

ORIGINAL ✓

# UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

**Title:** AFFIRMATION/DISCUSSION AND VOTE

**Location:** ONE WHITE FLINT NORTH, ROCKVILLE, MARYLAND

**Date:** WEDNESDAY, DECEMBER 21, 1988

**Pages:** 1-19

## **Ann Riley & Associates**

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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AFFIRMATION/DISCUSSION AND VOTE

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PUBLIC MEETING

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Nuclear Regulatory Commission  
Commissioners Conference Room  
One White Flint North  
11555 Rockville Pike  
Rockville, Maryland

WEDNESDAY, DECEMBER 21, 1988

The Commission met in open session, pursuant to notice, at 11:30 o'clock a.m., the Honorable LANDO W. ZECH, Chairman of the Commission, presiding.

COMMISSIONERS PRESENT:

LANDO W. ZECH, Jr., Chairman of the Commission  
THOMAS M. ROBERTS, Member of the Commission  
KENNETH CARR, Member of the Commission  
KENNETH C. ROGERS, Member of the Commission  
JAMES R. CURTISS, Member of the Commission

STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

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J. Hoyle

W. Parler

A. Bates

## P R O C E E D I N G S

[11:30 a.m.]

1  
2  
3 CHAIRMAN ZECH: Good morning, ladies and gentlemen.  
4 This is an affirmation session. We have five items to come  
5 before the Commission this morning. Before I ask the Secretary  
6 to walk us through those items, do any of my fellow  
7 Commissioners have any comments to make?

8 [No response.]

9 CHAIRMAN ZECH: If not, Mr. Secretary, you may  
10 proceed.

11 ASSISTANT SECRETARY HOYLE: Mr. Chairman, the  
12 Sunshine Act requires the Commission to vote to hold these  
13 items on less than one week's notice. The items are SECY-88-  
14 287 regarding professional conduct of nuclear power plant  
15 operations, SECY-88-279A regarding Comanche Peak, SECY-88-319  
16 regarding Shoreham, SECY-88-336 regarding Seabrook and SECY-88-  
17 346 regarding Pilgrim.

18 So I ask that you vote to hold this meeting on less  
19 than one week's notice.

20 [Chorus of ayes.]

21 ASSISTANT SECRETARY HOYLE: All right. The first  
22 item is SECY-88-287, the Commission policy statement on the  
23 conduct of nuclear power plant operations. The Commission is  
24 being asked to vote on a final Policy Statement on the Conduct  
25 of Nuclear Power Plant Operations. We will publish this in the

1 Federal Register.

2 All Commissioners have approved the policy statement  
3 which I circulated to you in final form this morning. May I  
4 ask you to affirm your votes?

5 [Chorus of ayes.]

6 ASSISTANT SECRETARY HOYLE: The second item is SECY-  
7 88-279A, Petition for Leave to Intervene in the Comanche Peak  
8 operating license and construction permit amendment  
9 proceedings.

10 The Commission is being asked to respond to a late  
11 filed petition dated August 11, 1988 from the citizens for Fair  
12 Utility Regulation which seeks to intervene in the Comanche  
13 Peak Operating License and Construction Permit Amendment  
14 proceedings.

15 All Commissioners have approved an Order which denies  
16 the Petition to Intervene. I ask you to affirm your votes?

17 [Chorus of ayes.]

18 MR. PARLER: Mr. Chairman, before the Commission  
19 proceeds with the next item, SECY-88-319, I have a brief  
20 comment to make concerning some correspondence that has been  
21 received about that item.

22 CHAIRMAN ZECH: Please proceed.

23 MR. PARLER: Thank you, sir. On December 16, 1988,  
24 the Commission received a letter from a Mr. Robert Belair  
25 regarding alleged NRC violations of the government in the

1 Sunshine Act.

2 That letter referred to several Commission items  
3 which the letter alleges that the advance notice requirements  
4 of the Sunshine Act were not adequately complied with. The  
5 Commissioners each have this letter, I believe, so I will not  
6 go over it in detail.

7 But the essence of the argument is that in the  
8 writer's opinion the Sunshine Act requires advance notice of  
9 seven days for meetings such as this unless there is an  
10 emergency.

11 Yesterday I received a copy of another letter, the  
12 letter was addressed to you, Mr. Chairman, dated December 20th  
13 which again alleges that the Commission is violating the  
14 procedural requirements of the Sunshine Act specifically, and  
15 this is why I am making these comments, the writer requested  
16 that the Commission cancel its December 21st meeting and hold  
17 no Shoreham related meetings until and unless as there has been  
18 compliance with the law.

