

NUCLEAR REGULATORY COMMISSION

ORIGINAL

COMMISSION MEETING

In the Matter of: CLOSED MEETING -- EXEMPTION NO. 10
 DISCUSSION OF CONTESTED ISSUES
 IN TMI-1 RESTART PROCEEDING

DATE: September 10, 1982 PAGES: 1-4

AT: Washington, D. C.

ALDERSON REPORTING

400 Virginia Ave., S.W. Washington, D. C. 20024

Telephone: (202) 554-2345

8407130085 840604
 PDR FOIA
 DETJEN83-27 FDR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DISCUSSION OF CONTESTED ISSUES
IN TMI-1 RESTART PROCEEDING

CLOSED MEETING - EXEMPTION NO. 10

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

Friday, September 10, 1982

The closed meeting convened, pursuant to
notice, at 9:35 a.m.

BEFORE:

- JOHN AHEARNE, Commissioner (Presiding)
- VICTOR GILINSKY, Commissioner
- THOMAS ROBERTS, Commissioner
- JAMES ASSELSTINE, Commissioner

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

- J. HOYLE
- L. BICKWIT
- J. MILHOAN
- J. MONTGOMERY
- D. RATHBUN
- J. ZERBE
- C. ROTHSCHILD

AUDIENCE SPEAKERS:

- B. REAMER

* * *

P R O C E E D I N G S

1
2 COMMISSIONER AHEARNE: The meeting begins on
3 the TMI restart discussion this morning in closed
4 session on the cheating investigation and the results of
5 the Licensing Board decision on it.

6 Before we begin, I would like the general
7 counsel to briefly summarize for us the status now. We
8 have had three partial initial decisions from the Board
9 and the status that the Commission has taken with
10 respect to them.

11 MR. BICKWIT: That is right. You had one on
12 management, one on hardware emergency planning and the
13 relation with TMI-1 and 2 and a supplement to that on
14 the enforcement plan which the Board approved. You had
15 a third one on the cheating incident following the
16 Special Master's report and the Commission has not taken
17 any decisions with respect to any of them.

18 COMMISSIONER AHEARNE: So we have in essence
19 in front of us the one single immediate effectiveness
20 decision as opposed to the separate ones.

21 MR. BICKWIT: That is right.

22 COMMISSIONER AHEARNE: Who is going to be the
23 lead this morning?

24 MR. BICKWIT: Well, we are going to share it,
25 but first order of business is to determine in which

1 order we proceed.

2 (Laughter.)

3 MR. BICKWIT: Our suggestion would be that the
4 most immediate questions are those of scheduling. In
5 reviewing the Commission orders on this proceeding, they
6 are very ambiguous as to what the Commission now plans
7 to do and in what time frame. I think it is important,
8 not that the Commission decide these issues today, but
9 that adequate discussion of those issues take place so
10 that they can be decided quickly.

11 COMMISSIONER AHEARNE: I would agree with
12 you. I have two comments I would make or three.

13 First, I think that we have to give the
14 Chairman an opportunity to make his comments on any
15 scheduling conclusions. So I wouldn't be prepared to go
16 to a decision today in any event.

17 Second, I am sure that Vic will have a
18 substantial interest in whatever schedule that we
19 decide, and although he said we could start at 9:30, he
20 is not here. So consequently I think going through that
21 would just mean we would have to repeat it anyway.

22 The third comment is that I am not myself
23 prepared to reach a decision on the scheduling. I would
24 agree we ought to have a discussion, but I will postpone
25 that until Vic comes.

1 COMMISSIONER ROBERTS: I agree with all of
2 that.

3 MR. BICKWIT: I agree with all of this, too,
4 but let me amplify the first one. I gather OPE has been
5 in touch with the Chairman's office and their view is
6 that they welcome a discussion of these matters. In
7 fact, they want a discussion of these matters and today
8 they don't want decisions.

9 Well, in light of that, why don't we turn to
10 the cheating analysis.

11 MR. RATHBUN: Good morning, Commissioner and
12 Commissioners.

13 COMMISSIONER AHEARNE: The Chairman is
14 listening to what we are saying.

15 MR. RATHBUN: Good morning, Mr. Chairman.

16 COMMISSIONER AHEARNE: He is on a one-way
17 phone so he is listening to us.

18 MR. BICKWIT: I hope he gets well soon.

19 COMMISSIONER ROBERTS: That might be torture
20 not to be able to respond.

21 (Laughter.)

22 COMMISSIONER AHEARNE: Even the fact that he
23 is willing to listen to it shows that he is improving.

24 COMMISSIONER ROBERTS: Obviously.

25 MR. RATHBUN: OPE supplied the Commission with

1 a memorandum on August 20th on the TMI restart, the
2 Atomic Safety and Licensing Board preliminary initial
3 decision on cheating in response to the staff
4 enforcement plan. This preliminary initial decision was
5 issued by the Board on July 27th, 1982.

6 As Len mentioned earlier, preliminary initial
7 decisions were issued on August 27th, 1981 and December
8 14th, 1981 which addressed, management, hardware and
9 separation of Units 1 and 2 and emergency planning
10 issues.

11 These preliminary initial decisions resolved
12 issues by the Board in favor of restarting the unit.
13 The preliminary initial decision of July 27th concluded
14 on the cheating issue that the integrity of the training
15 and testing program by the licensee failed due to
16 quality assurance weaknesses. Nevertheless, the Atomic
17 Safety and Licensing Board recommended a restart because
18 it believed that the remedy to defects in the training
19 and testing program for operators could be handled on a
20 long-term basis.

21 The ASLB required additional licensing
22 conditions as a result of the reopened hearing and is
23 now satisfied that the Commission's August 9th, 1979 and
24 March 6th, 1980 orders have been complied with and the
25 immediate effectiveness of the original shut-down order

1 can be lifted.

2 In our paper, the August 20th paper, OPE
3 reviewed several selected restart issues. Key among
4 these was the implications of the cheating incident for
5 the integrity and attitude of the TMI Unit 1
6 management. In that regard the Special Master's report
7 of April 28th, 1982 found that the licensee showed an
8 unacceptable attitude toward the NRC examinations.

