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NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

PUBLIC MEETING

**DISCUSSION OF COMMISSION'S DECISION-MAKING
ROLE IN EMERGENCY RESPONSE**

Place - Washington, D. C.

Date - Tuesday, 16 October 1979

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1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

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4 PUBLIC MEETING5 DISCUSSION OF COMMISSION'S DECISION-MAKING
6 ROLE IN EMERGENCY RESPONSE7
8 Room 1130
9 1717 H Street, N. W.
10 Washington, D. C.11
12 Tuesday, 16 October 1979
13 3:20 p.m.

14 BEFORE:

15 DR. JOSEPH M. HENDRIE, Chairman
16 VICTOR GILINSKY, Commissioner
17 RICHARD T. KENNEDY, Commissioner
18 PETER A. BRADFORD, Commissioner
19 JOHN F. AHEARNE, Commissioner

20 PRESENT:

21 Messrs. Bickwit, Case, Gossick, Kenneke, and Stello.

22 * * *

23

24

25

PV DAV 1

P R O C E E D I N G S

2 CHAIRMAN HENDRIE: The meeting will come to order.
3 Does it continue to be our understanding that we
4 can proceed to an affirmation?

5 MR. BICKWIT: That's my understanding.

6 COMMISSIONER BRADFORD: I would rather do it at
7 the end of this meeting.

8 CHAIRMAN HENDRIE: I can. Let me then explain
9 what the schedule looks like for the rest of the afternoon
10 on the basis of that request. The commission was scheduled
11 to meet now, or, rather, 20 minutes ago, on the subject of
12 its decision on taking a role in emergency response and to
13 discuss what, in particular, the commissioners and the
14 commission collegially ought to do in the event of an
15 emergency. I am going to start that meeting in a moment and
16 allow it to run until 4:15. At that point, wherever we are
17 in the discussion, we will terminate it.

18 The commission, as some of you may know, has since
19 late last week considering the question of the operation of
20 EPICOR-2 at Three Mile Island Unit 2, and a commission order
21 has been promised on that subject. It's my understanding
22 that we have an order which is acceptable to all of the
23 commissioners, and assuming that to still be true, at 4:15 I
24 will ask my colleagues to join me in voting to hold a
25 short-notice affirmation session or meeting to vote that

pv DAV 1 order.

2 At 4:30 the commission will adjourn. We have a
3 meeting on some personnel matters that I have to make sure
4 we get in this afternoon. And a couple of us have to leave
5 by 5:00, so that the schedule runs fairly tight.

6 With that introduction as to where I think we're
7 going this afternoon, let us turn to the commission's
8 decisionmaking role in emergency response. By way of -- I
9 see either the offensive team, or the defensive team, has
10 taken the field -- I'm not sure which --

11 (Laughter.)

12 CHAIRMAN HENDRIE: -- Or perhaps it's the special
13 team with the suicide squad members. I'm not quite sure.

14 (Laughter.)

15 CHAIRMAN HENDRIE: I have been watching Monday
16 night football.

17 By way of a preliminary note to this discussion,
18 in which I will ask Al Kenneke to lead us through a briefing
19 on some work that his group has done on the subject, I will
20 note that as an interim measure and until the collegial
21 commission decides differently or however it may decide on
22 what role the commission itself and commissioners ought to
23 have in the event of an emergency situation.

24 Last Friday I decided that until the collegial
25 commission decision is in hand on commissioner roles, that

pv DAV 1 if we have an emergency and the emergency management team of
2 the agency is mustered, that I am going to go off to the
3 response center and join that effort.

4 Al, why don't you go ahead. I take these are --

5 MR. KENNEKE: These are some slides that we've
6 prepared from the paper.

7 CHAIRMAN HENDRIE: That you're going to talk from?

8 Good.

9 MR. KENNEKE: I thought I would best start back
10 with the origins of the specific problem, other than Three
11 Mile Island itself, which was a memo from
12 Commissioner Bradford, in May, in which he called to your
13 attention the need to make some decisions about what your
14 role would be.

15 Can we have -- I hope - a slide 1, please?

16 They've lost the bulb.

17 You each have sheets in front of you. From the
18 audience's point of view, I hope the bulb is fixed quickly.

19 CHAIRMAN HENDRIE: Notice the smooth way in which
20 we deal with this emergency.

21 (Laughter.)

22 MR. KENNEKE: Commissioner Bradford put it very
23 basically that the basic question was whether or not the
24 commission could act collegially in the event of an
25 emergency response, an NRC emergency response; and if not,

ov JAV 1 then various delegations should be made and the matter
2 clarified.

3 Particularly, matters that he suggested be
4 considered on your agenda would be the locus of the
5 commission during an emergency --

o (Slide.)

7 -- Decisions to assign personnel to sites --

8 COMMISSIONER GILINSKY: "Locus" is like where the
9 commission is going to be?

10 MR. KENNEKE: Yes. The base of operations,
11 whether it's going to be in some corner office on H Street,
12 out in the heart of things, or on site.

13 COMMISSIONER KENNEDY: St. Louis?

14 CHAIRMAN HENDRIE: Well, I am going to have to buy
15 more ashtrays if we're going to run any more out of my
16 office.

17 MR. KENNEKE: The matter of recommending that
18 protective measures be taken, what the generic implications
19 might be for the plants, setting up post-accident
20 investigations in the various matters of liaisons.

21 As a result of that memo, the commission met in
22 June and discussed the matter in very broad terms with the
23 staff -- Harold Denton and Vic Stello, primarily, and
24 yourselves.

25 And the questions that seemed to us to summarize

1 that meeting were: are there clearly defined areas of
2 crisis management in which the commission's input is
3 desirable or necessary; if so, should these responsibilities
4 -- this is the second slide. Excuse me.

5 Slide 2, please.

6 (Slide.)

