

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

PUBLIC MEETING

DISCUSSION OF GESMO STATEMENT OF REASONS

Place - Washington, D. C.

Date - Thursday, 4 May 1978

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

PUBLIC MEETING

DISCUSSION OF GESMO STATEMENT OF REASONS

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

Thursday, 4 May 1978

The Commission met, pursuant to notice, at 4:30 p.m.

BEFORE:

- DR. JOSEPH M. HENDRIE, Chairman
- PETER A. BRADFORD, Commissioner
- RICHARD T. KENNEDY, Commissioner

PRESENT:

- SAMUEL CHILK, Secretary
- J. KELLEY, Acting Legal Counsel
- R. MALLORY
- K. PEDERSEN
- D. RATHBUN

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P R O C E E D I N G S

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2 CHAIRMAN HENDRIE: If we could gather again, the
3 next subject is the statement of reasons on GESMO which has
4 cycled through a number of draft stages, and which we go to
5 court in Philadelphia on Monday morning on. To say that there
6 is a time press hardly makes the point strong enough.

7 There continue to be all through the basic thrusts
8 of the various versions pretty much the same. There continue
9 to be some wording changes, shades of emphasis which were at
10 the beginning of April, instead of right up against the due
11 date for the document, that might be thrashed out, or maybe
12 they wouldn't, but at least there would be a fair chance.

13 But at this date, I think that the whole document,
14 that there are still enough differences so it is not practical
15 for them to attempt to go entirely to a collegial document
16 at this stage and still have something to file on Monday.

17 What I am proposing to do, and to discuss briefly
18 with my colleagues, is to attempt this afternoon in about an
19 hour to scan through the language in the several drafts in the
20 initial section, running up to about page 6, and then starting
21 again at about page 18 or 20 and running on through to the end
22 to see if we can agree -- the three of us -- and accept a
23 collegial version of that beginning and ending material.

24 COMMISSIONER KENNEDY: The pages run from?

25 CHAIRMAN HENDRIE: The front end is about 1 through

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1 6, the back end starts either on page 18 or on page 20,
2 depending on our negotiation when we get there. It may be
3 that 18 and 19 will have to go in the center.

4 Now what that does is to leave the center of the
5 thing out, and in fact the center of the thing is pretty much
6 the reason for the document. It states the reasons for the
7 Commission having made the decision that it made on GESMO. We
8 will supply that center section on an individual basis, and
9 if things happen to work as I would propose and hope, we would
10 have a collegial document which would come to that section and
11 have a title -- a short paragraph which would say, simply,
12 that: Individual views of the Commissioners -- in that
13 section of the paper -- are attached; and that a collegial
14 position has not been possible of achievement.

15 And the individual sets of writeups, then, of those
16 reasons by each of the Commissioners would be attached to the
17 document. And as I say, if we were able in fact to agree on
18 the front end and the back end and the transition paragraph,
19 then we indeed could file on behalf of the Commission a paper
20 with the Philadelphia court on Monday, presumably, providing
21 the Office of the General Counsel and the typing and
22 reproduction forces and editorial forces are able to work
23 through this lovely spring weekend.

24 MR. KELLEY: We will wheel our big guns into
25 position.

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1 COMMISSIONER BRADFORD: Nobody's going to have to
2 work through the weekend to type a 38-page document.

3 CHAIRMAN HENDRIE: I have observed staff papers for
4 many years. There always seems to be an awful lot to do, even
5 though it seems as though there are just a few mechanical
6 details.

7 Anyway, the job before us this afternoon, then, if
8 you're willing to move along this path, is to start at the
9 front end and see if we can agree on that language, and move
10 to the back end and see if we can agree on that language, and
11 then see where we are.

12 Now, I would hope we could move very rapidly, and
13 I would be perfectly willing to look at the center, if we can.
14 I am not optimistic about that being possible.

15 COMMISSIONER BRADFORD: I agree that if we can't
16 agree on the center material, then we should have some such
17 proposal as you suggested. It doesn't seem to me that the
18 two drafts are far enough apart on the center to make a lot of
19 sense for us to submit two versions if we can avoid it. I
20 think we should try to pull them together.

21 COMMISSIONER KENNEDY: Whose drafts are we talking
22 about? I've got so many different kinds of papers here. I
23 went through three drafts, in detail, the last of which I
24 think was dated about April 26th — on three different
25 occasions, from March 3rd or some such, till about April 26th,

jwb 1 three extensive drafts, complete in all respects -- and went
2 through them in great detail.

3 My understanding of the circumstances is simply
4 that, just last Monday as the paper was being put in final
5 form -- it was in final typing -- a vast number of proposed
6 changes began arriving, and some of them just arrived in my
7 office yesterday.

8 I have had time to scan some of them, and not
9 really think a lot of them through, but I find things that I
10 think are factually incorrect in some of the changes, and I
11 don't know -- I've got changes from two different offices, at
12 least. And so I don't know what I'm dealing with.

13 We need to sort of start somewhere, and that would
14 be helpful. For example, I have one here. This is on page 4.
15 What I'm reading, it says: "Moreover, a decision by the
16 United States to proceed with commercial plutonium recycled
17 domestically would undermine U.S. efforts to restrain
18 premature entry or international resort to plutonium."

19 Well, this has been changed to read: "... undermine
20 U.S. efforts to halt further commitment to plutonium use
21 internationally."

22 Now the President never intended that. That is an
23 incorrect statement. That is not national policy -- at least,
24 if the President of the United States is any longer expressing
25 national policy -- whatever that is. I can't agree with that.

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1 COMMISSIONER BRADFORD: The initials "VG" at the
2 bottom are a dead giveaway.

3 (Laughter.)

4 COMMISSIONER KENNEDY: The copy I have is so
5 scratched up that I did not even notice them.

6 Anyway, having that interpretation, that is at
7 least some clarification, but it makes no difference. It is
8 just factually incorrect. It does not state the national
9 policy, and I don't propose in this document to in any way
10 associate myself with a restatement of national policy until
11 the President undertakes it.

12 COMMISSIONER BRADFORD: Let me pick up on one
13 earlier point. I don't know whether this thing was going
14 into "final typing" or not Monday. If it was, somebody was
15 being optimistic, because I think my office had made it clear
16 that it would have comments. And as of Monday, those comments
17 had not been furnished.

18 So if you were told that the thing was in final
19 typing —

20 COMMISSIONER KENNEDY: I was told this. I believe
21 the rational view of the General Counsel's office was that we
22 were under an injunction from the court to deliver this, and
23 they were doing their best, having been working at it since
24 December 23rd when we made our decision. They had been
25 actually circulating the thing since March 3rd, and had on

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1 three different occasions, circulated completely new, fresh
2 drafts on which comments and notes from all offices, as I
3 understand it, had been gathered.

4 COMMISSIONER BRADFORD: Not mine.

5 COMMISSIONER KENNEDY: Anyway, the factual
6 situation is: Here we are.

7 CHAIRMAN HENDRIE: I think the most effective tack
8 would really be to start with the front end and see the
9 progress we make. I don't mind tackling the middle, but I
10 would like to get the front end and the back end together so
11 at least we've got a basis to move forward on.

12 I'm going to recommend we work on the one that you
13 marked up. I've got a markup draft from Vic, and keep it
14 handy, and turn it a page at a time. Let's see how fast we
15 can churn this out.

16 How about hanging with "concerning," Peter? Because
17 we did not terminate all of them.

18 COMMISSIONER BRADFORD: Fine.

19 CHAIRMAN HENDRIE: Page 2, I think the use is fine.
20 "More than a decade" is factually accurate, and "before the
21 Commission and its predecessor, the AEC." Are you keeping up
22 with me?

23 MR. MALLORY: Yes, there's a line further up on the
24 page.

25 CHAIRMAN HENDRIE: "This memorandum amplifies" -- I

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1 think it "provides the reasons," rather than "amplifies"
2 because otherwise, we would not be in such agony over this
3 thing.

4 "Exxon filed an application to construct at Oak
5 Ridge on" the date -- if somebody will supply a date -- Is
6 that correct, by the way?

7 COMMISSIONER BRADFORD: What I really was concerned
8 about there was just to remind myself to find out what the
9 exact status of that thing was.

10 MR. MALLORY: It is worded the way it is typed
11 because, as I understand it, they are not applying for a
12 license to construct a reprocessing plant; they're seeking
13 permission of a lesser sort.

14 COMMISSIONER BRADFORD: Is there "permission of a
15 lesser sort" that would let them do it?

16 MR. MALLORY: As I understand it, fuel cycle
17 facilities normally do not receive construction permits.

18 CHAIRMAN HENDRIE: I have a suggestion. This would
19 undoubtedly be a fascinating matter to know about, but if we
20 left it "permission," that would at least cover --

21 COMMISSIONER KENNEDY: And it is "currently
22 seeking"? That is the question that I think you had started
23 with, Peter.

24 COMMISSIONER BRADFORD: It is "currently seeking
25 permission"?

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1 COMMISSIONER KENNEDY: And it is "still before us"?

