



# Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

DISCUSSION OF SHOREHAM ORDER

Exemption No. 10

Friday, April 27, 1984

Pages 1-41

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Office of the Secretary

1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION

3  
4 DISCUSSION OF SHOREHAM ORDER

5  
6 CLOSED MEETING

7 Exemption No. 10

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

12 Friday, April 27, 1984

13 The Commission met in closed session at 4:10  
14 o'clock, p.m.

15 COMMISSIONERS PRESENT:

16 NUNZIO PALLADINO, Chairman of the Commission  
17 VICTOR GILINSKY, Commissioner  
18 THOMAS ROBERTS, Commissioner  
19 JAMES ASSELSTINE, Commissioner  
20 FREDERICK BERNTHAL, Commissioner

21 STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

22 S. CHILK  
23 H. PLAINE  
24 M. MALSCH  
25 P. CRANE

AUDIENCE SPEAKER:

J. FOUCHARD

P R O C E E D I N G S

1  
2 CHAIRMAN PALLADINO: This is a closed meeting on  
3 Shoreham. We need a vote to hold this on less than one  
4 week's notice and a vote to close it.

5 (Chorus of ayes.)

6 CHAIRMAN PALLADINO: To introduce the subject, let  
7 me just briefly say the following -- can we get attention.

8 MR. PLAINE: We're worried about the audience.  
9 Just a moment.

10 COMMISSIONER GILINSKY: I suppose whether the  
11 meeting is, indeed, closed.

12 COMMISSIONER ASSELSTINE: We haven't voted to close  
13 it yet, have we?

14 CHAIRMAN PALLADINO: Are we all set? Gary?

15 MR. GILBERT: Yes.

16 COMMISSIONER ASSELSTINE: Did we vote to close.

17 CHAIRMAN PALLADINO: I think we voted to close.

18 MR. CHILK: Yes, on both counts.

19 COMMISSIONER ASSELSTINE: Okay.

20 CHAIRMAN PALLADINO: The way we stood this morning,  
21 we got Commissioner Asselstine's additional comments. They  
22 were quite disturbing to me and I think to others. I think  
23 they introduced issues that are not before the court and I  
24  
25

1 was prepared, first, to ask Commissioner Asselstine to  
2 withdraw two statements at least, or then I was prepared,  
3 also, to add my additional comments, if you didn't.

4 Commissioner Bernthal said, "I think I can sell a  
5 compromise position."

6 COMMISSIONER BERNTHAL: I don't know the answer to  
7 that, yet.

8 CHAIRMAN PALLADINO: So, after much deliberation  
9 and discussion, I said, "Okay, if you sold it to at least  
10 three Commissioners -- I would prefer all four -- I would  
11 vote for this alternate proposal, but without any additional  
12 comments -- at least at this time."

13 I don't know where the proposal stands.

14 COMMISSIONER BERNTHAL: It's right here.

15 CHAIRMAN PALLADINO: I'll try to give you my  
16 version. I let Fred give his version. Why don't I let Fred  
17 give his version.

18 COMMISSIONER BERNTHAL: I'm going to circulate this  
19 memo, in any case and we can burn it or do whatever you want  
20 to.

21 CHAIRMAN PALLADINO: Why don't you outline the  
22 proposal.

23 COMMISSIONER BERNTHAL: This is the first time any  
24 of you have seen this version, as a matter of fact.

25 COMMISSIONER GILINSKY: I haven't seen any version.

1           COMMISSIONER BERNTHAL: I can only talk to so many  
2 people at once.

3           COMMISSIONER GILINSKY: No need to apologize.

4           COMMISSIONER BERNTHAL: In fact, only one at once,  
5 to be precise. .

6           CHAIRMAN PALLADINO: Are you going to highlight it  
7 for us?

8           COMMISSIONER BERNTHAL: Well, I think the essence  
9 of it is on the second page. Now, the three points, here,  
10 that are the policy issues that I suggest, since there is no  
11 longer a question of delay of the hearing. The hearing is  
12 going to be delayed by some weeks, at least. I'm simply  
13 urging that we make use of that time and go ahead and con-  
14 sider the policy issue.

15           The parties can go ahead and argue their time-  
16 table, which they have been doing for three weeks, now, and  
17 which they are under court order to do, in any case. If they  
18 don't reach agreement, then General Counsel's Office should  
19 go ahead, in case that happens, and prepare a schedule so  
20 that we can comply with the court on Monday, if the parties  
21 can't comply with the court order.

22           The policy issues themselves, I've essentially  
23 reworded Victor's version there with some modifications and  
24 the addition of the third point because of the question of  
25 whether you should not also consider the case of exemptions.

1 CHAIRMAN PALLADINO: Could you read these out loud?

2 COMMISSIONER GILINSKY: Let me ask kind of a  
3 procedural question. It looks to me as if we are not going  
4 to have an order by 5:00 o'clock, unless that order is the  
5 original order plus the views that have been prepared up to  
6 this point.

7 CHAIRMAN PALLADINO: Well, perhaps we don't need an  
8 order by 5:00 o'clock.

9 COMMISSIONER GILINSKY: Well, then you have to call  
10 people and tell them that the order is not in effect.

11 COMMISSIONER ROBERTS: That's correct.

12 COMMISSIONER GILINSKY: It seems to me you've got  
13 those two choices, right now, before we continue to discuss  
14 this point.

15 COMMISSIONER BERNTHAL: The last paragraph suggests  
16 that we need to tell them quickly if we're going to supple-  
17 ment that order.

18 COMMISSIONER GILINSKY: I haven't had a chance to  
19 look at this and I don't know how I would come out, but it  
20 doesn't seem to me that we could agree on some modification  
21 of this between now and 5:00 o'clock and put out an order.  
22 Just realistically this is not going to happen.

23 So, it seems to me the Commission needs to do one  
24 of two things.

25 CHAIRMAN PALLADINO: If we could get an agreement

1 on principle, then I'd agree to tell them that order is not  
2 going out.

3 COMMISSIONER GILINSKY: The principle being what?  
4 In any case, that order is not -- well, let me ask you this:  
5 does this modify the order that was put out?

