

ORIGINAL

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the matter of:

DISCUSSION OF FUTURE STEPS
IN TMI-1 RESTART

Docket No.

CLOSED MEETING

Location: Washington, D. C.

Pages: 1 - 96

Date: Monday, January 16, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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DISCUSSION OF FUTURE STEPS IN TMI-1 RESTART

- - -

CLOSED MEETING

EXEMPTIONS 5 AND 10

- - -

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

Monday, January 16, 1984

The Commission met, pursuant to notice, at

2:05 p.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:

SAM CHILK
JOHN ZERBE
JOHN MONTGOMERY
RICK LEVY
MARTIN MALSCH

AUDIENCE SPEAKER:

NORMAN HALLER

P R O C E E D I N G S

1
2 CHAIRMAN PALLADINO: Good afternoon, ladies and
3 gentlemen.

4 The purpose of this meeting is for the Commission
5 to discuss possible future steps in the TMI-1 proceeding.

6 By way of background, on October 7, 1983, we
7 notified the parties to the TMI-1 restart proceeding of a
8 schedule for a restart decision that would have called for
9 the completion of all investigations that could affect
10 TMI-1 before a restart decision.

11 We also indicated our willingness to consider
12 alternative approaches on management integrity issues.

13 We had two public meetings in late November and
14 early December to consider an alternative proposed by the
15 licensee, GPU Nuclear. On January 3, 1984, we received
16 written comments from the NRC staff. These comments were
17 served on the other parties along with a request for comment.

18 On January 12, I proposed an approach leading to a
19 possible vote on issues related to TMI-1, and I will be
20 interested in Commissioner comments on this proposal.

21 To help put my proposal in context, I thought it
22 would be useful to set forth a list of questions on which
23 we ought to get Commissioner views. Although I did not
24 develop a first cut to this list of questions until last
25 evening and only completed the final version about a half hour

1 ago, I distributed copies to Commissioners as soon as they
2 were available and I know you got them late.

3 I believe we should go through the list and try
4 to determine where each individual Commissioner stands on
5 each of these points.

6 Unless the Commissioners have other suggestions, I
7 propose we proceed in this direction. I would like to try to
8 determine by the end of the meeting whether or not there is
9 an agreement on the approach to a restart decision. At the
10 close of the meeting, we owe it to the parties, I believe,
11 to advise them as to where we stand on the restart matter.

12 Do Commissioners have any comments at this time?
13 If not, I believe we should address the proposed list of
14 questions.

15 COMMISSIONER GILINSKY: I do have a question. I
16 would like the Secretary to compile the number of hours
17 spent by the Commission on this proceeding since the
18 beginning.

19 CHAIRMAN PALLADINO: That would be very interesting.

20 But now, what I would like to do is see if we
21 could focus --

22 (Simultaneous conversation)

23 COMMISSIONER GILINSKY: The Commission in meetings.

24 CHAIRMAN PALLADINO: In meetings. Well, I am
25 trying to focus on questions that I thought we really need

1 to address, and the first one seemed to me central. Should
2 we await completion or settlement of the criminal trial
3 against Met Ed before we decide whether or not to lift
4 the immediate effectiveness shutdown order on TMI-1.

5 Then I have some sub sets. If yes, should we also
6 await completion of OI's follow-up investigation of the
7 Hartman matter and, if yes, should we also await, NRC, the
8 review of the record of the criminal case against Met Ed --
9 transcripts, exhibits, depositions, et cetera.

10 If we say "yes" to the first one, there are very
11 few other questions later on that need to be addressed, although
12 I think there would be interest in possibly addressing some
13 of independent questions, such as whether Kuhns and
14 Dieckamp should be kept on or whether they should be
15 required to not get involved in TMI-1.

16 So, I thought it might be worth discussion
17 Question No. 1 and seeing if we have Commission -- what
18 individual Commissioner's views are on that question.

19 Now, if the Commission decides not to wait for the
20 Met Ed trial to be completed, as outlined, should we
21 consider a proposal such as the one I made on 1-12; should
22 we consider what we do with the list of issues.

23 Then I have somewhat of an independent set of
24 other actions as part of our Commission action on lifting
25 the immediate effectiveness shutdown order on TMI-1. No. 3

1 says, should we (A) await the completion of the investigation
2 of the following items, and lists them.

3 Under 3 (B) I want to call your attention to the
4 fact that Commission action on ALAB-729 is urgently needed
5 because if we are going to take review, we are going to have
6 to start action pretty soon.

7 Then, under 3(C) I raise the question that
8 Commissioner Gilinsky has spoken on, do we have any other
9 actions that we want to take.

10 So, the first question, should we await the
11 completion of settlement of the criminal trial against Met Ed
12 is one on which views would be useful. I can express my
13 own view if it helps us get started.

14 I think the Met Ed trial is centered primarily on
15 TMI-2 and I don't think it is necessary to await completion
16 of the trial or settlement before proceeding with a possible
17 TMI-1 restart decision. So, on the first one, I would
18 vote "no, we need not."

19 COMMISSIONER ROBERT: share that view, I would
20 vote "no."

21 COMMISSIONER BERNTHAL: Are we going to have any
22 discussion on this?

23 CHAIRMAN PALLADINO: Yes, I am open to discussion.

24 (Laughter)

25 CHAIRMAN PALLADINO: I am trying to stimulate

1 discussion, really.

2 COMMISSIONER ASSELSTINE: We are waiting to see
3 if it was worthwhile.

4 COMMISSIONER GILINSKY: It depends on the conditions.
5 (Laughter)

6 COMMISSIONER GILINSKY: You know, you got at the
7 end -- just to mention one point -- in 3(C) you have referred
8 to the items that I raised in connection with Mr. Kuhns and
9 Mr. Dieckamp, whether they should continue in responsible
10 positions in the company.

11 That would certainly affect -- that is just one
12 aspect of the kinds of matters that would affect my thinking
13 on 1(A).

14 CHAIRMAN PALLADINO: You want to go to that one?

15 COMMISSIONER GILINSKY: In other words, I don't
16 think you can just ask the question in the abstract. There
17 is also something else. As I recall, the Department of
18 Justice wrote us saying that "We expect some pretty important
19 things to come out of this trial."

20 COMMISSIONER ASSELSTINE: That's right.

21 COMMISSIONER GILINSKY: "And we think that will be
22 of importance to your own decisions." I don't remember the
23 exact words but I think that was the sense of the letter. In
24 fact, I think they basically said that.

25 COMMISSIONER ASSELSTINE: Yes. In fact, I recall

1 Herzel saying to me after one of his meetings with the
2 Justice Department that they were amazed that the Commission
3 was even considering restart until after the material that
4 they had compiled in grand jury investigation was available
5 to us.

6 COMMISSIONER BERNTHAL: Let me ask that question,
7 since it has been on my mind for some time, and I'm sure
8 my request or suggestion is impossible for legal reasons but
9 I'll ask it anyway.

10 I have wondered whether it is impossible, necessari-
11 ly, under any circumstance for the Commission to review at
12 this time the transcript of the grand jury proceeding. Now,
13 I understand that if you review it, then you clearly are
14 enjoined against using that as a basis for your decision in
15 any public manner as we would have to, in fact, after having
16 seen the transcript.

17 The value of seeing the transcript would only be --
18 it would be a gamble if you reassured yourselves that there
19 is significant information and significant issues are
20 being raised there relevant to our proceedings. At least
21 then we would -- our path of simply not taking up the issue
22 at this time would be clear, it seems to me.

23 But could general counsel comment on that a little
24 bit? What would our options be?

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CHAIRMAN PALLADINO: You said you would like to discuss Item (C) on page 2.

1 COMMISSIONER GILINSKY: Well, I was just drawing
2 your attention to the fact that they are related. In other
3 words, that you can't in my view look at 1(A) in the abstract
4 unless you say what the conditions are for going ahead. As
5 I said in the memo last Friday, I guess, that here we have a
6 company which is on trial on criminal charges with people
7 who were in charge of it then are in charge of the plant that
8 you want to start up.

9 I just don't think that's an acceptable state of
10 affairs.

11 COMMISSIONER BERNTHAL:
12 _____
13 _____
14 _____

15 And that is
16 whether the fact that there is an indictment out is sufficient
17 reason for us by itself to make a judgment that we should
18 not proceed in view of that indictment out against the
19 Licensee.

20 COMMISSIONER GILINSKY: Well, I would say at
21 least with those same people in charge of the company --

22 COMMISSIONER BERNTHAL: I don't understand why
23 those relate --

24 COMMISSIONER ROBERTS: (Inaudible)

25 COMMISSIONER BERNTHAL: -- because the indictment
is against the company. Suppose those two individuals are

1 removed, I don't see that that changes the question.

2 CHAIRMAN PALLADINO: Well, except that the company --

3 COMMISSIONER GILINSKY: Well, it changes it in my
4 mind.

5 CHAIRMAN PALLADINO: -- would be different, at
6 least below Dieckamp the company is considerably different
7 from the one that is being charged with falsification.

8 COMMISSIONER BERNTHAL: But then they would have
9 indicted the individuals, wouldn't they?

10 CHAIRMAN PALLADINO: No, they indicted a company
11 that has now been changed. I don't know --

12 COMMISSIONER BERNTHAL: That's precisely my point.

13 COMMISSIONER GILINSKY: Well, that's just simply
14 a stronger view of the same proposition. You know, that's
15 another view.

16 COMMISSIONER BERNTHAL: Well, I am inquiring and
17 you are saying, though, that if those two individuals went,
18 that you would be prepared to ignore the indictment. Is that
19 true?

20 COMMISSIONER GILINSKY: What I am saying is, it
21 would make a big difference to me whether they were there or
22 whether they were not there. In other words, the significance
23 of the indictment is very much enhanced, in my view because
24 of the presence of those individuals because had Justice
25 indicted operators, say -- .

1 CHAIRMAN PALLADINO: Had it indicted what?

2 COMMISSIONER GILINSKY: Had it indicted operators,
3 individual operators and this fellow falsified records on
4 this date, and another fellow falsified them on another
5 date, well, that reflects less badly on the people in charge
6 because after all, there are individuals that commit misdeeds
7 all over the place. It doesn't reflect well on the people
8 running the company, but it is less serious, in my mind,
9 than an indictment of the company as a whole which then
10 reflects very much less well on the leaders.

11 In other words, an indictment against the company
12 as a whole is in my view a very much stronger indictment --
13 and speaking now conversationally rather than legally --
14 of the people in charge of the company. And Kuhns and Dieckamp
15 were in direct, total control of that company.

16 Kuhns was the Chief Executive Officer of every one
17 of those companies, and of course of Met Ed, and Dieckamp
18 was the number two person. That remains the case in the
19 situation we are dealing with here in connection with the
20 TMI-1 restart.

21 Say, you got the very embodiment of that company
22 that was indicted running the operation that you are reviewing.

23 COMMISSIONER BERNTHAL: Oh, I don't disagree with
24 that proposition, necessarily, Victor. But to me, stating
25 the reverse somehow that if those two individuals were

1 removed, that then you would be prepared to -- or at least
2 I gather you would be prepared to --

3 COMMISSIONER GILINSKY: I would be a good deal more
4 receptive, yes, to the proposition; that's true.

5 COMMISSIONER BERNTHAL: But then you are making
6 a judgment on the basis, or at least to some extent, on what
7 you consider to be the basis for the indictment, without
8 ever having seen the transcript of the indictment, that those
9 two individuals are key.

10 COMMISSIONER GILINSKY: Well, first of all, there
11 are a whole lot of other factors here that affect me,
12 quite apart from this indictment. I brought these matters
13 up before there ever was an indictment.

14 I think the indictment adds, you know, tips the
15 scale further. I would say at a minimum you would have to
16 wait, in ignorance of the details, you have to wait to see
17 how the thing is resolved.

18 If they weren't there -- I mean, they are in a
19 sense the last remaining connection with that earlier
20 operation. Most of the working staff, some details aside,
21 have been changed; the middle managers have been changed,
22 a great deal was made of this. But still, the guys in
23 charge, the top people, the ones with direct control --
24 and not just, you know, remote financial control but the guys
25 in direct control of every single one of those companies.

1 CHAIRMAN PALLADINO: Well, they were on the Board
2 of Met Ed.

3 COMMISSIONER GILINSKY: They were not on the Board,
4 they were the Chief Executive Officer and his Chief Assistant.

5 CHAIRMAN PALLADINO: Chief Executive Officer of
6 the parent company.

7 COMMISSIONER GILINSKY: Of every single one of
8 these companies, including Met Ed -- every single one of
9 those companies. That's the difference. That's why it is
10 more difficult to say, "Well, there is this distant holding
11 company up in New York and they just deal with stocks and
12 bonds," or something.

13 I mean, these guys were in direct control and
14 therefore, for myself, I just regard it as an unacceptable
15 proposition. I think the criminal indictment makes it a
16 much more difficult case.

17 COMMISSIONER BERNTHAL: Well, you clearly raised
18 the question of those two individuals as a separate issue.
19 But I fail to see how that would, disposal of that issue
20 even, would help the Commission to address what to me is a
21 key question. And that is whether we should proceed in
22 this matter until the question of the indictment is resolved.

23 COMMISSIONER GILINSKY: Well, you know, every one
24 of us has to decide for himself, and all I can tell you is
25 that the presence of those two individuals in controlling

1 positions is to my mind an important factor.

2 CHAIRMAN PALLADINO: And you consider it an important
3 factor --

4 COMMISSIONER BERNTHAL: I understand that.

5 CHAIRMAN PALLADINO: -- even if the Met Ed trial wasn't
6 in progress?

7 COMMISSIONER GILINSKY: Right. Yes, in all
8 honesty, I brought these issues up before the trial.

9 CHAIRMAN PALLADINO: Sure.

10 COMMISSIONER GILINSKY: What I am saying is that
11 I feel the trial further tips the balance in that direction
12 of not having -- or at least of not going ahead before the
13 outcome of the trial is known, if they are to be in controlling
14 positions.

