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OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

NUCLEAR REGULATORY COMMISSION
COMMISSION MEETING
CLOSED MEETING - EXEMPTION NO. 10

DKT/CASE NO.

TITLE DISCUSSION OF IMMEDIATE EFFECTIVENESS
ISSUES IN TMI-1 RESTART PROCEEDING

PLACE Washington, D. C.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DISCUSSION OF IMMEDIATE EFFECTIVENESS ISSUES
IN TMI-1 RESTART PROCEEDING

CLOSED MEETING - EXEMPTION NO. 10

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

Wednesday, December 1, 1982

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

COMMISSIONERS PRESENT:

- NUNZIO PALLADINO, Chairman of the Commission
- VICTORY GILINSKY, Commissioner
- THOMAS ROBERTS, Commissioner
- JAMES ASSELSTINE, Commissioner

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

- S. CHILK
- M. MALSCH
- J. ZERBE
- A. KENNEKE
- J. MONTGOMERY
- T. ROTHSCHILD

AUDIENCE SPEAKERS:

- J. MILHOAN
- J. FOUCHARD

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P R O C E E D I N G S

CHAIRMAN PALLADINO: Good morning, ladies and gentlemen.

Today we begin to consider whether or not to lift the immediately effective shutdown order that was imposed by the Commission on TMI-1 in 1979. The fundamental issue is do we lift the suspension now or leave the suspension in place pending completion of appellate review by the Appeal Board and, as appropriate, by the Commission.

We have a draft decision prepared by CGC and OPE. However, as their cover memo noted, this decision is really a vehicle for our discussion of the issues.

I don't think it would be productive to conduct a line-by-line review of the draft order at the present time. However, I do believe it would be appropriate to get general reaction to the order. I suggest that OPE give us a brief synopsis of the contents of the draft decision. Commissioners may have questions of clarification they wish to ask.

Following the synopsis I suggest each of us indicate our tentative view of the overall issue of lifting the suspension at this time. If certain conditions are necessary before a Commissioner can approve restart, if that is his inclination, then I

1 suggest we try to get those out on the table. In this
2 way I would hope to see us develop points of agreement
3 and disagreement.

4 If you wish to express your position in terms
5 of broad views in the draft order, that would do just as
6 well. Specific comments on the draft order that are
7 less significant or substantive I gather can be given
8 directly to OPE or CCC.

9 Now with this approach in mind, if there are
10 no other questions or comments, I would propose turning
11 the meeting over to Jack Zerbe.

12 Jack.

13 MR. ZERBE: We will briefly go through the
14 information in this very rough draft. However, before I
15 do that, Marty Malsch was planning to make a few
16 comments about some procedural matters that relate to
17 TMI-1.

18 MR. MALSCH: These are really sort of a list
19 of things which are still pending before the Commission
20 or Appeal Board or various elements of the staff. They
21 don't necessarily influence the restart decision, but
22 they could have a bearing on some of the language you
23 might choose to put in the decision.

24 The first one is that the Appeal Board has
25 issued a decision on emergency planning issues in ALAB

1 697 and 698. Petitions for review of that to the
2 Commission have been filed by various parties.

3 COMMISSIONER GILINSKY: Have we seen that?

4 MR. MALSCH: The petitions for review of the
5 ALABs?

6 COMMISSIONER GILINSKY: The ALAB on emergency
7 planning.

8 MR. MALSCH: I am sure you have copies, but we
9 haven't done our usual review of it yet. So you don't
10 have our paper.

11 Now I raise this only because in some respects
12 the ALAB decisions differ or additional things beyond
13 what was done by the Licensing Board. So should you
14 choose to make the Board decisions effective you need to
15 be clear as to which decision it is that you are
16 speaking to.

17 CHAIRMAN PALLADINO: Was that 697?

18 MR. MALSCH: ALAB 697 and 698. It is of
19 particular importance regarding the question about the
20 EOF and the issue which the staff is appealing. We will
21 need to make clear exactly what it is we are allowing to
22 go into effect.

23 CHAIRMAN PALLADINO: Is this where they come
24 out with four hours versus one hour?

25 MR. MALSCH: Four hours versus one hour,

1 right. Now the licensee, I understand, has committed to
2 adhere to the Licensing Board restriction pending
3 further review, but we will need to just be clear on
4 what we are talking about in the decision and I think we
5 have made an effort along those lines in this draft.

6 CHAIRMAN PALLADINO: Well, I think that is a
7 general comment that I had when we come to the
8 conclusion. It is not clear all the conditions that we
9 want in that and what has to be done before we actually
10 are going to allow it to start.

11 MR. MALSCH: Right. It is just something we
12 have to be careful about as we go through the decision.

13 The second thing is that the staff
14 certification regarding the status of completion of
15 various items is still incomplete. We will need to make
16 clear in the decision what remains to be done by what of
17 staff certification and if any Commission review is
18 necessary we will need to specify that.

19 In that regard there was an earlier sort of
20 informal decision regarding deferral of some NUREG 0737
21 items. This is SECY-92-384 which was part of a status
22 report by the staff on a TMI implementation of the TMI
23 Action Plan items.

24 We had earlier issued an order saying that the
25 Commission itself reserved the authority to modify or

1 set implementation schedules. We probably ought to make
2 that clear in this order also because we reserved that
3 authority as a part of our authority to decide in effect
4 on lifting effectiveness.

5 CHAIRMAN PALLADINO: Which SECY was that?

6 MR. MALSCH: It was SECY-82-384, and there is
7 a Chilk memo of October 19, 1982 reflecting a Commission
8 majority decision to go along with deferral of five
9 items with Commission Gilinsky dissenting. That ought
10 to be addressed somehow or other in the lifting of
11 effectiveness.

12 COMMISSIONER GILINSKY: Let's see, those
13 exemptions have been granted?

14 MR. MALSCH: I don't know what the exact
15 status is in terms of what the staff has done.

16 COMMISSIONER GILINSKY: Does anybody know?

17 MR. MONTGOMERY: No.

18 COMMISSIONER GILINSKY: Why not?

19 MR. MONTGOMERY: We haven't asked the staff.

20 COMMISSIONER GILINSKY: Could we find out?

21 MR. MONTGOMERY: Sure, we will find out.

22 COMMISSIONER ASSELSTINE: And one of these was
23 still open anyway, wasn't it, Marty?

24 MR. MALSCH: I think. I haven't looked at
25 them in detail.

1 COMMISSIONER ASSELSTINE: I think there was
2 one that was still open.

3 MR. MALSCH: It is just that since the
4 Commission reserves its authority as a part of its
5 decision-making process on lifting effectiveness we
6 probably ought to address it somehow in the decision
7 lifting or whatever on effectiveness.

8 The third item is an obvious one. We need t
9 reflect the status of the PANE litigation and make it
10 clear that this is not actually authorizing restart. We
11 have done that or made an attempt along those lines also
12 in this draft order.

13 CHAIRMAN PALLADINO: Well, in this order there
14 is an implication that we have got to wait for something
15 on PANE and I thought we don't have to do anything on
16 that.

17 MR. ZERBE: Not for this order.

18 CHAIRMAN PALLADINO: Excuse me?

19 MR. ZERBE: You don't have to wait for this
20 order.

21 CHAIRMAN PALLADINO: But this order gives the
22 implication that we have to wait for resolution of that
23 before we may restart and that is not right.

24 MR. MALSCH: Our only obligation is to give 30
25 days advance notice.

1 CHAIRMAN PALLADINO: I say that is a drafting
2 problem.

3 MR. MALSCH: We may have to look at that again.

4 Let me just mention a few other items that are
5 pending. I am sure you are aware of most of them.
6 There are a number of items that are sort of beyond the
7 adjudication. They include the steam generator problem,
8 and in particular an issue that is going to come up
9 regarding the need for an amendment to the operating
10 license in connection with restart because of the steam
11 generator tube repair program and the possibility that
12 that amendment would require a prior hearing.

13 COMMISSIONER ROBERTS: Let me ask a question.
14 Is it absolutely crystal clear there must be a license
15 amendment?

16 MR. MALSCH: I don't think it is. The staff
17 has advised the licensee that restart of the reactor
18 following completion of the repair program involves
19 several unreviewed safety questions in their preliminary
20 review. Under the regulations that would entail a
21 license amendment, but it isn't necessarily the case
22 that that amendment can't be issued prior to completion
23 of a hearing. Whether it can or cannot be issued prior
24 to completion of any requested hearing depends upon
25 whether the staff finds that these amendments involve a

1 significant hazards consideration. The staff offered a
2 preliminary review that they didn't, but expressed no
3 final conclusion.

