

**ORIGINAL**

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the matter of:

COMMISSION MEETING

Affirmation/Discussion and Vote

(Public Meeting)

Docket No.

Location: Washington, D. C.

Date: Wednesday, December 18, 1985

Pages: 1 - 5

8512260307 851218  
PDR 10CFR  
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

AFFIRMATION/DISCUSSION AND VOTE

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PUBLIC MEETING

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Nuclear Regulatory Commission  
Room 1130  
1717 H Street, Northwest  
Washington, D.C.  
Wednesday, 18 December 1985

The Commission met in open session, pursuant to  
notice, at 11:45 a.m., the Honorable NUNZIO J. PALLADINO,  
Chairman of the Commission, presiding.

COMMISSIONERS PRESENT:

- NUNZIO J. PALLADINO, Chairman of the Commission
- THOMAS M. ROBERTS, Member of the Commission
- JAMES K. ASSELSTINE, Member of the Commission
- LANDO W. ZECH, JR., Member of the Commission

Staff present and seated at Commission table:

S. CHILK

## P R O C E E D I N G S

CHAIRMAN PALLADINO: I will now convene the affirmation discussion session and ask the Secretary to lead us through the items on the agenda.

MR. CHILK: Before we do that, Mr. Chairman, I must ask the Commission to vote to hold this on less than one week's notice. The memorandum was on schedule, but we are doing the affirmation one day earlier, so it hasn't been on a full week.

COMMISSIONER TECH: Aye.

COMMISSIONER ROBERTS: Aye.

COMMISSIONER ASSELSTINE: Aye.

CHAIRMAN PALLADINO: Aye.

MR. CHILK: The first one is SECY 85-391. It is a petition for review of an Appeal Board decision on the Shoreham emergency planning and legal authority issues.

Here the Commission is being asked to respond to a petition from the Long Island Lighting Company to review an Appeal Board decision, ALAB 818, which affirmed the Licensing Board decision holding that Federal law did not preempt New York State legal limits on LILCO's authority to implement certain features of its emergency plan for Shoreham.

Secondly, holding that a likely Suffolk County response to the actual emergency would not satisfy NRC Emergency Planning Regulations. That was a realism issue.

1           And thirdly, rejecting LILCO's argument that certain  
2           of the functions that it purported cannot perform because of  
3           New York law are not required by NRC Regulations.

4           Commissioners Roberts, Bernthal and Zech have  
5           approved an order indicating the Commission will take review  
6           of the ALAE, but will defer briefing and decision until the  
7           Appeal Board has reviewed all currently pending emergency  
8           planning issues.

9           The Chairman and Commissioner Asselstine have  
10          disagreed. They would take review and decide the preemption  
11          issues as soon as possible.

12          Commissioner Asselstine will have separate views.

13          Commissioner Bernthal is not here to affirm his  
14          vote. He is a member of the majority. And therefore,  
15          Commissioner Asselstine, a member of the minority, has agreed  
16          to sit out, to abstain in this affirmation so that the will of  
17          the majority can prevail.

18          Will you please affirm your votes.

19          COMMISSIONER ZECH: Aye.

20          COMMISSIONER ROBERTS: Aye.

21          CHAIRMAN PALLADINO: Aye.

22          MR. CHILK: Second is SECY 85-241(A) which is a  
23          notice of hearing on a TMI-2 leak rate data falsification.

24          In an order issued back in February the Commission  
25          stated it would institute a separate hearing to develop the

1 facts surrounding the reactor coolant system leak rate data,  
2 falsification, at TMI-2 prior to the March 28, '79 accident in  
3 sufficient detail to determine the ultimate status of those  
4 likely involved, including those segregated from TMI-1 and  
5 those now working in other facilities.

6 In this paper the Commission is asked to act on the  
7 order that specifies the procedures which will govern that  
8 separate hearing.

9 Chairman Palladino, Commissioners Roberts and Zech  
10 have approved the order with modifications by the Chairman and  
11 Commissioner Zech which establishes a three-person board to  
12 preside over the hearing. The hearing to be a legislative  
13 format designed solely to gather information and to issue  
14 recommended decision setting forth facts in order for the  
15 Commission to determine what action it will take.

16 Commissioners Asselstine and Bernthal have  
17 disapproved. They will both have separate views.

18 Would you please affirm your votes.

19 COMMISSIONER ASSELSTINE: Aye

20 COMMISSIONER ZECH: Aye.

21 COMMISSIONER ROBERTS: Aye.

22 CHAIRMAN PALLADINO: Aye.

23 MR. CHILK: Thank you.

24 The third paper I might mention that was on the  
25 agenda is not ready. But, if it is ready by agenda planning

1       time this afternoon, I would propose to bring it before the  
2       Commission at that time.

3               CHAIRMAN PALLADINO: Thank you.

4               Anything further to come before us at this time?

5               COMMISSIONER ZECH: No.

6               COMMISSIONER ASSELSTINE: No.

7               COMMISSIONER ROBERTS: No.

8               CHAIRMAN PALLADINO: Thank you all.

9               We will stand adjourned.

10              [Whereupon, at 11:49 a.m., the meeting of the  
11       Commission was adjourned.]

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Name of Proceeding: Affirmation/Discussion and Vote (Public  
Meeting)

Docket No.:

Place: Washington, D. C.

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