

ORIGINAL
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

COMMISSION MEETING

Vote on Lifting Immediate Effectiveness
of 1979 Shutdown Orders for TMI-1/
Discussion if Necessary

Docket No.

PUBLIC MEETING

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1 UNITED STATES

2 NUCLEAR REGULATORY COMMISSION

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5 Public Meeting

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7 Vote on Lifting Immediate Effectiveness
8 of 1979 Shutdown Orders for TMI-1 -
9 Discussion if Necessary

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11 Room 1130

12 1717 H Street, N.W.

13 Washington, D.C.

14 Wednesday, May 29, 1985

15 The Commission met, pursuant to notice, at 2:10
16 p.m., Nunzio Palladino, Chairman of the Commission, presiding.

17 COMMISSIONERS PRESENT:

18 Nunzio Palladino, Chairman

19 Thomas Roberts, Commissioner

20 James Asselstine, Commissioner

21 Frederick Bernthal, Commissioner

22 Lando Zech, Commissioner

23 STAFF SEATED AT COMMISSION TABLE:

24 Samuel Chilk, Secretary

25 Herzel Plaine, General Counsel

1 PROCEEDINGS

2 CHAIRMAN PALLADINO: Good afternoon, ladies and
3 gentlemen.

4 The purpose of today's meeting is to call for a
5 Commission vote on whether or not to lift the immediately
6 effective shutdown orders that were entered for Three Mile
7 Island Unit 1 in 1979.

8 We will begin the meeting by asking the General
9 Counsel to summarize the draft order pending before the
10 Commission which would lift the 1979 shutdown orders.

11 Immediately following that summary, I will ask for
12 individual Commissioner questions or comments. At that time
13 Commissioners are free to state their respective positions on
14 the issuance of a draft order.

15 After we have heard from individual Commissioners on
16 the draft order, I will call for a vote. If the Commission
17 approves an order, then I would anticipate that the order
18 would be actually issued later today or tomorrow.

19 There is a possibility that some person may be
20 planning demonstrations or disruptions for today's meeting. I
21 would hope that you would not do that, so that we can carry on
22 the business at hand.

23 I ask all of you to please keep the meeting as
24 orderly as possible, without such demonstrations or
25 disruptions.

1 Do Commissioners have other opening remarks at this
2 time?

3 COMMISSIONER ASSELSTINE: No.

4 CHAIRMAN PALLADINO: Then let me turn the meeting
5 over to our General Counsel, Herzel Plaine.

6 MR. PLAINE: Thank you, Mr. Chairman, members of the
7 Commission.

8 Three Mile Island Unit 1 was a licensed nuclear
9 power station that had been operating for approximately five
10 years before the March 1979 accident that disabled Three Mile
11 Island Unit 2.

12 At the time of the TMI-2 accident, TMI-1 was in a
13 temporary shutdown undergoing a routine refueling. The
14 Commission, on July 2 and August 9, 1979, issued orders
15 directing TMI-1 to remain in a shutdown condition. Although
16 ordinarily the Licensee -- then Metropolitan Edison Company --
17 would have been entitled to a hearing on the orders before
18 they went into effect, in this case the Commission determined
19 that the public health, safety and interest required that the
20 orders be made immediately effective.

21 This meant that TMI-1 would not be allowed to return
22 to operation until the Commission lifted the immediate
23 effectiveness of the shutdown orders. Extensive hearings have
24 now been held on whether TMI-1 could be allowed to resume
25 operation.

1 Only two issues -- both management-related -- remain
2 pending before the agency. In that regard the agency's
3 appellate review of the Licensing Board's favorable decision
4 on the adequacy of Licensee's training program is underway,
5 and the Licensing Board is currently preparing its decision on
6 the Dieckamp mailgram issue.

7 The order before the Commission today, after setting
8 forth the Commission's overall views on Licensee's competence
9 and integrity, discusses the substance of the two remaining
10 issues and the procedural issues raised by the parties.

11 The order concludes that the two remaining
12 management-related issues do not raise concerns warranting
13 maintaining the immediate effectiveness of the shutdown orders
14 and, therefore, that lifting the effectiveness of those orders
15 is required.

16 With regard to Licensee's training program, the
17 order finds that after three exhaustive hearings and a
18 Licensing Board decision favorable to the Licensee, there are
19 no concerns about the adequacy of Licensee's training program
20 which would warrant maintaining the effectiveness of the
21 shutdown orders.

22 Concerning the Dieckamp mailgram issue, the order
23 states that under the present organizational structure and
24 procedures, Mr. Dieckamp's continued presence would not, could
25 not adversely affect the safe shutdown of TMI-1.

1 In sum, the order finds that GPU-Nuclear, the
2 current Licensee at TMI-1, represents a significantly improved
3 organization over Metropolitan Edison Company, in terms of
4 personnel, organizational structure, procedures and resources.

5 The order also finds that the pre-accident
6 management faults at TMI-1 have been corrected, such that
7 there is reasonable assurance that TMI-1 can and will be
8 safely operated.

9 [Applause.]

10 However, because the plant has been shut down for
11 over six years, the order does impose two conditions which
12 must be met prior to restart:

13 First, Licensee is to submit for Staff approval a
14 power ascension schedule with hold points at appropriate
15 levels, at appropriate power levels.

