

NUCLEAR REGULATORY COMMISSION

ORIGINAL

COMMISSION MEETING

In the Matter of: PUBLIC MEETING

DISCUSSION OF SECY-81-317 -
NEED FOR POWER RULE

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DISCUSSION OF SECY-81-317 - NEED FOR POWER RULE
PUBLIC MEETING

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

Thursday, June 4, 1981

The Commission met, pursuant to notice, at 2:05

p.m.

BEFORE:

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

ALSO PRESENT:

SAMUEL CHILK Secretary
LEONARD BICKWIT, General Counsel
WILLIAM PARLER
BRUCE BERSON
DENNIS RATHBUN
DARREL NASH
JEROME SALTZMAN
WAYNE KERR
MARTIN WALSCH

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P R O C E E D I N G S

(2:05 p.m.)

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3 CHAIRMAN HENDRIE: If the Committee would please
4 come to order.

5 We have this afternoon a discussion of SECY Paper
6 No. 81-37, on the need -- on a possible change in the need
7 for power rules and the way in which the Commission deals
8 with those in its assorted proceedings. The Commission has
9 asked the staff to prepare a paper along these lines and we
10 have the results of the staff's consideration before us.
11 And we also have an associated memorandum from General
12 Counsel, and we will want to discuss that as a part of the
13 matter.

14 Now, as a schedule matter, we also have an
15 affirmation session this afternoon, which was scheduled to
16 come after our discussion on the need for power rule.
17 Commissioner Gilinsky has an urgent matter that will take
18 him away for a little while this afternoon, and what I would
19 like to do is to get a sort of lead-in on the need for power
20 discussion, and then in the neighborhood of 2:25 or 2:30 I
21 would like to recess that discussion for a while, before Vic
22 has to leave, and take up the affirmation items. Then we
23 will return to the need for power discussion, and Vic will
24 be back later in the afternoon.

25 So Bill, why don't you lead off on the need for

1 power matter and I will find an appropriate place along in
2 15 or 20 minutes to recess.

3 MR. DIRCKS: I think we can lead off. We won't
4 take very long. We are making the proposition that we go
5 for a rulemaking to eliminate the need for power at the OL
6 stage. Darrel Nash will mention a few points that we have,
7 and from what I gather there are many more points to be made
8 by General Counsel's Office, so they may take up the bulk of
9 the time.

10 And by the way, Bill Parler is prepared to discuss
11 the points that were raised in this memo. Darrel, do you
12 want to summarize briefly the points made in this paper?

13 MR. NASH: Okay. I might just give a few words of
14 background to this issue for at least about a period of five
15 years that I was able to go back, that the staff has
16 communicated to the Commission through various sources that
17 there was a need to change the scope of review of need for
18 power and energy alternatives at the OL stage and in fact to
19 reduce the consideration at that point.

20 And recently we have had from the Commission
21 through SECY-81-69, which was the paper which requested us
22 to prepare this paper, and SECY-208 indicated that the
23 Commission is interested in considering the change of scope
24 of review of these issues at the OL stage.

25 The points that have been made in the staff's

1 papers, bringing them down to the narrow parts of it, is
2 that one of the first issues was that the analysis at the OL
3 stage should be forward-looking; and the second point made
4 was that our rules as they are stated, and indeed as the
5 licensing process is carried out, it becomes evident that it
6 is not at all clear that the factors to consider at the OL
7 stage are any different from those at the CP stage.

8 At the CP stage the single most important issue is
9 the forecast of electricity growth some decade or more into
10 the future. At the operating license stage the issue is
11 merely a matter of how operation of this plant compares to
12 operation of other alternatives to the applicant.

13 I would like to just list some of the contentions,
14 and I won't list them completely, but just the nature of the
15 contentions that have been raised in OL cases that are
16 before the Commission or have been in the recent past.

17 COMMISSIONER AHEARNE: Are these contentions that
18 were accepted?

19 MR. WASH: Yes.

20 Very briefly, they relate to reserve margins,
21 conservation, growth rates in demand, appliance saturation,
22 the no plant alternative, building smaller units, solar
23 energy as an alternative, comparative cost of generation,
24 cost of fuel and waste management and cogeneration.

