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NUCLEAR REGULATORY COMMISSION

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1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

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4 DISCUSSION OF NEED FOR AND IMPACT
5 OF FURTHER TMI-1 HEARINGS

6 - - -

7 PUBLIC MEETING

8 - - -

9 Room 1130
10 1717 H Street, N.W.
11 Washington, D.C.

12 Wednesday, January 16, 1985

13 The Commission met, pursuant to notice, at 2:05 p.m.

14 COMMISSIONERS PRESENT:

15 NUNZIO PALLADINO, Chairman of the Commission
16 THOMAS ROBERTS, Commissioner
17 JAMES ASSELSTINE, Commissioner
18 FREDERICK BERNTHAL, Commissioner
19 LANDO ZECH, Commissioner

20 STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

21 S. CHILK
22 E. GOODWIN
23 J. ZERBE
24 T. ROTHSCHILD
25 R. LEVI
M. MALSCH

AUDIENCE SPEAKER:

CONGRESSMAN G. GEKAS

DISCLAIMER

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P R O C E E D I N G S

CHAIRMAN PALLADINO: Good afternoon, ladies and gentlemen.

This afternoon, the Commission will discuss the need for further hearings in the TMI-1 Restart Proceeding. This is the first step in dealing with the need for and the impact of further TMI-1 Hearings.

By way of background, on September 11, 1984 the Commission issued an order, CLI-84-18, in which the Commission announced its decision to review the Appeal Board's decision on three issues:

1. The adequacy of licensee's training program.
2. The May 9, 1979 Mailgram from Herman Dieckamp to Congressman Udall regarding the pressure spike and
3. Leak rate practices at TMI-1.

The Commission also announced its decision in that order to review whether the Appeal Board had the legal authority to remove Mr. Charles Husted from supervisory duties.

And finally, the Commission stated that it had decided to review whether further hearings were required on the Hartman allegations concerning falsification of leak rate tests at TMI-2 as well as on any of the information discussed in the staff's latest evaluation of management integrity and NUREG-06-80, Supplement No. 5.

1 The September 11 order set forth the process by which
2 the Commission would decide whether any further hearings are
3 warranted in the TMI-1 proceeding and, if so, what the
4 scope of those hearings should be.

5 The parties to the proceeding were asked to address
6 the questions in filings to the Commission.

7 The purpose of today's meeting is to consider an
8 order which would conclude the Commission's consideration
9 initiated in September of '84 on what further hearings should
10 be held on TMI-1.

11 We will start today's meeting by asking the Office of
12 General Counsel and the Office of Policy Evaluation to summarize
13 the principal issues and considerations covered in the draft
14 order. Thereafter, the floor will be open for Commissioner
15 comments and questions.

16 At the conclusion of our discussion, I intend to
17 ask the Commissioners whether or not they agree in principle
18 with the draft order. In that context, we will take up for
19 consideration any suggested modifications to the approach
20 taken in the order.

21 Whether or not we will be able to complete our
22 deliberations on this matter this afternoon is open to
23 question. Nevertheless, when we do settle this issue, the
24 Commission will have to address the question of whether the
25 pendency of further hearings is a bar to lifting the

1 immediate effectiveness of the 1979 shutdown order.

2 I should note that since all parties have had the
3 opportunity to submit comments on the matters being discussed
4 today, the Commission does not contemplate asking questions
5 of any party or member of the public at this meeting.

6 I do wish to note that the Commission has received
7 letters from Members of Congress on the restart of TMI-1 and
8 in particular from members of the Pennsylvania Congressional
9 Delegation.

10 I believe Congressman George Gekas, within whose
11 congressional district Three Mile Island is located, is
12 here today --

13 (Applause)

14 CHAIRMAN PALLADINO: -- and I have had the chance to
15 meet him.

16 I would appreciate that you refrain from applause.

17 Congressman Gekas has asked to make a statement. I
18 had indicated to him that I would prefer not to have a state-
19 ment made since we have had submittals by all the parties
20 and each individual Commissioner has weighed those and our
21 purpose is to discuss each other's points of view.

22 Nevertheless, he asked me if I would poll my fellow
23 Commissioners to see if they would allow him to make a brief
24 statement. I would also ask my fellow Commissioners if they
25 vote "yes" to that, would they also indicate whether they

1 limit it to Mr. Gekas.

2 COMMISSIONER ZECH: I think it very appropriate
3 that Congressman Gekas be permitted to make a statement.

4 COMMISSIONER ASSELSTINE: I agree with that.

5 CHAIRMAN PALLADINO: All right. I would agree,
6 provided it's only Mr. Gekas to be given a chance.

7 COMMISSIONER BERNTHAL: Well, I just point out that
8 it's not entirely fair to some of the other individuals here
9 who are interested in expressing a point of view. But I
10 realize that the Congressman has a special rank in importance
11 here, and so I'm prepared to hear him out.

12 COMMISSIONER ROBERTS: I agree with Fred's comments.

13 CHAIRMAN PALLADINO: Okay. Well, let me then at this
14 time ask Mr. Gekas to make his statement. Following that,
15 then I'll turn the meeting over to General Counsel.

16 MR. GEKAS: Mr. Chairman, Members of the Commission,
17 I thank you for the opportunity to make an inquiring and
18 expressive statement.

19 The citizens from the Three Mile Island area are
20 here today because of rumors and expectations that indeed the
21 Commission was formulated for a meeting today to possibly make
22 a final decision on whether or not restart should occur in
23 Unit 1 of Three Mile Island.

24 This rumor having arisen and spread at a time when
25 most of the citizens involved in the proceedings either as

1 adversaries or observers or observers, or as intervenors, or
2 in one or another capacity interested in the turn-out of all
3 these matters when they were in the process of observing the
4 current hearings and discussing untold numbers of issues
5 which the public and which objective observers feel have not
6 yet been even considered, let alone decided.

7 I listened very carefully to the purpose of this
8 meeting as enunciated by the Chairman, and I feel more
9 comfortable at the moment than I did when I first entered
10 the building about what might be concluded here today.

11 If the purpose, as enunciated by the Chairman, is
12 to review the status up to date of where the hearings are;
13 what other hearings are yet to be held; what issues yet
14 require an airing and consideration, we wish you bon voyage
15 in these proceedings, and we will aid you in any way necessary
16 to elucidate what issues the general public and legal
17 participants in this proceeding wish to be heard.

18 We simply repeat that the issues of management
19 integrity, from all accounts, have not been resolved. The
20 issues of leak rate have not been resolved. The issues,
21 newly arisen and recurring in both ways on health effects
22 and possibility of incidence of cancer not before brought to
23 the attention of many of the organs of your own Commission,
24 and several other things -- not to mention what in my own mind
25 one of the most serious things is, the impact of the conviction

1 in Federal court of the licensee or potential licensee in
2 this matter.

3 So, I take this microphone now to thank you for
4 establishing a procedure for this meeting as it ostensibly
5 seems to be for what I consider this review to see what yet
6 has to be done, which implies to me that the issues have not
7 yet been fully considered nor concluded, and that the
8 decision to be made today, if any, is for further decisions
9 to be made concerning those issues down the line.

