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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555① Roman
② Sholly file

JAN 12 1983

MEMORANDUM FOR: Harold R. Denton, Director
Office of Nuclear Reactor Regulation

830110

Guy H. Cunningham
Executive Legal DirectorFROM: T. A. Rehm, Assistant for Operations
Office of the Executive Director
for Operations

SUBJECT: QUARTERLY PROGRAM BRIEFING ISSUES

The following points addressed in the quarterly program briefing on January 7, 1983, require action as indicated.

1. NRR should stay abreast of regional progress in regard to completion of assigned licensing actions and advise EDO if delays are developing that NRR cannot absorb.
2. ELD should review the legislative history of PL 97-415, Section 12 (Sholly Amendment), prior to resubmitting the Commission paper on promulgation of an effective rule to the EDO.
3. NRR should complete the review of environmental technical specifications before the Sholly Amendment procedures become effective.
4. NRR should review the reactor operator requalification program and, if appropriate, submit a Commission paper to the EDO with proposed changes.
5. NRR should review the prioritization of generic safety issues with the ACRS prior to submitting the Commission paper to the EDO in mid-March 1983.
6. DEDROGR will look into the requirements of the Regulatory Requirements Analysis, recently issued, and advise EDO if that procedure is intended for USIs and, in general, assure requirements placed on the staff in this regard are clear and reasonable.

T. A. Rehm
Assistant for Operations
Office of the EDOcc: J. G. Davis
R. C. DeYoung
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

PUBLIC MEETING
ON IMPLEMENTATION OF PUBLIC LAW 97-415

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

Tuesday, January 18, 1983

The Commission convened, pursuant to notice, at

2:01 p.m.

COMMISSIONERS PRESENT:

- JOHN AHEARNE, Commissioner
- VICTOR GILINSKY, Commissioner
- THOMAS ROBERTS, Commissioner
- JAMES ASSELSTINE, Commissioner

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

- S. CHILK
- M. MALSCH
- W. DIRCKS
- G. CUNNINGHAM
- E. CASE
- W. OLMSTEAD
- D. RATHBUN

AUDIENCE SPEAKERS:

T. DORIAN

* * *

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DISCLAIMER

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P R O C E E D I N G S

1
2 COMMISSIONER AHEARNE (presiding): The 2:00
3 o'clock meeting is about to start. The Commission first
4 has to vote the following vote on the briefing on
5 implementation of Public Law 97-415. We need to **vote to**
6 **hold** on less than one week's notice. All in favor say
7 aye.

8 (A chorus of ayes.)

9 COMMISSIONER AHEARNE: Opposed?

10 (No response.)

11 COMMISSIONER AHEARNE: All right. This
12 afternoon we hear from the Staff who has sent us up a a
13 fairly large paper discussing some of the regulations
14 they propose we put out for comment and one that will be
15 put out in final form to implement the various
16 provisions recently passed by the Congress.

17 Tom? Jim?

18 (No response.)

19 COMMISSIONER AHEARNE: Bill?

20 MR. DIRCKS: It's difficult to talk about
21 this, since one of the authors of the amendment is
22 sitting at the table.

23 (Laughter.)

24 COMMISSIONER AHEARNE: We can always ask him
25 about his comments.

1 COMMISSIONER ASSELSTINE: I'm looking at this
2 with a different perspective.

3 (Laughter.)

4 MR. DIRCKS: I thought you would be.

5 (Laughter.)

6 MR. DIRCKS: I thought it would be better if I
7 dropped out of the process at an early stage and let the
8 legal sections take it up. Guy Cunningham is here and
9 he will go through it. I think there are resource
10 impacts in this area when we get to the Sholly amendment
11 and we'd like to talk about that. But first I'll let
12 Guy pick up on the various rule changes and then we can
13 come back to the resource requirements.

14 COMMISSIONER AHEARNE: Is it correct that what
15 you are going to do today is try to walk us through this
16 paper?

17 MR. DIRCKS: Yes.

18 COMMISSIONER AHEARNE: We do not -- unless
19 there is an overriding sense of urgency on the part of
20 my colleagues, I don't think we intend to try to take
21 this to a vote. It's just a briefing at the present
22 time.

23 MR. DIRCKS: It's a briefing to get you
24 through it and we thought the sooner we got down here
25 with it the better, because we do have the time

1 requirements in the statute to move on it.

2 Guy?

3 MR. CUNNINGHAM: Okay. The package has three
4 separate rulemaking proposals: dealing first with
5 temporary operating licenses pursuant to the new Section
6 192 of the Atomic Energy Act; secondly, a final rule
7 dealing with the criteria for making the no significant
8 hazards consideration determination. That rule was
9 originally published in proposed form, I believe it was,
10 in March 1980. Then third and probably most complex are
11 the proposed rules to implement the Sholly amendment.

12 I would propose, I think, to go through first
13 of all the two simpler ones, the temporary operating
14 license and the criteria, and then devote the major part
15 of our time to the Sholly amendment at the end.

16 The temporary operating license authority was
17 granted to the Commission in the authorization bill for
18 1982 and '83 and expires on December 31st of this year.
19 It authorizes the Commission, upon the request of an
20 applicant for an operating license, to grant interim
21 operating authority, first at a five percent power level
22 and later, upon application, at higher power levels,
23 upon satisfaction of the Commission that all the
24 required safety criteria have been met.

25 In particular a prerequisite for issuance of

1 the interim operating authority is that the ACRS report
2 has been issued, the Staff's SER and the supplemental
3 SER which responds to the ACRS report, the final
4 environmental statement, and the appropriate emergency
5 plan.

6 The authority was requested by the Commission
7 following Three Mile Island as a temporary solution to a
8 temporary problem, and the Committee report, the
9 conference report, makes it clear that the Congress
10 intends that this authority be used only sparingly; but
11 that it is intended to take care of the problem of any
12 so-called impacted plants, which were the consideration
13 that prompted the sending up of the bill to begin with.

14 The Commission had such authority earlier,
15 which expired in 1972. The new Section 192 very closely
16 parallels the early authority, and for that reason the
17 regulations that we have put in this package very
18 closely track the ones that were published and effective
19 in final form in the earlier 1970's. Essentially, they
20 track the statute in detail, just saying that the
21 documents have to be completed and in evidence and then
22 the applicant on a motion supported by affidavit can
23 request the interim operating authority.

24 The statute provides that the Commission
25 should consider responsive affidavits or statements.

1 The regulations provide for that opportunity. And then
2 the Commission, without the necessity for completing the
3 operating license hearing can if it chooses issue the
4 interim operating authority, as I said first at five
5 percent and then later at a higher power level.

6 That in essence is the temporary operating
7 license authority part of the package. Unless there are
8 questions, I will move on to the significant hazards
9 consideration.

10 COMMISSIONER ASSELSTINE: Do you want to do
11 questions on each individual section?

12 COMMISSIONER AHEARNE: I think that would be
13 easier, particularly since this is quite different.

14 COMMISSIONER ASSELSTINE: I had just two
15 questions on the temporary operating license
16 provisions. One was on page 8 of the supplementary
17 information section of the proposed rule. At the top of
18 page 8 you note that the requirements of 189a do not
19 apply to the issuance of a temporary operating license,
20 but you do say -- you say, "Thus, the legislation
21 authorizes the Commission to use procedures other than
22 formal adjudicatory procedures in issuing a temporary
23 operating license. In this regard, the Commission will
24 develop informal procedures case-by-case to resolve
25 particular issues as they arise."

1 I guess the question I had was what additional
2 procedures other than what is included here do you
3 envision as possibly being necessary?

4 MR. CUNNINGHAM: Well, what we have put in the
5 rule, of course, is the opportunity or the requirement
6 for an affidavit from the applicant and the opportunity
7 for the public to respond.

8 COMMISSIONER ASSELSTINE: Right.

9 MR. CUNNINGHAM: There are no further
10 requirements stated. The Commission could just take
11 those, deliberate, and issue a decision.

12 But it could, if it chose, have a public
13 meeting like this one and invite the applicant and the
14 commenters to address them. But we've specifically left
15 that for a case-by-case development.

16 COMMISSIONER ASSELSTINE: But at least what is
17 in here in your view would satisfy at least what is
18 required, which is simply the submission of affidavits
19 and the opportunity for comment?

20 MR. CUNNINGHAM: That is right. That creates
21 the opportunity for a written record.

22 COMMISSIONER ASSELSTINE: So this would simply
23 allow as a discretionary matter by the Commission some
24 additional step if the Commission chose to do that on a
25 case-by-case basis?

1 MR. CUNNINGHAM: That's correct.

2 COMMISSIONER ASSELSTINE: The next question I
3 had was on page 11, the last bulleted item on the page:
4 "Section 192 provides that the Commission's authority to
5 issue new temporary operating licenses shall expire on
6 December 31, 1983, thus these regulations would expire
7 on that date."

8 It is clear. Is it not, from the legislation
9 that a temporary operating license could be issued any
10 time up to or through December 31st that would remain in
11 effect for some period of time beyond December 31st,
12 1983?

13 MR. CUNNINGHAM: That is clear.

14 COMMISSIONER AHEARNE: Is it clear from the
15 regulations?

16 COMMISSIONER ASSELSTINE: Yes, I guess that's
17 what I'm wondering is whether --

18 COMMISSIONER AHEARNE: It wasn't to me.

19 COMMISSIONER ASSELSTINE: Yes. The question I
20 had in my mind was the same one that the Chairman had
21 raised.

22 MR. CUNNINGHAM: I'm not sure that the
23 regulation has to be changed. It might be advisable to
24 put that in the supplementary information. We could
25 expand and make that clear.

1 COMMISSIONER AHEARNE: Somewhere in there,
2 because I did have that same question. It wasn't clear
3 what happened to all the licenses that might be out.

4 MR. CUNNINGHAM: If they were issued by
5 December 31st, they would remain in effect according to
6 the terms the Commission had originally set.

7 COMMISSIONER ASSELSTINE: And the expiration
8 of our regulations as of December 31st, 1983, would not
9 have any negative impact on that.

10 MR. CUNNINGHAM: No, because the regulations
11 only deal with the matter of issuance of the license.
12 The license would remain in effect on its own terms.

13 COMMISSIONER ASSELSTINE: They also deal with
14 amendments, don't they?

15 MR. CUNNINGHAM: Excuse me?

16 COMMISSIONER ASSELSTINE: Don't they deal also
17 though with amendments to a temporary operating
18 license?

19 MR. CUNNINGHAM: You can amend a TOL to raise
20 the power level, for example, but again I don't believe
21 you could do that after December 31st.

22 MR. MALSCH: They also relate for example
23 suspending a temporary operating license. If the
24 applicant is processing the application with due
25 diligence, that requirement would be to apply presumably

1 throughout the life of the temporary licensing, but that
2 would be beyond December 31st, 1983. You wouldn't want
3 that authority to lapse.

4 MR. CUNNINGHAM: I would think we would
5 probably still have that authority under other sections
6 of the Act, but it may be that we should take a look at
7 that.

8 COMMISSIONER ASSELSTINE: I'm not sure that I
9 fully agree with your other statement, Guy, that if you
10 had a temporary operating license, for example that was
11 issued in November of 1983 with the five percent power
12 level at the original level, why couldn't someone amend
13 that to authorize operation at a higher than five
14 percent level after December '83, since that would be in
15 effect an amendment to the license that was issued prior
16 to the statutory deadline.

17 MR. CUNNINGHAM: My impression had been that
18 our authority to issue licenses is an authority to issue
19 amendments as well, and that the Act says that it
20 expires on December 31st. But we'd certainly be willing
21 to look more closely at that question.

22 COMMISSIONER ASSELSTINE: Okay. I wasn't sure that it
23 was that clear. I had the sense that if you got in
24 under the wire that at least for that facility you would
25 be okay. But I guess that is the other question I would

1 raise. That covers mine.

2 COMMISSIONER AHEARNE: Vic?

3 COMMISSIONER GILINSKY: For myself, I don't
4 have any difficulty with the rule. But I don't think I
5 like the background section, which gets into the
6 question of whether it looked like there were going to
7 be delays or there weren't going to be delays, and I
8 would suggest either shortening that, saying "the rule
9 reflects the legislation which passed."

10 MR. CUNNINGHAM: Well, I understand your
11 point. The reason it was drafted that way is that was
12 essentially the case that the Commission made when it
13 requested the legislation.

14 COMMISSIONER GILINSKY: Well, it limited
15 itself to the low power phase. I guess I just don't
16 think there is a need to go into all of the ins and outs
17 of that, or else it needs to be, I think, more neutrally
18 worded. I have some minor changes I would make if you
19 were going to retain it, although I would prefer to
20 simply shorten it. I can give you that separately.

21 MR. CUNNINGHAM: We would certainly be pleased
22 to see your suggested word changes, and if any other
23 Commissioners have any suggestions.

24 COMMISSIONER AHEARNE: I would have no problem
25 with some slight word changes. It's only a paragraph

1 we're talking about, isn't it?

2 COMMISSIONER GILINSKY: Well, it's about a
3 page and a half all together.

4 MR. CUNNINGHAM: Pages 2 to 4?

5 COMMISSIONER ASSELSTINE: Most of the rest of
6 it is pretty well --

7 COMMISSIONER AHEARNE: I think the first
8 paragraph is the only one that really talks about that.
9 The rest is a factual description of what the Commission
10 rules were.

11 COMMISSIONER ASSELSTINE: I even thought the
12 discussion of the delay issue was couched pretty much in
13 terms of a factual recitation of the situation, at least
14 in 1980, the late 1980 time frame. But at that time it
15 did appear that delays would occur between the time of
16 construction --

17 COMMISSIONER GILINSKY: Well, it appeared to
18 some people it would. If you said "it was argued that,"
19 it would be different. I just felt there was no need to
20 go into that.

21 COMMISSIONER AHEARNE: What word changes would
22 you like?

23 COMMISSIONER GILINSKY: I guess I would argue
24 that if the basic notion is that you want to retain
25 this, I would say "It was argued that there was a

1 possibility" --

2 COMMISSIONER AHEARNE: Sure.

3 COMMISSIONER GILINSKY: -- "that there would
4 be delays."

5 MR. CUNNINGHAM: Right. We can certainly make
6 that change. And if any others are suggested to us, we
7 will take them into account.

8 COMMISSIONER AHEARNE: That's just two of us
9 who are willing to do that so far.

10 COMMISSIONER ASSELSTINE: I guess I would like
11 to see the changes.

12 (Laughter.)

13 MR. CUNNINGHAM: Well, as you know, this paper
14 was prepared in order to get things before the
15 Commission as quickly as possible.

16 COMMISSIONER AHEARNE: Yes.

17 MR. CUNNINGHAM: No one other than the Staff
18 had seen it in final form. We have consulted with OGC
19 early on, but we would anticipate that after this
20 briefing there will be other comments and we will have a
21 revision at some point in the very near future.

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1 COMMISSIONER AHEARNE: I guess only have two
2 questions. The first one was to what plants do you now
3 expect this might apply?

4 MR. CUNNINGHAM: I believe that the only
5 candidate is possibly Shoreham, but that case --

6 MR. CASE: Two possible candidates: Shoreham
7 and possibly Perry. They are both unlikely but
8 possible, I would say.

9 COMMISSIONER AHEARNE: And the second question
10 is on page 18, under section (c), it says "The
11 Commission will not issue a temporary operating license
12 until all significant safety issues significant to the
13 facility in question have been resolved to its
14 satisfaction, taking into consideration the power level
15 and time period requested."

16 I was, I guess, somewhat puzzled by the
17 finality of that statement. Isn't that equivalent to
18 the kind of a conclusion we would reach if we were about
19 to issue an operating license to the plant, "all
20 significant safety issues ... have been resolved to our
21 satisfaction"?

22 MR. CUNNINGHAM: Well, I think that has to
23 mean resolved to your satisfaction for the purpose of
24 temporary operating authority because there was also
25 language in here that makes it clear you cannot prejudge

1 the outcome.

2 COMMISSIONER AHEARNE: Perhaps then you could
3 put that phrase in.

4 MR. CUNNINGHAM: That is definitely in here in
5 other places. That was specifically --

6 COMMISSIONER ASSELSTINE: I agree with that.
7 I think it would be useful to put that in.

8 MR. CUNNINGHAM: But it may be that they ought
9 to be in closer proximity.

10 COMMISSIONER AHEARNE: Or at least
11 cross-referenced.

12 MR. MALSCH: Actually, you shouldn't have
13 standards like this in Part 2 anyway. The actual
14 standard for amendment issuance is in Part 50, and
15 they've got the statutory language there. I wasn't sure
16 why this, or for that matter (d) needed to be in Part 2.

17 MR. CUNNINGHAM: The short answer is we had it
18 in there back in '72 and '73. We could do some
19 tinkering. It's not essential. You are right that the
20 standard is set forth in Part 50.

21 COMMISSIONER AHEARNE: It could just be taken
22 out.

23 COMMISSIONER ASSELSTINE: Yes.

24 COMMISSIONER AHEARNE: Again, that is two who
25 feel that way. We are giving you lots of advice but --

1 (Laughter.)

2 MR. CUNNINGHAM: Not hearing any contrary
3 advice, I will go with the two that I hear.

4 (Laughter.)

5 COMMISSIONER AHEARNE: That sounds like a good
6 approach.

7 Tom, do you have any?

8 COMMISSIONER ROBERTS: (Nods in the negative.)

9 COMMISSIONER AHEARNE: All right, I guess
10 that's all.

11 Marty, did you have any more?

12 MR. MALSCH: I had one peculiar issue. I
13 don't know what to do about it. What would happen in
14 the situation in which a licensee already had a
15 low-power 5-percent license under our current rules?
16 Would we have to require him to refile for a temporary
17 low-power license in order for him to go through the
18 motions of asking for a full-power temporary license?
19 We couldn't come up with a clear answer to that
20 question, so we're thinking about it.

21 COMMISSIONER AHEARNE: Did you have any
22 particular plant in mind?

23 MR. CASE: It would be a possibility with
24 Shoreham because one might argue that they could get
25 their 5-percent license without off-site emergency

1 planning and be going along swimmingly and then suddenly
2 run into a problem on off-site emergency planning that
3 would go beyond. I could see that possibility.

4 MR. MALSCH: It also occurred to me that what
5 would happen say in Diablo if the record were reopened?
6 I am not sure. It wasn't clear to me that the situation
7 would never arise, and if it did arise, I couldn't see a
8 clear route to avoid going through what looked to me
9 like an empty exercise of applying for a temporary
10 low-power license when they already had one. But I just
11 offer it as a problem to think about.

12 MR. OLMSTEAD: You're talking about under this
13 statute --

14 MR. MALSCH: Well, and the regulations.

15 MR. OLMSTEAD: -- when they already had one
16 under 50.57(c)?

17 MR. MALSCH: Yes.

18 COMMISSIONER AHEARNE: To take advantage of
19 this statute's provision allowing them to keep cranking
20 up above 5 percent.

21 MR. OLMSTEAD: But they're allowed to do that
22 under 50.57(c), too.

23 MR. MALSCH: True, but the question would be
24 suppose they have gotten a low-power license under 50.57
25 after holding a hearing on low-power issues. Let's

1 suppose that the hearing on full-power issues were still
2 in progress and they wanted to obtain a temporary
3 full-power license prior to completion of that hearing.
4 Would they have to go through the motions of also
5 applying for a temporary low-power license when they
6 already had one just to be able to avail themselves of
7 the opportunity of filing application for a temporary
8 full-power license? That doesn't seem to make any sense.

9 COMMISSIONER AHEARNE: Jim, was this something
10 that came up?

11 COMMISSIONER ASSELSTINE: No.

12 (Laughter.)

13 COMMISSIONER AHEARNE: Bill?

14 MR. CUNNINGHAM: It's not one that we've
15 considered. We can give it some thought. This Act only
16 provides authority for amending incrementally licenses
17 issued under it.

18 COMMISSIONER ASSELSTINE: Yes. I am afraid
19 the way it's structured you probably would have to go
20 through the exercise of getting a 5-percent temporary
21 operating license under the section. That's my
22 suspicion.