25 So I think in looking at these contentions, also

1 in the way that the staff has treated it, although we are
2 revising our procedure somewhat in answer to the hearing
3 process, the same issues, the same analyses tend to be
4 performed. So it seems obvious that our rule as it now
5 stands doesn't make it at all clear that there should be a
6 distinction between the CP and OL considerations.

7 Just briefly going into the paper as such, the
8 paper states that the issue for needs of power and
9 alternative energy sources are considered and resolved at
10 the CP stage. At this point there is essentially no
11 environmental impact that has been made, nor has there been
12 a great expenditure of funds. So there are real
13 possibilities that another alternative could be selected.

14 At the OL stage, the environmental damage has
15 essentially been done, all the costs of building the plant
16 have been incurred, and so the only thing that the denial of
17 the license could do is to prevent this completed plant from
18 operating. And we feel that it is extremely unlikely that
19 there would be any reason found for not granting the
20 operating license once it has been -- once the plant has
21 been built.

22 COMMISSIONER AHEARNE: Assuming that the safety

23 --

24 MR. NASH: Yes, when I'm speaking, I'm speaking of
25 the issues here, the need for power and the alternative

1 energy sources. Now obviously I am in no position to
2 indicate something with regard to the safety aspects of the
3 plant, that may cause it to -- that may cause a license not
4 to be granted.

5 So therefore, considering this extreme
6 unlikelihood that denial of the license would occur, the
7 proposed rule is written such that these issues are to be
8 eliminated at the OL stage, except for the relief that is
9 available under 10 CFR 2.758. So that is really, in very
10 brief form, what the background and the proposed rule are
11 all about.

12 CHAIRMAN HENDRIE: Okay.

13 COMMISSIONER AHEARNE: Can I ask a couple of
14 questions on that?

15 CHAIRMAN HENDRIE: All right.

16 COMMISSIONER AHEARNE: Darrel, you have in your
17 proposed rule, you say in the opening summary, "This is to
18 provide for NEPA purposes need for power and alternative
19 energy sources will not be considered." That led me to at
20 least infer that there are for other purposes that they
21 could be considered.

22 MR. NASH: The reason for putting that in is that
23 these are where the issues are handled now under Part 51.

24 COMMISSIONER AHEARNE: I understand that. But was
25 not the intent to provide that need for power and

1 alternative energy sources will not be considered in
2 operating license proceedings?

3 MR. NASH: It was to eliminate the consideration
4 of them, and not to restrict it to NEPA, but just to
5 designate that that is where they are handled.

6 COMMISSIONER AHEARNE: So the phrase "for NEPA
7 purposes" --

8 MR. NASH: That is in a sense superfluous.

9 COMMISSIONER AHEARNE: That was really my
10 question. Other than your value impact analysis -- you have
11 in the opening sentence, "NRC staff has completed a
12 comprehensive review." Is that a written comprehensive
13 review?

14 MR. NASH: The review -- perhaps putting it in the
15 singular is not as clear as it could be, but there have been
16 at least two very extensive reviews that were done. One is
17 / SECY-77-355, and SECY-78-485, which went into these issues.
18 Both of these SECY papers were broader than that, but they
19 treated this issue that we are dealing with now in some
20 depth.

21 CHAIRMAN HENDRIE: Why don't you outline the OGC
22 comments on the proposition before the house?

23 MR. BICKWIT: Our only concern was that we felt a
24 stronger rationale would be useful for moving these
25 considerations from the OL proceeding. The reason that need

1 for power is looked at and alternative energy sources are
2 looked at at the OL stage is to analyze whether the
3 no-action alternative or the alternative of a plant of
4 another energy source is a reasonable alternative.

5 Under NEPA, you needn't look at all alternatives
6 when you are doing an environmental review. If some are so
7 remote as to be infeasible, then it is understood that they
8 needn't be analyzed at the time of the major federal
9 action. But if by rule that is what you are providing, then
10 you need in our view to demonstrate rather clearly in the
11 rule as to why they would be infeasible in all
12 circumstances.

13 I think from a policy standpoint it is defensible
14 to say that they would be, that when you have a completely
15 built nuclear plant, that the alternative of no action or
16 the alternative of keeping the plant out of operation in
17 order to allow a plant of another energy source to operate,
18 I think it is reasonable to say that those alternatives
19 might well be infeasible.

20 But I think you have to, to preclude their
21 consideration at the OL stage, you have to be pretty clear
22 in your rationale as to why they are infeasible.

