

RETURN TO SECRETARIAT RECORDS

NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

PUBLIC MEETING

CONTINUATION OF DISCUSSION OF ISSUES IN RESTART OF TMI-1

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Place - Washington, D. C.

Date - Friday, 3 August 1979

Pages 1 - 76

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*Official Reporters*

444 North Capitol Street  
Washington, D.C. 20001

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

PUBLIC MEETING

CONTINUATION OF DISCUSSION OF ISSUES IN RESTART OF TMI-1

- - -

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

Friday, 3 August 1979

The Commission met, pursuant to notice, at 2:25 p.m.

BEFORE:

- DR. JOSEPH M. HENDRIE, Chairman
- VICTOR GILINSKY, Commissioner
- RICHARD T. KENNEDY, Commissioner
- PETER A. BRADFORD, Commissioner
- JOHN F. AHEARNE, Commissioner

PRESENT:

- L. Bickwit, S. Ostrach.

gsn 1 CHAIRMAN HENDRIE: If we can come to order.

2 Our colleagues will join us directly.

3 We meet this afternoon, as I had noted previously  
4 at one of this week's meetings, to continue our discussion of  
5 the Three Mile Island unit 1 order and related matters.

6 This is a continuation of previous meetings and

7 I assume we don't need a short notice vote, do we?

8 MR. BICKWIT: No.

9 CHAIRMAN HENDRIE: If you would prefer to have one,  
10 we can always --

11 MR. BICKWIT: No.

12 CHAIRMAN HENDRIE: What I would propose to do this  
13 afternoon is to see if we can -- there are two general areas  
14 that I'd like to look at. One is to work on through the  
15 latest memorandum from the counsel's office detailing various  
16 questions that ought to be answered in the order and  
17 offering options and discussion on those.

18 Secondly, to look at some of the time scale  
19 questions and to help in the latter in case it's not handy --  
20 I know I have to go back and get one. This is Shapar's time  
21 scale map out, and I thought it would be useful for purposes  
22 of looking at that, if we can get to it.

23 Why don't I throw these over as far as I know.

24 They're just what Howard had.

25 Looking at the option paper for the order, we were

gsh 1 off and running on page 7 and had started on the title  
2 labelled, remaining issues, which is a hopeful sign.

3 As I recall it, we had concluded that that language  
4 about the list of actions as provision was not necessary  
5 and would not be included. And I think we were about to  
6 look at the next item under A, the alternative of removing  
7 all the specific actions.

8 We had some discussion along that line. I don't  
9 know if we concluded it.

10 MR. BICKWIT: I believe we did, Mr. Chairman. I  
11 believe that we decided to drop both 1 and 2 and simply to  
12 go with Peter's suggestion that we make clear that one of  
13 the options available to the board is not to bring the plant  
14 up.

15 Then you went on to item 3 and decided to drop that  
16 as well.

17 CHAIRMAN HENDRIE: Yes.

18 MR. BICKWIT: On the basis of a rather lengthy  
19 discussion.

20 CHAIRMAN HENDRIE: I'm glad that you remember better  
21 than I do. That, on the basis that should we propose to  
22 deal with generic requirements on the B&W plants, whether  
23 that was by rule-making or by simply commission order, or  
24 with consultation and order from Harold, that one could  
25 decide whether the specific generic action should apply to

gsh 1 Three Mile Unit 1 and be removed from the hearing, in which  
2 case the commission could issue an order at the time on those  
3 items specific to that.

4 MR. BICKWIT: That's right.

5 CHAIRMAN HENDRIE: Did we conclude that it wasn't  
6 necessary to put in that paragraph that that might be  
7 considered?

8 MR. BICKWIT: That's right.

9 CHAIRMAN HENDRIE: Ah, yes. We did arrive at the  
10 question of psychological distress. We were preparing for  
11 that. Let's see. To allow Peter time to find himself a cab  
12 and get through the traffic and whatever, rather than launch  
13 on that discussion, let me leap to page 11 and the question  
14 of financial qualifications and see whether we can see what  
15 the sentiment of those of us present is there.

16 You'd asked the question about that and I notice  
17 you've recently been thinking about financial qualifications  
18 in a more general sense.

19 COMMISSIONER GILINSKY: You like what I thought. I  
20 would tie any question about financial qualifications very  
21 closely to safety.

22 CHAIRMAN HENDRIE: Otherwise, it does seem to me  
23 that that's an appropriate thing to do because otherwise, it  
24 wanders. It's just going to wander over the financial ground  
25 of GPU and Met Ed.

gsh 1                   COMMISSIONER GILINSKY: Is there anything in the  
2 financial situation that gives one concern about safety  
3 matters?

4                   COMMISSIONER AHEARNE: Are you saying that as a  
5 general question or a specific question? If it's a general  
6 question -- if it's a specific one, it would seem if you  
7 have to ask the question --

8                   COMMISSIONER GILINSKY: I mean, I would specifically  
9 say that that is the question, the financial qualification.  
10 I'm not sure that I would include it at all. But if it were  
11 to be included, I would tie it specifically to safety concerns.

12                   CHAIRMAN HENDRIE: That does require some showing  
13 in a contention that there was a direct relation.

14                   COMMISSIONER GILINSKY: Yes. ;

15                   COMMISSIONER AHEARNE: I'd go along with that.

16                   (At 2:35 p.m., Commissioner Kennedy enters the room.)

17                   CHAIRMAN HENDRIE: I certainly would go with that,  
18 and in fact, would vote with you if you wanted to take out  
19 the financial qualifications issue.

20                   My feeling is that it's likely to be a substantial  
21 distraction.

22                   Dick, we were looking at the 30th memorandum as a  
23 base document. After a little prompting from the general  
24 prompting, I had discovered that we were up to the question  
25 of psychological distress and decided to allow Peter a few more

gsh 1 minutes to get out from the airport to be able to participate  
2 in that discussion from the beginning and move ahead to  
3 financial qualifications.

4 Vic has said that his view is that if there is to  
5 be a financial qualifications issues recited in the order,  
6 that it ought to be tied directly to safety rather than sort  
7 of general financial qualifications questions.

8 And John and I agreed with that.

9 COMMISSIONER KENNEDY: I agree.

10 CHAIRMAN HENDRIE: In fact, I'd be willing to take it  
11 out, as a matter of fact, because I do think it's more apt  
12 to be a distraction, a long running distraction in the  
13 proceeding than in the issue of real substance.

14 COMMISSIONER KENNEDY: I must say I had thought,  
15 about the totally theoretical possibility which one reads  
16 even once in a while in the financial pages of a problem of  
17 temporary insolvency receivership or whatever might ensue  
18 because of the short-term financial situation, et cetera.

19 I thought, well, now, as a practical matter, how  
20 would that resolve itself in a financial qualifications  
21 review. From the safety point of view, maybe not at all.

22 It would be a bit like, you know, the Penn Central  
23 matter, where the company was insolvent, but so what. It was  
24 simply put into receivership and continued to operate.

25 COMMISSIONER AHEARNE: Would you care to describe the

gsh 1 quality of the railroad?

2 COMMISSIONER KENNEDY: That was true before it became  
3 insolvent.

4 CHAIRMAN HENDRIE: I used to ride one of the railroads  
5 they owned; namely, the Long Island. And the service after  
6 Penn Central went into receivership was indistinguishable  
7 from the service before.

8 In neither case did it get much applause from the  
9 victims, but it certainly didn't --

10 COMMISSIONER KENNEDY: Either the company can operate  
11 the plant safely or it can't. It doesn't seem to me that  
12 its financial situation at that time would have all that  
13 much to do with it. And that's for us to decide whether it  
14 can operate it safely.

15 So I agree with Vic that if you want to just drop  
16 it altogether, I think it would be sensible.

17 COMMISSIONER GILINSKY: In the context I suggested  
18 licensing reviews, we could drop the financial qualifications  
19 review.

20 I think that, given that we haven't done that  
21 across the board, it's all right to throw the issue out  
22 altogether.

23 I think by the time that you get specifically to  
24 requiring that someone show a direct link between financial  
25 difficulties and safety matters, I think --

gsh 1 CHAIRMAN HENDRIE: But a fairly high threshold on  
2 litigation.

3 COMMISSIONER GILINSKY: Put it in the right context.

4 CHAIRMAN HENDRIE: Let's see. I perceive counsel's  
5 office muttering to itself.

6 COMMISSIONER KENNEDY: It doesn't know what we've  
7 just said.

8 CHAIRMAN HENDRIE: Could we have comment?

9 MR. BICKWIT: Your preference is to confound this  
10 issue to the safety question.

11 CHAIRMAN HENDRIE: And try to circumscribe it so that  
12 it doesn't become an area where there is just opportunity for  
13 endless delay while one crawls through endless piles of  
14 financial records and argues the esoterics of what the bond  
15 market is likely to be in 1982 or whatever the hell.

16 It just --

17 MR. BICKWIT: All right.

18 CHAIRMAN HENDRIE: Some of the litigation that has  
19 gone on in proceedings and financial qualifications just  
20 runs all over the whole map. It doesn't seem to me that the  
21 language at the top -- well, the recommended paragraph on  
22 page 12 is quite pointed enough. I think it needs to be  
23 more specifically tied to a clearcut safety issue and to put  
24 some reasonable kind of threshold on contentions; otherwise,  
25 this is an endless issue.

gsh 1 MR. BICKWIT: Well, in the draft order you've got,  
2 the licensee shall demonstrate its financial capability to  
3 operate TMI 1 and the TMI 2 complex. That can simply be  
4 changed to: "He shall demonstrate his capability to the extent  
5 relevant, his financial capability to the extent relevant to  
6 his ability to operate TMI 1 safely."

7 CHAIRMAN HENDRIE: Okay. Now does any of this  
8 further language in here -- does that do it, A?

9 MR. BICKWIT: That does part of it. And then with  
10 respect to the procedures, curtailing of procedures, I might  
11 ask Steve to address that.

12 MR. OSTRACH: What we had in mind in the language  
13 on page 12 was to leave the board free in consultation with the  
14 staff and parties to adopt procedures less complex than those  
15 used in ordinary licensing proceedings, quite possibly all  
16 along the lines of SECY-79-299, which would provide for  
17 presumption of financial qualification upon showing that it is  
18 a regulated utility with a sufficiently high bond rating.

19 That would end the issue right there.

20 CHAIRMAN HENDRIE: I'm not sure what the GPU bond  
21 rating is at the moment, but I have some doubt that that  
22 would clear the issue in this hearing, since the board is free  
23 to attempt to develop in consultation, et cetera, appropriate  
24 procedures from those employed in operating license  
25 proceedings, free to attempt to develop appropriate proceedings

gsh 1 different sounds a trifle less directive than I would prefer  
2 the language.

3 MR. BICKWIT: Shall attempt.

4 CHAIRMAN HENDRIE: How about, the board is directed  
5 to develop procedures? What would be the language?

6 MR. BICKWIT: That's fine -- directed to develop  
7 procedures.

8 CHAIRMAN HENDRIE: Instead of just procedures  
9 different from those procedures aimed at drawing the issues  
10 rapidly to a head.

