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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OPEN MEETING

DISCUSSION OF CITY OF LANCASTER LAWSUIT

Room 1130
1717 H Street, N. W.
Washington, D. C.

Thursday, 24 May 1979

The Commission met, pursuant to notice, at 10:45 a.m.

BEFORE:

VICTOR GILINSKY, Commissioner (presiding.)

RICHARD T. KENNEDY, Commissioner

PETER A. BRADFORD, Commissioner

JOHN F. AHEARNE, Commissioner

ALSO PRESENT:

Messrs. Humphreys, Wohlsen, Von Maur, Witmarth, Trowbridge,
and Eilperin.

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P R O C E E D I N G S

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2 COMMISSIONER GILINSKY (presiding). We're going to
3 hold a meeting this morning to give the City of Lancaster a
4 chance for its lawyers to make a statement to the Commission.
5 The City has sued the Commission, seeking an injunction against
6 the construction of the new water contamination facility at
7 Three Mile Island and against the dumping of any more contami-
8 nated water into the Susequehanna River.

9 I understand that lawyers for Metropolitan Edison are
10 also here, and, if they choose, they can also make a presenta-
11 tion to the Commission.

12 However, before we do that, we're going to have to
13 vote.

14 MR. CHILK: We have to vote to hold this meeting on
15 short notice, since we did not have time to act on it.

16 COMMISSIONER GILINSKY: Let's vote on it, then.

17 (Chorus of ayes.)

18 COMMISSIONER GILINSKY: And after these presentations,
19 the Commission will hold a closed meeting to consider the mat-
20 ter, and we will have to vote to hold that. We can take that
21 vote up.

22 MR. EILPERIN: That will be under Exemption 10 to the
23 Sunshine Act.

24 (Chorus of ayes.)

25 COMMISSIONER GILINSKY: Very well, then. Will the

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1 lawyers for Metropolitan Edison also be making a presentation?

2 Very good.

3 MR. HUMPHREYS: I am sorry. I am from Lancaster.

4 COMMISSIONER GILINSKY: Very well. Yes, then can
5 come up when the City of Lancaster has concluded. You will
6 have 10 minutes.

7 Why don't you proceed.

8 MR. HUMPHREYS: Commissioners, we appreciate the
9 opportunity to speak to you today. I am Jay Humphreys, from
10 the Lancaster law firm which is representing the plaintiffs in
11 the suit. Mayor Wohlsen is also here, on my right, and would
12 like to talk to you briefly when I am finished.

13 COMMISSIONER GILINSKY: Mr. Mayor, we are pleased to
14 have you here.

15 MR. WOHLSEN: Thank you very much.

16 MR. HUMPHREYS: About the feelings in Lancaster on
17 matter, I will try to be brief.

18 COMMISSIONER KENNEDY: Could you introduce your col-
19 leagues, as well, please?

20 MR. HUMPHREYS: I would be happy to. On my farthest
21 left is Art Wilmarth and Reed von Maur. Both of these men are
22 from the Washington law firm of Arent, Fox, Kintner, Plotkin &
23 Kahn, co-counsel with us on behalf of the plaintiffs.

24 On the far right is Pete Schannauer, who is the
25 mayor's administrative assistant in Lancaster.

1 As you have mentioned, Mr. Gilinsky, we filed the suit
2 on Monday asking for an injunction to prohibit the NRC from
3 approving or allowing the discharge of decontamination or dis-
4 charge of any water from any of the buildings connected with
5 reator No. 2 at TMI until the Commission properly prepares an
6 enviornmental impact assessment under the National Environmental
7 Policy Act of 1969, covering all possible plans for decontami-
8 nating the waste water in the buildings and considering when
9 decontamination should be attempted and whether decontaminated
10 waters should be discharged into the Susequehanna River.

11 The second part of our injunction asks that the NRC
12 be prohibited from approving or allowing construction or opera-
13 tion of any decontamination facilities at reactor No. 2 until
14 the NRC has issued an amendment to the licensee's construction
15 permit and operating license.

16 We have been told by representatives of the Justice
17 Department that there are no -- there appear to be no substan-
18 tial issues as to the facts stated in our case in the com-
19 plaint and application and supporting affidavits.