10 I thank you very much.

11 (Applause)

12 CHAIRMAN PALLADINO: Thank you.

13 Ladies and gentlemen, we have an important task to
14 do. We appreciate your interest and appreciate your being
15 here. But I would suggest that we keep to a minimum any
16 enthusiasm that you may have.

17 MR. GEKAS: Mr. Chairman, I join with you in
18 asking for the remainder of these proceedings that the
19 audience participate as "listeners and observers."

20 CHAIRMAN PALLADINO: Thank you, Mr. Gekas.

21 Now, let me ask if other Commissioners have any
22 opening remarks at this time.

23 COMMISSIONER ASSELSTINE: No.

24 CHAIRMAN PALLADINO: If not, then let me turn the
25 meeting -- oh, I am sorry.

1 COMMISSIONER BERNTHAL: Yes. I was just going to
2 comment that you are quite right, Mr. Gekas. I'm afraid
3 that the impression had been created -- and it was an
4 erroneous impression -- that today was the day that the
5 restart decision was going to be reached or at least discussed.

6 In fact, the Chairman has correctly, I think,
7 represented the intent of this meeting which is to try and
8 reach some determination and discussion, at least, of the
9 remaining hearings that need to be addressed.

10 CHAIRMAN PALLADINO: Okay, any other comments? Well,
11 then let me turn the meeting over to General Counsel.

12 MR. MALSCH: As you pointed out, Mr. Chairman, on
13 September 11, 1984 the Commission issued an order taking
14 review of whether and to what extent further hearings are
15 required in the TMI-1 restart proceeding.

16 In response to that order, the Commission has received
17 briefs from the Commonwealth of Pennsylvania, the Union of
18 Concerned Scientists, Three Mile Island Alert, the Aamadts,
19 the licensee, GPU Nuclear Corporation, and the NRC staff.

20 We have conducted an analyses of those briefs and,
21 for a more detailed discussion of where we are, let me turn
22 the meeting over to Rick Levi who is one of the senior
23 attorneys in our office working on this project. Rick?

24 MR. LEVI: Before getting into the position where we
25 are at, let me briefly summarize what the positions of the

1 parties who submitted comments are.

2 The licensee argued that no additional hearings were
3 required in this proceeding. The NRC staff maintained that
4 no additional hearings were required, although it felt that
5 the Commission could find that it would be in the public
6 interest to hold a hearing on the training issue.

7 The other intervenors collectively argued that all
8 the hearings ordered by the Appeal Board, as set forth by
9 the Chairman, should be held, plus several other matters
10 set forth in Sub. No. 5 should also be held.

11 The additional hearings included hearings on the
12 allegations of discrimination against Messrs. Park, King
13 and Gischel; licensee's changes to its internal investigation
14 of the accident, the Keaton Report, and licensee's response
15 to the October 1979 Notice of Violation.

16 After reviewing all those comments, we prepared our
17 analysis which provides a background of each of the issues
18 raised by the parties, summarizes the parties' comments, and
19 analyzes whether further hearings are required.

20 As we explained in that paper, there is a significant
21 public interest in this matter and reasonable minds can
22 differ on whether hearings are required.

23 While the ultimate decision must be made by the
24 Commission, in that paper we have set forth our best
25 judgment on what further hearings are required. Our judgment

1 is a hearing should be completed on the training and
2 Dieckamp issues, and an additional hearing should be held on
3 the Hartman allegations.

4 In brief, as set forth in the paper before you, it's
5 our view the training and Dieckamp hearings have almost been
6 completed already and they should be allowed to be completed.
7 With regard to the other issues, we find that the two most
8 significant issues are the Hartman allegations and staff's
9 likely change of position in Sub. No. 5.

10 With regard to the Hartman allegations, as we point
11 out in the paper before you, it is our view that changes in
12 management and personnel, and the segregation of potentially
13 implicated individuals, has significantly lessened the
14 importance of those allegations to the TMI-1 restart
15 proceeding.

16 However, it is also our view that there is a
17 significant public policy interest in fully airing the
18 circumstances of the first criminal conviction of a utility
19 for nuclear-related activities; that there are some
20 potentially implicated individuals who are still associated
21 with TMI-1 activities, even if not in operational positions,
22 and that conducting an adjudicatory hearing would provide
23 a forum for resolving the ultimate status of segregated
24 individuals.

25 It is our view that these considerations are sufficient

1 to warrant further hearings on the Hartman allegations.

2 With regard to the other issue that we see that is
3 most significant, staff's likely change of position. In
4 the paper we have analyzed staff's likely change of position
5 by looking at each of the events staff cites as support for
6 its likely change of position.

7 Running through those quickly, staff cites the
8 Hartman allegations which we have already recommended further
9 hearings be held on.

10 Secondly, staff cites pre-accident training
11 irregulatities and post-accident cheating. The post-accident
12 cheating was already litigated. The pre-accident training
13 irregularities, the Appeal Board denied a motion to re-open
14 on those same irregularities and, as we point out in the
15 paper, regardless, hearings are currently underway on the
16 adequacy of licensee's training program.

17 The third item cited by staff is the certification
18 of Floyd in 1979. From our review of the information, we
19 can find no significant new information that was not presented
20 to the Licensing Board.

21 The fourth item cited by staff is licensee's
22 response to the October 1979 Notice of Violation. The
23 implicated individuals in that event are no longer associated
24 with TMI-1 activities and hence that event appears to be
25 moot.

1 Based on that analysis of each of the events cited
2 by staff, it is our view that no further hearings beyond those
3 on the Hartman allegations and the training program are
4 required.

5 With regard to the other issues discussed in the draft
6 order, we think that the order and paper are largely self-
7 explanatory and we would propose opening the floor for
8 Commission questions and focusing on issues of interest to the
9 Commission rather than summarizing each one of them.

10 CHAIRMAN PALLADINO: All right. Let me ask the
11 Office of Policy Evaluation to add any comments they wish.

12 MR. ZERBE: We, of course, were part of that paper
13 that was just discussed and we agree with the comments made
14 by Rick. I guess we would also feel that we would be open
15 for questions now by the Commission.

16 We have nothing more to add.

17 CHAIRMAN PALLADINO: All right. Well, let me start
18 the questioning. I have questions in two areas, one having
19 to do with the scope of the Hartman allegations, or the
20 proposed Hartman hearing, and the second has to do with the
21 matters related to Mr. Husted.

22 With regard the other matters in the order, I have
23 no major problem.

24 The problem I have with regard to the Hartman
25 hearings is somewhat as follows: It is clear to me that

1 further hearings on the Hartman-related issues are appropriate
2 and the question is the scope. Individuals potentially
3 involved in leak rate falsification at TMI have been segregated
4 from TMI-1 operations.

5 In addition it is possible the Commission may order
6 additional persons to be segregated. I would favor Licensing
7 Board hearings on the possible involvement in the TMI-2 leak
8 rate falsification of any individual which the licensee
9 proposes to restore to the TMI plant operation.

10 The scope of the Hartman-related issues outlined
11 by the draft order goes beyond this in at least two respects.

12 First, it would authorize hearings into the
13 involvement in leak rate falsification of any individual
14 currently employed in the operation of TMI-1. I was interested
15 in knowing what your thinking was in that regard. For
16 example, I question the reason to have hearings to address
17 current TMI-1 employees who had no involvement in the TMI-2
18 and therefore had no involvement in TMI-2 leak rate falsifi-
19 cation, for example.

