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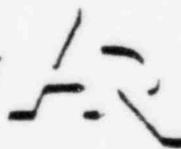
COMMISSION MEETING

In the Matter of: PUBLIC MEETING

AFFIRMATION/DISCUSSION AND VOTE

DATE: September 10, 1982 PAGES: 1 - 22

AT: Washington, D. C.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

AFFIRMATION/DISCUSSION AND VOTE

PUBLIC MEETING

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

Friday, September 10, 1982

The Commission convened, pursuant to notice, at
11:30 a.m.

BEFORE:

- JOHN AHEARNE, Commissioner (Presiding)
- VICTOR GILINSKY, Commissioner
- THOMAS ROBERTS, Commissioner
- JAMES ASSELSTINE, Commissioner

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

- S. CHILK
- M. MALSCH
- J. ZERBE

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DISCLAIMER

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1 P R O C E E D I N G S

2 COMMISSIONER AHEARNE: Do we need a short
3 notice meeting vote?

4 MR. CHILK: No. I understand this is a
5 continuation of a meeting yesterday.

6 COMMISSIONER AHEARNE: All right.

7 Yesterday afternoon we had on the agenda an
8 item addressing the affirmation of an order on Indian
9 Point. The origination of the issue came from a letter
10 from the Licensing Board to the Commission asking for
11 clarification of a couple of items to answer a couple of
12 questions before the Board.

13 In the middle of August in the absence of a
14 quorum the Secretary on behalf of the Commission after
15 having worked with at least the Commission offices sent
16 a preliminary answer to the Board and this order now is
17 the Commission's official position.

18 We were prepared to vote on it yesterday.
19 However, Commissioner Gilinsky pointed out that shortly
20 before the meeting that there was distributed a set of
21 comments by Commissioner Roberts and Commissioner
22 Gilinsky pointed out that it was appropriate in the
23 Commission context to allow Commissioners an opportunity
24 to consider comments from other Commissioners. So
25 therefore we deferred it until today.

1 We also have a set of views from Commissioner
2 Gilinsky just handed out.

3 (Laughter.)

4 COMMISSIONER ROBERTS: Shouldn't we postpone
5 this for another day?

6 (Laughter.)

7 COMMISSIONER GILINSKY: I think we ought to
8 discuss it.

9 COMMISSIONER AHEARNE: Well, before we get to
10 that, since we did agree with your request yesterday, I
11 will ask, Tom, do you want to postpone it?

12 COMMISSIONER ROBERTS: No.

13 COMMISSIONER AHEARNE: Jim?

14 COMMISSIONER ASSELSTINE: No.

15 COMMISSIONER GILINSKY: Well, there is a
16 difference a discussion and a vote.

17 COMMISSIONER AHEARNE: I first wanted to get
18 clear whether or not the same treatment would have been
19 Tom's right to ask.

20 COMMISSIONER ROBERTS: Thank you.

21 COMMISSIONER GILINSKY: Well, I am interested
22 in reading his comments.

23 COMMISSIONER AHEARNE: I assume you have by
24 now.

25 COMMISSIONER GILINSKY: Yes. I did read them.

1 COMMISSIONER AHEARNE: All right. Then I
2 gather the issue in front of us is this order and Vic
3 you wanted to discuss it.

4 COMMISSIONER GILINSKY: Yes. It seems to me
5 that the order is not entirely clear on just what it
6 expects of parties on the subject of probabilities and
7 consequences. We disagree on the point of whether
8 parties need to testify on both points if they are want
9 to testify on one of them. But in saying that each
10 party has to testify on probabilities, what do you mean
11 by that?

12 Here there have been some changes in the order
13 and Tom in his comments talks about discussion, that it
14 is not necessarily another calculation, or something
15 like that.

16 COMMISSIONER AHEARNE: Well, the reference to
17 the term "discussion," if I can recall to your mind, the
18 Commission when it met on that particular aspect of the
19 order some many months ago there was a Commission debate
20 or discussion on exactly what was meant by that, and in
21 fact you raised the question that should we not be more
22 specific because your point was that otherwise it would
23 bring, and I forget the exact term you used, but
24 something like armies into the field to do lengthy
25 calculations.

