



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

October 26, 1979

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SUNSHINE ACT OF:

Transcript of Briefing on Proposed
Enforcement Action Re TMI
October 23, 1979

Pursuant to 10 CFR 9.108(c), the Commission has determined that the subject transcript should be released to the public.

A handwritten signature in dark ink, appearing to read "Samuel J. Chirik".

Samuel J. Chirik
Secretary of the Commission

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NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

CLOSED MEETING

BRIEFING ON PROPOSED ENFORCEMENT ACTION RE TMI

- - -

Place - Washington, D. C.

Date - Tuesday, 23 October 1979

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

CLOSED MEETING

BRIEFING ON PROPOSED ENFORCEMENT ACTION RE TMI

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Room 1116
1717 H Street, N. W.
Washington, D. C.

Tuesday, 23 October 1979

The Commission met in Closed Session, pursuant to
adjournment, at 3:45 p.m.

BEFORE:

- DR. JOSEPH M. HENDRIE, Chairman
- VICTOR GILINSKY, Commissioner
- RICHARD T. KENNEDY, Commissioner
- PETER A. BRADFORD, Commissioner
- JOHN F. AHEARNE, Commissioner

PRESENT:

Messrs. Bickwit, Chilk, Denton, Engelhardt, Malsch,
Moseley, Snyder, and Stello.

* * *

P R O C E E D I N G S

1
2 CHAIRMAN HENDRIE: We meet to continue the discussion
3 on enforcement matters in connection with the Three Mile Island
4 Unit 2 accident. I believe I'm correct in assuming that as a
5 continuation of yesterday's meeting, I need not ask for short
6 notice or closure votes?

7 MR. BICKWIT: Yes.

8 CHAIRMAN HENDRIE: I guess it would be useful, however,
9 for me to note for the record, as I expect I would have been
10 well-advised to note before yesterday's discussion, that in --
11 the Commissioners in discussing the points here in connection
12 both in general on the enforcement matters, the possible forms
13 it could take, and on particular aspects of particular
14 non-compliance items -- you have heard we have made various
15 comments for and against and in connection with; and I would
16 simply want to note and make clear that these are by way of
17 inevitably and properly, I think, of the Commissioner's initial
18 or preliminary views connected with deciding what the enforce-
19 ment action that should go forward ought to be, that ultimately
20 the Commission may in turn be expected to confirm or review the
21 results of a proceeding on these enforcement actions; and I
22 would just emphasize for myself -- and I am sure for all of
23 my colleagues -- that the Commissioner's decisions at that time
24 will be based on the record compiled in the proceeding on
25 whatever enforcement action is taken here, and that whatever is

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1 said now is not final and a prejudged final opinion on the
2 merits of these issues.

3 With that caveat, which it seemed appropriate for
4 me to make since my comments may have been among the stronger
5 in some aspects at the last meeting, let us go on.

6 We asked Vic Stello to go and consult his records
7 and see what further proposals we might discuss with regard
8 to enforcement.

9 Vic?

10 MR. STELLO: Let me start with what I think is the
11 most substantive change. You all should have had a draft that
12 we did last night. It incorporates a number of the comments
13 that were made at yesterday's meeting to make clear that the
14 action we are now taking does not preclude any further action
15 on the part of individuals or the Licensee based on what we
16 find as time goes on.

17 CHAIRMAN HENDRIE: Is this the one with 10231220 in
18 the upper --

19 MR. STELLO: That's correct. I think the language
20 that's in here reflects the various comments that were made
21 modifying the letter.

22 CHAIRMAN HENDRIE: Would you note where it is, Vic?

23 MR. STELLO: ON page 4, the --

24 CHAIRMAN HENDRIE: Let's see. There's additional
25 language on page 2.

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MR. STELLO: The next to the last paragraph refers to the fact that further action would be forthcoming. The paragraph, the second paragraph on page 4, starting "The influence of the NRC" -- identifies other investigations. There were other editorial changes. I want to speak to one that I think is very substantive.

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sbndd 1 I indicated yesterday I would go back and look
2 very hard at what were the more significant safety issues in
3 here and look at whether or not we had applied ways in which
4 we normally would the civil penalties, taking into account
5 the activity.

6 I guess I was struck by one that did stand out.
7 That's the action related to whether or not they should have
8 closed the block valve downstream of the power-operated
9 relief valve; and if they had done so, that the accident
10 they had would not have occurred.

11 To me that clearly is a very, very significant
12 action. We looked very hard at that in the way we applied
13 the civil penalty. I was able to persuade myself that a
14 reasonable case could be to apply the full civil penalty,
15 that is \$5000 for each day that that situation existed.
16 That procedure was in effect and they did not take that
17 action.

18 As a result of that one specific action, the total
19 cost of the civil penalty increased from yesterday's total
20 of \$32,000 to \$155,000.

21 The reason it increased that amount was because
22 again you have the \$25,000 a day maximum that you apply in
23 any three-day interval.

24 I have a number of other alternatives for each of
25 the 12 items. I will get to those if I can last. There

sbndd 1 were a number of questions raised yesterday that we
2 indicated we would do our best to try to get answers. I
3 think they were very important. If I could, I will just go
4 through what these questions were and the answers.

5 One question that I thought was very important was
6 whether or not the NRC had approved any of the actions that
7 finally led up to a proposed civil penalty for that action.
8 You asked that of us and you asked it of Harold and Dick
9 Vollmer. The general answer is there are none.

10 MR. DENTON: That's right.

11 MR. STELLO: I think I speak for Harold, too.

12 CHAIRMAN HENDRIE: At least that we are aware of
13 to the best you can determine. I suppose returns --

14 MR. STELLO: There was one point, for example,
15 that I think needs to be cited as an example. We clearly
16 wanted data on the primary coolant sample. We were asked to
17 get such information. A result of taking that sample did
18 result in some overexposures. We were asked -- we clearly
19 don't feel that the result of the overexposure was a result
20 of asking. They needed the information as well as us. It
21 was their obligation to go about getting it to the best of
22 their ability to get it and prevent overexposure if that
23 were possible.

24 With that caveat or that exemption as a general
25 note, to the extent we were asking for information --

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sbnDD 1 COMMISSIONER KENNEDY: Would we have had reason to
2 assume if they pursued that request that there was a high
3 probability there would be overexposures in getting that?

4 MR. STELLO: I think the utility actually started
5 to draw the sample -- once they did that, it would be hard
6 pressed to notice how difficult it would be.

7 CHAIRMAN HENDRIE: There was at least that
8 possibility?

9 MR. STELLO: You knew you were dealing with highly
10 radioactive material.

11 COMMISSIONER KENNEDY: Or could be?

12 MR. STELLO: Could be. No one, I don't think, is
13 suprised.

14 COMMISSIONER KENNEDY: The second question is was
15 there some way in which they could have -- some
16 significant way, substantial way, that they could have
17 mitigated the offense?

18 MR. STELLO: I will speak for myself. I have
19 looked very hard at that question and taken the view that I
20 would not be able to cite them for the overexposures that
21 were obtained because I'm not sure that if they had tried to
22 do better, it would still have been eliminated. There are
23 practices associated with it. That's one of the reasons
24 that a number of these issues are lumped together at the
25 site-specific areas.

sbnDD 1 I do not believe that we can say had they done
2 things a little bit better that they could have completely
3 eliminated the overexposures. I might ask others here to
4 comment, especially those that might have a different view.
5 I don't want someone to have a different view, but
6 if you do?
7 (No response.)
8 (Laughter.)
9 MR. STELLO: We have explored it.
10 CHAIRMAN HENDRIE: Would you put down your club
11 when you asked that question?
12 MR. BICKWIT: I don't think he needs it.
13 MR. STELLO: I never use a club.
14 (Laughter.)
15 MR. STELLO: Another area that we were asked to
16 look into --
17 COMMISSIONER KENNEDY: On that one, is there a
18 specific -- do I remember a specific citation in the HP
19 area?
20 MR. STELLO: Yes. There is item number 2 which has
21 A through H which relate to general issues.
22 CHAIRMAN HENDRIE: I just wondered if there was a
23 specific citation.
24 MR. STELLO: Yes, there is. F was overexposed,
25 and G; but they are put in there -- again, I am making it

sbnDD 1 clear that my view was leaving them in there was for the
2 purpose of general information; and again, I say I have a
3 hard time deciding that that specific issue, if it stood --
4 if one argued to take this issue out and cite them for
5 that overexposure, I in good conscience could not do that.
6 I don't think it is appropriate. I will be coming back to
7 that. That's one of the reasons I will be using this.

