

Ref to Serial

MEMORANDUM FOR: Chairman Palladino

FROM: James J. Cummings, Director
Office of Inspector and Auditor

SUBJECT: REVIEW OF INVESTIGATION REPORTED IN NUREG-0862

By memorandum dated April 23, 1982, the Commission directed the Office of Inspector and Auditor (OIA) to conduct a review of the NRC investigation as set forth in NUREG-0862, "Inspection Report of 'Preliminary Report, Seismic Reverification Program' at Diablo Canyon Nuclear Power Plant, Units 1 and 2." The Commission's direction was predicated on issues raised in a February 8, 1982, letter from Congressman Udall and the concerns conveyed by Congressman Ottinger in letters dated February 4 and 23, 1982. Congressman Udall's letter questioned the overall quality of the investigation and asked whether appropriate questions were asked during the interviews conducted by NRC staff; whether these questions were appropriately followed up and so forth. Congressman Ottinger's letters questioned the overall adequacy of NUREG-0862.

By way of background, the staff's investigation was conducted in two phases. The first phase (reported as "NUREG-0862 Issue 2") consisted essentially of the testimony of: 19 Pacific Gas and Electric (PG&E) employees; 6 R.L. Cloud employees; and A. Bruce Norton, outside counsel to PG&E. The questioning of the above individuals sought to address 14 of the 16 issues which had been identified by the staff as being pertinent to the investigative objectives. Examples of some of the 14 issues addressed in the first phase are the following:

- Issue 6 Were employees of R.L. Cloud under any pressure to accept PG&E's comments that were provided as a result of PG&E's review of the draft reports?
- Issue 7 Did Dr. Cloud mislead the NRC in statements he made at the meeting with the NRC on November 3, 1981? If he did, was this done knowingly?
- Issue 11 Was the existence of the R.L. Cloud draft reports discussed by PG&E representatives at the November 3, 1981, PG&E pre-meetings, at the lunch break on November 3, or after the meeting?

The second phase (reported as "NUREG-0862 Issue 3") consisted of a review and analysis of each PG&E comment made to the various R.L. Cloud draft submittals for the purpose of determining what, if any, effect

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these PG&E comments had on the final R.L. Cloud report. The remaining two issues identified by the staff as being pertinent to this phase of the investigation were as follows:

Issue 15 Did any PG&E oral or written comments on the R.L. Cloud draft reports result in any unjustified changes in findings as contained in the November 12, 1981, draft report submitted to the NRC?

Issue 16 What were the bases for all of the substantive changes made in the R.L. Cloud draft reports?

OIA's review of the first phase of the investigation included the review of NUREG-0862 Issue 2; transcripts of related Commission meetings and the transcript of the November 3, 1981, meeting which gave rise to the investigation. Our review disclosed basic and substantive flaws. For example:

-- The overall scope of the investigation did not include obtaining the testimony of key NRC officials who were intimately involved and had knowledge regarding key issues under investigation. At a minimum, the investigation should have included statements from Messrs. Denton and Eisenhut who were attendees and participants at the November 3, 1981, meeting with PG&E officials. Such statements would have served, for example, to establish and document whether NRC officials were misled by statements made at the November 3, 1981, meeting.

-- The overall questioning of witnesses in most instances was neither sufficiently aggressive nor probing. Some examples are as follows:

- A. Bruce Norton, outside counsel to PG&E, was first interviewed on December 18, 1981. After a brief preamble, which established who Norton was; the nature of his relationship with PG&E; and a waiver by PG&E as to any attorney/client privilege, Norton was read part of the November 3, 1981, transcript and the following question and answer took place:

Investigator: Did you know at the time you made these comments that during the month of October 1981 that two draft reports had been given by Cloud and Associates to PG&E for review and comment?

Mr. Norton: I did not know that.

The interview was then for all intents and purposes ended. This entire interview of Norton was conducted in approximately 10 minutes and clearly made no attempt to probe the question under consideration.

- A. Bruce Norton was again interviewed on December 28, 1981, at which time additional questions were put to Norton. Again in this interview of Norton - lasting approximately 35 minutes - the questioning is far from probing. At one point Norton is asked if he made any inquiry during or before the November 3 meeting relative to the existence of drafts or working papers of Dr. Cloud's efforts. Norton answers that he did ask the question but cannot remember with whom he had the discussion, cannot remember who was present at various meetings where he might have asked the question, but believes he asked the question of Dr. Cloud. The questioning on this issue was then dropped and no effort was made by the investigators to explore Norton's answer any further.

- Also during Mr. Norton's second interview, one of the questions asked centered on any conversations Norton might have participated in during the lunch break on November 3, 1981, relating to the possibility that PG&E employees might have reviewed prior reports. Norton claims that he had none. However, it is clear from the November 3, 1981, transcript that Norton did have at least one conversation at the lunch break regarding the question of independence. The transcript on this point is as follows:

"...(Norton) so our problem lies, we think, in how do you assure that it is an independent evaluation. Someone during the lunch hour said, well, you should portray him as wearing a black hat. We could say that, but nobody is going to believe it by simply saying it..."

The investigators should have confronted Norton with his own testimony and determined the exact discussion he did have at the lunch break of November 3, 1981

- Dr. Cloud was first interviewed on December 16, 1981, at which time he was asked why, in response to Mr. Eisenhut's question (repeated below) at the November 3, 1981 meeting he had not mentioned the October 21 and 26 draft reports which he had previously submitted to PG&E. Cloud replied that the only thing he had on his mind at the time of his response to Mr. Eisenhut's question was the final report he soon would be submitting to PG&E. However, the investigators failed to pursue a viable line of questioning when they did not probe into how Cloud mention the October 21 and October 26 drafts, especially after knowing of the discussions that took place before and after Cloud answered Eisenhut's question. The relevant transcript is as follows:

"Mr. Denton: Do we get the same reports he (Cloud) gives you?"