11 Can you think of some words that accomplish that?

12 MR. BICKWIT: I think that that is easily done, yes.  
13 What you want is "expeditious."

14 COMMISSIONER GILINSKY: Not "expeditious." What you  
15 want is that the question be tied closely to safety.

16 MR. BICKWIT: That's done without any reference to  
17 procedures at all. Now if you want something beyond --

18 COMMISSIONER GILINSKY: But you refer to 10  
19 CFR 50.33 and so on. I don't know what's exactly in there,  
20 but as I remember, there's nothing much about safety. In  
21 fact, our whole financial review seems to be unrelated to  
22 any consideration of safety.

23 MR. BICKWIT: My understanding is that its entire  
24 basis is with respect to safety. But you're right.

25 COMMISSIONER GILINSKY: In that it comes from the same

gsh 1 act. But, you know, it branches from that point and I  
2 think one should consider contentions that the financial  
3 situation of the company may affect the protection of the  
4 public health and safety.

5 MR. BICKWIT: You resolved that issue. That is done.  
6 Now the only question is whether you want any different  
7 procedures, procedures different from the ones used.

8 COMMISSIONER AHEARNE: If by procedures you mean  
9 different than the ones that were used in the rest of the  
10 hearing?

11 MR. BICKWIT: No. Different from the ones used.

12 (At 2:45 p.m., Commissioner Bradford enters the room)

13 COMMISSIONER AHEARNE: But the ones already used have  
14 been already addressed.

15 COMMISSIONER GILINSKY: Why not treat it like any  
16 other contention. Just keep it narrowly tied to health and  
17 safety.

18 COMMISSIONER AHEARNE: What else did you have in  
19 mind?

20 CHAIRMAN HENDRIE: 50.33 F. 50.30, 31.

21 MR. OSTRACH: What we had in mind is that, presently,  
22 an applicant can only establish its financial qualifications  
23 by putting on witnesses to indicate that it can sell its bonds  
24 and that its bonds will sell at such and such a price and that  
25 it's going to accumulate so much money by doing such and such

gsh 1 in very elaborate procedures and other parties put on  
2 witnesses and conduct discovery that says, well, they won't  
3 be able to sell their bonds at that price and the capital  
4 market will be busy that year.

5 COMMISSIONER KENNEDY: The question is so what?

6 COMMISSIONER BRADFORD: All that has a lot more to  
7 do with construction, really, than it does with operation.

8 CHAIRMAN HENDRIE: For orientation, Peter, we kept  
9 out the psychology and decided we didn't want to do that  
10 without you. So we leaped to finances.

11 COMMISSIONER BRADFORD: I'm not sure that you have  
12 a firm grasp of my relative strengths.

13 (Laughter.)

14 COMMISSIONER KENNEDY: Are you suggesting that  
15 you would rather talk about the financial question than the  
16 psychology?

17 COMMISSIONER BRADFORD: Well, I may be equally  
18 unqualified.

19 CHAIRMAN HENDRIE: Did you get your luggage, by the  
20 way?

21 COMMISSIONER BRADFORD: It was a struggle.

22 MR. OSTRACH: In this case, we would expect the major  
23 cash arguments to deal, not so much with whether or not they  
24 can raise the amount of money necessary to operate TMI 1  
25 safely, but whether they can do that at the same time they're

gsh 1 satisfying the cash demands imposed on them from the TMI 2  
2 accident. Fixing TMI 2 perhaps would reserve the litigation  
3 costs and possible damage costs.

4 That would probably be what the contentions are  
5 all about. By suggesting an option of the procedures in  
6 SECY-79-299, we were hoping that if the utility was in  
7 reasonably sound financial condition, all of that review would  
8 be cut out and the board would simply accept as an irrebuttable  
9 presumption that they could meet those cash demands on them  
10 and leave the issue aside.

11 CHAIRMAN HENDRIE: I've got a notion that whether or  
12 not this plant ever restarts has got a lot to do with that  
13 financial strength.

14 COMMISSIONER KENNEDY: It's a circular question.

15 CHAIRMAN HENDRIE: So you can argue it on the basis  
16 that this would be so if acceptable conditions for restart  
17 were determined in this proceeding.

18 MR. BICKWIT: Certainly you could argue it on that  
19 basis. I don't think anybody would say that you couldn't  
20 take into account the revenues that you would receive from  
21 operating this plant.

22 CHAIRMAN HENDRIE: Let's see, 50.33 F, the application  
23 is for operating information sufficient to demonstrate to the  
24 commission the financial qualifications of the applicant to  
25 carry out in accordance with the regulations of this chapter,

gsh

1 Part 50, the activities for which the license is sought,  
 2 the funds necessary to cover estimated necessary operating  
 3 costs if the applicant has a reasonable assurance for  
 4 obtaining the necessary funds or a combination of the two,  
 5 et cetera.

6 That's all well and good. But in some ways,  
 7 litigating that question is different than litigating a  
 8 question that the financial condition of the company would  
 9 prevent the safe operation of the plant or would affect the  
 10 safe operation of the plant in such a way as to make it  
 11 unacceptable for a license.

2-6

12 It's the latter question that I think we tentatively  
 13 agree that we would like to focus on, if such a question is  
 14 to remain in the order.

15 So it's not clear to me that the language here --

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 25

1 MR. OSTRACH: This language is intended to require the  
2 licensee to demonstrate the same level of financial qualifica-  
3 tions it would have to show to get a new operating license for  
4 TMI-2. That was what we were attempting to do there.

5 Now, if the Commission does not wish that, as my impres-  
6 sion is your discussion has been, the reference to 10 CFR-5033-F  
7 and 5784 would have to be removed. We would replace that with  
8 lanugage such as: "Financial qualifications to meet the above  
9 discussion." The language that Mr. Bickwit used would be more  
10 appropriate in that spot. But our assumption was that when  
11 staff indicated as a substantive concern the financial qualifica-  
12 tions, they wished to indicate that they felt the licensee should  
13 show again an ordinary level of operating license financial  
14 qualifications that they're required to continue to meet through-  
15 out the entire period of operation.

16 CHAIRMAN HENDRIE: I am not sure why they plugged it in.  
17 Did we have financial qualifications in the orders on the other  
18 plants?

19 MR. OSTRACH: No, sir.

20 MR. BICKWIT: No.

21 COMMISSIONER AHEARNE: Of course, none of the other  
22 plants were faced with this.

23 CHAIRMAN HENDRIE: Yeah.

24 COMMISSIONER BRADFORD: The other area and the one  
25 which concerned me most when I first was interested in putting

1 something on financial qualifications in here, was the question  
2 of whether the company will be faced with particular constraints  
3 or incentives under either the orders of the Pennsylvania PUC,  
4 or, I suppose, of the tax laws, given that we have that allega-  
5 tion. And if so, we ought to be aware of these. I don't know  
6 that there is a lot that we can do about it.

7 COMMISSIONER KENNEDY: Are those questions necessarily  
8 going to surface and be answered in the context of the review of  
9 financial qualifications as it now proceeds under our regulations?  
10 My guess is: probably not.

11 If we want to address those questions -- and I can  
12 understand how we might -- the actions or presumed actions of  
13 the public service commission or public utilities commission,  
14 whichever it is, of Pennsylvania would be very relevant to the  
15 situation. But I am not sure that that would become a matter  
16 which would be explored under the terms of our existing regula-

17 MR. BICKWIT: Whether or not it would, this language  
18 would bring it in. As I say, we're not entirely clear on the  
19 extent to which this language which I just read -- licensee shall  
20 demonstrate his financial capability to the extent relevant to  
21 his ability to operate TMI-1 safely -- and whether that is a  
22 different standard from the standard of our regulations, are not  
23 entirely clear. But it seems to be the standard that you want.

24 COMMISSIONER KENNEDY: How does it address the ques-  
25 tion we were just talking about? How do you see that extrapolated?

1 MR. BICKWIT: If his financial capability, in demonstrat-  
2 ing his financial capability, it seems to me he would have to  
3 look at various contingencies that would affect it and would have  
4 to bring that in under the relevancy heading.

5 COMMISSIONER KENNEDY: That's really what we want to  
6 know, why we just asked that.

7 MR. BICKWIT: If that's all you want to know --

8 COMMISSIONER BRADFORD: You could start with that  
9 sentence and add a second one to it, that his demonstration  
10 include a discussion of any relevant provisions in rate-setting  
11 orders.

12 COMMISSIONER AHEARNE: Say that again.

13 COMMISSIONER BRADFORD: You could add a second sen-  
14 tence to that provision saying that the licensee should discuss  
15 any provisions regarding the restart of TMI-1 and the rate-setting  
16 orders of any other body. I don't have the exact phraseology.  
17 I think one could simply make that a relevant issue.

18 COMMISSIONER KENNEDY: Is that a matter of litigation?

19 COMMISSIONER BRADFORD: Well, let's see. I am just not  
20 familiar enough with the orders that the Pennsylvania PUC has  
21 issued, but if they have in some way made Met Ed's rates con-  
22 tingent upon the operation of TMI-1 by a certain time or under  
23 certain conditions --

24 CHAIRMAN HENDRIE: I think that currently is the case.

25 COMMISSIONER BRADFORD: That's my understanding. And if

1 for some reason what the licensing board does or feels compelled  
2 to order is inconsistent with those commissions, then I suppose  
3 that if financial qualifications are relevant at all, they would  
4 be especially relevant there.

5 COMMISSIONER KENNEDY: I agree it certainly would be,  
6 but isn't that a matter for the public utilities commission?

7 COMMISSIONER BRADFORD: Partly. The other is that our  
8 people just ought to be aware that if they're dealing with a  
9 company that for some reason is under considerable financial  
10 pressure to have a particular plant under a particular configura-  
11 tion by a particular time, that would simply signal to them that  
12 that ought to be a thing that they should be looking out for.

13 I think Len is right, that the sentence as it is --

14 COMMISSIONER AHEARNE: Picks it up.

15 COMMISSIONER BRADFORD: Picks it up. And at least  
16 gives the board the basis for further inquiry and gives the par-  
17 ties a framework within which they can raise it.

18 MR. BICKWIT: Now, beyond that, do you want to adjust  
19 the procedures in any way or do you simply want to leave that to  
20 the board with this standard? It seems to me we're running into  
21 difficulty when we talk about procedures in this area. Maybe it  
22 would be best to leave it alone.

23 MR. VOLLMER: I guess I wanted to comment that the  
24 staff originally had in mind in suggesting this -- and I almost  
25 wish we hadn't -- the same criteria that we used for operating

1 license, basically, in recognition of the fact that the plant  
2 would be out of service for quite a long time, and the unusual  
3 operations associated with TMI-2, I would feel, would be very  
4 difficult if the staff was faced with developing new criteria  
5 that somehow tied more specifically financial qualifications to  
6 safety of operation. I don't know exactly how we would formulate  
7 that right now.

8           Perhaps we could do it, but if it were to be done, I  
9 would hope we would get some firmer guidance from the Commission  
10 on what our threshold might be.

11           MR. OSTRACH: I agree with Dick. Any party can always  
12 file a request with the director of NRR for enforcement action  
13 based on the contention that TMI Unit 1, the licensee there,  
14 doesn't meet the operating license level of financial qualifica-  
15 tions. The director then would have to address that question.  
16 You know, we have criteria there. The staff has a lot of  
17 experience in determining what that means. Presumably, the  
18 board does, as well.

19           I think that we might be getting into uncharted waters  
20 if we tried to set up new criteria which might be viewed in some  
21 quarters as somehow less than ordinary operating license criteria  
22 or more narrow for this particular proceeding.

