

ORIGINAL

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NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

Open Meeting on
RESPONSE TO MOTION BY STATES OF NEW YORK,
WISCONSIN AND OHIO REGARDING ECONOMIC
IMPACTS OF THE URANIUM FUEL CYCLE
IN THE S-3 RULEMAKING PROCEEDING

Place - Washington, D. C.

Date - Thursday, 9 February 1978

Pages 1 - 11

Telephone:
(202) 347-3700

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UNITED STATES OF AMERICA

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Open Meeting on

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- - -

Thursday, February 9, 1978

Commission Meeting Room
1717 H Street N.W.
Washington, D.C.

The Commission convened, pursuant to notice, at
3:50 p.m.

PRESENT: Commissioners Hendrie, Gilinsky and
Kennedy.

- - -

1 CHAIRMAN HENDRIE: All right. May we resume our
2 gathering on the subject of Response to Motion by States of New
3 York, Wisconsin and Ohio Regarding Economic Impacts of the
4 Uranium Fuel Cycle in the S-3 Rulemaking Proceeding, states
5 for which I have the highest regard, I might say, for an
6 assortment of reasons.

7 We have before the house a revised draft of
8 the response to the New York State motion by Mr. Eilprin,
9 reflecting some of the discussion of yesterday.

10 I have a marked-up copy which was left behind,
11 which I understand is not at least universally favored.

12 Let's see. Clearly if we all could have agreed
13 on some particular set of wording, we would be here voting
14 "aye" in affirmation rather than discussing it. Either that,
15 or we haven't had time to focus on it.

16 Let me start out by saying that I found Steve Eilprin's
17 draft fine from my standpoint.

18 COMMISSIONER KENNEDY: I had two very very minor
19 editorial things for clarity purposes.

20 EILPRIN: Those are fine. I have no problem with
21 them.

22 COMMISSIONER KENNEDY: On the first page, just to
23 try to put this in English rather than legalese, the
24 fourth line from the bottom it says "also move us." I would
25 say "also urge us".

1 CHAIRMAN HENDRIE: I see. Whether they move us
2 remains to be seen.

3 COMMISSIONER KENNEDY: That is correct, precisely.

4 CHAIRMAN HENDRIE: I think that is a good criticism.

5 COMMISSIONER KENNEDY: And on page 2, at the
6 very end of that long long paragraph, it says "in a later
7 generic rulemaking, we do not" and I would add "and need not
8 now address."

9 MR. EILPRIN: I would just reverse the order.
10 "We need not and do not."

11 COMMISSIONER KENNEDY: Okay, right. Which
12 suggests that indeed we don't have to do it now, but that
13 does not imply that we will not. That was my point.

14 MR. EILPRIN: That's right. I think that that's
15 right.

16 COMMISSIONER KENNEDY: That is the only reason that
17 we are not doing it now is we don't have to.

18 It looks fine to me that way.

19 CHAIRMAN HENDRIE: Okay. SO your view would be
20 that with the comments you have made, it would be fine.

21 Vic, what do you think?

22 COMMISSIONER GILINSKY: I was trying to --

23 CHAIRMAN HENDRIE: Take care of Peter's thing?

24 COMMISSIONER GILINSKY: Yes, Peter's corrections.

25 MR. EILPRIN: I really think that Commissioner

1 Kennedy's changes are consistent with Commissioner Bradford's
2 views. I think Commissioner Bradford just wanted to make
3 clear that the matter is not now being decided whether or not
4 to later hold a generic proceeding.

5 COMMISSIONER GILINSKY: He went beyond that, really.

6 COMMISSIONER KENNEDY: He said -- and I don't
7 have any objection to that, a generic rulemaking, if that is
8 what we all conclude later is a wise course.

9 We don't need to, in my judgement we ought not
10 at this point decide that, and certainly not what I think
11 this may imply, the way he has drafted it, that indeed that
12 would be a part of this proceeding. We can't do that, as
13 I understand it, we are under an obligation to put a rule
14 in place.

