

NUCLEAR REGULATORY COMMISSION

ORIGINAL

COMMISSION MEETING

In the Matter of: CLOSED MEETING - EXEMPTION NO. 5
STATUS OF ZIMMER INVESTIGATION

DATE: November 8, 1982 PAGES: 1 - 103

AT: Washington, D. C.

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
3
4 STATUS OF ZIMMER INVESTIGATION
5

6 CLOSED MEETING - EXEMPTION NO. 5
7

8 Nuclear Regulatory Commission
9 Room 1130
10 1717 H Street, N. W.
11 Washington, D. C.

12 Monday, November 8, 1982

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

15 COMMISSIONERS PRESENT:

16 NUNZIO PALLADINO, Chairman of the Commission
17 VICTOR GILINSKY, Commissioner
18 JOHN AHEARNE, Commissioner
19 THOMAS ROBERTS, Commissioner
20 JAMES ASSELSTINE, Commissioner

21 STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

22 S. CHILK
23 M. MALSCH
24 J. ZERBE
25 G. CUNNINGHAM
D. HUNTER
J. KEPPLER
J. SNIEZEK

AUDIENCE SPEAKERS:

C. REAMER
E. CASE
J. FOUCHARD

* * *

1 P R O C E E D I N G S

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 All rework in the quality confirmation
9 program --

10 COMMISSIONER AHEARNE: Say that last one again.

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

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

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

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

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

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

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

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

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

25 I told him I could not tell him what happened

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

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

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

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

1 think it was appropriate at this time.

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

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

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

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

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

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

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

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

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

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

14 MR. REAMER: It was Wednesday.

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

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

18 CHAIRMAN PALLADINO: I called you on
19 Thursday.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 COMMISSIONER GILINSKY: Oh, I see.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 MR. CUNNINGHAM: That is right.

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

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

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

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

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

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

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

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

25 COMMISSIONER AHEARNE: It is principally the

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

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

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

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

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

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

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

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

11 CHAIRMAN PALLADINO: All right. Go ahead.

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

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

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

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

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

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

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

25 MR. CUNNINGHAM: That is the principal thrust

1 of it.

2 COMMISSIONER AHEARNE: Well, but it is --

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

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

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

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

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

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

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

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

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

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

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

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

19 CHAIRMAN PALLADINO: Read it aloud.

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

22 CHAIRMAN PALLADINO: No, the verification.

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

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

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

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

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

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

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

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

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

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

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

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

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

19 COMMISSIONER ASSELSTINE: That's right.

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

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

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

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

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

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

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

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

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

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

1 management is capable of doing the job.

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

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

6 MR. CUNNINGHAM: That can be done.

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

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

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

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

16 COMMISSIONER AHEARNE: I am sure you could.

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

25

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

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

10 MR. DIRCKS: That is right.

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

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

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

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

25 COMMISSIONER ASSELSTINE: We have the

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

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

5 CHAIRMAN PALLADINO: I can't hear you.

6 COMMISSIONER ASSELSTINE: It doesn't.

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

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

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

14 MR. KEPPLER: Absolutely.

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

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

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

24 CHAIRMAN PALLADINO: What was originally
25 drafted?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 CHAIRMAN PALLADINO: You are further ahead.

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

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

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

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

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

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

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

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

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

8 The legal discussion of that --

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

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

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

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

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

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

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

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

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

13 COMMISSIONER AHEARNE: And is the operation.

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

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

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

22 CHAIRMAN PALLADINO: Where are you reading?

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

1 COMMISSIONER ASSELSTINE: I agree with you.

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

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

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

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

20 MR. CUNNINGHAM: Oh, I am sorry.

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

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

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

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

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

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

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

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

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

25 CHAIRMAN PALLADINO: That was the point I was

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

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

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

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

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

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

1 another thrust of that point.

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

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

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

22 COMMISSIONER ASSELSTINE: Is that right?

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

25 CHAIRMAN PALLADINO: Incidentally, you read

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

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

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

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

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

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

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

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

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

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

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

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

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

12 COMMISSIONER AHEARNE: Yes.

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

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

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

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

1 evaluate what you have ultimately got.

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

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

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

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

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

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

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

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

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

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

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

1 evaluate it.

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

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

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

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

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

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

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

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

4 MR. CUNNINGHAM: Yes, I believe so.

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

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

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

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

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

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

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

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

12 MR. KEPPLER: I am sorry.

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

22 Those are three separable, different groups.

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

25 MR. CUNNINGHAM: I think that is right.

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

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

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

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

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

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

24
25

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

3 MR. KEPPLER: Yes.

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

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

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

17 COMMISSIONER ROBERTS: That is what this says.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 CHAIRMAN PALLADINO: That is not very probable.

18 (Laughter.)

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

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

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

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

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

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

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

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

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

1 COMMISSIONER GILINSKY: Right.

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

5 COMMISSIONER ASSELSTINE: Yes.

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

11 COMMISSIONER ASSELSTINE: That is right.

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

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

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

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

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

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

3 COMMISSIONER ASSELSTINE: Yes.

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

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

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

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

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

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

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

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

25 MR. KEPPLER: Independent in the sense that

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

2 CHAIRMAN PALLADINO: Say that again.

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

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

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

12 MR. DIRCKS: That is good.

13 (Laughter.)

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

22 MR. KEPPLER: Through its own QA department.

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

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

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

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

7 COMMISSIONER ASSELSTINE: That is right.

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

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

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

17 COMMISSIONER ASSELSTINE: That is correct.

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

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

1 for the continuation of construction, et cetera."

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

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

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

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

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

1 construction activities."

2 COMMISSIONER GILINSKY: Some or all.

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

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

11 CHAIRMAN PALLADINO: What do you mean?

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

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

1 in for an operating ---

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

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

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

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

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

19 COMMISSIONER ASSELSTINE: The nuclear
20 management, yes.

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

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

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

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

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

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

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

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

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

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

7 MR. KEPPLER: Yes. Maybe that isn't a good
8 assumption, but let me tell you that a year ago they did
9 bring in the Management Analysis Company. I am not sure
10 under what terms, but they had consulted with them on
11 some help and they dismissed their recommendations. I
12 really don't know any of the details on that and I have
13 gotten that sort of through the back door. I don't
14 think they were interested in hearing a lot of bad
15 things about their organization.

16 They know they have problems down there, but
17 they are reacting at the moment because of the heavy
18 Commission interest in this matter.

19 COMMISSIONER AHEARNE: You are then prepared
20 to accept any one of those four?

21 COMMISSIONER GILINSKY: Well, presumably you
22 have got to be presented with a convincing plan.

23 MR. KEPPLER: I think the way we asked it was
24 that they ought to weigh the advantages and
25 disadvantages.

1 What page is this on?

2 COMMISSIONER ASSELSTINE: Page 15.

3 MR. KEPPLER: I don't view item 1 as a strong
4 alternative. I really don't.

5 CHAIRMAN PALLADINO: Item 1, page where?

6 MR. KEPPLER: On page 15.

7 COMMISSIONER GILINSKY: You mean as a
8 promising alternative.

9 MR. KEPPLER: As a promising alternative.

10 COMMISSIONER ASSELSTINE: Jim, are you
11 basically saying that you don't think that CG&E alone
12 came come up with a workable plan for managing the
13 Zimmer project unless they get an outside organization
14 to help to put it together?

