

**In the Matter of:**

**Defense Nuclear Facilities Safety Board**

*December 11, 2015*

*Nonpublic Meeting*

**Condensed Transcript with Word Index**



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3 DEFENSE NUCLEAR FACILITIES SAFETY BOARD  
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10 NONPUBLIC MEETING  
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12 DECEMBER 11, 2015  
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15 DEFENSE NUCLEAR FACILITIES SAFETY BOARD  
16 625 INDIANA AVENUE, NW  
17 WASHINGTON, DC 20004  
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1 MR. DWYER: Timothy Dwyer, Group Lead, Nuclear  
2 Weapon Programs.  
3 MR. DUNLEVY: Michael Dunlevy, Board's  
4 technical staff.  
5 MR. ROSCETTI: Chris Roscetti, Group Lead for  
6 Performance Assurance and Acting Group Lead for Nuclear  
7 Programs and Analysis.  
8 DR. POLOSKI: Adam Poloski, Group Lead for  
9 Nuclear Facilities Design and Infrastructure.  
10 MS. HERRERA: Katherine Herrera, Deputy General  
11 Manager.  
12 MR. PASKO: John Pasko, Group Lead for Nuclear  
13 Materials Processing and Stabilization Group.  
14 MR. TONTODONATO: Excuse me. I'm Richard  
15 Tontodonato. I am the Tech Staff's Deputy Technical  
16 Director.  
17 MS. CONNERY: Casey?  
18 MS. BLAINE: Casey Blaine, Associate General  
19 Counsel.  
20 MS. CONNERY: Okay, so, with that, I'm going to  
21 turn it over to Mr. Biggins, the Board's Acting General  
22 Counsel, who will serve as the Board's Executive  
23 Secretary for the meeting.  
24 Mr. Biggins, please present the closed meeting  
25 agenda.

2

1 NONPUBLIC MEETING  
2 - - - - -  
3 (10:04 a.m.)  
4 MS. CONNERY: So, good morning. My name is  
5 Joyce Connery, and I am the Chairman of the Defense  
6 Nuclear Facilities Safety Board. I will preside over  
7 this closed meeting. With me today are my colleagues on  
8 the Safety Board. Present today are Ms. Jessie Roberson,  
9 the Board's Vice Chairman; Mr. Sean Sullivan; Mr. Dan  
10 Santos; Mr. Bruce Hamilton. We five constitute the  
11 Board.  
12 Having established a quorum of Board Members,  
13 this closed meeting will now come to order. Before I  
14 turn it over to Mr. Biggins, the Acting General Counsel,  
15 who will serve as the Board's Executive Secretary for the  
16 meeting, I will ask for a roll call for others in the  
17 room for the purpose of making note of who is in the  
18 room.  
19 So, we'll start on the phone. If you could  
20 state your name and position.  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 MS. CONNERY: Okay. Go to Tim.

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1 MR. BIGGINS: Thank you, Madam Chairman.  
2 During the Board's closed meeting on December 1st, 2015,  
3 the Board was only able to cover the first of three  
4 specific nonpublic agenda items. Consequently, the Board  
5 agreed by voice vote on that date to hold this December  
6 11, 2015 meeting.  
7 The meeting was announced on December 2nd, 2015  
8 on the Board's public website. It was also subsequently  
9 noticed in the Federal Register on December 7, 2015. The  
10 Board voted to close this meeting to address the final  
11 two agenda items not covered on December 1st. The  
12 meeting is closed to the public per the provisions of the  
13 Government and the Sunshine Act, as well as the Board's  
14 regulations implementing the Sunshine Act and the Board's  
15 operating procedures for meetings.  
16 The Board is invoking Sunshine Act Exemption 3  
17 to close the meeting, as authorized under 5 USC Code  
18 552(b), Subsection (c)(3) and 10 CFR Section 1704.4,  
19 Subsection (c).  
20 The Board has determined that it is necessary  
21 to close the meeting to the public to avoid disclosing  
22 matters that are specifically exempted from disclosure by  
23 statute. Specifically, the deliberations will pertain to  
24 potential recommendations which under 42 USC Section  
25 2286(d), Subsection (b) and (h)(3) may not be made

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1 publicly available until after they have been received by  
2 the Secretary of Energy or the President respectively. I  
3 have certified closure of this meeting under Sunshine Act  
4 Exemption 3.

5 The Board is recording this proceeding through  
6 a verbatim transcript. This closed meeting concerns  
7 member deliberations pertaining to the development and  
8 formulation of potential Board recommendations to the  
9 Secretary of Energy.

