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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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CONTINUATION OF DISCUSSION OF
APPEAL BOARD DECISION ON TMI-1

- - -

PUBLIC MEETING

- - -

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

Friday, June 1, 1984

The Commission met, pursuant to recess, at 11:50 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
- J. ZERBE
- J. MONTGOMERY
- R. LEVI
- M. MALSCH
- U. PLAINE

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P R O C E E D I N G S

1
2 CHAIRMAN PALLADINO: Please come to order.

3 The purpose of this morning's meeting is to discuss
4 the draft order prepared by the General Counsel and our
5 Office of Policy Evaluation, requesting the parties' views
6 on whether the Commission should continue to attempt to make
7 an immediate effectiveness decision on TMI-1 restart.

8 I would like to express regret on the Commission's
9 behalf for the very short notice of the meeting. We earlier
10 had scheduled a closed adjudicatory meeting to discuss the
11 Appeal Board decision, and in the course of preparing for
12 that meeting, it became clear that additional topics needed
13 to be addressed. Therefore, yesterday we scheduled this
14 public meeting.

15 Do other Commissioners have opening remarks?

16 COMMISSIONER ASSELSTINE: No.

17 CHAIRMAN PALLADINO: All right. At this time, then,
18 I wonder if I might turn the meeting over to OGC to discuss
19 the draft order.

20 MR. PLAINE: Mr. Chairman, the purpose of the order
21 is to deal with an issue of time. The Commission had
22 originally thought that it could, somewhere in the month of
23 June, come to some decision on immediate effectiveness in
24 the TMI-1 matter, and the advent of the ALAB on a number of
25 the important issues has made a difference in the possibility

1 of doing this.

2 The order that we have prepared is something that
3 could possibly try to save getting the effectiveness matter
4 reached in the month of June, but on a fairly tight schedule.

5 If we follow the merit decision course as laid out
6 by the Board or some other course that may be laid out,
7 why, it isn't going to be possible at all to touch this in
8 June. So, the only reason for this order would be not to
9 coerce you into making any decision on which course you should
10 follow but to perhaps save you the possible option of trying
11 for a decision in June.

12 Now, with that in mind I should make it clear
13 that if you agree to this order, it does not necessarily
14 bind you to any course of action because once you have heard
15 from the parties, you might decide that it isn't going
16 to be possible to do this. And hence, this is only for that
17 limited purpose.

18 I might say that it doesn't bind you to any one
19 of the three options that have been laid out in another paper
20 that we gave you. It simply preserves the possibility that
21 you might go with Option 3. Hence, the thrust of the
22 order is that the Commission would decide to request the
23 parties to comment on whether in view of ALAB-772 and all
24 other relative information, including the investigative
25 report by the Office of Investigations, the management

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1 concerns which led to making the '79 shut-down orders
2 immediately effective have been sufficiently resolved so that
3 the Commission should lift the immediate effectiveness of
4 those orders prior to the completion of review of any appeals
5 from ALAB-772. The parties would be given time to comment on
6 this and the Commission would also find at this point that
7 it is no longer necessary to issue a draft management decision
8 for comment.

9 That is, essentially, the thrust of the order.

10 CHAIRMAN PALLADINO: There was one question raised
11 with regard to the order in the last paragraph of the order.
12 It says, "Accordingly, after reviewing the parties' comments,
13 the Commission will determine by June 29, 1984 whether to
14 issue an effectiveness decision prior to completion of any
15 merits review of ALAB-772."

16 It may turn out that there is reason to do it before
17 or after that date, and it was suggested to cross out the
18 date. You say, "Accordingly, after reviewing the parties'
19 comments, the Commission will determine whether to issue an
20 effectiveness decision prior to completion of any merits
21 review of ALAB-772," for the flexibility.

22 I don't know what comments people have on that
23 section.

24 MR. PLAINE: I see no harm in striking it.

25 COMMISSIONER ROBERTS: That's acceptable to me.

1 CHAIRMAN PALLADINO: Okay, other questions or
2 discussions?

3 COMMISSIONER ASSELSTINE: I guess for myself, I have
4 four problems with the order that lead me to conclude that
5 I'm not going to vote for it. Maybe now is as good a time
6 as any just to highlight what those are.

7 The first problem I have is the problem I have
8 raised in the past. This order, I think, continues to
9 inappropriately confuse the kinds of decisions that the
10 Commission ultimately has to make on restart. It talks
11 again in terms of an immediate effectiveness decision.

