



Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

DISCUSSION OF EXPORT MATTER
(Closed to Public Attendance)

March 8, 1979

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Discussion of Export Matter
(Closed to Public Attendance)

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

Thursday, March 8, 1979

The Commission met, pursuant to notice, at 2:40 p.m.
Joseph Hendrie, Chairman of the Commission, presiding.

PRESENT:

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

ALSO PRESENT:

- L. Gossick
- J. Hoyle
- J. Shea
- G. Oplinger
- J. Becker
- R. Burnett
- M. Peterson
- J. Dunn Lee
- T. Sherr
- J. Devine
- L. Bickwit
- C. Stoiber

P R O C E E D I N G S

1
2 CHAIRMAN HENDRIE: Okay, we are off and running
3 on a Commission session on export matters, specifically
4 having to do with the Taiwan licenses.

5 We will be discussing classified information,
6 so the meeting is closed and the classification level, I
7 guess, is generally Secret. Is that a fair characterization,
8 Jim?

9 MR. SHEA: Yes, I think so.

10 CHAIRMAN HENDRIE: Now, there are two aspects that
11 we wanted to cover this afternoon. One of them is a summary
12 of what I will call the nationhood problem which appears to
13 offer some difficulties for Commission action on licenses
14 to export to Taiwan. We will have that summary from
15 Counsel's office.

16 Beyond that, we are getting started on a matter
17 that I think would be very useful and that Dick suggested,
18 and that is that it would be a good idea to begin to look
19 at the aspects of the outstanding licenses for Taiwan.

20 With regard to matters other than the nationhood
21 problem, and if, as, and when that clears, the result of
22 legislation or some other suitable form of magic, why
23 then we would be able to take fairly expeditious action.

24 So we have these two sorts of things that we
25 want to treat this afternoon. Why don't I start out by

1 asking Counsel and his folks for a summary on the nation-
2 hood situation. I understand they met recently with the
3 Department of State lawyers.

4 COMMISSIONER KENNEDY: Could I ask a question at
5 the outset in that connection?

6 CHAIRMAN HENDRIE: Why not.

7 COMMISSIONER KENNEDY: I wrote the Department of
8 State a rather lengthy letter on the 5th of February on that
9 very question. The first question of a number that I sent
10 to them was: "Does Taiwan meet the nationhood requirements
11 set forth in the Atomic Energy Act, and if so, what is the
12 specific legal basis for that conclusion?" I have not yet
13 had a response to that letter.

14 Could Counsel, if they have been discussing this
15 with State's counsel discuss that and also, indicate whether
16 they have any intention of replying to my letter, or should
17 I drop them a note reminding them that they have it.

18 MR. BICKWIT: We'll contact them.

19 Our purpose is to bring you up to date on our
20 legal analysis, and basically, we adhere to the position
21 that is in the paper that you -- the January 30th paper
22 that you have.

23 We still can't advise that exports can be
24 legally issued, absence the legislation. With legislation
25 of the sort that is being considered, our view is that the

1 threshold legal impediments will be removed, and our
2 best reading is that it appears that the legislation will
3 pass in about two or three weeks.

4 And in light of that, it was our view, and I know
5 the view of the Chairman and Commissioner Gilinsky, that
6 the Commission may as well focus on any other questions
7 associated with the licenses so that these can be eliminated
8 and the licenses can ^{be} issue^d closely after enactment, assuming
9 the bill, as presently drafted, is not altered.

10 As far as our meeting with State is concerned,
11 they made four arguments. They do not buy ours. That would
12 be the answer to your question request.

13 COMMISSIONER KENNEDY: That's only the answer to
14 the first half.

15 The second half is what is their legal basis for
16 that.

17 MR. BICKWIT: I'll give that one to you next.

18 COMMISSIONER KENNEDY: Why can't they write it
19 to us? Do they feel uncomfortable with it?

20 MR. BICKWIT: I don't plan to be their apologist.

21 COMMISSIONER KENNEDY: I wondered if they had
22 said anything to you.

23 MR. BICKWIT: They did not.

24 They first argue that the question that we pose,
25 which is essentially does Congress intend to continue nuclear

1 commerce with an entity not treated as a nation for
2 purposes of our foreign policy. I can say that biases
3 the answer a bit, and they would have been more comfortable
4 with the question of did Congress intend to continue exports
5 to Taiwan in the event of normalization.

6 I guess our response is that you can pose these
7 questions any number of ways. Their question, I feel,
8 biases the answer a bit because you might be inclined to
9 answer yes, if you felt the Congress wanted to continue
10 exports to Taiwan, even if they didn't use the word
11 nationhood.

12 COMMISSIONER AHEARNE: What date are they thinking
13 of in that question?

14 MR. BICKWIT: When the nationhood requirement was
15 passed, when was it, '62?

16 COMMISSIONER KENNEDY: '54, wasn't it.

17 COMMISSIONER AHEARNE: Then the question would
18 then be that even if you answered yes, at that time you
19 would have to ask, in what manner did Congress think that the
20 normalization would occur.

21 MR. BICKWIT: Yes.

22 COMMISSIONER AHEARNE: I think it is '54, it
23 would have been.

24 MR. BICKWIT: I think we could have sat there
25 quite some time and probably would not have been able to

1 agree on a common question.

2 In any case, whatever question you ask the answer
3 is unclear and ---

4 COMMISSIONER KENNEDY: The answer is unclear?

5 MR. BICKWIT: I think the answer is unclear.

6 COMMISSIONER KENNEDY: But they do not agree with
7 that?

8 MR. BICKWIT: Yes, they do.

9 COMMISSIONER KENNEDY: Oh, they do.

10 MR. BICKWIT: The way they phrased it was they felt
11 the arguments, on the one side, were as good as the arguments
12 on the other.

13 COMMISSIONER KENNEDY: But could you take that just
14 one step farther. That is 'n the present circumstances, but
15 if legislation were passed and the legislation implied that,
16 in fact, Congress did intend that exports go forward or
17 that relations continu^e as they have been in the past,
18 would that then meet the requirement?

