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NUCLEAR REGULATORY COMMISSION

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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AFFIRMATION ON HEARINGS WARRANTED AND DISCUSSION
OF IMPACT OF HEARINGS ON POSSIBLE RESTART OF TMI-1

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PUBLIC MEETING

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

Wednesday, February 13, 1985

The Commission met, pursuant to notice, at 10:37 a.m.

COMMISSIONER PRESENT:

- NUNZIO PALLADINO, Chairman of the Commission
- THOMAS ROBERTS, Commissioner
- JAMES ASSELSTINE, Commissioner
- FREDERICK BERNTHAL, Commissioner
- LANDO ZECH, Commissioner

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

- S. CHILK
- E. GOODWIN
- J. ZERBE
- M. MALSCH
- R. LEVI
- H. PLAINE

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CHAIRMAN PALLADINO: Good morning, ladies and gentlemen.

This morning's meeting will be in two parts. First, we have scheduled an affirmation of the votes on the order concerning what additional hearings are warranted in the TMI-1 Restart Proceeding.

Second, we will consider the impact of the Commission's decision on that order on the possible restart at TMI-1.

With regard to the matters of what further hearings are to be held, I will first ask OGC and OPE to highlight the draft order under consideration, and then ask the Secretary to summarize the status of votes at this time. I will then ask Commissioners to affirm their votes, following which I will give each Commissioner an opportunity to make any comments he wishes on this matter.

With regard to the second part of the meeting, that is whether the additional hearings we order are a bar to making the restart decision, I intend to ask OPE and OGC to summarize its advice to the Commission and to lead our discussion on the pertinent questions.

I do not intend to ask for a Commission vote today on the question of whether further hearings are a bar to restart. Rather, after reflecting on what we hear today, I

1 propose that Commissioners file notation votes on this
2 question, together with their views on whether or not an order
3 on restart should be prepared and if so, what conditions
4 should be contained in that order.

5 Let me ask at this point whether other Commissioners
6 have any opening remarks.

7 COMMISSIONER ZECH: No.

8 COMMISSIONER ASSELSTINE: No.

9 CHAIRMAN PALLADINO: All right, if not, then let
10 me turn the meeting over to General Counsel and Director of
11 Office of Policy Evaluation.

12 MR. PLAINE: Mr. Chairman and Members of the
13 Commission, the order presented by OGC and OPE in SECY-475
14 was revised pursuant to a Commission instruction.

15 The revised order discusses each issue which a
16 party to the restart proceeding argues should be the subject
17 of further hearing. The order as revised states that the
18 Licensing Board should issue its decisions on training and
19 Dieckamp Mailgram issues since the hearings on those issues
20 have been completed.

21 The order finds that no further hearings are
22 warranted within the restart proceeding. The order further
23 states, however, that the Commission will be instituting a
24 new proceeding to consider what action to take concerning
25 those individuals possibly involved in the TMI-2 leak rate

1 falsifications, except for those individuals who were
 2 identified as not involved by the statement of the United
 3 States Attorney at the sentencing hearing of Metropolitan
 4 Edison Company, or those already reviewed and found not to be
 5 implicated by NRC's Office of Investigations in its TMI-1
 6 leak rate investigation.

7 In addition, the Commission has decided that
 8 Charles Husted should be given an opportunity to request a
 9 hearing on the Appeal Board's condition that he have no
 10 supervisory responsibility insofar as the training of non-
 11 licensed personnel is concerned.

12 Finally, the order imposes two conditions on
 13 licensee:

14 One, no pre-accident TMI-2 operator, shift
 15 supervisor, shift foreman, or certain other individuals, shall
 16 be employed at TMI-1 in a responsible management or
 17 operational position without specific Commission approval;
 18 and

19 Two, licensee is to retain its expanded Board of
 20 Directors and its Nuclear Safety and Compliance Committee.

21 Jack, do you have anything to add to that?

22 MR. ZERBE: We have nothing to add.

23 CHAIRMAN PALLADINO: All right, any comments or
 24 questions by Commissioners at this time, before I ask SECY
 25 to summarize the votes?