1 So Peter Bradford and I had a short colloquy
2 on the matter in which it was pointed out we weren't
3 asking for calculations. In fact, we didn't even use
4 the word "estimate." We used the word "discussion."
5 The point was that we were requiring people who were
6 going to talk about the consequences to at least discuss
7 what is the probability of the accident which was
8 leading to those consequences.

9 Since that was a point the Commission had
10 addressed specifically, argued about and reached a
11 conclusion on, it only seemed appropriate to reiterate
12 it.

13 COMMISSIONER GILINSKY: But there are some
14 parties out there that are unhappy or will be unhappy
15 with the result of this order. The question is can they
16 satisfy the requirements of the Commission by saying we
17 think the probability of an accident is high?

18 You see, what is going to happen is that you
19 are going to get into endless wrangling in this hearing
20 over whether or not parties have satisfied the
21 requirement or haven't satisfied the requirement and
22 that isn't the sort of thing you want in a hearing that
23 is designed to investigate the facts.

24 So at this point, it seems to me, those who
25 are imposing that requirement ought to spell out very

1 clearly percisely what they mean by it.

2 COMMISSIONER AHEARNE: Well, Vic, you
3 disagreed with that approach in the beginning and that
4 was one of the reasons for speaking to it previously.
5 The Board did not read the instructions that we had
6 given them to require any linkage at all or any
7 discussion of the probability. In fact there was
8 information that was apparently out saying that, as a
9 result of one of the prehearing conferences, and I have
10 the transcript of the prehearing conference, where the
11 Board said no, there is no requirement to treat them
12 together.

13 Now you say we need explicit direction. I
14 don't think it is appropriate for us to give completely
15 detailed instructions, just as I don't think it is
16 appropriate for us to address each of the contentions
17 and say this one is out and that one isn't, nor do I
18 think it is appropriate for us to address in detail the
19 contentions and say you must modify it this way or that
20 way.

21 We did set up a Board and we did give it
22 directions to get started. They were not following the
23 directions that we originally gave them and so we have
24 reaffirmed the directions we gave them. They came back
25 and said look, do you really mean that they are supposed

1 to discuss both? What we are saying is yes, they are.
2 Now how much more detailed instruction to give them
3 obviously we disagree on. I don't think any more is
4 needed.

5 COMMISSIONER GILINSKY: Well, let me just say
6 that was never intended in the Commission's order.

7 COMMISSIONER AHEARNE: Wait a minute, what was
8 never intended?

9 COMMISSIONER GILINSKY: That each party
10 discuss both the probabilities and the consequences.

11 COMMISSIONER AHEARNE: That is absolutely not
12 true.

13 COMMISSIONER GILINSKY: Well, okay, you can
14 hold your view.

15 COMMISSIONER AHEARNE: And I know it is not
16 true because it was my ---

17 COMMISSIONER GILINSKY: Let's not get into
18 this.

19 COMMISSIONER AHEARNE: Wait a minute. I have
20 the table for a minute, Vic. You said something wasn't
21 intended in the Commission order. That section of the
22 order was put in at my proposal. You were not in the
23 group that voted for it. I was in the group that voted
24 for it. It was my proposal that was voted for and so it
25 absolutely was intended in the Commission's order.

1 COMMISSIONER GILINSKY: What the Commission
2 wanted from this Board was they wanted a record that
3 included both the probabilities and the consequences.

4 But, anyway, that is not what we are
5 discussing here.

6 COMMISSIONER AHEARNE: But it is not true
7 either.

8 COMMISSIONER GILINSKY: Well, we will deal
9 with that later.

10 The point here is do you know what you want
11 from the parties?

12 COMMISSIONER AHEARNE: I understand that an
13 accident that puts out a large amount of radiation into
14 that area will have disastrous consequences if it gets
15 down into the New York City area and such. I know that
16 and I have received lots of information from many
17 sources on that information, including many of these
18 people.

