sure that our approach for dealing with the comments that
20 come to DOE subsequently or as part of the public comment
21 period is consistent with your desires. What we had planned to
22 do was to review the public comments in parallel with DOE,
23 identify which ones we felt had a bearing on our particular area
24 of responsibility, health and safety, because they may very well
25 raise questions that we weren't smart enough to raise and in

1 those cases, we would attempt to include those, a resolution
2 of those, a satisfactory resolution of those as a part of our
3 Commission concurrence.

4 CHAIRMAN PALLADINO: May I ask, Jim, what is it that
5 the Commission is going to act on?

6 COMMISSIONER ASSELSTINE: The one that I am concerned
7 about is that next to the last item on page 7 where it says,
8 "NRC position on final guidelines to DOE June 24, 1983."

9 MR. DAVIS: We propose to have that to you June 6
10 and your action by June 24 in order to meet the DOE statutory
11 deadline.

12 CHAIRMAN PALLADINO: NRC position on final guidelines
13 to DOE June 24, 1983.

14 COMMISSIONER ASSELSTINE: That is the one that I
15 think really ought to come before the Commission.

16 CHAIRMAN PALLADINO: In the interim, we are working
17 on their comments back and forth. When would we have something
18 that is final enough for us to say yes or no to?

19 MR. DIRCKS: When will DOE have it in?

20 COMMISSIONER ROBERTS: June 6.

21 MR. BROWNING: This is contingent on DOE meeting their
22 piece of the schedule and we have laid out a schedule with them
23 so both of our needs are met.

24 CHAIRMAN PALLADINO: This is a yes or no proposition,
25 as I understand it.

1 COMMISSIONER ASSELSTINE: That's right.

2 CHAIRMAN PALLADINO: And if we say no for any reason,
3 we are all in trouble.

4 COMMISSIONER ASSELSTINE: The guidelines are in
5 trouble.

6 CHAIRMAN PALLADINO: We are, too.

7 COMMISSIONER ASSELSTINE: Yes.

8 MR. DAVIS: Of course, there will be some iteration
9 with the staff.

10 COMMISSIONER ASSELSTINE: DOE understands the
11 significance of concurrence, I take it?

12 MR. BROWNING: Yes. They are attempting to make sure
13 that we are satisfactorily involved in the thing to the point
14 when they submit it that there won't be any issue.

15 COMMISSIONER AHEARNE: That is why it is important
16 on this first round of staff comments that you are providing
17 to be explicit. In other words, if there is some underlying
18 problem that you have been working with DOE --

19 MR. DAVIS: You need to know about it.

20 COMMISSIONER AHEARNE: Yes.

21 COMMISSIONER ASSELSTINE: And they need to be
22 explicitly stated in our comments.

23 COMMISSIONER AHEARNE: Right, because at least that way
24 you will know whether the Commission also agrees that it is
25 significant or doesn't agree that it is significant.

1 MR. BROWNING: The next item on page 8, section 212(b)
2 requires the NRC to promulgate its technical criteria which
3 equates to the 10 CFR Part 60 technical rule by January 1, 1984.
4 Consistent with DOE's approach, we are trying to do that in
5 advance of the deadline date required in the Act. In fact, the
6 final package was submitted to the Commission on February 9.

7 The Act specifically addresses the concerns that we
8 had had earlier in the process with regard to going ahead with
9 our technical criteria advance of the EPA standard and the Act
10 makes it clear that we do not have to wait for the EPA standard
11 but we would have to conform our technical criteria subsequently
12 to the final EPA standard.

13 We believe that it is extremely important not to
14 rely on the January 1, 1984 deadline because DOE does, in fact,
15 need the guidance that is embedded in that technical criteria
16 to go on with their program.

17 There has been a lot of questions of exactly what the
18 requirements are and that would be, I think, highly desirable
19 to get those out in final form as soon as practical.

20 CHAIRMAN PALLADINO: This guidance is valuable to them
21 even though EPA standards are not available?

22 MR. BROWNING: The draft EPA standard is out right
23 now and that is discussed in the Commission paper. We forwarded
24 a copy of the EPA standard with the rule and addressed the
25 significance of the Act and the EPA standard on the rule and

1 concluded we should still go forward with the technical rule.

2 Another action that we will have to do during this
3 period is to revisit the Part 60 procedural requirements which
4 had been promulgated as a final rule to insure that they are
5 consistent to the extent necessary with the provisions in the
6 Act. We plan to accomplish that by January 1, 1984 even though
7 I think a literal interpretation of that wouldn't require that.
8 We want to make sure that the whole rule is in place before the
9 statutory deadline in addition to the technical portion.

10 COMMISSIONER ASSELSTINE: Let me ask a question on
11 that. As a recall and I haven't looked at the Part 60 procedural
12 rules in a while, but as I recall they included provisions for
13 cooperative arrangements with affected states on our part. Is
14 that right?

15 MR. BROWNING: Yes.

16 COMMISSIONER ASSELSTINE: I take it that as far as the
17 staff is concerned, there is nothing in the Act that is
18 inconsistent with our continuing that approach.

19 MR. BROWNING: That is one area that we want to look
20 into. We don't think there is anything that requires an
21 immediate change, the Act clearly puts more burden on DOE to
22 meet the needs of the interface between the states and the
23 affected Indian tribes. We want to take a look to make sure
24 that what we are doing is consistent with that intent.