23           I think, to the extent that time can be saved or use-  
24 less waste avoided, the focus ought to be on making sure that the  
25 board knows that it has the discretion that it always has to

1 keep the financial qualifications and to focus and direct it and,  
2 perhaps as an additional measure, instructing it that it is free  
3 to use the scope of review set forth in 70-299, which may enable  
4 it to cut out even more material.

5 COMMISSIONER AHEARNE: Steve, that sounds like you feel  
6 that we should not try to advise the board to restrict the  
7 financial qualifications to those aspects that might affect  
8 safety.

9 MR. OSTRACH: Yes, sir. I would believe that that  
10 would leave us open to a charge -- and I have in mind, litiga-  
11 tion -- a charge that the Commission did not apply its normal  
12 regulatory standards on financial qualifications to this case.

13 COMMISSIONER AHEARNE: Do we apply the normal standards  
14 of financial qualifications to each restart?

15 MR. OSTRACH: No, sir. But my point is that it could  
16 be raised in a 2206 request, and we would then have to apply them.  
17 While you could parcel that out separately, I would see that as  
18 a confusing matter.

19 COMMISSIONER KENNEDY: I am confused about your answer  
20 to the question. You said the answer to the question, "Do we  
21 normally require this kind of review prior to restart," the  
22 answer was "No."

23 Now, if that's the case, why would you here --

24 MR. OSTRACH: I am sorry. What I meant to say was that  
25 as a formal matter there is no separate investigation begun each

1 time a plant restarts on whether the applicant continues to meet  
2 his normal level of financial qualifications. I would assume  
3 that is done on the basis that there is no reason to change the  
4 determination made whenever he got his original operating license  
5 that he didn't meet that.

6 Now, in this case, staff, by listing this as a sub-  
7 stantive concern, indicated some concern about the licensee's  
8 financial qualifications. There is obviously an enormous drain  
9 upon the licensee's resources that was not considered when the  
10 licensee was originally given the TMI Unit 1 operating license.

11 It seems to me that if the Commission is charging its  
12 board to consider financial qualifications, the logical thing to  
13 do is to have that board apply the criteria that the applicant  
14 is required to meet, anyway. You could ask it to address a dif-  
15 ferent question, but the licensee still must meet that standard.  
16 It might not have to be proven in the licensing board hearing,  
17 but he must meet that standard.

18 COMMISSIONER KENNEDY: As a legal matter, do you think  
19 it preferable that you don't look at it in a hearing, or could  
20 it be looked at in the same context, the same context as any  
21 other restart?

22 MR. OSTRACH: I don't believe that where the financial  
23 qualifications is looked at would be that significant in terms of  
24 litigation outcome. I believe there might be concern, potential  
25 litigation risk, if the only finding on financial qualifications

1 that would be before a reviewing court would be on some criteria  
2 that are different from the operating license criteria.

3 (At 3:00, Commissioner Ahearne leaves room.)

4 MR. OSTRACH: I would have no problems if there were  
5 no financial qualifications inquiry in the hearing, but we had  
6 a staff finding that these people do meet it.

7 COMMISSIONER KENNEDY: Then why do we put it in the  
8 hearing, which adds only one more series of issues for litiga-  
9 tion?

10 MR. OSTRACH: We didn't, Commissioner. It's a sub-  
11 stantive issue proposed by staff.

12 I believe the Commission is quite clearly free to leave  
13 this out of the proceeding, and perhaps separately direct staff  
14 to satisfy itself as to the licensee's financial qualifications  
15 before permitting restart.

16 CHAIRMAN HENDRIE: How would that strike you?

17 COMMISSIONER BRADFORD: I would leave it in, just  
18 because I think this is a case, if there are any cases, in which  
19 the qualifications ought to be reestablished. There has been a  
20 great deal said and written about Met Ed and GPU's financial con-  
21 dition. Unlike your normal restart, this seems to be an area  
22 that we ought to inquire into and put away.

23 I would like also to have the issues separate as to  
24 whether the company's ratemaking situation or, for that matter,  
25 its tax situation, puts it under any constraints that the NRC

1 ought to be aware of.

2           COMMISSIONER GILINSKY: It seems to me if you can show  
3 that the company's financial situation is going to affect the  
4 safe operation of the reactor, then there might be something the  
5 board ought to listen to and consider.

6           (At 3:05, Commissioner Ahearne returns.)

7           COMMISSIONER AHEARNE: Are we still on the same thing?

8           CHAIRMAN HENDRIE: We're probing along to see where  
9 sentiment would lie with regard to a prompt decision to take it  
10 out of the order, simply separately advise the staff to satisfy  
11 itself as to the financial qualification issue.

12           COMMISSIONER AHEARNE: That would be like us asking the  
13 directors that were an outside party coming in --

14           COMMISSIONER KENNEDY: We would be directing the staff  
15 to satisfy itself, as it would in normal course.

16           CHAIRMAN HENDRIE: It's part of that, because the staff  
17 examination would be the same.

18           COMMISSIONER GILINSKY: It seems to me the staff's  
19 examination is wasted time.

20           COMMISSIONER KENNEDY: Then we need to go back to  
21 Steve's point. He would conduct this in accordance with our  
22 existing regulations. If those regulations result in reviews  
23 which, in your view, are not useful, that doesn't get us anywhere.

24           (At 3:06, Commissioner Bradford leaves room.)

25           COMMISSIONER KENNEDY: So, we need to come back and

1 find out what it is we want the board to do.

2 CHAIRMAN HENDRIE: I think Steve's point just is that  
3 we have a set of regulations on the book which say certain things  
4 about financial qualifications. Now, that's a standing condi-  
5 tion that operating plants have to meet. Presumably, as is  
6 pointed out, if somebody suspected that any operating entity  
7 was falling into a pit with regard to its financial condition,  
8 there could be a 2206 petition that says, "Hey, look at them.  
9 Shut them down."

10 The director of regulation would have to look at it  
11 and decide whether to grant the petition or have a hearing or  
12 deny it.

13 In particular, his point is that if we say in this  
14 proceeding, "Look at financial qualifications narrowly focused  
15 on the relation to the safety of the operation of TMI-1," you  
16 may not in that context address whether the operator, in fact,  
17 meets the general regulations for an operating license situation,  
18 which he's supposed to do in any case.

19 You then expose yourself, Steve thinks, to a litiga-  
20 tion risk and challenged the finding of the proceeding --

21 (At 3:07, Commissioner Bradford returns.)

22 CHAIRMAN HENDRIE: -- Especially if we haven't dealt  
23 with whether the plant meets the regulation.

24 Is that not an apt summary?

25 MR. OSTRACH: I wish I had said it myself, Mr. Chairman.

1           COMMISSIONER KENNEDY:    The logic seems irrefutable.  
2 If we're to pursue a course which is designed to determine whether  
3 or not the basic regulations that you have set out are being met,  
4 we ought to follow the rules which get you there.  If you start  
5 changing them or setting some different standards, then you'd  
6 better have a reason for that.  And we have to sit down and  
7 describe what that is, I suppose, or direct the board to do so.

8           So, if we're going to pursue this at all, it seems to  
9 me I would say let's pursue it.  My own view is I think that all  
10 needs would be properly served by directing the boards or direct-  
11 ing the staff to satisfy itself that in fact the financial quali-  
12 fication requirements have been met.

13           COMMISSIONER AHEARNE:  Would you then exclude it?

14           COMMISSIONER KENNEDY:  I would.

15           COMMISSIONER AHEARNE:  Then that wouldn't be meeting  
16 the normal regulations.

17           COMMISSIONER KENNEDY:  Oh, yes.

18           CHAIRMAN HENDRIE:  Sure, because you weren't in this  
19 hearing -- because of its special nature we could prescribe  
20 anything we want in or out of this hearing.

21           COMMISSIONER KENNEDY:  This plant has a license.

22           CHAIRMAN HENDRIE:  A party who wanted to litigate the  
23 question would not then come necessarily under this hearing, but  
24 would start with a 2206 petition; right?

25           COMMISSIONER KENNEDY:  Right.

1 CHAIRMAN HENDRIE: Which the Commission can direct be  
2 consolidated into this proceeding or not, as we wished; true?

3 MR. OSTRACH: In effect, as I understand what  
4 Commissioner Kennedy said, he would be directing the staff to  
5 make the same finding. It would make, if a 2206 request were  
6 made right now.

7 COMMISSIONER AHEARNE: But you would also exclude it  
8 from the hearing?

9 MR. OSTRACH: Yes, sir. There is no requirement that  
10 there be a hearing on all 2206 requests. The Commission main-  
11 tains the discretion to have staff handle it.

12 COMMISSIONER AHEARNE: So, Steve then takes this from  
13 the area from something that is a litigation risk to something  
14 that it not a litigation risk, to have the staff look at the  
15 issue.

16 MR. OSTRACH: The difference is that there is a litiga-  
17 tion risk if the only finding that the Commission has is a find-  
18 ing based on criteria different than the regulations. Whether  
19 or not the board makes a finding on a narrowly focused financial  
20 qualifications matter is not itself a litigation risk, as long  
21 as either the board or the staff makes an explicit finding that  
22 the requirement in the regulations for financial qualifications  
23 have been met. You could have both done, if you wished.

24  
25  
end#7

1                   One possibility to be would be to provide that the  
2 staff would make such a finding, a regulatory finding.

3                   Furthermore, if a party wished to enter as an  
4 additional contention in the hearing some narrowly focused  
5 demonstration on (financial qualifications affecting safety,  
6 the board could apply normal criteria to deciding whether or  
7 not to allow that as an additional contention.

8                   I would have no problem with that.

9                   COMMISSIONER KENNEDY: It seems to me that's sort of  
10 a middle ground reasonable proposition.

11                  MR. OSTRACH: That way the board would not be  
12 required to satisfy itself about the general subject of  
13 financial qualifications. It would look at whatever it  
14 decided was an appropriate contention.

15                  COMMISSIONER KENNEDY: But it would do that on the  
16 basis of the staff's certifications as to financial  
17 qualifications, presumably.

18                  MR. OSTRACH: On the assumption that such a  
19 certification would be made, yes.

20                  COMMISSIONER KENNEDY: My presumption was in going  
21 this route, we would also have elected to instruct the staff.

22                  MR. OSTRACH: Yes. They wouldn't necessarily be  
23 sequential. Staff would be satisfying itself during the  
24 course of the hearing.

25                  COMMISSIONER KENNEDY: Right.

gsh 1           COMMISSIONER BRADFORD: Let's see, Steve. What would  
2 you then do if a party raised as a contention the blanket one  
3 that the licensee was not financially qualified?

4           COMMISSIONER KENNEDY: I'm sorry, Peter.

5           COMMISSIONER BRADFORD: Supposing, then, the staff  
6 was satisfying itself separately on the subject. Supposing a  
7 party to the hearing came in and said that this company isn't  
8 financially qualified in one of its contentions within the  
9 meaning of the relevant sections of the regulations.

10          MR. OSTRACH: I would assume the board would not  
11 accept such a contention just as it would not accept the  
12 contention that the applicant does not meet the ECCS  
13 regulations, or some other matter that the commission has not  
14 told it to consider.

