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ORIGINAL

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

DISCUSSION OF MEMORANDUM
ON FUTURE STEPS IN TMI-1
RESTART

Docket No.

CLOSED MEETING

Location: Washington, D. C.

Pages: 1 - 35

Date: Thursday, January 26, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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DISCUSSION OF MEMORANDUM ON FUTURE
STEPS IN TMI-1 RESTART

- - -

CLOSED MEETING - EXEMPTIONS 5 AND 10

- - -

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

Thursday, January 26, 1984

The Commission met, pursuant to notice, at

3:37 p.m.

COMMISSIONERS PRESENT:

NUNZIO PALLADINO, Chairman of the Commission
VICTOR GILINSKY, Commissioner
THOMAS ROBERTS, Commissioner
FREDERICK BERNTHAL, Commissioner

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

SAM CHILK
JOHN ZERBE
JOHN MONTGOMERY
RICK LEVI
HERZEL PLAINE

AUDIENCE SPEAKERS:

JOE FOUCHARD
PAT DAVIS

P R O C E E D I N G S

1
2 CHAIRMAN PALLADINO: The subject of this meeting is
3 a draft memorandum on the TMI-1 restart future steps that
4 was circulated to our offices yesterday afternoon.

5 As a result of my review of that and questions that
6 were raised in connection with the proposed memorandum, I
7 suggested several changes and I have gotten one or two other
8 changes from --

9 COMMISSIONER BERNTHAL: Joe, let me --

10 MR. CHILK: Could I interrupt for just a second?
11 Before we go into the substance, could I ask the Commission
12 to vote to hold this on a short notice and to close it under
13 Exemptions 5 and 10.

14 CHAIRMAN PALLADINO: Thank you.

15 COMMISSIONER BERNTHAL: You may, but first I would
16 like to just raise the point that I am not prepared to do
17 this today, Joe. It seems to me that Jim is gone. I gave
18 a speech until late last night and it seems to me that it
19 really is important that we let the wording on these things
20 and so on sit for a day or so until we have a chance to go
21 through them carefully.

22 It's TMI-1 and we, on one day's notice, got this
23 meeting scheduled tomorrow now. There is no meeting Monday
24 and Tuesday, although I guess Victor has to be out of town.

25 CHAIRMAN PALLADINO: Commissioner Gilinsky has to

1 be out Monday, that's one of the problems that I have.

2 But besides, the Commission has said that we
3 wanted to try to get this out by the end of the week.

4 COMMISSIONER GILINSKY: I will also be out the
5 rest of the week.

6 CHAIRMAN PALLADINO: What's that?

7 COMMISSIONER GILINSKY: Tuesday --

8 CHAIRMAN PALLADINO: Yes, all next week and it
9 seemed appropriate to have an open session in which we
10 announce our roadmap.

11 COMMISSIONER BERNTHAL: I am entirely in agreement
12 with the need to be expeditious, but I don't think we should
13 be precipitous on a half-day's notice on things that I think
14 are of great moment.

15 I am just very concerned. I apologize because I
16 really haven't got the picture of the loose ends here until
17 the last hour and, perhaps, seven minutes here.

18 But is there any way that we can give ourselves
19 a day or so and perhaps have the benefit of Jim's presence
20 at a meeting to go through some of this?

21 COMMISSIONER GILINSKY: Well, Jim doesn't seem to
22 care. I mean, if you want to use some other reason, that's
23 fine. But I don't get the impression that Jim seems to care
24 whether you go forward or not.

25 COMMISSIONER BERNTHAL: No, I think he is willing

1 to let us go forward because he clearly has his own views.
2 I tend to think that you ought to have the benefit of
3 opinions whether or not the majority opinions -- in leading
4 these things.

5 COMMISSIONER GILINSKY: Let's see, are you concerned
6 about me having your opinion, or you have my opinion?

7 COMMISSIONER BERNTHAL: No, no, I don't think
8 we are going to convince anybody but --

9 CHAIRMAN PALLADINO: Well, let's see, does anyone
10 from Commissioner Asselstine's office know whether or not
11 he has suggested changes to this proposal?

12 MS. DAVIS: I talked to him earlier. He said it
13 was his view that it was up to you whatever you might put
14 out, and that he had no problems with it. You know, you would
15 still have his views tomorrow morning.

16 CHAIRMAN PALLADINO: All right.

17 COMMISSIONER BERNTHAL: Well, I don't want to
18 confuse the issue. The point is, it seems to me, that we
19 got two or three things here that are uncertain, I mean,
20 we've got to get really straightened out. And to me, doing
21 that on twelve hours' notice and issuing this today is not
22 just very prudent.

23 CHAIRMAN PALLADINO: Excuse me. We still have the
24 issue of whether to hold this meeting on short notice, and
25 we appear to be meeting --

1 COMMISSIONER BERNTHAL: That's right.

2 CHAIRMAN PALLADINO: -- holding the meeting. I
3 suggest we vote on holding the meeting. Then we can go ahead
4 and discuss this issue.

5 COMMISSIONER BERNTHAL: Okay.

6 MR. CHILK: The question is, do we hold the
7 meeting on short notice, do we close it under Exemptions
8 5 and 10, we complete the vote on that.

