

NUCLEAR REGULATORY COMMISSION

ORIGINAL

COMMISSION MEETING

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In the Matter of: AFFIRMATION/DISCUSSION SESSION

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

AFFIRMATION/DISCUSSION SESSION

Room 1130,  
1717 H Street Northwest,  
Washington, D.C.

Thursday, November 5, 1981

The Commission met at 3:03 p.m., pursuant to  
notice.

BEFORE:

- NUNZIO PALLADINO, Chairman.
- JOHN AHEARNE, Commissioner.
- VICTOR GILINSKY, Commissioner.
- PETER BRADFORD, Commissioner.
- THOMAS ROBERTS, Commissioner.

ALSO PRESENT:

- Samuel Chilk
- Leonard Bickwit
- Marshall Miller

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P R O C E E D I N G S

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

4 This is an affirmation/discussion session. The items  
5 up for consideration were listed on the agenda, and I will ask  
6 the Secretary to walk us through.

7 MR. CHILK: The first item I would like to take up  
8 is the NSF request for a stay of and a hearing on the license  
9 amendment to the West Valley license, where you have before you  
10 a proposed order pertaining to a request by NFS for a stay on  
11 their license amendment.

12 A majority of the Commission, the Chairman,  
13 Commissioners Gilinsky, Bradford and Roberts have approved  
14 the order, which denies the motion for stay and instructs the  
15 Board to initiate a proceeding on request for hearing.

16 Commissioner Ahearne dissents, and his dissent will  
17 be attached to the order.

18 Would you affirm?

19 COMMISSIONER AHEARNE: Could I ask a question, two  
20 questions?

21 CHAIRMAN PALLADINO: Sure.

22 COMMISSIONER AHEARNE: At least my copy of the order  
23 didn't have a page 7.

24 MR. CHILK: I will make sure page 7 is in there.

25 COMMISSIONER BRADFORD: That kind of thing happens

1 when you dissent, John.

2 (Laughter.)

3 COMMISSIONER AHEARNE: I would like to ask about  
4 the current status of this case; in particular some negotiations  
5 that I understood were going on.

6 MR. BICKWIT: I gather negotiations are going on. I  
7 don't know much about them. I know the state is a party to the  
8 negotiations, and NFS is a party to them, and that's about all I  
9 could tell you about them.

10 COMMISSIONER AHEARNE: What will the effect of this  
11 order have on the negotiations?

12 MR. BICKWIT: I would not be able to say.

13 COMMISSIONER AHEARNE: Do you think it's germane?

14 MR. BICKWIT: I think it could have an effect.

15 COMMISSIONER AHEARNE: And we do have, I believe, a  
16 section in Part 2 that speaks that when negotiations are underway,  
17 we ought to try to encourage that.

18 MR. BICKWIT: I'll take you at your word. I don't  
19 know the section.

20 COMMISSIONER AHEARNE: .275 and .212. I'm just  
21 pointing out that I think the Commission might have waited.

22 MR. CHILK: Is the Commission ready to affirm its  
23 votes?

24 (A chorus of ayes.)

25 MR. CHILK: Thank you.

1 The next item is SECY 81 --

2 COMMISSIONER BRADFORD: Of course, John, you have  
3 expanded hearing rights substantially, but --

4 (Laughter.)

5 COMMISSIONER ROBERTS: I want to change my vote. I  
6 abstain.

7 MR. CHILK: You wish to abstain?

8 The vote is then the Chairman, Commissioners Gilinsky  
9 and Roberts would approve the order -- Commissioner Roberts  
10 abstains.

11 COMMISSIONER BRADFORD: It's just one vote, but you  
12 move fast.

13 (Laughter.)

14 CHAIRMAN PALLADINO: Would you repeat it?

15 MR. CHILK: The majority of the Commission, the  
16 Chairman, Commissioner Gilinsky and Commissioner Bradford  
17 approved the vote; Commissioner Roberts abstains; and Commissioner  
18 Ahearne dissents.