6 COMMISSIONER BERNTHAL: Yes.

7 CHAIRMAN PALLADINO: We haven't put out the order.

8 COMMISSIONER BERNTHAL: Yes. This is a supplement  
9 to the order.

10 COMMISSIONER GILINSKY: Okay. No, I mean other  
11 than talking about reviewing the issues, does it modify the  
12 schedule part of the order?

13 COMMISSIONER BERNTHAL: That's essentially what  
14 this deals with.

15 COMMISSIONER GILINSKY: I mean, is it different  
16 from the order that was read to the parties?

17 COMMISSIONER BERNTHAL: I don't even have that in  
18 front of me.

19 COMMISSIONER GILINSKY: Because if it is and if  
20 we're going down some different path, it seems to me we have  
21 to tell them what was told them no longer applies. The  
22 Commission has pulled back. We may come out similar to that.  
23 We may come out in some different direction, but I don't see  
24 how you can let them go forward. You've given them a dead-  
25 line until 5:00 o'clock tonight.

1 MR. MALSCH: I think the status is that they are  
2 all sitting around in a hearing room waiting to hear from the  
3 Commission and getting sort of upset about what's going on  
4 and wondering why no order.

5 COMMISSIONER GILINSKY: If we're going to continue  
6 this subject --

7 CHAIRMAN PALLADINO: Let me make a proposal. I  
8 think we're in the following situation where I think it's the  
9 best for all parties involved and I think also for the  
10 Commission is to tell them to -- I don't know what to tell  
11 the courts but at least let's talk about what we want.

12 I would say, let's not let them keep working on the  
13 schedule.

14 COMMISSIONER GILINSKY: Yes, or no? I mean, are  
15 you leaving them with the deadline of 5:00 o'clock tonight?

16 CHAIRMAN PALLADINO: Five o'clock tonight?

17 COMMISSIONER BERNTHAL: To do what? I'm sorry.

18 COMMISSIONER ASSELSTINE: Monday -- noon Monday.

19 COMMISSIONER GILINSKY: Monday? I thought -- okay.  
20 well, fine. Noon Monday.

21 CHAIRMAN PALLADINO: I think Fred had said, yes,  
22 he'd like to leave that.

23 COMMISSIONER GILINSKY: Then I'd plan to put out my  
24 views by 5:00 o'clock.

25 CHAIRMAN PALLADINO: All right. I would propose



1 don't let them keep scheduling. Just stop the scheduling.  
2 Set a meeting for May 7.

3 COMMISSIONER GILINSKY: Wait a minute. I didn't  
4 understand that part. I thought you said --

5 CHAIRMAN PALLADINO: He -- now, I'm making my  
6 proposal. My proposal is.

7 COMMISSIONER GILINSKY: Oh, okay.

8 CHAIRMAN PALLADINO: My proposal is, tell them to  
9 stop scheduling.

10 COMMISSIONER ROBERTS: Disregard the the order that  
11 was read to them on the phone.

12 COMMISSIONER ASSELSTINE: That's right.

13 CHAIRMAN PALLADINO: Disregard the order. We will  
14 issue an order on perhaps Monday -- I hope it's Monday --  
15 that says we're going to hold a briefing meeting on May 7,  
16 starting at 10:00 a.m.

17 COMMISSIONER GILINSKY: Is that the following week?

18 COMMISSIONER ASSELSTINE: A week from Monday.

19 COMMISSIONER GILINSKY: A week from Monday, right.

20 CHAIRMAN PALLADINO: They wouldn't be ready Monday,  
21 they wouldn't be ready Tuesday, and there's travel all the  
22 rest of the week.

23 COMMISSIONER ASSELSTINE: Right.

24 CHAIRMAN PALLADINO: So the next first day is  
25 Monday the 7th and besides I think they need some time.

1                   COMMISSIONER ASSELSTINE: May 7, 10:00 o'clock,  
2 oral argument.

3                   CHAIRMAN PALLADINO: "Oral argument," that's the  
4 word I was looking for.

5                   COMMISSIONER ROBERTS: And what are they going to  
6 argue?

7                   CHAIRMAN PALLADINO: And they argue on the sub-  
8 stance of the issue. I would also suggest that they make  
9 comments about schedule, at that point, if the substance of  
10 the issue turns out such that there is to be a hearing.

11                   We would try to make a decision promptly, but we  
12 would not expect the hearing to start until some reasonable  
13 period of time after we issue our decision. Now, I could  
14 amplify on what I think is reasonable. But no additional  
15 comments to go with that.

16                   COMMISSIONER ROBERTS: What?

17                   CHAIRMAN PALLADINO: No additional comments to go  
18 with the order.

19                   COMMISSIONER ROBERTS: Well, you lose me.

20                   CHAIRMAN PALLADINO: What would you want to do?

21                   COMMISSIONER ROBERTS: I am dismayed at apparently  
22 what has occurred today, of which I have not been privy to  
23 any, and I'm not prepared to make a decision at 4:25 at the  
24 end of a long week and I assure you my comments, whether it's  
25 picking up the phone and calling NRC or attached to an order,

1 will give you more will give you more trouble than Jim  
2 Asselstine's has on the original order. This is no way to do  
3 business and I will not be a party to it.

4 CHAIRMAN PALLADINO: What do you think we should  
5 do?

6 COMMISSIONER ROBERTS: What we decided yesterday  
7 afternoon, pure and simply. I will reiterate the whole  
8 circumstances if anything gets changed.

9 COMMISSIONER BERNTHAL: Well, but the thing is, Tom  
10 --

11 COMMISSIONER ROBERTS: There's no "well, but" to  
12 me, Fred, because you've lost me.

13 COMMISSIONER BERNTHAL: I'm not convinced we have  
14 anybody but we've run out of time and the point is, one way  
15 or another, this thing is going to be delayed and, quite  
16 aside from what details and procedure we follow between now  
17 and Monday or Tuesday, that whole proceeding is delayed at  
18 least to the order of a month and, if we do nothing between  
19 now and then, it's going to be longer than a month.