20 Further, it appears that the available information
21 indicates that individuals involved in leak rate falsification
22 at TMI-2 were not involved in significant positions at
23 TMI-1.

24 Second, the scope of hearings outlined in the draft
25 order includes the question of whether there was a need for

1 additional corrective management action. I find this
2 statement somewhat vague and I would appreciate any clari-
3 fication.

4 My question is, why should we launch a broad
5 inquiry at Unit 1 after we concluded that no person who was
6 involved in falsification at Unit 2 will be in a position of
7 safety significance at Unit 1?

8 Maybe that was more than one could chew at one
9 time, but if you could respond I'll help you if you need to be
10 reminded of any of the questions.

11 MR. LEVI: Let me try and respond to the first
12 question first. It was not our intent in this scope to
13 cover anyone employed by GPU even if they could not have had
14 any involvement in leak rate falsifications.

15 Our intent was to cover those people who could have
16 been involved in leak rate falsifications who now or in the
17 future may return to significant positions at TMI-1.

18 CHAIRMAN PALLADINO: Well, the reason the question
19 arises -- I think it's on page 20 of the draft order. It
20 says, "With regard to the scope of the remanded hearings,
21 the Commission has decided that the hearings should address:
22 1. The facts surrounding the alleged falsification in
23 sufficient detail to determine the involvement of any
24 individual currently employed by GPU or its subsidiaries,
25 and who now or in the future may operate or significantly

1 affect the operation of TMI-1."

2 At least you clarified that point. Maybe the order
3 could bear some clarification also. Okay.

4 MR. LEVI: With regard to your second point, the
5 order as currently drafted states that the Hartman allegations
6 warrant further hearing for public policy reasons. If they
7 are being held for public policy reasons, it seemed to us
8 that the broader scope of determining whether further
9 corrective action was warranted should be put on as a
10 safeguard to dispel any lingering concerns in the area.

11 CHAIRMAN PALLADINO: And you say that's despite any
12 effort made to set aside individuals that worked on Unit 2
13 and having operating responsibility.

14 MR. LEVI: It's just an added safeguard as added
15 protection.

16 CHAIRMAN PALLADINO: Okay, I think you hit the
17 essence of my two major questions.

18 All right now, I had one other question with
19 regard to the Husted matter. The question is, does NRC
20 rules require issuance of a Notice of Opportunity for
21 Hearing with regard to the Husted matters? Has such
22 notice been issued? If not, how has Notice of Opportunity
23 for a Hearing been communicated to Mr. Husted or to the
24 licensee?

25 MR. LEVI: I don't believe that the NRC regulations

1 currently require that notice be given to Mr. Husted. Our
2 interpretation is that the Appeal Board required his
3 removal and obviously he knows he has been removed. And we
4 think that the fact of his removal put him on sufficient notice
5 that the government was taking action against him, and if he
6 had any complaint about that, he should have come to the
7 agency. And we think because he did not, it can be
8 reasonably concluded that he has waived any rights.

9 • I point out that in the area of --

10 COMMISSIONER ROBERTS: I disagree with that.

11 MR. LEVI: I point out in the area of materials
12 licenses, we do not give advance notice of a right to hearing,
13 which is the same basic principle.

14 COMMISSIONER BERNTHAL: Are we under any obligation --
15 whether strictly legal, if not ethical, perhaps -- to at
16 least inform somebody -- we don't quite run things this
17 way -- but inform him of his rights and the fact that he had
18 a right to request a hearing?

19 COMMISSIONER ROBERTS: We are being told, no.

20 MR. LEVI: There are two comments. First, we don't
21 think it's clear that he had a right to a hearing, we think
22 it is an open question.

23 COMMISSIONER BERNTHAL: The question is, the question
24 I asked is, were we under an obligation to inform the
25 individual, whether strictly legally speaking or not.

1 MR. LEVI: If the Commission wishes to do it, we
2 certainly have no objection, it is a matter of ethical
3 judgment. If that's your ethical judgment, fine.

4 COMMISSIONER BERNTHAL: But you are saying --

5 MR. LEVI: But as a strictly legal matter we say
6 you are not required to.

7 COMMISSIONER BERNTHAL: -- informing an individual of
8 his rights has no legal place in this context; is that what
9 you are saying?

10 MR. LEVI: We are saying that it can be reasonably
11 concluded that he waived any rights he had by not coming to
12 the agency, just as in material licenses cases we don't
13 give advance notice. If someone doesn't request a hearing,
14 they didn't have a right to advance notice.

15 CHAIRMAN PALLADINO: Rich, I'm trying to find a place
16 in the order. But as I recall it says you addressed the
17 matter from two standpoints, one on rights under Section 189(a)
18 if I have it correct, and the other was under normal due
19 process.

20 You gave a good case, apparently, on 189(a) as a
21 basis for, you said, having waived the rights. But when it
22 came to the due process, if I recall correctly -- and I
23 can't quite find it. If you find it, let me know.

24 MR. ROTHSCHILD: It's page 39.

25 CHAIRMAN PALLADINO: Page 39. All right, thank you.

1 It says, "The Commission has decided that it need not
2 resolve whether there are any such hearing rights. In this
3 particular case. the Commission does not have sufficient
4 information before it to decide the issue."

5 And I think you are speaking of due process. And
6 then you go on and say, "As under Section 189(a) analysis,
7 Husted has waived any rights he may have had." I wasn't
8 sure how you drew that conclusion.

9 MR. LEVI: It's the same analysis under due
10 process as under the Section 189, that an individual has an
11 obligation to come to the agency once he is on notice that
12 the agency has taken action against him.

13 In this case, Mr. Husted has made no effort to come
14 to the agency and present his position. And it's now been
15 many months since the Appeal Board issued this decision. Our
16 view is that Mr. Husted's continued silence amounts to a
17 waiver of any rights he may have had without reaching a final
18 determination of whether he had a right in the first place.

19 (Commissioner Roberts leaves meeting.)

20 CHAIRMAN PALLADINO: Well, I guess the reason I
21 raised the question, without trying to prejudge whether or
22 not any action is appropriate to him, it seems to me that
23 individuals who are going to be treated this way be given
24 appropriate notice. That would be my feeling. But I wait
25 to hear what my colleagues say.

1 MR. LEVI: I note that one of the things the draft
2 order would accomplish is put everyone on notice in future
3 cases that advance notice should be given.

4 CHAIRMAN PALLADINO: All right.

5 COMMISSIONER BERNTHAL: But that's almost tantamount
6 to admitting that at least we violated some fundamental
7 principle of fairness.

8 MR. LEVI: I can also, I think, safely say that we
9 don't object in the least if the Commission wants to give
10 Mr. Husted notice and opportunity to request a hearing.

11 CHAIRMAN: All right. I was going to turn to
12 Mr. Roberts, but he just left. Let me turn to Commissioner
13 Asselstine.

14 COMMISSIONER ASSELSTINE: I don't have a lot of
15 questions but I guess I have a few comments, Joe, on the
16 draft order and what OGC has described for us today.