9 CHAIRMAN PALLADINO: I would say aye.

10 COMMISSIONER BERNTHAL: That's this meeting, okay,
11 yes.

12 CHAIRMAN PALLADINO: This meeting.

13 COMMISSIONER BERNTHAL: Sorry..

14 CHAIRMAN PALLADINO: The one we are --

15 COMMISSIONER BERNTHAL: Not the one tomorrow.

16 COMMISSIONER ROBERTS: Aye.

17 COMMISSIONER GILINSKY: Aye.

18 CHAIRMAN PALLADINO: All right. We have the
19 meeting, have a conclusion different from what --

20 COMMISSIONER BERNTHAL: I'm sorry, what's the
21 question now?

22 CHAIRMAN PALLADINO: The question is, are you
23 willing to have the meeting now, on this subject, and are
24 you willing to close it on five and ten.

25 COMMISSIONER BERNTHAL: I'm willing to meet, yes.

1 I'm willing to close it. I thought I voted on that.

2 MR. CHILK: Yes, I thought you voted.

3 CHAIRMAN PALLADINO: Oh, I'm sorry. I hadn't
4 caught that.

5 COMMISSIONER BERNTHAL: And I'm willing to meet on
6 this subject now, that's fine with me. I do not believe
7 that we are prepared, though, to see a final version of more
8 than one document that's in front of us.

9 We also have a request for appearance tomorrow, I
10 believe, by some parties. I'm not prepared to have this
11 public meeting tomorrow.

12 And I guess, let me back up and say, my preference
13 would be to have more time to look at this document in front
14 of us that we are about to send out.

15 CHAIRMAN PALLADINO: Well, we are following the
16 schedule that I thought the Commission had agreed to. But
17 if you don't agree to it, then I guess --

18 COMMISSIONER BERNTHAL: I guess it's partly my
19 fault, but I don't think we got a schedule until late
20 yesterday, didn't we?

21 CHAIRMAN PALLADINO: No, when we talked about it
22 the other day we said we would be lucky to get something by
23 late yesterday. That we would have to look at it over the
24 next day. We ought to meet on Thursday to see whether or not
25 we are prepared for a Friday meeting and, if possible, try to

1 have a Friday meeting.

2 COMMISSIONER BERNTHAL: I guess that's what we are
3 doing, then. I don't think we are prepared for a Friday
4 meeting. That's my opinion.

5 CHAIRMAN PALLADINO: That's why I wanted to have
6 this meeting because I don't want people to come down here
7 and find a meeting that was cancelled, and I don't want them
8 to not come down if we are going to hold it.

9 COMMISSIONER BERNTHAL: Yes.

10 CHAIRMAN PALLADINO: So now, then, we have to talk
11 about when we might have such a meeting. And I do think it's
12 important for all Commissioners to be here. We have gone
13 this long and I would hate to have a meeting without all
14 Commissioners here because I think the additional remarks
15 of the Commissioners are important, and an opportunity to
16 set them forth.

17 COMMISSIONER GILINSKY: Would Jim be here tomorrow,
18 do you think?

19 COMMISSIONER BERNTHAL: That's another question.

20 MS. DAVIS: He was going to come in because of the
21 meeting.

22 CHAIRMAN PALLADINO: I didn't hear that.

23 COMMISSIONER GILINSKY: So he would have been here.

24 MS. DAVIS: Yes.

25 CHAIRMAN PALLADINO: What did she say?

1 COMMISSIONER GILINSKY: He would have come in.

2 CHAIRMAN PALLADINO: So, if he is still ill, he
3 won't be here; is that it?

4 COMMISSIONER GILINSKY: No, he was planning to be
5 here tomorrow.

6 COMMISSIONER BERNTHAL: Unless he's terribly ill,
7 I gather he'll make it no matter what. That's what you are
8 saying essentially.

9 CHAIRMAN PALLADINO: Well, Commissioner Gilinsky
10 is gone, I think, all next week. So, this would defer action
11 until February 6 at the earliest, providing no other
12 Commissioner travels or gets sick.

13 COMMISSIONER GILINSKY: Any one of you three,
14 particularly.

15 CHAIRMAN PALLADINO: I think it's important for all
16 of us to be here.

17 Well, in view of your views, is the Commission
18 agreed to wait until February 6th before proceeding?

19 COMMISSIONER BERNTHAL: Well, you clearly have a
20 majority if you can form one. My view is that there is too
21 little time to prepare for this meeting tomorrow. At least
22 speaking for myself, I'm not prepared for the meeting
23 tomorrow. I can get prepared, I suppose, at some level and
24 I question whether the Commission is prepared, given the
25 short notice and short lead time on some of the documents in

1 front of us. That's my opinion.

2 I apologize, we should have had a chance to talk
3 earlier, Joe.

4 CHAIRMAN PALLADINO: That's all right, that's why
5 I had put this meeting on. I just did not want to have
6 people coming down from Harrisburg and find out that there
7 wasn't any meeting.

8 COMMISSIONER BERNTHAL: Certainly, I understand.

9 CHAIRMAN PALLADINO: And I didn't want to have a
10 meeting without the appropriate notice to those people or to
11 anyone else that's interested.

12 Do you have any objection to waiting? This is how
13 we got where we were last January.

14 COMMISSIONER BERNTHAL: Well, it doesn't give me
15 any pleasure to think that this has to be deferred now for
16 ten days for a whole variety of reasons. But I'm also
17 concerned that we not move in haste without careful
18 consideration on something that is really terribly important.