9 The Atomic Safety and Licensing Board in its
10 July 27th decision reviewed the same evidence and
11 reached a different conclusion. OPE agreed with the
12 Board's conclusion that they saw no safety consequence
13 resulting from the cheating episodes and that cheating
14 was not a reflection on the upper-level management's
15 competence, good intentions and efforts. Those are
16 directly from the Board's decision on pages 10 and 172.

17 I note that both the Special Master and the
18 Atomic Safety and Licensing Board appeared to agree that
19 there was no evidence that the licensee's upper
20 management encouraged, condoned, participated in or knew
21 of cheating. The differences seemed to center on the
22 Special Master's assessment of the extent of cheating,
23 the sanctions recommended and the management attitude.

24 We summarized in our paper in the attachment
25 to Enclosure 1 a synopsis which compares the Special

1 Master's findings, sanctions recommended and basis to
2 those of the Board. It is clear that the Special Master
3 in his findings found more of the individuals accused of
4 cheating or alleged to have cheated guilty.

5 The Special Master in his report placed
6 considerable weight on the witnesses' attitude and
7 demeanor.

8 With respect to the licensee's training and
9 testing program, the Board found that the licensee's
10 training and testing program satisfied the Commission's
11 retesting requirements in its preliminary initial
12 decision of August 27th, 1981.

13 In the July 27th, 1982 decision the Board was
14 still satisfied with the design and constitution of the
15 licensee's training program but found inadequate the
16 quality control over the training and testing process
17 and that there was "significant weaknesses in the
18 quality of construction." As a result, the Board
19 recommended additional remedies.

20 First, that the licensee establish criteria
21 for training instruction; second, that the licensee
22 develop and implement an internal auditing procedure of
23 the training and testing program; and, thirdly, that the
24 licensee develop procedures for sampling exams for
25 cheating.

1 There were two additional Board conditions not
2 associated directly with the training and testing. One
3 was a two-week suspension of operators G and H, as I
4 recall, and the other was the \$100,000 penalty which is
5 the subject of a separate memorandum prepared by the
6 Office of General Counsel.

7 COMMISSIONER ROBERTS: Are we going to discuss
8 that in this meeting?

9 COMMISSIONER AHEARNE: I think so.

10 MR. RATHBUN: I was going to defer to OGC for
11 discussion of that.

12 The Special Master believed that the cheating
13 cast doubt with respect to the licensee's training and
14 testing program on that training and testing program and
15 NRC's examination.

16 In our memorandum of August 20th, OPE's
17 position was that it agreed with the Board that the
18 weaknesses in the training and testing program were not
19 of a level or a kind to justify denying the restart.

20 (At this point in the proceedings, at 9:47
21 a.m., Commissioner Gilinsky joined the other
22 Commissioners at the table.)

23 MR. RATHBUN: I hadn't expected it to go this
24 fast. I had expected more questions or comments.

25 (Laughter.)

1 COMMISSIONER AHEARNE: We are saving them.

2 (Laughter.)

3 MR. RATHBUN: Let me just go to the conclusion
4 then. In conclusion in our review we did not find any
5 particular technical or policy reasons for the
6 Commission to stay the effectiveness of the Board's
7 decision. With that, we are ready to discuss the
8 paper.

9 I have at the table with me the new Director,
10 Jack Serbe, and the fellows who spent the most time in
11 our office reviewing the Special Master's report, the
12 Board's preliminary initial decisions and other elements
13 of the record, John Montgomery immediately to my left,
14 and Jim Milhoan.

15 COMMISSIONER AHEARNE: Very good.

16 Vic, you arrived at a good time there. We are
17 opening for questions on their summary.

18 Let me ask a few questions. The Board
19 recommended an investigation into the certification of
20 DV to determine whether or not a material false
21 statement was made; is that correct?

22 MR. MONTGOMERY: Yes.

23 COMMISSIONER AHEARNE: And do you know what
24 the status of that is? Has the staff undertaken such an
25 investigation?

1 MR. MONTGOMERY: No, I really don't know what
2 the status is at all.

3 COMMISSIONER AHEARNE: Len, does that stand as
4 a Board recommendation which the Commission should
5 address?

6 MR. BICKWIT: I think the Commission should
7 address it, yes.

8 COMMISSIONER AHEARNE: On that particular item
9 then can I ask, either OPE or OGC, have you thought
10 through that question and do you have any preliminary
11 position on it? Was it a material false statement or
12 you are not sure?

13 MR. MONTGOMERY: On the basis of our reading
14 the record and not having discussed this with either
15 Dennis or Jack my own personal view is that I would
16 favor the investigation on the basis of the information
17 that appears in the record as to whether there is enough
18 evidence to pursue it.

19 MR. BICKWIT: I have not read the record and
20 don't have any views on it.

21 COMMISSIONER AHEARNE: I would be in favor of
22 certainly ---

23 COMMISSIONER GILINSKY: The statement on what
24 now?

25 COMMISSIONER AHEARNE: This is the question of

1 the material false statement of certification.

2 MR. MONTGOMERY: Involving the incident of the
3 certification of DV in 1979.

4 COMMISSIONER GILINSKY: Of who?

5 MR. MONTGOMERY: DV is the letter designation.

6 COMMISSIONER GILINSKY: And the possibility of
7 it being falsely certified?

8 MR. MONTGOMERY: Falsely certified, the
9 possibility of a false material statement having been
10 made.

11 COMMISSIONER AHEARNE: DV was a person who was
12 taking a qualifying requirement and asked somebody else
13 to do the work for him. The person who ended up
14 certifying to the NRC that DV was qualified knew that DV
15 had used someone else to do part of the work.

16 COMMISSIONER GILINSKY: I guess the
17 certification is regarded as the statement.

18 COMMISSIONER AHEARNE: Right.

19 MR. ROTHSCHILD: For what it is worth, I think
20 the licensee in its comments to the Commission said they
21 started an investigation into the whole matter.

