

NUCLEAR REGULATORY COMMISSION

ORIGINAL

COMMISSION MEETING

In the Matter of: CLOSED MEETING - EXEMPTIONS 1 AND 3
 BRIEFING ON DESIGN BASIS THREAT

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BRIEFING ON DESIGN BASIS THREAT
CLOSED MEETING - EXEMPTIONS 1 AND 3

Nuclear Regulatory Commission
Room 1130
1717 H Street, N. W.
Washington, D. C.
Friday, May 21, 1982

The Commission convened in closed session,
pursuant to notice, at 1:00 p.m.

BEFORE:

- 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
- T. ROTHSCHILD
- A. KENNEKE
- W. DIRCKS
- W. OLMSTEAD
- R. BURNETT
- J. DAVIS

AUDIENCE SPEAKERS:

- W. PURPLE
- G. McCORKLE
- S. MULLEN
- T. ISAACS
- M. DOWD
- R. BRADY

P R O C E E D I N G S

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

4 The Commission meets in closed session this
5 afternoon to receive a briefing from the staff on their
6 views concerning the design basis threat.

7 The Commission stated in its order denying the
8 review of ALAB 653 that it would re-evaluate the design
9 basis threat as a generic matter.

10 Consequently the Commission requested the
11 staff to provide its current views on the appropriate
12 kind and degree of threat and the vulnerabilities to
13 such threat for radiological sabotage.

14 So at this time, unless my fellow
15 Commissioners have some opening comments, I am going to
16 turn the meeting over to Mr. Davis.

17 MR. DAVIS: Thank you, Mr. Chairman.

18 We are here, of course, as you say, in
19 response to the memorandum from the Secretary and we are
20 prepared to brief on how we evaluate the threat
21 environment and our judgment resulting from this
22 environment. We are also prepared to brief on how we
23 assess the vulnerabilities of the licensees to this
24 design basis threat.

25 DOE is here today and will also be

1 participating in the briefing.

2 Bob Burnett, who is the Director of the
3 Division of Safeguards, will be our principal speaker.
4 We have several members from the Safeguards staff in the
5 audience here. So we hope we will be able to respond to
6 most questions which you may come up with.

7 MR. DIRCKS: I would also add that Bob Purple
8 from NRR is here in case you do get into the discussion
9 of safety versus security type problems.

10 MR. DAVIS: All right. Bob.

11 MR. BURNETT: As an introduction to this
12 level, I would like to emphasize that we are talking
13 about a postulated threat or a design level threat and
14 not an identified, existing threat to the nuclear
15 industry. There has been no information reported
16 identifying a conclusive actual identifiable threat
17 targeted against the domestic licensed nuclear
18 industry. So just keep this in mind, that our rules are
19 premised on a design basis threat.

20 (Slide presentation.)

21 MR. BURNETT: Could I have the first slide,
22 please.

23 MR. DIRCKS: That was not a no evidence
24 statement.

25 (Laughter.)

1 MR. BURNETT: Thank you, Bill.

2 COMMISSIONER AHEARNE: Bill just wanted to
3 make sure we understood.

4 (Laughter.)

5 MR. BURNETT: The design basis threat
6 statements shown on this slide are not complete
7 statements as they appear in our regulations but are
8 paraphrases to show the differences between the two
9 statements. The major difference that should be noted
10 is the several persons versus the small group. Also
11 keep in mind that

12 This is identified in the threat
13 statement that has been distributed.

14 COMMISSIONER AHEARNE: Bob, when you are
15 listing radiological sabotage and theft through
16 diversion of SSMN, these are threats that are used
17 independent of what the facility is?

18 MR. BURNETT: These are threats that have been
19 identified on a generic basis, and, depending on the
20 type of facility involved, it would respond to one or
21 both of the threats.

22 (Commissioner Gilinsky entered the meeting at
23 this point, 1:05 p.m.)

24 COMMISSIONER AHEARNE: But, for example then,
25 radiological sabotage and theft through diversion of

1 SSMN would, say, both apply to, say, (_____)?

2 MR. BURNETT: Yes, sir, whereas only the first
3 would apply to the rest of the power grid. Also, the
4 threat is not assigned on a site basis, but rather on a
5 national or generic basis.

6 COMMISSIONER GILINSKY: What does that mean?

7 MR. BURNETT: That means that the threat that
8 has been identified is that which we think is valid in
9 the United States of America rather than a threat for a
10 particular region or a particular site within a region.
11 We consider that the threat is highly mobile.

12 COMMISSIONER GILINSKY: You mean this is the
13 same standard which we apply to every plant?

14 MR. BURNETT: Yes, sir.

15 Next slide, please.

16 In the Commission's request for this meeting
17 the staff was asked to re-evaluate the design basis
18 threat as a generic matter. This has been accomplished
19 and we have concluded that the present design basis
20 threat statement is valid.

21 The methods employed during this effort for
22 the validation will be discussed on my next slide.

23 COMMISSIONER AHEARNE: Okay, now, but let me
24 make sure I understand what you are saying by that. By
25 that you are saying that you would still hold for an

1 internal threat it should be a single insider or a
2 single insider or conspiracy between insiders and that
3 for an external threat it would be a small group or
4 several persons. Is that correct?

5 MR. BURNETT: That is true, but understand
6 that we have not gone back and really looked at the
7 threat. What we have done is looked at the events that
8 have occurred since the establishment of the threat, the
9 environment that the threat is in to see if any of those
10 incidences would alter the threat.

11 COMMISSIONER AHEARNE: Well, are you going to
12 get at some point this afternoon into what does several
13 persons and what does small group mean?

14 COMMISSIONER GILINSKY: Before you do that,
15 could you get into what valid means?

16 (Laughter.)

17 COMMISSIONER GILINSKY: Could I ask you about
18 this slide before you -- I guess your questions will I
19 presume come ---

20 COMMISSIONER AHEARNE: I don't know. I wanted
21 to make sure because, see, it was on the slide before.

22 COMMISSIONER GILINSKY: Go ahead.

23 MR. BURNETT: To respond to your request, we
24 can cover that issue.

25 COMMISSIONER GILINSKY: Let me ask you about

1 this valid. That is a remark about possible sabotage or
2 whatever that might occur, or does that take into
3 account the costs of dealing with one or another level
4 of threat at the reactors?

5 I will tell you, what I really want to get
6 into is this whole business of the insider and to what
7 extent that drives the requirements that we lay on the
8 various reactors which I must say I am a bit concerned
9 about.

10 MR. DAVIS: Let me go back a bit and say what
11 Bob has already said. In looking at our continuing
12 evaluation of the situation, what we look at is
13 basically reports coming in which would lead staff to
14 think that the threat environment has changed from the
15 time in which the decision decided what the threat
16 should be.

17 We don't go back on a day-by-day or
18 month-by-month basis and re-examine the numbers that you
19 were talking about, Commissioner Ahearne. Rather, we
20 said the Commission went through a fairly long and
21 arduous task in establishing a threat.

22 COMMISSIONER GILINSKY: Well, what you are
23 saying is that intelligence reports or other reports are
24 not any more worrisome now than they were when we
25 established these objectives.

1 MR. DAVIS: The environment has not shifted
2 significantly, right, sir.

3 COMMISSIONER GILINSKY: But that doesn't mean
4 that what we are doing is sensible or reasonable.

5 MR. DAVIS: That does not go back and say
6 whether the judgment that the Commission made in '76 or
7 '77, that there might not be some people who think that
8 the judgment should be different.

9 COMMISSIONER GILINSKY: Careful.

10 (Laughter.)

11 COMMISSIONER AHEARNE: Some of us have no
12 problem in saying the judgment should be different.

13 (Laughter.)

14 MR. BURNETT: I would like to add,
15 Commissioner Gilinsky, that as you know certain
16 precautions against the insider were deferred until
17 other staff activities were concluded, in particular the
18 access rule. So the access rule is scheduled to come
19 before this body in the near future.

20 MR. DAVIS: Sometime this summer.

21 MR. BURNETT: Yes, sir. If one wanted to
22 re-evaluate the insider and the precautions to protect
23 against it, you certainly will have the opportunity.

24 COMMISSIONER GILINSKY: We can't go into that
25 now, but could you just tell us what the access rule

1 will cover?

2 MR. BURNETT: Yes, sir, I am prepared to do
3 that. Here we go.

4 COMMISSIONER GILINSKY: A 30-second version.

5 CHAIRMAN PALLADINO: Is that essential to this
6 discussion? I don't know.

7 COMMISSIONER GILINSKY: Well, because I want
8 to know whether we need to discuss some of the things
9 here.

10 MR. BURNETT: Okay. Originally it was
11 composed of three elements, a background investigation,
12 a psychological testing and a behavioral observation.

13 COMMISSIONER GILINSKY: I see. So these would
14 be various types of clearances of one kind or another to
15 insider access.

16 MR. BURNETT: Yes.

17 MR. DAVIS: It is really to give us, give the
18 licensees some basis to have a better feel for the
19 trustworthiness of the individual and to develop various
20 elements which can lead to developing a ---

21 COMMISSIONER AHEARNE: As part of it is there
22 any reflection if one were to go into a regime in which
23 you had much higher confidence on the trustworthiness
24 that then the ability to move within the plant would be
25 greater?

1 MR. DAVIS: It does involve some change in the
2 internal controls based on a higher level of confidence
3 and trustworthiness, but as it is presently written it
4 does not open all the doors.

5 MR. BURNETT: There were three prongs to the
6 rule. That is currently under evaluation to drop it to
7 possibly two and to put the psychological testing in the
8 form of guidance available for use by the licensee
9 rather than a requirement. But that is not a final
10 document yet and you should keep that in mind.

11 COMMISSIONER GILINSKY: Okay.

12 MR. DAVIS: But I do think, for the third
13 time, we don't really go back on a day-to-day basis and
14 look at these numbers.

15 COMMISSIONER AHEARNE: That is fine, but you
16 used the words, you said the numbers I referred to. The
17 only number on this chart, on 10 CFR 73, is single,
18 reflecting one. That is on internal threat. My issue
19 was I thought we were here talking about the external
20 threat and the words here are several persons and small
21 group. I am not asking whether you re-evaluate that on
22 the basis periodically, but I am really asking what does
23 it mean?

24 MR. DAVIS: And Bob said he will be glad to
25 tell you.

1 (Laughter.)

2 COMMISSIONER AHEARNE: No, he didn't say
3 that. He said he would be willing to.

4 (Laughter.)

5 MR. BURNETT: We will fully discuss that
6 before the end of the meeting hopefully to both of our
7 satisfactions.

8 COMMISSIONER GILINSKY: Aren't we just talking
9 about the external threat?

10 MR. BURNETT: I guess I was prepared to talk
11 about the sabotage threat.

12 CHAIRMAN PALLADINO: I thought that was the
13 focus of our Commission request.

14 MR. BURNETT: The focus was external.

15 COMMISSIONER GILINSKY: External?

16 COMMISSIONER AHEARNE: Yes.

17 MR. BURNETT: I understood the focus was ---

18 CHAIRMAN PALLADINO: Well, we referred to the
19 section that discusses radiological sabotage.

20 MR. BURNETT: Radiological sabotage has both
21 internal and external components.

22 CHAIRMAN PALLADINO: Oh, yes, I agree with you.

23 COMMISSIONER GILINSKY: What prompted this
24 meeting?

25 CHAIRMAN PALLADINO: The Commission in its

1 order on ALAB 653.

