



OFFICE OF THE
SECRETARY

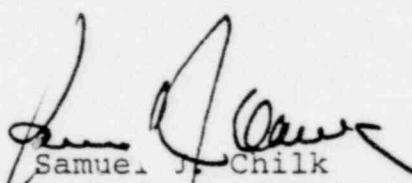
UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

July 19, 1979

COMMISSION DETERMINATION REGARDING PUBLIC DISCLOSURE
UNDER THE GOVERNMENT IN THE SUNSHINE ACT OF:

Minutes of Closed Commission Adjudicatory
Sessions for 1977

Pursuant to the Commission's regulations implementing the Government in the Sunshine Act, 10 CFR 9.108(c), the Commission, on the advice of the General Counsel, determined that the Minutes of Closed Commission Adjudicatory Sessions for 1977 should now be made available to the Public.


Samuel J. Chilk
Secretary of the Commission

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3. Adjudicatory Session 77-13, March 24, 1977.
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4. Adjudicatory Session 77-14, March 28, 1977.
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New Hampshire, et al., Seabrook Stations, Units 1 & 2.)
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7. Adjudicatory Session 77-18, April 1, 1977.
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8. Adjudicatory Session 77-19, April 5, 1977.
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10. Adjudicatory Session 77-21, April 26, 1977.
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Company of New Hampshire, Seabrook Station Units 1 & 2.)
11. Adjudicatory Session 77-22, May 2, 1977.
(Oral Argument, Houston Power & Light Company, South Texas
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12. Adjudicatory Session 77-23, May 2, 1977.
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13. Adjudicatory Session 77-24, June 3, 1977.
(Draft Opinion in Response to May 2, 1977 Oral Argument Presented by Parties to the South Texas Project Proceeding.)
14. Minutes of Intervention Petitions in Export Cases, June 8, 1977.
15. Adjudicatory Session 77-25, June 8, 1977.
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16. Minutes of: Discussion of Executive Branch Views on Tarapur With Department of State Representatives, June 21, 1977.
17. Minutes of: Discussion of Executive Branch Views on Tarapur, June 21, 1977.
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19. Adjudicatory Session 77-26, June 21, 1977.
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20. Minutes of: Discussion of Tarapur Export License, June 24, 1977.
21. Adjudicatory Session 77-27, June 24, 1977.
(Public Service Company of New Hampshire, et al., Seabrook Station Units 1 & 2; Consolidated Edison Company of New York, Inc., Indian Point Station Unit 2.)
22. Adjudicatory Session 77-28, June 27, 1977.
(Pacific Gas & Electric Company, Diablo Canyon Nuclear Power Plant Units 1 & 2.)
23. Minutes of: Discussion of Tarapur Export License, June 28, 1977.
24. Policy Session 77-39, June 30, 1977.
(Edlow International Company, Agent for the Government of India on Application to Export Special Nuclear Materials.)
25. Adjudicatory Session 77-30, August 24, 1977.
(Status of ALAB Reviews and Certiorari Petitions; Public Service Company of New Hampshire, et al., Seabrook Station Units 1 & 2; Florida Power and Light Company, St. Lucie Plant Unit 2; Pacific Gas and Electric Company, Diablo Canyon Nuclear Power Plant, Units 1 & 2.)

26. Adjudicatory Session 77-31, August 26, 1977.
(Public Service Company of New Hampshire, et al., Seabrook Station Units 1 & 2; Consolidated Edison Company of New York, Inc., Indian Point Station Unit 2.)
27. Policy Session 77-42, September 7, 1977.
(New Mexico Uranium Mill Lawsuit.)
28. Adjudicatory Session 77-33, September 9, 1977.
(Public Service Company of New Hampshire, et al., Seabrook Station, Units 1 & 2.)
29. Adjudicatory Session 77-34, September 15, 1977.
(Proposed Draft Order, Public Service Company of New Hampshire, Seabrook Station Units 1 & 2; Pacific Gas and Electric Company, Diablo Canyon Nuclear Power Plant Units 1 & 2; Florida Power and Light Company, St. Lucie Plant Unit 2.)
30. Adjudicatory Session 77-35, September 21, 1977.
(Florida Power and Light Company, St. Lucie Plant Unit 1 and Turkey Point Plant, Units 3 & 4; Draft Order, Florida Power and Light Company, St. Lucie Plant, Unit 2.)
31. Policy Session 77-46, September 21, 1977.
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33. Adjudicatory Session 77-38, October 19, 1977.
(Exxon Nuclear Company, inc., Nuclear Fuel Recovery and Recycling Center.)
34. Adjudicatory Session 77-40, November 1, 1977.
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35. Adjudicatory Session 77-41, November 3, 1977.
(Issues Associated with Oral Argument Presented on Nov. 2, 77, Public Service Company of New Hampshire, et. al., Seabrook Station Units 1 & 2.)
36. Adjudicatory Session 77-44, November 14, 1977.
(Public Service Company of New Hampshire, et al., Seabrook Station Units 1 & 2.)
37. Adjudicatory Session 77-45, November 22, 1977.
(Draft Seabrook Opinion.)
38. Adjudicatory Session 77-48, December 6, 1977.
(Draft Seabrook Opinion.)

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39. Adjudicatory Session 77-50, December 14, 1977.
(Public Service Company of New Hampshire, et al., Seabrook Station, Units 1 & 2.)
40. Adjudicatory Session 77-52, December 19, 1977.
(Draft Seabrook Opinion.)

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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OFFICE OF THE
SECRETARY

MINUTES OF

ADJUDICATORY SESSION 77-11

11:40 a.m., Friday, March 18, 1977, Commissioners' Conference Room

D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

Secretary of the Commission

Samuel J. Chilk
John C. Hoyle, Assistant

General Counsel

Peter Strauss

Staff

S. Cohen
P. Crane
J. Goldberg
J. Harves
B. Huberman
A. Kennek
S. Ostrach
I. Rothschild
R. Stratford

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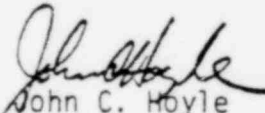
I. In the Matter of Consumers Power Company (Midland Plant, Units 1 & 2), Docket Nos. 50-329 and 50-330

The General Counsel presented for Commission consideration a proposed Order responding to two motions pending before the Commission in the Midland case. The first motion, filed on March 4, 1977 by the Consumers Power Company, requested a stay of Commission orders dated August 16, 1976, September 14, 1976, and November 5, 1976. The second motion, filed on March 15, 1977 by the Intervenors (other than Dow Chemical Company), requested an immediate suspension of construction of the Midland facility.

The General Counsel recommended approval of a proposed order delegating authority to rule on these motions to the Atomic Safety and Licensing Appeal Board. Such action would preclude a situation whereby, because of the Chairman's potential withdrawal from the case by disqualification, the Commission would be required to rule on the merits of the motions without a quorum to do so.

The Commission, noting that the Chairman is participating for the limited purpose of delegating these matters to the Appeal Board, by a 3-0 vote approved the attached order delegating its authority to rule on these pending motions to the Atomic Safety and Licensing Appeal Board, pursuant to 10 CFR 2.785.

During very brief discussion of the proposed order, the Commission noted that its action was limited to the two pending motions and had no effect upon its right to later act on matters in this case should the Commission choose to do so when additional Commissioners are available.



John C. Hoyle
Assistant Secretary of the Commission

Attachment:
Order dated March 18, 1977

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COMMISSIONERS:

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

Secretariat
Record Copy

In the Matter of
CONSUMERS POWER COMPANY
(Midland Plant, Units 1 and 2)

Docket Nos. 50-329
50-330

ORDER

On March 4, 1977, Consumers Power Company filed a motion with the Commission requesting that the Commission stay the orders it issued in this proceeding on August 16, 1976 (CLI-76-11, NRCI-76/8, 65); September 14, 1976 (CLI-76-14, NRCI-76/9, 163, September 14, 1976 (unreported); and November 5, 1976 (CLI-76-19, NRCI-76/11, 474). These opinions ordered the reconvening of a licensing board to hear certain issues remanded to the Commission by the United States Court of Appeals for the District of Columbia Circuit in Nelson Aeschliman et al v. NRC, Nos. 73-1776, 73-1867 (September 21, 1976). Consumers Power's motion is grounded on the fact that the United States Supreme Court granted certiorari in the above-named case on February 22, 1977.

On March 15, 1977, the Intervenors (other than Dow Chemical Company) filed a motion with the Commission requesting that the Commission immediately suspend construction of the Midland facility. The Intervenors' motion is based on an allegation that further hearings on a number of issues are required and that these hearings should be "unfettered and uncompromised by the continuation of construction."

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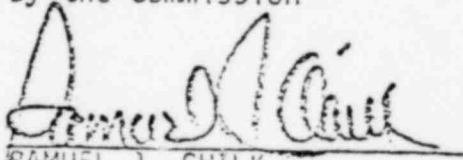
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Although the Commission would normally rule on these motions, the Commission is delegating its authority to act in these instances to the Atomic Safety and Licensing Appeal Board, pursuant to 10 CFR § 2.785. This action is being taken because Chairman Rowden has in the past disqualified himself from participating in this proceeding because of his prior service as Associate General Counsel of the Atomic Energy Commission during the pendency of this proceeding. Absent a showing of necessity not present here, the Chairman does not believe that he should participate on the merits of these motions. His withdrawal leaves the Commission without a quorum to rule on the merits of the motions. See 42 U.S.C. § 5841(a). The Chairman is participating for the limited purpose of delegating these matters to the Appeal Board because his presence is required to establish the necessary quorum of three. Otherwise, no action could be taken on the motions.

The Chairman of the Appeal Board, pursuant to 10 CFR § 2.787(a), shall designate three members of the Board to act on these motions.

It is so ORDERED.

By the Commission


SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D. C.
this 18th day of March, 1977

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555



OFFICE OF THE
SECRETARY

MINUTES OF
ADJUDICATORY SESSION 77-12

1:45 p.m., Monday, March 21, 1977, Commissioners' Conference Room
D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

General Counsel

Peter L. Strauss

Secretary of the Commission

John C. Hoyle, Assistant

Staff

R. Bell
S. Cohen
P. Crane
S. Eilperin
J. Fouchar
J. Goldberg
J. Harris
J. Harves
J. Kelley
A. Kenneke
R. McOsker
S. Ostrach
G. Sege
L. Spector
R. Stratford
H. Thompson

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I. Draft Opinion in the Matter of Public Service Company of New Hampshire, et al., (Seabrook Station Units 1 & 2) (Docket Nos. 50-443, 50-444)

The Commission discussed a draft Memorandum and Order, dated March 17, 1977, addressing the merits of the Atomic Safety and Licensing Appeal Board's January 21, 1977 decision (ALAB-366) suspending construction permits for the Seabrook facility, and comments on the draft contained in the Director of Policy Evaluation's March 31, 1977 memorandum to the Commission.

As described by the General Counsel, the proposed Memorandum and Order would affirm the Appeal Board's basic conclusion that the construction permit for Seabrook with once-through cooling must be suspended in light of the present uncertainty concerning EPA's future course and the absence of a finding that the Seabrook site is acceptable for closed-cycle cooling; that the Licensing Board's analysis and record before it does not establish that the Seabrook site is either acceptable or unacceptable for closed-cycle cooling; and that any analysis of closed cycle cooling at Seabrook must include comparison with other sites. The draft would also provide guidance for the Licensing Board for the conduct of additional site comparison - in effect, the Board would be instructed that an application should not be denied on the basis of comparison of the proposed site to alternate sites unless an alternate site appears to be clearly superior to the proposed site; that the appropriate basis of cost/benefit comparison between such sites is the cost and time necessary to complete a facility at each location in question; and that the Board must decide whether to consider, as additional alternative sites, sites in New England where other nuclear plants exist or are planned. Finally, the draft would set forth conditions under which construction might be permitted to resume at Seabrook. The Director of Policy Evaluation's March 21 memorandum took issue with a proposed alternative to the General Counsel's recommended course of action, as set forth in the draft Memorandum and Order, on the grounds that an evaluation of the cost versus the benefit of a proposed facility should be based on the set of facts existing at the time of the Licensing Board's decision regarding the licensability of the facility rather than on an outdated cost-benefit balance prepared as part of the applicant's initial submission.

After lengthy discussion of substantive aspects of the draft Memorandum and Order, the Commission requested that that portion of the draft concerning the standard of comparison for alternate sites (Section III, A. 1 & 2) be revised to clarify that comparison of facility completion costs is an integral part of the "clearly superior" standard rather than a separate, additional factor to be considered in comparing alternate sites and noted that further,

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more detailed individual Commissioner comments will be provided directly to the Office of the General Counsel. A revised draft Opinion reflecting these comments should be scheduled for further Commission consideration during the week of March 28, 1977.

The Commission took this action to eliminate any possible misinterpretation of the Commission's position as proposing a double weighting of facility completion costs in the overall comparison of alternate sites. The basis for the Commission's concern was that Section 111, A, 1 & 2, as presently drafted, seemed to suggest that facility completion costs (a factor favoring the proposed site, but nevertheless, a necessary factor in the comparison of alternate sites for the Seabrook facility since preliminary construction and the facility's design were based on the selected site) represented a standard to be applied independently of the "clearly superior" standard, while at the same time included as an element of the "clearly superior" criterion. The Commission also noted that constraints on available meeting time precluded discussion of individual Commissioner editorial changes, which could best be accommodated by being provided to the General Counsel in writing for incorporation into the next draft and considered by the Commission as a body during the meeting to be scheduled during the week of March 28.

In reviewing the draft, four issues served to focus the Commission's discussion: the method of calculating facility completion costs as part of the overall comparison of alternate sites, whether the overall comparison would be based on a single or double standard, the general applicability of the Memorandum and Order, and the extent to which the universe of alternate sites should be limited.

With respect to the method for calculating facility completion cost, the General Counsel outlined three options: calculation of costs from the present point in time, from the point at which the construction permit was issued, and an assessment of costs projected forward from the point at which a comparison is being made. As proposed in the draft Memorandum and Order, the recommended approach is to calculate costs forward from the point of comparison, unless a NEPA violation has occurred, in which case costs would be calculated from an earlier point in time as a penalty to the applicant. The Commission generally agreed that costs should be calculated forward from the point in time when the comparison is made rather than at an earlier point in time that does not reflect actual economic circumstances existing at the time the comparison is conducted. Differing views, however, were expressed concerning the use of an earlier point in time for cost comparison when a NEPA violation has occurred. Chairman Rowden, Commissioner Kennedy, and the Director of Policy Evaluation stated that in the Seabrook case, no such violation has been known to have occurred. On that basis,

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the Director of Policy Evaluation questioned whether Seabrook was the appropriate case for enunciating such a generally applicable standard. Chairman Rowden and Commissioner Kennedy, on the other hand, were more concerned that the draft lacked sufficiently specific guidance for the Board to apply the principle to Seabrook or to future cases to come before the Board. Commissioner Gilinsky favored the penalty approach to cost comparison in the event of a NEPA violation as a method of preserving the integrity of the Commission's licensing process and as a deterrent to insufficient attention devoted to NEPA issues on the part of utilities. He questioned, however, whether the costs of facility completion can always be counted in the same manner in each licensing case. He further suggested that such costs should include all power-related costs and not merely capital costs.

The Commission also expressed differences of view concerning the "clearly superior" standard, the approach to costs favored by the applicant and the NRC staff in the Seabrook proceeding. Commissioner Gilinsky strongly opposed the inclusion of cost factors within the standard, pointing out that these costs were essentially the same as the costs for facility completion. As a result, such costs would be counted twice, to the advantage of the site selected by the applicant. Under such a procedure, an alternate site must not only possess sufficient economic advantages to offset costs already expended at the selected site, but must also be clearly superior. Commissioner Gilinsky also suggested that cost comparison alone should be sufficient to compare alternate sites. The General Counsel noted that the clearly superior standard more closely adheres to the Commission's responsibility under NEPA and that if one part of the approach to alternate site comparison were dropped, he would prefer to eliminate the cost of facility completion aspect. Nevertheless, he reiterated that in his view, the overall comparison realistically should account for both the cost of facility completion and clearly superior factors. Chairman Rowden and Commissioner Kennedy felt that the clearly superior/cost of facility completion standard afforded necessary recognition of the economic facts existing for a given application, but suggested that costs of facility completion should be subsumed within the clearly superior standard and not also counted separately, as the draft Memorandum and Order seemed to imply.

On the issue of the universe of sites that an applicant must consider before selecting a preferred site, Commissioner Gilinsky suggested the need for limiting that universe by excluding from consideration those sites which would require a restructuring of the utility industry as presently organized. Such a case would arise under the approach of certain intervenors who suggest that the applicant should be required to consider sites in areas not

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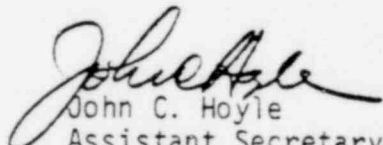
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served by the utility sponsoring the application. He further suggested that this problem, as well as problems associated with the other issues discussed, might be avoided if the Commission's decision is limited to Seabrook and the use of closed cycle cooling, rather than using the decision to state a generic standard. Chairman Rowden and the General Counsel noted that NIEPA requires consideration of alternate sites and that the Boards must be provided Commission guidance on this matter.

II. SECY-A-77-5 - Review of ALAB-367 (In the Matter of Tennessee Valley Authority) (Hartsville Nuclear Plant Units 1A, 2A, 1B, and 2B)

The Commission considered the Atomic Safety and Licensing Appeal Board's decision (ALAB-367) of January 25, 1977, which reviewed the issuance of a Limited Work Authorization after hearings before a licensing board on site suitability and environmental considerations for the four - reactor Hartsville facility near Nashville, Tennessee. The Appeal Board's decision upheld the Licensing Board's partial initial decision (PID) of April 20, 1976 on all issues with the exception of the fuel cycle issue, which the Appeal Board deferred pending anticipated adoption by the Commission of an interim fuel cycle rule, and the issue of the Licensing Board's conditioning of any LWA or construction permit on the installation off grids at the opening of intake pipes, or suitable alternative, which the Appeal Board reversed.

The Commission noted the Appeal Board's decision without further review. ALAB-367 will represent the Commission's final action on this matter as of March 25, 1977, the date on which the Commission's time for review will expire.


John C. Hoyle
Assistant Secretary
of the Commission

(4:20 p.m.)

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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April 21, 1977

OFFICE OF THE
SECRETARY

MINUTES OF

OF

ADJUDICATORY SESSION 77-13

3:40 p.m., Thursday, March 24, 1977, Commissioners' Conference Room
D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

General Counsel

Peter L. Strauss

Secretary of the Commission

John C. Hoyle, Assistant

Staff

J. Austin
S. Cohen
J. Harves
R. McOsker
S. Ostrach
B. Snyder
L. Spector
R. Stratford

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I. Babcock and Wilcox Request for Hearing

Under discussion was a proposed Notice of Hearing which would grant a hearing before an atomic safety and licensing board in response to a Babcock & Wilcox request resulting from receipt of an Order dated February 28, 1977 from Ernst Volgenau, Director of the Office of Inspection and Enforcement. That Order directed Babcock & Wilcox to respond to alleged failures in its accounting controls over highly enriched uranium at its Apollo and Leechburg, Pennsylvania, facilities, and to shut down these facilities following the scheduled April 1977 inventory pending completion of these actions and concurrence by the Office of Inspection and Enforcement that normal operations could be restarted.

The Commission approved the Notice of Hearing subject to review by the individual Commissioners.*

The Commission took this action after brief discussion of the procedures which would result from the issuance of the Notice.

The General Counsel explained the appropriateness of the Commission announcing a hearing without receipt of a complete Babcock & Wilcox response to the Notice of Violation which accompanied Mr. Volgenau's Order of February 28. He stressed that any Hearing Notice issued now could later be supplemented with a specific definition of issues to be considered. Mr. Strauss noted that the declaration of the hearing would have the effect of staying Volgenau's Order; however, there were mechanisms available to the Staff and to the Commission under Section 2.204 of the Commission's rules to continue the Order in effect.

The General Counsel stated that the draft Notice was written in a way that would allow the Commission to hear the arguments itself on an expedited basis. The Chairman expressed the view that, because the B&W facilities are involved in the national defense effort, the Executive Branch should be given an opportunity to express views. He also stated that it was the Commission's responsibility to pass judgment on the interim effectiveness of the Staff Order. Commissioner Kennedy also expressed the opinion that ERDA's views should be obtained and the Commission should reserve for itself the decision as to interim conditions. All Commissioners agreed that B&W's request for a hearing on the Staff Order should be granted; that the hearing should be before

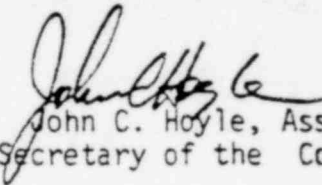
*Subsequently, due to further submissions in the matter, a revised Notice was submitted to the Commission March 31, 1977 and was discussed and approved by a vote of 3-0 at Adjudicatory Session 77-18 on April 4, 1977.

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an atomic safety and licensing board; and that the Commission should properly be the decision authority on the question of interim effectiveness of the Staff Order. The Chairman requested that the Counsel obtain ERDA's views on the Notice of Hearing and circulate it to the Commissioners for individual review.


John C. Hoyle, Assistant
Secretary of the Commission

(4:00 p.m.)

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

OFFICE OF THE
SECRETARY

MINUTES OF

ADJUDICATORY SESSION 77-14

2:15 p.m., Monday, March 28, 1977, Commissioners' Conference Room

D.C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

Secretary of the Commission

John C. Hoyle, Assistant Secretary

General Counsel

Stephen Eilperin, Acting

Staff

R. Bell
P. Crane
J. Fouchard
J. Goldberg
J. Harris
J. Harves
R. McOsker
S. Ostrach
T. Quay
G. Sege
L. Spector
R. Stratford
H. Thompson

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I. Revised Draft Opinion in the Matter of Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2) (Docket Nos. 50-443, 50-444)

Under discussion were revisions to pages 27 through 62a of the March 17, 1977 draft Memorandum and Order in the Seabrook Proceeding. The revised pages, circulated to the Commission by memorandum dated March 24, 1977, reflected Commissioner comments made during the March 21, 1977 meeting on this matter and subsequent comments from individual Commissioner offices.