19 The writer did not that on Monday, December 19th at  
20 approximately 2:50 in the afternoon, an NRC official telephoned  
21 the firm to tell them about this meeting today and the subject  
22 matter of the meeting.

23 Although I respect the writer's views, I disagree  
24 with him from the standpoint of my responsibility and will tell  
25 you briefly why. The statute, the Sunshine Act, which requires

1 or provides for the seven-day notice says that you will  
2 ordinarily proceed along that route unless a majority of the  
3 members of the Agency determines by a recorded that Agency  
4 business requires such meeting be called at an earlier date.

5 You all have made that recorded vote earlier in  
6 response to the Acting Secretary's request. The Commission's  
7 statutory implementation of the Sunshine Act is in accord with  
8 its provisions. It says that ordinarily you would have the  
9 seven days advance notice unless the Commission finds that in  
10 the public interest, a prompt Commission action requires  
11 otherwise.

12 In my judgment, the public interest does require  
13 otherwise for a number of reasons which I would briefly allude  
14 to if I may continue.

15 CHAIRMAN ZECH: Please continue.

16 MR. PARLER: This is an affirmation session. The  
17 purpose of the affirmation session is to comply with Section  
18 201(a)(1) of the Energy Reorganization Act of 1974 which  
19 provides that the acts of the Commission shall be determined by  
20 a majority vote of the members present.

21 To implement this requirement, a majority vote of the  
22 members present the Commission holds affirmation sessions at  
23 which time the Commissioners formally cast their votes in the  
24 presence of one another.

25 The subject matter of this Commission paper that is

1 next on the agenda is the review of three Appeal Board  
2 decisions, ALAB-900 which was issued on September 20, 1988,  
3 ALAB-901 which was issued also on the same date and ALAB-902  
4 which was issued on October 7, 1988.

5 The Commission's actions in acting on these  
6 petitions, that is whether or not to seek review of them, is  
7 entirely discretionary. The parties that are involved  
8 including the parties represented by the writer of the letters  
9 or at least the law firm, their views have been received and  
10 have been given consideration in the votes which have already  
11 been cast which are yet to be affirmed.

12 I think inherently the conduct of agency business  
13 requires that it move forward whenever it can on matters such  
14 as this and the Administrative Procedures Act does provide that  
15 the Agency within a reasonable time shall proceed to conclude a  
16 matter which is before it.

17 For all of those reasons, Mr. Chairman, the  
18 Commission is well within the legal bounds of the Sunshine Act  
19 to proceed and to affirm the votes of the four participating  
20 Commissioners on the Shoreham matter.

21 Having said that, I will emphasize again that as soon  
22 as it was found that this matter would be placed on the agenda,  
23 the parties were called. The information was put on the tape  
24 recording and the disclosures were made to the public.

25 CHAIRMAN ZECH: Thank you very much. Mr. Secretary,

1 you may proceed.

2 ASSISTANT SECRETARY HOYLE: Thank you, Mr. Chairman.  
3 The next item is SECY-88-319, Petitions for Review of three  
4 Shoreham Appeal Board decisions.

5 The Commission is being asked to act on petitions by  
6 the Long Island Lighting Company for review of ALAB-900, ALAB-  
7 901 and ALAB-902.

8 Chairman Zech and Commissioners Roberts, Carr and  
9 Rogers have approved an Order which denies review of ALAB-900  
10 and ALAB-901. Because the Commission took up by Order of  
11 November 9, 1988 the issue of whether the Intervenors' conduct  
12 merited expulsion from the entire proceeding or any other  
13 sanctions, the issue presented in ALAB-902 is essentially moot  
14 and the petition for review of ALAB-902 is denied as well as  
15 the request for a stay of ALAB-902.

16 Commissioner Rogers has separate views which will be  
17 attached to the order. Commissioner Curtiss did not  
18 participate in this matter. May I ask you to affirm your  
19 votes, please?

20 [Chorus of ayes.]

21 ASSISTANT SECRETARY HOYLE: The fourth item is SECY-  
22 88-336. It is an Order on Seabrook Station, financial  
23 qualifications, decommissioning funding and rule waiver issues.

24 The Commission is being asked to approve an order  
25 which decides the pending financial qualifications questions

1 brought for its consideration in the Seabrook proceeding. The  
2 order is quite long so I will try to summarize it.

3 All Commissioners have approved an Order which  
4 requires the applicant to provide reasonable assurance that  
5 \$72.1 million dollars in funds are available for  
6 decommissioning before licensing the Seabrook Station for low  
7 power testing.

