

NUCLEAR REGULATORY COMMISSION

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COMMISSION MEETING
RETURN TO SECRETARIAT RECORDS

In the Matter of: PUBLIC SESSION

AFFIRMATION/DISCUSSION SESSION: (PORTION)

SECY-81-631- FINAL RULE FOR PENDING CP/OL APPLICATIONS

SECY-81-674 - REVIEW OF ORDER CONCERNING SUA SPONTE ISSUES (IN THE MATTER OF TEXAS UTILITIES GENERATING COMPANY, ET AL.)

CLINCH RIVER EXEMPTION ORDER

DATE: December 22, 1981 PAGES: 1 - 17

AT: Washington, D. C.

RETURN TO SECRETARIAT RECORDS

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

- - -
PUBLIC SESSION
- - -

AFFIRMATION/DISCUSSION SESSION:

SECY-81-631 - FINAL RULE FOR PENDING CP/OL
APPLICATIONS

SECY-81-674 - REVIEW OF ORDER CONCERNING SUA
SPONTE ISSUES (IN THE MATTER OF TEXAS
UTILITIES GENERATING COMPANY, ET AL.)

CLINCH RIVER EXEMPTION ORDER

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

Tuesday, December 22, 1981

The Commission meeting was convened, pursuant to
notice, at 3:19 p.m., NUNZIO PALLADINO, Chairman of the
Commission, presiding.

PRESENT:

COMMISSIONERS:

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

COMMISSION STAFF:

- SAMUEL CHILK, Secretary
- LEONARD BICKWIT, General Counsel

DISCLAIMER

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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. I apologize for the delay.

4 This is an affirmation/discussion session. There
5 are the items listed on the agenda. In addition, it is
6 desired to get an affirmation/discussion on two other
7 items: one, Clinch River exemption order, which would be
8 appended to the open meeting; and then an order on the TMI-1
9 restart, which General Counsel advises should be a closed
10 meeting.

11 In order to take up either or both of these items,
12 we will need first a vote to hold the meeting involving
13 these subjects on less than one week's public notice. And
14 then if we want the order on the TMI-1 restart closed, we
15 will need a vote to close it.

16 MR. BICKWIT: No, you've given my recommendation.

17 CHAIRMAN PALLADINO: May I have a vote to hold
18 both the Clinch River exemption order and the order in the
19 TMI restart on less than one week's notice?

20 COMMISSIONER ROBERTS: Aye.

21 COMMISSIONER AHEARNE: Aye.

22 CHAIRMAN PALLADINO: Aye.

23 May I have a vote on closing the TMI-1 restart
24 discussion?

25 (A chorus of ayes.)

1 CHAIRMAN PALLADINO: Then I guess we're ready to
2 proceed. Mr. Secretary, will you walk us through the
3 items?

4 MR. CHILK: The first item is SECY-81674, a review
5 of order concerning sua sponte issues in the matter of Texas
6 Utilities Generating Company, in which the Commission is
7 asked to take review of licensing board decision and approve
8 an order directing the board to dismiss certain contentions
9 in this proceeding.

10 The Chairman, Commissioners Ahearne and Roberts
11 have approved the recommendation for review and the order,
12 with modifications suggested by Commissioner Roberts.
13 Commissioner Gilinsky and Commissioner Bradford have
14 disapproved it.

15 Will you please affirm that.

16 COMMISSIONER BRADFORD: Do we have the modified
17 order? Is it somewhere in the blizzard of paper that has
18 come in in the last 100 or so minutes? I may have had it.
19 I may have had it for days.

20 MR. CHILK: There was a modification in the last
21 sentence, the last two sentences on page 4 of the order, and
22 a sentence on page 2 of the order, and about four lines on
23 page 1.