23 MR. MALSCH: We are looking at it to see
24 whether there's a way around what would appear to be a
25 sort of a needless exercise.

1 COMMISSIONER ASSELSTINE: Yes. I don't think
2 it's addressed by intent at all. The only question is
3 whether you're locked into that by the words of the
4 statute.

5 MR. CUNNINGHAM: The next part of the package,
6 which is Enclosure 3, deals with the standards for
7 making a determination that a proposed OL amendment
8 involves no significant hazards consideration. As I
9 mentioned, these rules were proposed in March of 1980,
10 and we have in this package a final notice of rulemaking.

11 There is a correction package which was
12 circulated today to make the rule conform to the
13 approach we have taken in implementing Sholly. Clearly,
14 it is important that final action not be taken on this
15 until we decide which way we are going to go on Sholly
16 so that the appropriate conforming language is in there.

17 The changes or the criteria apply only to
18 operating license amendments, not to construction permit
19 amendments. The legislation only applies to operating
20 licenses, and in fact I don't believe we have ever made
21 no-significant-hazard consideration findings with regard
22 to construction permit amendments.

23 The no-significant-hazards consideration
24 finding is basically a procedural one. It deals with
25 the question of whether or not we notice in advance an

1 opportunity for hearing. The criteria for making that
2 determination in the rule are essentially the same as
3 they were in the proposed rule.

4 And there are three criteria: whether there
5 is a significant increase in probability or consequences
6 of an accident previously evaluated; whether the
7 amendment would create the possibility of an accident
8 different from those previously evaluated; and whether
9 it involves a significant reduction in the margin of
10 safety.

11 If any of those findings were met, then there
12 would be a significant-hazards consideration.

13 COMMISSIONER AHEARNE: Does it also hold true
14 that if none of them are met that it is not a
15 significant hazard?

16 MR. CUNNINGHAM: I think that's true.

17 Ed, would you agree?

18 MR. CASE: Yes, I would agree.

19 MR. CUNNINGHAM: Those are the only three
20 criteria which are spelled out in the rule.

21 The supplementary information gives -- on page
22 20 you will find the -- nine examples of amendments
23 which do involve significant-hazards consideration and
24 eight examples that do not involve significant-hazards
25 considerations.

1 These criteria are essentially the same as
2 those -- in fact, they are the same as those applied by
3 NRR now.

4 COMMISSIONER AHEARNE: Given the answer you
5 just gave me, perhaps, Ed, you can explain to me why
6 reracking a spent-fuel storage pool, which one of those
7 three is it?

8 MR. CASE: That was put in there because of
9 the Congress.

10 COMMISSIONER AHEARNE: I was just told that it
11 has to meet one of those; if it doesn't, then it isn't.
12 And I don't think it was put in there because of the
13 Congress. Congress didn't tell us to do that.

14 MR. CASE: Yes, they did.

15 MR. CUNNINGHAM: Yes. That was in the
16 Conference Report.

17 COMMISSIONER AHEARNE: Was it in the
18 Conference Report? Or was it in the Senate Report?

19 COMMISSIONER ASSELSTINE: I don't think it's
20 in -- well, let's see, that's a good question.

21 COMMISSIONER AHEARNE: The paper doesn't quote
22 it as being in the Conference Report. The paper quotes
23 it as being in the Senate Report.

24 COMMISSIONER ASSELSTINE: That's right; it
25 does.

1 MR. CASE: Well, depending on the reracking, I
2 could see --

3 COMMISSIONER AHEARNE: This just says "any
4 reracking."

5 MR. CUNNINGHAM: I don't see it in the
6 Conference Report now. I thought it was in the
7 Conference Report, but it was clearly added there at the
8 instigation of the legislative process.

9 COMMISSIONER AHEARNE: Are we bound if it is a
10 Senate report but it doesn't get into the conference
11 report, are we bound by that by regulation?

12 MR. MALSCH: I don't know how to answer that
13 question in the abstract.

14 COMMISSIONER AHEARNE: This is not the
15 abstract.

16 (Laughter.)

17 MR. MALSCH: I haven't seen the rest of the
18 legislative history. It would depend upon how important
19 that statement in the Senate report is in the overall
20 construction of the statute. If the statute is
21 ambiguous, and that is the only guidance we have, it
22 could be quite important to take that into account.

23 COMMISSIONER AHEARNE: I think at the moment I
24 find a basic inconsistency. I think you would have to
25 add a number 4 on page 27.

1 (Laughter.)

2 MR. CASE: If I were going to do it that way,
3 I would just add that particular example.

4 COMMISSIONER GILINSKY: Let me ask a question.

5 COMMISSIONER AHEARNE: Yes. I think I am
6 going to ask them to essentially go back and look at the
7 legislative history to see. At the moment it's just of
8 interest.

9 COMMISSIONER GILINSKY: When you say involves
10 a significant consequence of an accident previously
11 evaluated, do you mean the step that is contemplated or
12 that it involves an issue which has the possibility of
13 significantly increasing the probability of consequence
14 of an accident previously evaluated? Is that clear?

15 MR. CUNNINGHAM: No. Clearly, the
16 consideration related to the amendment --

17 MR. CASE: The operation of the facility in
18 accordance with the proposed amendment. So when you
19 deal with the merits of the amendment itself --

20 COMMISSIONER GILINSKY: What concerns me here,
21 it seems to me that somewhere we ought to be dealing
22 with the importance of the problem, the safety
23 importance.

24 MR. CUNNINGHAM: This specifically tells us to
25 separate the procedural issue from the merits. What

1 these criteria are intended to do is to identify the
2 types of actions which could involve, and if there is
3 any accident consideration involved, then you have to
4 find the significant-hazards consideration. You can
5 then evaluate it on the merits and find it's okay and
6 approve it.

7 COMMISSIONER GILINSKY: I guess I don't follow
8 that. Let's take a hypothetical example. Suppose there
9 is a crack in a pipe of some pressure vessel. If you
10 watch it carefully, you will always be able to catch it
11 before it's a break. So you propose an amendment for
12 increased surveillance.

13 Now, in view of the Staff, the NRC, that may
14 compensate for the deficiencies or the safety problems,
15 but it seems to me there may be -- it is a serious
16 safety problem which has been addressed but may not have
17 been addressed satisfactorily. I guess I would say that
18 is something that involves a significant-hazards
19 consideration.

20 Is that the way you see it? Does that fit
21 with the definitions or not?

22 MR. CASE: I haven't rehearsed this. That's
23 not the way I see these words. If the Staff felt there
24 was a small increase in the probability of an accident,
25 it could say no significant -- this did not involve a

1 significant-hazards consideration.

2 If on the other hand it was a significant
3 increase, albeit acceptable, then you would find
4 significant hazard. So there is a difference between
5 looking at the merits.

6 COMMISSIONER GILINSKY: I am not sure I follow
7 this. There is a safety problem which is being
8 compensated for by some step; in this case, increased
9 surveillance. And that is what is proposed for, say,
10 the next year of operation. Now, some people may feel
11 that that is not sufficient action, that you have to
12 replace the piece of pipe or whatever.

13 MR. CUNNINGHAM: That's the merits when you
14 say you do not think it is sufficient action. The
15 threshold procedural question is: Is there a potential
16 for a significant safety problem here?

17 COMMISSIONER GILINSKY: You're dealing with a
18 significant safety problem, you may feel you have dealt
19 satisfactorily with it, but certainly the problem itself
20 is a significant problem. If it isn't a significant
21 problem to begin with, you wouldn't be talking about it.

22 MR. CUNNINGHAM: But if it is a significant
23 problem that requires consideration of the accident
24 considerations, then it meets the requirement for a
25 significant-hazards consideration.

1 COMMISSIONER GILINSKY: That's what I am
2 asking about, whether this applies to the problem or the
3 solution.

4 MR. CUNNINGHAM: To the problem.

5 MR. CASE: I am sorry, that's not the way I
6 read the language, Guy.

7 COMMISSIONER GILINSKY: That's what I am
8 trying to get at.

9 MR. CASE: On page 27 it says, "... unless it
10 finds that operation of the facility in accordance with
11 the proposed amendment would: (1) involve a significant
12 increase in the probability" --

13 COMMISSIONER GILINSKY: Is that the language
14 of the law?

15 MR. CASE: No, that's the regulation.

16 COMMISSIONER GILINSKY: Oh, the final
17 regulation. Well, I guess I would tie it to the
18 problem, unless persuaded otherwise.

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1 COMMISSIONER AHEARNE: In the case you're
2 talking about, if there were a crack that led them to
3 have whatever the crack was in that had the plant out of
4 compliance, your concern is that they would then be able
5 to get into compliance by proposing an amendment?

6 MR. CASE: Looking at it more frequently than
7 they would have.

8 COMMISSIONER GILINSKY: It seems to me the
9 common sense test of -- we've got to be setting up a
10 standard that makes sense using the words that one
11 ordinarily does. And it seems to me a situation like
12 this involves a significant hazard.

13 Now, you may feel it has been dealt with
14 satisfactorily. That's the purpose of the amendment.
15 But however we treat the more important items, it ought
16 to fall in that basket.

17 MR. CASE: But we tried to set the standard to
18 decide which was more important.

19 COMMISSIONER GILINSKY: Well, there has to be
20 a plus. That isn't decreasing safety; that's increasing
21 safety.

22 COMMISSIONER AHEARNE: Except -- well --

23 COMMISSIONER GILINSKY: Certainly where
24 there's a significant reduction in the margin of
25 safety. No one's going to argue about that.

1 MR. CASE: You might get caught there.

2 COMMISSIONER GILINSKY: Possibly.

3 COMMISSIONER AHEARNE: Because the amendment
4 would be to propose --

5 MR. OLMSTEAD: It depends on the nature of the
6 amendment. If they're allowed to operate without the
7 increased surveillance, all they're doing is coming in
8 and saying we think we ought to increase surveillance,
9 so then it is not going to involve significant hazards
10 because they're already being permitted to operate with
11 a longer frequency between inspections.

12 COMMISSIONER AHEARNE: If the issue is not
13 being allowed to operate versus being allowed to operate
14 with increased surveillance --

15 MR. OLMSTEAD: Then you might well have a
16 significant hazards consideration, because you have to
17 look beyond just the frequency of the surveillance to
18 see if they can or cannot operate. If they can operate,
19 then the nature of the amendment is to increase safety.

20 COMMISSIONER AHEARNE: Did you have something
21 further?

22 COMMISSIONER GILINSKY: It seems to me there's
23 something wrong if you set up a system in which a
24 solution, no matter how slight, to a problem will
25 ultimately be regarded as significant, and that puts

1 that whole issue into the unimportant basket.

2 COMMISSIONER AHEARNE: But I'm not sure it
3 does.

4 COMMISSIONER GILINSKY: Well, if it doesn't,
5 how is it caught by --

6 COMMISSIONER AHEARNE: I think it would be
7 caught in number 3, because in the sense the amendment
8 would allow them to continue operating; because I think
9 they hypothetical case you came up with is there is some
10 damage to the system where otherwise you would make them
11 shut down and they would ask for permission to keep
12 operating for some period of time, and the argument for
13 increased surveillance will protect it.

14 But the argument now is that there is a
15 reduction, a significant reduction in the margin of
16 safety because prior to that it was supposed to be
17 operating an undamaged system. Now you're operating a
18 damaged system with someone watching it on the grounds
19 that they can shut the plant down if necessary, but that
20 is lowering the margin of safety.

21 COMMISSIONER GILINSKY: Well, I was looking
22 for some interpretation and maybe that's it.

23 MR. CASE: I agree with that.

24 MR. OLMSTEAD: I certainly agree with that, but
25 the reason that it works is because there are two types

1 of amendments: amendments that allow the plant to
2 operate when it would otherwise be required to shut
3 down, and amendments that for whatever reason accomplish
4 some other purpose but that they would continue to
5 operate. And that frequently drives how NRR looks at
6 the significant hazards criteria.

7 If the plant cannot continue to operate under
8 its present operating conditions without shutting down,
9 then you're perfectly right. Usually, nine times out of
10 ten it's going to be in the third criteria.

11 If, on the other hand, the plant can continue
12 to operate but for some other reasons, maybe for
13 operating efficiency, they want the amendment, more than
14 likely it's going to be one of the other criteria.

15 MR. CASE: What he's saying is the third one
16 in particular is designed for the kind of examples we
17 are bringing up where a plant would otherwise be
18 required to shut down. Basically the question is
19 determined on the staff judgment about the reduction in
20 the margin of safety as to whether it's a significant
21 hazards consideration, whether it's minor, no, major,
22 yes. No matter how you judge this, it's a judgmental
23 call every time.

24 COMMISSIONER GILINSKY: Is this rubric of any
25 other significance?

1 MR. CASE: Yes. It comes from the regulations
2 which define an unreviewed safety question. An
3 unreviewed safety question is something the licensee
4 must seek approval of in changing operation or design,
5 and that is defined essentially as these words without
6 the "significant" in there.

7 COMMISSIONER ROBERTS: How many license
8 amendments are there per year approximately?

9 MR. CASE: Six hundred.

10 COMMISSIONER ROBERTS: Six hundred?

11 MR. CASE: Yes.

12 COMMISSIONER ROBERTS: What percentage involve
13 no significant hazards consideration?

14 MR. CASE: Very high. Upwards in the 90s, in
15 the staff judgment.

16 COMMISSIONER ROBERTS: High 90s?

17 MR. CASE: Yes.

18 COMMISSIONER GILINSKY: Which are of no
19 significance?

20 MR. CASE: Yes.

21 COMMISSIONER GILINSKY: So 60 are significant?

22 MR. CASE: Two percent is what last year's
23 statistics were.

24 COMMISSIONER ASSELSTINE: I have a couple of
25 questions. One has to do with the three criteria for

1 making the no significant hazards consideration
2 determination.

3 Back when -- I think it was particularly in
4 the Senate -- this provision was first considered, I
5 recall that there was at least some testimony to the
6 effect that the criteria that NRC put out as a proposed
7 rule, which in a sense is these criteria, were not
8 particularly clear or predictable in their application.

9 And I realize that in looking in the summary
10 of the comments that that does not seem to have been a
11 predominant comment that the agency received at the time
12 on the proposed rule. Nevertheless, that was one of the
13 comments that I think the Congress heard when it was
14 considering this provision.

15 There is language in the conference report
16 that I think I says fairly clearly that when the
17 Commission develops these criteria, it is to make a
18 special effort to make sure the criteria are clear and
19 easily applicable and will result in a fairly certain --
20 in a degree of certainty in the determinations. And I
21 think we have included that language in the statement of
22 considerations as well.

23 I guess the question I have is you are
24 proposing putting out the criteria as a final rule.
25 Would it make sense, given the direction in the

1 conference report and given the fact that the other
2 aspects, the procedural aspects, if you will, of the
3 Sholly provision, have to go out as a proposed rule in
4 any event, would it make sense to put out the criteria
5 as a proposed rule for one more round of comment just to
6 ensure that that particular point is covered?

7 You know, again I recognize that this does not
8 appear to have been a very strong comment. It was made
9 on the original proposed rule when it was put out in
10 1980.

11 COMMISSIONER AHEARNE: Are you saying, Jim,
12 that you would want comment to go out quoting the
13 conference report?

14 COMMISSIONER ASSELSTINE: No. What I'm saying
15 is before we adopt the criteria as a final rule, we
16 perhaps ought to consider putting those criteria out as
17 a proposed rule, recognizing that what that might invite
18 is comments on the extent to which those criteria
19 respond to the direction that the agency had in the
20 conference report.

21 MR. CASE: For one thing, it would depend on
22 what you do with the Sholly amendment. For instance,
23 there is some consideration, I gather, of making them
24 interimly effective. If so, then you would need the
25 significant hazards consideration, wouldn't you?

1 MR. CUNNINGHAM: But they could go together.

2 COMMISSIONER AHEARNE: These aren't really
3 changed very much from before.

4 MR. CUNNINGHAM: These are essentially what
5 went out before.

6 COMMISSIONER AHEARNE: Since they are
7 essentially the same thing that you would be asking for
8 comment on, I believe that you would have to have some
9 reason for asking for that comment, so you would have to
10 say something such as the conference report directed
11 that the standards be capable to be applied, et cetera.

12 COMMISSIONER ASSELSTINE: And draw a clear
13 distinction.

14 COMMISSIONER AHEARNE: And I guess one would
15 have to go on to say we believe this does it, and if it
16 doesn't, how would you propose that it be changed to
17 make it do that.

18 COMMISSIONER ASSELSTINE: That's right.

19 COMMISSIONER AHEARNE: Without any other
20 specific comment it doesn't make any sense.

21 COMMISSIONER ASSELSTINE: That would be the
22 only basis I see.

23 MR. CUNNINGHAM: The alternative basis would
24 be to put them in context. You now have the Sholly
25 amendment.

1 COMMISSIONER AHEARNE: Except you always had
2 significant hazards issues.

3 MR. CUNNINGHAM: I would prefer not to put
4 them out for comment again, but if you're looking for a
5 basis, that would be a basis to tie them to the Sholly
6 rule.

7 COMMISSIONER ASSELSTINE: I guess it basically
8 boils down to two questions: one, are you all satisfied
9 that those criteria really do respond to the directions
10 that we had in the conference report, that they really
11 do draw a clear distinction between no significant
12 hazard considerations amendments and those that do
13 involve significant hazards considerations, and do you
14 believe they respond to the consideration --

15 COMMISSIONER AHEARNE: Is that a prefatory
16 question?

17 COMMISSIONER ASSELSTINE: Yes.

18 COMMISSIONER AHEARNE: The question is can the
19 conference report be satisfied; is it possible to meet
20 that?

21 MR. CUNNINGHAM: My response is going to be
22 we've been as responsive as we can.

23 COMMISSIONER AHEARNE: That's not doing what
24 the conference report said to do, but that's a separate
25 question.

1 COMMISSIONER ASSELSTINE: I didn't write the
2 conference report.

3 MR. CASE: When we move in that direction with
4 the examples, I think that is the best you can do to try
5 to ensure that consistency is in there.

6 COMMISSIONER ASSELSTINE: Consistency wasn't
7 included in the direction.

8 (Laughter.)

9 MR. CUNNINGHAM: Of course, part of the
10 attempt to be as clear as we can is inclusion of the
11 examples, both 9, which do, and 8, which don't, and
12 vice-versa.

13 COMMISSIONER ASSELSTINE: What are at least
14 some of those examples? There's another one that I want
15 to raise next.

16 (Laughter.)

17 COMMISSIONER ASSELSTINE: Whether this is the
18 Sholly amendment. I guess for myself I would still want
19 to think a little bit about the possibility of putting
20 out the criteria for comment again. It is just because
21 I do remember that there were some who at least argued
22 that these three criteria were not clear at all, and
23 they did not draw a clear differentiation between the
24 two kinds.

25 I never did hear anyone come up with any

1 concrete suggestions or proposals on how those or other
2 criteria could be modified or developed..

3 COMMISSIONER AHEARNE: The only distinction
4 I've heard is all amendments are significant hazards.

5 (Laughter.)

6 COMMISSIONER ASSELSTINE: That is clear, and
7 it is certain.

8 I guess the next question I have is new
9 example 9. On examples for amendments that are likely
10 to involve significant hazards considerations, I
11 understand the reference to the one phrase in the
12 conference report that you have on page 19. I guess I
13 have a couple of questions.

14 Does including example 9 in that list mean
15 that -- does that resolve the no significant hazards
16 consideration issues they are likely to involve? Are
17 you saying that in all cases where you have an amendment
18 permitting a significant increase in effluent emitted by
19 a power plant that that would be dispositive of whether
20 you have a significant hazards consideration amendment?

21 MR. CUNNINGHAM: I'm getting advice from that
22 end of the table.

23 MR. CASE: It says "likely." It doesn't say
24 "always." I think it's more or less a prima facie case
25 unless you had some reasons to the contrary.

