

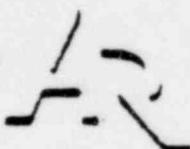
NUCLEAR REGULATORY COMMISSION

ORIGINAL

COMMISSION MEETING

In the Matter of: CLOSED MEETING - EXEMPTION 5
DISCUSSION OF DIABLO CANYON REPORT

DATE: January 27, 1982 PAGES: 1 - 68
AT: Washington, D. C.

ALDERSON  REPORTING

400 Virginia Ave., S.W. Washington, D. C. 20024

Telephone: (202) 554-2345

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DISCUSSION OF DIABLO CANYON REPORT

CLOSED MEETING - EXEMPTION 5

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

Wednesday, January 27, 1982

The Commission convened, pursuant to notice, at
10:36 a.m.

BEFORE:

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

STAFF MAKING PRESENTATIONS AT MEETING:

- S. CHILK
- L. BICKWIT
- F. REMICK
- J. MURRAY
- R. DeYOUNG
- W. DIRCKS
- H. DENTON
- J. LIEBERMAN
- E. CASE
- F. MIRAGLIA
- J. FOUCHARD

* * *

1 The four area, which I didn't mention the last
2 time, is the report itself. We did not get into any
3 discussions of intent or otherwise in this report. I
4 think what we tried to do is lay out the facts for the
5 Commission's views. There was some discussion of
6 whether the Commission might want to ask Jim Cummings to
7 bundle it up and send it over to the Department of
8 Justice to see if they want to review it for any
9 particular aspect of their operations.

10 Those are the four decision areas.

11 COMMISSIONER AHEARNE: I guess I didn't
12 remember that last one. I don't remember that one
13 coming up at all.

14 MR. DIRCKS: I know. That is what I said.

15 COMMISSIONER AHEARNE: You said there was some
16 discussion.

17 MR. DIRCKS: No. There was discussion among
18 ourselves. I said I didn't mention it the last time
19 before the Commission.

20 COMMISSIONER AHEARNE: Can I ask one
21 clarification of this. You said on Cloud "We continue
22 to regard him as the independent auditor." I didn't
23 think that we had reached that conclusion yet. So the
24 words "continue to regard" ---

25 MR. DIRCKS: Well, continue to evaluate him as

1 the independent auditor.

2 COMMISSIONER GILINSKY: Regard him as an
3 eligible candidate I suppose.

4 COMMISSIONER AHEARNE: Yes.

5 MR. DIRCKS: There are reviews right now going
6 on on his qualifications for that program.

7 COMMISSIONER AHEARNE: With that change.

8 COMMISSIONER GILINSKY: That strikes me as the
9 most time urgent question in that it would affect what
10 the company needs to do.

11 COMMISSIONER AHEARNE: Right.

12 CHAIRMAN PALLADINO: In answering that
13 question how important do you think the segment two
14 report will be?

15 MR. DIRCKS: Let me just mention that point.
16 That segment two or Phase II of the report will be
17 available by the 1st of February. From what I gather
18 Region V has uncovered no substantial problems in this
19 review of Cloud's work and no substantial areas where
20 changes were made for which adequate explanations are
21 not available. But we will get the report in on
22 February 1st.

23 CHAIRMAN PALLADINO: You are pretty confident
24 of that date?

25 MR. DIRCKS: Fairly confident, yes.

1 If you care to understand where we are in the
2 review of the program plan and the qualifications of
3 Cloud, I might ask Harold to address that point because
4 that review is going on concurrently also.

5 MR. DENTON: We have had a team of senior
6 people look at the submittal that came in and we have
7 also had a number of people out assisting Region V
8 actually reviewing the implementation of the plan. We
9 have some problems with the plan in a number of areas
10 and we have had difficulty scheduling a meeting between
11 all the parties on it.

12 Now it looks like the first meeting with the
13 company to go over their response to the Commission
14 order with regard to the independence of the contractors
15 and the adequacy of the program plan will occur either
16 the week of the 1st or the 8th, depending on when the
17 full power hearing is over.

18 CHAIRMAN PALLADINO: You say you are reviewing
19 the plan. Have you given them comments on the plan?

20 MR. DENTON: We sent them I think on January
21 8th comments on the plan itself. But then as a result
22 of our participation and Region V's participation
23 actually watching what they are doing a number of other
24 questions have come up about the adequacy of the plan
25 and whether or not it is responsive to the order.

1 CHAIRMAN PALLADINO: Have you told them that
2 you have additional questions?

3 MR. DENTON: Yes. That is the purpose of
4 trying to arrange the meeting. We have also received
5 comments from some of the parties to the proceeding,
6 what their views are on the plan. So everyone
7 recognizes the need for such a meeting and it is planned
8 to occur right after the close of the hearing.

9 COMMISSIONER AHEARNE: How tightly linked do
10 you see the plan being to Cloud? In other words, if we
11 were to conclude that Cloud is unacceptable or
12 Cloud/Teledyne are unacceptable, and as I recall
13 Teledyne was another major subcontractor that they had
14 proposed, who would conclude they are unacceptable?
15 Does that also mean that the plan is going to have to be
16 redone by some other group or is the plan transferable?

17 MR. DENTON: I think the plan itself is
18 transferable. I think what we have found in observing
19 the work that is being done out there were questions
20 related to the robustness, the technical robustness I
21 would say of Cloud's organization. It is a small group
22 and he is finding a lot of things and they take a long
23 time to run down and understand.

24 I see as one pathway that if, for example, you
25 can come to a conclusion that Cloud doesn't somehow fill

1 the bill himself he could be treated as part of the PG&E
2 company and then they would have to seek out someone
3 like Teledyne or someone that was big enough to do the
4 sort of overview that needs to be done. But I think his
5 resources are considerably restrained.

6 COMMISSIONER AHEARNE: They proposed Teledyne
7 in that package.

8 MR. DENTON: Yes.

9 COMMISSIONER AHEARNE: Have they gone ahead
10 and contracted with Teledyne?

11 MR. DENTON: That would be one of the things
12 we meet with as to who reports and what role does
13 Teledyne play.

14 MR. DIRCKS: Have they signed a contract yet?

15 MR. DENTON: I don't know for sure.

16 COMMISSIONER AHEARNE: I read in one of the
17 trade journals that PG&E had contracted with Stone and
18 Webster.

19 MR. DIRCKS: I haven't it yet, but I
20 understand they have sent it in. Phase II, going back
21 to several months ago, they were using Cloud for seismic
22 and they were going to use someone else for the
23 nonseismic reverification. I have heard that it has
24 arrived in our office but it hasn't gotten to me yet, a
25 package saying they have selected Stone and Webster for

1 the second phase of their study.

