

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

REPORT ON INVESTIGATIONS AT TMI
AND REPORT ON ADJUDICATORY AT
TMI

Docket No.

Status and Options regarding
Adjudicatory Matters
Exemption 10

Closed Meeting

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

REPORT ON INVESTIGATIONS AT TMI AND
REPORT ON ADJUDICATORY MATTERS AT TMI

STATUS AND OPTIONS REGARDING ADJUDICATORY MATTERS

CLOSED MEETING - EXEMPTION 10

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

Thursday, October 6, 1983

The meeting convened in closed session at
11:15 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
- H. PLAINE
- J. ZERBE
- J. MONTGOMERY
- R. LEVI

- - -

P R O C E E D I N G S

1
2 CHAIRMAN PALLADINO: I wonder if we could
3 reconvene.

4 For the second part of the closed meeting, there
5 are two major issues I think we should address. I am going
6 to propose an order in which we would address them.
7 However, I am willing to reverse them if people think they
8 would like to reverse them.

9 First, I would like to discuss the question of
10 where do we go from here in making a restart decision. We
11 currently appear to be on a track which likely will not
12 allow a restart decision before mid to late next year, even
13 if then.

14 My question is are there alternative approaches
15 we should consider that might make an earlier decision
16 possible?

17 Secondly, we have a related issue on how to
18 allocate the remaining investigative work between OI and
19 the Licensing Board. ALAB 738 identifies the possibility
20 that OI and the Boards will both be investigating the
21 Hartman matter and we need to address whether Commission
22 guidance is to be provided and, if so, what that guidance
23 should be.

24 Now, unless you would like to reverse the order,
25 I would propose that we turn the meeting over to OPE to

1 lead us through their thinking on the first matter and then
2 treat the next one by having OGC make the presentation. I
3 am willing to go either way.

4 COMMISSIONER ASSELSTINE: That is okay with me.

5 CHAIRMAN PALLADINO: Well, then why don't we
6 proceed with OPE introducing the first subject.

7 MR. ZERBE: Just as a matter of some of the
8 documents that we have sent to you recently to put them
9 in the right perspective of what we are talking about here
10 today, on the 9th of September we sent you a revised
11 schedule that updated the various aspects of the restart
12 decision. The earlier one was back in June.

13 Back then on September 23rd we sent you
14 additional comments relative to that schedule and it came
15 out of reviewing the schedule and some observations that
16 occurred to us and many of those things have been discussed
17 here earlier at least in outline form.

18 Where we felt with the scheduling stretching
19 out as far as it was and with the Board getting involved
20 with some efforts that were duplicating what were being
21 done by OI, we felt that there was a need to look at the
22 broad issue of whether the Board should continue with
23 OI or whether one or the other should take the lead and
24 the other one step aside.

8

What I wanted to do at least for a half hour.

9

is go ---

10

(Laughter.)

11

CHAIRMAN PALLADINO: We are scheduled to go

12

until 12:30.

13

COMMISSIONER ROBERTS: Are we!

14

(Laughter.)

15

COMMISSIONER ROBERTS: Oh, all right, sorry.

16

CHAIRMAN PALLADINO: We are scheduled to go to

17

12:30. Well, we haven't gotten to the hard part of the

18

meeting.

19

COMMISSIONER ASSELSTINE: That is right.

20

(Laughter.)

21

CHAIRMAN PALLADINO: I would like to discuss

22

possible approaches to see whether or not are we going

23

to proceed and wait for everything that is shown on this

24

schedule, plus whatever else might come up, or are there

25

alternative ways of approaching a decision short of waiting

for all those things?

1 Now I have been talking to my staff and Bill
2 Reamer came up with a number of options that we might
3 consider, and at least I wanted to walk through these and
4 see what kind of reactions we got and whether there are
5 other things that the Commission wants to do. It would be
6 nice if we could say that we have a consensus and we are
7 ready to go, but I would at least like to through the
8 items.

9 I went over these last night and I thought
10 they were worth reproducing and giving to members of the
11 Commission. So we walked them around this morning and I
12 have a few extra copies for people that need to participate
13 that don't have them or if you didn't bring your copy
14 with you.

15 Do you have one, Rick?

16 MR. LEVI: No.

17 (Copies were distributed to those that didn't
18 have them.)

19 COMMISSIONER ASSELSTINE: This is a draft
20 working paper.

21 CHAIRMAN PALLADINO: It is a working paper.

22 Among the things that he listed was, first,
23 the present approach where OI completes investigations,
24 NRC staff revalidates management competence/integrity
25 position, Board completes hearing on Hartman and rules on

1 other reopening issues and completes those hearings, and
2 Commission makes immediate effectiveness decision, and that
3 could be anywhere in the dotted area of the OPE chart.

