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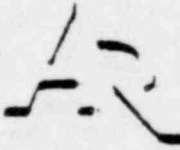
ORIGINAL

COMMISSION MEETING

In the Matter of: CLOSED MEETING - EXEMPTION 5

 DISCUSSION OF REGION V REPORT ON
 DIABLO CANYON

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DISCUSSION OF REGION V REPORT ON DIABLO CANYON
EXEMPTION 5 - CLOSED

Room 1130,
1717 H Street, N.W.,
Washington, D.C.
Thursday, January 21, 1982

The Commissioners met at 9:50 a.m., pursuant
to notice, Nunzio Palladino, Chairman of the Commission,
presiding.

- Also present:
- JOHN AHEARNE, Commissioner.
- PETER BRADFORD, Commissioner.
- VICTOR GILINSKY, Commissioner.
- THOMAS ROBERTS, Commissioner.

- Present for the NRC Staff:
- R. Engleken
- W. Dircks
- E. Case
- D. Eisenhut

- 1 H. Denton
- 2 J. Murray
- 3 R. DeYoung
- 4 P. Morrill
- 5 O. Shackleton
- 6 J. Crews
- 7 R. Faulkenberry
- 8 S. Chilk, Secretary
- 9 L. Bickwit, General Counsel
- 10 F. Resick

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P R O C E E D I N G S

1
2 CHAIRMAN PALLADINO: We will go on to the
3 meeting on Diablo Canyon, Region V report.

4 MR. DIRCKS: Bob Engleken is here. I want to
5 make sure he is here, as well as the peer group that
6 assisted in the review of the interview transcripts and
7 the preparation of the report, and I want to make sure
8 you know that Bob Faulkenberry and Mr. Shackleton are
9 here also. They did the principal interviewing. Mr.
10 Lieberman is also here, and he also participated in the
11 interviewing. And Phil Morrill, also one of the
12 interviewers.

13 COMMISSIONER AHEARNE: We just lost all of our
14 lawyers. Quick!

15 (Laughter.)

16 MR. DIRCKS: Bob Engleken will go over the
17 highlights of the report. The report is essentially a
18 factual summary and addresses the issues I think the
19 Commission asked for.

20 At the completion of his discussion, if you
21 want to get into the issue of recommendations, we are
22 prepared to talk about those, too.

23 Bob?

24 MR. ENGLEKEN: Can I have the first slide,
25 please.

1 (Slide.)

2 I'd like to just review briefly -- No. 2 --
3 some of the background leading up to the investigation.

4 (Slide.)

5 You recall that on September 28th PG&E
6 submitted a letter to the NRC indicating the "diagrams"
7 used to locate the vertical seismic floor response
8 spectra in Diablo Canyon Unit 1 containment annulus area
9 --

10 CHAIRMAN PALLADINO: Bob, by any chance, you
11 don't have these in a form that we could have at our
12 places here?

13 MR. ENGLEKEN: No, I'm sorry, I don't. I have
14 one set here, if they could be reproduced.

15 In the same time period, PG&E verbally
16 requested R. L. Cloud Associates to conduct a seismic
17 design review at Diablo Canyon and determine if other
18 errors had been made in the seismic design.

19 COMMISSIONER ROBERTS: Verbally? Was later a
20 contract or a purchase order issued?

21 MR. ENGLEKEN: Yes, sir. On October 9th, the
22 meeting between the NRC Staff and representatives of
23 PG&E was held to discuss the adequacy of the seismic
24 design, and at this meeting Dr. Cloud described a
25 reverification program entitled "Independent Assessment

1 of Safety Related Design Issues."

2 Also at this meeting Mr. Denton stated that
3 prior to start of fuel loading at Diablo Canyon Unit 1,
4 PG&E should furnish the NRC with certain information,
5 including an interim report of the results of the Cloud
6 review of seismic design work performed by the URS Blume
7 Company. During the period of October 14th to the 23rd,
8 a special instrument by NRC Region V personnel was
9 conducted at PG&E and at Blume offices. The results of
10 this inspection indicated that 10 CFR Appendix B
11 controls were not imposed upon PG&E's safety-related
12 service type contractors until late '77 or early 1978,
13 and many of the work activities performed by PG&E with
14 regard to the Blume contract were performed in an
15 informal manner.

16 On November 3, 1981, a second meeting was held
17 between the NRC Staff and representatives of PG&E. This
18 meeting was called by the NRC to discuss other seismic
19 design problems that had been identified through the
20 NRC's special inspection.

21 During this meeting Dr. Cloud stated that the
22 interim report requested by the NRC in the October 9
23 meeting was essentially complete and should be received
24 by the NRC within one or two weeks.

25

1 Also during this meeting, senior management
2 representatives stated that PG&E had not received the
3 Cloud interim report. A review of November 3 transcript
4 shows that draft reports were not discussed or mentioned
5 by any of the recorded participants.

6 CHAIRMAN PALLADINO: Was it clear he was
7 speaking to the interim report? Go back to your first
8 couple of sentences before that, when you said Cloud
9 said that the interim report was coming.

10 MR. ENGLEKEN: Also during this meeting,
11 senior representatives of PG&E stated that operational
12 had not received the Cloud interim report.

13 CHAIRMAN PALLADINO: Where you spoke about
14 what Cloud said, the sentence or two before that.

15 MR. DIRCKS: What Cloud said at the meeting.

16 MR. ENGLEKEN: Cloud stated that the interim
17 report requested by the NRC in the October 9 meeting was
18 essentially complete and should be received by the NRC.
19 Dr. Cloud in his testimony said that he was talking
20 about the final report, final draft that was submitted
21 to the Commission.

22 CHAIRMAN PALLADINO: That's why I asked you,
23 because you referred to his comment as though it related
24 to the interim report, and I wasn't quite clear. It
25 certainly wasn't clear in the testimony. But you seem

1 to make it more clear than it appeared to be in the
2 testimony. That's all I wanted to find out.

3 MR. ENGLEKEN: Well, Dr. Cloud's testimony
4 indicated that he was discussing the final report that
5 went to the Commission on November --

6 CHAIRMAN PALLADINO: But when you told us, you
7 said he was referring to the interim report and I wasn't
8 clear that he was referring to the interim report.

9 MR. ENGLEKEN: The interim report is --

10 CHAIRMAN PALLADINO: I just wanted to get a
11 repeat of what you had said, because I wanted to
12 understand it.

13 MR. ENGLEKEN: The "interim report" is the
14 term used for all copies, all drafts, all iterations of
15 this report that ultimately came to the Commission dated
16 November 12. That's called the interim report.

17 COMMISSIONER GILINSKY: I think "interim" and
18 "final" in this context are the same thing.

19 CHAIRMAN PALLADINO: I'm not sure.

20 COMMISSIONER GILINSKY: As opposed to draft.

21 COMMISSIONER AHEARNE: Yes.

22 COMMISSIONER GILINSKY: Interim was the one
23 that was to have been submitted later and was to have
24 summed up his views.

25 MR. ENGLEKEN: The interim report is the

1 expression used to describe the report that Cloud had
 2 committed to Mr. Denton to describe their preliminary
 3 efforts with respect to the reverification program. And
 4 then we used the expression "drafts" to identify the
 5 first, second, third, and fourth iterations of that
 6 report. Sometimes we used "final report" meaning the
 7 November 12 report which was the final draft of the
 8 interim report.

9 COMMISSIONER ROBERTS: Final draft of the
 10 interim report.

11 CHAIRMAN PALLADINO: Final version of the
 12 interim report.

13 COMMISSIONER GILINSKY: If I could quote fro
 14 one of the questioners asking one of the PG&E people, he
 15 asked, "Have you seen the final or the interim -- that's
 16 commonly referred to as the interim report from Mr.
 17 Cloud?"

18 CHAIRMAN PALLADINO: Which testimony is that?

19 COMMISSIONER GILINSKY: Well, I just picked it
 20 out of here.

21 CHAIRMAN PALLADINO: This was in the
 22 investigation, but --

23 COMMISSIONER AHEARNE: The reason in Cloud's
 24 mind that he had that is that they seem to view "final"
 25 as being the report that would come at the end of this

1 entire program of reverification.

2 MR. FAULKENBERRY: Maybe I could add a little
3 bit to that, Bob. I think the word "interim report,"
4 that was the term that was used in the October 9th
5 meeting and the November 3rd meeting also. That's the
6 terminology put forth by the NRC. So that's where the
7 word "interim report" came from.

8 And then of course, when Cloud in his
9 testimony -- he was thinking in terms of that, whether
10 it would be in the final form or the draft form as it
11 was submitted to us. He was thinking in terms of the
12 interim report, the report the NRC had requested.

13 MR. ENGLEKEN: At this point I'd like to
14 inject that a member of the peer panel suggested that
15 this statement, the last statement I made, namely that
16 review of the transcript of November 3rd shows that
17 draft reports were not discussed or mentioned by any of
18 the recorded participants --

19 CHAIRMAN PALLADINO: Say that again?

20 MR. ENGLEKEN: Shows that the draft reports
21 were not discussed or mentioned by any of the recorded
22 participants at their November 3rd meeting.

23 CHAIRMAN PALLADINO: Well now, Mr. Denton said
24 November the 3rd --

25 MR. ENGLEKEN: That's exactly the point I'm

1 trying to make.

2 CHAIRMAN PALLADINO: But he did mention
3 draft.

4 MR. ENGLEKEN: That's correct.

5 In reply, Mr. Norton -- well, let me just read
6 this: "A member of the panel pointed out that that was
7 not a completely correct statement, and Mr. Denton -- in
8 reply Mr. Norton said that PG&E was open to any
9 suggestion, and that they would give" -- excuse me.

10 "Mr. Denton specifically asked how PG&E
11 proposed to handle comments on the report."

12 CHAIRMAN PALLADINO: On this draft?

13 MR. ENGLEKEN: "And whether PG&E was going to
14 provide the NRC with the same report and how they were
15 going to preserve independence. And then in reply Mr.
16 Norton said that PG&E was open to any suggestion, that
17 they would give the NRC the report before PG&E received
18 it if that was what was wanted.

19 "The NRC did not respond to Mr. Norton's
20 request for direction in handling the report."

21 CHAIRMAN PALLADINO: But when Mr. Denton was
22 speaking, he didn't say "this report"; he said "on this
23 draft," which was I think the only reference I found to
24 a draft. This followed a statement by Mr. Norton: "I
25 might add, we do not have it. It's not a question of us

1 reviewing it. We don't have it either. It just hasn't
2 been done yet."

3 And Mr. Denton said: "Well, since this is a
4 particularly sensitive issue, I was wondering how you
5 propose to handle comments on this draft, or are you
6 going to send us the same report he sends you and add"
7 -- I think the word is -- "your cover letter to it? Or
8 how would you preserve independence?"

9 He did use the word "draft" at least once.

10 MR. ENGLEKEN: Yes, that's correct.

11 CHAIRMAN PALLADINO: I don't know if that has
12 any significance.

13 MR. ENGLEKEN: Well, that was pointed out by a
14 member of the peer panel, that that statement we made
15 was not entirely correct, that Mr. Denton had mentioned
16 "draft."

17 On November 18 a draft interim report dated
18 November 12, containing the results of the Cloud design
19 review and reverification of work activities performed
20 under the Blume PG&E contract, was submitted to the NRC
21 by PG&E.

22 On November 19 an order was issued by the
23 Commission which suspended License No. DPR-97. This
24 order, in conjunction with a letter signed by Mr.
25 Denton, defined what would be required from PG&E prior

1 to start of fuel loading and prior to power operation
2 above five percent power at Diablo Canyon Unit 1.

3 In late November 1981, Congressman Udall
4 informed the NRC that there existed a draft report other
5 than that which was submitted to the NRC on November 18,
6 containing the results of the Cloud design review and
7 reverification activities performed under the Blume
8 contract. On December 1, Region V contacted both PG&E
9 and Dr. Cloud and obtained from PG&E a copy of the draft
10 report in question. This draft report was later
11 identified to be copy number one of the October 21 draft
12 report, that is the first draft.

13 On December 10, Congressman Plenetta informed
14 the NRC that the draft report obtained on December 1 had
15 been submitted to PG&E by Cloud and that PG&E personnel
16 had reviewed it and made comments on the draft.

17 On December 10, the Region V office contacted
18 PG&E and Dr. Cloud and obtained from Dr. Cloud three
19 copies of the draft report, that is the first draft that
20 had been returned to Cloud from PG&E with handwritten
21 comments by PG&E personnel contained within each of the
22 three copies of the draft report. These copies were
23 later identified to be copies 3, 4 and 5 of the October
24 21, draft report.

25 On November 7 -- excuse me. In a memorandum

1 dated December 17, 1981, Mr. Dircks informed the
2 Commission he had directed an investigation be conducted
3 by NRC Region V into the circumstances surrounding the
4 development of the preliminary report on the seismic
5 reverification program being prepared by Cloud for
6 PG&E. In this memorandum Mr. Dircks says: "The
7 statements made at the meeting on November 3, 1981, by
8 representatives of PG&E led the NRC to believe that no
9 circulation of the results of the Diablo Canyon seismic
10 reverification study by Cloud had taken place
11 preliminary to the draft report submitted to the NRC on
12 November 18, 1981."

13 (Slide.)

14 The purpose and conduct of the investigation.
15 The investigation was directed by Mr. Dircks and was
16 begun by Region V on December the 16th.

17 COMMISSIONER GILINSKY: Can I ask you, when
18 did you discover that there was more than one draft,
19 draft two and draft three?

20 MR. ENGLEKEN: On December 10th, I believe,
21 December 10th.

22 MR. FAULKENBERRY: Excuse me, Bob. On that, I
23 think that we really discovered that there were several
24 drafts after we started our investigation on December
25 the 16th. Prior to that we just assumed there was only

1 one draft.

2 MR. ENGLEKEN: This investigation is being
3 done in two phases. For this report the NRC is
4 presenting the results of phase one, covering all
5 pertinent facts related to the statements made at the
6 November 3 meeting and the circumstances surrounding
7 Cloud submitting draft reports of the results of their
8 study to PG&E for comment and review prior to the
9 results being submitted to NRC in a draft report dated
10 November 12.

11 The second phase of the investigation will be
12 to determine whether the oral and written comments PG&E
13 provided to Cloud on the results of the Cloud study
14 resulted in any unjustified changes in the findings as
15 contained in the Cloud report submitted to the NRC on
16 November 18.

17 (Slide.)

18 During the planning stage for this
19 investigation, the regional administrator of Region V
20 requested that a peer review group be appointed to
21 evaluate the scope and findings of the investigative
22 effort and provide recommendations to assure that it was
23 sufficiently thorough and complete, and that the
24 findings were accurately represented in the reports.

25 CHAIRMAN PALLADINO: When was that request

1 made?

2 MR. ENGLEKEN: At the time that Mr. Dircks
3 requested the --

4 CHAIRMAN PALLADINO: Early, before you started
5 the investigation?

6 MR. ENGLEKEN: Yes.

7 Subsequently, the following individuals were
8 appointed to form such a group: E. Kevin Cornell, Edson
9 Case, James Sniezek, James Lieberman, Roger Fortuna,
10 Frank Miraglia.

11 The peer group met with the regional
12 administrator and the staff on two occasions to discuss
13 the progress of the investigation and the format and
14 content of the report. Substantive recommendations of
15 the peer group were implemented by the investigative
16 staff.

17 The performance of interviews and obtaining of
18 sworn testimony. This investigation involved obtaining
19 sworn testimony from 25 persons. 19 of the persons
20 interviewed were PG&E employees, 6 were former employees
21 of Cloud. All PG&E employees who attended the November
22 3, 1981, meeting with the exception of the secretary and
23 three public relations employees were interviewed under
24 oath. All employees of Cloud Associates who were
25 involved in either the preparation or revision of any of

1 the draft Cloud reports were interviewed under oath.

2 During the performance of the special
3 investigation, 16 issues were identified as pertinent to
4 the investigation. I've put them on the screen, but I
5 won't bother reading them, since we will be dealing with
6 each of the issues as we proceed.

7 (Slide.)

8 The NRC has determined that three separate
9 draft reports were submitted to PG&E by Cloud prior to
10 the November 12 draft report submittal to the NRC on
11 November 18.

12 CHAIRMAN PALLADINO: You say three different
13 drafts?

14 MR. ENGLEKEN: Yes.

15 CHAIRMAN PALLADINO: Not different copies of
16 the same draft?

17 MR. ENGLEKEN: Different drafts.

18 At this point I would like to point out that
19 the same member of the peer panel who made the previous
20 suggestion suggested that it be made clear that PG&E did
21 not inform the NRC of the existence of any of the drafts
22 prior to the time that the existence of the drafts was
23 called to NRC's attention by others, and the NRC was not
24 informed as to the total number of draft reports in
25 existence by PG&E until the course of the NRC

1 investigation.

2 COMMISSIONER AHEARNE: Is that a comment
3 you're making to make a factual point, or is there an
4 implication that you believe they should have informed
5 us of the draft?

6 MR. ENGLEKEN: That's just a factual
7 notation. This should have been brought out more
8 clearly.

9 COMMISSIONER BRADFORD: Wait a minute. If you
10 use the word "should," it seems to me the answer is it's
11 an opinion and not a factual notation. As a practical
12 matter, what do you think?

13 MR. ENGLEKEN: If you're asking my view, yes,
14 I think they should.

15 COMMISSIONER BRADFORD: Okay.

16 MR. ENGLEKEN: I think there was enough
17 discussion in the November 3rd meeting and in meetings
18 preceding the November 3rd meeting concerning drafts
19 that it probably would have been prudent on the part of
20 the Licensee to mention that they had --

21 COMMISSIONER AHEARNE: Bob, you had just
22 pointed out that in fact, from your impression, the
23 draft had not even been mentioned in the November 3rd
24 meeting, and it was pointed out to you by someone else
25 that, no, Harold had mentioned a draft once. So clearly

1 there was not a lot of discussion of drafts in the
2 November 3rd meeting.

3 MR. ENGLEKEN: No, that's true.

4 COMMISSIONER AHEARNE: And so, what meeting
5 prior to that did you feel there was a lot of discussion
6 of drafts?

7 MR. ENGLEKEN: I think at the November 3rd
8 meeting there was enough discussion about the kind of
9 effort that Dr. Cloud had been involved in that I think
10 it would have been a normal thing to have brought out
11 the fact that he was preparing a report for the NRC and
12 that they had received some information which was in
13 preparation --

14 COMMISSIONER GILINSKY: I thought you were
15 making a little different point earlier, that even after
16 there was some publicity about the first draft, we
17 started to look into it and no mention of other drafts
18 was made by PG&E until we came upon it --

19 MR. ENGLEKEN: That's true also. At first we
20 were just aware -- as of December the 1st when we got a
21 copy of the October 21 draft, we were not told that
22 there were copies of other -- that there were other
23 drafts, that there were drafts 2 and 3.

24 COMMISSIONER AHEARNE: Did you raise that
25 point?

1 MR. ENGLEKEN: No.

2 COMMISSIONER GILINSKY: Well, but still, no
3 matter what they might have thought about the situation
4 before --

5 COMMISSIONER AHEARNE: I was about to ask,
6 when we found out there was a draft December 1st, did we
7 immediately contact PG&E and say something, which would
8 be to the effect, we're really upset, we didn't know
9 there was any draft and now we find there was a draft?

10 MR. ENGLEKEN: No, I think we simply told them
11 we were aware that there was a draft and we wanted a
12 copy of it and we received a copy of it.

13 COMMISSIONER AHEARNE: We did ask for a copy?

14 MR. ENGLEKEN: Yes, on December 1st. And we
15 got a copy.

16 CHAIRMAN PALLADINO: Did you ask if there were
17 any other drafts? At the time we asked about the first
18 draft, did we ask if there were any other drafts?

19 MR. CREWS: No, not precisely that. I called
20 -- I got a call from Bill Dircks' office, just
21 information that a document -- they had a document that
22 fit the description of the interim report that we
23 received on the 18th of November. I had only a vague
24 description. It was pretty much just the title of that
25 document.

1 So I called Dr. Cloud and I said over the
2 phone, I'd like to go through your correspondence log
3 with PG&E for the month of October, would you just go
4 down that log with me and I'll tell you when you hit the
5 title of the document that sounds like what I'm looking
6 for. He did that and we got to the November 21st
7 document. I said, that's it; what's the date that you
8 sent that to PG&E?

9 Then I called PG&E and told them I wanted that
10 document. And I did not say all drafts of that
11 document, and the closest I came to that was, after
12 talking to that individual, which was late in the
13 afternoon, I called back to ask that any comments that
14 PG&E had provided to Dr. Cloud on that document I wanted
15 sent to me also.

16 Now, they hand-carried that to me the evening
17 of December 1st and I brought it to Washington the next
18 morning.

19 CHAIRMAN PALLADINO: And did they give you --
20 in response to your question, did they then come up with
21 drafts 3, 4 and 5 -- I'm sorry, copies 3, 4 and 5 of the
22 draft?

23 MR. CREWS: That did not come about until
24 December 10, when we had further evidence of drafts with
25 marginal notations, or at least I had that, information

1 from Congressman Panetta's office that indeed there were
2 drafts with marginal notations made on them returned to
3 Cloud.

4 And then in pursuing those I called PG&E.
5 They said they did not have those in-house. All they
6 had had been sent to Dr. Cloud. And I called Dr. Cloud
7 and made arrangements to pick those up.

8 CHAIRMAN PALLADINO: Were either PG&E or Cloud
9 given any instructions prior to this November 3rd
10 meeting on drafts? Were they ever instructed -- was any
11 comment made, for example, at the October 19th meeting,
12 where NRC said, well, look, we'd like to see any drafts
13 if you're going to send them on to PG&E? Were they
14 under any kind of instructions?

15 MR. DIRCKS: I think they were operating at
16 the November 3rd meeting, when Harold asked them, when
17 are we going to see copies of this --

18 CHAIRMAN PALLADINO: Prior to November 3rd,
19 were they under any instructions?

20 MR. DIRCKS: I think that's why Harold asked
21 the question, to see from them what their thinking was
22 on the situation. And they said, when we get it you'll
23 get it. And I think that let that issue lie. I think
24 that's what started us off down that path.

25 CHAIRMAN PALLADINO: Would you see for the

1 record whether or not they had been instructed to make
2 sure, prior to the November 3rd meeting, that any drafts
3 --

4 MR. DENTON: No. They had received to my
5 knowledge no written or oral instructions from the
6 Commission. The Governor had by that time begun to
7 raise a number of questions about independence and what
8 that meant.

9 I think I asked the question on the
10 presumption that Cloud would be generating drafts of his
11 product, and when I heard that they had not been
12 supplied to the company I dropped the subject, figuring
13 that we'd follow up somewhat later with instructions
14 when we commented on the independence and those other
15 issues.

