

50-358



POLICY ISSUE

(NEGATIVE CONSENT)

June 23, 1983

SECY-83-250

For: The Commission

From: James A. Fitzgerald
Assistant General Counsel

Subject: SUNSHINE ACT REVIEW OF CLOSED COMMISSION MEETING TRANSCRIPTS (ATTACHED) OF OCTOBER 28, NOVEMBER 8 AND 12 (ZIMMER SHOW CAUSE ORDER DISCUSSIONS)

Discussion: The subject meetings considered the advisability and, if so, the nature of show cause order stopping safety related construction and imposing a plan for management, and quality assurance review at Zimmer.¹

EX-5
(FLIA)

Contact:
M. Nordlinger
x41493

¹The first meeting also briefly considered an OI status report on its Zimmer investigation.

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PDR FOIA
GILINSK92-436 PDR

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 3, 5 + GISA 4.5
FOIA 92-436

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Ex.
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(FOIA)


believe that

We

Moreover, we believe that

Accordingly, we recommend that

EX-5
(FOIA)


James A. Fitzgerald
Assistant General Counsel

Attachment: October 28, 1982 Meeting Transcript
November 8, 1982 Meeting Transcript
November 12, 1982 Meeting Transcript

SECY NOTE: In the absence of instructions to the contrary, SECY will notify OGC on Friday, July 8, 1983 that the Commission, by negative consent, assents to the action proposed in this paper.

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NUCLEAR REGULATORY COMMISSION

ORIGINAL

COMMISSION MEETING

In the Matter of: CLOSED MEETING - EXEMPTION NO. 5.

STATUS OF ZIMMER INVESTIGATION (PORTION)
(WITH HANDOUT)

DATE: October 28, 1982

PAGES: 1 - 68

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

STATUS OF ZIMMER INVESTIGATION
CLOSED MEETING - EXEMPTION NO. 5

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

Thursday, October 28, 1982

The Commission convened, pursuant to notice, at
4:15 p.m.

COMMISSIONERS PRESENT:

- NUNZIO PALLADINO, Chairman of the Commission
- VICTOR GILINSKY, Commissioner
- JOHN AHEARNE, Commissioner
- THOMAS ROBERTS, Commissioner
- JAMES ASSELSTINE, Commissioner

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

- S. CHILK
- L. BICKWIT
- D. HUNTER
- J. KEPPLER
- J. FITZGERALD
- W. DIRCKS
- H. DENTON
- D. DeYOUNG
- D. GILBERT
- B. WARD
- J. ZERBE

AUDIENCE SPEAKERS:

- E. SCHWEIBINZ
- G. CUNNINGHAM
- J. FOUCHARD

* * *

1 On the 19th of July I appointed Ted Gilbert, a
2 senior investigator under me here at headquarters to
3 handle the investigation, to head up our effort and to
4 supervise the additional investigative resources that we
5 would be assigning to it.

6 To date and building up over time we have
7 committed, including Mr. Gilbert, a total of five
8 investigators to this effort, a verteran NRC
9 investigator, John Sinclair, two recent hires that came
10 on at various dates in September and an individual, Mr.
11 Murphy, out of our Atlanta office who is transferring to
12 headquarters.

13 COMMISSIONER AHEARNE: So you have five in all?

14 MR. FITZGERALD: So we have five in all, but
15 we haven't had five in all all along. We have been
16 building up. I might point out that that resource
17 commitment on our part makes this effort larger than
18 three of our regional offices. It is causing a
19 perturbation to the operation of the organization.

20 At the beginning Mr. Gilbert and the
21 investigator who was working with him and since the
22 beginning have been studying the allegations, what we
23 inherited from the region along with what has been
24 coming in, and I am going to ask Ted to explain our
25 approach and basic strategy for dealing with a large

1 mass of allegations. We will also indicate the field
2 work that we have done to date which is of course
3 ongoing indeed and people are in the field today.

4 Ted.

5 MR. GILBERT: I will very quickly walk through
6 our approach to the investigation. Our first
7 involvement was on the 20th of July when John Sinclair,
8 another OI investigator and myself conducted some
9 preliminary inquiries in Region III to determine the
10 current status of the Zimmer investigation. We
11 determined that the region had instituted a tracking
12 system wherein all allegations regarding Zimmer had in
13 fact been inputted into a computer.

14 After discussions with several Region III
15 personnel and reviewing the computer printout, it was
16 evident that there were indeed a large variety of
17 allegations which were continuing to be received by
18 Region III.

19 COMMISSIONER ROBERTS: Is that it?

20 MR. KEPPLER: That is some of it, but we have
21 got all our outstanding items on Zimmer on these things.

22 MR. GILBERT: Yes.

23 COMMISSIONER ROBERTS: That is the computer
24 printout for the allegations?

25 MR. KEPPLER: No, for all outstanding issues
at

1 Zimmer.

2 COMMISSIONER AHEARNE: But that is all Zimmer?

3 MR. KEPPLER: All Zimmer.

4 MR. GILBERT: In examining the allegations it
5 was evident that there were many significant issues
6 which warranted prompt investigative action, and we were
7 also aware that there was considerable public media and
8 Congressional interest regarding many of these
9 allegations.

10 Therefore, on the 4th of August the Office of
11 Investigations did assume investigative responsibility
12 for all allegations of an investigative nature. This
13 activity is currently being directed, controlled and
14 conducted through OI headquarters under the Division of
15 Field Operations.

16 COMMISSIONER GILINSKY: When you say of an
17 investigative nature, do you mean involving wrong-doing
18 by persons or alleged wrong-doing?

19 MR. GILBERT: Yes, sir. What I am saying is
20 that some of the allegations or alleged wrong-doings
21 were probably of an inspection nature rather than an
22 investigative nature. We are not involved in the
23 technical issue. We are more involved in the alleged
24 wrong-doings.

25 COMMISSIONER AHEARNE: So if the allegation is

1 that certain welds aren't done properly, then that would
2 be a regional ---

3 MR. GILBERT: --- inspection, yes.

4 COMMISSIONER AHEARNE: And if the allegation
5 is that they falsified the record for the weld, that
6 would be your office?

7 MR. GILBERT: That is correct.

8 CHAIRMAN PALLADINO: I suspect they don't fall
9 into clear-cut categorizations.

10 COMMISSIONER GILINSKY: Nothing does.

11 MR. GILBERT: Our first objective was of
12 course to organize an approach to the investigation. Of
13 necessity our plan has been structured on Region III's
14 computer printout since this represented essentially all
15 information which was made available to us at the time
16 we assumed investigative responsibility. To date
17 approximately 550 allegations have been inputted.

18 COMMISSIONER AHEARNE: Is that up to date with
19 the August 20th file?

20 MR. KEPPLER: The 550 was the total number
21 that have been generated to date. I think we have about
22 250 active ones?

23 MR. GILBERT: Yes. I will get into that.

24 COMMISSIONER AHEARNE: Did that include the
25 August 20th submission of the petition that you have

1 asked CG&E to respond to?

2 MR. SCHWEIBINZ: No, it did not.

3 COMMISSIONER AHEARNE: It did not?

4 MR. SCHWEIBINZ: That is correct, it did not.

5 MR. FITZGERALD: And others that probably have
6 come in in recent time.

7 MR. KEPPLER: Some of the August 20 were old
8 items and some were new.

9 COMMISSIONER AHEARNE: But whatever was new in
10 the August 20th were not included in that list?

11 MR. KEPPLER: That is apparently what he said.

12 MR. SCHWEIBINZ: Yes.

13 MR. GILBERT: This represents all allegations
14 which have been received since approximately 1979.

15 COMMISSIONER AHEARNE: No. See, that is why
16 we established it did not representation all allegations.

17 MR. GILBERT: Up until the last input which
18 was?

19 MR. SCHWEIBINZ: That list, the computer list
20 only represents up to late July. Everything received
21 after late July is not on that computer list right now.

22 CHAIRMAN PALLADINO: So the 550 are those that
23 came through toward the end of July?

24 MR. FITZGERALD: Correct.

25 MR. GILBERT: Yes, sir, not to include

1 anything received subsequently to that apparently. A
2 number of these are technical items which have been or
3 will be covered by the inspection staff in Region III,
4 and of course there are many others which will receive
5 resolution through the Office of Investigations.

6 COMMISSIONER AHEARNE: How did you plan to
7 pick up the allegations post end of July?

8 MR. GILBERT: Mr. Schweibinz is still
9 analyzing the various documentation which has been
10 received and he will make inputs based upon his
11 evaluation.

12 MR. FITZGERALD: Ted, I would also point out
13 that we have an ongoing information exchange with the
14 regional people, Mr. Kepler and Mr. Hunter, and that
15 when we receive allegations or information we have been
16 transmitting it to them and vice versa.

17 COMMISSIONER AHEARNE: Are you saying, Jim,
18 that when you receive an allegation it goes to Region
19 III and you wouldn't treat it as an allegation to be
20 investigated until it showed up on the computer printout?

21 MR. FITZGERALD: No. We are simply saying
22 that we use the computer printout as a vehicle for
23 getting a handle on the spectrum of potential work that
24 was out there. It is our understanding that the region
25 is continuing to use that computer program or whatever

1 to maintain some control over the allegations.

2 COMMISSIONER AHEARNE: But, see, this is
3 fairly specific because we do have a large petition in
4 front of us, as does Mr. Kepler, and that has a whole
5 series of allegations in it, and since we have to
6 respond, I am trying to understand how does that set of
7 allegations or those that are pertinent get into OI and
8 I am still puzzled. I am not getting the picture.

9 MR. GILBERT: If the region received the
10 petition? Is that what you are referring to.

11 COMMISSIONER AHEARNE: If the region received
12 one and the Commission received one.

13 MR. GILBERT: The region has been providing a
14 copy of whatever documentation they receive to us even
15 though they may not have made their computer entries.

16 COMMISSIONER AHEARNE: But I thought you just
17 finished telling us that you were using as your list of
18 allegations what is on the computer printout.

19 MR. GILBERT: Yes, sir. I am saying initially
20 when we first started setting up this, this was the sum
21 total.

22 COMMISSIONER AHEARNE: Have you added to that?

23 MR. GILBERT: We have indeed. We are aware of
24 the more recent information.

25 COMMISSIONER AHEARNE: Have you added then to

1 the list you are working with, to that August 20th
2 petition?

3 MR. GILBERT: Yes, sir. I was just trying to
4 explain how we have organized the background.

5 COMMISSIONER AHEARNE: I am sorry. I will
6 wait until you finish.

7 MR. GILBERT: All right.

8 CHAIRMAN PALLADINO: But 550 was your initial
9 backlog?

10 MR. GILBERT: Yes, sir, that is what we had
11 initially back on the 19th of July.

12 MR. KEPPLER: That wasn't a backlog.

13 (Laughter.)

14 MR. GILBERT: No, not really.

15 CHAIRMAN PALLADINO: Excuse me. That was the
16 total population backlog. Go ahead. I am going to keep
17 my mouth closed.

18 MR. GILBERT: Very briefly, the allegations
19 came from a variety of sources to include current and
20 former employees of Zimmer, primarily QA and QC
21 personnel, the GAP intervenor groups, a private
22 investigator, NRC inspectors and Members of Congress,
23 and the majority of the allegations have been documented
24 in letters, in memorandums, in written statements, as
25 results of interviews, investigative field notes and

1 previous inspections and investigations.

2 As far as reports of investigations, all
3 allegations which have been incorporated in 81-13, the
4 previous Region III investigation, I understand have
5 been included in the computer printout, and all
6 documentation pertaining to the allegations is being
7 forwarded to OI for further analysis and incorporation
8 in our investigative efforts.

9 COMMISSIONER GILINSKY: Let's see, my
10 attention wandered for a moment. How many of these fall
11 into your bailiwick?

12 MR. GILBERT: Approximately 245 we determined
13 are in fact open investigative items which we can look
14 into.

15 COMMISSIONER GILINSKY: And how many people do
16 you have working on this?

17 MR. GILBERT: We have a total of five.

18 COMMISSIONER GILINSKY: Five?

19 MR. GILBERT: Yes, sir. Understand that a
20 number of the allegations, while there are 245, there
21 are a lot of duplications and I will explain how we have
22 tried to categorize them so we can hopefully get it into
23 a more workable ---

24 CHAIRMAN PALLADINO: The 245, does that
25 include the new GAP allegations?

1 MR. GILBERT: It does not include the new GAP
2 allegations, no, sir.

3 MR. GILBERT: The region will continue to make
4 computer entries as additional allegations are received.

5 COMMISSIONER AHEARNE: And analyzed.

6 MR. GILBERT: And analyzed, and we will
7 reanalyze.

8 What I did upon receiving the computer
9 printout was to divide the allegations into two basic
10 groups, either closed alleagations, and by that I mean
11 items which have been previously addressed and resolved
12 through inspection or investigation, or items which are
13 not conducive to inspection or investigation. In other
14 words, they either weren't within our purview, but they
15 were generalizations which lacked specificity, they were
16 personal opinions or they simply had no apparent
17 significance.

18 The other broad category of course is open
19 allegations which would either be inspection items or
20 investigation items. Of the investigation items we have
21 approximately 245.

22 We have further segregated these 245
23 allegations into nine categories. These categories are
24 falsification and/or alteration of records and other
25 document deficiencies, and I do have a copy of these

1 nine which I will provide to you gentlemen, harassment
2 and intimidation of quality control inspectors,
3 unqualified personnel, the misuse of nonconformance
4 reports, material false statements by CG&E officials,
5 upgrading of material from non-essential to essential
6 status, quality assurance programmatic deficiencies,
7 vendor program deficiencies and electrical cable and
8 cable tray deficiencies.

9 By this division of the allegations into
10 distinct major areas of concern, we intend to simplify
11 our investigative procedures and reduce the length and
12 complexity of our individual reports of investigation.
13 What we will do is treat each of the nine categories
14 separately and ask we prepare several interim pending
15 reports of investigation, we will only focus on one of
16 those nine categories in each of the investigative
17 reports.

18 Now there may be a number of pending reports
19 pertaining to one category, for instance, the
20 harassment/intimidation issue. We could conceivably
21 have seven or eight or nine separate reports until we
22 are able to satisfactorily resolve and close out that
23 issue. Again, we will address the falsification of
24 records issue under a separate series of reports.

25 As we receive this backup documentation from

1 the region, we will determine which of the investigative
2 categories it addresses and assign it to the
3 investigator who has been assigned responsibility for
4 that aspect of the investigation. So whereas some of
5 the documentation has not been inputting as we receive
6 it by the region, we are still able to provide it to our
7 team of investigators to commence investigating it even
8 though it is not necessarily identified here again.
9 This is purely a tracking system primarily for Region
10 III's purpose.

11 COMMISSIONER AHEARNE: You have broken into
12 the nine categories. How are you now fitting in the
13 allegations in this August 20th petition into those
14 categories?

15 MR. GILBERT: Well, again, upon analyzing the
16 information, it might indeed pertain to alteration or
17 falsification of records.

18 COMMISSIONER AHEARNE: I guess what I am
19 asking is are you in the process of analyzing that
20 petition?

21 MR. GILBERT: We have received it. Quite
22 honestly, I don't know which one you are talking about,
23 Commissioner.

24 COMMISSIONER AHEARNE: There is an August 20th
25 petition of GAP ---

1 MR. GILBERT: Oh, the petition itself, yes, we
2 have analyzed it and I have indeed printed copies of it
3 and it has been provided to the investigators.

4 CHAIRMAN PALLADINO: But have you categorized
5 it by these nine categories?

6 MR. GILBERT: Yes. In other words, I could
7 see nothing in the petition which did not address a
8 category which we had established.

9 COMMISSIONER AHEARNE: So you or one of these
10 other people have gone through the petition and broken
11 out the allegations?

12 MR. GILBERT: Yes, sir.

13 COMMISSIONER AHEARNE: And there then is a
14 finite list of allegations which you believe map into
15 the petition? It is a somewhat loaded question.

16 (Laughter.)

17 MR. GILBERT: Yes, sir. I am trying to
18 anticipate your next question.

19 (Laughter.)

20 COMMISSIONER AHEARNE: The next question
21 obviously is to provide it and whether Region III agrees
22 that that is the set, because, you see, Region III has
23 directed, based upon at least one of the petitions, the
24 licensee to answer the allegations. So if you have
25 already developed a list of what the allegations are, it

1 would seem appropriate for Region III to take a look at
2 that and see if they agree and then consider perhaps if
3 they should provide that list to the licensee because
4 then this is the list of allegations they must respond
5 to.

6 COMMISSIONER GILINSKY: Commissioner, I am
7 taking as a separate issue the Region III's action as
8 far as providing the licensee a copy of the petition and
9 requesting the response from him.

10 COMMISSIONER AHEARNE: But the licensee has
11 been asked to respond to the allegations, and if you
12 have then defined what the allegations are, it would
13 seem very useful.

14 Jim, wouldn't it?

15 MR. FITZGERALD: Have you annotated the
16 petition for those that appear to be investigatable or
17 investigative interest?

18 COMMISSIONER AHEARNE: No, he has put them
19 into the bins. So he must have broken them out.

20 MR. GILBERT: What I have done in reading the
21 petition, I have seen which of these nine categories the
22 petition pertains to. If there were three or four
23 different categories, each of those files, if you will,
24 has a copy of the petition.

25 COMMISSIONER GILINSKY: Can I ask a question.

1 I am going to have to leave soon after 5. To what
2 extent is this relevant to Jim's recommendations about
3 what to do?

4 MR. KEPPLER: It is not.

5 COMMISSIONER GILINSKY: Could we handle it at
6 another time?

7 COMMISSIONER AHEARNE: Well, I don't mind
8 shifting to Jim, but since they are here I would like to
9 continue afterwards.

10 COMMISSIONER GILINSKY: Sure, that is fine
11 with me, but I would like to be present for ---

12 CHAIRMAN PALLADINO: But I gather on this
13 point Jim is really acting independently from what you
14 have been doing.

15 COMMISSIONER AHEARNE: But Jim agrees that
16 getting a list, if they have gone through and listed the
17 allegations, it would be useful.

18 CHAIRMAN PALLADINO: Sure.

19 MR. KEPPLER: Yes.

20 COMMISSIONER GILINSKY: Well, I am not sure
21 you want to mix up your investigation.

22 COMMISSIONER AHEARNE: I am not mixing it with
23 the investigation.

24 COMMISSIONER GILINSKY: I don't want to get
25 into this at all, to tell you the truth.

1 (Laughter.)

2 COMMISSIONER GILINSKY: I would rather get to
3 what Jim has and I am sorry I even mentioned that.

4 (Laughter.)

5 CHAIRMAN PALLADINO: I didn't appreciate that
6 this wasn't going to be related. Maybe since
7 Commissioner Gilinsky has to leave and I gather Jim
8 Kepler is going to have to leave ---

9 MR. DIRCKS: I think it is related in a
10 sense. I think what we wanted to show is that not only
11 is the QCP generated new information and new needs to
12 question and to have rework, but the investigation is
13 accumulating more issues than we are digesting at this
14 point.

15 COMMISSIONER GILINSKY: It is going from a
16 vicious circle to a descending spiral.

17 (Laughter.)

18 MR. KEPPLER: That is the real point.

19 MR. DIRCKS: I think that is the point we want
20 to make, that neither we nor the licensee now can draw
21 bounds around this problem.

22 COMMISSIONER AHEARNE: All right, can you then
23 quickly summarize and say, Jim, that you have not
24 reached any conclusions but that you are just getting
25 started?

1 MR. FITZGERALD: That is correct. We are
2 conducting field interviews with people, but they can be
3 categorized at this stage as more allegors, and we are
4 at the point where we have got to move beyond that to
5 proving out some of these things or proving them
6 negatively.

7 MR. KEPPLER: And they are coming in faster
8 than you can deal with them.

9 MR. FITZGERALD: That is right.

10 MR. KEPPLER: That is the real issue.

11 MR. DIRCKS: And there are allegations against
12 the QCP and there are allegations concerning harassment
13 of the personnel who are carrying out the QCQ.

14 MR. FITZGERALD: I would not say they are
15 coming in faster than we can deal with them. At some
16 point we are going to have to stop or curtail the input
17 and work the investigation, but it is a growth industry.

18 (Laughter.)

19 CHAIRMAN PALLADINO: Are you concentrating on
20 any of the specific areas out of the nine?

21 MR. FITZGERALD: The two areas that we are
22 concentrating on are harassment and intimidation of QC
23 inspectors and falsification of records is the way we
24 have prioritized our effort. That is one of the reasons
25 why we broke it down that way.

1 CHAIRMAN PALLADINO: Well, I think that maybe
2 gives us enough to go to ---

3 COMMISSIONER AHEARNE: Yes, but I don't want
4 to him to disappear because I want to get back to this.

5 CHAIRMAN PALLADINO: We will come back to you.

6 MR. FITZGERALD: I won't disappear.

7 (Laughter.)

8 CHAIRMAN PALLADINO: What I was going to
9 suggest was, unless you have some burning that you think
10 ought to be made at this point in the meeting, I was
11 going to suggest we go to the recommendations on actions
12 that the Commission ought to be taking.

13 I will turn it back to Jim Keppler while we
14 have a full Commission and while we have Jim Keppler and
15 we will come back to you.

16 Jim.

17 MR. KEPPLER: Well, I think it has become
18 apparent to us over the last several weeks and I think
19 to you people today that this project is heavily bogged
20 down right now and it is going to take a lot of
21 resources both in terms of numbers and talent to get
22 better control of this project.

23 I mentioned earlier that it is our view that
24 the quality confirmation program has been effective in
25 identifying problems, but the number and nature of the

1 problems have added to the overall complexity of the job.

2 Furthermore, the qualify confirmation program
3 is really showing us that the plant has not been built
4 in conformance with the application of the construction
5 permit.

6 COMMISSIONER ROBERTS: Is that at all in
7 contradiction with what Harold Denton said earlier?

8 MR. KEPPLER: No, I think he said the same
9 thing.

10 COMMISSIONER GILINSKY: I think Harold Denton
11 is assuming in reviewing ---

12 MR. KEPPLER: That they assumed the plant
13 would be built that way and we are telling you it isn't.

14 COMMISSIONER ROBERTS: I am not attacking you.

15 COMMISSIONER AHEARNE: Well, are you saying
16 that the plant isn't or at this stage you don't see how
17 you can possibly know whether it is or not?

18 MR. KEPPLER: We know that it is not built in
19 accordance with specifications or the construction
20 permit at this stage. We have several examples we can
21 give.

22 COMMISSIONER GILINSKY: Well, and the
23 pedigrees and the QA are all part of the application.

24 MR. KEPPLER: You are either going to come
25 into a program of doing rework or you are going to have

1 to justify it from an engineering point of view. One of
2 the two is going to have to be done. If the rework it
3 as they have started to do in a number of cases today to
4 bring it into specification, that is one approach. If
5 they try to justify it from an engineering approach,
6 then it will have to come before the NRC and the NRC
7 will have to pass judgment on it.

8 Efforts to control the quality confirmation
9 program to deal with the identified problems and control
10 ongoing work have really become very disorganized. They
11 start some work, they stop some work and they move in
12 this direction and that direction and it is proving to
13 be more than the licensee can handle. I think the
14 recent personnel cut-back at the site is a recognition
15 of this.

16 COMMISSIONER AHEARNE: Don't some of those
17 same phrases apply to the NRC?

18 MR. KEPPLER: They do. We have started out
19 and we have added to staff and we are having all we can
20 do to keep up with it and we are not doing very well.

21 MR. DIRCKS: Of course, the difference is it
22 is their project and their investment.

23 COMMISSIONER AHEARNE: I understand.

24 MR. DIRCKS: They are trying to build that
25 thing.

1 COMMISSIONER AHEARNE: Yes, and we are trying
2 to regulate it.

3 MR. DIRCKS: And we are trying to follow in a
4 sense what they are trying to do.

5 MR. KEPPLER: But the disorganization of it
6 and the lack of an orderly approach right now is making
7 it all the more difficult to follow and judge. I really
8 think that the cut-back of the 500 people is indicative
9 that the utility sees it as in a predicament. People
10 are standing around down there.

11 I think the lack of an orderly approach being
12 taken by the licensee places greater demand on our
13 resources, that is the point you made, and makes it
14 increasingly more difficult for us to verify that the
-15 plant meets the criteria of the construction permit
16 application.

17 I have said in the past that I support the
18 need for a third-party verification effort regarding
19 construction.

20 COMMISSIONER AHEARNE: You also said that you
21 really don't know what that means.

22 COMMISSIONER GILINSKY: Would you let him
23 finish.

24 CHAIRMAN PALLADINO: That is my statement.

25 (Laughter.)

1 MR. KEPPLER: I don't think that is what I
2 said, no. I said I did not develop the details of the
3 program, but I thought I conveyed to you at least
4 conceptually what I had in mind.

5 COMMISSIONER GILINSKY: Well, let's hear the
6 proposal and not argue about it. Maybe I won't like it
7 either.

8 (Laughter.)

9 MR. KEPPLER: I think that I have argued all
10 along that I felt the optimum ---

11 COMMISSIONER AHEARNE: The principle I think
12 is fine. It is the details that I am concerned about.

13 MR. KEPPLER: --- that I felt that the
14 optimum timing toward this thing should be toward the
15 end, and I still believe that that argument has a lot of
16 merit.

17 CHAIRMAN PALLADINO: What should be at the end?

18 MR. KEPPLER: That I have felt that the
19 third-party review should be toward the end of the QCP.
20 That has been the position I have taken all along. But
21 I think if you look at the point that the project is in
22 right now, that I think there is a need to bring in
23 additional resources to more effectively manage the
24 construction program down there, the activities in
25 progress.

1 The findings that we have developed from the
2 QCP to date, which are many, and the need to provide us
3 with greater confidence that CG&E's ongoing QA
4 activities are effective have convinced me that we
5 should move ahead with a number of actions, including
6 third-party verification.

7 We have developed a proposed course of action
8 and met yesterday with Mr. Dircks and other senior staff
9 officials and we have got a lot of work to do to develop
10 the specific approach as to how we are going to do this,
11 but we would like to inform the Commission of the steps
12 which we propose to take at Zimmer.

13 (At this point in the proceedings Mr. Kepler
14 passed out a document to those present at the
15 Commissioners' table.)

16 MR. KEPPLER: What we believe should be done
17 is to start out initially and halt all ongoing
18 construction work and to stop any rework that is going
19 on from the quality confirmation program.

20 COMMISSIONER AHEARNE: And the legal basis for
21 that?

22 MR. KEPPLER: Let me develop the whole thing,
23 if I could, and then come back to it.

24 MR. DIRCKS: We have reviewed the legal basis
25 and we can supply that.

1 (Laughter.)

2 MR. KEPPLER: What we feel needs to be done is
3 to bring in a construction management team into the job,
4 somebody like a Bechtel or a Stone and Webster, some big
5 organization that can get their arms around ---

6 COMMISSIONER AHEARNE: Jim, about 15 minutes
7 ago I asked you what you had in mind by a third party
8 and you said you didn't have that detail worked out.
9 Now either you have just in the last 15 minutes did it
10 or you gave me a misleading answer.

11 MR. KEPPLER: I think you asked the question
12 in terms of what I was stating at that time.

13 COMMISSIONER AHEARNE: I asked you what did
14 you have in mind.

15 MR. KEPPLER: At the time I made the
16 statements.

17 COMMISSIONER AHEARNE: You are interpreting
18 that as to what you had in mind when you made the
19 statements?

20 MR. KEPPLER: Yes.

21 COMMISSIONER GILINSKY: Well, I understood it
22 that way, too.

23 MR. DIRCKS: I think we all did. I think we
24 all understood it that way.

25 CHAIRMAN PALLADINO: That is why I was trying

1 to encourage you to wait for the recommendations to
2 explore the specifics on this point.

3 MR. KEPPLER: I am sorry if I misled you, but
4 I took your question to be ---

5 COMMISSIONER AHEARNE: All right.

6 CHAIRMAN PALLADINO: Why don't you go
7 through it.

8 MR. KEPPLER: I feel they need help and the
9 job is not progressing in terms of determining ---

10 COMMISSIONER GILINSKY: Let me ask a legal
11 question. Why does this need to be in closed session or
12 why is it proper to do this in closed session?

13 CHAIRMAN PALLADINO: Why don't we wait until
14 we hear it all.

15 (Laughter.)

16 COMMISSIONER GILINSKY: All right.

17 CHAIRMAN PALLADINO: If we are wrong in
18 having ---

19 COMMISSIONER AHEARNE: That is why I was
20 asking the questions earlier ---

21 CHAIRMAN PALLADINO: If we are wrong in having
22 closed the meeting, we can go through the transcript and
23 make this available to the parties.

24 Why don't we go on because I think time is
25 going to run out on us.

1 MR. KEPPLER: We think that this group would
2 come in and take a look at the total project, both in
3 terms of the quality confirmation program work and the
4 remaining work to be done, and put this into some kind
5 of an orderly progress which would work toward
6 identification of all the problems, presenting a report
7 that the NRC could look at and then moving ahead with
8 the proposed fix for the problems and bringing it into a
9 more orderly approach.

10 At the same time, I would look to have a third
11 party brought in and it could be by the same
12 organization to review the quality confirmation program
13 work to date, both the organization of it and the
14 conduct of it, that would focus on how well has the
15 program been carried out and do we have the confidence
16 that I think we have in the program.

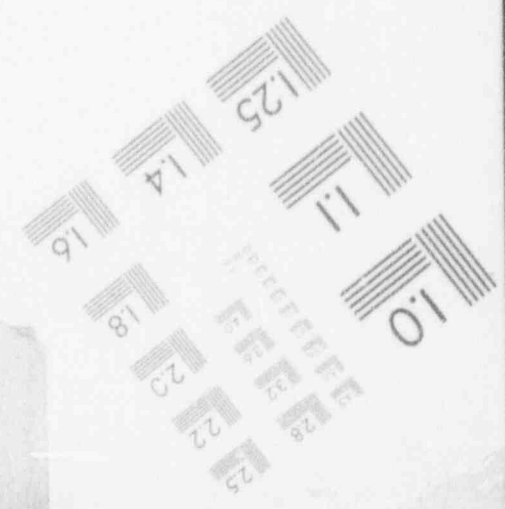
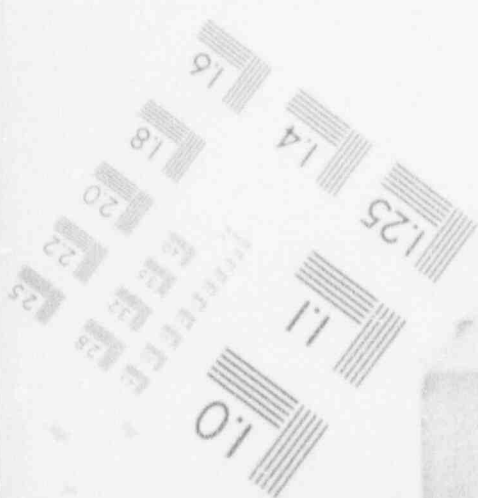
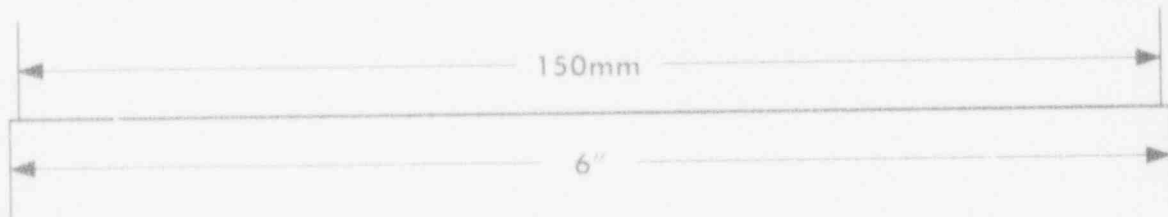
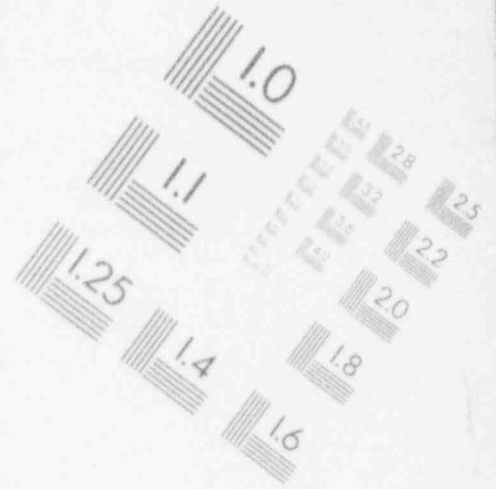
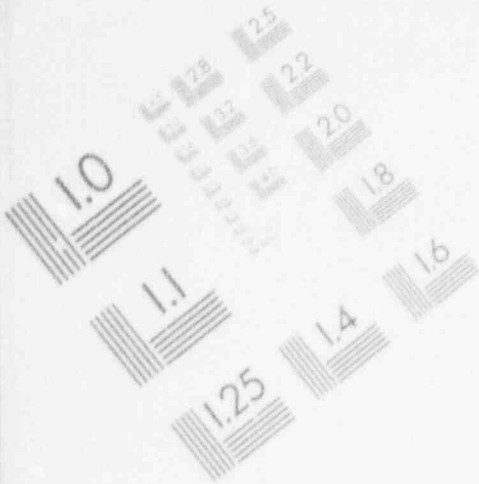
17 I would also have that group stay on and
18 overview Cincinnati Gas and Electric's quality assurance
19 activities at least until a point in time that we can
20 say yes, we have a high degree of confidence in it or we
21 don't.

