

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

CLOSED MEETING

DISCUSSION OF INTERNATIONAL SAFEGUARDS MATTERS

Room 1130
1717 H Street, N.W.
Washington, D.C.

Thursday, 21 June 1979

The Commission met, pursuant to notice, at 3:40 p.m.

BEFORE:

DR. JOSEPH M. HENDRIE, Chairman
VICTOR GILINSKY, Commissioner
RICHARD T. KENNEDY, Commissioner
PETER A. BRADFORD, Commissioner
JOHN F. AHEARNE, Commissioner

ALSO PRESENT:

J. Shea
K. Cohen
W. Dircks
J. Becker
L. Gossick
C. Stoiber

P R O C E E D I N G S

CHAIRMAN HENDRIE: The Commission meets now for the last item this afternoon, a discussion of international safeguards matters, in closed session. I take it that the SECY assures us that all those present, and presumably listening, are duly eligible to enter into these dark secrets which we now -- do we have to vote to close? I thought we had voted to close.

MR. CHILK: You have voted.

CHAIRMAN HENDRIE: There, you see?

MR. STOIBER: Just keeping you out of jail.

CHAIRMAN HENDRIE: Once a week, I go round the Commissioners and collect two dozen short notices, and -- you know, half a dozen or ten closures, and just sprinkle them around as we need them.

Now, it would be helpful, again, to have a one-minute sketch, or something fairly concise, to help the foggy thinkers among us through this next piece of the subject. I take it we are now at item 3 on safeguards, and its various ramifications. So if you would please go ahead.

MR. GOSSICK: Mr. Chairman, let me just very briefly say that I think the issue within the staff is essentially -- they both agree that the response that we got from Mr.

Pickering in his 24 April letter does not satisfy them, as far as their mutual views as to the needs for safeguards information. There is a difference with regard to the manner in which one would respond going back to State.

I think the simplest way to get that out before you is to ask Bill Dircks and Jim Shea to very briefly describe the viewpoints which they have which are in non-agreement.

COMMISSIONER AHEARNE: Just a clarification. This really is not number 3 on the safeguards. It's really 398.

MR. GOSSICK: It's 398. We summarized the views in 398. It all starts from the question on number 3.

COMMISSIONER AHEARNE: There's no disagreement on the wording of number 3.

MR. GOSSICK: That's my understanding. It's a matter of how we get there in trying to resolve with State our dissatisfaction with the answers that we got in Pickering's letter.

Bill?

CHAIRMAN HENDRIE: Is there disagreement over what the words mean?

MR. GOSSICK: There may be some of that, yes.

COMMISSIONER AHEARNE: I think it's the question of how to respond to his letter.

MR. GOSSICK: That's essentially it.

MR. DIRCKS: I think it's a different tone or approach, and there are a couple of matters of substance I want to mention. Jim and I have talked about it over the course of several weeks, I guess, ever since the letter came in. And we both agree, as was pointed out, that the letter did not satisfy -- would not appear to be completely satisfactory in answer to the Commission's February 28 letter.

There are about three points I wanted to make. One, Jim and I both agree that the information we're getting now is not adequate in regard to the export cases. Where we seem to disagree is that he may be more sanguine about DOS doing much more to correct the inadequacy than we are. I think Pickering ^{laid} made out certain rather restrictive ways in which they'd move to satisfy our request in the February 28 letter. They maintain in the letter that they are supplying us with as much information as they have now.

Both Jim and I would like to see more information. And I think we both say that we should have some sort of a common data base from which we could operate to look at each country. NMSS would like to see that data base as a beginning point where we could raise additional questions. As that data base may indicate, there are gaps in the information, and we

want to move more aggressively.

We in NMSS felt that the action plan was an appropriate vehicle in which to move in this direction. As you may recall, in the briefing that led to the February 28 letter, we used that as a basis for identifying information needs, and the Commission said, "Go ahead and send that over;" essentially extracting from our briefing, and turned into the action plan.

So, we regard the action plan operation mechanism as an appropriate way to increase our informational ^{base} needs, and in which to look at export cases.

The second area that I'd like to mention in the letters is that the Pickering letter seems to make a very strong point interpreting the basis on which we are seeking the information. State seems to be quite adamant in drawing the distinction between the Commission's need for this information under Criterion I, and the issue of whether or not the export is inimical or not to the common defense. That's a point that I think the Commission should address in the reply, and should address specifically.

The third point -- and it's more form than substance; the Department of State seems to be raising a number of arguments cautioning us ^{on} pressing for information, because it may undermine IAEA and lead us back to the world of bilateralism.

I think we can ask them for information to fulfill our responsibilities without undermining IAEA. I really think they're throwing up more of a smokescreen to ward us off than is necessary.

These were the only three points I had.

COMMISSIONER KENNEDY: It's only that last point that's really at issue, isn't it? If they could be persuaded that, in fact, what we were asking for -- we were not driving them to do something which they would conclude, at some point, would inevitably be perceived as an undercutting or an undermining of the IAEA system, then there's not an issue with them. Is that correct?

MR. DIRCKS: That's right. I think that's why, in the version that we drew up, we tried to lay out a program or a schedule that would sort of lead us down the information path without, I hope, giving the impression we're ready to rip down the IAEA structure.

COMMISSIONER GILINSKY: How does that concern arise at all? I don't really understand it. They're talking about confidential communications between two government agencies of the United States.

MR. DIRCKS: They don't want to give the impression that we are independently seeking to do our inspections and to

evaluate the IAEA itself.

COMMISSIONER AHEARNE: Which two government agencies?

