



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

AUG 31 1983

MEMORANDUM FOR: Chairman Palladino

FROM: Victor Stello, Jr., Deputy Executive Director
Regional Operations and Generic Requirements

SUBJECT: REPORT TO THE CHAIRMAN ON ALLEGATIONS OF
THOMAS APPLIGATE CONCERNING CONDUCT OF THE
OFFICE OF INSPECTOR AND AUDITOR

This is in response to your memorandum on this subject of August 4, 1983, forwarding the subject report for comment. I appreciate the opportunity to comment on the report because it levels specific criticisms at me.

The report is seriously flawed in that it (a) contains findings and conclusions on matters not mentioned in the body of the report (and far beyond the scope of the investigation as set forth in your memorandum of May 6, 1983 to the investigators), (b) incorrectly assumes that directions I gave which kept IE out of the criminal investigation business were contrary to common sense or Commission policy, or both, and (c) exhibits lack of understanding of the inspection process as it relates to "paper" and "hardware." My detailed comments supporting these conclusions are set out in the attached "Detailed Comments."

Victor Stello, Jr.
Deputy Executive Director
Regional Operations and
Generic Requirements

Attachment:

Detailed Comments w/encs.

1. Comments on Recommendations 1 through 5
2. Excerpts from Transcripts of
Meeting of October 27, 1981 (Closed)
and October 28, 1981 (Closed)
3. SECY 81-588

83120L0261
XA 43pp.

REC'D CHREN- CC: Commissioner Gilinsky
SEP 83 9:57 Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
William J. Dircks, EDO

Detailed Comments of Victor Stello, Jr. on
Report to the Chairman on
Allegations of Thomas Applegate Concerning
Conduct of the Office of Inspector and Auditor

Introduction

The subject report deals with allegations by Mr. Applegate concerning an investigation by OIA of earlier allegations by Mr. Applegate concerning an investigation by Region III, then a part of IE, of construction and quality assurance at the Zimmer Nuclear Power Station. The report contains a number of findings and recommendations. There are two statements in the report directly relating to me; one is in Finding 4, the other is in Recommendation 6.B. There is also a statement directly relating to me in the cover letter which transmits the report. My comments on those statements are set forth below. My comments on other recommendations of the report are set out in Enclosure 1 to these "Detailed Comments."

At the outset, I refute any implication that I encouraged or engaged in any policy regarding criminal investigation by IE which was in any way inconsistent with Commission policy applicable at that time, that I encouraged or engaged in any limitation of IE investigation effort into any issue affecting

health and safety, or that I view "paper problems" as a lesser form of regulatory violation.

The statements directly relating to me are:

- (1) from the cover letter

"...the unduly restrictive interpretation of 'health and safety' taken by Victor Stello, Deputy Executive Director for Regional Operations and Generic Requirements, and by senior Region III..."

- (2) Finding 4

"We find that Victor Stello, while Director of IE in 1981 and as Deputy Executive Director for Regional Operations today, has taken the official position and did so instruct Region III officials in 1981 that IE personnel are not to conduct criminal investigations. While facially correct, we further find that Region III officials apparently relied upon Mr. Stello's leadership on this aspect of enforcement to justify a failure to vigorously pursue all possible causes or types of regulatory violations. As a consequence of this hesitancy to address potentially criminal conduct, we find that Region III officials initially narrowed the scope and depth of their investigation into altered or incorrect QA/QC documents at Zimmer to the detriment of the NRC's enforcement program."

- (3) Recommendation 6.B

Victor Stello, by excluding criminal matters from the responsibility of IE and by focusing primarily on 'hardware' problems, has contributed to the artificially narrow concern exhibited by some Region III officials with respect to possible problems at Zimmer. While Mr. Stello has in the past pressed for a clarification of the investigative responsibilities of IE, his oft-articulated view of IE's mission has unintentionally permitted regional officials to exclude investigations into the causes of regulatory violations under the guise of 'not in my job description.' Moreover, he exhibited a disturbing willingness to view 'paper problems' as a lesser form of regulatory violations than other types of deficiencies."

The statement in the cover letter is a summary statement intended to characterize the finding and the recommendation. Therefore, my comments will be directed to the latter two statements.

