

ORIGINAL**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

In the matter of:

**STATUS OF CERTAIN ENFORCEMENT
ACTIONS**

Docket No.

CLOSED MEETING

Location: Washington, D. C.

Pages: 1 - 56

Date: Thursday, January 26, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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STATUS OF CERTAIN ENFORCEMENT ACTIONS

- - -

CLOSED MEETING

(EXEMPTIONS 5 and 7)

- - -

Nuclear Regulatory Commission
Commissioners' Conference Room
Room 1130
1717 "H" Street, N. W.
Washington, D. C.

Thursday, January 26, 1984

The above-entitled closed Commission meeting
convened, pursuant to notice, at 2:10 o'clock p.m., NUNZIO
J. PALLADINO, Chairman of the Commission, presiding.

COMMISSIONERS PRESENT:

- NUNZIO J. PALLADINO, Chairman of the Commission
- VICTOR GILINSKY, Member of the Commission
- THOMAS ROBERTS, Member of the Commission
- FREDERICK BERNTHAL, Member of the Commission

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

- S. CHILK
- H. PLAINE
- B. HAYES
- R. LEVI

AUDIENCE SPEAKERS:

- J. AXELRAD
- P. DAVIS

P R O C E E D I N G S

1
2 CHAIRMAN PALLADINO: Good afternoon ladies and
3 gentlemen. I suggest we get started. I should explain that
4 Commissioner Asselstine is ill and won't be able to be here
5 today. Commissioner Gilinsky is available and I expect he
6 will be here shortly. We were informed by his office that
7 we should start without him.

1 COMMISSIONER BERNTHAL: All right.

2 COMMISSIONER GILINSKY: Let's get on to something
3 else.

4 CHAIRMAN PALLADINO: All right. Any more
5 questions?

6 (No response.)

7 CHAIRMAN PALLADINO: I wanted to ask a question
8 since we are talking about certain investigations, Sam Chilk
9 sent this Staff Requirements Memo resulting from a January 10
10 meeting with regard to TMI-1 Restart and we said, "The
11 Commission also directed OI to proceed with its investiga-
12 tions..." and this is speaking of the TMI-1 leak rate.
13 "The Commission also directed OI to proceed with its investi-
14 gations as far as possible without violating the agreement
15 with DOJ and submit an interim report to the Commission."
16 The SECY suspense says, "To be determined."

17 I think we need to get an idea of when an interim
18 report could be obtained based on your limited investigation
19 because it may impact on what we do with regard to TMI-1
20 Restart.

21 MR. HAYES: We are getting to maybe the next area.
22 We have not yet formalized the Department of Justice's
23 request here.

24 CHAIRMAN PALLADINO: Do you mean you haven't
25 settled whether or not they can --

1 MR. HAYES: We have not.

2 MR. PLAINE: There are still some problems to work
3 out.

4 CHAIRMAN PALLADINO: When might that be settled?

5 MR. PLAINE: Maybe I will have a good answer next
6 week. They were over here yesterday and we went through an
7 awful lot of stuff and they want to think about some things
8 and make some inquiry. I have a tentative promise that we
9 get it done by next week.

10 CHAIRMAN PALLADINO: All right.

11 MR. HAYES: But in the interim, Mr. Chairman, we
12 are doing everything that we see that we should be doing
13 except interviewing certain members that were listed.

14 CHAIRMAN PALLADINO: Now after you get this
15 determination of whom you can and cannot interview, how long
16 does it take to write a report?

17 MR. HAYES: That would depend on what the Department
18 of Justice's bottom line is here with us in these negotiations.

19 MR. PLAINE: One of the problems is as I intimated
20 to you the other day that they are concerned about the
21 release of a report at this stage. They are wrestling with--

22 CHAIRMAN PALLADINO: This is a report to the
23 Commission.

24 MR. PLAINE: Yes, that's right. They are concerned
25 about release of that kind of a report at this point when the

1 department is wrestling with the court and the defendant
2 on the question of change of venue, jury selection, whether
3 or not any reports that we make at this time might
4 prejudice the selection of a fair jury.