2 CHAIRMAN PALLADINO: They have told you that?

3 MR. DENTON: I hear that is what they have
4 said. I haven't seen the letter.

5 MR. CASE: Stone and Webster is under Cloud.

6 CHAIRMAN PALLADINO: What is that?

7 MR. CASE: It is Cloud and a subcontractor to
8 Cloud is Stone and Webster for Phase II.

9 COMMISSIONER GILINSKY: I believe that is
10 correct.

11 COMMISSIONER AHEARNE: Teledyne was to be a
12 subcontractor for Phase I. Are you saying that it
13 appears that they have hired the subcontractor for Phase
14 II but not for Phase I?

15 MR. MIRAGLIA: Perhaps I can amplify. I am
16 Frank Miraglia of the staff. Their December 4th
17 submittal which was Phase I which is essentially
18 directed to responding to the requirements of the
19 Commission's order has R. L. Cloud and Associates as a
20 principal contractor. As a subcontractor to Dr. Cloud
21 is Roger I believe Reedy or Robert R. Reedy,
22 Incorporated, which is directed at conducting the QA
23 review and procedural review of the QA aspects.

24 In that December 4th submittal the utility had
25 indicated that they have also acquired the services of

1 Teledyne to act as an overview and audit of the work
2 performed by Cloud and his subcontractor Mr. Reedy and
3 Associates.

4 CHAIRMAN PALLADINO: Did they hire Teledyne?

5 MR. MIRAGLIA: Well, their intent was to use
6 Teledyne. Whether the contract has actually been
7 consummated or not, I don't know.

8 CHAIRMAN PALLADINO: And PG&E expressed its
9 intent to use Teledyne?

10 MR. MIRAGLIA: Yes. There were three proposed
11 entities in their December 4th proposal, Dr. Cloud,
12 Reedy as a subcontractor of Cloud and then Teledyne as
13 an independent overview of the work performed by those
14 two entities.

15 A letter of January 13th was directed to the
16 staff and it was received late last week. We have
17 copies in the form of board of notification procedures.
18 If you don't have them you should have them shortly. In
19 that letter it indicates their intent with respect to
20 Phase II which is essentially responding to the items in
21 the staff letter that went out in conjunction with the
22 Commission's order on November 19th.

23 The proposal is essentially the same, but in
24 addition to having Cloud have Reedy and Associates as a
25 subcontractor the proposal is also to have Stone and

1 Webster as a subcontractor to conduct certain
2 reverification efforts in the nonseismic area. Teledyne
3 and everything else is exactly the same. So there are
4 the three entities of Teledyne, Reedy and Cloud as
5 before with the addition of a subcontractor as Stone and
6 Webster.

7 COMMISSIONER ROBERTS: Would Teledyne do the
8 review of the second phase?

9 MR. MIRAGLIA: Again, an overview of Dr. Cloud
10 and his subcontractors. That is how I understand the
11 reading.

12 MR. DENTON: Straightening this out would be
13 the purpose of this meeting that I talked about during
14 the week of the 1st or the 8th in trying to get the
15 relationship straight. We have gotten out of phase.
16 Cloud, as I understand, has almost accomplished all of
17 the ---

18 COMMISSIONER AHEARNE: This almost sounds like
19 reviewing a plant to see whether or not it should be
20 built after it is built. We seem to have two paths.
21 One path is examining who ought to do the work and what
22 work ought to be done, and the other path is the work is
23 already done.

24 MR. DENTON: The company recognized that they
25 hired Cloud and Teledyne and possibly Stone and Webster

1 all at their own risk and they went ahead while other
2 things were occurring around them.

3 Some of our concerns now are, for example,
4 that the program plan doesn't follow up. They exclude
5 Westinghouse, for example.

6 CHAIRMAN PALLADINO: It doesn't follow up what?

7 MR. DENTON: Their program plan, for example,
8 excludes Westinghouse from any alternate review. There
9 are a number of things both about the adequacy of the
10 program plan and about the hierarchy of review between
11 Cloud and Teledyne and the company that we don't
12 understand.

13 So in effect Cloud will have completed his
14 original effort before we get formally on the record
15 with our comments about the adequacy of that effort and
16 whether he is the right person. We will have to then in
17 phases straighten that out and get additional work done
18 or get someone to review what he has done all over again.

19 The company clearly recognized that it had the
20 potential to get that way. When they sent their letter
21 in I think the letter said they were going ahead with
22 this plan and this contractor on their own.

23 CHAIRMAN PALLADINO: Do you sense a reluctance
24 for them to meet with you promptly?

25 MR. DENTON: No. It has just been more that

1 we didn't want to interfere with some of the other
2 things that were going on. So it is just a need to
3 straighten out the statements that were made and take
4 the depositions. Then the full power hearing had gotten
5 schedule and the need for most parties to prepare for
6 that. That is due to come to a close any day now and
7 that would facilitate getting back. Then we had the
8 holidays falling in there.

9 MR. DIRCKS: I think you had a conflict of
10 availability of the people from the Governor's office
11 that wanted to submit comments and participate in some
12 of these reviews.

13 MR. DENTON: We do now have the Governor's
14 comments on the plan and that will make the meeting most
15 productive.

16 CHAIRMAN PALLADINO: And what?

17 MR. DENTON: That would make the meeting
18 productive to have those in writing.

19 COMMISSIONER AHEARNE: And you say you do or
20 do not?

21 MR. DENTON: We do.

22 CHAIRMAN PALLADINO: Somehow the fact that
23 PG&E is going ahead does seem to complicate the
24 situation. Is it time to sit down with the PG&E
25 management and make sure that whatever strategy they are

1 following is not conflicting with what we are trying to
2 do to get approval of the plan and the independent
3 auditors?

4 MR. DENTON: Well, the Governor had requested
5 I think on December 17th that we order Cloud's efforts
6 suspended. This was a letter directed to the Commission.

7 COMMISSIONER GILINSKY: Well, he sent a couple
8 of telegrams.

9 MR. DENTON: That we haven't replied to. I
10 think maybe after today's meeting if you come to some
11 conclusions in this area would be the time at least with
12 regard to the second phase, the Stone and Webster phase,
13 which hasn't had time to begin, we could start out on a
14 new track on that one.

15 CHAIRMAN PALLADINO: Would such action better
16 get the attention of the company to try and develop a
17 resolution that follows the instructions we had given?

18 MR. DENTON: I think from our standpoint it
19 certainly would make it simpler to clear the issues up
20 with the contractors and their relationships and the
21 scope of the effort before it began.

22 COMMISSIONER AHEARNE: To follow up on the
23 Chairman's question, have you concluded the company is
24 reluctant to have the scope include what you wanted?

25 MR. DENTON: No.

1 COMMISSIONER AHEARNE: I didn't think so. I
2 think the complication is just it is out of phase.

3 MR. DIRCKS: The complication seems to be the
4 role of Cloud in this whole procedure.

5 MR. DENTON: And the need to involve the other
6 parties who wanted to have enough time to review the
7 program plan before they could comment and that sort of
8 thing.

9 COMMISSIONER GILINSKY: Well, there is no
10 complication if you regard these efforts as the company
11 simply trying to get on top of the facts as well as they
12 can for themselves.

13 The complication is as they keep involving
14 more and more groups in this effort the number of
15 eligible other dependent groups diminishes and there may
16 in the end be no one left.

