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NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

PUBLIC COMMISSION MEETING

POLICY SESSION 77-55

Place - Washington, D. C.

Date - Friday, 2 December 1977

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2 UNITED STATES OF AMERICA
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4 NUCLEAR REGULATORY COMMISSION
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6 PUBLIC COMMISSION MEETING

7 POLICY SESSION 77-55
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10 Room 1130
11 1717 H Street NW
12 Washington, D.C.

13
14 Friday, 2 December 1977

15 The NRC Commissioners met, pursuant to notice, at
16 1:45 p.m., JOSEPH HENDRIE, Chairman, presiding.

17 PRESENT:

18 JOSEPH HENDRIE, CHAIRMAN
19 RICHARD KENNEDY, COMMISSIONER
20 VICTOR GILINSKY, COMMISSIONER
21 PETER BRADFORD, COMMISSIONER

22 Howard Shapar
23 R. Minogue
24 R. Jones
25 Lee V. Gossick
B. Snyder
Samuel Chilk
E. Case

P R O C E E D I N G S

1
2 CHAIRMAN HENDRIE: Okay, we are meeting this
3 afternoon to hear a summary from the Staff of the Public Response
4 to Proposed Rulemaking on Criteria and Procedures for
5 Determining Eligibility for Access to or Control Over
6 Unclassified Special Nuclear Material.

7 And, we are ready to go. Since I have some Vugraph
8 preprints, I assume you have some Vugraphs, and maybe what
9 the Commission ought to do is let you fire those at us and
10 then we will see if we can --

11 MR. GOSSICK: Good.

12 Mr. Jones will lead off the discussion and Howard
13 Shapar will cover the aspects of the hearing.

14 MR. JONES: First, I will give you a chronology.

15 (Slide.)

16 The first Vugraph shows you where we were and
17 what had occurred in the situation starting back in August of
18 1974 when legislation gave us the authority to provide this
19 clearance program.

20 We drafted -- we developed the program, various
21 considerations, alternatives, options The joint ERDA Task
22 Force had an input to this program. The Miller Task Force
23 and our NRR, NMSS, IE Task Force was identified the crucial
24 role of clearances.

25 And then we presented SECY 76-508 along with the

mm 1 options and alternatives for the Commission to consider
2 publication of this program for public comment.

3 That was done. The public comment period ended in
4 May of this year.

5 We have analyzed those comments. Many of them
6 requested public hearings; about 25 percent of them requested
7 public hearings.

8 And there were a number of other issues raised in
9 these public comments.

10 General Counsel raised some questions regarding these
11 hearings, and you just recently received a memo from ELD-OGC
12 on that subject, which Mr. Shapar will take care of later.

13 (Slide.)

14 The next Vugraph shows the issues that we considered
15 in developing the program and the issues that were raised
16 during the public comment.

17 They were essentially the same issues, so we got
18 really no surprises from the public comment; who is to be
19 cleared, transportation, light-water reactors, their job
20 function, we were setting a precedent in the civilian sector --
21 we knew that -- people told us about industry practice -- we
22 knew what that was, industry does screen employees, they do
23 perform psychological tests.

24 The government practice, of course, in many agencies,
25 have used background investigations and psychological tests.

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1 We considered a graded program, a one-level clearance
2 versus a two-level clearance. This was addressed in the public
3 comments, also.

4 Many people asked about the physical protection
5 alternatives -- do you have to have clearances? We considered
6 this. They go together.

7 COMMISSIONER GILINSKY: Can I stop you for a minute?

8 MR. JONES: Surely.

9 COMMISSIONER GILINSKY: Are you lumping together
10 the fuel cycle and reactors?

11 MR. JONES: Yes. We are talking about both here.

12 Now, some of these issues like the second one,
13 application to LWRs, address the point of well, should this
14 be applied to reactors as well as to fuel cycle facilities.
15 That is one of the issues, of course.

16 But as I go down through here, I am not really
17 separating them at this point.

18 MR. CASE: The proposed rule applied to both.

19 MR. JONES: The proposed rule applied to both.
20 It did not separate them. It was control over and access to,
21 applied to both reactors and fuel cycle facilities.

