



## POLICY ISSUE

(NEGATIVE CONSENT)

June 30, 1983

SECY-83-263

**For:** The Commissioners

**From:** Martin G. Malsch  
Deputy General Counsel

**Subject:** SUNSHINE ACT REVIEW OF TRANSCRIPT OF MAY  
19, 1983 CLOSED COMMISSION MEETING ON  
INDIAN POINT

**Purpose:** Communicate advice on release of the  
subject transcript.

**Discussion:** OGC has reviewed the transcript of the  
May 19, 1983 Commission meeting, closed  
under Exemption 5 of the Sunshine Act, 5  
U.S.C. 552b(c)(5), at which the EDO  
briefed the Commission on his meeting  
with Governor Cuomo's representatives on  
Indian Point emergency planning efforts.

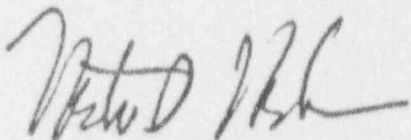
Ex.  
5  
(FOIA)

Information in this record was deleted  
in accordance with the Freedom of Information  
Act, exemptions 5  
FOIA: 92-436

**Contact:**  
Mike Blume, OGC, X41393  
Beverly S. Segal, OGC, X43224

67  
EX.  
5  
(FOIA)

we believe that



Martin G. Malsch  
Deputy General Counsel

Attachment: Transcript

SECY NOTE: In the absence of instructions to the contrary, SECY will notify OGC on Friday, July 15, 1983 that the Commission, by negative consent, assents to the action proposed in this paper.

DISTRIBUTION:  
Commissioners  
OGC  
OPE  
SECY

ATTACHMENT



# Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

BRIEFING ON ENFORCEMENT MATTER

(CLOSED MEETING - Exemption 5)

Pages 1-30

*8307250681*

Prepared by:  
ANN TIPTON  
Office of the Secretary

1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION

3  
4 BRIEFING ON ENFORCEMENT MATTER

5 CLOSED MEETING  
6 (Exemption 5)

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

10 Thursday, May 19, 1983

11 The Commission convened, on short notice, at  
12 10:40 o'clock, a.m.

13 COMMISSIONERS PRESENT:

14 NUNZIO PALLADINO, Chairman of the Commission  
15 VICTOR GILINSKY, Commissioner  
16 JOHN AHEARNE, Commissioner  
17 THOMAS ROBERTS, Commissioner  
18 JAMES ASSELSTINE, Commissioner

19 STAFF PRESENTERS SEATED AT COMMISSION TABLE:

20 S. CHILK  
21 W. DIRCKS  
22 G. CUNNINGHAM  
23 E. CHRISTENBURY  
24 H. PLAINE  
25 M. MALSCH  
J. ZERBE

AUDIENCE SPEAKERS:

H. DENTON



1 He was trying to explore what options he has taken. If you want  
2 to make it public, I really think it would be better not to have a  
3 meeting where all this --

4 COMMISSIONER ASSELSTINE: I guess I'm just curious.  
5 Herzel, what do you think? In what Bill described, is there  
6 sufficient legal basis for closing?

7 MR. PLAINE: Well, I had originally been told, without  
8 any information, that this was going to be an enforcement  
9 meeting.

10 CHAIRMAN PALLADINO: Briefing on enforcement matters.

11 MR. PLAINE: Or I wouldn't have signed off, as I did  
12 a few minutes ago, on the basis of Exemption 5.

13 CHAIRMAN PALLADINO: Well, it is an enforcement  
14 matter. Whether or not what we are talking about allows it to  
15 be closed I guess depends on the content, but I believe it  
16 should be closed.

17 COMMISSIONER ASSELSTINE: I guess my concern was that,  
18 at least in the first items that Bill described, I didn't see  
19 a basis for closing on the basis of Exemption 5 to the extent  
20 to which --

21 MR. PLAINE: If he had finished talking, he might  
22 have got around to it.

23 MR. DIRCKS: Well, you've got to know the first two  
24 in order to come up with the enforcement actions that you may  
25 want to consider.



1 MR. PLAINE: I understand. As I say, I came in  
2 without any knowledge at all of where we were going.

3 MR. DIRCKS: If you want to talk about enforcement  
4 actions in the absence of the meeting that was held yesterday,  
5 we can do it, but I don't think it would be right to breach  
6 the confidence that the Governor bestowed.

7 COMMISSIONER GILINSKY: What are the alternatives?  
8 For you to come around and talk to each of the Commissioners?

9 MR. DIRCKS: We can talk to you individually.

10 CHAIRMAN PALLADINO: Well, I think we also ought to  
11 discuss what actions, if any, we should take as a result of  
12 what we hear. Also, I thought I ought to report on a telephone  
13 call that delayed this meeting. It was a call from Axelrod  
14 just as I was ready to leave.

15 COMMISSIONER GILINSKY: Well, I think what Jim is  
16 saying is, if this enforcement is not withholdable, we would  
17 have to release it, if somebody asked for it, anyway.