7 If so, should these responsibilities be handled
8 singly or collegially? If individually, by whom?

9 COMMISSIONER GILINSKY: Actually, on that point,
10 on the singly, the general counsel had some comments on this
11 subject --

12 MR. KENNEKE: I will come back to that.

13 COMMISSIONER GILINSKY: -- At the meeting last
14 week. And I think you ought to address that point.

15 MR. KENNEKE: Yes.

16 What would the threshold points for commission
17 involvement be? And finally, what would the agenda be in
18 the event you participated?

19 We then, based on the commission's request,
20 developed what we hoped would be the basis for further
21 discussion that reflected the views of everyone. There were
22 very strongly held feelings that needed to be sorted out,
23 and that's basically what we attempted to do, to break the
24 problem down and lay it out in a way that perhaps would
25 allow us to approach it more rationally.

0V DAV 1 And I have on slide 3 --
2 (Slide.)

3 -- An outline of that memo. Simply, as the
4 background that led to the memo, it broke the problem down
5 into talking about the values of commission participation,
6 what the limits should be, should you participate, how that
7 might take place, what kinds of accidents might need to be
8 considered, and what items might be on that agenda, as well
9 as recommendations for future action.

10 (Slide.)

11 Slide 4, I would like to proceed and talk in more
12 detail about the memo. Under the heading of "Value of
13 Commission Participation" --

14 COMMISSIONER AHEARNE: Al, before you go into the
15 details, I am sure it's obvious, but I would like you to say
16 just a word or two about your answer, your first major
17 question, "Are there clearly defined areas in which
18 commission input is desirable or necessary?" The "desirable
19 or necessary" is from the standpoint of protecting the
20 public health and safety, and solely that; is that correct?

21 MR. KENNEKE: Yes. I think that's the essence of
22 the basic question. The question is whether your
23 involvement would add to safety or detract from safety.

24 COMMISSIONER AHEARNE: Fine.

25 MR. KENNEKE: Many individuals that we talked to

1 1 felt very strongly the commission shouldn't participate in
2 making decisions on responsive action, primarily because it
3 goes exactly to the point we just spoke of: it could cause
4 delay and create difficulty and make things less safe.

5 There are different perceptions, however, of the
6 commission's role, and it goes to the question of
7 decisionmaking. There really isn't any great question, I
8 think, about the role of individual commissioners acting in
9 specific roles, such as spokesmen in particular areas.
10 There is no question that you have policymaking
11 responsibilities beforehand and in the aftermath.

12 COMMISSIONER AHEARNE: Could I ask you a question
13 on that. You say that there is no concern about individuals
14 acting as spokesmen. Was any concern expressed about having
15 multiple spokesmen?

16 MR. KENNEKE: Yes.

17 COMMISSIONER AHEARNE: So, when you say there was
18 no concern -

19 MR. KENNEKE: What I was trying to say is that
20 those who were concerned about the commission not
21 participating or participating were concerned that your
22 collegial activities could interfere with decisionmaking.
23 They were not saying that you could not vote to be
24 participants as individuals in some specific specified way.

25 COMMISSIONER GILINSKY: Who is "they" now?

1 DAV 1 MR. KENNEKE: I would say primarily members of the
2 staff, the members that we talked to, and what we sensed
3 many of the difficulties you yourselves reading between the
4 lines.

5 COMMISSIONER GILINSKY: Did you ask them about
6 non-crisis activities?

7 (Laughter.)

8 MR. KENNEKE: We focused on emergency
9 requirements. A few other fora exist for that.

10 There is, however, despite people's concerns about
11 you not participating, I would say a residual concern that
12 there is a specific value to having the commission
13 participate, and they were not trying to say somehow not to
14 capture that value.

15 COMMISSIONER AHEARNE: What value was that?

16 MR. KENNEKE: That the response to a nuclear
17 emergency is likely to require decisions that involve value
18 judgments and agency commitments of the kind that the
19 commission would normally be required to make. In that
20 sense, if we could find a way, that would be the sense in
21 which the commission could come in.

22 Clearly, the limitations to commission
23 participation related to your decisionmaking role. The
24 constraints on that primarily was the question of time when
25 you needed to make a decision.

PV DAV 1 COMMISSIONER AHEARNE: Let me continue to push on
2 this, because, as I understand it, you did -- I guess Joe
3 and Jim went through this -- did interview a lot of people
4 or talk to a lot of people; is that correct?

5 MR. KENNEKE: Yes, one way or another.

6 COMMISSIONER AHEARNE: The flavor I am getting is
7 that the concern was solely because of the difficulty of
8 something that's moving rapidly and the difficulty of
9 bringing in a collegial group to try to have input into a
10 rapidly evolving --

11 MR. KENNEKE: That's the heart of the matter, yes.

12 COMMISSIONER AHEARNE: That's the heart of the
13 matter. Then you're saying it was not a concern, A, if the
14 matter weren't developing rapidly, nor, B, on the judgment
15 that might be reached.

16 MR. KENNEKE: The question of how much time was
17 available would be the single area in which it seemed
18 feasible that one could define that if there was sufficient
19 time.

20 COMMISSIONER AHEARNE: There was no concern that
21 the judgments that would be reached would not be the one --

22 MR. KENNEKE: I think -- and this is my own
23 reaction to my own understanding, and this is generalizing a
24 lot of people's points of view -- that while individuals
25 might differ, they, I think, unanimously agree there needs

1 to be a single decision and a clear-cut decision, whatever
2 that decision is, even though they might personally disagree
3 with the particular action.

4 VOICE: There is also concern about the
5 information problem.

6 COMMISSIONER AHEARNE: You mean getting enough
7 information in to make the informed decision?

8 VOICE: Yes.

9 COMMISSIONER KENNEDY: Because individual
10 commissioners would each be seeking different information,
11 or because it's difficult to get that much information to
12 all commissioners, or both?

