



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

Withheld

April 17, 1979

MEMORANDUM FOR: Chairman Hendrie
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Bradford
Commissioner Ahearne

FROM: *EB* Leonard Bickwit, Jr., General Counsel

SUBJECT: TMI-2 TRANSCRIPTS

We have reviewed the April 5, April 6 and April 9 transcripts of closed Commission meetings. The April 5 transcript deals with Harold Denton's report from the site (9:37 a.m. meeting), the B&W generic issue (11:00 a.m. meeting), drafting the Rancho Seco letter (3:14 p.m. and 5:25 p.m. meetings), a brief status report of conditions at the site (5:25 p.m. meeting, pp. 7-11), more on the Rancho Seco letter (5:25 p.m. meeting), and Sunshine Act discussions about the rationale for closing proposed meetings about a Commission-sponsored TMI-2 investigation (5:25 p.m. meeting, pp. 32-end).

The April 6 transcript deals with Harold Denton's report from the site (9:51 a.m. meeting), preliminary discussions about structuring a Commission-sponsored TMI-2 investigation, suggestions of people to head up the investigation (11:05 a.m. meeting), and further discussions as to the structure of a Commission sponsored investigation (3:23 p.m. meeting).

The April 9 transcript deals with Harold Denton's report from the site (9:37 a.m. meeting) and more on the structure of a Commission-sponsored investigation (3:00 p.m. meeting).

Discussion

The April 5 transcript presents to us the clearest case for immediate disclosure. It encompasses Harold Denton's site reports and the B&W generic issue. The Denton site reports have routinely been disclosed and the B&W generic issue is covered by the Moffitt/Hendrie letter of understanding.

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Disclosure would not impinge on any privacy interest; nor would it frustrate Commission action since the most plausible frustration claim -- consideration of the B&W generic issue -- has already been resolved for the present. In short, we think the April 5 transcript should be disclosed in its entirety both to Congress and to the public.

We note one caveat. The April 5, 5:25 p.m. meeting reflects a brief discussion about the prospect of putting an operating plant in a mode similar to TMI-2 in order to provide data for the natural circulation mode of operating the TMI-2 plant. (5:25 p.m. meeting, pp. 7-11, attached). The offer seems to have been made in confidence (we were not privy to the discussions and hence do not know) and a frustration of purpose case could be made for withholding the discussion if that is so. Nevertheless, unless disclosure would involve breach of a confidence, which the offeror is unwilling to forgo, we favor disclosure. The discussion seems much like other plans considered and rejected for bringing TMI-2 to a cold shutdown. And an attempt to withhold it from the public (we would be disclosing it to Congress under the Moffitt/Hendrie understanding) would most probably be ineffective and would unduly emphasize the significance of one particular plan to obtain some useful information for considering alternative cold shutdown plans.

We also suggest that when releasing the April 5 transcript, the Commission should attach to it the April 4 discussions about Rancho Seco and the B&W generic issue. Release of an entire Rancho Seco package (including the April 4 staff briefing, ACRS/NRC meeting and NRC meeting -- all of which are already public) would give context to the Commission decision reflected in the April 5 transcript not to close down the other B&W plants at this time.

The April 6 and April 9 transcripts present a distinct issue. Both transcripts (beginning with the 11:05 a.m. April 6 meeting) deal with structuring a Commission-sponsored investigation. (Later transcripts not yet reviewed also deal with this issue). The Commission has a colorable case for withholding the transcripts in their entirety both from the public and Congress. The rationale essentially would be that the Commission's desire to settle upon a sound structure for its own investigation would be frustrated by premature disclosure of its deliberations -- relying upon Section 9(B) of the Sunshine Act vis-a-vis the public and that exemption as well as a separation of power argument vis-a-vis the Congress.

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A more limited claim would insist on withholding only the names and evaluations of those being considered to head up the investigation -- again, the frustration of purpose rationale is applicable, but here more pointedly as to picking a particular person for an important job; additionally, the invasion of privacy rationale is applicable. We much prefer the limited claim of confidentiality relating to discussions about specific people. The general claim seems not much different from the kinds of arguments the Commission could muster whenever it is considering acting in the same general sphere as other agencies of government (e.g., the Commission's relation to Executive Branch actions on low-level radiation or waste management), and in our judgment is relatively weak. The more compelling argument is that the Commission's attempt to choose investigators will seriously be hampered by premature disclosure of those under consideration and that the disclosure would constitute an unwarranted invasion of privacy. We have marked and attached to this memorandum the portions of the April 6 transcript which would be withheld under this more limited claim.

Recommendation: Disclose the April 5 and April 9 transcripts in their entirety. Disclose the April 6 transcript in its entirety except those bracketed portions of the 11:05 a.m. meeting. Discuss further with OCA and OGC later this afternoon the issue of whether matter we would delete should be deleted from transcripts to be sent to Congress.

cc: OPE
OCA
SECY (2)

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CHAIRMAN HENDRIE: The other item which I would ask
1 all of you present in the room to hold in absolute confidence
2 is that the -- They're looking, [Bill Lee has said what
3 he wants to do is to take one of the Oconee units down,
4 let a little decay occur to get a near match to the Three
5 Mile conditions and carry out some evolutions which would
6 provide data for the natural circulation -- some baseline
7 data for the natural circulation mode.]

8 The staff has been looking at it. They see no
9 safety problems or technical specification limits that would
10 impede that prerequisite. Our completion of the staff judgment
11 that that is, in fact, an acceptable thing, and [Lee] will have
12 to talk to the ---

13 COMMISSIONER BRADFORD: Well, why at [Oconee] Joe,
14 instead of -- Is there something with [Arkansas] I ---

15 CHAIRMAN HENDRIE: Yes. It turns out that [Arkansas]
16 has been down too long and will be another couple of weeks --
17 they have already-- because they are in some maintenance
18 and associated other operations, it would take them a week to
19 two weeks to put things back together, and you have got further
20 decay, and then there's that delay in getting data. Furthermore
21 I must say if somebody's going to do this evolution, I think,
22 the [Duke operating unit is the right crowd to do it.]