22 COMMISSIONER AHEARNE: Well, yes, but I think
23 the issue is that here is a certification to the NRC and
24 the Board has said we have recommended it. Certainly
25 for myself I would want the staff to look into that and

1 it wasn't clear to me what was the right mechanism for
2 that, whether it should be as part of our order that we
3 put out on this or ---

4 MR. BICKWIT: I don't think that is necessary.

5 COMMISSIONER AHEARNE: It could be just a
6 staff requirements memo?

7 MR. BICKWIT: Yes.

8 COMMISSIONER AHEARNE: Very well. I would
9 like someone to draft such a memo and then of course the
10 Commission would have to look at it.

11 MR. BICKWIT: (Nodding affirmatively.)

12 COMMISSIONER AHEARNE: The next question is
13 your summary says that "The staff had indicated it did
14 not intend to review the licensee's improvements to
15 training administration. The Board will supply a
16 condition requiring such a staff audit." So the Board
17 has in its decision required the staff audit of the
18 training program; is that correct?

19 MR. MONTGOMERY: That is right, the staff
20 review anyway. To make that perfectly clear, what the
21 licensee has committed to is a review by an outside
22 contractor and the staff has agreed to review that audit
23 by the outside contractor.

24 MR. MILHOAN: I think there could be some
25 ambiguity in this particular one. I thought the Board

1 in its imposed condition required the independent audit
2 of the training program with the independent auditor to
3 be approved by the Director of NRR and not that the
4 staff necessarily would do the audit but they would
5 review the results of the audit.

6 COMMISSIONER AHEARNE: So, Jim, given that
7 description it sounds like what John just described
8 would meet that; is that correct?

9 MR. MILHOAN: I just wanted to make sure there
10 was no confusion over who was doing the audit.

11 COMMISSIONER AHEARNE: Len, is that something
12 that we have to respond to?

13 MR. BICKWIT: I don't think we have to respond
14 to it, no.

15 COMMISSIONER AHEARNE: And you are saying that
16 the licensee and the staff have already agreed to go
17 ahead and do that.

18 MR. MONTGOMERY: Right.

19 COMMISSIONER AHEARNE: All right. I will put
20 aside the question of the penalty, but I want to get
21 back to that.

22 The issue on the way NRC goes about making up
23 the content of exams and the process of reviewing exams,
24 the Special Master and the Board both discussed it and I
25 gather the Board's conclusion was it was not something

1 that they could order at the present time. You say "The
2 Board's views have potential value and we suggest as a
3 separate matter the Commission request the staff to
4 consider them within the existing program plans
5 regarding NRC exam upgrading."

6 MR. MONTGOMERY: Right. In our mind that was
7 a question of the appropriate form and in the Board's
8 mind, too.

9 COMMISSIONER AHEARNE: What exactly did the
10 Board end up recommending we do?

11 MR. MONTGOMERY: I am not so sure it was a
12 specific recommendation as their discussion of what the
13 problem was, which I think is constructive and important
14 in that it is something the staff could valuably factor
15 into their overall program of improving the exam.

16 COMMISSIONER AHEARNE: Dennis, what kind of a
17 request did you have in mind when you say "the
18 Commission request"?

19 MR. RATHBUN: Well, I guess I would think that
20 it would be, if the Commission agreed along the lines of
21 a staff requirement, I suppose it would refer to this in
22 outlining what the staff might look at drawn from the
23 Board's suggestion. I think that would be the mechanism
24 that I would envision.

25 COMMISSIONER AHEARNE: I guess for Commission

1 consideration you might draft such a memo.

2 My other question relates to the penalty that
3 I think we will go back to OGC. So let me stop at that
4 point and ask others if they have questions?

5 Two things that we will be still getting are
6 the penalty and the schedule, but other than that, Vic?

7 COMMISSIONER GILINSKY: Tell me about what the
8 State of Pennsylvania says about all this.

9 MR. RATHBUN: Their comments?

10 COMMISSIONER GILINSKY: What is their position?

11 MR. RATHBUN: The Commonwealth of Pennsylvania
12 in their comments and replies to the Board's preliminary
13 initial decision said that it opposed granting immediate
14 effectiveness for two reasons.

15 One, it believed it would not be proper to
16 allow the TMI Unit 1 to operate with Mr. Hustead, who is
17 a licensed training instructor, and operators G and H,
18 who the Special Master and the Board found as guilty,
19 because they "lacked the requisite integrity to perform
20 their duties safely."

21 Then, secondly, they believed that the Atomic
22 Safety and Licensing Board's condition to require the
23 licensee to establish criteria for qualification of
24 training instructors should be required prior to restart
25 because operator retraining is a short-term item in the

1 Commission's August 9th, 1979 order and therefore must
2 be satisfied prior to restart.

3 COMMISSIONER GILINSKY: Where does the plant
4 stand?

5 COMMISSIONER AHEARNE: Before you answer that
6 could I follow up on your earlier question?
7 Pennsylvania raised a question which at least the way
8 they have raised it certainly deserves an answer. I
9 think they are characterizing the difference in the
10 treatment between, and if I look at your chart I can
11 find it, your No. 1 and No. 2 where O and W copying on
12 exams were fired, and G and H copying on company quizzes
13 were given two weeks suspension. Essentially as I read
14 your summary of what Pennsylvania is saying is how is it
15 that O and W aren't even going to be allowed to attempt
16 to be qualified whereas G and H are going to be allowed
17 to continue to be qualified?

18 MR. RATHBUN: I think that is right the way he
19 has characterized it.

20 MR. MONTGOMERY: Yes, I agree with that
21 characterization.

22 COMMISSIONER AHEARNE: All right. Can you
23 provide an answer to the question of why would that be
24 correct?

25 MR. MONTGOMERY: Let me try to answer that.

1 We have discussed this and I think one potential
2 explanation is the difference in the significance of NRC
3 examinations and company quizzes, the major point being
4 that in the case of these company quizzes there is
5 evidence on the record to indicate that it was not made
6 clear to operators in which circumstances quizzes were to
7 be an examination from the standpoint that you work
8 alone and that cheating is an unacceptable behavior
9 versus the NRC examination which was very clear that
10 that is supposed to be an individual effort.