1 COMMISSIONER AHEARNE: I was curious.
2 Guy, I'm not sure how closely you were
3 involved. I was wondering whether any of the authors
4 looked through this. Are they familiar with what the
5 Commission did do and the conclusion it did reach about
6 the TMI positions that we have taken?

7 MR. CUNNINGHAM: I think the answer to that is
8 yes.

9 COMMISSIONER AHEARNE: The conclusion is that
10 this is not inconsistent with that?

11 MR. CASE: Yes, that is my conclusion. It
12 wasn't meant to be a backing away.

13 COMMISSIONER ASSELSTINE: As I understand it,
14 I gather the one sentence or that phrase in the
15 conference report did engender some discussion when the
16 conference report was considered. I've gone back to
17 look at that. But I gather that there was some
18 discussion of that phrase and its relationship, for
19 example, to any future case that would resemble the
20 krypton bedding issue.

21 Did you all look at that, too, when you
22 decided on incorporating the new element 9?

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1 MR. CUNNINGHAM: I don't know that we went
2 beyond the text of the conference report.

3 MR. OLMSTEAD: We had some conversation to
4 lead us to believe that that is correct.

5 COMMISSIONER AHEARNE: You might want to track
6 that.

7 MR. OLMSTEAD: Tom might be able to address
8 this better than I.

9 MR. DORIAN: Tom Dorian from ELD. We split it
10 with the various people who testified before Congress as
11 well as the staff and people who are working on the
12 conference report. This is the language that they said
13 they thought should be put in as an example.

14 COMMISSIONER AHEARNE: That was congressional
15 staff advice?

16 MR. DORIAN: Yes.

17 COMMISSIONER ASSELSTINE: I would like to, I
18 guess, reserve a little bit on this element as well. I
19 seem to recall that there may have been some discussion
20 among the floor consideration of the conference report
21 that might shed some more light on whether this is
22 intended to mean that you are supposed to give special
23 attention to these kinds of consideration in deciding
24 whether this is a no-significant-hazards consideration
25 and in ruling out this authority.

1 MR. DORIAN: It is clear, by the way, that we
2 should give that special attention; that came through.

3 COMMISSIONER ASSELSTINE: But that would
4 certainly not be dispositive on the issue.

5 MR. DORIAN: I don't think it is. It says
6 likely or not likely. In that case it is a prima facie
7 case unless there is other evidence.

8 COMMISSIONER AHEARNE: Tom, did you bounce
9 that -- here the congressional staff says it should be
10 in there. Did you go back to NRR and see whether that
11 should be definitely in there as an example? The
12 original list of examples were constructed primarily
13 with the technical staff.

14 MR. CASE: Yes, this went back. There was no
15 comment on it that I know of on the addition of that
16 criteria. There were on some of the other issues.

17 MR. OLMSTEAD: Yes. They were vocal on those
18 that they firmly disagreed with, and we removed them.

19 [Laughter.]

20 COMMISSIONER ASSELSTINE: In any event, this
21 list is for examples of one side or the other, and is
22 intended to be only a list of those that at least on
23 first impression appear to be cases in which you either
24 do or do not have significant hazards consideration, and
25 it is not intended to be dispositive in any of those

1 cases.

2 MR. CUNNINGHAM: Dispositive of the merits?

3 COMMISSIONER ASSELSTINE: Dispositive of
4 whether it is involving significant hazards
5 consideration. For example, can you have a proposed
6 amendment which would, if adopted, permit a significant
7 increase in the amount of effluence or radiation emitted
8 from a power plant? That might well be determined on a
9 case-by-case basis to be an amendment involving
10 no-significant-hazards consideration.

11 MR. CUNNINGHAM: I would think it unlikely.

12 MR. CASE: But possible?

13 COMMISSIONER ASSELSTINE: But possible.

14 MR. OLMSTEAD: I don't want to confuse the
15 example you just gave with the TMI situation because I
16 don't necessarily think that they are the same
17 hypothesis.

18 MR. CASE: No.

19 COMMISSIONER ASSELSTINE: Is that because of
20 the term "significant"?

21 MR. CASE: Yes.

22 MR. OLMSTEAD: Yes, and you haven't defined
23 the term over which you are talking. If we had
24 considered originally in all of our assessments for a
25 particular plant that it were a 50-year term, x number

1 of effluents would be released, and you are now talking
2 about x plus something, that is one situation. If you
3 are only talking about if I divided x by 40, that would
4 be so much this year, and this year I am proposing to do
5 2-1/2 times that but my 40-year average is going to be
6 roughly the same, then that is an entirely different set
7 of circumstances.

8 COMMISSIONER AHEARNE: Ed, running through
9 this, running through this list, where would you come
10 out on something like THI venting?

11 MR. CASE: I don't think it fits number 9, and
12 not because of special considerations, either.

13 COMMISSIONER ASSELSTINE: Okay, that is, I
14 think --

15 COMMISSIONER AHEARNE: You say there may be
16 some discussion from the floor?

17 COMMISSIONER ASSELSTINE: I will have to go
18 back and look and see.

19 COMMISSIONER AHEARNE: You could go back and
20 do that.

21 COMMISSIONER ASSELSTINE: To see if when the
22 bill was considered, the conference report was
23 considered by the Senate, see if there was some floor
24 discussion of that particular issue and whether that
25 phrase in the conference report was intended to indicate

1 that in future TMI-type situations, that that would mean
2 that this authority would not be available, that you
3 would automatically determine that it was a significant
4 hazards consideration. But I seem to recall there might
5 have been something like that.

6 MR. CUNNINGHAM: We will go back and look at
7 that.

8 COMMISSIONER ASSELSTINE: That covers mine.

9 COMMISSIONER AHEARNE: Okay. If you go out in
10 final, then at some other later point you would be what,
11 coming along and modifying some of these provisions,
12 which are then later picked up under the Sholly
13 provisions?

14 MR. CUNNINGHAM: The only real question
15 related to Sholly is whether you make enough significant
16 hazards consideration determinations and every case as a
17 separate step or do you follow our proposal, which is to
18 pre-notice an opportunity for hearing at the same time
19 as an opportunity for comment as to whether or not there
20 is a significant hazards considerations. If you get no
21 request for hearing, there is no need for a significant
22 hazards consideration, so you don't make it. So we have
23 the language on page 27, depending on which of the
24 Sholly reports you go with.

25 COMMISSIONER AHEARNE: The phrase, "The

1 Commission has found no significant hazards
2 consideration has been applied for and the Commission
3 may dispense with such notice.

4 MR. CUNNINGHAM: That is on page 26. Mr.
5 Olmstead and I debated for about an hour last night.
6 Bill, do you want to address that?

7 [Laughter]

8 MR. OLMSTEAD: There are getting to be so many
9 different types of hearings and so many different types
10 of notices under Section 1.89, it is difficult for me to
11 explain this, but you are required by the Sholly
12 amendment to give a particular kind of notice. It is
13 not a notice of hearing, it is a notice of intent to
14 issue a no-significant-hazards consideration. You also,
15 if someone requests a hearing pursuant to an opportunity
16 for hearing, you are required then to issue a notice of
17 hearing.

18 Now, those rules have not changed at all.
19 This rule is in our rules currently and has been held to
20 conform wholly --

21 COMMISSIONER AHEARNE: I understand that. I'm
22 just asking, if we replace the Sholly regulations --

23 MR. OLMSTEAD: It is not necessary. What I
24 convinced Mr. Cunningham of last night was that if we
25 got significant comment to that effect on the Sholly

1 rule, then we could make that procedural change before
2 we finalized it. But it is not as a matter of law
3 required to change this section, and if I got started
4 making all those changes, I think there were some other
5 provisions of the rule that would also be impacted
6 because we implemented 1.89 in a number of places, in
7 1.82.

8 COMMISSIONER AHEARNE: You are saying that the
9 only reason you might make the changes are for
10 clarification?

11 MR. OLMSTEAD: I think that in all of the
12 revisions that are floating around for Part 2, that it
13 is certainly not ill-advised for us to consider making
14 some changes in that regard, but I don't know that it is
15 necessary in this package.

16 COMMISSIONER ASSELSTINE: That is essentially
17 because you are providing the notice provision to deal
18 with the Sholly amendment as part of Part 50.

19 COMMISSIONER ROBERTS: This is part of Part 50.

20 COMMISSIONER AHEARNE: The one I read from is
21 Part 50.

22 MR. OLMSTEAD: Yes.

23 COMMISSIONER ASSELSTINE: Yes.

24 MR. OLMSTEAD: This is 50.58.

25 COMMISSIONER ASSELSTINE: Yes.

1 COMMISSIONER AHEARNE: My question is, if we
2 go down the Sholly route, would you then want to go back
3 later and modify this language, which is also Part 50?
4 I guess you say that non-employers should stay out --

5 [Laughter]

6 MR. CUNNINGHAM: It should be understood that
7 it is the public that has to use these regulations.

8 COMMISSIONER AHEARNE: You have a statement
9 that says the Commission finds that if no significant
10 hazard consideration is presented by an amendment to an
11 operating license, it may dispense with such notice of
12 publication. It says if we conclude there are no
13 significant hazards, we don't have to notice anything;
14 we just go on.

15 MR. OLMSTEAD: We don't have to notice a
16 hearing, that's true, and that is the "such notice."

17 MR. CUNNINGHAM: The question is what is the
18 definition of "such notice." What might be advisable
19 when we get to a final rule on Sholly to make a
20 conforming change is in this section.

21 COMMISSIONER ASSELSTINE: Yes.

22 COMMISSIONER AHEARNE: Marty, do you have any
23 questions or comments on that?

24 MR. MALSCH: We are still looking at it. What
25 we were doing this morning was trying to work through

1 the examples and see how they fit the standards, and we
2 were having a hard time. I was sort of comfortable with
3 the examples but I still want to see how they fit
4 together. In particular we couldn't see how example 9
5 on effluents and radiation fit into any of the standards
6 in 1, 2 or 3. I just raise the issue.

7 MR. CASE: Say that one again?

8 MR. MALSCH: That was the one added regarding,
9 in response to the concern that we be especially
10 sensitive to the amendments that increase effluents and
11 radiation. I didn't spend more than three seconds on
12 it, but it wasn't obvious based on the three second
13 review how that fit in, and with regard to reracking,
14 renewals, increased power levels. It may be that it
15 works out okay. It was just difficult to work it out in
16 the time that we had.

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1 COMMISSIONER AHEARNE: You are trying to hide
2 that clarity.

3 [Laughter]

4 MR. MALSCH: The answer may very well be that
5 this is the best we can do.

6 COMMISSIONER AHEARNE: It is a high ideal to
7 strive for.

8 MR. CUNNINGHAM: Having gone through the two
9 easy ones, we now turn to the Sholly amendments proper.
10 The authorization bill provides that upon the finding of
11 a no-significant-hazards consideration being involved in
12 an amendment, we may issue that amendment in advance of
13 any requested hearing. The way the Act is structured as
14 it is now, if we get a hearing and we don't make that
15 finding, we can't issue the license unless a hearing is
16 held first.

17 COMMISSIONER AHEARNE: Say it again?

18 MR. CUNNINGHAM: Unless we get a hearing
19 request, until we have these rules in place, we will
20 have no vehicle for issuing an amendment prior to
21 holding a hearing. When the rules are in place, which
22 the Act directs us to do within 90 days --

23 COMMISSIONER AHEARNE: There is an underlying
24 issue which we had taken to the Supreme Court, which
25 unfortunately now is being made moot, but it was our

1 interpretation, was it not, that under the current law
2 we were authorized that if we had reached a significant
3 hazard finding, to go ahead and issue the amendment?

4 MR. CUNNINGHAM: That is under the current
5 law, but this law became effective January 4 and says
6 you will not have the authority granted to you until you
7 get rules in place. So it changes the law which we were
8 previously interpreting, and that, of course, is the
9 reason --

10 COMMISSIONER AHEARNE: It cancels the previous
11 law.

12 MR. CUNNINGHAM: It supercedes it, yes.

13 COMMISSIONER AHEARNE: Supercedes it.

14 MR. CUNNINGHAM: That is, of course, the
15 reason we are trying to get the rulemaking package down
16 to you promptly. Our 90-day timetable started running
17 on August 4th -- I'm sorry, January 4th.

18 [Laughter]

19 Now the first approach -- well, let me
20 describe what the law required. It said upon making
21 this finding you could then issue the amendment in
22 advance of required hearing, but before making that
23 finding in final form, you had to allow the opportunity
24 for public comment on the proposed finding of no
25 significant hazards consideration and consult with the

1 state.

2 Our first approach to drafting implementing
3 rules was to say that in every case we take a quick look
4 at a proposed amendment, make a proposed finding of
5 no-significant-hazards consideration, which, as I said,
6 is covered by 98 percent of the amendments, publish a
7 Federal Register notice, allow 30 days for comments,
8 have consultation procedures with the states, evaluate
9 the comments and make the final determination, a process
10 which occupies some time, obviously, 30 to 60 days, and
11 in the Staff estimate based on 600 amendments a year --

12 MR. CASE: And additional professional staff
13 years.

14 MR. CUNNINGHAM: We have structured an
15 alternative proposal which is the one we recommend for
16 the Commission's consideration. That is, first of all a
17 change in the rules to require an applicant submitting
18 an amendment request to include his analysis of whether
19 or not there is significant hazards consideration. That
20 could be adopted in either form.

21 COMMISSIONER AHEARNE: Applicant does not do
22 that now?

23 MR. CUNNINGHAM: No.

24 MR. CASE: He is not required to do that.

25 MR. CUNNINGHAM: They may do it strictly if

1 they want the finding, but it is not required now. That
2 would be the first part of the package. The applicant
3 would make his argument and would also serve that upon --

4 MR. CASE: Using the standards in the
5 regulation.

6 COMMISSIONER AHEARNE: Previously described.

7 [Laughter]

8 MR. CUNNINGHAM: In addition, he would serve a
9 copy of that on the state official. We would have a
10 list of the appropriate state officials in each state.
11 Then we would issue a notice in every case -- and there
12 would probably be a batch of these once a week or once a
13 month -- of all the requests received of the preliminary
14 findings with regard to significant hazards
15 determinations and offer both an opportunity to comment
16 on that determination and an opportunity to request a
17 hearing.

18 If there were not requests for a hearing,
19 which we posit would be the normal case, in the event it
20 is truly trivial, then there would be no need for us to
21 make a final no hazards consideration finding because we
22 would have a procedural "out" from having a hearing, in
23 which case we would complete the safety review and, if
24 appropriate, issue the amendment.

25 And although there is an uncertainty, of

1 course, as to how many hearing requests would be
2 received, it is our judgment that that would probably
3 result in an overall savings of resources. We estimate
4 -- NRR estimates about four to five -- ?

5 MR. CASE: Three to four.

6 MR. CUNNINGHAM: -- staff years per year to
7 handle the same amendment load we have now. So a key
8 feature of our proposal is that we couple the notice of
9 opportunity for hearing with the request for a comment
10 on the no-significant-hazard consideration determination.

11 (Commissioner Gilinsky leaves the meeting at
12 3:02 p.m.)

13 COMMISSIONER AHEARNE: In your estimate on how
14 much time it will take you, is your assumption that most
15 of these will not have people coming in and arguing that
16 there are significant hazards? Are you assuming that
17 the licensees will say that 98 percent are insignificant
18 and that the commenters will tend to agree with that?

19 MR. CASE: No, I think it's more likely we
20 won't get many comments on the subject.

21 COMMISSIONER AHEARNE: So your assumption is
22 that you are not going to many times find yourself being
23 forced to reach a conclusion going through any kind of
24 detailed analysis?

25 MR. CASE: The only time I get to that is if

1 someone requests a hearing, and it would be only in
2 those cases that I would have to analyze the comments in
3 a more detailed analysis and write a final
4 determination, and I think those would be few.

5 COMMISSIONER AHEARNE: So that your estimate
6 of the staff years is based upon very few --

7 MR. CASE: Yes. Or more probably, the savings
8 in man-years is based on the fact that you don't have to
9 go through the full process with a few, although you
10 would have to do the preliminary process in all, in both
11 approaches. But if either approach engenders more
12 requests for hearing on those cases where there are
13 significant hazards consideration and actually having
14 the hearings, then that is where the manpower eater
15 really is.

16 MR. OLMSTEAD: I think this judgment is being
17 made because we assume that those who are going to
18 request a hearing under the Sholly legislation are going
19 to get notice of the amendment action anyway and they
20 are not the type of people who are going to be
21 unknowledgeable about the fact that whether we offer the
22 opportunity for hearing or not, that they certainly have
23 the right under 1.89 to request it. So that is what
24 leads to the judgment that you are not going to increase
25 by some large factor the number of hearing requests that

1 you actually get.

2 MR. CUNNINGHAM: Particularly when we assume
3 that not too many people are going to be interested in
4 an after-the-fact hearing after we complete the
5 no-significant-hazards consideration finding. That is
6 the principal feature of the proposal. It also
7 incorporates the statutory criteria for dispensing with
8 any opportunity for public comment and, if necessary,
9 consultation with the states in emergency situations.

10 MR. CASE: Or shortening.

11 MR. CUNNINGHAM: That is correct. The
12 criteria for emergency consideration are pretty
13 stringent because it requires, among other things, a
14 shutdown and de-rating of the facility, and the
15 applicant could not have foreseen the need for the
16 amendment on a more timely basis.

17 And finally, with regard to consultation with
18 the states, the proposed rules incorporate a specific
19 language of the statute again that this doesn't give the
20 state a right to delay the amendment or delay its
21 implementation.

22 COMMISSIONER AHEARNE: Did I read this
23 correctly that your contacts with the state lie pretty
24 much toward the state and the assumption is if the state
25 is interested, they will contact us?

1 MR. CUNNINGHAM: They are notified twice, once
2 by their analysis and once by providing the copy of the
3 Federal Register notice. I'm sure there would be a
4 cover letter that would say, if you are interested, let
5 us know. But in essence we have put it upon the state
6 to let us know if they want to discuss a particular
7 thing.

8 COMMISSIONER AHEARNE: The assumption is if we
9 don't hear, it is not a negative opinion?

10 MR. CUNNINGHAM: Yes.

11 COMMISSIONER ASSELSTINE: Is that consistent
12 with the first sentence of number 4, page 29, that says
13 -- I recognize you have the other two elements. You say
14 the Commission will make a good faith attempt to consult
15 with the state before it issues a license amendment
16 involving no-significant-hazards considerations. That
17 doesn't involve one more contact or attempt to contact
18 prior to issuance of the amendment?

19 MR. CUNNINGHAM: The position I would take is
20 if you sent them the Federal Register notice inviting
21 them to comment or respond, that is a good faith attempt
22 at consultation. This may be a matter we will get
23 comment upon, and I don't think the incremental burden
24 of us picking up the phone one more time --

25 COMMISSIONER ASSELSTINE: We are not saying we

1 are issuing the amendment. We just wanted to know if
2 you had any comments.

3 MR. CUNNINGHAM: Again I think there is an
4 assumption here that given the fact that the majority of
5 the amendments are truly minor, that the states might be
6 just as happy if we weren't ringing the phones two or
7 three times a month. If that is wrong and we hear a
8 comment to that effect, then we would change the process
9 in which we contact them.

10 COMMISSIONER AHEARNE: Is there any other
11 comment?

12 MR. CUNNINGHAM: No, that's the outline of the
13 package.

14 COMMISSIONER AHEARNE: Jim?

15 COMMISSIONER ASSELSTINE: I guess that was the
16 one question I really had, whether there should be that
17 one other step in there on the consultation with the
18 states, which seemed to be perhaps just a bit more like
19 consultation rather than providing an opportunity for
20 comment.

21 COMMISSIONER AHEARNE: I guess I only had a
22 few other minor questions.

23 Under the regulatory analysis, which is
24 Enclosure 5, Ed, I wonder if you could explain what was
25 meant by the last sentence?