19 MR. BICKWIT: Sure.

20 COMMISSIONER KENNEDY: Okay.

21 MR. BICKWIT: And we wouldn't dispute that.

22 It is clear that their reading is a strange one,
23 that ---

24 COMMISSIONER AHEARNE: To them too?

25 MR. BICKWIT: Yes, I think they would have to admit

1 that, and given that there is no legislative history to
2 support a strange reading, we adhere to the view that we
3 can't go with that strange reading. I felt we ought to
4 cover ourselves in that.

5 COMMISSIONER KENNEDY: You favor a reasonable
6 use of English.

7 MR. BICKWIT: In the absense of strong legislative
8 history we are going the other way.

9 (Laughter)

10 MR. BICKWIT: Their second argument had us going
11 for a while, which is that basically what we are dealing
12 with in the situation is an understanding that there was
13 one land mass, and one particular government was the one
14 we recognized, and all that has really changed is that
15 we are now dealing with another government. So that in
16 essence, you have a nation and you have the same nation that
17 you always had. The problem is that the agreement is not ---

18 COMMISSIONER KENNEDY: -- with that nation.

19 MR. BICKWIT: Right.

20 The third argument they make ---

21 COMMISSIONER KENNEDY: And what do they say to that?

22 MR. BICKWIT: We couldn't come up with it on the
23 spot.

24 COMMISSIONER KENNEDY: Really!

25 MR. BICKWIT: Well, we were acutally going around it.

1 COMMISSIONER KENNEDY: They were arguing that it is
2 one nation.

3 MR. BICKWIT: We have always viewed it as a nation.

4 COMMISSIONER KENNEDY: Well, not always. Since
5 about 1971, I think.

6 MR. BICWIT: Well, our position under the
7 Shanghai Communique has been that we acknowledge ---

8 COMMISSIONER KENNEDY: It pre-dates that if one goes
9 back and looks at the annual reports of foreign policy issued
10 by President Nixor, by a few months.

11 MR. BICKWIT: I see.

12 COMMISSIONER AHEARNE: The position is that we
13 have for some years recognized that the People's Republic
14 is a nation?

15 MR. BICKWIT: No. We have always recognized,
16 since '71, that there was a nation called -- well, the
17 problem is that there was a single nation and that Taiwan
18 was ---

19 COMMISSIONER AHEARNE: China isn't a nation.

20 MR. BICKWIT: Well, part of it. The only thing
21 that has changed is we now believe that a different government
22 is running it.

23 COMMISSIONER KENNEDY: We never said at that time,
24 which government was the Government of China.

25 MR. BICKWIT: That's right.

1 COMMISSIONER AHEARNE: So that type of argument
2 then would say that if it was legal to ^{issue} license for Taiwan
3 before, then it is still legal?

4 MR. BICKWIT: That is right. They tried to analogize
5 it in essence to the situation to where you have an
6 acknowledged nation and you simply changed your initiative
7 of who you are dealing with. And under those circumstances,
8 we would say we would advise that exports would be legal.

9 In other words, if the agreement ---

10 CHAIRMAN HENDRIE: Well, if the Swiss Government
11 decided to call themselves George, we could probably, within the
12 Commission's sweep of things, especially if the State
13 Department sent us a letter saying, well, we now call them
14 George. I expect we could make the transition. It is the
15 same group of people, the same fellow signed the papers
16 and are carrying out the thing, and it is the same government
17 with the same policemen and buildings and courts and clubs
18 and all the rest of it. But on Taiwan, it is a different
19 set of people and a different government located in a different
20 place with whom this thing called an agreement was not
21 negotiated, and one China with two different sets of people
22 is one set too many for our purposes.

23 COMMISSIONER KENNEDY:
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1 MR. BICKWIT:

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4 COMMISSIONER KENNEDY:

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6 COMMISSIONER AHEARNE:

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8 COMMISSIONER KENNEDY:

9 MR. BICKWIT:

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11 COMMISSIONER KENNEDY:

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13 COMMISSIONER BRADFORD:

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15 MR. BICKWIT: Their third argument is that even if
16 there is a problem under the statute, the Executive Memorandum
17 relieves us of that problem, and we hold to the principle
18 that any action by the President cannot substantively change
19 the expressed provisions in the statute. They do not adhere
20 to that. We just had to part on that issue.

21 MR. STOIBER: I have an interesting note here
22 that the Foreign Relations Committee of the Senate also
23 parted company with them on that. On page 41 of the
24 report the Committee says that it doubts that the power to
25 issue this directive is within the authority conferred upon

1 the President by the Constitution. And they then say,
2 therefore, it is the Committee's judgment, the enactment of
3 these provisions, that is the provisions of the Statute,
4 is legally required, not simply politically desirable, but
5 legally required if the President is to be enabled to
6 continue to conduct the myriad of programs concerning
7 Taiwan.

8 COMMISSIONER AHEARNE: Well, the State Department,
9 in writing to the Congress didn't make it as blunt as they
10 did to you, did they?

11 MR. BICKWIT: They didn't make it as blunt as they
12 do -- as I just indicated, but that was the clear implication
13 of their statement.

14 COMMISSIONER AHEARNE: Yes. I guess they would
15 be very hesitant about making it very bluntly.

16 MR. BICKWIT: That's right.

17 In light of this, given our interpretation, our
18 General Counsel's office was accused of having a Capitol
19 Hill bias, jokingly.

20 Then finally ---

21 COMMISSIONER KENNEDY: I would have thought it
22 would be the other. That Capitol Hill had an NRC bias.

23 MR. BICKWIT: Their final point is that they
24 hoped that the Commission would not come down on this
25 question, given that there was no need to understand various

1 policy options available to you, and that if by chance this
2 legislation become hung up, they would like to have another
3 crack at us, which would obviously, they would be harmed
4 by your having come down on the side of our memorandum.
5 And I think that is a good point. If you were inclined to
6 go in the direction of our advice, there is no reason for
7 you to actually come down on that side in this proceeding.

8 COMMISSIONER AHEARNE: In other words, if we
9 are predisposed to issue the license, go ahead, but as a
10 matter of fact, we ~~don't~~ ^{aren't}.

11 MR. BICKWIT: Now, with respect to the -- the
12 bottom line with respect to this point is that our advice
13 remains that it is not legally permissible to go forward.