22 COMMISSIONER AHEARNE: When you say to manage,
23 are you saying to replace Cincinnati Gas and Electric?

24 MR. KEPPLER: I would have them reporting in
25 at the very top of the organization, probably to the

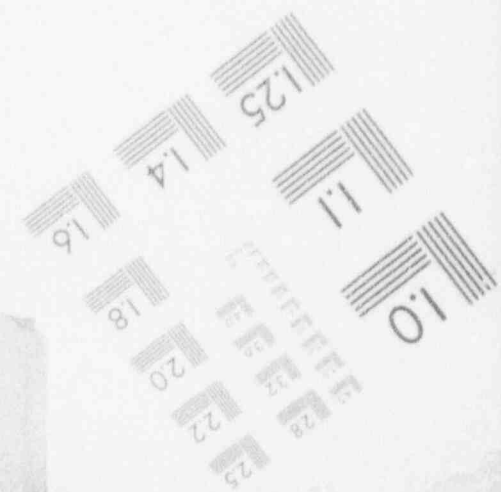
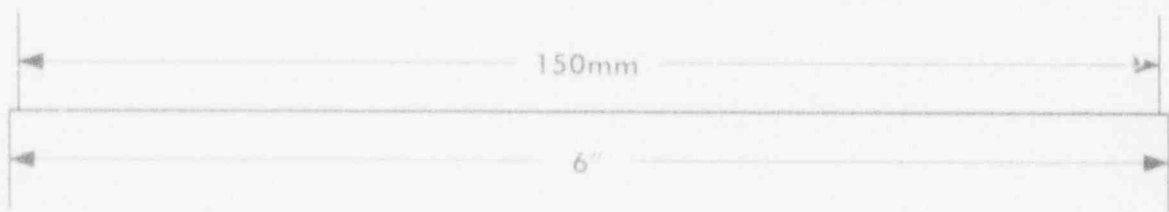
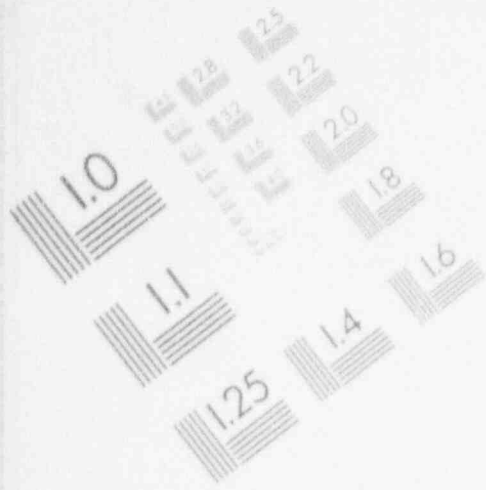
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IMAGE EVALUATION TEST TARGET (MT-3)



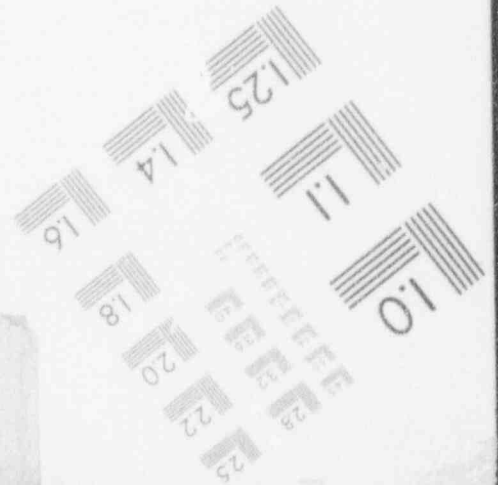
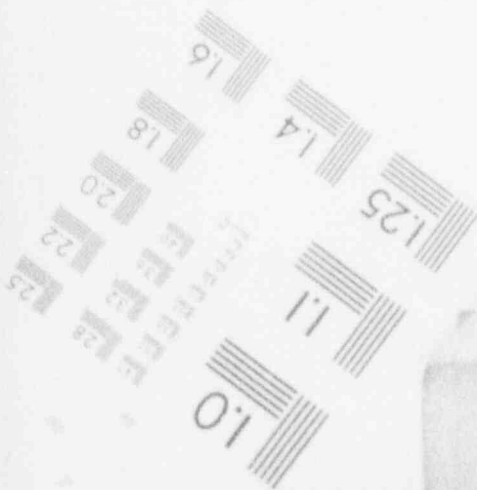
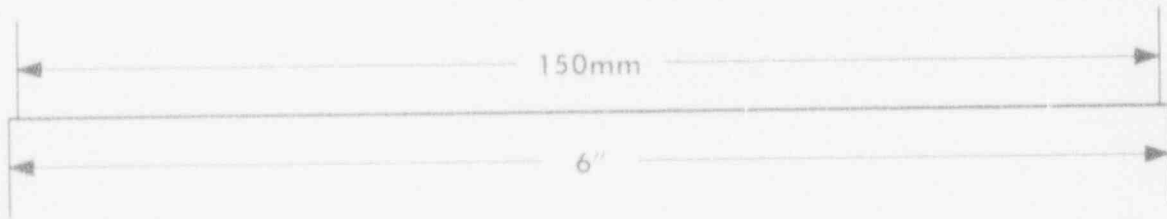
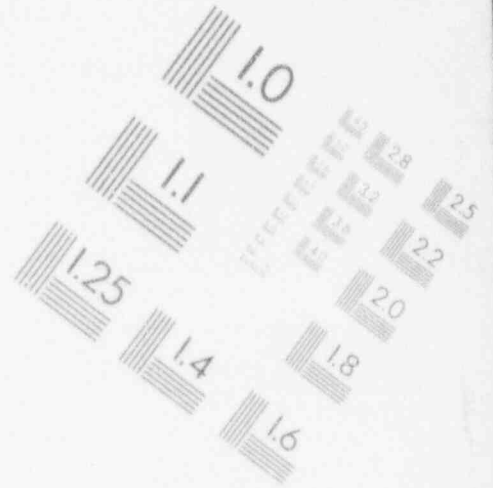
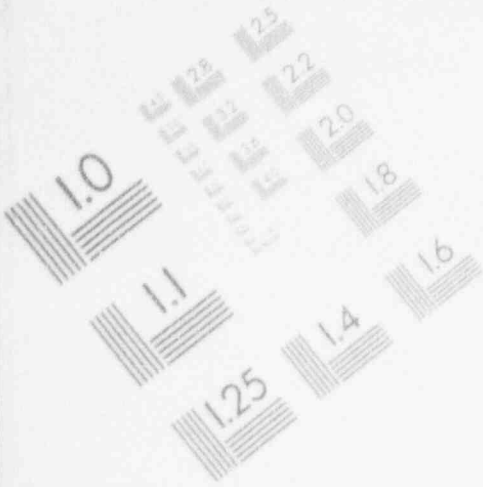
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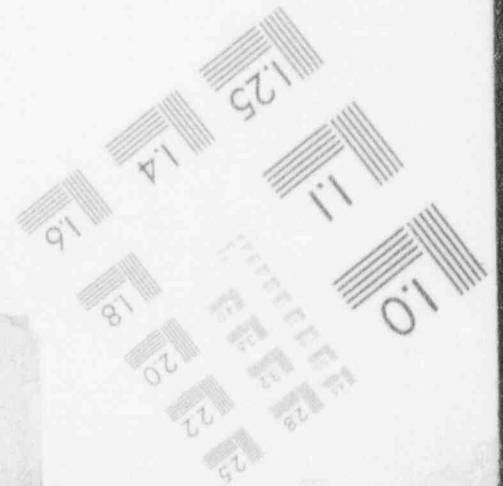
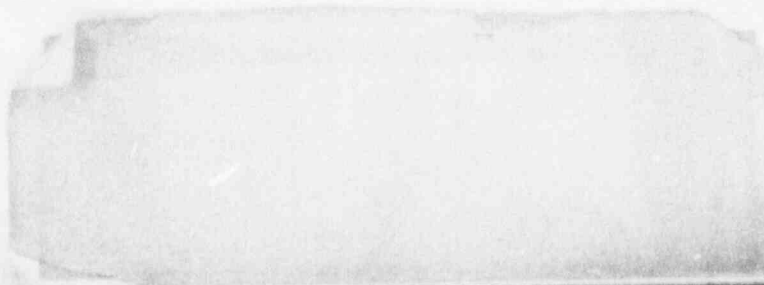
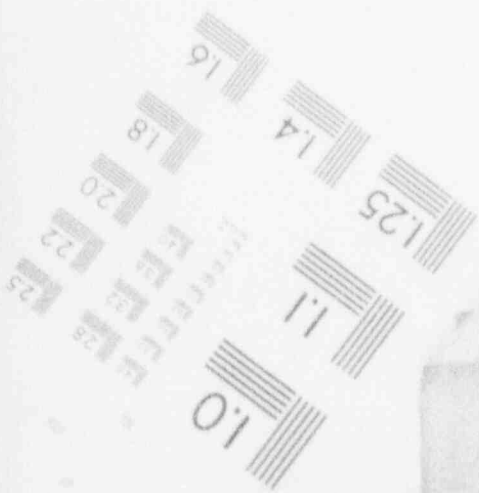
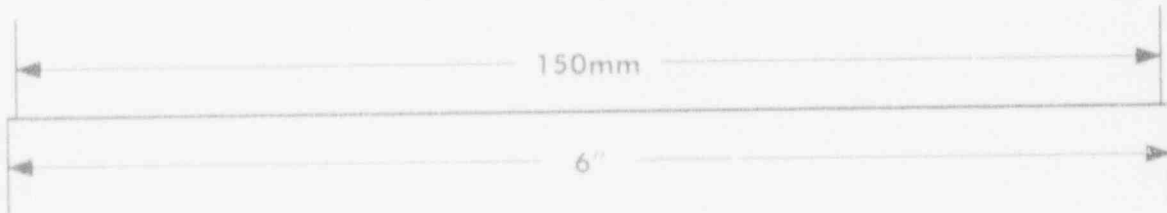
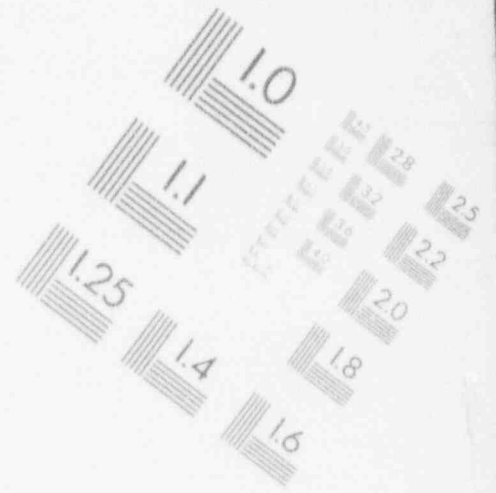
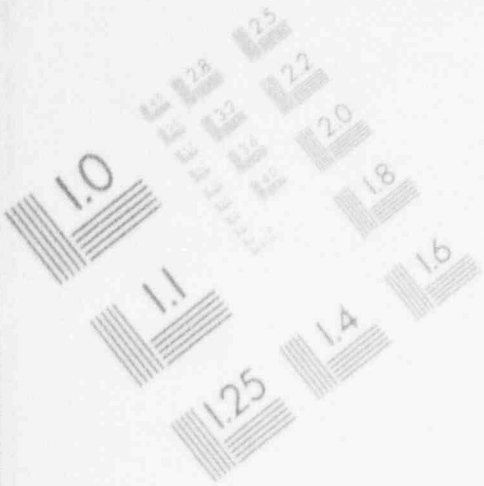
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IMAGE EVALUATION TEST TARGET (MT-3)



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IMAGE EVALUATION TEST TARGET (MT-3)



1 president.

2 COMMISSIONER AHEARNE: So they wouldn't be
3 replacing Cincinnati Gas and Electric?

4 MR. KEPPLER: They would not be replacing them.

5 COMMISSIONER GILINSKY: I would suggest the
6 chairman.

7 COMMISSIONER AHEARNE: The chairman of what?

8 CHAIRMAN PALLADINO: Of the board.

9 COMMISSIONER GILINSKY: Of the board.

10 CHAIRMAN PALLADINO: You use the words
11 "third-party" so many ways that I am not sure whether
12 these are all the same third-parties.

13 MR. KEPPLER: They could be different.

14 CHAIRMAN PALLADINO: But they are not all
15 third parties. You first say require a third-party to
16 manage the total project. This is where you talk about
17 the project management team.

18 MR. KEPPLER: Yes.

19 CHAIRMAN PALLADINO: So it is an outside party
20 that would be brought in.

21 COMMISSIONER AHEARNE: Well, it is a new
22 constructor ---

23 COMMISSIONER GILINSKY: A new manager.

24 MR. KEPPLER: Yes, a new manager.

25 COMMISSIONER AHEARNE: Right now you have

1 Kaiser doing the construction, right?

2 MR. KEPPLER: Yes.

3 COMMISSIONER AHEARNE: You had Sargent & Lundy
4 as the A&E.

5 MR. KEPPLER: Right.

6 COMMISSIONER AHEARNE: You had Cincinnati Gas
7 and Electric as the project manager, right?

8 MR. KEPPLER: Yes, they are basically the
9 project manager.

10 COMMISSIONER AHEARNE: Now when you say bring
11 in Bechtel, do you mean to have them do the
12 construction, do you mean to have them redo the A&E or
13 do you mean that you will move out the Cincinnati Gas
14 and Electric people and move Bechtel in, or do you mean
15 put Bechtel over the existing Cincinnati Gas and
16 Electric/Kaiser/Sargent & Lundy?

17 MR. KEPPLER: I would put Bechtel ---

18 COMMISSIONER GILINSKY: You don't mean Bechtel.

19 MR. KEPPLER: I would put an independent
20 organization in to manage the completion of that job,
21 and they would take whatever action with Kaiser or
22 Sargent & Lundy that they wish to take.

23 COMMISSIONER AHEARNE: You are saying then
24 that you would not automatically say Kaiser is out as
25 the constructor?

1 MR. KEPPLER: No.

2 COMMISSIONER AHEARNE: So the only people who
3 would be out would be the CG&E project team? Is that
4 what you mean?

5 MR. KEPPLER: That is right, and they could be
6 integrated into the program as this third party saw fit.

7 COMMISSIONER AHEARNE: Well, let's see if I
8 can understand this. You have an organization structure
9 and I thought what you were saying is you would require
10 Cincinnati Gas and Electric to remove itself from that
11 project management and replace it by a new project
12 manager who would have the responsibility of deciding
13 whether or not the existing constructor could stay there
14 and review the entire project and I guess would have the
15 responsibility of then reaching a conclusion of whether
16 the constructor ought to be replaced, whether additional
17 A&E work needed to be done and whether or not the CG&E
18 managers should have any role; is that correct?

19 MR. KEPPLER: Let me state it a different
20 way. The project is in a lot of trouble. They need
21 some help to get the work ---

22 COMMISSIONER AHEARNE: We are all in a lot of
23 trouble and I am trying to understand the details of
24 what you are asking for. I recognize that for public
25 credibility it looks great ---

1 MR. KEPPLER: I am not talking public
2 credibility.

3 COMMISSIONER AHEARNE: But the details are
4 important.

5 MR. DIRCKS: I think you are really jumping
6 into this thing in the wrong way. We are trying to
7 share with the Commission some thoughts.

8 CHAIRMAN PALLADINO: I believe we are trying
9 to understand them and I had started the questioning.
10 We have the concept of somebody coming in as an
11 independent group to manage the total project. Now let
12 me pretend I understand you for a few moments. Then we
13 have another group to come in and review the QCP and
14 overview the CG&E QA program. Do you envision that they
15 can be different groups?

16 MR. KEPPLER: They could.

17 CHAIRMAN PALLADINO: They could. They you
18 have all work to restart after project management team
19 is in and the third party is functioning and then you
20 are going to require a third-party review of design and
21 construction of one or more systems and that probably
22 could be a different one again.

23 MR. KEPPLER: Yes.

24 CHAIRMAN PALLADINO: So my question is are you
25 really getting a project management team when you are

1 getting three more outside individual groups?

2 COMMISSIONER GILINSKY: Well, it sounds to me
3 like they are saying they want a solid team to manage
4 the whole project in which we have confidence in, that
5 is No. 1, and they want the thing checked by someone
6 else.

7 MR. DIRCKS: And it is not a new concept.
8 South Texas went this route and seemed to get itself
9 straightened out.

10 COMMISSIONER GILINSKY: And Diablo Canyon is
11 doing this.

12 MR. DIRCKS: Diablo Canyon, yes..

13 CHAIRMAN PALLADINO: But the one third party
14 did all of those in the others.

15 COMMISSIONER GILINSKY: No.

16 CHAIRMAN PALLADINO: No?

17 COMMISSIONER GILINSKY: For example, in the
18 Diablo Canyon you have got Bechtel playing this
19 managerial role and you have got Teledyne as a third
20 party and various other groups like Stone and Webster
21 and so on involved with Teledyne.

22 CHAIRMAN PALLADINO: So the project management
23 team would come in and be right under the CG&E president
24 and over everybody else.

25 COMMISSIONER GILINSKY: I must say I would say

1 reporting to the board.

2 CHAIRMAN PALLADINO: Well, at a high level.

3 MR. KEPPLER: But I view the project
4 management team aspect of this as the most important
5 thing right now. That is the real key to it, and the
6 others I believe are important to provide added
7 confidence to us. The job is going to continue at the
8 rate it has been going, which is nowhere, if they don't
9 get a first-rate project management team in there.

10 CHAIRMAN PALLADINO: So you bring the project
11 management team in and they would guide the activities
12 of Sargent & Lundy and Kaiser, would they, or just
13 Kaiser?

14 MR. KEPPLER: Yes, or if they wanted to
15 replace them, they could replace them.

16 COMMISSIONER AHEARNE: I guess this is not
17 really a third party. It is a replacement. You are
18 really saying you want new managers. Once they have
19 come in they are then the management; isn't that correct?

20 MR. KEPPLER: Yes.

21 CHAIRMAN PALLADINO: That is different than a
22 third party.

23 MR. KEPPLER: I used the words "third party"
24 only in the sense that it means somebody new.

25 COMMISSIONER GILINSKY: We have tended to use

1 third party in the checking context.

2 COMMISSIONER AHEARNE: That is right, but this
3 is not a ---

4 COMMISSIONER GILINSKY: We are talking about a
5 new management team and a third party to check out the
6 project.

7 MR. DIRCKS: This is along the lines of the
8 South Texas.

9 CHAIRMAN PALLADINO: All right. In the first
10 one I write "new" instead of "third."

11 COMMISSIONER GILINSKY: Right.

12 MR. DIRCKS: That was causing confusion, the
13 term "third party." We are talking about a project
14 management team.

15 CHAIRMAN PALLADINO: Where do you bring in the
16 group that is going to look at the QCP and overview
17 CG&E's QA program?

18 COMMISSIONER AHEARNE: If you do bring in a
19 true new management team, and using the South Texas
20 analogy, I guess I am a little doubtful that you would
21 want to restrict them to accept the QCP, because recall
22 that in South Texas what has been happening is that it
23 is a whole review of the project, including the
24 construction and, in fact, the constructor ended up
25 leaving as a result of that. So I don't think you want

1 to say you want a new management team, and then,
2 however, you must accept an existing program. That is
3 not at all obvious.

4 MR. KEPPLER: I don't think the program has
5 been hard and fast.

6 COMMISSIONER AHEARNE: But you see you are
7 saying require a third party to review the QCP. That at
8 least by implication is that that part of it, the QCP is
9 an acceptable program. If you are asking for someone to
10 come in and take responsive management of the project, I
11 think one of the things they are going to have to do is
12 to review and ask is that a program that is sound.

13 MR. DIRCKS: I think you are right. I think
14 the basic premise is to get some new management in
15 there. I think what Jim may be saying is if they want
16 to continue with the QCP, then this is at least what you
17 would want to see come out of that new management team
18 in there.

19 COMMISSIONER AHEARNE: I would think what your
20 concept is is a new management team, but at the end of
21 that process you are saying that you want a third-party
22 audit or review or whatever you want to call it. But as
23 far as what the management team is going to do, I don't
24 think you can say, unless you want to be the management
25 team.

1 COMMISSIONER GILINSKY: Well, actually I think
2 all we can say is ---

3 MR. DIRCKS: I think you are right, John, that
4 the main concept is not the third party but the project
5 manager. It goes back to things we talked about
6 earlier. We just don't seem to be able to see the
7 management out there even identifying the scope of the
8 problem.

9 COMMISSIONER GILINSKY: But the action we
10 would be taking would be saying that we do not have
11 confidence in the management that is there. We cannot
12 force anyone to hire a new management. They can abandon
13 the whole project if they want to. So the step we would
14 be taking is saying if you want this thing to go
15 anywhere you are going to have to have new management
16 because we do not agree with the ---

17 MR. DIRCKS: Now you are coming to the second
18 partt of this proposal. Jim, this is meeting with CG&E
19 and we think they are about to lean in this direction
20 anyway and we want to put it to them.

21 COMMISSIONER AHEARNE: As I understood what
22 Jim was saying is almost everybody you would be meeting
23 with are part of the people that have to leave.

24 MR. DIRCKS: Well, I don't think we going to
25 withstand the firing of ---

1 COMMISSIONER AHEARNE: That is an odd way of
2 leaning. I am not saying firing. It is a small utility
3 though and it is not that obvious where you are going
4 to ---

5 MR. DIRCKS: Well, I think you have got to
6 start off with the chief executive officer. Now you may
7 have problems and I think he has gone through a learning
8 experience as we all have.

9 COMMISSIONER GILINSKY: Is the president or
10 the chairman the chief executive officer?

11 MR. DIRCKS: The president.

12 MR. KEPPLER: The president.

13 COMMISSIONER AHEARNE: Do you have the legal
14 authority to acquire a new management team?

15 COMMISSIONER ROBERTS: I would like to hear
16 this.

17 MR. CUNNINGHAM: Let me address this since it
18 keeps coming up. Our ultimate authority here is Section
19 186 of the Act which says we can revoke the CP for any
20 condition which would have warranted denial in the
21 beginning. Clearly, if we knew they were going to build
22 it in a manner which was not in accord with the CP we
23 wouldn't have granted it.

24 Suspension is a lesser authority. If we were
25 to order suspension, we would do it by way of a

1 show-cause order which would say if we don't have any
2 confidence that the QA is adequate, we don't see how you
3 can ever get an OL unless you bring in a third-party
4 auditor. Show us cause why you shouldn't be shut down
5 until you do that and they may have an alternative.

6 COMMISSIONER AHEARNE: But, Guy, we are
7 talking here about a new management team and not an
8 auditor.

9 MR. CUNNINGHAM: Well, all right, the new
10 management.

11 COMMISSIONER AHEARNE: I think what you are
12 saying is really we don't have a requirement that we
13 would refer to and therefore you need a new management
14 team. It is rather our conclusion is that we don't see
15 you can get your license unless you do this.

16 MR. CUNNINGHAM: Unless you do this, and they
17 can show cause why they can do something else. That
18 opportunity is open to them under the order. We
19 wouldn't directly require the new management team.

20 CHAIRMAN PALLADINO: How would you say it
21 again? You said you would show cause as to why they
22 shouldn't get a new management team?

23 MR. CUNNINGHAM: That is right. We are saying
24 in our opinion that is the only way you are going to get
25 an OL. Show cause why you shouldn't be required to do

1 that and may come back and say we have got a better
2 alternative.

3 MR. BICKWIT: Are you saying show cause why
4 you should be allowed to proceed with your construction?

5 COMMISSIONER GILINSKY: I mean really you are
6 saying show cause why you should not suspend your
7 construction permit.

8 MR. CUNNINGHAM: Right.

9 COMMISSIONER GILINSKY: One of the ways they
10 could show cause is to come in with a new proposal for
11 management.

12 MR. CUNNINGHAM: That is right.

13 COMMISSIONER GILINSKY: With various other
14 associated proposals for reviews.

15 CHAIRMAN PALLADINO: Is that the only thing
16 you can ask them to show cause on, why you shouldn't
17 suspend it?

18 COMMISSIONER GILINSKY: You could ask all
19 sorts of questions.

20 CHAIRMAN PALLADINO: No, I am looking at Len.

21 MR. CUNNINGHAM: Well, I think that is
22 basically it, to show cause. Our authority is to
23 suspend the license if we are not satisfied with what is
24 going on there.

25 COMMISSIONER AHEARNE: In this case the permit

1 because they ion't have it.

2 MR. CUNNINGHAM: That is right.

3 MR. DeYOUNG: But the hope is that if we can
4 talk to the utility at a high enough level and get them
5 to recognize the problem they have, I think they are
6 about ready to recognize it and that they will develop a
7 corrective program. They are not dumb and if you can
8 get their attention ---

9 (Laughter.)

10 MR. DeYOUNG: --- they are going to get a
11 corrective program.

12 COMMISSIONER GILINSKY: They are pretty dumb
13 to have gotten this far.

14 (Laughter.)

15 MR. KEPPLER: I agree, but I think the
16 approach really, if you are ever going to solve it at
17 this utility at all, is to go to them with the problem
18 and convince them that this is the proper course of
19 action to take.

20 COMMISSIONER GILINSKY: Well, let's see, are
21 you talking about issuing show-cause orders?

22 MR. KEPPLER: What I would talk about doing
23 would be to convince them that this is the course of
24 action to take and then confirm it, to issue a
25 confirmatory order.

1 COMMISSIONER AHEARNE: I guess what you would
2 be saying though in doing that is that you are convinced
3 that unless they change their management, then the
4 Commission will support an order halting construction,
5 and if they do make the management change, then the
6 Commission will give them time to have that management
7 take over. But aren't you also, however, they have to
8 halt construction now either way?

9 MR. KEPPLER: I am saying that they ought to
10 halt construction.

11 COMMISSIONER AHEARNE: Either way.

12 MR. KEPPLER: No, the latter way, unless we
13 can make an order immediately effective.

14 COMMISSIONER AHEARNE: But, Jim, your thread
15 is you are going to halt construction.

16 MR. KEPPLER: That is right.

17 COMMISSIONER AHEARNE: But you also want them,
18 if they put in a new management team, to halt
19 construction and let that management team take over,
20 don't you?

21 MR. KEPPLER: Yes.

22 COMMISSIONER AHEARNE: So you want them to
23 halt construction no matter what they do.

24 MR. DIRCKS: But the halting of construction
25 is almost academic right now.

1 CHAIRMAN PALLADINO: It is almost what?

2 MR. DIRCKS: Academic ---

3 COMMISSIONER AHEARNE: Well, there are about
4 1,500 people that are on ---

5 MR. DIRCKS: It is not that much more the new
6 construction. They are letting people off anyway. I
7 think it is the rework problem that you want to get to.

8 CHAIRMAN PALLADINO: Halting construction, do
9 they have to take care of all their 2,000 people?

10 MR. KEPPLER: No, it would probably be down to
11 about a thousand.

12 CHAIRMAN PALLADINO: What would those thousand
13 do?

14 MR. KEPPLER: The quality confirmation program
15 would continue presumably if the management team wanted
16 it to.

17 COMMISSIONER AHEARNE: So you would have to
18 stop that though until you got this management.

19 MR. KEPPLER: I guess that is true.

20 COMMISSIONER AHEARNE: Let's use South Texas
21 as an example. I recall what happened. When they
22 decided to change the project management, they
23 essentially did have to freeze everything for about a
24 year.

25 MR. DENTON: Could I get my word in on this

1 stop construction idea? Maybe this would be an
2 appropriate time to respond to the question you asked
3 originally.

4 CHAIRMAN PALLADINO: Go ahead.

5 MR. DENTON: The plant is essentially built
6 and hasn't changed much in the past several years if it
7 is looked at from a large perspective. It has been
8 there. The questions that have been raised are are they
9 able to document that this plant complies with the
10 commitments made in the application? It was recognized
11 a while back that documentation was missing in several
12 areas.

13 I think the further this quality program goes
14 it seems to be increasing in findings of actual
15 noncompliance turning up and not just that the
16 documentation was missing, but when they looking into
17 some things they found that it really was not done the
18 way that we thought it was.

19 Also, I think we had observed in dealing with
20 the management, at least Mr. Borgmann who we deal with,
21 that the management is rather ineffective. They just
22 sort of sit back and wait for the NRC to say do
23 something and they go do that minimum and they didn't
24 seem very imaginative in tackling the problem.

25 When I heard from Jim and his staff yesterday

1 about the amount of rework that is going on and their
2 tendency to rework on the stop, I became concerned that
3 we may end up with a jerrybuilt plant. I am concerned
4 that the lack of structure and order in this process
5 might force them when they can't decide how to analyze a
6 problem to put in another brace here or reweld this or
7 cut this out and in fact someone mentioned that possibly
8 you would have to cut out all the primary system welds
9 and replace them in order to make the confirmation.

10 Well, I think there you are beginning to
11 really impact safety if in fact the plant is not built
12 the way that we had envisioned it to be and if there are
13 twice as many primary system welds in this plant as
14 there would be in normal plant.

15 So I am in favor of a process that would not
16 have any further rework until these 7 or 12 categories
17 of activity that are being reconfirmed are thoroughly
18 completed and a proposal made back to the staff on what
19 they found and what they propose to do to rework it and
20 have us be in the chain of approval that, okay, this is
21 an acceptable way to to go rework the primary system or
22 go to rework the cable tray problem.

23 It seems to me that right now it is all this
24 milling around and that they have lost control between
25 the design and the review and the rework. So I think we

1 really do need a structured process so that we can make
2 a positive finding when this plant is completed and I
3 think we need to look just a little bit ahead of what
4 confidence are we going to have in this organization
5 when the time comes for it to operate if in fact we are
6 having the kind of problems we are having today about
7 the quality of the plant that has been constructed.

8 So I think it is certainly time, to use a term
9 from education, for a cognitive dissidence sort of
10 approach to this utility. Something needs to be done to
11 get out of this if they expect to have a plant they can
12 operate.

13 Now whether exactly I support Jim's type of
14 approach, and it needs work to flesh out, but we
15 certainly need to make some change there and I would
16 suggest that we not let them continue to rework without
17 us getting into the process to be sure they are not at
18 least degrading safety while they are reworking it.

19 CHAIREMAN PALLADINO: He is stopping all work
20 and not only rework. Is that consistent with yours?

21 MR. DENTON: I was stopping rework on the
22 basis that Jim seemed generally satisfied ---

23 COMMISSIONER AHEARNE: But if the reason you
24 need rework is because the work is bad, why wouldn't you
25 also stop whatever work is remaining?

1 MR. DENTON: I would stop any rework or work.
2 Let's say no further changes in the plant.

3 MR. KEPPLER: I think the Catalytic problem
4 tells you there are problems with ongoing work.

5 MR. DENTON: I would have no further ongoing
6 work of either kind, remaining work or rework, and then
7 any further work that they do, whether it is just
8 uncompleted work or whether it is as a result of a
9 quality confirmation program, until we become satisfied
10 that they have identified the problem and the
11 post-corrective action is responsible and we approve
12 that.

13 COMMISSIONER AHEARNE: This may be too harsh,
14 but my sense is that the problem is so large that we
15 really aren't able to look at every piece of it and say,
16 yes, you can go here and you can't go ahead there and
17 this is what you ought to do and this other is what you
18 ought not to do.

19 You description, Harold, I think I agree with
20 most of what you say, but I thought you could then reach
21 a conclusion that they don't have to make any management
22 change. All they have to do is stop everything and then
23 start coming in with proposals and we review those
24 proposals and when we agree with this one or we agree
25 with that one then they can go ahead.