11 So the only case you could make there or that
12 I could make there is that there are mitigating
13 circumstances in the case of the company quiz versus the
14 NRC examinations.

15 COMMISSIONER AHEARNE: All right, back to the
16 status question.

17 MR. RATHBUN: The SECY-250 which the staff
18 sent down to the Commission last June had indicated that
19 the plant would be ready for criticality in December of
20 1982. The staff now believes that the plant would be
21 ready for criticality in February of '83 instead of
22 December of '82.

23 COMMISSIONER AHEARNE: Has the staff approved
24 the explosive mechanism of fixing the tubes?

25 MR. RATHBUN: I don't know.

1 MR. MILHOAN: I don't know.

2 COMMISSIONER GILINSKY: Is that underway?

3 MR. RATHBUN: Jim, do you know?

4 MR. MILHOAN: I don't know the status.

5 COMMISSIONER AHEARNE: You see, I am assuming
6 it isn't underway because I am assuming that there would
7 have been a press release that it had begun, but I
8 haven't even seen anything that the staff had approved
9 the approach.

10 MR. RATHBUN: I can say this. The staff, as I
11 understand it, is preparing a follow up to its
12 SECY-82-250 which should be coming soon, and I would
13 imagine that will have updating information on the
14 status.

15 COMMISSIONER AHEARNE: There is nothing to
16 prevent though you guys from finding out what the status
17 is, is there?

18 MR. RATHBUN: That is where we got the
19 information this morning, yes, sir.

20 COMMISSIONER AHEARNE: For example, you can
21 find out have they approved the explosive approach and
22 what is the status of that.

23 MR. RATHBUN: (Nodding affirmatively.)

24 COMMISSIONER AHEARNE: Is that the staff or
25 licensee estimate for February?

1 MR. RATHBUN: That came from the NRC Project
2 Manager.

3 COMMISSIONER AHEARNE: Vic?

4 COMMISSIONER GILINSKY: No.

5 COMMISSIONER AHEARNE: Tom?

6 COMMISSIONER ROBERTS: No.

7 COMMISSIONER AHEARNE: Jim?

8 COMMISSIONER ASSELSTINE: I have one
9 question. You say that you are in agreement with the
10 Board's conclusion that there is no safety consequence
11 from the cheating episode. One of the Pennsylvania
12 arguments, as I understand it from your summary, is that
13 if you have people who in the past have cheated on
14 quizzes or the exams, that those people may not be
15 reliable suppliers of information, particularly in an
16 emergency. If they are willing to cheat, then they may
17 be willing to withhold information or not to provide
18 accurate information. Do you give any weight at all to
19 that argument and, if so, how do you square that with
20 your agreement with the Board conclusion?

21 MR. MONTGOMERY: I think we gave some weight
22 to the argument, but not enough to come down to what I
23 think is the only conclusion you would reach after you
24 accept that argument and that is that those operators
25 would have to be removed forever.

1 The reason that we agreed with the Board I
2 think rather than the Special Master in that particular
3 circumstance is I think the conclusion that having
4 cheated once raises a serious risk in terms of being
5 able to trust that individual to operate the plant is
6 somewhat tenuous. It deserves consideration, but I
7 don't think it leads one to the bottom argument that you
8 have to remove those people.

9 In this particular case there was an action
10 taken in recognition of that and that was the two-weeks
11 suspension. That at least in my mind serves as an
12 object lesson. I would not come down to say that G and
13 H, because of the finding that they had cheated, cannot
14 ever be trusted again. That is obviously a very
15 subjective judgment and it comes out of my own
16 background.

17 COMMISSIONER ASSELSTINE: I guess I might well
18 agree with you that on balance things would weight in
19 favor that there may be a greater likelihood after the
20 action that has been taken that they may not engage in
21 that activity or the risk of them being unreliable
22 suppliers of information or unreliable operators of the
23 plant may not be the prevailing risk, but I do have some
24 concern about being able to say that there is simply no
25 safety consequence whatsoever. It seems to me there is

1 some risk involved.

2 MR. MONTGOMERY: I will agree that that
3 statement could either be an overstatement or a
4 misinterpretation and it could have been worded better.

5 MR. MILHOM: I think also with respect to
6 emergency actions in which the State of Pennsylvania is
7 involved, we have taken action with respect to
8 establishing the EOF where the state will have direct
9 face-to-face communication with the licensee. I do
10 think in this case, and G and H are reactor operators
11 and not SROs, that the State of Pennsylvania would be in
12 the position as the accident proceeds of relying on one
13 individual's information alone.

14 COMMISSIONER GILINSKY: It seems to me a more
15 salient point is the message you are sending to
16 everybody.

17 COMMISSIONER ROBERTS: I would like to hear
18 your message. I can't hear you.

19 (Laughter.)

20 COMMISSIONER GILINSKY: It seems to me the
21 more significant aspect is the message that gets sent to
22 everybody and whether you feel that these people have
23 been sufficient chastized and everyone understands they
24 are not supposed to cheat or whether they come away
25 thinking well, you can get away with it one time or

1 something like that.

2 MR. MONTGOMERY: I agree that that message is
3 important and the way I read it is these people have
4 been punished.

5 COMMISSIONER AHEARNE: Certainly the message
6 for O and W is very clear.

7 COMMISSIONER ASSELSTINE: Is it correct that
8 all of the people whom the Board found involved in
9 cheating on the NRC exams have been or are being removed
10 from any nuclear operations, either they have been fired
11 or, in the case of Miller, that they are not going to be
12 involved in nuclear operations?

13 MR. MONTGOMERY: Well, let me make a
14 distinction. Those that have been found guilty of
15 cheating on the NRC exams are just two people, O and W.
16 Two managers who various actions have come into question
17 have been removed from nuclear operations.

18 COMMISSIONER ASSELSTINE: So the remaining
19 ones are strictly those where you have the question of
20 the exams, the GPU quizzes and the ambiguity that exists
21 there.

