

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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Public Meeting

AFFIRMATION SESSION 80-54 -- SECY-80-448
PROPOSED NARRATIVE EXPLANATION OF TABLE S-3;
SECY-A-80-168, RULEMAKING IN 10 CFR PART 2;
SECY-80-482, PROPOSED RULEMAKING FROM PUBLIC
CITIZEN LITIGATION GROUP ON REQUIRED LEVELS
OF FINANCIAL PROTECTION; AND DISCUSSION AND
VOTE OF AFFIRMATION ITEMS

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Nuclear Regulatory Commission,
Commissioners' Conference Room,
1717 H Street, Northwest,
Washington, D.C.

Thursday, 11 December 1980.

The meeting was convened, pursuant to notice, at

3:04 p.m.

BEFORE:

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

ALSO PRESENT:

Samuel J. Chilk, and Leonard Bickwit.

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DISCLAIMER

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The transcript is intended solely for general informational purposes. As provided by 10 CFR 9.103, it is not part of the formal or informal record of decision of the matters discussed. Expressions of opinion in this transcript do not necessarily reflect final determinations or beliefs. No pleading or other paper may be filed with the Commission in any proceeding as the result of or addressed to any statement or argument contained herein, except as the Commission may authorize.

P R O C E E D I N G S

(3:04 p.m.)

CHAIRMAN AHEARNE: The Commission returns to its session. We are going to work through some affirmation items. The first one is one on which Commissioner Gilinsky had abstained, so consequently I feel that we can go ahead and discuss that particular one.

MR. CHILK: The first one is SECY-80-448, Proposed Narrative Explanation of Table S-3. The Commission, with the Chairman and Commissioner Hendrie approving, and Commissioner Bradford approving, except as noted in his separate views; and Commissioner Gilinsky abstaining.

As approved, the Explanatory Narrative for S-3 and a proposed rule announcing the publication of the draft Narrative, with a modification that we circulated to you this morning.

Mr. Bradford will provide his separate views, which will be available three days before the deadline for publication.

COMMISSIONER BRADFORD: And I hope well before that.

MR. CHILK: Hopefully, well before that.

Would you please affirm your votes?

COMMISSIONER BRADFORD: Aye.

CHAIRMAN AHEARNE: Aye.

COMMISSIONER HENDRIE: Aye.

1 MR. CHILK: We will now need Commissioner Gilinsky.

2 CHAIRMAN AHEARNE: Well, we will sit in recess.

3 (Recess.)

4 CHAIRMAN AHEARNE: All right, we will go back in
5 session.

6 We have two items to cover before we go into
7 something we may need a closed meeting on. Can I get an
8 estimate of when my colleagues have to leave, so I will know
9 when --

10 COMMISSIONER GILINSKY: Well, we're just affirming,
11 aren't we? How long is that going to take?

12 CHAIRMAN AHEARNE: Well, there are two potential
13 discussions.

14 COMMISSIONER GILINSKY: Well, we've got these things
15 listed. Let's go on and do them.

16 CHAIRMAN AHEARNE: Okay.

17 COMMISSIONER GILINSKY: And if it takes too long,
18 we'll leave.

19 (Laughter.)

20 CHAIRMAN AHEARNE: Let's get an estimate of when you
21 might have to leave?

22 MR. CHILK: He can't do that, because the last
23 one --

24 COMMISSIONER BRADFORD: I don't have any need to
25 leave.

1 MR. CHILK: SECY-80-168, which is the Rulemaking
2 to incorporate in 10 CFR Part 2 APA's Military and Foreign
3 Affairs Exemption to Adjudications.

4 Mr. Chairman, and Commissioner Gilinsky, and
5 Commissioner Hendrie have approved the proposed rule change.
6 Commissioner Bradford has disagreed with it, and has sent out
7 a proposal which he has asked the Commissioners to address.

8 The Chairman and Commissioner Hendrie have replied
9 to that, disagreeing. Commissioner Gilinsky has not.

10 Do you stick with your original vote in the matter
11 to approve the proposed rule change?

12 COMMISSIONER BRADFORD: Now wait a minute, Sam.

13 (Laughter.)

14 COMMISSIONER BRADFORD: Could you state it more
15 neutrally than that?

16 (Laughter.)