16 COMMISSIONER GILINSKY: To return to the
17 earlier point, you're really asking about, the question
18 about informing the NRC about drafts at the November 3rd
19 meeting or prior to that, quite apart from that it is a
20 little surprising to me that when the whole issue boiled
21 up, so to speak, that they didn't come in and say:
22 Well, look, here are all the things that the draft
23 said.

24 COMMISSIONER AHEARNE: What I was trying to
25 probe is, I know it was boiling up internally here. I'm

1 trying to figure out whether they knew it was boiling
2 up.

3 COMMISSIONER GILINSKY: This was well
4 publicized.

5 MR. ENGLEKEN: It was in the media. I think
6 it was prior to the November 3 --

7 COMMISSIONER AHEARNE: No. It was after we
8 were informed there was a draft, which was December 1st,
9 between then and December 10th. I was trying to figure
10 out how much notice they had of the fact of what was
11 boiling up.

12 COMMISSIONER GILINSKY: I'm sure that they
13 were well aware of it before we got our investigation
14 under way.

15 MR. FAULKENBERRY: I might add to that just a
16 little bit. Certainly when we talked to people at the
17 higher management levels, like Mr. Maneatis and
18 Shackelford, et cetera, they had no knowledge. Even
19 Norton had no knowledge of the draft reports, and
20 therefore really no knowledge of "interest" in the draft
21 reports, prior to December the 1st and December the
22 10th, primarily December the 10th.

23 COMMISSIONER AHEARNE: That's what I was
24 trying to get at.

25 MR. ENGLEKEN: I think there were stories in

1 the newspaper when we went after the first draft.

2 COMMISSIONER GILINSKY: If you talk about the
3 company, you've got to talk about them collectively, and
4 the company knew we were starting up an investigation on
5 this draft business. And how they sorted it out
6 internally I don't know.

7 MR. ENGLEKEN: I think the matter of
8 independence got media attention and attention
9 generally. As a first step in this whole matter, there
10 was a press conference with Governor Brown early, and he
11 brought up the matter that --

12 CHAIRMAN PALLADINO: I think we've got to keep
13 our dates straight. You said that the investigation was
14 begun on December 16th. So I don't know how there would
15 have been a lot of media coverage.

16 MR. ENGLEKEN: On the matter of independence.

17 COMMISSIONER GILINSKY: No, but there was the
18 business about there being a draft in Panetta's office,
19 having it sent over and all that.

20 COMMISSIONER AHEAPNE: Panetta didn't send it
21 over until December 10th, and I'm trying to -- all I was
22 trying to do was to follow on. I get the impression
23 from Bob that he felt they should have told us about the
24 other drafts, and I can't reach that judgment unless I
25 get some sense that they knew we were concerned about

1 those drafts.

2 Now, the answer that we just got on what
3 question did we specifically go and ask to get that
4 first draft, sounded like a very focused request for a
5 specific document.

6 MR. CREWS: And I deliberately did that. I
7 didn't know our source, and subsequently it became
8 identified.

9 COMMISSIONER AHEARNE: So I could reach the
10 conclusion that that should have triggered coming out
11 with a lot of drafts. And I don't recall what kind of
12 news coverage there was between then and December 10th.

13 MR. CREWS: I think the public on December
14 11th, when we made notification --

15 MR. CASE: But even at that time, when it did
16 become public, there was some media interest after the
17 second request, PG&E had other drafts, drafts 2, 3, 4,
18 and 5, not just copies of the first draft, that they did
19 not make available to us until the investigation.

20 MR. ENGLEKEN: Commissioner Ahearne, in answer
21 to your earlier question, I just want to point out that
22 I think the focus on the independence issue was such
23 that I thought that the company should have volunteered
24 information about the channels of communication that he
25 had with Cloud -- that PG&E had with Cloud, and that

1 this would have naturally led to a discussion of
2 drafts. That's the point I was --

3 COMMISSIONER AHEARNE: I'm not sure I agree
4 with you.

5 MR. DIRCKS: I think what started this off was
6 the additional facts. I think he was only throwing that
7 in. If there was one draft, it was a substantial
8 trafficking in drafts and I guess that we wanted
9 everyone to know about.

10 CHAIRMAN PALLADINO: I was confused about what
11 Ed Case said. I thought these numbers 1, 2, 3 and 4
12 were copies of draft 1.

13 MR. CASE: Right. Then there were other
14 drafts, which we called draft 2, draft 3, and the final
15 draft, which was draft 4. 2 and 3 they did not call to
16 our attention until the investigation. It came out in
17 the investigation.

18 MR. ENGLEKEN: The first draft report was
19 dated October 18, 1981, and was submitted to Mr. Rocca
20 of PG&E on October 21, 1981. Upon receipt in PG&E, five
21 copies of this draft report were distributed to Messrs.
22 Rocca, Brand, Bettinger and McCracken.

23 These individuals were requested to review the
24 draft and provide their comments. Most or all of the
25 comments generated by those persons were returned to

1 Cloud.

2 COMMISSIONER AHEARNE: Let me interrupt with a
3 very trivial question, just to make sure I kept track of
4 the number of documents that were circulated. Your
5 report says they received the document, five copies were
6 made. That would lead me to conclude that there were
7 six documents.

8 MR. ENGLEKEN: There were five copies and one
9 was kept as a control.

10 COMMISSIONER AHEARNE: Then there were four
11 copies made.

12 MR. FAULKENBERRY: That is correct. The copy
13 they received was four. There was a total of five.

14 COMMISSIONER AHEARNE: Okay, thank you.

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1 COMMISSIONER GILINSKY: Versions -- no, not
2 "versions." Strike that.

3 (Laughter.)

4 MR. ENGLEKEN: The second draft report was
5 dated October 1981 and was submitted to Mr. Rocca on
6 October 26. The second draft report was distributed
7 within PG&E for review and comment. And only a few
8 comments were returned to Cloud on the second draft
9 report.

10 The third draft report was dated November 6
11 and was submitted to Mr. Rocca from Cloud. On November
12 6, 1981, this third draft report was distributed within
13 PG&E for review and comment. Only a few comments were
14 returned to Dr. Cloud on this third draft report. They
15 consisted of handwritten comments plus approximately
16 nine other comments which were provided via telephone to
17 Dr. Cloud and which were documented.

18 On November 18 a draft report dated November
19 12 was submitted to the NRC from PG&E. This has been
20 termed the "fourth draft," and commonly the one that we
21 refer to as the "final draft." Issues 1 through 6, as
22 described earlier, are applicable to the Cloud draft
23 reports just discussed.

24 COMMISSIONER AHEARNE: Number 5, when was that
25 letter?

1 MR. ENGLEKEN: That letter was sent -- do you
2 have a date on that, Bob -- December 23, December 23.

3 MR. CREWS: December 23. Right.

4 COMMISSIONER AHEARNE: Thank you.

5 MR. ENGLEKEN: The first issue, vuegraph 9.

6 (Slide)

7 What was the knowledge or understanding as to
8 how the Cloud findings should be handled prior to
9 submittal to the NRC? The NRC finding: Essentially no
10 direction or guidance was provided by PG&E, the NRC, or
11 Dr. Cloud as to how the findings of the work performed
12 by Cloud Associates should be handled prior to submittal
13 to the NRC.

14 At the November 3 meeting Mr. Denton stated
15 that his view of independence would mean, as a minimum,
16 that you were not reviewing the work with which you were
17 associated. PG&E representatives, specifically Mr.
18 Norton and Mr. Maneatis, stated they considered the
19 criteria for independence to be the same as that stated
20 by Mr. Denton.

21 At the November 3 meeting Mr. Norton
22 volunteered PG&E to follow any method the NRC wished in
23 submitting Dr. Cloud's reports, but the NRC did not give
24 PG&E any specific direction.

25 Dr. Cloud stated he had not been advised by

1 PG&E or NRC as to how to handle these reports.

2 The second issue --

3 COMMISSIONER AHEARNE: And you could not find
4 any such guidance?

5 MR. ENGLEKEN: That is correct.

6 The second issue. What has been the standard
7 practice or custom of PG&E regarding the review of the
8 results of a consultant's findings prior to these
9 findings being placed in a final draft or final report
10 form?

11 It has been standard practice --

12 COMMISSIONER AHEARNE: Excuse me. Take it
13 slowly on this. Have we given them any guidance up to
14 date on what we mean?

15 MR. ENGLEKEN: Not to my knowledge.

16 MR. DENTON: No. I have been awaiting final
17 action on reply to Congress on a similar question.

18 COMMISSIONER AHEARNE: So then, as of the
19 moment, there is no NRC guidance to PG&E nor to Cloud
20 nor, therefore, PG&E relaying to Cloud NRC guidance of
21 what independence should mean. Is that correct?

22 MR. ENGLEKEN: That is my understanding, yes,
23 sir.

24 COMMISSIONER AHEARNE: Just as a comment,
25 then, it makes it a little difficult for us to be

1 reaching a judgment that they are not sufficiently
2 independent.

3 COMMISSIONER GILINSKY: That is not the
4 question before us today.

5 COMMISSIONER AHEARNE: I understand. It was a
6 major -- I think it is part of the question, because if,
7 for example, we had told them what independence means
8 and then they had said, "Yes, it is independent," and it
9 turned out not to be what we had told them to mean, that
10 would be a serious misleading. But if we have never
11 told them what independence means and they say, "Well,
12 it is independent," then I guess initially we have to
13 see whether or not it tracks with what they meant by
14 independence.

15 COMMISSIONER GILINSKY: Except that is not the
16 question.

17 MR. DIRCKS: I think what started us off, if
18 at the November 3 meeting Harold had asked, "When are we
19 going to see it," and they said, "You will see it when
20 we see it," if they had said, "Oh, by the way, we had
21 circulated drafts of this in order to get comments," I
22 do not know whether we would have taken very much of it
23 or not. We would have noted it and said, "Fine. Could
24 we see the comments that were made on that draft."

25 I think the issue today is basically did they

1 know they had drafts circulated? If so, they should
2 have told us.

3 COMMISSIONER AHEARNE: That is your
4 characterization of Issue 1; it is not mine.

5 MR. DENTON: Let me elaborate on the
6 independence.

7 MR. DIRCKS: I think that is a point we should
8 follow up on, because that is the issue of this.

9 COMMISSIONER GILINSKY: That is the way I
10 understood it.

11 COMMISSIONER AHEARNE: Which?

12 COMMISSIONER GILINSKY: The question is: Did
13 they tell us truthfully how they were acting?

14 MR. ENGLEKEN: We will get into that, of
15 course, when we proceed.

16 COMMISSIONER GILINSKY: That, and whether or
17 not they had drafts or should have had drafts is another
18 question, and whether it would have affected the result
19 is another question.

20 COMMISSIONER AHEARNE: I agree with you, Vic,
21 on that. But when you say, "Did they truthfully," or I
22 guess what I asked, "Did they deliberately mislead us,
23 knowingly mislead us" --

24 COMMISSIONER GILINSKY: Knowingly is a whole
25 separate thing.

1 COMMISSIONER AHEARNE: A person can be misled
2 because they hear something and they interpret it
3 differently than the person saying it.

4 COMMISSIONER GILINSKY: The question is not
5 over independence, it is over whether or not they had a
6 report. The independence question is a separate one and
7 whether or not they should have had a report is a
8 separate question.

9 I have to say, frankly, I do not see anything
10 terrible about them having had drafts. I do have a
11 problem with them telling us they did not have a report
12 when they did have a report.

13 MR. REMICK: Is there not some relationship,
14 in that some of the questions that were being asked were
15 prefaced with, "Are you independent? We want to make
16 sure you are independent." And the responses to those
17 questions could have been influenced by their concept of
18 independence.

19 COMMISSIONER GILINSKY: Well, maybe we ought
20 to let Bob finish.

21 (Laughter.)

22 MR. DEVTON: With regard to the question of
23 independence, which was not today's focus, I did send
24 the Governor and the parties to the proceeding a
25 telegram immediately after receipt of their report to us

1 on why they thought their contractors were independent
2 and why the program plan was an adequate response. And
3 there had been a plan to meet between PG&E, the staff
4 and the parties to go over whether or not this response
5 was sufficient.

6 And about that time, the story began breaking,
7 and the parties deferred me until more was known here.
8 The next attempt was scheduled for such a meeting was
9 this week, but the meeting was postponed because the
10 full-power proceeding had started. So the first meeting
11 we have been able to arrange between all the parties to
12 go over independence and the program plan will be the
13 first week in February.

14 MR. ENGLEKEN: It has been standard practice
15 at PG&E for approximately 20 years or more to review and
16 comment on the results of the consultants' work prior to
17 the results being placed in final draft or final report
18 form.

19 Dr. Cloud stated it is routine practice for
20 his company to provide draft reports for review and
21 comment to their clients prior to formulating a final
22 report.

23 Issue 3 --

24 CHAIRMAN PALLADINO: Is it not also true that
25 that is a standard practice even in GPO on reports?

1 Maybe we should ask Jim Cummings.

2 COMMISSIONER GILINSKY: Except in this
3 respect: the GAO makes clear in their final report what
4 the agency comment was, and the changes that were --

5 COMMISSIONER AHEARNE: I disagree. That is
6 not correct. What the GAO does is if there are
7 technical -- if the GAO report has made factual errors,
8 let us say, for example, if they were to say that the
9 U.S. Air Force bought 450 F4s in a given year and the
10 Air Force only bought 400, they will not even mention
11 that; the Air Force will have come back and said, "Wrong
12 numbers. 400." The GAO report will not mention that
13 they have made that change.

14 COMMISSIONER GILINSKY: You may be right.

15 COMMISSIONER AHEARNE: I know I am right on
16 that.

17 COMMISSIONER GILINSKY: Except that we send
18 usually two kinds of comments to them: the kinds that
19 deal with basic issues in their report, and there is an
20 addendum page and so on, and "Change this to this," and
21 there is a record of it.

22 But I think the more important point is that
23 everyone understands how that system functions. And had
24 they been doing exactly the same thing as the GAO, there
25 would be absolutely no problem about it, if they had

1 explained that that is what they were doing.

2 CHAIRMAN PALLADINO: I wonder if we could ask
3 Jim to comment on how GAO works and how internal audits
4 work.

5 MR. CUMMINGS: After the draft report is
6 issued, there must be some record kept of any changes
7 that are made to it.

8 I think Commissioner Ahearne is right, that
9 recently there has been some legislation that has been
10 directed at GAO that if, in fact, they change their
11 draft report in the final, then they must account for
12 that difference. So they have been made accountable.

13 COMMISSIONER GILINSKY: He is certainly right
14 in the past. Even if there is a change now, I think the
15 more important point is that the participants understand
16 what the relationship is.

17 COMMISSIONER AHEARNE: That is right.

18 COMMISSIONER GILINSKY: That, it seems to me,
19 is the problem here.

20 CHAIRMAN PALLADINO: I think there is another
21 point to be made: that this is a more common practice,
22 having the drafts reviewed by, let me call it, the
23 client, or by the person who has asked for the review,
24 that that is a rather common practice done not only in
25 the industry but also in the government.

1 COMMISSIONER GILINSKY: Right.

2 CHAIRMAN PALLADINO: The government happens to
3 have perhaps more formal ways to identify how comments
4 will be handled, but it still does have drafts
5 reviewed. And I think that just supports the fact or
6 the statement that it is standard practice.

7 COMMISSIONER GILINSKY: But I think it cuts
8 the other way and makes the situation worse for them,
9 because if it is standard practice in the industry and
10 at PG&E, then the natural assumption by all the top
11 management people is that they have drafts.

12 COMMISSIONER AHEARNE: I think that would be
13 true.

14 CHAIRMAN PALLADINO: But one does not know
15 when they might have had them.

16 COMMISSIONER GILINSKY: Well, they were
17 talking about an interim report which was to be
18 submitted very soon after the November 3 meeting, and
19 the natural assumption on their part would have been
20 that they had drafts along the way.

21 COMMISSIONER AHEARNE: I would agree.

22 CHAIRMAN PALLADINO: That is possible, Vic,
23 but that is a question of timing.

24 I do think that it is important to recognize
25 the extent to which the practice of having the people

1 that ask for a certain report have the opportunity to
2 examine it. And that is the only point I want to make.

3 COMMISSIONER BRADFORD: I agree with the
4 second point, Joe, but the timing point I do not,
5 because what their lawyer was promising --

6 CHAIRMAN PALLADINO: I was not disputing there
7 was a timing question. I just said that is a different
8 question.

9 COMMISSIONER ROBERTS: Maneatis, too.

10 COMMISSIONER GILINSKY: Even if it were
11 standard practice, we were talking about a special
12 situation here. And I do not think Harold understood
13 there had been a bunch of drafts, at least in this case,
14 and was asking about it.

15 MR. DENTON: I thought there would likely be
16 drafts generated, and that is why I asked the question.

17 COMMISSIONER AHEARNE: You also expected that
18 those drafts would be sent to the company.

19 MR. DENTON: Yes. And I had anticipated that
20 comments would flow and they would be done aboveboard
21 and in the open. And I think that is where I was going
22 to. And unfortunately --

23 COMMISSIONER ROBERTS: When you say
24 "aboveboard and in the open," you mean --

25 MR. DENTON: That copies would be given to all

1 the parties when they went from Cloud to the contractor
2 and when the company commented.

3 COMMISSIONER ROBERTS: I am not sure I agree
4 with that.

5 MR. DENTON: Well, in this case --

6 COMMISSIONER ROBERTS: I understand what you
7 are saying.

8 CHAIRMAN PALLADINO: Why in this case?

9 MR. DENTON: Because independence had become
10 such an issue of whether he was under the control of the
11 company or not.

12 COMMISSIONER AHEARNE: Let me ask you a
13 question: OIA does audits internal to the NRC. My
14 understanding is that OIA sends a draft to the
15 organization being audited, for comment. Has Cummings
16 gone? Is that correct, Jim?

17 MR. CUMMINGS: That is correct -- I could not
18 hear you.

19 COMMISSIONER AHEARNE: Does OIA send a copy of
20 its audit and draft to the organization being audited?

21 MR. CUMMINGS: Yes.

22 COMMISSIONER AHEARNE: Harold, would you
23 expect them -- and independence of OIA has been an issue
24 -- would you expect OIA to send the drafts to us before,
25 let us say, your office had a chance to look at them or

1 at the same time? Because independence has been an
2 issue.

3 MR. DENTON: It depends on who OIA is working
4 for. In this case, we were all within the same
5 organization, and both parties were working for the
6 Commission. I had looked upon this as Cloud while he
7 was being paid by the company, it was being insisted
8 that he do this work through the NPC, and he was billed
9 as an independent contractor, not as being done within
10 PG&E.

11 COMMISSIONER GILINSKY: John, suppose Jim is
12 investigating Harold and there is some dreadful thing
13 going on, and we are asking Jim, you know, "We want to
14 know about this thing. When are we going to get a
15 report on it?" And he says, "You are going to get it
16 the same time, you know, that I give a draft to Harold
17 or whatever it is, or to Bill Dircks." And it turns out
18 that Harold has been working up a draft all this time.
19 I guess I would be pretty disturbed about it.

20 COMMISSIONER AHEARNE: Particularly since what
21 you said is he said, "You will get it at the same time I
22 give a draft to them."

23 COMMISSIONER GILINSKY: If you take out the
24 word "draft" and use the word "report," the problem is
25 not that a draft had been circulated, it is the way the

1 process was represented, and we certainly walked away, I
2 think. I do not think there was anybody in this
3 organization that thought there drafts circulating
4 around between Cloud and PG&E.

5 COMMISSIONER AHEARNE: I do not dispute that.
6 I think I would have asked him a hypothetical
7 situation. You mentioned the same question that Harold
8 asked in the meeting, and Harold asked the question
9 which I feel was predicated upon the belief that in this
10 kind of a situation there would be drafts and they would
11 be sent. And he was asking, I read his question, "Well,
12 since you are going to be sending drafts to the company,
13 are we going to get a copy of the draft?" That was
14 really the question.

15 COMMISSIONER GILINSKY: But even if he had not
16 used the precise word "draft," the situation is not much
17 changed. I notice in one of the interviews -- in fact,
18 I think it is the president of the company says, "A
19 draft report is not a report." It is like saying a
20 brown dog is not a dog, you know.

21 We asked about a report. A report is a report
22 is a report. If you have got a report from the guy,
23 even if it is labeled a draft, it is a report.

24 COMMISSIONER AHEARNE: I guess I would not go
25 along with you.

1 COMMISSIONER BRADFORD: I do not know whether
2 I agree with that precisely, but I would say the
3 situation is almost worse, which is where the context is
4 such that it is clear you are talking about, what is
5 being discussed, is some form of independence. The
6 availability of a draft report to the company is really
7 more important than the availability of the final
8 report.

9 If we knew the company had the final report
10 for a week or ten days, but that it was already bound in
11 leather and could not be changed, that would bother me
12 less than knowing that, as it turned out, as proof of
13 their independence they volunteered they had no copies
14 of the report. You know, draft report in that context
15 is much more important than the final.

16 COMMISSIONER AHEARNE: I do not agree with
17 you, because particularly under the time pressure they
18 were working, I guess, I accept Cloud and his employees'
19 arguments that they were trying to make sure they had
20 completeness in this.

21 COMMISSIONER BRADFORD: I do not dispute
22 that.

23 COMMISSIONER GILINSKY: That goes to the
24 question of whether or not they should have been doing
25 it. That is an entirely different question, and I must

1 say I do not see a problem or I do not even see it as
2 being appropriate for them to have shown a draft to the
3 company.

4 The problem was how they represented what they
5 were doing.

6 COMMISSIONER BRADFORD: I doubt we would be
7 sitting here if it had turned out that, by golly, at the
8 time those statements were made, unfortunately, a few
9 days earlier a final copy had been delivered and was in
10 a safe and nobody had been aware of it. But there was
11 just no question of editing and control, and they turned
12 it right over to us a day or two later.

13 Somehow, the fact that it was a draft report,
14 it was susceptible to change --

15 COMMISSIONER AHEARNE: I just disagree with
16 that. I agree with Victor. I disagree with you.

17 COMMISSIONER BRADFORD: I think I agree with
18 Victor. I must not be making myself clear.

19 (Laughter.)

20 COMMISSIONER ROBERTS: Victor said
21 independence was at issue and you just said it was.

22 COMMISSIONER BRADFORD: I am not troubled by
23 their having the draft as a matter of consultant or
24 company practice. But in the context of whether or not
25 they made a material false statement in telling us that

1 they did not, I find the fact it was a draft report they
2 had to be more significant than had it been a final
3 report, because we were more likely to be misled.

4 COMMISSIONER ROBERTS: Are we still at Issue
5 2?

6 MR. ENGLEKEN: No, we are beginning with Issue
7 Number 3 now. What were the instructions that had been
8 provided to PG&E personnel who had to review and comment
9 on the Cloud findings as contained within the draft
10 reports?

11 No written instructions were provided to PG&E
12 employees as to how they should review and comment on
13 Dr. Cloud's findings in the draft reports.