14 I'd like Carl to speak to the question of whether
15 it would be under the legislation.

16 MR. STOIBER: What I would like to do, if we have
17 sufficient time, is to basically run through the Statute
18 now as it exists. I'm not clear if the Senate will be
19 able to finish this legislation this week, although I
20 believe the House may well complete its action on the bill.
21 Chairman Zablocki has made his intentions to do that known,
22 and he would like to see it out of the committee.

23 In the event that at that point, these enactments,
24 these two different enactments as they emerge from either
25 house, and that would be, of course, the Conference Committee

1 and ---

2 COMMISSIONER KENNEDY: Are they substantially
3 different?

4 MR. STOIBER: They are substantially different in
5 the sense that the Senate version is a much more highly
6 developed document in the reports. The House version
7 parallels, I think, to a greater extent, the version
8 submitted by the Administration.

9 What I would like to do is run through the key
10 portions of the Senate bill which is entitled "The Taiwan
11 Enabling Act", S. 245. We did forward a copy of the
12 Administration version to you on January 31st, but it has
13 been considerably revised since that time. It was reported
14 out of the Committee to the floor on March 1st and its
15 structure is in five titles. The first 14 sections on
16 Taiwan deal with specific aspects of continued cooperation
17 of Taiwan. Title 2 contains implementing provisions for
18 the American Institute on Taiwan, the appropriate entity
19 which we are establishing to conduct these relations.

20 Title 3 contains the authorization for the
21 appropriation of funds. Title 4 provides for a Congressional
22 review of agreements entered into by the AIT and the
23 reporting requirement, and Title 5 makes the enactment
24 retroactive to the first of the year, and contains a
25 separate holding clause.

1 Title 1 is the one that is important for purposes
2 of the Commission's review of these licenses and I'd like
3 to run through, very quickly, the 14 sections and point out
4 where they specifically impact the Commission's licensing
5 authority.

6 I think, by way of introduction, we, in the General
7 Counsel's office believe that as currently framed, the
8 Statute would enable the Commission to continue its
9 licensing activities with respect to Taiwan and would resolve
10 the legal problems connected with the status of Taiwan and
11 the authorities on Taiwan and I will try to explain to you
12 how the Act attempts to do that.

13 First of all, Section 101 of the Act makes all
14 domestic, United States laws which refer to a state or a
15 nation applicable and makes that include Taiwan. Page 23
16 of the section-by-section analysis of the report makes it
17 clear that that also applies to the Atomic Energy Act of 1954.
18 That was listed specifically in the report as one of the
19 domestic United States statutes which is to be included
20 here. This is one of the several sections which deal with
21 the nationhood requirements.

22 One addition to Section 101, which was put in
23 by the Senate, dealt with the problem that was discussed
24 here in your last meeting about this locution, "people on
25 Taiwan," and what that actually means.

1 The Senate has now flushed out the definition of
2 that phrase to say, "people on Taiwan," as used in this
3 Act shall mean and include the governing authority on
4 Taiwan recognized by the United States prior to January 1,
5 1979, as the Republic of China with agencies, instrumentalities
6 and political subdivisions; and the people governed by it in
7 the islands of Taiwan and the Pescadores.

8 Now, it seems to me that the basic legal effect of
9 that definition is to confer what I would call defacto
10 government status on the people on Taiwan. I think that
11 is an important consideration for us in terms of a
12 continuing relationship here, and I think it cures a fairly
13 significant defect in the language as proposed by the
14 Administration.

15 Section 102 of the Act provides that diplomatic
16 relations will not be required to make Taiwan eligible
17 for participation in any program or any series of relations
18 conducted with the United States.

19 Section 103 gives the entity to be established by
20 Taiwan and that comes up in a further section here. The
21 standard procedure in the United States courts, if our
22 entity, the American Institute in Taiwan has reciprocal
23 rights to sue in courts on Taiwan, so it is a reciprocal
24 provision or outstanding provision.

25 Section 104 is another significant provision for

1 our purposes because what it does is to provide that all
2 agreements in force with the Republic of China prior to
3 January 1, 1979, entered into by the United States, will
4 continue in force and it places the Congress's approval
5 of that continuation in force on the President's Memorandum
6 of Law which he issued back in December. So it is, in a sense,
7 a Congressional ratification of the -- all these past
8 agreements including the agreement with Taiwan in the
9 Nuclear Cooperation Agreement.

10 Section 105 is also extremely important for the
11 Commission because it authorizes any programs to be carried
12 out with a foreign state or nation to be carried out with
13 Taiwan. Page 25 of the Senate report contains the following
14 language: "This will assure the continuation of authority
15 for such important programs as arms sales, nuclear exports,
16 and export-import bank financing. So nuclear exports are
17 specifically referenced in the report as one of these programs
18 to be continued under Section 105.

19 Section 106 is the section which mandates the
20 carrying out of all relations between the United States and
21 Taiwan through the American Institute on Taiwan is
22 going to be or has been incorporated under the laws of the
23 District of Columbia. So that is the provision which sets
24 up the AIT.

25 Section 107 is a provision in which the United States

1 is to advance human rights in Taiwan through the Institute.

2 Section 108 is another significant one from our
3 view point. This also bears upon the agreement for
4 cooperation requirement because ^{it} ~~the~~ state, ^{that} that whenever we
5 have to have an agreement in force in order to conduct any
6 sort of program or arrangement, that those kinds of
7 arrangements shall be entered into or performed in force in
8 the manner and to the extent directed by the President, by
9 or through the Institute. This is particularly significant
10 in view of the provision in the Nuclear Non-Proliferation
11 Act which requires the renegotiation of agreements for
12 cooperation, as this specifically authorizes this renegotiation
13 process to take place under the auspicious of the American
14 Institute on Taiwan.

15 Section 109, also ---

16 COMMISSIONER GILINSKY: Let's see. If there is
17 a renegotiation, it would be with the Taiwan Institute?

18 MR. STOIBER: Yes.

19 COMMISSIONER GILINSKY: It would be between these
20 two institutes?

21 MR. STOIBER: That's right.

22 COMMISSIONER GILINSKY: And the signature on the
23 agreement would be?

24 MR. STOIBER: The Director of the Institute or
25 whoever headed the agency.

1 COMMISSIONER KENNEDY: And what would the
2 title of the person on Taiwan be on this document?

3 MR. STOIBER: I believe it would be a director of
4 the coordinating -- Director of the Coordinating Committee
5 for American Affairs.

