

NUCLEAR REGULATORY COMMISSION

ORIGINAL

COMMISSION MEETING

In the Matter of: CLOSED MEETING - EXEMPTION 5

DISCUSSION OF PHASE 1 OF THE DIABLO
CANYON REPORT

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DISCUSSION OF PHASE I OF THE DIABLO CANYON REPORT

CLOSED MEETING - EXEMPTION 5

Nuclear Regulatory Commission
Room 1130
1717 H Street, N. W.
Washington, D. C.

Friday, February 5, 1982

The Commission convened in closed session, pursuant
to notice, at 2:05 p.m.

BEFORE:

NUNZIO PALLADINO, Chairman of the Commission
VICTOR GILINSKY, Commissioner
PETER BRADFORD, Commissioner
JOHN AHEARNE, Commissioner
THOMAS ROBERTS, Commissioner

STAFF MEMBERS GIVING PRESENTATIONS AT MEETING:

S. CHILK
L. BICKWIT
J. MURRAY
H. DENTON
W. DIRCKS
J. SNIEZEK
J. FOUCHARD

TELEPHONE CONFERENCE PARTICIPANTS FROM REGION V:

B. FAULKENBERRY
J. CREWS
P. MORRILL

* * *

P R O C E E D I N G S

CHAIRMAN PALLADINO: The meeting will please come to order.

The meeting today is a discussion of Phase I of the Diablo Canyon Report.

We have telephone communication I believe with the Region V office, including Bob Faulkenberry, Chief, Reactor Construction Projects Branch; Jesse Crews, Director, Division of Resident, Reactor Projects and Engineering Inspection; and Phillip Morrill, Reactor Inspector.

Are you on the line?

MR. CREWS: This is Region V. Yes, we are.

CHAIRMAN PALLADINO: Thank you. It is my understanding that when one of us is speaking we cannot interrupt. It is a stop and go process. So I think it might be important for us to bear that in mind.

I think our primary mission this afternoon is to try to reach a decision, any decisions we wish to make with regard to Phase I of the Diablo Canyon Report.

I would propose to proceed as follows. First have each of the Commissioners express any views they have or raise any questions with the people that did the inspection. Then I would suggest we try to formulate the questions we want to have answered and then address those questions.

Among the questions I would see that we would want to

1 consider is, one, the question of whether or not there was a
2 material false statement made. We may wish to divide that into
3 two parts, was there a false statement and was it material.

4 Then I think we need to address what action we want
5 to take as a result of that if we so find. Then I think we need
6 to address the question of whether or not on the basis of the
7 Phase I report we wish to continue Cloud as an eligible
8 independent auditor.

9 Now there may be other questions that we will formulate
10 when we get there, but I put those forth so that we could think
11 about them as we proceed.

12 With regard to positions, I have circulated to the
13 Commissioners my thoughts on this matter and I would be willing
14 to entertain any questions on it.

15 If you would like, I will be glad to summarize it
16 for you. You would like me to summarize.

17 COMMISSIONER BRADFORD: Don't take my silence as a
18 lack of interest.

19 COMMISSIONER AHEARNE: Could I first ask two questions
20 of the people on the other end?

21 CHAIRMAN PALLADINO: Yes, indeed.

22 COMMISSIONER AHEARNE: Let's see, I would like to ask
23 with respect to the Phase II report. I have read up to Appendix
24 C. Could you restate the significance that you would attach
25 to the exceptions to Issue 15's findings. You have two

1 exceptions listed. That is, on Issue 15 the finding is that
2 the revisions of material contained in the draft reports appear
3 to have been justified with the following exceptions, and then
4 you have the two exceptions.

5 It wasn't clear to me on my first reading how
6 significant you conclude those exceptions are.

7 MR. CREWS: This is Jesse Crews in Region V. I am
8 going to ask Bobby Faulkenberry to first respond and then the
9 two investigators, Bill Morrill and then John Faar(?) whom I
10 understand is there, and then they can elaborate.

11 CHAIRMAN PALLADINO: You are really on Phase II.

12 (Laughter.)

13 MR. FAULKENBERRY: With regard to the two exceptions
14 as they relate strictly to the revisions and justifications
15 for revisions made in the report, I think we would classify
16 them as not too significant.

17 CHAIRMAN PALLADINO: Would you repeat that.

18 COMMISSIONER AHEARNE: You would classify them how?

19 MR. FAULKENBERRY: As not too significant.

20 CHAIRMAN PALLADINO: Thank you.

21 MR. FAULKENBERRY: My reasoning for that is that we
22 did have -- documentation -- justified -- the majority of the
23 revision that was made in each case ---

24 COMMISSIONER GILINSKY: Can't we do better than that?

25 CHAIRMAN PALLADINO: May I interrupt.

1 (No response.)

2 CHAIRMAN PALLADINO: Can you hear me?

3 MR. FAULKENBERRY: Yes. Go ahead, please.

4 CHAIRMAN PALLADINO: I should advise you that this is
5 a voice actuated system and the first word or two is sometimes
6 garbled at the beginning. May I suggest that when you start
7 to speak you say some words such as this is Jesse or this is
8 so and so so that we don't miss the first words of your
9 statement.

10 MR. FAULKENBERRY: This is Bob Faulkenberry.

11 (Laughter.)

12 MR. FAULKENBERRY: This is Bob Faulkenberry again. I
13 will repeat what I said.

14 With regard to the revisions that were actually made
15 in the report as related to the two exceptions, we would consider
16 these two exceptions to not be very significant.

17 The reason for this is that they had documentation
18 which justified the majority of each of the revisions made or
19 the revisions made in each of the two paragraphs.

20 Our feeling is that they did not go far enough in
21 searching the documentation to really come up with the proper
22 answer to justify completely the statements they made in the
23 revisions.

