



Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

DISCUSSION OF PERSONNEL MATTER
(Closed to Public Attendance)

July 24, 1979

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Discussion of Personnel Matter
(Closed to Public Attendance)

Chairman's Conference Room
1717 H Street, N.W.
Washington, D. C.

Tuesday, July 24, 1979

The Commission met, pursuant to notice, at 11:35 a.m.,
Joseph Hendrie, Chairman of the Commission, presiding.

PRESENT:

- Chairman Hendrie
- Commissioner Gilinsky
- Commissioner Kennedy
- Commissioner Bradford

ALSO PRESENT:

- L. Bickwit
- P. Crane
- S. Ostrach

(Note: This transcript was prepared from a tape recording,
July 24, 1979.)

PROCEEDINGS

1
2 CHAIRMAN HENDRIE: Okay, we have got the tape
3 running and the first thing I have to ask you to do is join
4 me in voting to close this personnel discussion, because I
5 want to talk primarily this morning about the TMI One Board.
6 We have had a recommendation as to members, and that, I think,
7 clearly lies under the personal information exemption of the
8 Sunshine Act.

9 Before I do ask for the vote, however, Len, the
10 discussion of your memorandum is not so clearly a personnel
11 matter. In fact, it is an open question. Now, what shall we do
12 about that?

13 MR. BICKWIT: It relates to your selection process,
14 and I think it is within the reach.

15 COMMISSIONER GILINSKY: Of a personnel meeting?

16 MR. BICKWIT: You asked us to produce it in
17 connection with your selection of people for the Board.

18 CHAIRMAN HENDRIE: Okay, with that ruling, I will
19 then ask us to vote on closing the meeting.

20 Those in favor?

21 COMMISSIONER BRADFORD: Aye.

22 COMMISSIONER KENNEDY: Aye.

23 CHAIRMAN HENDRIE: Aye.

24 COMMISSIONER GILINSKY: Well, let's see. Closing
25 the meeting to discuss personnel or to discuss this memorandum?

1 CHAIRMAN HENDRIE: Both. They are part of a determin-
2 ation of coming to a selection of the Board Members for the
3 TMI One hearing.

4 COMMISSIONER GILINSKY: If it is to be closed, it would
5 seem to me on the basis of some sort of -- I guess it would seem
6 to me on the basis of some other reason.

7 MR. BICKWIT: Well, you have other reasons in that
8 Exemption 10 would be applicable.

9 COMMISSIONER GILINSKY: And 10 is?

10 MR. BICKWIT: Ten is a matter which specifically
11 concerns the agency's initiation, conduct or disposition of
12 a case of formal agency adjudication. That is clearly on point.

13 I would say the policy grounds for closing with
14 respect to the personnel question and a direct bearing on that
15 question is stronger than the grounds for closing it on the
16 basis of Exemption 10, but I would say that the legal grounds
17 for closing on the basis of Exemption 10 are stronger than the
18 legal grounds for closing the entire matter on the basis of
19 Exemption 6.

20 CHAIRMAN HENDRIE: Would it be appropriate then to
21 cite both exemptions in connection with this meeting?

22 MR. BICKWIT: Yes.

23 CHAIRMAN HENDRIE: Would that provide an acceptable ---

24 COMMISSIONER KENNEDY: Aye.

25 CHAIRMAN HENDRIE: -- grounds?

1 Vic, I'll take your nod as at least noting without
2 objection, if not outright go, and declare the meeting closed
3 under Exemptions 6 and 10.

4 Why don't we go ahead then with the discussion of the
5 memorandum that you prepared, Len.

6 MR. BICKWIT: All right.

7 CHAIRMAN HENDRIE: Since we have all just gotten
8 this, I think you could usefully march us through this in
9 summary fashion. I tried to read it during the meeting, and
10 got through it with distractions, but the others may not have
11 had a chance to see it.

12 MR. BICKWIT: Well, let me start with the caveat that
13 this is the first cut, which is what we were asked to do.

14 CHAIRMAN HENDRIE: Yes.

15 MR. BICKWIT: We weren't, in fact, asked to do it
16 in a paper, but we thought it would be useful.

17 Our first cut is that on the issue of whether the
18 public health, as used in the Atomic Energy Act encompasses
19 mental as well as physical health, and we do not believe that
20 it does.

21 We cite, in support of that, the New Hampshire v.
22 NRC case -- the AEC case, which is not directly in point, but
23 suggests that courts do not go out of their way to read public
24 health and safety, to include matters of doubtful or
25 questionable inclusion within that clause.

 COMMISSIONER BRADFORD: Let's see, is there, in fact,

1 any history -- I'm sorry, but I have only seen the memo --
2 on this point at all?

3 MR. BICKWIT: No, no. All you have is a case ---

4 COMMISSIONER BRADFORD: So that what you are really
5 saying is that the best inference from the failure to mention
6 it anywhere is that it is not included.

7 MR. BICKWIT: Yes, and also, from the case that rules
8 out consideration of thermal pollution effects as encompassed
9 by the phrase, "public health and safety." That suggests that
10 courts will look at the legislative history to find some
11 evidence that public health and safety was meant to include a
12 given interest. In that case, they did not find such history,
13 and in this case, as far as our research shows, they won't find
14 it either.