15 MR. KEPPLER: I think so, yes. That is my
16 view.

17 COMMISSIONER ASSELSTINE: Not just that they
18 are going to need help in terms of how they go about
19 managing, but they can't even come back with a
20 well-planned proposal.

21 MR. KEPPLER: I think it is very hard when you
22 are enmeshed in the problem yourself to solve it and I
23 don't think they have a lot of in-house talent to do
24 this.

25 CHAIRMAN PALLADINO: But, Jim, suppose we left

1 item No. 3 that starts on page 14 and going all the way
2 down to item No. 4 on 16, is there any problem in the
3 flexibility you have to make sure that they do this
4 thing in as dovetailed a way as you think is reasonable
5 and still do the job you want done?

6 I was looking at what they list. They list
7 four items. The first one is interviewing several
8 nationally recognized organizations with considerable
9 experience in nuclear project management to form an
10 assessment of the Zimmer project. That is the first
11 thing we had asked for and the selection of a firm is
12 expected this week.

13 Second, the assessment will include an
14 evaluation of current site management and the quality
15 confirmation program, which is what we want them to do.

16 After the evaluation is complete, a
17 comprehensive corrective action plan will be developed
18 under the selected organization's guidance. Now we are
19 not that specific and we allowed them to pick out some
20 other.

21 CG&E's staff will be augmented by their
22 personnel to implement the resultant program and they
23 sort of judge which one of these categories you have on
24 page 14 they want to follow.

25 COMMISSIONER AHEARNE: That is not the one.

1 That is their option.

2 MR. SNIEZEK: They really are not down into the
3 detail yet because they don't have the analysis.

4 COMMISSIONER AHEARNE: Jim, I disagree. Their
5 preference, I would argue, by the statement their staff
6 would be augmented by the personnel of this other
7 organization ---

8 CHAIRMAN PALLADINO: Well, that is one of our
9 criteria. That is No. 3, the creation of an
10 organization structure where the quality assurance
11 program is conducted -- no, wait a minute.

12 COMMISSIONER ASSELSTINE: No, it is No. 1.

13 CHAIRMAN PALLADINO: I saw the word
14 "augmented" somewhere, or I thought I saw it. Maybe I
15 didn't see it.

16 COMMISSIONER ASSELSTINE: No, because 2, 3 and
17 4 all talk about turning over portions.

18 CHAIRMAN PALLADINO: But are you sure that
19 option doesn't allow some integration. I don't see
20 where every one of them ---

21 MR. SNIEZEK: You can't prejudge the results
22 until the evaluation.

23 CHAIRMAN PALLADINO: But I am saying they are
24 going to do that, except they prejudge which one of
25 these categories they want to be in. "All work on the

1 quality confirmation has been stopped until completion
2 of the assessment." So as far as item No. 3, they are
3 going to do everything they say there, except they are
4 going to do it their way.

5 COMMISSIONER AHEARNE: I am skeptical in
6 general ---

7 (Laughter.)

8 COMMISSIONER AHEARNE: --- and I read this as
9 saying they have prejudged and they are on No. 1
10 because, after all, Jim's recommendation, which is
11 embedded in various forms in 2, 3 and 4, is one that is
12 the hardest for them to accept.

13 COMMISSIONER ASSELSTINE: Yes.

14 MR. DIRCKS: You think they will go for No. 1?

15 COMMISSIONER AHEARNE: I think that is what
16 the words "CG&E's staff will be augmented to implement
17 this program," that is what that means. It doesn't say
18 they would integrate or anything like that. Their staff
19 will be augmented. That is the way I read it.

20 MR. DIRCKS: But in terms of long-run
21 stability of that whole organization, that is not an
22 approach that should be thrown away.

23 COMMISSIONER AHEARNE: I agree.

24 MR. DIRCKS: We have used that approach, not
25 we, but Bechtel has used it in Diablo and in Three Mile

1 Island.

2 COMMISSIONER AHEARNE: I am just trying to
3 argue based upon where Jim came out in the ---

4 MR. DIRCKS: You see, the other three
5 approaches is that you can buy an organization and plug
6 it into the company and it exists there as an outside
7 group and when the project is finished the thing will
8 dissolve and go away.

9 COMMISSIONER AHEARNE: Not necessarily in that
10 the amount of infusion of people is and other details ---

11 COMMISSIONER GILINSKY: Well, let's see, what
12 is the relevance of the order? I mean what conclusion
13 are you drawing, Joe?

14 CHAIRMAN PALLADINO: What I was going to
15 propose and see if the Commission buys it is that we
16 take item No. 3 on page 14 and that extends all the way
17 up to the top of page 16 and make that No. 1, and
18 renumber No. 1 and No. 2 to be 2 and 3 and then see if
19 we are going to have a vote to release the order.

20 COMMISSIONER GILINSKY: What does that
21 accomplish?

22 CHAIRMAN PALLADINO: Only to put in the
23 emphasis the fact that we want some attention to the
24 management and that is the only reason.

25 COMMISSIONER AHEARNE: No. 3 has to do with

1 this changing of the management. Now at the same time
2 do you want them to be working on updating the
3 comprehensive plan to verify the quality of construction?

4 CHAIRMAN PALLADINO: I will give you my own
5 personal opinion. It seems to me that if you are going
6 to have a new management team that they ought to look at
7 that, too. So that is why it becomes No. 2.

8 COMMISSIONER AHEARNE: Well, then there ought
9 to be some way that that is clear, that one of the
10 functions of whatever choice is made out of ---

11 CHAIRMAN PALLADINO: However, I don't mind
12 leaving a little flexibility between ---

13 COMMISSIONER AHEARNE: But remember, if we put
14 this out, we are giving the licensee a harsh order and
15 we are saying here are the things you must do. I think
16 we ought to be pretty clear on what we are asking them.

17 CHAIRMAN PALLADINO: Well, we are asking that
18 they submit an updated comprehensive plan to verify the
19 quality of construction.

20 COMMISSIONER AHEARNE: Right, and it sounds to
21 me like we are saying on the one hand go out and hire
22 someone to come in and review your management to look at
23 how you are going to manage this whole project and at
24 the same time ---

25 CHAIRMAN PALLADINO: I didn't say at the same

1 time.

2 COMMISSIONER AHEARNE: But that is what it
3 sounds like because you are asking the licensee to
4 submit an updated comprehensive plan to verify the
5 quality of construction.