5 CHAIRMAN PALLADINO: But they are talking about a
6 trial that involves TMI-2. We are talking about a population
7 of people that have been investigated already and they have
8 provided their testimony in a different population from the
9 one they are treating. I don't see why having done that
10 OI can not give the Commission a report on the results of that
11 investigation.

12 What we do with it further --

13 MR. PLAINE: That is the question. What do you do
14 with it further?

15 CHAIRMAN PALLADINO: Its preparation should not be
16 delayed.

17 MR. HAYES: We are going to prepare a report.

18 MR. PLAINE: Yes.

19 CHAIRMAN PALLADINO: One of the reasons we did not
20 give you an arbitrary deadline, we knew the negotiation was
21 going on and wanted to get some feel from you how long it
22 took. But I do think that is something that is a high
23 priority item if we are going to go ahead with anything on
24 TMI-1.

25 I was trying to determine what a reasonable date

1 would be if priority is given to this item and I think we
2 ought to give it priority.

3 MR. PLAINE: I think it is clear that they have a
4 problem with ten people. It may reduce itself to eight
5 possibly. But nevertheless when you come to the point where
6 a report is made and you are going to release it, if it
7 happens to turn up in this particular time when jury selection
8 is taking place or when the court has decided whether or
9 not they are going to have the trial in the middle district
10 of Pennsylvania or in Delaware or in New Jersey or wherever
11 Respondent seems to be asking for --

12 CHAIRMAN PALLADINO: We are not interfering with
13 that all. We are not even talking to the same people unless
14 they allow us to. Right now the question as I understood it
15 was you have interviewed everybody except these ten. You
16 were going to determine whether there are more out of the
17 ten that we could interview and then Ben was going to decide
18 whether it is worth doing it because you said that the two
19 that they had mentioned really weren't worth it to you.

20 MR. PLAINE: That is the first question. The
21 second question is what publicity is given to a report be it
22 a partial report or an entirely whole report. The question
23 that they raised with us yesterday was there may be issues
24 of the giving of a fair trial or the ability first to select
25 a jury that may not be prejudiced by action by the Nuclear

1 Regulatory Commission in this field because TMI-1 and TMI-2
2 are somewhat intimately related and that if that interferes --
3 and that is going to interfere with the selection because
4 people will be automatically disqualified when they are
5 questioned on voir dire, that is going to raise a problem
6 for them.

7 Number two is whether or not even if it comes a
8 little later than that when the trial has started, whether
9 or not the issuance of a partial or even a complete report
10 on TMI-1 might not unfairly prejudice the jury in favor of
11 or against one side or the other.

12 That is the issue that they are posing to us
13 and they want to think about how to handle that and whether
14 or not they can. They are not trying to be obstructive.
15 They are trying to be fair.

16 CHAIRMAN PALLADINO: Sure.

17 MR. PLAINE: But they are looking into ways and
18 means of how do we deal with that problem and trying to
19 advise us on that hopefully next week if I can get some
20 advice by then.

21 CHAIRMAN PALLADINO: They seem to be more worried
22 about what we are going to do with it after it is created
23 rather than whether or not it is created.

24 MR. PLAINE: Not what you are going to do with it
25 but what kind of publicity you are going to give to it which

1 could affect the trial, the jury, the fairness, et cetera.

2 MR. HAYES: Their concern is not generating the
3 report itself but making it available to the public. That
4 is their concern as it may prejudice the jury or the
5 environment where the trial is being conducted.

6 CHAIRMAN PALLADINO: But we can't forever be held
7 hostage by the Department of Justice that we can't proceed
8 because something is referred to them for criminal investi-
9 gation.

10 MR. PLAINE: That is what we keep telling them.

11 CHAIRMAN PALLADINO: I don't mind your continuing
12 to work on it but I still say and I think the Commission says
13 but we can always bring it to a vote again that we ought to
14 go as far as we can and then get a report.

