

ORIGINAL

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NUCLEAR REGULATORY COMMISSION

In the matter of:

COMMISSION MEETING

Affirmation/Discussion and Vote

(Public Meeting)

Docket No.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
- - -
AFFIRMATION/DISCUSSION AND VOTE
- - -
PUBLIC MEETING

Room 1130
1717 H Street, N.W.
Washington, D. C.
Thursday, 27 June 1985

The Commission met, pursuant to notice, at 1:10 p.m.

COMMISSIONERS PRESENT:

NUNZIO PALLADINO, Chairman of the Commission
JAMES ASSELSTINE, Commissioner
FREDERICK BERNTHAL, Commissioner
LANDO ZECH, Commissioner

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

SAMUEL CHILK
ANDY BATES
TOM REHM
JOHN ZERBE
MARTIN MALSCH

P R O C E E D I N G S

CHAIRMAN PALLADINO: Good afternoon. This is an affirmation/discussion session. We have two items listed on the agenda. One of which we are prepared to vote on. And the other one I would suggest that we discuss, and then decide whether or not we are ready to vote.

So, I wonder if the Secretary could lead us through the item on which we are prepared to vote, and then we will take up the discussion of the other one.

MR. CHILK: The item is SECY 85-109, entitled Amendments to 10 CFR Part 60, Disposal of High-Level Radioactive Wastes in Geologic Repository.

The Commission here is being asked to approve for publication final amendment to 10 CFR Part 60, which contain criteria for the disposal of the high-level radioactive waste in an unsaturated zone.

All of the Commissioners have approved the amendments to 10 CFR Part 60, as recommended by the Staff in SECY 85-109. Would you please affirm your votes.

CHAIRMAN PALLADINO: Aye.

COMMISSIONER ROBERTS: Aye.

COMMISSIONER ZECH: Aye.

COMMISSIONER ASSELSTINE: Aye.

COMMISSIONER BERNTHAL: Aye.

MR. CHILK: Thank you.

1 The second item is the Severe Accident Policy.

2 CHAIRMAN PALLADINO: I wonder if I might begin the
3 discussion. Several points have arisen with regard to the
4 severe accident policy, and I believe on the policy itself we
5 have agreement. But the understandings that go along with
6 the agreement are the matters at issue.

7 One had to do with a paragraph that Commissioner
8 Zech had proposed. I had proposed a modification to it.
9 However, Commissioner Zech would prefer to go with it the way
10 it is.

11 I gather Commissioner Bernthal would also go with
12 the way it is. And, since I think my change was not
13 significant enough to delay the policy I would join that
14 majority. And so that paragraph would be as Lando Zech had
15 proposed it.

16 On the matter of property, I think we have agreement
17 that the word "property" be omitted from the policy
18 statement. However, there seems to be disagreement on some of
19 the understanding that is behind that.

20 I believe there is general agreement that in the PRA
21 cost-benefit analysis, property is a factor that is to be
22 considered in the evaluation of the PRA cost-benefit. I also
23 feel that equally important are the probabilities of the
24 events from which the possible offsite property losses are
25 determined, and we should make sure that those things are both

1 considered.

2 Commissioner Bernthal would also want us to accept
3 the fact that this has been long tradition, and also is a
4 matter of policy.

5 COMMISSIONER ASSELSTINE: As well as law. I think
6 Fred makes the point that the law requires it.

7 CHAIRMAN PALLADINO: I'm agreeing -- my point is
8 that as far as long tradition, I haven't examined whether or
9 not it is long tradition. And I don't know that we need to
10 be hung up on it.

11 I do agree that it is a factor to be considered,
12 based on the law. And when we agree to it, then I think it
13 becomes state of policy.

14 COMMISSIONER BERNTHAL: I don't mind dropping out
15 the words long tradition.

16 COMMISSIONER ASSELSTINE: I do.

17 COMMISSIONER BERNTHAL: The essence is whether or
18 not the Commission agrees to the fact that dropping this out
19 has no special significance, and that our policy remains as it
20 has been, precedent that offsite property is taken into
21 account.

