

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

PUBLIC MEETING

DISCUSSION OF AMENDED WORDING ON
SECTION 201(a)(1) OF ERA LEGISLATION

Place - Washington, D. C.

Date - Thursday, 4 May 1978

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

PUBLIC MEETING

DISCUSSION OF AMENDED WORDING ON
SECTION 201(a)(1) OF ERA LEGISLATION

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

Thursday, 4 May 1978

The Commission met, pursuant to notice, at 3:30 p.m.

BEFORE:

- DR. JOSEPH M. HENDRIE, Chairman
- PETER A. BRADFORD, Commissioner
- RICHARD T. KENNEDY, Commissioner

PRESENT:

- SAMUEL CHILK, Secretary
- J. KELLEY, Acting Legal Counsel
- L. GOSSICK
- C. STOIBER
- J. DEVINE

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CHAIRMAN HENDRIE: I have counted three genuine Commissioners present in the room, and we will commence.

The next item on the agenda is going to be even speedier than I had thought. This would discuss amended wording of Section 201(a)(1) of the Energy Reorganization Act. The intent was to slightly relieve the requirement now in the law which makes it impossible for the Commission to take any action without at least three members being eyeball to eyeball and agreeing on things.

This would print a piece of language into the Energy Reorganization Act in Section 201(a)(1) which would allow the Commission to take an action on a notational quote provided first that all of the Commissioners agreed with the substance of the recommendation or voted one way, either for or against it; and secondly, all the Commissioners agree that it was okay to do the vote on that subject by the notational method. If any single Commissioner thought there ought to be a discussion, there would be a discussion.

Now, there was legislation that appeared --

COMMISSIONER KENNEDY: Can I ask a question?

CHAIRMAN HENDRIE: Yes.

COMMISSIONER KENNEDY: Just a technical one.

You referred to all Commissioners having voted either for or against. What of those cases in which Commissioners from time to time have indicated they have noted

sp2 1 without objection, thus, in effect, have not voted? Must there
2 be an affirmative -- a direct negative or affirmed vote, or
3 will an abstention or something of that order affect it?

4 CHAIRMAN HENDRIE: I'm going to read the law and see
5 if I can get the general counsel to read the law.

6 To say that a noted without objection says that that
7 Commissioner doesn't object to the action being taken, and if
8 he counts as a Commissioner who is willing to go along with it,
9 it requires at least -- it requires a majority of the
10 Commissioners to say positively that they want to do it, I
11 believe, in this system to make it go. But a noted without
12 objection would not shoot down the Commission action, in my
13 view.

14 Mr. Stoiber. Mr. Chairman, I think that is a fair
15 reading. And under the statute there is a clause which says
16 that the indication may be in such form and manner as may be
17 prescribed by the Commission; if the Commission were to adopt
18 an understanding -- that is the way it wished to interpret
19 that -- then that would be in compliance with the statute.

20 CHAIRMAN HENDRIE: The chances are it would be, in
21 fact, helpful to write that down someplace and adopt it as a
22 Commission policy, assuming the legislation goes forward.

23 So counsel can take note of that.

24 At any rate, there was some language proposed for
25 this purpose down on the House side in the oversight committee

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1 in the authorizing legislation, and an earlier version of it,
2 while well-intentioned, seemed not to do what it was intended
3 to do. So after conferring with counsel, we gathered some
4 minor repairs so that we could propose to them language which
5 would do the job that everybody thought it would.

6 Now, what I have lately discovered is that the
7 House beat us to it and have now, in fact, adopted language
8 which is not word for word what we've got, but it does the
9 job perfectly adequately. And let me read it to you then.

10 And if you have copies of that 201(a)(1) paper, you
11 can compare to this recommendation and see how close, in fact,
12 it is.

13 The language that the House has put into the
14 authorization bill, the report on that bill reads: "The
15 present requirement for quorum purposes and for taking action
16 shall be waived in the case of any action of the Commission if
17 all members of the Commission (whether or not present) have
18 indicated in writing in such form and manner as may be pre-
19 scribed by the Commission that they agree to such waiver with
20 respect to such action and are unanimous with respect to the
21 approval or disapproval, as the case may be, of the proposed
22 action."

23 So I think that is just fine.

24 COMMISSIONER KENNEDY: It is the question,
25 Mr. Chairman, unanimous with respect to the approval or

sp4 1 disapproval, that raises the question. Unanimous with respect
2 to approval or disapproval would not seem to countenance a
3 no-objection vote, would it?

4 MR. KELLEY: I think that is not the right inter-
5 pretation.

6 COMMISSIONER KENNEDY: I always thought unanimous
7 meant everybody voting had to vote the same way.

8 MR. KELLEY: It seems to me, noting without objec-
9 tion -- you're not asking for a meeting -- would allow this to
10 operate as I think it is intended.

11 We might enshrine that in a memo.

12 CHAIRMAN HENDRIE: Well, if the law goes, then we
13 ought to have a policy.

14 MR. KELLEY: It will be formalized if and when the
15 law is approved.

16 CHAIRMAN HENDRIE: Now, I see then no reason for us
17 to take much of any action, except that I ought, or somebody
18 on my behalf ought.--

19 COMMISSIONER KENNEDY: May I just add a comment?

20 CHAIRMAN HENDRIE: Yes, sir.

21 COMMISSIONER KENNEDY: That the similarity which you
22 call attention to is striking and suggests that communication
23 by what, some sort of osmotic process, is striking, as well.

24 CHAIRMAN HENDRIE: It is inevitable that sooner or
25 later there would be some happy outcome through the otherwise

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1 random process.

2 I think that what we might do is -- one thing I have
3 to do, and I don't see the Office of Congressional -- oh, yes,
4 I do.

5 Ed, we talked to the Senate side staff yesterday or
6 the day before yesterday about this, so they should -- just let
7 them know that we finally caught up with things here and
8 everything is just fine.

9 The Commission, however, never has gone on record,
10 I don't believe, as to this language, and I know the Senate
11 side staff said they really thought it would be helpful if we
12 could go on the record,

13 What would you think of a note that just says, we
14 think the language proposed on the House side suits our
15 purpose?

16 COMMISSIONER KENNEDY: It wouldn't suit my purpose.
17 I would consider it adequate. That is different.

18 CHAIRMAN HENDRIE: How about, "supports the language
19 for the purpose for which it is intended"? How about something
20 like that?

21 COMMISSIONER BRADFORD: Fine.

22 COMMISSIONER KENNEDY: Fine.

23 CHAIRMAN HENDRIE: Just so that there can be some
24 record that this legislation proposed little addition here to
25 the Energy Reorganization Act, is, in fact, in consonance with

sp6 1 the Commission's goals.

2 COMMISSIONER KENNEDY: Though it doesn't accomplish
3 very much, it is not harmful.

4 CHAIRMAN HENDRIE: Well, there are a range of views
5 on its flexibility. I think this is sort of over on the short
6 end, actually.

7 Okay. Now, if somebody will put together a letter
8 like that, it would be useful to just do that rather promptly
9 and run it up.

10 And with your permission, then, I will declare the
11 201(a)(1) item to be satisfactorily resolved.

12 COMMISSIONER KENNEDY: I don't think we need to
13 vote, as long as both of you are agreeable to it. It will be
14 a very simple sort of a statement, and we will have draft
15 language around pronto.

16 (Whereupon, at 3:40 p.m., the meeting was adjourned.)

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