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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DISCUSSION OF TMI-1 RESTART
CLOSED MEETING - EXEMPTION NO. 10

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

Tuesday, June 21, 1983

The Commission convened in closed session,
pursuant to notice, at 11:15 a m.

COMMISSIONERS PRESENT:

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

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

- S. CHILK
- H. PLAINE
- J. MONTGOMERY
- J. ZERBE

AUDIENCE SPEAKERS:

- J. FOUCHARD
- M. MALSCH

- - -

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P R O C E E D I N G S

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CHAIRMAN PALLADINO: This is a closed meeting to continue our deliberations on the TMI-1 restart, and it is closed on Exemption No. 10 which relates to judicial activities. I do not know if anyone has any comment on that, but that is the basis on which we will go.

During the break I wrote down four areas in which I believe the Commission has to make some decisions.

First, with regard to the GPU v. B&W trial record based on the exhibits that were prepared but not introduced into the trial. I think we have to agree on what we want to get out of it, the purpose; what guidance we want to give to the staff on the approach and whether or not we approve having it being done by NRR and, must this be done before restart. That is all under the area of GPU v. B&W trial record.

The second area is management integrity. As I understand the Board proposal, it is looking to the new information to identify if any changes ought to be made in the Board decision. New sources of information are the investigation --

COMMISSIONER GILINSKY: What Board?

COMMISSIONER ASSELSTINE: The Appeal Board.

1 CHAIRMAN PALLADINO: It was Appeal Board
2 licensing.

3 COMMISSIONER AHEARNE: Now, you said the Board
4 proposal --

5 CHAIRMAN PALLADINO: I am sorry, the Licensing
6 Board decision. Is there an Appeal Board decision, also?

7 COMMISSIONER ASSELSTINE: There is an Appeal
8 Board order that has scheduled oral argument for next
9 months on whether to re-open the record on management
10 competence and integrity based upon a number of items of
11 information.

12 CHAIRMAN PALLADINO: I didn't address that.

13 COMMISSIONER ASSELSTINE: Okay.

14 CHAIRMAN PALLADINO: I was thinking of the
15 Licensing Board decision.

16 COMMISSIONER GILINSKY: The original Licensing
17 Board decision?

18 CHAIRMAN PALLADINO: Yes.

19 COMMISSIONER GILINSKY: What is that? Could you
20 just read that again?

21 CHAIRMAN PALLADINO: Well, all I have is notes
22 here. Management integrity. I was going on the basis that
23 we do have a Licensing Board decision.

24 COMMISSIONER GILINSKY: Right.

25 CHAIRMAN PALLADINO: New information is being

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developed.

COMMISSIONER GILINSKY: Right.

CHAIRMAN PALLADINO: New information is coming from investigations, possibly from the GPU v. B&W trial record review, and we also are getting new information from the licensee in terms of personnel changes.

My question is, what do we want to wait for before we start, or before we make an immediate effectiveness decision involving management integrity?

Now, it is complicated by the fact that the Appeal Board --

COMMISSIONER ASSELSTINE: Yes.

CHAIRMAN PALLADINO: -- is considering re-opening the issue.

COMMISSIONER GILINSKY: Complicated it putting it mildly.

CHAIRMAN PALLADINO: Well, okay. Sometimes I put it mildly.

The fourth question is, do we want to make a partial initial decision.

COMMISSIONER GILINSKY: What was the third question?

CHAIRMAN PALLADINO: I am sorry. The third one: Should the staff review the GPU proposal, make comments on it, consider it in its revalidation, or make other

1 recommendations to the Commission.

2 COMMISSIONER GILINSKY: Have we gotten any
3 requests for appearances before the Commission on the
4 part of GPU or anyone else? Are they satisfied with their
5 letter proposal?

6 MR. LEVI: Not formally, no.

7 MR. PLAINE: Not formally. I don't think anyone
8 else did.

9 COMMISSIONER GILINSKY: Joe has got his mouth
10 open up there.

11 MR. FOUCHARD: I thought Mr. Amodt talked to
12 you during --

13 MR. PLAINE: Was that Mr. Amodt who was talking
14 to me? He didn't introduce himself. So I didn't know who
15 he was.

16 CHAIRMAN PALLADINO: What request did he make?

17 MR. PLAINE: He made the suggestion that it
18 would be nice to have an oral argument.

19 COMMISSIONER GILINSKY: With him
20 participating, I suppose.

21 CHAIRMAN PALLADINO: Well, I didn't write that
22 down, but that is another question we may have to face.

23 My fourth question is, do we want to make a
24 partial initial decision before any of this information
25 comes in, or anyone along the line. What I had asked the

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OPE and OGC to do -- I guess primarily OPE -- was to look at what the schedule would be like if we were to wait for everything.

COMMISSIONER ASSELSTINE: Yes.

CHAIRMAN PALLADINO: That is what I gave you a first cut at yesterday, and we have a revised cut here today. There are some places where it says "To be determined" and OPE made a guess at what the date might be.

COMMISSIONER ASSELSTINE: Yes.

CHAIRMAN PALLADINO: So, when we get to that question or whenever you feel you would like to look at it, we can review the schedule.

I did put another category, "Other," and the only thing I put under there was that the staff wanted to review HRH and BEDA documents before they make a decision.

So, I would propose -- I am open to any other reasonable suggestions. I would propose that we start with discussion of the GPU v. B&W trial record and see what the thinking of the staff is with regard to that.

COMMISSIONER GILINSKY: Of the staff?

CHAIRMAN PALLADINO: The Commission.

COMMISSIONER AHEARNE: I would guess that critical is going to be whether or not the Commission is

1 willing to accept Dirck's proposal to separate.

2 COMMISSIONER ASSELSTINE: Yes.

3 COMMISSIONER AHEARNE: As far as the Commission
4 accepts Dircks's proposal to do that separation, then you
5 approach the review of the B&W file record one way and
6 if you don't accept it, you may have --

7 CHAIRMAN PALLADINO: Just plain a separation. I
8 have trouble in understanding what the separation is.

9 COMMISSIONER AHEARNE: I think Vic put it
10 exactly correctly.

11 CHAIRMAN PALLADINO: What is that?

12 COMMISSIONER AHEARNE: If you accept a
13 separation it is an attempt to finesse so that you do not
14 have to then address whether or not the investigations
15 and a review of the trial record has to be done.

16 COMMISSIONER ROBERTS: Say that again, John.

17 COMMISSIONER AHEARNE: I think Vic's
18 description was accurate. He used the word "finesse" and
19 Bill agreed to it. That it is an attempt to finesse the
20 issue of having investigations and review the trial
21 record being required to be completed before addressing
22 restart. That is basically what this separation, I think,
23 is.

24 COMMISSIONER GILINSKY: Except that they are
25 going to have keep investigating in order to decide

1 whether these people can come back.

2 COMMISSIONER AHEARNE: Oh, yes.

3 COMMISSIONER GILINSKY: After restart.

4 COMMISSIONER AHEARNE: My reading of what they
5 proposed, and then the meeting yesterday that GPU had
6 with the staff, I conclude what they are essentially
7 saying is that, "We will put aside as many people as you
8 want and will bring in fillers so that at some stage you
9 can agree that all of these on-going reviews need not be
10 completed prior to restart.

11 COMMISSIONER ASSELSTINE: Right.

12 COMMISSIONER AHEARNE: Vic is right that those
13 reviews would eventually have to be completed if they
14 want to bring those people back in.

15 COMMISSIONER GILINSKY: It would be done with
16 the plant in a reg base, is really the point.

17 COMMISSIONER ASSELSTINE: Yes.

18 COMMISSIONER AHEARNE: That, I think, is the
19 clearest way to describe what the staff's proposal is. In
20 other words, its action is what is clear about it.

21 CHAIRMAN PALLADINO: Procedurally, though, what
22 would take place would be that the Commission would
23 identify the individuals about whom there is controversy
24 and they would not be permitted to participate in TMI?

25 COMMISSIONER AHEARNE: I expect the way the

1 proposal would end up being that if the staff would
2 propose, "Here is an agreed position between GPU and
3 staff. Here are all the people that have been identified
4 and here is a new organization structure in which they do
5 not have direct involvement for TMI-1 and will not until
6 the conclusion of investigations that affect them."

7 CHAIRMAN PALLADINO: And the staff would
8 identify them by names.

9 COMMISSIONER AHEARNE: Yes.

10 COMMISSIONER GILINSKY: Right.

11 CHAIRMAN PALLADINO: And we would approve it?

12 COMMISSIONER AHEARNE: Well that is, you see --

13 COMMISSIONER GILINSKY: Oh, you have to.

14 COMMISSIONER AHEARNE: Yes. And the staff's
15 proposal did take a cut at that. They did identify by
16 name all those people.

17 CHAIRMAN PALLADINO: Well, but some of them
18 were new. Then I don't think they intended for us to --

19 COMMISSIONER GILINSKY: Well, they simply
20 listed everyone.

21 COMMISSIONER AHEARNE: Well, not everybody.

22 COMMISSIONER GILINSKY: In fact, they didn't
23 even list some of the people in the room.

24 (Laughter)

25 COMMISSIONER AHEARNE: That's right.

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1 MR. PLAINE: Mr. Chairman, with your permission
2 a question.