18 COMMISSIONER ASSELSTINE: Yes, that's right.

19 COMMISSIONER GILINSKY: So, is it withholdable or  
20 isn't it withholdable --

21 COMMISSIONER ASSELSTINE: That's the question.

22 COMMISSIONER GILINSKY: Unless Counsel advises us  
23 on it.

24 CHAIRMAN PALLADINO: Well, suppose it turns out that  
25 some of this we feel should be released, we can then go --

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

COMMISSIONER GILINSKY: We will then run into the problem that --

CHAIRMAN PALLADINO: No. One of the things that Axelrod said was that the Governor wanted to make a decision by today on what stands they should take and I encouraged them not to be so precipitous. He said he was meeting with the Governor at noon and he says he will relay my feeling, anyhow, to him. I said, give me a chance to find out what has gone on and explore what actions, if any, we have open to us.

Now, that's only part of the conversation. He sounded very agitated.

COMMISSIONER GILINSKY: He was.

MR. CUNNINGHAM: I think that, before we proceed, we ought to have the General Counsel specifically advise us. If Bill starts with a briefing, as a prelude to a discussion of options, is the portion of the discussion which constitutes the briefing about yesterday's meeting withholdable?

COMMISSIONER ASSELSTINE: That's right.

MR. MALSCH: I think if you are going to be discussing enforcement options, including options that Bill discussed with the Governor, that's withholdable and closeable. If you are talking about the status of preparedness at Indian Point at the present time, that probably is not withholdable, but it centers on what Bill was saying. If the focus of the discussion was on enforcement options, that should be withholdable.

1 You can't make any guarantees, but I think it should be with-  
2 holdable.

3 CHAIRMAN PALLADINO: But if it turns out that  
4 General Counsel feels that certain of the items we discuss  
5 should be released, how soon will we have to release them?  
6 You have to transcribe --

7 COMMISSIONER GILINSKY: -- by hand.

8 (Laughter.)

9 CHAIRMAN PALLADINO: And you have to review them.

10 MR. MALSCH: There is an obligation to review the  
11 transcripts. I don't know if there are time deadlines in the  
12 Act. I think we probably don't meet them most of the time.  
13 As a practical matter, it would depend upon if there are  
14 certain requests --

15 COMMISSIONER ASSELSTINE: Actually, I'm sure we don't  
16 meet a lot of the requirements of the Government in the Sun-  
17 shine Act most of the time.

18 COMMISSIONER AHEARNE: Pardon me?

19 CHAIRMAN PALLADINO: I thought we did.

20 COMMISSIONER AHEARNE: I think we meet the require-  
21 ments of that Act as well as any other agency.

22 COMMISSIONER GILINSKY: Let's stick to Indian Point.

23 (Laughter.)

24 COMMISSIONER ASSELSTINE: I'm not convinced of that,  
25 but let's stick to Indian Point, I agree.

1           COMMISSIONER AHEARNE: I find it disconcerting to  
2 have a statement like that made because it's my impression we  
3 were meeting the terms of the Sunshine Act and, if we're not,  
4 then I would like to be advised.

5           COMMISSIONER ASSELSTINE: That was the reason I  
6 raised the question at this time.

7           CHAIRMAN PALLADINO: I have not had any indication  
8 that we are not meeting or trying to meet the Sunshine Act.

9           MR. DIRCKS: It's unfortunate because, after the  
10 meeting, the State people went back to brief the Governor and  
11 discuss what options he would take. FEMA went back to brief  
12 General Guiffrida and I am sure he is aware of what options  
13 he should take. I'm always getting the view that the Commission  
14 is not going to hear what options may be available to it.

15           COMMISSIONER AHEARNE: The next time the issue comes  
16 up, just think of the administrator, Bill, you know, which  
17 side --

18           MR. DIRCKS: I've been on that side.

19           MR. ROBERTS: Absolutely.

20           (Laughter.)

21           COMMISSIONER ASSELSTINE: If the focus is on possible  
22 enforcement actions --

23           MR. GILINSKY: You could both resign.

24           (Laughter.)

25           COMMISSIONER ASSELSTINE: If the focus is on part of

1 your discussion with the Govenor on possible enforcement  
2 actions, then, fine. I don't have any real difficulty with  
3 that.

4 COMMISSIONER ROBERTS: Why don't we vote on whether  
5 we want to close the meeting?

6 CHAIRMAN PALLADINO: I would suggest that -- well,  
7 let me ask the question. All those in favor of closing the  
8 meeting indicate by raising their hand.

9 (Whereupon, Chairman Palladino and Commissioner  
10 Roberts raised their hands.)

11 COMMISSIONER AHEARNE: Could I ask Bill a question?  
12 You see, the difficulty is whether we close or not isn't going  
13 to solve the problem. It's whether the stuff Bill is going to  
14 talk about is withholdable. We can go ahead and close it but  
15 then a challenge would come and we would have to release it if  
16 it is not closeable.

