

NUCLEAR REGULATORY COMMISSION

APR 23 1981
WASHINGTON, D.C.

COMMISSION MEETING

In the Matter of: AFFIRMATION, DISCUSSION AND VOTE: 81-16

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

AFFIRMATION, DISCUSSION AND VOTE: 81-16

Nuclear Regulatory Commission
Room 1130
1717 H Street, N. W.
Washington, D. C.
Thursday, April 23, 1981

The Commission met, pursuant to notice, at
4:35 p.m.

BEFORE:

JOSEPH M. HENDRIE, Chairman of the Commission
JOHN F. AHEARNE, Commissioner
VICTOR GILINSKY, Commissioner
PETER A. BRADFORD, Commissioner

STAFF PRESENT:

L. BICKWIT
S. CHILK
J. AUSTIN

* * *

P R O C E E D I N G S

1
2 CHAIRMAN HENDRIE: Will you come to order on the
3 affirmation session.

4 Those of you who look at the affirmation schedule
5 with interest, you may strike Items A and B. I will talk
6 about Item C in a minute.

7 I will introduce an Item E by asking my colleagues
8 to join in voting to hold on less than one week's notice an
9 affirmation session for SECY 81-191A, Affirmation of
10 Leithauser Motion for Official Notice of Intervenor Status.

11 Those in favor?

12 (Chorus of Ayes.)

13 COMMISSIONER BRADFORD: What are we doing with
14 that one? We are affirming that one?

15 COMMISSIONER GILINSKY: Are we are all in
16 agreement on that one?

17 CHAIRMAN HENDRIE: Yes, we are unanimous.

18 Okay. We can now have a short notice meeting on
19 SECY 81-191A.

20 Sam, let us go ahead with that item.

21 MR. CHILK: SECY 81-191A, Leithauser Motion for
22 Official Notice of Intervenor Status. The Commission has
23 unanimously approved the proposed order with modifications
24 by Commissioner Gilinsky which refers the motion of
25 Mr. Leithauser to the licensing board for appropriate action.

1 Would you please affirm your vote?

2 (Chorus of Ayes.)

3 CHAIRMAN HENDRIE: So ordered.

4 Let us turn then to 81-114, Fire Protection Rule
5 for Future Plants.

6 I think we may need a little discussion on this to
7 see if we are still of an affirmation mind.

8 Sam, why don't you outline this.

9 MR. CHILK: The Commission has approved the
10 adoption unanimously of an Alternative 3 of a subject paper
11 which is a proposed fire protection rule, a hybrid of
12 Alternatives 1 and 2.

13 But in connection with the votes the question has
14 come up as to what happens to new licenses. Commission
15 Gilinsky has indicated that until a rule is in place the new
16 licenses should contain a condition requiring compliance
17 with the commitments made by the applicant and agreed to by
18 the staff.

19 Chairman Hendrie has indicated that he understands
20 new licenses to mean those from the date of the Commission
21 action on this matter and not retrospectively.

22 Your assistants have indicated that you wanted to
23 discuss this matter of how you want to treat the licenses
24 from January '79 to the present.

25 COMMISSIONER AHEARNE: And I gather it would

1 essentially end up being Sequoyah and North Anna.

2 CHAIRMAN HENDRIE: What about Farley?

3 COMMISSIONER GILINSKY: I think that in Farley and
4 in Salem they are in the tech specs I understand. So they
5 are in the license. So it just comes down to Sequoyah and
6 North Anna.

7 CHAIRMAN HENDRIE: Well, I will tell you what my
8 concern is.

9 COMMISSIONER GILINSKY: I understand they are in
10 compliance and have agreed to all the requirements. So
11 there is no problem of that sort.

12 CHAIRMAN HENDRIE: There is not a safety problem.
13 There is sort of an administrative and paper type question.

14 Let me tell you what my concern is. If you go and
15 amend the licenses to include that condition, is that an
16 amendment of no significance hazard consideration, or not,
17 and what are the hearing liabilities?

18 You know, for myself, since it is being done, I
19 would simply avoid creating liability to yet another hearing
20 where I would see not much point in one.

21 COMMISSIONER BRADFORD: What actually is the
22 answer to that question, if there is no significant hazards
23 consideration?

24 MR. BICKWIT: If there is no significant hazards
25 consideration then there is no hearing requirement under the

1 current stay of the Sholly Mandate.

2 COMMISSIONER AHEARNE: It doesn't mean there is no
3 hearing.

4 MR. BICKWIT: That is right, no before-the-fact
5 hearing.

6 CHAIRMAN HENDRIE: The custom on that kind of
7 amendment is, you know, you issue the amendment and you
8 issue a notice saying you have issued the amendment and here
9 is why and here is the safety report and you also say and if
10 anybody, you know, wants to argue about it, why they can
11 request a hearing, but it is post the action.