1 COMMISSIONER ASSELSTINE: No.

2 CHAIRMAN PALLADINO: All right, Mr. Secretary, would
3 you summarize the status of votes on the order which was
4 discussed by OGC?

5 MR. CHILK: The votes that we have are as follows:
6 you, Mr. Chairman, Commissioner Roberts and Commissioner Zech
7 have approved that order which was described by the General
8 Counsel. There have been some modifications to it that have
9 been geared into the order and have been approved by all
10 of you.

11 Commissioners Asselstine and Bernthal have dis-
12 approved the order and, it is my understanding, will have
13 dissenting views.

14 COMMISSIONER ASSELSTINE: That's correct.

15 CHAIRMAN PALLADINO: At this time, then, let me ask
16 Commissioners to affirm their votes.

17 COMMISSIONER ZECH: Aye.

18 CHAIRMAN PALLADINO: Aye.

19 COMMISSIONER ROBERTS: Aye.

20 COMMISSIONER ASSELSTINE: Aye.

21 COMMISSIONER BERNTHAL: Aye.

22 MR. CHILK: Thank you.

23 CHAIRMAN PALLADINO: Now, at this time I had
24 indicated I would provide Commissioners an opportunity to make
25 any statements they wish. I could begin with my statement.

1 With regard to the merits of the issues before us,
2 the evidentiary hearings on the training and Dieckamp Mailgram
3 issues have been completed and the Licensing Board should
4 issue its decisions on those issues.

5 After considering the other issues raised by the
6 parties, I have concluded that no further hearings are
7 warranted in the restart proceeding. However, separate from
8 the restart proceeding, I approved instituting a new proceeding
9 to consider what action to take concerning those individuals
10 possibly involved in the TMI-2 leak rate falsification,
11 except for those individuals who were identified as not being
12 involved by the statement of the U.S. Attorney at the
13 sentencing hearing of Metropolitan Edison Company, or those
14 already reviewed and found not to be implicated by the NRC's
15 Office of Investigations in its TMI-1 leak rate investigation.

16 In addition, I believe, that Mr. Husted should be
17 given an opportunity to request a hearing on the Appeal
18 Board's condition regarding his employment.

19 I agree with the Commission finding that the
20 training issue is more significant than the Mailgram issue
21 and support directing the Board to give priority attention
22 to the training issue, and to issue a decision on the training
23 issue first if working on the Dieckamp Mailgram issue would
24 delay issuance of the training decision.

25 I should also note that in this statement I am

1 expressing no view on whether the hearings must be completed
2 prior to a decision whether to lift the immediate effectiveness
3 of the 1979 shut-down orders. The Commission will be
4 addressing this separately later in this meeting and by
5 notation vote, as I indicated earlier.

6 All right, let me ask Commissioner Roberts if he
7 has any statement. Commissioner Asselstine?

8 COMMISSIONER ASSELSTINE: Just a couple of comments.
9 I'll have fairly extensive dissenting views that discuss in
10 detail my problems with the Commission's decision and the
11 reasons why I think further hearings are required.

12 Let me just highlight a few of the points that I
13 will be making in detail in my written views.

14 As I look back at the August 9, 1979 order that
15 established this proceeding, it seems to me that that order
16 reflected a determination by the Commission that hearings on
17 all relevant issues were required in order for the Commission
18 to be able to reach a conclusion on whether this licensee
19 can operate TMI-1 without the help --

20 (Applause)

21 CHAIRMAN PALLADINO: Let me ask the audience to
22 refrain from either applause or other demonstration or
23 emotion.

24 Thank you. Go ahead.

25 COMMISSIONER ASSELSTINE: It seems to me that the

1 August 9, 1979 order reflected a determination by the
2 Commission that hearings on all relevant issues were required
3 in order to reach a judgment on whether TMI-1 can be operated
4 without endangering the health and safety of the public.