16 And two, the NRC Staff is to provide the Commission
17 for its information a general description of a program for
18 increased NRC Staff oversight of operators at TMI-1.

19 The NRC Staff on May 29, 1985 certified that all
20 other conditions which must be met prior to restart have been
21 met.

22 Therefore, the order would authorize TMI-1 to return
23 to operation, subject to satisfactory completion of the two
24 conditions imposed in today's order.

25 Finally, the order will not become immediately

1 effective upon issuance so as to provide aggrieved parties a
2 limited time to seek relief in the federal courts.

3 Therefore, the issue that you will be voting on is
4 whether to approve the draft order before you which would lift
5 the immediate effectiveness of the July 2 and August 9, 1979
6 shutdown orders.

7 The approved order would have the effect of
8 authorizing the restart of TMI-1 subject to completion of the
9 conditions imposed in the order.

10 CHAIRMAN PALLADINO: Does that complete your
11 statement?

12 MR. PLAINE: That completes my statement.

13 CHAIRMAN PALLADINO: All right, thank you.

14 At this time I will ask for Commissioner questions
15 or comments. As I indicated in my opening remarks, individual
16 Commissioners may at this time state their respective
17 positions on the issuance of the draft order.

18 I will go first and then call on other Commissioners
19 in order of seniority on the Commission.

20 I do not have any further questions on the draft
21 order, but I would like to state my position on issuance of
22 the draft order.

23 The decision on whether or not to lift the
24 immediately effective shutdown orders placed on Unit 1 at
25 Three Mile Island in 1979 has not been an easy one for me.

1 Extensive expressions of concern have been raised by many
2 local citizens and political leaders. Last week the
3 Commission heard many of these concerns re-expressed in oral
4 presentations on TMI-1 Restart. As a Pennsylvanian, I know
5 first-hand the reaction of some of the public during those
6 stressful days following the accident at TMI-2.

7 The Commission has given careful attention to public
8 concerns through its attention to the underlying health and
9 safety questions in this case. Indeed, the Congress, in the
10 Atomic Energy Act, has directed the NRC to make decisions
11 regarding the licensing of nuclear reactors, such as this one,
12 on the basis of its own expert health and safety judgment and
13 analysis of whether the detailed regulatory requirements of
14 the Commission have been satisfied.

15 Thus, while we are aware of the sentiment of many
16 members of the public, the Commission must base its decision
17 to authorize restart on its conclusion that there is
18 reasonable assurance that the plant will be operated safely.

19 I am voting to lift the shutdown orders and allow
20 operation of Three Mile Island Unit 1 because I am confident
21 that GPU-Nuclear can and will abide by NRC requirements and
22 will operate Unit 1 so that public health and safety will be
23 adequately protected.

24 My confidence is based on (1) the four favorable
25 partial initial decisions of the Licensing Board after

1 extensive public hearings; (2) the NRC Staff's review and
2 conclusion, sustained in the hearings, that the shutdown
3 orders should be lifted; and (3) my own review of the
4 available information as discussed in the proposed order.

5 My confidence is bolstered by the greater-than-usual
6 NRC regulatory scrutiny that will be given to this Licensee
7 and this plant during the initial start-up. Our inspectors
8 will be there to oversee the Licensee's activities during this
9 important time period.

10 I continue to believe that the Commission was
11 correct in its February 1985 decision not to hold more
12 hearings on additional topics. There already have been more
13 than 150 days of hearings. In addition, the Commission itself
14 spent countless hours on the TMI-1 restart matter, including
15 sessions in Harrisburg.

16 It is important to recall that in 1979 the
17 Commission stated that the public hearing called for in the
18 shutdown orders was to resolve concerns so as to provide
19 reasonable assurance that the facility could be operated
20 without endangering the health and safety of the public.

21 Thus, the question that needed to be answered about
22 the additional topics for hearings was whether or not the
23 topics would bear upon a decision to keep Unit 1 shut down.
24 The information that was considered by the Commission in
25 making its decision not to hold further hearings, and the

1 reasons for these decisions, are public and I believe they
2 support that decision.

3 The Commission's February 1985 order addressed
4 specific matters proposed for further hearings at that time.
5 These included (1) the likely change in the Staff's position
6 in Supplement 5 of the Safety Evaluation Report, (2) the
7 handling of allegations by Mr. Richard Parks, a former Bechtel
8 operations engineer, regarding violations of TMI-2 clean-up
9 procedures, (3) the Hartman allegations on TMI-2 leak-rate
10 falsification, and (4) allegations of TMI-1 leak-rate
11 falsifications. I believe a brief comment on each of these
12 items is in order.

13 With regard to the question of the likely change of
14 the Staff's position, there were four issues raised by the
15 Staff. The Commission's February 1985 order explained the
16 reasons for concluding that none of these issues posed a
17 significant safety matter.

18 Two of those issues relate to items on which we held
19 hearings, and the remaining two items hold no continuing
20 significance because they relate to individuals who no longer
21 are involved in operating TMI-1.

22 With regard to the Parks matter, this had to do with
23 TMI-2. The facts were investigated and harassment of
24 Mr. Parks was found. However, no widespread pattern of
25 discrimination, harassment or intimidation was shown, and the

1 major GPU-Nuclear official involved is no longer with TMI-1 or
2 GPU-Nuclear organizations. Thus, this is a TMI-2 issue.