17 (Laughter.)

18 COMMISSIONER AHEARNE: They involve people who
19 otherwise would have been viewed as eligible and who may
20 still be eligible.

21 COMMISSIONER GILINSKY: That is really the
22 complication. I mean after all they are free to
23 investigate this problem as much as they want with
24 anybody they want to hire.

25 COMMISSIONER AHEARNE: Yes. That is the

1 difficulty with stopping them.

2 COMMISSIONER GILINSKY: In fact, I think it
3 makes a lot of sense from their point of view to try and
4 get on top of the problem as fast as they can and as
5 well as they can.

6 COMMISSIONER AHEARNE: I guess the real
7 complication is the slowness with which we grind through
8 the process and that slowness I think is probably
9 directly attributed to this problem that came up.

10 COMMISSIONER GILINSKY: The what now?

11 COMMISSIONER AHEARNE: The slowness has really
12 been complicated by this problem that came up.

13 CHAIRMAN PALLADINO: What problem?

14 COMMISSIONER GILINSKY: The November 3rd, the
15 statements and so on.

16 MR. DIRCKS: Well, if you look at it as a
17 series of questions that have been asked, the first
18 question started off as was the plant built as designed
19 to reverification. In order to get to that question
20 there was a question of an independent auditor and
21 looking at how independent that auditor was in his
22 program plan. That was complicated by the role of other
23 parties that wanted to look and participate in the
24 answering of that question. Then what diverted us from
25 that activity was this other issue.

1 COMMISSIONER GILINSKY: This is like level
2 three. We seem to go through these levels in a lot of
3 instances.

4 MR. DENTON: And the Cloud reverification
5 effort has turned up a number of additional technical
6 questions such as the spectra for the auxiliary building
7 and spectra for the intake structure. So even
8 technically the effort of Cloud has unraveled and forced
9 us to follow down those paths to stay abreast of what
10 Cloud is doing.

11 COMMISSIONER GILINSKY: He was going to hire
12 people from outside of his organization from a number of
13 other groups that were mentioned. Has he not done that?

14 MR. DENTON: I don't know where that stands.

15 CHAIRMAN PALLADINO: Forrest, you had a
16 comment.

17 MR. REMICK: Yes. The staff has indicated
18 they have a problem with the plan. Conceivably if they
19 do, the instructions to Cloud or to PG&E is that those
20 problems might be changed with time.

21 It seems to me that one of the important
22 questions is the independence of Cloud. Now in
23 information that the staff requested I think they were
24 asked to address the question of independence and I
25 think the staff has drafted proposed criteria to

1 determine independence.

2 I was wondering if that could be addressed, do
3 they meet the criteria on independence, because it seems
4 to me that one of the most difficult and embarrassing
5 predicaments is this goes done the line and then
6 subsequently if Cloud is found not to meet the
7 independence test it throws presumably the whole thing
8 out. It seems to me that that is one of the crucial
9 near-term decisions is are they considered independent
10 or not.

11 I realize it has been held up by the
12 investigation that has been going on, but there is the
13 question of do they meet the staff's proposed
14 independence status.

15 CHAIRMAN PALLADINO: It has also been held up
16 in that I wasn't quite in agreement with nuances of some
17 of the points. I gather there has been a mixture of
18 reactions from Commission offices. A redraft was
19 prepared yesterday that I guess is going to be discussed
20 with the various Commission offices.

21 COMMISSIONER GILINSKY: What are you referring
22 to now?

23 CHAIRMAN PALLADINO: These were the criteria
24 that you listed in I think it was the Ottinger/Dingell
25 letter.

1 COMMISSIONER GILINSKY: I see.

2 MR. CASE: In direct answer to Forrest's
3 question, we don't have enough information to know
4 whether it would satisfy those proposed criteria in the
5 Dingell letter.

6 MR. DENTON: We have not pressed that point
7 pending a final decision about what the proper criteria
8 were. That really wasn't the issue today.

9 MR. DIRCKS: The issue today is we will
10 continue to evaluate and I think that is important. I
11 guess the question we are asking is was there anything
12 in the Commission's mind that was contained in this
13 investigation that would now lead you to a decision on
14 Cloud?

15 CHAIRMAN PALLADINO: Vic indicated that he
16 felt this was the most important so far as time was
17 concerned. I asked earlier to what extent will segment
18 two of the report bear on the consideration of Cloud as
19 an eligible candidate for independent auditor.

20 MR. DIRCKS: We will have the report by
21 February 1st, but the early indications that we are
22 getting from the region is that that report will show
23 that there have been no substantive changes made in the
24 Cloud report that could not be explained
25 satisfactorily.

1 COMMISSIONER ROBERTS: That is not exactly
2 answering the question the Chairman asked.

3 MR. DIRCKS: In a way it does. This report
4 probably will show that Cloud made changes in the report
5 but the reasons for the changes were technically
6 explainable.

7 COMMISSIONER AHEARNE: And supportable?

8 MR. DIRCKS: Explainable and supportable. In
9 that sense I gather you would follow to a conclusion
10 that the independence of Cloud has not been affected.

11 MR. DENTON: I think that addresses the
12 question of did prior editorial control get exercised by
13 the company over Cloud and that seems to be coming out
14 that the answer is negative based on the initial look at
15 that.

16 CHAIRMAN PALLADINO:

17

18

19 COMMISSIONER BRADFORD:

20

21

22

23

24

25

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

CHAIRMAN PALLADINO:

1 COMMISSIONER BRADFORD:

2

3

4 CHAIRMAN PALLADINO:

5

6 COMMISSIONER BRADFORD:

7

8 CHAIRMAN PALLADINO:

9

10

11 COMMISSIONER GILINSKY:

12

13

14

15

16

17

18

19 CHAIRMAN PALLADINO:

20 COMMISSIONER ROBERTS:

21

22 CHAIRMAN PALLADINO:

23 COMMISSIONER ROBERTS:

24

25 COMMISSIONER GILINSKY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMISSIONER ROBERTS:
COMMISSIONER GILINSKY:

COMMISSIONER ROBERTS:
COMMISSIONER GILINSKY:
MR. DENTON:

MR. DeYOUNG-

MR. DENTON:

COMMISSIONER GILINSKY:

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1 COMMISSIONER AHEARNE: It is very hard to read
2 into what happened at a meeting by reading the
3 transcript. We have all, I am sure, seen that problem
4 in many transcripts. But from reading the transcript I
5 can't frankly see into it a lot of what we are now
6 extracting out of it. For example, I just don't get
7 that clear question that we were focusing on how
8 independent are you, are you sending drafts or any of
9 that.

10 COMMISSIONER GILINSKY: Why do you have to ask
11 somebody whether you are sending drafts?

12 COMMISSIONER AHEARNE: Vic, all I am saying is
13 that I don't see that that was the sense of the meeting
14 from the transcript.

15 COMMISSIONER GILINSKY: But you are talking
16 about reports. As Peter said earlier, it is much more
17 important if you are giving somebody drafts. The final
18 report is the final report.