4 CHAIRMAN PALLADINO: Why must that be treated
5 in this order?

6 MR. MALSCH: These don't have to be treated in
7 this order. I just wanted to sort of list a number of
8 other items which the Commission might be aware of.
9 That issue is essentially unresolved.

10 CHAIRMAN PALLADINO: What issue?

11 MR. MALSCH: The need for an amendment to the
12 operating license prior to restart to accommodate new
13 safety issues arising from the steam generator tube
14 repair program.

15 CHAIRMAN PALLADINO: Has not the staff been
16 requiring an amendment? I guess you mentioned at Ginna
17 they required an amendment.

18 MR. MALSCH: Yes, and they have advised the
19 licensee here that they believe an amendment is
20 necessary.

21 CHAIRMAN PALLADINO: But we don't have to
22 decide that as part of this.

23 MR. MALSCH: No.

24 COMMISSIONER ROBERTS: Well I don't understand
25 what you said. You said it is not absolutely clear an

1 amendment is required? Well you order says it is in a
2 footnote.

3 CHAIRMAN PALLADINO: Well I don't want to
4 cover that.

5 MR. MALSCH: My understanding is from the
6 papers that I read that the staff had a preliminary view
7 that an amendment was required. I believe some recent
8 discussions with staff have suggested that they are
9 pretty much fixed on the need for an amendment, but we
10 would need to clarify that before we made any such
11 unqualified statement.

12 CHAIRMAN PALLADINO: When you talk to steam
13 generators might it not be appropriate to say there are
14 other items such as the steam generator repair that we
15 want the staff to be satisfied on before the restart?
16 That doesn't make a commitment as to whether or not an
17 amendment should be issued.

18 MR. MALSCH: Yes. I would say if there is any
19 question at all about the need for an amendment I
20 wouldn't include it in this order because then you might
21 be binding yourselves to something you may later on
22 regret.

23 COMMISSIONER ROBERTS: Well as written you say
24 an amendment is required.

25 MR. MALSCH: My understanding is that is based

1 on formal discussions with the staff. Unless we are
2 very clear about that, I certainly wouldn't make any
3 such commitment in the order.

4 Then there are several things that we are
5 working on. There is a motion pending regarding ex
6 parte communications and we are going to be dealing with
7 that shortly.

8 There are some other items on which the
9 Commission wanted staff briefings when they lifted some
10 items out of the Appeal Board's ordinary sua sponte
11 review and the Commission will need to decide on those.

12 CHAIRMAN PALLADINO: What is the ex parte
13 consideration?

14 MR. MALSCH: There was a motion filed by, was
15 it, Trip, UCS?

16 MR. ROTHSCHILD: Yes.

17 MR. MALSCH: For complaining about alleged ex
18 parte communications between staff and Commission citing
19 a number of Commission papers and discussions which they
20 had not been privy to and we are going to be dealing
21 with that.

22 COMMISSIONER ASSELSTINE: Marty, what was the
23 item mentioned just after that, after ex parte?

24 MR. MALSCH: In an order the Commission issued
25 a while ago they lifted several issues out of -- well

1 the Appeal Board indicated a desire to raise several
2 issues sui sponte, including steam generator problems
3 and two or three other items. The Commission told the
4 Appeal Board the Commission itself would handle these
5 rather than having the Appeal Board address them sua
6 sponte and would be receiving staff briefings. Those
7 items are still pending. They include not only steam
8 generators but a couple of other issues.

9 Then, finally, in a March 23rd, '81 order the
10 Commission lifted out of the proceeding issues dealing
11 with financial qualifications, but said that the staff
12 would be following remonitoring the financial
13 qualifications of the applicant and would report to the
14 Commission of any adverse safety implications.

15 Now that order was issued prior to the time
16 the Commission amended its financial qualification rules
17 essentially taking financial qualifications out as a
18 safety issue. So as things stand now it is a little
19 unclear whether the Commission wants or doesn't want or
20 would need any kind of a staff briefing on financial
21 qualifications. It is a dangling item.

22 CHAIRMAN PALLADINO: Was that March 23rd of
23 this year?

24 MR. MALSCH: No, '81. These items don't
25 necessarily have to be dealt with in this decision.

1 They are just things that you ought to sort of think
2 about as other items requiring some thought.

3 CHAIRMAN PALLADINO: Aren't there other
4 issues. We have the TLD question that the State of
5 Pennsylvania wants and we have to decide that.

6 MR. MALSCH: Although not necessarily as a
7 part of effectiveness. They have petitioned for
8 Commission review of the Appeal Board decision on that
9 subject. So eventually the Commission will have to
10 address that on the merits.

11 CHAIRMAN PALLADINO: Also there are a couple
12 of people, I have forgotten whether there were three or
13 two, maybe there are three, one of whom left and the two
14 that the State of Pennsylvania feels ought not to be
15 involved.

16 MR. MALSCH: Yes, they made that comment as
17 part of their comments on effectiveness.

18 MR. MONTGOMERY: They made it in oral
19 argument, too.

20 MR. MALSCH: Yes. Now the Appeal Board
21 decision on management competence and related issues is
22 not out yet. So presumably the State is not only
23 pursuing those issues before the Commission as a part of
24 its review on effectiveness, but also will be pursuing
25 them before the Appeal Board as a part of its review on

1 management competence.

2 That is all I have.

3 CHAIRMAN PALLADINO: Jack.

4 MR. ZERBE: As noted in the cover memo that
5 accompanied this draft, this is a very rough draft and
6 it is solely to provide focus for your discussing the
7 matter of lifting the immediate effectiveness. Clearly
8 we would plan to reformat this document into a slightly
9 different order where we would give procedural
10 background on management and cheating issues as another
11 item, emergency planning as a third item and hardware
12 separation of plants and miscellaneous items as a fourth.

13 The way it is presented now it jumps around
14 between hardware and it is rather difficult to read, but
15 it was that way because of an earlier thought on how we
16 would format it, but after reading it over we felt that
17 we did definitely have to modify that. However, in
18 going through it today I will keep with the order we
19 have in the document so that we won't get confused and
20 hopefully you won't.

21 We have attached here information from
22 Commission Gilinsky's office. I recognize that it is
23 draft information and not necessarily a position of
24 Commissioner Gilinsky. We did solicit comments from
25 various Commissioners and that was one of them. We

1 didn't get too many comments, but that was one that we
2 did get and we added it in here, the hardware items, and
3 what is the status of effecting those hardware item
4 modifications for your information.

5 The Commission should consider whether you
6 want to have them included in the hardware issues. Some
7 of them would change what were decisions by the Board on
8 what should be done before initial start-up and what
9 should be done afterwards. So I think you would have to
10 address those and decide which ones you would want to
11 include.

12 CHAIRMAN PALLADINO: But you said you hadn't
13 gotten much so far. I just caught up with them last
14 night. So I hope we have a chance to give comments
15 still.

16 MR. ZERBE: Yes. Well going into the document
17 as you have it before you, the first 12 or 13 pages are
18 basically background information that discusses first
19 the order that, let's say, you would remove the
20 immediate effectiveness and then a number of pages on
21 the background of the various decisions and partial
22 decisions by the Board.

23 It covers the first two orders that came out
24 of the Appeal Board. It discusses the items that came
25 up by the parties in the case and then, finally, on page

1 10 it starts into the decision and the reiterating
2 statements that have been in previous documents that the
3 Commission must decide whether the concerns which
4 prompted the original immediate effectiveness suspension
5 order justify a continuation of that suspension during
6 the period that the Appeal Board and the Commission are
7 reviewing the merits of the Licensing Board decision.

8 If the Commission determines that its concerns
9 have been resolved, then legally you should lift the
10 immediate effectiveness order.

11 CHAIRMAN PALLADINO: Jack, before you get to
12 page 10, and I am not trying a page-by-page suggestion,
13 it would be helpful if somewhere in the first couple of
14 pages there was a summary of the concerns that existed
15 in 1979 when the order was lifted.

16 MR. ZERBE: You mean a listing of the items
17 that have been identified before?

18 CHAIRMAN PALLADINO: Or maybe a paragraph
19 summary.

20 MR. ZERBE: Okay. That is not in here right
21 now.

22 CHAIRMAN PALLADINO: As a matter of fact,
23 while I am making that suggestion, I found that it would
24 have been helpful to me in reading this if when
25 conditions were attached to partial initial decisions,

1 for example, the ten items of the condition, if there
2 would have been an attachment that said here are the
3 conditions that were attached. Do you follow me?

4 MR. ZERBE: No. You mean when they were
5 decided by the Board?

6 CHAIRMAN PALLADINO: There were partial
7 initial decisions where the Board said we go along with
8 restart subject to ten conditions. Well, I didn't have
9 them in front of me.