22 COMMISSIONER ASSELSTINE: I have to say I don't even
23 understand why you want to drop it out.

24 I have got a lot of problems with this policy
25 statement, but it seems to me what you are doing is creating

1 an ambiguity by taking it out.

2 Why in the world would you not want to acknowledge
3 in a severe accident policy statement, that you are going to
4 be protecting the public both from the standpoint of injury to
5 individuals, and from the standpoint of contamination to
6 public property.

7 One of the things I think we learned from the Indian
8 Point proceeding, is that in many of these accident sequences,
9 you could end up with widespread contamination of offsite
10 property.

11 And that is a factor to be taken into account in
12 deciding whether additional measures, and what additional
13 measures need to be taken to protect against severe accident
14 consequences. Why would you not want to make that explicit in
15 the Commission's policy?

16 CHAIRMAN PALLADINO: Well, let me answer that
17 question. The way it arose was that this policy was now
18 changing the fundamental expression that we always used in
19 making our findings. We also had other items going out that
20 did not have this phrase.

21 My feeling was that if we were going to make this
22 change in phraseology, we should consider it as a separate
23 matter and then change it for all the things we put out. And
24 not make it just an item related to severe accident policy and
25 then forget it from then on.

1 I didn't take a position whether it should or
2 should not be in the phraseology.

3 COMMISSIONER ASSELSTINE: Is there any doubt in your
4 mind?

5 CHAIRMAN PALLADINO: But I don't think it should be
6 in the phraseology of only one document, and then forgotten in
7 all the others.

8 COMMISSIONER ASSELSTINE: Which others is it not in
9 that are of significance?

10 CHAIRMAN PALLADINO: I hesitate to pick examples,
11 but I think the backfitting rule for all I know has something
12 about no undue risk to the health and safety.

13 COMMISSIONER ASSELSTINE: Of course that is not out
14 yet, so we can fix that one.

15 CHAIRMAN PALLADINO: But I think that you should not
16 make a decision like this as a part of another action. But
17 treat it overtly. And that was my suggestion that we ask the
18 Staff -- I did talk to Marty Nalsch, and he said that well
19 there are complications and it would be worth -- I'll let him
20 speak for himself. But I got the impression it would be worth
21 treating this as a separate matter, if we are going to change
22 the phraseology.

23 COMMISSIONER BERNTHAL: That's a separate issue in a
24 way.

25 CHAIRMAN PALLADINO: That was the fundamental issue

1 that caused me to bring this matter up at all.

2 COMMISSIONER BERNTHAL: But, as Jim says, he has
3 other disagreements with the policy statement. But I
4 concurred in your concern that we not -- and it is more a
5 legal principle, something I am not terribly familiar with, I
6 guess, that you don't take longstanding terminology and,
7 without some care, extrapolate it suddenly to include a new
8 term. Because then the longstanding understanding can be
9 confused.

10 The problem is, as you know, that it was in there
11 and it probably wasn't wise to be in there in connection with
12 that longstanding terminology, so I agreed with you that that
13 was not wise. We dropped it out. But that dropping it out in
14 itself can create a misimpression. And so the issue here is
15 very simple, and I thought we had agreement.

16 CHAIRMAN PALLADINO: Well, that's what I thought.

17 Because I had this statement in my memo responding
18 to your comments, that I agree among the factors to be
19 considered in PRA cost-benefit evaluations are possible
20 offsite property losses.

21 COMMISSIONER BERNTHAL: But then if you concur in my
22 memorandum, we are in agreement. My memorandum is before the
23 Commission for a vote, and you either disagree or agree.