20 There's no way to avoid the delay and we just plain  
21 didn't have enough time to do things before very late in the  
22 day on Friday, that's all, and I apologize -- I don't apolo-  
23 gize because it's simply a matter of doing our work but  
24 nobody sitting at this table has seen a final version of this  
25 thing, yet. I was just trying to seek some middle ground,

1 here, where we could do everybody a favor.  
2

3 I don't think we're doing ourselves any favors if  
4 we do nothing. That's all. We're certainly not doing  
5 licensee any favor.

6 CHAIRMAN PALLADINO: My preferred position would be  
7 to go out with the order and no additional remarks, but I  
8 gather that is not acceptable to those who want to put  
9 additional remarks.

10 COMMISSIONER ASSELSTINE: Well, for myself, I think  
11 what you have described would be satisfactory to me and I  
12 don't think I would need additional remarks.

13 CHAIRMAN PALLADINO: But Tom would put additional  
14 remarks.

15 COMMISSIONER ROBERTS: I would add additionally  
16 remarks.

17 COMMISSIONER ASSELSTINE: So you would have Tom's  
18 remarks.

19 COMMISSIONER ROBERTS: Absolutely. No question

20 CHAIRMAN PALLADINO: Let me ask Jim the following,  
21 just so I know what my options are:

22 There are two sentences particularly that bothered  
23 me in your additional remarks. One, it says at the end of  
24 the first paragraph, "indeed, it makes no sense to allow the  
25 licensing board to proceed with the hearing because a  
majority of the Commission now questions the basis for the

1 hearing." I don't know that.

2 The other is where you say, "There are serious  
3 questions regarding fundamental failure of the hearing  
4 board," but the one that says, "procedural irregularities  
5 associated with certain action by the Chairman of the Commis-  
6 sion which bears some relationship to the case."

7 This is the first time I've heard you say that. It  
8 shocks me and it is very difficult for me to address a  
9 baseless assertion at this late time, except to say that.

10 COMMISSIONER GILINSKY: Let me just interject here  
11 that I've written a brief paragraph, which I haven't cir-  
12 culated, which just says I agree with Jim's views and repeat  
13 the first item about -- I'm not sure I used the same wording,  
14 but I say, "Commission majority agrees that the proposition  
15 of the general design criteria do not apply to low power  
16 operating licenses. The basis for this hearing should be  
17 reexamined by the Commission before the start of the  
18 hearing."

19 I think that's true. That's the way I took Fred's  
20 remarks.

21 CHAIRMAN FALLADINO: If that's Fred's vote or not,  
22 we never voted on it.

23 COMMISSIONER GILINSKY: Well, I think the clear  
24 expression of the position was that that was the case.

25 COMMISSIONER BERNTHAL: I think everyone here needs

1  
2 to understand that I made a decision to write this memo last  
3 night and I began writing it this morning and the thing sort  
4 of ballooned, as we tried to seek some reasonable accommo-  
5 dation on the thing.

6 These are my views and the Commission is free to do  
7 with it whatever it wants. So I put this on the table, at  
8 this point, for all of you to look at. Joe, it's one option  
9 that I wish you would consider.

10 CHAIRMAN PALLADINO: With Tom's additional remarks

11 --

12 COMMISSIONER GILINSKY: Well, what is Tom going to  
13 say?

14 CHAIRMAN PALLADINO: It beats me, but --

15 COMMISSIONER GILINSKY: Why don't you ask him?  
16 Tom, what are going to say?

17 COMMISSIONER ROBERTS: I'm going to say how we  
18 caved in. I'd say, clearly, Joe is willing to do virtually  
19 anything to prevent Jim from making those comments.

20 COMMISSIONER GILINSKY: No.

21 COMMISSIONER ROBERTS: No, let's not objurgate.  
22 Come on.

23 CHAIRMAN PALLADINO: I was trying to keep the court

24 --

25 COMMISSIONER ROBERTS: No, Joe.

COMMISSIONER GILINSKY: I don't think I'd worry

1 about Tom's remarks.

2 COMMISSIONER ROBERTS: Good. Don't.

3 COMMISSIONER ASSELSTINE: Joe, if I understood your  
4 proposal, it was that we'd hold oral argument on May 7, the  
5 parties wouldn't have to do anything more on schedule until  
6 them, or anything more in preparation for the hearing, we'd  
7 trying to make a decision promptly, and then, after that,  
8 we'd do whatever had to be done on schedules. If that's your  
9 proposal, I'd be prepared to agree to it and not have views.

10 CHAIRMAN PALLADINO: One thing, I am not caving in  
11 because you put that statement in there. I was prepared to  
12 deal with it.

13 COMMISSIONER GILINSKY: I think the whole notion of  
14 caving in brings in -- puts a kind of emotional overlay on  
15 the thing that has nothing to do with the issues, here. The  
16 question is, what is the sensible and reasonable course.

17 COMMISSIONER ASSELSTINE: That's right, given what  
18 the court has done.

19 CHAIRMAN PALLADINO: Well, let me try to tell Tom  
20 why I think that's a reasonable course. If we go out with  
21 this and we start to argue about whether we have agreement on  
22 the basis, then the court will throw up its hands and say, "I  
23 don't what's going on." If they say, well, there are impro-  
24 prieties, then the court will say, "Well, I would want to  
25 look into those improprieties before I go on."

1  
2 I think, if you are interested in helping the  
3 licensee, that doesn't help any. It just delays it further.  
4 If we address it, we come to May 7, if we make a prompt  
5 decision -- I'm not saying how I'm going to decide on it --  
6 then we can proceed.

7 COMMISSIONER GILINSKY: You know, Tom, the fact of  
8 the matter is I really believe firmly that you are heading up  
9 a legal blind alley and you are leading the applicant up that  
10 alley, too. This is just going to lead to a big legal mess.  
11 Now, it's all very well to sit here and express your support  
12 for nuclear power and maintaining discipline, and all that  
13 sort of thing, but the fact of the matter is, you are creating  
14 a mess and it's going to be bad for everybody, on all sides.

15 There's a basic question here that needs to get  
16 sorted out. The licensing board has taken a big step forward  
17 in interpreting regulations and that needs to have either the  
18 approval or redirection by the Commission before this thing  
19 can go anywhere because it's going to be back here and it's  
20 going to be back in court, if you go in some different  
21 direction.

