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2 UNITED STATES OF AMERICA  
3 NUCLEAR REGULATORY COMMISSION

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5 BRIEFING ON INVESTIGATION AND POSSIBLE ENFORCEMENT ACTIONS

6 \* \* \*

7 CLOSED MEETING

8 (EXEMPTION 5)

9 \* \* \*

10 Nuclear Regulatory Commission  
11 11th Floor Conference Room  
12 1717 H Street, N.W.  
13 Washington, D.C.

14 Wednesday, March 30, 1983

15 The Commission met in closed session, pursuant to  
16 notice, at 2:35 p.m., NUNZIO J. PALLADINO, Chairman of the  
17 Commission, presiding.

18 COMMISSIONERS PRESENT:

19 NUNZIO J. PALLADINO, Chairman of the Commission  
20 VICTOR GILINSKY, Member of the Commission  
21 JOHN F. AHEARNE, Member of the Commission  
22 THOMAS ROBERTS, Member of the Commission  
23 JAMES K. ASSELSTINE, Member of the Commission

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2 STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

3 H. PLAINE

4 R. LEVI

5 J. ZERBE

6 J. CUMMINGS

7 R. DeYOUNG

8 H. DENTON

9 B. HAYES

10 J. LIEBERMAN

11  
12 AUDIENCE SPEAKERS:

13 H. THOMPSON

14 W. WARD

15 J. FITZGERALD

16 V. STELLO

P R O C E E D I N G S

1  
2 CHAIRMAN PALLADINO: Please come to order.

3 We are meeting in closed session this afternoon to  
4 discuss a number of investigations and possible enforcement  
5 issues that relate to Three Mile Island's Unit 1. These issues  
6 are the ones outlined in Mr. Chilk's Memorandum to the  
7 Commissioners dated March 25, 1983.

8 The purpose of our meeting is to discuss the status  
9 of the issues and to determine what is necessary to reach  
10 closure on each of them.

11 I would propose taking these issues up in the order  
12 presented in the Memorandum. However, the last item listed on  
13 the Memorandum seems to be more broad than the OGC we can  
14 discuss in the meeting, so I expect we ought to limit our  
15 discussion on those items, to those that are related to the  
16 investigation and possible enforcement.

17 The staff is with us this afternoon to discuss some  
18 of the issues and to answer questions on matters not related to  
19 the Commission's consideration of lifting the immediate  
20 effectiveness of the shutdown order.

21 I request that the General Counsel alert us if we  
22 stray in a matter which should not be discussed in the presence  
23 of the staff.

24 I would propose that we discuss the issues to the  
25 extent that we can and reserve time at the end of the meeting

1 if necessary to continue the discussion after excusing the staff  
2 if that becomes necessary.

3 Do any of my fellow Commissioners have any additional  
4 remarks before we begin?

5 COMMISSIONER AHEARNE: I guess I will start out by  
6 commenting that I will probably try to challenge the OGC if  
7 they say we can't ask the staff questions. We have been into  
8 this mess for so many years, at this stage, we still have a lot  
9 of unanswered questions. It is sufficiently frustrating but I  
10 will try to get answers to whatever questions that might come  
11 up.

12 MR. PLAINE: May I make one observation on this aspect,  
13 Mr. Chairman?

14 The meeting is a closed meeting and one aspect is  
15 directed to a possible enforcement proceeding against GPU. In  
16 that connection, of course, representatives of the EDO are  
17 present. It makes it advisable keeping two points in mind.  
18 First, when and if the Commission reaches consideration of its  
19 immediate effectiveness decision on TMI-1 decisions, if the  
20 Commission is going to use any portion or portions of today's  
21 enforcement discussion, the Commission will be obliged to serve  
22 the pertinent portions of the transcript on the parties, with  
23 an opportunity for comment.

24 The second point is --

25 CHAIRMAN PALLADINO: Does that relate to the



1 enforcement?

2 MR. PLAINE: I am talking only of enforcement.

3 Secondly, if today's discussions relate to whether the  
4 Commission should make the TMI Board decision immediately  
5 effective, it would appear necessary that the EDO representatives  
6 be excluded from those discussions.

7 COMMISSIONER GILINSKY: Would you repeat that last part  
8 again?

9 MR. PLAINE: If today's discussions relate to  
10 whether the Commission should make the TMI-1 Board decision  
11 immediately effective, it would appear necessary that the EDO  
12 representatives be excluded from those discussions.

13 COMMISSIONER GILINSKY: I can't imagine that they  
14 wouldn't one way or another to varying degrees perhaps, but  
15 in one way or another affect the Commission's decision.

16 COMMISSIONER AHEARNE: Herzel, one of the principal  
17 questions in TMI is whether the people are competent to run  
18 the plant. That's underlying all of this.

19 COMMISSIONER GILINSKY: And can be trusted to do so,  
20 is even more closely related.

21 COMMISSIONER AHEARNE: There is no way they are  
22 separated, and there is also no way we can get at this without  
23 talking to the EDO staff. While your principle sounds fine,  
24 I think in practice we just have to go ahead and discuss this.

25 COMMISSIONER GILINSKY: I think what General Counsel

1 is saying is it would have to be done in some way that allows  
2 other participants to be informed.

3 COMMISSIONER AHEARNE: That's review of the transcript.

4 MR. LEVI: Let me try to elaborate a little bit.

5 Staff can report on all of the investigations and everything  
6 they found. The only items that staff should not discuss with  
7 you are how that should relate to your decision.

8 COMMISSIONER AHEARNE: That's fine.

9 CHAIRMAN PALLADINO: Must the discussion on the  
10 enforcement action be made available to the parties?

11 MR. LEVI: If you are going to use it in your  
12 immediate effectiveness decision, you would have to make it  
13 available to the parties. In other words, if in writing your  
14 decision you said, staff has told us such and such and we  
15 believe this is pertinent, the immediate effectiveness decision  
16 has to be based on material on the record. You can not rely  
17 on material outside of the record.

