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NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

DISCUSSION OF NRDC PETITION ON TARAPUR EXPORT LICENSE

Place - Washington, D. C.

Date - Thursday, 16 March 1978

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CR 6793

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

DISCUSSION OF NRDC PETITION ON TARAPUR EXPORT LICENSE

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

Thursday, 16 March 1978

The Commission met, pursuant to notice, at 10:45

a.m.,

BEFORE:

VICTOR GILINSKY, Acting Chairman

PETER BRADFORD, Commissioner

ALSO PRESENT:

T. ROTHSCHILD
S. CHILK
J. BECKER
M. GUHIN
J. DEVINE
J. KELLEY

P R O C E E D I N G S

(10:45 a.m.)

COMMISSIONER GILINSKY: Let's proceed.

Trip, are you going to handle this?

MR. ROTHSCCHILD: I will start on this, with the assistance of Jim Devine today.

We have before us today a February 13th petition from NRCD, Union of Concerned Scientists and the Sierra Club, requesting that the Commission reopen the hearings that it held in July 1976 on exports to Tarapur.

The Commission issued an opinion in the spring of 1976 saying NRDC was not entitled to hearings on the Tarapur as a matter of right, that if any hearings were to be held, it would be on the matter of Commission discretion.

And that's where we stand right now. We are talking about whether this hearing should be held as a matter of Commission discretion.

The NRDC petition basically had four major contentions, there were four areas they wished to explore in public hearings.

One, they were concerned that there was no immediate need for the fuel in India and that the Commission could withhold action for several months on application, XSNM-1060, which is now before the Commission.

Secondly, they were concerned about the adequacy

1 of IAEA safeguards that would be applied at the Tarapur fac-
2 ility.

3 Three, they had concerns about the adequacy of
4 India's assurances that they will not use United States
5 supplied material for nuclear explosive devices of any kind
6 or any research or any research for nuclear explosive pur-
7 poses.

8 And fourth, they wished for a progress report on
9 what had occurred during the past 18 months regarding neg-
10 otiations on the return of spent fuel from Tarapur to the
11 United States.

12 This issue was discussed at great length in the
13 July 1976 hearings. And they wanted to know where we were at
14 with that regard.

15 They also in that same petition requested that the
16 Commission consolidate consideration of XSNM-1060, the
17 license is presently before the Commission, which we have
18 received Executive Branch and Staff views on, with considera-
19 tion of XSNM-1222. That is an application that we have not
20 yet received Executive Branch views on, and therefore, we
21 have not received Staff views on.

22 Earlier this month the Commission met on that sub-
23 ject and issued an order on consolidating consideration of
24 those two applications, although we explicitly stated in that
25 order that we reserve the right to act upon those two

1 applications at different times.

2 The Department of State responded to the NRDC
3 motion first by sending a letter stating that the Commission
4 should act promptly on XSNM-1060, that India needed this fuel
5 in February.

6 Secondly, they stated that they were not in favor
7 of public hearings. I gathered from their pleading they were
8 not in favor of public hearings either now or at some later
9 date.

10 The NRC Staff also responded to this motion. They
11 recommended that XSNM-1060 be issued promptly without the
12 Commission holding discretionary public hearings first.

13 The Staff did not explicitly address the issue of
14 whether they would favor hearing if the Commission were to
15 act upon XSNM-1060 now, and then hold a hearing thereafter,
16 on the generic issue of future exports to Tarapur. They did
17 not explicitly address that.

18 The State Department also recently, March 6th,
19 filed a memorandum with the Commission supplementing the
20 public record on development since the last Tarapur hearing.
21 They tried to address each of the concerns that the NRDC
22 petition had raised, and you have got that before you; SECY-
23 78-105A.

24 You also have before you a memorandum from the
25 Office of Policy Evaluation on whether a hearing should be

1 held.

2 And that is basically where we are at procedurally.

3 As far as alternatives for the Commission, there
4 are several possible alternatives that we can consider. These
5 were basically outlined at the last public meeting that we
6 held earlier this month.