2 COMMISSIONER GILINSKY: I was just checking up
3 here.

4 (Laughter.)

5 MR. BURNETT: He said that in the opening
6 remarks.

7 Could I have the next slide, please.

8 The slide presentation was designed to of
9 course answer the Commission request. I sense there are
10 some underlying questions that we will have to deal with.

11 (Laughter.)

12 MR. BURNETT: Staff's view is based upon its
13 continuing assessment of the threat environment to the
14 licensed activities. All of the items shown on this
15 slide are components of this activity. Based on the
16 information routinely available to the NRC staff through
17 its liaison activities and review of safeguard related
18 events, we are looking at a trend that may develop to
19 determine if any changes should be cranked into the
20 threat because of a change in the environment.

21 As part of a new program recently initiated
22 some months ago, a program dealing with the analysis of
23 operational data, a more final validation is
24 accomplished and documented on a six-month basis. This
25 semi-annual documentation is scheduled for completion in

1 June of this year.

2 COMMISSIONER AHEARNE: Now you say
3 validation. What are you validating?

4 MR. BURNETT: It was felt that we should go
5 through this in addition to a continual day-to-day where
6 we receive events. We should have a more formal,
7 traceable analysis.

8 COMMISSIONER AHEARNE: What I am asking, Bob,
9 is are you validating the number that you use for your
10 threat ---

11 MR. BURNETT: No, sir.

12 COMMISSIONER AHEARNE: --- or are you
13 validating that there have been no significant changes?

14 MR. BURNETT: The latter. We are validating
15 that there are no significant changes that would warrant
16 a change. Now if we find an incident that would warrant
17 a change, then it would be incumbent upon the staff to
18 initiate proper action.

19 The next slide, please.

20 MR. DIRCKS: That is more up than down, isn't
21 it? I mean, you are validating a threat even more to
22 come down.

23 COMMISSIONER AHEARNE: I guess you could say
24 less than several, a very small group.

25 (Laughter.)

1 MR. BURNETT: The reviewer is looking for
2 incidents outside of the previous incidents.

3 MR. DIRCKS: In other words, it is no worse
4 than what you estimated.

5 MR. BURNETT: Yes, sir. If something happened
6 all over the world and all terrorism was to dry up and
7 go away, one would hope that we could match it with our
8 security system which is highly improbable I believe.

9 We were asked also how do we know what we do
10 is right. I would like to point your attention to the
11 first bullet of this slide and point out how we look at
12 a security plan sent in by the licensee.

13 COMMISSIONER GILINSKY: Well, let's see. You
14 say "right." It seems to me to be the wrong word.
15 Reasonable.

16 MR. BURNETT: Reasonable, correct. I like
17 that word better myself.

18 The security plan is reviewed against standard
19 criteria for the acceptance of that plan. This criteria
20 is used to remove any possibility of variations between
21 reviewers. It is not reviewed with the threat in mind.
22 It is reviewed with the criteria, and the criteria it is
23 felt if adequately implemented will protect against the
24 threat.

25 CHAIRMAN PALLADINO: Say that again, Bob.

1 That is pretty germane I think.

2 MR. BURNETT: Yes. You know, when a reviewer
3 sits down and looks at a submitted security plan, and we
4 have a lot of reviewers looking at this, the reviewer
5 doesn't look at every aspect of the plan and say would
6 it hold up against the design basis threat, but rather
7 we have devised criteria which he should check the plan
8 for and see if components are existing and to what
9 extent they exist.

10 COMMISSIONER AHEARNE: But is it correct that
11 your criteria were established considering the design
12 basis threat?

13 MR. BURNETT: Yes, which gets us to your
14 question of does the design basis threat ---

15 COMMISSIONER AHEARNE: Well, no. I would have
16 no problem with your saying that they use a set of
17 criteria rather than thinking through the design basis
18 threat each time. I have no problem with that if the
19 criteria themselves were devised on the basis that if
20 these criteria are met, then the design basis threat can
21 be handled.

22 MR. BURNETT: We believe that is the case.

23 CHAIRMAN PALLADINO: The importance I attach
24 to your statement is that we don't have to define
25 several in our general requirements if the reviewer goes

1 against a set of criteria. Is that true?

2 MR. BURNETT: Yes, that is true.

3 CHAIRMAN PALLADINO: Now I think Commissioner
4 Ahearne's question is still valid, but that is something
5 we can address as an independent issue.

6 MR. BURNETT: It may appear as if I am trying
7 to dodge the issue. I am not. The criteria as we use
8 it is believed to satisfy the threat, and we will get
9 into a little later what we believe the threat is.

10 CHAIRMAN PALLADINO: But a reviewer in looking
11 at the situation does not have to know the basis on
12 which the criteria were developed?

13 MR. BURNETT: No, sir, he does not.

14 CHAIRMAN PALLADINO: He looks just down this
15 list of criteria and checks them off and say it meets
16 this under these circumstances.

17 MR. BURNETT: That is correct, and the
18 licensing reviewer does not need that information.

19 CHAIRMAN PALLADINO: Let me ask the
20 corollary. If one satisfies all the criteria on the
21 check list will he have met the intent of the ---

22 MR. BURNETT: From that review, yes, but you
23 have got to remember now a confirmation site visit is
24 made prior to a license being issued. There is a
25 preoperational inspection to assure that these

1 precautions are implemented correctly.

2 CHAIRMAN PALLADINO: I agree with that. But
3 all he has to do is do the checking against this set of
4 criteria.

5 MR. BURNETT: Yes, sir, which really leads me
6 right into the next point on this slide, which is bullet
7 four. A vital area analysis is conducted by Los Alamos
8 National Laboratory and provides the NRC with an
9 independent validation that the licensee has properly
10 identified all of the vital areas within his facility
11 which he has identified and has committed to protect in
12 his security plan. So this is another now of validation.

13 As you know, the rule has vital areas
14 associated with it, those areas that are most sensitive
15 to the ---

16 COMMISSIONER GILINSKY: Can I ask you, who
17 checks to see that the results don't conflict with
18 requirements of safety.

19 MR. BURNETT: When a rule is created, all
20 safeguard rules go to NRR for review. There is an
21 established element within NRR charged with looking at
22 safeguard rules to assure that they do not affect
23 safety. That element is within Mr. Eisenhut's area, and
24 I notice that Mr. Purple is here today.

25 COMMISSIONER GILINSKY: Do they just look at

1 the rule or do they look at it reactor by reactor?

2 MR. BURNETT: I would say it is just the rule
3 and then Inspection probably looks at it.

4 MR. PURPLE: Well, we certainly look at any
5 new rules that come out. In any particular difficult
6 areas where a licensee who would fall short in some way
7 of a criteria that NESC was reviewing and there was some
8 different solution to a problem raised, we would be
9 involved to look at that to be sure that that different
10 solution didn't affect safety in some way.

11 All licensing actions that go out, even though
12 reviewed by NESC, do come through the Division of
13 Licensing and they are all looked at by the SSPB Branch
14 for the very purpose of making sure that there is
15 nothing in there that would be contrary to safety.

16 MR. BURNETT: In fact, they have raised points
17 from time to time and through interaction between the
18 two staffs they have been accommodated.

19 COMMISSIONER GILINSKY: This is a little bit
20 off of our topic today, but I hope we will have an
21 occasion to discuss the question, because I am not sure
22 that the access rule, and that is why I wanted to ask
23 what was going to be covered, will in fact be covering
24 that question because it will deal with clearances and
25 so on.

1 CHAIRMAN PALLADINO: It was my understanding
2 we weren't prepared to discuss the insider rule today.

3 COMMISSIONER GILINSKY: No, I am not
4 suggesting we talk about it today, but if we can discuss
5 the whole business of access controls which at least in
6 some places seem to me to impinge on safety.

7 MR. DAVIS: We know of your continuing concern
8 and we have the same concern. What I will suggest, if
9 the Commission would like, is when we do come down with
10 the access rule we can expand our normal briefing of
11 this as a rule type thing and go into the area you are
12 talking about, the general philosophy of it, the basis
13 of it and this type thing, if you would like to.

14 COMMISSIONER GILINSKY: I would certainly very
15 much like that.

16 MR. BURNETT: One other point concerning vital
17 areas. Just to recap history a little bit, when the
18 vital areas were put into the rule that they needed an
19 extra level of protection, the licensees on their own
20 identified the vital areas to be protected and those in
21 place in the field right now.

22 Simultaneously with that action a contract was
23 let to validate those vital areas, and that, indeed, is
24 what I am referring to in these two bullets, that that
25 action is not complete and it is still ongoing.

1 In addition, I will call your attention to the
2 last bullet up there, the Regulatory Effectiveness
3 Review Program. This is also a new program and it is to
4 assure that the safeguards system as implemented
5 provides the desired level of protection intended by the
6 NRC regulations.

7 So through that whole list of determinations
8 the bottom line when you finish at a site is assurance
9 that they do meet what we intended.

10 MR. DAVIS: Let me mention a point here that
11 Bob went over very hurriedly, the analysis of safeguards
12 data. I would just like to remind the Commission that
13 Mr. Michaelson's group does not review safeguards data,
14 but Bob does have within his office a group that I will
15 say it is beyond the formative stages but not really to
16 where we want to go, but he is doing this particular
17 function for that type data.

18 COMMISSIONER AHEARNE: I notice that is the
19 last bullet on the last slide. I do hope you will get
20 back then and explain what several persons are, what a
21 small group is, why several persons in one case and a
22 small group in another case and how the numbers were
23 arrived at.

24 MR. BURNETT: That part of the briefing I
25 think responds to what we were requested to in the

1 request from the Commission.

2 Now we will talk about the threat itself, the
3 origin of some of the numbers.

4 I would remind you that when we deal with the
5 threat numbers associated with theft, then they are
6 classified, whereas the numbers associated with reactor
7 threat are not. That is a formality that we have to
8 keep in mind.

9 COMMISSIONER GILINSKY: I thought they were
10 both -- on, I see, classified in the sense of national
11 security.

12 MR. BURNETT: Yes, sir. As I said, that was
13 for formality.

14 COMMISSIONER AHEARNE: What I had hoped we
15 could develop a better understanding of is when we use
16 the sense of a design basis threat, an attack from the
17 outside, how we get that threat.

18 CHAIRMAN PALLADINO: Do you want to go into
19 that as well as sabotage or just sabotage?

20 COMMISSIONER AHEARNE: I think we have to
21 address both because I think the differences are
22 illuminating.

23 CHAIRMAN PALLADINO: They can be illuminating,
24 except one is classified and one isn't.

25 COMMISSIONER AHEARNE: That is true, but since

1 the basic material that we have for this all seems to be
2 classified ---

3 COMMISSIONER GILINSKY: I assume we are all
4 cleared.

5 CHAIRMAN PALLADINO: Let me ask a question,
6 and I am not sure who to ask the question of, if we are
7 going to discuss classified material, are all the people
8 who are here cleared for that appropriate level of
9 classification, and is this an appropriate room for
10 discussion of the classification?

11 MR. HOYLE: What is the level of the
12 classification, Bob?

13 MR. BURNETT: I don't anticipate getting above
14 secret.

15 Is that true also with DOE? I don't
16 anticipate getting above secret.

17 MR. DOWD: Yes.

18 MR. BURNETT: Most of it will just simply be
19 lower level than that.

20 MR. HOYLE: We have the names of all those in
21 the room. I can't say that I have personal knowledge
22 that everyone is Q cleared that is in here. I believe
23 perhaps the EDO staff could verify for theirs and I
24 could do that for the Commission level staff. Our
25 reporter has a Q clearance. If you are sensitive about

1 that, I could do that and we could make a change there.

