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Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

AFFIRMATION SESSION 78-1

(Open to Public Attendance)

Tuesday, April 4, 1978

Pages 1 - 17

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13

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
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5 AFFIRMATION SESSION 78-1

6 (Open to Public Attendance)
7

8 Commissioner's Conference Room
9 Room 1130
10 1717 H Street, N.W.
11 Washington, D. C.

12 Tuesday, April 4, 1978
13

14 The Commission met, pursuant to notice, at 10:40 a.m.,
15 Victor Gilinsky, Acting Chairman, presiding.

16 PRESENT:

17 Commissioner Gilinsky, Acting Chairman
18 Commissioner Kennedy
19 Commissioner Bradford

20 ALSO PRESENT:

21 S. Chilk, Secretary
22 J. Kelley
23 K. Pederson
24 W. Magee
25

P R O C E E D I N G S

MR. CHILK: The purpose of the meeting is to affirm eleven SECY papers on which the Commission has previously voted and I would just like to go through each of them and briefly brief the paper and indicate what your votes have been and request your affirmation.

SECY-A-78-18 HOUSTON LIGHTING AND POWER
MOTION re SOUTH TEXAS ANTITRUST

MR. CHILK: The first is SECY-A-78-18. It is a request of the Houston Lighting and Power Company for the establishment of procedures for the consideration of the Attorney General's antitrust advice letter.

The General Counsel has recommended a draft order denying the Houston motion on the basis that the law requires that we follow the recommendations of the Attorney General. All of you have approved and Chairman Hendrie's office has indicated they have no problem with it.

I ask now for you to confirm the vote.

COMMISSIONER KENNEDY: Aye.

COMMISSIONER GILINSKY: Aye.

COMMISSIONER BRADFORD: Aye.

MR. KELLEY: And that recommendation being that we have a hearing.

SECY 78-59 AMENDMENTS TO PART 2 AND 50
ANTITRUST INFO REQUIRED IN CERTAIN CASES

MR. CHILK: The second paper is 78-59, Amendments to

1 Parts 2 and 50 concerning Antitrust Information Required in
2 Certain Cases.

3 It is to obtain the Commission approval for the
4 publication of a Notice of a Proposed Rule changing the
5 requirements for submission of antitrust information in certain
6 instances.

7 The staff has recommended the publication of the
8 proposed record rule-making for 60 days. All of you have
9 approved the publication of the proposed rule and I ask for
10 the affirmation.

11 COMMISSIONER KENNEDY: Aye.

12 COMMISSIONER GILINSKY: Aye.

13 COMMISSIONER BRADFORD: Aye.

14 SECY 78-74 MISCELLANEOUS AMENDMENTS TO
15 10 CFR PART 2

16 MR. CHILK: The third item is 78-74, Miscellaneous
17 Amendments to 10 CFR Part 2. The purpose is to obtain
18 Commission approval for the publication in final form of
19 the various amendments to sections of the Rules of Practice.

20 These amendments are intended to facilitate public
21 participation in the licensing application review and improve
22 the coordination of states, counties and municipalities and
23 generally to approve an update of CFR Part 2.

24 The staff has recommended approval for the publi-
25 cation in the Federal Register Notice of the final rule.
Three of you have approved it and Chairman Hendrie's office

1 indicated there is no problem, and I ask for an affirmation.

2 COMMISSIONER GILINSKY: Aye.

3 COMMISSIONER KENNEDY: Aye.

4 COMMISSIONER BRADFORD: Aye.

5 SECY-78-86 RESPONSE TO LETTER FROM ENVIRONMENTALIST,
6 INC., REQUESTING SUSPENSION OF S-3 RULEMAKING

7 MR. CHILK: The next item is 78-86, it deals with
8 a Response to a Letter from Environmentalists, Inc., Requesting
9 Suspension of the S-3 Rulemaking. They move the Commission to
10 suspend the rulemaking until such times as necessary steps have
11 been taken to ensure the imbalance between the nuclear
12 proponents and the financial abilities of the citizens have
13 been equalized.