5 After reviewing the record of the hearings that have
6 been held thus far and the wealth of new and relevant
7 information that has been developed since the hearings were
8 concluded, I have reached the conclusion that further
9 hearings are required in four areas. Those four areas are:

10 1. The TMI-2 leak rate falsification question -- and I
11 would broaden the scope of the hearing beyond that contemplated
12 by the Board prior to the Commission's decision today.

13 2. The TMI-1 leak rate falsification issue.

14 3. The Parks allegations, both as they relate to
15 discrimination against Mr. Parks and as they relate to the
16 widespread violation of safety procedures for TMI Unit 2 and
17 their implications for the operation of TMI Unit 1.

18 And finally, and I think most importantly, the
19 staff's change in position on the question of GPU's competence
20 and integrity to operate TMI Unit 1.

21 I have to say that I am particularly disturbed by
22 the Commission's decision today not only not to further
23 expand the TMI-2 leak rate falsification hearing, but rather
24 to restrict it. For all practical purposes, it seems to me,
25 the Commission's decision today effectively excludes any

1 consideration of the possible involvement and responsibility
2 for the falsifications by Messrs. Kuhns, Dieckamp and Ross.
3 I think that's the practical effect of the Commission's further
4 restriction.

5 For myself, I have concluded that absent a commitment
6 by the Commission for additional hearings on the four subjects
7 that I identified, I do not see a sufficient basis for con-
8 cluding that this licensee has the requisite management
9 competence and integrity to operate TMI Unit 1 without
10 endangering the health and safety of the public.

11 (Applause)

12 COMMISSIONER ASSELSTINE: I guess that's all I have
13 at this point, thank you.

14 CHAIRMAN PALLADINO: Thank you. Commissioner
15 Bernthal?

16 COMMISSIONER BERNTHAL: Well, I'm in a somewhat
17 unaccustomed situation today, but let me explain my position.

18 Let me just begin by saying that this unfortunate
19 split in the Commission on this particular issue in my
20 judgment is a casualty of the extraordinarily restrictive
21 process that is forced on this Commission that virtually
22 eliminates real collegial decision making as a practical
23 possibility by the Commission.

24 I won't go into that further except to say that in
25 my judgment this is Exhibit A of what the problem is. And

1 the public in the end gets deprived of what they deserve
2 in the case of TMI more than in any other case, in my
3 judgment probably, that the Commission has ever considered,
4 and that is a truly collegial decision by this Commission
5 where the Commission sits down and works hard, and hammers
6 out what it can agree on as the basis for a decision. And
7 in this case it's clear that that process simply has not been
8 allowed to mature.

9 I think it's important for everyone to understand
10 why I felt it necessary to disapprove this order. I don't
11 disapprove it because I believe that further hearings are
12 necessarily legally required. In fact, the information that's
13 available to the Commission indicates that there have been
14 sufficient changes, in my judgment, in personnel and
15 attitude of the GPU organization so as to preclude a future
16 recurrence of the significant problems that have been
17 experienced in the past.

18 Moreover, the parties to this proceeding -- and
19 this has been a very complex proceeding, the Commission itself
20 made it that way -- have had extensive opportunity to comment
21 within the adjudicatory and, I might say, within the non-
22 adjudicatory proceedings of this entire matter. They have
23 had extensive opportunity to comment on the available
24 information both in writing and oral presentations at past
25 Commission meetings.

1 So, while I can appreciate and respect the position
2 of my colleagues in the majority on this matter who believe
3 that no further hearings are either required or appropriate,
4 I have to say that I believe the path the majority has
5 chosen here is just unwise.

6 I should state initially that all of us, I believe,
7 agree that there would be little point to our interfering
8 in the matters that are now on-going before the Licensing
9 Board, the Dieckamp Mailgram issues and the training issues.

10 Further, while I agree that further hearings should
11 be held in the Hartman matter, I don't feel that there is any
12 useful purpose served by what the Commission and the majority
13 here has chosen to do in specifying that those hearings be
14 held outside the scope of the TMI-1 restart proceeding.