3 CHAIRMAN PALLADINO: Yes.

4 MR. PLAINE: It is really addressed to
5 Commissioner Ahearne. I need a little refreshing on the
6 history of this.

7 As I recall, when we got to the point of
8 Stello having made his review and possibly before it, I
9 think it was you that suggested that we really ought to
10 look at all of these records that were being examined.

11 COMMISSIONER AHEARNE: Correct.

12 MR. PLAINE: Do you remember what it was that
13 your purpose was in --

14 COMMISSIONER AHEARNE: Oh, very clear. Very
15 clear because my purpose was also very clear and when I
16 asked for Stello to review it and it was very clear when
17 I asked your predecessor as General Counsel to keep track
18 of the court case in which -- and I was told that was too
19 big a job for General Counsel to track the court case.

20 (Simultaneous conversations)

21 COMMISSIONER AHEARNE: I was concerned that
22 there was new information having to do with what happened
23 at the time of the accident that would change, modify our
24 understanding of that accident.

25 MR. PLAINE: For litigation purposes?

1 COMMISSIONER AHEARNE: Actually, this might
2 seem strange. But no, it was just for understanding.

3 COMMISSIONER GILINSKY: Intellectual purposes.
4 (Laughter)

5 COMMISSIONER AHEARNE: Because, see, I felt
6 that much of the changes in our regulations and the
7 philosophy of operation of the NRC as well as much of the
8 industry came about as a result of TMI. We thought we
9 understood as best as possible what had happened, now did
10 that accident happen?

11 I didn't want to lose the opportunity while
12 there still were enough people around who still
13 remembered what was known to have an examination of this
14 new body of data, would that modify it. That was my
15 concern.

16 MR. PLAINE: Can I take it then you didn't tie
17 it in with the TMI restart?

18 COMMISSIONER AHEARNE: I tied it to neither TMI
19 restart nor litigation.

20 COMMISSIONER GILINSKY: It was I who tied it to
21 TMI restart. I asked Sue to look into --

22 MR. PLAINE: What was that?

23 COMMISSIONER GILINSKY: It was I who tied that
24 record --

25 MR. PLAINE: I am talking about that 70 feet of

1 documents that --

2 CHAIRMAN PALLADINO: Oh, this latter part.

3 MR. PLAINE: Yes, it was on that. That was a
4 special requirement after everything else was --

5 COMMISSIONER AHEARNE: Right. I asked for that.

6 MR. PLAINE: Yes. But it wasn't tied to the
7 restart. Is that correct?

8 COMMISSIONER AHEARNE: That's correct.

9 COMMISSIONER ASSELSTINE: It was tied to
10 restart as far as my support of that request was
11 concerned, and I think Victor feels the same way.

12 MR. PLAINE: So, in other words, from your
13 standpoint, then, it would have been something that you
14 would want to see finished before a restart, even an
15 immediate effectiveness decision was made?

16 COMMISSIONER GILINSKY: When I said I tied it
17 to restart I meant, I tied the question of looking into
18 the B&W record in my request to you to the restart.

19 MR. PLAINE: No, I wasn't talking of that. I
20 was talking about the extra documents.

21 COMMISSIONER GILINSKY: Well, that was the one
22 request I made.

23 MR. PLAINE: No, I am talking about the extra
24 documents, sir, the documents --

25 CHAIRMAN PALLADINO: The ones after.

1 COMMISSIONER GILINSKY: No, I understand.

2 CHAIRMAN PALLADINO: Well, is that still your
3 purpose in reviewing the others?

4 COMMISSIONER AHEARNE: That's right. Yes.

5 CHAIRMAN PALLADINO: However, Commissioners
6 Asselstine and Gilinsky at least feel that --

7 COMMISSIONER ASSELSTINE: My feeling was that
8 there may be information in those documents that relate
9 to the issues that were in controversy in the restart
10 proceeding, and I gather at least some information has
11 already been identified that fits into that category.

12 CHAIRMAN PALLADINO: What purpose would you
13 characterize -- how would you characterize what we are
14 doing?

15 What would you say is the purpose of doing
16 this latter review?

17 COMMISSIONER ASSELSTINE: Simply to make
18 certain within reasonable bounds that there isn't
19 information which the Commission had and which had been
20 identified as being in existence that would affect
21 restart without us at least having taken a look at it. In
22 essence, to avoid embarrassment.

23 I think it would be embarrassing for the
24 Commission to issue a decision on restart only to find
25 out that the Commission had available to it information

1 that would have affected those decisions.

2 CHAIRMAN PALLADINO: And when you say affecting
3 restart, are you thinking both from the safety standpoint
4 and management, or just safety standpoint?

5 COMMISSIONER ASSELSTINE: I am thinking in
6 terms of both the issues that are in controversy in the
7 proceeding. That is, is there information in those
8 documents that we did not know about before that affects
9 those issues, or presumably anything else that would
10 affect the safety of the operation of the plant.

11 But my principal concern was the first point.
12 That is, is there information there that is directly
13 relevant to the issues that are in controversy in the
14 proceeding, that we knew the documents were available to
15 us but that we didn't bother to review them before we
16 reached a decision.

17 CHAIRMAN PALLADINO: I know John raised a
18 question that in his mind he couldn't answer, all the
19 questions on GPU v. B&W trial record unless he knew how
20 we were going to stand with regard to the staff's
21 proposal to separate corporate and individual integrity.

22 You want to indicate why you think so?

23 COMMISSIONER AHEARNE: Yes. You see, from my
24 point of view the GPU trial record review is independent,
25 as I just answered to Herzel. But I knew that at least

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1 from the point of view of Vic and Jim it was not: They
2 were doing it clearly as part of the restart.

3 COMMISSIONER GILINSKY: When have I ever
4 expressed myself on that subject?

5 COMMISSIONER AHEARNE: What?

6 COMMISSIONER GILINSKY: I don't know that I
7 ever expressed myself on this subject.

8 COMMISSIONER AHEARNE: You have. You sent some
9 memos. And, as I recall, when you talked to Mr. Ottinger
10 you were very clear that this was critical in being able
11 to address a restart.

12 But it seemed to me that the concern was that
13 if Bill's proposal is correct, is accepted, then the
14 Commission would have to be essentially saying that if
15 was not tied to restart because he has essentially told
16 us that the review that he is going to have done of the
17 B&W trial record under his proposal would not be an
18 integral part of the restart decision.

19 I think another way of saying it is, he's got
20 an optimistic schedule for meeting that and he wouldn't
21 feel that there was a tremendous pressure to meet that
22 schedule if it was not tied to the restart.

23 I think when you realize now SERs are
24 generated, when you realize what he is saying is, he
25 wants to take eight of those topics, voluminous sets,

1 give them to these staff groups to essentially write,
2 draft, new SERs in a month, that is just very optimistic
3

4 CHAIRMAN PALLADINO: My reaction to what they
5 are doing is that it is growing beyond the bounds at
6 least I had in mind in supporting this, to where we are
7 developing new SERs.

8 COMMISSIONER AHEARNE: See, that is consistent
9 with having it be part of a restart decision, an SER. My
10 proposal had nothing to do with that. My proposal to look
11 at it from the standpoint of anything more new about the
12 accident, that wouldn't have led to an SER.

13 CHAIRMAN PALLADINO: Jim, you spoke about the
14 possibility that there is information in there that might
15 embarrass the Commission. We have gone through the trial
16 record and the exhibits used in the trial.

17 COMMISSIONER ASSELSTINE: Yes.

18 CHAIRMAN PALLADINO: They should represent the
19 best effort of the parties. It has been reviewed by the
20 Stello group. It has also been reviewed by Herzel's
21 group.

22 Could you get to your second document now?

23 MR. PLAINE: Apparently, we filed a, have a
24 paper on it. Is our paper ready for today?

25 MR. ZERBE: This is which one?

CHAIRMAN PALLADINO: You have not got on it

1 out.

2 COMMISSIONER GILINSKY: Wait a minute, this is
3 a review of the Stello report?

4 MR. ZERBE: Yes, it is ready to go if you are
5 nappy with it.

6 MR. PLAINE: It will be distributed.

7 CHAIRMAN PALLADINO: It has not been
8 distributed?

9 MR. PLAINE: It has not been distributed.

10 COMMISSIONER AHEARNE: Could I go back and ask
11 one question, Vic? Maybe I am incorrect in attributing it
12 to you. I really was sure that you felt that was
13 necessary.

14 COMMISSIONER GILINSKY: I don't remember saying
15 that before Mr. Ottinger, and I just asked the Secretary
16 to scare up my memorandum to refresh my memory -- it
17 sometimes fails me.

18 I would approach this thing very differently.
19 I agree with Tom.

20 COMMISSIONER ROBERTS: I can't hear you.

21 COMMISSIONER GILINSKY: In part. I said I agree
22 with you in part. You had better sit down.

23 My own view here is that the top management of
24 this company is to be replaced. I would replace the
25 chairman; I would replace the president; I would replace

1 the president of GPU. I would count on their replacements
2 to straighten out what really needs to be straightened
3 out.