14 Mr. Brown, the vice president of engineering,
15 issued oral instructions to the chief engineers
16 reporting directly to him. Mr. Brown stated these
17 instructions were the Cloud findings should not be
18 reviewed for editing or wordsmithing purposes, but to
19 call Dr. Cloud's attention to any additional information
20 that he should see.

21 It is unclear whether or not Mr. Brown's
22 verbal instructions were, in turn, given to the
23 engineers that actually reviewed the draft reports.
24 However, most PG&E engineers that were interviewed that
25 had commented on the Cloud work stated they did so only

1 to assure the Cloud work was accurate and complete.

2 COMMISSIONER AHEARNE: Now, you say most
3 engineers said that. Does that mean that there were
4 some who were interviewed who said that they did not do
5 it?

6 MR. ENGLEKEN: Well, there were one or two, I
7 believe, who stated that they thought the way certain
8 statements in the report had been phrased that it put
9 PG&E in a very bad light and that the statements could
10 be revised to at least make them neutral and factual but
11 not to necessarily be critical.

12 And there was also comment by one of the Cloud
13 people to that effect, that some of the comments made by
14 PG&E people were made to improve the language and put
15 PG&E in a better light.

16 But there was general agreement by the vast
17 majority of both PG&E and Cloud people that the comments
18 were directed towards improving the accuracy and
19 completeness of the report.

20 What was PG&E's purpose and intent in
21 providing comments on Dr. Cloud's findings is contained
22 within the draft report, Issue 4. Sworn testimony from
23 eight P&GE employees, seven of whom actually reviewed
24 and commented on the Cloud draft report, showed that
25 PG&E's purpose for reviewing the Cloud's findings and

1 submitting comments on draft reports was to assure
2 accuracy and completeness of the Cloud work.

3 However, as obtained from sworn testimony of
4 Mr. Motiwalla, former employee of Cloud Associates, and
5 from a review of the handwritten comments made by PG&E
6 personnel on the draft comments, some of the comments
7 made by at least two personnel were of an editorial
8 nature and were intended to make particular statements
9 in the draft report less critical of PG&E.

10 I think that answers your question.

11 (Slide)

12 Issue 5 --

13 CHAIRMAN PALLADINO: Do you know if those
14 comments were reflected in changes in the report?

15 MR. ENGLEKEN: At this stage we do not know
16 that. That will be done in phase 2.

17 Issue 5, what were the instructions provided
18 to the Cloud staff regarding the drafting and the
19 handling comments received from PG&E?

20 Five employees and Dr. Cloud were involved in
21 the preparation and revision of the October 21, October
22 26, November 6, and November 12 draft reports.

23 COMMISSIONER AHEARNE: Excuse me. But again I
24 am out of phase. You say you do not know that yet. But
25 it appears there were three or four of these editorial

1 comments that you specifically had asked about or were
2 specifically raised. Were those changes made?

3 MR. FAULKENBERRY: We have indications that,
4 yes, some revisions were made as a result of these
5 editorial-type comments. I think it may be worthwhile
6 to put it in perspective, though. If you look at the
7 examples that the various people of those employees gave
8 in their testimony as related to these editorial
9 comments, they are contained in the report. And I think
10 it kind of helps to put that in perspective.

11 COMMISSIONER AHEARNE: Yes, I did.

12 MR. ENGLEKEN: The five employees were
13 questioned to determine if directives or instructions
14 had been provided by Dr. Cloud or anyone else with
15 regard to how to prepare the draft report and how to
16 handle the comments received from PG&E. H. Loey, P.
17 Chen, S. Motiwalla stated that they had been provided no
18 specific or rigid instructions on how to prepare the
19 drafts and make revisions to the drafts. E. Denison
20 stated he was instructed that if a comment received from
21 PG&E was reasonable and correct, to make the change; if
22 it was not reasonable and correct, then do not make a
23 change. If the comment alluded to any additional
24 information, he was instructed to obtain the additional
25 information.

1 P. Anderson stated in the development of the
2 October 21 draft they attempted to stay away from any
3 personal conclusions or conclusions as told to them by
4 PG&E engineers.

5 Issue 6 were employees of R. L. Cloud under
6 any pressure to accept PG&E's comments that were
7 provided as a result of PG&E's review of the draft
8 reports?

9 Sworn testimony from all five employees of R.
10 L. Cloud who were involved in the preparation and
11 revision of the draft reports indicates they were not
12 under any pressure from anyone at R. L. Cloud to accept
13 the comments provided them from PG&E.

14 (Slide)

15 COMMISSIONER AHEARNE: Now, you have made a
16 modification in what you just said from what the report
17 says. And I just want to know whether that was a
18 significant point.

19 MR. FAULKENBERRY: No. We initially had the
20 report stating, "R. L. Cloud," and then we reviewed that
21 and broadened that to include PG&E. So really, our
22 conclusion is that we feel like there was no pressure
23 from PG&E or R. L. Cloud or really anyone.

24 MR. ENGLEKEN: Statements made at the November
25 3 meeting led the NRC to believe that no circulation as

1 a result of the Cloud seismic reverification study had
2 taken place preliminary to the draft report submitted to
3 the NRC on November 18.

4 The statements of concern made at the Novembe
5 3 meeting are contained on pages 215 through 217 of the
6 transcript of the meeting.

7 One statement of concern was made by Mr.
8 Maneatis in response to Mr. Denton's question, "How does
9 the NRC get the same reports that R. L. Cloud gives
10 you?" Mr. Maneatis' response was, "You just got it.
11 And I have to say, Mr. Denton, that some of these things
12 have just been disclosed to me. So you have got it
13 almost the same time I did."

14 Two statements of concern by Mr. Norton are
15 contained on pages 216 and 217 of this transcript. The
16 first statement is in response to a question from Mr.
17 Eisenhut, asking, "When can the NRC expect to see the
18 short-term report?" The statement made by Mr. Norton
19 was, "I might add, we do not have it. It is not a
20 question of reviewing it. We do not have it either. It
21 just has not been done yet."

22 COMMISSIONER AHEARNE: Do you know what
23 "short-term report" meant?

24 MR. ENGLEKEN: The interim report.

25 CHAIRMAN PALLADINO: The interim report.

1 Okay.

2 MR. ENGLEKEN: The second statement that was
3 made in response to a statement by Mr. Denton, in which
4 he said, "Well, this is a particularly sensitive issue.
5 I was wondering how you propose to handle comments on
6 this draft. Are you going to send us the same report he
7 sends you and add your cover letter to it, or how will
8 you preserve independence?"

9 Mr. Norton's statement was, "Any suggestions
10 you have, if you want the report before we see it,
11 fine. I frankly resent the implication that Dr. Cloud
12 is not an independent reviewer, because he is.

13 "As Mr. Maneatis just reported to you, we
14 heard this presentation to you yesterday. In fact, we
15 heard it Sunday for the first time. I assure you that
16 that is the case, and we came back last night, or we
17 came back yesterday, and you heard it this morning.

18 "The report itself has not been prepared. If
19 you want a copy of it before we get it, fine, or
20 simultaneously. He is an independent consultant, and,
21 you know, I do not know how we can show you that more
22 than to give you the reports when they are prepared.
23 You certainly are welcome to have an auditor, if you
24 will, from the NRC, accompany Dr. Cloud and his people
25 in their work, whatever you want to do. If you want to

1 talk to them directly out of our presence, fine. He is
2 an independent consultant."

3 A statement of concern made by Dr. Cloud was
4 also in response to Mr. Eisenhut's question of, "When
5 can the NRC expect to see the short-term report?" Dr.
6 Cloud's statement was, "I believe that we will be
7 turning it in either this week or next, so you should
8 have it shortly thereafter."

9 26 employees attended the November 23 meeting,
10 PG&E employees, six of whom stated in sworn testimony
11 that they were aware at the time of the meeting that
12 draft reports had been submitted to PG&E by Cloud.

13 PG&E, in preparation for the November 3
14 meeting, held three separate meetings. In attendance at
15 these meetings were Dr. Cloud, Mr. Norton, various PG&E
16 employees, including Messrs. Forbish, Raymond, Hoch,
17 Leve, Tressler and Herrera. At these meetings
18 discussions were held regarding the material that would
19 be presented at the November 3 meeting.

20 Issues 7 through 11, as defined in Section 3
21 of our report, are applicable to the November 3 meeting.

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1 These issues and the NRC findings related to
2 these issues are as follows:

3 Issue 7: Did Dr. Cloud mislead the NRC in the
4 statement he made at the meeting with the NRC on
5 November 3? If he did, was this done knowingly?

6 Of the six PG&E employees who attended the
7 November 3 meeting and who knew that Cloud had submitted
8 draft reports to PG&E for review and comment prior to
9 November 3, five stated in their sworn testimony they
10 did not consider Dr. Cloud's statement to be misleading
11 or erroneous. The specific question was not asked the
12 other employee regarding Dr. Cloud's statement. Thus it
13 is not known whether he considered the statement to be
14 misleading or erroneous.

15 COMMISSIONER AHEARNE: Who was the sixth and
16 why wasn't he asked?

17 MR. FAULKENBERRY: I'll have to check back and
18 make sure, but I believe that was Brand that we didn't
19 specifically ask that question to. I'd have to check to
20 make sure.

21 CHAIRMAN PALLADINO: Was there some reason for
22 not asking?

23 MR. FAULKENBERRY: No. It was that this issue
24 came up after we had been involved in the investigation
25 and it was not highlighted as a question until after we

1 had already interviewed that person.

2 COMMISSIONER GILINSKY: Well, on the basis of
3 the rest of his testimony, he wouldn't likely have said
4 that.

5 I'm a little surprised at the statement by at
6 least some of the individuals, because two of them
7 seemed to think that the company's statement was -- I
8 forget how they phrased it, but inaccurate, possibly
9 misleading, something like that. Why do they draw a
10 distinction between the company and Cloud?

11 MR. ENGLEKEN: Well, I don't know why they
12 drew a distinction. I think when you read the testimony
13 it's pretty clear that Cloud's statement relates to the
14 report that the NRC was going to get, to the draft
15 report that the NRC was going to get.

16 COMMISSIONER GILINSKY: The finding here, it
17 doesn't quite respond to the question. It simply says
18 that PG&E employees would not characterize the statement
19 as misleading.

20 MR. FAULKENBERRY: Commissioner Gilinsky, I
21 think really the reason for that was we were trying to
22 look at the other side of it from the standpoint of the
23 employees that knew about the draft reports there, how
24 did they react to that statement.

25 COMMISSIONER GILINSKY: Had the question been,

1 did PG&E employees regard Mr. Cloud's statement to have
2 been misleading, and that's a finding in response to
3 it. Do you understand my point?

4 MR. FAULKENBERRY: Yes. Now, with regard to
5 the interviewing of those particular people with regard
6 to Cloud's statement, they all without exception that we
7 addressed the question to very definitely related
8 Cloud's statement, or they thought Cloud's statement was
9 related to the report that the NRC was waiting to get,
10 "the final draft or final interim report."

11 CHAIRMAN PALLADINO: I'm having trouble,
12 though, following this testimony. Here you talk about
13 five out of six who said that it was not misleading, and
14 then later on you point to two people who said, well,
15 yeah, they knew of it.

16 MR. ENGLEKEN: That was concerning PG&E's
17 question.

18 COMMISSIONER GILINSKY: That was the question
19 I was asking. Two of them drew that conclusion about
20 PG&E's statement, which I gather was somewhat different
21 than the one that Cloud made.

22 MR. ENGLEKEN: Yes, that's right.

23 MR. FAULKENBERRY: I do recall now which
24 person we did not ask that specific question. That was
25 Hoch, John Hoch of indication.

1 COMMISSIONER GILINSKY: Well, that is
2 significant, because he was one of the two who thought
3 the PG&E statement --

4 MR. FAULKENBERRY: We asked a question in a
5 broad term, and when you go back and really look at the
6 details of his statement, he does not differentiate
7 between Cloud, Maneatis and Norton.

8 COMMISSIONER GILINSKY: And in any case, this
9 is the characterization of the various PG&E employees.
10 It's up to us to decide whether Cloud was misleading us
11 or not.

12 COMMISSIONER AHEARNE:

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16 MR. FAULKENBERRY:

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19 CHAIRMAN PALLADINO:

20 MR. FAULKENBERRY:

21 COMMISSIONER AHEARNE:

22 MR. SHACKLETON:

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25 COMMISSIONER BRADFORD:

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MR. FAULKENBERRY:

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COMMISSIONER GILINSKY:

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MR. FAULKENBERRY:

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CHAIRMAN PALLADINO:

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MR. FAULKENBERRY:

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CHAIRMAN PALLADINO:

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MR. FAULKENBERRY:

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MR. ENGLEKEN: Mr. Rocca, who recognized Mr.

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Norton's statements on pages 216 and 217 of the

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transcript to be misleading, in his sworn testimony

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stated that he did not see any inaccuracy in Dr. Cloud's

1 statement. Mr. Rocca said in his own mind Dr. Cloud was
2 talking about the final draft that was to be submitted
3 to the NRC, but had not yet been completed.

4 Dr. Cloud in his sworn testimony indicated he
5 did not knowingly mislead the NRC. He said that when he
6 made the statement at the November 3 meeting his
7 thoughts and words were directed toward the final draft
8 report or the final report that he was under pressure to
9 complete for PG&E for their submittal to the NRC.

10 (Slide.)

11 The same member of the peer group asked that
12 we make here the comment that we should have referenced
13 a discussion between Rocca and Tressler on the airplane
14 right after the November 3 meeting, the point being that
15 during part of this conversation Dr. Cloud was in close
16 proximity to Mr. Rocca and Mr. Tressler. However, Mr.
17 Rocca stated in his testimony that he did not believe
18 Dr. Cloud was involved in their conversation.

19 Dr. Cloud testified that when he returned to
20 his seat Rocca and Tressler were having a heated
21 conversation. He stated he did not remember the details
22 of the conversation or even the main thrust of it, but
23 that he believed it revolved around some of the thing
24 that attorney Bruce Norton had said at the meeting or
25 after the meeting. He said his memory did not go beyond

1 that.

2 Issue 8 --

3 CHAIRMAN PALLADINO: Did he not participate?
4 Didn't he overhear this heated argument?

5 MR. ENGLEKEN: That's correct. He stated that
6 when Mr. Rocca came to Mr. Tressler and Mr. Cloud -- Dr.
7 Cloud, Cloud and Tressler had been seated together.
8 Rocca came down. At that point Cloud got up and went
9 somewhere else in the plane, and Rocca sat down with
10 Tressler.

11 When Cloud finally came back they were having
12 a heated conversation, and he says he didn't get the
13 gist of that conversation, although he thinks it might
14 have related to something that Mr. Norton had said
15 either at the meeting or after the meeting.

16 CHAIRMAN PALLADINO: Did he go somewhere else
17 to sit or did he sit there with them?

18 MR. ENGLEKEN: It's not clear where he went.

19 MR. FAULKENBERRY: I think the understanding
20 that we have, and whether it's in the full testimony or
21 not I'm not sure, but Cloud and Tressler were sitting at
22 the back of the plane, Rocca and Herrera were sitting up
23 in the front portion of the plane. Rocca got up and
24 came back to where Tressler and Cloud were sitting.

25 Cloud at that time got up and gave Rocca his

1 seat, and he went on up to the front part of the plane,
2 talking to other people, I guess. And then he came back
3 at another time and was in the vicinity of where Rocca
4 and Tressler were having their discussion.

5 As a matter of fact, I think he said he sat on
6 the table near the place where Rocca and Tressler were.

7 MR. SHACKLETON: Mr. Chairman, I'd like to add
8 something else for the benefit of the Commission. As
9 you read the text, it's not in the transcript, but when
10 they got on the plane to return to San Francisco they
11 were quite tired after three days of preparation and
12 long hours. So they had some libation and they were
13 feeling no pain.

14 (Laughter.)

15 MR. SHACKLETON: So you're going to find, Mr.
16 Chairman, that when you read the testimony that there is
17 some differences on recall, and it may have to do with
18 how much libation each individual had.

19 MR. ENGLEKEN: The eighth issue: Did PG&E
20 mislead NRC representatives in statements they made at
21 the meeting with the NRC on November 3? If they did,
22 was this done knowingly?

23 The statements made by Norton at the November
24 3 meeting were erroneous and misleading. Mr. Norton in
25 his sworn testimony stated: "Well, obviously, when you

1 take the statement I made on pages 216 and 217, it's
2 factually incorrect. Indeed, PG&E had received a
3 report. So yes."

4 Mr. Norton also stated: "I honestly did not
5 have any meaning to that. If I had known" --

6 COMMISSIONER GILINSKY: What does that mean?

7 MR. ENGLEKEN: What does that --

8 COMMISSIONER GILINSKY: What does that mean?

9 CHAIRMAN PALLADINO: He's clearing it up.

10 MR. ENGLEKEN: "If I had known the report of
11 October 21st had been received by PG&E, I would not have
12 said what I said, because when I used the term 'report'
13 I was encompassing any report, whether it be
14 preliminary, interim, final, whatever. And it was
15 because I had asked the question, where is the report,
16 in the previous day or two and was told it would be
17 prepared in a week or two. I guess I assumed whoever
18 was answering my question was using the same definition
19 of 'report' I was. In all probability they weren't."

20 COMMISSIONER GILINSKY: Again, the findings
21 don't quite track with the question. Norton is the
22 attorney of record, I believe, and speaks for the
23 company. It's the company's responsibility that his
24 statements be accurate.

25 If he personally was aware of the facts about

1 draft reports has to do with his personal culpability,
2 you might say. But as far as the company is concerned,
3 the question deals with PG&E.

4 CHAIRMAN PALLADINO: I think there is some
5 implication that he was misled by somebody in PG&E.

6 COMMISSIONER GILINSKY: That's right, but
7 that's a separate question.

8 COMMISSIONER AHEARNE: Certainly in going back
9 to the November 3rd transcript, his statements were the
10 ones that were probably the most convincing:
11 "absolutely nothing." And as Vic said, he's -- now, I
12 gather he's not a junior attorney just fresh out of law
13 school.

14 MR. ENGLEKEN: No, he's been with PG&E on this
15 project for a number of years, and prior to that I know
16 he had been involved in the Palo Verde case.

17 COMMISSIONER AHEARNE: So he's not a novice.

18 MR. ENGLEKEN: No. He's a skilled lawyer.

19 COMMISSIONER GILINSKY: The company made an
20 arrangement with him that permits him to speak for the
21 company. It's up to the company to inform him on the
22 subject.

23 COMMISSIONER AHEARNE: It's a two-way street.
24 It's a little bit up to him to ask some questions.

25 Let me ask a different question. I notice

1 that Mr. Lieberman questioned Mr. Norton, as opposed to
2 having Mr. Shackleton or Mr. Faulkenberry. I wonder
3 why?

4 MR. ENGLEKEN: Well, when we first interviewed
5 Mr. Norton, since he had an attorney-client relationship
6 to be concerned about, he insisted that PG&E attorneys
7 be present and see -- we had to prepare written
8 questions, to see whether --

9 COMMISSIONER AHEARNE: Written questions he
10 was given? I guess I missed seeing that in here.

11 MR. ENGLEKEN: We didn't elaborate on that.

12 COMMISSIONER AHEARNE: Were written questions
13 given to everybody?

14 MR. ENGLEKEN: No. The people interviewed
15 were in some cases, not all, shown the written questions
16 just prior to testifying.

17 COMMISSIONER AHEARNE: Was Mr. Norton shown
18 just prior to testifying?

19 MR. LIEBERMAN: Yes, one or two minutes before
20 testifying he was shown the questions and, more
21 importantly, PG&E's attorneys were shown the questions
22 and they incorporated in the transcript of Mr. Norton
23 that they waived their privilege of confidentiality as
24 to the general scope of those questions. Those
25 questions are incorporated in the transcript.

1 COMMISSIONER AHEARNE: Was there an agreement
2 he would only be asked the written questions?

3 MR. LIEBERMAN: No, it was the general scope
4 of those questions. We didn't have specific questions
5 because as we got along with the questioning he provided
6 answers to some of the questions.

7 COMMISSIONER BRADFORD: Did he decline to
8 answer any of the questions on the basis of
9 attorney-client privilege?

10 MR. LIEBERMAN: No, he did not.

11 COMMISSIONER BRADFORD: Did you before
12 understand there were any areas you could not ask about
13 because of the attorney-client privilege?

14 MR. LIEBERMAN: No. Mr. Norton was
15 concerned. Since it was not a privilege he could claim,
16 rather than the company, he wanted the company to give
17 the waiver. And we had a short discussion with the
18 company and showed them the questions, and they came
19 back and said on the basis of this area they had no
20 problems.

21 COMMISSIONER AHEARNE: This was one minute
22 before the meeting?

23 MR. LIEBERMAN: Yes.

24 COMMISSIONER AHEARNE: That's when they
25 decided they had no problem?

1 MR. LIEBERMAN: Correct.

2 COMMISSIONER AHEARNE: But still, why did not
3 those gentlemen ask the question?

4 MR. DIRCKS: They carried out the first
5 interview with Norton. They are talking about the
6 follow-up interview.

7 MR. ENGLEKEN: I think we felt that we needed
8 an attorney who fully comprehended the matters, the
9 legal matters involved in lawyer-client relationships
10 and that sort of thing. So we asked for someone with a
11 legal background to assist us.

12 COMMISSIONER GILINSKY: When you refer to the
13 questions, are these what you now call issues?

14 MR. ENGLEKEN: No. These issues are
15 identified to assure ourselves that we had adequate
16 scope in the investigation. Now, the questions, the
17 questions that we wrote to ask individuals before we
18 interviewed them, had their origin in these issues,
19 yes. They were derived from these various issues,
20 that's correct.

21 MR. LIEBERMAN: They appear at pages 288 to
22 290 of the investigation report.

23 COMMISSIONER AHEARNE: It appeared to me that
24 Mr. Norton was not aggressively pursued.

25 MR. SHACKLETON: Mr. Ahearne, I was the one

1 that didn't aggressively pursue him the first time,
2 primarily again because of the attorney-client
3 relationship. It was very ticklish.

4 COMMISSIONER BRADFORD: How was it ticklish,
5 if the company wasn't asserting it?

6 MR. SHACKLETON: I could only ask him
7 questions relating to his own personal knowledge. I
8 couldn't ask him things about what the company was
9 doing.

10 COMMISSIONER BRADFORD: That was his ground
11 rules?

12 MR. SHACKLETON: That's the way the ground
13 rules were explained to me on the attorney-client
14 relationship.

15 COMMISSIONER AHEARNE: By whom?

16 MR. SHACKLETON: Initially by their
17 attorneys.

18 And I felt uncomfortable, without having our
19 own counsel. On the second conference that we had with
20 him, at that time we had Jim Lieberman and Roger Fortuna
21 with us, and I had asked Jim because I didn't want to be
22 a middleman in asking the questions and then have to go
23 into a discussion. I'd rather have the interview run
24 smoothly, with both people having the same knowledge on
25 how to handle it. So Jim took the responsibility in the

1 second interview.