2 MR. MALLORY: It is still pending, yes. I don't
3 think they have withdrawn it.

4 CHAIRMAN HENDRIE: At least as of the date of the
5 GESMO decision.

6 MR. KELLEY: They are to go to court, aren't they?

7 MR. MALLORY: Yes.

8 CHAIRMAN HENDRIE: Oh, they are suing us?

9 Onward. On page 3, I will vote for "evaluated"
10 instead of "covered" and I would not mind having "bifurcated"
11 taken out. It always pulls me up a little short, even though
12 it may be accurate.

13 Page 4, more changes. Now this one is retyped in
14 comparative form from the April 26th thing. Let's see. The
15 proposed change is "Congress and other parts of the Federal
16 Government, members of the public, and experts in national
17 security feel" -- it must have to be -- "have continued."

18 COMMISSIONER BRADFORD: That would be fine.

19 CHAIRMAN HENDRIE: -- "to express concerns relating
20 to the nuclear weapons proliferation risks in plutonium
21 recycling technology." And if I were to accept that wording,
22 I would need to put in "as it is presently conceived," since
23 in fact we are looking at other ways that may make it better.

24 So for myself, I would be glad to have the sentence
25 changed, but put in "have continued."

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1 MR. MALLORY: I think the phrase "as it is
2 presently conceived" goes better with the next paragraph, or
3 the next sentence which talks about using plutonium in
4 explosives.

5 COMMISSIONER KENNEDY: Now, wait. That is a
6 different point than the one the Chairman is making. The
7 Chairman is right; it really belongs to the previous. You
8 see, the concern is over a particular technology that is now
9 employed. That is the point he is making.

10 CHAIRMAN HENDRIE: Leave it with the previous
11 sentence. All right, Rick?

12 "The concern is basically that the international
13 spread creates risks"; okay?

14 COMMISSIONER BRADFORD: I think that is supposed to
15 be "a risk".

16 CHAIRMAN HENDRIE: -- "creates a risk". I don't
17 have any difficulty with that wording; I like it better.

18 "Moreover, a decision by the United States to
19 proceed with commercial plutonium recycled domestically would
20 undermine U.S. efforts to restrain" -- and I really need
21 "premature."

22 COMMISSIONER KENNEDY: I need "premature" also.

23 COMMISSIONER BRADFORD: By all means.

24 CHAIRMAN HENDRIE: -- "international reserve
25 to plutonium." Anything else on that page?

jwb 1 COMMISSIONER BRADFORD: Victor's language, you
2 feel, is incorrect?

3 COMMISSIONER KENNEDY: It is inconsistent with what
4 the President and all his people in the field have said
5 publicly and privately to people in all contracts.

6 CHAIRMAN HENDRIE: That is all on that page.

7 COMMISSIONER KENNEDY: Somebody wrote in down here
8 in the middle, toward the end of the next paragraph, "by the
9 board." It seemed to me that is right, that it would be a
10 good addition, I think. It would be definitely "postponed by
11 the board," just as a clarification.

12 CHAIRMAN HENDRIE: That was before my time.

13 Okay, the last page of this section.

14 COMMISSIONER KENNEDY: What does it say at the end
15 of page 6?

16 CHAIRMAN HENDRIE: "... of which an elaboration
17 follows."

18 COMMISSIONER BRADFORD: We have already decided
19 that, depending upon the outcome of further discussions, that
20 that paragraph is going to be rewritten, anyway. I am
21 perfectly willing to go back to the reasons.

22 COMMISSIONER KENNEDY: I couldn't read it. Either
23 way, it doesn't make any difference to me.

24 CHAIRMAN HENDRIE: It just says, "on which an
25 elaboration follows." But since this is the point at which,

jwb 1 unless lightning strikes, we're going to go into individual
2 views, why there will have to be a transition paragraph, and
3 I've talked to Rich, and I think we've got enough discussion
4 here so that the transcript will well show the nature of the
5 thought that that paragraph ought to include.

6 In fact, it wouldn't hurt if somebody tried to
7 draft something, because I would like to come away from this
8 table, if possible, with the language.

9 Now, could we flip to page 18?

10 COMMISSIONER BRADFORD: I would prefer to flip to
11 page 20.

12 COMMISSIONER KENNEDY: The one that I have, 18 and
13 19 is almost nothing left.

14 COMMISSIONER BRADFORD: There's not much left on
15 20, either, but we can negotiate, probably.

16 CHAIRMAN HENDRIE: Let's see. There is the
17 argument that we talked about briefly earlier in the day that
18 here in this section enumerating the arguments that favor
19 continuation is the first place that we note that commentators
20 have said that plutonium is an energy source and we need it,
21 and we think it should be continued.

22 COMMISSIONER KENNEDY: I think it is right.

23 CHAIRMAN HENDRIE: I would like to retain the
24 thrust -- for myself, I would like to retain the thrust of the
25 earlier text.

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COMMISSIONER BRADFORD: I have no difficulty with retaining the thrust of the earlier text; I concur with the substance, with the exception of the one sentence which I circled in the middle, and the thought that "some commentators have talked about the energy shortage." Everything else on it has been said previously. If there seems to be some value in repeating those thoughts in the context of the nation's energy shortage, and the reliance of the commentators thereon, I don't have any difficulty, in principle, with that.

CHAIRMAN HENDRIE: I would like to go back to it.

Now let's talk a minute about sort of ignoring the big "Xs" and look at the "finders."

COMMISSIONER KENNEDY: Do you mean the little notes? The other notes look to me to be okay.

COMMISSIONER BRADFORD: The other notes, I think, are from an earlier draft.

1 MR. MALLORY: Most of them are from the April 26th
2 draft. The only ones that are not are within the circle two-
3 thirds of the way down the page.

4 CHAIRMAN HENDRIE: Well, why don't we look in the
5 circle and see what it says? In the implementation, there is
6 concern about the economic aspects. It would be fewer words.

7 COMMISSIONER KENNEDY: But it is a very different
8 context. "Does not justify" is a very hard statement, whereas
9 "doesn't provide substantial grounds" is quite different, I
10 think.

11 CHAIRMAN HENDRIE: Can you go back and stand "sub-
12 stantial ground"?

13 COMMISSIONER KENNEDY: I would be prepared to say it
14 "does not provide substantial," instead of "would not appear
15 to," or "in our judgment does not provide substantial grounds."

16 COMMISSIONER BRADFORD: "Does not provide substan-
17 tial grounds" is fine with me.

18 CHAIRMAN HENDRIE: "At this period of time, it does
19 not provide substantial grounds." Okay. Can I come up to the
20 top and come down the page, and attempt to check off the other
21 elements?

22 COMMISSIONER BRADFORD: I can only note that Victor's
23 draft would have deleted even one sentence that I would have
24 saved, and I don't know why.

25 CHAIRMAN HENDRIE: Well, since I'm running in the

1 other direction at the moment, I'm not enthused about the
2 thought for a heading.

3 COMMISSIONER BRADFORD: I will tell you why I did
4 that. I was trying to keep it parallel with the next section,
5 in which I think the continuation is legally required.

6 COMMISSIONER KENNEDY: I think that is fine.

7 CHAIRMAN HENDRIE: Let us make that change. "Argu-
8 ments favoring continuation as a policy matter." Let's see,
9 the first sentence, I think you needed to sort of start -- I
10 would propose to retain it.

11 COMMISSIONER KENNEDY: You mean the first sentence?

12 CHAIRMAN HENDRIE: Yes, just to get things started.

13 COMMISSIONER BRADFORD: There is nothing on that
14 page that I found to be wrong or inaccurate. My problem is,
15 it seemed to me to be some measure -- it is a little awkwardly
16 stated.

17 COMMISSIONER KENNEDY: I would be for retaining it.

18 CHAIRMAN HENDRIE: I would be inclined that way,
19 because there is this section in here that I would like to re-
20 tain that thought, and in the rest of the context that seems to
21 go along.

22 Now, "acutely."

23 COMMISSIONER KENNEDY: If you don't say "acutely" it
24 is sort of a trite statement, I think. Normally, I would say
25 let's drop "acutely." But here, given the nature of the

1 sentence, if you don't say it, I think you ought to drop the
2 sentence, because it just looks so -- of course we are aware.
3 It was trying to say we understand this is a really big problem,
4 our electrical energy needs. Maybe we could rephrase the sen-
5 tence or rewrite the whole sentence.

6 CHAIRMAN HENDRIE: I would be glad to keep "acutely."

7 COMMISSIONER BRADFORD: Somewhere on that page, I
8 think we would do well to just put in a "previously noted," so
9 we don't given anyone the impression that we're really saying
10 anything new. But I will leave that to someone else to put in.

11 CHAIRMAN HENDRIE: Yes, will you put in, "as pre-
12 viously noted."

13 MR. MALLORY: After the word "however"?

14 COMMISSIONER BRADFORD: Well, however it can be done
15 gracefully.

16 CHAIRMAN HENDRIE: And the April 26th language would
17 go, I guess, "However," and then, "as previously noted."

18 COMMISSIONER KENNEDY: I like the way Peter has done
19 it, or whoever has done it.

20 CHAIRMAN HENDRIE: I think this was the editing on
21 the April 26th draft by the assistant.

22 COMMISSIONER KENNEDY: It looks pretty good to me.
23 I like that. I think it is fine.

24 CHAIRMAN HENDRIE: That would allow us to flip the
25 page.

1 COMMISSIONER KENNEDY: Then we are putting in "final-
2 ly submitting a progress"? We are putting that back in? I
3 would.

