



Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

DISCUSSION OF PROPOSED LICENSING LEGISLATION

Open to Public Attendance

May 18, 1978

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Prepared by:
C. H. Brown
Office of the Secretary

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
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5 DISCUSSION OF PROPOSED LICENSING LEGISLATION
6

7 (Open to Public Attendance)
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10 Commissioners' Conference Room
11 Room 1130
12 1717 H Street, N.W.
13 Washington, D. C.

14 Thursday, May 18, 1978

15 The Commission met, pursuant to notice, at 9:55 a.m.,
16 Joseph Hendrie, Chairman, presiding.

17 PRESENT:

18 Chairman Hendrie
19 Commissioner Gilinsky
20 Commissioner Bradford

21 ALSO PRESENT:

22 S. Chilk
23 J. Kelley
24 W. Reamer
25 C. Stoiber
E. Case
L. Gossick
A. Kenneke
J. Aron
M. Malsch
D. Muller

P R O C E E D I N G S

1 CHAIRMAN HENDRIE: Could we come to order. Today
2 we are discussing proposed licensing legislation, in
3 particular the testimony on the same.

4 I have got a copy of -- let's see, there is a
5 May 17th version from Kelley that is now the base document,
6 I think.

7 MR. REAMER: That's correct.

8 There would be two documents to work from, the
9 May 17 memo from Kelley with the testimony behind it and
10 Commissioner Gilinsky's changes to that.

11 CHAIRMAN HENDRIE: The May 17th version represents
12 changes from -- combines my markup of the original Kelley
13 draft, Commissioner Bradford's comments, OPE and OGC.

14 I'm afraid we are going to have to trace through
15 it a page at a time, if that's okay with you. The middle
16 of the first paragraph, I can stand a change that Peter
17 suggested. It is more accurate.

18 COMMISSIONER GILINSKY: Let's see, I guess my point --
19 I guess I was originally working from that. My point
20 was simply that there was one draft that we did comment
21 extensively on and had various degrees of comments and
22 direction. I think that could be described as extensive
23 comments.

24 CHAIRMAN HENDRIE: Let's see, it seems to me we
25 prepared letters of some weight on a couple of drafts, Marty,

1 do you remember?

2 COMMISSIONER GILINSKY: Was there more than one?

3 MR. MALSCH: There was the October OMB comments,
4 and before then we had sent over, I think a draft of the
5 bill just for purposes of discussion. I don't think there
6 have been any written comments besides that.

7 CHAIRMAN HENDRIE: Did we send anything over on
8 subsequent drafts?

9 MR. MALSCH: I don't think so.

10 COMMISSIONER GILINSKY: There were some individual
11 comments, I suppose on the first draft.

12 Well, it is just a matter of stating accurately
13 what our role is.

14 CHAIRMAN HENDRIE: Well, how would you like, in
15 any event, to strike "frequently"?

16 COMMISSIONER BRADFORD: I have no problem with that.
17 It depends how you define "consultant," I guess. We present
18 copies of every draft that came along, and I guess the covering
19 letter usually said comments would be acceptable or welcome.
20 May not, maybe they just said, "for your information." I
21 really don't remember the covering letter.

22 MR. KELLEY: They tended to ask for comments on
23 the next day.

24 COMMISSIONER BRADFORD: Well, as I said, it depends
25 on how you define consultant.

1 CHAIRMAN HENDRIE: Vic, the thing is already
2 pretty well qualified, take out the "frequently." I don't
3 know, "frequently consulted and commented extensively,"
4 either frequently or extensively could stand to go, maybe
5 you would prefer to take extensively out.

6 COMMISSIONER GILINSKY: Well, we certainly
7 commented extensively on one draft.

8 CHAIRMAN HENDRIE: Yes, well, until late October,
9 okay, we had our version which we certainly commented on
10 in some length, we had their version which we commented on
11 in the formal OMB round, that was certainly an extensive
12 comment. As long as it is qualified "until late October," is
13 it all that much of a hassle for you?

14 COMMISSIONER GILINSKY: I guess not, really.

15 CHAIRMAN HENDRIE: Why don't we leave it.

16 I think the next thing you want to take out is much
17 more of a problem.

18 COMMISSIONER BRADFORD: Are we dropping "frequently"?

19 COMMISSIONER GILINSKY: Yes.

20 COMMISSIONER BRADFORD: That's alright with me.

21 COMMISSIONER GILINSKY: I'm a little bit bothered
22 about saying "commented exclusively on various draft versions."

23 I guess I don't think that's really right, and
24 certainly not as a Commission.

25 COMMISSIONER BRADFORD: Well, I suppose two would

1 be accurate. In one case we were sent a draft and we sent
2 back a rewrite saying this is the route you want to go,
3 this draft is better. That's a pretty extensive comment.

4 COMMISSIONER GILINSKY: Are you referring to the
5 OMB comments?

6 COMMISSIONER BRADFORD: No, that was what, late
7 September, Marty when we ---

8 MR. MALSCH: Yes.

9 COMMISSIONER BRADFORD: -- we sent them our own
10 draft after having gone line-by-line through it.

11 COMMISSIONER GILINSKY: This was the result of
12 a number of Commission meetings ---

13 COMMISSIONER BRADFORD: Right.

14 COMMISSIONER GILINSKY: -- where we really went
15 through the bill in great detail and that's the one I had
16 in mind.

17 COMMISSIONER BRADFORD: But then we did do the
18 same thing again in late October, and that's when we sent a
19 9-page letter to McIntyre at OMB.

20 MR. MALSCH: That's right. And attached to the
21 letter was also a redraft of the bill.

22 COMMISSIONER BRADFORD: A second redraft?

23 MR. MALSCH: Yes.

24 CHAIRMAN HENDRIE: So we made two fairly extensive
25 excursions to the versions. There isn't any attempt to get

1 more specific here than there is draft versions, and it
2 does qualify in October and then from then on individual
3 Commissioner's comments on a less formal basis, et cetera.

4 Now, you want to take out that next sentence and
5 I have problems with that. ("You" referring to Commissioner
6 Gilinsky.)

7 The thing is qualified to say "with exceptions,"
8 but the basic features of the bill are proposals which the
9 Commission has been putting up for several years and it
10 seems to me the fact that those basic features do, in our
11 view and in the Commission's past view, represent reasonable
12 and workable approaches to approving some of the aspects.

13 COMMISSIONER GILINSKY: I think that adds somewhat
14 to the early siting and the standardization, and I don't
15 think it applies to the ---

16 CHAIRMAN HENDRIE: That's right. And to the CP-OL ---

17 COMMISSIONER GILINSKY: I don't think it applies
18 to the requirement of the NEPA. I think that's a different
19 category.

20 CHAIRMAN HENDRIE: Well, we sent up a draft -- when
21 we sent back our draft, why we had a base version and alternate
22 version, both of which dealt -- one of them was very close
23 to the principal which is in here and the other one backed off
24 somewhat.

25 COMMISSIONER BRADFORD: We indicated a preference

1 for the other one.

2 COMMISSIONER GILINSKY: Yes. I guess I think
3 there is a significant amount of difference between those.
4 You know, it comes down to what do you mean by exceptions or
5 how you qualify -- you know, you could say the Commission
6 supports the notion of early siting and standardization and
7 having the states do it as much as is reasonable or
8 something like that.

9 CHAIRMAN HENDRIE: Well, we come in turn to those
10 details as we go through an overview. You can't say every-
11 thing in the first sentence, and it seems to me ---

12 COMMISSIONER GILINSKY: But when you say the
13 basic features of this bill you are going beyond these
14 general concepts, you are saying the way they are implemented
15 in this bill.

16 CHAIRMAN HENDRIE: Well, the way the early site
17 reviews, standardization, CP-OL thing are implemented in this
18 bill, early notice is here for practically everything we do,
19 much earlier notice than is now the case. And we support that
20 down the line.

21 COMMISSIONER GILINSKY: Well, I mean you could say
22 "supports these basic principles of this bill as structured."

23 CHAIRMAN HENDRIE: Supports the basic principles
24 of this bill?

25 COMMISSIONER GILINSKY: Why don't we set this one

1 aside since this one probably causes more problems than any
2 other change and come back to this one.

3 CHAIRMAN HENDRIE: Okay.

4 Let's see, I don't think there is anything else on
5 this page that is a problem.

6 COMMISSIONER GILINSKY: No.

7 COMMISSIONER BRADFORD: There is a sentence, the
8 one, "This statement reflects the view of the Commission as
9 a whole ..." which again, we ought to come back to and that
10 will depend on where we are at the end of the statement.

11 CHAIRMAN HENDRIE: Next page.

12 Had a comment from ELD, top of the page, "The
13 Commission will submit for the record detailed comments and
14 specific suggested language concerning largely technical and
15 clarifying changes we think should be made." A suggestion
16 that that might very well go off to the end of the statement
17 as a sort of a last comment before the signoff.

18 COMMISSIONER BRADFORD: It doesn't matter.

19 CHAIRMAN HENDRIE: Okay, why don't we do that.

20 MR. REAMER: Was there a suggestion as to where
21 it would specifically fit at the end or just that it be
22 tagged on?

23 CHAIRMAN HENDRIE: Stick it right at the very
24 end, don't you think? Or don't people think it is worth
25 worrying about?

 COMMISSIONER BRADFORD: That's one I'll leave to

1 your discretion. I really don't care. It makes no big
2 difference.

3 CHAIRMAN HENDRIE: Find a place for it, okay.

4 Changes in the middle of the page, I don't have any
5 problem with.

6 COMMISSIONER BRADFORD: I don't have a problem with
7 your change over my change. I don't know whether yours was
8 made -- I guess it was made -- do you think frustrating
9 and expensive better adjectives than exhaustive and unfair?

10 MR. KELLEY: I think Commissioner Gilinsky's are
11 perfect.

12 COMMISSIONER BRADFORD: Well, in any case the
13 intervenor groups will be there and they will tell the
14 Congress exactly how we characterize it, at least. It is
15 of secondary importance.

16 CHAIRMAN HENDRIE: So frustrating and expensive?

17 COMMISSIONER BRADFORD: And exhaustive and unfair.
18 That's all right, leave it the way it is.

19 MR. REAMER: Leave it which way?

20 COMMISSIONER BRADFORD: Leave it Victor's way.

21 CHAIRMAN HENDRIE: And the others, I don't have
22 much problem.

23 MR. KELLEY: I'm not clear on the significance
24 of the asterisk of your version?

25 COMMISSIONER GILINSKY: They are color coded.

1 MR. KELLEY: Yes, that's what I got, great.

2 CHAIRMAN HENDRIE: A comment from ELD at the
3 bottom of page 2, "Legitimate interests are to some extent
4 necessarily in conflict in the nuclear licensing process."
5 Therefore, the recommendation was that a statement more along
6 the lines "reforms to the nuclear licensing process should
7 attempt to accommodate in a reasonable manner the numerous
8 and sometimes conflicting interests that are a problem."

9 MR. KELLEY: Where are you, at the bottom of page 2?

10 CHAIRMAN HENDRIE: Yes. The first sentence in that
11 paragraph at the bottom of page 2.

12 COMMISSIONER GILINSKY: Let's see. I have something
13 before that. I would strike the "wasteful" at bottom of
14 page 2, and let me tell you why.

15 It is not clear to me that a system of duplicative
16 reviews, at least in this bill -- at least as proposed in
17 this bill, we would be going necessarily to a more efficient
18 process, and so I think ---

19 CHAIRMAN HENDRIE: I don't have any problems with
20 that.

21 COMMISSIONER GILINSKY: Duplicative carries with
22 it some notion of wastefulness, I suppose any way.

23 CHAIRMAN HENDRIE: My only problem with the
24 word is that undoubtedly I will mispronounce it.

25 MR. REAMER: So there is the ELD change the one

1 we are discussion?

2
3 COMMISSIONER BRADFORD: Is there anywhere in
4 existence a copy of the ELD changes?

5 CHAIRMAN HENDRIE: There is an ELD document -- it
6 would look like this one. (Showing Commissioner Bradford
7 the document.)

8 COMMISSIONER BRADFORD: I see, that's just a
9 sentence that would go in and then --

10 CHAIRMAN HENDRIE: It would replace the first
11 sentence.

12 COMMISSIONER BRADFORD: I see.

13 I have no problems with that.

14 CHAIRMAN HENDRIE: I guess I know what is meant by
15 the OGC language and you do, but I think the proposed language
16 is a bit clearer. Have you got the May 12th Shapar note?

17 There is a blank look over there among the keepers
18 of the records.

19 MR. REAMER: Marty do you ---

20 MR. MALSCH: I have a copy, but not an extra copy.

21 MR. REAMER: Well, I will just get that language,
22 if there is agreement on it, from Marty for that sentence.

23 CHAIRMAN HENDRIE: Do you find the sentence? It is
24 included in the draft there at the bottom of the first page,
25 that note Shapar recommended.

1 Next page.

2 COMMISSIONER BRADFORD: I think we have had
3 some editorial confusion between me and OGC on the next page.

4 MR. REAMER: If you were to delete the "I think"
5 sentence, I think that that would better reflect the suggested
6 change.

7 MR. KELLEY: I don't think the French say what you
8 have them saying. It depends on which Frenchman you are
9 talking about.

10 COMMISSIONER BRADFORD: I also think the saying
11 is dispersion and I just put in the margin the notation that
12 I thought the actual saying was different from the one
13 they have you quoting, Joe, but I don't purport to know what
14 it is.

15 COMMISSIONER GILINSKY: Can't we just drop it.

16 CHAIRMAN HENDRIE: Why don't we just delete the
17 opinions of the French, whatever they may be, without
18 prejudice, of course. There is a double "that". "I would
19 urge that that best possibility" it is two lines above.

20 MR. REAMER: Yes, we only need one.

21 CHAIRMAN HENDRIE: I believe in the first version
22 there wasn't any, and now you are putting in two. So on
23 average you have got the right number of them.

24 Now, I don't know what your comment means, Vic,
25 stet?

1 COMMISSIONER GILINSKY: Oh, just ignore it.

2 Let's see, would we be taking out, "The Administration's" and
3 so on?

4 CHAIRMAN HENDRIE: Well, Peter wanted to strike it
5 and I ---

6 COMMISSIONER GILINSKY: I would be inclined to strike
7 it.

8 CHAIRMAN HENDRIE: Put a question mark by it. I
9 have a problem if we go through and take out -- this is
10 a little bit like the references to the deferences to the
11 President the other day, Peter's problem. That is, I don't
12 mind -- I can't stand to seem them all deleted, and I think
13 the one at the beginning is a more reasonable statement.
14 This one, I would tend to say, okay, let's take this one out.

15 COMMISSIONER BRADFORD: Okay, the difference between
16 this situation and that one is that in that case, at least those
17 were true there, they are all agreed that in fact, deference
18 to the President was one of reasons on this question of how
19 often one wanted and so on.

20 In this case, the bill as written, including the
21 various limitations on hearings, I would not urge that it
22 be inacted with my understanding now of what Department of
23 Energy intends by the hybrid hearings. So that we may really
24 have trouble and this is why I think it is wise to hold these
25 summary sentences until the end and see just where we are.

1 But we may have trouble in coming to a conclusive sentence
2 which says the Commission endorses this bill and all of
3 its provisions.

4 CHAIRMAN HENDRIE: All right.

5 COMMISSIONER GILINSKY: This is also a more specific
6 statement than previously.

7 COMMISSIONER BRADFORD: Which in a sense is more
8 difficult, you know, if you said "with appropriate
9 opportunities for public participation," my concern is a
10 couple of the sections really give the boot to public
11 participation.

12 CHAIRMAN HENDRIE: Now, I have got some problems
13 going on down the rest of the page.

14 COMMISSIONER BRADFORD: Now, the green ink is your
15 changes, is it?

16 MR. REAMER: That's correct?

17 COMMISSIONER BRADFORD: Is Joe's changes?

18 CHAIRMAN HENDRIE: Yes, but I have got other
19 problems on rereading the thing.

20 COMMISSIONER GILINSKY: You are on page 3?

21 CHAIRMAN HENDRIE: Yes.

22 Down at the bottom it talks about the problem
23 of reducing the overall time required for licensing, some
24 problems in power plant licensing simply are not acceptable
25 and so on.

1 COMMISSIONER GILINSKY: What do you have in mind there?

2 CHAIRMAN HENDRIE: Well, that's what I'm talking
3 about. I ain't got there yet.

4 We are using the word licensing here to refer
5 to the whole sequence of getting a power plant on line,
6 and some of the aspects of that overall process, which are
7 not susceptible to a legislative and administrative fix
8 and not the licensing aspects. In principle, a stroke of
9 the pen by the Congress would eliminate licensing and
10 that would presumably fix whatever delays we are associated
11 with.

12 So where it says that it may not fully achieve
13 the Administration's stated objectives and projections,
14 particularly in reducing the overall time required to put
15 a new power plant on line is my suggestion, in lieu of
16 licensing.

17 Then, I would propose to go on, "some problems
18 in that process, such as uncertainty over utilities load
19 growth or financial difficulties are not" -- either simply
20 are not susceptible or are not easily susceptible to an
21 Administrative legislative fix.

22 COMMISSIONER GILINSKY: Or for that matter,
23 aspects of the construction of the plant which takes up
24 the bulk of the time.

25 CHAIRMAN HENDRIE: "Financial difficulties or

1 construction delays." How about that?

2 MR. CASE: What do you mean by construction delays?

3 COMMISSIONER GILINSKY: Equipment being late, labor
4 problems.

5 CHAIRMAN HENDRIE: If you get a bad winter and a lot
6 of rain and they have to knock it off for a month, whatever.
7 Anything that delays construction is a construction delay.

8 Okay, can I read that again. Let me start back at
9 the beginning of the two sentences, it is right after the
10 words: "... by the Commission," green star.

11 "And I think we need to recognize that H.R. 11704,
12 if enacted, is not going to remake the world of nuclear
13 power plant licensing," that's certainly true. I think it
14 needs "and" at that point. Would you put an "and" in.

15 COMMISSIONER GILINSKY: I would take out the "and"
16 at the beginning of the sentence.

17 CHAIRMAN HENDRIE: I would take out an "and" at the
18 beginning of the sentence. That's fair, that preserves the
19 number of "ands" thus far. That's good.

20 "... and that it may not fully achieve the Administrat-
21 ion's stated objectives and projections, particularly in
22 reducing the overall time required," new words, "to put
23 a new power plant on line." I will give the drafters a
24 chance to transcribe.

25 Then it would go on, "Some problems in that process,

1 such as uncertainty over a utilities load growth, financial
2 difficulties" ---

3 COMMISSIONER GILINSKY: Let's see. Let's stop there.
4 The objective is not to clearance on line fast, but to have
5 a process which, if you want the plant to get on line fast
6 it allows you to do it. The uncertainty about the utilities
7 load growth would simply cause the utility to slow down and
8 perhaps properly. So I don't think that's the kind of thing ---

9 CHAIRMAN HENDRIE: Yes, it is, because repeatedly
10 plants get started on the basis of a projection made at time
11 "a" and two years later, why the plans are going along, maybe
12 some foundation work is done and they find, gee, we have got to
13 slip it and now they call off the construction for two years.

14 COMMISSIONER GILINSKY: Right, but they may be doing
15 just the right thing from a national point of view. And it
16 isn't the Administration's intent, I would think, to have
17 plants built that don't need to be built.

18 I think what one ought to be aiming for is to
19 reduce the lead time for building a plant if you want to build
20 a plant, so that you have a more flexible system that can
21 better deal with the energy problems. In other words, there
22 can be a very long lead time that make the system inflexible
23 and makes it more difficult to respond to your energy problems.
24 So I think the other point you mentioned, for example,
25 construction delays would fall in that category. In other words,

1 they do affect our ability to get a plant on line when we
2 want it on line for construction problems of one kind or
3 another. But I would say uncertainties of a load growth form
4 another category.

5 In other words, the point, I think, is not to just
6 blindly get plants on line as fast as you can, but have a system
7 that has as short a lead time as possible when you really want
8 to get a plant on line.

9 CHAIRMAN HENDRIE: I think that's correct. Do you
10 want to strike "uncertainty over load growth," Peter?

11 COMMISSIONER BRADFORD: It really doesn't matter.
12 It certainly is a problem ---

13 CHAIRMAN HENDRIE: It clearly is a factor in how
14 aggressively a utility pursues the construction schedule
15 on a plant.