25 MR. OLMSTEAD: There isn't anything that precludes us

1 from doing what we are doing, but we don't have to do as much
2 as we thought we might have to do. So there are some policy
3 issues there.

4 COMMISSIONER ASSELSTINE: All right. So there clearly
5 is a distinction between the kind of programmatic functions that
6 DOE has and the regulatory functions that we will have for
7 repositories. It does seem to me that there is still room
8 for the kind of cooperative exchange and agreements that are
9 called for under Part 60 with respect to our regulatory
10 functions as well.

11 COMMISSIONER AHEARNE: That true but, Jim, when we
12 put Part 60 together, we were putting it together in the
13 absence of any kind of program existing on the part of DOE
14 really to do that. I think it would be fair to say we put in
15 more because essentially we felt that if the whole process was
16 going to work that kind of interaction had to take place. If
17 DOE wasn't going to do it, even if it didn't fit completely
18 under our regulatory framework, still it would help in the
19 long run.

20 So we put in more than was really necessary for our
21 side of it.

22 MR. DAVIS: I think that is right. I think it
23 deserves to be revisited is what we are saying.

24 MR. BROWNING: The last item is merely to note that
25 Part 60 may have to be revisited after the EPA standard is

1 promulgated but under the Act that is not required until 1984.

2 MR. DAVIS: Of course, all of these will come to the
3 Commission as rule-making.

4 MR. BROWNING: On page 9, section 121(a) deals with
5 the EPA standards but we want to highlight that we do intend to
6 comment on the draft EPA standard that has been published in
7 the Federal Register. The comment period closes May 2, 1983
8 and we plan to get the proposed comments before the Commission
9 and we have been planning it as a negative consent item early
10 in April.

11 Section 121(b) again highlights that we may have to
12 revisit the final technical criteria depending on the signifi-
13 cance of the final changes to the EPA standard.

14 Section 114(e) indicates that NRC must coordinate with
15 DOE on the development of the project decisions schedule and
16 that if NRC can't comply with any deadline, we would have to
17 submit to both the Secretary of the Department of Energy and to
18 Congress a written report explaining the reason why we could not
19 comply.

20 We intend to make sure that does not happen to the
21 extent that is practical by working closely with the DOE people
22 that are doing the planning and scheduling of this just as we
23 have done with the planning and scheduling for the guidelines to
24 make sure that they are well aware of the time frame that we
25 need to do our particular review and concurrence. Again if we

1 are innovative enough and work in parallel enough, we should be
2 able to be not in the limiting path by any of these items
3 although that process is still ongoing.

4 MR. DAVIS: We see this basically as a staff effort
5 with informing the Commission as the Commission desires as to
6 what is going on in this thing.

7 MR. BROWNING: Clearly, we would inform the
8 Commission if we identified any place where we could not support
9 the DOE schedule.

10 CHAIRMAN PALLADINO: I think that would be important
11 and if it could be done early enough so that intervention might
12 bring about some resolution, that would help.

13 MR. BROWNING: Page 10, Section 113(b) addresses the
14 requirement that DOE submit to NRC the states and any affected
15 Indian tribes the site characterization plan including
16 description of the conceptual waste form and package description
17 and conceptual repository design.

18 The Act requires that that document be submitted to
19 us before they sink an exploratory shaft.


20 This equates to a large degree to the requirement in
21 our procedural rule that DOE submit a site characterization
22 report.

23 COMMISSIONER AHEARNE: Bob, I wonder if you could take
24 a couple of minutes and describe the process as it would apply
25 to Hanford as opposed to the process laid out as it would apply

1 to a site that has not yet been chosen.

2 MR. BROWNING: With respect to Hanford, the DOE
3 submitted the site characterization report that is required by
4 our procedural rules in November. The staff has been reviewing
5 that.

6 COMMISSIONER AHEARNE: What relationship does that have
7 with respect to the site characterization guidelines which
8 haven't yet been approved?

9 MR. BROWNING: Since it was done before the guidelines
10 have been promulgated, whatever correspondence there is is
11 just fortuitous at this point. 

12 COMMISSIONER AHEARNE: The law then grandfathers
13 Hanford so it does not have to fit the guidelines?

14 MR. BROWNING: I don't really think so and that is
15 not the way we understand they are going to pursue it. Later
16 this year they intend to submit to us anything that is required
17 in addition to what is in the report now to satisfy the
18 requirements of the Act's plan. I think it is in the fall of
19 this year. That is when the process required under the Act would
20 take place.

21 We have been doing most of that, if you will, by
22 reviewing the existing site characterization report. What they
23 plan to do later this year is to update that report to be
24 equivalent in content to what is required under the Act under
25 the description of their plan.

1 COMMISSIONER AHEARNE: So you are saying that Hanford
2 to be retained must meet the final guidelines?

3 Is that what you are saying?

4 COMMISSIONER ASSELSTINE: Hasn't DOE stopped any work
5 on sinking the shaft at Hanford now?

6 MR. BROWNING: They are not sinking the shaft.

7 COMMISSIONER ASSELSTINE: And they are going to go
8 through all of the steps that are required by the Act before
9 they start doing that again.

10 MR. BROWNING: That is my understanding.

11 COMMISSIONER AHEARNE: What I am just trying to get
12 clear is we have the process of going through the guidelines
13 and Hanford is or is not going to have to fit under those
14 guidelines?