4 A sub-option, the Commission makes immediate
5 decision after OI completes investigation and NRC staff
6 revalidates management's position, but before the hearings
7 are complete.

8 That is one.

9 The second one is Commissioner Gilinsky's
10 total quarantine. And, as I understand it, the Commission
11 issues order which which describes ---

12 (Laughter.)

13 CHAIRMAN PALLADINO: Well, it is not one to
14 be ruled out categorically.

15 COMMISSIONER ASSELSTINE: It is more the
16 characterization I think, the "total quarantine."

17 (Laughter.)

18 CHAIRMAN PALLADINO: Incidentally, Bill prepared
19 it for me and he doesn't mind using words like that when
20 talking to me. He didn't anticipate that I would ask him
21 to reproduce this for everybody.

22 The Commission issues order which describes the
23 current impasse on management issue and identifies the option
24 of a new entity to operate the plant; if a new entity is
25 substituted, Commission makes restart decision based on

1 management qualifications of that entity; further hearings
2 on that entity before a Commission decision may be needed.

3 COMMISSIONER ROBERTS: That is what I want to
4 know. Could we have some advice on that? What is the
5 likelihood of that happening?

6 COMMISSIONER GILINSKY: Well, I think you would
7 have a hearing of some kind or other.

8 CHAIRMAN PALLADINO: I think if GPU went and
9 hired ---

10 COMMISSIONER ROBERTS: That is not a question
11 mark?

12 CHAIRMAN PALLADINO: Well, it was in Bill's mind
13 when he wrote this, but I do believe if GPU went out and
14 hired somebody to run the place for them, we would have
15 to change the license and I think that would require a
16 hearing.

17 MR. PLAINE: There will be some kind of a hearing
18 I am sure.

19 COMMISSIONER ASSELSTINE: But you might avoid
20 the kinds of wide range of competence and integrity issues
21 that we now have.

22 CHAIRMAN PALLADINO: Tom was suggesting that
23 we cross out the question mark and we actually take away
24 the parentheses.

25 COMMISSIONER ROBERTS: Yes. We must be realistic.

1
2 CHAIRMAN PALLADINO: Item 3 or option 3, a
3 partial quarantine. This is below Dieckamp in shorthand.
4 Commission issues order which describes impasse over
5 management issue and asks whether licensee is willing to
6 remove temporarily Arnold (but not Clark) and any other
7 TMI-1 employee below Arnold who can reasonably be implicated
8 in any matter under OI investigation; if licensee agrees
9 and develops a suitable proposal, Commission makes restart
10 decision based on management qualifications of non-
11 quarantined TMI-1 management; further hearings on the
12 management competence of the nonquarantined management
13 before a Commission decision he raises as an open question.

14 COMMISSIONER BERNTHAL: Have we borrowed this
15 term from the Department of Defense or Center for Disease
16 Control?

17 (Laughter.)

18 MR. LEVI: On the question of further hearings
19 let me point out that even if you have further hearings
20 on the merits questions, that does not necessarily preclude
21 the Commission from making an immediate effectiveness
22 decision.

23 CHAIRMAN PALLADINO: Are you saying that if ---

24 MR. LEVI: Even under the total quarantine
25 approach, if the Commission found that there was no reason
for keeping the shutdown order immediately effective, it

1 could probably lift the immediately effectiveness and then
2 have hearings on the merits.

3 MR. PLAINE: That boggles the mind.

4 (Laughter.)

5 COMMISSIONER ASSELSTINE: Yes. I agree with
6 Herzel.

7 CHAIRMAN PALLADINO: What is that?

8 COMMISSIONER ASSELSTINE: Herzel said it boggles
9 the mind and I agree with him.

10 MR. PLAINE: That is one that you call a technical
11 possibility.

12 (Laughter.)

13 COMMISSIONER GILINSKY: Rick is saying that
14 legally you could do it.

15 CHAIRMAN PALLADINO: Yes. Now sub-options.
16 Quarantine below Arnold; Quarantine below Kuhns.

17 I think the basic one that is being shown
18 here is the partial quarantine below Dieckamp.

19 COMMISSIONER GILINSKY: I think one point that
20 this, or at least one of the paragraphs here doesn't do
21 full justice to is that it may involve just a lot of people.
22 When you say anyone who can reasonably be implicated in any
23 matter of OI investigation, that may just be a lot of names.

24 COMMISSIONER ASSELSTINE: Yes. In fact, if you
25 look at who got the Keaton report, it goes to Dieckamp and
it goes to Kuhns.

1 CHAIRMAN PALLADINO: Well, there are certain
2 assumptions made in every one of these. This is a very short-
3 hand list, but I think it can be helpful in seeing where
4 we want to focus.

5 COMMISSIONER ASSELSTINE: Yes.

6 CHAIRMAN PALLADINO: He has an option called
7 Help.

8 (Laughter.)

