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PROCEEDINGS BEFORE

NUCLEAR REGULATORY COMMISSION

COMMISSION MEETING

CLOSED MEETING - EXEMPTION NO. 5

DKT/CASE NO.

TITLE DISCUSSION OF POSSIBLE ENFORCEMENT ACTION

PLACE Washington, D. C.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DISCUSSION OF POSSIBLE ENFORCEMENT ACTION

CLOSED MEETING - EXEMPTION NO. 5

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

Thursday, March 3, 1983

The Commission convened in closed session at
2:05 p.m.

COMMISSIONERS PRESENT:

- NUNZIO PALLADINO, Chairman of the Commission
- VICTOR GILINSKY, Commissioner
- JOHN AHEARNE, Commissioner
- THOMAS ROBERTS, Commissioner
- JAMES ASSELSTINE, Commissioner

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

- S. CHILK
- H. PLAINE
- J. ZERBE
- D. DeYOUNG
- B. HAYES
- B. WARD
- J. AXELRAD

AUDIENCE SPEAKERS:

- M. MALSCH
- E. CASE
- J. LIEBERMAN

* * *

P R O C E E D I N G S

1

2

CHAIRMAN PALLADINO: Good afternoon, ladies

3

and gentlemen.

4

We are meeting in a closed session to discuss
5 two separate matters related to Three Mile Island.

6

The first matter we will take up concerns
7 investigations by OI into allegations regarding the
8 compromise of pre-employment psychological testing of an
9 individual that sought employment at the facility.

10

Two separate investigations were conducted.

11

One involved the substance of the allegation itself and

12

the other involved the licensee's handling of the

13

situation after GPU management had been made aware of the

14

allegation.

15

OI will provide us with an update on these

16

investigations.

—

COMMISSIONER ABDELSTINE: No.

24

COMMISSIONER AHEARNE: At some point towards

25

the end of the meeting before the meeting closes I would

1 like the use the opportunity having Ben is here to ask
2 about some other related items to the TMI investigation.

3 CHAIRMAN PALLADINO: I have a question for him
4 also after he is through. Are there any other
5 investigations under way or pending on TMI?

6 COMMISSIONER ROBERTS: I think we know the
7 answer to that.

8 COMMISSIONER ASSELSTINE: Yes.

9 (Laughter.)

10 CHAIRMAN PALLADINO: Then, if so, what?

11 Well, Ben, why don't we turn the meeting over
12 to you.

13 MR. HAYES: With respect to the two
14 investigations involving Mr. Quinn and the management
15 implications of Mr. Quinn's allegation, we have
16 concluded our investigation and sent to the Commission
17 our report.

18 As you are aware, the last time we presented
19 our report on the psychological cheating matter, we had
20 almost concluded the investigative activity. Basically
21 over the last three weeks it amounted to writing the
22 report and drawing our conclusion.

23 We were unable to, or did not substantiate Mr.
24 Quinn's allegation. And with respect to the management
25 implications, we did in fact document that GPU

1 management knew approximately two weeks before NRC knew
2 of the potential problem with Mr. Quinn.

3 However, further, we found that the failure to
4 notify NEC did not violate any regulation that we were
5 able to determine and OELD joined us. We asked for
6 their interpretation and they concluded the same thing.

7 During the investigation concerning the
8 management implications GPU was very helpful. They
9 didn't try to shield or hide anything. They fully
10 cooperated with us, waived some privileges and in
11 retrospect I am sure that they feel as though they
12 should have notified us in a more timely fashion.

13 That is about it in a summary and a nutshell.

14 CHAIRMAN PALLADINO: You raised a question in
15 your own letter on the top of page 2. It says, "Both
16 OELD and the licensee agree that there are some Appeal
17 Board decisions that appear to require licensee or NRC
18 notification to the Appeals Board regarding relevant and
19 significant information."

20 Then you add, "However, enforcement of this
21 requirement normally rests with the Appeal Board rather
22 than the staff."

23 First of all, I was interested in knowing what
24 obligation there was to notify the Appeal Board separate
25 from the NRC and, secondly, do you mean that we are

1 dismissing any wrong-doing merely because the Appeal
2 Board rather than the staff should enforce this
3 requirement? I just get an implication there that
4 sounded perhaps different from what you might have
5 wanted to say.

6 MR. HAYES: Well, it is my understanding that
7 there is no specific regulation that requires GPU to
8 notify us, NRC, but there are certain Appeal Board
9 decisions that require the staff to notify the Appeal
10 Board as well as GPU.

11 MR. WARD: Mr. Chairman, I did some of the
12 discussions with ELD on this. There are two ALAB
13 decisions and I have their cites here, 143 and 291. I
14 forget which facilities they pertain to, but they were
15 characterized to me as essentially binding parties to a
16 matter in front of the Board to the same Board
17 notification requirements. I believe the criteria are
18 must inform the presiding Board and other parties of new
19 information which is relevant.

20 CHAIRMAN PALLADINO: Who is that?

21 MR. WARD: This is the thrust of my
22 understanding of what the ---

23 CHAIRMAN PALLADINO: Is that the staff that
24 must notify?

25 MR. WARD: Both the staff and all parties. So

1 a fair reading of it would appear to apply to the
2 licensee as well.