8 It is cited because it is illustrative of what I
9 think is the problems of the health physics situation at the
10 plant.

11 The introductory language to this, it was
12 constructed to try to recognize the need to make this
13 balance.

14 CHAIRMAN HENDRIE: If there are not more
15 questions, let's move on.

16 MR. STELLO: When was the NRC informed of the 10
17 to 40 rem per hour calculation; try to reconstruct that.

18 We went back and asked people up at region 1 to
19 look at what they had. They started to record conversations
20 about 9:15 or so in the morning. On the record, there is a
21 conversation that related to a survey made at Goldsboro
22 which indicated they weren't being able to pick up
23 anything, and they did make reference to a calculation or a
24 prediction of a dose at that point, but didn't indicate the
25 numbers.

sbnDD 1 COMMISSIONER AHEARNE: They said they made a
2 calculation but didn't --

3 MR. STELLO: They didn't. Just indicated there
4 was a -- it sounded -- and I can't recall the exact words.
5 I think it was an estimate.

6 MR. MOSELEY: That's my recollection that it was
7 said that they had taken surveys in the Goldsboro area and
8 it didn't confirm that higher estimates existed. That was
9 the substance of it.

10 COMMISSIONER AHEARNE: The surveys had reported
11 back at that time?

12 MR. STELLO: Yes. We asked the inspectors that
13 were in the region, in the office at that time; and he was
14 unable to recall whether it was or wasn't mentioned. He
15 thinks it could have been that someone mentioned 10 r per
16 hour. I never recall 40 r per hour.

17 The about the best we were able to do in
18 looking back at the calculation. It is going to be --

19 COMMISSIONER AHEARNE: As far as from the initial
20 contact which was around seven up until that time, you are
21 saying it did not taper?

22 MR. STELLO: Those conversations were not taped.
23 We had to rely on memory. That's what we asked them to do
24 was go back and talk to those inspectors.

25 COMMISSIONER AHEARNE: That memory is a little

sbndd 1 fuzzy? About what they might have heard?

2 MR. STELLO: Yes.

3 COMMISSIONER KENNEDY: Why do we then refer to the
4 10 to 40 from here? We don't have any record of the 40.

5 MR. STELLO: The licensee did a calculation, as I
6 recall, that said it projected up to 40 r per hour. That
7 was a calculation. Am I correct? That's the reason.

8 COMMISSIONER KENNEDY: Okay.

9 MR. MOSELEY: That was later revised, I think,
10 rather informally to a 10 r per hour. As far as I can
11 recall, that was sort of a top of the head judgment; that
12 the number calculation was wrong and the number should have
13 been more like 10. I don't recall there being an actual
14 calculation.

15 COMMISSIONER AHEARNE: Is it correct then from
16 what you have said -- the way this reads is that -- down
17 here in the bottom of pager 11, that dose rates of this
18 magnitude were not immediately reported to the NRC? What I
19 gather from what you have said was we aren't sure whether
20 dose rates of this magnitude were reported to the NRC?

21 MR. STELLO: We have no evidence that they were
22 reported.

23 COMMISSIONER AHEARNE: What you pointed out is
24 that time period, which would be at issue, we weren't
25 reporting; and the people recollect a dose rate, they are

sbndd 1 not sure what it is or whether they heard it, but we are
2 making a flat statement that they didn't report it.

3 MR. MOSELEY: There were notes made of these
4 discussions earlier. There was nothing in those notes. We
5 are not strictly dependent on memory for that time period.
6 Maybe we misled you earlier. There are notes.

7 COMMISSIONER AHEARNE: I guess I'm still -- it is
8 not as positive -- it's a more positive statement than I get
9 from you.

10 MR. STELLO: I think I see your point. In light
11 of what we heard, it is at best going to be fuzzy. Was it
12 or wasn't it reported? I suspect that if the licensee does
13 make an argument that he thinks it was not, he can offer --
14 I am sure it will be memory, someone having had the
15 conversation; then I think that that's the appropriate time
16 to raise that issue.

17 I think that the thrust of item number 12 was to
18 collect these three issues into one and say was the
19 reporting of significant information done as well as it
20 should have been.

21 There's a feeling at least that while it could
22 have been better, we'll need to have his side of the story,
23 and that's, after all, what we are doing. We are suggesting
24 this is where we are coming out, that we have yet to hear
25 what his views might be; and if they are views such as you

sbnDD 1 are suggesting might come to light, there's no reason why we
2 can't decide it then.

3 COMMISSIONER AHEARNE: I am not suggesting that
4 they might come to light, I am just raising the question.

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1 MR. STELLO: Yes. On this one I think maybe we
2 should soften the language. I'll do that.

3 COMMISSIONER AHEARNE: Since I raised that, you
4 mention in item 123 -- did you give any more thought to
5 possible action against individuals?

6 MR. STELLO: I've given it thought but not as a
7 part of this particular activity. Some reports that I have
8 seen and heard about recently have raised some questions in
9 my mind beyond those that I had yesterday as to whether some
10 of the interviews we have had with people have provided us
11 with the same information that was provided in later
12 interviews based on the questions. I really can't answer
13 that.

14 It is being looked at.

15 COMMISSIONER AHEARNE: Is it -- is there some
16 alluding to that in the cover letter?

17 COMMISSIONER GILINSKY: Let's see. That deals
18 with events subsequent to the accident?

19 COMMISSIONER AHEARNE: No.

20 COMMISSIONER GILINSKY: In other words, I
21 understood Vic to say that he was concerned that
22 statement made to I&E didn't jibe with what had been -- the
23 same individuals said later?

24 MR. STELLO: That's correct.

25 COMMISSIONER GILINSKY: It's the truthfulness

bwdd 1 of those statements as opposed to their actions during the
2 period of the accident?

3 COMMISSIONER KENNEDY: I thought it was both.

4 MR. STELLO: It really is both. Without getting
5 into specifics, depending on how it comes out as to what he
6 told us, and what he told others who may have been in the
7 plant and how far up in the corporation that was understood,
8 which we will now have to understand and pursue, might mean
9 that other individuals may be involved, what they did or
10 didn't know.

11 COMMISSIONER GILINSKY: Let me ask you: what
12 action can you take against individuals?

13 MR. STELLO: If the individual is licensed, we can
14 revoke the license or fine him.

15 COMMISSIONER GILINSKY: If it's not a licensed
16 individual?

17 MR. STELLO: If it's not, I don't know there is
18 anything we can do.

19 MR. MOSELEY: Unless there is a Part 21.

20 MR. STELLO: That doesn't apply.

21 COMMISSIONER KENNEDY: Except insofar as you can
22 assess the licensee for responsibility for their employees'
23 actions.

24 MR. STELLO: That's the licensee.

25 COMMISSIONER AHEARNE: I was specifically

bwDD 1 addressing the individual.

2 MR. STELLO: To answer your question -- I have too
3 many questions -- on page 4, the last paragraph, we did
4 indicate in here there might be action on individuals. The
5 second to last paragraph. "Further enforcement action --"
6 against the company or individuals.

7 CHAIRMAN HENDRIE: Don't you mean for this time
8 period? I've exhausted the merits of the issue and am now
9 quibbling.

10 MR. STELLO: Yes, it's for.

11 CHAIRMAN HENDRIE: Editorial trivia.

12 COMMISSIONER AHEARNE: You worry about that part.
13 I'll worry about the rest.

14 So that's what you would view as potentially
15 covering that?

16 I ask General Counsel and also Tom, your
17 interpretations are there's no provision in our laws, our
18 regulations that would enable us to take any civil penalty
19 against an individual; is that correct?

20 MR. BICKWIT: That's not licensed.

21 MR. ENGELHARDT: That's not licensed. If it's an
22 individual who -- if an individual is not licensed, then we
23 won't have any way of reaching them, except through the
24 licensee itself.

25 MR. BICKWIT: Agreed.

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1 MR. STELLO: You might refer to the Department of
2 Justice under various criminal codes.