15 CHAIRMAN PALLADINO: Well, Vic has said his vote
16 on No. 1 would depend on the vote on No. 3(C), and I don't
17 know if the Commission would like to address 3(C) -- I guess
18 we are in a sense already addressing it.

19 Are there other opinions on whether Kuhns and
20 Dieckamp ought to be removed from -- however way we say it,
21 GPU Nuclear Board and any other oversight of TMI-1.

22 COMMISSIONER BERNTHAL: Well, those are related
23 issues and in fact that is something I would like to hear
24 others speak to.

25 CHAIRMAN PALLADINO: Well, actually my problem

1 with Kuhns and Dieckamp is, first of all, there is no
2 allegation against them except by the one that might come
3 out of the Met Ed trial. If one is going to take such a
4 drastic step at this particular point in time, you have to
5 ask, what is the basis for such action.

6 I think one has to have some reasonable specificity
7 in stating such action. And even if we tried to say what
8 the reason is, I would have to turn to OGC and ask whether
9 that's sufficient cause for elimination.

10 COMMISSIONER GILINSKY: Well, it's sufficient cause
11 if it is not contested. I mean, if they argue about it, that's
12 another matter.

13 CHAIRMAN PALLADINO: All right, I guess --

14 COMMISSIONER GILINSKY: I would be very much
15 surprised if they did, if the Commission spoke.

16 CHAIRMAN PALLADINO: I think a decision to get rid
17 of Kuhns and Dieckamp would really be a statement that the
18 Commission doesn't have reasonable assurance of safe operation
19 of the plant so long as Kuhns and Dieckamp are at the top of
20 the organization. I think that's what we are saying, in a
21 sense.

22 COMMISSIONER ASSELSTINE: I guess I tend to look at
23 this, both the criminal trial and how you deal with
24 individuals like Kuhns and Dieckamp, the other way which is,
25 we are being asked to make a decision that short circuits

1 the process that would otherwise apply.

2 And if that's the case --

3 CHAIRMAN PALLADINO: Which process are we short
4 circuiting?

5 COMMISSIONER ASSELSTINE: If you went through the
6 trial; if you then went through all the investigations;
7 if you then decided whether the record had to be re-opened
8 on issues that were identified, the integrity issues, by
9 the investigations, and once the hearing was completed, then
10 we made a decision on restart.

11 What GPU has asked us to do is to short circuit
12 that process, to come up with some kind of a process that
13 would lead to a decision much earlier than that time frame
14 would have taken.

15 And it seems to me if you are going to do that,
16 you have to look at it from the standpoint of, rather than
17 concluding affirmatively that these people have to go with
18 finality, it's rather, what steps have to be taken to
19 isolate or resolve those issues that we know we can't fully
20 resolve at this point.

21 I think there is no way we can resolve the TMI-2
22 leak rate matter right now. We don't know how high up in
23 the organization it will reach. We don't know whether there
24 was senior management involvement in it or not. The same
25 thing is true at this point, I think, of the Keaten Report

1 which does touch directly Kuhns and Dieckamp.

2 So, if you look at it from that standpoint, I think
3 the question is, what can you do to isolate the operation of
4 this facility in a manner that satisfactorily resolves those
5 issues on an interim basis.

6 So, I would say if you decided you were going to
7 remove Kuhns and Dieckamp, for now it would be from the
8 standpoint that that is something that will allow us to
9 say, this matter that is still open doesn't have to be
10 finally resolved in order to allow the plant to restart. I
11 think that's a little different from making an affirmative
12 finding that those two people have to go once and for all,
13 otherwise the plant can't be run safely.

14 CHAIRMAN PALLADINO: Could you repeat what finding
15 you would make?

16 COMMISSIONER ROBERTS: It's a little different, but
17 not much.

18 CHAIRMAN PALLADINO: I'm not quite sure, I'd like
19 to know --

20 COMMISSIONER ASSELSTINE: What I am saying is that
21 there, in my mind at least, there are serious questions
22 raised certainly by -- and I think principally by -- the
23 criminal trial but also to a somewhat lesser degree by the
24 other investigations.

25 The issue in my mind, in the absence of having the

1 information that Justice has that led to the indictment, in
2 the absence of our ability to conduct and complete an
3 investigation of the TMI-2 leak rate falsification issue,
4 how can I reach a conclusion that that situation is acceptable
5 from the standpoint of allowing the plant to restart?

6 That's a little bit different, I think, than
7 reaching an affirmative conclusion one way or the other on
8 the merits, which can only be done after the trial is
9 completed and all the investigations are done.

10 COMMISSIONER GILINSKY: After all, the same
11 principle applies to some of the lesser officials in the
12 company. Your memorandum made a point of commenting on
13 some of those in the training department, I believe.

14 Well, what would you be saying, that the presence
15 of this fellow in the training department is a direct threat
16 to the public health and safety, you think so?

17 CHAIRMAN PALLADINO: No, I said it as to such that
18 I don't trust the -- of these people.

19 COMMISSIONER GILINSKY: I must say, I'm a lot
20 more concerned about having the same chairman and the
21 same president who were in charge of the company when it
22 failed in its responsibilities, have them continue in
23 charge, than someone in the training department, however
24 bad his attitude.

25 CHAIRMAN PALLADINO: Well, I don't think --

1 COMMISSIONER GILINSKY: Their influence on the
2 company with a wink, with a lifted eyebrow, is just so much
3 greater.

4 CHAIRMAN PALLADINO: Well, I think you attach more
5 importance to their influence on the -- than the influence
6 of the people farther down the line. I think they tended
7 to believe they had a good organization and their initial
8 reaction was to support their organization until they found
9 it swamped.

10 COMMISSIONER GILINSKY: They did not carry out
11 their responsibilities.

12 CHAIRMAN PALLADINO: Oh, I think they tried to.
13 They weren't as effective as they --

14 COMMISSIONER GILINSKY: They didn't carry them out
15 before the accident; they didn't carry them out during the
16 accident, and they didn't carry them out after the accident.

17 CHAIRMAN PALLADINO: So, you are saying you want
18 to see them -- I'm not sure, Jim, what you would do. Would
19 you set them aside? Would you say the company can't operate
20 with them?

21 COMMISSIONER ASSELSTINE: My view would be -- I
22 think I even take a little broader view on the criminal
23 trial, maybe perhaps, than Vic does. I would say that the
24 criminal trial in my mind is a very significant one, the
25 indictment. And given the fact that we don't know what

1 information was available to Justice and we simply aren't
2 going to have access to it for a while, I would say that
3 in order for me to reach a conclusion to go ahead without
4 that information, I would want to remove in the interim those
5 people that I think could well be affected by it.

6 I would include Kuhns and Dieckamp on that basis,
7 I think, I would include Ross, and I would also include the
8
9

10 CHAIRMAN PALLADINO: Let's see, there is Kuhns,
11 Dieckamp --

12 COMMISSIONER ASSELSTINE: Ross, and then I would
13 take out

14
15 COMMISSIONER ASSELSTINE: Yes. I would like them
16 to take out but I guess I would -- since he
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23 CHAIRMAN PALLADINO: And so you would condition
24 a vote on number one on such action.

25 COMMISSIONER ASSELSTINE: Yes because it seems

1 to me that those are the people that are likely, or at least
2 have the potential for being brought in under the criminal
3 trial.

4 COMMISSIONER GILINSKY: I don't mean to exclude
5 them. It's just, I focused on Kuhns and Dieckamp because
6 you got them listed here at 3(C).

7 CHAIRMAN PALLADINO: Well, I had others, "please
8 identify."

9 COMMISSIONER GILINSKY: I see, okay. All right.
10 I was just trying to make the point that I didn't feel we
11 could deal with 1(A) just in the abstract --

12 COMMISSIONER ASSELSTINE: Yes, I agree with Vic
13 on that point.

14 COMMISSIONER GILINSKY: -- without dealing with
15 some of the other points.

16 CHAIRMAN PALLADINO: Well, still, we got to
17 decide on 1(A).

18 COMMISSIONER ASSELSTINE: Yes.

19 CHAIRMAN PALLADINO: Whatever our conditions.

20 COMMISSIONER ASSELSTINE: I wouldn't go so far as
21 to say absolutely and unequivocally, there is no way around
22 holding up restart until the completion of the criminal trial.
23 But it seems to me you have to do one of two things.

24 Either you have to insulate operation of TMI-1
25 from those that could be brought under the umbrella of the

1 criminal trial, or the other alternative which apparently
2 isn't a feasible one, is to simply bring in an outside
3 organization with an established record of competence and
4 integrity to run the plant for GPU. But Kuhns said that is
5 not a realistic possibility, and if that's not a possibility
6 then I guess it isn't.

7 COMMISSIONER GILINSKY: Well, he didn't seem to be
8 interested in it.

9 COMMISSIONER ASSELSTINE: Yes. In any event, I
10 guess if they are going to pursue it, they are the ones who
11 would have to come in with a proposal like that.

12 COMMISSIONER GILINSKY: Right.

13 COMMISSIONER ASSELSTINE: But as far as I'm
14 concerned, those are the only two conditions that I can see
15 that would enable me to say, notwithstanding the criminal
16 indictments in this case and the unavailability of that
17 information to us, I would still be prepared to make a
18 restart decision.

19 COMMISSIONER BERNTHAL: So, you think that removal
20 of that list of people that you named is a sufficient
21 condition.

22 COMMISSIONER ASSELSTINE: I think it would do it
23 for me because I think it would eliminate all of those,
24 essentially all of those, that could be touched by the
25 criminal trial.

1 CHAIRMAN PALLADINO: Would it be fair if I put, Jim,
2 to No. 1 a "no" with an asterisk and it says, "Based on
3 eliminating Kuhns, Dieckamp, Ross, _____"

4 COMMISSIONER ASSELSTINE: I think so. I think so,
5 yes. Unless OGC or OPE can think of other individuals that --
6 other than the ones I have hit --

7 MR. MONTGOMERY: I think that pretty well does it,
8 as I understand your action.

9 COMMISSIONER BERNTHAL: Could I hear some comment
10 from counsel on whether there is any legal implication at
11 all in our trying to divine those individuals -- and it may
12 be easier, it may be as simple as simply giving a list of
13 names here -- those individuals that are likely to be
14 touched by the indictment and whether in fact it is
15 possible to isolate personnel in that way. And secondly,
16 whether there is any legal grounds for challenging an action
17 like that on the part of the Commission.

18 Does it matter, in other words, that the company is
19 under indictment and we have not seen the transcript, but we
20 use our own judgment in trying to isolate that indictment
21 from individuals that we think might be touched by the
22 indictment.

23 Is it a non-issue from a legal standpoint?

24 MR. MALSCH: I'm honestly not sure --

25 CHAIRMAN PALLADINO: Put it in the context of

1 immediate effectiveness.

2 MR. MALSCH: Yes. I'm not sure. It's complicated
3 a little by the fact that we just don't know the indictments.
4 We do know a little bit about, from our own investigations,
5 about the TMI-2 leak rate controversy.

6 So, if we drafted up a decision it wouldn't be
7 based upon just the bare fact that indictments are pending
8 but it would also be, we had reason to believe that there
9 was a basis for the indictments and it wasn't clear how far
10 they went.

11 COMMISSIONER ASSELSTINE: And the finding by the
12 Appeal Board that there is already in existence sufficient
13 information about TMI-2 leak rate falsification that has a
14 bearing on this proceeding to warrant re-opening the record,
15 a judgment the Appeal Board has already made.

16 MR. MALSCH: Yes. I think the problem is
17 probably, what inferences are proper to draw with regard
18 to the involvement of particular individuals. I'm not sure
19 I can give a good answer in the abstract. You know, reasonable
20 inferences will be upheld, unreasonable inferences will not
21 be.

22 But it's hard to give a judgment upon that unless
23 you see it all explained out, see what the decision was like.
24 In any event, it's only for an interim period. It's only an
25 interim decision. Whatever the Commission decides here will

1 have to be looked at again on the merits based upon re-opened
2 hearings, and further investigations, and the whole like.

3 CHAIRMAN PALLADINO: I could see that going on for
4 several years.

5 I asked Bill Reamer to write down what is the
6 decision the Commission needs to make and he says, "The
7 Commission's August 9, 1979 order provided that the
8 Commission will decide whether the provisions of this order
9 requiring the licensee to remain shut down shall remain
10 immediately effective if it determines that the public health,
11 safety, or interests no longer require immediate
12 effectiveness."

13 COMMISSIONER ASSELSTINE: You know, Joe, you
14 mentioned immediate effectiveness. It strikes me that this
15 case is a little bit different from the normal course of an
16 immediate effectiveness review that we have, say, in an
17 operating license proceeding because here you do have
18 enforcement action that the Commission took, said that the
19 license has to be suspended and made immediately effective
20 until such conditions occur that satisfy the Commission,
21 that the concerns that they had originally are resolved,
22 and there is a sufficient basis for allowing a plant to
23 operate.

24 So, I think it's a little bit more, this review.
25 And the judgment we have to make now is a little bit more

1 than the kind of review we do for immediate effectiveness
2 in other cases. It really does amount to at least having
3 enough confidence that the information is there to assure
4 ourselves that our original concerns were resolved and that
5 the plant can be operated safely.

6 CHAIRMAN PALLADINO: Well, I think it still comes
7 down whether or not the Commission determines that the
8 public health, safety --

9 COMMISSIONER ASSELSTINE: Yes.

10 CHAIRMAN PALLADINO: -- no longer require immediate
11 effectiveness.

12 COMMISSIONER ASSELSTINE: Yes, that's right.
13 That's right.

14 CHAIRMAN PALLADINO: Now, in that conclusion, I
15 guess, you can draw in a lot of information.

16 COMMISSIONER BERNTHAL: Let me turn this question
17 around to counsel, and I'll just state it strongly so it's
18 clear what is troubling me here.

19 How in the world, if a company is under criminal
20 indictment in connection with running nuclear power plants,
21 can the Commission vote to allow that company to restart the
22 plants?