13 MR. KENNEKE: Both in the first compounding
14 sense. Whatever you do, whatever you decide, I think there
15 was a unanimous feeling that the mechanism for informing the
16 commission and receiving requests for that information goes
17 through a single channel, whatever you decide, to simplify
18 the problems of response, so that if the situation was
19 rapidly developing, I think it's pretty clear that the
20 commission would have to limit its response. I think there
21 is a universal feeling.

22 And from what I read in the newspapers and what I
23 sense in the air, I get the feeling that among you all,
24 similarly, that you recognize that.

25 And so, in that case, you'd have to limit your

ov DAV 1 role to official after-the-fact spokesman, perhaps, or
2 possibly designate a single or lead commissioner to oversee
3 the response or resolve.

4 That's the only other possibility, and I will come
5 back to that. That's the point that Commissioner Gilinsky
6 has raised.

7 COMMISSIONER BRADFORD: Is there in back of this
8 sort of a picture that I guess is pretty close to the
9 picture of the EMT that I would have had before Three Mile
10 Island; that is, it's a group designated and approved by the
11 commission, functioning under procedures and criteria
12 approved by the commission, and therefore that's a good
13 situation for the commission itself not to be involved in?

14 MR. KENNEKE: I think they're saying that whatever
15 organization you set up in advance, that that organization
16 should be allowed to proceed, and everyone should beforehand
17 know what his role is in the event of such a thing, so there
18 would be no confusion. Each would retire to his place to do
19 his thing, or to carry out business if he's not involved. I
20 think that's the essence of it.

21 COMMISSIONER AHEARNE: I think, in following up
22 some part of what I interpreted in Peter's question, did you
23 get any sense from these people who felt that it was
24 appropriate because of the pull of the events not to have
25 the commission involved, that they felt that they had enough

1 in the sense of procedures and guidance? Because the way
2 the chapter is written is that it's supposed to be operating
3 under the policies laid out by the commission. Did you get
4 the sense from them that they felt there was adequate laying
5 out of the policies?

6 MR. KENNEKE: Vic can talk more to this. One of
7 his assignments in the general plan of action is to revamp
8 the manual chapters.

9 Now, I have got in the back here, at the bottom
10 line, something that was not in the memo. It would be a
11 proposal that Vic could take into account.

12 COMMISSIONER AHEARNE: Wait, now. I am not really
13 talking about revamping manual chapters. I am really asking
14 the question: did the people in your discussions -- and I
15 can understand this concept that they feel that once things
16 get started the people operating the emergency response want
17 to have control, single-channel direction, et cetera. But
18 the way -- at least the words say that they do all this
19 under policies laid out by the commission.

20 My question is: did you get a sense that they
21 believe that there is adequate laying out of those policies
22 so that they feel that they have enough guidance framework?

23 MR. KENNEKE: Everything that I know of suggests
24 the staff believes there is plenty of room for improvement.

25 COMMISSIONER AHEARNE: Okay. Is that another way

1 DAV 1 of saying, "Yes, they believe that there must be" --

2 MR. KENNEKE: There should be more improvements,
3 yes. The emergency planning task force told you that, among
4 others. Vic is working on the manual chapters,
5 specifically.

6 One of the things we thought was important to
7 point out was the significance of Three Mile Island itself
8 as a background to the decision with regard to this matter.
9 TMI was, I think, not expected in the sense of being drawn
10 out. It was not visualized as the fundamental starting
11 place for planning. One always thought in terms of the
12 immediately unfolding situations or decisions went too fast
13 for any kind of questions. In the case of Three Mile Island
14 it lasted for some period of time, and a peak in terms of
15 public concern arose a couple of days after the beginning of
16 the event. And it seemed to us that it was that very fact
17 that drew the commission more heavily into it.

18 And there is a lesson in that, in the sense that
19 if the matter is drawn out, it seems inevitable that the
20 commission will be looked to as the chief spokesman for the
21 agency. They will be the points of contact for various
22 inquiries and so on, and not the staff. And in that sense,
23 it argues for carefully considering whether or not you
24 should remove yourselves from emergency response.

25 On the other hand --

5
6 DAV 1 COMMISSIONER AHEARNE: In that case, Al, once
7 Harold got established in Harrisburg, the public looked to
8 Harold to be the chief spokesman.

9 MR. KENNEKE: No, we're talking about drawing up a
10 policy that will guide future response.

11 COMMISSIONER AHEARNE: I thought I was detecting
12 your feeling that because it stretched out, the public
13 inevitably looks to the commission. I am just saying I
14 didn't think that was the case.

15 MR. KENNEKE: The decision to have additional
16 people go to the site, as I understand it, began to involve
17 commission advice, in part.

18 COMMISSIONER AHEARNE: I am only addressing the
19 question of the spokesman. I didn't think that there was
20 any difficulty once Harold was speaking on this matter.

21

22

23

24

25

1 MR. KENNEKE: I'd like to speak to the matter of
2 spokesmen. I'll break that matter down further a little
3 further on. There are spokesmen for the internal workings
4 of the thing, people who are involved in protection, and
5 those who are simply inquiring.

6 On the other hand, though Three Mile Island is
7 stretched out, we've got to be careful that we not use that
8 to bias our thinking, that that's the only kind of thing
9 that can happen. And there are other types of situations,
10 such as safeguards events that one has to be careful of.
11 The gist of that is that we should be thinking about
12 planning what kind of emergency situations might require
13 Commission participation, assuming that you should decide
14 you should be involved in some form.

15 What decisions would be appropriate for Commission
16 decision? And what modes might that participation take? In
17 any event, whatever you come up with it would seem to us
18 would have to be tested by realistic scenarios, and your
19 role and your activities would have to be part of that
20 test. In terms of assuming you had a role, the kinds of
21 things that one would relate to with regard to
22 decision-making would be the subject of the concurrence and
23 perhaps the staff's initial assessment of the severity and
24 the imminence of the threat, whether or not to send higher
25 level officials to the site, whether or not to recommend

kapDAV 1 that protective actions be taken, whether or not to seek
2 supplementary resources, what actions to take with regard to
3 generic concerns, setting up investigations, for example,
4 decisions equally important to recommending modifying or
5 terminating protective actions.