3 With regard to the Hartman matter, as a separate
4 item, we have ordered that all individuals who were suspect in
5 the TMI-2 leak-rate falsification are to be covered by a
6 future hearing, with the exception of those individuals that
7 were found by the U.S. Attorney not to have participated in,
8 directed, condoned, or been aware of the acts or omissions
9 that were the subject of the Hartman indictment.

10 We also found, on the basis of a separate NRC
11 investigation, that it was unlikely that Mr. Ross knew or was
12 involved in the TMI-2 leak-rate falsification. Thus, the
13 Hartman matter as a restart issue has been dealt with.

14 The TMI-1 leak-rate falsification allegations have
15 been investigated by NRC, but no pattern of deliberate
16 falsification was found. The Commission found that there was
17 no significant factual disputes concerning leak-rate practices
18 at TMI-1, and that the facts are currently known did not raise
19 a significant safety issue which might have led the Licensing
20 Board to reach a different result.

21 I believe that the major management faults which
22 existed in 1979 have been corrected. The current organization
23 is a different and improved organization from the one which
24 operated Three Mile Island in 1979. It is a significantly
25 improved organization in terms of personnel, organizational

1 structure, procedures and resources. I am satisfied that the
2 pre-accident management faults have been corrected.

3 Public confidence is a key issue for GPU-Nuclear
4 and TMI-1, and for nuclear energy and its regulators. Public
5 confidence must be earned over and over again. In the case of
6 TMI-1, the public confidence was damaged by events surrounding
7 the accident at TMI-2. GPU-Nuclear has publicly stated that
8 excellence is its standard and has made changes aimed at
9 fulfilling that goal. The NRC and, I am sure, the public will
10 be monitoring their performance closely.

11 In closing, let me reiterate my view that the 1979
12 shutdown orders should be lifted, thus allowing TMI-1 to
13 resume operation subject to the conditions set forth in this
14 order. I believe that this can and will be done with
15 reasonable assurance that public health and safety will be
16 adequately protected.

17 [Applause.]

18 Let me turn now to Commissioner Roberts.

19 COMMISSIONER ROBERTS: I have no questions. I have
20 a brief statement.

21 In August 1979 the Commission ordered TMI-1 to
22 remain shut down and a hearing to be held to determine whether
23 its further operation should be allowed.

24 At the time they ordered the hearing, the five
25 Commissioners who then held office anticipated that a decision

1 on restart would be reached in approximately one year. That
2 assumption turned out to be overly optimistic. Almost six
3 years have elapsed and now the hearings on all issues believed
4 by a majority of the presently incumbent Commissioners to be
5 material to a restart decision have been completed. No one
6 who was a Commissioner at the time the hearing was ordered is
7 a member of the Commission. The record of proceedings is a
8 massive one. The Licensing Board charged by the Commission in
9 taking evidence and reaching an initial decision has made
10 findings favorable to restart.

11 Moreover, the Appeal Board and the Commission have
12 completed appellate review of all hardware design issues, all
13 emergency planning issues, and all management issues except
14 the training and mailgram issues considered by the Licensing
15 Board on remand.

16 Only if we have sufficient remaining concerns
17 regarding favorable resolution of the training and mailgram
18 issues to warrant maintaining the effectiveness of the
19 shutdown order can we legitimately do so. The law requires
20 the lifting of an immediately effective license suspension
21 once the concerns that justified imposing it have been
22 adequately resolved.

23 That being so, and having neither found or been
24 provided any legitimate reason to delay any longer a decision
25 on lifting the immediate effectiveness of the license

1 suspension imposed in July of 1979, I believe the Commission
2 has a duty to make its decision now.

3 Therefore, although I do not doubt the sincerity of
4 the concerns expressed by those who oppose a restart decision
5 now, and I am aware of but cannot agree with the fears of
6 those who believe the plant should never restart, I will vote
7 to allow restart.

8 Thank you.

9 [Applause.]

10 CHAIRMAN PALLADINO: Let me turn now to Commissioner
11 Asselstine.

12 COMMISSIONER ASSELSTINE: I have a detailed written
13 dissent that will be attached to the Commission's order, but
14 this afternoon in my oral statement I want to spend just a few
15 minutes summarizing my principal objections to the
16 Commission's decision to allow restart of TMI Unit 1.

17 One reason for the Commission's 1979 decision to
18 shut down TMI-1 was that the Commission had questions about
19 the management capabilities of Metropolitan Edison, the
20 predecessor to GPU-Nuclear.

21 The utility had, after all, presided over the worst
22 accident ever at a commercial nuclear power plant in this
23 country. The Commission set up a Licensing Board to hear the
24 evidence and to decide whether GPU-N had the requisite
25 corporate character and competence to be permitted to operate

1 TMI-1.

2 The Licensing Board's conclusion was favorable, but
3 in the years since the accident new evidence has come to light
4 repeatedly which cast continued doubt on GPU-N's competence
5 and integrity. This is one reason this proceeding has lasted
6 for six years.

7 In its order today the Commission heaves a sigh of
8 relief and concludes that all questions about the management
9 capabilities of GPU-N have been satisfactorily answered, and
10 that GPU-N may be permitted to restart TMI-1.

11 I cannot agree with the Commission's conclusion.

12 [Applause.]