9 CHAIRMAN PALLADINO: The Commission issues order
10 which describes the impasse over the management issue (and
11 the likely schedule to resolve that impasse if the present
12 approach is followed to conclusion) and asks whether parties
13 believe some other approach is preferable; then licensee
14 possibly makes a proposal; and if proposal is acceptable,
15 Commission adopts that approach to a restart decision.

16 A sub-option, include in the order Jack Zerbe's
17 idea of requesting comment onwhether to give investigative
18 lead on some or all matters to the Board, but I wouldn't
19 throw that in for the moment.

20 COMMISSIONER ASSELSTINE: No.

21 MR. ZERBE: I don't know why that is in there.

22 CHAIRMAN PALLADINO: I said I wouldn't throw
23 that in.

24 COMMISSIONER ASSELSTINE: Jack is withdrawing
25 it.

1 (Laughter.)

2 MR. ZERBE: It is a different subject.

3 CHAIRMAN PALLADINO: Jack didn't put this
4 together. This was Bill Reamer trying to help me see where
5 the options are and I am providing it because I thought it
6 might be helpful to all of us. Incidentally we were going
7 start with this and then go to the ALAB, but it seemed
8 like ALAB came along and we wanted to do it.

9 Another option task force. Commission creates
10 special group within the NRC staff to do what it takes..
11 to develop a staff position on the management issue; this
12 task force has power to make an inquiry into all matters
13 under investigation by OI, for limited purpose of developing
14 all the facts as they relate to TMI-1 report. Ultimate
15 responsibility to conduct full investigation and to follow
16 up on wrong-doing suspicions remains with OI; task force
17 develops the staff's management competence/integrity position
18 which is basis for Commission's immediate effectiveness
19 decision as well as further hearings before Board;
20 Commission makes immediate effectiveness decision on the
21 basis of staff position before hearings are completed.

22 Now I don't know what initial comments or
23 reactions you have to these various approaches. I would
24 like to see something other than the present approach
25 because I think we have been at this so long that we are

1 going to run through several more Commissions if we go out
2 to '85. We are losing both the background and some con-
3 tinuity of thinking that has gone on since the accident.

4 COMMISSIONER GILINSKY: It seems to me that these
5 various options are not mutually exclusive.

6 CHAIRMAN PALLADINO: No, they are not.

7 COMMISSIONER ASSELSTINE: That is right.

8 COMMISSIONER GILINSKY: You could simply say that
9 this is the track we are on with the present approach and
10 there are some alternatives if GPU would make changes of
11 one kind or another that would simplify things. That
12 basically gets you into 2 and some version of 3 and 4 is
13 just a ---

14 CHAIRMAN PALLADINO: Two and three are the
15 ones that I am focusing on.

16 COMMISSIONER GILINSKY: But in any case, the
17 alternative to some change is that we continue on one.

18 COMMISSIONER ROBERTS: What was that, Victor?

19 COMMISSIONER GILINSKY: Well, the alternative
20 to some change which we ourselves I don't think can effect,
21 or we at least can't do it all ourselves, would be simply
22 that we continue on the course we are on. I think making
23 that clear would probably produce some changes.

24 COMMISSIONER BERNTHAL: I agree. I think the
25 way I read this, No. 4 is the one that might present some

1 new thoughts and perhaps a rapid solution that does not in
2 the end present the Commission with this dilemma at least
3 as I see it that I sort of opaquely referred to in the public
4 meeting of just how deeply we should get into managing a
5 utility.

6 Five may expedite the path that we are on right
7 now. It might expedite No. 1, but you will still be
8 confronted I think with 2 or 3 at some point.

9 COMMISSIONER GILINSKY: That is why I think it
10 is so important just to lay out the present course, and
11 whether in fact that ends up being what happens or not, it
12 is barring some change ---

13 CHAIRMAN PALLADINO: I have no objection to laying
14 out what the present course is. We have been focusing
15 on changing all along.

16 COMMISSIONER GILINSKY: So we will make it a
17 loose-leaf notebook or something., and just say the
18 consequence of everyone hanging fast to where they are
19 is that we are proceeding down this course which is pretty
20 slow.

21 Now you can stop there or you can go further
22 and say that you think some changes would be advisable or
23 would present us with a different proposition. I think
24 I would do that. But in any case, I think the most
25 important thing is to lay out what the prospects are, and

1 I think that will produce some changes in the Board and
2 elsewhere.

3 CHAIRMAN PALLADINO: It sure in the hell would.
4 Excuse me French.

5 (Laughter.)

6 COMMISSIONER BERNTHAL: It is all right. It is
7 a closed meeting.

8 COMMISSIONER GILINSKY: I don't think we can
9 say go to Duke Power and sign a contract and do this and
10 do that, but we can say to continue as we are means that
11 we are going to be moving very, very slowly for a long
12 time. I think that is the case. I mean no matter how
13 we address things, we will improve it a little bit and make
14 it a little bit more sensible, but still that is the
15 situation. The bit question mark is will the results of
16 these investigations and so on develop information that
17 will in effect force a reopening of a hearing. Then kind
18 of all bets are off at that point.