6 CHAIRMAN HENDRIE: POT.* You would probably have
7 Senior POTs.

8 (Laughter)

9 CHAIRMAN HENDRIE: Most distinguished POTs.

10 COMMISSIONER KENNEDY: POT emeritus.

11 MR. STOIBER: Moving briskly on to Section 101.

12 This is very important ---

13 CHAIRMAN HENDRIE: Will somebody tell me what
14 happened to Senator Percy?

15 MR. BICKWIT: That was to be passed along.

16 CHAIRMAN HENDRIE: Was I reading your mail,
17 sorry about that.

18 (Reporter's note: A message was received for
19 Mr. Bickwit with regards the Percy Amendment to
20 the Taiwan bill, thus, the above comments.)

21 MR. BICKWIT: It doesn't make a lot of sense without
22 some explanatory note.

23 The Percy Amendment ---

24 COMMISSIONER KENNEDY: I was particularly worried
25 about tabling Percy.

* People of Taiwan, see page 15.

1 MR. BICKWIT: The Percy Amendment is an amendment
2 which would increase security guarantees for Taiwan over
3 and above the Committee reported version. The Percy
4 Amendment carries -- you could have a situation where this
5 legislation became hung up in conference or wherever, and
6 the fact that they failed to table it suggests that that
7 would be the place to carry it. So it is very relevant to
8 this discussion.

9 COMMISSIONER BRADFORD: Has the House, in fact,
10 passed legislation yet?

11 MR. BICKWIT: No, but it is on the floors of both
12 the House and the Senate today.

13 COMMISSIONER KENNEDY: Today?

14 MR. BICKWIT: Yes.

15 MR. STOIBER: Section 109 deals with the problem of
16 assurances and provides that whenever an agency of the
17 United States is required to receive assurances, they shall
18 be rendered or provided to or recieved or accepted from
19 an instrumentality established by the people on Taiwan.

20 Now, that is amplified somewhat in the report
21 that states as follows: This section provides for dealing
22 with the people on Taiwan through an instrumentality act
23 of one we already have. It makes clear that provisions
24 for dealing with a foreign government would be satisfied
25 with respect to the people on Taiwan by dealing with that

1 instrumentality. For example, the Arms Export Control
2 Act authorizes the sale of defense articles and services
3 to foreign countries and it requires those countries to
4 agree to certain conditions and to provide certain
5 assurances. Under the bill, these sales will be made by the
6 Institute to the Taiwan counterpart instrumentality in the
7 agreements and assurances by that counterpart instrumentality
8 will be accepted in satisfaction with the requirements of
9 the Arms Export Control Act.

10 Now, the Atomic Energy Act is not specifically
11 referenced in that section, but in talking with people in
12 the Congress, the indication was that the same language
13 would apply.

14 Section 110 qualifies Taiwan for purposes of
15 any United States statute to enable courts to enforce
16 Taiwanese law as foreign law or any statute referring to
17 the need to apply foreign law would also be able to apply
18 the law applied on Taiwan.

19 Section 111 provides that no ownership of property
20 interest of Taiwan is to be affected by the recognition of
21 the PRC. This basically deals with the embassy up here
22 at Twin Oaks and other properties. It also preserves
23 pre-existing contracts entered into by Taiwanese and United
24 States nationalists.

25 Section 112 allows for loans, guarantees and

1 reinsurance under the Foreign Assistance Act.

2 Section 113 provides for privileges and
3 immunities comparable to the diplomatic privileges for
4 representatives of these counterpart agencies as long as
5 they ^{are} recipocal, and Section 114 is the policy article which
6 also contains the various security guarantees and the grave
7 concern of the United States over any attempt to resolve
8 the Taiwan issue by force.

9 So those are basically the provisions of the
10 Act. In combination, we believe that they do provide a
11 firm legal foundation for continuing relations and do
12 resolve the nationhood and reassurance problems.

13 I might just mention that the counterpart article
14 in the House bill is Section 201(a) and there is some
15 interesting language in the House report which indicates
16 how the House view is presented.

17 It says: "Likewise, this section does not effect
18 the future resolution of legal issues based on changed
19 circumstances. It simply makes the fact that the
20 recognition, irrelevant to the resolution of those issues,
21 for example, under this section the Nuclear Regulatory
22 Commission would be able to make the required findings and
23 determinations under the Atomic Energy Act of 1954 in order
24 to permit continued nuclear exports to Taiwan and
25 derecognition will not constitute a basis for not making those

1 findings and determinations. At the same time, there is
2 nothing in this bill that would prevent the Commission
3 from taking into account subsequent changes and circum-
4 stances in its application to the statutory criteria in
5 particular cases."

6 So this preserves your ability to look at the
7 factual circumstances, just as you would in any other case,
8 to determine whether or not the criteria are met. However,
9 it makes the fact that derecognition is irrelevant to that
10 determination. We are to treat Taiwan, essentially, as
11 we do any other government for the purposes of licensing.

12 COMMISSIONER GILINSKY: Let me ask you, are U.S.
13 Government personnel going to continue to travel to Taiwan?

14 MR. STOIBER: Yes.

15 COMMISSIONER GILINSKY: In any particular capacity,
16 or?

17 MR. STOIBER: Not in an official capacity, I
18 don't believe. That gets you into Title II of the Act
19 and there are provisions here in which officers or employees
20 of United States agencies may be permitted to serve with
21 the other agency in a nonofficial capacity.

22 COMMISSIONER GILINSKY: Well, what happens to
23 things like physical security inspection or it comes to
24 that, safeguards or ---

25 COMMISSIONER KENNEDY: Or American citizens on Taiwan?

1 MR. STOIBER: We did raise that issue with the
2 State Department and they wanted to assure us that those
3 matters would be dealt with by the Institute.

4 COMMISSIONER GILINSKY: Well, what happens to
5 Jerry Page when he goes on his periodic jaunts around the
6 world? Does he get to go to Taiwan?