19 CHAIRMAN PALLADINO: Yes.

20 Victor, are you leaving early in the morning, or
21 are you leaving the day before?

22 COMMISSIONER GILINSKY: I'm actually leaving in the
23 afternoon, but I'll be away the day before, I'll be in
24 New York. I don't know when I'll get back, whether I'll
25 leave there the night before or the following morning.

1 CHAIRMAN PALLADINO: Well, I was wondering, is it
2 possible that on Monday, if we schedule something on the
3 order of 11 o'clock?

4 COMMISSIONER GILINSKY: No, I can't handle it on
5 Monday, no.

6 CHAIRMAN PALLADINO: You can't handle it Monday at
7 all. Tuesday?

8 COMMISSIONER GILINSKY: Conceivably Tuesday
9 morning, but --

10 CHAIRMAN PALLADINO: Tuesday morning.

11 COMMISSIONER GILINSKY: -- it is at some
12 inconvenience. So, it's one person that's inconvenienced
13 versus another.

14 COMMISSIONER BERNTHAL: Well, if it's a question
15 only of my inconvenience, I clearly can go to a meeting
16 tomorrow and be prepared.

17 I question whether the Commission should meet on
18 this matter with these documents having been out such a
19 short period of time. I'm a firm believer on very important
20 matters in letting things sit for a day or two.

21 COMMISSIONER GILINSKY: Well, I mean that's a
22 matter on which I offer no suggestion. I mean, it's really
23 up to the three of you.

24 CHAIRMAN PALLADINO: Well, I'm trying to accomodate
25 your suggestion. I just want to see what the flexibility is.

1 COMMISSIONER BERNTHAL: No, I understand, that's
2 a Commission judgment. You got my opinion.

3 COMMISSIONER GILINSKY: I mean, I won't -- it's
4 possible that I'll be available but I just don't want to
5 commit myself at this point.

6 CHAIRMAN PALLADINO: So, at no time next week.

7 COMMISSIONER GILINSKY: No, after Tuesday after-
8 noon, then I'm away in Albuquerque and just won't be here
9 at all.

10 CHAIRMAN PALLADINO: So, if you are not prepared
11 to make a commitment for Tuesday, then, there is no commitment
12 next week; is that right?

13 COMMISSIONER GILINSKY: Yes. I mean, if you are
14 ready, I may be here. Certainly, if I'm here, I'll certainly,
15 if I'm here, I'll certainly be happy to go forward.

16 CHAIRMAN PALLADINO: But we have to give notice.

17 COMMISSIONER GILINSKY: Well, we would have given
18 one day's notice. So, I might be able to tell you on
19 Monday, call in or something like that.

20 I certainly, to the extent I can, will try to
21 accomodate you. And I realize you are accomodating me in
22 the sense that you would like everyone to be here.

23 CHAIRMAN PALLADINO: Yes, I would like everyone
24 to be here.

25 COMMISSIONER GILINSKY: You know, you set a

1 schedule and it was going to be tomorrow and --

2 COMMISSIONER BERNTHAL: Shot.

3 You should not, and the Commission should not,
4 consider this as an accomodation. I'll be here tomorrow.
5 The question that I am posing and suggesting is that there
6 has not been adequate time to review all these documents
7 in the way that they ought to be reviewed, and that's the
8 question the Commission ought to consider, not the fact
9 that I personally feel that we should not do it so quickly.

10 COMMISSIONER GILINSKY: Well, as I said, that is
11 something on which I offer no view. That is entirely up to
12 you.

13 CHAIRMAN PALLADINO: Well, the document is only
14 one document. There are a lot of back-up documents we might
15 want to rely on.

16 COMMISSIONER BERNTHAL: That's right.

17 CHAIRMAN PALLADINO: Well, I would be ready to
18 vote tomorrow, but I'm only one person.

19 COMMISSIONER ROBERTS: I'm willing to meet
20 tomorrow.

21 CHAIRMAN PALLADINO: What's that?

22 COMMISSIONER ROBERTS: I'm willing to meet tomorrow.

23 COMMISSIONER BERNTHAL: We'll meet tomorrow. I
24 would vote against meeting tomorrow, but --

25 COMMISSIONER ROBERTS: I defer to you, Joe.

1 I think Fred made some good points.

2 CHAIRMAN PALLADINO: Yes, I know he did.

3 COMMISSIONER ROBERTS: I don't comment on the merits.

4 You have my proxy, whatever you want to do.

5 (Laughter)

6 CHAIRMAN PALLADINO: If we could do it sometime
7 next week, I'd say, no problem because I have the same kind
8 of feeling that on reflection sometimes things arise that
9 deserve consideration.

10 COMMISSIONER BERNTHAL: Yes, and I must say, the
11 schedule tomorrow was very thick as it stands. Again, I
12 think that may lend itself to a less than thoughtful and
13 ideal consideration.

14 CHAIRMAN PALLADINO: I was trying to follow what
15 the Commission said they would try to do, that we should
16 get something out by the end of the week.

17 COMMISSIONER BERNTHAL: I understand.

18 CHAIRMAN PALLADINO: Victor, might we know Monday
19 whether or not you could be here?

20 COMMISSIONER GILINSKY: I will let you know Monday.

21 CHAIRMAN PALLADINO: So, deferring it, there may
22 be a window Tuesday. Lacking that, then the next time would
23 be probably February 6th.

24 COMMISSIONER BERNTHAL: Joe, I have no difficulty
25 with going through and getting comments on this document as

1 planned in the meeting today.