7 One would be to determine that the legislative
8 type hearing would be contrary to public interest. You could
9 just say: No further public proceedings required. We would
10 issue an order explaining why the Commission felt it had
11 adequate information to act upon licenses to India without
12 further hearings, and we would explain why a public hearing
13 would be contrary to the public interest.

14 A second alternative would be to order an oral
15 legislative type hearing. The Commission has taken the
16 position that adjudicatory hearings are not required in ex-
17 port licensing proceedings. And the new regulations, the
18 new Part 10 which will go into effect on May 3rd, specifically
19 does not provide for adjudicatory hearings.

20 COMMISSIONER GILINSKY: Are you going to deal with
21 the scope separately.

22 MR. ROTHSCHILD: Yes, we will deal with the scope
23 of the hearing separately.

24 Let me just go through some alternatives.

25 A third alternative would be to not order a

1 legislative type hearing immediately. We could order further
2 written comments. And perhaps on the basis of written com-
3 ments, if you wanted to convene a legislative type hearing,
4 you could, of course, do so.

5 A fourth alternative would be to deny a hearing
6 on license number XSNM-1060 and act upon that license applica-
7 tion now, which is -- this is a course which is favored by
8 both the NRC Staff and the Department of State.

9 And then we could decide what to do with the hear-
10 ing now or at a later date. One option would be to go ahead
11 and issue 1060 or to deny 1060, and then order public hearings
12 to be held in we will say approximately six years or four
13 weeks, how ever long it would the Commission to issue an order
14 and schedule public hearing.

15 That hearing, of course, would not be on XSNM-1060,
16 but that would be on the generic issue of exports to Tarapur.
17 The Commission in the past has not held export license hear-
18 ings on specific license applications. Our original Tarapur
19 hearings were not tied to specific application. They were on
20 the exports to Tarapur generically, and we specifically re-
21 serve the right in our May 6, 1976 opinion to issue licenses
22 pending before the Commission if we felt the circumstances
23 warranted it.

24 Under this course, the Commission could act upon
25 1060 and the order a public hearing, which could be held in

1 approximately four to six weeks.

2 Another option before the Commission would be to
3 deny a hearing on 1060 and defer decision on whether a hearing
4 should be held at some later date.

5 We haven't received Executive Branch views on
6 XSNM-1222 and the Commission may wait to see those views be-
7 fore they ordered a public hearing.

8 I think those are the basic options before the
9 Commission.

10 If the Commission wished to hold a public hearing,
11 whether it be a written hearing or whether it be an oral
12 legislative type hearing, the Commission could shape the
13 issues as they saw fit.

14 If the Commission wanted to hear about the ade-
15 quacy of safeguards, they could limit the hearing to just
16 that issue. If they wished to have it address each of the
17 issues that NRDC raised or any other issue that any member
18 of the public would like to raise, they can do that.

19 We would set forth the scope of any such hearing
20 in the order that we would issue designating a hearing, if it
21 is the desire of the Commission to hold a hearing.

22 I think another point that needs to be brought up
23 today is the fact that although the new regulations do not
24 go into effect until May 3rd, at the last Commission meeting,
25 we discussed whether we should in effect treat these

1 regulations as effective with respect to the issue of --

2 COMMISSIONER GILINSKY: Well, I think it is clear
3 that we are running under the current regulations, and I think
4 what ever decision we take will be taken by all Commissioners.

5 MR. ROTHCHILD: And as we said in our memo, if
6 two Commissioners want a hearing, we understand that
7 Chairman Hendrie and Commissioner Kennedy said they would vote
8 for a hearing, if there were two votes for a hearing, to get
9 us over any type procedural obstacle.

10 COMMISSIONER GILINSKY: I think the decision will
11 simply be taken by all the Commissioners together.

12 MR. ROTHCHILD: And I would now like to turn this
13 thing over to Jim Devine. I think he is going to discuss
14 some of the policy options behind each of these various op-
15 tions and some of the pros and cons for the Commission to
16 consider.