COMMISSIONER GILINSKY: The NRC and the Department of State.

Where do we get into bilateral safeguards and undermining the IAEA?

COMMISSIONER AHEARNE:

Those seem to be the two points.

COMMISSIONER GILINSKY: That's right. We do want that information. But we're going to proceed as a government, in its own coordinated way. It just sounds to me like it's a straw man.

MR. DIRCKS: Well --

COMMISSIONER AHEARNE: Bill, is it your belief that they have it and don't want to give it?

MR. DIRCKS: I was of one view up until yesterday. I've come away with another view, that maybe all these arguments are arguments. And maybe the thing is they just don't have the information readily available. Maybe --

COMMISSIONER AHEARNE: Readily, or available at all.

MR. DIRCKS: Available at all, or they don't want to go out and seek it.

COMMISSIONER KENNEDY: Which is what they argue about. It's not, I guess, that they couldn't get information. It's how aggressively should they pursue getting it,

COMMISSIONER GILINSKY: I would say we've just gotten out of hand.

MR. DIRCKS: You sat through the briefing yesterday, and I guess there's a very frail fabric of controls that exist out there. I suppose if we said, "Tell us what's there," rather than "Tell us what's not there," it would be better.

(Laughter.)

COMMISSIONER GILINSKY: What I find most disturbing ^{is} they seem to be saying that not only should the NRC not know this, but nobody should know this. I don't see how this government can carry ^{it} out its responsibilities without knowing about how the material is protected. We certainly don't know

— it now.

MR. SHEA: If I could just comment on that.

I think what State was saying in the discussions I've had with them -- some meetings and Commission meetings and so on --

I

think they've indicated that a number of times.

And our format request a few months before that asked for any significant information the Executive Branch possesses, which says to me available information that they happen to have.

We seemed to go well beyond that, I think, in this letter that we sent in February. And that is what they reacted to in their April letter,

I think that's kind of where they're coming from.

COMMISSIONER GILINSKY:

COMMISSIONER KENNEDY: Well, their argument, if I were to argue their case for them -- I would argue one on my own behalf in that regard, I guess, slightly differently. The point is that it may not be the best system, and indeed clearly

is not. But it's the only one you've got, unless alternatively you do want to revert to a bilateral system. And a bilateral system may be good for those with whom you have bilateral relations in that regard, but it won't be for a lot of other places and a lot of other people.

So, what you have to do is try to build the institution, strengthen it. And public condemnation is not likely to do that. I guess that's the point that they make. Now, that may be right or wrong.

COMMISSIONER GILINSKY: But I think you can support the IAEA system and try to strengthen it in any way you can, and still try to seek out all the information you can get in dealing with individual exports. I think we both ought to do that if we see that they're inconsistent.

I think we all want to strengthen the system.

COMMISSIONER KENNEDY: The place they would argue on -- I should let somebody else argue their case for them.

COMMISSIONER GILINSKY: Well, you're doing it very well.

(Laughter.)

COMMISSIONER KENNEDY: Well, I've been doing it for so long.

But the point where these two things come together,

and then perhaps become, in a sense, self-defeating from their point of view,

And secondly, it tends to look as though we are not supporting it. We are going so far, we are really pushing what others may believe to be a bilateral approach.

Now, I think you could work that out in ways that would not be the case. Nor would it be seen that way. The question is, you know, how much are we willing to back off that notion to work out some sort of a cooperative line that will get us more information than we've got now, but by no means, at this juncture, surely, will it get us all, maybe, that we want.

COMMISSIONER GILINKSY: I don't think, at least as I read the staff's suggestions, there was a demand for all information. It was just, (a., what they have, and (b., we want efforts undertaken to get more. And, after all, if one

We're talking about interlocking with the State Department. And before one takes further steps, presumably, there will be some more reflection on it.

COMMISSIONER KENNEDY:

COMMISSIONER GILINSKY: I think it's fair to say that we are putting pressure on them to move in that direction. On the other hand, I wouldn't expect them to do anything violently at odds with U.S. interests. But I think we would be pressuring them, and I think we ought to be pressuring them on it. We've got statutory responsibilities which make it a good deal more difficult for us to ignore questions of safeguards effectiveness than it might be for them. We're balancing them off with a lot of other questions. ^{They're} ~~We've got~~ narrower responsibilities, which is basically the protection of this material.

MR. SHEA: Another concern that State has I might mention. I think it shows up in some of their writings. It certainly was given to me forcefully informally.

It's
the resource problem.

They feel that they have many things to do. They don't see this --

COMMISSIONER GILINSKY: They're hard-pressed, and they're not, I think, overstaffed in this area. On the other

hand, from the point of view of the country, it's pretty clear the Congress has said that they would like this material adequately protected. If we don't have enough people in the office, it's necessary to go back to the Congress and ask for more people. But it seems to me a consideration which is rather slight compared to what's involved here, which is protecting material to keep people from making bombs out of it.

I am also concerned that they are reading our statutory responsibilities rather narrowly, interpreting our statute for us, which I thought was a bit gratuitous.

COMMISSIONER KENNEDY: Gee, I thought they did it pretty well.

COMMISSIONER GILINSKY: Oh, they did it well. They always do it well.

COMMISSIONER AHEARNE: Jim, Bill, a couple of simple questions just to help me understand the two relative positions.

Jim, if the State Department has the kind of information that Bill had asked for -- let us assume they have it. Do you think we ought to be able to get it?

MR. SHEA: If they have it within the government, and we won't have to go elsewhere to seek it, I think we should have it. And I think if we pressed for it, we'd get it.