24 CHAIRMAN PALLADINO: Well, I voted. I could not buy
25 all the other rationale about being longstanding.

1 I don't think it is necessary. If we agree that
2 property -- offsite property -- is to be considered, let's
3 agree. We can pass the severe accident policy and I think we
4 got our work done.

5 COMMISSIONER BERNTHAL: I don't mind dropping out
6 long tradition. That doesn't bother me a bit.

7 The key words are that the concurrence of the
8 Commission that the omission in a severe accident policy
9 statement in no way changes Commission policy and precedent,
10 as set forth in the Indian Point proceeding that offsite
11 property value is to be taken into consideration, cost-benefit
12 and PRA analysis.

13 And the last part of that, the key phrase here is
14 identical to the phrase in your memorandum.

15 CHAIRMAN PALLADINO: Yes.

16 COMMISSIONER BERNTHAL: So, I presume you concur in
17 what --

18 CHAIRMAN PALLADINO: In this being an important
19 consideration. Offsite property loss as being an important
20 consideration in PRA cost-benefit analysis. I agree. And if
21 we all agree on that, I think --

22 COMMISSIONER BERNTHAL: Then it is policy.

23 CHAIRMAN PALLADINO: That's right. It becomes
24 policy when we agree on it.

25 COMMISSIONER BERNTHAL: But the point is, Sam is

1 sitting there with a record matter that needs to have a
2 Commission vote. I voted -- I don't know what everybody
3 else's vote is on it. My vote is -- obviously I vote in favor
4 since it is my memorandum. It seems to me the rest of the
5 Commission has to vote.

6 COMMISSIONER ASSELSTINE: Fred, you want to vote on
7 your --

8 COMMISSIONER BERNTHAL: That's a condition of my
9 concurrence. I mean, it is clear that a condition of my
10 concurrence.

11 CHAIRMAN PALLADINO: We are not making any
12 implication at this time that denies precedent.

13 COMMISSIONER BERNTHAL: Right as stated on that
14 vote. That is exactly --

15 CHAIRMAN PALLADINO: But you have longstanding
16 tradition and those kind of words.

17 See, I don't think we have to make the finding on
18 longstanding tradition. And I think we are establishing
19 policy. And I think we are in agreement that potential
20 property loss is an important fact to be considered in PRA
21 cost-benefit analysis.

22 And I would say I think that is all we have to make
23 a finding on.

24 COMMISSIONER BERNTHAL: We have to make a finding
25 because, as I say in point 3 in my vote sheet, that my vote is

1 contingent on Commission concurrence. In paragraph 1, that
2 says it.

3 CHAIRMAN PALLADINO: Where is it?

4 COMMISSIONER BERNTHAL: The longstanding tradition
5 is my own commentary, and that is not the issue before the
6 Commission as I read it.

7 CHAIRMAN PALLADINO: Where are you reading from?

8 COMMISSIONER BERNTHAL: And the Secretary of the
9 Commission has to make a determination of how the Commission
10 votes.

11 If the Commission can't concur in that, then I don't
12 vote in favor of it. It is as simple as that.

13 CHAIRMAN PALLADINO: Which one are you reading?

14 COMMISSIONER BERNTHAL: Paragraph 1 in number 3. It
15 is the one I read earlier.

16 Omitting the word "property" from the policy
17 statement -- well, let's see, that is my -- The issue is
18 subject to omitting that word, which I have agreed with you to
19 omit, with the concurrence of the Commission that this
20 omission in the severe accident policy statement in no way
21 changes Commission policy and precedent as set forth, as
22 notably set forth in the Indian Point proceeding --

23 CHAIRMAN PALLADINO: That gives me another problem.

24 COMMISSIONER BERNTHAL: -- that offsite property
25 value was to be taken into consideration in the cost-benefit

1 PRA analysis.

2 And, let me read your memorandum, if I may. Your
3 memorandum says:

4 "I agree that among the factors to be considered in
5 PRA cost-benefit evaluation of offsite property losses."