17 MR. CHILK: We'll be able to move this along --

18 COMMISSIONER GILINSKY: This is on the question --

19 COMMISSIONER BRADFORD: It will push the Commission
20 into error, again.

21 (Laughter.)

22 CHAIRMAN AHEARNE: Commissioner Gilinsky would like
23 to ask a question.

24 COMMISSIONER GILINSKY: This is on the question of
25 whether we ask for comment on the application of the rule to

1 to the Erwin case?

2 CHAIRMAN AHEARNE: Right. That's correct.

3 COMMISSIONER GILINSKY: I guess I'll go along with
4 that, unless Peter has some comments that he'd like to make.

5 COMMISSIONER BRADFORD: Well, I would have said --

6 COMMISSIONER GILINSKY: You might sway me.

7 COMMISSIONER BRADFORD: I would have said that
8 those of us who favored an adjudicatory hearing on the last
9 go-round would not need comment as to what the outcome ought
10 to be, even in the event that the Commission adopted a
11 military and foreign affairs exception.

12 In fact, my own position is based upon the fact that
13 I prefer the adjudicatory hearing in any case, and therefore,
14 while I'm willing to have the Commission adopt a military and
15 foreign affairs exception, I just don't see any reason to
16 tangle that up in the Erwin case.

17 COMMISSIONER GILINSKY: Well, I guess that is
18 logically right, but I don't really see an objection to having
19 people comment on it.

20 MR. CHILK: Well, then, I would ask the Commission
21 to affirm their votes by 3 to 1 to approve the rule.

22 CHAIRMAN AHEARNE: Aye.

23 COMMISSIONER HENDRIE: Aye.

24 COMMISSIONER GILINSKY: Aye.

25 COMMISSIONER BRADFORD: I am going to want to just

1 stick a note in there saying what my views were, so don't
2 publish it until I have put in a sentence.

3 CHAIRMAN AHEARNE: Well, I assume that that means
4 you will do that reasonably soon?

5 COMMISSIONER BRADFORD: Yes.

6 CHAIRMAN AHEARNE: Okay, Sam?

7 MR. CHILK: 80-482, which is the Petition for
8 Rulemaking from the Public Citizen Litigation Group on the
9 Required Levels of Financial Protection.

10 You will recall at the last meeting that the
11 Chairman and Commissioner Hendrie had approved the staff
12 recommendation to deny the petition. Commissioner Gilinsky
13 then proposed a -- sent a memorandum suggesting exploration by
14 the Chairman of the willingness of insurers to increase the
15 liability coverage. Commissioner Hendrie had no objection to
16 this. The Chairman transmitted his own memorandum recommending
17 the Commission deny the petition, and asking that OGC and the
18 staff to do certain work, and suggesting that Commissioner
19 Gilinsky's separate views be attached. Commissioner Bradford
20 has preferred a rulemaking from the beginning.

21 CHAIRMAN AHEARNE: Sam, let me expand a minute.

22 I am still pretty unclear exactly on when I -- if
23 I or the new Chairman would go to the insurers, the framework
24 in which that approach would be made. So what I have asked
25 is that -- what I would like is the General Counsel to look

1 at our areas of responsibility, and for the staff to see if
2 they can't develop some linkage to the health and safety.

3 COMMISSIONER GILINSKY: That seems to me pretty
4 simple. I mean, there is something to be said for increasing
5 the amount of insurance, as public servants, in getting the
6 government out of the insurance business. I don't think there
7 is anything very mysterious about this, or anything that we're
8 going to discover by doing any study.

9 Now I think that if we decide to go forward, you
10 will want to consult with them to see how you want to go about
11 doing that, or in fact who it is you deal with, and I suppose
12 the context would be lunch or dinner.

13 (Laughter.)

14 CHAIRMAN AHEARNE: Perhaps we can delegate that to
15 a --

16 (Laughter.)

17 MR. CHILK: Is that a policy matter?

18 (Laughter.)

19 COMMISSIONER GILINSKY: It seems to me, I think
20 actually that if we were to approach them -- well, the problem
21 with rulemaking is that the maximum amount of insurance you
22 get is what they're willing to give, to provide, so it is
23 awkward without knowing what that is to fix it in a rule and
24 say you're not going to let the reactors operate unless that
25 amount is available.