16 COMMISSIONER GILINSKY: Well, why don't you put it
17 in and if it comes up we will just explain it.

18 CHAIRMAN HENDRIE: And it -- You know you are right
19 what you say about the system. I have no difficulty with
20 striking it and saying, "such as construction delays or
21 financial difficulties." All I'm looking for is to call their
22 attention that the sort of problem that we have in mind that
23 the legislation aren't going to cure, things which the legislation
24 just doesn't attempt to address properly.

25 So I just wanted a couple of specimens to indicate the

1 type.

2 COMMISSIONER GILINSKY: But, I guess what bothers me
3 a little bit is that it sounds as if they ought to be getting
4 those plants built. Maybe they should and maybe they shouldn't.

5 CHAIRMAN HENDRIE: Okay, let's strike the -- let it
6 read: "Some problems in that process, such as construction
7 delays or financial difficulties," okay?

8 MR. CASE: The industry is going to say some of the
9 construction delays are due to staffs, ratchets, so you are
10 walking into that if you use "construction delays."

11 CHAIRMAN HENDRIE: That's all right.

12 All I want is to get some specimens, and indeed to
13 the extent staff ratchets contribute, that's right, but the if
14 amalgated electric workers go on strike -- and by God they
15 do on almost every project, not saying every year, but on
16 every project -- that's something that we are not responsible
17 for in which the Congress would probably be reluctant to cure
18 legislatively.

19 Okay, then it would go on, "... construction delays
20 or financial difficulties, are not easily susceptible?" or
21 do you care?

22 COMMISSIONER GILINSKY: I would just say "not susceptible."

23 CHAIRMAN HENDRIE: Oh, I suppose in the most Draconian
24 sense they are suscepitable to it, that is why I was going to
25 say, "are not easily susceptible."

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COMMISSIONER GILINSKY: I think that's good.

CHAIRMAN HENDRIE: Okay. "... to a legislative or Administrative fix."

Similarly at the top of page 4 I have got some problems, again that I didn't notice previously. Whether there is a nonexistent demand for plants ---

COMMISSIONER GILINSKY: Let's see. I think it is okay up to "enactment" isn't it?

CHAIRMAN HENDRIE: Oh, yes, sure.

COMMISSIONER GILINSKY: Why don't we just put a period there.

CHAIRMAN HENDRIE: Put a period there -- that would help considerably.

COMMISSIONER GILINSKY: I think it really contains the next thought in it and we can just drop the rest of it. How's that?

CHAIRMAN HENDRIE: Yes.

COMMISSIONER GILINSKY: Now, when you speak of the nuclear industry are we looking into utilities and the vendors or what?

CHAIRMAN HENDRIE: I would think so, and you know, the subcontractors, suppliers ---

COMMISSIONER GILINSKY: I wonder if it might not be worth separating those out, with the utilities and the nuclear industry or something like that.

1 CHAIRMAN HENDRIE: I have no problem with that.

2 Of what, the utilities and the -- in the sense that
3 utilities are considerably more than -- they are part of the
4 nuclear industry, but there is also a lot more to it than that.

5 COMMISSIONER BRADFORD: That's also true of
6 Westinghouse.

7 CHAIRMAN HENDRIE: I don't care, what would you like,
8 Peter?

9 COMMISSIONER BRADFORD: It really doesn't matter to
10 me, but I'm not sure that I care one way or the other.

11 COMMISSIONER GILINSKY: Well, I don't care.

12 CHAIRMAN HENDRIE: "...aspects of this bill may
13 improve..."? Some of them should improve.

14 COMMISSIONER BRADFORD: I have no difficulty to
15 Vic's change to my change. Maybe we could work with that.

16 COMMISSIONER GILINSKY: "... may tend to improve.." --
17 well, certainly certain features of the bill -- the
18 question is this: what are you comparing it with? If you
19 compare with the way things are done now, then I think user
20 should improve it, but if you compare it without the bill,
21 then is it going to do much beyond that, and I think at that
22 point it becomes pretty questionable.

23 If you compare with the system up to now, custom
24 plants, custom reviews and so on, then I think the answer is
25 "should approve." But in fact, we are implementing a lot of

1 these things, and the questions really ought to be, is what
2 difference does this bill make, and at that point the
3 difference is between the track that we are on and what is
4 possible under the bill becomes not very great and in what
5 areas it is going to be a plus is not very clear.

6 CHAIRMAN HENDRIE: We could add, "as contrasted
7 with the situation today." "... should improve as contrasted
8 with the situation today."

9 COMMISSIONER GILINSKY: Yes, but then I think that
10 is almost misleading in that we do have a lot of things under
11 way, because we are implementing standardization, we are
12 implementing early siting and so on. And I think the comparison
13 ought to be with the situation that would obtain without the
14 bill and the situation that would obtain with the bill.

15 CHAIRMAN HENDRIE: I think as long as you have already
16 limited it and said "the aspects of the bill" rather than
17 the whole shebang, that it is true either way.

18 With the bill we can go ahead with a combined CP-OL
19 on a final design and I'm convinced that in a few years that
20 is what we are going to be seeing. We can't do that at the
21 present time, it has to go double review.

22 COMMISSIONER GILINSKY: Yes, but as you pointed out,
23 occasionally there is going to be some time before that gets
24 exercised. I mean, if that's what you are talking about ---

25 CHAIRMAN HENDRIE: It is certainly one of the things

1 in my view. I just have doubts that the early site review
2 provisions -- I think we have gone about as far with the rule
3 as we can go, but I just think as a stand, and without the sort
4 of, this connecting from a construction permit that the bill
5 allows, why establishing of a site permit is a recognizable
6 separate license the Commission offers. I don't think --
7 my view is that compared with what we can do administratively,
8 indeed the bill should improve that aspect of it, shouldn't it?
9 I think there is considerable merit with the situation of the
10 bill and with the situation without doing anything.

11 COMMISSIONER GILINSKY: Well, I don't know. I suppose
12 we could say "aspects of."

13 COMMISSIONER BRADFORD: That would allow each person
14 to have his own aspect in mind. As long as one feels that way
15 about at least one of them.

16 CHAIRMAN HENDRIE: Do you have a problem with "should"
17 Peter?

18 COMMISSIONER GILINSKY: I mean, it is also true that
19 aspects of this bill will not improve it and they in fact might
20 affect it adversely.

21 CHAIRMAN HENDRIE: True, it is possible.

22 COMMISSIONER GILINSKY: I wouldn't put farming out of
23 NEPA in that category.

24 CHAIRMAN HENDRIE: That's quite true.

25 MR. STOIBER: You could say aspects have the potential

1 for improving it.

2 COMMISSIONER GILINSKY: I think it is true that
3 some aspect should improve it and I suspect some aspects will
4 affect it the other way, but in picking out the positive ones,
5 you are in some sense averaging the bill ---

6 CHAIRMAN HENDRIE: You are taking a cheerful view
7 of the bill.

8 COMMISSIONER BRADFORD: I was going to come to that
9 same point. I think in the section on the NEPA delegation, I
10 do think we owe the Congress some, perhaps gently phrased
11 version about assessment of the delegation. I don't know that
12 it has to appear right here, but I do think somewhere in the
13 statement our being knowledgeable of it should be made.

14 COMMISSIONER GILINSKY: Well, I'm prepared to go
15 forward it "shall", but with properly qualified statements
16 elsewhere.

17 CHAIRMAN HENDRIE: Well, I think it is quite a fair
18 statement that -- with regard to the state NEPA as to whether
19 it is going to be a net -- it is responsive to state initiatives
20 that say give us the authority. You could certainly say that
21 for it.

22 COMMISSIONER GILINSKY: Yes.

23 CHAIRMAN HENDRIE: Whether at the same time it will
24 turn out to be a more effective and timely NEPA analysis is
25 sure a good question.

1 COMMISSIONER GILINSKY: I'm sure a lot of people
2 have reservations about intervening, so there you are.

3 MR. GOSSICK: How about "some aspects of this bill
4 should," and so forth, "other may not or may have the opposite
5 effect"?

6 CHAIRMAN HENDRIE: Let me stick to this, and if you
7 can stand "should" put it in. Maybe you can turn down the
8 corner of the page if you want to come back and argue about
9 it.

10 COMMISSIONER GILINSKY: So let's say it like it is.

11 CHAIRMAN HENDRIE: Sure. I think we have been quite
12 clear along the line of what our position is on the treatment
13 of the NEPA thing.

14 You had a note ---

15 COMMISSIONER GILINSKY: Why don't we say the
16 reliability?

17 CHAIRMAN HENDRIE: I don't know, because Peter
18 drafted that up to replace, "to the extent that the present
19 nuclear licensing process is becoming an impediment, the
20 one important choice, this bill, if enacted should help."

21 That may be a better sentence, in fact, than the
22 one you had.

23 COMMISSIONER BRADFORD: Isn't it in fact believed
24 about standardization that it should also be -- it is true
25 that the aspect that you have in mind is early siting, that
reliability is not the adjective.

1 CHAIRMAN HENDRIE: Do you mean the stability?

2 MR. KELLEY: Reliability means to take uncertainty
3 out of the process.

4 COMMISSIONER BRADFORD: Yes, that's what I was
5 going to say, even it is on early siting. Predictability
6 would be acceptable.

7 COMMISSIONER GILINSKY: The predictability of the
8 nuclear choice, or the reliability of the nuclear choice.

9 MR. GOSSICK: Viability? Is it viable or not?

10 COMMISSIONER GILINSKY: The attractiveness to the
11 utility was the thought, wasn't it?

12 COMMISSIONER BRADFORD: When one is making up a
13 national energy plan, assuming someone ever does, that actually
14 use numbers in having some sense of how many plantsites you
15 have, having an inventory of the plantsites, does improve your
16 ability to rely on that particular set of statistics.

17 COMMISSIONER GILINSKY: Oh, you mean the reliability
18 in that sense?

19 COMMISSIONER BRADFORD: Yes, ability to rely.

20 COMMISSIONER GILINSKY: The nation's ability to
21 rely on NEPA --

22 COMMISSIONER BRADFORD: As far as I was concerned
23 you could use the word both ways because I thought as far
24 as standardization of how you could use it in a technical
25 sense, that the plans would be on line a greater percent of the

1 of the time and the other choice, you could use it in the sense
2 that one could rely heavily on it, but I'm not wedded to the
3 word.

4 COMMISSIONER GILINSKY: Well, it's the useability
5 of the nuclear option or the ability to exercise the usefulness.

6 CHAIRMAN HENDRIE: Read the previous sentence again,
7 the scratched-out sentence, read that again.

8 COMMISSIONER BRADFORD: Well, the difficulty I had
9 with the scratched-out sentence is that I think it says
10 something a little different about the present nuclear licensing
11 process than what we really wanted to say. That is, if
12 instead of process it said legislative framework that would
13 improve it for me, but I would still have to say something
14 like, "certain features or aspects of," because I still do have
15 my problem about the hearing section.

16 COMMISSIONER GILINSKY: Well, the previous sentence:
17 "Congress and the Administration envision an energy policy of
18 real choices -- among conservation, coal and nuclear in the
19 near term." What we are talking about is our ability to
20 exercise that choice. By the way, is coal and nuclear the
21 right way to say it or is it coal and uranium or coal and
22 nuclear energy. Is nuclear a noun?

23 COMMISSIONER BRADFORD: I think you are right. It is
24 one of those things that is slipping in.

25 CHAIRMAN HENDRIE: In the colloquial use it is

1 certainly going to be clear to the whole audience that hears
2 it. It may not be classic language, but I don't mind.

3 COMMISSIONER GILINSKY: I know that nuclear is a noun.

4 COMMISSIONER BRADFORD: Now, it is a noun and on its
5 way to being a verb.

6 CHAIRMAN HENDRIE: Do you mean if we put another "u"
7 in it?

8 COMMISSIONER GILINSKY: Should we put in energy or
9 uranium or something like that?

10 COMMISSIONER BRADFORD: I have no difficulty with
11 putting it in.

12 MR. KELLEY: I think that detracts. I think your
13 grammar is out weighing ---

14 COMMISSIONER GILINSKY: Nuclear a noun?

15 MR. KELLEY: I would go with it the way it is. If
16 you give it the ear test, I think it passes.

17 CHAIRMAN HENDRIE: All right, back to Peter's
18 sentence.

19 Aspects of this bill, I'm trying to coax you into
20 should, I think I have got you sort of teetering, at least
21 on center. How bad are economy and reliability there, it's
22 not great. Economy and attractiveness? I don't know.

23 COMMISSIONER BRADFORD: I have some difficulty with
24 attractiveness.

25 CHAIRMAN HENDRIE: We haven't fallen into the right

1 word.

2 COMMISSIONER BRADFORD: Should we just live with
3 economy?

4 MR. KELLEY: Availability?

5 COMMISSIONER BRADFORD: Availability is all right.

6 CHAIRMAN HENDRIE: You raised the question, and if
7 we could find a better one, I think we could do it. We just
8 don't seem to have it for the moment.

9 Okay, at the bottom of the page you had a question --
10 "A formal adjudicatory hearing must be ..." ---

11 COMMISSIONER BRADFORD: I have a question and I
12 think Vic's comment there is getting at the same thing, but it
13 really runs through the whole paragraph.

14 Is it really true that the Atomic Energy Act requires
15 a two-stage nuclear plant licensing process?

16 MR. MALSCH: I think so.

17 COMMISSIONER BRADFORD: And does the Act itself
18 contemplate a construction permit and all of that and then the
19 operating licensing hearing afterwards?

20 MR. MALSCH: Yes.

21 MR. KELLEY: That was the key issue in the old
22 PRDC case back in '61.

23 COMMISSIONER BRADFORD: Now, was the issue in that
24 case whether it required it or whether it allowed it?

25 MR. KELLEY: I think it was implicit, it was a

1 requirement, contemplates two steps with a more intensive
2 requirement to step one.

3 COMMISSIONER BRADFORD: That was exactly why I was
4 raising the question. I don't believe I actually ever read
5 that case, but what I remember was that that was in issue
6 and I just didn't remember whether the court had said this
7 is the way you have to do it. What the UAW was saying in that
8 case is that you have to have a one-step process.

9 MR. KELLEY: No, they wanted a more definite safety
10 finding in step one and the court said, no, a tentative finding
11 is okay at step one, because you are going to have more
12 definition in step two.

13 COMMISSIONER BRADFORD: But did it also say that
14 you have to?

15 CHAIRMAN HENDRIE: I don't think the issue came up.

16 MR. KELLEY: Marty, what is your ---

17 MR. MALSCH: I think the opinion is written in a way
18 that presumes that's the way it had to be, namely, a two-step
19 process. The issue in the case was which issue you could
20 postpone until the second step.

21 CHAIRMAN HENDRIE: The statute certainly lays it out,
22 step one and step two in pretty clear shape. I think you
23 really have to find some words that say, "the above isn't
24 necessary" and there aren't any words like that.

25 COMMISSIONER BRADFORD: As long as it is clear, I don't

1 mind this language. I wasn't sure that it was ---

2 COMMISSIONER GILINSKY: Now, what about this ---
3 do we need formal adjudicatory hearings?

4 CHAIRMAN HENDRIE: Yes, I think so.

5 COMMISSIONER GILINSKY: Where does it say that?

6 CHAIRMAN HENDRIE: It is in the statute.

7 MR. MALSCH: Well, the statute says hearing, but
8 from almost the beginning of the regulatory era in the 50's,
9 it has always been construed as formal hearing. And in
10 fact, in the early 60s when the issue was challenged by a
11 number of scholars in the field, people walked away from
12 the hearings convinced that the AEC was indeed right, and the
13 Congress hasn't yet appended. It is suppose to be formal
14 hearings. So it doesn't use the word formal or on the record,
15 that's been always the interpretation of Section 189(a).

16 MR. KELLEY: Well, the exception would be, Marty,
17 wouldn't it, when nobody intervenes. You could have a
18 hearing, but ---

19 MR. MALSCH: But even there, the AEC took the
20 view that an uncontested construction permit hearing was still
21 a formal, on-the-record hearing.

22 COMMISSIONER GILINSKY: Well, but the question is, are
23 we free to change that?

24 MR. KELLEY: My answer is that you have to have it
25 on the record, because that's the way I read the APA

1 in conjunction with the Atomic Energy Act. It think it requires
2 an on-the-record hearing.

3 MR. MALSCH: There are a whole bunch of decisions
4 which make no sense unless you presume that on-the-record
5 hearings are required, for example, in the Segal case back
6 in the 60's was a big challenge to our rulemaking authority
7 and the issue there was could we issue a rule without a formal
8 hearing, and the court said, oh, no, a formal hearing is
9 only for licensing, and rulemaking can have notice and comment.
10 Now, the presumption there was that licensing called for
11 formal hearings.

12 The same is true of the amendment to the Act in 191
13 authorizing Atomic Safety and Licensing Boards. It would
14 have made no sense unless you presume that Congress understood
15 hearings were on-the-record hearings. So while the language
16 isn't there, I think the interpretation has been understood
17 by the Commission and the Congress so long, I doubt you could
18 change it.

19 (Commissioner Bradford departed the meeting.)

20 COMMISSIONER GILINSKY: We are in fact, adopting
21 that interpretation there.

22 CHAIRMAN HENDRIE: The Commission and its predecessor
23 agency have adopted it for so many years and it is embeded
24 in such a set ---

25 COMMISSIONER GILINSKY: No, that's the practice.

1 The question is, do you want to confirm that here?

2 CHAIRMAN HENDRIE: I don't think it is the question
3 of we having the option of confirming or saying, no, no, it
4 is at our option, I don't think it is in our hands any more.
5 That's the advice you are getting from both the legal offices.

6 MR. REAMER: Language very close to this has appeared
7 in other testimony delivered before the Congress by
8 representatives of the Commission as well.

9 CHAIRMAN HENDRIE: For a long time.

10 MR. CASE: Any time a citizen writes in, I send him
11 the phamplet that says this.

12 CHAIRMAN HENDRIE: I really don't think it is at
13 the option of the Commission. I think if we voted today
14 to cease having adjudicatory hearings in licensing proceedings,
15 I don't think we would have the power to do that, I think we
16 would have an injunction out of the Circuit Court downtown
17 on us in a matter of literally minutes and that would be that.
18 I don't think they could make a case for us. So I think in
19 fact, the language is correct.

20 At page 5 a one in the middle of the page.

21 (Commissioner Bradford returned to the meeting.)

22 COMMISSIONER BRADFORD: Who, me?

23 COMMISSIONER GILINSKY: Do you want to leave this
24 thing, Peter, a formal adjudicatory hearing must be held?

25 COMMISSIONER BRADFORD: Well, I don't -- it isn't a

1 question I have ever looked at. I'm still having a problem,
2 Marty, with your answer to the question I raised a minute ago.
3 The reason I'm having it, and I just checked back, that Howard
4 doesn't share your opinion of the one-step versus the two-step
5 process and I don't know -- obviously he's I gather overseas,
6 but he had told you that in his estimation a one-step license
7 could be issued under the licensing structure we have now.

8 Sometime between now and Monday, before we put
9 the Commission on record on that analysis, I wonder if you
10 could find a way to get together with him and iron it out.

11 MR. MALSCH: That's news to me. I think we could
12 issue a construction permit which had within it an approval
13 of the final design, but we would still need to issue a
14 document called an operating license before the plant can go
15 into operation.

16 COMMISSIONER GILINSKY: Yes, but that's just a
17 pro forma ---

18 CHAIRMAN HENDRIE: It can't be pro forma if you
19 can demand a hearing on that at that stage.

20 MR. CASE: That's the two stage process. It might
21 be a little different in the second stage, but it is a two
22 stage process.

23 MR. REAMER: This whole paragraph could be written
24 to neutralize any particular statement about what's required
25 and could say in terms of what's happening right now. For

1 example, you could say the nuclear licensing process under
2 the Atomic Energy Act is now a two-stage one and then you
3 go on, a construction permit is obtained -- it could easily
4 be recast in very neutral terms.

5 CHAIRMAN HENDRIE: I have no objection to it, but if
6 somebody asks me is a formal hearing required, I'm going to
7 say it is my understanding that it is, because the question
8 could arise.

9 MR. REAMER: I think that's correct.

10 COMMISSIONER BRADFORD: You will make the verb
11 changes?

12 MR. REAMER: Yes, I will try to capture that
13 paragraph and circulate it real quick this afternoon.

14 CHAIRMAN HENDRIE: Well, just say what the practice
15 is and put it in those terms. I don't know that you need to
16 circulate it. Every time we circulate a piece of paper, why
17 another 48 hours goes by while we disagree over relatively
18 minor word choices. This thing has to be at the Committee
19 tomorrow.

