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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
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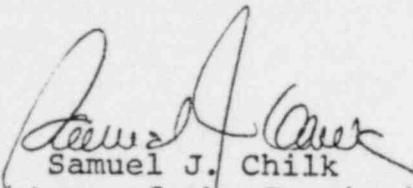
August 18, 1980

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

Transcript of Briefing on Possible  
Classified and Litigative Aspects of  
GESMO, May 3, 1977

Pursuant to the Commission's regulations implementing the Government in the Sunshine Act (10 CFR 9.108(d)), it has been determined after a further review of this transcript that additional portions of the text can be released to the public. Attached are all portions of the subject transcript that have been determined to be releasable. The remaining portions of the transcript remain withheld pursuant to 10 CFR 9.104 as noted below:

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23/7		23/9	10 CFR 9.104(a)(6)

  
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Secretary of the Commission

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Briefing on  
Possible Classified and Litigation Aspects of GESMO

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Room 1162  
1717 H Street N.W.  
Washington, D.C.

Tuesday, May 3, 1977

The Commission met at 1:00 p.m.

PRESENT: Commissioners Rowden, Kennedy and  
Gilinsky.

1 COMMISSIONER ROWDEN: All right, let's get going.

2 MR. STRAUSS: We are having this portion of the  
3 meeting to consider any classified aspects of the questions  
4 discussed this morning that may arise, and also to consider  
5 possible courses of action in pending litigation, notably  
6 Supreme Court review of the 2d Circuit's decision in the GESMO  
7 case.

8 That is a relatively simple matter. Maybe we can get  
9 that out of the way first. Steve, do you want to speak to that?

10 MR. GOLDBERG: I can speak to it. The Supreme Court  
11 granted certiorari in the 2d Circuit case which deals  
12 with just one aspect of the entire November policy statement  
13 and that is the matter of interim licensing.

14 So they have before them the November notice that  
15 says under certain conditions the Commission will consider  
16 granting an interim license.

17 The 2d Circuit said no, you can't do that, the Supreme  
18 Court is going to review that.

19 Our brief is currently due on June 13 on this matter.  
20 We have discussed the issue with the Solicitor General's  
21 Office and we have their approval for the following course  
22 of action if the Commission wants to take it.

23 If the Commission were to issue an order, public order,  
24 calling for comments on the November notice, including the  
25 matter of interim licensing, such as the order you are

1 considering, it would be appropriate in our view and in the  
2 view of the Solicitor General to go to court with a motion for  
3 extension of time, stating that here is an order the  
4 Commission put out, they are considering changing the November  
5 notice, they might or might not change it, this has a  
6 bearing on how we believe the case, on whether we would suggest  
7 it is moot. Then ask the Court for an extension until  
8 July 30, which would give enough time for the formulation of  
9 a new Commission policy and then make the appropriate  
10 representations to the court.

11 COMMISSIONER KENNEDY: If one is to be formulated.

12 MR. GOLDBERG: If the Commission decides to reaffirm  
13 its November notice, then the case is before the Court, it is  
14 a live case, and we would brief it on the merits.

15 If the Commission were to reverse its November policy,  
16 it seems quite likely we would file a suggestion of mootness,  
17 it is no longer an issue.

18 We might, at the same time, have to file a brief on  
19 July 30, a suggestion of mootness, but a brief in case the  
20 Court disagrees with us.

21 COMMISSIONER KENNEDY: Why would we do this? The  
22 specific question might be moot, but there is a fundamental  
23 principle involved. Why would we not have, since the Court  
24 has already taken it up, why wouldn't we let the Court go  
25 ahead and decide it?

1 MR. GOLDBERG: We don't have that option.

2 COMMISSIONER KENNEDY: That is their own choice, not  
3 ours.

4 MR. GOLDBERG: One chain of events is the following:  
5 We could brief the case. If the Commission were then to  
6 reverse the November decision on interim licensing in a later  
7 policy statement, we would have to bring this to the Court's  
8 attention and the Court would not continue to consider the  
9 case. They have to have a concrete case or controversy before  
10 them.