17 I guess my first comment is that I still have the
18 view that I held back in September, that was attached to the
19 Commission's order taking review of the Appeal Board's
20 decision on re-opening the record, that I think we proceeded
21 in the wrong way.

22 I think that the OGC order points out one of the
23 problems because one of the tests that we have to look at
24 here is whether we think these items would have led the
25 Licensing Board to change its decision. And it seems to me

1 that the best person to make that judgment is not us but
2 the Board itself. That's why I would have sent these matters
3 back to the Board -- apart from the three items that the
4 Appeal Board said had to be re-opened -- sent these matters
5 back to the Board and let the Board make the decision.

6 But nonetheless, since we are into this exercise,
7 I'll go through the order and the concerns that I have with it.

8 My biggest concern is, I think that the order is too
9 restrictive in terms of the issues that are identified for
10 further hearings. I think that there are some items that
11 ought to be opened for further hearings that are not included
12 within the OGC order, and also in one instance I feel that
13 the scope of the issues to be considered in the re-opened
14 hearing as described in the OGC order are too narrow and I
15 think the hearing should be somewhat broader.

16 Let me start with that one, and that's the TMI-2
17 leak rate falsification issue. It seems to me that perhaps
18 implicit in the issues that are identified in the OGC order
19 but not explicit in what I think ought to be made explicit
20 is that there is a somewhat broader issue than just which
21 individuals knew about or participated in the leak rate
22 falsification and what has been done to deal with that problem.

23 It seems to me that a fair issue is, to what extent
24 if at all is this company and its senior management responsible
25 for creating a climate that encouraged or allowed the leak

1 rate falsifications to occur. And that issue is not set
2 forth explicitly in the order and I think it should be. I
3 think that's a fair issue and I think there ought to be a
4 hearing on that issue. And if there was active involvement
5 or responsibility by the senior management of this company,
6 I think the fair issue is what are the implications of that
7 for the present organization. Are those people still there
8 and to what extent have those problems been adequately
9 resolved by changes that may have been made? Or, are
10 additional changes necessary?

11 The other issues are issues where the General
12 Counsel's Office has said that they do not believe that
13 hearings are necessary or appropriate, further hearings, in
14 areas where I think they are.

15 And I might add, by the way, I am troubled by
16 references in the order to this notion that as a matter of
17 policy the Commission might provide additional hearings in
18 some of these areas, including the training and Dieckamp
19 Mailgram issues and the TMI-2 leak rate issues.

20 It seems to me, again going back to the views I
21 expressed in September, that our Appeal Board made the
22 decision that re-opening the record on those three issues
23 is legally required. I don't see anything in the OGC order
24 that points out error in that decision by the Appeal Board
25 and in my mind at least there is a legal requirement that

1 the hearings be re-opened in those areas.

2 Turning to the other issues, in my view at least
3 there should be a re-opened hearing on the TMI-1 leak rate
4 falsification issues. It seems to me that the arguments that
5 were made by the Appeal Board in finding that a hearing is
6 necessary on possible TMI-1 leak rate falsification are all
7 valid arguments, and it seems to me that they weigh in favor
8 of granting a hearing on that issue as well.

9 I think the Appeal Board makes a good point that
10 the original Licensing Board's decision was made subject to a
11 resolution of the Hartman matter, and if the decision had to be
12 made subject to the resolution of the Hartman matter, then it
13 certainly ought to be made subject to the resolution of
14 possible leak rate falsification at TMI-1. Inevitably, that
15 has to be of at least as great if not greater significance
16 than possible falsifications at Unit 2.

17 Second, it does seem to me that the people are
18 entitled to an opportunity, to a hearing, on the validity of
19 the staff's conclusion which is based upon material that has
20 not been subject to a hearing in the past, the staff's
21 conclusion being that there was not a pattern of falsifications
22 at Unit 1 similar to that which occurred at Unit 2.

23 So, I think in order to provide a fair opportunity
24 to test that information, there is a need for a further
25 hearing on that issue, the TMI-1 leak rate falsification, as

1 well.

2 The next one is one that perhaps bothers me the
3 most in the OGC paper, I have the greatest difficulty with,
4 and that is on the staff's change in position.

5 It seems to me more than anything else the
6 fundamental element in this proceeding was the staff's view
7 that if they had known then what they know now, they would
8 not have testified the way they did in favor of GPU's
9 management competence and integrity.

10 The staff has told us now in essence -- I am
11 paraphrasing very broadly -- that this is a new organization,
12 that things have changed now, and they point to a great deal
13 of extra record material to support that view.

14 The fact is, nobody has been given an opportunity
15 for a hearing on that issue. We told the public that there
16 would be an opportunity for a hearing on the competence and
17 integrity of the organization when we started this
18 proceeding, and it seems to me that now there ought to be an
19 opportunity for a hearing on the staff's new judgment which
20 is, if this is a different organization, then let's provide
21 an opportunity for a hearing on whether this new organization
22 really has the requisite competence and integrity to run
23 the plant and what the basis is for that judgment.

24 (Applause)

25 COMMISSIONER ASSELSTINE: And it seems to me that

1 that's their game and that people have not been given an
2 opportunity to test that new judgment.

3 I guess, quite frankly, I am troubled by some of the
4 statements in the OGC order. One that perhaps bothers me
5 the most is the notion that it didn't necessarily -- would
6 not have necessarily changed the Licensing Board's decision
7 in favor of management competence and integrity simply
8 because the staff would have testified the other way.

9 I find it inconceivable to believe that if the staff
10 had testified in the first round of hearings that this
11 organization did not have the competence and integrity to
12 run the plant safely, that the Board would have issued the
13 decision it did in favor of allowing restart.

14 So, it seems to me that there are a lot of arguments,
15 and particularly strong ones, in favor of providing a
16 hearing on the staff's change in position.

17 (Commissioner Roberts rejoins meeting.)

18 COMMISSIONER ASSELSTINE: The last one, I guess, that
19 troubles me in particular has to do with the Parks allegations,
20 and it seems to me that there is an aspect of the OI report
21 that is not reflected at all in the OGC order.

22 I think you will recall, the OI report pointed out
23 that ignoring and violating safety procedures at TMI Unit 2,
24 the instances that our Office of Investigations had identified,
25 were representative but not exhaustive. And it seems to me

1 that a fair issue is, to what extent were there widespread
2 violations of safety procedures for TMI-2. And then the
3 question is, how far up the line did that go and what are
4 the implications for TMI Unit 1.

5 I think that's another one where the OGC paper does
6 not provide an opportunity for a hearing where I think there
7 is a requirement that that be done.

8 Those are the principal ones that I have concerns
9 about. I've got a number of other comments on specific
10 statements or provisions in the order. There are a number of
11 things where there are statements that would be attributed
12 to the Commission that I don't think are supportaBle, that
13 ought to go out.

14 But at a minimum, it seems to me, the order ought
15 to be redrafted to provide for opportunities for hearings
16 in the major areas that I have described.

17 So, I don't have any questions for OGC, but those
18 are my comments in terms of what I think is wrong with the
19 order the way it's now drafted.

20 CHAIRMAN PALLADINO: I don't want to put the OGC
21 or OPE in a position of debating with the Commission, but if
22 you have comments on any of these points, I think it would
23 be appropriate.

