

ORIGINAL

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NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

PUBLIC MEETING

DISCUSSION OF HEARING IN TARAPUR

Place - Washington, D. C.

Date - Thursday, 7 December 1978

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
3

4 PUBLIC MEETING
5 DISCUSSION OF HEARING IN TARAPUR
6

7 Room 1130
8 1717 H Street, N. W.
9 Washington, D. C.

10 Thursday, 7 December 1978

11 The Commission met, pursuant to notice, at 2:45 p.m.

12 BEFORE:

13 DR. JOSEPH M. HENDRIE, Chairman
14 VICTOR GILINSKY, Commissioner
15 RICHARD T. KENNEDY, Commissioner
16 PETER A. BRADFORD, Commissioner
17 JOHN F. AHEARNE, Commissioner

18 PRESENT:

19 C. STOIBER
20 K. PEDERSEN
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P R O C E E D I N G S

CHAIRMAN HENDRIE: Why don't we come to order and move to the next subject, and that has to do with questions of a hearing and, if so, in what form, color, shape and other description, in the matter of the current application for a license to export fuel to the Tarapur station. There has been some draft material by way of a prospective order circulated. It's under an OGC memorandum of November 30th. There have been several opinions back and forth.

I've scheduled this meeting and put it on short notice, because it seems to me that the various points of view that were being reflected back and forth would be best and perhaps only resolved by perhaps simply sitting down and running a poll on each one saying where the views lie and what sort of compromises could be worked out. And I thought we were at a state of mind where we could probably do that now, and that we would not be of any improved state of mind a week from now or a month from now. And all things considered, it seemed best to go ahead and do it.

The counsel's office and OB stand ready to advise us. But what I propose to do is work down a list of issues which seem to me to pretty well define what goes in an order and what doesn't go in an order. And, since these things, certain of them, at any rate, require a Commission vote in any case, why, good, we can take it here on the spot.

1 So the first thing that I propose to you is whether or
2 not the Commission should grant a hearing on this license, as
3 requested by the petitioners in the matter. The Commission's
4 rules under Part 110 say that an affirmative vote by two
5 Commissioners mandates a proceeding on an export license, and
6 I'd simply ask -- let me put it in a positive sense. Those in
7 favor of a hearing --

8 COMMISSIONER AHEARNE: Wasn't that already decided?

9 CHAIRMAN HENDRIE: We have to have a vote at the
10 table.

11 COMMISSIONER AHEARNE: But there was a vote at the
12 table the last time.

13 MR. CHILK: I believe you asked that they submit to
14 me the individual.

15 COMMISSIONER AHEARNE: I thought Peter and Dick voted.
16 I thought they said they wanted a hearing, and that was a formal
17 vote.

18 CHAIRMAN HENDRIE: I don't think it's been read -- it
19 hasn't been read as a formal vote. Why don't we do it again?
20 If it comes out the same way, why, it simply is a redundancy
21 that protects us. If it comes out differently, then one can
22 argue whether best two out of three votes would solve the
23 dilemma.

24 Let me just ask, would those in favor of having a
25 hearing on the issue, please say aye or otherwise indicate.

1 (Show of hands.)

2 CHAIRMAN HENDRIE: An abundance on the matter.

3 Do you want to vote or abstain?

4 COMMISSIONER GILINSKY: You said raise my hand and
5 I've been against.

6 CHAIRMAN HENDRIE: You are against?

7 COMMISSIONER GILINSKY: I am against.

8 CHAIRMAN HENDRIE: I joint you in being against. But
9 I think we've been outvoted again.

10 Okay, there will be a proceeding.

11 Now, I gathered from the circulated tally sheet to
12 see what the informal opinions were going to be that it would
13 be the preference of the majority of Commissioners that the
14 proceeding be on a written format basis and with the possibility
15 of some summary oral presentations after that, to be decided
16 later on. But let me just ask and then see if we can then
17 settle for the drafters of the order the question.

18 Those in favor -- and this time I'll put it so that I
19 can vote for it -- those in favor of a written format for the
20 proceeding, at least through its initial phase -- do I have a
21 positive? Do I have a majority there?

22 (A show of hands.)

23 COMMISSIONER GILINSKY: You're not talking about a
24 hearing; you're talking about a writing?

25 CHAIRMAN HENDRIE: Well, I'm talking about a hearing

1 in the sense that it can be a written hearing or an oral hearing,
2 or a written and an oral.

3 COMMISSIONER AHEARNE: Vic, you helped establish those
4 words in the regulations.

5 COMMISSIONER GILINSKY: I discovered that.

6 MR. STOIBER: Under the Administrative Procedure Act,
7 specifically, a case held by hearing can be either a written
8 form or an oral form, although it sounds rather strange.

9 COMMISSIONER GILINSKY: Does it actually say that?

10 MR. STOIBER: Yes.

11 CHAIRMAN HENDRIE: I think probably both you and I
12 would be more comfortable if we referred to it as a proceeding.
13 But let us understand, when we talk about hearing here, it can
14 be written or oral.

15 Okay. So I have a clear vote in favor of written
16 format.

17 MR. CHILK: Vic, did you abstain in that vote?

18 COMMISSIONER GILINSKY: I think, not having voted in
19 favor of the hearing, I'm prepared to have the others decide on
20 how they want to conduct it.

21 CHAIRMAN HENDRIE: Gee, I didn't feel any such restraint.
22 Record him as an abstention.

23 COMMISSIONER BRADFORD: Joe's containing the damage.

24 CHAIRMAN HENDRIE: Having lost Vote A, I see no reason
25 not to plunge in on Vote B and, as you say, contain the damage,

1 and so on down the line.