2 CHAIRMAN PALLADINO: Yes, I was going to --

3 COMMISSIONER BERNTHAL: And in fact, as far as
4 I'm concerned, since you got Tom's proxy and you prefer to
5 meet tomcorrow, we can talk later and then the decision
6 finally becomes yours because you need to decide whether to
7 meet tomorrow. If that's your decision, then I'll be ready
8 to meet tomorrow.

9 CHAIRMAN PALLADINO: Incidentally, we have been
10 getting telephone calls in my office at a relatively high
11 rate --

12 (Laughter)

13 CHAIRMAN PALLADINO: -- about this meeting tomorrow
14 and Joe Fouchard has been very --

15 COMMISSIONER GILINSKY: Have we announced the
16 meeting tomorrow?

17 CHAIRMAN PALLADINO: What's that?

18 MR. FOUCHARD: It's tentatively. Yes, it's on
19 your schedule.

20 COMMISSIONER GILINSKY: it was announced?

21 MR. FOUCHARD: Yes, it's on your tape and it's on
22 the Federal Register.

23 CHAIRMAN PALLADINO: Tentatively.

24 COMMISSIONER GILINSKY: What's the title?

25 MR. FOUCHARD: Sam, help me.

1 MR. CHILK: The title is, "Possible Vote on
2 Memorandum on Future Steps on TMI-1 Restart."

3 MR. FOUCHARD: But if you are going to postpone
4 even without setting a date, I would ask you to do it now
5 so that I --

6 CHAIRMAN PALLADINO: I want to do it before we
7 break up here.

8 MR. FOUCHARD: Okay.

9 COMMISSIONER BERNTHALL: It's your call. I mean,
10 you clearly got the consensus of two here to do it.

11 CHAIRMAN PALLADINO: To give me some time to think,
12 let me identify the suggested changes that have been made.

13 COMMISSIONER BERNTHAL: Fine.

14 CHAIRMAN PALLADINO: Because I'm not sure they are
15 all on the copies you've got.

16 Starting with the first paragraph, the sentence
17 that begins about the middle of the paragraph that says, "In
18 this regard, the Commission presently believes that the
19 only on-going investigation which will likely require further
20 resolution before a decision," et cetera, Tom Roberts
21 suggests that we replace "will likely" by the word "may."
22 So that it says, "The Commission presently believes that
23 the only on-going investigation which may require further
24 resolution," and I think that's a worthwhile suggestion.

25 I think the remainder of them have been identified

1 in what was walked around from my office.

2 In the second paragraph there is the insert, and
3 I believe it's the second sentence, "In this regard, the
4 Commission's view based on currently-available information,"
5 that would be the insert, "is that neither Chairman of the
6 Board Kuhns or Chief Executive Officer Dieckamp will have to
7 be temporarily or permanently separated."

8 Then, the next sentence it is suggested be deleted.

9 Down on the bottom of page 1 there is a bracketed
10 sentence and the suggestion is that we delete that bracketed
11 sentence.

12 And the last sentence in that paragraph says, "The
13 Commission believes that this process provides the
14 possibility for reaching an early decision." The suggestion
15 is we cross out "early" and make it "a decision."

16 On the top of page 3 there are two inserts and
17 some crossing out in the last sentence such that the last
18 sentence in the top paragraph would read, "The Commission's
19 decision will prescribe the conditions that will apply for
20 any individuals who are to be separated from Nuclear
21 Operations."

22 Those are the changes that I have, unless there
23 are others.

24 COMMISSIONER BERNTHAL: Joe, let me since I guess
25 the broad message at least didn't get through on the first

1 sentence, I do not think that we should characterize this
2 entire document as somehow strictly being a reply to the
3 GPU proposal nor, at least in my case, is my determination
4 based on the GPU proposal.

5 Therefore, I would suggest that that first sentence
6 be modified. It may happen to bear some resemblance to their
7 proposal but that's not -- in detail at this point I
8 probably couldn't tell you how closely my opinion here
9 resembles their proposal.

10 CHAIRMAN PALLADINO: Which sentence, Fred?

11 COMMISSIONER BERNTHAL: "The Commission's current
12 view is that the GPU proposal as modified and discussed,
13 and with some additional modifications, can be the basis for
14 a decision."

15 I would prefer that -- though I don't have the
16 words quite crafted here -- that something to the effect of
17 the fact that we have reached a decision, and that our
18 judgment is the following, in recognition of the need to
19 respond to their proposal perhaps.

20 But I don't want to convey the impression -- and
21 it's a misimpression -- that our decision and our judgment
22 is driven by their proposal.

23 COMMISSIONER GILINSKY: You shouldn't have no
24 doubt about how this will be viewed, or how it will be
25 labeled.

1 COMMISSIONER BERNTHAL: Well, that's all right. I
2 don't want to say something that isn't true, at least in my
3 case.

4 CHAIRMAN PALLADINO: Well, are you going to make
5 a suggested change? Did you provide a suggested change?
6 Not by tomorrow -- if that sounds more substantive than some
7 of the other matters. So, let me decide that we will wait
8 and will not have a meeting tomorrow, subject to any over-
9 riding by the Commission what it wants to do. That we not
10 have a meeting tomorrow.

11 COMMISSIONER BERNTHAL: Not because of this
12 sentence, or --

13 CHAIRMAN PALLADINO: For two reasons. One, at
14 least one Commissioner feels that there is value in spending
15 more time in reviewing this.