20 There will be a hearing on our application for pre-
21 liminary injunction during the week of June 4. There is a pos-
22 sibility that we : ' counsel --

23 COMMISSIONER KENNEDY: Here in the federal court?

24 MR. HUMPHREYS: Yes, sir.

25 There is a possibility that counsel for plaintiffs and

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1 counsel for the NRC could reach a stipulation to be approved by
2 the court prior to that time.

3 As far as we know, right now, at TMI, construction is
4 going forward on decontamination facilities, particularly a
5 system known as "F-Core-2," which would attempt to decontaminate
6 about 250,000 gallons of contaminated water contained in the
7 auxiliary building by a system of ion exchange cartridges. We
8 understand that the NRC staff is considering approval of dis-
9 charging waste water with supposedly low-level radiation, before
10 the disposition of our lawsuit and before the preparation of an
11 environmental impact assessment by the staff.

12 We are asking that you make an administrative order
13 today with essentially two provisions --

14 (At 10:52 a.m., Commissioner Bradford entered the
15 room.)

16 MR. HUMPHREYS: -- One, directing the NRC staff to
17 follow the procedures mandated by the National Environmental
18 Policy Act of 1969, and NRC's own regulations -- section 51, I
19 think -- before allowing or approving any further construction
20 of decontamination facilities or any decontamination or any
21 discharge of any water contained in any of the structures con-
22 nected with reactor No. 2.

23 The second part of the order that we request is that
24 you order that there be no further contamination or discharge
25 of water until the plaintiffs' application for injunction has
~~been granted~~

1 been decided or until an acceptable court-approved agreement
2 has been reached between us and your counsel.

3 To bring you up to date, today we will be serving on
4 the Justice Department a letter and interrogatories asking
5 whether there has been any discharge from reactor No. 2 since
6 May 20 -- that's the day before we filed -- and whether the Com-
7 mission has approved or intends to approve or has any knowledge
8 of any projected discharge of water between today and the
9 court's disposition of our application for injunction.

10 Unless the Commission enters an order preserving the
11 status quo -- in other words, no more construction -- and ensur-
12 ing that there will be no discharge, we would have to move on
13 Friday, tomorrow, for a temporary restraining order. We cannot
14 be sure that the things are going to come to a halt at reactor
15 No. 2 until the court has a chance to decide the case. No
16 decontamination or discharge of water, regardless of the assur-
17 ances we receive from the NRC, would be acceptable to the
18 plaintiffs or the public in Lancaster prior to the court's
19 disposition of our application for an injunction.

20 COMMISSIONER KENNEDY: Would you say that again,
21 please?

22 MR. HUMPHREYS: Yes. No construction of decontamina-
23 tion equipment or decontamination or discharge would be
24 acceptable to the plaintiffs or the public in Lancaster prior
25 to the court's disposition of our suit for an injunction or a

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1 court-approved agreement that the Commission will observe the
2 requirements of the National Environmental Policy Act and NRC
3 regulations.

4 Any discharge would destroy the chances for agreement
5 between us, and would destroy the Commission's credibility with
6 the citizens in Lancaster and jeopardize the operating future
7 of Three Mile Island. Many people are determined that Three
8 Mile Island should never operate again if discharges are
9 approved by the Commission without court approval.

10 We understand that Metropolitan Edison representatives
11 are here to present Met Ed's position. We anticipate that they
12 will argue that NRC should not order a stopping of the con-
13 struction of decontamination facilities. We do not feel that
14 that is a position which should be adopted by the NRC. Con-
15 struction of those facilities is illegal under the National
16 Environmental Policy Act, because no environmental impact assess-
17 ment has been made and you have not made a decision based on a
18 review of such an assessment.

19 Construction must stop while the analysis is being
20 prepared so that all possible solutions and alternatives can
21 be considered and not have alternatives foreclosed by the fact
22 that construction has proceeded. The NRC must determine whether
23 any decontamination is feasible, given the unique circumstances
24 at Three Mile Island. The public interest and safety and trust
25 are paramount and should override any financial interest in the

1 present that Metropolitan Edison could represent.

2 We would ask you to ensure that no further substances
3 will be released into the environment or handled or planned for
4 after secret meetings between your staff and Metropolitan Edison.
5 Those meetings have obviously gone on in the past, because con-
6 struction is under way at the site. They have been done without
7 full disclosure and explanation to the public, and we are asking
8 that the NRC comply with the legal requirements of NEPA to make
9 those processes public, and pursuant to a proper environmental
10 analysis.