22 Now, after you have had this review of the issue,  
23 if there is a majority on the Commission to support that  
24 licensing board, you will have lost a week or two. If there  
25 isn't, then you will have saved yourself a lot of grief. It  
would be better to discover that in a week or two than to



1 discover that after the hearing has taken place. God knows  
2 whether it will take place.

3 COMMISSIONER BERNTHAL: Licensee is stuck with a  
4 month's delay, more or less, whatever the time-table turns  
5 out to be. It can only get worse, if we do nothing. I think  
6 that's the bottom line and how we avoid doing nothing and  
7 avoid making a time-table worse, if you only consider that  
8 single issue, is open to any amount of creative thinking but  
9 I just think that we have got to do something. Otherwise, it  
10 only gets worse and the court has now made it a month worse.  
11 There is just no way around that.

12 MR. PLAINE: Mr. Chairman, can I intervene briefly.  
13 I was hoping that, since we are dealing, basically, with a  
14 procedural matter, that we could maintain some collegiality  
15 here that doesn't frighten the court into believing that we  
16 can't even agree on a simple order for setting a time for a  
17 hearing and making the whole process go away.

18 If we are going to each put on different views on  
19 what our timing proposition means, you inevitably set the  
20 court off to thinking, "My God, this thing is so completely  
21 bad that we're going to have issue maybe a permanent injunc-  
22 tion, let alone a preliminary injunction.

23 Now, we've had this fresh delay already. You are  
24 following a procedure that you came very close to agreeing on  
25 last Monday and it would help the law suit to go away and let

1  
2 us get on with the business of the low power license or not,  
3 whichever it turns out to be. I would hope that the Commis-  
4 sion could refrain from making of a simple time issue,  
5 coupled, of course, with an indication of why we are doing a  
6 little bit more than that, something that the court could  
7 read and understand and say to all of the parties, "Go ahead.  
8 God bless you. We don't have to intervene in this matter, at  
9 this point.

10 I'm fearful, whether it is new additional views  
11 that we haven't seen, that that kind of thing will really  
12 destroy any hope of recognizing this body as a collegial body  
13 and I just don't think you are being fair to yourselves when  
14 you do that.

15 COMMISSIONER GILINSKY: I guess I'm not clear on  
16 precisely what you are saying. Are you telling Tom not to  
17 write his views?

18 COMMISSIONER ASSELSTINE: I think so.

19 MR. PLAINE: I would hope so.

20 COMMISSIONER ASSELSTINE: I think that's what he is  
21 suggesting.

22 COMMISSIONER ROBERTS: He's not telling Jim not to

23 --  
24 COMMISSIONER ASSELSTINE: I'm prepared to drop my  
25 views. I'm prepared to withdraw my views.

COMMISSIONER ROBERTS: No, no way. I'm sorry.

1  
2 COMMISSIONER GILINSKY: I don't think anyone is  
3 going to pay any attention to Tom saying that the Commission  
4 is caving in, frankly. It will upset --

5 COMMISSIONER ROBERTS: Oh, it will be pretty  
6 detailed.

7 COMMISSIONER GILINSKY: It will upset J.Q. Worth,  
8 or somebody like that.

9 COMMISSIONER ROBERTS: The people who watch this  
10 minutia will certainly get the message.

11 COMMISSIONER GILINSKY: I mean, I'll ready it will  
12 interest.

13 (Laughter.)

14 COMMISSIONER GILINSKY: But I don't think it's  
15 going to make any difference in court.

16 COMMISSIONER ROBERTS: Good.

17 COMMISSIONER BERNTHAL: Look, are we going to sit  
18 around arguing about caving in or are we going to try and  
19 discuss the issue and what we might be able to agree on.  
20 It's possible there may be some grounds for agreement here,  
21 if we focus on it.

22 COMMISSIONER ROBERTS: I must say, Tom, you are not  
23 doing LILCO any favors, here.

24 COMMISSIONER ROBERTS: I don't have any obligation  
25 to do LILCO any favors.

COMMISSIONER GILINSKY: I understand that.

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COMMISSIONER ROBERTS: Quite the contrary.

COMMISSIONER GILINSKY: What I'm saying is, I take you to be concerned about LILCO getting a fair shake here and, if they've got a way of getting started, you want them to be able to get started. Now, is that unfair?

COMMISSIONER ROBERTS: That's a little strong. If you think I'm running up and down the hall saying, "My God, we've got to license Shoreham, you're dead wrong."

COMMISSIONER GILINSKY: No, I haven't seen you running up and down the hall.

COMMISSIONER BERNTHAL: I don't see it serves any purpose to characterize each other views. Let's figure out just what we are going to do, here.

COMMISSIONER ASSELSTINE: I like Joe's proposal.

CHAIRMAN PALLADINO: Well, I wrote it down. Meet on May 7 -- oral argument on May 7. Substantive matter. Comments on schedule. The Commission decision reasonably promptly -- and I put in parenthesis that this is not for publication but for us -- by the end of the week, by May 13.

COMMISSIONER ASSELSTINE: Okay.

CHAIRMAN PALLADINO: Allow reasonable time after decision before start of hearing -- I would say a week. I think that's reasonable.

COMMISSIONER ASSELSTINE: In light of the court decision, I don't think it is reasonable.

1  
2 COMMISSIONER GILINSKY: You have to have the same  
3 schedule --

4 CHAIRMAN PALLADINO: I'm sorry. When I say, "Start  
5 a hearing," I mean --

6 COMMISSIONER ASSELSTINE: Negotiating the schedule,  
7 at that point.

8 CHAIRMAN PALLADINO: -- I meant before you would  
9 start discovery or that part of it, or the hearing process.

10 COMMISSIONER ASSELSTINE: So, that's the point  
11 where you negotiate out.

12 COMMISSIONER GILINSKY: It seems to me that,  
13 whatever that schedule that is, it would have to be the same  
14 schedule that you would have set early next week under  
15 different circumstances.

16 In other words, whatever is reasonable ought to get  
17 translated.

18 COMMISSIONER ASSELSTINE: It also depends upon how  
19 we resolve the issues at the oral argument, too.

20 COMMISSIONER GILINSKY: Right. Well, let me just  
21 go back to Tom here, for a minute. Is your concern one of  
22 just being consistent with the early decision?