6 At that time, we concluded that this discussion
7 should focus on the following issues: should the Commission
8 limit its role to oversight, high level liaison, court of
9 last resort, or should it extend its role to
10 decision-making?

11 (Slide.)

12 If the Commission assumes -- one more slide,
13 please.

14 (Slide.)

15 If the Commission assumes a key role in
16 decision-making, what would be the preferred mode of its
17 participation and interactions with the staff? Given that,
18 what additional resources would you need, informational,
19 technical and physical, to assume a substantive role and to
20 make that role effective in emergency response
21 decision-making?

22 Whatever you decide, it seems to us the manual
23 chapter among other things should be revised to spell out
24 more specifically what the Commission's role as well as
25 adjusting the role of the staff will be in emergency

capDAV 1 response. At that time we didn't recommend a specific
2 resolution. That's a month ago. It was premature, it
3 seemed to us. We didn't know what your individual views
4 were, you needed time to think about it, you needed to have
5 pieces paper and other things had to happen.

o Well, since then -- and the last month has been
7 very eventful in that respect -- you've had a chance to
8 think about it. You've had the opportunity to talk with a
9 number of the investigating groups within NRC, outside of
10 NRC. It seems to me now, at least for talking purposes at
11 this meeting, a particular proposal might help to solidify
12 the thinking, or at least serve as a point of departure. It
13 seems to us that you need to be specific at this point to
14 come to grips with it and answer.

15 The Chairman has laid out, at least for the
16 interim, what he intends to do. I think you as a group now
17 might respond to that specific question. Slide seven --

18 (Slide.)

19 -- is a copy of the present incident response
20 organization. It has a lot of detail to it, but I want to
21 focus your attention on the very top little box that says
22 "commission," and everything else beneath that, think of as
23 the IRO, one box, however that is now or however that might
24 be reconstituted. 0502 now merely says that the Commission
25 has a policy-making role. Yet in diagrams, by the line

kapuav 1 nature of it, it seems to suggest that you have a
2 decision-making role in the line of decisions. The document
3 is pretty clear. That was not the intent.

4 COMMISSIONER AHEARNE: In the manual chapter it's
5 pretty clear.

6 COMMISSIONER GILINSKY: What's pretty clear?

7 COMMISSIONER AHEARNE: That the Commissioner was
8 to be in general policy, but as far as the instant response
9 and emergency action, that EMT was the group fronting. At
10 least that's what I thought it was.

11 COMMISSIONER KENNEDY: Yes, that's what the manual
12 chapter says.

13 COMMISSIONER BRADFORD: What is ambiguous, I
14 guess, is whether there is an ongoing policy function during
15 the accident. I must say I would have interpreted it as
16 not. But that's not absolutely certain.

17 MR. KENNEKE: The meaning of it becomes kind of
18 ambiguous or it's almost irrelevant in the sense of -- it is
19 not decision-making and it's not really involved in the
20 event. It's an off-line operation.

21 (Slide.)

22 Now, in slide eight, we have drawn there, on the
23 left of the chart, a simplified diagram of the 0502, the
24 Commission and the incident response organization. What we
25 suggest for your consideration, at least as a point of

capUAV 1 departure for discussion, is that the Commission consider
2 replacing the word "Commission" by "director," the chairman
3 of the NRC, that that be understood to be the
4 decision-making site, unambiguously clear that that person
5 makes the decisions in emergency responses.

6 COMMISSIONER AHEARNE: Now, if I understand it,
7 what you're saying is that you happen to be using the same
8 line block on the left-hand side of the manual chapter but
9 since in the manual chapter that really is not a
10 decision-making line between the Commission and IRO, what
11 you are saying is that you would change that to make that --
12 your proposal is to make it a decision-making role.

13 So in essence, whereas in the manual chapter EDO
14 is sort of the senior person making the decisions, you would
15 move that up.

16 MR. KENNEKE: I would say that's right. I would
17 also like to comment, I think there is a difference of
18 opinion as to what the manual chapter says with regard to
19 who makes decisions. Even within the staff, it's not clear
20 absolutely, unambiguously, that EDO is in charge. It seems
21 to us we need an unambiguous --

22 COMMISSIONER GILINSKY: Wait, wait, wait. Why
23 isn't it clear that the EDO is in charge?

24 MR. KENNEKE: If you read it again you can
25 interpret it to mean that he is first among equals but not

kapDAV 1 quite in charge.

2 COMMISSIONER GILINSKY: Where do you read that?

3 Could you read that over to me?

4 MR. KENNEKE: Lee, I know, knows how he interprets
5 it. But whatever you decide --

6 COMMISSIONER GILINSKY: I assume when he
7 interprets it that he is in charge, am I wrong?

8 COMMISSIONER AHEARNE: As far as I can see it says
9 the EDO is director of the executive management team. And
10 when it goes down to I&E it says, "serves as a member of
11 EMT." NRR serves as a member of EMT. This is 0502 part
12 one. It's the response planning duties.

13 MR. GOSSICK: I'd just comment that that's been
14 clear in my mind. There are attendant problems with it, but
15 that's my understanding of the intent.

16 COMMISSIONER BRADFORD: Did anyone dispute it?

17 COMMISSIONER AHEARNE: It certainly seems very
18 clear.

19 MR. GOSSICK: They didn't dispute it, but there
20 were some actions that were taken without my knowledge that
21 were a carry-over from the day-to-day kind of operation
22 which is the normal course of behavior.

23 COMMISSIONER GILINSKY: Let's see, what attendant
24 problems are you referring to specifically?

25 MR. GOSSICK: People are used to acting on their

capDAV 1 own without communicating with EDO during the normal course
2 of business around the NRC. And when you're thrust together
3 in the EMT set-up, in the crisis situation, there's a
4 tendency for that kind of action to carry on.