11 COMMISSIONER ROWDEN: We are not the only parties to  
12 this proceeding. Talk about Justice and the private parties.  
13 Justice is prepared to go along --

14 MR. GOLDBERG: With an extension of time.

15 COMMISSIONER ROWDEN: Suppose we were to say no, we  
16 are going to brief it on the merits and if our position  
17 changes, we will advise the Court accordingly. What is the  
18 President's lawyer going to do then?

19 MR. GOLDBERG: We don't know. All I can say is the  
20 Solicitor General, the people we talked to, were sympathetic  
21 to extending the time until we made clear what our policy is.  
22 I don't know what they would say.

23 I might point out if we were to brief it on the merits  
24 for June 13, it would be in many ways a difficult brief. To  
25 be effective, the brief would have to be hard-hitting. We would

1 say interim licensing is proper as a policy matter and  
2 that is how we brief it.

3 COMMISSIONER KENNEDY: I think that is an important  
4 question of principle.

5 MR. GOLDBERG: Right. To file such a brief during the  
6 pendency of reconsideration, it is up to the Commission, if  
7 they want to.

8 MR. STRAUSS: The brief would have to state in it that  
9 on the 3 of May, or fourth of May, the Commission issued a  
10 call for comments on the impact of the President's policy,  
11 on the course of action and the matter is not yet decided.

12 I think the short answer to your question, Commissioner,  
13 is that the Court sits to decide cases rather than fundamental  
14 principles and one of the consistent policies followed --

15 COMMISSIONER KENNEDY: Though most of its dicta are  
16 considered fundamental principles, isn't that right?

17 MR. STRAUSS: That is right. Their excuse for  
18 producing those dicta is that they are --

19 COMMISSIONER KENNEDY: I am glad you used that word.

20 MR. STRAUSS: Is that they are deciding such cases. And  
21 the consistent policy of the Department of Justice in this  
22 respect -- and I think it is a sound one -- has been to  
23 protect the Court as an institutional matter even at the  
24 expense of losing the opportunity for decision on the funda-  
25 mental principles.

1 COMMISSIONER KENNEDY: But meanwhile there is a  
2 decision on the record.

3 MR. STRAUSS: No.

4 COMMISSIONER KENNEDY: In a lower court.

5 MR. STRAUSS: No, that would disappear.

6 MR. GOLDBERG: If the case is mooted, the Supreme  
7 Court practice is absolutely consistent, the decision below  
8 is vacated as if it never happened. It is not citable as  
9 a precedent.

10 COMMISSIONER KENNEDY: No, and no young lawyer will  
11 ever read it as guidance to himself, although it is vacated  
12 nonetheless should the question arise again, he would have  
13 some idea that at least one court in a particular situation  
14 though this. Is that right?

15 MR. GOLDBERG: He would also know that cert was  
16 granted by the Supreme Court. Anyone who cites a case in  
17 which cert was granted --

18 COMMISSIONER GILINSKY: How does the vacation of the  
19 decision take place?

20 MR. STRAUSS: It is an order of the Supreme Court.

21 MR. GOLDBERG: It said it wanted to review some lower  
22 court decision. But because of the turn of events, it doesn't  
23 have a chance. That doesn't mean it agrees with what the lower  
24 court did.

25 COMMISSIONER KENNEDY: It doesn't mean it agrees either.

1 MR. GOLDBERG: Right. It enters an order that says  
2 the judgment is vacated and the matter remanded.

3 COMMISSIONER ROWDEN: I think the course of action  
4 you propose in my view is reasonable. I would be prepared  
5 to have Commissioner Kennedy's course explored with the Depart-  
6 ment of Justice. It is inconceivable to me the President  
7 would allow the Solicitor General to file a brief supporting  
8 the merits of interim licensing here. You talk about signals,  
9 in terms of conducting the GESMO proceeding.