4 CHAIRMAN HENDRIE: It again, was part of things.

5 COMMISSIONER BRADFORD: My only comment on that was
6 that we could put it in.

7 CHAIRMAN HENDRIE: Okay. These changes, I believe --

8 MR. MALLORY: All of those were in the April 26th
9 draft except the last one.

10 COMMISSIONER BRADFORD: I want to go to war on the
11 word "utilized."

12 COMMISSIONER KENNEDY: I will join you in that.

13 CHAIRMAN HENDRIE: Otherwise, the changes stand as
14 they are.

15 COMMISSIONER BRADFORD: Again, a Gilinsky change
16 that I'm not sure I can read.

17 COMMISSIONER KENNEDY: Where is this?

18 COMMISSIONER BRADFORD: On page 21. But you have
19 to use the Gilinsky draft, plus whatever it is you wrote with
20 invisible ink. "The substantial revision would be required to
21 proceed as we continue now would involve a much more substan-
22 tial waste of effort."

23 COMMISSIONER KENNEDY: "The substantial revisions
24 which would be required" -- is that "now"? No, "required if
25 the proceedings were continued now would involve a much more

1 substantial waste of effort." "A much more substantial waste
2 of effort than the effort than the effort we are already
3 wasting"? What does that mean? Substantially more of a waste
4 than what?

5 COMMISSIONER BRADFORD: Again, we have that diffi-
6 culty.

7 CHAIRMAN HENDRIE: Presumably there is already, and
8 inevitably will be some amount of waste. People were well into
9 GESMO under the ground rules as it stood. If we never go that
10 way again, why, that is all something that we could have done
11 without, I suppose. And if we do go that way again, not all
12 of it will be retrievable. All people are saying here is --

13 COMMISSIONER KENNEDY: Isn't that what the sentence
14 said before?

15 CHAIRMAN HENDRIE: Yes. I don't see any difference.
16 It is just two ways of saying the same thing. Do you see any
17 difference?

18 COMMISSIONER BRADFORD: I don't.

19 CHAIRMAN HENDRIE: Could we stay with it as it is,
20 simply because it is harder to read this one?

21 22. "It is not the Commission's intent to make a
22 proceeding of this sort into a general study on the licensing
23 procedure area." That's fine with me.

24 COMMISSIONER KENNEDY: That's all right.

25 CHAIRMAN HENDRIE: It may be a trifle more precise.

1 COMMISSIONER BRADFORD: Vic would delete the bottom
2 two sentences there.

3 COMMISSIONER KENNEDY: I would be willing to delete
4 it. It was trying to put the thing away.

5 CHAIRMAN HENDRIE: I thought it was a rather nice
6 closure on that.

7 COMMISSIONER KENNEDY: It was trying to encapsulize
8 what the Eizenstat letter was telling us.

9 COMMISSIONER BRADFORD: The point is well taken.
10 There may be some argument with the phraseology, but to the
11 extent that the commentators are arguing that the President has
12 misassessed the role of GESMO, it seems to me to be a point
13 where we're saying --

14 COMMISSIONER KENNEDY: I think it's okay.

15 CHAIRMAN HENDRIE: I would hope to keep it.

16 COMMISSIONER BRADFORD: I would, too. It may be
17 possible to phrase it more artfully.

18 CHAIRMAN HENDRIE: The note here, the note that
19 goes with this recommendation, is that the President doesn't
20 care about usefulness, but his concerns are in other directions,
21 and they don't belong in this context.

22 COMMISSIONER KENNEDY: Some of the commenters have
23 made the point --

24 CHAIRMAN HENDRIE: I would vote to keep it in if that
25 is all right.

1 COMMISSIONER KENNEDY: All we're doing is saying
2 they are wrong.

3 COMMISSIONER BRADFORD: Let me try a modification
4 of that. Supposing it said, "whether GESMO's potential useful-
5 ness outweighs" -- no, I'm just getting myself more tangled
6 up.

7 MR. MALLORY: We could say, "to assess whether GESMO
8 would be more useful than harmful."

9 COMMISSIONER BRADFORD: I would prefer that.

10 COMMISSIONER KENNEDY: Why don't we just say, "Fi-
11 nally, as to the view of some commenters that GESMO indeed
12 might be useful to the President's domestic and international
13 initiatives, we would only note that the President has judged
14 that it would not."

15 COMMISSIONER BRADFORD: That is fine.

16 CHAIRMAN HENDRIE: I think that deals with the com-
17 ment here. Would you repeat that, Rich?

18 MR. MALLORY: "Finally, as to the view of some com-
19 menters that GESMO would be useful to the President's domestic
20 and international initiatives, we would only note that he has
21 indicated it would not."

22 MR. PEDERSON: "GESMO" is used in an odd way there.
23 Wouldn't it be "as to whether continuation of the GESMO pro-
24 ceedings," because he in fact said the safeguards supplement
25 should be published. It is really the proceedings.

1 COMMISSIONER KENNEDY: Exactly. Just make that
2 minor fix. And that makes the point, it seems to me.

3 COMMISSIONER BRADFORD: Yes.

4 CHAIRMAN HENDRIE: Okay. From there, I want to go
5 to page 24.

6 COMMISSIONER KENNEDY: I might say here, I liked it
7 the way it was.

8 CHAIRMAN HENDRIE: Well, if you can stand the extra
9 words. If there is an inclination to leave it --

10 COMMISSIONER KENNEDY: The first one I think is fine
11 and is somewhat more elegant. The deletion of the second,
12 however, --

13 CHAIRMAN HENDRIE: Make the first change, "particu-
14 larly applicable when foreign policy considerations involving,"
15 etcetera.

16 COMMISSIONER BRADFORD: Now, the deletion of the
17 second one takes us, really, back into what you are seeking to
18 avoid in the middle pages. I don't have any problem with that
19 sentence the first or second or third times. I think this
20 would be about the same, and what I have tried to do back in
21 the middle was to state the substantial differences clearly and
22 precisely once, and then move on. And so I took it out of here
23 not as any reflection of the feelings that there wasn't a sub-
24 stantial point to be made, but that this had been made in that
25 middle section.

1 CHAIRMAN HENDRIE: If we end up with separate views
2 on the middle section, can you stand to have it in here?

3 COMMISSIONER BRADFORD: If we end up with identical
4 views on the middle section, I think I could stand to have it
5 here.

6 CHAIRMAN HENDRIE: Well, I was thinking in particu-
7 lar, since the -- I'm afraid we may not be able to collegially
8 make the central argument.

9 COMMISSIONER BRADFORD: Let me try to express the
10 concern that I have. I assume that we are more or less in
11 agreement that we are limited in the number of times we need
12 to meet substantial differences.

13 CHAIRMAN HENDRIE: It is certainly negotiable.

14 COMMISSIONER BRADFORD: But there is another point,
15 that I was also after editorial in the middle section and not
16 so much here, which is that the substantial deference is, of
17 course, circumscribed by what we do and what the law requires
18 of us.

19 CHAIRMAN HENDRIE: You had a phrase that you used
20 there.

21 COMMISSIONER BRADFORD: The "substantial deference"
22 does require us to go to the point of going against what we
23 think the statute should require. Now, that second point and
24 the way in which it would be appropriately inserted may be a
25 source of real difficulty. That point is not, as far as I'm

1 concerned, at issue here. And if you will be more comfortable
2 repeating "substantial deference," fine, I could follow that
3 in the interest of harmony. But I would not want to decide
4 that outside of the context of our looking again at the middle
5 section.

6 CHAIRMAN HENDRIE: I assume if we take a crack at
7 the center section, we will find out whether or not it can be
8 included.

9 COMMISSIONER BRADFORD: Can you paper clip this one?

10 CHAIRMAN HENDRIE: We can paper clip it.

11 Does anybody feel strongly about "probably"? We
12 can strike it.

13 The next place that we come to, which is not one of
14 those April 22nd assistant's amendments --

15 COMMISSIONER BRADFORD: 25 is okay.

16 CHAIRMAN HENDRIE: Go through 'til you hit 29, I
17 believe.

18 COMMISSIONER BRADFORD: I doctored a footnote on
19 27.

20 COMMISSIONER KENNEDY: I like that.

21 CHAIRMAN HENDRIE: What did it mean before and what
22 does it mean now?

23 COMMISSIONER BRADFORD: I took out both ends of the
24 double negative.

25 CHAIRMAN HENDRIE: This Commission goes for forthright

1 language. Take out the double negative.

2 COMMISSIONER KENNEDY: 28. Is that --

3 COMMISSIONER BRADFORD: That is not true on Victor's
4 draft. I guess Victor feels we have mis-cited the Harvey Radio
5 Laboratories case. But I've never read it, so I can't speak to
6 that.