COMMISSIONER AHEARNE: If pushing for it, if State

pushing to get it weren't to damage IAEA, do you think that we should push them to get it?

MR. SHEA: Yes.

COMMISSIONER AHEARNE:

MR. DIRCKS:

(Laughter.)

COMMISSIONER AHEARNE:

MR. DIRCKS:

(Laughter.)

COMMISSIONER AHEARNE: Is the question --

COMMISSIONER KENNEDY: Who answers the question?

COMMISSIONER AHEARNE: Yes, yes, I'll get to that.

Is the question whether we should be judging the adequacy of IAEA's safeguards?

MR. DIRCKS: I'm sorry?

COMMISSIONER AHEARNE: Is the underlying question whether or not we should be judging the adequacy of IAEA's safeguards?

MR. DIRCKS: No. I think the underlying question

is, what sort of controls are out there in the countries that we're ^{shipping} submitting this material to?

We have other sources of information.

COMMISSIONER AHEARNE: But I was wondering if there was an underlying question which went back to some of the debate on the NNPA on that issue of whether or not we should be judging the adequacy of IAEA safeguards.

MR. DIRCKS: When you make your decision, you should be looking at how effective those safeguards are, because I think we've delegated that. In a sense, we've delegated that responsibility to IAEA. We're relying on them.

COMMISSIONER AHEARNE: As I recall reading the debate on NNPA, that was at times a relatively heated issue, but it came out sort of neutral, I think. But I was just wondering whether you saw that as the underlying issue.

MR. DIRCKS: I think we've made a decision that we can rely on IAEA. We've given up the bilateral system, because IAEA is out there, and willing to do what we hoped they were going to do.

COMMISSIONER GILINSKY: As long as they do their job.

MR. DIRCKS: Yes. It would be nice to know if they

doing their job.

COMMISSIONER AHEARNE: Then it is a question of judging their adequacy.

MR. DIRCKS: There is that question.

COMMISSIONER KENNEDY: But the law doesn't require that.

MR. DIRCKS: I guess the question is whether it's applied or not. But the simple fact of whether safeguards are applied doesn't affect the question of how they are applied. That could be answered yes or no.

COMMISSIONER AHEARNE: It would appear to me that at least two of the questions are, one, do they really have that information? And that requires, in some sense, sitting down with Pickering and determining do they really have it. And the second, which I think is really, again, more of a State Department area of knowledge, is how damaging would it be to the IAEA were we to be pushing hard for information they don't already have -- again, leaving the requirement of settling that with the State Department.

MR. DIRCKS: Well, that enclosure to the February 28 letter laid strong emphasis on the state systems of accounting. From what I gather, that information is available in some form. But you can see, in the material we keep

— sending down to you, that we don't have it. Somebody must have it. We'd like to at least start from that point.

MR. SHEA: There's an observation I'd make there.

As I said, I think there's more information that could be obtained that is now available without, I think, undermining the IAEA. In fact, back in August, when Lou Nosenza wrote to me,

I think myself that they're concerned that, if they start down that track of providing information or starting to seek fairly readily acquirable information, that that would be just the foot in the door for NRC, and they would constantly

want more and more information -- or won't be satisfied until we've got as much information here as Dr. ^{Green}~~Greene~~ has in Vienna.

So, I think that's a concern they have. They're willing to go a certain distance, but perhaps would want reassurance that we'd stop at a certain point.

COMMISSIONER AHEARNE: Have you and Bill gone over to the State Department and sat down with them?

MR. DIRCKS: No. We've talked about it, and I think I mentioned it to you one time. I don't think we have. I'm sure if we could assure them of our good intentions in this area --

COMMISSIONER AHEARNE: It just seems, where we've traded lots of letters back and forth, at some point, and we're not physically that far away from them --

COMMISSIONER KENNEDY: Is it possible that one of

of the general character of this agency, which has some difficulty -- at least, more difficulty than some agencies -- in dealing with classified information?

MR. DIRCKS: I don't know. Jim may have a better feeling for that, if they distrust our security consciousness.

COMMISSIONER KENNEDY: No, I didn't mean that. I mean simply that we are subject to, because of our process, you see -- we're subject to so many rules which make the information available, under certain circumstances at least, more broadly than they would be.

MR. DIRCKS: I don't know.

COMMISSIONER GILINSKY: I don't think the same rules apply. I think there is something to what you're saying, in the sense that we tend to flag information in a way that others don't, so that one knows better what is available.

COMMISSIONER KENNEDY: That's right.

COMMISSIONER GILINSKY: But I think the rules of classification are the same.

COMMISSIONER KENNEDY: Except that I'm not sure that under our rules, it is possible for parties who might not otherwise have access to that information, to obtain access to it, under classification albeit. Nonetheless, some information is obtained in ways in which its mere existence is more important, perhaps -- the knowledge of its existence is more important than the actual content.

I don't know whether that's a problem for them or whether it isn't.

MR. SHEA: It's something that we could perhaps

— explore. I haven't detected that as a major disturbance. I'm sure there's a little of that, at least.

There's probably a little of that.

I think the big concerns really are, though, the IAEA and its role, and their perceiving it as not really necessary in order to work with and approve the exports.

But they think we have a different--

COMMISSIONER GILINSKY: They're really saying that it's not for us to look at the effectiveness of safeguards, and certainly not under Criterion I. The safeguards agreement is good enough for NRC from the point of view of the Department of State.

COMMISSIONER AHEARNE: I don't know whether they're saying that, or whether they're also saying that they don't have the information. And in order to get it, it's their judgment that it would really cause a lot of havoc.