2 Okay. Now, working off a written -- on a written
3 proceeding basis, what sort of time shall we allow for initial
4 submissions? Let me name the various possibilities. The
5 counsel draft order recommended --

6 MR. STOIBER: 30 days.

7 CHAIRMAN HENDRIE: -- in effect, 30 days from the
8 Federal Register notice. The estimate was that that would be
9 35 days from the order issuance. I have other bids. Could the
10 people who made them please help me remember.

11 Dick, I think you went with that?

12 COMMISSIONER AHEARNE: I proposed 20 days after the
13 publication.

14 CHAIRMAN HENDRIE: And John said 20 days after publi-
15 cation in the Register.

16 COMMISSIONER KENNEDY: I don't think that's really
17 going to give enough time, 20 days for discovery. So we're
18 going to be faced with, I would think, rather promptly, requests
19 for extension.

20 COMMISSIONER BRADFORD: Are we going to have
21 discovery?

22 MR. STOIBER: The rules, as they're now drafted,
23 provide the opportunity for a Freedom of Information Act
24 request.

25 COMMISSIONER KENNEDY: That's what I meant.

1 MR. STOIBER: And I would not be surprised to see
2 something of that nature. I guess I just don't know what to
3 expect.

4 COMMISSIONER GILINSKY: Well, let's see. This is
5 30 days from written submissions?

6 CHAIRMAN HENDRIE: Yes.

7 COMMISSIONER GILINSKY: From the inception?

8 COMMISSIONER KENNEDY: Right.

9 COMMISSIONER AHEARNE: So you're concern is that
10 under FY there wouldn't be enough time to cycle it around?

11 COMMISSIONER KENNEDY: Discovery, that's what I meant,
12 the normal course of events.

13 MR. PEDERSEN: A good deal of the requests for material
14 may be classified. It takes a good deal of time to go through
15 it just to determine whether it can be released or not. The
16 staff time goes into it.

17 COMMISSIONER BRADFORD: Carl, is that provision a
18 mandatory part of any hearing?

19 MR. STOIBER: No, it is not.

20 COMMISSIONER BRADFORD: If one wanted to go on a
21 tell us what you know and what your contentions are as of the
22 moment's basis, you don't have to have the discovery?

23 MR. STOIBER: No. And as a matter of fact, a person
24 can file an FOIA request for material related to a license at
25 any time, but it doesn't require that a proceeding be pending.

1 But once you've told the parties that you expect them to tell
2 them something, I can see there would be an interest for some
3 people in discovering more about what was on the record. So we
4 did include a provision of that nature and an optional character
5 in there, in the regulation.

6 CHAIRMAN HENDRIE: Okay, let me ask for a vote on
7 30 days from the Federal Register publication.

8 COMMISSIONER AHEARNE: Peter, what are you doing?
9 You and Dick were the two people who originally had the strong
10 feeling about this hearing.

11 (Laughter.)

12 CHAIRMAN HENDRIE: You had to slip that in, eh?

13 COMMISSIONER KENNEDY: Note, Peter, that we've become
14 persuasive. We attracted him to the idea.

15 COMMISSIONER BRADFORD: I think we're down to two and
16 a half votes.

17 (Laughter.)

18 COMMISSIONER AHEARNE: I have really been convinced on
19 your point, that you wanted to know what additional questions
20 people had. But I hadn't gone as far as this Freedom of
21 Information Act.

22 COMMISSIONER BRADFORD: My concern lies in terms of
23 flushing out that initial information and existing questions
24 doesn't require at the outset that this exists. I would be
25 perfectly content with the 20 days, I think, that you had

1 suggested, with the -- conceivably with an item in the notice
2 of hearing indicating that parties could indicate what other
3 contentions they would have and what they might hope to show,
4 based on FOIA requests. But for my purposes, on this export I
5 don't need a hearing that involves sort of having the outside
6 parties come in and flush out -- I shouldn't say flush out, but
7 discover contentions that they aren't now prepared to make.
8 What I want is all they have on the contentions thus far.

9 COMMISSIONER AHEARNE: 20 would be the exception.

10 COMMISSIONER BRADFORD: It would be for me.

11 COMMISSIONER KENNEDY: It would not be for me, because
12 in my view, the only purpose I believe this hearing can or
13 should serve is to give those parties who believe they have
14 contentions which should be brought before the Commission the
15 opportunity to do so, with the justification which underlies
16 the contentions, to support for those contentions, in order
17 that the Commission itself may then base its judgments or
18 reflect those contentions in making its judgments. Otherwise,
19 it's a useless proceeding. It's precisely the reason that I
20 wanted a hearing before.

21 What happened was, in the other case, one must
22 remember, that all those contentions were ultimately made and
23 laid out before the Congress. The Commission, under the law,
24 is required by its own proceedings to take account of all
25 information it can acquire on the subject. And here we have an

1 opportunity. Parties have come in and requested the opportunity
2 to present material. I think we ought to hear it and we ought
3 to give them the opportunity to develop it in a way which will
4 present it in a positive and supportable light. Having done
5 that, we are then in a position to make our judgment, and it
6 won't have to be reversed all over again elsewhere in the
7 government. That's what we're here for.

8 COMMISSIONER AHEARNE: Joe, what is your view? Don't
9 ask Vic, because Vic has already established that he is not
10 participating.

11 CHAIRMAN HENDRIE: You're going to make me the
12 tie-breaker on this one. I guess I'd go for 30 days.

13 COMMISSIONER BRADFORD: I was just going to make the
14 point, though, that you can get quite different perspectives on
15 this question, depending on how you felt about Criterion 1 the
16 last time around, because if the showing on some of the points
17 made in here, for example, the safeguards adequacy, would sug-
18 gest it might change a vote on Criterion 1, then that would
19 become a determining factor on how you might vote on the
20 application.