7 CHAIRMAN HENDRIE: I'm going to be unable to be very
8 much help there.

9 COMMISSIONER KENNEDY: I would defer to counsel. I
10 haven't read Harvey Radio Laboratories either.

11 COMMISSIONER BRADFORD: Maybe the only point to be
12 made there is that somebody should check and find out what the
13 point is.

14 MR. MALLORY: Yes, we are. Perhaps he indicated he
15 wasn't sure what the sentence meant, and I think someone else
16 asked that once. The jist of it is that people who apply for
17 a license before a freeze, and after the freeze under new
18 policies they might not get their licenses, even though they
19 applied before the freeze, under policies where they would have
20 gotten the license.

21 CHAIRMAN HENDRIE: I did not have any problems with
22 that. Vic was going to strike a number of things down in
23 there. And I have some problem taking all of that stuff out.
24 I'm going to have to try to stop and try to understand what it
25 means with and without.

1 COMMISSIONER BRADFORD: This is another point that
2 I was talking about a moment ago. I think Vic and I have the
3 same problem. I came at it by inserting language which, to
4 some extent, qualifies the thought. Vic came at it by striking
5 the thought entirely.

6 COMMISSIONER KENNEDY: I have no objection to
7 inserting your sentence.

8 COMMISSIONER BRADFORD: But you don't want to strike
9 the whole thing?

10 COMMISSIONER KENNEDY: I would not strike it.

11 CHAIRMAN HENDRIE: I think it helpful overall, a
12 good deal more helpful than just striking everything out there.
13 Now, we have to strike an "as shown above." There's no problem
14 there, I don't think. Rich, strike "as shown above" and put in
15 Peter's sentence shown on page 29.

16 Flipping merrily onward, I don't find anything con-
17 tentious all the way to page 36. "The order also stated that
18 the Commission, Commissioner Gilinsky dissenting. . ." That
19 seems to be a clear statement of fact.

20 COMMISSIONER BRADFORD: That is a thought that I put
21 in in order to preserve his position. But I notice he has
22 taken it out.

23 COMMISSIONER KENNEDY: He didn't dissent, as a mat-
24 ter of fact.

25 COMMISSIONER BRADFORD: He did on that proposition.

1 MR. MALLORY: He didn't register a dissent.

2 COMMISSIONER BRADFORD: The December statement indi-
3 cates that Commissioner Kennedy would have used the word "pre-
4 ferred" and Commissioner Gilinsky regards the inclusion of the
5 Barnwell part as unnecessary.

6 COMMISSIONER KENNEDY: But that is not a dissent.
7 I understand what you are trying to do. Why can't somebody
8 write a tiny footnote that the order also stated that the Com-
9 missioner reserved a decision, and so on, Commissioner Gilinsky,
10 in this regard?

11 COMMISSIONER BRADFORD: His note would seem to sug-
12 gest that you quote from a letter to the staff.

13 COMMISSIONER KENNEDY: He wrote a letter to the
14 staff, or was it the secretary's letter?

15 MR. MALLORY: It would seem proper to quote the
16 order.

17 COMMISSIONER KENNEDY: I would think we would quote
18 the order.

19 MR. MALLORY: A footnote at the end of the quotation
20 would be appropriate.

21 COMMISSIONER BRADFORD: A footnote at the end of the
22 quotation?

23 MR. MALLORY: A footnote at the end of the quotation
24 in the text. The footnote would be a quotation from the order,
25 saying Commissioner Gilinsky, and whatever the order said.

1 COMMISSIONER BRADFORD: That's all right with me.
2 Obviously, it is not up to me to indicate satisfaction or dis-
3 satisfaction with that arrangement.

4 There is a thought that Victor has pursued through
5 pages 36 and 37, having to do with licensing by the State of
6 South Carolina. I don't know how to relate to that, mainly
7 because I can't read it.

8 MR. MALLORY: I believe this is the contract licens-
9 ing that is turned over to the states. They don't license
10 reactors, for example.

11 MR. PEDERSON: Nor fuel cycle procedures.

12 CHAIRMAN HENDRIE: I think it is just flat wrong.

13 Okay, we have agreed on a deal, by quoting the order
14 language which reflects that which, presumably, is a fair state-
15 ment of that. And otherwise, these last pages don't have any-
16 thing else on them, at least in your markup, and Vic's stuff
17 getting into whether the state could do anything, I think it is
18 factually incorrect on the law.

19 MR. MALLORY: On page 37 we should delete the last
20 paragraph.

21 CHAIRMAN HENDRIE: We should delete the last
22 paragraph since we did it separately this morning, right?

23 MR. MALLORY: Yes.

24 CHAIRMAN HENDRIE: Okay.

25 Now, on page 38, the last one. It says, "The

1 separate views of Commissioner Kennedy appear below." At the
2 moment, it appears we may have a whole lot of separate views,
3 and I wonder.

4 MR. MALLORY: Or we could say, "Reasons are stated
5 above," if we have separate statements.

6 CHAIRMAN HENDRIE: Yes, please fix that if we end
7 up separately.

8 COMMISSIONER KENNEDY: My separate views go to some-
9 thing entirely apart from all of this, and I was only expressing
10 why I would have preferred. I joined in the opinion, but would
11 have preferred to have used other language. And I just wanted
12 to express why. I will let you all technically figure out how
13 to do that. They are totally apart from the other.

14 CHAIRMAN HENDRIE: We will be referring up in that
15 transition paragraph at the end of page 6 to our separate views
16 on reasons.

17 COMMISSIONER KENNEDY: That's right.

18 CHAIRMAN HENDRIE: If we could find some way here
19 to characterize the remarks.

20 COMMISSIONER KENNEDY: Additional views or some-
21 thing of Commissioner Kennedy concerning. You all can figure
22 out how to handle it.

23 CHAIRMAN HENDRIE: How would you characterize the
24 concern, to give him some guidance?

25 MR. MALLORY: We will make use of the word "terminate"

1 rather than "deferred."

2 COMMISSIONER KENNEDY: That's fine.

3 CHAIRMAN HENDRIE: That would be, I think, a help.

4 MR. KELLEY: That seems to me it probably fits with
5 this little bridge, couple of sentences, that I have drawn up.

6 CHAIRMAN HENDRIE: You would take it up there?

7 MR. KELLEY: I think so, because you go along with
8 facts and procedure.

9 COMMISSIONER KENNEDY: You see, I want -- initially,
10 originally, I was joined -- well, I am still joining in the
11 unanimous decision of the Commission. Well, it turns out now
12 that we have differing views as to why we reached the conclu-
13 sions we all join in. And that is what you are talking about.

14 Apart from that, if I had had my druthers, I would
15 have used a different word to characterize our decision. Rather
16 than have used the word "terminate," I would have "deferred" or
17 something like that. But that is a different question alto-
18 gether.

19 MR. KELLEY: But I think maybe you can jim this
20 transition paragraph to encompass that.

21 CHAIRMAN HENDRIE: His thought was --

22 COMMISSIONER KENNEDY: But I want to put that. I
23 don't want that to get mixed up with all of this stuff, because
24 it is out of place, you see.

25 MR. PEDERSON: How lengthy would your views likely

1 be on that point?

2 COMMISSIONER KENNEDY: How what?

3 MR. PEDERSON: How lengthy?

4 COMMISSIONER KENNEDY: A couple of pages.

5 MR. PEDERSON: All right.

6 CHAIRMAN HENDRIE: Well, I think it would be helpful
7 if they were --

8 COMMISSIONER KENNEDY: You could put "supplemental
9 views" or something.

10 CHAIRMAN HENDRIE: It would be helpful if they were
11 characterized so, as people looked at the attachment, you could
12 see, well, this is a separate view on this subject, and this is
13 a separate view on that subject. And whether it ought to be
14 mentioned here or mentioned up in the other place, I don't
15 know.

16 MR. KELLEY: It is perfectly common for the Supreme
17 Court splitting all over the lot, and they will have Justice
18 Black, with whom Justice Harlan joins, says as follows, and
19 they will go on for five pages. And then they'll have a piece
20 that says, Justice Harlan also, all by himself, also says this.
21 And that is perfectly routine.

22 COMMISSIONER KENNEDY: I will leave how to do it to
23 you. The language is all written since January 3rd. We're
24 going to have to go back and see if it is still readable.

25 CHAIRMAN HENDRIE: Peter had one paper clip left in

1 on 24.

2 COMMISSIONER BRADFORD: The paper clip is only rele-
3 vant if we undertake an effort to reach an accord on the rest.
4 I am in a considerable quandary as to what I would write to go
5 with the April 26th version on pages 7 through 20. But I don't
6 have any very wide degree of difference with the views expressed
7 in them. But I think it would be very unusual to file a con-
8 currence. But there are a couple of areas in there where there
9 certainly is a difference in emphasis. So that what we really
10 would be coming down to would be a statement to the effect
11 that -- in fact, I guess Victor would disagree, because he goes
12 further than I do on those points. And he would state the empha-
13 ses differently.