1 On the other hand, I think that if we would approach
2 them, they might well increase that amount, because my impres-
3 sion is that it's pretty much an arbitrary number. So I --

4 CHAIRMAN AHEARNE: You see this more as a jawboning
5 than a --

6 COMMISSIONER GILINSKY: Yes.

7 CHAIRMAN AHEARNE: -- regulatory requirement.

8 COMMISSIONER GILINSKY: Yes. Yes. On the other
9 hand, I think it could produce a useful result. So I commend
10 it to you. I think we ought to do it, and I think we oughtn't
11 to just step back and say: Well, you know, it's not clear
12 what the connection with our responsibilities are. You know,
13 we could sidestep it; but on the other hand, there is an
14 opportunity to make some improvements in the insurance
15 coverage. And if we can persuade the insurers to provide more
16 insurance, I think we will have done something worthwhile.

17 CHAIRMAN AHEARNE: I guess I would like -- rather
18 than going with an empty bow -- to see if I can't get a few
19 arrows in the quiver.

20 COMMISSIONER GILINSKY: Well, I'm not sure I know
21 what --

22 CHAIRMAN AHEARNE: So I would prefer to first ask
23 to see if I can't get a little assistance from the General
24 Counsel in this matter.

25 COMMISSIONER GILINSKY: Well, if we can get three

1 votes saying that you should go, I suppose you'll have to go.

2 CHAIRMAN AHEARNE: That's right.

3 (Laughter.)

4 CHAIRMAN AHEARNE: Or at least delegate an active
5 chairman for insurance coverage.

6 (Laughter.)

7 CHAIRMAN AHEARNE: But you're right --

8 COMMISSIONER GILINSKY: And you'll have to keep us
9 informed, too.

10 (Laughter.)

11 CHAIRMAN AHEARNE: -- if it's the Commission
12 decision, then it's a Commission decision; that's correct.

13 So I guess the first issue, then, is: What is the
14 Commission decision on whether or not the Chairman ought to be
15 delegated to go and persuade the insurers to increase the
16 liability coverage?

17 COMMISSIONER BRADFORD: Well, let's see. I would
18 agree with what I take to be the thrust of that, which is that
19 the agency ought to make a serious exploration of the potential
20 for the increased liability coverage.

21 I don't necessarily insist that you personally --

22 (Laughter.)

23 COMMISSIONER BRADFORD: But if it were put in terms
24 of the agency undertaking to ascertain what the potential is,
25 then I would be for it.

1 COMMISSIONER GILINSKY: That's really what I have
2 in mind.

3 CHAIRMAN AHEARNE: Joe?

4 COMMISSIONER HENDRIE: Yes, and I think the correct
5 way to phrase it is, "a serious exploration of the potential,"
6 because, you know, I think there is not piece of muscle, and
7 I think indeed the staff people, counsel's office, who are
8 insurance -- have some familiarity with insurance business, and
9 so on, ought to be --

10 CHAIRMAN AHEARNE: I guess, then, that is --

11 COMMISSIONER HENDRIE: -- the appropriate thing.

12 CHAIRMAN AHEARNE: -- the decision: 3 to 1.

13 MR. CHILK: 3 to 1.

14 CHAIRMAN AHEARNE: All right, the second item is
15 the denial of the petition.

16 MR. CHILK: You have voted to deny the petition?

17 Commissioner Hendrie has voted to deny the petition.

18 COMMISSIONER GILINSKY: I will vote to deny the
19 petition.

20 MR. CHILK: You do not?

21 COMMISSIONER BRADFORD: I do not. I would, as I said
22 in my separate views, institute a proceeding, not so much --
23 although it would be triggered by the petition, it really would
24 focus more on the comments of the California Energy Commission.

25 CHAIRMAN AHEARNE: All right.

1 MR. CHILK: Please, just -- Well, you've already
2 voted at the meeting. That concludes --

3 CHAIRMAN AHEARNE: All right.

4 (Whereupon, at 3:13, the meeting was recessed, to
5 consider further business.)

