

22
ORIGINAL

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

Docket No.

DISCUSSION OF STEPS TO DECISION IN TMI-1
RESTART PROCEEDING

CLOSED PORTION EXEMPTION 10

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TAYLOE ASSOCIATES

Court Reporters
1625 I Street, N.W. Suite 1004
Washington, D.C. 20006
(202) 293-3950

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3
4 DISCUSSION OF STEPS TO DECISION IN TMI-1
5 RESTART PROCEEDING

6 CLOSED PORTION -- EXEMPTION 10

7 Nuclear Regulatory Commission
8 Room 1130
9 1717 H Street, N. W.
10 Washington, D. C.

11 Friday, April 15, 1983

12 The Commission convened in closed session at
13 2:45 p.m.

14 COMMISSIONERS PRESENT: .

15 NUNZIO PALLADINO, Chairman of the Commission
16 VICTOR GILINSKY, Commissioner
17 JOHN AHEARNE, Commissioner
18 THOMAS ROBERTS, Commissioner
19 JAMES ASSELSTINE, Commissioner

20 STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

21 S. CHILK
22 H. PLAINE
23 B. HAYES
24 R. LEVI
25 J. MONTGOMERY
M. MALSCH
A. KENNEKE

AUDIENCE SPEAKERS:

J. CUMMINGS

* * *

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P R O C E E D I N G S

1
2 CHAIRMAN PALLADINO: We will continue with the
3 closed portion of the meeting and Mr. Herzel Plaine will
4 continue with his presentation.

5 MR. PLAINE: In this closed session, members of
6 the Commission, we will have OI give a discussion of the
7 progress in the matters that it is dealing with. When that
8 is over with, we will have to excuse OI so that we can go
9 into a further closed session and ---

10 COMMISSIONER GILINSKY: You mean i.ner inner.

11 (Laughter.)

12 MR. PLAINE: --- so that we can continue, Mr.
13 Hayes, with the TMI restart discussion. So if you won't
14 mind going ahead with whatever you have or any of your
15 colleagues have.

16 CHAIRMAN PALLADINO: I gather you are going to
17 cover not only the status of your ongoing investigation,
18 but the existence of pending nature of any other
19 investigations.

20 MR. HAYES: Yes. Presently we have ~~three~~
21 ~~investigative matters that are a part of the TMI et al, if~~
22 ~~you will~~

23 The ~~first~~, of course, is the ~~Parks Gischel~~
24 ~~matter~~ which we are presently pursuing. The OI staff
25 members have been at TMI since Tuesday of this week.

1 I presented to the Commission a work plan asking
2 for 45 days to complete that work plan. We are in hopes of
3 resolving the first three items on that work plan dealing
4 with the technical area procedures and what-have-you as
5 quickly as possible.

6 Right now with only 72 hours into the
7 investigation I cannot really give you a firm commitment at
8 this point.

9 CHAIRMAN PALLADINO: Both of these, you say Parks
10 Gischel, both of them relate to Unit 2 specifically?

11 MR. HAYES: Yes, we are looking at both of those
12 affidavits as one investigation.

13 COMMISSIONER GILINSKY: Who is Gischel?

14 COMMISSIONER AHEARNE: They relate to Unit 2, but
15 the questions of the management flow over to Unit 1.

16 MR. HAYES: That is correct.

17 CHAIRMAN PALLADINO: Possibly.

18 COMMISSIONER AHEARNE: The allegations, because
19 the allegations certainly. Now whether they actually do is
20 something that Ben will have to find out.

21 COMMISSIONER ASSELSTINE: That is right.

22 CHAIRMAN PALLADINO: I don't recall Unit 1,
23 except from the general top management level.

24 MR. HAYES: That is correct, the top.

25 The other investigative matter, which is quickly

1 drawing to a conclusion, is our investigation concerning an
2 allegation made by Mr. ~~Boring~~. That happened last year
3 sometime. We are right now reviewing the investigative
4 product. Bill Ward is reviewing that and we hope to
5 conclude that investigation within the next two or three
6 weeks.

7 ~~Our observation is at this time that the~~
8 ~~allegations are not focused, and in my view probably will~~
9 ~~not have any impact on the~~

10 CHAIRMAN PALLADINO: Now the Boring, is that the
11 ~~welder qualification?~~

12 MR. HAYES: Yes.

13 COMMISSIONER GILINSKY: Is this the one that has
14 something to do with Senator Hatch?

15 MR. HAYES: Yes. Senator Hatch wrote a letter to
16 the Chairman and asked that an investigation be instituted.

17 The ~~third investigation we completed~~. It dealt
18 with the ~~psychological cheating tests~~ ~~Quinn~~, if you
19 remember. We issued an investigative report I believe it
20 was last month sometime.

21 Mr. ~~Cummings has given me comments~~ on that
22 product and I have directed my staff to review his
23 comments to prepare documentation to me to determine
24 whether in our view his comments are appropriate and
25 correct ~~and it may require us to reopen~~, if we feel that

1 Mr. Cummings' comments are valid, reopen and do additional
2 inquiries in the psychological testing area.

3 ~~hope to have within the next five to seven~~
4 ~~work days~~ that staff work done. At that time, I will sit
5 down ---

6 CHAIRMAN PALLADINO: When you say you will have
7 the staff work done, you mean the reopened investigation or
8 whether or not to reopen it?

9 MR. HAYES: ~~The decision or at least my~~
10 ~~recommendation as to what we should do from the standpoint~~
11 ~~of OI.~~ At that point I intend to meet with Jim Cummings and
12 discuss it. We have gotten together and we have hopes of
13 resolving it among ourselves.

14 COMMISSIONER GILINSKY: Let's see, with all due
15 respect to him, why is he involved?

16 MR. HAYES: He has oversight responsibility or
17 did have oversight responsibility.

18 COMMISSIONER AHEARNE: When we set up OI one of
19 the things that we did at the same time was to task OIA to
20 review their operation on a semi-annual basis.