COMMISSIONER GILINSKY: Well, I mean, they're saying here they want to distinguish between information which we see as necessary and desirable, and that which is required for licensing under the NNPA. They're saying this is not.

— COMMISSIONER AHEARNE: Fine, Vic. But my point is

I would like to know whether or not they have the information and aren't giving it to us, or they don't have it, and they think it would be very, very hard to get it.

COMMISSIONER GILINSKY: Probably mostly in the second category.

CHAIRMAN HENDRIE: It's been my feeling that it's the second. And then the question is, you've got some exports to a country, and you've got the base analysis, and you think there isn't a great deal in it that allows you to say, "By George, those safeguards are adequate."

Does that mean, now, that we're foreclosed from exporting to that country?

COMMISSIONER AHEARNE: Before reaching that point, I'd really like to know if that's the situation they're in. And if they are, I guess at some point, I'd probably at least be interested in exploring with Congress whether or not that's what they had in mind.

COMMISSIONER GILINSKY: Beyond that, they don't want effectiveness of safeguards to affect individual exports.

At least, that's the way I read them. They regard effectiveness of safeguards as important, as something that the U.S. ought to do what it can, but it's something that ought to be remedied in ways that don't touch on the export review process.

COMMISSIONER AHEARNE: I'm not sure.

COMMISSIONER BRADFORD: But they're certainly unequivocal in saying that they don't feel that effectiveness of safeguards has anything to do with Criterion I.

COMMISSIONER AHEARNE: Ofttimes, letters are written to give the best argument for why one isn't going to do something. I'd like to get over that first step, at least in my mind, to know that they really don't have the information.

COMMISSIONER GILINSKY: Well, we had a briefing on this subject.

COMMISSIONER AHEARNE: No, we had a briefing from another organization.

CHAIRMAN HENDRIE: Which one do you mean?

COMMISSIONER GILINSKY: We had a briefing yesterday afternoon.

COMMISSIONER AHEARNE: From a different organization.

not these guys.

CHAIRMAN HENDRIE: The NRC?

COMMISSIONER AHEARNE: That's what they said. That was one of the sources.

COMMISSIONER KENNEDY: We have a vast, worldwide intelligence network.

(Laughter.)

CHAIRMAN HENDRIE: There appears to me to be beginning to be a certain amount of circularity.

(Laughter.)

CHAIRMAN HENDRIE: You know, we all tell each other things: you tell him, and it comes back here, and I say, "God, I didn't know that before," you know.

COMMISSIONER KENNEDY: Not only that. The fact that you got it from him independently confirms --

CHAIRMAN HENDRIE: My original --

COMMISSIONER GILINSKY: I put in a request, and after presumably several phone calls, I had somebody call me

— and ask me if I had any information that would help with the request.

(Laughter.)

COMMISSIONER KENNEDY: Whereupon you gave him the information.

(Laughter.)

COMMISSIONER GILINSKY: I actually had my assistant supply it.

MR. SHEA: In order to see if it came back the same way.

CHAIRMAN HENDRIE: Are you sure you should have asked in the first place.

Well, let's see.

COMMISSIONER KENNEDY: One of the ways that it would seem to me that we might be able to resolve some of these questions might be to sit down and ask them.

COMMISSIONER GILINSKY: I think we should. I think we also need to respond to the letter. In a way, it's unfortunate that Tom Pickering isn't here. But I think we also need to respond to this letter, because this letter lies on the record, and I think it needs to be responded to.

COMMISSIONER KENNEDY: Don't you think it would be helpful to talk with them before we responded to them?

—

COMMISSIONER AHEARNE: Yes.

COMMISSIONER GILINSKY: Should we read it over to discuss what's in the end of this letter?

COMMISSIONER KENNEDY: Like I say, I have this strange recollection that keeps running through my mind that we had sort of agreed that that's what we were going to do. And I came to this meeting thinking that that's what we were going to be doing today. But it is not too late, even now, to start thinking in those terms.

COMMISSIONER AHEARNE: It might even be useful for Bill and Jim to go over there to see if they can't work a little bit further on.

MR. DIRCKS: I wish they'd had the same discussion over there in preparation for writing the April 24 letter. I'd rather have seen some of these details after we'd sent out our ^{Feb.} '28 letter. It would have been helpful if they'd said, "Come over and sit down and talk to us," and honestly lay out what the problems are.

COMMISSIONER KENNEDY: Instead of writing back all this long stuff. Could I suggest that that be the next step?

CHAIRMAN HENDRIE: It could be, indeed.

But before I declare that to be the case, and adjourn us, which I'm anxious to do, I continue to be both

puzzled and uncertain what to do about the difference between the offices' approaches.

COMMISSIONER AHEARNE: It turns out, if you noticed, that they both gave the same sets of answers. They both agreed, if those guys have the information, they ought to give it.

COMMISSIONER GILINSKY: Let me add something to that.

But beyond that, it seems to me we've got certain responsibilities to ensure the protection of the material that gets exported. And there's got to be some absolute level of protection, and you've got to have some confidence in that.

And it's not enough, you know, to talk about the effect on the IAEA. If the IAEA just isn't functioning, I think we ought to know that.

COMMISSIONER AHEARNE: Okay. But I think, Vic, that that's a question I'd prefer to take back to the Congress, and say, "Look. You guys, when you wrote that fairly badly-worded bill --"

(Laughter.)

