



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

June 14, 1979

OFFICE OF THE  
SECRETARY

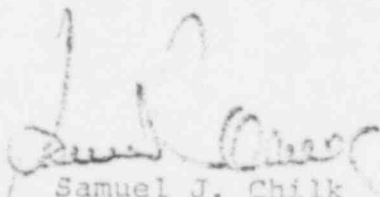
780 PUBLIC DOCUMENT 8-113

COMMISSION DETERMINATION REGARDING PUBLIC DISCLOSURE  
UNDER THE GOVERNMENT IN THE SUNSHINE ACT OF:

Discussion of Tarapur  
February 15, 1979

Pursuant to the Commission's regulations implementing the Government in the Sunshine Act (10 CFR 9.108(d)), the Commission, on the advice of the General Counsel, determined that the attached portions of the subject meeting record, a transcript, should be made available to the public. The remaining portions have been withheld from public disclosure as noted below:

<u>Page/Line</u>	through	<u>Page/Line</u>	<u>Exemption</u>
3/20		3/24	10 CFR 9.104(a)(1)
4/1		4/2	10 CFR 9.104(a)(1)

  
Samuel J. Chilk  
Secretary of the Commission

Attachment:  
Transcript

282 055

1907030410



# Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

DISCUSSION OF TARAPUR

(Closed to Public Attendance)

February 15, 1979

Pages 1 - 41

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

282 056

1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION

3 DISCUSSION OF TARAPUR  
4 (Closed to Public Attendance)

5  
6 Commissioner's Conference Room  
7 1717 H Street, N.W.  
8 Washington, D. C.

9 Thursday, February 15, 1979

10 The Commission met, pursuant to notice, at 1:47 p.m.,  
11 Joseph Hendrie, Chairman of the Commission, presiding.

12 PRESENT:

13 Chairman Hendrie  
14 Commissioner Gilinsky  
15 Commissioner Kennedy  
16 Commissioner Bradford  
17 Commissioner Ahearne

18 ALSO PRESENT:

19 S. Chilk  
20 L. Bickwit  
21 H. Shapar  
22 C. Stoiber  
23 J. Becker  
24 R. Burnett  
25 J. Shea  
G. Oplinger  
T. Sherr  
J. Devine  
J. Fouchard

282 057

P R O C E E D I N G S

1  
2 CHAIRMAN HENDRIE: If we could come to order.

3 The Commission mets this afternoon to discuss the  
4 Tarapur Export License, No. 1222.

5 I think the first thing I would like to do is to make  
6 a report to you, and the second thing I would like to do is  
7 talk something about procedure, and to review some of those  
8 procedural matters.

9 The progress report has to do with a telephone call  
10 I got about lunch time from Tom Pickering, the Assistant  
11 Secretary of State with whom we deal on these matters. Mr.  
12 Pickering has been recently in India, last Thursday and Friday,  
13 having conversations with high Indian officials on matters  
14 related to these exports, and the problems of coming to agreements  
15 that are in conformance with the Non-Proliferation Act, and he  
16 called me to reflect some discussion that has gone on in his  
17 bureau in State, since he got back over the weekend, along the  
18 line that the proposed safeguards committee may, in the long  
19 run, turn out to be less effective as a means of dealing with  
20 some of the differences between India and the U.S., than had  
21 been thought, and that perhaps more continued or increased  
22 emphasis in bilateral negotiations would produce a better  
23 result. He does not communicate this as a decision of the  
24 Department of State, but said he was aware that we were meeting  
25 these days on the Tarapur license, and wanted to communicate to

282 058

1 me that at least this thought was around there.

2 I understand Mr. Christopher will be going out at  
3 the end of this month, and the negotiations will continue.  
4 Mr. Pickering was very strong and reiterated several times the  
5 fact that in communicating, trying to keep us up to date on the  
6 progress of their thinking that this had not in any way affected  
7 their views as to the desirability and merits of the 1222  
8 license application, and he also said they had specifically  
9 discussed and thought about that aspect.

10 So I tell this to you for information and you will have  
11 to make your own assessment of what it means and to that end,  
12 I suppose individual Commissioners could call Pickering, if you  
13 wanted. He suggested that because it did not reflect any sort of  
14 policy decision at this point that he felt it was probably  
15 premature for a briefing, although, obviously at a mutually  
16 agreeable time, why, he would be glad to come and talk to us.

17 COMMISSIONER KENNEDY: Did he -- Excuse me.

18 CHAIRMAN HENDRIE: Okay. That's the end of my report.  
19 I thought I ought to let you know.

20 COMMISSIONER KENNEDY: [

21

22

23

24

25

CHAIRMAN HENDRIE: No.

282 059

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

COMMISSIONER KENNEDY: [

]

CHAIRMAN HENDRIE: He didn't offer any word on the subject and I didn't ask him.

COMMISSIONER KENNEDY: Well, this is just for the record, because the statement has been made, and of course, is a part of life in the world as it is.

Is the staff aware of any -- Did anybody make any calls on this? Were they aware of this at all?

MR. DEVINE: I expect, sir, it refers to Vance's letter to the Chairman in late December.

COMMISSIONER KENNEDY: That was the basis?

MR. DEVINE: I think so..

COMMISSIONER KENNEDY: Good.

CHAIRMAN HENDRIE: Okay, now as to procedural matters. We talked briefly at an agenda session several days ago about the procedural aspects here. I have told you that it seems to me that opinions are becoming sufficiently well crystallized so that we could come to a division of the house and find out which way the General Counsel ought to be drafting an order to represent the majority view in the case.

The suggestion last time was -- there was discussion in that context about what we should do then and the thought was -- one thought was expressed that we would look at the order draft language, exchange opinion drafts and one thing or

282 060

1 another. I'm not sure, on further reflection, that that is  
2 likely to be as productive an avenue as I might have thought  
3 once. I'm not sure that everyone's willing to trade draft  
4 opinions and it appears to me that ---

5 COMMISSIONER GILINSKY: Who isn't?

6 CHAIRMAN HENDRIE: Well, I think there have been some  
7 expressions about past experience that don't encourage people  
8 to want to do it this time.

9 It seems to me that we are well advanced with the  
10 discussion and the arguments in the case. The situation has  
11 been enhanced considerably since our last meeting, why numerous  
12 writings which have come to all the Commissioners. I am delighted  
13 to find that on occasion I'm getting critiques of papers before  
14 I get the papers, and I look forward, if we were to go much  
15 longer to getting rebuttal to critiques before the critique,  
16 which in turn would be before I'd get the paper.

