

NUCLEAR REGULATORY COMMISSION

ORIGINAL

COMMISSION MEETING

In the Matter of: PUBLIC MEETING
AFFIRMATION SESSION 81-32

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

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4 PUBLIC MEETING
5 AFFIRMATION SESSION 81-32
6

7 Nuclear Regulatory Commission
8 Room 1130
9 1717 H Street, N.W.
10 Washington, D.C.

11 Thursday, August 27, 1981

12 The Commission met, pursuant to notice, at 3:40 p.m.

13 BEFORE:

14 NUNZIO PALLADINO, Chairman of the Commission

15 VICTOR GILINSKY, Commissioner

16 PETER A. BRADFORD, Commissioner

17 JOHN F. AHEARNE, Commissioner

18 THOMAS ROBERTS, Commissioner

19 ALSO PRESENT:

20 SAMUEL CHILK

21 LEONARD BICKWIT

22 MARTIN MALSCH

23 FORREST REMICK
24
25

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

2 CHAIRMAN PALLADINO: We will call the meeting to
3 order.

4 This is an affirmation and discussion session.
5 The number of items were listed on the agenda. I will ask
6 the Secretary to walk us through the list.

7 MR. CHILK: The first item is SECY-81-20D, Policy
8 on Proceeding with Pending Construction Permit and
9 Manufacturing License Applications. A majority of the
10 Commission, the Chairman, Commissioners Ahearne and Roberts,
11 have approved the final rule for CPs and MLs as modified by
12 two EDO memos and as further modified by a Palladino
13 change. Commissioners Gilinski and Bradford disapproved the
14 paper and have provided separate papers.

15 Would you please affirm your votes?

16 COMMISSIONER AHEARNE: Aye.

17 COMMISSIONER ROBERTS: Aye.

18 CHAIRMAN PALLADINO: Aye.

19 COMMISSIONER GILINSKY: Let me add for the record,
20 at least so far as the manufacturing licenses go, there is
21 one closer agreement than there was before and while my
22 views are not entirely reflected in the additional paragraph
23 that has been added, I am pleased to see it. I expressed
24 some views. I would be pleased if they would be attached.

25 MR. CHILK: Yes, your views and Mr. Bradford's

1 views will be attached.

2 COMMISSIONER AHEARNE: And I also provided my
3 views.

4 MR. CHILK: Yes.

5 CHAIRMAN PALLADINO: And I may have some views to
6 attach but I have not had a chance to write them yet.

7 MR. CHILK: The second paper is 81-20E. A
8 majority of the Commission, the Chairman, Commissioners
9 Ahearne and Roberts, have approved the paper with
10 modifications to Section 2.504 that they have agreed to and
11 which were distributed today. Commissioner Bradford has not
12 responded.

13 Commissioner Gilinski, I do not know whether this
14 changes your previous stand.

15 COMMISSIONER GILINSKY: It was unclear to me that
16 we were going to deal with this today.

17 MR. CHILK: That is the one you were really
18 talking about a moment ago.

19 COMMISSIONER GILINSKY: Which is D and which is E?

20 MR. CHILK: The D paper was a basic paper that
21 covered the rules of both the CPs and the MLs. The E paper
22 then makes a modification conforming changes that are
23 required and makes a change in the preamble.

24 COMMISSIONER GILINSKY: Yes. I suggested as I
25 remember that it be restricted to the plants which are

1 listed in D.

2 MR. CHILK: That is right. Your original vote was
3 that it be limited to the plants listed in the CP and ML
4 rule.

5 COMMISSIONER GILINSKY: I did not realize we were
6 going to do E. I am sorry to take your time. Do you have E
7 there?

8 MR. BICKWIT: Here it is.

9 COMMISSIONER GILINSKY: It talks about the rule
10 being sufficient for licensing. Since the rule applies to
11 specific plants I think this is a matter of consistency.

12 COMMISSIONER AHEARNE: The rule does apply to
13 certain plants.

14 COMMISSIONER GILINSKY: The E ought to apply to
15 those plants too.

16 COMMISSIONER AHEARNE: We very specifically in D
17 restricted it to a particular set of plants.

18 CHAIRMAN PALLADINO: My vote did not imply that
19 20E would apply only to those plants. I thought it was a
20 general statement with regard to the posture we were going
21 to have concerning CPs and MLs.