15                I am assuming that the direction to the board would  
16 be something similar to the language on page 12, except that  
17 where it now says, "shall employ the financial qualifications  
18 criteria," it would be much more narrow and say, "the board  
19 shall decide whether to admit a contention tying it to  
20 some specific showing of safety-related risk."

21          COMMISSIONER BRADFORD: I think if it's worth asking  
22 the staff to satisfy itself, then it's also worth permitting  
23 the basis for the staff's satisfaction to be examined in the  
24 hearing.

25          CHAIRMAN HENDRIE: You'd keep it broad?

1                   COMMISSIONER BRADFORD: Yeah. I would keep, I guess,  
2 more or less the proposition that Steve and Len originally  
3 had. I thought your language was okay, and in fact, I think  
4 as an abstract matter, it is. But I respect the point that  
5 it may somehow be seen as being different from what the  
6 regulations require.

7                   COMMISSIONER AHEARNE: By "original" again, you mean  
8 as on page 12.

9                   COMMISSIONER BRADFORD: Yes.

10                  CHAIRMAN HENDRIE: Okay, Peter's keeping it broad.  
11 You would accept the proposition to them at the hearing issues  
12 on financial qualifications to those tied tightly to safety  
13 with the direction --

14                  COMMISSIONER KENNEDY: With the direction to the staff  
15 to make a finding as to the regulations.

16                  COMMISSIONER AHEARNE: Will you also direct the staff  
17 to make a finding?

18                  COMMISSIONER GILINSKY: I don't know if I would do  
19 that.

20                  COMMISSIONER AHEARNE: I'm still happy with Len's  
21 sentence, which is the tie-in to safety.

22                  CHAIRMAN HENDRIE: Is that the same?

23                  COMMISSIONER AHEARNE: That's the one that focuses  
24 so narrowly.

25                  CHAIRMAN HENDRIE: In the hearing?

sh

1 COMMISSIONER AHEARNE: Yeah.

2 CHAIRMAN HENDRIE: Then I presume that you don't  
3 have a problem with the staff satisfying itself.

4 COMMISSIONER KENNEDY: If you do that, I don't think  
5 anything is added by asking the staff to do that, is it?

6 If you pursue the language, which counsel has  
7 suggested, there's no higher except duplication.

8 CHAIRMAN HENDRIE: But I thought Len's safety  
9 language thing, whatever that language may be, is intended to  
10 focus financial qualification issues and make them be related  
11 directly to safety. And that seems to me to be identical  
12 to the corresponding part of the other proposition, which was  
13 a two-part one saying, yeah, hearing issues -- the restriction  
14 is that way, but in addition --

15 COMMISSIONER KENNEDY: Is that your understanding?

16 CHAIRMAN HENDRIE: But in addition, staff has  
17 satisfied itself.

18 MR. BICKWIT: That wasn't my understanding when  
19 I read it. But there's no problem with adding to it. So  
20 staff would make that determination.

21 COMMISSIONER AHEARNE: It is neither required, nor  
22 inconsistent.

23 MR. BICKWIT: That's right, it is not.

24 CHAIRMAN HENDRIE: Let's see. Then somebody better  
25 start over and instruct me.

sh 1                   COMMISSIONER AHEARNE: Why don't you read your  
2 sentence again?

3                   MR. BICKWIT: The licensee shall demonstrate his  
4 financial capability to the extent relevant to his ability to  
5 operate TMI 1 safely.

6                   CHAIRMAN HENDRIE: That would be in the list of  
7 short-term --

8                   MR. BICKWIT: That's right.

9                   CHAIRMAN HENDRIE: -- items. Would there then be  
10 a procedural discussion paragraph?

11                   MR. BICKWIT: You never resolved that. That's one  
12 question to resolve. And then in addition, you now have  
13 the question, do you want staff to independently make the  
14 judgment?

15                   CHAIRMAN HENDRIE: Well, let's see.

16                   COMMISSIONER AHEARNE: In the absence of our asking  
17 the staff, would they normally make that judgment.

18                   MR. BICKWIT: I believe that they would not.

19                   COMMISSIONER AHEARNE: You would say that normally,  
20 in reviewing whether a plant goes up, they would not check  
21 to see whether the regulations are satisfied.

22                   MR. BICKWIT: I would assume they would not. I would  
23 assume that they would not look through all the conditions  
24 for operating a plant and see whether they're all still met.

25                   COMMISSIONER AHEARNE: That could be a fairly informal

1 statement.

2 MR. OSTRACH: I think it's fair to say that whenever  
3 staff is confronted with any reason to believe that a previous  
4 finding of compliance with the regulations is no longer --

5 (Laughter.)

6 COMMISSIONER KENNEDY: That makes his statement  
7 quite accurate.

8 MR. OSTRACH: Yes.

9 CHAIRMAN HENDRIE: Okay.

10 MR. BICKWIT: Well, we all agree.

11 CHAIRMAN HENDRIE: I think the sentiment for the  
12 most recent language lies in a majority, Peter. Now let me  
13 declare that to be the tentative sense of the commission.

14 Now what about further procedural discussion or  
15 instruction along the lines there on page 12?

16 Does one desire that?

17 MR. BICKWIT: Do you want further explanation?

18 COMMISSIONER AHEARNE: It would help me. I'm still  
19 having difficulty in understanding what you're trying to  
20 accomplish.

21 COMMISSIONER BRADFORD: I'm not sure that this is  
22 what you'd call enlightened.

23 MR. OSTRACH: Given the sentence as written, as  
24 proposed by the general counsel, I don't know how necessary  
25 it would be to attempt to develop new criteria or scope of

1 review since they're dealing with a new question that they  
2 have never dealt with before. They would inevitably have to  
3 develop new criteria.

4 Perhaps the final sentence, which is hortatory,  
5 could be included, but it doesn't add anything particularly  
6 since they should do that in any event.

7 COMMISSIONER KENNEDY: In the absence of specifically  
8 stating criteria as in the language on page 12, what do you  
9 expect that the board is going to do? Is it not going to  
10 follow the regulations in the absence of instructions to do  
11 otherwise?

12 MR. OSTRACH: I assume, sir, that it will make a  
13 finding on the precise question that Mr. Bickwit read that  
14 the applicant has demonstrated the financial qualifications  
15 necessary to demonstrate safety. It would not make a finding  
16 on the 50.33 F qualifications.

17 That's why I would at least recommend that if they  
18 were to make a finding on the question as phrased by Mr.  
19 Bickwit that the staff be separately instructed to make it  
20 as part of their certification, perhaps it would be a logical  
21 time to do it, an explicit finding with supporting  
22 justification that the licensee does in fact meet the normal  
23 operating license criteria.

24 COMMISSIONER KENNEDY: I agree.

25 MR. OSTRACH: In fact, it could be just simply added

1 as the next sentence after the sentence that Mr. Bickwit read:  
2 Licensee shall demonstrate, period. At the time of the  
3 recertification, the staff shall.

4 COMMISSIONER KENNEDY: I would agree.

5 COMMISSIONER AHEARNE: Then you would not need this  
6 paragraph.

7 MR. OSTRACH: This paragraph in its entirety would  
8 be gone.

9 COMMISSIONER AHEARNE: Fine.

10 CHAIRMAN HENDRIE: I get a majority number of small  
11 amplitude nods. Peter, you were frowning. Did something  
12 occur to you in there?

13 COMMISSIONER BRADFORD: No.

14 COMMISSIONER KENNEDY: If we just wait a few minutes,  
15 something will.

16 (Laughter.)

17 COMMISSIONER BRADFORD: It occurred to me that you  
18 were on the wrong road.

19 COMMISSIONER AHEARNE: Not having been the first time.

20 CHAIRMAN HENDRIE: Okay. Let's do it as that. Why  
21 don't we retreat a page or two and launch into what is called  
22 psychological distress questions here.

23 COMMISSIONER BRADFORD: There's a class of issues  
24 there that I'm not sure is quite correctly described by that  
25 phrase. But as long as we start out with the same — what

1 we're really talking about is whether the scope of the  
2 Atomic Energy Act reaches this among several other issues  
3 that are all sort of accident-impact related.

4 I can't begin to anticipate what the various  
5 contentions will be, but there will be a class of contentions  
6 that more or less go to the theme that since this accident  
7 has happened, the impact on the area is sufficient in  
8 various, I suppose, some psychological, some economic, some  
9 sociological ways that, for one reason or another, it  
10 doesn't feel that the plant should operate.

11 I'm not sure that's psychological. That may be  
12 too limiting an adjective.

13 COMMISSIONER AHEARNE: But is it fair to describe,  
14 Peter, that the question is given that all the previous  
15 set of requirements are met, is the plant allowed to come on?

16 COMMISSIONER BRADFORD: Yes.

17 There may be a class of questions under that heading  
18 that are different in kind from what Len has discussed here.  
19 I mean, Lord only knows what contentions one can anticipate  
20 in that field. There may be some that don't especially  
21 relate to accident impact.

22 I wouldn't say that those two classes would prevent  
23 it.

24 COMMISSIONER KENNEDY: I'm not sure what your  
25 question was, John.

gsh 1                   COMMISSIONER AHEARNE: Well, my question was, we  
2 currently have a list of things that we normally would say if  
3 all of these are met, then a plant can operate.

4                   And I think the issue here is --

5                   COMMISSIONER KENNEDY: These are derived from --

6                   COMMISSIONER AHEARNE: Are there additional points  
7 which have not been addressed previously?

8                   COMMISSIONER BRADFORD: But there would be probably  
9 two classes of those. One would be additional points which,  
10 if addressed correctly, the proponent would then feel that  
11 operation were permissible. Then there's going to be a  
12 class of contentions and more or less, this plant would  
13 operate no matter what you do.

14                   COMMISSIONER AHEARNE: Yes. And it's more the second  
15 category, I think.

16                   COMMISSIONER KENNEDY: Why do you see them as  
17 different? I mean what's the question about these two -- this  
18 one class with two categories, as I understand it, what's  
19 the difference in treatment of one versus the other?

20                   COMMISSIONER AHEARNE: Do you mean the way the board  
21 would treat them or the character of the question?

22                   COMMISSIONER KENNEDY: I understand the character  
23 of the question. But having understood that, what difference  
24 does that make in the way that they're treated by the board?

25                   COMMISSIONER AHEARNE: It might not make any

gsh 1 difference.

2 COMMISSIONER KENNEDY: That's short of where we have  
3 to begin, though, to determine whether it does or not.

4 COMMISSIONER AHEARNE: I think the first issue that  
5 we have to decide is whether or not the board or the hearing  
6 should address those issues. That's, I think, the gist of  
7 what the general counsel's paper is attempting to address.

8 COMMISSIONER KENNEDY: Then we have to decide whether  
9 we're going to address that issue. And if we are, then who  
10 is to address it and procedurally, how and when?

11 COMMISSIONER AHEARNE: That's right.

12 COMMISSIONER KENNEDY: There we are. Now we've got  
13 the active agenda. Which question should we address first?

14 MR. BICKWIT: Why don't we proceed to our  
15 recommendation?

16 COMMISSIONER BRADFORD: I find at least your first  
17 couple and maybe all of your recommendations to be  
18 unexceptionable.