COMMISSIONER AHEARNE: There were a couple of problems they recognized and we recognized. There are some things that have to be worked on. One of the things we have run into is that, the way it is now worded has led us into this quandary. And that quandary is that we are faced with the point, "Do you or do you not want us to determine adequacy of safeguards? If you want us to determine adequacy of safeguards, then that leads us to the question, do we have to determine the adequacy of IAEA safeguards?"

Here's State's position. Here's the amount of knowledge they have. Here's the next steps that are required. Is that really what you have in mind?

COMMISSIONER GILINSKY: I'm all for marching back up to the Congress and asking them what they meant, by all means.

CHAIRMAN HENDRIE: They were unable to enunciate what they meant, and they knew damn well exactly what the difficulty in the question was. We made it clear in assorted ways in those days, and I doubt very much that, (a., they're one bit better able this session to say what they mean than they were last; and (b., having struggled, you know, for years and finally gotten it passed a year ago March, the chance that

they'll reopen that pail of worms is not very likely.

But, you know, I admire your spirit in saying, "By George --". In some ways it's like the staff coming up. You know, they can't quite agree on the accent here, so they come to the Commission to get this straightened out. And I don't think they're getting very well straightened out.

(Laughter.)

CHAIRMAN HENDRIE: And our response to this fairly straightforward thing, which is: "Commission, decide which of these views you want to be the view of the agency on this question, or synthesize them as you will and enunciate the view of the agency." Our response is to turn around and say, "Hey, Congress, why don't you move?"

(Laughter.)

MR. SHEA: That happened a year ago February, when the Commission wrote the Congress about this very issue.

CHAIRMAN HENDRIE: It's a dilemma. It's been a dilemma.

MR. DIRCKS: On a more narrow issue, we've been asked last year by Senator Glenn, was it: "Are you getting enough information out of the Executive Branch?" And I'm sure we're going to be asked that question again. I guess the definition of "enough information" is-- what's out there.

COMMISSIONER AHEARNE: In answering that question, I certainly would like to know whether they have the information. It's really a different character if they have it and aren't giving it versus they don't have it.

COMMISSIONER KENNEDY: If the question is enough information, that takes on the question of how much is enough. When you've determined that, it doesn't make any difference what's out there. If you haven't got it, you haven't got it.

If the answer is, "Whatever's out there must be enough --"

MR. DIRCKS: Are they cooperating? That's really what it should be.

COMMISSIONER AHEARNE: And that's really why you should go and find out if they have it.

MR. DIRCKS: That really is the question: are they cooperating?

MR. SHEA: We could go visit and ask them, although they have said very explicitly that they are providing everything that they get through these routes to the NRC. They have told us fairly clearly that they're giving us everything that they have.

COMMISSIONER GILINSKY: You know, when they argue that this information is not really essential to fulfilling our

statutory responsibilities, that puts a certain tilt on their view of their obligation to supply us with this information. And it means that when they don't, it's a far less serious matter than it would be than if they agreed that it was essential for us in carrying out our export licensing responsibilities.

So, I think this is just something that we've got to take a position on. If the majority of the Commission agrees with them, so be it. If not, we ought to make that clear.

CHAIRMAN HENDRIE: How would you characterize the positions?

COMMISSIONER BRADFORD: There's sort of that base proposition State asserts, which is that there is no effectiveness judgment at all required by the law. I have no difficulty disagreeing with that. I agree that there are some difficult choices as to how much is enough, and how do you go about getting it.

But I think that the history of the Act, and a rational reading of the Act, makes it clear that State's fundamental position is just plain wrong.

COMMISSIONER KENNEDY: Some members of the Senate feel they're right.

CHAIRMAN HENDRIE: Donald, what's my view on this?

(Laughter.)

CHAIRMAN HENDRIE: Or haven't I formulated one yet?

(Laughter.)

COMMISSIONER BRADFORD: That's the dirtiest trick I've ever seen played on a legal assistant.

CHAIRMAN HENDRIE: That's what they're for.

(Laughter.)

CHAIRMAN HENDRIE: The Congressmen ask me questions like that all the time.

I don't know whether, you know -- you were saying the Commission ought to decide. But it isn't quite clear to me what it is that one votes "aye" or "nay" upon, and I don't know. Should you try to enunciate something, or should we go the tack of sending these offices jointly off to see State in preparation for a meeting that we would all have collectively in the offices of the Commission and the State Department to hammer away at some of these things, to see if we could get closer?

COMMISSIONER KENNEDY: Let me just say, it seems to me we'd all be better served, and the problem would be more likely to be resolved in a reasonable way, in the interests of the objective -- which is better safeguards and better export policy, and everything else -- if in fact we all know

what we're talking about. At this juncture, I am not sure what it is that these people really have in mind, and how far, if one sits down and talks to Tom Pickering, one gets with this.

COMMISSIONER GILINSKY: Well, Tom Pickering wrote a pretty strong letter.

COMMISSIONER KENNEDY: Well, we wrote one too, you know.

CHAIRMAN HENDRIE: I think, as several people have said, as you've said, you don't leave a letter like that laying in the files unanswered as the last document. Because that unbalances the charge distribution.

(Laughter.)

CHAIRMAN HENDRIE: You have to put in an appropriate, equal amount. For every piece of paper, there should be an equal and opposite piece of paper.

(Laughter.)

CHAIRMAN HENDRIE: And the system is balanced, charge neutral. But in getting there -- I don't know; I'm kind of groping.

COMMISSIONER GILINSKY: If it's a matter of simply asking them, "What did you mean," then by all means, if the letter is not clear. I thought it was clear, but if it's not clear, by all means let's ask them what they meant.