18 If you are going to rely on what staff tells you in  
19 a closed meeting, that has to be put in the record.

20 COMMISSIONER AHEARNE: Why don't we debate this later?  
21 Why don't we find out about the material and understand as best  
22 we can and then we can debate how we use it.

23 COMMISSIONER GILINSKY: March on into the quicksand.

24 CHAIRMAN PALLADINO: We appreciate your comments. I  
25 think we are going to have to be mindful of them.

11 MR. DeYOUNG: We are ready to proceed with the leak  
12 rate testing. Jim Cummings will take off on that.

13 CHAIRMAN PALLADINO: I think this is one we would like  
14 to hear about. I have a number of questions on this one that  
15 I hope you will answer along the way. If not, I will ask them.

16 Why don't you proceed, unless you want to hear my  
17 questions ahead of time.

18 MR. CUMMINGS: As far as the status of Hartman, we did  
19 send you down a letter and I understand or I thought just  
20 before this meeting, I got a copy of a letter that I thought  
21 you had all agreed on signing, and that was to go to the  
22 Attorney General relative.

23 CHAIRMAN PALLADINO: Except when I got this report,  
24 I am not quite sure we are ready to send that letter. I  
25 would like to know if there actually was an investigation

1 because we say there was an investigation in that letter.

2 There was another thing in that draft letter that bothered me.

3 I was not sure this did not deny parts of that letter. Why

4 don't you go ahead? I will find what I want.

5 MR. CUMMINGS: Let me give you a little background on  
6 Hartman that I can recall. In about May of '80, I got a call  
7 from I&E that asked us to help them in their investigation of  
8 Hartman, who I believe at that time had just gone on WOR-TV  
9 or was about to go on WOR-TV.

10 COMMISSIONER GILINSKY: Was that the first time the  
11 allegations were made?

12 MR. CUMMINGS: As far as I know, it was the first time  
13 we became involved in this particular case.

14 We sent an investigator up to Region I. He in turn  
15 with the Region I investigators found him and interviewed him  
16 and subsequent to that, we did help I&E and Region I in  
17 conducting some additional interviews.

18 COMMISSIONER GILINSKY: Why were you doing that as  
19 opposed to them? It is just a matter of helping them out?

20 MR. CUMMINGS: It was a matter of helping them out.  
21 I believe at that time they only had one investigator or two  
22 investigators in the Region. It just was the luck of the draw  
23 at that particular time.

24 COMMISSIONER AHEARNE: The WOR interview was in March.

25 MR. CUMMINGS: It might have been the airing of that

1 program, because there was also --

2 COMMISSIONER AHEARNE: That was the airing.

3 MR. CUMMINGS: I stand corrected on that date. The  
4 interviews of the individuals that were conducted, which we  
5 participated in, revealed that in some cases they were alleging  
6 that the leak rate tests that were conducted in this 72 hours  
7 were either falsified or in some cases either the leak rate  
8 test was not within the boundary it should be in and were  
9 discarded.

10 COMMISSIONER AHEARNE: Is there more than one allegor?

11 MR. CUMMINGS: Hartman was the original allegor and  
12 in addition to that, there were several individuals who made  
13 admissions as to their knowledge of this particular situation.

14 At that particular point, there were some problems  
15 we were running into about who was representing who at the  
16 interview of the individuals. In other words, there were  
17 attorneys present which I believe the company had engaged.  
18 They were telling the individuals that in a sense, and I don't  
19 recall this precisely, that they were in fact for the time  
20 being representing them.

21 However, as individuals started to make admissions,  
22 the attorneys would kind of stop the clock and say, gee, now  
23 we have a problem because you are making admissions that are  
24 also against company policies and violating our own rules and  
25 regulations so we feel uncomfortable now representing you and

1 continuing this investigation.

2 At that point, my recollection is the individuals --  
3 we had only reached the first level, the control room operators,  
4 and we were now trying to go up to the next level, and it  
5 was at that point it was made known that through the Region  
6 that the individuals would not continue to agree to be  
7 interviewed unless they were subpoenaed by the NRC.

8 COMMISSIONER GILINSKY: This is the second level of  
9 individuals or anyone?

10 MR. CUMMINGS: We had just finished, I believe, five  
11 or six interviews. There were some admissions that were made.  
12 We were going to continue with those interviews and then  
13 hopefully go to the next level.

14 At that point, there was a discussion as to what  
15 would be the next step. Eventually, as it turned out, it  
16 was referred to the Department of Justice.

17 COMMISSIONER GILINSKY: By us?

18 MR. CUMMINGS: By us. We are still waiting.

19 CHAIRMAN PALLADINO: Was there a formal letter of  
20 transmittal?

21 MR. CUMMINGS: I don't believe there was a formal  
22 letter of transmission.

23 CHAIRMAN PALLADINO: Were there minutes of meetings?

24 MR. CUMMINGS: There were face to face meetings with  
25 the Department of Justice in East/West Towers.



1 CHAIRMAN PALLADINO: Were there any minutes of the  
2 meetings?

3 MR. CUMMINGS: No, I don't believe there were. They  
4 were rather lengthy meetings that got into what individuals had  
5 said. There were lengthy meetings trying to explain to the  
6 Department of Justice what a leak rate test is, what the  
7 primary boundary means, and those types of things, to try to  
8 get them to understand what it was we were talking about and  
9 whether or not they felt those circumstances warranted a  
10 violation of the Title XVIII statutes.

11 COMMISSIONER GILINSKY: Was this referral related to  
12 the fact that the individuals wouldn't agree to cooperate  
13 in the investigation?

14 MR. CUMMINGS: It was part of it, I think. I think  
15 it was also a situation where if the Justice Department looked  
16 at it, they were not encumbered by the same procedural steps  
17 that the NRC was encumbered with. They could simply haul  
18 someone into a Grand Jury. They weren't worried about  
19 subpoenas and that type of thing.