12 I don't think that's the kind of decision the
13 Commission has to make here. I think it has to make a
14 decision on the merits. The Commission has to find that there
15 is sufficient information on the issues that are relevant
16 to the shut-down order, the order that this plant be kept
17 shut down.

18 For the Commission to find that those issues have
19 been satisfactorily resolved to permit restart, and I think
20 that's more than the kind of immediate effectiveness decision
21 that we typically make in operating license cases.

22 Once again, I have a concern about the way that
23 the Commission's decision is being couched.

24 Second, I have said in the past that I am skeptical
25 that the Commission will have the information it needs by

1 the end of this month to make a decision on restart, and I
2 guess I am even more pessimistic about that now, based upon
3 my review thus far of the Appeal Board decision on management
4 competence and integrity.

5 I think, by the way, that this order -- contrary
6 to what the General Counsel suggests -- really does tend to
7 go more towards the third option. I think it's a bit more
8 than just preserving the availability of all options. It
9 tends to focus the Commission in a particular direction.

10 CHAIRMAN PALLADINO: I think changing that date
11 doesn't necessarily do that.

12 COMMISSIONER ASSELSTINE: Well, changing the date
13 simply removes, I think, the more explicit nature of the
14 concern.

15 CHAIRMAN PALLADINO: But it does ask for parties'
16 comments --

17 COMMISSIONER ASSELSTINE: It does.

18 CHAIRMAN PALLADINO: -- on whether or not we think
19 we can go with an immediate effectiveness.

20 COMMISSIONER ASSELSTINE: That's right.

21 I guess the third concern I have is the time
22 period. You are asking for parties' comments in two weeks
23 on whether the information that is now available, including
24 the vast amount of information that is outside of the record,
25 the formal record of the proceeding is sufficient to permit

1 a restart decision. That is an awful lot of material. We
2 have released very recently some fairly voluminous OI reports.
3 Some of those reports still are not available, the ones
4 that have been completed. There is still at least one that
5 has not been released yet, and we have a couple more that are
6 coming, that I don't think even are expected before the middle
7 of June when the comments are due from the parties.

8 I think the two-week time period is unrealistically
9 short.

10 And the fourth concern I have is that I have
11 already decided, at least for myself, that the steam generator
12 tube repair hearing has to be completed before I am prepared
13 to make a restart decision. At least in my own mind, that
14 convinces me that the June date is not possible and therefore
15 I don't see a strong justification in my own mind for this
16 very expedited approach in terms of asking for comments in
17 order to try and make some kind of a decision -- whether it
18 is by the end of June or very shortly thereafter.

19 So, I recognize that my own view on the steam
20 generator issue is different from others on the Commission,
21 and that factor isn't all that relevant for others.

22 But for those four reasons, I guess I am not in
23 favor of proceeding with this order at this time.

24 COMMISSIONER GILINSKY: Where does that hearing stand?

25 COMMISSIONER ASSELSTINE: I think the hearing itself

1 has not yet started. I think they are still in the discovery
2 phase.

3 MR. LEVI: The staff and licensee have moved for
4 summary disposition of all contingents. That motion is
5 pending before the Licensing Board.

6 CHAIRMAN PALLADINO: Well, I would vote for this
7 order. I think the fact that the time period for comments
8 is short has two points to be made in that regard:

9 One, much of the information has already been
10 made available for a considerable period of time.

11 Two, as in the past, parties could always ask for
12 extension, and if the extension is a reasonable request,
13 especially when we recognize whatever other documents might
14 be issued. So, I think there is a remedy for that.

15 And I think it does provide the maximum amount of
16 flexibility in our proceeding. So, I would strongly vote for
17 it.

18 Any other comments?

19 COMMISSIONER GILINSKY: Well, are you planning to
20 vote on this?

21 CHAIRMAN PALLADINO: I was planning to vote on it.

22 COMMISSIONER GILINSKY: I guess I'm going to abstain
23 simply because I don't want to be in the position of either
24 putting the decision off to a time beyond when I will be here,
25 or trying to hang onto it.

1 I have been ready to vote on this thing for some
2 years now.

3 (Laughter)

4 COMMISSIONER GILINSKY: Any time the Commission
5 is ready. I think I made that clear.

6 I would just make a comment on the dates here.
7 You are talking about getting responses back on the 15th, or
8 in the case of the staff, the 18th. Jack Zerbe earlier told
9 us that he wasn't going to supply his office's views on
10 the opinion until after he had seen these comments. So, it
11 is going to be some days after that, which doesn't leave you
12 a whole lot of time.