22 MR. MONTGOMERY: Correct.

23 COMMISSIONER AHEARNE: Anything further, Jim?

24 COMMISSIONER ASSELSTINE: No.

25 COMMISSIONER AHEARNE: Okay. Then, Len, if we

1 could move to the question of the Licensing Board
2 imposing the fine and the question of fines.

3 MR. BICKWIT: You have our paper on that. We
4 pose two options. There is really ---

5 COMMISSIONER ROBERTS: Wait a minute. You
6 posed two options, but take the first sentence of the
7 third paragraph. Now would you elaborate on that? You
8 are saying we have two options. This is allowing what
9 you say is their lack of jurisdiction to proceed.

10 MR. BICKWIT: I was in the middle of a
11 sentence saying that I think there is really a third
12 option ---

13 COMMISSIONER ROBERTS: Good. I am glad you
14 caught it.

15 (Laughter.)

16 MR. BICKWIT: --- which is to immediately find
17 that there is no jurisdiction and to pull the Board off
18 and send the matter out to OI along with this other
19 investigatory matter.

20 The reason we went for the second option is
21 simply that normally we don't make such major decisions
22 in the course of an effectiveness review. I guess it is
23 always easier to say we might benefit from parties'
24 comments and from the analysis of an Appeal Board in the
25 merits review. As between the second option and the
recommended option that we listed in the paper and the

1 third option I have just posed I have mixed feelings.

2 COMMISSIONER AHEARNE: When you say it is
3 your preliminary view that the Board lacked
4 jurisdiction, was the word "preliminary" there in order
5 to preserve if we do go to the route of saying we will
6 hold for the merits review that you have not reached a
7 final conclusion?

8 MR. BICKWIT: No, it was heartfelt. There is
9 a provision in the regs that gives the presiding officer
10 the power to take any other action consistent with the
11 Act, this chapter and then sections 551 and 558 of Item
12 5. My own feeling is that I am pretty clear that the
13 Board didn't have jurisdiction to do this.

14 COMMISSIONER AHEARNE: Could I ask a question
15 of clarification that more goes back to OPE. Your
16 description of the penalty is that it was not tied to a
17 specific conclusion based upon the Commission's policy
18 on enforcement action but rather that it was intended to
19 be a symbolic gesture to attract the attention of
20 interested parties, and I am reading from the top of
21 page 6 of your paper. Now is that a quote from the
22 Board, "intended as a symbolic gesture to attract the
23 attention of interested parties"?

24 MR. MONTGOMERY: Page 178 of the Board's
25 decision, paragraph 24.12, and I quote the last two

1 sentences of that paragraph: "The amount of \$100,000 is
2 not the result of mathematical calculation nor was it
3 arrived at with the Commission's guidelines on civil
4 penalties. This is a remedial symbolic penalty intended
5 to attract the attention of all interested parties."

6 COMMISSIONER GILINSKY: Well, isn't that what
7 all the penalties are, whatever you think of this one?

8 COMMISSIONER AHEARNE: There was the word
9 "remedial" on that; is that correct?

10 MR. MONTGOMERY: Yes.

11 COMMISSIONER AHEARNE: Any comments on Len's
12 three options?

13 COMMISSIONER ROBERTS: I would opt for option
14 three.

15 COMMISSIONER ASSELSTINE: I have a question I
16 would like to ask Len on option three. I take it under
17 option three ---

18 COMMISSIONER GILINSKY: What was option three
19 again?

20 MR. BICKWIT: Option three is the Commission
21 decides as part of its effectiveness review that there
22 really isn't any jurisdiction, or quite apart from its
23 effectiveness review it just decides right now that
24 there isn't any jurisdiction and that the matter be
25 referred to the Office of Investigations.

1 COMMISSIONER ASSELSTINE: For the purposes of
2 determining whether or not under our existing policy a
3 penalty would be appropriate for any actions taken?

4 MR. BICKWIT: To determine whether there was
5 any violation in the first place.

6 COMMISSIONER ROBERTS: Well, wait a minute.
7 Do we impose penalties because of policy or our
8 regulations, there being some fine point. There is a
9 difference.

10 MR. BICKWIT: Well, that was the point I was
11 trying to make.

12 COMMISSIONER GILINSKY: Well, what would you
13 prefer? You said to run this thing all over again? We
14 just had a lengthy investigation. Would you
15 reinvestigate it all?

16 MR. BICKWIT: No. We would have the Office of
17 Investigation use its discretion to look into what has
18 been done and see what its reaction is and see what
19 recommended action is appropriate.

20 COMMISSIONER GILINSKY: They would then go
21 into the field and investigate and take depositions?

22 MR. BICKWIT: If they felt it was necessary to
23 do so.

24 COMMISSIONER GILINSKY: That sounds a bit
25 nutty.

1 COMMISSIONER ASSELSTINE: They would also
2 presumably be able to use the record developed in these
3 proceedings.

4 MR. BICKWIT: If they didn't find it necessary
5 to do so, they would not do so.

6 COMMISSIONER GILINSKY: I would be surprisized
7 if they didn't feel'obligated to do something about it.

8 COMMISSIONER AHEARNE: Did the Board pin their
9 \$100,000 penalty on any specific or particular actions
10 on the part of the licensee or failure of actions?

11 MR. MONTGOMERY: The answer is yes.

12 MR. BICKWIT: It is quoted: "For the
13 negligent failure of the licensee to safeguard the
14 integrity of the examination process because it failed
15 to instill an attitude of respect for the company and
16 NRC administered examinations because it failed to
17 assure the quality of training instruction and because
18 of negligence in the certification of candidates for NRC
19 operator licenses."

20 COMMISSIONER AHEARNE: I guess I share Vic's
21 view. I think if we give this to OI, particularly with
22 all the emphasis we have laid on OI that you must now
23 ensure that every investigation you do meets high
24 standards and that it is a very tight quality product, I
25 don't see any choice they would have but to try to

1 retread a lot of this ground.

2 MR. BICKWIT: Well, if it hasn't been done
3 properly so that it meets those high standards, then I
4 think it is a good idea that before the Commission takes
5 any action in this matter to have it done properly.