22 That question, of course, was raised when we were
23 preparing the paper, and it was also raised in public comment.

24 We addressed the issue of psychological assessment,
25 structured interviews with alternatives to background



1 investigations with the basis that we might use these instead
2 of, or as supplements to the background investigations.

3 We were also aware of the number of labor constraints
4 that were involved in this kind of a program and the costs to
5 both the NRC and the licensee.

6 If this program were installed the NRC would have to
7 beef up its staff maybe as much as a dozen or so people. I
8 think you have already had a memo on that from the Comptroller
9 as to what would be involved for the NRC staff.

10 The question was also raised as to who pays for
11 this, the licensee, or does the government take care of it?

12 The appropriateness of the criteria, we also
13 considered at some length, and how they were compatible with the
14 DOE criteria for derogatory information; the same derogatory
15 information, different derogatory information, or different
16 application of the same derogatory information.

17 Then we also considered, and questions were raised
18 on just what kind of value do clearances provide you against
19 insiders, protection against insiders.

20 There were also questions raised and concerns with
21 the actual legal basis of applying clearances, and of applying
22 clearances to specific types of facilities; specifically, light
23 water reactors.

24 Then we also had the impact and interface of
25 access clearances for access to the SNM and clearances to access

1 for classified information, what are the interfaces here.

2 In most cases it would be the same people that would
3 be cleared. We would use the same investigative techniques, the
4 same information, but it might be applied a different way
5 because of the different application; one for information, one
6 for special nuclear material access.

7 And then we recognized the civil liberty impact.
8 The public comments recognized that there were civil liberty
9 impacts. One of the union letters specifically stated that they
10 knew that there was a civil liberty impact, but they
11 felt that this was worthwhile to provide the protection
12 necessary for their workers. These were the electrical workers
13 in the reactors. This was specifically talking about reactors.

14 COMMISSIONER GILINSKY: What kind of protection are
15 you talking about?

16 MR. JONES: The protection provided by a clearance
17 to assure that they were reliable people working in that
18 reactor. That is the tone of the union letter.

19 COMMISSIONER GILINSKY: They wanted to be sure that
20 everyone working in there was --

21 MR. JONES: Yes. They wanted to be sure that you
22 had reliable, stable employees working with the union. That
23 was the International Brotherhood of Electrical Workers
24 that stated that.

25 Those were the issues that we addressed. We

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1 summarized those in the paper SECY 77-486, and recommended
2 in that paper that the Commission have hearings to explore
3 these issues with the public.

4 Mr. Shapar can discuss with you some of the implica-
5 tions, whatever, having to do with those hearings.

6 COMMISSIONER GILINKSY: You had another slide, I
7 believe.

8 MR. JONES: Yes, I have one other slide, if you wish.
9 I haven't said anything about it.

10 (Slide.)

11 The one on impacts will give you some idea of what
12 the impact of this would be to the industry.

13 This is the impact of the proposed regulation,
14 the full field background investigation, national agency check.

15 These are the number of people that will be affected
16 in that timeframe, those timeframes given, and the approximate
17 costs. This is approximately a \$1000 charge for a full field
18 background investigation, about \$30 for a national agency check.

19 COMMISSIONER GILINSKY: These numbers are dominated
20 by the reactor numbers, aren't they?

21 MR. JONES: Yes.

22 COMMISSIONER GILINKSY: The fuel cycle numbers are
23 presumably about 10 percent of the --

24 MR. JONES: There are probably a dozen fuel cycles
25 versus some 60 reactors.

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1 MR. MINOGUE: Not only that but many of the people
2 in the fuel cycle program already have information-type
3 clearances, that would not require further clearances. So
4 they are very definitely dominated by the reactors.