2 CHAIRMAN PALLADINO: Can you verify for all
3 your staff?

4 MR. BURNETT: Our staff that are here are
5 cleared.

6 Mr. Brady, you are in charge of security.

7 (Laughter.)

8 MR. BRADY: My staff that are here are cleared.

9 CHAIRMAN PALLADINO: You have confirmed that
10 the Commissioner staff have clearances. What I am
11 worried about is who is confirming about the people who
12 are not covered by any of the groups.

13 (At this point in the proceedings a check was
14 made of the audience participants to assure they had
15 proper clearance authorizations for continued
16 participation in the meeting.)

17 CHAIRMAN PALLADINO: Well, then I gather that
18 all the people here are appropriately cleared to listen
19 to the discussion. Well then, we can go on. I gather
20 for this level of classification we don't need a swept
21 room.

22 MR. BURNETT: No, sir, you do not.

23 CHAIRMAN PALLADINO: Thank you.

24 Then why don't we proceed.

25 COMMISSIONER AHEARNE: I hope this is all

1 worth it?

2 (Laughter.)

3 MR. BURNETT: All right. I have just got to
4 figure in my mind where we would like to start,
5 Commissioner. I can start back in 1976 where the staff
6 started numbers and how those numbers worked into a rule
7 and what my understanding of the Commission's belief was
8 at that point. That sounds to me like where you would
9 like me to start.

10 In October 1976 Commission Paper 76/242C was
11 presented to the Commission. That document outlined a
12 reactor threat of from external
13 adversaries. It worded it that way.

14 In response to that Commission paper the
15 Commission wrote back to then Lee Gossick on December
16 the 17th, 1976, revised December the 23rd, 1976,
17 concerning the presentation of that paper. "The
18 Physical Protection Of Nuclear Power Reactors Against
19 Industrial Sabotage" was the name that it had at that
20 time.

21 The Commission agreed in principal with the
22 recommendations contained in that paper. They went
23 further to say in subparagraph 5, referring now to the
24 Commission paper, page 14, they did some word changes to
25 the threat, but the threat that they directed the staff

1 to utilize was "a deterrent, violent external assault or
2 attack by stealth of persons." I can read
3 the rest of it. It goes on.

4 CHAIRMAN PALLADINO: You say the Commission ---

5 MR. BURNETT: The Commission directed the
6 staff with this Chilkogram calculus to use that
7 external threat of from That was in an
8 unclassified document.

9 In February 1977 Messrs. Rusche and Chapman
10 wrote back to the Commission suggesting in lieu of
11 specific numbers, which they identified a couple
12 possible problems with, one being that the ERDA at that
13 time classified their numbers, and that it might not be
14 too well for us to put our numbers out.

15 Secondly, it was felt that by putting the
16 numbers out in open literature it was giving the
17 adversaries an additional piece of information that we
18 didn't have to give. They made four possible
19 alternatives, and I will just summarize them, that they
20 either classify them, withhold them as proprietary, use
21 a general statement like several or go open with a
22 number. They were your four alternatives.

23 In that document they made the following
24 statement. They suggest how to keep the numbers out of
25 the paper. "The security measures and acceptance

1 criteria required to assure a balanced security program
2 designed to protect against the threat as defined in
3 73.55," which I just read to you they had defined two
4 months earlier, "would not be altered by the proposed
5 changes in this paper."

6 So then Messrs. Ruche and Chapman were saying
7 by going to "several" it did not alter the Commission
8 decision in the direction handed down that the external
9 force should be There have been no
10 additional decisions by the Commission.

11 COMMISSIONER AHEARNE: Was it subsequent to
12 the Ruche and Chapman paper that 10 CFR 73.55 was ---

13 MR. BURNETT: A response came down from the
14 Commission accepting the Ruche Chapman position. Then
15 in May of that same year, 1977, 73.55 was issued for
16 public comment. That document used "several." So then
17 you can conclude that at the time of issuing that
18 document the Commission had in its mind an external
19 threat of

20 CHAIRMAN PALLADINO:

21 MR. BURNETT: but an outside
22 parameter of

23 CHAIRMAN PALLADINO: Did that later get
24 changed to mean

25 MR. BURNETT: No.

1 CHAIRMAN PALLADINO: I hear expressions like
2 one.

3 MR. BURNETT: Oh, yes, I have left out the
4 internal threat. The internal threat remained at one
5 constant throughout this time.

6 COMMISSIONER GILINSKY: What was this about
7 Ruche and Chapman saying what would not be changed?

8 MR. BURNETT: I will read it again.

9 COMMISSIONER GILINSKY: Read it again.

10 MR. BURNETT: I will try to paraphrase also
11 the front end. They came up and said maybe it would be
12 better if we don't put the threat out in open literature
13 because DOE, now DOE and then ERDA, does not do that.

14 In addition, we might be giving the
15 adversaries more information than can be useable to
16 them, that if they knew the size of our threat directly
17 then maybe they could postulate more easily ways to
18 defeat the system.

19 So they suggested four alternatives in their
20 paper. The first alternative was to go with all the
21 information in the public realm. The second is review
22 of the threat information in general terms, which is
23 like the "several." The third one, withhold the threat
24 information under 10 CFR 2.790 as proprietary. They
25 followed that up but the legal staff did not feel

1 confident doing that. The fourth suggestion was to
2 classify the threat as did ERDA at that time.

3 They suggested in their paper that they opt
4 for classification, but that none of the proposed
5 approaches should alter the design basis threat that had
6 been established in the previous document. In other
7 words, the way I read that is the numbers don't change.

8 MR. DAVIS: Well, you have got to read what
9 they said ---

10 CHAIRMAN PALLADINO: You said something that I
11 thought I heard differently just a minute ago. You say
12 they opted for classification?

13 MR. BURNETT: The staff suggested
14 classification. In the final analysis the Commission
15 did not.

16 CHAIRMAN PALLADINO: Oh, I thought they had
17 proposed the use of the word "several."

18 MR. BURNETT: They did as one of the
19 alternatives, but the staff preferred ---

20 COMMISSIONER AHEARNE: That wasn't the one
21 they recommended.

22 COMMISSIONER GILINSKY: Well, one of the
23 things they were concerned about was that the reactor
24 "threat" not be different than the fuel cycle "threat."
25 Now this bothered some people and it didn't bother other

1 people and it never bothered me. But the reactor people
2 were terribly upset. How were they going to explain it
3 if they have a lower threat. So one reason it was
4 fuzzing things was to fuzz that difference.

5 MR. BURNETT: I think that is true and that is
6 supported in this paper. They do in the first paragraph
7 talk about response capabilities rather than the threat.

8 COMMISSIONER GILINSKY: Well, that is right.
9 You know, there are several other variables here which
10 is the highly motivated and high armed and so on.

11 MR. BURNETT: Yes.

12 COMMISSIONER GILINSKY: As I remember, or at
13 least what I think was meant when they said we won't be
14 changing anything was that, you know, by adjusting
15 highly motivated and highly armed and so on you are
16 going to get about the same results. So we are not
17 going to require anything different as a result of
18 saying several. But I don't remember the Commission
19 ever fixing on That just doesn't jibe
20 with my memory which is not infallible.

21 MR. BURNETT: And of course no member on this
22 side of the table was here.

23 COMMISSIONER GILINSKY: Good.

24 (Laughter.)

25 COMMISSIONER GILINSKY: In which case I do

1 remember.

2 (Laughter.)

3 MR. BURNETT: I am just trying to glean the
4 relative sections from the Commission papers. Another
5 thing I don't have are records of the meetings.

6 MR. DAVIS: I think it would be well if you
7 read what the conclusion of Ruche and Chapman was. That
8 is the point that Commissioner Gilinsky is talking about.

9 MR. BURNETT: I will read it again. "The
10 security measures and acceptance criteria required to
11 assure a balanced security program designed to protect
12 against the threat as defined in 73.55 are not altered
13 by the proposed changes offered here within."

14 COMMISSIONER GILINSKY: In any case, I don't
15 remember us fixing numbers like In fact,
16 there was strong insistence on leaving the numbers
17 flexible, and no one was stronger on this than Mr.
18 Kennedy. I think in the end he prevailed.

19 MR. BURNETT: We do not have a record of the
20 meeting. There was no transcript taken. I can only
21 tell what was submitted to the Commission. We do know
22 what came back, and that was to go with "several."

23 COMMISSIONER AHEARNE: This was a meeting on
24 the Ruche and Chipman paper?

25 MR. BURNETT: Yes, sir. So that interaction I

1 can't comment on.

2 CHAIRMAN PALLADINO: The history is
3 interesting, but now I guess the question comes down to
4 well, what do you use, or what did you use in setting up
5 these criteria? Then the question is are we satisfied
6 that that basis is okay or do we want to change that for
7 one reason or another.

8 MR. BURNETT: The criteria employed had in
9 mind and one.

10 COMMISSIONER AHEARNE: So for the external
11 threat the criteria were developed on the basis of

12 MR. BURNETT: Correct. Now I also would like
13 to augment that within certain ranges the criteria would
14 not alter a great deal if the threat, for instance, was
15 officially because the responses
16 of a security system are not that finely tuned to an
17 adversary force.

18 COMMISSIONER GILINSKY: Well, I remember that
19 also being a point, that we didn't want to have a system
20 that in one way or another fell apart if you changed the
21 numbers. That is one reason for using "several" rather
22 than fixing on a particular number. In most cases that
23 would probably be taken care of, but there may be
24 circumstances or protected mechanisms that do fall apart.

25 CHAIRMAN PALLADINO: But nevertheless there

1 was a basis used to develop these criteria.

2 MR. BURNETT: Yes, sir, 73.55.

3 CHAIRMAN PALLADINO: I gather based on your
4 conclusion you are saying you see no reason to change
5 that basis.

6 MR. BURNETT: That is correct.

7 CHAIRMAN PALLADINO: All right.

8 Go ahead, John.

9 COMMISSIONER AHEARNE: Did Ruche and Chapman
10 propose the word "several" in that option? You had
11 mentioned the option was to use a general term, but did
12 they actually come up with the term "several"?

13 MR. BURNETT: The paper is divided into two
14 sections. I am sure they did, but I want to make sure.

15 MS. MULLEN: They suggested replacing the
16 specific numerical definition of the threat with a
17 generalized description and they offered new language
18 for 73.55 which used the word "several."

19 MR. BURNETT: Now where is that. I want to
20 make sure that I know it. See, she is going to the
21 back-up because it is not in the cover -- yes, here it
22 is. We will read it. Paragraph one: "A determined
23 violent external assault or attack by stealth by several
24 persons."

25 Thank you, Sally.

1 COMMISSIONER AHEARNE: Could you go through an
2 equivalent development of the small group?

3 MR. BURNETT: I did not come prepared to do
4 that.

5 COMMISSIONER GILINSKY: Can I give you a
6 capsule version?

7 COMMISSIONER AHEARNE: Yes.

8 (Laughter.)