3 Now during the course of our investigation we
4 approached this issue with the counsel to licensee, Mr.
5 Blake. Mr. Blake was aware of this requirement. He
6 stated that had the allegation been substantial, one that
7 they believed or one that they felt fit within that
8 description of relevant, they would have notified the
9 Board. Their judgment, however, was that the allegation
10 was not plausible and they did not believe it.
11 Therefore, they felt regardless of whether the Appeal
12 Board decisions applied to them, it wouldn't have met
13 the test of relevance.

14 COMMISSIONER AHEARNE: Did the NRC staff
15 notify the Appeal Board?

16 MR. WARD: Yes, sir, a Board notification was
17 made upon initiation of this investigation.

18 CHAIRMAN PALLADINO: But it is interesting
19 because in the report itself, in the first two pages, on
20 the second page it says, "The investigation developed no
21 evidence that GPU and management deliberately withheld
22 information from the NRC that they believed was required
23 to be reported to the NRC. Further, OI was unable to
24 identify any explicit NRC requirement regarding the
25 reporting of information of this nature."

1 But on the previous page they are speaking of
2 the GPU attorney. At the bottom of the page it says "In
3 addition, he said he also called an attorney for Shaw,
4 Pittman, Potts and Trowbridge and informed him of the
5 allegations. He commented that this firm was
6 representing GPU in the TMI-1 restart proceedings and
7 surmised that they would be interested in the matter
8 because of the NRC reportability potential."

9 So if they were thinking of the Appeal Board,
10 they certainly had had internally called to their
11 attention that there might be a reportability
12 potential. I am not trying to make a big thing out of
13 it, but I was curious.

14 MR. WARD: Yes, sir. Actually we first
15 learned of the Appeal Board requirements from the
16 interview of Mr. Wilson. Armed with that we then asked
17 that specific question of ELD what that meant, not being
18 sure of the regulatory requirement that would have
19 underpinned. So that is why both Mr. Wilson and then
20 ultimately Mr. Blake, and that is one of the reasons we
21 interviewed Mr. Blake, that we interviewed them in this
22 context of did you consider this reportable, did you
23 consider there would be a requirement to report that you
24 considered reportable.

25 They felt that the Appeal Board decisions

1 would have triggered a reason to report if the
2 allegation had been sufficiently substantial to fit
3 within those criteria.

4 So it was the two things. They did not feel
5 the allegation was reportable under any criteria. But
6 had it been substantiated, for instance, they would have
7 felt bound by that Appeal Board decision to notify the
8 Board.

9 CHAIRMAN PALLADINO: If the Appeal Board was
10 in the process of deliberating something and they knew
11 there was an investigation by GPU on an issue could
12 impact on that, it would seem they might weigh their
13 decision pending the determination of whether it was a
14 fact or just an allegation.

15 COMMISSIONER AHEARNE: Bill, you used two
16 different words. You said they believed that they would
17 report it if it were substantial, and then later you
18 said if it were substantiated. Which did you mean?

19 MR. WARD: Well, substantiated. I hesitate
20 here because I think that actually could apply,
21 depending upon the nature of an allegation. Now I am
22 hesitant to predict what the licensee's actions might be
23 in the fact of a hypothetical, but I would have thought
24 that something demonstrably serious on its face would
25 have triggered a different reaction.

1 Again, I don't want to speculate on what the
2 licensee's actions would have been, but that is how I
3 read it and how I understood it as I debriefed the
4 investigator.

5 COMMISSIONER AHEARNE: Of course, in this
6 particular case with one of the major items in
7 controversy being the integrity of management, an
8 allegation that management might have assisted in aiding
9 or abetting cheating probably would be viewed as
10 substantial, whereas in another plant it might not.

11 COMMISSIONER ROBERTS: Yes, but whether they
12 got good advice or not, Arnold and Clark went to their
13 lawyer and said should we report this. Now maybe they
14 were given unsound advice, but they are not lawyers.

15 COMMISSIONER AHEARNE: Good point.

16 MR. WARD: To following Commissioner Ahearne's
17 point, that is exactly why we broke this out as a
18 separate investigation. It struck us as a common sense
19 proposal that it might be construed as reportable and
20 that is why we explored how they handled it.

21 Mr. Plaine: Can I ask a question, Mr.
22 Chairman.

23 CHAIRMAN PALLADINO: Yes.

24 Mr. PLAINE: Do these two decisions make any
25 reference to reporting to the Commission as well as to

1 the Hearing Board?

2 MR. WARD: We don't know. I have not read
3 either one.

4 Mr. PLAINE: You have not read either one.

5 MR. CASE: No, they don't Herzel.

6 Mr. PLAINE: You know they do not?

7 MR. CASE: Yes. They oppose an obligation on
8 the parties to a proceeding before any Board, as a
9 matter of fact. Our whole Board notification system
10 that the staff adheres to is based on those Appeal Board
11 decisions.

12 MR. MALSCH: I think the difficulty would be
13 that the gist of the decisions is that there is a duty
14 to the parties to inform the Boards of issues while the
15 Boards have jurisdiction over the case.

16 In this situation both the Commission and the
17 Appeal Board has jurisdiction over this case because
18 while the Appeal Board is considering merits appeals,
19 the Commission is considering whether to lift the
20 effectiveness of its earlier shutdown order.