24 MR. LEVI: I will just make one clarifying point
25 on your argument on the procedural violations. We did not

1 address whether the Commission sua sponte take it up because
2 to our best reading of the briefs, no party argued for re-
3 opening on that issue.

4 COMMISSIONER ASSELSTINE: Fair enough, yes.

5 MR. LEVI: On staff's change of position just
6 very briefly, it was our judgment -- which you can certainly
7 differ with -- that the most staff's change of position would
8 have done would have been to lead the Licensing Board to
9 have hearings on individual issues cited by staff in further
10 development of the record.

11 Given that there have already been hearings or are
12 being hearings on the events cited by staff, we felt that it
13 was no longer significant, which is just our view for what
14 it's worth.

15 On the Unit-1 leak rate, I think our position is
16 summarized in the paper and I see no reason to repeat it now.

17 CHAIRMAN PALLADINO: Well, I think there is merit
18 in repeating some of the argument on TMI-1 leak rate. TMI-1
19 leak rate was a matter that was investigated and there were
20 a small number -- I don't remember exactly the number -- but
21 a relatively small number of questionable additions of
22 hydrogen and possibly water.

23 There was the point made that this is not necessarily
24 a wrong-doing because there are a lot of reasons to add
25 hydrogen or water, and that this same practice did not seem to

1 exist. So, going through that again, I'm not sure is going
2 to add to our knowledge on that particular item.

3 Is there more, Rick?

4 MR. LEVI: No, that's a fair summary.

5 CHAIRMAN PALLADINO: Does OPE have any comments?

6 MR. ZERBE: Only perhaps one relative to how we
7 were going to approach these number of people that could be
8 considered. We make a comment on the bottom of page 20,
9 the first one says, "The facts surrounding the alleged
10 falsifications in sufficient detail determine the involvement
11 of any individual currently employed in GPU or its
12 subsidiaries and who now or in the future may operate or
13 significantly affect the operation of TMI-1."

14 The intent of that statement was to cover anybody
15 that was in the GPU organization.

16 COMMISSIONER ASSELSTINE: Yes, I guess what I'm
17 concerned about is, though, how narrowly you read the focus
18 on those people who specifically knew about or participated
19 in the falsifications --

20 MR. ZERBE: Or condoned.

21 COMMISSIONER ASSELSTINE: -- and I think it begs --

22 MR. LEVI: Or a dereliction of duty.

23 MR. ZERBE: A dereliction of duty or neglect. So,
24 we thought we had everybody covered, you know.

25 COMMISSIONER ASSELSTINE: I'll grant you, it may be

1 there but my own view is, it ought to be made explicit that
2 one of the issues that ought to be considered is to what extent
3 the management of this company actually created or fostered a
4 climate in which this kind of thing could occur, and to what
5 extent they are responsible for that.

6 MR. LEVI: Just for the record, that was the purpose
7 of the word "dereliction."

8 COMMISSIONER ASSELSTINE: Okay, okay.

9 CHAIRMAN PALLADINO: All right, any more comments?

10 COMMISSIONER ASSELSTINE: Joe, I just add one
11 comment on this, at least on the staff's change in position.

12 You know, one of the things that troubles me about
13 the way the analysis is done is, the staff has now said that
14 clearly there was a pattern of activity here, a pattern of
15 conduct that, had they known about it at the time, would have
16 led the staff to a different position than that this
17 organization had the requisite competence and integrity to
18 operate the plant.

19 And by parsing it down and looking only at these
20 individual items, I think that unduly narrows the focus. It
21 seems to me that it's a legitimate question to say, given
22 this pattern of activity, might the Board have looked
23 farther? Might the Board have done more? Might the Board
24 have imposed additional limitations, conditions, beyond what
25 it considered or imposed if they had known that this kind of

1 a pattern of activity existed.

2 It seems to me that that justifies a broader inquiry
3 when you are now looking at the present organization and
4 the staff's changing position than simply saying, "Well, we'll
5 look at these few isolated instances that the staff has
6 identified and we'll see if those are being dealt with
7 separately. And if they are, then that's all we have to
8 worry about."

9 I really do think that given particularly the range
10 of new information that the staff is relying upon, the
11 new organization that is a key element in the staff's
12 judgment, that there really is a pretty strong justification
13 for a broader inquiry, looking at the new organization and
14 the basis for the staff's conclusions that this new
15 organization is satisfactory to operate the plant.

16 CHAIRMAN PALLADINO: Okay, let me turn to Commissioner
17 Roberts.

18 COMMISSIONER ROBERTS: I really have nothing to say.
19 I agree in part with the order, I disagree in part, and I
20 have put my thoughts in writing and I will see that you all
21 have it.

22 COMMISSIONER ASSELSTINE: I think we have all gotten
23 it, yes.

24 CHAIRMAN PALLADINO: All right. Commissioner
25 Bernthal?

1 COMMISSIONER BERNTHAL: I just want to make a couple
2 of fairly general comments. First of all, I would just say
3 that it strikes me as somewhat strange that we are "singing
4 from a sheet of music here" but haven't provided the public
5 with the lyrics.

6 (Applause)

7 COMMISSIONER BERNTHAL: I don't quite understand
8 the value, frankly, of not exercising our right to close
9 such meetings and we have chosen not to do that -- and I
10 think correctly chosen not to do that. But if that's the
11 case, then if we are going to discuss documents which are
12 supposedly confidential publicly, we might as well let the
13 public know what's in them. That just happens to be my
14 point of view.

15 COMMISSIONER ASSELSTINE: Mine also.

16 CHAIRMAN PALLADINO: Now, wait a minute, then the
17 report I got back was not correct.

18 COMMISSIONER BERNTHAL: What report?

19 CHAIRMAN PALLADINO: The report was that there were
20 three people that didn't want to put this out on the table.
21 I, for one, had voted to put it out on the table.

22 COMMISSIONER ASSELSTINE: So did I.

23 COMMISSIONER BERNTHAL: Well, maybe there was a
24 garbled message. I mean, we discussed the order, as I
25 recall.

1 CHAIRMAN PALLADINO: The order out on the table --
2 the order out on the table.

3 COMMISSIONER BERNTHAL: Well, let me just make the
4 record clear. As far as I'm concerned, I'd put this document
5 on the table, if there was any confusion.

6 Let me just comment for a moment on some of the
7 things that you said, Joe, and that Jim has said.

8 First of all, I am inclined in this entire matter
9 as a broad statement of principle to err, if at all, on the
10 side of expending additional resources and time to complete
11 to the extent that that's at all possible a record in full
12 in all of the matters that relate to Three Mile Island.

13 . I'm not prepared, therefore, to proscribe at this
14 time any additional hearing that any Commissioner might
15 choose to propose. I think that's something that we should
16 work out in detail because I believe that there is a basis
17 for consensus on this matter, and I don't want to prematurely,
18 at least, foreclose the possibility that the Commission can
19 reach consensus on the entire issue.

20 I would just say that some time ago, some six or
21 eight months ago, I advocated that the Commission might still
22 save time and, more importantly I think, carry out this
23 proceeding in a manner that's understandable to the public
24 by appointing a Special Master and concluding all of the
25 issues before the Commission in a single forum in a way that

1 would be understandable to the public.