The Commission requested that the draft opinion, as revised, be rescheduled in conjunction with the texts of Commissioners Kennedy's and Gilinsky's separate views, for final Commission consideration on Tuesday, March 29, 1977. Commissioner Kennedy requested an estimate in writing of the impact of the Seabrook decision on the time required to complete the licensing process review in future cases.

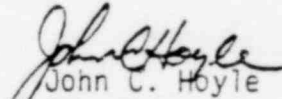
The Commission took this action after a lengthy, detailed review and discussion by the Acting General Counsel and his staff of the revisions already made in the text and further editorial changes requested by the Commission.

During the discussion, Commissioner Kennedy said he intended to prepare a separate concurring opinion, and Commissioner Gilinsky indicated he would require an additional 24 hours to determine his final position with respect to the proposed Memorandum and Order.

Commissioner Kennedy explained his position as in general agreement with the text of the proposed revised Memorandum and Order, although he would have preferred the Commission's decision to provide that even if an alternative site would not automatically be adopted as the approved site if the original site selected by the applicant were at least acceptable under relevant environmental criteria. He further noted that the position set forth in the draft Memorandum and Order may have an impact on the time required to complete licensing reviews; in this connection, he requested an estimate of that impact.

Commissioner Gilinsky would have preferred to await the outcome of Commission-mandated siting criteria studies being prepared by the staff prior to reaching a final decision in the Seabrook proceeding. On being informed that the six papers addressing the siting issues will not be available until May or June and the need to give the Appeal Board guidance as soon as possible, he requested 24 hours additional time to focus his views and to determine whether he would also prepare a separate statement of position. He further indicated that he did not oppose the position set forth in the draft and that it was unlikely that any separate view he might prepare would be in the form of a dissent.

Chairman Rowden expressed his concurrence in the proposed Memorandum and Order and pointed out his view was based on his perception of the reasonable nature of the position taken, the need to provide guidance to the Appeal Board on the issues pending in this proceeding at the earliest possible date, and the ability of the Commission to change its view in the event that the staff studies in preparation, or any other information that might develop at a later date, would warrant such a change in policy. He further suggested that prior to taking final action, each Commissioner should have the benefit of reviewing the texts of any separate statements that might be prepared on this matter. In that regard, he requested that the final views of the Commissioners be available for review and that a further meeting for the purpose of adopting a final position be scheduled during the morning of Tuesday, March 29, 1977.



John C. Hoyle
Assistant Secretary of the Commission

(3:30 p.m.)

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OFFICE OF THE
SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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MINUTES OF
ADJUDICATORY SESSION 77-15

10:40 a.m., Tuesday, March 29, 1977, Commissioners' Conference Room
D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

Secretary of the Commission

John C. Hoyle, Assistant

General Counsel

Peter Strauss

Staff

R. Bell
P. Crane
J. Goldberg
J. Harves
B. Huberman
W. Magee
R. McOsker
S. Ostrach
T. Quay
G. Sege
L. Spector
H. Thompson

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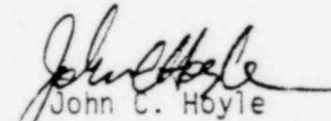
I. Revised Draft Opinion in the Matter of Public Service Company of New Hampshire, et al., (Seabrook Stations, Units 1 & 2) (Docket Nos. 50-443, 50-444)

Under discussion was the text of the March 17, 1977 proposed Memorandum and Order, as revised to reflect Commissioner comments provided during the March 28, 1977 meeting on this matter, and the text of Commissioner Gilinsky's statement of position, made available at the meeting; Commissioner Kennedy's separate statement was in its final preparation stages at the time of the meeting.

The Commission by a vote of 3-0, approved, as revised, the text of the proposed Memorandum and Order, subject to incorporation of the views of Commissioners Gilinsky and Kennedy, and requested that the Memorandum and Order in final form be circulated to individual Commissioners prior to publication. The Commission noted that release of the Memorandum and Order is currently planned for Thursday, March 31, 1977.

The General Counsel was instructed to coordinate Commissioner comments on the texts of Commissioners Gilinsky's and Kennedy's positions on this matter and incorporate those positions either within the text or as attachments to the text, as appropriate.

In discussing this matter, the Commission made two minor additional editorial changes on page 17 of the text of the proposed Memorandum and Order. Commissioner Gilinsky expressed his agreement with the text, with the exception of an editorial change on page 17, and suggested that his statement of position could be incorporated in the text as a footnote on page 50. Chairman Rowden expressed initial agreement with portions of Commissioner Gilinsky's statement of position, but suggested the need for additional time to reflect on the balance of the statement and on Commissioner Kennedy's separate views as soon as the latter are available.



John C. Hoyle
Assistant Secretary of the Commission

(10:55 a.m.)

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OFFICE OF THE
SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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MINUTES OF

ADJUDICATORY SESSION 77-16

2:20 p.m., Thursday, March 31, 1977, Commissioners' Conference Room
D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

Secretary of the Commission

John C. Hoyle, Assistant

General Counsel

Peter L. Strauss

Staff

D. Badger
R. Bell
P. Crane
J. Goldberg
J. Griggs
J. Harves
B. Huberman
J. Kelley
A. Kenneke
R. McOsker
S. Ostrach
T. Quay
G. Sege
L. Spector
R. Stratford
N. Terrell
H. Thompson

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~~843-272~~

I. SECY-A-77-10 Antitrust Hearing on South Texas Project, Units No. 1 & 2 (Docket Nos. 50-498A, 499A)

Under discussion was an Appeal Board decision of March 18, 1977 (ALAB-381), which found that the Licensing Board in the subject proceeding, in responding to a petition filed by Central Power and Light Company, had improperly directed a hearing on antitrust matters; and a petition filed by Houston Lighting & Power Company, pending before the Commission, requesting the Commission to issue a declaratory order that the Director of Nuclear Reactor Regulation may commence consideration of antitrust matters on an expedited application for an operating license, notwithstanding that the final safety analysis report has not been submitted.

The Commission, by a vote of 3-0, approved a proposed Order calling for further briefs and Oral Argument regarding a petition filed by Houston Lighting & Power Company, and the suggestion of the Commission's staff, concerning means by which an antitrust hearing might be initiated in the subject proceeding. The Order requests that briefs be filed no later than April 18, 1977, that reply briefs be submitted by April 25, 1977 and that Oral Argument be set for May 2, 1977.

The Commission took this action after a brief review of the unusual circumstances surrounding this proceeding. The Commission noted that although no antitrust hearing was considered necessary by any interested party at the time the construction permit application was filed, both applicants and the Attorney General have now agreed that an antitrust hearing should be held at the earliest opportunity, although there is disagreement among the applicants on the scope of such a proceeding.

In the General Counsel's view, the motions for an antitrust hearing at this time raise significant procedural problems in that the Commission's practice has been to convene such hearings only in the context of applications for either a construction permit or an operating license. To convene an antitrust hearing at any other stage of the licensing process, as in the subject case, might infer that the Commission has a continuing antitrust jurisdiction over nuclear licensees. In view of the procedural problems associated with this matter, the General Counsel recommended that Oral Argument be scheduled to amplify the Record on this issue. The Commissioners agreed that additional briefs from the parties and oral argument were appropriate on the grounds that the issue was significant and the record to date incomplete for action on the Houston petition.

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II. SECY-A-77-9 - Request of WPPSS for Exemption Under 10 CFR 50.12, (Washington Public Power Supply System Nuclear Project Nos. 3 & 5)

Under discussion was a request by the Washington Public Supply System on February 16, 1977 for an exemption to permit certain site preparation activities and off-site activities. WPPSS had filed the exemption request because the Company's August 1974 Application for a Limited Work Authorization had not been issued to date pending resolution of Federal Water Pollution Control Act and fuel cycle problems, as well as additional information on seismicity in Washington State. Since filing the subject request with the Commission, an Atomic Safety and Licensing Board, acting on a simultaneous motion filed by the applicant, granted partial relief on a portion of the issues covered by the exemption request before the Commission.

The Commission, by a vote of 3-0, approved, as revised, a proposed Memorandum and Order which would dismiss the subject exemption request on the grounds that the issuance of a Limited Work Authorization is anticipated within two weeks and as a means of preserving the exemption procedure in 10 CFR § 50.12 as a method of relief to be resorted to only in the presence of exigent circumstances.

In taking this action, the Commission took particular notice of the Licensing Board's decision of March 4, the anticipated issuance within two weeks of the Limited Work Authorization sought by the applicant in its August 1974 application, and the need to discourage future requests of this type except under compelling circumstances. The Commission also focused on the text of the proposed Memorandum and Order addressing the exemption request. Commissioner Kennedy, noting that the Memorandum and Order would deny the applicant's request, suggested that the term "deny" implied action on the merits of the request whereas the Commission's decision was being taken on procedural grounds. Chairman Rowden indicated the desirability of inserting in the text language to the effect that the issues raised by the exemption request filed with the Commission more properly should have been filed with the Licensing Board. In approving the draft Memorandum and Order the Commission requested revisions to reflect Chairman Rowden and Commissioner Kennedy's comments, and to adopt other minor editorial changes.

III. SECY-A-77-8 - Request of NRDC for Reconsideration of September 14, 1976 Decision Not to License the ERDA High Level Waste Storage Tanks

Under discussion was a proposed response to the Natural Resources Defense Council's December 10, 1976 request for reconsideration of the Commission's September 14, 1976 denial of NRDC's request that ERDA radioactive waste storage tanks at Hanford, Washington; Savannah River, South Carolina; and

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Idaho National Engineering Laboratories (INEL), Idaho, should be licensed by NRC pursuant to Section 202(4) of the Energy Reorganization Act. The proposed response, which would deny the reconsideration request, is prepared in two alternate formats - a short version in the form of a letter to Ronald J. Wilson, NRDC, and a longer version in the form of a proposed Memorandum and Order.

The Commission, by a vote of 3-0, approved the issuance of a Memorandum and Order denying the subject petition. Commissioner Gilinsky concurred in the result.

In taking this action, the Commission took into account a March 11, 1977 letter from Ronald J. Wilson, Attorney for NRDC, indicating that the Commission should consider the NRDC request withdrawn if action is not taken by March 31, the desirability of providing a full explanation of the Commission's action, and ERDA representations concerning new waste tanks to be funded in FY 1977.

With respect to the timing of Commission action on this matter, Commissioner Gilinsky indicated that he would prefer not to act on NRDC's request at the present time. The General Counsel informed the Commission, however, that failure to act today would result in withdrawal of the request by NRDC, which would, in effect remove the issue from the Commission's jurisdiction and prevent the public issuance of a further explanation of the Commission's decision. The Commissioners agreed that action should be taken today and that the request should be denied.

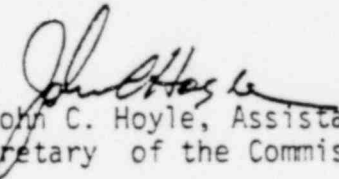
Concerning the proposed alternate formats for rendering a decision, Chairman Rowden and Commissioner Kennedy preferred the proposed Memorandum and Order rather than the draft letter on the grounds that the explanation of the Commission's action was more fully reflected in the Memorandum and Order. Commissioner Gilinsky preferred the shorter version in the absence of additional time to reflect on this matter, but agreed to adoption of the Memorandum and Order, subject to appropriate notation that he was concurring in the result only.

The Commission also discussed ERDA's assurances that new waste tanks requested in the FY 77 budget would be used for storage of wastes for less than 20 years and that the new tanks would permit withdrawal of wastes for removal to a permanent repository. Commissioner Gilinsky noted the NRC staff's March 8 statement expressing reservations concerning the feasibility and cost effectiveness of completed removal of neutralized waste from waste storage tanks. The General Counsel noted that tests conducted to date indicate that it is possible to remove 80-90% of the normal 5% residue remaining in existing tanks after waste had been removed, and that the staff sought further information on the new tanks, from which it is

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believed that wastes can be removed more easily. It was also pointed out that the Commission's action should rest on information available in the record and that, as a result, the Memorandum and Order should include a reference to ERDA's assurances with respect to its use of and the affected capabilities of the new tanks.


John C. Hoyle, Assistant
Secretary of the Commission

(3:15 p.m.)

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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OFFICE OF THE
SECRETARY

MINUTES OF
ADJUDICATORY SESSION 77-18

11:10 a.m., Friday, April 1, 1977, Commissioners' Conference Room
D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

General Counsel

Peter L. Strauss

Secretary of the Commission

Samuel J. Chilk

Staff

J. Goldberg
J. Harves
B. Huberman
R. McOsker
C. Ong
S. Ostrach
B. Snyder
L. Spector
R. Stratford

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I. Babcock & Wilcox Request for Hearing

Under discussion was a revision of a proposed Notice of Hearing first discussed at Adjudicatory Session 77-13 on March 24, 1977. In response to an Order requiring special reconciliation of the highly enriched uranium inventory at its Apollo and Leechburg, Pennsylvania, facilities, Babcock & Wilcox filed a request for a hearing. Subsequently, the licensee filed a further response to the Order, noting that although it had requested a hearing, it was concurrently engaged in urgent discussion with the NRC staff toward achieving an appropriate resolution of the matters covered by the Order and therefore requested that the initiation of hearing procedures be deferred pending the outcome of the discussions with the NRC staff.

By a vote of 3-0, the Commission denied the request for deferral of a hearing and approved the Notice of Hearing which declared that a hearing in the matter would be held before an Atomic Safety and Licensing Board.

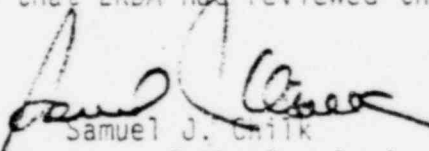
The General Counsel informed the Commission that the direction given in the notice was without prejudice to the licensee's right to renew its request for a deferral before the Board or to the granting of such a request upon proper showing that the public interest will thereby be best served. The Commission took this action after brief discussion about the potential that a hearing might not be needed and about the procedural aspects of further staff issuances in the matter.

The Commission, assured that it was apparent that a hearing would not be needed if the staff and the licensee rapidly resolved differences, unanimously agreed not to specifically identify this in the notice.

Noting that the effect of filing a request for hearing is to suspend the effectiveness of the Order requiring special reconciliation, discussion about the procedural aspects of further staff issuances in this matter centered around whether the Commission or the Board would have review authority over an issuance.

The General Counsel informed the Commission that the way the notice was currently worded, following a staff issuance, if the issuance was disputed, the matter would come to the Commission. The Commission, noting that it would normally retain this authority, but that there was the possibility of the lack of a quorum at the time an issuance might be made, unanimously agreed that this function should be delegated to the Board.

The Commission was also assured that ERDA had reviewed the document.


Samuel J. Chitt
Secretary of the Commission

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(11:30)

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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OFFICE OF THE
SECRETARY

MINUTES OF

ADJUDICATORY SESSION 77-19

10:15 a.m., Tuesday, April 5, 1977, Commissioners' Conference Room

D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

General Counsel

Irvin Rothschild III, Acting

Secretary of the Commission

John C. Hoyle, Assistant

Staff

P. Crane
J. Harves
A. Kenneke
R. McOsker
G. Sege
R. Stratford

843 277

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I. SECY-A-77-7B - In the Matter of Consumers Power Company (Midland Units 1 & 2) -- Intervenor's Motion for Directed Certification of Denial of Financial Assistance

Under discussion was a proposed Order which would dismiss the intervenors' request as improperly filed with the Commission, refer the intervenors' March 21 letter to the Appeal Board for treatment as a request for reconsideration of ALAB-328; state that since the Commission presently lacks a quorum, it will not exercise sua sponte review of ALAB-382; and vest authority to act on any matters that would otherwise be properly addressed to the Commission in this case until such time as a Commission quorum exists.

By a vote of 3-0, the Commission approved the Order. Chairman Rowden, although disqualified from participation in the merits of this proceeding, participated in this procedural action for the purpose of constituting a quorum.

The Commission took this action after very brief discussion of the desirability of retaining the last paragraph of the proposed Order, as follows:

"The intervenors' request to us for financial assistance is dismissed as improperly filed. The Appeal Board may treat the intervenors' letter of March 21 as a request for reconsideration. Because we presently lack a quorum, we will not exercise our sua sponte review power with respect to ALAB-382. We wish to make it clear that until there is a Commission quorum in this case, the Appeal Board is vested with authority to act on any matters that would otherwise be properly addressed to the Commission, subject to otherwise applicable rules and established Commission policies."

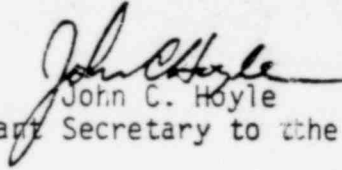
Commissioner Kennedy expressed reservations concerning the need for and the desirability of retaining the above paragraph. He questioned whether the paragraph would in fact release the Commission from having to act on each motion filed in this proceeding, whether adequate mechanisms currently exist for transferring motions from the Commission to the Appeal Board, and whether the proposed Order was the appropriate vehicle for emphasizing quorum difficulties now being experienced by the NRC. He further noted the Commission views of AS&LAB decision are of a sua sponte nature and that the Commission could decide simply not to review this matter.

The Acting General Counsel responded that, as a result of the subject Order, the parties to the Midland proceeding should file any additional motions with the Board, and in the event some motions were still filed with the Commission, the Office of the Secretary would be instructed to forward them to the Appeal Board for appropriate action.

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The Chairman, while recognizing the validity of Commissioner Kennedy's concerns, expressed the view that, since his own disqualification from considering the merits of this proceeding will effectively limit the Commission's ability to act on any substantive motion in this proceeding, he favored inclusion of the last paragraph in the text of the final Order as a full explanation of the reason that the Commission is unable to exercise its responsibility in this proceeding, even if that responsibility is only of sua sponte nature.



John C. Hoyle
Assistant Secretary to the Commission

(10:25 a.m.)

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555



MINUTES OF
ADJUDICATORY SESSION 77-20

11:40 a.m., Friday, April 22, 1977, Commissioners' Conference Room
D. . . Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

General Counsel

Peter L. Strauss

Secretary of the Commission

John C. Hoyle, Assistant

Staff

S. Eilperin
D. Frazier
J. Goldberg
J. Harves
W. Magee
R. Mallory
R. McOsker
S. Ostrach
T. Quay
R. Satterfield
G. Sege
L. Slaggie
L. Spector
R. Stratford

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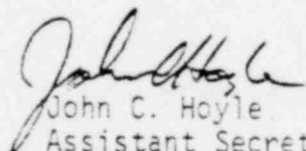
I. Discussion of Commission Briefs in Vermont Yankee and Aeschliman

Under discussion was the general content of briefs being prepared by the General Counsel's office and to be filed before the Supreme Court by Monday, May 23, 1977. The purpose of the discussion was to obtain Commission guidance or general comments on the substantive positions to be argued before the Court in these cases.

The Commission took no formal action on this matter.

In discussing the Vermont Yankee case the Commission was informed that the brief would be written to argue that the procedures used in the 1972 S-3 proceeding were adequate and consistent with the Administrative Procedures Act since no complaints were filed during the pre-hearing conference but only during the hearing itself and that the D. C. Circuit Court of Appeals lacked authority to require the adoption of different procedures. With respect to the adequacy of the record of the S-3 proceedings, the General Counsel expressed the view that the Supreme Court would not address that issue given the Commission's on-going effort to update the waste management - fuel reprocessing portion of the S-3 document and plans to conduct a hearing on the updated information.

With regard to the Aeschliman case, the General Counsel indicated the brief would be written to argue that in 1972, the energy conservation issue was not sufficiently recognized as a problem to warrant any agency to conduct an analysis of energy alternatives on a mandated basis, as the D. C. Circuit Court of Appeals decision would require; that the only standard for considering energy alternatives at that time was the rule of reason; and that in 1972 the energy alternative issue was not one that practically could be addressed by an independent agency, but rather was an aspect of national policy transcending the scope of authority of a single government entity. The General Counsel also indicated he hopes the brief would serve as a means by which the Supreme Court could address the issue of the proper role of a lower court in reviewing environmental impact statements. In the General Counsel's view that role should be limited to assessing the overall soundness of the EIS and not include a detailed review of individual segments of the total document. Additional argument in the brief will focus on the inappropriateness of parties to a proceeding to force issues in a court of law without first exhausting administrative remedies within an agency, and the Court of Appeals decision to return an ACRS letter on this matter directly to the Committee, rather than to the Commission, for clarification.


John C. Hoyle
Assistant Secretary
of the Commission

(12:15 p.m.) 843 281

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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MINUTES OF

ADJUDICATORY SESSION 77-21

11:10 a.m., Tuesday, April 26, 1977, Commissioners' Conference Room
D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

Secretary of the Commission

Samuel J. Chilk

Staff

P. Crane
J. Harves
B. Huberman
J. Goldberg
J. Kelley
R. McOskeer
R. Stratford

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SECY-A-77-18 - Review of ALAB-390 (In the Matter of New England Power Company NEP Units 1 & 2); (In the Matter of Public Service Company of New Hampshire (Seabrook Station Units 1 & 2)) (Docket Nos. STN 50-568, STN 50-569, 50-443, 50-444)

Under discussion was an April 7, 1977 Atomic Safety & Licensing Appeal Board Decision (ALAB-390) in which the Board held that a utility need not prepare emergency plans for the evacuation of persons beyond the perimeter of the low-population zone (LPZ) on the grounds that the existing 10 CFR Part 100 regulations do not require such a plan for areas outside the LPZ. The Board unanimously agreed, however, that the existing part 100 regulations needed re-examination on a generic basis, particularly in light of the staff's assertions at oral argument that their position in favor of an evacuation plan for areas outside the LPZ rested on safety concerns and not merely a reading of the regulations. The Commission considered this matter under its sua sponte review authority and not on the basis of either motions filed by the participants or Board certification of the issue to the Commission (as favored by a minority of the Board).