17 MR. DEVINE: OPE feels that irespective of your
18 decision on a hearing, which I will treat a little later, that
19 there is a persuasive case for issuance of this license.

20 It was approved by the highest levels of the
21 Executive Branch. I think there is -- the larger nonprolif-
22 eration objectives would be served by issuance of this license.

23 And I think failure to issue would have an adverse
24 impact on our efforts to secure, for example, full-scope
25 safeguards in India.

1 Looking at the new criteria in the bill, we be-
2 lieve that this case meets the new six new export criteria.

3 The important thing here is that by issuing this
4 license, you would not prejudice action either on 1222, which
5 is still pending, or your option to conduct a generic hearing
6 on our supply relationship with India.

7 The Executive Branch treated in its latest sub-
8 mission, the four concerns of the petitioners. They reviewed,
9 for example, the question of disposition of taps fuel. The
10 Executive Branch did undertake to explore this with the
11 Indian government after the last hearing. The Indians were
12 -- did agree in principle to such a buy-back scheme as was
13 discussed at the last hearing, but after studying the question
14 more extensively, under the umbrella of the NSC ad hoc
15 group, it was concluded that extraordinary effort would be
16 required and at least six years before fuel could be returned
17 to the United States at a cost of several million dollars.

18 They then embarked on a course under which they
19 provided consultants to the Indian government, and they now
20 have concluded that reracking is feasible in India at the
21 existing spent fuel ponds, which would carry them through the
22 early 1980s.

23 COMMISSIONER BRADFORD: Is there something unique
24 about Indian spent fuel, or is that true all over the world?

25 MR. DEVINE: As I understand it, the storage arrays

1 in India are unique in that they are six-by-six; Mike, as
2 opposed to the standard seven-by-seven.

3 MR.GUHN: In terms of the assemblies themselves.
4 There are also specific circumstances surrounding a situation
5 which would be associated with return, which may or may not
6 exist elsewhere, in terms of their cranes and their capabilities,
7 ties, in terms of shipping from --

8 COMMISSIONER GILINSKY: You are talking about the
9 local situation?

10 MR. GUHN: The local situation itself, in terms
11 of transport and these kinds of considerations.

12 COMMISSIONER GILINSKY: I remember a point was
13 made about the lack of containers and so on.

14 MR. DEVINE: Casks.

15 COMMISSIONER GILINSKY: Casks. Is this because
16 of the special nature of the fuel? A great deal of fuel is
17 being moved around the world. We have retransfer requests
18 coming in here pretty often.

19 MR. GUHN: That is not related to the nature
20 of the fuel. As far as I understand it, that is just simply
21 due to their -- there happens to be limited cask availability.
22 As you know, there are very few ships which are transporting
23 this, for example, and that these are, as I understand it,
24 if you look at it, at least their contracts, it is (inaudi-
25 ble).

1 So there is not only the cask availability, but
2 also shipping. But I think that cask was one of the prime
3 limiting factors in terms of their time estimate, as to taking
4 six years.

5 MR. DEVINE: The Executive Branch also reviewed the
6 question of urgency. As was the case in the earlier export
7 situation, the urgency here relates to the fuel fabrication
8 facility and not directly to the reactor at Tarapur.

9 However, if the fabrication facility is affected,
10 then the Indian practice is to turn down reactor output
11 to make in sync so to speak, with the fuel fabrication
12 facility.

13 So that if this license is not issued on a timely
14 basis, it would have an ultimate effect on the reactor at
15 Tarapur.

16 COMMISSIONER GILINSKY: What is the supply of
17 fuel at the present time?

18 MR. DEVINE: They have on hand, I think, 140
19 assemblies, on hand.

20 COMMISSIONER GILINSKY: Just in terms of tons of
21 fuel?

22 MR. DEVINE: What they have on hand?

23 COMMISSIONER GILINSKY: Yes.

24 MR. GUHIN: I don't know that specifically. We
25 have looked at it really in terms of the operations of the

1 fuel complex facility.

