

NUCLEAR REGULATORY COMMISSION

ORIGINAL

COMMISSION MEETING

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In the Matter of: CLOSED MEETING - EXEMPTION 10  
DISCUSSION OF TMI-1 RESTART

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DISCUSSION OF TMI-1 RESTART  
(Closed to the Public - Exemption 10)

Room 1130,  
1717 H Street Northwest,  
Washington, D.C.

Friday, November 6, 1981

The Commission met in closed session at 10:00 a.m.,  
pursuant to notice.

BEFORE:

- HUNZIO PALLADINO, Chairman.
- JOHN AHEARNE, Commissioner.
- VICTOR GILINSKY, Commissioner.
- PETER BRADFORD, Commissioner.
- THOMAS ROBERTS, Commissioner.

Present for the NRC Staff:

- S. Chilk, Office of the Secretary
- L. Bickwit, Office of General Counsel.
- F. Remick
- J. Milhoan
- J. Montgomery
- J. Roe
- I. Rothchild

P R O C E E D I N G S

1  
2 CHAIRMAN PALLADINO: The meeting will please come to  
3 order.

4 The topic of today's meeting is a Commission discussion  
5 on the TMI-1 Restart.

6 As you will recall, on October 14th, the Commission  
7 heard oral presentations by the parties on the Licensing  
8 Board's partial initial decision on management issues regarding  
9 the TMI-1 restart.

10 As a follow-on to these presentations, I believe that  
11 today we should determine first that the Commission wants  
12 further exploration or work that it wants done in preparation  
13 for its action on the management competence aspects of TMI-1  
14 restart.

15 If so, we ought to try to identify what those items  
16 so that we can get any work underway.

17 I also believe we should review the options open to  
18 us with regard to the action that we might want to take on  
19 the management competence partial initial decision of the Board,  
20 and determine to which of these options the Commission appears  
21 to be leaning.

22 We have received an OGC/OPE paper dated 11/3/81  
23 on the subject, and I propose that we have OPE and OGC highlight  
24 the features of the paper, and then solicit Commission input  
25 in the form of questions or comments.

1 MR. REMICK: Okay, Mr. Chairman, just briefly I'll  
2 outline what was in that joint memo. It was in response to your  
3 request.

4 The Commission now has the benefit of the Licensing  
5 Board's partial initial decision on the management issues, an  
6 OPE document, in discussion with OPE, and then on October 14th  
7 we had oral presentations by the parties.

8 As stated in our memo of September 24th, we felt that  
9 some aspects of the management issues remain unresolved and, in  
10 our view, should be further evaluated prior to the Commission  
11 reaching a conclusion on management issues.

12 Now the Licensing Board's initial decision on  
13 hardware and emergency planning issues is due in late  
14 November. We heard some word that that might run into December.

15 The Special Master's report --

16 (Laughter.)

17 MR. BICKWIT: Different people get different words.

18 MR. REMICK: The Special Master's report to the Board  
19 is scheduled for early January, we're told, with the Board's  
20 supplemental initial decision, as I believe they're going to  
21 call it, to follow approximately one month later. So that  
22 would be, we would expect, some time in February, or possibly  
23 March.

24 We believe that there are several options that the  
25 Commission has on handling the management issues:

1 One, the Commission could reach a decision now on  
2 the management issues without awaiting for additional information.

3 COMMISSIONER BRADFORD: Forrest, excuse me just a  
4 second.

5 For some reason, a May date for the cheating issue  
6 sticks in my mind. Didn't Milhollin at one point put out a  
7 schedule that contemplated that?

8 MR. REMICK: Well, this is a question I asked, I  
9 thought some time this week I saw something like that, but I  
10 have not been able to find whatever it was I read that made me  
11 feel that it went into April or May.

12 COMMISSIONER BRADFORD: I'm sure there is a document  
13 that contemplates a May decision on that issue, and it's not a  
14 recent one, it's a month or so old.

15 MR. REMICK: Trip?

16 MR. ROTHCHILD: Well, my most recent conversation  
17 with Ivan Smith was January, February, as far as the dates, that  
18 were stated in the OPE memo as far as what's the official position  
19 right now.

20 COMMISSIONER BRADFORD: I don't mean to say that  
21 that's wrong, but I just know there's --

22 MR. ROTHCHILD: What Ivan tells me is that he's not  
23 confident in those dates, having read the last couple of IE  
24 reports that have come out. He thinks this hearing may be longer  
25 than what people expected it to be.

1           There was a hope that they could finish the hearings  
2 with two weeks of evidentiary hearings in November. It looks  
3 definitely like they will have to have at least one week in  
4 December.

5           No one at this point can give a date, but I would  
6 probably think January and February are possible, but optimistic.

7           CHAIRMAN PALLADINO: This is on the cheating question?

8           MR. ROTHCHILD: This is on the cheating.

9           COMMISSIONER BRADFORD: What is the question there,  
10 whether the cheating was more widespread, or a lot of people  
11 cheated, or whether management condoned it, or what?

12          MR. ROTHCHILD: I think it's a combination of all  
13 those things. I think the Board would like to know how widespread  
14 was the cheating and, more importantly, was management involved  
15 in the cheating, or did they encourage it or facilitate it.  
16 It's a fairly wide-ranging inquiry, but I think they would like  
17 answers to both of those questions.

18          COMMISSIONER AHEARNE: Will the process be that  
19 Milhollin will write his own decision which he will then give  
20 to the Board, which they will then incorporate in any either  
21 further hearings for themselves, or in a final decision, since  
22 they had left that element open? Is it clear what happens  
23 after Milhollin finishes?

24          MR. ROTHCHILD: It's my understanding the parties  
25 get the comments out of Milhollin's opinion. I guess he sort of

1 says, "This is where I'm at," and the parties get the comment, and  
2 I guess that gets to go to Ivan Smith, and Ivan gets to make  
3 the real initial decision.

4 COMMISSIONER AHEARNE: Ivan or the Board?

5 MR. ROTHCHILD: <sup>S</sup>The Board. And, of course, that will  
6 be appealable.

7 MR. REMICK: The Board plans to participate in  
8 some of those hearings that the Special Master is conducting.  
9 They do plan to play an active role in part of them; not all of  
10 them.

11 COMMISSIONER AHEARNE: But unless something comes  
12 up that would change current plans, are the current plans for  
13 Milhollin to hold all of the hearings that might be held on  
14 this issue, and after he finishes his report, people comment  
15 on it, the Board then takes that under advisement and reaches a  
16 decision?

17 MR. ROTHCHILD: <sup>S</sup>That's my understanding.

18 MR. REMICK: This is my understanding, too,  
19 that the supplemental initial decision will be from the Board,  
20 with that input.

21 COMMISSIONER AHEARNE: But without, at least current  
22 plan is without an additional set of hearings after Milhollin?

23 MR. ROTHCHILD: <sup>S</sup>The Board, of course, has the  
24 authority to have one if they wanted to. I gather they will  
25 provide input to things of concern to Milhollin as he is going

1 along.

2 CHAIRMAN PALLADINO: So now you are indicating that  
3 the hearing on the cheating may be done by February, but then  
4 there are actions on top of that?

5 MR. REMICK: Not actions, but writing the decision.

6 CHAIRMAN PALLADINO: Writing the decision, and then  
7 going to the Hearing Board. Does the Hearing Board not have  
8 to review it and write a decision also?

9 MR. ROTHCHILD: Ivan expects all that to be finished  
10 by February, is the hope; but that may slip.

11 COMMISSIONER AHEARNE: Particularly, as you say,  
12 that the other parties have an opportunity to provide comments  
13 on Milhollin's decision, February does sound --

14 MR. ROTHCHILD: Frankly, it's going to depend on how  
15 many days of evidentiary hearings they hold and when they finish  
16 them. Once you get that date, it will become more predictable  
17 because you know you have a set number of days for filing  
18 proposed findings.

19 COMMISSIONER GILINSKY: Well, it's clear the thing  
20 might go longer. I don't know if there's any point in pursuing  
21 all --

22 MR. REMICK: I share Commissioner Bradford's view  
23 that I could have sworn that earlier this week I saw something  
24 that said April or May, but I have not been able to relocate it  
25 within the office. But I thought I read something, and I'm not



1 sure what it was.

2 COMMISSIONER BRADFORD: I gather it's an order  
3 that came out of a prehearing conference that just had a  
4 schedule attached to it, and I know that schedule said May.

5 MR. ROTHCHILD: There's a lot of informal discussion  
6 that come the latter part of December or early January,  
7 Milhollin might be able to give a preliminary report that  
8 said management was involved or management was not involved,  
9 based on all the evidence that has been heard, based on the trial  
10 record.

11 CHAIRMAN PALLADINO: Well, why don't we go on.  
12 I think we will have the schedule as it comes out.

13 MR. REMICK: The first option, as I indicated,  
14 would be the Commission would decide now.

15 The second would be that they could await receipt  
16 of the Licensing Board's November initial decision before  
17 reaching a decision on management issues.

18 Or, the third option, the Commission could await  
19 receipt of the Licensing Board's supplemental initial decision  
20 on cheating before reaching a decision on the management  
21 issues.