20 MR. REAMER: I'll give it to the legal assistants,
21 and if they have problems they can call.

22 CHAIRMAN HENDRIE: Okay, I don't have problems with
23 the changes. Let's see, I guess I made them didn't I.
24 I made one and Peter made one.

25 COMMISSIONER BRADFORD: You made two.

1 CHAIRMAN HENDRIE: You are right.

2 Any difficulty there?

3 COMMISSIONER BRADFORD: No.

4 COMMISSIONER GILINSKY: None.

5 CHAIRMAN HENDRIE: Page 6 shows that it is clean in
6 all of the drafts that I have.

7 COMMISSIONER GILINSKY: Let me just go down it
8 quickly.

9 COMMISSIONER BRADFORD: There are a couple of fugures
10 in there that I'm sure are accurate, I'm not sure -- well, I
11 trust they are accurate.

12 I'm not sure whether used here they don't mislead
13 a little. That 20.1 months includes voluntary delays on the
14 applicant's part?

15 COMMISSIONER GILINSKY: Yes, it would, yes.

16 Can't we drop the point 1 (.1)?

17 COMMISSIONER BRADFORD: That 20.1 months, the point
18 one includes projects if the applicants choose to delay?

19 COMMISSIONER GILINSKY: Well, more importantly the
20 33 would include this.

21 MR. CASE: I assume it does, I don't know where the
22 numbers came from.

23 COMMISSIONER GILINSKY: Where do they come from?

24 MR. REAMER: They are from Harold Denton's little
25 booklet.

1 MR. CASE: Denton's task force?

2 MR. REAMER: Yes. I assume they have been adjusted to
3 account for factors that would obviously distort the impression
4 they leave.

5 MR. CASE: No, I don't believe so.

6 COMMISSIONER GILINSKY: No, they certainly have not.

7 MR. REAMER: They have not been adjusted to correct
8 misimpressions?

9 COMMISSIONER GILINSKY: Of course not.

10 MR. REAMER: Sorry.

11 COMMISSIONER GILINSKY: But what bothers me also here
12 is that while the statements are clear enough, I think the
13 casual listener may get the impression these are all gathered
14 up and I think that that's important that that be clarified in
15 some way, because the 20 is really included in the 33 somewhere.

16 One way to do it would be 20 months to commence
17 preliminary construction of site clearance activities and
18 then another 13 months for the construction permits.

19 MR. CASE: Except that's not actual in some cases.
20 On the average it does.

21 COMMISSIONER GILINSKY: Well, that's right, but I think
22 you are going to find that people are just going to add all
23 of these numbers up, the 20, the 33, the 6.7 and the 7.

24 Or you could give the 33-month number and say where
25 an LWA is granted it comes at the 20-month point. Something

1 like that, on the average.

2 CHAIRMAN HENDRIE: Why don't we collapse some of
3 these things a little bit.

4 Item 1, 20 months for that activity, including 6.7
5 months time taken in hearings in contested cases.

6 COMMISSIONER GILINSKY: Right.

7 CHAIRMAN HENDRIE: Are the drafters ready to note?

8 So Item 1 would read the way it reads down to the
9 semicolon, which ought to be converted to a comma and then
10 go on -- "of this time, 6.7 months was taken up in hearings
11 in contested cases."

12 COMMISSIONER BRADFORD: Let me suggest that that
13 second sentence be modified in a way that -- I don't have the
14 words -- but something that doesn't suggest that in fact there
15 was a hearing board sitting for 6 or 7 months five days a week
16 hearing testimony.

17 CHAIRMAN HENDRIE: But there was.

18 COMMISSIONER BRADFORD: That's not correct.

19 CHAIRMAN HENDRIE: Well, that certainly is correct.

20 MR. REAMER: I think the hearing might include the
21 prehearing process as well, actually it is an on-going discovery,
22 filing of testimony.

23 MR. GOSSICK: Call it the hearing process.

24 MR. CASE: The hearing phase or something.

25 COMMISSIONER BRADFORD: Anything like that is fine. I

1 wouldn't want to give the impression that this was like an
2 anti-trust case.

3 CHAIRMAN HENDRIE: Okay, what language would you
4 use, Bill?

5 MR. STOIBER: "Taking up hearing procedures in
6 contested cases."

7 MR. REAMER: How about the "hearing phase"?

8 COMMISSIONER GILINSKY: I tell you, I would start
9 with the 33 months, I mean, that's really your big number,
10 the construction permit. And then say "where an LWA is
11 requested it comes at the 20-month point."

12 MR. REAMER: Well, one is definitely bigger, but
13 the other does tend to come first.

14 COMMISSIONER GILINSKY: Well, it is not the fact
15 that it is bigger ---

16 CHAIRMAN HENDRIE: I was going to help that out by
17 chucking -- noting at the end of the construction permit, saying,
18 that this time would include the 20 months to obtain an LWA
19 where one was applying for it. That would be the tag line for
20 33.

21 COMMISSIONER GILINSKY: Okay.

22 CHAIRMAN HENDRIE: Okay, are we clear on one?

23 MR. REAMER: I would be more clear if you were
24 to read it one more time.

25 CHAIRMAN HENDRIE: Take out the point one, just

1 because it suggests the precision of one part 200 which
2 is beyond, I'm afraid, even though it does shorten the time
3 a bit.

4 "20 months elapsed between the docketing of applicant's
5 environmental information to NRC and NRC authorization for
6 the applicant to commence preliminary construction and site-
7 clearance activities, this time includes 6.7 months taken up
8 in the hearing phase in contested cases," or it could be: "in
9 the hearing phase -- taken up in the hearing phase of
10 contested cases;

11 "(2) 33 months represented the period between the
12 docketing of an applicant's safety information to NRC and NRC
13 authorization of a construction permit."

14 COMMISSIONER GILINSKY: Let's see, they docket them
15 both at the same time don't they?

16 CHAIRMAN HENDRIE: No, not necessarily.

17 COMMISSIONER GILINSKY: Typically, don't they?

18 MR. KELLEY: Less than half the time.

19 COMMISSIONER GILINSKY: And how far apart would they
20 be?

21 MR. MULLER: It would be about 6 months.

22 COMMISSIONER GILINSKY: With the environmental one
23 coming earlier?

24 MR. CASE: Either way.

25 COMMISSIONER GILINSKY: Well, I guess I think it is

1 worth saying, because I think the relation of one starting
2 point to the other is significant, because again, I think one
3 doesn't want to get the notion ---

4 CHAIRMAN HENDRIE: It's better to -- because they
5 really are both important and they aren't linearly contained
6 one within the other in quite the simple way that 20 plus 13 ---

7 COMMISSIONER GILINSKY: Don't you have to have some
8 of the safety information before you get the LWA?

9 MR. CASE: Sure, site suitability, yes.

10 COMMISSIONER GILINSKY: Now, would that cover the
11 environmental report or would that come ---

12 MR. CASE: You send it in early, you are required to
13 have that information at the same time.

14 CHAIRMAN HENDRIE: You see, it could be. So one
15 important thing is that where a utility is trying to get on
16 the site with a shovel as early as possible, it takes 20 months
17 from the time they could get that kind of information to us
18 and the time that we let them have an LWA.

19 Another piece of information is that it takes 33
20 months from the time they get appropriate information to us
21 until we issue a construction permit. Then what I would add
22 as a tag line is that although it is not -- that that time ---

23 COMMISSIONER GILINSKY: Generally includes.

24 CHAIRMAN HENDRIE: Generally covers time for issuance
25 of a limited work authorization if one is requested. And I think

1 the word "generally covers" is important, because, as I say,
2 it isn't a nice clean --

3 COMMISSIONER GILINSKY: Let me ask you one more thing.

4 The relations of all this time or the amount of all
5 of this time which is actually on the critical path, is, I think
6 not the total time. In other words, even if there were no
7 licensing process they would not have -- it wouldn't be often
8 running per day, I would think.

9 CHAIRMAN HENDRIE: I wouldn't bet on that.

10 COMMISSIONER GILINSKY: When do they order their
11 systems?

12 CHAIRMAN HENDRIE: About a year before these filings.

13 COMMISSIONER GILINSKY: A year before the filings?

14 CHAIRMAN HENDRIE: Yes. And if they decide to go
15 for a plant and get an architect-engineer lined up if they
16 used one before that. You see, to accumulate the information
17 for the filings takes -- well, the environmental stuff, you
18 have to make up your mind you are going to do it and it takes
19 a year to get it together. Now, if you didn't have a licensing
20 process they would be in there digging at that point.

21 COMMISSIONER GILINSKY: Okay.

22 CHAIRMAN HENDRIE: Okay, Item 2 would read: "33 months
23 represented the period between the docketing of an applicant's
24 safety information to NRC and NRC authorization of a construction
25 permit" -- then I would go on and say, "this time includes 7

1 months in the hearing phase in contested cases and also
2 generally covers the time to obtain a limited work authorization
3 where one is requested."
4

5 COMMISSIONER GILINSKY: You might reference the previous
6 20 months, I mean -- or reference Item 1, something like that.

7 Now, what would you cite as the time on the critical
8 path, the 20 months?

9 CHAIRMAN HENDRIE: Yes, it's the 20 months. If the
10 construction permit follows in a reasonable time, it is not
11 a pacing item. He is able to go ahead in a reasonable way.
12 You might get a mild argument from some applicants, but
13 basically it is the 20 months.

14 COMMISSIONER GILINSKY: Basically it is the 20 months.

15 CHAIRMAN HENDRIE: Yes, plus the preparation time
16 to the extent that that would ---

17 MR. CASE: Could I make one more suggestion on this
18 paragraph. You ought to tie it to a recent staff study,
19 because you know, if I looked at the averages today they
20 might be a little different.

21 COMMISSIONER GILINSKY: Yes, let's reference that
22 study.

23 MR. KELLEY: Is this the Denton Report?

24 MR. CASE: Sir?

25 MR. KELLEY: These numbers are out of the Denton
Report?

1 MR. CASE: I assume.

2 CHAIRMAN HENDRIE: The Denton Report.

3 MR. REAMER: I have it right now, "in a recent staff
4 study, we found," ---

5 CHAIRMAN HENDRIE: Okay, good.

6 MR. REAMER: Could I have the thought after the "in
7 general" portion of what now is the 2, the last spot in two.

8 CHAIRMAN HENDRIE: The words would be, "and generally
9 covers the 20 months required to obtain a limited work authori-
10 zation where one is requested."

11 MR. REAMER: Okay, thank you.

12 CHAIRMAN HENDRIE: Good, then Item 3 would be that
13 we had spent 7 man years on the safety review.

14 COMMISSIONER GILINSKY: What's the significance of
15 that? Is that good, bad, too high or ---

16 CHAIRMAN HENDRIE: Oh, it gets on to the thing that --
17 here ---

18 COMMISSIONER GILINSKY: I guess I think reducing staff
19 time is not all that important here, because the amount of
20 money expended on staff time compared to the amounts involved
21 that are gained or lost in the building of the plant turns
22 out to be pretty insignificant. And if you thought you could
23 save overall time by spending more staff effort you would do
24 it.

25 MR. CASE: I never knew this was an objective of the

1 bill, to reduce the time it would take.

2 COMMISSIONER GILINSKY: Yes, I would just drop that.

3 CHAIRMAN HENDRIE: Drop which?

4 COMMISSIONER GILINSKY: The fact that 7 man years
5 were expended. I mean, that has to do with what your safety
6 standards are and so on, I mean, you know, maybe that's right,
7 maybe that's wrong. It just raises another whole bunch of
8 issues.

9 CHAIRMAN HENDRIE: What do you think, Peter?

10 COMMISSIONER BRADFORD: I guess that I --- Well, I
11 don't understand what it adds, so my inclination would be to
12 drop it, but I don't care very strongly unless somebody wants
13 to gather statictics.

14 COMMISSIONER GILINSKY: Well, then I would say -- I
15 would put it somewhere else and say ---

16 MR. REAMER: It already appears on page 13. In the
17 context of the sentence it says that in one case involving
18 four proposed plants the staff manpower expended in safety
19 review averaged 2.5 man years as compared with 7.0 man year
20 average for custom designs.

21 COMMISSIONER GILINSKY: Fine.

22 CHAIRMAN HENDRIE: That's in a deleted section.
23 Take it out here, I don't care.

24 MR. CASE: I don't understand why that whole subject
25 is in the testimony, to tell you the damn truth.

1 COMMISSIONER GILINSKY: Yes, frankly, I would take
2 it out.

3 MR. CASE: The purpose of standardization is to
4 get the review off the critical path.

5 COMMISSIONER GILINSKY: And it may well be that you
6 want to -- I doubt it -- but that you want to spend more staff
7 effort.

8 CHAIRMAN HENDRIE: It is more than that. It is to
9 stablize the review. And in fact, if people had to choose
10 between stablizing and getting it off the critical path, I
11 bet you a cookie, they would stick with stablizing.

12 COMMISSIONER GILINSKY: I think that's right.

13 Also, I think it is confusing, you are switching
14 units from months to man years.

15 CHAIRMAN HENDRIE: Let's take out the 7 man years,
16 good.

17 COMMISSIONER GILINSKY: Okay.

18 CHAIRMAN HENDRIE: How about the "questions were
19 asked by" ---

20 COMMISSIONER GILINSKY: -- I would take that out
21 too ---

22 MR. REAMER: It seems like it should follow the same
23 precedence.

24 CHAIRMAN HENDRIE: All right, now what do we do with
25 the last paragraph?

1 COMMISSIONER GILINSKY: Now, wait a minute.

2 I think that -- I would put in some statement
3 saying that in recent years, these times have been affected
4 by the utilities own schedule, therefore, they are not
5 necessarily indicative of what this process can do.

6 CHAIRMAN HENDRIE: Okay, now, how would this thing
7 read?

8 COMMISSIONER GILINSKY: This is a proposal, it would
9 fit with your earlier comments about there are some things which
10 are just not susceptible to legislative-administrative
11 solutions.

12 CHAIRMAN HENDRIE: This would be language which
13 would replace the paragraph starting "These data," right?

14 MR. REAMER: Well, it could be inserted this way --
15 you could say "While these data are to some extent affected
16 by a utility's own plans, they do suggest the two objectives
17 could be..."

18 COMMISSIONER GILINSKY: Well, I think it is important
19 to say that in recent years utilities have slowed down the
20 rate of which they are moving. Is that not right, Ed?

21 MR. CASE: Yes.

22 COMMISSIONER GILINSKY: And that these numbers are
23 not necessarily indicative of ---

24 MR. CASE: He was proceeding on the assumption
25 that we called those up, at which we didn't.

1 MR. REAMER: Yes, but my change here was intended
2 to correct that earlier.

3 COMMISSIONER BRADFORD: But you have already made
4 a change here, haven't you?

5 COMMISSIONER GILINSKY: Yes.

6 COMMISSIONER BRADFORD: I have no problem with that
7 change, except I guess I'd say ---

8 CHAIRMAN HENDRIE: Read it, because it didn't seem to
9 scan to me, down the middle.

10 COMMISSIONER GILINSKY: "To a certain extent utilities
11 have been slowing down plant construction because conservation
12 efforts have tended to push back," I would say, "the time
13 in which power for the plants is needed." Or one could say
14 uncertainties about low growth, or ---

15 COMMISSIONER BRADFORD: I would have said falling
16 demand.

17 COMMISSIONER GILINSKY: Or falling demand, or
18 uncertainties about demand.

19 COMMISSIONER BRADFORD: It is not the uncertainties,
20 it is the fall that has pushed back the time. If it were
21 just uncertainties it would be going forward.

22 COMMISSIONER GILINSKY: Well, I think it is uncertainty.

23 CHAIRMAN HENDRIE: I think it is uncertainty. It is
24 less this year than you thought it would be and now you are
25 in a great puzzle over what to use for future years.

1
2 COMMISSIONER BRADFORD: Well, that's right, but your
3 decision to defer is based on the realization that you won't
4 need the plant.

5 CHAIRMAN HENDRIE: You won't know if you will need the
6 plant.

7 COMMISSIONER GILINSKY: Well, it is an immediate
8 dropoff in the plant.

9 MR. CASE: But, this also includes people slowdowns,
10 they don't know what the hell to do, so they kind of ---

11 COMMISSIONER BRADFORD: Yes, but what they are really
12 saying is, once I thought I needed this plant in 1982 and
13 now I know that I can get along without it until 1984.

14 MR. CASE: But before that they go through a process
15 of "I'm not so sure" and say we will push the licensing ahead.

16 COMMISSIONER BRADFORD: Do you mean what they may
17 be saying is once I thought I needed it in '82, but I always
18 knew I could get by without it and now that finance is getting
19 difficult or we have got construction problems or something,
20 we are just going to get by without it.

21 MR. CASE: Something like that.

22 CHAIRMAN HENDRIE: Suggestion for language?

23 "Slowing down plant construction because..." ---

24 COMMISSIONER BRADFORD: "... the demand uncertainties
25 have postponed..."

CHAIRMAN HENDRIE: I think that's excellent.

1 MR. CASE: Well, it's not the plant construction.
2 It is prosecuting the application, because you are really
3 talking about times of prosecuting the application here.

4 CHAIRMAN HENDRIE: "... and uncertainties have
5 postponed..." solves your forward or back problem ---
6 "... have postponed the time at which power plant is needed ..."

7 COMMISSIONER GILINSKY: Close. "thought to be
8 needed..."

9 CHAIRMAN HENDRIE: "... postponed the time at which
10 the plant is thought to be needed."

11 COMMISSIONER GILINSKY: Yes.

12 CHAIRMAN HENDRIE: Is there a period then?

13 COMMISSIONER GILINSKY: Yes.

14 CHAIRMAN HENDRIE: Mine didn't have a period.

15 Now, this starts a new sentence then. "To the
16 extent..." good, that solves my problem.

17 "To the extent that it is the regulatory process
18 itself which slows down the construction of a plant. Licensing
19 reform should seek to reduce the amount of time that the
20 licensing process is on the critical path of the facility's
21 construction." I have no problem with that.

22 COMMISSIONER GILINSKY: Why not say: "... is actually
23 holding up the plants construction." Critical path goes
24 with nuclear reliability.

25 CHAIRMAN HENDRIE: What's the suggestion?

1 COMMISSIONER GILINSKY: It is holding up the plants
2 construction -- is actually holding up the plants construction.

3 MR. REAMER: Well, the concept of "critical path" was
4 introduced on the previous page, so I assume you don't like it
5 there either.

6 CHAIRMAN HENDRIE: I'm lost with regard to the change
7 to the change.

8 "To the extent that it is the regulatory process
9 itself which ..."

10 COMMISSIONER GILINSKY: "... slows down the
11 construction of a plant..."

12 CHAIRMAN HENDRIE: "... licensing reform should seek
13 to reduce the amount of time..."

14 COMMISSIONER GILINSKY: Well, seek to -- "... the
15 regulatory process itself, which holds up construction of a
16 plant, licensing reform should seek to reduce..."

17 CHAIRMAN HENDRIE: Instead of talking about "reduce"
18 why don't we talk about improving the process in some fashion.

19 MR. CASE: "... slows down construction..." is too
20 narrow. It should be "... increases the time necessary to
21 get a plant on line..."

22 COMMISSIONER GILINSKY: Why don't we just recast the
23 whole thing and say, "the objective of the regulatory reform
24 is to reduce the licensing contribution to the lead time..."

25 CHAIRMAN HENDRIE: Yes, right.

1 COMMISSIONER GILINSKY: That's one idea. You are
2 introducing other ideas. I would say, "... one of the
3 objectives of regulatory reform is to reduce the lead time
4 to build the plant..." I think it is just one of the objectives.

5 CHAIRMAN HENDRIE: Okay, we will retain the second
6 sentence down through "... the plant..." and then say, "... one
7 of the objectives to licensing reform should be to..." what
8 was it? "... reduce..."

9 COMMISSIONER BRADFORD: "... to reduce the amount of
10 time..."

11 CHAIRMAN HENDRIE: Yes.

12 Now, if the drafters have got that clear I would
13 be surprised. May I read?

14 MR. REAMER: Please.

15 CHAIRMAN HENDRIE: Okay, instead of "These data"
16 one starts: "To a certain extent utilities have been slowing
17 down plant construction because demand uncertainties have
18 postponed the time at which power from the plant is thought to
19 be needed, to the extent that it is the regulatory process
20 itself which slows down construction of a plant. One of the
21 objectives of licensing reform should be..." ---

22 MR. CASE: You put a broad interpretation on
23 construction, really meaning the whole cycle.

24 COMMISSIONER GILINSKY: I was going to return to your
25 point.

I think, if I may modify my own words here, "To a

1 certain extent these figures reflect some slowing down of
2 the prosecution of the license application of the utilities,
3 because of uncertainties in demand projections." That's
4 merely a thought, because it goes back to these numbers.
5

6 MR. CASE: It all deals with construction itself
7 starts.

8 COMMISSIONER GILINSKY: Yes. So to a certain
9 extent ---

10 CHAIRMAN HENDRIE: Yes, all right.

11 If you can find any place, Bill, on the page to
12 make the change I would suggest, "To a certain extent, these
13 data reflect the fact that utilities..." et cetera. Okay?