19 (A chorus of ayes.)

20 MR. CHILK: The next item is 81-245A, interim  
21 amendments to 10 CFR Part 50, related to hydrogen control.  
22 This is a paper that was held over from the preceding week  
23 in which the Commission is being asked to approve a final rule  
24 to require inerted atmospheres in Mark I and II containments  
25 and hydrogen recombiner capability for LWRs and not rely on

1 purge and repressurization systems as the primary means of  
2 hydrogen control.

3 The Commission has unanimously approved the order  
4 or the rule, rather, that was circulated to you earlier. Would  
5 you please affirm your votes?

6 (A chorus of ayes.)

7 MR. CHILK: The third item is the draft order for  
8 the oral presentation in the Waste Confidence Proceeding, in  
9 which the Commission has before it a memorandum and order  
10 specifying procedures for oral presentations to the Commission  
11 in that proceeding.

12 The Commission has considered the order and have  
13 talked about it, and it is my understanding that all of you have  
14 agreed to the order that was circulated to you, with the  
15 exception of a decision has not been made on a paragraph item 3  
16 on page 13 in which I believe the Commission may want to discuss  
17 whether that item is included or is not included in the order.

18 I understand two Commissioners have gone on record  
19 as Commissioner Ahearne desiring it be deleted and Commissioner  
20 Bradford desiring it be retained.

21 COMMISSIONER GILINSKY: I wonder if we could hear  
22 from Mr. Miller.

23 MR. CHILK: Do we have Mr. Miller here?

24 COMMISSIONER GILINSKY: On why he thought it was  
25 useful to include it.

1 MR. MILLER: Which item is this?

2 CHAIRMAN PALLADINO: Page 13.

3 MR. MILLER: As I told Commissioner Ahearne, it's  
4 really his fault, in a way.

5 (Laughter.)

6 Let me give you just a --

7 MR. BICKWIT: You can usually trace it back.

8 (Laughter.)

9 MR. MILLER: In the only prehearing conference we've  
10 had, I issued an order as the presiding officer limiting the  
11 scope to the spent fuel from nuclear reactors for two reasons:

12 First, because that's what the court said to do; and  
13 secondly, because DOE, which has the lead responsibility, told me  
14 at that hearing that it would take another year or two even to go  
15 into the matter, that they had no studies made. But if we  
16 wanted to proceed, they did have and would go forward as lead  
17 agency on the spent fuel in the commercial reactors.

18 The next thing I knew, there came a memorandum  
19 February the 9th, 1981, from Commissioner Ahearne, regarding  
20 reprocessed fuel, and there were recommendations made, I believe,  
21 from the working group and myself as presiding officer.

22 But then that same month, February of '81, we had a  
23 motion from some of the intervenors who sought to make the TMI-  
24 type wastes part of this proceeding within the scope of it,  
25 and they cited the letter that Chairman Ahearne is familiar with,

1 which he had written, I think it was on October 20, 1980.

2 COMMISSIONER AHEARNE: But at least for the clarifica-  
3 tion of two of the Commissioners who weren't familiar with it,  
4 the letter was to try to prod the DOE to take some action with  
5 respect to get moving on the efforts to clean up TMI. That  
6 was the purpose of the letter, and it was not in any way  
7 addressing the waste confidence proceeding, either explicitly  
8 or, to the best of my knowledge, implicitly.

9 MR. MILLER: It was picked up by the intervenors who  
10 got a copy through, I think, Freedom of Information. But, anyway,  
11 they got a copy --

12 COMMISSIONER AHEARNE: Well, actually we did not  
13 try to keep the letter very quiet, because we were trying to get  
14 DOE to move.

