



OFFICE OF THE  
SECRETARY

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

June 19, 1980

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

Transcript of Discussion of Tarapur  
Export License  
Tuesday, May 13, 1980

Pursuant to 10 CFR 9.108(c), the Commission, upon the advice of the General Counsel has determined that the subject transcript should be released to the public.

A handwritten signature in black ink, appearing to read "Samuel J. Chilk".

Samuel J. Chilk  
Secretary of the Commission

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GOLDSTEIN  
is

1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

3 (CLOSED MEETING)

4 DISCUSSION OF TARAPUR EXPORT LICENSE

5  
6 Nuclear Regulatory Commission  
7 Room 1130  
8 1717 H Street, N.W.  
9 Washington, D.C.

10 Tuesday, May 13, 1980

11 The Commission met, pursuant to notice, at 10:00 a.m.

12 BEFORE:

13 JOHN. F. AHEARNE, Chairman of the Commission

14 VICTOR GILINSKY, Commissioner

15 PETER A. BRADFORD, Commissioner

16 JOSEPH M. HENDRIE, Commissioner

17 NRC STAFF PRESENT:

18 LEONARD BICKWIT

19 HOWARD K. SHAPAR

20 JOHN STEPHENS

21 J. SHEA

22 J. DEVINE

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

P R O C E E D I N G S

1  
2 CHAIRMAN AHEARNE: This is a meeting on the discussion for Tarapur  
3 export license. First I would like to vote to hold on less than one week's  
4 notice. (Chorus of ayes.)

5 Second I would like to vote to close it on exemption I, classified  
6 information. (Chorus of ayes.)

7 MR. BICKWIT: You might want to consider closing it on  
8 the basis of Exemption 9B also. I am not recommending that but  
9 let me point out the practical distinction. If you close it on  
10 the basis of classified information the transcript will be made  
11 available in its entirety with the exception of the discussion  
12 of the classified information and it will be made available as  
13 promptly as practicable.

14 If you close it on the basis of 9B, I believe you can  
15 hang on to that transcript until the conclusion of the debate  
16 on this issue in the Congress.

17 COMMISSIONER HENDRIE: Or such other time as the  
18 Commission may set.

19 MR. BICKWIT: I don't recommend it in that I think it is  
20 a close legal question though I think you can do it but from my  
21 vantage point -- I don't have a good vantage point on the recommen-  
22 dation because I am not clear on what the Commissioners want to  
23 discuss in this session and the Commissioners may want to make  
24 use of that exemption depending on how they see the discussion  
25 going.

26 COMMISSIONER HENDRIE: I propose we just add it to  
27 the list of bases for closing the meeting and I think in part one  
28 of the thing -- I would hope our views here are not greatly  
29 different and that we might be able to set here a direction both

1 for drafting guidance to you and a understanding as to the sort  
2 of approach that we will take in testimony eventually on the  
3 Hill, because I have no doubt that we will, in Gods good time,  
4 testify on this subject all over the other end of town.

5 I think it would be reasonable then to preserve the  
6 discussion here which I hope will lay the basis for that until  
7 after that testimohy is given.

8 CHAIRMAN AHEARNE: Is 9B the one one uses for that  
9 testimony?

10 COMMISSIONER BRADFORD: That is all right with me.

11 CHAIRMAN AHEARNE: Also add 9B, then.

12 The main purpose I think is to try to see where we  
13 are, to -- as Joe said -- aim at giving some guidance to perhaps  
14 general counsel and to I guess get some sense of what additional  
15 work, if any, has to be done by any of the staff, Commission  
16 staff or Jim Shea for example, or Howard.