24 COMMISSIONER GILINSKY: Was that circulated?

25 MR. CHILK: Yes, it was.

1 COMMISSIONER GILINSKY: At what time?

2 MR. CHILK: The thing was dated the 16th and I
3 would imagine that it was circulated shortly thereafter.

4 COMMISSIONER GILINSKY: The modifications?

5 MR. CHILK: The modifications.

6 COMMISSIONER GILINSKY: And this would include
7 this order, attached views?

8 MR. CHILK: Do you want your views attached?

9 COMMISSIONER GILINSKY: Certainly.

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

11 (A chorus of ayes.)

12 MR. CHILK: The second one is SECY-81-631, which
13 is a final rule for pending CM/ML's, where the Commission is
14 being asked to approve changes to a rule which has been
15 previously approved on August 27.

16 The Chairman, Commissioners Ahearne and Roberts
17 have approved the rule. Commissioner Gilinsky approves the
18 rule and partly disapproves with the hydrogen control
19 provisions of the rule as applied to GE Mark III plants and
20 Westinghouse ice condenser plants. And Commissioner
21 Bradford has disapproved the rule.

22 A majority of the Chairman, Commissioners Ahearne
23 and Roberts have approved modifications made by Commissioner
24 Ahearne. There was one further issue on buckling which has
25 been turned down by the Commission, with the Chairman,

1 Commissioners Ahearne and Roberts voting against it. Could
2 you please affirm your votes?

3 (A chorus of ayes.)

4 CHAIRMAN PALLADINO: But I will have --

5 MR. CHILK: Do you have some additional comments?

6 COMMISSIONER GILINSKY: In that case also I have
7 views.

8 COMMISSIONER AHEARNE: And I will also.

9 (Laughter.)

10 COMMISSIONER BRADFORD: And I always have had.

11 COMMISSIONER AHEARNE: And in order for the rule
12 to get out, I will try to get the views tomorrow.

13 MR. CHILK: The other two items, the Clinch River
14 exemption order, I defer to the General Counsel on.

15 MR. BICKWIT: You have copies of a memorandum from
16 our office dated December 21st, and I have markups by the
17 Chairman's office and Commissioner Ahearne's office. I have
18 not seen the various schedules that have been floating
19 around. What I suggest is that we go through the order
20 itself, and then somebody else may have to take the lead
21 when it comes to the schedules.

22 COMMISSIONER GILINSKY: Do you plan to go through
23 this order line by line at this point? It seems an odd way
24 to do business.

25 MR. BICKWIT: I was planning simply to point in

1 the direction of each change recommended either by the
2 Chairman or Commissioner Ahearne. That is the way we've
3 done business in the past.

4 COMMISSIONER GILINSKY: If there are a number of
5 these, it's impossible to get a clean copy. I think that
6 there's a real problem with the way this whole thing was
7 handled. These changes should have come earlier. If we're
8 going to have an affirmation session, these things are
9 basically supposed to be ready.

10 MR. BICKWIT: I think the problem is that we
11 submitted our proposal late last night, and you are sitting
12 in a situation where the Commission is about to leave town.
13 And under these circumstances there is a certain sandwiching
14 effect, and one way to deal with that is to deal with this
15 under less than optimum conditions.

16 The other way is simply not to put an order out.

17 COMMISSIONER GILINSKY: Or the other way is to
18 give the Commissioners more time.

19 MR. BICKWIT: If you are suggesting our office was
20 delinquent, frankly I don't think so. We originally
21 contracted to have this to the Commission by yesterday and
22 that is what we have done.

23 COMMISSIONER BRADFORD: Does this one require a
24 Commission vote?

25 MR. BICKWIT: I would say not. You have already

1 had a vote, and I think you could move by notation on it.

2 COMMISSIONER GILINSKY: I'm prepared to accept the
3 order as you drafted it. It's just that if you start making
4 changes all over the place it is hard to tell where you're
5 going. And if you don't see a clean copy when you're all
6 through --

7 MR. BICKWIT: There is another option, as Peter
8 suggests. I don't know if you're suggesting the option, but
9 it is presented by your remark, and that is that you try to
10 get this order out by notation after you have had a couple
11 more hours to look at the changes.