21 CHAIRMAN PALLADINO: We gave them two charges.
22 One, we said would they until the end of fiscal '82 look at
23 each investigation. Since there were none before the end of
24 fiscal '82, we felt that they ought to wait until they get
25 a few under their belt and they have been giving comments

1 on that.

2 The second thing we said was I believe it was
3 every six months they were to make an audit of their
4 operation, and I don't know whether we had a time frame on
5 that or not.

6 COMMISSIONER GILINSKY: This is basically their
7 auditing role?

8 COMMISSIONER AHEARNE: Yes, right.

9 CHAIRMAN PALLADINO: They have also been looking
10 at these specific cases in the spirit of our request that
11 they look at the first six months of the investigations.

12 MR. HAYES: So every product that we have
13 generated up until a few weeks ago has gone to Mr.
14 Cummings' shop for his review.

15 That, gentlemen, concludes the three
16 investigative matters that we are currently looking at.

17 CHAIRMAN PALLADINO: Now on the **Park**
18 **investigation**, as I recall, there were three parts to it at
19 least, and I would be inclined to call it **four part**.

20 **One involved technical issue**. **One involve**
21 **harassment and intimidation**, as I recall. **One of the**
22 **involved possible collusion** by the NRC and then there was
23 one that was inferred, but I think should be identified,
24 the **mystery man issue**.

25 I wasn't sure what you said about each one of

1 them. [REDACTED] you are doing first.

2 MR. HAYES: Yes.

3 CHAIRMAN PALLADINO: And y [REDACTED]

4 [REDACTED]

5 MR. HAYES: Hopefully. That is what we are
6 striving for.

7 CHAIRMAN PALLADINO: Okay. Then there was the
8 intimidation and harassment.

9 MR. HAYES: That would be the next priority that
10 we would look into. At the same time, Jim Cummings' staff,
11 they have their role in the collusion aspect and, as a
12 matter of fact, we had a briefing today jointly from the OI
13 staff people at TMI this morning at 9 o'clock for about an
14 hour to keep Mr. Cummings well read in on what we are
15 doing.

16 CHAIRMAN PALLADINO: I wrote down 45 days and i
17 wasn't sure what that meant.

18 MR. HAYES: Well, 45 days, Mr. Chairman, as I
19 remember, was for us to resolve is possible the technical
20 issues dealing with procedures, whether or not they were
21 violated, who did and who didn't and who authorized, that
22 sort of thing.

23 CHAIRMAN PALLADINO: But I was wondering, do you
24 expect the intimidation and harassment also to be in that
25 category?

1 MR. HAYES: No, sir.

2 CHAIRMAN PALLADINO: When might those come about?
3 I am not trying to get a commitment out of you. I am trying
4 to get a feel for ---

5 MR. HAYES: Yes, you are.

6 (Laughter.)

7 MR. HAYES: I would think if we can meet the 45
8 day schedule, then I would think it shouldn't take more
9 than 45 days to hopefully resolve the other aspects.

10 CHAIRMAN PALLADINO: An additional 45 days.

11 MR. HAYES: Well, we may during this 45 days pick
12 up testimony that would shorten that, but our thrust is to
13 try to resolve the procedures and what-have-you. So it is
14 difficult. We might be able to do both in 45 days, but at
15 the moment I can't say.

16 CHAIRMAN PALLADINO: And the collusion ---

17 MR. HAYES: Well, the collusion I would have to
18 turn to my colleague back here, Mr. Cummings.

19 MR. CUMMINGS: I think what we are trying to do
20 is to let the OI investigation go forward and get
21 developed. Then when it is developed we are going to try to
22 reach a point where it makes sense for us to start our part
23 of it, so to speak, in the collusion aspects without
24 interviewing people one right after another, that now you
25 talk to him and now to me. We are trying to phase it in and

1 I hope that once we start on it, which will maybe be next
2 week or the week after, I don't expect that it is going to
3 take us more than [REDACTED]

4 MR. HAYES: I would think that our technical
5 aspect and his collusion aspect would probably be completed
6 on or about the same time frame hopefully.

7 CHAIRMAN PALLADINO: [REDACTED]

8 [REDACTED]

9 MR. HAYES: Mr. Chairman, I haven't the faintest
10 idea on that yet.

11 CHAIRMAN PALLADINO: It will probably be longer.

12 MR. HAYES: I would think so since it has been
13 lingering for many years. Whether or not we will ever
14 resolve that I question.

15 I might add that at TMI now there are three
16 investigations ongoing, ours, the Department of Labor and
17 their own internal Bechtel investigation. So the people
18 there, the employees, the affected people are being queried
19 numerous times by different governmental agencies as well
20 as their in-house investigation.

21 COMMISSIONER GILINSKY: Who is handling the
22 Hartman business?

23 MR. HAYES: Well, from what I understand, the
24 United States Attorney in Harrisburg. I have no open
25 investigation in OI.

1 CHAIRMAN PALLADINO: We finally got agreement on
2 the letter I believe and I signed it.

3 COMMISSIONER AHEARNE: After a fashion.

4 CHAIRMAN PALLADINO: After some ---

5 COMMISSIONER GILINSKY: You mean we haven't sent
6 a letter out yet?

7 CHAIRMAN PALLADINO: We sent it out only a few
8 days ago. Monday.

9 COMMISSIONER GILINSKY: And what did the letter
10 say? I thought I had approved one a long time ago.

11 COMMISSIONER ASSELSTINE: It was revised a couple
12 of times.

13 CHAIRMAN PALLADINO: I think it was essentially
14 your letter except it had some additional remarks.

15 COMMISSIONER ROBERTS: Specifically that I didn't
16 agree to the sending of the letter.

17 COMMISSIONER GILINSKY: Oh, I remember that.

18 (Laughter.)

19 CHAIRMAN PALLADINO: All right. Any other
20 questions for Ben Hayes on the allegations?

21 (No response.)