24 So there is a little bit of an overshadow here with
25 regard to evaluating the revisions aspect of it as related to

1 evaluating the adequacy of the reverification effort that they
2 did to obtain the information that they put in the report.

3 CHAIRMAN PALLADINO: As long as we are on Phase II let
4 me ask a follow-up question with regard to those exceptions.

5 This is Palladino.

6 My question is this: Do you believe that in these
7 exceptions that Cloud was trying to accommodate PG&E comments
8 or do you view this as an error or insufficiency of the check
9 on the part of Cloud?

10 MR. FAULKENBERRY: This is Bob Faulkenberry. We do
11 not believe that Cloud was intentionally making this look better
12 for PG&E. We believe that the exceptions were a lack on Cloud's
13 part of searching the documentation sufficiently to obtain
14 enough detail to provide correct information in the revision.

15 CHAIRMAN PALLADINO: All right, thank you.

16 Any other questions?

17 (No response.)

18 CHAIRMAN PALLADINO: Well then, I wonder if we might
19 return to Phase I.

20 COMMISSIONER AHEARNE: The reason I asked the question
21 was I thought it might somewhat affect the decision on Phase I.

22 CHAIRMAN PALLADINO: Well getting back to Phase I again
23 I do not have a problem with the fact that R. L. Cloud had
24 submitted draft reports for PG&E review and comment prior to
25 placement of work in final draft report form, especially since

1 NRC had supplied no guidance on this point.

2 This is apparently standard practice among many
3 consultants and apparently has been standard practice both at
4 PG&E and R. L. Cloud.

5 The purpose of such reviews is to assure accuracy
6 and completeness of the work being done. At least that is what
7 is maintained by both PG&E and Cloud.

8 The problem arises from the fact that the November
9 3 meeting statements made by PG&E led NRC to believe that
10 no circulation of the results of the R. L. Cloud seismic
11 reverification study had taken place preliminary to the draft
12 report submitted to the NRC on November 18th, 1981.

13 A particular concern in my mind are the statements
14 made by Mr. Norton indicating that PG&E did not have the report.
15 He said: "It is not a question of us reviewing it, we don't
16 have it either. It just hasn't been done yet."

17 During the investigation made by the NRC staff
18 Mr. Norton indicated that based on the knowledge he later
19 obtained the statement he made on November 3 was factually
20 incorrect.

21 Mr. Norton stated to NRC investigators: "I honestly
22 do not have any meaning to that. If I had known the report
23 of October 21 had been received by PG&E I would not have said
24 what I said because when I used the term 'report' I was
25 encompassing any report, whether it be preliminary, interim or

1 final, whatever, and was, because I asked the question where
2 is the report on the previous day or two and was told it would
3 be prepared in a week or two. I guess I assumed whoever was
4 answering my question was using the definition of 'report' I was.
5 In all probability they weren't," Mr. Norton said.
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COMMISSIONER GILINSKY

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COMMISSIONER BRADFORD:

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CHAIRMAN PALLADINO: Any comments? John.

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COMMISSIONER AHEARNE: Yes, I have several.

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I think that this ends up establishing a precedent
for what we would mean by material false statement, the direction

1 tnat you are going.

2 COMMISSIONER ROBERTS: Amen.

3 COMMISSIONER BRADFORD: Yes, I agree with that. So far
4 we are on a parallel track.

5 COMMISSIONER AHEARNE: We are now about to diverge.

6 (Laughter.)

7 COMMISSIONER AHEARNE: I have a substantial problem
8 with this as a precedent for the following reasons.

9 To me what is important when licensees or applicants
10 or people deal with this is to make sure that the basic information
11 that they are telling us is correct and also that they aren't
12 lying to us. I think that those are the two standards that at
13 least I would like to establish.

14 Now as far as the basic information, there is a
15 question of scope and I would want to focus on what is
16 significant. I would want to make sure that significant items
17 are correct.

18 On the point of whether there is a lie being told I
19 don't think the issue of significance arises. A deliberate
20 misstatement undermines, as Vic has pointed out many times,
21 undermines the whole theory or our regulation, the whole frame-
22 work of our regulation.

23 So to me the questions that I address in looking at
24 this issue, and I would intend to address in looking at any
25 question of material false statement, are, first, is it

1 deliberate and then, second, the significance of the information.
2 If I conclude it is deliberate and it is incorrect, then the
3 significance I have just pointed out can make the matter worse,
4 but I already would have concluded that there was something
5 worth penalizing.

6 What we have just finished hearing in the discussion
7 with the people in Region V and what we covered last time is that
8 the question of deliberateness doesn't really seem to be there,
9 particularly with respect to Norton.

10 Now I agree the conduct wasn't the best. As I mentioned
11 last time I think Norton was ill prepared. I do have a problem
12 with the two employees that were mentioned. I reached the
13 conclusion that that is more indicative of the pattern that
14 Dick DeYoung had mentioned previously, that the company just
15 does not establish correct attitudes in its employees.

16 I have somewhat similar concern, as Peter had mentioned,
17 with respect to Cloud, that there is a nagging question there.
18 But across the board there it just doesn't rise to my mind of
19 deliberateness. So I can't reach the conclusion that there
20 was a deliberate action.

21 Then I would have to go to the significance, and I
22 don't find this significant. I think that up until that meeting
23 we had not really discussed independence much at all. I don't
24 think there was strong guidance. What was going on there was
25 standard industry practice for what is called an independent

1 consultant.

2 I can't really believe, at least from reading the
3 transcript, that the existence of drafts would have been an
4 astonishing fact to people.