8 Assurance in the form of a prepaid external account,  
9 surety or other guarantee would be acceptable. The Commission  
10 will also accept applicants proffered plan to fund, before  
11 receipt of a license for low power testing, a separate and  
12 segregated account held by its Disbursing Agent provided that  
13 the amount shall be \$72.1 million dollars rather than the \$21.1  
14 million dollars suggested by Applicants, and provided further  
15 that certain of the financially healthy Applicants each jointly  
16 and severally guarantee to make up any deficiency in the fund  
17 caused by disbursements for a non-decommissioning expense.

18 With regard to pending petitions to waive the  
19 Commission's 1984 financial qualifications rule so as to  
20 require a financial qualifications review and finding before  
21 low power, the Commission finds that with decommissioning  
22 expenses reasonably assured, as specified above, there are no  
23 remaining significant safety issues related to financial  
24 problems that need to be addressed. Since a rule waiver is not  
25 needed to resolve any significant safety problem, the waiver

1 petitions are denied.

2 Under this order a low power testing license may be  
3 issued by the Director of the Office of Nuclear Reactor  
4 Regulation after the applicants have satisfied staff that all  
5 the decommissioning terms of this decision are met, subject to  
6 the following qualifications.

7 The license shall be conditioned to allow Seabrook  
8 Unit 1 to operate at power levels not in excess of five percent  
9 and shall permit no more than 0.75 effective full power hours  
10 of such operation without additional Commission approval.

11 In addition, before a lower power license may be  
12 issued, the Licensing Board must have resolved the pending  
13 motion to litigate additional on-site emergency planning issues  
14 and any litigation before it on such additional on-site issues.

15 Finally, to accommodate any party that might wish to  
16 seek a stay, a low power license may not issue until ten days  
17 after notice by staff to the Commission that the  
18 decommissioning funding terms of this Decision have been  
19 satisfied or issuance of the Licensing Board decision disposing  
20 of additional on-site emergency planning issues, whichever  
21 event shall later occur, but in any event not before January 6,  
22 1989. Any motions for a stay or other relief from the Order  
23 shall be brought to the Commission itself.

24 May I ask the Commissioners to affirm their votes?

25 [Chorus of ayes.]

1 ASSISTANT SECRETARY HOYLE: The final item is SECY-  
2 88-346, Request for Commission approval for the Restart of the  
3 Pilgrim Nuclear Power Plant.

4 The Commission is being asked to act on the NRC  
5 staff's recommendation that the Commission authorize the staff  
6 to allow the restart of the Pilgrim Nuclear Power Station when  
7 the staff is satisfied the licensee is ready to proceed with  
8 the power ascension program.

9 Before calling for affirmation of the Commission's  
10 votes, I understand the Chairman has a statement to make at  
11 this time.

12 CHAIRMAN ZECH: Yes, I do. After careful  
13 consideration of both the documentary information provided and  
14 the testimony presented to the Commission by local officials,  
15 the Commonwealth of Massachusetts, elected Massachusetts  
16 representatives, the Boston Edison Company and the NRC staff  
17 pertinent to the restart of Pilgrim, I have concluded that  
18 Pilgrim should be allowed to restart.

19 I am satisfied that the management and technical  
20 problems which led to the 1986 shutdown have been adequately  
21 addressed. As a matter of fact, I believe that since shutdown  
22 there have been significant management and technical  
23 improvements at the Pilgrim facility and that the plant is  
24 ready to resume safe power operations.

25 With respect to the status of emergency preparedness,

1 my decision to allow restart rests on the following major  
2 considerations. First, successful emergency preparedness  
3 exercises have been held in the vicinity of the Pilgrim plant  
4 since emergency planning became a requirement in 1980.

5 Responsible local officials have been involved in the  
6 development process and in updating emergency plans and  
7 implementing procedures. Testimony provided to the Commission  
8 indicates that emergency preparedness is much improved today  
9 over what it was in the past.

10 Therefore, concerning the Pilgrim plant I believe  
11 that appropriate emergency actions could and would be taken in  
12 the unlikely event that a radiological emergency would occur.

13 Second, the staff has proposed a restart plan for the  
14 Pilgrim reactor which involves a phase start-up and power  
15 ascension. The staff has recommended that this power ascension  
16 will involve hold points at criticality, five percent, 25  
17 percent, 50 percent, 75 percent and full power.

18 At each of these hold points, it is intended that the  
19 Commission will receive a staff evaluation of plant safety  
20 including a status of continuing progress and off-site  
21 emergency planning.