15 COMMISSIONER BRADFORD: Let's see, the First
16 Circuit -- that case predated NEPA ---

17 MR. BICKWIT: That's right. .

18 COMMISSIONER BRADFORD: -- and since NEPA the First
19 Circuit did say that we could take esthetics into account
20 in reciting the Seabrook transmission lines.

21 MR. BICKWIT: Yes.

22 We moved on -- I don't know whether that case said
23 that you could take it into account under NEPA or because of
24 NEPA or under the Atomic Energy Act. My guess was that it was
25 one of the first two, and that leads us to the second point in

1 our paper, which is the question that we address in that part
2 of the paper is, "Does the Commission have any obligation under
3 NEPA to examine the psychological impact of licensing TMI One."

4 COMMISSIONER GILINSKY: Before you get to that one,
5 on point one, it seems to me you address yourself to a fairly
6 clearcut case, where I was talking about, you might say, purely
7 mental health. We may be faced with a messier sort of
8 proposition where someone has been irradiated and has physical
9 symptoms and some people, I think, are destroyed by fear, but
10 how is he to distinguish those things?

11 MR. BICKWIT: Well, clearly, if you have got that
12 kind of a situation, you have to try to segregate it into its
13 elements.

14 If one of those elements was physical damage, I don't
15 think that there would be any doubt that it was within the range
16 of that clause. The elements which were mental, and mental
17 alone, our view is that they would not be.

18 COMMISSIONER GILINSKY: In other words, if someone has

19 COMMISSIONER BRADFORD: Migraine headaches since
20 Three Mile Island.

21 COMMISSIONER GILINSKY: -- or heart palpitations or
22 whatever, you would regard that as being included under the
23 health category?

24 MR. BICKWIT: I guess that's a question that has
25 never been resolved. To what extent is mental illness ---

COMMISSIONER GILINSKY: If at one extreme somebody

1 just says, I'm unhappy, it bothers me, I can't stand it.
2 Can you regard that as purely a mental problem, psychological
3 problem.

4 MR. BICKWIT: I guess all mental illness is to some
5 degree physical, therefore, if you say that any mental illness
6 that results in any kind of physical reaction is thereby
7 covered, you have completely pulled the rug out from under
8 this proposition.

9 COMMISSIONER GILINSKY: Well, I don't know the answer
10 here. I'm asking you.

11 MR. CRANE: I think it is the nebulous, and at the
12 area of heart palpitations, as one moves from, "I'm unhappy to
13 I'm physically ill," I expect that the Commission would have
14 a fair amount of discretion.

15 COMMISSIONER GILINSKY: And supposing you had received
16 some kind of a low dose, that we don't otherwise regard as
17 life threatening, but here is the person with all sorts of
18 physical effects.

19 MR. BICKWIT: Physical effects from the low-dose?

20 COMMISSIONER GILINSKY: Well, you know, doctors may
21 say that it is because he is upset.

22 MR. BICKWIT: If it is simply a mental response to the
23 fact that he has been physically exposed, but no one would say
24 that there was any physical response caused by the dose, I would
25 say that it is within the reach of our proposition. If anyone
could say that there was a physical reaction to the dose, it is

1 certainly outside of the reach of the process.

2 MR. OSTRACH: Is it fair to say that the Commission
3 has a reasonable range of discretion in deciding how it would
4 use the term, "protection", that public health and safety
5 should be interpreted in this context, and that if the
6 Commission wishes to, it can not unreasonably determine that
7 at least physical symptoms, even those relating solely to
8 mental consideration of the hazards of radiation, do fall into
9 the encompass of the statutory term?

10 MR. BICKWIT: I guess there is some discretion, but
11 I don't think the Commission could have used its discretion
12 to decide that thermal pollution was in the reach of public
13 health and safety, under the Act.

14 MR. OSTRACH: The case that Commissioner Bradford
15 cited, Seabrook transmission lines, the Commission used its
16 discretion to say that transmission lines dozens of miles away
17 from a nuclear power plant were important component parts of the
18 plant.

19 MR. BICKWIT: Right. And was it functioning because of
20 NEPA?

21 MR. OSTRACH: It was functioning under the Atomic
22 Energy Act definition of the section, what they believe
23 was an important part of the thing. I'm just saying that ---

24 MR. BICKWIT: I thought NEPA did not change
25 statutory requirements. I thought NEPA preferred its own
statutory requirements, but did not change the terms of any

1 existing statute. Is that right?

2 MR. OSTRACH: Yes.

3 MR. BICKWIT: So I would be inclined to say that it is
4 the second part of this paper, where the case is considerably
5 stronger, that mental health effects can be taken into account,
6 that part being the effects of NEPA upon this particular
7 proposition.

8 MR. CRANE: On the other hand, a point that didn't
9 find its way into the paper, but you had raised before, which
10 is that courts have been giving greater and greater respect to
11 mental health effects as part and parcel of health effects
12 generally, in allowing recovery in civil cases for injuries to
13 mental health, in requiring prisons and state hospitals to
14 remedy mental deficiencies or emotional problems, as well as
15 physical.

16 MR. BICKWIT: We are by no means firm on this conclusion
17 as I said. I just said, to the extent that we can feel
18 comfortable with any conclusion, we would be more comfortable
19 with the conclusion that public health and safety doesn't reach
20 these questions.

21 COMMISSIONER GILINSKY: I'm just trying to zero in
22 on exactly what you are saying. Is it an overstatement of your
23 position to say that basically we consider only cancer,
24 hair falling out, radiation burns and that is pretty much it?