21 If you didn't feel Criterion 1 was met the last time,
22 then there are another set of issues that may well be deter-
23 minative, at least in my own case, and these issues, while it's
24 important to have them fleshed out and important to have them
25 understood, especially if we're to go before the Congress again,

1 they aren't the issues that are --

2 COMMISSIONER KENNEDY: I recognize that, Peter. But
3 let me suggest that I would again also recall that there are
4 several parties, presumably, and therefore one's view of
5 Criterion 1, whether it was or was not met, might well be
6 influenced by what the Department of State would present. And
7 again, it seems to me they need the opportunity to present
8 whatever views they have in this regard and whatever information
9 they have in this regard in the most positive light they can
10 present it.

11 COMMISSIONER BRADFORD: Let me just take where that
12 was taking me. I wouldn't vote against the broader or the
13 longer period of time which you have in mind, just because it
14 doesn't seem essential to my own situation. I think clearly in
15 a situation like this you have to allow the proceeding that the
16 group of Commissioners feels is necessary to get at the informa-
17 tion they need.

18 COMMISSIONER AHEARNE: Vic, if it was a tie, would you
19 vote?

20 COMMISSIONER GILINSKY: Let's see if it's a tie.

21 CHAIRMAN HENDRIE: Let me try the question again, and
22 I'll put it in terms of those in favor of 30 days and put my
23 own hand up.

24 (Show of hands.)

25 COMMISSIONER BRADFORD: I'll vote for 30 on the basis

1 of what I said.

2 COMMISSIONER AHEARNE: I'll pass.

3 CHAIRMAN HENDRIE: Okay. 3 ayes and 2 abstentions,
4 huh? Time, 30 days from initial Federal Register notice.

5 Okay. Next question. The counsel's draft order,
6 memorandum and draft order suggested it would be very useful to
7 allow a brief period for parties to submit any, in effect,
8 rebuttal comments that they felt appropriate on other folks'
9 submissions. 10 days were tacked in for that. And I've had
10 differing opinions, again, on an informal basis as to whether the
11 Commissioners would either be willing to forego that, or,
12 conversely, felt strongly that that provision should be in
13 place.

14 Dick, I think you felt very strongly that again, I
15 believe consistent with your view to try and fully develop the
16 incoming material, that it was necessary.

17 COMMISSIONER KENNEDY: Strongly enough that if indeed
18 we were to move to a proceeding which would not contemplate
19 that, I would have serious doubts as to the merits of the
20 proceeding itself or its purposes, and might have to reconsider
21 my votes on the previous questions.

22 COMMISSIONER AHEARNE: Let me give you my argument as
23 to why I don't think it -- this appears to me not to be really
24 a new issue, but rather, one of re-examination of a previous
25 issue chronologically later and factually later, because there's

1 a lot more information that has come out through the Congression-
2 al hearings, for example. It isn't as though we were starting a
3 whole new issue and therefore trying to get all of this informa-
4 tion and re-information. And I do fold into the perspective
5 that the fundamental objective of the Nonproliferation Act
6 appears to be to improve international institutional arrangements
7 to reduce nonproliferation. And there does come a point, in
8 my mind, at least, that I'm willing to say I would try to acquire
9 as much information as I can with reasonable prudence, and then
10 try to reach the best conclusion I can.

11 And I think that stopping without having a reitera-
12 tion of comments and comments is where I would draw that line.

13 COMMISSIONER KENNEDY: Well, you know, one must recall
14 again that in these proceedings the comments we receive often
15 are in the form, certainly are in the form of, in part at least,
16 allegations as to fact. And hopefully, now that we've given a
17 little bit more time and assured that a little bit more time,
18 hopefully, with reasonable support -- nonetheless, the percep-
19 tion of those facts and perhaps their reality is subject to
20 consideration, review by those who may have other information
21 bearing on those facts.

22 It seems to me that we are obligated one way or
23 another to ascertain if that is true. We have no way to do that
24 that I know of except to expose to the view of all the parties
25 the views of the others.

1 COMMISSIONER GILINSKY: Not necessarily parties.

2 COMMISSIONER KENNEDY: Whatever we may call them,
3 participants. But we need that opportunity. Again, it's in
4 the interest of our being able to conduct a proceeding worthy
5 of the name within the constraints and effects of the law.
6 Otherwise, we are going to make subjective judgments and drop
7 them on the table of the Congress of the United States. I do
8 not believe that the law contemplated -- any law indeed, affect-
9 ing the existence of this Commission -- contemplated that that
6 10 would be the way we would conduct our business.

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1 COMMISSIONER AHEARNE: I would guess that any
2 judgment we end up making is a mixture of objective and
3 subjective.

4 COMMISSIONER KENNEDY: Of course, it is our
5 objective to make them as objective, and limiting the
6 subjective elements to the extent possible. And that's
7 precisely what I attempt to do here.

8 CHAIRMAN HENDRIE: Okay. I'm sorry, John, go
9 ahead.

10 COMMISSIONER AHEARNE: I don't think that not
11 asking for reply and comments necessarily means that we allow
12 allegations that are raised in the comments to go unverified
13 or unchecked. I would expect that after we received this
14 information, we might, for example, require asking additional
15 questions ourselves of, let's say, the State Department.

16 COMMISSIONER KENNEDY: I think that could very
17 well make a mockery of the proceeding, because, after all,
18 if we do that, we are then stepping into it and shutting
19 participants out of it.

20 You know, I think I couldn't participate in a
21 proceeding of that kind.

22 COMMISSIONER AHEARNE: Dick, are you saying that
23 you could not participate in a proceeding that has some
24 confidential material involved?

25 COMMISSIONER KENNEDY: Confidential material has been

gsh 1 provided for. The regulations are very clear on how it
2 should be handled and how it will be dealt with in our
3 proceedings.

4 COMMISSIONER AHEARNE: Clearly, the confidential
5 material is part of what we're going to base our judgment on.
6 And we're not going to share that confidential material with
7 all participants.