17 Any way, I admire the speed of response very much  
18 and the arguments are useful in developing the points of view.

19 It does seem to me that we are well along in that  
20 process and that it might be desirable to go ahead and take a  
21 division of the house, ask the Counsel's office to then begin  
22 to draft as rapidly as he can, an order reflecting the majority  
23 view, presuming there is a majority view and then look forward  
24 to a time when individual opinions of Commissioners can be  
25 combined with that order and produced.

1           What I would suggest to you is that a final and  
2 formal, if you will, vote on the matter could be in the nature  
3 of an affirmation vote on the majority order, and that at such  
4 time as that vote was scheduled, which would be when the majority  
5 had agreed on the order language, that we would look and see if  
6 individual Commissioners expect to have such comments as they  
7 might want to make in hand by that time, and I would try to  
8 schedule that affirmation to take account of the time that  
9 people need to gather their individual thoughts together.

10           COMMISSIONER BRADFORD: I'm a little puzzled, and I'm  
11 concerned as well by one aspect of this.

12           When we agreed to circulate opinions, I thought we did --  
13 that was certainly fine with me. I haven't been shy about  
14 circulating opinions up to now, and certainly whoever writes  
15 a majority opinion will be able to shape whatever they have to  
16 say in response to the points that have been on my mind.

17           I would like, before writing any final opinion in  
18 the case, to have had a chance to see what others have to say.

19           COMMISSIONER AHEARNE: That's fine with me.

20           COMMISSIONER GILINSKY: That's the way it has been done  
21 before.

22           COMMISSIONER KENNEDY: Not exactly.

23           COMMISSIONER GILINSKY: Well, you know you are  
24 referring to the previous Tarapur vote.

25           COMMISSIONER KENNEDY: No. I'm referring to three



1 occasions.

2 COMMISSIONER GILINSKY: Well, let's pick up ---

3 COMMISSIONER KENNEDY: I'll put them all on the  
4 record, okay?

5 COMMISSIONER GILINSKY: Well, let me ask you which  
6 three occasions.

7 COMMISSIONER KENNEDY: I'll put the three occasions all  
8 on the record. Delighted to do so.

9 I recall a Tarapur matter and I recall reading in the  
10 press a reasonably accurate account, that there were 11 drafts  
11 circulated as one rebuttal followed another in an endless process,  
12 terminated only because some Commissioners were exhausted in  
13 continually rewriting everything to take account of yesterday's  
14 rebuttal.

15 I don't intend to go through that process.

16 COMMISSIONER GILINSKY: Well, I don't either.

17 COMMISSIONER KENNEDY: Secondly, -- Good, I'm delighted  
18 to hear that, and I hope that that's very clear on the record.

19 Secondly, I recall another Tarapur matter in which  
20 precisely that was suggested and at this table I was overruled  
21 because it was a little late, the other opinion having been --  
22 having reached a stage of -- in the dissemination, that to stop  
23 it would have caused perturbations since it actually was on  
24 the table.

25 COMMISSIONER GILINSKY: No, that wasn't the point.

1 The point was ---

2 COMMISSIONER KENNEDY: Well, that certainly was the  
3 point and that was the only point.

4 COMMISSIONER GILINSKY: May I just say something  
5 about it?

6 COMMISSIONER KENNEDY: You may if you wish, of course.

7 COMMISSIONER GILINSKY: Well, the past practice has  
8 been ---

9 COMMISSIONER KENNEDY: No. Past practice has been  
10 whatever certain Commissioners wanted it to be. And I'm telling  
11 you -- it doesn't make any difference to me what you do, I have  
12 no intention of circulating a draft of my opinion until it is  
13 written and final and ready to be issued, at which point,  
14 everybody will get it.

15 I want the third one on the record. We followed  
16 precisely that procedure in Seabrook, you will recall, with our  
17 full agreement. Only after I left town with that understanding,  
18 was my opinion then rebutted and in a way that had some slight  
19 tinge of inaccuracy. And I have no intention of either  
20 rebutting inaccuracy or submitting myself to it.

21 COMMISSIONER GILINSKY: Well, let me take up the  
22 Tarapur matter.

23 COMMISSIONER KENNEDY: Feel free.

24 COMMISSIONER GILINSKY: The practice has been, or let's  
25 say it was before that, to have the vote at the time opinions --

1 Let me turn it around. ---

2 COMMISSIONER KENNEDY: That represents 1 and 2.

3 Which is the one which shows the trend?

4 COMMISSIONER GILINSKY: Okay. Well, the vote and the  
5 opinions being released went together, and the significance of  
6 it was that when the vote is released people have a reasonable  
7 right to have the notion as to why you voted that way.

8 COMMISSIONER KENNEDY: Why did we then change it?

9 COMMISSIONER GILINSKY: I would have been happy to  
10 delay a vote. The point is that we had a vote and ---

11 COMMISSIONER KENNEDY: Who called out for the vote?

12 COMMISSIONER GILINSKY: Well, ah ---

13 COMMISSIONER KENNEDY: Those whose opinion had been  
14 written.

15 COMMISSIONER GILINSKY: I don't know about that.

16 COMMISSIONER KENNEDY: Those who were participating  
17 in the discussion which was leading, presumably, to the  
18 decision of the Commission, but having already written it.

19 COMMISSIONER GILINSKY: Well, it was the ---

20 COMMISSIONER BRADFORD: But it had also been circulated  
21 for several days before the meeting.

22 COMMISSIONER KENNEDY: Never. I had not seen it.  
23 It may have been circulated to some. Indeed, I had the  
24 distinct impression it may well have been, but not to me.

25 COMMISSIONER GILINSKY: As I remember, it was your

1 insistence on taking a vote in public on this matter.

2 COMMISSIONER KENNEDY: Exactly as it remains my  
3 insistence here.

4 COMMISSIONER GILINSKY: In that case, I thought it  
5 entirely appropriate to release opinions along with the vote,  
6 and I didn't think that that broke with past practice.

7 Now, what did break with past practice was the fact that  
8 we did not delay the vote until we had the opinions prepared and  
9 exchanged. I think the proper way to do it is, in fact, for  
10 Commissioners to prepare their views, to exchange them, and  
11 then vote on the matter.

12 COMMISSIONER KENNEDY: I assert that we are free to  
13 do this, I intend to write my opinion, and when it is ready for  
14 issuance, I will issue it, along with the majority opinion of  
15 the Commission, whatever it may be, whether I am part of the  
16 majority or otherwise. And when that issue is ready to be issued,  
17 my opinion will be appended to it.

18 Anyone wishes to follow that, to rebut it, is free to  
19 do so on the public platforms of the nation. I couldn't care  
20 less, but I am not going to sit here and go through a four-month  
21 exercise, to be terminated only when I believe it is terminated  
22 leaving town and having it then resumed while I'm not available  
23 to do it. I'm not going to go through that again, ever.