23 COMMISSIONER AHEARNE: Had you looked, Len, at the
24 two studies that Darrel had commented on? Do you know
25 whether either of those meets your request for a staff

1 study?

2 MR. BICKWIT: No, I haven't. I have only looked
3 at the proposed rule.

4 COMMISSIONER AHEARNE: Marty, are you familiar
5 with either of those?

6 MR. MALSCH: They didn't ring a bell when I heard
7 them described. I may have read them before, but I'm not
8 certain.

9 COMMISSIONER AHEARNE: What I gather you're
10 proposing is that the staff do a study to --

11 MR. BICKWIT: No. I think it is feasible to take
12 existing materials and make the case that the consequences
13 of keeping a plant out of operation are just unbearable when
14 you have the alternative of putting it in operation. Now,
15 if on the basis of existing materials that can't be said,
16 then I would think you would need another study.

17 COMMISSIONER AHEARNE: Is it correct that you are
18 assuming that there are existing materials that would
19 support that?

20 MR. BICKWIT: Yes. But I think the bulk of that
21 -- the bulk of the reason I think that is persuasive is that
22 there is a general understanding as to what the financial
23 consequences would be to a utility and to the general public
24 of simply not allowing a constructed plant to operate. I
25 think there is some understanding of what the environmental

1 differentials might be between a nuclear plant and any
2 alternative.

3 And I guess I am inclined to think that there is
4 material available which would document that the
5 consequences, the environmental consequences if there be any
6 differential, of keeping this plant out of operation, would
7 not compare with the financial consequences of simply
8 keeping the plant out of operation.

9 COMMISSIONER AHEARNE: For the environmental
10 consequences, I think it really ends up being a study,
11 because in the sense that even if a lot of that information
12 is available, there is some effort to go find it, dig it
13 out, pull it together.

14 MR. BICKWIT: Yes.

15 COMMISSIONER AHEARNE: Would you say that using as
16 an assumption that the safety requirements are met?

17 MR. BICKWIT: Yes.

18 COMMISSIONER AHEARNE: So then it would not --

19 CHAIRMAN HENDRIE: And the environmental
20 requirements.

21 MR. BICKWIT: The safety requirements in the
22 Atomic Energy Act would be met, that would be a premise.
23 The question is, when you are balancing environmental
24 consequences under NEPA versus other consequences, can you
25 rule out the alternative of keeping this plant out of

1 operation.

2 COMMISSIONER AHEARNE: I just want to make that
3 clear, because for many of the other mechanics of
4 generation, if you are willing to take as an acceptance that
5 the safety requirements are met, then it is probably very
6 easy to show that at least environmentally the nuclear power
7 plant, for other actual generation sources, the power plant
8 is much better.

9 MR. BICKWIT: That would be my guess.

10 CHAIRMAN HENDRIE: It seemed to me, Len, that on
11 page 3 of your memo the essential proposition is pretty
12 fairly stated. It certainly agrees with my feeling about
13 the thing. That is, if you balance on the one hand the
14 immediate consequences to the utility and its investors, and
15 then in the longer-term the utility ratepayers, of a refusal
16 to allow a completed plant to go into operation, and to
17 compare that with whatever increment plus or minus there
18 might be in environmental effects, that you have in all but
19 the most extraordinary case a fairly overpowering
20 proposition in favor of allowing the plant to go forward and
21 operate.

22 I think that is the case, and I think that is
23 probably also -- one can also outline that line of reasoning
24 with some substantive material.

25 MR. BICKWIT: Well, some materials that I know are

1 available are the past environmental impact statements in
2 which it is concluded that with respect to specific plants
3 the environmental effects of a nuclear plant are less than
4 the environmental effects of the alternatives. I think if
5 you assemble enough of those that is going to certainly help
6 your case substantially when you try to add this up into the
7 proposition that the no-action or the alternative source
8 alternative simply doesn't make much sense at this stage.

9 CHAIRMAN HENDRIE: Now, there's always the
10 extraordinary case to be considered and the proposition, if
11 there were one, would be a perfectly reasonable approach,
12 would be to come in under 2.758 and say: Look, this
13 exclusion doesn't serve its purpose here because here are
14 the extraordinary circumstances. And then one can consider
15 them.