3 MR. ENGELHARDT: We are talking about civil.

4 COMMISSIONER AHEARNE: Specifically on the civil
5 penalty. The 's no way we have of reaching that
6 individual?

7 I gather that even if it's a licensed operator,
8 can we exact a civil penalty on a licensed operator?

9 MR. ENGELHARDT: Yes, you can.

10 MR. BICKWIT: You can.

11 MR. ENGELHARDT: If they are licensees of the NRC,
12 we have the whole panoply of actions.

13 COMMISSIONER AHEARNE: Another advantage of
14 requiring licensed operators.

15 COMMISSIONER GILINSKY: This may have been asked,
16 but can the company pay that fine? Is there any way to stop
17 it from paying that fine?

18 MR. ENGELHARDT: I guess there is nothing in the
19 regulations that says the company cannot pay that fine. In
20 other words, there is nothing to preclude that
21 happening. Whether they do or not is a matter of company
22 policy. There is nothing in our regulations that controls
23 it.

24 COMMISSIONER AHEARNE: Of course, you can control
25 the operating license, let the company do that.

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1 In other words, Vic was trying to point out if you
2 penalize the operator, the company might step in and pay the
3 penalty. If you lift the operator's license --

4 COMMISSIONER KENNEDY: Oh, I thought you said
5 operating license.

6 COMMISSIONER GILINSKY: I just didn't know what
7 the situation was.

8 MR. STELLO: The next question was, were any of
9 the items that are in the citation previously identified
10 through inspection reports or activities?

11 We had them go back and review the inspection
12 reports. We cannot find any specific reference to something
13 having been previously identified or known to be inadequate
14 in a specific manner. However, the reports which cover the
15 period from 1977 through '78, they do contain discussions of
16 being dissatisfied with procedures. However, they do not
17 reflect the specific procedures or the specific aspect of a
18 specific procedure that is being requested. So you really
19 can't get a direct answer to each of these. They normally
20 don't have details to allow you to get down into that
21 problem. That is especially when you are going through the
22 preoperating.

23 The next question was whether there were any
24 inspections in progress on the dates at which the auxiliary
25 water valves had problems. That was January 3,

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1 February 26, and March 26.

2 On January 3, there were no inspectors on the
3 site; on February 26, there was an inspector on the site who
4 was performing inspections on Unit 1, not Unit 2. h

5 On March 26, there was an inspection that was
6 principally looking at the refueling outage for Unit No. 1,
7 and he did some record review on unit 2, but didn't do a
8 walk through the plant. A

9 Did any of the previous inspections identify the
10 fact that tail pipe temperatures were above the procedural
11 limit? Based on the review, the answer is no.

12 Did the inspectors review and approve the
13 auxiliary feedwater surveillance procedure? We did find out
14 that here again there was an inspection in December of
15 1973. The inspector observed the surveillance testing for
16 the period through July to early December. He also reviewed
17 the procedure, but the report does not indicate that he
18 identified any problems with the procedure. I would have to
19 conclude that he didn't recognize that that procedure had a
20 deficiency in it. |

21 COMMISSIONER AHEARNE: Would you then also
22 conclude that that would be interpreted as his approving the
23 procedure?

24 MR. STELLO: I don't think so. I think that what
25 they do is look at them; and if they find deficiencies, get

bwdd 1 the deficiencies corrected, but the kind of review and the
2 knowledge and the time it would take to really go through
3 them and do them, get approval, I don't believe they would
4 not normally do this during inspections.

5 If they do find something that is a problem, they
6 clearly focus on that and get it corrected.

7 COMMISSIONER KENNEDY: Does the licensee see it
8 that way? The guy goes through the procedure, looks at it,
9 hands it back and doesn't indicate deficiencies. What is
10 the licensee going to think he just did?

11 MR. MOSELEY: If I may answer that, because I am
12 sure Vic may want to have his own answer, in my experience
13 we have -- we always tell the licensee that our review of
14 procedures is specifically not to approve the procedure, but
15 rather to test for the effectiveness with which they review
16 it.

17 So I would say from my vantage point that
18 licensees do not believe that the reviews we do are for the
19 purpose of approval.

20 MR. STELLO: I guess I agree. the licensee would
21 be in error to think that that constituted approval, since
22 if he wanted to change the procedure then, I think he would
23 have to then, if he felt that way, come back and ask for our
24 review and approval of the change. That's clearly not --

25 COMMISSIONER KENNEDY: Which he does not do?

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bwdd 1 MR. STELLO: Right. If he does think it
2 constitutes approval, he would have the obligation of
3 saying, "Now, I want to change it. Here, approve my
4 change."

5 MR. SNYDER: Aren't these also one of just
6 thousands of procedures that you pick someone at random on
7 an audit basis?

8 MR. STELLO: They are clearly --

9 MR. SNYDER: How about all the others? We are not
10 in that position, are we?

11 MR. STELLO: We are going to be emphasizing a lot
12 more in the future, do a lot more procedure review for the
13 important safety systems.

14 MR. SNYDER: At the time?

15 MR. STELLO: At the present time the answer is --

16 COMMISSIONER KENNEDY: Boy, are we going to have a
17 a lot of problems.

18 MR. STELLO: I know we are. I think with the
19 resident program, if we pick out the important systems and
20 take a good hard look at how that should be done, we ought
21 to be able to identify problems such as we saw here.

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1 CHAIRMAN HENDRIE: Isn't there some hope
2 through the unit inspector programs, I think, probably more
3 than the resident? Because the resident is a little more
4 broadly focused. It's going to be tough to do; and I wouldn't
5 be surprised if -- to the extent that you can settle down on a
6 particular model, of which there are a number, and if it
7 happens to be one, for instance, that we run a number of
8 our residents through a simulator program on, and the pro-
9 cedures that are used in each one of those run-throughs,
10 each one of those quick course for our people, I wouldn't
11 be surprised but that those get a tolerable shake-down,
12 because I must say that training crowd of simulators is
13 pretty darn sharp.

14 Just to be faced with a mass of those things in the
15 plant, to try to go through them --

16 MR. STELLO: That's not what I am advocating.

17 CHAIRMAN HENDRIE: I know. Furthermore, it's
18 off the subject. We have already had a pretty vigorous
19 afternoon here.

20 MR. STELLO: One more number I tried to deal with
21 as we were groping around yesterday to try to find out
22 how to articulate the clearly upper bound number. What is
23 the maximum theoretical dollar civil penalty that could be
24 imposed? And let me tell you what I didn't try to do: I
25 looked up when was the plant licensed. It was February 8, 1978.

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1 So if I assumed that there was something that went wrong
2 every month from the time it was licensed until March 30 --

3 COMMISSIONER AHEARNE: Not a bad assumption.

4 MR. STELLO: -- that assumption, the maximum
5 dollar fine, \$350,000. That's assuming a \$25,000 fine every
6 month, in that time period. So you can;t get a number bigger
7 than that number. At least I don't see of any way.

8 MR. ENGELHARDT: That's right.

9 COMMISSIONER GILINSKY: A certain principle of
10 spanking children whether they need it or not on the principle
11 that they may have done things you don't know about.

12 CHAIRMAN HENDRIE: Just make a uniform \$25,000
13 levy and after two years if we haven't found anything, we can
14 give part of it back.

15 COMMISSIONER KENNEDY: However, I would have to note
16 that I think that is in many quarters discredited.

17 COMMISSIONER AHEARNE: Vic, I notice that on your
18 discussion on the electromatic relief valve and not closing
19 the black valve you don't have any comments that you have in
20 a few other places about why that is significant. Is there a
21 particular reason for that?

22 CHAIRMAN HENDRIE: I thought that was one page 2.

23 MR. STELLO: Unless it didn't come through.

24 Page 2, I told you I modified that paragraph to make
25 clear that the concern here is this could have prevented

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1 an accident and it does add up -- and I don't want to say it's
2 the most important issue, but it clearly is among the important
3 issues.

4 COMMISSIONER AHEARNE: No. I see. I just
5 contrasted the bottom, item number 1 where you have the
6 violation attributed to an accident. You pick it up in the
7 letter.

8 MR. STELLO: I emphasize it in the letter to make
9 the point.

10 CHAIRMAN HENDRIE: On that valve, if the block
11 valve had been closed, I think they'd have pumped the safety --
12 the low set safety, wouldn't they?

13 MR. STELLO: Yes, I would think they would have.

14 CHAIRMAN HENDRIE: With the auxiliaries off, the
15 rise in the temperature, the expansion, I assume it would
16 have gone up out the safety. Would that have at least had
17 a different ending?