24 COMMISSIONER GILINSKY: Let me remind you that this  
25 exchange of 11 drafts was not at my insistence, it was at the

1 Chairman's and the Commission. At the time, it didn't want  
2 to go out with their opinion until they felt they had fully  
3 rebutted my views each time, and it was only ---

4 COMMISSIONER KENNEDY: Well, that is a matter of  
5 perception, depending on which side of the writing you were on.

6 COMMISSIONER GILINSKY: We can go out with your  
7 majority opinion anytime you wanted, you didn't want to do it,  
8 but anyway, that's ancient history.

9 COMMISSIONER KENNEDY: Well, I've stated my view, and  
10 insofar as I know, the Commission's rules do not require that I  
11 circulate my opinion. And if I choose to do so I will, and if  
12 I choose not to do so, I will not.

13 COMMISSIONER BRADFORD: I should certainly indicate  
14 that I certainly don't recollect the Seabrook opinion in that  
15 way, but this isn't the place to discuss it.

16 COMMISSIONER KENNEDY: Recollection is different. The  
17 record is clear.

18 CHAIRMAN HENDRIE: It does continue to seem to me that  
19 in the circumstances the course most likely to produce an  
20 expeditious termination is to move today to what I'll call a  
21 preliminary counting of hands so that we can instruct the Counsel  
22 in which direction to shape an order, assuming there is a  
23 majority, and then to schedule an affirmation vote, a public  
24 affirmation vote for that order as soon as I can foresee when  
25 the majority side is agreeing on its language, and at the same time

1 ask the other Commissioners whether they will have any separate  
2 opinions ready by the time of that affirmation.

3 COMMISSIONER GILINSKY: You do not foresee allowing  
4 some opportunity for reflecting the majority views, whatever  
5 they are?

6 CHAIRMAN HENDRIE: I would think that we would all get the  
7 drafts from the Counsel. I don't see any objection to that.

8 COMMISSIONER GILINSKY: I see what you mean.

9 COMMISSIONER AHEARNE: I wasn't a participant in any  
10 of these previous issues and ---

11 COMMISSIONER KENNEDY: You may count yourself fortunate.  
12 I'm trying to assure that you are not involved in  
13 another one.

14 CHAIRMAN HENLRIE: Let me stick that last word in,  
15 John, before you speak.

16 I was going to say -- if I'm able to get myself on  
17 paper any time before zero hour, why, I will be glad to  
18 circulate and will circulate to you the stages of my drafting  
19 as I get it prepared, and would be glad to see the direction in  
20 which yours are going and Dick prefers not to circulate his,  
21 and I guess that's his privilege.

22 John?

23 COMMISSIONER AHEARNE: Well, as I was going to say,  
24 I am fully prepared to vote this afternoon, I came here prepared  
25 to vote. I have some rough drafts of my arguments and I will have

1 it, I think, ready to distribute on Tuesday in draft, and I  
2 have no problem with distributing it as a draft version. I am  
3 prepared to vote.

4 COMMISSIONER BRADFORD: I have no difficulty with a  
5 tentative -- I don't think I would call it a vote -- but a  
6 tentative indication of views which you suggested, but it does  
7 seem to me and obviously in this case it is desirable to be  
8 expeditious as well, but it does seem to me, in the interest  
9 of producing sound Commission opinions, that it is well for  
10 a full an opportunity for comment back and forth on drafts as  
11 possible to take place. I mean, the Supreme Court would never  
12 consider issuing an opinion without full circulation, and I  
13 would guess that 11 drafts would fall far short of their  
14 record. I'm not suggesting that we emulate it, but it wouldn't  
15 surprise me at all to have a document go back and forth several  
16 time to take into account different arguments and different  
17 reflections of positions.

18 Now, in this case, one has to balance the need to  
19 act expeditiously with the need to have a good document, but I  
20 wouldn't come down entirely on the side of expedition.

21 CHAIRMAN HENDRIE: Well, of us, you have been  
22 particularly active ---

23 COMMISSIONER BRADFORD: There is that as well, I  
24 feel singularly exposed at this point.

25 CHAIRMAN HENDRIE: -- in getting some things in writing

1 for which, I must say, it is helpful to get them done.

2 COMMISSIONER AHEARNE: I would just -- another comment --  
3 mention that I don't know whether this case will be like other  
4 instances, but it appears that of my experience in the Government,  
5 the ability of this organization to withhold to itself any  
6 actions is not as effective as other organization I have been  
7 in. So I would expect that after a vote it ---

8 COMMISSIONER KENNEDY: Oh, I think it will be kept clean  
9 until tomorrow morning, only because the other papers have gone  
10 to press already.

11 COMMISSIONER BRADFORD: Well, there's always the  
12 radio.

13 (Laughter)

14 CHAIRMAN HENDRIE: That raises the question again,  
15 which I suggested to you last time as to whether on balance --  
16 I don't know whether to put it in the sense that it creates an  
17 equal opportunity for all leakers or seekers of information or  
18 whatever, but I think it is worth thinking again about whether  
19 a simple one or two sentence statement on behalf of the  
20 Commission wouldn't be -- after we know where it goes --  
21 wouldn't be the best thing to do.

22 COMMISSIONER GILINSKY: Well, however remote the  
23 chances, one of the purposes with exchanging views is that one  
24 or another person's views may change. You may not end up --  
25 well, you may not change entirely, but you may change in part,

282 070



1 you may qualify your views ---

2 COMMISSIONER KENNEDY: Until the last Tarapur meeting,  
3 I would have thought that had some merit as an argument. But  
4 indeed, I would think in principle that ought to be true, but  
5 when one comes to the table for a two-hour discussion and then  
6 at the end of the discussion, hands out a 40-page opinion already  
7 printed, one wonders what the purpose of the discussion was,  
8 except as sort of a Commission briefing in the interest of  
9 making it easier for people to read the document. I mean,  
10 really.

11 COMMISSIONER GILINSKY: Well, as I remember, you were  
12 unwilling to have meetings on the subject among ourselves.

13 COMMISSIONER KENNEDY: I did not want private meetings,  
14 because I don't believe private meetings is the way the  
15 Commission ought to do its business.

16 I think the purpose of the Sunshine law was precisely  
17 to insure that the public knew what the Commission was doing  
18 when it was doing its business. I contend that that is the  
19 reason for the sunshine law and I support it.