19 COMMISSIONER AHEARNE: You found them --

20 COMMISSIONER BRADFORD: Unexceptionable. I do not  
21 disagree with any of the recommendations.

22 MR. OSTRACH: That's lawyereze for it's okay.

23 MR. BICKWIT: That's not the same as unexceptional.

24 COMMISSIONER BRADFORD: A little more than okay.  
25 If they had a choice, I think in each case they picked the

gsh 1 right one, a rare sentiment.

2 CHAIRMAN HENDRIE: It's always had the connotation  
3 to me that anyone who took exception to the point must be  
4 odd. All reasonable men would not make an exception.

5 COMMISSIONER AHEARNE: The only difference that I  
6 would take myself in the outline, and let me ask a question.

7 The impression I get after having read it is, you  
8 would have the board addressing the issue initially.

9 MR. BICKWIT: That's correct.

10 COMMISSIONER AHEARNE: I guess I'm probably still  
11 more interested in us addressing it because I think in the  
12 absence of a lot more specific direction than we're prepared  
13 to give now, until we've heard the contentions, we couldn't  
14 give the direction.

15 In the absence of the direction, I think the board  
16 would be going off into very uncharted territory.

17 MR. BICKWIT: Now that's one of your options.

18 COMMISSIONER BRADFORD: Len? Here I am already taking  
19 exception. Do you read your second section as recommending  
20 that the board --

21 MR. BICKWIT: The board considers it in the first  
22 instance.

23 COMMISSIONER BRADFORD: But there would be given  
24 instructions to certify it.

25 MR. BICKWIT: And it is resolved by the commission.

gsh 1 The board might recommend.

2 COMMISSIONER BRADFORD: Before or after recommended  
3 decision. I thought what you were saying is that it made  
4 sense to wait until we saw what form the contentions took,  
5 saw whether they may in some way require the taking of  
6 evidence and had some feel for what the issue really looked  
7 like before we decided whether or not to have the board take  
8 a crack at it itself, or simply certify the whole thing.

9 That was the proposition, I thought. It was at  
10 least a good idea.

11 MR. BICKWIT: We could try it, but as we map it out,  
12 we leave it to the board.

13 Now, obviously, the commission can step in and  
14 have it certified.

15 COMMISSIONER GILINSKY: You'd leave it to the board  
16 whether or not to certify it with the commission.

17 MR. BICKWIT: Whether or not to recommend.

18 COMMISSIONER KENNEDY: I'm not sure which question  
19 it is we're talking about. Is it the question of whether  
20 these matters shall be considered or the question of what  
21 and how shall be considered.

22 What is it that we're talking about?

23 MR. BICKWIT: Both.

24 COMMISSIONER KENNEDY: Now wait. Okay, it's the  
25 who will resolve it question. Now could you visualize this

gsh 1 for me, conceptualize it for me in terms of how it works.  
2 You have a hearing board. We have a sort of general  
3 milestone thing that tells us something about how this whole  
4 process might work, under what seems to be an extraordinary  
5 length of time, but whatever.

6 But the question that I have is: When did they  
7 reach this conclusion? When did they certify that question  
8 to us? And what effect does that have on the ongoing  
9 proceeding?

10 MR. BICKWIT: Our view would be that the contention  
11 stage, when other contentions were being resolved, that the  
12 board would look at this contention.

13 COMMISSIONER HENDRIE: If any.

14 MR. BICKWIT: Right.

15 CHAIRMAN HENDRIE: Generally there would be some if  
16 we deal with it this way.

17 COMMISSIONER KENNEDY: In Peter's view, it would  
18 probably be a host of such contentions in these two general  
19 categories.

20 COMMISSIONER BRADFORD: I just don't know what to  
21 expect.

22 COMMISSIONER KENNEDY: Possibly you would not rule out  
23 that it could be several of various orders in these two  
24 general categories. Okay. Now we've got all those before the  
25 board. And that's in the period some 60 days into the

1 proceeding.

2 MR. BICKWIT: That's right. At that point, the  
3 board takes a look at the contention and any supporting  
4 information, decides whether it needs additional supporting  
5 information, whether it wants to get a brief on the other  
6 side, perhaps, decides whether it believes some evidence  
7 should be taken.

8 After making those decisions, let's assume it  
9 decides it does want some briefs and it wants some evidence.  
10 What it might then do is take the briefs and the evidence,  
11 come to a recommendation on the issue, and certify it up  
12 to the commission.

13 COMMISSIONER KENNEDY: This is before the issuance  
14 of the pre-hearing conference order.

15 MR. BICKWIT: There are two pre-hearing conference  
16 orders. Our concept was that this would be, in all probability,  
17 after the issuance or contemporaneous with the issuance of  
18 the first pre-hearing conference order, the order determining  
19 what interventions were to be allowed and what contentions  
20 were to be argued.

21 COMMISSIONER BRADFORD: You seem to be giving a  
22 little more discretion to the board than I thought that your  
23 recommendation did. I took your recommendations to say that  
24 the board would be given instructions to certify the question  
25 and the briefs and records at one point to the commission for

gsh

1 an interlocutory decision either before or after making a  
2 recommended decision, as it deems appropriate.

3 Now I read that to say that there would, in fact,  
4 be briefs and a record, assuming that there were contentions.

5 MR. BICKWIT: There would be briefs. Well, I  
6 wouldn't even go that far.

7 I mean they might take a look at the filing of  
8 the contention and make a decision that its recommendation on  
9 the basis of the filing alone was that this was not a  
10 contention which ought to be allowed, and that no briefs were  
11 needed and no evidence was need.

12 Certify that up to the commission.

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1           MR. OSTRACH: In the normal case I'm sure they  
2 would await, however, the filing of responsive arguments  
3 from the other side, which for an issue like this would  
4 certainly resemble briefs quite closely. I think we can be  
5 sure that the Commission, once the question would be  
6 certified, that the Commission would be briefed with the  
7 views of the parties both favoring and disfavoring — at  
8 least this is the potential.

9           MR. BICKWIT: But the language doesn't so state,  
10 but you could so provide.

11           COMMISSIONER KENNEDY: Okay. Now you have this  
12 matter either before the Commission, either before or  
13 contemporaneously with the issuance of that first prehearing  
14 conference order.

15           CHAIRMAN HENDRIE: Is this the first or second?

16           MR. BICKWIT: The first one.

17           COMMISSIONER KENNEDY: When is it that the  
18 Commission decides that matter, and what happens to the  
19 proceeding meanwhile, while the matter remains at issue?

20           MR. BICKWIT: Our concept is that the Commission  
21 decides it as expeditiously as it can, and that the  
22 proceeding goes forward while the Commission is considering  
23 it.

24           COMMISSIONER KENNEDY: The proceeding goes  
25 forward?

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1 MR. BICKWIT: Yes. Which in essence means  
2 discovery, at this point.

3 COMMISSIONER KENNEDY: All right. Discovery is to  
4 be completed by 140 days or 60 days after this; therefore,  
5 you are presuming that the Commission decides this question  
6 definitively within the 60-day period. If it does not,  
7 what?

8 MR. BICKWIT: If it does not, and discovery is in  
9 fact completed on the other issues, the Commission after it  
10 has decided it, would send the matter back down and  
11 discovery would take place on that issue. Assuming it  
12 resolves it in favor of the contention being allowed —

13 COMMISSIONER KENNEDY: And the second prehearing  
14 conference could have gone on meanwhile, on all other  
15 issues?

16 MR. BICKWIT: Our concept is that it would not.

17 COMMISSIONER KENNEDY: Ah, so that that's what I  
18 was trying to get at.

19 MR. BICKWIT: It would not.

20 COMMISSIONER KENNEDY: So that if Day 140, if the  
21 Commission has not resolved that question and instructed the  
22 Board in one way or another, the proceeding comes to a halt  
23 until it does?

24 MR. BICKWIT: Yes.

25 COMMISSIONER AHEARNE: More than that, I think

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1 what you've said, that is that if the second prehearing  
2 conference doesn't begin --

3 COMMISSIONER KENNEDY: That's right. The entire  
4 proceeding ceases at some point.

5 COMMISSIONER AHEARNE: Does it not begin until  
6 after discovery is completed on these other contentions?

7 MR. BICKWIT: That was our concept.

8 COMMISSIONER AHEARNE: But if that's so, then I  
9 think what you really said is you've put a broken line  
10 there.

11 COMMISSIONER KENNEDY: Of indeterminate length.

12 COMMISSIONER AHEARNE: And the prehearing  
13 conference is held 60 days after the Commission decides.

14 MR. BICKWIT: No. We're not saying that.

15 COMMISSIONER AHEARNE: That's what you just said.

16 MR. BICKWIT: No, we're saying that it comes down  
17 to the Board. The Board decides what kind of discovery is  
18 needed, and holds things up until that discovery takes  
19 place and then has its prehearing conference on all issues.

20 It may decide that no discovery is necessary; it  
21 may decide -- and would if there were no contentions --

22 COMMISSIONER AHEARNE: Yes, I see.

23 MR. BICKWIT: -- it might decide that a couple of  
24 days would do.

25 COMMISSIONER AHEARNE: 60 days isn't automatic?

1 MR. BICKWIT: No.

2 MR. OSTRACH: Furthermore, it's not necessarily  
3 so, that the parties will not be conducting contentions on  
4 the psychological contentions during the period —  
5 particularly if the Licensing Board recommended decision  
6 favors that this is a contention. I would expect that  
7 parties would more than likely, unless they have good reason  
8 to believe that it won't be admitted, would be going ahead  
9 with the discovery efforts at this time.

10 So the time that the Commission spends —

11 COMMISSIONER AHEARNE: Would it be allowed?

12 MR. OSTRACH: Yes, sir. The discovery is over.

13 COMMISSIONER KENNEDY: On a contention not yet  
14 admitted?

15 MR. OSTRACH: A party could object and could  
16 refuse to comply with discovery, but voluntary discovery is  
17 always permitted. Discovery, of course, is not only against  
18 adversaries, but I believe we're using the term here also to  
19 include preparation for a hearing. The parties could be  
20 having their consultants preparing testimony and material  
21 like that, even apart from discovery efforts against one  
22 another.

23 COMMISSIONER KENNEDY: Just so I understand this,  
24 in simple backwoods layman's terms, Mr. Ahearne's  
25 characterization seems to me to be very clear and accurate.

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ap 1 On this chart, at Day 140, one draws a dotted line and there  
2 is some indeterminate period which is a function of a length  
3 of time that the Commission may require to resolve the  
4 question in its own mind and instruct the Board, plus, some  
5 indeterminate period that would be required for discovery,  
6 which may run from zero to 60 days.

7 MR. BICKWIT: That is our view.

8 COMMISSIONER KENNEDY: Therefore, there could be  
9 an interruption in this entire process. There will be an  
10 interruption in this entire process, of some indeterminate  
11 period.

12 MR. BICKWIT: There will be if the Commission  
13 takes a very lengthy period of time to resolve it.

14 COMMISSIONER KENNEDY: Do you consider 60 days to  
15 resolve a question of interpretation of the Atomic Energy  
16 Act, as it will affect all proceedings before the Commission  
17 now and in the future, to be something that will be  
18 relatively quickly taken? I doubt it.

