

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

Title: AFFIRMATION/DISCUSSION AND VOTE

Location: ROCKVILLE, MARYLAND

Date: OCTOBER 17, 1990

Pages: 7 PAGES

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1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

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4 Affirmation/Discussion and Vote (PUBLIC MEETING)

- 5 a. Petition to Intervene and Requests for Hearing
6 in Shoreham Operating License Amendment
7 Proceeding
- 8 b. Kerr-McGee's Motion for a Hearing Under Section
9 274o
- 10 c. Final Rule, Interim Procedure for Agency
11 Appellate Review

12 * * *

13 PUBLIC MEETING

14 * * *

15 Nuclear Regulatory Commission

16 One White Flint North

17 Rockville, Maryland

18 FRIDAY, October 17, 1990

19 The Commission met in open session, pursuant to
20 notice, at 11:30 a.m., the Honorable KENNETH G. ROGERS,
21 Acting Chairman of the Commission, presiding.

22 COMMISSIONERS PRESENT:

23 KENNETH M. CARR, Chairman of the Commission

24 KENNETH C. ROGERS, Member of the Commission

25 JAMES R. CURTISS, Member of the Commission

FORREST J. REMICK, Member of the Commission

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1 STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

2 SAMUEL J. CHILK, Secretary

3 WILLIAM C. PARLER, General Counsel

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P R O C E E D I N G S

(11:35 a.m.)

CHAIRMAN CARR: Good morning, ladies and gentlemen. This is an affirmation session.

We have three items to come before us this morning. Before I ask the Secretary to lead us through the items for affirmation, do any of my fellow Commissioners have any opening comments they would like to make?

(No response.)

If not, Mr. Secretary, you may proceed.

MR. CHILK: One of the items, Mr. Chairman, has not been noticed to the public for the required length of time, and I would ask the Commission to vote to hold on less than one week's notice, an affirmation of Final Rule entitled Interim Procedures for Agency Appellate Review.

May I have that vote?

(Chorus of ayes.)

MR. CHILK: Thank you. The first item before the Commission is SECY 90-299. It is a Petition to Intervene and Request for Hearing in the Shoreham Operating License Amendment Proceeding.

The Commission is being asked in this paper, to respond to six Petitions to Intervene and Request for Hearings related to various actions taken by the NRC Staff

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1 and the Long Island Lighting Company concerning the
2 Shoreham Nuclear Power Station.

3 The Petitions seek various Commission actions,
4 including an order directing the NRC Staff to prepare an
5 Environmental Impact Statement on the proposed
6 decommissioning of the Shoreham facility, and that the EIS
7 consider resumed operation as an alternative to
8 decommissioning.

9 All Commissioners have approved an order
10 attached to a memorandum of October 16th, which indicates
11 that NRC is not required under the Atomic Energy Act and
12 the National Environmental Policy Act, to consider
13 "resumed operations" as an alternative under the facts of
14 this situation.

15 The order also forwards the petitions to the
16 Atomic Safety and Licensing Board, with directions to
17 review and resolve all other aspects of these hearing
18 requests in a manner not inconsistent with the order.

19 Would you please affirm your votes?

20 (Chorus of ayes.)

21 MR. CHILK: Thank you.

22 The second item, Mr. Chairman, is SECY 90-254,
23 the Kerr-McGee Motion for a Hearing Under Section 274o.
24 The Commission is being asked to act on an order which
25 responds to an April 27th, 1990 motion filed by Kerr-McGee

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1 Chemical Corporation requiring that the NRC comply with
2 Section 274o of the Atomic Energy Act, which Kerr-McGee
3 reads to require a full adjudicatory hearing and an oral
4 argument, before deciding whether to amend the NRC's
5 agreement with the State of Illinois.

6 The amended agreement would empower Illinois to
7 regulate uranium and thorium mill tailings under the
8 Uranium Mill Tailings Radiation Control Act.

9 All Commissioners have approved an order
10 attached to our memorandum, which denies both the request
11 for oral argument on the proposed amendment to the
12 Commission's agreement with Illinois and the motion that a
13 formal adjudication on Illinois' differing 11(e)(2)
14 standards be held before the Commission decides whether to
15 amend its agreement with Illinois.

16 The Commission has also today approved an
17 amendment to the Illinois agreement. In doing so, the
18 Commission has approved the Illinois generic program for
19 regulation of 11(e)(2) byproduct material. However, the
20 Commission has also determined that it has a site-specific
21 obligation that will arise only later if, and when,
22 Illinois, having applied authority over byproduct
23 material, seeks to impose standards which differ from the
24 Commission's own standards.

25 If the state seeks to adopt alternatives to any

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1 requirement adopted and enforced by the Commission for
2 disposal of material at the West Chicago site, the
3 Commission will determine, after notice and opportunity
4 for a hearing, whether the state's alternatives will
5 achieve a level of stabilization and containment at the
6 West Chicago site, and a level of protection for public
7 health, safety and the environment from both radiological
8 and non-radiological hazards which are equivalent to, to
9 the extent practicable, or more stringent than, the level
10 which would be achieved by any requirements adopted or
11 enforced by the Commission for disposal of the materials
12 at West Chicago.

13 Would you please affirm your vote?

14 (Chorus of ayes.)

15 MR. CHILK: The third and last item is a Final
16 Rule on Interim Procedure for Agency Appellate Review in
17 which the Commission is being asked to approve a final
18 rule which places into effect a transition plan to handle
19 all appeals from initial decisions of presiding officers
20 in all formal and informal agency adjudications and
21 certain other appellate and related matters.

22 The Commission's recent decision to abolish the
23 Atomic Safety and Licensing Appeal Panel, which heretofore
24 provided an intermediate level of appeal from initial
25 decisions, requires a new procedural system for direct

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1 appellate review by the Commission.

2 The transition plan implemented in this final
3 rule provides that, with certain exceptions, the
4 Commission rather than the Appeal Board will provide
5 agency appellate review for appellate matters filed in the
6 interim period between the date -- after the date of
7 publication of this final rule and the effective date of
8 the final appellate review rule.

9 The Commission review in this interim period
10 will follow existing procedures. Appellate matters which
11 are pending before the Appeals Board and on the date of
12 this final rule will be decided by the Board.

13 All Commissioners have approved the rule as
14 attached. Would you please affirm your votes?

15 (Chorus of ayes.)

16 CHAIRMAN CARR: Is there anything else to come
17 before us today?

18 MR. CHILK: That concludes my items.

19 CHAIRMAN CARR: We stand adjourned.

20 (Whereupon, at 11:40 a.m., the meeting was
21 adjourned.)

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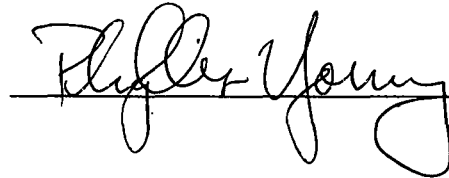
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