22 Now, if in selecting one of those options the  
23 question of cheating comes on the critical path, as Trip just  
24 suggested, there is a possible option that the Commission could  
25 request from the Special Master and the Board an early interim

1 report, and the Special Master, in one of the prehearing  
2 conferences, did alert the parties that he could foresee this  
3 as a possibility. He was clearly thinking along the same line.

4 What form that would take, I don't know. I defer  
5 to OGC on what form that would be, a written report, or I guess  
6 it could be an oral report. I don't know.

7 Under recommendations, as a minimum, certainly OPE  
8 and I believe OGC supports this, that we believe the Commission  
9 should await at least until it can evaluate the Board's initial  
10 decision on hardware and emergency planning and the separation  
11 of the TMI units, which is due in November, before deciding  
12 the management issues.

13 We do feel, though, that the Commission is ripe to  
14 decide whether it feels there are any additional conditions it  
15 wishes to place further than what the Board placed in its  
16 initial decision, and if they decide that there are either  
17 additional conditions or major modifications to those conditions  
18 that you might wish to consider putting out an order, so that  
19 the Applicant is alerted to this, in case any of these require  
20 corrective action that might take time.

21 Now it's OPE's view that that is not necessary; that --

22 CHAIRMAN PALLADINO: What's not necessary?

23 MR. REMICK: That additional conditions need to be  
24 made or major modifications. In our September 24th memo, we  
25 indicated that there were several things that we thought should be

1 done, but they were more in the nature of modifying than they  
2 were significant changes to conditions.

3 So if the Commission were to follow that OPE previous  
4 advice, we do not see the need for an order, because none of  
5 those would require major corrective action. It would require  
6 additional monitoring.

7 CHAIRMAN PALLADINO: One was on quality assurance. . .

8 MR. REMICK: There was a --

9 CHAIRMAN PALLADINO: There were two that I remember  
10 specifically.

11 COMMISSIONER BRADFORD: The Board conditions?

12 CHAIRMAN PALLADINO: In the September. . .

13 MR. REMICK: One, we suggested that the Applicant  
14 should definitely define how it's going to define safety-related  
15 maintenance items. That was one thing.

16 CHAIRMAN PALLADINO: Well, there is -- I guess that  
17 was the one you had talked about. It says, "While the Board  
18 passed favorably on Licensee case regarding safety-related  
19 maintenance, it appears that it was less assured in this issue  
20 than others. The Board based its decision on the revised  
21 maintenance system, with assurance that the new system  
22 correct the past problems. However, the Board indicated that  
23 the auditability of quality control records would be improved  
24 if QC observation hold points were signed off by a QC at each  
25 point, rather than when the job was finished."

1 Is that one of them?

2 MR. REMICK: That's one of the ones that we would  
3 propose, that there be monitoring.

4 COMMISSIONER AHEARNE: But you did suggest modifying  
5 one of the Board conditions.

6 CHAIRMAN PALLADINO: Yes. On 9-D. And now how did  
7 you suggest that we modify that?

8 MR. MILHOAN: We suggested on Board Condition 9-D  
9 it would require the utility to maintain a five-shift schedule.  
10 If they could not maintain the five-shift schedule using  
11 regular shift personnel, they would be required to use management  
12 personnel who hold licenses to introduce them into shift work.

13 Our concern was if they did that to maintain a five-  
14 shift schedule, their regulator job might go unattended if there  
15 was not some compensating measure established.

16 So what we were suggesting, that prior to the  
17 Licensee being required to use the management personnel to  
18 stand regular shift watches, that they notify the Staff and  
19 obtain Staff approval that this would be an acceptable measure.

20 CHAIRMAN PALLADINO: Are you saying that doesn't  
21 necessarily need an order?

22 MR. MILHOAN: At this time, no.

23 MR. REMICK: I don't think at this time, no.

24 MR. MILHOAN: But eventually, yes.

25 MR. REMICK: The order we are referring to, if the

1 Commission feels there should be other major changes to the  
2 conditions or any conditions which might require corrective  
3 action, it would require some time, that the Commission should  
4 decide that and get the order out so the Applicant is aware of it.

5 We do not suggest it. That's certainly for the  
6 Commission to decide.

7 The Commission has received a memo from Commissioner  
8 Gilinsky to discuss Mr. Stello's memo, and if you do discuss  
9 that, we believe the Commission should determine what effect  
10 this may have on the Commission's immediate effectiveness  
11 decision on the management issues, and the Commission may also  
12 wish to determine its schedule for receiving the parties' views  
13 on whether the Licensing Board's decision, due in November,  
14 should be made immediately effective.

15 You indicated that you would put out such a schedule,  
16 and we suggest that you may wish to do that at this time, or  
17 at least by mid-November, and I think that's an area that OGC  
18 can better address than OPE.

19 CHAIRMAN PALLADINO: This will be the schedule after  
20 we get the next partial initial decision?

21 MR. REMICK: It would be a schedule to be implemented  
22 once the decision is issued, but I think the notice of the  
23 schedule should go out before that time, so the parties are  
24 aware of how much time they will have to respond.

25 CHAIRMAN PALLADINO: Did I read somewhere that we

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1 had committed ourselves to making a decision within 35 days?

2 MR. REMICK: Yes.

3 COMMISSIONER GILINSKY: Of whatever we regard as  
4 the final stage.

5 MR. REMICK: That's correct.

6 COMMISSIONER AHEARNE: So if we decided that the  
7 cheating resolution has . . . then the 35 days. . .

8 MR. REMICK: That's right.

9 There are two other issues --

10 MR. BICKWIT: We did say the second initial decision  
11 in the last order.

12 CHAIRMAN PALLADINO: In the last order?

13 MR. BICKWIT: In the last order.

14 COMMISSIONER GILINSKY: I think the question is  
15 whether that one is complete or not complete.

16 CHAIRMAN PALLADINO: Yeah, if it's a supplemental,  
17 it's not really complete.

18 MR. REMICK: There are two other issues, Mr. Chairman.  
19 that the Commission may wish to discuss. I'm not sure if they  
20 are.

21 One is a question on confidentiality, I am told,  
22 relating to the two individuals who did cheat; and the other is a  
23 current ruling by the Special Master that Staff attitude  
24 needs to be an issue in the cheating hearing.

25 CHAIRMAN PALLADINO: Staff's attitude?

1 MR. REMICK: NRC Staff attitude, yes.

2 COMMISSIONER ROBERTS: Would you elaborate on that?  
3 Staff attitude?

4 MR. REMICK: The Special Master has indicated, I think  
5 in a prehearing conference order, that he wishes the Staff to  
6 address the Staff's attitude. The Staff has come back and  
7 argued that they do not feel that that is within the bounds  
8 of the issues in the --

9 CHAIRMAN PALLADINO: Attitude towards what?

10 MR. REMICK: Staff attitude about operator training;  
11 about examining operators.

12 COMMISSIONER AHEARNE: I think, as I recall, from  
13 reading the discussion, it was do we really have a serious  
14 attitude on these exams. Do we view them as something that is  
15 very important; do we proctor them carefully. What is the  
16 overall attitude towards them.

17 MR. REMICK: The Staff has responded saying they do  
18 not consider that appropriate. They have asked the Special  
19 Master to reconsider and, if he decides against it, to certify  
20 it to the Licensing Board. He denied them on both counts.

21 I do not know if the Licensing Board will take it up  
22 on some motion or not, but it is a question that has come up.  
23 I did know whether the Commission wished to address it or not.

24 MR. ROTHCHILD: It's my understanding, from talking  
25 to Staff yesterday, they are still considering whether to appeal

1 the denial of the request to certify the matter to the Licensing  
2 Board, and they probably will appeal that decision.

3 CHAIRMAN PALLADINO: Do they appeal that to the  
4 Master, or to whom do they appeal that?

5 COMMISSIONER AHEARNE: They asked the Master to  
6 certify.

7 CHAIRMAN PALLADINO: And he denied it.

8 COMMISSIONER AHEARNE: I suppose they will probably  
9 appeal it to us, or the Licensing Board.

10 CHAIRMAN PALLADINO: To the Licensing Board?

11 COMMISSIONER GILINSKY: Thereby displaying their  
12 attitude.

13 (Laughter.)

14 COMMISSIONER AHEARNE: Before you get into the  
15 discussion on the items, could I ask the Staff a question?

16 Does anybody know the status of the operator exams?

17 MR. MONTGOMERY: They were conducted. We tried to  
18 find out this morning exactly how many candidates took the test.  
19 We didn't get that information back yet. I know that last week  
20 they were finishing some up.

21 COMMISSIONER AHEARNE: Last week?

22 MR. MONTGOMERY: And prior to that. But as far as I  
23 know, they were concluded last week.

24 COMMISSIONER AHEARNE: Do you have a rough estimate  
25 when the results of that might be known?



1 MR. MONTGOMERY: No, we don't.

2 COMMISSIONER AHEARNE: Do you know how they were  
3 proctored?

4 MR. MONTGOMERY: My understanding is they were  
5 proctored significantly differently. The proctors -- one or  
6 more proctors were there totally through the examination. There  
7 was no period of time when it was unproctored.