5 COMMISSIONER GILINSKY: To whom?

6 COMMISSIONER AHEARNE: To anybody.

7 COMMISSIONER GILINSKY: I thought we were all
8 surprised.

9 COMMISSIONER AHEARNE: I am not sure of that.

10 COMMISSIONER GILINSKY: Well, were you?

11 COMMISSIONER AHEARNE: That there were drafts? No.

12 COMMISSIONER GILINSKY: I thought everyone else around
13 the table was.

14 COMMISSIONER AHEARNE: I was surprised when I read
15 Norton's statement because I thought Norton's statement was
16 so unequivocal, but as far as the existence of drafts by
17 a consultant ---

18 COMMISSIONER GILINSKY: Well, it is only coupled with
19 the statement that it makes ---

20 COMMISSIONER AHEARNE: I am trying to point out the
21 existence of drafts or drafts being available is not surprising,
22 that is drafts being ---

23 COMMISSIONER GILINSKY: That is irrelevant.

24 COMMISSIONER AHEARNE: No, it is relevant.

25 CHAIRMAN PALLADINO: Well, why don't we let him

1 finish.

2 COMMISSIONER GILINSKY: It is more fun to interrupt.

3 (Laughter.)

4 COMMISSIONER AHEARNE: So for me at least I can't
5 really find that this was truly significant. What would have
6 been significant is had Norton been that positive knew he was
7 wrong. Then that would have been a deliberate lie. But the
8 matter at hand I can't conclude is very significant. That is
9 why I was asking the question earlier with respect to Phase II
10 because obviously my conclusion that it wasn't very significant
11 is affected by the conclusions that the Phase II report has
12 come to, affected in the negative sense in that if the Phase II
13 conclusion had been oh, yes, there were drastic changes made
14 and there was really a warping, then I would reach a different
15 conclusion.

16 CHAIRMAN PALLADINO: You are combining Phase I and
17 Phase II.

18 COMMISSIONER AHEARNE: I am using that as at least
19 a test against where I came out on Phase I. So I would have
20 reached a conclusion of no action. Now I am still struck by
21 the point that Dick DeYoung had made the other day and that I
22 think was supported by a number of people from the region that
23 they have had a lot of difficulty in dealing with the company
24 and that there was sort of a pattern of behavior that was
25 not surprising in the sense of a reluctance to be forthcoming

1 to the NRC.

2 I am left with a feeling not dissimilar to that which
3 I had when we first addressed the recent Pilgrim action. It
4 seems that we were planning on taking an action because of a
5 pattern of behavior. But I would believe, just as I did believe
6 in the Pilgrim case, and which I think we eventually ended up
7 at least closer to where I had wanted us to be, that if there
8 is a pattern of behavior and if the management is bad that there
9 ought to be more than just one isolated event.

10 I would expect in this case if there is not, then
11 the more appropriate action would be for either DeYoung or
12 the Chairman to meet with the senior utility people and dress
13 them down or address the specific problems we have and point
14 out these concerns.

15 That still ends up leaving what is probably one of
16 the more difficult questions that I think we as regulators
17 continuously face and that is the public perception issue.
18 Public perception has been raised that this is really a serious
19 issue and a serious problem and I think that many people expect
20 that therefore they will look and if we don't take an action
21 then we are a patsy for the industry and if we do take an
22 action then that is consistent with being noble defenders of
23 the public.

24 Unfortunately, I have to be comfortable with myself
25 with what I end up doing. So I have reached the conclusion

1 I wouldn't give the volation.

2 CHAIRMAN PALLADINO: John, you used deliberateness
3 as a criterion for a material false statement.

4 COMMISSIONER AHEARNE: What I am saying, Joe, is that
5 in the context of a material false statement I am really in
6 my own mind I say there are two important issues. One, is it
7 deliberate; and, two, is it significant.

8 CHAIRMAN PALLADINO: Well, I don't know how you use
9 deliberate, in deciding whether it is a material false statement?

10 COMMISSIONER AHEARNE: I am saying that there are two
11 important issues to me that I will address when I am looking
12 at what a licensee or an applicant does in communication with
13 the NRC. If it is incorrect, first, was it deliberately
14 incorrect. If it wasn't deliberately incorrect, was it at
15 least significant. I find that the answer is no in both of
16 these cases.

17 CHAIRMAN PALLADINO: I don't think whether it is
18 deliberate or not influences whether it is a false statement.
19 The falsity of the statement was confirmed.

20 In determining whether or not it had the capacity
21 to influence the NRC staff we have to view it in the context
22 in which it was made and it was made in the context where they
23 were discussing the reverification program and the independence
24 of that program. I say, well, it had the capacity to influence
25 the NRC staff with regard to this matter and therefore it is

1 material and I don't have to examine whether it is deliberate
2 or not.

3 COMMISSIONER AHEARNE: All I am saying is that I
4 disagree with that as the set of standards because I find that
5 that doesn't help me look at any of these problems very much.
6 I think the threshold ends up being much lower than I would
7 establish for the problems that I would want to deal with.

8 COMMISSIONER BRADFORD: John, I don't expect to
9 change your mind on this, but let me pose a situation. Supposing
10 that we were testifying before a Congressional committee, and
11 let's take a hypothetical. We have used sometimes before the
12 issue where an OIA report regarding I&E's ---

13 (Laughter.)

14 COMMISSIONER BRADFORD: You could say you had even
15 asked sort of casually perhaps on the way into the room whether
16 the Director of I&E had seen the OIA report and were told no, and
17 in the course of the Congressional hearing had had occasion to tell
18 the Congress, which was not on the verge of immediately legislating
19 in the area or something like that, so it is not clear that it
20 was immediately pertinent to their legislation, but you had
21 the occasion to tell them unequivocally that that OIA report
22 had not gone to I&E entirely independent. Then on leaving the
23 hearing there were a couple of different situations.

24 One, someone from OIA came up to you and said,
25 Commissioner Ahearne, I think you ought to know that in fact

1 a draft is being reviewed.