1 MR. CASE: Could you read it to me?

2 COMMISSIONER AHEARNE: It says, "The Office of
3 Nuclear Reactor Regulation is already using these
4 standards but not all of the examples listed in the
5 preamble of the final rule."

6 MR. CASE: Well, certainly that is a
7 significant increase in effluents, which is not one we
8 are using now.

9 MR. CUNNINGHAM: And rerack.

10 MR. CASE: I don't know of any reracks where
11 we haven't found significant hazards. But in any event,
12 I think when that was written there were perhaps another
13 couple of new examples that didn't quite make it.

14 [Laughter]

15 MR. OLMSTEAD: We always do what the client
16 wants.

17 COMMISSIONER AHEARNE: I will pass on that.

18 [Laughter]

19 COMMISSIONER AHEARNE: Okay. Then on page 2,
20 Enclosure 9, it says with respect to Comment C -- I
21 didn't really follow your response.

22 MR. CUNNINGHAM: I will have to read that.

23 [Pause]

24 MR. CUNNINGHAM: I think I will ask Tom Dorian
25 if he can comment on that.

1 MR. DORIAN: Frankly, I don't remember. This
2 goes back to a comment analysis we did at the time right
3 after we put out the proposed rule.

4 MR. CUNNINGHAM: We can get back to you on
5 that.

6 COMMISSIONER AHEARNE: Let me just make a
7 point. There is someone just slightly familiar with
8 this area and someone more familiar with this area and
9 someone supposedly very familiar with this area. This
10 is something that the public is supposed to be able to
11 look at and understand the response? We can't.

12 MR. CUNNINGHAM: Well, it is something we
13 could change. We will have to go back to the original
14 comment letter and be more clear in our response.

15 COMMISSIONER AHEARNE: Do you have anything
16 else, Jim?

17 COMMISSIONER ASSELSTINE: No.

18 COMMISSIONER AHEARNE: Marty?

19 MR. MALSCH: Is it possible, Guy, to notice
20 all amendments but then only pre-notice significant
21 hazards consideration evaluations in the event a hearing
22 request is received? In your proposal you are
23 pre-noticing all. You are pre-noticing a significant
24 hazards consideration determination of some preliminary
25 sort. They are all amendments. Is it possible to go

1 back still another step and not even publish a proposed
2 no-significant-hazards consideration situation in which
3 no request for hearing is received?

4 MR. CUNNINGHAM: The proposed
5 no-significant-hazards consideration, we haven't invited
6 comment on it so you haven't applied Sholly. In the
7 event you get a hearing request, then you are going to
8 have to start noticing at that step. Our intent was to
9 save time by issuing a dual notice up front in each
10 case, and we would get both comments on both a
11 no-significant-hazards consideration and on the hearing.

12 MR. CASE: I think his question is more like
13 in a preliminary view, do you think it is a significant
14 hazards consideration; why go through the rest of it.

15 MR. CUNNINGHAM: There is no need to. In that
16 case you just issue a notice for hearing.

17 MR. MALSCH: The other question is,
18 suppose -- your proposal, I gather, is to make a
19 proposed or preliminary no-significant-hazards
20 consideration determination in all cases.

21 MR. CUNNINGHAM: No. We make a preliminary
22 finding on the question of significant hazards
23 consideration. In most cases there will be no
24 significant hazards.

25 MR. MALSCH: Right, but at least you make a

1 preliminary --

2 MR. CUNNINGHAM: That's correct.

3 MR. MALSCH: Is it possible to avoid even
4 doing that and only making that determination in the
5 event you have received a hearing request? In other
6 words, pre-notice for hearing all amendments?

7 MR. CLMSTEAD: The reason we didn't do
8 that -- we did consider that. There was quite a bit of
9 discussion about it. But the reason we didn't do that
10 is because of the stringent emergency criteria. If you
11 don't do it right up front as quickly as you get the
12 amendment, you can run the risk that the amendment will
13 be needed before you leave the notice requirements on
14 the criteria and you wouldn't be able to find that it
15 was an emergency situation because you dallied around
16 for a couple of months before you got around to making
17 that finding.

18 MR. MALSCH: Okay.

19 COMMISSIONER AHEARNE: All right. There are
20 some items that you are going to try to do some more
21 work on, this being one of them?

22 MR. CUNNINGHAM: There are points raised today
23 which we will look at.

24 COMMISSIONER AHEARNE: Very good. Thank you.

25 [Whereupon, at 3:15 p.m. the meeting was

1 concluded.]

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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

in the matter of: PUBLIC MEETING

ON IMPLEMENTATION OF PUBLIC LAW 97-415

Date of Proceeding: January 18, 1983

Docket Number: _____

Place of Proceeding: Washington, D.C.

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

Jane N. Beach

Official Reporter (Typed)

Jane N. Beach

Official Reporter (Signature)

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PROCEEDINGS BEFORE**

NUCLEAR REGULATORY COMMISSION

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TITLE PUBLIC MEETING
ON IMPLEMENTATION OF PUBLIC LAW 97-415

PLACE Washington, D.C.

DATE January 18, 1983

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

PUBLIC MEETING
ON IMPLEMENTATION OF PUBLIC LAW 97-415

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

Tuesday, January 18, 1983

The Commission convened, pursuant to notice, at
2:01 p.m.

COMMISSIONERS PRESENT:

- JOHN AHEARNE, Commissioner
- VICTOR GILINSKY, Commissioner
- THOMAS ROBERTS, Commissioner
- JAMES ASSELSTINE, Commissioner

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

- S. CHILK
- M. MALSCH
- W. DIRCKS
- G. CUNNINGHAM
- E. CASE
- W. OLMSTEAD
- D. RATHBUN

AUDIENCE SPEAKERS:

- T. DORIAN

* * *

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DISCLAIMER

This is an unofficial transcript of a meeting of the United States Nuclear Regulatory Commission held on January 18, 1983 in the Commission's offices at 1717 H Street, N. W., Washington, D. C. The meeting was open to public attendance and observation. This transcript has not been reviewed, corrected, or edited, and it may contain inaccuracies.

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

P R O C E E D I N G S

1
2 COMMISSIONER AHEARNE (presiding): The 2:00
3 o'clock meeting is about to start. The Commission first
4 has to vote the following vote on the briefing on
5 implementation of Public Law 97-415. We need to vote to
6 hold on less than one week's notice. All in favor say
7 aye.

8 (A chorus of ayes.)

9 COMMISSIONER AHEARNE: Opposed?

10 (No response.)

11 COMMISSIONER AHEARNE: All right. This
12 afternoon we hear from the Staff who has sent us up a a
13 fairly large paper discussing some of the regulations
14 they propose we put out for comment and one that will be
15 put out in final form to implement the various
16 provisions recently passed by the Congress.

17 Tom? Jim?

18 (No response.)

19 COMMISSIONER AHEARNE: Bill?

20 MR. DIRCKS: It's difficult to talk about
21 this, since one of the authors of the amendment is
22 sitting at the table.

23 (Laughter.)

24 COMMISSIONER AHEARNE: We can always ask him
25 about his comments.

1 COMMISSIONER ASSELSTINE: I'm looking at this
2 with a different perspective.

3 (Laughter.)

4 MR. DIRCKS: I thought you would be.

5 (Laughter.)

6 MR. DIRCKS: I thought it would be better if I
7 dropped out of the process at an early stage and let the
8 legal sections take it up. Guy Cunningham is here and
9 he will go through it. I think there are resource
10 impacts in this area when we get to the Sholly amendment
11 and we'd like to talk about that. But first I'll let
12 Guy pick up on the various rule changes and then we can
13 come back to the resource requirements.

14 COMMISSIONER AHEARNE: Is it correct that what
15 you are going to do today is try to walk us through this
16 paper?

17 MR. DIRCKS: Yes.

18 COMMISSIONER AHEARNE: We do not -- unless
19 there is an overriding sense of urgency on the part of
20 my colleagues, I don't think we intend to try to take
21 this to a vote. It's just a briefing at the present
22 time.

23 MR. DIRCKS: It's a briefing to get you
24 through it and we thought the sooner we got down here
25 with it the better, because we do have the time

1 requirements in the statute to move on it.

2 Guy?

3 MR. CUNNINGHAM: Okay. The package has three
4 separate rulemaking proposals: dealing first with
5 temporary operating licenses pursuant to the new Section
6 192 of the Atomic Energy Act; secondly, a final rule
7 dealing with the criteria for making the no significant
8 hazards consideration determination. That rule was
9 originally published in proposed form, I believe it was,
10 in March 1980. Then third and probably most complex are
11 the proposed rules to implement the Sholly amendment.

12 I would propose, I think, to go through first
13 of all the two simpler ones, the temporary operating
14 license and the criteria, and then devote the major part
15 of our time to the Sholly amendment at the end.

16 The temporary operating license authority was
17 granted to the Commission in the authorization bill for
18 1982 and '83 and expires on December 31st of this year.
19 It authorizes the Commission, upon the request of an
20 applicant for an operating license, to grant interim
21 operating authority, first at a five percent power level
22 and later, upon application, at higher power levels,
23 upon satisfaction of the Commission that all the
24 required safety criteria have been met.

25 In particular a prerequisite for issuance of

1 the interim operating authority is that the ACRS report
2 has been issued, the Staff's SER and the supplemental
3 SER which responds to the ACRS report, the final
4 environmental statement, and the appropriate emergency
5 plan.

6 The authority was requested by the Commission
7 following Three Mile Island as a temporary solution to a
8 temporary problem, and the Committee report, the
9 conference report, makes it clear that the Congress
10 intends that this authority be used only sparingly; but
11 that it is intended to take care of the problem of any
12 so-called impacted plants, which were the consideration
13 that prompted the sending up of the bill to begin with.

14 The Commission had such authority earlier,
15 which expired in 1972. The new Section 192 very closely
16 parallels the early authority, and for that reason the
17 regulations that we have put in this package very
18 closely track the ones that were published and effective
19 in final form in the earlier 1970's. Essentially, they
20 track the statute in detail, just saying that the
21 documents have to be completed and in evidence and then
22 the applicant on a motion supported by affidavit can
23 request the interim operating authority.

24 The statute provides that the Commission
25 should consider responsive affidavits or statements.

1 The regulations provide for that opportunity. And then
2 the Commission, without the necessity for completing the
3 operating license hearing can if it chooses issue the
4 interim operating authority, as I said first at five
5 percent and then later at a higher power level.

6 That in essence is the temporary operating
7 license authority part of the package. Unless there are
8 questions, I will move on to the significant hazards
9 consideration.

10 COMMISSIONER ASSELSTINE: Do you want to do
11 questions on each individual section?

12 COMMISSIONER AHEARNE: I think that would be
13 easier, particularly since this is quite different.

14 COMMISSIONER ASSELSTINE: I had just two
15 questions on the temporary operating license
16 provisions. One was on page 8 of the supplementary
17 information section of the proposed rule. At the top of
18 page 8 you note that the requirements of 189a do not
19 apply to the issuance of a temporary operating license,
20 but you do say -- you say, "Thus, the legislation
21 authorizes the Commission to use procedures other than
22 formal adjudicatory procedures in issuing a temporary
23 operating license. In this regard, the Commission will
24 develop informal procedures case-by-case to resolve
25 particular issues as they arise."

1 I guess the question I had was what additional
2 procedures other than what is included here do you
3 envision as possibly being necessary?

4 MR. CUNNINGHAM: Well, what we have put in the
5 rule, of course, is the opportunity or the requirement
6 for an affidavit from the applicant and the opportunity
7 for the public to respond.

8 COMMISSIONER ASSELSTINE: Right.

9 MR. CUNNINGHAM: There are no further
10 requirements stated. The Commission could just take
11 those, deliberate, and issue a decision.

12 But it could, if it chose, have a public
13 meeting like this one and invite the applicant and the
14 commenters to address them. But we've specifically left
15 that for a case-by-case development.

16 COMMISSIONER ASSELSTINE: But at least what is
17 in here in your view would satisfy at least what is
18 required, which is simply the submission of affidavits
19 and the opportunity for comment?

20 MR. CUNNINGHAM: That is right. That creates
21 the opportunity for a written record.

22 COMMISSIONER ASSELSTINE: So this would simply
23 allow as a discretionary matter by the Commission some
24 additional step if the Commission chose to do that on a
25 case-by-case basis?

1 MR. CUNNINGHAM: That's correct.

2 COMMISSIONER ASSELSTINE: The next question I
3 had was on page 11, the last bulleted item on the page:
4 "Section 192 provides that the Commission's authority to
5 issue new temporary operating licenses shall expire on
6 December 31, 1983, thus these regulations would expire
7 on that date."

8 It is clear, is it not, from the legislation
9 that a temporary operating license could be issued any
10 time up to or through December 31st that would remain in
11 effect for some period of time beyond December 31st,
12 1983?

13 MR. CUNNINGHAM: That is clear.

14 COMMISSIONER AHEARNE: Is it clear from the
15 regulations?

16 COMMISSIONER ASSELSTINE: Yes, I guess that's
17 what I'm wondering is whether --

18 COMMISSIONER AHEARNE: It wasn't to me.

19 COMMISSIONER ASSELSTINE: Yes. The question I
20 had in my mind was the same one that the Chairman had
21 raised.

22 MR. CUNNINGHAM: I'm not sure that the
23 regulation has to be changed. It might be advisable to
24 put that in the supplementary information. We could
25 expand and make that clear.

1 COMMISSIONER AHEARNE: Somewhere in there,
2 because I did have that same question. It wasn't clear
3 what happened to all the licenses that might be out.

4 MR. CUNNINGHAM: If they were issued by
5 December 31st, they would remain in effect according to
6 the terms the Commission had originally set.

7 COMMISSIONER ASSELSTINE: And the expiration
8 of our regulations as of December 31st, 1983, would not
9 have any negative impact on that.

10 MR. CUNNINGHAM: No, because the regulations
11 only deal with the matter of issuance of the license.
12 The license would remain in effect on its own terms.

13 COMMISSIONER ASSELSTINE: They also deal with
14 amendments, don't they?

15 MR. CUNNINGHAM: Excuse me?

16 COMMISSIONER ASSELSTINE: Don't they deal also
17 though with amendments to a temporary operating
18 license?

19 MR. CUNNINGHAM: You can amend a TOL to raise
20 the power level, for example, but again I don't believe
21 you could do that after December 31st.

22 MR. MALSCH: They also relate for example
23 suspending a temporary operating license. If the
24 applicant is processing the application with due
25 diligence, that requirement would be to apply presumably

1 throughout the life of the temporary licensing, but that
2 would be beyond December 31st, 1983. You wouldn't want
3 that authority to lapse.

4 MR. CUNNINGHAM: I would think we would
5 probably still have that authority under other sections
6 of the Act, but it may be that we should take a look at
7 that.

8 COMMISSIONER ASSELSTINE: I'm not sure that I
9 fully agree with your other statement, Guy, that if you
10 had a temporary operating license, for example that was
11 issued in November of 1983 with the five percent power
12 level at the original level, why couldn't someone amend
13 that to authorize operation at a higher than five
14 percent level after December '83, since that would be in
15 effect an amendment to the license that was issued prior
16 to the statutory deadline.

17 MR. CUNNINGHAM: My impression had been that
18 our authority to issue licenses is an authority to issue
19 amendments as well, and that the Act says that it
20 expires on December 31st. But we'd certainly be willing
21 to look more closely at that question.

22 COMMISSIONER ASSELSTINE: Okay. I wasn't sure that it
23 was that clear. I had the sense that if you got in
24 under the wire that at least for that facility you would
25 be okay. But I guess that is the other question I would

1 raise. That covers mine.

2 COMMISSIONER AHEARNE: Vic?

3 COMMISSIONER GILINSKY: For myself, I don't
4 have any difficulty with the rule. But I don't think I
5 like the background section, which gets into the
6 question of whether it looked like there were going to
7 be delays or there weren't going to be delays, and I
8 would suggest either shortening that, saying "the rule
9 reflects the legislation which passed."

10 MR. CUNNINGHAM: Well, I understand your
11 point. The reason it was drafted that way is that was
12 essentially the case that the Commission made when it
13 requested the legislation.

14 COMMISSIONER GILINSKY: Well, it limited
15 itself to the low power phase. I guess I just don't
16 think there is a need to go into all of the ins and outs
17 of that, or else it needs to be, I think, more neutrally
18 worded. I have some minor changes I would make if you
19 were going to retain it, although I would prefer to
20 simply shorten it. I can give you that separately.

21 MR. CUNNINGHAM: We would certainly be pleased
22 to see your suggested word changes, and if any other
23 Commissioners have any suggestions.

24 COMMISSIONER AHEARNE: I would have no problem
25 with some slight word changes. It's only a paragraph

1 we're talking about, isn't it?

2 COMMISSIONER GILINSKY: Well, it's about a
3 page and a half all together.

4 MR. CUNNINGHAM: Pages 2 to 4?

5 COMMISSIONER ASSELSTINE: Most of the rest of
6 it is pretty well --

7 COMMISSIONER AHEARNE: I think the first
8 paragraph is the only one that really talks about that.
9 The rest is a factual description of what the Commission
10 rules were.

11 COMMISSIONER ASSELSTINE: I even thought the
12 discussion of the delay issue was couched pretty much in
13 terms of a factual recitation of the situation, at least
14 in 1980, the late 1980 time frame. But at that time it
15 did appear that delays would occur between the time of
16 construction --

17 COMMISSIONER GILINSKY: Well, it appeared to
18 some people it would. If you said "it was argued that,"
19 it would be different. I just felt there was no need to
20 go into that.

21 COMMISSIONER AHEARNE: What word changes would
22 you like?

23 COMMISSIONER GILINSKY: I guess I would argue
24 that if the basic notion is that you want to retain
25 this, I would say "It was argued that there was a

1 possibility" --

2 COMMISSIONER AHEARNE: Sure.

3 COMMISSIONER GILINSKY: -- "that there would
4 be delays."

5 MR. CUNNINGHAM: Right. We can certainly make
6 that change. And if any others are suggested to us, we
7 will take them into account.

8 COMMISSIONER AHEARNE: That's just two of us
9 who are willing to do that so far.

10 COMMISSIONER ASSELSTINE: I guess I would like
11 to see the changes.

12 (Laughter.)

13 MR. CUNNINGHAM: Well, as you know, this paper
14 was prepared in order to get things before the
15 Commission as quickly as possible.

16 COMMISSIONER AHEARNE: Yes.

17 MR. CUNNINGHAM: No one other than the Staff
18 had seen it in final form. We have consulted with OGC
19 early on, but we would anticipate that after this
20 briefing there will be other comments and we will have a
21 revision at some point in the very near future.

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1 COMMISSIONER AHEARNE: I guess only have two
2 questions. The first one was to what plants do you now
3 expect this might apply?

4 MR. CUNNINGHAM: I believe that the only
5 candidate is possibly Shoreham, but that case --

6 MR. CASE: Two possible candidates: Shoreham
7 and possibly Perry. They are both unlikely but
8 possible, I would say.

9 COMMISSIONER AHEARNE: And the second question
10 is on page 18, under section (c), it says "The
11 Commission will not issue a temporary operating license
12 until all significant safety issues significant to the
13 facility in question have been resolved to its
14 satisfaction, taking into consideration the power level
15 and time period requested."

16 I was, I guess, somewhat puzzled by the
17 finality of that statement. Isn't that equivalent to
18 the kind of a conclusion we would reach if we were about
19 to issue an operating license to the plant, "all
20 significant safety issues ... have been resolved to our
21 satisfaction?"

22 MR. CUNNINGHAM: Well, I think that has to
23 mean resolved to your satisfaction for the purpose of
24 temporary operating authority because there was also
25 language in here that makes it clear you cannot prejudge

1 the outcome.

2 COMMISSIONER AHEARNE: Perhaps then you could
3 put that phrase in.

4 MR. CUNNINGHAM: That is definitely in here in
5 other places. That was specifically --

6 COMMISSIONER ASSELSTINE: I agree with that.
7 I think it would be useful to put that in.

8 MR. CUNNINGHAM: But it may be that they ought
9 to be in closer proximity.

10 COMMISSIONER AHEARNE: Or at least
11 cross-referenced.

12 MR. MALSCH: Actually, you shouldn't have
13 standards like this in Part 2 anyway. The actual
14 standard for amendment issuance is in Part 50, and
15 they've got the statutory language there. I wasn't sure
16 why this, or for that matter (d) needed to be in Part 2.