14 MR. REAMER: Uh-huh.

15 CHAIRMAN HENDRIE: Now, see if you can write that in
16 and we will see where we go from there.

17 "... utilities have been slowing down plant construction
18 because demand uncertainties have postponed the time at which
19 power..." --- better make it "a plant" we have got a little
20 singular plural problem and that may help, "... is thought
21 to be needed to the extent that it is the regulatory process
22 itself which slows down the construction of a plant. One of
23 the objectives of licensing reform should be to reduce the amount
24 of time that the licensing process is on the critical path
25 of the facility's construction."

COMMISSIONER GILINSKY: You wouldn't prefer "... is in

1 the way of facility's construction.." or is that not the
2 same.

3 MR. REAMER: How about delay.

4 CHAIRMAN HENDRIE: I think for the audience you
5 are going to be addressing this critical path is going to
6 be well enough understood and less confusing, actually, than
7 talking about in the way of.

8 MR. CASE: I really think it is pretty bad, because
9 it talks about plant construction and they are not at all on
10 the critical path after construction starts.

11 CHAIRMAN HENDRIE: "... which delays the construction..."
12 Okay?

13 MR. KELLEY: "Delays the beginning of constuction"?

14 MR. CASE: Yes.

15 CHAIRMAN HENDRIE: Let's just say, "... delays the
16 construction..." okay. It can be read either way and it
17 includes the meaning. I don't have room on my page to make
18 any more changes.

19 Onward.

20 COMMISSIONER BRADFORD: Yes, except I guess the OGC's
21 comments relate to the specific comments, not necessarily
22 the general comments. I just sort of get off the boat at
23 this point.

24 I don't think that the concepts involved in this bill
25 really are res judicata at all. The opportunity for hearing

1 standard isn't anything that any treatise on res judicata
2 would recognize. What this bill does is not what we are
3 saying here that it does. We say that issues resolved in
4 earlier proceedings should be accorded some presumption of
5 the construction, and that's perfectly true. What the bill
6 says that the issues that it could have raised in the earlier
7 proceedings must now be presumed to be resolved.
8

9 COMMISSIONER GILINSKY: It depends what you are
10 referring to here. You are speaking of the section which
11 says that somebody had an opportunity to raise that, I
12 gather, and should be established in the early siting.

13 COMMISSIONER BRADFORD: Yes, but you can't get away
14 from the interplay. You are right, but in the next two
15 paragraphs on it goes on to finality concept is incorporated
16 in three features, but it is also incorporated in the hearings
17 that are available with regard to plants involved in the
18 issue.

19 COMMISSIONER GILINSKY: I would say the important
20 concept here is to push the industry and get as much work
21 done before it starts building the plant rather than in the
22 initial concept.

23 MR. REAMER: Yes, I understand your comment. It was
24 that this is too narrow when compared with the bill, because
25 the bill would limit future litigation of issues that could
have been raised, whereas this is cast in terms of what was raised.

1 COMMISSIONER BRADFORD: This describes what to me
2 is one of the most unreasonable features of the bill in very
3 reasonable terms. If this is what the bill said, I'd have
4 much less trouble with it than I do.

5 CHAIRMAN HENDRIE: I suppose it is a clarifying
6 technical change in that section.

7 MR. KELLEY: My treatise on res judicata says that
8 if you either raised it before or you could have raised it
9 before ---

10 COMMISSIONER BRADFORD: But you had to be in the
11 hearing, you had to be part of the hearing.

12 MR. KELLEY: Yes, the same parties.

13 COMMISSIONER GILINSKY: Yes, but this isn't the case
14 there is it?

15 MR. KELLEY: You could broaden it to that extent. But
16 the concept it could have raised is in res judicata.

17 COMMISSIONER GILINSKY: But it is not the same person.
18 In other words, it could be somebody else 10 years later and ---

19 MR. REAMER: There is a limited portion of res judicata
20 in which it can be used in a situation in which the parties
21 are not identical.

22 CHAIRMAN HENDRIE: Now, let me make a suggestion.

23 There was criticism up from ELD on this section,
24 also remarking that it seemed difficult to start out this
25 section with this -- with the finality concept since that was --

1 since the no prior opportunity test ---

2 COMMISSIONER GILINSKY: Are we clear on what that
3 means?

4 COMMISSIONER BRADFORD: No prior opportunity?

5 CHAIRMAN HENDRIE: Well, let's get to that in a
6 moment.

7 What I want to do is say, "overview of HR 11704." --
8 delet from there over to the start of the paragraph on page 8
9 "This finality concept..." Now, I need a new lead-in
10 sentence. Remember that we have just been talking about
11 getting off the critical path and I would suggest a lead-in
12 sentence which starts out, "To accomplish the objective of
13 reducing the amount of time that the licensing process is
14 on the critical path or facility construction, as well as to
15 provide increased stability of the licensing process..." ---

16 COMMISSIONER BRADFORD: I'll buy almost anything you
17 put in there that is along that thought.

18 CHAIRMAN HENDRIE: Comma, and then I want to get on
19 and say, "...there are three principal features of the bill..."
20 okay? And now I'm over here and I want to name the features
21 that help get you off the critical path and reduce the amount
22 of time you are on the critical path and help stabilize the
23 process. Except I would make number one early site reviews
24 and number two standardization of reactor designs, and number
25 three the combined construction permit operating license.

1 (Mr. Kelley nods in the affirmative.)

2 COMMISSIONER GILINSKY: Because if you do it as the
3 whole three features of it, I think the third one is NEPA ---

4 MR. KELLEY: Yes, but that doesn't speak to his
5 lead-in sentence.

6 COMMISSIONER GILINSKY: No, I understand.

7 CHAIRMAN HENDRIE: And you are getting to that on
8 the next page.

9 COMMISSIONER GILINSKY: Well, what I would do is
10 I would throw in the combined construction permit operating
11 license in the standardization and I would say, "... including
12 the feature where final designs are available..." I mean,
13 that's really a sub-part of the standardization.

14 CHAIRMAN HENDRIE: No, because it isn't tied to
15 standardization per se. I'm sure it will be used for the most
16 part that way, but you could come final on a custom design,
17 at least in principle.

18 Why do you want to bring the state NEPA thing in at
19 this point?

20 COMMISSIONER GILINSKY: I wouldn't. I would preserve
21 the notion that the three features of the bill are really
22 early siting, standardization and the state NEPA.

23 CHAIRMAN HENDRIE: Why do you count -- I don't understand.

24 COMMISSIONER GILINSKY: Well, okay.

25 MR. REAMER: It depends on your approach. If you are

1 approaching the problem ---

2 CHAIRMAN HENDRIE: There are other features of the
3 bill, you know, if you wanted to say this bill has 12 or 10
4 or 7 or something like that, significant features and list
5 them, but I don't think you could come out three.

6 Here I was going to say, here are three features
7 that have to do with reducing time on the critical path and
8 improving the stability of the licensing process. I don't
9 know whether we can think of any more, but -- and they ought
10 to be three main features, okay, or some equivalent or to
11 suggest that there are some other things that come along
12 that are less of a --- can you think of any more that
13 contribute to those things, by the way?

14 COMMISSIONER GILINSKY: Well, it is not standardization
15 of reactor design, it is providing for licensing of
16 standard design, isn't it, well before construction.

17 CHAIRMAN HENDRIE: True, but if you are trying to
18 make a list, one thru three, and you are going to go ahead
19 and talk about the thing. All you are looking for here is
20 some identifying phrase to go with the 1, 2, 3.

21 COMMISSIONER GILINSKY: Well, it should be stated
22 accurate.

23 CHAIRMAN HENDRIE: Well, to be perfectly accurate you
24 many need some sentences.

25 COMMISSIONER GILINSKY: Well, there are different kinds

1 of reviews. You are talking about a construction permit and
2 operating license, an early site license review and your
3 standard design license.

4 COMMISSIONER BRADFORD: Isn't that problem really
5 one that rests with the drafters, at least -- I mean, there
6 is no real doubt that we are just trying to get a flow here
7 and we are not really saying that these are the three
8 primary features of the bill. They are the three features
9 that are relevant to the context.

10 MR. REAMER: Well, early site review would not embody
11 an approval that would permit you to construct a reactor.

12 COMMISSIONER GILINSKY: Yes, but you are getting a
13 license.

14 MR. KELLEY: No, I don't think you are.

15 COMMISSIONER GILINSKY: Or a permit, or are you getting
16 a decision.

17 MR. KELLEY: You are getting a decision.

18 CHAIRMAN HENDRIE: In principle you can get a
19 decision now. I think the permit is going to be regarded
20 as substantially more binding.

21 So yours would be something like, "(1) early site
22 reviews and site permits. (2) licensing of standardized
23 reactor designs..."

24 MR. REAMER: Well, licensing wouldn't be technically
25 complete, because there would be a situation in which you would

1 have approval of a design that wouldn't involve the license
2 and perhaps maybe an approval of standardized. That's what
3 the bill speaks of, approval of standardized designs.

4 COMMISSIONER GILINSKY: Put it in.

5 CHAIRMAN HENDRIE: Okay.

6 "... and..." -- well, how about the combined
7 construction permit operating license.

8 Now, the next sentence, Peter, in that paragraph on
9 page 8 -- delete the abortive try to -- then the sentence --
10 "... speaking very generally, however, each of these three
11 features contemplates early regulatory decisions that would
12 be accorded a presumption of correctness in subsequent
13 administrative proceedings."

14 Now, I don't think that's a problem, that's not the
15 problem you have right?

16 COMMISSIONER BRADFORD: That's right, and especially
17 now that we have gotten rid of the paragraph that was really
18 causing the problem.

19 CHAIRMAN HENDRIE: Now, let's see. Would somebody
20 read me my new lead-in sentence so I know what to do with
21 the second concept because I have to make it balance.

22 MR. REAMER: Here's what I wrote down.

23 COMMISSIONER GILINSKY: I think you want to drop
24 "second concept." You want to start with, "... the licensing
25 process by its nature..."

COMMISSIONER BRADFORD: Yes, but the early siting ---

1 COMMISSIONER GILINSKY: Now, you are going over these
2 things.

3 CHAIRMAN HENDRIE: I see, okay. Good, you are right.
4 I had gotten myself sort of crossways in the track and thought
5 we were about to plunge into NEPA reviews. Good.

6 Now, how do we want to carry in to it?

7 COMMISSIONER GILINSKY: I would just start, "... with
8 the licensing process..." right here.

9 MR. REAMER: The two sentences that would be deleted
10 by that are certainly captured in your lead-in.

11 COMMISSIONER GILINSKY: Right. That's a good point.

12 CHAIRMAN HENDRIE: Is that okay with everybody?

13 The third line from the bottom you start, "The
14 licensing process to be better structured..."

15 Nobody seemed to have much difficulties, minor changes
16 by Peter and me down below that looks fine.

17 Can we leap to the bottom of page 9. Oh, wait a minute.

18 Yes, I think we can leap to the bottom of page 9.

19 Now, there was a sentence about intervenor funding:
20 "This is a complet and controversial idea worth trying ..."
21 Peter's suggestion is to delete it and to talk about our
22 appeals board has frequently contested and so on and so on.

23 Peter, your problem was that the complex and
24 controversial idea was too grudging and ---

25 COMMISSIONER BRADFORD: That's right.

1 CHAIRMAN HENDRIE: I'm having some difficulty with
2 the new proposal on account of ---

3 COMMISSIONER BRADFORD: How would you feel about
4 putting the other sentence back in and then going in to what
5 I have here, because I think I really deleted that one
6 and I have just decided to replace it with something, but
7 I wouldn't mind leaving it there and then running in to what
8 I put.

9 CHAIRMAN HENDRIE: Well, let me see.

10 "... our appeals board is certainly attested..." do
11 they frequently attest or ---

12 COMMISSIONER BRADFORD: I can produce a fair list.

13 CHAIRMAN HENDRIE: Are there an array of occasions or
14 do we keep seeing the same quote.

15 COMMISSIONER BRADFORD: There are four or five that
16 I can list.

17 CHAIRMAN HENDRIE: There are a number of separate
18 citations by the appeals board?

19 MR. MALSCH: Yes.

20 COMMISSIONER BRADFORD: If you would prefer "... on
21 several occasions..." that's fine.

22 CHAIRMAN HENDRIE: I don't suppose you would like
23 "longer".

24 COMMISSIONER BRADFORD: I don't mind.

25 CHAIRMAN HENDRIE: Let's see, I think the comments
back where we are saying, "... now, here's what the Commission

1 thinks about this..." this is just a quick citation of these
2 principle features and then say, here's what we think about
3 them. That language seemed all right.

4 Let's see, how much toning down can I encourage here.

5 COMMISSIONER BRADFORD: Okay, I see what your
6 problem is there. I don't mean that those aspects of the
7 case that the staff presents aren't presented fairly and
8 maybe it would be a good thing to get that word out of there.
9 Because what I meant to say is that in a case where there
10 are several different perspectives to be argued, you can't
11 expect -- and the perspectives are inconsistent with each
12 other. You can't expect the same people to do justice to
13 a number of different clashing ideas with equal purview.
14 But I see your problem.

15 MR. CASE: I would like fully better.

16 COMMISSIONER BRADFORD: Well, I don't even mind
17 dropping the adverb. In fact what I would do is to start
18 that sentence ---

19 CHAIRMAN HENDRIE: Can you stand to do without the
20 sentence?

21 "Note that the Appeals Board has frequently attested..."
22 and just go on.

23 COMMISSIONER BRADFORD: Because I think the point is
24 important, that is, I think I was asked in my own confirmation
25 and I know I have been asked testifying on the subject before,

1 Why should we fund intervenors, what's your staff for.
2 We are paying Commission salaries to represent the public
3 interest, why does anybody else have to.

4 What I would suggest would be a sentence which
5 simply said our staff and the applicants cannot be expected
6 to present all possible views in all of our cases.

7 MR. KELLEY: Do you want, "present all possible.."
8 "Contrasting"? Reasonable? Possible is far out it seems to me.

9 CHAIRMAN HENDRIE: Where are we?

10 COMMISSIONER BRADFORD: "Our staff and the applicants
11 cannot be expected to fully present all reasonable views in
12 all of our cases."

13 MR. REAMER: "... all reasonable views..." or "... all
14 contrasting views?"

15 COMMISSIONER BRADFORD: Is "contrasting" better?
16 All right.

17 In any case, drop those four words and the sentence
18 now starts, "Our staff..."

19 CHAIRMAN HENDRIE: And it would read: "Our staff and
20 the applicants..."?

21 COMMISSIONER BRADFORD: Right.

22 CHAIRMAN HENDRIE: And then what?

23 MR. REAMER: "...cannot be expected fully to present
24 all contrasting views in all cases."

25 MR. KELLEY: Strike the "all" before "contrasting"
and say, "contrasting views in all cases." I think that was

1 a little awkward.

2 MR. REAMER: Would the introductory thought: "... in
3 contested cases our staff..."? Would that be helpful?

4 CHAIRMAN HENDRIE: I don't know whether we are
5 improving things or making them worse.

6 Before we delve further into this, let me stop and
7 check the schedule affair.

8 When could you come back? Vic's going to have to
9 leave in another 10-15 minutes. What does your afternoon
10 look like?

11 COMMISSIONER BRADFORD: I won't be here tomorrow.
12 I plan to use the afternoon just to finish off my own statement
13 in light of what we have gotten done here. What I think would
14 work best for me is if we come back late in the afternoon,
15 that way I can read what I have written and get that retyped
16 out there while we are working in here. But I would also
17 like to leave at 4:15, so.

18 COMMISSIONER GILINSKY: I would have to leave around
19 5:00.

20 CHAIRMAN HENDRIE: I guess what we ought to do is
21 plan to come back at 2:00.

22 COMMISSIONER BRADFORD: How about 2:30?

23 CHAIRMAN HENDRIE: I'm sorry, 2:30. See if we can
24 manage that.

25 Let's go for the last 10 minutes and clear up.

1 Up here, I know the point you are trying to make, but
2 I'm a little worried about the sentence.
3

4 COMMISSIONER GILINSKY: What if we just cut it all
5 back and say, "... this is a complex idea, but..." and then
6 say something more positive in that an idea was framed ---

7 COMMISSIONER BRADFORD: It is weaker than I would
8 like.

9 COMMISSIONER GILINSKY: That's what I said, say
10 something more positive.

11 COMMISSIONER BRADFORD: Yes, but there are reasons,
12 I take it -- it just didn't seem to me that I was making
13 this any more affirmative. It is certainly less extensive
14 than our discussion of the other issues.

15 Joe's having difficulty with one sentence in it and ---

16 COMMISSIONER GILINSKY: The last sentence?

17 COMMISSIONER BRADFORD: No, "... the our staff and the
18 applicants cannot..." that middle sentence.

19 CHAIRMAN HENDRIE: Yes, I'm afraid it is getting worse.

20 MR. REAMER: You could substitute for that the
21 rationale that the Appeal Board used in arriving at its decision.

22 COMMISSIONER BRADFORD: Yes, but that's a different
23 point, that is, the Appeals Board has its reasons, but that
24 is not really -- they are not endorsing intervenor funding.
25 They are just saying that intervenors are helpful.

MR. REAMER: I take it, though, that's what the first

1 and second sentences on 10 go to.

2 COMMISSIONER BRADFORD: No, the second sentence goes
3 to this point that as I said I had been question on before,
4 and that is ---

5 MR. REAMER: But that's a reason to permit intervention
6 in the first place.

7 COMMISSIONER BRADFORD: But the other question has to
8 do with sort of the rhetoric of the taxpayer's dollar. We
9 are paying you people to make sure that everybody is represented.
10 Why should we pay somebody else to do it as well.

11 MR. KELLEY: I think where you are right.
12 The point I think that ought to be made is that the way you
13 first wrote the sentence, I would say, is a departure from
14 an official Commission position of two years ago, because
15 you are turning down fundings-- the idea was, do we need
16 intervenors in order to make safety determinations.

17 COMMISSIONER GILINSKY: But they are all done.

18 MR. KELLEY: Well, no.

19 Now, the way you originally wrote it, I would say
20 that is a departure from the earlier position, and perhaps
21 properly so. I'm not arguing for the earlier one, I'm just
22 noting the fact that I think it is. If you put in a phrase
23 like "fully presents" it seems to me that's a notch below,
24 and at the same time an endorsement that would be seen as
25 less of a sharp departure, and yet as a substantive argument

1 in favor of doing it.

2 CHAIRMAN HENDRIE: This is what, now?

3 MR. KELLEY: Well, it could we read where we
4 ended up there?

5 COMMISSIONER BRADFORD: "Our staff and the applicants
6 cannot be expected fully to present contrasting views in all
7 of our cases."

8 MR. KELLEY: Yes, I happen to agree with that.
9 And I wouldn't read that necessarily that there were reputations
10 of two years ago, I guess it comes to the fact that Mr.
11 Kennedy isn't here and ---

12 COMMISSIONER BRADFORD: I wouldn't be in favor of
13 intervenor funding myself if I didn't believe that there were
14 some situations in which the Commission itself can't fully
15 articulate views that don't mesh and that there could be
16 different positions we could possibly take.

17 But the proposition isn't just that intervenors
18 would be valuable and therefore we should give them money.

19 MR. KELLEY: No.

20 CHAIRMAN HENDRIE: Some of the points that are not
21 coming out, the amended language that has been proposed
22 has as many peculiarities as the original did.

23 COMMISSIONER BRADFORD: What is it that is coming out
24 of the middle sentence?

25 CHAIRMAN HENDRIE: The implication that the staff

1 should have contrasting views.

2 COMMISSIONER BRADFORD: Oh, okay.

3 CHAIRMAN HENDRIE: And that this isn't always
4 possible, therefore, you need intervenors in the party.

5 MR. CASE: Why don't you just say "the staff", because
6 you know the applicants are not taxpayers money and it doesn't
7 meet what you are trying to respond to, I don't think.