20 COMMISSIONER GILINSKY: Where was this course decided  
21 on? Did we decide that as the Commission? Did you decide  
22 that or someone else? Did we ever take it up here?

23 MR. CUMMINGS: I don't know that the Commission ever  
24 took it up. I think it was more of a question that we were  
25 certainly at that point also under an obligation, in my view,

1 to notify the Department of Justice, about a case that I felt  
2 clearly was a violation of Title XVIII, 1001.

3 COMMISSIONER AHEARNE: Vic Stello might remember some  
4 of this. As I recall, Vic did not want us to go that route.

5 MR. STELLO: Our first awareness of this issue  
6 as I recall was in the original investigation in NUREG 0600  
7 where we did the original interviews.

8 There were also interviews as I recall done by  
9 Rogovin. Our awareness of this was in 1979, not 1980.

10 COMMISSIONER GILINSKY: I don't remember it appearing  
11 in either of those reports.

12 MR. STELLO: The interviews are a matter of record,  
13 and where they are referred to, I would need a computer to  
14 go through the pages.

15 COMMISSIONER GILINSKY: The reports themselves.

16 MR. CUMMINGS: When we became aware of it is 1980.  
17 There are interviews of Hartman.

18 MR. STELLO: Interviews of Hartman that date, I  
19 believe, in the summer of '79.

20 COMMISSIONER AHEARNE: The first reference here is  
21 a 72 page interview conducted on May 22, 1979 by I&E.

22 MR. STELLO: That is about right. That would be  
23 part of NUREG 0600.

24 COMMISSIONER AHEARNE: There was also a group in  
25 October of 1979.

1           COMMISSIONER GILINSKY: Why didn't it make its way  
2 into either report?

3           MR. STELLO: The leak rate issue was raised in NUREG  
4 0600. I don't know if there was an issue of the allegations  
5 in NUREG 0600. I would have to check. The leak rate was  
6 part of our civil penalty.

7           COMMISSIONER GILINSKY: As I recall, and I don't  
8 remember the details very well, it was a very narrow slice  
9 of that problem that was involved in the civil penalty.

10          MR. STELLO: They improperly calculated the leak rates  
11 and that was the reason for the civil penalty. The allegations  
12 of the propriety in the leak rates, I don't know if that was  
13 in the report. I would have to go back and reread it.

14          COMMISSIONER GILINSKY: I don't think it was.

15          MR. STELLO: I think I will agree with you. I don't  
16 think it was in Ragovin mentioned as allegations or in NUREG  
17 0600. For some strange reason, I seem to remember it in a  
18 Senate Report. That came out in the fall.

19                Let me go through the chronology. As part of our  
20 investigation, that you asked us to after NUREG 0600, to look  
21 into the willfulness issue with respect to reporting  
22 information, we began to look at it again and got started  
23 with it. Because of my sensitivity of not wanting to have an  
24 issue that had the potential for referral to Justice, I  
25 informed Jim very early to become involved in the process

1 because it was clear there was an issue of impropriety for  
2 which there was a question. That was our procedure to involve  
3 Jim.

4 With respect to the referral, Jim went through the  
5 chronology of us looking into it, that was unilateral on Jim's  
6 part, and if Jim remembers, most of us didn't talk to each  
7 other for about two days because I was very upset, that the  
8 judgments on behalf of the operational end of the business  
9 weren't included in the decision made to stop our investigation.

10 You will remember me telling the Commission because  
11 I was very upset because of the inability for us to then  
12 continue with the rest of the investigation. We had to go  
13 with subpoenas, to Harrisburg again.

14 COMMISSIONER AHEARNE: I remember pretty clearly  
15 that we came to the Commission.

16 COMMISSIONER GILINSKY: I must say I don't remember.

17 MR. STELLO: That was a fact.

18 COMMISSIONER GILINSKY: I just want you to refresh  
19 my memory. This is on this particular item, on the Hartman  
20 business?

21 MR. STELLO: On the Hartman issue precisely.

22 COMMISSIONER GILINSKY: How was it that we came to  
23 stop our investigation?

24 MR. STELLO: I was informed by Mr. Cummings that  
25 the Department of Justice had requested us to do so and we

1 were to terminate all further investigations into this matter  
2 and inform the Commission that we would have to go through the  
3 circuitous route to get interviews, to do the rest of the issue.

4 COMMISSIONER GILINSKY: When you say the rest of the  
5 issue --

6 MR. STELLO: The flow of information issue, the  
7 NUREG 0760 issue.

8 COMMISSIONER GILINSKY: The leak rate testing.

9 MR. STELLO: We were prohibited from doing further  
10 work.

11 CHAIRMAN PALLADINO: Is that document anywhere?

12 MR. STELLO: I have checked as part of some other  
13 activities I have been asked to look into to find out if we  
14 have that document and to the best of my recollection, Jim  
15 gave instructions to me orally. I don't believe we ever  
16 received anything from either Jim, that is IE, or do I ever  
17 recall seeing anything from the Department of Justice in  
18 writing. The only thing that I can remember and that I have  
19 been able to find is a document that was prepared or which  
20 was being prepared either as a press release or as a piece  
21 of paper to use if we were asked further questions regarding  
22 this matter because it was a very visible issue, to have  
23 a referral.

24 CHAIRMAN PALLADINO: The proposed letter that Jim  
25 earlier talked about, it says "The Commission's investigation



1 into this matter was halted in May, 1980 at the request of DOJ."  
2 I understand that later DOJ came back and said there were a  
3 number of other reports, some 19 other reports that two months  
4 later they had learned about. They came from the region, I  
5 gather.

6 I am not clear that this is a true statement, that  
7 we halted the investigation in May.

8 MR. CUMMINGS: It is, Mr. Chairman, because what had  
9 happened was we thought we had given the Department of Justice  
10 all of the material that we had, the interviews. We later  
11 found out that the region had -- I think there were 19  
12 interviews that they had not -- that we had not given to the  
13 Department of Justice.