8 COMMISSIONER GILINSKY: Did each operator have a  
9 proctor?

10 (Laughter.)

11 MR. MONTGOMERY: I don't think it went quite that  
12 far. But there was more than one proctor in the room.

13 MR. ROTHCHILD: They changed the seating arrangements  
14 and everything, as well. Instead of having two people at the  
15 table, they put one person at the table, and they said that as a  
16 rule when you finished a page, you had to turn it down. You  
17 couldn't leave answers face up. And there was going to be full-  
18 time proctoring. Individuals were to bring their lunches to  
19 the room and eat their lunch in the room. There were a number  
20 of conditions that were quite different from the earlier standards.

21 MR. MIJHOAN: It's my understanding that Steve  
22 Hanauer was up there for that.

23 COMMISSIONER AHEARNE: The Director of Safety  
24 Technology.

25 (Laughter.)

1 MR. REMICK: There is an interesting sidelight to the  
2 bit of proctoring which basically comes out. At least two  
3 proctors would be sent to examinations, and my understanding,  
4 the interpretation by operators out in the field is the  
5 Commission has decided that during oral exams now, two people  
6 will give them the oral exam. And this has had quite a  
7 significant morale effect.

8 COMMISSIONER GILINSKY: Two people will give them --

9 MR. REMICK: They interpreted this that there  
10 are going to be two people giving them the oral exam rather  
11 than one. And, of course, they generally dread the oral exam  
12 more than the written exam.

13 CHAIRMAN PALLADINO: That is not the intent?

14 MR. REMICK: That is not the intent, no.

15 COMMISSIONER GILINSKY: Do our people ever take exams?  
16 The ones who give the exams? Do we take exams?

17 MR. REMICK: The practice of the operator licensing  
18 branch, some years ago, was not quite the same, but they would  
19 give out -- they held an annual conference and they would give  
20 out a set of questions and get the examiners to answer them, and  
21 then they would compare -- excuse me. It was not answer the  
22 questions. It was to take a question and a given answer and  
23 grade that, and then discuss the grading. So that you get some  
24 kind of consistence with people across the country on how you  
25 grade. But, no, not --

1 COMMISSIONER GILINSKY: I think our people ought to  
2 take the exam. Everyone below the level of Commissioners.

3 (Laughter.)

4 CHAIRMAN PALLADINO: I'm glad you added that.

5 COMMISSIONER GILINSKY: At the beginning of your  
6 statement, I think it's too early to give the company a clean  
7 bill of health, because their management is tied up in some of  
8 the things that are to come, including the hardware decisions,  
9 the implementation of which is a reflection of management.

10 I don't know whether we have any real problems --  
11 I don't know whether anyone shares this view, I certainly do --  
12 that I think we should tell the company now to give them time  
13 to do whatever it is that they can do to bring order to the  
14 situation.

15 CHAIRMAN PALLADINO: Before getting into some of  
16 the items such as what more we want to do in preparation for  
17 our action, could I get you to review what you think we ought  
18 to be addressing with regard to the cheating question? The list  
19 of things you repeated after you had identified the options?

20 You said the Commission -- you mentioned the schedule.

21 COMMISSIONER AHEARNE: That's not the cheating.

22 CHAIRMAN PALLADINO: I thought you had raised the  
23 question --

24 COMMISSIONER AHEARNE: One issue he raised on the  
25 question, I thought, of cheating was --

1 MR. BICKWIT: The confidentiality question?

2 COMMISSIONER AHEARNE: Yes. That's an issue.

3 MR. REMICK: And staff attitude were the two that I  
4 said.

5 CHAIRMAN PALLADINO: And what was the question on  
6 the confidentiality?

7 MR. REMICK: I guess the better term is "immunity."

8 CHAIRMAN PALLADINO: And what is the --

9 MR. REMICK: OGC, I think, can better address that.

10 CHAIRMAN PALLADINO: What is the issue or immunity?

11 MR. ROTHCHILD: The Licensing Board issued an order  
12 stating that they wanted these hearings on cheating held in the  
13 public, rather than a closed session.

14 The Staff and the Licensee, as well as counsel for  
15 the individuals who had cheated, requested Milhollin to hold  
16 the hearings in camera.

17 COMMISSIONER AHEARNE: The Staff supported them?

18 MR. ROTHCHILD: Yes.

19 Gary Milhollin, after receiving briefs from the parties,  
20 ruled that the proceeding would be held in public. He felt  
21 that it's basically an issue of the individual's privacy interest  
22 vs. the public interest in open hearing. He drew the balance  
23 that the public interest was in having open hearing, and that out-  
24 weighed the privacy interest.

25 COMMISSIONER GILINSKY: What was the Staff's idea?

5  
1 MR. ROTHCHILD: The Staff goes through and says this  
2 is now this gets to the Freedom of Information Act, and we are  
3 talking about the privacy issue. They draw the privacy issue as  
4 an unwarranted invasion of privacy. They think that outweighs  
5 the public interest in open hearings now.

6 They are also concerned -- there is another exemption  
7 under the FOIA under investigatory records, and this is sort of  
8 an ongoing investigation.

9 COMMISSIONER AHEARNE: Now you've triggered my memory.  
10 Milhollin then said that if it was information solely restricted  
11 to the NRC, and only the NRC knew it, then he would have to  
12 honor the NRC's claim that it's because of its investigatory  
13 aspect. But since this was information obtainable from the  
14 Licensee, that argument didn't hold.

5  
15 MR. ROTHCHILD: The Licensee had indicated that if  
16 someone had filed a proper discovery request with it asking  
17 for the names of the cheaters, that they would have to divulge  
18 that information, lest the Board, in its discretion, issued a  
19 protective order, directing them not to disclose that information.

20 There have been appeals of that decision to the  
21 Licensing Board. All those parties named previously have  
22 appealed, including the Staff, and I understand Ivan Smith is  
23 going to rule on that this afternoon.

24 COMMISSIONER GILINSKY: I must say I find it odd that  
25 the Staff would argue privacy as opposed to something -- I mean I

1 could understand if they said that this would adversely affect  
2 the morale among operators or something like that, or undermine  
3 safety --

4 CHAIRMAN PALLADINO: Or inhibit their investigation.

5 COMMISSIONER GILINSKY: Or something like that.

6 CHAIRMAN PALLADINO: Or is that part of the so-called  
7 privacy --

8 COMMISSIONER GILINSKY: Well, it may be.

9 CHAIRMAN PALLADINO: I don't know.

10 MR. ROTHCHILD: Staff weighs the balancing between  
11 the public and private interests in favor of the individuals  
12 in this instance. The individuals could be embarrassed by  
13 disclosure and experience other difficulties in their personal  
14 lives. The privacy interest of the individuals is not outweighed  
15 by the public interest in knowing the information.

16 COMMISSIONER AHEARNE: This is the NRC Staff?

17 MR. ROTHCHILD: Although the public has an interest  
18 in many aspects of the way NRC and the Licensee dealt with  
19 and will deal with the incident, knowledge of the names of the  
20 individuals involved in the cheating will not further the public  
21 interest.

22 COMMISSIONER GILINSKY: I'm not saying that isn't  
23 necessarily correct, but what is the Staff doing? You know,  
24 the Licensee will prepare that case. The Staff has other things  
25 to do. It's just another instance, I think, at least on the face

1 of it, of an overactive ELD.

2 MR. ROTHCHILD: This is a long way of getting to the  
3 immunity issue, but it's necessary background.

4 In their appeal of Gary Milhollin's decision, the  
5 attorneys for the cheaters attached affidavits which -- signed  
6 by the two individuals -- said that they will not voluntarily  
7 appear in a public hearing on the matter, which means we would  
8 have to subpoena them, which is no problem. And that if they  
9 are subpoenaed to testify, they will take the Fifth Amendment  
10 privilege and not testify.

11 And therefore, since they were just going to get up  
12 and take the Fifth Amendment, why embarrass them and just  
13 subject them to public scrutiny.

14 When Gary Milhollin got that, he called the Office  
15 of General Counsel.

16 COMMISSIONER GILINSKY: Let me ask you, does the  
17 Fifth Amendment apply in a regulatory proceeding where there  
18 are no criminal penalties involved?

19 MR. BICKWIT: It applies if criminal prosecution is a  
20 possible outgrowth.

21 COMMISSIONER GILINSKY: I see.

22 But presumably it wouldn't apply -- and maybe that's  
23 what you are talking about -- if criminal prosecution were ruled  
24 out?

25 MR. BICKWIT: That's right.

1 COMMISSIONER BRADFORD: That would be immunity.

2 MR. BICKWIT: That is one kind of immunity, what  
3 is called transactional immunity. If you make the statement that  
4 under no circumstance will the person be prosecuted for any  
5 action involved here, then that neutralizes the problem.

6 COMMISSIONER AHEARNE: That's the much broader --

7 MR. BICKWIT: That's right.

8 CHAIRMAN PALLADINO: Why don't we let Trip go ahead?  
9 I think he's going to cover that.

10 Go ahead, Trip.

11 MR. ROTHCHILD: Gary Milhollin called and asked us  
12 could we get some kind of immunity. We do have a statute that  
13 allows the NRC to give use immunity, which I will get into, if  
14 the Justice Department approves its use.