8 COMMISSIONER KENNEDY: Now wait. It's not that
9 clear, is it? Our rules are very clear on this, how it
10 should be handled, the conditions under which it will be
11 made available.

12 Can you read us those?

13 MR. STOIBER: There is provision for persons to be
14 cleared for the receipt. It's subpart K, special procedures
15 for classified information. And it does allow information
16 to be provided to people who have been cleared. And as
17 part of that, it would also involve the determination by
18 the agency furnishing the material whether or not that
19 material would be furnished under a need-to-know concept.

20 COMMISSIONER AHEARNE: I guess this is a new aspect,
21 and I would like to explore it a little bit further. Is
22 the intention, then, to attempt to clear all of the
23 participants and the need-to-know being the reason that they
24 are the participant?

25 CHAIRMAN HENDRIE: No, I don't think so.

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1 COMMISSIONER KENNEDY: Not unless the time comes
2 where it is important to do that or there's some positive
3 reason to do that. But it cannot be foreclosed. Our own
4 rules provide that. And, indeed, this same discussion
5 occurred frequently, I think, as we were contemplating those
6 rules.

7 CHAIRMAN HENDRIE: Let me see if I can go ahead and
8 push us past the point of classified information and on.

9 COMMISSIONER AHEARNE: But, Joe, perhaps the four
10 of you have gone through this enough in the past. But I
11 want to explore it, if I can, a little bit further because
12 at the heart here, we do have a situation where there is a
13 negotiation going on with another country in which the
14 overall objective, I think, of both countries is to try to
15 reduce the proliferation of nuclear weapons.

16 The concern is that there is, at least in my mind,
17 I am concerned that there is to some extent, that those
18 type of negotiations do require a certain amount of secrecy
19 in their operation, confidentiality. Certainly during the
20 stages of the development of the negotiations.

21 And I'm concerned if what we are really saying here
22 is that we believe that we must get all of that information
23 into the hearing and then clear all participants in that
24 hearing for access to all that information.

25 CHAIRMAN HENDRIE: It is absolutely unambiguous that

gsh 1 that is not what is being said here and is not what is
2 contemplated in any way, shape, or form.

3 COMMISSIONER AHEARNE: All right.

4 COMMISSIONER KENNEDY: It certainly was not my
5 contemplation.

6 CHAIRMAN HENDRIE: But I had the feeling that the
7 debate somehow wasn't, that the lines of debate weren't quite
8 parallel in that sense, but somehow were divergent.

9 I couldn't quite put a finger on it.

10 Let me come back and press you on the rebuttal
11 submission thing. I guess my thrust here is to look for
12 places where commissioners have extremely strong feelings
13 and where in that case, I'm going to vote that way, rather
14 than, I think, than with the commissioners who probably, on
15 free choice, wouldn't do it that way, but it isn't so
16 important.

17 I think that that was kind of the direction you
18 were noting on the last point, Peter.

19 Let me propose to you the following question for
20 the house to divide on, then. Those in favor of ordering
21 a 10-day rebuttal period, please signal in some sort of
22 fashion, and I'll put up to this y.

23 (A show of hands.)

24 COMMISSIONER BRADFORD: Let me indicate that I would
25 support an intermediate formulation on that. I would rather

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1 not decide that question until we have the first round of
2 materials before us.

3 My own concept of this proceeding is that it is,
4 that parties aren't in it as parties of right. They're in
5 it because we feel their participation would be helpful to
6 us, and that at each stage, we ought to re-evaluate and
7 make a decision as to whether the next stage would be
8 helpful to the proceeding as it stands at that time.

9 If I had to vote now, I would vote with John, I
10 take it to drop that stage. But I would rather hold that
11 question open and decide it after we've seen what the first
12 round of submissions looks like and whether, in fact, there
13 really would be some help to be gotten from the second
14 round of comments, perhaps focused on specific questions
15 that the commission wanted to have addressed.

16 COMMISSIONER GILINSKY: You're on your own.

17 (Laughter.)

18 CHAIRMAN HENDRIE: 2, 2, and in abstention.

19 COMMISSIONER KENNEDY: What does the 2-man rule
20 contemplate?

21 CHAIRMAN HENDRIE: Why did I think that a 5-person
22 commission was going to avoid these situations?

23 COMMISSIONER AHEARNE: As our mutual friends told
24 you, that wasn't going to work.

25 CHAIRMAN HENDRIE: Counter-propositions. We've had

gsh 1 one from Peter and --

2 COMMISSIONER AHEARNE: That sounds acceptable to
3 me.

4 COMMISSIONER GILINSKY: I can't imagine that you
5 won't get responses. In any case, you're certainly not saying
6 that you won't entertain them.

7 MR. STOIBER: I think the key element here is
8 what happens to the time limits?

9 COMMISSIONER GILINSKY: No, but I mean responses to
10 the submissions. In other words, I can't imagine that the
11 State Department will not respond.

12 COMMISSIONER KENNEDY: I would certainly hope so,
13 and I would hope that other parties or participants would
14 respond as well. And if that is the case, we ought to
15 acknowledge it at the outset and not dance around the
16 issue, it seems to me, and just tell them that that's the
17 way it is and moreover, it has the great virtue of having
18 some orderliness about it. It's known as the outset precisely
19 how this proceeding is going to go ahead.

20 One more thing. We haven't come to another question
21 which is the total duration of this proceeding. And if we
22 don't nail these things down now, we're stringing it out
23 ad infinitum.

24 Something else. I just can't, as we discussed the
25 other day, I don't think any of us want to do that. So the

gsn 1 more precise we can get about the time limits we propose --
2 it also has another advantage, it seems to me. You know,
3 the predictability and reliability of process, if everybody
4 knows what the game is before they start playing it, they
5 know how to marshall their resources and exactly how to go
6 about it.