19 MR. BICKWIT: My view is that the Commission is  
20 capable of resolving that question in less than 60 days.  
21 Moreover, if it takes 60 days, we have no assurance --

22 COMMISSIONER KENNEDY: Let me commend you for your  
23 confidence and express my appreciation for it.

24 MR. BICKWIT: If it should take the Commission 60  
25 days or more to resolve it, that's not to say that you will

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ap 1 bring things to a halt, because it's quite possible that  
2 discovery will be going on quite beyond the period of time  
3 that's designated in the schedule for discovery. In fact,  
4 when the Executive Legal Director presented this schedule,  
5 he described as unrealistic the 60-day period for discovery.

6 COMMISSIONER KENNEDY: That's another issue we  
7 have to come back to, and that's the entire schedule, then.  
8 To what extent do we want to establish --

9 COMMISSIONER AHEARNE: The advantage of what you  
10 see, having this issue first go through the Board prior to  
11 coming to us, is what --

12 MR. BICKWIT: That evidence may well be relevant.  
13 And the Board had better see that they take it.

14 MR. OSTRACH: In any event, we believe the  
15 question is not necessarily the abstract one of what  
16 psychological questions the Commission wants resolved, but  
17 what psychological and social contentions parties wish to  
18 raise and that will not be developed until after parties  
19 have identified themselves and begun the intervention  
20 process before the Board, in any event.

21 COMMISSIONER AHEARNE: The only thing I'm  
22 wrestling with is, it seems to me that this is such a major  
23 change, if we go this route, and we allow these contentions,  
24 and it's such a major change that I'm having difficulty  
25 understanding how the Board is going to be addressing it.

ap 1 Do you believe the Board could remain neutral on whether or  
2 not the Commission is going to come down one way or the  
3 other, and yet allow the contentions to be developed fully,  
4 is that correct?

5 MR. OSTRACH: I believe the Board — we're talking  
6 about an experienced skillful board — it has a fairly good  
7 idea of what is necessary to provide a basis for a ruling on  
8 the admissibility of contentions.

9 (At 3:45, Commissioner Gilinsky left the room.)

10 COMMISSIONER AHEARNE: My only problem is, let us  
11 suppose maybe the Board is sufficiently skilled and  
12 experienced, but at least some people might have a  
13 skepticism that if the question were raised, that in the  
14 previous history of the operations had not been allowed,  
15 that a Board might again not allow it and then therefore  
16 essentially say these issues were raised conditionally,  
17 they've never been accepted? The proper reading of the  
18 Atomic Energy Act doesn't allow them —

19 COMMISSIONER BRADFORD: Have they been raised  
20 before?

21 MR. BICKWIT: Yes, they have. We have a series of  
22 cases.

23 CHAIRMAN HENDRIE: Not under the Atomic Energy  
24 Act, I don't think, have they?

25 MR. BICKWIT: Yes, I think you've had somewhat

1 similar issues raised under the Atomic Energy Act.

2 COMMISSIONER KENNEDY: Could you forward to me  
3 references to all of them, please?

4 MR. BICKWIT: They're included in our memorandum.

5 COMMISSIONER KENNEDY: I thought I read the  
6 memorandum very carefully.

7 COMMISSIONER BRADFORD: You don't mean this one.

8 COMMISSIONER KENNEDY: Oh, the other one. I'm  
9 sorry.

10 MR. BICKWIT: They're not directly on point.

11 COMMISSIONER KENNEDY: I didn't think so.

12 COMMISSIONER AHEARNE: My concern is that  
13 therefore the Board would not go into any lengthy process.

14 MR. BICKWIT: If that happens they would then send  
15 it up with the recommendation that this contention not be  
16 allowed. If the Commission felt that evidence was needed,  
17 it could take it itself or send it back down and ask for  
18 evidence. I don't really find that a significant problem.

19 MR. OSTRACH: I think the situation has changed.  
20 If the Commission specifically provides in the order that a  
21 certain issue which has not normally been taken account in  
22 the licensing proceedings may be an appropriate matter,  
23 bringing it to the Board's attention, they would not simply  
24 say, Nobody's ever heard this before. They'd be dealing  
25 with the basis of the Commission's potential interest.

ap 1 CHAIRMAN HENDRIE: It seems to me we will come  
2 ultimately to decide this question on the basis of our  
3 readings of the underlying statute.

4 COMMISSIONER KENNEDY: And the cases which, as  
5 counsel so well points out, are possibly relevant, but not  
6 necessarily all on point -- as he well points out in his own  
7 memo -- that was the reason for my question to you. I  
8 wasn't sure. I thought maybe you knew something that you  
9 hadn't yet time to communicate to us.

10 MR. BICKWIT: I don't know at thing I haven't  
11 communicated to you.

12 CHAIRMAN HENDRIE: I take it that the inclination  
13 here, on balance, is to postpone decision on these matters  
14 until a little further development of the sort of  
15 contentions. Vic left me his proxy in favor of the general  
16 counsel's recommendation. Does that seem to be the  
17 inclination?

18 COMMISSIONER BRADFORD: Certainly, as to point  
19 one.

20 CHAIRMAN HENDRIE: There's a paragraph over  
21 there. Look at the bottom of page 11.

22 COMMISSIONER BRADFORD: Along the lines that I  
23 mentioned before, I don't know that psychological, as  
24 opposed to physical consequences, exactly describe the  
25 issues. But if you leave that aside, I have no difficulty

1 with the framework that's set out from then on.

2 It does specifically say, though, that we expect  
3 briefs. So I don't think it leaves the Board with any  
4 discretion not to have briefs on the question. I'm all for  
5 that anyway.

6 COMMISSIONER AHEARNE: Do you have a better  
7 phrase, if you can think of a better phrase?

8 COMMISSIONER BRADFORD: I have one, and I can read  
9 it now. But I could just as easily circulate it to you.

10 COMMISSIONER AHEARNE: Fine. I'd go with the  
11 paragraph.

12 CHAIRMAN HENDRIE: Dick?

13 COMMISSIONER KENNEDY: I guess I'd pass. I find  
14 that we're creating a procedure here, and a process, which  
15 is going to be close to interminable, and dealing with so  
16 many issues and contentions of such complexity that if it is  
17 ever completed it would be a remarkable thing.

18 If I understood how this was really going to work  
19 and what effect it was going to have on this proceeding, I'd  
20 be more inclined to act right now. I simply do not know.  
21 It has not yet been pointed out to me in very clear terms.  
22 That's undoubtedly my own inability to understand it, not  
23 the inability of those trying to convey it. It nonetheless  
24 is a fact that I do not understand how to effect this  
25 process.

1 CHAIRMAN HENDRIE: A bare majority in favor, at  
2 least tentatively, of your paragraph. Stick it in.

3 Good heavens!

4 COMMISSIONER BRADFORD: It's all in the first  
5 sentence.

6 CHAIRMAN HENDRIE: Let us leap forward to D, page  
7 12. Peter, do you want to lead on this since it is  
8 alleged --

9 COMMISSIONER BRADFORD: It seems to me that  
10 certainly once one defers ruling on whether these issues  
11 which I had in mind are entirely the ones that we've agreed  
12 to defer ruling on, I wouldn't advocate ruling on this  
13 point, outside the framework of voting on the issues  
14 themselves.

15 That is, I don't think it's necessary to fund  
16 people to raise the contentions in the first place, that I  
17 think we can expect will happen.

18 COMMISSIONER AHEARNE: Is that a subset of  
19 interventions that you're concerned about?

20 COMMISSIONER BRADFORD: Yes.

21 COMMISSIONER KENNEDY: Only those?

22 COMMISSIONER BRADFORD: My original memo was  
23 specifically on this set of issues as being unique under the  
24 Act, and also a set of issues on which we couldn't expect  
25 the staff would be sensitized to them in the way that people

1 who lived in the area would be, that therefore it would be  
2 variable to find and fund a vehicle.

3 I don't think, though, that it's necessary to do  
4 that as a part of getting the issues put into contention  
5 form. I think anyone who is serious enough about these  
6 issues to be a legitimate candidate for funding would go  
7 through the process of putting them in contention.

8 COMMISSIONER AHEARNE: So you'd recommend  
9 deferring? I'd go along with you.

10 COMMISSIONER KENNEDY: I would like to note that I  
11 did ask counsel to prepare a memorandum, which I hoped was  
12 going to be unequivocal. Apparently there is some  
13 difference of view in English, as to the word "unequivocal,"  
14 because I did not find the memorandum that way.

15 I also found it interesting to note that in  
16 matters which I would have thought relevant, given the  
17 extensive background which was included in the memorandum,  
18 didn't seem to appear, directly relating to the actions of  
19 the Congress in this regard. And my views on this, of  
20 course, are clear to everybody, I think. That is, I think  
21 this is a matter for Congress to decide and not regulatory  
22 bodies responsible to no one, and certainly having no taxing  
23 authority nor independent authority as to the use of funds  
24 which happen to be appropriated by the Congress.

25 So, I would've thought there were two things that

1 ought to have been mentioned and referred to, and perhaps  
2 assessed in some way in the memorandum.

3 First, it is, I believe, true that the Chairman of  
4 our own oversight committee introduced on his own motion and  
5 behalf and that of other members of his committee a proposal  
6 for funding which was rejected by the committee. I thought  
7 that was relevant in terms of some view, at least, or at  
8 least one temporary view of Congressional intent and  
9 attitudes.

10 Secondly, I would note that rather recently there  
11 was an extensive debate on the floor in one of the bodies,  
12 which extended for some considerable period of time,  
13 following which -- I believe this matter pertains to some  
14 arm of the Department of Energy -- and there was a great  
15 deal of sentiment expressed there and I would have thought  
16 at least there would have been some mention of this in the  
17 memo.

18 However, having said all that, I did not find the  
19 memo as persuasive as I hoped it would be, to make me  
20 --unequivocally, as I hoped I would -- support the  
21 proposition. It is not that I disagree with the  
22 proposition. It is that I believe that it is illegal, and  
23 having believed it is illegal I cannot subscribe to it,  
24 obviously. And you gave me no basis for thinking other  
25 wise, I'm sorry.

1           The Comptroller General leaves me, to say the very  
2     least, a bit queasy about the matter. If he had thought it  
3     was legal, he would have said so.

4           MR. BICKWIT: Well, we did not give you an  
5     unequivocal opinion; that's correct.

6           COMMISSIONER KENNEDY: That's what I had asked  
7     for.

8           MR. BICKWIT: Our need to advise you as best we  
9     can overrode our desire to give you an unequivocal opinion.

10          COMMISSIONER KENNEDY: I understand that and  
11     appreciate that. Your wisdom is exceptional.

12          COMMISSIONER AHEARNE: If the question of the  
13     Comptroller General's opinion, since it looks like we're  
14     deferring this until resolution of the contention, perhaps  
15     we can ask the Comptroller General?

16          MR. BICKWIT: Certainly. And we could also  
17     address the points Commissioner Kennedy has raised.

18          MR. OSTRACH: We could also put it in the context  
19     of the specific concerns on funding that Commissioner  
20     Bradford would have indicated, which might get us a more  
21     focused answer.

22          COMMISSIONER BRADFORD: I do think it would be  
23     obviously well to have both our basis and our intent in this  
24     regard cleared up between now and the time those decisions  
25     have to be made. There's nothing to be said for completing



1 the review with the agencies and then starting the process  
2 to decide whether or not anything is fundable. At that  
3 point we ought to be able to say quite quickly that funding  
4 will be available and what the basis for it would be.

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1 MR. OSTRACH: Then I think that we ought to draft  
2 a letter to the Comptroller General setting forth that  
3 consensus of the Commission.

