



November 15, 1983

POLICY ISSUE

SECY-83-466

(NEGATIVE CONSENT)

For: The Commission

From: James A. Fitzgerald
Assistant General Counsel

Subject: REVIEW OF OCTOBER 6, 1983 CLOSED COMMISSION MEETING

Discussion: OGC has reviewed the transcript of the October 6, 1983 closed Commission meeting involving investigations at Three Mile Island. The majority of the discussions involve OI resources and the schedules for completing the TMI investigations.

EX.
5
(FOIA)

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in accordance with the Freedom of Information
Act, exemptions 3, 5 & 6 ISAR & 5 & 7 A
FOIA- 92-436

w/b

SECY NOTE: In the absence of instructions to the contrary, SECY will notify OGC on Wednesday, November 30, 1983 that the Commission, by negative consent, assents to the action proposed in this paper.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

REPORT ON INVESTIGATIONS AT TMI
AND REPORT ON ADJUDICATORY AT
TMI

Docket No.

Report on process on going Investigation
Exemptions 5 & 7

Closed Meeting

Location: Washington, D.C.

Pages: 1 - 22

Date: Thursday, October 6, 1983

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

REPORT ON INVESTIGATIONS AT TMI AND
REPORT ON ADJUDICATORY MATTERS AT TMI
REPORT ON PROCESS OF ONGOING INVESTIGATION

CLOSED MEETING - EXEMPTIONS 5 & 7

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

Thursday, October 6, 1983

The meeting convened in closed session at
10:35 o'clock, a.m.

COMMISSIONERS PRESENT:

- NUNZIO PALLADINO, Chairman of the Commission
- VICTOR GILINSKY, Commissioner
- THOMAS ROBERTS, Commissioner
- JAMES ASSELSTINE, Commissioner
- FREDERICK BERNTHAL, Commissioner

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

- S. CHILK
- B. HAYES
- H. PLAINE
- J. ZERBE
- R. LEVI

- - -

P R O C E E D I N G S

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2 CHAIRMAN PALLADINO: We will convene the first part
3 of the closed meeting. At this part of the closed meeting
4 I would like OI to brief us on the status of TMI-1 related
5 investigations, particularly in view of the new information
6 provided by the staff as a result of reviewing the trial
7 documents.

8 We are interested in what investigations are
9 pending and the OI strategy and schedule for completing the
10 investigations, together with some indication on the extent
11 to which the strategy and schedule are firm or not firm.

12 Do other Commissioners have opening remarks?

13 COMMISSIONER ASSELSTINE: No.

14 (No response from the other Commissioners.)

15 CHAIRMAN PALLADINO: All right. Then let me turn
16 the meeting over to Mr. Hayes.

17 MR. HAYES: Thank you, Mr. Chairman.

18 As of this moment we have five open investigations
19 and early this morning I was briefed on a situation which
20 we are evaluating and let me cover that first.

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COMMISSIONER GILINSKY: Well, since you are not sure of the details, there is not much point in getting diverted on that one.

(Laughter.)

MR. HAYES: Well, I am just asserting it as it is under active consideration and it will be evaluated.

COMMISSIONER GILINSKY: Okay.

MR. HAYES: The remaining ongoing investigations. The Parks-Gishel investigation, as you know, we have completed phase one of that investigation. We are contemplating putting Parks-Gishel, TMI-1 leak rates, BETA-RHR, Keaton and Hartman all together and I hope to form a task

1 force and conclude those five investigations by the end of
2 March 1984.

3 CHAIRMAN PALLADINO: Could you repeat them again
4 for us. Parks-Bishel, TMI-1 leak rates, BETA-RHR ---

5 MR. HAYES: Keaton, which is in essence from the
6 Item 10, that GPU transcript review and the Hartman matter.

7 CHAIRMAN PALLADINO: Thank you.

8 MR. HAYES: Now we have presently four staff
9 members working on those five investigations. I am supple-
10 menting those four with two other additional investigators
11 in the hopes of meeting the March estimated completion date.

12 At this point in time it is very difficult for
13 me to give you completion dates on a case-by-case basis
14 because I hope to have the task force look at and review
15 all of these matter simultaneously.

16 COMMISSIONER GILINSKY: How big is the task force?

17 MR. HAYES: It will end up being six
18 investigators, including my manager in Region 1. Keith
19 will be a member of that.

20 The Hartman matter is one of the most difficult
21 to get a handle on because of the grand jury situation
22 which is out of our control.

23 The other four investigations are within our
24 control as it pertains to completeness and resources and
25 what-have-you.