17 COMMISSIONER HENDRIE: Are you willing to come reason-  
18 ably rapidly to grips, John?

19 CHAIRMAN AHEARNE: I was about to say what I was going  
20 to do.

21 COMMISSIONER HENDRIE: I was prepared to say what I  
22 was going to do.

23 CHAIRMAN AHEARNE: I will circulate and give to general  
24 counsel a short memorandum and order which I had drafted which  
25 essentially says we can no longer find that these license appli-  
cations meet the criteria and we refer them to the President.  
Then I guess it is about a two page -- my own comment -- which  
essentially says that although last time around I find I could,

1 I can no longer.

2 COMMISSIONER GALINSKY: Where does that leave you on  
3 128?

4 CHAIRMAN AHEARNE: I disagree with the Executive Branch  
5 interpretation on 128, that the March 28 deadline meant only ---

6 COMMISSIONER GILINSKY: I presume your order covers  
7 that.

8 CHAIRMAN AHEARNE: The order says -- I am suggesting  
9 none of these are met, the criteria are not met. It does not  
10 meet the criteria.

11 COMMISSIONER GILINSKY: Well, I think you have to say  
12 127, 128 -- 128 adds a criteria.

13 CHAIRMAN AHEARNE: What I am saying is it does not  
14 meet the criteria in 109, 127 and 128.

15 COMMISSIONER GILINSKY: I guess that's where I come out.

16 COMMISSIONER HENDRIE: That is where I come out too and  
17 my inclination is as I commented to one of you, is to reject in  
18 as general a fashion as possible the State Department's thrust on  
19 the dates, on the 128. I can't buy that but I see no reason to  
20 be obnoxious about not accepting the argument either, and then  
21 simply to say that I don't find that, I don't find that I can find  
22 the criteria met and pass it on in effect without prejudice to the  
23 President for whatever he may want to do in view of the much broader  
24 set of things that he has to take account of in whatever he may do.

25 COMMISSIONER GILINSKY: The law allows him to waive  
both sets of criteria. He would have to make separate exemptions  
I guess.

MR. BICKWIT: He would not have to waive 128 criteria

1 under a separate rationale.

2 COMMISSIONER GILINSKY: I think the rationale is the  
3 same but he would have to separately waive, wouldn't he?

4 MR. BICKWIT: No. He can choose not to waive under  
5 the separate provision and treat the 128 criterion as any other  
6 criterion.

7 CHAIRMAN AHEARNE: In other words just say ---

8 MR. BICKWIT: Just say send it to Congress, the cri-  
9 teria have not been met according to NRC. 128 should be con-  
sidered in the same manner.

10 COMMISSIONER HENDRIE: Just as all the others, the 7th criterion.

11 MR. BICKWIT: Right.

12 COMMISSIONER GILINSKY: So he makes one finding.

13 MR. BICKWIT: He has that option.

14 COMMISSIONER GILINSKY: Does he have two possible  
15 courses?

16 MR. BICKWIT: He did before the NRC acts. He could  
17 waive the 128 criteria in a way that NRC would not even be  
permitted to consider it.

18 CHAIRMAN AHEARNE: Isn't it that before we act, since  
19 our time has run out, he could just take it from us and say the  
20 NRC has not acted, therefore he is now acting?

21 MR. BICKWIT: That is right. But with respect to the specific  
22 waiver provision on 128, he clearly, prior to NRC action or  
23 inaction, has the authority to just drop the 128 criterion from  
the picture.

24 COMMISSIONER GILINSKY: In which case we could not  
25 consider it.

1 MR. BICKWIT: That is right, either directly or in your  
2 inimicality judgment. Whether what you are saying is he now has  
3 the option to use that provision, I am not clear.

4 COMMISSIONER GILINSKY: But he can simply say I find that  
5 whatever the law requires specifically is met, therefore the export can move  
6 forward.

7 MR. BICKWIT: I would take his not having used that  
8 special waiver provision as an indication that he does not intend  
9 to on this export and will simply treat the 128 criteria as the  
10 seventh criterion.

11 COMMISSIONER BRADFORD: If he formally drops the 128,  
12 Congress would use that determination separately from the license.