2 I just note that OGC in this document which I guess
3 I can quote from, at least in part, states that there is a
4 strong public policy value in full public hearings on all
5 significant issues related to TMI-1 restart. The case is
6 complex, important and unique, and without going beyond that,
7 I think that says enough.

8 Therefore, I think that all of us should consider
9 very carefully and very seriously the value, even if we
10 don't feel that extra record information that we might have
11 available that's not available to the public at this point,
12 even if we don't feel on the basis of that extra record
13 material that such hearings are perhaps strictly necessary
14 for us to make a decision.

15 My point is that I think they may be very necessary
16 for the public to understand that decision.

17 Finally, I would just say that the best example of
18 that category of hearing is perhaps the TMI-1 leak rate
19 question. Here is a case where the Commission has some time
20 back considered in great, exhaustive detail every possible
21 facet, I think, of that incident and occurrence and has
22 arrived at some judgments based on the Office of Investigation's
23 report on the TMI-1 leak rate question.

24 Much of that, however, is extra record. And it just
25 seems to me that here is one clear example where getting the

1 information on the record and out in the open where the
2 public can understand clearly the basis for the Commission's
3 decision, has great value.

4 So, I think that's as much as I'm going to say at
5 this point. To just summarize, let me say that I'm inclined
6 to view with favor any reasonable request and suggestion
7 that we proceed to expand the public record and clarify the
8 public record on whatever issues any individual Commissioner
9 might feel is appropriate.

10 CHAIRMAN PALLADINO: Let's see if I understand you,
11 Fred. You are not offering specific areas on your own.

12 COMMISSIONER BERNTHAL: Not at this time, no.

13 CHAIRMAN PALLADINO: But you would say any
14 reasonable statement by any Commissioner you would be inclined
15 to go along with. Okay.

16 I'm going to ask for comments, as I did on the
17 others, if the OPE and OGC want to make any. But I think
18 it's important to settle what appears to be a housekeeping
19 "glitch." I personally went to each Commissioner and asked
20 them about putting this order out on the table. I thought I
21 had an affirmative vote.

22 Later, I was informed -- when the legal assistants
23 were contacted -- I was told the vote went the other way.
24 I asked that the legal assistants go back and check with
25 their principals because it did not jive with the information

1 I had. Now, the Secretary reports that your office had
2 indicated that you did not want to put this out. Now, that
3 doesn't mean you don't have a privilege to change your mind.
4 I just want to explain why we got the decision.

5 COMMISSIONER BERNTHAL: I think that I can tell you
6 where the misunderstanding is, and that's separating the
7 question of the order, Joe, and the draft order, perhaps,
8 from the document because I did not feel and I do not
9 believe that there is any reason at this point for us to put
10 a draft order on the table and that's as precisely as you
11 say, I did indicate that.

12 But there is the broader question of the OGC
13 document and that's really what I am addressing here. I
14 think the OGC document with its arguments, since we are
15 sitting here discussing them freely and quoting from them,
16 I see no real reason -- whatever misunderstanding there
17 might have been over the order versus the document itself --

18 CHAIRMAN PALLADINO: The order contains all the
19 arguments pro and con, I think.

20 COMMISSIONER BERNTHAL: But it's obviously not nearly
21 as exhaustive, nor does it contain all the rationale that
22 the document itself does. I think the order, finally, then
23 becomes the official definitive action of the Commission. And
24 if there was a misunderstanding on that, I apologize.

25 CHAIRMAN PALLADINO: All right, thank you.

1 COMMISSIONER BERNTHAL: But that's what my position
2 was, I believe.

3 CHAIRMAN PALLADINO: All right, does OPE want to
4 comment?

5 MR. ZERBE: I just want to make one point, that
6 all of the information that was used by the two offices in
7 preparing this document has been given to the public. It's
8 not on the adjudicatory record perhaps, but all of the
9 information that was used was disseminated to all the
10 parties. We mention that in the document.

11 COMMISSIONER BERNTHAL: But not the document itself.

12 MR. ZERBE: Not the document. The document itself
13 has not been sent out.

14 CHAIRMAN PALLADINO: All right, comments?

15 MR. MALSCH: I just have one comment to make. Our
16 paper does identify and evaluate various kinds of public
17 policy considerations here. One them is, of course, the
18 one mentioned by Commissioner Bernthal that we say there
19 is a strong public policy value in full public hearings on
20 all significant issues related to TMI restart.

21 There is also the competing consideration which
22 we also identify in the paper, and that is that five years
23 has now passed without a decision. There have been many
24 restart hearings and the competing public policy value in
25 completing this proceeding also takes on more importance

1 than it did in 1979.

2 We do have -- you may have, anyway, competing
3 values here. On the one hand, the need for further
4 hearings and further exploration of the issues, and on the
5 other hand the need to complete a proceeding which has now
6 been on-going for some five years.

7 That has a bearing on where you see the public
8 policy resolution in this case, and both of those are
9 discussed in the paper.

10 CHAIRMAN PALLADINO: And incidentally, if you go
11 back to the original order -- or maybe it was the second
12 order -- talks about doing this thing expeditiously and
13 even taking advantage of the means for expediting the whole
14 proceeding. I think five years doesn't represent expedition.
15 But I think our purpose here is to settle the issue in an
16 enlightened and objective way that represents the overall
17 interest of the public.

18 MR. MALSCH: I think it's also fair to say that
19 while the proceeding has lasted five years there are a
20 number of reasons -- many of them beyond the Commission's
21 control -- as to why that has occurred.

22 COMMISSIONER ASSELSTINE: Yes.

23 MR. MALSCH: And that is explained in the documents
24 that you have before you.

25 COMMISSIONER BERNTHAL: Let me just comment though,

1 Marty. Isn't it true that while you raise a good point about
2 the length of the proceeding and the countervailing public
3 interest that might be contained therein, the subject of
4 this meeting today is in fact to determine which if any
5 hearings should be continued. And that in itself does not
6 address the next question that we need to take up -- and
7 perhaps more difficult question -- of which of those
8 hearings must indeed affect the lifting of the suspension.

9 So, I am cognizant of the points you raised.

10 MR. MALSCH: That's true.

11 COMMISSIONER BERNTHAL: But they are not addressing
12 the second issue here today; is that right?

13 MR. MALSCH: That's true, they are separate issues
14 although I think, depending on how you analyze them, one may
15 have a bearing on the other.

16 CHAIRMAN PALLADINO: All right, Commissioner Zech?

17 COMMISSIONER ZECH: Thank you, Mr. Chairman.

18 Today we are meeting on a very important matter, a
19 very important matter, and I think it's appropriate that we
20 have this meeting so people can understand the status of
21 the hearings and the status of the thinking on TMI-1 plant.

22 Congressman Gekas, I appreciate very much your
23 being with us today and spending the time with us, and
24 expressing your views and those views of some of your
25 constituents.

1 I appreciate the fact that this is a matter not
2 only of great interest but great importance to nuclear
3 power of our country and also to the public health and
4 safety of not only the people in Pennsylvania but the
5 people in all our nuclear plants.