23 COMMISSIONER ROBERTS: Yes, that's an element of  
24 it. I thought, yesterday afternoon, we had agreed on what we  
25 were going to do. Now, all of a sudden, we're not agreed  
and, I'm sorry, I don't have much stomach for that.

1  
2 COMMISSIONER GILINSKY: Well, I can understand  
3 that.

4 COMMISSIONER ROBERTS: Okay?

5 COMMISSIONER GILINSKY: It something I can identify  
6 with.

7 (Laughter.)

8 CHAIRMAN PALLADINO: I think we've got to get off  
9 the dime.

10 COMMISSIONER BERNTHAL: May I ask one procedural  
11 thing, here. I don't understand what happens between now and  
12 Monday. Why is it not possible for us to simply overlay,  
13 add, amend, whatever we did yesterday with some new and  
14 additional conditions?

15 CHAIRMAN PALLADINO: I'm sorry, I didn't under-  
16 stand.

17 COMMISSIONER BERNTHAL: What happens between now  
18 and Monday, with respect to those parties agreeing or not  
19 agreeing and at what point do we have to step in?

20 MR. PLAINE: All we said in the order was that, if  
21 they hadn't reached that agreement by noon on Monday, we will  
22 step in.

23 COMMISSIONER ASSELSTINE: But I think the question  
24 is, why make the parties negotiate something over the weekend  
25 if, for all practical purposes, the Commission --

MR. MALSCH: The parties are not negotiating

1 anything or any aspect of the order until they see a written  
2 order.

3 COMMISSIONER BERNTHAL: Why not let them try and  
4 negotiate an agreement on it now?

5 (Simultaneous conversation.)

6 MR. PLAINE: Would you say it again, Fred. They  
7 are all talking at once.

8 COMMISSIONER ROBERTS: Yes, I'm sorry.

9 COMMISSIONER BERNTHAL: I'm just saying, why not  
10 give them the opportunity to try and agree.

11 COMMISSIONER GILINSKY: They're not going to agree.  
12 I think it is not playing straight with them. If we are  
13 modifying the order, we ought to tell them right now that  
14 there is a new order in the works and the previous order is  
15 "non-operative."

16 MR. PLAINE: It is "kaput," is the word.

17 COMMISSIONER GILINSKY: Or whatever the right word  
18 is.

19 CHAIRMAN PALLADINO: Herzel, if you went this way,  
20 why wouldn't --

21 COMMISSIONER BERNTHAL: That still doesn't answer  
22 the question of why they should be allowed to try to agree on  
23 a time table.

24 COMMISSIONER GILINSKY: Because you are changing  
25 the ground rules and what are they supposed to be devising a

1  
2 time table for?

3 COMMISSIONER BERNTHAL: But we tell them exactly  
4 what the ground rules are. We can tell them exactly what the  
5 ground rules are -- here's what we intend to do, here's what  
6 we --

7 COMMISSIONER GILINSKY: No, no. It makes no sense  
8 to talk about a schedule until you have dealt with the  
9 substantive matters. Now, there is nothing wrong in having  
10 them comment in their presentation that, if you are going to  
11 pursue this, this would be a reasonable schedule to pursue  
12 the question.

13 COMMISSIONER BERNTHAL: Well, they are free to  
14 decide that. They, of course, could decide, "We don't want  
15 to negotiate." In which case, then, we have an option.

16 COMMISSIONER GILINSKY: This is futile. We are  
17 getting close to 5:00 o'clock.

18 COMMISSIONER BERNTHAL: It's not a big point.

19 CHAIRMAN PALLADINO: Let me ask one question.  
20 Herzl, suppose we adopted this, what do we tell the court or  
21 what is that step?

22 MR. PL<sup>A</sup>INE: If you adopt an order of this kind,  
23 then I think we would file it with the court as indicating  
24 that we have worked out a solution for the problems that have  
25 been raised by the plaintiff and we would ask the court to  
dismiss.



1  
2 CHAIRMAN PALLADINO: The question of schedule will  
3 still not have been settled. It won't end the case. What  
4 I'm saying is, after we have made our basic decision, then we  
5 have got to schedule and we can try to work on it but, if  
6 they don't agree, then we've have got to set one and that  
7 might then go back to the court.

8 MR. PLAINE: Are you suggesting that what you do,  
9 now, will have no reference at all to scheduling?

10 CHAIRMAN PALLADINO: I am going to ask them if they  
11 can give their remarks on scheduling.

12 COMMISSIONER GILINSKY: Herzel, wouldn't the  
13 Chairman's present proposal moot the present case before the  
14 court?

15 MR. PLAINE: I think it would.

16 COMMISSIONER GILINSKY: It might return to that  
17 situation if the Commission decided that it wanted to go back  
18 to its earlier view but, for the moment, it would moot the  
19 case.

20 MR. PLAINE: There is one other possibility, Vic.  
21 The plaintiffs, who now have a temporary order, might argue  
22 that "this is just a promise and we want the court to hold  
23 the temporary order in place until we get what we are en-  
24 titled to." Now, the court might say, "Well, all right, if  
25 that's the case, I'll continue this matter for a period of  
time or indefinitely," or something like, and you can come

1 back.

2 The worst that would happen to us, at that point,  
3 is that we would have a temporary restraining order against  
4 holding the oral hearing that was scheduled.

5 COMMISSIONER GILINSKY: Which we --

6 MR. PLAINE: Which we will probably end up dis-  
7 banding anyway, the way you are looking at it.

8 COMMISSIONER GILINSKY: Right. It seems to me it  
9 would put the Commission in the best possible light before  
10 the court in that we would be extremely forthcoming.

11 MR. PLAINE: I would think so.

12 CHAIRMAN PALLADINO: The best possible light would  
13 be to go with the present order and no additional remarks.

14 COMMISSIONER GILINSKY: Well, you're not going to  
15 get no additional remarks.

16 COMMISSIONER ASSELSTINE: That's right.

17 COMMISSIONER GILINSKY: If you want to go with the  
18 present order, I'm perfectly happy to do so and I will have  
19 this typed up and ready by 5:00 o'clock.