2 Mr. Norton was much more cooperative and much
3 more willing to converse on the second interview. I
4 want to make one thing else clear for the Commission's
5 knowledge. Attorney Bruce Norton has represented PG&E
6 as a licensing counselor and has been with them since
7 1976. But he's based in Phoenix, Arizona, so he does
8 not have a day to day personal relationship with the
9 company.

10 COMMISSIONER AHEAPNE: Yes, but he's not a
11 novice and the company allows him to speak for them. He
12 made the very positive statements. He was committing
13 the company. He was making the offer, here's what we
14 will do. At least from the transcript of the meeting
15 from November 3rd, he didn't have to go into
16 consultation with some other member of the company about
17 whether or not he could say something. He was speaking
18 for the company.

19 And it appears to me that someone who's been
20 around that many years in the business -- the fact that
21 reports are submitted back and forth, the drafts arise,
22 I find it surprising that he felt the word "report"
23 covered everything. He asked whether there was a
24 report, and then his comment that, well, apparently
25 people didn't mean the same thing as he did.

1 One of the points that the lawyers are
2 constantly stressing here is that, gee, you have to be
3 very careful on terms, make sure you know what the term
4 means. I was not comfortable with Mr. Norton's
5 testimony, nor his questioning.

6 MR. ENGLEKEN: Mr. Hoch and Mr. Bocca of PG&E,
7 who were in attendance at the meeting and who knew of
8 the existence of the draft reports, recognized the
9 statements made by Mr. Norton to be misleading and
10 erroneous.

11 The misleading and erroneous statements made
12 by Mr. Norton at the November 3 meeting were not made
13 knowingly. Throughout his sworn testimony, Mr. Norton
14 stated there was no attempt on his or anyone else's part
15 to mislead the NRC. Mr. Norton did not become aware of
16 the draft reports until December 14, 1981.

17 It is questionable whether the statement made
18 by Mr. Maneatis at the November 3 meeting is
19 misleading. Mr. Maneatis in his sworn testimony said
20 his statement at the November 3 meeting was in reference
21 to Dr. Cloud's oral report that was presented to the NRC
22 during the meeting.

23 If Mr. Maneatis' statement at the November 3
24 meeting was misleading, it was not done knowingly. Mr.
25 Maneatis stated in his sworn testimony that he was not

1 aware of the existence of the draft reports until Mr.
2 Crews of the NRC called him on December 10, 1981.

3 (Slide.)

4 COMMISSIONER GILINSKY: Before you go to the
5 next issue, at some point responsibility for the
6 contract switched to Maneatis.

7 MR. ENGLEKEN: Yes.

8 COMMISSIONER GILINSKY: Apparently some time
9 after the November 3rd meeting. I think we raised the
10 question as to just where it is Cloud was fitting into
11 the company. It seems from reading the various
12 transcripts to have been just a formality in their
13 contracts department. Maneatis doesn't seem to have
14 gotten informed on Cloud's activities. There seems to
15 be no contact. All the contact is with Brand in the
16 engineering department, continued just as before.

17 COMMISSIONER AHEARNE: Rocca and the
18 assistants were actually running the contract.

19 COMMISSIONER GILINSKY: Rocca or whoever it
20 was. I don't know whether it's relevant to the prior
21 discussion.

22 MR. ENGLEKEN: I think it says something
23 perhaps about communications within the company.

24 COMMISSIONER GILINSKY: But they seem to have
25 just done this as a gesture to appease us. But Maneatis

1 does not seem to have informed himself about what Cloud
2 was doing in the relationship between PG&E --

3 CHAIRMAN PALLADINO: What's Maneatis' function
4 in the company?

5 MR. ENGLEKEN: He's senior vice president.

6 CHAIRMAN PALLADINO: Of what?

7 MR. ENGLEKEN: Of advanced engineering.

8 CHAIRMAN PALLADINO: So he should have had
9 more interest in the report than if he were just a
10 contracting officer.

11 COMMISSIONER GILINSKY: He is over the whole
12 engineering department. Brand is the vice president
13 under him.

14 CHAIRMAN PALLADINO: I remember him.

15 COMMISSIONER GILINSKY: And under the
16 engineering department are Rocca and the chief engineers
17 and so on.

18 MR. ENGLEKEN: I'd like to correct that. Mr.
19 Maneatis is senior vice president of facilities
20 development.

21 COMMISSIONER GILINSKY: Right. And who did
22 the people in charge of Diablo Canyon report to? Does
23 that go up through Brand or does that go up through some
24 other chain? In other words, who does, say, Hoch report
25 to?

1 MR. CUNNINGHAM: I could perhaps clarify, and
2 this is based on my recollection, is that Mr. Hoch
3 reports to Mr. Skyler, who is the vice president for, I
4 believe, nuclear operations or something like that. So
5 Mr. Hoch reports through a different vice president, but
6 both vice presidents, Mr. Skyler and Mr. Brand, report
7 to Mr. Maneatis. The titles may not be accurate, but I
8 believe that's the chain.

9 CHAIRMAN PALLADINO: We've been sitting here
10 now for two hours and 20 minutes. I wonder, is there
11 any objection if we take a break now and then continue
12 for another hour?

13 COMMISSIONER GILINSKY: I'm going to have to
14 leave at 12:00, in fact a couple of minutes before
15 that.

16 MR. ENGLEKEN: We're at your disposal.

17 CHAIRMAN PALLADINO: Well, I think it would be
18 wise to have a break now and then give you opportunity
19 to ask questions before you have to leave. I don't know
20 what decision, if any, we're going to take today. I'm
21 not sure even if I knew a decision to make that I'd want
22 to make it without a little bit of sleeping on it.

23 COMMISSIONER GILINSKY: I guess I wouldn't
24 want to miss out on hearing recommendations from the
25 staff.

1 CHAIRMAN PALLADINO: Well, we had asked them
2 not to make recommendations. Perhaps they're going to
3 offer some now, but that was my point. I would have
4 liked to have recommendations.

5 COMMISSIONER GILINSKY: If we are going to do
6 that, I'd very much prefer to pick it up later in the
7 afternoon.

8 CHAIRMAN PALLADINO: When can you come back?

9 COMMISSIONER GILINSKY: I've got a
10 long-standing commitment to give a speech, which I'm
11 going to have to wing.

12 (Laughter.)

13 COMMISSIONER ROBERTS: Which you're going to
14 have to what?

15 COMMISSIONER GILINSKY: I'm going to have to
16 wing it, at noon.

17 I can come a little bit late, I suppose.

18 COMMISSIONER AHEARNE: Rather than trying to
19 compress the front end of this, maybe we could start
20 when you get back.

21 COMMISSIONER GILINSKY: It's fine with me. I
22 thought we had a waste confidence meeting.

23 MR. BICKWIT: That's a closed meeting.

24 COMMISSIONER GILINSKY: That's fine with me.
25 I plan to be back at 2:00.

1 CHAIRMAN PALLADINO: Suppose we go through the
2 factual part and then at 2:00 o'clock we continue with
3 recommendations of the staff, okay? That way you won't
4 miss them.

5 COMMISSIONER AHEARNE: Or when Vic has to
6 leave, could we just stop the meeting and then pick it
7 up again when he comes back?

8 CHAIRMAN PALLADINO: Well, that's going to
9 crowd us in the afternoon. I have a feeling that most
10 of the items that are covered here are already in the
11 report that we're talking about, the issues.

12 COMMISSIONER GILINSKY: Why don't we take a
13 short break and then we'll see where we are.

14 CHAIRMAN PALLADINO: Why don't we take a short
15 break.

16 (Recess.)

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1 CHAIRMAN PALLADINO: I wonder if we could
2 start to take our seats. Okay, I wonder if we could
3 reconvene. Let's take care of a housekeeping detail
4 first.

5 The proposal is that we go until noon and then
6 we break and we try to be ready to start here by 1:45
7 and that will give us a little more time. Okay?

8 MR. REMICK: Mr. Chairman, a question on the
9 waste confidence. Would you hold it later, then, or not
10 hold it? There are some people coming in from the
11 Staff. If we are not going to have the meeting,
12 probably we should alert them.

13 COMMISSIONER BRADFORD: Do you have a plane to
14 catch, Tom?

15 COMMISSIONER ROBERTS: Yes, the same one as
16 the Region V people.

17 COMMISSIONER BRADFORD: At 3:30?

18 COMMISSIONER ROBERTS: I need to leave here at
19 3:30.

20 CHAIRMAN PALLADINO: I have a feeling we are
21 going to take most of the time between 1:45 and 3:30 to
22 go on this particular topic, and I would suggest that we
23 not have the waste confidence proceeding this
24 afternoon. We'll have to reschedule it, perhaps
25 sometime next week, but we will take that up at the

1 agenda session.

2 All right, well then, can we proceed?

3 MR. ENGLEKEN: Issue 9. What explanation was
4 given by the speakers at the November 3 meeting for the
5 statements they made that the R. L. Cloud report had not
6 been received by PG&E.

7 (Slide.)

8 Three persons, Maneatis, Norton and Cloud,
9 made statements at the November 3 meeting with NRC that
10 could be considered erroneous or misleading. Mr.
11 Maneatis considered his statement to apply to the oral
12 report being given by Dr. Cloud at the November 3
13 meeting. He was not aware until December 10 that two
14 draft reports of Dr. Cloud's work had been submitted to
15 PG&E prior to the November 3 meeting.

16 Mr. Norton did not become aware until December
17 14 that draft reports of Dr. Cloud's work had been
18 submitted to PG&E prior to submittal to the NRC.

19 Dr. Cloud considered his statement to be
20 directed toward the final draft report, not toward any
21 of the previous draft reports, which he considered to be
22 working papers.

23 Issue 10.

24 (Slide.)

25 What are the explanations given by people

1 attending the November 3 meeting, for not bringing the
2 existence of the Cloud reports to the NPC's attention.

3 CHAIRMAN PALLADINO: Could I go back to number
4 9?

5 (Slide.)

6 Based on the record of the November 3 meeting
7 it's not all that clear that they were talking about the
8 final report. Did you explore further the relationship
9 between Denton's question and the follow-up answer? Oh,
10 I guess the answer that came before that, when Mr. Cloud
11 said, "I believe it's -- we will be turning it in in
12 another week or so, either this week or next week, so
13 you should have it shortly thereafter."

14 And then the question about this draft came
15 up. He would have had an opportunity there to say well,
16 I'm not speaking of the draft; I'm speaking of the final
17 report. But he didn't.

18 Did you explore that?

19 MR. FAULKENBERRY: Yes. I might add, about
20 the only thing we can say on that is what Cloud himself
21 said, but he said that prior to the meeting of November
22 3 he was under tremendous pressure to get the report
23 completed and submitted to the NRC. At that time they
24 did not know whether they were going to put it in final
25 form or whether it would be a draft report.

1 So he said a few days prior to the meeting as
2 well as all the time that he was at the meeting, his
3 thoughts were completely directed at the report that he
4 was chartered to get prepared and get to the NRC, which
5 would be "the final draft."

6 CHAIRMAN PALLADINO: But there was quite a bit
7 of discussion after his comment that could have raised
8 the question that they might be talking about something
9 else than the final report, but I gather you got no
10 insight on that question.

11 MR. FAULKENBERRY: That's correct.

12 COMMISSIONER GILINSKY: I find it interesting
13 that their lawyers seem to understand by "a report", any
14 report. All of our engineers seem to understand
15 "report" being report. Somehow their engineers,
16 including Cloud, draw a distinction between draft report
17 and final report or interim report.

18 CHAIRMAN PALLADINO: One of the reasons I am
19 concerned about that point because on the same page as
20 Mr. Cloud's response but shortly thereafter Mr. Norton
21 speaks and he says, "Any suggestions you have, if you
22 want the report before we see it, fine. I frankly
23 resent the implication that Dr. Cloud was not an
24 independent reviewer, because he is.

25 "As Mr. Maneatis just reported to you, we

1 heard this presentation to you yesterday. In fact, we
2 heard it Sunday for the first time. I assure you that
3 that's the case and we came back last night, or we came
4 back yesterday and you heard it this morning."

5 So even here we are talking about a somewhat
6 different report from what Mr. Cloud says he answered.
7 I was thinking of when he had answered his question in
8 between Mr. Denton's query about a draft report and Mr.
9 Norton says the report itself hasn't been prepared and
10 so on.

11 It seems like there is enough confusion about
12 which report they were talking about that that would
13 have been a good time to have said something.

14 COMMISSIONER GILINSKY: On their part.

15 CHAIRMAN PALLADINO: On their part, on Cloud's
16 part.

17 COMMISSIONER BRADFORD: You raised another
18 interesting point, Joe, which is that Maneatis'
19 statement seems to have, if Norton is to be believed,
20 fooled Norton as well. That is, Norton immediately
21 rolled it into his statement, which he now concedes was
22 misleading, as part of the proof that the company hadn't
23 in fact seen anything.

24 CHAIRMAN PALLADINO: Well, I was just trying
25 to find out whether --

1 MR. FAULKENBERRY: I was going back to the
2 testimony of Dr. Cloud. We did specifically ask Dr.
3 Cloud about Mr. Norton's statement after we asked him
4 about his own. We asked him if he heard Mr. Norton's
5 statement and why didn't he correct Mr. Norton's
6 statement.

7 And he said of course he had to have heard the
8 statement, "I was there, but I don't recall him saying
9 that no results had been submitted to PG&E. I certainly
10 don't remember it in those terms."

11 We explored it a little bit further and he
12 said, "When this issue came up, which first came up as
13 far as I was concerned on Monday of this week, the day
14 before yesterday. I went back into my memory. I looked
15 at this transcript and the context of that discussion
16 was focused on the report that I would be giving to PG&E
17 that would subsequently be sent to the NRC. That's what
18 I had in my mind at that time. That's what, as far as I
19 was concerned, Norton was talking about."

20 COMMISSIONER GILINSKY: I thought it was
21 interesting that if Forbush had said had he known about
22 the draft he certainly would have mentioned it, so he
23 certainly wasn't drawing any of these distinctions
24 between draft and interim. He understood the question.

25 MR. ENGLEKEN: Yes.

1 MR. REMICK: Mr. Chairman, can I just make an
2 observation here? I think the comment about Harold
3 Denton on draft report -- draft report to me is too
4 broad because I think it has to be read in the context
5 of the question that was asked by Darrel Eisenhower just
6 before that.

7 He said when will we be expecting to see that
8 short-term report, which we are told is the interim
9 report, and I certainly conclude that too, and Cloud, in
10 response, says we will be turning it in either this week
11 or next. You should have it shortly thereafter.

12 Then Harold said, well, since this is a
13 particularly sensitive issue, I was wondering how you
14 proposed to handle comments on this draft. Now on this
15 draft, to me doesn't mean draft report. It could be --
16 he might have said this interim report or this final
17 report. He said "on this draft." To me that doesn't
18 say "draft" report.

19 Now Harold has indicated what he intended, but
20 when I read the words coldly I can interpret that on
21 this draft in a number of different ways.

22 COMMISSIONER GILINSKY: But I think the
23 assumption was that there weren't previous drafts.

24 MR. REMICK: But when I see the discussion at
25 the time, one could reasonably conclude that he was

1 thinking of the interim report. That's what he
2 answered. That's basically the question Eisenhut had
3 asked and then Harold had come in and used "draft", but
4 not saying draft reports or anything else.

5 CHAIRMAN PALLADINO: I wasn't clear what
6 "interim report" meant and I gather --

7 MR. CASE: You can't just read the cold words
8 in the transcript. You have got to be there to
9 understand the context. Not only Maneatis, Norton,
10 Forbish, but also Shackelford said I can see how the
11 answers could have been thought to have been misleading.

12 So there were a lot of people who understood
13 the question differently.

14 CHAIRMAN PALLADINO: But I didn't understand
15 what "interim" report meant until this morning. I took
16 it to mean perhaps a draft. But if interim report meant
17 the final interim report that everybody's talking about
18 --

19 COMMISSIONER GILINSKY: I was at that meeting
20 and I must say I walked away with the impression that
21 when anything is put on paper and given to the company
22 we were going to see it.

23 MR. DENTON: I think the presentation by
24 Cloud, which was the focus of the meeting, was portrayed
25 as being hot off the press and not written down.

1 COMMISSIONER GILINSKY: That's right. There
2 had been an oral report. They had just gotten the oral
3 report. I certainly walked away with that impression.

4 MR. ENGLEKEN: Dr. Gilinsky, when you and I
5 visited Dr. Cloud, I recall he mentioned at that meeting
6 that that report would be issued within a day or two and
7 I think we visited November 16.

8 COMMISSIONER GILINSKY: It is worth mentioning
9 here that I asked him what the status of the report was,
10 and, as I recall, he said that you should have it now or
11 you have it now. And we said, or you said, no we didn't
12 have it now, and so he turned to the PG&E fellow,
13 McCracken, I believe, and the guy said, well, no.
14 Actually it's in our legal department. And Cloud
15 groaned, as I recall.

16 (Laughter.)

17 MR. ENGLEKEN: I believe he said it would be
18 passed along in a day or two.

19 COMMISSIONER GILINSKY: McCracken did. Cloud
20 seemed to be surprised that it hadn't come to us faster
21 and that it had been held up in PG&E and that it took
22 quite some time, actually, to get it. We didn't get it
23 in a day or two.

24 MR. ENGLEKEN: That's correct.

25 COMMISSIONER AHEARNE: Well, if you were there

1 on the 16th --

2 MR. ENGLEKEN: I'm not certain of that date.

3 I think it was the 16th.

4 COMMISSIONER AHEARNE: I thought they sent the
5 report on the 18th.

6 MR. FAULKENBERRY: Cloud sent the report to
7 PG&E on the 12th. I believe that Mr. Gilinsky and
8 ourselves were over there on the 18th, if I'm not
9 mistaken. They mailed it out of PG&E on the 18th and we
10 got it on the 19th or so.

11 COMMISSIONER GILINSKY: I must say that I
12 think that the report did not come immediately
13 thereafter. It was a week. That's what I remember. It
14 was about a week.

15 In fact, the point was it was postmarked a
16 certain date and they claimed that a copy of it went and
17 got lost and they eventually gave us another copy.

18 MR. FAULKENBERRY: We explored that with the
19 people at PG&E. Of course, the only thing I can relate
20 is what we found. But we explored it through Crane.

21 Crane's secretary signed off the transmittal
22 letter for him on the 18th and they said it was mailed
23 on the 18th.

24 COMMISSIONER GILINSKY: But we didn't get it
25 until about a week later.

1 MR. ENGLEKEN: That's right.

2 MR. CREWS: We got it the 25th.

3 COMMISSIONER BRADFORD: Was it postmarked?

4 MR. CREWS: I don't know when it was
5 postmarked. Actually we got it stamped into our office
6 on the 25th. We had obtained a copy because, again, I
7 had called them just to get the report and a copy was
8 hand-carried to us on the 23rd, and on the 25th I think
9 we actually received it in the office by then.

10 COMMISSIONER BRADFORD: But no one made note
11 of the postmark?

12 MR. CREWS: No.

13 MR. ENGLEKEN: One of the explanations given
14 by people attending the November 3 meeting for not
15 bringing the existence of the Cloud report to the NRC's
16 attention, six persons from PG&E plus Dr. Cloud were
17 aware of the existence of the reports while they were in
18 attendance at the November 3 meeting. Norton, Maneatis
19 and Cloud made statements.

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1 Four persons -- Brown, Bettinger, Ghio, and
2 Tressler -- either did not hear the statements made by
3 Mr. Norton, Mr. Maneatis and Dr. Cloud or did not
4 consider the statements to be misleading or erroneous.
5 Two persons -- Rocca and Hoch -- hear the statements
6 made and considered them to be erroneous or misleading.

7 Mr. Rocca said that immediately after he heard
8 Mr. Norton's statement that PG&E did not have the
9 report, Mr. Norton made another statement offering to
10 provide the NRC with the results of the Cloud study
11 prior to their being submitted to the NRC.

12 COMMISSIONER AHEARNE: Prior to their being
13 submitted to PG&E?

14 CHAIRMAN PALLADINO: This says NRC.

15 MR. ENGLEKEN: Excuse me. That should be
16 PG&E. Mr. Rocca said Mr. Norton's latter statement
17 upset him and he tended to forget Mr. Norton's previous
18 statement.

19 COMMISSIONER AHEARNE: The statement he tended
20 to forget was the one that they had had a draft, and
21 what really upset him was that he was being told he
22 shouldn't have a draft.

23 MR. ENGLEKEN: What upset him was the
24 statement, the implication that he would have to submit
25 his work directly to NRC. However, Mr. Rocca did bring

1 the subject up regarding Mr. Norton's statement that
2 PG&E did not have the Cloud report with Mr. Tressler on
3 the airplane ride home from the November 3 meeting.

4 During that conversation Mr. Tressler told Mr.
5 Rocca that he did not believe Mr. Norton's statement was
6 misleading to the NRC. Mr. Rocca testified that after
7 his discussion with Mr. Tressler he did not discuss the
8 subject with anyone else.

9 And another peer review comment was that the
10 same member of the peer review suggested that it be
11 mentioned that Mr. Rocca, in a second interview, said
12 that he probably mentioned to Mr. Brand during a lunch
13 break that there was a report from Dr. Cloud in-house,
14 but that he wasn't really sure.

15 Mr. Brand stated in his testimony that he did
16 not recall that subject ever coming up during his
17 discussion with Mr. Rocca.

18 Mr. Hoch stated that he had not read the draft
19 reports, that he was a peripheral participant at the
20 meeting, and that he assumed that someone else would
21 correct the statements if they were wrong. After the
22 meeting broke up he said he tended to forget about Mr.
23 Norton's statements.

24 COMMISSIONER AHEARNE: Now I guess I hadn't --
25 when I read Tressler's testimony I guess I didn't get

1 the same sense that he was assuring Maneatis that he
2 hadn't mislead the NRC -- Rocca.

3 MR. ENGLEKEN: Yes, I think that's --

4 COMMISSIONER AHEARNE: When I read the report
5 it sounded like we asked him did you discuss this, and
6 what was your position, and Tressler told Rocca don't
7 worry about it. I really didn't mislead you, honestly.

8 MR. CASE: Tressler also said that Rocca told
9 him that he had told management about this, but he
10 didn't say who.

11 COMMISSIONER GILINSKY: It fits in.

12 MR. CASE: It fits in with the story.

13 COMMISSIONER AHEARNE: Could I perhaps ask Mr.
14 Shackleton or Mr. Faulkenberry to address that? Was
15 Tressler really clearly remembering here was a
16 conversation that I had and Rocca was upset, and I
17 assured him don't worry?

18 MR. FAULKENBERRY: Well, I think that Mr.
19 Tressler came across very strong with regard to his
20 remembrance of the conversation that he had with Mr.
21 Rocca and it would be more of a passing comment that he
22 made, that he told Mr. [unclear] that he did not believe the
23 statements mislead the NRC.