7 But if the game is sort of subject to rule-making
8 as it goes along, everybody's wondering what do I do next
9 and what do I have to be prepared to do next, I don't think
10 that's a very good process.

11 So, you know, we ought to decide whether we're
12 going to entertain them. If we're not going to entertain
13 them, they ought to know that. It ought to say so in the
14 order. Don't leave it ambiguous. If we're not going to
15 entertain them, we ought to tell them that, and then be
16 prepared to receive complaints about that, one of which will
17 be mine.

18 (Laughter.)

19 COMMISSIONER BRADFORD: It does seem to me to be
20 more consistent with the notion of the two-man hearing that
21 two votes ought to also compel the schedule and the scope.
22 It gets a little peculiar when the votes that are compelling
23 the schedule and scope aren't those.

24 COMMISSIONER AHEARNE: Except here you have two
25 votes on one side of schedule and scope and two votes on the

gsh 1 other side.

2 COMMISSIONER BRADFORD: But you might even have
3 two votes for a hearing and three against, and still have
4 the hearing.

5 MR. STOIBER: Any two votes.

6 COMMISSIONER BRADFORD: Right.

7 CHAIRMAN HENDRIE: Suggestions?

8 COMMISSIONER KENNEDY: Just go ahead and do the
9 reasonable and rational thing and authorize ten days' response
10 period.

11 (Laughter.)

12 COMMISSIONER KENNEDY: That's my suggestion.

13 CHAIRMAN HENDRIE: That seems straightforward.

14 John?

15 COMMISSIONER AHEARNE: I feel I have logic on my
16 side, so I wouldn't want to budge.

17 CHAIRMAN HENDRIE: Oh, go ahead and budge.

18 (Laughter.)

19 COMMISSIONER BRADFORD: I feel the same way as John
20 does, at the same time. While I may have logic on my side,
21 there's no good logic to having the commission come out at
22 the end of the day unable to —

23 CHAIRMAN HENDRIE: Make an order.

24 COMMISSIONER BRADFORD: Make an order.

25 COMMISSIONER AHEARNE: I was counting on the

gsh 1 chairman as seeing that.

2 (Laughter.)

3 COMMISSIONER KENNEDY: I'm counting on the
4 chairman's usual sound judgment in this matter.

5 COMMISSIONER AHEARNE: So am I, although he has
6 momentarily slipped away.

7 (Laughter.)

8 CHAIRMAN HENDRIE: I must say I think that we
9 probably going to be better off with it and with having it
10 defined specifically in the initial order. I think if we
11 stop to contemplate the comments at the end of 30 days and
12 then decide what to do about that, that we'll end up
13 losing the 10 days, anyway. And I've got a notion, I just
14 sense that we're more likely than not to go ahead and
15 authorize it at that point.

16 So I think from my standpoint, I think it makes
17 sense to just go ahead and tack it right on the end of the
18 30 days, so that at the end of the 40 days, by God, people
19 have filed and had their limited -- and it is limited --
20 chance for rebuttal comment. And now the written material
21 is before the commission.

22 COMMISSIONER AHEARNE: Is it 10 days after receipt
23 of the material that has been submitted?

24 CHAIRMAN HENDRIE: The stuff is due here in the
25 commission offices on the 30th day after the Federal Register

gsh 1 notice. Okay?

2 COMMISSIONER GILINSKY: Calendar days?

3 CHAIRMAN HENDRIE: Calendar days. And the rebuttal
4 material, I would say 10 calendar days later.

5 COMMISSIONER AHEARNE: How do they know?

6 CHAIRMAN HENDRIE: They come in and get it out of
7 the public document room.

8 COMMISSIONER KENNEDY: It will be made available to
9 them. It'll be served on them by counsel forthwith.

10 MR. STOIBER: Any named participants in the
11 proceedings will receive any submissions. However, others
12 who just may comment generally, the general public will be
13 advised that these materials are available in the public
14 document room.

15 CHAIRMAN HENDRIE: My guess just is overall that
16 things will click along on balance and one will then have
17 had whatever benefit there is to have in the opportunity,
18 however brief, for the rebuttal comments.

19 So I really think we ought to do that. Let me
20 see if I can't --

21 COMMISSIONER BRADFORD: I'll abstain.

22 CHAIRMAN HENDRIE: All right. I think we've got
23 you, John, two to one, and two backed off. Good, 10-day
24 comment period.

25 COMMISSIONER KENNEDY: You're going to have to put

gsh 1 these votes in an appendix to the order.

2 (Laughter.)

3 CHAIRMAN HENDRIE: Well, there would be a large
4 matrix with issues down the left column and commissioners
5 across the top. And it won't be a diagonal matrix or
6 anything else.

7 Now the next issue before the house is a fairly --
8 it also relates to procedures, I think we ought to say in
9 the order, whether we are, A, going to have the opportunity
10 for oral presentations after the written submissions. B,
11 we'll positively not have any, or C, we'll decide it at that
12 time. Well, I think one way or another, it ought to be clear
13 now and we ought to make up our minds.

14 COMMISSIONER BRADFORD: I would vote for C on that.

15 COMMISSIONER KENNEDY: C being --

16 COMMISSIONER BRADFORD: Decided at the time.

17 CHAIRMAN HENDRIE: yes.

18 COMMISSIONER BRADFORD: I should add that I see no
19 real likelihood of having it, but just in order not to rule
20 it out entirely.

21 COMMISSIONER KENNEDY: I agree with Peter.

22 CHAIRMAN HENDRIE: In that case, I'll put the
23 question. Those in favor of saying as the draft bid that
24 the commission will consider, whether an opportunity for
25 oral presentations to the commission is warranted after

gsh 1 reviewing written comments received, those in favor --

2 (A show of hands.)