14 CHAIRMAN PALLADINO: They had not been conducted  
15 prior to May? Did the regions get the word there was a halt  
16 to the investigation?

17 MR. STELLO: Yes.

18 CHAIRMAN PALLADINO: If we left the letter this way,  
19 it would be a true statement?

20 MR. STELLO: Absolutely. There are still documents  
21 being generated on this issue, of course.

22 CHAIRMAN PALLADINO: As a matter of fact, there was  
23 a question as to whether or not we had ever started an  
24 investigation.

25 MR. STELLO: We did in fact start one.



1 COMMISSIONER GILINSKY: How precisely did they tell  
2 us to stop our investigation or did they in fact tell us to  
3 stop our investigation?

4 MR. CUMMINGS: They told us to stop our investigation.

5 COMMISSIONER GILINSKY: Who was that?

6 MR. CUMMINGS: The Department of Justice. It was  
7 discussed with -- as high as the Chief of the General Liti-  
8 gation Division, which was Larry Lippe at the time. Maybe  
9 even with Mark Richard, who was the Deputy Assistant Attorney  
10 General.

11 CHAIRMAN PALLADINO: Why don't we document a little  
12 note to the file that says "talked to"?

13 MR. CUMMINGS: I will go through our files. There  
14 was a continuing dialogue that was going on on a daily basis.

15 CHAIRMAN PALLADINO: When you get a direction from  
16 the Department of Justice to stop your investigation, I  
17 think that would be significant.

18 COMMISSIONER GILINSKY: There may be something in  
19 their files.

20 MR. CUMMINGS: Let me see if I can find that.

21 There was a question of elevating, we continued to  
22 try to elevate the decision and we couldn't get a decision.  
23 I think we were even thinking of going to higher levels in  
24 Justice but let me check our files.

25 COMMISSIONER GILINSKY: Let me be sure I understand

1 you precisely. They were not saying something like don't do  
2 anything without letting us know or something like that, they  
3 said we don't want you to do anything?

4 MR. CUMMINGS: It was clear, unequivocal that what  
5 they wanted to do was have us stop.

6 COMMISSIONER AHEARNE: Isn't this a case where they  
7 asked us to provide someone to help them and then precluded us  
8 from talking to that NRC employee?

9 MR. STELLO: Yes. They asked for and we gave them  
10 someone who was not directly involved in following up the  
11 leak rate issue from Region 2. The conditions that I discussed  
12 with the Department of Justice is look, we think we understand  
13 enough of the issue to go and make sure we fix in every plant  
14 to avoid this kind of problem because it has an awful lot of  
15 technical depth as to why the problem came up in the first place.

16 As you are going through this, we want to have the  
17 assurance that should something come up, that Martin is free  
18 to come back and say, there is a safety problem. From time  
19 to time I would ask him, is there anything you are hearing  
20 in that Grand Jury proceedings which we ought to have a safety  
21 concern for. The answer was no.

22 That provision was there and we continued to provide  
23 them with technical assistance because it is a very complicated  
24 issue.

25 COMMISSIONER AHEARNE: He was foreclosed by them

1 from discussing any of the Hartman leak rate issues?

2 MR. STELLO: That is a fact unless in his judgment  
3 he saw a safety issue, then he was to inform us. We  
4 periodically chatted and I said the most recent one I had  
5 with him was several weeks ago.

6 COMMISSIONER GILINSKY: You refer to other documents  
7 from GPU that came to light the other day. Didn't we know  
8 anything about these before a few days ago?

9 MR. CUMMINGS: I did not.

10 MR. STELLO: I had a meeting and I informed Jim  
11 Cummings and I think Mr. Hayes. There are two documents.  
12 You only know of one, and the one you are referring to I  
13 think is the GPU report where they looked into a lot of the  
14 technical stuff we are talking about on the leak rate issue.

15 There is another one where they had a rather detailed  
16 interview, a further deposition of Hartman, that was in 1982.  
17 I have been struggling to get my hands on that particular  
18 document because in reading just excerpts from the trial record,  
19 there seemed there was information in there that was creating  
20 a different impression for me. I have succeeded in getting  
21 that document and I have provided that to Jim.

22 MR. CUMMINGS: I have not had a chance to read it.

23 COMMISSIONER GILINSKY: Did they have an obligation  
24 to tell us about these documents?

25 MR. STELLO: You would have to ask the lawyers.

1 COMMISSIONER GILINSKY: The first of these documents  
2 date from 1980?

3 MR. STELLO: The first is 1980; the second is 1982.

4 MR. LEVI: We would have to look at the documents,  
5 since I do not believe we have even gotten copies yet. We  
6 would have to look at them and tell you.

7 COMMISSIONER GILINSKY: I would urge you to get a  
8 copy of them.

9 CHAIRMAN PALLADINO: Did GPU ever send these to the  
10 NRC before we got it recently? Did you explore that?

11 MR. STELLO: I am not surprised that it existed  
12 or that they looked into it. Not having it and not having  
13 read it, I am fairly sure I have a good recollection of the  
14 documents we have gotten from them on this point. Based on  
15 my recollection, I would answer without reservation that the  
16 answer is no.

17 The first time I heard of the documents was in a  
18 meeting with Mr. Arnold who insisted to talk to me, knowing  
19 I was doing this other activity. I felt there was a need for  
20 me to listen and not to explore and I didn't really explore  
21 any particular points with him.

22 I can't really answer. I am reasonably certain  
23 that in all the documents I have been through, this is the  
24 first time I saw it and the first time I heard it existed was  
25 at that meeting.

1           There was a particular reference to the document  
2 in a question from Udall, I believe, where it asked if we  
3 had ever gotten a leak rate report. After I got it, we  
4 answered that question no, and after we got it, I felt we  
5 were being asked about this report. It may be possible they  
6 had access to it or they were aware of it.