16 I think it is fair enough that the Commission's
17 rules, which reflect the way that we carry out things in
18 most places, correspond generally to the way things go most
19 of the time, rather than the other way around. So it seems
20 to me a reasonable proposition.

21 Now, having just broached what could be a very
22 interesting discussion, in view of my earlier comment that I
23 would like to get a couple of affirmations done and some
24 discussion on the affirmation items before Vic has to pull
25 out a few minutes before 3:00, what I'd like to do is just

1 to recess this discussion and turn to the affirmation
2 session.

3 COMMISSIONER AHEARNE: But you don't want them to
4 leave?

5 CHAIRMAN HENDRIE: No. I'm sorry to say, I'm
6 going to ask you to hang around so we can come back to
7 this.

8 (Recess.)

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Chairman

1 MR. HENDRIE: Very good. Let us come back to such
2 order as we can accomplish amongst ourselves. The session
3 is now open.

4 I will note for the information of those who may
5 have come in and be interested that the Commission will
6 continue its discussion of the draft decision on the GPO
7 federal tort claim on Monday the 8th at 1 p.m.

8 Yes, sir.

9 COMMISSIONER AHEARNE: If we are going to move on
10 into discussing SECY 317A, I guess I would like to
11 understand why 317A isn't distributed.

12 MR. BICKWIT: Well, my own feeling is that the
13 Commission preserves its flexibility best when it receives
14 advice of counsel in confidence.

15 COMMISSIONER AHEARNE: Then should we not have a
16 closed meeting?

17 MR. BICKWIT: I don't think it is necessary to
18 have a closed meeting. I think it is simply necessary to
19 hold close this particular piece of paper.

20 COMMISSIONER BRADFORD: Especially if we don't
21 know really what we are talking about.

22 MR. BICKWIT: Consistent with the maximum possible
23 openness principle.

24 COMMISSIONER AHEARNE: I guess I disagree.

25 CHAIRMAN HENDRIE: A simple way to do it, I guess,

1 would be to ask for a division of those present and voting
2 whether to put 317A on the back board.

3 COMMISSIONER BRADFORD: I agree with John. I
4 think that if this paper is to be discussed in an open
5 session, then not enough is preserved by actually holding
6 the text close up here at the table. If it does rise to the
7 level that there is a serious legal problem, then we ought
8 to close the meeting.

9 COMMISSIONER AHEARNE: That is the way I feel.

10 CHAIRMAN HENDRIE: I guess on advice of counsel I
11 would not put it back there. I find myself the underdog in
12 a two to one vote.

13 Len, do you think there is serious litigation
14 risk? You know, your paper obviously --

15 MR. BICKWIT: Obviously if you follow the proposal
16 of our paper, there is no litigation risk. I want to give
17 you the option of not following it. So it really does
18 depend on how the Commission chooses to resolve the matter.

19 CHAIRMAN HENDRIE: It seems to me that from your
20 standpoint you ought to argue to make the paper public, then
21 point out to the Commission that, having done that, they
22 have no choice but to follow your recommendations.

23 COMMISSIONER AHEARNE: If we are going to sit up
24 here in an open meeting discussing a paper, this shouldn't
25 be an exercise in cryptology by the audience to try to

1 figure out what must be the paper that they are discussing.

2 CHAIRMAN HENDRIE: I guess I don't hew to that as
3 an inviolable principle, but in this case the expression of
4 interest on this side of the table shows a clear majority in
5 favor of putting it back there, so let us put it back there,
6 the counsel having said there is not serious legal objection
7 of litigation risk. Let us consider it done. The Secy will
8 do it and back to discussion.

9 MR. CHILK: Well, there are times that we don't
10 have extra copies.

11 CHAIRMAN HENDRIE: The counsel has various ways of
12 carrying out his objections, after all.

13 COMMISSIONER BRADFORD: We could have our
14 discussion sitting well away from the microphone.

15 CHAIRMAN HENDRIE: We normally do that. Okay,
16 onward.

17 Now, the base proposition before the house is, it
18 seems to me, whether to go forward with the staff proposal
19 as it stands. The infamous paper has now arrived. Those
20 who have not read it and are now receiving it are warned
21 that they are about to receive knowledge which will burden
22 them the rest of their lives.