16 And two, that there is a substantive change that
17 you would like the Commission to consider.

18 COMMISSIONER GILINSKY: That's not really a
19 substantive change.

20 CHAIRMAN PALLADINO: Well, he considers it a
21 substantive change. I consider it a substantive change.

22 COMMISSIONER GILINSKY: Well, he considers it a
23 label. He doesn't know what the substantive difference is.

24 CHAIRMAN PALLADINO: Well, I view what he says
25 on there to be a substantive change.

1 COMMISSIONER BERNTHAL: I can probably suggest some
2 words here. My only objection is that if you take out the
3 stuff in between -- this says the GPU proposal can be the
4 basis for a decision on the management issues.

5 I think the Commission ought to make the decision
6 on the management issues.

7 CHAIRMAN PALLADINO: Well, the Commission is going
8 to make a decision. I'm not sure I understand, Fred.

9 COMMISSIONER GILINSKY: Well, I think what Fred
10 is saying -- and it is entirely understandable, if I may help
11 you out.

12 COMMISSIONER BERNTHAL: Yes.

13 COMMISSIONER GILINSKY: That it doesn't look so
14 good to be calling this the GPU proposal. But in fact, it is.

15 CHAIRMAN PALLADINO: Yes, I consider that a
16 substantive comment.

17 COMMISSIONER ROBERTS: Vic, you are a very good
18 devil's advocate.

19 COMMISSIONER GILINSKY: I can argue either side.
20 (Laughter)

21 CHAIRMAN PALLADINO: And sometimes you do.
22 (Laughter)

23 COMMISSIONER GILINSKY: Good point.

24 COMMISSIONER BERNTHAL: We don't need to get hung
25 up on this.

1 CHAIRMAN PALLADINO: No, I'm hung up on the decision
2 with regard to tomorrow, and I'm still saying, if you find
3 this a problem then we ought to have time to discuss it.
4 You ought to propose what you think should be said, and we'll
5 look at it.

6 COMMISSIONER BERNTHAL: Well, do you find it a
7 problem? If you and Tom have no problem with it, then it's
8 not a problem.

9 CHAIRMAN PALLADINO: No, you are an important
10 part of a three-to-two decision.

11 (Laughter)

12 CHAIRMAN PALLADINO: We can be very accomodating.

13 (Laughter)

14 CHAIRMAN PALLADINO: Let me again say that in view
15 of the feeling of at least one Commissioner that this matter
16 should not be rushed and we should have time to reflect on
17 the words written here, and in view of the fact that there
18 are a particular set of words that you feel deserve special
19 attention, I would say we will not have the meeting tomorrow.

20 COMMISSIONER ROBERTS: Is that a question?

21 CHAIRMAN PALLADINO: I'm proposing it.

22 COMMISSIONER ROBERTS: When are we going to get
23 Commissioners Gilinsky's and Asselstine's dissenting views?

24 CHAIRMAN PALLADINO: I have those as additional
25 questions.

1 COMMISSIONER GILINSKY: Well, we can deal with that
2 right now. I don't see any point in writing or distributing
3 anything until I have seen the final version of what you are
4 going to do.

5 So, if you are not going to put it out tomorrow,
6 you have turned out a final version tomorrow --

7 COMMISSIONER BERNTHAL: I think this is a small
8 point. This could be settled in 15 minutes, but --

9 CHAIRMAN PALLADINO: Well, let's try it, if you
10 want to try it. This is where we got, I remember, last time.
11 One of the reasons we delayed was that we were going to wait
12 for dissenting opinions. But then people went on travel and
13 then new things came up.

14 COMMISSIONER GILINSKY: I would suggest --

15 COMMISSIONER BERNTHAL: Yes, I don't want to
16 discourage the first opinion.

17 COMMISSIONER GILINSKY: You can either do it in
18 meeting or two-by-two, I'll be happy to leave.

19 (Laughter)

20 COMMISSIONER GILINSKY: However you want to do it.

21 CHAIRMAN PALLADINO: Do what?

22 COMMISSIONER GILINSKY: Well, I don't know. I
23 thought you wanted to go forward with your document. But if
24 you are not going to complete it tomorrow, then I guess I
25 would like to see at least what you regard as -- if you

1 consider at all doing anything next week, I would like to have
2 something by tomorrow night, close of business.

3 COMMISSIONER BERNTHAL: This document, I think, is
4 not -- especially that particular change -- is not the
5 question about whether to have a meeting tomorrow, in my
6 judgment.

7 I think we could give you a final version of this
8 document, at least as far as I am concerned, certainly by
9 5 o'clock today, I would guess.

10 My question about the wisdom of holding a meeting
11 tomorrow is simply whether you shouldn't let this thing have
12 at least 24 hours for consideration. And that's a different
13 question, almost.

14 CHAIRMAN PALLADINO: Well, we have had 24 hours
15 and we'll have another 24 hours.

16 COMMISSIONER BERNTHAL: What I am saying, Joe, is
17 I think your decision should be based on the first part of
18 the statement you just made. I think at least this particular
19 part of the statement --

20 CHAIRMAN PALLADINO: Let's see, I have to turn the
21 question around and say, are you ready to vote tomorrow? If
22 you are not ready to vote, then we don't have a vote.

23 COMMISSIONER BERNTHAL: I'm prepared to vote if
24 the majority of the Commission is prepared to vote. But I
25 still --

1 CHAIRMAN PALLADINO: Well, you are part of that
2 majority, that's the thing. Are you, as part of the
3 majority, are you ready to vote tomorrow? If you feel that
4 you need more time then I say --

5 COMMISSIONER BERNTHAL: I would prefer to have more
6 time to look at the documentation, that is a fact, including
7 the documentation in front of us, as I have stated.