5 COMMISSIONER AHEARNE: People use resources as
6 though they were --

7 MR. GOSSICK: No, I'm talking about telling people
8 to do things, whether it's their resource or not.

9 COMMISSIONER GILINSKY: I take it you're talking
10 about actions that are of sufficient magnitude --

11 MR. GOSSICK: I'm talking about specifically
12 telling the representative of the state programs office to
13 advise the Pennsylvania people that we're recommending an
14 alert -- I mean, an evacuation. I was not aware of that. I
15 thought he acted on his own, overhearing the conversation
16 that had gone on within EMT, where we were in a position
17 where we called you to tell you that that was our
18 recommendation. And which we did, promptly thereafter.

19 MR. KENNEKE: Well, I'm unable to document it at
20 the moment, the source of my ambiguity. I don't have a copy
21 which I marked up, but let me see if I can do it. There is
22 an ambiguity.

23 CHAIRMAN HENDRIE: Let's just note that if there
24 is one it needs to be cleared up.

25 MR. KENNEKE: That's right. I think we all agree

kapDAV 1 that it should be unambiguous as to who will make decisions
2 and who will speak for NRC. I think that's really the
3 clearest element.

4 COMMISSIONER GILINSKY: Could we return to this
5 alternative proposal that a member of the Commission,
6 particularly the chairman, direct this center?

7 COMMISSIONER AHEARNE: Endorsed by at least one
8 member of the Commission.

9 CHAIRMAN HENDRIE: But there's an interesting
10 thing Vic's alluding to. There's an interesting proposition
11 which we'll ask the general counsel to lead us through, and
12 that is the proposition that in asserting that I propose to
13 go to the response center and take charge of the EMT, if it
14 has to activate, at least as I say up until some further
15 description of Commission is enunciated by the collegial
16 body, it's not altogether clear what my legal authority is
17 to do so.

18 The law says we can delegate to an officer of the
19 Commission the Commission's powers and so on, but apparently
20 we can't delegate to a commissioner.

21 COMMISSIONER KENNEDY: Could you explain that?

22 CHAIRMAN HENDRIE: We might very well be in the
23 position of having to exercise moral suasion on the officers
24 of the staff.

25 MR. KENNEKE: May I ask a point of personal

kapDAV 1 privilege, and finish the proposal, the bottom line of which
2 is a hand-off with regard to the legal aspect, with regards
3 to whether it can be done, and if so how it can be done.

4 But the point of our suggestion is that the
5 chairman -- since now we are seeking a way to have
6 Commission involvement, the line of succession would not be
7 down to the staff but would be to the other commissioners.
8 If the chairman were not available, whoever was acting would
9 be and it would follow, in effect, the national emergency
10 line of succession unless otherwise specified.

11 As part of the --

12 COMMISSIONER GILINSKY: The same problems would
13 attach to that.

14 MR. KENNEKE: Right, exactly. That'll be the
15 hand-off, and Len can take it on from there. Part of it
16 would be because each of you then would be somehow giving up
17 something, something along the lines of a best effort
18 requirement on the part of the chairman, to keep you fully
19 informed and to involve you in collegial decision-making to
20 the extent that's feasible.

21 COMMISSIONER AHEARNE: Can you explain, going back
22 to the reason I originally asked the question, you're solely
23 focused upon improving health and safety?

24 MR. KENNEKE: Health and safety, right.

25 COMMISSIONER AHEARNE: How that requirement gets

capuav 1 into that --

2 MR. KENNEKE: Which one, specifically?

3 COMMISSIONER AHEARNE: The last one. The best
4 effort to keep informed, et cetera.

5 MR. KENNEKE: Because if the idea is to involve
6 you in an advisory way, collegially, to the extent feasible,
7 then you must have the information available to you as best
8 you can, so that delay would not be involved. The primary
9 emphasis is on making you capable of advising on a moment's
10 notice, should that be possible.

11 CHAIRMAN HENDRIE: I think John's asking, why does
12 that aid safety? I guess the delicate answer you ought to
13 make is that --

14 COMMISSIONER KENNEDY: Whose health and safety?

15 CHAIRMAN HENDRIE: If there is time in the
16 decision-making process, then hopefully five commissioners'
17 points of view collectively gathered, are better than one.

18 MR. KENNEKE: You stole the words right out of my
19 mouth.

20 VOICE: There is also the third line.

21 CHAIRMAN HENDRIE: I don't know how strongly I
22 endorse that.

23 (Laughter.)

24 COMMISSIONER AHEARNE: You started off very well.
25 Thank you.

1 apdAV VOICE: Al's third line if also involved here.
2 Namely that if the Commission undertakes any liaison
3 activities, clearly you have to be in phase with the
4 information, and there would be health and safety if you are
5 advising people on the basis of information.

6 COMMISSIONER AHEARNE: That's absolutely right.

7 VOICE: So it does have a health and safety
8 implication.

9 MR. KENNEKE: It seems to us also, then, that the
10 commissioners should consider seriously putting yourselves
11 in specific roles within the organization, particularly at
12 the interface of the internal workings, which is yourselves
13 and the licensee, and the state and locals who are working
14 specifically to deal with the emergency. Interface with
15 those on the outside who are inevitably going to inquire —
16 you can start with the White House, Congress, other agencies
17 who have not been involved, industry, insofar as they need
18 to know what the implications are, the international
19 community -- all of these things occur.

20 And it seems to us that it would be well for you
21 to consider seriously assigning those.

22 COMMISSIONER AHEARNE: But, Al, let me ask a
23 difficult question: you have this situation where you have
24 an emergency unfolding in which there is great tension,
25 great concern and you have a variety of groups that you've

kapDAV 1 mentioned -- now, the most concerned being the public in the
2 affected area, but all of these others, the White House,
3 Congress, et cetera. Is it a principal responsibility of
4 the NRC to make sure that that information link or liaison
5 be as accurate as possible?