1 MR. DENTON: Well, I think without a
2 management change we may never find any proposals to be
3 adequate based on the way they are going. I think Jim
4 is right that ---

5 COMMISSIONER AHEARNE: My sense is that our
6 whole process is really based upon an audit with the
7 basic assumption that when you do that audit that most
8 of the things are going to turn out right.

9 MR. DENTON: That is right.

10 COMMISSIONER AHEARNE: And here is a situation
11 where we have done the audit and most of the things have
12 turned out wrong, and I don't think our process is
13 really geared to be able to handle that.

14 COMMISSIONER GILINSKY: There are serious
15 questions about the management, that is true.

16 MR. DENTON: It is based on the utility in
17 general being able to have a degree of confidence in
18 what they are doing and our audit then is a way of
19 assuring that it is continued there. It has broken here
20 and they need to restore our confidence that they know
21 what they are doing.

C. W. H.
Ex 5
Sunshine
Act

w/h: Ex-5 Sunshine
Act

21 COMMISSIONER GILINSKY: My own feeling is I
22 would prefer to go with an order because what we are
23 saying is we do not have confidence in that management
24 and some change has got to be made. We would rather
25 that they did it on their own, but I am uncomfortable

1 with that process.

2 MR. KEPPLER: Could I make an argument to the
3 contrary just for your consideration. I think if you
4 don't do it the way I suggest, you might as well take
5 that utility and chuck it because I don't think you will
6 ever get him into a part of the process to deal with
7 this plant.

8 COMMISSIONER AHEARNE: But, Jim, if you give
9 him a show-cause order he can come back with exactly the
10 type of approach that you are suggesting, and if it is
11 reasonable then it might be something that we would
12 accept.

13 COMMISSIONER GILINSKY: You would basically
14 have to carry five votes in your hip pocket and you
15 would cut some deal.

16 COMMISSIONER AHEARNE: Or three at least.

17 COMMISSIONER GILINSKY: That is right.

18 (Laughter.)

19 COMMISSIONER GILINSKY: And you would come
20 back. I think it is better. If we really believe that
21 the management is not capable of running that project,
22 if we don't think it ought to continue under the present
23 management, then we ought to act. Now they will have
24 every opportunity then. In many ways they will be in a
25 stronger position to get the resources that they need or

1 get whatever they need from their board to go forward
2 and get another group in.

3 I mean, it seems to me the time for discussion
4 is after we have issued an order. Then we can discuss
5 what would make the situation right again.

6 MR. DeYOUNG: But on Diablo, you know, we
7 never had to put out the order.

8 CHAIRMAN PALLADINO: What is that?

9 COMMISSIONER GILINSKY: This is a lot worse
10 than Diablo.

11 COMMISSIONER AHEARNE: Dick, I am not sure in
12 retrospect you would want to use Diablo as a ---

13 CHAIRMAN PALLADINO: But we took some other
14 comparably strong step that got their attention. We
15 suspended their license.

16 MR. DIRCKS: We talked about it yesterday and
17 we said the order or try to get the company to move. If
18 the company had any sense right now they would have
19 moved in this direction but they haven't.

20 COMMISSIONER AHEARNE: Well, but part of the
21 problem is that almost everybody who would have had to
22 make that decision would have to be saying I am part of
23 the problem and I ought to step aside.

24 MR. DIRCKS: I think they gradually have taken
25 various steps and that they have edged up this way.

1 From their perspective getting an order from us I think
2 is easier than making a decision in this regard.

3 COMMISSIONER AHEARNE: Oh, but they are going
4 to have to make a decision, Bill, if they get an order.

5 MR. DIRCKS: Oh, yes, but I am still saying
6 the burden then falls on this agency and not on them.

7 COMMISSIONER AHEARNE: No ---

8 COMMISSIONER GILINSKY: Why do you say that?

9 MR. DIRCKS: We are the one who will now be
10 stopping the project and laying off the 2,000 employees.

11 COMMISSIONER GILINSKY: Well, we will be
12 taking the heat. But, listen, that is what we have got
13 to decide. If we think those guys are okay, then let
14 them go. If they are not okay, and we don't believe
15 that the project can forward under this management, we
16 have to say so.

17 COMMISSIONER ASSELSTINE: Jim, let me ask you
18 something that picks up on what Harold said earlier. Do
19 you think that this management could manage the project
20 if new construction work were stopped and if rework were
21 stopped until after the quality confirmation program was
22 completed; that is, go through next June, do the quality
23 confirmation program only, identify the problems only
24 and no rework at the same time and no new construction
25 work at the same time, or do you think it is simply that

1 even that alternative approach they can't do because of
2 the deficiencies in the project management?

3 MR. KEPPLER: I think they need a lot of
4 help. That is where I am coming out. And I think the
5 thing is just growing and they can't get their arms
6 around it, they don't know how to deal with it and I
7 think it is going to continue forever this way if
8 something action isn't taken.

9 COMMISSIONER AHEARNE: I think our whole
10 regulatory process is really based on making
11 modifications on the margin and we can't get our hands
12 around this as it is either. What I think you are
13 saying is that given the existing management you can't
14 carry out your responsibility.

15 MR. KEPPLER: We have lost control, yes.

16 MR. DIRCKS: Because you can't manage a
17 project. You have got to rely on them to manage that
18 project.

19 MR. KEPPLER: That is right, and we are
20 finding ourselves steering the activities down there far
21 too often.

22 COMMISSIONER AHEARNE: I would go for a
23 show-cause order.

24 CHAIRMAN PALLADINO: What do we lose by giving
25 a show-cause order?

1 COMMISSIONER GILINSKY: Well, I think what
2 Bill is saying is that the onus is then very clearly on
3 us, that we are the ones who stopped the project and so
4 on.

5 MR. DIRCKS: And if you say that these plants
6 can only be operated safely if you have a group there
7 that wants to operate them safely and wants to build them
8 correctly. The difference in South Texas is the company
9 turned around and realized they had a problem and
10 brought in a firm and they stopped work and they got
11 that thing turned around.

12 COMMISSIONER ROBERTS: But we didn't go and
13 suggest that they do that.

14 COMMISSIONER GILINSKY: Yes, and they did that
15 for a lot less cause, you might say.

16 MR. DIRCKS: For a lot less cause, right.
17 This has been a slower moving and slower thinking
18 entity. Again, we are the ones who are sort of pushing
19 them into accepting good management. It would better to
20 give them, I don't know, one last chance and let them ---

21 COMMISSIONER GILINSKY: You are pushing them
22 either way. As Tom said, you are blackmailing them into
23 doing this, but ---

24 MR. DIRCKS: There is a fee seen in this thing
25 that you have got to consider, too.

1 COMMISSIONER GILINSKY: Right, there is a
2 slight difference in appearance, both in terms of
3 appearance for them and in appearance of who is to blame
4 for shutting down a project and that is not an
5 insignificant matter. But it seems to me that having
6 come to the conclusion that we have come to, that you
7 have come to, we really don't have any alternative but
8 to issue show-cause orders. I also think that is a much
9 cleaner way of handling the situation and I think in
10 many ways it will keep the relationship between you and
11 them on a much better basis.

12 They will have an opportunity to argue and
13 they have got all sorts of legal rights and properly so.

14 MR. DeYOUNG: But that is part of the risk in
15 staffing.

16 MR. CUNNINGHAM: There is one of the
17 considerations that ought to be factored in, and that is
18 the hearing rights question. If we write an order that
19 they can consent to and do consent to, there will be no
20 hearing. If we write an order without having talked to
21 them or negotiated first, it may or may not be one that
22 is acceptable to them or there may be some alternative
23 that is acceptable to both of us.

24 COMMISSIONER GILINSKY: But they will come
25 back with a counter proposal.

1 MR. CUNNINGHAM: And that may very well get us
2 into a hearing situation.

3 COMMISSIONER GILINSKY: Yes, but they will
4 come back. After all, that is what show cause means.
5 You come back and you show cause and now we can then
6 modify our view. We don't have to stick with our
7 initial view.

8 CHAIRMAN PALLADINO: And if we think things
9 are getting out of hand we can always stop their work.

10 MR. KEPPLER: You say if you invite a hearing
11 though.

12 COMMISSIONER AHEARNE: If they come back and
13 say the reason it shouldn't be stopped is because we are
14 putting in a new management team, then you lift your
15 show cause order.

16 MR. CUNNINGHAM: That is right, but there may
17 be hearing rights. I will have to look into that
18 question further.

19 MR. KEPPLER: You mean on the part of others.

20 MR. CUNNINGHAM: On the part of others, on the
21 GAP and so forth. If we consent to something other than
22 what we had originally proposed in the show cause order,
23 we may well have created hearing rights on third parties.

24 COMMISSIONER GILINSKY: Don't they have these
25 rights anyway?

1 MR. CUNNINGHAM: Not if we issue an order and
2 it is consented to. That is it.

3 COMMISSIONER GILINSKY: Let's see, I suppose
4 the Commission can deal with them the way it dealt with
5 them before.

6 (Laughter.)

7 MR. CUNNINGHAM: My only point is that the
8 possibility of a hearing is another consideration.

9 CHAIRMAN PALLADINO: Who has the right to a
10 hearing? I thought it was only the licensee.

11 MR. CUNNINGHAM: The licensee always has a
12 right to a hearing.

13 COMMISSIONER GILINSKY: But others may also
14 have a right.

15 MR. CUNNINGHAM: If we do something other than
16 what we had originally proposed in the order, it is
17 highly possible.

18 CHAIRMAN PALLADINO: When you do something,
19 what?

20 MR. CUNNINGHAM: Other than what we had
21 proposed in the order.

22 CHAIRMAN PALLADINO: Well, what did we propose
23 in the order?

24 COMMISSIONER GILINSKY: Oh, he is saying if we
25 compromise with the licensee and end up accepting

1 something less than we required ---

2 COMMISSIONER AHEARNE: But, as Guy says, it
3 depends on how the order is worded.

4 MR. CUNNINGHAM: That is right, and we have a
5 lot of flexibility in drafting the order. The South
6 Texas order had a lot of alternatives and said evaluate
7 them. You know, we can write an order.

8 COMMISSIONER GILINSKY: I think it is a much
9 cleaner way of doing things and also I think it is
10 cleaner for the licensee, too. They know what they face
11 and if they want to take legal action of one kind or
12 another, they can do so.

13 CHAIRMAN PALLADINO: Well, could you write us
14 an order, Guy, that we could look at that sets this out
15 so that we give ourselves some flexibility without the
16 requirement for a hearing?

17 MR. CUNNINGHAM: Certainly. No one has tried
18 to do that yet, but we can certainly do it.

19 COMMISSIONER AHEARNE: I gather that was not
20 one of the options they planned on presenting to us.

21 COMMISSIONER GILINSKY: That is right.

22 CHAIRMAN PALLADINO: But I felt also that the
23 cleaner way is to have a show-cause order, and I gather
24 you do, Tom ---

25 MR. CHILK: Well, yes, but ---

1 CHAIRMAN PALLADINO: But I would like to leave
2 them some room.

3 COMMISSIONER ROBERTS: I am not prepared to
4 make a decision of this nature after talking about it
5 for 45 minutes.

6 CHAIRMAN PALLADINO: Excuse me. I was
7 proposing you write something that we can consider.

8 MR. CUNNINGHAM: That we can certainly do.

9 CHAIRMAN PALLADINO: That is what I was
10 proposing.

11 COMMISSIONER ROBERTS: Well, as far as I am
12 concerned, if we are going to take some step, I
13 certainly think it is the proper thing to issue the
14 show-cause order and then you argue about what is in it,
15 but this business of negotiating with them with a
16 threat, I think that is not proper.

17 CHAIRMAN PALLADINO: I was trying to get the
18 order written so that if they come back and say well,
19 look we are going to bring in a new management team and
20 whatever ---

21 COMMISSIONER ROBERTS: We don't have to
22 propose their choices.

23 CHAIRMAN PALLADINO: No, but I want to know
24 what the options are to keep ourselves flexible so we
25 don't have to necessarily get into a hearing. That is

1 what I was looking for.

2 COMMISSIONER GILINSKY: I am going to have to
3 run because I have to give a talk, but one thing I would
4 suggest is that this be done fairly quickly because it
5 is just better that whatever we do we do as soon as
6 possible so that we can reflect on it.

7 MR. FOUCHARD: That was to be my point.

8 (Laughter.)

9 MR. FOUCHARD: Before anybody leaves, I assume
10 that nobody has any comment on this meeting because
11 everybody's phone, including mine, is going to ring.
12 Agreed?

13 (Laughter.)

14 CHAIRMAN PALLADINO: What is it that we don't
15 make any comment about? We don't have anything yet.

16 MR. FOUCHARD: Good, fine.

17 MR. BICKWIT: Excuse me. Under the
18 Commission's concept would the order stop construction
19 immediately?

20 MR. CUNNINGHAM: I would propose in the paper
21 we send with the proposed order we address both
22 immediate effectiveness and hearing and let the
23 Commission know the options and constraints.

24 CHAIRMAN PALLADINO: I didn't understand what
25 you said.

1 MR. CUNNINGHAM: That we would discuss in the
2 paper accompanying this draft order the question of
3 immediate effectiveness, whether it could and whether it
4 should be immediately effective and also the question of
5 hearing rights.

6 MR. DeYOUNG: A shutdown order.

7 COMMISSIONER GILINSKY: Right.

8 CHAIRMAN PALLADINO: Can't you tell them to
9 halt construction and still let them show cause?

10 MR. CUNNINGHAM: That is the question of
11 immediate effectiveness. Yes.

12 COMMISSIONER GILINSKY: Well, you can put that
13 in as an option.

14 MR. CUNNINGHAM: That is my proposal.

15 COMMISSIONER GILINSKY: When do you think you
16 could do it, tomorrow?

17 (Laughter.)

18 MR. CUNNINGHAM: I think we could have it
19 Monday. Tomorrow is pressing it.

20 COMMISSIONER AHEARNE: Yes, this is a very
21 serious step.

22 MR. CUNNINGHAM: In fact, Monday is pushing it
23 and we would like until Wednesday.

24 COMMISSIONER GILINSKY: Well, we haven't
25 decided what to do. I am talking about getting a

1 document before us.

2 COMMISSIONER AHEARNE: Yes, but the quality of
3 that document ---

4 MR. CUNNINGHAM: It is going to be a very
5 important document and I would like to do it well and
6 have it right even if we look at it in draft form.

7 COMMISSIONER AHEARNE: And if you can't do it
8 well, let have it at least right.

9 (Laughter.)

10 CHAIRMAN PALLADINO: Well, basically I gather
11 that is going to tell them to get with it or otherwise
12 they aren't going to have a license and presumably we
13 are going to tell them to stop work.

14 (At this point in the proceedings, at 5:30
15 p.m., Commission Gilinsky left the Commissioners' table.)

16 COMMISSIONER AHEARNE: I still have a couple
17 of questions of Jim.

18 CHAIRMAN PALLADINO: I know. Do we have any
19 more on the recommendation?

20 MR. DIRCKS: No, we ran out of recommendations.

21 (Laughter.)

22 CHAIRMAN PALLADINO: Thank you.

23 Okay, you have a few questions?

24 COMMISSIONER AHEARNE: Yes. Jim, I wanted to
25 get back to Fritz on how the allegations are going to be

1 handled. My questions really are that there are a whole
2 host of allegations at present and I wanted to
3 understand how these new ones were going to be
4 incorporated into your approach.

5 You had mentioned that you had culled out some
6 245 from the previous and then were sorting them into
7 the nine bins.

8 MR. FITZGERALD: Yes, sir.

9 COMMISSIONER AHEARNE: My impression I was
10 getting was that you or your people were going through
11 these new sets and doing the same thing, that is
12 identifying specific allegations which were then going
13 to be added so at some stage you would say, no, it is
14 not 245, but it is 319.

15 MR. GILBERT: I don't mean to overemphasize
16 the number of total allegations which have been
17 received. We are more interested in the issues, the
18 areas which have been identified as potential problem
19 areas.

20 COMMISSIONER AHEARNE: Are you saying that you
21 will be looking then rather than specific allegations
22 more at general areas?

23 MR. GILBERT: Well, I think they go hand in
24 hand. We have got the general problem area and specific
25 allegations which have been made regarding that.

1 COMMISSIONER AHEARNE: Well, but you see at
2 some point the NRC is going to have to respond, whether
3 it is to GAP or to the Congress that here are a set of
4 allegations.

5 MR. GILBERT: Yes, sir.

6 COMMISSIONER AHEARNE: And now how do we
7 respond to them. So someone is going to have to have
8 gone through that and figured out -- it is not that
9 easy. It is a fairly in many ways a turgid
10 document. So someone is going to have to figure out
11 what are the allegations.

12 MR. GILBERT: Which is exactly why this
13 computer printout is of some importance to us because it
14 does identify those.

15 COMMISSIONER AHEARNE: Right. It identifies
16 the previous ones. It doesn't touch these.

17 MR. GILBERT: It has not yet, sir, only
18 because that information has not been included in the
19 printout.

20 COMMISSIONER AHEARNE: Are you relying on the
21 region to do that or are you going to do it?

22 MR. GILBERT: I am relying on the region to
23 make the computer entries, if you will, but we are not
24 waiting for the computer entries to be made to
25 investigate the allegations.

1 COMMISSIONER AHEARNE: But is the region then
2 going through those petitions and culling them out into
3 forms and specific allegations?

4 MR. SCHWEIBINZ: Pardon?

5 COMMISSIONER AHEARNE: See, we have just been
6 told from OI they are going to rely on the region to go
7 through the GAP petitions and cull out specific
8 allegations. Is the region doing that?

9 MR. SCHWEIBINZ: The region is not presently
10 doing that. The region will do it.

11 CHAIRMAN PALLADINO: But I thought he was
12 doing that.

13 COMMISSIONER AHEARNE: No. You see, he said
14 he is going to rely on the region to do that and the
15 region is saying they are not doing it.

16 CHAIRMAN PALLADINO: But I thought he earlier
17 said that they were taking these petitions and going
18 through and identifying the allegations and categorizing
19 them and saying this one goes into No. 3 and this one
20 goes into 9 and this one goes in 4 and 7.

21 COMMISSIONER AHEARNE: Rather than beating
22 around this issue, I think, Jim, could you make sure
23 that someone goes through these petitions and does
24 indicate specific allegations and gets them into the
25 computer list? At the moment nobody is doing that.

1 MR. FITZGERALD: I am sure that we can do that.

2 COMMISSIONER AHEARNE: Because otherwise we
3 are going to run into major trouble.

4 MR. GILBERT: Yes, sir. I appreciate your
5 concern and I agree that we do have to make sure that
6 they are covered because at some point we are going to
7 be questioned about the resolution.

8 COMMISSIONER AHEARNE: And there may even be
9 some significant ---

10 MR. GILBERT: In this particular petition a
11 number of the allegations which have been made are
12 repetitious of previous allegations which have in fact
13 been identified.

14 COMMISSIONER AHEARNE: Absolutely, I agree
15 with that.

16 MR. GILBERT: And a number of them are
17 inspection items.

18 COMMISSIONER AHEARNE: I agree with that,
19 too. It is just that someone has to go through and very
20 specifically list the sets of allegations. That was my
21 concern.

22 CHAIRMAN PALLADINO: Do you have any more
23 questions?

24 (No response.)

25 CHAIRMAN PALLADINO: Jim?

1 MR. FITZGERALD: Just a closing comment. Our
2 approach, having done this, is to move out on a couple
3 of the areas that I indicated focusing particularly on
4 allegations of recent origin, not what happened in 1979
5 and 1980, but what has happened, the intimidation, what
6 is happening in 1982 or is alleged to have happened.

7 It may be that after we have gotten down the
8 road further, depending on the type of case that is
9 developing, that we may be delivering to the region a
10 product that may be useful to them in taking certain
11 actions and it may not be necessary to investigate every
12 last allegation. That is our hope, and that is why we
13 are focusing on the recent stuff.

14 CHAIRMAN PALLADINO: But you are working
15 closely enough together so that if you uncover anything
16 that has safety implications that that gets called to
17 the region.

18 MR. FITZGERALD: That is correct. We have a
19 lot of interaction with them and in fact because of the
20 magnitude of the interaction we are going to actually
21 regularize it by at the same time each week an agenda
22 type information exchange because we have been doing it
23 as we get it, both parties rather informally up to now
24 and we are going to try to really regularize it.

25 CHAIRMAN PALLADINO: Okay, any more comments?

1 MR. FITZGERALD: No, sir.

2 CHAIRMAN PALLADINO: Any more questions?

3 (No response.)

4 CHAIRMAN PALLADINO: Okay, thank you all and
5 we will stand adjourned.

6 (Whereupon, at 5:40 p.m., the closed meeting
7 adjourned.)

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ZIMMER -- PLANNED INITIATIVES

1. HALT CONSTRUCTION
2. REQUIRE THIRD PARTY TO MANAGE THE TOTAL PROJECT
3. REQUIRE THIRD PARTY TO REVIEW QCP AND OVERVIEW CG&E QA PROGRAM
4. ALLOW WORK TO RESTART AFTER PROJECT MANAGEMENT TEAM IS OPERATIONAL AND THIRD PARTY IS FUNCTIONING TO REVIEW CG&E QA PROGRAM
5. REQUIRE THIRD PARTY REVIEW OF DESIGN AND CONSTRUCTION OF ONE OR MORE SYSTEMS

NUCLEAR REGULATORY COMMISSION

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

in the matter of: CLOSED MEETING - STATUS OF ZIMMER INVESTIGATION
EXEMPTION NO. 5

Date of Proceeding: October 28, 1982

Docket Number: _____

Place of Proceeding: Washington, D. C.

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

Mary C. Simons

Official Reporter (Typed)

Mary C Simons

Official Reporter (Signature)

NUCLEAR REGULATORY COMMISSION

ORIGINAL

COMMISSION MEETING

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STATUS OF ZIMMER INVESTIGATION

DATE: November 8, 1982 PAGES: 1 - 103

AT: Washington, D. C.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
STATUS OF ZIMMER INVESTIGATION

CLOSED MEETING - EXEMPTION NO. 5

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

Monday, November 8, 1982

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

COMMISSIONERS PRESENT:

- NUNZIO PALLADINO, Chairman of the Commission
- VICTOR GILINSKY, Commissioner
- JOHN AHEARNE, Commissioner
- THOMAS ROBERTS, Commissioner
- JAMES ASSELSTINE, Commissioner

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

- S. CHILK
- M. MALSCH
- J. ZERBE
- G. CUNNINGHAM
- D. HUNTER
- J. KEPPLER
- J. SNIEZEK

AUDIENCE SPEAKERS:

- C. REAMER
- E. CASE
- J. FOUCHARD

* * *

P R O C E E D I N G S

1
2 CHAIRMAN PALLADINO: Good afternoon, ladies
3 and gentlemen.

4 At our October 28th meeting we received a
5 briefing from the staff on the status of its activities
6 involving the Zimmer project. Subsequently in closed
7 session the Commission received the staff's
8 recommendations on proposed enforcement actions.

9 In brief, as I understand them, the staff
10 proposed to halt all on-going construction work and to
11 stop rework that grew out of the Zimmer quality
12 confirmation program. The staff also proposed to have a
13 new construction management team brought into the job to
14 review the total project and to manage it to completion.

15 Also recommended was a third-party review of
16 the quality confirmation program, a third-party
17 oversight of the licensee's quality assurance activities
18 for an indefinite period and a third-party review of
19 design and construction of one or more plant systems.

20 The staff proposed an informal meeting with
21 the licensee to attempt to gain acquiescence in the
22 staff's approach. However, the Commission was not
23 prepared to endorse an informal approach and the staff
24 was asked to prepare a paper and draft show-cause
25 order. The staff suggested that the paper address the

1 option of immediate effectiveness and discuss the matter
2 of hearing rights. We now have the paper and draft
3 order before us.

4 At this meeting I suggest we have the staff
5 briefly set out what the draft order would do. Of
6 particular interest is the matter of immediate
7 effectiveness both from a standpoint of its legal basis
8 and from the standpoint of how immediate effectiveness
9 influences our ability to obtain the changes we believe
10 are necessary in this project.

11 At the end of the meeting or near the end of
12 the meeting I would like to spend a few minutes
13 discussing what we tell the company, the Congress and
14 the press about our proposed or improved enforcement
15 action, depending on what turns out, what we tell them
16 at this time pending final release of that action.

17 Unless there are further comments by my fellow
18 Commissioners, I would propose we turn the meeting over
19 to the staff and have them proceed.

20 MR. DIRCKS: Guy Cunningham will go through
21 the elements of the order.

22 There is one other matter that I think we
23 should discuss with the Commission, and that flowed out
24 of the meeting that we had the other day, which was a
25 public meeting. I think Cincinnati Gas and Electric had

1 representatives at that meeting and they went back to
 2 their company and, I am sure, out of their views of
 3 where the Commission may be coming from, they have been
 4 making some plans to come up with some alternative
 5 proposals.

6 The one that I guess is the latest one was
 7 relayed to Dick DeYoung in the past couple of days. It
 8 might be good if Jim could summarize what the company
 9 had relayed on to Mr. DeYoung and you could have that in
 10 front of you as we go through the order, then.

11 MR. DIRCKS: Jim, do you want to review what
 12 the company?

13 MR. SNIEZEK: Mr. Chairman and Commissioners,
 14 Mr. DeYoung could not attend today this meeting because
 15 of a pressing personal matter. However, he asked me to
 16 pass on some information he is aware of that may aid you
 17 in making a decision on this matter.

18 He said that Mr. Dickhoner, the Chief
 19 Executive Officer for CG&E, has indicated his intent to
 20 take certain positive actions in light of recent
 21 developments. These include interviewing several
 22 nationally-recognized organizations with considerable
 23 expertise in nuclear project management to perform an
 24 assessment of the Zimmer project. The selection of a
 25 firm is expected this week.

1 The assessment will include an evaluation of
2 current site management and the quality confirmation
3 program. After the evaluation is complete, a
4 comprehensive corrective action plan will be developed
5 under the selected organization's guidance. CG&E staff
6 will be augmented by their personnel to implement the
7 resultant program.

8 All rework in the quality confirmation
9 program --

10 COMMISSIONER AHEARNE: Say that last one again.

11 MR. SNIEZEK: CG&E staff will be augmented by
12 their personnel to implement the resultant program.
13 That is the personnel of the selected organization.

14 MR. DIRCKS: This is something similar, I
15 guess, to what has happened in several of the other
16 plants where organizations such as Bechtel have scaled
17 in their personnel on top.

18 MR. SNIEZEK: And the last point was all
19 rework in the quality confirmation program has been
20 stopped until completion of the assessment.

21 Mr. Dickhoner also indicated a strong
22 preference for a commitment from CG&E to certain
23 programs with a confirmatory order rather than a direct
24 order from the Commission. He is prepared to develop
25 appropriate programs with Commission representatives.

1 Mr. Dickhoner is concerned about a complete
2 shutdown of all site safety-related work. He has no
3 hesitation in stopping work where questions arise, but
4 he is concerned that if all work is halted many
5 employees will be discharged in an impacted area and it
6 is very difficult to restart a job, once stopped. The
7 crafts disperse to other areas and manpower must be
8 rehired and requalified.

9 The bottom CG&E line is that they are prepared
10 to do anything within reason to resolve the Zimmer
11 situation. Mr. DeYoung received this information from
12 Mr. Dickhoner by telephone conversation last Friday.

13 COMMISSIONER AHEARNE: Has Dickhoner or has
14 the licensee passed similar views on to you?

15 MR. KEPPLER: The licensee called me on
16 Monday, a week ago today, and expressed similar concerns
17 but without a program that he talked to Mr. DeYoung
18 about.

19 He asked to meet with me and I discouraged a
20 meeting. I told him that really the issue had been
21 taken out of my hands; it was in the hands of the
22 Commission and that I could not really advise him which
23 direction to go in because I did not know which
24 direction the decisions would be made.

25 I told him I could not tell him what happened

1 in the closed session, but that he was focusing on
 2 trying to come up with something which the Commission
 3 would accept and would look like it was CG&E-initiated,
 4 rather than Commission-initiated. He seemed to be very
 5 concerned about the image factor of the company.

6 I told him if he, you know, if he pushed hard
 7 for a meeting that I did not want to say no to meetings,
 8 but I really thought it was fruitless to meet before the
 9 Commission had made a decision, and he seemed to accept
 10 that. He said at that time that if he had made any
 11 decisions and if he decided to go ahead with certain
 12 courses of action, he would contact me and let me know
 13 that, and I have not heard from him since.

14 CHAIRMAN PALLADINO: I would complete the
 15 picture by indicating, I believe it was Wednesday but it
 16 could have possibly been Thursday, Dick DeYoung, while
 17 he was in Walnut Creek called me to say he had a call
 18 from Mr. Dickhoner asking if he could have a private
 19 meeting with me to tell me about all the good things
 20 they were doing.

21 And Dick says well, I do not think that is
 22 going to be practical, but, he says, I will relay your
 23 request to the Chairman. Well, after thinking about it
 24 a little bit, talking to Len and my colleagues, I called
 25 Dick DeYoung and told him to call back and say I did not

1 think it was appropriate at this time.

2 COMMISSIONER AHEARNE: Was that then -- was it
3 in that callback that Dickhoner then relayed this?

4 CHAIRMAN PALLADINO: No. Let us see. Bill,
5 are you here? Norm, do you remember when that call was
6 from Dick?

7 MR. REAMER: Let me check. I am just not sure
8 whether it was Wednesday or Thursday.

9 CHAIRMAN PALLADINO: It was either late
10 Wednesday afternoon.

11 MR. SNIEZEK: I am not sure if this was the
12 follow-up call when DeYoung returned that call or not,
13 but this was on Friday.

14 COMMISSIONER AHEARNE: What I was trying -- it
15 was a little odd that Dickhoner was relaying the details
16 to DeYoung rather than to --

17 MR. KEPPLER: Well, I think it is partly in
18 fact that I really tried to turn him off from any
19 meetings until the Commission had acted.

20 CHAIRMAN PALLADINO: One point in my
21 deliberations was I did not want to see us cut off all
22 communication between NRC and the licensee, but I did
23 not think the perception would be very good if I sat
24 down in a private meeting to try to receive anything
25 from them.

1 And I did call Dick Keppler and told him about
2 the meeting. I told him I thought he ought to know
3 about it -- I am sorry, about the call, not the
4 meeting. I called Jim Keppler to tell him about
5 Dickhoner's call to Dick DeYoung to have a meeting with
6 me because, I said, he may call you back and y, boy, I
7 am getting cut off at all passes and told Jim depending
8 on what the circumstances were, if they wanted to tell
9 him something and it was only receiving and not
10 negotiation, that maybe depending on the circumstances
11 it might be well to listen.

12 MR. KEPPLER: But I did not receive a call,
13 no.

14 MR. REAMER: It was Wednesday.

15 CHAIRMAN PALLADINO: November 3, Wednesday it
16 was that I received the call.

17 MR. KEPPLER: And you called me on Thursday.

18 CHAIRMAN PALLADINO: I called you on
19 Thursday.

20 All right. Do you have the list? I thought
21 there were four points. I did not catch them all.

22 MR. DIRCKS: We can have this run off. This
23 is a note from --

24 CHAIRMAN PALLADINO: I think it would be
25 helpful, if we are going to give any attention to it.

1 MR. DIRCKS: I think it would be good if Guy
2 Cunningham went through the elements of the proposed
3 order.

4 MR. CUNNINGHAM: We have drafted this order in
5 accordance with our understanding of what the Commission
6 requested at the meeting last week. It is an order to
7 show cause with one immediately effective element. The
8 element, of course, is the immediate cessation of
9 safety-related construction activities on the site.

10 COMMISSIONER ROBERTS: Was that decision made
11 at the last meeting?

12 MR. CUNNINGHAM: It was certainly not clear
13 guidance. It was an interpretation of the sense of what
14 we thought the Commission wanted, coupled with the Staff
15 recommendation that work be stopped.

16 COMMISSIONER AHEARNE: We certainly wanted a
17 discussion of the immediate effectiveness issue.

18 MR. DIRCKS: You wanted an order, I think, to
19 discuss, not that you had decided the issue.

20 CHAIRMAN PALLADINO: I think in my opening
21 remarks I said however, the Commission was not prepared
22 to endorse an informal approach and the Staff was asked
23 to prepare a paper and a draft show-cause order and I
24 guess it should have been "for discussion." We did not
25 say here is what we are going to do.