9 COMMISSIONER GILINSKY: It started out at one
10 point that people were talking about

11 and for reactors. Then there
12 was a certain amount of discomfort about having a
13 difference. A part of the reactor people, they didn't
14 want to be subject to the criticism that they weren't
15 protecting against the threat that was lurking out
16 there. And if the fuel cycle facilities were protecting
17 against

18
19 You know, the descriptions were fuzzed in such
20 a way as still to leave some distinction and have the
21 fuel cycle protection somewhat greater in some
22 qualitative way. In one case the word "several" used
23 and in the other case "a group" was used

24

25

1 So it is, you know, a
2 little bit shifted over to the right. Now that is about
3 it.

4 MR. BURNETT: There is extensive paperwork to
5 show that one is greater than the other.

6 COMMISSIONER GILINSKY: I won't tell you how
7 many hours were spent on this.

8 (Laughter.)

9 CHAIRMAN PALLADINO: Then I gather you changed
10 terminology from reactor to radiological sabotage and
11 changed perhaps some other kind of facility to theft.

12 MR. BURNETT: Yes, sir.

13 CHAIRMAN PALLADINO: So now you speak in terms
14 of theft and radiological sabotage.

15 MR. BURNETT: Yes, sir. Now I would like to
16 go back and see if I can give you a little more relevant
17 information. This document, the Safeguards Design
18 Threat draft working paper for the Gasmo Study
19 postulated a range of threats ranging from three to
20 twelve. That was followed up by a joint ERDA/NRC task
21 force. This document selected a classified number of
22 That level of threat was accepted by the
23 Commission and termed a small group.

24 CHAIRMAN PALLADINO: Who was that proposed for?

25 MR. BURNETT: For theft, and the numbers that

1 are used are and they were created by this
2 document in July 1975.

3 CHAIRMAN PALLADINO: That means
4 is that right?

5 MR. BURNETT: Yes, sir.

6 COMMISSIONER AHEARNE: It was termed "small
7 group."

8 MR. BURNETT: It was termed "small group."
9 Then the Commission in a later action accepted the small
10 group terminology and put the rule out for publication.

11 Month and year?

12 MS. MULLEN: The upgrade rules?

13 MR. BURNETT: Yes.

14 MS. MULLEN: Finally in 11/79.

15 MR. BURNETT: 11/79.

16 COMMISSIONER AHEARNE: Equivalently you
17 mentioned that the criteria you were using for reactors
18 ended up being to develop those criteria.

19 MR. BURNETT: Yes, sir.

20 COMMISSIONER AHEARNE: When you do fuel cycle
21 facilities, do you deal

22 MR. BURNETT: Yes, sir.

23 COMMISSIONER AHEARNE: Now I noticed in the
24 7th Annual Report on Domestic Safeguards the description
25 of DOE's threat and the quote is "DOE characterizes the

1 terrorist threat for planning purposes is a group of

2

3 MR. BURNETT: We discussed this extensively
4 at DOE. Again, we don't see the numerical difference in
5 there as the really controlling point. It is one aspect
6 of a threat. There are other equally important aspects,
7 the method, the tactics, the weaponry and the
8 motivation. A security system isn't aligned at just one
9 number.

10 COMMISSIONER AHEARNE: Now do you in DOE
11 believe there is a major difference between the threat
12 they used and the threat we use?

13 MR. BURNETT: No, sir, and they will be to the
14 microphone.

15 COMMISSIONER GILINSKY: For what?

16 COMMISSIONER AHEARNE: Well, I was going to
17 get to that. First, I was going to say in the
18 safeguards and then, second, since DOE does have some
19 reactors what ---

20 MR. BURNETT: The threat associated with
21 theft, DOE and NRC I believe are comparable. DOE is
22 present.

23 MR. ISAACS: My name is Tom Isaacs. I am the
24 Deputy Director of Safeguard and Security for DOE. It
25 is a pleasure to be here.

1 It is hard to give you a short answer to your
2 question in that we do think our threat profiles are
3 comparable. The current DCE threat guidance or policy
4 that we have out in the field is exactly as Bob states.
5 It is adversaries and includes potential
6 inside assistance.

7 However, we are currently in the throes of
8 looking to modify that threat in a number of ways which
9 I would be happy to discuss with you. Whether they will
10 change the nature of the effectiveness or the level of
11 protection I think remains to be seen, but we do believe
12 that there has been quite a bit of an overemphasis both
13 on numbers of adversaries, because of some of the
14 reasons that Bob alluded to and some others, and also an
15 overemphasis on the concept of a design basis threat
16 because we believe that adversaries have the ability to
17 adapt and they have the ability to use creativity in
18 bring effective threats to bear that don't have anything
19 to do with the nature of the specific design threat.

20 So we are looking for toward modifying and
21 enlarging our threat to an envelope of potential
22 adversaries, some of whom may press on your system
23 mostly in one direction, say, like a terrorist group
24 where numbers may be very important and other kinds of
25 adversaries who may put a difficult on your system of an

1 entirely different kind because perhaps they will be
2 more inventive or more innovative or have better use of
3 insiders or be able to better create a conspiracy, those
4 kinds of things. So we are looking to broaden our
5 concept of how we look at adversaries.

6 COMMISSIONER AHEARNE: Do you have a
7 difference in the type of threat with respect to the
8 type of facility that you are attempting to guard?

9 MR. ISAACS: No. If a facility meets the
10 criteria, which is essentially if it is of national
11 security significance or if its damage could be of
12 significant impact on the general public health and
13 safety, we have a single specific threat range or
14 envelope that we would use.

15 COMMISSIONER AHEARNE: So FFTF, for example ---

16 MR. ISAACS: --- would have the same threat as
17 Rocky Flats.

18 COMMISSIONER GILINSKY: I was going to say you
19 have got reactors on reservations far away from people.

20 MR. ISAACS: Now we do make some special
21 concessions for places like PANTEX where we have
22 finished weapons assemblies.

23 COMMISSIONER AHEARNE: So, for example, you
24 would then have this same kind of threat going against
25 the any reactor or like reactor you might have?

1 MR. ISAACS: Yes. If you look at a
2 sophisticated adversary, there is no reason in our
3 judgment to suspect he will have different capabilities
4 to bring to bear if he chooses to steal material versus
5 if he chooses to sabotage a facility.

6 COMMISSIONER GILINSKY: Well, except that what
7 you have to decide is how much protection you want to
8 have. You don't guard a candy store the same way you
9 guard a bank.

10 MR. ISAACS: Agree, but you don't change the
11 threat to accomplish that. You change the level of risk
12 that you would be willing to put up with. If an
13 adversary chooses to do one action or another he can
14 bring the resources to bear that he needs in order to
15 accomplish that within his capabilities.

16 COMMISSIONER GILINSKY: Yes, but this is just
17 a way of applying a standard.

18 MR. ISAACS: I understand that. We are not
19 faced quite with the same difficulties that you are
20 because we set policy with one hand and give money with
21 the other.

22 (Laughter.)

23 MR. ISAACS: And so we have more flexibility
24 in trying to be realistic about these things. You are
25 under the onerous burden of being fair.

1 (Laughter.)

2 COMMISSIONER GILINSKY: Well, it isn't just a
3 matter of being fair. We are supplying a certain test
4 for reactors and we have decided that it is more
5 important to guard the fuel cycle facilities because
6 there someone could run off with material and export it
7 anywhere in the world.

8 MR. ISAACS: Let me just add one point. There
9 is a difference between the kinds of reactor facilities
10 that we deal with, FFTF aside. When we talk about the
11 production reactors, we are talking about reactors that
12 have national security significance, and therefore the
13 impact is not just the ---

14 COMMISSIONER AHEARNE: That is why I carefully
15 chose the ---

16 MR. BURNETT: I wonder if this would be the
17 proper time for Mr. Isaacs to give their presentation.

18 CHAIRMAN PALLADINO: For who?

19 MR. BURNETT: Mr. Isaacs from the DOE.

20 CHAIRMAN PALLADINO: I see no reason why not.

21 MR. BURNETT: I have given about
22 three-quarters of it.

23 (Laughter.)

24 MR. ISAACS: Up until now basically our threat
25 guidance to the field or our threat policy has been very

1 much in align with the same policy that NRC has and I
2 think it is very comparable in terms of its
3 effectiveness. It is it identical? No. Does it have
4 to be or should it be? I don't think so. I think we
5 have unique situations.

6 We have come to feel over the last several
7 years, because of some of the things I just mentioned,
8 that we probably ought to modify that to try and reflect
9 reality a little bit more. By reflecting reality what I
10 mean is that the concept of a design basis threat, that
11 is defining a single threat which you say if you can
12 meet this threat you are okay and if you can't meet it
13 you are not okay, probably doesn't reflect what
14 adversaries are going to do. In other words, an
15 adversary generally will either bring to bear the
16 resources he feel are required to do the job or he is
17 not going to attempt it in the first place. That is one
18 thing.

19 Secondly, there has been a focus on
20 terrorists, and understandably so, because of the
21 tremendous amount of publicity and public reaction that
22 has occurred over the last decade or so. So both NRC
23 and DOE have really responded to physical protection
24 measures focused on effectively encountering terrorists
25 and I think we have got to do that. I think it is

1 probably still, along with protection against the
2 insider, our highest priority requirement today. But
3 there are other potential adversaries out there as well,
4 some of whom may have qualities that are more difficult
5 to protect against than the terrorist. They may not
6 have as sophisticated an armament system, but they may
7 be much more ingenuous.

8 We have seen cases in history where smaller
9 groups of people have succeeding in malevolent acts
10 where larger more well armed groups of people have
11 failed.

12 So what we are trying to do is to give our
13 facilities a broad level of guidance of the range of
14 envelope of types of adversaries that are out there. So
15 that is one change that we have.

16 Secondly, we have noticed that, if nothing
17 else, for sure threat change with time. They are
18 dynamic in nature. We see more and more concern, and
19 some of it as a result of occurrences in the license
20 sector, to worry about the insider threat. We have seen
21 some incidents and some trends that lead us to have more
22 concern. So we are focusing more attention, for
23 example, on our production reactors against sabotage,
24 the exact thing you are talking about. We are focusing
25 much more attention and money on the protection of those

1 facilities than we have had until the recent past.

2 COMMISSIONER GILINSKY: What sort of credit do
3 you give for a clearance?

4 MR. ISAACS: What sort of credit do you give?

5 COMMISSIONER GILINSKY: For a clearance.

6 MR. ISAACS: I think you don't put a number on
7 it. What I think you do is you say that we can't
8 quantify it. We are not sure how effective it is, but
9 we believe it certainly is more effective to have people
10 who have been cleared into your facility than those that
11 haven't. So we think it is a worthwhile procedure to
12 follow.

13 We don't give any credit in the sense that we
14 say to ourselves we believe that if this person is
15 cleared we don't have to be concerned about him being a
16 potential saboteur or working potentially with an
17 external force to divert nuclear material. We give no
18 credit in that sense other than to say that there is a
19 certain degree of conspiracy beyond which we believe one
20 would prudently not protect because of the fact that
21 people are cleared and it wouldn't occur because people
22 are cleared and perhaps there is a higher reliability
23 because of that.

24 COMMISSIONER GILINSKY: Do you have any idea
25 how your access controls compare with those in the

1 License sector?

2 MR. ISAACS: The actual access controls I
3 would say are probably comparable. Given like
4 situations they are probably very comparable.

5 COMMISSIONER GILINSKY: I mean physical access.

6 MR. ISAACS: I am talking about physical
7 access as well. I think they are comparable. For
8 example, if you go to PANTEX, you will find a very
9 rigorous access control system into that facility and at
10 some other places it is somewhat less rigorous. There
11 are facilities where we are not happy with our access
12 controls and we are working to upgrade them right now.