4 COMMISSIONER AHEARNE: Koons, Diekamp and
5 Arnold.

6 COMMISSIONER GILINSKY: Right. And I would
7 count on their replacements to straighten out whatever
8 needs to be done in that company. Otherwise, we are goina
9 to be at this forever. It is typical of the Commission to
10 sort of "nibble" applicants to death.

11 (Laughter)

12 COMMISSIONER AHEARNE: Dean Atchison once
13 described this process as "being beaten to death by a
14 roomful of feathers."

15 COMMISSIONER GILINSKY: Yes. That's my view of
16 it.

17 COMMISSIONER AHEARNE: So, you would not tie --

18 COMMISSIONER GILINSKY: Not if we took that
19 sort of action.

20 COMMISSIONER AHEARNE: If we didn't take that?

21 COMMISSIONER GILINSKY: Well, then they have to
22 pursue all those things, yes.

23 COMMISSIONER AHEARNE: So, if that action were
24 not taken, you would want the --

25 COMMISSIONER GILINSKY: You have to pursue the

1 various investigations, the Hartman business, other
2 things.

3 COMMISSIONER AHEARNE: So, you would want that
4 --

5 COMMISSIONER GILINSKY: You have to come to
6 some view, either these things are important or they are
7 not important. Now, for myself --

8 CHAIRMAN PALLADINO: But you did the
9 investigation.

10 COMMISSIONER GILINSKY: On the basis of things
11 that have come before, I feel these people ought not to
12 stay, quite apart from what we have on our plate now.

13 CHAIRMAN PALLADINO: But could we stick to the
14 issue of GPU v. B&W trial record? Do you think --

15 COMMISSIONER GILINSKY: Well, I don't think you
16 can look at it --

17 CHAIRMAN PALLADINO: Well, I am not sure you
18 are going to find anything out of that.

19 COMMISSIONER GILINSKY: -- independently of
20 what else you are doing.

21 CHAIRMAN PALLADINO: I think you can. I don't
22 think --

23 COMMISSIONER GILINSKY: We differ.

24 CHAIRMAN PALLADINO: I don't think we are going
25 to get a lot of information out of that review and it is

1 going to cost us one whale of a lot of effort. That was
2 why I was starting to ask Jim Asselstine if he is really
3 concerned that there is information in that trial record
4 that could embarrass us.

5 COMMISSIONER GILINSKY: Well, it's not a
6 question of just embarrassing us.

7 CHAIRMAN PALLADINO: Let me finish asking Jim
8 my question. This is my second attempt on it.

9 Especially in view of the fact that we had the
10 Stello group look at it and now we have the --

11 COMMISSIONER GILINSKY: I really have to
12 interrupt you on that one, Joe because that Stello review
13 was really a joke. They did not make a single reference
14 to that record. Now, you cannot seriously portray that as
15 a review of the record.

16 CHAIRMAN PALLADINO: You don't like the report,
17 but the review may --

18 COMMISSIONER GILINSKY: well, let me ask you,
19 did that review satisfy you?

20 CHAIRMAN PALLADINO: Well, I think I made my
21 comment on that.

22 COMMISSIONER GILINSKY: What is the answer?

23 CHAIRMAN PALLADINO: That I would have liked to
24 see more reference to the record.

25 COMMISSIONER GILINSKY: Some reference. There

1 was no reference to the record. Don't you regard that as
2 completely unsatisfactory, or let me say
3 "unsatisfactory?" Can you say whether you are satisfied
4 or dissatisfied with that report?
5

6 CHAIRMAN PALLADINO: I say that it should have
7 had more reference to the record.

8 COMMISSIONER GILINSKY: Well, you are unable to
9 say you are satisfied with it.

10 CHAIRMAN PALLADINO: I certainly didn't say I
11 was completely satisfied with it.

12 COMMISSIONER GILINSKY: Well, are you satisfied
13 at all with it?

14 CHAIRMAN PALLADINO: Yes, I think the
15 observations --

16 COMMISSIONER GILINSKY: Do you think it was a
17 good job?

18 (Laughter)

19 COMMISSIONER GILINSKY: Did they do what you
20 expected them to do?

21 CHAIRMAN PALLADINO: They came out with what --
22 don't be like Congress there, but --

23 (Laughter)

24 CHAIRMAN PALLADINO: But I found fault with the
25 report and I said so.

COMMISSIONER GILINSKY: But you are saying to

1 Jim, in view of --

2 CHAIRMAN PALLADINO: No, I am not --

3 (Simultaneous conversations)

4 CHAIRMAN PALLADINO: In view of the Stello
5 report and, and --

6 COMMISSIONER GILINSKY: They didn'd do a damned
7 thing, Joe.

8 CHAIRMAN PALLADINO: But I say, fine -- I am
9 asking him his judgment -- in view of the Stello report
10 and the OGC preliminary document where you suveryed the
11 record, and now unfortunately you have not had a chance
12 to see, nor have I, the final document. But based on
13 these things, do you still feel that there may be a
14 source of embarrassment?

15 COMMISSIONER ASSELSTINE: That is what I am
16 concerned about. First, as limmited as -- I tend to agree
17 with Victor that as far as the product of the Stello
18 review was concerned, it was an unsatisfactory product.
19 It didn't provide any basis for me at all to go back and
20 verify the accuracy of their judgments.

21 Second, they did say that they found
22 information, new information, that related to issues in
23 the proceeding. Now, granted -- I guess this was only one
24 issue that was actually referred to the staff, but ey
25 did say there was new information. Their view was it was

1 not significant new information, it didn't alter their
2 judgments.

3 But my concern is that I think there is at
4 least some indication that there is new information
5 there. I have concerns about the adequacy of the review
6 in terms of having something that we can review and
7 assure ourselves as at least some kind of a fair look at
8 it, and third, it was only a portion of the material.
9 Whether the parties, including B&W, put their best case
10 forward in the first half of the trial, I think, is an
11 assumption that you just cannot necessarily make.

12 CHAIRMAN PALLADINO: They certainly would not
13 have put less than their best foot forward.

14 COMMISSIONER ASSELSTINE: Well, unless they
15 were saving some of their ammunition for their half of
16 the case.

17 So, it does seem to me that we have to make at
18 least some effort to look at that material and to reach a
19 judgment on whether there is information in there that
20 really is significant and affects the issues in the
21 proceedings.

22 CHAIRMAN PALLADINO: So, you say it should be
23 done before we :-

24 COMMISSIONER ASSELSTINE: I think at least some
25 reasonable effort should be made.

1 CHAIRMAN PALLADINO: Well, I guess I divide it
2 more black and white. I don't know what "reasonable
3 effort" means unless they mean what they are doing.

4 COMMISSIONER ASSELSTINE: I am not dissatisfied
5 with what the staff is proposing.

6 CHAIRMAN PALLADINO: So, you would say that
7 ought to be done before we make our immediate
8 effectiveness decision on restart?

9 COMMISSIONER ASSELSTINE: I guess I am inclined
10 to say, yes. Yes, that I think it should.

11 CHAIRMAN PALLADINO: Now, Vic, you said
12 something about agreeing with Tom Roberts. Could you --

13 COMMISSIONER GILINSKY: Well, just in his
14 comments about this being a great morrass.

15 Incidentally, I had the Secretary look up the
16 various memoranda and he doesn't seem to find anything
17 that fits your description of what I said.

18 COMMISSIONER AHEARNE: Let me fix it. Then I
19 have --

20 COMMISSIONER GILINSKY: Perhaps my memory fails
21 me.

22 COMMISSIONER AHEARNE: Maybe I got the wrong
23 impression. My impression was that you felt it was
24 necessary to look at that for anything that might affect
25 restart. Was that incorrect?

1 COMMISSIONER GILINSKY: well, I think that we
2 needed to look into the questions, yes.

3 COMMISSIONER AHEARNE: That would affect
4 restart?

5 COMMISSIONER GILINSKY: That would affect
6 restart. But what I am saying also is that this is
7 assuming the Commission is continuing on the course it is
8 continuing. Now, I would also say that I don't feel all
9 these things are necessary for restart if we put in a new
10 "high command" in that company.

11 COMMISSIONER AHEARNE: No, and you have been
12 consistent on that, that has been your position for a
13 long time.

14 My question is, is it incorrect that you felt
15 that it had to be looked at for anything that might
16 affect restart? Isn't the conclusion incorrect that you
17 would have then concluded the review would have had to be
18 done before the Commission addressed restart?

19 COMMISSIONER GILINSKY: I guess probably. But,
20 you know, I have said before that in reviewing these
21 documents you don't start at page 1 and just read every
22 page. I think these reviews have got to be intelligent
23 reviews.

24 COMMISSIONER AHEARNE: No, I am just trying to
25 get clear, was I falsely attributing to you the position

1 that this review ought -- I was trying to draw a
2 distinction between, my position was a review ought to be
3 done to look at, is there anything new about the
4 accident.

5 I was attributing to you the position the
6 review ought to be done to see whether there was anything
7 that would affect restart.