13 CHAIRMAN PALLADINO: Please let Commissioner
14 Asselstine continue.

15 [Continued applause.]

16 COMMISSIONER ASSELSTINE: The Commission has managed
17 to identify the primary question which must be answered: Does
18 the Licensee exhibit the corporate integrity necessary for the
19 Commission to be confident that the licensee will operate the
20 plant safely. Unfortunately, the Commission's decision-making
21 process has not been able to produce a dispositive answer to
22 this question.

23 This is primarily because the Commission has either
24 ignored or discounted important issues, and because the
25 Commission's approach to the --

1 [Applause.]

2 COMMISSIONER ASSELSTINE: And because the
3 Commission's approach to the management integrity issues,
4 since the end of the Licensing Board proceeding in 1981, has
5 been a piecemeal one.

6 Each time evidence of a new transgression has come
7 to light, the Commission has chosen to deal with that
8 particular issue in isolation. While acknowledging that a
9 pattern of misbehavior would be significant, the Commission
10 has refused to see such a pattern in the history of GPU's
11 actions or inactions.

12 [Applause.]

13 COMMISSIONER ASSELSTINE: Even in considering the
14 various individual parts of the puzzle, the Commission has
15 ignored the fact that there continue to be pieces missing
16 which leaves gaps in our information and precludes us from
17 discerning the whole picture.

18 The Commission has been satisfied with shuffling
19 around individuals as a solution to GPU's problems.

20 [Applause.]

21 COMMISSIONER ASSELSTINE: This approach quite simply
22 begs the central question in this proceeding. The character,
23 integrity, and attitude of our Licensees is a matter of
24 fundamental importance. The Commission must be able to rely
25 on our Licensees to provide accurate and timely information.

1 A lack of candor or truthfulness in Licensee submittals to the
2 NRC undermines NRC regulation and poses a threat to the public
3 health and safety.

4 The Commission must also be able to rely upon
5 Licensees to have the commitment and willingness to implement
6 their programs in an effective manner and with a dedication to
7 safety as the first priority.

8 Finally, the Commission must be able to rely upon a
9 Licensee to comply with NRC requirements. A consistent
10 pattern of violating the Commission's regulations may show a
11 lack of corporate integrity, such that future compliance
12 cannot be assured, thus demonstrating that the Licensee cannot
13 be relied upon to act in accord with a commitment to the
14 public health and safety.

15 What does an examination of the actions and
16 inactions of GPU over the past six years show us?

17 This is a Licensee which had the worst accident in
18 the history of nuclear power in this country. One would
19 expect that such a Licensee would learn from its mistakes and
20 would want to strive for excellence in order to avoid even the
21 possibility of such an accident ever occurring again at one of
22 its plants.

23 Instead, the history shows us a Licensee which has
24 been unwilling or unable to provide to the Commission accurate
25 and complete information on significant safety issues. It

1 shows us a Licensee which has been unwilling or unable to
2 recognize its own problems, to acknowledge responsibility for
3 its missteps, and to take quick, effective action to uncover
4 the causes of those problems and to resolve them.

5 It shows us a Licensee with a pattern of violating
6 Commission regulations for the sake of expediency, a pattern
7 which began before the accident and which continues even to
8 this day.

9 [Applause.]

10 COMMISSIONER ASSELSTINE: One sees this history of
11 failures on the part of this Licensee in the widespread
12 falsification of leak rate tests at TMI-2 prior to the
13 accident, the events which led to the utility's conviction for
14 criminal violations of the Atomic Energy Act, in the material
15 false statement made by the Licensee to the NRC in responding
16 to the Notice of Violation resulting from the TMI-2 accident,
17 and in the cheating on NRC and company operator licensing
18 examinations and in the company's poor response to the
19 cheating incident.

20 The Licensee's failures also include the knowing
21 false certification of an employee's qualifications for taking
22 an NRC reactor operator examination, the failure to provide
23 relevant safety reports to the NRC in a timely manner, the
24 deliberate circumvention of safety requirements in the TMI-2
25 cleanup, and the Licensee's poor performance in ensuring that

1 safety equipment is fully qualified to perform its intended
2 function in the harsh environments resulting from a severe
3 accident like that which occurred at TMI-2.

4 Each of these events is discussed in detail in my
5 written dissent.

6 What the record of this proceeding shows is that
7 this Licensee has a consistent pattern of violating Commission
8 regulations. The most recent evidence seems to show that this
9 pattern has continued, rather than it has been broken as the
10 Commission concludes.

11 I recognize that there have been many personnel and
12 organizational changes at TMI-1; however, given the history
13 and the seeming continuation of an inadequate commitment to
14 safety by this corporation, I am unable to conclude that GPU-N
15 has the requisite corporate integrity and competence, such
16 that we can have reasonable assurance that GPU-N can be relied
17 upon in the future to comply with NRC requirements and to act
18 in accordance with a commitment to the public health and
19 safety.

20 I am also unable to conclude that there is
21 reasonable assurance that this utility has the requisite
22 corporate character and integrity, because there are
23 significant gaps in the record of this proceeding. On those
24 issues which the Commission has considered and which have not
25 been considered by a Licensing Board, the Commission's basic

1 approach has been to treat each issue in isolation. The
2 solution to each issue has been to allow GPU-N to transfer
3 those individuals primarily responsible for various Licensee
4 failures to other parts of the GPU organization, not
5 responsible for the actual physical operation of the TMI-1
6 plant.