14 CHAIRMAN HENDRIE: Do you want to take a crack at
15 that center section? I think if you can stand a little while
16 longer, I think it is worth taking a look at. I don't know.
17 If we begin to get bogged down, why, we will skip it. What do
18 you think, Peter?

19 COMMISSIONER BRADFORD: I am willing to try. I under-
20 stand there are substantial changes in a short period of time.
21 But I can do it either way.

22 COMMISSIONER KENNEDY: Where are we, pages 7 through
23 19?

24 CHAIRMAN HENDRIE: That is the missing piece.

25 COMMISSIONER BRADFORD: I don't want to mislead you.

1 There are a couple of areas in there where we may have problems.

2 COMMISSIONER KENNEDY: Well, if we were able to
3 reach agreement on the others, those could be taken care of by
4 footnotes in a much different way. I don't care. But I'm not
5 going to be able to continue past 6:00 this evening. I would
6 be willing to try again tomorrow.

7 CHAIRMAN HENDRIE: This probably will narrow this.
8 Okay, page 7. "This is an important problem."

9 COMMISSIONER KENNEDY: "This is an important problem
10 for" --

11 CHAIRMAN HENDRIE: United States foreign policy.

12 COMMISSIONER KENNEDY: That's okay with me.

13 CHAIRMAN HENDRIE: It's hard to fight that.

14 COMMISSIONER KENNEDY: The footnote is fine with me,
15 too.

16 MR. MALLORY: Do you want to strike "inter alia"?

17 CHAIRMAN HENDRIE: Yes. I've never figured out what
18 it means.

19 Let's see. "The basis for the President's request."
20 I don't know. I don't care.

21 COMMISSIONER KENNEDY: It seems to me that's true.
22 But I don't really care.

23 COMMISSIONER BRADFORD: It probably does not show
24 very well on the Xerox. But in the footnote, the word "also"
25 goes in after "policy."

1 COMMISSIONER KENNEDY: Yes.

2 COMMISSIONER BRADFORD: But again, those aren't
3 changes of substance.

4 COMMISSIONER KENNEDY: The first sentence there can
5 be dropped, I think, and the word "lengthy" adds nothing.

6 CHAIRMAN HENDRIE: I would ask, can you stand to
7 have this one in and that one out?

8 COMMISSIONER BRADFORD: Sure.

9 CHAIRMAN HENDRIE: Since not everybody knows where
10 the finger on the page was, we would leave in the first para-
11 graph, we would leave that one in, and down in the footnote
12 strike, the first sentence, strike "lengthy" and put in "also."

13 Okay. Onward. Page 9, "The United States thus
14 asserts the right, under its cooperative agreements" -- what
15 are they mumbling over there? Anything I should hear?

16 MR. PEDERSON: No. I have a copy that has both
17 Gilinsky's and Bradford's, and it's a little hard to tell.

18 COMMISSIONER BRADFORD: Mine would just delete "as-
19 serts the right." Victor's takes all of that out.

20 CHAIRMAN HENDRIE: Let me go back to your draft,
21 Peter.

22 COMMISSIONER KENNEDY: Victor wants to put back the
23 staff changes that were taken out.

24 COMMISSIONER BRADFORD: Yes.

25 COMMISSIONER KENNEDY: Including "therefore," I

1 assume, the footnote.

2 COMMISSIONER BRADFORD: I should think so, yes. I
3 don't have any objection.

4 COMMISSIONER KENNEDY: I don't have any objection
5 to putting it back if it will make anybody any happier.

6 CHAIRMAN HENDRIE: Well, putting it back comes in
7 the context of a number of other changes which would be a good
8 deal more difficult to parse. I have a lot of difficulty
9 trying to shake, at this point, to shake down the differences
10 and understand where we are.

11 COMMISSIONER KENNEDY: I don't think it would hurt
12 anything anyway. It was there before his other changes. But
13 as I say, it doesn't make any difference to me.

14 CHAIRMAN HENDRIE: Peter, I would really rather
15 stick to your draft and the agreements struck by the assistants
16 on April 26th.

17 COMMISSIONER BRADFORD: I am hardly in a position
18 to object to that.

19 CHAIRMAN HENDRIE: I assume you participated in
20 that, didn't you, Hugh? These adjustments to the April 26th
21 draft?

22 COMMISSIONER BRADFORD: My own draft doesn't put
23 that one back in.

24 CHAIRMAN HENDRIE: That is true, and I am proposing
25 to hang with the markup as you've marked it up, which means

1 that the sentence under "The President's nuclear nonprolifera-
2 tion policy" would stay this way.

3 Now, get down there just before the footnote, and
4 we have, "If the U.S. were to deny other nations while continu-
5 ing to pursue commercial reprocessing at home, it would under-
6 mine the credibility of our" -- what's the word, Peter?

7 COMMISSIONER BRADFORD: Concern.

8 CHAIRMAN HENDRIE: -- "the credibility of our concern
9 about the issue of plutonium, and encourage other nations to
10 develop their own."

11 COMMISSIONER KENNEDY: I've no concern about the
12 "concern about the credibility about plutonium." I think the
13 last part -- what I think is more likely is, "and thereby lessen
14 the likelihood that we could encourage others" --

15 COMMISSIONER BRADFORD: "To refrain from" --

16 CHAIRMAN HENDRIE: I think a period after "the use
17 of plutonium" does the job.

18 COMMISSIONER KENNEDY: I think that does it. I
19 think it just gets redundant. I don't think it is going to
20 encourage them. Those that are doing it are doing it anyway,
21 or will. What we wanted to do was to try to get them to share
22 our concern, and to the extent that continuing this effort
23 casts doubt on our own credibility, we would be less likely
24 to be successful in our effort to get them to join us in that
25 concern. I think the encouragement -- I think a period does

1 it after "plutonium."

2 CHAIRMAN HENDRIE: A period is one way, and if a
3 period does not grab you I would recommend, "It would undermine
4 the credibility of our concern about the use of plutonium,
5 and our international initiatives toward nonproliferation."
6 If you would want to pick up that thought.

7 COMMISSIONER BRADFORD: I don't think that those
8 changes are quite as sharply focused as the real other thought
9 there, that if someone resorted to a plutonium economy, so
10 would others. You are expressing the same concern at one
11 higher level of abstraction. So if you are more comfortable
12 with that, that is still all right.

13 COMMISSIONER KENNEDY: I am, because it implies more
14 than just the plutonium question.

15 CHAIRMAN HENDRIE: Let me scan just once more, and
16 Rich, you take notes. Those last lines there would be, "It
17 would undermine the credibility of our concern about the use
18 of plutonium and our international initiatives toward nonpro-
19 liferation."

20 Next page.

21 COMMISSIONER KENNEDY: What are these deletions?

22 CHAIRMAN HENDRIE: Are those yours?

23 COMMISSIONER BRADFORD: That was mine. That was
24 the page that I messed up so badly that I retyped and put it
25 in clean.

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CHAIRMAN HENDRIE: How did you manage to get it in between page 9 and page 10?

COMMISSIONER BRADFORD: That already, in fact, had been done. There was already a page 9A.

CHAIRMAN HENDRIE: I see.

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1 COMMISSIONER BRADFORD: If you take the page by
2 itself, then each of those sentences plays a role. If you
3 take that page in conjunction with what has gone before it --
4 I'm going through it -- it is so piecemeal. But haven't we
5 already said everything in the first 5 lines on the
6 immediately preceding pages?

7 COMMISSIONER KENNEDY: I don't think so.

8 COMMISSIONER BRADFORD: Why do we need to say that
9 it is appropriate for us to consider foreign-policy matters in
10 deciding to terminate the proceedings? That is clearly
11 implicit in everything that we've just done. All we're doing
12 is talking about foreign-policy matters. Why do we have to
13 say that it is appropriate?

14 COMMISSIONER KENNEDY: Up till now, we've been
15 saying all of those things were important, and now we're
16 saying moreover not only are they important and significant to
17 the question, not only are those issues significant, but it is
18 wholly within our power and, indeed, within our mandate to
19 take them into account in this domestic licensing decision.

20 You see, it's a different question. It is not an
21 expert question.

22 COMMISSIONER BRADFORD: But the same thought, then,
23 also follows. In that same paragraph, we cite sections of the
24 statutes that permit us to do that, and we go right through
25 the same thought again, from there on down, by making it more

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1 specific and, I think, more useful.

2 We say Congress intended for us to do this; here
3 are the sections. Each of the individual license applications
4 has been considered under one of these sections, and security
5 is an essential element. It just seems to me that we
6 expressed the same thought twice within the space of 10 lines.

7 COMMISSIONER KENNEDY: If we are to keep the first
8 sentence, I would certainly be prepared to drop that
9 introductory phrase in the next sentence.

10 So, the first sentence going "So, although —" down
11 through "proceedings and Congress has determined that the
12 security would be an essential element in all the domestic
13 licensing decision."

14 And then, I don't have any trouble with the other
15 changes. In other words, I would keep the first sentence and
16 take the other changes.

17 MR. MALLORY: The changes in the middle of the page
18 after the word "Congress" all the way down through all those
19 numbers were made in the April 26 draft.