1 COMMISSIONER GILINSKY: Could you explain the
2 immediate effectiveness? On page 16, it says within 25
3 days of this order, the Licensee may show cause why the
4 actions, so and so, should not be ordered by filing
5 written comments and so on. Is it immediately effective
6 as written now, immediately effective in 25 days unless
7 the licensee satisfies us?

8 MR. CUNNINGHAM: What is immediately effective
9 now is on page 13, Item A, cessation of safety-related
10 construction activities. It says effective
11 immediately. That is the standard form of an
12 immediately-effective show cause order.

13 We issue it and they still have time to show
14 cause why it should be lifted.

15 COMMISSIONER AHEARNE: The 25 days, then, goes
16 to B, where it says shall show cause why it should not
17 remain.

18 MR. CUNNINGHAM: That is right, although
19 within the same 25 days the licensee can come in and
20 show why the suspension should be lifted until they have
21 had a hearing or whatever.

22 COMMISSIONER GILINSKY: Oh, I see.

23 CHAIRMAN PALLADINO: Why don't you highlight
24 the principal features of what you think this does and
25 what it does not do?

1 MR. CUNNINGHAM: I think where we want to
2 focus, of course, is on the ordering provisions and what
3 it is that we have incorporated there. The first eleven
4 pages really just set forth the jurisdiction, the fact
5 that the company holds a construction permit and a
6 detailed recitation of the facts which lead us to
7 believe that corrective action is necessary.

8 COMMISSIONER AHEARNE: Now the reason that you
9 felt that you had to put in all of those recitation of
10 facts was --

11 MR. CUNNINGHAM: To establish a basis for the
12 order. In fact, there is a conclusory section, Roman
13 III, which starts on page eleven, which is what all
14 those facts tell us, namely that there is a lack of
15 adequate assurance.

16 COMMISSIONER AHEARNE: Now do I gather, then,
17 your point would be that the order has to stand -- the
18 justification for the order stands or falls on what you
19 have in your first eleven pages?

20 MR. CUNNINGHAM: That is right. That is
21 putting the licensee on notice why we are taking the
22 action and what it is that he should challenge if he
23 were to challenge it.

24 COMMISSIONER AHEARNE: Okay. So that, for
25 example, if the licensee were to say you have not proven

1 your case that it is significant enough to cause
2 immediate effectiveness, we could not say ah-ha, but,
3 however, and go beyond those eleven pages? Is that what
4 you are saying?

5 MR. CUNNINGHAM: No, no -- of this order.
6 This is the basis of this order.

7 COMMISSIONER GILINSKY: You would have issue a
8 new order if you had other information.

9 MR. CUNNINGHAM: And the basis for immediate
10 effectiveness is really something different than these
11 eleven pages. The requirement for immediate
12 effectiveness is that the public health, safety or
13 interest requires it.

14 The Chairman had asked that we address that
15 legal issue. That is the Administrative Procedure Act
16 standard. One could argue that since we have a two-step
17 licensing process the public health or safety --

18 COMMISSIONER AHEARNE: I am familiar with
19 that. I was trying to get at specifically if there are
20 any facts that had been developed in the process or
21 arguments that had been built, say by Jim or his
22 people. I think what you are saying is if they are not
23 representend in these first eleven pages for the purpose
24 of justifying this order, they are irrelevant. They
25 either are here or we cannot use them.

1 MR. CUNNINGHAM: That is right.

2 COMMISSIONER AHEARNE: So the question then
3 would be with respect to Jim, are you comfortable that
4 that is a complete rendition of the problems that you
5 found?

6 MR. KEPPLER: I think so. We feel that that
7 pretty well represents the history.

8 MR. CUNNINGHAM: Jim's people did most of the
9 drafting here, with our assistance.

10 COMMISSIONER AHEARNE: The second question
11 related to that, we had issued -- you had taken an
12 enforcement action already with respect to Zimmer, so
13 that have you looked at -- some of the items that you
14 have listed are ones that were linked to that previous
15 enforcement action.

16 So obviously if you already took action based
17 on those --

18 MR. CUNNINGHAM: Well, we are taking a
19 different action now. We say we have got a cumulative
20 picture here.

21 COMMISSIONER AHEARNE: It is only in the sense
22 of an accumulation that those could weigh?

23 MR. CUNNINGHAM: That is right. We certainly
24 cannot punish twice for the same violation.

25 COMMISSIONER AHEARNE: It is principally the

1 pattern of deficiencies that has continued to exist
2 after the issuance of the immediate effectiveness
3 letter -- I mean, the immediate action letter -- the
4 problems that have continued to exist up until the
5 present time.

6 MR. KEPPLER: I think that is part of it, but
7 I think another important part is that the quality
8 confirmation program is making significant findings and
9 is showing that there are areas where specifications and
10 applicable codes are not being met, and it is really a
11 combination of all this.

12 COMMISSIONER AHEARNE: I guess the reason I
13 was asking these questions -- perhaps if I went back and
14 reread it more carefully, but I read through it rather
15 quickly -- I did not get that sense of accumulation of
16 the points that come clear when you talk to us, Jim. It
17 was not coming through in the --

18 MR. KEPPLER: We were trying to accomplish
19 that with Section 3.

20 MR. CUNNINGHAM: I was about to get to Section
21 3, which is really the conclusion. In the first
22 paragraph, which is on page eleven, we come to four
23 conclusions. The next paragraph, on page twelve, we
24 tell why we think those four conclusions lead to a
25 requirement of immediate effectiveness.

1 So the four conclusion in paragraph three are,
2 then, first, that the plant has been subject to
3 inadequate management and controls and, therefore, has
4 been constructed without an adequate quality assurance
5 program.

6 CHAIRMAN PALLADINO: Is that word "has
7 been" -- should that be "is being"? "Has been
8 constructed" is not --

9 MR. KEPPLER: No, I think it is largely the
10 past that we are focusing on here.

11 CHAIRMAN PALLADINO: All right. Go ahead.

12 MR. CUNNINGHAM: Secondly, that there are
13 substantial efforts under way to determine the quality
14 of past construction activities. And, third, those
15 substantial efforts have in fact been leading to the
16 identification of construction deficiencies and that, as
17 a result, both reanalysis and rework will be required.

18 And, fourth, the concern that rework of
19 deficiencies identified by the quality confirmation
20 program has been undertaken piecemeal prior to
21 completion of other relevant QCP tasks, with a potential
22 that things which have been reworked may have to be
23 reworked again.

24 Taking those four factors in the conclusion
25 into account, the conclusion is that the NRC presently

1 lacks reasonable assurance that the Zimmer plant is
2 being constructed in accordance with the terms of its
3 construction permit and the quality assurance
4 regulations in Appendix B.

5 COMMISSIONER AHEARNE: I found, I guess, the
6 way you have got those four listed -- I was a little
7 uncomfortable with them in that I thought that the
8 purpose of the order was to lead to the conclusion that
9 Jim had reached last time, and, therefore, what you
10 really need is a change in the management of the
11 organization.

12 The way you have got these four listed, in the
13 past there was inadequate QA. Now, however, substantial
14 efforts are under way. Those substantial efforts are
15 identifying construction deficiencies that continue to
16 be identified. Reanalysis and rework will be required
17 and rework of deficiencies identified by the QCP is
18 going on, but it is being undertaken prior to completion
19 of all the reviews. There may be additional reworking
20 needed.

21 It is not obvious to me that that flow leads
22 to the conclusion that you need new management change.
23 I agree that it can lead you to the conclusion well, you
24 ought to stop any further construction.

25 MR. CUNNINGHAM: That is the principal thrust

1 of it.

2 COMMISSIONER AHEARNE: Well, but it is --

3 MR. CUNNINGHAM: Then, the approach is you
4 come in and show cause why you should not put in new
5 management so that that is alleviated before we let you
6 start construction again.

7 COMMISSIONER AHEARNE: I am worried that if we
8 are too clever in what we draft here, the message is not
9 going to get through.

10 COMMISSIONER ASSELSTINE: Yes, I agree with
11 John. Those four points did not lead me to the
12 conclusion that we had demonstrated a basis for the full
13 range of actions that were being taken as part of the
14 order part, both in terms of relooking at the scope of
15 the quality confirmation program and at a fundamental
16 change in the management of the project.

17 CHAIRMAN PALLADINO: As a matter of fact, the
18 fact that they have a quality confirmation program in
19 force and are finding deficiencies tends to support that
20 they are doing a good job.

21 MR. CUNNINGHAM: Well, I think you will recall
22 at the last meeting that Jim did see there was --

23 COMMISSIONER AHEARNE: I understand that. But
24 I am convinced -- I was convinced last time by Jim and I
25 am convinced that the best solution would be to have

1 this new management brought in, and I would think that
2 the order, though, has to get you there.

3 At the moment I am saying the list of details
4 did not get there because of the way they are worded.
5 It is just a lot of a list of details. So, therefore,
6 in answer to my question you said well, this Section 3
7 is going to do it. But Section 3 does not. It does not
8 get there.

9 MR. CUNNINGHAM: I appreciate what you are
10 saying, and that is a drafting problem. If the
11 Commission wants to go this approach, we can do more
12 drafting to put more language in.

13 MR. KEPPLER: Doesn't your next paragraph get
14 there, to some degree -- the paragraph on page twelve?

15 MR. CUNNINGHAM: Which we say is the basis for
16 immediate effectiveness.

17 MR. KEPPLER: No, I am not talking about the
18 first page.

19 CHAIRMAN PALLADINO: Read it aloud.

20 MR. CUNNINGHAM: In view of the importance
21 part?

22 CHAIRMAN PALLADINO: No, the verification.

23 MR. KEPPLER: The verification of the
24 facility's quality -- that paragraph.

25 MR. CUNNINGHAM: Well, I think it does.

1 MR. DIRCKS: Why don't you read it, Guy?

2 MR. CUNNINGHAM: We say, starting about eight
3 lines up from the bottom of page twelve, that "in view
4 of the importance to safety and these activities and the
5 past pattern of quality assurance deficiencies, the
6 Commission has concluded that construction, including
7 rework activities, should be suspended until there is
8 reasonable assurance that future construction activities
9 will be appropriately managed to assure that rework
10 activities and all other construction activities will be
11 conducted in accordance with Commission requirements."

12 MR. KEPPLER: But I am talking about even
13 above that, where you start out with "verification." I
14 think that -- you are talking about the importance of
15 how the Commission has to be confident of the thing and
16 that the licensee has got to assure the Commission, and
17 then you come up with the second part of this thing.

18 MR. CUNNINGHAM: I think Commissioner
19 Ahearne's point is that we have not talked in terms of
20 management deficiencies as much as we have talked in
21 terms of QA deficiencies.

22 COMMISSIONER AHEARNE: Yes. It just does not
23 get --

24 COMMISSIONER ASSELSTINE: That is right. When
25 I read the detailed recitation of items, the thing that

1 came through to me, or at least one of the elements that
2 came through to me, was that there was a continual
3 pattern of deficiencies, even after the immediate action
4 letter was issued, even after the quality confirmation
5 program was put in place, that there was still a
6 continuing pattern of deficiencies in the quality
7 assurance program of the licensee, such that we did not
8 have confidence now that the plant, either new work or
9 in rework, was being built in accordance with our
10 regulations or with the requirements of Appendix B.

11 That was one of the themes that came through
12 to me. Maybe that is wrong.

13 CHAIRMAN PALLADINO: Isn't that a management
14 deficiency?

15 COMMISSIONER ASSELSTINE: But if it is, I do
16 not see that reflected in those four conclusions.

17 CHAIRMAN PALLADINO: But if it were linked to
18 management deficiencies.

19 COMMISSIONER ASSELSTINE: That's right.

20 COMMISSIONER AHEARNE: I am not saying that
21 the details are not there. The logic did not flow to
22 the conclusion that I thought was the primary conclusion
23 that Jim had brought us to last time.

24 COMMISSIONER ASSELSTINE: And the second
25 element that I did not see reflected in here but that I

1 thought you were saying last week, Jim, was that the
2 volume, the number of items, that were being identified
3 and the amount of work involved in trying to correct
4 those items as well as doing the rework was simply
5 beyond the capabilities of the licensee -- that they
6 just were not in control of that process.

7 It seemed to me that both of those elements
8 are not reflected in your four fundamental conclusions
9 on eleven and twelve.

10 COMMISSIONER GILINSKY: Well, the fact that
11 the problems are increasing faster than the --

12 COMMISSIONER ASSELSTINE: Than the ability to
13 handle them.

14 COMMISSIONER GILINSKY: Solutions are catching
15 up with them. You could put that in number two or
16 number three, but I think it ought to be in there. We
17 seem to be diverging from where we ought to be.

18 MR. CUNNINGHAM: Well, I think we ought to
19 stay on the logic you have articulated, and I agree with
20 it.

21 COMMISSIONER GILINSKY: I think the point Jim
22 made earlier is very important. Just a whole bunch of
23 things have been tried and that is why we come to --

24 MR. CUNNINGHAM: Basically, we want a fifth
25 conclusion here that says we lack assurance that the

1 management is capable of doing the job.

2 CHAIRMAN PALLADINO: I think you have to link
3 it.

4 COMMISSIONER ASSELSTINE: Yes, you have to
5 link it, because that can be done.

6 MR. CUNNINGHAM: That can be done.

7 MR. KEPPLER: I think we can work this out.

8 COMMISSIONER AHEARNE: The rest of it could
9 very well lead the company to come back and say well, we
10 are going to fine tune this a little bit more and we
11 have met your problems.

12 MR. CUNNINGHAM: Well, I accept the point. We
13 can certainly strengthen the drafting of it.

14 MR. DIRCKS: Let me see if I can express a
15 view here.

16 COMMISSIONER AHEARNE: I am sure you could.

17 MR. DIRCKS: I think what you want -- the
18 heart of the problem is to get some sort of an
19 understanding what all the deficiencies are before you
20 start correcting them. What you need is some sort of a
21 plan, a reasonable plan, to say here is where we have
22 been, here is where we are today, and here are all the
23 things we have got to start correcting before we correct
24 them on the spot as they have develop.

25

1 COMMISSIONER AHEARNE: I accept the
2 difference, but I think from the situation we heard
3 about earlier in the spring, that statement you just
4 made could have also been made and the conclusion would
5 have been that CG&E really would have had to get serious
6 and develop that list of problems.

7 Where we are now I think, based upon the last
8 presentation, is that we don't have confidence that CG&E
9 can do that.

10 MR. DIRCKS: That is right.

11 COMMISSIONER AHEARNE: So it is more a
12 question of bring in a new group.

13 COMMISSIONER ASSELSTINE: That is right. If
14 the only problem was the one you articulated, the answer
15 to that would be no more rework until the quality
16 confirmation program is done and then you start off
17 fixing things after that.

18 MR. DIRCKS: Well, maybe I am just playing the
19 devil's advocate here because the next step is the point
20 of no return. Now if you say get rid of management out
21 there and put in new management, that is the massive
22 strike at them.

23 COMMISSIONER ROBERTS: Well, do we have the
24 authority to do that?

25 COMMISSIONER ASSELSTINE: We have the

1 authority to say that their existing management isn't
2 capable of continuing with the project.

3 MR. KEPPLER: I don't think the order as
4 drafted says a get rid of management assumption.

5 CHAIRMAN PALLADINO: I can't hear you.

6 COMMISSIONER ASSELSTINE: It doesn't.

7 COMMISSIONER GILINSKY: You want to convince
8 us that you have a management and a plan that we can
9 have some confidence in.

10 MR. KEPPLER: I think it is flexible enough to
11 offer them a number of ways to go.

12 COMMISSIONER AHEARNE: Well, it is true that
13 that is your principal recommendation.

14 MR. KEPPLER: Absolutely.

15 COMMISSIONER GILINSKY: That is the key
16 problem there.

17 MR. DIRCKS: I think the way the order was
18 originally drafted was to outline the problems and then
19 have them come in with an outside evaluation to see if
20 the management was competent, but you wanted to skip
21 that portion and go directly to your ---

22 COMMISSIONER AHEARNE: You see, the way it was
23 originally drafted was appropriate for three months ago.

24 CHAIRMAN PALLADINO: What was originally
25 drafted?

1 COMMISSIONER AHEARNE: The way it was
2 originally drafted would have been more --

3 COMMISSIONER GILINSKY: The supporting
4 reasoning. You are talking about the supporting
5 reasoning, not the conclusion -- not the action. And
6 the supporting reasoning is not -- does not reflect our
7 recent experience.

8 COMMISSIONER AHEARNE: Correct. So Bill's
9 recommendation again was not perfect for three months
10 ago. I think it is overtaken.

11 COMMISSIONER ASSELSTINE: I would just raise
12 question. I was just going to raise one question on
13 what you were saying, Bill.

14 The only question I had was that I know what
15 you said last week, Jim, about what you thought the
16 fundamental problem was and the change that was
17 necessary. The way I read the order part here, it was
18 flexible enough to take into account a range of
19 possibilities. One is to displace the present project
20 management both for construction and for QA, or for one
21 or the other, with some outside entity. Another was to
22 supplement the existing project management.

23 And I guess the one concern I had about just
24 totally supplanting the utility is one that you
25 mentioned to me a good while ago, and that is, as

1 important as it is to get this plant built right, sooner
2 or later this licensee is going to be in asking for a
3 license to run this plant, and I wonder what the impact
4 is going to be if we take them out of the picture
5 entirely in terms of building the plant and running the
6 QA program in terms of their ability to come back in a
7 few months or years from now and ask for a license to
8 run that plant, and in terms of our being able to say at
9 that point that we have got some assurance that they are
10 going to be able to run that plant safely.

11 COMMISSIONER GILINSKY: I think that cuts two
12 ways. You want to have somebody in there who is going
13 to run the plant right, but if you do not have
14 confidence in these guys in the construction phase, you
15 are not going to have confidence in them to run the
16 plant.

17 So I think you want to start that process of
18 getting people in there that are sound and can be relied
19 upon.

20 COMMISSIONER AHEARNE: The issue is already in
21 front of us, Jim, at this stage. But one would really
22 have to have -- at least I know I would really have to
23 have some question about their ability to operate the
24 plant, given the serious question I have about their
25 ability to construct the plant.

1 COMMISSIONER ASSELSTINE: Yes, I agree with
2 that and I had the same concerns. The question I have,
3 though, is whether they are going to be in any better
4 position to make some kind of a demonstration to us that
5 they can run the plant if they are just pushed aside and
6 Bechtel comes in to build it and run.

7 COMMISSIONER AHEARNE: It is certainly true
8 that they are going to have to meet a higher threshold
9 of truth. Even if they do not, even if there were a
10 mechanism developed over the next several months and
11 CG&E pulled itself together and got the plant built,
12 they will still, I am sure, have to meet a higher
13 threshold because of all these concerns.

14 CHAIRMAN PALLADINO: Well, I think these are
15 separable problems. I think we could independently let
16 them know what they have got to face with regard to
17 operation, but I think they were already working from
18 the concept that somebody was going to build this plant
19 and then they were going to come in and operate it.

20 COMMISSIONER GILINSKY: That is what got them
21 into trouble in the first place.

22 CHAIRMAN PALLADINO: But now we are trying to
23 get it so that it is constructed properly. That does
24 not say they are going to be prepared to operate it
25 properly, but I think we ought to start getting them

1 giving their attention to operating it properly. But I
2 do not think the two have to necessarily be tied
3 together.

4 MR. KEPPLER: Let me add one comment. I think
5 the four points that were raised there were issues that
6 we felt they should address the pros and cons of. It
7 was not anything to steer them in one direction.

8 CHAIRMAN PALLADINO: You are further ahead.

9 COMMISSIONER GILINSKY: You are up on page
10 fifteen.

11 MR. KEPPLER: I would agree with his comment.

12 CHAIRMAN PALLADINO: Let me see if we all got
13 the same thing out of this discussion.

14 We need a linkage between the QA deficiencies
15 and the management inadequacies. That seems to be
16 missing.

17 I think mention was made about the fact that
18 the number of deficiencies that was being identified is
19 growing at a faster rate than the company appears to be
20 able to handle it, which speaks again to management.

21 And I had this other one about operation, but
22 I would say I would not put that in the order.

23 But those were two points that were identified
24 so far.

25 All right. Do you want to go ahead, Guy?

1 MR. CUNNINGHAM: As I say, we could insert
2 those. Then we move to the bottom of page twelve, the
3 language I read a few moments ago, which is the
4 justification for immediate effectiveness -- utmost
5 importance to safety and want to be assured that the
6 rework activity will not be undertaken until it is clear
7 what is needed.

8 The legal discussion of that --

9 COMMISSIONER GILINSKY: When you say
10 "important to safety", you are talking not only about
11 rework but you are also talking about the various
12 seismic modifications that are ongoing, which apparently
13 form the bulk of the work at the plant right now?

14 MR. CUNNINGHAM: That is right. The Staff
15 position right now is that all safety-related work --

16 MR. KEPPLER: All safety-related work should
17 stop.

18 COMMISSIONER AHEARNE: Did you say
19 safety-related work?

20 MR. CUNNINGHAM: Yes, that is on page thirteen
21 at paragraph A. We just said deficiencies in
22 construction are of utmost importance.

23 COMMISSIONER AHEARNE: But you say the
24 Commission has concluded that construction should be
25 suspended.

1 CHAIRMAN PALLADINO: Toward the lower third of
2 page twelve you say, "In view of the importance to
3 safety of these activities." It is these activities,
4 per se, that are important to safety. Until we operate
5 the plant -- something seems to be missing in the tie-in
6 there in view of the importance of safety of these
7 activities.

8 COMMISSIONER GILINSKY: A few of these
9 presumably are construction activities.

10 CHAIRMAN PALLADINO: You have got to have good
11 construction to get good plant. Otherwise, you cannot
12 operate it.

13 COMMISSIONER AHEARNE: And is the operation.

14 CHAIRMAN PALLADINO: Yes, the operation is
15 what leads to safety. You might just look at those
16 words.

17 COMMISSIONER GILINSKY: Are you talking
18 about -- it says that construction. Is this all
19 construction, safety-related construction?

20 MR. CUNNINGHAM: Well, I think we would insert
21 in that line, several lines up --

22 CHAIRMAN PALLADINO: Where are you reading?

23 MR. CUNNINGHAM: Page twelve, seven lines up
24 from the bottom I think we should insert
25 "safety-related" before "construction" there.

1 COMMISSIONER ASSELSTINE: I agree with you.

2 COMMISSIONER AHEARNE: Jim, could you sort of
3 give your own rationale as to why you think it is
4 important to make it immediately effective? As I
5 gather, the last time you did want to halt it.

6 MR. KEPPLER: My rationale, which is not a
7 legal one, is that I do not want to get in another
8 predicament like we got into with Midland where you have
9 a problem and you are litigating the matter three years
10 after the problem comes up. So if you have a show-cause
11 order that is not adhered to, or I guess they can stay
12 the order by asking for a hearing. That is the concern
13 I have, and then you do not get anything effective that
14 way immediately.

15 MR. CUNNINGHAM: Well, asking for a hearing
16 would not automatically stay the order. What it would
17 do is trigger, you know, a prompt hearing.

18 CHAIRMAN PALLADINO: He meant if it was not
19 immediately effective.

20 MR. CUNNINGHAM: Oh, I am sorry.

21 MR. KEPPLER: And that is the kind of
22 predicament we got into in Midland, which I just thought
23 was not a good way to go.

24 COMMISSIONER GILINSKY: Would you explain that
25 predicament again?

1 MR. KEPPLER: Well, the situation at Midland
2 had to do with concern about the improperly compacted
3 soil at the site and this problem surfaced back in
4 1979. The Staff proposed or issued an order that was
5 not immediately effective that called for halting of
6 construction until this problem could be, I guess,
7 evaluated would be a good way to say it.

8 And here we are, three years later, and
9 hearings are still going on in the matter.

10 CHAIRMAN PALLADINO: And the work is still
11 going on.

12 MR. KEPPLER: And work is still going on.

13 CHAIRMAN PALLADINO: I think what he is saying
14 if it is not immediately effective they can continue
15 working until the hearings are complete and everything
16 is settled.

17 COMMISSIONER ROBERTS: But to make it
18 immediately effective, don't we have to be convinced
19 that to not make it immediately effective we are
20 endangering the public health and safety?

21 MR. CUNNINGHAM: Or interest. As I started to
22 indicate earlier, one can argue that since the plant is
23 not operating, they can construct anything they want out
24 there and the public health and safety are not affected.

25 CHAIRMAN PALLADINO: That was the point I was

1 speaking to in the way this is worded there about eight
2 lines up from the bottom.

3 MR. CUNNINGHAM: But the Commission has in the
4 past found that the public health and safety or interest
5 did require cessation of construction in different
6 cases. Midland, the cadwelding episode being one.

7 COMMISSIONER AHEARNE: I guess in this
8 particular case, the point of Midland and the
9 cadwelding, the argument, as I recall, there was that if
10 it was not suspended, the concrete would be poured over
11 the welds. So, therefore, the argument was obviously
12 you had to suspend immediately.

13 MR. CUNNINGHAM: That was part of the
14 argument. There was also the question of the licensee
15 came back in that case and said they will not all be
16 covered up. You can come in and inspect every one of
17 them. And the Commission said that is not our job to do
18 a 100 percent inspection. If you do not stop, we will
19 never end up with assurance that the cad welds were
20 formed correctly.

21 COMMISSIONER AHEARNE: Because we are not
22 going to inspect 100 percent and they will be covered
23 up.

24 CHAIRMAN PALLADINO: And it is up to them to
25 have a good quality assurance program. I think that was

1 another thrust of that point.

2 MR. CUNNINGHAM: That is right. But in the
3 Midland case, of course, that was the concern -- the
4 adequacy of quality assurance.

5 My point is that one can argue either side of
6 this question. The Commission in the past has found
7 that it was indeed in the public health, safety and
8 interest to, and, of course, we have no court cases
9 interpreting that provision and whether we can stop
10 construction. When we have done it in the past, there
11 have been on challenges.

12 CHAIRMAN PALLADINO: But I gather from the
13 discussions last time that there are certain actions
14 that are being taken now because of one phase of the
15 quality confirmation program being finished that later
16 would have to be redone because of some other phase of
17 the quality confirmation program, and I could picture
18 welds that might have been corrected because of some
19 structural requirement that now might have to be
20 recorrected because of some other structural
21 requirement.

22 COMMISSIONER ASSELSTINE: Is that right?

23 MR. CUNNINGHAM: The order reflects our
24 concern that that --

25 CHAIRMAN PALLADINO: Incidentally, you read

1 "other" in that line, fifth line from the top, and I
2 think it belongs there -- "other relevant QCP tests."
3 You said it and I think it belongs there. You said
4 that and I had it on my work sheet.

5 COMMISSIONER AHEARNE: But, Joe, in your
6 comment about work being done that is going to have to
7 be undone --

8 CHAIRMAN PALLADINO: Well, you are never sure
9 then whether you have corrected either/or of the two
10 steps.

11 Well, I do not know. I do not know the
12 examples well enough, but you might on a particular
13 bracket need six inches long weld and then you come and
14 say oops, that should be eight inches because of
15 something else, and you weld over. I do not know what
16 you have done to the original six.

17 MR. REAMER: I might comment as an example
18 using the structural steel welds and we have been using
19 those because that is the major rework that is going on,
20 is in that area.

21 The original Bristol Steel welds were never
22 inspected. Part of the QCP was to reinspect all of that
23 work. They ran into a number of problems, one of which,
24 of course, is that the welds would not meet the
25 specifications and standards that they were inspected to

1 at that time. So we required that they reinspect them
2 to the specs that they built the plant to, supposedly.

3 They reworked the welds that did not meet
4 those specs and we would consider that premature because
5 they have not completed the welder qualification
6 reviews, in other words, the people who actually welded
7 the original welds. Therefore, there is some bad weld,
8 some additional weld underneath the new welds.

9 Additionally, the certification of materials,
10 and we have heard questions about upgrading of materials
11 purchase order review to certify the materials. Some of
12 those welds are on a material that particularly might
13 not be certified and some of it might have to come out.
14 I do not know.

15 But if you do not finish the relevant task
16 associated with any activity, there is a potential that
17 you have to rework again that which was just recently
18 reworked.

19 COMMISSIONER AHEARNE: But let me draw the
20 distinction between something that is expensive to do
21 and something that raises a question of fundamental
22 safety. Are you saying that this would, if that rework
23 had to be done, that you could not certify the safety
24 adequacy, or are you pointing out that it would lead to
25 greater expense?

1 MR. REAMER: I cannot respond specifically,
2 but there would -- the minimum number of reworks from
3 the safety aspect is better, but if it was done in
4 accordance with the codes and specs and it did not
5 damage the base material, it did not reheat the area
6 again and again reworking it, then it probably could be
7 done satisfactorily.

8 COMMISSIONER GILINSKY: Well, I think to
9 require that work be stopped immediately you have to
10 feel that you may get into a situation where you may
11 just not be able to resolve problems.

12 COMMISSIONER AHEARNE: Yes.

13 COMMISSIONER GILINSKY: Because welds are
14 overwelded and you may just never get it straight. And
15 you just do not want to get into that sort of
16 situation. That really has to be the basis.

17 COMMISSIONER AHEARNE: I would agree. I was
18 not getting a sense that that was the case. Is that the
19 case?

20 MR. HUNTER: Let me think about it a second.

21 MR. KEPPLER: Well, I guess the feeling that I
22 have is that you do not -- we have set the project as
23 indeterminate at this stage. And to allow rework to go
24 on before you have determined all the problems I think
25 puts you into a more difficult process of trying to

1 evaluate what you have ultimately got.

2 Now maybe with structural work it is not as
3 critical as it might be if they started taking out pipe
4 spools and replacing them and doing some rewelding
5 work.

6 COMMISSIONER GILINSKY: I think the case, at
7 least to my mind, is a lot clearer on the rework. The
8 question is what else is going on there. And I gather
9 the rework is rather the minority of the work, the
10 smaller part of what is going on. There are a lot of
11 other activities going on.

12 CHAIRMAN PALLADINO: But if they have not been
13 able to do the passed work incorrectly, have they set in
14 motion a procedure whereby we can be assured that their
15 new work is properly done? I thought that was part of
16 the lack of assurance.

17 MR. KEPPLER: It is, and I think that -- I
18 guess why I would prefer to see all work stopped right
19 now is that they may be doing work, ongoing work, on
20 systems that may require some rework because of what
21 they find in the quality confirmation program.

22 COMMISSIONER GILINSKY: You know, I think I
23 would add to what I said earlier, John. I think it is
24 not just a matter of feeling that you cannot ever get it
25 straight. I think the expense does come in because you

1 cannot ever ignore the expense and it is just becoming
2 more difficult to get things straight if a licensee has
3 completed a certain amount of work. It would be
4 extremely expensive to do it over again.

5 There is no question that it affects us. It
6 tilts things, shifts the balance in one direction and it
7 means that one is likely to later come to a compromise
8 which is less satisfactory.

9 CHAIRMAN PALLADINO: The problem with expense,
10 though, is he thinks that the way he is going now is
11 less expensive and will do the job and he ought to have
12 the privilege of doing the less expensive way.

13 The problem is he is using what may be a less
14 expensive way, but it is not producing the results that
15 we require.

16 MR. KEPPLER: There may be some ongoing work
17 that they might want to do, and they can convince us
18 that that work will not be impacted by the quality
19 confirmation program. Well, my reaction would be to
20 look at that and if we saw the controls were proper for
21 that and it was something we could set aside, my
22 reaction would be to let them do that.

23 But I think the burden should be on them to
24 show that what they are doing is not going to impact on
25 the ultimate determination of this plant and for us to

1 evaluate it.

2 MR. CUNNINGHAM: That is specifically provided
3 for in the order on page sixteen, Arabic four there.

4 CHAIRMAN PALLADINO: Do you want to go into
5 the specifics of the order?

6 MR. CUNNINGHAM: Well, we have gotten to the
7 point now of the actual ordering language, on page
8 thirteen, Roman four. The first paragraph we mentioned
9 already.

10 Effective immediately, the order requires
11 cessation of safety-related construction activities,
12 including rework.

13 The remainder of the order, which is all of
14 this paragraph B, is to show cause and requires the
15 licensee to show cause why safety-related construction
16 activities should not remain suspended until the
17 licensee has accomplished four -- three enumerated
18 things.

19 The first of these is that he submit to the
20 regional administrator an updated, comprehensive plan to
21 verify the quality of construction.