6 COMMISSIONER ASSELSTINE: In all likelihood
7 that is where we are likely to end up anyway if in fact
8 on the merits review a decision is made that the Board
9 lacks the authority to impose this kind of a civil
10 penalty in any event, and aren't we right back to the
11 same situation but just farther down the road?

12 MR. BICKWIT: You could say in this case we
13 don't have those high standards.

14 (Laughter.)

15 COMMISSIONER GILINSKY: I take back my comment
16 about it being nutty.

17 (Laughter.)

18 COMMISSIONER GILINSKY: But it will I think
19 get us into another investigation and it may or may not
20 be a sensible thing to do.

21 COMMISSIONER AHEARNE: Isn't it ---

22 COMMISSIONER GILINSKY: Let me just make one
23 more comment. You know, we are talking about
24 jurisdiction. The Board, as I understand it, said if it
25 doesn't have jurisdiction, then it is recommending that

1 we take this step.

2 COMMISSIONER ASSELSTINE: Right. That is true.

3 COMMISSIONER GILINSKY: So you will be
4 rejecting the recommendation. You would be inquiring
5 further but nevertheless rejecting the recommendation.

6 MR. BICKWIT: Well, we would be saying that
7 you can't simply impose the fine on the basis of the
8 procedures that have been used. The way we go about
9 imposing fines is to have a matter investigated and then
10 have the staff initiate the action in accordance with
11 our regulations if there has been a violation and it is
12 found worthy of penalizing.

13 COMMISSIONER AHEARNE: Tom, when you said you
14 would go for option three, did that include giving this
15 to OI?

16 COMMISSIONER ROBERTS: Not necessarily.

17 (Laughter.)

18 COMMISSIONER AHEARNE: 3-A or 3-B?

19 COMMISSIONER ROBERTS: 3-A.

20 COMMISSIONER GILINSKY: You mean do nothing.

21 (Laughter.)

22 COMMISSIONER GILINSKY: Until you hear from me.

23 (Laughter.)

24 COMMISSIONER AHEARNE: Jim?

25 COMMISSIONER ASSELSTINE: I am not wild about

1 another investigation, but I think because of the
2 difficulties of the way the Board went about it and the
3 fact that they didn't follow the kind of procedures that
4 Len described, I guess I would say I would be in favor
5 of option three but sending it to OI. I am not wild
6 about that though.

7 COMMISSIONER AHEARNE: Vic?

8 COMMISSIONER GILINSKY: I don't know. I am
9 embarrassed to go along with this now.

10 (Laughter.)

11 COMMISSIONER GILINSKY: Well, let me hear what
12 other people have to say.

13 (Laughter.)

14 COMMISSIONER AHEARNE: Well, let's see. I
15 gather that if we give it to the Board, to the merits
16 review, the likely result is going to be obviously one
17 of two options, either, one, the Appeal Board says they
18 do have jurisdiction, or two, they don't. If they
19 don't, it is clearly back where it is. If they do have
20 jurisdiction, then the Appeal Board or you will still be
21 faced with the question of what should the size be and
22 how does it match with respect to the enforcement
23 policy, because I would imagine the Commission would
24 still want to have the enforcement policy followed.

25 So either way I guess OI is going to have to

1 reach a conclusion on it. Since it isn't as though the
2 Board is doing something that we are overriding them
3 they can raise this as a question one way or the other.
4 I admit that my position is reached taking into account
5 the complicating fact that the licensee has already said
6 they are will to pay the fine.

7 COMMISSIONER ROBERTS: That is rather
8 troublesome.

9 (Laughter.)

10 COMMISSIONER AHEARNE: That sort of says it is
11 not that there is a strong resistance to this penalty,
12 but we are more just trying to protect the quality of
13 our process. So I guess I would go along with 3-B very
14 reluctantly.

15 MR. BICKWIT: I am not quite sure what 3-B is.

16 (Laughter.)

17 MR. BICKWIT: I like it though.

18 (Laughter.)

19 COMMISSIONER AHEARNE: 3-B is saying that the
20 Board didn't have the jurisdiction, but we are accepting
21 the Board's recommendation, and to the extent this is
22 now an issue raised by the Board, we are asking OI to
23 look into it. I would ask OI to look into it using the
24 record to the extent they can, and I guess I would
25 couple that with at the same time looking into the

1 material false statement issue, because the Board sounded
2 like in giving their reasons for this the negligence in
3 certification is wrapped up in that.

4 COMMISSIONER GILINSKY: No, I thought they
5 said that was not involved in that at all. I believe
6 they underlined that point.

7 COMMISSIONER AHEARNE: I thought the
8 negligence of certification was one of the reasons that
9 you just read.

10 MR. BICKWIT: In this case, yes.

11 COMMISSIONER GILINSKY: Yes, but that
12 particular case was not related to the \$100,000 penalty.

13 COMMISSIONER AHEARNE: No, but I am saying
14 that the material false statement is part of the
15 certification issue.

16 COMMISSIONER GILINSKY: But they said
17 specifically the \$100,000 was not related.

18 COMMISSIONER AHEARNE: Yes, I understand
19 that. What I am saying is that since we are tasking OI
20 to look into the material false statement, which is part
21 of the certification, that it all can be done at the
22 same time.

23 COMMISSIONER GILINSKY: I think I will pass.
24 I am undecided.

25 (Laughter.)

1 COMMISSIONER AHEARNE: These are tentative
2 positions in any event because ---

3 MR. BICKWIT: Just file a dissent to whatever
4 the Commission decides.

5 (Laughter.)

6 COMMISSIONER AHEARNE: Joe would want to have
7 a say in it also. So at least this is a preliminary
8 position.

9 Any other items on that particular aspect?

10 (No response.)

11 COMMISSIONER AHEARNE: All right. Before we
12 get into scheduling, are there any other issues we ought
13 to be discussing?

14 (No response.)