12 COMMISSIONER BRADFORD: It is less critical I
13 think with regard to the order -- I have some differences
14 with it, but I can note them as footnotes -- than it may be
15 with regard to the schedule, which we don't seem to have
16 come to earth on yet, unless we can do it now.

17 CHAIRMAN PALLADINO: Well, one thing we could do,
18 we could mark up a copy and make sure it is legible. I
19 think there has been interaction among the offices of at
20 least three Commissioners and I think there's agreement on
21 all the points. But I do think we ought to give the other
22 Commissioners an opportunity to see this and give them a
23 chance.

24 COMMISSIONER BRADFORD: I was just wondering which
25 offices they were.

1 CHAIRMAN PALLADINO: Or we could walk through it
2 now.

3 COMMISSIONER BRADFORD: Which version have you all
4 agreed on?

5 CHAIRMAN PALLADINO: Basically, right now I don't
6 know which one.

7 COMMISSIONER GILINSKY: Which were the three
8 offices?

9 COMMISSIONER BRADFORD: It's not you and it's not
10 me.

11 COMMISSIONER GILINSKY: For all I know, my office
12 is involved. These things happen.

13 CHAIRMAN PALLADINO: I think by and large it is
14 Commissioner Ahearne's marks on the OGC copy.

15 COMMISSIONER BRADFORD: I have something labeled
16 "the Chairman's comments."

17 COMMISSIONER AHEARNE: We sent one to Tom Gibbon.

18 COMMISSIONER BRADFORD: I may have that, too.

19 CHAIRMAN PALLADINO: Some of the revisions are
20 suggested by my staff. Many of them are revisions suggested
21 by Commissioner Ahearne. And if you'd like we could walk
22 through them. I don't think it's going to take that long to
23 at least identify.

24 COMMISSIONER AHEARNE: I would go along with the
25 notation. I share Vic's concern a little bit. In the past

1 we have had problems with trying to make a decision without
2 having a change to read through it completely, and as long
3 as we can do it by notation I think that will be find.

4 CHAIRMAN PALLADINO: We ought to try to get it
5 done by tomorrow.

6 MR. BICKWIT: By this afternoon.

7 CHAIRMAN PALLADINO: If possible, by the end of
8 the afternoon.

9 COMMISSIONER BRADFORD: I don't expect, unless you
10 have made radical changes, to have differences other than
11 the ones I had with the OGC-prepared schedule, which had to
12 do with the reservation I always had about adjudicatory
13 hearings. The schedule may be a more serious matter.

14 CHAIRMAN PALLADINO: The schedule that was
15 proposed was Roberts' modification of Ahearne's
16 modification.

17 COMMISSIONER GILINSKY: I also understand you want
18 to delete some of the questions.

19 CHAIRMAN PALLADINO: One of the questions, number
20 6. I had proposed also deleting number 7. I had also
21 suggested deleting number 10, but it was called to my
22 attention that it does contain some information that I
23 thought was duplicative of point 3 in the order, and I see
24 that it really does add something. So I yielded. So the
25 one I would delete is number 6.

1 COMMISSIONER BRADFORD: Which one is number 6?

2 COMMISSIONER AHEARNE: The Savannah River
3 question.

4 COMMISSIONER BRADFORD: Why would you delete
5 that?

6 CHAIRMAN PALLADINO: Well, I think it goes back
7 into issues that are not germane, I think, to this.

8 COMMISSIONER AHEARNE: It was my original question
9 and it wasn't quite an accurate -- it was not an accurate
10 statement, as it turned out, in digging back into what the
11 document actually said. And I tried to struggle with trying
12 to reword it in a way that made some sense, and I finally
13 gave up.