5 COMMISSIONER GILINSKY: So they are practically all
6 reactors.

7 MR. MINOGUE: Yes, sir.

8 MR. JONES: Practically all reactors.

9 MR. MINOGUE: Basically all reactors.

10 MR. JONES: But most of the people already are
11 cleared in the fuel cycle facilities.

12 COMMISSIONER GILINSKY: So we are really talking
13 about a reactor clearance program.

14 MR. JONES: It would apply to all of them. And there
15 may be people --

16 COMMISSIONER GILINSKY: But in terms of impact,
17 additional impact?

18 MR. JONES: Additional impact, yes.

19 MR. MINOGUE: Additional impact, that's correct.

20 MR. JONES: And a major number of comments on the
21 rules were from utilities.

22 Now if you wish, we can go into some of the other
23 issues, or we can proceed with the subject of the hearing.

24 CHAIRMAN HENDRIE: Let me ask about -- one of the
25 sets of comments had to do with the use of research reactors.

mm 1 Let's see. This program would not apply --- what --
2 in any event, we are not talking about Department of Energy
3 Research Reactors?

4 MR. JONES: No.

5 CHAIRMAN HENDRIE: But we could be talking about 50,
6 60-odd university reactors and other civilian research reactors.

7 MR. JONES: Well the way the proposed rule was
8 written, it stated that those facilities that came in Part 73
9 would have the clearance applied to them.

10 Our intent was those facilities that had the
11 stringent protection of 73 50 and 60, and that would not include
12 most of the research reactors.

13 CHAIRMAN HENDRIE: Okay.

14 MR. JONES: Now, when we go into the upgrade rule,
15 and identified specifically the formula quantities and that
16 sort of thing, then you are talking about perhaps only one
17 research reactor left under that rule. So this rule would
18 be worded so that it would be those formula quantity facilities
19 under the upgrade rule and under 73 55 that this would apply to.
20 That was our original thought in that.

21 So that the small research reactor with the lower
22 quantities would be handled in a separate part of part 73.

23 COMMISSIONER GILINSKY: But the larger research
24 reactors would be included, the ones that have formula quantities?

25 MR. JONES: Formula quantities, yes.

mm 1 MR. SNYDER: Incorporated irradiated and unirradiated
2 formula quantities if 73 50 is approved, right?

3 MR. JONES: That -- in the upgraded rule there is
4 an exemption for irradiated, 100 rem exemption. Now that is
5 still up in the air and it is still being looked at. NRR is
6 evaluating what kind of protection we need on research reactors,
7 what are the consequences and that sort of thing.

8 And I think perhaps Ed Case or Jim Miller could
9 state that better than I can.

10 COMMISSIONER GILINSKY: Is the theory that we are
11 protecting research reactors against theft of special nuclear
12 material; power reactors against sabotage?

13 MR. JONES: Yes, because the research reactors have
14 high enriched uranium.

15 COMMISSIONER GILINSKY: So you are not protecting --

16 MR. JONES: No.

17 NRR is also doing a study on the consequences of
18 sabotage for a research reactor to see whether or what kind of
19 protection we need at research reactors from sabotage as well
20 as from theft. Those things are being considered right now.

21 MR. CASE: It is our view, pending the results of
22 this study that diversion protection is more than adequate to
23 protect against sabotage on research reactors. We are having
24 a study done to confirm that.

25 COMMISSIONER GILINSKY: Let's see, you would be

mm 1 protecting some reactors, however, from the point of view of
2 diversion if we had certain quantities of material, but
3 other reactors almost of the same size would presumably posing
4 the same sabotage dangers, would not be so protected?

5 MR. JONES: We also have another rule --

6 COMMISSIONER GILINSKY: Or, do these reactors
7 just not pose much of a sabotage threat at all, and this is
8 something not to worry about?

9 MR. JONES: That is what we are looking at right now.

10 That is what we think right now, but they are
11 confirming that, that they don't really pose a sabotage problem.

12 MR. MINOGUE: One of the comments was -- that many
13 of the commenters stressed was the training type reactor rather
14 than the research reactor, and many of these are the type
15 the sabotage potential was assessed in the past, and I think
16 it is generally regarded as not being of significant concern.

17 COMMISSIONER GILINSKY: Now you would treat all
18 power reactors the same, presumably? You wouldn't tie it to
19 any closeness to population areas or anything like that?