22 CHAIRMAN PALLADINO: Have any new ones come in
23 that you are aware of?

24 COMMISSIONER GILINSKY: Let me just ask here, we
25 are just going to wait for an answer from the Attorney

1 General?

2 CHAIRMAN PALLADINO: We asked for an answer, if I
3 recall correctly ---

4 COMMISSIONER ASSELSTINE: By May 15th, wasn't it?

5 CHAIRMAN PALLADINO: May 15th. But I don't know
6 if that is going to resolve the issue. Now the question is
7 if they say well, we are in no position to do anything by
8 that time, if they say (a) you can go ahead and make your
9 own investigation, well then we have got to see what we
10 want to do on that.

11 COMMISSIONER GILINSKY: Do we remember who it was
12 who told us to stop?

13 Jim, you were in conversation with someone
14 there?

15 MR. CUMMINGS: There was a meeting that was held
16 in Larry Libby's office.

17 COMMISSIONER GILINSKY: Who asked us not to
18 pursue the investigation?

19 MR. CUMMINGS: The Justice Department
20 specifically.

21 COMMISSIONER GILINSKY: I know, but who?

22 MR. CUMMINGS: I believe it was Larry Libby at
23 that meeting. It was a joint meeting with the general
24 staff.

25 CHAIRMAN PALLADINO: What time frame are you

1 talking about?

2 MR. CUMMINGS: This would have been May of 1980.

3 COMMISSIONER GILINSKY: Nothing in writing?

4 MR. CUMMINGS: We did not get it in writing.

5 COMMISSIONER GILINSKY: Is he still there?

6 MR. CUMMINGS: Yes, he is.

7 COMMISSIONER GILINSKY: Why don't we give him a
8 call and just say we think we need to pursue this. Of
9 course, we have just written the Attorney General.

10 COMMISSIONER AHEARNE: We have got a letter out
11 to the Attorney General.

12 COMMISSIONER GILINSKY: I guess we should have
13 thought of this before.

14 (Laughter)

15 MR. CUMMINGS: We have been calling them.

16 MR. PLAINE: If the Commission decides that they
17 want your group to make an investigation absent the Grand
18 Jury bringing anything in, how much time or staff would you
19 need for that? Do you have any idea at this point?

20 MR. HAYES: Some members of my existing staff
21 were originally on the first investigation. Now I do not
22 know to what extent they were proceeding. I would have to
23 rely upon them. I just don't know. I would think that it
24 would not be a matter that would be readily determined
25 because we would probably have to review all the

1 transcripts out of New York and a lot of other things.

2 COMMISSIONER GILINSKY: I would suggest that we
3 gear up at this point and not interview anybody, which is
4 really what Justice's request must have been. I mean it
5 wasn't that we not think about it. It was that we not get
6 involved in something by interviewing people or whatever.
7 But I think it is inevitable that we are going to want to
8 look into it and I think we need to do the homework that
9 will allow us to do it when we have reached some agreement
10 with Justice, because to be in the position then of having
11 to start from scratch ---

12 COMMISSIONER AHEARNE: You are right, no matter
13 which way they come out.

14 COMMISSIONER ASSELSTINE: That is right.

15 MR. HAYES: I tend to agree with you, and what I
16 have done in that regard is I have instructed my Director
17 in Region I to secure all investigative material that was
18 previously obtained during the first investigation and
19 secrete that away, if you will, in a file cabinet. We have
20 also put him on notice about a month ago when I met before
21 the Commission and there was a likelihood that I may be
22 directed to take a look at that. He started thinking about
23 the amount of resources necessary and what-have-you.

24 Up to that extent we had done that planning and
25 we are in essence on standby, if you will.

1 COMMISSIONER GILINSKY: But there are some other
2 documents that have just turned up. I think Hartman's
3 deposition ---

4 MR. HAYES: I have that.

5 CHAIRMAN PALLADINO: Now this leak rate test
6 question related to Unit 2, did it not?

7 MR. HAYES: That is my understanding.

8 CHAIRMAN PALLADINO: It doesn't necessarily
9 impact on the Unit 1 decision unless we find some trail
10 either to a person that is now working on Unit 1 or to the
11 top management.

12 COMMISSIONER GILINSKY: Well, yes, except in the
13 sense, and I am just speculating here, if the company did
14 not pursue it in the way that they should have. Then that
15 reflects on the way they ran things.

16 CHAIRMAN PALLADINO: But I think we should
17 separate as much as possible those things that directly
18 impact on Unit 1 and those that impact on Unit 2,
19 recognizing where there might be connections.

20 COMMISSIONER GILINSKY: But the accident was a
21 big test for the mangement there. Now you can come out
22 differently. Well, let's take the information flow issue,
23 just to take something at random.

24 (Laughter.)

25 COMMISSIONER GILINSKY: Let's suppose you had

1 decided that they lied. It seems to me that is relevant
2 to ---

3 CHAIRMAN PALLADINO: I agree. I said I am trying
4 to separate ---

5 COMMISSIONER GILINSKY: Otherwise, that is
6 something else.

7 CHAIRMAN PALLADINO: One of the questions I
8 raised with OPE in a memo was, look, please look at the
9 management and let's at least understand how different they
10 are from what they were in those days so that we can better
11 assess the possible connections of those kind.

12 What I said is yes, there might be a connection
13 to Unit 1. If we find the guy that did the falsification or
14 the persons that did the falsification were working on Unit
15 1, then that is an important issue, or if there is a trail
16 that shows that it involves top level management
17 competence.

18 COMMISSIONER GILINSKY: Well, but there is also
19 this sort of question. It depends on what their position is
20 on these things. If you conclude that there had been
21 serious wrongdoing in one or another of these areas and the
22 present management doesn't agree with that, then I at least
23 have difficulty with approving them.

24 CHAIRMAN PALLADINO: I said if there is a ---

25 COMMISSIONER GILINSKY: I know, but that is the

1 sort of connection we are talking about. After all, the
2 plant is a different plant. We are talking about the
3 leaking in Unit 1 or the PORV or something like that.

4 CHAIRMAN PALLADINO: If there was wrongdoing,
5 then there is the wrongdoing. I am just trying to keep them
6 separate so we don't mix them up unnecessarily but
7 recognize where the connections are.