6 MR. KENNEKE: Yes.

7 COMMISSIONER AHEARNE: So doesn't that come into
8 some conflict with your suggestion that there be the best
9 effort, but not necessary -- all I'm saying is that I can
10 recognize a certain sensibility protocol issue but it's not
11 obvious to me that that best information link is served by
12 having the commissioners being the link.

13 MR. KENNEKE: Let me try to make a distinction.
14 That best effort related to providing you general
15 information across the board, that would allow you to
16 provide good advice to the director of the decision-making.
17 The spokesman aspect has each of you, as I would visualize
18 it, in a specific role -- a limited spectrum of the
19 information, that you indeed would be the expert. You would
20 be backed up.

21 For example, Congress. The important aspect, it
22 seems to us, is not solely the question of whether you have
23 the decision-maker or the spokesman have authority to do
24 that. But what is also their stature?

25 COMMISSIONER AHEARNE: It seems to me it's more

capDAV 1 the protocol side that you're getting wrapped up there with,
2 rather than good information transfer.

3 MR. KENNEKE: Well that is a lesser aspect of it.
4 But it seems to us that you should seriously consider that.
5 The heart of our notion is to make it clear that there's one
6 person who speaks for the entire agency, that makes the
7 decision. There's a clear line of succession. But that
8 there be a mechanism for involving the other commissioners
9 collegially through that individual.

10 And then thirdly, and tertiary, that you
11 consider involving yourselves as the nominal spokesmen for
12 these various interfaces that will invariably occur.

13 COMMISSIONER GILINSKY: You're really saying we
14 ought to take over public affairs and congressional affairs.

15 MR. KENNEKE: I think for example, public affairs.

16 COMMISSIONER AHEARNE: Do you mean, Vic, on a
17 routine basis?

18 COMMISSIONER GILINSKY: I don't want to answer
19 that.

20 MR. KENNEKE: Okay. Slide nine --

21 (Slide.)

22 -- more precisely puts down the proposal.

23 COMMISSIONER AHEARNE: I thought at the bottom of
24 this you were going to --

25 CHAIRMAN HENDRIE: He's trying to get through his

kapuAV 1 slides. Until general counsel gets a hold of the issues.

2 MR. KENNEKE: There is a bullet on that that says
3 it is recognized that clarification of the legal
4 effectivenes of these recommendation may be needed. But it
5 seems to us fairly straightforward. My understanding is
6 that it can be done, but in the interim whatever decision
7 you make, if you decide to do it, tell Congress what your
8 intent is and act on it as an interim measure.

9 I think your interest here, as you point out, is
10 health and safety. What is the best thing for health and
11 safety should another emergency occur? And I will leave the
12 legalities and mechanisms and how that might best be said
13 for Len to describe, but as I understand, it can be done.

14 The question to you is whether it ought to be.

15 COMMISSIONER AHEARNE: Since you're still
16 finishing your slides --

17 MR. KENNEKE: I am finished.

18 COMMISSIONER AHEARNE: But I wanted to ask one
19 last question. You focused, as I think you started out
20 saying, on the role -- would I be correct in assuming that
21 you also believe that we must, no matter how we come out of
22 this role, we have to put out policy guidance that is clear?

23 MR. KENNEKE: Unambiguous.

24 COMMISSIONER AHEARNE: Okay.

25

gsh 1 MR. GOSSICK: I'd just like to make a comment on
2 that point, Commissioner Ahearne.

3 We're assuming that the role of the whole incident
4 response organization and staff action is absolutely clear as
5 to what the objectives are.

6 COMMISSIONER AHEARNE: That's what I was trying to get
7 at, you see. I don't think it is. I think there's a lot of
8 policy.

9 MR. GOSSICK: That's my point. There are certainly
10 assumptions being made about command control and decisions.
11 And I'm contending that those decisions come pretty few and
12 far between, even at Three Mile Island, that there's an
13 awful lot of other interaction, communication, and notification
14 that goes on that is provided for by the current structure,
15 which I think, you know, one mustn't lose sight of.

16 MR. KENNEKE: And there are those specific occasions
17 when someone of the commissioners would be appropriate as
18 an intervenor for the spokesman aspect.

19 COMMISSIONER AHEARNE: What I think I was trying to
20 get at is that there are sets of evacuation procedures.
21 Commissioner Gilinsky was having them worked up in the middle
22 of the accident.

23 Now that's the kind of a framework, a policy that I think
24 has to be in place, and that's what I think is very appropriate
25 for the commission to lay down guidance on.

gsh 1 We didn't have it.

2 MR. KENNEKE: Our focus here was, as I tried to show
3 by these two slides, was the focus merely at the top. Where
4 does the final decision arise? Whatever you do within the
5 internal box, whether it's the present organization or
6 some revised one, presumably, that would flow.

7 But we've got to deal with that ultimate decision-making.
8 That's the basic question, and that guides everything else
9 the staff's planning.

10 CHAIRMAN HENDRIE: Do you want to hear briefly, one
11 hopes, from the general counsel? Now couch your advice with
12 a certain amount of discretion.

13 MR. BICKNIT: I understand.

14 (Laughter.)

15 CHAIRMAN HENDRIE: I would prefer to be at least
16 formally somewhat ignorant of any illegality I contemplate in
17 the actions at hand.

18 You might point out in a theoretical sense --

19 COMMISSIONER KENNEDY: Let us not forget our
20 ex parte and conflict of interest rules, however, as you take
21 that advice.

22 MR. BICKNIT: Well, I didn't suggest this meeting.

23 (Laughter.)

24 MR. BICKNIT: I'm not in any way suggesting that
25 you're taking over the EMT would be illegal in all respects.

1 gsh 1 (Laughter.)

2 CHAIRMAN HENDRIE: Listen, you've got to be grateful
3 for what you can get these days.

4 (Laughter.)