6 So, it is a very important issue and I think it's
7 appropriate that we have this open session and air out
8 our thoughts on it so you can hear the different views of
9 my colleagues, the fellow Commissioners, who in my judgment
10 are all very decent, knowledgeable Americans sitting here
11 at this table, trying to come to a decision that is very
12 difficult but so very important.

13 I personally feel that the OGC paper is a good
14 paper. I do feel that it needs modification. I feel that
15 it's a predecisional paper and for the information of those
16 who wonder why the Commission differed, perhaps, on the
17 viewpoint of whether to release it to the public, my view
18 is it's a predecisional paper. It's in my best interest,
19 your best interest as the public, my fellow Commissioner's
20 best interest, everybody's best interest that we get out
21 an order that is solid.

22 The order we have now in my judgment does need
23 considerable modification. And my understanding is that all
24 of my fellow Commissioners have modifications to it. I
25 personally feel that we should do our chores and submit an

1 submit an order that is certainly more tidy and one that we
2 do have a little bit more consensus on than we perhaps have
3 with this draft order which none of us have had a chance to
4 input to at all.

5 COMMISSIONER BERNTHAL: Lando, if you will excuse me,
6 we can maybe discuss that point a little bit. I again want
7 to stress that I agree with the decision for exactly the
8 reasons that you have stated, that the order itself, since
9 it represents the final thinking and decision and formal
10 thinking and decision of the Commission, that I believe is
11 something that we need to mull over, as distinct from the
12 rest of the document in front of us.

13 COMMISSIONER ZECH: Thank you.

14 COMMISSIONER BERNTHAL: I agree with you on that.

15 COMMISSIONER ZECH: Thank you.

16 Let me just say specifically because, Mr. Chairman,
17 I know we are moving along. My feeling is that the training
18 hearings on-going simply must be concluded before I will be
19 in a position to form a final decision on whether or not
20 to vote for restart of TMI-1 plant. So, the training
21 hearings, I think, are absolutely necessary.

22 I think the Husted matter, I think an opportunity
23 for justice is what we are saying and I think it's simply
24 a matter of justice and should be pursued in some form or
25 another. I'm not sure that it would have a bearing on the

1 TMI-1 restart in my judgment, but I think certainly that
2 should be considered and perhaps decided at a later time.
3 But justice, I think, should be pursued in that matter.

4 The Hartman and TMI-2 leak rate matter, I would
5 agree, Mr. Chairman, with your views that perhaps some focused
6 way of pursuing that should be entertained. I do believe
7 that we would have to decide whether or not that would have
8 to do with the TMI-1 restart and that would be a separate
9 decision we would have to make. But perhaps a focused
10 hearing on that matter in order to make the record complete
11 would be appropriate.

12 My view is truly that the hearings that we have had
13 have been useful. The hearings in progress are necessary.
14 I really don't know from my review that we need a lot of
15 additional hearings. I don't know what it would be to
16 conclude that it's necessary for the safety of the public
17 or the safety of operation of that plant in any way.

18 From a technical standpoint, it seems to me, that
19 five years, almost six years has really been sufficient, and
20 I think the time has come -- at least soon and very soon --
21 for us to have to decide here, the five of us, and looking
22 after the public health and safety because that's something
23 that I at least feel is my personal responsibility. And I
24 know my fellow Commissioners feel the same way. We are
25 representing the public. It's our responsibility to simply

1 keep in mind what is the right thing to do.

2 I think that's so important for all of us, and I
3 think we are trying to do that. I recognize there are
4 those who feel on one side of the question very strongly
5 and one on the other side very strongly. But I think it's
6 up to us to ultimately make the decision, and I think, Mr.
7 Chairman, the time is rapidly approaching that we simply,
8 the five of us, must make a decision.

9 I think the hearings we have on here now, the
10 training hearing especially, must be completed. I think
11 the staff must give us further reports. But I do think
12 that the time is near to make a decision, as hard as it may
13 be, what is the right thing to do. I think all of us simply
14 must be prepared to do that very soon.

15 Thank you, Mr. Chairman.

16 (Applause)

17 CHAIRMAN PALLADINO: Thank you. Any comments, y
18 OPE or OGC?

19 I would like to add a comment. I agree very
20 strongly with your statement that we've got to get on to
21 making the decision. As a matter of fact, I have been
22 pressing for it for some time -- I guess almost since I
23 got to my chair.

24 COMMISSIONER ROBERTS: That's a fair statement,
25 Mr. Chairman.

1 CHAIRMAN PALLADINO: And I would like to press until
2 we get a decision on this matter.

3 Now, are there any other comments that Commissioners
4 would like to make? Then I'll try to assess where we go from
5 here.

6 COMMISSIONER ASSELSTINE: I guess maybe it's not
7 so much a comment as a question, Joe. I guess I would like
8 to ask for those of you who don't feel that there is a need
9 for a further hearing on the staff's change in position, how
10 do you square that with in essence what the Commission said
11 when it started this proceeding, that the decision was going
12 to be based upon an adjudication on the record.

13 We now know that the information that led to the
14 Licensing Board's earlier positive decision on management
15 competence and integrity was based upon wrong information.
16 The staff said it would change its view. The staff has now
17 come back to us with a lengthy analysis that says, "This
18 organization now is okay largely because it's a different
19 organization, lots of new people are in here. We have done
20 a SALP report that says these people are quite capable. INPO
21 has done reviews that says they are quite capable. Admiral
22 Rickover has done a review --

23 (Laughter)

24 COMMISSIONER ASSELSTINE: But largely those are
25 the kinds of things that are the basis for the staff's

1 judgment now and yet, there haven't been hearings on any of
2 those things. And given all of that new information and the
3 importance of it to the staff's current position, and given
4 the changes that have occurred in the organization, why not
5 have a hearing on that issue? Why not give people an
6 opportunity to look at the staff's conclusion, to test the
7 elements that went into it, to assess the validity of the
8 judgments that the staff has made and to look at the
9 organization itself?

10 That's what we started out doing in this proceeding
11 and it seems to me that it would be useful to do that.
12 How that affects a Commission decision on whether to allow
13 the plant to operate is a separate matter. But at least in
14 terms of providing an opportunity for the kind of hearing
15 that we promised at the outset. It seems to me that that's
16 only fair.

17 But I guess, you know, I'd be interested in the
18 reasons why you think that's not right.

19 CHAIRMAN PALLADINO: Well, there were four reasons
20 given, as I recall, for the staff position and some of those
21 are being addressed in adjudication.

22 The others were well known at the time, as far as
23 I can see, were factored into the decision and information
24 that says it's even better than that. I don't see how that
25 would countervail a favorable decision.

1 Now, this is better analyzed in the paper than I
2 can give you in one quick response. Maybe other Commissioners
3 would like to respond as well.

4 COMMISSIONER ZECH: My view was that the staff had --
5 we had addressed that to the staff and they had presented a
6 view that certainly was reasonable to me. And the points
7 that the Chairman made were, I believe, well taken.

8 I think that the matter of the staff integrity, if
9 you will, that has been looked into has been addressed. I
10 think it's generally known that management has changed
11 to a very great extent and the management folks up there now
12 simply have a different approach, I believe, to the matter
13 than the former management.

14 There is no question but there are different
15 people involved. I don't believe that the staff's statement --
16 when you have such a significant change in management it
17 would at least be understandable to me that the staff might
18 take such a position.