14 The recommendation has been to ~~dispatch a draft~~
15 response denying this motion. Commissioner Gilinsky has
16 approved, Commissioner Bradford has approved with a comment.
17 The Hendrie office has approved as amended by OGC memorandum.
18 Commissioner Kennedy has approved as amended by OGC memorandum.
19 Commissioner Bradford subsequently revised the letter which
20 has been circulated to all of you and all of you have concurred
21 in that revision. I ask you to affirm the vote.

22 COMMISSIONER GILINSKY: Aye.

23 COMMISSIONER BRADFORD: Aye.

24 COMMISSIONER KENNEDY: Aye.

25 SECY-78-110 PROPOSED REVISION OF 10 CFR 2.802
PETITION FOR RULEMAKING

1 MR. CHILK: 78-110, deals with the Revision of
2 10 CFR 2.802. It is a Petition for Rulemaking of which under
3 the rules any interested person may petition the Commission
4 to issue, amend or rescind any regulation.

5 The staff requests that the rules be amended so that
6 the statements in support of the petition set forth specific
7 issues.

8 All of you have approved. Commissioner Bradford
9 has approved with the exception of a change of one sentence
10 which has been coordinated with all of you.

11 COMMISSIONER KENNEDY: Aye.

12 COMMISSIONER GILINSKY: Aye.

13 COMMISSIONER BRADFORD: Aye.

14 SECY-78-140 APPROVAL UNDER SECTION 145b FOR
15 EMPLOYMENT OF PAUL R. VERKUIL AS CONSULTANT AND
16 FOR ACCESS TO SECRET NSI OTHER THAN RESTRICTED
17 DATA

18 MR. CHILK: SECY 78-140 is the Approval Under 145b
19 of the Atomic Act for the Employment of Paul Verkuil as a
20 Consultant and for Access of the gentleman to Secret National
21 Security Information other than Restricted Data.

22 This gentleman is going to be the presiding officer
23 of a hearing panel and all of you have approved his employment
24 as a consultant, have authorized his access. Commissioner
25 Bradford made a comment with regard to the clearance, but he
also did approve the appointment, in addition to which there is
also ---

1 COMMISSIONER KENNEDY: What is the effect of the
2 comment concerning the clearance?

3 MR. CHILK: The effect of the comment concerning
4 clearance ---

5 COMMISSIONER BRADFORD: Do you have it right there?

6 MR. CHILK: Yes, I have the problem.

7 He questions the cost involved and the time that
8 it takes to get the clearance ---

9 COMMISSIONER BRADFORD: Yes, but in particular the
10 question that has to do with the difference between whether
11 it would be "L" or "Q" clearance and why it takes longer to
12 get the lesser clearance.

13 COMMISSIONER KENNEDY: But it doesn't have any affect
14 upon this particular case?

15 COMMISSIONER BRADFORD: What we wind up doing is
16 paying more for -- or we are somehow getting ourselves involved
17 in a more elaborate clearance procedure because it takes too
18 long to get the \$7.50 clearance so you wind up getting the
19 \$900 clearance.

20 MR. CHILK: And I believe you have discussed that
21 with the staff and we will send your comments down on the staff
22 to be resolved.

23 In addition, there is an OGC memo ---

24 COMMISSIONER KENNEDY: That is just a normal
25 practice.

1 COMMISSIONER GILINSKY: I don't even want to leave
2 an impression. You just pay and get the clearance.

3 COMMISSIONER BRADFORD: I'm sorry, I did not mean
4 to pontificate that, but there is a level of clearance that
5 was adequate for this case that is far less expensive, but
6 which we chose not to do because it turns out it takes so
7 much longer. I was puzzled.

8 MR. CHILK: But in addition to this, there is a
9 memorandum from the Acting General Counsel for a Federal
10 Register Notice to implement your action appointing a hearing
11 board and at the time you approve this, I would like to request
12 your authorization to issue that Federal Register Notice.
13 May I have your vote on that?