8 MR. STOIBER: Can't you talk in terms about representing
9 interests rather than presenting views.

10 COMMISSIONER BRADFORD: Well, the problem, I think ---
11 yes, interests are there too.

12 COMMISSIONER GILINSKY: Why not throw in something
13 "... which are important to a sound Commission desision."
14 Something like that and qualify it that way

15 COMMISSIONER BRADFORD: If you will let me take a
16 whack at it during the break, it may be that the two sentences
17 will serve this point better than one. Something along the
18 line that in some cases there are a number of different
19 reasonable views and in such cases our staff cannot be
20 expected to fully present justification to a number of
21 instances.

22 CHAIRMAN HENDRIE: I had hoped to shorten it a little
23 if possible some place.

24 Onward.

25 COMMISSIONER BRADFORD: Could I ask one question that

1 would help me a lot.

2
3 There is a section inserted by the staff -- excuse me --
4 by OGC, I guess, "Modified Hearing Procedures" at the bottom
5 of the page, which comes out as expressing a preference for
6 return to NRC current practice for the hybrid hearings as
7 suggested by the bill should not be enacted. That was the
8 point I was going to stress very strongly in my separate
9 statement that in fact, it is the Commission's position then
10 I can react accordingly, but that certainly is a departure
11 from the statement as it was up to now and it would encompass
12 a point that I thought of making on my own.

13 MR. KELLEY: That's an OPE suggestion.

14 CHAIRMAN HENDRIE: Vic, what's your view on the
15 hybrid review?

16 COMMISSIONER GILINSKY: I think it is a bad idea.

17 CHAIRMAN HENDRIE: So you would prefer to come back
18 to the present practice?

19 COMMISSIONER GILINSKY: Yes.

20 CHAIRMAN HENDRIE: I think it ought to be given a
21 try and we can do one of two things at this point. We sit
22 here as a quorum and you could either adopt this language
23 on the two to one basis ---

24 COMMISSIONER GILINSKY: Where is this?

25 CHAIRMAN HENDRIE: Top of page 11.

Take out "here again" ---

1 COMMISSIONER BRADFORD: If you do that you will have
2 a considerable problem at the beginning of this in terms of
3 how to state what this testimony represents.

4 CHAIRMAN HENDRIE: Why?

5 COMMISSIONER BRADFORD: Well, because -- you would
6 just have problems with the sentence afterwards saying
7 Commissioner Kennedy wasn't here when it was shaped.

8 CHAIRMAN HENDRIE: Well, we have already said "amply"
9 at the beginning that everybody is likely to have individual
10 views to present, and you know, if Dick were here he would
11 vote and we could divide two-two on the point.

12 COMMISSIONER BRADFORD: You see, the next step of
13 the problem in the process is where the trouble is going to
14 come. We will go before a hearing in the Senate sometime in
15 June, Dick will be back, and we will wind up giving a different
16 Commission position.

17 CHAIRMAN HENDRIE: Well, I was going to say there are
18 two alternatives on this particular piece. We could either
19 say, "as drafted" which would represent a decision at this
20 table on a 2-1 basis that the proposed language would be
21 accepted, or we could say simply here the Commission is
22 divided as to whether this concept should be tried or whether
23 it should be removed from the legislation.

24 COMMISSIONER BRADFORD: I think that's safer, because
25 otherwise you get in a situation of having told the House that

1 Commission prefers and then you go back to the Senate and ---

2 CHAIRMAN HENDRIE: I'm fairly sure if Dick were here
3 that he would go in that direction. I see some nods from
4 his assistant that ---

5 MR. KELLEY: His message to us was to support the
6 bill.

7 CHAIRMAN HENDRIE: Why don't we put in here, language
8 then, instead of that last sentence, instead of saying, "here
9 again," etcetera, we would say, "... here the Commission is
10 divided..." and then go on to ---

11 MS. ARON: Do you think it is relevant that the
12 Senate will probably be considering next fall changes in the
13 Administrative Procedure Act, the section that provides for
14 adjudicatory hearing, to modify it so that legislative type
15 hearings will become the standard rather than ---

16 CHAIRMAN HENDRIE: Well, I certainly think it is
17 germane, but on the point where all of us recognize that that
18 proposal is in hand and will be debated and argued about,
19 in due time we will see how APA comes out modified or not.
20 In the meantime, I think Peter and Vic feel pretty strongly
21 that we ought to stay with the adjudicatory hearings. I would
22 kind of like to try the hybrids and see how they go. I'm
23 not sure how it would turn out as a matter of fact. But
24 I would like to see it tried and I think it does have some
25 benefit when we impose those procedures on the states, because

1 I think the states -- well, some of them will want adjudicatory
2 procedures and others, you know, will be annoyed if they
3 are mandated by us. So I guess it is a mixed bag.

4 Will the drafters please work some language saying,
5 here the Commission is divided and it is a significant point.

6 I just want to go back to page 10 and settle a
7 little drafting.

8 (Commissioner Gilinsky departed.)

9 Okay, you are going to work on the top of page 10.
10 When you do that, Peter, look over at page 18, bottom,
11 recognizing that on 18 the Commission is giving its view in
12 more detail on the specific features, at the bottom of 9, top
13 of 10 it is in principle a very summary mentioning of the
14 item. If there is more detailing, it might go better.

15 COMMISSIONER BRADFORD: Would you be comfortable with
16 this thought if it appears back in ---

17 CHAIRMAN HENDRIE: If we can help avoiding the
18 cumbersomeness of somehow implying that the staff and the
19 applicant really ought to have contrasting views. Does that
20 mean that?

21 COMMISSIONER BRADFORD: No, that's not the point
22 that I have to make.

23 CHAIRMAN HENDRIE: Then the only other thing I would
24 want to clear up here, page 10 starts in the middle of the page,
25 "I have already mentioned the essential features..." okay.

1 "Let me briefly describe the Commission's position on each
2 of these features..." and we promptly start in with two
3 features that have not had the honor of mention heretofore.
4 So okay, a drafting problem, right?

5 COMMISSIONER BRADFORD: Let me slip that paragraph
6 around to go after the word "practice" on page 11.

7 CHAIRMAN HENDRIE: No, what I would prefer to do
8 is just avoid the little difficulty that we had mentioned.
9 "Now let me briefly describe the Commission's position on
10 these and other features of the bill." Okay, how about that?

11 If we can do that, then I don't think we have any
12 difficulty down through "Early Site Review" on page 11.
13 Drafters to fix that "divided Commission" and we can start
14 with "Early Site Reviews".

15 (Whereupon, the meeting was recessed at 12:05 noon
16 and resumed the meeting at 3:00 p.m.)
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(May 18, 1978, 3:00 p.m.)

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CHAIRMAN HENDRIE: All right, back to work.

COMMISSIONER BRADFORD: Oh, I forgot something that I owe you.

(Commissioner Bradford departed the room briefly and returned.)

COMMISSIONER BRADFORD: This is the intervenor funding.

CHAIRMAN HENDRIE: Jolly good show.

COMMISSIONER BRADFORD: It really doesn't matter to me where it goes, if we can solve the problem by dropping one sentence.

CHAIRMAN HENDRIE: You were working fast, weren't you. Where does this go, Ed?

MR. CASE: It is after the numbers.

MS. HODGDON: Top of page 6.

COMMISSIONER GILINSKY: You have got dimensions in every sentence here.

COMMISSIONER BRADFORD: To the first three, I know.

MR. CASE: Because we are talking about the long averages or LWAs and CPs.

COMMISSIONER GILINSKY: I thought it was better in the original.

COMMISSIONER BRADFORD: So did I.

COMMISSIONER GILINSKY: You mean you did a bad job just so the original would look better?

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COMMISSIONER BRADFORD: No, no.

CHAIRMAN HENDRIE: Where does this language go?

COMMISSIONER BRADFORD: Where did we stop?

MR. MALSCH: Top of page 10.

CHAIRMAN HENDRIE: I have no objection to that. If Peter has no objection, here's to "a certain extent..." language, top page 7 which should be faster, Reamer, as the keeper of the manuscript.

Now, with regard to intervention.

(Chairman reading document.)

COMMISSIONER GILINSKY: Are we doing intervention?

CHAIRMAN HENDRIE: Yes.

COMMISSIONER BRADFORD: Where I had come to just before we left was that if we took the sentence -- that sentence had come all the way down to "... our staff cannot be expected to fully present contrasting views in all of our cases." "Contrasting views," doesn't quite capture what I was after, in any case, but what I was prepared to do was just to drop that sentence if it was still causing trouble and instead, pick up the paragraph I just circulated to you and put it in the actual discussion of intervenor funding, whatever it is, page 18.

CHAIRMAN HENDRIE: Sorry, Peter, I was making vigorous corrections here. You were saying -- I think this ought to go back in whatever we do of an extended nature, it

1 ought to go in the section back on page -- well, it probably
2 goes right in the bottom of 18 after that lead-in sentence.

3 COMMISSIONER BRADFORD: What I would suggest that
4 you do is that we drop the sentence that is troubling Joe
5 beginning "Our staff..."

6 CHAIRMAN HENDRIE: Yes, if we go in with this sort of
7 material back on 18, can we limit the page 9-10 sections really --

8 Well, I had come down to it as an idea worth trying,
9 but ---

10 COMMISSIONER GILINSKY: An idea whose time is time.

11 CHAIRMAN HENDRIE: I wish I had thought of that.

12 COMMISSIONER GILINSKY: Could we say something a little
13 more cheerful?

14 CHAIRMAN HENDRIE: All right. Let me try a proposition
15 on you in the interest of reducing the page 9-10 section to
16 a very brief language, and that is to insert the Appeals
17 Board endorsement into that proceedings sentence.

18 "This is a complex and controversial idea..." and
19 I don't know whether I want "but" or not, "...but our
20 Appeals Board is frequently attested to the value of intervenor..."
21 I would say "...contributions in the licensing process and we
22 have come to the conclusion that it is an idea worth trying."

23 COMMISSIONER GILINSKY: I would prefer we say
24 we feel under the circumstances the funding of capable
25 intervenors could make a useful contribution to the licensing

1 process.

2 CHAIRMAN HENDRIE: All right, where would you --
3 how would you pick it up from back here, would you use this?

4 COMMISSIONER GILINSKY: Yes, you might just -- if
5 you are going to have the details here, I think you might
6 put the licensing Appeals Board here.

7 COMMISSIONER BRADFORD: Can you read me the sentence
8 now?

9 COMMISSIONER GILINSKY: This is assuming you are
10 going to have some more extended discussion here, but that
11 it is a complex and controversial idea and we have come to
12 the conclusion that the funding of capable intervenors would
13 make a useful contribution to the licensing process.

14 CHAIRMAN HENDRIE: I'll buy it. It has the splendid ---
15 "... but we have come to the conclusion that..." ---

16 COMMISSIONER GILINSKY: But then we would pick up the
17 Appeals Board and put it in in a longer discussion.

18 CHAIRMAN HENDRIE: Okay.

19 I propose we do that. Shall I read it from the
20 beginning of the sentence for Reamer's benefit and see if
21 we agree on how it comes out?

22 MR. REAMER: Please, do.

23 CHAIRMAN HENDRIE: Okay, the first sentence is
24 unchanged, bottom page 9: "The relatively new idea ..."
25 and the next sentence goes unchanged to almost the end of that

1 page. "This is a complex and controversial idea, but we
2 have come to the conclusion that..." strike the "it" and
3 lead to the 5th line of the next page "... the funding of
4 intervenors would be a useful contribution to the licensing
5 process."

6 COMMISSIONER GILINSKY: Are you going to put in the
7 word capable or not?

8 COMMISSIONER BRADFORD: I would like to get rid of
9 the word "complex". That is probably the simplest idea in
10 the bill, all things considered. I don't mind "controversial"
11 I can live with that.

12 CHAIRMAN HENDRIE: Okay, delete "complex and".
13 "... this is a controversial idea, but we have come to the
14 conclusion that the funding of intervenors would be a useful
15 contribution to the licensing process." I don't know what
16 "capable" does for one there. There is an implication ---

17 MS. ARON: Can't you just say, "which will enable
18 needy groups to participate more fully in our proceedings or
19 more effectively in our proceedings."

20 COMMISSIONER GILINSKY: I think you want to get that
21 thought in.

22 COMMISSIONER BRADFORD: Well, yes and no.

23 CHAIRMAN HENDRIE: That's not quite the idea. The
24 administrative procedures of the Commission are not some sort
25 of playground at which the citizenry in general is invited

1 to come and amuse itself, okay. The participation of these
2 needy groups needs to have a rationale connected with the
3 licensing procedure, just to say to allow needy groups to
4 participate more completely, you know, totally misses the
5 thrust. It leaves you vulnerable to every criticism that is
6 made of this kind of funding.

7 COMMISSIONER GILINSKY: But I think the notion of needy
8 is essential.

9 CHAIRMAN HENDRIE: Well, the funding of needy
10 intervenors? There has to be an interest shown by the part
11 and a contribution to be made to the proceeding before there
12 is rationale for the expenditure of funds and so forth.

13 COMMISSIONER GILINSKY: I think it ought to be provision
14 for funding, because it isn't across-the-board funding of
15 intervenors. We are making provision for funding under the
16 circumstances.

17 MR. STOIBER: The funding of those intervenors
18 which would make a useful contribution to the licensing
19 process and then require resources to do so.

20 MR. KELLEY: Well, in trying to keep it short, why
21 not just strike capable.

22 COMMISSIONER GILINSKY: Everybody knows what the
23 funding of intervenors is. It is just like nuclear.

24 MR. CASE: Or standardization.

25 COMMISSIONER GILINSKY: Or standardization.

1 CHAIRMAN HENDRIE: Now, while we have got the language
2 hot in hand, why don't we go back and see if we can fix the
3 intervenor section rather than postpone it until we get through
4 another 10 pages and we will have forgotten it.

5 Go to the foot of 18, Funding of Intervenors. I
6 think that first sentence is a fair enough start.

7 I would then suggest that the second sentence,
8 starting at the top of page 19 also stand as it is.

9 COMMISSIONER BRADFORD: You have the word "timeliness"
10 in it and I guess I have no objection to it except my own
11 reluctance to really promise that this measure is a timesaver.
12 In some cases I would hope that it would be. The intervenors
13 themselves have an argument that goes something to the effect
14 if we don't have to do it all through cross examination we
15 would be better off.

16 CHAIRMAN HENDRIE: Well, that was the source of the
17 comment that I put in that this pitch has been made and I have
18 heard it from a number of people.

19 COMMISSIONER BRADFORD: I'm not sure I really believe
20 that it will work that way. Maybe yes, maybe no.

21 CHAIRMAN HENDRIE: Well, I have the same concern over
22 quality.

23 COMMISSIONER GILINSKY: Well, strike them both if
24 you don't believe them.

25 CHAIRMAN HENDRIE: Okay, good, cross timeliness.

1 I would suggest that the "in theory" sentence stand
2 and then we go on and say something like "... also..."

3 COMMISSIONER BRADFORD: I wouldn't mind saying
4 "perhaps the timeliness".

5 CHAIRMAN HENRIE: It is not worth discussing it at
6 this point.

7 Let's see, now I begin to pick up your paragraph
8 going in here: "Also, our proceedings often involve issues..."
9 and then I would say, "... that can be approached from
10 substantially different view points."

11 COMMISSIONER BRADFORD: Okay, that's all right so far.
12 Now what are you going to do to me?

13 CHAIRMAN HENDRIE: Then I would suggest: "We believe
14 that it is in the public interest for these view points to
15 be fully explored in our proceedings."

16 COMMISSIONER BRADFORD: Fine.

17 CHAIRMAN HENDRIE: Then I would duck and not -- you
18 know -- then I would go to the: "... we believe we should
19 fund intervenors..." and not try to work out why the staff and
20 our attorneys can't do all these things.

21 COMMISSIONER BRADFORD: Leaving out the last sentence
22 which has few too many words in it --- at least leaving out
23 the first three words in it. I still think there is some
24 value to this business about the difficulty in pursuing
25 inconsistent positions through the same sets of witnesses and

1 attorneys.

2 CHAIRMAN HENDRIE: Okay, I was up getting down
3 what I had said before.
4

5 COMMISSIONER BRADFORD: We have gotten the conflict
6 between the staff and the applicant.

7 CHAIRMAN HENDRIE: Yes.

8 COMMISSIONER BRADFORD: We still need to put the
9 Appeals Board somewhere.

10 MR. KELLEY: That could come after the theory
11 sentence.

12 CHAIRMAN HENDRIE: Or it could come after saying,
13 "... we believe it is in the public interest for these view
14 points, i.e, the different view points to be explored in our
15 proceedings." It would fit there: "Our Appeals Board has
16 frequently attested to the value of intervenor contributions
17 in the licensing process." Then I would still prefer to go
18 ahead and say, "... under these circumstances the Commission..."
19 and I would try to shorten the sentence down a little.

20 COMMISSIONER BRADFORD: You can always get rid of
21 the "under these circumstances."

22 CHAIRMAN HENDRIE: Yes.

23 How would you feel about the Appeals Board testimonial
24 in there after proceedings. It says: "The public interest
25 for these view points to be explored in our proceedings..."
and then the Appeals Board testimonial.

1 Then do we or don't we need that sentence?

2 COMMISSIONER BRADFORD: The "however" sentence?

3 I like it.

4 COMMISSIONER GILINSKY: I think somewhere in there,
5 the staff is a party to the proceedings and are expected to
6 represent all points of view.

7 CHAIRMAN HENDRIE: Now, that approach to it, I think,
8 has less difficulties that I worried about in this sentence,
9 either in the morning version or the present version..

10 COMMISSIONER BRADFORD: If it said, "equal justice
11 to all points of view".

12 CHAIRMAN HENDRIE: We would say something like
13 "however" or "the Commission notes" -- I don't know. Our
14 staff -- I don't know whether we need to say technical staff
15 and attorneys or just our staff is a sufficient characterization,
16 "Our staff is itself a party in our proceeding," and either
17 "cannot always be expected" or just "cannot be expected" ---
18 I would say, "represent fully the several points of view,"
19 or something like that.

20 COMMISSIONER BRADFORD: Fine.

21 CHAIRMAN HENDRIE: How does that strike you?

22 Okay, now we need to get some drafting started.
23 Would you go with the Appeals Board in just before this
24 sentence or some place else?

25 COMMISSIONER BRADFORD: Yes, as long as Bill is given

1 the license to sort of juggle conjunctions to make sure the
2 sentence is well constructed. I don't mind having that
3 thought there.

4 It might come actually better just before that
5 paragraph or just after it, but I really don't care strongly
6 about the placement of it as long as it is in there some where.

7 CHAIRMAN HENDRIE: Okay.

8 On balance I think you are right. I think at the
9 beginning of the paragraph works better. So we would have
10 the "in theory" sentence on page 19, the "Appeals Board"
11 sentence. Can you identify that one, Bill? You are beginning
12 to look confused.

13 MR. REAMER: No, I'm following you perfectly.

14 CHAIRMAN HENDRIE: And in that sentence make it
15 "attested to the value of intervenor contributions," rather
16 than "the value of intervenors in the licensing process."

17 Then we would go on: "Our proceedings often involve
18 issues that can be approached from substantially different
19 view points. We believe it is in the public interest for these
20 view points to be explored," I don't know whether you want
21 to say, "in our proceedings again" or not. "... to be explored..."
22 period, I think would be good.

23 MR. KELLEY: Fully explored?

24 COMMISSIONER BRADFORD: I think fully explored is
25 better.

1 CHAIRMAN HENDRIE: How about just "exploring these
2 view points," at the moment.

3 Now, I haven't got Vic's language ready. We could
4 either start "however" or we could start out "The Commission
5 notes..."

6 COMMISSIONER BRADFORD: "The Commission notes" sounds
7 kind of like we are handling an appeals ---

8 CHAIRMAN HENDRIE: "However, our staff is itself
9 a party in these proceedings..." ---

10 COMMISSIONER GILINSKY: "with a point of view."

11 MR. CASE: Well, I can take care of that, put an
12 opposing in there. I think that will give that same thought.

13 CHAIRMAN HENDRIE: You lost me. What I've got
14 at this moment is: "However, our staff is itself a party in
15 these proceedings and cannot reasonably be expected fully
16 to represent opposing points of view."

17 COMMISSIONER BRADFORD: Then in the next sentence
18 you just get rid of "under these circumstances."

19 CHAIRMAN HENDRIE: -- "... can in some circumstances
20 expect to get a more thorough airing of the issues.." --
21 Do we need to pursue them independently?