18 MR. STELLO: No. Now, you would have to assume
19 that the safety failed, too.

20 CHAIRMAN HENDRIE: Oh, yes.

21 MR. STELLO: I don't have any evidence to say
22 the safety would have failed. I assume the safety would
23 have worked.

24 CHAIRMAN HENDRIE: I think the likelihood of the
25 safety resetting is probably better than that -- than Peter's

1 favorite relief valve.

2 COMMISSIONER BRADFORD: Who manufactured it?

3 MR. STELLO: What I said is that the valve
4 failed. If the block valve had closed, it wouldn't have
5 been given an opportunity to fail.

6 CHAIRMAN HENDRIE: I just think you would have
7 gone ahead and lifted the saefty and then been --

8 MR. STELLO: Everything would have been all right.

9 CHAIRMAN HENDRIE: On the other hand, it would
10 at least have been a different sequence. The chances that it
11 would have resulted in a severe accident are probably --

12 MR. STELLO: The reason I made the statement I made,
13 that valve we know failed. If that valve had had its block
14 valve closed, failure would not have affected the accident.
15 I have no reason to believe that the safeties would have
16 failed. That's why I made the statement.

17 CHAIRMAN HENDRIE: You had no more than roughly
18 a 1 percent reason to believe that the safety --

19 MR. STELLO: Excuse me. There is always a chance.
20 That is true.

21 CHAIRMAN HENDRIE: Then at least you'd have started
22 with a cold tailpipe. Maybe the operators would hav

23 MR. STELLO: Been more successful. The recorders --
24 there is another thought. If they also had the high tailpipe
25 temperatures, I think -- someone help me -- I think they were

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1 also required to put thermocouples on the tailpipes and
2 the safety valves on a trend recorder. Even if one of those
3 should have maloperated, they would have had the temperatures
4 on the trends recorders and been able to see it.

5 Is that not right?

6 VOICE: That's correct.

7 MR. MOSELEY: That is correct.

8 MR. STELLO: The procedure required them to put
9 those termocouples on the trend recorder.

10 CHAIRMAN HENDRIE: Because they don't have
11 valve indication on the safety?

12 MR. STELLO: They don't also have a way to isolate
13 it.

14 CHAIRMAN HENDRIE: Yes.

15 MR. STELLO: Well --

16 CHAIRMAN HENDRIE: At any rate, clearly a different
17 kettle of fish?

18 MR. STELLO: Yes.

19 If you would like, I could go through each of the items
20 again as to --

21 CHAIRMAN HENDRIE: Is it necessary?

22 COMMISSIONER AHEARNE: I don't think so.

23 I have another question, though, of a general character.

24 CHAIRMAN HENDRIE: Okay.

25 COMMISSIONER AHEARNE: Vic, I recognize that your

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1 group has now gone through and thoroughly reviewed as far
2 as the I&E approach is concerned; but there are a number of
3 other people reviewing the behavior of the licensee as well
4 as our own behavior, but the behavior of the licensee.

5 In particular, obviously Kemeny's group is doing this.

6 Can you give me an explanation of why it is more
7 appropriate to take the action now as opposed to waiting
8 until February, given -- at least let me make an assumption
9 and disagree with the assumption.

10 The assumption would be that a large civil penalty
11 against the licensee now is not going to have any greater
12 effect upon the licensee than a large civil penalty upon the
13 licensee in February?

14 MR. STELLO: The thought that I had when I addressed
15 this the last time was the need to get on with the action,
16 we have sharpened up the thinking of what went on. I think
17 it's time to bring this into focus. We could probably do it
18 other ways than issuing the civil penalty, but the thought that
19 I had in my mind is, well, we might find something from the
20 Kemeny Commission, it's possible, that will affect our think-
21 ing, and we will have to pursue it.

22 It's possible that when Ragone is finished, it may come
23 out.

24 The Hart group, Senator Hart's group, I think won't be
25 finished until June. It's possible something may come out of

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DD 1 it. I just see the potential for a delay in making this
2 decision that just seems longer than it need be.

3 I don't feel the least but constrained; and if I do
4 learn something more, I can take further action as needed.

5 Either way. I don't know if we could give someone
6 a civil penalty back if they paid it and found that we were
7 not really justified.

8 COMMISSIONER KENNEDY: Sure.

9 MR. STELLO: I suspect we could if that were
10 appropriate.

11 CHAIRMAN HENDRIE: We would just have to reopen.

12 COMMISSIONER AHEARNE: My real concern is
13 trying to think through -- that is we -- I am now looking
14 more at it on our side than on your side of the table. We
15 went through a fairly lengthy period of trying to get started
16 on a broad scale investigation and finally got it going,
17 the Ragone effort, which is now committed to coming in
18 rather around the end of the year.

19 I was trying to think through what is it that required,
20 that makes it important to go out now in this enforcement
21 action prior to receiving that; and that's what I would
22 like to know. Ther is one other thought that came to my
23 mind. I think we have pretty much signaled to the country
24 that this was something that we would be doing in about 60
25 days after issuing the report. I use the flip side --

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COMMISSIONER GILINSKY: That was the purpose of launching the study that led to new reg 0600 in the first place.

MR. STELLO: Yes. That was its purpose.

COMMISSIONER AHEARNE: Since you interjected that, if you recall at that time we were under the assumption we were going to get started on the other thing.

COMMISSIONER GILINSKY: Yes, but they are directed to different purposes, principally improving of the agency.

COMMISSIONER AHEARNE: As has been recently obvious in recent stories in the newspapers, they're still continuing to come out with alleged information about what actually was happening with respect to the licensee's personnel at the time.

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1 CHAIRMAN HENDRIE: It's a good question. I have been
2 trying to decide for myself, John, whether we ought to be going
3 forward now with this or to, in effect, hold it and have the
4 Rogovin results in hand and the Presidential Commission and then
5 go with it.

6 About all I concluded from that is that there isn't
7 any good answer. We are going to collectively have to choose
8 which form we are going to be impaled on.

9 If we don't move, people are going to point a finger
10 and say, look, there, they can't do anything again; they sit
11 there and mutter to themselves.

12 If we do go ahead, we are going to hear there goes
13 the NRC going ahead with their own inquiry and letting Met Ed
14 off with a little pat on the wrist.

15 COMMISSIONER AHEARNE: I suspect, Joe, there's a
16 different part to that; and also there is the strong potential
17 that there is the NRC trying to quickly run ahead and say that
18 they have now identified who the culprits are and it's right
19 over there, it's Met Ed, they are the culprits.

20 CHAIRMAN HENDRIE: Just so.

21 About all I can conclude is that --

22 COMMISSIONER KENNEDY: That only presumes that people
23 are out looking for culprits. There are those who believe
24 people are out looking for facts. I am one of those.

25 COMMISSIONER AHEARNE: That's why I think it might be

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1 be better to wait.

2 CHAIRMAN HENDRIE: My impression is there are more
3 culprit lookers.

4 COMMISSIONER KENNEDY: I think you are right.

5 CHAIRMAN HENDRIE: That may be a cynical view.

6 COMMISSIONER KENNEDY: No, it's the realistic one.

7 CHAIRMAN HENDRIE: My conclusion out of all this is
8 if I am going to be damned if I do and damned if I don't, my
9 inclination is to go ahead with it. It's right. The investiga-
10 tion has been done. The Staff has chewed. We have viewed,
11 argued, come back.

12 I would be inclined to see what the results -- what
13 our collective view is; I would be inclined to go ahead.
14 There are clearly good arguments you can make both ways.

15 COMMISSIONER KENNEDY: One argument for going ahead --
16 I recognize arguments on both sides as well, one argument for
17 going ahead is that at least it's consistent with our oft-
18 stated objective of moving the assessment of penalties up closer
19 to the event.

20 We had historically waited for long periods and thus
21 the event and it's significance had paled by the time when
22 suddenly the penalty comes along and nobody even recalls the
23 event.

24 That's not likely to happen here.

25 COMMISSIONER AHEARNE: It's not likely.

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1 COMMISSIONER KENNEDY: Wait a moment. Just a minute.
2 Events tend to pale in people's significance. While
3 it may be a dramatic and terrible one in your view right now,
4 I bet you that there are in the 200 million people in this
5 country a very, very much larger percentage today who would
6 say TMI, let's see, what was that about than there were even
7 two months ago. It's going to be that way, the longer time
8 goes on. It is not going to be the greatest historical event
9 of all time, except in our minds.