24 I will look for his testimony in here and read
25 it back to you as soon as I find it.

1 MR. CREWS: I think, Bob, it's on the bottom
2 of 493.

3 MR. FAULKENBERRY: Okay. This is on 493. I
4 asked the question: "Mr. Tressler, based upon your
5 conversation with Mr. Rocca and your being present at
6 the November 3 meeting, did you in your own mind
7 consider then that Mr. Norton or Mr. Maneatis may have
8 made some misleading statements to the NRC?"

9 Tressler's reply was: "I guess I -- and I
10 told Jim Rocca this when I talked with him -- I really
11 didn't consider the statements to be misleading and
12 that, again, I considered the work Cloud was doing at
13 that point in time to be preliminary and anything that
14 he was coming up with that we looked at were findings.
15 And I felt it was absolutely necessary that the company
16 participate." Et cetera, et cetera.

17 COMMISSIONER GILINSKY: What did he say Rocca
18 had said about having talked to other people?

19 MR. LIEBERMAN: That's on the next page, 494,
20 on line 8. Bobby asked Mr. Tressler did at any time
21 after conversations with Mr. Rocca did you relay to any
22 of your management the conversation that you had or the
23 fact that Mr. Rocca had concerns that possibly
24 information provided to the NRC had been misleading?

25 Tressler: "No, I did not discuss that with

1 management other than Mr. Rocca." And the Bobby says,
2 "Mr. Tressler, do you have any knowledge of whether or
3 not Mr. Rocca relayed these concerns to anyone else
4 within PG&E other than yourself?" "I believe he did,
5 but I can't be certain. I was not involved in any
6 conversations and have no firsthand knowledge of such
7 conversations."

8 MR. FAULKENBERRY: We then followed this up
9 with a questioning of Mr. Rocca and asked him
10 specifically if he had discussed this with Mr. Brand.
11 He said no. We asked him if he discussed it with anyone
12 else and he said no. And that was the question after
13 the no discussions after the airplane meeting.

14 COMMISSIONER GILINSKY: But he did think that
15 he discussed it at the lunch break.

16 MR. FAULKENBERRY: You will have to read his
17 testimony, and this goes back to the previous answer to
18 you people's questions. Rocca changed things, jumped
19 about a lot. And whether he was having a problem with
20 recall, I don't know. But if you go back and look at
21 the testimony he says, "I think I may have. I'm not
22 sure. I probably did."

23 MR. CASE: But there were two subjects there.
24 He was trying to say that he had said it before and
25 that's where he hesitated a lot. I believe I think I

1 mentioned 164. I'm not sure. I would have to look at
2 my transcript.

3 And all that hesitation deals with whether he
4 mentioned it in his previous transcript.

5 CHAIRMAN PALLADINO: What page? 154?

6 MR. FAULKENBERRY: 164.

7 MR. CASE: I think I probably mentioned it to
8 Mr. Brand, though at the time, you know, there was an
9 in-house report without any significance.

10 MR. FAULKENBERRY: Actually it starts on the
11 very last line of 163 and then extends over to 164 and
12 165.

13 MR. CASE: It seems to me that Rocca was
14 concerned that he hadn't in first testimony mentioned
15 this, so that's where he stutters and stammers quite a
16 bit.

17 COMMISSIONER GILINSKY: I got the impression
18 that he thought he hadn't mentioned it at the lunch
19 break.

20 MR. FAULKENBERRY: During his first testimony,
21 Mr. Rocca stated that no, he had not discussed it with
22 Mr. Brand, at the lunch break, that he had only
23 discussed his concern about Norton's statement that he
24 would supply the reports to us prior to PG&E.

25 Now we brought Rocca back about several days

1 after that for a reinterview, and then this is where he
2 came in with the statement --

3 MR. CASE: You confronted him with the fact
4 that Tressler said --

5 MR. FAULKENBERRY: That's correct.

6 MR. ENGLEKEN: Issue 11 was the existence of
7 Cloud draft reports discussed by PG&E representatives.

8 COMMISSIONER AHEARNE: Before you finish 10,
9 could you say a few words about Hoch, who was the other
10 person who felt that these statements were misleading?

11 MR. FAULKENBERRY: Okay. That was John Hoch.
12 In John Hoch's interview, of course, if you read it, he
13 goes on several pages, but basically Hoch says I don't
14 know. He said, "I have tried to recollect why I didn't
15 bring it to Mr. Norton's attention." But he said,
16 really, "I don't know."

17 Hoch did pick up another statement that Norton
18 made at the meeting, that Cloud had never worked for
19 PG&E before. At the lunch break Hoch specifically
20 contacted Norton and made him aware of that particular
21 statement.

22 When we asked him, "Why didn't you make him
23 aware of the other statement," he said, "I really don't
24 know." He said, "If I'd thought about it I would have,"
25 but he said, "I didn't, and I really don't know."

1 COMMISSIONER BRADFORD: Did Norton then
2 correct the other one?

3 MR. FAULKENBERRY: Yes, he did.

4 MR. ENGLEKEN: Was the existence of the Cloud
5 draft report discussed by PG&E representatives at the
6 November 3 PG&E pre-meetings or at the lunch break on
7 November 3?

8 Nine persons who attended the pre-meetings and
9 who were at the lunch break gave sworn testimony they
10 did not hear at the pre-meetings or during the lunch
11 break any discussion regarding the existence of a Cloud
12 draft report.

13 CHAIRMAN PALLADINO: You said nine?

14 MR. ENGLEKEN: Nine. The only discussion
15 anyone heard that related to the Cloud draft reports was
16 the question by Mr. Norton asking is the report done or
17 do we have the report yet, meaning the report that was
18 going to the NRC. Someone in turn answered that it
19 would be ready in a week or two.

20 Mr. Rocca of PG&E discussed with Mr. Tressler
21 of PG&E on the airplane flight home from the November 3
22 meeting Mr. Norton's statement that PG&E did not have
23 Dr. Cloud's report. Mr. Tressler said he told Mr. Rocca
24 during the conversation on the flight home that he did
25 not feel Mr. Norton's statement was misleading to the

1 NRC.

2 Mr. Rocca stated that after the conversation
3 with Mr. Tressler he did not have further conversations
4 with anyone else regarding Mr. Norton's statement that
5 PG&E did not have Dr. Cloud's report.

6 COMMISSIONER AHEARNE: In your interviews with
7 Rocca, is he not the individual who seemed surprised at
8 the question of should they volunteer information to the
9 NRC that the NRC hadn't asked for?

10 MR. FAULKENBERRY: As I recall, that's correct.

11 COMMISSIONER AHEARNE: And his attitude was if
12 we haven't asked for it, why should they tell us?

13 MR. FAULKENBERRY: Well, yes, I have to say
14 that's true. I think if you look at his testimony a
15 little bit closer I think he indicated he was trying to
16 think in terms of the legal requirements for reporting
17 to the NRC. That was going through his mind and he
18 brought that out a little bit.

19 So whether that was his confusion or not, I
20 don't know, but he did make those type statements.

21 COMMISSIONER AHEARNE: Just one other question
22 on issue 11. It's really trivial.

23 You said nine. The report says ten, and there
24 are ten names.

25 MR. FAULKENBERRY: Ten is the correct number.

1 COMMISSIONER BRADFORD: Before you go off of
2 this general subject, there isn't quite an issue framed
3 -- simply, was the NRC mislead -- as its starting
4 point. Now how did you go about establishing that? Do
5 you have to, at some point, interview Harold and the
6 other top NRC Staff that was there?

7 It seems to me the ultimate conclusion whether
8 or not the NRC was mislead shouldn't rest with PG&E.

9 MR. ENGLEKEN: I think we are starting out
10 with the general agreement that the NRC was mislead.
11 Mr. Dircks indicates that in his letter, which is a
12 matter of public record.

13 COMMISSIONER BRADFORD: Let's see. And then
14 have any one of those who were at the meeting and who
15 were mislead indicated which statements they felt were
16 part of or contributed to being mislead?

17 MR. ENGLEKEN: NRC persons?

18 COMMISSIONER BRADFORD: Yes.

19 MR. ENGLEKEN: We have not discussed this with
20 NRC persons. We did not interview NRC people.

21 I think there was general agreement that the
22 NRC was mislead at the meeting, and we didn't take sworn
23 testimony from any NRC people. There were discussions,
24 of course.

25 COMMISSIONER BRADFORD: Well, I guess what I'm

1 after is at some point when you start talking about
2 whether particular statements were material you get into
3 whether or not they were in fact relied upon by those at
4 the meeting in arriving at judgments about what they
5 were being told.

6 MR. ENGLEKEN: I raised the question would we
7 have done anything different if we knew they were draft
8 reports, and the response I got from people in NRR was
9 that yes, we would have asked for copies of the draft.

10 CHAIRMAN PALLADINO: Are you suggesting that
11 we need that testimony?

12 COMMISSIONER BRADFORD: Well, I'm not sure,
13 but when one starts breaking this whole issue of a false
14 statement down into just which statements were in fact
15 -- (a) which were false and (b) which were material, at
16 some point you have to, I would think, make some
17 assessment of any given statement's contribution to the
18 misleading of the NRC.

19 COMMISSIONER AHEARNE: I guess I haven't yet
20 reached the conclusion of what is the -- if it was not
21 on their side a knowing misleading. I haven't yet
22 reached the point of what formal reporting requirement
23 they were under which would then lead to the material
24 false statement.

25 COMMISSIONER BRADFORD: Well, I am leaping

1 over that in the sense that I don't have any difficulty
2 with the knowing, at least on PG&E's general part,
3 leaving aside the question of individual relationships
4 to particular relationships and degree of knowledge.

5 It seems to me if you take PG&E as a corporate
6 entity, they have the knowledge and they made the full
7 statement.

8 MR. ENGLEKEN: I am not aware of any
9 requirement, any NRC requirement, that they inform us of
10 the existence of draft reports. I just don't believe
11 there are any. Certainly none have been identified to
12 us.

13 COMMISSIONER BRADFORD: Except that once a
14 representative of the company leads us to believe that
15 there are in fact no draft reports, then they are under
16 a duty to disclose it.

17 MR. ENGLEKEN: Yes, that's a different
18 question.

19 CHAIRMAN PALLADINO: Are you through with
20 issue 11?

21 MR. ENGLEKEN: Yes.

22 CHAIRMAN PALLADINO: Well, maybe this is a
23 good time to break for lunch and then resume at 1:45.
24 So we will be in recess.

25 (Whereupon, at 12:05 o'clock p.m., the meeting

1 was recessed, to reconvene at 1:45 o'clock p.m., the
2 same day.)

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1 AFTERNOON SESSION

2 (2:00 p.m.)

3 CHAIRMAN PALLADINO: We will resume our
4 earlier meeting.

5 (Slide presentation continued.)

6 MR. ENGLEKEN: Mr. Chairman, I would now like
7 to discuss independency and other concerns as described
8 in our report. Independency is related to Cloud's
9 seismic reverification review. It was not a specific
10 point of discussion between PG&E and the NRC at the
11 October 9th meeting between PG&E and NRC.

12 In the discussions the word "independent" was
13 spoken only once and was used by Dr. Cloud when he
14 stated the title of one of his presentation slides,
15 "Independent Assessment of Safety-Related Design Sheets."

16 The term "independent audit" was first used at
17 the October 9 meeting in the discussions that occurred
18 between the NRC and Mr. David Fleishacker, attorney for
19 the intervenors, when Mr. Fleishacker stated "I would
20 like to request that the staff recommend an independent
21 audit of the seismic reanalysis."

22 In response to Mr. Fleishacker's statement Mr.
23 Denton of the NRC stated "I think we are getting an
24 independent audit. I assume we are getting an
25 independent audit through the work that Dr. Cloud is

1 doing. That is one reason I wanted the reverification
2 program plans submitted so we can look at it in advance
3 to see if we think it is really adequate."

4 The independency issue as related to the Cloud
5 seismic reverification work was addressed at the
6 November 3rd meeting in the discussions that occurred
7 between PG&E and NRC representatives.

8 Mr. Maneatis stated that Dr. Cloud had been
9 retained by PG&E to do an independent and in-depth
10 reverification program. Mr. Norton stated that he was a
11 little bit concerned that suddenly questions were being
12 raised about the independence of the review. He said
13 "There is no reason to believe that the review is not
14 independent."

15 The meaning of independency was not defined at
16 the November 3rd meeting other than through the
17 statements made by Mr. Denton. Mr. Denton stated one
18 meaning of the word "independent" for me as independent
19 of the people who did the original work. Mr. Denton
20 again addressed the meaning of independent and stated "I
21 guess just to reiterate my view of independence would
22 mean as a minimum you are not reviewing the work with
23 which you are associated."

24 Dr. Cloud in his sworn testimony said he had
25 not been advised by the NRC nor PG&E as to how to handle

1 his reports. He does not believe the issue of
2 independency reached a high degree of importance until
3 the November 3rd meeting.

4 PG&E representatives, particularly Mr.
5 Maneatis and Mr. Norton, in their sworn testimony stated
6 they believed the acceptance criteria for independency
7 to be as stated by Mr. Denton. Mr. Maneatis stated that
8 at the November 3rd meeting Mr. Norton volunteered to
9 follow any method the NRC wished in submitting Dr.
10 Cloud's reports but PG&E was never given any specific
11 directions.

12 On December 1, 1981, a written contract was
13 submitted to Dr. Cloud from PG&E requesting his
14 consulting services in connection with assisting PG&E in
15 the Hosgri seismic reverification program for Diablo
16 Canyon.

17 This investigation determined that the written
18 contract between PG&E and Cloud Associates dated
19 December 1 does not address the independence of the
20 contractor, Cloud Associates, in any sense of the
21 meaning that is of concern in this special investigation.

22 During the course of this investigation a
23 concern arose within the NPC regarding possible policies
24 or procedures that might exist within PG&E that would
25 inhibit or restrict the free flow of information between

1 PG&E and the NRC. This concern was addressed throughout
2 the course of the investigation and was incorporated
3 into the interviews of various PG&E personnel.

4 Issues 12 through 14 are applicable to the
5 discussions at the October 9th and November 3rd meetings
6 focused on independency, the contract document of
7 December 1 requesting Cloud to perform work for PG&E and
8 possible policies or procedures within PG&E that could
9 restrict the free flow of information between PG&E and
10 the NRC.

11 These issues are as follows:

12 Issue 12: What is the basis for the NRC
13 expectation that Dr. Cloud's work and findings should be
14 independent?

15 Statements made by PG&E representatives at the
16 November 3rd meeting, as shown in the transcript ---

17 COMMISSIONER AHEARNE: Excuse me, Bob. In
18 that Issue 12 question are you asking what is the basis
19 that they should be or that they would be?

20 MR. ENGLEKEN: What is the basis for the
21 expectation.

22 COMMISSIONER AHEARNE: But that would then be
23 a question to the NRC, why should they be independent.

24 MR. ENGLEKEN: Well, "would be" I guess would
25 be a better word, yes. Really the meaning would be

1 conveyed.

2 Statements made by PG&E representatives at the
3 November 3rd meeting, as shown in the transcript of the
4 meeting show that PG&E told the NRC that Dr. Cloud was
5 performing an independent investigation or review.

6 Mr. Maneatis states that Dr. Cloud has been
7 retained by PG&E to do an independent and in-depth
8 reverification program. Mr. Norton states that there is
9 no reason for the NRC to believe that Dr. Cloud's review
10 has not been independent.

11 As discussed earlier, independency was not
12 defined at the November 3 meeting except for the
13 statements made by Mr. Denton.

14 Also, as discussed earlier, independency was
15 not a subject of discussion between PG&E and NRC at the
16 October 9th meeting and did not become a subject of
17 discussion until November 3rd.

18 Issue 13: Are there any policies within PG&E
19 written or otherwise regarding not providing information
20 to the NRC unless specifically asked for by the NRC?

21 Eight employees, including four senior level
22 management personnel stated there are no such policies
23 or procedures in existence with PG&E.

24 COMMISSIONER BRADFORD: When I read those
25 questions, and I haven't read all of them so I may have

1 missed it, but the ones that I read were asked in the
2 form is there a PG&E policy against providing
3 information to the NRC unless asked for.

4 Were any of the PG&E employees asked in more
5 general terms what the policy was on providing
6 information?

7 MR. FAULKENBERRY: Yes, there was one employee
8 that expanded on that somewhat. But the only thing he
9 really came up with was the employee handbook type of
10 information or other statements, you know, that you will
11 provide and you will not withhold information.

12 CHAIRMAN PALLADINO: Will provide what?

13 MR. FAULKENBERRY: That you will provide
14 information and that you will not withhold information,
15 you will be factual, tell the truth, et cetera. It is
16 more the standard boilerplate information you find in
17 the employee handbooks.

18 MR. ENGLEKEN: One employee also I believe
19 referred to the kind of standard advice you get in a
20 formal hearing by an attorney when he says answer the
21 question and you simply answer the question and he asks
22 him don't go beyond that. One employee did mention that
23 kind of counsel.

24 Issue 14: What is the relationship of the
25 contract terms as contained in the December 1 contract

1 with R. L. Cloud in the performance of the Dr. Cloud as
2 an independent contractor?

3 The written contract does not address the
4 independence of the contractor in any sense of the
5 meaning that is the concern of this special
6 investigation.

7 The remaining two issues, Nos. 15 and 16, are
8 related specifically to the changes that were made to
9 the Cloud reports as a result of PG&E comments. They
10 will be dealt with specifically in Phase II of the
11 investigation.

12 Those issues are 15 and 16.

13 Namely, 15 is: Did any PG&E either oral or
14 written comments result in any unjustified changes in
15 Dr. Cloud's findings contained in the November 12th
16 draft report submitted to the NRC?

17 16: What were the bases for substantive
18 changes, if any, made in Dr. Cloud's earlier draft
19 reports?

20 Preliminary investigation into these issues
21 indicated that a substantial amount of additional review
22 by three parties, NRC, PG&E and Cloud Associates, was
23 required to adequately investigate the issues. It was
24 therefore decided that these issues would be handled in
25 a separate phase of the investigation. That phase is

1 underway at the present time and should be completed
2 within the next two or three weeks, early February.

3 We have a target date of February 1st.

4 Bobby, do you think we can make that?

5 MR. FAULKENBERRY: Yes. Right now that looks
6 good. We should have the report finished by February
7 1st.

8 CHAIRMAN PALLADINO: I was thinking we will
9 want to schedule a meeting on it and I should have some
10 idea as to when we might be able to do so.

11 MR. ENGLEKEN: It is a little difficult to
12 predict with a great deal of accuracy because in the
13 Cloud report that we got back from him requesting
14 information concerning the handling of the comments
15 there are a number of references to logs and files of
16 his and we don't have too good a feeling at this
17 particular time as to how much effort will be involved
18 in our review of those logs and files.

19 We have asked for and gotten additional help
20 from NRR who will be participating in this investigation
21 with us out there. So I think we will make the February
22 1 target.

23 CHAIRMAN PALLADINO: Could you tell us how
24 that investigation is proceeding? What is the format
25 and who is going to do what?

1 MR. ENGLEKEN: We will be visiting the Cloud
2 office along with his report which identifies all of the
3 comments made and then refers to sections of his files
4 and logs where the justification for the changes that
5 were made based on those comments are contained. We
6 will be reviewing his files to see whether the actions
7 taken by him in response to the comments are justified.

8 CHAIRMAN PALLADINO: You are not going to ask
9 him to provide what changes he made?

10 MR. ENGLEKEN: We have done that, yes, and he
11 has identified the changes.

12 CHAIRMAN PALLADINO: You mean he has gone
13 through the report page by page and identified the
14 changes?

15 MR. ENGLEKEN: We basically asked both PG&E
16 and Cloud to provide us with all of the information
17 necessary for us to review the comments and see what
18 changes were made as a result of the comments, who made
19 the comments and what changes were made and then to
20 identify where the supporting information is in the
21 files to support the justification for those changes.

22 CHAIRMAN PALLADINO: You are not going to ask
23 him to explain why he made a particular change?

24 MR. DIRCKS: We will be, yes.

25 CHAIRMAN PALLADINO: So he is going through

1 page by page. When he identifies an item that was
2 changed he is going to give the reason for it; is that
3 right?

4 MR. ENGLEKEN: If this will help, I will read
5 a letter that I sent to Pacific Gas and Electric Company
6 on December the 30th.

7 It is addressed to PG&E, attention of Mr.
8 Philip Crane, Assistant General Counsel, dated December
9 30.

10 It says: "With respect to NPC's continuing
11 investigation of the Dr. R. L. Cloud matter please
12 direct Dr. Cloud to provide under oath or affirmation
13 the following information directly to this office with a
14 copy to the Pacific Gas and Electric Company:

15 "(A) A compilation of all written and known
16 oral comments related to the four draft reports from R.
17 L. Cloud Associates that were submitted to PG&E on
18 October 21 and 26, November 6 and November 12, 1981.

19 "(B) For each comment identify the draft
20 report, the page number, the second number and whether
21 the comment was made by a PG&E employee or an employee
22 of Dr. Cloud. If the comment was made by an employee of
23 Dr. Cloud identify the employee by name.

24 "For purposes of these responses please
25 identify the draft dated October 21 as draft one, the

1 draft dated October 26 as draft two, the draft dated
2 November 5 as draft three and the draft dated November
3 12 as draft four.

4 "(C) For each comment indicate whether or
5 not the comment resulted in a revision of the material
6 being commented on.

7 "(D) For each comment for which a change was
8 made provide an explanation as to why the change was
9 made.

10 "(E) For each comment that resulted in a
11 change identify the log or other document which
12 substantiates the explanation.

13 "Dr. Cloud should be instructed that neither
14 Dr. Cloud nor any of his employees should discuss any of
15 the responses or any drafts thereof with PG&E employees
16 or seek any other information from PG&E employees in
17 preparing the above information.

18 "Part 2. Please provide under oath or
19 affirmation the following information to this office:

20 "Identify all persons, PG&E, Westinghouse and
21 so forth, with specific names who were provided copies
22 of the four draft reports from R. L. Cloud Associates
23 and identify the draft number of each such document.

24 "For purposes of these responses please
25 identify the draft dated October 21 as draft one, the

1 drafted dated October 26 as draft two, the draft dated
2 November 5 as draft three and the draft dated November
3 12 as draft four.

4 "(B) Identify all persons and parties, other
5 than employees of Dr. Cloud, who made either oral or
6 written comments on such documents and list each
7 comment, the commenter, the draft number, the page
8 number and the section of each document.

9 "(C) Identify which of these comments were
10 forwarded to Dr. Cloud.

11 "(D) For each comment transmittal to Dr.
12 Cloud identify how and through whom, Mr. Rocca or
13 otherwise, the comment was submitted to Dr. Cloud.

14 "The responses of these requests should be
15 submitted by January 15, 1981.

16 "If you or Dr. Cloud have any questions
17 concerning this request please contact my office
18 directly. Please be advised that the information
19 requested above is in addition to that requested of you
20 in my letter dated December 23, 1981."