23 Now, we have talked about a case where you can in
24 fact perhaps go to court and show that absolutely nobody
25 involved from some date was involved before and therefore you

1 would have an arguable case.

2 But let's suppose for a moment that we were unable
3 to do that. That at least those two individuals that Victor
4 mentioned were still involved. Again, the same question, is
5 there any legal question there, and what would a court do if
6 you argued a case just from that simple perspective that at
7 least some of this company is still there. They are under
8 criminal indictment for activities involved in running nuclear
9 power plants. How can the Commission permit them to run it?

10 CHAIRMAN PALLADINO: They are under indictment for
11 a particular aspect of running one?

12 COMMISSIONER BERNTHAL: That's right.

13 CHAIRMAN PALLADINO: Because otherwise you have
14 to raise the question, should you shut down Oyster Creek.

15 COMMISSIONER GILINSKY: That's a good question.

16 COMMISSIONER ASSELSTINE: That is a good question,
17 actually.

18 COMMISSIONER GILINSKY: I raised that some time ago.

19 CHAIRMAN PALLADINO: I raised it, but I also
20 answered it for myself.

21 COMMISSIONER GILINSKY: And just to add to what
22 Fred is saying, that is certainly going to be the question
23 that everyone is going to be asking outside of this room.

24 COMMISSIONER ASSELSTINE: Yes.

25 CHAIRMAN PALLADINO: That's why I put it first. I

1 felt we can't walk away from that one. I think we have to
2 decide. And it's much better to put the issue -- even though
3 it's a hard one -- up front, that it be put up front because
4 that's implied in my proposal and that's why I felt that
5 ought to be settled before we even discuss my proposal.

6 MR. MALSCH: I suppose if we went forward the
7 theory would simply be that persons are presumed innocent
8 until proven guilty.

9 CHAIRMAN PALLADINO: What's that?

10 MR. MALSCH: That persons are presumed innocent
11 until proved guilty and the mere issuance of indictment,
12 the Commission would carry --

13 COMMISSIONER BERNTHAL: What about this --

14 COMMISSIONER GILINSKY: I don't think we can get
15 by with that. It seems to me we have --

16 COMMISSIONER ROBERTS: Get by with anything -- what
17 do you mean, get by with it? That's by imputation that we
18 are caught at something that's immoral, unethical, or dis-
19 honest. I take issue with that.

20 COMMISSIONER BERNTHAL: And not even fun.

21 (Laughter)

22 CHAIRMAN PALLADINO: We are going to get beat,
23 no matter what we do. We are going to get beat on the head,
24 we are going to go to trial, I'm sure --

25 COMMISSIONER ROBERTS: Of course.

1 CHAIRMAN PALLADINO: -- no matter which way we go.

2 COMMISSIONER GILINSKY: Well, I say that I don't
3 think we can get by with that. The reason is, there is a
4 different standard of proof that is called for in our
5 proceedings and criminal proceedings.

6 I don't think we can say simply because, you know,
7 there isn't enough proof to put someone behind bars, that we
8 should not take note of the indictment until they have been
9 convicted because, you know, this is a matter that we have
10 dealt with, I mean the leak rate testing, all that business,
11 we have been involved in. We know something about it just
12 as you pointed out a little while ago.

13 So, I'm not saying that there aren't circumstances
14 in which what you have just said would apply, but I don't
15 think they would apply in the current circumstances.

16 MR. MALSCH: I am saying, though, if one were to
17 go ahead --

18 COMMISSIONER GILINSKY: What would you say -- well,
19 okay.

20 MR. MALSCH: That's obviously what you would say.
21 You would also have to explain why the information we had
22 before us, independent of the indictment, didn't lead us to
23 withhold restart authorization.

24 But in terms of the indictment itself, I think
25 that's --

1 COMMISSIONER BERNTHAL: Would you be comfortable
2 arguing that in court, that somehow the indictment itself
3 was not sufficient cause for the Commission with supposedly
4 its lower threshold -- at least we talk about it. I don't
5 guess that's a matter of statute or anything else that we
6 are required to use a lower threshold.

7 COMMISSIONER GILINSKY: Oh, yes, it's a matter of
8 Supreme Court decision. There is no question about that.

9 CHAIRMAN PALLADINO: But let me ask, Marty, suppose
10 you had to go and defend why we say these people should be
11 removed from oversight of TMI or participation in TMI and
12 the only reason being that there is an indictment against
13 them for falsification of leak rate at TMI-2.

14 MR. MALSCH: I think then we would simply try to
15 defend the Commission's policy judgment that people under
16 indictment shouldn't at all be involved in license
17 activities.

18 CHAIRMAN PALLADINO: Well, then you got to take
19 the next step and eliminate them from Oyster Creek.

20 MR. MALSCH: I agree.

21 COMMISSIONER GILINSKY: It seems to me in the case
22 of many of these individuals, you would have to argue some-
23 thing like this -- I don't think it can be supported by
24 the facts. But you would have to argue that we have looked
25 into this. We think justice is off base, you know, in our

1 investigations nothing has turned up to cause us to be
2 sufficiently concerned to keep these people out of a plant.
3 We are the experts on nuclear safety and we feel confident
4 that it's okay.

5 So, I don't think that's the case.

6 MR. MALSCH: Well, as I said, you would have to
7 address independent of the indictments whatever information
8 the NRC itself possessed on these individuals or on this
9 licensee.

10 CHAIRMAN PALLADINO: But what you would be saying
11 is that we don't have reasonable assurance that this
12 company with Dieckamp and Kuhns involved can operate the
13 plant effectively, with a reasonable assurance of public
14 health and safety.. And then you have to say it for all
15 plants they own.

16 COMMISSIONER GILINSKY: Well, you don't have
17 sufficient confidence, whatever is required by the law, to
18 go forward on that basis. That's what you would be saying.

19 CHAIRMAN PALLADINO: Now, of course, I have
20 sufficient confidence.

21 COMMISSIONER GILINSKY: I know. You said what
22 would you be saying. That's what you would be saying.

23 CHAIRMAN PALLADINO: Yes, you would be saying
24 that and then, I think, you would be forced to do something
25 on Oyster Creek. I'm not pushing that one, I don't think --

1 COMMISSIONER GILINSKY: Well, if Kuhns and
2 Dieckamp departed from GPU, the problem would be over for
3 all of these plants. There wouldn't be any problem with
4 Oyster Creek.

5 COMMISSIONER BERNTHAL: At least it seems to me
6 that it's true that if you made your list, unfair though it
7 might be, of people that in our best judgment segregate the
8 current operation from the indictment, at least then you
9 have a plausible presentation for arguing in court.

10 COMMISSIONER ASSELSTINE: Yes.

11 COMMISSIONER BERNTHAL: I swear, I don't under-
12 stand. And in fact, with great reluctance I have to agree
13 that the mere issue of the indictment probably raises the
14 question of how -- although nobody has raised it so maybe we
15 can assume that we aren't at great risk in court on this
16 issue. But it raises the question of why somebody didn't
17 take us to court to shut down Oyster Creek.

18 CHAIRMAN PALLADINO: Well, you also have to
19 consider what you are going to face in other situations that
20 may arise where there may be some falsification or alleged
21 falsification, and if a trial is instituted, then you require
22 that management to step aside. That's a pattern you are
23 going to have to face any time when an issue like this comes
24 up.

25 COMMISSIONER GILINSKY: This is an entirely

1 unprecedented case. I mean, there has been one criminal
2 indictment of a company that I know of. I don't know of any
3 other utility that has been criminally indicted --

4 CHAIRMAN PALLADINO: (Inaudible)

5 COMMISSIONER GILINSKY: Well, I hope not.

6 COMMISSIONER ROBERTS: Is that an accurate
7 statement? I am not disputing that, I just want to know.

8 COMMISSIONER GILINSKY: I don't know. Is that
9 correct?

10 MR. MALSCH: I think there may have been a criminal
11 indictment in the antitrust areas, but that would be the
12 only one that comes to mind.

13 COMMISSIONER GILINSKY: Well, see, there again
14 that might be a case in which you would just say that doesn't
15 directly bear on --

16 COMMISSIONER ASSELSTINE: Yes.

17 COMMISSIONER GILINSKY: -- nuclear safety and --

18 COMMISSIONER ASSELSTINE: Because this is a
19 criminal indictment on a violation of safety requirements.

20 (Simultaneous conversation)

21 COMMISSIONER GILINSKY: Depending on what it was.
22 Depending on what it was.

23 CHAIRMAN PALLADINO: About its integrity.

24 COMMISSIONER GILINSKY: But in any case, I don't
25 know of any previous case. I would not expect very many in

1 the future, if any. You are dealing with a situation in
2 which we have been sitting here, wringing our hands, for
3 four and-a-half years. It is, to say the least, unique.

4 CHAIRMAN PALLADINO: Well, let's see, Victor, I
5 have not put a vote down for you on number one. Is it
6 similar to Jim's?

7 COMMISSIONER GILINSKY: I guess so.

8
9
10 COMMISSIONER GILINSKY: I haven't really, either,
11 and leaving the precise outlines of that list aside,
12 generally speaking, yes.

13 CHAIRMAN PALLADINO: Well, I am going to put
14 you two asterisks.

15 (Laughter)

16 COMMISSIONER GILINSKY: That's all right.

17 CHAIRMAN PALLADINO: Eliminate at least -- at
18 least --

19 COMMISSIONER GILINSKY: Well, I didn't want to put
20 it that way, I'm just saying that generally --

21 CHAIRMAN PALLADINO: Kuhns and Kieckamp.

22 COMMISSIONER GILINSKY: Oh, I see what you mean.

23 CHAIRMAN PALLADINO: And that means you are
24 reserving on the others until you look at them.

25 COMMISSIONER GILINSKY: I think Jim's arguments

1 sound right.

2 CHAIRMAN PALLADINO: Fred, do you have any
3 comment? I wrote down for me "no" and for Tom "no."

4 COMMISSIONER ROBERTS: Let me make a comment.
5 I've never been criminally indicted and I sure as hell
6 fought any number of unfair labor practices and EEOC charges,
7 all of which I was absolved from. And just because you are
8 charged with some wrongdoing is meaningless.

9 I attach no importance to the indictment per se.

10 COMMISSIONER GILINSKY: Well, but suppose --

11 COMMISSIONER ROBERTS: I'm sorry, I don't have any
12 sympathy for that point of view.

13 COMMISSIONER GILINSKY: Suppose you had been
14 indicted for supplying the wrong kind of material to a
15 nuclear plant. Would you not think it proper for the NRC
16 to take that into account in any dealings with you?

17 COMMISSIONER ROBERTS: Not on its face, no. I mean,
18 I have had disgruntled employees call the Labor Relations --

19 COMMISSIONER GILINSKY: Yes, but you don't --

20 COMMISSIONER ROBERTS: -- and you have to be
21 accountable for those things.

22 COMMISSIONER GILINSKY: First of all, these are
23 relatively informal proceedings you are talking about. You
24 know, you don't get indicted just like that.

25 COMMISSIONER ROBERTS: There is nothing informal

1 about an EEOC complaint.

2 CHAIRMAN PALLADINO: I have been in a Federal
3 trial --

4 COMMISSIONER ROBERTS: There is nothing informal
5 about an unfair labor practice.

6 CHAIRMAN PALLADINO: -- and this was tried in Federal
7 Court in Williamsport before a jury. The allegation was
8 that Penn State was discriminating on the basis of age and
9 specifically named were the President and the Dean of
10 the College of Engineering.

11 Now, the trial was completed. We were exonerated
12 of having violated Federal law. But if we had been held on
13 the basis of an indictment --

14 COMMISSIONER GILINSKY: Well, Joe, if GPU had
15 been indicted for discriminating against persons on the basis
16 of their age, I would not weigh that very heavily --

17 CHAIRMAN PALLADINO: I am just citing --

18 COMMISSIONER GILINSKY: -- in this proceeding.
19 But here we are talking about something which is exactly on
20 point.

21 CHAIRMAN PALLADINO: Well, you are concluding that
22 because they were indicted, that we have no reasonable
23 assurance that the public health and safety is protected.
24 I found no evidence of that so far.

25 COMMISSIONER GILINSKY: Well, first of all, I raised

1 some of these issues long before the indictment came about.
2 What I am saying is, that the indictment adds sufficiently
3 to that side of the argument that I really don't see how
4 you can proceed, giving their heavy involvement previously
5 and their heavy involvement now, how you can proceed short
6 of a resolution of that trial and opening up TMI-1 under
7 their control. That's all I have said.

8 I personally had this view even before the
9 indictment. So, the indictment was not the only element
10 here or even the one that tipped the scales for me. But it
11 seems to me it's got to tip the scales for you.

12 (Laughter)

13 CHAIRMAN PALLADINO: Well, I guess I have to have
14 a triple asterisk on mine because I did say something about
15 "DD."

16 COMMISSIONER GILINSKY: Right. And if you are
17 hanging on to his heel, or something --

18 (Laughter)

19 CHAIRMAN PALLADINO: But I have that in my
20 proposal, that's why I didn't -- as a matter of fact, I
21 think independent of "DD" I would go ahead. My "no" is
22 not conditioned.

23 COMMISSIONER GILINSKY: Well, let's see, you mean
24 aren't some of us "yes's" and some of us "noes?"

25 CHAIRMAN PALLADINO: So far, I got us all "noes" --

1 (Laughter)

2 CHAIRMAN PALLADINO: Well, let me ask you. This is
3 my understanding, that Jim Asselstine feels we should not
4 await the completion of the settlement of the criminal trial
5 against Met Ed --

6 COMMISSIONER ASSELSTINE: Yes.

7 CHAIRMAN PALLADINO: -- provided we eliminate
8 Kuhns, Dieckamp, Ross, from the
9 list of people who would operate.

10 COMMISSIONER GILINSKY: Well, I have to say for
11 myself --

12 CHAIRMAN PALLADINO: This Dieckamp --

13 COMMISSIONER GILINSKY: -- I would be inclined to
14 turn it around. I would say, "Yes, short of doing the
15 following."