23 It seems to me the proposition before the house is
24 whether to go forward with the staff proposal as it is
25 framed as a rule which would be for comment, a proposed rule

1 for comment, or whether to ask the staff to retire and put
2 together a sort of alternate basis for the same rule
3 provisions, said basis to be along the lines that -- the
4 guts of it are right there on page 3 of the OGC memo, noting
5 that except in the extraordinary case which could be amply
6 taken care of by use of 2758, that the costs to people, the
7 cost to the utility, the investors, rate payers eventually
8 compared to whatever environmental increment was likely to
9 accrue, which could even be in favor of the plant, just are
10 very unlikely to be overbalanced by the environmental thing.

11 MR. DIRCKS: I am sure Bill will want to have a
12 few words, but could I -- I am not quite sure I understand
13 everything that is said here, but what I do understand is
14 this. Particularly the study, the analysis of this
15 alternative rationale on page 3 -- "Section analysis would
16 examine consequences to a utility, investors and rate payers
17 of not allowing a completed nuclear plant to operate and
18 reach a general conclusion whether these consequences could
19 likely be outweighed by other environmental considerations"
20 -- that is a very broad and sweeping analysis, and if we get
21 into something like that, aside from the merits of
22 discounting the environmental considerations coming up, I
23 don't think we are ever going to get to a position where we
24 are today, namely, hitting this particular question of need
25 for power. It is a very big chunk and it is going to take --

1 COMMISSIONER AHEARNE: At that stage you are at
2 the point where you balance how much resources are spent
3 defending the need for power argument in the hearings versus
4 this, and you conclude the study is going to be bigger than
5 those resources.

6 MR. DIRCKS: Bill?

7 MR. PARLER: The proposed rule has a very narrow
8 objective. That objective is to eliminate the repetitive
9 re-review and re-litigation just of need for power and
10 alternative energy source issues at the operating license
11 stage. Because of the present rules which are written which
12 refer to new information, commonly these issues are raised
13 at the operating license stage, and typically they are not
14 raised in the context of the hypothetical example that is
15 given in 317A.

16 As I understand the proposed rule as written, it
17 was certainly its intent. If there is the situation that is
18 suggested in the hypothetical example that there is
19 available a source of electricity which could be used and
20 which is either environmentally superior to the nuclear
21 power plant which is being constructed or there is
22 information which is offered and otherwise valid contentions
23 which if it is accepted would show that there is the
24 potential for showing that there is another source which is
25 significantly environmentally better than the nuclear plant,

1 the proposed rule does not, as the general counsel's
2 memorandum points out, preclude such issues.

3 That is one of the reasons for the special
4 circumstances waiver provision. We relied on the special
5 circumstances waiver provision, which is now the general
6 revision in the rules, rather than trying to spell out what
7 significant new information meant or very significant new
8 information, because in addition to the example that is
9 given in the general counsel's memorandum, there may be an
10 untold number of other examples of the extraordinary
11 situation where even though we have looked at need for power
12 and alternative energy sources at the construction permit
13 stage, there is nevertheless an alternative-type issue which
14 is raised at the operating license stage which is
15 appropriate for consideration.

16 The proposed rule does not rule out consideration
17 of such issue under the SALP cost theory, as the general
18 counsel suggests. It does not rule out the consideration of
19 such an issue simply because alternatives have already been
20 considered in the construction permit stage. It does not
21 rule out the consideration of such an issue because of
22 NEPA's rule of reason. The rule of reason was simply
23 pointed out in a footnote for the purpose of indicating what
24 the law allows. That is, NEPA law does allow reasonable
25 flexibility of our rulemaking authority based on experience.

1 As far as the alternative theory is concerned, in
2 addition to the points that I've already tried to make, that
3 is, attacking, as Bill Dircks pointed out, dealing with a
4 policy issue which goes much broader than the limited scope
5 of the proposed rule. That is, it would apparently rule out
6 NEPA considerations completely at the operating license
7 stage.

8 It also for that reason, as far as NRC's
9 experience is concerned, would get the NRC into uncharted
10 and unknown NEPA law territory. I recognize, as the general
11 counsel points out, that there are general NEPA decisions
12 which provide that NEPA does not dictate particular results
13 to the decision-makers; but a move in the direction of
14 saying that NEPA is not relevant at all at the operating
15 license stage, as the study would seem to suggest, would be
16 a significant step considerably beyond that involved in the
17 proposed rule.