20 COMMISSIONER GILINSKY: Well, I support it too. But  
21 at any rate ---

22 COMMISSIONER KENNEDY: The only difference is I vote  
23 for it.

24 COMMISSIONER GILINSKY: Well, I think the Congress votes  
25

1 for it, but at any rate ---

2 COMMISSIONER KENNEDY: I vote for its application.

3 COMMISSIONER GILINSKY: -- it seems to me that  
4 a Commissioner may go from voting for to concurring or something  
5 like that. I think it is true that it may be difficult to  
6 keep this information from getting out, but I think, just as in  
7 an adjudicatory case one might have in domestic licensing, it  
8 seems to me that the proper way for the Commission to work is  
9 to get its views together and then announce them, you know, when  
10 they have been bounced back and forth. That's part of the point  
11 in having a Commission.

12 MR. STOIBER: If I may point out one procedural aspect  
13 which may bear on this under the Non-Proliferation Act.

14 If you vote, for example, to deny the license then  
15 that triggers the Presidential referral, and under the Act,  
16 you must submit your views and your decision to the President  
17 at the same time that the license is forwarded.

18 Of course, on the other side, if you approve the  
19 license there is no further legal operation. However, you may  
20 want to consider whether or not there is some usefulness in  
21 having a parallel procedure of both of those sides.

22 COMMISSIONER GILINSKY: I don't follow you. Parallel  
23 being ---

24 MR. STOIBER: Parallel being, I guess ---

25 CHAIRMAN HENDRIE: Do you mean the practice of letting

1 individual comments and opinions be published at the same time  
2 as the order -- as the majority decision order?

3 MR. STOIBER: Right.

4 CHAIRMAN HENDRIE: I must say, I think there is merit  
5 in it, but I continue to wonder whether -- you know -- sort of  
6 trying to guess what the probability of maintenance of  
7 confidentiality for another week and a half might be against the --  
8 if it is going to breach -- against the benefits of having  
9 a simple statement that said -- I don't know -- I would suggest  
10 something just along the lines that an initial division of  
11 the Commission indicates majority in favor of "X" ---

12 COMMISSIONER AHEARNE: What is an initial ---

13 CHAIRMAN HENDRIE: It doesn't strike you?

14 COMMISSIONER AHEARNE: No.

15 CHAIRMAN HENDRIE: All right.

16 COMMISSIONER GILINSKY: Well, you either have a vote  
17 or you don't, John. And this is either a vote to which you  
18 are held or it isn't, and if it isn't then I don't think it ought  
19 to be announced.

20 CHAIRMAN HENDRIE: Yes, it could be not announced.

21 COMMISSIONER GILINSKY: Well, I don't know. You can  
22 experiment.

23 (Laughter)

24 COMMISSIONER BRADFORD: Just label it a non-binding  
25 vote and then the next -- the most it can be announced as is a

1 non-binding vote.

2 COMMISSIONER KENNEDY: The fact that the Commission  
3 is sitting at the table obviates the need for an affirmation.  
4 The fact that the Commission votes sitting at the table is its  
5 affirmation. Isn't that correct? What we would not vote subject  
6 to an affirmation of our vote, the vote would have been taken.  
7 Isn't that right?

8 MR. STOIBER: The mechanics are relevant here also,  
9 because when you take a vote, that is an instruction to the  
10 staff, and unless you want to say in your vote to instruct the  
11 staff not to, in effect, to actually issue the license, then  
12 you have sort of done a very odd thing.

13 CHAIRMAN HENDRIE: Wait, wait. Say that again?

14 MR. STOIBER: Taking a vote but do not issue a  
15 license, because under the procedures you have established, the  
16 Commission's vote merely constitutes a recommendation to the  
17 staff that it has decided that the criteria are met and that  
18 they can, in fact, send the piece of paper to the Edlow  
19 International Company. So what you would ---

20 CHAIRMAN HENDRIE: Well, let me tell you what I  
21 had in mind for this afternoon.

22 I need some sort of indication so that unless you  
23 folks want to prepare two equal and opposite orders, okay, then  
24 we could have them here in due time, in a week or so on, I  
25 don't know how we agree on them, since in agreeing on them, why it

282 074

1 may become clear what the vote is. What I'm looking for is  
2 some sort of a straw vote to see which way to direct the  
3 order to go. Now, having done that, I have said I think we ought,  
4 then when the majority side can agree on the language of that  
5 order, that we ought to set a date for a public affirmation  
6 vote, we could just come in and do a regular affirmation, and  
7 that vote will be the formal vote on the application and the  
8 license will issue or not issue, subject to that circumstance.  
9 And in setting that affirmation time, I would want to take  
10 account of what individual Commissioners felt they needed as a  
11 time to be able to bring their individual comments in final  
12 form to the table so they could go with the order as a package.

13 Now, this may not be the ideal course from a number  
14 of points of view, but in view of some of the various opinions  
15 expressed, it seems to me to be perhaps a practical one for  
16 us that we could agree on, and in fact, the only one that strikes  
17 me, at the moment, as a practical way to go forward. So now  
18 what we are talking about is -- if I could assume for the moment  
19 that I can get agreement on that course, what I'm now asking you  
20 is whether you want to reconsider the discussion of several  
21 days ago about any sort of an announcement by the Commission  
22 of the direction of its straw vote.

23 COMMISSIONER KENNEDY: What discussion do you refer to?  
24 I don't recall any.

25 CHAIRMAN HENDRIE: There was one at an agenda session

1 the other day where I raised questions about some of these  
2 procedural matters for today.

3 Joe, you want to get your two bits worth in.

4 MR. FOUCHARD: Yes. I'll play kami kaze pilot.

5 At the conclusion of this meeting there are a number  
6 of media, including the Indian media, who are going to ask: Did  
7 the Commission vote on the Tarapur license? It has either got  
8 to be, it seems to me, a yes or a no. Irrespective of if the  
9 answer is "yes" then the obvious follow-on question is: How  
10 did it go.

11 It seems to me that if the Commission is going to  
12 vote today on Tarapur, it should announce the results of its  
13 vote promptly, after notifying the Executive Branch, Congress,  
14 and that should go bing-bing-bing, real close in. I just  
15 don't believe that a straw vote, sir, will hold. I think a  
16 leak in this situation, with the eyes of many media, many  
17 government agencies, and -- it just shouldn't leak. It  
18 should be handled straight away.

19 CHAIRMAN HENDRIE: Well, that calls for a formal  
20 vote on the matter to be announced immediately and without  
21 either an order in hand, even ---

22 COMMISSIONER BRADFORD: Well, not necessarily. One  
23 can also instruct the General Counsel's office to prepare  
24 opinion both ways or to prepare one opinion if one or more  
25 Commissioners' want an opinion prepared that way, you don't have

1 to vote at all until later. It does seem to me that the  
2 question is a significant one. Is it possible for this  
3 Commission to meet, have a tentative indication of views to  
4 guide a particular office in preparing a document, without  
5 at that point, having had it made public as though it were  
6 a final Commission decision. Things may be relatively clear-cut  
7 today, I don't know about that, but there are going to be  
8 cases in which we are going to want to see what different  
9 opinions look like in writing. Now, there ought to be a way  
10 to do that.