12 MR. BICKWIT: That is right.

13 CHAIRMAN HENDRIE: And the amendment is in place
14 while the hearing goes on. So that is less burdensome. I
15 was about to say that I don't think anybody would request a
16 hearing on a post basis.

17 COMMISSIONER GILINSKY: But even if it were before
18 the fact what would happen? We have got the requirements in
19 place.

20 CHAIRMAN HENDRIE: I don't know. It would be very
21 confusing. If it were before the fact, why I would think
22 the licensee would have to stop implementation until the
23 hearing were completed and he were ordered by the board to
24 either do it as planned or do it as modified.

25 MR. BICKWIT: That is correct.

1 CHAIRMAN HENDRIE: For him to be going ahead and
2 doing it while the hearing was going on is precisely
3 contrary to a hearing before the action.

4 COMMISSIONER GILINSKY: That doesn't sound to me
5 like the common ---

6 MR. BICKWIT: That suggests if he does it
7 voluntarily that he needs an amendment which does not
8 involve ---

9 COMMISSIONER GILINSKY: It seems to me in this
10 case there is no difference whether it is before the fact or
11 after the fact. The only difference is an administrative
12 one whether something becomes attached to a license or
13 doesn't become attached to a license and they go on as they
14 were.

15 If there were a hearing before the fact, they just
16 would not be part of the license.

17 CHAIRMAN HENDRIE: What do you mean if there was a
18 hearing before the fact?

19 COMMISSIONER GILINSKY: Well, we are talking about
20 a license amendment.

21 COMMISSIONER AHEARNE: Except I would imagine if
22 there were to be a hearing, and I would agree with you that
23 I don't see how it could be before, but if for some odd
24 reason the system ended up saying, yes, you have to have a
25 hearing before that can be put into the license amendment,

1 then I would imagine the licensee could very well say, hey,
2 wait, if I am going down this path and implementing this, if
3 there are any things that aren't reversible and if the board
4 might decide I have to do more, I just won't do this either
5 and I will just wait and see what the board says.

6 COMMISSIONER GILINSKY: Well, the staff is always
7 free to issue orders if it thinks that safety is not being
8 adequately taken account of. It is conceivable, although
9 pretty unlikely, that the licensee himself may come and say,
10 yes, I have agreed to do these things but I don't want it in
11 the license. But in the meantime it would be part of the
12 regulatory framework under which he lives.

13 COMMISSIONER BRADFORD: Am I wrong in thinking
14 that the doctrine of which I am not very fond, but may work
15 to an advantage in this case, namely the Point Beach
16 business, would restrict the scope of the hearing in any
17 case as to whether or not the proposed changes were a
18 detriment to safety?

19 CHAIRMAN HENDRIE: I have no idea.

20 MR. BICKWIT: It would restrict standing to those
21 who contested the implementation of this action.

22 COMMISSIONER BRADFORD: On the basis that it did
23 decrease safety?

24 MR. BICKWIT: Yes. That if somebody were
25 complaining about the action not taken, that he would not be

1 able to ---

2 COMMISSIONER AHEARNE: Wait a minute. This is a
3 license amendment.

4 MR. BICKWIT: I am not clear that you need a
5 license amendment here. That is the point I am trying to
6 make. If it is acceptable for this licensee to do it
7 voluntarily without amending his license, then he can be
8 ordered to do it without it.

9 *Commissioner Bradford:*
~~MR. BICKWIT:~~ But the point is whether it is a
10 good idea to have these things in the licenses because then
11 I&E inspects against them and they become enforceable and
12 have to be maintained out into the future.

13 MR. BICKWIT: That is right. If you want it in
14 the license you are going to have to amend the license.

15 COMMISSIONER AHEARNE: My only question, Len, was
16 your answer on Marble Hill I didn't think was consistent
17 with the position that your office is taking on license
18 amendments.

19 MR. BICKWIT: No, it is. If the complaint is with
20 respect to the action not taken, the Marble Hill rationale
21 would apply.

22 COMMISSIONER AHEARNE: Except that the scope of
23 what that hearing encompasses is not strictly the amendment
24 described.

25 MR. BICKWIT: No, it would be. It would be.

1 COMMISSIONER AHEARNE: Your Dresden opinion
2 doesn't track that.

3 MR. BICKWIT: If the complaint is that the
4 amendment does not go far enough, the Marble Hill rationale
5 applies.

6 COMMISSIONER AHEARNE: That is not what Dresden
7 says. That is not what your Dresden paper said.

8 MR. BICKWIT: I just don't read it that way.

9 COMMISSIONER AHEARNE: RGC has a license amendment
10 paper up at Dresden.

11 MR. BICKWIT: I just don't read it as you do.

12 CHAIRMAN HENDRIE: It seems to me what you are
13 saying, Vic, is that you want to amend the license to these
14 two plants.