By a vote of 3-0, the Commission agreed to extend the time for its review of ALAB-390 until June 30, 1977, and requested that the General Counsel contact the Chairman, AS&LAB, to determine if the Appeal Board anticipates the issuance of any ALAB decisions during May 1977, when a quorum of Commissioners may not be available to exercise the Commission's sua sponte review authority.

In taking this action the Commissioners expressed agreement with the General Counsel's view that the Commission could best determine how to address the issues raised in ALAB-390 after reviewing a paper on Reactor Site Evaluation policy currently in preparation by the staff and scheduled to be forwarded to the Commission on or about May 16. Since during the period May 6 through June 1 a quorum of Commissioners may not be available, the Commission decided that an extension of time to review ALAB-390 through June 30, 1977, should provide sufficient time to consider the issues raised by the Board.

In connection with this decision, Chairman Rowden inquired as to the likelihood that other significant adjudicatory matters might require Commission action during the May 6-June 1 period when no quorum would be available. The General Counsel suggested the possibility of issuing a general Order extending the time for Commission review of any pending adjudicatory matters until mid-June. Commissioner Kennedy, however, disagreed on the necessity for such action. As a result of this discussion, it was considered appropriate for the General Counsel's office informally to inquire of the Appeal Panel if any matters currently pending Appeal Board action would be decided between May 6 and June 1.


Samuel J. Chilk
Secretary of the Commission

(11:15 a.m.)

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555



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MINUTES OF
ADJUDICATORY SESSION 77-22

9:40 a.m., Monday, May 2, 1977, Chairman's Conference Room
D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

General Counsel

Peter L. Strauss

Secretary of the Commission

John C. Hoyle, Assistant

Staff

R. Bell
P. Crane
J. Kelley
K. Mason
R. McOsker
T. Quay
G. Sege
L. Spector
R. Stratford

843 284

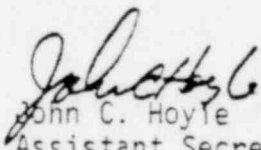
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I. Discussion of Oral Argument - Houston Power & Light Company
(South Texas Project, Units 1 & 2) (Docket Nos. 50-498A, 499A)

The Commission discussed the antitrust issues to be argued before the Commission by the parties to the subject proceeding at the Oral Argument Session scheduled at 10:00 a.m., today. The issues discussed had been set forth in briefs filed by the parties in response to the Commission's Order of March 31, 1977, calling for further briefs and Oral Argument regarding a petition filed by Houston Lighting and Power Company concerning means by which an antitrust hearing might be initiated in the subject proceeding.

The Commission took no final action on this matter.

In discussing the issues associated with the oral argument session, the Commission forced its attention on the implications of conducting an antitrust hearing prior to receiving an application for an operating license, as requested by the Houston Lighting & Power Company in its petition. The Commission was informed that the South Texas Project is scheduled for completion in late spring 1980, and that a FSAR should be filed sometime in 1978. Commissioner Kennedy indicated that, given this schedule, if the Commission granted a hearing on antitrust issues at this time, either the hearing record may have to remain open, or a second antitrust may need to be scheduled, to account for any new information that may develop between the time the antitrust hearing is concluded and the issuance of an operating license. He also pointed out that during this entire period, construction work would be on-going and that at some point in the future it may become difficult for the Commission to withhold or delay approval of a license after the expenditure of millions of dollars by the applicants on the proposed facility. Mr. Sege (OPE) cautioned the Commission that from the NRC institutional standpoint, it would be desirable to limit the NRC's antitrust obligations on the grounds that the Commission is not the primary forum for resolving such issues nor does the Commission have the personnel resources in the antitrust field to undertake a continuous role in such matters. The General Counsel expressed the hope that the oral argument session would focus on an appropriate NRC role in antitrust matters.


John C. Hoyte
Assistant Secretary
of the Commission

(10:00 a.m.)

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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MINUTES OF
ADJUDICATORY SESSION 77-23

1:40 p.m., Monday, May 2, 1977, Chairman's Conference Room
D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

General Counsel

Peter L. Strauss

Secretary of the Commission

John C. Hoyle, Assistant

Staff

R. Bell
P. Crane
J. Kelley
K. Mason
R. McOsker
T. Quay
L. Spector
R. Stratford
G. Sege

843 286

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I. Discussion of Commission Response to Oral Argument Presented by the Parties to the South Texas Project Proceeding (Docket Nos. 50-498A, 499.)

Under discussion was Commission guidance to the General Counsel on the general content of an opinion addressing the issue of whether an antitrust hearing should be convened in the subject proceeding in advance of the submission of an application for an operating license for the South Texas facility. The Opinion would be prepared on the basis of oral argument presented primarily by Houston Lighting & Power Company, and Central Power & Light Company, the joint applicants in the subject proceeding.

The Commission requested that the General Counsel prepare an appropriate Opinion adopting the procedures set forth in Section 105 of the Atomic Energy Act of 1954, as amended, as the basis for initiating an antitrust review in the subject proceeding. The Opinion should also contain a mechanism under which the Commission, in conducting a hearing on antitrust matters prior to receiving an application for an operating license in this proceeding, could reopen the case in light of any significant changes between the time the antitrust hearing is completed and the issuance of an operating license for the South Texas project.

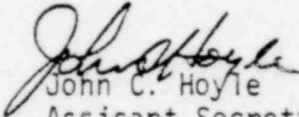
In taking this action, the Commission considered the alternatives of conducting an antitrust review (a) within the context of Section 105 of the Atomic Energy Act, as amended, under which the Commission would initiate the antitrust review after finding, based on the advice of the Attorney General, that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous antitrust review in connection with the construction permit for the facility; or (b) within the context of Section 186 of the Atomic Energy Act, as amended, under which the Commission could suspend or revoke the construction permit for the South Texas project pending completion of an antitrust review after initiating a show cause proceeding pursuant to 10 CFR 2.202.

The General Counsel explained that under the Section 105 approach, the scope of the Commission's antitrust authority would be more limited since Section 105 specifically provides an antitrust review mechanism only in the context of an application to construct or operate a production or utilization facility. As a result, had the circumstances now prevailing in the South Texas project case developed after issuance of an operating license, the Commission's authority under Section 105 would no longer apply.

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Chairman Rowden expressed reservations concerning the implication of a continuing Commission antitrust review role inherent in the Section 186 approach advocated by Central Power and Light Company. He indicated that the primary advantage of the Section 105 procedure was its disciplined approach. Commissioner Kennedy expressed the view that had the antitrust issues in this case arisen within six months after issuance of the construction permit, it would be difficult to justify an antitrust review so far in advance of receipt of an operating license application. Chairman Rowden suggested that this problem could be accommodated with a mechanism to take into account events taking place between completion of the antitrust review and issuance of an operating license. The Chairman and Commissioner Gilinsky agreed that under the Section 105 approach, the focus of the antitrust review should be limited to any significant changes and the impact of such changes, and should not constitute a de novo proceeding. In the Chairman's view, such a limitation would provide the appropriate "good cause" threshold above which it would be appropriate to render a determination to begin a Section 105 procedure.


John C. Hoyle
Assisant Secretary
of the Commission

(2:20 p.m.)

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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OFFICE OF THE
SECRETARY

MINUTES OF
ADJUDICATORY SESSION 77-24

4:10 p.m., Friday, June 3, 1977, Commissioners' Conference Room
D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

General Counsel

Peter L. Strauss

Secretary

Samuel J. Chilk

Staff

R. Bell
P. Crane
J. Harves
R. McOsker
G. Sege
L. Spector
R. Stratford
N. Terrell
C. Woodhead

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I. Draft Opinion in Response to May 2, 1977 Oral Argument Presented by Parties to the South Texas Project Proceeding (Docket Nos. 50-498A, 499A) (See May 26, 1977 OGC Memorandum to the Commission, as Revised)

Under discussion was a proposed Memorandum and Order in the subject proceeding which would grant the petition of Houston Lighting & Power Company that an application for an operating license be accepted for purposes of antitrust review without the necessity of filing with it a Final Safety Analysis Report. The draft Memorandum & Order represented a proposed Commission response to Oral Argument presented to the Commission by parties to the South Texas Project proceeding on May 2, 1977.

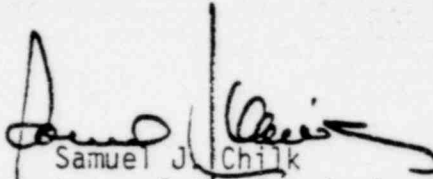
The Commission approved in principle the substance of the proposed Opinion, subject to editorial changes and recirculation of the revised text to individual Commissioners. The Commission noted that Commissioner Gilinsky may prepare a separate, concurring statement after reviewing the revised text.

In taking this action, the Commission focused its attention on revisions to pages 26, 27 & 28 of the May 26 draft. The changes reflected the comments of Commissioner Gilinsky with respect to the basis for seeking the views of the Department of Justice under Section 105 of the Atomic Energy Act. Commissioner Gilinsky took the position that the changed circumstances which have led the Commission to seek antitrust review by the Department of Justice were not sufficiently explored in Oral Argument to warrant the statement in the May 26 draft that such changes are "significant," and that the use of that term implies a determination by the Commission that an antitrust review is necessary. Commissioner Gilinsky would have preferred language pointing out a defect inherent in the statute, which requires that a "significant change" determination be made in order to seek the Attorney General's advice on whether new circumstances have arisen which may have competitive significance. Commissioner Gilinsky would have softened the importance of the finding, stating that the Commission should make such a referral as soon as circumstances appear which arguably might have such significance.

Chairman Rowden and Commissioner Kennedy expressed the view that the new language was less clear than that appearing in the May 26 draft, that the Commission should have before it a sufficiently high threshold level of activity to justify a request for the Department of Justice's review, and that the term "significant" provides such a threshold consistent with the facts in this case. But such a request for the Attorney General's views does not otherwise imply that the Commission itself has determined that the activity in question has legal or antitrust significance, that a hearing is necessary or that license conditions ought to be imposed.

In the course of the meeting changes were made in the draft to remove any remaining uncertainty concerning the implications of the Commission's finding, as stated above.

(4:35 p.m.)


Samuel J. Chilk
Secretary of the Commission

843 291

~~843 293~~



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

OFFICE OF THE
SECRETARY

MINUTES OF
INTERVENTION PETITIONS IN EXPORT CASES

3:55 p.m., Wednesday, June 8, 1977, Commissioners' Conference Room
D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

General Counsel

Peter L. Strauss

Secretary of the Commission

Samuel J. Chilk

Staff

P. Crane
S. Eilperin
J. Griggs
J. Harves
M. Holland
J. Hoyle
R. Mallory
R. McOsker
I. Rothschild
L. Schwartz
L. Spector
R. Stratford
N. Terrell
H. Thompson

843 292

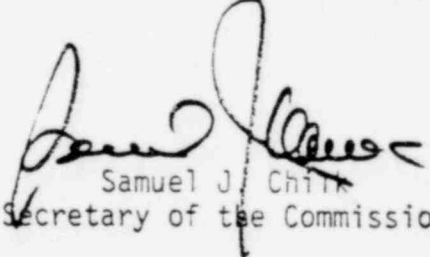
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Under discussion was the status of Executive Branch views on a series of proposed export licenses that are subject to pending petitions for intervention.

The Commission took no final action on these matters, but was informed that:

1. it is anticipated that the Executive Branch will recommend Commission approval of the issuance of license number XSNM-845 for shipment of fuel for the Tarapur facility, and that the Department of Justice is prepared to advise the U.S. Court of Appeals that developments have occurred in this proceeding;
2. the Department of Justice has advised that it may wish to consider contacting intervenors in two related export license cases to work out arrangements similar to those which permitted issuance of export license number XSNM-805;
3. a paper containing staff views regarding available procedural options for handling export cases subject to intervention petitions will be submitted to the Commission by Friday, June 10, or Monday, June 13;
4. several other export licensing cases for both high enriched and low enriched uranium are still pending Executive Branch views; and
5. the staff would contact the Department of State to determine their views with respect to three LEU export licenses to West Germany and the Netherlands.

(4:20 p.m.)


Samuel J. Chirk
Secretary of the Commission

843 293

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555



OFFICE OF THE
SECRETARY

MINUTES OF
ADJUDICATORY SESSION 77-25

4:20 p.m., Wednesday, June 8, 1977, Commissioners' Conference Room
D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

General Counsel

Peter L. Strauss

Secretary of the Commission

Samuel J. Chilk

Staff

R. Bell
P. Goldberg
J. Griggs
J. Harves
J. Hoyle
J. Kelley
A. Kenneke
R. McOsker
I. Rothschild
G. Seae
L. Spector
R. Stratford
N. Terrell

843 294

~~843-294~~

Review of ALAB-390 (In the Matter of New England Power Company; In the Matter of Public Service Company of New Hampshire) (NEP Units 1 & 2; Seabrook Station Units 1 & 2) (See SECY-A-77-18)

Under discussion was the Atomic Safety & Licensing Appeal Board's April 7, 1977 decision in the subject proceedings (ALAB-390). The Appeal Board held in ALAB-390 that the two utilities need not prepare emergency plans for the evacuation of persons beyond the perimeter of the low population zone (LPZ) of their respective facilities based on existing requirements set forth in 10 CFR Part 100, but agreed that Part 100 should be reexamined on a generic basis to determine the need for extending the scope of emergency planning to areas outside the LPZ, particularly in light of the staff's position in favor of requiring such an extension of emergency planning in these particular cases.

The Commission determined not to review ALAB-390, but agreed with the Appeal Board in the subject proceeding that a generic rulemaking proceeding to reexamine 10 CFR Part 100 with respect to the need for requiring emergency planning for areas outside the Low Population Zone is warranted. By a vote of 3-0 the Commission approved, subject to editorial changes, a statement reflecting the Commission's position on the need for a generic rulemaking proceeding. The Commission also requested the staff to expedite completion of the proposed paper on Emergency Planning to serve as a focus for a Commission determination on the appropriate scope of the rulemaking proceeding.

In discussing this matter the Commission was informed that to the extent the Commission perceives the emergency planning issue as generic, as the Appeal Board indicated in ALAB-410, immediate Commission action is probably unnecessary; on the other hand, if the issue is seen as site specific, more immediate action is required to ensure that the matter is resolved prior to final site selection for the facilities in question. Chairman Rowden expressed the view that while he considered the issue to be clearly generic, it should be addressed in a rational but timely manner. In this regard, he suggested that (a) in the absence of the identification of specific safety issues associated with the lack of emergency plans for areas outside the low population zone in the subject proceedings, (b) the relevance of the issue to other facilities not now the subject of Commission proceedings, and (c) the consistency of the Commission's interpretation since the early 1960's that Part 100 does not require emergency plans outside the LPZ, the Commission should allow ALAB-390 to stand. At the same time he proposed that the Commission announce publicly that a generic issue has been identified and will be the subject of a future rulemaking proceeding. It was generally agreed to adopt this approach.



Samuel J. Chilk
Secretary of the Commission

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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OFFICE OF THE
CHAIRMAN

MINUTES OF

DISCUSSION OF EXECUTIVE BRANCH VIEWS ON TARAPUR
WITH DEPARTMENT OF STATE REPRESENTATIVES

3:25 p.m., Tuesday, June 21, 1977, Commissioners' Conference Room
D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

General Counsel

James L. Kelley, Acting

Secretary of the Commission

Samuel J. Chilk

Department of State
Representatives

L. Nosenzo
D. Hoyle
D. Kucks

NRC Staff

P. Crane
T. Dorian
J. Griggs
M. Guhin
J. Harves
M. Holland
K. Mason
R. McOsker
K. Pedersen
B. Ridder
I. Rothschild
J. Shea
L. Spector
C. Stoiber
R. Stratford
N. Terrell
H. Thompson
S. Williams
C. Woodhead

843 296

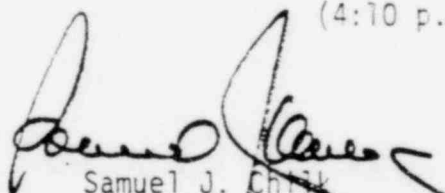
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The Commission met with the Department of State representatives to discuss the bases for the Department's recommendation for issuance of export license No. XSNM-845 as a fuel shipment for the Tarapur facility, and the Department's views on the future course of U.S. cooperation on nuclear matters with the Government of India.

The Commission took no final action on this matter, but noted that the Executive Branch had determined, as a matter of policy, that the appropriate course of action for the United States to adopt with respect to the issue of whether continued shipments of reactor fuel to India should be authorized was to negotiate firm understandings on non-proliferation and other outstanding questions with the new Indian Government while continuing to provide the fuel needed to keep the Tarapur facility in a normal, operational mode. The decision to adopt this approach was based on indications from responsible officials of the Government of India in preliminary discussions of this matter of their receptivity to certain assurances sought by the United States.

Commissioner Gilinsky commented that the current Agreement for Cooperation between the U.S. and India does not provide for termination of U.S. fuel shipments in the event that any assurances provided by the Government of India are subsequently violated, nor has any provision been made with regard to India's use, for purposes not in the interests of the U.S., of U.S.-supplied-material already received by India at the time a decision to terminate further shipments is rendered. The Department of State representatives indicated that this issue will be the subject of further negotiations with India. Commissioner Gilinsky also noted the necessity to discuss with India the use of U.S.-supplied heavy water to stockpile plutonium.

(4:10 p.m.)


Samuel J. Chirk
Secretary of the Commission

843 297

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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OFFICE OF THE
SECRETARY

MINUTES OF

DISCUSSION OF EXECUTIVE BRANCH VIEWS ON TARAPUR

4:05 p.m., Tuesday, June 21, 1977, Commissioners' Conference Room
D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

General Counsel

James L. Kelley, Acting

Secretary of the Commission

Samuel J. Chilk

Staff

P. Crane
T. Dorian
J. Griggs
M. Guhin
J. Harves
M. Holland
K. Mason
R. McOsker
K. Pedersen
B. Ridder
I. Rothschild
J. Shea
L. Spector
C. Stoiber
R. Stratford
N. Terrell
H. Thompson
S. Williams
C. Woodhead

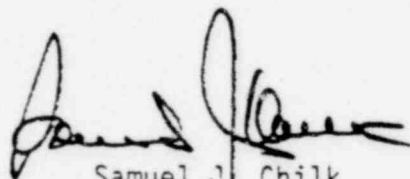
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Under discussion were Executive Branch views regarding the issuance of license no. XSNM-845 to Edlow International Company for the shipment of reactor fuel for the Government of Indian's Tarapur Facility. The views of the Executive Branch had been provided orally by Department of State representatives in a meeting held earlier in the day.

The Commission took no final action on license no. XSNM-845, but noted that staff views on issuance of license no. XSNM-845 would be forwarded for consideration at a meeting to be scheduled for Friday, June 24. Commissioner Gilinsky suggested the need for clarification of the Government of India's assurance that U.S.-supplied fuel would not be used in explosive devices and would be adequately safeguarded.

(4:16 p.m.)



Samuel J. Chilk
Secretary of the Commission

843 299

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OFFICE OF THE
SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

MINUTES OF

DISCUSSION OF TARAPUR CONSOLIDATION PETITION

4:16 p.m., Tuesday, June 21, 1977, Commissioner's Conference Room
D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

Secretary

Samuel J. Chilk

Staff

R. Bell
P. Crane
J. Griggs
J. Harves
M. Holland
J. Kelley
K. Mason
R. McOsker
K. Pedersen
W. Riddes
L. Spector
C. Stoiber
R. Stratford
N. Terrell
C. Woodhead

843 300

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Under discussion was a proposed Order in the Matter of Edlow International Company (Agent for the Government of India on Application to Export Special Nuclear Materials) (License No. XSNM-845, Docket No. 70-2131; License No. 70-2485). The proposed Order would consolidate the pending proceedings on the subject export licenses on the grounds that the issues raised in the two proceedings are identical and would permit avoidance of any suggestion that the Commission has mooted, or is seeking to moot, these proceedings because circumstances warrant authorization of a further fuel shipment. The Order had been prepared in response to two motions filed jointly on February 10, 1977 by the Natural Resources Defense Council, Inc., the Sierra Club, and the Union of Concerned Scientists.

The Commission, by a vote of 3-0, approved the Memorandum & Order subject to editorial changes and narrowing of the scope of the order to limit the precedential effect of this decision with respect to other pending export matters. The Commission also requested that a draft order addressing the merits of issuing export license number XSNM-845 be circulated for consideration on Friday, June 24, 1977.

In taking this action, the Commission discussed the advantages and disadvantages of consolidating the subject proceedings, the effect of consolidation on other pending export licensing actions, and the relationship of consolidation to a decision on issuing License No. XSNM-845 as an interim shipment. The discussion was held in the context of the receipt by the Commission of Executive Branch views recommending the issuance of License No. XSNM-845 at this time while negotiations with the Government of India on additional long-term understandings with respect to U.S.-supplied nuclear material continue.

The Office of the General Counsel recommended consolidation on the basis that such action would preserve the issues identified by the intervenors before the Court of Appeals and the Commission, and is consistent with the Commission's general approach that consolidation is warranted where no new information has developed on licenses considered in series. Chairman Rowden indicated a further advantage is that in the absence of consolidation, an interim license could not be issued and no action on License No. XSNM-845 could be taken without first addressing the merits of the case. It was explained that the only disadvantage of consolidation was the Commission's position that in export licensing proceedings participants are not parties because they have been denied leave to intervene for lack of standing, and that consolidation under 30 CFR 2.716 contemplates filings of motions for consolidation only by parties to a proceeding. It was also noted, however, that the Commission may, in effect, consolidate proceedings on its own initiative and that proposed export licensing regulations currently pending Commission action do contemplate consolidation where common issues are identified and cost/time savings can be expected.