1 COMMISSIONER GILINSKY: What will the investiga-
2 tors be doing? Will they be interviewing people?

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 COMMISSIONER GILINSKY: Let me ask you. You
mentioned a date that you hoped to get this wound up. Do
you think you understand the scope of these investigations
well enough to do that, leaving aside how the thing might
come out, but do you think you have got a pretty good handle
on just how much needs to be done to look into those
questions?

 MR. HAYES: The fly in the oitment would be the

1 Keaton investigation. We are planning to meet with NRR
2 staff people the first part of next week to go over some
3 of the actual exhibits and documents that they surfaced
4 in their review. I think at the last presentation they
5 said they have get to give us a hundred percent of them.

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10 If it appears after our analysis and review with
11 NRR that we cannot meet the March deadline, then I would
12 get back to the Commission and so advise you.

13 COMMISSIONER GILINSKY: That was the two-week
14 effort they were referring to as still being left over is
15 getting to gether on the Keaton business?

16 MR. HAYES: I believe that is what they were
17 referring to.

18 CHAIRMAN PALLADINO: Ben, are you saying your
19 projected date for completion of the BETA-RHR and Keaton
20 would be March?

21 MR. HAYES: That is what we are attempting to
22 shoot for, but as Commissioner Gilinsky indicated, that
23 could be shortered or elongated, depending upon the scope
24 of the Keaton matter. I think we have a pretty good feel
25 for the Keaton matter but we have yet to analyze and review

1 all of the documents. This is the best I can tell you
2 as of today.

3 COMMISSIONER ASSELSTINE: Would you consider
4 issuing reports in each of these individual areas serially
5 when you get one done, or are you talking about one big
6 package in March?

7 MR. HAYES: I would hope to do it as we complete
8 it. The first one to be completed would probably be phase
9 two on the Parks-Gishel, which is the intimidation and
10 harassment. We are well into that aspect of it.

11 TMI-1 leak rates we have yet to open up and do
12 something. Keaton and BETA-RHR is the same. We have yet
13 to complete our analysis as to what the scope is of those
14 inquiries.

15 Hartman we are well into. We have made some
16 inter~~x~~views and conducted interviews last week in response
17 to our subpoenas, but we are also on notice that we are
18 going to have to have those enforced and we are in the
19 process of working with OGC on that matter.

20 COMMISSIONER GILINSKY: How does that estimate
21 track with the assumptions you used in earlier estimates?

22 MR. ZERBE: You mean in the schedules. Well,
23 we had some dates earlier and some dates later. Our most
24 recent schedule, we talk about later. which has this
25 particular objective.

1 COMMISSIONER GILINSKY: So this is comparable
2 to the date that you used?

3 MR. ZERBE: Yes. It is in the middle of what
4 we had viewed.

5 COMMISSIONER GILINSKY: I see.

6 CHAIRMAN PALLADINO: Looking at the items that
7 would affect TMI 1 restart, certainly the TMI-1 leak rate
8 question would loom as important. Do you have any idea
9 when that might get started?

10 (No response.)

11 COMMISSIONER GILINSKY: Well, let's see, are
12 you saying the others do not impact on TMI-1 restart?

13 CHAIRMAN PALLADINO: I picked that one out
14 because it could impact on the crew that might be picked
15 to operate it. If they were involved in some falsification
16 of TMI-1 leak rates that would raise a very serious question.

17 COMMISSIONER GILINSKY: I thought the assumption
18 was that all of these may impact it.

19 CHAIRMAN PALLADINO: Well, I think that one
20 perhaps more than the Hartman one so far as restart is
21 concerned. I was just just interested in when you are going
22 to start that one, if you know.

23 MR. HAYES: I didn't ask specifically the staff
24 a date on that. My assumption would be that this particular
25 case would commence prior to Keaton and BETA-RHR because

1 we basically had the analysis from Region 1 in that
2 inspection report. So we don't have to go out and do more
3 on that one. The TMI-1 leak rates would be started prior
4 to the Keaton and BETA-RHR I would presume this month,
5 Mr Chairman

6 The staff is really looking at the Keaton matter
7 intensely at this point and that is where they devoted
8 their resources, and Hartman because we have committed
9 ourselves previously with the subpoenas. I am trying to
10 shift resources around throughout the country to accommodate
11 my March '84 deadline.

12 COMMISSIONER GILINSKY: When you say the staff
13 is putting their resources on these issues, are these
14 separate from the effort we just heard about?

15 MR. HAYES: I am sorry, when I say staff, I am
16 talking about my staff.

17 COMMISSIONER GILINSKY: Oh your staff.

18 MR. HAYES: Small "s". All 22 investigators.

19 (Laughter.)