21 I might add that we have received responses
22 from both PG&E and from Cloud. We have not had an
23 opportunity really to review them yet. They just were
24 received within the last day or two and we were busy
25 working on this report.

1 CHAIRMAN PALLADINO: So now you are going to
2 visit and go over the items that are covered. Who are
3 you going to visit, Cloud?

4 MR. ENGLEKEN: We will visit both PG&E and
5 Cloud.

6 CHAIRMAN PALLADINO: What are you going to do
7 in the visit?

8 MR. ENGLEKEN: There are a number of
9 references to documents that support the changes that
10 were made and that will be the principal effort. I
11 presume we will also talk to people and get their views
12 as to why certain changes were made.

13 CHAIRMAN PALLADINO: Then will all the
14 information that they submit, plus whatever results from
15 your meeting, will that be all part of the second report?

16 MR. ENGLEKEN: That will be in the second
17 report, the Phase II report, yes, sir.

18 CHAIRMAN PALLADINO: Do you have any questions?

19 COMMISSIONER AHEARNE: (Nodding negatively.)

20 CHAIRMAN PALLADINO: All right. Do you have
21 more, Bob?

22 MR. ENGLEKEN: No, sir, that completes the
23 presentation.

24 CHAIRMAN PALLADINO: All right. We are open
25 to questions and comments.

1 COMMISSIONER AHEARNE: There are several
2 slides in the back. Are you going to get to those or is
3 that not part of the presentation?

4 MR. ENGLEKEN: Those are not part of the
5 presentation. They were discussion items that in the
6 even that subject came up we were prepared to use these
7 are notes.

8 CHAIRMAN PALLADINO: I didn't see those. Do
9 these mean you have some further remarks?

10 MR. ENGLEKEN: They were my personal notes.

11 COMMISSIONER GILINSKY: What, at the back?

12 CHAIRMAN PALLADINO: Yes. I didn't see them.

13 Well, let's see if there are any general
14 questions. I would suggest then that we do go to any
15 recommendations or observations that you wish to make.

16 Are there any questions generally before we
17 get into that?

18 (No response.)

19 MR. DeYOUNG: The point that we might clear up
20 now is when do we release this report?

21 CHAIRMAN PALLADINO: I have that written in
22 big letters, when do we release the report.

23 MR. DeYOUNG: We suggest now.

24 CHAIRMAN PALLADINO: John, do you have any
25 comments?

1 COMMISSIONER AHEARNE: I guess before I
2 comment on that I would to understand where I&E comes
3 out so far on the question of whether there has been a
4 violation and, if so, of what and what would their
5 recommendation be.

6 MR. DIRCKS: When you talk about in the
7 technical sense what the violation would be.

8 MR. DeYOUNG: We have concluded within the
9 Office of I&E that there was a violation and the
10 violation is that a material false statement did occur.
11 We have several points that led to that. If you want me
12 to, I can read those points.

13 No. 1, NRC was under the impression that there
14 were no drafts of the R. L. Cloud report prior to that
15 that was submitted to the NRC on November the 18th.

16 No. 2, if NRC had been aware that a draft
17 existed NRC would have investigated further. As a
18 minimum it would likely have asked for copies of those
19 drafts.

20 No. 3, PG&E officials knew of the existence of
21 previous drafts.

22 No. 4, PG&E officials knew incorrect
23 information was given to NRC.

24 No. 5, other managers of PG&E, once informed
25 of the existence of the drafts, stated that incorrect

1 information had been given to NRC on November 3rd.

2 No. 6, NRC was not informed by PG&E of the
3 existence of the drafts until December the 1st, 1981, 28
4 days after the November 3rd meeting.

5 CHAIRMAN PALLADINO: Say that last one again.

6 MR. DeYOUNG: NRC was not informed by PG&E of
7 the existence of the drafts until December 1st, 1981, 28
8 days after the November 3rd meeting.

9 COMMISSIONER GILINSKY: When did we get the
10 report from the Congress that there had been other
11 drafts?

12 MR. ENGLEKEN: Mr. Udall first said there was
13 a draft.

14 COMMISSIONER GILINSKY: When was that?

15 MR. ENGLEKEN: December 1.

16 COMMISSIONER GILINSKY: And you said you
17 didn't hear from the company until December 1?

18 CHAIRMAN PALLADINO: First I thought you said
19 the 14th, to tell you the truth.

20 COMMISSIONER BRADFORD: I think the point is
21 we told them rather than they telling us.

22 CHAIRMAN PALLADINO: Excuse me. Tom had a
23 question.

24 COMMISSIONER ROBERTS: Would you read No. 2
25 again, please.

1 MR. DeYOUNG: If NRC had been aware that a
2 draft existed NRC would have investigated further. As a
3 minimum it would likely have asked for copies of those
4 drafts.

5 COMMISSIONER ROBERTS: I am not sure I agree
6 with the appropriateness of that. That is my own
7 personal opinion. In fact, I disagree with that.

8 MR. DeYOUNG: We were under the impression
9 that no drafts did exist.

10 COMMISSIONER GILINSKY: Wait a minute, Tom.
11 When you say the appropriateness, you disagree that that
12 is what NRC would have done or you disagree that it is
13 relevant?

14 COMMISSIONER ROBERTS: I don't think had the
15 NRC known of a draft that it would be reasonable for the
16 staff to ask for the draft. They are preparing a
17 document. We have all I think conceded that it is
18 certainly proper for the person being audited to make
19 comment on the work as it is in progress.

20 COMMISSIONER GILINSKY: But they are telling
21 you they would have asked for it.

22 COMMISSIONER ROBERTS: I think procedurally
23 that would have been improper. A different point of
24 view. Sorry.

25 MR. DeYOUNG: We have generally done that.

1 COMMISSIONER ROBERTS: Now wait a minute, you
2 have generally done that. I get the impression that the
3 NRC doesn't have any great wealth and background and
4 experience in auditing or reviewing an audit such as
5 this.

6 COMMISSIONER GILINSKY: I think what is at
7 issue here is the materiality which I gather is what you
8 are addressing. When you say material false statement,
9 there are two tests: One, is it material and, two, is
10 it false. False I think we understand. Material means
11 you would have taken it into account. This goes to the
12 question of whether or not it would have been taken into
13 account.

14 CHAIRMAN PALLADINO: And in what way.

15 MR. DeYOUNG: I might give you my personal
16 views that I see nothing wrong with them having draft
17 reports, but I think it should have been done the way
18 the GAO does it, for example. Here is our report. You
19 comment on it. You know, you may make all the comments
20 you wish on it. But that is a public document. It is
21 free and everyone knows that it is there.

22 COMMISSIONER AHEARNE: No.

23 COMMISSIONER ROBERTS: I am not persuaded that
24 is correct.

25 COMMISSIONER AHEARNE: The GAO draft if not a

1 public document.

2 MR. DeYOUNG: Public to us. At the end
3 Congress will see the comments, the changes and so on.

4 COMMISSIONER AHEARNE: No.

5 COMMISSIONER ROBERTS: I have a question for
6 Jim Cummings. If you were conducting an investigation
7 of any office, whatever, would you show the Commission,
8 these five seats, the working papers that were commented
9 on by the person you are auditing; a draft?

10 MR. CUMMINGS: I think we make a distinction
11 between an investigation and an audit. If we were doing
12 an audit we would normally send the draft to the EDO,
13 get his comments, incorporate it and send it back in to
14 the Commission.

15 If there were substantial changes to our
16 report between the draft and the final we would account
17 for those changes in the transmittal letter that we
18 would send to the Commission.

19 COMMISSIONER AHEARNE: Even if there were
20 minor changes?

21 MR. CUMMINGS: I don't know where exactly you
22 would draw that line.

23 COMMISSIONER GILINSKY: It seems to me that it
24 is not even essential that the staff would have asked
25 for the document. The question is would it have borne

1 on any staff judgment and it certainly would have
2 affected your notion of what the relationship with Cloud
3 was to PG&E. The only question here is the materiality
4 of the documents in question.

5 MR. DENTON: I would have followed up on it
6 certainly if I had been told there were documents because
7 by that time the Chairman had received the letter from
8 the Governor raising questions of the credibility and
9 the independence of Cloud. In fact, the letter that
10 came in on October 30th, for example, said that the
11 Governor believed that the public would not believe the
12 results of any audit performed by PG&E or the NPC.

13 I had spend several hours on the phone by the
14 time with Herb Brown, the Governor's representative. So
15 I was somewhat sensitized to the need to be sure this
16 audit was independent. That is why I conclude if I had
17 been told that there were drafts around we would have
18 asked to have seen the copies.

19 I would have expected drafts to occur and I
20 think it is normal business practice. I think that is
21 what led me to say how will you transmit the draft?
22 Will you put your comment on the draft or will you send
23 your comments back? I have no problem either with
24 drafts being exchanged between parties provided that it
25 was done in a manner that all people could see it.

1 There was no hint of editorial control being exercised.

2 COMMISSIONER BRADFORD: This isn't of course
3 just a case in which the abstract method of practice is
4 at issue. If you take the hypothetical involving Jim
5 Cummings and add as an ingredient that Jim had come
6 before the Commission and said this is a completely
7 independent review and I am not showing any copies to
8 that office and then later discovered that one of his
9 subordinates had in fact shown a copy to that office I
10 would certainly expect him to make that known to us even
11 if the Commission would not have objected to that
12 practice in the first place.

13 COMMISSIONER AHEARNE: True, but they didn't
14 say that they had not shown any copies.

15 COMMISSIONER BRADFORD: Well, Norton at least
16 did.

17 COMMISSIONER AHEARNE: No, Norton made an
18 offer.

19 COMMISSIONER GILINSKY: Norton said they did
20 not have to report.

21 COMMISSIONER AHEARNE: They did not have to
22 report, that is right.

23 COMMISSIONER GILINSKY: Which he said included
24 drafts.

25 CHAIRMAN PALLADINO: What decision would have

1 been affected had you know that the drafts existed?

2 MR. DENTON: I think if we had known at that
3 meeting that the whole course from here out would have
4 been different and we would have asked for copies.

5 MR. DIRCKS: I think you were looking to see
6 whether it was going to be a tainted report. You were
7 looking for something of a paper trail.

8 MR. DENTON: We were looking for the degree of
9 independence. We were worrying about other factors than
10 independence at the time, the amount of work that he may
11 be doing and these kinds of things. But it was assumed
12 at that meeting that certainly there was no editorial
13 control going on.

14 I think Dr. Cloud had the first opportunity to
15 right the situation when Norton turned to him and asked
16 him when would the report be available. If he had said
17 then well, I have provided several drafts already prior
18 to this meeting and we expect to have the final, I think
19 we would have said we would like to see copies of these
20 drafts and the comments made on them and it would have
21 become a minor issue. In the review everyone would have
22 accepted that what had occurred prior to the meeting was
23 correctly represented and we would have followed the
24 development of the final.

25 CHAIRMAN PALLADINO: You would have followed

1 what?

2 MR. DENTON: We would have followed then the
3 development of Cloud's final report and see what he did
4 with comments that the company made. I think it would
5 have gone differently. The report might not have
6 changed, and I think that is the second phase of what we
7 are trying to determine, did the report really change
8 editorially as a result of Cloud's comments or not.

9 CHAIRMAN PALLADINO: That result has been a
10 delay in getting to the question you would have asked
11 because we are asking that question now and we are
12 investigating it.

13 MR. DENTON: In fact, it has diverted the
14 resources from following what Cloud's review is doing
15 technically into doing the kind of compiling of
16 information we have gotten. So we are a long ways from
17 being up to speed on what the Cloud technical report is
18 going to show.

19 COMMISSIONER ROBERTS: Wouldn't the staff
20 monitoring all these drafts and the comments be
21 analogous to grading the exam before the student has
22 turned it in?

23 MR. DENTON: I think in a normal case where a
24 utility hires a consultant say to do the geological work
25 for them we don't look upon that in the same way as

1 here. I think this was kind of an outside report card,
2 sort of a CPA audit. The books were in and the design
3 was in and the big focus of issue was the credibility of
4 this outside review and would it substitute.

5 We were being pushed by some parties to maybe
6 fund such a review ourselves. The whole focus at this
7 time was how independent was Cloud's report. I think if
8 people had volunteered that there were drafts around and
9 had provided them the issue would have become a small
10 one.

11 CHAIRMAN PALLADINO: The materiality then has
12 to do with having done sooner what we are trying to do
13 now. It would have also resulted in redirection of some
14 of your attention from the procedural matters to the
15 more technical matters. I am just trying to understand.

16 MR. DENTON: Well, let's take the extreme.
17 Suppose we never found out that there were drafts and
18 that there were major changes that had been made in the
19 report because of the editorial nature and ultimately we
20 might have reached the wrong conclusion I think would be
21 the extreme case that we are trying to protect against.

22 COMMISSIONER AHEARNE: How about on the other
23 side if there were no material changes made?

24 MR. DENTON: If there were really no material
25 changes then the net effect of this would be we would

1 have gotten the same finding.

2 MR. DENTON: All along it has been both the
3 appearance and the substance here. The big issue the
4 Commission faced when it got into thing, first of all,
5 was how independent was going to be an independent audit.

6 I think what we have been finding out was what
7 we were very much afraid of which was that we didn't
8 have an independent audit.

9 COMMISSIONER AHEARNE: Bill, when you say we
10 find out we didn't have any independent audit, so far
11 the only proposed definition of independence has been
12 Harold's.

13 COMMISSIONER ROBERTS: You are prejudging that.

14 MR. DENTON: Let's strip away a lot of this
15 stuff. We had a person that was brought on. He was
16 already brought on under a charge that he was deeply
17 embedded already with the company. We were concerned
18 that the work he was going to do was going to reflect
19 his work not subjected to the editorial revision of the
20 firm in question.

21 Then we find out that his reports that he had
22 been preparing that we did not know about had indeed
23 been circulating through the company to get the
24 benefit. I don't know whether it is editorial or
25 factual or not. But if they had said that this had been

1 happening at the time of the November 3rd meeting I
2 think we would have had a non-issue. We would have said
3 fine, okay. We would like to see these drafts just to
4 assure ourselves that indeed there were not going to be
5 substantive changes made in this report based on some
6 pressure from the company.

7 COMMISSIONER GILINSKY: You might also have
8 changed the rules for how they are handled. You might
9 have said how did you handle them precisely? What is
10 done is done. Would you in the future keep a detailed
11 record of this or that. Three days after the meeting
12 they circulated another draft. We might have said okay
13 you can do that but do it in a certain way.

14 I just find it inconceivable that if they had
15 told us there were such drafts that we would have just
16 taken absolutely no notice of it and gone on to the next
17 subject.

18 CHAIRMAN PALLADINO: But you said that if you
19 had known about drafts you would have expected they
20 would have shown them to you.

21 MR. DIRCKS: We very probably would have asked
22 them.

23 CHAIRMAN PALLADINO: But now Harold said that
24 he wouldn't have been surprised if there had been
25 drafts. As a matter of fact he asked a question about

1 them.

2 MR. DENTON: I think in the context of the
3 meeting it had been projected that what we were hearing
4 was being heard for the first time. I am not surprised
5 that there are draft reports made available but it was
6 the fact that we were told that none had been made
7 available to date. I felt that Cloud would write his
8 own report in the way he saw the facts, transmit it
9 without any input from the company to the company and
10 the company would then send that report to us perhaps
11 with a cover letter saying here is what we think of this
12 report somehow.

13 COMMISSIONER AHEARNE: Without checking his
14 facts?

15 MR. DENTON: Or either send it back to Cloud
16 and say correct. I mean somehow the company has to have
17 a chance to get their "or" in and I would have expected
18 them to.

19 CHAIRMAN PALLADINO: The process that is
20 commonly used in the professional engineering arena is
21 the one that they were following. It apparently is
22 pretty close to what we do in our own internal audits
23 and what the GAO does.

24 So the fact that it was transmitted for
25 comment and the comments were transmitted I don't think

1 is contrary to normal practice.

2 MR. DeYOUNG: But we think this was not a
3 normal situation.

4 CHAIRMAN PALLADINO: In what way?

5 MR. DeYOUNG: It was highly sensitive.

6 COMMISSIONER GILINSKY: Suppose the Congress
7 were asking us about one of these CIA reports and we
8 told the Congress no, it doesn't get circulated to an
9 office.

10 MR. DeYOUNG: I might say that I asked John
11 Collins because there was another project that was just
12 as sensitive, HLEP in South Texas. They employed the
13 Quadrex Corporation to do a study of the design
14 implementation for their plant.

15 We asked John Collins to check to see what
16 HLEP required of that consultant. It was in the
17 contract that they did not want any drafts. They wanted
18 their report without drafts submitted because they knew
19 it was a sensitive subject. If it appeared as if they
20 were trying to guide and change the report, even though
21 the facts were wrong, they did get a chance to correct
22 certain facts later and it is all on the record. It is
23 just Quadrex report, they commented and Quadrex will
24 probably comment on their comments and say I understand
25 we made a mistake. So they do get the facts corrected.

1 They were aware of the sensitivity of this
2 thing and they did it in a different way.

3 MR. ENGLEKEN: If I may just add a further
4 comment. From my perspective out in California I felt
5 that the independence issue was focused on very sharply
6 immediately following the receipt of Governor Brown's
7 letter. I think the date of that letter was about
8 October the 16th or thereabouts.

9 As I recall virtually every paragraph of that
10 letter mentioned an independent audit and gave great
11 emphasis to an independent audit. It was after the
12 receipt of that letter that the independency issue took
13 on within the Commission, within the staff, somewhat
14 more concern than it normally does when we talk about an
15 independent audit.

16 MR. DIRCKS: I don't think putting Cloud in
17 the same boat as the General Accounting Office is a very
18 good analogy. We don't hire the General Accounting
19 Office to come in here to do an audit of us. They come
20 in and do it.

21 In this case it was PG&E that hired Cloud. So
22 there was already this suspicion that Cloud was less
23 than a free agent. I think what we were concerned about
24 in reviewing the record was to assure ourselves that
25 indeed Cloud was going to act like a free agent.

1 MR. DENTON: The reason for the question was
2 to find out what they were doing to see how
3 independent. I think what we have done in the future,
4 in the case right after this one, was right from the
5 beginning lay down a ground rule that all correspondence
6 between the auditor and the company were to be served on
7 all parties whenever they were produced.

8 CHAIRMAN PALLADINO: You say that was told to
9 them?

10 MR. DENTON: Yes, and that is being done in
11 the San Onofre case, for example. Anything that GA
12 sends to the company is served on the parties and then
13 GA writes back. The comments are quite proper except
14 everybody sees what is going on and there is no dealing
15 between the auditor and the company.

16 CHAIRMAN PALLADINO: What I am having trouble
17 with is putting the words together in my mind as to what
18 makes this a material false statement.

19 One, I can see that because they had made that
20 statement and then later found out about it you had to
21 get into procedural matters that took up time that would
22 have gone to technical matters. That is one thing that
23 resulted.

24 Two, it may turn out that the comments made
25 will influence your decision on independence. You are

1 going to find out what those comments are and whether
2 they were appropriate or inappropriate and that might
3 influence your decision on whether they are independent
4 and hence it will come later.

5 MR. DENTON: I think that is the stronger
6 argument. The question is the integrity, you know, the
7 process, it seems to me.

8 CHAIRMAN PALLADINO: The integrity, yes. I
9 think you have got a point there. The integrity that is
10 illustrated by this action can come into question.

11 MR. DIRCKS: I think it is the integrity and
12 the lack of sensitivity that overwhelms the whole issue.

13 COMMISSIONER GILINSKY: Joe, if I may
14 interrupt you. It isn't so much what Harold did or
15 would have done. The legal test is would he have taken
16 it into account.

17 MR. BICKWIT: Can I speak to that?

18 CHAIRMAN PALLADINO: Yes.

19 MR. BICKWIT: It seems to me that you are
20 really focusing on two questions and one of them is
21 legal. Even if you decide that the legal test is met,
22 and my conclusion is that it is, questions about
23 materiality could influence your decision about whether
24 to go forward and how bad is this business. So that
25 merely deciding that the legal test is met is not

1 dispositive of what action we take, the legal test of
2 materiality.

3 The legal test is not all that stringent. You
4 have got cases that say in interpreting the 1001 Statute
5 in the Criminal Code that "Actual reliance of the
6 governmental department is not an essential element of
7 the offense charged."

8 Similarly the Firth Circuit has held "The
9 agency need not actually have relied or acted to its
10 detriment upon the false statement but the government
11 must still show that the statement have the capacity to
12 influence a determination required to be made."

13 Further in our own VEPCO decision the test
14 appears to be rather lax.

15 COMMISSIONER GILINSKY: You might say
16 something about that actually because it is an
17 interesting case.

18 COMMISSIONER AHEARNE: What decision would
19 have been required to be made that this would be
20 influencing?

21 MR. BICKWIT: I read this as saying that if
22 there is any chance that we might have wanted to see
23 those drafts even if ultimately we decided we didn't
24 that would satisfy the test.

25 COMMISSIONER GILINSKY: The VEPCO case is

1 interesting because in that case what was in issue was
2 whether the company supplied us with a report on a
3 seismic fault during a licensing proceeding. As it
4 turned out that report was one that we would have
5 ultimately disagreed with and would not have affected
6 the licensing decision. But at the same time it is one
7 we would have taken into account at the time and we
8 fined VEPCO for failing to submit that report. There it
9 was not a positive statement but the lack of it.

10 MR. DeYOUNG: An omission.

11 COMMISSIONER GILINSKY: It was an omission.
12 The failure to submit a report was regarded as a
13 material false statement and that was upheld by the
14 courts.

15 COMMISSIONER AHEARNE: Len, you said that you
16 agreed with the position that this was a material false
17 statement legally.

18 MR. BICKWIT: No. I said that it was legally
19 material. I would like to speak further.

20 COMMISSIONER ROBERTS: Say that again.

21 MR. BICKWIT: There are a number of elements
22 of the material false statement count under our
23 statute. One of them is materiality. It seems to me
24 that it meets the threshold of materiality.

25 COMMISSIONER AHEARNE: And that threshold

1 seems to be whether anyone in the regulatory staff might
2 have done something different had they known of that
3 finding ---

4 MR. BICKWIT: Would consider it.

5 COMMISSIONER AHEARNE: --- whether or not that
6 action was something that was required under a
7 regulation or not; is that correct?

8 MR. BICKWIT: That is right. To test the
9 materiality, yes.

10 MR. MURRAY: Just very briefly the test
11 distilled from the VEPCO case is a statement is material
12 within the meaning of Section 186 if it has a natural
13 tendency or capability to influence, not whether it does
14 so in fact, the decision of the person or body to whom
15 the statement is submitted.