22 Thus, the Commission after approving re-start will be  
23 informed and fully involved in monitoring the safety of the  
24 public in the vicinity of the Pilgrim plant during start-up and  
25 power ascension.

1           Considering all the information supplied by the  
2 Boston Edison Company, state and local officials and the  
3 evaluation and other information from the NRC technical staff,  
4 I believe there is reasonable assurance that there will be  
5 adequate protection of the public with the Commission's  
6 decision to authorize restart of the Pilgrim facility.

7           Thank you, Mr. Secretary.

8           ASSISTANT SECRETARY HOYLE: Do any other  
9 Commissioners have statements to make at this time?

10          COMMISSIONER ROGERS: Yes, I do.

11          CHAIRMAN ZECH: Commissioner Rogers.

12          COMMISSIONER ROGERS: In considering my position on  
13 the readiness of the Pilgrim Nuclear Power Plant to be allowed  
14 to restart, I have carefully reviewed the status of the plant  
15 at the time of my personal visit there in early May of this  
16 year, the staff reports and the materials presented to the  
17 Commissioners by the staff and by the Boston Edison Company  
18 managers concerning the current plant status and all of the  
19 recent presentations on emergency planning to the Commissioners  
20 by NRC staff, the Boston Edison Company and by the State and  
21 local officials.

22                 I am convinced that all of the technical issues that  
23 were the original bases for the shutdown of Pilgrim have been  
24 corrected and that significant safety improvements have been  
25 made in the physical state of the plant.

1           The current plant management is the best management  
2 team to date at Pilgrim and it has the capability to operate  
3 the plant safely. I believe that given the opportunity to do  
4 so, it will perform satisfactorily.

5           I have concluded that the current status of emergency  
6 planning in the Pilgrim area is superior to that which existed  
7 during the 1981 to 1986 plant operating period, that the  
8 planning deficiencies identified in FEMA's 1987 review are  
9 resolved in the emergency plans, that the Civil Defense  
10 infrastructure of the Emergency Planning Zone communities is  
11 still largely in place and it could and would implement the  
12 plans in an emergency, that the Commonwealth has demonstrated  
13 its capability to manage an emergency at the state level and  
14 that the local communities probably could make more rapid  
15 progress on the completion of their plans.

16           For all of these reasons, the staff believes and I  
17 agree that there is reasonable assurance that adequate  
18 protective actions can and would be taken in the event of a  
19 radiological emergency at Pilgrim.

20           A deliberate phased start-up program over four or six  
21 months with augmented NRC oversight and formal reports at each  
22 of the six proposed hold points and with NRC approval required  
23 to move from one hold point to the next will provide ample  
24 opportunity for the staff and Commission to monitor licensee  
25 performance as well as for the Plymouth and Duxbury officials

1 to complete the remaining implementing procedures.

2 Therefore, I vote in favor of the start-up of the  
3 Pilgrim plant in a manner consistent with these requirements.

4 ASSISTANT SECRETARY HOYLE: Does any other  
5 Commissioner wish to make a statement at this time?

6 COMMISSIONER CURTISS: Mr. Chairman, I have a brief  
7 statement.

8 CHAIRMAN ZECH: Commissioner Curtiss, proceed,  
9 please.

10 COMMISSIONER CURTISS: In April of 1986, the Pilgrim  
11 plant was shut down because of numerous management and  
12 technical concerns that caused the staff and the Commission to  
13 lose confidence that the plant could be operated in a manner  
14 that would provide reasonable assurance that the public health  
15 and safety would be protected.

16 Following that, in August of 1987, FEMA withdrew its  
17 interim approval of the off-site emergency plans for the  
18 Pilgrim EPZ based upon six cited deficiencies in those plans.

19 The decision that confidence has been lost in a  
20 licensee is not an easy one; the exercise of judgment regarding  
21 whether and at what point in time that confidence has been  
22 regained is in many respects even more difficult.

23 As a Commissioner who has just begun his term near  
24 the end of this lengthy process leading to the Commission's  
25 decision today, I have felt a particularly heavy responsibility

1 to undertake a careful, thorough and objective review of the  
2 record before deciding whether Boston Edison Company should  
3 again be entrusted with the authorization to operate a nuclear  
4 facility.

5 I have endeavored, as have all of my colleagues, to  
6 approach this most difficult decision with an open and  
7 impartial mind. My review has taken into account the views of  
8 the Boston Edison Company, state and local officials,  
9 interested members of the public and the NRC staff. After  
10 considerable deliberation, I Have concluded that restart should  
11 be authorized.