21 So I think you could probably read the Appeal
22 Board decisions, which have been approved by the
23 Commission, as imposing an obligation both to report to
24 the Appeal Board and to report to the Commission since
25 both have jurisdiction over the case at the same time.

1 MR. CASE: That is the way the staff reads it,
2 as an obligation to both.

3 CHAIRMAN PALLADINO: But I gather GPU
4 management made an effort to determine whether it was
5 reportable and got advice from their own lawyers that it
6 was not. Is that correct?

7 MR. HAYES: I think they were going to
8 institute their internal investigation in an attempt to
9 determine as quickly as possible the merits of this
10 allegation and then take whatever action.

11 CHAIRMAN PALLADINO: But I meant in the
12 interim they raised the question of whether it was
13 reportable while they were doing the investigation?

14 MR. WARD: Yes, sir, that is a correct
15 statement.

16 CHAIRMAN PALLADINO: So, as Tom Roberts says,
17 they may have gotten bad advice, but at least they made
18 an effort.

19 Any other questions on this investigation?

20 (No response.)

21 CHAIRMAN PALLADINO: Could you highlight for
22 us what other investigations are underway or pending on
23 TMI-1 that could affect our decision?

24 MR. HAYES: Most recently on March 1st we
25 received an allegation from a gentleman by the name of

1 L. P. King who is the Director of Site Operations at TMI
2 Unit 2 and he made certain allegations concerning NRC
3 personnel. In addition, he indicated that he had been
4 forced to sign off on certain safety evaluations reports
5 at the direction of his superiors.

6 CHAIRMAN PALLADINO: You don't mean safety
7 analysis reports?

8 MR. HAYES: I have safety evaluation reports
9 here, SERs.

10 MR. CASE: Reports by the licensee.

11 CHAIRMAN PALLADINO: SERs are our reports.

12 MR. HAYES: At the request of the Regional
13 Administrator of Region I we contacted Mr. King by
14 telephone and attempted to arrange a meeting to meet
15 with him to further explore these allegations.

16 We had some problems finding him. He was in
17 travel of course, but we did in fact last night at
18 approximately 8:30 p.m. until about 1 in the morning,
19 Bill?

20 MR. WARD: Yes.

21 MR. HAYES: --- we met with Mr. King. And to
22 tell you the truth, I haven't been in my office this
23 morning to find out what he said. Bill did receive a
24 call from Mr. Christopher.

25 CHAIRMAN PALLADINO: Who met with Mr. King?

1 MR. HAYES: Mr. Keith Christopher, the
2 Director of CI in Region I.

3 MR. WARD: I did have a conversation with Mr.
4 Christopher just before the meeting and I can generally
5 characterize it as that Mr. King had no specific
6 information of wrong-doing, the things that we would
7 feel would be of CI investigative interest. It was a
8 long, somewhat rambling conversation, according to Mr.
9 Christopher. It did not result in a written statement
10 being obtained, although Keith will prepare a report of
11 interview regarding it. It appears to be better
12 characterized as generalized expressions of differing
13 professional opinion.

14 COMMISSIONER ROBERTS: Well, now there is
15 something that hasn't been said here, according to your
16 memo. He has been suspended by GPU.

17 MR. HAYES: Yes, he has, sir.

18 COMMISSIONER ROBERTS: All right. That needs
19 to be understood.

20 MR. WARD: That appears to play heavily in his
21 willingness to speak with us.

22 (Laughter.)

23 MR. HAYES: Apparently GPU suspended him on
24 the basis of the fact that Mr. King had kind of a
25 sideboard consulting business and he was doing business

1 with Bechtel I believe. The merits of this I can't
2 present to you today.

3 (Laughter.)

4 MR. WARD: I am not sure at what level of
5 detail you wish to pursue it at this juncture, but the
6 thrust of his concerns now happens to be Bechtel.
7 Rather than as originally characterized to us, we felt
8 there had been some implicit allegations against Mr.
9 Arnold or Mr. Clark, which of course would have had some
10 bearing upon the Unit 1 aspects. He has backed away
11 from that. In fact, to the contrary, his concerns are
12 more, since Bechtel has taken over Unit 2 clean-up
13 operations, and they seem to be having to do with their
14 emphasis on paperwork and pushing paperwork, vague
15 things of this nature which have already been
16 communicated to TMI site personnel, NRC personnel.

17 COMMISSIONER AHEARNE: Let me ask
18 specifically, Ben, in your letter you say that he
19 asserted that he had been forced to sign off on SERs at
20 the direction of his supervisor. At least the inference
21 I draw from that is that he was directed to approve an
22 SER with which he disagreed.

23 MR. WARD: This is what he said in the
24 telephone conversation with Keith Christopher yesterday
25 morning. But when pressed along these lines during the

1 interview last night he denied it. He backed completely
2 away from that and, to the contrary, gave a rather
3 explicit of confidence to Mr. Arnold. He stated that
4 things would be better if Mr. Arnold were personally
5 overseeing clean-up operations rather than Fectel.

6 MR. HAYES: There is something here that
7 triggered him initially, and I don't know what that is.
8 Maybe the suspension or the threat of suspension, in my
9 opinion, triggered Mr. King to get in touch with NRC
10 staff, and how he seems to want to back away from that.
11 I can't tell you why in a real factual sense of why he
12 has taken that posture, but I think it would be
13 important to know those things if you wanted to
14 determine the credibility of any allegations and
15 subsequently what do we do with those allegations.