5 COMMISSIONER GILINSKY: It reminds me of the story
6 of the English guest who opened up his morning egg and sort
7 of stepped back. And the host asked him what was wrong with
8 it, and he said, oh, parts of it were excellent.

9 (Laughter.)

10 MR. BICKWIT: The dividing line as to which parts are
11 excellent and which parts are not comes in the phrase,
12 commission action, as used in the statute.

13 There's very little legislative history on what commission
14 action is. But what the statute says is that commission
15 action can only be taken by a majority of the commission, the
16 majority of a quorum.

17 COMMISSIONER AHEARNE: Do you interpret that as
18 being physically present?

19 MR. BICKWIT: Yes. Even if a matter involves
20 commission action, it is possible to delegate the carrying out
21 of that commission action to a member of the staff.
22 However, the statute seems clear that it is not possible to
23 delegate to a commission any function.

24 So that the question is, if we're talking about taking over
25 the EMT, that includes the authority to issue orders, something

gsh 1 that, in my view, would probably be within the meaning of
2 commission action.

3 We've got a problem. There's very little problem if you're
4 talking about actions which would not fall within the meaning
5 of that term. And since the term is very fuzzy, we're in
6 a muddy area.

7 MR. GOSSICK: Len, you've got the same situation
8 with the EOO as the director of the EMT because I don't have
9 the delegation issue orders.

10 MR. BICKWIT: The difference is that under the
11 statute, you could be delegated it tomorrow.

12 MR. GOSSICK: At the present time it's not. Okay.

13 MR. BICKWIT: That's true. But also, it could be
14 the understanding of the commission that you would do this.
15 That would not be regarded as in any way a way around this.

16 MR. GOSSICK: The question on this is: Is it
17 illegal for the Chairman as it is for me in the event that
18 it should become necessary to direct Vic or Denton to issue
19 an order?

20 COMMISSIONER GILINSKY: What he's saying is if
21 that's a problem, we can fix it. And he's saying that the
22 other problem --

23 MR. GOSSICK: Is more complicated.

24 COMMISSIONER GILINSKY: That's right. It needs a
25 change of the law.

5.15.5

1 gsh 1 COMMISSIONER AHEARNE: But in your view, can we
2 fix that problem? In other words, could we in some way give
3 Joe the authority to direct Harold to give an order?

4 MR. BICKWIT: To give an order, I'd be inclined to
5 be concerned about that.

6 COMMISSIONER GILINSKY: You know there's a question.
7 I've thought about this a little bit and one question is: How
8 do you distinguish an emergency situation from a non-emergency
9 situation?

10 I mean Joe's liable to get completely carried away with
11 himself.

12 (Laughter.)

13 CHAIRMAN HENDRIE: I plan to declare one at 4:15.

14 (Laughter.)

15 CHAIRMAN HENDRIE: I'm hoping to have the authority
16 by then.

17 COMMISSIONER GILINSKY: No, seriously, it's hard to
18 see how you can categorize these sorts of situations. It
19 would be simple if the commission itself had authority to
20 delegate to one of its members or simpler.

21 CHAIRMAN HENDRIE: You run into the same definition
22 problem because you'd want to do it beforehand rather than
23 have to convene the commission and declare an emergency
24 before you can delegate them.

25 Then you have the same problem of defining an emergency.

gsh 1 But I'm assuming that that can be done in some kind of terms
2 that makes it fairly clear that the Chairman isn't, or whoever
3 might be designated to run off some Thursday afternoon,
4 declare an emergency, and vote all the paper that he happens
5 to have under his arm.

6 COMMISSIONER AHEARNE: Although, just to be clear
7 since some people will be disappearing, I gather, just from
8 my point of view, it is, I'm sure, important and difficult
9 and subtle and a hard legal issue, but were an emergency
10 to occur, I think that Joe should nevertheless do that
11 because handling the emergency is really more important.

12 MR. BICKWIT: I'm not suggesting that it wouldn't be.

13 COMMISSIONER BRADFORD: I guess I would rather that
14 the current EMT function, until we've taken the steps
15 necessary to do it some other way, I mean is it clear, Al,
16 in all that you've laid out, is it clear that there is a
17 distinct advantage to having the Chairman running the EMT
18 as distinguished from the EDO?

19 MR. KENNEKE: The distinct advantage is, I've tried
20 to say, more than just authority; it's a question of stature.

21 COMMISSIONER BRADFORD: First of all, given that we
22 do have this bizarre physical distance between parts of the
23 agency, suppose the accident moves fast enough that some
24 critical decisions have to be made while the Chairman is in
25 his car.

gsh 1 CHAIRMAN HENDRIE: Then whoever the senior officer
2 present is will have to make them if decisions have to be
3 made.

4 MR. KENNEKE: It's suggested that you need
5 communications for that car.

6 COMMISSIONER BRADFORD: That really won't do it.

7 COMMISSIONER AHEARNE: The senior person, whether it's
8 at the site, if conditions have broken down, or at Bethesda,
9 has to make the decisions. And whatever the protocol is,
10 we'd have to worry about some later time.

11 When an emergency decision has to be made, it has to be
12 made.

13 CHAIRMAN HENDRIE: Let me tell you what my thought
14 has been in taking this interim step.

15 I've thought some over the months since Three Mile on what
16 the configuration ought to be, and I've about concluded that
17 there is no way that the commission, and particularly the
18 senior commissioner or the Chairman, if he's on the ground,
19 is going to be able to stand back out of the fray and make what
20 are called policy decisions.

21 We were pulled in as soon as things warmed up at Three
22 Mile Island and the same will be true, I'm sure, if anything
23 comparable ever occurs again.

24 It has seemed to me, then, that being the case, that
25 whoever is ranking -- I've spoken for myself on this interim

gsh 1 oasis, is simply going to be in much better shape to deal
2 with whatever, as head of the agency or acting head, you have
3 to deal with if you're there at the information center, or
4 at least the best information center we've got within, you
5 know, half an hour or wherever we're likely to be.