25 MR. BICKWIT: Yes. I think that's an overstatement.

1 COMMISSIONER GILINSKY: What else would you include
2 in it?

3 MR. BICKWIT: Just anything, any physical manifestation
4 that could be traced to the actual, physical exposure to
5 radiation --

6 COMMISSIONER GILINSKY: With the person's brain not
7 getting in the way.

8 MR. BICKWIT: If it is the result of fear of that
9 radiation, no. Then it doesn't get to it. It doesn't get
10 to our proposition, but if the radiation has, in fact, caused
11 some kind of physical manifestation, then we would say, certainly
12 that is within the reach.

13 MR. OSTRACH: But you mean only things that would happen
14 to guinea pigs. Things without a brain, right?

15 I mean, a person could argue that my stomach ulcer
16 was caused by the radiation, I have been worrying about it for
17 days and days, and my God, there's my stomach ulcer.

18 COMMISSIONER GILINSKY: Well, that's what I was thinking

19 MR. OSTRACH: That falls outside of your definition?

20 MR. BICKWIT: That's right. That is stricke .

21 COMMISSIONER GILINSKY: The law protects brains.

22 COMMISSIONER KENNEDY: No, it is not true, because
23 all of those other similar animals with brains who didn't get
24 sick are exhibiting a different set of manifestations from
25 precisely the same stand. So you can't say, simply the real
point is whether it is brainless or not. Simply in response to

1 the stimulants.

2 COMMISSIONER GILINSKY: What if you had a majority
3 of the population -- this may be getting a little academic here,
4 but ---

5 COMMISSIONER BRADFORD: Well, no. That's the more
6 important point, really. I don't know how you divide it, but
7 if just one person comes in with vast symptoms resulting from
8 Three Mile Island, that is a very different case than if it
9 can be shown that somehow these vast symptoms are problems
10 throughout the area. So I do think that the quantity makes
11 the difference.

12 COMMISSIONER GILINSKY: I expect that someone is
13 going to be making all of these cases, and one way or another
14 we are going to have to face the question and decide what
15 really counts.

16 CHAIRMAN HENDRIE: Wh: don't you move on to the NEPA
17 section of the thing.

18 MR. BICKWIT: Under NEPA, the threshold question
19 we wanted to reach was: "Is NEPA applicable to this situation,
20 and would there be a requirement for a NEPA statement for an
21 environmental assessment?"

22 Then we had intended, after making that determination,
23 to move on to the question of whether you saw such an
24 assessment of mental illness would be considered in the balance.
25 We found that whether or not mental illness is cognizable under

1 NEPA, might have an effect on whether NEPA was applicable at all.

2 In other words, if it were determined that mental
3 illness was cognizable and that there was rather extensive
4 mental illness caused as the result of this situation, that might
5 influence the determination that some kind of NEPA document was
6 called for.

7 So these questions are inter-related. On isolating
8 the question of whether mental illness is cognizable under
9 NEPA, we came to the conclusion that the courts are split, with
10 a slight preponderance in favor of it not being cognizable.

11 The questions that would have to be addressed in this
12 particular area of consideration would be whether they are
13 cognizable, and if so, how should the impacts be considered.
14 Should they be considered as health impacts or social impacts.
15 If they are health impacts, they may justify the preparation of
16 an impact statement even if there are no other physical impacts
17 involved. If they are social impacts, they may have to ride on
18 the backs of some other physical impact. Even if they are
19 health impacts, then that would not be dispositive on the
20 issue of whether the NEPA document was required, because you
21 already had a NEPA document in the case of the issuance of
22 the license.

23 I guess the bottom line is that as Peter posed the
24 question, is it yes, no, or maybe on whether psychological
25 factors can be taken into account here, and the answer is

1 definitely maybe.

2 COMMISSIONER KENNEDY: The question that is stated
3 here is: "Does the Commission have an obligation to examine?"

4 MR. BICKWIT: Yes. And the answer to that is, "maybe".

5 COMMISSIONER KENNEDY: Maybe.

6 COMMISSIONER BRADFORD: Supposing the question were:
7 "Does the Commission have the power to, if it feels it necessary?
8 or that discretion.

9 MR. BICKWIT: My guess is that the answer would be
10 different, but as a matter of fact, if the Commission chose to
11 exercise the discretion in order to do that, it would not be
12 stopped in court.

13 COMMISSIONER BRADFORD: No injunction would issue?

14 MR. BICKWIT: No, I don't ---

15 COMMISSIONER BRADFORD: On the other hand, if we
16 actually were to say for some reason that the plant couldn't
17 resume operation and based the decision in some measure on
18 this set of considerations, I guess I would expect to see that
19 appealed. I don't know what a court would do with it.

20 MR. BICKWIT: I mean, I don't think the Commission has
21 the discretion to just take anything into account it wants to,
22 and a NEPA statement, even if one decides that it is not
23 relevant, there are rights at stake.

24 However, I think as a practical matter, I think it
25 does, given the state of the law ---

1 COMMISSIONER BRADFORD: In this area?

2 MR. BICKWIT: Yes.

3 Now, the third question: "Whether psychological
4 effects are part of the Commission's responsibility -- whether
5 that question should be certified to the Commission before it
6 is raised before the Board?"