19 COMMISSIONER BERNTHAL: I would just agree I
20 guess with the procedural difficulty that Victor points
21 out. We may all end up at very different conclusions on
22 what the Commission's role should be on these management
23 issues. but if we continue along a path, and it looks to
24 me like we are, where the half life of the procedure is
25 longer than the half life of the Commission, we are just

1 inviting ourselves into another situation of something that
2 never ends it seems to me and we ought to look very care-
3 fully at where we are headed and try and figure out a way
4 to expedite it, it seems to me, and let the chips fall where
5 they do and the Commission can make up its mind then on this
6 question of management and what to do on it.

7 COMMISSIONER ASSELSTINE: Except I do think
8 that Victor's point is correct, that to a large extent
9 the present approach is driven by what we have before us.
10 The present approach is dictated by the utility's desire
11 to continue with its present management and personnel

12 CHAIRMAN PALLADINO: They did make a proposal.

13 COMMISSIONER ASSELSTINE: They did make a proposal,
14 that is right, which would be some version of a partial
15 quarantine, but I think if we make it clear that if the
16 approach continues as it is now, which is to use the
17 same management and people, then this is the course we
18 are on and here is when it might lead to some kind of
19 a resolution. It really is up to them and to the other
20 parties to propose some kind of an alternative formulation
21 that might result in a more expedited approach.

22 CHAIRMAN PALLADINO: Jim, could you refresh my
23 memory. Did we reject their proposal? I don't think
24 we ever formally rejected it. We have such a proposal
25 before us.

1 COMMISSIONER ASSELSTINE: I guess that is what
2 I remember.

3 MR. MONTGOMERY: As I recall, you objected
4 to the staff's proposal and not the GPU proposal.

5 COMMISSIONER ASSELSTINE: That is right, we
6 rejected the staff's proposal, to my knowledge.

7 CHAIRMAN PALLADINO: We never commented on the
8 GPU proposal. So we have such a proposal before us and
9 maybe one of the things we need to do is act on it.

10 COMMISSIONER ASSELSTINE: Yes.

11 CHAIRMAN PALLADINO: We may, if we followed No.
12 4 say we do have that proposal before us and we don't feel
13 it is complete or as gratifying as we want at this time
14 and we would encourage further development of that proposal.
15 That may be one way to handle that.

16 COMMISSIONER GILINSKY: There are some new
17 realities here. When we were looking at this earlier the
18 staff was straining to say yes. I mean they just don't
19 want to be the ones who are saying ---

20 CHAIRMAN PALLADINO: They don't want to be up
21 front.

22 COMMISSIONER GILINSKY: They don't want to be
23 out in front on this one and they don't want to take the
24 responsibility. It was just very different before, and that
25 is why earlier you could talk about removing one little

1 stumbling block or one person or another and now it is
2 just pretty clear they aren't comfortable with it and all
3 of the sudden you have 262 documents to look at. So that
4 is definitely a new situation I think.

5 CHAIRMAN PALLADINO: Let me see if I can
6 make a proposal building on Fred's and yours and Jim's
7 and other comments, that we try a version of No. 4 that
8 say we have gotten to this impasse and here is what it
9 looks like if we continue on the way we are going and
10 that we really feel that if a reasonably prompt decision --
11 prompt is not the right word -- but one in the near future
12 has come about that it is going to take some different
13 action from just following that and we are looing for
14 other approaches. We did have the one from GPU and while
15 we found it interesting, we didn't think it went far
16 enough, and then ask for other proposals.

17 COMMISSIONER ASSELSTINE: I would say if you
18 wanted to go beyond that, too, and even list say 2 and
19 3 as possibly options, that that would be acceptable to
20 me.

21 CHAIRMAN PALLADINO: I don't know when the
22 lawyers think it through whether or not that gives them
23 any problem, the second part.

24 COMMISSIONER BERNTHAL: I have difficulty with
25 that as a policy matter at least in just making a quick

1 gut judgment. I think we need to discuss that because
2 it seems to me it is a major policy issue whether we begin
3 to get into that kind of scrutiny and recommendation,
4 detailed recommendation on management.

5 It seems to me what Joe is proposing here, and
6 in fact if it is consistent with Victor's earlier comments
7 and desire that we lay out a fairly firm timetable, in
8 a sense you have made kind of a decision then. You have
9 listed the time line for the utility to make a decision.
10 This is the way it is going to be and it is going to take
11 this many years, I am afraid, if we continue the way we
12 are right now. You need to be cognizant of that and make
13 a decision.