10 MR. ZERBE: You mean added conditions above
11 and beyond the conditions ---

12 CHAIRMAN PALLADINO: Whatever conditions the
13 Board said applied to their decision would be nice
14 either in the document or in an attachment we list the
15 ten, and then there was another place where there were
16 four, just to have them handy because it will help us
17 when we come to identify at the end what conditions we
18 want to see met before its restart.

19 MR. ZERBE: We could have those in an appendix
20 just as well as having them in the opening.

21 CHAIRMAN PALLADINO: Yes, I think an appendix
22 would be fine. Just so they have a handy reference.
23 But go ahead.

24 MR. ZERBE: Well, OPE believes that the
25 conditions had met to remove the immediate effectiveness

1 orders previously put out by the Commission. All of the
2 documentation that OPE has issued over the last year and
3 a half or so is consistent with what we are saying now,
4 and of course that thing had been delayed some time
5 because of the various issues that have come up. The
6 last one I guess is the cheating issue.

7 Starting then on page 14 we identify the major
8 items that we addressed in the document, the management
9 competence and integrity, emergency planning, the issue
10 of cheating, which, as I mentioned earlier, when we
11 reformat this document we would put the cheating issue
12 up with the management area because it pertains to that.

13 COMMISSIONER ASSELSTINE: But you would still
14 keep it as a separate item.

15 MR. ZERBE: We could keep it separate because
16 it was obviously a very important and separate item, but
17 probably in the format we would have it in the area
18 where the management concerns were.

19 CHAIRMAN PALLADINO: Before you go on, on page
20 13 I think some drafting attention needs to be given to
21 the last few sentences above the footnotes. It says
22 "There are several issues outside the scope of this
23 proceeding such as steam generator tube problems and a
24 psychological stress issue that must be resolved prior
25 to any restart," and it implies that the psychological

1 stress has to be resolved.

2 MR. MALSCH: Yes, that is a little misleading
3 and we need to correct that.

4 COMMISSIONER ASSELSTINE: I think the footnote
5 is pretty clear.

6 MR. ZERBE: It is in the court.

7 CHAIRMAN PALLADINO: I know, but sometimes the
8 people don't read the footnotes.

9 MR. MALSCH: That is right. I mean it does
10 suggest that we are actually are going to resolve it on
11 the merits, which is what we tried to avoid.

12 COMMISSIONER ASSELSTINE: Right.

13 CHAIRMAN PALLADINO: Go ahead, Jack.

14 MR. ZERBE: Well the other item that we
15 covered here is the separation of the two plants.

16 CHAIRMAN PALLADINO: Now on page 16 you use
17 words and I occasionally see this elsewhere. In the
18 middle of the page where it says "For immediate
19 effectiveness purposes the Commission therefore accepts
20 the Board's favorable finding on management." Those
21 words "for immediate effectiveness purposes" made it
22 sound like we haven't made a decision.

23 MR. ZERBE: Your decision on immediate
24 effectiveness is not necessarily your final decision on
25 starting the plant up. As a result of subsequent

1 reviews of the merits that will take place after you
2 could conceivably change your position and reverse
3 yourself. If you say you start up now, you could
4 ultimately say I have redecided.

5 Take, for instance, the case, and this is one
6 that might be confusing, it was to me I know, on the
7 Special Masters case here compared to the Board, you
8 know, we say you aren't making a final decision. The
9 decision you would be making by removing the immediate
10 effectiveness now is in a preliminary way your feeling
11 would be that the Board was right and that they made the
12 right decision relative to the issue that the Special
13 Masters differed from the Board. However, that can be
14 reversed later on when the full merits reviews are
15 available.

16 COMMISSIONER GILINSKY: Say that again. I
17 mean isn't this the time to consider these questions?

18 MR. ZERBE: Well this is why I am bringing it
19 up because of the words in here. It is kind of tricky I
20 think.

21 CHAIRMAN PALLADINO: There are a few times
22 where words like this appear.

23 MR. ZERBE: This is a preliminary feeling that
24 one would have on the case. It doesn't mean that if new
25 information became available ---

1 COMMISSIONER GILINSKY: Well, but on the basis
2 of the information the Commission has up to now we will
3 be making a decision.

4 MR. ZERBE: That is right.

5 COMMISSIONER GILINSKY: It isn't for the
6 purposes of this. It is for the purposes of that. You
7 are either approving or disapproving.

8 MR. ZERBE: That is right. If you didn't
9 believe that it was right, you shouldn't ---

10 COMMISSIONER GILINSKY: Now if something comes
11 up tomorrow, that is another matter. It is always
12 another matter.

13 MR. ZERBE: That is right. That is the only
14 point.

15 MR. MALSCH: Well, it is almost that. The
16 only difference is that when the Commission originally
17 launched this whole hearing it made clear that its
18 effectiveness decision would have no bearing at all on
19 its later merits review.

20 One thing we have to make clear is whatever
21 conditions we ---

22 COMMISSIONER GILINSKY: Well, that is true in
23 all of these cases, that is right. You can still go
24 over the same ground and take briefs and review all the
25 material all over again.

 MR. MALSCH: That is right.

 COMMISSIONER GILINSKY: But in terms of

1 turning the plant on the Commission is saying we have
2 reviewed the material and this is our current view.

3 MR. ZERBE: That is right.

4 CHAIRMAN PALLADINO: And I think it has to be
5 more definitive than this implies.

6 MR. ZERBE: That is the current view that you
7 shouldn't remove it.

8 CHAIRMAN PALLADINO: Well, this is especially
9 important because management competence was one of the
10 specific issues that was of concern to the Commission
11 and one of the reasons I believe that they wanted to
12 explore it as part of lifting the shutdown order. So
13 the weasel word here I think would be wrong.

14 MR. ZERBE: What page are you talking about?

15 CHAIRMAN PALLADINO: We are looking at the
16 middle of page 15, the last sentence in the first
17 paragraph. I think we ought to clearly indicate whether
18 our doubts have been all resolved or any doubts that we
19 may have.

20 MR. WALSCH: I think the best solution rather
21 than sort of, you know, place weasel words at strategic
22 locations throughout the opinion is to explain once up
23 front what the nature of the review is that the
24 Commission is conducting and then not thereafter
25 consider weasel words.

1 CHAIRMAN PALLADINO: If you just said the
2 Commission therefore accepts the Board's favorable
3 finding on management, that probably would ---

4 MR. MALSCH: Now one thing we have to be
5 careful on, and that is since this isn't the final
6 merits review whatever conditions the Commission itself
7 might choose to impose as a condition of lifting
8 effectiveness will not necessarily survive the later
9 merits review. So we have to be careful in tracking the
10 merits review to be sure that that incorporates
11 conditions acceptable to the Commission.

12 Let's suppose the Licensing Board imposed, I
13 don't know, 25 conditions. Let's suppose the Commission
14 decided it wanted to impose an additional 5 conditions
15 as a part of its review on lifting effectiveness and it
16 imposed them in its order lifting effectiveness. It
17 wouldn't at all be clear that once the complete review
18 process was completed, you know, Appeal Board decisions
19 and the Commission decisions on the merits review and
20 the entire record, if as a result of the review of the
21 entire record following briefs and arguments and
22 everything else nothing further was said about those
23 five additional conditions, it wouldn't at all be clear
24 that they remain because they were imposed as a specific
25 condition of allowing restart pending completion of

1 these further reviews.

2 So one thing to keep in mind is as the merits
3 review progresses is to keep track of these license
4 conditions and make sure that when the final decision on
5 the merits comes down before the Commission it has got
6 all the conditions that it wants.

7 CHAIRMAN PALLADINO: Well, that is why I think
8 at the end in our conclusions we ought to be pretty
9 clear what conditions we are imposing.

10 MR. MALSCH: Your suggestion that we list the
11 conditions is helpful.

12 CHAIRMAN PALLADINO: Those that came out of
13 the Board, but those may or may not be the sum total of
14 everything that we asked for.

15 MR. MALSCH: That is right.

16 CHAIRMAN PALLADINO: Or we may not ask for
17 some of them also. But your suggestion of explaining
18 what the immediate effectiveness order is somewhere up
19 front so that we don't have to put all these
20 "preliminary" and "for immediate effectiveness purposes"
21 phrases in is good.

22 MR. MALSCH: One problem with doing that you
23 will inevitably leave it out in a couple of places and
24 people will draw implications that, gee, they didn't
25 mean it here and they meant it there, or they are soft

1 on this and firm on this and you end up with problems
2 when you do that.