13 COMMISSIONER GILINSKY: But PANTEX is a pretty
14 different place than a power reactor.

15 MR. ISAACS: Yes. I would say for power
16 reactors in the sense that we have something comparable,
17 there would be comparable access requirements and actual
18 implementation.

19 CHAIRMAN PALLADINO: You mean in the reactors?

20 MR. ISAACS: I am sorry?

21 CHAIRMAN PALLADINO: You say in your reactors
22 you feel access control is comparable to what we have in
23 ours?

24 MR. ISAACS: To the best of my knowledge, they
25 would be comparable.

1 CHAIRMAN PALLADINO: My memory, and I have to
2 back a number of years, so I am not sure I can compare
3 in the same time frame, but what I see in commercial
4 reactors today and what I remember, they are not
5 comparable. My impression is the commercial reactors
6 are far more stringent.

7 MR. ISAACS: In commercial reactors, yes.

8 CHAIRMAN PALLADINO: By I am comparing two
9 different time frames.

10 MR. ISAACS: As a matter of fact, you are
11 absolutely right. When I came into the safeguards
12 business in the mid-70's I would agree with you, and as
13 a result we have spent quite a bit of money recently on
14 production reactors, as I mentioned, for exactly those
15 kinds of reasons.

16 CHAIRMAN PALLADINO: So my memory is not
17 applicable. It is applicable but it is not relevant.

18 (Laughter.)

19 COMMISSIONER AHEARNE: We all know what you
20 mean.

21 (Laughter.)

22 MR. ISAACS: That really is what I planned to
23 say to you all, but I would be more than happy to answer
24 any questions or go back and do any kind of fumbling in
25 research that might be necessary to meet your

1 requirements.

2 COMMISSIONER AHEARNE: So I gather though from
3 what you have said that you have the same position as
4 Bob does and John, that there have been no real changes
5 in the events that you have seen that leads you to
6 conclude that the size of the threat is growing?

7 MR. ISAACS: I would have to answer you and
8 say that I think there is an overemphasis on the number
9 of people that are in a threat. I think that it is
10 focused on far too much and it is to the detriment of
11 the kinds of things that need to be done in order to
12 make facilities effective in future threats.

13 Now having said that, I think there are some
14 trends out there that we all need to pay attention to.
15 I have often told people before that I think I am in the
16 business of walking the fine line between paranoia and
17 prudence and if I am going to err it is on the side of
18 paranoia.

19 I think there are some potential threats out
20 there that we have to concern ourselves with so that if
21 they look like they are going to become more realistic
22 we have to worry about them. One is demonstrations,
23 particularly at our facilities at Lawrence Livermore we
24 have seen an increasing number of demonstrations. We
25 had someone actually go over a fence, as you are

1 probably aware, and go into one of our facilities. We
2 consider these things in a very serious vein and we are
3 doing something about it.

4 Now are we changing our policy? Yes, we will
5 be taking a look at the policies we have for protecting
6 against demonstrations because if you look in Europe at
7 what the potential is some place down the road it could
8 become much more serious in this country. It is a kind
9 of threat against which we have not designed effective
10 responses in every case. In some cases we do very
11 well. So that is one example for you.

12 The insider I think is another example. I
13 think NRC has also looked equally hard at some of the
14 trends in inside potential adversaries and what you
15 might have to do and there are others as well.

16 MR. BURNETT: I might add that DOE and NRC are
17 having extensive dialogue in the new directions that
18 they are considering. When they finalize their threat
19 we will have to analyze that data and the statement for
20 relevance to our position.

21 COMMISSIONER AHEARNE: Bob, if you were to
22 take the threat, however, you want to describe it,
23 numbers or anything, which apply against the fuel
24 facility and applied it against the reactor, would you
25 have to substantially change the criteria that you now

1 use?

2 MR. BURNETT: Yes, sir. If you applied, if I
3 understand you, the small group as opposed to the
4 several, that would change the criteria. Now I have the
5 Licensing Branch Chief with me, George McCorkle.

6 Would you like to add something to that?

7 MR. McCORKLE: No, sir. I agree with you.

8 The smaller groups with their capability

9 would certainly present a different problem
10 for us. It is inherently larger in size. Of course, if
11 you use the entire threat statement, then we would have
12 to worry about internal conspiracy which would make a
13 significant change.

14 MR. BURNETT: A significant change, I want
15 emphasize that.

16 COMMISSIONER AHEARNE: Yes, I understand
17 that. One of the advantages that had been often used
18 for the use of the word "several" is that it is an
19 approximate number. It doesn't really pin down any one
20 specific. That is fine until you walk down the
21 argument, however you compare the plans versus this
22 other criteria, that the criteria are established on the
23 basis of which then leads to the question, well,
24 what if you apply this same general flexibility and
25 let's go to small group.

1 is the implication I got out of what you said.

2 MR. McCORKLE: Well, of course that is only a
3 minimum.

4 CHAIRMAN PALLADINO: I agree it is a minimum.

5 MR. McCORKLE: The number of guards that we
6 employ out there we say are dedicated to a response.
7 Now that does not mean that those are the only armed
8 guards available for a response. There are other
9 functions out there the guards occupy that they could
10 drop.

11 CHAIRMAN PALLADINO: I still maintain my
12 question with all your caveats. Would you still let it
13 go down to five?

14 MR. McCORKLE: Yes, sir.

15 CHAIRMAN PALLADINO: Even if it was a
16 as your design basis threat?

17 MR. McCORKLE: Yes, sir.

18 MR. BURNETT: George, I think you should say
19 in the presence of other features.

20 MR. McCORKLE: Right.

21 CHAIRMAN PALLADINO: Given the circumstances
22 that allowed you to go to five based on you are
23 saying you would still go to ---

24 MR. McCORKLE: There is more immediacy for
25 action, sir, with a reactor facility. We are worried

1 there about stopping an act of sabotage. That is a
2 force that comes in and commits the act. Where they
3 have a facility they have to come in, they have to
4 penetrate the area where the material is, steal it and
5 start back out again. So the time factor is more with
6 the defensive force.

7 CHAIRMAN PALLADINO: I agree with all that,
8 but you said earlier that you had developed your
9 criteria on the basis of a given design threat and that
10 was outsiders and one insider. On that
11 basis you said if the circumstances are right you will
12 let the guard force that would respond be as low as five.

13 MR. McCORKLE: Yes, sir.

14 CHAIRMAN PALLADINO: Now if your design basis
15 threat were
16 would you still allow the responding guard force to go
17 down to five?

18 MR. McCORKLE: Yes, sir, it could be. It is
19 not the driving thing.

20 CHAIRMAN PALLADINO: So you are saying that
21 this design basis threat then, even though that was the
22 basis for which you developed this criteria, that even
23 if you changed it the criteria wouldn't change
24 at least so far as ---

25 MR. McCORKLE: On that portion of it because

1 it is a balanced system. The defensive force is not
2 entirely dependent on ---

3 CHAIRMAN PALLADINO: We have a set of criteria
4 and if the criteria are met and they were developed on a
5 reasonable basis then we don't have to worry about what
6 "several" means. That is what I am exploring. You are
7 saying this is insensitive to what "several" means, that
8 the criteria are insensitive.

9 MR. McCORKLE: I believe that the basic
10 difference though on the minimum number, in
11 consideration of the difference in the size of the
12 force, was the nature of the act we were protecting
13 against. Again, it is a question of the time element
14 with the theft which is our principal ---

15 CHAIRMAN PALLADINO: I wasn't talking about
16 theft. I was just talking about sabotage.

17 MR. McCORKLE: Of course at the present
18 facilities from a standpoint of radiological sabotage
19 within the fuel industry and the absence of plutonium
20 out there, we are not particularly concerned about
21 radiological sabotage. Our primary concern is theft.

22 COMMISSIONER GILINSKY: Say that again?

23 CHAIRMAN PALLADINO: You are mixing me up. I
24 wanted to stick on just one subject and that is sabotage
25 for reactors. I am talking reactors now. I want to

1 know whether your criteria would change if I changed
2 the ---

3 MR. McCORKLE: If you changed the number to
4 reactors.

5 CHAIRMAN PALLADINO: If I changed from
6 for reactors for reactors.

7 MR. McCORKLE: At the level I would
8 start to think.

9 COMMISSIONER GILINSKY: Well, I think you have
10 to say that your confidence would go down.

11 CHAIRMAN PALLADINO: What would go down?

12 COMMISSIONER GILINSKY: About protection.

13 CHAIRMAN PALLADINO: Would you change the
14 criteria? That is what I want to know.

15 MR. BURNETT: I must admit that I would have
16 to look at that.

17 MR. McCORKLE: We have got a mind-set of
18 if I understood your question. Definitely
19 we would start to think about what that criteria ---

20 MR. BURNETT: I would like to augment what he
21 said. I would have to review that.

22 COMMISSIONER GILINSKY: At one point we
23 attached high confidence to these numbers. We said that
24 you had to protect with high confidence, and somewhere
25 along the way I think high confidence bit the dust.

1 MR. BURNETT: No, sir.

2 COMMISSIONER GILINSKY: Is it still there?

3 MR. BURNETT: In one form. The goal of
4 safeguards is high assurance and that is still the rule.

5 COMMISSIONER GILINSKY: That was a big
6 compromise with Joe Hendrie. Thinking of it that way,
7 the idea was to have high confidence by protection with
8 at fuel cycle facilities, but
9 you would have a certain degree of protection at
10 reactors against although not
11 quite the same level of confidence.

12 MR. BURNETT: It would cut into that level of
13 confidence in reference to the rules. I think that the
14 staff would have to come back and evaluate if the threat
15 was numbered that way.

16 CHAIRMAN PALLADINO: Can I ask you a couple of
17 questions to help me clear up my own thinking.

18 One, you recommended that we make no change.
19 I forgot how you worded it.

20 MR. BURNETT: Our evaluation of the incidents
21 since the formation of the threat, we haven't seen any
22 reason to alter the threat statement.

23 CHAIRMAN PALLADINO: Well, on the basis of
24 that one might say that the Commission needs to do
25 nothing.

1 Then "several" would remain in, what is it,
2 72.1?

3 MR. BURNETT: Yes, sir.

4 CHAIRMAN PALLADINO: And ALAB 653 would remain
5 the same. It would say we assume

6 MR. OLMSTEAD: You have got to be careful
7 about ALAB 653. As it sits now the only people who have
8 access to it are the people who were granted access to
9 it in Diablo.

10 COMMISSIONER GILINSKY: What does that mean?

11 MR. OLMSTEAD: Well, that means that in
12 another proceeding, and may be misreading what you were
13 starting to say.

14 COMMISSIONER GILINSKY: Oh, you are talking
15 about the audience here?

16 MR. OLMSTEAD: There are a number of people on
17 the staff and in our office who have not had access to
18 that decision. The point I was making is since they
19 have not really released an sanitized version it has no
20 precedential value in any other proceeding.