10 COMMISSIONER KENNEDY: I thought the Administration sent  
11 some when it went up on the Hill just the other day.

12 COMMISSIONER ROWDEN: That is not one on use of plutonium.  
13 This is talking about interim licensing of reprocessing  
14 facilities.

15 MR. STRAUSS: Let me talk about it in outcome, determin-  
16 ative terms for a moment. In terms of the point in time when  
17 you could expect a decision to be rendered in the case, the  
18 course of action that we are proposing would not change that.  
19 It might postpone the oral argument by as much as a month.  
20 But the case would in any event be reached next year and  
21 decided next year. And beyond that no man could say anything  
22 about when the Supreme Court is going to act. So that one  
23 doesn't lose anything by taking this course.

24 The paper filed with the court would say nothing more  
25 than what I gather the Commission this morning has decided to



1 do, the course of action is being undertaken, which may prove to  
2 have an influence on the case, and consequently it is most  
3 efficient to postpone briefing until that course of action  
4 can have been determined.

5 MR. GOLDBERG: I should make it clear it doesn't fore-  
6 close any options. If the Commission decided to continue  
7 to favor interim licensing after the comment process, it would  
8 presumably state its additional reasons for doing so, and the  
9 brief we would file at the postponed date would take advantage  
10 of that, say here is interim licensing, it is legal, here are  
11 the reasons, whatever the position is, it can be fully  
12 defended.

13 COMMISSIONER ROWDEN: If this course of action is  
14 followed, before it is implemented, would you propose to  
15 consult with the petitioners?

16 MR. GOLDBERG: I don't believe so.

17 COMMISSIONER ROWDEN: Why not?

18 MR. GOLDBERG: I am not sure our interests --

19 COMMISSIONER ROWDEN: No, I am sure the interests are  
20 not the same. As a matter of fact, I would be the first  
21 to say our interests are independent of theirs, but just as  
22 a matter of professional courtesy. They filed the petition  
23 for certiori.

24 MR. STRAUSS: Certainly we will call petitioners and  
25 tell them that this is part of the conclusion the Commission  
has reached.

1 COMMISSIONER ROWDEN: If that is the course, let's  
2 follow it, they ought to have an opportunity to be heard  
3 at least.

4 MR. STRAUSS: They will.

5 COMMISSIONER ROWDEN: The lawyers in the Department of  
6 Justice can make up their own minds.

7 MR. STRAUSS: There is no question about that.

8 COMMISSIONER ROWDEN: I would be happy to have you,  
9 as far as my own perspective is concerned, explore Commissioner  
10 Kennedy's proposed course of action with the Department of  
11 Justice.

12 COMMISSIONER KENNEDY: No, so long as the options are  
13 open, remain open, there is no misunderstanding on that  
14 score, proceed on this course.

15 COMMISSIONER GILINSKY: And that is to ask for a post-  
16 ponement?

17 MR. STRAUSS: Yes.

18 COMMISSIONER KENNEDY: After having spoken with counsel  
19 for the petitioners.

20 MR. STRAUSS: Yes.

21 MR. GOLDBERG: The order has to come out, we will  
22 speak to counsel and pursue it.

23 VOICE: The plea is for the 20th of July?

24 MR. GOLDBERG: 30th of July.

25 MR. GOLDMAN: Do you think it will be sorted out by that  
time?

1 MR. GOLDBERG: If the order is issued promptly,  
2 comments are in by early June.

3 MR. STRAUSS: What the date should be, whether the 30th  
4 of July or 30th of August --counsel for the Respondent  
5 in the case has already indicated that he has some vacation  
6 plans for mid-summer which led me to think that there would  
7 be no objection on their part to a longer postponement than  
8 the 30th of July.

9 COMMISSIONER KENNEDY: If you postpone it long  
10 enough you get into the winter vacations, skiing and so on.  
11 So get us out of the work period during the late winter  
12 and early spring, the normal work period for these matters.

13 COMMISSIONER ROWDEN: You are going on the supposition  
14 there will be lawyers around to write the briefs, and  
15 commissioners around to give them guidance.