3 MR. ZERBE: Well, just below that Item 1, page
4 16 then we discuss the emergency planning and conclude
5 that the issues have been addressed and that from the
6 point of view of emergency planning the immediate
7 effectiveness could be removed.

8 CHAIRMAN PALLADINO: Somewhere along the line
9 here there were Pennsylvania conditions and I don't
10 remember them all.

11 MR. ZERBE: Well they were issues up on page
12 11.

13 CHAIRMAN PALLADINO: We are going to have to
14 make some decisions that nobody else has made yet on the
15 TLBs, of whether or not we want those specified
16 individuals still working there.

17 MR. ZERBE: Well of course the Appeal Board
18 upheld the Board that you didn't need the TLBs.
19 Technically we agree with that. I think it would be a
20 political issue, particularly since one of the other
21 plants and Susquehanna apparently uses TLBs.

22 COMMISSIONER ASSELSTINE: Well, correct me if
23 I am wrong, but in that one didn't we also decided for
24 purposes of immediate effectiveness that they weren't
25 required, but after that they went ahead and the utility

1 voluntarily provided them?

2 MR. ZERBE: Yes. Is it not the same that GPU
3 has a connection with that plant, too?

4 COMMISSIONER ASSELSTINE: No, not with the
5 utility. There would be a difference because
6 voluntarily the utility has provided them in that case.

7 MR. KENNEKE: There is a generic implication
8 in whatever decision you make.

9 COMMISSIONER ASSELSTINE: That is right.

10 CHAIRMAN PALLADINO: Jack, would it not be
11 helpful in the next go-around on this to pick out items
12 that are so specific that we ought to really decide
13 whether or not we want to go with the Board or go
14 somewhere different, for example, the TLBs and people
15 working, the Pennsylvania condition.

16 MR. ZERBE: You mean to pick them out in the
17 document or to pick them out ---

18 CHAIRMAN PALLADINO: No, for working by the
19 Commission.

20 MR. KENNEKE: If you would list the decisions.

21 CHAIRMAN PALLADINO: Yes. So we can actually
22 say yes, we do want TLBs or no, we don't require them,
23 or otherwise we are liable to have ---

24 MR. KENNEKE: It would be lost in the draft.

25 CHAIRMAN PALLADINO: That is right.

1 MR. ZERBE: While we are on that, then the
2 next item on that page 11 was those three individuals
3 that the State addressed and the Boards identified, you
4 know, that the penalties had been issued and they had no
5 cause to want to remove the two that are still there
6 from the staff.

7 CHAIRMAN PALLADINO: I wasn't trying to make a
8 decision of whether or not I agreed with them, except
9 that is one that we ought to specifically pull out and
10 see if the Commission wants to do anything different
11 from what the Boards recommended.

12 COMMISSIONER ASSELSTINE: Yes, I agree.

13 MR. ZERBE: We say no reason to differ with
14 the Board on that issue.

15 COMMISSIONER ASSELSTINE: I am not sure I
16 agree with that. I agree that we ought to discuss it.

17 (Laughter.)

18 MR. ZERBE: I am back on page 17, unless you
19 have more questions on those earlier pages. This issue
20 I think was discussed on the bottom there in earlier
21 conversation here, but the Appeal Board differed with
22 the Licensing Board on the manning of the EOF and that
23 is discussed here.

24 Subsequently later on we wrote it as if the
25 Commission would choose to want to go with the Licensing

1 Board rather than the Appeal Board on this issue at this
2 time and say that the EOF should be manned after the
3 first hour rather than four hours in the control room.
4 You might choose to want to say that differently, or you
5 may not agree with that, but that would be our
6 recommendation.

7 CHAIRMAN PALLADINO: Have we actually decided
8 to stay the portion of the ALAB 698 which relates to
9 the ---

10 MR. ZERBE: No.

11 MR. KENNEKE: We are putting words in your
12 mouth there.

13 MR. ZERBE: You would do it in this order.

14 MR. MONTGOMERY: This would be one of those
15 specific issues you have asked us to put on a list to
16 make a decision about.

17 MR. KENNEKE: We have assumed that you would
18 not approve the TLBs and we have assumed you would
19 support a one-hour EOF requirement.

20 MR. ZERBE: Well, on page 22 we talk about
21 the ---

22 CHAIRMAN PALLADINO: If you are going to jump
23 that far ahead, in the page 18 to 19 range, and I am not
24 going to pick up details, but in this area you have
25 "preliminary" again. What the Commission must say is

1 that the concerns which prompted the immediately
2 effective shut-down order have been resolved and I don't
3 think we want to have preliminary in there. Let me find
4 it.

5 MR. ZERBE: That was one I had talked about
6 earlier.

7 CHAIRMAN PALLADINO: The discussion on
8 hardware on page 20 is rather thin, the middle paragraph.

9 MR. ZERBE: Well, there are other areas in
10 here. We are going to pull all the hardware together.

11 CHAIRMAN PALLADINO: Fine.

12 MR. ZERBE: It was taken up in this case
13 because the Board had talked about hardware and said
14 that hardware issues are in place, and then it was taken
15 up later on because some of the parties brought up
16 hardware and we discussed it under what the parties had
17 said. But we will put that all together.

18 CHAIRMAN PALLADINO: Then on page 21 you have
19 again in the first full paragraph, the last sentence, it
20 says "for immediate effectiveness purposes," and this
21 is the same kind of question.

22 MR. ZERBE: Right, and we have got hardware in
23 there.

24 CHAIRMAN PALLADINO: What is that?

25 MR. ZERBE: That next paragraph again flips

1 back to essentially hardware.

2 CHAIRMAN PALLADINO: Well, I was looking in
3 the middle of that next paragraph and it says "Pending
4 Appeal Board resolution of this issue." I don't know
5 that that has anything to do with it. I think you ought
6 to just leave that phrase off and just say the
7 Commission agrees that reasonable assurance exists that
8 the public health and safety can be adequately
9 protected, or whatever.

10 MR. ZERBE: Okay, that is the same issue we
11 had before.

12 CHAIRMAN PALLADINO: Then on page 22 to 23 you
13 have "preliminary view," you have "preliminarily," and
14 there are a whole lot of these preliminaries that I
15 think give the same problem as the others, and then I
16 will drop that.

17 MR. ZERBE: Yes. But in that area we are
18 talking about the comments of the various parties and
19 the fact that they have been reviewed by the Commission.

20 COMMISSIONER ROBERTS: Where are you, on the
21 bottom of page 23?

22 MR. ZERBE: I am not there yet, but go ahead.
23 Yes, I am at 23 now.

24 COMMISSIONER ROBERTS: Can you explain to me
25 the meaning of consistent, arbitrary and capricious

1 conclusions? Is consistent an adjective that modifies
2 conclusions or were the conclusions consistently
3 arbitrary and capricious?

4 MR. ZERBE: Wait a minute.

5 MR. KENNEKE: We are still trying to find
6 you. Where are you?

7 COMMISSIONER ROBERTS: Page 23, the last
8 paragraph, first sentence.

9 MR. KENNEKE: I don't see that.

10 MR. ZERBE: I don't see that on mine.

11 MR. KENNEKE: Have we got a different version?

12 COMMISSIONER ROBERTS: It beats me. I am on
13 page 23, the last paragraph with regard to the Licensing
14 Board July 27th ---

15 MR. MONTGOMERY: It is at the top of page 24
16 on the other paper, the first sentence on the top of
17 page 24. I see where you are at.

18 MR. ZERBE: Have you got a different version?

19 MR. MONTGOMERY: He may still have the
20 advanced version. There was an advance copy and then
21 the SECY copy.

22 COMMISSIONER GILINSKY: What kind of advanced
23 copy are you talking about? What is this advanced copy
24 you are talking about?

25 MR. MONTGOMERY: It was an advance copy that

1 was provided the day before the SECY paper came out. It
2 did not have the standard SECY heading on it.

3 CHAIRMAN PALLADINO: That is the advantage of
4 not reading the preliminary stuff ---

5 COMMISSIONER ROBERTS: What did you say, that
6 is the advantage of not reading the ---

7 (Laughter.)

8 (Simultaneous conversations -- Inaudible.)

9 COMMISSIONER ASSELSTINE: Are you sure you
10 don't just have a typo on that, that is an arbitrary and
11 capricious conclusion?

12 MR. MONTGOMERY: Yes, sir, right.

13 MR. ZERBE: "Inconsistent," that seems like a
14 typo.

15 COMMISSIONER ASSELSTINE: Or consistently.

16 MR. MONTGOMERY: One or the other.

17 COMMISSIONER ROBERTS: Maybe they were
18 consistently arbitrary and capricious.

19 MR. MONTGOMERY: I don't know if that is a
20 quote. Is that a quote?

21 COMMISSIONER ROBERTS: I don't know.

22 MR. BETHSCHILD: We will check it out.

23 (Laughter.)