But if we're talking about a conversation in which Bill and Jim would be coming to some accommodation, then it seems to me they have to know what the Commission thinks, and what it is they're representing.

COMMISSIONER AHEARNE: I'm not asking -- normally, when people are in disagreement, one of the things you do is, you try to get those people together in an organization, try to get the staffs together, to at least hammer out to make sure everybody understands what the facts of these matters are, and what their positions really are. Interchanging by formal letters, as Joe says, to balance each other out, is good for position taking, but it's not really good, usually, to clear things up.

And what I was really suggesting is that Jim and Bill try to bring greater clarity to this.

COMMISSIONER GILINSKY: Clarity to what?

COMMISSIONER AHEAPNE: Clarity to, "Do they really

COMMISSIONER GILINSKY: They would not, then, be representing any NRC view.

COMMISSIONER AHEARNE: Each other's.

COMMISSIONER GILINSKY: You're going to send two offices from one agency to go talk to the State Department representative to do this?

COMMISSIONER KENNEDY: They have different perceptions.

COMMISSIONER AHEARNE: It's sitting down and trying to iron things out.

COMMISSIONER GILINSKY: That seems to me to conflict with the basic Kennedy principles of management.

(Laughter.)

COMMISSIONER KENNEDY: I'll vote for that whatever it is.

CHAIRMAN HENDRIE: That's what I was afraid of.

(Laughter.)

CHAIRMAN HENDRIE: That's an illegal tactic.

COMMISSIONER AHEARNE: At some point, we are going to have to sit down with Tom Pickering and reach some final, formal position. But prior to that, it seems to me that it would be very useful to get this greater understanding.

COMMISSIONER KENNEDY: We may well know more about these problems if these fellows go over and sit down with these guys and talk.

COMMISSIONER GILINSKY: I agree. But let me put it

this way.

If the majority of the Commission agrees with the view that at least I'd thought they expressed very clearly, then there's no point in having some of those discussions.

COMMISSIONER AHEARNE: I think it's the charge balance letter that he was responding to. We sent over a fairly lengthy extensive -- "sweep up the books." And he's come back with a salvo in reply.

COMMISSIONER KENNEDY: I thought what we were doing was asking them to clear their files so that we could move into their building.

(Laughter.)

COMMISSIONER KENNEDY: Which, actually, I didn't think was a bad idea.

(Laughter.)

COMMISSIONER AHEARNE: You knew which floor you wanted.

COMMISSIONER KENNEDY: But he comes back and says, "I don't think we can do that. The Secretary isn't impressed with that notion."

CHAIRMAN HENDRIE: Let's see. Actually, this is Lou's letter of January; isn't that the one we're talking about?

COMMISSIONER AHEARNE: No, no, no.

COMMISSIONER KENNEDY: It's the letter of April.

COMMISSIONER AHEARNE: We're not talking about the Executive Branch format.

(Laughter.)

CHAIRMAN HENDRIE: I should have stayed in Los Angeles.

(Laughter.)

COMMISSIONER KENNEDY: It's April 24; that's the one.

CHAIRMAN HENDRIE: I probably have that down in here. "Commision letter, Pickering response --" is that the one?

COMMISSIONER KENNEDY: That's it.

CHAIRMAN HENDRIE: All right.

What is it? Let me see which of the things that we're taking strong objection to -- geez, look at the red lines on that thing.

(Laughter.)

COMMISSIONER KENNEDY: For whatever it matters, mine are on a different line.

(Laughter.)

COMMISSIONER BRADFORD: Maybe we should accuse them

of trying to undermine the NRC.

(Laughter.)

COMMISSIONER AHEARNE: We do a really beautiful job of that ourselves.

COMMISSIONER GILINSKY: You know, if we agree with that, there's probably no need to pursue the subject at all.

COMMISSIONER BRADFORD: I see. Where you've written "No," Dick has written "OK."

CHAIRMAN HENDRIE: I don't know. I suggest that they go over to State and have the discussion. Without coming to this issue, I think it's clear there are enough Commissioners that don't think this is a correct statement --

MR. SHEA: State does agree with this. I think there's total unanimity, as they say. The technical content of application of safeguards is, of course, one of several relevant factors under the national security plan. They at least want that part. I think everyone on the staff and Commission all agree on that.

The question is whether you need to make an adequacy finding, and need the detailed information that we have asked for in the February letter to make the Criterion 1 finding, finding whether safeguards are applied. I think it's a little narrowly drawn, then, for them saying, "You don't need

it at all for your export license," or "You must have this."

COMMISSIONER GILINSKY: As Peter pointed out, you get into a question of degree, or how much the information really is needed. But they're saying that no information whatsoever is needed. And that, it seems to me, ought to be a difficult proposition for this Commission to swallow for satisfying Criterion I.

MR. SHEA: Well, "such detailed information" is the way they say it. This is, anyway, a requirement under 127. I'm not sure that they say that nothing is needed. In fact, they do provide us, they claim -- and I guess I've seen enough of it to believe it -- a certain amount of it.

COMMISSIONER GILINSKY: It says, "Does not require a judgment as to the adequacy of IAEA safeguards."

COMMISSIONER KENNEDY: But that they are applied.

COMMISSIONER GILINSKY: But that they are applied, which means that there is an agreement.

COMMISSIONER KENNEDY: I think that there has to be agreement.

COMMISSIONER GILINSKY: This is like the famous story, you know: would you do it for a million dollars?

(Laughter.)

COMMISSIONER KENNEDY: How does that story go?

(Laughter.)