15 And I also agree with the majority on the point
16 that the elementary concept that I have, at least, of fairness
17 requires that Mr. Husted be given the opportunity for a
18 hearing prior to removing him from his supervisory position.
19 Well, so much for the extent of agreement.

20 As for the other matters that are at issue here, I
21 have to depart from the position taken by the majority. Now,
22 bear in mind that the Commission has broad authority -- we
23 are not really talking so much about a legal matter here -- we
24 have broad authority to decide which of these issues have to
25 be resolved in an adjudicatory format. That means hearings,

1 formal hearings with cross-examination.

2 Shortly after the TMI accident, the Commission
3 announced that adjudicatory hearings, these formal hearings,
4 would be convened on the issues raised by the accident. In
5 my view, that was a purely discretionary Commission decision,
6 taken long before -- well, I guess I can say any of us now
7 sat on this Commission.

8 Since that decision, however, the Commission has
9 proceeded to conduct many off-the-record, informal reviews
10 of a number of TMI-related matters, and these reviews also
11 arguably fall within the broad discretionary authority the
12 Commission has, in my judgment, in what is at bottom and
13 very arguably an enforcement proceeding under standard
14 Commission procedure.

15 And I want to emphasize the two elements in this
16 complicated procedure we followed in TMI.

17 One is the thing that the lawyers like to talk
18 about and are very fond of, cross-examination in adjudicatory
19 proceedings. Those are the hearings we are talking about here.

20 The other is the discretionary privilege in
21 enforcement matters of the Commission to review off-the-record
22 material and to make judgments based on such off-the-record
23 material.

24 You have both things going in parallel in this
25 matter and that's part of the reason for the confusion over

1 what's really required of the Commission, in my judgment.

2 Nevertheless, having said that then, I think the
3 Commission is responsible in this case for exercising unusual
4 diligence and perseverance to see to it that insofar as we
5 possibly can and as is appropriate within our special purview,
6 we provide the public with a complete record of all the
7 facts and events associated with the TMI accident and its
8 aftermath, so that any reasonable concerns and questions with
9 respect to the long and troubled history of these facilities
10 can finally be laid to rest.

11 And so I believe that there is, as our staff have
12 pointed out to us, a strong public policy value in full public
13 hearings on all significant issues related to TMI-1 restart.

14 They may not be required as a legal matter on any
15 of the remaining issues, that's an arguable point. But
16 policy considerations have led me to conclude that at least
17 three of the outstanding matters deserve special consideration
18 by us, and those have already been cited by Commissioner
19 Asselstine in addition to the Hartman matter I cited.

20 They are the staff's likely change of position in
21 respect to management competence and integrity.

22 The Parks allegations, and

23 The TMI-1 leak rate matter.

24 I am not going to go through in detail exactly what
25 my rationale is for supporting re-opening or at least in the

1 case of the TMI-1 leak rates not objecting to re-opening of
2 hearings on those issues. I'll just say that in the case of
3 the TMI-1 leak rates once again the Commission has had
4 extensive opportunity to consider off-the-record information
5 which in my judgment is fairly conclusive, but unfortunately
6 that information has not been subjected to the thorough airing
7 that it would have in the cross-examination process that
8 one has in a hearing.

9 Let me not go on much farther than that except to
10 empasize that I'm not under any illusion here that the
11 Commission might somehow by convening further hearings on
12 some or all of the issues that I have identified satisfy
13 everyone who might oppose eventual operation of the TMI-1
14 facility.

15 Rather, it seems to me, that given the age of the
16 record in this case -- and I'll just take one record in
17 particular, I believe it is the -- if I can recall correctly
18 here, I'll think of it in a moment.

19 One of the things we have been considering, we have
20 been talking about a record that's three years old before
21 the Licensing Board. The Commission has had further
22 information to consider for three years, but there is no
23 formal consideration of that in the record. Again, off-the-
24 record and on-the-record differences.