7 MR. STOIBER: It says: "Any Department or..."
8 this is Section 202. I'm sorry.

9 MR. BICKWIT: Section 106 provides that U.S.
10 Government program transactions and other relations with
11 respect to the people on Taiwan shall be carried out through
12 the American Institute in Taiwan. So I would assume that you
13 would have to have any activity of the United States
14 running through that Institute. I think there might be a
15 problem with personnel -- Government personnel actually
16 doing inspections. But AIT personnel, there would be no
17 problem with AIT personnel, though.

18 COMMISSIONER KENNEDY: They could be U.S.
19 citizens carrying regular passports temporarily assigned
20 to AIT to do whatever it is they have to do. This is
21 being done in business in more than one place where we
22 do not have diplomatic relations on business, but on
23 official business, you simply had to do this with a
24 standard tourist passport and no indication of orders
25 indicating that you were, in fact, visiting there on
official business of the U.S. Government.

1 MR. STOIBER: 201, I think is the applicable
2 section. It allows any department or agency of the United
3 States to perform support functions and services for the
4 operations of the Institute and for reimbursement to other
5 agencies for those services provided.

6 If you are talking about a physical security
7 visit, for example, I think what would have -- the way they
8 envision this operating is that the physical security people
9 would be seconded to the American Institute in Taiwan and
10 they would have to perform their services as a liaison
11 officer or as an official of this entity, then they would
12 be, of course, separated ---

13 COMMISSIONER GILINSKY: Now, the American
14 Institute, presumably, would carry out the U.S. side of
15 the agreement. In other words, certain determinations would
16 need to be made and certain fall-back, safeguard functions
17 that might have to be exercised at some point. I assume
18 that the American Institute then would officially carry
19 out those functions rather than the United States Government.
20 So that agreement is no longer with the United States
21 Government, is that right?

22 MR. BICKWIT: As no agreements would be with the
23 United States Government.

24 COMMISSIONER GILINSKY: So not only is it not
25 with the Republic of China, but it is not with the United

1 States Government either. Now, what control would the
2 United States Government here, have over this Institute?

3 MR. STOIBER: The Taiwanese entity?

4 COMMISSIONER GILINSKY: Over our entity.

5 MR. BICKWIT: In fact, total control.

6 COMMISSIONER GILINSKY: Well, in what sense, I
7 mean, you are obviously going to be appointing the -- who
8 is it, the Secretary of State appoints the directors or?

9 MR. STOIBER: The provisions which establish the --
10 You have two links. You have the statutory link in Taiwan
11 which provides that in the instrumentality that we are
12 going to set up here, it is going to conduct its activities
13 in the manner and to the extent directed by the President.
14 So it is under his direct executive control, but it is not
15 in the same sort of constitutional relationship that one
16 ordinarily has with an executive agency. It is a special
17 statutory type control that the President has by virtue
18 of this act.

19 The other nature of control is provided under the
20 articles of Cooperation of the American Institute.

21 COMMISSIONER GILINSKY: They have to do as
22 directed by the President?

23 MR. STOIBER: Well, you have directors which are
24 appointed by ^{the} President ---

25 COMMISSIONER KENNEDY: As you said, they have to

1 carry out their functions to the extent and in the manner
2 prescribed by the President.

3 COMMISSIONER AHEARNE: Are they removable by the
4 President?

5 MR. STOIBER: Yes.

6 COMMISSIONER AHEARNE: Without any binding clause
7 or anything like that?

8 MR. BICKWIT: I'm sure they are.

9 COMMISSIONER AHEARNE: To the extent that legal
10 minds have been able to come up with it, this is a fairy
11 castle representation of the United States Government on
12 the one hand, and of the Republic of China Government on
13 the other hand?

14 COMMISSIONER KENNEDY: The Japanese have been doing
15 this for several years.

16 CHAIRMAN HENDRIE: Any other discussion on the
17 nationhood proposition?

18 COMMISSIONER AHEARNE: We have moved into the
19 realm of a true international government in this fictitious
20 world.

21 CHAIRMAN HENDRIE: Now, on the issue on the merits
22 of the case, aside from who they are.

23 COMMISSIONER KENNEDY: Which case?

24 CHAIRMAN HENDRIE: We have what, four?

25 MR. SHEA: We have a total of 6 Taiwan exports

1 before NRC, that is, completed through the Executive Branch
2 review.

3 One of those is with the staff and the export
4 qualifies as a minor ^{Case}. In our prior referral to the
5 Commission we have been holding it pending the resolution
6 of these questions. Five of them are actually cleared
7 with the Commission. Gerry is prepared to summarize those --

8 COMMISSIONER KENNEDY: I thought I saw where
9 even the minor ones if they were of a particularly sensitive
10 character would normally be put before the Commission, and
11 I'm sure Taiwan must be in that category. Am I confused
12 about -- maybe I was confused about the way we sort of
13 agreed on how these things were to be handled.

14 MR. SHEA: I think maybe Marv could summarize
15 Part 110 on that.

16 MR. PETERSON: You are correct on this, they
17 may be forwarded to the Commission for review, but in this
18 case the problem is the country ~~is~~ at issue and not the
19 particular case, so the case remains minor.

20 CHAIRMAN HENDRIE: So when the major cases go ---

21 MR. SHEA: Then we notify the Commission.

22 MR. PETERSON: There are no other sensitive
23 issues in this Taiwan case.

24 CHAIRMAN HENDRIE: Gerry, why don't you go ahead.

25 MR. OPLINGER: All right.

The minor case, I might add, is 20 percent material.

1 The other cases are as follows:

2 We have an application for about 32kg of 20
3 percent material. This is for a water boiler reactor at
4 their research institute.

5 COMMISSIONER KENNEDY: 32 plus 19 is 51.

6 MR. OPLINGER: Where does the 19 come from.
7 32 kilograms of 19 percent material.

8 COMMISSIONER KENNEDY: I see, all right. And the
9 other one is?

10 MR. OPLINGER: The minor one that I mentioned is
11 three and a half kilograms.

12 There is another application for 239,000 kilograms
13 of LEU for two power reactors, the Chinshan Units 1 and 2.
14 We have an application for two power reactors, Tai Power
15 5 and 6 and then we have two cases for depleted uranium.
16 One for 10,000 kilograms and one for 17,000.