13 CHAIRMAN PALLADINO: That's why I --

14 MR. ZERBE: That was on the merits, you are talking
15 about, you were talking about this morning. I said that we
16 would not know what to do on the ALAB --

17 COMMISSIONER GILINSKY: I see.

18 MR. ZERBE: -- until we saw the parties' comments
19 on the ALAB. That's what you are referring to.

20 COMMISSIONER GILINSKY: Well, I'll leave it to you.

21 COMMISSIONER ROBERTS: I would vote for the order.

22 COMMISSIONER BERNTHAL: Mr. Chairman, I am not
23 going to vote at all, I am not going to participate in a vote
24 at this time. I have one document in front of me here dated
25 May 31; I have two others dated May 30. I was otherwise

1 occupied last night and otherwise occupied and pre-occupied
2 this morning.

3 I think it is simply not good practice for us to
4 make hasty decisions on what I think was a rather piece of
5 rapid -- not to say "hasty" -- work by OGC, and I intend to
6 discuss this matter further with my legal counsel.

7 I would be happy to attempt to reach a decision
8 any time, beginning with the beginning of this afternoon's
9 meeting or the end of it, or any time early next week. But
10 I think we ought to be adequately informed before we vote
11 on a matter of this importance and I am not going to vote
12 at this time.

13 COMMISSIONER ROBERTS: What are the procedures?
14 You carry it today, Joe, you got two votes for, one against,
15 one not participating, and one abstaining.

16 COMMISSIONER GILINSKY: Not if the others don't
17 participate at all.

18 CHAIRMAN PALLADINO: The problems are that next
19 week there is considerable travel.

20 COMMISSIONER BERNTHAL: Yes, let's worry about the
21 practicality of getting the vote here, and I'm certainly
22 going to vote as soon as I can satisfy myself that the course
23 that is suggested here is the best course. I have studied it,
24 but I haven't satisfied myself yet and I'm not going to vote
25 until I have a chance to do that.

1 COMMISSIONER GILINSKY: Let me ask you something
2 else, what do you expect to get from the parties, aren't the
3 views that you are going to receive fairly predictable?

4 (Laughter)

5 CHAIRMAN PALLADINO: They may be.

6 COMMISSIONER GILINSKY: I mean, is it just going
7 through the motions here?

8 CHAIRMAN PALLADINO: No, I don't think so. I
9 think there are important points and trying to give as much
10 time to the parties as we can.

11 We have another problem, the travel starts on the
12 part of at least one Commissioner at 3:30.

13 COMMISSIONER BERNTHAL: At 3:30?

14 CHAIRMAN PALLADINO: We could --

15 COMMISSIONER BERNTHAL: Well, as far as I am
16 concerned --

17 CHAIRMAN PALLADINO: Would you be ready by then?

18 COMMISSIONER BERNTHAL: I would hope so, yes. I
19 still think it's unwise. There really is no reason to act
20 on this today, except I understand the problems with travel
21 early next week. Have we explored the possibility that we
22 might get together for some brief period of time next week,
23 even in view of various Commissioners' travel plans?

24 CHAIRMAN PALLADINO: If you say did we exhaust
25 the possibilities, you never really exhaust the possibilities

1 because people's plans change.

2 COMMISSIONER GILINSKY: Well, I won't be here for a
3 couple of days, but don't let that stop you.

4 (Laughter)

5 CHAIRMAN PALLADINO: But Commissioner Roberts --

6 COMMISSIONER ROBERTS: (Inaudible)

7 COMMISSIONER BERNTHAL: Well, if Victor intends
8 to abstain in any case, then clearly your actions need not
9 depend on his travel plans.

10 CHAIRMAN PALLADINO: No, but there are other
11 travel plans. Unfortunately, I didn't pick up the one
12 that handles the travel plans, or at least this copy doesn't.

13 Yes, Commissioner Roberts is out Monday and
14 Tuesday; Gilinsky is out Wednesday. Thursday, we have
15 crowded everything in that we possibly can because on Friday
16 you travel. I don't know that we can crowd any more in.

17 COMMISSIONER BERNTHAL: Let's see --

18 COMMISSIONER ROBERTS: What are you doing, are you
19 not participating?

20 COMMISSIONER BERNTHAL: I intend to participate, but
21 I'm not going to vote until I feel I can cast an informed
22 vote.