16 COMMISSIONER ASSELSTINE: Yes, yes.

17 COMMISSIONER GILINSKY: Because I wouldn't like
18 this represented --

19 COMMISSIONER ASSELSTINE: That's right.

20 COMMISSIONER GILINSKY: -- as some qualified
21 approval for not awaiting the end of the trial.

22 COMMISSIONER ASSELSTINE: Yes.

23 CHAIRMAN PALLADINO: Well, I don't think -- maybe
24 I didn't understand your answer. Are you saying we should
25 await?

1 COMMISSIONER GILINSKY: Unless you act on those
2 individuals. So, the asterisk may take away from the "yes"
3 but I would rather put it in those terms.

4 COMMISSIONER ASSELSTINE: Yes.

5 COMMISSIONER GILINSKY: In other words, I'm willing
6 to reconsider the "yes."

7 CHAIRMAN PALLADINO: Yes, it's your vote. So,
8 I've got to represent it as you want it. But --

9 COMMISSIONER BERNTHAL: It's the same outcome.

10 COMMISSIONER ASSELSTINE: I think the outcome is
11 the same.

12 CHAIRMAN PALLADINO: It sounds different.

13 COMMISSIONER ASSELSTINE: I prefer your characteri-
14 zation, Vic.

15 COMMISSIONER GILINSKY: It's just that I would not
16 like it to be said that the Commission is unanimously for
17 not waiting for the outcome of this trial.

18 CHAIRMAN PALLADINO: Well, go ahead.

19 COMMISSIONER GILINSKY: I would just say, it
20 depends on the Commission.

21 CHAIRMAN PALLADINO: Well, now, I am giving Fred
22 time to think.

23 (Laughter)

24 CHAIRMAN PALLADINO: In think in (B) 2 --

25 COMMISSIONER BERNTHAL: I just want to talk to my

1 lawyer about this.

2 (Laughter)

3 CHAIRMAN PALLADINO: Feel free to talk to your lawyer.

4 I think also, when you say you are going to wait
5 for the completion of the criminal trial against Met Ed,
6 I think then there is a question of follow-up OI investigation.

7 COMMISSIONER ASSELSTINE: Yes, I agree.

8 CHAIRMAN PALLADINO: I am sure we would wait for
9 that --

10 COMMISSIONER GILINSKY: Right.

11 CHAIRMAN PALLADINO: -- if we go that far. And
12 I'll bet a bottom dollar that we would review the record,
13 the exhibits and that will take at least six or seven months.
14 Then we will investigate, as a result of that.

15 And I have a feeling we are talking a minimum of
16 two years before -- minimum of two years -- before we ever
17 get back to TMI. And I have a feeling that the people that
18 are now there are prepared to participate and say, "The
19 Dickens with this stuff" and go find themselves a new job.
20 And then, I think, we might be in a worse shape than we are
21 in now. That's if I were Clark and --

22 COMMISSIONER GILINSKY: Well, that's the price
23 we are paying for hanging onto those guys.

24 CHAIRMAN PALLADINO: Well, we are paying a
25 severe price. I think that when we find that the conditions

1 are satisfied, we ought to move. I guess I think they are
2 satisfied to a point.

3 Well, I gather we have two say we should await
4 the completion of trial, unless --

5 COMMISSIONER ASSELSTINE: Yes.

6 CHAIRMAN PALLADINO: Now, let me ask you this one.
7 The reason why your "yes" bothers me a little bit, suppose
8 steps were taken to eliminate Kuhn, Dieckamp, Ross,
9 _____ Now, is your answer still "yes" or has
10 your answer changed to "no," we don't need to await?

11 This is what bothers me about saying "yes." It
12 doesn't say what your position is.

13 COMMISSIONER GILINSKY: Well, it's the way you
14 asked the question. You asked it in this absolutely stark
15 manner.

16 CHAIRMAN PALLADINO: Well, this is a stark
17 question.

18 COMMISSIONER GILINSKY: No -- Well, if you want
19 to ask it on the basis of the present conditions and the
20 present company, I would say absolutely "yes."

21 If you want to talk about changes in the company,
22 then I'm willing to consider those and maybe the answer
23 may be "no."

24 CHAIRMAN PALLADINO: Yes, but you give no
25 assurance the answer would be "no."

1 COMMISSIONER GILINSKY: Well, with the departure
2 of those people, I'm willing to consider the proposition of
3 going forward without awaiting the end of the trial and
4 consider the application of the company.

5 CHAIRMAN PALLADINO: Incidentally, when I got to
6 3(C), let's see what I wrote down for Jim Asselstine. I
7 wrote, Jim, yes with an asterisk to both Kuhns and Dieckamp.

8 If "one" is to be followed -- that was my shorthand
9 for saying if we are going to go with "one," then you --

10 COMMISSIONER ASSELSTINE: Yes, yes.

11 CHAIRMAN PALLADINO: And I know you have the other
12 people.

13 COMMISSIONER ASSELSTINE: That's right, yes.

14 COMMISSIONER BERNTHAL: I want to ask Marty another
15 question. I should say, I am pleased to hear that apparently
16 we are at some level of at least separating integrity from
17 competence. That we apparently all agree that cheating at
18 cards does not necessarily affect one's ability to run a
19 power plant.

20 The question that you have not answered for me is
21 really, you have told me how you would go to court and
22 argue. But let's suppose these individuals -- that we can't
23 do what is really implied by Jim's and Victor's proposition
24 and that is for them to fire those people. Isn't that what
25 you are saying? Or how do you segregate them?

1 COMMISSIONER GILINSKY: -- I would, yes.

2 COMMISSIONER ROBERTS: That comes through loud
3 and clear.

4 COMMISSIONER BERNTHAL: How do you segregate
5 them, Jim?

6 CHAIRMAN PALLADINO: How do you what?

7 COMMISSIONER BERNTHAL: I am asking Jim --

8 COMMISSIONER ASSELSTINE: The lower level people,
9 I think, you could separate easier. Kuhns and Dieckamp are
10 probably pretty tough.

11 CHAIRMAN PALLADINO: And I gather you want the
12 lower-level people out even if you didn't follow on --
13 you certainly --

14 COMMISSIONER ASSELSTINE: Well, the people that
15 I mentioned, my concerns tie into the criminal trial. In
16 fact, I guess I've got a couple of others, as you do, that
17 tie into some of the other considerations like the cheating
18 business.

19 COMMISSIONER GILINSKY: It seems to me you can't
20 move people from TMI-1 where you are concerned about them
21 to, say, Oyster Creek. If you worry about somebody in a
22 sense of nuclear position, they can't go somewhere else
23 where they are in a sense in a nuclear position.

24 COMMISSIONER BERNTHAL: I think you are right.

25 CHAIRMAN PALLADINO: But see, I have to ask you,

1 I have to ask Jim and you now if you want to, if you make
2 that kind of decision you are going to go address the issue
3 of whether Oyster Creek should continue to operate? They
4 are doing a very fine job.

5 COMMISSIONER GILINSKY: Well, we haven't dealt
6 with it. But my own feeling is that Kuhns and Dieckamp should
7 not be in charge of that operation either. I want them out
8 of that company entirely, and then the problem is over.

9 COMMISSIONER BERNTHAL: I guess I can understand
10 how you could segregate the lower-level people, assign them
11 to duties entirely separate --

12 COMMISSIONER ASSELSTINE: Whatever.

13 COMMISSIONER BERNTHAL: It's probably hard to
14 assign to other duties chief executives.

15 COMMISSIONER ASSELSTINE: That's right. That's
16 right. Those two I have a tougher time with, yes. Yes.

17 COMMISSIONER BERNTHAL: Let me get back to the
18 question, then, to Marty. You said how you would argue
19 in court. But you haven't said, given us a representation
20 of your odds. Do you think you could win making that
21 argument in court?

22 CHAIRMAN PALLADINO: Making which argument?

23 COMMISSIONER BERNTHAL: Somehow making the argument,
24 suppose these people don't depart one way or another, and I
25 guess Kuhns and Dieckamp in the end are the two at issue here,

1 and that they stay there.

2 Not having access to the indictment record, assuming
3 that you were taken to court, do you think you can walk in
4 and plausibly argue -- I am asking for some sense of yours
5 of what the odds are that you would be successful in making
6 an argument like that, defending our action should we decide
7 to continue operation or, I should say, permit operation.

8 COMMISSIONER GILINSKY: If I may interject. It
9 seems to me that's an important and interesting question, but
10 we ought to decide on the basis of, you know, how you feel.

11 CHAIRMAN PALLADINO: (Inaudible)

12 COMMISSIONER GILINSKY: I am talking about whether,
13 is this a winning argument or a losing argument, and I
14 don't know what Marty is going to say.

15 COMMISSIONER BERNTHAL: But that reflects the
16 issue on trying to get out here. I mean, that is a different
17 way to put it.

18 MR. MALSCH: I think we can probably -- I think
19 it is largely a policy judgment. I think we can probably
20 win it either way, especially if they characterize it as
21 really a Commission decision to await the results of further
22 investigations and further proceedings until making a final
23 decision one way or the other.

24 HUC had a great deal of discretion in putting
25 off final decisions pending various investigations. In fact,

1 the Commission itself has a decision in that area,
2 characterizing the Commission's authority as involving a
3 great deal of latitude and discretion to put off things until
4 investigations and inquiries are completed.

5 So, I thin it's really a policy issue.

6 CHAIRMAN PALLADINO: But that's not what is being
7 proposed. The proposal is that we await, unless these people
8 are eliminated from participation in TMI-1.

9 MR. MALSCH: Well, I think the way we would --
10 let's suppose the decision were to quarantine Dieckamp, Kuhn,
11 _____ and whoever else was involved. That would
12 not be a final decision. That would be a decision to allow
13 restart on that condition --

14 COMMISSIONER ASSELSTINE: That's right.

15 MR. MALSCH: -- pending completion of further
16 inquiries which would decide finally one way or the other
17 whether they should be --

18 CHAIRMAN PALLADINO: Well, how do you do that?
19 He's got to step out of being Chief Executive Officer,
20 perhaps even a member of the Board. He probably -- what's
21 the name, GPU is the hold organization. Can he stay as
22 Chief Executive Officer of the GPU?

23 MR. MALSCH: I think that would be something they
24 would have to work out.

25 CHAIRMAN PALLADINO: Well, that's something that we

1 need to understand. What is it that we are asking when they
2 quarantine him, take him out of the whole organization?
3 They have to just walk out, maybe even sell their shares?
4 I don't know, maybe --

5 MR. MALSCH: Well, I think the most that we could
6 require would be that he step aside pending the completion
7 of our investigations and if necessary, hearings. I don't
8 think we are in any position at this point to make a final
9 decision one way or the other.

10 COMMISSIONER ASSELSTINE: That's right, yes.

11 CHAIRMAN PALLADINO: So, what does "stepping
12 aside" mean, he gets off the Board?

13 COMMISSIONER ASSELSTINE: Yes.

14 MR. MALSCH: At least temporarily -- well, it
15 depends on how you want to characterize your decision. But
16 whatever it would be, it would be temporary.

17 CHAIRMAN PALLADINO: For a couple of years.

18 COMMISSIONER ASSELSTINE: However long it took, yes.

19 CHAIRMAN PALLADINO: Well, you can bet your boots
20 they don't --

21 COMMISSIONER ASSELSTINE: I think you are probably
22 right, a couple of years is probably realistic.

23 CHAIRMAN PALLADINO: We are not going to resolve
24 this in something like a few weeks or a month.

25 COMMISSIONER ASSELSTINE: No. I think that is

1 probably realistic.

2 CHAIRMAN PALLADINO: And what's possible is that
3 they might settle and the issues never get addressed until
4 we go after a civil action.

5 COMMISSIONER ASSELSTINE: Yes. But I think Marty
6 is right, the posture of the case that will be significant
7 in terms of how it's reviewed basically would be a situation
8 that we think the criminal indictment is a significant item
9 and it goes to the question of whether the enforcement
10 action should continue the way it is now.

11 And what we are doing is, we are saying that we
12 would be prepared to find that those conditions were
13 sufficiently changed if the following changes were made on an
14 interim basis. And if they don't want to make those changes,
15 the question would be, is there a reasonable basis for the
16 Commission's decision to continue the enforcement action.

17 COMMISSIONER BERNTHAL: Well let me, Joe, just so
18 you can get your tally sheet, I certainly, under the
19 conditions of segregation that Jim has outlined, then clearly
20 it seems to me it is reasonable for us to contemplate going
21 ahead before we settle the criminal trial.

22 In the other case, if that segregation is not made,
23 I don't know yet. I would just have to think about really, I
24 guess, about what sort of weight one places. And that's the
25 reason for the inquiries about those of you who spent your

1 time in courts, how an outside observer would view our
2 essentially ignoring a criminal indictment.

3 CHAIRMAN PALLADINO: The easy decision is to say,
4 "Well, let's cover every aspect." But the question is, do we
5 really have concerns that this plant cannot be operated
6 safely with these people there. I mean a significant concern,
7 this is not just, "Oh, I would rather not have them there."

8 That their presence contributes to the unsafe
9 operation of this plant, and I don't see how that --

10 COMMISSIONER GILINSKY: I guess what staggers me,
11 you know, had you simply said, "Everything is okay," that
12 would be one thing.

13 But you have zeroed in on certain individuals. In
14 fact, one guy in the training department. You think that's
15 important. With this guy there, we could be getting into an
16 unsafe situation. That is a worrismatic thing to you.

17 And here you've got the guys in total and complete
18 control of the company and you say they don't play much of a
19 rule here.

20 CHAIRMAN PALLADINO: You use those words --

21 COMMISSIONER GILINSKY: Well, what does Chief
22 Executive Officer mean?

23 CHAIRMAN PALLADINO: But the fellow that ran the
24 company, was it a --

25 COMMISSIONER GILINSKY: Well, let me tell you, in

1 some companies the President is the Chief Executive Officer,
2 in other companies the Chairman of the Board is the Chief
3 Executive Officer.