15 COMMISSIONER AHEARNE: All right. Getting
16 into scheduling, my records may not be complete. What I
17 have was an August 2nd memo that the Chairman had
18 distributed proposing a series of steps. As a matter of
19 fact, we are now on the sixth step which was Commission
20 meeting to be briefed and discuss Board decision on
21 cheating and implementation of restart conditions. Also
22 decide whether to hold oral argument, and that is
23 September 10th. So we are tracking down that schedule.

24 The other item I had, there was a memo from
25 Commissioner Asselstine saying that the oral argument

1 should be a definite part of this schedule and he also
2 says he strongly endorses including a public Commission
3 meeting in Harrisburg. It wasn't clear from his memo
4 whether those were the same items.

5 COMMISSIONER ASSELSTINE: My view is they
6 could be or they could be separable items. Let me just
7 say on the oral argument part of it it would be ---

8 COMMISSIONER AHEARNE: Jim, could I interrupt
9 one moment.

10 COMMISSIONER ASSELSTINE: Sure.

11 COMMISSIONER AHEARNE: Let's see, Bill Reamer,
12 was there a final schedule put out?

13 MR. REAMER: I think there was not a final
14 schedule put out.

15 COMMISSIONER AHEARNE: All right. So that the
16 August 2nd was the last schedule that your office put
17 out?

18 MR. REAMER: That is correct.

19 COMMISSIONER AHEARNE: Go ahead, Jim.

20 COMMISSIONER ASSELSTINE: On the oral argument
21 part, I guess for myself the oral argument would be
22 particularly useful since this is one of the things that
23 I am coming in on somewhat in the middle at this point,
24 but at least from my standpoint the oral argument would
25 give me an opportunity to take a look at the other

1 aspects, the other earlier partial initial decisions
2 with the parties as well.

3 COMMISSIONER AHEARNE: All right. Could you
4 expand on that a little bit. Are you saying that you
5 would want at the time of an oral argument to also
6 explore with the parties the other issues in the
7 decision?

8 COMMISSIONER ASSELSTINE: If I understand the
9 proposal on No. 8, it is an oral argument on all voted
10 decisions it had.

11 COMMISSIONER AHEARNE: I see. Would you see
12 that in lieu of reading the previous decisions?

13 COMMISSIONER ASSELSTINE: No, I wouldn't; as a
14 supplement to.

15 (Laughter.)

16 COMMISSIONER AHEARNE: All right. Do you have
17 more comments on it? I gather you are a very strong
18 supporter of this concept.

19 COMMISSIONER ASSELSTINE: Let me just say a
20 couple of things about the public meeting idea. It
21 seems to me that even though we are not required to hold
22 even an argument or a public meeting for that matter,
23 that given the amount of concern that there is obviously
24 up there in the vicinity of the plant that it would be
25 useful for us to at least provide an opportunity for the

1 people up there to in a disciplined forum to provide us
2 their comments.

3 In fact, one of the thoughts that I had in
4 mind on this was that we could have an opportunity for
5 oral argument by the parties at the outset in which
6 members of the surrounding community could listen to the
7 arguments made by the parties and then that could be
8 followed by a period of time in which people could
9 provide their own personal views to us. It seems to me
10 that there would be a benefit to doing that and I don't
11 see too much of a downside to it but maybe others do.

12 COMMISSIONER ROBERTS: I think in theory that
13 sounds wonderful. I think in practice it would be a
14 disaster.

15 COMMISSIONER ASSELSTINE: Do you really?

16 COMMISSIONER ROBERTS: I do indeed. I think
17 that meeting will become a side show.

18 COMMISSIONER GILINSKY: Well, I don't think it
19 would be a side show.

20 COMMISSIONER ROBERTS: I think in theory it
21 sounds great, but in execution I think it is going to be
22 a disaster.

23 COMMISSIONER AHEARNE: Vic?

24 COMMISSIONER GILINSKY: I think I would follow
25 Jim's suggestion. You know, there is always a danger

1 that things may not work out as one hopes. I was the
2 principal object of a meeting ---

3 (Laughter.)

4 COMMISSIONER GILINSKY: --- in the area soon
5 after the accident and I know from firsthand what Tom is
6 talking about. But even there I think it was
7 worthwhile. People were certainly very free with their
8 comments during the meeting, but afterward were rather
9 polite and pleased that we had come. It looked rather
10 bad for a while. A state trooper came over and said we
11 are going to go out the side door.

12 (Laughter.)

13 COMMISSIONER GILINSKY: But we didn't and it
14 worked out quite well. It has been some time since
15 then, and I don't think we are going to run into
16 anything quite like that. I think we have an obligation
17 to present ourselves there and to display the process
18 and let the people hear the arguments.

19 I am not sure just what kind of meeting I
20 would hold up there, but maybe Jim's suggestion on that
21 point is a good one and we might as well go all the way.

22 COMMISSIONER ROBERTS: You mean hear the oral
23 argument and ---

24 COMMISSIONER GILINSKY: Well, I haven't
25 thought about this, to tell you the truth, but I

1 certainly would hold a meeting up there, yes.

2 COMMISSIONER ASSELSTINE: I am not wedded to
3 the notion of coupling them and it seems to me that is
4 one option we could think about.

5 COMMISSIONER AHEARNE: But I gather you do
6 though want both?

7 COMMISSIONER ASSELSTINE: I do think it would
8 be worthwhile to do both.

9 COMMISSIONER AHEARNE: Now I gather that when
10 you say you are not that committed to combining the two
11 that if we did have them separate, then the location of
12 the oral argument is not as critical?

13 COMMISSIONER ASSELSTINE: That is correct. I
14 see an advantage to having it there because from an
15 informational standpoint it does allow the people up
16 there to hear the argument and to see the process in
17 operation, but there may be disadvantages to that, too.
18 My feeling on locating the oral argument up there is
19 less important in my mind than having the two.

20 COMMISSIONER GILINSKY: You know the other
21 occasion we did something like this, we held a hearing
22 up at Manchester in the Seabrook case and there were
23 people marching up and down outside on the street and so
24 on, but it was a very well conducted hearing and I think
25 it was a good thing that we were there.

1 COMMISSIONER AHEARNE: It accomplished what?

2 COMMISSIONER ROBERTS: Yes, elaborate on what
3 you mean it was a good thing. I am not being
4 argumentative. I just want to understand what you mean
5 it was a good thing.