7           CHAIRMAN PALLADINO: Could we check to make sure  
8 we have a sound basis for knowing whether anybody in the NRC  
9 received it and whether or not any member of the NRC was aware  
10 of this, of its existence, or people in the region knew about  
11 it.

12           MR. STELLO: I can speak to Region 1 and I can speak  
13 for all the investigative people who have been involved in this  
14 issue and the answer is no. With respect to the agency, that  
15 is 3300 people. To get that kind of assurance --

16           Submitting it, I think the answer is no.

17           COMMISSIONER GILINSKY: Why is GPU bringing this  
18 report up now?

19           MR. STELLO: I think you would have to ask GPU  
20 that question. I don't know the answer.

2b           COMMISSIONER ASSELSTINE: Was it referred to in the  
21 transcript at the trial?  
22

23           MR. STELLO: I believe we had about 1400 exhibits  
24 that were not introduced in the trial record. I can't remember  
25 whether or not that was one of them. I think there is now



1 by the count they did, 1,760 such documents.

2 COMMISSIONER GILINSKY: I assume there was some  
3 connection with the trial.

4 CHAIRMAN PALLADINO: The feeling I got was this was  
5 not introduced.

6 MR. STELLO: It was not introduced into the record  
7 for sure because if it were, we would have had it. When  
8 Arnold came to check with me about other documents they had,  
9 the number was 1,760 additional exhibits that were not  
10 introduced into the record, which is on the order of 20,000.

11 COMMISSIONER ASSELSTINE: Which were referred to.

12 MR. STELLO: Which were potentially listed as  
13 exhibits. I don't understand the procedure they use in Court.  
14 Apparently they identify a lot of things they may use and  
15 use some of them and those that are left -- the trial ended  
16 in the mid to three quarter point and all of them didn't get  
17 introduced. Whether it would have or not I guess remains  
18 to be seen.

19 MR. PLAINE: There were about 5500 exhibits identified  
20 and as you say, some 4000 plus were actually admitted.

21 COMMISSIONER AHEARNE: Is it possible, I guess I  
22 would be interested in having I&E look at whether or not these  
23 documents should have been submitted.

24 CHAIRMAN PALLADINO: I have a number of questions. I  
25 want to make sure first of all whether GPU ever sent that



1 report to NRC. I am interested in Vic's questions if any  
2 member of the NRC was aware of the existence of this report  
3 and that includes I&E, OI, Region 1, the program office,  
4 I think a reasonable explanation of the people who might have  
5 been made aware of this.

6 Also if the Department of Justice knew about or  
7 received this report back in the timeframe involved.

8 MR. CUMMINGS: As far as we know, Mr. Chairman, the  
9 answer to that question is no, they got it several days ago  
10 from GPU.

11 CHAIRMAN PALLADINO: I think answers to these questions  
12 could be rather significant to us. If we send a response  
13 to some questions by Congressman Udall, and we respond the  
14 way the draft now reads, and then later these things surface,  
15 it would just be an uncomfortable position to be in.

16 MR. DENTON: For NRR, I have never seen the document.  
17 I think we have always been uncomfortable with whether that  
18 proceeding would come to a conclusion by the time the plants'  
19 repairs were complete. That is still in doubt, what the  
20 ultimate process will be over at DOJ on these items.

21 COMMISSIONER AHEARNE: I will have to admit I was  
22 in opposition to Mr. Stello when he originally -- when this  
23 issue first came up. He was right.

24 MR. DeYOUNG: I may raise again my concern about DOJ,  
25 the referral of the other report and what may happen.

1           COMMISSIONER AHEARNE: I think we have to do the report.  
2 There are other federal laws, as I recall, that relate to  
3 if you are a federal employee and you find a potential  
4 violation, you have to let the Department of Justice know  
5 about it. The referral issue I don't think is an issue.

6           I am just concerned -- Vic had made the point  
7 at the time that those guys never asked and they assured us  
8 as I recall, yes, they will get right on top of it.

9           MR. CUMMINGS: They would have it wrapped up in three  
10 months.

11          CHAIRMAN PALLADINO: Vic, did you have more questions?

12          COMMISSIONER GILINSKY: Not at this point.

13          CHAIRMAN PALLADINO: Jim?

14          COMMISSIONER ASSELSTINE: No.

15          CHAIRMAN PALLADINO: Can we go to a brief statement  
16 on number four?

17          MR. DENTON: On number four, an employee was offered  
18 a job by GPU and turned it down and then alleged that GPU  
19 had provided him answers to psychological tests that he  
20 apparently had flunked the first time. When we heard about  
21 this, we asked OI to investigate it. They did and provided  
22 us with a report back that indicated they were unable to  
23 substantiate the allegations. On the basis of that report,  
24 we considered the issue closed.

25          CHAIRMAN PALLADINO: There is a second part with

1 regard to the accident at GPU. They were investigating and had  
2 not notified us. You were checking into that.

3 MR. HAYES: I think we touched upon it.

4 CHAIRMAN PALLADINO: I want to refresh my memory.  
5 My impression is that both issues are closed.

6 MR. HAYES: That's correct. In our view, they  
7 consulted with their attorneys in New York, it was under  
8 advisement, so they have not tried to cover it up. In fact,  
9 I believe they asked their in-house counsel to review it  
10 to determine whether or not it was a matter that should be  
11 referred to NRC. Then we commenced the investigation.

12 CHAIRMAN PALLADINO: Can we go to item five? This  
13 is the GAP allegation. I don't know what you can tell us  
14 about it but I would like to listen.

15 MR. HAYES: I am sure everyone is aware we received  
16 an affidavit from Mr. Parks and I subsequently received a  
17 memorandum from the Chairman asking OI to assume the coordinating  
18 responsibility on behalf of NRC in looking at these particular  
19 allegations. That was last Friday.

20 On Monday of this week, a member of my staff plus  
21 two of EDO's staff members, started analyzing the affidavit,  
22 and drafting a work plan that you requested I provide to the  
23 Commission by tomorrow. We are currently doing that.