25 So, I don't have any illusions that all matters

1 would necessarily be resolved by hearings and everybody
2 satisfied, but I think that on balance, since there is a lot
3 of off-the-record information -- this has been going on for
4 around six years now, if I count right -- the vast majority of
5 the public will be better able to understand and accept
6 whatever judgment the Commission might make in this matter if
7 the Commission would make every reasonable effort to assure
8 a thorough and complete airing of all of the essential
9 information on and off the record considered by the
10 Commission in making its final decision on restart.

11 And I'll have somewhat more coherent and comprehensive
12 views to present later.

13 CHAIRMAN PALLADINO: Commissioner Zech?

14 COMMISSIONER ZECH: Very briefly, I believe that
15 almost six years seems sufficient time for hearings, meetings,
16 discussions and other proceedings concerning this very, very
17 important issue.

18 I believe that no further hearings except as
19 provided in the order are appropriate. The order reflects
20 my views and I have no additional comments, Mr. Chairman.

21 CHAIRMAN PALLADINO: I would like to take the
22 privilege of representing what I believe are some of the
23 factors affecting the majority decision.

24 The implication has been made that we are not
25 giving due attention to matters involved in the TMI-1 proceeding.

1 The matters are all discussed in the order but, for example,
2 with regard to the question of the change of the staff's
3 position, there were four issues raised by the staff. Two
4 of them related to items that we are holding hearings on,
5 namely training and the Hartman matter.

6 The other two items relate to individuals who no
7 longer are involved with GPU.

8 And so I don't think that we are denying that aspect
9 of the suggestion to deal with the change in position of
10 the staff. The two substantive issues raised by the staff are
11 being covered by hearings.

12 With regard to the Parks matter, this had to do with
13 TMI-2. The facts were determined. Harassment was found. But
14 the individual that was then in charge of the organization
15 has been removed, he is no longer with that organization,
16 namely Mr. Arnold. So, unless there is some real tie that
17 can be made to TMI-1, this is a TMI-2 issue.

18 With regard to the Hartman matter as a separate
19 item, we are asking that all individuals who were suspect in
20 the TMI-2 leak rate matter be covered by the hearing, with
21 the exception of those that were exonerated by the U.S. Attorney
22 and that is quite a sweeping statement that he made. They were
23 found by the U.S. Attorney to not have participated in,
24 directed, condoned, or been aware of the facts, or omissions,
25 that were the subject of this indictment.

1 The question is, it's been dealt with. How many
2 times must we deal with the same issue?

3 The TMI-1 leak rate falsification allegation has
4 been dealt with by investigation and there is no basis
5 identified for implicating Mr. Ross. So, I say, "Well, then,
6 let's get on with the show."

7 Actually, I think Mr. Ross is very key to the
8 organization that will be operating TMI-1 if it's ever
9 allowed to operate.

10 Any other comments by other Commissioners?

11 COMMISSIONER ASSELSTINE: No.

12 CHAIRMAN PALLADINO: Well, then I believe this
13 completes the action on the question of whether we should
14 hold further hearings on the TMI-1 restart proceeding.

15 And to summarize, as part of the restart proceeding,
16 the Commission has decided that the pending Licensing Board
17 proceedings should be completed on the training issue and
18 the Dieckamp Mailgram issue.

19 The next question to be addressed is whether those
20 Licensing Board proceedings must be completed before the
21 Commission can make a --

22 Excuse me, ladies and gentlemen, will you please
23 take your seats? We cannot proceed in the face of demonstrations.

24 FROM THE FLOOR: They are not making any noise,
25 they won't obstruct --

1 CHAIRMAN PALLADINO: Well, I would like for them to
2 take their seats if seats are available.

3 FROM THE FLOOR: They will not make any noise, sir.
4 Please, conduct your business.

5 CHAIRMAN PALLADINO: We must conduct this meeting
6 with the decorum that befits our deliberations, and I think
7 distractions do interfere with the orderly process of the
8 meeting.

9 Please take your seats, or at least go back to the
10 back of the room. Either that, or I'll have to recess the
11 meeting.