15 MR. MILLER: No question of it, it's just as you say,  
16 sir, except it has gone in many respects for that purpose, I'm  
17 sure. So the differences between the high specific activity  
18 waste there and the usual spent fuel such as the kind you get  
19 from a reactor was then seized upon for the motion, and I as  
20 presiding officer had to rule on the motion. I adhered to what  
21 I understood the Commission's original memos had told me and  
22 what the court had said we should do. But I did indicate several  
23 times in the order that the scope would be the subject of  
24 recommendations by the working group and the presiding officer  
25 would be determined ultimately in this proceeding by the

1 Commissioners themselves, because the Commissioners have always  
2 reserved full power to make these decisions and have carefully  
3 told the working group, myself and everybody else, that those  
4 matters are to be determined solely by the Commission, and we  
5 always respected that.

6 So that's the reason it's in there, and I ask you to  
7 keep me honest, because I had said the Commissioners would dispose  
8 of that question and other questions of scope, such as now  
9 the reprocessing, since that's come to the fore. And then one  
10 other reason. The issues that I described in the recommendations  
11 that I made to the Commissioners as presiding officer of 26  
12 issues, and then they were framed as questions by the working  
13 group.

14 In No. 1 and No. 2, it says that the scope, whether  
15 or not it should be limited to the spent fuel that comes from  
16 the facilities or the commercial reactors or anything else, is  
17 listed as an issue. I could not, at least, tell people it was  
18 going to be determined by the Commission, by the working group,  
19 as an issue for consideration with 25 others, and then tell  
20 anybody that we couldn't take it up and talk about it.

21 Now that's the whole reason -- I'm sorry I've taken  
22 so long. The reason is there, which otherwise one could wonder  
23 why it's contained in the recommendations.

24 CHAIRMAN PALLADINO: If this were deleted, would it  
25 prevent people from bringing it up?

1 MR. MILLER: Well, they'd be puzzled, I think, sir,  
2 because we've got the 26 issues and the questions upon which  
3 they are based would say in part that the scope of the issues  
4 relating to what kind of radioactive materials are going to be  
5 considered is one of the issues.

6 Then I think it was probably intended to refer to  
7 such things as reprocessing, for example. Not the legal issue,  
8 but the scope, and so far we in an administrative capacity have  
9 been limiting scope to what the courts said and what we understood  
10 the Commissioners' desires when they originally exchanged  
11 memoranda.

12 CHAIRMAN PALLADINO: As I read the heading, it says  
13 participants were requested to address in the written statements,  
14 as well as their oral presentations, the significance of the  
15 recent developments listed below for the Commission's decisions  
16 on the proceeding.

17 So this specifically requests those comments, and now  
18 my thinking was if we deleted it, we would not be requesting  
19 their comments, but that we would not preclude them. Is that  
20 a reasonable interpretation?

21 MR. MILLER: Well, we wouldn't be precluding them,  
22 but when you've got 26, I suspect that you can't tell the  
23 player without looking at the program. It's going to be a very  
24 tough question, in trying to respond to the Commission's  
25 directives in a reasonably short period of time, as well as

1 early under pressure, to know what's in and what's out. I don't  
2 know. I think it would leave it ambiguous.

3 COMMISSIONER AHEARNE: But, Marshall, that first  
4 question involved in the major issues you referred to says,  
5 should the waste confidence proceeding address waste disposal  
6 issues other than storage and disposal of power reactor spent  
7 fuel. And in looking back through my files of information,  
8 which is working group comments and your questions to the  
9 working group, for example, I don't believe that this issue  
10 labeled 1 is -- now we're back in the situation of you wrote  
11 that one and I wrote the previous letter. I know what I meant,  
12 and maybe you meant in this one when you wrote it, should  
13 accident-generated waste be there.

14 Certainly when I read what you wrote, I concluded  
15 you were raising the question of should reprocessing be included  
16 or should this be restricted to spent fuel.

17 MR. MILLER: I didn't mean it because I had nothing  
18 to do with reprocessing. That, fortunately, was solely,  
19 purely, historically only yours, the Commissioners'. I had  
20 nothing to do with it. I did get into the other because of the  
21 motion, but I am not involved, other than the original prehearing  
22 order, where the question came up of reprocessing, and there  
23 the prehearing conference order said no.