16 COMMISSIONER AHEARNE: Now you also say he
17 made general allegations concerning meetings of NRC
18 employees.

19 MR. HAYES: That is correct.

20 COMMISSIONER AHEARNE: Now in your meeting did
21 he substantiate that?

22 MR. WARD: We did not pursue that with him in
23 the meeting. When he first brought these up on the
24 telephone with Keith, Keith interrupted him and said
25 that that was properly within the purview of Mr.

1 Cummings and provided him Mr. Cummings name and
2 telephone number.

3 MR. HAYES: I have furnished to the Jim
4 Cummings a synopsis of the allegation that Mr. King made
5 against the two specific employees.

6 COMMISSIONER AHEARNE: Can you tell us what
7 they are?

8 MR. WARD: Generally it is characterized that
9 Mr. Barrett and Fasano are whitewashing everything.

10 CHAIRMAN PALLADINO: This is King you are
11 quoting?

12 MR. WARD: Yes, this is King's
13 characterization. He brushed up against that lightly in
14 the interview again last night and Keith again did not
15 pursue that issue. Nothing he has provided, no
16 specifics. Again, we have no figure of merit to place
17 on what he says.

18 CHAIRMAN PALLADINO: You mean there was no
19 follow-up to his allegation that these two individuals
20 were whitewashing?

21 MR. HAYES: Not by my staff because I IE I
22 think would look into that potential integrity matter.

23 MR. WARD: Now further stripping that
24 information away from the rest of the data that King
25 provided last night, just some of the technical

1 concerns, for instance, one which comes to mind is some
2 concerns about how a polar crane is being used there,
3 Keith this morning discussed these with some of the TMI
4 site personnel, the NRC personnel, and they were well
5 aware of Mr. King's concerns.

6 So evidently his dissenting opinions, if you
7 will, have been provided to NRC staff up there for some
8 time and they are well known. Now, again, this all very
9 preliminary and I think people need to read the detailed
10 report of interview that Keith puts together and it may
11 be upon reading that that we will want to bring Mr. King
12 in and put him down in front of a court reporter and
13 brief him a little bit more fully.

14 CHAIRMAN PALLADINO: So at the moment you
15 haven't decided whether this is worthy of further
16 investigation?

17 MR. WARD: At this juncture, sir, we would
18 like to read what Keith puts together, but it does not
19 at this period appear to be an investigatable matter.
20 It probably is something that Region I certainly would
21 like to look into and it may well concern NRR as well.
22 But we do not see misconduct or wrong-doing being
23 alleged specifically here.

24 One other thing you should be aware of is he
25 indicated at some urging from his wife as well that he

1 may wish to communicate directly with a Commissioner or
2 two.

3 (Laughter.)

4 CHAIRMAN PALLADINO: What does he think he
5 will get from that?

6 MP. HAYES: We will ask him the next time we
7 chat with him.

8 (Laughter.)

9 COMMISSIONER ROBERTS: I decline.

10 (Laughter.)

11 CHAIRMAN PALLADINO: Are there other
12 investigations?

18 COMMISSIONER AHEARNE: Can I raise one matter?

19 CHAIRMAN PALLADINO: Go ahead.

20 COMMISSIONER AHEARNE: In looking a document
21 that Cummings forwarded to the Acting Administrator of
22 the Drug Enforcement Administration, he included a
23 report from OI. This is a report of inquiry on drug and
24 alcohol abuse. This was done at the end of '82, if you
25 are familiar with it, by OI, and they were drug and

1 alcohol abuse allegations at a series of plants, one of
2 which was Three Mile Island.

3 It seemed to me that the way the report was
4 written was you had interviewed the fellow and had some
5 difficulty getting to the guy to interview him. You
6 finally end up interviewing him and he gave this whole
7 list of people that he said used drugs and that was it.
8 Then the investigation is closed.

9 I was sort of left hanging and I didn't
10 understand whether there was some other follow-up or
11 whether there was a conclusion, if he had made this up
12 or what it was.

13 MR. WARD: Well, sir, it was not an
14 investigation. Without trying to be a quibbler, it was
15 an inquiry limited strictly to that the individual had
16 some concerns, he made these allegations, we wrote them
17 down and gave them to the appropriate Regional
18 Administrators to decide what action to take. Obviously
19 we did it in such a fashion because there did not appear
20 to be a clear mandate for us to do drug investigations
21 and pursue these matters of turpitude any further.

22 COMMISSIONER AHEARNE: Well, let's see, do I
23 interpret what you are saying is you have this guy who
24 has given you a whole list of names of people he claims
25 used drugs at nuclear power plants and you have turned

1 it over to the Administrators for them to decide whether
2 or not they want what, further investigation done?

3 MR. DeYOUNG: Bill, do you want me to add
4 something?

5 MR. WARD: Please, please.

6 (Laughter.)

7 MR. DeYOUNG: They turned it back to us as the
8 experts on drugs.

9 COMMISSIONER GILINSKY: Who turned it back, CI?

10 MR. DeYOUNG: OI and the Regional
11 Administrators because it is broad and there are quite a
12 few plants and they are not all plants. There are some
13 contracting groups in there.