4 COMMISSIONER BRADFORD: It seems fine with me, as  
5 long as we haven't gone to that well too often already. We  
6 could well keep going back.

7 COMMISSIONER KENNEDY: We went and went at some  
8 length and in some depth. But I leave that to counsel. If  
9 he feels that the question was clear and the answer was  
10 equivocal -- but this very equivocation, I might add, is the  
11 thing that gives me pause. If the Comptroller General had  
12 thought that it was legal, he would have said so. He suggested  
13 that there were some views on this side and some on this  
14 side, and he could see better to do this, but on balance he  
15 thought it would be wise to seek legislation in this regard.

16 It seems to me it is to be recalled, also, that it  
17 is not, unless we take some legal step -- I'm not sure even  
18 we can -- it is not the responsibility of the Commissioners  
19 who make this decision to be responsible under the law for  
20 payments, which may be subsequently challenged. It is the  
21 certifying officer involved, who in this case I think would  
22 be the controller of the organization.

23 I, as I think is well known, am not yet comfortable  
24 with any notion that puts burdens on people where the respon-  
25 sibility lies elsewhere.

1           COMMISSIONER AHEARNE: I think all the more reason  
2 to go back to the Comptroller General with a very specific,  
3 direct question: Is it legal or is it not legal?

4           COMMISSIONER BRADFORD: It isn't that we're going  
5 to be spending funds that the NRC wouldn't be spending anyway.  
6 I don't quite see that we're going out and putting a new tax  
7 on the public.

8           COMMISSIONER KENNEDY: Yeah. It is taking funds  
9 that would have been spent on already authorized projects  
10 and purposes, and putting them on projects and purposes not  
11 yet authorized.

12           COMMISSIONER BRADFORD: For example, I don't think  
13 anyone would dispute it if the staff decided to pursue this  
14 issue and went out and hired, I don't know, a team of  
15 sociologists, psychologists, to study the issues for them and  
16 to present it in a hearing. So the only question, it seems to  
17 me, that is controversial is whether the issue can be presented  
18 by those other than our staff, with the assistance of funding  
19 from us.

20           COMMISSIONER KENNEDY: Yes, I understand that. And  
21 don't misunderstand, either, that if there is a case of  
22 funding, it is this kind of situation. Indeed, the townships  
23 involved, as those who have been here long enough may recall,  
24 the townships involved are precisely the kinds of entities  
25 that I long believed needed some consideration if we were

1 talking about funding.

2 We're talking about little governmental entities,  
3 the budgets of which are probably less than the salaries of  
4 most of the people at this table. It just happens to be a  
5 fact that many of these institutions simply don't have the kind  
6 of money that it would take, and I'm talking about townships.  
7 Now, manifestly, it is theoretically possible for them to  
8 expand their tax base. But if one has paid taxes in small  
9 townships lately, he knows how foolish that idea is, because  
10 people are rebelling. And it goes either out of the school  
11 budget or somewhere else.

12 CHAIRMAN HENDRIE: Confounded schools take it all  
13 up. There isn't any money left. If we'd stop educating  
14 people, it would be an enormous benefit to property values  
15 all over the country, and who knows what other benefits.

16 Could I declare that this discussion, while illumi-  
17 nating --

18 COMMISSIONER BRADFORD: One last point. Don't forget  
19 that TMI-1 and 2 are in the tax base.

20 COMMISSIONER KENNEDY: Not now.

21 CHAIRMAN HENDRIE: We needn't come to a decision on  
22 the point. I feel sufficiently pressed with time against  
23 deadlines in this matter with regard to the budget proceedings  
24 to say, okay, anything I can defer we ought to defer.

25 COMMISSIONER AHEARNE: But is it okay to send the

1 letter to the Comptroller General?

2 CHAIRMAN HENDRIE: I guess any clarification of  
3 authority would be helpful.

4 MR. MALLORY: The Comptroller General has construed  
5 his response to us once.

6 COMMISSIONER AHEARNE: But we have the situation  
7 where we have an expression of interest on the part of this  
8 one Commissioner to provide some funding. We have an expres-  
9 sion of opinion on the part of another Commissioner that it  
10 ought to be illegal.

11 COMMISSIONER KENNEDY: A serious presumption.

12 COMMISSIONER AHEARNE: Therefore, we see ourselves  
13 coming downstream on a situation where an officer of the  
14 Commission may end up being asked to do something which at  
15 least a more senior official of the Commission has tentatively  
16 reached the conclusion may be illegal. So I think it's well  
17 worth asking the Comptroller General. We can much more narrowly  
18 focus the issue.

19 MR. MALLORY: I think that's true, compared to both  
20 our previous letter and the previous letters from other  
21 agencies.

22 CHAIRMAN HENDRIE: I recommend we do it. And I would  
23 note also that we will receive the decision of the Comptroller  
24 General before the end of the year.

25 COMMISSIONER KENNEDY: I'd like it before the end

1 of September.

2 COMMISSIONER BRADFORD: It would be much better.

3 CHAIRMAN HENDRIE: Not the way I read it.

4 That brings precisely to the next thing I wanted to  
5 talk to you about this afternoon, which is that date list of  
6 Howard's that I've got, what that thing is. I want to look at  
7 that with you and see what is practical and reasonable, to  
8 see if we can tighten this proceeding up some. And I wonder  
9 if we could look at that here.

10 Let's see if my addition is decent. If things were  
11 to go as projected here, with no more than the incremental  
12 times listed -- and I suspect they won't without some strong  
13 urging from the Commission -- then zero date is 8/10. 20 days  
14 from petitions takes us to September 1st; answers on the  
15 15th of September. By October 10th there have been petition  
16 amendments, negotiations on the contentions. By the 25th --  
17 it's October 10th for that and October 25th for the special  
18 prehearing conference. November 1st there is an order coming  
19 out of the special prehearing conference.

20 And my understanding is that it is at that point  
21 that we would get certification on that question. Discovery  
22 will then run to the first of the year on this schedule. And  
23 I assume one wants to have the question we've just been  
24 discussing settled by that time. So it would be desirable to  
25 have the Comptroller's answer, I guess, by November 1st.

1 (At 4:10 p.m., Commissioner Gilinsky returned to the  
2 room.)

3 MR. OSTRACH: It's at that point, Mr. Chairman,  
4 the discovery completion stage, that we have noted in the  
5 staff recommendation, that if the SER is to go to the ACRS  
6 to be reviewed by the ACRS that there be another two months  
7 built in at that spot before the completion of discovery.

8 CHAIRMAN HENDRIE: I've been making estimates on  
9 SER times. I believe the staff could produce an SER on the  
10 schedule indicated here, that is, 15 days before the end of  
11 the 60-day discovery period, which would make it December 15th.  
12 However, if the ACRS is to review and the whole staff submittal  
13 is to include the ACRS business, then indeed there are another  
14 couple of months involved.

15 I frankly don't see why the staff's SER can't be  
16 submitted and put on the record at that point, and the ACRS  
17 considerations go on thereafter. The ACRS letter would be  
18 expected about February 1st, which would be still before the  
19 hearings would begin on this schedule. Otherwise, there'd be  
20 another 60 days, up to December 15th.

21 I'm not sure that the staff is capable of producing  
22 its safety evaluation report much faster than that. A little  
23 bit, maybe.

24 COMMISSIONER KENNEDY: By December 15th?

25 CHAIRMAN HENDRIE: Yes. That is, if one looks in

1 the first 125 days for places to tighten this up, there isn't  
2 much in there. It's not going to help much to tighten it up  
3 and then have the staff come in and say, well, we're not ready  
4 to go forward and everything has to slide anyway.

5 However, there are a number of periods in that  
6 first 125 days which are of arbitrary length and for which  
7 Howard has simply made an estimate, and rather a minimum  
8 estimate, I think. If one wanted in the proceeding to move  
9 at least that fast, I suspect that it needs some specification.

10 Looking on past day 125, discovery completed the  
11 first of the year, it then takes 35 days to file the testimony.  
12 In the hearings, I'm not sure how much speed-up there is  
13 there. 60 days for hearings.

14 Do people see possibilities for tightening this up?

15 MR. BICKWIT: We don't see significant possibilities?  
16 The language that you've agreed to on discovery and on  
17 cross-examination could compress this, but only to a marginal  
18 degree.

19 COMMISSIONER KENNEDY: You say the SER can't be  
20 completed before December 15th?

21 CHAIRMAN HENDRIE: I'm making an estimate judgment.  
22 One of the participants in the SER production is here. I guess  
23 it's fair enough to ask him how much faster than that he can  
24 work.

25 COMMISSIONER AHEARNE: Is that an appropriate

1 question? Are there any problems with that?

2 MR. BICKWIT: No problem with that.

3 MR. VOLLMER: We discussed it today. I think that  
4 December the 1st would be about the fastest we could go.  
5 Certainly we chose December 1st if we had to get it to the  
6 ACRS, rather than December 15th, which would put in an addi-  
7 tional month. I think that's about the best we could do.

8 COMMISSIONER KENNEDY: Then in fact the savings  
9 that one might visualize up through the beginning of discovery  
10 don't matter anyway.

11 CHAIRMAN HENDRIE: I think that's probably right.

12 COMMISSIONER KENNEDY: Well, not necessarily.

13 CHAIRMAN HENDRIE: However, for those periods of  
14 time that are just estimates here and that can slide, what I'm  
15 seeking, if we can't contract them clearly, can we at least  
16 mandate them, so that five days become 40 and 60 days become  
17 200?

18 COMMISSIONER KENNEDY: This calls for the SER to be  
19 published 15 days prior to the end of discovery, which was  
20 day 125, which is somewhere like the early part of December.

21 CHAIRMAN HENDRIE: The 15th. What he's saying is,  
22 he's been thinking about December 1st in order to let the  
23 ACRS pick it up at what, the January meeting. And I expect  
24 you'd have to do that anyway. That would simply make it  
25 either 30 days prior to the end of discovery or you could pull

1 discovery into 45 days.

2 COMMISSIONER KENNEDY: The SER has to be published  
3 before discovery is terminated.

4 MR. BICKWIT: It's been staff practice to allow  
5 discovery on the SER.

6 COMMISSIONER KENNEDY: Do rules call for that?

7 MR. BICKWIT: No, sir, I don't believe so.

8 MR. OSTRACH: The rules do not even require an SER  
9 to be published.

10 COMMISSIONER KENNEDY: Discovery can go ahead and be  
11 completed. In other words, if one could find in the earlier  
12 periods time that could be removed, even if the SER were  
13 published substantially after the discovery period and provided  
14 to all parties, that would not be in violation of the rules?

15 CHAIRMAN HENDRIE: I don't think there really are  
16 any rules in this proceeding. We can define them in the  
17 order.

18 MR. OSTRACH: In fact, sir --

19 COMMISSIONER KENNEDY: I'm just wondering. I guess  
20 I want to think that through and see if there isn't some way,  
21 then, to go back through here and compress things. I was  
22 thinking earlier that it wasn't going to make any difference,  
23 because of the date of the SER. But if the rules in no sense  
24 require the SER publication at a given point in the proceeding,  
25 surely it ought to be done before the hearing itself actually

1 begins. I understand that, because there is time to do that.  
2 There's another month and a half. And if we can squeeze some  
3 time out, we'd still get that SER published before the hearing  
4 had actually commenced.