13 MR. BICKWIT: Not separately from the license, but  
14 there are different rules. There are different practical conse-  
15 quences associated with congress's overriding or failure to override.

16 CHAIRMAN AHEARNE: Independent of any of those -- the  
17 President has the option -- I don't believe those options are that  
18 significant to us either.

19 MR. BICKWIT: I don't believe they are.

20 MR. SHAPAR: Have you all said up to now that the criteria  
21 have been met or you are unable to find that they have been met? I think the  
22 wording has political consequences and sensitivities.

23 COMMISSIONER GILINSKY: Presumably you use the language of the law.

24 COMMISSIONER HENDRIE: I am unable to find it.

25 CHAIRMAN AHEARNE: Peter, I notice you had large tones there of  
of being brought back.

COMMISSIONER BRADFORD: There are two matters. There is the fuel  
shipment. We also have a bunch of components.

COMMISSIONER HENDRIE: I want to talk about the components.

1 COMMISSIONER BRADFORD: On the fuel the direction you  
2 suggested seems perfectly all right to me although I want to  
3 see the order, of course, but the basic direction ---

4 COMMISSIONER HENDRIE: Is it possible to build into  
5 the order just an outline of some of the basic reasons ---

6 COMMISSIONER GILINSKY: Why don't we simply attach  
7 general counsel's brief. I would propose you have a two para-  
8 graph order that everyone can agree on quickly. In fact since  
9 Commissioner Kennedy is not here why don't I say that we should  
10 be able to do this today.

11 (Laughter.)

12 CHAIRMAN AHEARNE: John, you I think were prepared to  
13 comment for Commissioner Kennedy.

14 MR. STEPHENS: I think the direction you are taking pre-  
15 sents no problem for us. The only problem that I may have with  
16 timing is Commissioner Kennedy will have some additional views  
17 of his own to attach too. Whether or not I will have those today  
18 is at this point problematical -- I don't know. By Thursday  
19 I am sure I would have. By tomorrow probably. I would suspect  
20 each of you would want a little time to have read them and see  
21 if there is anything in them that prompts a comment from you.

22 I am hopeful to circulate that this afternoon.

23 CHAIRMAN AHEARNE: I would propose to treat both of  
24 the fuel packages in the same way. We have got two sets of fuel  
25 and I don't see any real reason to not treat them both at the same  
time.

COMMISSIONER HENDRIE: I think we ought to handle all we've got.  
We have two fuels and three components, and I think ---



COMMISSIONER BRADFORD: There are more components now;  
1 Apparently State has just dredged up a new set of components.

2 MR. SHEA: Three sets of additional components just came in.

3 COMMISSIONER GILINSKY: Can you explain to me what  
4 criteria apply to the components?

5 MR. SHEA: Three criteria. Safeguards, peaceful  
6 uses and retransfer, but not the other two.

7 COMMISSIONER GILINSKY: In the same form they are in  
8 Section 127?

9 MR. SHEA: Right. Those are identical.

10 COMMISSIONER GILINSKY: I would put them all in one  
11 package. I think I know what you are going to say, that they are  
12 a different sort of export.

13 COMMISSIONER HENDRIE: The staff has decided that they  
14 are not able to find, for the components, that the three appli-  
15 cable criteria are met. The one obviously -- no full scope  
16 safeguards.

17 MR. DEVINE: That does not apply to components.

18 COMMISSIONER HENDRIE: Just safeguards on the what?  
19 Device for which the component is ---

20 MR. SHEA: That is right.

21 COMMISSIONER HENDRIE: What is it that fails the test  
22 then, inadequate assurances of no explosion?

23 MR. SHEA: On all three of these the uncertainty comes  
24 about because of the provisions of the Indian agreement and the  
25 uncertainty that that will endure in the future. At the present  
time they are applied but uncertainty in the future is the prospec-  
tive application and that makes them doubtful, and a question from  
the Staff's view.