15 There's a difference between use immunity and  
16 transactional immunity.

17 As Len said, transactional immunity would mean that  
18 they would never be prosecuted for anything having to do with  
19 the cheating incident.

20 A use immunity is much narrower, and says whatever they  
21 testify to in our administrative hearing, that testimony cannot  
22 be used against them in any criminal prosecution.

23 COMMISSIONER AHEARNE: Could I just ask a question?  
24 You put in on the cheating incident. Isn't it anything they  
25 testify upon?



1 If, for example, in the middle of their testimony,  
2 they should testify on something else.

3 MR. ROTHCHILD<sup>S</sup>: But here the two statutes that they  
4 have violated deal with giving false statements to when they  
5 took the exams by cheating. Those would be the three statutes  
6 they violated, with giving the United States government false  
7 information.

8 COMMISSIONER AHEARNE: In cheating on the exam?

9 MR. ROTHCHILD<sup>S</sup>: They are, in effect, when given the  
10 exam, saying, "These are my answers," and they are not, in effect,  
11 their answers.

12 COMMISSIONER AHEARNE: Do they sign anything?

13 MR. ROTHCHILD<sup>S</sup>: Well, their name is on the exam.  
14 Apparently that kind of conduct, apparently under the case law,  
15 could be construed as violating those two statutes.

16 MR. BICKWIT: Withholding information is equivalent  
17 to the providing of an actual false statement.

18 COMMISSIONER GILINSKY: Is that right?

19 MR. BICKWIT: Yes.

20 COMMISSIONER AHEARNE: I was --

21 (Laughter.)

22 MR. BICKWIT: You knew that.

23 (Laughter.)

24 COMMISSIONER AHEARNE: The question I was asking, Len,  
25 is that even in the absence of their being asked to sign it,

1 the thing that says, "Yes, this is taken without cheating, these  
2 are all my answers," and so forth.

3 MR. BICKWIT: There's a possible violation under  
4 the criminal statute, nonetheless, yes.

5 MR. ROTHCHILD: Apparently the statute is fairly  
6 broadly drawn. We have not read the cases on it. OGC is not  
7 doing the investigation, but OIA has discussed the matter with  
8 the Department of Justice. It's enough there where it could be  
9 criminal conduct.

10 CHAIRMAN PALLADINO: Well, now, Trip, is there anything  
11 before us on which we have got to act?

12 MR. ROTHCHILD: Yes, there is one thing we do need  
13 to get your approval on. We would like to go to the Department  
14 of Justice and get use immunity. That would mean that if the  
15 Commission decides the hearings are to be in public, this will  
16 force them to testify, will compel testimony. They will not be  
17 able to use the Fifth Amendment.

18 If, on the other hand, the decision is made to close  
19 these hearings, or they decide not to invoke the Fifth, we don't  
20 need to use the use immunity.

21 We would like to get the process started now with  
22 the Department of Justice, so in case we do need it, we have it  
23 in hand.

24 COMMISSIONER AHEARNE: They could take the Fifth,  
25 though, even if it's a closed hearing.

1 MR. BICKWIT: Yes. They haven't said that they will.

2 COMMISSIONER AHEARNE: I understand.

3 COMMISSIONER GILINSKY: Let's do it.

4 CHAIRMAN PALLADINO: You're proposing we grant use  
5 immunity -- no, I'm sorry, let me rephrase that -- that we agree  
6 to OGC going to the Justice Department to get permission to grant  
7 them use immunity?

8 Is that your proposal?

9 COMMISSIONER ROBERTS: Can they only be granted use  
10 immunity, not transactional?

11 MR. BICKWIT: That's correct.

12 COMMISSIONER ROBERTS: What are the standards, the  
13 criteria the Justice Department uses to determine whether they  
14 will honor this request if it's made?

15 MR. ROTHCHILD<sup>S</sup>: I think in part -- I don't know if  
16 there's any written criteria. It is my understanding they will  
17 look at, one, do they have an interest in prosecuting the matter.  
18 It is my understanding at this point they have no interest in  
19 prosecuting the matter.

20 Secondly, a prime concern will be if we grant them  
21 use immunity and they were interested in prosecuting, would they  
22 have other means of getting the information on which to base a  
23 prosecution. In this particular case, there is, because the  
24 NRC has the exams which illustrate the cheating, plus we have  
25 sworn statements which they have signed and given to our Office

1 of Inspection & Enforcement, on which they have admitted cheating.

2 So, therefore, if the Department of Justice decided  
3 they wanted to prosecute, it's our view there would be plenty of  
4 information on which to prosecute them and the absence of being  
5 able to use the testimony they gave the NRC wouldn't make any  
6 difference.

7 COMMISSIONER AHEARNE: If in the hearing that is  
8 being held, if they are asked, "Is this your sworn statement?"  
9 They say yes, and it's introduced as part of the record, does  
10 that remove then the use of that from the possible --

11 MR. BICKWIT: For possible criminal prosecution?  
12 That's what use immunity is.

13 COMMISSIONER AHEARNE: All right.

14 CHAIRMAN PALLADINO: It would only be their statement  
15 "Yes," but it wouldn't exclude the sworn statement.

16 COMMISSIONER ROBERTS: That's not what John says.

17 MR. BICKWIT: Maybe I didn't understand your question.

18 COMMISSIONER AHEARNE: They're in the hearing, they  
19 have been granted use immunity, and they are asked by their  
20 counsel, "Did you sign a sworn statement? Yes, we did. Is  
21 this the sworn statement? Yes, it is. I submit it for the  
22 record."

23 MR. BICKWIT: No, what is precluded from use is their  
24 testimony. If the facts testified to can be established in some  
25 other way, that is not excluded from use.

1 COMMISSIONER AHEARNE: Well, all I'm asking is they  
2 have now submitted that sworn statement as part of the testimony  
3 in the hearing. Does that sworn statement now get covered by  
4 the use immunity?

5 MR. BICKWIT: No. That sworn statement can be received  
6 somewhere else. If you can get the evidence some other way,  
7 then the fact that you got it in the course of this hearing is  
8 not relevant.

9 COMMISSIONER AHEARNE: I pass.

10 MR. BICKWIT: I think, if I understand your question,  
11 I think --

12 COMMISSIONER AHEARNE: In other words --

13 CHAIRMAN PALLADINO: We don't want to preclude the  
14 submission of that sworn statement at a later criminal trial.

15 MR. BICKWIT: You won't.

16 CHAIRMAN PALLADINO: Or at least we are asking the  
17 question, would it preclude.

18 MR. BICKWIT: It would not.

19 COMMISSIONER AHEARNE: I wasn't sure whether I --

20 CHAIRMAN PALLADINO: Okay?

21 COMMISSIONER AHEARNE: Yeah, it's all right with me.

22 CHAIRMAN PALLADINO: The proposal is that we  
23 authorize OGC to ask the Justice Department for permission to  
24 offer use immunity in this case.

25 MR. BICKWIT: And we'd put something in the letter

1 that this is an option-preserving mechanism, rather than any  
2 decision that we are going in the direction that will require  
3 us to use --

4 COMMISSIONER AHEARN: I assume you will actually go  
5 up and talk to them about it, because there's a rapid time-  
6 turn-around that's required. The hearing is supposed to start  
7 Tuesday, I think.

8 MR. ROTHCHILD<sup>S</sup>: They have given us a form to fill out,  
9 we will hand-carry over today.

10 MR. BICKWIT: Is there any indicating on the timing?

11 MR. ROTHCHILD<sup>S</sup>: Milhollin has given me the indication  
12 that the earliest they would call these individuals is November  
13 16th, and if need be, they can hold them off until the first  
14 week in December. So we'd have time, but we need to start the  
15 process.

16 CHAIRMAN PALLADINO: Any other questions on this?

17 Can we vote?

18 All those in favor of proceeding along this line --

19 (Chorus of ayes.)

20 CHAIRMAN PALLADINO: Opposed?

21 I gather then we have unanimous agreement on that.

22 COMMISSIONER ROBERTS: Well, I abstained.

23 CHAIRMAN PALLADINO: Did you abstain? I'm sorry.  
24 I should have asked for abstentions.

25 COMMISSIONER AHEARNE: Do you see a problem, Tom?

1 COMMISSIONER ROBERTS: I'm just not clear in my mind  
2 what we are doing. I defer to your judgment.

3 CHAIRMAN PALLADINO: All right, now, was there any  
4 other decision on Staff attitude or on other aspect of the --

5 COMMISSIONER AHEARNE: Well, I guess we actually don't  
6 have a petition in front of us.

7 CHAIRMAN PALLADINO: That's what I'm asking, do we  
8 have any item there that --

9 MR. BICKWIT: You're always capable of reaching down  
10 and deciding the matter, taking the matter away from the Board.  
11 But we are not recommending that at this time.

12 CHAIRMAN PALLADINO: All right. Well, going back to  
13 my opening remarks, I was interested in determining if the  
14 Commission has other things it would like to explore with regard  
15 to management competence before -- in preparation for any  
16 action we want to take, or if there's any other work that the  
17 Commission feels we ought to explore.

