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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

PUBLIC MEETING
AFFIRMATION SESSION 80-31

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

Thursday, June 26, 1980

The Commission met, pursuant to notice, at 10:37 a.m.

BEFORE:

- JOHN F. AHEARNE, Chairman of the Commission
- RICHARD T. KENNEDY, Commissioner
- VICTOR GILINSKY, Commissioner
- JOSEPH HENDRIE, Commissioner
- PETER A. BRADFORD, Commissioner

NRC STAFF PRESENT:

- LEONARD BICKWIT
- SAMUEL J. CHILK

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CHAIRMAN AHEARNE: Sam.

MR. CHILK: The first item is 80-153, which is advanced notice of proposed rulemaking on reactor siting. It concerns a Federal Register notice and the requirements memo which were circulated to Commissioners. The Chairman and Commissioners Kennedy and Hendrie have approved the version of the requirements memo and the FRN, while Commissioner Gilinsky and Bradford approved the original paper. They have not commented on the latest version of the requirements memo and it's my understanding that they --

CHAIRMAN AHEARNE: Would you stop at this? Sam, why don't you start again?

MR. CHILK: The first item is 80-153, which the advanced notice of proposed rulemaking on reactor siting. It deals with a staff requirement memo and a Federal Register notice. The Chairman and Commissioners Kennedy and Hendrie have approved both items. Commissioners Gilinsky and Bradford, although they approved the original paper, 80-153, they have not commented on the latest version and the version that is being presented for affirmation. It was my understanding that both offices would like a short discussion of the matter if it were to be affirmed today.

COMMISSIONER BRADFORD: I've been working on another this morning. I'm not even prepared for discussion. Why



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1 don't you just go ahead and affirm. I won't participate.
2 I'm not ready.

3 MR. CHILK: You will not participate? Commissioner
4 Gilinsky, would you express your view?

5 COMMISSIONER GILINSKY: There were two items in that
6 paper.

7 CHAIRMAN AHEARNE: Advance notice and requirements
8 memo

9 COMMISSIONER GILINSKY: I was going to say there
10 were two items in the paper altogether that I took -- at least
11 one I took issue with. And I believe there is a statement
12 to that effect attached to the --

13 COMMISSIONER BRADFORD: I am assuming that that
14 statement is in there. It was the other part that I'm not
15 prepared to discuss.

16 COMMISSIONER HENDRIE: It's in the body.

17 COMMISSIONER GILINSKY: And the other one. I haven't
18 felt my way through the proposal and what I would support is
19 the original -- I guess it was item j. And if there's any
20 question about how it interacts with the authorization bill,
21 I would simply say throw in the words consistent with the
22 law or the bill. Or soon to be law. That would be my
23 proposal. In effect, still sending out for comment on the
24 point.

25 COMMISSIONER KENNEDY: I could not understand you.



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1 COMMISSIONER GILINSKY: The original -- if I recall
2 correctly -- the original paper dealt with the issue of the
3 implication of the new rules to reactors at existing sites
4 by proposing that the public comment on how the agency might
5 deal with this problem. I would stick with that proposal
6 not necessarily because I disagree with the proposal that
7 John made, but because I'm not sure that I fully understand
8 it. I feel a little more comfortable at this point in going
9 on for comment.

10 COMMISSIONER HENDRIE: Here's my understanding with
11 regard to other elements of the advance notice that these
12 do. I was not aware of any substantive difference among
13 us.

14 COMMISSIONER GILINSKY: On the others?

15 COMMISSIONER HENDRIE: On the rest of it.

16 MR. CHILK: I have three votes for the proposition
17 as outlined. Would the Commission affirm their votes.

18 (A chorus of ayes.)

19 COMMISSIONER GILINSKY: I'd affirming my comment.

20 MR. CHILK: And Commissioner Bradford not partici-
21 pating.

22 The second item, at least as shown on the schedule,
23 is 80-56, which is an anti-trust determination of significant
24 changes, in which the Commission majority, consisting of the
25 Chairman, Commissioners Kennedy, Hendrie and Bradford have

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1 approved a memorandum and order that was circulated to you
2 on the 25th. We do not have a vote from Commissioner Gilinsky.

3 COMMISSIONER GILINSKY: I'm going to abstain from
4 that one.

5 MR. CHILK: He's abstaining from that.

6 Commissioner Bradford, although he has approved it,
7 did note that he preferred a change on a paragraph on page
8 15. Would you please affirm your votes on that?

9 (A chorus of ayes)

10 MR. CHILK: The third item if 80-223 -- promulga-
11 tion of amendments generally extended the time for Commission
12 action in which the majority of the Commission has approved
13 the final rule. Commissioners Gilinsky and Bradford, although
14 they concurred in the rule as it is being presented and circulated
15 on the 25th, would have preferred to have adopted the staff
16 recommendation which was somewhat broader. Would you please
17 affirm your votes?

18 (A chorus of ayes.)

19 MR. CHILK: The fourth item deals with A-80-82,
20 with respect to amending the rules of general applicability
21 for the conduct of adjudicatory proceedings in 10 CFR, part
22 2. The Commission approves this by a vote of three to two,
23 with the Chairman, Commissioner Kennedy and Hendrie approving,
24 Commissioner Bradford and Commissioner Gilinsky dissent.