11 COMMISSIONER AHEARNE: Joe, I have to at least take  
12 some exception to you, I think, in that Peter, I think put his  
13 finger on the point. Are you saying that we could never reach  
14 a tentative vote without having to therefore announce that we  
15 have voted?

16 MR. FOUCHARD: No. I'm saying that it is unlikely  
17 that you can reach a tentative vote in a matter with this much  
18 attention being paid to it and have that tentative vote not  
19 become public in some way.

20 COMMISSIONER AHEARNE: We could try.

21 COMMISSIONER BRADFORD: As I said before, if it is  
22 not more than a tentative vote, then that is the most that  
23 should become public.

24 COMMISSIONER AHEARNE: For example, we have 40 people  
25 or so here, and if it doesn't work with that, then maybe the next

1 time we could do it with 6 or 7. An if that doesn't work ---

2 (Laughter)

3 If that doesn't work then each of us will write our  
4 own opinion, give it to the General Counsel and he will be the  
5 one.

6 CHAIRMAN HENDRIE: That's good. I like that.

7 COMMISSIONER GILINSKY: Pull them out of a hat.

8 MR. SHAPAR: Another option of course, is to have two  
9 opinions written going in the opposite directions without  
10 expressing an opinion as of this time which way anybody wants to  
11 go. It is done that way in a other agencies, I understand.

12 COMMISSIONER KENNEDY: That's the logical course to  
13 follow. The bulk of the work done on either side would then be  
14 useful in any event. It would have to be done sooner or later.

15 CHAIRMAN HENDRIE: If that leaves the General Counsel's  
16 office either with a spare opinion for or a spare opinion  
17 against the license, will that prejudice the consideration of the  
18 next license since he will already have -- you know ---

19 MR. BICKWIT: That was the least of our concerns.

20 MR. STOIBER: Historically, the way we have prepared  
21 these opinions has required a good deal of consultation with  
22 the Commissioners who have voted with the majority, and it  
23 seems to me, personally, I guess, because I will be engaged  
24 in the process, not a very efficient use of our resources to  
25 prepare two free-standing separate opinions which we cannot relate



1 to the real votes or the real positions.

2 COMMISSIONER GILINSKY: Let's see, why can't they  
3 be assigned to different persons.

4 MR. STOIBER: Oh, it can be assigned to different  
5 persons ---

6 COMMISSIONER BRADFORD: I think I see Carl's point.  
7 It is the different people they were assigned to that would want  
8 to know which Commissioners they should talk to for input.  
9 Of course, they could go from office-to-office and say, are  
10 you interested in talking to me?

11 (Laughter)

12 COMMISSIONER KENNEDY: It seems to me that Commissioner  
13 Gilinsky conveyed a view that would form the basis of at least  
14 one opinion in what seemed to me a reasonable, clear and  
15 straightforward sort of note. I would be prepared to do the  
16 same thing which doesn't necessarily commit me to anything,  
17 except I'd like to see that opinion that said that. I'd like  
18 to see the opinion that is written along the lines that he is  
19 talking about.

20 COMMISSIONER GILINSKY: You'll see it.

21 CHAIRMAN HENDRIE: Well, all right, let me see.

22 I'm not sure that I detect consensus at the moment.  
23 What would you ---

24 COMMISSIONER AHEARNE: Well, as I said, I had come today  
25 prepared to vote and that is still what I'm still prepared to do.

282 079

1 COMMISSIONER GILINSKY: But, let's see, did you ---

2 COMMISSIONER AHEARNE: My preference would be to vote,  
3 to then direct the General Counsel to attempt to prepare it,  
4 to direct Public Affairs to do that which is not unknown in the  
5 history of government public affairs to attempt to keep the press  
6 at arms length during that period of time ---

7 COMMISSIONER KENNEDY: The Defense Department tries  
8 that more often than most with a singular lack of success.

9 COMMISSIONER AHEARNE: We know about the lack of  
10 success.

11 COMMISSIONER KENNEDY: Oh, yes. I know about the others  
12 too, and their numbers are smaller.

13 COMMISSIONER BRADFORD: It was never known as the  
14 Defense Commission, however.

15 COMMISSIONER AHEARNE: See, I'm -- I would prefer  
16 to have the General Counsel focus its efforts on writing the  
17 opinion that they may have to then defend.

18 CHAIRMAN HENDRIE: Yes.

19 MR. BICKWIT: That's what I was looking for.

20 COMMISSIONER KENNEDY: That's looking for the easy way.

21 (Laughter)

22 COMMISSIONER AHEARNE: I recognize the General  
23 Counsel staff is uniformly of high quality, I assume though,  
24 that there might be some ---

25 COMMISSIONER BRADFORD: It's a good theory, John, but

1 its applicability here is limited by the fact that there is no  
2 one who is standing to appeal, except, of course, the  
3 applicant.

4 COMMISSIONER AHEARNE: I would imagine that the --  
5 other than if the ---

6 CHAIRMAN HENDRIE: Can't these things go to court?

7 COMMISSIONER BRADFORD: I thought the NNPA left the  
8 the intervenors without a standing to get into court.

9 COMMISSIONER AHEARNE: Well, if there is no reason for the  
10 order that the General Counsel prepares to say other than yea or  
11 nay, then that's very straightforward and doesn't have to work at  
12 all on it. If there is a reason for a lot of work to go into it  
13 then I'm the one that is going to have to be defended, putting  
14 aside where it is going to have to be defended.

15 MR. OPLINGER: Would it help at all if each of the  
16 Commissioners were to express the direction in which he is  
17 leaning now, but specify that he is not prepared to say ~~final~~<sup>ly</sup>,  
18 where he comes out at this point.

19 COMMISSIONER KENNEDY: I'd rather not read about that  
20 tomorrow.

21 CHAIRMAN HENDRIE: Well, that's the sort of testing of  
22 the water that I had been hoping to come to and then to use that  
23 as guidance to the drafters of language here, as well as to us  
24 individually since those of us on the minority side are surely  
25 going to want to have our opinions published at the time of the

1 order, and even though the majority side may want to express  
2 personal views on the matter, but the question of whether or  
3 not in so doing we can maintain a reasonable confidentiality for  
4 such working up the language and exchange of drafts to whatever  
5 extent that's possible, that is one of the questions before us.  
6 The suggestion is that if you take any kind of a vote, why it  
7 will inevitably become known and I guess sort of the corollary  
8 then is that a way to avoid this is to not take a vote and ask  
9 the Counsel's office to work on parallel documents with opposite  
10 polarities and then come to an affirmation vote.