2 Taken in that situation you would send a note to the
3 Congressional committee ---

4 COMMISSIONER GILINSKY: I am sure Chairman Dingell.

5 (Laughter.)

6 COMMISSIONER AHEARNE: I can't believe that I would
7 answer the question that you suggested the way you have suggested
8 I would answer it if the information I had was what you gave me.
9 I think I would answer if the question arose that I would just
10 ask the Director of I&E whether he saw the OIA report, and he
11 just said no.

12 COMMISSIONER BRADFORD: That certainly is a more
13 prudent answer, but you can't get away ---

14 COMMISSIONER AHEARNE: Peter, yes, I can because you
15 asked me what would I do. I believe that is the answer I would
16 make. You can say what if someone else was asked this question
17 and answered this is what they would do. But you asked me what
18 would I do.

19 COMMISSIONER BRADFORD: Supposing I got myself into
20 that mess and came to you and said, John, what do you think I
21 ought to do now?

22 (Laughter.)

23 COMMISSIONER BRADFORD: Do you really doubt that you
24 would tell me that I ought to communicate to the committee that
25 I had put my foot in it?

1 COMMISSIONER AHEARNE: I am sure you will view this
2 evasion, but again I don't see you making that answer either
3 based upon that casual comment. I don't see you being that
4 positive.

5 COMMISSIONER GILINSKY: It seems to me the normal
6 way to answer it if you are informed by your senior officials
7 is to give the answer they gave. I mean if you have confidence
8 in them usually you take responsibility for these things.

9 CHAIRMAN PALLADINO: Well, I guess getting involved
10 in Congressional hearings makes you a little more wary. It took
11 me a while to realize how wary one must be.

12 (Laughter.)

13 CHAIRMAN PALLADINO: I appreciate it. I was speaking
14 more of myself.

15 COMMISSIONER BRADFORD: You see, the other half of
16 that hypothetical which may be closer to what happened here would
17 be not to have the person from OIA come up and tell you that, but
18 to have the Congress find out about it in some other way and
19 writing a scathing letter over here, and then have it turn out
20 that at two or three different levels out in the staff people had
21 been concerned that that had been a misstatement and had raised
22 it with others, superiors, who had said oh, don't worry about
23 it. There are other interpretations.

24 I think I would really feel let down that they hadn't
25 come to me and given me the choice of whether or not to stick

1 by my statement or to correct it.

2 COMMISSIONER AHEARNE: You won't like this analogy,
3 I am sure, but in a way a closer example is a statement made say
4 in a budget when a Congressman will ask someone did you review
5 the agency's program in this area, and there may be 50 items,
6 and running down one of the items it will be mentioned that the
7 budget for this amount is \$17.5 million. Then at some later
8 point it turns out that it is \$25 million. Whether or not that
9 will be communicated and whether or not the Congress would be
10 upset about that obviously depends upon the specific program and
11 how much focus is being placed on it.

12 COMMISSIONER BRADFORD: But in terms of the way this
13 institution ought to work or PG&E ought to work, it seems to me
14 just to be fundamental that the person who made the misstatement
15 should have it called to his attention so that he can be aware
16 and appraise whether or not in terms of what he intended to convey
17 it is likely that a misunderstanding occurred.

18 The real breakdown in PG&E seems to be that nobody
19 went back to Norton and left it up to him.

20 COMMISSIONER AHEARNE: You must realize that every time
21 the Commission testifies, that the Commissioners speak, that every
22 time every senior official in this government testifies, that
23 every time every Congressman speaks there are a host of people,
24 staff members, Congressional staff, NRC staff and agency staff
25 who flinch because they know that that principal doesn't really

1 understand all the details and has made a couple of misstatements,
2 and they don't go running up and say oh, wait a minute ---

3 (Laughter.)

4 COMMISSIONER AHEARNE: --- because in their judgment
5 that doesn't rise to that significance.

6 CHAIRMAN PALLADINO: Well, hypothetical examples ---

7 (Laughter.)

8 CHAIRMAN PALLADINO: I must say that while hypothetical
9 examples are good to help us evaluate our thinking, I don't think
10 that necessarily everything is transferrable from a hypothetical
11 to the actual situation we face now.

12 Tom.

13 COMMISSIONER ROBERTS: I essentially agree with John. I
14 think there was a false statement. I do not think it was material
15 and I do not think we ought to issue a violation.

16 I would rather not be interrogated. I am not going
17 to change my mind.

18 (Laughter.)

19 COMMISSIONER ROBERTS: I think we are setting a
20 threshold here for a material false statement that is wrong.

21 COMMISSIONER GILINSKY: Let me ask, do you ---

22 COMMISSIONER ROBERTS: I don't want to be interrogated.

23 (Laughter.)

24 COMMISSIONER GILINSKY: I was going to ask you about
25 the past.

1 (Laughter.)

2 COMMISSIONER GILINSKY: Do you agree with the
3 Commission's decision in North Anna? The case there, if I can
4 just remind you ---

5 COMMISSIONER ROBERTS: I have read the case.

6 COMMISSIONER GILINSKY: The company didn't supply a
7 report which it turned out wouldn't have changed anybody's mind
8 and I think in retrospect we regard it as probably wrong but it
9 would have been considered at the time, probably considered and
10 rejected, but, anyway, would have been considered. On that
11 basis we found Vepco guilty of the material false statement and
12 fined them.

13 COMMISSIONER ROBERTS: That was a license application
14 that was in writing and certified. Victor, I am not going to
15 argue with you and I am not going to change my mind.

16 COMMISSIONER GILINSKY: That is what this Commission
17 is for, arguing ---

18 (Laughter.)