19 COMMISSIONER AHEARNE: That is not the issue.

20 COMMISSIONER GILINSKY: You know, that doesn't
21 get changed. If they have it for a few days so what?

22 COMMISSIONER AHEARNE: All I am saying is that
23 I read the transcript ---

24 COMMISSIONER GILINSKY: That is a draft. That
25 is a big deal.

1 CHAIRMAN PALLADINO: One at a time.

2 COMMISSIONER AHEARNE: When I read the
3 transcript of the meeting ---

4 COMMISSIONER GILINSKY: I thought I was the
5 one.

6 COMMISSIONER AHEARNE: --- I don't see the
7 message that you people are drawing out of it.

8 COMMISSIONER GILINSKY: "You people" includes
9 who now?

10 COMMISSIONER AHEARNE: That includes you and
11 Harold a moment ago. I do not see reading through that
12 that was the focus of the meeting. So I can't reach
13 that same level of conclusion.

14 I admit that when I first read the extracted,
15 just those short portions of the transcript, yes, it was
16 very disturbing. But when I read the whole meeting
17 transcript and when I read the interviews I don't come
18 away with that same view.

19 CHAIRMAN PALLADINO: John, are you saying that
20 we need more information before you address this?

21 COMMISSIONER AHEARNE: No. I am not.

22 CHAIRMAN PALLADINO:

23

24 COMMISSIONER AHEARNE:

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIRMAN PALLADINO:

COMMISSIONER AHEARNE:

CHAIRMAN PALLADINO:

COMMISSIONER AHEARNE:

CHAIRMAN PALLADINO:

(Laughter.)

COMMISSIONER AHEARNE:

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

CHAIRMAN PALLADINO:

19

20

21

22

23

24

25

COMMISSIONER BRADFORD:

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

CHAIRMAN PALLADINO:

17

18

19

20

21

22

23

COMMISSIONER BRADFORD:

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIRMAN PALLADINO:

MR. DeYOUNG:

CHAIRMAN PALLADINO:

1

1 COMMISSIONER GILINSKY: Let's see, now that
2 the staff knows what we think could we find out what the
3 staff thinks?

4 MR. DIRCKS: I think what we have done is to
5 provide you with everything that you need.

6 COMMISSIONER GILINSKY: A Commissioners' kit.

7 (Laughter.)

8 COMMISSIONER BRADFORD: You did provide a
9 package with the citation you would issue with regard to
10 the material false statement. "Citation" is the wrong
11 word, but anyway it is the document that you issue. You
12 concluded that it was severity level three. Which
13 policy were you using.

14 MR. DeYOUNG: It is the policy that is now in
15 effect and not the one that you would have yet to
16 approve.

17 COMMISSIONER AHEARNE: That is the interim
18 enforcement policy.

19 MR. DeYOUNG: The interim enforcement policy.

20 COMMISSIONER BRADFORD: How did you come out
21 with a level three in that context?

22 MR. DeYOUNG: I would rather turn this over to
23 the Chief of the Enforcement Branch, Jim Lieberman.

24 MR. LIEBERMAN: Severity levels one, two and
25 three violations are significant violations. Severity

1 levels one and two are considered highly significant.

2 COMMISSIONER GILINSKY: What is one?

3 MR. LIEBERMAN: Severity one?

4 COMMISSIONER GILINSKY: Yes. I mean one and
5 two can't be the same.

6 MR. LIEBERMAN: Under the interim policy the
7 distinction between severity level one and two is more
8 like in severity one that a problem actually occurred.
9 A system was called upon to work and it didn't work and
10 it was needed to work. Whereas severity level two is a
11 system would not work but it was not called upon to work.

12 COMMISSIONER GILINSKY: That sort of criterion
13 doesn't seem to apply to what we are talking about.

14 MR. LIEBERMAN: That is the general
15 distinction from severity level one to severity level
16 two. Severity level one is that much more important
17 than severity level two.

18 What we have been doing in the material false
19 statement area under the interim policy is we have
20 concluded that material false statements by their very
21 nature are significant and we have been calling them
22 severity level three's.

23 COMMISSIONER GILINSKY: No matter what they
24 are?

25 MR. LIEBERMAN: If there was deliberateness

1 involved then we would increase it to a higher level,
2 one or two. It would generally be the level of the
3 underlying substance of the material.

4 COMMISSIONER GILINSKY: What if it involves a
5 reckless disregard for the truth?

6 MR. LIEBERMAN: I consider that wilfull within
7 the meaning of the Administrative Procedure Act and I
8 would escalate that to at least a two level.

9 COMMISSIONER GILINSKY: What if it involves
10 just gross negligence on the part of the company in not
11 seeking out the truth and conveying it to us?

12 MR. LIEBERMAN: Gross negligence and
13 recklessness, these terms are terms of art that
14 different people, different judges have different
15 interpretations of what these terms mean. I have tried
16 to stay away from the different categories of negligence
17 because I think it is very confusing.

18 COMMISSIONER GILINSKY: What you are saying is
19 that it can never be a one in the way you are viewing
20 it. If it is deliberate it is a two and if it is
21 something else it is a three. Is that a fair
22 characterization.

23 MR. MURRAY: I think it would be a one if
24 someone withheld information deliberately covered up
25 with some guilty purpose in mind. That would be the

1 criminal type thing.

2 MR. LIEBERMAN: I said at least a two.

3 MR. DeYOUNG: He said at least a two.

4 COMMISSIONER BRADFORD: What was Pilgrim?

5 MR. LIEBERMAN: Pilgrim was a severity level
6 three.

7 COMMISSIONER AHEARNE: Could I ask a question
8 on the violations rule. You have embedded in it, you
9 say at the November 3rd meeting the NRC staff "inquired
10 of the licensee whether the licensee had received
11 reports dealing with the seismic reverification study
12 being conducted by R. L. Cloud and Associates,
13 Incorporated." I wonder whether you could point to me
14 in the transcript where we inquired whether the licensee
15 had received reports dealing with the seismic
16 reverification study?

17 MR. LIEBERMAN: I was referring to Mr.
18 Denton's statement on page 215. "Do we get the same
19 reports as he gives you?" I read into that do you have
20 reports concerning the reverification program.

21 COMMISSIONER AHEARNE: The following sentence
22 says: "The licensee" and I guess that is "responded
23 indicating that no written reports existed." Where does
24 he say that? I gather since you have just pointed to
25 that question then it must be Mr. Maneatis saying you

1 just got it.

2 MR. LIEBERMAN: That is correct, together with
3 Mr. Norton on the next page saying: "I might add we do
4 not have it. It is not a question of us reviewing it."

5 COMMISSIONER AHEARNE: Wait, wait, wait.
6 Let's talk to "it" there. That is Eisenhut asking when
7 will we be expecting to see that short-term report.

8 COMMISSIONER GILINSKY: But you have Norton's
9 statement saying that what he had in mind was any
10 report. He wasn't fooling around. He wasn't dancing
11 around and hiding behind draft reports.