6 It seems to me that what we ought to be asking
7 if we really believe in the approach is to do the step,
8 which you relabeled step 1, and that this old step 1 has
9 to follow after the approval of the ---

10 CHAIRMAN PALLADINO: Well, if that clears it
11 up. I was just saying ---

12 COMMISSIONER GILINSKY: I think that is
13 probably right.

14 CHAIRMAN PALLADINO: I was saying that is the
15 way I would do it. I don't know. I may not be
16 imaginative enough to ---

17 COMMISSIONER GILINSKY: But I think if you
18 order them in that way then that is the natural
19 progression.

20 COMMISSIONER AHEARNE: I think we ought to be
21 explicit.

22 CHAIRMAN PALLADINO: Well, how did you want to
23 fix it?

24 MR. CUNNINGHAM: Well, as written down, and of
25 course it doesn't really prescribe an order. It says

1 you do all three ---

2 COMMISSIONER GILINSKY: But by putting 3/1 it
3 puts more emphasis on the straightening out of the
4 management of the company.

5 MR. CUNNINGHAM: But is that the only change
6 you are suggesting is just the emphasis, or would you
7 actually that it requires?

8 COMMISSIONER AHEARNE: I would say something
9 like following the approval indicated in Part B of step
10 one, that the licensee shall.

11 MR. CUNNINGHAM: We can put that in explicitly
12 very easily.

13 CHAIRMAN PALLADINO: But you are going to
14 first reorder them.

15 MR. CUNNINGHAM: Yes.

16 COMMISSIONER ASSELSTINE: I think though if we
17 do it makes the most sense to follow them that way in
18 series, but that is going to mean it looks like from all
19 of those elements that it is going to take quite some
20 time to go through this whole process, one, reviewing
21 the management and, two, deciding how the project is
22 going to be managed and, three, developing the
23 comprehensive plan.

24 COMMISSIONER GILINSKY: Well, the
25 comprehensive plan is something the new management has

1 to do.

2 CHAIRMAN PALLADINO: I don't know if some of
3 these other things can be effectively done before all
4 the new management plan is set forth. That is what
5 worries me about restricting it.

6 COMMISSIONER GILINSKY: They are going to have
7 to sit down with Jim and discuss this.

8 MR. KEPPLER: Can I ask a question?

9 COMMISSIONER GILINSKY: Yes, go ahead.

10 MR. KEPPLER: Sorry, I didn't mean to
11 interrupt.

12 COMMISSIONER GILINSKY: No, go ahead.

13 MR. KEPPLER: I don't have a copy of that
14 piece of paper.

15 (The paper referred was handed to Mr. Keppler.)

16 MR. KEPPLER: You were focusing on the words
17 of what they mean by augment their staff.

18 COMMISSIONER AHFARNE: It is the bullet after
19 the evaluation is completed.

20 MR. KEPPLER: After the evaluation is
21 completed, a comprehensive corrective action plan will
22 be derived under the selected organization's guidance.
23 CG&E's staff will be augmented by their personnel to
24 implement the resultant program. You inferred that your
25 interpretation of that was to be item 1 and I guess I

1 raised a question about I could infer that to be almost
2 any one of them, depending upon how you did it and what
3 you mean by augmenting.

4 COMMISSIONER GILINSKY: And we are also
5 getting this phone call to Dick DeYoung.

6 MR. KEPPLER: Yes, that is where this is from.

7 COMMISSIONER GILINSKY: Well, but still, it is
8 not like a written document that is being approved by
9 the management of a company.

10 CHAIRMAN PALLADINO: John, you would like
11 something that says you don't do the new item 2 until
12 you have done the new item 1?

13 COMMISSIONER AHEARNE: Yes, or otherwise I
14 think you are telling them they had better hurry up and
15 start doing both of those items.

16 CHAIRMAN PALLADINO: Well, I was viewing these
17 as three independent things and leaving it to Jim and
18 the licensee to work it out. I do agree that if I were
19 doing it I would do it with the new No. 1 and then
20 this ---

21 MR. HUNTER: Our intent was that the new
22 management provide the comprehensive plan.

23 COMMISSIONER GILINSKY: They are going to have
24 to make a choice of a new arrangement, a new management
25 which is what he is talking about here himself. What we

1 are saying is that in making that choice we want you to
2 have the advice of an outside consultant. That is what
3 we are saying in effect. I mean this is a sequence that
4 they are going to have to go through no matter what.
5 Whether there is an order or whether there is no order
6 or whatever, they are going to have to do these things.

7 What we are saying is the choice here is
8 something we want you to make with some advice and not
9 just on your own because you guys have made a lot of
10 mistakes up to now. So it needn't be just sort of an
11 infinitely long series of management studies. We want
12 you to make this choice of whether you are going to beef
13 up your management, whether you are going to hire
14 somebody, what the mix is going to be and do that
15 together with an outside consultant.

16 CHAIRMAN PALLADINO: Let me try a proposal and
17 see if the Commission is ready to take any action.

18 COMMISSIONER ROBERTS: Is it inappropriate to
19 ask that we have what we are voting on reduced to
20 writing? I take offense at voting on bits and pieces
21 and somebody said this and somebody said that.

22 CHAIRMAN PALLADINO: We are not going to vote
23 on it until you see the final order.

24 COMMISSIONER ROBERTS: Okay.

25 CHAIRMAN PALLADINO: But we have got to give

1 instruction to them who are providing, and I am trying
2 to find out whether or not you are ready to give them
3 instructions.

4 As I understand what we plan to give them now
5 is to rewrite this with item No. 3 beginning on page 14
6 and extending to the top of page 16 and call that No. 1;
7 renumbering No. 1 to be No. 2; and No. 2 to be No. 3;
8 and include in No. 1 some phrasing such as upon
9 obtaining approval indicated in No. 1(b) et cetera, some
10 transition.

11 MR. CUNNINGHAM: The order of sequence
12 required.

13 COMMISSIONER AHEARNE: Yes.

14 CHAIRMAN PALLADINO: Now if those changes were
15 made and we are satisfied with the way they were made,
16 are there any other things the Commission would want to
17 see done before we would be ready to vote?

18 COMMISSIONER GILINSKY: Where there were the
19 various changes that John referred to at the beginning.

20 COMMISSIONER AHEARNE: Yes, making that
21 management change.

22 CHAIRMAN PALLADINO: Oh, yes, the new linkage.

23 COMMISSIONER AHEARNE: That is right.

24 CHAIRMAN PALLADINO: Yes, I am sorry.

25 COMMISSIONER AHEARNE: And I think we still

1 have the issue of immediate effectiveness.

2 CHAIRMAN PALLADINO: Do you want to discuss
3 the pros and cons of immediate effectiveness?

4 COMMISSIONER AHEARNE: That would be nice.

5 CHAIRMAN PALLADINO: Guy, do you want to lead
6 us through the pros and cons. It was written up in part
7 in Bill Dircks' memo.

8 MR. CUNNINGHAM: Well, I think the principal
9 concern is not the legal one but the practical one, that
10 you want that construction halted immediately. As Jim
11 has pointed out before, if you don't you have a
12 situation like Midland where you went some two and a
13 half years from the time of the show-cause order before
14 anything halted and that was only after a Board decision.

15 The legal issue is pretty simple. The
16 Administrative Procedure Act says that an immediate
17 suspension of a right held by a licensee or permittee
18 has to be based a showing that the public health and
19 safety or interest so requires.