18 Since the hypothetical example, which is
19 presumably the basis for the general counsel's analysis that
20 the proposed rule's justification is deficient, perhaps
21 legally deficient, is in my judgment not correct. I would
22 think that for the narrow purpose of the proposed rule, that
23 its objective and the reasons for proposing it are laid out
24 in the proposed statement of consideration.

25 The objective is clear: to avoid unnecessary and

1 repetitive litigation simply because of some alleged change
2 in circumstances from the prior consideration, a decision at
3 the construction permit stage on need for power and
4 alternative energy sources. As we know from the decisions,
5 including the fairly recent 1979 Commission decision in
6 Sharon Harris, these forecasts are not exact. There is
7 considerable room for margins of error.

8 The way the situation now stands is that if
9 someone at the operating license stage makes a contention
10 alleging such changes without more, those contentions
11 probably requires routinely a reconsideration of need for
12 power and alternative energy source issues.

13 And in any event, if the alternative theory is
14 adopted I would think that you would have to have some sort
15 of waiver provision because even though the result is
16 probably supported, as indicated earlier, on the basis of
17 studies and final environmental statements, when you
18 disregard the impacts of the construction of a nuclear power
19 plant, that the operational environmental impacts are
20 insignificant. no one will know with great confidence what
21 sort of extraordinary examples someone might come up with in
22 the future, such as the one that the general counsel
23 mentioned.

24 So the point that I am trying to make is that we
25 think that the proposed rule has an adequate justification.

1 The alternative approach gets us into a broader area which
2 has unknown and untested NEPA legal questions involved.

3 In other words, I disagree with the conclusions
4 reached in the general counsel's memorandum which lead him
5 to also conclude that the justification of the proposed rule
6 is inadequate.

7 CHAIRMAN HENDRIE: Len, your paper says we believe
8 such an analysis could be put together with existing
9 materials and no delay of any consequence in issuing the
10 proposal.

11 So it sounds to me that in making the proposition
12 that there be a stronger argument, that it would be very
13 unlikely that a need for power issue would be of sufficient
14 magnitude to affect the decision, so let's write it out of
15 the rules except for any extraordinary circumstances. You
16 seem to have a feeling, some sort of internal model in mind
17 for what you would patch together, and it sounds like a lot
18 less than the sort of thing that Bill is worried about, that
19 both Bills are worried about.)

20 MR. BICKWIT: I think it is. We do not have a
21 comprehensive study that is going to take

22 MR. DIRCKS: Could I suggest, then, that you might
23 be able to do it better than we can?

24 COMMISSIONER BRADFORD: I saw that discussion
25 coming about a half-hour ago.

1 MR. BICKWIT: In fact, I don't have any problems
2 with that, but whether we do it or you do it is not really
3 the basis for the decision here. My own feeling is that I
4 understand the objective, which is to preclude raising these
5 issues again at the OL stage, like need for power and
6 alternative source with nothing else involved, just changed
7 circumstances in that regard. That is all the rule covers.

8 MR. DIRCKS: We get the impression that you want
9 to go much further.

10 MR. BICKWIT: No. My concern is that you have the
11 National Environmental Policy Act, which says that when you
12 have major federal action, you have to examine alternatives
13 except those alternatives that you can say are remote. And
14 I think you had in mind in proposing this rule that the
15 alternative of doing nothing after the plant is built or
16 going with an alternative energy source, that either of
17 those alternatives is remote.

18 MR. PARLER: Not at all. The basis of the paper
19 is that need for power and alternative energy sources have
20 already been considered at the construction permit stage,
21 and in the absence of a significant new information which
22 suggests that those matters should be reconsidered or
23 relitigated, that there is no need to do that as far as

24 MR. BICKWIT: Well, I am saying even in the
25 presence of such.

1 CHAIRMAN HENDRIE: But you are agreeing. You are
2 essentially agreeing. He is just saying the proposition
3 that we need to consider, that in those circumstances we
4 need not consider it at the OL stage, is based on a fairly
5 strong feeling that if he litigated need for power and
6 alternative energy source issues, those were the only things
7 turning in the operating license proceeding and it is just
8 very unlikely that the decision would be made not to operate
9 on those issues alone.

10 MR. PARLER: I agree with the result. I just
11 didn't want to lose sight of the obvious fact that these
12 things have already been litigated once.