7 By following this piecemeal approach, the Commission
8 has refused to take a larger view of the Licensee's corporate
9 character or to address the root causes of GPU-N's problems in
10 the areas of corporate character.

11 The Commission has instead been satisfied with
12 band-aid, short-term fixes.

13 [Applause.]

14 COMMISSIONER ASSELSTINE: The Commission has not
15 addressed the issue of why this Licensee continues in its
16 pattern of failing to adhere to requirements or whether the
17 band-aid fixes really solve the underlying problems.

18 I recognize that this broader integrity question is
19 not an easy issue to address. What is needed is an integrated
20 look at all of those integrity issues to determine what are
21 the root causes, why does this corporation seem to be
22 unwilling or unable to comply with regulations, and what
23 remedial actions are necessary to ensure future compliance.

24 The sub-issues are many and complex, and there are
25 massive amounts of information which must be considered and

1 experts to be consulted. The Commission isn't really equipped
2 to do all of this, but our Licensing Boards are particularly
3 useful in and perfectly capable of performing this function.

4 The Commission seems to have recognized this when it
5 established this proceeding in 1979 and decided to have a
6 Licensing Board consider the issues first. In the interest of
7 expedience, however, the Commission has chosen now not to
8 follow this more reasonable approach and allow the Licensing
9 Board to consider all of the relevant information on this
10 issue.

11 A further benefit to a hearing would be that the
12 gaps in the formal adjudicatory record would be cured. Much
13 of the information relied upon by the Commission in making its
14 immediate effectiveness decision today and its decision on
15 whether future hearings are necessary has never been the
16 subject of a formal hearing, as the Commission said its
17 decision would be when it set up the proceeding in 1979.

18 While we have much information and the Staff's
19 conclusions about present management, the Licensing Board has
20 never been given an opportunity to hear the information, and
21 the parties have not been given an opportunity to test that
22 information in an adjudicatory setting. Written comments on
23 written reports are hardly an adequate substitute for the
24 in-depth treatment these issues would receive in a hearing.

25 In my dissent to the Commission's February 25th

1 order, I identified several issues which I believe
2 specifically ought to be heard by the Licensing Board to make
3 the record complete. This would further enable the Licensing
4 Board to address the issue of whether all necessary remedial
5 actions have been taken to ensure Licensee competence and
6 integrity.

7 Still another benefit of hearing on these issues
8 would be to increase public confidence in our decision-making
9 and in the safety of the plant. The people of Central
10 Pennsylvania are not unreasonable. All most of them want
11 before TMI-1 is permitted to restart is to know that the NRC
12 carefully considered all of the evidence and did the best it
13 could to ensure that TMI-1 will be operated safely.

14 Having been forced to endure one serious nuclear
15 power plant accident, the people of Central Pennsylvania
16 deserve nothing less than a full and searching inquiry into
17 every relevant safety issue before TMI-1 is allowed to
18 restart.

19 [Applause.]

20 COMMISSIONER ASSELSTINE: Above all else, the
21 Commission owes it to them to make every effort to ensure that
22 TMI-1 will operate safely. Unfortunately, by its actions
23 today, the Commission is turning its back on that
24 responsibility.

25 The Commission's decision-making process and its

1 refusal to allow further hearings has not promoted public
2 confidence. Rather it has only served to harden opposition to
3 restart and to cause needless distress for the people of the
4 TMI area.

5 [Applause.]

6 COMMISSIONER ASSELSTINE: Without the completion of
7 hearings on certain management competence and integrity
8 issues, I am unable to conclude that there is reasonable
9 assurance that GPU-N will operate TMI-1 safely. Given an
10 opportunity through further hearings on these issues, it is
11 possible that GPU-N could provide sufficient evidence to
12 establish that its present organization has the requisite
13 competence and integrity to operate TMI in a safe manner. But
14 since the Commission has refused to hold further hearings, I
15 must reach my decision based upon the record now before us.

16 The present record leads to one clear and
17 inescapable conclusion. This Licensee has failed to
18 demonstrate that it is fit to hold an NRC license to operate a
19 nuclear power plant.

20 [Applause.]

21 CHAIRMAN PALLADINO: Please be seated.

22 COMMISSIONER ASSELSTINE: For that reason, I cannot
23 join the Commission's order which permits restart of TMI
24 Unit-1.

25 That completes my statement.

1 [Applause.]

2 CHAIRMAN PALLADINO: Thank you, Commissioner
3 Asselstine.

4 Let me turn next to Commissioner Bernthal.

5 COMMISSIONER BERNTHAL: I, too, have a longer
6 version of this which will be available immediately after the
7 meeting. I am sure no one here will object to getting the
8 short form today.

9 This decision today on TMI-1 restart and the
10 Commission's earlier vote on February 13 represent the most
11 visible failure to date of that illusive ideal and
12 disappearing ideal, I should say, in this city, of the
13 collegial decision-making process.

14 It has been evident for more than a year that the
15 basis existed for a Commission consensus decision on this
16 issue. Unfortunately, the decision-making process, as
17 contrived by your Congress and your Commission, permits such
18 an outcome only as a long-shot, random, chance, coincidence
19 and views among Commissioners.