8 I had reached the conclusion that if that were
9 the case, then that review would have to be completed
10 before the Commission addressed the restart decision.

11 COMMISSIONER GILINSKY: I am not sure I ever
12 put my thoughts together on that simply because my view
13 has always been that what is needed here is a new top
14 management.

15 COMMISSIONER AHEARNE: Sure. But why have them
16 go through the review to look for things that might
17 affect restart if you were not going to have that review
18 be required to be completed before you addressed restart?

19 COMMISSIONER GILINSKY: I would like them to go
20 through the documents in some intelligent way and see if
21 there are things that are important to restart, yes. But
22 that doesn't mean starting at page 1 and going through
23 all the record.

24 COMMISSIONER AHEARNE: Sure. No, I recognize
25 that. There is a difference in the way it is done.

1 COMMISSIONER GILINSKY: Right.

2 COMMISSIONER AHEARNE: But you would want that
3 review to be completed.

4 COMMISSIONER GILINSKY: That is probably right,
5 assuming that -- at least I think it ought to get done.
6 But I must say, barring a change in the top management of
7 that company, my present view is that that company ought
8 not to be permitted to run the plant.

9 COMMISSIONER AHEARNE: Sure, and that has been
10 your consistent position.

11 COMMISSIONER ROBERTS: Well, then who would you
12 include?

13 COMMISSIONER GILINSKY: I would include the
14 chairman, the president of GPU, and the president of GPU
15 Nuclear.

16 COMMISSIONER AHEARNE: That is Koons, Diekamp
17 and Arnold.

18 COMMISSIONER GILINSKY: And if you changed
19 those people and got pretty decent people in there, I
20 just don't think it is necessary for us to look into
21 every detail, and we can count on a new management to
22 straighten those things out.

23 CHAIRMAN PALLADINO: Could you depend on the
24 new management, would they be familiar enough with the
25 issues to really be able to cope with them? I am not

1 convinced that the new management would necessarily come
2 in and do better. I am thinking, starting with the
3 Chairman of the Board.

4 COMMISSIONER GILINSKY: well, I think there are
5 very strong, important advantages there for moving new
6 people in here.

7
8 Now, people were arguing just a little while
9 ago about the advantages of having had new people in all
10 the various jobs in the company. Now, you can't have it
11 both ways. Either that is a good thing or not a good
12 thing.

13 CHAIRMAN PALLADINO: well, no. You could have
14 it that way, though, where the management is making the
15 changes in the lower divisions to bring about --

16 COMMISSIONER GILINSKY: Yes, but these are the
17 same guys. You know, I don't know if you want to talk
18 substance now. The fact of the matter is, all of those
19 companies -- you know, we can play games about GPU
20 Nuclear and so on -- all of those companies, as far as I
21 can tell, are run by Koons and Diekamp. They are the two
22 guys that run that entire system.

23 CHAIRMAN PALLADINO: But they are thinking
24 about changes in the organization.

25 COMMISSIONER GILINSKY: Right. And I must say,
I do not have confidence in those people. Arnold is a

1 tough guy in GPU --

2 COMMISSIONER AHEARNE: I disagree with Vic's
3 conclusion. But I agree with him, it is really odd that
4 when you look at the staff's description --

5 COMMISSIONER ASSELSTINE: Sure.--

6 COMMISSIONER AHEARNE: Of who is involved in
7 it, they start and they don't list Herman Diekamp. And we
8 all know from all of our involvement with this, he has
9 been completely enmeshed --

10 COMMISSIONER GILINSKY: Yes, and Arnold
11 basically takes orders from Diekamp, as far as I can
12 tell, even right here in a meeting.

13 COMMISSIONER AHEARNE: So, to have a chart that
14 starts without listing him is absurd.

15 CHAIRMAN PALLADINO: Oh, I have no argument
16 with that. I think your comment was well taken. But now,
17 whether or not you have to start with the Chairman of the
18 Board and the presidents -- when they are making changes
19 --

20 COMMISSIONER GILINSKY: Sure they are making
21 changes.

22 CHAIRMAN PALLADINO: Well, I think that we have
23 to evaluate whether they are making the right changes or
24 good changes, effective changes because all of the new
25 management can come in and do is make changes.

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CHAIRMAN PALLADINO: Before the immediate effectiveness decision.

COMMISSIONER GILINSKY: I would say that --

CHAIRMAN PALLADINO: Unless we already --

COMMISSIONER GILINSKY: Barring -- it seems to me the company has either got to accept responsibility for things that have happened, wrong-doing which in my view has taken place, or the top people have got to get changed out. They have not accepted the responsibility that I think they need to accept. In fact, they blame us, they are suing us.

CHAIRMAN PALLADINO: Can I ask you another question? Suppose Koons were replaced, after all, he is elected by the Board I presume and the Board picked somebody else these days on the Board. Would that be a satisfactory solution, at least so far as Koons is concerned?

Is it Koons, or Koon?

COMMISSIONER GILINSKY: well, I just have not addressed that. But I think you need a new chairman, a new president of the company; just new people who are in charge. It is not my intention to go after these people personally wherever they go off to. But I think you need a new chairman, a new president, new leadership in that company, and a new president of GPU Nuclear.

1 CHAIRMAN PALLADINO: Does anybody else share
2 that view?

3 COMMISSIONER AHEARNE: I don't because if I had
4 agreed with that, then I would have resigned from the NRC
5 after the accident.

6 COMMISSIONER GILINSKY: Well, let's not go
7 through that again. If you want to --

8 COMMISSIONER AHEARNE: Vic, I think this is
9 important.

10 COMMISSIONER GILINSKY: The fact of the matter
11 is, we are the judges here and this is on our plate.

12 COMMISSIONER AHEARNE: Vic, but I am just
13 trying to say, if the conclusion is that the people at
14 the top of the organization are the ones responsible for
15 the difficulties and that we can't look into enough
16 detail to see where the difficulties arose, we want to
17 make changes to put it in shape, then the Commissioners
18 of the NRC should have resigned. And we did not see it
19 that way; certainly, I didn't. So, I disagree with that.

20 COMMISSIONER GILINSKY: The question is, should
21 the president who told people to resign, or not.

22 Now, he made his decisions; the Senate made
23 their decisions.

24 COMMISSIONER AHEARNE: We are an independent
25 Commission.

1 COMMISSIONER GILINSKY: No.

2 COMMISSIONER AHEARNE: There would have been --
3 if we believed that the people at the top are the ones
4 that have the fundamental responsibility and you have to
5 have that change --

6 COMMISSIONER GILINSKY: You know, this argument
7 is being used over and over again to explain away all
8 sorts of wrong-doing all over the place and us doing
9 nothing about it.

10 Now, the fact of the matter is, we go around
11 every day of the week and say, it is the top management
12 caring about quality assurance that is the key thing. It
13 is top management attitude that is the ultimate decider
14 on safety.

15 COMMISSIONER AHEARNE: Sure, that is right.

16 COMMISSIONER GILINSKY: It is top management
17 this, and top management that.

18 COMMISSIONER AHEARNE: That's right. That's
19 right.

20 COMMISSIONER GILINSKY: Well, here top
21 management has screwed up, has behaved -- has acted
22 wrongly; has refused to face up to its responsibilities
23 and I say, top management has got to go.

24 COMMISSIONER AHEARNE: I would --

25 CHAIRMAN PALLADINO: Let me ask. I am sorry, go

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1 ahead.

2 COMMISSIONER AHEARNE: I would disagree that
3 they have -- to say they have refused to face up to their
4 responsibilities. I think they have made a number of
5 major changes, including a reorganization of the whole
6 organization. They have substantially beefed the
7 organization up. They brought in a lot of people from the
8 outside.

9 They really, as far as I can tell, they went
10 out and tried to get as competent people as they could to
11 come in to run the various elements of this organization.
12 So, they have made a number of changes and they have
13 recognized it.

14 Now, when you say they have not essentially
15 admitted their responsibility, the point I made in the
16 open meeting, it is not obvious to me -- given the suits
17 and countersuits and the positions of PUCs with respect
18 to what can and cannot be allowed into rate bases -- I
19 think it is a very complicated situation as to what they
20 could admit.

21 For example, I still believe that their filing
22 the suit against us was part of that strategy.

23 COMMISSIONER GILINSKY: Well, they are just
24 caught up in that situation and that is just too bad. But
25 what you are really saying is that you have a better view

1 of them than I do.

2 COMMISSIONER AHEARNE: Yes.

3 COMMISSIONER GILINSKY: And for that reason you
4 don't want to take that sort of action.

5 CHAIRMAN PALLADINO: But in the interest of
6 trying to get something done, does anyone else share
7 Commissioner Gilinsky's view that Koons, Diekamp and
8 Arnold should go?

9 COMMISSIONER ASSELSTINE: I don't go that far.
10 I think I am probably right in the middle of where John
11 is and where Victor is. I have some serious questions
12 about the competence and integrity of the management of
13 the utility, based largely on the cheating incidents.