8 COMMISSIONER GILINSKY: I mean if there is no
9 wrongdoing there is nothing to talk about. But if there is
10 wrongdoing and the top people now say, yes, that is right,
11 and those guys are gone and it has been dealt with, then
12 okay that is one kind of a situation.

13 Now let's say the operator cheating business, I
14 must say it doesn't make a very good impression on me when
15 the top guys are kind of sliding around about whether there
16 was cheating or not. Now if he says yes, there was cheating
17 and it was terrible and the guy is gone, that is different
18 and the issue is over.

19 CHAIRMAN PALLADINO: I agree, but I am saying
20 that some of those are directly involved with Unit 1 and
21 some of them are not directly involved in Unit 1, and this
22 is one that is not directly involved in Unit 1. But I admit
23 that there are at least two chains in which there could be
24 a connections. I wasn't going to say any more than that in
25 this part of the meeting.

1 Any other questions?

2 (No response.)

3 MR. PLAINE: If there are none, thank you, Ben.
4 we appreciate your help.

5 CHAIRMAN PALLADINO: Thank you, Ben.

6 MR. PLAINE: At this juncture, Mr. Chairman, we
7 will go into the closed, closed meeting.

8 (Laughter.)

9 CHAIRMAN PALLADINO: Is Ben the only one that has
10 to leave?

11 MR. PLAINE: No. I think a couple of people in OI
12 have to also.

13 MR. HAYES: If I have to leave, my staff is
14 going, too.

15 (Laughter.)

16 COMMISSIONER GILINSKY: I want ^{we} to record to show
17 that Roxanne is leaving voluntarily.

18 (Laughter.)

19 (At this point in the proceedings Mr. Hayes and
20 his staff together with others left the room.)

21 (Brief pause.)

22 MR. PLAINE: Mr. Chairman, did you want to make
23 an opening statement?

24 CHAIRMAN PALLADINO: We have received your
25 document. I think what I have is called advance. So I am

1 not sure if I have the right document.

2 This is a document in which you address several
3 options we may have to treat the immediate effectiveness
4 action of the Commission, and I didn't know whether you were
5 going to highlight the options or whether you just want us
6 to ---

7 MR. PLAINE: I thought I would start with the
8 options on an assumption that there is general familiarity
9 with the background facts, some of which you got today and
10 many of which you have known for some time.

11 I must say that one of our options is slightly
12 flawed either because of writing or because of certain
13 facts. I am talking about option 2 and let me point out
14 what that flaw is.

15 No.1, on the GPU versus B&W documents, the
16 additional documents, we learned today that there are far
17 more than were supposed to be in existence. The description
18 we got was 70 feet of documents which translates into about
19 300,000 pages.

20 COMMISSIONER GILINSKY: 300,000 pages?

21 MR. PLAINE: 300,000 pages. So that translates
22 into something which I am certain ---

23 COMMISSIONER GILINSKY: I had earlier calculated
24 that the staff task force read at the rate of 10 pages an
25 hour.

1 (Laughter.)

2 MR. PLAINE: Even if the read 500 an hour they
3 would have a tough time getting through that.

4 (Laughter.)

5 MR. PLAINE: I understand you have assigned them
6 a date early in May, the first week in May.

7 CHAIRMAN PALLADINO: Yes. I have gotten feedback
8 that that was an unrealistic request.

9 MR. PLAINE: An unrealistic date, right.

10 If you also have in mind putting them in the
11 Document Room and giving the parties a chance to comment, I
12 can't imagine anything less than 60 days or longer. It
13 depends on your concept of how people get their work done.
14 But in any event, that would make the concept ---

15 COMMISSIONER AHEARNE: Herzel, one of my
16 colleagues has pointed out that you can really do that much
17 more rapidly by selective reading.

18 MR. PLAINE: That is a possibility if you know
19 what you are selecting.

20 COMMISSIONER GILINSKY: That is my approach.

21 MR. PLAINE: I have not seen any. So I don't know
22 whether they are properly titled or whether the title
23 indicates what is in them. It is hard to tell that. So this
24 is all speculation.

25 But in any event, what I was going to suggest

1 just by way of quick reform is on Option 2 delay a vote
2 pending obtaining additional information on progress by
3 approximately mid-May and then make a decision to go ahead
4 if there is no probability of negative or significant
5 information emerging.

6 That makes it an option which otherwise is not
7 the case if we had to wait on getting completion of some of
8 these other items that are listed there.

9 So that the options would boil down to three.
10 The first, and this is at the foot of page 5, to vote on
11 the present draft order modified as necessary after
12 completion of Commission review of the OGC analysis of GPU
13 versus B&W transcripts without awaiting resolution of the
14 review of the additional GPU and B&W documents or the
15 outcome of the OI investigations, and one of them I
16 understand from Ben is almost complete, but still if any of
17 them are not available and complete.

18 Now under this option a possible vote on the
19 partial decision might be taken in early May. Of the risk
20 in that option is that things could turn up that would make
21 it embarrassing or awkward or however you describe it.

22 COMMISSIONER GILINSKY: I must say you are
23 remarkably frank here in this memorandum.

24 (Laughter.)

25 COMMISSIONER ROBERTS: Refreshing isn't it.

1 COMMISSIONER ASSELSTINE: Yes.

2 CHAIRMAN PALLADINO: Let me ask a question of
3 Herzel.

4 COMMISSIONER AHEARNE: Oh, I don't know. I felt
5 sort of like coming to a meeting about my own funeral.

6 (Laughter.)

7 MR. PLAINE: Commissioner Ahearne, I want you to
8 know that I worried about that.

9 COMMISSIONER AHEARNE: I am just teasing you,
10 Herzel.

11 MR. PLAINE: I know, but I was thinking last
12 night that there ought to be a still further option which
13 says the unanimous vote by your colleagues asking the
14 President to make you the fifth member.

15 (Laughter.)

16 COMMISSIONER AHEARNE: You excluded that one in
17 the low probability.

18 (Laughter.)