14 COMMISSIONER GILINSKY: So that is the only one
15 you're dropping?

16 CHAIRMAN PALLADINO: I think that is the major
17 change.

18 Did you schedule --

19 COMMISSIONER ROBERTS: I gave it to OGC.

20 COMMISSIONER AHEARNE: Tom had circulated a
21 schedule on the 21st to all of us.

22 CHAIRMAN PALLADINO: And I gather you agreed to
23 that?

24 COMMISSIONER AHEARNE: Yes.

25 CHAIRMAN PALLADINO: And I agreed to that.

1 COMMISSIONER BRADFORD: I'm still trying to figure
2 out which one that is. This looks like John's.

3 CHAIRMAN PALLADINO: It looks like John's except
4 there's a change one date and put a footnote.

5 COMMISSIONER GILINSKY: Well, I guess they're
6 going to put a copy together so we will see all these
7 things. Why don't we just do that as quickly as we can.

8 CHAIRMAN PALLADINO: Okay.

9 COMMISSIONER BRADFORD: What this one does is to
10 add three weeks if additional questions are asked, right?

11 CHAIRMAN PALLADINO: Two weeks -- oh, I'm sorry,
12 you changed it to three.

13 COMMISSIONER BRADFORD: Now, why wouldn't you just
14 provide that -- and it also for some reason moves step four
15 from the 5th, which was already later than it needed to be,
16 to the 12th. Why wouldn't you just provide that a second
17 round of questions would go out within a few days of the
18 28th and answers would be due before oral argument?

19 What is screwy about this schedule is it provides
20 for the second round of answers to come in after the oral
21 presentation. And the theory is I thought that the oral
22 presentation was the Commission's last chance to ask
23 clarifying questions about all of the material that it had
24 in front of it.

25 Normally, when you organize a set of presentations

1 you put the oral presentation at the end so that the
2 Commissioners can raise any questions that haven't been
3 clearly responded to in writing.

4 COMMISSIONER AHEARNE: My asterisked comment
5 really was that if additional questions were to be asked,
6 then the whole schedule would have to slide.

7 COMMISSIONER BRADFORD: Right. And what I'm
8 suggesting -- first, I don't think it needs to. But if you
9 provide that further Commission questions would come in a
10 period, say, between the 28th and the 5th of February, and
11 be answered before the oral presentations, the questions
12 should not be lengthy at that point. There shouldn't be
13 much left to deal with.

14 COMMISSIONER GILINSKY: Why are we drawing this
15 thing out? I just can't understand it. Tom, I assume you
16 came here to streamline the procedure.

17 COMMISSIONER ROBERTS: I'm not sure why I came.

18 COMMISSIONER AHEARNE: I'm not sure I can cope
19 with that. I don't know if I want any more honest remarks.

20 (Laughter.)

21 COMMISSIONER GILINSKY: Seriously, I don't know
22 why we need such a drawn-out process to deal with something
23 after you've had briefs and an opportunity to hear from
24 people who want exemption granted and those who don't want
25 an exemption granted. The Commission simply can't settle

1 fairly quickly. It does not seem to me the sort of thing --
2 this is not like granting an operating license or a
3 construction permit or some enormously complicated case.

4 The Commissioners may differ, but I don't think
5 that there is just a mass of material here that we're
6 dealing with.

7 CHAIRMAN PALLADINO: Well, if there are no
8 questions then there is no additional period of time.

9 COMMISSIONER BRADFORD: What I am suggesting,
10 though, Joe, is even if there are questions, they can be put
11 out and answered more or less within the schedule following
12 the 28th and still have the material in front of the
13 Commission in time for oral presentations on or about the
14 schedule suggested here.

15 CHAIRMAN PALLADINO: Would it help if, instead of
16 saying "will be required," "may be required"? "An
17 additional three weeks may be required." That would flag
18 that we may need additional time. We may need less.

19 COMMISSIONER AHEARNE: Sure.

20 COMMISSIONER BRADFORD: Whatever you all want. I
21 mean, if I once get into this, let me make clear, I will
22 stay here long enough to see it through. I can arrange
23 that. So whatever schedule makes sense to you I can adapt
24 to.