COMMISSIONER BRADFORD: I guess the way I have seen this as working was not unlike the format as a whole. That is, if there were areas in which there was no information available, at least no information in the government, then it hadn't seemed to me to be unacceptable. I'm not sure that State had understood this about the format as a whole, for them to say this information is not available within the U.S. government, whereupon it would move the burden of emphasis back to us.

Remember, this is with their first submission. It doesn't come at the very end of the process, to say: "Gee, for this country, we really just think that particular piece of information is fundamental."

COMMISSIONER AHEARNE: Remember, Pickering's letter isn't a response to the format.

COMMISSIONER BRADFORD: I understand. But what triggered his concern was that four or five-page addendum, plus writing our letter. I saw that. But I saw that list working in some ways that it was not inconceivable that they would say, in a particular case, that we couldn't have these particular items -- we can't get them. And then, if we felt for that country and that item, we had to have it, that would trigger another exchange between us and State before any

license was issued.

That's all I meant, was I saw the format working the same way. And to the extent that we've been able, that there was perhaps common ground on other points in the format, that we'd be able to work them out that way. That might be a possibility here, too. Because obviously, the system has to allow for the answer that the information is not available, or that the information is terribly hard to get, and we think it would be a question of too high a price to pay.

COMMISSIONER GILINSKY: We've got along without that information for some time. I don't regard that as a state of affairs that is satisfactory for the indefinite future.

COMMISSIONER KENNEDY: The only way we're going to be able to deal with that effectively, it seems to me, is to be able to sit down with Tom Pickering, and if you believe that, make that point. I don't necessarily agree with it, but -- you know, I would wish you to make the point, and see what kind of a response we get.

Because if he says, "Look; I share your concern, I understand the nature of it, and where it comes from, but the simple fact is this government cannot afford to do that," then, you know, we have a decision to make. Are we going to say, "Well, we don't care whether we can afford it or not;

we're going to have to?" That's a decision we have to make.

Or we have to go back to the Congress with something that John suggests, for example: go over and say, "You've put an impossible burden on us. There's no way we can discharge this responsibility, as we understand it, in a way that's consistent with the basic objective, which is something advancing the interest of the United States. If we pursue this, we are told by these people that it would be inconsistent with our national interest. Now, what do you want us to do?"

COMMISSIONER GILINSKY: Of course, that's a perfectly possible response on an individual application. It's quite another thing if he says, just across the board, "That's all."

COMMISSIONER KENNEDY: But what I'm trying to say is, you know, just what it is he's saying in this regard, let's find out. If we just sit down and talk with him --

COMMISSIONER GILINSKY: Sure. I think it'd be a good idea.

COMMISSIONER BRADFORD: Doesn't tha say, though, that it's better that we talk with Tom before we tell Jim and Bill to go?

COMMISSIONER AHEARNE: I would have said different. I would have thought that it would be more useful to escalate it up the line, and you try to get as much of the unknowns

ironed out, or uncertainties, misconceptions ironed out before you get to the top.

COMMISSIONER KENNEDY: I think it would be useful for them to have that conversation. Because I think it will help them think out the problem, and at least get, in looking at the problem, to the point that we now are. They will understand something more about what we think.

COMMISSIONER AHEARNE: It might even help us.

COMMISSIONER BRADFORD: That's what I thought a conversation between us and Tom will do. I assume Bill and Jim would now go ahead and talk to people at State. The State people would be talking against the background of Tom's letter.

COMMISSIONER AHEARNE: Or the background of facts that they have, or positions they have, knowledge they have, just as Bill and Jim would be doing the same.

COMMISSIONER BRADFORD: I would think they'd be a little reluctant to say anything inconsistent with the position taken in the letter.

COMMISSIONER AHEARNE: I'm suggesting maybe they could talk to Tom. Maybe they'd feel more comfortable talking with him.

COMMISSIONER GILINSKY: That's one way of doing it.

COMMISSIONER KENNEDY: I guess I'd say, why don't we

ask Tom to come on over and sit down and talk with us?

COMMISSIONER GILINSKY: That sounds reasonable.

COMMISSIONER KENNEDY: You know, you're right, Vic. In principle, you're absolutely right. If in fact he says, "Now look I'm not going to give you anything," well, then, we have a basic decision over here to make.

If, on the other hand, he says "Look; in some circumstances, I'm just not going to be able to do a thing. I just can't do it. We will, in other cases, give you everything you want. We'll go get more if we can." That's a different order of question. I don't know what he's saying here, and I think we ought to be able to get that clear in our mind. And then, on the basis of what he says, our understanding of that which we can further by a discussion with him -- then we can write him a letter which says, "Sorry, Jack; you're just way off the track. That won't do." Or, "Now that we better understand, I think there is something we can do, and here's the way we see this."

We can't do that at this point. All we can do is argue about how strongly we should rebut his letter.

COMMISSIONER AHEARNE: I still think it would be useful for both us and for them, so that there's a little bit better understanding on both sides of what the positions are

— based on.

CHAIRMAN HENDRIE: I think we'll try to meet with Tom and hack away at the subject. I think it's some help when you shape up for a meeting like that if there's been some contact between the staffs, so when the principals come together, why, they understand sort of what they're coming together about.

Now, presumably, unless all our memory circuits go into complete trauma over the afternoon, and blank it all out, we know, as we come to the meeting, what it is we want to discuss. We've sharpened it over an afternoon's discussion. I think it would be helpful if staff went over it.

COMMISSIONER GILINSKY: I'm not sure we've sharpened it.