15 COMMISSIONER ASSELSTINE: I think it has to meet the
16 guidelines, doesn't it?

17 MR. BROWNING: I would think so, yes.

18 COMMISSIONER AHEARNE: As far as the relationship with
19 respect to any NRC process, is the stopping of DOE related to
20 our requirements in the Act?

21 MR. BROWNING: No.

22 COMMISSIONER AHEARNE: So it is related to their
23 meeting the requirements of the Act as far as the environmental
24 assessment.

25 MR. BROWNING: That is my understanding, yes. There is

1 nothing that we have a requirement that would indicate they
2 would have to stop exploratory shaft at this stage. With
3 regard to the staff's comments on the site characterization
4 plan, that again we would plan to at least the original plan
5 was that in the draft change, the staff would issue it for
6 public comment and obtain public comments and then after
7 a resolution of the public comments, it would be issued by the
8 Director of NMSS. This would be in accordance with the
9 procedural rule and again that would be a negative affirmation
10 by the Commission.

11 MR. DAVIS: The Commission asked that this be
12 discussed at the final form before it was issued.

13 CHAIRMAN PALLADINO: Be discussed?

14 MR. DAVIS: Come to the Commission and discuss these
15 comments.

16 MR. DIRCKS: I guess it brings up the question about
17 the site characterization report itself. It is in-house.

18 MR. BROWNING: It is in-house. The staff is reviewing
19 it and it will be forthcoming in the near future.

20 MR. DIRCKS: It is quite a thick document, isn't it?

21 MR. BROWNING: It is not printed yet.

22 MR. DAVIS: Their report was about that thick
23 (indicating).

24 MR. BROWNING: Their report is three volumes this
25 thick (indicating).

1 MR. DIRCKS: This is the one you are going to be
2 commenting on.

3 MR. OLMSTEAD: Comments are that thick (indicating).

4 MR. DIRCKS: We would like to know how you would like
5 to handle this one.

6 COMMISSIONER AHEARNE: We will just require you, Bill,
7 to sign and verify that you have read every word of it.

8 (Laughter.)

9 MR. DIRCKS: And then you will follow on with your
10 signature.

11 MR. BROWNING: At this stage since the report doesn't
12 really fit that well with what the Act requires, it is our
13 intent to just document our review to the extent that it is
14 done so that we can give DOE the guidance that we are able to
15 give at this point in the process in time that that guidance
16 hopefully could be implemented in the plan when we get it later
17 this fall.

18 So we think it is extremely important to get that
19 review and comment out on the street as quickly as possible.

20 MR. DAVIS: Which will be draft comments and again
21 I would propose to be issued under my signature.

22 CHAIRMAN PALLADINO: When must this approval be
23 given? I guess it is comment, when must we comment? We don't
24 approve. What sort of time frame is it?

25 MR. BROWNING: Our planning is on the basis of four

1 months between the time of receipt to our comments. That is
2 contingent on a couple of things, one, that very high quality
3 document from DOE and two, an ongoing informal exchange of data
4 and information on the ongoing site characterization work from
5 DOE. That process has been working and we intend to keep doing
6 that.

7 COMMISSIONER AHEARNE: They have been exchanging data
8 fairly well?

9 MR. BROWNING: Yes. We have been attending what we
10 call workshops where we go out and review the data with them
11 at that particular point in time.

12 CHAIRMAN PALLADINO: You do have the site characteri-
13 zation plan?

14 MR. BROWNING: No, we do not have the plan required
15 by the Act. We will not be receiving the --

16 MR. DIRCKS: We have what they term the report.

17 CHAIRMAN PALLADINO: What is that? How does it
18 differ from a plan?

19 MR. DAVIS: They submitted in November what we
20 require under Part 60. The staff has been reviewing that. In
21 the meantime, we have the Act and the Act makes that report,
22 it is necessary to redo portions of that report to meet the
23 Act. That will be coming in later.

24 CHAIRMAN PALLADINO: How much later?

25 MR. BROWNING: This fall.

1 MR. DAVIS: So what we intend to do, we have the
2 staff comments on the report which came in in November and we
3 intend to release those. They are in draft form, release those
4 under my signature to provide guidance to DOE for the prepara-
5 tion of their plan.

6 CHAIRMAN PALLADINO: Would the Commission in your eyes
7 get into this at all except for any comments we might give you?

8 MR. DAVIS: If we go back to what was said when Part
9 60 was discussed, when we go out with the draft, it was not our
10 understanding that the Commission desired to be involved in
11 that, but when we get ready to make the final director's
12 opinion, publish the director's opinion, then we would come
13 and brief the Commission.

14 CHAIRMAN PALLADINO: But that would be on the final
15 document?

16 MR. DAVIS: Right, sir.

17 CHAIRMAN PALLADINO: Which would come in later?

18 MR. DAVIS: Right, sir. That would be following the
19 November submittal.

20 COMMISSIONER AHEARNE: That's fine.

21 MR. DAVIS: So we will move ahead with these draft
22 comments.

23 MR. BROWNING: I might point out here that it is not
24 just one report. For every site that they will be nominating
25 for characterization, it will be submitting site characterization

1 plans. That is one area where we have been trying to work
2 closely with them so we understand the sequence in which they
3 are going to be submitting them because they are going to be
4 submitting them apparently significantly in advance of the
5 dates that would be indicated in the Act, itself.

6 COMMISSIONER AHEARNE: Bob, a question that I had in
7 reading through the Act and perhaps you can answer it. The first
8 question I sent out to you last night was with respect to the
9 sites that have to be characterized, do we read the Act as say-
10 ing that the three sites all have to be acceptable?