11 COMMISSIONER KENNEDY: Let me point out that Commissioner  
12 Gilinsky and I have always felt strongly, whichever of us in the  
13 individual case ---

14 COMMISSIONER GILINSKY: I want to hear the end of this.  
15 (Laughter)

16 COMMISSIONER KENNEDY: -- We have both felt strongly  
17 that the minority should be afforded just as much service from  
18 the General Counsel in the preparation of its opinion as the  
19 majority. Whichever one happens to be on is irrelevant. The fact  
20 is that that's where the legal staff is that serves the  
21 Commissioner directly and thus, it seems to me, they are going  
22 to have to write two opinions anyway, and the sooner they get at  
23 it the better.

24 COMMISSIONER GILINSKY: I agree with that.

25 COMMISSIONER AHEARNE. Well, I would be most interested

282 082

1 in the opinion that says that we should license.

2 COMMISSIONER GILINSKY: I'd be interested in both.

3 COMMISSIONER BRADFORD: One always focuses harder on  
4 what one is going to have to rebut.

5 COMMISSIONER AHEARNE: That's a lawyer speaking,  
6 that's not a position.

7 CHAIRMAN HENDRIE: Other -- Let's see. I've got two  
8 votes for a two-opinion initiative.

9 COMMISSIONER BRADFORD: Well, I'll vote for that.

10 COMMISSIONER KENNEDY: Well, I vote for that.

11 COMMISSIONER GILINSKY: Yes.

12 CHAIRMAN HENDRIE: Yes, I was counting you and Vic,  
13 and now Peter joined in. I think there is a majority there,  
14 John.

15 COMMISSIONER AHEARNE: Well, I've already said the  
16 opinion I'd like to see, and certainly General Counsel can prepare  
17 any number of opinions.

18 COMMISSIONER KENNEDY: I take that to have been an  
19 expression of confidence in the General Counsel.

20 COMMISSIONER AHEARNE: Absolutely. I have high  
21 confidence in the General Counsel, as well as other people in  
22 the office.

23 CHAIRMAN HENDRIE: As long as there are more of them  
24 than there are of us, I guess it is possible to have whatever  
25 number of opinions that are required in any given case. That may

1 work to keep idle hands from getting into mischief or whatever  
2 it is that idle hands get into down on the 10th floor, but it  
3 seems to me -- All right, I'll ---

4 (Laughter)

5 CHAIRMAN HENDRIE: -- I'll decide we have a Commission --  
6 I wouldn't say necessarily roundly-applauded direction, but it  
7 is clear a majority of the Commissioners would prefer, rather than  
8 taking -- me asking for a raising of hands or other indication  
9 of a direction here, to ask you to crank forward on these two  
10 directions.

11 COMMISSIONER BRADFORD: Could I ---

12 CHAIRMAN HENDRIE: Yes, sir.

13 COMMISSIONER BRADFORD: Could I ask, it is on a  
14 separate and much slower track that OGC and maybe OPE and OPA,  
15 think a little about Commission adjudicatory sessions in  
16 general, and the best way in which to shape them with an eye  
17 toward ---

18 CHAIRMAN HENDRIE: Yes. I think that is a useful  
19 comment. I would just as soon not come to this sort of  
20 impasse in terms of an anxiously awaiting public audience without  
21 the doors and need for some exchange of -- desirability of  
22 exchanges and written views, but nobody -- Commissioners are  
23 not going to sit down and write two sets of views, one for  
24 and against, and then at the last minute announce: "I take 'A'".  
25 You are going to write what you think and if there is to be a

1 chance for that to happen and for any circulation of that  
2 among us before a formal decision is announced, then we have to  
3 have a way to protect that process in adjudications. And I would  
4 be interested, indeed, in seeing if we couldn't have a general  
5 agreement so that we don't have to patch one together every time  
6 we have one of these.

7 COMMISSIONER GILINSKY: I sent a note around, also,  
8 suggesting that we have a version of the legislative analysis that  
9 was -- well which we prepared for John, and that a memorandum be  
10 prepared for the Commission. If it turns out to be merely a  
11 change of addressees so be it, but I think that a number of --  
12 Well, if nothing else, Peter has written a memo which I think  
13 ought to be taken into account, and my conversations with Len  
14 suggest to me that there's more to his memo than meets the eyes,  
15 so ---

16 COMMISSIONER KENNEDY: Maybe less.

17 (Laughte.

18 COMMISSIONER GILINSKY: -- Well, no. I mean, it's ---

19 COMMISSIONER KENNEDY: Which memo are you referring to.  
20 Do you mean the February 13th one?

21 COMMISSIONER GILINSKY: Yes.

22 COMMISSIONER KENNEDY: On the legislative history?

23 COMMISSIONER GILINSKY: Yes. And I would like to see  
24 a memo on that subject addressed to the Commission.

25 COMMISSIONER KENNEDY: I assumed that although it was

1 answering a specific question and was forwarded to all  
2 Commissioners that any such memo -- I have always assumed that  
3 any such memo is to the Commission. Is that an erroneous  
4 assumption?

5 COMMISSIONER GILINSKY: Well, if nothing else, he  
6 didn't have a chance to take other views into account. Now, he  
7 may feel that he doesn't want to change a word, but he may feel  
8 that he wants to, and ---.

9 COMMISSIONER KENNEDY: I'm lost.

10 COMMISSIONER GILINSKY: Well, I'm referring to Peter's  
11 memo.

12 COMMISSIONER KENNEDY: Well, he didn't have Peter's memo.  
13 Peter's memo post-dated this memo.

14 COMMISSIONER GILINSKY: That's right.

15 COMMISSIONER KENNEDY: It is a critique.

16 COMMISSIONER GILINSKY: Yes, well, I just think it is  
17 an important document and, you know, the General Counsel's  
18 memorandum on the legislative ---

19 COMMISSIONER KENNEDY: We are asking the General  
20 Counsel's critique of the critique. Is that what you are asking?

21 COMMISSIONER GILINSKY: Well, I'm asking him to ---

22 COMMISSIONER KENNEDY: I would urge that, and in fact,  
23 if the General Counsel feels that he could do it without greater  
24 trepidation than he already suffers.

25 COMMISSIONER GILINSKY: What I'm asking is for the



1 Commission to ask the General Counsel to address a memorandum on  
2 that subject to the Commission. If his views haven't changed at  
3 all, and even take into account Peter's memo, then so be it, but  
4 if they have and other discussions have -- or if he wants to  
5 amplify it or change it or whatever, then I think that ought to be  
6 in there.