10 As a reminder to those who are in attendance  
11 and Board employees who may later become privy to these  
12 proceedings, the Board and its staff are prohibited from  
13 publicly disclosing information describing draft or final  
14 recommendations prior to receipt of the final  
15 recommendation by the Secretary of Energy. This  
16 prohibition applies to information learned during the  
17 course of this meeting or by review of the meeting  
18 transcript, related documents, or from other sources.

19 Pursuant to the agenda for today's meeting, the  
20 Board will now discuss the following agenda items.

[Redacted]

7

1 recommendations of issues that we think could be  
2 considered at some point to be issues of adequate  
3 protection. I do not think that we need to vote on every  
4 issue as an issue of adequate protection.

5 Despite the flow sheet that Mr. Sullivan  
6 helpfully put together last time, I believe that is an  
7 internal process that each of us goes through when we  
8 have sufficient facts in front of us and a recommendation  
9 in front of us to determine whether or not there's an  
10 adequate protection issue. So, I just wanted to put that  
11 marker down.

12 [Redacted]

21 And my hope is that during our conversation  
22 today about things that concern us and potential  
23 recommendations that we can tease out some of the issue  
24 items that we could focus on at that time and then once  
25 we have complete information we can make determinations

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1 Following each item, the Chairman will  
2 summarize the outcome of the discussion in conjunction  
3 with a summary of any staff taskings by the General  
4 Counsel. After an opportunity for Board Member comments,  
5 the meeting will adjourn.

6 Pursuant to the constraints of the Sunshine  
7 Act, the Board should not conduct deliberations in this  
8 closed meeting on purely procedural aspects of issuing  
9 recommendations that are not coupled to the substance of  
10 a particular recommendation.

11 I now yield the floor back to the Chairman for  
12 any opening remarks.

13 MS. CONNERY: Thank you. So, I actually do  
14 have a few opening remarks, and I apologize ahead of  
15 time. Part of this is because Bruce and I were at Pantex  
16 earlier this week, so I didn't get a chance to talk to  
17 Board Members separately prior to the meeting.

18 I want to comment a little bit about our first  
19 closed meeting, which is part of the -- was part of the  
20 agenda of this closed meeting, except we ran out of time,  
21 to state that I was -- and we have not yet made our  
22 notational votes or our comments on those votes, but I do  
23 want to point out in this conversation, which I think is  
24 very important, about potential recommendations that from  
25 my point of view we should be discussing potential

8

1 as to how we want to move forward with either potential  
2 recommendations or other courses of actions that may be  
3 relevant to the conversation.

4 So, those are my brief opening remarks. And  
5 with that, I will turn it to Ms. Roberson for any opening  
6 remarks she has.

7 MS. ROBERSON: I don't have any, Ms. Chairman,  
8 at this time.

9 MS. CONNERY: Okay. Mr. Sullivan?

10 MR. SULLIVAN: Thank you, Madam Chairman. So,  
11 just to respond to some of the comments that you did  
12 make, my opinion is different. I respect your opinion;  
13 my opinion is different. I think a meeting is an  
14 opportunity for deliberations. We have an opportunity to  
15 put forward motions.

16 If no -- if a Board Member is alone in wanting  
17 to pursue a motion and it gets no second, well, then that  
18 will end the motion right there. If there is a second,  
19 then we should proceed to a vote unless -- unless tabled  
20 by a majority. And, so, I mean, it's just a simple  
21 procedure with discussions that go along with our  
22 discussions and deliberations. And I think those will be  
23 useful.

24 MS. CONNERY: Thank you, Mr. Sullivan.  
25 Mr. Santos.

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1 MR. SANTOS: No comment.  
2 MS. CONNERY: Mr. Hamilton?  
3 MR. HAMILTON: I would like to echo part of  
4 your earlier comment. I do tend to agree that it's not  
5 necessary to decide on an issue of adequate protection in  
6 order to direct the staff to prepare a draft  
7 recommendation. Thank you.  
8 MS. CONNERY: Thank you, Mr. Hamilton.  
9 Okay, so, this concludes the Board's opening  
10 remarks.

[REDACTED]

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1 [REDACTED]

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4 Okay, Board Member comments. We'll start --  
5 we'll go this way.

6 Mr. Santos?

7 MR. SANTOS: I think this was very useful for  
8 me, and I look forward to future closed meetings. The  
9 more we practice, I think the better we're going to get  
10 at this. And I look forward to our deliberations. So,  
11 this was very useful to me. Thank you.