20 CHAIRMAN PALLADINO: Fred, have you got any com-  
21 ment?

22 COMMISSIONER BERNTHAL: Everything I have to say is  
23 on a piece of paper.

24 COMMISSIONER GILINSKY: Which, personally, we have  
25 not had time to look at and there are probably all sorts of

1 profound things in it.

2 COMMISSIONER BERNTHAL: Had I stuck to my projected  
3 original intent, it would have been much shorter.

4 COMMISSIONER ASSELSTINE: Fred, do you have a  
5 problem with Joe's proposal?

6 COMMISSIONER BERNTHAL: I understand that --

7 CHAIRMAN PALLADINO: I am going to take a lot of  
8 flack for this from a lot of places.

9 COMMISSIONER ASSELSTINE: I understand that.

10 CHAIRMAN PALLADINO: My position was, until about  
11 1:00 o'clock or 1:30, to stick with the old order and to ask  
12 you to withdraw those two sentences.

13 COMMISSIONER BERNTHAL: Let me see if I understand  
14 what you are proposing. You are essentially saying that on  
15 the 7th we meet and hear from the parties on the on the  
16 policy issue and decide, shortly thereafter --

17 COMMISSIONER ASSELSTINE: They can also make  
18 comments on the schedule.

19 COMMISSIONER BERNTHAL: At the same time -- well,  
20 okay.

21 COMMISSIONER ASSELSTINE: Decide, shortly after  
22 that, on the policy issue. No further negotiations on  
23 schedule... No further prehearing work until after the Commis-  
24 sion makes its decision.

25 COMMISSIONER BERNTHAL: And that satisfies the

1 court, in your judgment?

2 MR. PLAINE: I think it would. It would indicate  
3 to the court that you are really now taking a good look at  
4 the whole thing.

5 MR. MALSCH: One thing that might help us to make  
6 it clear is that the board's whole schedule is hereby vacated  
7 by the Commission.

8 COMMISSIONER ASSELSTINE: Yes.

9 MR. MALSCH: That is implicit in all this. It is a  
10 necessary corollary to say it up front. We absolutely should  
11 present the entire case before the district court. You no  
12 longer have an order restraining.

13 COMMISSIONER GILINSKY: I honestly think this is  
14 the most sensible course in the interest of all the parties.

15 COMMISSIONER ASSELSTINE: I do, too.

16 CHAIRMAN PALLADINO: My deep down gut feeling is to  
17 go with the old order. I'm just having trouble with that.

18 COMMISSIONER GILINSKY: What we have got are some  
19 people on the side-lines who are looking at this and don't  
20 have a very clear idea of what the details are and, you know,  
21 they pick sides and they see a good side and a bad side but  
22 have not involved themselves in the complexities and don't  
23 understand the consequences of coming down one course or  
24 another.

25 COMMISSIONER BERNTHAL: Two things have changed.

1 The court has introduced a month's delay.

2 CHAIRMAN PALLADINO: How do you know it's a month?

3 COMMISSIONER BERNTHAL: Well, I'm not an expert.  
4 What does counsel say?

5 MR. PLAINE: At the very least it's a month.

6 COMMISSIONER BERNTHAL: If we do nothing for a  
7 month, and then this thing comes back at us and we delay  
8 another two, three, four weeks, that's not a sensible way to  
9 proceed, it seems to me.

10 CHAIRMAN PALLADINO: So, part of this is to vacate  
11 the current schedule.

12 COMMISSIONER BERNTHAL: The situation was different  
13 a week ago. The situation before was not one where we had a  
14 certain month's delay. The question is whether we might  
15 introduce a week or ten days delay which we chose not to do.

16 COMMISSIONER GILINSKY: Let me ask a question. I  
17 was going to ask whether Fred supports the -- the Chairman  
18 asked about it. Are you going to support this approach?

19 COMMISSIONER BERNTHAL: I'm going to wait to hear  
20 from the Chairman before I decide what to do, here.

21 COMMISSIONER GILINSKY: Well, contingent on the  
22 Chairman's approving it, that's what I'm saying.

23 COMMISSIONER BERNTHAL: Pardon me?

24 COMMISSIONER GILINSKY: Contingent on the Chairman.

25 COMMISSIONER BERNTHAL: Yes, I'll certainly approve

1 it if the Chairman feels --

2 CHAIRMAN PALLADINO: Now, I have to maintain one  
3 caveat. After I see Tom's comments, I may feel obliged to  
4 answer them.

5 COMMISSIONER GILINSKY: Well, I can understand that  
6 but I must say that there's a good deal -- let's see, I guess  
7 the court has gone home.

8 COMMISSIONER BERNTHAL: About three hours ago.

9 COMMISSIONER GILINSKY: But it something that ought  
10 to be there Monday, it seems me. I think we ought to be  
11 phoning the parties by 5:00 o'clock and I think we ought to  
12 have something by Monday morning.

13 CHAIRMAN PALLADINO: If we get it by Monday, it  
14 depends on what time we get Tom's comments.

15 COMMISSIONER GILINSKY: Yes.

16 CHAIRMAN PALLADINO: I am regret it, but I would  
17 vote for this.

18 COMMISSIONER ROBERTS: I can't hear you, Joe.

19 CHAIRMAN PALLADINO: I say I may regret it, but I  
20 will vote for it, but I want it understood that I am not, in  
21 any way, caving in because you said there are procedural  
22 irregularities. As a matter of fact, I categorically reject  
23 any implication of that, but I'll treat that as a separate  
24 matter.

25 COMMISSIONER BERNTHAL: It's just that we are in a

1 mess, here, and I don't think we need to worry about motives  
2 or anything else. We just make it worse for the licensee and  
3 everybody else if we don't do something in the next month.  
4

5 MR. PLAINE: Would it help, Mr. Chairman, if we  
6 tried to dictate, just outside this room or somewhere, a  
7 brief one-page order to cover the points that you have got?

8 CHAIRMAN PALLADINO: Except we ought to see it.

9 MR. PLAINE: I mean dictate it and bring it back in  
10 here.

11 CHAIRMAN PALLADINO: I've got vacate present board  
12 schedule. Commission hear oral argument on May 7 starting at  
13 10:00 on substantive matter -- you will have to get some  
14 different words for "substantive matter."