7 COMMISSIONER KENNEDY: I think before he does that,  
8 though, he ought to prepare a full list of the discussees in  
9 order that all of the readers can understand the basis on which  
10 he arrives at his conclusions. Up to now, my assumption has been,  
11 and I think it is correct, that the original memo which he  
12 drafted was drafted based upon a careful analysis of the record.

13 Now, if we are to introduce into that, a variety of  
14 opinion and other things, I think that's fine, but I think that  
15 all ought to be carefully footnoted so that one is not making  
16 erroneous assumptions about the basis for the judgments and  
17 conclusions which are reached in the paper. Does that make sense  
18 to you, Counsel?

19 MR. BICKWIT: Yes. I do want to make clear that the  
20 memo was produced, as you said ---

21 COMMISSIONER KENNEDY: There was never a doubt in my  
22 mind on that score.

23 MR. BICKWIT: Yes. I also think probably it should have  
24 some amplification on the discussion between Commissioner  
25 Gilinsky and myself that led to the interpretation that there might

1 be more to the memo than met the eye.

2 COMMISSIONER KENNEDY: No, no. I did not imply that.  
3 Not as to this memo. What I'm suggesting is that if a new memo  
4 is to be done as Commissioner Gilinsky suggests, and I see merit  
5 in that, but if it is to go as he suggests, taking into account  
6 other discussions and views, the nature of those needs to be  
7 rather carefully spelled out so that all the readers know that it  
8 is not just the law and the legislative history which has been  
9 taken into account in the writing, but also, views which may have  
10 been gleaned from these discussions. That's all. I just want  
11 to be sure that our scholarship is clear and clean as it can be.

12 MR. BICKWIT: Would it be simpler ---

13 COMMISSIONER KENNEDY: Oh, I think it would be simpler  
14 to just stick to the facts, of course. That's where I'd begin.

15 MR. BICKWIT: -- to stick to Commissioner Bradford's  
16 memo.

17 COMMISSIONER GILINSKY: Well, I think whatever you do  
18 ought to be in a memorandum addressed to the Commission as a whole.  
19 I mean, it is a ---

20 COMMISSIONER AHEARNE: I think he certainly meant to  
21 address that to the Commission as a whole.

22 COMMISSIONER GILINSKY: There is nothing wrong with him  
23 addressing a memorandum to a Commissioner, it is just ---

24 COMMISSIONER KENNEDY: Let me assure my colleagues  
25 and the General Counsel and anyone else who is interested that

1 whenever I receive a memorandum addressed to a particular  
2 Commissioner, I assume it is intended for me as well as to them.  
3 It is addressed to them specifically, only because that  
4 individual or those individuals were the ones who specifically  
5 asked the question and therefore, are getting a direct reply,  
6 but that memoranda, written by the staff, whoever they may be,  
7 to any Commissioner is a memorandum to the Commission. That's  
8 my understanding of the way the Commission functions and I hope  
9 it is a general understanding. Could we agree on that as a  
10 certain matter of policy?

11 CHAIRMAN HENDRIE: I think that's clear, sure.

12 COMMISSIONER BRADFORD: You mean in cases where copies  
13 go to all Commissioners?

14 COMMISSIONER KENNEDY: Yes. Well, I assume they do.

15 COMMISSIONER BRADFORD: I think they do as well, but  
16 I guess I can conceive of a situation, let's say an open-door  
17 submission where it might not, and that might be a different  
18 sort of matter.

19 COMMISSIONER KENNEDY: Right, of course.

20 COMMISSIONER AHEARNE: But certainly, if there is  
21 copy at the bottom.

22 CHAIRMAN HENDRIE: Okay, now ---

23 COMMISSIONER AHEARNE: Joe, what is our schedule then,  
24 because if we can only vote together and we are not going to be  
25 together for more than two weeks, are you suggesting, therefore, w

1 do not vote for two weeks?

2 COMMISSIONER KENNEDY: Well, it isn't going to make any  
3 difference. The only import at this juncture of a vote, if I  
4 understand it, because someone earlier stated, the only import of  
5 a vote at this juncture is an instruction to the staff to issue  
6 or not to issue a license. So if we are not going to do that  
7 until --- What?

8 COMMISSIONER BRADFORD: It can be done with less than  
9 five.

10 COMMISSIONER KENNEDY: Yes. It could. It could be done  
11 with three. It would be an interesting sort of exercise which  
12 three.

13 COMMISSIONER BRADFORD: You would want the right three.

14 (Laughter)

15 CHAIRMAN HENDRIE: You might find a Commissioner to  
16 vote against his principles in order to let the will of the  
17 majority be done.

18 What about schedule? Now, you are not going to be here  
19 next week and Dick's not going to be here the week after.

20 COMMISSIONER GILINSKY: Well, I'm going to leave  
21 Tuesday afternoon, and I will be away, then, for the rest of  
22 that week.

23 CHAIRMAN HENDRIE: You will be back the following week,  
24 but you will be gone. It is going to take a while to put it  
25 together. You are not about to do it instantaneously.

1 MR. BICKWIT: Yes. And we have some additional questions  
2 of this procedure we thought ought to be raised.

3 What is the Commission's position on the exchange of  
4 drafts? We know that the Commission wants two drafts prepared,  
5 how does it come down on that question? That's one of our  
6 questions.

7 COMMISSIONER KENNEDY: As to the two drafts, I assume  
8 we will all look at the two drafts.

9 MR. BICKWIT: I see.

10 COMMISSIONER KENNEDY: (A), we will decide what we think  
11 about each one of them, and then -- (a) -- and then (b) decide  
12 what we think about which we would prefer, (a) or (b).

13 COMMISSIONER GILINSKY: Now, are they preparing the  
14 other drafts beyond that? I asked them to prepare drafts. Is  
15 that one of these two or is that the third draft?

16 COMMISSIONER KENNEDY: I had asked them to do some ---

17 COMMISSIONER GILINSKY: -- or is that bracketed material  
18 in one draft?

19 COMMISSIONER KENNEDY: -- I had asked them to do some  
20 work for me which would be applicable in either case.

21 COMMISSIONER GILINSKY: Now, presumably these drafts,  
22 and they are usually written in certain bracketed sections, you  
23 ought to incorporate, it seems to me, everything you do,  
24 into two drafts.

25 COMMISSIONER BRADFORD: So far.

1                   COMMISSIONER KENNEDY: Well, all I can say to that is  
2 "good luck".

3                   CHAIRMAN HENDRIE: I expect there is going to end up  
4 being individual expressions --

5                   MR. BICKWIT: That's my next question.

6                   CHAIRMAN HENDRIE: -- no matter what, and ---

7                   COMMISSIONER KENNEDY: Unless this is to be a genuine  
8 first.

9                   COMMISSIONER AHEARNE: I'm afraid not, Dick. Sorry.

10                  COMMISSIONER GILINSKY: Are you talking about five  
11 opinions or something?

12                  CHAIRMAN HENDRIE: I was just mulling ---

13                  MR. BICKWIT: There is also the difficulty of whose  
14 instructions to follow in revising these drafts.