15 MR. EILPRIN: Under the court order.

16 MR. EILPRIN: That is what my suggestion would
17 be, that we did not need Commissioner Bradford's changes.

18 The major problem I have with Commissioner Bradford's
19 suggestion is that if in fact we are going to have an economic
20 generic rulemaking, or are seriously thinking of having that
21 as a related phase of this rulemaking, it is something that
22 we should decide now, because that is going to otherwise
23 get the panel hopelessly confused.

24 And also we have some obligation, I think, to
25 this panel that took this proceeding as given, with the
defined scope, at least with regard to this panel, to keep

1 that scope. This leaves open --

2 COMMISSIONER KENNEDY: Moreover, I am concerned
3 about the time. I can't visualize getting into this much
4 broader scope -- and it would be a considerably broader scope,
5 as we heard yesterday from the staff, a very substantially
6 broader scope. We would never get it finished in the time
7 we are supposed to do this under the court order, or at least
8 that we have implied to the court that we would.

9 Now what I think one has to face is the fact that
10 at that point the arguments that we have used up until now,
11 to allow us to continue the licensing process. might well no
12 longer hold. I think at least they would be in question.

13 MR. EILPRIN: As I understand what Commissioner
14 Bradford is implying, I don't think that would be any serious
15 problem at all. I think that there would be one phase with
16 a particular rule coming out of it, and that would be
17 promulgated, and then there would be another phase involving
18 economics.

19 I just think that that really is somewhat akin
20 to the idea of belated generic rulemaking, and the major problem
21 I have in tying it together as to this rulemaking is that I
22 think it would create difficulties for the Board, and it
23 implies, to my mind, that it would soon follow upon completion
24 of the present rulemaking.

25 I think that that is something which the staff

1 should address in a paper. And I think that is the best
2 way to handle it, the Commission direct the staff to give it
3 a paper --

4 COMMISSIONER KENNEDY: We already did that
5 yesterday.

6 MR. EILPRIN: I am not sure if that direction was
7 clear. But I think that the staff --

8 COMMISSIONER KENNEDY: I think we can do that
9 right now. I thought we did it yesterday. I thought you had
10 suggested or said we ought to look into that question, the
11 staff ought to look into this and give us their advice on it.

12 COMMISSIONER GILINSKY: I would propose an
13 alternative here. Suppose we drop his language and put in
14 "whether the detailed economics of the fuel cycle" and so on,
15 because we are saying that economic feasibility is relevant,
16 and the distinction between costs and feasibility, I
17 think, is not all that clear.

18 CHAIRMAN HENDRIE: "Whether the detailed economic" --

19 COMMISSIONER KENNEDY: Okay, drop his language
20 and put in the word "detailed" after "whether the".

21 COMMISSIONER GILINSKY: Yes.

22 MR. EILPRIN: No problem.

23 COMMISSIONER GILINSKY: And just drop his language.
24 I hope he will forgive me.

25 COMMISSIONER KENNEDY: That is fine with me.

1 CHAIRMAN HENDRIE: I intend to tell him I fought
2 like a tiger for his language, you wrested me down.

3 COMMISSIONER KENNEDY: I won't, because the
4 record of the meeting is clear anyway.

5 CHAIRMAN HENDRIE: Okay. "Detailed economic costs,"
6 the word "urge" instead of "move," and "need not and do
7 not now address." With those adjustments to the Elprin draft,
8 I would ask for a vote of those present.

9 COMMISSIONER GILINSKY: Aye.

10 COMMISSIONER KENNEDY: Aye.

11 CHAIRMAN HENDRIE: Aye. It is so ordered.

12 The Commission will now, before the flow dies
13 down, will immediately rush to affirm several items.

14 MR. RYAN: MR. Chairman, could I ask a question.
15 What was the nature of the paper that you requested?

16 CHAIRMAN HENDRIE: Yes. Do we in fact want to
17 ask for a staff discussion paper on the economic --

18 COMMISSIONER KENNEDY: On the merits of an economic
19 rulemaking. A generic rulemaking on the economic impact.

20 MR. RYAN: The purposes, what it will do.

21 COMMISSIONER KENNEDY: Yes.

22 COMMISSIONER GILINSKY: Could I make one comment
23 that relates to one of our previous discussions on scope?

24 CHAIRMAN HENDRIE: Yes.

25 COMMISSIONER GILINSKY: We discussed whether

1 reprocessing should or should not be included, and decided
2 to include it. But there was some testimony that John Deutch (?)
3 gave, I think yesterday, in presenting the DOE view,
4 and I am just presenting this as an aside.