4 There is a reason why they assigned it to the
5 Chairman because he is the guy in charge.

6 CHAIRMAN PALLADINO: I don't think Kuhns participated
7 in --

8 COMMISSIONER GILINSKY: Well, that's pretty
9 serious in itself. But the fact is --

10 CHAIRMAN PALLADINO: Not necessarily.

11 COMMISSIONER GILINSKY: -- that he was in charge.
12 He guided those companies. They were building, they were
13 off building Forked River when they should have been taking
14 care of TMI and Oyster Creek. And they ran those plants
15 down. They ran down Oyster Creek, ran it into the ground
16 practically; neglected maintenance and all sorts of things.
17 And they were both --

18 CHAIRMAN PALLADINO: Well, you are asserting those
19 but I don't have any evidence of it.

20 COMMISSIONER ASSELSTINE: Well, even the industry
21 ranks Oyster Creek as among the worst plants in the country
22 today.

23 CHAIRMAN PALLADINO: I don't know, it's been
24 running quite satisfactorily.

25 COMMISSIONER GILINSKY: Well, I visited the plant,

1 Joe, and it bears the scars. It has a pretty good guy now
2 in charge and he is trying to improve things.

3 CHAIRMAN PALLADINO: Well, he's the one you have
4 confidence in, just like I have confidence in --

5 COMMISSIONER GILINSKY: Well, except the guy who
6 controls him, the people who control him, are Kuhns and
7 Dieckamp. I just can't understand -- you know, it's one
8 thing if you thought, you know, these guys are really great
9 and are doing a good job, and you differed with me that way.

10 But here you told me that they really don't play
11 a role. They didn't play much of a role before. They don't
12 play much of a role now. That just isn't the way these
13 places run.

14 I mean, Kuhns with a lifted eyebrow accomplishes
15 more than "DD" in a lifetime.

16 CHAIRMAN PALLADINO: Well, I don't know, it varies.
17 I was just reading about General Motors, they got another
18 Chief Executive Officer, Chairman of the Board, who is now
19 stepping in where others didn't do anything. I guess that
20 was his prerogative. But it doesn't mean that the others
21 were wrong.

22 COMMISSIONER GILINSKY: Well, look, they had the
23 choice. They could have had Kuhns as Chief Executive of
24 that holding company Board or a distant entity. But in fact,
25 he was Chief Executive of every one of those companies. In

1 fact, it is all one company. The fact that there are five
2 or six companies, I think, is just a fiction. They are
3 basically all one company and they are run by Kuhns and
4 Dieckamp.

5 Now, one is either satisfied with the way they
6 run things and sufficiently confident that things will be
7 done right in the future, and if you feel that way, then you
8 ought to approve the operation with them in charge. I
9 don't feel that way.

10 And I think the criminal indictment of the company
11 is a very serious condition, as I said, to the scales against
12 them.

13 COMMISSIONER BERNTHAL: It seems to me that at
14 some point though; and maybe this is the place to do it,
15 the question has to be answered since it is unprecedented
16 of what the meaning of a criminal indictment is, if you
17 can't use the record. How do we deal with something like
18 that? What does DOJ mean when they say they can't believe
19 that we would even consider it?

20 COMMISSIONER GILINSKY: Well, first of all, we
21 know some things about this case because we were involved in
22 it to a certain extent. This is not something that has come
23 out of the blue and we know absolutely nothing about it. We
24 don't know precisely what is in the grand jury record, but
25 we know something about the background of these investigations

1 and we participated in them ourselves, and our staff had
2 reason to believe that there was in fact substance to some
3 of the charges -- something they were rather late in telling
4 us.

5 COMMISSIONER BERNTHAL: Well, see, I have yet
6 to be convinced though, Victor, that your -- and I know how
7 you feel about it but I am not convinced and I am certainly
8 not as familiar as you are with the record -- that these
9 guys were aware of everything that was going on in a day-to-
10 day basis. That in fact they were directly responsible for
11 what happened.

12 COMMISSIONER GILINSKY: Look, they are the -- I am
13 sure that Kuhns did not know about individual records of
14 leak rates and I am sure he wasn't telling anybody to do
15 anything improper. Without knowing of the details, I would
16 be extremely surprised, let me say --

17 COMMISSIONER ROBERTS: (Inaudible)

18 COMMISSIONER GILINSKY: -- if he had any direct
19 involvement in what was going on.

20 COMMISSIONER BERNTHAL: But then you are talking
21 about competence.

22 COMMISSIONER GILINSKY: But these guys are the
23 ones who set the climate in a company. They are the ones
24 who determine the incentives in the company. They are the
25 ones who determine what people think they can get away with

1 up and down the line. Actually, they are the ones who
2 determine it for the next few levels of management, and those
3 guys determine it for the people down below.

4 They have got to take responsibility for what
5 happened in those companies.

6 CHAIRMAN PALLADINO: Victor, can I ask you a
7 question?

8 COMMISSIONER GILINSKY: Sure.

9 CHAIRMAN PALLADINO: We've got from -- lists of
10 members of the Board and they gave us -- there is a Central
11 Life; they gave us Pennsylvania Electric; they gave us --
12 Service Corporation, and they gave us Metropolitan Edison.
13 Where is GPU Nuclear, is that the parent organization?

14 COMMISSIONER GILINSKY: No, GPU Nuclear is one
15 of the internal Boards.

16 CHAIRMAN PALLADINO: Well, then they didn't send --

17 COMMISSIONER GILINSKY: I think there was a
18 separate --

19 CHAIRMAN PALLADINO: -- but that was a formal
20 submittal from them.

21 COMMISSIONER GILINSKY: I think that was the one
22 on GPU Nuclear.

23 COMMISSIONER ASSELSTINE: Yes, I think that's right.

24 CHAIRMAN PALLADINO: (Inaudible)

25 Well, let's see, I didn't write anything down yet

1 for Fred.

2 COMMISSIONER BERNTHAL: I clearly -- okay, I believe
3 that under the -- I am afraid -- unrealistic scenario that
4 Jim has outlined that all these guys somehow are completely
5 segregated, then is my answer "yes" or "no," how does this
6 work?

7 Then I do not think we would have to await
8 completion of the trial. In the other circumstance where
9 those people are all still there, I still want to think
10 about that a little bit.

11 CHAIRMAN PALLADINO: In other words, if people
12 as "JA" indicated are quarantined, then you will --

13 COMMISSIONER BERNTHAL: So the answer is that
14 in principle, clearly, we could proceed under some set of
15 circumstances. Whether or not that is a correct legal
16 judgment, it seems to me that we can proceed.

17 CHAIRMAN PALLADINO: If people, as JA indicated,
18 are quarantined, then you would not await -- you would
19 not await --

20 COMMISSIONER ASSELSTINE: But you haven't decided
21 if there is something short of that, that would satisfy him.

22 COMMISSIONER BERNTHAL: If that is a sufficient
23 condition and not necessarily a necessary condition. I guess
24 that's the way I will put it.

25 CHAIRMAN PALLADINO: Well, you are saying then if

1 the people, as JA indicated, are quarantined, then you would
2 not await Met Ed's trial completion. Is that --

3 COMMISSIONER BERNTHAL: Yes, that's clearly true.

4 CHAIRMAN PALLADINO: Now, what was the converse?
5 Without there being quarantine, you don't know yet.

6 COMMISSIONER BERNTHAL: Yes, I'm not sure that's
7 a necessary condition. That's what I am saying.

8 CHAIRMAN PALLADINO: Without the quarantine --

9 COMMISSIONER BERNTHA:: May I ask one last question?

10 CHAIRMAN PALLADINO: Commissioner Bernthal is
11 undecided.

12 COMMISSIONER BERNTHAL: Was this you, Marty, that
13 spoke with the individual at DOJ that said, "I can't believe
14 that," et cetera, et cetera?

15 MR. MALSCH: First, I haven't been involved in
16 any of those meetings.

17 COMMISSIONER BERNTHAL: Who was involved in that
18 meeting?

19 MR. MALSCH: I think it was Judge Plaine. Were
20 you present, Rick?

21 MR. LEVY: No, it was just Judge Plaine, yes.

22 COMMISSIONER BERNTHAL: Okay.

23 COMMISSIONER GILINSKY: Let's see, you said earlier
24 something about we are separating integrity from competence.
25 Just because somebody cheats at cards doesn't mean he can't

1 run a nuclear plant. I thought you were going to say
2 doesn't mean he doesn't know the rules of the cards.

3 It seems to me that is not the kind of person you
4 want to play cards with.

5 COMMISSIONER BERNTHAL: True.

6 COMMISSIONER GILINSKY: And there is a --

7 CHAIRMAN PALLADINO: Unless you do the same thing.

8 COMMISSIONER GILINSKY: -- distinction. I mean,
9 it's like on the one hand, if you are talking, say, about
10 a bank teller, does he know how to count money. That's
11 his competence. Is all of it going to be there at the end
12 of the day, that's his integrity. They are both important
13 whether or not you want this guy in the bank.

14 COMMISSIONER BERNTHAL: But I thought we were
15 agreeing because you had said, for example, that the
16 indictment on securities -- sorry, --

17 COMMISSIONER GILINSKY: Okay.

18 COMMISSIONER BERNTHAL: -- trust violations is
19 not necessarily relevant.

20 COMMISSIONER GILINSKY: Right, depending on its
21 nature. But it might well not be.

22 COMMISSIONER BERNTHAL: That's the distinction
23 that I was saying.

24 CHAIRMAN PALLADINO: I don't know how you vote on
25 the question Should we await the completion of settlement

1 of the criminal trial against Met Ed?

2 One way I think it comes out to the "no" with
3 the asterisk that says, "Eliminate Kuhns, Dieckamp, Ross,

4
5 COMMISSIONER GILINSKY: Well, this doesn't lend
6 itself to a simple "yes" or "no" the way you have put it.
7 You see, if you --

8 CHAIRMAN PALLADINO: Look, we've got to decide --
9 yes, it is.

10 COMMISSIONER GILINSKY: No.

11 CHAIRMAN PALLADINO: Excuse me, Vic. We are
12 deciding every day that we don't decide.

13 COMMISSIONER GILINSKY: But you are not -- the
14 way you need to ask the question is, "Under the following
15 circumstances, are you willing to go forward," or "Under
16 the following circumstances, are you willing to go forward?"

17 If you just say, "Are you willing to go forward
18 without a settlement in the current trial," one has to
19 assume it is the circumstances as they are today, in which
20 case the answer is "no."

21 CHAIRMAN PALLADINO: I am trying to understand
22 Fred. I understand your answer and I understand Jim's
23 answer. I am trying to understand Fred's answer.

24 COMMISSIONER GILINSKY: He is giving you half an
25 answer.

1 COMMISSIONER BERNTHAL: That's right.

2 CHAIRMAN PALLADINO: Well, let's see, without
3 quarantine -- are you voting, do I put the same thing down
4 for you as I put for Jim? I don't think so. I think I'd
5 put a "no" --

6 COMMISSIONER GILINSKY: For one-half of it, it
7 would be the same, and the other half he hasn't dealt with.
8 Is that fair?

9 CHAIRMAN PALLADINO: Well, what's the half?

10 COMMISSIONER GILINSKY: He said that given those
11 conditions he is willing to go forward.

12 CHAIRMAN PALLADINO: Yes, so I put --

13 COMMISSIONER GILINSKY: Not given those conditions,
14 he is thinking about it.

15 COMMISSIONER ASSELSTINE: Yes.

16 COMMISSIONER GILINSKY: Is that a fair repre-
17 sentation?

18 COMMISSIONER BERNTHAL: Yes, that's very good.

19 CHAIRMAN PALLADINO: So, I put an "n" with an
20 asterisk that we need not await it, providing you get these --
21 but the converse, without them, you are not sure.

22 COMMISSIONER BERNTHAL: The difference -- well
23 let's not --

24 CHAIRMAN PALLADINO: What do we tell the public?
25 What do we tell the parties?

1 COMMISSIONER BERNTHAL: Pardon me?

2 CHAIRMAN PALLADINO: What do we tell the parties?

3 COMMISSIONER BERNTHAL: Are these record votes
4 that we are doing here?

5 CHAIRMAN PALLADINO: No. What we are trying to --
6 but I think at the end of the meeting we ought to be able
7 to tell the parties whatever guidance or whatever tentative
8 conclusion we reached, or how we intend to go about handling
9 the restart.

10 I think if we have a Commission conclusion that
11 says, "We are going to wait for the completion of the Met Ed
12 trial or settlement thereof," plus the follow-up actions,
13 "unless these individuals go." That is a very important
14 decision. We might as well have it be known.

15 I don't agree with it, but that's where we are
16 coming down. Now, I can also say that two of us say they
17 wouldn't wait. Two would say they would wait unless these
18 conditions were met. One that says he would be satisfied
19 if these conditions were met and he would vote --

20 COMMISSIONER BERNTHAL: I don't think that we
21 ought to do that.

22 COMMISSIONER ROBERTS: I don't either.

23 (Simultaneous conversation)

24 CHAIRMAN PALLADINO: But that's what I am trying to
25 determine, what do you say?

1 COMMISSIONER ROBERTS: I don't think that's proper.

2 COMMISSIONER ASSELSTINE: Joe, I think that the
3 better thing --

4 COMMISSIONER BERNTHAL: Excuse me.

5 COMMISSIONER ASSELSTINE: Go ahead.

6 COMMISSIONER BERNTHAL: If we get to the point
7 tomorrow or an hour from now, or five minutes from now, that
8 it is time in your judgment and the Commission's judgment
9 for us to speak on it, I'll talk to Herzel and make a decision
10 and we'll vote the thing.

11 But I don't think we should represent Commission
12 positions until the Commission has a position.

13 CHAIRMAN PALLADINO: Well, I am trying to understand
14 what the position is. And I am trying to force attention to
15 that question. There is no question about it, I don't think
16 we can sit forever and say, "Well, we really don't know
17 whether we are going to wait for the completion of the trial."