12 COMMISSIONER AHEARNE: But the "it" that was
13 basically asked for there. Eisenhut asked ---

14 COMMISSIONER GILINSKY: Look, it is clear.
15 Norton, if he had known he says he would have told the
16 NRC. Furbish recognizes the difference. He said if he
17 had know about it he would have told the NRC. They
18 understood what the question meant and so did everybody
19 else.

20 CHAIRMAN PALLADINO: I was trying to
21 understand John's point with regard to ---

22 COMMISSIONER AHEARNE: I guess my basic point
23 is that we have now finally work through this transcript
24 and I guess I was quite disturbed when I read now that
25 we were put out. I think it is misleading.

1 CHAIRMAN PALLADINO: What was wrong with
2 Norton's statement?

3 COMMISSIONER AHEARNE: We have two sentences
4 here. "We inquired whether the licensee had received
5 reports dealing with the seismic reverification study."
6 The next sentence is "The licensee responded indicating
7 that no written reports existed."

8 "I asked what did the first question refer
9 to?" That referred to Denton asking do we get the same
10 reports he gives to you? I would have concluded reading
11 this paragraph that the licensee responded had to refer
12 then to the question we just asked. But it doesn't. It
13 refers to Mr. Norton who is now answering a different
14 question, namely, Mr. Eisenhut's question.

15 COMMISSIONER GILINSKY: But Norton understood
16 what he was being asked.

17 CHAIRMAN PALLADINO: Even though they said
18 they referred to one question, I thought there were
19 several places where the staff inquired of the licensee
20 whether the licensee had received reports.

21 COMMISSIONER AHEARNE: I don't think so.

22 CHAIRMAN PALLADINO: One of them was Eisenhut.

23 COMMISSIONER AHEARNE: I don't think so.

24 COMMISSIONER GILINSKY: He understood the
25 question to be that way. He understood that that is

1 what he was asked.

2 COMMISSIONER AHEARNE: I am not sure what
3 Norton understood. I know what Norton said in his
4 testimony.

5 CHAIRMAN PALLADINO: I wonder if I could
6 follow up with my question. Read Eisenhower's question
7 again.

8 COMMISSIONER AHEARNE: "When will we be
9 expecting to see that short-term report?" Bob Cloud
10 said, "It is essentially complete."

11 CHAIRMAN PALLADINO: All right. What did
12 Norton respond to that?

13 COMMISSIONER AHEARNE: Norton said: "Dr.
14 Cloud, could you answer that." Then Cloud said: "We
15 will be turning it in either this week or next." Norton
16 then said: "I might add we do not have it."

17 CHAIRMAN PALLADINO: That is the point. That
18 is the answer which is being referred to here I
19 believe. "The licensee indicated that no written
20 reports existed." That implies that no written report
21 exists.

22 COMMISSIONER GILINSKY: Joe, you know what you
23 are saying would make some sense if we were dealing with
24 Norton who was saying wait a minute, when you asked thus
25 and such I had in mind the following, but that isn't the

1 case. He understood the question and I think everyone
2 else understood the question.

3 COMMISSIONER AHEARNE: No, I don't think he
4 understood the question at all. I think that he didn't
5 know very much at all. He had done very poor
6 preparation for what the situation was, but he was out
7 there speaking for the company. He heard Cloud say the
8 report isn't there. So then he made a very strong point
9 that no, it isn't here yet. I think his words flow
10 specifically from Cloud just having said we will turning
11 it into you this week or next.

12 COMMISSIONER BRADFORD: I am not sure about
13 the point on poor preparation, John. I thought he had
14 asked this question on a Sunday and had been told then
15 by PG&E.

16 COMMISSIONER AHEARNE: One question, a
17 fleeting question.

18 COMMISSIONER BRADFORD: Well, but how many
19 questions do you ask when you get what you think is a
20 clear answer? You go on to the next topic. I know a
21 lot of your feelings about lawyers, but one thing a
22 lawyer wouldn't do is cross-examine his own client.

23 (Laughter.)

24 COMMISSIONER BRADFORD: I mean if he asked his
25 client if they had ---

1 COMMISSIONER AHEARNE: He wouldn't do his
2 probing questioning of his own client in preparation?

3 COMMISSIONER BRADFORD: Of his own client? No.

4 COMMISSIONER AHEARNE: If he wants to really
5 know well what the situation is?

6 COMMISSIONER BRADFORD: Why in the world would
7 he expect his own client to lie to him?

8 COMMISSIONER AHEARNE: You mean if the lawyer
9 asks questions it is because he thinks he is being lied
10 to and not to get more information?

11 COMMISSIONER BRADFORD: I would say when a
12 lawyer is dealing with his client for the most part he
13 accepts what he is told.

14 CHAIRMAN PALLADINO: I think we are getting a
15 little bit off the point. The licensee responded
16 indicating that no written reports existed. Now in my
17 mind the licensee did respond that no written reports
18 existed. Whether he responded expressly to the question
19 as raised by the staff here is a little different, but I
20 certainly in reading that transcript got the feeling
21 that, hey, I had indicated that no written reports
22 existed. Now it may not be exactly tied in the way this
23 is tied in.

24 COMMISSIONER AHEARNE: I was prepared to have
25 that conclusion when I first read the extracts of the

1 transcript a month or so ago. As a result of the
2 investigation I reached a different conclusion and I
3 think that paragraph is misleading in the same sense
4 that this transcript is misleading.

5 COMMISSIONER GILINSKY: But look, John, not
6 on ly did Norton understand the question but Furbish
7 understood the question and he says so. He said that
8 had he know that there were draft reports he would have
9 spoken up. He understood perfectly well. Now, you
10 know, he explains it away in various ways, but he
11 understood the question perfectly well and he understood
12 his obligations.

13 To some extent even the president understood
14 it. His statement is inconsistent, but at least at one
15 point he said that he didn't think it was a material
16 false statement in considering what the people knew at
17 the time or something like that, what the group knew.
18 Well, anyway. And we all understood it that way. I
19 don't think anybody walked away from the meeting saying,
20 ah hah, there are no final reports but we didn't ask
21 about draft reports. Reports are reports. All of these
22 are draft reports.

23 CHAIRMAN PALLADINO: John, can I ask you, are
24 you concluding there was no material false statement?

25 COMMISSIONER AHEARNE: That is correct.

1 CHAIRMAN PALLADINO: Or are you concluding
2 that it wasn't serious enough to pursue it?

3 COMMISSIONER AHEARNE: I guess in my limited
4 experience with this terminology here I had seen that
5 there were gradations. I thought material false
6 statement was yes or no.

7 CHAIRMAN PALLADINO: Then the second question
8 is: You can have a material false statement; yes or
9 no? Then I think the gradations come in when you want
10 to decide what to do about it.

11 COMMISSIONER AHEARNE: To me I must admit that
12 material false statement as a phrase is still kind of
13 fuzzy. It doesn't have crystal clarity so that I can
14 look at something and say yes or no on it. In general
15 my impression here is that I would not reach the level
16 that this is a material false statement.