2 The Executive Branch goes through this in detail.
3 It is slightly unclear as to some details of that operation.
4 For example, they mention going into a scrap operation; it is
5 unclear whether this is going on right at this time, or whe-
6 ther it would be part of the -- at a later date, and it is
7 unclear, for example, whether they continue to put scrap back
8 in as they are going with fresh feed.

9 COMMISSIONER GILINSKY: You are not clear then,
10 in terms of how many years' supply there is at the present
11 time?

12 MR. DEVINE: Oh, yes.

13 MR. GUHIN: Yes, for the next -- essentially at
14 least for the next reload for each of the reactors, is avail-
15 able in India.

16 And in fact, the Executive Branch memo points out,
17 I think, -- there is concern there or at least the idea that
18 they wish to go to a new assembly, and indeed they are
19 building this amount, with a view to being able to redo a
20 fab operation, and be able to shift over to a new assembly
21 that they consider would be more efficient.

22 COMMISSIONER GILINSKY: Let's go on.

23 MR. DEVINE: The third point raised by the peti-
24 tioners was the adequacy or the forum in which the President of
25 India, given the nonproliferation assurances alluded to in

1 original State Department paper.

2 The latest State submission notes that he did have
3 conversations with both President Carter and British Prime
4 Minister Callahan earlier this year and cited various other
5 public pronouncements he has made over the course of the last
6 year in which he indicated that India had no need for an
7 explosive capability, they had no intention of detonating
8 another device.

9 Finally, on the question of safeguards adequacy,
10 the latest State Department submission contained nothing new.
11 In other words, the issue as it has been presented to you
12 and several others for us, is still with us. We do not have
13 independent, if you will, verification of the adequacy here.

14 Now, the question you will have to address is
15 whether you want to tackle this issue in the context of either
16 this license application or in the context of a generic hearing
17 on the Indian nuclear relationship.

18 You have before you separate from this case a
19 draft action plan that the Staff has been working with the
20 Executive Branch on, various options that NMSS has developed.
21 You will be getting comments from IP on that options paper.

22 It would seem to me that the question of IAEA
23 safeguards adequacy should be addressed in that context
24 rather than a specific license application.

25 Now, turning to the question of a hearing, as I --

1 I think the legislation indicates that you should have a
2 hearing when it would provide you --

3 COMMISSIONER GILINSKY: Let's go back to the
4 license. You mentioned that it complied with the -- that
5 the requirements of the new act have been carefully examined
6 by your office; Michael, your office?

7 MR. GUHIN: We looked at the question, yes, and
8 in terms of the applicable criteria, of course, the sensitive
9 technology is not applicable because we are not dealing with
10 that. But in terms of the others, we have looked at them
11 and considered that the assurances in the various categories
12 are consistent with the legislation.

13 COMMISSIONER GILINSKY: Have you examined that?

14 MR. ROTHSCHILD: Yes; I think they meet the pre-
15 sent criteria.

16 COMMISSIONER GILINSKY: Why don't you go on?

17 MR. DEVINE: It seems to me that hearing is war-
18 ranted, perhaps, under three conditions.

19 One would be when it would provide you with new
20 information, better information which will enable you to make
21 a more informed decision.

22 The second would be a hearing, if a hearing were
23 justified on the basis of elaborating the public record,
24 separate and apart from what new information it might bring
25 to you.

1 And finally, whether a hearing might be justified
2 as an end itself, as perhaps an earnest of the Commission's
3 commitment to greater public participation in the export
4 process.

5 With respect to the first of these, I rather doubt
6 that a hearing will result in any new information, that could
7 be above and beyond this very voluminous file we have before
8 us.

9 COMMISSIONER GILINSKY: You are referring to a
10 hearing specifically on this license, or a hearing in general?

11 MR. DEVINE: A hearing on this license.

12 Secondly, I believe that the latest State Depart-
13 ment submission, including its enclosures, have been placed
14 in the public document room.

15 Hence, aside from the classified briefings you
16 received over the course of the last several months, all this
17 information is available to the public. So I do not believe
18 that a hearing would result in a greater elaboration of the
19 public record.