14 I think something needs to be done and I do
15 not have a great deal of confidence in allowing that
16 utility to operate the plant with the present people it
17 has. But I don't think -- at least in my own mind -- that
18 the evidence goes so far as to say that I could finger
19 those three people as saying, those three have to go.

20 CHAIRMAN PALLADINO: So, as far as these three
21 are concerned --

22 COMMISSIONER ASSELSTINE: Mine is more, is
23 broader as far as the management of the company as a
24 whole, rather than those three specific individuals.

25 CHAIRMAN PALLADINO: Well, my feeling is that

1 we can't finger these three people. I have one
2 reservation. If any of these allegations, particularly
3 the Parks-Gischel one, leads important tentacles to
4 Arnold, I might reserve on that.

5 COMMISSIONER ASSELSTINE: Oh, I think that --

6 COMMISSIONER AHEARNE: Of course, if
7 investigations lead to specific information on an
8 individual like Arnold saying to him, he knew something,
9 did something wrong, that is different.

10 COMMISSIONER ASSELSTINE: Yes.

11 CHAIRMAN PALLADINO: Let me ask you and Tom
12 with regard to whether or not this GPU trial record
13 review needs to be done before we have an immediate
14 effectiveness decision.

15 COMMISSIONER ROBERTS: Not for me.

16 COMMISSIONER AHEARNE: I don't think it is.

17 COMMISSIONER ROBERTS: I think a likelihood --
18 I understand what Jim is saying. I think the likelihood
19 of that happening is extremely remote and I think it is a
20 misuse of resources.

21 COMMISSIONER ASSELSTINE: Yes. You may be
22 right. But it is a gamble.

23 COMMISSIONER AHEARNE: I mean, really.

24 COMMISSIONER ASSELSTINE: That is what it boils
25 down to.

1 CHAIRMAN PALLADINO: all right, let me ask
2 another question. Well, that would be three to say we
3 don't have to have it for restart, two to say we want it
4 for restart.

5 Is the approach being taken by the staff
6 satisfactory to the Commission, that is, turning it over
7 to NRR and having them proceed as they outlined to us
8 this morning?

9 COMMISSIONER AHEARNE: I think as far as the
10 volume of this is concerned, I think it has to go down
11 into a staff element. I guess there is a little concern,
12 I think as Vic points out, that when you have this large
13 a volume you have to do it in intelligently in the
14 review.

15 I had no way of telling whether or not they
16 are doing that, and I don't know how the Commission could
17 find out.

18 COMMISSIONER ASSELSTINE: The reason why I
19 thought that staff approach was a reasonably sound one
20 was, one, it seemed to be a more systematic approach than
21 Vic Stello had used, admitting that Harold has got more
22 resources to put in on it.

23 But one, it did seem to me that they had
24 adopted a systematic approach and, two, it seemed to me
25 from their description of the product that the product

1 would enable us to go back later on and verify the
2 quality of the job that has been done, and that is
3 something we simply couldn't do.

4 COMMISSIONER AHEARNE: If there is some
5 mechanism -- and I guess we would have to leave that to
6 General Counsel -- if there is some mechanism for someone
7 either from OPE or the General Counsel to track that
8 process.

9 My sense is that Harold agreed immediately to
10 your question, will all these be referenced. I am not
11 sure whether he realized what amount of effort that
12 was now going to require on the part of the staff doing
13 that review of record, of everywhere they run across
14 something and do that in such a way that it could be
15 then, as you said, we could go and look at that document.

16 COMMISSIONER ASSELSTINE: Yes.

17 COMMISSIONER AHEARNE: That is a very large
18 undertaking, requiring very good records control.
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1 It would be useful if someone from the
2 Commission staff office could check on the process they are
3 using to verify that you guys are going to be satisfied.

4 COMMISSIONER ASSELSTINE: Yes. Although I think
5 you have to recognize, and in my own view I certainly
6 recognize that this has to be a best effort kind of thing.
7 This isn't something where you can examine if that much ---

8 CHAIRMAN PALLADINO: well, reasonable effort.

9 COMMISSIONER ASSELSTINE: Well, okay, reasonable
10 effort. You can't examine that many documents within that
11 period of time and be absolutely certain that you have
12 identified everything or described it in great detail. I
13 think you just have to view the effort and the product
14 within some reasonable bounds.

15 CHAIRMAN PALLADINO: Take emergency planning, the
16 trial record really speaks about emergency planning that was
17 listed at that time. My recommendation would be that they
18 spent very little time on doing a review of that and only
19 scanned it by subject matter areas to see if there is any
20 information that might impact on what we are getting to
21 day.

22 What I am getting at is to use the reasonable
23 point of view that Victor pointed out. I forget the word he
24 used, intelligent point of view, to take an intelligent
25 approach to it.

1 COMMISSIONER ASSELSTINE: My recollection of the
2 emergency planning issues was that something like that I
3 think would be fairly reasonable. I am not sure that I
4 would expect to see too terribly much that would be
5 directly relevant to the emergency planning issues that we
6 were raised in the restart proceeding.

7 CHAIRMAN PALLADINO: Well, let me make a
8 proposal, that the staff approach is okay, but it should be
9 pursued on a reasonable basis and with wisdom with regard
10 to the extent of review on each of the various issues, for
11 example, emergency planning because I think we have got to
12 give them an answer one way or the other. By the staff
13 approach is okay means also that it be assigned to NRR.

14 COMMISSIONER AHEARNE: Now OGC and OPE had
15 recommended that the Commission address -- they say "The
16 Commission may want to state expressly its views on whether
17 or not the review must be completed before restart."

18 CHAIRMAN PALLADINO: Well, I have three to two,
19 review of GPU versus B&W trial record not needed for
20 restart.

21 COMMISSIONER AHEARNE: But you are going to
22 include that in what you are talking about.

23 CHAIRMAN PALLADINO: Oh, yes. Now I was going to
24 the staff approach.

25 COMMISSIONER ASSELSTINE: Before you do that, one

1 element that I think ought to be in there, is I think there
2 ought to be a bin for management competence and integrity.

3 COMMISSIONER GILINSKY: Well, I assume that there
4 is one.

5 COMMISSIONER ASSELSTINE: Well, it wasn't listed
6 in Harold's little chart of viewgraphs, and what he said
7 was they are going to do the best they can and just look at
8 those on a case-by-case basis because they are technical
9 people and they are really not qualified to identify those
10 things.

11 COMMISSIONER AHEARNE: Yes, you are right.

12 COMMISSIONER ASSELSTINE: I would renew the
13 suggestion I made this morning that at least they ought to
14 consider the feasibility of having one person work with
15 them who they could just consult with. If they see
16 something say, hey, what do you think? Is this something
17 that should be ---

18 CHAIRMAN PALLADINO: Why couldn't that person
19 come from ELD?

20 COMMISSIONER ASSELSTINE: I suppose they could,
21 yes. I expect if you can find somebody from ELD that can
22 identify those things, fine.

23 CHAIRMAN PALLADINO: You would suggest a bin on
24 management integrity and competence be established.

25 COMMISSIONER ASSELSTINE: Yes.

1 CHAIRMAN PALLADINO: And someone from ELD from
2 look ---

3 COMMISSIONER ASSELSTINE: Look for somebody that
4 would have at least some ability to help and guide them on
5 that.

6 COMMISSIONER GILINSKY: Is that then taken out of
7 the proceeding?

8 CHAIRMAN PALLADINO: I don't know what you mean.
9 Explain a little more, Vic.

10 COMMISSIONER GILINSKY: What I mean by within the
11 proceeding?

12 CHAIRMAN PALLADINO: Yes, about the proceeding.

13 COMMISSIONER GILINSKY: well, if you have got a
14 proceeding going, and the ELD are a party and so on, then
15 you have got to drag other people in or parties into this
16 process and comments, et cetera.

17 CHAIRMAN PALLADINO: Isn't NRR a party to the
18 proceeding?

19 COMMISSIONER GILINSKY: Yes, but if you are
20 saying that this doesn't need to be done before restart,
21 then I am wondering whether you are taking it in effect out
22 of the proceeding, and is that then on a less formal basis?

23 MR. PLAINE: He said for immediate effectiveness,
24 which wouldn't be a complete review of everything.

25 CHAIRMAN PALLADINO: I can't hear you Herzel.

1 MR. PLAINE: I was saying that if you are talking
2 about immediate effectiveness, you wouldn't necessarily
3 have to make any complete judgment on everything that
4 affects restart ultimately.

5 CHAIRMAN PALLADINO: Suppose though we suggest to
6 NRR that they are going to do this, they have a bin for
7 management integrity and competence and ask somebody else
8 on the staff who might be more management oriented to say
9 we will review it and tell you whether there is anything
10 here that has merit.

11 COMMISSIONER GILINSKY: This would then have to
12 be given to other parties to comment on, et cetera, et
13 cetera.

14 CHAIRMAN PALLADINO: Why?

15 COMMISSIONER GILINSKY: Why, because if it is in
16 a proceeding, that is what you have got to do.

17 CHAIRMAN PALLADINO: I guess you have to.

18 Well, now let me ask you this. But we are not
19 going to wait for restart.

20 COMMISSIONER GILINSKY: Well, but what he is
21 saying, the Counsel has just given you his advice that that
22 only pertains to restart but the proceeding continues with
23 appeals, et cetera. That is what happens when you have the
24 staff in hearings. You ought to take the staff out of the
25 hearing at this point.