10 COMMISSIONER AHEARNE: Not in mine. There are a few
11 others that were of more significance historically.

12 COMMISSIONER KENNEDY: I think so. But I suggest
13 that there are going to be a lot of them that will come along
14 in ther interim.

15 I am not arguing for this point of view. I am just
16 saying it is an argument that I think one can make and weight
17 in the equation.

18 COMMISSIONER GILINSKY: I agree. I think we have the
19 responsibility for investigating these sorts of situations.
20 I am of the view of taking enforcement action. For us to
21 wait I think would be to raise questions about the respons-
22 ibilities of that office. Certainly in waiting it -- the
23 advantages of waiting are that we may learn more, obviously.
24 I would say we ought to act now in the face of what we have
25 come up with.

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1 COMMISSIONER KENNEDY: I agree with that on balance.
2 I think the sooner rather than later concept is the better
3 course to take. That is the proper course.

4 COMMISSIONER BRADFORD: I think it's a very difficult
5 question. As long as the matter is so phrased that we can take
6 various actions, we can go ahead now.

7 COMMISSIONER AHEARNE: I would prefer to wait. I
8 just feel there are too many unanswered questions.

9 CHAIRMAN HENDRIE: I guess we will -- the record
10 will duly note your view, John. I think the rest of us are
11 more inclined to move ahead.

12 COMMISSIONER BRADFORD: It could become pretty
13 important if we split two to two on the matter of how John
14 voted.

15 COMMISSIONER AHEARNE: I intend to continue voting
16 the rest of the year.

17 Having now accepted the Commission action ...

18 CHAIRMAN HENDRIE: We are going to lose a commissioner
19 pretty quick.

20 I think we have settled one of the questions I was
21 going to ask you, namely should we think about postponing
22 until other investigation reports are in or go ahead now; and
23 by now I mean in the near term; and I think the weight it
24 toward going ahead.

25 Can I --

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1 COMMISSIONER KENNEDY: I would only add, however,
2 as I suggested yesterday after having advised the Kemeny group
3 of our intention to do so, I'm not suggesting that we are
4 hereby seeking their advice in the matter, simply advising them
5 what we are doing, so they don't read it in the Washington Post
6 or some other equally reputable paper.

7 VOICE: We have held later than they have, sir.

8 VOICE: I notice that. I am suggesting if we have a
9 leak on that, I rather it come from them than us. I would
10 rather we read it as a leak than they.

11 CHAIRMAN HENDRIE: Can I do a quick sampling of the
12 feeling --

13 COMMISSIONER AHEARNE: Before you get to that, I
14 appreciate the rapid turraround in answering my questions. I
15 do find the dollar amount here more satisfying.

16 COMMISSIONER KENNEDY: More satisfying?

17 COMMISSIONER AHEARNE: Yes. More satisfying.

18 CHAIRMAN HENDRIE: Gee, you got to \$700,000 there
19 before that limit turned up.

20 COMMISSIONER KENNEDY: Are you sure the word is
21 satisfactory. I am just trying to get the nuance of the feel-
22 ing here.

23 CHAIRMAN HENDRIE: Can I ask what the general
24 inclination is with regard to the current -- Dick's revised
25 package?

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1 COMMISSIONER BRADFORD: Do you want to take it piece
2 by piece?

3 CHAIRMAN HENDRIE: Well, I am going to run out of a
4 Commissioner in ten minutes. I was trying to see whether it
5 might go in larger chunks I guess is what I was searching for.

6 COMMISSIONER BRADFORD: I tell you the difficulty
7 I have with it, even as recast. As I said yesterday, the one
8 item in it that I find the most troublesome is the withholding
9 of the thermocouple information, and perhaps the other two items
10 that are in that same category.

11 The new package in a sense exacerbates that
12 difficulty: that is it seems to me the 4000 bond for those
13 infractions which might have had drastic implications for the
14 public health and safety have been a very short time,
15 represents the greatest disproportion between the penalty we
16 are talking about imposing and the gravity of the action we
17 are citing.

18 By jacking a different item up to \$620,000, we are
19 saying that that item is \$150,000 more serious than the one
20 that seems to me to be the most serious. In a way, I think it
21 represents one of the concerns. You showed there would be an
22 imbalance by doing your numbers again yesterday.

23 That leaves me about where I was at the end of
24 yesterday. I would come down in favor of I think revocation
25 based specifically on that one item or set of items and would

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1 go back to a civil penalty package. I haven't really had a
2 chance to sit down and study this, but it seems to me the big
3 difference is clearly in that jump up to \$620,000.

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1 COMMISSIONER AHEARNE: Could I comment on that?

2 At least as far as I can see, the action that they are
3 citing for the much larger penalty, though, is one which had
4 it not been there, had that violation not occurred, the
5 accident would not have occurred.

6 If that's clear in the sense that's a clear
7 violation, their action that they followed the procedure and
8 this accident would not have occurred, the Three -- not
9 relating information, that is the area I am uneasy about,
10 not knowing all of the facts.

11 You have one case, the relay of a dose rate
12 calculation. I know of the difficulty -- we have heard
13 about the difficulties the licensee had in contacting the
14 NRC during that period of time.

15 That was also what led to a lot of hectic action
16 going on at that time. I am very uneasy about saying, aha,
17 there's a clear violation.

18 The second one which is that hydrogen spike, I
19 think that's going to be if ever resolved, it would be an
20 interesting resolution; but there is certainly a lot of
21 debate about who would have known what, when and how much
22 did NRC employees in that area know.

23 As far as going on to the thermocouples, that's
24 why I really now focus back on the question of an individual
25 and possible penalties against an individual; and I have a

ltDD 1 little difficulty --

2 COMMISSIONER GILINSKY: Don't you see the utility
3 responsible for the accident?

4 COMMISSIONER AHEARNE: But, Vic, as I tried to say
5 yesterday, in thinking through the revocation cycle -- and I
6 have, I guess, satisfied myself that the issue of would we
7 be able to have sufficient leverage on them -- I am
8 satisfied we would, so I think I am satisfied from that
9 point of view.

10 The question is, it seems to me, there are two
11 reasons one would do that. One either does it because you
12 have concluded that they are not fit to operate a plant, or
13 you do it as a penalty.

14 What kinds of penalties? Well, there are two
15 penalties associated. I gather this is, one, a question
16 that there may be a very substantial financial penalty that
17 they would have to pay to refile for a license.

18 My experience leads me to believe that's not
19 really, (a), much of a penalty, because that can go into the
20 rate system, that is more normal operating expenses; and it
21 certainly would seem to be a warping of the rules of the
22 Congress that we work under, as to here is what you are
23 supposed to do.

24 COMMISSIONER BRADFORD: I don't understand that.

25 COMMISSIONER AHEARNE: Congress has said here are

1 the penalties you lay out. I don't recall -- I don't think
2 there's anything that would say one of the penalties is you
3 have to pay an application fee in the sense of a penalty.

4 Then the other side of it would be a penalty that
5 in our list of possible penalties the worst we can do is hit
6 them with our procedures, they have to go through the
7 procedures.

8 That's bad government. I'm having real difficulty
9 seeing it as a consistent with a penalty, so I move back to
10 the other side: They are not fit to operate.

11 COMMISSIONER BRADFORD: Wait a minute --

12 COMMISSIONER AHEARNE: Could I just finish my
13 point?

14 If the conclusion is they are not fit to operate,
15 then I think a much more serious question is on TMI-1 and
16 that's the license we ought to revoke. That's the issue.

17 There's real doubt whether TMI-2 will ever
18 operate. Certainly there's no doubt it's not going to
19 operate for several years.

20 TMI-1 is an operable plant. We are going through
21 this process on whether it should be able to operate. So if
22 we have grave doubt about someone, one of those plant's
23 ability to operate, the management, can they do it, it ought
24 to be TMI-1 that we ought to revoke?

25 COMMISSIONER BRADFORD: Are you making that

1 tdd 1 proposal?