19 MR. PLAINE: I didn't exclude it, except I
20 thought of it too late.

21 (Laughter.)

22 CHAIRMAN PALLADINO: You mean that he stay on.

23 MR. PLAINE: Yes.

24 (Laughter.)

25 MR. PLAINE: Now that is No. 1. I might ask when

1 I am finished just outlining the three that possibly OPE
2 has some views that they would like to express on these.

3 CHAIRMAN PALLADINO: On Option one?

4 MR. PLAINE: On option particularly perhaps.

5 COMMISSIONER GILINSKY: Aren't these basically
6 listed in order of time?

7 MR. PLAINE: They are basically aimed at time
8 sequence.

9 COMMISSIONER GILINSKY: On the other hand, you
10 have potential embarrassment, high, medium and low.

11 MR. PLAINE: That is right. That is about what it
12 is.

13 (Laughter.)

14 COMMISSIONER GILINSKY: Take your pick. There is
15 another way of doing it.

16 (Laughter.)

17 MR. PLAINE: The easy one is No. 4. Maybe you
18 have got No. 4 better than I have. I was thinking of John
19 Ahearne settling No. 4 with the help of his colleagues and
20 the President.

21 I think No. 3 is obvious.

22 Based on as we have kind of rewritten No. 2,
23 what we were simply saying is take a look around the middle
24 of May and see how far some of these blocking items have
25 progressed and whether or not you still think there is too

1 great a risk to go ahead and the necessity then to wait
2 until most if not all of these things are completed.

3 In fact, if you went to the third, of course,
4 under the timing there it is possible that you wouldn't
5 have to deal with a partial effectiveness decision and you
6 might be dealing with a complete decision at that point.

7 So those in effect are the three timing options.

8 COMMISSIONER GILINSKY: Let's see, why do you say
9 partial effectiveness?

10 MR. PLAINE: Right now we are talking about a
11 partial effectiveness decision.

12 COMMISSIONER GILINSKY: But it is an
13 effectiveness decision for the Board ruling, isn't it?

14 CHAIRMAN PALLADINO: Yes, a partial decision.

15 COMMISSIONER ASSELSTINE: Well, you still have
16 the other issue that is now pending before the Appeal
17 Board.

18 MR. MONTGOMERY: One issue has been carved out to
19 the point, and that is the ---

20 COMMISSIONER GILINSKY: What is the schedule for
21 that?

22 MR. MONTGOMERY: For the Appeal Board to finish
23 that issue? Sometime in early May.

24 MR. LEVI: June 1st.

25 CHAIRMAN PALLADINO: June 1st, yes.

1 COMMISSIONER GILINSKY: Now if they come down
2 saying you have to have, what is it, high point vents or
3 whatever, that they want in there, is the company ready to
4 put those in on the schedule that they are talking about
5 for restart?

6 MR. MONTGOMERY: My last understanding was that
7 high pionts vents would go in regardless. I am not sure
8 that would be the necessary outcome if the Appeal Board
9 came down with such decision.

10 COMMISSIONER GILINSKY: What is the most
11 unfavorable outcome from the point of view of the company
12 of an Appeal Board decision?

13 MR. MONTGOMERY: Possibly that they would have to
14 do something to emergency feedwater systems, something
15 other than high point vents. I don't know. It is pretty
16 speculative to say what that outcome might be.

17 COMMISSIONER GILINSKY: Let's see, the chain of
18 reasoning is that since you don't have a safety grade PORV,
19 well, let's see, I guess I have lost this. You want to make
20 sure you can have natural circulation.

21 MR. MONTGOMERY: Right.

22 COMMISSIONER GILINSKY: You want to have natural
23 circulation.

24 MR. MONTGOMERY: There is some question about the
25 feasibility of natural circulation and there was some

1 earlier question, at least according to the original Board,
2 about feed and bleed, and part of the resolution on it will
3 be as to which is necessary and which of the Boards relies
4 on one or the other, but I wouldn't want to say at this
5 point what that might result in in terms of something
6 additional the company might have to do.

7 COMMISSIONER GILINSKY: Well, I guess what I am
8 asking is is there any outcome of a Board decision that
9 could lead to hardware requirements that would impose a
10 longer schedule than they are on now?

11 MR. MONTGOMERY: I think the answer has to be
12 yes, there could be. I wouldn't even know how to state a
13 probability on it though. It is possible.

14 CHAIRMAN PALLADINO: I only have John Ahearne
15 here for another ten minutes. Would you give me the
16 privilege of going through something I think we need to
17 address.

18 First fo all, we have the option of a partial
19 decision. We are ready for it. Nothing new has been
20 introduced into the record. There may be new information
21 introduced in the record, but none yet.

22 I would propose that we make out partial
23 decision. If for some reason we find we can't make it
24 because of something coming up, we will be no farther
25 behind than we would be otherwise.

1 As a matter of fact, that is the hard issue
2 which at the moment involves management competence. We have
3 been over and over it a great deal of time, and I think
4 that even if we wait for the OGC analysis, and I would
5 propose that we wait on the GPU versus B&W transcripts, we
6 still could do it in a time frame between now and sometime
7 before the end of May.

8 Whether or not we have to have these additional
9 documents reviewed is another question that could
10 jeopardize or put this action into greater risk, but I
11 don't see the need for us to wait for the additional
12 documents because I thought part of the plan was we are
13 going to have the staff look at it and we are going to give
14 the public a chance to comment.

15 The staff was looking at it from only two
16 standpoints. One, are there any new safety issues and, two,
17 the flow of information I believe on the day of the
18 accident. Those are the only two things that we asked them
19 to look at.

20 So I think we could go ahead with the first
21 option and then I have a 1(a) really. My 1(a) is a
22 combination of 1 and 2, that we go ahead and do the initial
23 decision. Then when we get the hardware decision, it may
24 turn out that there is a lot of work that has to be done
25 and we may concur that it has to be done or we may have no

1 decision, but if we are in a position to make a decision,
2 then we would make that as another step.