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COMMISSIONER ASSELSTINE: I think ultimately if there is anything still ongoing on the proceeding when the staff comes up with this information ---

COMMISSIONER AHEARNE: No. In this particular case it is information that is going to be used as part of your decision. That is what does the trigger. It doesn't matter who is doing a generation.

CHAIRMAN PALLADINO: It is a good thing I never decided to become a lawyer.

(Laughter.)

COMMISSIONER ASSELSTINE: Is ultimately there is something left of the proceeding at the time that the staff comes in with its conclusion on this, would seem to me at that point this would still be part of the proceeding and at that point you would have to deal with providing an opportunity ---

CHAIRMAN PALLADINO: Define for me what the proceeding is.

COMMISSIONER ASSELSTINE: The one that the Commission started in terms of the reviews of all of these issues leading to an ultimate decision. If we make an immediately effectiveness decision, there is still a merits review going to the Appeal Board and ultimately the merits review by the Commission.

CHAIRMAN PALLADINO: The proceeding is not then

1 the immediate effectiveness decision?

2 COMMISSIONER ASSELSTINE: That is correct.

3 COMMISSIONER GILINSKY: It is part of it.

4 COMMISSIONER ASSELSTINE: That is part of it, but
5 it is not the full substance.

6 COMMISSIONER AHEARNE: It is the full
7 adjudication and it ends for the NRC when the Commission
8 makes it final pass or decision on the merits review, at
9 which point ---

10 COMMISSIONER GILINSKY: Now we could simply say
11 that the immediately effectiveness decision is the decision
12 period.

13 COMMISSIONER ASSELSTINE: well, I don't think
14 anybody is proposing that.

15 CHAIRMAN PALLADINO: We haven't talked about
16 investigations yet. All we have talked about is GPU versus
17 B&W trial record and we said we are going to do it, but we
18 are not going to ask that it be completed before restart.

19 All I am asking next is is the staff's approach
20 okay, to give it to NRR, but they should be reasonable and
21 use wisdom in deciding the extent of a review on each of
22 the various issues such as emergency planning ---

23 COMMISSIONER GILINSKY: well, be selective and
24 focus their effort on the important issues.

25 CHAIRMAN PALLADINO: Focus their effort on

1 important issues, all right.

2 COMMISSIONER GILINSKY: And include the question
3 of the ---

4 CHAIRMAN PALLADINO: The bin. Now I was trying to
5 see whether or not we had Commission consensus on this.

6 COMMISSIONER ASSELSTINE: I agree to that.

7 COMMISSIONER AHEARNE: Do either Herzal or Jack
8 want to make any comments on the staff ---

9 MR. MONTGOMERY: I have maybe one suggestion, and
10 that is, if I understand it, you would not have this review
11 to be completed before the restart decision, and that any
12 instruction back to the staff you might wish to explicitly
13 state that any significant information is provided as an
14 interim report. Otherwise they may get the signal that
15 since it is not tied to restart they are going to wait
16 until some later time to ---

17 COMMISSIONER GILINSKY: They are going forgot
18 about it is what they are going to.

19 CHAIRMAN PALLADINO: So your suggestion is what,
20 that we tell them to ---

21 MR. MONTGOMERY: That any significant information
22 is reported prior to the final report so that it would be
23 of use to you if the timing is such that you still have to
24 make a restart decision.

25 COMMISSIONER GILINSKY: Of course, they will

1 still move pretty slowly.

2 CHAIRMAN PALLADINO: Well now do you want to say
3 anything about the timing in which they should try to
4 finish their GPU versus B&W review? I think they should not
5 put it off. They should continue.

6 COMMISSIONER ASSELSTINE: I am willing to leave
7 it with the schedule that they proposed and say they ought
8 to pursue that. That is their proposal.

9 CHAIRMAN PALLADINO: To meet their schedule.

10 COMMISSIONER ASSELSTINE: That is right.

11 CHAIRMAN PALLADINO: Any other guidance?

12 COMMISSIONER GILINSKY: Well, actually what you
13 are saying is not that you don't want to have it, but that
14 you don't feel bound to wait for it.

15 COMMISSIONER ASSELSTINE: That is right.

16 CHAIRMAN PALLADINO: I think that is the point.

17 COMMISSIONER GILINSKY: I think that is perhaps
18 the way to say it.

19 CHAIRMAN PALLADINO: I think that is a very good
20 way.

21 MR. ZERBE: If they get on the schedule that they
22 are talking about, and if you look at the schedule which we
23 haven't done yet, the schedule we presented, you know, you
24 could use it for ---

25 COMMISSIONER GILINSKY: Well, John was saying he

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1 didn't they would make that schedule.

2 MR. ZERSE: well, that might be.

3 CHAIRMAN PALLADINO: But other things may not
4 make the schedule either. I like that, that the Commission
5 is not bound to use the review of the GPU versus B&W
6 restart, but we would like to have it done on the time
7 frame that they are now planning.

8 Who is going to write this all up? This would be
9 a ---

10 MR. CHILK: A draft memorandum in conjunction with
11 anybody ---

12 CHAIRMAN PALLADINO: That focused on the
13 important issue and that judgment should be used in the
14 extent of review on topics not considered important, or on
15 issues for which the information in there might not be
16 important. I don't want to imply that the issues are not
17 important. Then suggest a bin on management integrity and
18 competence and someone to review it and that we would like
19 any significant information to be reported as soon as it is
20 found.

21 COMMISSIONER ASSELSTINE: There is one other
22 question that is not directly related to the restart.
23 Harold was pretty clear in saying that the kind of review
24 that he had in mind was not the kind of review he thinks
25 needs to be done to support the litigation, the GPU versus

1 NRC litigation.

2 The question is do we want to go ahead under
3 this approach, which I am satisfied with other than the
4 question of when we make our restart decision, recognizing
5 the possibility that as you get closer to the lawsuit, if
6 there is going to be a trial, it is all going to have to be
7 done over again.

8 MR. PLAINE: Well, that was the one thing that
9 troubled me with Mr. Denton's presentation. He said he
10 wasn't sure that they could provide anything to us that
11 did seem to have litigation significance.

12 It would seem to me that while they are looking
13 if they came across anything like that, there is no harm in
14 passing it to us. You know, just to ignore it completely
15 would not make good sense.

16 CHAIRMAN PALLADINO: Well, there is a difference
17 in saying if you find something that seems important in
18 litigation to let us know from the statement that what they
19 ought to be examining is specifically for litigation
20 because on the one hand, if you wanted to really have it
21 for litigation, you would have a litigation type of person
22 reviewing it.

23 But I would not object to saying that if they
24 see anything that might affect litigation that they pass
25 that information on to OGC.

1 MR. PLAINE: Just pass it to us.

2 COMMISSIONER AHEARNE: Could you explain a little
3 bit more than what kind of information that is?

4 MR. PLAINE: Well, I think it is possible. I
5 think from the summary that we have made, that you will see
6 by the end of the day I hope, there are a half a dozen
7 topics that do have a bearing on the litigation. If that
8 can help as a key work finder for them, that would be
9 useful.

10 COMMISSIONER AHEARNE: I just think that without
11 some kind of description, I am afraid many of their
12 reviewers aren't going to know what that means.

13 COMMISSIONER ASSELSTINE: Yes, that is probably
14 right.

15 COMMISSIONER GILINSKY: What is your bottom line
16 on whether this trial record affects our decision or not?

17 MR. ZERBE: Well, there are two attachments, and
18 the one relative to the immediate effectiveness decision we
19 say that it doesn't affect what we had said before.

20 COMMISSIONER GILINSKY: What did you say before?

21 MR. ZERBE: That the management was competent to
22 go ahead.

23 COMMISSIONER GILINSKY: And either management
24 competence or integrity, you see nothing in there that
25 would affect your ---

1 MR. ZERBE: There were no facts developed that
2 came up that would change our position. Now on the part
3 that OGC looked at relative to the trial where they are
4 dealing in ---

5 COMMISSIONER GILINSKY: What did you look at?

6 MR. ZERBE: We were looking at the trial to come.

7 COMMISSIONER GILINSKY: I see. Well, I am not
8 interested in that for the moment.

9 MR. PLAINE: That was the question I was raising.

10 COMMISSIONER GILINSKY: So you did not look into
11 whether this transcript affected the restart decision.

12 MR. PLAINE: No, that was their decision.

13 COMMISSIONER GILINSKY: OPE did that.

14 MR. PLAINE: OPE did that.

15 COMMISSIONER GILINSKY: That is very interesting.

16 MR. PLAINE: They did it using whatever material
17 we had found and summarized in a litigation memorandum.

18 COMMISSIONER GILINSKY: So the General Counsel
19 has never looked at this B&W trial record to see whether
20 there is anything in it that would affect the Commission's
21 restart decision?