2 COMMISSIONER KENNEDY: I hope not, since we have
3 an ongoing proceeding.

4 COMMISSIONER GILINSKY: I am trying to understand
5 the suggestion.

6 COMMISSIONER AHEARNE: That's why I have had
7 difficulty seeing the logic of going through the revocation
8 on this enforcement action.

9 COMMISSIONER BRADFORD: I think you are right in
10 saying that it's more in the category of saying that they
11 are not fit to operate; that is, there are certain driving
12 violations that would cost you your license automatically,
13 even if you commit them during an accident; you find
14 yourself in the hospital and you can't drive a car again for
15 months anyway. Revocation simply follows.

16 What I am saying is I would revoke based upon what
17 is here. I am saying that based on the showing that we have
18 had so far from the staff, the posture I would think that is
19 the right thing to go into the hearing with is that
20 revocation is in order. As a consequence of the withholding
21 of this information.

22 As facts come out during the hearings that
23 indicate that as to one or another of those three items, the
24 understanding as presented to us in this letter and by the
25 staff in the briefings are somehow different or shaded or

ltdd 1 modified, then the conclusion of the hearings should be
2 different, also.

3 As far as saying what the right position is to
4 have based on the facts under this, I come down on the side
5 that I would not want these people operating a plant again.

6 As to TMI-1, I might wind up there again on the
7 other hand saying, (a), there are changes that could be made
8 in the management structure. (B), the mere fact that the
9 hearing in that case will permit that issue to be thoroughly
10 aired with regard to TMI-1, the picture might be different
11 if both plants were still operating.

12 I don't know what I feel.

13 COMMISSIONER AHEARNE: There will certainly be --
14 if the licensee ever proposes to operate TMI-2, and whatever
15 structure, organization, what that is at that time, there
16 certainly will be a hearing on it.

17 COMMISSIONER BRADFORD: My point has less to do
18 with TMI-2 as such than I think that as this is laid out
19 here ought to result in revocation and that that ought to
20 be -- even if this were to happen again, even if the
21 licensee --

22 COMMISSIONER AHEARNE: Where I would end up -- and
23 that's why I say I have a lot of questions and prefer not to
24 go ahead at this time.

25 After I reviewed what Rogovin has come up with and

1tDD 1 gone through that, and I were to conclude as you have
2 concluded that the licensee should not operate the plant, I
3 would take action against him.

4 That's the one that I think is really the issue.

5 COMMISSIONER GILINSKY: Let me ask you: Suppose a
6 utility has half a dozen or dozen plants and something were
7 to occur that raises grave questions about the management,
8 do you feel bound to pull all the licenses?

9 COMMISSIONER AHEARNE: If something occurs that
10 raises grave questions about the management, I certainly
11 feel obligated to take careful review of their management.

12 My point is that if the issue is that it is so
13 grave an action that a license should be pulled, it appears
14 to me that focused specifically on Met Ed, narrowed down to
15 TMI, there is one plant where the issue of it operating is
16 really an issue.

17 That's the main one.

18 COMMISSIONER GILINSKY: Are you proposing -- if
19 you are, we can discuss that? Are you proposing that we
20 also close the other one?

21 COMMISSIONER AHEARNE: What I am saying is of the
22 two licenses I would be prepared to pull, it would be TMI-1.

23 COMMISSIONER KENNEDY: We ought to restrain
24 ourselves to the discussion of TMI-1?

25 MR. BICKWIT: No. There is no problem with that.

1 You are deciding -- you are discussing an additional
2 enforcement action with respect to TMI-1. You are permitted
3 to do that.

4 COMMISSIONER KENNEDY: Let me just say that that
5 is not my sensing of the conversation. It has had to do
6 with some of the very issues that, as I understand it, we
7 have specifically asked the board to consider.

8 MR. BICKWIT: That is true. I don't -- I don't
9 dispute --

10 COMMISSIONER KENNEDY: I am suggesting we have to
11 be careful.

12 MR. BICKWIT: I don't dispute that. I am saying
13 that there need not be much care exercised here, because
14 what you are doing is deciding whether to go forward with
15 additional enforcement actions; and there are cases that
16 suggest that you ought not to be precluded from dealing with
17 those kinds of questions, because of the pendency of ongoing
18 proceedings.

19 COMMISSIONER KENNEDY: Okay. All right.

20 MR. BICKWIT: You would be hamstrung as a
21 Commission if that were not the case.

22 COMMISSIONER KENNEDY: Fine.

23 I will eliminate the problem as far as I am
24 concerned. I may wind up the only Commissioner able to
25 consider the problem later.

1 MR. BICKWIT: My advice is that that will not be
2 the case.

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1 COMMISSIONER KENNEDY: If you keep talking about it
2 in the context in which you are talking about it, it will be.

3 (Commissioner Kennedy left the room at 4:50 p.m.)

4 COMMISSIONER GILINSKY: It is my understanding that
5 you said you thought revocation didn't amount to much?

6 COMMISSIONER AHEARNE: No. I said I can see
7 revocation being taken for one or two rounds, as a penalty --

8 COMMISSIONER GILINSKY: I don't understand your
9 comments on the penalty.

10 COMMISSIONER AHEARNE: I said then there are two
11 kinds of penalties that are associated with it. The first
12 is there is a financial penalty; and as I understand it, it's
13 a possibility of a very large fee that has to be paid once they
14 reapply for the license. My point was I did not think that that
15 was consistent with the congressional statutes under which we
16 operate, that that license fee was supposed to be a penalty.

17 The second was the other kind of a penalty is that
18 we make them comply with our procedures. I think that is bad
19 government to use our procedures as a penalty. One of the
20 reasons you take the action is for a penalty or they are not
21 fit to operate.

22 COMMISSIONER GILINSKY: I think it would be regarded
23 as a penalty quite apart from any monetary costs that are
24 involved here. I think the licensee will regard it as such.
25 I think the public will regard it as such.

- jeri2 1 COMMISSIONER AHEARNE: Well, at the moment I am trying
2 to focus on what I think it really is; and I think -- it's
3 either a penalty or it's because they are not fit to operate.

4 COMMISSIONER GILINSKY: Suppose you regard it as a
5 penalty?

6 COMMISSIONER AHEARNE: Then it's one of two kinds:
7 a financial penalty or the penalty is they have to go through
8 our procedures.

9 COMMISSIONER GILINSKY: It seems to me beyond that
10 there is an expression on the part of this Commission leading
11 to revocation of the license.

12 COMMISSIONER AHEARNE: That gets me back to -- the
13 reason that's being exacted is that we must conclude they are
14 not fit to operate. If I reach that conclusion, then I get
15 back to the fact it's TMI 1 I ought to be worried about.

16 COMMISSIONER GILINSKY: They have taken actions which
17 we regard as being wrong and so wrong that punitive action is
18 required. What are all those monetary penalties?

19 COMMISSIONER AHEARNE: That's right. These are
20 explicit penalties that the Congress has said we have the
21 authority to lay out. My point is that as far as the revocation
22 of license, as far as I can think through it, you do it for
23 one of two reasons. The main reason -- and I end up that you
24 only do it for one reason. They are not fit to operate the
25 plant. That's the reason you revoke the license. If they are

1 not fit to operate, I have much less -- I don't have many
2 concerns, at least in the immediate future, about their opera-
3 tion of TMI 2. If they re not fit to operate, I am really
4 concerned about TMI 1.

5 COMMISSIONER BRADFORD: If TMI 1 were running right
6 now, so would I. The fact is it's the ongoing procedure. It
7 seems to me we don't have to take that action on TMI 1 at the
8 moment.

9 With TMI 2 it's quite right, the action is not of
10 great significance, just as in my earlier hypothetical about
11 the guy driving the car.

12 That is not of grave practical significance. It
13 does seem to me in both cases what you have is a situation in
14 which the pulling of the license just speaks out clearly about
15 the facts, at least the way it emerges to me at the moment,
16 that it is simply something that ought to be done. It may not
17 have great practical significance to this case, but establishing
18 that as a clear standard --

19 COMMISSIONER AHEARNE: If I use then the car analogy,
20 I would think a more analogous situation would be the
21 individual who drives recklessly and cracks up the car and goes
22 back to the garage and gets a second car. The conclusion the
23 police take is that you may not drive that cracked-up car
24 because you are a reckless driver.

25 COMMISSIONER BRADFORD: If it's the same individual,

jeri 4 1 we can get to the same choice.