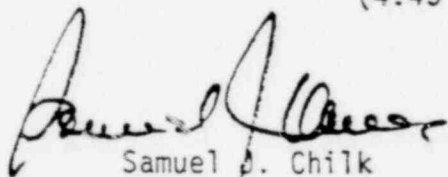
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On the issue of the effect of consolidation on other pending export licensing cases, Commissioner Kennedy expressed the view that consolidation of the subject proceedings may imply that a precedent has been set by the Commission in all subsequent export licensing cases. The Office of the General Counsel advised that while there would be some precedential effect in cases where common issues are raised, the extent to which common elements exist in other cases may vary from those existing in the Tarapur license proceedings, and that an analysis of the facts in each case will be required before a determination on consolidation in other pending cases could be rendered. In addition, it was explained that consolidation is a flexible procedure that could be limited to selected issues if desired.

With regard to the relationship of the consolidation order to the pending decision on License No. XSNM-845, Chairman Rowden, noting the Office of the General Counsel's belief that the Commission could dispose of the merits of the Tarapur licenses on the basis of the Executive Branch's response to the eight question analysis requested by NRC, questioned the need to consolidate the proceedings. It was explained that the primary purpose of the consolidation motion and consideration of License No. XSNM-845 as an interim shipment was to preserve the participants' rights before the Court of Appeals. In connection with the interim shipment, the Commission also noted the necessity for expedited development of an Order for consideration prior to June 30, after which a quorum of Commissioners may not be available.

(4:45 p.m.)



Samuel P. Chilk
Secretary of the Commission

843 302

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OFFICE OF THE
SECRETARY


UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

July 19, 1979

COMMISSION DETERMINATION REGARDING PUBLIC DISCLOSURE
UNDER THE GOVERNMENT IN THE SUNSHINE ACT OF:

Minutes of Closed Commission Adjudicatory
Sessions for 1977

Pursuant to the Commission's regulations implementing the Government in the Sunshine Act, 10 CFR 9.108(c), the Commission, on the advice of the General Counsel, determined that the Minutes of Closed Commission Adjudicatory Sessions for 1977 should now be made available to the Public.


Samuel J. Chilk
Secretary of the Commission

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

R ✓

MINUTES OF
ADJUDICATORY SESSION 77-26

4:50 p.m., Tuesday, June 21, 1977, Commissioners' Conference Room
D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

Secretary of the Commission

Samuel J. Chilk

General Counsel

James L. Kelley, Acting

Staff

R. Bell
P. Crane
J. Griggs
J. Harves
W. Magee
K. Mason
R. McOsker
K. Pedersen
L. Spector
R. Stratford

843 304

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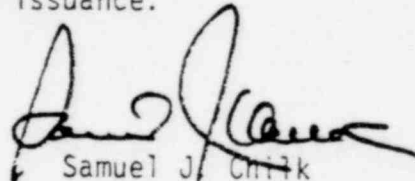
In the Matter of Florida Power and Light Company (St. Lucie Plant, Units 1 and 2) Docket Nos. 50-335A and 50-389A; Florida Power and Light Company (Turkey Point Plant, Units 3 and 4) Docket Nos. 50-250A and 251A

Under discussion was a proposed Memorandum and Order, which had been circulated to the Commission by a memorandum dated June 16, 1977, from the Acting General Counsel, denying a recent motion of the Florida Cities. That motion requested that the Commission either clarify procedures with respect to the authority of the Board or, in the alternative, rule on the matter itself.

The Commission approved the Memorandum and Order subject to the inclusion of a footnote explaining the Chairman's limited participation for purposes of dismissing an improperly filed request.

The Commission took this action after a brief discussion by the Acting General Counsel and his staff of the rationale behind the denial of the motion. During this discussion it was explained that the basic question raised by the movants, upon which decision was expressly reserved in the Commission's June 15, 1977 Opinion in the South Texas matter, is whether antitrust review may be initiated where "significant changes" occur after an operating license is issued. It was further stated that the proposed Memorandum and Order concludes that the motion is not properly before the Commission and that the issues should first be addressed by either the Appeal Board or the Director of Nuclear Reactor Regulation.

The Chairman made note of the need for a footnote explaining his disqualification from ruling on the merits and the complexion of his limited participation. He requested that such a footnote be added to the Memorandum and Order before issuance.



Samuel J. Chick
Secretary of the Commission

(4:55 p.m.)

843 505

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

R ✓

OFFICE OF THE
SECRETARY

MINUTES OF
DISCUSSION OF TARAPUR EXPORT LICENSE

4:30 p.m., Friday, June 24, 1977, Commissioners' Conference Room
D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

General Counsel

James L. Kelley, Acting

Secretary of the Commission

John C. Hoyle, Assistant

Staff

P. Crane
A. George
M. Holland
K. Mason
R. McOsker
S. Ostrach
K. Pedersen
I. Rothschild
L. Schwartz
J. Shea
L. Spector
C. Stoiber
R. Stratford
N. Terrell
C. Woodhead

843 306

~~843-278~~

Under discussion was a draft Opinion, circulated by the General Counsel's June 23, 1977 memorandum, addressing the merits of issuing export license No. XSNM-845 to the Edlow International Company. The license would permit the shipment of fuel for use by the Government of India in the Tarapur facility.

The Commission requested that the Opinion be revised to reflect the views of individual Commissioners and be resubmitted on June 27, 1977. The Commission indicated a preference for deleting the classified appendix to the Opinion and incorporating instead a reference in the text of the Opinion to the existence of such classified information.

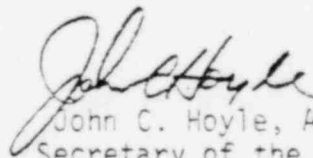
In taking this action, the Commission focused its attention on the tone of the draft Opinion and the issue of whether the classified appendix attached to the June 23 draft should be included as part of the final version. The Commission also discussed the timing of their further consideration of this matter during the period through June 30 when a quorum of Commissioners will be available.

With regard to the text of the June 23 draft, Chairman Rowden and Commissioner Kennedy expressed their agreement with the substance of the draft, subject to minor editorial changes which would be consolidated by the Chairman's office and provided directly to the General Counsel later in the day. Commissioner Gilinsky expressed reservations regarding the tone of the text, which in his view seemed overly optimistic, particularly concerning future Commission action on subsequent exports to India. He also indicated he desired time to review the Opinion at greater length. Chairman Rowden agreed that the Commission's Opinion should not contain implications on future actions beyond the positions taken by the Executive Branch in its statement of views regarding License No. XSNM-845.

General agreement was also expressed that the classified appendix should not be issued as part of the Commission's final Opinion. Chairman Rowden suggested, however, that the appendix should be placed in the record of the Commission's proceeding on this license and an appropriate reference to it should be made in the text of the Opinion.

The Commission further noted the desirability of reaching a final decision on the Opinion by Monday June 27, if possible. In this regard, the Offices of the General Counsel and Policy Evaluation should expedite the development of a revised text for further Commission consideration.

(4:55 p.m.)



John C. Hoyle, Assistant
Secretary of the Commission

843 307

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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MINUTES OF ADJUDICATORY SESSION 77-27

4:51 p.m., Friday, June 24, 1977
Commissioners' Conference Room, D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

Secretary of the Commission

John C. Hoyle, Assistant

General Counsel

James L. Kelley, Acting

Staff

P. Crane
K. Mason
S. Ostrach
K. Pedersen
I. Rothschild
R. Stratford
N. Terre??
C. Woodhead

843 308

~~843 300~~

I. In the Matter of Public Service Company of New Hampshire, et al,
(Seabrook Station, Units 1 and 2) Docket Nos. 50-444, 50-443

The Commission discussed a draft Order, which had been transmitted to it from the Acting General Counsel via memorandum dated June 21, 1977, in answer to a motion by the applicant seeking revocation of the suspension of the Seabrook construction permits in light of EPA's approval of once-through cooling.

During a brief discussion, it was explained that the Order would dismiss the applicant's motion, which had also been filed with the Atomic Safety and Licensing Board and the Atomic Safety and Licensing Appeal Board, on the grounds that it should be considered by the Appeal Board in the first instance. It was further explained that the Appeal Board had ordered the suspension and still had certain issues in the proceeding before it.

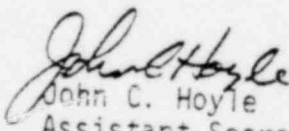
The Commission approved the draft Order, as written, and requested that it be issued.

II. In the Matter of Consolidated Edison Company of New York,
(Indian Point Station, Unit No. 2) Docket No. 50-247, PL No. DPR-26

Under discussion was a proposed Order, which had been circulated to the Commission by the Acting General Counsel via SECY-A-77-39 on June 23, 1977, which would extend the time to consider three petitions for certiorari.

During a brief discussion the Acting General Counsel stated that these petitions for review of ALAB-399 are the first such petitions under the new certiorari system (10 CFR 2.786), which allows the Commission 20 days to rule on the petitions or they are automatically denied. He explained that since Chairman Rowden would have to disqualify himself from ruling on the merits and since the issue raised by the petitions seemed worthy of Commission review, it appeared reasonable to keep the option of review open by extending the time to consider the petitions until 20 days after there is a quorum of Commissioners able to participate in the merits of the proceeding.

The Commission approved the proposed Order, subject to minor editorial changes by the Chairman.


John C. Hoyle
Assistant Secretary
of the Commission

(5:05 p.m.)

843 309

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

2

OFFICE OF THE
SECRETARY

MINUTES OF

ADJUDICATORY SESSION 77-28

11:10 a.m., Monday, June 27, 1977, Commissioners' Conference Room
D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

General Counsel

James L. Kelley, Acting

Secretary

John C. Hoyle, Assistant

Staff

P. Crane
K. Mason
R. McOsker
K. Pedersen
W. Reamer

843 310

~~843 310~~

I. Review of ALAB-410 (In the Matter of Pacific Gas & Electric Company, Diablo Canyon Nuclear Power Plant, Units 1 & 2, Docket Nos. 50-275 OL and 50-323 OL) (See undated OGC Memorandum to the Commission)

Under discussion was the procedural issue of whether the Commission should extend the time to review the Atomic Safety & Licensing Appeal Board's June 9, 1977 Memorandum & Order in the subject proceeding (ALAB-410), or determine that the Appeal Board's decision should be permitted to stand, subject only to a statement expressing the Commission's concern regarding the limited and conditional disclosure of the applicant's physical security plan to the intervenor's counsel and expert witnesses, as held by the Appeal Board in ALAB-410.

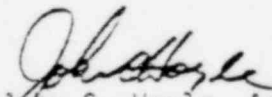
The Commission, by a vote of 3-0, approved an extension of time in which to review ALAB-410, and requested the General Counsel to prepare an appropriate Order reflecting this action and noting the Chairman's limited participation in this procedural matter. The Order will be issued on June 28, 1977. (Chairman Rowden was disqualified from considering the merits of ALAB-410 and participated in this procedural action only for the purpose of constituting a quorum).

In taking this action, the Commission took note of the General Counsel's recommendation not to review ALAB-410, the Chairman's disqualification from consideration of the merits of this matter, the pending, related issue of possible classification of power reactor facility security plans as a matter of general policy, and the likely absence of a quorum to consider ALAB-410 after June 30, 1977.

The Acting General Counsel explained that, in view of the Chairman's disqualification from considering the merits of the Appeal Board decision, the Commission could either determine not to review ALAB-410, or to extend the time for Commission review until such time as a quorum present and qualified to vote on the matter is available. In the Office of the General Counsel's view, the Appeal Board's decision could be allowed to stand based on the nature of the conditions placed by the Appeal Board upon discovery of the security plan, the uncertain status of classification of LWR security plans, and the possibility that a rulemaking proceeding might constitute a better forum for addressing the issue.

Commissioners Kennedy and Gilinsky indicated their desire to extend the time for review on the grounds that ALAB-410 raises significant safeguards questions that warrant Commission review. It was agreed that the extension would continue in effect pending the availability of a quorum.

(11:20 a.m.)


John C. Hoyle, Assistant
Secretary of the Commission

843 311

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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OFFICE OF THE
SECRETARY

MINUTES OF
DISCUSSION OF TARAPUR EXPORT LICENSE

11:20 a.m., Tuesday, June 28, 1977, Commissioners Conference Room
D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

Office of General Counsel

C. Stoiber

Secretary of the Commission

John C. Hoyle, Assistant

Staff

P. Crame
S. Eilperin
A. George
K. Mason
R. McCosker
I. Rothschild
L. Spector
R. Stratford
N. Terrell

843 312

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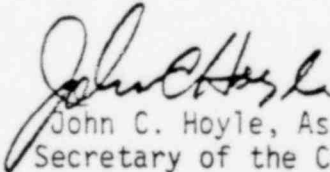
Under discussion was a marked-up version of the June 23 draft Opinion regarding the issuance of export License No. XSNM-845 to the Edlow International Company for shipment of fuel for the Government of India's Tarapur facility. The June 23 text had been edited based on Commissioner comments provided during the Commission's discussion of this matter on June 24 and subsequent comments provided directly to the Office of the General Counsel by individual Commissioner offices.

The Commission, by a vote of 3-0, approved, subject to editorial changes, the issuance of a proposed Memorandum & Order directing the Assistant Director for Export-Import and International Safeguards to issue export License No. XSNM-845 to the Edlow International Company. Commissioner Gilinsky advised that while he concurred in the issuance of the license, he would prepare a separate, concurring statement to accompany the Memorandum & Order.

The Commission further agreed that the Memorandum & Order should be issued by close of business June 28, if possible, and that Commissioner Gilinsky's concurring statement could be issued on June 29, 1977 if circumstances prohibited completion of his statement prior to issuance of the Memorandum & Order.

In taking this action, the Commission suggested editorial changes on pages 6A, 16A, 18, 19, 26, 26A, and 27 to generally clarify the description of current understandings with the Government of India. Commissioner Gilinsky indicated that his separate statement would note that his concurrence in the issuance of export License No. XSNM-845 is influenced by changed political circumstances from those in effect when he dissented on a similar export last year, and that certain significant issues, such as an agreement on the use by India of U.S.-supplied heavy water, remain unresolved.

(11:55 a.m.)


John C. Hoyle, Assistant
Secretary of the Commission

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OFFICE OF THE
SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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MINUTES OF

POLICY SESSION 77-39

2:30 p.m., Thursday, June 30, 1977, Commissioners' Conference Room
D. C. Office

Commissioners

Marcus A. Rowden, Chairman
Victor Gilinsky
Richard T. Kennedy

Staff

Carl Stoiber

Secretary of the Commission

Samuel J. Chilk

General Counsel

James L. Kelley, Acting

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- I. Proposed Order in the Matter of Edlow International Company (Agent for the Government of India on Application to Export Special Nuclear Materials (License No. XSNM-845, Docket No. 70-2131)(License No. 1061, Docket No. 70-2485)

The Commission discussed a proposed Order which would suspend the issuance of License No. XSNM-845 as a result of an Order issued on June 30, 1977, by the United States Court of Appeals in the District of Columbia Circuit (in the matter of NRDC v. NRC (76-1525)).

By a vote of 3-0, the Commission approved the Proposed Order.

In taking this action, the Commission focused its attention on an appropriate procedure for issuing License No. XSNM-845 in the event that the Court of Appeal's June 30 order should be reversed or vacated in the near future during the period in which a quorum of Commissioners would not be available to authorize issuance of the license. It was generally agreed that the Commission's Order should explicitly state that License No. XSNM-845 would be suspended until such time as a further Order of the Court permits its issuance. Under such a procedure, the license would issue on receipt of a subsequent Court Order without further formal action by the Commission.

(3:00 p.m.)


Samuel J. Chirk
Secretary of the Commission

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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MINUTES OF
ADJUDICATORY SESSION 77-30

1:45 p.m., Wednesday, August 24, 1977, Commissioners' Conference Room
D.C. Office

Commissioners

Joseph M. Hendrie, Chairman
Victor Gilinsky
Richard T. Kennedy
Peter A. Bradford

Secretary of the Commission

Samuel J. Chilk

General Counsel

James L. Kelley, Acting

Staff

R. Bell
P. Crane
J. Fitzgerald
J. Griggs
J. Hard
A. Kenneke
W. Magee
R. Mallory
R. McOsker
S. Ostrach
K. Pedersen
T. Quay
C. Reamer
L. Spector
R. Stratford
C. Woodhead
K. Mason

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I. Status of ALAB Reviews and Certiorari Petitions

The Commission was briefed by the Office of the General Counsel on the means by which adjudicatory matters reach the Commission. This had been outlined in an August 16, 1977 memorandum to the Commissioners from the Acting General Counsel which also briefly explained and made recommendations on all the adjudicatory matters which were pending before the Commission.

The Commission took no action with respect to the recommendations of the April 16 memorandum, but did consider several special issues later in the session.

The Office of General Counsel explained that since June 1, 1977, parties to a proceeding can petition the Commission for review of an Appeal Board decision within 15 days after its issuance on the ground of error with respect to an important question of fact, law, or policy. If the Commission has not granted the petition in whole or in part within 20 days, or extended the review time, it is deemed denied. In addition, the Commission has 30 days after issuance of an Appeal Board decision to exercise its sua sponte review authority. The counsel stated further that as of August 15, 1977, the Commission disallowed any petitions for review of Directors' denials under 10 CFR 2.206, but retained its right to sua sponte review.

II. In the Matter of Public Service Company of New Hampshire, et al., Seabrook Station, Units 1 and 2 (Docket Nos. 50-443, 50-444)*

Under discussion was the August 19, 1977, memorandum from the Acting General Counsel to the Commissioners, "Commission Review of the Recent Seabrook Decisions, ALAB-422 and -423," which explained the issues resolved by the Appeal Board in those decisions, outlined those issues for which review had been sought, and recommended Commission review of four issues. There had been filed two petitions for review under 10 CFR 2.786: one by the lead applicant, Public Service Company of New Hampshire, which requested review of the population center and transmission line issues in ALAB-422; the other by the New England Coalition on Nuclear Pollution (NECNP) which requested review of the reinstatement of the construction

*The Chairman did not participate in this portion of the Session because of the possibility of his disqualification due to his prior involvement with the Seabrook proceeding as Deputy Director for Licensing and Technical Review of the Atomic Energy Commission.

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permit by ALAB-423 and of the following issues in ALAB-422: population center criteria; emergency planning outside the LPZ; seismic design; alternative sites; acceptance of EPA's findings; financial qualifications; and need for power. NECNP challenged the Appeal Board's independent review of the record and its subsequent fact finding in Support of the Licensing Board's Initial Decision in ALAB-422 and its assumption of presumptive validity of the Licensing Board's Supplemental Initial Decision in ALAB-423.

Three other issues, for which review had not been sought, were addressed by the Appeal Board: alternatives to building a nuclear plant; improper pressure on the Licensing Board; and the effects of the uranium fuel cycle.

The Commission requested that the Office of General Counsel prepare a draft order granting partial review of the ALAB's, specifying the four issues to be reviewed, extending the time in which to review the seismic issue, and setting out a schedule for briefing and argument. The Commission further requested that the Draft Order be scheduled for consideration on Friday, August 26, 1977.

Before the Commission took this action, the Acting General Counsel and his staff summarized in detail the legal implications of Commission review of each of the issues addressed by the Appeal Board in ALAB-422 and -423. The Acting General Counsel focused the Commission's attention on his recommendation that the following four issues be reviewed: the financial qualifications of the applicant; the Appeal Board's acceptance in ALAB-422 of EPA's findings on adverse marine aspects in discharging NRC's NEPA obligation to consider all environmental impacts; the Appeal Board's analysis of the record and independent fact finding; and ALAB-423's acceptance of the presumptive validity of the Licensing Board's Supplemental Initial Decision in lifting the stay on the construction permits.

Commissioner Kennedy expressed reservations about reviewing the issue of financial qualifications. The Acting General Counsel noted that Member Farrar had dissented from the majority opinion on this issue and that what was in question was the validity of the legal theory that a public utility is almost

certainly financially qualified because the state regulatory body will allow it to fix its rates as necessary. He pointed out that, without such a review, the Commission would be put in the position of going into court with that theory as precedent. Commissioner Bradford noted that he might have a conflict of interest, with regard to the financial issue only, due to his prior participation as a member of the Maine Public Utilities Commission in matters involving the Seabrook facility. The Commission agreed to suspend further discussion of this issue until Friday, August 26, 1977.

In discussing the third issue for which review was recommended, Commissioner Kennedy questioned the means by which the Commission could determine whether the Appeal Board's independent fact finding had in fact distorted the record, without having to undertake the same sort of review engaged in by the Appeal Board. He also noted the protracted nature of the proceeding already and expressed the view that review of this issue could serve to lengthen it even further. The Acting General Counsel stated that there was no need for a de novo review of the record; that the Commission could ask the parties in their briefs to be quite specific in where they see the Appeal Board's findings having distorted the record. In addition, he pointed out that NRC's position in court would be poor if this issue was not reviewed.

Commissioner Kennedy commented that the petitioner could still take this issue to court, even if the Commission reviewed it. The Acting General Counsel agreed but stressed that any such court review would be limited considerably by the Commission review.

The Acting General Counsel suggested that he prepare a Draft Order for Commission consideration on Friday, August 26, 1977, that would deny the petition of the lead applicant and grant in part the petition of NECNP. The Draft Order would set forth the four issues recommended by the Acting General Counsel for review, and set out a schedule for briefing and oral argument. He further suggested that the order extend the time for review of the seismic issue until after Member Farrar had issued his dissent on that matter. The Commission agreed with the Acting General Counsel's suggestion and asked the Secretary to schedule a meeting to consider the Draft Order on Friday, August 26, 1977.

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III. In the Matter of Florida Power and Light Company,
St. Lucie Plant, Unit No. 2 (Docket No. 50-389A)*
(see SECY-A-77-52)

Under discussion was a petition by Florida Power and Light Company for Commission review under 10 CFR 2.786 of ALAB-420. The petition alleges that the Atomic Safety and Licensing Board had abused its discretion in granting a late petition for leave to intervene by the Orlando Utilities Commission.

The Commission, by a vote of 3-0, approved the issuance of a proposed order extending the time for review of ALAB-420 under 10 CFR 2.786 until September 15, 1977.