11 COMMISSIONER BRADFORD: Which part of NEPA is it that
12 requires the meeting to be public?

13 MR. HUMPHREYS: Not that the meetings be public, but
14 that the analysis be distributed and subject to public comment
15 after it's been made.

16 That's the end of my comments.

17 COMMISSIONER KENNEDY: Could you refer to the Com-
18 mission's regulations which you've cited?

19 MR. HUMPHREYS: Yes. It's 10 CFR Part 51,
20 Mr. Kennedy.

21 At this point, if I may, I would like to ask
22 Mayor Wohlson to speak to you briefly about the feelings of the
23 people in Lancaster at this moment.

24 COMMISSIONER GILINSKY: Mayor.

25 MR. WOHLSEN: Mr. Gilinsky, gentlemen, I have a brief

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1 report to make, and I will read it quickly so that we can be
2 within our 10 minutes.

3 I would like to thank the Nuclear Regulatory Com-
4 mission for this opportunity to speak about the possible dis-
5 charge of treated radioactive water from the Three Mile Island
6 nuclear power plant into the Susquehanna River, and the
7 intense feelings of concern in the Lancaster community at this
8 possible action.

9 Now, at this point in time I wanted to briefly intro-
10 duce myself. I am a businessman, a retired businessman, 40
11 years in the construction and engineering business. I am the
12 interim mayor of Lancaster, Pennsylvania. I have had no
13 experience in politics or government, until February 17. I am
14 not a candidate for public office. I am doing this from what
15 I consider to be good civic responsibilities.

16 Before I proceed further, I would like to say that I
17 realize that there has never been an accident like the one at
18 TMI, and, because of the uniqueness of this accident, govern-
19 ment and utility officials were understandably treading on new
20 ground and facing problems never before faced. For this reason,
21 I want it to be understood that my criticisms are levied in a
22 constructive sense, so that if such an accident should ever
23 happen again, the same mistakes would not be repeated.

24 One thing which is evident throughout this entire
25 experience from the time of the accident itself to the present

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1 deliberations on how to dispose of the radioactive water at the
2 power plant has been a total disregard and lack of considera-
3 tion for the responsibility of local government. By far, the
4 most serious problem faced by the Lancaster City Government was
5 and continues to be a lack of constant and reliable information
6 upon which to base intelligent decisions.

7 I also want to emphasize that I am not opposed to
8 nuclear energy and power under conditions consistent with
9 public safety. My position and the position of the city is
10 based on a general concern for the welfare of the community and
11 105,000 people who draw water from the city's municipal water
12 system.

13 The citizens of Lancaster community are tremendously
14 concerned about the likely effects of the disposal of treated
15 radioactive water into the Susquehanna River. The details of
16 this concern are presented in my affidavit. I received numerous
17 letters and phone calls from people who are frightened and, in
18 some cases, terrified by the prospect of cooking and drinking
19 such water. These letters have come from responsible people:
20 professionals, senior citizens, young people, and others. They
21 are worried about something they can't see and taste and which
22 effect might not be felt until years in the future.

23 Even though I am very aware of their concerns, my
24 decisions are still based on what I feel is proper. Because of
25 the depth of their feelings, no assurance made by NRC or by

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1 Metropolitan Edison would be consoling to them. Met Ed and NRC
2 do not have the confidence of these people.

3 Remember, it was only seven to eight weeks ago that
4 the accident at TMI occurred. Being only 23 miles away from the
5 accident, they are intimately aware of the conflicting and
6 erroneous information disseminated by the NRC and Met Ed. They
7 are aware that decisions were being made about which their
8 local government officials had not been informed or consulted.
9 They are aware that their mayor and city council, governor and
10 congressmen first read about water disposal plans in the news-
11 paper.

12 They also know that a meeting was held to brief local
13 officials and that the day after their officials attended that
14 meeting the invitation to the meeting arrived at city hall.

15 Lack of satisfactory NRC regulations to control
16 decontamination and disposal of the water are disquieting to
17 them. The city is obviously opposed to the disposal of the
18 water into the Susquehanna River, but we are equally as con-
19 cerned about the decontamination process and the mass of equip-
20 ment required.