6 COMMISSIONER GILINSKY: Well, what we are
7 talking about here is the reaction of people, because
8 after all as far as the legal arguments go, you know,
9 they are no different here than they are there. I can't
10 say there is any great swell of enthusiasm for the NRC
11 up in New Hampshire as I discover every year ---

12 (Laughter.)

13 COMMISSIONER GILINSKY: --- but, nevertheless,
14 I think, you know, it takes some of the sharp edges off
15 the people's attitude toward us, the fact that you are
16 willing to, well, sort of run your process in full view
17 of people that are affected.

18 COMMISSIONER AHEARNE: Was that before or
19 after you had the group of several hundred sitting
20 outside here?

21 COMMISSIONER GILINSKY: That was several days
22 before we committed ourselves wisely or otherwise at
23 that time to having a decision in four days. So we had
24 this vigil down here and Mr. Kennedy going up and down
25 shaking hands.

1 (Laughter.)

2 COMMISSIONER AHEARNE: Well, I guess as far as
3 the public meeting in Harrisburg goes, as I have said
4 many times on this matter, I defer to the Chairman on
5 that by allowing him to have my proxy on that matter

6 COMMISSIONER GILINSKY: Because he is the
7 Chairman or because he is from Pennsylvania?

8 COMMISSIONER AHEARNE: Because he is from
9 Pennsylvania.

10 COMMISSIONER ROBERTS: Oh, because he is from
11 Pennsylvania?

12 COMMISSIONER AHEARNE: Because he is from
13 Pennsylvania.

14 COMMISSIONER ROBERTS: Well then since I am
15 from Tennessee maybe the other Commissioners would ---

16 (Laughter.)

17 COMMISSIONER ROBERTS: It is a pretty good
18 analogy don't you think?

19 (Laughter.)

20 COMMISSIONER AHEARNE: If you want to hold a
21 public meeting at Clinch River ---

22 (Laughter.)

23 COMMISSIONER AHEARNE: He came from working
24 very closely on the TMI issue and from working very
25 closely with those people. So I will defer to him on

1 holding that public meeting.

2 As far as the oral argument goes, I guess the
3 times I have participated in these oral arguments I find
4 not even a close substitute for reading the material
5 because there just is no chance to get as much
6 information as you can get out of reading the material.

7 COMMISSIONER GILINSKY: I must say I have an
8 opposite reaction. You know, as a personal matter I get
9 a great deal out of an oral argument and the reactions
10 of the people who are there to present arguments and you
11 can follow things up in a way that you just can't in
12 writing. You know, something that takes weeks to go
13 back and forth, you know, and you can get a reaction in
14 a second or a minute.

15 COMMISSIONER ROBERTS: Well, as you say, it is
16 personal. I find little benefit from the oral argument.

17 COMMISSIONER AHEARNE: Unless there are
18 additional thoughts, Joe had wanted to hear the
19 discussion and he obviously will have ---

20 COMMISSIONER ASSELSTINE: I think the
21 principal advantage to an oral argument is not that it
22 serves as a substitute for looking at the submitted
23 materials, but that it does provide an opportunity to
24 follow up on the points that are made and to ask
25 questions of the parties directly. As far as I am

1 concerned that is the principal benefit of it. That was
2 the benefit I got out of the Clinch River oral argument,
3 for example.

4 COMMISSIONER AHEARNE: I will comment that in
5 general I find the answers very shallow. It sort of
6 clear that the presenters ---

7 COMMISSIONER ROBERTS: The presenters have not
8 developed the information.

9 COMMISSIONER AHEARNE: That is right.

10 COMMISSIONER ROBERTS: And they can't answer a
11 substantive question.

12 COMMISSIONER AHEARNE: No matter who the
13 presenters are on all parties. Tom is exactly right,
14 the substantive information is not developed by the
15 presenters.

16 COMMISSIONER GILINSKY: That is an answer in
17 itself.

18 COMMISSIONER AHEARNE: But it is to be
19 expected. The presenters are there because they present.

20 COMMISSIONER GILINSKY: I don't expect ---

21 (Laughter.)

22 COMMISSIONER ROBERTS: I think it is clear.

23 COMMISSIONER AHEARNE: Yes, there is a latent
24 barb in that.

25 (Laughter.)

1 COMMISSIONER ROBERTS: There is a what?

2 COMMISSIONER AHEARNE: There is a latent barb
3 in that.

4 COMMISSIONER ROBERTS: All right, sorry.

5 (Laughter.)

6 COMMISSIONER AHEARNE: Are ther any other
7 questions at all to be addressed?

8 (No response.)

9 COMMISSIONER AHEARNE: All right. Where we
10 stand then is that there will be a couple of staff
11 requirements memos developed. The Chairman will have
12 comments on the remaining question about this schedule
13 which addresses both the public meeting, oral argument
14 and the combination or not of those two.

15 There is one question which was passed up to
16 me that I should ask, and that is who is the keeper of
17 the enforcement policy? The question really is in
18 referring for work to see whether or not an enforcement
19 action should be taken, is that something that something
20 that should be referred to I&E or should it be referred
21 to OI?

22 MR. BICKWIT: I think it should be referred to
23 OI initially for its recommendation.

24 COMMISSIONER AHEARNE: Would you think a
25 little bit about that question in preparing the staff

1 requirements memo.

2 MR. BICKWIT: (Nodding affirmatively.)

3 COMMISSIONER AHEARNE: All right.

4 If there is nothing else, then we will adjourn
5 now.

6 (Whereupon, at 10:35 a.m., the closed meeting
7 adjourned.)

8 * * *

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

NUCLEAR REGULATORY COMMISSION

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

in the matter of: CLOSED MEETING - EXEMPTION 10 - DISCUSSION OF CONTESTED
ISSUES IN TMI-1 RESTART PROCEEDING

Date of Proceeding: September 10, 1982

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.

Mary C. Simons

Official Reporter (Typed)

Mary C Simons

Official Reporter (Signature)