6 If things move slowly, why, I'd expect to see commissioners
7 come on out and gather the group and have such discussions
8 and make such decisions as seem appropriate. And if things
9 move fast, why, whoever is ranking on the spot is going to
10 have to do what has to be done.

11 But I think the time scale then determines to a very
12 heavy degree who decides what, when.

13 But I see no advantage and considerable disadvantage
14 having had the experience once of being yet one more
15 communication link removed from Bethesda, where even there,
16 the state of information wasn't what I would call admirable,
17 and by the time it furthermore got filtered into, you know,
18 one more step through the phone lines and so on, the first
19 time, why, it was just that much poorer.

20 I think it's much better to be right there.

21 I have no lack of confidence at all in the EMT as
22 constituted, simply to go ahead and manage an emergency and
23 for all of us to step back and to put our hands in our
24 pockets.

25 It's just that that isn't going to be allowed to happen.

1 gsh 1 People are going to want to hear what the commissioners and
2 the Chairman have got to say for themselves on behalf of the
3 agency. And I think in that circumstance, it's better to go
4 down there in the trench.

5 COMMISSIONER AHEARNE: I guess, Joe, I'd have to
6 disagree. I think we really, and obviously, in three minutes
7 it isn't the time we're going to do it, but in going back to
8 the point earlier on that I was trying to make, we have to
9 address what is the best for getting the protection to the
10 public health and safety.

11 And I think at some point we have to decide, is it better
12 for the 5 or collection to be trying to run the operation or
13 is it not?

14 If it is better, then I think the instructions have to
15 be very clear to have that either way it operates. If it is
16 not, if independent of when you say the public won't have it
17 or the Congress won't have it, our primary responsibility is
18 to make sure that the thing si handled the best way to
19 protect health and safety.

20 That's a decision we have to make and bear with whatever
21 the pressures are.

22 COMMISSIONER BRADFORD: It doesn't take a oig, I
23 think, change in assumptions about Three Mile Island to
24 change the role of the commission quite a lot.

25 If you assume on Friday morning that evacuation

gsh 1 recommendation had been, on the one hand, clearly conveyed
2 to the State of Pennsylvania on behalf of the agency, and
3 on the other, clearly conveyed to the commission that, in
4 fact, had been made and was being carried out.

5 Then I'm not sure whether the commission would have been
6 going in the same sense that we were through the weekend.

7 So there may be some difficulties and I haven't really
8 thought this through in generalizing from what may have been
9 an almost flukish glitch in communications to what the
10 mandatory role of the commission will be in accident
11 situations in which we get communications right and the
12 criteria right in the future.

13 My concern about the proposition is, I suppose, is a
14 legal one, and that is that these decisions are of such
15 importance, granted the need to get them made clearly and
16 articulated clearly during the accident. I would hate to
17 knowingly set in motion a machinery which would, after the
18 accident, open endless legal cans of worms about whether
19 things are done on proper authority.

20 That's why I think Len's concerns, as exactly stated, are
21 serious ones.

22 COMMISSIONER AHEARNE: What I was trying to say is
23 I think we ought to decide what we believe is to be the
24 appropriate way and then, if it requires some sort of change,
25 to propose a change to see how it can be successfully done.

gsh 1 COMMISSIONER KENNEDY: I agree with that. But I
2 think that the point that Peter makes, one ought not to
3 too quickly generalize from what might have been an anomaly
4 to reach conclusions about how to deal with the future.

5 And it is a very good one and it ought to be thought about
carefully.

6 CHAIRMAN HENDRIE: Well, I will recommend it to your
7 urgent thinking and we'll look to receive some comments on the
8 OPE proposition outlined here in the last page or two of the
9 handout. ✓

10 I wonder how much more spelling out of this would either be
useful or straightforward to do, Al.

11 MR. KENNEKE: I offered it for discussion and it
12 served that purpose.

13 CHAIRMAN HENDRIE: I think it's clear enough as it
14 stands. I'd be interested in staff views on it, commissioner
15 views on it.

16 MR. GOSSICK: I'd just like to address one point
before you ask the others.

17 CHAIRMAN HENDRIE: The others aren't going to get
any chance.

18 MR. GOSSICK: The "running the operation," the
19 term you used, and decisions, we need to think very carefully
20 about what are we talking about when we say that.

21 We are not running anything; we're following a situation

gsh 1 and trying to judge whether the actions being taken are
2 adequate, safe, and appropriate, and whether —

3 As I say, I think it's important that we have it very
4 clearly understood and laid out as to just what the NRC
5 role is in an emergency. And unless somebody can argue us
6 off that point, that could have an effect on the decision we
7 make about who makes "decisions."

8 MR. KENNEKE: The strongest one in there was the
9 one about evacuation. That's a question that we decided to
10 recommend.

11 MR. GOSSICK: We can't order it.

12 MR. KENNEKE: Exactly the point that I was making.

13 MR. GOSSICK: But certainly, we can make the
14 decision to recommend evacuation.

15 COMMISSIONER AHEARNE: Then I gather although we
16 can't get a chance that Vic, are you going to have something
17 coming to us?

18 CHAIRMAN HENDRIE: Well, the staff has underway some
19 cleaning up of the piece down here labelled "incident response
20 organization," which underlies — it's sort of one
21 hierarchical step down from where we're arguing now.

22 MR. GOSSICK: We've put down on paper, which is
23 currently being scrubbed, some revisions to procedures. We're
24 not supposed to formally amend the manual chapter but we will
25 follow until such further guidance or direction may be

gsh 1 forthcoming.

2 CHAIRMAN HENDRIE: Okay. Well, practically, as
3 promised, I'm going to thank Al and participants in the
4 discussion and recommend this subject to your attention for
5 comment and recommendations and further thought.

6 And turn, then, to the EPICOR-2 order.

7 (Whereupon, at 4:18 p.m., the committee adjourned.)

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