After several careful readings of the report, I found no supporting discussion anywhere in the report regarding either the finding on the recommendation particularized to me. I, therefore, inquired of Judge Hoyt if indeed that was correct. Judge Hoyt agreed it was and informed me that the finding and the recommendation were derived from information provided during their interview of me. A short time later, she contacted me to inform me that the finding and the recommendation were also derived from information provided during interviews of Charles E. Norelius and James B. McCarten. I requested copies of the transcripts of these interviews, as well as the transcript of the James G. Keppler interview. While Mr. McCarten's interview contains a great deal of discussion of his belief that NRC should conduct investigations so as to focus on ascertaining criminal conduct and Mr. McCarten's speculations concerning motives of others involved in the conduct of the Zimmer investigation, the only portion which relates directly to me deals with a meeting I attended in the Region III office in the spring of 1981¹. This portion of Mr. McCarten's interview is discussed below. I found nothing in Mr. Norelius's interview directly related to me.

¹ There are also a few additional second-hand statements in Mr. McCarten's interview indicating what other people thought I would do or say if a question were put to me.

Embodied in Finding 4 and Recommendation 6.B are two basic concepts "criminal investigations" and "paper versus hardware problems."

A. Criminal Investigations

Commission Policy

A major (unstated) premise for the conclusions contained in Finding 4 and Recommendation 6.B, quoted above, as well as several other conclusions in the report, is that IE and Region III ought to have conducted criminal investigations related to activities of Zimmer. This point is brought out in Recommendation 4 of the report.

"...The identification and enforcement of regulatory violations including possible criminal violations is in everyone's job description. Accordingly, there should be a review of office charters, job descriptions and internal operations memoranda to determine whether senior Commission officials are, by narrow interpretations of their responsibilities, effectively jeopardizing the mission of the agency."

This unstated premise appears to be the view of the authors of the report about what the NRC policy should have been, but it does not in fact accurately represent what the NRC's policy really was regarding criminal investigations during the 1980-1981 timeframe. The report is, therefore, seriously flawed.

During that time frame, and for many years before, Commission policy, which was founded on Section 221b of the Atomic Energy Act² and the

² Section 221b reads in its entirety as follows: "The Federal Bureau of Investigation of the Department of Justice shall investigate all alleged or suspected criminal violations of this Act."

prudent utilization of available resources, was to focus on the health and safety implications of regulatory noncompliance and to refer all alleged or suspected criminal violations which might be associated with such noncompliance to the Department of Justice. Indeed, less than a year ago, in response to a request for legal research and opinion on the question of "whether the NRC has the authority to conduct criminal investigations," the Office of the General Counsel advised:

"The Atomic Energy Act does not explicitly give the NRC such authority -- indeed the Act should probably be read as depriving NRC of such authority -- and we conclude a court would most likely conclude that the NRC does not have the authority to conduct an investigation solely for criminal purposes."³

Moreover, the fact that IE was not conducting an investigation to determine whether there were criminal issues involved in connection with the Zimmer case - that was the province of OIA and the Department of Justice - was specifically brought to the attention of the Commission, along with the reasons therefore, at meetings held October 27, and October 28, 1981. We discussed specifically, and were actively questioned by the Commissioners concerning, the Memorandum of Understanding with the Department of Justice and the work of OIA in the area of investigations into allegations of criminality in connection with Zimmer. Moreover, we asked for Commission guidance on working relationships between IE and OIA and between NRC and the Department of Justice. (pp 99 through 105 of the transcript of October 27 meeting and pp 14 through 23 of the October 28 meeting are enclosed as Enclosure 2.)

These fundamental policy and legal issues, which were an essential part of the background of the allegations which were the subject of the report, were ignored.⁴ If they had been carefully considered, the authors would have recognized that the position attributed to me personally in Finding 4 and Recommendation 6.B, of relying on DOJ and OIA rather than IE for criminal investigation work, in fact reflected Commission policy at that time and was in fact a matter of which the Commission was aware during that time frame. Those statements on Finding 4 directed toward me are completely untenable.

The Role of IE in Criminal Investigations

On the related point of how far NRC's investigation should go into attempting to uncover criminal conduct, the Finding 4 and Recommendation 6.B. are directly related to another erroneous assumption in Recommendation 4 that "[the] identification and enforcement of regulatory violations including possible criminal violations is in everyone's job description."

As I pointed out during my interview, any investigation is basically a fact gathering activity, independent of whether these facts are to be used for a civil or criminal proceeding. What then becomes the fundamental question is: when to conclude the investigation? Clearly, from

4

Or, at best treated rather casually. Finding 4 refers to my position regarding conduct of criminal investigations as "facially correct."