17 So, Bill, you have heard the discussion going back  
18 and forth. Would you characterize what you are going to say as  
19 primarily focused upon possible enforcement actions?

20 MR. DIRCKS: Well, I thought the enforcement action  
21 you were talking about was what action you are going to take on  
22 June 9th, whether the plant should be allowed to operate or  
23 not allowed to operate.

24 The discussion yesterday came down to what actions  
25 the State and FEMA are willing to do and can do by June 9th

1 to give you any sort of a feeling of assurance about allowing  
2 the plants to operate or not operate.

3 COMMISSIONER AHEARNE: So your view is that it would  
4 be focused on information which would affect or modify the  
5 enforcement action?

6 MR. DIRCKS: That is the whole reason we are here.

7 COMMISSIONER AHEARNE: Then I'll vote "aye," then.

8 COMMISSIONER ASSELSTINE: (Nodding.) Yes.

9 CHAIRMAN PALLADINO: That's a vote to close?

10 COMMISSIONER AHEARNE: Yes.

11 COMMISSIONER GILINSKY: I'm just going to pass.

12 COMMISSIONER AHEARNE: That's probably the smart  
13 thing to do.

14 COMMISSIONER ASSELSTINE: Are you going to leave, Vic?

15 (Laughter.)

16 CHAIRMAN PALLADINO: Let me turn the meeting over to  
17 Bill.

18 MR. DIRCKS: I'll give you the abbreviated version.  
19 I'll exclude the more colorful give-and-take in view of the  
20 fact that this whole thing may come out.

21 COMMISSIONER ROBERTS: Who were the parties? Would  
22 you tell us who was there?

23 MR. DIRCKS: FEMA was represented by Jeff Bragg and  
24 Frank Petrone; for the State, the principal spokesman was Dr.  
25 David Axelrod, supported by Frank Murray who is from the

1 Governor's office. There were a few other people there who  
2 really didn't say anything. I think there was one lawyer there  
3 from the State.

4 The purpose of the meeting was to discuss the options  
5 that the State could take to satisfy FEMA and NRC concerns. The  
6 State presented a couple of options, principally two -- well,  
7 three. Let me go back.

8 First, the issue of the bus drivers. The State and  
9 FEMA both reported that they thought the bus driver situation  
10 had been essentially resolved. The contracts -- I think five  
11 of the six contracts had been negotiated, and signed, and  
12 agreed to, and the State said to FEMA, "Does this really answer  
13 your question, since it deals with only five of the six?" And  
14 FEMA said, "That seems to be all right. There doesn't seem to  
15 be any problem there."

16 COMMISSIONER AHEARNE: When you say, "FEMA said" --  
17 Bragg or Petrone?

18 MR. DIRCKS: Bragg. I'm going to come to a punch-line  
19 here in a minute.

20 (Laughter.)

21 CHAIRMAN PALLADINO: You said the contract with the  
22 bus drivers was signed?

23 MR. DIRCKS: Signed, negotiated, yes.

24 MR. CHRISTENBURY: Five of the six.

25 MR. DIRCKS: Five of the six.

1           COMMISSIONER ROBERTS: What's the status of the sixth?  
2 Is there an impasse? Are they negotiating?

3           MR. DIRCKS: They are coming into it but, as far as  
4 FEMA is concerned, the bus driver planning situation has been  
5 resolved.

6           Then they got onto the question of Rockland County  
7 which was a more troublesome issue, and then State presented  
8 two options. One was a throwaway option. One involved absolute  
9 no State participation in Rockland County, with the two utilities  
10 providing all the emergency resources, personnel, and so on and  
11 so forth.

12           COMMISSIONER AHEARNE: I read in the Times that  
13 local --

14           MR. DIRCKS: Yes. We didn't get into that issue at  
15 the meeting. FEMA's response to that was negative. They  
16 didn't see how it would work. There was a lot of give and take  
17 on it and FEMA pretty much said, "You can submit your plan.  
18 We'll review it. We don't think it's going to work because  
19 you don't have any police power out there and who is going to  
20 manage this thing?" The State then said, all right, the next  
21 option is that the utilities would supply the resources again,  
22 the State would supplement it by adding managers, directors,  
23 and manning the emergency operation facility, and carrying out  
24 the State supervision. FEMA questioned whether this could  
25 work in view of the fact that the utility people lacked police



1 power. How can they direct traffic and so on and so forth.

2 COMMISSIONER GILINSKY: Can they be deputized?

3 MR. DIRCKS: The State said they could handle that  
4 problem. They didn't say how, but "we can handle that problem."  
5 The question, "In a real emergency, would Rockland County step  
6 in?" They said they would step in. "How could untrained people  
7 come in and supplement these trained utility people?" I think  
8 the State said, "We've got an answer to that one, too. We could  
9 say the Governor would declare a state of emergency and allow  
10 the State to move in and take over."