14 We decided not to begin something, as we did
15 in Zion, to pursue on each plant our own investigation,
16 not to request OI to do it. We said this is a utility
17 problem. We have developed this requirement for the
18 fitness for duty approach and we went and told the
19 Regional Administrators we think you should inform each
20 utility and each contractor of these allegations and the
21 names, specifically that part that applies to them
22 only. We will do this verbally, you know, by phone and
23 then we would follow that up by a written indication.

24 Within a period of time after they received
25 that information, we requested them to tell us what they

1 had done about this situation. I think all the
2 utilities and all the contractors had been contacted
3 with the names for their organizations. I don't know
4 whether all the written requests went out for them to
5 address this and inform us, but the 30 days should be up
6 sometime in the next few weeks I think.

7 CHAIRMAN PALLADINO: What do they do in 30
8 days, just send a report back here?

9 MR. DeYOUNG: Just tell us what they have done
10 about this. We don't want to handle it as we did on
11 Zion. We got into a lot of difficulty there and we
12 don't have those resources. It is the utility. They
13 have the responsibility. We gave them the names and we
14 put some qualifiers in there, and I forget what it was.
15 I don't remember the letter.

16 COMMISSIONER AHEARNE: Well, when you gave
17 them the names, did you give them the names in the sense
18 of here is some information we have received, rather
19 then here is some information we received and if it
20 turns out that these people are drug users they
21 shouldn't be working there, or what?

22 MR. DeYOUNG: We want to know what they did
23 about it and they were going to tell us within 30 days.
24 I think it is clear cut that we have a fitness for duty
25 requirement.

1 COMMISSIONER AHEARNE: I thought the fitness
2 for duty requirement had to do with operational
3 personnel.

4 MR. DeYOUNG: All staff personnel at the plant.

5 COMMISSIONER AHEARNE: All staff, and not just
6 operational.

7 MR. DeYOUNG: Yes, not just the operational.

8 COMMISSIONER AHEARNE: Even maintenance.

9 MR. DeYOUNG: Maintenance.

10 Jim Lieberman of OELD helped us draft a
11 letter. We got a legal opinion as to whether we could
12 go the way we went and perhaps he could add some of the
13 details. I don't recall the exact wording.

14 COMMISSIONER AHEARNE: Jim?

15 MR. LIEBERMAN: I don't have the letter here,
16 but what we told the licensees is that we had received a
17 sworn statement from an employee who desired to remain
18 anonymous that indicated that individuals employed in
19 their facilities or in their company may raise a
20 question concerning their fitness for duty.

21 We told these companies that we had not
22 conducted our own investigation and therefore we were
23 not in a position to ascertain whether the individuals
24 were in fact users of this material but there may be a
25 question. Then, as Mr. DeYoung said, we asked them to

1 tell us within 30 days what actions they have taken or
2 plan to take concerning this matter. At that time we
3 will decide what is the next step for NRC to take.

4 MR. DeYOUNG: This was all done through the
5 Regional Administrators in each region.

6 COMMISSIONER AHEARNE: So you have not
7 completed it in the sense that you are waiting for
8 responses from the plants.

9 MR. DeYOUNG: That is true.

10 MR. WARD: There was one more action taken,
11 and that was all the names listed there, with the
12 exception of one, were accused of drug use. One was
13 characterized as being a "trafficker." The name of that
14 individual was furnished to local law enforcement
15 authorities by us in the location of the plant where he
16 is currently employed, and further was provided to CIA
17 for notification of the Drug Enforcement Administration
18 as a criminal matter.

19 CHAIRMAN PALLADINO: I don't know if this is
20 for CI or maybe for Dick DeYoung, but we do have still
21 pending the question of falsified leak rate calculations
22 from three to four years ago that I understand went to
23 the grand jury.

24 It was supposed to be completed in six months
25 after it went to the grand jury and it has been ---

1 MR. DeYOUNG: Two and a half years since then.

2

3 COMMISSIONER GILINSKY: Completed by whom?

4 CHAIRMAN PALLADINO: By the Grand Jury and the
5 Department of Justice I think.

6 MR. DeYOUNG: Yes.

7 COMMISSIONER GILINSKY: Why did we never
8 pursue that?

9 COMMISSIONER AMEARNE: We were asked by the
10 Department of Justice not to.

11 COMMISSIONER GILINSKY: Were we asked not to
12 pursue it?

13 MR. DeYOUNG: We were asked not to pursue it.

14 COMMISSIONER GILINSKY: What form did that
15 request take?

16 MR. DeYOUNG: Jim Cummings did it. I had
17 hoped that he would be here.

18 COMMISSIONER GILINSKY: You know so many times
19 we have heard that we have told not to do things and it
20 turns out we were told to inform them before we did
21 anything. I am just wondering whether this is another
22 one of these cases?

23 MR. DeYOUNG: I had hoped he would be here
24 this afternoon.

25 CHAIRMAN PALLADINO: I talked to him just a

1 couple of minutes ago and he confirmed that we had
2 agreed with their request not to pursue this while they
3 had it before the Grand Jury.

4 COMMISSIONER GILINSKY: Was this a written
5 request?

6 MR. DeYOUNG: No, they have a new request.

7 COMMISSIONER AHEARNE: I seem to recall,
8 though, that that issue was actually brought to the
9 Commission because I remember Vic Stello being very
10 angry about it and not wanting us to stop.