12 MS. CONNERY: Ms. Roberson?

13 MS. ROBERSON: Yeah, I don't have any  
14 additional comments.

15 MS. CONNERY: My only comments is next time we  
16 should bring food.

17 Mr. Hamilton?

18 MR. HAMILTON: No comments, Madam Chairman.

19 MS. CONNERY: Mr. Sullivan?

20 MR. SULLIVAN: Yes, I want to thank the other  
21 Board Members and the staff who are here participating.  
22 I also think these were two very useful discussions and  
23 focused on the safety issues that are in the -- in the --  
24 around in the complex in various places. And I ask  
25 myself, as I'm sure I think other Board Members do, I ask

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[REDACTED]

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1 myself these questions on every issue the staff brings to  
2 us.

3 And because -- and I do that because as I read  
4 our statute and the legislative history behind it, our  
5 actions and our expected response by the Department  
6 varies. They vary significantly. Vary, V A R Y. They  
7 change. They fall into different categories based on  
8 whether or not these are issues of adequate protection.

9 And if an issue is adequate protection and we  
10 identify it as such, then we are saying to the Secretary,  
11 you must address this issue and we think that the  
12 decision to address it is -- we make that decision  
13 independent of cost. Now, how it gets addressed is  
14 always a function of cost, but it's independent of cost  
15 that -- that we determine you must address this.

16 If the issue does not fall as an issue of  
17 adequate protection, then it is a safety improvement,  
18 which is subject to cost. And I often see us through --  
19 as prompted by our staff, demanding from the Department a  
20 technical justification for whatever decision they are  
21 making, but in my view, if they -- if the issue itself is  
22 not an issue of adequate protection, then it is entirely  
23 appropriate for the Department to make a decision on an  
24 economic basis as opposed to a technical basis.

25 So, I think this is a very important thing that

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1 I consider, and I'm sure other Board Members do, from the  
 2 beginning, whenever any issue is -- comes up, because it  
 3 actually, in my view, controls what the proper --  
 4 appropriate thing that the Board should expect the  
 5 Department to do in its response and it also should  
 6 control their response. And those things go in  
 7 completely different directions based on the way the  
 8 initial question is answered in my own mind as to whether  
 9 or not this is an issue of adequate protection.  
 10 So, I think for -- I think it is healthy for  
 11 the Board to early in issue identification, as best as we  
 12 can, try to see if we have consensus amongst ourselves.  
 13 There may be various ways, as other Board Members have  
 14 stated, to try to get to resolution, but I do think the  
 15 type of resolution that we should expect actually does  
 16 vary significantly based on how the issue is viewed in  
 17 terms of adequate protection. And, so, I encourage  
 18 further discussion on any such issue to be had in a  
 19 manner similar to the way we had it today.  
 20 Thank you.  
 21 MS. CONNERY: Thank you, Mr. Sullivan.  
 22 I'll give the staff an opportunity. If you  
 23 have parting shots for us, since you are our technical  
 24 experts. No, they'll wait until we leave the room for  
 25 those.

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1 Folks on the phone, any comments?  
 2 [REDACTED] No comments from us.  
 3 MS. CONNERY: We appreciate you taking the time  
 4 out of your day to spend with us. Unless there are no  
 5 objections, I move to adjourn the meeting. There's been  
 6 unanimous consent. All in favor?  
 7 MS. ROBERSON: Yay.  
 8 MR. SANTOS: Yay.  
 9 MS. CONNERY: Yay.  
 10 MR. HAMILTON: Yes.  
 11 MS. ROBERSON: Going to off the record.  
 12 (Whereupon, the closed meeting was adjourned at  
 13 12:55 p m.)  
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1 CERTIFICATE OF REPORTER  
 2  
 3 I, JENNIFER METCALF-RAZZINO, the officer before  
 4 whom the foregoing testimony was taken, do hereby certify  
 5 that the proceeding was digitally recorded by me and  
 6 thereafter reduced to typewriting by me or under my  
 7 direction; that said testimony is a true record of the  
 8 event; that I am neither counsel for, related to, nor  
 9 employed by any of the parties to the action in which  
 10 this proceeding was taken; and, further, that I am not a  
 11 relative or employee of any of the parties hereto, nor  
 12 financially or otherwise interested in the outcome of the  
 13 action.  
 14  
 15  
 16 JENNIFER METCALF-RAZZINO  
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