20 COMMISSIONER BRADFORD: Oh, were they?

21 MR. MALLORY: Yes. And it could be shown here, as
22 you have typed it, as the original.

23 CHAIRMAN HENDRIE: Say that again.

24 COMMISSIONER KENNEDY: So, if we keep the first
25 sentence, drop the introductory part of the next sentence, and

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1 then take the rest of the paragraph with all those other
2 changes.

3 MR. MALLORY: Except for the last sentence, where
4 we say we think it appropriate that -- and that includes
5 Peter's change.

6 COMMISSIONER KENNEDY: That is certainly not
7 objectionable to me. I think that's fine.

8 COMMISSIONER BRADFORD: Is the footnote my doing or
9 yours?

10 MR. MALLORY: That's yours. I don't think we would
11 object to knocking out all of the changes after the word
12 "however."

13 CHAIRMAN HENDRIE: That would be okay with me.

14 MR. MALLORY: The last point in the footnote was
15 marginal.

16 COMMISSIONER BRADFORD: The more I thought about
17 that, the more trouble I had with it, and that's why I took it
18 out. It would take me a moment to reconstruct my thinking.

19 CHAIRMAN HENDRIE: Let's strike it. Can somebody
20 tell me now what we are groping for, in agreement, on page 9A?

21 COMMISSIONER BRADFORD: On page 9A, you have the
22 first sentence I had taken out, and that was from "although"
23 down to "proceedings," and then the nation's security.

24 CHAIRMAN HENDRIE: So, you part with "the Congress
25 has" --

pv 1 COMMISSIONER BRADFORD: And then the rest of it is
2 just the way it's typed. Those changes, with the exception of
3 "we think it is appropriate," are all part of the staff April
4 26 draft.

5 CHAIRMAN HENDRIE: Would that be okay?

6 COMMISSIONER KENNEDY: Fine.

7 MR. MALLORY: And "we think it appropriate" is out?

8 CHAIRMAN HENDRIE: True. I see. That is a dash on
9 an O. I got you. Okay. We've got a 9A.

10 MR. MALLORY: What about the first sentence of the
11 footnote?

12 CHAIRMAN HENDRIE: I think "we do not find at this
13 time" is the better language.

14 COMMISSIONER KENNEDY: Sure. If we say that, that
15 says on the merits -- well, how else could we say it?

16 MR. MALLORY: It had to do with this troublesome
17 point in the end of it.

18 CHAIRMAN HENDRIE: Okay. Page 10.

19 MR. MALLORY: There are a couple of things that I
20 talked to the assistants about that don't appear anywhere
21 here, and I would bring them up.

22 CHAIRMAN HENDRIE: Please do.

23 MR. MALLORY: The last line on 9A, we thought,
24 might be changed from "great" to "substantial deference."

25 COMMISSIONER KENNEDY: That's a small change.

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1 Normally, I would object, because it is longer.

2 CHAIRMAN HENDRIE: He would object because it's
3 longer.

4 COMMISSIONER KENNEDY: I am with him.

5 MR. MALLORY: That sentence runs to the next page.
6 There's no paragraph there.

7 CHAIRMAN HENDRIE: I see. It would period with a
8 new sentence but not a new paragraph. "It has been settled
9 that regulatory agencies are."

10 Anything more on 9A?

11 MR. MALLORY: No.

12 CHAIRMAN HENDRIE: Okay. 10?

13 COMMISSIONER KENNEDY: The deletion, then, that
14 "foreign-policy views are entitled to great deference" -- we
15 just said it. That is the opening sentence of the paragraph.

16 COMMISSIONER BRADFORD: Victor was taking it out.
17 But I'm prepared to say it should stay.

18 CHAIRMAN HENDRIE: If we leave it in, we can take
19 it out here.

20 COMMISSIONER BRADFORD: Victor is also taking it
21 out of there.

22 COMMISSIONER KENNEDY: You can't take it out.
23 That's what the paragraph's about.

24 CHAIRMAN HENDRIE: Is Victor going to run in '80?

25 COMMISSIONER KENNEDY: If he was going to run in

pv 1 '80, he would want all of these in here.

2 CHAIRMAN HENDRIE: Onward. "Traditionally extended
3 substantial deference when we believe permissible."

4 COMMISSIONER KENNEDY: What does that mean?

5 CHAIRMAN HENDRIE: That means when the statute
6 tells you to do something, you have to do it whether the
7 President wants it or not.

8 COMMISSIONER KENNEDY: I don't have any problem
9 with that.

10 COMMISSIONER BRADFORD: Where are we?

11 CHAIRMAN HENDRIE: On page 10, about 10 or 12 lines
12 down. Now, what do the lines and all mean here?

13 COMMISSIONER BRADFORD: I can explain mine.

14 COMMISSIONER KENNEDY: Which lines are these?

15 CHAIRMAN HENDRIE: He's going to explain what the
16 note means.

17 COMMISSIONER BRADFORD: First of all, the word
18 "deference" is now still in 3 times, on the bottom of 9A and
19 the middle of 10. That is even with the deletion in one case.
20 Then, the next sentence begins, "This deference."

21 CHAIRMAN HENDRIE: Okay. What would one do?

22 COMMISSIONER BRADFORD: My point there was not
23 that --

24 COMMISSIONER KENNEDY: Well, you could say "in this
25 regard."

pv 1 COMMISSIONER BRADFORD: I've raised the question in
2 the margin, and I don't know what the answer is. What I was
3 after was some other citation from this Commission's long
4 history, which made the same point without having to cite a
5 case that, for one reason or another, I think they are going
6 to know that I have some misgivings about.

7 COMMISSIONER KENNEDY: He can dissent.

8 MR. MALLORY: I don't know of any. I think these
9 are the ones that are most specific about the kind of things
10 discussed in the quote. I don't think there are many that are
11 very explicit about what is being done. The Westinghouse case
12 he cited is not very explicit; and as far as I know, all of
13 the other cases say almost nothing about this subject in one
14 way or another.

15 COMMISSIONER KENNEDY: I think, with the change in
16 the introductory sentence, I think the point ought to be made
17 that it does reflect what the Commission has said in the past,
18 and it would seem, if that makes Peter uncomfortable, if this
19 is what we were leading to, I would be prepared to include it
20 as a footnote, that Commissioner Kennedy notes, indeed, that
21 the Commission, in its wisdom, has already --

22 COMMISSIONER BRADFORD: My concern about it really
23 doesn't go that far. I'm not very fond of either of those
24 cases, but the particular language quoted here is not the part
25 that causes the greatest trouble. If that is the only place

pv 1 where you can find the proposition stated with sufficient
2 clarity, go ahead. The idea of putting in a footnote appeals
3 to me, just in terms of handling the text.

4 COMMISSIONER KENNEDY: And I think that's fine, if
5 you want to make a footnote out of it.

6 CHAIRMAN HENDRIE: Sort of this whole shebang here?

7 COMMISSIONER KENNEDY: That piece is -- where that
8 line is, make a footnote out of that.

9 COMMISSIONER BRADFORD: And if you hinged the
10 footnote to the earlier sentence, you could get rid of another
11 "deference."

12 CHAIRMAN HENDRIE: I was just going to take it out
13 and say "this has been formally recognized."

14 COMMISSIONER KENNEDY: Or say "in this regard, the
15 Commission has stated" or "in this regard, we cite the
16 Commission's own decisions."

17 MR. MALLORY: Assistants worked out language for
18 the sentence beginning "Thus, while the Commission is not
19 infallible, it has traditionally accorded due regard to
20 Executive Branch views in matters touching foreign policy" --
21 "the United States foreign policy" --

22 COMMISSIONER KENNEDY: That's fine.

23 CHAIRMAN HENDRIE: I'll buy it.

24 COMMISSIONER KENNEDY: And then Peter would like to
25 have in "when legally permissible."

pv 1 COMMISSIONER BRADFORD: What I would like to have
2 in there, actually, would force me to rethink my own insert,
3 and it would be to put at the end of that sentence "the
4 Executive Branch touching matters of foreign policy in the
5 absence of a clear statutory mandate."

6 COMMISSIONER KENNEDY: That's fine.

7 CHAIRMAN HENDRIE: I think that's excellent. And
8 that could be appended to that, which would avoid another
9 "substantial concurrence" or "deference."

10 COMMISSIONER BRADFORD: At the top of page 11, you
11 will find "deference" again.

12 COMMISSIONER KENNEDY: We are not still using that
13 word "touching United States foreign policy." It is one thing
14 to say we accorded deference to matters that reflect policies;
15 it's another thing to say it is tangentially related. We
16 would certainly have an effect on the amount of deference we
17 are going to accord.

18 MR. MALLORY: That is still in.

19 COMMISSIONER KENNEDY: I would change the word to
20 "affected."

21 CHAIRMAN HENDRIE: How does that read there, in the
22 middle of 10, as you worked it out, Rich?

23 MR. MALLORY: It is: "Thus, while the Commission
24 is not compelled to adhere to the President's views, it has
25 traditionally accorded due regard to Executive Branch views in

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1 matters affecting United States foreign policy in the absence
2 of a clear statutory mandate to the contrary."