22 However after a point that Commissioner Ahearne
23 brought up, I did agree that the hydrogen aspects of the
24 manufacturing licenses were to be confirmed by some studies
25 and I agreed with him that we ought to put that in. That is

1 what we have added on 20E.

2 COMMISSIONER GILINSKY: Right, but that goes into
3 the 20D rule or the rule covered by the paper --

4 CHAIRMAN PALLADINO: I am going to have to ask
5 General Counsel.

6 MR. BICKWIT: I think the Commissioner is right
7 from the standpoint of logic that since the rule itself
8 applies only to a certain number of plants, the reservation
9 with respect to 2.764 and 2.504 really ought to conform to
10 that.

11 CHAIRMAN PALLADINO: I thought you were changing
12 2.764.

13 MR. BICKWIT: That is right. You change it so
14 that it conforms to the fact that the rule itself deals only
15 with six, seven plants. You are saying if those six or
16 seven plants meet the requirements of AD-20D that that is
17 enough for a license. You do not speak to any other CPs in
18 the future.

19 COMMISSIONER AHEARNE: I think the background of
20 that was that when we were trying to struggle through this
21 process of what actions to take after Three Mile Island, we
22 first looked at operating plants. Then we looked at plants
23 in the pipeline for their operating licenses. Then we
24 turned to plants under construction and then we turned to
25 the plants that had construction applications pending.

1 But at that time NRR when they came in with the
2 proposals said they were really looking at the plants whose
3 applications were at some certain stage of review and their
4 review was not intended to encompass what kinds of general
5 changes they would propose for construction permits in the
6 future.

7 So the rule that represents 20D when it went out
8 and in our --

9 CHAIRMAN PALLADINO: I understand 20D. I thought
10 20E was modifying our general requirements.

11 MR. BICKWIT: Yes, it was. But I think the
12 logical point here is right, that initially you had an
13 understanding that it would not be sufficient to comply with
14 the rules to get a license. Now you are changing that
15 because you have come up with a set of conditions that you
16 do regard as sufficient in the case of six plants. So you
17 ought to now change the other rule that says that it is not
18 sufficient to comply with the rules in order to get a
19 license. I would support that.

20 CHAIRMAN PALLADINO: I believe the wording as it
21 now exists does that.

22 MR. BICKWIT: No, it does not. I think the
23 wording that we proposed should be modified in accordance
24 with --

25 CHAIRMAN PALLADINO: That is what was confusing

1 me. The way it was written it seemed to apply to all the
2 plants and I was ready to vote on that.

3 MR. BICKWIT: We recommend that it be restricted.

4 CHAIRMAN PALLADINO: I guess I would not object to
5 limiting it to these plants until we have a chance to look
6 at it further.

7 COMMISSIONER AHEARNE: All right.

8 CHAIRMAN PALLADINO: But we did add that we wanted
9 the decision on hydrogen for the manufacturing licenses to
10 wait the evaluation of the results of containment, loading
11 and mitigation studies. That was a modification.

12 I would go along with at least for the time being
13 only to those plants that are covered by 20D.

14 COMMISSIONER AHEARNE: That is right.

15 CHAIRMAN PALLADINO: Is that agreed?

16 COMMISSIONER ROBERTS: (Nods in the affirmative.)

17 COMMISSIONER GILINSKY: I do not know that I ought
18 to vote, not having voted for the original rule, but I will
19 vote yes. I did vote for the original rule with the
20 exception of one provision. I think you ought to record it
21 that way. I will approve the rule except in the case of one
22 provision in the rule.

23 MR. CHILK: I will record it that way.

24 COMMISSIONER BRADFORD: I will just abstain from
25 this one. Not having approved the original rule, it does

1 not make sense for me to vote on it.

2 MR. CHILK: The third item on the agenda was
3 SECY-81-464 which has been taken off. That is the
4 Protection of Unclassified Safeguards Information.

5 CHAIRMAN PALLADINO: We had two requests that it
6 be deferred and we had two who felt that it ought to go back
7 for some additional rewording.

8 COMMISSIONER GILINSKY: I was happy with your
9 change.

10 CHAIRMAN PALLADINO: It still has to go back for
11 rewording.

12 MR. CHILK: It still has to go back for rewording
13 and we will have to come back anyway.

14 CHAIRMAN PALLADINO: You were not ready yet.

15 COMMISSIONER AHEARNE: Right.

16 CHAIRMAN PALLADINO: In either event it would have
17 to come back so it was decided to scratch it for today.
18 That gives everybody a chance to read the comments, get the
19 wording established so then we know what we voted on
20 specifically.