8 CHAIRMAN PALLADINO: Well, could you be more
9 definite? I take a preference as a vote.

10 COMMISSIONER BERNTHAL: That's right.

11 CHAIRMAN PALLADINO: So, you are saying you are
12 not prepared to vote tomorrow.

13 COMMISSIONER GILINSKY: You are too gentle, Joe.

14 CHAIRMAN PALLADINO: What's that?

15 COMMISSIONER GILINSKY: I said you are too gentle.

16 (Laughter)

17 CHAIRMAN PALLADINO: Well, I really need to know.
18 Are you prepared to vote or not?

19 COMMISSIONER BERNTHAL: I'm prepared to vote if
20 you want to vote tomorrow, yes.

21 CHAIRMAN PALLADINO: Well, do you want to vote?

22 COMMISSIONER ROBERTS: I want to do what you are
23 doing.

24 (Laughter)

25 COMMISSIONER GILINSKY: I'll tell you, this

1 transcript better not get out.

2 (Laughter)

3 CHAIRMAN PALLADINO: Am I the majority?

4 COMMISSIONER BERNTHAL: Look, I don't want to delay
5 this thing ten days. I think if you think there is a high
6 probability that Victor can't make it back on Tuesday, maybe
7 we just ought to plunge ahead here and vote tomorrow.

8 CHAIRMAN PALLADINO: Well, okay, let me reverse
9 the decision, then. I'm prepared to vote tomorrow. I would
10 like to get your suggested change on the first part.

11 COMMISSIONER BERNTHAL: You will have that by
12 5 o'clock.

13 CHAIRMAN PALLADINO: And propose that we go ahead.
14 I am concerned not going ahead is going to lead us to
15 continuing delay. I am doing that with the understanding
16 that you are prepared to vote tomorrow.

17 COMMISSIONER BERNTHAL: That's right.

18 CHAIRMAN PALLADINO: That Tom's prepared to vote
19 tomorrow, and that the other individuals will have their
20 additional views.

21 All right, then let's make it that we will vote
22 tomorrow and that you give us your suggested change. It is
23 scheduled for 1:30 -- that's not tomorrow's schedule.

24 MR. FOUCHARD: Now, if you are going to vote
25 tomorrow, now I'll have to put it on the AP and the UPI

1 wires. I haven't done anything up until now. So, now we
2 will schedule it.

3 CHAIRMAN PALLADINO: All right.

4 MR. FOUCHARD: I really ought to do it.

5 CHAIRMAN PALLADINO: Well, okay.

6 COMMISSIONER BERNTHAL: Don't we also have a
7 question before us of requests for participation tomorrow?

8 CHAIRMAN PALLADINO: Yes. We can treat that, and
9 I think we should treat that.

10 MR. FOUCHARD: I'll hold off, then.

11 CHAIRMAN PALLADINO: Now, let me make sure. I
12 would like a vote that you agree that we will meet tomorrow.
13 I vote, aye.

14 COMMISSIONER ROBERTS: Aye.

15 COMMISSIONER BERNTHAL: Aye.

16 COMMISSIONER GILINSKY: I will be ready when you
17 are.

18 CHAIRMAN PALLADINO: So, we have a vote and we
19 will go on that.

20 COMMISSIONER GILINSKY: Supply my feelings one
21 way or the other.

22 CHAIRMAN PALLADINO: Now, who is familiar with the
23 requests for someone to speak tomorrow?

24 MR. CHILK: We have had two requests, one from
25 TMIA, Joan Doroshow, and one from Ellen Weiss.

1 COMMISSIONER GILINSKY: Doroshow.

2 MR. CHILK: Doroshow, both requesting permission
3 to address the Commission at the public meeting tomorrow.

4 COMMISSIONER GILINSKY: I might point out to you
5 that I am the only Commissioner who is being sued personally
6 by that organization.

7 (Laughter)

8 CHAIRMAN PALLADINO: Oh, I didn't know that.

9 COMMISSIONER ROBERTS: Sued by whom?

10 COMMISSIONER BERNTHAL: -- honor.

11 COMMISSIONER GILINSKY: TMIA.

12 COMMISSIONER BERNTHAL: TMIA.

13 COMMISSIONER GILINSKY: Because of our role in
14 releasing crypton.

15 CHAIRMAN PALLADINO: Releasing what?

16 COMMISSIONER GILINSKY: Crypton.

17 CHAIRMAN PALLADINO: Oh.

18 COMMISSIONER ROBERTS: But your brothers at the
19 time are also being sued; is that not correct?

20 COMMISSIONER GILINSKY: Right, but I'm the only
21 sitting Commissioner. So, I'm the only one being sued by
22 both sides.

23 (Laughter)

24 COMMISSIONER BERNTHAL: That's true.

25 CHAIRMAN PALLADINO: Let me make an observation --

1 COMMISSIONER BERNTHAL: Do you have a good lawyer?

2 COMMISSIONER GILINSKY: The same one that defends
3 Richard Nixon -- doing very well.

4 (Laughter)

5 COMMISSIONER GILINSKY: Say that again?

6 COMMISSIONER GILINSKY: I don't think I will.

7 (Laughter)

8 CHAIRMAN PALLADINO: Read your transcript.

9 Observation. We did have a meeting in which the
10 parties were offered the opportunity to speak, and if we
11 start with giving any one or two individuals an opportunity
12 to speak then we have to give, I believe, all the others an
13 opportunity to speak including the licensee.