17 Now, the first of those, the usage was to make
18 containers for radioisotopes and in the second case, 17,000
19 kgs to make shipping casks for spent fuel rods.

20 COMMISSIONER GILINSKY: Is that what you make
21 shipping casks out of?

22 MR. OPLINGER: Out of depleted uranium? Well,
23 they use it to line shipping crates. I don't know how
24 common that usage is, but I gather it

25 COMMISSIONER GILINSKY: Are these exempt from the

1 safeguards?

2 CHAIRMAN HENDRIE: Depleted uranium?

3 MR. SHEA: They consider it as source material,
4 I believe.

5 (Simultaneous discussion.)

6 MR. SHEA: We produced a paper a while back on the
7 use of source material.

8 COMMISSIONER BRADFORD: Is there a shipping cask
9 business on Taiwan? What use do they have for casks?

10 MR. OPLINGER: The only use for it I know of is
11
12 spent fuel.

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16 Marv, do you know anything more about it?

17 MR. PETERSON: The tails material result^{ed}ing from
18 the previous or original contract by Taiwan Power Company
19 ^{which} and _A provides for the return of material, so they
20 apparently have a cask facility for making casks.

21 MR. OPLINGER: If you want, I can go through these
22 cases briefly to describe what remaining issues we see
23 besides the legal problems we have been talking about
24 in relation to Taiwan.

25 CHAIRMAN HENDRIE: I think it would be useful to

1 cite those.

2 MR. OPLINGER: The first one is the question of
3 facility attachments, and this could raise some problems
4 under Criterion 1 because of Taiwan's status with the IAEA.
5 They are no longer recognized by the agency as occupying
6 the seat of China and in effect, that government is no
7 longer a member of the agency.

8 COMMISSIONER AHEARNE: That's nothing new.

9 MR. OPLINGER: Right, nothing new about that.
10 Do you want me to stop and read this or ---
11 (Indicating to Ms. Becker who was showing Mr.
12 Oplinger a paper.)

13 MS. BECKER: No. I thought you were familiar with
14 it.

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18 MR. OPLINGER: Yes, I think that's clear, but
19 the question I'm raising is the fact that it is not
20 apparently possible for the agency to negotiate a facility
21 attachment with a government that is not a member of the
22 agency.

23 COMMISSIONER GILINSKY: On what basis do they
24 inspect from?

25 MR. OPLINGER: Well, because there is an existing

1 agreement, a trilateral agreement between the three
2 parties. That is in existence now and they can operate
3 under it, apparently, but we are not aware that there are
4 any existing facility attachments or that they plan to
5 negotiate any.

6 COMMISSIONER GILINSKY: I must say that it is
7 not clear to me that the agency takes its inspection in
8 Taiwan as seriously as it does in other places. They are
9 paid on sort of a by hour or per hour basis, and we have
10 got to have some confirmation that in fact they do regard
11 it to be on the same basis as other responsibilities.

12 COMMISSIONER BRADFORD: Gerry, what does that
13 business about facility attachment 3 in terms of cameras mean?

14 MR. OPLINGER: Well, I don't think very much,
15 because, remember, this is an INFCIRC '66 agreement and
16 therefore, there is no requirement, even if they were
17 negotiating this facility attachment under a '66 agreement
18 to have seals and cameras, although, in fact, they do,
19 at least -- for example, the Canadian reactor has had
20 camera coverage.

21 COMMISSIONER GILINSKY: Well, doesn't a facility
22 attachment go into ~~to~~ how often inspectors come around?

23 MR. OPLINGER: It goes into that and any kind
24 of details ---

25 COMMISSIONER KENNEDY: What is going to be inspected

1 and what the general characteristics are of the systems.

2 MR. OPLINGER: Right.

3 COMMISSIONER GILINSKY: So on what basis are they
4 inspecting?

5 MR. OPLINGER: I don't know, and we have been
6 trying to get the answer to that question for some time
7 from the Executive Branch, and they don't have a clear
8 answer. We sent over to them on February 16th four
9 questions about safeguards operations that NMSS has asked
10 us to get answers to. We have not received any answer.

11 COMMISSIONER GILINSKY: Why don't you read the
12 question?

13 MR. OPLINGER: Yes, I'll just summarize it.

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1 Now, if we got clear answers, well, to the first
2 of those questions, that would give us a better handle on
3 how, in the absence of facility attachments they do decide
4 what they can do, what their inspection schedule would be
5 and all of those things. We simply don't know at this
6 point.

7 CHAIRMAN HENDRIE: When did we issue the last
8 export license for Taiwan?

9 MR. SHEA: Do you recall -- we can check that out.
10 I think it has been about a year.

11 MR. OPLINGER: Asking about facility attachments
12 was not the common practice at that point for us.

13 MR. ROTHSCHILD: The Commission has almost issued
14 nothing since the NPA went into effect. So the Commission has
15 gone for the criteria on that one.

16 MR. OPLINGER: In particular on this water boiler
17 reactor, we sort of routinely asked State, what was the
18 status of your facility attachment on that, and we got an
19 answer which said, well, there isn't one because the reactor
20 has not completed construction yet, so there wouldn't be.

21 Then we got a letter from one of the people in the
22 ROC nuclear program who said, hurry up with the license
23 because the reactor is sitting there, it is all completed
24 and we want our fuel. So we have gone back to State
25 and said, please clarify it and we don't have an answer to

1 that.

2 COMMISSIONER AHEARNE: But you know the answer.

3 MR. OPLINGER: Well, I assume there is no facility
4 attachment.

5 COMMISSIONER AHEARNE: I thought you had said at
6 the beginning of that little discussion that there couldn't
7 be.

8 MR. SHEA: State's position was that they couldn't
9 because it wasn't completed.

10 COMMISSIONER AHEARNE: No. If you define a
11 facilities^Y~~es~~ attachment as a negotiated agreement between the
12 country and IAEA on how IAEA is going to go about doing
13 inspections, then there can't be.