24 An analysis, at this point, if you will, --

25 COMMISSIONER AHEARNE: Before you get to the analysis

1 of GAP, could you briefly describe the effort you are putting  
2 on it?

3 MR. HAYES: I will get to that. Commissioner Roberts  
4 asked me to be prepared to discuss workload, et cetera. Let  
5 me go over our assessment of what resources we are going to  
6 need and then its impact on OI.

7 We feel as though we can conclude the field work  
8 within 45 to 60 days barring enforcement problems or what have  
9 you, if we have to issue subpoenas. I just don't know what  
10 to expect here, and hopefully have a written product within 90  
11 days. That is if everything goes the way we would like to have  
12 it go.

13 At this point I intend to put two investigators  
14 and request to Bill Dircks to let me have three technical  
15 personnel, at least initially, to assist us in this effort.

16 We plan to actually commence on-site interviews  
17 and inspections and what have you on or about Tuesday or  
18 Wednesday, April the 12th and 13th.

19 I have yet to communicate with Mr. Dircks who we  
20 would like to have assist us on this. I will work that out  
21 with Bill next week.

22 In terms of its impact, I have prepared --

23 COMMISSIONER AHEARNE: Before we get to the impact,  
24 to make sure I understand, by having technical people, you  
25 are going to address the technical questions, for example --

1 MR. HAYES: The QA matters.

2 COMMISSIONER AHEARNE: Whether the analysis was done  
3 correctly, whether enough was done, what the hazards were  
4 associated with it, et cetera.

5 MR. HAYES: Yes. There is five or six areas that we  
6 intend to look at. Normally one of those areas of course  
7 falls within OI's perview, intimidation and harrassment. You  
8 are aware of the colusion allegations.

9 COMMISSIONER AHEARNE: I can understand you and your  
10 normal management people doing the supervisory review for the  
11 quality of the investigative work, how are you going to get  
12 the review of the technical work?

13 MR. HAYES: There are a couple of options. To tell  
14 you the truth, I can't tell you which one we are going to  
15 recommend. One would be at the conclusion of the  
16 investigative efforts, to have the results and assumptions  
17 presented to a managerial technical review oversight, OPE  
18 or someone, to take a look at it. Another would be an ongoing  
19 managerial review, technical, with the results on an ongoing  
20 basis, something I haven't discussed with Bill yet either.

21 There are some options. I can't present to you today  
22 which would be my recommendation. It is a problem.

23 COMMISSIONER AHEARNE: I urge you to remember that  
24 one of the criticisms of some of the previous NRC investigations  
25 has been some of the investigators try to be technical analysts



1 and they weren't and they tried to be engineers and they  
2 weren't.

3 COMMISSIONER GILINSKY: We had the opposite problem,  
4 too.

5 COMMISSIONER AHEARNE: You do not want to fall into  
6 that trap.

7 CHAIRMAN PALLADINO: Ben, you did mention the colusion,  
8 who is going to do the colusion? I presume OIA is going to  
9 investigate it.

10 MR. HAYES: Jim Cummings, yes. That is correct.

11 CHAIRMAN PALLADINO: You didn't mention them as part  
12 of your overall effort.

13 MR. HAYES: Yes. I spoke of OI staff and the  
14 technical staff. Needless to say, I do not desire my staff  
15 to look into that particular allegation and Mr. Cummings'  
16 staff in coordination with us will be looking at that matter.

17 CHAIRMAN PALLADINO: What is that going to involve?

18 MR. CUMMINGS: Depending on the front end product,  
19 which is the way Ben is looking at it, perhaps two weeks of  
20 field work.

21 CHAIRMAN PALLADINO: By one or two people?

22 MR. CUMMINGS: Yes, I will put two people on it.  
23 I think that will get it done in about two weeks.

24 COMMISSIONER GILINSKY: What about the subject of  
25 the mystery man?



1 MR. HAYES: That is a part of the area that we will  
2 be looking into.

3 COMMISSIONER GILINSKY: That bears not only on Unit  
4 2 but on restart and also GPU's case against NRC.

5 MR. HAYES: In fact, I spoke with Vic Stello on that  
6 and he said his review shed some light on that and he is  
7 sending me a copy of that.

8 COMMISSIONER GILINSKY: One he just completed?

9 MR. HAYES: Yes.

10 COMMISSIONER AHEARNE: My reading so far of  
11 everything is that the staff has been unwilling to step back  
12 and say perhaps we were wrong, because as I understand it,  
13 the staff's position had been that the pumps couldn't have  
14 been turned off because they weren't turned on, so it could  
15 not have been someone turning them on and off at that period  
16 of time. Therefore, in this question of whether there was  
17 a so-called mystery man, there couldn't have been and it is  
18 moot. It would occur to me we at least would have to start  
19 at relooking at the other issue.

20 MR. HAYES: I have no preconceived notions or judgments  
21 in here.

22 COMMISSIONER GILINSKY: It is relevant for all three  
23 of those issues. B&W thought it was important in their  
24 \$4 billion trial and another \$4 billion lawsuit that involves  
25 us.

1 MR. HAYES: You raised this point. If it hadn't been  
2 settled in four years, how in the hell can I do it in 90 days?

3 COMMISSIONER AHEARNE: The point I was alerting you  
4 to is reading much of what the NRC has previously said on it,  
5 they have done a technical analysis and concluded that wasn't  
6 the question but you have to at least, if you are going to look  
7 at that, be willing to relook at that other issue.

8 COMMISSIONER GILINSKY: I think there you will need  
9 some technical help, too.

10 CHAIRMAN PALLADINO: There has been quite a bit of  
11 discussion in the staff report.

12 COMMISSIONER AHEARNE: It essentially says we had  
13 analyzed it before and the only people that thought the pumps  
14 could have been turned on and off were GPU and they were wrong.  
15 Therefore, there could not have been a leak.