21 MR. CHILK: The fourth item is SECY-81-473 which
22 is a Federal Register Notice To Implement the Age
23 Discrimination Act. The Commission has approved unanimously
24 the Federal Register Notice to amend 10 C.F.R. Part 4 to
25 prohibit discrimination in federally assisted Commission

1 programs on the basis of age.

2 Would you please affirm your votes?

3 COMMISSIONER GILINSKY: Aye.

4 COMMISSIONER BRADFORD: Aye.

5 COMMISSIONER AHEARNE: Aye.

6 COMMISSIONER ROBERTS: Aye.

7 CHAIRMAN PALLADINO: There was a comment made on
8 why it took us so long. Just for the benefit of at least
9 one newcomer to this Commission, it would be interesting to
10 find out why it took that long and to what extent might
11 those reasons impact on our future actions.

12 MR. CHILK: All right, sir.

13 The last item is SECY-81-503 which is a paper that
14 was discussed this morning, Proposed Amendment to 10 C.F.R.
15 Part 50, Appendix E, in which there have been three votes to
16 approve the proposed amendment with the date changed to
17 February 1, 1982 and modification of the letter, but I
18 believe there is some discussion.

19 CHAIRMAN PALLADINO: I think Commissioner Gilinski
20 had a thought he would like to present to us before we
21 confirm our votes.

22 COMMISSIONER GILINSKY: I would urge you to arrive
23 at the same result by another means and that is by sticking
24 with the current rule, as I said this morning a reasonably
25 liberal interpretation of how we apply the formula, period.

1 That way we could decide the matter now.

2 If you go out for the proposed rule, it will be, I
3 do not know, a week or two before it is in the Federal
4 Register. We have a 30-day comment period. The staff is
5 going to have to take account of all the comments, write a
6 paper, respond to the comments, get back here. I would be
7 surprised if that process is completed in two months.
8 Likely it will take longer. I am sure John will have a
9 generous estimate of how long that process takes. You
10 cannot be sure that you will end up with February 1 because
11 after all, that is going out for public comment. It may
12 come out shorter; it may come out later.

13 COMMISSIONER AHEARNE: It cannot come out much
14 shorter because there will not be that much left.

15 COMMISSIONER GILINSKY: So in terms of getting
16 guidance, you are giving a certain amount of guidance but
17 you will not have decided the issue. It will come back
18 here. We will deal with it again.

19 One of the arguments that has been made is that it
20 proposes a certain amount of the work on the staff to send
21 out letters to licensees indicating deficiencies. In fact
22 that information is pretty well in hand because the
23 licensees have sent in letters indicating where they are.
24 So it is pretty clear at least on the basis where a minimum
25 of the deficiencies are.

1 Against that work you have to lay the work in
2 preparing the papers, reviewing comments, bringing it back
3 here and taking up our time.

4 CHAIRMAN PALLADINO: But if we go the way you are
5 proposing to have the four-month rule, we would be reverting
6 to an enforcement action. In other words we say you are
7 deficient, now you have so much time in which to make
8 corrections. It does take the additional time to prepare
9 the individual letters, but then if I understand correctly
10 -- and I might be wrong -- there are also various conflicts
11 that can arise or contesting of the issues that would not be
12 as clean cut as it would be if there were rules.

13 COMMISSIONER AHEARNE: Also for all the reasons I
14 mentioned this morning, I believe that going the route of
15 the rule change is the most frank way of doing it. I think
16 it is entirely consistent with the way that we originally
17 had intended for the rule to be put in place. I would
18 assume that under the firm hand of the new Chairman, the
19 staff will turn to and achieve a reasonably rapid response
20 in turnaround.

21 COMMISSIONER GILINSKY: Do you see any ambiguity
22 in the interpretation of the four-month period? Can we be
23 put in the position where we would be required to take
24 enforcement action now?

25 MR. BICKWIT: I do not believe so. I think any

1 effort to get an enforcement arm of an agency to take
2 enforcement action prior to the time it is ready is
3 inevitably doomed to failure. So I do not really see that
4 as a down side.

5 CHAIRMAN PALLADINO: Len, you expressed confidence
6 this morning and I never had any reason to question it until
7 that question was raised this morning on the applicability of
8 the four months to the July 1st date.