2 COMMISSIONER AHEARNE: This is the same answer.

3 COMMISSIONER BRADFORD: That's why I tried to use a
4 taxi company yesterday.

5 COMMISSIONER GILINSKY: The degree of commonality
6 is not entirely clear. Had we not started this other proceeding
7 in which these questions would be reviewed, it would seem to
8 me the thing would appear in a different way: but we have, and
9 we will review those specific questions in the course of the
10 TMI 1 proceeding. That should not, it seems to me, hold it
11 back from acting in the case of TMI 2. The alternative is to
12 say that when you don't notify the NRC -- and I agree here that
13 that whole list strikes me as the most significant item, the
14 worst wrong that was committed. You get stuck with a fine of
15 a few thousand dollars.

16 In fact, it seems to me if you are willing to put in
17 the bank \$300,000, you don't have to worry about NRC enforce-
18 ment at all. You just handle the whole year's worth.

19 COMMISSIONER AHEARNE: That would be an interesting
20 argument to the PUC.

21 COMMISSIONER GILINSKY: Or you can made a deal or
22 something. I think for this Commission to come out with X
23 thousand dollars in fines as a result of what took place at
24 Three Mile Island would be regarded with some levity. When we
25 talk about things not being of practical significance, that is

eri 5
1 of practically no significance to a company. It's the literal
2 drop in the bucket.

3 COMMISSIONER AHEARNE: Of course one of the main
4 reasons that the civil penalty amount is low is because of the
5 congressional restraint we have on us. We are not
6 constrained -- we are not coming out with that proposed
7 penalty because I&E evaluated and concluded that that's the
8 right amount. They read value within the constraints of the
9 laws that they have to operate under; that's the amount.

10 COMMISSIONER GILINSKY: Sure.

11 COMMISSIONER AHEARNE: I am not saying \$60,000 is
12 very large.

13 COMMISSIONER GILINSKY: We have to live within those
14 constraints.

15 COMMISSIONER AHEARNE: That's right.

16 COMMISSIONER GILINSKY: But we have other means
17 available to us.

18 When we discussed the whole question of approaches
19 to enforcement earlier, we were discussing in fact the upping
20 of these limits. It was said that the fines are sort of an
21 intermediate category. On one side is a letter of reprimand,
22 trying to get to the attention of the company. Then there are
23 fines. If somebody is really serious, that's it; you ring
24 the place shut.

25 What we are saying is that this event falls in the

eri 6
1 intermediate category. Suppose the reactor were not
2 inoperable? Would the situation call for telling them not to
3 operate or would it call for revoking the license?

4 COMMISSIONER AHEARNE: As a matter of fact, one of
5 the points I tried to make was that I want to be clear on
6 what the licensee did do in that period. Both you and Peter
7 have stressed the really crucial factor was the lack of
8 relaying information. I think in this report the fuzziest
9 part we have at the moment is the relaying of information.

end 7
10 COMMISSIONER GILINSKY: That's a separate matter.
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1 COMMISSIONER AHEARNE: It can't be a separate
2 matter, if that's the critical point.

3 COMMISSIONER GILINSKY: I am saying if you in your
4 mind are not convinced that that -- that we have the right
5 to take action on that issue, that item, that's a different
6 matter.

7 You just regard it --

8 COMMISSIONER AHEARNE: That's the fuzziest area in
9 this paper.

10 COMMISSIONER GILINSKY: I don't think it's fuzzy,
11 but if you do, that puts you in a different situation, I
12 agree.

13 COMMISSIONER HENDRIE: I have some doubt you will
14 make it stick for \$4000, let alone a license revocation.

15 COMMISSIONER AHEARNE: If I really reached the
16 conclusion that Met Ed's gross income -- I keep on
17 reiterating it is not TMI-2 I am worried about them
18 operating. It's TMI-1 I am worried about.

19 You say we have a hearing. Someone will have a
20 hearing on TMI-2. That hearing is not the same magnitude if
21 we revoke their license. That's why I want to review what
22 Mr. Rogovin's effort ends up with.

23 At that stage, it may be I will try to push for
24 trying to pull TMI-1. It might be appropriate at that stage
25 that the conclusion is that that plant does not operate

1 unless it's transferred to another utility.

2 Revoking the license of a plant that's not going
3 to operate for many years, if at all, I still am having
4 difficulty with that.

5 COMMISSIONER HENDRIE: I have difficulty with it
6 because the specific grounds on which you revoke it just
7 seem to me to be as John says, sort of the mushy end of the
8 enforcement list.

9 COMMISSIONER BRADFORD: Those are two different
10 points. John's point is that he's not sure that the facts
11 are as stated here.

12 COMMISSIONER AHEARNE: Right.

13 COMMISSIONER BRADFORD: There's a separate
14 question about the question as to the legal grounds.

15 COMMISSIONER AHEARNE: Oh, I have no problem about
16 that, the legal grounds.

17 COMMISSIONER HENDRIE: My problem is with regard
18 to the facts. Indeed, you know, you ascribe -- all I can
19 say is pulling a guy's operating license, that can be a
20 serious proposition.

21 I assume that it is taken in a high -- you know,
22 with a high urge for revenge or whatever. Now, I look
23 around and see who the -- who the culprit is.

24 It turns out to be some gentleman or set of
25 gentlemen who didn't get to the NRC until the evening of the

ltuu 1 28th, something about high temperatures from the
2 thermocouple.

3 I must say I have the most limited sort of
4 information which would allow me to conclude that these guys
5 were saying to each other, Jesus, don't let the inspector
6 see that.

7 COMMISSIONER GILINSKY: Does it take that?

8 COMMISSIONER HENDRIE: Good Christ, if you are
9 going to say -- if you are going to pick out after an event,
10 second guess the licensee -- although we manage to get
11 second-guessed that way all the time -- some particular item
12 which the operator at the time, the shift supervisor,
13 whoever it may have been, didn't see or didn't notice or it
14 didn't occur to him that that was a crucial matter to get to
15 the NRC, then you say, aha, you didn't do that, whomp their
16 license off, there isn't a stable license for man or beast
17 in the country.

18 COMMISSIONER GILINSKY: We are not talking about
19 any little old item.

20 COMMISSIONER BRADFORD: The facts that are
21 concerning me don't quite sum up that way. The 2500 degree
22 reading as I understand it, the NRC didn't learn about until
23 well into the days, if not weeks, of the accident.

24 The fact the thermocouples had gone off scale, I
25 think, Roger Matson was talking about on the 29th or 30th.

1 Exactly how far off scale the potentshometer
2 readings indicated, I don't remember learning that for a
3 month.

4 The 4000 degree reading -- obviously the person
5 who did the interviewing learned about that in the ensuing
6 months. I don't think we learned about it until August.

7 COMMISSIONER HENDRIE: All I can tell you about
8 4000 degree readings with those themocouples is it's
9 garbage. Nature doesn't work that way. ✓

10 COMMISSIONER BRADFORD: Is it all that clear that
11 people in the control room didn't do that?

12 COMMISSIONER HENDRIE: I really can't say. All I
13 can say is that what you have before you in the way of facts
14 about what was or was not known and what was or wasn't given
15 to the NRC is in no way or shape in my view to pulling a
16 license on that basis.

17 The pressure spike in the containment, what are
18 you going to do with somebody that had a block valve being
19 closed or open or something like that and thought what he
20 was seeing was electrical cross-talk on the circuit?

21 You mean we are going to go around pulling
22 licenses because of that kind of misjudgment at that time?

23 COMMISSIONER BRADFORD: I have been stressing the
24 thermocouples. In fact, what the staff said about that
25 is -- well, let me just leave it there.

ltdd 1 If there were people in that control room who had
2 other interpretations about what the staff thought of the
3 spike, then it may be just as serious.

4 The reason I have the problem is because of the
5 ambivalence about whether or not we had people in the
6 control room who might have seen it and relayed it back to
7 this.

8 I would think the staff should -- as long as they
9 are satisfied that that was not the case, they should press
10 ahead on that ground and Met Ed can prove to the contrary.

11 That issue can turn on the facts, whether or not
12 the law was broken.

13 COMMISSIONER GILINSKY: Just think of the message
14 that you are sending from this Commission. It means if you
15 screw up to the extent that Met Ed has in this instance, you
16 end up with a fine which is -- the original version double,
17 now three times, something like that what VEPCO received for
18 failing to supply us with a document which never did make
19 any difference in the review but might have.