22 COMMISSIONER AHEARNE: Can I ask with respect
23 to all of these: if you are now talking to the licensee,
24 what is the order in which you want the licensee to do
25 these? Is it in the order that they are,

1 chronologically, programmatically -- do you want the
2 licensee to go through them as you have listed them --
3 one, two three?

4 MR. CUNNINGHAM: Yes, I believe so.

5 COMMISSIONER AHEARNE: That is the way I read
6 it and then I would have a problem because I thought, if
7 I go back to what Jim had provided to us last time on
8 the initiative, the first was halt construction and the
9 second was require a third party to manage the total
10 project, which seems to make sense, if that is the
11 approach you want.

12 Then, that third party would have, then, the
13 responsibility of going through some of these other
14 pieces. But the way this, chronologically --

15 MR. DIRCKS: You probably think three should
16 be -- number three should be one?

17 COMMISSIONER AHEARNE: I would have thought
18 so, because otherwise you are asking the licensee to
19 first have one independent organization do something and
20 then he is going to go out and have another independent
21 organization.

22 CHAIRMAN PALLADINO: Incidentally, you used
23 the word "independent" where I think sometimes you mean
24 "third party," because number three says "obtained an
independent review of the management at Zimmer." Well,

1 anyhow, if you bring in a company to assure project
2 management, good project management, is that company
3 still independent, or do you have to get somebody to
4 review them?

5 The word "independent", I am not sure, is
6 always used the way -- in the same, and I do not know
7 when you really mean independent, when you mean you
8 ought to bring some third party in to do something.

9 COMMISSIONER AHEARNE: I gather you also
10 have -- am I correct that there are three separate new
11 organizations that are referred to in this?

12 MR. KEPPLER: I am sorry.

13 COMMISSIONER AHEARNE: I think there are three
14 or you have in mind in this order three separate
15 groups. There is one that is going to do, that is
16 defined as an independent, qualified organization to do
17 the audit. There is another that is going to be an
18 independent organization to do a review of the
19 management. And there is a third that is an experienced
20 outside organization which may either do QA or may do
21 the overall management.

22 Those are three separable, different groups.

23 MR. DIRCKS: Three functions, but maybe one
24 organization could do it.

25 MR. CUNNINGHAM: I think that is right.

1 COMMISSIONER ASSELSTINE: Except that one
2 probably could not do the design audit if that
3 organization also became the project manager.

4 COMMISSIONER GILINSKY: You need at least two,
5 it sounds like.

6 MR. DIRCKS: Why? I mean, if the firm went
7 out and hired a very large, integrated construction
8 firm, and that firm came in and did an evaluation and at
9 the same time said look, we will do this if we have the
10 following sound elements in this project. Why couldn't
11 they do it? Why couldn't one firm carry out a study and
12 then do the actual management of the project?

13 COMMISSIONER ASSELSTINE: And then later on do
14 the independent, the audit to verify the adequacy of
15 quality of construction? That is the part where I
16 thought you needed -- you were implying at least there
17 that you wanted a second organization to do that.

18 COMMISSIONER AHEARNE: I am not raising a
19 question about which is better. I was just having some
20 difficulty following what it was that you were actually
21 requiring.

22 COMMISSIONER ASSELSTINE: There is at least a
23 potential of three.

24
25

1 CHAIRMAN PALLADINO: You want an independent
2 review of management.

3 MR. KEPPLER: Yes.

4 CHAIRMAN PALLADINO: You want somebody to fix
5 up the management and that might be the same company,
6 and then you want somebody to check to see that the
7 management has been fixed up.

8 COMMISSIONER AHEARNE: If CG&E came back in
9 and said we have decided that the best solution is to
10 hire "X" who is a big, experienced construction company
11 to manage this project, that doesn't meet your
12 requirement, correct, because they didn't first go out
13 and hire Rand or somebody to do a management review?

14 MR. DIRCKS: I have been out for a week and so
15 I haven't seen all of it, but in my own view I would not
16 insist on these compartmentalized approaches.

17 COMMISSIONER ROBERTS: That is what this says.

18 MR. DIRCKS: Well, I am speaking with the
19 liberty of not having been tied into this. I think
20 there has always been a tendency sometimes to box these
21 things off and have independent checks on independent
22 auditors doing independent reviews, and I am not quite
23 sure that makes sense.

24 If you are talking about how to get control of
25 the project, if you brought in a large comprehensive

1 firm and they did a review of it and said this is how we
2 would carry out the project if we were brought in to
3 manage it, I would see nothing wrong with that. They
4 could go another approach and do as they have done in
5 South Texas.

6 MR. KEPPLER: I don't think this precludes
7 that.

8 COMMISSIONER GILINSKY: Well, I will tell you,
9 I think there are a couple of functions here. You see,
10 suppose you bring in a big company and it is going to do
11 the construction, that isn't quite the same as advising
12 the owners on what they ought to be doing. The
13 interests of the constructor may well be to get the
14 thing built right, but they are also not necessarily in
15 the direction of strengthening the company and we have
16 talked about that being important for the longer run.

17 So I think it is important to have two
18 elements anyway. One is someone that the company
19 consults to straighten out its affairs, its house.
20 Another one and a more construction oriented one would
21 be along the lines that you laid out which may well deal
22 with all the other aspects.

23 MR. DIRCKS: It could very well work out that
24 way, but I would preclude one first option if it turned
25 out well. It probably would go well.

1 COMMISSIONER GILINSKY: Well, I mean, the big
2 construction companies are good at building big
3 projects. They are not in the business of helping a
4 utility set up its own management or figure out how it
5 is going to go on and run the plant.

6 CHAIRMAN PALLADINO: Well, they had better be
7 because that is in the end what has got to be done.
8 They have got to come in there and management the
9 construction.

10 COMMISSIONER GILINSKY: You know, you could
11 turn the whole thing over to them, but we have been
12 talking here to some extent about how do you get the
13 owners to have the strength to carry on. I would say
14 there you want them to go to a management doctor. It is
15 a different role than a construction company.

16 COMMISSIONER ASSELSTINE: If anything, this
17 slants the other way. This really slants by saying that
18 the independent organization has to be knowledgeable in
19 QA/QC matters and nuclear plant construction. It slants
20 more towards saying you have got to go out and get a big
21 constructor to come in and tell you how to do it.

22 CHAIRMAN PALLADINO: But they do have the
23 features that Vic is talking about. They want an
24 independent organization that is going to make
25 recommendations to the licensee regarding the necessary

1 steps to ensure that the construction of the facility
2 can be completed.

3 COMMISSIONER ASSELSTINE: The functions may
4 not fit the description.

5 CHAIRMAN PALLADINO: Then they give some
6 considerations. Then they say the licensee shall submit
7 to the Regional Administrator the independent
8 organization's evaluation on the licensee's recommended
9 course of action on the basis of this independent review
10 in evaluating the recommendations of licensees and shall
11 tell why he did one thing and why another. But you
12 never quite come in and say now bring in a good
13 construction manager which I think was the major thrust
14 of the first point you made in the last meeting.

15 MR. DIRCKS: At the risk of being thrown out
16 of the room ---

17 CHAIRMAN PALLADINO: That is not very probable.

18 (Laughter.)

19 MR. DIRCKS: That is why I think you ought to
20 take a look at whether or not you should go back and see
21 what that company wants to propose to you. It is very
22 hard for us to sort of write a cook book here. Maybe
23 they have got some ideas out there that we can latch on
24 to and it would still allow us the flexibility of adding
25 our own two cents into what they should do overall.

1 CHAIRMAN PALLADINO: I don't mind doing that,
2 Bill, but we were trying to reconstruct what it is that
3 we thought Jim Keppler wanted. What I don't find here
4 is the punch-line that says after you have reviewed it
5 and got the recommendations, then what is missing is,
6 unless I didn't find it, that you finally get somebody
7 coming in and doing a good job of managing it.

8 COMMISSIONER ASSELSTINE: I thought you got
9 that under 2 and 3 on page 15, Joe, where it talked
10 about the alternatives that had to be considered.

11 CHAIRMAN PALLADINO: Well, let's say they are
12 the ones you consider.

13 COMMISSIONER ASSELSTINE: It is 3 and 4
14 actually.

15 MR. CUNNINGHAM: We deliberately did not order
16 them to bring in an independent project manager. We
17 considered that option, but we would like to hear their
18 views as to whether that is the way to go or not.

19 COMMISSIONER GILINSKY: Well, that is right,
20 you can't order them to bring ---

21 CHAIRMAN PALLADINO: There is nothing that
22 says then do what you finally get approval to do.

23 COMMISSIONER ASSELSTINE: Except that it does
24 say that whatever you come in with has to be acceptable
25 to the Regional Administrator.

1 COMMISSIONER GILINSKY: Right.

2 CHAIRMAN PALLADINO: And I guess that would
3 imply you would only approve it if you thought it was
4 going to be done.

5 COMMISSIONER ASSELSTINE: Yes.

6 COMMISSIONER AHEARNE: But you are asking
7 though for a two-step process. You are asking for some
8 organization, to see if you need to hire an organization
9 to do a management review and make recommendations on
10 the basis of that management review.

11 COMMISSIONER ASSELSTINE: That is right.

12 CHAIRMAN PALLADINO: Then you have got to go
13 out and contract to do whatever you plan to be done.

14 COMMISSIONER ASSELSTINE: Then you have to
15 come back with a proposal based upon those
16 recommendations.

17 COMMISSIONER GILINSKY: Well, I wouldn't
18 regard these as necessarily going in sequence.

19 CHAIRMAN PALLADINO: Well, it looks like they
20 are going in sequence.

21 COMMISSIONER GILINSKY: I guess as far as
22 dealing with the construction, maybe I do agree with
23 what Bill was saying, but the company itself has got to
24 get strengthened and I think this management doctor or
25 consultant or whatever is very important.

1 COMMISSIONER AHEARNE: I would think that that
2 could be a parallel effort.

3 COMMISSIONER ASSELSTINE: Yes.

4 COMMISSIONER AHEARNE: You see the way this is
5 written is the management review must be done, the
6 alternatives developed, submitted to the licensee and
7 the licensee shall submit it to Jim and then Jim
8 approves it. So it is really here and it is a series
9 operation as opposed to a parallel.

10 COMMISSIONER GILINSKY: Yes. I wouldn't
11 necessarily think of it as having to be in series.

12 CHAIRMAN PALLADINO: Guy, when you use the
13 word "independent" do you always know what you mean and
14 does it always mean the same thing?

15 MR. CUNNINGHAM: Hopefully we know what it
16 means and hopefully it always means the same thing.

17 MR. KEPPLER: I think we have tried to use it
18 consistently throughout here.

19 COMMISSIONER ASSELSTINE: Does it always just
20 mean outside?

21 MR. KEPPLER: It means outside and independent
22 of the financial aspects of the company.

23 CHAIRMAN PALLADINO: But not necessarily
24 independent of each function.

25 MR. KEPPLER: Independent in the sense that

1 you have used it in the response to Dingle and Ottinger.

2 CHAIRMAN PALLADINO: Say that again.

3 COMMISSIONER AHEARNE: We had a response
4 giving a definition of "independence."

5 CHAIRMAN PALLADINO: But is a company
6 independent if it takes on one aspect of this work?
7 Does it now lose its independence or is it qualified to
8 carry on another aspect of the work?

9 MR. KEPPLER: I guess I had viewed that the
10 approach that Bill had talked about, I did not view that
11 as a solution that would be rejected.

12 MR. DIRC'S: That is good.

13 (Laughter.)

14 COMMISSIONER ASSELSTINE: So in other words,
15 you could conceivably have a large construction company
16 doing the management review and recommending that they
17 be placed in charge of the construction and QA of the
18 program, that being proposed by the licensee and
19 approved by you, and then later on that same
20 organization doing the verification of construction
21 adequacy.

22 MR. KEPPLER: Through its own QA department.

23 COMMISSIONER AHEARNE: That would then be
24 outside though of the definition of "independence" that
25 we previously provided.

1 CHAIRMAN PALLADINO: I think he put a stop to
2 it somewhere along the line.

3 COMMISSIONER ASSELSTINE: It would, that is
4 right.

5 MR. DIRCKS: That is the problem you face when
6 you get overly prescriptive and you may rule out ---

7 COMMISSIONER ASSELSTINE: That is right.

8 MR. HUNTER: Jim, your comment is that you
9 wouldn't want them to audit the same work which they
10 possibly have ---

11 COMMISSIONER ASSELSTINE: Well, I didn't
12 necessarily say that, but what I was pointing out is I
13 think if you use our original definition of "dependent"
14 you would be ruling that out.

15 MR. KEPPLER: But that would only be with
16 respect to the last point.

17 COMMISSIONER ASSELSTINE: That is correct.

18 COMMISSIONER GILINSKY: You know, take Diablo
19 Canyon. We did have a separate organization doing
20 auditing and Bechtel came in to do the main part of the
21 work. This one looks to be in more difficult straits.

22 CHAIRMAN PALLADINO: Jim, could I ask you
23 another question. On the top of page 14 it says "Have
24 submitted to the Regional Administrator a comprehensive
25 plan based on the results of the reverification program

1 for the continuation of construction, et cetera."

2 This implies that the verification program
3 must be complete or that one could imply that. Does
4 this also allow for phasing in? You may say well, that
5 portion of verification is complete and therefore you
6 are allowing them to go ahead. Is that flexible enough
7 to permit that?

8 MR. CUNNINGHAM: Yes. This is a comprehensive
9 plan based on the results of the verification program.
10 In other words, we have plans built on the verification
11 program as you get the results of the verification
12 program. It was not our intent that you had to complete
13 the verification program and then start the ---

14 MR. KEPPLER: This is similar to the approach
15 we used on Marble Hill.

16 CHAIRMAN PALLADINO: I am just trying to
17 understand what the words meant, whether they gave you
18 the flexibility to phase it or to divide it into
19 compartments or segment it and say, well, okay, that is
20 done and you can go ahead on that plan based on that ---

21 MR. CUNNINGHAM: We think it is built into
22 that paragraph, but it is also expressly set forth on
23 page 16 in paragraph 4. It says "The Regional
24 Administrator can relax some of these conditions and on
25 a case-by-case basis allow resumption of certain

1 construction activities."

2 COMMISSIONER GILINSKY: Some or all.

3 CHAIRMAN PALLADINO: John, suppose they did
4 reverse it to talk about the management first. Would
5 that fix up your ---

6 COMMISSIONER AHEARNE: That would fix up part
7 of it. I think I would happier if they had CG&E
8 reviewing its management structure but at the same time
9 CG&E proposing how to go about handling this
10 construction problem.

11 CHAIRMAN PALLADINO: What do you mean?

12 COMMISSIONER AHEARNE: Well, I think there are
13 two separate issues. One is how does CG&E review its
14 own management structure. The second is how do they get
15 this plant finished. I thought what Jim really was
16 referring to, or was recommending to last time, is in
17 order to get this plant finished in a manner that it
18 will be acceptable they have to come in and have this
19 fundamentally different approach. That I think is
20 addressed in this list of here are these four
21 possibilities.

22 The other issue is the point that Vic had been
23 addressing is that they still at the same time have to
24 look at their own management and that goes more toward
25 the point of when they eventually are going to be coming

1 in for an operating ---

2 CHAIRMAN PALLADINO: Isn't that covered by
3 their point 3?

4 COMMISSIONER AHEARNE: Well, the way they have
5 got it here is first CG&E reviews its management and
6 nothing else happens until they have brought in this
7 group to review its management and then they make some
8 recommendations.

9 CHAIRMAN PALLADINO: How can they do it in
10 parallel?

11 COMMISSIONER ASSELSTINE: You would leave it
12 to CG&E to propose a solution to their construction
13 management problem and then at the same time you would
14 have another organization coming in and doing the review
15 of the overall utility management looking towards the
16 future.

17 MR. DIRCKS: Would you want a review of their
18 overall management or their overall nuclear management?

19 COMMISSIONER ASSELSTINE: The nuclear
20 management, yes.

21 COMMISSIONER GILINSKY: Well, you know, these
22 points really don't, at least as they are written, don't
23 necessarily have to be followed in any particular
24 order. You have to come back and present plans on how
25 you are going to deal with all of these.

1 COMMISSIONER AHEARNE: Well, the way it is set
2 up it did have to be followed in the order. It had to
3 hire a management group to come in and review their
4 management and then that group was going to make
5 recommendations of these various alternatives. It
6 didn't allow CG&E to come in and choose Jim's preferred
7 solution, for example.

8 MR. KEPPLER: Are you saying that 3 ought to
9 be No. 1?

10 COMMISSIONER AHEARNE: What I would have
11 thought is No. 1 is that CG&E shall review this order
12 and the concerns and make recommendations as
13 alternatives to the management of the Zimmer project,
14 and here are the four possible alternatives that CG&E
15 can propose. That is what I thought you were really
16 trying to get at.

17 MR. KEPPLER: Instead of bringing in an
18 independent group for review work.

19 COMMISSIONER AHEARNE: An independent
20 organization to review the management.

21 COMMISSIONER GILINSKY: The order here isn't
22 so bad I think. Well, why don't you go ahead.

23 MR. KEPPLER: They don't think there is any
24 problem though with the organization. So I felt that we
25 needed to start out on a different premise.

1 MR. DIRCKS: They are beginning to see the
2 trouble.

3 COMMISSIONER AHEARNE: Are you saying that you
4 believe that if they hire any outside organization they
5 will perceive the problems as you perceive the problems
6 and will end up making the right recommendation?

7 MR. KEPPLER: Yes. Maybe that isn't a good
8 assumption, but let me tell you that a year ago they did
9 bring in the Management Analysis Company. I am not sure
10 under what terms, but they had consulted with them on
11 some help and they dismissed their recommendations. I
12 really don't know any of the details on that and I have
13 gotten that sort of through the back door. I don't
14 think they were interested in hearing a lot of bad
15 things about their organization.

16 They know they have problems down there, but
17 they are reacting at the moment because of the heavy
18 Commission interest in this matter.

19 COMMISSIONER AHEARNE: You are then prepared
20 to accept any one of those four?

21 COMMISSIONER GILINSKY: Well, presumably you
22 have got to be presented with a convincing plan.

23 MR. KEPPLER: I think the way we asked it was
24 that they ought to weigh the advantages and
25 disadvantages.

1 What page is this on?

2 COMMISSIONER ASSELSTINE: Page 15.

3 MR. KEPPLER: I don't view item 1 as a strong
4 alternative. I really don't.

5 CHAIRMAN PALLADINO: Item 1, page where?

6 MR. KEPPLER: On page 15.

7 COMMISSIONER GILINSKY: You mean as a
8 promising alternative.

9 MR. KEPPLER: As a promising alternative.

10 COMMISSIONER ASSELSTINE: Jim, are you
11 basically saying that you don't think that CG&E alone
12 came come up with a workable plan for managing the
13 Zimmer project unless they get an outside organization
14 to help to put it together?

15 MR. KEPPLER: I think so, yes. That is my
16 view.

17 COMMISSIONER ASSELSTINE: Not just that they
18 are going to need help in terms of how they go about
19 managing, but they can't even come back with a
20 well-planned proposal.

21 MR. KEPPLER: I think it is very hard when you
22 are enmeshed in the problem yourself to solve it and I
23 don't think they have a lot of in-house talent to do
24 this.

25 CHAIRMAN PALLADINO: But, Jim, suppose we left

1 item No. 3 that starts on page 14 and going all the way
2 down to item No. 4 on 16, is there any problem in the
3 flexibility you have to make sure that they do this
4 thing in as dovetailed a way as you think is reasonable
5 and still do the job you want done?

6 I was looking at what they list. They list
7 four items. The first one is interviewing several
8 nationally recognized organizations with considerable
9 experience in nuclear project management to form an
10 assessment of the 21000 project. That is the first
11 thing we had asked for and the selection of a firm is
12 expected this week.

13 Second, the assessment will include an
14 evaluation of current site management and the quality
15 confirmation program, which is what we want them to do.

16 After the evaluation is complete, a
17 comprehensive corrective action plan will be developed
18 under the selected organization's guidance. Now we are
19 not that specific and we allowed them to pick out some
20 other.

21 CG&E's staff will be augmented by their
22 personnel to implement the resultant program and they
23 sort of judge which one of these categories you have on
24 page 14 they want to follow.

25 COMMISSIONER AHEARNE: That is not the one.

1 That is their option.

2 MR. SNIEZEK: They really are not down into the
3 detail yet because they don't have the analysis.

4 COMMISSIONER AHEARNE: Jim, I disagree. Their
5 preference, I would argue, by the statement their staff
6 would be augmented by the personnel of this other
7 organization ---

8 CHAIRMAN PALLADINO: Well, that is one of our
9 criteria. That is No. 3, the creation of an
10 organization structure where the quality assurance
11 program is conducted -- no, wait a minute.

12 COMMISSIONER ASSELSTINE: No, it is No. 1.

13 CHAIRMAN PALLADINO: I saw the word
14 "augmented" somewhere, or I thought I saw it. Maybe I
15 didn't see it.

16 COMMISSIONER ASSELSTINE: No, because 2, 3 and
17 4 all talk about turning over portions.

18 CHAIRMAN PALLADINO: But are you sure that
19 option doesn't allow some integration. I don't see
20 where every one of them ---

21 MR. SNIEZEK: You can't prejudge the results
22 until the evaluation.

23 CHAIRMAN PALLADINO: But I am saying they are
24 going to do that, except they prejudge which one of
25 these categories they want to be in. " All work on the

1 quality confirmation has been stopped until completion
2 of the assessment." So as far as item No. 3, they are
3 going to do everything they say there, except they are
4 going to do it their way.

5 COMMISSIONER AHEARNE: I am skeptical in
6 general ---

7 (Laughter.)

8 COMMISSIONER AHEARNE: --- and I read this as
9 saying they have prejudged and they are on No. 1
10 because, after all, Jim's recommendation, which is
11 embedded in various forms in 2, 3 and 4, is one that is
12 the hardest for them to accept.

13 COMMISSIONER ASSELSTINE: Yes.

14 MR. DIRCKS: You think they will go for No. 1?

15 COMMISSIONER AHEARNE: I think that is what
16 the words "CG&E's staff will be augmented to implement
17 this program," that is what that means. It doesn't say
18 they would integrate or anything like that. Their staff
19 will be augmented. That is the way I read it.

20 MR. DIRCKS: But in terms of long-run
21 stability of that whole organization, that is not an
22 approach that should be thrown away.

23 COMMISSIONER AHEARNE: I agree.

24 MR. DIRCKS: We have used that approach, not
25 we, but Bechtel has used it in Diablo and in Three Mile

1 Island.

2 COMMISSIONER AHEARNE: I am just trying to
3 argue based upon where Jim came out in the ---

4 MR. DIRCKS: You see, the other three
5 approaches is that you can buy an organization and plug
6 it into the company and it exists there as an outside
7 group and when the project is finished the thing will
8 dissolve and go away.

9 COMMISSIONER AHEARNE: Not necessarily in that
10 the amount of infusion of people is and other details ---

11 COMMISSIONER GILINSKY: Well, let's see, what
12 is the relevance of the order? I mean what conclusion
13 are you drawing, Joe?

14 CHAIRMAN PALLADINO: What I was going to
15 propose and see if the Commission buys it is that we
16 take item No. 3 on page 14 and that extends all the way
17 up to the top of page 16 and make that No. 1, and
18 renumber No. 1 and No. 2 to be 2 and 3 and then see if
19 we are going to have a vote to release the order.

20 COMMISSIONER GILINSKY: What does that
21 accomplish?

22 CHAIRMAN PALLADINO: Only to put in the
23 emphasis the fact that we want some attention to the
24 management and that is the only reason.

25 COMMISSIONER AHEARNE: No. 3 has to do with

1 this changing of the management. Now at the same time
2 do you want them to be working on updating the
3 comprehensive plan to verify the quality of construction?

4 CHAIRMAN PALLADINO: I will give you my own
5 personal opinion. It seems to me that if you are going
6 to have a new management team that they ought to look at
7 that, too. So that is why it becomes No. 2.

8 COMMISSIONER AHEARNE: Well, then there ought
9 to be some way that that is clear, that one of the
10 functions of whatever choice is made out of ---

11 CHAIRMAN PALLADINO: However, I don't mind
12 leaving a little flexibility between ---

13 COMMISSIONER AHEARNE: But remember, if we put
14 this out, we are giving the licensee a harsh order and
15 we are saying here are the things you must do. I think
16 we ought to be pretty clear on what we are asking them.

17 CHAIRMAN PALLADINO: Well, we are asking that
18 they submit an updated comprehensive plan to verify the
19 quality of construction.

20 COMMISSIONER AHEARNE: Right, and it sounds to
21 me like we are saying on the one hand go out and hire
22 someone to come in and review your management to look at
23 how you are going to manage this whole project and at
24 the same time ---

25 CHAIRMAN PALLADINO: I didn't say at the same

1 time.

2 COMMISSIONER AHEARNE: But that is what it
3 sounds like because you are asking the licensee to
4 submit an updated comprehensive plan to verify the
5 quality of construction.

6 It seems to me that what we ought to be asking
7 if we really believe in the approach is to do the step,
8 which you relabeled step 1, and that this old step 1 has
9 to follow after the approval of the ---

10 CHAIRMAN PALLADINO: Well, if that clears it
11 up. I was just saying ---

12 COMMISSIONER GILINSKY: I think that is
13 probably right.

14 CHAIRMAN PALLADINO: I was saying that is the
15 way I would do it. I don't know. I may not be
16 imaginative enough to ---

17 COMMISSIONER GILINSKY: But I think if you
18 order them in that way then that is the natural
19 progression.

20 COMMISSIONER AHEARNE: I think we ought to be
21 explicit.

22 CHAIRMAN PALLADINO: Well, how did you want to
23 fix it?

24 MR. CUNNINGHAM: Well, as written down, and of
25 course it doesn't really prescribe an order. It says

1 you do all three ---

2 COMMISSIONER GILINSKY: But by putting 3/1 it
3 puts more emphasis on the straightening out of the
4 management of the company.

5 MR. CUNNINGHAM: But is that the only change
6 you are suggesting is just the emphasis, or would you
7 actually that it requires?

8 COMMISSIONER AHEARNE: I would say something
9 like following the approval indicated in Part B of step
10 one, that the licensee shall.

11 MR. CUNNINGHAM: We can put that in explicitly
12 very easily.

13 CHAIRMAN PALLADINO: But you are going to
14 first reorder them.

15 MR. CUNNINGHAM: Yes.

16 COMMISSIONER ASSELSTINE: I think though if we
17 do it makes the most sense to follow them that way in
18 series, but that is going to mean it looks like from all
19 of those elements that it is going to take quite some
20 time to go through this whole process, one, reviewing
21 the management and, two, deciding how the project is
22 going to be managed and, three, developing the
23 comprehensive plan.

24 COMMISSIONER GILINSKY: Well, the
25 comprehensive plan is something the new management has

1 to do.

2 CHAIRMAN PALLADINO: I don't know if some of
3 these other things can be effectively done before all
4 the new management plan is set forth. That is what
5 worries me about restricting it.

6 COMMISSIONER GILINSKY: They are going to have
7 to sit down with Jim and discuss this.

8 MR. KEPPLER: Can I ask a question?

9 COMMISSIONER GILINSKY: Yes, go ahead.

10 MR. KEPPLER: Sorry, I didn't mean to
11 interrupt.

12 COMMISSIONER GILINSKY: No, go ahead.

13 MR. KEPPLER: I don't have a copy of that
14 piece of paper.

15 (The paper referred was handed to Mr. Keppler.)

16 MR. KEPPLER: You were focusing on the words
17 of what they mean by augment their staff.

18 COMMISSIONER AHEARNE: It is the bullet after
19 the evaluation is completed.

20 MR. KEPPLER: After the evaluation is
21 completed, a comprehensive corrective action plan will
22 be derived under the selected organization's guidance.
23 CG&E's staff will be augmented by their personnel to
24 implement the resultant program. You inferred that your
25 interpretation of that was to be item 1 and I guess I

1 raised a question about I could infer that to be almost
2 any one of them, depending upon how you did it and what
3 you mean by augmenting.

4 COMMISSIONER GILINSKY: And we are also
5 getting this phone call to Dick DeYoung.

6 MR. KEPPLER: Yes, that is where this is from.

7 COMMISSIONER GILINSKY: Well, but still, it is
8 not like a written document that is being approved by
9 the management of a company.

10 CHAIRMAN PALLADINO: John, you would like
11 something that says you don't do the new item 2 until
12 you have done the new item 1?

13 COMMISSIONER AHEABNE: Yes, or otherwise I
14 think you are telling them they had better hurry up and
15 start doing both of those items.

16 CHAIRMAN PALLADINO: Well, I was viewing these
17 as three independent things and leaving it to Jim and
18 the licensee to work it out. I do agree that if I were
19 doing it I would do it with the new No. 1 and then
20 this ---

21 MR. HUNTER: Our intent was that the new
22 management provide the comprehensive plan.

23 COMMISSIONER GILINSKY: They are going to have
24 to make a choice of a new arrangement, a new management
25 which is what he is talking about here himself. What we

1 are saying is that in making that choice we want you to
2 have the advice of an outside consultant. That is what
3 we are saying in effect. I mean this is a sequence that
4 they are going to have to go through no matter what.
5 Whether there is an order or whether there is no order
6 or whatever, they are going to have to do these things.

7 What we are saying is the choice here is
8 something we want you to make with some advice and not
9 just on your own because you guys have made a lot of
10 mistakes up to now. So it needn't be just sort of an
11 infinitely long series of management studies. We want
12 you to make this choice of whether you are going to beef
13 up your management, whether you are going to hire
14 somebody, what the mix is going to be and do that
15 together with an outside consultant.

16 CHAIRMAN PALLADINO: Let me try a proposal and
17 see if the Commission is ready to take any action.

18 COMMISSIONER ROBERTS: Is it inappropriate to
19 ask that we have what we are voting on reduced to
20 writing? I take offense at voting on bits and pieces
21 and somebody said this and somebody said that.

22 CHAIRMAN PALLADINO: We are not going to vote
23 on it until you see the final order.

24 COMMISSIONER ROBERTS: Okay.

25 CHAIRMAN PALLADINO: But we have got to give

1 instruction to them who are providing, and I am trying
2 to find out whether or not you are ready to give them
3 instructions.

4 As I understand what we plan to give them now
5 is to rewrite this with item No. 3 beginning on page 14
6 and extending to the top of page 16 and call that No. 1;
7 renumbering No. 1 to be No. 2; and No. 2 to be No. 3;
8 and include in No. 1 some phrasing such as upon
9 obtaining approval indicated in No. 1(b) et cetera, some
10 transition.

11 MR. CUNNINGHAM: The order of sequence
12 required.

13 COMMISSIONER AHEARNE: Yes.

14 CHAIRMAN PALLADINO: Now if those changes were
15 made and we are satisfied with the way they were made,
16 are there any other things the Commission would want to
17 see done before we would be ready to vote?

18 COMMISSIONER GILINSKY: Where there were the
19 various changes that John referred to at the beginning.

20 COMMISSIONER AHEARNE: Yes, making that
21 management change.

22 CHAIRMAN PALLADINO: Oh, yes, the new linkage.

23 COMMISSIONER AHEARNE: That is right.

24 CHAIRMAN PALLADINO: Yes, I am sorry.

25 COMMISSIONER AHEARNE: And I think we still

1 have the issue of immediate effectiveness.

2 CHAIRMAN PALLADINO: Do you want to discuss
3 the pros and cons of immediate effectiveness?

4 COMMISSIONER AHEARNE: That would be nice.

5 CHAIRMAN PALLADINO: Guy, do you want to lead
6 us through the pros and cons. It was written up in part
7 in Bill Dircks' memo.

8 MR. CUNNINGHAM: Well, I think the principal
9 concern is not the legal one but the practical one, that
10 you want that construction halted immediately. As Jim
11 has pointed out before, if you don't you have a
12 situation like Midland where you went some two and a
13 half years from the time of the show-cause order before
14 anything halted and that was only after a Board decision.

15 The legal issue is pretty simple. The
16 Administrative Procedure Act says that an immediate
17 suspension of a right held by a licensee or permittee
18 has to be based a showing that the public health and
19 safety or interest so requires.

20 One could argue, since we have a two-stage
21 licensing process, that there is never a health or
22 safety interest because we won't give them an operating
23 license if the plant is not constructed safely. The
24 Commission, however, has rejected that rather simplistic
25 argument and in at least two occasions suspending

1 construction and making the finding of public health,
2 safety and interest premised on the fact that the
3 project could get to a point where the Commission would
4 never be able to go back and find out whether the
5 reactor had been constructed so there was reasonable
6 assurance. We think there is a legal basis for
7 immediate effectiveness. The real question is is that
8 what you want?