20 Finally, you do have the option of holding hearings
21 as I indicated, if you believe that it would be justified as
22 an end itself.

23 Now, that is something that I don't think any of
24 us at this side of the table can comment on. It is some-
25 thing that you have to consider.

1 But in summary, I do think that irrespective of
2 your decision on a hearing, that this particular license
3 application should move ahead.

4 COMMISSIONER GILINSKY: And let' see; that was
5 with respect to a hearing tied to this license. Any thoughts
6 about a broader hearing, or do your comments apply there,
7 equally?

8 MR. DEVINE: I think they probably would apply
9 equally to a broader hearing. That is assuming that you chose
10 to address the safeguards question separate from India or
11 what ever.

12 MR. GUHIN: I would agree with that, but I would
13 like clarify that in the Executive Branch's submission, of
14 course, in its language it was very specific in opposing a
15 hearing in conjunction with issuance of this license.

16 So, in fact, this is the Staff view, also, which
17 was put forward. And I think that was the issue that was
18 being confronted when looking at the possibility of a generic
19 hearing as was the earlier one, and that in fact there could
20 be a different array.

21 I think OPE's analysis of the basis and aspects
22 for it, I think, are equally valid, but then one could have
23 a different array of disadvantages or the extent to which
24 identified disadvantages would actually apply.

25 And I don't think we have at this stage, at any

1 rate, we have a clear reading on that. We have it from the
2 Executive Branch as to how they view it. And we have not
3 addressed that question specifically. and we

4 On the face of it, there would be far less --

5 MR. DEVINE: To elaborate on that, I think clearly
6 the foreign policy implications of a hearing on a subsequent
7 license or generically, would be far, far less than pulling
8 it on this particular license application.

9 So that would be, as Mike pointed out, perhaps
10 I would say a reason for a hearing, but certainly an argument
11 that, you know, the foreign policy implications, the question
12 of urgency would not arise, if you were to order a generic
13 hearing.

14 For example --

15 COMMISSIONER GILINSKY: Were there any commitments
16 made by the Commission in a previous round of hearings that
17 would bear on this question?

18 MR. ROTHSCHILD: No, there were not.

19 I would like to reiterate that the Commission
20 in its earlier Tarapur opinion, took the position that if
21 we held public hearings it would not be tied to the applica-
22 tion, specific applications.

23 One of the problems is frequently you may get --
24 the hearing process may get delayed from the original schedule
25 that you set forth and people may want extensions of time to file

1 various pleadings, which the Commission may choose to grant if
2 there is time. And sometimes there is a situation where they
3 may be certain foreign policy pressures to act upon a given
4 license.

5 So the Commission has avoided that in the past by
6 saying we are going to hold a hearing on the generic issues
7 raised by petitions, without tying it to a specific license
8 application.

9 COMMISSIONER GILINSKY: What would a hearing
10 entail, can you sketch out what --

11 MR. ROTHSCHILD: Well, basically --

12 COMMISSIONER GILINSKY: -- sort of schedule would
13 be involved?

14 MR. ROTHSCHILD: Basically, what would happen, I
15 think, we would need to issue an order setting forth hearing
16 in a Federal Register notice. That would probably take a
17 couple of weeks to get Commission concurrence on.

18 I think it is going to take three Commissioners in
19 a room raising their hands. It may take us a couple of weeks
20 until we have a quorum again.

21 I think we can have an order ready for you as soon
22 as a quorum is available to issue such an order.

23 I think we would probably want to leave a couple
24 of weeks for any groups who would like to submit of Freedom
25 of Information Act requests for information to do so.

1 I think we can handle them fairly expeditiously
2 on the FOI requests because NRDC requested in conjunction with
3 the last hearing held in the summer of '76, all information
4 from the United States government that was available at that
5 time, and they got virtually everything, and there has not
6 been that much new paper generated in the past 18 months that
7 they might wish to see.

8 So I think we can handle FOI requests fairly ex-
9 peditiously.

10 I think you are going to want to give them a
11 couple of weeks to use discovery. I think you are going to
12 want to give them a couple of weeks to submit written sub-
13 missions to the Commission. I think you are talking about,
14 you could begin a hearing approximately one month after
15 you issue an order, or a month to six weeks.