25 But at the same time, it seems to me to make for a

1 more sensible proceeding to have the questions come in a way
2 that contemplates having them on the table in front of us at
3 the time of the oral proceedings.

4 COMMISSIONER AHEARNE: That was contemplated,
5 Peter.

6 COMMISSIONER BRADFORD: You were contemplating
7 slipping the oral proceedings if necessary.

8 COMMISSIONER AHEARNE: If there are additional
9 questions.

10 COMMISSIONER BRADFORD: I see.

11 COMMISSIONER GILINSKY: Why can't we do this in a
12 month? I must say --

13 CHAIRMAN PALLADINO: All we're saying is that if
14 there are additional questions -- and there may very well be
15 -- and if there are not, then we don't have a problem.

16 COMMISSIONER GILINSKY: Well, with those
17 additional questions, where do you end up at that point?

18 CHAIRMAN PALLADINO: Then we end up 3-8. If there
19 are additional questions, we can put in "an additional three
20 weeks may be required."

21 COMMISSIONER GILINSKY: That's like 11 weeks or
22 something like that, or 10 weeks. It seems an awfully long
23 time to me.

24 COMMISSIONER AHEARNE: I suspect it's going to be
25 a difficult decision and I think the questions are going to

1 be reasonably difficult to answer.

2 COMMISSIONER GILINSKY: I don't think it gets any
3 easier by drawing out the proceeding.

4 COMMISSIONER AHEARNE: It is not drawing it out.
5 It is giving the people who have to answer the questions I
6 chance to answer them and then giving the people who want to
7 comment on those answers a chance to answer those comments,
8 and then giving the staff a chance to analyze all of the
9 material.

10 COMMISSIONER GILINSKY: I would have a shorter
11 schedule.

12 COMMISSIONER BRADFORD: Okay. I think it is clear
13 we're at a point where there's no -- well, there are
14 differences. There's clearly a majority, though, for the
15 schedule more or less as laid out here. And the next
16 potential point of difference doesn't come until the end of
17 January. So you may as well put this one out and see what
18 happens at that time.

19 CHAIRMAN PALLADINO: And would you like to have in
20 that footnote "an additional three weeks may be required,"
21 so it doesn't sound so categorical?

22 COMMISSIONER BRADFORD: Sure.

23 CHAIRMAN PALLADINO: Len, are you going to put
24 this together?

25 MR. BICKWIT: Yes, we'll draft it and get it

1 around.

2 COMMISSIONER BRADFORD: Let me just ask, though,
3 why does the schedule contemplate at step four that the
4 notice for opportunity for oral presentation not come until
5 the 12th of February? That seems to me to be a document
6 that essentially doesn't derive from anything that comes
7 later than the 28th of January.

8 COMMISSIONER AHEARNE: I think the point is the
9 additional questions. It is really more keyed to the
10 asterisk, I believe. I think the additional questions would
11 come after looking at the staff report, and if there are no
12 additional questions then you give the notice of
13 opportunity. You couldn't give the notice of opportunity
14 --

15 COMMISSIONER BRADFORD: I see. You want the staff
16 report in hand before you put that together?

17 COMMISSIONER AHEARNE: That will then decide
18 whether or not you'r ready to go to oral.

19 CHAIRMAN PALLADINO: Are there any other
20 questions?

21 COMMISSIONER AHEARNE: At least that was why I was
22 willing to accept the change, because that seemed to be a
23 sound argument.

24 COMMISSIONER GILINSKY: You know, we approve
25 operating reactors going into operation on the basis of a

NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the
COMMISSION MEETING

On the matter of: AFFIRMATION/DISCUSSION SESSION:

Date of Proceeding: December 22, 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.

Alfred H. Ward

Official Reporter (Typed)

Alfred H. Ward

Official Reporter (Signature)