15 COMMISSIONER GILINSKY: Yes. And I guess the
16 reason I would like to go back is simply that I find it odd
17 to have 70 plants covered in one way or another by rules and
18 two not. It seems like an odd situation.

19 Now, it doesn't seem to me as if there is a legal
20 problem.

21 CHAIRMAN HENDRIE: Why are the 70 covered?

22 COMMISSIONER BRADFORD: Well, they are not covered
23 by this rule but they are covered by ---

24 COMMISSIONER AHEARNE: The order.

25 MR. BICKWIT: The previous rule.

1 CHAIRMAN HENDRIE: The previous rule covered
2 plants up through '79, right?

3 MR. BICKWIT: That is right.

4 CHAIRMAN HENDRIE: We are in the process of
5 devising a rule which will cover plants from then on.

6 COMMISSIONER BRADFORD: Right.

7 COMMISSIONER GILINSKY: I should have said by a
8 rule or a license condition.

9 CHAIRMAN HENDRIE: Once that rule is in place, it
10 is necessary for all this stuff to be in the licenses?

11 MR. BICKWIT: No, it is not necessary.

12 CHAIRMAN HENDRIE: Furthermore, once this rule is
13 in place, you know, we won't put it in new licenses and it
14 becomes in effect obsolete although probably still operable
15 in the licenses that it was put into, right?

16 MR. BICKWIT: Right.

17 COMMISSIONER BRADFORD: How will that apply to
18 Sequoyah and North Anna?

19 MR. BICKWIT: If they are covered by the rule,
20 then the rule will apply. If they are not and you want to
21 amend those licenses, then you will have to go through the
22 amendment procedure. If a finding of no significant hazards
23 consideration can be made, then there is an after-the-fact
24 hearing.

25 COMMISSIONER BRADFORD: The point is they aren't

1 in fact covered by the rule.

2 CHAIRMAN HENDRIE: Because the rule would just
3 cover from its effective date forward.

4 MR. BICKWIT: This is your proposal.

5 CHAIRMAN HENDRIE: I see. So for all time you
6 would have a group of 70 plants covered by Rule A, a little
7 group of three or four in the middle ---

8 COMMISSIONER BRADFORD: Two I hope.

9 CHAIRMAN HENDRIE: --- and then a whole batch
10 covered by Rule B.

11 COMMISSIONER AHEARNE: Whose proposal was it that
12 the rule would only cover from now on?

13 MR. BICKWIT: Isn't that your proposal that the
14 rule covers from now on and you want to amend the licenses
15 for the excluded middle here?

16 COMMISSIONER BRADFORD: Isn't that?

17 COMMISSIONER AHEARNE: We don't even have the rule.

18 COMMISSIONER GILINSKY: It is the requirement that
19 from now on the licenses include the conditions on fire
20 protection which this staff has imposed.

21 MR. BICKWIT: And how do you want to impose that ,
22 requirement?

23 CHAIRMAN HENDRIE: In licenses from now on?

24 MR. BICKWIT: Yes.

25 COMMISSIONER GILINSKY: Until we come to a point

1 where there is a rule and the rule will apply to all
2 subsequent plants.

3 MR. BICKWIT: If you want to do that by a legally
4 enforceable mechanism you either have to do it by rule or
5 amend the license or by order.

6 COMMISSIONER GILINSKY: Well, you are not amending
7 prospective licenses because they haven't been issued. So
8 this only becomes part of a license. So the only place
9 where you are talking about amending a license is in those
10 two cases because the other two have already been covered.

11 It just doesn't seem to me that there is a legal
12 problem. What could happen is that someone could ask for a
13 hearing and there may be a hearing, although it seems to me
14 unlikely, but nevertheless that could happen.

15 Now, I don't think that hearing would have any
16 effect on the plant during the conduct of the hearing.

17 MR. BICKWIT: It wouldn't if it is an
18 after-the-fact hearing.

19 COMMISSIONER GILINSKY: Well, it seems to me that
20 it wouldn't either if it is a before-the-fact hearing
21 because the fact is really ---

22 MR. BICKWIT: It would if it is a before-the-fact
23 hearing if the fact is the implementation of the amendment,
24 but I don't envision that happening.

25 COMMISSIONER AHEARNE: I would support Vic's

1 proposal.

2 CHAIRMAN HENDRIE: You would go ahead and take the
3 hearing liability?

4 COMMISSIONER AHEARNE: I would run the risk of
5 that.

6 COMMISSIONER GILINSKY: It doesn't seem to me that
7 the liability is more than the possibility of a hearing.
8 Now, I am giving you free legal advice.