20 COMMISSIONER GILINSKY: Okay.

21 MR. HAYES: What we are trying to do is to
22 complete our Zimmer report, which I have asked the staff to
23 have out in the next two months. The Comanche Peak
24 situation is festering itself in OI and we are going to put
25 out two reports within the next 30 days on that matter. The

1 Boards are knocking at my door asking for things. To be
2 very candid, we are having just a hell of a time to meet
3 everybody's expectations.

4 COMMISSIONER BERNTHAL: I just can see no way,
5 and you can support or refute me here, and I have a feeling
6 I know what your comments will be, but I just see no way
7 that this office with the number of people that it currently
8 has can do that job that is in front of it along with the
9 other things that we are asking them to do with the number
10 of personnel they currently have.

11 I guess the new budget request has some remedy
12 for that, but I wonder if it isn't totally inadequate for
13 the task at hand.

14 COMMISSIONER GILINSKY: You are probably right.

15 CHAIRMAN PALLADINO: I have not question but what
16 you are right. We have tried to get permission to go to
17 at least 44 and we have not gotten any action, and that
18 means they are basically not going along with us. I have
19 forgotten what we have in the '84 budget. I think it is
20 44 and then 49.

21 COMMISSIONER BERNTHAL: But there is a real
22 question here. If we are not going to get concurrence from
23 the Administration on these requests, then that tells us
24 something, it seems to me, about at least what their per-
25 ception is.

1 COMMISSIONER ASSELSTINE: It is not from the
2 Administration.

3 CHAIRMAN PALLADINO: It is not the Administration.

4 COMMISSIONER BERNTHAL: From the Congress. Well,
5 it tells us something then about the perception of the
6 Congress on what they expect us to do. But I wonder if
7 we don't need to lay that out. Maybe my fellow Commissioners
8 have already done that before my arrival here, but do they
9 want us to conduct these investigations in a way that
10 is thorough and expeditious or not. That it seems to me
11 is the basic question.

12 COMMISSIONER GILINSKY: The person Tom was going
13 to call doesn't.

14 COMMISSIONER ROBERTS: That is right.

15 (Laughter.)

16 CHAIRMAN PALLADINO: The Bevil Committee doesn't
17 feel we --.

18 COMMISSIONER GILINSKY: I told everybody you
19 went out to call Mr. Udall.

20 (Laughter.)

21 COMMISSIONER BERNTHAL: If I can continue for
22 another moment here, it just seems to me that that is a
23 decision and that is an instruction then that somehow we
24 should be cognizant of in the tasks that we pass on to our
25 own staff here.

1 COMMISSIONER GILINSKY: Well, up to a point.

2 CHAIRMAN PALLADINO: I think we need to do more.

3 COMMISSIONER GILINSKY. You have got your
4 responsibilities that float from the law.

5 COMMISSIONER BERNTHAL: But it just won't get
6 done and somehow the responsibility, it seems to me, is
7 also that we be expeditious in doing these things.

8 CHAIRMAN PALLADINO: I think there are two points
9 that come out of your comments. One let's keep pursuing
10 it to see if we can't get more people authorized, but that
11 doesn't help Ben in a hurry, because even if we got it
12 authorized, he has to recruit them and hire them. But
13 there is also I think another part. At least I understand
14 up until now you have had assistance from technical staff.
15 While I appreciate those aren't investigators, to the
16 extent to which we can supplement your effort, we certainly
17 are prepared to do so, and your identification of how
18 we might help with staff help would be very useful. But
19 I do agree that we ought to pursue it further.

20 COMMISSIONER ASSELSTINE: Yes, I would agree
21 with that as well. I think maybe one of the things we
22 haven't done or made as clear as we need to is the potential
23 impact that it will have on this if we decide that these
24 things have to be done and we simply don't have the people
25 to do them expeditiously.

1 COMMISSIONER BERNTHALL: We will be making the
2 decision by default unless we establish some priorities
3 it seems to me on what we ask this office to do.

4 COMMISSIONER ASSELSTINE: Yes. I had one other
5 question on your March 1984 estimated completion date. If
6 there are indictments in the Hartman case is that pretty
7 much out the window?

8 MR. HAYES: Well, I think the indictments in
9 the Hartman case would help us complete our Hartman inquiry
10 or investigation because one of the contentions of defense
11 counsel at this moment is they do not wish their clients
12 to testify to us because of the potential criminal grand
13 jury hanging over their heads. If that matter is resolved
14 by the Department of Justice, that might free up the flow
15 of information to and from us and the people we would like
16 to speak to. So that might help us.