20 One could argue, since we have a two-stage
21 licensing process, that there is never a health or
22 safety interest because we won't give them an operating
23 license if the plant is not constructed safely. The
24 Commission, however, has rejected that rather simplistic
25 argument and in at least two occasions suspending

1 construction and making the finding of public health,
2 safety and interest premised on the fact that the
3 project could get to a point where the Commission would
4 never be able to go back and find out whether the
5 reactor had been constructed so there was reasonable
6 assurance. We think there is a legal basis for
7 immediate effectiveness. The real question is is that
8 what you want?

9 CHAIRMAN PALLADINO: What is the downside of
10 immediate effectiveness, that it may be hard to get the
11 thing back on the track or that it maybe hard to get it
12 restarted, to get construction restarted?

13 MR. CUNNINGHAM: Well, the Commission has
14 taken the view that no hearing is required before you
15 lift a suspension. This order has been written with
16 that flexible paragraph 4 on page 16 to give the
17 Regional Administrator the maximum flexibility for
18 allowing them to undertake some or all aspects of the
19 construction.

20 CHAIRMAN PALLADINO: But that is only if the
21 licensee consents to the order?

22 MR. CUNNINGHAM: That is correct.

23 CHAIRMAN PALLADINO: If he starts to argue
24 with any part of the order, then we could have hearings.

25 MR. CUNNINGHAM: That is correct. The

1 licensee has an absolute right to a hearing ---

2 COMMISSIONER GILINSKY: I think you are
3 talking about hearings called by someone other than the
4 licensee. I think what Guy is saying is that there is
5 sufficient flexibility here.

6 CHAIRMAN PALLADINO: After there is consent to
7 the order.

8 MR. CUNNINGHAM: That is right. If there is
9 consent to the order there is flexibility for the
10 Regional Administrator to allow ---

11 COMMISSIONER GILINSKY: I think the point is
12 there is a lot of flexibility here which allows them to
13 interpret consent in a variety of ways. In other words,
14 for example, well, they have got one through four. In
15 other words, there is not a specific action that the
16 licensee has to perform which, if he doesn't perform,
17 then allows others to ask for a hearing. There is a
18 range of possibilities any one of which we could regard
19 as consent to the order or conformance with the order.

20 CHAIRMAN PALLADINO: Not counting that as
21 consent.

22 COMMISSIONER GILINSKY: It would then be up to
23 us to decide whether there had been some backing off or
24 whatever.

25 MR. CUNNINGHAM: That is right. What the

1 order does is that you study these four options and tell
2 us which one you think is the way to go. It doesn't say
3 that only one is acceptable.

4 COMMISSIONER ASSELSTINE: Guy, if the order is
5 accepted and at some point down the road before 1, 2, 3
6 and 4 have been agreed to the Regional Administrator
7 determines that some or all safety related construction
8 work could resume what rights to a hearing would that
9 create in someone other than some outside party?

10 MR. CUNNINGHAM: Someone with an interest
11 affected by the order can request a hearing. The
12 position that we have taken, and it is subject to
13 challenge in the courts now, is that if they want us to
14 do more than what we have required they don't get a
15 hearing. That is still the Commission's position.

16 If the order comes down with an agreement as
17 to what is acceptable and someone wants more ---

18 COMMISSIONER ASSELSTINE: No, but you do say
19 in the order that the licensee shall show cause why
20 safety related construction activities, including rework
21 activities, should not remain suspended until the
22 following things are done.

23 MR. CUNNINGHAM: That is correct, but the
24 order also contains the escape valve, the relief valve,
25 and as long as that is part of the order ---

1 COMMISSIONER ASSELSTINE: You think that is
2 sufficient?

3 MR. CUNNINGHAM: Yes, that is my advice.

4 COMMISSIONER ASSELSTINE: So that for all
5 practical purposes the Regional Administrator could give
6 up one or all of these items and that still would not
7 create an opportunity for a hearing by anyone.

8 COMMISSIONER GILINSKY: Well, it sounds like
9 he couldn't give up everything. I mean they would have
10 to meet some test.

11 MR. CUNNINGHAM: Who would have to meet some
12 test now?

13 COMMISSIONER GILINSKY: The company.

14 MR. CUNNINGHAM: Right, they would have to
15 satisfy the Regional Administrator that they could
16 conduct these activities in accordance with the
17 regulations and so forth. But it was deliberately put
18 in there as a relief valve so that some construction
19 could be authorized without triggering rights to a
20 hearing.

21 CHAIRMAN PALLADINO: But he may relax all of
22 them which sounds surprising to me. They all give a
23 little bit of a problem.

24 MR. MALSCH: I think there is no difficulty
25 with having with having the director relax any or all

1 parts of the order insofar as it demands immediately
2 effective action. It is less clear that his doing so
3 would completely wipe out any adjudicatory proceeding
4 that was held on the order itself.

5 So, for example, you could find yourself in
6 the situation where, let's say, the director was
7 satisfied that construction could continue without
8 meeting the terms of 1 through 3, but that if a hearing
9 had been requested you might have a hearing on the issue
10 of whether 1 or 2 or 3 ought to be relaxed, but in the
11 meantime construction would be continuing because the
12 director would have decided that insofar as it was
13 immediately effective that could be relaxed.

14 CHAIRMAN PALLADINO: So as soon as he decides
15 to relax something he say, okay, they can start
16 constructing even though the hearing is going on?

17 MR. MALSCH: That is right.

18 MR. CUNNINGHAM: That is right.

19 CHAIRMAN PALLADINO: What is the union or some
20 workers who don't want to lose their job say we would
21 like a hearing even though the company consents? Do
22 they have a right to the hearing?

23 MR. CUNNINGHAM: They certainly have a right
24 to request a hearing. The Commission case law is next
25 to non-existent. There was one case where we issued an

1 order to Palisades that restricted the number of hours
2 the operators could work and the company consented. The
3 union requested a hearing, the Appeal Board said they
4 were entitled to a hearing, the staff was prepared to
5 appeal that decision to the Commission but the case was
6 settled. Thereupon, the Commission vacated the Appeal
7 Board decision and said that was not to be considered as
8 precedent. So it could get to be a close question.
9 Certainly the workers whose jobs are affected have an
10 interest affected by the order.

11 CHAIRMAN PALLADINO: Meanwhile while they
12 litigated the order the work would be suspended or
13 stopped?

14 MR. CUNNINGHAM: Yes.

15 MR. MALSCH: I think there is some question
16 whether the economic interests of workers would be a
17 cognizable interest within the meaning of the Atomic
18 Energy Act. There are some decisions involving
19 ratepayers, for example, that suggest that raising an
20 issue of one's economic well being is not something that
21 the Commission is concerned about and therefore wouldn't
22 be enough to confer standing. But, as Guy said, I don't
23 think we have a case that is squarely in point.

24 CHAIRMAN PALLADINO: Let's see, how do you
25 want to proceed on immediate effectiveness?

1 COMMISSIONER AHEARNE: I guess at the moment I
2 am having difficulty seeing how we could strongly defend
3 the immediate effectiveness order.