24 CHAIRMAN PALLADINO: On the bottom of page 23,
25 again it give me the feeling that we are soft on our

1 decision. At the bottom of page 23, the second to the
2 last line it says "Is of such magnitude as to suggest
3 that the Commission not lift" The word
4 "suggest" maybe you want "justify" or "require" a
5 mandate. The sense I was getting is that we really
6 weren't sure of our decision.

7 MR. ZERBE: We should not be weasely like that.

8 COMMISSIONER GILINSKY: Well, it ought to
9 reflect what the Commission thinks.

10 CHAIRMAN PALLADINO: Yes, that is right.

11 MR. ZERBE: That is right.

12 COMMISSIONER GILINSKY: If the Commission
13 feels positive, it ought to be positive. If the
14 Commission feels weasel wording ---

15 (Laughter.)

16 CHAIRMAN PALLADINO: If you read the whole
17 sentence though it says "Although long-term
18 uncertainties remain concerning final resolution of some
19 of the issues raised by UCS, there is no technical issue
20 where the uncertainty is of such magnitude as to justify
21 the Commission not lift the immediate effectiveness."

22 MR. ZERBE: We are still talking on page 24 of
23 the issues that were brought up by the parties and
24 presumably dispensing with them relative to the
25 immediate effectiveness. We are essentially stating

1 that those issues are of not sufficient substance to
2 prevent removing immediate effectiveness.

3 CHAIRMAN PALLADINO: Are you on page 25 yet?

4 MR. ZERBE: I am on page 1 now.

5 CHAIRMAN PALLADINO: Well, in the middle of
6 25, the last sentence in the last full paragraph says
7 "We will consider the matter during our merits review."
8 Now let me ask a question. It is my understanding the
9 Appeal Board may go to the merits review and we may or may
10 not choose to review that.

11 COMMISSIONER GILINSKY: Just so.

12 MR. MALSCH: Yes, we probably shouldn't.

13 CHAIRMAN PALLADINO: Well, "We will consider
14 matters during our merits review."

15 MR. MONTGOMERY: That is a drafting mistake.
16 I can speak for that with certainty.

17 MR. MALSCH: That could be read as a
18 commitment to actually take it up on the merits side.

19 COMMISSIONER GILINSKY: You know, I have a
20 small suggestion that somewhere in the beginning you
21 explain to people what an effectiveness review is and
22 what a merits review is. I am sure that no one will
23 understand, and for the Commission after this long
24 process to be talking about a merits review off in the
25 future is going to at least raise eyebrows and will

1 probably make people reach for some implement.

2 (Laughter.)

3 CHAIRMAN PALLADINO: And make it clear now so
4 that even the Commissioners could explain it to somebody
5 else. I mean a non-legal Commissioner.

6 (Laughter.)

7 CHAIRMAN PALLADINO: On page 26 under
8 "Conclusions," when I was all through I wasn't sure what
9 it was that we were agreeing to, except the restart, and
10 I think we ought to spell out either by listing or by
11 reference the things that we are putting as conditions
12 for restart, the things we want done before restart and
13 the things we want done after. For example, it says "In
14 conclusion the Commission should review all the material
15 before it in the case of the concerns which prompted the
16 immediate effectiveness. The original shutdown orders
17 will be satisfied when the NRC staff is able to make the
18 required certifications that various items have been
19 completed."

20 Should we not identify items that we
21 specifically want to make sure they certify? I raise
22 that as a question? "The Commission therefore legally
23 must lift the immediate effectiveness of the shutdown
24 order during the appellate review of the Licensing Board
25 decisions. Accordingly, the immediate effectiveness of

1 the shutdown order is lifted subject to staff
2 certification. The Commission emphasizes, however, that
3 the decision does not authorize TMI-1 to restart nor is
4 it to prejudice the agency merit reviews of the
5 Licensing Board decision."

6 I don't know how the other Commissioners feel,
7 but it seemed to me that ---

8 MR. ZERPE: You would like to list
9 specifically all the items that ---

10 CHAIRMAN PALLADINO: Well, let me raise it as
11 a question. Somehow I wasn't sure when I was all
12 through, if I voted for this I wasn't sure what I was
13 voting for. That was my feeling.

14 COMMISSIONER GILINSKY: Let me ask you this.
15 Is it your intention to put out this or some version of
16 this document on December 10th?

17 CHAIRMAN PALLADINO: I would expect so.

18 COMMISSIONER GILINSKY: That is what we are
19 driving for?

20 CHAIRMAN PALLADINO: Yes, that is what we are
21 driving for, plus perhaps Joe Fouchard might put out a
22 press release as well.

23 COMMISSIONER GILINSKY: He doesn't put out
24 press releases.

25 CHAIRMAN PALLADINO: I am sorry. He will

1 prepare a press release for us.

2 Well, any other comments or questions?

3 (No response.)

4 CHAIRMAN PALLADINO: Well now what is going to
5 be the procedure? Incidentally, I have other little
6 nits.

7 MR. ZERBE: I guess we should address what you
8 would intend to do with the hardware items here that
9 have been attached for your consideration. Some of
10 these aren't addressed at the moment in the items under
11 the effectiveness as they originally were. So we would
12 have to add those and maybe that would be included in
13 your item there, Mr. Chairman, you know, at the end of
14 things that you would want to include that would have to
15 be done prior to restart.

16 CHAIRMAN PALLADINO: Well, if I understand
17 Commissioner Gilinsky's list, these are items you want
18 to install or modify prior to ---

19 MR. ZERBE: I don't know that they are
20 Commissioner Gilinsky's. His office at least sent these.

21 CHAIRMAN PALLADINO: But these are items that
22 you want to install or modify prior to restart, and I
23 think some of these items ---

24 MR. ZERBE: Some of them will be done and we
25 have identified those.

1 COMMISSIONER GILINSKY: This is a list we put
2 together. They are certainly items we are interested in
3 and wanted to know the status of.

4 MR. ZERBE: Right. The items that are
5 identified that will be completed now in the way things
6 are scheduled by the licensee, items 2, 3, 4 and 7 I
7 think we have identified will be done by the restart.

8 CHAIRMAN PALLADINO: Now you say they will be
9 done. Is that voluntary, or is that something the staff
10 has ---

11 MR. ZERBE: Well, it is agreed to by the ---

12 CHAIRMAN PALLADINO: These are commitments?

13 MR. MONTGOMERY: It is a commitment. The only
14 qualification is that is assuming that the restart
15 occurs when it is supposed to and there aren't slippages
16 in the schedule.

17 COMMISSIONER GILINSKY: And supposed to is
18 when?

19 MR. MONTGOMERY: Supposed to, we were talking
20 about April, the end of March or the first of April for
21 restart.

22 CHAIRMAN PALLADINO: But if it slips it might
23 be more is what you are saying.

24 COMMISSIONER ASSELSTINE: The commitment in
25 any event is to do those items you just indicated before

1 restart; is that correct?

2 MR. MONTGOMERY: No. The commitment, if I
3 remember correctly, is to a specific date, March 31st.
4 That is why the qualifier. For example, if restart were
5 to be capable a month earlier and they were given
6 permission, then that might not hold.

7 COMMISSIONER ASSELSTINE: So it isn't a
8 commitment to do them by restart?

9 MR. MONTGOMERY: By restart, no.

10 CHAIRMAN PALLADINO: But 2, 3 4 and ---

11 MR. ZERBE: 2, 3, 4 and 7.

12 MR. MILHCAN: Excuse me. Item No. 7 is a
13 SECY-111B item, Reg. Guide 197 and all the
14 instrumentation. That would require considerable time
15 to install all that instrumentation, but you had decided
16 that one on SECY-111B, the guidance.

17 COMMISSIONER GILINSKY: So 7 drops out of the
18 list.

19 MR. ZERBE: 7 is dropped out of it.

20 COMMISSIONER GILINSKY: So we have 2, 3 and 4?

21 MR. ZERBE: Yes. Our cover letter then is in
22 error. We had 2, 3 4 and 7.

23 Items 1 and 11 I guess they are scheduled to
24 be done at the first refueling?

25 COMMISSIONER GILINSKY: Didn't the Appeal

1 Board say that it had to be done before ---

2 MR. MONTGOMERY: I don't think they have
3 gotten that far yet. I think what they did was they
4 suggested they were going that way and have asked for
5 comments and they have gotten some responses back yet
6 but we haven't see all of them.