23 COMMISSIONER ASSELSTINE: Tom is asking, at this
24 meeting right now, what is --

25 COMMISSIONER ROBERTS: At this meeting right now --

1 COMMISSIONER ASSELSTINE: -- are you abstaining or
2 are you not participating?

3 COMMISSIONER BERNTHAL: Well, if I have to protect
4 my right to vote, then I will vote against it at this time.
5 If that's the question, maybe somebody needs to --

6 CHAIRMAN PALLADINO: Now, would you be able to
7 tell us at 2 o'clock whether or not you are prepared to vote?

8 COMMISSIONER BERNTHAL: I would hope so, yes.

9 CHAIRMAN PALLADINO: Okay. Well, then I guess we
10 are at the point where, if we want to vote further, we'll
11 have to reconvene on this matter at 2 o'clock.

12 COMMISSIONER ASSELSTINE: Yes.

13 COMMISSIONER BERNTHAL: That's fine with me.

14 CHAIRMAN PALLADINO: All right, anything further to
15 come before us at this time?

16 All right, thank you. We'll stand adjourned.

17 (Whereupon, at 12:05 p.m., the meeting of the
18 Commission was adjourned, to reconvene at 2 o'clock p.m. on
19 the same day.)

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AFTERNOON SESSION

(2:20 p.m.)

CHAIRMAN PALLADINO: Please come to order.

This meeting is a continuation of this morning's meeting in which we were addressing the draft order requesting the parties' view on whether the Commission should continue to attempt to make an immediate effectiveness decision on TMI-1 restart.

This morning, there were two individuals who were in favor; one who was against; one who abstained, and Commissioner Bernthal requested time to consider further. So, maybe at this time we should ask Commissioner Bernthal if he has considered further.

COMMISSIONER BERNTHAL: Yes, I have, and I apologize for the delay. As you know, I missed a closed meeting this morning because I had another commitment, and required some additional time to study the issue.

I am going to vote in favor of the order going out, and I'll just say, I don't like it.

(Laughter)

COMMISSIONER BERNTHAL: I think we are faced with a Hobson's choice here between a number of what I consider to be undesirable alternatives. But I have not found a desirable alternative, I must say, in the bunch.

What you can say for this order is that it offers

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1 us the widest possible flexibility for some short period
2 of time here. I also believe that Jim or Victor, I guess it
3 was, is quite correct that the comments we are likely to
4 receive are somewhat predictable.

5 But at least this does give us time to study what
6 options might be available to us further. So, I am going to
7 vote in favor of the order.

8 CHAIRMAN PALLADINO: Your comment that you don't
9 like it, I think --

10 COMMISSIONER BERNTHAL: That is a summary statement,
11 I guess.

12 CHAIRMAN PALLADINO: -- has implications that there
13 has been pressure on you to do one thing or the other.

14 COMMISSIONER GILINSKY: You better take it and run,
15 Joe.

16 (Laughter)

17 COMMISSIONER ROBERTS: Sound advice, Victor, sound
18 advice.

19 CHAIRMAN PALLADINO: I am sorry, but there are
20 implications there that I think ought to be cleared up. It is
21 your vote.

22 COMMISSIONER BERNTHAL: Joe, let me --

23 (Laughter)

24 COMMISSIONER BERNTHAL: I shouldn't be so summary
25 in my comment, I guess. The point is that it really is a case

1 that I think we have no good options before us. We are now
2 faced with a series of undesirable options. I might have
3 preferred to have simply delayed action further and tried to
4 seek a better alternative -- and one may not have come up.
5 And since I was unable to come up with one in the time that
6 we had allotted here, I am going to go with the option that
7 I think preserves our flexibility.

8 That is what I mean when I say I don't like it.

9 CHAIRMAN PALLADINO: Okay, thank you.

10 Well, then, could we confirm the votes on going
11 forward with the draft order that was prepared by OGC/OPE
12 and was discussed this morning?

13 All those in favor of issuing the order indicate
14 by saying aye.

15 COMMISSIONER ROBERTS: Aye.

16 COMMISSIONER BERNTHAL: Aye.

17 CHAIRMAN PALLADINO: Aye.

18 Those opposed?

19 COMMISSIONER ASSELSTINE: No.

20 CHAIRMAN PALLADINO: And the abstention.

21 COMMISSIONER GILINSKY: I am abstaining.

22 CHAIRMAN PALLADINO: I should have indicated that
23 that was without the date in there that we had agreed to.

24 COMMISSIONER BERNTHAL: Yes, that's right.

25 CHAIRMAN PALLADINO: Okay, anything further to come

1 before us on this matter?

2 COMMISSIONER ASSELSTINE: No.

3 CHAIRMAN PALLADINO: All right, thank you. We
4 will adjourn this meeting and will convene the next meeting.

5 (Whereupon, at 2:22 p.m. the meeting of the
6 Commission was adjourned to proceed with other business.)

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