7 My feeling was that we did not see any need to direct
8 that at this time, that we thought the best way to preserve
9 options for the Commission was not to specify that, but to
10 have our officer or whatever, monitor the proceeding below and
11 we came to the conclusion that on the basis of that proceeding
12 that we wanted to certify, that we would advise you.

13 COMMISSIONER BRADFORD: Well, let's see. The one
14 thing I think we would clearly want to avoid would be getting
15 to the end of this proceeding with the Board having executed
16 this ---

17 MR. BICKWIT: Yes.

18 COMMISSIONER BRADFORD: -- and then having the
19 Commission decide that it should have been included and
20 reversing it. I would think whether we require the question
21 to be certified to us or whether we reviewed the Board
22 decision on an interlocutory basis, in their view was to
23 point toward dealing with the question at the beginning of
24 the hearing and just eliminating all possibility that the
25 Commission would disagree with your assessment of the ---

1 MR. BICKWIT: Yes. In fact, I would be inclined to
2 agree with that. But I think -- What I am saying is that it
3 would be useful to anybody's determination on this question, to
4 look at these briefs and I think the best way to proceed is to
5 have us look at them and advise you on whether we think it is
6 right to decide them.

7 CHAIRMAN HENDRIE: There will come a time when
8 contentions of parties in a proceeding get enunciated, and
9 I take it then that your recommendation is that we have you
10 keep track of how those are being treated, and that's the
11 appropriate place to deal with them here.

12 MR. BICKWIT: That's right. I think the Commission
13 staff should keep track of that proceeding on all fronts, but
14 on this one in particular.

15 COMMISSIONER BRADFORD: The Commission's staff?

16 MR. BICKWIT: The Commission's staff, yes.

17 COMMISSIONER GILINSKY: Does that mean your office?

18 MR. BICKWIT: OPE.

19 Now, if the Commission decides this is an issue
20 for consideration in the hearing, can it add a fourth member
21 to the Board. In our view ---

22 COMMISSIONER BRADFORD: I wish that last one were
23 that clear to answer.

24 MR. BICKWIT: That's right.

25 Although I guess we do have a decent ---

MR. CRANE: Well, we have a voice within the office

1 saying, "Boy, oh boy, if I were you I would take a really close
2 look at the legislative history before saying anything quite
3 that firm, to see whether there is an intent to exclude larger
4 boards."

5 MR. BICKWIT: And we haven't looked at that, but the
6 statute looks pretty plain on its face, and if we have to ---

7 COMMISSIONER KENNEDY: Precisely, what are its words?

8 MR. BICKWIT: "The Commission is authorized to
9 establish one or more common safety and licensing boards,
10 each comprised of three members."

11 COMMISSIONER BRADFORD: It is hard to imagine a
12 history of that phrase ---

13 MR. BICKWIT: That's right.

14 And as far as the Greene County matter was concerned,
15 which you, Peter, suggested we look at, we think that is
16 distinguishable and it doesn't stand for the proposition
17 in which you could expand beyond three.

18 Finally, could the Commission or a Board rely on
19 consultants for help in reaching its decision if psychological
20 impacts are among the issues to be considered. Legally, we see
21 no problem at all. I guess the only practical -- Well, there
22 would be a problem if the consultants were advising the
23 Commission or a Board, not on the basis of the record, but on
24 the basis of knowledge obtained elsewhere, but assuming the
25 consultant reads the record and basis his advise on the record
together with any background he may have in the matter, as we

1 would do or OPE would do, we see no legal problem.

2 CHAIRMAN HENDRIE: But you do point out that there
3 is a certain amount of difficulty in getting consultants to
4 observe those limitations, and there is a tendency, inevitably
5 that the consultant sits down with the Board in chambers, and
6 consultants will inevitably base their recommendation and
7 discussion, not only on what they heard in the hearing, but
8 on their professional knowledge and so on, then you get the
9 Costle problem ---

10 MR. BICKWIT: And it is a fine line. Obviously they
11 can't say, I read in my course or I assigned in my course the
12 following treatise which says thus and such, even though your
13 record doesn't say that. That is clear they can't say that,
14 but when they start to think in those terms without saying it,
15 then it is not quite too clear where the line is drawn.

16 COMMISSIONER BRADFORD: Courts do cite precedents
17 from time to time outside of the legal field ---

18 MR. BICKWIT: Outside of the legal field?

19 COMMISSIONER BRADFORD: I think so. I don't know
20 whether they are in the record or not ---

21 MR. BICKWIT: Yes, it seems to me that if they are
22 not in the record, there is a problem here. You are supposed to
23 make your decision based on what's in there, and if your
24 consultant starts telling you about this treatise and it is
25 not in the record, I think that is going to violate the Costle
problem.

1 MR. CRANE: You can take judicial notice of it.

2 MR. OSTRACH: There are two points that apply.

3 One, the Costle decision was, in a sense a very
4 unfortunate one. It was largely reflected, the court's
5 dissatisfaction with what they felt to be very unusual
6 procedures, the EPA had employed in creating this panel and
7 giving public notice of it, having them meet over a weekend.

8 The court was obviously very interested in scrutinizing
9 EPA's procedures very carefully.

10 The second factor to keep in mind is that to the
11 extent to which an agency can supplement the record, depends in
12 large measure, on the relationship of what the matter is, the
13 agency's specialty. I don't think that a court would bat an
14 eye if the Commission said such and such a radiation level is
15 safe or not safe, and in addition to the materials cited in
16 the record, here's four other nuclear physicist's reports.
17 That's our expertise. It is expected, that we would have that
18 we could rely on, even if it isn't developed in the record,
19 even in communications.