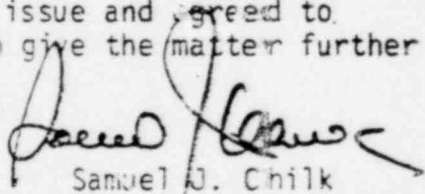
In taking this action, the Commission noted that the paper on this issue had just been received the previous day and that there was not sufficient time to discuss the merits of the petition. Therefore, the Commission agreed to extend the time for review so that they could consider the matter further at a later date.

IV. In the Matter of Pacific Gas and Electric Company,
Diablo Canyon Nuclear Power Plant, Units 1 and 2
(Docket Nos. 50-2750L, 50-3230L)*
(see SECY-A-77-53)

Under consideration was a petition for Commission review under 10 CFR 2.786 of ALAB-410 by Pacific Gas and Electric Company. ALAB-410 upheld the Licensing Board's ruling that the applicant's physical security plan should be disclosed to an intervenor, but established detailed conditions for that disclosure. The petition requests a Commission ruling that would, as a matter of policy, exclude the details of security plans from such proceedings.

The Commission, by a vote of 3-0, approved a proposed order extending the time for Commission review of ALAB-410 under 10 CFR 2.786 until September 15, 1977.

In so doing, the Commission noted the lack of sufficient time to discuss the merits of the issue and agreed to extend the review time in order to give the matter further consideration.


Samuel J. Chilk
Secretary of the Commission

(3:00 p.m.)

*The Chairman did not participate in this portion of the Session because of the possibility of his disqualification due to his prior involvement with the Seabrook proceeding as Deputy Director for Licensing and Technical Review of the Atomic Energy Commission.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

12

Minutes of
Adjudicatory Session 77-31

12:20 p.m., Friday, August 26, 1977, Commissioners' Conference Room
D.C. Office

Commissioners

Victor Gilinsky
Richard T. Kennedy
Peter A. Bradford

Secretary of the Commission

Samuel J. Chilk

General Counsel

James L. Kelley, Acting

Staff

P. Crane
J. Fitzgerald
J. Griggs
K. Mason
R. McOsker
S. Ostrach

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I. In the Matter of Public Service Company of New Hampshire, et al, Seabrook Station, Units 1 and 2 (Docket Nos. 50-443, 444)

The Commission had before them a draft order responding to two petitions for review of ALAB-422 and -423 which had been transmitted via an August 26, 1977 Memorandum from the Acting General Counsel. That order would deny the lead applicant's petition for review and grant, in part, the petition of the New England Coalition on Nuclear Pollution (NECNP) on the following issues: the financial qualifications of the applicant; the propriety of the Appeal Board's according binding effect to EPA's findings with respect to marine environmental impacts; whether the Appeal Board's independent fact finding distorted the record; and the Appeal Board's acceptance of the presumptive validity of the Licensing Board's supplemental initial decision in ALAB-423. The draft order also would extend the time for review on the seismic issue until Appeal Board Member Farrar's full dissent on that matter is issued and would call for briefing and oral argument on the four issues to be reviewed.

The Commission, by a vote of 3-0*, extended the time for consideration of the pending petitions for review until September 15, 1977, and requested that an appropriate Order be prepared. In addition, the Commission authorized the General Counsel to inform the U.S. Court of Appeals for the First Circuit by letter that the Commission has decided to review the July 26, 1977 decisions of the Atomic Safety and Licensing Appeal Board, ALAB-422 and -423, and that it expects shortly to issue an Order announcing which issues presented by those decisions it will review.

In taking this action, the Commission noted that Commissioner Bradford was preparing a Memorandum to the parties in the Seabrook proceeding which would outline his prior participation as a member of the Maine Public Utilities Commission in proceedings involving the Seabrook facility and state that he would consider any objections to his participation in the Commission's consideration of the Appeal Board's July 26, 1977 decisions received before September 15, 1977. The Commission agreed to meet again to consider the draft order, but not to issue any final order until September 15, 1977.

The Acting General Counsel suggested that he be authorized to inform the U.S. Court of Appeals for the First Circuit that the Commission had decided to review the July 26, 1977 Appeal Board decisions to some extent and that an

*Chairman Hendrie did not participate in this discussion since he is currently reviewing his past involvement in this case as Deputy Director for Licensing and Technical Review of the Atomic Energy Commission.

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Order setting out the matters to be reviewed would be issued shortly. The Commission agreed with the suggestion and authorized the Acting General Counsel to so notify the court by letter.

II. In the Matter of Consolidated Edison Company of New York, Inc., Indian Point Station, Unit 2 (Docket No. 50-247, OL No. DPR-26)
(see SECY-A-77-39A)

Under consideration was a proposed draft order which would deny the petitions for review of ALAB-399 under 10 CFR 2.786 filed by the applicant, Consolidated Edison, and the intervenor Hudson River Fishermen's Association (HRFA) and grant the petition for review of the NRC staff. The order would also deny HRFA's request for a stay of ALAB-399. The order would set out as issues for review the Appeal Board's holding that the approval of the Village of Buchanan Zoning Board of Appeals is a "necessary governmental approval" required by the license prior to starting construction on the cooling towers and the discussion to the effect that NEPA preempts the Zoning Board of Appeals' power to deny a zoning variance for the facility.

The Commission, by a vote of 3-0*, approved the issuance of the proposed order.

The Commission took this action after a very brief discussion by the Acting General Counsel and his staff of their recommendation that the Commission review the issues of ALAB-399 that are set out in the proposed order. The Commission accepted the recommendation and approved issuance of the order.


Samuel J. Chilk
Secretary of the Commission

(12:30 p.m.)

*Chairman Hendrie did not participate in this discussion since he is currently reviewing his past involvement in this case as Deputy Director for Licensing and Technical Review of the Atomic Energy Commission.

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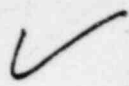
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OFFICE OF THE
SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555



MINUTES OF

POLICY SESSION 77-42

5:05 p.m., Wednesday, September 7, 1977, Commissioners' Conference Room
D. C. Office

Commissioners

Joseph M. Hendrie, Chairman
Victor Gilinsky
Richard T. Kennedy
Peter A. Bradford

General Counsel

James L. Kelley, Acting

Secretary of the Commission

John C. Hoyle, Assistant

Staff

J. Aron
S. Eilperin
J. Griggs
W. Kerr
K. Mason
R. McOsker
K. Pedersen
R. Ryan
G. Sege
R. Stratford
C. Woodhead

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I. SECY-A-77-48 - New Mexico Uranium Mill Lawsuit

Under discussion was a proposal to defend a lawsuit filed by NRDC, two individuals, and the Central Clearing House (a New Mexico environmental group) against the NRC and the New Mexico Environmental Improvement Agency (NMEIA) (NRDC, et al., v NRC, et al., DNM No. 77-240-B). The suit seeks to enjoin operations of United Nuclear's Church Rock Uranium mill, which had been issued a license by the State of New Mexico on May 3, on the grounds that neither NRC nor New Mexico had prepared an Environmental Impact Statement. The proposed motion to dismiss the lawsuit would argue, in essence, that the licensing of the Church Rock facility was a State action to which the NEPA requirement for preparation of an EIS does not apply.

By a vote of 4-0, the Commission approved the General Counsel's proposal to defend the lawsuit and requested that the NRC's defense recognize that the State of New Mexico has performed well in connection with environmental impact evaluation and protection. The Commission also requested preparation of a response to the Council on Environmental Quality's letter indicating that NRC will defend the lawsuit, that the State of New Mexico has performed the environmental impact evaluations required by NEPA, and that the Commission plans as a general proposition to study the Agreement State Program from the standpoint of performance under NEPA of environmental impact assessments. This study will consider whether the NRC should insist on NEPA compliance as part of Agreement States' project reviews.

In taking this action the Commission focused its attention on NRDC's contentions that (1) Agreement States, in taking licensing actions pursuant to Section 274 of the Atomic Energy Act, are exercising federal power that has been delegated to them by the NRC and that as a result, the Agreement States must comply with NEPA requirements; and (2) Agreement State programs, in order to comply with Section 274, must be compatible to those of the NRC program in non-agreement states, where environmental impact statements are prepared by NRC for new milling licenses. The Commission also considered the separate, broad policy issue of whether NRC should alter its present policy for implementing NEPA under the Agreement States program.

With respect to the legal issues raised by the NRDC, the Solicitor advised the Commission that the legislative history of Section 274 of the Atomic Energy Act clearly indicates that certain Commission regulatory authority would be discontinued and specifically assumed by the states. As a result, the license issued by New Mexico, pursuant to Section 274, is a state action to which NEPA does not

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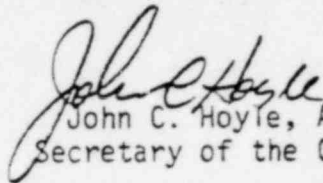
apply. On NRDC's second contention that an EIS is required for the New Mexico license by virtue of the Section 274 provision that Agreement State programs must be compatible with NRC programs in non-agreement states, the Solicitor observed that the term "compatibility," as used in Section 274, does not imply that state procedures must be identical to those of the NRC, but only that state procedures be "adequate to protect public health and safety." Based on these arguments, the Solicitor expressed the view that a motion to dismiss the suit was legally sound. The Commission also was informed that NRDC was unwilling to settle the case out of court, that New Mexico had already filed a motion to dismiss the lawsuit, and that the Department of Justice supported the filing of a similar motion by NRC. The Council on Environmental Equality, however, while recognizing that an EIS in the New Mexico case is not legally required, would prefer that the states perform environmental impact statements as a matter of policy.

With regard to this broad policy question, the Solicitor indicated that the lawsuit could be defended as outlined in the proposed motion without foreclosing the option of persuading the states to utilize some form of environmental review in their licensing actions. Commissioner Gilinsky expressed reservations concerning the current practice of requiring impact statements only for licensing uranium mills physically located in Non-Agreement States; while he recognized that this procedure was consistent with applicable law, and that the State of New Mexico has performed reasonably well in evaluating environmental impacts for the Church Rock facility, he suggested that an environmental impact statement should be prepared for all uranium mill licensing actions and that NRC should have some responsibility in this area. Chairman Hendrie observed that since New Mexico has performed environmental investigations and expects to impose certain protective measures, the effect of the NRDC petition is to require the Commission to duplicate New Mexico's efforts; he added that if New Mexico had not undertaken any environmentally-related activities he would not support the proposal to defend the case. He suggested that the motion to dismiss the instant case make reference to New Mexico's performance and that CEQ be informed by letter that the lawsuit will be defended and that the Commission is considering the general question of whether NRC should alter its present policy to ensure implementation of NEPA requirements under the Agreement States Program. He further suggested that, in the context of this policy reappraisal, the Commission may wish to consider withdrawing certain authority from the Agreement States. Commissioners Kennedy and Bradford expressed general agreement that the suit should be defended and that CEQ should be informed that a general policy review would be undertaken, but they took exception to inclusion in

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the letter to CEQ of any reference to Commission consideration of withdrawing existing Agreement State authority. Commissioner Gilinsky commented that in his view, the Commission's options should be kept open at this time. It also was pointed out that any such reference might have adverse implications for the Administration's draft licensing reform bill, and that any specific changes in policy should await the receipt of Agreement State comments on a draft report prepared by NRC's Agreement State Study Group and circulated to the states.


John C. Hoyle, Assistant
Secretary of the Commission

(5:45 p.m.)

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

Re ✓

OFFICE OF THE
SECRETARY

MINUTES OF
ADJUDICATORY SESSION 77-33

2:05 p.m., September 9, 1977, Commissioners' Conference Room

D.C. OFFICE

Commissioners

Victor Gilinsky
Richard T. Kennedy
Peter A. Bradford

Secretary of the Commission

Samuel J. Chilk

General Counsel

James L. Kelley, Acting

Staff

M. Chopko
P. Crane
J. Fitzgerald
K. Mason
S. Ostrach
T. Quay
G. Sege
L. Spector
R. Stratford
S. Trubatch
C. Woodhead

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In the Matter of Public Service Company of New Hampshire, et al,
Seabrook Station, Units 1 and 2 (Docket Nos. 50-443, -444).

Under discussion was a proposed draft order, which had been transmitted by a September 7, 1977, memorandum from the Acting General Counsel, responding to two petitions for review of ALAB-422 and -423. That order would deny the lead applicant's petition for review and grant, in part, the petition of the New England Coalition on Nuclear Pollution (NECNP) on the following issues: (1) the financial qualifications of the applicant; (2) the propriety of the Appeal Board's according binding effect to EPA's findings with respect to marine environmental impacts; (3) whether the Appeal Board's independent fact finding distorted the record; and (4) the Appeal Board's acceptance of the presumptive validity of the Licensing Board's supplemental initial decision in ALAB-423. The draft order also would extend the time for review on the seismic issue until Appeal Board Member Farrar's full dissent on that matter is issued and would call for briefing and oral argument on the four issues to be reviewed.

The Commission, by a vote of 3-0*, approved, subject to revision and recirculation, the draft order. The order as revised would limit the Commission's review to issues 1, 2, and 4 and extend the time for review on the seismic issues.

In taking this action, the Commission addressed itself to several of the issues treated in the Appeal Board decisions. Commissioner Bradford expressed his strong interest in reviewing the issue of financial qualifications, especially its relationship to the safety of the facility. He stated further that the need for power determination is also impacted by this issue; if rates are to be raised in order to build the facility, which action is inherent in the Appeal Board's rationale, then the need for power determination must be reexamined in the light of the understanding that Seabrook would produce cheaper power. The Acting General Counsel stated that, although the NRC has a statutory obligation to examine the financial qualifications of the applicant, this obligation is not explicitly related to the public health and safety. Nevertheless, he continued, it may be possible to make a case for the theory that if an applicant is short of funds, it may cut corners in the construction of the facility. A member of the Office of Policy Evaluation made the observation that the temptation to cut construction costs is always present, regardless of the applicant's financial situation.

Commissioner Kennedy observed that the NRC is required to determine whether the applicant is financially qualified, apart from other considerations, and that this is a factual finding of whether the

*Chairman Hendrie did not participate in this decision because of his prior involvement with the Seabrook proceeding as Deputy Director for Licensing & Technical Review of the Atomic Energy Commission.

utility can obtain the money for construction. The Acting General Counsel pointed out that the Appeal Board had determined that the applicant was financially qualified on the basis that the applicant is a public utility regulated by the State which would allow it to raise its rates as necessary to build the facility. If the Commission, in reviewing this issue, were to find this theory invalid, then it would have to look at the record in order to determine that there is enough evidence to support a finding of financial qualification. Commissioner Kennedy asked what options the Commission had if it found the Appeal Board's theory invalid and that the record was insufficient to determine financial qualification. The Acting General Counsel replied that the Commission could remand the issue to the Licensing Board or could enlarge the record itself.

In discussing the seismic issue, Commissioner Kennedy questioned the need to delay the decision whether to review that issue. The Acting General Counsel stated that the Commission would have a better basis upon which to make that decision after Appeal Board Member Farrar's dissent was issued and that extending the time for review preserves the Commission's right to make that decision.

Commissioner Bradford questioned the implications of the Appeal Board's ruling that the applicant is not required to perform emergency planning for persons located outside the low population zone (LPZ). The Acting General Counsel pointed out that the Appeal Board has made this same ruling in earlier cases and that in June of this year the Commission had upheld that ruling but at the same time had announced its intention to initiate a rulemaking as soon as the staff study on the subject was completed. He expressed the view that a rulemaking was the best means to study the question of emergency planning outside the LPZ and that the results of that rulemaking can be applied to Seabrook before it receives an operating license. The Commission requested that the order mention this issue and reaffirm its intention to conduct a rulemaking. Commissioner Kennedy stressed that the reaffirmation should be put within the context of why the Commission is not reviewing the question of emergency planning outside the LPZ in this case. Commissioner Bradford asked that the order state that the Commission expects the rulemaking to be completed before Seabrook reaches the operating license stage.

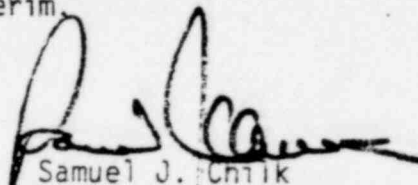
Commissioner Kennedy raised the issue of the transmission line. He pointed out that it is conceivable that, when the applicant goes back to get approval from the State for the route selected by the Board, the State might not approve that route. The Commissioner expressed the view that the Commission should not foreclose its right to review that issue. The Acting General Counsel stated that, if such an event were to occur, the Commission could always amend the construction permit.

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The Acting General Counsel stated that, after further study, he was now recommending against the Commission reviewing issue 3. The Commission agreed with the recommendation, with Commissioner Bradford reserving judgment for the present. It was noted that Commissioner Bradford had sent a Memorandum To Counsel For The Parties allowing them until September 15 to lodge objections to his participation in the Seabrook proceeding based on his prior involvement as a member of the Maine Public Utilities Commission. Therefore, the order could not be issued until September 15. The Commission approved the order subject to the revisions previously noted and asked that it be recirculated. The Commission agreed that the order, as revised, would be issued on September 15 unless a Commissioner called for another meeting in the interim.



Samuel J. Chirik
Secretary of the Commission

(3:00 p.m.)

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OFFICE OF THE
SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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MINUTES OF
ADJUDICATORY SESSION 77-34

1:25 p.m., Thursday, September 15, 1977, Commissioners' Conference Room
D. C. Office

Commissioners

Joseph M. Hendrie, Chairman
Victor Gilinsky
Richard T. Kennedy
Peter A. Bradford

General Counsel

S. Eilperin, Acting

Secretary of the Commission

John C. Hoyle, Assistant

Staff

R. Bell
M. Chopko
P. Crane
W. Dorie
G. Eysymontt
J. Fitzgerald
J. Griggs
J. Hard
A. Kenneke
K. Mason
R. McOsker
C. Ong
S. Ostrach
K. Pedersen
T. Quay
D. Rathbun
G. Sege
B. Snyder
C. Reamer
R. Stratford
R. Tweed
C. Woodhead

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I. Proposed Draft Order in the Matter of Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 & 2) (Docket Nos. 50-443, 50-444) (See also Commissioner Bradford's September 14, 1977 Memorandum to Commissioners Gilinsky and Kennedy)

Under discussion was a proposed draft order which would deny Public Service Company of New Hampshire's August 10, 1977 petition to review two Appeal Board decisions (ALAB 422 and ALAB 423 which addressed issues relating to Seabrook decided in the Licensing Board's June 29, 1976 initial decision authorizing construction of the facility), and granting in part the New England Coalition on Nuclear Pollution's August 10 petition to review the same Appeal Board decisions. The proposed Commission Order previously had been approved, subject to revision and recirculation to the Commission, on September 9, 1977. By memorandum dated September 14, 1977, Commissioner Bradford suggested revisions to paragraph 3, page 3 of the September 7, 1977 draft Order and suggested the need to schedule a further meeting on this matter prior to close of business on September 15, 1977.

The Commission, by a vote of 3-0*, approved, as revised, the proposed Order. The Commission's review will be limited to the following selected issues, set forth in detail in the Order:

1. The Appeal Board's finding that applicants had a reasonable assurance of obtaining the necessary funds to cover construction and fuel cycle - related costs;
2. Whether it was proper for the Appeal Board to accord binding effect to EPA findings under the FWPCA with respect to impacts of once-through cooling on the marine environment;
3. NECNP's assertion that the Appeal Board, in exercising independent review authority, has distorted the meaning of testimony; and
4. Whether the Appeal Board erred in according presumptive validity to the July 17, 1977 AS&LB decision comparing the Seabrook site with possible alternative sites.

* Chairman Hendrie did not participate in the discussion and decision on this matter because of his prior involvement with the Seabrook proceeding as Deputy Director for Licensing & Technical Review of the Atomic Energy Commission. Commissioner Bradford participated in the discussion and decision after reviewing his prior participation as a member of the Maine Public Utilities Commission in matters involving the Seabrook facility and determining that there was no reason why he should abstain from participating in this review. The parties to this proceeding were advised of Commissioner Bradford's prior involvement and subsequent determination, and raised no objection.

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POOR ORIGINAL

In taking this action, the Commission focused its attention on Commissioner Bradford's proposed revision to issue 3, on which Commissioner Bradford at a prior meeting had reserved judgment, the proposed inclusion in issues one and two of a request to the parties to comment on the state of the record, and the issue raised by NECNP regarding emergency planning outside the low population zone.

Commissioner Bradford in his September 14 memorandum had explained that after reviewing the Appeal Board decision he would favor review of issue #3, and that he had revised page 4, paragraph 3 of the draft Commission Order to reflect minor changes he considered appropriate. Commissioners Gilinsky and Kennedy concurred in the revised language, with the exception of the final sentence, which would have requested the parties to specifically discuss the legal extent to which the Appeal Board may exercise its fact finding power in a specific case. Commissioner Bradford agreed that this sentence could be deleted.

With regard to the issue of requesting the parties to address the state of the record on issues 1 and 2, Commissioner Gilinsky inquired as to the purpose of the proposed change. Commissioner Kennedy and the General Counsel's office expressed the view that it would be helpful if the parties found the record on these issues to be complete, since such a finding would obviate the need for the Appeal Board to consider the issues a second time.

Commissioner Bradford questioned the implications of the Appeal Board's findings concerning emergency planning in areas outside the low population zone. He noted that an apparent interpretation of the finding was that the nearer a population center was found to be to the low population zone, the area in which emergency planning is required becomes smaller. The Office of the General Counsel explained that the Commission, in an Order dated June 17, had decided not to review this matter only on the grounds that the staff was preparing a study and that the Commission intended to conduct a rulemaking proceeding on this issue in the near future. It was also noted that the present Order would reference this earlier decision and would reiterate the Commission's intention to conduct the rulemaking at an early date. It was generally agreed that the present Order should be adopted with the revisions previously noted.