3 CHAIRMAN HENDRIE: I think that sounds fine. Now,
4 what was this business?

5 COMMISSIONER KENNEDY: Taking out the word
6 "touching" and changing it to "affecting."

7 CHAIRMAN HENDRIE: Let's strike "tradition."

8 MR. MALLORY: The footnote will begin with a quote,
9 and I think Commissioner Kennedy had some language as to how
10 the footnote might start. It seems to me it can simply begin
11 with a quote.

12 COMMISSIONER KENNEDY: Well, just say, "The recent
13 decisions of the Commission reflect this view."

14 CHAIRMAN HENDRIE: You could just start with a
15 quote.

16 COMMISSIONER KENNEDY: I guess. Sure.

17 MR. MALLORY: Or simply knock the word "deference"
18 out of the sentence.

19 CHAIRMAN HENDRIE: Either way.

20 COMMISSIONER KENNEDY: Yes. Sure. Just take the
21 word "deference" out and stick the whole thing down there.

22 CHAIRMAN HENDRIE: Okay. Page 11.

23 MR. MALLORY: Pages 11, 12, and 13 were
24 substantially worked over by the assistants.

25 COMMISSIONER KENNEDY: I have pages with double

pv 1 lines down the side of them.

2 MR. MALLORY: That was a substantial revision that
3 appeared here, and there were further revisions that the
4 assistants worked out.

5 CHAIRMAN HENDRIE: Are the assistants' latest
6 things titled "redraft of pages 11, 12, 13 of the April 26
7 draft"?

8 MR. MALLORY: Yes.

9 COMMISSIONER BRADFORD: Those start with the words
10 -- let me try to pick up. I think the first sentence on page
11 11, I took out --

12 COMMISSIONER KENNEDY: Wait a second.

13 COMMISSIONER BRADFORD: Your new pages --

14 CHAIRMAN HENDRIE: Go back to what -- go back,
15 Dick, to what you would think would be page 18, and what you
16 will discover is the page after 17.

17 MR. KELLEY: Mr. Chairman, we've got versions here
18 that Rich tells me are the versions, and I've Xeroxed these.

19 CHAIRMAN HENDRIE: Pass them out, please.

20 COMMISSIONER KENNEDY: Apropos of my comments
21 earlier --

22 CHAIRMAN HENDRIE: I take it we draw a line here.

23 COMMISSIONER KENNEDY: It says "in addition." That
24 stuff is a footnote on the other page, now. I don't know what
25 this is. I'm reading this for the first time.

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1 CHAIRMAN HENDRIE: What do you do with the footnote
2 to the footnote?

3 MR. MALLORY: That, I think, is taken out.

4 COMMISSIONER BRADFORD: I have no qualms with those
5 changes. As far as I'm concerned, you can go up to page 14.

6 COMMISSIONER KENNEDY: I would like to get to read
7 them. Well, I am reading something else. I was looking at
8 these.

9 CHAIRMAN HENDRIE: That, starting at the
10 appropriate place, replaces this.

11 COMMISSIONER KENNEDY: Yes.

12 CHAIRMAN HENDRIE: Do we start cleaning on page 14?
13 Yes, we do, because it is a new section.

14 COMMISSIONER KENNEDY: Let me reserve on those 2
15 pages overnight, so I can look at them and read them.

16 CHAIRMAN HENDRIE: The new 11, 12, and 13 were the
17 result of what?

18 MR. MALLORY: Assistants' discussions about what is
19 reflected in the draft that you have and the draft we have
20 been discussing.

21 COMMISSIONER KENNEDY: But they were not
22 recirculated again until just this minute. I don't have them.

23 CHAIRMAN HENDRIE: I think I ended up getting them.

24 MR. MALLORY: They were attached, supposedly, to
25 the end of the thing we have here.

pv 1 COMMISSIONER KENNEDY: Oh, so they are. Mine are
2 between pages 37 — no, mine were between 2 copies of page 38,
3 which is where you would almost always look for pages 10, 11,
4 and 12, or pages 11, 12, and 13. I should have done that.

5 CHAIRMAN HENDRIE: I always look for them after
6 page 17, myself. Why don't we clip these in at this point?
7 You would like to read them, but there is at least a strong
8 presumption of acceptability, if the assistants have talked to
9 each other on them.

10 COMMISSIONER KENNEDY: Let me have the opportunity
11 to read them. But I will confirm that early on in the
12 morning.

13 MR. MALLORY: There is a word "start" marked on the
14 first page.

15 COMMISSIONER KENNEDY: This version doesn't even
16 have it. This was a really fancy one.

17 MR. MALLORY: In the draft we have been going
18 through here, at the top of page 11, there is a sentence that
19 was intended to be part of the thing that was going on on page
20 10 that we have been discussing, to be the terminal sentence
21 of that paragraph.

22 COMMISSIONER BRADFORD: Once you turn it into a
23 footnote, that sentence disappears. I would have taken it out
24 regardless, but certainly, once it is a footnote —

25 COMMISSIONER KENNEDY: I don't think it's

pv 1 necessary.

2 CHAIRMAN HENDRIE: I did not feel it was necessary
3 anyway.

4 COMMISSIONER KENNEDY: I don't think it is
5 necessary any longer.

6 CHAIRMAN HENDRIE: Strike it.

7 COMMISSIONER KENNEDY: The way we have redone the
8 other page.

9 CHAIRMAN HENDRIE: Strike it. Peter, if this
10 section comes out after fewer deferences to the President,
11 than your version did --

12 COMMISSIONER BRADFORD: It may. I think you can
13 probably now pull that paper clip on page 24.

14 CHAIRMAN HENDRIE: Alternative fuel in cycles.
15 This language seems good to me.

16 COMMISSIONER KENNEDY: Fine.

17 CHAIRMAN HENDRIE: We can accept that language.
18 "These studies will at least provide important information" --
19 et cetera, et cetera. Good.

20 COMMISSIONER KENNEDY: The President has said that
21 the whole purpose of the exercise is to make the benefits of
22 nuclear power available to all nations.

23 COMMISSIONER BRADFORD: Is that in the charter?

24 MR. PEDERSON: It is taken from his statement to
25 the conference, I think.

pv 1 COMMISSIONER BRADFORD: Can you quote it, rather
2 than paraphrase it? The only reason I took it out was it
3 seemed different than the course we were going on.

4 MR. PEDERSON: I think it is from his keynote
5 address.

6 MR. MALLORY: I believe that is essentially a
7 quote.

8 COMMISSIONER BRADFORD: Let's use the exact
9 language.

10 COMMISSIONER KENNEDY: If you use the exact
11 language, we can leave that to you.

12 CHAIRMAN HENDRIE: We get to flip the page. Now,
13 let's see, in the previous paragraph, the one with the lining.
14 We talked about NASEP, and the change would be the specific
15 focus involved.

16 COMMISSIONER KENNEDY: I suggest dropping the first
17 sentence.

18 CHAIRMAN HENDRIE: Yes. I was going to try to read
19 how the change -- and see how it sounded. "The specific focus
20 that these" --

21 COMMISSIONER BRADFORD: "Of both studies."

22 CHAIRMAN HENDRIE: "Is on alternatives that
23 combines" -- this gets us on more swiftly. Let's please do
24 that.

25 COMMISSIONER KENNEDY: I must say I prefer the word

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1 "appropriate."

2 COMMISSIONER BRADFORD: That's a word that I
3 usually choke on, because it is a substitute for something
4 else, usually. But it isn't something I feel strongly about.

5 COMMISSIONER KENNEDY: Maybe we can find another
6 word, but "waste of time and effort," I think that is a little
7 strong.

8 CHAIRMAN HENDRIE: Let's use "inappropriate."
9 Instead of saying "waste of time and effort," you're saying
10 precisely what is bothering you. "The Commission must --
11 should --"

12 COMMISSIONER KENNEDY: I don't care.

13 CHAIRMAN HENDRIE: Do you still like "must"?

14 COMMISSIONER BRADFORD: That's okay.

15 CHAIRMAN HENDRIE: Put in "must."

16 COMMISSIONER KENNEDY: I don't know why we delete
17 this, except I think you argue redundancy. Is the last
18 sentence, though, really redundant? Have we been making that
19 point?

20 MR. MALLORY: I think we made it pretty well in the
21 sentence we just discussed.

22 COMMISSIONER BRADFORD: That seems to me to say the
23 same thing.

24 COMMISSIONER KENNEDY: Not quite, because here
25 there are two things, either as to the GESMO proceedings, or

pv 1 the licensings, and the other sentences, the other sentence
2 refers only to a decision on licensing.

3 COMMISSIONER BRADFORD: Suppose we just put in the
4 GESMO proceedings?

5 COMMISSIONER KENNEDY: That's fine. That's okay.
6 The decision either on -- a final decision either on the GESMO
7 proceedings or the licensing of plutonium recycled functions.
8 That will take care of it.