20 What the Commission and the public have lost, as the
21 Commission wandered down this unwise and ill-considered path
22 toward the restart vote today, is the opportunity to see a job
23 done convincingly and done right. Instead, the Commission
24 has, in all likelihood, set the stage for endless wrangling
25 over what is done and what is undone, what is known and what

1 is unknown, what is true and what is untrue in these six years
2 and thousands of pages of on-the-record and off-the-record TMI
3 proceedings.

4 I suspect that only the lawyers may delight in this
5 decision today, because their future is assured.

6 [Applause.]

7 COMMISSIONER BERNTHAL: I find the Commission's
8 methodology for restart to be crudely insensitive to what
9 should be a paramount concern, public confidence.

10 [Applause.]

11 COMMISSIONER BERNTHAL: The Commission majority's
12 path for restart runs contrary to the broad public interest
13 and knowing all that can be learned about events leading up to
14 and following the accident at TMI, where the Commission should
15 have gone the extra mile in the case of providing support, for
16 example, for the Pennsylvania Department of Public Health's
17 long-term health effects study and its receptiveness to the
18 urgent pleas a few weeks ago of the TMI Advisory Panel to
19 serve as a conduit for public concerns.

20 In the far-reaching decision in February not to
21 clear the air on all remaining questions outstanding, the
22 Commission has instead chosen to go only the extra inch.

23 Indeed, the history of TMI has been a history of
24 such mistakes. No one would argue about the mistakes that led
25 to the accident itself, but early on in the wake of the

1 accident, there should have been less concern in all circles
2 -- local, state, and national -- for the possible consequences
3 of a utility bankruptcy and more concern for an expeditious
4 cleanup of the world's worst nuclear accident.

5 [Applause.]

6 COMMISSIONER BERNTHAL: The Congress failed to act
7 first and determine responsibility later in getting about the
8 urgent business of cleanup. What other country in the world,
9 given the circumstances, would have haggled over the
10 responsibility or even the dollars first, and have then left
11 cleanup of the worst nuclear commercial power plant accident
12 to an uncertain future in the hands of an uncertain utility?

13 Then the Commission itself contrived an
14 ill-conceived hybrid proceeding, neither fish nor fowl,
15 neither adjudicatory nor enforcement, a proceeding that
16 virtually precluded any possibility of orderly and timely
17 resolution of the issues.

18 And I have to say, I do not have particular
19 admiration for the way this Licensee conducted many of its
20 affairs before, during, or since the accident. In a
21 real-world competitive market, unprotected by regulation at
22 all levels of government, such grievous mistakes would cost
23 you the store.

24 [Applause.]

25 COMMISSIONER BERNTHAL: Nevertheless, despite the

1 occasional desires of some Commissioners to act as a surrogate
2 Board of Directors for this Licensee --

3 [Applause.]

4 COMMISSIONER BERNTHAL: -- that is emphatically not
5 the function of this Commission. For all the breast-beating
6 that has gone on over the last several years about management
7 competence and integrity, it is still wonderfully strange, to
8 me at least, that no Commissioner has ever raised more than a
9 halfhearted, second-thought question as to the same
10 management's credentials and abilities to operate another
11 plant at Oyster Creek in New Jersey.

12 [Applause.]

13 COMMISSIONER BERNTHAL: And no Commissioner has ever
14 mounted a serious attempt to shut down or prohibit further
15 operations at that site. One is led to expect that that old
16 flogging horse so useful to avoid difficult decisions, the
17 questions of management integrity and competence has more to
18 do with suspicions than with supportable basis in fact.

19 While I could continue at length to analyze and
20 ponder and pontificate, which I'm good at, on which issues are
21 closed, half-closed, or open, that would now serve little
22 purpose. Whether this or that action, inaction, deed or
23 misdeed renders GPU management fit or unfit, better or worse
24 than average, will not assuredly be debated for years.

25 Not one member of the Commission sitting here today

1 was present at the creation of this thing, and I find no
2 optimism or reason in the Commission's action of February 13th
3 that anyone here sitting today will see it brought to an end.

4 By now it is quite clear, I think, where the
5 Commission decision today is headed, and although I take
6 strong exception to the majority's disregard for what I
7 consider to be elementary and neglected public policy
8 considerations, it is also essential that where confidence is
9 deserved in this decision, confidence should be fostered.

10 Before the arguing ensues, the public deserves to
11 know, whether by objective evaluation of the physical
12 preparation of this plant and by all reasonable measures of
13 Licensee management, personnel, and capability, I find that
14 TMI-1 can and will, with reasonable assurance, and then some,
15 I might add for the case of TMI, be operated in conformance
16 with the requirement to preserve the public health and safety.

17 On February 13, the majority of this Commission
18 decided in its order that no further hearings were required as
19 a part of the TMI restart proceedings. I agreed with the
20 majority at that time that further hearings were not required
21 as a legal matter. I believed at that time and still believe
22 that it is important, indeed critical, that our decisions be
23 decisions that will pass legal muster.