19 COMMISSIONER AHEARNE: I haven't gone back and read
20 that decision. I wasn't here, as you know, at the time the
21 decision was made. So it is a question of do I agree with a
22 previous decision of the Commission. But when I did read it
23 some months ago I can recall being uncomfortable with the
24 conclusions.

25 Your initial question was do I agree with it. My

1 basic sense is no, I don't. But I am really hard put ---

2 COMMISSIONER GILINSKY: So we really want to raise
3 the threshold that was set in that decision, is what you are
4 saying.

5 COMMISSIONER AHEARNE: I think that is probably
6 correct, yes.

7 COMMISSIONER GILINSKY: You are uncomfortable with
8 what I guess I and Mark Rowden and Dick Hendrie ---

9 COMMISSIONER BRADFORD: The radicals ---

10 (Laughter.)

11 COMMISSIONER AHEARNE: It is probably not the first
12 time.

13 (Laughter.)

14 COMMISSIONER GILINSKY: --- and the other radicals ---

15 COMMISSIONER AHEARNE: I am not in any way attributing
16 a philosophical bent to the decision-makers at the time. I am
17 just saying that I am not comfortable with the decision.

18 CHAIRMAN PALLADINO: Did you have any comment?

19 COMMISSIONER GILINSKY: Well, I can't see how we
20 could not conclude it was a material false statement. I am not
21 sure what we would do after that. I think in any case something
22 more than PG&E management meet with some of our staff is called
23 for. If we do go down this road we can discuss that when we
24 get there, if we get there.

25 CHAIRMAN PALLADINO: Well, I don't know whether you

1 want to participate in more discussion. I was trying to write
2 down questions that we might want to address.

3 Was a false statement made by one or more PG&E
4 employees? Was that statement material? If it is a material
5 false statement, what do we want to do about it?

6 Then I wrote down another question. What does the
7 Commission feel about keeping Cloud as an eligible contender
8 as an independent auditor based on Phase I?

9 COMMISSIONER GILINSKY: Well, it seems to me we ought
10 to take those in sequence.

11 CHAIRMAN PALLADINO: I am just giving you the totality
12 of the questions so that as we address them we know what is
13 following.

14 Now I am open to any suggestions on changing the
15 questions or asking different ones.

16 COMMISSIONER AHEARNE: I think my sense is that you
17 have three votes to go in towards a violation. So as far as
18 your first question is concerned, for myself I would prefer for
19 the three of you to reach a conclusion as to what type of
20 violation or penalty you want to exact. You see, I am approaching
21 it from a different set of standards.

22 CHAIRMAN PALLADINO: I appreciate that, but if there
23 is a conclusion that it is a material false statement that doesn't
24 exclude you from deciding what ought to be done about it even
25 though you may not agree.

1 COMMISSIONER AHEARNE: Well, I have already concluded
2 that what ought to be done in this circumstance is nothing formal
3 and an informal chewing out session between you preferably and
4 the senior officers of the company.

5 CHAIRMAN PALLADINO: Well, I think I have to ask the
6 question. If it is a material false statement, and I guess I
7 would have to divide that into several parts. Do you wish to
8 have a notice of violation or do you wish to have a notice of
9 violation with a civil penalty? If it is a material false
10 statement I don't think we can escape without at least a notice
11 of violation.

12 COMMISSIONER AHEARNE: I don't want to be obstreperous,
13 Joe. However, since I disagree with it meeting my standards of a
14 material false statement I don't think that I should participate
15 then in a decision on what the violation ought to be because I
16 am going to disagree with the penalty, with the fact that a
17 penalty should be given. I don't think therefore that I ought
18 to be moderating what penalty the three of you are going to give.

19 CHAIRMAN PALLADINO: I find that difficult in view
20 of the fact that you wanted to take some punitive action on the
21 individuals involved at least in terms of calling them on the
22 carpet. I find that that is really what a notice of violation
23 is and I want to call the management people on the carpet and
24 I want to make sure that some action is taken as a result of it.
25 That is what I find is the value of a notice of violation.

1 COMMISSISONER AHEARNE: My option for the mechanism
2 to call them on the carpet would be for you to meet them.

3 CHAIRMAN PALLADINO: Well, the reason I think it is
4 important with your thinking that is closer to ---

5 COMMISSIONER GILINSKY: We won't press you, Joe.
6 (Laughter.)

7 CHAIRMAN PALLADINO: Maybe you ought to think twice
8 before you say, well, it is going to get worse rather than
9 get better.

10 COMMISSIONER AHEARNE: I recognize it will get worse.
11 (Laughter.)

12 CHAIRMAN PALLADINO: Maybe you don't want to go through
13 the three steps. May we ought to just vote and say if it is a
14 material false statement if that is satisfactory and we can
15 jump right to that question.

16 COMMISSIONER AHEARNE: I would say no.

17 COMMISSIONER ROBERTS: I would say no.

18 COMMISSIONER GILINSKY: Yes.

19 COMMISSIONER BRADFORD: Yes.

20 CHAIRMAN PALLADINO: I would say yes.

21 All right, we have three to two to say yes.

22 Now with regard to ---

23 COMMISSIONER ROBERTS: Excuse me, just a moment. What
24 are the mechanics here. Is a piece of paper going to come out?

25 COMMISSIONER GILINSKY: The Commission would have to

1 issue an opinion or an order to support its statement and you
2 would certainly have the opportunity, and John would ---

3 COMMISSIONER BRADFORD: Well, wait a minute.

4 (Laughter.)

5 COMMISSIONER BRADFORD: Normally a notice of violation
6 would come from the staff. Now it certainly isn't inconceivable
7 that we could concoct a different procedure, but the normal one,
8 depending on what happens next, would be for the staff to issue
9 the notice of violation. We have sort of invented documents in
10 the past when Commissioners had separate views. Sometimes it is
11 the instruction from Sam to the staff.