4 CHAIRMAN PALLADINO: Why do you say that?

5 COMMISSIONER AHEARNE: I think it has to rest
6 on that the problems are such that if we don't
7 immediately stop the construction we would not be able
8 to develop confidence that it was constructed properly,
9 and I don't detect that that is really the case. I
10 detect that there are compounding problems and that we
11 think it would be a lot easier if we stop it, and I
12 recognize the concern that Jim raises about, well, what
13 happens if the licensee puts it into a hearing. Well,
14 but if the licensee puts its into a hearing and it takes
15 many years, the plant isn't going to get its operating
16 license. So I just think there is little probability in
17 the licensee doing that and I have difficulty pinning it
18 to the immediate safety and health problem.

19 CHAIRMAN PALLADINO: Well, that is why I
20 didn't like some of the words that were used in here. I
21 do feel that a cessation of confidence in their quality
22 assurance is a valid reason for stopping the work and I
23 think Region III has certainly reached that point and
24 conveyed it to us in the last meeting.

25 I do agree their linkage is not as well

1 developed in the text here as it might be and that
2 should be fixed up. I do remember their statement about
3 they were finding deficiencies faster than the company
4 could cope with them and I do think that is a valid
5 point to developing the linkage.

6 COMMISSIONER ASSELSTINE: I also seem to
7 recall that Harold said last week that what he was
8 afraid of is with all the rework going on that what we
9 would end up with is a patched up plant where there had
10 been a whole lot of things ripped out and reinstalled
11 with the result being that it is not as sound as it
12 would otherwise be.

13 COMMISSIONER AHEARNE: That is true, Jim. I
14 had forgotten that comment. That is about the only one
15 I can think of that directly relates to a reason for
16 immediate effectiveness.

17 COMMISSIONER ASSELSTINE: Yes, that is right.
18 I mean the plant could still conceivably squeak by, but
19 it would be more marginal than it would otherwise be if
20 the work was done.

21 COMMISSIONER AHEARNE: Well, but at the moment
22 all we have is Harold's concern and I just didn't get
23 the impression ---

24 COMMISSIONER ASSELSTINE: And that is
25 certainly not in here.

1 COMMISSIONER AHEARNE: --- that it was that
2 concerned with it. So I am uneasy with it.

3 MR. CASE: I think it immediately has to be
4 read in the context of now or two and a half years now
5 or the duration of a hearing. It has that kind of a
6 definition I believe in this case.

7 COMMISSIONER AHEARNE: But I don't see the
8 licensee going and asking for a hearing in this case
9 because I think they want their operating license.

10 MR. CASE: That may well be true, but that has
11 nothing to do with the legal significance of the finding.

12 COMMISSIONER AHEARNE: What I think has a
13 great deal of significance is our trying to argue what
14 is our rationale for going for immediate effectiveness.

15 COMMISSIONER ASSELSTINE: Except that if you
16 take out the immediate effectiveness and the licensee
17 agrees to this order, it may be literally months before
18 all of this work is completed and he has got his new
19 organization in place.

20 COMMISSIONER AHEARNE: No, I agree.

21 COMMISSIONER ASSELSTINE: In the meantime all
22 of the problems that are now existing continue to calm
23 down.

24 COMMISSIONER AHEARNE: Yes, I agree with that,
25 too. So the balance is do we believe that the public

1 health and safety is jeopardized by allowing a three or
2 four months hiatus before the change occurs, and I
3 wasn't getting the sense from the regional people that
4 they felt there was this jeopardization of the rationale.

5 CHAIRMAN PALLADINO: I thought the loss of
6 confidence in our quality assurance, at least by
7 precedent, is a basis for stopping construction. It has
8 been used in the past ---

9 MR. CUNNINGHAM: That is right. That was in
10 the Midland case.

11 CHAIRMAN PALLADINO: I say from what I
12 understand this is certainly that kind of situation.

13 COMMISSIONER AHEARNE: But I think you have to
14 look at, at least for me, I have to look at the details
15 beyond just the lost confidence in the quality
16 assurance, and the Midland case really was quite
17 different.

18 CHAIRMAN PALLADINO: I wasn't going on the
19 Midland case. I was saying there we by precedent had
20 established that if we lost the confidence it was a
21 reasonable basis to stop the construction. Now I forget
22 the Midland case and come back and say have we lost the
23 confidence and do we have a strong enough linkage to the
24 basis that we describe here to assert that, and I say
25 that linkage needs to be fixed up. But I would be

1 inclined to go with the immediate effectiveness.

2 MR. CUNNINGHAM: May I may just one more
3 point. Commissioner Asselstine pointed out that if they
4 agreed to the order it is still going to be months
5 before all these things were accomplished. The minute
6 they agree to the order it becomes effective. So that
7 they not immediately effective shutdown part would
8 become effective upon their consent. So they wouldn't
9 keep constructing if they agreed to the order.

10 CHAIRMAN PALLADINO: Wait a minute, under what
11 circumstances, if we didn't have the shutdown order?

12 MR. CUNNINGHAM: If we didn't have an
13 immediate effectiveness position, but we did say show
14 cause why we shouldn't suspend work until you do the
15 following, and they said all right, we will consent to
16 that order and then work stops at that point.

17 COMMISSIONER ASSELSTINE: You are right, it is
18 only if they refuse to consent to the order and ask for
19 a hearing on the order that construction work continues
20 on for a long period of time.

21 MR. CUNNINGHAM: That you get into this two
22 and a half year hiatus.

23 CHAIRMAN PALLADINO: This is cleaner though.

24 COMMISSIONER AHEARNE: It is cleaner unless
25 you have to try to defend why the immediately

1 effectiveness.

2 CHAIRMAN PALLADINO: I think it is harder to
3 defend a more subtle way of getting them to stop the
4 order. How do you reword that, Guy? You say show cause
5 why you shouldn't be shut down or why your work
6 shouldn't stop ---

7 COMMISSIONER ASSELSTINE: That stays just the
8 same as is in here. The only question is whether you
9 make it immediately effective or whether you require
10 that that is part of the show-cause order.

11 MR. CUNNINGHAM: Essentially on page 13 what
12 we would do is delete the words "effective immediately"
13 and move the phrase "the licensee shall show cause" up
14 to the top of the paragraph. So they would have to show
15 cause why construction shouldn't be suspended and why
16 you shouldn't be required to do items 1, 2 and 3 before
17 you can resume construction.

18 COMMISSIONER ASSELSTINE: What that means is
19 if the ---

20 MR. CUNNINGHAM: It would stop if they agreed
21 to the order.

22 COMMISSIONER ASSELSTINE: But if a licensee
23 says I disagree with the order and now I want a hearing
24 on it, then it is going to be literally years before you
25 would stop construction and construction would just go

1 merrily on all the time while this issue was being
2 litigated in the hearing.

3 COMMISSIONER AHEARNE: That is true. And I
4 guess realistically if one or two members of the
5 Commission who voted differently on the Zimmer case were
6 to change their position and it were to go to the Board,
7 then there will be another probably year or year and a
8 half of that process before the operating license could
9 be granted and the licensee at that stage might very
10 well say, well, what the heck.