5 CHAIRMAN HENDRIE: All right, could you just tell
6 us where it is from, and go ahead.

7 COMMISSIONER GILINSKY: The testimony before the
8 House Committee on Science and Technology, which I think
9 was on their '79 authorization yesterday. He does give the
10 DOE view as a preliminary view. But he says that reprocessing
11 is not necessary for safe disposal of spent fuel from light
12 water reactors.

13 I thought that was something that, you know,
14 cleared through their system, and I could not resist bringing
15 it up here.

16 CHAIRMAN HENDRIE: I don't see why you should
17 have resisted. I would be interested if you have the full
18 transcript, or that piece of it by John, I would like to
19 read it.

20 COMMISSIONER KENNEDY: Could you make a copy of it?
21 I would like to read his statement.

22 COMMISSIONER GILINSKY: Most of it is on other
23 subjects.

24 MR. PEDERSON: It is summarized in Energy Daily.

25 COMMISSIONER GILINSKY: It is relevant to Mr.
Scheslinger's comments.

1 CHAIRMAN HENDRIE: It sounds too complicated.

2 MR. PEDERSON: It shows the great flexibility of
3 the Executive Branch.

4 CHAIRMAN HENDRIE: Now can the Secretary get us
5 affirmed on three papers? Let's see if you can do that without
6 the hand touching the eye.

7 MR. DOYLE: There are actually two, Mr. Chairman.
8 We will delay the affirmation of the Bailly matter at
9 counsel's request.

10 The first is a paper involving publication of a
11 rule change, requiring licensees to prepare safegaurds
12 contingency plans.

13 Each of you have approved a guidance memorandum
14 which resulted as a result of an exchange of correspondence
15 between the Secretary and the Staff and OPD with a modification
16 by the Chairman.

17 This guidance memorandum will clearly state when
18 the contingency plans shall be submitted and when they shall
19 become effective.

20 Each of you have given the Secretary your approval
21 of this guidance memorandum, which authorizes publication
22 of the proposed rule.

23 CHAIRMAN HENDRIE: All in favor?

24 COMMISSIONER KENNEDY: Aye.

25 COMMISSIONER GILINSKY: Aye.

1 CHAIRMAN HENDRIE: It is so ordered.

2 MR. DOYLE: The other item relates to the GE
3 test reactor case. The paper before you speaks of approval
4 of the issuance of an order designating and delegating
5 authority to a hearing board to rule on petitions to intervene
6 in the Vallecitos Nuclear Center license renewal proceeding,
7 and to conduct a hearing, if one results from this action.

8 Each of you have indicated your approval of
9 proceeding with an order to the Office of the Secretary. The
10 General Counsel has provided me with an order that would
11 take care of this. I will be pleased to circulate this to
12 your offices for your review, if you wish, prior to the
13 Secretary signing it. It is an order that is consistent with
14 your approval of this paper.

15 CHAIRMAN HENDRIE: In that case, I will call for
16 a vote on the merits, so to speak, and each will have a
17 chance to look at the specific order language to make sure it
18 does indeed agrees with his conception. Okay.

19 On that basis, I would ask for an affirmative
20 vote.

21 COMMISSIONER GILINSKY: Aye.

22 COMMISSIONER KENNEDY: Aye.

23 CHAIRMAN HENDRIE: It is so ordered.

24 MR. DOYLE: One other aspect of it: General
25 Counsel sent you a memorandum suggesting, or recommending that

1 the staff paper, SECY 78-23, on this matter, be released
2 for anyone who might want to use it in the show-cause
3 proceeding. Each of your offices have indicated you have no
4 objection to this. SO we will be doing that.

5 CHAIRMAN HENDRIE: Okay.

6 MR. DOYLE: That's all I have, Mr. Chairman.

7 CHAIRMAN HENDRIE: Onward to agenda.

8 (Thereupon, at 4:10 p.m. the discussion on
9 S-3 Rulemaking Proceeding was concluded.)
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