12 CHAIRMAN PALLADINO: Does the Commission ever issue
13 a notice of violation?

14 COMMISSIONER BRADFORD: There is no reason it can't.
15 Well, there may be a reason it can't.

16 Go ahead, Jim.

17 MR. MURRAY: I believe it is without precedent, but
18 there is no reason why the Commission couldn't. It has delegated
19 the authority to its subordinate officers to issue such a notice
20 and the Commission could do that. The cause analogies are when
21 the Commission itself issues orders these orders are not always
22 premised on violation of anything but the Commission issues the
23 orders, like the Three Mile order.

24 COMMISSIONER GILINSKY: Well, in one way or another
25 we are giving instruction to the staff. Even if the notice of

1 violation is issued by the staff there is no problem, it seems
2 to me, with the Commission expressing itself.

3 MR. MURRAY: None whatsoever that I can see.

4 CHAIRMAN PALLADINO: That might be another question
5 of whether we want to do it that way or issue an order from
6 the Commission.

7 COMMISSIONER AHEARNE: Well, as far as I am concerned
8 it doesn't make any difference which way it is done, I will
9 contend, whether it is a memo to the staff or an order of the
10 Commission if I can append my views to whatever document.

11 COMMISSIONER BRADFORD: The normal next steps would
12 be if the company disagrees they can request a hearing and
13 the Commission winds up being the ultimate judge of the appellate
14 process -- no?

15 MR. MURRAY: Not on a mere notice of violation. Only
16 if there is some escalated enforcement action, and by that I
17 mean a civil penalty or an order.

18 COMMISSIONER BRADFORD: I see. They can't request
19 a hearing of any sort ---

20 MR. MURRAY: --- on a notice of violation. That is
21 correct. They can request it but they are not entitled to it.

22 (Laughter.)

23 CHAIRMAN PALLADINO: Do you find it agreeable to
24 append your comments ---

25 COMMISSIONER ROBERTS: I don't care what they are

1 appended to. I just want them publicly known.

2 (Laughter.)

3 CHAIRMAN PALLADINO: I guess the next question is
4 having a three to two vote on identifying the material false
5 statement, what do we want to do about it?
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14 COMMISSIONER GILINSKY:
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25 (Laughter.)

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1 COMMISSIONER ~~ROBERTS~~:

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3 COMMISSIONER BRADFORD:

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8 CHAIRMAN PALLADINO:

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14 COMMISSIONER ~~GILINKSY~~

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16 CHAIRMAN PALLADINO:

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18 I think we have another question to answer, and that
19 is should Cloud Associates ---

20 COMMISSIONER GILINKSY: Well, you know, before we get
21 to that we were talking about you had another item in your
22 proposal which was some interaction with the company.

23 CHAIRMAN PALLADINO: Oh, in my proposal I had that this
24 order should call for a meeting with the top officials, as it
25 did, for example, in a more recent one, except that I think in

1 this particular case they should be asked to meet with the staff
2 to outline steps to be taken to avoid situations such as developed
3 on November 3 and to review procedures for handling the independent
4 audits for the Diablo Canyon plant.

5 COMMISSIONER GILINSKY: Now what do you have in mind
6 there? What is it that our staff would say to them?

7 CHAIRMAN PALLADINO: I guess I didn't put it into
8 words because I didn't know how to do it nicely and maybe it
9 shouldn't be done nicely. I think because of their basic
10 attitude they need to have their attention called to the matter
11 of basic attitude.

12 COMMISSIONER ROBERTS: That headline in the LA Times
13 when this violation comes out is going to get their attention.

14 COMMISSIONER AHEARNE: Part of the problem I had with
15 that statement is situations such as developed out of the meeting
16 is very nebulous and to review procedures for handling leads me
17 to think of a meeting in which many members of our staff meet
18 with many members of theirs and there is a rambling discussion.

19 I would think it would be much more useful if you
20 were to meet with the executive level of their company and not
21 be very euphemistic about the problems that have been seen, which
22 I would believe you could get from the Region V people and from
23 DeYoung which would go beyond just this one instance.

24 CHAIRMAN PALLADINO: Is this a practice or has it been
25 done that the Chairman do this?

1 COMMISSIONER AHEARNE: Well, I don't know.

2 CHAIRMAN PALLADINO: Would it include participation
3 by the staff?

4 COMMISSIONER AHEARNE: My recommendation would be
5 very few staff. What I would encourage you to try to do is
6 to have a face-to-face meeting with a small group on both sides
7 which could then be very blunt.

8 CHAIRMAN PALLADINO: Closed?

9 COMMISSIONER AHEARNE: I would hope so.

10 MR. FOUCHARD: In private?

11 COMMISSIONER AHEARNE: I would think so.

12 CHAIRMAN PALLADINO: Is that legal?

13 COMMISSIONER ROBERTS: Does that give you problems, Joe?

14 MR. FOUCHARD: Can they meet with ---

15 MR. BICKWIT: Yes.

16 COMMISSIONER BRADFORD: As long as it is not ex parte
17 you can I suppose.

18 MR. BICKWIT: It would not be given the subject
19 matter that would be discussed.

20 COMMISSIONER GILINSKY: I am sure it it such a great
21 idea to have a meeting. You know, you can yourself say things
22 to them separately, but I think there has to be a public aspect.

23 CHAIRMAN PALLADION: May I ask a question. For example,
24 when the Boston Edison people come down, you had called them in,
25 is that going to be a public meeting or is that going to be a

1 MR. MURRAY: I was at that meeting and so were you,
2 Jim.

3 CHAIRMAN PALLADINO: Oh, it happened already.

4 MR. SNIEZEK: We had a meeting where the Boston
5 Edison people did come down and that was not a public meeting.
6 They met with Mr. DeYoung in the Operations Center and there was
7 just the staff and Boston Edison there.