20 The psychological matters on the other hand, I think
21 a court would not be too impressed by a claim from the
22 Commission that, well, you don't have lots of expertise.
23 They would feel, you know, you don't know any more about that
24 than anyone else. That's the sort of material that you have
25 to decide, just like a factual matter. So the thing is that the

1 courts try and focus on what is usefully protected in an
2 evidentiary proceeding. The obvious facts, like who struck
3 John, are well presented evidence. Technical facts within
4 the expertise of the agency aren't. A technical fact that
5 isn't within the expertise of the agency, a court would probably
6 say, therefore, it belongs in the hearing.

7 COMMISSIONER BRADFORD: How about an opinion?

8 MR. OSTRACH: An expert opinion? That's cross
9 examination.

10 MR. CRANE: I'm not sure that I agree with Steve's
11 distinctions.

12 What happened in the Costle, among other things,
13 was that the consultants looked at the studies of fin fish
14 and said, well, granted, there is not much in the record on
15 fin fish, but the scientific literature has lots on the subject.
16 And the court singled that out and said, if you wanted to talk
17 about the scientific literature as witnesses in the hearing,
18 you are free to do it, but you can't talk about it as deciders
19 here.

20 MR. OSTRACH: I was there. I really think that if
21 the court hadn't spent the entire oral argument saying, "Do
22 you mean they just met for three days over a weekend and you
23 didn't tell anyone about it?" I don't think the court would
24 have batted an eye at statements like that. If it hadn't
25 been fin fish. If it had been the NRC in an adjudicatory
proceeding talking about the literature is full of information

1 on neutron diffraction, I don't think we would have any trouble
2 with it at all.

3 MR. CRANE: My knowledge is necessarily limited to
4 what they said on their decision in the case.

5 MR. BICKWIT: Well, in any event, you can have the
6 consultants, and if there is any doubt you can simply take
7 testimony from them.

8 CHAIRMAN HENDRIE: But it sounds as though consultants
9 would be more -- that it would be a cleaner proposition,
10 rather than suggesting or assigning to the Board a consultant
11 who would sort of sit on their side of the table and withdraw
12 with them to private discussion of matters, that the inputs
13 from the consultant would be available in the hearing
14 process.

15 COMMISSIONER KENNEDY: Can the Board call
16 a consultant a sort of friend of the court?

17 MR. BICKWIT: Yes, the Board can.

18 MR. OSTRACH: In fact, that was one of the procedures
19 the court suggested in the Costle on remand, be done.

20 CHAIRMAN HENDRIE: That way it is there on the
21 record and people get a crack at it.

22 MR. BICKWIT: If we are talking about the Board, you
23 get to see it, which I think is a distinction between a
24 consultant -- that is a consultant to the Board and a consultant
25 to the Commission.

1 COMMISSIONER GILINSKY: Back there in some of your
2 earlier discussion this point may have been made before, but
3 isn't esthetics a matter of psychology? You have to include the
4 esthetics.

5 MR. CRANE: Well, that's what Leventhal says. He
6 says some things of esthetics are so amorphous that, like
7 psychological considerations, they are not quantifiable, and
8 they can't play a role in the NEPA process.

9 MR. OSTRACH: You say they can't play a role or
10 it is not the both of them -- NEPA says they can't measure the
11 role in the process.

12 MR. CRANE: Well, that they do not play a role in
13 making the determination of whether a ---

14 COMMISSIONER GILINSKY: What page is that quote from?
15 Not readily translatable and all that?

16 MR. CRANE: Yes.

17 MR. OSTRACH: As the Commissioner is pointing out,
18 I think, at least with respect to esthetics the Commission is
19 long past the point where it can argue it isn't cognizant.

20 The staff has recommended denying the CP for that
21 utility company in New York largely on esthetic grounds.

22 COMMISSIONER GILINSKY: It seems odd to accept
23 intensities which have to do with whether something is
24 legally pleasing or not, and not to accept others that involve
25 strongly held fears.

1 MR. BICKWIT: Posing a fact, seems to me, a little
2 bit stronger in the case of esthetics.

3 We say that something -- When we say that something
4 is beautiful or ugly, we are generally saying that everybody
5 perceives it that way.

6 COMMISSIONER GILINSKY: Well, is it the "everybody"
7 here that's important? In other words, that we accept esthetics
8 where those people think that the distinction between beautiful
9 and ugly is reasonably clear? Would we then accept psychological
10 factors that involve similar sorts of distribution of ---

11 MR. BICKWIT: I think that would be a factor. The
12 case is obviously never that question precisely, but I think
13 that would be a factor.

14 You put up what everybody agrees is a beautiful
15 structure and it is fair to say that that beautiful structure
16 has caused a perception that -- a pleasant perception.
17 You emit radiation and everyone says that's got nothing to do
18 with fear, because you can stop emitting the radiation and
19 you still have the fear. The causal link, I think, is a little
20 deeper.

21 COMMISSIONER BRADFORD: This gets very hard to deal
22 with, I mean, I suppose somebody who felt that esthetics was
23 more promising than psychological impacts would argue that
24 all the facts had changed the esthetics at Three Mile Island
25 considerably.