7 COMMISSIONER GILINSKY: Well, I guess I am a
8 little surprised that your list here doesn't reflect the
9 Appeal Board's action.

10 CHAIRMAN PALLADINO: Well let me ask Marty a
11 question. Is the Appeal Board's action on merits review?

12 MR. MALSCH: Yes.

13 COMMISSIONER ASSELSTINE: But it is not
14 complete yet.

15 MR. MALSCH: It is not complete, no.

16 CHAIRMAN PALLADINO: I am just trying to
17 understand. Now we are in the process of an immediate
18 effectiveness review. I will ask it in a very naive way.

19 COMMISSIONER GILINSKY: We are not required to.

20 CHAIRMAN PALLADINO: Are we required to look
21 at the ALAB decisions on merits?

22 MR. MALSCH: If the Appeal Board has rendered
23 a final decision on the merits, that is what you are
24 making effective.

25 MR. ZERBE: If you don't change it.

1 MR. KALSCH: This is a preliminary review. I
2 mean the Commission could look at it and think about it
3 and decide whether it wishes to speak to that issue
4 itself in its effectiveness review, but I don't think it
5 is required.

6 MR. KENNEKE: We did do that on the emergency
7 planning things. So I think it is a valid question.

8 CHAIRMAN PALLADINO: Yes, you are right.

9 COMMISSIONER ASSELSTINE: But that was an ALAE
10 final decision.

11 MR. KENNEKE: That is right, but again they
12 are raising a valid question.

13 CHAIRMAN PALLADINO: But as it stands now do
14 we have a commitment from the licensee to install the
15 vent valves on the candy canes during the first
16 refueling?

17 MR. MONTGOMERY: Yes. The commitment is to do
18 it then rather than prior to restart. That is right.

19 CHAIRMAN PALLADINO: And we have permission
20 from the applicant to make modification to the decay
21 heat removal system during the first refueling?

22 MR. ZERBE: Yes.

23 COMMISSIONER GILINSKY: Now all sorts of let's
24 say items which we have gotten into the habit of
25 scheduling on the basis of refuelings and are getting

1 getting done in other plants just because they are
2 operating have gotten put off here because the licensee
3 has taken advantage of that way of framing the schedules
4 and have just put them off because he has not been
5 operating. So his first refueling is way off in the
6 future.

7 I think on the high point vents, and I can't
8 remember whether it is the high-point vents or the level
9 meters, but one of them just about everybody has done.

10 MR. ZERBE: The level meter hasn't ---

11 COMMISSIONER GILINSKY: It would be the
12 high-point vents I guess, or at least there was some
13 other item which essentially everyone had done and they
14 are still going by this extra fueling. So what is
15 happening is that the very plant which caused the
16 interest in the item that caused us to decide that this
17 is a terribly important thing and needs to be put in is
18 the one that is taking the longest time and it has taken
19 advantage of every loop hole to do that. Now is that
20 something you want to go along with?

21 CHAIRMAN PALLADINO: Why are they putting this
22 off to the first refueling, Jack, or does anybody know?

23 MR. ZERBE: I don't know.

24 CHAIRMAN PALLADINO: Is this something where
25 you have to drill into the pipes?

1 MR. MILHOAN: Excuse me, Mr. Chairman. In the
2 licensee's response to the Appeal Board order they
3 indicated that they were getting the hardware on site by
4 the end of the year, but to do all the installation and
5 the procedures for the installation it would take them a
6 considerable length of time. I think that they use
7 double shifts. It was four months I believe. I don't
8 remember the time frame, but they are getting the
9 hardware on site and the installation is going to take a
10 considerable length of time.

11 COMMISSIONER GILINSKY: Do you know what the
12 status is with other plants? I have this somewhere, but
13 I don't have it in front of me.

14 MR. MILHOAN: No, I don't know.

15 COMMISSIONER GILINSKY: Do you know the degree
16 of installation across the country of this item?

17 MR. ZERBE: I do not.

18 MR. MILHOAN: We can find out for you.

19 CHAIRMAN PALLADINO: But I gather this
20 involves penetrating the pipe. They would have to build
21 up some strengthening in the area.

22 MR. MILHOAN: And running cables.

23 CHAIRMAN PALLADINO: And what?

24 MR. MILHOAN: Running cables to the control
25 room.

1 CHAIRMAN PALLADINO: Let me ask you, is there
2 a facility now where they only put on the vent valves or
3 is they have to actually drill in or get into the pipe
4 and make a hole that gets vent? Do you follow me?

5 MR. MILHOAN: I am sorry, I didn't hear your
6 question.

7 CHAIRMAN PALLADINO: Is there a hole up there
8 now?

9 MR. MILHOAN: I don't know.

10 COMMISSIONER GILINSKY: I think there is
11 because weren't they going to go in during the accident
12 and isn't that the place that they were going to open up
13 a vent? Does anybody know?

14 MR. MONTGOMERY: I don't.

15 CHAIRMAN PALLADINO: Can we find out a little
16 more about it?

17 MR. ZERBE: We will find out the status of
18 that.

19 CHAIRMAN PALLADINO: Whether this involves
20 penetrating the pipe or whether it is just putting on
21 valves on an existing penetration.

22 MR. MILHOAN: I have got the details if you
23 care to go through them. Under here it says "First of
24 all, the engineering efforts were initiated in December
25 of '80. The detailed design and engineering is expected

1 to be completed in January of '83 with issuance of
2 engineering drawings.

3 "Construction of all elements of the vent
4 system will take approximately six months if one shift
5 per day is utilized. If two shifts are utilized it
6 would take four months. The earliest expected
7 completion would be May of 1983.

8 "The construction effort associated with
9 installation is composed of the following elements:
10 Installation of approximately 100 feet of piping and
11 associated piping supports; mounting of four solenoid
12 operated valves; four hydrostatic test valves and four
13 block valves; mounting of two differential pressure
14 transmitters; two orifice flow devices and two rupture
15 discs; installation of a platform on top of the
16 secondary shield wall D ring under which electrical
17 cables will be run. Under electrical installation,
18 installation of 120 seismic cable supports with anchor
19 bolts."

20 COMMISSIONER GILINSKY: I don't want to
21 interrupt this if the Chairman wants to hear it, but
22 somehow or other other plants are putting these things
23 in and it is required in all plants and my impression is
24 that a lot of them have them in already. I would be
25 interested to know what the answer is.

1 CHAIRMAN PALLADINO: My question was a little
2 more direct. Is there a hole there or isn't there?

3 (Laughter.)

4 CHAIRMAN PALLADINO: I think it makes a
5 significant difference. If I have to go in and drill a
6 hole and doing it after you have got more radioactivity
7 in there ---

8 MR. ZEPPE: You mean you think there might be
9 a flange?

10 CHAIRMAN PALLADINO: That is what I am trying
11 to find out. Could we check that?

12 MR. ZEPPE: Yes, we will check that.

13 CHAIRMAN PALLADINO: Because it might
14 influence whether you want to do it before you get the
15 place contaminated or not.

16 CHAIRMAN PALLADINO: Now how about the other
17 items on this list.

18 MR. ZEPPE: Well, item 5 and item 6 are items
19 that are unscheduled and we have pending NRC action on
20 SECY-82-111.

21 CHAIRMAN PALLADINO: Which one was that?
22 Which ones are those?

23 MR. ZEPPE: That was 5 and 6, complete the
24 control room design review and install the safety
25 prominent display panel.

1 CHAIRMAN PALLADINO: What is that waiting for?

2 MR. ZERBE: Well NPC action under SECY-82-111.

3 COMMISSIONER ASSELSTINE: If we can ever get
4 it issued.

5 CHAIRMAN PALLADINO: What about 8, 9, 10 and
6 12?

7 MR. ZERBE: Item 8 is the level indicator and
8 that one is involved in this total scheme of what is
9 going to happen generically I guess to the B&W plants
10 and presumably TMI is one of those. We said in the
11 notes here in the introduction, I mean in the CPE notes
12 that the Commission order requiring B&W licensees to
13 submit a RLI system design within 90 days will apply to
14 TMI and should accelerate the development and
15 installation of the RLI system at TMI-1.

16 COMMISSIONER GILINSKY: But, you know, one of
17 the things coming out of this accident was that they
18 ought to be able to tell what the level is, and here we
19 are four years after the accident, the very plant that
20 created the requirement and we are about to let them go
21 without a level meter.

22 MR. ZERBE: But a lot of that time was
23 involved in deciding what kind of a level meter you
24 wanted to use.

25 COMMISSIONER GILINSKY: But other people

1 managed to get level meters in and design them and they
2 just hung back. These guys are going to be the last to
3 put in everything and other plants have been operating
4 and have managed to get the stuff in. Now what have
5 these guys been doing? We really have to ask ourselves.