9 CHAIRMAN HENDRIE: And with that change, addition
10 to 15, we can strike on 16 -- 17 -- I like 17 -- 18 --

11 MR. MALLORY: Only 2 pages to go.

12 CHAIRMAN HENDRIE: "The Commission's decision to
13 terminate these proceedings does not involve their final
14 disposition on the merits" -- all agree the change would be,
15 as we have covered, "the present state of studies."

16 Rich, does that get the same thought to you?

17 COMMISSIONER KENNEDY: That seems to me to get it
18 all.

19 CHAIRMAN HENDRIE: It seems to me a better phrasing
20 actually.

nd#7 21 MR. MALLORY: Mine is a bit cumbersome.

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1 CHAIRMAN HENDRIE: By George, I think you've extracted
2 a confession.

3 Okay, the change accepted up there at the beginning:
4 "Moreover, the President has not stated." Well, I don't know.

5 COMMISSIONER KENNEDY: I'm not troubled by the dele-
6 tion. We have said that already. We certainly said that earlier
7 on. At the beginning of the paper we said that. That is what
8 he wrote us. That doesn't trouble me.

9 COMMISSIONER BRADFORD: Vic, I notice, has deleted
10 the sentence before that.

11 CHAIRMAN HENDRIE: I would rather hang onto the one
12 before that.

13 COMMISSIONER KENNEDY: The one before that should be
14 hung onto, and again, it is a statement of fact.

15 COMMISSIONER BRADFORD: Again, I was just going to
16 suggest that we use, if there is in fact a precise sentence
17 from the speech, that we use the exact sentence.

18 MR. MALLORY: For the one that is crossed out?

19 COMMISSIONER BRADFORD: Yes.

20 COMMISSIONER KENNEDY: No, for the one that is not
21 crossed out.

22 COMMISSIONER BRADFORD: I'm sorry, the one that is
23 crossed out in Victor's copy.

24 MR. MALLORY: "Premature entry into the economy."

25 Those are his words, "Premature entry into the plutonium

1 economy."

2 COMMISSIONER BRADFORD: What about the first half?

3 MR. MALLORY: That I think would be --

4 COMMISSIONER BRADFORD: My concern is that it is
5 always chancy to paraphrase the President in situations like
6 this. The State Department and the President try to put their
7 thoughts in some precision.

8 MR. MALLORY: That would, I think, be more difficult
9 to find, a specific statement that says something very close to
10 that.

11 CHAIRMAN HENDRIE: Is there anywhere in here where
12 we refer to the Administration?

13 MR. MALLORY: I think several places.

14 CHAIRMAN HENDRIE: Would it help to say, "The Adminis-
15 tration has not taken a final position"? I begin to sense what
16 your problem is. Watch about saying what the man said if you
17 don't have it right there.

18 COMMISSIONER KENNEDY: That is exactly right. I
19 agree with that. You better say what the man said in his words,
20 not yours.

21 CHAIRMAN HENDRIE: Okay, we can strike the next
22 sentence.

23 COMMISSIONER KENNEDY: That's all right with me.

24 CHAIRMAN HENDRIE: "The Administration's policy
25 will presumably take account of the study's results." That

1 seems like sort of a smart crack to me.

2 COMMISSIONER KENNEDY: I really think we ought to
3 delete that word.

4 CHAIRMAN HENDRIE: "Presumably"?

5 COMMISSIONER KENNEDY: Around the world, we have
6 enough problems with people who have serious doubts about our
7 seriousness about this.

8 COMMISSIONER BRADFORD: I did not mean it was a
9 wisecrack. I meant it simply to indicate that we are in a posi-
10 tion of presuming the Administration can take account of any-
11 thing.

12 CHAIRMAN HENDRIE: All right. Now, let's get down
13 here after the remarks. "The Commission is committed to re-
14 examining its decision to terminate, in light of the completed
15 studies."

16 COMMISSIONER KENNEDY: That's okay. Why would we
17 delete the footnote?

18 COMMISSIONER BRADFORD: I deleted it because I
19 thought it was at some variance. The first sentence is not a
20 problem. The second sentence I thought was at some variance
21 with our order itself. What I would need to have read to me
22 to be sure whether --

23 CHAIRMAN HENDRIE: I would like to keep the first
24 sentence of the footnote, and strike the second.

25 COMMISSIONER KENNEDY: You would not even need it as

1 a footnote if that's all you've got.

2 CHAIRMAN HENDRIE: Right. Why not just move the
3 sentence up?

4 COMMISSIONER KENNEDY: Just say, "In light of the
5 completed studies, expected to take about two years," -- is
6 that okay, and then you could just delete the footnote alto-
7 gether? That's all right with me.

8 CHAIRMAN HENDRIE: Are we aboard, Rich?

9 MR. MALLORY: Yes.

10 CHAIRMAN HENDRIE: I think we can flip the page.

11 Okay, then. "Will then be reinstated on whether
12 some other course will be adopted."

13 COMMISSIONER KENNEDY: Where's this, now?

14 CHAIRMAN HENDRIE: Page 19 up at the top. "The
15 changes then will be reinstated or whether some other course
16 will be adopted." I think that's fine. Let's do it this way.
17 "But in this posture, the termination is not a final disposi-
18 tion."

19 COMMISSIONER KENNEDY: Of the individual license
20 application, that's correct.

21 CHAIRMAN HENDRIE: Rich, do you see any difficulty
22 with that?

23 MR. MALLORY: No.

24 CHAIRMAN HENDRIE: Now, the sentence did have in it,
25 "both the individual license application on the merits and the

1 issues surrounding widescale plutonium recycling." Now, in
2 coming down to "the individual license applications," have we
3 missed something?

4 COMMISSIONER KENNEDY: Why don't we just say "final
5 disposition of the GESMO studies," as we did earlier?

6 MR. MALLORY: "Of GESMO proceedings"?

7 COMMISSIONER KENNEDY: Yes.

8 COMMISSIONER BRADFORD: I guess I would prefer
9 "widescale plutonium recycling" if we mean to say that, because
10 we did terminate the GESMO proceedings.

11 CHAIRMAN HENDRIE: I would call it something dif-
12 ferent next time.

13 COMMISSIONER KENNEDY: That's true.

14 CHAIRMAN HENDRIE: But you see, in the contraction
15 that you made it, it comes down from "both the recycling, the
16 generic recycle and licenses, to just the particular licenses.
17 And I think the intent was the broader one.

18 Rich, any comment there?

19 MR. MALLORY: Yes, I would prefer to see something
20 like that.

21 COMMISSIONER BRADFORD: Again, it's one of those
22 sentences where I did not take it out. There is a sentence on
23 the preceding page that permits us to re-examine the decision
24 to terminate the proceedings.

25 CHAIRMAN HENDRIE: To an extent that's repetitious,

1 but it is a fairly substantial sentence and it is one that is
2 going to be quotable. So I think it ought to go "termination
3 is not a final disposition of the issues surrounding widescale
4 plutonium recycling or of the individual license applications
5 on the merits."

6 COMMISSIONER KENNEDY: The next one seems fine to
7 me.

8 CHAIRMAN HENDRIE: The footnote, what is that?

9 COMMISSIONER KENNEDY: "The license application has
10 been denied without prejudice."

11 CHAIRMAN HENDRIE: Rich, you are looking reflective.
12 Have you got this?

13 MR. MALLORY: Yes, I'm following it.

14 CHAIRMAN HENDRIE: Peter, do you have any problems?

15 MR. BRADFORD: Let me take ten more seconds to go
16 through that.

17 COMMISSIONER KENNEDY: To me, this has been a worth-
18 while afternoon's work.

19 CHAIRMAN HENDRIE: Can I leave in the "deference"
20 on page 24?

21 COMMISSIONER BRADFORD: I think we have reduced the
22 number of "deferences" to a substantial extent.

23 CHAIRMAN HENDRIE: Page 24, the "deference" stays in.

24 MR. MALLORY: pages 11 through 13 remain.

25 CHAIRMAN HENDRIE: I will sign off on right now.

1 Commissioner Kennedy will let you know first thing in the
2 morning.

3 COMMISSIONER KENNEDY: Let me just say this. If
4 we are prepared to now together say this draft, as we have just
5 gone through it, is acceptable, I will guarantee you that,
6 unless there is a significant change other than editorial, I
7 will personally come around and see each of you tomorrow morn-
8 ing. I doubt that that will be the case. And I would say I
9 would sign off on the document right now.

10 COMMISSIONER BRADFORD: No, you may still have
11 problems if Victor wants to do a separate statement on this.

12 CHAIRMAN HENDRIE: Yes.

13 MR. MALLORY: It is easy enough to add a sentence
14 and attach his views.

15 CHAIRMAN HENDRIE: But with the understandings
16 expressed here and your survey of this thing tonight, may we
17 agree that this is indeed the statement of reasons? And I will
18 ask you, by God, to vote on it.

19 COMMISSIONER KENNEDY: Aye.

20 COMMISSIONER BRADFORD: Aye.

21 CHAIRMAN HENDRIE: So ordered. And I must say, this
22 is extraordinary.

23 (Whereupon, at 6:15 p.m., the meeting was adjourned.)

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