22 MR. PLAINE: Not per se.

23 CHAIRMAN PALLADINO: I thought you did.

24 MR. PLAINE: We have done it in ---

25 COMMISSIONER GILINSKY: That is a little contrary

1 to testimony before Mr. Ottinger.

2 MR. PLAINE: I didn't hear what you said.

3 COMMISSIONER GILINSKY: I said it is contrary to
4 what the Chairman testified to before Mr. Ottinger.

5 MR. PLAINE: We prepared a memorandum based on
6 looking at the testimony, not the whole trial record, just
7 the actual testimony, the record of the 47 volumes, and
8 maybe one or two exhibits crept in there because they were
9 in part were used in the testimony.

10 CHAIRMAN PALLADINO: But, remember, you came to
11 me, or maybe it was OPE, and in a meeting it was stated
12 that one of the major decisions was whether the legal
13 assessment regarding restart could be separated from the
14 legal assessment affecting litigation.

15 My first reaction was oh, yes, we ought to
16 separate them. Then on appeal after appeal in statements
17 that you can't separate them I said well, then do it the
18 way you were planning to.

19 So I took from that that there was review so far
20 as the restart issue was concerned at least on the part of
21 OGC.

22 MR. PLAINE: OPE used this material ---

23 COMMISSIONER GILINSKY: Yes, but OPE are not
24 lawyers and they don't understand evidence and they are not
25 familiar with dealing with this ---

1 CHAIRMAN PALLADINO: But see, that is why I
2 wanted the separation. I said the things that you reviewed
3 that affect restart ought to be in a separate document from
4 those that affect the litigation.

5 MR. PLAINE: It is.

6 CHAIRMAN PALLADINO: No, from legal counsel.
7 Remember, that is what the issue was, should the legal
8 counsel assessment be divided.

9 MR. PLAINE: There is an A paper and a B paper.
10 These are attachments to a cover in which OPE takes the
11 view as to whether or not whatever we have found is useful
12 in connection with the restart.

13 Now they make a different judgment on certain
14 things with respect to restart than we would with regard to
15 fighting the litigation against the USNRC. That is the
16 difference. They draw on the material thought.

17 CHAIRMAN PALLADINO: I don't know whether yours
18 was the A or B paper, but whatever yours was was the one
19 that I thought ought to be divided into two parts.

20 MR. PLAINE: Well, it could be separated.

21 CHAIRMAN PALLADINO: I am only using that to say
22 that it was my impression that you had addressed the legal
23 aspects affecting restart.

24 MR. MALSCH: Let me clarify what exactly we did.
25 We had a group of lawyers who went through the transcripts

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1 to identify issues related to both the litigation and
2 restart. The issues thus identified were then sent over to
3 a different team led by OPE to examine what implications
4 those issues had for restart. That is now the two documents
5 got separated.

6 We did review the transcript and it served the
7 dual purpose, but the ultimate conclusions on the effect on
8 management were drawn by OPE. But we participated in
9 reviewing the transcript to make sure that all the issues
10 were identified as an input to OPE's review process.

11 CHAIRMAN PALLADINO: But it did have a dual
12 purpose, both litigation and TMI-1 restart.

13 MR. MALSCH: That is right.

14 CHAIRMAN PALLADINO: Are you willing to go till
15 12:30 or even a little later?

16 COMMISSIONER GILINSKY: I would not like to.

17 CHAIRMAN PALLADINO: Well, Vic, we are getting to
18 some decisions I know ---

19 COMMISSIONER GILINSKY: If you think you will
20 complete it by 12:30, but I don't think you will.

21 CHAIRMAN PALLADINO: Well, let me try.

22 Should the staff review the GPU proposal and the
23 comment on it and pursue it as part of whatever it feels it
24 needs to do on revalidation and make other recommendations
25 if necessary to the Commission?

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COMMISSIONER AHEARNE: It really confused me. It confused me on two grounds. First, the one that OPE and OGC raises as I tried to raise in the meeting.

I am really puzzled by if they make sweeping changes if now is an organizational structure rather than a people structure, but as I recall the Board, the Board addressed a people structure.

COMMISSIONER ASSELSTINE: That is right.

COMMISSIONER AHEARNE: They went through these people and addressed the competence of those individuals. I recognize, Joe, your issue well, an organization has to have the ability to make changes. That is true, but in this restart issue, as I recall the Board, they focused very heavily on specific people.

CHAIRMAN PALLADINO: Well, I was giving caution for the future. I didn't want to tie the future ---

COMMISSIONER AHEARNE: I understand that, but for right now I think the memo we got from OPE and OGC is right on that point.

COMMISSIONER ASSELSTINE: I agree with John.

COMMISSIONER AHEARNE: The second part, the reason I asked the question in the meeting, I am not sure whether I would really want to characterize this as a GPU proposal. I just get the sense from the way Harold answered that our staff has told GPU that, look, one of the problems

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1 the Commission is having is that these people are still
2 there that had previous links. So can't you in some way
3 come up with a proposal that would separate them out?

4 So I am not sure what good it would be to have
5 the staff review the GPU proposal.

6 CHAIRMAN PALLADINO: Well, I only found two
7 things in the GPU proposal, and that was that the emphasis
8 on Clark being in charge of TMI-1 and some different
9 approach to Husted. The rest of it is just organizational
10 charts saying here are where the changes have already been
11 made. There is nothing new that they are proposing.

12 COMMISSIONER AHEARNE: In the meeting yesterday
13 actually they did talk about a number of people that they
14 were not going to have associated. They were going to allow
15 some operating licenses to lapse. In fact, they are going
16 to withdraw some people who had operating licenses,
17 withdraw the licenses.

18 CHAIRMAN PALLADINO: Well, my own feeling is that
19 if GPU wants to make proposals and they impact on restart,
20 we should have the staff input as to whether or not it is a
21 favorable or unfavorable impact.

22 COMMISSIONER ASSELSTINE: Well, I think what we
23 ought to do is on that question, and the staff is a party,
24 and get comments from all the parties. Say we have received
25 this proposal from GPU and any party that wants to provide

1 comments or advice or views on the proposal, that is fine.
2 Let them do it.

3 I think the more fundamental question is the one
4 that John raised which is what about the staff's proposed
5 approach? I guess I am inclined to agree with your
6 comments. I just don't think it is feasible to separate out
7 the organization from the individuals. I think we ought to
8 say no, that we are not satisfied with that approach and
9 that you have to look at management competence and
10 integrity as involving not only the organization but also
11 the individuals that compose that organization.

12 COMMISSIONER AHEARNE: Yes. I agree again with
13 the OPE/CGC memo on that one, and that was the thrust I
14 gather of your comments where you say something here at
15 this late stage of the proceeding to separate them.

16 COMMISSIONER ASSELSTINE: Yes.

17 CHAIRMAN PALLADINO: But if you get a proposal
18 from a utility you can't ignore it.

19 COMMISSIONER ASSELSTINE: That is right.

20 COMMISSIONER AHEARNE: One issue is GPU has
21 proposed some management changes, and I think the right
22 way, as Jim said, you have asked all the parties for their
23 comments, and I think OGC has to look at the issue they
24 raised, what effect does it have on the Board decision.

25 COMMISSIONER ASSELSTINE: Right.

1 COMMISSIONER AHEARNE: The second one Jim was
2 talking to was Dirck's proposal to separate people from
3 organization, and I agree with him on that also. What I
4 gathered from the OPE/OGC memo is that it is just too late
5 in the process to make that kind of separation.

6 CHAIRMAN PALLADINO: I understand that.

7 But now I don't your saying that you consider
8 the staff as a party and therefore we ask everybody for
9 comments. If you said the staff ought to review it,
10 consider it and then also ask for the parties' comments, I
11 would say then I would understand it. Otherwise, I don't
12 know who has the job to do it. The parties don't have any
13 job except to comment. The staff has a job to make sure
14 that the public health and safety is protected.

15 COMMISSIONER GILINSKY: But in these proceedings
16 they are a party and that is the price you pay for carrying
17 on ---

18 CHAIRMAN PALLADINO: I didn't intend it and I
19 don't like it either, but we have got it.

20 COMMISSIONER ASSELSTINE: But you have the staff
21 now saying to us that they are going to have to revalidate
22 their position on management integrity and competence. I
23 guess my own view is if you want to explore the GPU
24 proposal to understand more fully what it is, I don't have
25 any problem with that. If you want to bring all the parties

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1 in and have GPU give us a short presentation and then have
2 the other parties comment on it.

3 CHAIRMAN PALLADINO: I was thinking of us doing
4 it. If the staff has a proposal from one of the parties as
5 part of its review, it should review that proposal. It
6 should also be served on all the parties and then it should
7 be factored into the revalidation program to whatever
8 extent they think it is important.

9 COMMISSIONER ASSELSTINE: I guess I don't have
10 real difficulty with that, although I think in this sense
11 the staff is pretty much just like any of the others. The
12 staff had a position on these issues, they have said they
13 are revalidating it now and I think the staff has to decide
14 what weight they want to give the GPU proposal in making
15 their revalidation.

16 CHAIRMAN PALLADINO: Okay, I will agree to that.
17 That is what was getting at. They should review it to satisfy
18 themselves with regard to the impact it has on their
19 revalidation.