16 MR. STRAUSS: Yes.

17 COMMISSIONER ROWDEN: In other words, all other things  
18 being equal.

19 MR. STRAUSS: All other things being equal, yes.

20 COMMISSIONER ROWDEN: I won't explore the ramifi-  
21 cations of that.

22 To my way of thinking that is the only practical course  
23 of action.

24 MR. STRAUSS: All right.

25 COMMISSIONER KENNEDY: Did we decide on the 30th of

July or the 30th of August?

2           COMMISSIONER ROWDEN: I would be prepared to defer to  
3 your views.

4           MR. STRAUSS: We will work that out.

5           COMMISSIONER ROWDEN: It ought to be a reasonable  
6 period of time, taking into account resources.

7           I think you are also supposing that the Commission will  
8 have reached a determination on the basic issue before the  
9 end of June. You are calling for replies by the third of  
10 June. It is our contemplation that we act on this by the  
11 end of June. We ought to.

12          MR. SHAPER: There are some pretty knotty issues.

13          COMMISSIONER KENNEDY: By that time they will be even  
14 knottier.

15          COMMISSIONER ROWDEN: That is the target, anyway.

16          MR. STRAUSS: There will be one around to cut the  
17 Jordainian knot.

1 MR. STRAUSS: A second aspect of this afternoon's  
2 discussion concerns the question of consultation with  
3 the Executive Branch.

4 What issues the Commission would wish to have raised,  
5 on what time table. My own thinking in that respect would be  
6 that there are two courses of action that might be followed.

7 One of them, which may appear resumptious, but would  
8 take care of everything at once and assure that the assignment  
9 of formulation of the views within the Executive Branch was  
10 exactly what was wished by the President, would be to address  
11 the request for comments to the President.

12 It is, after all, his statement issued over his  
13 name which you wish to have interpreted as it applies here.

14 If that seems like too forward a course, as it may,  
15 I can identify three or four different agencies in the Executive  
16 Branch who perhaps have a claim to speak. The Department of  
17 State, obviously, the ceiling of the Department of Energy,  
18 Mr. Schlessinger, the existing Office of Energy, ERDA, and  
19 CEQ. FEA, perhaps, though they have not been signficiantly  
20 involved in nulcear affairs since the Ragumas (sic) matter  
21 more or less by wish of the Congress, as I understood it.

22 COMMISSIONER KENNEDY: It is an energy matter.

23 MR. STRAUSS: It is an energy matter, yes.

24 COMMISSIONER GILINSKY: We have addressed letters to  
25 the national Security Council on many occasions.

1 COMMISSIONER KENNEDY: We certainly can address a  
2 letter to the President and it can be handled by whoever he  
3 chooses.

4 MR. STRAUSS: That is right. That is the first  
5 alternative.

6 COMMISSIONER KENNEDY: If you address it to the President,  
7 I assume you will get an authoritative view, from whomever  
8 he selects to give it.

9 MR. RATHBURN: Isn't there a connection between the  
10 timing of the release of this order and the answer to the  
11 question that Pete raised with regard to who we are going  
12 to approach in the Executive Branch?

13 It seems to me it might be desirable to informally  
14 contact the Executive Branch before the order is issued  
15 and get some feedback on a fairly rapid turn-around basis.

16 COMMISSIONER ROWDEN: What feedback are you thinking  
17 of?

18 MR. RATHBURN: Well, as it is, we really don't know  
19 what their reaction would be to the order and the specific --

20 COMMISSIONER ROWDEN: Why do we care? I will tell  
21 you, we are going to get the views of the participants and  
22 the public and insist on the views of the Executive Branch.  
23 And I frankly am not particularly interested in any misgivings  
24 about contributing those views. They owe us the views for the  
25 record. We have been left with a decision-making responsibility

1 and it is vital we have that contribution.