11 MR. BROWNING: There are people who read it that way.
12 Apparently you can read it that way but it just doesn't seem to
13 be a practical approach. I think there is a way to read it
14 and interpret it so you don't have to do that.

15 MR. OLMSTEAD: Right.

16 MR. DAVIS: This is on page 8 of the handout that you
17 have.

18 CHAIRMAN PALLADINO: Is it one of these enclosures?

19 MR. OLMSTEAD: Right, enclosure 2, page 3, we discuss
20 these issues and the answer to the question that you have posed
21 in your little memorandum here is not specifically to be found
22 in there because it is once again one of these areas where, I
23 think, it is advisable to retain some flexibility.

24 A lot of it depends on the timing. Now if we just
25 take the process very simply and assume that everything went in

1 a sequential time frame, the Secretary nominates five sites.
2 He compares them to the guidelines and picks three for character-
3 ization. He starts the characterization process which at that
4 point they must meet the guidelines but where in the
5 characterization process they might fall out and no longer meet
6 the guidelines becomes the issue.

7 It is clear that the purpose of going through the
8 characterization process is to pick the better site for
9 recommendation to the President.

10 COMMISSIONER AHEARNE: The question I am asking is
11 that must there at that point of going forward have been,
12 must there have been three sites that were acceptable in
13 going through the characterization.

14 MR. OLMSTEAD: Not all the way through it, there
15 must be three sites that meet the guidelines when you start.
16 Now if you just started right out and you went a little ways
17 and it became evident they no longer met the guidelines, I
18 think the better view is then you would have to go pick yourself
19 up a third site again.

20 If you come to the second repository and during the
21 site characterization process, one of those sites fell out,
22 you couldn't use one of those sites to characterize for the
23 second repository.

24 There is a lot of room in between those extremes.

25 COMMISSIONER ASSELSTINE: You are saying that the

1 better view is that when you end the characterization process
2 on those first three sites or however many there are, you don't
3 have to have at that point still three valid sites?

4 MR. OLMSTEAD: That is correct.

5 MR. DAVIS: Only one must survive.

6 COMMISSIONER ASSELSTINE: Only one must survive.

7 MR. OLMSTEAD: I want to make it clear that is for
8 the first repository.

9 COMMISSIONER ASSELSTINE: Right.

10 MR. OLMSTEAD: You could not then take the non-
11 qualifying site to the second repository.

12 COMMISSIONER ASSELSTINE: I understand that, yes.

13 MR. DAVIS: This reading is subject to interpretation.

14 COMMISSIONER AHEARNE: Maybe my confusion then is
15 based on reading some interpretation. I had thought that
16 somewhere I had read that for the second repository, you couldn't
17 consider the two that were unsuccessful in the first five.

18 MR. BROWNING: No. The five sites that are nominated
19 of which three are characterized, those two you couldn't pull
20 out.

21 MR. OLMSTEAD: There is some doubt there, too, because
22 that assumes the reason the two fell out is because they didn't
23 meet the guidelines and if they did meet the guidelines but the
24 Secretary just chose not to characterize them, it is not clear
25 then that you couldn't even pull those two down for the second

1 repository although a literal reading would tell you you can't.

2 COMMISSIONER AHEARNE: All right.

3 MR. BROWNING: Section 112(b), one of the requirements
4 of the Act puts on DOE is to submit for comment environmental
5 assessments on each of the five sites that are nominated by DOE
6 and we do plan although the Act doesn't specifically say the
7 NRC has to comment, we do plan to review and comment on this
8 consistent with the desire to ultimately be able to use the
9 environmental impact statement that DOE develops in which
10 the Act encourages us to do to the extent practical.

11 MR. DAVIS: These we expect sometime this summer,
12 right?

13 MR. BROWNING: Yes. We expect these fairly soon.
14 Although the Act requires the nomination and recommendation
15 no later than January, 1985, it is our understanding that
16 they plan to try to do that yet this year.

17 COMMISSIONER AHEARNE: All five.

18 MR. BROWNING: The next one, 301(b), the Act requires
19 NRC and other parties to comment on DOE's draft mission plan
20 that must be published for comment by April 7, 1984. This
21 document is similar to the project decision schedule and is one
22 that we have planned and are, in fact, working closely with DOE
23 to make sure that their work and our work fit in that plan.

24 That again, we intend to be a staff comment and working
25 period and I would think that the only time that we would need to

1 involve the Commission is if we detect any problem in that
2 whole process or any areas where there is inconsistency.

3 To the extent that we can, we intend that process to
4 insure that DOE is developing as much of the information as we
5 will ultimately need for our licensing actions as a part of their
6 mission plan.

7 MR. DIRCKS: We reviewed one part of this before. As
8 they go through site characterization actually characterizing
9 this site, we would anticipate almost day-to-day contact with
10 them so that we could be raising issues at that point rather
11 than waiting to raise issues after we get a construction
12 authorization application.

13 CHAIRMAN PALLADINO: By mission plan, do they mean
14 an overall plan?

15 MR. DAVIS: For the whole Act, all of the elements
16 that are in there. DOE hasn't really launched into this
17 yet but we intend to interface as this is developed.

18 MR. BROWNING: They and we have been concentrating
19 more on the short lead time items but we have a mechanism in
20 place to make sure that we work closely in the development of
21 that plan.