- II. SECY-A-77-53 and SECY-A-77-53A - Petition for Review of ALAB-410 (In the Matter of Pacific Gas & Electric Company, Diablo Canyon Nuclear Power Plant) (Units 1 and 2, Docket Number 50-275 01) (See August 18, 1977, ACRS Letter to Chairman Hendrie re Nuclear Plant Security)

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Under discussion was a proposed Order which would deny a June 27, 1977 petition filed by Pacific Gas and Electric Company requesting Commission review of the Appeal Board's June 9, 1977 decision (ALAB-410), and indicate that the Commission declines to exercise its sua sponte review authority. The Order would note, however, that the Commission recognizes that even limited disclosure of physical security plans pose serious and difficult questions, and that the extent to which disclosure beyond the general outlines and criteria of the applicant's security plan may be required is a matter for the Licensing Board to decide, subject to Appeal Board and Commission review procedures.

The Commission, by a vote of 4-0*, approved the Order as revised.

The Commission also requested that:

1. a separate memorandum be prepared which would direct the staff to address various alternatives to current NRC practice that would afford the Commission sufficient basis to make necessary findings before granting a license without submitting the entire physical security plan to the adjudicatory process;
2. information concerning the applicability of criminal penalties under the U.S. Criminal Code for unauthorized disclosure of classified physical security plans.

In taking this action, the Commission primarily addressed two issues: (a) whether the Commission should review ALAB-410 either in the context of the applicant's petition or on its own motion, and (b) whether the limits set by the Appeal Board concerning public disclosure of the applicant's physical security plan were sufficient to prevent the plan being compromised.

With regard to the applicant's petition, the Commission was advised that technically the Commission's certiorari rule does not permit a party to request Commission review of interlocutory judgments. Nevertheless, the Commission could review this matter on its own motion. The General Counsel's office recommended that ALAB-410 not be reviewed on the grounds that the Appeal Board's decision was correct on the legal issue of whether the security plan, which is part of the application to operate the facility, should be made available on request of the parties, subject to appropriate limitations.

* Chairman Hendrie participated in the discussion and decision on this matter after reviewing his prior participation as AEC Deputy Director for Licensing and Technical Review and as a member of the ACRS in matters involving Diablo Canyon, and after determining that there was no reason why he should abstain.

Concerning the limitations on disclosure of the security plan imposed by the Appeal Board, the General Counsel's office recommended that this issue not be reviewed in the grounds that the limitations were legally correct and that it would be more appropriate to review this matter after the Licensing Board had implemented the specific guidelines by the Appeal Board in this proceeding. It was recommended that the Commission should make note in the Order of the sensitive nature of this issue. The Commission was also reminded that while ALAB-470 represented a unanimous decision by the Appeal Board, two members, in separate, additional views, had indicated the need to revise current practices to permit necessary findings to be made without submitting the entire security plan to the adjudicatory process. Chairman Furdrie commented that had the security plan been a classified document, no greater protection would have been afforded than that set forth by the Appeal Board. Commissioner Gilinsky agreed and, together with Commissioner Kennedy, requested information as to whether criminal sanctions would apply for disclosure of such a plan if it had been classified. The Chairman suggested that the General Counsel's recommendation be accepted, subject to an editorial change. The Commission generally agreed to adopt the Order as revised, after determining that the staff would be requested by separate memorandum to address the concerns of the two Appeal Board members.

III. SECY-A-77-52 - Review of ALAB-420 (In the Matter of Florida Power and Light Company) (St. Lucie Plant, Unit No. 2) (Docket No. 389A)

Under discussion was a petition for review of the Appeal Board's July 12, 1977, decision (ALAB-420) which affirmed the Licensing Board's grant of an antitrust hearing on the St. Lucie 2 construction permit application and granted 21 Florida municipalities and utility Commissions, and the Florida Municipal Utilities Association ("Florida Cities") leave to intervene.

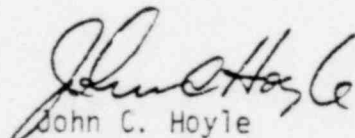
The Commission, by a vote of 3-0*, approved the issuance of an Order extending the time for review of ALAB-420 until September 30, 1977, and requested that an appropriate Order be prepared granting review of ALAB-420 and requesting briefing on the substantive issues presented by ALAB-420, namely, whether late intervention in the subject proceeding is appropriate and whether all the "Florida Cities" or just Orlando should be admitted as parties.

* Commissioner Gilinsky was not present.

In taking this action, the Commission focused its attention on the basis for the Licensing Board's decision to permit late intervention under 10 CFR 2.714. The Office of the General Counsel informed the Commission that the intervenors had filed a joint petition for intervention in the antitrust proceeding in August 1976, thirty-one months after the filing deadline, and that the Licensing Board had granted the petitions on the basis of uncontroverted affidavits that alleged that the Orlando Utilities Commission had not intervened earlier because it had been promised, by the applicant, an opportunity to participate in future nuclear power plants; subsequently, the applicant had reneged. The other justifications considered by the Board included as well as the impact of the oil embargo and natural gas curtailment on the "Florida Cities" generating capacities the agreement by the intervenors that the St. Lucie 2 construction permit could issue in advance of resolution of the antitrust contentions.

Commissioner Kennedy questioned the decision to grant late intervention to all the intervening parties merely on the basis of the applicant's broken promise to Orlando. He was informed that one argument for allowing all parties intervention seemed to be because all of the intervening parties were represented by the same counsel but that the Appeal Board had not really addressed the issue of whether permitting Orlando late entry justified treating the other parties similarly. Commissioner Kennedy questioned the establishment of a principal which would justify or require the granting of late intervention by all parties after finding good cause for granting late intervention to one.

Commissioner Bradford indicated he favored late intervention by Orlando, but not by the other intervenors. Commissioner Kennedy observed that in order to review the question indicated, the Commission would have to review ALAB-420. Chairman Hendrie concurred in this approach. The Commission agreed that the time for establishing a briefing schedule review must be extended to permit preparation of an appropriate Order.


John C. Hoyle
Assistant Secretary
of the Commission

(3:10 p.m.)

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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MINUTES OF
ADJUDICATORY SESSION 77-35

2:35 p.m., Wednesday, September 21, 1977, Commissioners' Conference
Room, D.C. Office

Commissioners

Joseph M. Hendrie, Chairman
Victor Gilinsky
Richard T. Kennedy
Peter A. Bradford

Secretary of the Commission

John C. Hoyle, Assistant Secretary

Staff

J. Aron
R. Bell
G. Eysymontt
J. Fitzgerald
P. Goldberg
A. Kenneke
W. Magee
K. Masom
S. Ostrach
K. Pedersen
C. Reamer
B. Snyder
R. Stratford
R. Tweed
C. Woodhead

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I. SECY-A-77-64 - Review of ALAB-428 (In the Matter of Florida Power and Light Company, St. Lucie Plant, Unit No. 1, Turkey Point Plant, Units 3 and 4, Docket Nos. 50-335A, 50-250A, and 50-251A)

Under discussion was a proposed Order which would extend the time for review of ALAB-428. A petition for review has been lodged with the Commission by certain municipalities in Florida, collectively known as the "Florida Cities." The Florida Cities' petition alleges that ALAB-428 should be reviewed because the Appeal Board was wrong in deciding that the Commission lacked authority to grant antitrust review of operating units.

The Commission, by a vote of 4-0, approved the proposed Order, and extended the time for review until October 28, 1977.

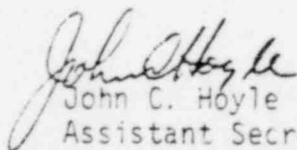
In taking this action, the Commission noted that responses to the petition were not due until September 22, 1977, at which time a quorum would not be present, and that a quorum would not thereafter be present until the week of October 14, 1977. Chairman Hendrie indicated the desirability of extending the time for review to October 28, 1977, rather than October 21, 1977, as proposed by the Office of the General Counsel, to ensure that ample time would be available for Commission consideration of the petition. The Commission agreed that such a revision would be appropriate.

II. Draft Order (In the Matter of Florida Power and Light Company, St. Lucie Plant, Unit No. 2, Docket No. 50-389A)

Under discussion was a draft Order calling for briefing as to two issues of significance in the St. Lucie 2 matter (review of ALAB-420), and an alternative Order extending the time for Commission review of the matter.

The Commission, by a vote of 4-0, approved the Order extending the time for review to October 21, 1977.

In taking this action, the Commission noted that insufficient time was available for consideration of the Order calling for briefing. As a result, the Commission agreed that it should defer consideration of the subject, and instead adopt the alternative Order extending the time for review until a quorum of Commissioners was reconstituted.


John C. Hoyle
Assistant Secretary
of the Commission

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(2-10-1977)

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OFFICE OF THE
SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

July 19, 1979

COMMISSION DETERMINATION REGARDING PUBLIC DISCLOSURE
UNDER THE GOVERNMENT IN THE SUNSHINE ACT OF:

Minutes of Closed Commission Adjudicatory
Sessions for 1977

Pursuant to the Commission's regulations implementing the Government in the Sunshine Act, 10 CFR 9.108(c), the Commission, on the advice of the General Counsel, determined that the Minutes of Closed Commission Adjudicatory Sessions for 1977 should now be made available to the Public.

A handwritten signature in black ink, appearing to read "Samuel J. Chilk".

Samuel J. Chilk
Secretary of the Commission

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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OFFICE OF THE
SECRETARY

MINUTES OF
POLICY SESSION 77-46

2:40 p.m., Wednesday, September 21, 1977, Commissioners' Conference Room

D. C. Office

Commissioners

Victor Gilinsky
Richard T. Kennedy
Peter Bradford

Secretary of the Commission

John C. Hoyle, Assistant Secretary

Staff

J. Aron
R. Bell
G. Eysymontt
J. Fitzgerald
J. Goldberg
A. Kenneke
W. Magee
K. Mason
S. Ostrach
K. Pedersen
C. Reamer
B. Snyder
R. Stratford
R. Tweed
C. Woodhead

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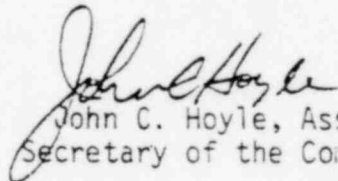
SECY-77-487 - In the Matter of Trustees of Columbia University (TRIGA Research Reactor), Docket No. 50-208 (OI.)

Under consideration was a request by the Morningside Renewal Council, Inc., (MRC) of August 12, 1977, for reconsideration of the issuance of an operating license for applicant's TRIGA Mark II reactor, and a stay of operation of the reactor "pending judicial review of such decision," under 10 CFR 2.771. The Office of the General Counsel had recommended that the request be denied, as 10 CFR 2.771 does not apply in this matter, because the issuance of a license by the Director, Nuclear Reactor Regulation (NRR), is not the "final decision" in the operating license proceeding. General Counsel did recommend that the request be treated as a request for action under 10 CFR 2.206 which provides that any person may file a request to institute an administrative proceeding "to modify, suspend or revoke a license, or for other such action as may be proper." §2.206(a)

The Commission, by a vote of 3-0, approved a proposed letter to John G. Lipsett, Esq., denying MRC's request for reconsideration, but informing him of the issuance of a memorandum to the Acting Director, NRR, approved in the same vote, instructing NRR to treat MRC's request as a request for action under 10 CFR 2.206.

(Chairman Hendrie had previously disqualified himself from the decision due to a possible conflict of interest, and therefore did not attend the meeting.)

2:45 p.m.


John C. Hoyle, Assistant
Secretary of the Commission

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555



MINUTES OF

MEETING ON NEW MEXICO-URANIUM MILL LAWSUIT

2:25 p.m., Thursday, October 13, 1977, Commissioners' Conference
Room, D.C. Office

Commissioners

Victor Gilinsky
Richard T. Kennedy
Peter A. Bradford

General Counsel

Jerome Nelson

Secretary of the Commission

Samuel J. Chilk

Staff

J. Aron
P. Comella
R. Cunningham
W. Dorie
S. Eilperin
T. Engelhardt
G. Eysymontt
J. Griggs
A. Hodgdon
J. Kendig
M. Malsch
J. Mapes
J. Martin
R. McOsker
S. Meyers
H. Miller
C. Nelson
K. Pedersen
R. Ryan
G. Sege
C. Smith
L. Spector
R. Stratford
R. Tweed
C. Woodhead

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Under consideration was a proposed neutral Answer to a lawsuit filed by the Natural Resources Defense Council, Inc. (NRDC), two individuals, and the Central Clearing House (a New Mexico environmental group), seeking to enjoin operations of United Nuclear's Church Rock (N.M.) uranium mill (NRDC et al, v. NRC et al, D NM No. Civ.-77-240-B), and a motion for abeyance of the case. The proposed Answer would meet the legal requirements of answering the suit by October 17, while enabling the NRC to ask for an abeyance until the Commission completes its policy reassessment.

The Commission agreed that the Solicitor should inform the Department of Justice that the NRC supports the filing of the proposed Answer and motion. The Commission also requested that the staff analysis of Agreement State policy issues be submitted to the Commission by the end of November, and the Commission agreed on early January as the scheduled time for completion of its Agreement State program reassessment.

In taking this action, the Commission discussed the effect the proposed Answer would have on the Commission's previous decision (September 7, 1977) to defend the lawsuit, and the need for reevaluation of the Agreement State program, especially with respect to environmental concerns.

The Solicitor recommended the proposed Answer because it would present a unified Federal position, while allowing the Commission time to fully evaluate its uranium mill problems. Commissioner Kennedy asked whether adopting the proposed Answer would not change the Commission's previous position on the lawsuit. It was explained that the opposition of the Council on Environmental Quality to the Commission's position had necessitated the neutral answer as a compromise to the Council on Environmental Quality, enabling the NRC to be represented by the Department of Justice, and meeting the October 17 deadline. The Solicitor also noted that filing the proposed Answer would not preclude the Commission from later asserting a more explicit statement of its legal position.

With regard to the staff analysis of policy issues, Commissioner Gilinsky pointed out that although the Commission had requested its completion by the end of December, the Commission would like to have it earlier so as to have its own reassessment completed by early January. The Director, Office of Nuclear Material Safety and Safeguards, indicated that the analysis could be ready by the end of November.

The Solicitor pointed out that, in order to aid the motion for abeyance, a specific time for resolution of the environmental issues associated with the licensing of uranium mills should be agreed upon by the Commission.

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Commissioner Kennedy pointed out that the Commission's workload would be quite heavy for the next two months. Commissioner Gilinsky noted that with the staff analysis due by the end of November, the Commission could have its reassessment completed by early January.

The Director, Office of State Programs, informed the Commission of his office's planned participation at a conference of selected agreement and non-agreement states on uranium milling problems to be held in early November. The Commission requested that a report of that meeting be included in the staff analysis report.



Samuel J. Chilk
Secretary of the Commission

(3:15 p.m.)

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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OFFICE OF THE
SECRETARY

MINUTES OF

ADJUDICATORY SESSION 77-38

4:10 p.m., Wednesday, October 19, 1977, Commissioners' Conference Room
D. C. Office

Commissioners

Joseph M. Hendrie, Chairman
Victor Gilinsky
Richard T. Kennedy
Peter A. Bradford

Staff

R. Bell
J. Hoyle
R. Mallory
K. Mason
K. Pedersen
R. Stratford

Secretary of the Commission

Samuel J. Chilk

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In the Matter of Exxon Nuclear Company, Inc., Nuclear Fuel Recovery and Recycling Center (Docket No. 50-564)

The Commission had before them a Commissioner Action paper, SECY-A-77-55A, prepared by the Office of General Counsel, which addressed the issue of sua sponte review of ALAB-425. That decision examined the question, which had been certified by the Licensing Board, of whether the Exxon proceeding should be suspended pending the Commission's reassessment of GESMO and recycle related license applications in light of President Carter's April 7 nuclear policy statement, and concluded that the proceeding should not be suspended. The General Counsel paper pointed out that the Commission's May 3 Order calling for the reassessment had allowed recycle related proceedings to continue and the likelihood of an expeditious Commission decision now that the White House comment on GESMO had been received. The paper concluded by recommending that the time for sua sponte review be allowed to expire without issuance of an order.

The Commission, by a vote of 3-1, allowed the time for sua sponte review of ALAB-425 to expire on October 19, 1977, without issuance of an Order.

In taking this action, the Commission focused its attention on the merits of extending the review time until the end of December, at which time a decision on the future course of GESMO and recycle related licensing activities should be made. Commissioner Gilinsky expressed the view that the time for review should be extended until after the GESMO decision is made in order to avoid giving any unwarranted signals regarding GESMO, particularly in light of the views contained in the recently received White House letter. Commissioner Kennedy made the point that the Exxon proceeding was only in the discovery stage and that formal hearings would not begin for approximately another year. He indicated his belief that extending review, which is an action, sends a signal, while letting the review time expire, which is no action, does not and that sending such a signal at this time is premature.

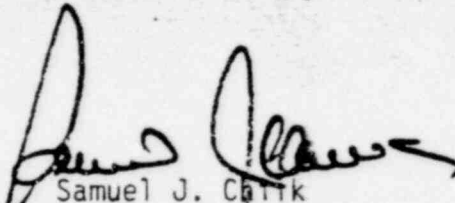
The Office of the General Counsel indicated that the whole question before the Appeal Board in ALAB-425 was whether there should be an interim suspension of the Exxon proceeding until a decision on the future course of GESMO is made and, therefore, there would be no need for the Commission to review the Appeal Board's disposition of that question once the GESMO decision is made. Commissioner Kennedy agreed and indicated that the Commission's disposition of the larger issue will decide the fate of the instant proceeding. Chairman Hendrie pointed out that the Exxon proceeding would continue whether the review time were extended or not and that, in his view, the Commission would be giving a signal in either case. Commissioner Kennedy questioned this view and suggested that, if the Commission were to extend the time for review, the parties to the proceeding, who are now effectively engaged in pre-hearing activities, might take that action to mean that the Commission is seriously considering suspending the proceeding and therefore might slow down or stop their activity.

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A majority of the Commission concurred in the Office of General Counsel recommendation. Commissioner Gilinsky dissented.



Samuel J. Chalk
Secretary of the Commission

(4:25 p.m.)

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

EV

MINUTES OF
ADJUDICATORY SESSION 77-40

9:40 a.m., Tuesday, November 1, 1977, Commissioners' Conference Room

D.C. Office

Commissioners

Victor Gilinsky
Richard T. Kennedy
Peter A. Bradford

General Counsel

Jerome Nelson

Secretary of the Commission

John C. Hoyle, Assistant
Secretary

Staff

P. Crane
A. Hodgdon
J. Kelley
K. Mason
R. McOsker
S. Ostrach
K. Pedersem
T. Quay
G. Sege
R. Stratford
H. Thompson
R. Trask
R. Tweed

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Discussion of Oral Argument Session in the Matter of Public Service
Company of New Hampshire, et al (Seabrook Station Units 1 & 2) (Docket
Nos. 50-443 and -444

Under discussion* was the Oral Argument Session in the subject proceeding scheduled for November 2, 1977.

The Commission agreed that a major portion of oral argument time should be devoted to the financial qualifications question; agreed not to devote oral argument time to the issues of alleged distortion of the record by the Atomic Safety & Licensing Appeal Board or to the presumptive validity of the Atomic Safety & Licensing Board's recent decision concerning alternative sites; and agreed that the parties should be prepared to address the relationship between the Appeal Board's holding and the Second Memorandum of Understanding with EPA. The Commission then requested that the Office of the General Counsel (OGC) telephone all of the interested parties to inform them of the particular topics it wished addressed in Oral Argument.

In taking this action, the Commission noted that the financial aspects of the matter have been changing, and that updated information might be presented in the Oral Arguments. Commissioner Gilinsky pointed out that in the Order specifying the issues for Commission review, the question of an applicant's financial qualifications as they relate to safety was not specifically addressed. The Commission agreed that this issue should be specifically addressed.

With regard to the alleged distortion of the record, it was pointed out that OGC believed that the New England Coalition on Nuclear Power (NECNP) had not documented its charges. Further, NECNP's only documented claim for distortion centered on testimony dealing with seismic issues. Commissioner Gilinsky noted that because of the pending dissenting opinion of Appeal Board Member Farrar, seismic issues were not before the Commission at this time.

Commissioner Gilinsky also pointed out that in view of the motion before the Commission for a stay of the Construction Permit, the issue of the presumptive validity of the Licensing Board's decision on alternative sites need not be addressed.

With regard to the issue of the Appeal Board's acceptance of the findings of the Environmental Protection Agency (EPA) on thermal effluent effects (ALAB-422), it was pointed out that the EPA had conducted an environmental analysis of its own, and that a further impact study by the NRC might be redundant. Commissioner Gilinsky noted that the Second Memorandum of Understanding with EPA contains language which may require a separate NRC impact study regardless of EPA actions. The Commissioners agreed that the parties should be prepared to address this specific issue.

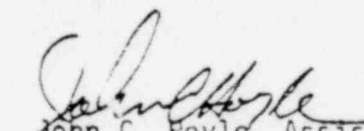
*Chairman Hendrie did not participate in this discussion because of his prior involvement with the Seabrook proceeding as Deputy Director for Licensing & Technical Review of the Atomic Energy Commission.

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With regard to the motion for a stay of the Construction Permit, it was recommended that the Commission deny the motion. It was pointed out that the Commission would complete its review of the matter in the next 4-6 weeks, and that any construction during this period would be of little significance. It was noted, however, that the motion had been filed 2 months late. Commissioner Bradford wanted to know the reason for the delay in filing. Commission Kennedy pointed out that if the delay were to be brought up, the question of the stay motion would then be open to discussion in the Oral Argument Session. It was suggested that the Commissioners' opening statement could instruct the participants that some of their time could be spent on the stay question, but that that would be the only discussion of it.

The General Counsel read a draft of a proposed telephone message to be relayed to all of the parties concerning the changes in the scope of the oral argument. The Commission approved the language, and instructed the General Counsel to inform all of the interested parties before the end of the day.


John C. Hoyle, Assistant
Secretary of the Commission

(11:10 a.m.)