22 COMMISSIONER BRADFORD: Can't you just period after
23 that?

24 CHAIRMAN HENDRIE: --- "... to fund qualified
25 intervenors."

1 COMMISSIONER BRADFORD: I guess I like the independence
2 thought, that is, you might get a little Moynihan argument
3 that, well, he doesn't mind having intervenors able to pursue
4 issues, but he sure would hate to pay them because then they
5 won't be independent. I don't mind knocking off "of the NRC
6 staff," at the end.

7 COMMISSIONER GILINSKY: What's the problem?

8 CHAIRMAN HENDRIE: There is something about the end
9 of that sentence that hangs for me.

10 COMMISSIONER GILINSKY: Couldn't we say, "fully
11 represent opposing points of view."

12 COMMISSIONER BRADFORD: We are in the next sentence.

13 Joe was talking about lopping it off after "intervenors"
14 and I was talking about lopping it off after "independent."

15 COMMISSIONER GILINSKY: Do we need this sentence at
16 all?

17 COMMISSIONER BRADFORD: You probably don't, except
18 that it supposedly is recapturing the thought that we booted
19 out of a paragraph back on page 10 or 11 where we were talking
20 about quality and a more thorough and more fair licensing
21 process.

22 CHAIRMAN HENDRIE: I don't know, maybe it is all right.
23 How does it strike the drafters over there?

24 MR. REAMER: Does this last sentence say something
25 different than the "in theory" sentence?

1 CHAIRMAN HENDRIE: Than the which?

2 MR. REAMER: The "in theory" sentence at the top of
3 page 19, about the participants are better prepared?

4 COMMISSIONER GILINSKY: Yes, it does. It says you will
5 get different points of view. The better prepared sentence
6 says what they will do they will do better and maybe faster and --

7 MR. REAMER: Okay, then the sentence ought to stay in.

8 COMMISSIONER GILINSKY: It really says there are
9 things you wouldn't get, maybe if you don't fund them.

10 CHAIRMAN HENDRIE: I don't know, does it bother
11 anybody else, the end of that thing? Not enough to complain.

12 Can we start that sentence out -- I seem to need
13 some transition from the previous discussion. Could we start
14 it then: "In some cases then the Commission can expect to get
15 a more thorough..."

16 COMMISSIONER GILINSKY: That's not bad. You are a
17 really stylist.

18 CHAIRMAN HENDRIE: Well, if you are unprepared to
19 deal with the substance, why there is little other place to
20 make a contribution.

21 COMMISSIONER BRADFORD: Can I make a suggestion
22 based on the fact that I am likely to depart before we get
23 through this page-by-page. And that is if we close with the
24 rest of page 19, if we can come to grips with that with
25 the question raised about whether or not the Commission in fact

1 feels that the bill should be enacted, that I can leave a
2 fair amount of the editing with Victor.

3 CHAIRMAN HENDRIE: All right.

4 COMMISSIONER GILINSKY: Why do we need to comment
5 on the bill one way or the other. I thought that part of
6 the argument for us not submitting the bill was precisely
7 so that we could sit down and look at the various sections
8 of it without any private authorship, you might say, without
9 any specific commitment to the bill as a whole and it is
10 not as if the vote is next week or a sort of do or die.

11 CHAIRMAN HENDRIE: Now, let's see. That last phrase
12 is a problem for you, is it Peter?

13 COMMISSIONER BRADFORD: Well, it is for me because
14 if the bill were really to contain the hearings provisions
15 as they are then I don't feel that it should be enacted.
16 So the last 8 or 9 words there are just not, at the moment,
17 a perspective that I prescribe to.

18 COMMISSIONER GILINSKY: I don't know that anybody
19 is going to ask us to say right now should the bill go in
20 its totality. I think they really want our views on the
21 various parts of it.

22 COMMISSIONER BRADFORD: But if we were asked, we
23 would probably give different answers in any case.

24 COMMISSIONER GILINSKY: Yes.

25 CHAIRMAN HENDRIE: All right, why don't we put a period

1 at "on the points it does address " period.

2 COMMISSIONER BRADFORD: Well, even there, one of the
3 points it does address for hearings ---

4 COMMISSIONER GILINSKY: Well, we say right off the
5 bat here: "The Commission supports HR 11704." I mean, do
6 we really have to say that?

7 COMMISSIONER BRADFORD: I shouldn't have started at
8 the end of that paragraph. My real point originally was the
9 whole paragraph was involved.

10 CHAIRMAN HENDRIE: There is that paragraph, there is
11 the one on the first page were there is difficulty, and there
12 is one in the middle some place. I would agree on page
13 3 which we agreed to take out, but there is this front end
14 and back end. Okay?

15 COMMISSIONER GILINSKY: I would propose that we drop
16 3 on the end and modify the one on page 1, just say that
17 we support the notions which are addressed in this bill,
18 without committing ourselves to precise language.

19 In other words, early siting, standardization, even
20 the notion of having the states do as much as they can
21 reasonably do without, you know, getting into the precise
22 way the bill was written or the associated details of the
23 hearings or other matters are just the way we would like them.

24 MR. KELLEY: There is an alternative for the Committee,
25 whereby it is my understanding Mr. Chairman, Commissioner Kennedy

1 supports the bill and thinks it ought to be enacted, just
2 say the features of it are good but the hearing thing
3 is bad and on the grounds that it shouldn't be enacted.

4 Because I think the very first question they are
5 going to ask if you don't say it is, well, should we enact
6 this bill or not.

7 COMMISSIONER GILINSKY: I don't think it is.

8 MR. KELLEY: Well, when witnesses go up on the Hill
9 they are either for bills or they are against them.

10 COMMISSIONER GILINSKY: Well, this is pretty early
11 in the process. There are going to be a lot of hearings and
12 a lot of things are going to happen before this bill is
13 enacted. There will probably be changes of one sort or
14 another and I think that since it deals with us, obviously
15 people want to know what we think. Are our provisions
16 workable, are they not workable. I think they will want to
17 know what we think of various parts of it, but, you know, do
18 you have to go with this bill as it is written right now,
19 I don't know that anybody is going to ask us that. Because
20 that's not the decision before them. They are not at that
21 point.

22 MR. KELLEY: Well, just in my point as reflected in
23 hearings, you go up there and the first paragraph says this
24 is a good bill, you should enact or it is a bad bill and you
25 shouldn't act.

1 COMMISSIONER GILINSKY: The oft-given reason for
2 why the bill didn't come through this Commission was precisely
3 the same, you know, dispassionately addressed the various
4 points and it was our feeling that we were committed to all
5 of it. If one has reservations about one piece or another of
6 it, I don't see why you have to say right now, you know,
7 given the reasons of my reservations, I would say do it
8 right now -- they are not about to vote on it now. They
9 want to know whether parts are sound and should they tinker
10 with it. How is it going to affect your process and so on.
11 That seems to me these are the questions we are going to be
12 faced with.

13 CHAIRMAN HENDRIE: Why don't we go back to page 1 and
14 take a look at the things we skipped over in the beginning.

15 I really think the Commission needs to make as much
16 of a statement as it reasonably can on a majority basis.

17 COMMISSIONER GILINSKY: Why don't we take out the
18 word "exception" and then have the statement read that we
19 support the basic notions which are addressed in this bill.
20 You know, we think they ought to proceed in those directions.

21 CHAIRMAN HENDRIE: We do a whole of a lot more than
22 that, though. If the Congress said, good, go home and come
23 back next week with the way you think the early site review,
24 standardization, et cetera, paragraphs ought to be written,
25 we would come back with things that are very close, not identical,

1 some omissions and so on to what's there, because indeed what's
2 there is there because it flowed pretty much from our words.

3 So I think -- and I think the exceptions language
4 is important in order to allow Peter to get aboard.

5 COMMISSIONER GILINSKY: Well, I tell you, I qualified
6 in my support of the idea of farming out NEPA to the states.
7 I'm not convinced that that's a good idea.

8 CHAIRMAN HENDRIE: Well, but you need it too.

9 COMMISSIONER GILINSKY: Well, but I think what he
10 said with exceptions, I think that really means to a listener
11 with pretty minor exceptions and that doesn't include an arm
12 and a leg, because otherwise the statement is meaningless,
13 unless you want to separate out the standardization ---

14 COMMISSIONER BRADFORD: That's the other choice is
15 to embrace the areas in which there is that consensus which
16 is early siting, standardization. I don't know about
17 intervenor funding, and CP-OL, authorization. You just have
18 to enumerate those as to some of the other issues there.

19 CHAIRMAN HENDRIE: Except, you know, you have got a
20 whole chunk of testimony in the middle here which deals with
21 individual pieces. What you are looking for here is a summary
22 statement which starts out in the beginning and says, you know,
23 is our thrust net positive or net negative on this bill. And
24 in spite of the reservations that individuals have about particular
25 pieces of it, I continue to perceive that our net thrust is

1 positive.

2 COMMISSIONER BRADFORD: For the Commission as a whole,
3 I suppose that's right. My point is that if I were asked
4 the question that Vic doesn't think it will be, that is
5 as the bill is in its present form, I would say no. That's
6 why I have difficulty with it.

7 CHAIRMAN HENDRIE: Well, I doubt that anybody is going
8 to want to be tied down that far. After all, we have got some
9 pages of technical and clarifying suggestions which even the
10 most rabid enthusiast will say, yes, let's by all means
11 consider those to help the language be clear and not have it
12 be full of little rips and snags that will be a problem on
13 down the line.

14 COMMISSIONER BRADFORD: But they aren't just technical,
15 either. I gather that as to the hybrid NEPA hearing the
16 recommendation there is that we close the door that DOE thinks
17 is open in terms of what that section means. So that it is
18 not just a matter of saying, by the way, we have your changes
19 and sections, numbers and punctuation.

20 CHAIRMAN HENDRIE: Well, I want to look at those
21 things, because I have got three paperclips in them and one
22 has got me confused and others, I think, are substantive.

23 COMMISSIONER BRADFORD: What do we plan to do with
24 those incidentally. Just indicate that we will be submitting
25 them shortly or do you actually plan to turn them in on Monday?

1 CHAIRMAN HENDRIE: Plan to turn them in.

2 COMMISSIONER BRADFORD: But they aren't actual
3 draft amendments yet. They are just indications of where
4 amendments could be written. These things aren't in the
5 present form that one wants to be written in the law verbatim.

6 MR. MALSCH: The problem is in some cases I wasn't
7 sure in which direction the Commission wanted to clarify
8 them. So I essentially raised a series of questions and
9 problems. It would not be very difficult to come up with
10 draft language, assuming you knew which way the language was
11 going.

12 COMMISSIONER GILINSKY: Do you think turning NEPA
13 over to the states is a reasonable and workable approach in
14 improving that aspect or not?

15 CHAIRMAN HENDRIE: I think it has got its perils
16 but if I am willing to go along with intervenor funding,
17 I think I'm damn sure to go along with turning NEPA reviews
18 over to states where we are going to grill the whap out of
19 them with regard to the programs they are going to have
20 and the criteria they are going to use and the procedures
21 they are going to use. By the time we get them fully wrung
22 out that, why we will be down to one or two states or three.

23 I think -- and with regards to those states, if we
24 don't turn it over to them, why that isn't going to speed
25 the licensing process because they are going to do their own
thing any way. And it takes longer than ours and it doesn't

1 matter what we do, really. The pacing item is going to be
2 their review, so I have lots less concern than you do over this
3 turn over to the state.
4

5 COMMISSIONER GILINSKY: You are saying it basically
6 won't go any further than it goes now.

7 CHAIRMAN HENDRIE: Not in the near term, not by the
8 time we get done working with CEQ on the procedures the state
9 is going to have to use, all the things they are going to
10 have to look at and the standards and hearing procedures
11 and everything else. I just don't think there are going to
12 be very many states that are going to be in a position to move
13 forward and take over that responsibility.

14 The ones that are are the ones that are doing these
15 two, to infinity year environmental reviews, California,
16 New York, I think Maryland is the one place where you might
17 get a state that would vote to conform and move. On the
18 case of those states, why yes. We turn it over to them you
19 say, you slow it down. Well, maybe so, maybe no. The plant
20 can't go until they do those things any way.

21 COMMISSIONER GILINSKY: But the bill really encourages
22 other states to get into this same position.

23 CHAIRMAN HENDRIE: Well, to the extend that a state
24 that isn't in the business decided it would like to go into
25 the business it will come in configuring itself to an NRC-type
environmental assessment process using national laboratory.

1 technical support and so on, because it will be offered.
2 And it is much more likely than to be a state environmental
3 review system and process, which is similar to ours and will
4 work in a manner similar to ours and on a time scale similar
5 to ours.

6 So I think there is, to an extent, sort of a compen-
7 sating mechanism built in. I think the states we are turning
8 it over to, where you would be allowed to turn it over, indeed
9 it won't speed the process. It won't hold it up because it
10 is going to be their process and that already takes very much
11 longer than ours. Other states, I think, coming later and
12 sort of implementing to fit this, I think are more likely
13 to get reasonable sorts of -- you know, they just build their
14 staffs to fit the needs of the way we do it are likely to come
15 out much closer.

16 It is still, by the time you get through in 10-15
17 years, you may be able to add up the site indeed, that the
18 right staff, which is now churning the environmental review
19 in about a year will be a more efficient processor of that
20 information than the average state proceeding now.

21 I find it hard to argue that that would not be the
22 case, but I have some prospect for thinking that it wouldn't
23 be a serious problem now, against those costs. You have to
24 balance the fact that the state groups, the governors have
25 said very strongly that they want that kind of responsibility,

1 and if they don't get it from the Feds, the implication is that
2 they will go ahead and implement state laws which in effect
3 duplicate and provide them the controls they want of this
4 authority, sort of in parallel.

5 So it is a very mixed proposition and I'm willing to
6 give the bill a try and say, yes I will support that. I want
7 to recognize that you are trying to meet several objectives
8 here and that the end result may not be a speeding up of those
9 and that is one of your objectives.

10 Well, how badly off is that paragraph in the front end,
11 Peter?

12 COMMISSIONER BRADFORD: Well, it doesn't describe my
13 position at the moment and I guess it was trying to do sort
14 of a minimum cure on it and I figured the exception to be --
15 read either to mean as the summation of the Commission.
16 But if it was read as the Commissioners, then it didn't matter.

17 Maybe the best approach to it is to be a little
18 more expansive and to say that the Commission supports many
19 of the basic features of this bill, but that individual
20 Commissioners do have separate views that they will be
21 presenting.

22 CHAIRMAN HENDRIE: Well, we get to that point immediately
23 there at the bottom of the page.

24 COMMISSIONER BRADFORD: That's right. If you can
25 swallow "many of" before the basic features ---

1 CHAIRMAN HENDRIE: Does that relieve the need for an
2 exception?

3 COMMISSIONER BRADFORD: Then you leave the "need for
4 an exception" there. But that thought, then, has to carry
5 through the other statements that now come out as sort of
6 net endorsements.

7 COMMISSIONER GILINSKY: Why don't we drop the other
8 statement.

9 CHAIRMAN HENDRIE: Well, we agreed to drop one on
10 page 3, you know, and I want to argue with you about a closing
11 statement, because I think we need one. But I thought ---

12 COMMISSIONER BRADFORD: Well, I don't mind a closing
13 statement that reiterates many of the features. The only
14 problem I have with the closing statement is it says -- it
15 simply says that the Commission thinks the bill should be
16 enacted, is that that says rather more than I would say.
17 In fact, it says something different from that.

18 CHAIRMAN HENDRIE: I don't have a problem coming back
19 at the end and sort of reiterating the thrust of that page 1
20 paragraph, that it be better---

21 It is a long statement and when we get to the back
22 nobody will remember what we said in front.

23 COMMISSIONER GILINSKY: I think when you say many
24 of the basic features then it does raise the question of what
25 do you support and what don't you support and so on. I frankly

1 would leave it out. If you want to have a statement that
2 says many of the basic features, that's fine I will go along
3 with that, but I think that it is a better idea not to have
4 it there at all.

5 CHAIRMAN HENDRIE: If I can't coax a positive statement
6 out of the Commission, why I can't coax a positive statement
7 out of the Commission. But I would like to be able to make
8 that sort of a statement if I have to leave "many of" in there,
9 why that's the price of admission. I would rather have it
10 with than without.

11 By the way, do you still have "with exceptions" at
12 the front end?

13 COMMISSIONER BRADFORD: No, we have the "many of".

14 I think if you have the "many of" you don't need
15 the "exception."

16 CHAIRMAN HENDRIE: Many of, okay. And I think that's
17 right. I think we divide on others, although I think the
18 vote gets to be 3-1 on some so the Commission would still
19 support, although it does divide, but on many of the basic
20 features, I think, we are in essential agreement and that they
21 are in fact, the kind of things that the Commission has proposed,
22 that we would be proposing this year or next if we didn't
23 have this bill to work on.

24 I would suggest deleting the word in the middle of
25 that thing, Peter, the "in addition".

1 COMMISSIONER GILINSKY: Where is that?

2 CHAIRMAN HENDRIE: On page ---

3 MR. REAMER: It is the last sentence of that paragraph.

4 CHAIRMAN HENDRIE: I would delete that one, because
5 some of these basic features that we think are okay, are in
6 fact the ones in which explicit -- with the "in addition" it
7 sounds as though there are two classes and in fact there is
8 to a large extent the same class.

9 COMMISSIONER GILINSKY: Good, I approve it.

10 CHAIRMAN HENDRIE: Okay.

11 I thought it was great when I first read it, but --

12 Now, I propose to you then, on page 1: "The Commission
13 supports many of the basic features of this bill..." et cetera,
14 delete "in addition" and would then propose to largely ---

15 COMMISSIONER GILINSKY: Well, you might save parts
16 of the rest of it.

17 CHAIRMAN HENDRIE: This bill has many sections raising
18 from lousy to excellent or excellent to lousy as you may prefer.

19 MR. REAMER: The sentence on page 3 would be deleted?

20 CHAIRMAN HENDRIE: Yes, we agreed to that.

21 And on the end instead of -- I would -- "Mr. Chairman,
22 inclosing I would..." what do I say, "reemphasize" is that
23 the right word?

24 COMMISSIONER GILINSKY: Well, no. You really are at
25 that point asking for a nose count vote from the various

1 committees.

2 CHAIRMAN HENDRIE: Well, I presume at that point
3 we are going to plunge ahead and people who have individual
4 views -- I know Peter will want to make his and I don't know
5 what I really want to say, and Dick won't be there, but
6 I think we are going to promptly get into those views.
7 I think it will probably end up being commissioner-by-commissioner
8 and section-by-section.

9 Would it be "reemphasized" or just say "I would
10 restate that the Commission supports many of the basic
11 features of this bill." Not the identical words, but very
12 close. Would that take you off the hook, then Peter?

13 COMMISSIONER BRADFORD: Yes.

14 CHAIRMAN HENDRIE: All right, let me not deal further
15 with that since any changes from the page 1 wording will be
16 primarily to condense a little bit and to move those thoughts
17 into a single sentence rather than making two sentences of
18 them so it won't be an identical restatement, but the thoughts
19 will carry in summary form. And that will serve -- that will
20 go in there at the end, "Mr. Chairman, in closing I would like
21 to restate that..." and then here comes this summary sentence.

22 Would you like to have anything else in that page 19
23 paragraph left in there?

24 COMMISSIONER BRADFORD: I don't mind if you want to
25 say it, that thought about the difference between whether the

1 bill should address other questions.

2 CHAIRMAN HENDRIE: Yes.

3 COMMISSIONER BRADFORD: I don't happen to have it,
4 but I ---

5 CHAIRMAN HENDRIE: Well, in the interest of simplicity,
6 maybe why don't -- I will put together with OGC this summary
7 of the two sentences from page 1 and just let it stand as
8 that, okay?

9 COMMISSIONER BRADFORD: Yes.

10 CHAIRMAN HENDRIE: Okay, now that gets us the front
11 end and the back end.

12 Let us turn swiftly to page 11. By that time you
13 had run out of making comments, but let's see, page 11,
14 neither you nor I had anything further, Peter. Page 12, I
15 expanded the coal from "coal to other types of energy
16 facilities," and then we get into the difference in attack on
17 standardized designs, which I think we ought to talk about
18 for a minute or two before you have to go away.

19 COMMISSIONER GILINSKY: What would you say if someone
20 asked you what are standardized designs?

21 CHAIRMAN HENDRIE: In this context it is a design
22 which is received -- it is an explicitly enumerated design
23 by somebody which has received staff recognition either
24 resulting in a preliminary design approval or an FDA floor
25 a Commission rule or a manufacturing license.