8 MR. BICKWIT: It is not a legal matter, but the
9 prospect of a public meeting I don't think is appealing in
10 a situation like this.

11 CHAIRMAN PALLADINO: No, but I was trying to find out
12 what has been done in the past.

13 COMMISSIONER GILINSKY: Well, an alternative to all
14 this is a letter from you.

15 MR. MURRAY: There have been public meetings as well,
16 Mr. Chairman. At Marble Hill, for example, Vic Stello met with
17 the senior people there and it was quite a media event as I
18 understand it.

19 MR. FOUCHARD: Not involving the Chairman, Jim.

20 MR. MURRAY: No, that is true.

21 CHAIRMAN PALLADINO: Well, I might agree with you
22 that review procedures for handling the independent audits is
23 getting in a direction we may not necessarily want to go, but I
24 sure do want to make sure they outline steps to avoid situations
25 like this and in the process you would let them know how important

1 this is.

2 Now whether it should be the staff or the Chairman,
3 I think our past practice has been the staff.

4 COMMISSIONER GILINSKY: Well, what would they say
5 to them. May be we can hear a sample.

6 (Laughter.)

7 MR. DENTON: We have had a lot of meetings with
8 utilities on management attitudes in general. At our last meeting
9 with PG&E on the reverification effort we pointedly said that
10 the transcript would be made available to everyone so it could
11 be corrected in the next few days if they found anything in there
12 that needed changing. So we tried to set up a procedural
13 mechanism so that people would be sensitive to what was on the
14 transcript and indicated several times that we were going to rely
15 on the transcript and how important the transcript was.

16 CHAIRMAN PALLADINO: Which meeting was this?

17 MR. DENTON: We just completed a recent meeting on
18 the reverification program with PG&E in which we went through the
19 factors that were identified in the letter back to Congress
20 that we were going to consider in judging independence and
21 qualification of companies.

22 The meeting that you seem to be discussing is one
23 that would flow from the types of items that Mr. DeYoung described
24 last time as presistent management difficulties between ourselves
25 and the company over a number of years and would make up an

1 agenda based on that sort of issue rather than on just this
2 particular meeting.

3 CHAIRMAN PALLADINO: Yes, you could call them on the
4 carpet for this meeting in that particular aspect. I was trying
5 to get at getting the attention to the faults in their attitude.

6 MR. DENTON: I think it would go toward their general
7 insensitivity over the years to some of our concerns and apparently
8 the lack of communication up and down the line in the company as
9 to who is responsible for interacting with us.

10 CHAIRMAN PALLADINO: Well, I think in view of the
11 fact that this is the way it has been handled in the past, I
12 still think it is proper for the staff to do it. You know, you
13 use your big guns, and I am using it only symbolically ---

14 (Laughter.)

15 COMMISSIONER ROBERTS: You are the biggest gun we
16 have got.

17 (Laughter.)

18 CHAIRMAN PALLADINO: If you use it when a rifle will
19 do you may not be making the best use of the circumstances.
20 However, if once, twice, three times, you know, the second time,
21 then you may want to use back-up ammunition.

22 I recall the story of the farmer and his wife who
23 had been married for 50 years. On their anniversary a reporter
24 asked them how they managed to live so happily for 50 years.
25 He says, well, on our wedding day driving back to the farm the

1 horse slipped and he went out and helped him up and he says,
2 that is once. He went on a little more and the horse slipped
3 again, that is twice. Then the horse slipped again and he said,
4 that is three times, and he shot him. Then the wife started to
5 get all upset and said why did you kill the horse? He says,
6 that is once.

7 (Laughter.)

8 CHAIRMAN PALLADINO: Let me propose that the ~~meeting~~
9 ~~be held with the staff~~. I am not wedded to the words in this
10 proposal. I do think that we have to address this issue and
11 make sure that something is done about correcting their approach.
12 I do intend to capture what Dick DeYoung has said, to get to
13 other matters of management intention and would propose that the
14 staff do it.

15 Is there a reasonable concurrence to that?

16 COMMISSIONER BRADFORD: Yes.

17 (Other Commissioners gave no audible response.)

18 (Mr. Dircks at this point returns to the Commissioners'
19 table.)

20 COMMISSIONER AHEARNE: You just missed being the man.

21 (Laughter.)

22 CHAIRMAN PALLADINO:
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COMMISSIONER BRADFORD:

CHAIRMAN PALLADINO:

COMMISSIONER GILINSKY:

CHAIRMAN PALLADINO:

COMMISSIONER GILINSKY:

COMMISSIONER AHEARNE:

CHAIRMAN PALLADINO: Well, I think that concludes our action on Phase I. We do have the Phase II report. I have read everything through "C". I have read most of "D" and have paged through all of "E". I have paged through all of it, but I did read everything through "C" and must of "D" and paged through

1 "E" looking for specific points, particularly those on 3.3.5.11
2 and 3.3.5.12. Maybe we could leave that to our next meeting.

3 Bobby?

4 (Laughter)

5 CHAIRMAN PALLADINO: Are any of you still on?

6 (Laughter.)

7 CHAIRMAN PALLADINO: Jesse?

8 (Laughter.)

9 COMMISSIONER GILINSKY: Well, you know, it is "loss"
10 time out there.

11 (Laughter)

12 CHAIRMAN PALLADINO: I guess we lost you all.

13 (Laughter.)

14 MR. CREWS: We are here but you were cut out very
15 briefly. We heard the tailend of your statement but I think
16 you would need to restate it for Bobby.