16 CHAIRMAN PALLADINO: You are saying be broad minded  
17 and open minded enough?

18 COMMISSIONER AHEARNE: Yes. If you start out with  
19 the conclusion that it could not have been turned on and off.

20 MR. HAYES: Then there is no mystery man.

21 COMMISSIONER AHEARNE: That is right.

22 COMMISSIONER GILINSKY: This is not one we want to  
23 deal with by definition.

24 MR. HAYES: I have asked the staff to look at that,  
25 to look at this whole issue in terms of trying to prove Parks'

1 allegation as 100 percent correct. I feel if we take that  
2 particular avenue and take the necessary steps, then it will  
3 be much more easy to defend ourselves should we not be able  
4 to prove those allegations.

5 It is a little different approach from what we might  
6 take in another issue.

7 Any other questions on resources or the thrust?

8 Commissioner Roberts asked me for an analysis of  
9 basically workload and what OI would have to set aside if you  
10 will, to elevate the Parks allegation to the extent that I have.

11 COMMISSIONER GILINSKY: What was set aside to turn this  
12 out?

13 MR. HAYES: About a day and a half of my secretary's  
14 time.

15 CHAIRMAN PALLADINO: I think this is part of the  
16 pitch to get more people for OI.

17 MR. HAYES: Would I use this opportunity to present  
18 that?

19 COMMISSIONER AHEARNE: Since you have given me these  
20 numbers, let me see if I understand. This is the overtime  
21 in January for the Director of OI and Deputy Director?

22 MR. HAYES: Yes. We throw it all in there.

23 COMMISSIONER AHEARNE: I was there.

24 MR. HAYES: There are two of you, that is about 45.

25 COMMISSIONER AHEARNE: Hours per person?

1 MR. HAYES: That is about average, maybe about 10.5  
2 hours a week, maybe two hours a day overtime. Whatever, it  
3 depends.

4 Of course I tell Roger I do most of the work.

5 COMMISSIONER AHEARNE: Two hours a day overtime.

6 MR. HAYES: If I can summarize this pile of paper,  
7 we have available 23 investigators which include the five  
8 deputies in the field. There is Mr. Ward and Mr. Fortuna  
9 and myself. There are 26 investigators on the OI staff today.  
10 We are short a couple right now that we are attempting to  
11 replace.

12 We have committed five staff members to Zimmer which  
13 leaves us 18; three to PV, which leaves us 15; two to  
14 the D.C. Cook/Midland investigation, which leaves us 13, two  
15 investigators to the tube line vendor Region 4 investigation  
16 which leaves us 11. We have 40 investigations as of today.  
17 This leaves me 31 investigations to be covered by the balance  
18 of 11 staff members.

19 We also prioritized these by looking at your  
20 schedule in terms of hearings, votings, what have you. Any  
21 one given time, the investigations are up and down depending  
22 upon the Commission's desires as well as personal problems  
23 with staff. I have one in the hospital now.

24 I can't tell you specifically today that the "XYZ"  
25 investigation cannot be touched for 90 days because. The

1 best I can do is tell you I have anywhere from 11 to 13 people  
2 to continue the approximately 30 investigations we have and  
3 that does not include the assistance with inquiries.

4 COMMISSIONER AHEARNE: How many people are you putting  
5 on this?

6 MR. HAYES: Two OI staff people.

7 MR. DENTON: From the way the discussion is going,  
8 I guess you will be requesting assistance from other areas  
9 of the staff also.

10 MR. HAYES: It would appear so.

11 CHAIRMAN PALLADINO: Do you have that summary where  
12 you said five for Zimmer, two for PV?

13 MR. HAYES: No. I just wrote that down so I could  
14 give you a bottom line figure.

15 COMMISSIONER ROBERTS: You delineated the first group.  
16 Where are the other 11?

17 MR. HAYES: Eleven are handling the other 30 odd  
18 investigations we have ongoing.

19 COMMISSIONER AHEARNE: The other ones you mentioned  
20 are assigned full time to each of those?

21 MR. HAYES: It is difficult to say full time because  
22 if a witness is not available then the staff member may help  
23 another investigator on another case.

24 In terms of overall commitment, I have prioritized,  
25 if you will, these particular investigations in OI to receive



1 priority considerations. These come before the others at this  
2 time.

3 CHAIRMAN PALLADINO: You are saying with this effort,  
4 it is going to take you 90 days and you are not going to start  
5 until the middle of April?

6 MR. HAYES: Yes. It is going to take me a week to  
7 pull the staff together, and go through orientation.

8 CHAIRMAN PALLADINO: I see.

9 COMMISSIONER AHEARNE: April 1st is 90 days from  
10 June 30th. That is a date I happen to know.

11 (Laughter.)

12 CHAIRMAN PALLADINO: Very interesting. I thought the  
13 Appeals Board Panel was going to be involved in that.

14 You are going to give us a work plan?

15 MR. HAYES: That is correct, my best guesstimate, if  
16 you will.

17 CHAIRMAN PALLADINO: Do you have any more on that?

18 MR. HAYES: No, not unless someone else has any  
19 questions.

20 CHAIRMAN PALLADINO: Item six, the only part I think  
21 would be pertinent to this discussion has to do with  
22 allegations and the investigation. I think we have covered  
23 all of those that are in there.

24 COMMISSIONER AHEARNE: I have one question. There  
25 was a statement in the report that came down, which was

1 the review of the record, and in it it mentioned that Bob  
2 Arnold had come down and offered some large numbers of documents.  
3 580 documents remained that contained something of interest,  
4 all of the documents are indexed and available for our  
5 inspection and copying and we apparently haven't looked at them.

6 We are considering the offer and will contact them if  
7 we wish to review the documents. This is Appendix A.

8 I would guess given the sensitivity of this TMI issue,  
9 or all these TMI issues, I can't understand why we would not  
10 want to go over and review the documents. I think somebody  
11 in the NRC better go and read those documents and look at those  
12 documents.