14 Our proposal would be, no, not to permit them to
15 speak. I can see new headlines.

16 COMMISSIONER GILINSKY: I would allow them to speak,
17 even though they are suing me.

18 (Laughter)

19 CHAIRMAN PALLADINO: Well, would you allow all
20 people -- see, this is a half-hour --

21 COMMISSIONER GILINSKY: I'd give them five minutes,
22 that is all they are asking for. It's a fairly important
23 turning point.

24 CHAIRMAN PALLADINO: I don't understand why it is
25 we have a meeting to hear the parties and then we hear them,

1 and then when we come to offer a decision we've got to hear
2 them again, and this time only those that request.

3 COMMISSIONER GILINSKY: Well, we've been a little
4 casual on occasion. The company has been here at meetings,
5 we have allowed them to speak up.

6 CHAIRMAN PALLADINO: Not on the day on which we
7 are going to decide, make our decision.

8 COMMISSIONER GILINSKY: No. But I think one of the
9 points the petitioners make that the company has had
10 opportunity that they have not, and it was certainly more
11 than five minutes.

12 So, I don't think their requests are unreasonable.

13 CHAIRMAN PALLADINO: Well, let's see, who are the
14 people again, Sam?

15 MR. CHILK: TMIA, TMI Alert and Ellen Weiss of
16 UCS.

17 CHAIRMAN PALLADINO: Now, who else might be
18 potential requesters? And now you might have objection
19 because people say, "Wait a minute, we didn't know if we had
20 requested it we'd gotten an opportunity to speak." I think
21 it is a totally unfair way of doing it.

22 COMMISSIONER GILINSKY: In principle, squeaky
23 wheels get the grease.

24 CHAIRMAN PALLADINO: Well, sometimes they deserve
25 it, and sometimes they don't.

1 COMMISSIONER ROBERTS: I'm going to agree with you,
2 Joe.

3 MR. CHILK: Tom, how did you vote? I'm sorry.

4 COMMISSIONER ROBERTS: I would agree with the
5 Chairman.

6 COMMISSIONER BERNTHAL: We are voting only on TMIA
7 and UCS?

8 COMMISSIONER GILINSKY: I think both.

9 CHAIRMAN PALLADINO: Yes, both of them. And I
10 think we are making a decision that would apply to any
11 other requester.

12 COMMISSIONER BERNTHAL: I don't have any trouble
13 with giving them five minutes. I think we should do that.

14 MR. LEVI: I think that it's a legal matter. If
15 you hear from one party, you are going to have to provide
16 every party an opportunity to comment.

17 CHAIRMAN PALLADINO: That's what I'm worried about,
18 exactly the direction we are going, we are getting another
19 public meeting. I would say -- I think then it makes it
20 impractical to have the meeting tomorrow.

21 MR. PLAINE: Why not issue a telegram to all of them
22 tell them that --

23 CHAIRMAN PALLADINO: No, I'm sorry --

24 MR. PLAINE: If you are going to do it. If you are
25 going to do it.

1 CHAIRMAN PALLADINO: The schedule only allows at
2 most a half hour. If we are going to turn this into another
3 series of presentations by the parties, then we are going to
4 have to reschedule it at a time when the Commission can hear
5 the parties.

6 I need to understand the justification for hearing
7 them again, and I think the threshold ought to be higher than
8 just say, "Well, let's listen to them."

9 COMMISSIONER GILINSKY: Let's see, how many parties
10 are there?

11 MR. LEVI: Five.

12 COMMISSIONER GILINSKY: Five?

13 MR. LEVI: USC, TMIA, the Aamodts, the licensee,
14 and the staff.

15 COMMISSIONER GILINSKY: Well, why don't you allot
16 15 minutes and divide it?

17 CHAIRMAN PALLADINO: No, the issue is that
18 the Commission starts to question and I think it's
19 appropriate for the Commission to question and explore the
20 points being made, especially if there is anything new that
21 comes up.

22 But I think there needs to be a better reason
23 that just say, "Well because they requested it, we ought
24 to defer our decision.

25 COMMISSIONER BERNTHAL: Is there any -- I'm not

1 sure this is a legal question, but maybe counsel --

2 CHAIRMAN PALLADINO: Joe Fouchard, did you --
3 where are you?

4 (Laughter)

5 MR. FOUCHARD: I'm here, Mr. Chairman.

6 MR. PLAINE: I didn't hear you, Fred. Do you
7 want to start again?

8 COMMISSIONER BERNTHAL: Yes. My question is whether
9 in respect to any action that we propose to take tomorrow
10 there is a legal justification or question of the requirement
11 or perhaps appropriateness to let the parties comment on
12 the action.

13 MR. PLAINE: I don't think you are required to
14 hear them. But I was suggesting that if you are going to
15 hear one, give the opportunity to all five or six.

16 CHAIRMAN PALLADINO: That was my conclusion, and
17 then I got to know, why are we repeating what we just did?

18 COMMISSIONER GILINSKY: Well, actually, there are
19 five parties, two of them the applicant and staff. And
20 since the decision is basically a favorable one to them, I
21 don't see what they -- you know, what you really have to learn
22 from hearing from them. So, I don't see that there is any
23 need to do that.