6 Now, I don't see a nickel's worth of difference
7 between those.

8 CHAIRMAN PALLADINO: I agree. It is the part that
9 comes out, "In this connection it should be noted that the
10 Commission has by long tradition. . ." and I am supposed to
11 concur to that.

12 COMMISSIONER BERNTHAL: No. That is my comments,
13 Joe. That is not -- you need concur only in that paragraph
14 that I have read. I don't care whether we agree it is by
15 long tradition or not.

16 COMMISSIONER ASSELSTINE: But you are insisting on
17 concurrence in that first paragraph of item number 3?

18 COMMISSIONER BERNTHAL: That first paragraph. It is
19 just this issue that you have stated in the first sentence
20 there.

21 CHAIRMAN PALLADINO: I also have a problem with
22 referring to the Indian Point proceeding. I have a problem
23 there because at Indian Point, while there were various
24 cost-benefit analyses made, the decisions were made on the
25 basic policy question.

1 If you crossed out that on Indian Point, I would say
2 that the first paragraph of 3 -- the reference to Indian
3 Point -- the first paragraph of 3 I could live with.

4 COMMISSIONER BERNTHAL: Okay. I don't care about
5 Indian Point. That is a parenthetical. Strike the Indian
6 Point, I don't mind.

7 COMMISSIONER ASSELSTINE: I think you are wrong on
8 that point, Joe, that you are trying to make about Indian
9 Point, though. I don't think the judgment was made on whether
10 to do something more or less was made on the basis of some
11 broad policy judgment. It was based on the factual record in
12 that proceeding, which included analyses of offsite property
13 damage as well as loss of life or injury to people.

14 It was not a broad policy judgment, it was a
15 specific factual judgment based upon the record in that
16 proceeding. And I think Fred's paragraph is absolutely
17 accurate.

18 CHAIRMAN PALLADINO: Well, why do we have to settle
19 that.

20 COMMISSIONER BERNTHAL: I don't care if we mention
21 Indian Point. That is obviously a parenthetical comment.

22 COMMISSIONER ROBERTS: Let me see if I can referee.

23 CHAIRMAN PALLADINO: Yes, go ahead.

24 COMMISSIONER ROBERTS: Are you saying you would
25 accept the first paragraph under Fred's number 3 if you strike

1 "as notably set forth in the Indian Point proceeding"?

2 However, you do not want to be in agreement with the
3 second paragraph.

4 CHAIRMAN PALLADINO: Right.

5 COMMISSIONER ROBERTS: And Fred, you say deleting
6 the second paragraph doesn't bother you?

7 COMMISSIONER BERNTHAL: The second paragraph is my
8 own commentary. That is not what is before the Commission.

9 The issue before the Commission is concurrence of
10 the first and clear point.

11 CHAIRMAN PALLADINO: If you clarify that point --
12 see, because your memo did say subject to the following. And
13 so if you say it is not subject to the second paragraph --

14 COMMISSIONER ROBERTS: Strike paragraph 2, you will
15 get the concurrence of the Chairman is the way I understand
16 it.

17 COMMISSIONER BERNTHAL: Let's do this. If there is
18 confusion there, I will say, rather than "it should be noted,"
19 "I note that," because that is the sense of it. "In this
20 connection I note that." How is that?

21 CHAIRMAN PALLADINO: Okay.

22 Well, I think the transcript can show that we have
23 agreement on the first paragraph, taking out the parenthetical
24 thought. And we need not strike the second part, but we are
25 not voting on whether that -- we got agreement on that.

1 I will make it simpler. The transcript will show
2 that we did confirm the first paragraph in item 3, less the
3 parenthetical expression.

4 COMMISSIONER BERNTHAL: Well, why don't we make it
5 even simpler.

6 I will change the wording of my vote sheet, the
7 second paragraph, which say "In this connection it should be
8 noted that. . .".