22 The next portion deals with the test and evaluation
23 facility. Section 213(a) requires that NRC consult with DOE
24 on the T&E siting guidelines which must be published by DOE by
25 July 7, 1983 which is the same date that they have to publish

1 the siting guidelines for the repository.

2 COMMISSIONER AHEARNE: There is a phrase in the Act
3 as it discusses T&E facility which essentially says that if the
4 T&E facility is to be located at any candidate site or repository
5 site and then it goes on and it is treated much differently
6 if it is at a site or not at a site. What is the definition
7 of the staff of "at a site?"

8 MR. BROWNING: This would really depend on the
9 definition of a site that is in our technical rule which you
10 currently have in front of you. If it was within the boundary
11 that is defined in that definition, it would be co-located.

12 COMMISSIONER AHEARNE: I think we are using the word
13 controlled area.

14 MR. BROWNING: That's right. It ties back to the
15 definition of controlled area which is 10 kilometers extending
16 beyond the perimeter of the actual repository. You have given
17 us some comments to clarify that definition.

18 COMMISSIONER AHEARNE: Your definition then of "at a
19 site," would be within the controlled area?

20 MR. BROWNING: Yes.

21 COMMISSIONER AHEARNE: So your conclusion is that,
22 for example, if you were to build a T&E facility 10.1 kilometers
23 outside of the boundary of the proposed site even if it is in
24 the same geological region, et cetera, then it does not come
25 under the provision of the Act.

1 MR. BROWNING: And it was not connected in any way.

2 COMMISSIONER AHEARNE: When you say, "not connected,"
3 what do you mean?

4 MR. BROWNING: Physically connected so you could go
5 from one to the other.

6 COMMISSIONER AHEARNE: Since the repository might not
7 even be started, are you saying that there would have to be a
8 provision on the T&E facility or on the repository saying they
9 could never be connected?

10 CHAIRMAN PALLADINO: What do you mean by not
11 connected? There could be a gate on one side of the street for
12 one and a gate on the other side of the street for the other
13 one and you would just drive across.

14 COMMISSIONER AHEARNE: What puzzles me is that it
15 would seem to me that on the reading of that, just the plain
16 language, one would conclude that they must be talking about
17 a site as we talk about the Hanford site. Now when one talks
18 about the Hanford site, one doesn't really mean the 10 kilometers
19 around that small area usually or the WIPP site. Certainly
20 the people in an area when they are identified as they are a
21 candidate for a site haven't narrowed it down to that small a
22 region.

23 I gather that the staff's conclusion is that it is
24 this very tight --

25 MR. BROWNING: That would be the literal definition.

1 I think as a matter of intent, DOE would not have any real
2 practical reason to even try to do that.

3 MR. DAVIS: I think obviously that is an area that
4 we ought to take up and will take up.

5 COMMISSIONER AHEARNE: Mike is reasonable.

6 MR. BELL: The Act itself only defines one site-
7 related factor which is the candidate site. What they appear
8 to have in mind there, I think, is similar to what the staff
9 has in mind because it is tied to the area under site character-
10 istics and the hydrology and geology that is providing
11 isolation rather than just the convenient hunk of land on which
12 the federal government happens to be conducting operations.

13 COMMISSIONER AHEARNE: That would seem to be much
14 more reasonable.

15 MR. BELL: That is our reading.

16 COMMISSIONER ASSELSTINE: I think what Mike says
17 supports what Bob was saying earlier, that you really are talking
18 about that defined area that you are looking at.

19 COMMISSIONER AHEARNE: I think just the opposite.
20 Bob was saying it is 10 kilometers in this region.

21 MR. BELL: The 10 kilometers is what you are depending
22 on for isolation. That is the area DOE has to --

23 COMMISSIONER AHEARNE: But Mike there is a difference
24 between what we are saying we will only watch the 10 kilometers
25 versus what is the hydrological region of the site. We have to

1 justify our 10 kilometers on the grounds of protecting the
2 migration times and so forth, but the geological feature of
3 that site and hydrological feature of that site may well be
4 much more than 10 kilometers.

5 MR. BELL: Not all of that is necessarily going to
6 affect isolation of the waste. The Hanford salts go on.

7 COMMISSIONER AHEARNE: But you see the reading of
8 the law doesn't say that the reason that you must maintain,
9 that you have a difference, the T&E and the repository is
10 to maintain that kind of separation, does it?

11 MR. BELL: What I was saying the staff was reading
12 into it was given the definition in the Act which ties it to
13 the site characterization program, we think what is intended by
14 the Act is that portion of the hydrology and geology that
15 is really provided in isolation.

16 COMMISSIONER AHEARNE: That ends up being character-
17 ized.

18 MR. BELL: You are not going to characterize 100.

19 COMMISSIONER AHEARNE: Sure, but for example, if you
20 end up and I haven't seen any of these characterization reports,
21 but at least as I recall the earlier work that DOE was doing
22 a site characterization was going a lot farther than six miles
23 or 10 kilometers.

24 MR. BELL: Again, our definition of characterization
25 in Part 60 is after you do the broad regional studies which is

1 specifically excluded from site characterization, you then
2 narrow down a location that you want to study in more detail
3 and then site characterization begins and you are focusing in,
4 I guess, on that controlled area.

5 COMMISSIONER AHEARNE: I have no problem if the point
6 is that the area that the detailed site characterization report
7 will cover some region and that that is the region that one
8 is talking about either in or out, that T&E is in the region
9 or out of the region.