24 CHAIRMAN PALLADINO: The question is giving the
25 people an opportunity.

1 COMMISSIONER GILINSKY: We are just talking about
2 three parties. Reasly, these two and I suppose the Aamodts
3 will want to come.

4 COMMISSIONER ROBERTS: Anything we are liable to
5 hear tomorrow is not going to affect our decision.

6 COMMISSIONER GILINSKY: I dought it.

7 COMMISSIONER ROBERTS: I do, too.

8 COMMISSIONER GILINSKY: I'm sure we'll get a
9 different interpretation.

10 COMMISSIONER BERNTHAL: Let me just, in view of
11 the fact that I think it's unfair to the parties, there is
12 no legal requirement that we give the parties a chance to
13 be heard, I can't really imagine getting a telegram out of
14 here at 4:30 the night before being construed as anything
15 but injudicious haste in expecting them to get up here.

16 I would suggest that we not have the parties make
17 presentations and leave it at that, if you want to proceed
18 tomorrow. So, I'll vote with you on that, Joe.

19 COMMISSIONER GILINSKY: I mean, two of them have
20 asked -- I don't know when their letters are dated. But I
21 mean, it's not as if they asked today.

22 COMMISSIONER BERNTHAL: Well, I just think it's
23 unseemly for us to send a telegram to the Aamodts at 5 o'clock.

24 CHAIRMAN PALLADINO: I haven't even seen that
25 letter.

1 MR. CHILK: We got calls today from both parties.

2 MR. PLAINE: I have a copy of one here.

3 MR. CHILK: There is a TMIA request and Doroshow
4 which just came in today.

5 COMMISSIONER GILINSKY: I mean, I don't think they
6 will regard it as unseemly. I mean, if you don't do it,
7 they will regard themselves as having been deprived of their
8 rights -- you may feel that --

9 COMMISSIONER BERNTHAL: Well, certainly, if you
10 allow the others to be heard, that's why --

11 COMMISSIONER GILINSKY: But there really are just
12 the Aamodts, then, when you think about it. There are these
13 two groups and maybe the Aamodts will make it down. I
14 suppose they probably will. But at worst, you are really
15 talking about three groups.

16 CHAIRMAN PALLADINO: Did not -- let's see, is
17 this TMI Alert?

18 MR. PLAINE: Yes.

19 MR. CHILK: TMI Alert.

20 CHAIRMAN PALLADINO: Did they not participate in
21 a public meeting?

22 MR. LEVI: Yes, they did.

23 MR. PLAINE: Yes, they did.

24 COMMISSIONER GILINSKY: But let's see, wasn't that
25 one round in which you heard from the company and then

1 others just got to send in written comments?

2 MR. LEVI: They were given an oral meeting after-
3 wards. The company was heard on one day, the parties were
4 heard orally at a later date.

5 COMMISSIONER GILINSKY: I see.

6 CHAIRMAN PALLADINO: And I don't think the
7 perception will be proper to be all prepared to vote and
8 have our statements all ready, and we pretend to go through
9 listening to them, and then we don't.

10 MR. PLAINE: Yes, it's somewhat of a charade.

11 COMMISSIONER BERNTHAL: Yes, I agree.

12 MR. LEVI: If you happened to deliberate on what
13 they said --

14 (Simultaneous conversation)

15 CHAIRMAN PALLADINO: I understand I have three
16 votes not to allow these individuals to make --

17 COMMISSIONER GILINSKY: I guess I would hear them,
18 and I expect Jim would have, too.

19 CHAIRMAN PALLADINO: What's that?

20 COMMISSIONER GILINSKY: I said, I would vote to
21 hear then and expect Jim would have, too.

22 CHAIRMAN PALLADINO: Well, then that's a three to
23 two vote again.

24 Okay, anything further to come before us?

25 MR. LEVI: Could I ask one further question?

1 CHAIRMAN PALLADINO: Sure.

2 MR. LEVI: Commissioner Bernthal, did you have any
3 other major comments on this document for the Commission's
4 attention now?

5 COMMISSIONER BERNTHAL: No, at this point I only
6 want to do a rewrite on that first sentence.

7 CHAIRMAN PALLADINO: When will we be able to get
8 that, Fred?

9 COMMISSIONER BERNTHAL: A half hour.

10 CHAIRMAN PALLADINO: We are going to keep you
11 occupied for half an hour.

12 Well, what we could do is break now and wait
13 until 4:30 for our affirmation, and go to agenda planning.
14 I don't think we have time for agenda planning between now
15 and 4:30.

16 COMMISSIONER GILINSKY: Okay.

17 CHAIRMAN PALLADINO: Okay, then the meeting is on
18 for tomorrow. Anything else on this subject, Rick?

19 MR. LEVI: No.

20 CHAIRMAN PALLADINO: We will stand adjourned and
21 will meet again at 4:30.

22 (Whereupon, at 4:15 p.m. the Commission adjourned,
23 to reconvene at 4:30 p.m. on the same day.)
24
25

CERTIFICATE OF PROCEEDING

1
2 This is to certify that the attached proceedings before the
3 NRC COMMISSION

4 In the Matter of: Discussion of memorandum on Future steps
in TMI-1 Restart

5 Date of Proceeding: 26 January 1984

6 Place of Proceeding: Washington, D. C.

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

9
10 Elizabeth Hansen
Official Reporter - Typed

11
12 *Elizabeth Hansen*
13 Official Reporter - Signature

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