18 COMMISSIONER GILINSKY: Well, I think I have made no  
19 secret of the fact that I'm not happy with the management there.  
20 I think they behaved badly during the accident, and have not  
21 faced up to it since then, and so far as I'm concerned, I  
22 wouldn't approve the plant's operation with the present management  
23 in charge.

24 CHAIRMAN PALLADINO: Is there any more information  
25 that you would like to see developed to either clarify or confirm

1 or do whatever else is necessary for you to reach a decision?

2 Or do you think you have enough information?

3 COMMISSIONER GILINSKY: Well, I'm prepared to act on  
4 the basis of what I have. I certainly -- if the company came  
5 forward and changed its mind and decided to make a clean breast  
6 of it, I'd certainly take that into account.

7 CHAIRMAN PALLADINO: But you're not identifying any  
8 particular thing we ought to be doing now? Or are you?

9 COMMISSIONER GILINSKY: Well, as far as I'm concerned,  
10 I would propose that we say that on the basis of their testimony  
11 that the chief executives cannot continue to be in charge of  
12 that company.

13 COMMISSIONER AHEARNE: How far down would you go on  
14 that?

15 COMMISSIONER GILINSKY: Oh, I think I'd say the  
16 chairman and the president.

17 COMMISSIONER AHEARNE: Koon and --

18 COMMISSIONER GILINSKY: Dieckamp.

19 And the point here is not so much the -- well, first  
20 of all, they've got to take responsibility for the company's  
21 action on that day. I remind you of how things are done in Japan,  
22 where after a slight leak in the Japcor reactor, there was a  
23 purge of everyone at the top of that company.

24 COMMISSIONER AHEARNE: Well, it wasn't a slight leak,  
25 it was the fact they'd been covering it up.



1 COMMISSIONER GILINSKY: Well, that's true. That's  
2 really the point. I didn't mention that, but that really is  
3 the point.

4 In this case, they simply ignored this issue and  
5 maintain to this day that they did not act improperly. It seems to  
6 me that's just clearly wrong. I don't think there is anybody  
7 off this Commission who thinks that they leveled with either  
8 the state or the federal government on that day.

9 CHAIRMAN PALLADINO: What was that last statement?  
10 You said there's nobody on this Commission --

11 COMMISSIONER GILINSKY: No, I said off this Commission.

12 CHAIRMAN PALLADINO: Off this Commission.

13 COMMISSIONER GILINSKY: I think it's fairly obvious --

14 CHAIRMAN PALLADINO: That, I can say, is a false  
15 assertion. I could name any number of people who have a  
16 different opinion.

17 COMMISSIONER GILINSKY: Well, it's a little exaggeration  
18 involved there. I didn't intend that as a purely factual state-  
19 ment.

20 (Laughter.)

21 CHAIRMAN PALLADINO: Okay. There are many people  
22 that. . .

23 COMMISSIONER GILINSKY: And I found it interesting  
24 that Stello has come around and changed the testimony that was  
25 presented to us on the --

1 CHAIRMAN PALLADINO: I read that, and it refers to his  
2 transcript, and the transcript says that -- and if he's still  
3 maintaining the transcript is accurate, that the transcript said  
4 that he still had problems with two particular issues that  
5 were concerned with the statement that they did not transmit  
6 information understood by them. I remember those words being  
7 pertinent. And he didn't believe the words "understood by  
8 them" appropriate.

9 And the other one was an allegation with regard  
10 to willfulness. His contention was that there was information  
11 withheld, but it came about by confusion rather than any. . .

12 COMMISSIONER GILINSKY: Well, that transcript is just a  
13 muddle, and the Staff's testimony on the subject is a muddle,  
14 and the way they treated the whole subject in appearing before us,  
15 I think was outrageous.

16 I think Stello should have been here, Moseley should  
17 have been here, who was the chief witness for the Staff. There  
18 was no good excuse for them not having been here. Moseley  
19 was apparently working on the budget.

20 CHAIRMAN PALLADINO: Well, that may be so.

21 COMMISSIONER GILINSKY: Well, let me come back to  
22 Stello. For one reason or another, he decided that he had to  
23 send us a note to modify whatever it is DeYoung told us.

24 Now, DeYoung clearly said that he --

25 COMMISSIONER ROBERTS: Clearly DeYoung contradicted

1 himself in that meeting. He made one statement and then changed  
2 it. It was not clear. I take issue with your choice of words.

3 COMMISSIONER GILINSKY: I thought that DeYoung said  
4 that he disagreed with --

5 COMMISSIONER ROBERTS: He took two contrary positions  
6 during that meeting.

7 COMMISSIONER AHEARNE: Dick DeYoung was not the  
8 principal author of that report.

9 COMMISSIONER GILINSKY: Well, he shouldn't have been  
10 up there. But, in any case, whatever it was he said somehow  
11 did not leave Stello with the feeling that his view had been  
12 transmitted, and he sends us a note which I agree, if you look at  
13 the transcript, it's a muddle. If you look at the note, he says  
14 he agrees with the Udall report.

15 COMMISSIONER AHEARNE: No, he doesn't say that.

16 COMMISSIONER GILINSKY: Well, drag up the memo.

17 Anyway, I wouldn't hang my decision on this but --

18 COMMISSIONER AHEARNE: You raised the point. He  
19 says, "As discussed in the enclosed transcript, my view is that  
20 the conclusion of the House report and the I&E conclusions are  
21 consistent. Personally, I am in substantive agreement with the  
22 conclusions of the House committee report."

23 Now I called Vic when I got this, because I was  
24 similarly puzzled. Does this mean he has changed his position?  
25 And he said no, he thought that there was -- he had been informed

1 that at the meeting there was confusion as to what his position  
2 was, and he just wanted to make it clear that it was still as it  
3 always was; that his view was that he hasn't changed his position.

4 COMMISSIONER GILINSKY: My respect for these people  
5 has gone down considerably as a result of this experience;  
6 including Stello, I might add.

7 But he ends up saying, "I am in substantive agreement  
8 with the . . ." and you can read the rest of the conclusions.

9 COMMISSIONER AHEARNE: Yes. I just did.

10 COMMISSIONER GILINSKY: The conclusion of the House  
11 committee report is that the company withheld information from  
12 the state and the federal government.

13 CHAIRMAN PALLADINO: But he never disputed that.  
14 He disputed whether or not it was willfully done.

15 COMMISSIONER GILINSKY: Withheld is willful. Even  
16 Dieckamp said that.

17 COMMISSIONER AHEARNE: We've been through this over  
18 and over on this issue, and I don't think that anybody is going  
19 to shift positions again.

20 COMMISSIONER GILINSKY: Well, I'm just telling you  
21 what my position is and how I plan to handle the subject, the  
22 decision, and I'm happy to have that dealt with right now, for  
23 us to put out a statement on the subject, or a partial decision.

24 CHAIRMAN PALLADINO: Well, I'm not sure I'm ready  
25 to put out a partial decision, and if I were ready, I'm not sure

1 that would be the partial decision -- I mean that would be the  
2 decision.

3 COMMISSIONER GILINSKY: No, I understand that.

4 CHAIRMAN PALLADINO: I do feel that there was a great  
5 deal of confusion that day, there existed confusion for quite a  
6 number of days thereafter. Many things that are now called  
7 obvious were not obvious even five days later in the think tank  
8 that existed at TMI, and there were charts that were pasted up  
9 on the walls by teams of experts from throughout the country --  
10 and I mean Oak Ridge and I think Los Alamos, I don't remember --  
11 and it took study to draw some of the conclusions that now  
12 everybody considers quite obvious.

13 To say that they were willfully withheld, is perhaps a  
14 little difficult. It's difficult for me to reach that conclusion.  
15 I will say there was an awful amount of confusion throughout the  
16 whole period, and I find it difficult to categorize things  
17 with motives when it wasn't even clear that some of these things  
18 were as well understood as now they appear to be.

19 COMMISSIONER GILINSKY: But, Joe, there's a difference  
20 between sorting out technical fact and saying you know what  
21 was really going on, where was the water, where was the steam,  
22 what was the temperature and so on; and knowing that you are in  
23 deep trouble. And they knew they were in deep trouble, and  
24 they didn't say that.

25 And, in fact, one of their excuses for their performance

1 is that they were in deep trouble in a situation they'd never  
2 found themselves in before, for which they were not trained,  
3 which they didn't know how to deal with, and so on.

4 Did they tell anybody that? No. And they had a  
5 responsibility to do that.

6 CHAIRMAN PALLADINO: I think there was even confusion  
7 in their chain of command, because one of the problems that  
8 exists in almost every organization is a fear to transmit bad  
9 news to your management or even --

10 COMMISSIONER GILINSKY: That's right, but this  
11 industry can't work on that basis.

12 CHAIRMAN PALLADINO: I agree, Vic. I'm just saying  
13 to pick the place where you want to change the management --

14 COMMISSIONER GILINSKY: That's why I'm saying not  
15 going after Gary Miller and crucifying him, but the guys in  
16 charge do have to take responsibility and do have to own up to  
17 all this, and do have to take action. Now they haven't done that.

18 What they have said is they did not act improperly.  
19 That's the problem. I'm not prepared to turn a plant over to  
20 people like that. I don't think they belong there.