9 Instead of saying that, I will say "In this
10 connection I note that. . .", which was the intent in any
11 case. Those are my notations, not something before the
12 Commission to vote on.

13 CHAIRMAN PALLADINO: Okay.

14 Now also another point that I have to point out,
15 having changed the "property," I think 1070 that accompanies
16 the severe accident policy would have to be modified in
17 accordance with the agreement we reached here.

18 COMMISSIONER BERNTHAL: Okay. I think we are home,
19 except for you.

20 CHAIRMAN PALLADINO: I think we are prepared to
21 vote. I would like to see that paper get out. I think it is
22 a good paper, it has got a lot of very good points in there.
23 With this, I don't think we have a basis to hold it up.

24 COMMISSIONER ASSELSTINE: Wait a minute.

25 (Laughter)

1 I have waited for months for you guys to finally
2 agree on a version of this policy statement.

3 Now that you do, I would like four working days to
4 prepare my views. And I would ask -- I have no problem with
5 affirming the policy statement today, as long as it is held up
6 for four working days for me to prepare my view, so that it
7 can be issued as a package with my views.

8 If that is agreeable, that is fine with me.

9 COMMISSIONER ZECH: Fair enough with me.

10 COMMISSIONER ROBERTS: Right.

11 CHAIRMAN PALLADINO: Yes.

12 COMMISSIONER BERNTHAL: Right. That is asking a
13 lot. We have been at this four months already, to ask for
14 four more days.

15 (Laughter)

16 CHAIRMAN PALLADINO: We may find it necessary to ask
17 for another day, if there are going to be responses.

18 COMMISSIONER ASSELSTINE: That's right.

19 CHAIRMAN PALLADINO: I will certainly accept four
20 days for you to prepare your additional remarks.

21 Is there any problem with that?

22 COMMISSIONER ZECH: No, none at all.

23 COMMISSIONER ROBERTS: No.

24 COMMISSIONER BERNTHAL: No.

25 CHAIRMAN PALLADINO: All right, if we didn't vote on

1 that today we would be delaying it more than that anyhow.

2 COMMISSIONER ASSELSTINE: That's right.

3 MR. CHILK: Let me ask one other question.

4 CHAIRMAN PALLADINO: Okay.

5 MR. CHILK: I heard you, Mr. Chairman, agree with
6 Commissioner Bernthal. Do I take it the rest of the
7 Commissioners agree with the Bernthal --

8 CHAIRMAN PALLADINO: With the first paragraph under
9 item 3. With the modification on the Bernthal parenthetical
10 statement.

11 COMMISSIONER ZECH: I agree.

12 COMMISSIONER ROBERTS: Yes.

13 COMMISSIONER ASSELSTINE: Yes.

14 MR. CHILK: Then the matter before the house is the
15 policy statement on severe reactor accidents regarding future
16 designs in existing plants.

17 We circulated a version to you earlier today which
18 contains all of the changes and the modifications that
19 Commissioners have made, and which have been inserted, except
20 as noted in this conversation here at the table.

21 It is our understanding the Chairman, Commissioner
22 Bernthal, Commissioner Zech, Commissioner Roberts approve the
23 policy statement, Commissioner Asseistine disapproves. He
24 will have separate views to be within four days.

25 Would you please affirm your vote.

1 CHAIRMAN PALLADINO: Aye.

2 COMMISSIONER BERNTHAL: Aye.

3 COMMISSIONER ZECH: Aye.

4 COMMISSIONER ROBERTS: Aye.

5 COMMISSIONER ASSELSTINE: Aye.

6 CHAIRMAN PALLADINO: Thank you. That was a
7 worthwhile session.

8 Anything more to come before us?

9 MR. CHILK: I have nothing more at this time.

10 CHAIRMAN PALLADINO: Thank you.

11 We will stand adjourned.

12 (Whereupon, at 1:30 p.m., the affirmation/discussion
13 meeting was adjourned.)

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