12 All right, we'll recess the meeting.

13 (Whereupon, at 11:04 a.m. a recess was taken until
14 11:10 a.m.)

15 CHAIRMAN PALLADINO: We will resume our meeting.
16 Will you please come to order?

17 I should point out that the Commission needs to do
18 its business and do it in an orderly fashion, and if it
19 can't do it in such a fashion, then we'll have to devise other
20 means by which we do our business. I prefer to go forward
21 with the business that we had planned.

22 Let me start over again with regard to the comments
23 I was making.

24 This completes the action on the question of what
25 further hearings should be held on the TMI-1 restart proceeding.

1 To summarize, as part of the restart proceeding, the
2 Commission has decided that the pending Licensing Board
3 proceedings should be completed on the training issue and
4 the Dieckamp Mailgram issue.

5 The next question to be addressed is whether those
6 Licensing Board proceedings must be completed before the
7 Commission can make a decision on TMI-1 restart.

8 I would like OPE and OGC to summarize the advice
9 to the Commission on this issue. Following that, I will
10 open for Commissioner comments.

11 As I indicated at the outset of the meeting, it is
12 not my intent to call for a vote today on that question.
13 Rather, I propose that Commissioners file notation votes on
14 the question, together with their views on whether or not
15 an order on restart should be prepared and if so, what
16 conditions should be contained in that order.

17 So, unless other Commissioners have other comments
18 at this time, I propose to turn the meeting over to Mr.
19 Zerbe and then to General Counsel.

20 MR. ZERBE: Thank you, Mr. Chairman.

21 In its September 11, 1984 order, the Commission took
22 review of certain issues on the TMI restart proceeding in
23 order to decide whether any further hearings are required in
24 that proceeding and if so, what their scope should be.

25 The Commission in that order also stated that it had

1 not decided to rule on whether to lift the immediate
2 effectiveness of the 1979 shut-down orders until after it had
3 decided what further hearings, if any, are required in the
4 restart proceeding.

5 The Commission stated that if it decided further
6 hearings are required, it will decide whether public health
7 and safety and public interest require completion of those
8 hearings prior to a decision to lift the effectiveness of
9 the shut-down orders.

10 Now that the Commission has decided that hearings
11 on the licensee's training program and the Dieckamp Mailgram
12 should be completed and that further hearings on the TMI-2
13 leak rate falsification are to be held outside of the
14 restart proceeding, the issue we now are here to discuss is
15 whether under the present circumstances the Commission should
16 lift, consider lifting, the effectiveness of the shut-down
17 orders.

18 As noted in SECY-84-480, the Commission in order to
19 decide whether to lift the immediate effectiveness of the shut-
20 down orders needs to answer two questions:

21 One, after evaluating all available information,
22 does the public health and safety or public interest require
23 keeping TMI-1 shut down until the Board decisions on training
24 and the Mailgram are issued.

25 If not, is the Commission legally precluded from

1 lifting the immediate effectiveness shut-down orders until the
2 Board decisions are issued.

3 If the Commission answers these questions in the
4 negative, then an order lifting the effectiveness of the
5 shut-down order should be considered.

6 I will first briefly summarize OPE's views on the
7 first largely technical question. Then OGC will summarize
8 their views on the second, legal question. After that, OGC
9 and OPE are available to address any of the matters in
10 more detail in response to Commission questions.

11 Again, the first question is, after evaluating all
12 available information, does the public health and safety or
13 public interest require keeping TMI shut down until the
14 training and Mailgram decisions are issued.

15 Based on all the available information, OPE concludes
16 that the public health and safety or public interest do not
17 require keeping TMI-1 shut down until those steps have been
18 taken.

19 CHAIRMAN PALLADINO: Excuse me.

20 (Chairman Palladino gavels meeting to order.)

21 MR. ZERBE: The extra record information relied on
22 in this conclusion was provided to the parties. They were
23 given an opportunity to comment on that information, and those
24 comments have been taken into account.