19 As you will recall when we originally
20 addressed whether or not the Indian Point plants ought
21 to be allowed to continue in operation, we had the staff
22 do a quick risk analysis and they came in and said yes,
23 the consequences are more severe there, but the
24 probabilities are less. So therefore on balance these
25 plants were no more hazardous than the normal plant.

1 So what I was looking for is are there
2 sequences, are there ways in which these plants are not,
3 and are there areas in which the probability is higher
4 that you are going to have an accident?

5 I recognize that people aren't going to be
6 able to go into great detail of that most likely,
7 although I expect some of the people will, but,
8 nevertheless, if they do wish to focus entirely upon the
9 consequences, I felt to have it be really useful for me
10 at least, then they ought to at least discuss what is
11 the probability of getting there because that is part of
12 the risk equation. It is not only there is a severe
13 consequence, but the event has to happen. So you do
14 have to address to some extent or at least discuss and
15 acknowledge that you understand that fact.

16 COMMISSIONER GILINSKY: But what is the logic
17 in having each and every party address it? A party may
18 be competent and equipped to deal with one aspect of the
19 problem and contribute to the Commission's
20 decision-making and not be equipped or not have the
21 money or not have the intellectual horsepower, or
22 whatever, to deal with the other part of the problem.

23 COMMISSIONER AHEARNE: What I am trying to say
24 to you is that at least my support of setting up this
25 hearing and going in that direction was to try to

1 provide information that I didn't have and it didn't
2 seem that I was going to be getting so that I could
3 reach a judgment on the final question, which was should
4 there be modifications made to those plants, including
5 shutting them down.

6 The focus questions that we laid out for the
7 Board I thought was to try to help all of us, and my
8 interest in it was to help me in getting an answer. The
9 part of it in that area that I was most interested in is
10 the linkage which begins with the probability of that
11 sequence. That was critical to me. So there is my
12 interest.

13 COMMISSIONER GILINSKY: Right. It is an
14 important element, we all agreed, but why does it have
15 to come from each and every party? What is your logic
16 there?

17 COMMISSIONER AHEARNE: I am not saying that
18 each and every party has to have a great deal of
19 discussion of that, but in order to lead to a utility in
20 analyzing the risk there has to be some linkage to the
21 probability of the event that is being discussed.

22 COMMISSIONER GILINSKY: Which you would take
23 from one of the other parties if you didn't get from
24 that party.

25 COMMISSIONER AHEARNE: But that is not what I

1 asked, because I think it is critical to see whether
2 there is a linkage to the probability.

3 COMMISSIONER GILINSKY: Well, yes, but why do
4 you feel that you need to get it from that particular
5 party?

6 COMMISSIONER AHEARNE: Because, Vic, as I
7 said, for myself, I have lots of information upon the
8 disastrous consequences of large amounts of radiation
9 being released into areas and I could get that without
10 going through this years and years process of the
11 Board. The setting up of the Board was a special
12 circumstance to try to get that information that wasn't
13 coming. That was the piece that wasn't coming.

14 COMMISSIONER GILINSKY: Well, look, if a party
15 wants to discuss the consequences of an accident and
16 doesn't discuss the probabilities, what will happen is
17 you will rely on the probabilities discussed by other
18 parties. So there is no advantage gained thereby.

19 Now why do you insist that that particular
20 party go out and hire one of the beltway bandits around
21 here and develop calculations on probabilities?

22 COMMISSIONER AHEARNE: I didn't use the words
23 "calculations on probabilities." You did.

24 COMMISSIONER GILINSKY: Well, let me ask you,
25 can they get by by saying the probabilities are higher

1 or lower or medium?

2 COMMISSIONER AHEARNE: I believe that the
3 Board members can sort out what kind of information they
4 have to get. I am not going to lay out detailed
5 guidance because that is going down the pike ---

6 COMMISSIONER GILINSKY: Well, but this comes
7 after the Commission has pulled the Board up short, and
8 now you are saying they have discretion.

9 COMMISSIONER AHEARNE: Because the Board said
10 that they didn't require any connection. The Board said
11 there was no need to have any connection.