11 MR. DeYOUNG: We stopped. They proceeded with
12 that Grand Jury. It is about two and a half years now.

13 COMMISSIONER GILINSKY: Let's see, when you
14 say we stopped, when was that?

15 MR. DeYOUNG: Oh, about two and a half years
16 ago.

17 COMMISSIONER GILINSKY: The date being what?

18 COMMISSIONER AHEARNE: In fact, it was even
19 worse than usual because this particular case, as I
20 recall, the Justice Department asked for us to provide
21 some experts to assist them in interpreting the
22 information and once we did that and they went into the
23 Grand Jury then they said we couldn't talk to our
24 experts any more.

25 COMMISSIONER GILINSKY: Why did the other

1 investigations not take this up? Do you know? So far
2 as I know they didn't.

3 MR. DeYOUNG: They did not.

4 COMMISSIONER GILINSKY: Why did the Rogovin
5 investigation not take it up?

6 MR. DeYOUNG: We didn't know about it at the
7 time. This came up about two and a half years ago after
8 the Rogovin investigation. We began to investigate it
9 with Vic Stello at the time, and we had the
10 investigative group. We began and then we were informed
11 by the Department of Justice that they wished to take it
12 to the Grand Jury and would we please not continue our
13 investigation or start any more investigations into the
14 matter. We held off. At that time it was our policy to
15 hold off. Jim Cummings was our contact with the
16 Department of Justice.

17 We met, if you recall, with OI, OIA, I&E and
18 the Commissioners to talk about how to proceed with
19 these matters and to be very aggressive in trying to
20 continue to press the Department of Justice that we
21 wanted to go forward where we saw potential safety
22 problems.

23 COMMISSIONER GILINSKY: Well, often it is not
24 a matter of pressing them. It is just a matter of going
25 out and doing your job because they never told us to

1 stop. I don't know what the circumstances were in this
2 case.

3 MR. DeYOUNG: On this one Jim Cummings did go
4 forward again very recently. I think a day ago or two
5 days ago he concluded it. He met with the Department of
6 Justice people ---

7 COMMISSIONER GILINSKY: Let's see, he
8 concluded what?

9 MR. DeYOUNG: He concluded his talks with the
10 Department of Justice about seeing what requests they
11 had of NEC with respect to investigating this matter. I
12 talked to him very briefly last night and he said that
13 they had requested him, if possible, that they would
14 like for the NEC not to initiate any investigations at
15 this time.

16 They understood they had made this request
17 before and had indicated they would expect to complete
18 their deliberations within a reasonable time and they
19 understood that, but they still requested that we not
20 initiate our own investigations at this time.

21 COMMISSIONER GILINSKY: Let me just say I have
22 got a lot of problem with OIA contacting Justice when
23 OIA is not the office with direct interest in these
24 investigations.

25 CHAIRMAN PALLADINO: Well, that is a different

1 question.

2 COMMISSIONER GILINSKY: I know, but it comes
3 up right here and it is a very important one.

4 CHAIRMAN PALLADINO: Okay, but they did
5 contact them, and that is part of their job.

6 MR. DeYOUNG: He did.

7 CHAIRMAN PALLADINO: Yes, I talked to him and
8 he said he went to Harrisburg and talked yesterday to
9 the Assistant U. S. Attorney and they did not want us to
10 investigate until they had a chance to complete I guess
11 it is Grand Jury work.

12 MR. DeYOUNG: Yes.

13 CHAIRMAN PALLADINO: And he hopes that they
14 could do it by June. Now that raises a question of do
15 we want to wait. If we start to do an investigation now
16 and we have to interview people that are before the
17 Grand Jury on perhaps a criminal charge, I guess they
18 could take the Fifth Amendment.

19 MR. DeYOUNG: I think many of them would.

20 CHAIRMAN PALLADINO: And that would thereby
21 frustrate our investigation. But still I think we have
22 a problem.

23 COMMISSIONER GILINSKY: Let's see, can they
24 take the Fifth Amendment?

25 MR. LIEBERMAN: Yes, they can, and there is a

1 mechanism to get immunity through the Attorney General
2 if they do take the Fifth Amendment.

3 COMMISSIONER GILINSKY: Immunity from criminal
4 prosecution, right, and if they get the immunity they
5 then cannot take the Fifth Amendment.

6 MR. LIBERMAN: That is correct, but only the
7 Attorney General can grant the approval for immunity.

8 COMMISSIONER GILINSKY: Well, it seems to me
9 we ought to pursue that.

10 CHAIRMAN PALLADINO: I bring it up because it
11 is a pending matter that certainly would be nice to have
12 under our belt or completed before we finish with this
13 case.

14 COMMISSIONER AHEARNE: I think what we ought
15 to do is to ask Cummings to prepare something with I&E.
16 I would at this stage propose that we tell Justice that
17 we are going to go ahead. This is just too long. Three
18 years is too long.

19 CHAIRMAN PALLADINO: If I caught it right, Jim
20 said three and a half years.

21 MR. DeYOUNG: It may be.

22 COMMISSIONER AHEARNE: Well, three years or
23 three and a half years. When they first broached the
24 issue, as I seem to recall it was May and they were
25 going to be completed by the end of the summer, and that

1 seemed reasonable.

2 CHAIRMAN PALLADINO: What are you proposing,
3 John?

4 COMMISSIONER AHEARNE: I am proposing that
5 Cummings and I&E come down either with a piece of paper
6 or meet with us and review this.