20 It seems to me a very strange sort of message to
21 send out there. It's hardly a pin prick.

22 COMMISSIONER AHEARNE: Well, I did vote not to
23 issue.

24 COMMISSIONER GILINSKY: I don't quite understand
25 your comment.

1 COMMISSIONER AHEARNE: I don't think that it
2 really is complete, but I think that the issue of revocation
3 is a serious one.

4 As I keep saying, if revocation is appropriate,
5 it's TMI-1 it's appropriate to revoke.

6 COMMISSIONER GILINSKY: You know, it is a
7 possibility that we may revoke that license.

8 I guess I don't understand the argument that you
9 are making.

10 COMMISSIONER AHEARNE: As far as I can see the
11 facts at the moment, this is about as far as the facts
12 support and certainly if we had civil penalties that we
13 have finally asked the Congress for, this would be a
14 heck of a lot more.

15 COMMISSIONER GILINSKY: You know, there are a lot
16 of people out there, and I went and spoke to some of
17 them yesterday, who wonder whether we are really up
18 to regulating this industry. I told people -- if you
19 will bear with me for a few minutes here -- that I
20 thought -- You know, people ask: "Can we live
21 with nuclear power?"

22 I said, "Yes, if we take sufficient care and a
23 sufficiently disciplined approach."
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1 And they said, "Well, how are you going to get that?
2 The utilities are out to basically make money. They
3 are not the most careful organizations; how are you going
4 to get them to take all of this care?
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7 I said, "Well, the government just has to regulate
8 in a really tough way. People step out of line. They have
9 to get whammed. It is up to us to impose that discipline."

10 Let me tell you I was meant with a pretty cynical
11 retort to that. "The history of regulation in this country
12 shows that regulatory agencies just don't do that."

13 I made some effort to assure them that I thought
14 we would take a tough approach. What we are doing here or
15 what we may do is just say, you know, "You get a slap on the
16 wrist, not matter how bad the behavior is."

17 It strikes me that that's an unfortunate message
18 to put out.

19 COMMISSIONER AHEARNE: Please, he challenged my
20 point. You used the word "discipline." To me that also
21 means logical. It has to be defensible not in the sense of
22 emotion, but it also has to be defensible on rational
23 grounds. I just think the logic isn't there. I agree that
24 the emotional response would be -- it would appear that now
25 we are really being tough. We are going to revoke the

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bwdd 1 license of TMI 2. But I think in the cold light of -- at
2 least to me, in trying to think through it logically, it
3 doesn't hang together.

4 COMMISSIONER GILINSKY: It seems to me we are
5 dealing here -- you come back to this TMI 1, TMI 2. We have
6 a process for evaluating TMI 1. We can apply cold reason to
7 it.

8 COMMISSIONER AHEARNE: We will also end up having
9 a hearing on TMI 2? At least to me, I have to reach
10 conclusions on the basis that I think I can defend to
11 myself and others on the fact that this is now logical and
12 sound.

13 I have difficulty if the point is that I am trying
14 to make a -- teach a lesson, but I can't really explain
15 carefully what the lesson is.

16 COMMISSIONER GILINSKY: If you think that point is
17 fuzzy, why did you support a \$4000 fine?

18 COMMISSIONER AHEARNE: That element -- I wasn't
19 going to argue 3000, 5000, 4000, all the great specific
20 details. Vic, I&E concluded there is a question there. I
21 think it has been pointed out by many people that if the
22 licensee comes back in the hearing and objects to that, that
23 will be resolved there.

24 My vote on not even going ahead was that I don't
25 think it's yet completely clear, at least to me. Four of

bwdd 1 you did vote to go ahead.

2 COMMISSIONER BRADFORD: As I foresaw at the time,
3 there might be an issue on that. Your vote would be
4 important. Maybe in view of the status of this proposition
5 now, we would want the Staff to make a
6 revocation.

7 COMMISSIONER AHEARNE: That's correct.

8 COMMISSIONER BRADFORD: Is going to call for an
9 interesting paragraph in the letter.

10 COMMISSIONER AHEARNE: I notice there is already a
11 line in there about possible revocation.

12 COMMISSIONER BRADFORD: There may not be much more
13 than that that can be done on that.

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1 COMMISSIONER HENDRIE: I think we are going to
2 have to decide whether we take the issue as it appears by
3 now.

4 We will have to move with this package or let it
5 in effect continue to lie before us. At the moment on the
6 matter of revocation, if I read wrongly, please tell me.

7 John is not prepared to agree to revocation,
8 particularly on the grounds cited here.

9 I am. Vic, I guess you are strongly for it on any
10 grounds.

11 (Laughter.)

12 COMMISSIONER GILINSKY: That's a rather odd
13 description.

14 COMMISSIONER HENDRIE: Peter on the specific
15 information that you have been citing.

16 We can either declare ourselves bound two and two
17 and leave it on the table or I think we read Commissioner
18 Kennedy correctly not in favor of revocation, at least at
19 this time.

20 We can go ahead with the package without
21 revocation. I don't know.

22 COMMISSIONER AHEARNE: I have a bias. Clearly I
23 find it very consistent with my original position if we
24 split two and two and could go ahead.

25 COMMISSIONER HENDRIE: True.

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1 COMMISSIONER BRADFORD: I would like to review the
2 package at least overnight and think about it. Because
3 without revocation in it, then I have to go back and look at
4 the penalty.

5 There are some tradeoffs, I think, with revocation
6 and following the staff recommendation that we stick to the
7 conventional method of doing it or leaving revocation out
8 and taking what would be a radical departure from the
9 staff's original civil penalty package or holding revocation
10 as an open question; and if so, then which civil penalty.

11 COMMISSIONER AHEARNE: Let me ask Vic Stello a
12 question: Maybe I misinterpret your opening statement on
13 this new penalty.

14 My interpretation was that you did not view this
15 increase as necessarily a radical departure?

16 MR. STELLO: No, I don't. I am concerned about
17 throwing it out of balance, but over those things which the
18 licensee had control of, that have had a real impact on the
19 accident, the block valve, that satisfied that need.

20 I felt no difficulty in pulling the full
21 enforcement capability that was available.

22 COMMISSIONER GILINSKY: In effect, John, you are
23 saying that INE did an inadequate investigation?

24 COMMISSIONER AHEARNE: This is a very
25 complicated -- obviously this has had many people -- many
people

ltuu 1 people have pointed out it is the most serious accident,
2 most significant event. It's complicated.

3 We debated at the time, if you recall, when we got
4 the effort under way which eventually ended up being the
5 Rogovin effort, whether or not it would be appropriate to
6 start INE off on its investigation, recognizing that it was
7 of necessity a more limited and a more rapid one than the
8 other one might become.

9 We have now reached the point where I think one of
10 the results of that is now past. I am not faulting the INE
11 effort. I think with their resources and their charter,
12 they went after it very rapidly and quite thoroughly; but
13 one of the fundamental issues has turned out to be of
14 sufficient difficulty to wrestle with that, I don't think
15 they have ended up getting there, getting through it.

16 Now, the conclusion that you see it leading you
17 to, I don't quite reach. I'm not faulting INE's effort. I
18 am just saying that we as a Commission did attach a much
19 larger effort which hasn't reached its conclusion.

20 COMMISSIONER HENDRIE: Well, the pause fits John's
21 inclination. Peter needs to read it overnight. I must say
22 I would recommend to you that -- going ahead with the
23 revised enforcement package, but it appears to me that
24 there's a sufficient inclination not to have to reach that
25 this afternoon one way or the other.

1 So I think we -- barring people's questions,
2 comments, or further remarks -- have come to an end.

3 MR. STELLO: Mr. Chairman, do I understand that
4 you are now directing me not to take any action until I hear
5 from the Commission?

6 COMMISSIONER HENDRIE: I guess so.

7 MR. STELLO: Okay.

8 COMMISSIONER BRADFORD: I would expect that would
9 be soon, but I can't tell you when.

10 VOICE: In the event you decide not to take any
11 action at this time, I think you should say so for
12 publication.

13 COMMISSIONER AHEARNE: To not?

14 VOICE: In the event you don't decide to wait for
15 the completion of the other investigations.

16 I just try to look ahead to the next day.

17 (Whereupon, at 5:20 p.m., the hearing was
18 adjourned.)

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