10 The difficulty I was having is that 10 kilometers as
11 best as I can tell is an artificial boundary put up for several
12 reasons and I would expect that site characterization reports
13 that end up going successfully through the process are not
14 going to use that artificial boundary in the region and they
15 may very well cover a larger area.

16 MR. DAVIS: The exclusion.

17 MR. BELL: I was hoping that I could clarify quickly.
18 Apparently I haven't. I think we can revisit this question.
19 Let's leave it as an open issue.

20 COMMISSIONER AHEARNE: We may have to.

21 MR. BELL: We can revisit this question when we come
22 down and look at the changes to the licensing procedures
23 required by the Act and we will have that opportunity.

24 COMMISSIONER AHEARNE: What I am really trying to say
25 is that there is one way of reading the Act which is a very

1 literal definition in which the DOE or whomever could decide
2 to do something which would be viewed as clever and the clever
3 way would be we chose this repository and here is the area
4 repository, we are going to build it here and we now carefully
5 measure out the 10 kilometers and right over that line, we will
6 now start the T&E facility with the intent at some stage of
7 then connecting them. They will be the same facility.

8 That would appear to violate at least the face of the
9 law. It might not violate the letter of the law and I was just
10 trying to understand where the staff was.

11 COMMISSIONER ASSELSTINE: There is an awful lot of
12 history on that very issue. There is an awful lot of it.

13 CHAIRMAN PALLADINO: Does it clarify it?

14 COMMISSIONER ASSELSTINE: I think it does to a certain
15 extent because I think most of it focuses on the ability to
16 locate the test and evaluation facility and a repository which-
17 ever comes first within the same geologic formation and I think
18 most of the history tends to support the notion that you can do
19 that as long as they are not, in essence, the same facility.

20 COMMISSIONER AHEARNE: I would like to see that.
21 I was familiar with some history which was cutting the opposite
22 way.

23 MR. BROWNING: I think the main concern was that
24 if they were to start a T&E facility and that would evolve into
25 a repository without all of the front end investigation.

1 COMMISSIONER AHEARNE: But, you see, once you have
2 agreed that you can go 10.1 miles, that is exactly what you
3 have agreed to, 10.1 kilometers. At that stage, you have
4 agreed that they can do just that.

5 CHAIRMAN PALLADINO: Can we get a little bit of
6 legislative history on that?

7 COMMISSIONER AHEARNE: It would be useful.

8 COMMISSIONER ASSELSTINE: One thing I think it is
9 also clear on is that the intention was not to allow DOE to
10 later on turn the T&E facility into the repository.

11 MR. DAVIS: I think that is very true.

12 COMMISSIONER ASSELSTINE: The very same shafts and
13 rooms that were part of the T&E facility to allow those to
14 actually become the repository is not allowed, but not
15 necessarily to foreclose that same geologic formation in
16 which the T&E facility is located, to use that formation for
17 a repository if you go through all of the steps that are
18 required for a repository.

19 COMMISSIONER AHEARNE: I would agree with that. It is
20 the former that I was concerned about.

21 COMMISSIONER ASSELSTINE: Yes.

22 MR. BROWNING: We don't know yet. DOE hasn't really
23 decided and they have up to one year under the Act to decide
24 whether or not to co-locate the site.

25 MR. DAVIS: But we considered this consultation to be

1 a staff level consultation under 213(a).

2 MR. BROWNING: I would think as a part of the written
3 agreement and the process by which we coordinate, your concerns
4 would clearly be addressed.

5 MR. DAVIS: Again, that written agreement we had
6 considered a staff level written agreement, negative consent
7 on the part of the Commission.

8 MR. BROWNING: Page 12, Section 303, this, I believe,
9 is the only requirement that specifically says the Chairman
10 rather than the Commission, requires that DOE consult with the
11 Chairman on a study of alternative approaches to managing
12 civilian waste management program and then DOE is to report to
13 Congress what its conclusions are. The date there is January 6,
14 1984 in which that has to be done.

15 Sometime during this year, I would expect the DOE
16 to propose something to the Chairman.

17 CHAIRMAN PALLADINO: Does it take their initiative to
18 make a proposal?

19 MR. BROWNING: Yes.

20 CHAIRMAN PALLADINO: If they don't take the initiative
21 then what?

22 MR. BROWNING: They are required to do something by
23 January 6.

24 MR. DAVIS: In dealing with them, they fully intend
25 to come up with something and submit for your comment.

1 MR. BROWNING: We have staff identified to help you
2 to the extent that you need the staff help on that.

3 CHAIRMAN PALLADINO: And I will keep the Commission
4 informed.

5 MR. BROWNING: Now sections 151 (a) and (b) deal
6 with financial arrangements of low-level waste. It is not
7 directly related to the high-level waste area and they really
8 are provisions to a large extent that we had indicated would
9 be desirable to allow us in our rule-making, 10 CFR 61,
10 separate rule-making to cover financial arrangements for long
11 term monitoring and site care.

12 COMMISSIONER AHEARNE: I don't want to take time this
13 morning to address this but I have a copy that I guess you
14 people sent up to OCA of a memo from Guy Cunningham to Wayne
15 Derr talking about answering some questions on these sections
16 with respect to the Waste Policy Act. There are two points in
17 there that at some point, I think, you ought to perhaps flush
18 out a little bit for the Commission. One is your point that
19 an agreement states site is going to have a long term maintenance
20 and monitoring. The Commission has to review and approve the
21 post-license long term arrangements. This is basically saying
22 that if a state has a site and is making arrangements, the
23 Commission has to step in and do the arrangement and that is
24 probably something the agreement states haven't realized and
25 if we end up taking that position, we ought to at least make sure

1 that we agree with it and then discuss it.