20 MR. MINOGUE: That's right.

21 CHAIRMAN HENDRIE: Why don't we hear from Howard
22 about the hearing aspects.

23 MR. SHAPAR: I will be extremely brief.

24 In the Notice of Proposed Rulemaking, the Commission
25 indicated that if there was sufficient public interest in this

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1 matter it would consider holding public hearings.

2 There is a lot of public interest, and consequently
3 Staff suggested to the Commission that a legislative type
4 hearing be held.

5 There is some question about the form of the Notice
6 of Hearing that went up to the Commission with that suggestion.
7 Jerry Nelson and I sent you fairly recently a revised form
8 of Notice of Hearing to take into account several suggestions
9 from Jerry Nelson's office.

10 I understand that there may be some other questions
11 about that revised Notice of Hearing that was sent to you by
12 Jerry Nelson and me. If not, I guess the Commission is in a
13 position now to approve the Notice.

14 COMMISSIONER GILINSKY: We are approving basically
15 going forward with the hearing?

16 MR. SHAPAR: Yes.

17 COMMISSIONER GILINSKY: We are not dealing here with
18 any particular proposal?

19 MR. SHAPAR: No.

20 The idea of the hearing, of course, is to get further
21 public input so we would have a better data base from which to
22 select --

23 MR. MINOGUE: When the rule was published as a
24 proposed rule, one of the points under consideration was a
25 possible need for a hearing, and the Commission explicitly



mm 1 solicited public reaction on that.

2 A large number of the people that commented suggested
3 a hearing.

4 In view of the nature of many of the issues, they
5 are not narrow, technical issues, they get into broad
6 questions of public policy, but the hearing would basically
7 be in regard to a proposed rule, one which has already been
8 published.

9 COMMISSIONER GILINSKY: But we would be going into the
10 hearing with this proposed rule?

11 MR. MINOGUE: Yes.

12 COMMISSIONER GILINSKY: There would be commentary
13 on the proposed rule?

14 MR. SHAPAR: And a number of specific questions
15 which are outlined in the notice.

16 MR. JONES: The revised Notice that they prepared
17 listed the various issues. There were seven different issues
18 that were identified.

19 MR. SHAPAR: To help set a focus.

20 MR. JONES: To focus the hearing.

21 COMMISSIONER GILINSKY: All right.

22 MR. JONES: Commissioner Kennedy has made some
23 comments on changes to this Revised Federal Register Notice.

24 This memo is November 21.

25 COMMISSIONER KENNEDY: Mr. Bradford also made some

mm 1 suggestions.

2 MR. CHILK: Mr. Bradford made some changes to the
3 Federal Register Notice which we then coordinated with --

4 COMMISSIONER BRADFORD: Yes, those are in now.

5 MR. CHILK: Those are in.

6 It is my understanding that all of you have
7 approved the changes that have been made by Commissioner
8 Bradford.

9 CHAIRMAN HENDRIE: Now, let's see. Bob, did
10 Commissioner Kennedy's and Commissioner Bradford's -- their
11 comments don't run to the same places do they?

12 MR. MINOGUE: Not to my knowledge.

13 MR. JONES: I don't know what his comments were,
14 but they are apparently in here already.

15 CHAIRMAN HENDRIE: If I talk about the Nelson-
16 Shapar Draft, all right?

17 MR. SHAPAR: Right.

18 CHAIRMAN HENDRIE: Then Commissioner Bradford has
19 some suggested changes for that. And the Commissioners have
20 all agreed to those.

21 MR. SHAPAR: Right.

22 CHAIRMAN HENDRIE: Commissioner Kennedy also has
23 some comments with regard to the Nelson-Shapar draft. I know
24 I have agreed to them. And they don't conflict.

25 MR. MINOGUE: Yes, sir, that is correct.

1 CHAIRMAN HENDRIE: Okay.

2 Then as far as I know, why is everybody agreed?

3 MR. JONES: The question then that would be raised
4 would be Commissioner Kennedy's fourth comment, that specifically
5 says that the Commission will consider, whereas --

6 CHAIRMAN HENDRIE: Wait a minute, maybe there is
7 an intersection.

8 Okay, there is in fact a difference in
9 Commissioner Kennedy's -- well, the Nelson-Shapar Draft talks
10 about the Commission: specifically considering the possibility
11 of entertaining at the close of the hearing, requests to
12 permit cross-examination of particular witnesses on specific
13 factual issues, et cetera, et cetera.