18 I think we ought to say, "Yes, we are," or "No, we
19 aren't." Or, "Yes, we are, provided -- "No, we aren't,
20 provided these conditions" or, "Yes, we are provided these
21 conditions aren't not met."

22 COMMISSIONER BERNTHAL: I don't think we need to
23 comment right now, do we? This is a close meeting.

24 CHAIRMAN PALLADINO: Well, we have been accused
25 of nonfeasance by a very illustrious Senator who says, "You

1 guys ain't making any decisions." And we haven't been making
2 any decisions. I would like to make one at least.

3 I am not saying it has to be made in these five
4 minutes, but I don't think we have forever.

5 COMMISSIONER BERNTHAL: Well, let me just throw
6 out one point of view here and perhaps -- and I'll mix it
7 up with legal proceeding here since I think that's part of
8 it.

9 It seems to me there is a fundamental issue that
10 probably has to be resolved in court, and if it comes down
11 to it's time to go and resolve that issue, I may very well
12 be inclined to simply say, "No, we don't have to wait for
13 that. These guys can stay," and I fully expect we'll be
14 in court on that issue and somebody will tell us.

15 But I am amazed that --

16 COMMISSIONER GILINSKY: Well, it's not really
17 a problem of what we'll get by in court. The question is,
18 do you feel confident in going forward with these people,
19 do you feel that you can go forward and have confidence in
20 the safety of the plant and in the operation that these
21 people ought to be set aside. It's one of the two.

22 COMMISSIONER BERNTHAL: Well, you see, the problem
23 is what significance one should attach to an indictment
24 and information that we do not have access to. That, then,
25 becomes a procedural issue and you just have to decide

1 whether you attach significance to a record that you can't see,
2 and the guilty until proved innocent, or vice versa, in this
3 case. That, to me, is a procedural issue because we don't
4 have the record on the indictment and yet, the indictment to
5 me is a key issue.

6 COMMISSIONER ROBERTS: Mr. Chairman, could I tell
7 a story?

8 COMMISSIONER GILINSKY: By all means.

9 COMMISSIONER ROBERTS: I rarely bore you all, but
10 I'll share this with you. You remember the breaking by
11 Duane Arnold, the living schedule?

12 COMMISSIONER ASSELSTINE: Yes.

13 COMMISSIONER ROBERTS: After that meeting, I asked
14 that fellow if he would step in my office, I thought he was
15 a pretty decent sort of guy.

16 CHAIRMAN PALLADINO: Who was this, Arnold?

17 COMMISSIONER ROBERTS: No, no, no, Duane Arnold
18 Power --

19 COMMISSIONER ASSELSTINE: I'm sorry.

20 COMMISSIONER GILINSKY: This is the manager, or what?

21 COMMISSIONER ROBERTS: He was the vice president.

22 COMMISSIONER ASSELSTINE: Yes.

23 COMMISSIONER ROBERTS: And I said, "How are you
24 viewing your relations with the NRC?" And he thought a
25 minute and before he answered I said, "You know, I hear all

1 sorts of contrasting stories, we are just arbitrary and
2 capricious, and unreasonable. A lot of people say we are
3 promoting nuclear power, we have no objectivity" -- I'm
4 speaking of the staff generally, you know whom I mean."

5 And he looked me in the eye and he said, "You
6 know, we have reasonable relations with the NRC. But" --
7 he said -- "you have to understand something. In Iowa we
8 don't start with the presumption that everybody is a crook."

9 That's the presumption that we are taking in this
10 case.

11 COMMISSIONER GILINSKY: Not everybody.

12 (Laughter)

13 COMMISSIONER ASSELSTINE: Give me some exceptions.

14 (Laughter)

15 COMMISSIONER ROBERTS: Give me some exceptions,
16 right.

17 CHAIRMAN PALLADINO: Excuse me, I am looking for
18 something.

19 COMMISSIONER GILINSKY: After all, we have a
20 track record on some of these people and each one of us has
21 got to react to that. It isn't as if you are dealing with
22 these things in a vacuum, and each one of us has to decide
23 how significant the criminal indictment is. But it seems
24 to me it can't help them.

25 COMMISSIONER ASSELSTINE: Yes. I think that's

1 right, the criminal indictment is one element -- I think
2 my own view is, it's a significant one but it's not by any
3 means the only element.

4 COMMISSIONER BERNTHAL: But only under -- you are
5 saying that under a rather stringent set of circumstances,
6 and it seems to me that you are saying unless you -- all
7 these guys, then it's a pretty significant element; right?

8 COMMISSIONER ASSELSTINE: Yes. Yes, it is. It is.
9 Yes. I agree with --

10 COMMISSIONER GILINSKY: This is not an every-day
11 event, you know. This isn't as if they are being accused
12 of discriminating against the aged or some minor problem --

13 CHAIRMAN PALLADINO: A criminal offense is a
14 criminal offense.

15 COMMISSIONER GILINSKY: Well, are you equating
16 the two, Joe, in this context? I wouldn't think you would
17 want to.

18 CHAIRMAN PALLADINO: They are both criminal
19 offenses. I only use it to show that not all indictments
20 represent -- the convictions -- are even valid.

21 COMMISSIONER GILINSKY: Well, but that gets us
22 absolutely nowhere. The fact is, this is an indictment on
23 a matter directly related to this proceeding, and it is an
24 indictment of the company as a whole. And we are talking
25 about the people who are responsible for the operation of

1 the company. And you are saying, "Well, they didn't know,
2 and they are out to lunch --

3 CHAIRMAN PALLADINO: No, I am saying that --

4 COMMISSIONER GILINSKY: -- they are not going to do
5 anything in the future.

6 CHAIRMAN PALLADINO: -- the trial will produce
7 whatever results it will produce. And if at that time it
8 turns out that there is -- on the part of Dieckamp and Kuhns,
9 you deal with it.

10 COMMISSIONER GILINSKY: First of all, the trial
11 is not going to determine comparability on the part of
12 individuals.

13 CHAIRMAN PALLADINO: I don't know what it is
14 going to determine.

15 COMMISSIONER GILINSKY: It is going to either
16 convict the company or not convict the company.

17 And second of all, our standards are different
18 and we can't turn away from the decisions we have to make
19 and the standards we have to apply and simply say that we
20 are going to go merely on the basis of the outcome of a
21 trial.

22 CHAIRMAN PALLADINO: I guess that's where you
23 and I disagree.

24 COMMISSIONER GILINSKY: I think I've got the
25 Supreme Court on my side.

1 CHAIRMAN PALLADINO: Perhaps. I don't know which
2 side the Supreme Court is going to vote.

3 COMMISSIONER BERNTHAL: May I suggest that we
4 move on because --

5 CHAIRMAN PALLADINO: Well, let me ask you --

6 COMMISSIONER ROBERTS: Joe is saying there is not
7 much moving to do.

8 CHAIRMAN PALLADINO: Well, what I am trying to find
9 out is, honestly, I believe we owe something to the parties.

10 COMMISSIONER GILINSKY: I agree with you.

11 CHAIRMAN PALLADINO: I think it's important to
12 say something about it. It sounds to me as though a majority
13 of the Commission would be willing to go without the
14 completion or settlement of the criminal trial against Met
15 Ed, or would consider going that way if these people were
16 eliminated.

17 Then you can get into details of how far down the
18 list you want to go. I have a feeling --

19 COMMISSIONER BERNTHAL: Joe, maybe I misunderstood
20 the agenda for today. But why don't we -- let's set a
21 deadline. I gather that you want to set a deadline for
22 informing the parties here -- and I agree with you,
23 incidentally. In fact, I think I said so a long time ago
24 that we owe these people some sort of schedule.

25 And if you want to decide by tomorrow, or the next

1 day, if we can agree on a date of communicating our
2 conditions if all of us can agree that that's even a good
3 thing to do, then that's fine. I will settle my position
4 on this by that date and we can go ahead.

5 COMMISSIONER ASSELSTINE: You know, it seems to me --
6 I agree with what Fred is saying and I had thought that
7 originally when we talked about this meeting, that we had
8 a concrete proposal before us.

9 CHAIRMAN PALLADINO: Yes.

10 COMMISSIONER ASSELSTINE: The GPU proposal to start
11 with, with the staff's recommendations. You fleshed that
12 out a bit and have given us a more complete proposal.

13 It seems to me you've got two steps here. One is,
14 how do we respond to the proposal that we have, which is
15 essentially the GPU proposal with the staff's recommendations.
16 And you have proposed one way of responding to it.

17 Maybe what we ought to do is decide how we are
18 going to respond to that, and then if the response is
19 negative, then what kind of guidance we can give the parties
20 on whether there is another approach that we would find
21 would be an acceptable way of reaching a decision before
22 the longer approach that we have outlined in the notice to
23 the parties last summer.

24 CHAIRMAN PALLADINO: Well, you want to go down to
25 No. 2?

1 COMMISSIONER GILINSKY: Joe, I have a suggestion.
2 I think your list is much better read the other way, in
3 other words, going from --

4 COMMISSIONER ASSELSTINE: Bottom up?

5 COMMISSIONER GILINSKY: -- going from 4 to 1,
6 rather than from 1 to 4. In other words --

7 CHAIRMAN PALLADINO: Incidentally, let me urge
8 you to deal with ALAB-729. I finally got around to it. I
9 voted in favor of taking review, but I think it is important
10 for all, for everybody to act. And I think it would be
11 important to act this week.

12 COMMISSIONER ASSELSTINE: Yes.

13 CHAIRMAN PALLADINO: So, if I may urge you on that
14 one. You want to go backwards. But let's try to go
15 forward again since Jim said, let's address whether you
16 want to consider a proposal such as I had outlined. There
17 may be nuances, there may be changes you want to make.

18 COMMISSIONER GILINSKY: Let me just tell you why
19 I tried to do it the other way and that is because by the
20 time you get to 1(A), you know what proposition it is you
21 are talking about. And then you would say, on the basis of
22 that proposition, are you now willing to go ahead or not.

23 And then it would be pretty clear. And then it's
24 a "yes" or "no." There are no more qualifications.

25 CHAIRMAN PALLADINO: My view was, if you are going

1 to wait for the Met Ed trial, we've got a long time.

2 COMMISSIONER GILINSKY: It depends on what the
3 conditions are. That was my point.

4 COMMISSIONER ASSELSTINE: Yes.

5 COMMISSIONER BERNTHAL: We clearly could go ahead
6 under some conditions without waiting for the end of that
7 trial.

8 COMMISSIONER ASSELSTINE: Yes.

9 COMMISSIONER BERNTHAL: And that was one of the
10 things we explored here, whether in principle it just was
11 untenable.

12 COMMISSIONER GILINSKY: At this point, it seems to
13 me, you've got to give people three choised, yes, no or
14 possibly.

15 CHAIRMAN PALLADINO: You want to start from the
16 bottom? You know, rather than argue about it, let's do one
17 or the other.

18 COMMISSIONER GILINSKY: All right.

19 COMMISSIONER ASSELSTINE: Although I think we are
20 going to hit an impasse pretty fast.

21 (Laughter)

22 COMMISSIONER BERNTHAL: How about starting from
23 the middle?

24 CHAIRMAN PALLADINO: I only put that down, "Await
25 completion of hearing on steam generators," I didn't expect

1 us to vote today. I expected that -- I put it there only
2 to let you recognize that's still a pending issue. I was
3 not proposing we try to vote that one today. That's why I
4 put it down the bottom.

5 COMMISSIONER GILINSKY: Of course, you may force
6 a vote on that.

7 CHAIRMAN PALLADINO: See, if we are about to make
8 a decision proceeding without Met. Ed trial, then this becomes
9 a very important one. That's why I put it at the bottom,
10 going forward.

11 COMMISSIONER ASSELSTINE: Yes.

12 CHAIRMAN PALLADINO: If you want to go up -- I
13 think we have discussed (C) for a while. I don't think we
14 want to sit here and vote on ALAB-729 but I would urge you
15 to do it so we can possibly affirm it this week.

16 COMMISSIONER ASSELSTINE: Okay.

17 CHAIRMAN PALLADINO: I don't know, does it need
18 affirmation? I presume it does.

19 MR. CHILK: Yes.

20 COMMISSIONER ASSELSTINE: Yes, yes.

21 CHAIRMAN PALLADINO: Then we go to Item 3 --

22 COMMISSIONER GILINSKY: Item 3 (A).

23 CHAIRMAN PALLADINO: As part of the Commission
24 action on lifting the immediate effectiveness shutdown order
25 on TMI-1. Shall we await the completion of the investigation

1 of the following items.

2 COMMISSIONER GILINSKY: Well, I would say with
3 many of those people gone, then that would moot some of
4 these, perhaps all of these investigations; certainly some
5 of them.

6 CHAIRMAN PALLADINO: Well, TMI-1 leak rate
7 falsification. And then I put, 2, "After completion of
8 Met Ed trial, are you willing to do it after limited
9 investigation."

10 I know they are hard issues, but I just --

11 COMMISSIONER ASSELSTINE: Yes.

12 CHAIRMAN PALLADINO: -- thought we had to address
13 them. Now, if you want to skip that one, do we want to
14 wait?

15 COMMISSIONER GILINSKY: Well, I would say if you
16 set everyone aside who was involved in those things, then --

17 COMMISSIONER ASSELSTINE: Except you haven't
18 for the TMI-1 --

19 CHAIRMAN PALLADINO: What's that?

20 COMMISSIONER GILINSKY: TMI-1 -- we-1, I don't
21 know. I guess I would probably be inclined to say that
22 we could investigate this ourselves. At least on the face
23 of it, the indictment doesn't deal with TMI-1.

24 COMMISSIONER ASSELSTINE: No, although the problem
25 is the Justice Department prohibition on our talking to those

1 people that list the people that OI says they have to talk
2 to to complete the investigation.

3 COMMISSIONER GILINSKY: Well, there may be
4 practical difficulties there. But at least as a matter of
5 principle, I don't think that waiting for the trial is
6 required.

7 CHAIRMAN PALLADINO: So, the question is, should
8 we await --

9 COMMISSIONER GILINSKY: But that's given that we
10 have resolved 3(C) satisfactorily, otherwise it doesn't make
11 any sense to ask the question.