6 MR. ZERBE: In listening to the earlier
7 discussions on the meter I presume that they were
8 hanging back ---

9 COMMISSIONER GILINSKY: But others put them in.

10 CHAIRMAN PALLADINO: Not on B&W.

11 MR. ZERBE: I don't know that B&W has any.

12 COMMISSIONER GILINSKY: Well, they are not
13 going to be the first B&W plant to do any of these
14 things. I can guarantee you that.

15 MR. ZERBE: Does any B&W plant have them in
16 yet? I don't think so.

17 COMMISSIONER ASSELSTINE: I thought that one
18 had submitted the design though as I recalled the
19 discussion. I thought one of the B&W units had and the
20 rest of them were sort of hanging tough.

21 MR. ZERBE: Yes, but they haven't installed
22 that one yet.

23 COMMISSIONER GILINSKY: I must say I wonder
24 whether B&W's hanging back has something to do with
25 liability questions, I mean going back to the accident

1 and not wanting to concede that there was anything wrong
2 with the hardware. We have been very indulgent I must
3 say.

4 CHAIRMAN PALLADINO: Can we find out what
5 progress is being made on B&W water level meter
6 installations and generally and specifically what the
7 plans are for TMI?

8 MR. ZERBE: None of these B&W plants that
9 don't have those devices in them have been shut down
10 because they don't have them. The thought that OPE had
11 was that technically from the immediate effectiveness
12 point of view there is no reason you can't run in the
13 short term with the instrumentation that is already
14 there. That doesn't mean that anybody believes you
15 shouldn't put instrumentation in, but we saw no reason
16 to treat them differently and force them to put it in
17 before they start up when there are other plants out
18 there running which have the same lack of
19 instrumentation that are the same type. That was the
20 thought in it.

21 MR. KENNEKE: It wants to be treated as an
22 operating reactor.

23 MR. ZERBE: Right. You can decide differently
24 of course, but it wasn't an item that we felt that it
25 was critical to the health and safety of the public to

1 do something before you started the plant up.

2 MR. KENNEKE: You would be changing your view
3 on that policy.

4 CHAIRMAN PALLADINO: We are going to address
5 that, but would you ---

6 MR. ZERBE: We will check and find out the
7 status comparatively.

8 CHAIRMAN PALLADINO: The status of the water
9 level meters for B&W plants and generally and
10 specifically what is the plan for TMI-1.

11 MR. ZERBE: Okay.

12 CHAIRMAN PALLADINO: Now let's see, we have
13 talked about everything down to, we skipped 7 and will
14 come back to it, at least we talked about 8 and now what
15 about 9?

16 MR. ZERBE: Items 9 and 10 were addressed and
17 the Hearing Board recommended against proposed
18 modifications. The Board recommended against those
19 modifications.

20 CHAIRMAN PALLADINO: Why did they recommend
21 against it?

22 MR. MILHOAN: No. 9 which is the safety system
23 by-pass and override, the actual contention was a UCS
24 contention that comes out of the fact that during the
25 accident high pressure injection was in fact turned off

1 by the operators and was a significant cause to the
2 ultimate result.

3 The real issue in the hearing was one of which
4 is the best way to respond to that. UCS thought that
5 the way to respond was to mechanically see to it that
6 once it is initiated an operator cannot uninitiate it,
7 so to speak. The licensee and the Board in agreement
8 said no, that is not really the best way to handle the
9 problem.

10 The problem in the accident was one where the
11 operators didn't understand what was happening and took
12 an inappropriate action. They should still have the
13 flexibility to be able to turn off that system
14 potentially for other reasons because there might be a
15 reason you would want to, and as long as they have been
16 trained so that they understand what they should or
17 should not do, that flexibility should remain in the
18 system and we have agreed on balance with the Board's
19 position.

20 COMMISSIONER GILINSKY: Let me ask you, are
21 you watching to make sure that anything which may come
22 up in the trial that is now going on that would affect
23 this decision will be brought to our attention?

24 MR. WALSCH: We are following it. I don't
25 what distribution we are making of the transcripts, but

1 we are following it and I think we have someone up there
2 today hearing some re-cross. I don't know what
3 disposition we are making of the transcripts.

4 COMMISSIONER GILINSKY: I meant just in terms
5 of alerting the Commission to anything that might affect
6 whatever is being decided here.

7 MR. MALSCH: I think it is our idea that if we
8 see something interesting for whatever bearing it has on
9 immediate effectiveness or something else we would call
10 it to the Commission's attention.

11 CHAIRMAN PALLADINO: What about No. 7 coming
12 back. Is that something some of which is going on
13 before restart and some of which is going on after
14 restart and some of which is going on after first
15 refueling?

16 MR. ZERBE: I can't answer that. You
17 recognize that Mr. Milhoan used to be the mechanical
18 expert in OPE before his current job and he has some of
19 this background.

20 CHAIRMAN PALLADINO: Okay.

21 MR. MILHOAN: There were about four
22 instruments under NUREG 0578 which were also the same in
23 NUREG 0737 which were supposed to be done prior to
24 restart. There is a staff certification required on
25 those instrumentation. Then there are other instruments

1 that are covered in Reg. Guide 197 in addition to these
2 limited number of instruments which were the subject of
3 SECY-111B where there will be a plant specific schedules
4 worked out for that additional instrumentation.

5 CHAIRMAN PALLADINO: Well, I don't propose
6 that we vote on these today, but I think we ought to get
7 the information that can enlighten us a little bit more
8 on some of them.

9 MR. MILHOAN: Do we have agreement that, for
10 example, in giving you a list about decisions we should
11 put all the items that we have discussed on that list
12 and say something about them? We will that. We have
13 already committed to provide you additional information
14 on some of them.

15 CHAIRMAN PALLADINO: You are saying should we
16 include these items on the list of questions?

17 MR. MILHOAN: On the list that we will provide
18 you about specific decisions that the Commission wants
19 to make.

20 CHAIRMAN PALLADINO: Are you asking should you
21 include this?

22 MR. MILHOAN: Yes, right.

23 CHAIRMAN PALLADINO: I would include it as a
24 category.

25 MR. MILHOAN: Okay.

1 MR. ZERBE: Item 12 is involved with this
2 SECY-81-111.

3 CHAIRMAN PALLADINO: Well, I will have to go
4 back and look at what 11 says.

5 If I understand it, you are reorganizing the
6 order.

7 MR. ZERBE: We would propose to reorder into
8 giving procedural background initially as we do now and
9 then have a section on management and cheating issues, a
10 section on emergency planning issues and a section on
11 hardware separation and miscellaneous issues.

12 CHAIRMAN PALLADINO: And you will try to do
13 some fixing up of any comments you got?

14 MR. ZERBE: Yes, and any others that you would
15 want to make individually.

16 CHAIRMAN PALLADINO: Now, I forget, when is
17 our next meeting on this subject?

18 MR. ZERBE: Next Monday.

19 CHAIRMAN PALLADINO: Next Monday.

20 MR. ZERBE: That is why we wanted a
21 separation. Remember, there were two of these in one
22 week at one time.

23 CHAIRMAN PALLADINO: Now when would you have a
24 revised draft if we gave you whatever time that we have
25 on that one?

1 MR. MILHOAN: I am going to say Friday since
2 we have a Monday meeting. It would be a little
3 difficult to do it sooner than that. I would not want
4 to commit before Friday being that today is Wednesday.

5 CHAIRMAN PALLADINO: Well, okay, why don't we
6 accept that as a target. If we are going to discuss
7 them Monday we really have to have a Friday target.

8 MR. MILHOAN: I understand the timing pressure.

9 CHAIRMAN PALLADINO: How late Friday would you
10 have it?

11 (Laughter.)

12 CHAIRMAN PALLADINO: That is besides the point.

13 MR. MILHOAN: Before you leave could I ask if
14 there are any other specific comments that you could
15 help me with in changing the paper at all?

16 CHAIRMAN PALLADINO: I can give you some
17 little nits and I can give you the comments that I got.

18 MR. ZERBE: There is one item I haven't
19 discussed.

20 CHAIRMAN PALLADINO: The major ones I have
21 already identified for you, but there are some others I
22 didn't.

23 MR. ZERBE: There was one item we didn't
24 discuss and that was the pros and cons of whether you
25 want to make this decision on the 10th. We had assumed

1 that it was firm in your minds that you did want to do
2 that, but apparently even though this document says
3 there is a legal obligation, my impression is that is
4 not absolutely rock solid that you would have to do it.