14 MR. OPLINGER: Unless there had been something
15 negotiated before the change in the status of the IAEA.

16 COMMISSIONER GILINSKY: They feel they can inspect
17 someone with whom they can't negotiate? Is that the logic?

18 MR. OPLINGER: Apparently so.

19 I have talked to people on the telephone about this
20 in DOE and State, and I get somewhat different answers from
21 everybody I talk to. Some people have told me that there
22 have been some kind of arrangements, negotiated or that
23 decide questions like you would address in a facility
24 attachment, but they don't have the status of a real
25 facility attachment. Whether that's true or not, I can't

1 confirm it or haven't been able to.

2 COMMISSIONER GILINSKY: You ought to try to find
3 out what they are. There is no reason why the Taiwanese
4 shouldn't let us know.

5 MR. OPLINGER: Now, on more general matters, if
6 I could go on,

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8 , I don't think we have anything very significant
9 to add to any of that.

10 COMMISSIONER GILINSKY:

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14 MR. OPLINGER:

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16 and you will have to decide whether or
17 not you are satisfied with that response, I think, before
18 we go ahead with licenses.

19 There is one other possible question that may
20 arise on at least two of these, I believe, with respect to
21 full-scope safeguards, because the reactors case and the
22 low enriched fuel both involve exports which will go and
23 be used after March 10, 1980. I personally ---

24 COMMISSIONER GILINSKY: Are they part of the NPT?

25 MR. OPLINGER: They are part of the NPT, but it is

1 not clear, for example that the agency takes any official
2 cognizance, for example, of this water boiler reactor inside
3 the research institute. There is no document that we can
4 identify under which they, at this point, will apply
5 safeguards to that thing. So how can we say, in approving
6 a license, that all the known Taiwanese facilities are
7 under safeguards.

8 COMMISSIONER GILINSKY: Doesn't the IAEA have an
9 obligation to inspect all parties of the NPT whether or
10 not they are members of the IAEA?

11 MR. OPLINGER: Well, yes, but that has to be done,
12 I think, through a safeguards agreement. Either a 153 or
13 66's on every facility. We have no way of knowing that all
14 Taiwanese facilities, at this point, are covered by safeguards
15 agreements, and therefore, whether or not they qualify under
16 128.

17 COMMISSIONER AHEARNE: When you say we have no
18 way of knowing, does that mean that as far as we can tell
19 there is no way of knowing or that we have asked IAEA and
20 they haven't answered, or that we have asked Taiwan and
21 they haven't answered or we haven't asked, but ---

22 MR. OPLINGER: We haven't asked the question,
23 I guess is the answer, and I think we should.

24 COMMISSIONER GILINSKY: Well, why don't we ask,
25 and why don't we get the IAEA to get cracking on this.

1 MR. OPLINGER: The only one that I can identify
2 where there is a real as opposed to a theoretical question
3 is this water boiler reactor. There could be others.
4 On the other hand, this could be the only one. I simply
5 don't know.

6 COMMISSIONER GILINSKY: Well, let's at least deal
7 with this one.

8 MR. OPLINGER: Yes. Well, we have asked the
9 question of State on this one and we don't yet have an
10 answer. But we had that answer which said, well, it's
11 not completed yet, but that's not a real answer.

12 COMMISSIONER KENNEDY: What does it mean to say,
13 let's get the IAEA cracking? What is it that they are
14 supposed to do (a) and what can they do (b)?

15 COMMISSIONER GILINSKY: Well, if there is a
16 facility out there that is going to be operating, they
17 ought to be inspecting it.

18 COMMISSIONER KENNEDY: The question is, can they?

19 COMMISSIONER GILINSKY: If they can't, then we
20 ought to be doing it. Somebody has got to be covering that.
21 The Taiwanese, I presume, are willing to have it inspected.

22 COMMISSIONER KENNEDY: I'm confident of that.

23 MR. STOIBER: Are we informed about the legal
24 case which the Secretariat makes where it is better to
25 enter into the facility attachments under its statute?

1 COMMISSIONER GILINSKY: If they can't then we have
2 got to employ bilateral safeguards.

3 MR. STOIBER: It is sort of a troublesome legal
4 issue that I would like to have the Secretariat, at least,
5 to respond to if they are asserting that they can't do this.

6 COMMISSIONER KENNEDY: Well, that's what I'm saying.
7 What is it that they can do and what is it they can't do,
8 before we sort of assert what they ought to do.

9 COMMISSIONER GILINSKY: Well, certainly we want to
10 find out what the facts are.

11 MR. OPLINGER: It would seem to me that instead
12 of dealing with these questions piecemeal, as we have done,
13 what we need is a letter to State now, saying, during this
14 period while the legislation is pending, we are trying to
15 clean up all of these things and we have the following
16 safeguards questions.

17 COMMISSIONER KENNEDY: Some of those questions you
18 will find in my letter, to which I have not yet received
19 a reply. It has only been a month. I was trying to clear
20 them up last month. I'll try to clear them up this
21 afternoon.

22 CHAIRMAN HENDRIE:

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24 MR. OPLINGER: Commissioner Bradford had asked the
25 question

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COMMISSIONER KENNEDY:

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MR. OPLINGER:

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COMMISSIONER BRADFORD:

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COMMISSIONER KENNEDY:

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COMMISSIONER BRADFORD:

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CHAIRMAN HENDRIE:

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COMMISSIONER BRADFORD:

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CHAIRMAN HENDRIE: Okay, so that's interesting.

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What else is hidden on these things?

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MR. OPLINGER: That's it as far as we have been able to identify.

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CHAIRMAN HENDRIE: Why don't you get off and running with communications with the Executive Branch and see if we can't get some of these matters cleaned up.

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COMMISSIONER KENNEDY: Let me reiterate, that's what I tried to do on February 2nd, and they haven't answered.

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CHAIRMAN HENDRIE: Let me ask: out of the five major licenses before the Commission, either three or five of them are over the 120 day limit at this point, aren't they?

1 MR. SHEA: That's right.

2 CHAIRMAN HENDRIE: Quite apart from the nationhood
3 problem, why are they in that condition at that age with
4 regard to these other questions?

5 COMMISSIONER AHEARNE: I don't think you can
6 separate them from the nationhood problem, can you?

7 COMMISSIONER BRADFORD: The vigor with which the
8 other questions might have been pursued, I guess, has been
9 slowed down by the nationhood problem.