3 If it happens before June 30, fine. I would like
4 to try to see it happen before June 30. At least we will
5 have had the hard item taken up. Whereas if we start after
6 we get the hardware decision, we have a bigger population
7 of material than if we do it in two steps.

8 Now I learned that Sam had put together key
9 dates. It is a very rough chart and I am going to ask him
10 to hand it out. There are three charts. One that he would
11 say would apply if we go to option 1, one that he says
12 would apply if we go to option 2, and one that would apply
13 if we go to option 3.

14 I would like to take a minute to walk through
15 them one at a time. I am going to start under just above
16 the underlined Commission decision on partial immediate
17 effectiveness under Option 1. Above that we have asked OPE
18 for analysis of GPU management to see how different it is,
19 and there is a date that I think is about April 22, if I
20 recall correctly ---

21 MR. KENNEKE: The 29th.

22 CHAIRMAN PALLADINO: No, the one that is not
23 listed. That is the memo that I wrote asking could you look
24 into the GPU organization and see if it is much different
25 from what it was in the days of the accident mainly to

1 assess whether we have got a new management team and does
2 that improve things.

3 COMMISSIONER ASSELSTINE: You say that is April
4 22nd?

5 CHAIRMAN PALLADINO: I think the feedback I had
6 was April 22nd.

7 Now starting with the staff analysis of
8 additional GPU documents, that is not going to be done by
9 May 2nd, I am quite sure, but I maintain that is not
10 needed.

11 The leak rate I say is Unit 2 and does not
12 relate and it is not on the record as relating to Unit 1.

13 COMMISSIONER GILINSKY: I am ---

14 CHAIRMAN PALLADINO: Let me just finish my little
15 monologue. If, however, it turns out that they find there
16 is somebody working in Unit 1 that did this, well, we
17 either tell them to get rid of him or we may reverse our
18 decision. But I don't think we need to wait for that.

19 As a matter of fact, we were prepared to make
20 the partial decision without that in the first place.

21 COMMISSIONER GILINSKY: Well, let's see, if you
22 have just got a few minutes, rather than ---

23 CHAIRMAN PALLADINO: What I a getting at is the
24 key date and I think we could do our review on Option 1
25 before June 1st.

1 COMMISSIONER GILINSKY: Well, why don't you find
2 out if there is agreement to ---

3 CHAIRMAN PALLADINO: I would say what do we lose
4 if we try that, because if we can get these issues that we
5 spent a lot of time already working on under our belt, we
6 would have done one step.

7 Then I would propose when we get the hardware
8 decision that we see whether or not we can do anything on
9 the hardware decision in the remaining days. If we can't
10 reach it, then the Commission picks it up at whatever pace
11 it decides it has to.

12 There is always the question of whether the
13 partial decision stands, but it stands unless the
14 new Commission decides to change it.

15 COMMISSIONER GILINSKY: Well, I don't think we
16 ought to make any assumptions about who is going to be
17 here.

18 CHAIRMAN PALLADINO: John, you are going to leave
19 in two minutes.

20 COMMISSIONER AHEARNE: First, I think it is clear
21 that the final decision on restart is going to come after I
22 leave. So unless there is a majority of the four of you who
23 are willing to start the plant, then I recognize you will
24 need to have whoever the person is, unless it is someone
25 directly out of the staff who is already very

1 knowledgeable ---

2 (Laughter.)

3 COMMISSIONER AHEARNE: A knowledgeable person
4 would not be disqualified. I guess that probably ends up
5 being Bickwit.

6 (Laughter.)

7 COMMISSIONER AHEARNE: But putting that aside, I
8 think that the person is going to require time to just go
9 through the sheer volume of the material. So I think either
10 there is a majority of the four of you or else it is going
11 to go ---

12 CHAIRMAN PALLADINO: Let me ask you a question
13 though. On the partial decision which you were about to
14 participate in the first ---

15 COMMISSIONER AHEARNE: I am going to get to that.
16 All I am saying is that is the fundamental issue of the
17 plan up or down. This even presumes that the staff comes
18 out and there is agreement that it is a no significant
19 hazards on the steam generators. If it concludes a
20 significant hazard on the steam generator that is a hearing
21 process in itself.

22 As far as the transcripts of all the court
23 records goes and all this volume of material, I for myself
24 am quite willing to say that since there is really nothing
25 that I have seen either in Stello's or in the transcript

1 reviews that the General Counsel provided there is anything
2 new, that I would be willing to take the attitude and
3 recommend to the Commission that on these large volumes of
4 material to give an adequate time for people to look at it
5 and just say that if something significant comes up and the
6 decision has already been reached, then that decision
7 obviously can be readdressed. But I don't think it is
8 necessary to keep the two together.

9 As far as the partial initial decisions, the
10 first partial initial decision, I am still willing to go
11 ahead and vote on it and to vote favorably as I had before,
12 but now I would require an additional statement being put
13 in and that is that there have been allegations raised
14 which do go directly to the management capability of the
15 current management of the GPU system which speaks to the
16 management competence of the organization, and consequently
17 these investigations which you are going on may end up
18 affecting that partial initial decision. There are
19 underlying in these, for example, Gischel and Parks, and
20 they do address Arnold and consequently this senior
21 management of the corporation.

22 CHAIRMAN PALLADINO: But you would be willing to
23 address the partial decision?

24 COMMISSIONER AHEARNE: Yes, but this is an
25 additional statement that would have to be put in.

1 CHAIRMAN PALLADINO: Although I have got to remind
2 you that those are allegations and we have to treat them as
3 such.

4 COMMISSIONER AHEARNE: That is true.

5 CHAIRMAN PALLADINO: I would agree that if those
6 allegations turn out so that there is management
7 involvement ---

8 COMMISSIONER AHEARNE: I think that what the
9 Commission would have to do is to look at what is the plus
10 of going ahead with Option 1. I would be willing to go
11 along with it, but I would think it is better for Option 2
12 really.

13 CHAIRMAN PALLADINO: Well, I don't see what you
14 lose by doing Option 1 because we are going to debate and
15 we may have to redebate many of the things we have already
16 debated unless everybody is willing it and say here is how
17 I want to mark it up.