20 COMMISSIONER ASSELSTINE: Sure.

21 COMMISSIONER GILINSKY: But they have done that.
22 They have had a meeting and they have ---

23 COMMISSIONER ASSELSTINE: I am not sure they have
24 really reached any conclusion.

25 COMMISSIONER AHEARNE: They had the meeting

1 yesterday which was to try to explore and get further
2 information because that original letter was very sparse.

3 COMMISSIONER GILINSKY: Well, ultimately they
4 will come up with some view of it which will emerge in the
5 form of their own position.

6 COMMISSIONER AHEARNE: I think your approach is
7 right, Jim.

8 COMMISSIONER ASSELSTINE: Okay.

9 CHAIRMAN PALLAINO: I am going to skip to a
10 question that I believe is of particular interest to Victor
11 and others. Do we want to try to issue a partial initial
12 decision on anything promptly, or do we want to wait until
13 we have all of the items that would fall into place
14 completed before we make any decision?

15 Now one of the reasons for raising that question
16 was I believe Commissioner Gilinsky was interested in a
17 vehicle for getting his additional comments out and he
18 wanted to get them out early enough so that they may have
19 whatever impact they could have before the final decision
20 has to be made.

21 So my question is while we have Commissioner
22 Ahearne here do you want to make a partial initial
23 decision? The reason I say that is because it is not clear
24 to me how soon we will have another Commissioner.

25 COMMISSIONER AHEARNE: It doesn't look to me like

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1 given the schedule that OPE has come up with, I don't that
2 there realistically is a set of issues that can be
3 addressed while I am still here. I don't think that the
4 Commission should rush on any of those.

5 I would expect that there are a couple sets of
6 issues that ought not to lead to that great a disagreement
7 among the Commission and you might want to be able to try
8 to at least get those out of the way, which are some of the
9 hardware issues and perhaps the emergency planning type
10 issues. At least that would begin to close parts of the
11 proceeding and that would be useful and that would give
12 Victor his opportunity.

13 CHAIRMAN PALLADINO: But it would be off a few
14 more weeks. I do agree that we should not rush.

15 COMMISSIONER ASSELSTINE: I think the issues
16 touching on management competence and integrity, I just
17 don't see how we can reach any kind of a judgment at this
18 point.

19 COMMISSIONER AHEARNE: In fact, on that one,
20 although I didn't believe that the B&W/GPU court record
21 ought to be part of that decision, I would recommend that
22 you wait for the Hartman investigation before you make that
23 decision.

24 COMMISSIONER ASSELSTINE: Yes.

25 CHAIRMAN PALLADINO: Well, I would proposal also

1 to wait for the Parks/Gischel investigation and, as a
2 matter of fact, the ongoing investigations ought to be
3 awaited.

4 I also feel that we ought to try to get the
5 staff to complete the GPU versus B&W trial record as soon
6 as reasonably possible so that it can be factored in.

7 Now we can attempt to make some partial
8 decisions on the hardware issues, on emergency planning, on
9 the design issue and leave the management one to ---

10 COMMISSIONER AHEARNE: Yes, I think you ought to
11 try to do that.

12 COMMISSIONER ASSELSTINE: Yes, I would be willing
13 to work towards that.

14 CHAIRMAN PALLADINO: Now, Vic, I don't know where
15 that leaves you with your desire to get your additional
16 comments out.

17 COMMISSIONER GILINSKY: I guess I will have to
18 think about it.

19 CHAIRMAN PALLADINO: All right.

20 So I would suggest that OPE look at where we
21 might be able to make those decision and get us a revised
22 integrated schedule on that basis.

23 Now that also sort of makes a decision for us
24 with regard to investigations, that we should wait for
25 Hartman, Parks and Gischel. I don't have a whole list

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1 before me. Those are the principal ones.

2 COMMISSIONER ASSELSTINE: And you have Beda and
3 whatever it is.

4 CHAIRMAN PALLADINO: Well, Beda and RHR is going
5 to be done by the staff.

6 COMMISSIONER AHEARNE: I gather by this latest
7 document that ELD has already given a recommendation to NRR
8 on whether GPU should have reported certain information. Do
9 you know what that conclusion is?

10 MR. MONTGOMERY: No. Interestingly enough, that
11 is one of the first things I want to do after this meeting
12 is find out what the answer is. We just got the
13 information back this morning.

14 COMMISSIONER AHEARNE: The 5th item down on this
15 latest schedule.

16 CHAIRMAN PALLADINO: Make surb you are looking at
17 the 6/21 schedule.

18 COMMISSIONER AHEARNE: I was just curious what
19 the recommendation was.

20 COMMISSIONER ASSELSTINE: Yes.

21 CHAIRMAN PALLADINO: Well, I think we have made
22 most of the ---

23 MR. PLAINE: Mr. Chairman.

24 CHAIRMAN PALLADINO: Yes.

25 MR. PLAINE: Would there be any value in issuing

1 an order indicating generally what you are waiting for so
2 that there would be no misunderstanding publicly, or is
3 that something that you would prefer to handle by a press
4 release?

5 CHAIRMAN PALLADINO: Well, I was thinking of a
6 memo to the staff that would outline these decisions. Now
7 maybe that isn't the best way to do it and maybe it is an
8 order.

9 COMMISSIONER GILINSKY: Well, that presumably
10 gets served on parties.

11 CHAIRMAN PALLADINO: What is that, the order?

12 COMMISSIONER GILINSKY: No, any instruction to
13 the staff.

14 CHAIRMAN PALLADINO: Well, let's see what is it
15 that we have by way of instruction, that the Commission
16 doesn't feel that it is bound to wait for the review of the
17 GPU and B&W trial record, but that the staff should
18 continue working on its present time frame so that we can
19 get it early.

20 we also have the staff approach being okay on
21 the review of that trial record and all the items that we
22 discussed on that, and on the GPU proposal that the staff
23 should review it to the extent that it impacts on their
24 revalidation decision, and that we believe that the results
25 of the key investigations on IMI-1 should be awaited before

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1 we make the immediate effectiveness decision on managemen
2 integrity and competence and that in the interim we woul
3 try to make partial decisions on other topics which are
4 less controversy.

5 COMMISSIONER ASSELSTINE: And that we don't
6 accept the staff's proposed approach to separate out
7 organization from personnel, from individuals.

8 CHAIRMAN PALLADINO: I have a problem saying
9 or no to that one because I don't know what I am saying
10 or no to.

11 COMMISSIONER AHEARNE: I think the Commission
12 got to respond because ---

13 CHAIRMAN PALLADINO: I gather the Commission
14 knows what it wants.

15 COMMISSIONER ASSELSTINE: That is right.

16 COMMISSIONER AHEARNE: It is a proposal by th
17 EDO. He has proposed that to the Commission, and I thin
18 the Commission has to respond.

19 CHAIRMAN PALLADINO: We are saying basically
20 want to wait for all these investigations and therefore
21 is not essential to do it that way.

22 COMMISSIONER ASSELSTINE: No. In essence it i
23 rejection of that.

24 CHAIRMAN PALLADINO: Now suppose all these thi
25 in a memo that Sam would write up and circulate among us

1 Is that the proper way to proceed, or is an order more in
2 order?

3 I would say after we have that understood, then
4 we may have a tentative draft. I don't know what to do with
5 the schedules. How do you issue those so everybody knows
6 what we are working on without be bound to them? Is that an
7 order, a tentative schedule or ---

8 MR. PLAINE: I suppose you could say we are
9 waiting on certain things.

10 COMMISSIONER AHEARNE: I guess whether, and Jack
11 is probably better able to answer this, but given the
12 number of changes that ---

13 MR. ZERBE: Well, that schedule is a living
14 schedule.

15 COMMISSIONER AHEARNE: --- occurred in the
16 schedule, I would hesitate to have the Commission issue ---

17 CHAIRMAN PALLADINO: Well, it is a living
18 schedule which changes every day.

19 COMMISSIONER ASSELSTINE: I don't think we should
20 do anything.

21 CHAIRMAN PALLADINO: I am not indicating my
22 position, but somebody said we ought to have an order. Is a
23 memo as good as an order at least up to this point?

24 COMMISSIONER AHEARNE: I would think the staff's
25 requirements memo would be ---

1 COMMISSIONER ASSELSTINE: Served on the parties.

2 COMMISSIONER AHEARNE: --- served on the parties
3 in order to satisfy them.

4 COMMISSIONER ASSELSTINE: Yes.

5 CHAIRMAN PALLADINO: Well, will you prepare what
6 you think was said?

7 MR. PLAINE: Yes.

8 (Laughter.)

9 CHAIRMAN PALLADINO: Okay. Well, thank you very
10 much. I think it has been a worthwhile discussion.

11 We will stand adjourned.

12 (Whereupon, at 12:30 p.m., the meeting
13 adjourned.)

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CERTIFICATE OF PROCEEDINGS

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

In the matter of: DISCUSSION OF TMI-1 RESTART
COMMISSION MEETING (CLOSED)

Date of Proceeding: Tuesday, 21 June 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