12 CHAIRMAN PALLADINO: Well, if we are going to wait
13 for the Met Ed trial for other reasons, then I would say,
14 well, we might as well wait on this one.

15 COMMISSIONER ASSELSTINE: Yes.

16 CHAIRMAN PALLADINO: But I'm inclined here that if
17 we are not going to wait for the Met Ed trial, then are
18 you willing to do limited investigation, go as far as
19 possible, without --

20 COMMISSIONER GILINSKY: I think so.

21 CHAIRMAN PALLADINO: All right.

22 COMMISSIONER GILINSKY: But again, this assumes
23 that we have, as I said, dealt with 3(C) in a manner that --

24 CHAIRMAN PALLADINO: 3(C)?

25 COMMISSIONER GILINSKY: Yes, in a way that, say,

1 Jim and I have talked about.

2 COMMISSIONER ASSELSTINE: I have a little bit of
3 concern about the TMI-1 leak rate investigation. I guess
4 it's two concerns -- well, maybe three concerns.

5 One, the OI people did seem to be saying the
6 other day that they really aren't going to be able to do
7 what they think is necessary to do the investigation without
8 talking to those people that are on the Justice Department
9 embargoed list.

10 Two, I think Region I made a good point at one
11 of the meetings, I guess it was the public meeting, about
12 the concerns they have about operation of the plant with
13 operators that are still under investigation. I think that
14 would be the case.

15 CHAIRMAN PALLADINO: You know, I would try to do
16 it just on the basis of information you can get right now.

17 COMMISSIONER ASSELSTINE: Yes, and say that --

18 CHAIRMAN PALLADINO: I didn't find OI very
19 enthusiastic about the information they got. I think an
20 investigator would always say, "Oh, yes, I can do better
21 with more investigation."

22 COMMISSIONER ASSELSTINE: Yes.

23 CHAIRMAN PALLADINO: But they didn't come saying,
24 "By golly, we found flagrant violations, here they are."
25 Nobody admitted there was any violation. So I say, sure, we

1 could wait for more information but we are not here to
2 take the easiest task but rather to make the decision whether
3 or not we should lift the immediate effectiveness.

4 COMMISSIONER ASSELSTINE: Yes.

5 COMMISSIONER BERNTHAL: It is not even clear in
6 one of the things -- it seems to me it ought to be clear
7 to make a judgment here -- what the base line record, if
8 you will, of operation of other plants is. Whether these
9 are truly unusual occurrences, extraordinary to TMI-1 or
10 not. We don't even know that.

11 COMMISSIONER GILINSKY: No.

12 CHAIRMAN PALLADINO: Or if we had as much
13 evidence as we have on TMI-1, would we shut down a plant?
14 I doubt it. I don't think we have much evidence at all on
15 TMI-1. All we have is, they have "x" number of people,
16 something like a dozen out of -- I'm sorry, "x" number,
17 something like a dozen, of cases where there was some
18 variance from the procedure, out of something close to a
19 thousand. They had no motivation for it.

20 COMMISSIONER ASSELSTINE: Yes.

21 CHAIRMAN PALLADINO: Well, let's see, I wrote
22 in response to the question, should we await the completion
23 of the investigations -- the question got fouled up a little
24 bit.

25 COMMISSIONER GILINSKY: Well, you don't have to

1 write down a formal vote. I think we are getting a
2 sense of --

3 CHAIRMAN PALLADINO: I'm getting a feel from you,
4 you would go the way I think on that. I don't know if that
5 makes me question my own thinking or not.

6 (Laughter)

7 CHAIRMAN PALLADINO: Jim, I guess you are --

8 COMMISSIONER ASSELSTINE: I am a little more
9 hesitant, but I would certainly be willing to look at the
10 limited investigation and make the judgment at that time.

11 CHAIRMAN PALLADINO: And would you --

12 COMMISSIONER BERNTHAL: Yes, I would. But I also
13 am waiting for staff to try and come in with what base line
14 data they can get me from the records of other plants.

15 MR. ZERBE: We have asked for that information.
16 We have not got it, not yet.

17 CHAIRMAN PALLADINO: Tom, would you be willing to
18 go with the limited investigation, or do you insist we
19 wait unti -- maybe you don't think we need any of the
20 TMI investigation.

21 COMMISSIONER ROBERTS: I vote "no" to Question 1,
22 period. Lots of luck.

23 CHAIRMAN PALLADINO: Okay. All right. Parks/
24 Gischel allegations. Is there anybody here that thinks
25 that we should wait for the completion of the report

1 before considering (inaudible)

2 All right, let me turn the question around --

3 COMMISSIONER ASSELSTINE: One of the questions, I
4 guess, I have on all of these remaining ones is, my
5 recollection was that with the exception of maybe one of
6 them, these were not impacted by the criminal trial. Is
7 my recollection right? We sought whoever we need to and
8 OI can talk to whoever they need to and complete the
9 investigations.

10 (Simultaneous conversations.)

11 MR. MONTGOMERY: That might be wrong.

12 MR. LEVY: There are four people?

13 COMMISSIONER ASSELSTINE: That's right, there
14 were four.

15 CHAIRMAN PALLADINO: I wasn't relating these to
16 the Met Ed trial.

17 COMMISSIONER GILINSKY: What is your proposal?

18 CHAIRMAN PALLADINO: Jim, I wasn't relating these
19 to whether or not we should wait for the trial. Should we
20 wait, before we restart, should we await completion of the
21 investigation of Park/Gischel/King allegations.

22 COMMISSIONER ASSELSTINE: Part of -- I guess what
23 I am trying to say is, part of my judgment on that would
24 depend, too, on when the investigations could be done, when
25 they are scheduled to be done. I don't remember when OI has

1 said --

2 CHAIRMAN PALLADINO: Why is that?

3 COMMISSIONER ASSELSTINE: Because if it is
4 something that could be done fairly soon, within the next --
5 or would be done within the next month or two and if it has
6 some bearing, that's something that I would take into account.

7 CHAIRMAN PALLADINO: That would be fortuitous, yes.

8 I am frustrated because if we want to tie everything
9 to everything else, we never make a decision on any one
10 item.

11 It seems to me that if there is anything clear,
12 at least to me, that does not affect TMI-1's prestart, it's
13 the Park/Cischel/King allegations, they were clearly with
14 regard to TMI-2 --

15 COMMISSIONER ASSELSTINE: TMI-2, yes.

16 CHAIRMAN PALLADINO: Arnold was the top guy
17 that was involved in that and regardless of how it comes
18 out, I think one could go ahead with restart of TMI-1 --
19 subject to any other comments.

20 COMMISSIONER ASSELSTINE: Yes.

21 CHAIRMAN PALLADINO: But on this one I was hoping
22 at least we would have agreement that we don't have to wait
23 on this one. Now, if we want to raise a question about
24 every one, then we are saying we are not willing to make a
25 decision.

1 COMMISSIONER GILINSKY: Well, let me tell you how
2 I come out.

3 CHAIRMAN PALLADINO: All right.

4 COMMISSIONER GILINSKY: With the departure of
5 those individuals and we talked about at the top of the
6 company and some of the others at least being quarantined,
7 but mainly my main concern is the individuals at the top of
8 the company. And with them being replaced by persons who
9 meet your condition (E) where you said, "GPU should
10 acknowledge that having responsibility for the plant
11 includes accepting --

12 CHAIRMAN PALLADINO: Well, I wanted that from
13 Kuhns.

14 COMMISSIONER GILINSKY: -- operator staff,
15 management actions," and so on, then it seems to me that
16 moots all of these investigations, so far as I can tell,
17 unless someone brings some point to me, to my attention
18 that I have missed up to now.

19 CHAIRMAN PALLADINO: You are doing what I wanted
20 to do, was start at the top and if we decided that --

21 COMMISSIONER GILINSKY: But we start --

22 (Laughter)

23 CHAIRMAN PALLADINO: But when you are starting
24 from the bottom you are saying, if we get all this, then
25 Park/Gischel --

1 COMMISSIONER GILINSKY: Forget all of these, yes.

2 CHAIRMAN PALLADINO: So, what do you want to -- I
3 think in my mind you can categorially say that Parks/Gischel/
4 King allegations, we don't have to wait for them for TMI-1
5 restart.

6 Now, there may be other conditions you can put
7 on TMI-1 restart but I don't think --

8 COMMISSIONER GILINSKY: You mean irrespective of
9 anything.

10 CHAIRMAN PALLADINO: Yes, irrespective.

11 COMMISSIONER GILINSKY: That may be, I'm just not
12 that familiar with the details of it.

13 CHAIRMAN PALLADINO: But it's a decision we got
14 to make.

15 COMMISSIONER GILINSKY: Right. But I have given
16 you a condition that covers all of them.

17 CHAIRMAN PALLADINO: That's why I was willing
18 to stop after No. 1.

19 COMMISSIONER ASSELSTINE: Okay.

20 CHAIRMAN PALLADINO: Then I was encouraged to
21 go on to No. 2, and then you said, "Let's go to No. 4."

22 COMMISSIONER GILINSKY: Because it all hinges on
23 how you come out on that 3(C).

24 CHAIRMAN PALLADINO: I think the more important
25 question to raise if you want to by-pass completion of

1 No. 1 -- if there is any support for considering the
2 proposal such as I made, I think that is the next important
3 question. If there is, I propose to get them started. I
4 think I had enough caveats in there so that we would not be
5 running amok, we would be doing it in an orderly process?

6 My implication was that No. 1 was, no, we mean to
7 weight that. And then I said, well, let's try a proposal
8 that says what it would do. That was the proposal.

9 And incidentally, there I would be willing to
10 listen to Commission discussion.

11 COMMISSIONER GILINSKY: Well, with the modest
12 addition, I think, it's okay --

13 CHAIRMAN PALLADINO: With your addition that --
14 (Laughter)

15 CHAIRMAN PALLADINO: That was my proposal.

16 COMMISSIONER GILINSKY: With a modest subtraction,
17 maybe.

18 CHAIRMAN PALLADINO: Let me ask you for comments
19 on the proposal as to any modification you want to make
20 thereof. Can I get some feel from each of you, how you
21 feel about such a proposal?

22 Now, it does not include Dieckamp's and Kuhn's
23 going. I guess the Commission could vote saying --

24 COMMISSIONER GILINSKY: I just don't see how you
25 can do it, I mean, I really don't. I mean, even from your

1 own point of view and even having discounted things, as I
2 said earlier, I have given that thought earlier before this
3 indictment came up, I just don't see how you can go forward
4 given that the company is under indictment; given it's the
5 same leadership; given the complete control these guys have
6 had in the company.

7 CHAIRMAN PALLADINO: Let me ask you a converse
8 question. Suppose we had the plant operating and there
9 was a falsification of leak rate allegation and it went
10 to trial. Would you shut them down? I don't think we would.

11 COMMISSIONER GILINSKY: I'm not sure. I mean,
12 I don't want to give you a blanket answer that will be
13 merely consistent with what I have said before.

14 CHAIRMAN PALLADINO: But I ask if they could --

15 COMMISSIONER GILINSKY: I certainly would think
16 that that is depending on the circumstances. It depends
17 on our involvement in the issues, what we know of them and
18 so on. It certainly is not a favorable mark for the people
19 running the company and you may, as a result of that,
20 require that they depart.

21 I frankly thought in the case of Salem that some
22 people should have left and there wasn't any criminal
23 indictment there. I thought things were sufficiently --

24 CHAIRMAN PALLADINO: If everybody leaves, Victor,
25 there won't be anybody running these plants.

1 COMMISSIONER GILINSKY: Yes, but you know, there
2 is absolutely no accountability in this whole system. You
3 know, there are half a dozen plants out there where the
4 inattention or the improper actions of the top people have
5 cost the public a billion dollars a piece, and they are
6 all still there.

7 CHAIRMAN PALLADINO: Let me ask you again, you
8 would consider a proposal such as I made if Dieckamp and
9 Kuhns were quarantined.

10 COMMISSIONER ROBERTS: You'd better think, though --

11 COMMISSIONER GILINSKY: Not quarantined, I am
12 talking about these people leaving.

13 COMMISSIONER ROBERTS: Yes.

14 CHAIRMAN PALLADINO: Leaving their present
15 position as Chief Executive.

16 COMMISSIONER ROBERTS: I don't think Victor is
17 saying that. I wouldn't think forcing them out --

18 COMMISSIONER GILINSKY: Well, I don't want them
19 in charge of the company.

20 CHAIRMAN PALLADINO: Well; Jim said temporarily
21 until they find that they are innocent.

22 COMMISSIONER GILINSKY: That can be done with the
23 people lower down. I don't think as a practical matter
24 you can do that with the people on top.

25 CHAIRMAN PALLADINO: I didn't think so either.

1 COMMISSIONER GILINSKY: Now, maybe they can stay
2 on the Board or something like that, but they can't be
3 running the company. They can't have the positions they
4 have.

5 CHAIRMAN PALLADINO: Well, that's what -- meant
6 to me. If Dieckamp and Kuhns go -- all right, I think I
7 understand.

8 COMMISSIONER GILINSKY: I mean, I haven't thought
9 my way through whether it matters whether they stay on the
10 Board as members or whatever. But I don't want them as
11 Chief Executive; I don't want them as Chief Operating
12 Officer; I don't want them running those companies.

13 CHAIRMAN PALLADINO: But you wouldn't mind their
14 remaining on the Board?

15 COMMISSIONER GILINSKY: I haven't thought about
16 that, frankly. I'll give your sort of a Fred Bernthal
17 answer.

18 (Laughter.)

19 CHAIRMAN PALLADINO: Well --

20 COMMISSIONER GILINSKY: He didn't say he hadn't
21 thought about it. He just said he's not telling you.

22 (Laughter)

23 CHAIRMAN PALLADINO: Well, I think you can't
24 escape the fact that we got to make our opinions known.

25 COMMISSIONER GILINSKY: Joe, I have made my

1 opinions known. You know when I make my opinions known.
2 And I have, you know, set down the conditions, I think,
3 pretty clearly.