21 Should a mistake be made, the possibility exists that
22 highly radioactive water could be directly discharged into the
23 river, disastrously. The process and the system are just as
24 important as the place or location of disposal. Water in this
25 amount and of this contamination level has never before been

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1 treated in a location so near a population center the size of
2 ours and disposed directly into a source of municipal water
3 supply. This aspect requires much serious consideration. No
4 further work should be done, I feel, until there has been a
5 thorough analysis under procedures required by law concerning
6 the processing and disposal alternatives.

7 In short, you can understand that the public will not
8 be consoled or comforted by assurances made by either you or
9 Met Ed, and the City of Lancaster, as you are aware, has filed
10 suit in federal court to bar the proposed discharge of water.
11 To assure a careful examination of the decontamination process
12 and mechanism, we feel that only the independent board-mandated
13 review of alternative means of disposal and the likely impact
14 of the alternatives will be reassuring to our citizens.

15 The environmental impact, which would include public
16 review, is a logical request, and would be reassuring to me and
17 our citizens. The community is behind us 100 percent in this
18 matter. The city and I intend to follow through with this suit
19 because there is no doubt in my mind that what we are doing is
20 in the best interests of our community.

21 I want to add that this entire matter, from the
22 accident itself to the clean-up of the reactor and disposal of
23 contaminated water, has dealt a blow to nuclear energy. I
24 believe that an orderly, well-publicized, and carefully thought-
25 out approach for the handling of the water will do much to

1 restore confidence in nuclear energy.

2 On the other hand, a shrouded, ill-fated approach
3 could be disastrous.

4 Prudence dictates caution in this situation. We,
5 the City of Lancaster, have a duty under state and federal law
6 to maintain an adequate and safe drinking water supply to the
7 public which uses our system. If we do not take action to
8 force ~~the~~ to comply with the procedures required by law, then
9 we may be found to be in violation of our duties. For that
10 reason, the City is seeking the broadest review of the decontami-
11 nation plans and a full airing of alternatives and safety issues,
12 to assure the protection of the environment and the public
13 health.

14 And I do want to thank you very much for giving me
15 the opportunity to be with you this morning.

16 COMMISSIONER GILINSKY: Thank you very much, Mr. Mayor.
17 Thank you.

18 Do you have any additional questions?

19 COMMISSIONER AHEARNE: Just a couple of questions.
20 These are more hypothetical, because I am just trying to under-
21 stand. I haven't read through these.

22 If there are pertinent federal regulations, such as
23 EPA standards on levels of radioactivity for water, are you say-
24 ing -- are you requesting a reconsideration of those levels?

25 MR. HUMPHREYS: We are not making a general attack on

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1 your regulations or EPA's. We do feel that the general regula-
2 tions which apply to operating plants are not applicable in
3 this case, because of the accident and the aftermath and the
4 concern of citizens in the area and the fact that there are
5 900,000 gallons of water, some of which hasn't been sampled,
6 et cetera, et cetera.

7 COMMISSIONER AHEARNE: I recognize that. What I am
8 trying to do, if I can, is to see whether there's any separa-
9 tion between the process by which you reach, say, the disposal
10 of the water and the actual quality of the water when it's
11 disposed.

12 So, my question is: If one works through the process,
13 let us suppose we have a procedure which meets the requirements
14 of Lancaster and your approach. At the end of that time, you
15 now have water that meets the standards that, say, EPA has set
16 up for what is acceptable to be disposed into the river.

17 Are you saying at that point that you would or would
18 not accept that?

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1 MR. HUMPHREYS: We really can't say that now. The
2 quality of the water or the low level of its radioactivity
3 would be one of the issues to be addressed in an environmental
4 impact analysis.

5 COMMISSIONER AHEARNE: But are you saying that that
6 should extend to reviewing the acceptability of EPA standards?

7 MR. HUMPHREYS: Could you start again?

8 COMMISSIONER AHEARNE: Do you believe that that
9 should extend to reviewing the acceptability of the existing,
10 let us say, EPA standards?

11 MR. HUMPHREYS: I'd like that decision to be made
12 by your staff and the decision to be analyzed -- we have
13 decided to use different standards or we have decided not to,
14 and these are the reasons.