16 MR. KELLEY: Would it be under the new rules by
17 then?

18 MR. ROTHCHILD: If the hearing were after May
19 3rd, we would have the new rules in effect.

20 The new legislation also provides that if the
21 Commission would like to adopt temporary procedures that
22 would cover public participation until May 3rd, we are wel-
23 come to do so.

24 And I believe a paper will be prepared for the
25 Commission shortly, suggesting such a course of action to the

1 Commission that would allow us to make these rules effective,
2 you know, if we wanted to hold a hearing at the end of April,
3 or something like that.

4 But I think a reasonable time schedule, in order
5 to give people time to prepare would be a hearing toward the
6 end of April or early May.

7 COMMISSIONER BRADFORD: How has discovery been used
8 in NRC hearings of this sort in the past?

9 MR. ROTHSCCHILD: The Commission took the position
10 in the Tarapur opinion in 1976, the May '76 opinion, that
11 discovery should be related to Freedom of Information Act
12 requests.

13 And that has been codified in the new regulations,
14 which have not been effective.

15 COMMISSIONER BRADFORD: You suggested discovery
16 apart from the FOI, I thought.

17 MR. ROTHSCCHILD: Discovery has been limited to
18 the FOIA. That's what the new regulations call for. We
19 are a little more elaborate in the sense that we also allow
20 participants to submit questions to the Commission, which they
21 may address to the Executive Branch or to the NRC Staff.

22 In the last Tarapur hearing, NRDC submitted about
23 110 or 112 questions to the Commission. We deleted a couple
24 of questions as being irrelevant and submitted the rest of
25 it to the State Department and asked them to respond in writing.

1 to the 110 questions, which is what the State Department did.

2 We have provided for option as well, in our new
3 regulations. So that they can seek information through the
4 Freedom of Information Act and secondly, they can submit
5 questions to the Commission which they would like the Com-
6 missioners' discretion to ask to other participants.

7 If the Commission received such questions, we would
8 need to look at the questions and determine whether we would
9 like to ask them either in the oral hearing or whether we
10 would like to submit them to the Department of State to have
11 them respond in writing, or the NRC Staff or anyone else who
12 would like to have them respond to such questions.

13 But we have not provided for formal interrogatories.
14 We have not provided for adjudicatory procedure. We have not
15 provided for subpoena of witnesses, and we have not provided
16 for cross-examination of witnesses.

17 I think a reasonable schedule is four to six
18 weeks after we issue an order, to hold an oral hearing, if
19 you would like to do so.

20 COMMISSIONER GILINSKY: If we take that step, we
21 need a quorum of the Commission.

22 MR. ROTHSCHILD: I think to issue a Commission order
23 we would need a quorum.

24 COMMISSIONER GILINSKY: We can't do what we did
25 this morning, in other words.

1 MR. KELLEY: I would hesitate to say that we can
2 do it. We did this morning partly because if we didn't do
3 it this morning, then time would have run on an opinion.
4 And partly because all we did was extend the time. So the
5 more exigent the circumstances and the more innocuous is
6 what you do, the more likely the chance to do it.

7 I wouldn't want to say that we couldn't issue such
8 an order. But I have asked the question: Assuming that you
9 want to have hearing, do you really have to have an order
10 in the next week or two, and the answer has been no. So I
11 don't think you ought to try to put out a formal order unless
12 there is some real need for it.

13 COMMISSIONER GILINSKY: For those who are mystified
14 by that, we had Chairman Hendrie on the loudspeaker, par-
15 ticipating via electronic means.

16 MR. KELLEY: And in talking to Trip, I gather an
17 order would not be just one sentence that said there is going
18 to be hearing on Tarapur. It would lay out various issues
19 and I don't see how we can do that kind of a thing over the
20 phone.