13 CHAIRMAN HENDRIE: The language in the proposed
14 statement of considerations sort of says that. I am looking
15 at the paragraph on page 4 in which you discuss how it has
16 been treated at the CP stage, and now we have the OL stage
17 and things are different. The plant is constructed, the
18 costs have been incurred, and you say given this factual
19 background, the Commission cannot readily conceive of a
20 situation in which an alleged reduction, et cetera in and of
21 themselves could result in the denial of the operating
22 license, unquote.

23 Now, as I read the OGC remarks, they are along the
24 line that couldn't we make a somewhat more quantitative case
25 either in association with the paper or even write the

1 summary of it out in a statement of consideration that in
2 fact that is likely to be the case? I don't think they are
3 saying no, let's go on and sweep beyond that in any sense at
4 all.

5 MR. DIRCKS: What is meant by this: "Section
6 analysis would examine consequences to a utility, investors
7 and rate payers of not allowing a completed nuclear plant to
8 operate and reach a general conclusion whether these
9 consequences could likely be outweighed by other
10 environmental considerations"? Right above that it says
11 "Should a completed nuclear plant which satisfies all the
12 requirements of the Atomic Energy Act be prohibited from
13 operating?"

14 That seems to me a broader analysis than this
15 particular issue of need for power.

16 CHAIRMAN HENDRIE: But the whole thing is focused
17 only on need for power.

18 MR. DIRCKS: That is not what you said here,
19 though.

20 CHAIRMAN HENDRIE: I know.

21 MR. BICKWIT: The reason for the need for power
22 analysis under NEPA is to examine the feasibility of the no
23 action alternative, and if you believe the no action
24 alternative is infeasible as a general rule after you have
25 got the plant built, then it is just our proposition that

1 you ought to say why.

2 MR. DIRCKS: Focusing only on the narrow issue of
3 need or power? What you are saying is that the argument to
4 support this need for power problem here should be beefed up
5 with some sort of an analysis.

6 MR. BICKWIT: That is right.

7 MR. DIRCKS: And obviously you have in mind what
8 sort of an analysis is needed and where the materials are.
9 If it is only that, that is one issue. I just read this as
10 saying should we sweep away all environmental considerations
11 if a completed plant sits there.

12 MR. BICKWIT: No, no. It is not meant to say
13 that. It is meant to say, however, that you need to say
14 something about the fact that it is untenable to allow that
15 plant, having been constructed, not to operate. You have to
16 give some reason as to why that is not a good idea, and it
17 needn't be in the form of a NUREG analysis but it needs some
18 analytical backup.

19 COMMISSIONER BRADFORD: Of course, the mischief
20 here is that you have to be careful not to consider the
21 capital costs.

22 COMMISSIONER AHEARNE: It still sounds to me like
23 a large analysis.

24 MR. BICKWIT: Well, we wrote the paper and we
25 didn't have in mind a large analysis.

1 COMMISSIONER AHEARNE: Exactly; and therefore I
2 think it is best done by your office.

3 MR. BICKWIT: That is fine.

4 CHAIRMAN HENDRIE: I think my own view is that it
5 would be useful for some of your staff, Bill, who are
6 familiar with this stuff, to sit down with the counsel's
7 office to sort through the material and get a clear idea of
8 what is in mind. It may be that we are not in fact so far
9 off, that you are not as far apart as you might think, and
10 that the sort of buttressing of the proposition here that
11 you are recommending we have might not turn out to be all
12 that arduous a proposition.

13 Now, whether he ended up making a final set of
14 words on it or your guys do it I leave you to argue between
15 the two of you, but clearly you have to talk to each other.

16 MR. DIRCKS: I think we can.

17 CHAIRMAN HENDRIE: And each spell out the
18 particulars. He needs to say, well, I think we have these
19 reports and what I do is cite this one and this one.

20 MR. DIRCKS: I think it is more. I think it may
21 be more than that because that premise of should a plant not
22 be allowed to operate, I think that is the issue that may be
23 very difficult to get at. I think it is more difficult than
24 what we are heading for in this one. We tried to keep this
25 one sort of simple and direct it only to a particular issue.

1 CHAIRMAN HENDRIE: I don't read anything over
2 here, in fact I don't read anything coming from that end of
3 the table which would suggest that the proposed changes in
4 Part 51-21 and 53 would be any different than exactly what
5 you have said.