14 COMMISSIONER KENNEDY: Aye.

15 COMMISSIONER GILINSKY: Aye.

16 COMMISSIONER BRADFORD: Aye.

17 SECY 78-17 PETITION FOR RULEMAKING RPRM 50-19:
18 PARTS 1 and 2, UNDERGROUND SITING AND HEAVY
VACUUM CONTAINMENTS

19 MR. CHILK: The next item deals with SECY-78-17.

20 This is a Petition for Rulemaking, Parts 1 and 2
21 Underground Siting and Heavy Vacuum Containments. The
22 Connecticut citizens Action Group and several other groups
23 filed a petition for rulemaking to ask for three things:

24 One, that nuclear reactors be located below ground-
25 level; secondly, that they be housed in sealed buildings, and

1 thirdly, that a full-time federal employee be present.

2 We took care of the full-time federal employee
3 previously, and this now involves the location of nuclear
4 reactors below ground level and that they be housed in sealed
5 buildings.

6 The petition was published for comment. There were
7 ten letters that have been received, none in support of the
8 comment of the petition.

9 The staff has recommended publication of a denial
10 of portions of the petition. Subsequently, in response to
11 comments from Commissioners Kennedy and Bradford, Mr. Minoque
12 came back with a re-write of a portion of the Federal Register
13 Notice with a draft public announcement and with expanded
14 letters to the two congressional committees as requested by the
15 two committees.

16 All of you have approved the staff's recommendation,
17 and I request that you affirm your vote.

18 COMMISSIONER KENNEDY: Aye.

19 COMMISSIONER GILINSKY: Aye.

20 COMMISSIONER BRADFORD: Aye.

21 SECY 78-99 AMENDMENTS TO TABLE S-3;
22 RESPONSE TO NECNP PETITION

23 MR. CHILK: We originally requested SECY 78-99 be
24 affirmed, however, I have since been notified that there are
25 problems with it in two of the Commissioner offices, and we
are withdrawing that request for affirmation.

1 COMMISSIONER GILINSKY: What is the title of that?

2 MR. MAGEE: Amendments to Table S-3; Response to
3 NECNP ---

4 MR. KELLEY: It's the radon problem, I think.

5 MR. PEDERSON: Yes, it is the value for the table for
6 radon.

7 SECY 78-132 ADOPTION TO RULE CHANGE TO PART 20;
8 PETITION BY THE STATE OF ALASKA ON CONTAINERS

9 MR. CHILK: The next one is SECY 78-132 which is
10 an Adoption to a Rule Change to Part 20 in response to a
11 Petition for rulemaking by the State of Alaska concerning
12 labels on empty containers that the Department of Military
13 Affairs in Alaska has requested an amendment, to require the
14 removal or defacing the radioactive material lables on empty
15 radioactive material containers.

16 The Commission has published a proposed rule. A total
17 of ten comments were received. The ten comments were briefed,
18 some in favor, some having some other minor changes in it.
19 The staff has recommended the publication of an effective rule.
20 All of you have concurred in that. Commissioner Kennedy
21 requested that the Register be amended to include a fuller
22 statement of the commenter's views and that will be done.

23 COMMISSIONER KENNEDY: That has been done?

24 MR. CHILK: Yes.

25 I ask you to affirm the vote?

COMMISSIONER GILINSKY: Aye.

1 COMMISSIONER KENNEDY: Aye.

2 COMMISSIONER BRADFORD: Aye.

3 SECY 78-48 ASSESSMENT OF ENVIRONMENTAL IMPACTS
4 OF URANIUM MILLS IN AGREEMENT STATES

5 MR. CHILK: SECY 78-48, which was an Assessment of
6 Environmental Impacts of Uranium Mills in Agreement States
7 was originally scheduled for affirmation and I understand there
8 is a problem in one of the Commissioner's offices.