"Mr. Manatis: You just got it. And I have to say,

Mr. Denton, that some of these things have just been disclosed to me, so you got it almost the same time I did.

'Mr. Eisenhut: When will we be expecting to see the short-term report, Bob Cloud said it's essentially complete.

'Mr. Norton: Dr. Cloud, could you answer that?

'Mr. Cloud: I believe it's -- we will be turning it in either this week or next, so you should have it shortly thereafter.

'Mr. Norton: I might add we do not have it. It's not a question of us reviewing it. We don't have it, either. It just hasn't been done yet.

'Mr. Denton: Well, since this is a particularly sensitive issue, I was wondering how you propose to handle comments on this draft, or are you going to send us the same report he sends you and add you cover letter to it? Or how will you preserve independence?"

And later:

'Mr. Denton: I'm just asking how independent is it?

'Mr. Norton: Any suggestions you have - if you want the report before we see it, fine. I frankly resent the implication that Dr. Cloud is not an independent reviewer because he is. As Mr. Maneatis just reported to you, we heard this presentation to you yesterday - in fact, we heard it Sunday for the first time. I assure you that's the case and we came back last night, or we came back yesterday, and you heard it this morning.

'The report itself hasn't been prepared. If you want a copy before we get it, fine, or simultaneously (emphasis added)."

- Three transcripts contain the notation "Discussion off the record" with no further explanation (Norton, Maneatis and Tresler transcripts). These off-the-record situations, once the formal interview process has begun, should be explained, e.g., five minute break, lunch, review of documentation, etc., and not left to the reader's speculation. Obviously any substantive issues or questions which are discussed during off-the-record periods should be rediscussed on the record.
- The management decision regarding the methodology to be used in conducting interviews of witnesses may well have inhibited witnesses from being fully candid and forthright. Initially placing individuals

under oath and keeping a verbatim transcript normally does not make witnesses feel comfortable. A better approach would have been to conduct initial interviews in a more informal manner, later memorializing the substantive parts of the interview in a formal transcript under oath. In addition to scope and direction, a good interview is a product of time invested. An adequate job simply cannot be done within the time frames illustrated by some of the key interviews, e.g., Norton - 45 minutes; Cloud - 2 hours and 5 minutes; Rocca - 1 hour and 19 minutes; Manatis - 43 minutes; and, Brand - 1 hour and 44 minutes.

OIA's overall finding is that the IE investigation, as reported in NUREG-0862 Issue 2, was unsatisfactory.

OIA's review of the second phase of the investigation (NUREG-0862 Issue 3) concluded that the methodology employed in addressing Issues 15 and 16 was reasonable and accomplished the stated purpose (see page ___), that is, to determine what effect, if any, PG&E's comments made on the various R.L. Cloud draft submittals had on the final R.L. Cloud draft report. Although a number of minor documentary and procedural deficiencies were noted, they did not affect the overall soundness of the report.

By way of background, the methodology employed included reviewing copies of all known draft reports and all comments relating thereto. In this regard, Region V conducted interviews, under oath, with both PG&E and R.L. Cloud personnel. A major objective in conducting these interviews was to identify how many different draft reports were issued and the number of copies of each draft that existed. The documentation received from PG&E and R.L. Cloud was consistent with the information developed in the interview process, both as to number of drafts and copies of each. Region V then analyzed the submittals, comparing comments made on the drafts to the final draft, in order to determine if any significant changes were made. All identified changes were analyzed to determine their significance ~~and the basis for making the change~~. All substantive changes were followed up on by IE employees at the R.L. Cloud offices. *revised*

In evaluating the handling of Issues 15 and 16, OIA: interviewed Region V staff; examined information available in Region V's files pertaining to the investigation being conducted, including meeting transcripts, correspondence between NRC, Cloud and PG&E, NRC inspection reports, and other miscellaneous notes, briefs, etc; and analyzed NUREG-0862 Issue 3. In performing this evaluation, OIA made the following observations regarding the investigative methodology and end product:

- The documentation to support the work performed on Issues 15 and 16 was incomplete. The documentation acquired consisted of informal worksheets, schedules and tabulations which were not complete and required the assistance of regional personnel to determine what was

done and to interpret results. As a result, the files in themselves were insufficient to support the findings put forth in the report. However, in many instances OIA was able to obtain adequate support by supplementing the files with discussions with the regional staff.

- Each draft was not specifically compared to the final draft report, line by line, to identify changes which may have been made based on verbal rather than written comments. However, OIA believes that any such changes would probably have surfaced because of the technique of tracing written comments through each version of the Cloud report.
- The report contains minor errors, such as inaccurate totals, and inconsistencies between the various sections reviewed by OIA, with most errors occurring in the Summary and Details sections. Further, the information contained in the Summary and Details sections is not totally supported by the report's appendices. OIA could not reconstruct the report's schedules to correct the inaccurate totals due to incomplete documentation, as noted earlier. OIA attributes these errors to a lack of detailed review of the report prior to publication, probably due to the short time constraints for completing the report. OIA believes, however, that these errors and inconsistencies do not affect the overall soundness of the report.

In spite of the deficiencies noted above, which OIA considers to be minor, OIA's overall finding is that the IE investigation, as reported in NUREG-0862 Issue 3, was fully satisfactory, especially considering the time constraints for completing the work. The methodology employed was reasonable and accomplished the stated objective.

A copy of this report is being furnished to the Acting Director, Office of Investigations (OI). In line with your April 23, 1982, request that a "review be undertaken with a view to improving the investigatory process," OI should consider how the investigatory deficiencies noted in this report can be alleviated when developing their internal operating procedures.

cc: Commission (4)
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