15 COMMISSIONER GILINSKY: On the questions suitably  
16 phrased.

17 MR. PLAINE: On the issues, maybe. Is "issues" a  
18 good word?

19 CHAIRMAN PALLADINO: On the premise in the board  
20 order and comments on the schedule.

21 COMMISSIONER ROBERTS: Are you going to delineate  
22 the premise? Are you going to be specific?

23 CHAIRMAN PALLADINO: That's why I hate to put  
24 anything out. I'd like to see the order before it goes out.  
25 Get Commission decision on policy matter reasonably promptly  
-- don't put a date. Allow reasonable time after decision

1 before start of hearing, if needed -- or if called for or  
2 decided upon.

3 We can't go on for ever deciding. I would vote for  
4 that.

5 COMMISSIONER BERNTHAL: One point. Don't we want  
6 to include in this what the policy issues are going to be?

7 COMMISSIONER ASSELSTINE: I think we do.

8 CHAIRMAN PALLADINO: That's why I am hesitant about  
9 writing something up that is not complete on what the issues  
10 are.

11 COMMISSIONER GILINSKY: I have not had a chance to  
12 look at yours, Fred. I thought we had agreed on your modi-  
13 fication or mine. So I don't know to what extent your new  
14 one is different.

15 COMMISSIONER BERNTHAL: The only essential dif-  
16 ference is that--

17 CHAIRMAN PALLADINO: I don't know which one you are  
18 reading.

19 COMMISSIONER BERNTHAL: -- is the third point,  
20 here, that it is also the case that we should address the  
21 possibility that the licensee might request an exemption.

22 COMMISSIONER ASSELSTINE: Well, they haven't  
23 requested an exemption.

24 COMMISSIONER GILINSKY: It seems to me it is up to  
25 them to submit a request for exemption. At which point, we



1 will take it up.

2 COMMISSIONER ASSELSTINE: Why don't you just ask  
3 that question at oral argument.

4 COMMISSIONER GILINSKY: We can ask it at any time  
5 but it is odd for us to be anticipating exemptions that  
6 haven't been asked for, particularly as grantors for exemp-  
7 tions.

8 CHAIRMAN PALLADINO: Can I try a shorthand --

9 COMMISSIONER BERNTHAL: I thought we were trying to  
10 set out a general policy guidelines here that's not only  
11 related to Shoreham abut other cases as well and, if you do  
12 that, then you want to cover the whole picture.

13 You could argue, on the face of it, that the  
14 regulation, itself, the plain language of it, simply doesn't  
15 permit it.

16 COMMISSIONER GILINSKY: Well, nothing prohibits us  
17 from bringing it up and I'm sure you are going to get answers  
18 on the subject, but I find it awkward for us to be asking for  
19 applications for exemptions.

20 CHAIRMAN PALLADINO: Let me make a suggestion. If  
21 you want a shorthand version -- Commission hold oral argument  
22 May 7 on (a) the applicability of GDC-17 to low power, (b)  
23 comments on schedule. That, at least, tells you what the  
24 substantive issue is.

25 Give Commission decision on applicability on GDC-17

1  
2 to low power reasonably promptly. Allow reasonable time  
3 after decision before start of hearing, if decided upon -- if  
4 a hearing is needed.

5 MR. PLAINE: In connection with your May 7, do you  
6 still want written memoranda from the parties?

7 CHAIRMAN PALLADINO: We're trying to write the  
8 order, which I didn't think we were trying to write but, yes,  
9 I would ask them to file --

10 MR. PLAINE: Ask them to file that by Friday  
11 morning?

12 CHAIRMAN PALLADINO: If we are going to start that  
13 morning, we won't have a chance to read them.

14 COMMISSIONER ASSELSTINE: Yes, that would be fine.

15 MR. PLAINE: That would give you part of Friday.

16 CHAIRMAN PALLADINO: Well, you don't have much  
17 time, if they file them Friday morning. You don't get time  
18 to read them.

19 COMMISSIONER GILINSKY: The meeting is on Monday,  
20 so you have from Friday to Monday.

21 MR. PLAINE: When do you want them -- Thursday  
22 noon?

23 CHAIRMAN PALLADINO: I'm sorry, you're right. I  
24 was picture Friday was the hearing.

25 MR. PLAINE: The hearing is on Monday.

CHAIRMAN PALLADINO: All right, Friday morning.

1  
2 COMMISSIONER ASSELSTINE: Friday morning.

3 MR. PLAINE: Friday morning, okay.

4 CHAIRMAN PALLADINO: Vacate the present board  
5 schedule. Oral argument on May 7 at 10:00 a.m., (a) on the  
6 applicability of the GDC-17 to low power, (b) comments on  
7 schedule. Commission decision on the applicability of GDC-17  
8 to low power reasonably promptly. I don't say anything about  
9 setting a schedule. Maybe you want to put, "Allow reasonable  
10 time after decision before start of the hearing, if hearing  
11 is needed. Commission will work with parties to develop a  
12 schedule."

13 COMMISSIONER ASSELSTINE: We will establish the  
14 schedule, yes.

15 COMMISSIONER GILINSKY: Well, we've got six minutes  
16 to tell the parties.

17 CHAIRMAN PALLADINO: Can we vote on this question.

18 MR. PLAINE: Do you think it is that important at  
19 this moment, or can it be done before the night is out and  
20 let them know that they don't have to here Monday morning or  
21 wherever they are assembling?

22 We'll try to do it as close to 5:00 as we can, but  
23 -- excuse me, what are we telling the parties? If we are  
24 going to call the parties, what are we --  
25

1  
2 MR. MALSCH: You could call the parties, right now,  
3 in the hearing room, and simply orally give, say, exactly  
4 what you just said.