15 COMMISSIONER AHEARNE: At the moment you don't have
16 a position on that?

17 MR. HUMPHREYS: No. The important thing to us is
18 the consideration of all alternatives, and by all I mean all.

19 As I understand it, some of the EPA drinking water
20 regulations only talk about gross alpha, gross beta, gross
21 gamma concentrations. It seems to me that is not an appropriate
22 standard in this case, particularly because it is clear there
23 are various isotopes in the water. We know that you don't know
24 exactly what's there, because you haven't been able to sample
25 it. And it's important to know exactly what's there, which

1 ones are organ-specific, which are not, what's the radioactive
 2 level, et cetera.

3 COMMISSIONER AHEARNE: So you're saying that perhaps
 4 you would want a modification of the EPA standards.

5 MR. VAN MAUR: I think the answer to your question
 6 is probably yes. We don't regard this as a normal operation.
 7 That's the point I think that should be made. It may warrant
 8 separate standards to analyze whether this water, as a feasible
 9 alternative, can be put in the river. I don't pretend to say
 10 what those standards should be or that we've analyzed them down
 11 to the last detail.

12 But we want to emphasize that it is not a normal
 13 operational situation, and the environment we're dealing with
 14 is not only trees and water and springs, but it's people.

15 COMMISSIONER AHEARNE: I can certainly understand
 16 that. I'm just trying, as I say, trying to explore, to get a
 17 further understanding.

18 But if EPA's regulations are of what goes into water
 19 and not on how that is generated, normal-abnormal, just what
 20 goes into the water, the sense I get is that you believe that
 21 those regulations ought to be reexamined; is that correct?

22 MR. WITMARTH: We feel that would be part of a proper
 23 environmental impact assessment.

24 COMMISSIONER AHEARNE: Part of the proper environ-
 25 mental impact assessment would be to reexamine --

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1 MR. WITMARTH: What standards should be applied in
2 these unique circumstances.

3 MR. HUMPHREYS: We're not saying that reexamination
4 of the regulations should apply across the board. What we're
5 saying, in our special situation --

6 COMMISSIONER AHEARNE: Secondly, the same sort of
7 exploratory question. If, in the process of the way the
8 reactor is going, if it's cooldown, et cetera, if there comes
9 a stage at some point where some action must be taken to
10 alleviate some hazard that might be developing, what procedure
11 would you see as being appropriate to try to get that to the
12 response that you address?

13 MR. HUMPHREYS: I think if an emergency arises, it
14 must be dealt with by the people who are there in the best
15 way they can. We know we were gravely disappointed with many
16 of the ways such emergencies were handled over the last eight
17 weeks.

18 We would look at what was done again if there was
19 an emergency. But we are not saying that you must consult us,
20 who are not nuclear experts, before you handle an emergency.

21 COMMISSIONER AHEARNE: Thank you.

22 MR. WITMARTH: I think it should be emphasized that
23 the matter is before the court, and we feel it's appropriate
24 for the court to consider, in this type of emergency situation,
25 what the NRC would wish to do. I think the court has that

1 capability of giving such consideration.

2 MR. HUMPHREYS: It would be appropriate for you to
3 contact our Washington counsel. He could be before the court
4 in a matter of minutes to discuss what the problem is.

5 COMMISSIONER AHEARNE: Thank you.

6 COMMISSIONER GILINSKY: Thank you very much.

7 Would you please identify yourself.

8 MR. TROWBRIDGE: I'm George F. Trowbridge of the
9 Washington law firm of Shaw, Pitman, Potts and Trowbridge. I
10 have been a counsel for nearly 25 years on this nuclear project.

11 COMMISSIONER GILINSKY: Let me say at the outset, try
12 to keep your presentation to 15 minutes. I said 10 minutes
13 earlier.

14 MR. TROWBRIDGE: It will be short.

15 COMMISSIONER GILINSKY: Perhaps you can identify your
16 colleagues.

17 MR. TROWBRIDGE: On my left is Mr. Ron Williams. He's
18 a technical consultant who is presently stationed at the TMI
19 site. On the right is Mr. Tom Baxter from my office.

20 I am not going to give a long statement. In fact,
21 until I sat here and listened I had no idea what I would be
22 addressing. I'm not going to talk about the law of the case,
23 other than to say that I do not agree that there's a violation
24 of NEPA involved or of the other regulations cited in the
25 complaint.