9 CHAIRMAN PALLADINO: What is the downside of
10 immediate effectiveness, that it may be hard to get the
11 thing back on the track or that it maybe hard to get it
12 restarted, to get construction restarted?

13 MR. CUNNINGHAM: Well, the Commission has
14 taken the view that no hearing is required before you
15 lift a suspension. This order has been written with
16 that flexible paragraph 4 on page 16 to give the
17 Regional Administrator the maximum flexibility for
18 allowing them to undertake some or all aspects of the
19 construction.

20 CHAIRMAN PALLADINO: But that is only if the
21 licensee consents to the order?

22 MR. CUNNINGHAM: That is correct.

23 CHAIRMAN PALLADINO: If he starts to argue
24 with any part of the order, then we could have hearings.

25 MR. CUNNINGHAM: That is correct. The

1 licensee has an absolute right to a hearing ---

2 COMMISSIONER GILINSKY: I think you are
3 talking about hearings called by someone other than the
4 licensee. I think what Guy is saying is that there is
5 sufficient flexibility here.

6 CHAIRMAN PALLADINO: After there is consent to
7 the order.

8 MR. CUNNINGHAM: That is right. If there is
9 consent to the order there is flexibility for the
10 Regional Administrator to allow ---

11 COMMISSIONER GILINSKY: I think the point is
12 there is a lot of flexibility here which allows them to
13 interpret consent in a variety of ways. In other words,
14 for example, well, they have got one through four. In
15 other words, there is not a specific action that the
16 licensee has to perform which, if he doesn't perform,
17 then allows others to ask for a hearing. There is a
18 range of possibilities any one of which we could regard
19 as consent to the order or conformance with the order.

20 CHAIRMAN PALLADINO: Not counting that as
21 consent.

22 COMMISSIONER GILINSKY: It would then be up to
23 us to decide whether there had been some backing off or
24 whatever.

25 MR. CUNNINGHAM: That is right. What the

1 order does is that you study these four options and tell
2 us which one you think is the way to go. It doesn't say
3 that only one is acceptable.

4 COMMISSIONER ASSELSTINE: Guy, if the order is
5 accepted and at some point down the road before 1, 2, 3
6 and 4 have been agreed to the Regional Administrator
7 determines that some or all safety related construction
8 work could resume what rights to a hearing would that
9 create in someone other than some outside party?

10 MR. CUNNINGHAM: Someone with an interest
11 affected by the order can request a hearing. The
12 position that we have taken, and it is subject to
13 challenge in the courts now, is that if they want us to
14 do more than what we have required they don't get a
15 hearing. That is still the Commission's position.

16 If the order comes down with an agreement as
17 to what is acceptable and someone wants more ---

18 COMMISSIONER ASSELSTINE: No, but you do say
19 in the order that the licensee shall show cause why
20 safety related construction activities, including rework
21 activities, should not remain suspended until the
22 following things are done.

23 MR. CUNNINGHAM: That is correct, but the
24 order also contains the escape valve, the relief valve,
25 and as long as that is part of the order ---

1 COMMISSIONER ASSELSTINE: You think that is
2 sufficient?

3 MR. CUNNINGHAM: Yes, that is my advice.

4 COMMISSIONER ASSELSTINE: So that for all
5 practical purposes the Regional Administrator could give
6 up one or all of these items and that still would not
7 create an opportunity for a hearing by anyone.

8 COMMISSIONER GILINSKY: Well, it sounds like
9 he couldn't give up everything. I mean they would have
10 to meet some test.

11 MR. CUNNINGHAM: Who would have to meet some
12 test now?

13 COMMISSIONER GILINSKY: The company.

14 MR. CUNNINGHAM: Right, they would have to
15 satisfy the Regional Administrator that they could
16 conduct these activities in accordance with the
17 regulations and so forth. But it was deliberately put
18 in there as a relief valve so that some construction
19 could be authorized without triggering rights to a
20 hearing.

21 CHAIRMAN PALLADINO: But he may relax all of
22 them which sounds surprising to me. They all give a
23 little bit of a problem.

24 MR. MALSCH: I think there is no difficulty
25 with having with having the director relax any or all

1 parts of the order insofar as it demands immediately
2 effective action. It is less clear that his doing so
3 would completely wipe out any adjudicatory proceeding
4 that was held on the order itself.

5 So, for example, you could find yourself in
6 the situation where, let's say, the director was
7 satisfied that construction could continue without
8 meeting the terms of 1 through 3, but that if a hearing
9 had been requested you might have a hearing on the issue
10 of whether 1 or 2 or 3 ought to be relaxed, but in the
11 meantime construction would be continuing because the
12 director would have decided that insofar as it was
13 immediately effective that could be relaxed.

14 CHAIRMAN PALLADINO: So as soon as he decides
15 to relax something he say, okay, they can start
16 constructing even though the hearing is going on?

17 MR. MALSCH: That is right.

18 MR. CUNNINGHAM: That is right.

19 CHAIRMAN PALLADINO: What is the union or some
20 workers who don't want to lose their job say we would
21 like a hearing even though the company consents? Do
22 they have a right to the hearing?

23 MR. CUNNINGHAM: They certainly have a right
24 to request a hearing. The Commission case law is next
25 to non-existent. There was one case where we issued an

1 order to Palisades that restricted the number of hours
2 the operators could work and the company consented. The
3 union requested a hearing, the Appeal Board said they
4 were entitled to a hearing, the staff was prepared to
5 appeal that decision to the Commission but the case was
6 settled. Thereupon, the Commission vacated the Appeal
7 Board decision and said that was not to be considered as
8 precedent. So it could get to be a close question.
9 Certainly the workers whose jobs are affected have an
10 interest affected by the order.

11 CHAIRMAN PALLADINO: Meanwhile while they
12 litigated the order the work would be suspended or
13 stopped?

14 MR. CUNNINGHAM: Yes.

15 MR. MALSCH: I think there is some question
16 whether the economic interests of workers would be a
17 cognizable interest within the meaning of the Atomic
18 Energy Act. There are some decisions involving
19 ratepayers, for example, that suggest that raising an
20 issue of one's economic well being is not something that
21 the Commission is concerned about and therefore wouldn't
22 be enough to confer standing. But, as Guy said, I don't
23 think we have a case that is squarely in point.

24 CHAIRMAN PALLADINO: Let's see, how do you
25 want to proceed on immediate effectiveness?

1 COMMISSIONER AHEARNE: I guess at the moment I
2 am having difficulty seeing how we could strongly defend
3 the immediate effectiveness order.

4 CHAIRMAN PALLADINO: Why do you say that?

5 COMMISSIONER AHEARNE: I think it has to rest
6 on that the problems are such that if we don't
7 immediately stop the construction we would not be able
8 to develop confidence that it was constructed properly,
9 and I don't detect that that is really the case. I
10 detect that there are compounding problems and that we
11 think it would be a lot easier if we stop it, and I
12 recognize the concern that Jim raises about, well, what
13 happens if the licensee puts it into a hearing. Well,
14 but if the licensee puts it into a hearing and it takes
15 many years, the plant isn't going to get its operating
16 license. So I just think there is little probability in
17 the licensee doing that and I have difficulty pinning it
18 to the immediate safety and health problem.

19 CHAIRMAN PALLADINO: Well, that is why I
20 didn't like some of the words that were used in here. I
21 do feel that a cessation of confidence in their quality
22 assurance is a valid reason for stopping the work and I
23 think Region III has certainly reached that point and
24 conveyed it to us in the last meeting.

25 I do agree their linkage is not as well

1 developed in the text here as it might be and that
2 should be fixed up. I do remember their statement about
3 they were finding deficiencies faster than the company
4 could cope with them and I do think that is a valid
5 point to developing the linkage.

6 COMMISSIONER ASSELSTINE: I also seem to
7 recall that Harold said last week that what he was
8 afraid of is with all the rework going on that what we
9 would end up with is a patched up plant where there had
10 been a whole lot of things ripped out and reinstalled
11 with the result being that it is not as sound as it
12 would otherwise be.

13 COMMISSIONER AHEARNE: That is true, Jim. I
14 had forgotten that comment. That is about the only one
15 I can think of that directly relates to a reason for
16 immediate effectiveness.

17 COMMISSIONER ASSELSTINE: Yes, that is right.
18 I mean the plant could still conceivably squeak by, but
19 it would be more marginal than it would otherwise be if
20 the work was done.

21 COMMISSIONER AHEARNE: Well, but at the moment
22 all we have is Harold's concern and I just didn't get
23 the impression ---

24 COMMISSIONER ASSELSTINE: And that is
25 certainly not in here.

1 COMMISSIONER AHEARNE: --- that it was that
2 concerned with it. So I am uneasy with it.

3 MR. CASE: I think it immediately has to be
4 read in the context of now or two and a half years now
5 or the duration of a hearing. It has that kind of a
6 definition I believe in this case.

7 COMMISSIONER AHEARNE: But I don't see the
8 licensee going and asking for a hearing in this case
9 because I think they want their operating license.

10 MR. CASE: That may well be true, but that has
11 nothing to do with the legal significance of the finding.

12 COMMISSIONER AHEARNE: What I think has a
13 great deal of significance is our trying to argue what
14 is our rationale for going for immediate effectiveness.

15 COMMISSIONER ASSELSTINE: Except that if you
16 take out the immediate effectiveness and the licensee
17 agrees to this order, it may be literally months before
18 all of this work is completed and he has got his new
19 organization in place.

20 COMMISSIONER AHEARNE: No, I agree.

21 COMMISSIONER ASSELSTINE: In the meantime all
22 of the problems that are now existing continue to calm
23 down.

24 COMMISSIONER AHEARNE: Yes, I agree with that,
25 too. So the balance is do we believe that the public

1 health and safety is jeopardized by allowing a three or
2 four months hiatus before the change occurs, and I
3 wasn't getting the sense from the regional people that
4 they felt there was this jeopardization of the rationale.

5 CHAIRMAN FALLADINO: I thought the loss of
6 confidence in our quality assurance, at least by
7 precedent, is a basis for stopping construction. It has
8 been used in the past ---

9 MR. CUNNINGHAM: That is right. That was in
10 the Midland case.

11 CHAIRMAN FALLADINO: I say from what I
12 understand this is certainly that kind of situation.

13 COMMISSIONER AHEARNE: But I think you have to
14 look at, at least for me, I have to look at the details
15 beyond just the lost confidence in the quality
16 assurance, and the Midland case really was quite
17 different.

18 CHAIRMAN FALLADINO: I wasn't going on the
19 Midland case. I was saying there we by precedent had
20 established that if we lost the confidence it was a
21 reasonable basis to stop the construction. Now I forget
22 the Midland case and come back and say have we lost the
23 confidence and do we have a strong enough linkage to the
24 basis that we describe here to assert that, and I say
25 that linkage needs to be fixed up. But I would be

1 inclined to go with the immediate effectiveness.

2 MR. CUNNINGHAM: May I say just one more
3 point. Commissioner Asselstine pointed out that if they
4 agreed to the order it is still going to be months
5 before all these things were accomplished. The minute
6 they agree to the order it becomes effective. So that
7 they not immediately effective shutdown part would
8 become effective upon their consent. So they wouldn't
9 keep constructing if they agreed to the order.

10 CHAIRMAN PALLADINO: Wait a minute, under what
11 circumstances, if we didn't have the shutdown order?

12 MR. CUNNINGHAM: If we didn't have an
13 immediate effectiveness position, but we did say show
14 cause why we shouldn't suspend work until you do the
15 following, and they said all right, we will consent to
16 that order and then work stops at that point.

17 COMMISSIONER ASSELSTINE: You are right, it is
18 only if they refuse to consent to the order and ask for
19 a hearing on the order that construction work continues
20 on for a long period of time.

21 MR. CUNNINGHAM: That you get into this two
22 and a half year hiatus.

23 CHAIRMAN PALLADINO: This is cleaner though.

24 COMMISSIONER AHEARNE: It is cleaner unless
25 you have to try to defend why the immediately

1 effectiveness.

2 CHAIRMAN PALLADINO: I think it is harder to
3 defend a more subtle way of getting them to stop the
4 order. How do you reword that, Guy? You say show cause
5 why you shouldn't be shut down or why your work
6 shouldn't stop ---

7 COMMISSIONER ASSELSTINE: That stays just the
8 same as is in here. The only question is whether you
9 make it immediately effective or whether you require
10 that that is part of the show-cause order.

11 MR. CUNNINGHAM: Essentially on page 13 what
12 we would do is delete the words "effective immediately"
13 and move the phrase "the licensee shall show cause" up
14 to the top of the paragraph. So they would have to show
15 cause why construction shouldn't be suspended and why
16 you shouldn't be required to do items 1, 2 and 3 before
17 you can resume construction.

18 COMMISSIONER ASSELSTINE: What that means is
19 if the ---

20 MR. CUNNINGHAM: It would stop if they agreed
21 to the order.

22 COMMISSIONER ASSELSTINE: But if a licensee
23 says I disagree with the order and now I want a hearing
24 on it, then it is going to be literally years before you
25 would stop construction and construction would just go

1 merrily on all the time while this issue was being
2 litigated in the hearing.

3 COMMISSIONER AHEARNE: That is true. And I
4 guess realistically if one or two members of the
5 Commission who voted differently on the Zimmer case were
6 to change their position and it were to go to the Board,
7 then there will be another probably year or year and a
8 half of that process before the operating license could
9 be granted and the licensee at that stage might very
10 well say, well, what the heck.

11 CHAIRMAN PALLADINO: I didn't follow all that,
12 John.

13 (Laughter.)

14 COMMISSIONER AHEARNE: Well, as I recall,
15 there were some contentions that were raised with the
16 Licensing Board. After the Licensing Board issued its
17 decision the Licensing Board said they were going to
18 reopen the hearing and three of us voted and said no,
19 you are not going to reopen the hearing. Now this is
20 back up to us again on appeal and if one or two members
21 of the three-person majority were to change and say, oh,
22 yes, it is a good idea and we will give it back to the
23 Licensing Board, then at that stage we would I think
24 from the licensee's perspective be saying well, it is
25 going to take a year or year and a half until this

1 operating license is granted and so at that stage they
2 might say well, we might as well argue some of these
3 points if we disagree with them. I am not necessarily
4 trying to argue my point.

5 CHAIRMAN PALLADINO: That says we ought to
6 have immediate effectiveness of the order.

7 COMMISSIONER AHEARNE: No, it says that we
8 ought not to reopen the hearing.

9 (Laughter.)

10 MR. KEPPLER: Last week when we met I
11 expressed the view of my preference toward moving in the
12 direction of meeting with the utility and getting a
13 confirmatory order. With hearing the discussions that
14 you are having right now and the fact that the utility
15 is apparently starting down some path, does that change
16 your consideration of that matter at all?

17 COMMISSIONER ROBERTS: Well, for me personally
18 I would rather have a confirmatory order. Dickhoner
19 tried to get hold of the Chairman and you have given him
20 a wave-off and he finally got to DeYoung.

21 MR. KEPPLER: I guess I am raising the
22 question of would we be better off in the interest of
23 time and everything else for me to set down and steer
24 him in a direction that we can accept.

25 MR. DIRCKS: Well, not only to steer him but

1 to see what he has on his mind and to get a proposal on
2 the table.

3 COMMISSIONER ASSELSTINE: It sounds even like
4 from what we have got from the phone call from Dick that
5 it is very similar in ---

6 MR. KEPPLER: There are a lot of similarities,
7 but we are lacking on some of the details to know how
8 far they would go.

9 COMMISSIONER GILINSKY: Well, what Dickhoner
10 wants is to fend off trouble. The difficulty is that he
11 is at the center of the problem and he has been all
12 these years.

13 COMMISSIONER ASSELSTINE: But he also
14 recognizes that he is in a much better position if he is
15 proposing something to us that we then confirm than if
16 we go out and order him to do something and that may
17 make him more amenable to accept exactly what it is we
18 want.

19 CHAIRMAN PALLADINO: Incidentally, I think it
20 was appropriate for me not to have a private meeting
21 with him. I would have welcomed a public meeting with
22 the Commission but I also thought we should not isolate
23 ourselves so that the staff doesn't talk to him and this
24 is why I said if they have something to propose we ought
25 to listen and then play it back to the Commission and

1 that is precisely what was done. So from that
2 standpoint I want to make sure we maintain liaison.

3 As far as the situation as we find it, I still
4 think that it is up to the Commission to assert itself.
5 I think we have been going quite a number of years, or
6 several years anyhow with Zimmer with emphasis on the
7 utility to get attention to the job and they keep on
8 saying well, we are on top and things never get
9 corrected.

10 I am not sure that without the benefit of this
11 order that corrective action will be as intense as it
12 will be with the order.

13 COMMISSIONER ASSELSTINE: But a confirmatory
14 order, Joe, wouldn't change the binding nature of the
15 requirements at all. It would simply be to say to
16 Dickhoner look, the Commission is working on an order
17 that has the following elements.

18 COMMISSIONER ROBERTS: The advantage is you
19 don't throw a lot of people out of work ---

20 MR. KEPPLER: Oh, no.

21 COMMISSIONER ROBERTS: Well, I understand you
22 might.

23 COMMISSIONER GILINSKY: Look, if Dickhoner's
24 proposal is satisfactory to Jim, then that ends the
25 matter. In other words, you issue an order and if

1 Dickhoner comes in with a proposal that is satisfactory
2 that ---

3 COMMISSIONER ROBERTS: You know good and well
4 there is a lot of difference between a confirmatory
5 order and a show-cause order.

6 COMMISSIONER GILINSKY: And that cuts two
7 ways. We have had a lot of experience with these things
8 over the years and it depends on whom you are dealing
9 with. Sometimes it is the constructive way to proceed
10 and they are more motivated and you get a better result
11 with a confirmatory order and sometimes you just have to
12 be a little more formal and stricter to get the action
13 that is required. I guess I am inclined to think that
14 is the case here on the basis of my own reading of the
15 man.

16 MR. DIRCKS: On the other hand, if it looks
17 like we can get everything that we want to get out of a
18 direct order and then maybe a little bit more and then
19 get it right away, that seems like a deal that we should
20 at least explore.

21 COMMISSIONER GILINSKY: But, let's see, why
22 would you not be getting those things ---

23 COMMISSIONER ASSELSTINE: The immediate
24 effectiveness is a good example. If a majority of the
25 Commission is not in favor of making this immediately

1 effective, the one thing you don't get control of is the
2 ongoing construction work which is what brought Jim to
3 us last week.

4 COMMISSIONER GILINSKY: Well, it is not clear
5 what the situation is.

6 MR. DIRCKS: I don't think we know what they
7 have to offer and my recommendation is to find out what
8 they want to put on the table and then go from there.

9 COMMISSIONER GILINSKY: With all we have been
10 through with these people for so long and, you know,
11 they will just string us along. They just don't want
12 trouble and I understand. You know, it is
13 understandable that he would take this position.

14 If he really has a reasonable proposal, then
15 the only thing that is different about this approach is
16 that it does, as Tom says, get more of a blaze of
17 headlines and so on, but in terms of actual effect it
18 will not be different.

19 COMMISSIONER ROBERTS: But don't you think we
20 have an obligation to hear his proposal or at least have
21 the staff hear it?

22 COMMISSIONER GILINSKY: We have talked with
23 him for years. Now, sure, when you are about ready to
24 act he is talking about proposals.

25 CHAIRMAN PALLADINO: But he could have given

1 us a formal proposal and he didn't.

2 MR. DIRCKS:

3 COMMISSIONER AHEARNE: They got the message in
4 the last meeting.

5 MR. DIRCKS: They sat through to the end of
6 the meeting.

7 COMMISSIONER AHEARNE: Right, and I think that
8 my vote would be to go ahead with a not immediately
9 effective order.

10 MR. DIRCKS: But then you are losing
11 something. You are gaining something in symbolism, but
12 you are losing immediate action.

13 COMMISSIONER AHEARNE: If they are already
14 with a proposal, they can come back in with the proposal
15 and Jim can accept it.

16 CHAIRMAN PALLADINO: And then what happens?
17 Does the work stop?

18 COMMISSIONER AHEARNE: That is part of the
19 proposal.

20 CHAIRMAN PALLADINO: All right, let's hear
21 what others feel.

22 Tom?

23 COMMISSIONER ROBERTS: I think the staff can
24 sit down with Dickhoner and see what he has got in
25 mind. If it covers all of our concerns, then have a

1 confirmatory order rather than ---

2 MR. KEPPLER: Look, you automatically know it
3 isn't going to cover all the concerns because he is
4 saying here is doesn't want to stop construction. So
5 that is going to be one thing that we would have to ---

6 COMMISSIONER ROBERTS: Well, nobody persuaded
7 me that we need to stop construction because of concerns
8 for public health and safety and the public interest. I
9 am sorry, but I am just not persuaded.

10 MR. DIRCKS: I can almost see Dickhoner giving
11 on that issue.

12 MR. KEPPLER: Yes, he could.

13 CHAIRMAN PALLADINO: I didn't hear you.

14 MR. DIRCKS: I have a feeling that to get the
15 confirmatory order he would agree to stopping
16 construction.

17 The other element, and I don't think we can
18 take it into our consideration, is that would then be
19 the company stopping construction and perhaps laying off
20 some workers out there as opposed to our order having
21 the economic impact right away.

22 COMMISSIONER AHEARNE: And lying down
23 immediate effectiveness.

24 (Laughter.)

25 MR. DIRCKS: But it is still NRC that orders

1 that stoppage of the work and the construction.

2 COMMISSIONER AHEARNE: A confirmatory order is
3 an NRC order.

4 COMMISSIONER ASSELSTINE: That is right.

5 MR. DIRCKS: Yes, but the company can announce
6 today we are taking the following reactions.

7 COMMISSIONER ASSELSTINE: That it is reacting
8 to it, to their proposal now.

9 CHAIRMAN PALLADINO: John, you are in favor of
10 a not immediately effective.

11 COMMISSIONER AHEARNE: Yes.

12 CHAIRMAN PALLADINO: Vic?

13 COMMISSIONER GILINSKY: Well, I would go with
14 the Commission order. I think immediately effective is
15 a question of just exactly how much work it would cover.

16 CHAIRMAN PALLADINO: We could make it either
17 immediately effective so far as shutdown is concerned or
18 make that part of the show-cause and I gather that is
19 what you mean by not immediately effective.

20 COMMISSIONER AHEARNE: Right, just a regular
21 proposal.

22 COMMISSIONER GILINSKY: Let me understand,
23 John. Are you saying it is effective at some date?

24 COMMISSIONER AHEARNE: Well, the show-cause
25 order gives them 25 days.

1 COMMISSIONER GILINSKY: Well, wait a minute,
2 are you saying that it would go into effect unless in
3 the 25 days they come back?

4 COMMISSIONER AHEARNE: Yes.

5 CHAIRMAN PALLADINO: It wouldn't go into
6 effect right away. Suppose they took 25 days to
7 deliberate whether they want to come back and argue
8 about something, could they not continue to work?

9 COMMISSIONER AHEARNE: Sure, yes.

10 COMMISSIONER GILINSKY: No, no, during the 25
11 days, but I would regard that as a different form of
12 immediate effectiveness.

13 COMMISSIONER AHEARNE: Well, they either
14 consent or ask for a hearing.

15 COMMISSIONER ASSELSTINE: That is right, but
16 even then work doesn't stop.

17 COMMISSIONER AHEARNE: Those are the two
18 options.

19 MR. CUNNINGHAM: That is right.

20 COMMISSIONER AHEARNE: If they consent the
21 work stops.

22 COMMISSIONER ASSELSTINE: But if they don't
23 consent the work goes on until the hearing is concluded.

24 COMMISSIONER GILINSKY: Well, wait a minute.
25 If I understand, John, and I don't have any difficulty

1 doing it his way which is that work does not stop for
2 these 25 days, and if the company comes back with a
3 satisfactory proposal during this period of time, then I
4 guess ---

5 CHAIRMAN PALLADINO: Well, they would have to
6 consent to the order and then they would stop work
7 because they have to do certain things before they can
8 continue if we write it correctly.

9 COMMISSIONER GILINSKY: Well, depending on how
10 we work things out with them at that point or they can
11 convince us that conceivably during that time that some
12 part of the work should continue.

13 CHAIRMAN PALLADINO: Well, you are doing sort
14 of a quasi-negotiation.

15 COMMISSIONER AHEARNE: During those 25 days,
16 yes.

17 CHAIRMAN PALLADINO: But then you are going to
18 invite hearings.

19 COMMISSIONER GILINSKY: It is up to them to
20 decide.

21 COMMISSIONER ROBERTS: But if they agree to
22 the order effective immediately all work stops period.

23 CHAIRMAN PALLADINO: If they agree to the
24 order entirely, which if they were smart they would do
25 because then they can work on the relaxation part under

1 the order, but if they start to take exception with any
2 part of the order before they consent, then they are
3 going to have a hearing.

4 MR. CUNNINGHAM: Not necessarily. If they
5 come back with a proposal that is short of our order and
6 we accept it, then there is no hearing at their behest
7 but now an interested member of the public.

8 MR. KEPPLER: GAP would ask for a hearing.

9 CHAIRMAN PALLADINO: GAP or Applegate or
10 somebody else could ask for a hearing.

11 MR. MALSCH: My understanding is that the way
12 these things have worked out in the past what a licensee
13 would do within the 25 days is make an alternative
14 proposal if he wasn't going to consent to the order
15 entirely and that he would probably file a contingent
16 request for a hearing in effect saying, listen, if you
17 don't accept my alternative proposal here, then I want to
18 insist on a hearing. So you may find a period of
19 negotiation between licensee and staff after the 25-day
20 period, but during that time you wouldn't know whether
21 the licensee was or was not actually requesting a
22 hearing because he wouldn't be sure whether the staff
23 was going to accept his proposal or not.

24 COMMISSIONER AHEARNE: If the staff accepts
25 the modified proposal, which is less than what was in

1 the show-cause order, what right would some other
2 organization then have?

3 MR. MALSCH: As long as the modified proposal
4 was clearly beyond the bounds of the original language
5 of the show-cause order, assuming the person had an
6 interest that would be affected, it would be fair game
7 for a hearing for the organization to insist on the
8 original proposal as distinguished from the alternative
9 proposal. That happens regardless of whether or not you
10 make it effective or not immediately effective. It is
11 something that arises from the fact you are issuing a
12 formal show-cause order.

13 COMMISSIONER ASSELSTINE: Does that go to the
14 halting construction? For example, do they come back
15 and say here is our plan and we accept everything in
16 here except the halting of construction and we don't
17 want to stop safety related construction work while we
18 are doing all these other things and the staff accepts
19 that. Does that then give rise to an opportunity then
20 for a hearing, for someone to come in and say wait a
21 minute, the Commission said construction should stop
22 until all this is done and now they have accepted
23 something less.

24 MR. MALSCH: I think offhand the answer is
25 yes. Even assuming a hearing was requested a director

1 still has discretion to allow construction to resume
2 based upon a finding that there is no longer an urgent
3 situation requiring anything immediately effective. So I
4 think in theory there is a right to a hearing, but I am
5 not sure how meaningful it is because of the discretion
6 the director has during the meantime.

7 MR. CUNNINGHAM: There is also the question of
8 whether they can show an interest affecting the staffing.

9 MR. MALSCH: Right.

10 CHAIRMAN PALLADINO: To make sure I am
11 following everything, do I understand under Ahearne's
12 proposal that this might read something like this. The
13 licensee shall show cause why safety related
14 construction activities, including rework of identified
15 deficient construction, shall not remain suspended until
16 the licensee has done 1, 2 and 3?

17 COMMISSIONER GILINSKY: But if the licensee
18 did not respond at all in 25 days the order would go
19 into effect.

20 CHAIRMAN PALLADINO: They have got to redraft
21 this so I think some guidance from the Commission would
22 be helpful. I think we know where John and Tom stand.
23 I would be inclined toward the immediately effective,
24 but I could live with the other.

25 You would go with the Ahearne proposal?

1 COMMISSIONER GILINSKY: I would go along with
2 it.

3 COMMISSIONER ROBERTS: Make it four to one.

4 COMMISSIONER ASSELSTINE: I think my first
5 preference would be to go back and hear what
6 licensee has to say with a one-week time deadline on it;
7 that is, to see if we can get a proposal from the
8 licensee within a week that conforms to the elements
9 that are in what we would issue in the show-cause
10 order. If that failed, then I would be prepared to
11 issue the show-cause order with the immediate
12 effectiveness provision in it.

13 CHAIRMAN PALLADINO: So you are going with
14 Roberts sort of?

15 (Laughter.)

16 COMMISSIONER ROBERTS: Yes, I think that is
17 reasonable. I am not sure I would follow your second
18 step. I think it sounded reasonable to hear what they
19 proposed before we make a decision.

20 (Laughter.)

21 CHAIRMAN PALLADINO: So if I want a majority I
22 have to go with the John Ahearne proposal.

23 COMMISSIONER AHEARNE: No, you have got two
24 choices.

25 (Laughter.)

1 CHAIRMAN PALLADINO: I feel the order is the
2 right way to go and I said I could accept your version
3 although I prefer the other one. I think this
4 organization needs the strength of an order to get
5 things under way.

6 All right, from that standpoint, Guy, you
7 would rewrite the order. Does it change anything with
8 regard to point about the Regional Administrator may
9 relax all the prior conditions?

10 MR. CUNNINGHAM: There is no need to relax
11 that. The order provides that flexibility. That he can
12 allow construction on a case-by-case basis, that should
13 stay in there.

14 CHAIRMAN PALLADINO: I said there is nothing
15 in combining and that doesn't change that.

16 MR. CUNNINGHAM: That is right.

17 CHAIRMAN PALLADINO: I am suggesting you look
18 at it just in case.

19 All right, any other point on this that should
20 be discussed?

21 MR. CUNNINGHAM: We have the other two points
22 about the linking management to QA deficiencies.

23 CHAIRMAN PALLADINO: And there was another
24 point that was made that the number of deficiencies is
25 growing at a faster rate than the company can handle.

1 MR. CUNNINGHAM: Right.

2 CHAIRMAN PALLADINO: With regard to the
3 substance of the order is there any more that anyone
4 feels we ought to be talking about?

5 COMMISSIONER ASSELSTINE: So there are three
6 votes for not immediate effective?

7 CHAIRMAN PALLADINO: We have got three votes
8 for a not immediately effective order. When we finally
9 see the wording there may be fussing about the wording.

10 I would suggest that we see the revised
11 version and see if we can't get a notation vote that we
12 could affirm in our next affirmation session. I don't
13 think there is that much work for you to do.

14 (Laughter.)

15 CHAIRMAN PALLADINO: Well, why don't you get
16 it to us and then I will encourage the Commissioners to
17 give their votes by notation or we will affirm.

18 Well, can I spend a minute. I understand
19 there are press people outside and there are TV cameras
20 and somebody I guess is expected to go out and say
21 something.

22 (Laughter.)

23 CHAIRMAN PALLADINO: The last time I ducked
24 out and didn't say anything. I would propose to say at
25 this point in time that the Commission is still

1 deliberating its enforcement action and has not yet
2 reached a decision and as soon as we know a decision we
3 will let it be known or as soon as we have a decision we
4 will let it be known.

5 MR. CUNNINGHAM: Did you use the word
6 "enforcement" in there or did you say deliberating its
7 action?

8 MR. FOUCHARD: When we went into closed
9 session we said we were going to consider an enforcement
10 action and I think we might as well be up front on it.

11 CHAIRMAN PALLADINO: I am open to other
12 suggestions.

13 COMMISSIONER AHEARNE: One suggestion is to
14 let Joe do it.

15 MR. FOUCHARD: It bothers me not at all so
16 long as I know what I am saying.

17 CHAIRMAN PALLADINO: Well, why don't you do
18 that, Joe.

19 (Laughter.)

20 CHAIRMAN PALLADINO: Is there any other point
21 though? They are going to ask is it a strong action or
22 not a strong action. Joe, why don't you lead. You are
23 the one that is going to go face them.

24 MR. FOUCHARD: Well, I think I would say that
25 the Commission is still deliberating an enforcement

1 action. I need some guidance from you though as to when
2 you might conclude this deliberation.

3 COMMISSIONER GILINSKY: Let's see, if there
4 any enforcement action here?

5 MR. KEPPLER: The order.

6 COMMISSIONER GILINSKY: You regard that as
7 enforcement action.

8 CHAIRMAN PALLADINO: Well, I was trying to see
9 if we could get it out and get the votes and affirm it
10 before the end of the week. We have an affirmation
11 session I think Friday, is that right, or is it
12 Wednesday?