14 CHAIRMAN PALLADINO: I accept your comments.
15 Going back to what I was thinking of and referring to the
16 proposal they did make, I believe we ought to be a little
17 more constructive and we ought to at least raise some
18 questions about that if we are going to refer to it, but
19 maybe while OGC and OPE are preparing a possible approach
20 to this, we could take a look at that and come up with
21 some specific questions because if you say well, it wouldn't
22 go far enough, they don't know what that means.

23 That would be one approach and I would suggest
24 that we try to get OGC and OPE to do that. The question
25 is in what time frame. Now the reason I raise that question

1 is because my time frame for immediate action is tomorrow
2 at 12:30, in 24 hours. That may be too tight a requirement
3 for them. Another time frame is when I got back, but there
4 is a whole time frame in between and it may be something
5 that ---

6 COMMISSIONER GILINSKY: Well, it seems to me
7 that we could deal with something like this.

8 CHAIRMAN PALLADINO: I think I would like to
9 explain the impasse and do we need some other proposals
10 if we are going to deal with this question. Now the
11 only problem with saying that is if GPU's answer is we
12 gave you a proposal and you never acted on it, and I was
13 saying well, let's refer to that and give them some
14 guidance based on that. Then that document could go out.

22 COMMISSIONER GILINSKY: I mean you can even
23 put on here tentative and not endorsed by the Commission,
24 I mean all that kind of stuff, and this is the way it
25 looks to them.

CHAIRMAN PALLADINO: Yes. I would just say

1 tentative projections of completion dates for major
2 issues.

3 Now would you go along with having OGC and
4 OPE try to develop an approach such as Item 4, recognizing
5 that we already have the GPU proposal?

6 COMMISSIONER ASSELSTINE: Yes. That would be
7 fine with me. I think if you want to go beyond to make
8 comments on the GPU proposal, I guess the principal
9 comment that I have is that I think to be a workable
10 approach you really have to separate out all of the
11 people that are implicated by all of the investigations
12 that are now going on. I guess my big concern is how
13 feasible is it to do that with a partial quarantine, because
14 I think these things are just pervasive. They go everywhere
15 in the organization.

16 CHAIRMAN PALLADINO: I started out a different
17 way. I started out in saying let me try assumptions, and
18 my first assumption was let's assume that Dieckamp is
19 clean and everybody above him is clean and then what do
20 we do? If I took that assumption, I had to make another
21 one, and that is that the TMI-1 leak rate investigation
22 is not going to identify falsification by people who
23 are not on the staff.

24 I thought that was not an unreasonable assump-
25 tion because we are talking about 30 questionable ones

1 out of 1200, and if they wanted to cheat they could have
2 cheated over a longer range. I am just justifying my
3 assumption is not implausible and that it is not impossible
4 if you are making leak rate tests that goes over a period
5 time that somebody goes over and sees a tank that is low
6 and says oh, I had better bump this water level up and even
7 though it might show on the computer the guy that is doing
8 the test might not look at it. I just think it is not
9 implausible. I am not saying it is plausible, but that is
10 one of the partials.

11 I think in the GPU proposal Ross was an open
12 question and I would say don't make that an open question,
13 and until Ross is proved otherwise, he is quarantined.

14 What I was getting at is try to get something
15 written that explains our impasse, include something like
16 this and ask for a proposal. Then I think you almost have
17 to refer or say something about the GPU proposal. I would
18 say if something comes to where it is so definitive that
19 all four of your agree while I am gone, I would say go
20 ahead. If you want to wait until I come back, well, that
21 is an option. But I do think we need to say something,
22 and we need to say something reasonably soon.

23 COMMISSIONER ASSELSTINE: I agree with that.

24 CHAIRMAN PALLADINO: I don't think it is something
25 that we should demand by 12:30 tomorrow.

COMMISSIONER GILINSKY: Let me say I think I

1 would go with a piece of paper like this and simply say
2 that the Commission is going to speak to this further and
3 wait with that until you come back.

4 CHAIRMAN PALLADINO: If we are going to try
5 to get a decision before all these items are completed, we
6 need some alternate proposals and we welcome them from
7 anybody, but we particularly need them from the licensee.

8 MR. PLAINE: Mr. Chairman, do you visualize
9 this as building on the proposal that GPU put in and that
10 we are in effect drafting a reply to that which says to
11 them please give us a little stronger proposal because?

12 CHAIRMAN PALLADINO: Well, I started out picking
13 up on Fred Bernthal's suggestion that No. 4 is a good way
14 to go and ask for a proposal. Then I remember we had that
15 proposal and I said you can't really ask for a new proposal
16 when you have already got one unless you speak to the
17 one you have. So I would suggest that we ought to speak
18 to it one way or another.