9 COMMISSIONER KENNEDY: Why don't we withdraw that
10 which was a request from Commissioner Bradford's office.

11 MR. CHILK: We have three other items which we are
12 adding to the list which were not previously announced in which
13 the public was not given adequate notice. I would therefore,
14 ask for your concurrence to vote on SECY 78-8 --

15 COMMISSIONER KENNEDY: Which is?

16 MR. CHILK: -- which is a Response to the
17 Commission Question Concerning the Protection of Strategic
18 Special Nuclear Material SSNM Shipments, and SECY 78-143 which
19 is Proposed Rulemaking for Certain Minor Quantities of Nuclear
20 Material, and SECY A-78-17 which involves a hearing on Nuclear
21 Engineering's application for a renewal and expansion of an
22 operating license for its low-level radioactive waste burial
23 site near Sheffield, Illinois, which I understand now you are
24 ready to affirm. Can I have a vote on short notice to do that?

25 COMMISSIONER KENNEDY: Aye.

COMMISSIONER GILINSKY: Aye.

1 COMMISSIONER BRADFORD: Aye.

2 SECY 78-8 RESPONSE TO THE COMMISSION QUESTION
3 CONCERNING THE PROTECTION OF STRATEGIC SPECIAL
4 NUCLEAR MATERIAL SHIPMENTS

5 MR. CHILK: The first paper then is SECY 78-8 which
6 is the Response to the Commission Question Regarding the
7 Protection of Strategic Special Nuclear Material Shipments.

8 This involves approval for public comment of an
9 amendment to 10 CFR Part 70 which would require the issuance
10 of a general license to any person who possesses SSNM
11 subject to a requirement for the purpose of transportation.

12 All of you have concurred in that paper and the Hendrie
13 office has advised us there is no problem as far as they are
14 concerned.

15 COMMISSIONER GILINSKY: Aye.

16 COMMISSIONER KENNEDY: Aye.

17 COMMISSIONER BRADFORD: Aye.

18 SECY 78-143 PROPOSED RULEMAKING FOR CERTAIN
19 MINOR QUANTITIES OF NUCLEAR MATERIAL

20 MR. CHILK: The next one is 78-143 which was
21 a Proposed Rulemaking for Certain Minor Quantities of Nuclear
22 Material in which the Export License Study Group has reviewed
23 the licensing criteria for some time and has requested or
24 suggested a proposed rule which would establish or expand
25 specific licensing provisions for the export of small quantities
of special nuclear material.

Three of you have concurred. Chairman Hendrie's

1 office indicates there is no problem with it.

2 COMMISSIONER GILINSKY: Aye.

3 COMMISSIONER KENNEDY: Aye.

4 COMMISSIONER BRADFORD: Aye.

5 SECY A-78-17 HEARING ON NUCLEAR ENGINEERING
6 COMPANY'S APPLICATION FOR RENEWAL AND EXPANSION
7 OF THE OPERATING LICENSE FOR ITS LOW-LEVEL RADIO-
8 ACTIVE WASTE BURIAL SITE; SHEFFIELD, ILLINOIS

9 MR. CHILK: The last item is a Hearing on the
10 Nuclear Engineer Company's Application for the Renewal and
11 Expansion of the Operating License for its Low-Level
12 Radioactive Waste Burial Site near Sheffield.

13 Commissioner Kennedy has approved it. Commissioner
14 Gilinsky has approve it. The Hendrie office has indicated
15 there is no problem, and I understand there is no problem
16 and that you are going to approve it ---

17 COMMISSIONER BRADFORD: Yes.

18 MR. CHILK: -- and I request that you affirm your
19 votes at this time.

20 COMMISSIONER GILINSKY: Didn't you approve that Peter?

21 COMMISSIONER BRADFORD: Yes. Let me just ask again --
22 I don't think I have any difficulty with it.

23 Is the recommendation based on the proposition that
24 we should eventually be treating waste sites like license
25 applications, that is, if we want to set up the same appeals
process for waste sites on a generic basis or are we just

1 talking about Sheffield?