24 However, there is and always has been more involved
25 in this matter than strict legality. No available information

1 leads me to believe also that a decision otherwise favorable
2 to restart would be impacted, as a legal matter, by further
3 examination of the issues identified either by me or by my
4 colleague, Commissioner Asselstine. More importantly,
5 although sound public policy considerations dictate to me that
6 further hearings should have been held, I firmly believe that
7 as a technical matter, this facility can now be operated in a
8 manner wholly consistent with public health and safety.

9 Technical judgments -- that is, judgments regarding
10 the actual safety of a particular facility -- can best be made
11 in comparison to accepted standards of safety at other plants,
12 which the Commission has licensed to operate. Technical
13 issues of safety at TMI-1 are, for the most part, to issues at
14 other pressurized water reactors, and in particular to other
15 Babcock & Wilcox plants now operating.

16 Insofar as the procedures, the systems, and
17 operating crews are similar to other licensed facilities, the
18 important question becomes whether these procedures, systems,
19 management and operating teams are equal to or better than
20 that which is accepted and consistent with safe operation of
21 other plants.

22 All available information suggests that TMI-1
23 measures up well to that standard.

24 Having said this, I must also say that to the extent
25 I can do so, consistent with my mandate to protect public

1 health and safety, I do not intend, nor have I made a practice
2 of holding an otherwise appropriate Commission decision
3 hostage to the mistakes and poor judgment of this or previous
4 Commissions.

5 It is also in the public interest that the six-year
6 suspension of operations at TMI-1 be lifted, when it is
7 obviously safe to do so. Indeed, the law requires the
8 Commission to do so.

9 There is clearly no reconciling that fact with my
10 dissatisfaction over the tortuous path the Commission has
11 chosen now to take us from June 1984 to June 1985, and I am
12 sure, beyond.

13 The action of the Commission majority in closing the
14 record in this case might not inspire much public confidence
15 in the wisdom or common sense of the Commission, but the
16 public can and should have confidence that this plant is
17 indeed ready for operation, that it meets or exceeds the
18 standards the Commission has laid down and requires at 93
19 other plants in this company, from San Onofre to St. Lucie,
20 from Grand Gulf to Oyster Creek.

21 I therefore will lend my concurrence to the vote of
22 the majority today in so finding.

23 CHAIRMAN PALLADINO: Thank you.

24 [Applause.]

25 CHAIRMAN PALLADINO: Let me turn now to Commissioner

1 Zech.

2 COMMISSIONER ZECH: Thank you, Mr. Chairman. I have
3 a brief statement.

4 Six years ago, the accident at Three Mile Island
5 Unit-2 changed the course of commercial nuclear power. The
6 accident that was not supposed to happen did happen. During
7 the first few hours and days of the accident, there was
8 considerable confusion as to the danger presented by the
9 damaged Unit-2 nuclear plant. The citizens of Pennsylvania
10 became the victims of lack of information, poor communication,
11 and ineffective Licensee and governmental actions.

12 Even though our best evidence now indicates that
13 there were no adverse radiation effects as a result, --

14 [Audience disruption.]

15 CHAIRMAN PALLADINO: Please.

16 COMMISSIONER ZECH: -- the emotional impact on the
17 public was substantial. The accident generated widespread
18 fear and a deep distrust of the Licensee and the responsible
19 regulatory agency, the Nuclear Regulatory Commission.

20 During those very early days of uncertainty, as a
21 precaution, and a proper one in my view, the undamaged nuclear
22 plant at Three Mile Island Unit-1 was ordered shut down by the
23 Commission. The Commission then decided that TMI-1 should
24 remain shut down until the problems that led to the TMI-2
25 accident were identified, debated in a public hearing, and

1 adequately resolved.

2 There have been six years of adjudication,
3 investigation, analysis, monitoring, a Presidential inquiry,
4 as well as other actions.

5 As a result of the accident, many lessons have been
6 learned and applied to TMI-1 over the past six years. The
7 adequacy of the many changes that have taken place as a result
8 of these lessons have been argued in extensive public hearings
9 held by this Commission's Licensing and Appeal Boards.

10 I believe that as a result we now have the necessary
11 information to decide whether it is proper to allow the
12 undamaged Unit 1 to restart.

13 While many changes in personnel, procedures, and
14 equipment at Three Mile Island and elsewhere have been put in
15 place to enhance safety of operations and to minimize the
16 possibility of another Three Mile Island accident, the
17 question we are facing today is, have all the necessary
18 changes been accomplished at Three Mile Island to permit the
19 restart of Unit 1?

20 It is important, I believe, to separate where
21 possible the issues involving the undamaged Unit 1 and those
22 involving the cleanup of damaged Unit 2. It is my opinion
23 that the cleanup of Unit 2 could have been managed more
24 efficiently and more effectively. However, it now seems to be
25 progressing in a satisfactory matter, and in any event, the

1 evidence leads me to conclude that cleanup of TMI Unit 2 will
2 not interfere with the operation of Unit 1.

3 In addition, a very serious consideration must be
4 for the views of the people of Central Pennsylvania. Although
5 it appears that many citizens favor starting up the No. 1
6 Unit, it also appears that many do not favor restart and are
7 genuinely concerned for their health and safety.

8 While respecting this concern, we, as regulators,
9 are faced with a personal responsibility under the law which
10 requires that, if we are reasonably assured that public health
11 and safety will be protected, we must lift the order
12 suspending the license to operate TMI Unit -1.