14 MR. JONES: But Commissioner Kennedy said --

15 CHAIRMAN HENDRIE: Your amendment was simply to
16 improve the language?

17 COMMISSIONER KENNEDY: Mine was just making it
18 simple, straightforward English to say, yes, we are going to
19 do that, we will consider it.

20 MR. CHILK: I think the Bradford language says the
21 same thing.

22 COMMISSIONER KENNEDY: The Bradford language says
23 the Presiding Officer will decide.

24 COMMISSIONER BRADFORD: My concern was, it didn't
25 make a lot of sense for it to come up to us again at that

mm 1 point. That this would be something I would be willing to
2 entrust to whoever was presiding at the hearing rather than
3 have the four of us have to meet on whether or not it would
4 be appropriate to have cross-examination on matters for
5 which we hadn't been present and weren't at that point terribly
6 familiar with.

7 COMMISSIONER GILINSKY: Who is going to preside over
8 the hearings?

9 MR. SHAPAR: People that you are going to have to
10 select.

11 CHAIRMAN HENDRIE: Presumably a board.

12 MR. SHAPAR: My recommendation to you is a board,
13 unless you want to do it yourself, and I would think the
14 strains on your time would not permit that.

15 CHAIRMAN HENDRIE: To do a decent job, it would
16 occupy the Commission essentially full time.

17 MR. SHAPAR: Legally there are many kinds of options
18 you could use. Traditionally the way to do it is a board,
19 but you could a member of the Staff, a hearing examiner, or
20 administrative law judge.

21 But I think experience and past practice on your
22 part would indicate, I think, a board.

23 CHAIRMAN HENDRIE: I would think so, would you not?

24 COMMISSIONER KENNEDY: I would think so. I
25 assumed it would be.

1 CHAIRMAN HEDRIE: Check down the line here?

2 COMMISSIONER BRADFORD: Yes.

3 COMMISSIONER GILINSKY: Yes.

4 COMMISSIONER KENNEDY: It was with that in mind I thought
5 the Commission itself might well wish to -- on the basis of
6 recommendations, of course from the board -- consider whether
7 it ought to permit cross-examination and authorize the board
8 or direct the board to go ahead and conduct it.

9 MR. SHAPAR: Traditionally the Commission has
10 reserved to itself the further possible stage of cross-examination.

11 But, as Commissioner Bradford indicates, the board
12 is on the spot, it is most conversant with the evidence, and I
13 guess could be relied upon to do a rather reasonable choice
14 with respect to further cross --

15 COMMISSIONER BRADFORD: I guess I just wasn't
16 familiar with that practice, but how many proceedings has that
17 come up in?

18 I mean, does the Commission spend a lot of time
19 worrying about whether cross-examination --

20 COMMISSIONER GILINSKY: Has it ever come up?

21 MR. SHAPAR: I think the Commission has provided for
22 it twice; GESMO, and of course we haven't gotten to that stage
23 yet in GESMO, and --

24 COMMISSIONER KENNEDY: And S-3.

25 MR. SHAPAR: -- and S-3.

mm 1 So the Commission is really in the spectrum of
2 experimenting in the Rulemaking. The Commission has really,
3 I think, gone three or four ways.

4 COMMISSIONER GILINSKY: Well, let's see, we haven't
5 really dealt with it in S-3, have we?

6 MR. SHAPAR: We haven't come to that point.

7 COMMISSIONER GILINSKY: We haven't come to that
8 point.

9 So there is really just GESMO and we never --

10 COMMISSIONER KENNEDY: And we never came to that
11 either.

12 MR. SHAPAR: The question was, what has the
13 Commission outlined as a future course of action in the places
14 where it has done so?

15 In the places where it has done so, it has reserved
16 for itself the determination that it would decide, rather than
17 the board.