2 MR. DAVIS: You are running somewhat counter to the
3 states being responsible for --

4 COMMISSIONER AHEARNE: Yes. The second point that
5 you have reached is as a general principle this 151(b) that
6 transfers title to DOE of sites, that a state-licensed site
7 will remain state responsibility and so any low-level waste
8 site licensed by an agreement state cannot fit under the transfer
9 to DOE. I would guess that that is something that we and the
10 states would like to make sure that we understand fully.

11 MR. BROWNING: Now there are no specific dates in the
12 Act for those requirements, but they will be rule-making actions
13 which will come before the Commission.

14 COMMISSIONER AHEARNE: But there is a lot more
15 activity right now on finding low-level waste sites than there
16 is for repositories. I think it is something that you ought to
17 get together on and get something to the Commission.

18 MR. BROWNING: Page 13, we have identified the short
19 lead time actions required in the area of programmatic or
20 fuel cycle, material safety and transportation.

21 Section 223(b) requires that DOE and NRC publish a
22 joint notice in the Federal Register regarding technical
23 assistance to non-nuclear weapon states for spent fuel storage.
24 That Commission paper has come to the Commission and I under-
25 stand that comments are being resolved and will go back to the

1 Department of Energy and we expect to be able to meet that
2 date.

3 CHAIRMAN PALLADINO: When must it be done, by April 7?

4 MR. BROWNING: April 7, yes.

5 CHAIRMAN AHEARNE: That is pretty well along, isn't
6 it, Sam?

7 MR. BROWNING: International Programs is the one that
8 took the lead on doing that particular action.

9 Section 141(b)(3) requires that the NRC will consult
10 with the DOE on the development of the MRS proposal which DOE
11 must submit to Congress by June, 1985. This is an area where
12 the NMSS office is, in fact, coordinating with DOE in the
13 development of that proposal, but it is just now getting off
14 the ground and there aren't any real firm schedules to which
15 we could indicate when you people might get involved in that.

16 MR. DAVIS: We see this as basically staff level.
17 It is pretty technical consultation at this point or seems to be.

18 MR. BROWNING: Section 151(c) deals with the financial
19 arrangements for long-term maintenance and monitoring as well
20 as decontamination and stabilization of special sites that have
21 essentially milltailings that resulted from specific processing
22 operations. This is tied in with the requirements in the low-
23 level waste site and we will be handling those in a very similar
24 manner so that the rule-making applicable to this would come
25 together with the low-level waste sites.

1 CHAIRMAN PALLADINO: May I go back to 141(b). It
2 says, "NRC will consult with the DOE on the development of the
3 MRS proposal..." Who is developing the MRS proposal?

4 MR. BROWNING: The Department of Energy.

5 CHAIRMAN PALLADINO: And they are going to come back
6 and consult with us?

7 MR. BROWNING: Yes.

8 MR. DAVIS: That has already begun.

9 COMMISSIONER ASSELSTINE: On that one given some of
10 the controversy that has surrounded MRS in the past, I would
11 hope and I grant you as long as it is the fairly detailed,
12 technical discussions now, I wouldn't have any difficulty with
13 the staff doing that, but at some point before DOE sends the
14 proposal, I think it would be useful to come back to us and
15 tell us before we give any kind of a final set of comments.

16 CHAIRMAN PALLADINO: That is the conclusion that I
17 was going to come to, also.

18 MR. DAVIS: What we have done so far is really we
19 have gotten with DOE and begun to identify areas that will need
20 research in order to support an application for an MRS, but
21 we will come back to the Commission.

22 MR. DIRCKS: There may be some need to look at Part 72.

23 MR. BROWNING: That revisiting of that rule is
24 presently under way. The preliminary indications are that it
25 would not require major changes.

1 MR. DAVIS: It is somewhat dependent on what direction
2 they go for the MRS.

3 COMMISSIONER AHEARNE: Yes. But 151 (c) would show
4 up as a rule change, our action under that.

5 MR. BROWNING: Section 135 (a) requires that NRC
6 will determine that use of an existing federal facility for
7 interim storage will adequately protect the public health and
8 safety. Other federal storage capacity provided for civilian
9 nuclear power reactor spent fuel must comply with NRC licensing
10 or authorization requirements.

11 MR. DAVIS: We had been planning that as a staff
12 action.

13 COMMISSIONER AHEARNE: As I understand it, the
14 facilities that are available to the federal government for this
15 have to be one that they already owned at the time of the Act.

16 MR. DAVIS: They can be modified.

17 COMMISSIONER AHEARNE: They can be modified.

18 MR. DAVIS: Then we would have to make a determination
19 of the adequate protection of the public health and safety for
20 that facility.

21 COMMISSIONER AHEARNE: Is West Valley called a DOE
22 owned facility?

23 MR. DAVIS: Right now?

24 MR. DIRCKS: I don't think it is.

25 COMMISSIONER AHEARNE: I wasn't sure.

1 COMMISSIONER ASSELSTINE: I thought the facility was
2 but the stuff in it wasn't.

3 MR. DIRCKS: Do you mean under that Act? I think it
4 was to DOE for clean-up.

5 MR. DAVIS: And then goes back. We have continuing
6 license arrangements with the states.

7 COMMISSIONER AHEARNE: It went through the court
8 process and I just wasn't sure. I didn't know how it fit.

9 MR. DAVIS: We will take a look at that.

10 COMMISSIONER AHEARNE: I am sure that Mr. Lundine
11 would be very upset.

12 So then the facilities that are normally thought of
13 are like the storage pools at Spent River or something. To
14 what extent does the NRC review extend then to that facility?