5 Is that a reasonable or feasible course?

6 MR. OSTRACH: I think it's very important to maintain  
7 a reasonable amount of time between the publication of the SER  
8 and the beginning of the hearing, because the parties' cases,  
9 particularly the intervenors' cases, would likely be focused  
10 by the SER and will be addressed to the SER.

11 COMMISSIONER KENNEDY: Why is that, if there isn't  
12 even a requirement for the SER to be published?

13 MR. OSTRACH: In this case, I would expect that if  
14 there is an SER, they are going to focus their case on it.  
15 If there weren't an SER, they would have to build their case  
16 themselves. I am generalizing from my experience with  
17 licensing proceedings. That is the way intervenors' cases  
18 are built.

19 COMMISSIONER KENNEDY: Okay, I understand.

20 CHAIRMAN HENDRIE: I'm sorry. I lost the thread,  
21 Dick.

22 COMMISSIONER KENNEDY: Well, Steven's point is that,  
23 given that there is going to be an SER, it's reasonable to  
24 presume that there is going to be a reasonable period of time  
25 after the issuance of the SER and before the hearing begins

1 to allow people to base whatever case they wish to make on the  
2 SER. I understand the point.

3 CHAIRMAN HENDRIE: It's clear that we need an SER  
4 in this circumstance?

5 COMMISSIONER KENNEDY: Is it or isn't it?

6 MR. BICKWIT: This was the judgment of the staff,  
7 that they don't feel competent to evaluate it.

8 CHAIRMAN HENDRIE: I think it's valuable for the  
9 staff to say what it thinks about a proposition in an issue  
10 like this and to provide that document. It stretches things  
11 out.

12 MR. BICKWIT: Not necessarily.

13 CHAIRMAN HENDRIE: If you want to publish the SER  
14 and then allow a reasonable amount of time before the whole  
15 thing goes, before the proceeding starts before the board,  
16 why, you've got a certain increment in time to get to the SER  
17 and you've got some distance beyond that, even if you don't  
18 allow the ACRS review, to just add directly in series to the  
19 time you had to get in the hearing.

20 MR. BICKWIT: All I'm saying is getting rid of the  
21 SER, compressing it, doesn't get you anything unless you can  
22 compress this side of the schedule. That's my only point.

23 COMMISSIONER AHEARNE: A lot of the schedule is going  
24 to be driven by something, I would guess, such as what is  
25 happening on the other plants. That seems to be one of the

1 two major issues that's really going to be addressed in the  
2 hearing.

3 COMMISSIONER KENNEDY: I'm sorry, John. I missed  
4 the point.

5 COMMISSIONER AHEARNE: It's just that there are  
6 two fundamental issues being addressed. One is the relationship  
7 to the second plant and what is the condition of the second  
8 plant, if it can continue isolated from the first. Therefore,  
9 part of the shadow schedule here is what's happening with the  
10 second plant.

11 CHAIRMAN HENDRIE: I think in this kind of a time  
12 scale, you can separate them. Now, whether you accomplish  
13 all that, physically accomplish it, is another question. But  
14 to the extent that bulletins have to be done before a restart,  
15 why, you can get the hearing done and then be waiting to pick  
16 up this pipeline.

17 COMMISSIONER AHEARNE: I wasn't implying that the  
18 action would have to be finished. But I have a sense that  
19 coming to at least a resolution of those steps, it's going to  
20 take a number of these months anyway; not because of TMI-1  
21 but because of the clarifying of some other issues on TMI-2.

1 CHAIRMAN HENDRIE: Len, suppose we went at this thing,  
2 the December 1 SER publication, and directed that the ACRS  
3 review that, that the prehearing conference order go ahead, that  
4 the ACRS review letter as expected be available before the  
5 hearing begins --

6 (At 4:20, Commissioner Gilinsky leaves room.)

7 CHAIRMAN HENDRIE: -- But not hold at all of that.  
8 We'll put that in. We would then -- we're probably going to  
9 need that 60-day discovery completion, anyway, which puts the  
10 prehearing conference at the first of January, overlaps the  
11 discovery period, 30 days on the SER publication, which would  
12 be December 1. From there on, it take 40 days to get into the  
13 hearing, and 60 days through a hearing if things went well.  
14 April 10, I make it.

15 COMMISSIONER AHEARNE: To complete the hearing?

16 CHAIRMAN HENDRIE: To complete the hearing. Because  
17 there has to be some reasonable time, as pointed out, for people  
18 to look at the SER, prepare testimony, one thing or another, and  
19 also to allow the ACRS to get its opinion filed so it can be  
20 looked at. I don't know how much squeeze there is there.

21 From there on, it takes 40, 50, 95, 130 days before  
22 there could be a restart if one considered appropriate conditions  
23 were met. That includes 40 days for filing of proposed find-  
24 ings, 10 for the reply, 45 for a board decision, and then the  
25 35-day Commission look to see what all of that means.

1 Is there some contraction possible in there?

2 MR. BICKWIT: There may be, with respect to each of  
3 these items. Chances are there won't be.

4 COMMISSIONER KENNEDY: Can you prescribe it?

5 MR. BICKWIT: Certainly, you can prescribe it. What  
6 you've got in there now is an instruction to the board to do  
7 whatever it can to compress those. You considered at one point  
8 that you would have a target date, and, as I remember, the way  
9 you resolved it, that you wouldn't, that you would ask the board  
10 to set a target date. You can rethink that, but that's where  
11 you were.

12 COMMISSIONER KENNEDY: In addition to this 335, then,  
13 the Commission now has it.

14 MR. BICKWIT: The Commission has it, and we have  
15 considerably collapsed the possible review process time prior  
16 to restart, permitting a decision on lifting immediate effec-  
17 tiveness prior to final review. Commission time could be down  
18 to a matter of weeks. But our view was once you abandoned the  
19 two-hearing approach idea and rejected the severe tightening  
20 on cross-examination and discovery, there wasn't much tighten-  
21 ing that could be done other than Commission time after receipt  
22 of the board's initial decision, which you have done.

23 CHAIRMAN HENDRIE: 45 days for the board decision.

24 Other people have filed proposed findings. Could we come down  
25 some on that and then the board decision time?

1           MR. BICKWIT: I gather this is an optimistic fore-  
2 cast as to what the decision time is for a board. Again, you  
3 have told the board to do it as quickly as it can. You told  
4 them to take full advantage of the rule that allows them to  
5 collapse time periods.

6           CHAIRMAN HENDRIE: I am very much afraid you may run  
7 in the other direction, which is why one would look at the  
8 schedule in some detail, to see if we aren't willing to put  
9 some pressure on.

10           Let me tell you what I had in mind about the schedule.  
11 I don't think it's practical to write into the order and say  
12 the Commission orders that you do this in five days and that in  
13 seven, the other in 12, and the whole thing, you know, and so  
14 on and so on.

15           On the other hand, it seems to be practical to work  
16 this kind of a layout to agree on some of these times in the  
17 order, to say that the Commission expects parties and the board  
18 to conform as fully as practicable to the attached tentative  
19 schedule, which leaves it not a compelled matter which may in  
20 some particular case just flatly be unreasonable, and people  
21 would be back to us for relief with an order relieving it, but  
22 does make it clear in a very explicit way that one wanted to  
23 move and provides a pressure on the system to make it move.

24           If I could convince you that something like that is  
25 reasonable to do, my own view is that it would be helpful.

1 COMMISSIONER AHEARNE: I have no problem with it.

2 CHAIRMAN HENDRIE: I would propose here to do no more  
3 than put that explanation to my reason for discussing the matter.

4 COMMISSIONER BRADFORD: Joe, this would take the place  
5 of the proposition that the board should set its own target date.

6 CHAIRMAN HENDRIE: Clearly, it would.

7 COMMISSIONER BRADFORD: One alternative is to have  
8 the board set the target date, and if it seems to us to be pre-  
9 posterous, to step in at that point and say, "No, no, we would  
10 rather you worked on this type of schedule."

11 I would like to think about it, but my tentative  
12 reflex is that as the board gets a slightly better feel for the  
13 proceedings, they ought to set a target date; they will then  
14 have the incentive of having to obey it themselves, and obvi-  
15 ously, we can do that, anyway.

16 CHAIRMAN HENDRIE: Well, I recommend it to your con-  
17 templation over the weekend.

18 I guess I would put one final comment on it. If I  
19 could figure out where to take out five days here and 10 there,  
20 just pull it in. As it runs now, it comes out on the 20th of  
21 August 1980.

22 COMMISSIONER BRADFORD: How does it get there?

23 MR. OSTRACH: 35 days for Commission review.

24 CHAIRMAN HENDRIE: It continues to seem to me that a  
25 reasonable examination of legitimate concerns could be completed

1 a little quicker than that. So, I would look and see, in fact,  
2 if it were possible to contract at least a few of those times  
3 and without any specific recommendations, but only having warned  
4 you that I will try that on you, why don't we end this?

5 MR. BICKWIT: I should say I don't have any problem  
6 with the legality of that, except when you're talking about  
7 collapsing the SER portion, where there you would be directing  
8 staff as to how to prepare its own testimony, in which case --

9 CHAIRMAN HENDRIE: Well, if I am going to urge the  
10 other parties by virtue of a thing like this, saying the Com-  
11 mission expects, you know, parties A, B, and C, to get their  
12 testimony filed in, you know, five plus 20 days after the close  
13 of discovery, I don't see why I can't tell the staff: Part E,  
14 we expect you to get your SER out by whatever it turns out to be.

15 MR. OSTRACH: I think that's all we're saying, that  
16 the staff should be treated to the extent that you treat other  
17 parties rather than being subject to special directions that it  
18 had to meet certain deadlines.

19 CHAIRMAN HENDRIE: I wouldn't have written the staff  
20 part into the order. Just say: Attached hereto is the schedule.

21 MR. BICKWIT: But the SER portion --

22 CHAIRMAN HENDRIE: Would be in this, not in the order.  
23 It would be just the same as the other parties.

24 MR. BICKWIT: All right. Would you attach this  
25 schedule to the order and say this is --

1 CHAIRMAN HENDRIE: Yes.

2 MR. BICKWIT: I would just leave the SER portion of  
3 it off. Well, reflect.

4 CHAIRMAN HENDRIE: If you see some good reason for  
5 that, okay. But I don't understand why. But don't tell me now.

6 MR. BICKWIT: You are directing --

7 (Laughter.)

8 MR. BICKWIT: Well, okay, I will heed your last admo-  
9 nition.

10 CHIARMAN HENDRIE: One last thing. It seems to me  
11 that some of the other things we wandered back and forth across  
12 and down the memoranda, and the meeting that proceeded that  
13 memorandum, could now be drafted up so one could see what some  
14 of this looks like. And I would ask that you do that. And  
15 for the next meeting on this subject, sort of work it in as a  
16 diversion to the budget exercise. Anytime we discover ourselves  
17 getting bleary-eyed over staffing levels and budget, why, we'll  
18 return.

19 We're about two minutes away when we now meet on the  
20 next order.

21 COMMISSIONER KENNEDY: This is now a scheduling meet-  
22 ing?

23 CHAIRMAN HENDRIE: That is right. We are now con-  
24 cluded, the TMI-1 meeting. A scheduling matter.

25 (Whereupon, at 4:35 p.m., the meeting adjourned.)