21 CHAIRMAN PALLADINO: What I am getting at is
22 we could do nothing on the basis that you say "several"
23 is fine and you wouldn't change the criteria because you
24 are not changing what you meant on the basis for
25 developing the criteria. We could go away and do

1 nothing and then I was wondering where does that leave
2 us? Are we in a good situation or are we in some
3 awkward situation because of what ALAB 653 ---

4 MR. OLMSTEAD: I think, too, there is one
5 other point that should be made about ranges. Nobody is
6 going to litigate

7 If it is

8 The thing people want to know
9 is what is the upper bound. That is what is at issue.

10 CHAIRMAN PALLADINO: Aside from ALAB 653,
11 another hearing board comes along and they say we have
12 got a security problem and we think you are right if the
13 number is Now we again might have difficulties
14 saying that we accept or not. Are we willing to
15 let the status quo ---

16 COMMISSIONER AHEARNE: Let's take this case of
17 another hearing. Let's suppose that there is another
18 plant and the intervenor challenges the adequacy of the
19 emergency plan and comes in with the challenge is the
20 plant can't handle a dedicated attack of
21 Now how does the staff defend against that, that it
22 meets the emergency plan criteria and the number is
23 irrelevant, or does the staff defend against it by
24 saying that the number that has to be met is

25 MR. OLMSTEAD: That gets to be very complex
because there is another contention that has to come in

1 ahead of that which you have in some cases and don't
2 have in the other cases, and that is the interplay
3 between 73.1 and 73.55.

4 The criteria that everybody is talking about
5 are the implementing criteria for the specific
6 requirements in 73.55. If you litigate that you never
7 get to the threat because everybody agrees that whatever
8 the threat is that meets it. It is when you are
9 challenging whether that criteria adequately implements
10 73.55 that you go to the preface of that section which
11 throws you back to 73.1 and you get into the question of
12 what the threat is.

13 COMMISSIONER AHEARNE: Let's assume that they
14 do all of that.

15 MR. OLMSTEAD: If they do all of that, then we
16 go to the staff and say what is your position on this?

17 COMMISSIONER AHEARNE: And your position ends
18 up being?

19 MR. BURNETT: If it was a convincing argument
20 that the threat is really a number as I said
21 earlier, we would have to re-evaluate the criteria in
22 73.55. I don't think we today can sit here and say what
23 would be the impact of

24 COMMISSIONER GILINSKY: It seems to me we
25 oughtn't to let the tail wag the dog here. We ought to

1 design the protection that we think ought to be there
2 and then figure out how to deal with hearings rather
3 than design protection for hearings.

4 CHAIRMAN PALLADINO: No, there are two ways of
5 establishing what the meaning of "several" is. One, we
6 could establish it, or, two, somebody can establish it.
7 What I am getting is the boards are starting to
8 establish it. Do we want to go that way if we let the
9 status quo ---

10 MR. OLMSTEAD: I don't think the boards think
11 they are establishing it. They are trying to figure out
12 the degree to which they are allowed to litigate it.
13 Essentially what you get into if you allow them to
14 litigate what the threat what the threat is in a
15 particular plant is you get into scenarios and it takes
16 a long time ---

17 CHAIRMAN PALLADINO: I don't want that and
18 that is why I am bringing it up.

19 MR. BURNETT: If I could add, I don't think it
20 would be wise to put number out there. I think
21 the way it is going is more advantageous because, as
22 Bill just illuminated, the bigger than actual number
23 that you all support, the more scenarios we have to deal
24 with, when actually, as DCE has told you, there is too
25 much emphasis on this number.

1 CHAIRMAN PALLADINO: I am not suggesting that
2 I want you to do that. I am saying if your suggestion
3 is the design basis threat reviews ---

4 MR. DIRCKS: Couldn't we get around it by
5 establishing the criteria as the basis for the ---

6 CHAIRMAN PALLADINO: That is what I was trying
7 to get at.

8 MR. DIRCKS: Formalize the criteria and say if
9 they meet the criteria you won't litigate it.

10 CHAIRMAN PALLADINO: Notwithstanding it is not
11 necessary to define "several" ---

12 MR. OLMSTEAD: Then you have come full
13 circle. What got us to this point in the first place
14 was Gesmo where Carl Builder established performance
15 criteria which was threat based and went away from
16 specific criteria. If you go back to that, then you are
17 back where you started. That is all right. There is
18 nothing wrong with it.

19 MR. ISAACS: One of the things I wanted to
20 mention and neglected to in support of this is that in
21 DOE's experience in the last several years where we up
22 until recently had only specifications, not performance
23 oriented safeguards but specifications, we found that in
24 facility after facility it was possible for those
25 facilities to meet every single one of the black and

1 white specifications

2 That is why we felt
3 there was an overlay necessary of a performance oriented
4 policy that said in addition to this you have got to
5 have some kind of system.

6 MR. BURNETT: That is the very reason we have
7 that elaborate program of inspection, confirmatory
8 visits and a regulatory review to find gaps that reading
9 the black and white does not correctly illuminate.

10 CHAIRMAN PALLADINO: But if you find gaps even
11 in the criteria you can fix up the criteria.

12 MR. BURNETT: Yes. In fact that regulatory
13 review helps us to say, hey, it is being misinterpreted
14 or it is being misimplemented so it can, shall we say,
15 fine-tune the regulations as well as the system.

16 COMMISSIONER AHEARNE: I had no problem with
17 any of that. I thought I was fairly comfortable with
18 the various discussions in the past between the
19 differences in reactors and fuel facilities and all of
20 those in the approaches. The difficulty really arose
21 when we now have a board which seemed to conclude that
22 the only way it could test the adequacy against the
23 challenge was to reach a specific conclusion of the
24 number.

25 MR. BURNETT: Agreed.

1 COMMISSIONER AHEARNE: And I don't think
2 wrongly. I think the wrong part may have been the
3 board's conclusion that the only way they can test it
4 is to reach a specific number, but if once they reach
5 that conclusion I think they did a reasonably good
6 historical track and they came out the same place Bob
7 has just come out because they seemed to be bound and
8 determined that they had to have a number.

9 COMMISSIONER GILINSKY: Well, but that was
10 wrong in itself.

11 CHAIRMAN PALLADINO: You said you see no
12 reason for change and I am not taking exception to
13 that. So we could leave the meeting and say the status
14 quo and do nothing. I still think that leaves us with a
15 problem, and that is the hearing boards.

16 COMMISSIONER GILINSKY: We have to tell the
17 boards something.

18 CHAIRMAN PALLADINO: I agree. So now we have
19 a couple of options to tell the board. One, we could
20 say we want no particular number attached to the word
21 "several." Your evaluation shall be on the criteria
22 that we have listed. Is that a reasonable approach or
23 what problems do we get into ---

24 MR. BURNETT: I would like to ask legal what
25 problem that gives us.

1 MR. OLMSTEAD: Well, it doesn't give you a
2 legal problem. It gives you a timing problem because
3 you have increased the amount of safeguards information
4 that can be litigated in individual cases.

5 CHAIRMAN PALLADINO: Oh, you mean all these
6 criteria now can be litigated?

7 MR. OLMSTEAD: Right, and there are lots of
8 people willing to testify about what the criteria ought
9 to be.

10 CHAIRMAN PALLADINO: What do you suggest we do
11 based on the recommendation that we see no basis for
12 change?

13 COMMISSIONER GILINSKY: Let's see, the
14 criteria, are they not in the rule?

15 MR. OLMSTEAD: The criteria are in the rule,
16 but if you are saying that your performance requirement
17 is such that it is threat sensitive and you can adjust
18 it up and down, then one first has to litigate what the
19 threat is so that one can argue about what criteria
20 should be considered.

21 CHAIRMAN PALLADINO: I was trying to get away
22 from that though. I was trying to say don't worry about
23 what the general requirement is. We are going to
24 evaluate the plants against these announced set of
25 criteria. Do they meet them or don't they meet them?

1 What is wrong with that?

2 MR. OLMSTEAD: Then you have to change the
3 performance requirement of the rule which allows the
4 adjustment. You can't have a situation where you are
5 letting the staff adjust the criteria and not letting
6 the parties litigate whether the staff adjusted it
7 properly.

8 CHAIRMAN PALLADINO: What would we have to do?

9 MR. OLMSTEAD: You would have to take the
10 performance portion out of the rule.

11 CHAIRMAN PALLADINO: By the performance
12 portion you mean "several"?

13 MR. OLMSTEAD: Well, not the "several"
14 necessarily, but the part of 73.55(a) that allows the
15 safeguards criteria to be adjusted.

16 CHAIRMAN PALLADINO: Well, I am open to any
17 suggestion. We could just leave everything alone and let
18 whatever the boards say be said or we can try to take ---

19 COMMISSIONER GILINSKY: We ought to say what
20 we think ought to ---

21 COMMISSIONER AHEARNE: I am afraid we are
22 going to have to something. We might say "several" does
23 mean But I am uncomfortable because even if it
24 is on a restricted access to that board, it doesn't
25 prevent any other board from going through the same

1 situation.

2 COMMISSIONER GILINSKY: Well, it is the Appeal
3 Board. They have only got six members and these people
4 are going to be on a lot of boards.

5 CHAIRMAN PALLADINO: There is another problem
6 I was told. I don't know what the word "restricted"
7 means for the moment and I was told you can't classify
8 this number

9 COMMISSIONER GILINSKY: That is right.

10 MR. OLMSTEAD: That is true.

11 CHAIRMAN PALLADINO: So how do you restrict it?

12 MR. OLMSTEAD: The Appeal Board in that
13 particular case issued an order which all parties are
14 bound by on what the distribution of that document would
15 be and it cannot be given to other people. Now you have
16 got a request, and I think OGC can tell you about it,
17 from the licensee in Shoram who would like to have that
18 document because he is faced with a situation where the
19 intervenors have access to it and he doesn't.

20 COMMISSIONER AHEARNE: Well, not all the
21 intervenors.

22 MR. OLMSTEAD: No, just the county.

23 COMMISSIONER AHEARNE: Well, not only the
24 county. I assume just the lawyer.

25 MR. OLMSTEAD: You are right. The lawyer for

1 one of the parties, yes.

2 COMMISSIONER AHEARNE: Right, but that party
3 does not I assume.

4 MR. OLMSTEAD: That is correct.

5 CHAIRMAN PALLADINO: Let's leave the board for
6 the moment and say we do want to define what "several"
7 means. Can we in some way restrict or classify that
8 definition? It is my understanding we cannot. We come
9 out and say "several" means "X" number or even a range
10 of numbers, I am told we can't classify it.

11 MR. OLMSTEAD: I think that is the view of
12 NMSS, that is not ---

13 CHAIRMAN PALLADINO: How can we control it?
14 Then we have to publicly announce it, or is there some
15 intermediate step? That is the problem I find with
16 trying to say "several" means "X".

17 COMMISSIONER GILINSKY: I think we have to
18 recognize that this is an area in which professional
19 judgment is going to be paramount and in which it is
20 impossible to put down cut and dry rules. We are just
21 going to have to live with that situation and basically
22 adjust the way we deal with it in hearings to that
23 reality.

24 CHAIRMAN PALLADINO: What are you going to
25 tell the hearings boards, don't try to interpret

1 "several" and just goes to these criteria? That is one
2 way you could do it and that is the way I thought maybe
3 might be out, but you say that opens up all the criteria.

4 COMMISSIONER GILINSKY: I think it is an area
5 where there will just have to be more deference to
6 professional judgment. Here are the people who are
7 charged with the responsibility on the staff.

8 CHAIRMAN PALLADINO: What I am saying though,
9 Vic, is we go away from this meeting, unless we continue
10 the subject, and say there was this recommendation there
11 be no change and we buy it and we adjourn the meeting
12 and everybody is happy.

13 Now the boards I think get the clue that
14 "several" means because whatever one board might
15 do, the others would follow.