CHAIRMAN AHEARNE: Isn't one of them for the research

1 facility; Bhabha or whatever, I found great difficulty in meeting  
2 the peaceful uses.

3 COMMISSIONER GILINSKY: One is for Bhabha Research  
4 Institute. That is a famous place.

5 MR. SHEA: John, correct me, all the ones we have before  
6 us are for Tarapur. The one for Bhabha is still with the Executive  
7 Branch, hasn't been approved.

8 COMMISSIONER HENDRIE: These are all Tarapur.

9 MR. SHEA: Straight Tarapur. There are five total.  
10 Three just came in. We had two.

11 COMMISSIONER HENDRIE: Your argument then about the  
12 assurances is the one that because the Indian agreement says if we  
13 don't send fuel they feel they can breach even though we don't.

14 COMMISSIONER BRADFORD: It is not argument but it is  
15 that argument plus an element that was not present when it was  
16 made before which the March 10 is now behind us and the conditions  
17 for cutoff are much more imminent.

18 COMMISSIONER HENDRIE: It is the old Indian agreement  
19 argument plus the post-March 10th. It seemed to me I had to look  
20 for some condition that was different than my situation on the  
21 last occasion since it seems to me I rejected that argument on  
22 the last occasion and I wondered why I now find it appealing.

23 MR. SHEA: Staff went through that same reasoning on  
24 the components in January and we had an analysis which said what  
25 we need here.

COMMISSIONER HENDRIE: On components I may attach  
a remark saying it is less clear to me that the criteria -- that

1 I would be unable to find a criteria met for the components --  
2 there does seem to me a trifle of a nasty element to it. We sold  
3 them the reactor and now we don't want to send them spare parts  
4 that might allow them to run it safely. That seems a trifle  
5 dog-in-the-manger issue. Nevertheless the law is the law.

6 COMMISSIONER BRADFORD: The point is the components  
7 then also go to the President who if that reasoning appeals to  
8 him ---

9 COMMISSIONER HENDRIE: Really, one of the incentives is to firm  
10 up this package with all deliberate haste and move it along  
11 rather than have it just ---

12 MR. SHAPAR: 128 does not apply to the components.

13 CHAIRMAN BRADFORD: But the Presidential waiver as to  
14 the 127 criteria is in all respects the same for the components  
15 as it is for the fuel. Your opinion then it is in shape to  
16 be circulated?

17 CHAIRMAN AHEARNE: Yes. When I did it I just had two sets of the  
18 components. I did not have these other three that have just come over.

19 COMMISSIONER GILINSKY: This is just a straight for-  
20 ward order, two pages or something.

21 CHAIRMAN AHEARNE: Yes.

22 COMMISSIONER GILINSKY: I would think we could circu-  
23 late that pretty fast.

24 CHAIRMAN AHEARNE: Right.

25 COMMISSIONER GILINSKY: It seems to me each of us can  
attach a page or two or whatever. John said something about we  
may object to having a comment on that. It seems to me in a way  
that that time has passed. We have been through all these things

1 and laid out the criteria and a way of looking at the problem and  
2 the question comes down to whether the criteria laid out form-  
3 ulating the problem conceptually are met or are not met, given  
4 what has occurred. That is something each of us has to decide for ourselves,  
5 but I don't expect there will be a lot of back and forth on that.

6 CHAIRMAN AHEARNE: I don't see any reason why ---

7 MR. STEPHENS: I didn't mean to invite comment. I  
8 just wanted you to know you had opportunity.

9 COMMISSIONER HENDRIE: Dick is not going to be back  
10 for ---

11 MR. STEPHENS: Until next Wednesday.

12 CHAIRMAN AHEARNE: But we ought to be able to get his  
13 comments is what you are saying by tomorrow?

14 MR. STEPHENS: I am not saying the Commission ought to  
15 be waiting to vote or to get an issue by then.

16 CHAIRMAN AHEARNE: My point is I would like to -- I  
17 know I will have mine ready by this afternoon or first thing  
18 tomorrow because there are about three pages and I just need to  
19 tune it a little more. I would like if possible to get the  
20 whole thing out by Thursday but I don't know. How about you  
21 guys?

