



OFFICE OF THE  
SECRETARY

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555

February 26, 1982



MEMORANDUM FOR: Persons on Service List for CLI-82-1  
(Dockets 50-275 O.L. and 50-323 O.L.)

FROM: Scott W. Stucky, Chief, Docketing and  
Service Branch

SUBJECT: ADDITIONAL VIEWS OF COMMISSIONER GILINSKY  
REGARDING PACIFIC GAS AND ELECTRIC'S  
MATERIAL FALSE STATEMENT

On February 26, 1982, Commissioner Victor Gilinsky released his additional views relating to the Commission's order CLI-82-1 of February 10, 1982, in the Diablo Canyon matter. A copy of Mr. Gilinsky's statement is attached, and should be appended to your copy of CLI-82-1.

Attachment:  
As Stated

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED

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COMMISSIONERS:

Nunzio J. Palladino, Chairman  
Victor Gilinsky  
Peter A. Bradford  
John F. Ahearne  
Thomas M. Roberts

SERVED FEB 26 1982

In the Matter of )

PACIFIC GAS AND ELECTRIC CO. )

(Diablo Canyon Nuclear Power )  
Plant, Units 1 & 2) )

Docket No. 50-275 O.L.  
50-323 O.L.

ADDITIONAL VIEWS OF COMMISSIONER GILINSKY REGARDING  
PACIFIC GAS AND ELECTRIC'S MATERIAL FALSE STATEMENT

On February 10, 1982, the Nuclear Regulatory Commission charged Pacific Gas and Electric with making a material false statement in discussions of the Diablo Canyon seismic design with the NRC. The Commission's Order was brief to the point of being telegraphic, and I sense that the public was left wondering about the Commission's finding as well as its significance in view of the Commission's failure to impose a civil penalty. What follows is my own view of the matter:

Last September, PG&E informed the NRC that errors had been discovered in the seismic design of the Diablo Canyon nuclear power plant, which had just received NRC permission for test and low power operation. The NRC suspended the low

power license and required a reverification of the plant's seismic design. On November 3, the NRC met with PG&E officials, led by the Company President, Barton W. Shackelford, and with PG&E's consultant, Robert L. Cloud, to discuss the seismic reverification program being conducted by Dr. Cloud's firm.

As a result of questions raised by other parties to the case and in Congress, NRC was becoming increasingly interested in the extent to which Dr. Cloud's review would be conducted independently of PG&E. The Company naturally had a strong interest in emphasizing Dr. Cloud's independence since NRC's early acceptance of him as an independent reviewer might have speeded up the reverification program which stood in the way of the power plant's startup.

At the meeting, Harold Denton, NRC's Director of Nuclear Reactor Regulation, asked whether NRC would receive the same reports which Dr. Cloud gave to PG&E. George Maneatis, a PG&E Senior Vice President, responded "You just got it. And I have to say, Mr. Denton, that some of these things have just been disclosed to me, so you got it almost the same time I did."

Bruce Norton, PG&E's attorney in the Diablo Canyon case, stated "I might add we do not have it [Cloud's report]. It's not a question of us reviewing it. We don't have it

either. It just hasn't been done yet...." He then added, with considerable force, "I frankly resent the implication that Dr. Cloud is not an independent reviewer because he is...The report itself hasn't been prepared. If you want a copy of it before we get it, fine, or simultaneously. It is an independent consultant, and you know, I don't know how we can show you that more than to give you the reports when they are prepared."

In fact, as NRC pieced together later, at the time these statements were made PG&E had already reviewed and commented on two separate drafts of Dr. Cloud's report and, unbeknownst to NRC, was about to receive the third draft. The NRC's subsequent investigation revealed that six of the PG&E officials at the November 3 meeting, including Donald A. Brand, the Vice President of Engineering, who was responsible for handling the Cloud contract, knew of PG&E's review of the Cloud reports. The Company's officials failed to correct the false statements made in the meeting. Perhaps more importantly, neither the Company nor Dr. Cloud corrected these statements after the meeting although they had ample opportunity to do so.

Mr. Norton, who had insisted at the November 3 meeting that PG&E had no access to Cloud's reports, told NRC investigators that he did not learn about drafts of the Cloud report submitted to PG&E until December 14. He had

asked PG&E before the November 3 meeting about the status of Cloud's report and was apparently misinformed by his clients. He told the NRC investigators that, "If I had known the report of October 21st had been received by PG&E, I would not have said what I said because when I used the term report, I was encompassing any report whether it be preliminary, interim, final, whatever..."

Mr. Maneatis told the NRC investigators that, at the meeting, he was referring to Dr. Cloud's oral report of November 3 to the NRC. Mr. Maneatis explained that he did not know that PG&E had received written drafts of the Cloud report until he was told of such reports by the NRC on December 10. The other PG&E employees and Dr. Cloud have said that they assumed that the questions raised related to the final report, not to the draft reports.

This last artificial distinction won't wash. Even PG&E's General Counsel, Malcolm Furbush, agreed that the Company's statements "appear to be incorrect" and said that, "Had I known about those reports, I would have said something at the meeting." In fact, in this context, the draft reports are inherently more significant; it is the drafting which determines what will be emphasized and what will not.

Where does this leave us? It is troubling that a company which seeks permission to operate nuclear power plants

should be so insensitive to its obligation to inform federal regulators and the public. The issue is not the circulation of the reports but the false portrayal of PG&E's relationship with Dr. Cloud's firm. When we grant a utility the authority to operate a nuclear power plant we must be confident that its officials will be forthright with us. That is why the Commission's finding that PG&E had made a material false statement is so important.

I would have gone beyond the terms of the Commission's Order and imposed a civil penalty to underline the seriousness with which the Commission views PG&E's actions.

Nevertheless, the Commission did require the top management of PG&E to meet with NRC officials to discuss ways of ensuring that this problem will not recur. A meeting between the Chairman of the Board of PG&E and the NRC Director of Inspection and Enforcement and the NRC Regional Administrator is scheduled to take place in the near future. PG&E should lose no time in acting to restore confidence in its integrity.

As for Dr. Cloud, we cannot, in my view, simply ignore the fact that he also had an obligation to inform the NRC that his draft reports were being reviewed by PG&E. Again, it is not the circulation of the report which is of concern, but the failure to disclose the interactions between Dr. Cloud's firm and PG&E when the question was raised by NRC. The only

reasonable course, at this point, is to regard his report as, in effect, a PG&E report and to look to someone else to perform the independent audit of the reverification program.