1 MR. CRANE: One of the cases, I can't remember which,
2 talks about the Picasso statue in front of the Federal Building
3 in Chicago, saying if we get into considering the esthetics,
4 then we have got to argue between those who say it is an
5 eyesore and those who say it is great art.

6 COMMISSIONER BRADFORD: There will certainly be
7 those who would say that they were adversely impacted by their,
8 at least electric bills and others will say that. (inaudible)

9
10 MR. CRANE: If one accepts psychological impacts here,
11 then one may have difficulty distinguishing the ordinary
12 reactor, especially if 10,000 people come in with a petition
13 saying, rationally or irrationally, I will never sleep well
14 knowing that there is a nuclear plant in my area.

15 COMMISSIONER BRADFORD: I think clearly whatever
16 we do here is at least potentially applicable in other cases.
17 I'm not sure it would be applicable to all of the cases, but
18 there is some difference, but the possibility is there.

19 COMMISSIONER GILINSKY: I would be very surprised
20 if this isn't raised in this case, and also, that if it came
21 to us in a very sort of clear-cut way, I expect people will
22 come in with statements from their doctors to certify the
23 fact that they, indeed, had all kinds of symptoms ---

24 MR. CRANE: It has been raised already. There is
25 one petition that says that child beating has gone up and acts of

1 violence ---

2 COMMISSIONER GILINSKY: In the area of Three Mile
3 Island?

4 COMMISSIONER KENNEDY: Does this allege a corollation
5 between the rate of dose and the number of beatings or what?

6 COMMISSIONER BRADFORD: Well, you have seen the
7 petition, I would have guessed it would be discussed rather
8 than the actual doses discussed.

9 COMMISSIONER KENNEDY: Was there any measurement of
10 the stress following the Susquehanna floods?

11 MR. CRANE: If so, it was not described in this
12 petition.

13 COMMISSIONER BRADFORD: Well, just to get us back
14 into this sort of fetus subject, there is, I suppose literature
15 of disasters and people's response to them, and how they
16 adjusted going back and living in a flood zone area afterwards,
17 and I'm sure somebody somewhere has done some research on that.

18 MR. NICKWIT: I guess one of the factors that gets
19 us cause is that if you put up the same structure here and
20 then put it up somewhere else, in one case -- it is the same
21 in both cases. In each case it is as safe as the other case,
22 but in one case here it is likely to cause a more amount of
23 distress than somewhere else. That is not to say that it
24 rules out considering it, considering the factor just made
25 us uncomfortable.

COMMISSIONER BRADFORD: The parallels to esthetics

1 is an interesting one, but you can say the same thing about
2 the Greene County. It is Greene County -- where is the
3 staff recommending ---

4 MR. OSTRACH: I think it is called Haven or New
5 Haven.

6 COMMISSIONER BRADFORD: Okay. You are saying again,
7 the plant is no more ugly or less safe there than anywhere
8 else.

9 MR. BICKWIT: What is rational or what is not
10 rational behavior.

11 CHAIRMAN HENDRIE: No. Peter, there was a distinction
12 there, because the case was made very strongly as part of that
13 esthetic impact determination that the area was one of historic
14 importance from an esthetic standpoint. Much citation of
15 Washington Irving and other great authorities down the line,
16 and the particular point was made that the plant, at the place
17 that it was proposed to be erected with the great cooling
18 tower and so on, presented an unfortunate intrusion into that
19 historic and scenic vista. And, in fact, they said if you
20 move down the river where Washington Irving and subsequent
21 discerners of the esthetic values didn't pay much attention
22 to it and didn't think it was much, you could stick up the
23 same cooling tower and we wouldn't, then, find it objectionable.

24 COMMISSIONER BRADFORD: Yes. That's good, and all I
25 meant to say is that the argument here is that this is an area

1 which is simply susceptible to these kinds of concerns.

2 MR. BICKWIT: We are talking about irrational peers.
3 I think that's the important thing. You move a structure from
4 place to place, it may be esthetically pleasing in one place
5 and displeasing in another place and everybody is going to
6 react that it is pleasing here and displeasing here.

7 COMMISSIONER BRADFORD: Well, not everybody, because
8 you have some sense of the community.

9 MR. BICKWIT: Here, you are talking about, "is the
10 plant safe here or is it safe here." Those in the know recognize
11 that it is equally safe in both places, however, in one case
12 there is tremendous fear of the plant and in the other case
13 there is not. You have to say that either the fear is
14 irrational or the lack of fear is irrational.

15 COMMISSIONER BRADFORD: Yes, but as Vic said at the
16 beginning, if it were just -- whether the fear is an abstract
17 proposition, that's a relatively extreme case. What I guess
18 one worries about is the kinds of things in that petition
19 which, if a concrete case can be made that that fear then
20 links itself into -- this child beating surprises me, but I
21 would be less surprised, for example, by behavior by children
22 that indicated a general fear of something impressive in their
23 lives. I just don't know where all of this leads, but I ---

24 COMMISSIONER GILINSKY: It seems to me it is like the
25 case of a jail, sort of after a jailbreak. We are putting on

1 extra guards, extra gates and fences and so on, and people
2 who live in the neighborhood, they don't want the jail.

3 MR. BICKWIT: Well, where this leads, for purposes
4 of your selection process is that we can't give you a firm
5 answer, and my guess is -- We can give you a firmer answer
6 after some time, but my guess is that even af or a good deal
7 of time we would ---

8 COMMISSIONER BRADFORD: Yes. You have said that
9 there are ways other than incorporating the expertise on the
10 Board itself.