17 MR. CUNNINGHAM: The short answer is we had it
18 in there back in '72 and '73. We could do some
19 tinkering. It's not essential. You are right that the
20 standard is set forth in Part 50.

21 COMMISSIONER AHEARNE: It could just be taken
22 out.

23 COMMISSIONER ASSELSTINE: Yes.

24 COMMISSIONER AHEARNE: Again, that is two who
25 feel that way. We are giving you lots of advice but --

1 (Laughter.)

2 MR. CUNNINGHAM: Not hearing any contrary
3 advice, I will go with the two that I hear.

4 (Laughter.)

5 COMMISSIONER AHEARNE: That sounds like a good
6 approach.

7 Tom, do you have any?

8 COMMISSIONER ROBERTS: (Nods in the negative.)

9 COMMISSIONER AHEARNE: All right, I guess
10 that's all.

11 Marty, did you have any more?

12 MR. MALSCH: I had one peculiar issue. I
13 don't know what to do about it. What would happen in
14 the situation in which a licen already had a
15 low-power 5-percent license under our current rules?
16 Would we have to require him to refile for a temporary
17 low-power license in order for him to go through the
18 motions of asking for a full-power temporary license?
19 We couldn't come up with a clear answer to that
20 question, so we're thinking about it.

21 COMMISSIONER AHEARNE: Did you have any
22 particular plant in mind?

23 MR. CASE: It would be a possibility with
24 Shoreham because one might argue that they could get
25 their 5-percent license without off-site emergency

1 planning and be going along swimmingly and then suddenly
2 run into a problem on off-site emergency planning that
3 would go beyond. I could see that possibility.

4 MR. MALSCH: It also occurred to me that what
5 would happen say in Diablo if the record were reopened?
6 I am not sure. It wasn't clear to me that the situation
7 would never arise, and if it did arise, I couldn't see a
8 clear route to avoid going through what looked to me
9 like an empty exercise of applying for a temporary
10 low-power license when they already had one. But I just
11 offer it as a problem to think about.

12 MR. OLMSTEAD: You're talking about under this
13 statute --

14 MR. MALSCH: Well, and the regulations.

15 MR. OLMSTEAD: -- when they already had one
16 under 50.57(c)?

17 MR. MALSCH: Yes.

18 COMMISSIONER AHEARNE: To take advantage of
19 this statute's provision allowing them to keep cranking
20 up above 5 percent.

21 MR. OLMSTEAD: But they're allowed to do that
22 under 50.57(c), too.

23 MR. MALSCH: True, but the question would be
24 suppose they have gotten a low-power license under 50.57
25 after holding a hearing on low-power issues. Let's

1 suppose that the hearing on full-power issues were still
2 in progress and they wanted to obtain a temporary
3 full-power license prior to completion of that hearing.
4 Would they have to go through the motions of also
5 applying for a temporary low-power license when they
6 already had one just to be able to avail themselves of
7 the opportunity of filing application for a temporary
8 full-power license? That doesn't seem to make any sense.

9 COMMISSIONER AHEARNE: Jim, was this something
10 that came up?

11 COMMISSIONER ASSELSTINE: No.

12 (Laughter.)

13 COMMISSIONER AHEARNE: Bill?

14 MR. CUNNINGHAM: It's not one that we've
15 considered. We can give it some thought. This Act only
16 provides authority for amending incrementally licenses
17 issued under it.

18 COMMISSIONER ASSELSTINE: Yes. I am afraid
19 the way it's structured you probably would have to go
20 through the exercise of getting a 5-percent temporary
21 operating license under the section. That's my
22 suspicion.

23 MR. MALSCH: We are looking at it to see
24 whether there's a way around what would appear to be a
25 sort of a needless exercise.

1 COMMISSIONER ASSELSTINE: Yes. I don't think
2 it's addressed by intent at all. The only question is
3 whether you're locked into that by the words of the
4 statute.

5 MR. CUNNINGHAM: The next part of the package,
6 which is Enclosure 3, deals with the standards for
7 making a determination that a proposed OL amendment
8 involves no significant hazards consideration. As I
9 mentioned, these rules were proposed in March of 1980,
10 and we have in this package a final notice of rulemaking.

11 There is a correction package which was
12 circulated today to make the rule conform to the
13 approach we have taken in implementing Sholly. Clearly,
14 it is important that final action not be taken on this
15 until we decide which way we are going to go on Sholly
16 so that the appropriate conforming language is in there.

17 The changes or the criteria apply only to
18 operating license amendments, not to construction permit
19 amendments. The legislation only applies to operating
20 licenses, and in fact I don't believe we have ever made
21 no-significant-hazard consideration findings with regard
22 to construction permit amendments.

23 The no-significant-hazards consideration
24 finding is basically a procedural one. It deals with
25 the question of whether or not we notice in advance an

1 opportunity for hearing. The criteria for making that
2 determination in the rule are essentially the same as
3 they were in the proposed rule.

4 And there are three criteria: whether there
5 is a significant increase in probability or consequences
6 of an accident previously evaluated; whether the
7 amendment would create the possibility of an accident
8 different from those previously evaluated; and whether
9 it involves a significant reduction in the margin of
10 safety.

11 If any of those findings were met, then there
12 would be a significant-hazards consideration.

13 COMMISSIONER AHEARNE: Does it also hold true
14 that if none of them are met that it is not a
15 significant hazard?

16 MR. CUNNINGHAM: I think that's true.

17 Ed, would you agree?

18 MR. CASE: Yes, I would agree.

19 MR. CUNNINGHAM: Those are the only three
20 criteria which are spelled out in the rule.

21 The supplementary information gives -- on page
22 20 you will find the -- nine examples of amendments
23 which do involve significant-hazards consideration and
24 eight examples that do not involve significant-hazards
25 considerations.

1 These criteria are essentially the same as
2 those -- in fact, they are the same as those applied by
3 NRR now.

4 COMMISSIONER AHEARNE: Given the answer you
5 just gave me, perhaps, Ed, you can explain to me why
6 reracking a spent-fuel storage pool, which one of those
7 three is it?

8 MR. CASE: That was put in there because of
9 the Congress.

10 COMMISSIONER AHEARNE: I was just told that it
11 has to meet one of those; if it doesn't, then it isn't.
12 And I don't think it was put in there because of the
13 Congress. Congress didn't tell us to do that.

14 MR. CASE: Yes, they did.

15 MR. CUNNINGHAM: Yes. That was in the
16 Conference Report.

17 COMMISSIONER AHEARNE: Was it in the
18 Conference Report? Or was it in the Senate Report?

19 COMMISSIONER ASSELSTINE: I don't think it's
20 in -- well, let's see, that's a good question.

21 COMMISSIONER AHEARNE: The paper doesn't quote
22 it as being in the Conference Report. The paper quotes
23 it as being in the Senate Report.

24 COMMISSIONER ASSELSTINE: That's right; it
25 does.

1 MR. CASE: Well, depending on the reracking, I
2 could see --

3 COMMISSIONER AHEARNE: This just says "any
4 reracking."

5 MR. CUNNINGHAM: I don't see it in the
6 Conference Report now. I thought it was in the
7 Conference Report, but it was clearly added there at the
8 instigation of the legislative process.

9 COMMISSIONER AHEARNE: Are we bound if it is a
10 Senate report but it doesn't get into the conference
11 report, are we bound by that by regulation?

12 MR. MALSCH: I don't know how to answer that
13 question in the abstract.

14 COMMISSIONER AHEARNE: This is not the
15 abstract.

16 (Laughter.)

17 MR. MALSCH: I haven't seen the rest of the
18 legislative history. It would depend upon how important
19 that statement in the Senate report is in the overall
20 construction of the statute. If the statute is
21 ambiguous, and that is the only guidance we have, it
22 could be quite important to take that into account.

23 COMMISSIONER AHEARNE: I think at the moment I
24 find a basic inconsistency. I think you would have to
25 add a number 4 on page 27.

1 (Laughter.)

2 MR. CASE: If I were going to do it that way,
3 I would just add that particular example.

4 COMMISSIONER GILINSKY: Let me ask a question.

5 COMMISSIONER AHEARNE: Yes. I think I am
6 going to ask them to essentially go back and look at the
7 legislative history to see. At the moment it's just of
8 interest.

9 COMMISSIONER GILINSKY: When you say involves
10 a significant consequence of an accident previously
11 evaluated, do you mean the step that is contemplated or
12 that it involves an issue which has the possibility of
13 significantly increasing the probability of consequence
14 of an accident previously evaluated? Is that clear?

15 MR. CUNNINGHAM: No. Clearly, the
16 consideration related to the amendment --

17 MR. CASE: The operation of the facility in
18 accordance with the proposed amendment. So when you
19 deal with the merits of the amendment itself --

20 COMMISSIONER GILINSKY: What concerns me here,
21 it seems to me that somewhere we ought to be dealing
22 with the importance of the problem, the safety
23 importance.

24 MR. CUNNINGHAM: This specifically tells us to
25 separate the procedural issue from the merits. What

1 these criteria are intended to do is to identify the
2 types of actions which could involve, and if there is
3 any accident consideration involved, then you have to
4 find the significant-hazards consideration. You can
5 then evaluate it on the merits and find it's okay and
6 approve it.

7 COMMISSIONER GILINSKY: I guess I don't follow
8 that. Let's take a hypothetical example. Suppose there
9 is a crack in a pipe of some pressure vessel. If you
10 watch it carefully, you will always be able to catch it
11 before it's a break. So you propose an amendment for
12 increased surveillance.

13 Now, in view of the Staff, the NRC, that may
14 compensate for the deficiencies or the safety problems,
15 but it seems to me there may be -- it is a serious
16 safety problem which has been addressed but may not have
17 been addressed satisfactorily. I guess I would say that
18 is something that involves a significant-hazards
19 consideration.

20 Is that the way you see it? Does that fit
21 with the definitions or not?

22 MR. CASE: I haven't rehearsed this. That's
23 not the way I see these words. If the Staff felt there
24 was a small increase in the probability of an accident,
25 it could say no significant -- this did not involve a

1 significant-hazards consideration.

2 If on the other hand it was a significant
3 increase, albeit acceptable, then you would find
4 significant hazard. So there is a difference between
5 looking at the merits.

6 COMMISSIONER GILINSKY: I am not sure I follow
7 this. There is a safety problem which is being
8 compensated for by some step; in this case, increased
9 surveillance. And that is what is proposed for, say,
10 the next year of operation. Now, some people may feel
11 that that is not sufficient action, that you have to
12 replace the piece of pipe or whatever.

13 MR. CUNNINGHAM: That's the merits when you
14 say you do not think it is sufficient action. The
15 threshold procedural question is: Is there a potential
16 for a significant safety problem here?

17 COMMISSIONER GILINSKY: You're dealing with a
18 significant safety problem, you may feel you have dealt
19 satisfactorily with it, but certainly the problem itself
20 is a significant problem. If it isn't a significant
21 problem to begin with, you wouldn't be talking about it.

22 MR. CUNNINGHAM: But if it is a significant
23 problem that requires consideration of the accident
24 considerations, then it meets the requirement for a
25 significant-hazards consideration.

1 COMMISSIONER GILINSKY: That's what I am
2 asking about, whether this applies to the problem or the
3 solution.

4 MR. CUNNINGHAM: To the problem.

5 MR. CASE: I am sorry, that's not the way I
6 read the language, Guy.

7 COMMISSIONER GILINSKY: That's what I am
8 trying to get at.

9 MR. CASE: On page 27 it says, "... unless it
10 finds that operation of the facility in accordance with
11 the proposed amendment would: (1) involve a significant
12 increase in the probability" --

13 COMMISSIONER GILINSKY: Is that the language
14 of the law?

15 MR. CASE: No, that's the regulation.

16 COMMISSIONER GILINSKY: Oh, the final
17 regulation. Well, I guess I would tie it to the
18 problem, unless persuaded otherwise.

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1 that in future TMI-type situations, that that would mean
2 that this authority would not be available, that you
3 would automatically determine that it was a significant
4 hazards consideration. But I seem to recall there might
5 have been something like that.

6 MR. CUNNINGHAM: We will go back and look at
7 that.

8 COMMISSIONER ASSELSTINE: That covers mine.

9 COMMISSIONER AHEARNE: Okay. If you go out in
10 final, then at some other later point you would be what,
11 coming along and modifying some of these provisions,
12 which are then later picked up under the Sholly
13 provisions?

14 MR. CUNNINGHAM: The only real question
15 related to Sholly is whether you make enough significant
16 hazards consideration determinations and every case as a
17 separate step or do you follow our proposal, which is to
18 pre-notice an opportunity for hearing at the same time
19 as an opportunity for comment as to whether or not there
20 is a significant hazards considerations. If you get no
21 request for hearing, there is no need for a significant
22 hazards consideration, so you don't make it. So we have
23 the language on page 27, depending on which of the
24 Sholly reports you go with.

25 COMMISSIONER AHEARNE: The phrase, "The

1 Commission has found no significant hazards
2 consideration has been applied for and the Commission
3 may dispense with such notice.

4 MR. CUNNINGHAM: That is on page 26. Mr.
5 Olmstead and I debated for about an hour last night.
6 Bill, do you want to address that?

7 [Laughter]

8 MR. OLMSTEAD: There are getting to be so many
9 different types of hearings and so many different types
10 of notices under Section 1.89, it is difficult for me to
11 explain this, but you are required by the Sholly
12 amendment to give a particular kind of notice. It is
13 not a notice of hearing, it is a notice of intent to
14 issue a no-significant-hazards consideration. You also,
15 if someone requests a hearing pursuant to an opportunity
16 for hearing, you are required then to issue a notice of
17 hearing.

18 Now, those rules have not changed at all.
19 This rule is in our rules currently and has been held to
20 conform wholly --

21 COMMISSIONER AHEARNE: I understand that. I'm
22 just asking, if we replace the Sholly regulations --

23 MR. OLMSTEAD: It is not necessary. What I
24 convinced Mr. Cunningham of last night was that if we
25 got significant comment to that effect on the Sholly

1 rule, then we could make that procedural change before
2 we finalized it. But it is not as a matter of law
3 required to change this section, and if I got started
4 making all those changes, I think there were some other
5 provisions of the rule that would also be impacted
6 because we implemented 1.89 in a number of places, in
7 1.82.

8 COMMISSIONER AHEARNE: You are saying that the
9 only reason you might make the changes are for
10 clarification?

11 MR. OLMSTEAD: I think that in all of the
12 revisions that are floating around for Part 2, that it
13 is certainly not ill-advised for us to consider making
14 some changes in that regard, but I don't know that it is
15 necessary in this package.

16 COMMISSIONER ASSELSTINE: That is essentially
17 because you are providing the notice provision to deal
18 with the Sholly amendment as part of Part 50.

19 COMMISSIONER ROBERTS: This is part of Part 50.

20 COMMISSIONER AHEARNE: The one I read from is
21 Part 50.

22 MR. OLMSTEAD: Yes.

23 COMMISSIONER ASSELSTINE: Yes.

24 MR. OLMSTEAD: This is 50.58.

25 COMMISSIONER ASSELSTINE: Yes.

1 COMMISSIONER AHEARNE: My question is, if we
2 go down the Sholly route, would you then want to go back
3 later and modify this language, which is also Part 50?
4 I guess you say that non-employers should stay out --

5 [Laughter]

6 MR. CUNNINGHAM: It should be understood that
7 it is the public that has to use these regulations.

8 COMMISSIONER AHEARNE: You have a statement
9 that says the Commission finds that if no significant
10 hazard consideration is presented by an amendment to an
11 operating license, it may dispense with such notice of
12 publication. It says if we conclude there are no
13 significant hazards, we don't have to notice anything;
14 we just go on.

15 MR. OLMSTEAD: We don't have to notice a
16 hearing, that's true, and that is the "such notice."

17 MR. CUNNINGHAM: The question is what is the
18 definition of "such notice." What might be advisable
19 when we get to a final rule on Sholly to make a
20 conforming change is in this section.

21 COMMISSIONER ASSELSTINE: Yes.

22 COMMISSIONER AHEARNE: Marty, do you have any
23 questions or comments on that?

24 MR. MALSCH: We are still looking at it. What
25 we were doing this morning was trying to work through

1 the examples and see how they fit the standards, and we
2 were having a hard time. I was sort of comfortable with
3 the examples but I still want to see how they fit
4 together. In particular we couldn't see how example 9
5 on effluents and radiation fit into any of the standards
6 in 1, 2 or 3. I just raise the issue.

7 MR. CASE: Say that one again?

8 MR. MALSCH: That was the one added regarding,
9 in response to the concern that we be especially
10 sensitive to the amendments that increase effluents and
11 radiation. I didn't spend more than three seconds on
12 it, but it wasn't obvious based on the three second
13 review how that fit in, and with regard to reracking,
14 renewals, increased power levels. It may be that it
15 works out okay. It was just difficult to work it out in
16 the time that we had.

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1 COMMISSIONER AHEARNE: You are trying to hide
2 that clarity.

3 [Laughter]

4 MR. MALSCH: The answer may very well be that
5 this is the best we can do.

6 COMMISSIONER AHEARNE: It is a high ideal to
7 strive for.

8 MR. CUNNINGHAM: Having gone through the two
9 easy ones, we now turn to the Sholly amendments proper.
10 The authorization bill provides that upon the finding of
11 a no-significant-hazards consideration being involved in
12 an amendment, we may issue that amendment in advance of
13 any requested hearing. The way the Act is structured as
14 it is now, if we get a hearing and we don't make that
15 finding, we can't issue the license unless a hearing is
16 held first.

17 COMMISSIONER AHEARNE: Say it again?

18 MR. CUNNINGHAM: Unless we get a hearing
19 request, until we have these rules in place, we will
20 have no vehicle for issuing an amendment prior to
21 holding a hearing. When the rules are in place, which
22 the Act directs us to do within 90 days --

23 COMMISSIONER AHEARNE: There is an underlying
24 issue which we had taken to the Supreme Court, which
25 unfortunately now is being made moot, but it was our

1 interpretation, was it not, that under the current law
2 we were authorized that if we had reached a significant
3 hazard finding, to go ahead and issue the amendment?

4 MR. CUNNINGHAM: That is under the current
5 law, but this law became effective January 4 and says
6 you will not have the authority granted to you until you
7 get rules in place. So it changes the law which we were
8 previously interpreting, and that, of course, is the
9 reason --

10 COMMISSIONER AHEARNE: It cancels the previous
11 law.

12 MR. CUNNINGHAM: It supercedes it, yes.

13 COMMISSIONER AHEARNE: Supercedes it.

14 MR. CUNNINGHAM: That is, of course, the
15 reason we are trying to get the rulemaking package down
16 to you promptly. Our 90-day timetable started running
17 on August 4th -- I'm sorry, January 4th.

18 [Laughter]

19 Now the first approach -- well, let me
20 describe what the law required. It said upon making
21 this finding you could then issue the amendment in
22 advance of required hearing, but before making that
23 finding in final form, you had to allow the opportunity
24 for public comment on the proposed finding of no
25 significant hazards consideration and consult with the

1 state.

2 Our first approach to drafting implementing
3 rules was to say that in every case we take a quick look
4 at a proposed amendment, make a proposed finding of
5 no-significant-hazards consideration, which, as I said,
6 is covered by 98 percent of the amendments, publish a
7 Federal Register notice, allow 30 days for comments,
8 have consultation procedures with the states, evaluate
9 the comments and make the final determination, a process
10 which occupies some time, obviously, 30 to 60 days, and
11 in the Staff estimate based on 600 amendments a year --

12 MR. CASE: And additional professional staff
13 years.

14 MR. CUNNINGHAM: We have structured an
15 alternative proposal which is the one we recommend for
16 the Commission's consideration. That is, first of all a
17 change in the rules to require an applicant submitting
18 an amendment request to include his analysis of whether
19 or not there is significant hazards consideration. That
20 could be adopted in either form.