11 CHAIRMAN PALLADINO: I didn't follow all that,
12 John.

13 (Laughter.)

14 COMMISSIONER AHEARNE: Well, as I recall,
15 there were some contentions that were raised with the
16 Licensing Board. After the Licensing Board issued its
17 decision the Licensing Board said they were going to
18 reopen the hearing and three of us voted and said no,
19 you are not going to reopen the hearing. Now this is
20 back up to us again on appeal and if one or two members
21 of the three-person majority were to change and say, oh,
22 yes, it is a good idea and we will give it back to the
23 Licensing Board, then at that stage we would I think
24 from the licensee's perspective be saying well, it is
25 going to take a year or year and a half until this

1 operating license is granted and so at that stage they
2 might say well, we might as well argue some of these
3 points if we disagree with them. I am not necessarily
4 trying to argue my point.

5 CHAIRMAN PALLADINO: That says we ought to
6 have immediate effectiveness of the order.

7 COMMISSIONER AHEARNE: No, it says that we
8 ought not to reopen the hearing.

9 (Laughter.)

10 MR. KEPPLER: Last week when we met I
11 expressed the view of my preference toward moving in the
12 direction of meeting with the utility and getting a
13 confirmatory order. With hearing the discussions that
14 you are having right now and the fact that the utility
15 is apparently starting down some path, does that change
16 your consideration of that matter at all?

17 COMMISSIONER ROBERTS: Well, for me personally
18 I would rather have a confirmatory order. Dickhoner
19 tried to get hold of the Chairman and you have given him
20 a wave-off and he finally got to DeYoung.

21 MR. KEPPLER: I guess I am raising the
22 question of would we be better off in the interest of
23 time and everything else for me to set down and steer
24 him in a direction that we can accept.

25 MR. DIRCKS: Well, not only to steer him but

1 to see what he has on his mind and to get a proposal on
2 the table.

3 COMMISSIONER ASSELSTINE: It sounds even like
4 from what we have got from the phone call from Dick that
5 it is very similar in ---

6 MR. KEPPLER: There are a lot of similarities,
7 but we are lacking on some of the details to know how
8 far they would go.

9 COMMISSIONER GILINSKY: Well, what Dickhoner
10 wants is to fend off trouble. The difficulty is that he
11 is at the center of the problem and he has been all
12 these years.

13 COMMISSIONER ASSELSTINE: But he also
14 recognizes that he is in a much better position if he is
15 proposing something to us that we then confirm than if
16 we go out and order him to do something and that may
17 make him more amenable to accept exactly what it is we
18 want.

19 CHAIRMAN PALLADINO: Incidentally, I think it
20 was appropriate for me not to have a private meeting
21 with him. I would have welcomed a public meeting with
22 the Commission but I also thought we should not isolate
23 ourselves so that the staff doesn't talk to him and this
24 is why I said if they have something to propose we ought
25 to listen and then play it back to the Commission and

1 that is precisely what was done. So from that
2 standpoint I want to make sure we maintain liaison.

3 As far as the situation as we find it, I still
4 think that it is up to the Commission to assert itself.
5 I think we have been going quite a number of years, or
6 several years anyhow with Zimmer with emphasis on the
7 utility to get attention to the job and they keep on
8 saying well, we are on top and things never get
9 corrected.

10 I am not sure that without the benefit of this
11 order that corrective action will be as intense as it
12 will be with the order.

13 COMMISSIONER ASSELSTINE: But a confirmatory
14 order, Joe, wouldn't change the binding nature of the
15 requirements at all. It would simply be to say to
16 Dickhoner look, the Commission is working on an order
17 that has the following elements.

18 COMMISSIONER ROBERTS: The advantage is you
19 don't throw a lot of people out of work ---

20 MR. KEPPLER: Oh, no.

21 COMMISSIONER ROBERTS: Well, I understand you
22 might.

23 COMMISSIONER GILINSKY: Look, if Dickhoner's
24 proposal is satisfactory to Jim, then that ends the
25 matter. In other words, you issue an order and if

1 Dickhoner comes in with a proposal that is satisfactory
2 that ---

3 COMMISSIONER ROBERTS: You know good and well
4 there is a lot of difference between a confirmatory
5 order and a show-cause order.

6 COMMISSIONER GILINSKY: And that cuts two
7 ways. We have had a lot of experience with these things
8 over the years and it depends on whom you are dealing
9 with. Sometimes it is the constructive way to proceed
10 and they are more motivated and you get a better result
11 with a confirmatory order and sometimes you just have to
12 be a little more formal and stricter to get the action
13 that is required. I guess I am inclined to think that
14 is the case here on the basis of my own reading of the
15 man.

16 MR. DIRCKS: On the other hand, if it looks
17 like we can get everything that we want to get out of a
18 direct order and then maybe a little bit more and then
19 get it right away, that seems like a deal that we should
20 at least explore.

21 COMMISSIONER GILINSKY: But, let's see, why
22 would you not be getting those things ---

23 COMMISSIONER ASSELSTINE: The immediate
24 effectiveness is a good example. If a majority of the
25 Commission is not in favor of making this immediately

1 effective, the one thing you don't get control of is the
2 ongoing construction work which is what brought Jim to
3 us last week.

4 COMMISSIONER GILINSKY: Well, it is not clear
5 what the situation is.

6 MR. DIRCKS: I don't think we know what they
7 have to offer and my recommendation is to find out what
8 they want to put on the table and then go from there.

9 COMMISSIONER GILINSKY: With all we have been
10 through with these people for so long and, you know,
11 they will just string us along. They just don't want
12 trouble and I understand. You know, it is
13 understandable that he would take this position.

14 If he really has a reasonable proposal, then
15 the only thing that is different about this approach is
16 that it does, as Tom says, get more of a blaze of
17 headlines and so on, but in terms of actual effect it
18 will not be different.

19 COMMISSIONER ROBERTS: But don't you think we
20 have an obligation to hear his proposal or at least have
21 the staff hear it?

22 COMMISSIONER GILINSKY: We have talked with
23 him for years. Now, sure, when you are about ready to
24 act he is talking about proposals.

25 CHAIRMAN PALLADINO: But he could have given

1 us a formal proposal and he didn't.

2 MR. DIRCKS:

3 COMMISSIONER AHEARNE: They got the message in
4 the last meeting.

5 MR. DIRCKS: They sat through to the end of
6 the meeting.

7 COMMISSIONER AHEARNE: Right, and I think that
8 my vote would be to go ahead with a not immediately
9 effective order.

10 MR. DIRCKS: But then you are losing
11 something. You are gaining something in symbolism, but
12 you are losing immediate action.

13 COMMISSIONER AHEARNE: If they are already
14 with a proposal, they can come back in with the proposal
15 and Jim can accept it.