17 About the most I would have gone to is writing
18 letters of censure, if you would like, to ---

19 COMMISSIONER GILINSKY: Well, let's see, why?

20 CHAIRMAN PALLADINO: That is where the
21 gradation comes in, what you do about it.

22 COMMISSIONER GILINSKY: Do you think it is an
23 immaterial false statement or do you think it is a
24 material false statement?

25 COMMISSIONER AHEARNE:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMISSIONER GILINSKY:

COMMISSIONER AHEARNE:

COMMISSIONER GILINSKY:

COMMISSIONER AHEARNE:

COMMISSIONER GILINSKY:

COMMISSIONER AHEARNE:

1

2

3

4

5

6

7

8

9

10 COMMISSIONER GILINSKY:

11

12 COMMISSIONER AHEARNE:

13 COMMISSIONER BRADFORD:

14 (Laughter.)

15 CHAIRMAN PALLADINO:

16

17

18

19 Now I took time to go through the VEPCO
20 decision and it seemed to have pretty good sense about
21 it and it would convince me that this was a material
22 false statement. These two sentences aren't quite
23 right, but I come down to whether there was a material
24 false statement. Now the question is what do I do about
25 it. As I say, I have trouble deciding yet where to go

1 on that.

2 The staff I gather says, and don't let me put
3 words in your mouth, but I am implying that you believe
4 we ought to take action on a civil penalty in this
5 regard; is that right?

6 MR. DeYOUNG: Do you want my view?

7 CHAIRMAN PALLADINO: Yes.

8 MR. DeYOUNG:

9

10

11

12

13

14

15

16 CHAIRMAN PALLADINO:

17

18

19 MR. DeYOUNG:

20 COMMISSIONER GILINSKY:

21

22

23

24 COMMISSIONER AHEARNE:

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMISSIONER GILINSKY:

COMMISSIONER AHEARNE:

COMMISSIONER GILINSKY: _____

COMMISSIONER AHEARNE:

CHAIRMAN PALLADINO:

COMMISSIONER AHEARNE:

COMMISSIONER GILINSKY:

COMMISSIONER AHEARNE:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CHAIRMAN PALLADINO:

COMMISSIONER AHEARNE:

it.

CHAIRMAN PALLADINO:

COMMISSIONER ROBERTS:

1

COMMISSIONER GILINSKY:

2

3

4

COMMISSIONER ROBERTS:

5

6

7

COMMISSIONER GILINSKY:

8

9

COMMISSIONER ROBERTS:

10

11

COMMISSIONER GILINSKY:

12

13

COMMISSIONER ROBERTS:

14

15

COMMISSIONER GILINSKY:

16

17

COMMISSIONER ROBERTS:

18

19

COMMISSIONER GILINSKY:

20

21

COMMISSIONER ROBERTS:

22

23

24

25

1 COMMISSIONER GILINSKY:

2

3 COMMISSIONER ROBERTS:

4

5

6 COMMISSIONER GILINSKY:

7

8

9 COMMISSIONER BRADFORD:

10

11 CHAIRMAN PALLADINO:

12

13

14

15

16

17 MR. DeYOUNG:

18 COMMISSIONER BRADFORD: Dick, can I ask it
19 another way. Supposing that this were a run-of-the-mill
20 case, that the decision since it is severity level three
21 were with you and not with us, would you impose a civil
22 penalty?

23 MR. DeYOUNG: It might come out that we would
24 propose notice of violation without the civil penalty.
25 But it depends and you have to look at each case. I

1 think we need to get the attention of this company some
2 way.

3 COMMISSIONER BRADFORD: Harold, do you feel
4 that NRR was in fact misled in a material way in this
5 matter?

6 MR. DENTON: Prior to the meeting I have been
7 having a number of discussions with other parties,
8 including Herb Brown, the Governor's representative, and
9 with Mr. Maneatis by phone, and we have talked about the
10 kinds of concerns that were beginning to surface around
11 this time.

12 I certainly left the meeting with the
13 impression that there had been no reports exchanged. So
14 to that extent I was misled in that there had been a
15 draft report.

16 COMMISSIONER BRADFORD: I must say that I come
17 out, and one could debate the level, but I come out on
18 the side of a penalty here, especially because if it
19 weren't for the fact that somebody somehow got word of
20 these drafts to some Congressmen's offices we would
21 still today be in ignorance of their existence. It is
22 not as though the company would have eventually gotten
23 its act together and decided that they had misled the
24 NRC. This could have gone on practically indefinitely.

25 COMMISSIONER AHEARNE: Could I ask though that

1 if let us suppose we didn't find out about the drafts
2 and the report was sent in, if as Region V has been
3 reported as saying that there was no substantive change,
4 I am having difficulty understanding the relevance then
5 of the fact that there had been drafts.

6 COMMISSIONER BRADFORD: The issue of a
7 substantive change doesn't necessarily matter because if
8 in fact all of the changes are technically justified and
9 there were no changes of another sort rejected it really
10 doesn't tell you very much about the relationship
11 between Cloud and PG&E.

12 It seems to me, as Harold as indicated before,
13 that if he had gotten an accurate answer at that point
14 in time he would have probed further and rules would
15 have been set up surrounding the exchange of drafts and
16 the documenting of changes and the process would have
17 proceeded in a more orderly fashion as far as being able
18 to trace the origins and the nature of changes. That
19 may or may not manifest itself in actual changes in
20 conclusions regarding reports and hardware in the plant.

21 It is pretty hard to go back and create an
22 alternative chain here in the way that one could in
23 Pilgram where there was an operating plant and a
24 specific piece of hardware. But it is clear I think
25 from what Harold said that he would have set up a

1 different set of procedures had he been aware that the
2 drafts were being exchanged.

3 COMMISSIONER AHEARNE: That is entirely
4 possible. I will point out that it is not completely
5 obvious that we would have immediately been able to
6 reach a decision on what independence was because we
7 found out there had been drafts since it is now many
8 months ---

9 COMMISSIONER BRADFORD: No, I agree with that.

10 CHAIRMAN PALLADINO: It isn't whether or not
11 they would have but could they have, and I think they
12 could have.

13 COMMISSIONER AHEARNE: True.

14 CHAIRMAN PALLADINO: Can I ask Dick a
15 question. You said another possible action is a notice
16 of violation. Suppose we find a material false
17 statement. Is a notice of violation ---

18 MR. DeYOUNG: Without a civil penalty.

19 CHAIRMAN PALLADINO: Without a civil penalty.
20 What form does that take? If they do violate it, then
21 it scolds them for having done it?

22 MR. MURRAY: Corrective action.

23 MR. DeYOUNG: Just a corrective action
24 requirement.

25 CHAIRMAN PALLADINO: That comes closer to my

1 own leaning. It seems to me that there has been a
2 material false statement. I think I made this point at
3 the end of the last time that I don't think it is all
4 that great, although I hate to be misled at any point in
5 the operation.