2 COMMISSIONER KENNEDY: If they choose not to give it,  
3 that is a choice they should make on the record as well.

4 COMMISSIONER ROWDEN: I am not faulting you for  
5 making the suggestion, but I think you ought to appreciate  
6 that there is a clearly thought-out rationale for soliciting  
7 the views of the Executive Branch.

8 MR. GOLDMAN: The question is what do you want to  
9 solicit?

10 COMMISSIONER KENNEDY: Their views.

11 MR. GOLDMAN: If we get their views --

12 COMMISSIONER KENNEDY: We don't give them the answers,  
13 we just give them the questions.

14 MR. GOLDMAN: One of the questions maybe you want to  
15 ask, and this is the basis of part of our concern, is what  
16 impact do our options have on the Executive Branch foreign  
17 policy as it is now ongoing and is possible. This is one of  
18 the concerns, at least initiated at the OPE level, that if we  
19 go ahead and talk out of both sides of our mouth, keeping our  
20 domestic options open by continuing to any extent, versus --

21 COMMISSIONER KENNEDY: We have already done that. The  
22 Executive Branch did that on the Hill just the other day,  
23 when they were asked if they wished legislation to prohibit  
24 this, and they said no, they wanted to keep their options open.

25 MR. GOLDMAN: That was the Executive Branch.

1 COMMISSIONER KENNEDY: Who are we addressing?

2 MR. GOLDMAN: We are addressing the Commission. How does  
3 the Commission feel about this? Do they feel they are  
4 furthering --

5 COMMISSIONER KENNEDY: I thought it was the Executive  
6 Branch.

7 MR. GOLDMAN: This Commission here. This Commission is  
8 an independent commission, not subject to Executive vetoes,  
9 supposedly.

10 COMMISSIONER ROWDEN: State the proposition.

11 MR. GOLDMAN: I think the problem is what we ought to  
12 specifically be asking the Executive Branch that this order  
13 does not ask for is we have certain options or courses of  
14 action open to us in the form of GESMO. What is the impact  
15 of each of those courses of action on the Executive Branch.

16 COMMISSIONER ROWDEN: I think if we addresss a President,  
17 we use a tough course of action. You don't get down to  
18 specifics, you indicate the desirability of having consul-  
19 tation with him on an informal basis, and the need to have  
20 formal views contributed for the record, ask him to designate  
21 an appropraite representative, then you see what happens.  
22 I don't think I am that smart in terms of being able to  
23 appreciate where all of the issues are in terms of what they  
24 see them to be, or know what all of the underlying consideration  
25 are. That would be my suggestion, if we go the Presidential



1 route. There are so many players in the game --

2 COMMISSIONER KENNEDY: Tell them these are the choices  
3 open to us and the circumstances, and we would appreciate  
4 their views.

5 MR. STRAUSS: I don't see any reason why you couldn't  
6 be a bit fuller with the President than might otherwise be  
7 in order.

8 COMMISSIONER ROWDEN: Draft up a letter.

9 COMMISSIONER GILINSKY: You could send it to the  
10 National Security Council.

11 COMMISSIONER ROWDEN: They don't cover the domestic  
12 side of it. Schlessinger would be in on this game.

13 MR. SMITH: The best thing is to send it to the  
14 President and let him make that decision.

15 COMMISSIONER ROWDEN: Why doesn't the Staff get together  
16 and draft up a letter to the President?

17 When do you think you can come back with a completed  
18 draft circulated? I would like to have it circulated  
19 before you bring it in.

20 MR. STRAUSS: There is no reason why we couldn't have  
21 that draft of a letter by late this afternoon, depending on  
22 the rest of the Commission's business.

23 COMMISSIONER KENNEDY: Fine.

24 Now let's deal with this problem, this thing, and get  
25 rid of it. That shouldn't take more than five minutes either.

1 COMMISSIONER GILINSKY: What is "this"?

2 COMMISSIONER KENNEDY: The order.

3 MR. STRAUSS: I have no difficulty with discussing  
4 it as long as the Commission understands the transcript of the  
5 discussion will be made public. I think that should be under-  
6 stood.