11 COMMISSIONER AHEARNE: The issue that FEMA had raised  
12 before in the report that the State plan doesn't have the  
13 State --

14 MR. DIRCKS: This would be a new plan. The Governor  
15 would stand behind it and make a commitment, would come out  
16 with his statement and it would be a real sign that the  
17 Governor was going to take charge.

18 All this was going very well. FEMA was indicating  
19 positive indications and would see hope here. The State was  
20 being receptive to suggestions, and then I happened to ask the  
21 question about whether or not FEMA would modify its statement  
22 that it lacked reasonable assurance and that public health  
23 and safety would be protected.

24 COMMISSIONER GILINSKY: By June 9th?

25 MR. DIRCKS: By June 9th, and FEMA said, "Well, we

1 can't change that.

2 COMMISSIONER ROBERTS: Who said that -- Bragg or  
3 Petrone?

4 MR. DIRCKS: Bragg and Petrone. They said, "We  
5 have two plans here, and we can't make a statement about the  
6 protection of public health and safety until the plans have  
7 been exercised."

8 COMMISSIONER GILINSKY: Here we go, again.

9 MR. DIRCKS: So I think I said, "How long will that  
10 take," and they said, "Oh, it will take at least 90 days."  
11 I said, "Well, we're back to 120 days, again," and there was  
12 a good deal of hard feeling at this point. I think FEMA was  
13 saying that we could accept or reject their finding. There is  
14 nothing in the law that binds us to that. In fact, they were  
15 misstating our Order by saying our Order says all we have to  
16 see is significant progress and Bragg was quite adamant on this  
17 point until he was corrected and Ed Christenbury, who was with  
18 me, did correct him. There is nothing in our Order that talks  
19 about significant progress.

20 COMMISSIONER AHEARNE: There's nothing what?

21 MR. DIRCKS: There is nothing in our Order -- of the  
22 four factors, there is no mention that we would be satisfied  
23 with signs of significant progress.

24 MR. CHRISTENBURY: He was suggesting that if they  
25 showed only significant progress, that would be enough for us

1 to change our vote, and we indicated that the Order says we'll  
2 consider a variety of factors, one of which will be significant  
3 progress but, certainly, a showing of significant progress, the  
4 Order does not suggest that that, alone, is sufficient.

5 MR. DIRCKS: Well, coming down to enforcement actions,  
6 we can identify this one that was identified in the meeting by  
7 FEMA. The Commission could move beyond the FEMA. It does  
8 not need to rely on the FEMA finding of reasonable assurance.  
9 It can make its own finding. The State joined in on that one  
10 and said they could see nothing in our statute that would  
11 require us to accept or rely on a FEMA finding.

12 In fact, Axelrod was quite vociferous on this point  
13 saying that we should obey our own statute and, in effect, make  
14 our own independent judgment of the exercise and not rely on  
15 the FEMA work.

16 COMMISSIONER AHEARNE: Axelrod said we should  
17 evaluate the exercise?

18 MR. DIRCKS: On our own, and come up with our own --

19 COMMISSIONER ROBERTS: The March 9th exercise?

20 MR. DIRCKS: Yes. Well, the March 9th exercise and  
21 the two plans that the State is going to be --

22 COMMISSIONER AHEARNE: You're saying that Axelrod's  
23 position is that we ought to evaluate the exercise?

24 MR. DIRCKS: Yes.

25 MR. CUNNINGHAM: Well, he was suggesting that you

1 would consider, though, what's been done since the exercise?

2 MR. DIRCKS: Yes, but there's a mixture of both.  
3 Consider the exercise, consider what has been done since the  
4 exercise, and, a third factor, consider what the State is  
5 going to do in response.

6 Now, there was a good deal of argument going on  
7 between FEMA and the State about how well FEMA did the evalua-  
8 tion of the March 9th exercise. The State felt as though they  
9 had performed exceedingly well and they were quite annoyed that  
10 FEMA found failings.

11 COMMISSIONER AHEARNE: In which part?

12 MR. DIRCKS: He thought they did very well in  
13 Rockland County.

14 COMMISSIONER AHEARNE: Did FEMA mention, in saying --  
15 you mentioned that they said they can't revise their finding,  
16 their conclusion, but did they say that they also cannot provide  
17 any statement?

18 MR. DIRCKS: As we got onto this thing and we were  
19 in the discussion, FEMA said, "Look, we don't have to mention  
20 this business of reasonable assurance. We can give you a --  
21 on the basis of a review of the plan, we could provide a --  
22 and if the plans are submitted as the State has suggested they  
23 were going to be submitted, we could provide you with a very  
24 positive review.

25 I think we asked then, I said, well, what happens

1 if you mention the reasonable assurance finding in the April  
2 letter and you don't mention it in this new letter, and you  
3 were asked what is your feeling on reasonable assurance?  
4 Petrone said, "Well, I would have to say we don't have  
5 reasonable assurance," and we are again back --

6 COMMISSIONER GILINSKY: They are sorry they ever got  
7 mixed up in this.

8 (Laughter.)