13 MR. CHILK: Friday.

14 CHAIRMAN PALLADINO: Friday. Now if you could
15 get something out that we could work on and vote on we
16 could affirm it Friday. I think we have had people sort
17 of in limbo for a long enough time and we ought to make
18 a decision by Friday if we possibly can.

19 MR. FOUCHARD: Then I would say that the
20 Commission is still deliberating an enforcement action
21 and hopes to reach a decision by the end of the week and
22 I wouldn't take debate as to what the enforcement action
23 would involve. Obviously it involves a range of things
24 which certainly includes the halt of construction. If
25 anybody asks that, that is an option.

1 CHAIRMAN PALLADINO: Okay. Does anybody have
2 trouble with that?

3 (No response.)

4 CHAIRMAN PALLADINO: Well, do a good job, Joe.

5 (Laughter.)

6 MR. FOUCHARD: Or don't come back.

7 (Laughter.)

8 CHAIRMAN PALLADINO: Okay. Anything more?

9 (No response.)

10 CHAIRMAN PALLADINO: We will stand adjourned.

11 (Whereupon, at 4:05 p.m., the closed session
12 adjourned.)

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ORIGINAL

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

NUCLEAR REGULATORY COMMISSION

COMMISSION MEETING

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DKT/CASE NO.

TITLE CLOSED MEETING - EXEMPTION NO. 5
DISCUSSION OF COMMISSION ACTION IN ZIMMER

PLACE WASHINGTON, D. C.

DATE November 12, 1982

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DISCUSSION OF COMMISSION ACTION IN ZIMMER

CLOSED MEETING - EXEMPTION NO. 5

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

Friday, November 12, 1982

The Commission convened in closed session,
pursuant to notice, at 1:10 p.m.

COMMISSIONERS PRESENT:

- NUNZIO PALLADINO, Chairman of the Commission
- VICTOR GILINSKY, Commissioner
- JOHN AHEARNE, Commissioner
- THOMAS ROBERTS, Commissioner
- JAMES ASSELSTINE, Commissioner

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

- J. HOYLE
- M. MALSCH
- J. ZERBE
- H. DENTON
- W. DIRCKS
- J. KEPPLER
- G. CUNNINGHAM

AUDIENCE SPEAKERS:

- W. WARD
- J. CUMMINGS
- R. WARNICK
- J. FOUCHARD

P R O C E E D I N G S

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CHAIRMAN PALLADINO: Good afternoon, ladies and gentlemen.

Before proceeding we will need a vote to hold this meeting on short notice.

Will the Commissioners signify approval by saying Aye.

CHAIRMAN PALLADINO: Aye.

COMMISSIONER GILINSKY: Aye.

COMMISSIONER AHEARNE: Aye.

COMMISSIONER ROBERTS: Aye.

COMMISSIONER ASSELSTINE: Aye.

CHAIRMAN PALLADINO: Opposed?

(No response.)

CHAIRMAN PALLADINO: Today's meeting continues our discussion of possible enforcement action concerning the Zimmer nuclear plant.

At our first meeting the staff presented its proposal and after Commission discussion was asked to prepare an order to show cause for Commission consideration.

Our second meeting consisted of Commission consideration of the draft show cause order and related staff memorandum. At the conclusion of our discussions the majority of the Commission indicated a preference

1 for issuance of a formal order to show cause. However,
2 a majority did not favor making the order immediately
3 effective. Two Commissioners indicated a preference for
4 NRC dialogue with the licensee rather than instituting
5 formal enforcement action at this time.

6 The staff was also asked to strengthen the
7 order to show cause on the nexus between quality
8 assurance breakdowns and the need for project management
9 changes.

10 Also the staff was to clarify the order's
11 focus on "safety related" construction and those
12 relevant instances where the order referred to
13 suspension of construction.

14 Finally, the staff was asked to reorder the
15 sequence of the actions to be required of the licensee
16 to make as the first step the hiring of an organization
17 to do a management review. The immediate effectiveness
18 provision in that order was also to be dropped.

19 We have now received a revised draft order.
20 In addition, the EDO cover memo accompanying that order
21 highlights an alternative provision which might be
22 adapted from the South Texas situation to the Zimmer
23 situation. I believe the staff is prepared to discuss
24 in more detail their thinking with regard to such a
25 provision for the Zimmer order.

1 We also received a letter from the licensee,
 2 Cincinnati Gas and Electric, which outlines the steps it
 3 is taking to address the problems at the Zimmer plant.
 4 This letter, although somewhat indefinite in certain
 5 respects, requires Commission attention again to the
 6 question of how our enforcement concerns and actions
 7 should mesh with the voluntary actions of the licensee.

8 I would be interested in the staff's opinion
 9 on how the licensee's voluntary actions compare with the
 10 staff's recommended actions and NRC approvals.

11 For myself I have reviewed the CG&E letter and
 12 I don't find it consistent with all the things that we
 13 had said we wanted to do. I have also looked at the
 14 revised order. I guess I still come down on an
 15 immediate effective order. I don't know whether there
 16 is Commission sentiment to that, but if it were it would
 17 make it a much shorter meeting.

18 COMMISSIONER GILINSKY: That would be the
 19 direction I would go in.

20 CHAIRMAN PALLADINO: I don't know how others
 21 feel.

22 COMMISSIONER ASSELSTINE: That is the
 23 direction I would go in as well.

24 COMMISSIONER ROBERTS: What was that?

25 COMMISSIONER ASSELSTINE: I would go in that

1 direction as well, but I want to say one thing about the
2 CG&E voluntary offer first.

3 I think in the normal case my preference would
4 be for someone, whether it is Jim or Bill or us, to hear
5 some more details about what is in their proposal and to
6 try and get a better understanding on how much it
7 differs from what we want to see done. There are a
8 number of areas where I think it is somewhat ambiguous
9 now and indefinite where it could come fairly close to
10 what we had in mind or it could be a fairly substantial
11 departure still. But I think this is a significant
12 enough and an extraordinary enough case that we probably
13 ought not to let this run on much longer.

14 I also think that whatever order we issue, if
15 they have got an alternative that they have every
16 opportunity during the 25 days to come in with their
17 alternative and to convince us that it does what we
18 think needs to be done if I read the various
19 formulations of the orders correctly.

20 CHAIRMAN PALLADINO: How does the suggestion
21 that somebody sit down with them fit with giving an
22 immediately effective show cause order?

23 COMMISSIONER ASSELSTINE: My feeling is that
24 this is an extraordinary case and therefore I don't
25 think we ought to take the additional time that would be

1 needed to enter into a negotiation with them to work out
2 the details of what they are proposing and see if they
3 would be willing to propose voluntarily all of the
4 essential elements that we think need to be
5 accomplished.

6 So for that reason I would say that we ought
7 to go ahead and issue an order and we ought to make it
8 immediately effective, recognizing that they then have a
9 period of time to come in with a counterproposal if they
10 want to.

11 COMMISSIONER AHEARNE: I would still go to a
12 show-cause order rather than immediate effectiveness.

13 MR. KEPPLER: Could I ask a question. Is your
14 proposal that you would issue the order before meeting
15 with them or after?

16 COMMISSIONER ASSELSTINE: Before. I would
17 issue the order and then they have a 25-day period to
18 respond to that order, and I gather, if past experience
19 is any indication, frequently what you get is some kind
20 of a counterproposal.

21 COMMISSIONER AHEARNE: Marty, correct me if I
22 am wrong. If we issue an order that says you must do
23 these things and they come in with a counterproposal and
24 it is less than what we had said in the order they must
25 do and we accept that, does that not give the intervenor

1 then a right to a hearing on whether or not what we
2 originally ordered them to do should not have been done?

3 MR. MALSCH: Yes.

4 COMMISSIONER AHEARNE: That is what I
5 thought. So I would argue that we ought to know what we
6 want done and ensure that the order is written in that
7 way.

8 COMMISSIONER ASSELSTINE: But that is true
9 whether it is an immediately effective order or
10 otherwise.

11 COMMISSIONER AHEARNE: Oh, absolutely. I just
12 wanted to point out that we ought to recognize when we
13 say we can go into a negotiation and then modify it that
14 that kind of a negotiation and modification is
15 certainly ---

16 COMMISSIONER GILINSKY: Well there are limits
17 on how far you can go without triggering the situation
18 you are talking about, but this is fairly flexibly
19 written.

20 COMMISSIONER AHEARNE: I wanted to ask a
21 question on that.

22 CHAIRMAN PALLADINO: Well, perhaps we ought to
23 hear what the staff has to say.

24 COMMISSIONER AHEARNE: We have a draft order
25 in front of us.

1 CHAIRMAN PALLADINO: Yes. I also think we
2 might want to give attention to the adaptation of a
3 South Texas approach.

4 COMMISSIONER AHEARNE: Well, I think you have
5 got your three votes for immediate effectiveness.

6 CHAIRMAN PALLADINO: Oh, I appreciate that.

7 COMMISSIONER GILINSKY: Let me understand,
8 John. My impression was that the order as written did
9 not reflect the position that you supported last time.

10 CHAIRMAN PALLADINO: Which, the revised order?

11 COMMISSIONER GILINSKY: There are two versions
12 here. I thought you were supporting the position that
13 made it effective in a certain number of days but it did
14 not require an additional order to end construction.

15 COMMISSIONER AHEARNE: I felt this was
16 approximately what I had asked for.

17 CHAIRMAN PALLADINO: Actually we really only
18 have one revised order, except that that you are showing
19 a comparison of the old and the new.

20 COMMISSIONER GILINSKY: Okay, right.

21 CHAIRMAN PALLADINO: If we were to go toward
22 an immediately effective order, there are a couple of
23 things I would keep from the old order and I think then
24 the revised order could be changed rather easily.

25 COMMISSIONER GILINSKY: That is right. There

1 are two kinds of changes. One was reordering the
2 paragraphs to describe what needed to be done and that I
3 don't think there is any question about here. Then
4 there are some word changes that affected the immediate
5 effectiveness.

6 MR. CUNNINGHAM: And there was another set of
7 changes to put the focus on management.

8 COMMISSIONER GILINSKI: Well, that is what I
9 was referring to earlier.

10 CHAIRMAN PALLADINO: But if we wanted to go
11 with the direction of making it immediately effective,
12 if we took the comparative text on page 14 and I think
13 if we remove the brackets and keep that statement, and
14 under Part 4 we would keep Item A and we would remove
15 the brackets from that. Those two places I think would
16 straighten it out.

17 I did have a question that even as written is
18 Item No. 3, does it really belong under the heading of
19 these are the things that the licensee is ordered to
20 do? I am sorry, maybe it is renumbered now.

21 COMMISSIONER AHEARNE: I think you are right.
22 You mean the Regional Administrator relaxing?

23 CHAIRMAN PALLADINO: Yes. It doesn't follow
24 that ---

25 COMMISSIONER GILINSKY: That is right. It

1 should not be numbered.

2 CHAIRMAN PALLADINO: It probably should be if
3 they are going to have an A and B, then that probably
4 should be C, but that is a minor point.

5 MR. MALSCH: Mr. Chairman, one other item. I
6 think you would want to reinsert the language on page
7 18, the bracketed language at the bottom of the
8 paragraph.

9 CHAIRMAN PALLADINO: What page is that?

10 MR. MALSCH: Page 18 of the comparative.

11 CHAIRMAN PALLADINO: All right. It is open
12 then for discussion.

13 COMMISSIONER AHEARNE: Let me ask a couple of
14 questions about the draft order, if I could.

15 MR. CUNNINGHAM: This is the one we sent down
16 on Wednesday.

17 COMMISSIONER AHEARNE: Yes. Is there a later
18 one?

19 MR. CUNNINGHAM: No.

20 COMMISSIONER AHEARNE: Page 8. I will just
21 refer to the marked-up copy.

22 MR. CUNNINGHAM: The comparative text.

23 COMMISSIONER AHEARNE: Page 8. This is not a
24 new term. About the 8th line down from the top you say
25 "The licensee failed to adequately address the

1 requirements of Reg. Guide 1.58. I wasn't aware that
2 reg. guides gave requirements.

3 MR. CUNNINGHAM: You are correct there.

4 COMMISSIONER AHEARNE: Do you mean that the
5 licensee had agreed to follow the reg. guide and now has
6 failed to adequately address it.

7 MR. CUNNINGHAM: You are correct that reg.
8 guide provisions are not requirements. I think,
9 nonetheless, that one has to either address those
10 provisions or come up with an alternative.

11 COMMISSIONER AHEARNE: Yes, but I am just
12 talking about the terminology. This says the
13 requirements of the reg. guide.

14 MR. CUNNINGHAM: Well, that can be taken care
15 of by changing that word to "provisions." But if your
16 question goes beyond that ---

17 COMMISSIONER AHEARNE: No, no, that was all.

18 MR. CUNNINGHAM: That is easily done.

19 COMMISSIONER AHEARNE: On page 15 at the top I
20 have two questions.

21 First, you would be requiring an independent
22 review of the management of the Zimmer project. Now I
23 gather that this independent review which we are
24 requiring has to be more than what they are proposing in
25 their letter.

1 MR. KEPPLER: I don't think the letter is
2 detailed enough to say that.

3 COMMISSIONER AHEARNE: Well, except it seems
4 to me their letter seems to imply that in three weeks
5 Bechtel is going to review their program and come up
6 with their conclusions and this is going to have an
7 independent review of the management, the quality
8 assurance program, the quality verification program and
9 then look at all these alternatives.

10 MR. KEPPLER: Well, we already know that even
11 CG&E's projects for the quality verification program
12 take them into the middle of next year and there were a
13 couple of tasks that had no case associated with them.

14 COMMISSIONER AHEARNE: Many of my questions
15 really have underlying concern that once we issue an
16 order with these statements in it, and as you all know I
17 am not a fan of hearings, and I think the way the order
18 is written it is going to lead to hearings because I
19 think once you issue this order then you are going to
20 find that you are going to want not to have done the
21 details that should be read into this and consequently
22 someone is going to have a justifiable case saying ah
23 hah, but that is not what you asked for and therefore
24 there is a hearing.

25 So I want to make sure it is clear what you

1 are asking for. I read No. 1 very similar to the kinds
2 of reviews that, for example, were done in South Texas,
3 the kind of review ---

4 COMMISSIONER GILINSKY: Are you talking about
5 the Quadrex review?

6 COMMISSIONER AHEARNE: Well, actually I
7 suspect it is even beyond that at a minimum. So I think
8 that it is a multi-month effort that you have embedded
9 in No. 1.

10 MR. DIRCKS: I think you are right and this
11 was a point we were trying to make the other day. There
12 is a compulsion here to get it right the first time
13 because you may not have another bite at the apple
14 unless you go through a hearing. That is why we were
15 talking about getting something going in the form of a
16 confirmatory order that we could work out beforehand.

17 COMMISSIONER AHEARNE: Well, that is not the
18 way the Commission is going.

19 MR. DIRCKS: I know it. I thought I would
20 just mention it.

21 COMMISSIONER AHEARNE: You say one of the
22 things this independent review is going to do is to
23 determine whether the management of the project is
24 adequate. It seems to me that much of the thrust of
25 their order we have reached the conclusion is not

1 adequate. Are you saying that the first thing you are
2 going to do is to require the licensee to get an
3 independent estimate of whether the NRC is correct so
4 that it is an acceptable answer that the management is
5 adequate.

6 COMMISSIONER GILINSKY: Well, I suppose you
7 can't leave out the possibility that they will come back
8 here and convince us that we were wrong.

9 COMMISSIONER AHEARNE: It just seemed a little
10 odd that we were asking for this independent review to
11 check on what we had already spent the first part of
12 this order saying was the case. Well, I had a lot of
13 problems with No. 1. I don't think that is the correct
14 thing to be asking for.

15 Let me go down. "We have introduced a copy of
16 the independent organization's recommendations and they
17 will be submitted to the Regional Administrator at the
18 same time they are submitted to the licensee." Have you
19 thought about the problem of drafts?

20 MR. CUNNINGHAM: No.

21 COMMISSIONER AHEARNE: The way this is
22 written, this only says that the Regional Administrator
23 is required to get the final set of recommendations. So
24 I gather you have concluded it is acceptable for this
25 independent group to be exchanging drafts with the

1 licensee. I am not saying it isn't. I just want us to
2 be explicit from the beginning.

3 MR. KEPPLER: I think I would want everything.

4 COMMISSIONER GILINSKY: I think it is
5 understood here that if there are drafts we will see the
6 drafts.

7 COMMISSIONER AHEARNE: It is not understood.
8 We have gotten ourselves in a lot of trouble in the past
9 because we are not clear on what we expect. This says
10 very explicitly a copy of the recommendations shall be
11 submitted.

12 COMMISSIONER GILINSKY: If they are making
13 recommendations, then I think we would want to see them.

14 CHAIRMAN PALLADINO: Jim, you had a comment.

15 MR. KEPPLER: I guess my view is that we would
16 want to see all exchanges.

17 COMMISSIONER AHEARNE: I think if you mean
18 that you ought to say it.

19 You have got "You consider at a minimum the
20 following alternatives." I am not sure why you are
21 including strengthening the present CG&E organization as
22 one of the alternatives you want to see at a minimum.
23 That could be an alternative that they might produce,
24 but my sense is that is not an alternative that you
25 really were proposing and I don't think many of us are

1 really interested in that as an alternative.

2 MR. DIRCKS: Do you want to not have that as
3 an alternative?

4 COMMISSIONER AHEARNE: We are asking for at a
5 minimum, consider at a minimum the following
6 alternatives. If they want to come back with that, that
7 is certainly within their right.

8 MR. DIRCKS: But couldn't you almost argue
9 that of all the alternatives this is the best one to get
10 because you want a company out there qualified with good
11 management to operate that plant.

12 COMMISSIONER AHEARNE: My sense is that the
13 staff isn't going to accept and I don't think the
14 Commission is going to accept if they came back in with
15 the alternative that they are going to just tighten up
16 their organization.

17 COMMISSIONER GILINSKY: Well, I would be
18 inclined to agree with you, John, but at the same time
19 it seems to me that you can't simply say we will not
20 listen to any plan which involves improving that
21 organization no matter what the plan is.

22 COMMISSIONER AHEARNE: That is true, but ---

23 COMMISSIONER GILINSKY: I know it says at a
24 minimum, but the gist of it is that I think it is a
25 matter of style really.

1 COMMISSIONER AHEARNE: The other issue I had
2 with respect to that section is I would have preferred
3 to have reporting to the Chief Executive Officer.

4 COMMISSIONER GILINSKY: Who is the Chief
5 Executive Officer?

6 MR. KEPPLER: Dickhoner. He is the CEO.

7 COMMISSIONER AHEARNE: Well, throughout here
8 in that section the alternatives being examined are
9 important to the senior management.

10 CHAIRMAN PALLADINO: I see, the Chief
11 Executive Officer.

12 COMMISSIONER GILINSKY: I would say the
13 Board.

14 CHAIRMAN PALLADINO: I think the Chief
15 Executive Officer would be a good substitution. The
16 Board ---

17 COMMISSIONER GILINSKY: Where were you?

18 COMMISSIONER AHEARNE: I was in No. 2, No. 3
19 and No. 4 of the alternatives.

20 COMMISSIONER GILINSKY: I would say a new
21 Executive Officer.

22 (Laughter.)

23 COMMISSIONER GILINSKY: That is probably the
24 most important change we could make.

25 (Laughter.)

1 MR. KEPPLER: I think one of the reasons we
2 wrote it the way we did is because we are really not
3 sure whether it may have to go above Dickhoner.

4 MR. DIRCKS: Well, if you go above you go to
5 the Board of Directors.

6 MR. KEPPLER: That is right.

7 COMMISSIONER GILINSKY: Senior management.

8 MR. KEPPLER: We allowed flexibility after
9 seeing what the best course of action was.

10 COMMISSIONER AHEARNE: This is a floor. At a
11 minimum you want to see these alternatives. The
12 difficulty I was having, just as I had with the
13 strengthening one, is I didn't want to give the
14 impression that this is really the direction. My view
15 was it ought to be someone reporting to the Chief
16 Executive Officer. Senior management, that really can
17 include people underneath the Chief Executive Officer.

18 COMMISSIONER GILINSKY: That is right, but to
19 be frank I think Dickhoner is a very, very large part of
20 this problem and by singling him out as the person who
21 is going to approve a report, I don't know. We seem to
22 be propping him up and I am reluctant to do that. In
23 some ways we might end up being better off, if one does
24 go in this direction, if they got some hot-shot new
25 person in in something less than a presidential

1 position. I guess I would be inclined to leave it a
2 little more flexible.

3 CHAIRMAN PALLADINO: You mean you would leave
4 senior management in there instead of Chief Executive
5 Officer?

6 COMMISSIONER GILINSKY: It ends up being
7 subject to our interpretation anyway and we are going to
8 have to agree to some arrangement.

9 CHAIRMAN PALLADINO: I don't know what senior
10 management means. How senior is senior management?

11 COMMISSIONER GILINSKY: Well, you put "to the
12 top management." You can even put in Chief Executive
13 Officer I suppose.

14 COMMISSIONER ASSELSTINE: The CEO is the
15 logical person.

16 CHAIRMAN PALLADINO: Yes, I think the CEO is
17 the logical person.

18 COMMISSIONER GILINSKY: He is certainly in the
19 right position.

20 COMMISSIONER ASSELSTINE: Yes, that is right.

21 CHAIRMAN PALLADINO: I think you raise some
22 worthwhile points, John. In Item No. 1 let me see if
23 something like this would fix it. Rather than say "To
24 determine whether the management of the project is
25 adequate," say "To determine measures needed to assure

1 that construction of Zimmer can be completed in
2 conformance," et cetera.

3 COMMISSIONER AHEARNE: That would be much
4 better.

5 COMMISSIONER ASSELSTINE: Yes.

6 CHAIRMAN PALLADINO: Then there is one about
7 the independent organization's recommendations. Someone
8 suggested exchange. I don't know if this would work.
9 "A copy of each exchange on the independent
10 organization's recommendations shall be submitted to the
11 Regional Administrator at the same time it is submitted
12 to the licensee." I don't know whether we have to
13 include other material, but something like that would
14 fix it up. I lean toward the Chief Executive Officer.
15 He is the one that is responsible.

16 COMMISSIONER GILINSKY: Yes, that is certainly
17 the right position. I have to agree with that.

18 CHAIRMAN PALLADINO: I would like to hear
19 comments others than those we have gotten on immediate
20 effectiveness. I would like to hear yours and Tom's and
21 the staff's.

22 COMMISSIONER AHEARNE: Could I just ask, Joe,
23 if you look at this in comparison with what CG&E has
24 proposed, there are two major differences in what they
25 have proposed and what we are asking as far as I see it.

1 One is they had proposed not to stop work.
2 They talk about stopping the rework, but nevertheless
3 they also talk about they don't want to lay off the
4 1,500 people. So consequently I have to conclude they
5 are continuing much of their work. So that is one big
6 difference.

7 The second big difference is they are not
8 going to do this independent evaluation.

9 COMMISSIONER ROBERTS: Doesn't that paragraph
10 address that, not in any specificity, but it says
11 that ---

12 CHAIRMAN PALLADINO: Which one is it, Tom?

13 COMMISSIONER ROBERTS: Page 2 of their
14 proposal, the third paragraph. I mean I agree it
15 doesn't give a lot of detail, but isn't this a third
16 party?

17 COMMISSIONER AHEARNE: This is a third party
18 to confirm the acceptability of selected safety
19 systems. I am talking about the first step of our order
20 which talks about getting an independent group to assess
21 what changes have to be made to the management.

22 Is it correct that what we are asking them to
23 do is to hire someone, and by their description it could
24 just as well be Bechtel, to say, first, before you
25 propose your solution, which apparently they are working

1 on, examine all these other alternatives. Is that what
2 you had in mind?

3 CHAIRMAN PALLADINO: They don't look at the
4 independent review of present management, nor do they
5 provide the opportunity for NRC to confirm after review
6 the comprehensive plan that new work and rework will
7 proceed in an orderly manner consistent with the
8 Commission's regulations.

9 COMMISSIONER AHEARNE: That second part I
10 think is less likely to be a difference. I think the
11 first one is going to be a major difference.

12 CHAIRMAN PALLADINO: Then they have no
13 stoppage of new work.

14 COMMISSIONER ASSELSTINE: But they have a
15 limit on new work?

16 CHAIRMAN PALLADINO: What is that?

17 COMMISSIONER ASSELSTINE: Did you say new work?

18 CHAIRMAN PALLADINO: Yes. They don't stop new
19 work.

20 COMMISSIONER CILINSKY: Do you know how the
21 activities break down, and we have talked about this
22 before, at the site. The bulk of it is new work, isn't
23 it?

24 MR. KEPPLER: I have heard it expressed both
25 ways, but I think the bulk of it is new work.

1 COMMISSIONER GILINSKY: Or half and half.

2 MR. KEPPLER: No, I think the bulk of it is
3 new work. The major work that was going on on the
4 rework in the quality confirmation program was in the
5 structural steel welding area. But I know there is a
6 massive effort underway on installation of hangers and
7 TMI type rework.

8 CHAIRMAN PALLADINO: And your feeling, at
9 least if I understood your feeling, it was pretty strong
10 that the new work should stop as well as the old work.

11 MR. KEPPLER: I think at least until you
12 determine all of the suspect areas of the plant so that
13 you are not doing work that will have to be redone later.

14 COMMISSIONER AHEARNE: But I think, as we also
15 pointed out last time, that was not because you believed
16 that there is a safety hazard, that you are sure there
17 is a safety hazard associated with that.

18 MR. KEPPLER: That is correct.

19 COMMISSIONER ROBERTS: You are sure there is a
20 safety hazard?

21 MR. KEPPLER: No, I am not.

22 COMMISSIONER AHEARNE: No, he is not.

23 COMMISSIONER ROBERTS: Well then I don't see
24 how we can shut them down.

25 CHAIRMAN PALLADINO: Well, on the basis

1 that ---

2 COMMISSIONER ROBERTS: I believe that is the
3 wrong attitude. I am sorry, but I feel that very
4 strongly.

5 CHAIRMAN PALLADINO: But we are headed in a
6 direction where we have no assurance that they are going
7 to build this plant right.

8 COMMISSIONER ROBERTS: Whether they build it
9 right or not, we will have to make an ultimate
10 determination. The fact that they are going out and
11 doing stupid things is none of our concern.

12 CHAIRMAN PALLADINO: Well, that has not been
13 the precedent that we set in other actions in the past.

14 COMMISSIONER AHEARNE: We had I think a much
15 stronger case in the past that the actions that were
16 about to be taken were ones that would be much more
17 difficult to handle.

18 CHAIRMAN PALLADINO: Well, we are not sure
19 that some of the actions taken here ---

20 COMMISSIONER GILINSKY: They are more
21 thorough-going and far-reaching than in any other plant
22 that I am familiar with.

23 COMMISSIONER AHEARNE: That is certainly true,
24 Vic, but much of that, if not a large bulk of it, has
25 already passed. The only question is are we giving the

1 immediate effectiveness for the symbolic value or for
2 the safety value? I believe in the past the issues
3 where we put on the immediate effectiveness was for the
4 safety value and I believe that this time it is more for
5 the symbolic value.

6 COMMISSIONER ROBERTS: There is no doubt in my
7 mind that I agree with that. It is punitive.

8 CHAIRMAN PALLADINO: I don't see what is
9 different here from the other cases.

10 COMMISSIONER AHEARNE: In Midland, for
11 example. As was pointed out at the time they were going
12 to start pouring concrete over the welds. So clearly
13 that was a significant difference from where we are
14 here, or at least I think so.

15 COMMISSIONER GILINSKY: Well, that certainly
16 applies to the rework.

17 COMMISSIONER ASSELSTINE: I would like to ask
18 both Jim and Harold if given the extensive amount of
19 rework that is now going on as well as the new work and
20 our uncertainties about and in fact our doubts about
21 whether that work is being done properly, whether the
22 kinds of activities that are going on there in both of
23 those areas don't create the clear potential in this
24 case to have an adverse impact on the safety operation
25 of those systems and components throughout the plant?

1 I mean, Harold, the last time you were here
2 you mentioned that very concern, that given the patch-up
3 nature of going back in and ripping things out and
4 putting new things in that the consequence of that would
5 be to end up with a patched-up plant where you would
6 have a less safe plant as a result of that kind of
7 rework activity.

8 MR. DENTON: I was going to let Jim answer it
9 first, but since you ask. I think it goes back a bit to
10 what we talked about last time. Our process for
11 inspection and review sort of assumes that the process
12 is under control and they aren't making many errors and
13 therefore you have a fair chance of catching on and
14 being sure that the minor things you want to do can be
15 done.

16 I think my recommendation was more along the
17 line that this is an undocumented plant. It is true
18 there is no health and safety problem today. There is
19 no radioactive materials on site. But with the
20 description of what is going on my concern was that
21 there would be a number of modifications made and
22 because of the extent of the modifications they are
23 making we may never get an adequate review of how they
24 are doing in these various areas unless we put a stop on
25 it now and make sure the process that oversees them is

1 properly working.

2 I don't think we would ever be able to with
3 inspectors and reviewers to properly audit all the
4 rework going on. So it was more of the confidence that
5 we would have when we got to the end of the line and did
6 we understand what was there. That is why I wanted to
7 get something in process soon that would provide that
8 confidence.

9 MR. KEPPLER: I think when you look at the
10 large amount of this plant that is of an indeterminate
11 quality right now, I would sooner see work only go on in
12 those areas where you know there aren't questions about
13 the material adequacy, welding adequacy or any other
14 concerns that you may have and put the burden on the
15 licensee to show that rework won't have to be redone
16 again later.

17 Whether you make the case that that should an
18 immediately effective consideration or not, I dont know,
19 but that is the basis that I was coming from.

20 COMMISSIONER GILINSKY: Well, it certainly
21 shifts the burden or proof, so to speak, and one is more
22 likely to end up with a satisfactory program.

23 COMMISSIONER ASSELSTINE: I guess I would
24 think that Tom and John are right that if we don't have
25 the sense now that the kinds of activities that are

1 going on are likely to have an adverse impact on our
2 ability to determine that that plant is built safely and
3 will run safely and we can't make that kind of a
4 judgment now, then we ought not to impose the
5 immediately effective order. What probably we ought to
6 do instead is say if construction goes on the way it is
7 going on now there is no way in the world this
8 Commission can ever issue a license for that plant
9 because it will never be able to determine it was built
10 right.

11 COMMISSIONER AHEARNE: I doubt it. That is
12 probably too stark, the "never."

13 COMMISSIONER ASSELSTINE: If the work goes on
14 without our ability to monitor it and given assurance
15 that it was done right, how can we later on determine
16 that it was built right?

17 COMMISSIONER AHEARNE: I would guess that
18 since so much of it has already been built, the question
19 on our being able to make an adequate finding is going
20 to depend upon the reverification and the review of
21 everything that is there much more than the final steps
22 that are still to be done. It is still going to be
23 difficult to make that final decision, but I would
24 believe that if we do come out for immediate
25 effectiveness, I think that you ought to have something

1 clearer in the order explaining why immediate
2 effectiveness is needed. Probably legally you don't
3 need it, but it might answer our questions.

4 COMMISSIONER ROBERTS: You legally don't need
5 it?

6 MR. CUNNINGHAM: I think we would be well
7 advised legally to put it in there. I think that the
8 arguments that Harold and Jim Keppler just articulated
9 indicate that the reason is not health and safety but
10 public interest, which is one of the three permissible
11 grounds of this procedure.

12 (Laughter.)

13 COMMISSIONER ROBERTS: You are going to be put
14 1,500 people out of work, is that public interest? My
15 God!

16 MR. KEPPLER: That 1,500 number is misleading.

17 COMMISSIONER ROBERTS: I understand that, but
18 there is some number.

19 MR. KEPPLER: Yes.

20 MR. DIRCKS: What I don't understand is ---

21 COMMISSIONER ROBERTS: I can't square that
22 with the public interest. I am not attacking you.

23 MR. DIRCKS: --- if we are concerned about
24 rework on the quality confirmation program, but moreover
25 we are concerned about all new work ---

1 COMMISSIONER AHEARNE: That is right.

2 MR. DIRCKS: But why then aren't we concerned
3 about it now under the quality confirmation program and
4 why haven't we been concerned about it? Why haven't we
5 just taken this new work and lumped it into the quality
6 confirmation program? If we are concerned about it now,
7 why weren't we concerned about it a month ago?