21 COMMISSIONER AHEARNE: Applicant does not do
22 that now?

23 MR. CUNNINGHAM: No.

24 MR. CASE: He is not required to do that.

25 MR. CUNNINGHAM: They may do it strictly if

1 they want the finding, but it is not required now. That
2 would be the first part of the package. The applicant
3 would make his argument and would also serve that upon --

4 MR. CASE: Using the standards in the
5 regulation.

6 COMMISSIONER AHEARNE: Previously described.

7 [Laughter]

8 MR. CUNNINGHAM: In addition, he would serve a
9 copy of that on the state official. We would have a
10 list of the appropriate state officials in each state.
11 Then we would issue a notice in every case -- and there
12 would probably be a batch of these once a week or once a
13 month -- of all the requests received of the preliminary
14 findings with regard to significant hazards
15 determinations and offer both an opportunity to comment
16 on that determination and an opportunity to request a
17 hearing.

18 If there were not requests for a hearing,
19 which we posit would be the normal case, in the event it
20 is truly trivial, then there would be no need for us to
21 make a final no hazards consideration finding because we
22 would have a procedural "out" from having a hearing, in
23 which case we would complete the safety review and, if
24 appropriate, issue the amendment.

25 And although there is an uncertainty, of

1 course, as to how many hearing requests would be
2 received, it is our judgment that that would probably
3 result in an overall savings of resources. We estimate
4 -- NRR estimates about four to five -- ?

5 MR. CASE: Three to four.

6 MR. CUNNINGHAM: -- staff years per year to
7 handle the same amendment load we have now. So a key
8 feature of our proposal is that we couple the notice of
9 opportunity for hearing with the request for a comment
10 on the no-significant-hazard consideration determination.

11 (Commissioner Gilinsky leaves the meeting at
12 3:02 p.m.)

13 COMMISSIONER AHEARNE: In your estimate on how
14 much time it will take you, is your assumption that most
15 of these will not have people coming in and arguing that
16 there are significant hazards? Are you assuming that
17 the licensees will say that 98 percent are insignificant
18 and that the commenters will tend to agree with that?

19 MR. CASE: No, I think it's more likely we
20 won't get many comments on the subject.

21 COMMISSIONER AHEARNE: So your assumption is
22 that you are not going to many times find yourself being
23 forced to reach a conclusion going through any kind of
24 detailed analysis?

25 MR. CASE: The only time I get to that is if

1 someone requests a hearing, and it would be only in
2 those cases that I would have to analyze the comments in
3 a more detailed analysis and write a final
4 determination, and I think those would be few.

5 COMMISSIONER AHEARNE: So that your estimate
6 of the staff years is based upon very few --

7 MR. CASE: Yes. Or more probably, the savings
8 in man-years is based on the fact that you don't have to
9 go through the full process with a few, although you
10 would have to do the preliminary process in all, in both
11 approaches. But if either approach engenders more
12 requests for hearing on those cases where there are
13 significant hazards consideration and actually having
14 the hearings, then that is where the manpower eater
15 really is.

16 MR. OLMSTEAD: I think this judgment is being
17 made because we assume that those who are going to
18 request a hearing under the Sholly legislation are going
19 to get notice of the amendment action anyway and they
20 are not the type of people who are going to be
21 unknowledgeable about the fact that whether we offer the
22 opportunity for hearing or not, that they certainly have
23 the right under 1.89 to request it. So that is what
24 leads to the judgment that you are not going to increase
25 by some large factor the number of hearing requests that

1 you actually get.

2 MR. CUNNINGHAM: Particularly when we assume
3 that not too many people are going to be interested in
4 an after-the-fact hearing after we complete the
5 no-significant-hazards consideration finding. That is
6 the principal feature of the proposal. It also
7 incorporates the statutory criteria for dispensing with
8 any opportunity for public comment and, if necessary,
9 consultation with the states in emergency situations.

10 MR. CASE: Or shortening.

11 MR. CUNNINGHAM: That is correct. The
12 criteria for emergency consideration are pretty
13 stringent because it requires, among other things, a
14 shutdown and de-rating of the facility, and the
15 applicant could not have foreseen the need for the
16 amendment on a more timely basis.

17 And finally, with regard to consultation with
18 the states, the proposed rules incorporate a specific
19 language of the statute again that this doesn't give the
20 state a right to delay the amendment or delay its
21 implementation.

22 COMMISSIONER AHEARNE: Did I read this
23 correctly that your contacts with the state lie pretty
24 much toward the state and the assumption is if the state
25 is interested, they will contact us?

1 MR. CUNNINGHAM: They are notified twice, once
2 by their analysis and once by providing the copy of the
3 Federal Register notice. I'm sure there would be a
4 cover letter that would say, if you are interested, let
5 us know. But in essence we have put it upon the state
6 to let us know if they want to discuss a particular
7 thing.

8 COMMISSIONER AHEARNE: The assumption is if we
9 don't hear, it is not a negative opinion?

10 MR. CUNNINGHAM: Yes.

11 COMMISSIONER ASSELSTINE: Is that consistent
12 with the first sentence of number 4, page 29, that says
13 -- I recognize you have the other two elements. You say
14 the Commission will make a good faith attempt to consult
15 with the state before it issues a license amendment
16 involving no-significant-hazards considerations. That
17 doesn't involve one more contact or attempt to contact
18 prior to issuance of the amendment?

19 MR. CUNNINGHAM: The position I would take is
20 if you sent them the Federal Register notice inviting
21 them to comment or respond, that is a good faith attempt
22 at consultation. This may be a matter we will get
23 comment upon, and I don't think the incremental burden
24 of us picking up the phone one more time --

25 COMMISSIONER ASSELSTINE: We are not saying we

1 are issuing the amendment. We just wanted to know if
2 you had any comments.

3 MR. CUNNINGHAM: Again I think there is an
4 assumption here that given the fact that the majority of
5 the amendments are truly minor, that the states might be
6 just as happy if we weren't ringing the phones two or
7 three times a month. If that is wrong and we hear a
8 comment to that effect, then we would change the process
9 in which we contact them.

10 COMMISSIONER AHEARNE: Is there any other
11 comment?

12 MR. CUNNINGHAM: No, that's the outline of the
13 package.

14 COMMISSIONER AHEARNE: Jim?

15 COMMISSIONER ASSELSTINE: I guess that was the
16 one question I really had, whether there should be that
17 one other step in there on the consultation with the
18 states, which seemed to be perhaps just a bit more like
19 consultation rather than providing an opportunity for
20 comment.

21 COMMISSIONER AHEARNE: I guess I only had a
22 few other minor questions.

23 Under the regulatory analysis, which is
24 Enclosure 5, Ed, I wonder if you could explain what was
25 meant by the last sentence?

1 MR. CASE: Could you read it to me?

2 COMMISSIONER AHEARNE: It says, "The Office of
3 Nuclear Reactor Regulation is already using these
4 standards but not all of the examples listed in the
5 preamble of the final rule."

6 MR. CASE: Well, certainly that is a
7 significant increase in effluents, which is not one we
8 are using now.

9 MR. CUNNINGHAM: And rerack.

10 MR. CASE: I don't know of any reracks where
11 we haven't found significant hazards. But in any event,
12 I think when that was written there were perhaps another
13 couple of new examples that didn't quite make it.

14 [Laughter]

15 MR. OLMSTEAD: We always do what the client
16 wants.

17 COMMISSIONER AHEARNE: I will pass on that.

18 [Laughter]

19 COMMISSIONER AHEARNE: Okay. Then on page 2,
20 Enclosure 9, it says with respect to Comment C -- I
21 didn't really follow your response.

22 MR. CUNNINGHAM: I will have to read that.

23 [Pause]

24 MR. CUNNINGHAM: I think I will ask Tom Dorian
25 if he can comment on that.

1 MR. DORIAN: Frankly, I don't remember. This
2 goes back to a comment analysis we did at the time right
3 after we put out the proposed rule.

4 MR. CUNNINGHAM: We can get back to you on
5 that.

6 COMMISSIONER AHEARNE: Let me just make a
7 point. There is someone just slightly familiar with
8 this area and someone more familiar with this area and
9 someone supposedly very familiar with this area. This
10 is something that the public is supposed to be able to
11 look at and understand the response? We can't.

12 MR. CUNNINGHAM: Well, it is something we
13 could change. We will have to go back to the original
14 comment letter and be more clear in our response.

15 COMMISSIONER AHEARNE: Do you have anything
16 else, Jim?

17 COMMISSIONER ASSELSTINE: No.

18 COMMISSIONER AHEARNE: Marty?

19 MR. MALSCH: Is it possible, Guy, to notice
20 all amendments but then only pre-notice significant
21 hazards consideration evaluations in the event a hearing
22 request is received? In your proposal you are
23 pre-noticing all. You are pre-noticing a significant
24 hazards consideration determination of some preliminary
25 sort. They are all amendments. Is it possible to go

1 back still another step and not even publish a proposed
2 no-significant-hazards consideration situation in which
3 no request for hearing is received?

4 MR. CUNNINGHAM: The proposed
5 no-significant-hazards consideration, we haven't invited
6 comment on it so you haven't applied Sholly. In the
7 event you get a hearing request, then you are going to
8 have to start noticing at that step. Our intent was to
9 save time by issuing a dual notice up front in each
10 case, and we would get both comments on both a
11 no-significant-hazards consideration and on the hearing.

12 MR. CASE: I think his question is more like
13 in a preliminary view, do you think it is a significant
14 hazards consideration; why go through the rest of it.

15 MR. CUNNINGHAM: There is no need to. In that
16 case you just issue a notice for hearing.

17 MR. MALSCH: The other question is,
18 suppose -- your proposal, I gather, is to make a
19 proposed or preliminary no-significant-hazards
20 consideration determination in all cases.

21 MR. CUNNINGHAM: No. We make a preliminary
22 finding on the question of significant hazards
23 consideration. In most cases there will be no
24 significant hazards.

25 MR. MALSCH: Right, but at least you make a

1 preliminary --

2 MR. CUNNINGHAM: That's correct.

3 MR. MALSCH: Is it possible to avoid even
4 doing that and only making that determination in the
5 event you have received a hearing request? In other
6 words, pre-notice for hearing all amendments?

7 MR. CLMSTEAD: The reason we didn't do
8 that -- we did consider that. There was quite a bit of
9 discussion about it. But the reason we didn't do that
10 is because of the stringent emergency criteria. If you
11 don't do it right up front as quickly as you get the
12 amendment, you can run the risk that the amendment will
13 be needed before you leave the notice requirements on
14 the criteria and you wouldn't be able to find that it
15 was an emergency situation because you dallied around
16 for a couple of months before you got around to making
17 that finding.

18 MR. MALSCH: Okay.

19 COMMISSIONER AHEARNE: All right. There are
20 some items that you are going to try to do some more
21 work on, this being one of them?

22 MR. CUNNINGHAM: There are points raised today
23 which we will look at.

24 COMMISSIONER AHEARNE: Very good. Thank you.

25 [Whereupon, at 3:15 p.m. the meeting was

1 concluded.]

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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

in the matter of: PUBLIC MEETING

ON IMPLEMENTATION OF PUBLIC LAW 97-415

Date of Proceeding: January 18, 1983

Docket Number: _____

Place of Proceeding: Washington, D.C.

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

Jane N. Beach

Official Reporter (Typed)

Jane N. Beach

Official Reporter (Signature)

1 COMMISSIONER AHEARNE: In the case you're
2 talking about, if there were a crack that led them to
3 have whatever the crack was in that had the plant out of
4 compliance, your concern is that they would then be able
5 to get into compliance by proposing an amendment?

6 MR. CASE: Looking at it more frequently than
7 they would have.

8 COMMISSIONER GILINSKY: It seems to me the
9 common sense test of -- we've got to be setting up a
10 standard that makes sense using the words that one
11 ordinarily does. And it seems to me a situation like
12 this involves a significant hazard.

13 Now, you may feel it has been dealt with
14 satisfactorily. That's the purpose of the amendment.
15 But however we treat the more important items, it ought
16 to fall in that basket.

17 MR. CASE: But we tried to set the standard to
18 decide which was more important.

19 COMMISSIONER GILINSKY: Well, there has to be
20 a plus. That isn't decreasing safety; that's increasing
21 safety.

22 COMMISSIONER AHEARNE: Except -- well --

23 COMMISSIONER GILINSKY: Certainly where
24 there's a significant reduction in the margin of
25 safety. No one's going to argue about that.

1 MR. CASE: You might get caught there.

2 COMMISSIONER GILINSKY: Possibly.

3 COMMISSIONER AHEARNE: Because the amendment
4 would be to propose --

5 MR. OLMSTEAD: It depends on the nature of the
6 amendment. If they're allowed to operate without the
7 increased surveillance, all they're doing is coming in
8 and saying we think we ought to increase surveillance,
9 so then it is not going to involve significant hazards
10 because they're already being permitted to operate with
11 a longer frequency between inspections.

12 COMMISSIONER AHEARNE: If the issue is not
13 being allowed to operate versus being allowed to operate
14 with increased surveillance --

15 MR. OLMSTEAD: Then you might well have a
16 significant hazards consideration, because you have to
17 look beyond just the frequency of the surveillance to
18 see if they can or cannot operate. If they can operate,
19 then the nature of the amendment is to increase safety.

20 COMMISSIONER AHEARNE: Did you have something
21 further?

22 COMMISSIONER GILINSKY: It seems to me there's
23 something wrong if you set up a system in which a
24 solution, no matter how slight, to a problem will
25 ultimately be regarded as significant, and that puts

1 that whole issue into the unimportant basket.

2 COMMISSIONER AHEARNE: But I'm not sure it
3 does.

4 COMMISSIONER GILINSKY: Well, if it doesn't,
5 how is it caught by --

6 COMMISSIONER AHEARNE: I think it would be
7 caught in number 3, because in the sense the amendment
8 would allow them to continue operating; because I think
9 they hypothetical case you came up with is there is some
10 damage to the system where otherwise you would make them
11 shut down and they would ask for permission to keep
12 operating for some period of time, and the argument for
13 increased surveillance will protect it.

14 But the argument now is that there is a
15 reduction, a significant reduction in the margin of
16 safety because prior to that it was supposed to be
17 operating an undamaged system. Now you're operating a
18 damaged system with someone watching it on the grounds
19 that they can shut the plant down if necessary, but that
20 is lowering the margin of safety.

21 COMMISSIONER GILINSKY: Well, I was looking
22 for some interpretation and maybe that's it.

23 MR. CASE: I agree with that.

24 MR. OLMSTEAD: I certainly agree with that, bu
25 the reason that it works is because there are two types

1 of amendments: amendments that allow the plant to
2 operate when it would otherwise be required to shut
3 down, and amendments that for whatever reason accomplish
4 some other purpose but that they would continue to
5 operate. And that frequently drives how NRR looks at
6 the significant hazards criteria.

7 If the plant cannot continue to operate under
8 its present operating conditions without shutting down,
9 then you're perfectly right. Usually, nine times out of
10 ten it's going to be in the third criteria.

11 If, on the other hand, the plant can continue
12 to operate but for some other reasons, maybe for
13 operating efficiency, they want the amendment, more than
14 likely it's going to be one of the other criteria.

15 MR. CASE: What he's saying is the third one
16 in particular is designed for the kind of examples we
17 are bringing up where a plant would otherwise be
18 required to shut down. Basically the question is
19 determined on the staff judgment about the reduction in
20 the margin of safety as to whether it's a significant
21 hazards consideration, whether it's minor, no, major,
22 yes. No matter how you judge this, it's a judgmental
23 call every time.

24 COMMISSIONER GILINSKY: Is this rubric of any
25 other significance?

1 MR. CASE: Yes. It comes from the regulations
2 which define an unreviewed safety question. An
3 unreviewed safety question is something the licensee
4 must seek approval of in changing operation or design,
5 and that is defined essentially as these words without
6 the "significant" in there.

7 COMMISSIONER ROBERTS: How many license
8 amendments are there per year approximately?

9 MR. CASE: Six hundred.

10 COMMISSIONER ROBERTS: Six hundred?

11 MR. CASE: Yes.

12 COMMISSIONER ROBERTS: What percentage involve
13 no significant hazards consideration?

14 MR. CASE: Very high. Upwards in the 90s, in
15 the staff judgment.

16 COMMISSIONER ROBERTS: High 90s?

17 MR. CASE: Yes.

18 COMMISSIONER GILINSKY: Which are of no
19 significance?

20 MR. CASE: Yes.

21 COMMISSIONER GILINSKY: So 60 are significant?

22 MR. CASE: Two percent is what last year's
23 statistics were.

24 COMMISSIONER ASSELSTINE: I have a couple of
25 questions. One has to do with the three criteria for

1 making the no significant hazards consideration
2 determination.

3 Back when -- I think it was particularly in
4 the Senate -- this provision was first considered, I
5 recall that there was at least some testimony to the
6 effect that the criteria that NRC put out as a proposed
7 rule, which in a sense is these criteria, were not
8 particularly clear or predictable in their application.

9 And I realize that in looking in the summary
10 of the comments that that does not seem to have been a
11 predominant comment that the agency received at the time
12 on the proposed rule. Nevertheless, that was one of the
13 comments that I think the Congress heard when it was
14 considering this provision.

15 There is language in the conference report
16 that I think I says fairly clearly that when the
17 Commission develops these criteria, it is to make a
18 special effort to make sure the criteria are clear and
19 easily applicable and will result in a fairly certain --
20 in a degree of certainty in the determinations. And I
21 think we have included that language in the statement of
22 considerations as well.

23 I guess the question I have is you are
24 proposing putting out the criteria as a final rule.
25 Would it make sense, given the direction in the

1 conference report and given the fact that the other
2 aspects, the procedural aspects, if you will, of the
3 Sholly provision, have to go out as a proposed rule in
4 any event, would it make sense to put out the criteria
5 as a proposed rule for one more round of comment just to
6 ensure that that particular point is covered?

7 You know, again I recognize that this does not
8 appear to have been a very strong comment. It was made
9 on the original proposed rule when it was put out in
10 1980.

11 COMMISSIONER AHEARNE: Are you saying, Jim,
12 that you would want comment to go out quoting the
13 conference report?

14 COMMISSIONER ASSELSTINE: No. What I'm saying
15 is before we adopt the criteria as a final rule, we
16 perhaps ought to consider putting those criteria out as
17 a proposed rule, recognizing that what that might invite
18 is comments on the extent to which those criteria
19 respond to the direction that the agency had in the
20 conference report.

21 MR. CASE: For one thing, it would depend on
22 what you do with the Sholly amendment. For instance,
23 there is some consideration, I gather, of making them
24 interimly effective. If so, then you would need the
25 significant hazards consideration, wouldn't you?

1 MR. CUNNINGHAM: But they could go together.

2 COMMISSIONER AHEARNE: These aren't really
3 changed very much from before.

4 MR. CUNNINGHAM: These are essentially what
5 went out before.

6 COMMISSIONER AHEARNE: Since they are
7 essentially the same thing that you would be asking for
8 comment on, I believe that you would have to have some
9 reason for asking for that comment, so you would have to
10 say something such as the conference report directed
11 that the standards be capable to be applied, et cetera.

12 COMMISSIONER ASSELSTINE: And draw a clear
13 distinction.

14 COMMISSIONER AHEARNE: And I guess one would
15 have to go on to say we believe this does it, and if it
16 doesn't, how would you propose that it be changed to
17 make it do that.

18 COMMISSIONER ASSELSTINE: That's right.

19 COMMISSIONER AHEARNE: Without any other
20 specific comment it doesn't make any sense.

21 COMMISSIONER ASSELSTINE: That would be the
22 only basis I see.

23 MR. CUNNINGHAM: The alternative basis would
24 be to put them in context. You now have the Sholly
25 amendment.

1 COMMISSIONER AHEARNE: Except you always had
2 significant hazards issues.

3 MR. CUNNINGHAM: I would prefer not to put
4 them out for comment again, but if you're looking for a
5 basis, that would be a basis to tie them to the Sholly
6 rule.