5 MR. KENNEKE: I don't believe there is any
6 legal obligation.

7 MR. MALSCH: Well, there is a legal obligation
8 if we conclude that the reasons which caused us to shut
9 down no longer are present to lift the shutdown order,
10 but as it turns out it is kind of an academic question
11 if the plant is shut down in any event. I mean there is
12 no one that is harmed by our failing to speak to the
13 issue.

14 CHAIRMAN PALLADINO: There is no harm to what?

15 MR. MALSCH: Generally speaking, you know, we
16 have the obligation to remove the shutdown order if the
17 reasons which caused us to shut the plant down are no
18 longer present, but in this situation the plant is shut
19 down for other reasons. So while technically you have
20 the obligation to lift the order, it is kind of academic
21 whether we choose to do so now or later because the
22 licensee isn't injured. So there is nothing matching
23 about the December 10th date.

24 COMMISSIONER ROBERTS: If the plant is shut
25 down for maintenance, or whatever, is it out of the rate

1 base?

2 MR. MALSCH: As a general matter if it is shut
3 down for maintenance it is still used and useful and is
4 in the rate base. Now I don't know whether this one is
5 or is not.

6 COMMISSIONER ROBERTS: I am not sure I accept
7 your statement that we are not causing any injury to the
8 licensee.

9 CHAIRMAN PALLADINO: I agree with Tom. It is
10 not clear to me either.

11 MR. ROTHSCHILD: Well, the utility commission
12 here has said that they are not going to put it in the
13 rate base until it has been operating at at least 35
14 percent power for 72 hours or something like that.

15 COMMISSIONER ROBERTS: Thank you.

16 MR. ROTHSCHILD: They can always change that

17 ---

18 MR. MILHOAN: And at present it is tied to
19 restart.

20

21 MR. ROTHSCHILD: --- but at the present that
22 is the way it is right now.

23 MR. MALSCH: If it was out of the rate base,
24 depending upon our decision on lifting effectiveness,
25 then it would make a big difference.

1 CHAIRMAN PALLADINO: Let me discuss it just a
2 little bit. I see where it would make a difference to
3 the utility from several standpoints. It removes the
4 uncertainty as to whether or not we are going to lift it
5 or not and it might influence their ability to borrow
6 money for clean up at TMI-2 or for any other thing. I
7 would say if we have the findings that permit us to make
8 this decision we ought to go ahead and make it.

9 MR. MALSCH: There are a lot of reasons why
10 you would do it. All I am saying is I wasn't sure that
11 you had a legal obligation to do so by a certain date
12 given the present situation. But you are right, there
13 are a lot of reasons why you would want to speak to it,
14 among them removing uncertainty as to where the
15 Commission stands on what conditions it wants to impose
16 as conditions of restart.

17 CHAIRMAN PALLADINO: I think it is important
18 to clarify those conditions because what might happen is
19 we go along and then all of the sudden we say well we
20 want these conditions put forth and we may have caused
21 them unnecessary delay. If we come along here and say,
22 look, as a condition of restart you must do this, that
23 and the other, and they are different from what are not
24 being perceived, I would say that would be an important
25 message to send early.

1 MR. MALSCH: That is true.

2 CHAIRMAN PALLADINO: I don't know how others
3 feel.

4 COMMISSIONER GILINSKY: I don't have a strong
5 feeling one way or the other, but I would like to be
6 clear on whether we are or not going to do this because
7 I would hate to spend a lot of time on it and discover
8 that ---

9 CHAIRMAN PALLADINO: Well, I propose that we
10 do it. Now let me see what reaction I get.

11 COMMISSIONER ASSELSTINE: I don't have any
12 problem with that.

13 CHAIRMAN PALLADINO: Okay.

14 COMMISSIONER ASSELSTINE: I did have just one
15 other point, Jim, since you have raised the question of
16 are there other areas. I have some difficulty with the
17 treatment in the draft of the cheating decisions and I
18 am not yet persuaded that the Licensing Board in every
19 instance was right and that Mr. Milhoan was wrong, nor
20 am I convinced yet that we ought not to consider some
21 other conditions in addition to the proposed
22 Pennsylvania condition. Maybe the best thing for me to
23 do is to get clear in my own mind what I think may be
24 needed in that area and then just circulate around a
25 proposal that we can discuss perhaps at the next session.

1 CHAIRMAN PALLADINO: It may be important in
2 this order to make some statement about expecting
3 attention to higher standard levels in their
4 professional treatment of training and operator
5 attitudes, examinations and the like. All right, but we
6 will wait for your comments.

7 Any other items we should be discussing on
8 this thing?

9 MR. MALSCH: Let me just mention one small
10 thing. We kind of thought about this and didn't reach
11 any good answer, and that was the extent to which we
12 should have a separate section in this which addresses
13 some of the public comments given at the public session.

14 Now some of them are difficult to deal with
15 and they deal with such things as, for example, how come
16 we are allowing the restart of Unit 1 prior to clean-up
17 of Unit 2, how come we are not paying attention to the
18 various referenda of the various local governments that
19 spoke to the restart question and some other issues that
20 are not really an issue in the restart hearing, but
21 which were raised in the public sessions.

22 It is at least conceivable that members of the
23 public would pick up the order and expect to see
24 something about those issues in here and be disappointed
25 if they are not. Some of them are difficult to deal

1 with, but they are impossible to deal with, and we
2 thought that we could use some Commission guidance on
3 what their desires were in this area.

4 CHAIRMAN PALLADINO: I hate to shoot from the
5 hip.

6 (Laughter.)

7 CHAIRMAN PALLADINO: Maybe it is something we
8 would rather think about.

9 MR. MALSCH: It is not an easy question.

10 CHAIRMAN PALLADINO: I think you raise a valid
11 point. There is going to be quite a bit of
12 consternation on the part of some of the people and
13 maybe it would help the whole situation if those issues
14 were addressed.

15 MR. KENNEKE: I think there was a press
16 release.

17 MR. FOUCHARD: I think it has to be in the
18 order. I think if the Commission has any views, and I
19 am assuming this is favorable, as to why Unit 1 should
20 start up while Unit 2 is still not cleaned up, that is a
21 very important issue in Pennsylvania, starting with the
22 Governor and working down.

23 MR. MILHOAN: It should be in the order, Joe?

24 MR. FOUCHARD: Yes, if you have any views you
25 should state them officially. I am not going to make

1 them up for you.

2 (Laughter.)

3 CHAIRMAN PALLADINO: Well, I think our
4 separation of the plant works to that.

5 MR. MALSCH: We could, or we could have a
6 separate section just devoted to it. There are a number
7 of ways to do it.

8 CHAIRMAN PALLADINO: I think we ought to do it
9 in a separate section.

10 MR. FOUCARD: All I am saying is consider it,
11 and maybe you will say no, but don't ignore it.

12 CHAIRMAN PALLADINO: What was your second one?

13 MR. MALSCH: Well, the other example I thought
14 of was the various referenda and how come the Commission
15 isn't listen to them. That would be the charge that
16 would be made and what our legal obligations are or what
17 are views are on the deference we pay to local
18 referenda. They are difficult issues, but there are
19 certain natural ones that will arise should we authorize
20 restart. We couldn't decide what to do about them, but
21 we could use some Commission guidance as to what they
22 think about these issues and whether we should treat
23 them at all.

24 COMMISSIONER ASSELSTINE: I think it is
25 something we ought to think about. I am not sure how I

1 would come in on it yet, but it does seem that the
2 public session did have four or five major issues that
3 we heard over and over.

4 COMMISSIONER GILINSKY: Not to speak of some
5 threats.

6 (Laughter.)

7 CHAIRMAN PALLADINO: I am going home this
8 weekend.

9 (Laughter.)

10 CHAIRMAN PALLADINO: Well, you might try to
11 identify the topics that you think we ought to consider.

12 MR. ZERBE: But not necessarily put them in
13 this new draft?

14 CHAIRMAN PALLADINO: If you have got some
15 thoughts on them why don't you just develop them as a
16 separate package.

17 MR. ZERBE: Okay.

18 CHAIRMAN PALLADINO: If there anything else we
19 should discuss?

20 MR. MALSCH: No.

21 CHAIRMAN PALLADINO: All right. Well, we will
22 meet again on the 6th.

23 Thank you We will stand adjourned.

24 (Whereupon, at 11:25 a.m., the meeting
25 adjourned.)

NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

COMMISSION MEETING

in the matter of: CLOSED MEETING - EXEMPTION NO. 10 - DISCUSSION OF
IMMEDIATE EFFECTIVENESS ISSUES IN TMI-1 RESTART PROCEEDING

Date of Proceeding: December 1, 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)