2 MR. KELLEY: We are talking about Sheffield.
3 This is a one-case, ad hoc decision to give these people
4 who have petitioned for intervention an appeal subject to
5 later Commission review.

6 COMMISSIONER BRADFORD: But it is an appeal---

7 MR. KELLEY: An appeal to the Appeal Board because
8 the rules are now structured only to give the Appeal Board
9 jurisdiction over Part 50 licensing, production utilization
10 facility. This is a materials license. If there is a gap
11 on the rule maybe it shouldn't be there, maybe it should be
12 there, but on an ad hoc basis in this case, this just gives
13 them an appeal to the Appeal Board on the merits of their
14 intervention petition, which I think is an appropriate thing
15 to do.

16 COMMISSIONER BRADFORD: They would otherwise though
17 have an appeal to the Commission?

18 MR. KELLEY: I'm not entirely sure of the answer to
19 that, whether they would have any appeal at all. I would have
20 to, frankly, look at the rules again, but I think a way to
21 take another look at the denial of their intervention is to
22 have the Appeal Board look at it. That's what we have done in
23 the past.

24 COMMISSIONER BRADFORD: I would just as soon we do
25 that.

1 MR. KELLEY: I don't think you are crossing any
2 policy bridge here at all.

3 COMMISSIONER KENNEDY: Well, we are not so long as
4 it is clearly understood that this vote is an ad hoc-one-time
5 decision having no precedent effect whatever.

6 MR. KELLEY: Yes.

7 COMMISSIONER KENNEDY: It is? Are we clear?
8 Because if we are not I withdraw my vote. I vote only on
9 that grounds and the record should so note.

10 MR. KELLEY: Our recommendation is clearly an ad hoc-
11 this-case recommendation.

12 COMMISSIONER KENNEDY: With no precedent effect?
13 The Commission must state that it has no precedent effect or
14 I do not vote and I withdraw my concurrence.

15 COMMISSIONER GILINSKY: Well, is that part ---

16 COMMISSIONER KENNEDY: That was my understanding
17 and if my understanding is incorrect then I withdraw and
18 request that the item be withdrawn for further consideration.

19 MR. KELLEY: I think that your understanding is
20 correct.

21 COMMISSIONER KENNEDY: You mean, you think my
22 understanding is correct?

23 MR. KELLEY: Yes, sir.

24 COMMISSIONER KENNEDY: Does the Commission see it
25 that way?

1 COMMISSIONER BRADFORD: I have no difficulty with
2 saying that if we ever see another one of these it should be
3 evaluated anew.

4 COMMISSIONER KENNEDY: That's not quite the same as
5 my statement. I want it to have no precedent effect in any
6 case.

7 COMMISSIONER GILINSKY: Well, what does that mean
8 other than considering individual cases?

9 COMMISSIONER KENNEDY: Any case of this kind or
10 anything like it. This has no precedent effect whatever. It
11 is as though it had not occurred as to the Commission's business,
12 except as to the Sheffield matter.

13 COMMISSIONER GILINSKY: Right. But doesn't that
14 mean precisely we will evaluate any such case anew?

15 COMMISSIONER KENNEDY: If that is the case, then
16 my statement is correct, that it has no precedent effect.

17 COMMISSIONER GILINSKY: All right.

18 COMMISSIONER BRADFORD: I don't think I have any
19 trouble with that.

20 COMMISSIONER KENNEDY: Okay. Please make a note
21 that that's the case for the courts decision.

22 MR. KELLEY: The record will so reflect, no
23 precedential effect.

24 MR. CHILK: Do I then have an affirmation of your
25 vote on A-78-17?

1 COMMISSIONER KENNEDY: Aye.

2 COMMISSIONER GILINSKY: Aye.

3 COMMISSIONER BRADFORD: Aye.

4 MR. CHILK: That concludes the Affirmation Session.

5 (Whereupon, the meeting was concluded at 10:55 a.m.)

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