16 MR. OLMSTEAD: If you give the opinion out.
17 The boards don't have the opinion either, except for the
18 Appeal Board in Diablo Canyon. General Counsel has a
19 request to give access to the opinion, but nobody has it
20 right now.

21 COMMISSIONER GILINSKY: I would tell them that
22 they misinterpreted things and that there is no need to
23 fix any particular number.

24 CHAIRMAN PALLADINO: Embellish that. How can
25 you convince them there is no need to fix any particular

1 number?

2 COMMISSIONER GILINSKY: Well, I could try to
3 write it down in my little opinion here in Diablo Canyon.

4 (Laughter.)

5 CHAIRMAN PALLADINO: I am not trying to create
6 a problem. I would like to get an easy resolution. One
7 thing we could do is just close the meeting and say we
8 agree, if we agree, and I am not trying to prejudge how
9 the Commissioners feel, but if the Commissioners agree
10 with your recommendation that there is no basis for
11 change and therefore we should not change, we could end
12 the meeting and if everybody is happy ---

13 COMMISSIONER AHEARNE: Bill, from your
14 consideration of the board system and the regulations,
15 if the Commission were to say to the boards that in
16 addressing security plans and looking at whether 73.1
17 and 73.55 are meant they would not have to specify a
18 specific number for "several," what would be the impact
19 of that?

20 MR. OLMSTEAD: Well, I think that would be
21 helpful, but the nature of the process is that when one
22 is hypothesizing in litigation, which is what all these
23 experts do, even our own, the number becomes critical to
24 setting up their illustration. Essentially what happens
25 in litigation is you get these people inside the plant

1 and they start hypothesizing where they are going to be
2 and what they are going to do and the safety people get
3 up and say well, you really can't do that because you
4 need to have somebody down in the auxiliary building.
5 And the more people they have they more likely put them
6 where they need them in order to litigate the scenario.

7 The thing that the boards have had difficulty
8 controlling was the number of scenarios they had to hear
9 before they could get to the performance criteria. So
10 that is the problem, the practical problem. Anything
11 that clarifies that I think is helpful.

12 COMMISSIONER AHEARNE: Well, I am not sure.
13 Are you saying that if we were to say don't focus on a
14 specific number, it is not clear to me that that helps
15 the board in that limitation unless each board then
16 reaches its own conclusion on approximately how much is
17 "several" and beyond that they would say that we can't
18 construct a scenario with more than that.

19 MR. OLMSTEAD: Yes, and I don't really want to
20 speak for the boards. I know the boards that have had
21 to deal with this problem feel it is difficult to deal
22 with and I think the Appeal Board indicated that it
23 would like to speak to you when the record was closed
24 about its own ideas on how to handle the problem.

25 The times I have been involved with it, and I

1 prefer to refer to Gesmo, which is where a lot of this
2 came out of, and one of the considerations was that
3 everybody wanted to know what the range was, not because
4 they wanted to know what the range was but because they
5 wanted to litigate the upper bound because that is where
6 you get the most mileage because the more numbers you
7 can run in the more you can do with people.

8 COMMISSIONER AHEARNE: What you are saying I
9 think is that if the Commission were to say you
10 shouldn't focus on the specific number, the help there
11 would be that the boards then wouldn't feel obligated to
12 try to find a specific number. But as far as the
13 limitation of scenarios goes it wouldn't do anything.

14 MR. OLMSTEAD: It wouldn't do much.

15 COMMISSIONER AHEARNE: Now let me consider the
16 opposite case that we don't speak. You said the opinion
17 hasn't been distributed yet, but, as I understand it, it
18 is not at all a foreclosed conclusion that it isn't
19 going to have to be distributed.

20 MR. OLMSTEAD: No, it isn't and OGC can speak
21 to that. Although I will say that I happen to know that
22 in another case where that is going on, that isn't the
23 number the board has seized on.

24 CHAIRMAN PALLADINO: That what?

25 MR. OLMSTEAD: That is not the number that the

1 other board is using.

2 COMMISSIONER AHEARNE: My point is that it is
3 entirely possible that that Appeal Board decision is
4 going to have to be released.

5 MR. OLMSTEAD: Or at least large portions of
6 it.

7 COMMISSIONER AHEARNE: And the particular
8 portion that speaks to what "several" means.

9 MR. OLMSTEAD: Yes.

10 COMMISSIONER AHEARNE: Now if that does happen
11 and we haven't spoken, and we don't say anything ---

12 MR. OLMSTEAD: Then everybody will pay
13 attention to what has ---

14 COMMISSIONER AHEARNE: To that number, and
15 that will be the number that will be used.

16 MR. BURNETT: But would it be possible for the
17 Commission to agree, and let me get this all out, that
18 and one was a fair representation of the threat,
19 understanding that the security is relatively
20 insensitive to minor changes?

21 COMMISSIONER GILINSKY: Well, understanding
22 that that is an additional criteria and that one doesn't
23 want to get into situations were it is.

24 MR. BURNETT: But if the Commission said
25 something like that ---

1 COMMISSIONER GILINSKY: I think that is a
2 reasonable representation if you add the condition that
3 you are supposed to take a look and make sure that
4 things are falling apart whether it is

5 MR. BURNETT: We do.

6 CHAIRMAN PALLADINO: Bob, I think you are
7 getting to what I was going to propose. If we buy your
8 recommendation that there is no need for change, then we
9 would ask the staff what recommendation would you make
10 for our action in view of our concurrence that there is
11 need for change, and that you are approaching that by
12 trying to ---

13 COMMISSIONER AHEARNE: I would have to add, if
14 I could, that it is not just his recommendation from the
15 standpoint of how ought the staff look at security plans
16 or how ought they be built, we do have then as a
17 secondary step look at how do we speak to the boards,
18 because I believe we do have to say something and I
19 don't believe we can remain silent because in one way or
20 another I think that "X" equals is going to be ---

21 COMMISSIONER GILINSKY: But what Bob says is
22 not the same as what the board would say.

23 COMMISSIONER AHEARNE: I understand that.

24 MR. BURNETT: It is slightly different.

25 COMMISSIONER GILINSKY: I just want to repeat,

1 and maybe this is obvious, that we don't want to let the
2 hearing process drive what the security should be like.

3 COMMISSIONER AHEARNE: You are right.

4 COMMISSIONER GILINSKY: We want to be sure you
5 set up the security system ---

6 COMMISSIONER AHEARNE: Sure, absolutely.

7 COMMISSIONER GILINSKY: --- and then figure
8 out how you deal with it.

9 COMMISSIONER AHEARNE: I thought we had, at
10 least in the couple of years I have been here, at the
11 times this issue has come up, focused on that, how well
12 we addressed the review for the security system. It
13 wasn't until this Appeal Board decision came up that
14 frankly I really thought about that we also have to take
15 into account what the boards are going to be doing.

16 CHAIRMAN PALLADINO: Well, would it be fair to
17 proceed in this way if the Commission agrees, and I want
18 to poll them, but if the Commission were to agree that
19 there was no need for a change, that we concurred in
20 your recommendation that there was no need for a change,
21 and then ask the staff to propose what actions we should
22 take to recognize that decision?

23 COMMISSIONER AHEARNE: Well, I think something
24 like Bob was just saying sounds reasonable. The point
25 that Vic had made earlier to Bob also, that what you

1 want to make sure of is you don't have a system that
2 suddenly precipitiously falls down.

3 CHAIRMAN PALLADINO: Tom.

4 COMMISSIONER ROBERTS: What does the staff
5 think "several" means?

6 (Laughter.)

7 MR. BURNETT: To be honest, we think it is

8

9 (Laughter.)

10 CHAIRMAN PALLADINO: One of my staff members
11 had asked a number of staff members and he has always
12 gotten

13 MR. BURNETT: But we think is a fair
14 representation, and I have staff members here. So,
15 we are satisfied.

16 COMMISSIONER ROBERTS: What is the down side
17 of the Commission agreeing with that conclusion? Is it
18 the lack of classification? Is that what the problem is?

19 CHAIRMAN PALLADINO: If we agree with it,
20 fine, and then we have to let everybody know it.

21 MR. OLMSTEAD: I think one of the problems you
22 have is if you go back to this historical paper that Bob
23 ran you through, one of the reasons for using "several,"
24 although as Commissioner Gilinsky points out not the
25 only reason, but one of the reasons was the concern

1 about having numbers in the regulations.

2 Now the rules have changed. The safeguards
3 legislation passed, there are new standards for what you
4 can withhold and what you can't withhold and you are in
5 the dilemma with the Appeal Board decision of having to
6 release a number that the Commission at that time was
7 trying to not release. So I think that is another
8 factor you having focused on too much. But under the
9 safeguards legislation a generic number is not
10 protectable. A site specific number is.

11 MR. DIRCKS: I think you are clarifying that
12 you don't want to make the numbers publicly available.

13 COMMISSIONER AHEARNE: We are going to have to.

14 MR. DIRCKS: Then you have a problem I think.

15 CHAIRMAN PALLADINO: I know we have a problem.

16 MR. DIRCKS: Well, if you tell everyone that
17 generally our criteria are set up around the numbers
18 and one, are we telling others who may be intent
19 on doing something that in order to beat the numbers you
20 up it a little bit to maybe more

21 CHAIRMAN PALLADINO: But we have no way of
22 classifying it.

23 COMMISSIONER AHEARNE: I think that is true
24 and we tried to make that argument to the Congress when
25 they were passing that safeguards legislation and we

1 failed.

2 COMMISSIONER GILINSKY: Isn't the point really
3 for anyone who is trying to attack one of these
4 facilities how many guards there are and what the place
5 looks like? I mean, he is not going to look up 73.55 ---

6 (Laughter.)

7 COMMISSIONER GILINSKY: --- he is going to go
8 out there and get his binoculars and ---

9 MR. DIRCKS: Well, the thing is you don't make
10 it easier for people by saying generally you are
11 protecting against "X" number of people who want to
12 break in. I mean, that seems a rather silly thing to do.

13 COMMISSIONER GILINSKY: Well, if you put it
14 that way, I don't want to defend it, but ---

15 (Laughter.)

16 COMMISSIONER ROBERTS: I agree with you.

17 COMMISSIONER AHEARNE: Well, unfortunately,
18 that is was the argument that got turned down by the
19 Congress.

20 MR. DAVIS: But that is the argument that led
21 to the use of the word "several."

22 MR. DIRCKS: And we tried to get around it.

23 COMMISSIONER AHEARNE: My concern is I suspect
24 we are going to find we can't protect the Appeal Board
25 decision. So we will have the board saying "several"

1 means

2 MR. DIRCKS: The board is now taking over your
3 policy.

4 COMMISSIONER AHEARNE: But, wait, we will say
5 "several" means What other choice do we have?

6 COMMISSIONER ROBERTS: Suppose we agree with
7 it?

8 COMMISSIONER AHEARNE: You see, we can't not
9 give it out to the boards. I suspect we have got to
10 face that that will be there. Now we can say we
11 disagree with the board, that "several" doesn't mean
12 Is that what you want?

13 CHAIRMAN PALLADINO: There is a problem in
14 that.

15 COMMISSIONER AHEAPNE: That is right. Or we
16 can say "several" mean but the force
17 can't be such that it would fail precipitously if the
18 threat is a little bit more than that, which I thought
19 was what Bob was proposing. But I think we are in the
20 bind now that given the board opinion and the law that
21 we have got to speak to it.