25 COMMISSIONER GILINSKY: This is the Erwin facilities?



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1 MR. CHILK: This is one of the two Erwin matters.

2 COMMISSIONER GILINSKY: Mr. Bickwit?

3 MR. BICKWIT: To exempt from subpart G of part 2
4 those adjudications relating to military and foreign affairs
5 functions.

6 COMMISSIONER GILINSKY: This is a general exemption
7 or specific?

8 MR. BICKWIT: It is a general exemption.

9 COMMISSIONER GILINSKY: And it is being put into
10 effect immediately?

11 MR. BICKWIT: It is being put into effect immediately.

12 COMMISSIONER GILINSKY: Without notice or comment?

13 MR. BICKWIT: That is right.

14 COMMISSIONER GILINSKY: I have three paragraphs I
15 would like to attach to my no.

16 MR. CHILK: I understood you were writing a dissent.
17 And I understand Commissioner Bradford is also dissenting.

18 COMMISSIONER BRADFORD: Yes. I assume the dissents
19 will be attached.

20 MR. CHILK: The dissents will be attached.

21 CHAIRMAN AHEARNE: Mr. Bickwit, may I ask you a
22 legal judgment since I've read at least one of the dissents.
23 Is this a legal action you're taking?

24 MR. BICKWIT: Yes. I believe they are --

25 COMMISSIONER KENNEDY: Do you think it's an honest



1 action?

2 COMMISSIONER BRADFORD: I don't.

3 COMMISSIONER KENNEDY: I'm just asking if counsel
4 thinks it is.

5 COMMISSIONER GILINSKY: An honest?

6 COMMISSIONER KENNEDY: Well, it says here the
7 decisions are both dishonest and disgraceful. Dishonest and
8 disgraceful. Disgraceful I will accept, but dishonest up-
9 sets me.

10 COMMISSIONER BRADFORD: I will change dishonest to
11 dishonorable.

12 COMMISSIONER KENNEDY: That's slightly different.
13 It's more in the line of disgraceful. It's a value judgment.
14 Now it is not an assertion of conduct, which might even be
15 libelous. But that is up to you.

16 COMMISSIONER BRADFORD: The current draft reads
17 dishonorable.

18 COMMISSIONER KENNEDY: In my view that will make a
19 vast improvement in the general tenor of the comment and
20 relieve me of the question of whether it is libelous.

21 MR. BICKWIT. I'm glad you thought to relieve me
22 of that.

23 COMMISSIONER KENNEDY: I thought you would feel
24 better if I didn't ask it of you.

25 MR. CHILK: We have a majority Commission approving

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1 the immediately effective rule with two dissents. Will you
2 please affirm your votes?

3 (Three eyes)

4 MR. CHILK: The last item also deals with Erwin.
5 It is A-80-41a, in which a majority of the Commission approves
6 a memorandum, and order and notice of hearing with respect
7 to Erwin. Again, the majority, consisting of the Chairman,
8 Commissioners Kennedy and Hendrie. Commissioners Gilinsky
9 and Bradford both dissenting.

10 Would you affirm your votes on that?

11 CHAIRMAN AHEARNE: I would like to ask General
12 Counsel the same question. Is this a legal action?

13 MR. BICKWIT: I do believe it is. Yes.

14 COMMISSIONER BRADFORD: Let me just ask you if it's
15 inconsistent -- not this one -- with the advice that your
16 office has rendered? Did you say that the Commission should
17 proceed in this way?

18 MR. BICKWIT: We have said that we believe that --

19 COMMISSIONER BRADFORD: Never mind. I will not put
20 you in this position. I will just make the papers public.

21 CHAIRMAN AHEARNE: Fine.

22 MR. CHILK: I have a majority of votes approving
23 the amendment.

24 COMMISSIONER KENNEDY: Well, if we're going to make
25 three decisional matters public, I have a large file of

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1 interesting papers which I thought I might like to make public
2 too. Since we seem to have no rules any more, I guess it
3 doesn't matter. Is that correct, Mr. Chairman?

4 CHAIRMAN AHEARNE: I think our rules would apply,
5 but individual Commissioners have already had a certain amount
6 of --

7 COMMISSIONER KENNEDY: Flexibility to flagrantly
8 ignore them?

9 CHAIRMAN AHEARNE: I wouldn't say that. I would
10 say they have their own responsibilities.

11 COMMISSIONER KENNEDY: Is it only a matter of one's
12 view, how to proceed.

13 MR. CHILK: We have a majority of the Commission
14 approving a memorandum, an order and a notice of hearing.
15 On the matter could I ask you to affirm your votes, please?

16 (Three ayes.)

17 (Thereupon, at 10:49 a.m., the hearing was adjourned.)



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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

in the matter of: Public Meeting - Affirmation Session 80-31

Date of Proceeding: 26 June 1980

Docket Number: _____

Place of Proceeding: Washington, D. C.

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

Alfred H. Ward

Official Reporter (Typed)

Alfred H. Ward

Official Reporter (Signature)

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