16 COMMISSIONER AHEARNE: But see, Jim, you went
17 back to the decision, to influence a decision.

18 MR. MURRAY: Yes.

19 COMMISSIONER AHEARNE: I tried to use the word
20 "any action."

21 MR. BICKWIT: I don't see a difference. I
22 think decision is used there to mean any action.

23 COMMISSIONER AHEARNE: I thought in the VEPCO
24 case you were speaking specifically to the decision in
25 the licensing action.

1 MR. DENTON: It was a decision to allow fuel
2 load. A license had been issued and we had you
3 shouldn't go ahead until this issue is cleared up which
4 is not quite analogous.

5 COMMISSIONER AHEARNE: That is a good point.

6 MR. BICKWIT: I don't read these cases as
7 saying that it has to be the decision that is
8 influenced. I think it has to be some action of the
9 agency that could be influenced.

10 COMMISSIONER BRADFORD: Dick, what do you all
11 make of the fact that three days after the statement,
12 and would the staff I still take it have a view that it
13 would be seeing the report at the same time the company
14 did? Yet another draft was circulated to many of the
15 people who had been in the room by Cloud in what would
16 seem to me to be direct contravention of what their
17 lawyer had told the Commission three days before.

18 MR. DeYOUNG: Your question is?

19 COMMISSIONER BRADFORD: My question is the
20 action three days later part of your conclusion on the
21 material false statement or does that rest entirely on
22 the early draft?

23 MR. DeYOUNG: On the past, yes.

24 COMMISSIONER BRADFORD: Supposing there had
25 been no earlier drafts but simply the statement by

1 Norton followed by the circulation of drafts in a manner
2 that contradicted the statement?

3 MR. DeYOUNG: I would have had no problem
4 because they gave us the opportunity to say how we
5 wished to handle it. He said whatever you wish. If you
6 want it simultaneously or at any time, if you want it
7 before us we will give it to you, but we didn't respond.

8 CHAIRMAN PALLADINO: We never responded?

9 MR. DeYOUNG: We never responded.

10 MR. CASE: But there was another statement
11 that you will get it at the same time we get it. I
12 think any statement afterward would have been contrary
13 to that.

14 COMMISSIONER GILINSKY: I feel that way, too.
15 But in any case, we are not facing that pure case.

16 CHAIRMAN PALLADINO: Can I come back to Len.
17 Were you finished on the materiality because that is an
18 important point to me.

19 MR. BICKWIT: I just to further answer Don's
20 point. Let me give you a cite from the Ninth Circuit
21 Court, the materiality test under Section 1001 is:
22 "Whether the falsification is calculated to induce
23 action or reliance by an agency of the United States.
24 Is it one that could affect or influence the exercise of
25 governmental functions?" Not necessarily a particularly

1 government fuction which constitutes a licensing
2 proceeding. "Does it have a natural tendency to
3 influence or is it capable of influencing agency
4 decision?

5 MR. MURRAY: Of course, that is a criminal
6 statute, too. You gentlemen are the first arbiters of
7 how 185 is to be construed.

8 COMMISSIONER GILINSKY: Also, you know, there
9 is another aspect to this. If it was revealed that
10 there had been drafts it seems to me that it is likely
11 that others outside of the Commission would have made
12 quite a fuss about it and God knows what we would have
13 done.

14 MR. DeYOUNG: May I raise a point?

15 CHAIRMAN PALLADINO: Yes.

16 MR. DeYOUNG: Len, I thought you were going to
17 talk about the false part of it. You said as far as the
18 materiality was concerned.

19 MR. BICKWIT: Yes. My major concern about
20 whether the test for material false statement is met is
21 that it relates to the language of our statute which
22 says: "It is not enough that it be a material false
23 statement. It must be a material false statement in the
24 application or any statement of fact required under
25 Section 192."

1 So you first have to decide whether it is a
2 material false statement and I think the threshold is
3 meant there. But it is a harder case to make that it is
4 a material false statement in the application or in a
5 statement required by Section 182.

6 CHAIRMAN PALLADINO: What is 182?

7 MR. MURRAY: It basically requires that the
8 statements in the applications be signed, that they be
9 written and that they be sworn to.

10 CHAIRMAN PALLADINO: It speaks again to the
11 application.

12 MR. BICKWIT: On written I might have to take
13 issue, but it talks about statements in connection with
14 licenses.

15 Let me just read it to you. I think that is
16 probably the best way to go about it.

17 "The Commission may at any time after the
18 filing of the original application and before the
19 expiration of the license require further written
20 statements in order to enable the Commission to
21 determine whether the application should be granted or
22 denied or whether a license should be modified or
23 revoked. All applications and statements shall be
24 signed by the applicant or licensee. Applications for
25 and statements made in connection with licenses under

1 Sections 103 and 104 shall be made under oath or
2 affirmation. The Commission may require any other
3 applications or statements to be made under oath or
4 affirmation."

5 These particular statements do not fit
6 naturally under that language.

7 CHAIRMAN PALLADINO: It says those under 103
8 are the ones to which you need to swear; is that right?

9 MR. MURRAY: Yes.

10 MR. BICKWIT: Yes. With respect to 103 and
11 104, those are the licensing reactors.

12 MR. MURRAY: That is reactors.

13 MR. CASE: I thought in the Sequoyal case
14 before the ACRS you issued a piece of paper that said
15 oral statements before the ACRS were statements within
16 the meaning of ---

17 MR. BICKWIT: I haven't said what my state of
18 assurance is here.

19 (Laughter.)

20 MR. BICKWIT: My feeling is that if the
21 Commission wants to proceed in this area that it would
22 have a better than even chance of sustaining its
23 action. But I wouldn't say it is much better than even.

24 CHAIRMAN PALLADINO: We mean we don't have
25 better than an even chance of ruling this as a material

1 false statement?

2 MR. BICKWIT: I think you do have a better
3 than even chance, but I don't think it is much better
4 than an even chance. I don't know what Jim's estimate
5 would be.

6 MR. MURRAY: Under the holding of the VEPCO
7 decision which was the unanimous decision of then
8 Chairman Rowden, Commission Gilinsky and Commissioner
9 Kennedy, it seems clear to me that this is a material
10 false statement.

11 MR. BICKWIT: It obviously doesn't seem as
12 clear to me, but it seems more likely than not.

13 (Laughter.)

14 MR. MURRAY: I stress that under the law that
15 is handed down in the VEPCO decision, as Len has just
16 pointed out and I myself have just pointed out, there
17 are some concerns with the way the statute fits the
18 facts of this case but those concerns were present in
19 the VEPCO. They were not argued, however, in the VEPCO
20 case.

21 MR. BICKWIT: I think VEPCO is distinguishable
22 in that there the omissions were from statements which
23 were required under Section 182 and the statements which
24 were written were clearly required under 182.

25 CHAIRMAN PALLADINO: Well, don't you feel

1 these questions and these answers are consistent with
2 the requirements of 182?

3 MR. BICKWIT: I have difficulty reading this
4 language naturally ---

5 CHAIRMAN PALLADINO: No, let's go back. We
6 got started on this because an error had been made in
7 analysis and we were unclear whether the analysis had
8 been done on the plant as it was designed. Then we
9 wanted an independent audit and how we find some
10 question about the independency of that audit.

11 Does not that bear on whether or not in the
12 end we are going to proceed with the license of this
13 plant or the action we are going to take to make it such
14 that the plant can proceed?

15 MR. BICKWIT: I think that is true, but if you
16 read the language closely 182 is talking about
17 statements under oath. These were not statements under
18 oath.

19 CHAIRMAN PALLADINO: These are not considered
20 statements under oath.

21 COMMISSIONER BRADFORD: Now wait a minute. I
22 can't count the number of times I have suggested that
23 this agency in one context or another require statements
24 to be under oath and I have repeatedly been told it
25 makes no difference.

1 MR. BICKWIT: I haven't told you that.

2 (Laughter.)

3 MR. BICKWIT: I have told you precisely the
4 opposite with regard to the enforcement policy.

5 MR. MURRAY: You are thinking for purposes of
6 18 USC 1001.

7 COMMISSIONER BRADFORD: Basically enforcement
8 context.

9 MR. MURRAY: For purposes of a criminal
10 statute 18 USC Title I it doesn't make any difference
11 whether a false statement made to the government which
12 influences its action is under oath or not. If it were
13 under oath there would be an additional violation of the
14 criminal statute.

15 MR. BICKWIT: There is the materiality element.

16 MR. MURRAY: Assuming it is material.

17 MR. BICKWIT: Yes, assuming it is material.

18 CHAIRMAN PALLADINO: Well, shall we go on.

19 COMMISSIONER AHEARNE: Did Ed finish?

20 CHAIRMAN PALLADINO: No. He just got down to
21 his statement that there was a material false
22 statement. I don't think we were finished.

23 COMMISSIONER AHEARNE: But had Dick finished?

24 MR. DIRCKS: Were you finished, Dick?

25 MR. DeYOUNG: I could add more but I think you

1 will add it for me.

2 MR. DIRCKS: You said recommendations and I
3 think we stressed when we got into this thing that we
4 were only going to lay out some options.

5 One of them is if the Commission wishes we can
6 pursue the civil penalty argument on the material false
7 statement.

8 COMMISSIONER AHEARNE: Would that be against
9 some individuals?

10 MR. DIRCKS: It would be against the company.

11 COMMISSIONER AHEARNE: Which person's or
12 persons' statements would you be listing?

13 MR. DeYOUNG: It depends on how far you go
14 with that civil penalty. Again, we have to talk to the
15 lawyers to see if we can go as far as we think
16 potentiall you might be able to go. Again, we thought
17 there was 28 days from the time we had the meeting.

18 COMMISSIONER GILINSKY: I think he was asking
19 you which particular person. Which statements are we
20 talking about?

21 COMMISSIONER AHEARNE: You would be saying a
22 material false statement.

23 MR. DeYOUNG: The point is we build up 28
24 days. There was only one day they made that false
25 statement. That is a statement of commission I think.

1 Each day thereafter of those 28 days ---

2 COMMISSIONER GILINSKY: He is not saying how
3 far you would carry the penalty for how many days but
4 which person's statement are you referring to?

5 MR. DeYOUNG: Well, the first day the
6 commission would be Mr. Norton.

7 MR. MURRAY: Those others who knew about the
8 drafts and didn't come forward and say it there would be
9 a false statement by omission there.

10 MR. CASE: I think it would be a combination
11 of Norton, Maneatis and Cloud.

12 COMMISSIONER AHEARNE: Ed, with all due
13 deference let me ask the Director of I&E.

14 MR. DeYOUNG: Mr. Norton.

15 COMMISSIONER AHEARNE: That is it? Just Mr.
16 Norton and nobody else?

17 MR. DeYOUNG: Yes.

18 COMMISSIONER AHEARNE: All right. What action
19 would you take against Mr. Norton?

20 COMMISSIONER GILINSKY: Wait a minute, he is
21 talking about the company?

22 COMMISSIONER AHEARNE: I understood that, but
23 he has now told me that the material false statement was
24 Mr. Norton's and now I am asking what action would he
25 take against the individual who made the material false

1 statement.

2 COMMISSIONER GILINSKY: You mean apart from
3 any action against the company.

4 COMMISSIONER AHEARNE: That is right.

5 COMMISSIONER GILINSKY: You mean would you
6 take any action against Mr. Norton.

7 MR. DeYOUNG: On the basis of what I have read
8 in this material about why he made that statement I
9 would take no action.

10 COMMISSIONER AHEARNE: So he is harmless.

11 COMMISSIONER BRADFORD: Not harmless, unharmed.

12 (Laughter.)

13 COMMISSIONER AHEARNE: He is held harmless but
14 he did make the material false statement.

15 MR. DeYOUNG: He did.

16 COMMISSIONER AHEARNE: Is there aspect of the
17 material false statement that requires it to be known?

18 MR. BICKWIT: Not under our statute.

19 COMMISSIONER GILINSKY: In fact it was
20 stipulated in VEPCO that there was no intent involved.

21 COMMISSIONER AHEARNE: So therefore he would
22 be the individual at fault but there would be no penalty
23 against him.

24 MR. DeYOUNG: Right. Now each day from there
25 on you might consider there was a material false

1 statement of omission. They never came back and told us
2 even though they talked about it on the plane, people
3 knew that it was false in the company and the company
4 never informed us until on the 1st of December.

5 COMMISSIONER BRADFORD: Wouldn't you include
6 that day for the omission as well?

7 MR. DeYOUNG: Probably.

8 COMMISSIONER AHEARNE: Which people would that
9 be?

10 MR. DeYOUNG: I think the people that knew
11 about it, John Hoch ---

12 MR. DIPCKS: You are talking about the company
13 again.

14 COMMISSIONER GILINSKY: It has to be the
15 company. Take a look at the Pilgrim case. We have not
16 gone after an individual assigned there.

17 MR. DeYOUNG: We continue the investigation.

18 COMMISSIONER AHEARNE: That part of it is an
19 omission.

20 COMMISSIONER GILINSKY: We may or may not.

21 COMMISSIONER AHEARNE: We may or may not, that
22 is right, because we haven't finished the investigation
23 there.

24 MR. DeYOUNG: We have completed the
25 interviews. We know about where we are coming out on

1 that case.

2 COMMISSIONER AHEARNE: So, Hoch, is that
3 right, just John Hoch?

4 MR. DeYOUNG: And Mr. Rocca.

5 MR. DIRCKS: These are people who knew, but
6 you are not recommending that you take any action
7 against them?

8 MR. DeYOUNG: No.

9 COMMISSIONER AHEARNE: I recognize he is not.
10 I am asking him a question. Rocca, anybody else?

11 MR. DeYOUNG: I think that is about all.

12 COMMISSIONER AHEARNE: Now those two, that
13 would be a possible additional fine on the company; is
14 that correct?

15 MR. DeYOUNG: Of omission.

16 COMMISSIONER AHEARNE: Are they like Mr.
17 Norton also that they didn't realize what they were
18 doing?

19 MR. DeYOUNG: They haven't looked at that
20 point that clearly but I know one of the individuals
21 through the years and I would hazard there was no intent
22 to do anything wrong. It was just one thing that he
23 failed on, but we would have to examine that.

24 I am not saying that we should do this. This
25 is the extreme case that I am talking about.

1 COMMISSIONER AHEARNE: I understand.

2 MR. DeYOUNG: This is the extreme and you
3 would come to a total if you did that above \$100,000 per
4 day per violation. You could come up with a \$2,800,000
5 or \$2,900,000 violation. That is the extreme.

6 COMMISSIONER AHEARNE: I guess in the case of
7 Hoch and Rocca there might still be the potential of
8 individual action against them if you were to conclude
9 that they knew what they were doing. But clearly one of
10 the differences, if the transcript is to be believed,
11 that is if what they have said is believed, Norton did
12 not know that he was saying something in error. Hoch
13 and Rocca did understand that something was said that
14 was wrong. So at least there is the potential for
15 action against them.

16 CHAIRMAN PALLADINO: In their minds they
17 concluded that they were not misleading.

18 MR. DeYOUNG: At the time they thought it was
19 wrong and they knew it was wrong. Then on the plane Mr.
20 Rocca, for example, talked with a friend and he got some
21 further guidance that it wasn't misleading.

22 CHAIRMAN PALLADINO: The other guy doesn't
23 remember why he didn't bring it up.

24 COMMISSIONER ROBERTS: This is when they were
25 having all those libations ---

1 (Laughter.)

2 COMMISSIONER GILINSKY: I would say Brown is
3 the most culpable is you were to go to anyone.

4 COMMISSIONER AHEARNE: In your view is the
5 action that they would then be held responsible for and
6 whether they individually held responsible or the
7 company, in your view were the ground rules under which
8 they should be operating sufficiently clear?

9 MR. DeYOUNG: I don't understand the question.

10 COMMISSIONER AHEARNE: Well, the proposal
11 is ---

12 MR. DeYOUNG: To charge the company.

13 COMMISSIONER AHEARNE: Yes, but the company is
14 going to be charged for the actions of some individuals.

15 MR. DeYOUNG: Or lack of action.

16 COMMISSIONER AHEARNE: Or lack of action of
17 some individuals. What I am asking is is it your view
18 that the ground rules under which those individuals
19 should have been acting, were those rules sufficiently
20 clear that they should have known?

21 MR. DeYOUNG: That is my bottom line. I think
22 the company has a real problem from the top on down to
23 their philosophy of operation and how they run these
24 matters. That is the crux of the problem. I don't
25 think it is the individual. I think they are confused.

1 The individual people are confused as to when to speak
2 up and when not to speak up.

3 I have known this utility for a long time and
4 there is something basically wrong with the leadership,
5 the direction that they give to their staff. It has
6 been a problem for some time.

7 When they had a problem in the past, for
8 example, they switched horses and they put a lawyer in
9 charge of the technical problems they were having with
10 geology and seismology and he ran it for a while. They
11 have some very, very capable people. But those people
12 are not permitted to make a decision until it gets
13 factored up some place and it takes a long time to get
14 decisions and then they come back and they are not quite
15 sure when to do this or to do that.

16 I think many of the people, even at what I
17 would call a middle management level, the chief
18 engineers, they are not quite sure when to say something
19 and when not to say something. There is a lawyer in
20 charge. At this specific meeting and it was a technical
21 meeting, it was led by a lawyer, Mr. Norton.

22 The technical people stepped aside and they
23 more or less let this individual run that meeting for
24 them, a lawyer, and he was making statements.

25 I think they are unsure of when to step in and

1 correct somebody. Now, John Hoch, for example ---

2 COMMISSICNER GILINSKY: Well, after they
3 apparently misinformed the lawyer.

4 MR. DeYOUNG: Yes, or didn't inform him.

5 COMMISSICNER BRADFORD: Do you mean actively
6 misinformed?

7 CHAIRMAN PALLADINO: It was claimed by Mr.
8 Norton that on Sunday he had asked whether or not there
9 was a report and he was told there was no report. He
10 used a definition for report that was different from
11 perhaps what they thought a report was. But he said
12 later had he known there was any kind of report it would
13 have influenced his answer.

14 MR. DeYOUNG: It seems they have always had a
15 policy of having these lead people, these special people
16 be their spokesmen and you don't interrupt them. It has
17 been my observation at PG&E for a long time that they
18 are insensitive. They are so large that the nuclear
19 part of their activity doesn't receive that much
20 attention.

21 CHAIRMAN PALLADINO: Let me ask you another
22 question. I see our time is running fast. When does
23 Cloud fit into any of these material false statements.

24 MR. DIRCKS: This was the point we were trying
25 to get to. There were a couple of issues that we

1 thought the Commission might want to focus on.

2 One, should you take any action along the
3 lines that we have been discussing on the civil penalty?

4 Two, what do we do with the Cloud PG&E
5 relationship because that decision is needed because in
6 the meantime this is reverification work is going on and
7 we need to get some decisions relating to Cloud and his
8 work and the acceptability of his work.

9 CHAIRMAN PALLADINO: I gather on that point
10 PG&E is proceeding even though we haven't approved
11 anybody, but I presume they are proceeding on their own
12 risk.

13 MR. DIRCKS: They are proceeding on their own
14 risk.

15 CHAIRMAN PALLADINO: They are trying to get
16 ahead of the game for which I don't fault them.

17 MR. DIRCKS: Yes. You know, the issue that
18 started this off is is the plant safe, is it built as
19 designed and that is why we started this reverification
20 program and that is why we got into looking at a
21 contractor programmed plan. Meanwhile all of these
22 things are awaiting the decisions that the Commission
23 has to make regarding Cloud and the disposition of this
24 case.

25 CHAIRMAN PALLADINO: Have we gotten any

1 proposal for a decision? Are we waiting for something
2 from you?

3 MR. DIRCKS: We have a submission regarding
4 the qualifications of Cloud and we have a submission for
5 the program planned which is being reviewed.

6 CHAIRMAN PALLADINO: Are you going to make the
7 decision or are we going to make the decision?

8 MR. DENTON: The comments responded to your
9 order and you have asked to make the decision as to
10 whether your order is meant. So we are sending
11 information to brief you perhaps next month on whether
12 we think what the company has proposed meets your order.

13 CHAIRMAN PALLADINO: Including the people that
14 are going to do the audit?

15 MR. DENTON: Including the independence and
16 the adequacy of the program plan.

17 CHAIRMAN PALLADINO: So we are not in a
18 position yet to make that decision?

19 MR. DIRCKS: Except you may wish to make a
20 decision regarding Cloud and the acceptability of his
21 work based on the investigation thus far.

22 MR. RICKWIT: But I wouldn't make that
23 decision in favor of Cloud at this point because we have
24 promised the parties ---

25 MR. DIRCKS: All we are saying do you want to

1 take him out now or do you want to pursue along the
2 lines of looking at his qualifications and looking at
3 the acceptability of the program plan.

4 MR. BICKWIT: Correct.

5 MR. DIRCKS: I think that is a decision that
6 we have to make.

7 The third point ---

8 CHAIRMAN PALLADINO: I guess I am not sure we
9 are ready to make that decision. He is doing some work
10 and he sent the qualifications in but you haven't sent
11 them to the Commission yet. Now are you saying we
12 should consider what has happened here to see if we want
13 to make a negative decision prior to review?

14 MR. DIRCKS: If on the basis of this you wish
15 to say that either Cloud or the work he is doing is
16 acceptable or Cloud is not acceptable, then we would not
17 proceed along the lines of further reviewing Cloud's
18 qualifications and asking more questions and developing
19 a profile file. We would stop that work and ask the
20 company to come in with another contractor.

21 MR. DENTON: The Governor asked you on
22 December 17th to suspend Cloud's work pending a
23 determination as to whether Cloud was independent and
24 his program adequate. But you did give all parties a
25 certain time frame to comment on the response of the

1 Commission to the order. That clock has just tolled and
2 we have just received from the Governor and the other
3 parties their comments on Cloud and his program plan.
4 That is the meeting I mentioned we will have in the
5 first week in February when all parties go over this and
6 later we would get back to the Commission on the staff
7 views on that.

8 CHAIRMAN PALLADINO: You say decide if Cloud
9 is unacceptable based on this information now. What
10 information now do you suggest we consider in this
11 regard?

12 MR. DIRCKS: Well, I guess if there is enough
13 information here for you to make a decision as to
14 whether Cloud has been as forthcoming as you want him to
15 be and whether you wish to proceed along the lines of
16 maintaining that Cloud is the independent contractor
17 based again on the review.

18 CHAIRMAN PALLADINO: I am not ready to make
19 that decision. The question that you are asking me is
20 do I want to make a negative decision now.

21 MR. DIRCKS: That is right.

22 CHAIRMAN PALLADINO: I don't know that I have
23 enough information.

24 MR. DIRCKS: If you don't want to make a
25 negative decision we will continue assuming that Cloud

1 should be continued to be evaluated and we will continue
2 to collect information on his qualifications and solicit
3 views of the outside parties.

4 We are not recommending up or down. We are
5 just saying it would be good to get a decision because
6 we have got this other train coming down the track.