3 COMMISSIONER GILINSKY: If you call the first phase
4 a written hearing, you can call the second phase a spoken
5 writing.

6 (Laughter.)

7 CHAIRMAN HENDRIE: Are you going to vote yes or
8 abstain?

9 (Laughter.)

10 COMMISSIONER GILINSKY: Abstain.

11 CHAIRMAN HENDRIE: Peter?

12 COMMISSIONER KENNEDY: Only when he finds out
13 what we're going to call it.

14 COMMISSIONER BRADFORD: This is Option C, yes.

15 CHAIRMAN HENDRIE: Okay, four in favor of the
16 language in the draft proposition.

17 Next, it was suggested very strongly by several
18 commissioners that we ought to go ahead and try to put a
19 clear end to the procedures.

20 COMMISSIONER AHEARNE: Are you at some stage going
21 to take up whether or not the State Department --

22 CHAIRMAN HENDRIE: Yes, I am, but I thought I'd try
23 to worm my through these who does what to whom on what
24 schedule matters and then come back and pick up that one and
25 another one.

gsh 1 Now there are in effect, if one wanted to move
2 forward to a date certain sort of proposition, there are
3 several ways to do it. I would think that if the
4 commission -- for instance, let me propose as a for instance
5 that the commission decide at the end of 40 days from the
6 Federal Register publication that oral presentations were
7 not warranted. Then I would hope that in something like
8 10 days we could close the proceedings.

9 COMMISSIONER GILINSKY: Are you, in effect,
10 committing yourself not to act on this until the end of
11 this proceeding?

12 CHAIRMAN HENDRIE: You're certainly committing
13 yourself not to act on it until the end of 30 days, plus
14 10 days, plus any oral presentation.

15 COMMISSIONER AHEARNE: How could you possibly be
16 open-ended? Carl, the clock that then begins to run runs
17 when we close the formal step of closing the hearings.

18 MR. STOIBER: The statute says that when the
19 proceeding is completed and the commissioners decide when
20 that is completed, if they decided before or --

21 COMMISSIONER AHEARNE: Then there's a 60-day clock.

22 MR. STOIBER: Then the 60 days starts.

23 CHAIRMAN HENDRIE: And I think the thrust of the
24 suggestions about trying to set a clear termination to the
25 proceeding was to put that in motion and let it be apparent

gsh 1 within some reasonable limits when it would run until and
2 so on.

3 It seems to me a reasonable proposition and I
4 think we could declare the proceeding closed in 10 days
5 after either.

6 Now let's see, though. Ah, here we are.

7 COMMISSIONER KENNEDY: You could even drop that
8 10 days and say, we deem it concluded as of the filing date
9 for reply briefs, which we now agreed to have.

10 CHAIRMAN HENDRIE: Yes, okay. Here's a proposal.
11 The proceeding would be deemed completed on the due date
12 for reply briefs, unless the commission has by that date
13 ordered oral presentations.

14 COMMISSIONER KENNEDY: You see, the reason for that
15 other 10 days was to give us, based upon having received the
16 reply briefs, the opportunity to conclude at that point
17 whether we would have the oral hearings.

-7 18 That was the only reason for an additional period
19 of time.

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1 CHAIRMAN HENDRIE: Shall I put the ten days in or
2 make it seven?

3 COMMISSIONER KENNEDY: Seven is fine with me.
4 Seven calendar days? That's a full week. That's fine.

5 CHAIRMAN HENDRIE: A working week, by God.

6 COMMISSIONER KENNEDY: And after the reply briefs
7 are due, which gives us, then, the opportunity to have looked
8 at the reply briefs and from that concluded whether, in
9 fact, we wanted an oral hearing. If we need anything beside
10 that, in such case, issue an order. Otherwise, automatically
11 the proceeding is doomed to have been closed with the 60-day
12 clock beginning to run at that point.

13 CHAIRMAN HENDRIE: If I can just repeat that
14 proposition to pick up the point -- well, reply briefs come
15 in. 7 days later the proceeding closes formally, unless
16 the commission declares that oral presentations are to be
17 made. If it makes that declaration, they will be held within
18 the following 14 days and the proceeding would then close
19 at the completion of the party's oral presentations -- is
20 the proposal which puts, you know, a plus 7 or plus 21 day
21 date certain after the filing of reply briefs.

22 I think and then the 60-day clock starts at that
23 point -- I think it helpful to have this kind of settling
24 on the sequence of things so people can see where the schedule
25 is in fact going to do. So I will propose that to you and

gsh 1 vote for it myself.

2 COMMISSIONER AHEARNE: Peter, did you have a comment

3 CHAIRMAN HENDRIE: I'm sorry.

4 COMMISSIONER BRADFORD: That total, theoretically,
5 of roughly 100 days before a decision. I think for my own
6 part, I would indicate that I think we can beat that by some.

7 COMMISSIONER KENNEDY: I would hope that we would
8 not have to use the 60 days. That's our own time, time in
9 which we can put pressure on ourselves, and presumably, we've
10 got all that 30 days and the 37 days, really, to do a lot
11 of thinking and have ourselves fairly well settled down as
12 to where we'll be coming out or what we think about this.

13 COMMISSIONER GILINSKY: You have to prepare opinions.

14 COMMISSIONER KENNEDY: Yes.

15 COMMISSIONER AHEARNE: Hopefully, it will be an
16 opinion.

17 COMMISSIONER KENNEDY: An opinion of two lines.

18 CHAIRMAN HENDRIE: Was the plural Freudian, or shall
19 I make anything out of that?

20 (Laughter.)

21 CHAIRMAN HENDRIE: All right. The proposition,
22 then, on terminating the thing. I was in the midst of a
23 vote when -- do you want to okay?

24 (A show of hands.)

25 CHAIRMAN HENDRIE: You're going to continue to

gsh 1 abstain?