1 These are matters which can be properly addressed
2 and will be addressed before the court. I should inform the
3 Commission now that we intend to intervene in the proceedings.
4 I think there's no question that the court will permit our
5 intervention. And I would add to that, I think we would become
6 an indispensable party to any agreement.

7 I'd like to speak for a moment about the procedure
8 here. There is a procedure, 2.206 of the Commission's
9 Regulations, under which petitions may be filed with the
10 Commission for Commission action, to deny a license, to revoke
11 a license, to impose an order or whatever you like. But it is
12 a procedure that requires a written petition, usually directed
13 to the Director of NRR, although the Commission has on occasion
14 entertained such petitions directly itself.

15 They also provide for an opportunity for response.
16 And I do not regard sitting in the audience and listening as
17 an ample opportunity to review the request for an administra-
18 tive order.

19 I would also point out that even the presentation
20 I did hear did not contain what is an indispensable element
21 of such a petition to the Commission, namely, the showing of
22 irreparable harm to the city of Lancaster from any of the
23 discharges presently contemplated.

24 The statement was made, on the basis, apparently,
25 on the conversation with the Department of Justice, there was

1 no argument over the facts as represented in this. I don't
 2 think there's a lot we would disagree with there. But there's
 3 one fact I think just is not correct. The statement is made
 4 in the petition that you could leave the contaminated water in
 5 the reactor building indefinitely.

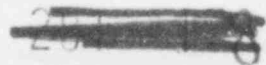
6 As the Commission has been told in previous meetings,
 7 the water level in the reactor building is very radioactive,
 8 is continuing to rise through leakages in the piping within
 9 containment, and the desire to process the water presently in
 10 the tanks in the auxiliary building is not just a desire with
 11 getting on with cleaning up the facility. Certainly it is
 12 that.

13 It is also a desire to provide empty tank space
 14 when that becomes necessary to remove some of the water from
 15 the reactor containment building. One of the means of removing
 16 that water is going to be through the heat decay system, decay
 17 heat system. That is one of the methods, for instance, of
 18 removing it.

19 The sump pump may not work. It's been covered with water
 20 for quite some time. An alternative means is to remove the
 21 water via the decay heat system. That means opening a motor-
 22 operated valve, and it's not forever before that valve itself
 23 would be covered with water. It is not a simple matter, we
 24 don't have to do anything for a long time.

25 I'd like to say just a little bit more about what

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1 has been going on. There have been -- I should say there have
2 been discharges of low-level and treatment level discharges of
3 very low-level treated water to the river. Most of that has
4 come from TMI-1, but some of it from TMI-2. Water that has
5 been treated and released has been classified low-level, and
6 by low-level I understand that means not more than one
7 microcurie of iodine per liter. That's the level of water that
8 has thus far been treated and discharged.

9 Excuse me. Microcurie per milliliter.

10 The next batch of water to be treated and discharged
11 is presently contained in the tanks in the auxiliary building,
12 and it's making room in those tanks that is important. This
13 would be treated by the so-called Exi-Core 2 system now under
14 construction at the site.

15 The plans for treatment of the more radioactive
16 material in the containment and in the primary coolant system
17 have not been formulated. As a matter of fact, there are
18 meetings going on today leading to a choice of methods --
19 evaporators or demineralizers or perhaps some other method.

20 I think this is all I'm going to say at this point.
21 Either I or Mr. Ron Williams would be happy to answer any
22 questions.

23 COMMISSIONER AHEARNE: Do you disagree with the
24 point that there ought to be an involvement of the people in
25 the area in order to address how these problems are resolved?

1 MR. TROWBRIDGE: Not this kind of involvement. Let
2 me say this: The Commission staff and Mr. DeCamp have met.
3 Much of the information contained in here came out of this
4 meeting. They met in Hershey with a great many local officials,
5 in an effort to explain precisely what proposals had gone on,
6 what was going on, what was planned, to assure them that
7 nothing would be released that -- well, nothing would be done
8 without the Commission's approval, no discharges would be
9 released that violated the Commission's technical limitations,
10 and to explain that essentially, once the water is decontami-
11 nated -- and there are known processes for doing this -- essen-
12 tially, you're going to have drinking water be discharged, and
13 that there is no reason why the public can't be informed before
14 additional releases are made of this, I'll call it, middle-
15 contaminated water now in the auxiliary building tanks.