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NUCLEAR REGULATORY COMMISSION

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

in the matter of: Public Meeting - Affirmation Session 80-54 --SECY-80-448

Proposed Narrative Explanation of Table S-3; et al

Date of Proceeding: December 11, 1980

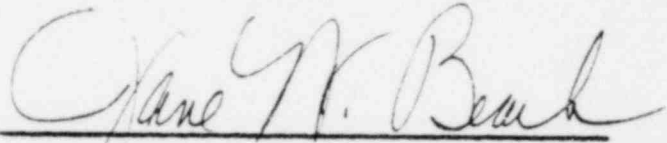
Docket Number: _____

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.

Jane N. Beach

Official Reporter (Typed)

A handwritten signature in cursive script, reading "Jane N. Beach", written over a horizontal line.

Official Reporter (Signature)

October 23, 1980

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

SECY-80-482

CONSENT CALENDAR ITEM

For: The Commissioners

From: Harold R. Denton, Director
Office of Nuclear Reactor Regulation *HRD*

Thru: Executive Director for Operations

Subject: PETITION FOR RULE MAKING FROM PUBLIC CITIZEN LITIGATION
GROUP ON REQUIRED LEVELS OF FINANCIAL PROTECTION

Discussion: On April 22, 1980, the Commission published a notice in the FEDERAL REGISTER (45 FR 26973) requesting public comment on a letter dated December 20, 1979 to the General Counsel of the Commission by the Public Citizen Litigation Group (PCLG). The letter requested that the Commission amend 10 CFR § 140.11(a)(4) of its regulations to increase the amount of primary financial protection required of persons licensed to operate reactors with a rated capacity of 100 Mw(e) or more from \$160 million to \$460 million plus the amount available as secondary financial protection. The Commission directed that the letter be treated as a petition for rule making. Pertinent portions of the General Counsel's February 19, 1980 response to the PCLG letter were also published.

PCLG suggests that the insurance industry should be required to combine the \$300 million in property insurance that it sells to reactor operators with the \$160 million in primary liability insurance it provides to utilities under the Price-Anderson Act to offer a combined level of liability insurance totaling \$460 million.* Eleven comment letters were received on this petition. (Attachment "A") The eight comments received from utilities, trade groups or associations, and from the insurance pools disagree with the petitioner's arguments that the availability of \$300 million in property insurance indicates that the \$160 million prescribed by the Commission is not the "maximum amount available" as required by the Act.

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*This paper only addresses the insurance layers that are part of the overall limit of liability of \$560 million. For information concerning the staff's views on increasing or establishing a new limit of liability for the Price-Anderson Act, see SECY-80-471.

Contact:
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DUPLICATE

September 23, 1980

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

SECY-79-576

CONSENT CALENDAR ITEM

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8610239624

For: The Commissioners

From: John G. Davis, Director
Office of Nuclear Material Safety and Safeguards

Thru: Executive Director for Operations

Subject: PROPOSED NARRATIVE EXPLANATION OF TABLE S-3

Purpose: To transmit for Commission review and approval the proposed narrative explanation of Table S-3 specified in the Commission Order on the final fuel cycle rule. This narrative, originally submitted as SECY-79-576, has been revised in response to Commission comments. A draft Federal Register notice announcing the publication of the draft narrative and rules for its use is also submitted for approval.

Discussion: The changes requested in Mr. Chilk's memorandum dated May 13, 1980 (items 1 through 10, on pages 2 and 3), have been incorporated in this revised narrative. Based on a discussion with Dr. Buck, Section II of the narrative also has been reorganized and revised. In general, Section II notes that the nonradioactive chemical effluents and liquid (cooling water) effluents result, for the most part, from the generation of electrical energy used in the nuclear fuel cycle by coal-fired power plants. Except to compare the amount of land disturbed to supply strip-mined coal to meet the annual requirements of a 1,000-MWe coal-fired power plant, the narrative does not compare the environmental considerations of coal vs. nuclear because that issue is beyond the scope of Table S-3. Since liquid effluents are expressed in amounts and not concentrations of chemicals, rather than making a comparison with EPA drinking water standards, Section II notes that discharges of liquid effluents to surface streams are in accordance with National Pollutant Discharge Elimination System Permits issued by EPA or states.

On July 14, 1980, the staff response to Commissioner Bradford's comments regarding the conservatism relevant to

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