23 However, it's dependent upon [Lee] being able to
24 bring the [Governor of South Carolina] along. And that's why
25 I would ask for absolute confidence ---

COMMISSIONER A. EARNE: What kind of hazard and risk

1 COMMISSIONER BRADFORD: -- He will want to explain
2 what he has in mind very carefully.

3 (Simultaneous voices.)

4 CHAIRMAN HENDRIE: I think, relatively little.
5 They can do it in very careful stages, come back ---

6 (Simultaneous voices)

7
8 CHAIRMAN HENDRIE: -- shut down or come back, two
9 pump circulation, look at some things, one pump circulation,
10 simulating the Three-Mile, look, get some data there ---

11 (Simultaneous voices)

12
13 CHAIRMAN HENDRIE: -- and then go very carefully
14 at this stage of the time over toward natural circulation,
15 and able at all times to recover from whatever stage they
16 are and go back and do a ---

17 COMMISSIONER AHEARNE: What is it, then, that requires
18 the [Governor of South Carolina] to be brought along?

19 CHAIRMAN HENDRIE: Well, I suppose in principle,
20 nothing formally and legally, but ---

21 COMMISSIONER AHEARNE: No. I'm asking it poorly.

22 Is it that they think that the loss of the voluntary
23 cutting of the power is something they want to make sure he
24 agrees with, or is it that they are concerned he may ---

25 (Simultaneous conversation between Commissioner
Kennedy and Commissioner Gilinsky.)

1 conclude that there is a substantial risk ---

2 CHAIRMAN HENDRIE: It's the latter.

3 COMMISSIONER BRADFORD: The other ---

4 CHAIRMAN HENDRIE: [The Governor of South Carolina has
5 three of the B&W plants operating] ---

6 COMMISSIONER AHEARNE: I know.

7 CHAIRMAN HENDRIE: -- [at the Oconee Station in his
8 state,] he is concerned that they don't want to do anything
9 without him being on board.

10 COMMISSIONER BRADFORD: [If it were said carelessly,
11 for example, that this plant were going to be put into a
12 configuration similar to Three-Mile Island in order to run
13 tests --]

14 (Laughter.)

15 CHAIRMAN HENDRIE: They can see a substantial
16 problem. They feel it necessary, from their own standpoint
17 of being level with the local authorities that they be on
18 board on this kind of thing.

19 Furthermore, [Lee says they need the power from the
20 Oconee units and he would not, as the result of this evolution
21 unless something untoward happens, want them to be tied from
22 not allowed to come back and get on line afterwards.] So it --
23 one of the things that we all understand is that if this is to
24 go, and I think it highly desirable that that data be
25 available to the calculators of natural circulation, --

COMMISSIONER AHEARNE: Is there anybody ---

1 CHAIRMAN HENDRIE: -- he not then be trapped
2 in a continued shutdown ---

3 COMMISSIONER GILINSKY: Right.

4 COMMISSIONER AHEARNE: Is there somebody in NRR
5 who isn't so integrally involved with TMI who has taken a
6 look at that and to conclude: Yeah, there really is no
7 serious risk in it"?

8 CHAIRMAN HENDRIE: Well, they've got the -- they
9 are looking hard at it down there, and have got all the
10 senior staff at hand -- They have got the cream of the talent
11 down there and are undoubtedly working -- they are working
12 it back through into the Bethesda shop. Tedesco is running
13 it at the Bethesda shop, because the site -- the TMI site
14 won't have, you know, the tec spec folks and all of the
15 stuff [on Ocone.]

16 COMMISSIONER AHEARNE: Yes.

17 CHAIRMAN HENDRIE: So that has to be worked at
18 Bethesda.

19 COMMISSIONER AHEARNE: Harold and Vic, basically
20 those originally assigned, don't seem to mind.

21 (Commissioner Gilinsky discussing another subject
22 at table with some other person. Difficult to distinguish
23 voices.)

24 CHAIRMAN HENDRIE: Okay, so I simply inform you of
25 that and we will see how that progresses. I told Roger

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1 that it was my judgment that contingent on a continued clean
2 bill from the staff, who will have to issue a judgment, that
3 it is an acceptable set of maneuvers and so on, and stand
4 behind it in the normal way. And contingent on [Lee's ability
5 to clear with this Governor] that as a very desirable additional
6 assurance of the calculations and analysis that's being done
7 for Three Mile in preparation for the natural circulation mode.

8 COMMISSIONER AHEARNE: An immediate payoff then for
9 having brought in [Lee.]

10 COMMISSIONER GILINSKY: Can I ---

11 CHAIRMAN HENDRIE: Yes.

12 COMMISSIONER GILINSKY: -- I wonder if I can quickly
13 run over this then I would put it in to be typed.

14 CHAIRMAN HENDRIE: Yes, sir.

15 COMMISSIONER GILINSKY: I would change paragraph
16 2 to say: "On the basis of a preliminary analysis, our staff
17 is reasonably confident that it has identified the principle
18 factors..." --

19 COMMISSIONER KENNEDY: You say: "... is now
20 reasonably confident..."

21 COMMISSIONER GILINSKY: "... now reasonably con-
22 fident..."

23 COMMISSIONER AHEARNE: In the absence of the staff
24 we are now committing them to being reasonably confident.

25 (Laughter.)

COMMISSIONER KENNEDY: They said that before.