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555



MINUTES OF
ADJUDICATORY SESSION 77-41

9:40 a.m. Thursday, November 3, 1977 Chairman's Conference Room
D.C. Office

Commissioners

Victor Gilinsky
Richard T. Kennedy
Peter A. Bradford

Secretary of the Commission

Samuel J. Chilk

General Counsel

Jerome Nelson

Staff

P. Crane
A. Hodgdon
J. Doyle
J. Kelley
K. Mason
R. McOsker
S. Ostrach
T. Quay
G. Sege
R. Stratford
R. Tweed

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I. Discussion of Issues Associated with Oral Argument Presented on November 2, 1977, In the Matter of Public Service Company of New Hampshire, et al., (Seabrook Station, Units 1 and 2) (Docket Nos. 50-433, 50-444) (See ALAB 422 and ALAB 423, Dated July 26, 1977)

Under discussion were issues raised by the parties in Oral Argument in connection with Commission review of the Appeal Board's decisions of July 26 dealing with the proposed Seabrook facility.

The Commission, by a vote of 3-0*, denied an October 7, 1977 Motion filed by the New England Coalition on Nuclear Pollution for a stay of construction at Seabrook pending completion of the Commission's review of ALAB 422 and 423, and requested that a draft Order be prepared for individual Commissioner review.

The Commission also requested:

1. a draft Opinion be prepared reflecting individual Commissioner views expressed during the discussion. The draft Opinion should be forwarded for Commission consideration on Monday, November 14, 1977;
2. A copy of the Department of Justice's brief filed before the 1st Circuit Court of Appeals in connection with a pending suit seeking reversal of the EPA Administrator's Section 316(a) finding;
3. A section of the draft Opinion address the issue of whether EPA findings with respect to environmental impacts can be accepted under NEPA without independent evaluation by the NRC;
4. A comparison of financial data (bond ratings) for all utilities for which applications for licenses have been processed within the past year.

In taking these actions the Commission primarily was concerned with three issues: the financial qualifications of the Seabrook applicants, the use of EPA findings by the Appeal Board, and the stay motion.

With regard to financial qualifications, Commissioner Bradford indicated he was not comfortable with that issue as it now stands. He suggested that although certain positions in the Appeal Board decision seemed clearly wrong to him, the decision as a whole appeared defensible. He pointed out, however, that the financial

* Chairman Hendrie did not participate in this decision because of his prior involvement with the Seabrook proceeding as Deputy Director for Licensing and Technical Review of the Atomic Energy Commission.

picture for Seabrook had changed since the Appeal Board's decision was issued in that additional filings regarding the two companies in Connecticut which were attempting to sell their shares are being submitted. He further indicated he would prefer to review those filings prior to deciding the issue.


The Acting General Counsel noted that the Board had said, in effect, that it would review this matter in the context of the financial qualifications of new applicants if any sale took place. Commissioner Gilinsky expressed the view that the financial qualifications situation at Seabrook was little different than that applying at any other facility; in that regard, he suggested that a comparison be made of financial data for facilities for which applications have been filed in the past year to determine whether the Seabrook case was significantly different. He also indicated that it might be more appropriate to proceed with this case, but to inform the staff that financial qualifications issues in licensing proceedings need to be addressed in better ways.

On the issue of the adoption by the Appeal Board of EPA findings regarding environmental impacts of the Seabrook cooling system without independent review, Commissioner Bradford noted that he would prefer to adopt the rational approach of accepting EPA findings except that in this case EPA did not follow appropriate adjudicatory proceedings in deciding this matter. He pointed out that if NRC undertook a separate, independent review of the matter and reached a different conclusion than EPA, the Seabrook proceeding would become embroiled in an interagency dispute regarding the standards used in conducting such duplicative reviews. In the view of the Deputy General Counsel, if NEPA lends itself to adopting the EPA analysis, then it would be rational for NRC to do so. It was also noted that the Appeal Board had proceeded on that basis. It was generally agreed that the larger issue of NRC staff review of the EPA analyses under NEPA need not be addressed today, but that a portion of the draft Opinion should address the question of whether NEPA requires an independent NRC evaluation in this case. In that connection, the Office of the General Counsel indicated that it would obtain a copy of the Department of Justice brief filed with the 1st Circuit Court of Appeals in response to pending litigation on the EPA findings in this case.

The final issue addressed by the Commission was whether construction should be stayed at the Seabrook site at this time while the Commission reviews ALAB 422 and 423, and whether construction should be stayed as a result of the Commission's ultimate decision on ALAB 422 and 423. It was generally agreed that no showing had been made during Oral Argument justifying an immediate stay of construction nor had any prior filing been made requesting such a stay. The Commission agreed to deny an immediate stay.

POOR ORIGINAL ~~843 346~~
843 354

and to discuss a subsequent stay on the Commission's own motion
in the context of the Commission's final decision on ALABs 422
and 423.



Samuel J. Orlitz
Secretary of the Commission

12:15 p.m.

843 355

~~843 317~~



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

MINUTES OF ADJUDICATORY SESSION 77-44

1:40 p.m., Monday, November 14, 1977, Chairman's Conference Room
D. C. Office

Commissioners

Victor Gilinsky
Richard T. Kennedy
Peter A. Bradford

General Counsel

James L. Kelley, Deputy

Secretary of the Commission

John C. Hoyle, Assistant

Staff

P. Crane
A. Hodgdon
W. Magee
K. Mason
S. Ostrach
T. Quay
G. Sege
R. Stratford
R. Tweed

843 356

~~843 356~~

In the Matter of Public Service Company of New Hampshire, et al, Seabrook Station, Units 1 and 2 (Docket Nos. 50-443,-444)

Under discussion were matters pertaining to the Oral Argument which had been heard on November 2, 1977. At that time the Commission heard argument on four issues, addressed in ALAB-422, on which review had been granted: the applicants' financial qualifications, the effect of the EPA determinations of aquatic environmental impacts, alleged distortions of the record by the Appeal Board, and the presumptive validity of a recent supplemental initial decision of the Licensing Board concerning alternatives sites. The Commission* concerned itself primarily with aspects of the financial qualifications issue and also discussed the problem of construction taking place while a case is still in adjudication.

The Commission provided guidance to the Office of the General Counsel in preparing an initial draft opinion, requesting that there be included a provision for a remand to the Appeal Board on the narrow issue of the financial qualifications of the Connecticut utilities, which inquiry should be conducted within thirty days and during which time construction could continue. The Commission also requested inclusion of language granting the October 26, 1977 SAPL-Audubon motion to file additional material.

In providing this guidance, the Commission discussed the issue of allowing SAPL-Audubon's October 26, 1977 filing, and the other documents filed in response, to be entered into the record of the proceeding. The Deputy General Counsel recommended accepting the documents and the Commission agreed.

The Commission discussed at some length the state of the evidence in the record on the financial qualifications issue and its adequacy for a finding of "reasonable assurance" that the applicants are financially qualified. Discussed generally were the meaning of the financial qualifications implementing regulations, IRC's responsibilities under those regulations, and the relationship between financial qualifications and safety.

Commissioner Gilinsky raised the issue of the Commission's NEPA responsibilities in this regard and the question of financial ability not only to construct, but also to operate and decommission the facility. The Deputy General Counsel made the point that it was a judgment that was based, in part, on speculation. Commissioner Bradford expressed the opinion that, insofar as Public Service Company of New Hampshire was concerned, he saw no need to reopen the record, but that he had reservations about that part of the record pertaining to the Connecticut utilities (CLP and UL) which owned a twelve percent interest in the facility and were planning to sell that interest. A member of the Office of the

*Chairman Hendrie did not participate in this discussion because of his prior involvement with the Seabrook proceeding as Deputy Director for Licensing & Technical Review of the Atomic Energy Commission.

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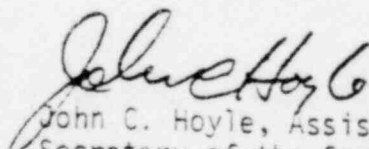
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General Counsel explained that CLP and UL were obligated by contract to continue financial support, until their interest had been sold. Commissioner Gilinsky suggested that, if the Commission was not satisfied with the record in this regard, it could ask the Appeal Board to clarify it. The Deputy General Counsel suggested doing this by remanding to the Appeal Board the one issue of the Connecticut utilities and their desire to sell their interest and the effect that might have on the overall judgment as to the applicants' financial qualifications.

Commissioners Gilinsky and Bradford raised the question of what action the Commission could take if it were found that there was a problem with the twelve percent interest. The Deputy General Counsel stated that one solution was to condition one or both of the construction permits, which might entail only Unit 1 going forward at the present time. Commissioner Kennedy raised the question of the use of common facilities by both units and the impact the permit qualification may have on the NEPA findings. The Deputy General Counsel was asked to investigate the technical and legal implications of conditioning the permits in some fashion. The Deputy General Counsel pointed out that if the Commission decided to remand this issue, then it should consider the question of a stay of construction. Commissioner Kennedy pointed out that the remand should not take long and that construction should be slow in the winter. The Deputy General Counsel suggested asking the Appeal Board to conduct its inquiry within thirty days. The Commission requested that the Deputy General Counsel include in the draft opinion the limited remand, as discussed, with a thirty-day requirement and no stay of construction.

Commissioner Bradford suggested that the draft opinion contain language to the effect that it is not normal or desirable for a case not only to be adjudicated before four forums simultaneously, but also to have construction underway at the same time. Commissioner Kennedy commented that, although the Appeal Board had addressed this issue somewhat, it would be useful to mention it in the Commission's opinion. Commissioner Gilinsky agreed.

The Commission requested that the Deputy General Counsel prepare an initial draft opinion along the lines of the discussion in time for the Commission meeting to be held on November 22, 1977. In addition, the Assistant Secretary was requested to schedule a follow-up meeting for the morning of December 5, 1977.


John C. Hoyle, Assistant
Secretary of the Commission

(3:15 p.m.)

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

OFFICE OF THE
SECRETARY

MINUTES OF
ADJUDICATORY SESSION 77-45

10:10 a.m., Tuesday, November 22, 1977, Commissioner's Conference Room
D. C. Office

Commissioners

Victor Gilinsky
Richard T. Kennedy
Peter A. Bradford

General Counsel

James L. Kelley, Deputy

Secretary of the Commission

John C. Hoyle, Assistant

Staff

M. Chopko
P. Crane
P. Goldberg
A. Hodgdon
K. Mason
S. Ostrach
T. Quay
G. Sege
R. Stratford
R. Trask
W. Travers
R. Tweed

843 359

843 351

The Commission* met to discuss the draft Seabrook Opinion transmitted by OGC memo of November 18, 1977 which addresses the issues of: the applicants' financial qualifications, the effect of the EPA determinations of aquatic environmental impacts, alleged distortions of the record by the Appeal Board, and the presumptive validity of a recent supplemental initial decision of the Licensing Board concerning alternative sites; and the OPE memo of November 21, 1977 on the effects of a delay in the construction of Seabrook Unit 2.

The Commission requested that the General Counsel revise the draft Opinion to reflect the Commissioners' discussion, and circulate the revised draft to the Commissioners by November 26, 1977. The Commission also requested OPE to identify Commission options for addressing the problems posed by substantial construction being underway while the Commission is considering issues that bear on whether the plant should be built at all.

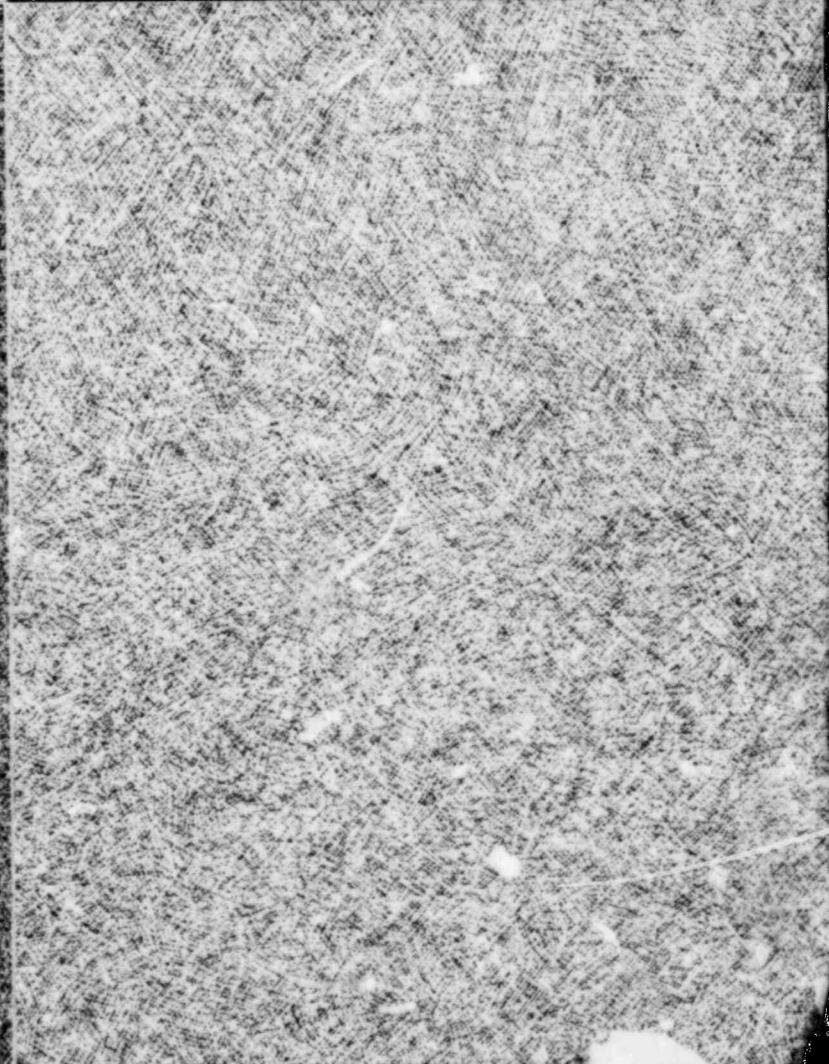
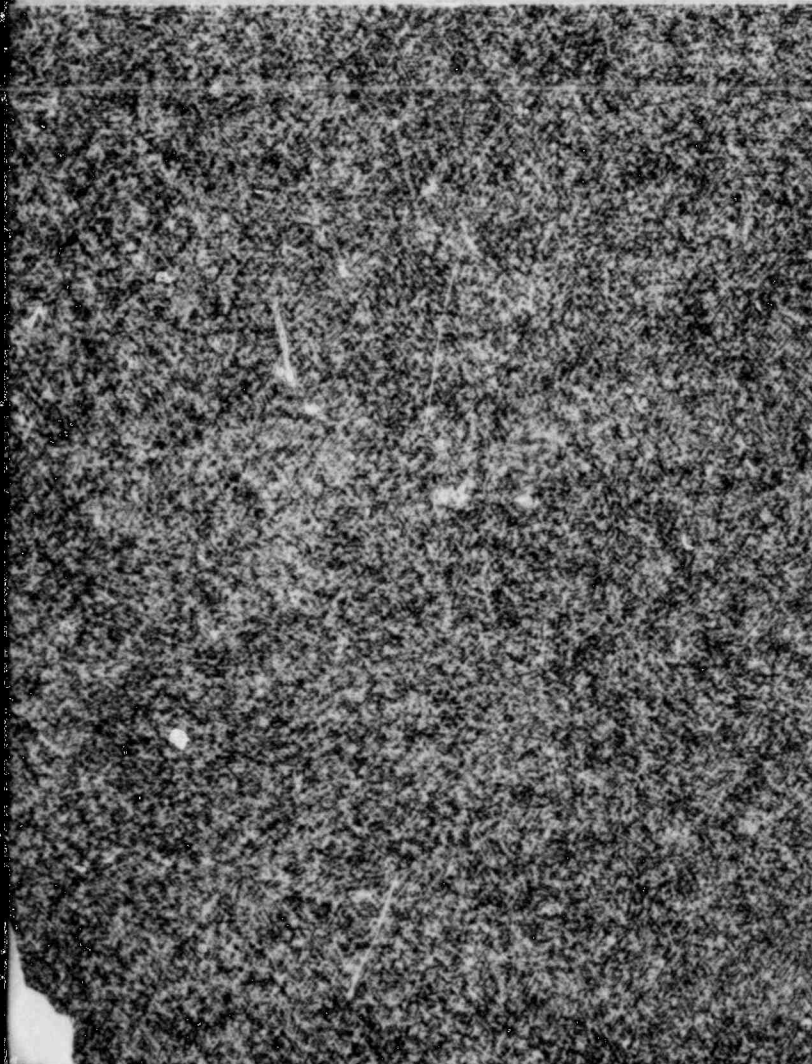
In taking this action, the Commission noted that the Seabrook matter is an unusual one, but that many potentially serious questions concerning the licensing process have come out of it. Commissioner Gilinsky pointed out that in the current licensing procedure, the issues coming before the Commission are old, and leave little for the Commission to decide. Commissioner Kennedy noted that both internal and external actions have protracted the process, and have hampered the effectiveness of Commission action.

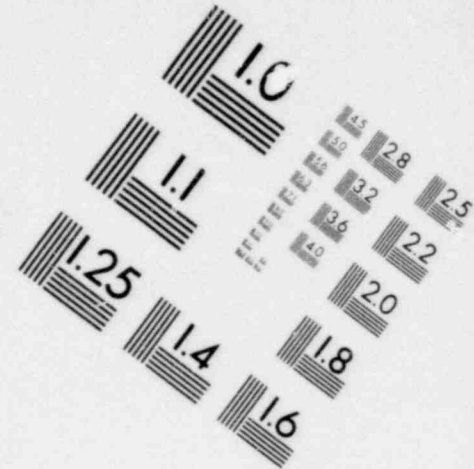
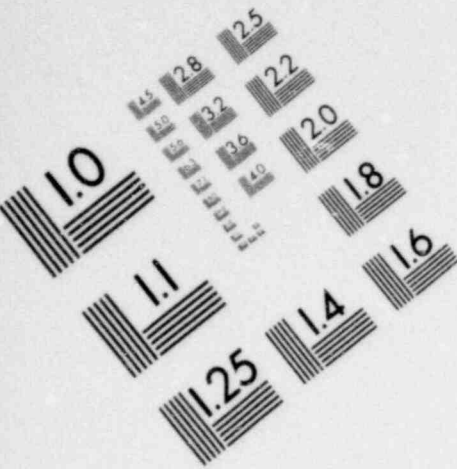
With regard to the effect of a delay in construction of Unit 2, should the Commission stay construction of that unit, it was pointed out that delay would result in approximately \$5-\$10 million being added to the final construction cost for each month of delay.

With regard to the issue of financial qualifications, the terms of the agreement between the 13 utilities to construct the Seabrook facility were reviewed, with particular attention given to the provisions for an individual utility to sell its share of the facility. It was noted that all of the participants are bound by the agreement to their percentage of the facility; however, if a participant wished to sell its share, it can only be sold to another New England utility, and the sale must be approved by Public Service Company of New Hampshire (PSCO) and United Illuminating, the two utilities which have the right of first refusal as to such sales. Commissioner Bradford noted that he was concerned about NRC's ability to make a "reasonable assurance" finding in the event that the two Connecticut utilities have difficulty selling shares of the facility totaling approximately 22 percent. Commissioner Kennedy pointed out that the Connecticut utilities have indicated that their shares could easily be sold, but that uncertainty as to whether or not the facility will be approved can only hurt the chances of sale. He also stated that the

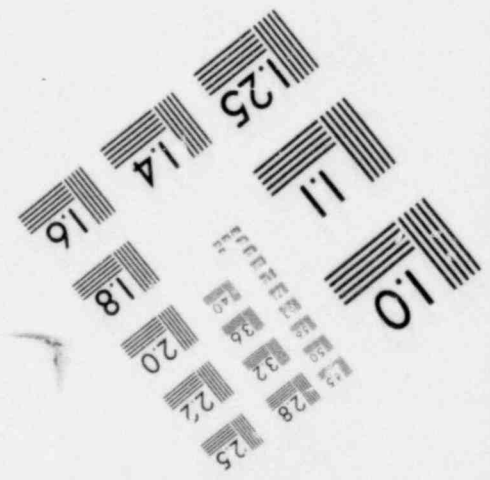
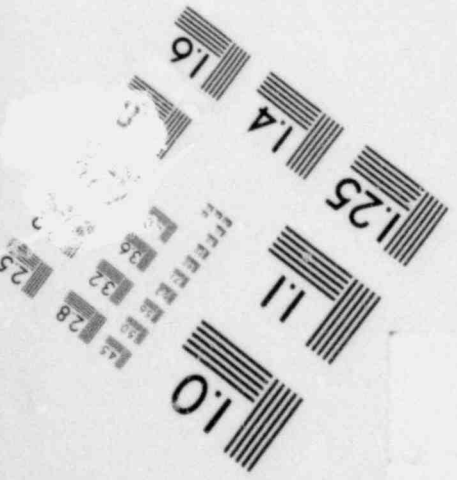
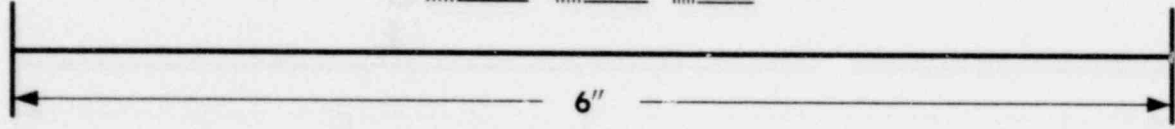
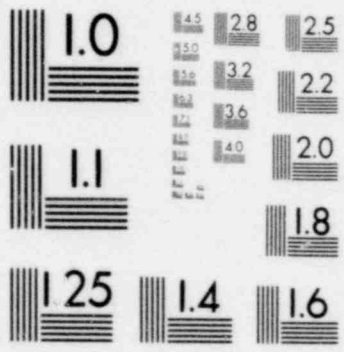
* Chairman Hendrie has disqualified himself from the Seabrook proceedings and so did not participate in this discussion.