7 CHAIRMAN PALLADINO: Okay. You had a third
8 point.

9 MR. DIRCKS: There was a third point that the
10 Commission may wish to consider and that deals with the
11 points Dick has raised. Has there been a problem of
12 sensitivity on the part of the firm or lack of
13 sensitivity? Should you in some way, based again on
14 this record, wish to express your feelings to the
15 company in some form or another? A possible option
16 might be either a letter to the company one way or the
17 other or inviting senior officials or the board of
18 directors to come in here and discuss these problems.

19 CHAIRMAN PALLADINO: Is there a violation?

20 MR. DeYOUNG: Yes.

21 MR. DIRCKS: Yes.

22 MR. DeYOUNG: Now the range of penalties for
23 that violation, and you only allowed me to talk about
24 the extreme top. There is the extreme bottom of just no
25 penalty.

1 CHAIRMAN PALLADINO: John.

2 COMMISSIONER AHEARNE: Dick, just a couple of
3 questions to follow along that line that I was asking
4 before.

5 I gather then that you feel fairly strongly
6 that this company has a history of not providing clear
7 ground rules to its technical people, for example, when
8 they participate in these kinds of meetings?

9 MR. DeYOUNG: I feel that way.

10 COMMISSIONER AHEARNE: Do you believe that the
11 NRC has provided clear ground rules to the company?

12 MR. DeYOUNG: I just feel we are obliged to
13 tell them how to run their meetings.

14 COMMISSIONER GILINSKY: Well, let's see,
15 ground rules on what?

16 CHAIRMAN PALLADINO: Guidance on a new issue.

17 COMMISSIONER AHEARNE: Actually it was a two
18 part question and I was waiting to see how Dick would
19 answer it.

20 COMMISSIONER GILINSKY: Why don't you ask me?

21 (Laughter.)

22 COMMISSIONER AHEARNE: The first part of the
23 question is if the company doesn't give clear ground
24 rules to its staff have we ever established any kinds of
25 ground rules for the participation of members of a

1 licensee's staff in our meetings?

2 MR. DeYOUNG: To my knowledge, no we have
3 not. What we had done is call the utility president in,
4 for example, and say there are problems of sensitivity
5 of your staff and they don't seem to be cooperating in
6 the best way to move this forward. We are having
7 difficulties ---

8 COMMISSIONER AHEARNE: We have done that with
9 PG&E's president?

10 MR. DeYOUNG: I can't remember.

11 COMMISSIONER GILINSKY: John, I don't want to
12 ask a question. I want to sharpen it a little bit, if I
13 may. It seems to me that there is a distinction between
14 giving guidance on whether or not they can have graphs
15 or whether or not they can comment on it and so on and
16 that is a valid point. It is another thing to say have
17 we given them guidance on telling the truth or being
18 forthright with us.

19 COMMISSIONER AHEARNE: But that wasn't the
20 issue. The first issue was the question that Dick had
21 raised about this long-term problem with PG&E.

22 MR. DeYOUNG: The answer is that I can recall
23 one or two times when we said yes. For example, I
24 believe, and I am not positive, but I believe that PG&E
25 in part obtained the services of Norton at our

1 suggestion. Their counsel was extremely poor in
2 performing the licensing.

3 MR. DIPCKS: I think you might want to ask Bob
4 who has been living with that company out there for the
5 last several years.

6 COMMISSIONER AHEARNE: Let me ask one other
7 question. The second part of it was on the particular
8 area, the kinds of things that are being addressed here
9 on an independent review, as best as I know we have
10 never given out any kind of ground rule that said that
11 for an independent review we mean such and such, that a
12 draft should be exchanged only with a copy sent to us.
13 We have never described that.

14 MR. DeYOUNG: I think we have.

15 COMMISSIONER AHEARNE: We have?

16 MR. DeYOUNG: I think we have told people that
17 when this review is done we would like to see the
18 consultant's report at the same time it is given to you.

19 CHAIRMAN PALLADINO: Well now, I am not sure
20 personally that I agree with that. What I am getting at
21 is it is not so obvious that all these things are
22 right. I have four suggestions to the criteria you are
23 proposing to Ottinger and Dingell. I am not saying that
24 we don't have honest differences of opinions. All I am
25 saying is there are honest differences of opinions on

1 what the right thing is that should be done. So I don't
2 know that it is all that obvious.

3 COMMISSIONER GILINSKY: But look, it seems to
4 me that that isn't strictly on the point.

5 CHAIRMAN PALLADINO: I have trouble when you
6 start to talk about the management attitudes. You know,
7 that is a very tenuous thing.

8 COMMISSIONER BRADFORD: I agree.

9 CHAIRMAN PALLADINO: You may not like their
10 attitude but how is it affecting the safety and the
11 health of the people that are going to be impacted on by
12 this plant. Now if they are violating some order of us,
13 then you have got a violation. If they are violating
14 something specific that affects health and safety then
15 you can cite a violation.

16 I don't know how, or at least I haven't gotten
17 a feel yet of what specifics there are that would say,
18 oh, their attitude is something that we had better
19 correct.

20 COMMISSIONER GILINSKY: Can I just say a word
21 here. Nothing attacks the whole system of protection of
22 the public health and safety more than for licensees not
23 to be truthful with us.

24 CHAIRMAN PALLADINO: That is a violation. I
25 listened to that. That is why I asked is this different

1 from violation, because if it is different from
2 violation then I have got to understand it better. If
3 it is the same as violation, then I would have a better
4 feel.

5 MR. DeYOUNG: Well, I think there is a history
6 that tells you that the performance of a utility during
7 the review for the construction and the operation of the
8 plant is a precursor as to how they will probably act
9 when they get the plant into operation. The same
10 attitudes will prevail and that is the concern.

11 CHAIRMAN PALLADINO: But this is coming out of
12 this particular situation.

13 COMMISSIONER GILINSKY: It bears on how tough
14 you want to be.

15 COMMISSIONER ROBERTS: Would you repeat what
16 you said about Norton and the staff? I didn't
17 understand that.

18 MR. DeYOUNG: In years gone at PG&E in going
19 through the licensing procedures the PG&E counsel was
20 creating all kinds of problems and difficulties. We
21 didn't seem to be able to meet certain dates and to get
22 on with things. It was very poor.

23 Again, you know, we criticize people because
24 they can't remember two and half months, but I can
25 remember but not very specifically who I talked to.

1 They had requested advice as to what was wrong, why
2 don't we seem to be getting along and why can't we move
3 faster?

4 I personally was there one time and I believe,
5 and you can ask him, and I think it was Mr. Tourtelotte
6 that suggested you need some help in your counsel. They
7 are not a regulatory counsel. They don't know the
8 procedures and they don't know how to do things and they
9 stumble all over themselves and it is delay after delay
10 after delay.

11 CHAIRMAN PALLADINO: But this is an item that
12 is not necessarily related to this incident.

13 MR. DeYOUNG: Not at all.

14 CHAIRMAN PALLADINO: Here we might take
15 actually an advising action.

16 MR. DeYOUNG: To meet with the board or
17 something.

18 MR. ENLEKEN: Perhaps I can help a little.
19 My experience bears out what Dick feels that there is a
20 problem within the company. It dates back for a long
21 number of years back through the Humboldt regime and the
22 Botega period and for many years.

23 On a couple of occasions I have gone to high
24 management in the company and complained about this. I
25 remember doing it with former president Jack Bonner on

1 one occasion in very strong terms. But that is all
2 ancient history.

3 I think I can give an example, however,
4 related to the current situation that may give you some
5 better feeling for what we are talking about. During
6 our review of the Cloud reverification effort we came
7 across some information that he became aware of in his
8 review about the use of improper spectra in the
9 auxiliary building.

10 We looked into the matter and found that Blume
11 and PG&E became aware of the application of improper
12 spectra in the design of the auxiliary building in
13 1978. There was an evaluation done by PG&E and they
14 felt that the use of the improper spectra was in the
15 conservative direction and would have no real impact but
16 they did not notify the NRC of the use of the improper
17 spectra. They did not amend the Hosgri Report amendment
18 to indicate that those spectra had been revised.

19 Now in Cloud's review he is going over this
20 work and it turns out that for the building proper the
21 application of those spectra were conservative, but for
22 some of the equipment in the upper elevations of the
23 building it could be nonconservative. The technical
24 decision has not been made yet as to whether that is the
25 case or not.

1 I think it is very important that the company
2 did not notify the Commission of the use of improper
3 spectra and let the Commission make a judgment as to
4 whether it was significant or not.

5 Now that is I think a very good example. I
6 think the attitude if I can describe it is one of
7 regulation being sort of a necessary nuisance that they
8 have to put up with and it results in a kind of
9 arrogance that we all feel. Most of my staff has
10 complained about it. I have felt it and people in NRR
11 have felt it. It is a rather general feeling that they
12 are not always free and forthcoming with information.
13 If we ask them they give us answers.

14 COMMISSIONER AHEARNE: As Mr. Rocca said.

15 MR. ENGLEKEN: Yes, exactly.

16 COMMISSIONER GILINSKY: It seems to me, if I
17 can elaborate a little bit, expand or add to Bill's
18 point three ---

19 COMMISSIONER BRADFORD: Do you see a
20 difference between elaborate, expand and add to?

21 (Laughter.)

22 COMMISSIONER BRADFORD: Sorry.

23 CHAIRMAN PALLADINO: Elaborate.

24 COMMISSIONER GILINSKY: It is what Peter
25 Stroud called "more fullsome."

1 (Laughter.)

2 COMMISSIONER GILINSKY: It seems to me that
3 this incident calls into question the integrity of the
4 company and the question of whether it is fit to run a
5 plant as far as I am concerned. I would ask for the
6 company to respond and tell us how they plan to get
7 their house in order so we can have confidence in them
8 as operators of a plant. I think it goes beyond the
9 subject of a letter or just a chat with the board.

10 CHAIRMAN PALLADINO: Well, I think Bill was
11 identify three areas for consideration. Was there a
12 fourth?

13 MR. DIRCKS: That is essentially it. One,
14 does the Commission have continued faith in the
15 management of that firm and has it been jolted at all?

16 Two, goes down the list of actions, what do we
17 do about the ongoing work on the reverification
18 program? I think we wanted to know do you still wish to
19 continue the Cloud effort and, if so, if you do we will
20 continue the review of the Cloud qualifications and his
21 program plan.

22 Three, again getting sort of narrower, do you
23 wish to make a decision on the issue of the civil
24 penalty? Do you think there is a violation and do you
25 wish to pursue it and do you wish us to pursue the civil

1 penalty?

2 The fourth point that Bob just mentioned to me
3 relates to the issue of your continued faith in that
4 management.

5 CHAIRMAN PALLADINO: I have only got three,
6 the violation, faith in the management and do we want to
7 make a negative decision on Cloud at this time.

8 MR. DIRCKS: Yes. In the management area
9 there were discussions about either asking them to say
10 how they are going to come to grips with the problems
11 that have plagued that company and it goes into how they
12 handle their contracts which got us into this things in
13 the first place, and all the way through how senior
14 executives can sit through a meeting and not correct the
15 record. Do you wish to ask for any studies or analyses
16 of the way the company operates and the way it treats
17 its nuclear operations?

18 COMMISSIONER AHEARNE: And do we release the
19 report.

20 CHAIRMAN PALLADINO: I have got to decide on
21 releasing this report. Since I am afraid these folks
22 are going to have to leave soon, and I know Tom is going
23 to have to leave, do we want to release the report now
24 or do you want to wait until we get back part two. When
25 we talked to the recent report we didn't know it was

1 going to be in two parts. Do you want to release them
2 independently or wait for both of them and then wait for
3 us to look at both of them?

4 COMMISSIONER AHEARNE: In the interviewing was
5 there any statement made about confidentiality of the
6 interviews?

7 MR. FAULKENBERPY: No, to the contrary. I
8 think without exception we told everyone that the
9 transcripts of their interviews would be incorporated
10 into a report which would be made public.

11 COMMISSIONER GILINSKY: I will tell you my
12 view is that if we are going to decide on these issues
13 in the next couple of days then we ought to hang onto
14 the report. But if we aren't then I think we ought to
15 release it. I don't think we can hang onto it for a
16 month.

17 CHAIRMAN PALLADINO: I don't know when we will
18 make our decision, but on the assumption that we might
19 get part two around the 1st or the 4th I was going to
20 propose I think a meeting on the 9th.

21 COMMISSIONER GILINSKY: Well, that is almost
22 three weeks.

23 CHAIRMAN PALLADINO: Well, by hunting and
24 pecking we might be able to move it up to the 5th. But
25 if the report doesn't come until the 4th and if it is

1 substantive we are going to need some time to review it.

2 COMMISSIONER GILINSKY: And this one being
3 late, the other one may be late, too.

4 CHAIRMAN PALLADINO: Even if one is finished
5 on the first, by the time it comes in and gets logged in
6 and it gets to the desk it is about the 5th and the 9th
7 is the second working day thereafter.

8 MR. DENTON: I want to point out there has
9 been considerable interest from several Congressional
10 staffs in the release of this report.

11 CHAIRMAN PALLADINO: Whose staffs?

12 MR. DENTON: Udall's staff and Panetta's
13 staff, for example, called several times about it since
14 they played an initiating role.

15 COMMISSIONER AHEARNE: Speaking of the
16 Congressional staffs, I had another question on the
17 investigators. Did we ever go back to Panetta's staff
18 and ask whether they had any additional information
19 which would relate to this?

20 MR. ENGLEKEN: No, sir.

21 COMMISSIONER AHEARNE: I guess the first draft
22 came from ---

23 MR. DIRCKS: The first initiation from
24 Congressman Panetta's office came to me.

25 COMMISSIONER AHEARNE: On December 1st we had

1 gotten an earlier one I thought.

2 MR. DIRCKS: That came from Udall.

3 COMMISSIONER AHEARNE: Did we ever go back to
4 Udall?

5 MR. DIRCKS: And ask for more drafts?

6 COMMISSIONER AHEARNE: In other words, we had
7 an indication from a set of sources that there were
8 drafts being exchanged.

9 COMMISSIONER BRADFORD: What did we actually
10 have?

11 COMMISSIONER AHEARNE: Did we ever go back to
12 those sources and ask did they have anything more that
13 could help us?

14 MR. FAULKENBERRY: No, we did not.

15 COMMISSIONER AHEARNE: Was there any
16 particular reason?

17 MR. FAULKENBERRY: Not really except that I
18 guess we probably assumed that once they made us aware
19 of the possibility of reports and what-have you we would
20 feel like we have dug out all of the reports that were
21 in existence at that time with our investigation through
22 Cloud and PG&E.

23 COMMISSIONER AHEARNE: Normally if you have
24 someone who alleges something is wrong don't you try to
25 talk to the alleged?

1 MR. ENGLEKEN: We in Region V did know who
2 gave us this information. It came through our
3 headquarters.

4 MR. DIRCKS: The allegation was that there
5 were drafts of a report that we had not seen. I talked
6 to Katherine Cook from Congressman Panetta's office and
7 I guess you talked to her, too. Her concern was that
8 there were drafts of the report that had been circulated
9 during the month of October.

10 COMMISSIONER BRADFORD: Were they the ones who
11 actually provided us with the first drafts that we had
12 or did we get them from the company?

13 MR. ENGLEKEN: We got them from the company.

14 MR. DENTON: She provided some pages.

15 CHAIRMAN PALLADINO: I wonder if this bears on
16 do we release the report or not?

17 COMMISSIONER AHEARNE: You just triggered that
18 it was really more a question of completeness of that
19 investigation but it is not essential.

20 CHAIRMAN PALLADINO: Vic has indicated his
21 preference for not releasing it until we get part two
22 and have a chance to meet on it. Do I understand that
23 correctly?

24 COMMISSIONER GILINSKY: I said if we are going
25 to decide on this phase of it within the next couple of

1 days or so or days anyway then I think we can hang onto
2 the report and decide. But I don't think it is a
3 practical course to hang onto it for three weeks.

4 CHAIRMAN PALLADINO: I see.

5 MR. DENTON: I wanted to point out that since
6 we have gotten the reply from Dr. Cloud and the company
7 on why the changes it doesn't seem to me that the
8 release of this effort would prejudice our ability to
9 determine the accuracy of phase two because that is
10 already now a matter of record and we will just verify
11 that those logs support the facts.

12 MR. ENGLEKEN: I can think of no reason why
13 the report shouldn't be released at this time.

14 CHAIRMAN PALLADINO: But then we are going to
15 be asked immediately what are our recommendations or
16 what action are we going to take.

17 COMMISSIONER GILINSKY: That is right.

18 CHAIRMAN PALLADINO: There was an option to
19 consider violation, there is an option to consider
20 whether or not we want to make a negative finding on
21 Cloud at the present time and the option as to whether
22 or not we find the management attitude such that it ought
23 to be changed and they ought to be admonished or meet
24 with the board.

25 COMMISSIONER BRADFORD: Is there a way to move

1 that meeting back earlier than the 8th? I am of the
2 view that we ought not to release the report until we
3 have made our decisions based on it if possible.

4 CHAIRMAN PALLADINO: It depends on when you
5 assume the report is going to be done.

6 COMMISSIONER BRADFORD: The second round, I
7 wonder if it would make any sense.

8 CHAIRMAN PALLADINO: The 2nd is a Tuesday. If
9 it came in on the 2nd we might be able to do something
10 on the 4th or 5th.

11 COMMISSIONER BRADFORD: You are assuming
12 though that we need the Phase II report to deal with the
13 material false statement question?

14 CHAIRMAN PALLADINO: No, I just was saying
15 that if you want to wait until part two is in ---

16 COMMISSIONER BRADFORD: That is right.

17 CHAIRMAN PALLADINO: --- then I think we are
18 talking in the time frame at best of the 5th and more
19 than likely the 9th.

20 COMMISSIONER GILINSKY: Well, let's not wait
21 until part two is in.

22 CHAIRMAN PALLADINO: So you are proposing not
23 waiting for part two.

24 COMMISSIONER BRADFORD: At least as to the
25 false statement issue. If we can resolve that one way

1 or the other ---

2 CHAIRMAN PALLADINO: Well, we are going to
3 have to shedule a meeting to resolve it.

4 COMMISSIONER GILINSKY: Well, I would say the
5 Cloud business hinges to a large extent on whether you
6 feel that Cloud had an obligation to inform us about
7 these drafts. Now I just say in the past I have argued
8 against taking an unreasonably strict view of
9 independence and so on. I went out and talked with
10 Cloud's people and Cloud and came away with a pretty
11 decent impression. But it seems to me that if we come
12 away deciding that he had an obligation to tell us about
13 those drafts then I really don't see how we can continue
14 with Cloud.

15 CHAIRMAN PALLADINO: Well, if we are going to
16 do that I think that we ought to hear him on it.

17 COMMISSIONER GILINSKY: Well then prepare to
18 hear him out.

19 MR. DIRCKS: I might mention that depending on
20 how you deal with Cloud you have got a couple more
21 options you might want to consider which I am sure PG&E
22 would also have some suggestions.

23 If we say Cloud is not going to be the
24 independent source of this reverification I think that
25 PG&E would say, okay, he is now our employee in a way

1 and he will do the work again. I guess our next
2 suggestion would be to get another independent
3 contractor there to verify Cloud's work. That could be
4 the proposal that would come up if you decide that you
5 don't want Cloud as the independent contractor.

6 COMMISSIONER GILINSKY: It seems to me that if
7 there is a serious possibility that Cloud is not going
8 to be it that we are not doing PG& E any service if we
9 drag it out.

10 CHAIRMAN PALLADINO: Well, let me try a
11 suggestion and we are going to have to face it
12 immediately on the agenda planning, that we do indeed
13 try to have a meeting in which we see whether we are
14 prepared to make the decision on violation, the decision
15 on Cloud and the decision on the management attitude.
16 On my premise it would have to be done I would say next
17 week.

18 Then if we are going to do it we will withhold
19 the report until that time. If we can't find a way to
20 do it within the next week, then I think we ought to
21 release the report.

22 COMMISSIONER ROBERTS: If we go along with
23 that scenario would it be as late as Wednesday, Thursday
24 or Friday?

25 CHAIRMAN PALLADINO: I can see that it will

1 have to be Wednesday, Thursday or Friday and we would
2 have to take off at least one topic. We would also put
3 waste confidence in jeopardy again because that is one
4 of the topics we were trying to have.

5 COMMISSIONER GILINSKY: We really ought to
6 have it as absolutely early as we possibly can. I think
7 when you are hold onto a report like this every day
8 counts.

(Discussion of scheduling among the
10 Commissioners.)

11 COMMISSIONER AHEARNE: Why don't we agree that
12 we will have it Wednesday or Thursday at the latest. At
13 that time we will definitely release the report no
14 matter which way we come out. I make that proposal.

15 CHAIRMAN PALLADINO: All right.

16 MR. DIRCKS: Could you have the meeting
17 without the representatives from San Francisco being
18 here?

19 CHAIRMAN PALLADINO: I have a feeling we can,
20 but that is my feeling.

21 COMMISSIONER GILINSKY: I think so.

22 CHAIRMAN PALLADINO: I think we have more
23 philosophical questions to ask ourselves than we have
24 real questions to ask them. I would like to think about
25 whether we want Cloud in there or not.

1 COMMISSIONER BRAUFORD: Could I ask that the
2 staff draft up what the I guess show-cause order on a
3 material false statement would look like if we issued it?

4 CHAIRMAN PALLADINO: May I make an
5 observation. You know, talking about a material false
6 statement, we just gave a \$250,000 fine to a material
7 false statement where real safety was involved.
8 Because of what they did because they had made a
9 material false statement about it the public was
10 actually endangered. I think that ought to be a
11 reference point against what you think when you propose
12 a civil penalty on a violation here. I am not say what
13 it is. I am just saying there is a reference point and
14 don't lose sight of that reference point because in my
15 mind even though I may come up with a violation I am
16 sure it is of the same magnitude.

17 COMMISSIONER GILINSKY: Well, I am not sure
18 which way that cuts. I will have to see. You know,
19 they have to get into how important the safety systems
20 were and were they exercised would they have made a
21 difference.

22 CHAIRMAN PALLADINO: Well, I think you had
23 better start for your plane. We agree that we will have
24 a meeting next week on Wednesday or Thursday and that we
25 will release part one of the report at that time. ✓

1 (At this point the parties left the room.)

2 CHAIRMAN PALLADINO: Are there any other
3 comments on this topic?

4 (No response.)

5 We will stand adjourned on this meeting.

6 We will recess for a few minutes and then we
7 will go into the affirmation/discussion session.

8 (Whereupon, at 3:30 p.m., the meeting
9 adjourned.)

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NUCLEAR REGULATORY COMMISSION

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

in the matter of: CLOSED MEETING - EXEMPTIONS 5 - DISCUSSION OF REGION 5
REPORT ON DIABLO CANYON

Date of Proceeding: January 21, 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.

Ann Riley

Official Reporter (Typed)

Ann Riley

Official Reporter (Signature)

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 REGION V
REPORT ON DIABLO CANYON

Date of Proceeding: January 21, 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)