18 COMMISSIONER KENNEDY: Well in the place, rather
19 than places. There is just GESMO, is that right?

20 MR. SHAPAR: And S-3.

21 COMMISSIONER GILINSKY: We haven't come to that in S-3.

22 MR. SHAPAR: But that is what it says in the notice,
23 both of those proceedings, but you haven't come to that point yet.

24 COMMISSIONER GILINSKY: But we didn't decide that on
25 these.

mm 1 COMMISSIONER KENNEDY: We decided that we would
2 consider it when the time came.

3 MR. SHAPAR: The Commission.--

4 COMMISSIONER GILINSKY: No, I thought we would
5 decide by the end of this year, whether we would put ourselves
6 in that posture.

7 CHAIRMAN HENDRIE: You mean of having cross-
8 examination?

9 COMMISSIONER GILINSKY: Yes, or does my memory
10 fail me?

11 MR. SHAPAR: You think so.

12 (Laughter.)

13 CHAIRMAN HENDRIE: But you are both right. All
14 Howard said was that the notice--

15 COMMISSIONER KENNEDY: But whatever the Commission
16 decided, it would make the decision.

17 CHAIRMAN HENDRIE: But the S-3 notice takes note
18 of this possibility, right?

19 MR. SHAPAR: Yes.

20 CHAIRMAN HENDRIE: So what you are both saying is
21 correct. It is not incompatible, at any rate; you may be
22 both wrong.

23 (Laughter.)

24 MR. SHAPAR: We approach that with different insights.

25 CHAIRMAN HENDRIE: I see.

1 COMMISSIONER BRADFORD: I guess maybe if I had S-3
2 to think over again I would want to word that the same way as
3 I have suggested doing it here.

4 But I just can't see it as very productive use of
5 the Commission time to step back and reassert that kind of a
6 control over a hearing.

7 COMMISSIONER KENNEDY: It is essentially a policy
8 question.

9 COMMISSIONER BRADFORD: I guess perhaps I hadn't
10 understood the extent to which the Commission hadn't -- it was
11 just really new ground.

12 MR. SHAPAR: I would say on the other hand, on
13 supporting your position, the Commission had really been
14 experimenting in this area, and the one thing they haven't
15 done is --

16 (Laughter.)

17 -- it's another experiment.

18 COMMISSIONER GILINSKY: Another zany idea.

19 (Laughter.)

20 COMMISSIONER KENNEDY: The one thing it hasn't done
21 is either.

22 COMMISSIONER BRADFORD: In fact it has done none
23 of these things except conceptually, to lay them out.

24 MR. SHAPAR: Can I just interject, that really there
25 have been three or four points in the spectrum of the way the

1 Commission has handled its rulemaking.

2 Number one is just notice of comment; number two is
3 a pure legislative type hearing without even a glint of the
4 possibility of further add-on cross-examination; then a full
5 adjudicatory type rulemaking such as ECCS; and then a hybrid
6 that we experimented with in GESMO, which is to offer a follow-
7 on thing if justified in terms of an adjudicatory process.

8 COMMISSIONER BRADFORD: There is no reason to doubt,
9 is there, that the Licensing Board -- of course they can get
10 back to use if they feel uncomfortable -- the legal guy chairing
11 Licensing Board wouldn't be comfortable deciding whether his
12 record would be enhanced by cross-examination?

13 MR. SHAPAR: I think they would be quite comfortable
14 with it if you say they will make the decision. Beyond that the
15 test is pretty well known. The test is whether or not there
16 are any substantial matters or material fact, that is the
17 traditional touchdown for triggering cross-examination.

18 There don't appear to be any at this time from the
19 comments that have been submitted. They are mainly policy and
20 legal.

21 And so for that matter another option the Commission
22 has is to decide right now that it is going to be purely
23 legislative type, and not offer this possibility of further
24 cross-examination.

25 COMMISSIONER GILINSKY: When you said presiding

mm 1 officer, did you mean the board?