8 COMMISSIONER ASSELSTINE: We were concerned
9 about it because we had a hundred percent
10 reverification, our reverification program on it.

11 MR. DIRCKS: But then if the argument is stop
12 rework, that is fine, but is this argument about new
13 work?

14 CHAIRMAN PALLADINO: Well, we haven't seen the
15 program that will assure that the new work is going to
16 be done properly.

17 MR. DIRCKS: But if we are so unsure of the
18 new work now why haven't we pulled that in under the
19 quality confirmation program.

20 COMMISSIONER GILINSKY: You know, that is a
21 good question and we might well look into that, but that
22 doesn't argue in this case for an action.

23 MR. DIRCKS: Well, it was just a passing
24 thought.

25 (Laughter.)

1 COMMISSIONER GILINSKY: Well, we can come back
2 to it.

3 MR. KEPPLER: I guess I don't follow the
4 question then.

5 COMMISSIONER GILINSKY: What I am saying is we
6 are being consistent here.

7 MR. DIRCKS: If we say that we want to, and
8 maybe I am arguing against my own position here, but the
9 thought occurred to me ---

10 (Laughter.)

11 MR. DIRCKS: --- if we are concerned that we
12 are not satisfied with just stopping the rework under
13 the quality confirmation program, but we want to stop
14 all work, now why haven't we been concerned about this
15 work that has not been under the quality confirmation
16 program? Why haven't we lumped that into the quality
17 confirmation program.

18 MR. KEPPLER: Well, we were following that
19 work and that work was being controlled by the
20 conditions of the immediate action letter that was
21 issued in April of 1981. What has questioned our
22 confidence in that was the recent work being done by
23 Catalytic that resulted in a stop-work order down
24 there.

25 I think this whole order has evolved from a

1 series of things and not just any one thing. It has
2 been a series of questions concerned with the findings
3 from the quality confirmation program, that fact that
4 rework has been going on with it and the fact that the
5 whole complexity of the job has I guess contributed to
6 more mistakes being made currently with the job. It is
7 the totality of the events that brought about this thing.

8 COMMISSIONER GILINSKY: Well, what I remember
9 you saying, Jim, last time or the time before was that
10 of all the things you would have expected to have been
11 done right was the Catalytic work which was closely
12 watched and covered by all sorts of instructions and so
13 on. When that turned out not to be right, then that
14 threw into question all sorts of other ---

15 MR. DIRCKS: I suppose in the logical world
16 the next step would have been to take the work under the
17 Catalytic contract and throw it under ---

18 MR. KEPPLER: That is right. In fact, we were
19 already ---

20 CHAIRMAN PALLADINO: What?

21 MR. DIRCKS: The next step, if we hadn't moved
22 in this direction, the next step would have been to take
23 that work under the Catalytic contract and put it under
24 the quality confirmation program.

25 MR. KEPPLER: The fact of the matter is we

1 were moving in a direction that was probably going to
2 result in stoppage of all ongoing work. I had an
3 enforcement conference with CG&E regarding the Catalytic
4 work and the outcome of that meeting resulted in some
5 differing opinions as to the seriousness of some of the
6 problems and we were moving in that direction when all
7 of this unfolded. So I think we were headed in the
8 direction of moving toward a stop-work order anyway.

9 MR. DENTON: It is true that most of the work
10 has been done, but I guess among the things your
11 inspector mentioned, Jim, that bothered me was the
12 possibility that they could not confirm the quality of
13 the primary system welds, for example, and they may have
14 to redo it all over again. I think that may require our
15 review before we let them proceed.

16 So that seemed clear to me that where they
17 were not building the plant in accordance with the way
18 we would normally think plants are built, that they
19 considered cutting out all those welds and putting in
20 spool pieces or redoing it however they did it, was a
21 major enough design change that we ought to be involved
22 in the review of that.

23 If the ongoing work is being done completely
24 in accordance with the present design and you were sure
25 of the quality of it, there would be a basis for

1 excluding the ongoing remaining work.

2 COMMISSIONER GILINSKY: And this order allows
3 for phasing that back in if Jim is satisfied that it is
4 going to be done right and it is not going to interfere
5 with other things.

6 MR. KEPPLER: Yes, I think the order permits
7 the flexibility.

8 CHAIRMAN PALLADINO: One other item I had
9 asked you to look at was your suggestion that maybe an
10 approach somewhat like that taken in South Texas would
11 do anything different or better for us.

12 MR. DIRCKS: We wanted to make sure that the
13 Commission knew that the order we sent down on November
14 10th wasn't going to get them to the South Texas
15 situation. If you wanted to go the South Texas route,
16 Guy Cunningham has put together some alternate language
17 to get you there.

18 CHAIRMAN PALLADINO: Well, I was wondering
19 what the pros and cons were.

20 COMMISSIONER GILINSKY: Well, let's see, what
21 do you mean by the South Texas route?

22 MR. CUNNINGHAM: The South Texas order was an
23 immediately effective order that said 90 days from now
24 you will stop construction unless in the meantime you
25 have done the following. They could come in and ask for

1 a hearing, but they were going to shut down on the 90th
2 day regardless of that hearing as opposed to this order
3 which says you shut down the day the order is issued.

4 The problem with writing that kind of an order
5 or translating the November 10th draft to that kind of
6 an order is that the 1, 2 and 3 items we have required
7 could take as long as a year or more and what date would
8 you put in there.

9 COMMISSIONER GILINSKY: Right.

10 MR. CUNNINGHAM: We have taken a crack,
11 however, at a type of order which modifies those items
12 1, 2 and 3 to require them to come up with a plan, and
13 if they don't have a satisfactory plan in "X" days, then
14 they will be shut down.

15 COMMISSIONER GILINSKY: You know, we talk
16 about South Texas. It is my impression that the
17 problems in South Texas were far, far smaller than what
18 we are talking about here, that the principal
19 difficulties were not so much the failures in QA, but
20 you had an architect/engineer that simply wasn't able to
21 do the design work that he was supposed to do and wasn't
22 getting anywhere.

23 What impression do you have?

24 MR. DENTON: It seems to be the reverse from
25 the South Texas case in that South Texas was mainly a

1 design control breakdown that they couldn't show that
2 they were designing it properly. Here is a breakdown at
3 the site of attempts to construct it to a proper design.

4 COMMISSIONER GILINSKY: Right.

5 COMMISSIONER AHEARNE: I recall there was one
6 other thing in South Texas. It was an earlier stage in
7 the project and it was clear that the QA inspectors were
8 not being allowed to do their job and that that was the
9 triggering cause for the NRC to intervene into the South
10 Texas construction project. It was an early stage of
11 construction and clearly the QA people were not being
12 allowed to be QA people and basically we stepped in to
13 ensure that they could.

14 MR. DIRCKS: I think that is the point. I
15 think what we are talking about here is a more massive
16 intervention at a much later date.

17 COMMISSIONER GILINSKY: To deal with a much
18 more difficult problem. I also got the impression, and
19 now of course I saw them at a later point in their
20 get-well program, that Houston Lighting and Power had a
21 more positive attitude toward it all. I don't know how
22 they were earlier when they were just uncovering the
23 problems.

24 COMMISSIONER AHEARNE: Remember they
25 essentially stopped work for a year.

1 COMMISSIONER GILINSKY: Yes, they got in a
2 vice president. They hired somebody from Stone and
3 Webster who was a pretty solid character and they gave
4 him a free hand at really taking a look at everything
5 and he brought in an outside contractor and really
6 leaned over backwards to give them complete freedom.

7 COMMISSIONER AHEARNE: But I think we ought to
8 remember he was in an earlier stage of the project, too.

9 COMMISSIONER GILINSKY: That is true.

10 COMMISSIONER ASSELSTINE: But given the scope
11 of the rework activities and even the ongoing new
12 construction activities, I am not sure that the
13 potential for further damage to the plant is any less
14 here than it was in South Texas because if you don't
15 have any confidence that the rework is being done right
16 or that the ongoing work is being done right, it seems
17 to me that you have got the very same potential for
18 damage.

19 COMMISSIONER GILINSKY: I certainly think so
20 in absolute terms. I think what John is saying is that
21 percentage-wise so many bad things have happened that if
22 you go on, however much you add to the problems, it may
23 not be a big percentage of what has already happened,
24 and possibly that is right, but I don't think you can
25 look at it in these sort of percentage terms. There may

1 be a . . . of work that needs to be done right which will
2 just not get done right or will get done in a way that
3 will be unanalyzable.

4 COMMISSIONER AHEARNE: I guess what I am
5 trying to do is to balance this, as I did at the South
6 Texas time, as to what are the changes that have to be
7 made in the way the project is being completed and what
8 is the probability of that change being made in a
9 reasonable time, depending upon the type of order.

10 In the South Texas case I reached the
11 conclusion that it had to be immediate effectiveness to
12 get that. In this case I don't think it is, and
13 therefore I can't reach in my own mind the judgment to
14 justify the immediate effectiveness. I think in the
15 final analysis it is going to be a judgment, and my
16 conclusion is I can't reach that judgment. I agree with
17 Guy that one would have to rest it on the public
18 interest finding and I couldn't reach that in this case.

19 CHAIRMAN PALLADINO: What were the pros and
20 cons or the benefits and the downside of the South Texas
21 approach?

22 MR. CUNNINGHAM: The biggest downside I think
23 is determining how much time you are going to give them
24 and what they have got to do within that . . . me. The pro
25 of course is that you do build in a firm date by which

1 if they haven't done it then they do stop which is of
2 course not the case with the order we sent out on
3 November 10th. If they ask for a hearing, we don't have
4 any shutdown until that hearing is completed.

5 COMMISSIONER GILINSKY: Well, I think you are
6 going to get put in the same position again on the
7 immediate effectiveness. Suppose we say it is to be
8 effective at some point. Well, what difference again
9 does it make whether it is another week or another two
10 weeks at that point?

11 CHAIRMAN PALLADINO: It could keep the people
12 working and it might get them more cooperative with the
13 management to try to come up with a solution.

14 COMMISSIONER GILINSKY: Well, I would think
15 that it is more likely that CG&E will really scramble
16 hard to come up with a plan very soon that allows us to
17 continue at least part of the work with an immediately
18 effective order, but we will also be in a position of
19 having to explain why we shut it down at that later
20 point when it wasn't necessary to shut down at the
21 earlier point.

22 COMMISSIONER ASSELSTINE: That is right.

23 CHAIRMAN PALLADINO: Well, I wanted to bring
24 it out because we had asked specifically for you to look
25 at that.

1 There is one other question that I don't know
2 if it impacts or not, but there was some other
3 allegation on the existence of a document for which we
4 are supposed to get an answer I think by the middle of
5 next week. I don't know if that affects what we want to
6 do or not.

7 COMMISSIONER AHEARNE: I think OI had
8 something to say on that. Bill Ward is here.

9 MR. WARD: Yes, sir, I can provide some
10 information on that. As all of you were briefed as part
11 of our ongoing investigation the team has been in the
12 Cincinnati area all week.

13 CHAIRMAN PALLADINO: I am sorry, I missed that.

14 MR. WARD: Our investigative team has been in
15 Cincinnati all week, sir, and in midweek of an evening
16 they interviewed one individual who indicated that this
17 report that allegedly was withheld from the NRC during
18 the July 9th meeting in fact was extant and would be
19 withheld from the NRC's 50.54F letter which was crafted
20 to obtain that document.

21 Since then information has changed as it is
22 wont to do during ongoing investigations. We have
23 interviewed a second person who was in a position to
24 know who said yes, the document existed. It was in the
25 possession of the Kaiser representatives during the July

1 9th meeting, but was not asked for by the NRC nor
2 provided to them. It was, however, allegedly hand
3 carried to the resident inspector and provided to him on
4 the 12th of July.

5 We have not verified that the resident
6 inspector took this ---

7 CHAIRMAN PALLADINO: You say you have now or
8 not?

9 MR. WARD: We have not verified that the
10 resident inspector took this, but we believe this to be
11 the truth.

12 To further complicate this, just prior to our
13 meeting here today and discussions with Region III, it
14 is the belief of the region that they do in fact possess
15 the report. Perhaps Mr. Warnick or Mr. Keppler can
16 expand more fully on that. I can't.

17 (Laughter.)

18 CHAIRMAN PALLADINO: Region III has the report?

19 MR. WARD: Yes, sir, and I think that the
20 confusion is probably the nomenclature of this document,
21 but I believe we are talking about the same report.

22 Mr. Warnick.

23 MR. WARNICK: What we have got is a list of
24 documents that we have reviewed in our follow-up to the
25 welder qualification issue, and one of the things that

1 our people looked at was a line item which we called
2 Henry J. Kaiser QA Document Review Group Welder Status
3 Log which is about 170 pages in length.

4 It was on our basis of review of this status
5 log that we told CG&E that these people were not
6 qualified and we made them to back and requalify their
7 people.

8 Now we have told Henry Myers that we have
9 looked at these records and he indicated that there was
10 some other report, a book that was different than what
11 we had looked at. So that was why we issued the 50.54.F
12 request to CG&E asking for all the information they
13 had. Now I still don't know in my own mind what Henry
14 Myers was asking about was what we looked at.

15 COMMISSIONER GILINSKY: Is that the allegation
16 that Mr. Ward just referred to?

17 MR. WARNICK: Yes.

18 MR. WARD: We believe we are talking about the
19 same document. The document we are looking for or
20 talking about is characterized as being 167 pages in
21 length, having been the work product of 15 people
22 working two weeks straight, 12 hours a day, including
23 weekends. That appears to jibe with the description of
24 the document that Mr. Warnick just referred to.

25 COMMISSIONER AHEARNE: Did OI ask Henry Myers?

1 MR. WARD: Yes, sir. Mr. Myers has been in
2 contact with Mr. Gilbert quite often.

3 COMMISSIONER AHEARNE: OI has asked him for
4 the description of the document that he is referring to?

5 MR. WARD: Yes, sir, and it appears to
6 coincide with the 167-page document we are talking about.

7 CHAIRMAN PALLADINO: Did you ask him if he has
8 a copy of it?

9 MR. WARD: He denies having a copy of it. It
10 was one of the people who evidently was supplying
11 information to him who was the first person we
12 interviewed this week which resulted in the telephone
13 calls which you received on Wednesday night. So we have
14 talked to two different people in our investigations who
15 have seen the document who may have largely discovered
16 we already know about.

17 CHAIRMAN PALLADINO: So that may be a
18 non-problem.

19 MR. WARD: This may well be the case. The
20 characterization of its contents appears to be the same
21 as Mr. Warnick just indicated. It is characterized to
22 us as saying that better than half of 570-off welders
23 had some "problems" with their certifications or
24 qualifications and beyond that I have no further
25 information regarding it.

1 MR. KEPPLER: It is hard for me to react to
2 this instantaneously, but we have had several
3 discussions with Henry Myers regarding a document that
4 purportedly said that CG&E and Kaiser were aware that
5 unqualified welders were in fact working at the site.
6 We talked to Henry Myers about all the documents that we
7 had. So I am not convinced at this moment whether this
8 is or isn't the same document because our people looked
9 at what they had and at least on the face of it did not
10 conclude that they were being deceived.

11 In Henry Myers' view from what he had heard he
12 thought it was a straightforward issue. So I think
13 there is something to unravel here.

14 MR. WARD: Sir, one further piece of
15 information is that it is our understanding that they
16 will provide a copy of it along with the 50.54F response
17 basically saying well, we gave it to you once and here
18 it is again.

19 MR. KEPPLER: Just an added reaction on this.
20 There are many allegations that relate to potential
21 wrong-doing on the part of the utility and/or its
22 contractors. I would urge that the Commission would
23 take this action independent of those and anything new
24 that came up we would deal with it as it unfolded.

25 CHAIRMAN PALLADINO: That would be my stance.

1 MR. KEPPLER: If there was evidence of
2 wrong-doing, then we would take action accordingly at
3 that time.

4 CHAIRMAN PALLADINO: Aside from the question
5 of immediate effectiveness and those points that were
6 brought out, does the rest of the order seem okay to you?

7 COMMISSIONER AHEARNE: Marty, let me just
8 check one other point. On page 17, Section 3, "The
9 Regional Administrator may relax all or part of the
10 conditions for resumption of specified construction
11 activities." If the Regional Administrator does relax
12 any of those, does that also trigger the hearing right?

13 MR. MALSCH: No, I think that is a special
14 provision. We are talking about lifting immediate
15 effectiveness. I think whatever he does regarding
16 lifting immediate effectiveness doesn't have any effect
17 on hearing rights.

18 COMMISSIONER GILINSKY: On that point, whether
19 it is written into the order or not, I would like us to
20 agree that you would let us know before taking any grand
21 action.

22 CHAIRMAN PALLADINO: What did you say?

23 COMMISSIONER GILINSKY: I said whether it is
24 written into the order or not, I would like us to agree
25 that Jim will let us know of any important actions he is

1 about to take.

2 CHAIRMAN PALLADINO: I wouldn't mind writing
3 in there with timely notice.

4 COMMISSIONER AHEARNE: Marty, you point is
5 that the Regional Administrator may allow certain parts
6 of the construction to start and that would not by
7 itself trigger a hearing right?

8 MR. MALSCH: That is right, and we have taken
9 that position before in other cases.

10 COMMISSIONER ASSELSTINE: So that if we stuck
11 by the principal elements in Section 4 and the utility
12 was prepared to do those elements, then the Regional
13 Administrator would retain the authority to allow, for
14 example, ongoing work to continue after a certain point
15 in time and that wouldn't trigger a hearing?

16 MR. MALSCH: That is right. It wouldn't take
17 away hearing rights either, but it wouldn't have any
18 effect one way or the other.

19 COMMISSIONER ASSELSTINE: If the utility can
20 then come in and convince us then in this 25-day
21 period ---

22 MR. KEPPLER: I would hate to get in the
23 posture of having to come back on ever single change and
24 the Commission has to approve it.

25 COMMISSIONER GILINSKY: No, no, that is why I

1 didn't say approval. I just would like you to inform us.

2 CHAIRMAN PALLADINO: I think on major
3 relaxations it would be appropriate for you to let us
4 know. I don't want to set up a situation where you have
5 to consult with us on every one because if you let us
6 know in a timely way and we don't like it you will hear
7 the noise.

8 (Laughter.)

9 COMMISSIONER ROBERTS: If the Commission were
10 to issue a confirmatory order spelling out all these
11 things that we require, would that accomplish your
12 purposes? Would you feel comfortable with that?

13 MR. KEPPLER: Confirming what?

14 MR. DIRCKS: Confirming the elements of the
15 CG&E letter?

16 COMMISSIONER ROBERTS: Yes.

17 MR. DIRCKS: If after we pin down the details
18 of what they are offering and we could establish what
19 they are offering is what we want, yes, that would meet
20 our needs.

21 MR. KEPPLER: It would be acceptable.

22 COMMISSIONER ASSELSTINE: But it is clear you
23 can't do that now on the basis of this letter, isn't it?

24 MR. KEPPLER: That is correct.

25 CHAIRMAN PALLADINO: That would take a

1 considerable amount of time.

2 MR. DIRCKS: I don't know. I don't think it
3 would ---

4 COMMISSIONER ROBERTS: It wouldn't take a
5 considerable amount of time.

6 MR. DIRCKS: I don't think I would negotiate.

7 MR. KEPPLER: It would take a meeting.

8 MR. DIRCKS: Yes, one meeting.

9 COMMISSIONER ROBERTS: To me that would
10 certainly be a more acceptable procedure.

11 COMMISSIONER ASSELSTINE: What is your feeling
12 about that, Jim?

13 MR. DIRCKS: Yes, Jim, what is your feeling?

14 (Laughter.)

15 MR. KEPPLER: That was my preference in the
16 first place. I will come back to my old soapbox here,
17 but I guess to me that got the utility more into the act
18 and it got rid of the question of the immediately
19 effectiveness of it because I would just make it
20 immediately effective with them.

21 CHAIRMAN PALLADINO: Say that again.

22 MR. KEPPLER: I would just have them agree to
23 the immediate effectiveness.

24 COMMISSIONER ASSELSTINE: In other words, an
25 essential precondition of any proposal that they made

1 would be an absolute halt at the outset to all
2 construction work.

3 MR. KEPPLER: That is correct.

4 COMMISSIONER ROBERTS: Well, that is not in
5 their proposal.

6 COMMISSIONER ASSELSTINE: That is right.

7 (Laughter.)

8 COMMISSIONER ROBERTS: But you believe they
9 would agree to that?

10 MR. KEPPLER: I think they would agree to most
11 anything.

12 MR. DIRCKS: I think they would agree with
13 some sort of a staged resumption based on some clearance
14 from the NRC.

15 MR. DENTON: I think if you were going that
16 way they would agree to not proceed with either rework
17 or new work until this new party, Bechtel, had concurred
18 that it could be done with due regard to safety and not
19 foreclosing other repairs and that kind of thing and you
20 would kind of move the burden over then to this new
21 group to assure that all new things flowed through them
22 and they could stage at whatever made sense if you
23 wanted to go that way.

24 CHAIRMAN PALLADINO: Any other items we should
25 discuss before asking for a vote?

1 COMMISSIONER AHEARNE: I have two questions
2 which don't necessarily relate to the order but relate
3 to Zimmer.

4 CHAIRMAN PALLADINO: All right. Do you want
5 to take them up now?

6 COMMISSIONER AHEARNE: It doesn't make any
7 difference to me.

8 COMMISSIONER ASSELSTINE: I have one more
9 question on the order.

10 CHAIRMAN PALLADINO: All right, go ahead.

11 COMMISSIONER ASSELSTINE: On page 13 of the
12 comparative text the new item 3 which was essentially
13 the old item 4 in the middle of the page.

14 CHAIRMAN PALLADINO: Which page?

15 COMMISSIONER ASSELSTINE: On page 13.

16 CHAIRMAN PALLADINO: Of the comparative or the
17 new one?

18 COMMISSIONER ASSELSTINE: The comparative.

19 It seemed to me that the key point in No. 3
20 was not just that the rework under the quality
21 confirmation program has been undertaken before all the
22 quality confirmation program has been completed because
23 in fact that has been the operating mode ever since the
24 quality confirmation program has really been underway
25 and certainly over the past several months that there

1 has been rework at the same time other elements of the
2 quality confirmation program were underway.

3 It seemed to me it was that fact in
4 combination with the continuing pattern of deficiencies
5 in rework and in new construction work, particularly the
6 deficiencies in the Catalytic work. Would you agree,
7 Jim? It would seem to me that that was the fundamental
8 element and it was not simply that rework was being done
9 at the same time that the quality confirmation program
10 was going on because if you had assurance that that
11 rework was being done properly it doesn't seem to me
12 that that would be a problem.

13 The difficulty comes in in that you have
14 rework going on while the quality confirmation is
15 proceeding and you have evidence that there are
16 continuing deficiencies in the rework itself.

17 MR. KEPPLER: I think that this was expressed
18 this way because if you take the rework that is going on
19 in the structural steel area, the welding work, that is
20 being done before the issue of traceability of
21 structural steel has been completed and because the
22 qualification of welders issue has not been completed.

23 So if it turns out that you have a serious
24 question with respect to the material involved or to the
25 welding work involved, you may have to redo that again.

1 COMMISSIONER ASSELSTINE: Okay. Then I just
2 misunderstood what the point was.

3 CHAIRMAN PALLADINO: Were you through, Jim?

4 COMMISSIONER ASSELSTINE: Yes.

5 CHAIRMAN PALLADINO: This order is one which I
6 gather the Commission is signing off on. Is there any
7 advantage or disadvantage to going that way as opposed
8 to having the staff do it?

9 (Laughter.)

10 COMMISSIONER GILINSKY: I think they came in
11 with one set of recommendations and we modified them and
12 I we have to take the responsibility for that.

13 CHAIRMAN PALLADINO: I don't know what the
14 up's and down's on that are.

15 MR. CUNNINGHAM: Well, typically orders are
16 cited by the staff. That was the case in South Texas,
17 for example. We drafted it this way because the impetus
18 seemed to come from the Commission.

19 CHAIRMAN PALLADINO: But you have to support
20 it and you have to defend it just as we do.

21 (Laughter.)

22 MR. CUNNINGHAM: We were conscious of that as
23 we wrote it.

24 (Laughter.)

25 CHAIRMAN PALLADINO: I think from that

1 standpoint it doesn't make any difference who signs it,
2 except that is there some importance or some signal we
3 are sending out by signing this as opposed to having you
4 sign it?

5 MR. DIRCKS: Well, I think that was behind a
6 lot of the conversation. There is a symbolic signaling
7 effect you want to send to the company along this line.
8 Otherwise, you might have gone the confirmatory order
9 route, but obviously you want to send a stronger signal.

10 COMMISSIONER ROBERTS: Well, we are going to
11 send it.

12 CHAIRMAN PALLADINO: Okay. Well, let's see if
13 we are ready for a vote. The vote would be on issuing
14 an immediate effective order with the necessary
15 changes. I think they were on page 14 to make it
16 conform. Also there were comments made with regard to
17 the items on pages 15 and 16 where in item No. 1 instead
18 of saying "To determine whether its management project
19 is adequate," the proposal would be "To determine
20 measures needed to ensure the construction." And that
21 underlined sentence in the next paragraph, some word
22 changes need to be made to that to the extent we are
23 talking of each exchange on these items. Then the Chief
24 Executive Officer being indicated in items 2, 3 and 4.
25 It seems to me there was one other, but I

1 can't remember.

2 MR. CUNNINGHAM: On page 17 there was the
3 matter of numbering that last item part 3.

4 CHAIRMAN PALLADINO: Oh, yes.

5 MR. CUNNINGHAM: And earlier on we had changed
6 a word to "provisions" at the suggestion of Commissioner
7 Ahearne.

8 CHAIRMAN PALLADINO: Okay.

9 COMMISSIONER GILINSKY: Let's see, there is a
10 word or typo I believe on page 16, B, line 2. Do you
11 want that "and" after the bracket?

12 MR. CUNNINGHAM: No, I believe that should
13 come out.

14 CHAIRMAN PALLADINO: Yes.

15 MR. MALSCH: I think we also need to reinsert
16 the language on page 18.

17 CHAIRMAN PALLADINO: Oh, yes.

18 COMMISSIONER AHEARNE: That is right.

19 CHAIRMAN PALLADINO: Very good.

20 Okay, any other points on this?

21 (No response.)

22 CHAIRMAN PALLADINO: Can we indicate those in
23 favor of such a proposal?

24 (Show of hands by Chairman Palladino and
25 Commissioners Gilinsky and Asselstine.)

1 CHAIRMAN PALLADINO: Aye.

2 COMMISSIONER GILINSKY: Aye.

3 COMMISSIONER ASSELSTINE: Aye.

4 CHAIRMAN PALLADINO: Those opposed?

5 (Show of hands by Commissioners Ahearne and
6 Roberts.)

7 COMMISSIONER ROBERTS: May I have separate
8 views, please?

9 CHAIRMAN PALLADINO: Sure.

10 COMMISSIONER GILINSKY: I gather, John, you
11 would have supported the other version?

12 COMMISSIONER AHEARNE: Yes. What I am going to
13 say is I agree with both the substance and the direction
14 for change described in this order. However, I would
15 have made it a show-cause order rather than immediately
16 effective.

17 COMMISSIONER GILINSKY: I was curious as to
18 what your view is, Tom. Do you support John's position?

19 COMMISSIONER ROBERTS: No.

20 CHAIRMAN PALLADINO: Well, we will be
21 interested in what your views are.

22 COMMISSIONER ROBERTS: I have them now if you
23 want them, but they will be distributed.

24 CHAIRMAN PALLADINO: Okay, good.

25 COMMISSIONER AHEARNE: I have two questions. I

1 do want to ask.

2 CHAIRMAN PALLADINO: Relative to the order,
3 what sort of public announcement would we need to make
4 and what sort of time frame?

5 MR. FOUCHARD: I think we have to go with it
6 this afternoon, Mr. Chairman. What I would recommend is
7 that we get the order and give the press, and I know who
8 they are and there are probably a few of them outside
9 right now, a call when the order is ready and let the
10 order essentially speak for itself.

11 CHAIRMAN PALLADINO: So we would not try to
12 put out some press release?

13 MR. FOUCHARD: No, sir. I think at this point
14 we ought to let the order speak for itself. But it is
15 essential that it go this afternoon.

16 I think that also we have to think about who
17 calls the licensee. The company should be informed
18 before it gets calls from ---

19 CHAIRMAN PALLADINO: Who normally calls the
20 licensee?

21 COMMISSIONER AHEARNE: Could I recommend Jim
22 be the one.

23 MR. FOUCHARD: In other words, once we have
24 got it, and hopefully we can get it in an hour.

25 MR. CUNNINGHAM: Well, we can get it this

1 afternoon, but it is on word processing in Bethesda and
2 we have got to send the changes up there and have it
3 transmitted electronically back down here.

4 MR. FOUCHARD: Can't it be done from here?

5 MR. CUNNINGHAM: Well, there will be 20 pages
6 of typing. We will get it this afternoon. I can't say
7 an hour.

8 MR. FOUCHARD: Well, we closed down Seabrook
9 at 10 o'clock one night, but the sooner the better.

10 CHAIRMAN PALLADINO: All right, but Jim is
11 going to call the licensee.

12 MR. FOUCHARD: I think we have got to time
13 this so that we are ready to go, you know, within a few
14 minutes after he talks to the licensee. That is why I
15 am trying to establish a time.

16 CHAIRMAN PALLADINO: Incidentally, the
17 Commission still has a request from Mr. Applegate to
18 meet with the Commission on this. I don't know if we
19 have to settle that today, but we have to address that
20 question.

21 COMMISSIONER AHEARNE: May I ask my two
22 questions?

23 CHAIRMAN PALLADINO: Yes, indeed, go ahead.

24 COMMISSIONER AHEARNE: First, I wondered
25 whether anybody could explain to us the current status

1 of the grand jury on Zimmer?

2 MR. DIRCKS: Jim Cummings ought to be around.

3 MR. CUMMINGS: I am aware that they have
4 started that process.

5 COMMISSIONER AHEARNE: We have a newspaper
6 article saying that Tom Devine was given a subpoena to
7 appear in front of the grand jury.

8 MR. CUMMINGS: They have spoken repeatedly,
9 and the latest letter we sent down to you, of starting
10 that process. Now whether in fact they have had the
11 first meeting or the witnesses they have subpoenaed, I
12 don't know.

13 COMMISSIONER AHEARNE: The subpoena is
14 December 7th apparently, but there is no other
15 information?

16 MR. CUMMINGS: I have none.

17 COMMISSIONER AHEARNE: The second question was
18 I guess more directed to you, Jim.

19 Why do you think Bechtel is so good?

20 MR. KEPPLER: Well, I don't know that I can
21 answer why I think they are so good. I think they are
22 one of the largest in the business and I think they have
23 been involved ---

24 COMMISSIONER AHEARNE: It is a rhetorical
25 question in the sense that we have tended to say we need

1 new management to come in, and I agree with all that,
2 but there also seemed to be an willing exceptance of
3 Bechtel and it appeared to me that we have at least a
4 few cases where Bechtel did not do such a super hot job
5 of managing the project either, and it wasn't obvious
6 that we should be getting across the impression that as
7 long as Bechtel comes in any time we have a problem we
8 are now happy.

9 COMMISSIONER GILINSKY: Well, I think that is
10 definitely right. I mean, there is Bechtel and Bechtel,
11 and it depends on which office of Bechtel you are
12 getting and which team and it is a large organization
13 with a variety of talents. They are obviously a large
14 and powerful organization and if you get the right
15 people they will do very well. I couldn't agree more.

16 MR. KEPPLER: Let me make two points. I was
17 not promoting Bechtel when I used them as an example of
18 who they might bring in. I think the Commission is well
19 aware that we had a lot of problems with Bechtel at
20 Midland.

21 COMMISSIONER AHEARNE: Well, I know that, and
22 that is why I was asking ---

23 MR. KEPPLER: So the fact that the company has
24 proposed Bechtel or plans to bring them in, I think I
25 would want to know a lot more information about it

1 before we accepted Bechtel.

2 COMMISSIONER AHEARNE: Good.

3 CHAIRMAN PALLADINO: Okay. Anything more that
4 should come up at this time?

5 (No response.)

6 CHAIRMAN PALLADINO: Okay, thank you very much.
7 We will stand adjourned.

8 (Whereupon, at 2:20 p.m., the closed 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 - EXEMPTION NO. 5 - DISCUSSION OF
COMMISSION ACTION IN ZIMMER

Date of Proceeding: November 12, 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)