12 COMMISSIONER GILINSKY: For each and every
13 party.

14 COMMISSIONER AHEARNE: That is what the Board
15 said and that is not what the Commission originally
16 said. Yes, there did have to be a connection. They did
17 have to relate.

18 COMMISSIONER GILINSKY: Well, I must say, as I
19 say in this whole piece, that if what you mean is that
20 they can simply come in and just say a few words and nod
21 their head in the direction of probability, then, you
22 know, it is no more than an irritant.

23 COMMISSIONER AHEARNE: Obviously they have to
24 do somewhat more than that.

25 COMMISSIONER GILINSKY: Well, you see, now you

1 are saying more. Now what is a discussion if not a
2 calculation?

3 COMMISSIONER AHEARNE: I do not intend that
4 they have to go hire, as your term is, a beltway bandit,
5 but they do have to think a little bit more about what is
6 the probability and what is the sequence that is going
7 to cause this large amount of radiation.

8 COMMISSIONER GILINSKY: Can they say the
9 probabilities here are about the same as elsewhere? I
10 mean these things are all going to be litigated and you
11 might as well give them direction at this point. You
12 know, the majority has decided what it wants to do.
13 That is your right, but I think you also ought to tell
14 them precisely what you want.

15 COMMISSIONER AHEARNE: That was the direction,
16 but the place where the connection fell down wasn't that
17 the Board didn't understand that we were saying you have
18 to have a discussion of probability. The place that it
19 fell down was the Board didn't understand that the
20 people making heavy argument on the consequences had to
21 at least discuss what is the probability of getting that.

22 COMMISSIONER GILINSKY: Well, you are saying
23 "at least discuss." When I said can they just say that
24 the probabilities are about the same as elsewhere, you
25 say no, that is not enough and you have got to have a

1 little more.

2 COMMISSIONER AHEARNE: That is correct.

3 COMMISSIONER GILINSKY: Now how much more?

4 What do they have to have, five pages, ten pages? Do
5 they have to use numbers? Do they have to use algebra?

6 Do you know what you want, Tom?

7 COMMISSIONER AHEARNE: I think at some point I
8 would defer to the Board's judgment. I am not trying to
9 get a bunch of robots up there.

10 COMMISSIONER GILINSKY: Well, I think you
11 probably have a Board now that is not going to make a
12 move unless it is told what to do by the Commission.

13 COMMISSIONER AHEARNE: Well, I don't think
14 that is correct.

15 COMMISSIONER GILINSKY: Do you know what you
16 want, Tom?

17 COMMISSIONER ROBERTS: I want linkage.

18 COMMISSIONER GILINSKY: That sounds pretty
19 good.

20 COMMISSIONER ROBERTS: My views, you have
21 them. I think this is a fruitless debate and I propose
22 we affirm our vote.

23 COMMISSIONER GILINSKY: Well, it sounds to me
24 like you don't know what you want and this is going to
25 lead to more problems, more delay and more wrangling. I

1 don't think it is the way for the Commission to conduct
2 its business. It doesn't seem like we are going to get
3 any further on this point so I won't pursue it.

4 Let me ask you on this other point why did the
5 Commission not want to hear the petitioners who wanted
6 to appear before us in advance of our taking this vote?

7 COMMISSIONER AHEARNE: I imagine the main
8 reason is that the Commission felt it critical to move
9 forward and answer the questions that the Board had
10 asked. The questions the Board had asked, particularly
11 the first one, was did the Commission really mean what
12 it originally said? They asked the question did we mean
13 it, and the answer is yes, we did mean it. The second
14 one again is a question of ---

15 COMMISSIONER GILINSKY: We could not spare a
16 half hour to hear out people who were in disagreement
17 with the conclusion the Commission was coming to? I
18 find that rather odd. Is that how you feel?

19 COMMISSIONER AHEARNE: I wouldn't have
20 characterized it that way, but I seldom characterize
21 things the same way you do anyway.

22 COMMISSIONER GILINSKY: Well, very well. I am
23 sorry to see the Commission moving down this path. I
24 don't think it is going to lead to a happy result for
25 anyone.