19 COMMISSIONER BERNTHAL: Let me just make a
20 comment. I must say I do have some problems. If the
21 time line is worded in such a way that it is stacked knee
22 deep with qualifiers that we have not really realistically
23 laid out for them exactly what the timetable is likely to
24 be, and I think we all have a pretty good sense for that
25 and I don't think it is fair for the utility, and it is

1 not fair to the Commission at some level to waffle on that
2 issue. In one sense we have tossed the money on their back
3 then and avoided our responsibility if we don't come
4 forward with something that is pretty firm, it seems
5 to me.

6 COMMISSIONER GILINSKY: All the estimates have
7 gone up by a very, very large factor in the last several
8 months, and they have gone back and forth over the past
9 several years. You can just give them the best sense
10 of what you have and it depends on a lot of things.

11 I think one thing you can say is it can only
12 longer than what you have.

13 COMMISSIONER BERNTHAL: That is frankly my
14 concern. I am concerned that we give them a timetable
15 that is unrealistically short, if anything.

16 COMMISSIONER GILINSKY: Well, I think the
17 qualifiers, depending on how these things turn out, you
18 may be on the dotted line. Now if it turns out great for
19 them, they won't be on the dotted line. I am a little
20 skeptical from the way Ben was talking whether he can
21 meet an April 1 deadline. But anyway, let's suppose you
22 accept that or maybe it is just missed by a couple of
23 months or something like that. The real question is what
24 kind of years question, and is that then going to force
25 reopening of a hearing.

1 Now I think when a Commission has been sitting
2 around on a case for four years which involves management
3 integrity and it says that at this point it can't decide
4 that question for another year or maybe even two, that
5 speaks volumes about what the Commission thinks. You know,
6 you ought to get this stuff up to the line at that point
7 and just say the fact of the matter is we are pretty uncom-
8 fortable with this crowd, or otherwise you just go in
9 there and you vote yes.

10 CHAIRMAN PALLADINO: If you get down to the
11 meat of that ---

12 COMMISSIONER GILINSKY: You can do that.

13 (Laughter.)

14 CHAIRMAN PALLADINO: My inclination would be
15 to consider seriously a modified version of the GPU plan,
16 and by modified I would have to have some clarity on what
17 Arnold's position is, it wasn't clear, and I would say
18 since Ross is in question, let's take Ross out. That would
19 be one approach.

20 I wanted to understand Fred's question a little
21 bit more. You said we are shirking our responsibility by
22 not proposing something?

23 COMMISSIONER BERNTHAL: Well, there are a couple
24 of questions. One is what we owe to the utility in terms
25 of being straightforward about what our sense is. We may

1 not have anything approaching a consensus on what our
2 opinion is on the question of management integrity and is
3 this going to drag on and on and are we continually going
4 to find reasons to defer a decision on this to the point
5 where you are hitting them with a glove fist really and
6 not with the straight story in saying in effect that this
7 just isn't going to work and there has got to be some major
8 change. That is what worries me, for example, about
9 qualifiers that give the impression that it could go either
10 way, and a timetable, it would worry me about another
11 modification of the GPU plan.

12 It also, once again, allows us to avoid the
13 policy decision of do we really want to get into management
14 questions in detail.

15 COMMISSIONER GILINSKY: Well, it is not in
16 detail. It is the very opposite of detail. You are really
17 dealing with the overall issue, because going about and
18 asking about this or that person, whether Ross lied and
19 was he in fact working at TMI and all that sort of stuff,
20 that is getting into detail.

21 COMMISSIONER BERNTHAL: Yes, that is what I am
22 saying.

23 COMMISSIONER GILINSKY: Well, maybe we agree and
24 maybe we are separated by our agreement.

25 (Laughter.)

1 COMMISSIONER GILINSKY: The reason that I think
2 it is a good idea, assuming the Commission sees some merit
3 in it, in at least suggesting the possibility of some
4 alternatives is that they don't know from their part
5 whether it is worth getting into any of these other possi-
6 bilities and now they are just going to get up some other
7 blind alley. Is the Commission then saying they go off
8 and they will contract with somebody and they will come back
9 in and the Commission will say no, we didn't have that in
10 mind at all.

11 If we indeed think that is a simpler route, and
12 I do, then I think you have to indicate you are willing to
13 entertain it at any rate or some other possibilities,
14 whatever other changes you think are possibilities. Because
15 otherwise they will come in or they will butcher their
16 organization or something and come in and you tell them
17 no, you really have to get something else.

18 CHAIRMAN PALLADINO: Well, all that we can do
19 is respond to proposals. I am sure they say that is our
20 starting point and now what didn't you like about it, and
21 I have a feeling we have to tell them what we didn't like
22 about it.

23 COMMISSIONER GILINSKY: We probably don't see
24 eye to eye down the line on this one, but my own feeling
25 is that we have kind of gone past these proposals when you

1 talking about particular persons in or out and so on.