21 COMMISSIONER AHEARNE: I guess for me, sitting -- I  
22 wasn't up where you were, Joe, but sitting back at this end, I  
23 certainly agree. There was a great amount of confusion, and it  
24 was not all clear, and on the particular day of the accident,  
25 we were very unclear as to what was happening, and how serious

1 it was.

2 Some of us, as I recall, were given some information.  
3 I think, Vic, you were given information by Stello, and next  
4 morning we had a briefing here, and we sent Joe Hendrie up to  
5 the Hill, and as I recall, Joe went up there and said essentially  
6 things are under control. We didn't understand.

7 COMMISSIONER GILINSKY: Damned right we didn't  
8 understand. Would it have helped you if you'd known there  
9 were temperatures of several thousand degrees measured on that  
10 day?

11 COMMISSIONER AHEARNE: Accurate knowledge of what is  
12 real is always a help, Vic. The issue is, there was a lot of  
13 confusion, and I cannot in hindsight look back and say, aha,  
14 these guys should have been able to sort through that confusion,  
15 cut through like the hot knife, and get right to the accurate  
16 information.

17 COMMISSIONER GILINSKY: Is there any question in your  
18 mind that those guys knowingly downplayed that accident in  
19 talking to the state and federal government?

20 COMMISSIONER AHEARNE: Absolutely.

21 COMMISSIONER GILINSKY: Well, Stello doesn't say that.

22 COMMISSIONER AHEARNE: Stello has said it many times;  
23 that he does not conclude they willfully withheld information.

24 COMMISSIONER GILINSKY: You ask him whether they --

25 COMMISSIONER AHEARNE: I have asked him whether they

1 willfully withheld information.

2 COMMISSIONER GILINSKY: Let's just get him back here.  
3 You asked what we ought to do? Let's get him back here. Not  
4 that I'd go by what Stello says, but --

5 COMMISSIONER ROBERTS: Well, Stello isn't making this  
6 decision.

7 COMMISSIONER GILINSKY: Damned right he isn't.

8 COMMISSIONER AHEARNE: We have gone through this  
9 time and time again. So I do not --

10 COMMISSIONER GILINSKY: Look, the man wrote it down.  
11 It is incredible how every step of the way we continue to seek  
12 refuge in some little word or ambiguity. You know, I just  
13 can't believe this. I have to tell you that. This Commission  
14 just is not carrying out its responsibilities.

15 COMMISSIONER AHEARNE: We all over years have  
16 constantly -- and you are just like the rest of us -- worked on  
17 words and tuned words to where they come out where we want them  
18 to come out.

19 The basic point is, did these guys lie? We have not  
20 been able to find anybody who says we've gone through and, yes,  
21 we can show they have really lied. It's a subjective judgment.  
22 You come down on one side. You are absolutely sure they did,  
23 and so therefore you reach a conclusion. If I was absolutely  
24 sure that they did, as you are, I would come out in the same  
25 place. I am not. And so I don't see any use of continuing to



1 reiterate the same issue over and over again.

2 COMMISSIONER GILINSKY: Well, why don't we address a  
3 written question?

4 CHAIRMAN PALLADINO: Well, I have the same problem,  
5 Vic. If I honestly thought they were willfully withholding  
6 information, I'd feel the same way you do. But I found, at  
7 least to the extent that I was involved, an openness in exchanging  
8 all kinds of information and finding great difficulty in  
9 drawing conclusion.

10 You know, even when you talk about the temperatures,  
11 they had voltages, and it took somebody with a conversion chart  
12 on what those voltages meant. They didn't have direct reading  
13 on temperature.

14 COMMISSIONER GILINSKY: For God's sakes, Joe, they had  
15 five people down there, they were experienced people, they all  
16 checked those numbers, and they came back and you have Miller's  
17 testimony that he, while he wasn't sure about the exact numbers,  
18 he knew it was damned hot.

19 You know, that's all you need.

20 CHAIRMAN PALLADINO: Well, I don't know to who that  
21 was communicated.

22 COMMISSIONER GILINSKY: Well, that is the responsibility  
23 of the company, for which --

24 CHAIRMAN PALLADINO: Up and down the line, I agree. . .  
25 but I don't know that. . .

1 COMMISSIONER GILINSKY: God, here we're talking about  
2 stringing up a couple of guys who handed in some false answers  
3 on a test, you know, and talking about criminal statutes when  
4 they may be marginal operators, maybe they would have made it  
5 anyway, maybe they wouldn't have.

6 CHAIRMAN PALLADINO: Haven't we had a whole series of  
7 investigations on this? And --

8 COMMISSIONER AHEARNE: Yeah.

9 COMMISSIONER GILINSKY: We have not.

10 COMMISSIONER AHEARNE: That's not true. We have had  
11 lots of investigations on this.

12 COMMISSIONER GILINSKY: Where are the investigations  
13 on this? We have had the investigation --

14 CHAIRMAN PALLADINO: Incidentally, I read the House  
15 report, fortunately finished it, and I find the report confirms  
16 my impression of a great deal of confusion on that day, that  
17 some people couldn't even remember whether something they learned  
18 was learned on that day, or was learned after, and it's replete  
19 with that, and that even includes state people, and it's  
20 awfully hard to say, well, this was well known on that date.

21 There were speculations by some people, and in one  
22 case at least they voiced this speculative observation, but they  
23 didn't have -- or at least I couldn't find where there  
24 conclusive pieces of information that were willfully withheld.

25 COMMISSIONER GILINSKY: Let's just take the morning.

1 You know, Miller had a conversation with his people at, I forget  
2 where, company headquarters. He was a little frank there. He  
3 said, "We don't know what's happening. If we had a LOCA, we'd  
4 be lucky, because we don't know what's going on."

5 They go and talk to the state, the state puts out a  
6 statement, which I don't have with me here, but it says everything  
7 is fine, there is no danger, there was no danger. That's on  
8 the basis of a communication with the company.

9 Now, were they straightforward? Obviously not.

10 CHAIRMAN PALLADINO: Well, I also remember the  
11 Gerusky discussion of that meeting, where he came away disgusted  
12 I think in two parts, and now -- unfortunately I have talked  
13 to Tom Gerusky on this, and I have a little bit different view.  
14 He was disgusted on two parts:

15 One, that either (a) the management at GPU didn't know  
16 what was going on offsite, and yet were testifying. And the  
17 other thing that disgusted him was that there was not a great  
18 deal of attention by the state people to the information they  
19 were getting from their own state people.

20 Now that didn't quite come out in here, but the  
21 technical people were being considered the low boys in the  
22 whole operation. They had to talk to all the cabinet officers.  
23 And there was a lot of input at the high level, and ignoring of  
24 some of the input that was being provided at the lower level by  
25 their own state people.

1 So I can say it's a confused mess.

2 COMMISSIONER ROBERTS: May I ask a question?

3 Peter, do you share Victor's view? I'm not trying  
4 to put you on the spot, this is my education.

5 COMMISSIONER BRADFORD: In part, I do, Tom. That is  
6 if I had to bet on the issue of willfulness as to whether Miller  
7 and Herbein on a conscious level didn't tell the state officials  
8 all the uncertainty that they felt -- the issue isn't really  
9 whether they understood exactly what was going on, it's whether  
10 they told the state officials and leveled with us that they  
11 really had no idea what was going on -- I'd say that Victor is  
12 right about that, and I'm not sure what that means in the context  
13 of the restart proceeding.

14 Up to now, in the course of answering questions about  
15 whether that justified further investigation, I have come out in a  
16 different position, in that I have said that I don't see any  
17 indication that one is going to be able to prove that to a  
18 criminal or even a civil penalty type of standard beyond the  
19 penalties that we have already imposed for, among other issues,  
20 the failure of information to flow adequately between the company  
21 and us.

22 So I haven't supported various proposed actions  
23 that would have involved investigating it further, because I  
24 don't think there is new evidence to be had on the subject that  
25 would rise to the level of either revoking the -- I guess the

1 possible issues were revoking Miller's individual license or  
2 taking criminal action against those two.

3 So my gut feeling is that it's hard for me to imagine  
4 that there wasn't an impulse shared within the company not to  
5 tell the outside world how out of control things had gotten.  
6 But I haven't felt that we are going to be able to prove that  
7 to the satisfaction of any tribunal that we brought it before,  
8 with regard to further action.

9 What I am in a quandary over, though, is the implication  
10 it has for the management on the qualification issue in context  
11 of the restart.

12 CHAIRMAN PALLADINO: By 4:30 that day, the governor,  
13 lieutenant governor had issued a different press release from  
14 the one that was issued in the morning, and he says that  
15 Metropolitan Edison had given you and us conflicting information.  
16 We just concluded a meeting with company officials and hope this  
17 briefing will answer most of your questions, but he did say  
18 that based on an update the situation is more complex than the  
19 company first led us to believe.

20 So it depends on when the first day ends. During  
21 the course of the day there was more information transmitted  
22 that led to a different press release by the lieutenant governor  
23 at 4:30 that afternoon.