7 COMMISSIONER ROWDEN: I think we are discussing this  
8 matter in an open session. This is just an extension of the  
9 session we had this morning.

10 COMMISSIONER KENNEDY: WE said this morning we were  
11 going to do this. And whatever we say on that can be in open  
12 session.

13 MR. STRAUSS: That is what I am saying. The transcript  
14 of this discussion will be put in the Public Document Room.  
15 So let's go to this.

16 MR. GOLDBERG: You have a draft of the proposed order  
17 seeking public comments. It has been changed in light of  
18 this morning's discussion. You are inviting comment not only  
19 from the GESMO participants, but from the public. We are  
20 now putting in the context of the November 1975 policy  
21 statement, the first paragraph and more specifically the  
22 third paragraph.

23 There are some changes to the draft you have. On page  
24 2, line 2, the proper date there for comments should be filed  
25 by June 3, 1977.

1           COMMISSIONER GILINSKY: Since we are going back to the  
2 November statement, I didn't remember it very well myself,  
3 but shouldn't one indicate something about that statement?

4           COMMISSIONER KENNEDY: We are enclosing a copy.

5           MR. GOLDBERG: We will enclose a copy of the November  
6 statement, and a copy of the President's statement.

7           MR. STRAUSS: Would the Federal Register publish  
8 the attachments?

9           MR. GOLDBERG: They won't publish -- they will publish  
10 the President's statement, because it is brief. And they have  
11 a citation to the other and everyone who receives a copy will  
12 receive both attachments. We would not only serve it, but  
13 since we are asking for public comment at large, it will  
14 go in the Federal Register, be sent to the regular mailing  
15 list, the relevant Congressional committees, and so on.

16           COMMISSIONER KENNEDY: Which includes Foreign Relations,  
17 I assume?

18           MR. STRAUSS: Yes. In order to avoid giving -- with the  
19 changes, it is probably undue prominence to the matters now  
20 pending before the hearing board, the second paragraph in this  
21 draft could be moved to a footnote on the secondpage,  
22 reading "On April 12, the GESMO hearing board postponed the  
23 hearings until further notice."

24           COMMISSIONER KENNEDY: The sentence that is in the center  
25 of that paragraph, about issues raised by the President's

1 statement seems to me a perfectly reasonable sentence to  
2 introduce what would now be the new second paragraph.

3 MR. STRAUSS: Okay.

4 MR. GOLDBERG: That could be the lead-in sentence of  
5 the new second paragraph.

6 Let me see if I have this straight procedurally. With  
7 these changes --

8 COMMISSIONER KENNEDY: I have a couple of additional  
9 things.

10 MR. GOLDBERG: And additional changes, I am prepared,  
11 if the Commission desires, to have this put in final form very  
12 promptly, and we can perform service and mailing this  
13 afternoon or tomorrow morning, not awaiting the drafting and  
14 approval of the letter to the Executive Branch and so on.

15 COMMISSIONER ROWDEN: No.

16 MR. GOLDBERG: Fine. If I get your changes we will  
17 have this out late today or early tomorrow.

18 MR. SHAPER: Do you want to request particular comment  
19 on the appropriate breaking place on GESMO?

20 COMMISSIONER KENNEDY: What are the staff views on that?

21 MR. STRAUSS: The EDO view is that is an option,  
22 that is the option they put forward this morning.

23 MR. GOLDMAN: Of the choices given. I don't think  
24 we ought to be soliciting an answer.

25 MR. GOLDBERG: We think we have swept up the issues here,

1 the future course and scope of GESMO, many parties will talk  
2 to possible breaking points.

3 MR. SHAPER: It is a question of whether it will be  
4 helpful to the Commission. It is one of the most difficult  
5 questions in front of you, where exactly to break. I am not  
6 advocating it.

7 COMMISSIONER KENNEDY: You can put a question, one  
8 question which might be considered is is there a logical  
9 cut-off point, if one were to be sought.