25 Until the hearing on training and the Mailgram have

1 been completed, we do not expect the Licensing Board decision
2 to issue until April at the earliest. However, our review of
3 the transcripts identified no information that would affect
4 our judgment on the training or Mailgram issues.

5 With regard to the licensee's training program, the
6 overwhelming preponderance of available information demonstrates
7 that there is reasonable assurance that the operators are
8 adequately trained and the training program is adequate.

9 We base our conclusions primarily on the results of
10 the extensive testing of the operators, especially since the
11 close of the hearing record in 1981.

12 In our view, the operators' performance on written,
13 oral, and simulator examinations is the best available measure
14 of the adequacy of operator training.

15 Concerning the Dieckamp Mailgram issue, we conclude
16 that it does not raise a significant health or safety concern,
17 rather that it demonstrates at most an act of negligence or
18 poor judgment. Further, as Mr. Dieckamp is not involved in
19 daily operations at TMI-1, and as Mr. Clark, President of
20 GPU Nuclear --

21 CHAIRMAN PALLADINO: Excuse me. Please, return to
22 order.

23 MR. ZERBE: And as Mr. Clark, President of GPU Nuclear
24 reports directly to the Board of Directors of GPU on matters of
25 safety and budget, we consider Mr. Dieckamp's role in TMI-1

1 matters now so limited that it does not bear significantly on
2 TMI-1 safety.

3 This is all we have to say at this point. OGC will
4 now address the second question, whether the Commission is
5 legally precluded under present circumstances from lifting
6 the effectiveness of the shut-down orders.

7 MR. PLAINE: Legal difficulties before the Licensing
8 Board issues its decision were discussed with the Commission
9 in our paper 480, and the major difficulties in not waiting
10 for that decision, the Commission would need to rely on
11 information outside the formal adjudicatory record in order
12 to make its decision.

13 And secondly, that the Commission in some of its
14 earlier orders stated it would await completion of the
15 hearings before deciding whether to lift immediate effective-
16 ness of the shut-down order.

17 However, we also pointed out that an argument could
18 be made for lifting immediate effectiveness of the shut-down
19 orders before the hearings are completed. And let me say at
20 this point, the hearings are completed. What has not been
21 completed is the issuance of a decision, which is to be
22 forthcoming fairly soon, we expect.

23 Namely, that the lifting of immediate effectiveness
24 before the completion could rely on the extraordinary nature
25 of an immediate effective enforcement order to using extra-

1 record material and, secondly, rely on changed circumstances
2 to justify a departure from the Commission's original intent
3 to await completion of the hearings before deciding on restart.

4 Now, there is another practical consideration at
5 this very point which might make the whole issue academic,
6 and that is the hearings have been completed --

7 CHAIRMAN PALLADINO: Excuse me, will you please
8 remain in order?

9 MR. PLAINE: The Hearing Board has embarked on
10 the writing of its decision, and it would seem that just as
11 a practical matter and to avoid the issue, there might be
12 good sense in waiting for the completion of the hearings
13 with the decision of those two hearings. It may be that
14 that small amount of time is worth weighing in the balance
15 here and not having to make any argument which some people
16 might regard as a strained argument.

17 CHAIRMAN PALLADINO: Does that complete your
18 presentation?

19 MR. PLAINE: That completes what I have to say.

20 CHAIRMAN PALLADINO: Well, then let me open the floor
21 to comments from Commissioners. If you like, I'll begin
22 again.

23 My view is that the hearings that will follow on
24 the Hartman allegations are not a bar to restart decision
25 because the Commission has decided that those hearings are to

1 be completed outside the restart proceeding.

2 I also believe that any hearings on the Husted
3 matter are not a bar to restart or restart decision.

4 I would propose that the Commissioners address the
5 matters regarding the training issue and the Dieckamp Mailgram
6 issue in their notation votes, and indicate whether or not
7 they believe that we should await the completion of these
8 decisions on these matters.

9 My leaning is toward awaiting judgment of the
10 Board in the training issue. With regard to the Dieckamp
11 Mailgram issue, I really haven't made up my mind and will have
12 to deliberate further on that question.