1 COMMISSIONER GILINSKY: How does that differ from
2 custom design plants.

3 CHAIRMAN HENDRIE: The designs which appear in
4 custom plants are presented on behalf of the utility applicant
5 who is going to be the owner and operator of that specific
6 unit on the specified site. Standardized designs are
7 presented on behalf of a manufacturer who doesn't have
8 specific plants and sits in mind and hopes to peddle the
9 design to people who will be operators.

10 COMMISSIONER GILINSKY: But you can replicate
11 these designs from a customer view?

12 CHAIRMAN HENDRIE: There is a variation of the
13 standardization policy that allows you to replicate. In the
14 replicating, however, you go through a step which is akin
15 to the one of explicitly enumerating a design and having it
16 recognized with the staff, that is, when you step forward and
17 say to utility A, I want to replicate his plant No. 7 and the
18 staff says, and what is that and you in effect put on the
19 table the design of his plant number 7 for consideration by
20 the staff, and the staff then says, aha, we'll take that for
21 replication provided you fix the following 143 things. And
22 once they have said that, plant 7, plus the 143 things to be
23 fixed becomes a standardized design for purposes of the policy
24 itself.

25 COMMISSIONER GILINSKY: Well, why don't we say that

1 for standardized designs.

2 CHAIRMAN HENDRIE: Well, we could, but ---

3 COMMISSIONER GILINSKY: Nobody there will know.

4 CHAIRMAN HENDRIE: Everybody manages to have his
5 own concept of what it means, and it also has perhaps a similar
6 but somewhat broader meaning outside the context of the bill
7 and the staff standardization policy.

8 COMMISSIONER GILINSKY: I think it would be useful
9 to explain what it is you are talking about in that one
10 sentence.

11 CHAIRMAN HENDRIE: We could. Anybody here think
12 he could write it out?

13 We could include, if you like, what would amount
14 to sort of parenthetical remark once we get to talking about
15 standards -- in the specific feature where we are talking
16 about standardized designs, say, this feature of the bill
17 also reflects current NRC administrative practice, but it is
18 important for recognition ---

19 COMMISSIONER GILINSKY: I would make it the combined
20 CP-OL with some other matters and that is something you don't
21 have there.

22 CHAIRMAN HENDRIE: Well, the reason, I think, that
23 the Atomic Energy Act in laying out CPs and OLs and the
24 information you supply at a CP stage and so on speaks in terms
25 which, well not in using the explicit words, has very strongly

1 in it the sense of sort of classical custom design preparation
2 sufficient to the staff, custom review, build the particular
3 plant, do the OL review on it and so on, and here comes another
4 guy with another design.

5
6 The usefulness of statutory recognition is that in
7 use of these designs and the way we propose to use them is
8 a significant element, we hope, in the future. I think it
9 would be very useful for the Congress to show that it recognizes
10 indeed that this is the way we are moving toward doing business
11 and, good, I think that's a useful concept.

12 COMMISSIONER GILINSKY: Well, I think it would be
13 useful to have a statement here and just explain that we are
14 talking about approval of design and parts from siting one
15 particular plant.

16 CHAIRMAN HENDRIE: Yes, precisely.

17 And you would like to try, why we could include a
18 remark saying, "I should note that in talking about standard
19 designs the Commission generally means designs that are
20 explicitly enumerated," and whatever it was that I said.

21 COMMISSIONER GILINSKY: Well, that is the concept
22 that you think is the statutory recognition? The approval
23 of designs apart from particular application for a particular
24 plant in your sitings.

25 CHAIRMAN HENDRIE: Yes.

COMMISSIONER BRADFORD: I have to take off.

1 CHAIRMAN HENDRIE: Let me ask you before you go,
2 how strongly you feel about the page 12, 13, 14. You adopted
3 OPE's standardization discussion. In some ways I like it
4 better than my rewrite and other ways I don't. Because theirs
5 has the feature that it starts out and it say, Point 1, some
6 would argue that this is a good idea, however, others would
7 have different views. Two, -- well you know. The point
8 is made by a few that it will help safety. On the other hand
9 though it has an extraordinarily sense to it ---

10 COMMISSIONER BRADFORD: Except for point 4.

11 CHAIRMAN HENDRIE: Does this point 4 come in four
12 square ---

13 COMMISSIONER BRADFORD: There would be something
14 to be said for making point 4, point 1 in that.

15 CHAIRMAN HENDRIE: So I wanted to whack up there
16 and be a little more positive. Or alternately how badly
17 did you feel about my draft?

18 COMMISSIONER BRADFORD: I can live with most any
19 formulation in there, I think.

20 CHAIRMAN HENDRIE: Well, I think some of the things
21 I said probably could be thrown out, for instance like that
22 point 4 from the OPE draft and other pieces of it to.

23 COMMISSIONER BRADFORD: Why don't we leave it this
24 way, Joe, when do you plan to put this -- I'll just plan to
25 call in first thing in the morning and see what you and Victor

1 have done.

2 CHAIRMAN HENDRIE: How late can you stay, Vic?

3 COMMISSIONER GILINSKY: Until 5:00.

4 CHAIRMAN HENDRIE: I think it will take us until
5 5:00 to thrush on through.

6 COMMISSIONER BRADFORD: Right. What I was going to
7 say is I'll check back in the morning and if I have any
8 strong objections to what you come up with I can register them
9 at that point. I guess you will want to put this to bed around
10 noon. Let's leave it on that basis.

11 CHAIRMAN HENDRIE: Maybe you had better as close
12 to noon as you can.

13 COMMISSIONER BRADFORD: The only other question I had,
14 whether you intend to make any reference to the fact that the
15 Commission did at one time have a form of the NEPA delegation
16 which you considered preferable than the one in this legislation.
17 That is, without saying that you oppose this one you could say
18 you feel it could be done better.

19 MR. MALSCH: There is a feature in the bill now that
20 comes fairly close to what the Commission really had in mind
21 and that is in 195(i) which authorizes the states ---

22 CHAIRMAN HENDRIE: Yes, except that when we did the
23 alternate to our draft bill and finally decided to balance
24 because it seemed easy to implement because we liked it
25 better, why it said we will use state work products, they can

1 just come in and join us in our hearing, so on. That didn't
2 propose to transfer NEPA authority to the states. It didn't
3 offer the option.

4 MR. MALSCH: Right.

5 CHAIRMAN HENDRIE: I think that's the thing that
6 Peter's --- I wouldn't object to it.

7 COMMISSIONER BRADFORD: To commissioning that or ---

8 CHAIRMAN HENDRIE: Yes. I wouldn't object to that.

9 Aside from the drafting problem as time runs short, why ---

10 COMMISSIONER GILINSKY: I think it would be a good
11 idea.

12 CHAIRMAN HENDRIE: Indeed, if we mentioned it in
13 this testimony, why it saves you having to crank up something
14 in my own remarks, which would be a help.

15 COMMISSIONER BRADFORD: That's fine.

16 CHAIRMAN HENDRIE: Okay, so you will take a check
17 back and we probably won't do anything that would disturb you.

18 Where are you going to go, Maine? Things will be
19 so serene up there, nothing will distrub you.

20 (Commissioner Bradford departed the meeting.)

21 COMMISSIONER GILINSKY: Let's see, we are going to
22 crank in some statement of what standardized designs are?

23 CHAIRMAN HENDRIE: Okay. "This feature is also
24 reflected ..."

25 MR. CASE: Mr. Chairman, does the preferred version

1 on standardization have numbers in it, manpower numbers, because
2 I'm not sure which one you are working from over there.

3 CHAIRMAN HENDRIE: Well, I left those numbers in mine
4 and Peter took them -- well. Peter took them out of his and
5 I don't much care about them one way or the other.

6 MR. CASE: I'm saying, if you want to use them, I
7 would like to check them to make sure they are right, because
8 I don't know where they came from, but I assume they got them
9 from somewhere.

10 CHAIRMAN HENDRIE: Well, they came out of Denton's
11 Report, I assume.

12 MR. CASE: And those were from a few applications?

13 CHAIRMAN HENDRIE: I don't know that they did a
14 great deal. As a matter of fact, that whole paragraph on page --
15 the first page 13 started realistically -- struck realistically
16 or is struck in the other one and I don't have any objection
17 to doing that also.

18 Let's see. Standardized Designs. First sentence
19 okay as struck to some extent.

20 COMMISSIONER GILINSKY: I think it might be useful
21 to give it statutory recognition here. It could perfectly
22 well go along without the statutory recognition. You have
23 licenses. Just because things are important doesn't mean
24 they regard statutory recognition as there are different things
25 you can do, indeed to change the statute. Is it importance,

1 because the authority is in doubt?

2 CHAIRMAN HENDRIE: No, the explicit, I think is
3 about the right word. It merits explicit recognition.

4 MR. KELLEY: It is unusual for agencies to go off
5 and get confirmatory authority even though their lawyers
6 advise them that they don't have to do that.

7 COMMISSIONER GILINSKY: Suppose you just present the
8 following statement: "This feature of the bill is also
9 reflected in current NRC administrative practice." period.
10 Then say, "I would remind you that standardized design are ..."
11 the following. Then say that their availability offers a
12 number of potential advantages and you believe the concept
13 merits explicit statutory performance.

14 CHAIRMAN HENDRIE: Okay, let's see if we can that.
15 Do you think you can track that Bill?

16 MR. REAMER: I think I can.

17 CHAIRMAN HENDRIE: A period after "practice".
18 Then we get an explantation. I would note that by standardized
19 design the Commission means..." then you will have to
20 track back along the transcript and see if you can find those
21 particular words. It means a design that has been explicitly ---

22 MR. REAMER: Well, let me offer one suggestion.

23 If I were to attempt a definition of a standardized
24 design, I would say that it is a facility design which has
25 achieved staff recognition and which has been proposed and

1 approved as a design having potential value for more than
2 one plant.

3 COMMISSIONER GILINSKY: Well, I wouldn't say it has
4 the staff recognition.

5 MR. KELLEY: It has got more than staff recognition.

6 COMMISSIONER GILINSKY: Well, you have a standardized
7 design which has been approved and you have a standardized
8 design which hasn't been approved. So a design is a design.

9 We are really talking about design apart from ---

10 CHAIRMAN HENDRIE: No, we are talking about designs
11 that have staff approval. The provisions in this legisltation
12 and in the standardization policy talk about the use of
13 standardized designs. Now, if you are going to use a
14 standardized design, it has to be a design which has been
15 approved by the staff.

16 COMMISSIONER GILINSKY: Well, at that point it is
17 approved, but we are talking about reviews of standardized
18 designs. Hearing will come after staff review, but certainly
19 licensing of standardized designs.

20 CHAIRMAN HENDRIE: But the words I used were staff
21 recognition of a design as one intended -- presented by a
22 vendor or use.

23 COMMISSIONER GILINSKY: I mean, when somebody gets
24 a PEA, a design is a design. It is standardized design, but
25 it is not an approved design, so what have we got here, staff

1 approval.

2 MR. KELLEY: When you go to hear it you can
3 litigate the adequacy of that design, less the standings
4 are that view they think they have. Under this bill, that
5 would no longer be true.

6 COMMISSIONER GILINSKY: What I'm saying is that it
7 is no less a standardized design before the staff has approved
8 it than after the staff has approved it. It is just not
9 an approved standardized design. You know, it is true that
10 at some ---

11 CHAIRMAN HENDRIE: I was making the definition
12 narrower than that. I was making the definition narrower so
13 that when you talk about standardized design you had something
14 that had at least staff approvals, not necessarily a rule
15 or Commission approval after hearings. I don't know whether
16 you want to limit it that way or not.

17 MR. KELLEY: I would think not in talking about this
18 bill. A standardized design under this bill is a design you
19 are going to look at once and then in later applications,
20 you can't put it ---

21 COMMISSIONER GILINSKY: You are saying that
22 standardized design is one that has been looked at and
23 approved. But the basic point is the design apart ---

24 CHAIRMAN HENDRIE: Presented apart from a specific
25 plant application and presented for the purpose of being

1 pre-reviewed ---

2 MR. CASE: I think that purpose element or the
3 intent element often inclines the key element that you
4 are getting at. It is offered for the purpose of being
5 immediately used in different situations regardless of
6 the site.

7 COMMISSIONER GILINSKY: Yes, then I would say the
8 availability of standardized designs offers a number of
9 potential advantages for -- for something -- for the use
10 of ---

11 CHAIRMAN HENDRIE: Okay, say availability -- I'll
12 buy that. ... "The availability of standardized designs offers
13 a number of potential benefits and the concept merits an
14 explicit statutory recognition."

15 Now, if you guys can gin up a definition --
16 you had better help, Ed, but don't make it too horribly complex,
17 please.

18 Okay, now, from there let us see what the two sided
19 did.

20 COMMISSIONER GILINSKY: Oh, these are yours and his.
21 Are they very different?

22 CHAIRMAN HENDRIE: Well, let's agree to strike the
23 realistically paragraph. That was the one with the -- that's
24 that one and it is already struck on that one.

25 Now, we go at it sort of two ways.

1 MR. REAMER: Just to clarify, the realistically
2 paragraph is to be struck or the word "realistically"?
3

4 CHAIRMAN HENDRIE: No, the paragraph.

5 I tell you what, let's go back to Peter's page 12,
6 13, 14, okay.

7 We are now over to the bottom of 13 because most
8 of 13 is crossed out, okay.

9 MR. CASE: The stuff in the middle of 13 still in?

10 CHAIRMAN HENDRIE: No, the realistically ---

11 MR. CASE: Before that.

12 CHAIRMAN HENDRIE: You have got to flip over, there
13 is another page 12, 13, 14 in a little bit.

14 COMMISSIONER GILINSKY: It is very hard to follow.

15 CHAIRMAN HENDRIE: It goes back and forth.

16 Let's start on the bottom of page 13 and see if
17 we can -- first -- Let's see. We just got through saying
18 they offer a number of potential benefits and so on.

19 Why don't we start out first and pick up that
20 stability and predictability.

21 COMMISSIONER GILINSKY: Well, is that the primary
22 goal of standardization, that is from our point of view, but
23 I think the major gains are in construction and that area is
24 completely outside our purview. It is insofar as it relates to
25 our process. In fact, it might be worth saying that there are
many advantages to the industry to move in this direction.

1 CHAIRMAN HENDRIE: You can look at mine.

2 COMMISSIONER GILINSKY: That's fine. I would take
3 out as building.

4 CHAIRMAN HENDRIE: What we might do is make it
5 one of these enumerated things.

6 COMMISSIONER GILINSKY: What do you mean?

7 CHAIRMAN HENDRIE: This could become -- if we wanted
8 to say something like, at first an goal of standardization
9 is to introduce the degree --- second, ---

10 COMMISSIONER GILINSKY: I think it is better to have
11 this come first because this is more general and then say
12 in connection with the licensing process it would have the
13 advantage of ---

14 CHAIRMAN HENDRIE: All right.

15 COMMISSIONER GILINSKY: I think this single design
16 gives the misleading notion that it will from now on be
17 one design.

18 CHAIRMAN HENDRIE: Yes.

19 COMMISSIONER GILINSKY: Unless you had a smaller
20 number of designs.

21 CHAIRMAN HENDRIE: How about few designs, because
22 it is simple. Do we need a first, second, third configuration?

23 COMMISSIONER GILINSKY: I don't think so.

24 CHAIRMAN HENDRIE: Now, Bill, if you will gather
25 up -- take my page 13 that underlying section. This would

1 start after we get through saying explicit statutory
2 recognition. I think we could plunk right in part of the
3 same paragraph, the concept encourages the concentration of
4 technical staffs on a few designs ---

5 COMMISSIONER GILINSKY: I would stick in here that
6 the availability of -- maybe complete design is too strong,
7 but before construction, help improve the quality of the
8 plant, again, the notion that having the design work done
9 before they build the plant.

10 CHAIRMAN HENDRIE: And you don't think this does it?

11 COMMISSIONER GILINSKY: "... at an earlier point in
12 this design..."

13 CHAIRMAN HENDRIE: That should have been in there
14 in the beginning. I don't know whether I forgot to write it
15 in when I drafted it or it got transcribed wrong.

16 COMMISSIONER GILINSKY: Then it is okay.

17 CHAIRMAN HENDRIE: Okay, read it to him.

18 COMMISSIONER GILINSKY: "Next, it encourages a
19 more complete development of the design at an early point in
20 the design fabrication and construction sequence."

21 CHAIRMAN HENDRIE: Take out "as built" and run to the
22 end.

23 Then I think we would like to add, and this probably
24 could start a new paragraph, "In connection with the licensing
25 process..." let's see. Do you now go to Bradford's 14. Down

1 there on that 4th goal you started out, "In connection with
2 the licensing process, a goal of standardization..." and then
3 I think it runs okay to the end of that 4th thing.

4 COMMISSIONER GILINSKY: Let's see, if you are saying,
5 "...introduces the greatest stability and predictability..."
6 do you need the "... necessary to eliminate uncertainties.."?
7

8 CHAIRMAN HENDRIE: No, you don't.

9 Good, then we could go on, "... this is accomplished
10 by the foregoing..." okay.

11 Now, that would be the next thing after my paragraph
12 on page 13. Should we pick up any of these other elements
13 in here.

14 COMMISSIONER GILINSKY: When you say, "... foregoing
15 changes..." do you mean in a specific design? There is a
16 step change every now and then as you produce a new standardized
17 design. I don't think we ought to give the idea that ---

18 MR. KELLEY: But it is covered in the next
19 paragraph.

20 COMMISSIONER GILINSKY: Is it? Okay.

21 CHAIRMAN HENDRIE: Now, the previous page. Turn
22 back to Peter's 13 and see if you want to pick up some of
23 these other items starting at the bottom.

24 COMMISSIONER GILINSKY: What are we going through
25 all of this for. For every plus there is a minus.

CHAIRMAN HENDRIE: Do you just want to go on then and

1 pick up the -- pick up on 15?

2 COMMISSIONER GILINSKY: Well, I would make some
3 of these points, but not in the back-and-forth manner as it
4 is done here. I think probably what it is saying is that there
5 are still site specific questions that have to be reviewed,
6 unless the early siting provision has also been utilized,
7 but I don't know.

8 CHAIRMAN HENDRIE: Wash it. We have already got
9 a couple of statement on it.

10 Then we go ahead: "... the criticism most often
11 heard..."

12 COMMISSIONER GILINSKY: I would put that in the
13 positive. I'd say, "standardization is not intended to..."
14 Rather than stating criticism is trying to ---

15 CHAIRMAN HENDRIE: Okay, bottom of page 14, can
16 we put that in the sense, "... standardization is not intended
17 to freeze the design of nuclear plants..."

18 COMMISSIONER GILINSKY: Or to hobble the technology,
19 which means you move step-wise.

20 CHAIRMAN HENDRIE: Okay.

21 COMMISSIONER GILINSKY: You go in little hops.

22 "...standardization is not intended to freeze the
23 design of nuclear plants....

24 MR. REAMER: "... or to restrict the possible improve-
25 ment of the technology..." how about that thought.

MR. CASE: It is, but it is only for a short period

1 of time.

2 COMMISSIONER GILINSKY: That's what I mean. In other
3 words, if you step back and you look at the development of
4 technology this may well be a better way to do it. So you
5 can always use the airplane analogy.

6 CHAIRMAN HENDRIE: Let's see. We've got a thing
7 that starts out: "... in connection with the licensing
8 process the goal of standardization is to increase the
9 degree of stability and predictability. This is accomplished
10 by both industry and the regulator, foregoing..." I would
11 then suggest "... for discrete periods... introduction of
12 changes having only marginal public benefits..." and then
13 go on,-- then pick up over there on page 15, "... no
14 standardized design would be approved without the full array..."
15 and so on and so on. Or does that lead too much?

16 COMMISSIONER GILINSKY: Well, I think when people
17 talk about freezing the technology they are usually concerned
18 not about safety features, but about broader aspects of the
19 development of reactors.

20 CHAIRMAN HENDRIE: Yes, true.

21 COMMISSIONER GILINSKY: And it is not intended to
22 hobble that either.

23 CHAIRMAN HENDRIE: True.

24 His language sounded pretty good. Do you want to
25 read that again, Bill?

1 MR. REAMER: I had: "Standardization is not
2 intended to freeze the design of nuclear plants or to restrict
3 possible improvement of the technology in addition to public
4 health and safety protection." Or it could be "... alternatives
5 would be to prevent the possible..."