9 (Laughter.)

10 COMMISSIONER AHEARNE: Our legal adviser is saying
11 that that is not necessarily clear.

12 CHAIRMAN HENDRIE: It is clear that it is of not
13 significant hazards consideration?

14 MR. BICKWIT: It strikes me as clear.

15 COMMISSIONER BRADFORD: Have you ever made that
16 determination before?

17 (Laughter.)

18 COMMISSIONER BRADFORD: I will support Vic's
19 proposal.

20 COMMISSIONER AHEARNE: Let's put it this way. If
21 it were to lead to a prehearing, then we really know our
22 system is ---

23 COMMISSIONER BRADFORD: I owe you a vote on the
24 scope of that hearing.

25 (Laughter.)

1 MR. BICKWIT: It were to lead to a prehearing,
2 then probably as a matter of law it should lead to one even
3 if you don't insist on amendment.

4 COMMISSIONER AHEARNE: But a matter of law and a
5 matter of right are two different issues.

6 COMMISSIONER GILINSKY: Certainly the way no
7 significant hazards has been interpreted in the past, it
8 should lead to a finding of no significant hazards because
9 the question is whether the action increases the safety of
10 the plant and obviously it does not. But then that is up to
11 Ed case and not me.

12 (Laughter.)

13 MR. BICKWIT: When would it be proposed that these
14 changes would be made?

15 COMMISSIONER BRADFORD: You mean the physical
16 changes in the plant?

17 MR. BICKWIT: Yes. How quickly would they be made?

18 COMMISSIONER AHEARNE: Well, some of them were
19 being made.

20 COMMISSIONER BRADFORD: That is right.

21 COMMISSIONER AHEARNE: There are commitments the
22 licensee has made that he can do these things.

23 MR. BICKWIT: Right. I guess my point is if the
24 amendment to the license takes place beyond denial of
25 certiorari then you conceivably have no problem.

1 COMMISSIONER AHEARNE: Are you talking about the
2 Sholly Mandate?

3 MR. BICKWIT: Yes.

4 COMMISSIONER BRADFORD: It is better amended
5 sooner than later.

6 MR. BICKWIT: Yes.

7 COMMISSIONER BRADFORD: It would be very hard to
8 find significant hazards consideration in an amendment that
9 simply confirmed what a board had done, but I think you are
10 right it makes more sense to do it sooner.

11 CHAIRMAN HENDRIE: Did the staff ever indicate,
12 Vic, any opinion?

13 COMMISSIONER BRADFORD: Well, I think the staff
14 opinion is that they see no difficulty in that.

15 COMMISSIONER GILINSKY: I am not sure that we
16 asked them.

17 COMMISSIONER BRADFORD: We did.

18 COMMISSIONER GILINSKY: Did we, John?

19 MR. AUSTIN: Yes. I talked to several members of
20 the staff asking them if they had a problem backfitting.
21 The response was that they prefer to go with ^{their} the proposal
22 and there would be no major problem if it were backfitted.
23 No major problem was the way they characterized it.

24 COMMISSIONER GILINSKY: Was there any problem?

25 MR. AUSTIN: It is going back and finding what the

1 commitments were and writing up tech specs.

2 COMMISSIONER BRADFORD: But it is not a problem in
3 the plant then but it is a paperwork problem.

4 COMMISSIONER AHEARNE: An administrative problem.

5 MR. AUSTIN: They have already agreed. I mean it
6 is a fait accompli.

7 COMMISSIONER GILINSKY: So it is really the bother
8 of doing it.

9 Well, it just seemed odd to have this funny little
10 exception.

11 CHAIRMAN HENDRIE: Let's do it. If it turns out
12 that this thing heads down a hearing line though, why ---

13 COMMISSIONER GILINSKY: We will know who is to
14 blame.

15 (Laughter.)

16 CHAIRMAN HENDRIE: --- we will march right back in
17 here and ask for a reversal on the thing.

18 COMMISSIONER AHEARNE: I would like to talk to
19 you, Len, later about Dresden because we really do disagree.

20 MR. CHILK: The Commission has unanimously
21 approved adoption of Alternative 3 of ⁸⁰⁻⁵⁴⁶ ~~85-46~~/81-114 with a
22 modification proposed by Commissioner Gilinsky.

23 Would you please affirm your votes.

24 (Chrous of Ayes.)

25 CHAIRMAN HENDRIE: So ordered.

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Thank you very much.

(Whereupon, at 4:50 p.m., the affirmation session
concluded.)

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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 and Vote: 81-16

Date of Proceeding: April 23, 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.

Mary C. Simons

Official Reporter (Typed)

Mary C. Simons

Official Reporter (Signature)