9 COMMISSIONER ASSELSTINE: So their finding stands  
10 until they expressly revoke it.

11 MR. DIRCKS: Until they expressly revoke it.

12 COMMISSIONER AHEARNE: Well, I guess there is logic  
13 to it. What they are saying is, as Vic said a minute ago, their  
14 position has always been that they make their final decision  
15 on the basis of an exercise. So they made one decision on the  
16 basis of an exercise and what they are saying is that several  
17 of the elements can be modified.

18 COMMISSIONER ASSELSTINE: Until you do another  
19 exercise.

20 COMMISSIONER AHEARNE: Yes, some of the elements may  
21 be modified, but their final finding requires an exercise.

22 COMMISSIONER GILINSKY: Even with the exercise, they  
23 have taken a pretty rigid view of this in the past. They could  
24 quickly exercise some portion of the plan.

25 MR. DIRCKS: I asked about that. I said, "Look,

1 here we are. We're going to get a State plan and it's going  
2 to take" -- well, FEMA, at one point, said it is going to take  
3 months to review this State plan. They narrowed it down to  
4 three week.

5 Then I said something about, "How could we look to an  
6 exercise very rapidly, since you've narrowed the two issues  
7 down -- bus drivers and Rockland County. And the answer was,  
8 "No, absolutely no." It would be -- let's see, there are 200  
9 or so people in Rockland County they would have to train, they  
10 would have to train these bus drivers. So they had two plans.  
11 That was FEMA's point. There were two plans, here. They  
12 looked like good plans, they looked like plans that could  
13 ensure the public health and safety, but they cannot say they  
14 will ensure the public health and safety.

15 CHAIRMAN PALLADINO: Well, did they at least agree  
16 that, if these things were done, they would give us a letter  
17 saying that the plans had been fixed up and-that, in their  
18 opinion, it is feasible of being implemented? I'm not saying  
19 that's enough, but at least will they go that far?

20 MR. DIRCKS: They will send us a letter saying that  
21 the plans, if they turn out as good as the State said they were  
22 to turn out, they would send us a letter saying that the plans  
23 were acceptable and they look good, they look like they can  
24 be implemented, but they have got two issues in their regulation  
25 that say, plans -- and Ed, you can quote it -- plans that can

1 be implemented to assure the public health and safety and will  
2 be implemented. So they've got two issues there that they keep  
3 hanging up on. This was not a kids' club meeting and when I  
4 suggested something like that, Bragg said, "Well, you're trying  
5 to make us compromise our regulations and we don't want to do  
6 that."

7 On the other hand, when we suggested about the stand  
8 that the Governor might want to take if he is committed, if the  
9 plans are good, I suggested to Dr. Axelrod whether or not the  
10 Governor would want to send a letter to the Commission saying  
11 he has good plans, they will be implemented, in the meantime,  
12 here are my recommendations, and I was told that the political  
13 situation wouldn't allow that type of a letter. So you've got  
14 these various elements that looks like its coming down, narrowing  
15 the options for this Commission to take. I don't have any  
16 recommendations. All I am telling you is you've got basically  
17 the option of getting a FEMA letter that says, plans that will  
18 look good, appear to be capable of being implemented, and they  
19 will review those two plans. They probably will not mention  
20 anything about a reasonable assurance finding but, on the  
21 other hand, they did warn us that, if passed, they would  
22 probably state that, until the plans could be exercised, they  
23 would not have --

24 COMMISSIONER AHEARNE: Probably it would be better  
25 if they were very forthright in their letter and said that this

1 does not modify the finding of lack of reasonable assurance  
2 because that finding cannot be modified until successful  
3 exercise.

4 COMMISSIONER ASSELSTINE: I agree. That's right.

5 CHAIRMAN PALLADINO: But then go on and talk about  
6 what their opinion is on the plan and the feasibility of it.

7 MR. DIRCKS: They could narrow the issues down to  
8 these two issues. They've got plans in that look like they  
9 can be implemented, they can't comment on whether these two  
10 individual, specific plans can be implemented until the exer-  
11 cise is done -- or will be implemented. If they can narrow  
12 the issues down and make it clear it is dealing with two  
13 specific points, it gives you more leeway to make your decisions.  
14 That's about how we left it. Now, no one was happy.

15 COMMISSIONER GILINSKY: We're talking, basically,  
16 about Rockland County?

17 MR. DIRCKS: Rockland County.

18 CHAIRMAN PALLADINO: Well, the bus drivers have to  
19 be trained.

20 COMMISSIONER GILINSKY: How long does it take to train  
21 bus drivers?

22 COMMISSIONER AHEARNE: Let me hesitate on that. If  
23 the Times is correct in their quotes of Governor Cuomo, it is  
24 not clear that he is going to buy Westchester County bus drivers.