6 I was using as a reference well, we put
7 \$250,000 on Boston Edison for a material false
8 statement, but there actual safety systems were
9 involved. I agree with you they need to have their
10 attention called to the matter, but I am not sure I am
11 ready yet to go to a civil penalty. I had not thought
12 of a notice of violation and that may be a point that at
13 least represents where I come out on my leaning.

14 COMMISSIONER GILINSKY: You mentioned this
15 before, Joe, about the relative importance of this case
16 and the Pilgrim case. I must say I come out
17 differently. I realize the other one involves a
18 hardware system the importance of which I think is not
19 entirely clear to me.

20 Here you are talking about the top brass of
21 the company coming down all of them before you and
22 telling you one thing when another is true. While there
23 is not, you know, a specific change in a hardware system
24 that is at issue, but what is at issue is just the whole
25 regulatory process, the whole relationship with them and

1 with everybody else out there.

2 I realize you are saying that you think it was
3 a false statement and it was material, but if people can
4 do that then they can do anything.

5 CHAIRMAN PALLADINO: I wasn't letting them off
6 free.

7 COMMISSIONER GILINSKY: No, no, I understand
8 that. But what I was saying is that to my mind just the
9 fact that a hardware system, an actual safety system was
10 specifically involved, the detail on it, doesn't to my
11 mind make the Pilgrim case more important in the overall
12 scheme.

13 CHAIRMAN PALLADINO: Well, I thought it did.

14 COMMISSIONER GILINSKY: No, I understand that,
15 and I was just telling you why I thought otherwise.

16 COMMISSIONER AHEARNE: The Pilgrim case though
17 was so much clearer.

18 CHAIRMAN PALLADINO: Yes.

19 COMMISSIONER AHEARNE: I still argue that this
20 just isn't that clear.

21 COMMISSIONER GILINSKY: John, on the one hand
22 you are not sure whether it is false and on the other
23 hand you want to censure people. I must say I don't
24 understand your point of view.

25 COMMISSIONER AHEARNE: When I read the

1 transcript all that you people are reading into it just
2 doesn't come out.

3 COMMISSIONER GILINSKY: Well then why do you
4 want to censure anybody?

5 COMMISSIONER AHEARNE:

6

7

8

9 COMMISSIONER GILINSKY:

10

11 COMMISSIONER ROBERTS:

12

13 MR. BICKWIT:

14 COMMISSIONER BRADFORD:

15

16 (Laughter.)

17 COMMISSIONER ROBERTS:

18

19 COMMISSIONER GILINSKY: Wait a minute, you
20 didn't let me finish the sentence.

21 (Laughter.)

22 COMMISSIONER AHEARNE: You didn't let me
23 finish what I was saying either.

24 (Laughter.)

25 COMMISSIONER GILINSKY: Why don't we stop

1 there.

2 COMMISSIONER AHEARNE: The other point that I
3 tried to get across is that I do think that what we did
4 see here tracks with what Dick said is characteristic of
5 the company and I think that is an issue that we ought
6 to get to and I don't think that trying to, to me you
7 use some convoluted logic to get a penalty out of this
8 issue.

9 I think the message that comes across there
10 speaks more about the way we are willing to after the
11 fact look at something as opposed to getting a message
12 to the senior people in the company that the way that
13 that whole operation is running is wrong. I thought
14 that was the point that Dick made last time which I felt
15 was much more significant. I still think that you ought
16 to some way reach to either the CEO or the chairman of
17 the board of the company.

18 COMMISSIONER BRADFORD: That same point cost
19 Pilgrim what, \$200,000, that the company wasn't running
20 right.

21 COMMISSIONER AHEARNE: But there is was a lot
22 more extensive.

23 CHAIRMAN PALLADINO: You are really addressing
24 more the third point by writing the censure letters to
25 getting management, and I forgot how you put it, to get

1 management more on track in what they ought to be doing.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMISSIONER GILINSKY:

COMMISSIONER AHEARNE:

COMMISSIONER GILINSKY:

COMMISSIONER BRADFORD:

1
2
3
4
5
6

7 COMMISSIONER AHEARNE: I will try not to make
8 this point again because either I am wrong or it is not
9 being understood. A lot of the discussion today would
10 lead me to conclude that we are talking about a November
11 3rd meeting and the subject was are there draft reports
12 or what type of report is being written and when is it
13 going to be submitted. Maybe those few who were at the
14 meeting understood that was the topic. That is not what
15 the transcript comes across as.

16 COMMISSIONER GILINSKY: You are making a
17 distinction between a draft report and a report?

18 COMMISSIONER AHEARNE: It is a side point as
19 far as I can tell embedded in this.

20 COMMISSIONER BRADFORD: One of the reasons
21 though that it takes up so small a space in the
22 transcript was that Harold got what he thought was a
23 conclusive answer to his question. The reason that that
24 point wasn't discussed any further was that Harold was
25 told that there was nothing there to discuss. So that

1 instead of a five-page discussion it is a two-page
2 discussion.

3 COMMISSIONER AHEARNE: Except that it is
4 almost 100 pages into the transcript that the issue
5 comes up.

6 COMMISSIONER BRADFORD: I am not saying it is
7 the major point. I think it is an important one. But
8 you know when you look at Commission meetings here they
9 wander some.

10 (Laughter.)

11 COMMISSIONER BRADFORD: But the Commission
12 assumes that when it asks the staff for information on
13 any particular point in the course of those wanderings
14 that it is getting an accurate answer and that if some
15 of the people at the table have misgivings they will
16 speak up on that.

17 CHAIRMAN PALLADINO:

18

19

20

21

22

23

24

25

1

2

COMMISSIONER BRADFORD:

3

4

5

6

7

COMMISSIONER AHEARNE:

8

COMMISSIONER BRADFORD:

9

10

COMMISSIONER GILINSKY: I want to amend my
11 response to John and say at least that I don't believe
12 some of them anyway when I said that they didn't think
13 it was misleading.

14

I did want to say something about the fact
15 that these exchanges didn't take a lot of time. Norton
16 responded very forcefully. He said, you know, I resent
17 this line of questioning. I was there and, you know, I
18 don't remember if he banged the table, but it was a very
19 forceful and indignant response, you know, who do you
20 think we are? What sort of people do you think we are?
21 We don't do these sorts of things. I told you that you
22 were going to get it at the same time I do -- we do.

23

I certainly walked away thinking, well, you
24 know, they just decided that that is the way they are
25 going to do it and they are annoyed. In fact, I have to

1 be honest that I thought Harold was a little forward in
2 pressing them. I mean, here they were saying, you know,
3 they are upstanding citizens and so on and indignant and
4 they were going to play it straight and it turned out it
5 was not that way at all.

6 COMMISSIONER AHEARNE: I have seen Norton in
7 action so I could imagine how he answered you.

8 CHAIRMAN PALLADINO: Incidentally, I have some
9 other little problems but I don't want to address them
10 now.

11 I guess at the moment I personally am not
12 ready to make a decision on this. I don't know where
13 you are. I do feel though having spent a bit of time
14 last night trying to understand the material and going
15 through the statements that I did come down that there
16 was a material false statement.