17 COMMISSIONER GILINSKY: Is there some time limit
18 on possible indictments?

19 MR. HAYES: Well, there is some speculation is
20 the best I can point to. I personally am anticipating
21 resolution within the next couple of weeks on that matter.
22 If it isn't resolved in the next couple of weeks, then I
23 am looking to March of '84, the time of the accident, I am
24 using a five- statute as the basis for that, but that is
25 pure speculation on my part. I have no foundation to make

1 that other than just ---

2 CHAIRMAN PALLADINO: Are you saying you don't
3 know whether or of the Statute of Limitation runs out in
4 March of '84?

5 MR. HAYES: Well, it would depend upon the
6 particular criminal act and the time that criminal act
7 occurred. That is when the statute begins to toll and there
8 is usually a five-year statute is most criminal sanctions.

9 MR. PLAINE: The question has been as to whether
10 there was an event involved that took place in '78, in
11 October '78. If it did, then the statute runs this month,
12 sometime in the middle of this month.

13 CHAIRMAN PALLADINO: In the middle of this month.

14 MR. PLAINE: Yes, in October '83. Now no one
15 has every explicitly stated this anywhere, but I would
16 suspect the Justice Department out of caution is probably
17 gearing its efforts to get something completed by the middle
18 of this month with the grand jury, either a no-bill, if
19 they don't have enough, or an indictment and what kind
20 of an indictment is very questionable. You don't know
21 whether they can get an indictment against individual parties
22 or whether they can get an indictment only against the
23 corporation, et cetera.

24 Everybody at this point speculates because no
25 one really knows.

1 CHAIRMAN PALLADINO: Now Ben had implied something
2 in April. Is there some other statute?

3 MR. HAYES: In March.

4 MR. PLAINE: He was using the date of the
5 accident as perhaps the terminal point from which to
6 measure the five years.

7 CHAIRMAN PALLADINO: But if the event took place
8 in '78, then ---

9 MR. PLAINE: If one of the crucial events took
10 place in '78, then it was something, I was told, was
11 probably October of '78 and that would make it a five-year
12 limitation this month.

13 MR. HAYES: So that is basically where we
14 are. I am expecting some difficulty in getting TMI-1
15 operators to speak to us when we open that case us because
16 of the TMI-2 grand jury leak rates. Some of them were at
17 TMI 2. So I am anticipating some hard times in completing
18 that case

19 CHAIRMAN PALLADINO: Okay. Were there any items
20 that were turned over to you from the staff as a result of
21 this GPU trial record review?

22 MR. HAYES: Yes. During the review NRR brought
23 to our attention certain trial transcripts and we reviewed
24 those. At the conclusion, as I think Bill indicated, there
25 were additional documents. What I propose to do there is

1 before we finalize our strategy on approaching the Keaton
2 matter, that my staff get a detailed briefing from NRR and
3 discuss with them our proposed strategy. In fact, they
4 may participate with us. I haven't had a chance to speak
5 to Mr. Dircks, but we are hoping to ask two of the big "S"
6 staff members to assist us in the Keaton matter who were
7 involved in this review. I think that would expedite
8 certainly our investigation and help us from stumbling
9 over some of these things.

10 CHAIRMAN PALLADINO: Were there other investiga-
11 tions they suggested that you feel you should conduct?

12 MR. HAYES: There was some indication during the
13 review as to some improper training documents, or it was
14 alleged as a possible falsification of training records.

15 CHAIRMAN PALLADINO: Is that for TMI-1 or
16 TMI-2?

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COMMISSIONER ASSELSTINE: So really you haven't gone through the documents that are listed in those seven areas, apart from Keaton and Hartman.

MR. HAYES: Not in total. I spoke to Keith Christopher, our Manager in Region 1 who is being held accountable for these, and he is hoping to get with NRR the first part of next week to start that review.

COMMISSIONER ASSELSTINE: So you could well have other investigations started after that review is done.

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COMMISSIONER ASSELSTINE: You are going to lump all of this stuff under the generic heading of Keaton, but explore all the ones remaining at this point?

MR. HAYES: Yes, that is what we are proposing at this point. I see really no need to break out independent investigations. I would like to be done by April 1st with TMI and try to address everything as best we can. But of course this incident that just arose this morning, it seems like every few weeks something happens on the island that would cause us to take a look at it, or if the staff requests us to do so. I am sure there is going to be more of that as we go forward.

COMMISSIONER GILINSKY: To what extent does your assessment today reflect the results of the report we just heard about? In other words, you said you have gone through some of the material, but not all of the material. To what extent do you know how much that expands, and I assume it would only be in that direction, your task?