24 COMMISSIONER AHEARNE: Right.

25 MR. MILLER: Sticking strictly to what the courts said

1 the Commissioners should do, and what my understanding of the  
2 correspondence was involving yourself and some other Commissioners  
3 at the time told me, as an administrative matter, as the presiding  
4 officer.

5 COMMISSIONER GILINSKY: This is spent fuel of a sort.

6 COMMISSIONER AHEARNE: At least my view is that  
7 where it talks about the recent developments in the proposed  
8 order, and it specifically addresses there are several major  
9 recent developments, and to me the question of the reprocessing,  
10 the question of waste from reactor storage, those are quite  
11 central to the underlying question that had originally been  
12 asked of the Commission or redirected back to the Commission,  
13 and the Commission then set up this proceeding. And the TMI  
14 waste seems to me to not be in that same category of the central  
15 issue, and I would guess that if we get off into the area of  
16 TMI waste, that it brings up entirely different character issue,  
17 very large, nongeneric, but potentially one that will take us a  
18 great deal of time to sort through, and detract from trying to  
19 address fundamental issues that were raised in this proceeding.

20 CHAIRMAN PALLADINO: Again, can I ask the question,  
21 what's the consequences of keeping it out? Would it not be  
22 addressed?

23 MR. MILLER: What page is that, Mr. Chairman?

24 CHAIRMAN PALLADINO: Page 13.

25 MR. MILLER: When I inquired whether the subject of

1 reprocessing and another and different kind of radioactive  
2 waste is within the realm of potential issues the Commission  
3 would desire to consider?

4 COMMISSIONER AHEARNE: That's number one. Page 10,  
5 it's asking that question.

6 MR. MILLER: Yes, but I don't know what the  
7 Commission is going to do about it. If it's in, then it's a  
8 very different form than that which was originally handed down  
9 by the court, and in response to your question, Mr. Chairman, I  
10 don't know. I suspect the people who made the motion and who  
11 were told by the presiding officer that it was a matter that  
12 was potentially in issue, but that it was a matter that that  
13 and other issues of scope would be decided solely by the  
14 Commission, they may or they may not remember, or they may or  
15 they may not want to talk to you about it at a hearing.

16 CHAIRMAN PALLADINO: My reading of it is if we  
17 leave this out, we would not be inviting them to give their  
18 comments. But I also concluded it would not preclude them.

19 COMMISSIONER BRADFORD: Well, as a practical matter,  
20 it might well have, for the reason Marshall just gave, which is  
21 they've got a limited amount of time to focus on a lot of things,  
22 and if we tell them that doesn't seem to be of much interest,  
23 they aren't going to focus on it.

24 COMMISSIONER AHEARNE: You mean if we don't put it in,  
25 what it will tell them is that at least from the Commission's view,

1 that is not one of the questions they should put their time on,  
2 to focus on.

3 If we do put it in, I think you're telling them just  
4 the opposite. It is one of the key questions. I would agree  
5 with Joe in that if it's out, it doesn't preclude them. If they  
6 think that is really a big issue, they could still address it.  
7 But it doesn't say that we think it's a big issue, which is where  
8 I came out.

9 CHAIRMAN PALLADINO: And that's about where I come  
10 out.

11 COMMISSIONER BRADFORD: But it is not, as I understand  
12 it, the way you feel the matter now lies in the understanding  
13 of the participants.

14 MR. MILLER: I suppose it's just a matter that I want  
15 to be intellectually honest. I told them in good faith in an  
16 order that they would have an opportunity -- that the  
17 Commission itself would determine it. So long as the Commission  
18 determines it, I think I've satisfied my obligations, and I  
19 don't really care to urge anything beyond that.

20 COMMISSIONER AHEARNE: So that it is in front of us,  
21 and if we vote to delete it as an explicit item, we have so  
22 determined.

23 MR. MILLER: Yes. You've determined in advance of  
24 the hearing.

25 COMMISSIONER BRADFORD: I was just going to say, they

1 certainly haven't had much of an opportunity to address this.