2 COMMISSIONER GILINSKY: Yes.

3 CHAIRMAN HENDRIE: Okay. 4, 0.

4 COMMISSIONER KENNEDY: You've had a boring afternoon,
5 Vic.

6 CHAIRMAN HENDRIE: He's maintaining his flexibility.
7 Now let's go back and pick up a couple of other propositions.
8 In the draft order by the council, the State Department was
9 listed as a participant, in a sense being asked for, along
10 with the staff and the commissioners, I guess that's right,
11 the petitioner brackets and the Department of State.

12 It seems to me their views are hardly germane. Do
13 you know whether they have objection?

14 MR. STOIBER: They have participated in the
15 other hearings when they have been advised that that was
16 expected.

17 COMMISSIONER AHEARNE: I'm not sure why it would
18 be germane if they objected.

19 COMMISSIONER KENNEDY: I guess if they don't want to
20 participate, unless we wish to issue a subpoena, they don't
21 have to. Isn't that right?

22 COMMISSIONER BRADFORD: Sure. The Executive Branch
23 does have some designated roles to fill. It may be that
24 they would have to --

25 COMMISSIONER AHEARNE: But they could decline and

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1 I'm for them.

2 COMMISSIONER KENNEDY: I would certainly hope that
3 they would be admitted and would see fit to join us.

4 CHAIRMAN HENDRIE: I agree totally. I ask is there
5 any need or utility in saying the NRC staff, the petitioner
6 and the Department of State, if it so agrees, will be
7 participants?

8 COMMISSIONER AHEARNE: If it so desires.

9 CHAIRMAN HENDRIE: Make it permissive, voluntary.
10 Carl, what do you think? Is it useful? I'm not sure whether
11 the Nuclear Regulatory Commission is exactly fully empowered
12 to order the State Department --

13 COMMISSIONER AHEARNE: No, I didn't mean to, I
14 wasn't trying to imply we were ordering them. I would, if
15 it has to be explicit, then if they desire.

16 COMMISSIONER GILINSKY: Since the whole thing is
17 rather informal, they will certainly want to comment on
18 what we receive.

19 CHAIRMAN HENDRIE: You don't think it's necessary
20 to make that voluntary nature explicit?

21 COMMISSIONER GILINSKY: I wouldn't think so.

22 CHAIRMAN HENDRIE: Even the petitioner could say,
23 no, I'm not, and I doubt we'd start criminal proceedings.

24 Now if the staff said no, we're not going to file
25 an opinion, why, I guess --

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1 COMMISSIONER KENNEDY: We might have to refer to you.

2 CHAIRMAN HENDRIE: Okay. If you don't feel a need

3 for it, why, okay. But we all agree --

4 COMMISSIONER KENNEDY: Is this in any sense -- yes,

5 I agree to the question.

6 MR. STOIBER: So it would remain as it stands,

7 without the brackets.

8 COMMISSIONER KENNEDY: Is this -- I've forgotten

9 the precise wording. Okay. Other interested members of

10 the public, whoever they may be, are covered by the

11 language, okay?

12 MR. STOIBER: Yes.

13 COMMISSIONER KENNEDY: Fine.

14 CHAIRMAN HENDRIE: Okay. And we all agree on the

15 State Department, with the abstention, I assume --

16 COMMISSIONER AHEARNE: With the understanding that's

17 really if they desire.

18 CHAIRMAN HENDRIE: Yes. Okay, next item. In the

19 draft order, it notes --

20 COMMISSIONER GILINSKY: Let me ask you a question.

21 What is the difference between a participant and being an

22 interested member of the public? Is there really any

23 difference?

24 MR. STOIBER: It insures that you are in receipt of

25 all materials filed. Probably basically not much.

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1 CHAIRMAN HENDRIE: It gives you automatic entry
2 on the service list. Otherwise, you have to write in and
3 say, hey, I want to be a participant.

4 MR. STOIBER: It would be meaningful for a private
5 party, not the State Department, because the participant
6 would be able, then, to seek clearance, for example, under
7 our rules; whereas, a nonparticipant cannot.

8 So it wouldn't have any significance particularly
9 for the State Department, but it might for a private
10 individual.

11 COMMISSIONER BRADFORD: Let me just ask about that
12 sentence. I haven't actually been through a hearing on one
13 of these before myself. Has this language been in the
14 previous ones? Have people commented?

15 COMMISSIONER KENNEDY: Not only commented, but we
16 had a long string of individuals who requested the
17 opportunity to appear in our oral —

18 COMMISSIONER BRADFORD: At the orals? These are
19 apart from the petitioners.

20 COMMISSIONER KENNEDY: Oh, yes.

21 COMMISSIONER GILINSKY: Well, that was a real
22 hearing.

23 (Laughter.)

24 MR. STOIBER: It's not a spoken writing.

25 (Laughter.)

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MR. PEDERSEN: In Gilinsky talk, it was the spoken writing.

CHAIRMAN HENDRIE: What he really means is written speaking.

COMMISSIONER KENNEDY: That's what we're getting at.

CHAIRMAN HENDRIE: The next item in the draft order, the order notes particularly the petitioner's request for the commission to order a hearing on four topics. It cites them as, one, the adequacy of Prime Minister Desai's assurances that he "will not authorize nuclear explosive devices or further nuclear explosions," to the adequacy of the safeguards applied by the International Atomic Energy Agency at the Tarapur facility, and the adequacy of U.S. Government information on those safeguards. Three, the adequacy of U.S.-India negotiations on the return of spent fuel from Tarapur to the U.S. for storage. Four, on the fuel requested.

The people named as participants, together with other interested parties, are invited to submit written comments on these issues, or any other issues purporting to the proposed export of nuclear fuel to India and relating to the statutory determinations the commission must make under pertinent law.