25 COMMISSIONER GILINSKY: He's going to what?



1 COMMISSIONER AHEARNE: It's not clear he's going to  
2 buy it. He's quoted --

3 COMMISSIONER GILINSKY: What's it say?

4 CHAIRMAN PALLADINO: I think that's a quote in  
5 response to --

6 COMMISSIONER AHEARNE: Well, it says, "The Governor  
7 suggested Westchester was correct in being concerned about  
8 whether bus drivers would leave their families and rush to pick  
9 up other children. "If my children were in that zone of  
10 danger, I have to ask myself," etcetera.

11 MR. DIRCKS: I think that was referring to the  
12 original situation because, in the meeting, Axelrod said,  
13 "They've signed up. The agreement is -- FEMA, would you accept  
14 this, now?"

15 COMMISSIONER GILINSKY: I must say, I don't see why  
16 it's impossible to solve things like that in three weeks.

17 COMMISSIONER AHEARNE: Neither do I.

18 COMMISSIONER ASSELSTINE: I don't, either.

19 COMMISSIONER GILINSKY: If people wanted to do it,  
20 if FEMA wanted to do it --

21 CHAIRMAN PALLADINO: At the meeting that we held  
22 over in Giuffida's place they said that, after this contract  
23 was signed, FEMA was prepared to help them do the training  
24 and make sure they understood the bus routes and whatever else  
25 needed to be done, and they could do that by June 9th, and, if

1 we're going to do it, I think we would say that deficiency has  
2 been resolved.

3 MR. DIRCKS: I did not notice that spirit of coopera-  
4 tion, yesterday.

5 (Laughter.)

6 MR. DIRCKS: They were more in the view of, "Give us  
7 a plan. Tell us when you want to exercise it, and we will  
8 evaluate it." Was that your feeling, Ed?

9 MR. CHRISTENBURY: Yes. The letter we get back will  
10 be, presumably, a very upbeat letter except for that key element.  
11 That's when either you or the television cameras want to ask  
12 FEMA about the bottom line. Has your view on reasonable  
13 assurance as to whether health and safety of the public can  
14 be protected -- has that changed? And they indicated, at  
15 least yesterday, that their finding would be negative. So the  
16 letter will have, I think, many positive things, both in terms  
17 of Westchester County and Rockland County.

18 COMMISSIONER AHEARNE: You are assuming, however,  
19 that all this contractual arrangement will fall into place  
20 and that the State will make this modification to the plan  
21 that does look good.

22 MR. CHRISTENBURY: The meeting, yesterday, either  
23 rightly or wrongly, did not really focus too much on that  
24 because the State outlined this procedure and FEMA was not  
25 very probing on it but simply -- I don't want to mischaracterize

1 this--but certainly indicated that they didn't perceive any  
2 problem there.

3 COMMISSIONER AHEARNE: I was just commenting that in  
4 your statement that this is going to be an upbeat letter, there  
5 are a couple of critical assumptions there, that all of that,  
6 as described, does turn out to be that.

7 MR. CHRISTENBURY: That's correct.

8 MR. DIRCKS: And depending on how the Governor comes  
9 out. Axelrod, at the end of the meeting, was saying that maybe  
10 the Governor shouldn't stick his neck out in this one if what  
11 you're saying that FEMA can't come in with a relief of the  
12 negative finding and NRC, you do rely on FEMA, what assurance  
13 do we have that, no matter what the Governor does, it won't  
14 be acceptable because it can't make that June 9th deadline.  
15 I must say that, although I was not giving them much encourage-  
16 ment to say that we would move off the FEMA recommendations, I  
17 said I couldn't predict how the Commission would come out, but  
18 you do have this problem of --

19 COMMISSIONER GILINSKY: The staff is not going to  
20 compromise its principles.

21 MR. DIRCKS: No.

22 (Laughter.)

23 CHAIRMAN PALLADINO: He expressed it a little  
24 differently to me in his telephone call. I don't know if I  
25 should go through with it.

1 COMMISSIONER GILINSKY: He, is who?

2 CHAIRMAN PALLADINO: Axelrod. He called me just as  
3 I was coming down to the meeting.

4 COMMISSIONER GILINSKY: He sounded as if he was  
5 agitated?

6 CHAIRMAN PALLADINO: Yes.

7 COMMISSIONER ROBERTS: Could you share with us what  
8 he said?

9 COMMISSIONER GILINSKY: Whoever else gets to read  
10 this transcript --

11 CHAIRMAN PALLADINO: Let's see -- "We're facing a  
12 crisis which was precipitated largely by yesterday's meeting."

13 COMMISSIONER ROBERTS: The crisis was precipitated  
14 by the meeting?

15 CHAIRMAN PALLADINO: Partly, in part by the results  
16 of the meeting yesterday. You will have to allow me to  
17 interpolate what I wrote down. "Leaving essentially no options  
18 open to the Commission." He says this was a replay of a meeting  
19 six months ago. FEMA steadfast on the statement on whether or  
20 not there could be reasonable assurance in protecting public  
21 health and safety. FEMA will not state that they can give such  
22 assurance. Dircks says it will put NRC in a difficult position.  
23 The Governor has agreed to commit resources but apparently it  
24 is all to no avail because, if he commits the resources, does  
25 everything that FEMA wants, FEMA is not going to come around

1 and say that it provides reasonable assurance. He says it is  
2 very disheartening. FEMA is asking for an irrelevant system.  
3 He says because, in the end, Rockland County has said it will  
4 respond to an emergency and it is not its intent to let others  
5 take over for it. In the absence of a FEMA finding, he was  
6 trying to assess where different Commissioners would come down.