18 COMMISSIONER AHEARNE: I guess the other side is
19 what is the advantage?

20 CHAIRMAN PALLADINO: Well, we get that out of the
21 way.

22 COMMISSIONER AHEARNE: You don't get it out of the
23 way because of these other allegations and you do put
24 yourself in the position of how explaining why it was that
25 you felt comfortable with going ahead.

1 I am willing to do that. I have I think in my own
2 case a much more defensible position, namely, that I would
3 like to participate in as many of these decisions as
4 possible before I leave.

5 CHAIRMAN PALLADINO: But I have another problem. 7
6 Allegations may not just continue.

7 COMMISSIONER ROBERTS: Well, look at page 7 of the
8 OGC paper. Very succinctly, if the Commission delays
9 issuance of an order every time a new allegation arises,
10 the Commission conceivably would indefinitely defer. That
11 is the track we get on.

12 CHAIRMAN PALLADINO: I would like to see us
13 proceed with the partial decision with whatever caveats
14 people feel necessary. If we don't reach it, then we don't
15 reach it, but I think there is much to gain from it.

16 I would also say that I would not categorically
17 rule out, although I recognize the practical difficulties,
18 voting on the hardware items. Remember we are working on
19 immediate effectiveness. If that comes out and there is a
20 capability to get it done before you leave, fine, but I
21 think I would like to see us work on the partial decision.

22 (At this point in the proceedings, 3:30 p.m.,
23 Commissioner Ahearne left the meeting and did not return.)

24 CHAIRMAN PALLADINO: I gather you would be willing
25 to work on the partial decision.

1 COMMISSIONER GILINSKY: What do you mean work on
2 it?

3 CHAIRMAN PALLADINO: Well, reopen it.

4 COMMISSIONER GILINSKY: You want us to vote.

5 (Laughter.)

6 CHAIRMAN PALLADINO: No, I want to re-examine it.
7 I haven't looked at the partial decision. We had an order
8 out. I think you had given some of your comments out. Jim,
9 I think you are still working on your coments and there is
10 no need to rush.

11 I would say working on it means we all reread it.
12 I would like to see if there are any caveats or changes
13 that we want to make and pursue the completion of the
14 additional remarks and try to vote on it on the schedule
15 sometime in May. Well, meet on it first.

16 I think it is very worthwhile because if we still
17 have issues on management competence aside from those that
18 might arise out of the allegations, we ought to hash them,
19 and I think there were some very important ones that I
20 think we do want to discuss. For example, the people that
21 are working there now around which there are still
22 suspicion. I think if we can get that done, we would have
23 accomplished a major action.

24 I will agree that doesn't authorize restart.

25 COMMISSIONER ASSELSTINE: Well, I think you have

1 got three votes for Option 1. My own preference would be
2 Option 2. I think Option 2 still gives you ---

3 CHAIRMAN PALLADINO: Well, I don't give up on
4 Option 2. You see, I have a 1(a). I say then I go pick up
5 on June 1st and see what we can do on the hardware. If we
6 can't do it, we can't do it.

7 COMMISSIONER ASSELSTINE: I think Option 2 still
8 gives you a partial initial decision before John's term
9 expires.

10 CHAIRMAN PALLADINO: No, I don't think it does at
11 all. I think it gives us nothing, unless we are lucky
12 enough that the hardware issue goes real easy because the
13 hardware issue will come out and now we have got the whole
14 gamut to re-examine.

15 I am saying why don't we re-examine that
16 portion of the gamut for which we have a record now and see
17 how we come out on that.

18 Then on June 1st if we get the hardware decision,
19 we can continue. If we can do the hardware decision, fine,
20 and if we can't ---

21 COMMISSIONER ASSELSTINE: Yes, except that I
22 thought Option 2 still gave you that option as well. You
23 consider the hardware issue as soon as the Appeal Board
24 comes out. The only question is will you do it concurrently
25 with deciding what you are going to do about the other

1 issues, including management competence, or do you do them
2 serially as Option 1 would envision.

3 CHAIRMAN PALLADINO: I am taking the admonition
4 that Commission Gilinsky says which is why don't we prepare
5 to do the things we can do along the way.

6 (Laughter.)

7 CHAIRMAN PALLADINO: I don't disagree with
8 everything you say.

9 (Laughter.)

10 COMMISSIONER ASSELSTINE: The one disadvantage
11 that I see to Option 1 is that even if you put the kind of
12 disclaimer that John was talking about in the decision, if
13 you make a decision before you at least have some basis for
14 deciding how some of these allegations are going to turn
15 out that really do go to the management competence issue, I
16 think it is going to be possible to read the decision as
17 saying well, one, on the one hand we are satisfied with the
18 management competence ---

19 CHAIRMAN PALLADINO: We have got to make our
20 decision on the record and not on allegations. The only way
21 it will change the record is that if the allegation turns
22 out to have some point in fact, then the record is
23 reopened.

24 COMMISSIONER ASSELSTINE: Which is the whole
25 purpose that we have instituted the investigation.

1 CHAIRMAN PALLADINO: If the record is reopened, we
2 reopen our conclusion, too.

3 COMMISSIONER ASSELSTINE: All I am saying is that
4 you can put in all the disclaimers you want. I think there
5 still exists the potential for embarrassment of the
6 Commission.

7 CHAIRMAN PALLADINO: Aren't we going to face that
8 any way we are about to decide. There will be existing
9 allegations. I think we are honor bound to look at them to
10 make sure that they are or they are not matters of
11 substance. If they are matters of substance, we have to
12 reopen the record, re-examine them, and we say by golly,
13 that is important and therefore we change our decision.