15                               (Laughter)

16                  COMMISSIONER AHEARNE: That's right. He has got -- at  
17 that stage, there is a fairly valid point. If one set of drafts  
18 are "yea" and the other set of drafts are "nay", I would guess  
19 that the people that he ought to be following for the revision  
20 to the "yea" are those who are going to vote for the "yea".

21                  COMMISSIONER GILINSKY: The changes of the drafts takes  
22 place in the General Counsel's office.

23                               (Laughter)

24                  COMMISSIONER KENNEDY: Let me just point out that that  
25 really was one of the problems which we were having in the first

1 Tarapur exercise. What was it that people were working on, and  
2 it was never clear, because (a) the dissenter was working upon  
3 the majority opinion and would try to say: "Oh, no, that's wrong."  
4 So the majority would change it, whereupon, the dissenter  
5 would then change his dissent, you see, to coincide with the new  
6 draft of the majority. And it can go on for ever. So it is not  
7 as clear as ---

8 COMMISSIONER AHEARNE: I think we have found a way  
9 never to issue a license or reject it.

10 COMMISSIONER BRADFORD: In part the answer is that after  
11 the drafts are prepared the Commissioners are going to have to  
12 meet, to some measures among themselves, and see who agrees with  
13 what. The group at that point faces the difficulty is the majority  
14 because their meeting becomes a Sunshine. So they will have to  
15 do it through their assistants and the minority will have no such  
16 problem.

17 (Laughter)

18 COMMISSIONER KENNEDY: You can't sell tickets to a close  
19 meeting.

20 CHAIRMAN HENDRIE: By George, that's almost a good reason  
21 to avoid being in the majority.

22 MR. SHAPAR: I would also assume that at any time during  
23 the process any one or more Commissioners could say that I'll  
24 draft myself, from this point on. I think that's really the  
25 important thing.

1           CHAIRMAN HENDRIE: I tell you, since we seem destined  
2 to go in this multi-drafted fashion, it seems to me that what  
3 you try to do is to get up an initial opinion one way and the  
4 matching opinion the other way and circulate them and Commissioners  
5 will have to focus in on one or another, and then I think ---

6           Let me just say for myself that I will not propose  
7 to kibitz on the opinion running in a way that I don't propose  
8 to vote. Then I think Commissioners leaning each way have to  
9 take the lead in either taking over the draft, or at least working  
10 with the Counsel's staff member who has got that one, to get  
11 it perfected.

12           Now, ---

13           MR. BICKWIT: At that point, each Commissioner will  
14 make the decision about the further exchange of drafts?

15           CHAIRMAN HENDRIE: Yes, I think so. I think once the  
16 Commissioners, in effect, assume possession, as it were, of the  
17 drafting effort, then those that are for circulation will  
18 circulate and those that are not for it won't.

19           MR. DEVINE: Sir, OPE may be involved marginally in  
20 preparing these statements, what issues precisely should be  
21 discussed in the two opinions?

22           COMMISSIONER KENNEDY: Those that are relevant.

23           (Laughter)

24           MR. DEVINE: I'm referring now to the issues raised,  
25 for example, in the Commission order on the oral hearing, the



1 written hearing. Fuel need, adequacy, safeguards and things of  
2 that nature.

3 COMMISSIONER KENNEDY: Certainly any opinion as to  
4 a comment to explore as appropriate, a justification for the  
5 view, whether or not the criteria are met, obviously. That's one.

6 MR. DEVINE: That, I think, narrows the list of issues  
7 to be addressed then.

8 COMMISSIONER AHEARNE: Tuesday, I will give you what I  
9 think are the relevant issues and, at least, where I come out on  
10 them.

11 CHAIRMAN HENDRIE: But, I think, it would seem to me  
12 that some attention to the items which we cited, particularly  
13 for the oral hearing, or for the comments from people, ought to  
14 be covered. Some note ought to be taken of those meetings.  
15 We, after all, exercised people and encouraged them to address  
16 them, and presumably we had some interest hearing them. But I  
17 think beyond the question of the criteria and those points,  
18 then from there on, it think it may depend on what Commissioners  
19 want to see in one side or the other.

20 MR. DEVINE: Let me ask Howard a question: You mentioned  
21 that agencies did this normally, preparing two drafts, the  
22 same people in the agencies, Howard?

23 MS. BECKER: I was the one who told Howard that, but  
24 it was structured somewhat differently and the board would give  
25 the General Counsel's staff instructions and then a board member

1 -- very often the same attorney would prepare the draft.

2 COMMISSIONER AHEARNE: Out of curiosity, how, in the  
3 absence of the Commissioners expressing what they believe are  
4 the important issues and how they come out of it, how does the  
5 General Counsel adopt the argument that they then agree with them?

6 MR. BICKWIT: I think there will have to be some  
7 instruction. It may take place as a back-and-forth methodology.

8 COMMISSIONER BRADFORD: As one final chilling note,  
9 I can't think of any part of this meeting that is withholdable.

10 (Laughter)

11 CHAIRMAN HENDRIE: I will note that the report I made  
12 to you from the Department of State, let it be quite clear is  
13 classified on the normal basis that internal deliberations to the  
14 government in connection with foreign policy matters, National  
15 Security Information.

16 Well, I'm not sure we came to where I had hoped we  
17 would come to this afternoon, but I think we have sort of run  
18 down on this subject.

19 Let me note once again, for the benefit of everybody  
20 present that the Commission is attempting to preserve for itself  
21 confidentiality until these opinions and orders can be prepared  
22 and we can meet in public meeting to take a final vote on the  
23 Tarapur application.

24 There are institutions in this town and elsewhere  
25 that manage to work in that fashion with some success. I admire

1 them for the tradition that they have managed to build among  
2 their members and staff and assistants and so on, to preserve  
3 that ability of those bodies to work. I think of the Supreme  
4 Court, particularly. My impression has been that similar  
5 efforts here have not been very successful. Let me ask each one  
6 of you to please accept for yourselves a responsibility to help  
7 us maintain this confidentiality and to allow the Commission to  
8 work in this fashion until it is ready to come to a public  
9 meeting and take a formal vote.

10 Thank you very much.

11 COMMISSIONER BRADFORD: Well, put.

12 (Whereupon, the Commission meeting was adjourned at  
13 2:55 p.m. and the Commission moved on to other business.)  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

282 097