17 COMMISSIONER GILINSKY: Could I just ask before you
18 go on to Phase II ---

19 CHAIRMAN PALLADINO: I wasn't going on to Phase II
20 today.

21 COMMISSIONER GILINSKY: Oh, I am sorry.

22 CHAIRMAN PALLADINO: Go ahead.

23 COMMISSIONER GILINSKY: I was just going to ask about
24 the mechanics of what happens at this point.

25 CHAIRMAN PALLADINO: Let me finish.

1 Bobby, you said you wanted something repeated?

2 MR. FAULKENBERRY: This is Bob Faulkenberry: We did
3 not hear your question.

4 CHAIRMAN PALLADINO: Which question?

5 (Laughter.)

6 CHAIRMAN PALLADINO: I was just finding out whether
7 you were there and whether you had any closing comments.

8 MR. FAULKENBERRY: We are still here but we do not
9 have any closing comments at this time.

10 CHAIRMAN PALLADINO: All right. The question was
11 asked here how do we proceed. I gather a possible way is for
12 the Secretary to draft a memo to the staff which gives the
13 Commissioners an opportunity to append their comments and I guess
14 we ought to get it circulated and approved by the Commission and
15 then that would be the basis for the order by the staff.

16 Is this a reasonable way to approach it?

17 MR. BICKWIT: Either that or simply a Commission
18 statement, something with the title "Statement" at the top
19 taking your position on these three points. Then Commissioners
20 could attach their views.

21 COMMISSIONER BRADFORD: That may be better because
22 it avoids the sort of oddness of a staff document with Commissioner
23 views attached to it.

24 MR. FOUCHARD: May I play Kamikaze pilot here for
25 just a moment. If the Commission really wants to stress the

1 action it is taking it would be better for the action to come
2 under the auspices of the Commission. In that way you could also
3 attach your separate views. I am not quite sure of the mechanics
4 of getting the separate views attached to a staff notice of
5 violation, but anything is possible.

6 COMMISSIONER AHEARNE: I said I would be happy with
7 any form I can attach my views to. I didn't intend it to be
8 attached to the notice of violation. I intended it to be attached,
9 for example, if the Commission put out the order then it would
10 be with that. If the Commission put out a staff requirements
11 memo directed to the staff it would be with that. Staff
12 requirements memos end up getting wide distribution and it is
13 a public knowledge document.

14 CHAIRMAN PALLADINO: You said you didn't think it
15 was proper to have a staff requirements memo?

16 MR. BICKWIT: I don't think it is improper. It just
17 seems to me that given the elevation of this issue and the amount
18 of time you put into it that it makes sense for the Commission
19 to issue a statement.

20 CHAIRMAN PALLADINO: A statement.

21 COMMISSIONER AHEARNE: How about the notice of
22 violation.

23 MR. BICKWIT: The first paragraph of the statement
24 would be that the Commission has directed the staff to issue
25 a notice of violation.

1 CHAIRMAN PALLADINO: Have we done that before? Do
2 we have precedence?

3 MR. BICKWIT: I don't know.

4 MR. MURRAY: I don't believe so. I see nothing wrong
5 with it.

6 COMMISSIONER AHEARNE: In other words, it would be
7 a staff requirements memo but it would be in the form of a
8 statement.

9 CHAIRMAN PALLADINO: All right.

10 COMMISSIONER ROBERTS: When is this going to happen?
11 It is 3:20 on Friday afternoon.

12 COMMISSIONER GILINSKY: Well, I would urge that it
13 happen fairly soon.

14 COMMISSIONER ROBERTS: I can't hear you.

15 COMMISSIONER GILINSKY: I would urge that it would
16 happen fairly soon. This is the sort of thing one doesn't want
17 to sit on for a long time.

18 CHAIRMAN PALLADINO: What resources do we have to
19 prepare this statement?

20 COMMISSIONER AHEARNE: I will not be able to give
21 you my piece which I want attached until Monday.

22 MR. FOUCHARD: I would urge as early next week as
23 possible. I can play stiff arm over the weekend.

24 CHAIRMAN PALLADINO: Can you and Faar help prepare
25 the statement working with Sam?

1 MR. BICKWIT: All right.

2 CHAIRMAN PALLADINO: We do want to circulate it to the
3 Commission before it goes out for Commission approval.

4 (Laughter.)

5 CHAIRMAN PALLADINO: Well thank you very much, Bobby and
6 Jesse and Phillip. We are going to sign off.

7 VOICE: All right.

8 CHAIRMAN PALLADINO: Thank you for your participation.

9 MR. DIRCKS: Could I ask a question before you leave?
10 Next Tuesday you are meeting again on this issue. What did
11 you want to come out of that meeting that we haven't explored
12 today?

13 CHAIRMAN PALLADINO: I have already written mine. I
14 think it is whether or not it changes my opinion about keeping
15 Cloud as an eligible independent auditor.

16 MR. DIRCKS: This is not based on his qualifications
17 but on this incident.

18 CHAIRMAN PALLADINO: I am just trying to close the
19 November 3rd incident and I think a major issue is do we wish
20 to change the conclusion we had today.

21 MR. DIRCKS: Do you wish Faulkenberry to be in here
22 on Tuesday afternoon?

23 CHAIRMAN PALLADINO: I am going to suggest that since
24 this seemed to work reasonably well we call them again on
25 Tuesday.

1 MR. DIRCKS: All right.

2 Thank you very much.

3 The meeting is adjourned.

4 (Whereupon, at 3:25 p.m., the closed meeting
5 adjourned.)

6 * * *

NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the
COMMISSION MEETING

in the matter of: CLOSED MEETING - EXEMPTION 5 - DISCUSSION OF PHASE 1
OF THE DIABLO CANYON REPORT

Date of Proceeding: February 5, 1982

Docket Number:

Place of Proceeding: Washington, D. C.

were held as herein appears, and that this is the original transcript
thereof for the file of the Commission.

Mary C. Simons

Official Reporter (Typed)

Mary C Simons

Official Reporter (Signature)