1 COMMISSIONER AHEARNE: That may well be. It
2 is, however, the path that at least I think is the
3 responsible path and it may not be a happy path.

4 Jim, did you have some comments?

5 COMMISSIONER ASSELSTINE: The only thing I was
6 going to add is just one thing, John, and that is I
7 think one of my fundamental disagreements with the
8 majority is that some of the things that you intended to
9 be in the Commission's original orders I simply don't
10 find there. It seems to me that, given the nature of
11 what we are doing here, what we have to do is look to
12 the four corners of the previous orders.

13 I guess one of the problems I have is on the
14 point about how you have to establish in the record a
15 discussion not only of consequences but also of
16 probabilities. I just don't see in those earlier orders
17 anything that would have put the Board or the parties on
18 notice that the same witnesses have to ---

19 COMMISSIONER AHEARNE: Let me ask you, did you
20 read the transcript? Normally I wouldn't have reference
21 to a transcript, but in this particular case, since even
22 the Board referred to the transcript and since they were
23 public meetings, did you read the transcript?

24 COMMISSIONER ASSELSTINE: I did not look at
25 the transcript, but I guess my feeling is that it is not

1 reasonable for us to expect the Board or parties, for
2 that matter, especially parties, to have to go back and
3 search through transcripts to glean the meaning of what
4 the Commission was saying.

5 COMMISSIONER GILINSKY: Which we have said in
6 no legal way.

7 COMMISSIONER AHEARNE: Jim, I would normally
8 agree with you. I thought it was very clear, frankly,
9 and so I would not have thought that there was a
10 possibility of confusion. The reason I reference the
11 transcript is that the Board referenced the transcript
12 and said that they used that to get their
13 understanding.

14 I am saying the Board misunderstood and I am
15 pointing out that compounding my difficulty is seeing
16 how the order could be misunderstood. But you point out
17 that you don't see it there either, and that is why I
18 mention, well, the transcript which the Board then
19 referred to for clarification I felt made it clear,
20 although I will say I was so close to it, particularly
21 the debate in the Commission on were we really requiring
22 that, that it just did seem obvious.

23 COMMISSIONER GILINSKY: It also serves no
24 logical purpose and that is why it is so hard to
25 understand and to read into the order.

1 Let me just return to this point. You say a
2 party can refer or base its testimony on information
3 which was developed by another party.

4 COMMISSIONER AHEARNE: Yes.

5 COMMISSIONER GILINSKY: Now can they simply
6 refer to it and say there is testimony on the
7 probability?

8 COMMISSIONER AHEARNE: I will leave to the
9 Board some flexibility clearly. If we were going to run
10 the hearing ourselves, then we would have run the
11 hearing ourselves.

12 COMMISSIONER GILINSKY: Can it just say there
13 is an Oak Ridge report which says ten times as high
14 is ---

15 COMMISSIONER AHEARNE: Vic, I am not going to
16 the Board you must do this or that. I would imagine if
17 I were to do that, then at some later point I would be
18 accused of trying to make robots out of the Board and
19 telling them exactly what to do.

20 COMMISSIONER GILINSKY: Well, but after the
21 Commission has bashed the Board on the head you have a
22 pretty nervous Board.

23 COMMISSIONER AHEARNE: Well, no. I think that
24 what we did is get their attention.

25 COMMISSIONER GILINSKY: Well, it doesn't sound

1 like the Commission really knows what it wants and this
2 is going to lead to a lot of difficulty.

3 COMMISSIONER AHEARNE: Well, I will agree that
4 it will be described as that as it is now being
5 described.

6 COMMISSIONER GILINSKY: Well, we don't seem to
7 be able to articulate what it wants at any rate.

8 Do you have any further thoughts on this, Tom?

9 COMMISSIONER ROBERTS: No. I have expressed
10 my views.

11 COMMISSIONER AHEARNE: Jim?

12 COMMISSIONER ASSELSTINE: I do not have
13 anything else.

14 COMMISSIONER GILINSKY: Well, very well.

15 (At this point in the proceedings Commissioner
16 Ahearne conferred with legal counsel off the record.)