17 I didn't come down to where it was in anywhere
18 near the same severity class as the Pilgrim situation.
19 I didn't know where to come down. Now that you have
20 mentioned the notice of violation, I guess I should have
21 remembered that that is a possible out but I didn't come
22 up with that last night.

23 With regard to whether Cloud should continue
24 as a eligible auditor, I guess I don't see the evidence
25 that says he should not be at this time an eligible

1 auditor.

2 I do think though with regard to your third
3 point that management needs some admonition with regard
4 to getting on the ball.

5 I gather on the first issue we are split and I
6 guess on the second issue we are split. I don't know
7 where we are on the third. But we are going to have to
8 come up with a decision. I would hate to rush it
9 because I think it would be better if we took another
10 couple of days if we can. The only reason I say another
11 couple of days is I don't think we can fit it in
12 tomorrow and I don't know if we can fit it in Friday
13 unless we cancel something.

14 COMMISSIONER GILINSKY: Are we releasing the
15 report today?

16 CHAIRMAN PALLADINO: That is what I was coming
17 to. I said there is one decision I think we do have to
18 make and that is are we releasing the report today and
19 with the release, if we release it, do we want to say
20 anything.

21 COMMISSIONER GILINSKY: I thought we committed
22 ourselves.

23 CHAIRMAN PALLADINO: Well, I read Sam Chilk's
24 note and I didn't realize that it was as strong as his
25 note said and I didn't know where to put it.

1 COMMISSIONER GILINSKY: I thought it was
2 utterly unqualified, whether that was wise or not.

3 (Laughter.)

4 MR. FOUCHARD: I don't know about anybody
5 else, Mr. Chairman, but I committed us.

6 (Laughter.)

7 COMMISSIONER GILINSKY: We were unprepared,
8 Joe.

9 (Laughter.)

10 MR. FOUCHARD: And I believe that I had
11 everybody listening.

12 (Laughter.)

13 CHAIRMAN PALLADINO: What did you believe,
14 Joe, that we had committed?

15 MR. FOUCHARD: I believe I sat here and told
16 you. I was going to say we expect to and I was told no,
17 we will.

18 COMMISSIONER AHEARNE: That is what I thought,
19 too.

20 CHAIRMAN PALLADINO: So we will release the
21 report.

22 Is there any question on releasing it?

23 COMMISSIONER BRADFORD: I would rather not,
24 but if Joe has made a commitment then I think we should.

25 (Laughter.)

1 COMMISSIONER AHEARNE: We can put a footnote
2 on that Commissioner Bradford would rather not release
3 it.

4 (Laughter.)

5 COMMISSIONER BRADFORD: I think this doesn't
6 rise to that level.

7 (Laughter.)

8 CHAIRMAN PALLADINO: Is there any statement
9 that you think ought to be made with the release of this
10 except that we will be asked questions and we will have
11 to say that we are still deliberating any action.

12 MR. FOUCHARD: I would take that course of
13 action, sir, that the Commission is still discussing the
14 report.

15 CHAIRMAN PALLADINO: Let me ask the members of
16 the Commission do any of you feel that you are waiting
17 for the segment two report before making a decision?

18 COMMISSIONER AHEARNE: A decision on?

19 CHAIRMAN PALLADINO: On whether we are going
20 to take an enforcement action and whether or not we are
21 going to continue Cloud on the eligibility list.

22 (No response.)

23 CHAIRMAN PALLADINO: All right. Well then I
24 guess the main point would be that we release the report.
25 and we have not yet made a decision with regard to that

1 report.

2 MR. BICKWIT: Just one final point. All of
3 the discussions of violations so far as centered on the
4 material false statement violation. We believe a good
5 case can be made for a violation of Section 103(b)(3).

6 CHAIRMAN PALLADINO: What was that again?

7 MR. BICKWIT: 103(b)(3). I don't think it is
8 productive at this time to get into a discussion about
9 it, but as you consider your options we think ---

10 CHAIRMAN PALLADINO: Could you help me
11 understand a little bit better what it says?

12 MR. BICKWIT: It says "The Commission shall
13 issue such licenses to persons applying therefor who
14 agree to make available to the Commission such technical
15 information and data concerning activities under such
16 licenses as the Commission may determine necessary to
17 promote the common defense and security and to protect
18 the public health and safety."

19 MR. MURRAY: We of course disagree with that.

20 COMMISSIONER BRADFORD: Why of course, Jim.

21 (Laughter.)

22 MR. MURRAY: I have been talking with Len
23 about it for the last couple of days.

24 CHAIRMAN PALLADINO: Why do you disagree?

25 MR. MURRAY: We disagree, Mr. Chairman for

1 about three reasons.

2 One is that the licensee has to agree to make
3 available the information according to statute, it has
4 to be technical information data and it has to be
5 determined by the Commission to be necessary, presumably
6 determined in advance.

7 COMMISSIONER AHEARNE: We haven't allowed the
8 last to bother us so far.

9 MR. MURRAY: No, sir. That is one of Len's
10 arguments.

11 MR. BICKWIT: What, to determine in advance?
12 Well, our response is that the determination in advance
13 is viewed on the transcript and that Harold's questions
14 constitute that determination.

15 I would say that our view on this one is about
16 the same as our view on a material false statement which
17 is that chances of prevailing are slightly better than
18 even.

19 (Laughter.)

20 CHAIRMAN PALLADINO: It doesn't make it very
21 easy, does it..

22 (Laughter.)

23 CHAIRMAN PALLADINO: Any other opinions on the
24 material false statement?

25 (No response.)

1 CHAIRMAN PALLADINO: Well, unless you have
2 further comments ---

3 MR. DIRCKS: Could I make just one
4 clarification. The decision on Cloud, however you come
5 down on it in this segment, if you rule him in our out,
6 we will just then accept that and exclude that from
7 further consideration on the other parts that Harold is
8 investigating.

9 CHAIRMAN PALLADINO: I didn't follow you, Bill.

10 MR. DIRCKS: In other words, if you say he is
11 still eligible we will not then when we evaluate him
12 further in connection with the criteria and so on, we
13 will not then consider this factor any more in our
14 evaluation.

15 CHAIRMAN PALLADINO: At this point in time.

16 COMMISSIONER AHEARNE: Isn't what you are
17 saying is when you look at a list of who is eligible and
18 Cloud is up there and you look at the points for and
19 against, if we conclude this does not disqualify him
20 then that will not be added as a negative.

21 MR. DIRCKS: We don't want to argue that point
22 again.

23 CHAIRMAN PALLADINO: Yes, and I seem to think
24 that at least three of you feel that way.

25 Unless anybody else has any other point on

1 this we will stand adjourned.

2 (Whereupon, at 12 Noon, the meeting adjourned.)

3

* * *

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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 DIABLO
CANYON REPORT.

Date of Proceeding: January 27, 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)