MR. HAYES: I am not quite sure I follow you,

1 Commissioner.

2 COMMISSIONER GILINSKY: Well, they have reviewed
3 all this material and have gone through a number of
4 documents and they are handing that over to you. Does
5 your estimate of how large the investigation that needs to
6 be performed is reflect knowing what is in there, and I
7 gather you are saying partially?

8 MR. HAYES: Yes, but only to those documents
9 we have reviewed at this point. I have read Item No. 10
10 in its entirety that is in case and Harold and I went over
11 that personally to excise some of the material that ---

12 COMMISSIONER GILINSKY: When you say Item NO.
13 10, you mean Chapter 10?

14 MR. HAYES: Yes.

15 COMMISSIONER GILINSKY: There are a whole lot
16 of documents that pertain to that.

17 MR. HAYES: Yes. Now those documents are the
18 ones that we have not totally 100 percent reviewed, but
19 there are some conclusions that the staff reached in
20 Item 10.

21 COMMISSIONER GILINSKY: I think you said 262
22 documents. Now have you looked at those or scanned those?

23 MR. HAYES: Not in total, no, sir, we have not,
24 but my estimated completion date of March is based upon my
25 reading of the text in its entirety without an independent

1 review of each and every document. The staff, and I feel
2 very comfortable with the effort that they did. I think
3 it was the first time a lot of this material has been focused
4 in on and it makes it a lot easier for us to get a handle
5 on some of those items. But there may be something in those
6 documents that would cause us to look every beyond what
7 the staff asked us to do. I just don't know until we take
8 a real hard look at it, and things may surface during the
9 investigation, as it usually does in any investigation, that
10 would expand us off into another area.

11 What I am attempting to do is to take my resources
12 and try to complete this task after discussions with OPE
13 so that the Commission can hopefully resolve this matter
14 next spring.

15 From what I know now and the resources I have,
16 that is what we are going to try to do, but there are all
17 kinds of factors that could push us one way or another
18 that I can't speculate on.

19 CHAIRMAN PALLADINO: Ben, can you identify, not
20 at this moment, but in the next few days the type of staff
21 help that might be useful to you in carrying on some of
22 these functions?

23 MR. HAYES: Well, I hate to bother the Commission
24 with details, but on the FOIA on Zimmer, my staff told me
25 it is going to take four weeks just to complete that, and

1 I am trying to work it out with GAF. I need clerical help.

2 CHAIRMAN PALLADINO: Would you provide it to me
3 so I can make some ---

4 MR. HAYES: I have been told that when I reach
5 my 38 body limit that is a person is detailed to help us,
6 it counts against the 38 and that is a no-no. Now I don't
7 know how to get around that.

8 CHAIRMAN PALLADINO: There are types of help that
9 could be provided that I don't think necessarily have to
10 count in the 38. Why don't you look at what your needs
11 are and discuss it with us and let's see what we can do
12 to help you get them.

13 COMMISSIONER BERNTHAL: I would like to also
14 ask the Chairman I guess whether it might not be possible
15 for the Commission to in some sort of ongoing frequent,
16 unfortunately frequent I guess, assessment based on what
17 Ben tells us of his investigations, whether we can't narrow
18 perhaps the scope to a fewer number of issues that seem most
19 likely to affect the restart.

20 CHAIRMAN PALLADINO: That is one of the things
21 that I would say we ought to talk about in the next part
22 of the closed meeting.

23 COMMISSIONER BERNTHAL: Again, I go back to the
24 point that it is just a matter of the resources that we been
25 given to try and do a task that, as nearly as I can tell,

1 we can't do with that number of people.

2 CHAIRMAN PALLADINO: I would also intend to
3 go back to Bevil and see if we can't break the ice.

4 COMMISSIONER BERNTHAL: That is another way to
5 go at it.

6 CHAIRMAN PALLADINO: Well? I think each one of
7 these should be dealt with.

8 Are there any other comments or questions?

9 COMMISSIONER ASSELSTINE: No.

10 [No comment from the other Commissioners.]

11 CHAIRMAN PALLADINO: All right. Then why don't
12 we adjourn this part of the closed meeting and as soon as
13 the room is cleared, we will go to the next part.

14 (Whereupon, at 11:10 a.m., the meeting
15 adjourned.)

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CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before the
NRC COMMISSION

In the matter of: Report on Process on going Investigation

Date of Proceeding: October 6, 1983

Place of Proceeding: Washington, D. C.

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

Mary C. Simons

Official Reporter - Typed

Mary C. Simons

Official Reporter - Signature