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**Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

AFFIRMATION SESSION 81-39

(Open to Public Attendance)

Thursday, October 22, 1981

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

AFFIRMATION SESSION 81-39  
(Open to Public Attendance)

Commissioners' Conference Room  
1717 H Street N.W.  
Washington, D. C.

Thursday, October 22, 1981

The Commission met pursuant to notice at 3:00 p.m.,  
Nunzio J. Palladino, Chairman of the Commission, presiding.

PRESENT:

- Chairman Palladino
- Commissioner Gilinsky
- Commissioner Bradford
- Commissioner Ahearne
- Commissioner Roberts

ALSO PRESENT:

- S. Chilk, Secretary
- L. Bickwit, General Counsel
- F. Remick, Office of Policy Evaluation

P R O C E E D I N G S

1  
2 CHAIRMAN PALLADINO: The meeting will please come to  
3 order.

4 This is an affirmation session and I'm going to ask  
5 the Secretary to go through the items listed on the agenda.

6 MR. CHILK: The first paper is SECY-81-197 - Proposed  
7 Amendment to 10 CFR Part 71 to Restrict Air Transport of  
8 Plutonium, in which the Commission is being asked to approve  
9 for publication in the Federal Register a proposed amendment to  
10 10 CFR Part 71 that would restrict the shipment of plutonium by  
11 air, implementing the Scheuer Amendment with a rule and  
12 acknowledging the development of a plutonium package certified  
13 to be air-crash resistant.

14 Chairman Palladino, Commissioners Ahearne and Roberts  
15 have approved the proposal. Commissioners Gilinsky and Bradford  
16 have disapproved it believing that legislation is required.  
17 Commissioner Bradford's separate views will be attached to the  
18 proposed rule.

19 Would you please affirm your votes?

20 (Chorus of ayes.)

21 MR. CHILK: The second one is SECY-81-532 -- Review  
22 of ALAB-646, where the Commission is being asked to act on  
23 request for a Commission review of ALAB 646 and for a stay of  
24 the effectiveness of that decision pending litigation of the  
25 conditions imposed on the Alabama Power Company's license to  
operate the Farley nuclear unit.

1 Chairman Palladino and Commissioners Ahearne and  
 2 Roberts have approved the attached order. The order declines  
 3 Commission review and denies the stay. Commissioner Gilinsky is  
 4 not participating. Commissioner Bradford concurs in the result of  
 5 the order as it applies to the Alabama Power Company, however,  
 6 he would take review of that portion of the Board decision that  
 7 finds that the Municipal Electric Utility Association is not a  
 8 potential competitor. His separate views will be attached to the  
 9 order.

10 Would you please affirm your votes?

11 (Chorus of ayes.)

12 MR. CHILK: The third one is SECY#81-557 - Implementation  
 13 of Equal Access to Justice Act in which the Commission is being  
 14 asked to approve a proposed amendment to its rules to add new  
 15 provisions designed to implement the recently enacted Equal Access  
 16 to Justice Act.

17 All of the Commissioners have approved the proposed  
 18 rule. A majority of you have approved a modification to the  
 19 proposed rule which deletes the phrase "...or due process..."  
 20 from next to the last line on page 3. Commissioner Roberts would  
 21 have preferred that the rule be further modified to contain a list  
 22 of hearings required to be advisory by APA and those required to  
 be advisory by the Commission's own rules.

23 Would you please affirm your votes?

24 COMMISSIONER BRADFORD: Can I ask if the deletion of  
 25 "or due process" makes any difference?

1 MR. BICKWIT: . You are asking me?

2 COMMISSIONER BRADFORD: Yes.

3 MR. BICKWIT: I don't believe it makes any difference.  
4 The rule would remain unchanged. We proposed, for completeness  
5 that those words be included. On balance we would prefer to see  
6 them in, but we are not disturbed by removing them.

7 MR. CHILK: Any other comment? I still have three  
8 Commissioners who have voted.

9 COMMISSIONER AHEARNE: Let me just say: I would like  
10 to add, Commissioner Roberts had something he would have  
11 preferred to have in the rule. I had a list of issues that I  
12 had asked OGC to prepare an answer to during the comment period,  
13 and I would like Commissioner Roberts' point added to that  
14 list of things OGC would address.

15 MR. CHILK: Yes, that will be sent.

16 CHAIRMAN PALLADINO: But it would be separate from  
17 the order?

18 COMMISSIONER AHEARNE: Yes.

19 MR. CHILK: Would you please affirm your votes?

20 (Chorus of ayes.)

21 MR. CHILK: The last one is 81-560 -- Delegation of  
22 Part 70 Jurisdiction to Licensing and Appeal Boards, where the  
23 Commission is being asked to approve the final rule to make  
24 explicit the jurisdiction of its adjudicatory boards in certain  
25 ancillary licensing matters which arise.

Chairman Palladino and Commissioner Gilinsky and

1 Commissioner Bradford have approved the proposed rule with  
2 an agreement on three related points which has been raised by  
3 Commissioner Ahearne.

4 Commissioner Ahearne would prefer to withhold action  
5 at this time awaiting the paper from the General Counsel regarding  
6 timely petitions for hearing on Part 70 licenses. Commissioner  
7 Roberts supports a delegation of jurisdiction with regard to  
8 fuel storage, but does not support the broader delegation.

9 I believe Commissioner Ahearne would like to ---

10 COMMISSIONER AHEARNE: Yes, I would like to ask: Len,  
11 I would like to know whether your office is going to provide  
12 a paper?

13 MR. BICKWIT: We intend to provide a paper. I think  
14 it will take us from two to four weeks to do it.

15 COMMISSIONER AHEARNE: With the start date being?

16 MR. BICKWIT: Starting today.

17 COMMISSIONER AHEARNE: I see.

18 So you would expect that in two to four weeks to be  
19 able to answer the question?

20 MR. BICKWIT: That's right.

21 COMMISSIONER BRADFORD: Let's see, does it make a  
22 big difference whether we act now or later? Do you know? I'm  
23 always reluctant to put something out while another Commissioner  
24 is waiting for a response of any sort. Is there a major  
25 pressure for this action?

MR. BICKWIT: I doubt it. It is not our paper, but I

1 can't imagine that there is urgency on this.

2 MR. CHILK: I have no knowledge of any urgency on this.

3 COMMISSIONER BRADFORD: Well, John, then if you see  
4 the OGC paper as making an actual difference ---

5 COMMISSIONER AHEARNE: Yes.

6 COMMISSIONER BRADFORD: -- I'm perfectly willing  
7 to wait for it.

8 COMMISSIONER AHEARNE: Good. Thank you.

9 MR. CHILK: You are then voting not to vote at this  
10 time?

11 COMMISSIONER BRADFORD: Yes. Sorry, Sam.

12 MR. CHILK: Mr. Chairman, I have to withdraw the  
13 paper.

14 CHAIRMAN PALLADINO: Yes, unless there is any sense  
15 of urgency that ---

16 MR. CHILK: I know of no sense of urgency.

17 CHAIRMAN PALLADINO: Okay, so that is withdrawn for  
18 today.

19 MR. CHILK: That completes the affirmation.

20 CHAIRMAN PALLADINO: All right. Any other items that  
21 should come before the Commission? if not, we will stand  
22 adjourned.

23 (Whereupon, the Commission was adjourned at 3:10 p.m.)

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