COMMISSIONER AHEARNE: But, Joe, we have not that much further information on what State is basing its position on. So when you say we've sharpened this afternoon, we've argued back and forth. But I don't think we've had the benefit --

CHAIRMAN HENDRIE: No, no. What I'm saying is that with regard to preparation for a meeting between ourselves and Pickering and Company, we're better prepared for that by virtue of this discussion this afternoon than he's likely to be. I think it would be useful if there were some staff contacts to

—

try to sketch out the concerns, the nature of the arguments here, and other things we want to talk about.

COMMISSIONER GILINSKY: You know, they've heard the case on these arguments just as we have. So they're familiar with both sides. They've written letters to the Congress. They've testified, we've testified. That isn't the problem.

They've said where they stand. The question is where we stand.

COMMISSIONER AHEARNE: We'd get a lot more done by talking than by writing letters.

COMMISSIONER GILINSKY: I'm not talking about writing letters. We talk to him, we talk to him. But I think before our staff people go over. I think they're representing two separate points of view. They ought to have a clear idea of where the Commission stands.

CHAIRMAN HENDRIE: Good. I solicit your efforts to develop where the Commission stands. If somebody would enunciate for me a question the Commission should deal with.

COMMISSIONER GILINSKY: Do we agree with that proposition is the single question. "In that light, we believe it is clear that Section 127-1, which states that IAEA safeguards will be applied, does not require a judgment as to the adequacy of IAEA safeguards."

COMMISSIONER KENNEDY: I think a respectable legal opinion can be made that that's right. Now, I'm not sure that that's the position I would take. I'm just saying that it's a respectable position to take.

CHAIRMAN HENDRIE: The statute says the criterion needn't apply. It doesn't say it would be good, bad or indifferent.

COMMISSIONER GILINSKY: The Commission can come down on either side of that. But I think it is important to know which side it does come down on before you're going to send two offices with different views out to talk to the State people.

COMMISSIONER AHEARNE: That wasn't what I was asking that they go to talk about.

COMMISSIONER GILINSKY: If it's really --

COMMISSIONER AHEARNE: I'd like to know a little bit more about the factual basis before reaching a decision on that position myself.

Why don't you ask Tom to come?

CHAIRMAN HENDRIE: Let's see if we can arrange a meeting with the Assistant Secretary and his cohorts.

COMMISSIONER AHEARNE: And hopefully, someone in setting up that meeting will at least try to explain what some

of the things are that he'll be asked about. It's a lot more than just, "Should the Commission use adequacy in reaching its determination?" That's not the issue that we want to get from him.

COMMISSIONER GILINSKY: The point I was trying to make was that everything turns on how you come out on that question. If you agree with that proposition that there's no need to look in any way at the adequacy of the safeguards; that, that is, at no time will we make a determination on Criterion I, there's just nothing further to pursue here.

COMMISSIONER AHEARNE: How you come out on that might depend on a lot of other factors.

COMMISSIONER GILINSKY: But there's no point in questioning how State wants to deal with this matter unless you disagree with that proposition.

COMMISSIONER AHEARNE: I'm not questioning how they want to. I'm saying how they are able to.

COMMISSIONER GILINSKY: If you want to deal with it in that way --

CHAIRMAN HENDRIE: I think we've gone about as far as we can go -- I daresay, further than it was useful to. I'm afraid -- well, okay, let us terminate.

What should we do with this tape?

(Laughter.)

CHAIRMAN HENDRIE: Before I go away, what I propose for this tape is that we hold it until we've come to some agreement with the State Department on the Executive Branch format, at which time the counsel reviews it for classified material, and puts the unclassified part in the public document room. Fair enough? So that it can have a statute of limitations attached to it.

Okay.

(Whereupon, at 4:50 o'clock p.m., the meeting was adjourned.)

- - -



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

July 8, 1980

OFFICE OF THE
 SECRETARY

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

Transcript of Discussion of International
 Safeguards Matters, June 21, 1979

Pursuant to 10 CFR 9.108(c), the Commission has determined that the attached portions of the subject transcript should be released to the public. The remaining portions of the transcript are being withheld from public disclosure pursuant to 10 CFR 9.104 as noted below:

<u>Page/Line</u>	thru	<u>Page/Line</u>	<u>Exemption</u>
7/7		7/12	10 CFR 9.104(a)(1)
8/6		8/11	10 CFR 9.104(a)(1)
9/5		9/13	10 CFR 9.104(a)(1)
9/15		10/4	10 CFR 9.104(a)(1)
10/9		10/13	10 CFR 9.104(a)(1)
10/15		10/19	10 CFR 9.104(a)(1)
12/2		12/6	10 CFR 9.104(a)(1)
12/19		12/20	10 CFR 9.104(a)(1)
13/1		13/4	10 CFR 9.104(a)(1)
13/17		13/18	10 CFR 9.104(a)(1)
15/4		15/11	10 CFR 9.104(a)(1)
16/2		16/3	10 CFR 9.104(a)(1)
18/7		18/19	10 CFR 9.104(a)(1)
19/16		19/18	10 CFR 9.104(a)(1)
21/2		21/4	10 CFR 9.104(a)(1)
21/7		21/9	10 CFR 9.104(a)(1)
22/10		22/14	10 CFR 9.104(a)(1)
23/13		23/15	10 CFR 9.104(a)(1)
24/1		24/6	10 CFR 9.104(a)(1)
27/6		27/8	10 CFR 9.104(a)(1)
27/11		27/12	10 CFR 9.104(a)(1)
34/18		34/20	10 CFR 9.104(a)(1)

John C. Hoyle
 John C. Hoyle

Acting Secretary of the Commission

~~002110 494~~