2 COMMISSIONER AHEARNE: On the other hand, I think  
3 that you have characterized earlier in this that we shall --  
4 the Commission shall decide what goes in, and we would be  
5 deciding that. We would be saying that in our focus on this,  
6 that it does not rise to that level.

7 MR. MILLER: I merely say you will then be in the  
8 posture, with TV cameras and everything on the hearing, if  
9 there is one, in the posture of not having mentioned it after,  
10 and people are --

11 COMMISSIONER AHEARNE: Saying that we would decide it,  
12 and it was considered.

13 MR. MILLER: So long as the Commission is now making  
14 decisions, I am only going to -- I don't tell you what to do.

15 COMMISSIONER AHEARNE: Come on, Marshall, you clearly  
16 are arguing very strongly for its inclusion.

17 MR. MILLER: Am I? I guess I just want you to put  
18 in a footnote to get me off the hook. If somebody says you  
19 told us they were going to do it, you at least made a  
20 recommendation, you bum, and look, I'm the presiding officer,  
21 and I'm the only one probably you've seen all day. You were  
22 talking this morning about what presiding officers do and don't  
23 do. I'm the only live one.

24 (Laughter.)

25 If I write down somebody's a bum, they zoom in with

1 those cameras and --

2 COMMISSIONER AHEARNE: We also have that situation  
3 quite frequently.

4 MR. MILLER: I know.

5 COMMISSIONER AHEARNE: And I know what the letter  
6 that we sent to DOE said, and I have read what Judith Johnsrud  
7 said it meant. I happen to disagree with that. And at least  
8 for me, putting it in here, items 1, 2, 3 elevates it far beyond  
9 the level that I thought it deserved.

10 MR. MILLER: That may well be. I'm willing to settle  
11 for a small, tiny footnote.

12 COMMISSIONER AHEARNE: We aren't saying they can't  
13 raise it. I think a footnote would say -- there are many items,  
14 Marshall, that we aren't saying that they can't keep out. If  
15 this order goes, we give them time to say that you are being  
16 given time to address the issues that basically we think are  
17 important, and as you well know, because as the presiding officer  
18 you've been in many such situations, they will then address  
19 what they think is most important.

20 COMMISSIONER GILINSKY: Well, let me say after listening  
21 to Commissioner Ahearne, I have decided to leave the order as it  
22 is.

23 (Laughter.)

24 CHAIRMAN PALLADINO: So as I understand it, we have  
25 three votes to delete and two votes to retain, and so that would

1 indicate that we delete that.

2 MR. MILLER: Mr. Chairman, I just want you to know  
3 they devoted a whole issue of South Carolina Law Review to this  
4 proceeding. I want you to know that they have heard of this  
5 down as far as South Carolina.

6 (Laughter.)

7 COMMISSIONER AHEARNE: Marshall, I'd have to say  
8 that for my good friend, Richard Riley, I would not say as far  
9 down as South Carolina.

10 MR. MILLER: Well, it depends on your point of view,  
11 where your center of the universe is.

12 (Laughter.)

13 Thank you.

14 MR. CHILK: Mr. Chairman, that concludes the  
15 affirmation on this presentation on this particularly. You  
16 have three deleting the paragraph, two retaining it, and  
17 the Commission previously voted unanimously in favor of the  
18 order itself, less paragraph -- split on paragraph 13.

19 CHAIRMAN PALLADINO: All right.

20 (A chorus of ayes.)

21 MR. CHILK: That concludes the affirmation.

22 (Whereupon, at 3:25 p.m., the meeting was  
23 adjourned.)

24 \* \* \* \*

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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

COMMISSION MEETING

in the matter of: Affirmation/Discussion Session

Date of Proceeding: November 5, 1981

Docket Number: \_\_\_\_\_

Place of Proceeding: Washington, D. C.

were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

Ann Riley

Official Reporter (Typed)

*Ann Riley*

Official Reporter (Signature)