5 COMMISSIONER ASSELSTINE: Yes.

6 CHAIRMAN PALLADINO: Well, I didn't write "estab-  
7 lish a schedule."

8 COMMISSIONER GILINSKY: I would suggest just  
9 telling them that we are holding up on the previous order.

10 MR. PLAINE: That's right.

11 COMMISSIONER ASSELSTINE: Holding up on the pre-  
12 vious order --

13 COMMISSIONER GILINSKY: Just tell them that we are  
14 vacating the previous order, period.

15 COMMISSIONER ASSELSTINE: With an order the fol-  
16 lowing Monday.

17 MR. PLAINE: We're confused enough, right now.  
18 Not let's make it worse.

19 COMMISSIONER GILINSKY: I think, this time around,  
20 it ought to come out --

21 CHAIRMAN PALLADINO: Vacating the board schedule.  
22 Vacate present board schedule.

23 COMMISSIONER ASSELSTINE: But, also, void yester-  
24 day's order.

25 CHAIRMAN PALLADINO: Well, we never sent it.

MR. PLAINE: We'll destroy yesterday's order.

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COMMISSIONER ASSELSTINE: That's right.

COMMISSIONER BERNTHAL: Is that just a formality to comply with what the court has already done?

COMMISSIONER ASSELSTINE: No, no, yesterday's order. The other one is, yes.

COMMISSIONER BERNTHAL: The board doesn't have a schedule anymore.

CHAIRMAN PALLADINO: That's been vacated.

COMMISSIONER ASSELSTINE: That has already been vacated by now.

COMMISSIONER GILINSKY: We have to negate the telephone call we made to them, yesterday.

MR. PLAINE: Can't we say we are replacing yesterday's order --

COMMISSIONER GILINSKY: -- with another order that will come out on Monday. I think, at this point, we ought not to read them anything.

MR. PLAINE: That's right.

CHAIRMAN PALLADINO: I like that because I don't know where it will come out on Monday.

COMMISSIONER ASSELSTINE: Disregard previous message. New message to follow.

COMMISSIONER GILINSKY: Watch this space.

(Laughter.)

COMMISSIONER ROBERTS: Don't hold your breathe.

1  
2 CHAIRMAN PALLADINO: Are we ready to vote? All  
3 those in favor say aye.

4 COMMISSIONER ASSELSTINE: Aye.

5 COMMISSIONER GILINSKY: Aye.

6 CHAIRMAN PALLADINO: Aye.

7 COMMISSIONER BERNTHAL: Aye.

8 CHAIRMAN PALLADINO: Opposed.

9 COMMISSIONER ROBERTS: No.

10 MR. PLAINE: Hold it just a minute, please, Mr.  
11 Chairman. Do you want to discuss at all, very briefly, this  
12 subpoena matter or is that something for another day.

13 COMMISSIONER ASSELSTINE: Another day, don't you  
14 think?

15 CHAIRMAN PALLADINO: We don't have that much time.  
16 Why don't you at least tell them what has developed? Why  
17 don't you inform us on what has developed.

18 MR. PLAINE: Do we need a separate meeting or can  
19 we probably regard this as part of the Shoreham meeting  
20 itself, because it relates to Shoreham?

21 CHAIRMAN PALLADINO: Yes, I think it is related to  
22 Shoreham. I am not prepared to talk about what we do as a  
23 result of it.

24 MR. PLAINE: No, but we made need a little bit of  
25 your approval. If not entirely, at least to know that we are  
acting in concert and information with the letter that you

1 sent.

2  
3 The subcommittee staff director, Steven Richardson,  
4 called me this afternoon, not too long before we walked in  
5 here, telling me that the subcommittee was accepting the  
6 offer contained in the last paragraph of the letter sent Mr.  
7 Markey on the 26th, to meet with General Counsel and go over  
8 some of the things that we thought might be done to satisfy  
9 the request of Mr. Markey.

10 He did indicate that he needed to have that meeting  
11 with him and various other staff members who are lawyers for  
12 the whole committee on Monday afternoon at 3:00 o'clock and I  
13 agreed that we would show. We would be there.

14 I think I would like to be authorized to offer some  
15 of the things that we alternatively had in mind to meet in  
16 some way compliance with Mr. Markey's request, short of just  
17 releasing both the letter and the minutes of the meeting that  
18 we indicated we would withhold. If I can do that, there is  
19 the possibility that we might avoid the business of a sub-  
20 poena because they are, in contemplation, going to be dis-  
21 cussing the possibility of a subpoena with the full committee  
22 on Wednesday.

23 If there is no objection to my having agreed to  
24 appear -- the offer indicated that I would appear if asked --  
25 I will do that and I will try to find ways and means of  
satisfying Mr. Markey's request and report back to you.

1                   CHAIRMAN PALLADINO: The part of the meeting where  
2 you state our position and you probably would state why we  
3 want to withhold and they would show why we shouldn't with-  
4 hold, I think you could clearly go in and, out of all of it,  
5 you may get a sense of direction.

6                   What I am not clear on is what you do after that  
7 and I think we have to get a Commission majority, at least on  
8 the maneuvering room you have. We were starting to talk  
9 about that when --

10                  MR. PLAINE: You were starting to talk about it but  
11 you had to interrupt yourself to pull this meeting.

12                  CHAIRMAN PALLADINO: We could go through a couple  
13 of them. One might be have Markey look at the transcript and  
14 I start with a bid position of just looking at the transcript  
15 and not getting the General Counsel's advice involved here,  
16 and then give it back to us.

17                  MR. PLAINE: I was told, Mr. Chairman, that, on a  
18 previous occasion, this kind of request was satisfied by  
19 letting the chairman of the subcommittee view and read the  
20 documents in question and then taking them back.

21                  CHAIRMAN PALLADINO: Rather than try to outline all  
22 the things that one might do, I'm going to suggest that we  
23 can continue to discuss options and then, on Monday, we ought  
24 to meet on the subject. Otherwise, I'm not sure where we are  
25 going to go.



1 We should have closed the other meeting.

2 COMMISSIONER ASSELSTINE: Yes. Okay.

3 CHAIRMAN PALLADINO: Can we adjourn the other  
4 meeting.

5 COMMISSIONER ASSELSTINE: We have stopped.

6 (Whereupon, the foregoing meeting was adjourned at  
7 4:55 o'clock, p.m.)  
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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the Commission in the matter of: Discussion of Shoreham Order, held on Friday, April 27, 1984, at 1717 H Street, N. W., Washington, D. C., 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)