11 CHAIRMAN HENDRIE: I think that's a critical point.

12 COMMISSIONER GILINSKY: By the way, one of the places
13 that -- there is a sect of Millarites (phonetic) who are
14 supposedly waiting the end of the world, mostly in New York
15 State, one of the places most of them waited for the end of
16 the world was on the island next to Three Mile Island.

17 CHAIRMAN HENDRIE: Well, they just got the timing
18 wrong.

19 Well, let me try the following line of thought on
20 you. It does seem to me that should these questions eventually
21 come into the proceeding in an active way, there are appropriate
22 ways to help the Board with professional expertise in the
23 area, which don't rely either on the staff producing a
24 psychologist or the applicant producing a psychologist, or the
25 client-party producing a psychologist, but rather ---

1 COMMISSIONER BRADFORD: All of those things will
2 probably happen.

3 CHAIRMAN HENDRIE: They will all happen, but in
4 addition, the Board can seek its own consultants who would act
5 as -- What would their status be? Friends of the Board or --

6 MR. BICKWIT: They would be consultants to the Board.

7 CHAIRMAN HENDRIE: And would simply, rather than going
8 into the back room, which sounds like a way that would lead
9 to some challenge on the procedure, just say what they had to
10 stay in open session.

11 MR. BICKWIT: That has been a practice that the
12 boards have used. They have used that practice without having
13 used the behind-the-doors practice.

14 CHAIRMAN HENDRIE: Yes. So it is a way of providing
15 the Boards with professional expertise and views, that is,
16 not being sponsored by one of the particular parties in the
17 proceeding.

18 It does seem to me that there is so much in the
19 proceeding which deals with more normal reactor safety
20 licencing, et cetera, type of issues, that it would be -- I think
21 it would be a little unfortunate to replace one of the
22 customary Board expertise areas and an experienced Board member,
23 and put a psychologist in just to cover this possibility,
24 because I think this other way to provide help to the Board
25 in the area and -- I wonder if you feel that we could go ahead
with [] as recommended.

1 John has said that -- I talked to him and told him
2 what I wanted to talk about this morning, and he said that
3 if we go with that Board, he has no objection to that and he
4 will join that. If we went that way, I would propose that
5 I consult with him when he comes back this afternoon, and that
6 it not be a final decision until I confirm that he, indeed,
7 would agree with it. If you were inclined to go that way,
8 why I think we could take that ---

9 COMMISSIONER BRADFORD: Which of the issues that we
10 have heard this morning that someone of [] background
11 have -- this is really apart from what we have been discussing
12 up to now, but there wasn't a lot that I heard this morning
13 that would seem to me would be down an environmental
14 scientist's alley.

15 CHAIRMAN HENDRIE: No. I think in terms of the
16 order, the staff is concentrating on entirely in its
17 insertions to the order, on safety-related matters, what I will
18 call the Atomic Energy Act side of things.

19 Len, maybe you can tell me. I expect we will have,
20 in the proceeding, contentions of all kinds, issues that
21 people want to discuss, and some of these are inevitably going
22 to -- a number of them are going to relate to the
23 Susquehanna and the discharge of radioactive materials into
24 the Susquehanna, and assorted questions about what all of that
25 may mean, the human health and also, I would think some things

1 that are normally taken up in environmental hearings, because
2 I can see right away, the Susquehanna Fishermen's Association
3 will be muttering about radioactive fish and so on. It may
4 be necessary, the way the proceeding ---

5 COMMISSIONER KENNEDY: The farmers and their cows.

6 CHAIRMAN HENDRIE: Yes. -- shaves, to relate that
7 back to effects on humans through the consumption of fish
8 or something. Are the limitations clear to make environmental
9 issues of that kind out of bounds?

10 COMMISSIONER BRADFORD: No. Nothing rules them out.

11 CHAIRMAN HENDRIE: Yes, I think your comment that
12 what the staff has put in the order is more engineering,
13 managerial, operations oriented, safety matters, but I think
14 some of the issues of the parties that will come into the
15 proceeding will want to discuss will reach well over into
16 Little's area.

17 COMMISSIONER KENNEDY: Steve, you don't think so?

18 MR. OSTRACH: No. It seems to me, Commissioner,
19 that most of the environmental concerns that are going to be
20 considered in the TMI One hearing, a Board Chairman can
21 fairly rapidly say have already been considered and evaluated
22 fully in the OL proceeding or in the CP proceeding for Unit
23 No. 1, and he doesn't need to hear any more testimony on that,
24 the Commission has already ruled on that and determined what's
25 going to happen to the cows in normal operation. The only

1 additional areas would be either Class 9 accidents or
2 accidents such as the one at TIM Two, if it isn't considered
3 a Class 9. I think those would be previously discussed.

4 MR. BICKWIT: How about radiation monitoring?

5 MR. OSTRACH: That's not exactly environmental.

6 COMMISSIONER GILINSKY: It seems to me the
7 business about the Susquehanna, that really deals with TMI 2,
8 doesn't it?