Every question I pose to you, then, is do you believe this is an adequate statement of the issues?

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1 COMMISSIONER BRADFORD: I would rephrase the first
2 point in order to avoid any misunderstanding. I would have
3 it read: "The sufficiency for purposes of the nuclear
4 nonproliferation act of" -- and I assume that the statement
5 is adequate toward other purposes. The prime minister made
6 it at the time, and that we're concerned about that.

7 CHAIRMAN HENDRIE: Say that again.

8 COMMISSIONER BRADFORD: Point I began, the adequacy
9 of Prime Minister Desai's -- I was saying the sufficiency
10 for the purposes of the Nuclear Nonproliferation Act.

11 COMMISSIONER KENNEDY: Sufficiency?

12 COMMISSIONER BRADFORD: Yes.

13 COMMISSIONER AHEARNE: You mean sufficiency for
14 our purposes.

15 COMMISSIONER BRADFORD: Our purposes, yes.

16 CHAIRMAN HENDRIE: For purposes of the NNPA. Let'
17 see. This would -- since that's not precisely what the
18 petitioner --

19 COMMISSIONER BRADFORD: Neither is this language
20 here.

21 MR. STOIBER: This language is not specific until
22 you get down to the quoting material. What we tried to do
23 is to characterize what they were primarily concerned about.

24 CHAIRMAN HENDRIE: Okay, good, good. Okay. In that
25 case, I don't have any further problem with the change.

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COMMISSIONER AHEARNE: In No. 2.

COMMISSIONER KENNEDY: We're settled on that one?

CHAIRMAN HENDRIE: Yes, I think so. There seems to be no disagreement.

COMMISSIONER AHEARNE: On No. 2, isn't the issue, similarly, the adequacy for purposes of the Act for NRC's judgment of the safeguards, rather than an absolute adequacy on some undetermined basis?

MR. STROIBER: Sure.

COMMISSIONER BRADFORD: Again, that's what I would say.

CHAIRMAN HENDRIE: The adequacy.

COMMISSIONER AHEARNE: For NRC's determination under the Nuclear Nonproliferation Act.

COMMISSIONER BRADFORD: Since in each case, we're purporting to describe what the petitioners have asked for there, maybe it's better to break our amendments loose and state that as what we're actually ordering.

MR. STOLBER: You could add a sentence at the end of that list of four items, saying these items should be addressed from the point of view of a sufficiency for purposes of the commission's determination under the NNPA.

COMMISSIONER KENNEDY: That would be better than --

COMMISSIONER AHEARNE: Could you not say we should request the commission to order public hearings focusing upon

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1 this fuel transfer and then go on to say --

2 COMMISSIONER KENNEDY: Either way. So long as it
3 does separate the characterizations, I think that's important.

4 CHAIRMAN HENDRIE: How about that sufficiency thing
5 as a sentence at the end?

6 COMMISSIONER BRADFORD: I particularly wanted it in
7 Item 1.

8 COMMISSIONER AHEARNE: I think you're right.

9 COMMISSIONER BRADFORD: I think there was an
10 element of real presumptuousness in using that.

11 MR. PEDERSEN: Why don't you say based on the
12 petitioner's request, the commission is asking for hearings
13 on these, and don't characterize it.

14 COMMISSIONER BRADFORD: Change the colon to a
15 period and then insert that.

16 COMMISSIONER KENNEDY: That's fine.

17 COMMISSIONER AHEARNE: yes.

18 COMMISSIONER KENNEDY: That will take care of it.
19 That's fine.

20 COMMISSIONER KENNEDY: Does that seem clear to
21 everybody? I lost it, but if everybody else is happy with it,
22 I'll vote for it. Where did we put the period?

23 COMMISSIONER BRADFORD: Just after the word "topics."
24 That became a period. And then the candidates said, based
25 on this request, we were ordering a hearing.

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1 MR. PEDERSEN: Focusing on the following four
2 issues.

3 CHAIRMAN HENDRIE: Okay. Put the period over there
4 after public hearing, don't you, and then say based on this
5 request, or in any event, the commission herewith orders
6 a hearing focused on four topics -- one, two, three, four.

7 COMMISSIONER KENNEDY: Hopefully, the petitioner
8 will note, indeed, that these four topics have a considerable
9 similarity to what he wrote.

10 CHAIRMAN HENDRIE: I hope so. Now do we put the
11 sufficiency phrase into one and two, or do we clank it at
12 the bottom?

13 COMMISSIONER BRADFORD: No, I think it stays in.

14 COMMISSIONER KENNEDY: Now you can put it in.

15 CHAIRMAN HENDRIE: And with those amendments, the
16 issues seem to be acceptably framed. Those in favor?

17 (A show of hands.)

18 CHAIRMAN HENDRIE: Okay, good. 4, 0. Now let's
19 see, I think that covers the whole thing. Could I then ask
20 you for an affirmative vote on this order of the commission
21 to hold a hearing with the provisions as voted on here this
22 afternoon? The commissioners will see a final draft and
23 I will ask them, please, to refrain from any but the most
24 crucial correction of factual and important matter editing
25 sorts of things, recognizing your natural inclination to

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1 perfect the language. I ask restraint for all but the most
2 essential changes.

3 If I could then ask for a positive vote on the
4 order --

5 (A show of hands.)

6 CHAIRMAN HENDRIE: I guess you abstained?

7 COMMISSIONER GILINSKY: Uh huh.

8 CHAIRMAN HENDRIE: 4, 0. Listen Vic, I had prepared
9 a dissenting opinion about having a proceeding at all, and
10 I've decided not to use it.

11 Would you like to?

12 (Laughter.)

13 CHAIRMAN HENDRIE: I'd be glad to give you a copy.
14 Okay, I think we've done this piece of business.

15 (Whereupon, at 3:45 p.m., the hearing adjourned.)
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