6 MR. PARLER: That is my understanding.

7 CHAIRMAN HENDRIE: And in fact, with regard to the
8 statement of considerations, there probably is an extra page
9 that would go in and there might be a memorandum of seven or
10 eight pages that would be available in support of that.
11 Now, if that is the case and the material is not that
12 difficult to come by, then that seems like a reasonable
13 proposition for us to do. If indeed there are more
14 substantive differences on the thrust, why, a certain amount
15 of haggling and shouting at each other may illuminate those
16 on both sides, and we can understand that and see what to do
17 with it.

18 MR. PARLER: The explanation on page 4 you
19 referred to earlier was primarily, at least my mind, based
20 on about eight or nine years of experience litigating these
21 issues. These narrow issues are raised and the conclusion
22 is always the same. The situation has not been

23 CHAIRMAN HENDRIE: Bill, I don't find from over
24 here anything more than a recommendation that if a good part
25 of what they think you ought to have is a summarizing of

1 that litigation experience along with some contemplation of,
2 you know, what it is worth to have a million-plus units
3 sitting out there and the utility is told no, you can't use
4 it, now what do you do with it, what do you do with the
5 electricity that is generated and is that all worth doing
6 compared to the difference between nuclear plant emissions
7 and coal plant emissions, perhaps, or nuclear plant
8 emissions and waiting for a couple of million square feet of
9 TV panel or whatever.

10 Any Commissioners' comments? You can see what I
11 am sort of suggesting here.

12 COMMISSIONER AHEARNE: When this first came up a
13 year and a half ago, my concern was it would end up taking
14 up more resources than was worth the effort. It now has the
15 potential of slipping back into that mode, and that is why I
16 really believe that if Len or Marty can see a more narrow
17 focused study that will accomplish what they believe is
18 necessary, then they should do it, and I think OGC should do
19 it.

20 I have no problem with saying that the staff
21 should point in the direction of documents. I just am
22 concerned about it. If it is going to lead to a big study,
23 I think we ought to reconsider whether we want to allocate
24 staff resources that way.

25 I have another question. Len's last point is the

1 paper deals only with NEPA issues with reference to safety
2 impact. On page 4 there is a statement that says denial of
3 the operating license would be reasonable and justified only
4 in the real or unusual case in which there has been some
5 significant change in the newly-discovered information
6 concerning the public health and safety or environmental
7 impacts associated. That was the only place I could see --

8 COMMISSIONER BRADFORD: Yes, I would have deleted
9 that for, I think, the same reason, which is that I think
10 this is just an overall threshold for operating license
11 reviews, which in other contexts we have advocated, that is,
12 the various licensing reform legislation. But it isn't the
13 statutory standard at the moment.

14 COMMISSIONER AHEARNE: On that point, Peter, why
15 would you just delete safety?

16 COMMISSIONER BRADFORD: I would delete the
17 sentence. Actually I would delete more than that, but
18 anyway, among what I would delete is that sentence.

19 COMMISSIONER AHEARNE: Len, you somehow saw a
20 difference between safety and public health.

21 MR. BICKWIT: No. We have in mind deleting the
22 reference to public health and safety.

23 COMMISSIONER BRADFORD: I don't have any
24 questions. In the time long before the review comes back I
25 think I will circulate a couple of sentences that I would

1 like to put in. I have no objection, though, to something
2 along these lines going out for comment as soon as the
3 Commission is in a position to approve it.

4 CHAIRMAN HENDRIE: Okay. Would you please find a
5 way to gather the stack of material that might be useful to
6 get straightened away on what counsel thinks this thing
7 ought to have by way of buttressing the case and let us know
8 how that looks? If it can be done in a fairly
9 straightforward fashion without great agencies and chewing up
10 half the office and one thing and another, I mean it would
11 certainly be useful to do it briskly.

12 This Commission will sit for two more weeks.

13 Okay, thank you very much.

14 (Whereupon, at 3:30 p.m., the meeting was
15 adjourned.)

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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 - Discussion of SECY-81-317 - Need For
Power Rule

Date of Proceeding: June 4, 1981

Docket Number: _____

Place of Proceeding: Washington, D. C.

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

Susan Harris

Official Reporter (Typed)

Susan Harris

Official Reporter (Signature)