12 I am convinced that the significant management and  
13 technical issues which led to the 1986 shutdown have been  
14 satisfactorily addressed and that the licensee now has the  
15 personnel and the commitment to safe operation that justify the  
16 decision to authorize restart.

17 I should emphasize that an important factor in my  
18 decision is the phased power ascension program that the staff  
19 has proposed for the facility. This program will permit both  
20 the staff and the Commission the further opportunity to  
21 evaluate plant status at various "hold points" and will, in my  
22 view, provide further confidence that safe plant operation has  
23 been achieved and will be maintained.

24 On the issue of emergency planning, the Commission  
25 must determine whether the deficiencies in planning which led

1 FEMA to withdraw its interim approval in 1987 have been  
2 adequately addressed and thus whether emergency preparedness  
3 has progressed to the point where the Commission can make the  
4 required finding that adequate protective measures can and will  
5 be taken in the event of a radiological emergency.

6 After careful consideration of the differing views on  
7 this subject, I have concluded that this finding can be made.  
8 All involved agree that emergency preparedness is far superior  
9 to that which existed at the time of FEMA's withdrawal of  
10 interim approval.

11 The personnel and facilities which are at the core of  
12 the planning infrastructure are in place and have been for some  
13 time. The Commonwealth has demonstrated its ability to cope  
14 competently and professionally with a radiological emergency at  
15 the state level of government.

16 While there is admittedly more work to be done, there  
17 appears to be good cooperation among Boston Edison Company, the  
18 Commonwealth and local officials which, in turn, should lead to  
19 the rapid resolution of the remaining issues.

20 I am convinced that the planning details that remain  
21 would not preclude a rapid, dedicated and effective response by  
22 all concerned in the very unlikely event of a radiological  
23 emergency at Pilgrim.

24 For these reasons, I support the Commission's  
25 decision to permit restart of the Pilgrim facility.

1 ASSISTANT SECRETARY HOYLE: Thank you, Commissioner  
2 Curtiss. Are there any further statements from members of the  
3 Commission?

4 COMMISSIONER CARR: Mr. Chairman, I would like to  
5 note for the record --

6 CHAIRMAN ZECH: Commissioner Carr, proceed.

7 COMMISSIONER CARR: -- that it is sheer coincidence  
8 that this vote takes place on the anniversary of the Pilgrim's  
9 landing at Plymouth in 1620.

10 CHAIRMAN ZECH: Thank you very much.

11 ASSISTANT SECRETARY HOYLE: All Commissioners have  
12 voted to approve authorizing the staff to allow restart.

13 FROM THE FLOOR: I would like to say, Commissioners,  
14 if you are so confident, then why was your voice quivering with  
15 fear?

16 CHAIRMAN ZECH: Please sit down and be quiet while we  
17 conduct our business, please.

18 FROM THE FLOOR: Why was your voice quivering with  
19 fear?

20 CHAIRMAN ZECH: My voice doesn't quiver at all.  
21 Perhaps yours does. Mr. Secretary, you may proceed.

22 ASSISTANT SECRETARY HOYLE: Thank you. All  
23 Commissioner have voted to approve authorizing the staff to  
24 allow restart. May I ask you to affirm your votes at this  
25 time?

1 [Chorus of ayes.]

2 CHAIRMAN ZECH: Is there anything else to come before  
3 us this morning, Mr. Secretary?

4 ASSISTANT SECRETARY HOYLE: No, sir.

5 CHAIRMAN ZECH: If not, thank you very much. We will  
6 stand adjourned.

7 [Whereupon, the meeting of the Commission was  
8 adjourned at 11:54 o'clock a.m., to reconvene at the Call of  
9 the Chair.]

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CERTIFICATE OF TRANSCRIBER

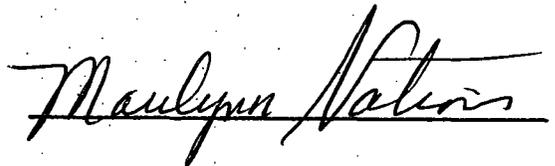
This is to certify that the attached events of a meeting of the U.S. Nuclear Regulatory Commission entitled:

TITLE OF MEETING: AFFIRMATION/DISCUSSION AND VOTE

PLACE OF MEETING: Washington, D.C.

DATE OF MEETING: WEDNESDAY, DECEMBER 21, 1988

were transcribed by me. I further certify that said transcription is accurate and complete, to the best of my ability, and that the transcript is a true and accurate record of the foregoing events.

A handwritten signature in cursive script, reading "Marilyn Watkins", is written over a horizontal line.

Ann Riley & Associates, Ltd.