7 COMMISSIONER ASSELSTINE: I guess it basically
8 boils down to two questions: one, are you all satisfied
9 that those criteria really do respond to the directions
10 that we had in the conference report, that they really
11 do draw a clear distinction between no significant
12 hazard considerations amendments and those that do
13 involve significant hazards considerations, and do you
14 believe they respond to the consideration --

15 COMMISSIONER AHEARNE: Is that a prefatory
16 question?

17 COMMISSIONER ASSELSTINE: Yes.

18 COMMISSIONER AHEARNE: The question is can the
19 conference report be satisfied; is it possible to meet
20 that?

21 MR. CUNNINGHAM: My response is going to be
22 we've been as responsive as we can.

23 COMMISSIONER AHEARNE: That's not doing what
24 the conference report said to do, but that's a separate
25 question.

1 COMMISSIONER ASSELSTINE: I didn't write the
2 conference report.

3 MR. CASE: When we move in that direction with
4 the examples, I think that is the best you can do to try
5 to ensure that consistency is in there.

6 COMMISSIONER ASSELSTINE: Consistency wasn't
7 included in the direction.

8 (Laughter.)

9 MR. CUNNINGHAM: Of course, part of the
10 attempt to be as clear as we can is inclusion of the
11 examples, both 9, which do, and 8, which don't, and
12 vice-versa.

13 COMMISSIONER ASSELSTINE: What are at least
14 some of those examples? There's another one that I want
15 to raise next.

16 (Laughter.)

17 COMMISSIONER ASSELSTINE: Whether this is the
18 Sholly amendment. I guess for myself I would still want
19 to think a little bit about the possibility of putting
20 out the criteria for comment again. It is just because
21 I do remember that there were some who at least argued
22 that these three criteria were not clear at all, and
23 they did not draw a clear differentiation between the
24 two kinds.

25 I never did hear anyone come up with any

1 concrete suggestions or proposals on how those or other
2 criteria could be modified or developed..

3 COMMISSIONER AHEARNE: The only distinction
4 I've heard is all amendments are significant hazards.

5 (Laughter.)

6 COMMISSIONER ASSELSTINE: That is clear, and
7 it is certain.

8 I guess the next question I have is new
9 example 9. On examples for amendments that are likely
10 to involve significant hazards considerations, I
11 understand the reference to the one phrase in the
12 conference report that you have on page 19. I guess I
13 have a couple of questions.

14 Does including example 9 in that list mean
15 that -- does that resolve the no significant hazards
16 consideration issues they are likely to involve? Are
17 you saying that in all cases where you have an amendment
18 permitting a significant increase in effluent emitted by
19 a power plant that that would be dispositive of whether
20 you have a significant hazards consideration amendment?

21 MR. CUNNINGHAM: I'm getting advice from that
22 end of the table.

23 MR. CASE: It says "likely." It doesn't say
24 "always." I think it's more or less a prima facie case
25 unless you had some reasons to the contrary.

1 COMMISSIONER AHEARNE: I was curious.
2 Guy, I'm not sure how closely you were
3 involved. I was wondering whether any of the authors
4 looked through this. Are they familiar with what the
5 Commission did do and the conclusion it did reach about
6 the TMI positions that we have taken?

7 MR. CUNNINGHAM: I think the answer to that is
8 yes.

9 COMMISSIONER AHEARNE: The conclusion is that
10 this is not inconsistent with that?

11 MR. CASE: Yes, that is my conclusion. It
12 wasn't meant to be a backing away.

13 COMMISSIONER ASSELSTINE: As I understand it,
14 I gather the one sentence or that phrase in the
15 conference report did engender some discussion when the
16 conference report was considered. I've gone back to
17 look at that. But I gather that there was some
18 discussion of that phrase and its relationship, for
19 example, to any future case that would resemble the
20 krypton bedding issue.

21 Did you all look at that, too, when you
22 decided on incorporating the new element ??

23

24

25

1 MR. CUNNINGHAM: I don't know that we went
2 beyond the text of the conference report.

3 MR. OLMSTEAD: We had some conversation to
4 lead us to believe that that is correct.

5 COMMISSIONER AHEARNE: You might want to track
6 that.

7 MR. OLMSTEAD: Tom might be able to address
8 this better than I.

9 MR. DORIAN: Tom Dorian from ELD. We split it
10 with the various people who testified before Congress as
11 well as the staff and people who are working on the
12 conference report. This is the language that they said
13 they thought should be put in as an example.

14 COMMISSIONER AHEARNE: That was congressional
15 staff advice?

16 MR. DORIAN: Yes.

17 COMMISSIONER ASSELSTINE: I would like to, I
18 guess, reserve a little bit on this element as well. I
19 seem to recall that there may have been some discussion
20 among the floor consideration of the conference report
21 that might shed some more light on whether this is
22 intended to mean that you are supposed to give special
23 attention to these kinds of consideration in deciding
24 whether this is a no-significant-hazards consideration
25 and in ruling out this authority.

1 MR. DORIAN: It is clear, by the way, that we
2 should give that special attention; that came through.

3 COMMISSIONER ASSELSTINE: But that would
4 certainly not be dispositive on the issue.

5 MR. DORIAN: I don't think it is. It says
6 likely or not likely. In that case it is a prima facie
7 case unless there is other evidence.

8 COMMISSIONER AHEARNE: Tom, did you bounce
9 that -- here the congressional staff says it should be
10 in there. Did you go back to NRB and see whether that
11 should be indefinitely in there as an example? The
12 original list of examples were constructed primarily
13 with the technical staff.

14 MR. CASE: Yes, this went back. There was no
15 comment on it that I know of on the addition of that
16 criteria. There were on some of the other issues.

17 MR. OLMSTEAD: Yes. They were vocal on those
18 that they firmly disagreed with, and we removed them.

19 [Laughter.]

20 COMMISSIONER ASSELSTINE: In any event, this
21 list is for examples of one side or the other, and is
22 intended to be only a list of those that at least on
23 first impression appear to be cases in which you either
24 do or do not have significant hazards consideration, and
25 it is not intended to be dispositive in any of those

1 cases.

2 MR. CUNNINGHAM: Dispositive of the merits?

3 COMMISSIONER ASSELSTINE: Dispositive of
4 whether it is involving significant hazards
5 consideration. For example, can you have a proposed
6 amendment which would, if adopted, permit a significant
7 increase in the amount of effluence or radiation emitted
8 from a power plant? That might well be determined on a
9 case-by-case basis to be an amendment involving
10 no-significant-hazards consideration.

11 MR. CUNNINGHAM: I would think it unlikely.

12 MR. CASE: But possible?

13 COMMISSIONER ASSELSTINE: But possible.

14 MR. OLMSTEAD: I don't want to confuse the
15 example you just gave with the TMI situation because I
16 don't necessarily think that they are the same
17 hypothesis.

18 MR. CASE: No.

19 COMMISSIONER ASSELSTINE: Is that because of
20 the term "significant"?

21 MR. CASE: Yes.

22 MR. OLMSTEAD: Yes, and you haven't defined
23 the term over which you are talking. If we had
24 considered originally in all of our assessments for a
25 particular plant that it were a 50-year term, x number

1 of effluents would be released, and you are now talking
2 about x plus something, that is one situation. If you
3 are only talking about if I divided x by 40, that would
4 be so much this year, and this year I am proposing to do
5 2-1/2 times that but my 40-year average is going to be
6 roughly the same, then that is an entirely different set
7 of circumstances.

8 COMMISSICNER AHEARNE: Ed, running through
9 this, running through this list, where would you come
10 out on something like TMI venting?

11 MR. CASE: I don't think it fits number 9, and
12 not because of special considerations, either.

13 COMMISSIONER ASSELSTINE: Okay, that is, I
14 think --

15 COMMISSIONER AHEARNE: You say there may be
16 some discussion from the floor?

17 COMMISSIONER ASSELSTINE: I will have to go
18 back and look and see.

19 COMMISSIONER AHEARNE: You could go back and
20 do that.

21 COMMISSIONER ASSELSTINE: To see if when the
22 bill was considered, the conference report was
23 considered by the Senate, see if there was some floor
24 discussion of that particular issue and whether that
25 phrase in the conference report was intended to indicate

AA61-2

PDR



January 13, 1983

SECY-83-16

RULEMAKING ISSUE

For: The Commission **(Affirmation)**

From: William J. Dircks
Executive Director for Operations

Subject: REGULATIONS TO IMPLEMENT LEGISLATION ON (1)
TEMPORARY OPERATING LICENSING AUTHORITY AND
(2) NO SIGNIFICANT HAZARDS CONSIDERATION (THE
"SHOLLY AMENDMENT")

Purpose: To obtain Commission approval of publication of proposed and final regulations implementing legislation which authorizes NRC to issue (1) temporary operating licenses and (2) requested operating license amendments involving no significant hazards consideration before the conduct of any hearing.

Discussion: In August 1982, the Senate and House conferees agreed on legislation authorizing appropriations to NRC for fiscal years 1982 and 1983. Relevant portions of the Conference Report are attached at Enclosure 1A. In late December, both houses of Congress passed this legislation, leaving it unchanged with respect to temporary operating licensing authority and the Sholly Amendment, and on January 4, 1983, it was signed into law as Pub. L. 97-415. (See Enclosure 1B.) Since, among other things, it requires that NRC act promptly to promulgate regulations, I am sending this package to you for your prompt review and approval.

Among other things, the legislation authorizes us to issue temporary operating licenses for nuclear power plants and to issue amendments to operating licenses involving no significant hazards consideration before the conduct of any hearing. The legislation also directs us to promulgate, within 90 days of enactment, regulations which establish: (a) standards for determining whether any amendment to an operating license involves no significant hazards consideration; (b) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on such a determination; and (c) procedures for consultation on any such determination with the State in which the facility involved is located.

Contact: Thomas F. Dorian, OELD
492-8690

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Enclosure 4 is our proposal on prior notice and reasonable opportunity for public comment on determinations involving no significant hazards considerations. We considered two alternatives. Both were the same to the extent that they provided for a proposed rule, issued for thirty days' public comment, which gave the criteria and procedures for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on a determination about no significant hazards consideration and which gave the procedures for the required consultation with the State in which the facility involved is located. With respect to public notice, both were different from the procedures discussed in the previous draft. The final legislation and its history make it clear that normally the staff should issue for public comment a proposed determination on no significant hazards consideration, as opposed to the procedure contemplated in the previous draft of simply issuing a notice of receipt of an amendment request before making the final determination. The proposed regulations reflect this change.

In one alternative we attempted to literally translate the legislation into regulations by making a proposed determination for every amendment request, then reviewing, documenting, and analyzing all public comments on that request (in the same way we do in connection with proposed rules), and, finally, issuing a final determination. The guideline in this attempt was to provide notice and public comment procedures which were administratively simple, involved the least cost, did not entail undue delay, and allowed for meaningful public comment. A second guideline was to provide State consultation procedures, similar to those in the previous draft, which were relatively simple, easy to administer, and fair to the States. We found that no matter how simple and easy we attempted to make the procedures contemplated by the legislation, they, nonetheless, were quite burdensome and involved significant resource impacts on NRC, especially on NRR. The first alternative, for example, would have involved about ten additional professional staff years of work during one year of amendment requests, based on an average of 600 amendments per year

and tried to lighten this impact, while staying within the two guidelines.

We chose a second, what we believe to be, somewhat less burdensome alternative. This version, also in keeping with the legislation, involves about four to five staff years of work during one year of amendment requests. It is based on the fact that a conclusion about no significant hazards is needed only where we have received a request for a hearing and and it is decided to make the license amendment immediately effective and to finish the hearing after issuance of the amendment rather than before. The no significant hazards determination has no other practical significance. This alternative is tailored like the first alternative; however, it avoids the necessity of expending as substantial an amount of resources as contemplated in the first alternative on proposed and final determinations of no significant hazards consideration (1) by normally coupling prior notice for public comment on proposed determinations with prior notice for opportunity for a hearing for amendments to operating licenses, (2) by requiring applicants requesting amendments to provide us and the State involved with their appraisals on the significant hazards question as well as on the issue of emergencies, where they want us to act quickly on their requests without the usual public comment procedures, and (3) by completing an evaluation leading to the final determination of no significant hazard consideration only where a hearing request is received. Thus, this alternative would provide a less time consuming and resource intensive procedure by eliminating the need for a final determination on no significant hazards unless there is a hearing request. The Federal Register notice would make this clear. In any case, if a hearing request is received and if it were concluded that the amendment posed no significant hazards, it would become effective pending the completion of any hearing. This also would be made clear in the Federal Register notice. This second alternative is described more fully in Enclosure 4; we propose it for adoption by the Commission. As mentioned, the resource impacts of both alternatives are significant and are discussed in the Regulatory Analysis in Enclosure 5 together with the resource impacts of the other rules.

Recommendations:

That the Commission:

- (a) Approve publication of the rules in Enclosures 2, 3, and 4 with respect to temporary operating licensing authority and the "Sholly Amendment."

AUTHORIZING APPROPRIATIONS FOR THE NUCLEAR
REGULATORY COMMISSION

SEPTEMBER 28, 1982—Ordered to be printed

Mr. UDALL, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 2330]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2330) to authorize appropriation to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

AUTHORIZATION OF APPROPRIATIONS

SECTION 1. (a) There are hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954 (42 U.S.C. 2017) and section 305 of the Energy Reorganization Act of 1974 (42 U.S.C. 5875), for the fiscal years 1982 and 1983 to remain available until expended, \$435,200,000 for fiscal year 1982 and \$513,100,000 for fiscal year 1983 to be allocated as follows:

(1) Not more than \$80,700,000 for fiscal year 1982 and \$77,000,000 for fiscal year 1983 may be used for "Nuclear Reactor Regulation", of which an amount not to exceed \$1,000,000 is authorized each such fiscal year to be used to accelerate the

TEMPORARY OPERATING LICENSES

SEC. 11. Section 192 of the Atomic Energy Act of 1954 (42 U.S.C. 2212) is amended to read as follows:

"SEC. 192. TEMPORARY OPERATING LICENSE.—

"a. In any proceeding upon an application for an operating license for a utilization facility required to be licensed under section 103 or 104 b. of this Act, in which a hearing is otherwise required pursuant to section 189 a., the applicant may petition the Commission for a temporary operating license for such facility authorizing fuel loading, testing, and operation at a specific power level to be determined by the Commission, pending final action by the Commission on the application. The initial petition for a temporary operating license for each such facility, and any temporary operating license issued for such facility based upon the initial petition, shall be limited to power levels not to exceed 5 percent of rated full thermal power. Following issuance by the Commission of the temporary operating license for each such facility, the licensee may file petitions with the Commission to amend the license to allow facility operation in staged increases at specific power levels, to be determined by the Commission, exceeding 5 percent of rated full thermal power. The initial petition for a temporary operating license for each such facility may be filed at any time after the filing of: (1) the report of the Advisory Committee on Reactor Safeguards required by section 182 b.; (2) the filing of the initial Safety Evaluation Report by the Nuclear Regulatory Commission staff and the Nuclear Regulatory Commission staff's first supplement to the report prepared in response to the report of the Advisory Committee on Reactor Safeguards for the facility; (3) the Nuclear Regulatory Commission staff's final detailed statement on the environmental impact of the facility prepared pursuant to section 1022(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)); and (4) a State, local, or utility emergency preparedness plan for the facility. Petitions for the issuance of a temporary operating license, or for an amendment to such a license allowing operation at a specific power level greater than that authorized in the initial temporary operating license, shall be accompanied by an affidavit or affidavits setting forth the specific facts upon which the petitioner relies to justify issuance of the temporary operating license or the amendment thereto. The Commission shall publish notice of each such petition in the Federal Register and in such trade or news publications as the Commission deems appropriate to give reasonable notice to persons who might have a potential interest in the grant of such temporary operating license or amendment thereto. Any person may file affidavits or statements in support of, or in opposition to, the petition within thirty days after the publication of such notice in the Federal Register.

"b. With respect to any petition filed pursuant to subsection a. of this section, the Commission may issue a temporary operating license, or amend the license to authorize temporary operation at each specific power level greater than that authorized in the initial temporary operating license, as determined by the Commission, upon finding that—

"(1) in all respects other than the conduct or completion of any required hearing, the requirements of law are met;

"(2) in accordance with such requirements, there is reasonable assurance that operation of the facility during the period of the temporary operating license in accordance with its terms and conditions will provide adequate protection to the public health and safety and the environment during the period of temporary operation; and

"(3) denial of such temporary operating license will result in delay between the date on which construction of the facility is sufficiently completed, in the judgment of the Commission, to permit issuance of the temporary operating license, and the date when such facility would otherwise receive a final operating license pursuant to this Act.

The temporary operating license shall become effective upon issuance and shall contain such terms and conditions as the Commission may deem necessary, including the duration of the license and any provision for the extension thereof. Any final order authorizing the issuance or amendment of any temporary operating license pursuant to this section shall recite with specificity the facts and reasons justifying the findings under this subsection, and shall be transmitted upon such issuance to the Committees on Interior and Insular Affairs and Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate. The final order of the Commission with respect to the issuance or amendment of a temporary operating license shall be subject to judicial review pursuant to chapter 158 of title 28, United States Code. The requirements of section 189 a. of this Act with respect to the issuance or amendment of facility licenses shall not apply to the issuance or amendment of a temporary operating license under this section.

"c. Any hearing on the application for the final operating license for a facility required pursuant to section 189 a. shall be concluded as promptly as practicable. The Commission shall suspend the temporary operating license if it finds that the applicant is not prosecuting the application for the final operating license with due diligence. Issuance of a temporary operating license under subsection b. of this section shall be without prejudice to the right of any party to raise any issue in a hearing required pursuant to section 189 a.; and failure to assert any ground for denial or limitation of a temporary operating license shall not bar the assertion of such ground in connection with the issuance of a subsequent final operating license. Any party to a hearing required pursuant to section 189 a. on the final operating license for a facility for which a temporary operating license has been issued under subsection b., and any member of the Atomic Safety and Licensing Board conducting such hearing, shall promptly notify the Commission of any information indicating that the terms and conditions of the temporary operating license are not being met, or that such terms and conditions are not sufficient to comply with the provisions of paragraph (2) of subsection b.

"d. The Commission is authorized and directed to adopt such administrative remedies as the Commission deems appropriate to mini-

size the need for issuance of temporary operating licenses pursuant to this section.

"e. The authority to issue new temporary operating licenses under this section shall expire on December 31, 1963."

OPERATING LICENSE AMENDMENT HEARINGS

Sec. 12. (a) Section 129 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2202(a)) is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph: "(1)(A) The Commission may issue and make immediately effective any amendment to an operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall periodically but not less frequently than once every thirty days publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to such amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.

"(1)(B) The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the urgency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located."

(b) The authority of the Nuclear Regulatory Commission, under the provisions of the amendment made by subsection (a), to issue and to make immediately effective any amendment to an operating license shall take effect upon the promulgation by the Commission of the regulations required in such provisions.

QUALITY ASSURANCE

Sec. 13. (a) The Nuclear Regulatory Commission is authorized and directed to implement and accelerate the resident inspector program as to ensure the assignment of at least one resident inspector by the end of fiscal year 1963 at each site at which a commercial nuclear powerplant is under construction and construction is more than 15 percent complete. At each such site at which construction is

Public Works Committee, contained a similar provision, but this provision was deleted during consideration of S. 1207 by the full Senate. The conferees have been advised that the NRC and DOE, on March 15, 1982, entered into a memorandum of understanding which sets forth the respective responsibilities of the two agencies for removal and disposition of the solid nuclear wastes from the cleanup of TMI-2. Accordingly, the conferees have agreed to omit the House provision. At the same time, however, the conferees intend that the Congress be kept fully apprised by the NRC of all activities undertaken by the NRC and DOE of a collaborative nature with respect to the cleanup of TMI-2. Therefore, in lieu of the requirement contained in subsection 10(c) of H.R. 2330, the conferees have included in section 10 of the conference agreement a provision directing the NRC, in its annual report to the Congress, to include a separate chapter discussing such activities.