22 CHAIRMAN PALLADINO: Well, if we were to ask
23 the staff to come back with a recommendation on what
24 ought to be done and if we concur with your
25 recommendation, then there is no basis for change.

1 MR. DIRCKS: I was thinking about some ways to
2 help you deal with this board decision.

3 CHAIRMAN PALLADINO: Well, that would be one
4 of the recommendations you might come back with. I am
5 not trying to foreclose what the array of
6 recommendations might be. I am saying that in lieu of
7 trying to invent them sitting here this afternoon.

8 MR. DIRCKS: We don't even have the -- do you
9 have the Appeal Board decision?

10 MR. BURNETT: Yes, sir.

11 MR. DIRCKS: Oh, you do.

12 MR. BURNETT: Yes, sir.

13 (Laughter.)

14 CHAIRMAN PALLADINO: Well, let me ask the
15 Commission if they concur with the staff recommendation
16 that no changes should be made in the design basis
17 threat. I have forgotten how your recommendation went.
18 Is that it.

19 MR. BURNETT: Yes, sir, that is the bottom
20 line.

21 COMMISSIONER GILINSKY: Let's see, why are we
22 taking up that question?

23 CHAIRMAN PALLADINO: That is their
24 conclusion. After their study they are saying there is
25 no basis for change. Now if we concur, then we go ask

1 them what do we do about this and please recommend what
2 we ought to do now that we have said no basis for change.

3 COMMISSIONER GILINSKY: Well, I have to say
4 for myself I don't have any reason to think that we
5 ought to change what we are doing. On the other hand, I
6 haven't studied the question.

7 CHAIRMAN PALLADINO: Well, we don't have to
8 vote. I think something needs to be done. I feel a
9 dilemma in that we have boards acting and we are silent
10 and they are putting words in our mouth. There may be
11 ways of getting around it, and I am asking could we
12 study that. They are all based on the assumption that
13 there is no need for change. If you say, well, you want
14 to study that question, then they can't start on theirs.

15 I would say I am prepared to go along with
16 that.

17 COMMISSIONER GILINSKY: I thought it was more
18 a question of interpreting what in fact we were doing
19 and stating that clearly.

20 COMMISSIONER AHEARNE: Part of that has to be
21 do we agree that the design basis threat hasn't changed
22 because it is very hard to then speak clearly on how ---

23 COMMISSIONER GILINSKY: Well, let me just say
24 for purposes of this meeting I don't see any need to
25 change it, but I don't want this regarded as a judgment

1 I made based on any particular study of the question.

2 CHAIRMAN PALLADINO: Well, they are going to
3 come back. Vic, when I say propose, I mean they propose
4 and come back and make recommendations to the Commission
5 on how to handle this.

6 MR. BURNETT: Also remember we will be
7 documenting a revisiting on a six-month basis which is
8 due in June that we will forward up.

9 CHAIRMAN PALLADINO: Is there concurrence for
10 the purpose of developing a course of action? Is the
11 Commission willing to proceed on the recommendation made
12 by the staff that there is no need for change at this
13 time?

14 COMMISSIONER AHEARNE: Well, I don't see any
15 need for change in the threat as they have described it
16 or as Tom Isaacs described it. I think there is a need
17 for being clear on how we would interpret it and I would
18 agree with your suggestion that the staff come back with
19 recommendations.

20 CHAIRMAN PALLADINO: That is what I was trying
21 to get to. Okay.

22 Do you agree, Tom.

23 COMMISSIONER ROBERTS: I do.

24 COMMISSIONER ASSELSTINE: I agree.

25 CHAIRMAN PALLADINO: How about you?

1 COMMISSIONER GILINSKY: (Nodding
2 affirmatively.)

3 CHAIRMAN PALLADINO: Well then we will ask the
4 staff to examine the dilemma we face and see what
5 alternatives you might recommend to the Commission to
6 consider.

7 Is there anything more we should do on this
8 subject?

9 (No response.)

10 CHAIRMAN PALLADINO: Thank you all for coming.
11 We will stand adjourned.)

12 (Whereupon, at 2:45 p.m., the meeting
13 concluded.)

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NUCLEAR REGULATORY COMMISSION

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

is the matter of: CLOSED MEETING - EXEMPTIONS 1 and 3 - Briefing on
Design Basis Threat

Date of Proceeding: May 21, 1982

Docket Number: _____

Place of Proceeding: Washington, D. C.

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

Mary C. Simons

Official Reporter (Typed)

Mary C Simons

Official Reporter (Signature)

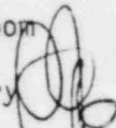


UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

October 22, 1982

OFFICE OF THE
SECRETARY

MEMORANDUM FOR: CHIEF, Public Document Room

FROM: SAMUEL J. CHILK, Secretary 

SUBJECT: COMMISSION DETERMINATION STATEMENT REGARDING
THE TRANSCRIPT OF: BRIEFING ON DESIGN BASIS
THREAT, HELD ON FRIDAY, MAY 21, 1982

Attached is the Commission Determination Statement for the subject closed Commission meeting and corresponding transcript which is being released in part to the public. This document is forwarded to you for formal placement in the Public Document Room pursuant to 10 CFR Part 9. Two copies are provided for your convenience.

Attachments:
As stated

cc: DCS-016 Phillips



OFFICE OF THE
SECRETARY

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

October 22, 1982

COMMISSION DETERMINATION REGARDING PUBLIC DISCLOSURE
UNDER THE GOVERNMENT IN THE SUNSHINE ACT OF:

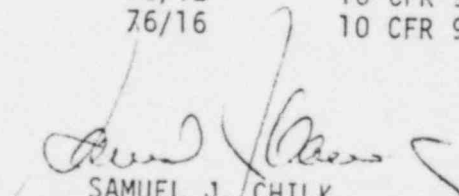
Transcript of Briefing on Design Basis Threat

Friday, May 21, 1982

Pursuant to 10 CFR 9.108(c) and 10 CFR 9.104(a)(1) and (3), the Commission has determined that the attached portions of the subject transcript should be released to the public. The remaining portions of the transcript are being withheld from public disclosure pursuant to 10 CFR 9.104(a)(1) and (3) as noted below:

<u>Page/Line</u>	<u>through</u>	<u>Page/Line</u>	<u>Exemption</u>
4/11	-	4/12	10 CFR 9.104(a)(1) and (3)
24/12	-	24/12	10 CFR 9.104(a)(1) and (3)
25/02	-	25/02	10 CFR 9.104(a)(1) and (3)
25/07	-	25/07	10 CFR 9.104(a)(1) and (3)
26/09	-	26/09	10 CFR 9.104(a)(1) and (3)
26/19	-	26/19	10 CFR 9.104(a)(1) and (3)
26/20	-	26/20	10 CFR 9.104(a)(1) and (3)
26/21	-	26/21	10 CFR 9.104(a)(1) and (3)
26/22	-	26/22	10 CFR 9.104(a)(1) and (3)
26/24	-	26/24	10 CFR 9.104(a)(1) and (3)
27/02	-	27/02	10 CFR 9.104(a)(1) and (3)
29/19	-	29/19	10 CFR 9.104(a)(1) and (3)
30/15	-	30/15	10 CFR 9.104(a)(1) and (3)
31/09	-	31/09	10 CFR 9.104(a)(1) and (3)
31/11	-	31/11	10 CFR 9.104(a)(1) and (3)
31/15	-	31/15	10 CFR 9.104(a)(1) and (3)
33/10	-	33/11	10 CFR 9.104(a)(1) and (3)
33/11	-	33/11	10 CFR 9.104(a)(1) and (3)
33/17	-	33/18	10 CFR 9.104(a)(1) and (3)
33/23	-	33/25	10 CFR 9.104(a)(1) and (3)
34/01	-	34/01	10 CFR 9.104(a)(1) and (3)
34/21	-	34/22	10 CFR 9.104(a)(1) and (3)
35/01	-	35/01	10 CFR 9.104(a)(1) and (3)
35/03	-	35/04	10 CFR 9.104(a)(1) and (3)

<u>Page/Line</u>	<u>Through</u>	<u>Page/Line</u>	<u>Exemption</u>
35/18	-	35/18	10 CFR 9.104(a)(1) and (3)
35/21	-	35/21	10 CFR 9.104(a)(1) and (3)
36/01	-	36/02	10 CFR 9.104(a)(1) and (3)
37/05	-	37/05	10 CFR 9.104(a)(1) and (3)
48/08	-	48/09	10 CFR 9.104(a)(1) and (3)
48/23	-	48/23	10 CFR 9.104(a)(1) and (3)
49/02	-	49/02	10 CFR 9.104(a)(1) and (3)
49/10	-	49/10	10 CFR 9.104(a)(1) and (3)
49/12	-	49/13	10 CFR 9.104(a)(1) and (3)
49/16	-	49/18	10 CFR 9.104(a)(1) and (3)
49/24	-	49/24	10 CFR 9.104(a)(1) and (3)
50/15	-	50/16	10 CFR 9.104(a)(1) and (3)
50/22	-	50/22	10 CFR 9.104(a)(1) and (3)
50/23	-	50/23	10 CFR 9.104(a)(1) and (3)
51/10	-	51/10	10 CFR 9.104(a)(1) and (3)
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53/04	-	53/04	10 CFR 9.104(a)(1) and (3)
53/05	-	53/05	10 CFR 9.104(a)(1) and (3)
53/06	-	53/06	10 CFR 9.104(a)(1) and (3)
53/07	-	53/07	10 CFR 9.104(a)(1) and (3)
53/18	-	53/18	10 CFR 9.104(a)(1) and (3)
54/08	-	54/08	10 CFR 9.104(a)(1) and (3)
54/10	-	54/10	10 CFR 9.104(a)(1) and (3)
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56/06	-	56/07	10 CFR 9.104(a)(1) and (3)
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56/20	-	56/20	10 CFR 9.104(a)(1) and (3)
56/24	-	56/24	10 CFR 9.104(a)(1) and (3)
57/20	-	57/20	10 CFR 9.104(a)(1) and (3)
57/23	-	57/23	10 CFR 9.104(a)(1) and (3)
58/20	-	58/20	10 CFR 9.104(a)(1) and (3)
60/01	-	60/02	10 CFR 9.104(a)(1) and (3)
63/23	-	63/23	10 CFR 9.104(a)(1) and (3)
64/08	-	64/08	10 CFR 9.104(a)(1) and (3)
66/14	-	66/14	10 CFR 9.104(a)(1) and (3)
70/18	-	70/18	10 CFR 9.104(a)(1) and (3)
71/04	-	71/04	10 CFR 9.104(a)(1) and (3)
71/20	-	71/20	10 CFR 9.104(a)(1) and (3)
73/08	-	73/08	10 CFR 9.104(a)(1) and (3)
73/12	-	73/12	10 CFR 9.104(a)(1) and (3)
73/13	-	73/13	10 CFR 9.104(a)(1) and (3)
73/15	-	73/15	10 CFR 9.104(a)(1) and (3)
74/18	-	74/18	10 CFR 9.104(a)(1) and (3)
74/20	-	74/20	10 CFR 9.104(a)(1) and (3)
76/01	-	76/01	10 CFR 9.104(a)(1) and (3)
76/05	-	76/05	10 CFR 9.104(a)(1) and (3)
76/12	-	76/12	10 CFR 9.104(a)(1) and (3)
76/16	-	76/16	10 CFR 9.104(a)(1) and (3)


 SAMUEL J. CHILK
 Secretary of the Commission