6 CHAIRMAN HENDRIE: We have got to get the specified
7 period and step-wise improvement.

8 MR. REAMER: We are talking about big things like
9 technology, not individual designs.

10 COMMISSIONER GILINSKY: Containment designs.

11 CHAIRMAN HENDRIE: "Standardization is not intended
12 to freeze the design or restrict improvements of the technology
13 or additional measures for public health and safety,---"

14 COMMISSIONER GILINSKY: Why don't you start a new
15 sentence with "public health and safety." "Nor is it intended..."

16 CHAIRMAN HENDRIE: No, because I want to go on and
17 say something along the line, but requires that these
18 improvements in additional measures or these improvements, at
19 any rate, be made in step-wise fashion. I don't know what
20 I mean by that. I know what I mean by that, I'm not sure
21 anybody else would know.

22 COMMISSIONER GILINSKY: That means you are collecting
23 improvements and when you get enough of them -- you could say
24 by the introduction of new models, rather than by ---

25 CHAIRMAN HENDRIE: Let me ask a question. Is the

1 point clear enough so we would do better to move on and leave
2 to the drafters the creation of the necessary language to
3 carry the thought.

4 MR. KELLEY: I think it is.

5 CHAIRMAN HENDRIE: You in fact do freeze things.

6 MR. KELLEY: Sure you do.

7 CHAIRMAN HENDRIE: You don't let the vendor make
8 improvements in what he thinks would be commercial improvements
9 in his design and you don't let the staff implement the
10 latest reg guide unless you think it is a big enough deal
11 to a backfitting operation.

12 On the other hand, this doesn't go on indefinitely,
13 it goes on for the period of the license or permit or
14 whatever. Then there is a chance for everybody to leap in
15 and upgrade.

16 Now, as I get on down that next page, why I covered
17 the point, see down in the middle of the page where it says,
18 "Also under the bill an approved design remains good for no
19 more than five years and both technical and safety improvements..."
20 I don't mean technical, I mean technological, "... and safety
21 improvements can be made when the design is reviewed or
22 renewal or resubmission." If they want to do a real refurbishing
23 and then submit it as mark 2.

24 So the thought does appear down the line, explicitly,
25 and maybe you can work out some way so that that will all
fall together. If the need is clear enough and the intent is

1 clear enough maybe we can move on, what do you think?

2 MR. KELLEY: (Nods in the affirmative.)

3 CHAIRMAN HENDRIE: I see noddng heads with no
4 conviction in the eyes.

5 MR. REAMER: Well, we will find out when it is
6 redrafted.

7 CHAIRMAN HENDRIE: Just don't call me on Saturday
8 and ask about testimony.

9 A little bit above that sentence I was quoting in
10 there, and to meet a note that I found in Bill Parler's
11 rundown, it says: "No standardized design for nuclear power
12 plant will be approved by the NRC without the full array of
13 reviews to procedural and safeguards, including notice and
14 trial time of hearings and no power plant using a standardized
15 design would be approved. Please add without modification."

16 MR. KELLEY: That sentence ought to come after the
17 interval thought because what comes after that is the interval
18 concept.

19 CHAIRMAN HENDRIE: I'm beginning to get sufficiently
20 baffled by this section. So like the amateur art critic,
21 I will know what I like when I see it, but I couldn't draw
22 it for you.

23 Transfer to the States: Aside from certain
24 grumpy commissioners, we all think this is a good idea. How
25 is that a way to start that one.

(Laughter)

1 COMMISSIONER GILINSKY: Couldn't you just stick in
2 something to the effect that this is unclear whether this will
3 speed up or slow down. My thought is initially I think it
4 would slow things down.

5 CHAIRMAN HENDRIE: Let's see. There are several
6 things to cork into the transfer to the states.

7 One of them is we would read, with Peter, that we
8 will take note of the fact that in its own drafting the
9 Commission drafted a NEPA transfer to the states section
10 which carried many of the same thoughts that are in the
11 present bill. That as it considered the various program
12 qualifications and reviews of state proposals that would be
13 required, we formed an alternate NEPA review draft which said
14 in essence what is said now in -- what is it, Marty, 195 --

15 MR. MALSCH: 195(i).

16 CHAIRMAN HENDRIE: 195(i). That is that state work
17 products would -- it really just reiterates what we believe
18 to be our authority at the present time.

19 So there ought to be a paragraph noting that.

20 Another thing I would like to note in here and
21 would be glad to give up some of the other verbage, to keep
22 it from getting overlong, is that the -- I think it would be
23 fair to say that we understand that the section as drafted in
24 the 11704 follows fairly closely the recommendations of the
25 governors' conference, that is, I think there ought to be

1 recognition, perhaps without drawing out all the connections
2 that this section is not necessarily, totally, uniquely a
3 federal concept and has the support on the federal level,
4 because the fact the governors came down strongly for this
5 authority was really a major motivation, I believe, in the
6 way the section finally came out. For instance, in DOE's
7 choice to go the present way rather than to accept our alter-
8 native, NEPA review language, which Peter and I went over
9 the arguments with Hanfling and his crew one time, and he
10 pointed out, okay, he understood our point of view but he
11 felt that the judgment would probably be that DOE had
12 a commitment to the governors' conference.

13 MR. REAMER: Just to be clear, did the governors
14 contemplate a delegation of NEPA to the states?

15 CHAIRMAN HENDRIE: Precisely, they said give it
16 to us and you Feds get out in toto.

17 MR. REAMER: But they were aware that it was a
18 delegation of NEPA and not a delegation of environmental
19 review responsibility, the latter being more flexible, and
20 perhaps accommodating more state programs.

21 CHAIRMAN HENDRIE: What they were explicit about
22 was, get the Fed's hands off and there is no way you can do
23 that unless you transfer the NEPA responsibility. Either that
24 or declare NEPA doesn't comply, which is sort of unthinkable.

25 MR. REAMER: I was just clarifying what the governors

1 have agreed to, that's all.

2 CHAIRMAN HENDRIE: I have got the thing around
3 some place. You can look at it if you really need to.

4 And then crank into this section that we are not
5 certain, in fact, that transfers to the states will -- we
6 are not certain but what it may not lengthen the process.
7 I think it is sort of plus something minus nothing. I don't
8 think it is right on center either way.

9 COMMISSIONER GILINSKY: The reason for doing it is not
10 to speed up the process.

11 CHAIRMAN HENDRIE: I think that's right.

12 Over there where it cranked around about the
13 state's capabilities and we must recognize if they don't
14 upgrade and so on, I wouldn't say that. We want to make it
15 clear that the bill calls for states meeting what will
16 inevitably be fairly rigorous requirements before they can
17 assume the NEPA responsibility, but talk about upgrading
18 their competence and so on.

19 You have to go, I have got one or two more things
20 I want to pick with them.

21 (Commissioner Gilinsky departed the meeting.)

22 Now, as soon as you can make some kind of crack at
23 these several drafting jobs, why don't you see if you can
24 get a copy to me, well, get it around to all of the offices.

25 MR. KELLEY: Do it by when?

1 CHAIRMAN HENDRIE: Well, we are do to be there by
2 when? Close of business tomorrow.

3 MR. KELLEY: Early tomorrow.

4 CHAIRMAN HENDRIE: I will be in Bethesda tomorrow.

5 MR. REAMER: You will be in Bethesda all day?

6 CHAIRMAN HENDRIE: Until late afternoon. I will
7 be going out there ---

8 MR. KELLEY: We can send it out by messenger.
9 You can tolerate written words and stuff?

10 CHAIRMAN HENDRIE: Oh, yes, anything that is passable.

11 It seems to me we have fairly well defined what we
12 need in the standardization section, but it has been a good
13 deal fuzzier in the state's section. I worry a little bit
14 more about that. The points that we would want to get in,
15 the fact that we are not sure but what the transfer to states
16 may not lengthen the process and that's about the right sort
17 of tone to have on that.

18 MR. KELLEY: You can just trade that from this
19 lanugage here about competence.

20 CHAIRMAN HENDRIE: That's okay.

21 There is another piece that -- the question of whether
22 the HR 11704 scheme -- on the same page "... will prove
23 attractive to the states." Let is strike that, to an extent
24 that it would be covered by what I would like to see, which
25 is just a very summary reference to the fact that we understand

1 that these provisions reflect -- strongly reflect the views
2 of the governors' conference on these matters and so on.
3 Let that stand.
4

5 MR. KELLEY: That goes in. This has to go out.

6 CHAIRMAN HENDRIE: Yes. I was a little uncertain
7 whether I wanted to say that any way.

8 The business about, "... from our perspective we
9 think it is reasonable to require that the review be the
10 procedural and substantive equivalent of what NRC is required
11 to do," is an odd way to end this section. It seems to me
12 it needs to go back in some place where we explain over here
13 on page 16, middle of the page, we say, "... the bill offers
14 the states to do the thing if they are up to it, a state
15 which desires to make these determinations would be required
16 to submit a program for making the determinations..." and so
17 on "... to be approved the state program must contain..." and
18 so on. I would incorporate the thought of the end of page 17,
19 over at that point and then ---

20 MR. KELLEY: You have already said they have got to
21 comply with NEPA, on 16.

22 CHAIRMAN HENDRIE: Yes. I'm not sure that that's
23 the thought that we think they have to do at least a
24 procedural and substantive equivalent of what we are doing
25 is the usual thought, if it is not already there.

That would mean that we would end the section on

1 state -- transfer the NEPA responsibility to the states
2 on this comment about a little uncertain but what this may
3 not lengthen licensing times.

4 MR. CASE: As long as you mean the present licensing
5 time. The other side of the coin is that unless you do
6 something like this, the states are going to come in and
7 lengthen it to an infinity by saying you can't build this damn
8 plant here unless you have my approval. So it is a choice
9 of evils, sort of thing that you are facing here and this
10 is the lesser of the two, I believe.

11 CHAIRMAN HENDRIE: But I think the statement about
12 uncertainty that it will lengthen the process is a correct
13 one. And then what it does is to leave the section on state
14 transfer with that cautionary thought at the end, and that's
15 not bad.

16 On the combined CP-OL section there was a comment
17 that I wanted to make down in the middle where the paragraph
18 starts: "... the combined CP-OL authority is a long term
19 reform measure not likely to be used in the near future." I
20 think in fact, that's correct. My own view is that it is
21 likely to be much used. As soon as we get some final designs
22 in hand -- standardized final designs, I think you are not
23 going to see any more PDA level stuff at CP time. So I would --
24 long term, I'm not sure. I would suggest we do a long term
25 reform measure and have it read: "... the combined CP-OL

1 authority is an important alternative avenue to an NRC
2 license." Then I would go on: "... and one, we would
3 encourage for use in the future..." or equivalent words if
4 I didn't quite win out in the grammar.

5 The reason is, from our standpoint getting the final
6 designs in hand at the beginning of the process has a lot
7 of advantage. So rather than talk about whether we think they
8 are likely to be used or not, let us please say we would
9 encourage the use of, except rearrange that.

10 MR. KELLEY: But you would say, what, "... would be
11 an important alternative avenue..."?

12 CHAIRMAN HENDRIE: Yes.

13 From there -- How are you doing, Bill?

14 MR. REAMER: I think I've got it.

15 CHAIRMAN HENDRIE: Shall I lurch ahead or do you
16 need to transcribe?

17 MR. REAMER: I have, "The combined CP-OL authority
18 would be an important alternative avenue through an NRC
19 license and one which we would encourage."

20 CHAIRMAN HENDRIE: Yes. Meaning if you passed the
21 bill we would do it.

22 That's right, because we said it is an avenue, why
23 we can encourage that avenue, good, good.

24 Next page we are going to cut: "... and timeliness..."
25 up there and then: "Mr. Chairman, in closing I would..." I'm

1 not sure whether I would restate or reemphasize or what.
2 Then collapse the two sentences at the front end on page
3 one into one sentence and conclude the prepared statement.
4 Okay.

5 There is one more thing which hangs annoyingly
6 about one's head here, and that is, what to do with the
7 nut and bolt stuff. It could go up pretty much as it is.

8 MR. STOIBER: Mr. Chairman, let me suggest that
9 you are probably going to be getting some questions from
10 members of the committee asking you to address specific
11 issues in which you would like to say you would like to come
12 back and review what the responses are. Maybe the better
13 idea would be to submit the detailed comments after you
14 have had an opportunity to find out what specific things
15 they are interested in.

16 CHAIRMAN HENDRIE: Well, it may be necessary ---

17 MR. STOIBER: That would avoid having to send yet
18 another piece of paper in addition to this one as well.

19 CHAIRMAN HENDRIE: I'm sorry we have run down on
20 time so, that we don't have a chance to go over this infor-
21 mation and decide which way to go in some places and to have
22 some drafting -- some language drafted to recommend the cure
23 to what we see as some of these difficulties.

24 I'm just wondering even at that it wouldn't be
25 better to note in the Commission testimony that there are a

1 number of places where technical clarification changes would
2 be useful and that we are supplying a list of these for
3 the record, although language has not been proposed, if the
4 committee liked we could come afterward with language. And
5 that would allow this or the essence of this to attach as
6 a part of the submitted record, and stake out, in effect
7 that we have these areas where clarification is useful. For
8 some of these, why, you know, you sort of cry out and say,
9 all right, what's the damn language I ought to use and I
10 understand why you didn't draft it. In others, the fact that
11 this concept which appears here and here, but not here need
12 to be made consistent is in itself a useful thing.

13 MR. CASE: I think it ought to go along, because it
14 reflects the kind of deliberation you have given in this bill,
15 otherwise if you just have your primary testimony it will
16 look like you have spent five minutes on this.

17 CHAIRMAN HENDRIE: It does.

18 Before we quit let me ask you a couple of questions
19 about it, partly for clarification and partly to see if there
20 are substantive issues hidden in here which --

21 On page 2, section 102, revised section 185(c) it
22 says the meaning of: "at the risk of the applicant," should
23 be clarified, specifically it should be made clear whether this
24 provision would preclude special treatment of site cost
25 of NEPA reviews. What is the Seabrook stand there of the ---

1 MR. MALSCH: The Seabrook stand is that you can
2 give special treatment to site costs in NEPA reviews. And
3 at least arguably in that case the continuation of construction
4 would in fact, have an effect on the subsequent review and
5 it would not be, at least in the limited sense, at the risk
6 of the applicant.

7 Now, heDOEhe says in the section-by-section analysis
8 in effect that Seabrook would be changed, but the bill doesn't
9 speak to that specifically one way or another.

10 CHAIRMAN HENDRIE: Should this item then read as it
11 does or should it note the Commission's Seabrook -- the thrust
12 of the Seabrook decision or what?

13 MR. MALSCH: We could if we were convinced that we
14 did not want to be denied the option of according special
15 treatment to site costs. In most cases here I simply raised
16 issues on the suggested resolution.

17 CHAIRMAN HENDRIE: Yes.

18 MR. GIBBON: Mr. Chairman, I know that Commissioner
19 Bradford has some rather strong feelings one way or the other
20 on the way these issues should go.

21 CHAIRMAN HENDRIE: I expect most of us do.

22 And the question is then -- the aim then is to try
23 to avoid stating any particular issue in a way that unnecessarily
24 prejudices our position, however we may come down eventually.
25 For this one it may very well be that just saying it just this

1 way is about as neutral as one could get at this point,
2 clearly before a Commission recommendation saying, now, here's
3 the kind of language you should use to clarify would come out,
4 why the Commission would have to meet and decide what it wanted
5 to say about this. Maybe this leaves it fairly enough open
6 while still marking it out as an area where we think clari-
7 fication would be very useful and save us a lot of agony down
8 the line.

9 The second one was page 4, section 105, new section
10 193(d). Are you sure you have got the right section, Marty?
11 It just didn't seem to me to make any sense.

12 (Mr. Malsch check his documents.)

13
14 CHAIRMAN HENDRIE: (d) says the site permit will be
15 valid for 10 years, et cetera. The (a) it says at a certain
16 time come in for renewal and it can be renewed; and (b) the
17 Commission shall renew unless it finds significant new
18 information ---

19 MR. MALSCH: I was looking at paragraph 3 there.

20 CHAIRMAN HENDRIE: "A permit issued pursuant ..."
21 "... valide only to a thermal neutron power generation
22 facility designed to produce..." so and so.

23 MR. MALSCH: I was trying to express Commissioner
24 Bradford's problem of the fact that designs are produced
25 does not necessarily mean will produce. There was some
discussion about that last week about the possibility of how

1 to improve the language.

2 CHAIRMAN HENDRIE: Yes, but this is at a time when
3 the only thing you have on the table is a site permit, and
4 the site permit says, now, this site is good for a reactor
5 that is painted blue and is five feet by ten feet by twelve
6 feet, okay. And you are talking about renewing the site
7 permit.

8 How do you know what the plant performance of a unit
9 eventually built on a site is going to be?

10 MR.MALSCH: Well, except -- you are talking about
11 conditions in site permits and it might be relevant at a
12 later point in time when you are referencing a site permit
13 in a CP application in knowing whether or not the conditions
14 are met to know whether the conditions speak in terms of
15 design or whether the conditions speak in terms of expected
16 operation.

17 I think we had sort of decided last week that designs
18 really meant the implication that each expected operation would
19 fall within the designs. So I mentioned it as an item of
20 clarification any way.

21 CHAIRMAN HENDRIE: Leave it in, but it is badly
22 worded. There is no way you can know what plant performance
23 will be until you build the plant and you are talking about
24 renewing a site permit. It may be years or never before you
25 have a plant in place and can tell what its performance is.

1 MR. MALSCH: Right, we are talking about paragraph 3
2 and the conditions of paragraph three are speaking to would
3 only have meaning at a later point in time when an actual
4 plant design is being proposed. And the question is does it
5 fit within the site permit conditions.

6 CHAIRMAN HENDRIE: You are not going to know at
7 that point. That's the construction permit stage.

8 I don't see any other way to do it. Peter's problem
9 was that when you say which is designed to produce levels
10 et cetera, does that reasonably assure that the performance
11 will be up to the design. What we have said is that we use
12 the language which is designed to produce, et cetera, in a
13 sufficiently broad way so that we mean it is designed by the
14 better to produce a certain performance, the staff agrees it
15 will produce the performance, the plant is built, the performance
16 is tested and by God, it must meet that level. So that in
17 effect, it covers the whole smear.

18 MR. MALSCH: I think that's right, and I think there
19 was a consensus on that when we spoke about it. We might
20 just drop it.

21 CHAIRMAN HENDRIE: I would recommend having it come
22 out.

23 Page 5, section 106, new section 194. Ed Case wants
24 to knock down the number of renewals in this thing to one.
25 I don't know whether I feel up to doing that unilaterally or

1 not.

2 MR. CASE: I talked to each of the assistants on
3 the point, and I don't know whether they went in and talked
4 to their ---

5 CHAIRMAN HENDRIE: Well, things have been pretty
6 hassled and I don't know how much focusing on the point has
7 been possible.

8 Why don't you buck up that item, your paragraph
9 number 14, Marty, to say 194(d)(2)(a) it should -- why don't
10 we lean it a little bit and say since there is some question
11 as to how many renewals of a design should be permitted without
12 review and upgrading ---

13 MR. MALSCH: Should we make the same point for both
14 designs and sites?

15 MR. CASE: It appears in both. The same language,
16 the same problem.

17 CHAIRMAN HENDRIE: Yes, well, let's see. In the
18 site thing, does it go on for indefinite numbers of 10 year
19 extensions?

20 MR. MALSCH: The same problem. It uses the word
21 renewal for five year periods.

22 CHAIRMAN HENDRIE: I see. The same kind of thing.
23 Well, maybe I had better not prejudice. There should be
24 clarification of whether one or two or an indefinite number
25 of renewals can be permitted without some measure of upgrading

1 is the way I would put it, frankly. Then we can later --
2 that gives the opening to it, okay.

3 Now, could you make those adjustments somehow.
4 Can you produce it in a form that they don't have to retype
5 the damn thing, and figure out some appropriate reference
6 to make to it along the lines that I have suggested. That
7 here are some places where we think clarification is needed,
8 we have cited these, but we haven't supplied the language
9 and we would be glad to supply language later if you would like
10 it. And then we could cite these areas.

11 MR. KELLEY: It could go right in the end.

12 CHAIRMAN HENDRIE: Yes, and it would be submitted
13 for the record. Now, if they start to ask questions on it,
14 that's fine. Each Commissioner would be able to say what he
15 thinks the clarification ought to be and Dick can always
16 write a letter later on.

17 Okay, thank you very much.

18 (Whereupon the meeting was concluded at 5:20 p.m.)
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