16 There is no reason why local officials, state
17 officials, and I'm sure NRC will be there anyhow and attend
18 the sampling of the water, which always occurred after treat-
19 ment and before it's actually released to the water. I would
20 hope that the local officials will try to explain to people
21 who are unnecessarily worried.

22 Governor Scranton talked yesterday, Lieutenant
23 Governor Scranton, before the McCormick Committee, and he said
24 that one of the few silver linings in this, that this would
25 be an opportunity to educate people and that they're going to

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1 listen this time. I think some of the education has to be
2 two-way. Some of the education, I think, has to be that when
3 local, state officials are told by responsible people that
4 they believe, their own Bureau of Radiological Health results,
5 that these are low, safe levels of radiation, that it should
6 be a part of their responsibilities, once they are self-
7 satisfied, to pass that information and comfort on.

8 COMMISSIONER KENNEDY: Would you tell me what the
9 status of the Epi-Core 2 construction is?

10 MR. WILLIAMS: That system is pretty much finished
11 right now.

12 COMMISSIONER KENNEDY: What does "pretty much
13 finished" mean?

14 MR. WILLIAMS: About 99 percent finished today.
15 We're going into a sort of testing on that system, we hope over
16 this weekend. We'll run this thing through its paces before
17 we actually process anything through it.

18 COMMISSIONER GILINSKY: Is there any other construc-
19 tion relating to water cleanup?

20 MR. WILLIAMS: Yes. We have installed a series of
21 tanks in one of our fuel pools at the station, and this is not
22 a processing system per se. It's simply some tanks to provide
23 a place to put water, so that we can take it from those tanks
24 and process that water. But there is no other processing
25 facility under construction now.

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1 We do have two systems, the Epi-Core 1, which is
2 being used to process the low-level wastes from the Unit 1
3 side and some Unit low-level wastes, and we are now con-
4 structing Epi-Core 2.

5 COMMISSIONER GILINSKY: Which is the one that is
6 99 percent complete?

7 MR. WILLIAMS: Epi-Core 2 is 99 percent completed.

8 COMMISSIONER GILINSKY: What else do you have the
9 money to build? You've mentioned tanks.

10 MR. WILLIAMS: We are looking at what system we
11 should utilize for processing the higher activity wastes in
12 the reactor building. We have not decided on what that system
13 should be yet. We're looking at a number of alternatives.

14 COMMISSIONER GILINSKY: So you haven't gotten going
15 on that one at all?

16 MR. WILLIAMS: No. We have some design efforts under
17 way, but we haven't committed to any actual hardware or done
18 any construction work at all. The design effort is necessary
19 to put a tag on how much it will cost, whether it will work,
20 and whether it will fit in the space that's available.

21 COMMISSIONER GILINSKY: Thank you.

22 Thank you very much.

23 The Commission will now hold a closed meeting on this
24 subject.

25 MR. WITMARTE: Mr. Chairman, if we could address the

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1 Commission on this matter of closure.

2 COMMISSIONER GILINSKY: On the matter of closing the
3 meeting? Yes.

4 MR. WITMARTH: We believe under 5 U.S.C. 552(b),
5 general counsel is required to file a written certification of
6 why the meeting should be closed from public view. I could be
7 mistaken, Mr. Chairman, but I don't believe that's been done in
8 this case.

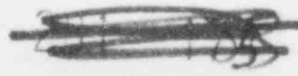
9 I feel that, in light of the circumstances here,
10 that the Commission general counsel should provide a written
11 certification of why the meeting is being closed to public
12 view.

13 COMMISSIONER GILINSKY: I believe we do provide
14 certifications after each meeting.

15 MR. WITMARTH: Normally that would be prepared before
16 the Commission went into closed session, as I understand it,
17 Mr. Chairman. Would be prepared. I'm not necessarily saying
18 it has to be distributed to the public.

19 COMMISSIONER KENNEDY: Counsel, you already earlier
20 indicated the grounds for closing the meeting. Why don't you
21 just write that down on your pad and sign it, please?

22 MR. EILPERIN: I certainly indicated that the meeting
23 is probably closeable under Exemption 10 of the Sunshine Act.
24 Perhaps Mr. Ostrach might speak to whether or not it's
25 necessary to have a certification signed.