16 CHAIRMAN PALLADINO: And then what happens?
17 Does the work stop?

18 COMMISSIONER AHEARNE: That is part of the
19 proposal.

20 CHAIRMAN PALLADINO: All right, let's hear
21 what others feel.

22 Tom?

23 COMMISSIONER ROBERTS: I think the staff can
24 sit down with Dickhoner and see what he has got in
25 mind. If it covers all of our concerns, then have a

1 confirmatory order rather than ---

2 MR. KEPPLER: Look, you automatically know it
3 isn't going to cover all the concerns because he is
4 saying here is doesn't want to stop construction. So
5 that is going to be one thing that we would have to ---

6 COMMISSIONER ROBERTS: Well, nobody persuaded
7 me that we need to stop construction because of concerns
8 for public health and safety and the public interest. I
9 am sorry, but I am just not persuaded.

10 MR. DIRCKS: I can almost see Dickhoner giving
11 on that issue.

12 MR. KEPPLER: Yes, he could.

13 CHAIRMAN PALLADINO: I didn't hear you.

14 MR. DIRCKS: I have a feeling that to get the
15 confirmatory order he would agree to stopping
16 construction.

17 The other element, and I don't think we can
18 take it into our consideration, is that would then be
19 the company stopping construction and perhaps laying off
20 some workers out there as opposed to our order having
21 the economic impact right away.

22 COMMISSIONER AHEARNE: And lying down
23 immediate effectiveness.

24 (Laughter.)

25 MR. DIRCKS: But it is still NRC that orders

1 that stoppage of the work and the construction.

2 COMMISSIONER AHEARNE: A confirmatory order is
3 an NRC order.

4 COMMISSIONER ASSELSTINE: That is right.

5 MR. DIRCKS: Yes, but the company can announce
6 today we are taking the following reactions.

7 COMMISSIONER ASSELSTINE: That it is reacting
8 to it, to their proposal now.

9 CHAIRMAN PALLADINO: John, you are in favor of
10 a not immediately effective.

11 COMMISSIONER AHEARNE: Yes.

12 CHAIRMAN PALLADINO: Vic?

13 COMMISSIONER GILINSKY: Well, I would go with
14 the Commission order. I think immediately effective is
15 a question of just exactly how much work it would cover.

16 CHAIRMAN PALLADINO: We could make it either
17 immediately effective so far as shutdown is concerned or
18 make that part of the show-cause and I gather that is
19 what you mean by not immediately effective.

20 COMMISSIONER AHEARNE: Right, just a regular
21 proposal.

22 COMMISSIONER GILINSKY: Let me understand,
23 John. Are you saying it is effective at some date?

24 COMMISSIONER AHEARNE: Well, the show-cause
25 order gives them 25 days.

1 COMMISSIONER GILINSKY: Well, wait a minute,
2 are you saying that it would go into effect unless in
3 the 25 days they come back?

4 COMMISSIONER AHEARNE: Yes.

5 CHAIRMAN PALLADINO: It wouldn't go into
6 effect right away. Suppose they took 25 days to
7 deliberate whether they want to come back and argue
8 about something, could they not continue to work?

9 COMMISSIONER AHEARNE: Sure, yes.

10 COMMISSIONER GILINSKY: No, no, during the 25
11 days, but I would regard that as a different form of
12 immediate effectiveness.

13 COMMISSIONER AHEARNE: Well, they either
14 consent or ask for a hearing.

15 COMMISSIONER ASSELSTINE: That is right, but
16 even then work doesn't stop.

17 COMMISSIONER AHEARNE: Those are the two
18 options.

19 MR. CUNNINGHAM: That is right.

20 COMMISSIONER AHEARNE: If they consent the
21 work stops.

22 COMMISSIONER ASSELSTINE: But if they don't
23 consent the work goes on until the hearing is concluded.

24 COMMISSIONER GILINSKY: Well, wait a minute.
25 If I understand, John, and I don't have any difficulty

1 doing it his way which is that work does not stop for
2 these 25 days, and if the company comes back with a
3 satisfactory proposal during this period of time, then I
4 guess ---

5 CHAIRMAN PALLADINO: Well, they would have to
6 consent to the order and then they would stop work
7 because they have to do certain things before they can
8 continue if we write it correctly.

9 COMMISSIONER GILINSKY: Well, depending on how
10 we work things out with them at that point or they can
11 convince us that conceivably during that time that some
12 part of the work should continue.

13 CHAIRMAN PALLADINO: Well, you are doing sort
14 of a quasi-negotiation.

15 COMMISSIONER AHEARNE: During those 25 days,
16 yes.

17 CHAIRMAN PALLADINO: But then you are going to
18 invite hearings.

19 COMMISSIONER GILINSKY: It is up to them to
20 decide.

21 COMMISSIONER ROBERTS: But if they agree to
22 the order effective immediately all work stops period.

23 CHAIRMAN PALLADINO: If they agree to the
24 order entirely, which if they were smart they would do
25 because then they can work on the relaxation part under

1 the order, but if they start to take exception with any
2 part of the order before they consent, then they are
3 going to have a hearing.

4 MR. CUNNINGHAM: Not necessarily. If they
5 come back with a proposal that is short of our order and
6 we accept it, then there is no hearing at their behest
7 but now an interested member of the public.

8 MR. KEPPLER: GAP would ask for a hearing.

9 CHAIRMAN PALLADINO: GAP or Applegate or
10 somebody else could ask for a hearing.

11 MR. MALSCH: My understanding is that the way
12 these things have worked out in the past what a licensee
13 would do within the 25 days is make an alternative
14 proposal if he wasn't going to consent to the order
15 entirely and that he would probably file a contingent
16 request for a hearing in effect saying, listen, if you
17 don't accept my alternative proposal here, then I want to
18 insist on a hearing. So you may find a period of
19 negotiation between licensee and staff after the 25-day
20 period, but during that time you wouldn't know whether
21 the licensee was or was not actually requesting a
22 hearing because he wouldn't be sure whether the staff
23 was going to accept his proposal or not.

24 COMMISSIONER AHEARNE: If the staff accepts
25 the modified proposal, which is less than what was in

1 the show-cause order, what right would some other
2 organization then have?

3 MR. MALSCH: As long as the modified proposal
4 was clearly beyond the bounds of the original language
5 of the show-cause order, assuming the person had an
6 interest that would be affected, it would be fair game
7 for a hearing for the organization to insist on the
8 original proposal as distinguished from the alternative
9 proposal. That happens regardless of whether or not you
10 make it effective or not immediately effective. It is
11 something that arises from the fact you are issuing a
12 formal show-cause order.

13 COMMISSIONER ASSELSTINE: Does that go to the
14 halting construction? For example, do they come back
15 and say here is our plan and we accept everything in
16 here except the halting of construction and we don't
17 want to stop safety related construction work while we
18 are doing all these other things and the staff accepts
19 that. Does that then give rise to an opportunity then
20 for a hearing, for someone to come in and say wait a
21 minute, the Commission said construction should stop
22 until all this is done and now they have accepted
23 something less.

24 MR. MALSCH: I think offhand the answer is
25 yes. Even assuming a hearing was requested a director

1 still has discretion to allow construction to resume
2 based upon a finding that there is no longer an urgent
3 situation requiring anything immediately effective. So I
4 think in theory there is a right to a hearing, but I am
5 not sure how meaningful it is because of the discretion
6 the director has during the meantime.