2 CHAIRMAN PALLADINO: We are talking about
3 principals.

4 COMMISSIONER GILINSKY: I think the staff has
5 gotten past that point. That is what I sense. They really
6 are uncomfortable. A lot of things have come out and they
7 had assumed that -- well, I guess things have come out
8 which seemed to have surprised them. Harold was surprised
9 at various reports that were shown to him, and so on and
10 so forth, after they had gone down the line for three years
11 and testified in favor of restart and stood there arm in
12 arm with GPU in the hearing and I think at this point they
13 really don't want to be doing that any more and I don't
14 think we are going to get favorable statements from the
15 staff.

16 CHAIRMAN PALLADINO: What do you propose we
17 do?

18 COMMISSIONER GILINSKY: Well, I think the most
19 powerful thing we can do which is pretty simply and that
20 is to put out a schedule.

21 CHAIRMAN PALLADINO: But I think without some
22 words, I don't think we are doing any of the parties
23 a service.

24 COMMISSIONER GILINSKY: Well, the words that
25 I would use in here would be to say that the major question

1 in the schedule was whether when you get to the middle of
2 '84 you feel you have got to open a hearing or not. If you
3 don't, you are going to decide some time, and you may be
4 a few months off, but decisions will be in this middle
5 period. Well, I don't know. But if the results of the
6 investigations are that things look markedly worse, then
7 it is going to be longer. You are beyond the dotted line,
8 and I don't know that you can say an awful lot more than
9 that.

10 MR. ZERBE: If you think there is some
11 possibility of significantly shortening that situation
12 though, you would want to have some words to that effect
13 that you were ---

14 COMMISSIONER GILINSKY: The only possibility
15 is if the Commission would choose to approve the plan for
16 say the completion of the investigations or whatever. The
17 Commission can certainly do it. It would surprise me, but
18 the Commission is certainly free to do that.

19 COMMISSIONER BERNTHAL: I can't believe that
20 anybody here really believes that it will be short.

21 COMMISSIONER ROBERTS: That what will be short?

22 COMMISSIONER BERNTHAL: That the process will
23 be shortened.

24 CHAIRMAN PALLADINO: Then we would take some
25 other action.

1 COMMISSIONER ASSELSTINE: I think at best about
2 all you can say is that under the best of all possible
3 conditions if there isn't a need to reopen the hearing, a
4 decision might be reached sometime about the middle of next
5 year.

6 COMMISSIONER BERNTHAL: That is why I am saying
7 is it unfair to the utility to even give that impression
8 at any level.

9 COMMISSIONER ASSELSTINE: Of if you do, just make
10 it clear that if it isn't under the best of all possible
11 conditions you have to expect the potential for lengthy
12 delays beyond that.

13 COMMISSIONER GILINSKY: But I think this chart
14 does that.

15 CHAIRMAN PALLADINO: Even in my proposal this
16 chart was going out.

17 COMMISSIONER GILINSKY: I guess I am concerned
18 that I don't think we will put something out when you are
19 not here, and I am concerned that as a practical matter
20 it puts us into the middle of November. You know, if you
21 are really going to go into the question of what they might
22 do and the kinds of hints and signals you are sending, we
23 are going to want to be very careful how we write that and
24 we will be wringing our hands here and massaging the piece
25 of paper for some time.

26 CHAIRMAN PALLADINO: You may have one alternative
27 that is general and one that tries to deal with it. I
28 think we need to deal with the GPU proposal.

1 COMMISSIONER GILINSKY: What I am saying is we can
2 still do that, but at least let's get this off our back,
3 so to speak. That will set them thinking and we can take a
4 little longer.

5 CHAIRMAN PALLADINO: What sort of words would
6 you put with this?

7 COMMISSIONER GILINSKY: I frankly think it doesn't
8 need anything because it says additional potential hearings,
9 and it does have a dotted line.

10 CHAIRMAN PALLADINO: Yes, I think it should have
11 some words.

12 COMMISSIONER GILINSKY: What I would say is that
13 if these investigations don't require any further action and
14 a decision somewhere in the middle of '84 or thereafter is a
15 possibility, and if it does, it is going to be out here at
16 the end of the page. I don't think it is more than a
17 paragraph. You could type it right on here.

18 CHAIRMAN PALLADINO: I would rather have a little
19 cover letter, memo or letter. Shall we try to get OGC and
20 OPE to put something together by tomorrow that would permit
21 us to transmit this?

22 MR. PLAINE: I assume now we are not writing a
23 paper. You are just going to issue this sort of informally.

24 CHAIRMAN PALLADINO: Within the context of the
25 statement.

 COMMISSIONER GILINSKY: With a couple of sentences.

 MR. PLAIN: Is that what you want?