1 MR. OSTRACH: I believe, subject to checking, that
2 the legislative history of the Act indicates that the closure
3 certificates are inspected prior to the closure of the meeting
4 in question. I think the most definitive work on interpreting
5 the Act indicates that certifications are not only not required
6 prior to the meeting, they're not a prerequisite for holding
7 the meeting.

8 I understand that, since this meeting was called on
9 extremely short notice, the ministerial task of actually
10 preparing the certificate might not yet have been completed.
11 My understanding is that that certificate in this case will be
12 very short, several sentences long, and it will merely be a
13 writing down of what Mr. Eilperin has advised the Commission,
14 that, in the General Counsel's opinion, this meeting can properly be closed
15 pursuant to Exemption 10 of the Sunshine Act.

16 I don't think that, therefore, even if there were a legal
17 requirement that the certificates be executed before the meeting, that the
18 ministerial act of getting it typed should delay the Commission's considera-
19 tion of this, particularly in view of the fact that I understand the City
20 of Lancaster is urging the Commission to act as expeditiously as possible.

21 COMMISSIONER AHEARNE: Perhaps that latter is
22 correct.

23 MR. VAN MAUR: The City of Lancaster is that either
24 an order be issued forthwith or that answers to the interro-
gatories be available by noon tomorrow. Otherwise,

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1 Mr. Humphreys has indicated we will seek a temporary restrain-
2 ing order.

3 COMMISSIONER AHEARNE: You are asking, in fact.

4 MR. VON MAUR: If you are so inclined.

5 MR. WITMARTH: In accordance with the law, I did
6 want to address this one point before the Commission.

7 COMMISSIONER BRADFORD: Steve, if we're not absolutely
8 certain on the point of law, what harm is there in taking
9 however many minutes it takes to type up those few sentences?

10 MR. EILPERIN: None whatsoever.

11 COMMISSIONER KENNEDY: When did the law say that a
12 certificate was only a certificate if it was typed? If the
13 question arises, why doesn't counsel just take his pen and
14 write it and sign it? That's a certificate.

15 COMMISSIONER GILINSKY: This is the basis on which
16 we proceeded up until now, a statement on the part of general
17 counsel's office that the meeting is properly closeable under
18 a certain exemption. And the certificates, as I understand
19 them, have been filed subsequently.

20 MR. EILPERIN: Yes.

21 COMMISSIONER GILINSKY: I would propose that we
22 continue on that basis.

23 COMMISSIONER KENNEDY: Not at all. Whichever ground,
24 I suggest, given the urgency of the matter, it's far more
25 important to go forward and discuss the subject than to debate
lawyer's points.

1 COMMISSIONER BRADFORD: If no one can advise me that
2 they're certain that the certificate does not have to be filed
3 before the meeting, I would just as soon have the normal certi-
4 ficate filed and then meet. I understand that's a matter of a
5 few minutes, and it just seems foolish to have a potential
6 meeting overturned.

7 COMMISSIONER KENNEDY: The meeting will have to be
8 completed before noon, because at that point I must leave for
9 an already established appointment.

10 MR. EILPERIN: I think we've already made clear the
11 basis for the exemption. I think it's a proper basis for the
12 exemption. I think that the meeting can proceed, subject to
13 the ministerial task later on of having the general counsel
14 sign the certificate.

15 COMMISSIONER AHEARNE: Does the City of Lancaster's
16 lawyer argue that it cannot go forward?

17 MR. WITMARTH: We're presenting only the position.

18 COMMISSIONER AHEARNE: Are you arguing that we can't
19 go forward?

20 MR. WITMARTH: I'm not making that argument.

21 COMMISSIONER AHEARNE: It wasn't clear whether you
22 were trying to delay us or argue with us.

23 MR. WITMARTH: Simply that we would like, for the
24 record, a statement as to what the basis for the closure was,
25 and make clear that that was on the ~~written~~ written record.

1 COMMISSIONER BRADFORD: Do you mind if you get that
2 statement after the meeting?

3 MR. WITMARTH: No. Under the circumstances, we will
4 not object, although I believe a closer analysis might show
5 that a written certificate is advisable.

6 COMMISSIONER GILINSKY: Thank you very much. We'll
7 proceed on that basis, and we'll ask all but staff and Justice
8 lawyers to please leave.

9 (Whereupon, at 11:35 a.m., The Commission went into
10 closed session.)

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