7 COMMISSIONER GILINSKY: Let's see, wouldn't it
8 be CI?

9 MR. DeYOUNG: They would be one of the
10 parties. They would do the investigation.

11 COMMISSIONER AHEARNE: My preliminary
12 conclusion is we ought to be prepared to go to the
13 Justice Department and tell them we are going ahead, but
14 I would like to hear from the other side as to the
15 complications.

16 CHAIRMAN PALLADINO: Well, why don't we ask
17 them to prepare a status report and then meet with the
18 Commission.

19 COMMISSIONER AHEARNE: Fine.

20 CHAIRMAN PALLADINO: And include as exhibits
21 any written agreement on holding up on the ---

22 COMMISSIONER AHEARNE: Or written request.

23 CHAIRMAN PALLADINO: Well, the reason I think
24 it is important to know about these allegations is I
25 guess I have the basic question of when is the

1 Commission in the position to either proceed with the
2 partial decision made before or reverse it. I gather
3 this last one, I am not sure to what extent it is
4 related to our decision.

5 COMMISSIONER GILINSKY: The last one being?

6 CHAIRMAN PALLADINO: This one.

7 COMMISSIONER GILINSKY: This one being what?

8 CHAIRMAN PALLADINO: The falsification of leak
9 rate calculations.

10 COMMISSIONER GILINSKY: Alleged falsification.

11 CHAIRMAN PALLADINO: Alleged, excuse me.

12 COMMISSIONER ROBERTS: When did that allegedly
13 happen?

14 (Laughter.)

15 COMMISSIONER ASSELSTINE: Prior to the
16 accident.

17 MR. DeYOUNG: Prior to TMI. As I recall it,
18 they alleged that ---

19 COMMISSIONER ROBERTS: So in excess of four
20 years ago.

21 MR. DeYOUNG: Oh, yes.

22 COMMISSIONER AHEARNE: The significance was
23 the PORV leak rate.

24 COMMISSIONER ASSELSTINE: That is right.

25 (Laughter.)

1 CHAIRMAN PALLADINO: The other one then, you
2 have something coming soon on the other alcohol abuse.
3 We also in a couple of weeks can expect a report from
4 the ---

5 COMMISSIONER GILINSKY: Let me just ask on
6 that previous point.

7 MR. DeYOUNG: On the alcohol abuse?

8 COMMISSIONER GILINSKY: Did the company ever
9 investigate the leak rate matter?

10 MR. DeYOUNG: I don't know.

11 CHAIRMAN PALLADINO: You said you expected a
12 response from them.

13 MR. DeYOUNG: On the drug and alcohol abuse,
14 but he is asking about the leak rate matter.

15 CHAIRMAN PALLADINO: Oh, I am sorry.

16 MR. DeYOUNG: I don't think so, but I don't
17 know. We can check on that, but I don't think so.

18 CHAIRMAN PALLADINO: What was your question
19 again?

20 COMMISSIONER GILINSKY: Did the company ever
21 look into that.

22 COMMISSIONER AHEARNE: A Grand Jury issue.

23 MR. DeYOUNG: I don't know.

24 CHAIRMAN PALLADINO: Incidentally, we have a
25 letter from Congressman Udall in which he asks has the

1 Commission ever received a report on the alleged
2 manipulation of leak rate calculations performed in the
3 weeks preceding the March 29th, 1979 accident.

4 COMMISSIONER GILINSKY: I think it would be
5 nice to get a little chronology on the events, when that
6 first came up, when the Grand Jury proceedings were
7 started and when we talked with the Attorney General, or
8 whoever. I just say they are very hazy in my mind.

9 MR. DeYOUNG: Mine also.

10 CHAIRMAN PALLADINO: Well, I am just trying to
11 recapitulate. On the leak rate, the possible
12 manipulation, we are going to have OIA and I&E prepare a
13 status report.

14 MR. DeYOUNG: Yes, with a chronology.

15 CHAIRMAN PALLADINO: With a chronology, and
16 meet with us, the Commission, and have OI present to see
17 where we go from here with the inclination to say we
18 ought to start an investigation and tell the Department
19 of Justice about it.

20 On the alcohol abuse case you expect some
21 comments back from the utilities..

22 MR. DeYOUNG: I think reasonably soon. In
23 Region One I think they are going to be soon.

9 MR. HAYES: Yes, on the recent allegations.

10 CHAIRMAN PALLADINO: I guess we should pursue
11 these reasonably diligently so that we can decide how we
12 want to go on the partial decision.

13 Now Hersel, at one I had asked you if you and
14 your staff might look at all the things that have to be
15 done on TMI-1.

16 COMMISSIONER AHEARNE: Joe, we still have
17 ICE's ---

18 CHAIRMAN PALLADINO: Yes. I am coming back to
19 that. I haven't forgotten that.

20 (Laughter.)

21 CHAIRMAN PALLADINO: I don't know if there was
22 anything that you see that we need to do based on any
23 study you have made so far prior to coping with our
24 partial decision.

25 Mr. PLAINE: You and I talked last week, and

1 one thing that has been started is we are preparing a
2 list. We have a rough draft of a list of things that
3 you might put into three categories. The first category
4 would be items bearing directly on restart among the
5 things that need to be done. The second might be items
6 that may have a bearing on restart. The third would be
7 items unlikely to have a bearing.