7 MR. CUNNINGHAM: There is also the question of
8 whether they can show an interest affecting the staffing.

9 MR. MALSCH: Right.

10 CHAIRMAN PALLADINO: To make sure I am
11 following everything, do I understand under Ahearne's
12 proposal that this might read something like this. The
13 licensee shall show cause why safety related
14 construction activities, including rework of identified
15 deficient construction, shall not remain suspended until
16 the licensee has done 1, 2 and 3?

17 COMMISSIONER GILINSKY: But if the licensee
18 did not respond at all in 25 days the order would go
19 into effect.

20 CHAIRMAN PALLADINO: They have got to redraft
21 this so I think some guidance from the Commission would
22 be helpful. I think we know where John and Tom stand.
23 I would be inclined toward the immediately effective,
24 but I could live with the other.

25 You would go with the Ahearne proposal?

1 COMMISSIONER GILINSKY: I would go along with
2 it.

3 COMMISSIONER ROBERTS: Make it four to one.

4 COMMISSIONER ASSELSTINE: I think my first
5 preference would be to go back and hear what the
6 licensee has to say with a one-week time deadline on it;
7 that is, to see if we can get a proposal from the
8 licensee within a week that conforms to the elements
9 that are in what we would issue in the show-cause
10 order. If that failed, then I would be prepared to
11 issue the show-cause order with the immediate
12 effectiveness provision in it.

13 CHAIRMAN PALLADINO: So you are going with
14 Roberts sort of?

15 (Laughter.)

16 COMMISSIONER ROBERTS: Yes, I think that is
17 reasonable. I am not sure I would follow your second
18 step. I think it sounded reasonable to hear what they
19 proposed before we make a decision.

20 (Laughter.)

21 CHAIRMAN PALLADINO: So if I want a majority I
22 have to go with the John Ahearne proposal.

23 COMMISSIONER AHEARNE: No, you have got two
24 choices.

25 (Laughter.)

1 CHAIRMAN PALLADINO: I feel the order is the
2 right way to go and I said I could accept your version
3 although I prefer the other one. I think this
4 organization needs the strength of an order to get
5 things underway.

6 All right, from that standpoint, Guy, you
7 would rewrite the order. Does it change anything with
8 regard to point about the Regional Administrator may
9 relax all the prior conditions?

10 MR. CUNNINGHAM: There is no need to relax
11 that. The order provides that flexibility. That he can
12 allow construction on a case-by-case basis, that should
13 stay in there.

14 CHAIRMAN PALLADINO: I said there is nothing
15 in combining and that doesn't change that.

16 MR. CUNNINGHAM: That is right.

17 CHAIRMAN PALLADINO: I am suggesting you look
18 at it just in case.

19 All right, any other point on this that should
20 be discussed?

21 MR. CUNNINGHAM: We have the other two points
22 about the linking management to QA deficiencies.

23 CHAIRMAN PALLADINO: And there was another
24 point that was made that the number of deficiencies is
25 growing at a faster rate than the company can handle.

1 MR. CUNNINGHAM: Right.

2 CHAIRMAN PALLADINO: With regard to the
3 substance of the order is there any more that anyone
4 feels we ought to be talking about?

5 COMMISSIONER ASSELSTINE: So there are three
6 votes for not immediate effective?

7 CHAIRMAN PALLADINO: We have got three votes
8 for a not immediately effective order. When we finally
9 see the wording there may be fussing about the wording.

10 I would suggest that we see the revised
11 version and see if we can't get a notation vote that we
12 could affirm in our next affirmation session. I don't
13 think there is that much work for you to do.

14 (Laughter.)

15 CHAIRMAN PALLADINO: Well, why don't you get
16 it to us and then I will encourage the Commissioners to
17 give their votes by notation or we will affirm.

18 Well, can I spend a minute. I understand
19 there are press people outside and there are TV cameras
20 and somebody I guess is expected to go out and say
21 something.

22 (Laughter.)

23 CHAIRMAN PALLADINO: The last time I ducked
24 out and didn't say anything. I would propose to say at
25 this point in time that the Commission is still

1 deliberating its enforcement action and has not yet
2 reached a decision and as soon as we know a decision we
3 will let it be known or as soon as we have a decision we
4 will let it be known.

5 MR. CUNNINGHAM: Did you use the word
6 "enforcement" in there or did you say deliberating its
7 action?

8 MR. FOUCHARD: When we went into closed
9 session we said we were going to consider an enforcement
10 action and I think we might as well be up front on it.

11 CHAIRMAN PALLADINO: I am open to other
12 suggestions.

13 COMMISSIONER AHEARNE: One suggestion is to
14 let Joe do it.

15 MR. FOUCHARD: It bothers me not at all so
16 long as I know what I am saying.

17 CHAIRMAN PALLADINO: Well, why don't you do
18 that, Joe.

19 (Laughter.)

20 CHAIRMAN PALLADINO: Is there any other point
21 though? They are going to ask is it a strong action or
22 not a strong action. Joe, why don't you lead. You are
23 the one that is going to go face them.

24 MR. FOUCHARD: Well, I think I would say that
25 the Commission is still deliberating an enforcement

1 action. I need some guidance from you though as to when
2 you might conclude this deliberation.

3 COMMISSIONER GILINSKY: Let's see, if there
4 any enforcement action here?

5 MR. KEPPLER: The order.

6 COMMISSIONER GILINSKY: You regard that as
7 enforcement action.

8 CHAIRMAN PALLADINO: Well, I was trying to see
9 if we could get it out and get the votes and affirm it
10 before the end of the week. We have an affirmation
11 session I think Friday, is that right, or is it
12 Wednesday?

13 MR. CHILK: Friday.

14 CHAIRMAN PALLADINO: Friday. Now if you could
15 get something out that we could work on and vote on we
16 could affirm it Friday. I think we have had people sort
17 of in limbo for a long enough time and we ought to make
18 a decision by Friday if we possibly can.

19 MR. FOUCHARD: Then I would say that the
20 Commission is still deliberating an enforcement action
21 and hopes to reach a decision by the end of the week and
22 I wouldn't take debate as to what the enforcement action
23 would involve. Obviously it involves a range of things
24 which certainly includes the halt of construction. If
25 anybody asks that, that is an option.

1 CHAIRMAN PALLADINO: Okay. Does anybody have
2 trouble with that?

3 (No response.)

4 CHAIRMAN PALLADINO: Well, do a good job, Joe.

5 (Laughter.)

6 MR. FOUCHARD: Or don't come back.

7 (Laughter.)

8 CHAIRMAN PALLADINO: Okay. Anything more?

9 (No response.)

10 CHAIRMAN PALLADINO: We will stand adjourned.

11 (Whereupon, at 4:05 p.m., the closed session
12 adjourned.)

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NUCLEAR REGULATORY COMMISSION

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

in the matter of: CLOSED MEETING - EXEMPTION NO. 5 - Status of Zimmer
Investigation

Date of Proceeding: November 8, 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)