13 Attempting to arrive at this personal decision
14 concerning the health and safety of our fellow citizens places
15 a very heavy burden of responsibility on each Commissioner.

16 In the case of Three Mile Island, I believe we have
17 a special responsibility. The issues of management competence
18 and integrity have been central in this proceeding. I believe
19 them to be the most important considerations in deciding to
20 authorize a restart.

21 I do not condone some of the conduct or the
22 practices which have occurred at the Three Mile Island site in
23 the past; however, the crux of the matter for me is whether
24 these past occurrences continue to create doubt about the
25 technical competence and integrity of the Licensee's present

1 TMI-1 management team. Both the parent corporate entity and
2 the management team responsible for the operation of TMI-1
3 have changed substantially. The Licensee's current
4 organizational structure strikes me as sound with provisions
5 for sufficient checkpoints to assure that safety is paramount.

6 I have given careful consideration towards forming a
7 judgment concerning the technical competence and integrity of
8 the individuals in positions of responsibility. My conclusion
9 is that I have confidence in them in both areas. I emphasize
10 that I have no reservations about the competence and integrity
11 of the people who are directly responsible for the safe
12 operation of TMI-1. If I did, I could not support resumed
13 operation.

14 However, if subsequent events change my judgment, I
15 will dedicate my efforts to prompt correct.

16 [Audience disruption.]

17 CHAIRMAN PALLADINO: Please.

18 COMMISSIONER ZECH: Unfortunately, despite six long
19 years of NRC deliberations on Licensee management and
20 organizational changes, public confidence in this Licensee has
21 not been fully restored. In my judgment, it will be up to the
22 Licensee to sustain excellent performance to earn the
23 confidence and respect of Pennsylvania's citizens. While that
24 performance record is being accumulated, continuing vigilance
25 and dedication by both the Licensee and the regulator will be

1 required to ensure that the Licensee carries out its primary
2 responsibility to provide reasonable assurance that the public
3 health and safety is protected throughout the life of the
4 license.

5 I am satisfied that the Licensee has the team in
6 place to provide that assurance. I will do all that I can as
7 a regulator to see that the Licensee maintains the requisite
8 competence and integrity.

9 I am also satisfied that all other concerns have
10 been adequately addressed.

11 My conclusion, after reviewing the record with the
12 Staff's certification that all Nuclear Regulatory Commission
13 requirements have been met, is that Three Mile Island Unit-1
14 can be operated with reasonable assurance that the public
15 health and safety will be protected.

16 General Public Utilities has an obligation to ensure
17 not only now, but during the term of the license, that TMI-1
18 is operated with the greatest of care and with every regard
19 for the public health and safety --

20 [Audience disruption.]

21 CHAIRMAN PALLADINO: Please.

22 COMMISSIONER ZECH: -- that all involved with TMI-1
23 perform in the most competent manner possible, and that they
24 take every measure to earn the special trust and confidence
25 not only of the citizens of Pennsylvania, but of all the

1 citizens of the United States.

2 I vote for restart of Three Mile Island Unit-1.

3 [Applause.]

4 [Audience disruption.]

5 CHAIRMAN PALLADINO: At this point --

6 [Audience disruption.]

7 CHAIRMAN PALLADINO: Will you please permit us to go
8 ahead?

9 [Audience disruption.]

10 CHAIRMAN PALLADINO: At this point, I want to
11 indicate that I will have some additional comments on some of
12 Commissioner Asselstine's statements, and they will be
13 appended to my additional remarks and attached to the order.

14 CHAIRMAN PALLADINO: At this time, if the Commission
15 is ready to vote, I would pose the following question:

16 Does the Commission approve the draft order before
17 us which would lift the immediate effectiveness of the July 2
18 and August 9, 1979 shutdown orders? The approved order would
19 have the effect of authorizing the restart of TMI-1, subject
20 to completion of the conditions imposed in the order.

21 All those in favor, indicate by saying aye.

22 COMMISSIONER BERNTHAL: Aye.

23 COMMISSIONER ZECH: Aye.

24 COMMISSIONER ROBERTS: Aye.

25 CHAIRMAN PALLADINO: Opposed?

1 COMMISSIONER ASSELSTINE: No.

2 CHAIRMAN PALLADINO: That concludes our vote.

3 [Audience disruption.]

4 CHAIRMAN PALLADINO: Would you please -- I think we
5 have completed the business that we came for. I had intended
6 to summarize what we voted on, but I think that has become
7 quite clear.

8 [Audience disruption.]

9 CHAIRMAN PALLADINO: So unless there is something,
10 would you --

11 [Audience disruption.]

12 CHAIRMAN PALLADINO: All right. The meeting stands
13 adjourned.

14 [Whereupon, at 2:55 o'clock, p.m., the Commission
15 meeting was adjourned.]

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5 This is to certify that the attached proceedings
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8

9 Name of Proceeding: Vote on Lifting Immediate Effectiveness
10 of 1979 Shutdown Orders for TMI-1 -
Discussion if Necessary

11 Docket No.:

12 Place: Washington, D. C.

13 Date: Wednesday, May 29, 1985
14

15 were held as herein appears and that this is the original
16 transcript thereof for the file of the United States Nuclear
17 Regulatory Commission.
18

19 (Signature)

(Typed Name of Reporter) Ann Riley
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23 Ann Riley & Associates, Ltd.
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