9 MR. BICKWIT: That is certainly my reading.
10 Obviously John has reached another reading. We have
11 disagreed before.

12 CHAIRMAN PALLADINO: Can that become a source of
13 litigation or confrontation, whatever?

14 MR. BICKWIT: I do not believe so. If it is
15 argued that the four-month period does not apply to this
16 circumstance but that the Commission as a matter of
17 discretion chooses to apply a four-month period, it strikes
18 me that it would be beyond the reach of the law.

19 CHAIRMAN PALLADINO: Let me add one other thing.
20 Maybe this is said in the report, but it is intended that
21 upon the completion of the period ending February 1st that
22 we do intend that there be appropriate enforcement action
23 taken thereafter for those that do not comply.

24 COMMISSIONER AHEARN: Yes.

25 CHAIRMAN PALLADINO: I think that is an important

1 point.

2 MR. BICKWIT: Mr. Chairman, may I say that I do
3 not see any great difference in the staff mechanics, in the
4 mechanics resulting from either of these approaches. I
5 think it really does boil down to the question that John
6 raised: which posture are you more comfortable in,
7 extending the rule or sticking with the rule and going with
8 an enforcement posture which is not an immediate one.

9 CHAIRMAN PALLADINO: I gather you feel more
10 comfortable with --

11 COMMISSIONER BRADFORD: We are sticking with the
12 rules --

13 MR. BICKWIT: That is between these two
14 alternatives.

15 CHAIRMAN PALLADINO: Commissioner Roberts?

16 COMMISSIONER ROBERTS: (Nods in the affirmative.)

17 CHAIRMAN PALLADINO: Commissioner Bradford?

18 COMMISSIONER BRADFORD: You know my preference was
19 for using November 1 as the date after which enforcement
20 action would be taken unless good cause were shown to the
21 contrary. But I think given the way things have been going
22 lately, anytime I wind up five-eighths of the way to where I
23 thought I was, I had better just take it and shut up.

24 (Laughter.)

25 CHAIRMAN PALLADINO: There is another point also

1 in the rule. If as a result of the comments we were to
2 change our mind, then we would have chosen the right
3 course. So I think there is some benefit in the comment and
4 this is one of the things that makes me lean towards going
5 with a fixed date.

6 I gather then we still have three votes to proceed
7 with --

8 MR. CHILK: I gather you have five.

9 Are you both concurring?

10 COMMISSIONER BRADFORD: I guess you could count me
11 as a no on the first ground but I will concur in the
12 February 1 date.

13 MR. BICKWIT: You concur in the amendment to the
14 staff proposal?

15 COMMISSIONER BRADFORD: Amendment is a generous
16 term for it, yes. There was considerable wenching down of
17 the staff proposal.

18 CHAIRMAN PALLADINO: How do you vote?

19 COMMISSIONER GILINSKY: I will go along with
20 that. I would like some indication of the fact that I would
21 have preferred to do it differently.

22 MR. CHILK: That completes the list.

23 CHAIRMAN PALLADINO: Are there any other items
24 that should come up at this time?

25 (No response.)

1 CHAIRMAN PALLADINO: Thank you. We stand
2 adjourned.

3 (Thereupon, at 4:00 p.m., the meeting was
4 adjourned.)

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in the matter of: PUBLIC MEETING - AFFIRMATION SESSION 81-32

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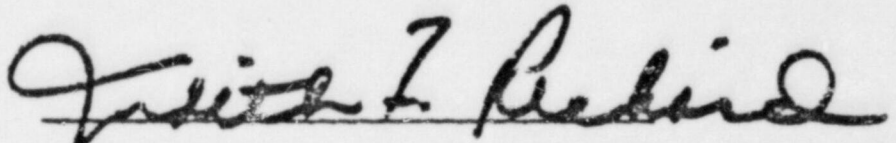
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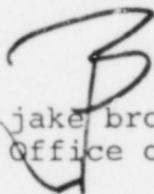
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1. Transcript of: Affirmation Session 81-32,
August 27, 1981. (1 copy)
 - a. SECY-81-20E - Rulemaking Issue, dated
August 21, 1981, Policy on Proceeding with
Pending CP and ML Applications.
(1 copy)
 - b. SECY-81-473, Rulemaking Issue, dated Aug. 3. 81,
Issuance of Federal Register Notice of
Proposed Rulemaking to Implement the Age
Discrimination Act of 1975, et cetera.
(1 copy)


jake brown
Office of the Secretary