13 CHAIRMAN PALLADINO: How many?

14 COMMISSIONER AHEARNE: It is 580. It is a lot.

15 COMMISSIONER ROBERTS: Arnold said he didn't think  
16 there was anything we didn't know.

17 COMMISSIONER AHEARNE: Tom?

18 (Laughter.)

19 COMMISSIONER AHEARNE: With all respect to Bob  
20 Arnold, I would feel a lot more comfortable if it were someone  
21 on our staff who said they had gone through them and there  
22 wasn't anything in there that we didn't know.

23 MR. DeYOUNG: Is there disagreement?

24 CHAIRMAN PALLADINO: No, I wrote it down, review  
25 580 documents.

1 (Laughter.)

2 MR. DeYOUNG: Who will tell Vic?

3 CHAIRMAN PALLADINO: Reviewing is going to take a  
4 little bit of time. I think it should be the same group.

5 MR. DeYOUNG: I know.

6 MR. HAYES: I need one of those particular people.  
7 on Vic's taskforce. I really appreciate Mr. Dircks'  
8 commitment that he will give me anyone on his staff besides  
9 Mr. Stello and I am going to hold him to it.

10 COMMISSIONER GILINSKY: That's half the staff.

11 MR. DeYOUNG: I will tell Vic you said that.

12 CHAIRMAN PALLADINO: When do you think you will be  
13 in a position on items one and two, your overall recommendation?  
14 I guess it all comes down to the civil penalty.

15 MR. DeYOUNG: I am really concerned about the DOJ  
16 matter. I hear all the things that we don't have to pay  
17 attention to.

18 COMMISSIONER GILINSKY: My point is we shouldn't  
19 be waiting for them to say stop. We have certain courtesies  
20 that have to be observed. I think we want to cooperate with  
21 them. It seems to me it is highly unlikely they are going  
22 to say don't do anything in any case and we ought not be  
23 approaching it that way.

24 I think the point really is in the past we have been  
25 too ready to stop when any hint or suggestion is made on their

1 part and whether or not they told us definitely to stop.

2 CHAIRMAN PALLADINO: I think you have a good point.

3 COMMISSIONER AHEARNE: I believe in this particular  
4 case they did ask us to do that.

5 COMMISSIONER GILINSKY: That is right. That is what  
6 Jim said. There have been a lot of other cases, too.

7 CHAIRMAN PALLADINO: Lacking interference from DOJ,  
8 what sort of time frame would you see before you got --

9 MR. DEYOUNG: I would say three weeks. Jane will  
10 not be back until sometime next week. I want her to review  
11 these documents.

12 CHAIRMAN PALLADINO: With regard to the Hartman  
13 investigation, I guess we will send off the letter. We approved  
14 a draft and I think you answered some of the questions that  
15 would help me with that draft.

16 The psychological profile test is gone and the other  
17 one was 90 days, from April 1.

18 MR. HAYES: After listening to the Commission, I'm  
19 optimistic with 90 days.

20 CHAIRMAN PALLADINO: I know I might get in trouble  
21 with General Counsel but I do think we have a real timing  
22 problem. If we are to take advantage of the presence of the  
23 Commission, we might be able to achieve the result that might  
24 otherwise be a long time in coming.

25 COMMISSIONER ASSELSTINE: It might never happen.

1 COMMISSIONER GILINSKY: That isn't showing much faith.

2 CHAIRMAN PALLADINO: At least there is an opportunity  
3 to address it in a reasonable time frame.

4 COMMISSIONER GILINSKY: You are not showing much  
5 faith in the President.

6 CHAIRMAN PALLADINO: Any other matters that should  
7 come before us this afternoon?

8 MR. DeYOUNG: Not from this side.

9 CHAIRMAN PALLADINO: I think we have other items,  
10 OPE/OGC, that probably would be in another meeting.

11 COMMISSIONER GILINSKY: Did Ben's staffing problems  
12 get resolved fairly reasonably?

13 CHAIRMAN PALLADINO: Yes. He is going to request three  
14 people from EDO.

15 MR. HAYES: At a minimum to start with.

16 CHAIRMAN PALLADINO: I wrote down three from EDO,  
17 two from your office, two from Jim Cummings' office for a  
18 couple of weeks and you will have the whole thing wrapped  
19 up in 90 days.

20 MR. HAYES: I knew it.

21 CHAIRMAN PALLADINO: When you leave people with  
22 impressions!

23 MR. HAYES: Take advantage of the new kid.

24 CHAIRMAN PALLADINO: I know you can't predict  
25 where these things are going to go. We do want to make sure



1 we put our resources to good use, so you can see if you run into  
2 a blind alley, I assume you would use your judgement as to  
3 whether or not you want to proceed.

4 MR. HAYES: Certainly.

5 COMMISSIONER GILINSKY: At the same time, if you  
6 need more people, it is better to know about it earlier than  
7 later.

8 MR. HAYES: As with any investigation, it is a  
9 continual evaluation as to resources and where we should be  
10 going and the degree of documentation. I can assure you  
11 I will be involved in this one.

12 CHAIRMAN PALLADINO: We are giving attention to your  
13 basic need problem.

14 MR. HAYES: Thank you.

15 CHAIRMAN PALLADINO: Anything more?

16 (No response.)

17 CHAIRMAN PALLADINO: Thank you very much. We will  
18 stand adjourned.

19 (Whereupon, the Commission adjourned at 5:02 p.m.)  
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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the  
NUCLEAR REGULATORY COMMISSION

in the matter of:

BRIEFING ON INVESTIGATION AND POSSIBLE ENFORCEMENT ACTIONS  
CLOSED MEETING, EXEMPTION 5

Date of Proceeding: Wednesday, March 30, 1983

Docket Number: --

Place of Proceeding: 1717 H Street, N.W.

Washington, D.C.

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

Marilynn M. Nations

Official Reporter (Typed)

*Marilynn M. Nations*

Official Reporter (Signature)