19 CHAIRMAN PALLADINO: Any other Commissioner comments?

20 COMMISSIONER BERNTHAL: I'll just make one or two
21 brief comments here. Everybody agrees that it's time to
22 make a decision. Making a decision can mean --

23 COMMISSIONER ZECH: Mr. Chairman, may I interrupt
24 and ask, will you please, folks, allow us to respond up here?
25 It's rather disrupting to talk up here, even to think up

1 here, when we hear a lot of murmuring in the crowd. Please,
2 the Congressman has asked you, the Chairman has asked you,
3 and I'm asking you.

4 Thank you.

5 COMMISSIONER BERNTHAL: I appreciate that. Thank you.

6 Making a decision, it seems to me, means a number
7 of things. One, we need to decide -- and we intend to do
8 that, I take it, rather quickly and issue an order forthwith
9 on what exactly hearings, what hearings the Commission believes
10 should be carried out, whether in support of specific additional
11 enforcement action that might or might not be warranted, or
12 whether just in support of broad public interest and the
13 interest of the public having full information.

14 I might mention that one of the reasons in my
15 judgment that we are in this procedural morass that we seem
16 to be on Three Mile Island is that we talk about "on the
17 record" and "off the record" information and Jim has
18 correctly pointed out that the Commission early on committed
19 to conducting an adjudicatory proceeding in this matter.
20 That was discretionary on the part of the Commission.

21 But what it has led us into is a kind of gridlock
22 in decision making here because the public, and the parties,
23 and a number of individuals believe that they have a right
24 to see certain things argued out on the record, and the
25 Commission itself, for its part, feels that it has a right,

1 since this was a discretionary proceeding, to consider things
2 that are off the record.

3 Well, I'm just suggesting that in the interest of
4 all parties concerned it just seems to me that the first
5 decision, exactly what hearings should be held for whatever
6 reasons might lie behind them, is something that I frankly
7 take a rather liberal point of view on.

8 Secondly, then, is the relevance of those hearings
9 that we might choose to conduct, the relevance of those
10 hearings to the suspension itself and the lifting of the
11 enforcement action, lifting of the suspension.

12 And finally, I think, the decision-making process
13 has a third element that now, as I sit here a year later, I
14 wish we had addressed more carefully because it was about
15 one year ago today that the Commission discussed this issue
16 at some length -- and I can't go into the details of that
17 because I believe that was a closed meeting.

18 But I think it's fair to say that the Commission has
19 stated publicly since that a number of us believe that it
20 was incumbent on us to let all of the parties in this matter
21 know what our intentions were on a fairly well-defined
22 time table. In this particular case, that means informing
23 them, of course, of the scope of the hearings.

24 But by implication that also means informing them
25 of -- for whatever use they might find in them -- what might

1 come out of such hearings. Therefore, the various interested
2 parties can prepare themselves and take whatever actions,
3 anticipatory actions, that might need to be taken.

4 So, those three elements, it seems to me, are
5 involved in this decision-making process and I think that
6 it's time to conclude that so everybody knows where he
7 stands; so the public gets a maximum amount of information
8 and can just possibly still understand this process.

9 CHAIRMAN PALLADINO: Let me make two comments. I
10 remind the Commission that hearings have been going on, I
11 think almost continuously, since the whole hearing process
12 was started. As a matter of fact, it is my understanding
13 the original Commission that set out the orders anticipated
14 everything being done within a year.

15 Issues have become more complex because there
16 were parts that weren't even understood at the time of the
17 accident. There were developments that were not known even
18 after the accident, and those will have to be cleared up.

19 The question comes about now -- we can keep always
20 adding new things that could be heard and there would be
21 merit to it. I think in fairness to all the people involved,
22 we have got to carefully examine which ones deserve going
23 forward with and which ones deserve not going forward with
24 so that we are in a position to make a decision.

25 The other point I wanted to make was that several

1 times people have alluded to having a closed meeting or not
2 haveing a closed meeding. My reaction on TMI-1 is that
3 unless overruled by the Commission, I would intend to have
4 all these meetings open.

5 Are there other comments at this time?

6 COMMISSIONER ZECH: No, no other comments.

7 COMMISSIONER ASSELSTINE: No.

8 CHAIRMAN PALLADINO: Well, let me make a few
9 observations and then see where we might go from here.

10 Each of the Commissioners has expressed the view --
11 and you can see as well as I can see that we are not as of
12 one mind, and that we have some detailed work to do.

13 I would like to ask Commissioners to put their
14 points down on paper so that we can give some guidance to the
15 people who are trying to draft an order to reflect our views.
16 And I would like to have a commitment of effort to try to get
17 a revised order that we can act upon and deal with in the
18 order of two weeks. That means given careful and dedicated
19 attention to getting it done.

20 I think it's essential for us to know what hearings
21 we feel are warranted before we can discuss whether or not
22 the pendency of any of these hearings is a bar to restart as
23 a consideration.

24 So, when we get that, I would expect to have a public
25 meeting in which we confirm what the order is going to be and

1 then go on to this question of whether the pendency of
2 any of these hearings is a bar to considering a restart order.

3 As I indicated earlier, I will keep on pressing
4 until we can see a decision forthcoming.

5 I guess that's about as far as we are going to be
6 able to go today unless Commissioners have other questions,
7 comments, or points they would like to bring up.

8 COMMISSIONER ZECH: No.

9 COMMISSIONER ASSELSTINE: No.

10 MR. CHILK: Before you terminate the meeting, I have
11 had a request from Ivan Smith to make an announcement of a
12 change in the hearing schedule up in Harrisburg. He has
13 been trying to reach the parties.

14 The hearing scheduled for tomorrow at 10 o'clock
15 in Harrisburg has been changed to 1 o'clock, for those of you
16 who are involved.

17 CHAIRMAN PALLADINO: Could you repeat it so that --

18 MR. CHILK: The hearing scheduled in Harrisburg
19 tomorrow for 10 a.m. has now been changed to 1 p.m.

20 COMMISSIONER BERNTHAL: Joe, let me just make the
21 comment that it seems to me in view of the confusion about
22 what the intent and request of various members of the
23 Commission might have been on release of this document in
24 whole or in part, it seems to me you might recheck, repoll
25 the Commission on that.

1 Again I would say that for my 'part', I'm not in
2 favor of releasing the draft order. In fact, after this
3 meeting it seems relatively pointless to do that. I am in
4 favor, however, of releasing this document. It's not
5 because of the nature of this proceeding quite in the same
6 category as our other such documents and strictly and only
7 adjudicatory matters, it seems to me.

8 So, that would be my position.

9 CHAIRMAN PALLADINO: Okay. Anything more to come
10 before us?

11 Well, we thank you very much for your cooperation
12 and your presence, and we will be back with you, to you,
13 with regard to our future schedule.

14 We'll stand adjourned.

15 (Whereupon, at 3:15 p.m., the meeting of the
16 Commission was adjourned.)

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NAME OF PROCEEDING: Discussion of Need and Impact of
Further TMI-1 Hearings

Public Meeting

DOCKET NO.:

PLACE: Washington, D.C.

DATE: January 16, 1985

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