10 MR. SHAPER: Yes.

11 COMMISSIONER ROWDEN: You have a no difficulty with that?

12 MR. STRAUSS: We will put that in.

13 COMMISSIONER KENNEDY: So long as it has this condition,  
14 the "if".

15 MR. GOLDBERG: Yes. Many parties will view the matter  
16 in that fashion.

17 MR. STRAUSS: One other matter related to this which  
18 we might discuss, which I think would be appropriate for  
19 return to a closed format, as Mr. Shaper mentioned this  
20 morning, one aspect of the S-3 Notice is the incorporation  
21 of a description of the hearing board.

22 A possibility, depending on the options that are  
23 adopted, would be to make use of one or more members of the  
24 GESMO hearing board in conjunction with the S-3 effort.  
25 They are obviously educated, they have obviously also performed  
extraordinarily well in what they have done.

1           The choices that you have left open make it impossible  
2 at this time to make any such move. What I suggest might  
3 be done in the interest of moving the S 3 proceeding forward  
4 would be to publish it, as you have already approved it --  
5 and I think you have to identify the board. I think they  
6 have to get started. But it would be possible to add a  
7 conditional statement: "In the event that the Commission may  
8 wish " --

9           COMMISSIONER ROWDEN: Either you have confidence in  
10 these people, and know you have confidence and select them  
11 and it is go. I would feel, if I were designated to be a  
12 member of a board on that basis that if a better team comes  
13 along --

14           MR. STRAUSS: No, supplementation.

15           COMMISSIONER KENNEDY: If additional hot shots appear  
16 on the scene, we will add them to you.

17           COMMISSIONER ROWDEN: I am not sure that that is --

18           COMMISSIONER KENNEDY: That is the way this Commission  
19 operates all too frequently.

20           COMMISSIONER ROWDEN: I am not sure it would be recieved  
21 in the manner in which you intended it. It is a good panel.  
22 There is a lot to be said for utilizing this talent that  
23 might otherwise/be available if the GESMO proceeding doesn't go  
24 forward.

25           COMMISSIONER KENNEDY: There is no reason the new panel

1 couldn't call upon the others for advice, counsel and  
2 background.

3 COMMISSIONER ROWDEN: But I think we have to make a  
4 choice. The choice is you go with one or go with the other.  
5 You couldn't pick the GESMO panel now, that as much as says  
6 how you are going to come out.

7 COMMISSIONER GILINSKY: Where do we stand on the S-3?

8 COMMISSIONER ROWDEN: The Commission approved three  
9 members for the panel.

10 VOICE: The Commission tentatively approved the  
11 panel.

12 MR. SHAPER: What do you mean tentative?

13 COMMISSIONER ROWDEN: There is no question it would be  
14 a little awkward if we were to change now. But we are in a  
15 position to make that determination now.

16 MR. STRAUSS: The only thing you can do is postpone  
17 publication of the S-3 notice, postpone appointment of the  
18 board or appoint the board as you now have it and go ahead.

19 COMMISSIONER ROWDEN: We have not given public notice.  
20 We decided among ourselves who the Board members would be,  
21 and they have been contacted and indicated they are willing  
22 to serve. It would be awkward -- it's an attractive  
23 possibility, but not being able to implement it now  
24 pretty much dictates the course of action.

25 MR. SHAPER: They know they have been selected?

1 COMMISSIONER ROWDEN: Yes.

2 MR. SHAPER: It would be a little embarrassing  
3 then.

4 COMMISSIONER KENNEDY: We are going with the panel  
5 as originally selected?

6 MR. STRAUSS: So I understand. We will revise the S-3  
7 accordingly,

8 COMMISSIONER ROWDEN:

9 -- it is a great panel.

10 MR. STRAUSS: Okay, that is it.

11 MR. SHAPER: Then we have a notice subject to any  
12 further editing on the version distributed this morning?

13 MR. STRAUSS: That is right.

14 (Conclusion of discussion on this subject)

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