15 MR. PLAINE: All right. They are not objecting
16 to it.

17 CHAIRMAN PALLADINO: But in a reasonable time
18 frame, not two years from now.

19 MR. PLAINE: They are not objecting to our doing it.

20 MR. HAYES: You are talking about the TMI report,
21 Mr. Chairman, TMI-1 leak rates?

22 CHAIRMAN PALLADINO: I am talking about TMI-1 leak
23 rate.

24 MR. HAYES: We will have that report done notwith-
25 standing the guidelines that might be negotiated with the

1 Department even the most restrictive by the end of March.
2 That was the projection.

3 CHAIRMAN PALLADINO: I was going to ask you why
4 does it take that long?

5 MR. HAYES: If we are allowed to interview
6 additional people then we are going to need to the end of
7 March. If we are not permitted to interview, then that will
8 constrict down. Plus or minus two to four weeks, Mr. Chairman.

9 CHAIRMAN PALLADINO: Four weeks is significant.
10 What I was getting at, yes, go ahead with your discussions
11 but if we are not going to interview any more additional
12 people or if we are not going to interview any of those ten
13 people, then you are in a position to go ahead and finish
14 your report.

15 MR. HAYES: Yes, sir.

16 CHAIRMAN PALLADINO: If you are going to interview
17 then you can tell us what it is going to take.

18 MR. HAYES: In any event out of all the TMI matters
19 that we have, that is the priority investigation within my
20 office.

21 CHAIRMAN PALLADINO: I just want to raise the
22 question because we left the suspense date open and I will
23 come back to you after you have had discussions.

1 CHAIRMAN PALLADINO: I don't know if I am authorized
2 to do this in a closed meeting but I would just like to talk
3 about where we go from here for the rest of the afternoon.
4 We have a meeting on the Discussion of Memorandum on Future
5 Steps in TMI-1 Restart. I hope that meeting is a short one.

6 I am going to suggest that we break now until 3:30
7 and that we come back at 3:30 on this Future Steps but then
8 be prepared to go right into agenda planning because I have
9 a feeling that we will have time between that time and 4:30.

10 COMMISSIONER BERNTHAL: Mr. Chairman, the one point
11 I would raise and I don't know whether you have spoken with
12 him about it despite the fact that, I guess, he and Victor
13 have already indicated they will attach dissenting views,
14 I would wonder whether in this matter we should not have
15 Jim here for the discussion.

16 CHAIRMAN PALLADINO: I know we are going to get far
17 afield but the purpose of today's meeting is to see if we
18 have any problem with the "as written" material because if
19 we are going to do something tomorrow and tomorrow is when
20 we would vote, if we are going to do something tomorrow then
21 we ought to give notification to people so that those from
22 Harrisburg who want to come down can come down.

23 If it turns out that we have great problems with
24 the wording and we are not going to get it settled by
25 tomorrow, then there is no point in their coming down. That

1 is all I want to determine out of the 3:30 meeting. That is
2 why I thought it could be short.

3 I don't know if we have had the benefit of Jim
4 Asselstine's input to the order. I think we would benefit
5 from that.

6 COMMISSIONER GILINSKY: What does he say, Pat?

7 MS. DAVIS: He says that is fine to go ahead without
8 him. He will have his views tomorrow.

9 CHAIRMAN PALLADINO: All right. That is why I say
10 that meeting could be a short meeting and then I would
11 suggest that we go on to agenda planning after that meeting
12 and by that time it will be 4:30 and we can go to affirmation
13 and we will conserve some time toward the end of the day.

14 Why don't we take a recess and come back at 3:30.
15 Thank you.

16 (Whereupon, the above-entitled Commission meeting
17 adjourned at 3:22 o'clock p.m., to reconvene at the Call of
18 the Chair.)

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NUCLEAR REGULATORY COMMISSION

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

in the matter of: Status of Certain Enforcement Actions
(CLOSED MEETING - Exemptions 5 and 7)

Date of Proceeding: Thursday, January 26, 1984

Docket Number: _____

Place of Proceeding: Rm. 1130, 1717 "H" St., N.W.
Washington, D. C.

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

Marilynn M. Nations

Official Reporter (Typed)

Marilynn M. Nations
Official Reporter (Signature)