8 As, for example, activities bearing directly
9 on restart you need to deal with an immediate
10 effectiveness decision. The plant can't restart until
11 the Commission lifts the effectiveness of the shutdown
12 orders. That is a technicality of course.

13 COMMISSICNER GILINSKY: How is that?

14 (Laughter.)

15 Mr. PLAINE: I mean it is something, that
16 having made a decision, it is a technical element here.

17 COMMISSIONER GILINSKY: You have five
18 technicalities here.

19 (Laughter.)

20 Mr. PLAINE: Well, maybe that is expressing it
21 too optimistically.

22 (Laughter.)

23 CHAIRMAN PALLADINO: Well, I thought it might
24 be helpful when you get that done so we have a better
25 idea ---

1 COMMISSIONER GILINSKY: Well, I think the
2 Chairman was asking what sort of matters bear on that
3 so-called technicality.

4 CHAIRMAN PALLADINO: Yes.

5 (Laughter.)

6 Mr. PLAINE: Well, there are any number of
7 things that stand in the way. As for example, take the
8 PANE of which we heard the argument yesterday, the
9 possibility that the court might not reverse the D. C.
10 Circuit's decision. It creates problems because it is
11 likely that the D. C. Circuit since it has told us to
12 notify it on 30-days notice of an intention to start up
13 might enjoin that start-up, and if this happened we
14 might recommend certain actions. So that becomes an
15 involvement.

16 The problem of activities that may have a
17 bearing on restart might grow out of the review that has
18 been made of the transcript of the GPU versus P&W trial.

19 What our intention is, Mr. Chairman and
20 Members of the Commission, is to prepare the list of all
21 the things that we are aware of that are going on,
22 circulate it amongst all of the divisions that have an
23 interest in this, divisions and offices, and then come
24 back with a firm list to you on things that we think do
25 or will need action if you decide on a restart, the

1 things that may have a bearing and hope you will be able
2 to dispose of them based on what turns up and the things
3 which we think do not apply.

4 CHAIRMAN PALLADINO: Well, why don't we give
5 you a chance to prepare that list.

6 Mr. PLAINE: Yes, it will take a little time I
7 am afraid.

8 COMMISSIONER GILINSKY: Let's see, when you
9 say all the divisions ---

10 Mr. PLAINE: I am talking about any office or
11 division of the Commission.

12 COMMISSIONER GILINSKY: Does that mean you
13 then have to circulate it to other parties?

14 Mr. PLAINE: At the present time this is, I
15 take it, an in-house survey of where we are.

16 CHAIRMAN PALLADINO: It really is a check list.

17 Mr. PLAINE: It is a check list. It is
18 possible that some things can result.

19 COMMISSIONER GILINSKY: Well, I am just
20 raising a question in that by outlining the things with
21 respect to the decision you are in some sense affecting
22 the decision and participate as one of the parties in
23 this. All I am asking is does that obligate us to
24 participate equally with other parties?

25 CHAIRMAN PALLADINO: You are suggesting that

1 we ought to ---

2 COMMISSIONER GILINSKY: I am not suggesting
3 anything.

4 CHAIRMAN PALLADINO: I think you are raising
5 the question of should we at this time leave it at the
6 Commission level.

7 COMMISSIONER GILINSKY: Well, in a way I am
8 asking that.

9 CHAIRMAN PALLADINO: Yes, I think you are.

10 COMMISSIONER GILINSKY: Yes.

11 CHAIRMAN PALLADINO: It might well first to
12 get it out for the Commission.

13 COMMISSIONER AHEARNE: It seems to me it is
14 asking for a status report, and I don't see any reason
15 why asking for a status report is ---

16 COMMISSIONER GILINSKY: Well, no, but we are
17 asking for comments on what needs to affect our decision.

18 COMMISSIONER AHEARNE: Steps, action, judgment.

19 COMMISSIONER GILINSKY: I am asking a
20 question. I am not expressing a view. It depends on
21 what is in that list and what questions are asked.

22 MR. WALSCH: Let me just say we are sensitive
23 to the problem. We thought it we had to involve the
24 staff because, for example, we know NRE is involved
25 looking at the need for possible amendments because of

1 the steam generator repair program, and is there
2 anything else going on in WER that we ought to know
3 about along those lines.

4 COMMISSIONER GILINSKY: Well, those are
5 outside of the proceeding, aren't they?

6 MR. MALSCH: Well, true, except we broadened
7 our request so that we are trying to put together a list
8 of everything that is going on that maybe you might want
9 to know about. It was for that reason that we felt we
10 had to involve the staff. It is not our intent to ask
11 the staff to give us a list of things they think we
12 ought to consider on restart.

13 COMMISSIONER GILINSKY: Of course, the staff
14 could withdraw as a party.

15 (Laughter.)

16 MR. MALSCH: We just want a list of things.

17 COMMISSIONER GILINSKY: Okay, as long as you
18 are sensitive to that.

19 MR. MALSCH: We are aware of the problem.

20 CHAIRMAN PALLADINO: I never knew just asking
21 for a list was so complicated.

22 (Laughter.)

11 CHAIRMAN PALLADINO: If not, we will stand
12 adjourned.

13 (Whereupon, at 3:05 p.m., the meeting
14 adjourned.)

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