21 MR. ROTHCHILD: We are talking about the scope of
22 the hearing, if you would like to narrow some of the issues.

23 Secondly, if the Commission were to decide to issue
24 XSNM-1060, or deny it, I think we need an opinion to explain
25 the Commission's action, setting forth, looking at the new

1 export licensing criteria.

2 As you know, last time we issued a --

3 COMMISSIONER GILINSKY: If we have an opinion
4 then, presumably, we need a vote to approve an opinion.

5 MR. ROTHSCHILD: Yes.

6 COMMISSIONER GILINSKY: Well, then --

7 MR. KELLEY: You can issue now and explain later,
8 can't you?

9 MR. ROTHSCHILD: I suppose you can direct Staff
10 to act upon XSNM-1060 and issue an opinion.

11 COMMISSIONER GILINSKY: So far, no Commissioner
12 has acted on this matter, and I think what we will do is
13 consult with the other two commissioners and deal with that
14 matter.

15 MR. KELLEY: But you don't need a formal vote to
16 approve that license, because the authority to do so has been
17 delegated.

18 COMMISSIONER GILINSKY: To the Staff.

19 MR. KELLEY: Yes, except the concurrence process.

20 COMMISSIONER GILINSKY: That is if -- now, let
21 me ask you why you feel that you need an opinion, that an
22 opinion is appropriate.

23 MR. ROTHSCHILD: There are a couple issues. One,
24 if you are talking about the merits of 1060, I think you re-
25 member last time when the Commission issued a license, I guess

1 XSNM 845; NRDC immediately rushed into court seeking to enjoin
2 that shipment of the material.

3 The court enjoined for two days, three days, until
4 we could file a brief. We then filed a brief and the court
5 then removed the injunction. The material was allowed to
6 be shipped.

7 This could happen again. We have no idea what
8 NRDC plans to do.

9 I think the Office of General Counsel feels more
10 comfortable, if there is going to a court challenge, if we
11 have a written Commission opinion justifying our order,
12 particularly since the court has seen several other orders
13 on India, showing every time we have issued a license, we
14 have issued an opinion explaining what we were doing. And I
15 think it makes our action easier to defend in court, if they
16 were to seek an injunction if we have a full written Com-
17 mission opinion explaining what we were doing, rather than just
18 informing the court that we issued 1060, because this litiga-
19 tion is still pending before the court.

20 We did consolidate, which will allow the Com-
21 mission to act upon 1060, but we will need to inform the
22 court of our action.

23 COMMISSIONER GILINSKY: The court has had this
24 for quite awhile now.

25 MR. ROTHSCHILD: Yes. Unfortunately, there is

1 really no ready mechanism to get the court to move.

2 (Laughter.)

3 As you know, we recently, early this week, filed
4 a motion with the court, explaining the impact of the new
5 legislation upon that litigation. We took the view that the
6 legislation says that we are not required to hold adjudicatory
7 hearings and informed the court of that.

8 We feel that effectively resolves one of the
9 issues in the dispute.

10 The standing issue still remains before the court.

11 MR. KELLEY: Isn't one of the contentions --
12 there are various contentions -- one contention, if you will,
13 is license specific, saying, the questioning the need for
14 this shipment now.

15 And if they are, isn't it appropriate to at least
16 say why this one is needed now?

17 Some of the others, like the long-term nuclear
18 relationship with India, you can call that more a sort of
19 generic issue, I would think.

20 MR. GUHIN: Would any of these risks that you
21 see, Trip, be mitigated through -- at least to any extent
22 by not simply informing the court that it has been issued,
23 but if you will, in effect a brief opinion, if the Commission
24 were to see that necessary, which would also commit them-
25 selves to a full opinion in a short time period?

1 I was just wondering if that would at least reduce
2 any of the risks you see.

3 COMMISSIONER GILINSKY: In any case, an opinion
4 would require a Commission vote. It would require that
5 three Commissioners be present.