15 MR. DAVIS: If DOE decides to use that as a storage
16 facility which I would say would be relatively unlikely, but
17 if they decide to, then we would have to make a determination
18 that that facility does adequately protect the public health
19 and safety.

20 Now we are not sure at this point what that determin-
21 ation would look like. It is less than an agreement apparently
22 because it called for an agreement elsewhere for other places
23 with DOE and it surely is not a license so my impression is
24 that we would have to do some type of safety analysis on the
25 existing facility to come up with a determination.

1 MR. DIRCKS: Probably something similar to the work we
2 do for the Navy in reviewing their reactors.

3 COMMISSIONER AHEARNE: Do you see developing any
4 formal procedures for that review?

5 MR. DAVIS: I would personally not launch into this
6 until we get a better feel from DOE as to what their plans are.

7 COMMISSIONER AHEARNE: Let me rephrase the question.
8 If DOE were to come in with something, would you be comfortable
9 on doing the review without formal procedures or would you
10 feel that you would have to have formal procedures?

11 MR. DAVIS: We would have to come to some written
12 understanding with DOE as to what this entails, right?

13 MR. DIRCKS: Yes.

14 MR. BROWNING: Section 136(b) is a requirement that
15 NRC determine eligibility for federal storage of persons
16 generating or owning spent fuel. That is a rule-making action
17 related to that which is laid out --

18 COMMISSIONER AHEARNE: That is the April 7.

19 MR. BROWNING: Right.

20 MR. DAVIS: Then when they apply, we have six months
21 to process their application.

22 MR. BROWNING: Section 218(a) indicates that NRC may
23 be rule approve dry storage technologies to the maximum extent
24 practical without additional site specific approvals by NRC.

25 MR. DAVIS: This would entail a rule change. It is

1 a generic approval as you well know insofar as practical. The
2 way we are looking at it is we will have these reports on the
3 various casks which will be -- quote -- off the shelf and then
4 insofar as practical defining the rule, what the siting
5 requirements should be.

6 COMMISSIONER AHEARNE: Do we already have such an
7 application for TVA to use the casks?

8 MR. DAVIS: We have applications from Vepco to use
9 a cask but it does not specify which cask. We do have two
10 topical reports submitted to us from cask manufacturers for
11 the approval of the casks. This is all under review at the
12 present time

13 COMMISSIONER AHEARNE: Now the way I was reading the
14 Waste Act and some of the comments you had in here is you said
15 we would be putting out proposed rule and the procedures to do
16 this. Does that mean that you don't believe that our current
17 rules are adequate?

18 MR. DAVIS: No. We think our current rules are
19 adequate for the approval of the casks and for the approval on
20 a site-to-site basis. However, this is a generic aspect that
21 we are talking about.

22 MR. BROWNING: That completes the short lead time items
23 and obviously there are a lot of other longer term things, but
24 I think the staff, at least, has not been able to digest much
25 more than this.

1 CHAIRMAN PALLADINO: We will have trouble with as
2 much as you did.

3 MR. DAVIS: What we intend to do now after this
4 interchange which has been very valuable to us, we will go back--

5 COMMISSIONER AHEARNE: It is very valuable to us all
6 especially all those times that we said that we intend to do
7 this by negative consent.

8 (Laughter.)

9 MR. DAVIS: We will go back and mark on this to show
10 those actions and let you know our understanding of which will
11 come to you for approval, for discussion and approval.

12 COMMISSIONER AHEARNE: And you are also going to come
13 back with a table on the 302.

14 MR. DAVIS: The simple part of that Act on the reactors.

15 CHAIRMAN PALLADINO: We appreciate very much what you
16 have presented to us today. You seem to be on the right track
17 and I am very gratified to see the cooperation being carried on
18 between DOE and the staff. We will undoubtedly be interested
19 in longer term actions but I think those could wait until a
20 better consolidation of our position on the near term actions.

21 MR. DAVIS: I agree. I think we and DOE both need to
22 get a tighter schedule on the near term actions. But we will
23 promptly come back with this recognizing what we have done today.

24 CHAIRMAN PALLADINO: Are you going to put out the
25 revised schedule and indicate on there where Commission action

1 is necessary?

2 MR. DAVIS: We will revise the next to last attachment
3 on that submittal. Yes, sir.

4 CHAIRMAN PALLADINO: All right. Any other comments
5 by any of the other Commissioners?

6 (No response.)

7 CHAIRMAN PALLADINO: We thank you very much and we
8 stand adjourned.

9 (Whereupon, at 11:35 o'clock a.m., the meeting was
10 adjourned, to reconvene at the Call of the Chair.)

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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the
NUCLEAR REGULATORY COMMISSION

in the matter of: Briefing on Nuclear Waste Management Act

Date of Proceeding: Friday, March 18, 1983

Docket Number: _____

Place of Proceeding: Rm. 1103, 1717 "H" St., N.W.
Washington, D. C.

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

Marilynn M. Nations

Official Reporter (Typed)

Marilynn M. Nations

Official Reporter (Signature)