7 (Laughter.)

8 COMMISSIONER GILINSKY: What did you tell him?

9 CHAIRMAN PALLADINO: Well, he referred to a particular  
10 Commissioner who he thought was pitiable -- pivotal....

11 (Laughter.)

12 COMMISSIONER GILINSKY: I see a Freudian slip.

13 CHAIRMAN PALLADINO: To make certain the record is  
14 clear, he said "pivotal." He said, for example, "I know where  
15 he'll come down." I said, "Golly, you know something I don't."  
16 He said, "The State will do what's needed but, if it's going  
17 to be to no avail, then they need to know whether or not they  
18 should go ahead and make all these commitments. Get the  
19 utility and the State rewriting the plan and the Governor is  
20 going to make a decision by noon on that."

21 I told him I hoped he wouldn't make it by noon. I  
22 would like to have a little time to work in. I said that I  
23 wanted to get together with Bill Dircks and hear what he has  
24 to say and perhaps see what I can do to help the situation.  
25 He said, "Well, how much time are you talking about?" I said,

1 at least a day. He said, "Well, I'm leaving for New York  
2 around 3:00 p.m. Could you call me around 3:00 p.m." He said,  
3 "You might want to call the Governor directly." I said,  
4 "There's no point in my calling the Governor directly until I  
5 have something that might be constructive."

6 We left it that way. I took his number and agreed  
7 to try to call him back by this afternoon.

8 One of the inclinations I had was to talk to you  
9 freely because the tone of that meeting, so far as FEMA is  
10 concerned, seems to be significantly different from the tone  
11 that they expressed the other day.

12 COMMISSIONER AHEARNE: Joe, obviously I wasn't in  
13 your meeting and I wasn't in Bill's meeting, but I don't think  
14 that we ought to (a) be surprised -- and I think we ought to  
15 be a little careful on trying to get them to change one of  
16 their fundamental positions, and it's not unique to Indian  
17 Point. It's been with FEMA all along. Their final conclusion  
18 requires an exercise and they've always said that. It's not  
19 new.

20 COMMISSIONER GILINSKY: Yes, but you can talk about  
21 a personal exercise.

22 COMMISSIONER AHEARNE: Yes.

23 COMMISSIONER GILINSKY: An it seems to me that that's  
24 what we ought to be thinking about and I just don't see why  
25 things like this can't be done on relatively short notice.

1 It just isn't a situation where you want to do business as  
2 usual.

3 COMMISSIONER AHEARNE: I agree with that.

4 COMMISSIONER GILINSKY: And that's what's happening.

5 COMMISSIONER AHEARNE: So, rather than trying to,  
6 say, pressure --

7 CHAIRMAN PALLADINO: I didn't say "pressure."

8 COMMISSIONER AHEARNE: -- or anybody, to get FEMA  
9 to change their particular aspect, I think Vic's approach is  
10 a much better one. If they require some kind of a drill or  
11 exercise of it, then exercise that.

12 CHAIRMAN PALLADINO: But there is a significant  
13 difference. We did not pressure them at the meeting we had  
14 over in his office. They told us what they were going to do  
15 in response to a question on validation. They said, yes,  
16 they would be prepared to write a letter that the deficiencies  
17 had been satisfied and that they could provide reasonable  
18 assurance of public health and safety. Nobody pressured  
19 them into that. And that was Bragg that said that, not  
20 Guiffrida. Guiffrida was there and he turned the meeting over  
21 to Bragg.

22 MR. DIRCKS: Tim Martin just indicated that exercises  
23 vary between FEMA regions. Region I, the one in Boston, Tim,  
24 you said will accept what they call "tabletop exercises,"  
25 surgical developments, as opposed to getting people out on

1 the field and moving them around. But they did indicate that  
2 the problem there is that they would have to train all of these  
3 utility people in their new role.

4 There was one point I should clarify to make sure  
5 the record is clear. Axelrod said that the Governor may request,  
6 and underline "may," the NRC to do an independent evaluation  
7 of the exercise that was held in March. Since he didn't mention  
8 it again, I don't know how --

9 MR. CHRISTENBURY: Well, one of the points he,  
10 Axelrod, seemed to be pursuing was first, in the process, he  
11 turned to FEMA to find out what their bottom line was, and then  
12 he turned to us in terms of were we relying on FEMA, to which  
13 we indicated that we were. Then he seemed to suggest that he  
14 felt that the Commission had responsibilities and should look  
15 at the matter separate and apart from FEMA. That was one of  
16 the things -- maybe doing an independent audit of the circum-  
17 stances.