6 MR. ROTHSCILD: And we are recommending an opinion
7 in this case.

8 COMMISSIONER GILINSKY: You are frowning there.

9 MR. KELLEY: I am not sure it would.

10 The issue in question is this licence; correct?

11 MR. ROTHSCILD: But you would issue an order to
12 go along with it explaining.

13 MR. KELLEY: Well, maybe we shouldn't debate
14 legal issues at length right now, but my reaction is that
15 if the license -- the license itself you can cut loose with
16 no reasons at all, right?

17 MR. ROTHSCILD: Absolutely.

18 MR. KELLEY: If you can cut a license loose with
19 no reasons at all, why do you need a vote to write an opin-
20 ion? I am not so sure you couldn't circulate it and get it
21 approved.

22 Just leave, "it is so order," off the last sen-
23 tence.

24 (Laughter.)

25 The license is the operative document, and that is

1 gone.

2 So I don't know. We can think about that a little
3 further, but --

4 What do you think, Joanne?

5 MS. BECKER: I tend to agree with you, that there
6 is no need to have a meeting to consider an opinion.

7 MR. KELLEY: If we have already let the license --

8 MS. BECKER: That's right; sure.

9 MR. GUHIN: Could I ask one thing here on
10 the -- the Staff has made its view clear publicly that it
11 does not favor delay on the license on this because of the
12 hearing matter and it feels that there should not be a hear-
13 ing in conjunction with the license.

14 And this regard and to what Trip had said earlier,
15 I think it should be added if the Commission feels that a
16 generic hearing on continued supplies to India, or perhaps
17 even a generic hearing on simply some of the issues raised
18 in these motions, would be in order, or was warranted, adding
19 to one of Trip's options here; I don't think in that light,
20 if those issues weren't there, that one need wait at all,
21 for further Executive Branch views on the second pending
22 application, 1222. I think one could proceed, if it is
23 decided to do so, quite apart from that, because those may
24 be some time.

25 As we know, the supply covered by this pending

1 license is estimated to keep the NMC fuel complex in operation
2 for about 18 weeks. The next license is for a substantially
3 longer period of time.

4 COMMISSIONER GILINSKY: Well, I think that is
5 what Trip was saying, at least, if we -- not tieing up the
6 licenses.

7 I wonder if you could just clarify one point for
8 me. What does the legislation say about the imposition of
9 a requirement on full safeguards coverage?

10 What are the time limits on that.

11 MR. DEVINE: Unless the criteria is met; namely,
12 full-scope safeguards -- and correct me if I am wrong,
13 Trip -- are in effect after 18 months --

14 COMMISSIONER GILINSKY: From the signing of the
15 bill?

16 MR. DEVINE: From the signing of the bill, there
17 shall be no export of any material which -- how does it
18 read -- is slated to be exported with 24 months.

19 MR. ROTHSCHILD: If an application is filed 18
20 months after the bill was signed, full-scope safeguards
21 apply.

22 That requirement also will apply if the applica-
23 tion is filed with the Commission within -- before 18 months,
24 but the shipment would not occur until 24 months after the
25 bill has gone into effect.

1 So in other words, if you filed an application at
2 the 16th month, but the shipment isn't going to take place for
3 another year, the full-scope safeguards do apply.

4 COMMISSIONER GILINSKY: You mean in 26 months?

5 MR. ROTHSCHILD: Yes.

6 MR. GUHIN: Or more starkly, if we got an applica-
7 tion today which we may well have, but if one came in today
8 which was not to be shipped until 24 months after March 10,
9 1978, then the full-scope would have to apply.

10 MR. KELLEY: Otherwise, it is just applications
11 that are filed 18 months after the bill is enacted.

12 MR. GUHIN: Even if we acted on it in two months,
13 it would have to apply.

14 COMMISSIONER GILINSKY: Peter?

15 COMMISSIONER BRADFORD: No questions.

16 COMMISSIONER GILINSKY: Unless anybody has any-
17 thing else to mention here, I think we will have to discuss
18 this with the other Commissioners, and at least one of them
19 was not here because of unforeseen circumstances.

20 And we will act on the matter then.

21 Thank you.

22 (Whereupon, the hearing in the above-entitled
23 matter was adjourned at 11:16 a.m.)

