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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

COMMISSION BRIEFING

SOUTH AFRICA

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

Thursday, 31 March 1977

Hearing in the above-entitled matter commenced at 3:20 p.m., Chairman Rowden, presiding.

PRESENT:

MARCUS ROWDEN, Chairman
RICHARD KENNEDY, Commissioner
VICTOR GILINSKY, Commissioner
BENJAMIN HUBERMAN, Director, Office Policy Evaluation
NORMAN TERRELL, Office of Policy Evaluation
PETER STRAUSS, General Counsel
STEVEN OSTRACH, Office of General Counsel
JOHN HOYLE, Assistant Secretary.

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P R O C E E D I N G S

MR. STRAUSS: The question before you today is the question on which I served merely as interlocutor, in effect,a while back. You met, decided to send letters to the participants in the South Africa case, informing them of the recent communication from the Department of State on the South Africa Safari proposed export.

At that time Commissioner Kennedy suggested that the letter should also be sent to the Department of State indicating that while we would defer action awaiting their response, that response should be promptly made, as the Commission ought not to appear to be delaying matters which private parties and other governments had an interest in having prompt decision.

It was not clear whether all three Commissioners would wish to have such a letter sent. We drafted a letter, sent it around. Commissioner Kennedy does wish to have the letter sent, as I understand it. The other two of you would prefer that such a letter not be sent.

And the basic purpose of this meeting is to reach a decision, possible rewriting of the letter, or a decision on that question.

As I understand Commissioner Kennedy's view, it is also that the letter to the -- letters to the two parties should not be sent in the absence of the letter to the Department of State.

COMMISSIONER GILINSKY: There is also a possibility of just sending the first paragraph, which uses the words "reasonable opportunity."

MR. STRAUSS: This is the letter to Nosenzo.

CHAIRMAN ROWDEN: Well, the three are not that inextricably related. We must advise the parties of actions that we have taken, must we not?

MR. STRAUSS: I would think so.

CHAIRMAN ROWDEN: So not sending these letters really presupposes our not taking action. It is not simply a question of whether we send the letters or not.

These letters record, you know, relate determinations of the Commission.

MR. STRAUSS: That's right.

COMMISSIONER KENNEDY: Does anyone have any doubt that the language of the second paragraph is not correct in the letter to Mr. Nosenzo?

Does anyone have a quarrel, for example, with

stating that the application has been pending since March 1975, a period of some two years, I would note, and the intervention petition has been pending since July 1976. That the Commission has a duty to respond to both applicants and would-be intervenors within a reasonable time.

Can there be any doubt that this is true?

MR. STRAUSS: It is all true.

COMMISSIONER KENNEDY: And further delays should be minimized for the interests of all concerned.

Okay, is there any question that that would be true?

MR. STRAUSS: Perhaps we should stop there.

COMMISSIONER KENNEDY: And if those are all true, one would hope that we could request the Executive Branch assessment be completed.

Now if there is a question about allowing some more reasonable time than 15 days, I think that certainly could be arranged. But certainly it seems incumbent upon us to call to the Executive Branch's attention the need for us to do our business, in order that we can help them more fully conclude their own business in this regard.

COMMISSIONER GILINSKY: Well, they are pretty clear on this.

COMMISSIONER KENNEDY: But the record is not.

CHAIRMAN ROWDEN: But my own view is strongly colored by the fact that the Executive Branch, with our participation, is in the process of reexamining national policy in that regard.

It is a difficult exercise. Some might wish it to be completed more rapidly than it is being completed, but I think we would all agree that a sound decision is the best result.

And I would be disposed not to put this sort of public pressure on them to move forward, but to work with them to reach as rapid a conclusion of the policy formulation matter as we possibly can.

I think this would embarrass our government, a chiding of this sort, which I think it would be considered as being. You are correct, it is all accurate, the recitation of what has happened in the past is very accurate. But I think it would be something that would embarrass the government. Not simply with the South Africans. This is illustrative of a number of cases which are pending.

COMMISSIONER KENNEDY: That is precisely my concern of course.

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Now perhaps it would be wise to call a more general matter to the attention of the Executive Branch in the hope that as the general review proceeds, consideration can be given to the need for an expeditious arrival of fundamental decisions since they affect a number of specific activities engaged in by a variety of persons, organizations.

CHAIRMAN ROWDEN: Well, I think that would certainly be more appropriate than limiting it to the South African situation, but that would not lessen the concern that I have that this would be an embarrassment to the government in areas such as this.

MR. HUBERMAN: Yes. I am afraid they will limit our attendance to 20 people at meetings.

(Laughter.)

CHAIRMAN ROWDEN: There may be some good then to be achieved fromthis.

COMMISSIONER KENNEDY: I think that would be desirable.

MR. HUBERMAN: Separately, yes. But they are mentioning this particular case in the context of one of the papers they are working on as a need to get this out --

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CHAIRMAN ROWDEN: Almost all of the matters we would be referring to are in this category?

MR. HUBERMAN: On HEU they say, gee, one of the things we need to get a policy on is -- so we can suggest to NRC what they do on Safari.

So it is not -- it is not separate from the current review, it is clearly part of it, and I think Nosenzo would be a little embarrassed by getting it.

CHAIRMAN ROWDEN: It is not just Nosenzo.

MR. HUBERMAN: Maybe it would just roll off his back.

CHAIRMAN ROWDEN: No, I think a statement such as this will be picked up and publicly used.

CHAIRMAN KENNEDY: So long as the Commission -- and I gather it does -- fully accepts that the statements made in the last paragraph of the letter all are true and represent basic considerations which go into the decisionmaking process of the Commission, I would certainly be prepared to endorse Commissioner Gilinsky's view that we just delete the second paragraph and send only the first paragraph of the letter to Mr. Nosenzo.

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The record would at least then be complete, which it is not at this point.

MR. HUBERMAN: I don't think -- he didn't have any problem with the first one.

MR. STRAUSS: I don't think so.

All right.

MR. HUBERMAN: He would just think you were completing the record.

MR. STRAUSS: All right. This meeting wasn't scheduled to be over until 4:30.

(Laughter.)

MR. OSTRACH: This transcript, since it dealt entirely with the discussion of a letter, editing of a letter is withholdable under a very specific bit of legislative history under 9(b) and therefore the transcript need not be released.

MR. STRAUSS: And it is also classified, I imagine in part by some of the references that were made.

MR. OSTRACH: In part, yes.

COMMISSIONER KENNEDY: Classifiable?

MR. STRAUSS: Well, I believe there were some references made to an ongoing Executive Branch review of

mm certain matter --

COMMISSIONER KENNEDY: You mean the one I read about in the New York Times.

(Laughter.)

MR. STRAUSS: Well that you heard what was in and what wasn't --

COMMISSIONER KENNEDY: Is it a different one that I wasn't aware of?

MR. STRAUSS: You heard what was in certain papers. I don't know -- tell me Security Officer, is that classified?

MR. HUBERMAN: Yes, that was classified.

COMMISSIONER KENNEDY: I think that is an extraordinary extension of the security classification.

CHAIRMAN ROWDEN: I prefer a more exotic rationale.

(Whereupon, at 3:40 p.m., the hearing in the above-entitled matter was adjourned.)