18 COMMISSIONER AHEARNE: Well, I guess I would hope  
19 that the Governor can see his responsibility as focused upon  
20 what his conclusion as to the State responsibilities are and  
21 what the status of those responsibilities are, and leave to  
22 FEMA and the NRC the judgment of how to interpret that. I  
23 guess I am a little distressed about the concept of everybody  
24 trying to figure out how the other person is going to come out  
25 so they can position themselves to be in the right position.



1 MR. DIRCKS: As we pointed out, the only ones who  
2 seem to be isolated out there was NRC. FEMA said they couldn't  
3 compromise the exact wording of the regulation. The State had  
4 their problems politically. And I said, everybody has to leave  
5 this thing with a little blood on his nose, and no one was  
6 wanting to join in the fight. They were isolating the Commission  
7 in a way, saying, "It's your finding. You can make it on what-  
8 ever basis you want to make it on."

9 COMMISSIONER GILINSKY: That's it, huh?

10 (Laughter.)

11 MR. DIRCKS: There was an extraordinary amount of  
12 press interest in this thing. I was flabbergasted that they  
13 were there. They came in with a television camera and walked  
14 around the room and then we went down the hallway and they  
15 just blocked the hallway and they wouldn't let us out.

16 The spokesman for the State was Dr. Axelrod. When  
17 it came FEMA's turn, Bragg stepped aside and pushed Petrone up,  
18 and then they got me. But that's how the meeting went. It  
19 went on for about three hours. So it was a long, long ordeal.  
20 I think we had to run like mad to catch the subway to get our  
21 train back.

22 COMMISSIONER GILINSKY: What is the status of the  
23 plants?

24 MR. DIRCKS: Denton? Harold, I guess --

25 MR. DENTON: I think one plant is operating and the

1 other is still down.

2 COMMISSIONER GILINSKY: How long is it going to be  
3 down?

4 MR. DENTON: I don't know what the status is, today,  
5 though.

6 COMMISSIONER GILINSKY: I mean what is the status  
7 going to be June 9th? That is really what I want to know.

8 MR. DIRCKS: One plant, I guess, is due to come back  
9 prior to June 9th.

10 MR. DENTON: Unit 3 is scheduled to come back.

11 MR. DIRCKS: Unit 3 is scheduled to come back. One  
12 reporter said would we hold that plant down in view of the  
13 June 9th Order. I said we were not going to pre-move on the  
14 June 9th Order. There may be other reasons but it was not  
15 this Order.

16 COMMISSIONER PALLADINO: Any more questions?

17 COMMISSIONER GILINSKY: Did you go up before the  
18 cameras and say, "This is not the time for business as usual"?

19 CHAIRMAN PALLADINO: Axelrod seems to know exactly  
20 how the Commission is thinking, with one exception, but they  
21 are willing to gamble on that.

22 Okay. We will keep each other posted as things  
23 develop. Anything more?

24 (No response.)

25 CHAIRMAN PALLADINO: All right. Thank you. Then

1 we'll stand adjourned.

2 MR. DIRCKS: This meeting that we went up to yesterday  
3 was billed not as an Indian Point meeting. It was on the  
4 Suffolk County issue and that wasn't mentioned. This was  
5 supposed to get into this task force thing.

6 COMMISSIONER AHEARNE: The task force.

7 CHAIRMAN PALLADINO: Had this group not been expanded  
8 to include Indian Point as well?

9 MR. DIRCKS: No, I don't think so.

10 CHAIRMAN PALLADINO: Somehow I got that impression.

11 MR. DIRCKS: I have yet to receive anything officially  
12 on it, so I don't know.

13 CHAIRMAN PALLADINO: I'll tell you where I got the  
14 impression. It was at the meeting we had in Guiffrida's office  
15 where it was said, "Well, now, that group is also going to  
16 talk on Indian Point." Remember when they said they were going  
17 to talk about the forthcoming meeting going to be largely on  
18 Shoreham and I said, "Well, I'll have to leave on that." And  
19 he said, "Well, we have a few things we want to talk about  
20 because it will also cover Indian Point." That's where I got  
21 the impression they were going to expand it.

22 COMMISSIONER AHEARNE: That could be very difficult  
23 because I thought one of the groups was going to have partici-  
24 pants from the county

25 MR. DIRCKS: There were no outsiders at this meeting.

1 There was just the State, FEMA, and NRC.

2 CHAIRMAN PALLADINO: Okay. Anything more?

3 (No response.)

4 CHAIRMAN PALLADINO: All right Thank you. We stand  
5 adjourned.

6 (Whereupon, the meeting was adjourned at 11:25  
7 o'clock, a.m.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

COMMISSION

in the matter of: Briefing on Enforcement Matter

Date of Proceeding: May 19, 1983

Docket Number: \_\_\_\_\_

Place of Proceeding U. S. Nuclear Regulatory Commissio

Washington, D. C. 20555

were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

Elizabeth Ann Tipton

Official Reporter (typed)

Elizabeth Ann Tipton  
Official Reporter (Signature)