13 At this point, let me turn to other Commissioners.
14 I'll start with Commissioner Roberts.

15 COMMISSIONER ROBERTS: I will vote by notation.
16 When do you want that?

17 CHAIRMAN PALLADINO: As soon as individual
18 Commissioners can make up their mind.

19 Commissioner Asselstine?

20 COMMISSIONER ASSELSTINE: My view is basically
21 what I stated earlier. Certainly, as far as the hearings
22 that will still be held under the Commission's order, I think
23 the Commission should wait until it receives the decision.
24 That's what the Commission promised in its August 9, 1979
25 order, that's what it said was required, and I think the

1 Commission should stick with it.

2 (Applause)

3 CHAIRMAN PALLADINO: Excuse me.

4 (Chairman palladino gavels the meeting to order.)

5 COMMISSIONER ASSELSTINE: I have to say the only
6 response I would give to the OPE comment is, I happen to
7 agree with the Appeal Board decision on remanding the Dieckamp
8 Mailgram issue. I think it's naive to assume that just
9 because Mr. Dieckamp has been removed from his other functions,
10 that he will not remain a continued strong voice on the GPU
11 Board in terms of TMI operation.

12 I think for that reason I disagree with the
13 conclusion that you drew and I think the Appeal Board was
14 right on that issue as well.

15 My problem is with the issues that aren't going to
16 be the subject of hearings that I think are required in order
17 for the Commission to reach a judgment. And as long as
18 those hearings aren't required, then I don't see a basis in
19 my mind for the Commission being able to reach a decision
20 that the licensee has the requisite competence and integrity
21 to safely operate the plant.

22 That's about it.

23 (Applause.)

24 CHAIRMAN PALLADINO: Please, ladies and gentlemen,
25 we are trying to conduct a very weighty deliberation. Please,

1 permit us to do it without interrupting.

2 Commissioner Bernthal?

3 COMMISSIONER BERNTHAL: Well, I'm not sure that I
4 have much to add to what I have already said. I mean, it's
5 clear to me -- at least it should be clear to all of us -- that
6 I believe that the scope of those hearings should, as a
7 public policy matter, should extend substantially beyond
8 where we are right now.

9 I'm not sure -- if you want me to comment on any
10 specific point beyond that, I'll be happy to do so, Joe. I'm
11 not sure what else I need to say.

12 CHAIRMAN PALLADINO: Okay. Commissioner Zech?

13 COMMISSIONER ZECH: From my standpoint, I need to
14 satisfy myself that the existing training program is
15 adequate, and I'm not now able to say precisely when I'll be
16 able to reach a decision on that matter.

17 Since the training hearing is now completed, to
18 assist me, I would request that OPE and OGC provide me and my
19 fellow Commissioners with your analysis -- both of you -- your
20 analysis on the completed hearings and on the record of the
21 training issue.

22 That's all I have, Mr. Chairman.

23 CHAIRMAN PALLADINO: All right.

24 COMMISSIONER ROBERTS: Well, let me say I certainly
25 agree with Commissioner Zech.

1 CHAIRMAN PALLADINO: Excuse me, you are out of order.

2 Will you please sit down?

3 Will you please sit down?

4 The Commissioners have indicated that they would
5 like to adjourn the meeting if we can't conclude, and I
6 think we are just about through. The only thing I was about
7 to do was to indicate --

8 Will you please set down?

9 The final word, I would like to remind Commissioners
10 to submit their notation votes just as soon as possible.

11 Is there anything further to come before the
12 Commission? All right, we'll stand adjourned.

13 (Whereupon, at 11:27 a.m., the meeting of the
14 Commission was adjourned.)

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This is to certify that the attached proceedings before the UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING: Affirmation on Hearings Warranted and
Discussion of Impact of Hearings on
Possible Restart of TMI-1

Public Meeting

DOCKET NO.:

PLACE: Washington, D.C.

DATE: February 13, 1985

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission.

(sig) M. E. Hansen

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