10 COMMISSIONER KENNEDY: The vigor with which they
11 have answered a number of the questions that have been
12 posed has probably been slowed down by the same situations,
13 which I would grant them, of course.

14 CHAIRMAN HENDRIE: Well, the business of the
15 facilities attachments and the Taiwanese, in effect, hiring
16 the agency to make safeguards inspections, that has been
17 in existence for some time, for some years.

18 MR. OPLINGER: That's right.

19 CHAIRMAN HENDRIE: So with regards to new facilities
20 and so on, that's some sort of problem with having an
21 agreed upon inspection routine for a new facility. It isn't
22 something that has just turned up since Mr. Carter said
23 we've got to switch into China recognition.

24 COMMISSIONER BRADFORD: There is a nationhood
25 dimension to that problem, that is, whether the facility

1 attachment can be put together.

2 CHAIRMAN HENDRIE: Yes, but it sounds to me as
3 though the problem -- such problems may have existed before
4 the nationhood problem came up, wasn't making any progress,
5 and I don't understand why the damned license applications
6 have aged the way they have without any progress on what
7 I'll call the old problem.

8 MR. OPLINGER: Well, it wasn't identified as a
9 problem in some of these cases.

10 COMMISSIONER BRADFORD: Well, these things have
11 aged in a funny way. It seems to me, I remember a Friday
12 afternoon in November when they were almost out the door.

13 COMMISSIONER AHEARNE: Yes, that's right.

14 COMMISSIONER BRADFORD: I have forgotten how
15 many signatures there were on ---

16 COMMISSIONER AHEARNE: Enough.

17 COMMISSIONER BRADFORD: They would have gone without
18 this problem being focused on, I guess.

19 COMMISSIONER AHEARNE: Yes.

20 CHAIRMAN HENDRIE: Well, now we are going to
21 sway into mid-March.

22 COMMISSIONER AHEARNE: What happened was that the
23 President made his announcement. I think Peter's point is
24 quite right, that they were ready to go and would have gone --

25 COMMISSIONER BRADFORD:

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CHAIRMAN HENDRIE: Well, let's go after them now and see if we can please or generate some action of these assorted questions. If the Congress moves ahead in a couple of weeks, two-three weeks or something, it would be very nice if we could be well underway with this.

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MR. OPLINGER: Well, we have asked at least some of these questions, weeks ago, and had no response to them. Should we consolidate them all into a -- repeat those that we already asked, or ---

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COMMISSIONER GILINSKY: Do an omnibus package.

CHAIRMAN HENDRIE: I think the most useful thing is to call Lou up and see if he can focus a little attention on it.

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I notice that both we and the Department of State have the problem that we seem to lose cases and when somebody rattles our door we say, Oh, yes, gee, look at that.

Son of a gun. It may be you have asked enough questions and it may be that all we need to do is get some motion on the answers.

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COMMISSIONER GILINSKY: They are probably waiting for a replacement for Dixon.

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CHAIRMAN HENDRIE: I don't know. They are short

1 handed over there and they can't work on everything that
2 they ought to be working on. That's quite clear. We
3 have some of the same problems. I notice we have got a
4 few things now that seemed to have fallen off the table.
5 They have to decide just as we do, what's the case that we
6 are going to burn the resources on today, and maybe the
7 time is getting close and maybe it would be useful for them
8 to devote a little of their limited and precious resource
9 to moving toward some of these answers so that we can move
10 assuming that the Congress will act in the meantime.

11 Okay, anything else? Now, what I'm trying to
12 search for here is are there other things that are of
13 difficulty that we haven't enunciated. Does anybody know
14 of any thorns laying around that we ought to identify.

15 COMMISSIONER BRADFORD: Is your correspondence
16 with Lou at an end now. It seems as though you had asked
17 rather more of a question than he had answered the last time
18 I had ---

19 COMMISSIONER A'HEARNE: I guess I relayed that ---

20 COMMISSIONER KENNEDY: This is in respect to the
21 book?

22 COMMISSIONER BRADFORD: Yes.

23 COMMISSIONER AHEARNE: Yes, this is in respect to
24 the book.

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COMMISSIONER KENNEDY:

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COMMISSIONER AHEARNE: So I was satisfied with respect to the -- as far as it addressed the questions I had, but I still felt that they have an obligation, as a representative.

COMMISSIONER BRADFORD: They actually said that too? There were several statements, I noticed they hadn't addressed and I don't remember that one.

COMMISSIONER AHEARNE: Yes.

COMMISSIONER KENNEDY:

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COMMISSIONER AHEARNE:

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COMMISSIONER KENNEDY:

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COMMISSIONER AHEARNE:

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COMMISSIONER GILINSKY:

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COMMISSIONER AHEARNE:

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COMMISSIONER KENNEDY:

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CHAIRMAN HENDRIE:

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COMMISSIONER KENNEDY:

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COMMISSIONER GILINSKY: That would be a help.

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CHAIRMAN HENDRIE: But the outcome of this

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conversation is that -- with regard to the applications before

1 us. There is a more general problem, perhaps, but this
2 is referring to these applications.

3 COMMISSIONER BRADFORD:
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6 COMMISSIONER AHEARNE:
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16 COMMISSIONER GILINSKY:
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25 COMMISSIONER KENNEDY:
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27 COMMISSIONER GILINSKY:
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1 COMMISSIONER KENNEDY: I tend not to try ^{to} find the
2 lowest guy on the totem pole, but the responsible guys.

3 COMMISSIONER AHEARNE: But the State Department
4 answer,

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7 COMMISSIONER BRADFORD:

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13 COMMISSIONER AHEARNE:

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25 CHAIRMAN HENDRIE: Other items that are going to be

1 thorns under this ---

2 COMMISSIONER BRADFORD:

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6 COMMISSIONER AHEARNE:

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9 CHAIRMAN HENDRIE: I don't hear any other citations
10 being made and I'll assume that we have heard about the problem.
11 Let's see if we can make some progress on these.

12 Thank you very much.

13 By the way, let's vote to withhold this tape and
14 transcript.

15 (A chorus of "ayes".)

16 CHAIRMAN HENDRIE: So ordered.

17 (Whereupon, the meeting in the above-entitled matter
18 was concluded at 3:55 p.m.)

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