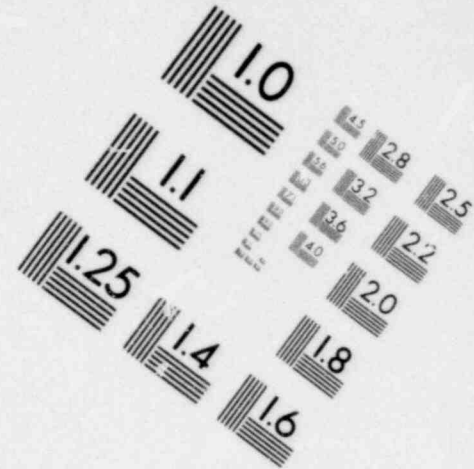
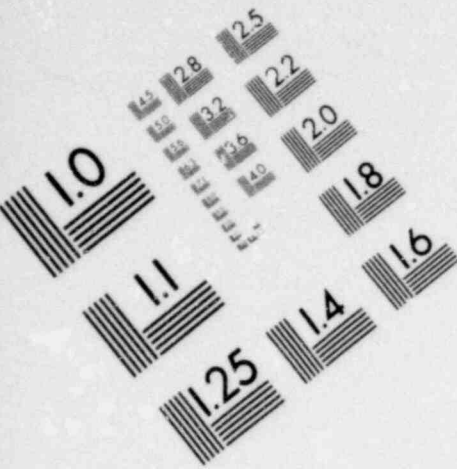
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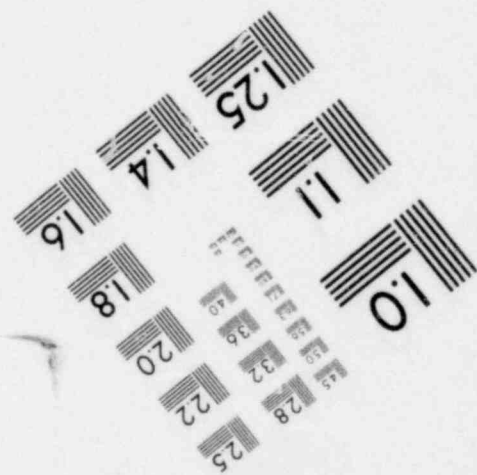
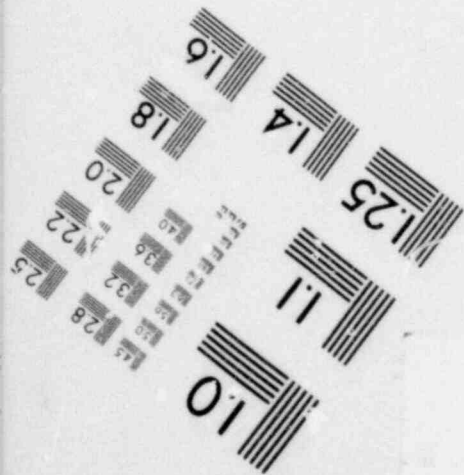
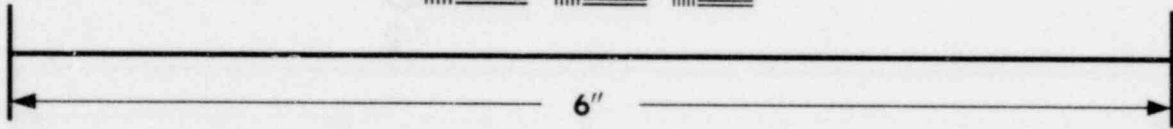
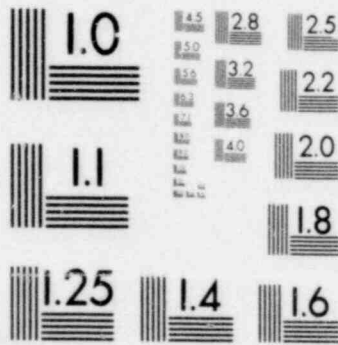


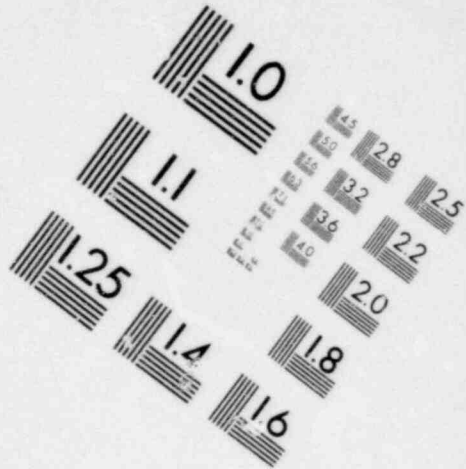
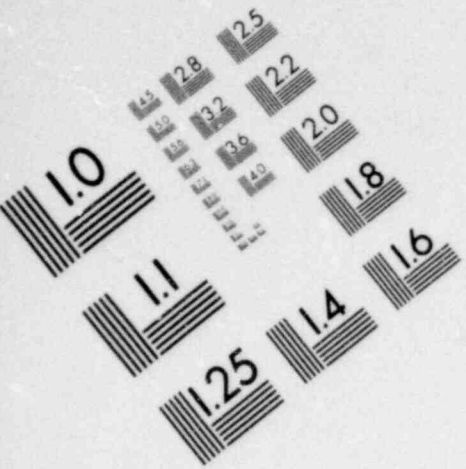
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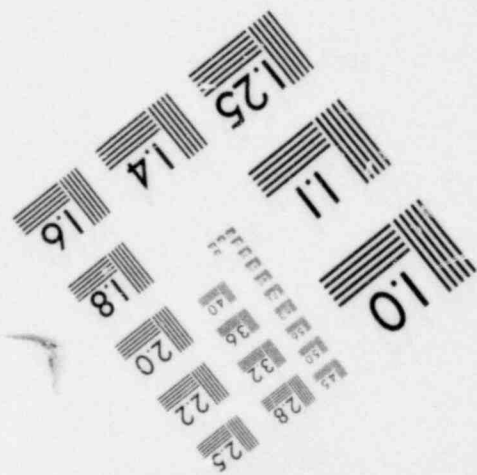
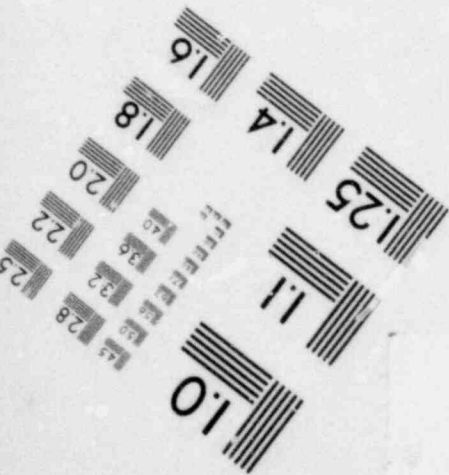
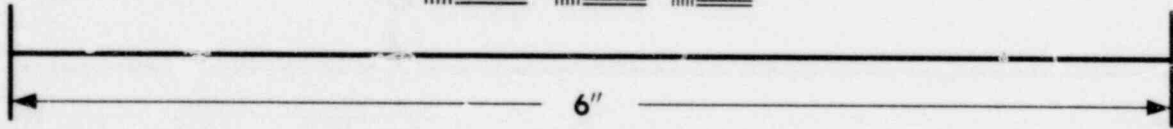
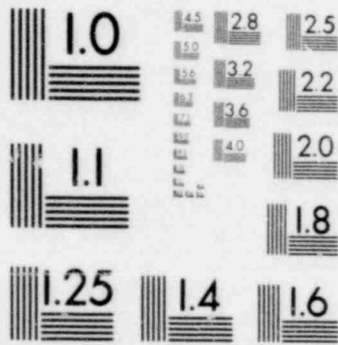


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**IMAGE EVALUATION
TEST TARGET (MT-3)**



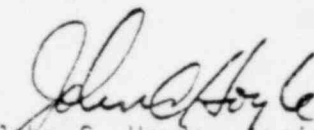
contract agreed to by the participants must be assumed valid until proven otherwise. Commissioner Gilinsky expressed the view that there was little to be gained by seeking more information from the utilities at this time, but he suggested that some form of automatic notice be provided the NRC in the event of an individual utility's failure to meet the terms of the agreement.

With regard to the effect of the EPA determinations, Commissioner Bradford noted that he had a comment he would like included, but that he had no problems with the draft's treatment of this issue. Commissioners Gilinsky and Kennedy agreed that the staff's position that NRC was not required to do a separate impact statement should be included in this section.

With regard to the alleged distortion of the record by the Appeal Board, Commissioner Kennedy noted the importance of receiving Appeal Board member Farrar's dissenting opinion on the seismic issue at a very early date.

With regard to the summary statement at the conclusion of the draft opinion, Commissioner Kennedy noted that the issues raised went beyond Seabrook, and that these matters should be addressed separately, so as to allow the Chairman's involvement. Commissioner Gilinsky agreed that separate consideration of generic issues would be proper but pointed out that it would be proper to comment on the licensing process in this forum, in order to place on the public record what the process really entails, and a review of the events of this matter. Commissioner Kennedy, while believing that generic problems in the licensing process should not be discussed in the Seabrook Opinion, agreed that a review of the events of the Seabrook matter was merited. Commissioner Gilinsky also believed that some expansion upon the overall problems the Commission has faced in making its decision should be in this review section.

The Commission then requested OPE to identify options the Commission has in addressing problems posed by substantial construction being underway at the same time that the Commission considers issues bearing upon whether the facility should be built at all.


John C. Hoyle, Assistant
Secretary of the Commission

(11:50 a.m.)

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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MINUTES OF

ADJUDICATORY SESSION 77-48

2:40 p.m., Tuesday, December 6, 1977, Commissioners' Conference Room
D.C. Office

Commissioners

Victor Gilinsky
Richard T. Kennedy
Peter A. Bradford

General Counsel

James L. Kelly, Deputy
General Counsel

Staff

P. Crane
A. Hodgdon
R. McOsker
S. Ostrach
T. Quay
G. Sege.
R. Stratford
R. Tweed

844 002

~~843 354~~

Discussion of Draft Seabrook Opinion (In the Matter of Public Service Company of New Hampshire, et al (Seabrook Station Units 1 & 2) (Docket Nos. 50-443 and -444

The Commission* met with the Deputy General Counsel and members of the Office of Policy Evaluation to discuss the revised draft Seabrook Opinion.

The Commission discussed the draft, and requested that the Office of the General Counsel revise the draft along the lines of the Commission's suggestions.

In taking this action, the Commission concerned itself with the financial qualifications of the applicant, especially in light of the situation of the Connecticut utilities, and the need for revisions in the section dealing with the present structure of the licensing system.

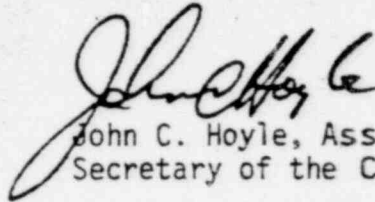
With respect to the financial qualifications question, Commissioner Gilinsky pointed out that the Commission had four options before it: 1) a stay of the construction permit; 2) a provision for remand included in the decision; 3) conditions concerning financial qualifications in the decision; and 4) a notation of the Commission's concern included in the decision. The Commission then focused on the options of remand, conditions or notation. Commissioner Bradford pointed out that although the financial qualifications rule may not have originally been intended for a matter such as the Seabrook matter, the financial information presently available was of concern to him, and that a measure such as a remand provision or financial conditions should be placed in any Opinion recommending continuation of the project. Commissioner Gilinsky noted that a link between safety and the financial condition of the applicant has not been made, and that if the financial problems of the applicant became serious, construction would be halted at that point. Commissioner Bradford suggested that the applicant report to the Commission any pertinent financial developments, and what the remaining utilities in the group would do if the Connecticut utilities are forced to withdraw their support of the project. Commissioners Gilinsky and Kennedy suggested that the staff keep track of these happenings. Commissioner Bradford then suggested some language that would require the applicant to keep the staff informed of any actions taken by the Connecticut Public Service Commission with regard to the two Connecticut utilities' participation in the Seabrook project. Commissioners Gilinsky and Kennedy approved the placing of this language, or some other form of it, into the Opinion text.

*Chairman Hendrie did not participate in this discussion.

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With regard to the section dealing with the licensing system, Commissioner Gilinsky asked that it point out the Commission's intention to fully consider this area with the Chairman, and that the study of the present licensing system be done expeditiously.



John C. Hoyle, Assistant
Secretary of the Commission

4:10 p.m.

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

OFFICE OF THE
SECRETARY

MINUTES OF

ADJUDICATORY SESSION 77-50

2:15 p.m., Wednesday, December 14, 1977, Chairman's Conference Room
D. C. Office

Commissioner

Victor Gilinsky
Richard T. Kennedy
Peter A. Bradford

General Counsel

James L. Kelly, Deputy

Secretary of the Commission

Samuel J. Milk

Staff

P. Crane
A. Hodgdon
W. Magee
K. Mason
S. Ostrach
T. Quay
G. Sege
J. Stephens
W. Travers
R. Tweed

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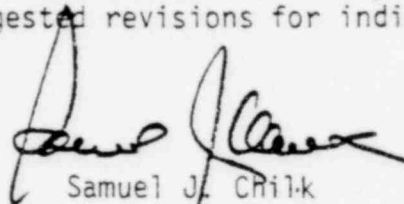
IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, ET. AL.
(SEABROOK STATION, UNITS 1 AND 2), DOCKET NOS. 50-443, -444.

The Commission* met with the Deputy General Counsel and discussed the Revised Seabrook Opinion circulated by Acting General Counsel's memo of December 12, 1977.

The Commission requested that the Office of the General Counsel further revise the Opinion to reflect the discussion and circulate those revised sections to the individual Commissioners.

In taking this action, the Commission made many editorial changes to the Opinion before them.

Commissioner Kennedy indicated that he preferred the inclusion of a paragraph pointing out licensing process problems the full Commission should address, rather than an entire section devoted to the deficiencies of the process in the Seabrook case. Commissioner Gilinsky asked that each Commissioner circulate his suggested revisions for individual Commissioner consideration.



Samuel J. Chilk
Secretary of the Commission

(4:00 p.m.)

* Chairman Hendire did not participate in this discussion.

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2 ✓
UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

MINUTES OF
ADJUDICATORY SESSION 77-52

9:40 a.m. & 4:05 p.m., Monday, December 19, 1977, Chairman's Conference Room

D.C. Office

Commissioners

Victor Gilinsky
Richard T. Kennedy
Peter A. Bradford

General Counsel

James L. Kelley, Deputy

Secretary of the Commission

Samuel J. Chilk

Staff

P. Crane
A. Hodgdon
R. McOsker
S. Ostrach
T. Quay
G. Sege
J. Stephens

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Discussion of Draft Seabrook Opinion (In the Matter of Public Service Company of New Hampshire, et al) (Seabrook Station, Units 1 & 2) (Docket Nos 50-443 and 50-444)

Under discussion was a revised text of the Seabrook Opinion, dated December 12, 1977, as modified to reflect Commissioner comments at the December 7, 1977 meeting on this matter, Commissioner Gilinsky's December 16, 1977 memorandum concerning an insert to page 4 of the Opinion, Commissioner Bradford's December 16, 1977 comments on the text, and Commissioner Kennedy's December 15, 1977 memorandum.

The Commission, by a vote of 3-0*, approved, as revised, the text of a proposed memorandum and order, subject to recirculation of the revised text to individual Commissioners. This action was taken subject to resolution of the issue of whether language directing the staff to undertake a study designed to develop a process by which the Commission could monitor proceedings in its lower boards to ensure Commission-level involvement, where necessary, at an earlier stage of the licensing process should be incorporated in the Text of the Seabrook Opinion or handled as a separate directive to the staff.

The Commission took this action after conducting a detailed review of the text to ensure that individual Commissioner views previously expressed had been incorporated into the Order and to make a series of additional changes throughout the Opinion. In the course of this review, Commission discussion was focused primarily on those sections of the Opinion dealing with alleged Appeal Board distortions of the Record, financial qualifications on the Record of this case, the effect of EPA determinations of aquatic impacts, and the generic problem of developing a process to monitor more effectively the proceedings of the Commission's lower boards.

With regard to the New England Coalition on Nuclear Pollution's contention that the Appeal Board had distorted the meaning of certain NECNP testimony, Commissioners Gilinsky and Kennedy expressed agreement with the conclusion drawn on page 42 of the text of the draft Opinion that NECNP, in responding to the Commission's Order of September 15, 1977, had failed to provide specific instances, with possible exception of seismic issue, to support its claim of distortions of the Record. Commissioner Bradford observed that while NECNP had only provided specific citations of distortion with regard to the seismic issue, they had cited the entire testimony of their witnesses and had indicated that analysis had shown that the Board had been more rigorous with the intervenors than with the Applicant.

* Chairman Hendrie did not participate in the discussion or decision on this matter.

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Commissioner Bradford further indicated that although the Commission's September 15 Order had requested "specific instances" of distortion, NECNP, by citing their testimony, may have believed they were complying with the September 15 Order. He suggested that the present Order should be revised to indicate that NECNP had failed to provide specific explanations of how the Record was allegedly distorted. Commissioner Kennedy suggested that the draft Opinion be revised on page 42 to quote directly that portion of the September 15 Order inviting NECNP's comments, and include on page 43 of the draft Opinion the phrase "as contemplated in our Order" to clarify the basis for the Commission's conclusion. Commissioners Gilinsky and Bradford agreed, subject to recirculation of the revised text for individual Commissioner review.

Referring to discussion on page 23 of the draft Opinion concerning financial qualifications and the "reasonable assurance" doctrine (10 CFR 50.33), Commissioner Bradford suggested the need for further explanation of the Commission's position that "reasonable assurance meant that the applicant must have a reasonable financial plan ..." since that statement implied that the Commission had relied at least in part on the applicant's financial plan in its review of the Appeal Board's July 26, 1977 decision in Seabrook (ALAB-422). Commissioner Kennedy commented that the Commission had not reviewed the Applicant's financial plan, but rather had relied on the judgments of the Licensing and Appeal Boards. The Deputy General Counsel noted that in fact, as the text was currently written, the Commission was expressing a judgment concerning the Applicant's financial plan, but he added that the staff had reviewed that plan in detail as part of the overall licensing review. It then was agreed that the General Counsel's Office would draft an additional sentence to clarify this matter for insertion at the end of the first full paragraph on page 23 of the draft Opinion.

In connection with NECNP's contention that the Appeal Board's acceptance of EPA's determination of the magnitude of aquatic impacts from Seabrook's once-through cooling system, was in conflict with the spirit of the Calvert Cliff's decision, the Commission discussed a proposed addition to footnote 39 on page 40 of the draft Opinion. The added paragraph would emphasize the extensive nature of EPA's proceedings on this matter, the specific facts in this case which underlay the Commission's decision, and that, in future cases of this type where EPA findings were rendered after proceedings with adequate procedural protections, the Commission would expect NRC's adjudicatory boards to accept such determinations. Commissioner Bradford indicated that he had no objection to such reliance on EPA determinations since EPA was the most competent authority on such matters; he suggested however, that language should be included in the footnote to the effect that NRC would accept such determinations that were based on full administrative proceedings since the adequacy of EPA's proceedings in this case currently were the subject of a pending lawsuit. Commissioner Kennedy expressed reservations that such an approach might lead to an eventual duplicative NRC review and he indicated he would reserve judgment pending recirculation of the revised text of the draft Opinion.

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The Commission then addressed the generic issue of whether language directing the staff to undertake a study to develop a process by which the Commission could monitor proceedings in its lower boards to ensure Commission - level involvement, where necessary, at an earlier stage of the licensing process should be included in the text of the Seabrook Opinion. Commissioner Kennedy indicated he preferred alternative language which would specify only that the Commission will look into this matter. He pointed out that this issue transcended the Seabrook proceeding and should be addressed in the presence of the Chairman who had disqualified himself from considering the Seabrook Opinion. Commissioner Gilinsky commented that the purpose of the present version, in his view, was only to initiate the study, which then could be later addressed as a generic matter outside the scope of any on-going proceeding. Commissioner Gilinsky also indicated that while he agreed the issue was generic in nature, he also felt that it reflected the Commission's experience in Seabrook and could be seen as logically flowing from this case.

Because of time constraints, it was agreed that the Commission should reconvene at 4:00 p.m. to further consider the generic issue.
(adjourned - 11:00 a.m.)

(Reconvened - 4:05 p.m.)

Commissioner Kennedy reiterated his opposition to inclusion in the text of the Opinion language directing the staff to undertake the generic study on the grounds that the Seabrook issues before the Commission did not require that this matter be addressed and that the Chairman should be present to participate in the determination to commence such a study. He further indicated that he had reservations concerning the ultimate direction the study might take, and as a result, the Commission would be implying further disturbances to the licensing process which would have an unsettling effect on licensees and the public and which could not be explained by the Commission. Commissioner Kennedy also commented that if the present language were retained in the text, he would feel compelled to add a footnote indicating his disagreement. In lieu of incorporating a directive to the staff in the text, he offered substitute language which would, in effect indicate the Commission's intent to recommend a course of action on this matter outside the context of the Seabrook proceeding.

Commissioner Gilinsky commented that all parties seemed to recognize the need for Commission action and that incorporation of directive language to the staff in the Seabrook Opinion would serve to initiate the process at an early date without prejudicing the full Commission's ability to consider alternative courses of action at a later date.

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It was suggested that a separate draft memorandum to the staff directing initiation of the study be prepared and circulated to the Commissioners as an alternative to incorporating directive language in the text of the Opinion. If accepted by the Commission, the memorandum could be issued either concurrently with the Seabrook Opinion or held for issuance at a later date. Commissioner Bradford indicated that at the same time, he would attempt to revise the current directive language in the text of the Opinion to reflect a more limited Commission objective than a full study of the problem. The Commission agreed to consider both alternatives, and voted to adopt the Opinion, subject to resolution of this matter.

4:55 p.m.



Samuel J. Chirk
Secretary of the Commission

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