22 COMMISSIONER GILINSKY: It is all right with me.

23 COMMISSIONER BRADFORD: I have no plans to either  
24 do a separate comment -- I may change my mind but it won't be  
25 anything that can't be done by Thursday.

COMMISSIONER HENDRIE: We could target on I guess it  
would be an affirmation or just meet to vote and lay out papers  
together either Thursday afternoon or Friday morning.

1           COMMISSIONER BRADFORD: It is just a laying of the papers together.  
2 Since this is a delegated function I am not sure that we technically have an  
3 item to affirm.

4           MR. BICKWIT: I think this is an action of the Commis-  
5 sion. What is delegated is issuance of the license.

6           COMMISSIONER GILINSKY: Let me understand. Is Com-  
7 missioner Kennedy in accord with the conclusions of this two-page  
8 order which none of us have seen?

9           MR. PHENS: To the extent everyone else can commit  
10 to it I think I can commit him to it.

11           COMMISSIONER GILINSKY: Assuming it has what we think it  
12 has in it.

13           MR. BICKWIT: I think I know the answer to this issue but I feel  
14 it ought to be raised. You have an inimicality judgment which can be the basis  
15 for an action to send the license to the President. I don't feel you are obli-  
16 gated to reach it. Nonetheless it is on the same footing as your judgments with  
17 respect to the criteria.

18           CHAIRMAN AHEARNE: I have not even gotten to that because I  
19 reached the conclusion I couldn't find the regular set of criteria met so  
20 therefore that ---

21           COMMISSIONER HENDRIE: I suspect from the President's standpoint  
22 it would be helpful if we didn't reach it.

23           CHAIRMAN AHEARNE: I didn't find it necessary.

24           MR. SHAPAR: From the President's standpoint the  
25 easiest thing would be to knock it down to the 128 without reaching  
the others.

          COMMISSIONER HENDRIE: You have to go beyond that for  
the components and once you go beyond it for the components it  
sure applies to the fuel.

1 COMMISSIONER BRADFORD: More strongly.

2 MR. BICKWIT: You could delay your finding on the components.

3 COMMISSIONER HENDRIE: No, no. I think it very important to  
4 get the whole thing. The reason State's letters were hustled over here was  
5 so we could deal with it as a package. I think it would be very poor to have  
6 to have the President going to Congress with a whole string of these things  
7 down through the summer.

8 COMMISSIONER BRADFORD: There is another point as John  
9 pointed out. We have no notion what may happen. If the President,  
10 following the finding on our part solely on 128 were to waive  
11 128 we would have the whole thing back in our laps to do 127 anyway  
12 so we might as well have it done.

13 MR. DEVINE: Components are probably more urgent than  
14 fuel from a safety point of view.

15 COMMISSIONER GILINSKY: Is your paper public because I  
16 saw something about it in Energy Daily?

17 MR. SHEA: It was unclassified.

18 COMMISSIONER GILINSKY: Is it in a public document?

19 MR. SHEA: It goes into the public document room.

20 MR. DEVINE: Unless there are compelling reasons not  
21 to put it in, it is three days after you receive it.

22 COMMISSIONER GILINSKY: I don't have any particular  
23 feeling about it.

24 MR. BICKWIT: That is the practice on staff papers.

25 MR. SHAPAR: On closed meetings?

COMMISSIONER HENDRIE: On exports. It is a rule  
specific to exports.

MR. SHEA: No distinction -- close or open meetings --

1 just the the classified or not classified.

2 COMMISSIONER HENDRIE: Specific to exports though.

3 CHAIRMAN AHEARNE: Any other points

4 (Thereupon, at 10:25 a.m. the hearing was adjourned.)

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