24 Not having been privy to what went on --

25 COMMISSIONER BRADFORD: That's right. The critical

1 period, I think, is pretty clearly the one that started about  
2 7:00 or 8:00 that morning, when there was first contact with  
3 the outside world, and that at least began to end with the  
4 press release that you just quoted us. Those seven or eight hours  
5 during what turns out to have been the very worst of the accident.

6 CHAIRMAN PALLADINO: And also, part of the problem, I  
7 think, was taking away key people from the plant to go respond  
8 to the state, and I believe that when they left, they thought  
9 that they had a situation under control. Those people. Now  
10 when they came back, they apparently learned quite a bit more.

11 COMMISSIONER BRADFORD: There is a second issue, too,  
12 and I think Victor has touched on it. I should have mentioned  
13 it in response to Tom, and that is that there is something  
14 disturbing in, I think, Dieckamp's case in particular about the  
15 continued insistence that the company really did perform up to  
16 -- I won't say they performed adequately, because they did pay  
17 the civil penalty, but, for example, the meeting with the lieutenant  
18 governor really was in any way a full and frank exchange on  
19 the situation.

20 So there is a second issue that arises from  
21 Dieckamp's adherence to that position for the months afterwards.

22 Now, on the other side of the ledger -- and there  
23 have been some changes. Kreitz is not still the president of Met  
24 Ed, and wasn't almost for about a month or so after the  
25 accident. Herbein certainly doesn't occupy the position in

1 the chain that he might have without the accident, and Miller  
2 doesn't either.

3 So it really does, for me, focus now in terms of  
4 pretty closely down onto Dieckamp. With regard to Koons, I guess  
5 I have to think a little more about how the chairman of the  
6 board happened. I mean they are chosen by the board, and I  
7 think it's hard to think in terms of ousting the board chairman  
8 without ousting the rest of the board. But that's just something  
9 I'd have to think more about.

10 It depends a lot on how the individual company is  
11 set up, but I wouldn't assume automatically that the chairman  
12 of the board had much by way of line authority in the way things  
13 were done.

14 CHAIRMAN PALLADINO: Well, let me ask the Commission  
15 this:

16 Do you feel you want to try to make or reach an  
17 interim decision now on the management competence, or wait until  
18 we get all the information from the second partial initial  
19 decision, and perhaps. . .

20 COMMISSIONER AHEARNE: For me, I don't see anyway I  
21 could reach today on the management competence. At a minimum  
22 there are a number of items in that being addressed in the  
23 hardware side, which go to management attitude, if nothing else,  
24 on the pace at which they're putting stuff in. So I would  
25 have to wait for that. And I haven't yet -- a much harder

1 question is what to do about the cheating side, and I really  
2 haven't come to a conclusion on that, and I can see it both ways  
3 at the moment.

4 CHAIRMAN PALLADINO: Well, I certainly don't feel I'm  
5 ready to reach a decision on management competence. I don't know,  
6 I gather you are, Vic.

7 (Laughter.)

8 Don't let me put words in your mouth. I know I won't.

9 COMMISSIONER BRADFORD: No, I'm not. I think Vic is  
10 right to the extent that if we were to conclude that management  
11 were unqualified in some specific way, it would be well then to  
12 put the decision out at an early date in order that the company  
13 be on notice that significant changes were in order before  
14 the plant could be restarted. But it's not a conclusion I can  
15 reach this morning.

16 COMMISSIONER ROBERTS: I will wait for the second  
17 partial initial.

18 CHAIRMAN PALLADINO: Is there any step that the  
19 Commission feels we ought to take to better prepare ourselves  
20 for this decision, other than await. . .

21 COMMISSIONER AHEARNE: Well, I think Forrest has  
22 suggested a schedule.

23 CHAIRMAN PALLADINO: A schedule which would start  
24 after we decide which one of these decisions --

25 COMMISSIONER AHEARNE: When the second partial



1 decision comes in, we have got to review it and get comments on  
2 it, and what he's pointing out is that it is best for all the  
3 parties to know on what schedule they have to provide their  
4 comments. It's going to be an enormous decision, I gather.

5 CHAIRMAN PALLADINO: Does this tie to the 35-day  
6 rule?

7 COMMISSIONER AHEARNE: It could.

8 CHAIRMAN PALLADINO: It could, but it doesn't  
9 necessarily. We have to make a decision somewhere in that time  
10 frame as to whether or not we want to wait for the cheating,  
11 and that would determine whether or not we start the 35-day clock.  
12 You're saying independent of the 35-day clock, we ought to have  
13 this schedule?

14 MR. REMICK: You told the participants that they  
15 would have an opportunity to comment on that decision, and what  
16 we are suggesting is you should notify them on what schedule  
17 they should comment, once the second decision -- what they're  
18 calling initial decision -- is released, to alert them how much  
19 time they will have.

20 CHAIRMAN PALLADINO: How do we normally proceed in  
21 getting such schedules? Do we ask you and OGC to prepare it?

22 MR. REMICK: We have suggested in this document.

23 CHAIRMAN PALLADINO: What page?

24 MR. REMICK: It's in the last paragraph.

25 COMMISSIONER ROBERTS: Comments received within 20 days

1 after issuance.

2 COMMISSIONER BRADFORD: Is there any serious drawback  
3 to accepting this schedule but also allowing the filing of reply  
4 comments seven days later? There is no reason the Commission  
5 can't begin its review based on the initial documents, and then  
6 the comments as they come in.

7 The reason for asking is that I have always found  
8 reply comments to be quite useful in terms of focusing, bringing  
9 the precise basis for the difference in views to a head.

10 MR. REMICK: I think OGC can best address that aspect.

11 MR. BICKWIT: I think you can do that. The reason we  
12 have recommended against it is that it's going to be hard enough  
13 to reach a decision within 15 days of receiving comments. Your  
14 suggestion means that you reach the decision within eight days  
15 of receiving all comments, but I understand you're saying that  
16 you could start the decision-making process before you got the  
17 reply comments, and I don't have any problem with that.

18 CHAIRMAN PALLADINO: So you're proposing a modification  
19 to the schedule, Peter?

20 COMMISSIONER BRADFORD: Well, it's basically the  
21 same schedule as far as the 35 days is concerned, but it just  
22 does allow the filing of reply comments seven days after the  
23 others come in.

24 CHAIRMAN PALLADINO: Seven days after when?

25 COMMISSIONER BRADFORD: The first round of comments

1 comes in in 20 days, and then seven days later the reply comments  
2 come in. Meanwhile, the Commissioners are working away on a  
3 separate track, so the reply comments --

4 MR. BICKWIT: Meanwhile, I gather, our offices would  
5 be furnishing something to you even before the reply comments  
6 came in?

7 COMMISSIONER BRADFORD: Yeah.

8 COMMISSIONER AHEARNE: Hopefully with at least a  
9 factor of 10 reduction.

10 (Laughter.)

11 CHAIRMAN PALLADINO: Can we get that in there somewhere?

12 (Laughter.)

13 Does anybody have any problem with Peter's suggestion?

14 COMMISSIONER AHEARNE: No.

15 COMMISSIONER ROBERTS: No.

16 CHAIRMAN PALLADINO: Can we get an agreement on this  
17 being, then, as modified by Peter being the schedule that we  
18 would authorize?

19 COMMISSIONER AHEARNE: Yeah. I think unless we reach a  
20 prior decision, we ought to mention that we have not yet reached a  
21 decision on whether or not that's going to start our 35-day clock.  
22 Otherwise, I think the recipients are going to take what we have  
23 put out as we have reached that decision.

24 MR. BICKWIT: Do you want to ask for comment on that  
25 question? Ask for comment on whether the Commission ought to

1 await the results of the cheating hearing?

2 COMMISSIONER AHEARNE: Not particularly.

3 COMMISSIONER GILINSKY: You're going to get two no's  
4 and one yes, two yes's and two no's, and where is that going to  
5 take you?

6 MR. BICKWIT: As I remember, the Chairman mentioned  
7 that as an option in his memo to the Commissioners. It struck me  
8 as something that while not necessarily helping, is certainly  
9 not hurting.

10 Moreover, I regard it as useful from an appearance  
11 standpoint. You led people to believe that --

12 COMMISSIONER BRADFORD: Well, that's true.

13 MR. BICKWIT: -- this plant would not come up until  
14 after the cheating.

15 CHAIRMAN PALLADINO: And I honestly thought at the  
16 time that we had to wait for all this, and it didn't occur to me  
17 that there are some decisions that came from others.

18 MR. BICKWIT: The representation has now been made  
19 that minds are open on that question.

20 COMMISSIONER AHEARNE: I'm glad you made that comment.  
21 Given that you made the comment, I think I would agree that we  
22 ought to --

23 CHAIRMAN PALLADINO: Yeah, I honestly believed that  
24 we were obligated to wait for all decisions, and it was fortunately  
25 brought to my attention, so I thought the best way to do it was

1 own up to it and pay the bank.

2 Well, so you are suggesting that as part of our  
3 issuing the schedule we indicate that we have not yet made a  
4 decision, and we are asking for comments on whether or not we  
5 ought to wait for that cheating decision?

6 Do we have agreement to proceed this way?

7 (Chorus of ayes.)