4 CHAIRMAN PALLADINO: Well, but I am just saying if
5 you get to proposals like, should they be on the Board, it
6 would be helpful if we had some opinions on that.

7 COMMISSIONER BERNTHAL: I guess the one question
8 that is in my mind is, if they remain on the Board, in
9 effect then realistically now, are you saying that whoever
10 these individuals are that are responsible for running
11 Oyster Creek and TMI-1 -- I don't recall their names --
12 that they would in effect be the CEO of the company for
13 that purpose, reportable only to the Board collectively? Or
14 how would -- I don't understand that.

15 COMMISSIONER GILINSKY: Would not be -- I haven't
16 thought about whether it's okay to leave them on the Board.
17 But suppose you left them on the Board, what I did not want
18 is for them to be Chief Executive Officer, Chief Operating
19 Officers, which is what they are now.

20 COMMISSIONER BERNTHAL: But then, if GPU told us
21 that these individuals did not report to Mr. Kuhns or
22 Mr. Dieckamp, is that what you are saying, that that would
23 be adequate?

24 COMMISSIONER ASSELSTINE: Well, I think Victor
25 also wants to know who is going to be in those positions, too.

1 COMMISSIONER GILINSKY: Yes, I want somebody else
2 in those positions, and someone who satisfies Joe's criterion
3 (E) somewhere, 1(E).

4 CHAIRMAN PALLADINO: Well, I want to hear from
5 Kuhns.

6 Let me try to force just a little bit more and
7 then we'll quit. Can I get other expressions on whether
8 or not you would consider proposals such as 2(A)? I would,
9 of course, say, yes, I would consider such a proposal.

10 I gather from Victor, yes, he would consider it
11 if Dieckamp and Kuhns are no longer in the operating chain
12 of TMI-1.

13 Tom, I don't know if you have a thought on this
14 or not, whether you would be willing to proceed, develop
15 a proposal.

16 COMMISSIONER ROBERTS: Oh, I'm sure. The
17 question is the men I'm willing to consider, yes. I think --

18 CHAIRMAN PALLADINO: Well, by that I mean well
19 enough so that we should get them started doing it.

20 COMMISSIONER ROBERTS: I don't agree with every-
21 thing in your proposal.

22 CHAIRMAN PALLADINO: All right. Well, I would be
23 willing to sit down and let's hammer through what we should
24 take out. Jim?

25 COMMISSIONER ASSELSTINE: I would -- I guess I would

1 be willing to work on something along the lines of your
2 proposal. My own view is, I think, similar to Victor's
3 that there are several things in here that I just don't
4 think go far enough in terms of assuring ourselves that this
5 is a sufficiently different organization to be able to
6 go ahead, pending the completion of some of the investi-
7 gations, particularly the criminal one --

8 CHAIRMAN PALLADINO: Would an important part of it
9 be if Dieckamp and Kuhns go?

10 COMMISSIONER ASSELSTINE: Yes. But I also, you
11 know, I have these other people as well.

12 CHAIRMAN PALLADINO: I understand.

13 COMMISSIONER ASSELSTINE: I agree with your
14 concern about "DD:" I agree with you that we have to
15 resolve the hardware issues, and I think an important
16 element of that is assuring ourselves that whatever issues
17 are going to be left for resolution later on, we have at
18 least enough information now to assure ourselves that the
19 plant can operate safely.

20 But I think that before we get people running
21 off working on these very elements, we probably ought to see
22 if we can reach some kind of an agreement on whether there
23 is a sufficient set of organizational changes that will
24 satisfy the majority of the Commission that it's worth
25 pursuing this.

1 CHAIRMAN PALLADINO: Well, all of these come down
2 to people, it seems like, in the end.

3 COMMISSIONER ASSELSTINE: I think so, yes.

4 CHAIRMAN PALLADINO: Fred, do you have any
5 thoughts on that one?

6 COMMISSIONER BERNTHAL: Let me just summarize where
7 I am on this thing. It seems to me that "the" key question
8 is this management integrity thing, and I simply have not
9 decided how to approach that issue yet. I will decide
10 at whatever date you say you want a decision.

11 We clearly have to review the hardware issues,
12 and I agree with the sense of what I think has been said
13 earlier here today, that independently of all the hardware
14 issues, that if this management integrity thing is resolved
15 by some rearrangement of the current structure, possibly,
16 or resolved then as a matter of principle in my own mind,
17 then I am certainly prepared to vote that we move ahead
18 toward restart.

19 CHAIRMAN PALLADINO: Well, if we are going to
20 consider a propoasl, I guess it is important to hear from
21 each of you what your stance is with regard to the people
22 that you want to do something about. It sounds --

23 COMMISSIONER ROBERTS: I don't think there is
24 any uncertainty here about that; is there? I'm not being
25 argumentative with you.

1 CHAIRMAN PALLADINO: No, I gather Victor says,
2 well, at least Kuhns and Dieckamp --

3 COMMISSIONER GILINSKY: Well, I wasn't trying to
4 be -- let me tell you what's in my mind.

5 I'm less concerned about the precise outlines of
6 the persons of lower levels who stay or go. I am more
7 concerned about the persons at the top who set the
8 direction.

9 And if we didn't catch every last one at lower
10 levels who misbehaved or acted improperly, I'm counting on
11 that being taken care of by there being the proper incentives
12 and organization, and direction and the company as a result
13 having the right people at the top. That seems to me to
14 be paramount. That is basically, it seems to me, our job.

15 We can't chase down every last employee of every
16 one of these companies, it's impossible. And whatever
17 confidence you get has got to come not from knowing that
18 hundreds or thousands of people are doing the right thing,
19 but that basically the right people are in charge and they
20 are giving the right instructions, and they've got the right
21 things in mind and the right motivation.

22 COMMISSIONER BERNTHAL: Joe, let me just also
23 address another issue which I forgot to mention, and that
24 is the leak rate investigations.

25 I am certainly in agreement with your proposal that

1 we go ahead with those two individuals that apparently we are
2 going to be permitted to question. I doubt that that is
3 going to resolve the issue.

4 COMMISSIONER ASSELSTINE: That's right.

5 COMMISSIONER BERNTHAL: If it does, it will be
6 in a negative manner that we will decide then that we can't
7 go ahead. But suppose we find nothing there, then as soon as
8 I get some data on this question of what the base line is
9 for plant operation, then I am certainly prepared to go ahead
10 on that question as well.

11 CHAIRMAN PALLADINO: Well, I was going to ask each
12 of you to write -- not a long epistle but a couple of
13 paragraphs such as Victor did -- that says, "I would be
14 willing" -- or I would not be willing, whichever way you
15 want to express it -- "to consider not awaiting completion
16 of the criminal trial against Met Ed, provided that." Or
17 you want to reverse it and put it the other way, that's
18 fine.

19 COMMISSIONER ASSELSTINE: All right.

20 COMMISSIONER ROBERTS: When do you want it?

21 COMMISSIONER GILINSKY: Yours is going to be
22 short.

23 (Laughter)

24 COMMISSIONER ROBERTS: (Inaudible)

25 CHAIRMAN PALLADINO: I would like it so that you

1 are considered. I understand.

2 Because I think that's crucial to whether or not
3 we are going to wait. Oh, I was thinking Wednesday,
4 Thursday. I was hoping that there is a time this week
5 we might even meet again to discuss it.

6 COMMISSIONER ASSELSTINE: I don't think so.

7 COMMISSIONER BERNTHAL: Two of us are out of town,
8 at least.

9 COMMISSIONER ASSELSTINE: Yes.

10 COMMISSIONER BERNTHAL: Unless you can form a
11 majority.

12 CHAIRMAN PALLADINO: No, I would like to see it
13 from each of you.

14 COMMISSIONER ASSELSTINE: Okay.

15 CHAIRMAN PALLADINO: And then I think the same
16 central issue exists in considering the proposal, I gather.

17 COMMISSIONER ASSELSTINE: I think that's right.

18 CHAIRMAN PALLADINO: So that if it turns out
19 that three feel we should await their completion unless
20 certain things are care of, I think that's the basis on
21 which we consider the proposal. And the reason for
22 suggesting another meeting is because I do think we need to
23 interchange with each other.

24 COMMISSIONER ASSELSTINE: Yes.

25 CHAIRMAN PALLADINO: As hard as it is and as

1 obnoxious as it may seem to keep forcing people to say what's
2 on their mind, I think we've got to do it.

3 COMMISSIONER ASSELSTINE: Yes.

4 CHAIRMAN PALLADINO: And the way we do it is by
5 exchanging in a meeting. Now, that doesn't mean we shouldn't
6 have interim consultation. And my guess, if we are going
7 to say anything to the parties is, we didn't make a
8 determination. We are going to work on the subject.

9 COMMISSIONER ASSELSTINE: Yes.

10 CHAIRMAN PALLADINO: And as soon as we reach
11 a conclusion, we'll let them know. But the question is,
12 when are you going to try to reach that?

13 COMMISSIONER BERNTHAL: Yes. I would like to
14 know what deadline the Commission is attempting to
15 establish.

16 CHAIRMAN PALLADINO: Does everybody have a
17 schedule for this week? Do you have one of the schedules?
18 I just want to see when we might meet.

19 Oh, is everybody on travel this week?

20 COMMISSIONER GILINSKY: Not me.

21 MR. CHILK: Commissioners Asselstine and Bernthal.

22 COMMISSIONER ASSELSTINE: Yes.

23 CHAIRMAN PALLADINO: There is always a possibility
24 of coming home early so we could try one for Friday.

25 (Laughter)

1 CHAIRMAN PALLADINO: Well, it is getting
2 desperate, I think.

3 COMMISSIONER ASSELSTINE: What's the beginning
4 of next week?

5 CHAIRMAN PALLADINO: Well, we have affirmation
6 and discussion, affirmation and vote on the modification
7 of Commission memorandum and order regarding operation
8 of Diablo Canyon. I guess this is Mods 4 and 3.

9 COMMISSIONER ASSELSTINE: That's right.

10 CHAIRMAN PALLADINO: Then we have discussion of
11 pending investigation of Diablo Canyon, and then we have
12 a hearing about the response center out there, and then we
13 have the 26th, status of certain enforcement actions.

14 MR. CHILK: That's the OGC. The meeting is
15 probably a general session.

16 CHAIRMAN PALLADINO: Is this tube line, et cetera?

17 COMMISSIONER ASSELSTINE: How about Tuesday
18 afternoon? The hearing is in the morning, right?

19 MR. CHILK: The hearing is in the morning.

20 CHAIRMAN PALLADINO: Yes, I am willing. It will
21 be a little relaxation.

22 (Laughter)

23 CHAIRMAN PALLADINO: What do we have on Norm -- or
24 is any member of my staff here? Do I have any commitment
25 in the afternoon of the 24th?

1 MR. HALLER: I would have to go get the schedule
2 out of the office.

3 CHAIRMAN PALLADINO: Could you check it?

4 MR. HALLER: Yes.

5 CHAIRMAN PALLADINO: Because I would suggest
6 at 2:30.

7 COMMISSIONER ASSELSTINE: Sure, that will be fine.

8 COMMISSIONER ROBERTS: And this is what, to vote?

9 CHAIRMAN PALLADINO: To continue our discussion.
10 To assess where we are and see if there is some -- that
11 we can make.

12 COMMISSIONER ASSELSTINE: With the idea that each
13 of us is going to try a crack at a written --

14 CHAIRMAN PALLADINO: What your positions are,
15 either for a proposal or waiting for Met Ed's trial. I think
16 they are both almost the same. Just get together to see
17 whether we have a common position.

18 All right, as soon as Norm gets back, he'll know
19 my schedule.

20 COMMISSIONER ASSELSTINE: Fine.

21 CHAIRMAN PALLADINO: I think 2:30 -- and if the
22 trial runs -- excuse me, not the trial.

23 COMMISSIONER ROBERTS: Was that a slip of the
24 tongue?

25 (Laughter)

1 COMMISSIONER BERNTHAL: You are probably right, but
2 go ahead.

3 CHAIRMAN PALLADINO: If the hearing goes very
4 late, we can adjust easily. I would suggest it will still be a
5 closed meeting because we are talking primarily about
6 individuals.

7 (Simultaneous conversation)

8 CHAIRMAN PALLADINO: Let's try for 2:30.

9 COMMISSIONER ASSELSTINE: Okay.

10 CHAIRMAN PALLADINO: Okay, any more we should try
11 to hammer out this afternoon? But I would call your
12 attention to keep on thinking about these kinds of questions.

13 COMMISSIONER GILINSKY: Well, we made a little
14 headway.

15 COMMISSIONER ASSELSTINE: We will try to get
16 you something in writing the next couple of days.

17 MR. ZERBE: We looked at a schedule. If the
18 Commission were to go along the lines you were suggesting
19 and see where you come out time wise, and it was about June
20 15 for restart. You know, if you voted all those things
21 down --

22 CHAIRMAN PALLADINO: If we went through a proposal
23 such as this?

24 MR. ZERBE: If you went through your proposal with
25 all the things you had in your proposal, it would be like

1 June 15th before you would be able to say anything.

2 CHAIRMAN PALLADINO: I sort of said the end of
3 March, but that's close enough.

4 COMMISSIONER ASSELSTINE: That's aiming at like
5 about May 1st to put out the --

6 MR. ZERBE: Yes, right.

7 CHAIRMAN PALLADINO: Okay. Well, why don't we
8 adjourn this discussion?

9 (Whereupon, at 4:02 p.m. the meeting of the
10 Commission was adjourned.)

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CERTIFICATE OF PROCEEDING

1
2 This is to certify that the attached proceedings before the
3 NRC COMMISSION

4 In the Matter of: Discussion of future steps in TMI-1 Restart

5 Date of Proceeding: 16 January 1984

6 Place of Proceeding: Washington, D. C.

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

9
10 Elizabeth Hansen
11 Official Reporter - Typed

12 *Elizabeth Hansen*
13 Official Reporter - Signature

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