9 MR. OSTRACH: Yes.

10 COMMISSIONER GILINSKY: Would that be included, I
11 would think not.

12 CHAIRMAN HENDRIE: Well, I would be surprised if you
13 don't have a series of contentions presented along that line.

14 COMMISSIONER GILINSKY: Yes, but how would they relate
15 to TMI One?

16 CHAIRMAN HENDRIE: I would expect them to be made
17 to tie the fact that there was an accident at TMI Two, and
18 say, well, there is more likely to be one at TMI One, and
19 then we will have the stuff in the water, and that's bad news.
20 Wouldn't you think? I'm speculating.

21 COMMISSIONER GILINSKY: I guess I don't see any --
22 You know, when you talk about the Susquehanna, I was just
23 thinking of this process we are going through on Two, but
24 that's really all TMI Two, and one of the things the staff
25 wants to get straight is that the two will have been separated

1 sufficiently, and so to the extent there will be a certain
2 amount of argument about this, it will be over whether they
3 are separated, not whether the TMI Two water is going into
4 the Susquehanna and what the effect of that is.

5 It may be that one wants a little more strength on
6 this safety side, because, as you say, the staff -- Well,
7 those are the basic issues and the ones that they have there
8 that go beyond what we have had with the other B&W reactors
9 are the emergency planning, the issues relating to management
10 and this is a separation. I guess I would have to go with
11 Steve. As far as the monitoring, I think the safety will deal
12 with that.

13 CHAIRMAN HENDRIE: You may be right, Vic. I just
14 thought that in establishing a Board which did not include
15 an identified environmental member might have sort of a
16 better aspect to it here.

17 COMMISSIONER GILINSKY: But we are not granting the
18 license in the first instance when you are reviewing the
19 environmental statement and everything else. Since the issues
20 are primarily safety issues, when it gets right down to it --

21 COMMISSIONER KENNEDY: I think that's right.

22 COMMISSIONER GILINSKY: -- you know, our adolescent
23 learned recommendations had been implemented, you know,
24 et cetera, et cetera.

25 COMMISSIONER KENNEDY: Yes. I guess I was
unconsciously visualizing the thing, really, in the context of

1 a contested OL hearing and it is not. All those issues are
2 essentially behind us, and only if o could prove that something
3 now in respect to TMI One is drastically different than
4 it was in the OL hearing, then the questions doesn't arise.

5 COMMISSIONER GILINSKY: We may end up with some kind
6 of separate TMI Two proceeding, but it doesn't sound to me
7 like these issues are going to be coming into the TMI One
8 proceeding.

9 COMMISSIONER KENNEDY: That's probably right.

10 CHAIRMAN HENDRIE: Well, one thing which we could do is
11 I could give Bob a call and see who he thinks he has got on
12 the Panel who is available and seems particularly strong on
13 operations. ---

14 COMMISSIONER KENNEDY: Maybe somebody in the health
15 physics kind of business.

16 CHAIRMAN HENDRIE: [

17
18
19] what I will call the operations
20 area, management capability, how to operate -- is this
21 a good operation, let me look at the organization chart, let
22 me deal with those contentions that Med. Ed. isn't competent
23 to run this plant and the operators aren't good enough. So
24 the question I just -- we could do that, call and then over
25 the next day or two find out what the recommendation is. Let

1 me ask. Peter, what do you think? Would you think that a
2 better configuration of the Board than the present one?
3 It does mean going away and not having a Board on which there
4 is an identifiable so-called environmental member, because
5 the Panel Members are identified in these general categories.
6 It seems to me, at first glance at least, that perhaps it was
7 not desirable to give the appearance in naming the Board that
8 we were sort of turning aside from that whole area of consider-
9 ation in the proceeding, but the point you raise is a valid
10 one in the Board from the standpoint of dealing with the
11 kinds of things that staff has listed. The issues that
12 presumably all of which or most of which will be identified,
13 and the Board could be a stronger one with the replacement of
14 the environmental member -- a panel member who has a fairly
15 strong background in operations and safety-related management.

16 COMMISSIONER BRADFORD: If Bob has a good person
17 with that background, I would be tentatively inclined to go
18 that way. I know nothing about [] and have nothing against
19 [] but I just have a little difficulty meshing [] background
20 with what I think is going to come up at the hearing.

21 CHAIRMAN HENDRIE: Well, why don't I call --

22 COMMISSIONER KENNEDY: See ...at Bob has.

23 CHAIRMAN HENDRIE: Is it fair to judge, either because
24 it hasn't come up yet, that [] as Chairman and [] seem
25 good members for this Board?

COMMISSIONER KENNEDY: Yes.

1 CHAIRMAN HENDRIE: Okay, then let me talk to Bob and
2 see what he can get us in the way of an operations -- Because

3
4
5]--
6 COMMISSIONER BRADFORD: (inaudible)

7 CHAIRMAN HENDRIE: Yes.

8 COMMISSIONER KENNEDY: Okay.

9 CHAIRMAN HENDRIE: Very good.

10 MR. BICKWIT: I would like to raise another issue
11 as soon as you turn this machine off.

12 CHAIRMAN HENDRIE: A scheduling issue?

13 MR. BICKWIT: Yes.

14 CHAIRMAN HENDRIE: I'll ask for a vote to withhold
15 the tape under Exemption 6 and 10.

16 COMMISSIONER BRADFORD: Aye.

17 COMMISSIONER KENNEDY: Aye.

18 COMMISSIONER GILINSKY: Aye.

19 CHAIRMAN HENDRIE: So ordered.

20 (Whereupon the meeting was adjourned at 12:40 p.m.)
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