Third, the House bill included a provision (section 14) barring the NRC from any willful release of radioactive waste water from TMI-2 into the Susquehanna River. The Senate amendment did not contain a similar provision. The conference agreement includes in subsection 10(d) a modified version of the House provision. Under section 14 of H.R. 2330, NRC was prohibited from using any authorized funds to approve any willful release of "radioactive water resulting from the accident" at TMI-2. The conference agreement modifies this language for the purpose of making it clear that the prohibition does not extend to routine discharges of radioactive water from the Three Mile Island Unit 1.

The conferees intend the prohibition in subsection 10(d) of the compromise agreement to be narrowly limited to "accident-generated water." The conference agreement references the definition of this phrase contained in the Commission's Final Programmatic Environmental Statement (NUREG-0683, page 1-23). The conferees do not intend this provision to apply, in any fashion, to discharges of radioactive waste water which do not fall within this definition. Moreover, the conferees do not intend that the adoption of this provision in any way implies that routine discharges from other commercial nuclear power reactors which meet all applicable standards or requirements pose an unacceptable risk to the public health, safety, or the environment.

Finally, the conferees recognize that NRC staff studies and analyses will continue to evaluate alternative means for the disposition of the water as a necessary step in the cleanup. These studies are, in the view of the conferees, potentially useful to the Commission as it endeavors to fulfill NRC's responsibility to protect the public health and safety.

SECTION 11—TEMPORARY OPERATING LICENSES

Both the House bill and the Senate amendment granted the Commission new limited authority to issue temporary (or "interim") operating licenses for nuclear power reactors if certain conditions were fulfilled.

Section 12 of H.R. 2330 gave the Commission authority to issue temporary operating licenses (TOLs) for nuclear generating stations in advance of the conduct and completion of hearings re-

quired under section 189 and 192 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2242). The House provision invoked the existing authority and procedural requirements of section 192 of the Atomic Energy Act, and thus did not directly amend existing law.

Section 201 of S. 1207 amended section 192 of the Atomic Energy Act of 1954, and explicitly amended existing procedures under section 192 for the issuance of a temporary operating license.

The House bill required that a TOL first be limited to no more than five percent of a power reactor's rated full thermal power. The House provision allowed, subsequent to the issuance of a 5% TOL, and contingent upon licensee application and Commission approval, the plant to operate at levels up to and including full power. The Senate amendment incorporated a similar step-by-step TOL (with an initial upper limit of five percent power operations) permitting the possibility of ascendency to full power prior to the completion of hearings required under section 189 of the Atomic Energy Act.

The Senate amendment required filing of a State, local, or utility emergency preparedness plan prior to petition by an applicant for an interim operating license. Section 12 of the House bill contained no similar requirement. The House did provide in section 8 of H.R. 2330, however, that the Commission was to determine prior to issuing a TOL that an emergency preparedness plan existed which provided reasonable assurance that public health and safety would not be endangered by a plant operating under a temporary operating license.

S. 1207 required NRC to publish notice of a petition for an interim operating license. Under the Senate amendment, any party was allowed to file supporting or opposing affidavits within 30 days of such notice. By reference to the existing section 192 of the Atomic Energy Act, the House provided that any party could file supporting or opposing affidavits within 14 days of the filing of the petition. The House provision also empowered the NRC to extend this time by 10 days.

H.R. 2330 required the Commission to hold a hearing on the issue of whether or not to grant a temporary operating license. Under the House bill, each hearing, which could be held after the issuance of the TOL, could be consolidated with the final operating license hearing held by NRC pursuant to section 185 of the Atomic Energy Act. S. 1207 did not require a hearing on the issuance of an interim operating license.

The House provision required NRC to find, prior to issuance of a TOL, that the licensee would not retire or dismantle any of its existing generating capacity because of the new capacity provided by the facility to be granted the temporary license. The Senate amendment to section 192 of the Atomic Energy Act did not contain this restriction.

The Senate amendment did require the Commission to make a finding, prior to issuance of an interim operating license, that denial of such license would result in delay in the initial operation of the facility (due to completion of the plant's construction prior to the completion of the section 189 public hearings required under the Atomic Energy Act). The House bill contained no similar requirement.

S. 1207 included a provision directing any party to the final operating license proceeding, as well as any member of the Commission's licensing board, to notify the Commission of any information indicating that the licensee was not complying with the terms of the interim operating license. Similarly, the Commission was required to be informed if the terms of the interim license were not adequate. The House bill had no similar requirement.

The Senate amendment directed NRC to adopt administrative changes that would minimize the need for issuance of interim operating licenses. H.R. 2330 had no such directive.

Both the House and Senate intended that the Commission's authority to issue temporary operating licenses should expire at a time certain. The Commission's authority under the House bill ended on September 30, 1983. The expiration date under S. 1207 was December 31, 1983.

Section 11 of the conference agreement amends section 192 of the Atomic Energy Act of 1954 (42 U.S.C. 2242) and grants the Commission authority to issue a temporary operating license for a utilization facility required to be licensed under section 103 or 104 b. of the Act. The agreement specifies that an applicant may petition the Commission for a TOL authorizing fuel loading, reactor testing, and operations at a specific power level to be determined by the Commission. The conferees intend that the applicant cannot undertake any such activities until final favorable action by the Commission on the TOL application. The conference agreement also specifies that the initial petition for a TOL, and any temporary license issued by the Commission pursuant to the initial petition, must be limited to power levels not to exceed 5 percent of rated full thermal power.

Under the conference agreement, which is substantially similar to section 201 of the Senate amendment, the conferees intend that any TOL, whether for initial operation at 5 percent of full power or for operation at a higher power level, would be issued or amended only upon a vote of the Commission itself. The conferees intend that the authority to issue or amend such licenses, or to make findings required by subsection b, may not be delegated to the NRC staff.

The conferees believe that the circumstances which gave rise to the need for section 11 of the conference agreement, (including primarily the temporary reassignment of NRC staff from licensing review work to post-Three Mile Island safety reevaluations) were unique and will not recur in the foreseeable future. As the Commission itself noted in its March 18, 1981 letter submitting proposed legislation to authorize the issuance of temporary low-power operating licenses, such legislation represents an "extraordinary and temporary cure for an extraordinary and temporary situation." In addition, the conferees expect the Commission to use this period to continue to review its operating license and case management procedures, and to make such changes as may be needed to increase their overall efficiency without restricting the rights of the public to raise and have resolved the legitimate safety and environmental issues which accompany the construction and licensing of nuclear powerplants.

The conferees caution that in no way should the conference agreement be interpreted as a determination by Congress that any particular facility is presumptively ready to operate, or has a valid legal claim to begin operations once construction is completed. Under the agreement, a TOL cannot be issued before all significant safety issues specific to the facility in question have been resolved to the Commission's satisfaction. Paragraphs (1) and (2) of subsection b of the conference agreement are intended to assure that, based upon all the information available to the Commission, the Commission is able to find that the facility would meet all requirements of law (other than the conduct or completion of any required hearing) necessary for the issuance of the final operating license.

Subsection 11(d) of the conference agreement directs the Commission to adopt such administrative remedies as it deems appropriate to minimize the need for issuance of temporary operating licenses. This subsection reflects the conferees' expectation that a TOL should be a last resort remedy, to be employed only when no other alternative is available. This subsection envisions that the NRC will adopt such remedies pursuant to its current statutory authority, and is not intended to confer any additional authority upon the NRC beyond that it now possesses. In addition, the conferees expect that any administrative remedies adopted to minimize the need for issuance of TOL's shall not themselves infringe upon the right of any party to a full and fair hearing under the Atomic Energy Act. The conferees intend that the Commission shall notify the Congressional committees listed in subsection 11(b) of the conference agreement of all administrative remedies that it proposes to adopt in accordance with subsection 11(d).

SECTION 12—OPERATING LICENSE AMENDMENT HEARINGS (THE "SHOLLY" PROVISION)

The House and Senate each granted the Commission new authority to approve and make immediately effective certain amendments to licenses for nuclear power reactors, upon a determination by the Commission that the amendment involved no significant hazards consideration.

Section 11 of the House established this new Commission authority in a provision that did not amend existing law. The Senate amendment granted the Commission permanent authority by amending the Atomic Energy Act of 1954.

Under H.R. 2330, the Commission's new authority was limited to amendments to nuclear power reactor licenses. The authority under S. 1207 was broader, and extended to amendments to licenses for all facilities licensed under the Atomic Energy Act.

The House specified that NRC could approve and make immediately effective a license amendment only after notification of the State in which the facility was located. Also, the House required the Commission "when practicable" to consult with the State before issuance of an amendment. The Senate required the Commission to consult with the State in which the facility was located when determining whether or not an amendment involved a significant hazards consideration. The Senate also directed NRC to promulgate within 90 days criteria for providing prior notice and

public comment on such determinations and procedures for consultation with the affected State.

Section 11 of the House bill directed NRC to publish periodically (at least every 30 days) notice of amendments issued or proposed to be issued using the immediate effectiveness authority; the nuclear power reactor concerned; and, a brief description of the amendment. The Senate, in its report accompanying S. 1207, directed the NRC to submit a monthly report to Congress on the exercise of its authority under this provision.

The House bill directed the NRC to promulgate standards (within 90 days of enactment) for determining whether or not an amendment to a license involved no significant hazards consideration. The Senate amendment explicitly preconditioned the Commission's authority to issue and make immediately effective license amendments involving no significant hazards consideration on promulgation by NRC of standards for making the "no significant hazards" determination.

The conferees adopted a compromise provision (section 12 of the conference agreement) which amends section 189a of the Atomic Energy Act of 1954 (42 U.S.C. 2239a). Under the conference agreement, the NRC may issue and make immediately effective a no significant hazards consideration amendment to a facility operating license before holding a hearing upon request of an interested party. The Commission may take such action only after (in all but emergency situations), (1) consulting with the State in which the facility is located, and (2) providing the public with notice of the proposed action and a reasonable opportunity for comment.

The conference agreement maintains the requirement of the current section 189a of the Atomic Energy Act that a hearing on the license amendment be held upon the request of any person whose interest may be affected. The agreement simply authorizes the Commission, in those cases where the amendment involved poses no significant hazards consideration, to issue the license amendment and allow it to take effect before this hearing is held or completed. The conferees intend that the Commission will use this authority carefully, applying it only to those license amendments which pose no significant hazards consideration.

The conferees also expect the Commission, in promulgating the regulations required by the new subsection (2)(C)(i) of section 189a of the Atomic Energy Act, to establish standards that to the extent practicable draw a clear distinction between license amendments that involve a significant hazards consideration and those amendments that involve no such consideration. These standards should not require the NRC staff to prejudge the merits of the issues raised by a proposed license amendment. Rather, they should only require the staff to identify those issues and determine whether they involve significant health, safety or environmental considerations. These standards should be capable of being applied with ease and certainly, and should ensure that the NRC staff does not resolve doubtful or borderline cases with a finding of no significant hazards consideration.

The conferees intend that in determining whether a proposed license amendment involves no significant hazards consideration, the Commission should be especially sensitive to the issue posed by

license amendments that have irreversible consequences (such as those permitting an increase in the amount of effluents or radiation emitted from a facility or allowing a facility to operate for a period of time without full safety protection). In those cases, issuing the order in advance of a hearing would, as a practical matter, foreclose the public's right to have its views considered. In addition, the licensing board would often be unable to order any substantial relief as a result of an after-the-fact hearing. Accordingly, the conferees intend the Commission be sensitive to those license amendments which involve such irreversible consequences.

The conferees note that the purpose of requiring prior notice and an opportunity for public comment before a license amendment may take effect, as provided in subsection 2(c)(ii) for all but emergency situations, is to allow at least a minimum level of citizen input into the threshold question of whether the proposed license amendment involves significant health or safety issues. While this subsection of the conference agreement preserves for the Commission substantial flexibility to tailor the notice and comment procedures to the exigency of the need for the license amendment, the conferees expect the content, placement and timing of the notice to be reasonably calculated to allow residents of the area surrounding the facility an adequate opportunity to formulate and submit reasoned comments.

The requirement in subsection 2(c)(ii) that the Commission promulgate criteria for providing or dispensing with prior notice and public comment on a proposed determination that a license amendment involves no significant hazards consideration reflects the conferees' intent that, wherever practicable, the Commission should publish prior notice of, and provide for prior public comment on, such a proposed determination.

In the context of subsection 2(c)(iii), the conferees understand the term "emergency situations" to encompass only those rare cases in which immediate action is necessary to prevent the shut-down or derating of an operating commercial reactor. (The Commission already has the authority to respond to emergencies involving imminent threats to the public health or safety by issuing immediately effective orders pursuant to the Atomic Energy Act or the Administrative Procedure Act. And the licensee itself has authority to take whatever action is necessary to respond to emergencies involving imminent threat to the public health and safety.) The Commission's regulations should insure that the "Emergency situations" exception under section 12 of the conference agreement will not apply if the licensee has failed to apply for the license amendment in a timely fashion. In other words, the licensee should not be able to take advantage of the emergency provision by creating the emergency itself. To prevent abuses of this provision, the conferees expect the Commission to independently assess the licensee's reasons for failure to file an application sufficiently in advance of the threatened closure or derating of the facility.

Subsection 2(c)(iii) of the conference agreement requires the Commission to promulgate procedures for consulting with a State in which the relevant facility is located on a determination that an amendment to the facility license involves no significant hazards

consideration. The conferees expect that the procedures for State consultation will include the following elements:

(1) The State would be notified of a licensee's request for an amendment;

(2) The State would be advised of the NRC's evaluation of the amendment request;

(3) The NRC's proposed determination on whether the license amendment involves no significant hazards consideration would be discussed with the State and the NRC's reasons for making that determination would be explained to the State;

(4) The NRC would listen to and consider any comments provided by the State official designated to consult with the NRC; and

(5) The NRC would make a good faith attempt to consult with the State prior to issuing the license amendment.

At the same time, however, the procedures for State consultation would not:

(1) Give the State a right to veto the proposed NRC determination;

(2) Give the State a right to a hearing on the NRC determination before the amendment became effective;

(3) Give the State the right to insist upon a postponement of the NRC determination or issuance of the amendment; or,

(4) Alter present provisions of law that reserve to the NRC exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

In requiring the NRC to exercise good faith in consulting with a state in determining whether a license amendment involves no significant hazards consideration, the conferees recognize that a very limited number of truly exceptional cases may arise when the NRC, despite its good faith efforts, cannot contact a responsible State official for purposes of prior consultation. Inability to consult with a responsible state official following good faith attempts should not prevent the NRC from making effective a license amendment involving no significant hazards consideration, if the NRC deems it necessary to avoid the shut-down or derating of a power plant.

SECTION 13—QUALITY ASSURANCE

Section 304 of the Senate amendment required NRC to accelerate its resident inspector program so that by the end of fiscal year 1982 at least one resident inspector would be at each power reactor site where construction is more than fifteen percent (15%) complete. The Senate also directed NRC to study options for improving quality assurance at reactors under construction, and to undertake a pilot program at a minimum of three sites to evaluate alternative approaches to quality assurance. Finally, S. 1207 directed NRC to report to Congress on the results of this program within 18 months.

The House bill contained no similar provision.

The conferees adopted a provision similar to section 304 of the Senate amendment.

Subsection 304(a) of S. 1207 required that by the end of 1982 an NRC resident inspector would be assigned to each site where a

temporary operating license shall not bar the assertion of such ground in connection with the issuance of a subsequent final operating license. Any party to a hearing required pursuant to section 189 a. on the final operating license for a facility for which a temporary operating license has been issued under subsection b., and any member of the Atomic Safety and Licensing Board conducting such hearing, shall promptly notify the Commission of any information indicating that the terms and conditions of the temporary operating license are not being met, or that such terms and conditions are not sufficient to comply with the provisions of paragraph (2) of subsection b.

"d. The Commission is authorized and directed to adopt such administrative remedies as the Commission deems appropriate to minimize the need for issuance of temporary operating licenses pursuant to this section.

"e. The authority to issue new temporary operating licenses under this section shall expire on December 31, 1963."

OPERATING LICENSE AMENDMENT HEARINGS

Sec. 12. (a) Section 189 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2239(a)) is amended--

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(2)(A) The Commission may issue and make immediately effective any amendment to an operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing, in determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this Act.

"(B) The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.

"(C) The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located."

(b) The authority of the Nuclear Regulatory Commission, under the provisions of the amendment made by subsection (a), to issue and to make immediately effective any amendment to an operating

Exhibit 4

The public notice provision was explained by the Conference

Report as follows:

The conferees note that the purpose of requiring prior notice and an opportunity for public comment before a license amendment may take effect, as provided in subsection (2)(C)(ii) for all but emergency situations, is to allow at least a minimum level of citizen input into the threshold question of whether the proposed license amendment involves significant health or safety issues. While this subsection of the conference agreement preserves for the Commission substantial flexibility to tailor the notice and comment procedures to the exigency of the need for the license amendment, the conferees expect the content, placement and timing of the notice to be reasonably calculated to allow residents of the area surrounding the facility an adequate opportunity to formulate and submit reasoned comments.

The requirement in subsection 2(C)(ii) that the Commission promulgate criteria for providing or dispensing with prior notice and public comment on a proposed determination that a license amendment involves no significant hazards consideration reflects the conferees' intent that, wherever practicable, the Commission should publish prior notice of, and provide for prior public comment on, such a proposed determination.

In the context of subsection (2)(C)(ii), the conferees understand the term "emergency situations" to encompass only those rare cases in which immediate action is necessary to prevent the shutdown or derating of an operating commercial reactor. . . . The Commission's regulations should insure that the "Emergency situations" exception under section 12 of the conference agreement will not apply if the licensee has failed to apply for the license amendment in a timely fashion. In other words, the licensee should not be able to take advantage of the emergency itself. To prevent abuses of this provision, the conferees expect the Commission to independently assess the licensee's reasons for failure to file an application sufficiently in advance of the threatened closure or derating of the facility. Conf. Rep. No. 97-884, 97th Cong., 2d Sess. 38 (1982).

AA61-2 PDR

January 18, 1983

C O R R E C T I O N N O T I C E

TO ALL HOLDERS OF

SECY-83-16 - REGULATIONS TO IMPLEMENT LEGISLATION ON (1) TEMPORARY
OPERATING LICENSING AUTHORITY AND (2) NO SIGNIFICANT HAZARDS
CONSIDERATION (THE "SHOLLY AMENDMENT")
(COMMISSIONER ACTION ITEM)

PLEASE REPLACE PAGE 27 OF ENCLOSURE 3 TO SECY-83-16 WITH THE
ATTACHED, REVISED PAGE 27.

ATTACHMENT:
AS STATED

THE SECRETARIAT

8301270015

2 pp

§ 50.92 Issuance of amendment.

In determining whether an amendment to a license or construction permit will be issued to the applicant, the Commission will be guided by the considerations which govern the issuance of initial licenses or construction permits to the extent applicable and appropriate. If the application involves the material alteration of a licensed facility, a construction permit will be issued prior to the issuance of the amendment to the license. If the amendment involves a significant hazards consideration, the Commission will give notice of its proposed action pursuant to § 2.105 of this chapter before acting thereon. The notice will be issued as soon as practicable after the application has been docketed. The Commission ~~will determine~~ may make a final determination pursuant to the procedures in § 50.91 that a proposed amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility involves no significant hazards consideration, unless it finds that operation of the facility in accordance with the proposed amendment would:

- (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
- (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
- (3) Involve a significant reduction in a margin of safety.

Dated at Washington D.C. this _____ day of _____, 1983.

For the Nuclear Regulatory Commission,

Samuel J. Chilk
Secretary for the Commission