14 COMMISSIONER GILINSKY: Aren't you crowding the
15 Appeal Board?

16 CHAIRMAN PALLADINO: The Appeal Board is not
17 involved.

18 COMMISSIONER ROBERTS: Well, they are dealing with
19 this issue.

20 CHAIRMAN PALLADINO: I am not crowding the Appeal
21 Board, except I would like to see them meet the June 1st
22 date.

23 COMMISSIONER GILINSKY: I mean it puts them in the
24 way, so to speak.

25 CHAIRMAN PALLADINO: Not really. I am trying to

1 get things done that we are prepared to do.

2 MR. PLAINE: What are they dealing with?

3 COMMISSIONER GILINSKY: Hardware.

4 COMMISSIONER ASSELSTINE: Hardware issues.

5 COMMISSIONER GILINSKY: That is the ultimate
6 decision and something the Commission ought to be taking
7 the heat on.

8 COMMISSIONER ASSELSTINE: Well, in any event, I
9 guess you and John and Tom agree at least in terms of
10 Option 1 of picking up the hardware issues.

11 COMMISSIONER ASSELSTINE: I wasn't clear what John
12 was saying. He was saying he was willing to do it. Was he
13 really if there is a majority here that he is willing to do
14 it or if the question is raised that he will vote to vote.

15 CHAIRMAN PALLADINO: I wasn't clear.

16 (Laughter)

17 CHAIRMAN PALLADINO: I really do think there ought
18 to be some expression aside from saying we will agree. We
19 ought to be closer on something. You are still free to make
20 whatever decision that you feel like making. It doesn't
21 mean that when we get there that you are forced to vote one
22 way or the other.

23 COMMISSIONER ASSELSTINE: Actually that is why I
24 was in favor of Option 2 rather than Option 3 because
25 Option 2 says you don't have to wait for everything to be

1 done. Let's at least take an initial look.

2 CHAIRMAN PALLADINO: Option 2 says we are going to
3 do it all in one fell swoop.

4 COMMISSIONER ASSELSTINE: No. That is Option 3.
5 Option 2 is let's take a look about the middle of May,
6 wasn't it ---

7 MR. PLAINE: That is right.

8 COMMISSIONER ASSELSTINE: --- and decide at that
9 point whether we know enough about how these investigations
10 are going and what kind of information they are turning up
11 so that we want to take the risk of going ahead with the
12 partial initial decision, and this says partial initial
13 decision June 10th.

14 Option 3 is the one that says wait until
15 absolutely everything is nailed down and then issue the
16 final decision.

17 COMMISSIONER GILINSKY: I mean as a practical
18 matter even on your schedule there would be a decision at
19 the beginning of June. So what difference does it make if
20 you are considering ---

21 CHAIRMAN PALLADINO: I want to get started. I want
22 to see, based on the old record, are there any items that
23 we want to readdress, that is why I called it 1(a), rather
24 than wait until mid-May or the end of May to say well, now,
25 let's go back and see Husted and let's go back and see VV.

1 I want to see if we can't work on those issues now.

2 COMMISSIONER GILINSKY: There is the Supreme
3 Court, too.

4 CHAIRMAN PALLADINO: What is that?

5 COMMISSIONER GILINSKY: I just noticed the Supreme
6 Court decision.

7 CHAIRMAN PALLADINO: Well, I know. Our immediate
8 effectiveness would have to be conditioned on whatever comes
9 out. So that is why I called it 1(a). The recommendation I
10 had from my staff said to go No. 2, and I said I would like
11 to start working on those issues that we could work on now,
12 and that is consistent with what you were saying.

13 COMMISSIONER GILINSKY: Well, I think it depends
14 on precisely what John was saying.

15 CHAIRMAN PALLADINO: I am trying to ask you also.
16 You are no less important than any other member of the
17 Commission.

18 COMMISSIONER GILINSKY: Well, that is nice to
19 hear.

20 (Laughter.)

21 CHAIRMAN PALLADINO: No, sincerely.

22 COMMISSIONER GILINSKY: You have had my views for
23 several months.

24 CHAIRMAN PALLADINO: Well, let me say what I would
25 intend if you said you would go along with the modified

1 Option 2. Certainly I am going to go reread all the stuff
2 we had that pertained to our decision and then see if there
3 are issues we ought to address and suggest them and
4 suggesting meetings to address those with a target that in
5 parallel with it they are going on with these
6 investigations and hope that they finish. Otherwise, I
7 don't know when we are going to ever finish.

8 COMMISSIONER ASSELSTINE: I guess I don't have an
9 objection to doing that. My concern may come when we have
10 completed that work and at that point deciding whether to
11 go ahead and issue the partial initial decision touching
12 only upon what we know at that point in time or whether
13 given the management competence issues whether in my own
14 view I would prefer to wait until we know more about some
15 of those investigations.

16 But as far as goina ahead now and working on the
17 issues that we already have before us, I don't have
18 any objection to that.

19 CHAIRMAN PALLADINO: I guess underlying my
20 approach is an expectation that we are going to continue to
21 get allegations and that we are always going to be faced
22 with stepping up and saying all right, now we think we have
23 reached the point of diminishing returns and we are ready
24 to make a decision. Each person has to decide that for
25 himself.

1 COMMISSIONER GILINSKY: Well, I will tell you what
2 I have to do. I have to file for an extension of my income
3 taxes.

4 (Laughter.)

5 COMMISSIONER ASSELSTINE: That is most important.

6 COMMISSIONER ROBERTS: That certainly is.

7 (Laughter.)

8 CHAIRMAN PALLADINO: At least you are willing to
9 approach Option 2 with a possibility of treating current
10 and new information on the way.

11 COMMISSIONER ASSELSTINE: Yes.

12 CHAIRMAN PALLADINO: Okay. Maybe that is as much
13 as we can hope to get done today, and you had better go get
14 your extension.

15 (Laughter.)

16 Thank you, and we will stand adjourned.

17 (Whereupon, at 3:45 p.m., the meeting adjourned.)

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CERTIFICATE OF PROCEEDINGS

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

In the matter of: TMI-1 -- Exemption No. 10

Date of Proceeding: April 15, 1983

Place of Proceeding: Washington, D.C.

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

Mary C. Simons

Official Reporter - Typed

Mary C. Simons
Official Reporter - Signature