 COMMISSIONER BERNTHAL: I think we have basic

1 consensus here at least on the next step. My concern,
2 and I guess I am groping here myself for what we ought to
3 do, but somehow I feel that we owe it to the parties
4 involved to make clear, one, that the time table can be
5 long in this process and, secondly, if we are prepared to
6 say this that in fact the management issue could keep you
7 shut down. I just think that those are messages that they
8 deserve to hear however this Commission feels about the
9 issue and might vote on the issue.

10 COMMISSIONER GILINSKY: Well, I think the latter
11 part comes through if you look at the chart.

12 (Laughter.)

13 COMMISSIONER GILINSKY: That is the part that ---

14 COMMISSIONER ASSELSTINE: --- where the dotted
15 lines keep going.

16 CHAIRMAN PALLADINO: Can we agree that you will
17 try to prepare the context in the statement and see if you
18 can't circulate it so that we get agreement.

19 COMMISSIONER ASSELSTINE: I was just going to
20 say that if you wanted to even go beyond that you can
21 notify people or put them on notice that we may go farther
22 than that, that the Commission is prepared to consider
23 alternatives, alternative management approaches that might
24 reduce the time period and that the Commission would
25 provide additional guidance on that in the future, if you
26 want to at least leave open the door rather than ---

27 CHAIRMAN PALLADINO: I like that additional
28 point.

1 MR. PLAINE: YOU mean as a footnote to this?

2 COMMISSIONER ASSELSTINE: As part of the
3 explanation.

4 CHAIRMAN PALLADINO: No, no. I think it takes
5 a cover memo that says that ---

6 MR. PLAINE: Well, I would appreciate if you
7 would restate what you think this cover memo should be
8 because we have been hearing a lot of cross things and I am
9 not quite clear. Do you mind taking a minute and telling
us?

10 CHAIRMAN PALLADINO: That we appear to be on a
11 course that would result in a schedule such as attached
12 in the enclosed document or on the attachment, that we
13 believe that the parties should be aware of this and we
14 would be looking for possible ways of reaching a decision
15 prior to the completion of all of the items on here and
16 we will be back with some guidance on how we might achieve
that.

17 COMMISSIONER GILINSKY: Jim said it a little
18 differently. It gets a little tricky when you say you
19 are going to shorten it because some people are immediately
20 going to be rushing in here or going to the courts or something.

21 CHAIRMAN PALLADINO: I was trying to pick up
22 Jim's words and I couldn't remember them, not specifically.

23 COMMISSIONER GILINSKY: The way he said it it
24 sounded fine to me, but if there is any question about
agreeing on those, I think I would just prefer to ---

25 CHAIRMAN PALLADINO: Oh, I think we all want to

1 agree.

2 Jim, if you could spend a little bit of time
3 maybe could you help and work with Herzel.

4 COMMISSIONER ASSELSTINE: Sure

5 MR. PLAINE: All right.

6 CHAIRMAN PALLADINO: I would suggest that we
7 try to get that out while I am still here.

8 COMMISSIONER ASSELSTINE: Yes.

9 CHAIRMAN PALLADINO: Then I would suggest also
10 that while on a travel status it might be a good idea to
11 look at that GPU proposal and see what comments you might
12 have on it and also what you might see as a way of proceeding
13 beyond this first step.

14 MR. LEVI: Let me ask one additional question
15 on publishing the schedule. Under hardware issues it
16 mentions a hearing requirement on
17 This issue is before the Commission for review. Do you
18 want to tell the parties there is a possibility of a hearing?

19 MR. MONTGOMERY: It is under the ALAB 729 review
20 line towards the bottom.

21 MR. ZERBE: It is just a comment on here that
22 perhaps should be left off, or that whole dotted section.

23 MR. LEVI: Since you are mainly concerned with
24 management, do you want to include hardware?

25 CHAIRMAN PALLADINO: Well, I think they should
26 know if that if there is a hearing required before restart
27 on the steam generator, it extends the time frame. That
28 is one issue.

1 COMMISSIONER ASSELSTINE: Under
2 just say if hearing required.

3 MR. LEVI: Fine.

4 CHAIRMAN PALLADINO: What are we to do on 729?
5 Are we to make a decision?

6 MR. ZERBE: Yes, you have a paper before you now,
7 October 3rd.

8 CHAIRMAN PALLADINO: Now let's say if we
9 develop anything and it can wait until I get back, I would
10 appreciate it. If there is something that requires action,
11 I am reachable by phone and I would also appreciate your
12 working with my staff.

13 MR. PLAINE: But this you want out before you
14 leave.

15 CHAIRMAN PALLADINO: I would like to try to.

16 MR. PLAINE: All right.

17 CHAIRMAN PALLADINO: All right. Thank you
18 very much.

19 We will stand adjourned.

20 (Whereupon, at 12:38 p.m., the meeting adjourned.)

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CERTIFICATE OF PROCEEDINGS

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

In the matter of: Status and Options regarding Adjudicatory
Matters

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