2 COMMISSIONER BRADFORD: Well, I would guess --

3 MR. SHAPAR: A three-man board.

4 COMMISSIONER GILINSKY: Well, there is something to
5 be said for Peter's proposal in that it would mean if we
6 didn't follow it then we would have to come up, bring the thing
7 up here, we would have to have someone review, and we would
8 have more meetings and recommendations one way or the other.

9 And you know, if you go through all that you might as
10 well hear the whole case yourself.

11 MR. SHAPAR: I think there are more important items
12 on your agenda than that.

13 MR. JONES: If you decide now not to permit cross-
14 examination, then nobody would have to decide.

15 COMMISSIONER GILINSKY: That's right, that's the
16 other way to go.

17 MR. JONES: Yes.

18 MR. MINOGUE: There is something else --

19 MR. SHAPAR: There is some argument to be made on
20 that point, and that is that if you hold out the spectre of
21 cross-examination it could be argued that when you are dealing
22 with largely policy and legal issues you are perhaps decreasing
23 the amount of participation that you otherwise might get in
24 the legislative phase.

25 I emphasize that because I wouldn't say that if

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1 the matters were largely questions of fact, but they are not
2 here up until now.

3 So one could make the argument on the other side
4 that if you are going to be telling people if they appear they
5 are liable to be subject to cross-examination, they might not
6 want to invest that time in showing up, which I think is one
7 of the points that -- so those, I think are your options,
8 basically the three as I have described them.

9 COMMISSIONER KENNEDY: It is for that reason, by
10 the way -- (Inaudible.) -- just simply by not making it clear
11 that in fact there would be a cross-examination clause requiring
12 that it be brought to the Commission, we would enhance the
13 likelihood of better participation -- (Inaudible.)

14 MR. SHAPAR: I think to the extent that these
15 people felt more secure, that by merely appearing at the legisla-
16 tive phase, they wouldn't be opening themselves up to cross-
17 examination, I think one could argue you would get wider public
18 participation.

19 But you know, you are largely in a speculative area.

20 I think the thing to focus on is whether or not you
21 think the kind of issues here are factual issues or not. That
22 is why in the briefing we --

23 COMMISSIONER BRADFORD: Granted that is the ultimate
24 test -- I guess I am just more comfortable letting the presiding
25 officer assess the ebb and flow of what has come up at a hearing

1 a lot better than we can, allow him to make that determination
2 after the hearing, than I am just assuming that we know in
3 advance everything that is going to come up.

4 I mean, who knows as to what sort of thing will come
5 up at the actual hearing. Someone will get on the witness
6 stand, Lord knows what they might say about conditions at a
7 particular plant or set of plants that might merit further
8 examination, and that we can't anticipate now.

9 CHAIRMAN HENDRIE: Okay.

10 I am going to try a recommendation. I recommend
11 that we take Mr. Bradford's proposed direction, change the
12 presiding officer to board, or whatever is appropriate to reflect
13 the fact that we think it may be a board, and I think that
14 is also -- I sense that is a decision of the Commission in
15 fact.

16 And I propose that we then go and try this one with
17 the board deciding whether there should be a cross-examination
18 phase and what its scope should be.

19 How does that strike you?

20 COMMISSIONER GILINSKY: That's fine.

21 COMMISSIONER BRADFORD: That's fine.

22 CHAIRMAN HENDRIE: I sort of counted on you, Peter.

23 (Laughter.)

24 COMMISSIONER BRADFORD: Well, you did change my

25 wording.

mm 1 (Laughter.)

2 CHAIRMAN HENDRIE: Okay, Dick?

3 COMMISSIONER KENNEDY: Sure.

4 You will make the other changes, right?

5 MR. MINOGUE: Yes.

6 CHAIRMAN HENDRIE: So ordered.

7 Okay, anything else we need to consider on this
8 matter?

9 MR. MINOGUE: That does it.

10 CHAIRMAN HENDRIE: That's it.

11 MR. SHAPAR: We better be thinking about a board,
12 I guess as the next step. I think the General Counsel ought
13 to do it, not the Staff.

14 CHAIRMAN HENDRIE: Okay.

15 Thank you very much.

16 (Whereupon, at 2:25 p.m., the hearing in the above-
17 entitled matter was adjourned.)

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