17 COMMISSIONER AHEARNE: Excuse me. I think we
18 have to take a short recess.

19 (Laughter.)

20 COMMISSIONER AHEARNE: We will reconvene at
21 five after twelve.

22 (Whereupon, from 11:53 a.m. to 12:05 p.m., the
23 Commission stood in recess.)

24 COMMISSIONER GILINSKY: Well, do you want to
25 pursue the discussion? Could we do that?

1 COMMISSIONER AHEARNE: Yes, we can pursue the
2 discussion. As a result of some further information, I
3 am not prepared to vote on the order, but we can
4 certainly pursue the discussion.

5 COMMISSIONER GILINSKY: This is not as a
6 result of reading my opinion?

7 (Laughter.)

8 COMMISSIONER AHEARNE: No, I didn't take it
9 with me.

10 COMMISSIONER GILINSKY: Well, let me pursue
11 this point since we have a little time.

12 COMMISSIONER AHEARNE: Although to be fair to
13 you, it is not unrelated.

14 COMMISSIONER GILINSKY: You know, you used the
15 word "discussion." Does discussion imply quantitative
16 argument or can it be qualitative? Before you answer,
17 let me just ---

18 COMMISSIONER AHEARNE: No, what I was
19 hesitating on is that I don't view this as tasking a
20 staff member to go and prepare a report for me. If I
21 were doing that, I would then spell out in detail the
22 ground rules and I would specifically identify what
23 information I wanted, how I wanted it and the format it
24 was supposed to be in. It wasn't that detailed a
25 requirement. It was an attempt to require some linkage.

1 Now the reason for going back and saying that
2 over again to the Board was my belief based not on
3 reading testimony but on reading the Board orders in the
4 prehearing conference. The Board had reached the
5 conclusion which apparently Jim says is reasonable, and
6 I still find difficult. Maybe if you look at it from a
7 lawyer's point of view ---

8 (Laughter.)

9 COMMISSIONER AHEARNE: The Board had concluded
10 that there need not be any linkage and they would
11 provide the linkage. My conclusion was that I needed a
12 different type of help than that. I have supported the
13 reaffirmation of the original direction. The Board came
14 back and I read what the Board was asking as to say did
15 you really mean that, and I thought our answer was yes,
16 we really meant that.

17 Perhaps a better explanation of what was
18 really meant would be useful and that was the thrust of
19 what your comments were. That is one of the things I
20 want to rethink.

21 COMMISSIONER GILINSKY: Let me pursue that
22 point, and I think that is particularly important
23 because this is an investigatory proceeding. We asked
24 them to look into a problem.

25 COMMISSIONER AHEARNE: Yes.

1 COMMISSIONER GILINSKY: Now it is not a matter
2 of simply adjudicating among parties. It is coming up
3 with a body of facts that can help us make a decision.

4 COMMISSIONER AHEARNE: Yes.

5 COMMISSIONER GILINSKY: For that reason I
6 think it is particularly important to explain to them
7 just what sort of information we want.

8 COMMISSIONER AHEARNE: As enjoyable the thrust
9 and parry were, nevertheness, I think you may have a
10 good point and I will rethink and perhaps there are some
11 additional words that I could use to better describe
12 what exactly it is that at least I was looking for. Now
13 whether my other two colleagues will support that, I
14 don't know.

15 COMMISSIONER ROBERTS: I am willing to do that.

16 COMMISSIONER AHEARNE: But I will try to.

17 COMMISSIONER GILINSKY: I guess I don't have
18 anything further, but let's sort of take it up again
19 when we have had more time to think about it.

20 COMMISSIONER AHEARNE: All right.

21 Thank you.

22 (Whereupon, at 12:10 p.m., the affirmation
23 session concluded.)

24

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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/DISCUSSION AND VOTE

Date of Proceeding: September 10, 1982

Docket Number: _____

Place of Proceeding: Washington, D. C.

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MEETING DATE:

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