8 CHAIRMAN PALLADINO: How about you, Vic?

9 COMMISSIONER GILINSKY: I guess I abstain.

10 CHAIRMAN PALLADINO: Okay.

11 MR. REMICK: Do you wish to any kind of decision  
12 on the interim report at this time or not, on whether you will  
13 be asking the Special Master and Board for an interim report?

14 MR. BICKWIT: I don't think so. I think that suggests  
15 that you're going to wait, and if you're going to get an interim  
16 report, I think to be useful, it will have to be down the road a  
17 piece.

18 MR. REMICK: Oh, yes, this would be after the hearing,  
19 but I didn't know if they wanted to decide --

20 CHAIRMAN PALLADINO: After the hearing?

21 MR. REMICK: After the close of the hearing on  
22 cheating. The question is have you decided whether you want  
23 to ask the Special Master and Board to come in with an interim  
24 report before --

25 COMMISSIONER AHEARNE: I agree with Len, that sort of

1 would be prejudging which way you're going to come out, and I  
2 don't --

3 MR. REMICK: Yes, that's true.

4 The other goes back to the factor of 10. I was  
5 going to ask that question independent of it. We presume that you  
6 would want OPE, when the decision comes out, to summarize and  
7 analyze, and I was going to ask the question, and I think I get  
8 the direction already, was the TMI management issues one helpful  
9 or do you have suggestions for OPE? Would you like us to boil it  
10 down more, or any guidance you can give us?

11 CHAIRMAN PALLADINO: I found it helpful. Are you  
12 talking the September --

13 MR. REMICK: The September 24th.

14 CHAIRMAN PALLADINO: I like them shorter, but I  
15 thought --

16 (Laughter.)

17 -- you can't get them much shorter and still cover  
18 the waterfront.

19 MR. MILHOAN: I think one of the questions that I  
20 would have is we attached an enclosure to the main body of the  
21 report which summarizes the Board decision and the issues, and  
22 whether that's useful, the attachment?

23 COMMISSIONER AHEARNE: I consider both as being the  
24 page count.

25 (Laughter.)

1 CHAIRMAN PALLADINO: There is a question, though,  
2 did we want to send to the Licensee any advance information on  
3 this 9-D? This is where we eventually come up with an order  
4 before they can use management people, they have to get approval.

5 MR. REMICK: We were not recommending that you do that,  
6 only if you placed additional considerations for some reason.  
7 We do not see it necessary.

8 CHAIRMAN PALLADINO: Well, I don't know that there  
9 are any other conditions that are being proposed. . .

10 COMMISSIONER AHEARNE: You know, Vic has. . .

11 (Laughter.)

12 CHAIRMAN PALLADINO: Okay, anything more that we  
13 should discuss?

14 COMMISSIONER GILINSKY: Well, I'm just curious, as  
15 an afterthought, about your reaction to the Stello memo. Did you  
16 not regard it as any change in Staff view?

17 CHAIRMAN PALLADINO: Vic, you want my honest opinion?  
18 I found it a very confusing memo.

19 COMMISSIONER AHEARNE: I found it specious and  
20 confusing. I called Vic and asked him, "Does this mean you  
21 have changed your position?" He said, "No, I just thought that  
22 people were unclear so I thought I'd make sure they understood.  
23 There is no change."

24 COMMISSIONER GILINSKY: And what do you regard his  
25 view to be when he says he shares the substantive agreement with

1 the House report?

2 CHAIRMAN PALLADINO: That's the sentence that seemed  
3 to contradict the previous one.

4 COMMISSIONER BRADFORD: But that is the sentence that  
5 he used before, isn't it? And wasn't that his original reaction  
6 to the House report?

7 COMMISSIONER GILINSKY: He came up -- anyway, what do  
8 you take that sentence to mean?

9 COMMISSIONER AHEARNE: I know what it means.

10 COMMISSIONER GILINSKY: What does it mean?

11 COMMISSIONER AHEARNE: That he's in substantive  
12 agreement, because the previous draft of the original conclusion  
13 of the House report was one he disagreed with.

14 COMMISSIONER GILINSKY: Well, just tell me what it  
15 means in plain English. Does it mean that he agrees that the  
16 company withheld information?

17 COMMISSIONER AHEARNE: I think it means he helped  
18 write the conclusion, so he's in substantive agreement.

19 COMMISSIONER GILINSKY: Tell me what the words mean.

20 COMMISSIONER AHEARNE: You know darned well -- the  
21 original draft --

22 COMMISSIONER GILINSKY: -- said they withheld  
23 information.

24 COMMISSIONER AHEARNE: The original draft report  
25 conclusion is what Henry Myers believes. Vic couldn't agree with



1 that. So, as you know, we got two different conclusions.

2 COMMISSIONER GILINSKY: Can you tell me -- look,  
3 there's one report, the one that's printed, okay, Stello says he  
4 agrees with it.

5 COMMISSIONER AHEARNE: No, he says he's in substantive  
6 agreement. And unfortunately --

7 COMMISSIONER GILINSKY: What does it mean?

8 COMMISSIONER AHEARNE: The whole thing is replete --

9 COMMISSIONER GILINSKY: John, you're evading the  
10 question. Just tell me --

11 COMMISSIONER AHEARNE: I believe that Vic doesn't  
12 believe that they willfully withheld information.

13 COMMISSIONER GILINSKY: That's what it means to say  
14 I agree with Henry Myers, they didn't --

15 COMMISSIONER AHEARNE: Vic, you asked me what do I  
16 think he means. I believe Stello means that he doesn't believe  
17 they willfully withheld information.

18 COMMISSIONER GILINSKY: That's what that sentence  
19 means?

20 COMMISSIONER AHEARNE: You can talk about what the  
21 sentence means and you can talk about what Stello means. You're  
22 doing one or the other. You can't do both.

23 COMMISSIONER GILINSKY: You've got to face up to this  
24 thing, John.

25 COMMISSIONER AHEARNE: Vic, I believe facing up to it

1 in your term means agreeing with you.

2 COMMISSIONER GILINSKY: No, it's just answering the  
3 question.

4 COMMISSIONER AHEARNE: I answered it. I have  
5 asked Vic. My belief is he continues to say they didn't willfully  
6 withhold the information.

7 COMMISSIONER BRADFORD: There's another troublesome  
8 data point in all this, which is that Vic at one point, remember,  
9 recommended taking a stronger action than the Commission was  
10 prepared to against Gary Miller, so his personal conclusion --

11 COMMISSIONER GILINSKY: I don't know whether you and  
12 Tom are aware of this. Are you? That Vic came here and he  
13 proposed that a show-cause order against Gary Miller be issued,  
14 and he was talked out of it by the Commission. I went along with  
15 that, thinking that it was better to have that charge brought  
16 against the company rather than against an individual. In the  
17 end, the Commission chose not to bring the charge at all, and  
18 the whole thing was lost in a file of there just not having been  
19 an adequate organization for developing information and so on.

20 But he came up here and the word he used was  
21 "dissembling." He said he thought about it for some time, and  
22 he didn't want to use the word lying, he didn't want to use the  
23 word -- you know, the other words that have been used. He  
24 said he thought about it and the word is dissembling.

25 MR. BICKWIT: But he did say -- he did define

1 dissembling in an unusual way.

2 (Laughter.)

3 I mean he did --

4 COMMISSIONER GILINSKY: I was going to get to that  
5 part.

6 MR. BICKWIT: All right.

7 (Laughter.)

8 COMMISSIONER GILINSKY: But, look, here's a guy, I  
9 mean presumably he's gone through high school and he reads  
10 English and he can use a dictionary, and he's thought about it,  
11 and he comes up here and he says dissembling, and then people  
12 tell him, well, that means deliberate and, you know, criminal  
13 statutes and everything else. He backed off immediately and  
14 he said, "That's not what I meant," and that's the part of the  
15 transcript that you have here.

16 CHAIRMAN PALLADINO: It certainly is confusing.

17 COMMISSIONER GILINSKY: Well, it's confusing in a  
18 way. It's not at all confusing in other ways, if you regard  
19 the performance of this organization.

20 MR. REMICK: We just got some information that  
21 apparently 32 candidates took the licensing exam, and my  
22 recollection is that that would be four less than last April.  
23 So apparently we've had four candidates drop out. Back in  
24 September we indicated we had heard it might be as high as seven,  
25 but apparently it was four less.

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CHAIRMAN PALLADINO: Thank you.

Well, I'm going to suggest that we adjourn. We do have another topic that we want to take up in a meeting at 11:30, and we will need a short-notice meeting vote when we reconvene.

COMMISSIONER GILINSKY: Are we going to break?

CHAIRMAN PALLADINO: Yeah. I'm going to propose a 10-minute break.

(Whereupon, at 11:20 a.m., the meeting was adjourned.)

\* \* \* \* \*

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NUCLEAR REGULATORY COMMISSION

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

is the matter of: CLOSED MEETING - EXEMPTION 10 - DISCUSSION OF TMI-1  
RESTART

Date of Proceeding: November 6, 1981

Docket Number: \_\_\_\_\_

Place of Proceeding: Washington, D. C.

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

Ann Riley

Official Reporter (Typed)

*Ann Riley*

Official Reporter (Signature)