NRC's viewpoint it must continue until sufficient information is compiled to assure adequate protection of public health and safety in connection with any licensed activity⁵ and to enable NRC to take the appropriate regulatory action. During the information gathering process for either investigations or inspections, occasionally a fact pattern emerges which suggests potential criminal violations. When a fact pattern is apparent which suggests criminal activity, the question is do we pursue it further? Clearly, if more data is needed to understand the health and safety issue, the answer is yes. NRC should pursue the matter until we have all the facts necessary to understand the health and safety implications of the issue. We should take our regulatory action on this basis. Any information suggesting criminal conduct should be turned over for further investigation to trained criminal investigators -- the FBI and DOJ. It may well be that further regulatory action would be appropriate upon completion of the criminal investigation activities.

There is, of course, an issue as to whether the Zimmer investigations were conducted with adequate investigative techniques and went far enough to provide necessary information to make health and safety judgments. But this issue is different from the question of whether IE must pursue all investigations to the extent of determining whether there is a criminal case.

5

For construction under a construction permit, in which the activity itself poses no direct radiological safety hazard, our investigation must provide sufficient information to ascertain the potential significance of the issue to the safety of the facility if an operating license were to be granted.

My position on the scope of IE's investigation effort, and its interrelationship with the work of OIA and DOJ, is reflected in the interview conducted by the authors of the Report, for example at p 43.

"Mr. Stello: I don't remember ever preparing a memo asking that question, but everything that I had gotten back and explaining what we were doing, and I had a number of confrontations I guess with Mr. Cummings on this issue, where it was clear to the Commission that I was conducting the business of that office for the Commission with the understanding that I was not 'conducting criminal investigations.' They were health and safety investigations for the purpose of collecting that information.

" They clearly collected facts that could be used for both purposes for sure, but when we satisfied that we had collected sufficient information to deal with health and safety, we were finished, and to go beyond that just for the criminal issue was a call that was to be made by the Department of Justice.

" I think Mr. Cummings disagrees with me and believes that that is his call as well and, hence, Gamble was 'doing a criminal investigation,' which if he understands that is in his charter, that is fine. It was not in my view in my charter, and I think, who was it, Commissioner Ahearne who was Chairman at that time, and I think that was understood because we had discussions on this issue."

Even Mr. McCarten's interview, despite reflecting his disagreement with IE management about conducting investigations to develop information about potential criminal conduct, demonstrates that he understood that he was to pursue allegations to develop all the facts necessary to understand the health and safety significance of the issue involved in the allegation; he argues his belief that IE should have gone further to establish underlying criminality - something Mr. McCarten indicates calls for much more investigation effort.

Mr. McCarten's one direct reference to me relates to a meeting at Glen Ellyn in the spring of 1981:

(Mr. McCarten) "That brings us around to the main meeting with Mr. Stello in Region III in which Mr. Stello was given detailed brief as to what we found at the plant. The conclusion of the brief was Mr. Stello, these are only paper problems and that is it.

Stello got very upset about that saying you mean you spent three months investigating a plant with 20 inspectors and invested a thousand man-hours and you are telling me you have only found paper problems? He was kind of upset with that type of thinking, and one of the inspectors, Jerry Shapker, stood up and he says has anybody in this room got any evidence that there are hardware problems? He said I have got inspectors that can walk into a plant and tell you if there are hardware problems. I would like to see the inspector, but the point is Shapker stood up in that meeting and said there are some hardware problems, the structural welding is faulty.

I stood up and I says the nonconformance reporting system relates to hardware problems not being identified. Then I said there are also criminal violations there, and when I said that Stello got very emotionally upset, threw up his hands and said we have got inspectors tied up in grand juries right now. I don't want to hear about any criminal allegations. He says we are just going do health and safety. That is OIA's job and we don't want to have nothing to do with criminal stuff, and this is May. Then he walked out of the meeting." (p 100)

The quoted portion reflects two areas of frustration on my part: first, the inability to obtain what I felt was a thoughtful assessment of the safety significance of the results of an investigation into which substantial office resources had been poured; and second, the inability to have IE investigators recognize that criminal investigative work was being carried out by OIA at that time and that IE's resources needed to be focused on the health and safety issues. At the time of the spring 1981 meeting, OIA had already established an independent criminal

investigation -- thus, despite Mr. McCarten's misunderstanding of the situation, the issue was not whether NRC would continue an investigation into criminal issues but rather the issue was that an office other than IE would do so.

A memorandum⁶ was developed for IE and OIA to set Agency policy for such circumstances. This memorandum was developed with the (informal) concurrence of the Department of Justice. It established a process, whereby, IE would inform OIA of such circumstances for their evaluation and determination as to whether or not a referral should be made to the DOJ.⁷

The Director of OIA was and remains of the view that his office is responsible for conducting criminal investigations of NRC licensees.⁸ Consistent with this view, OIA initiated a criminal investigation of Zimmer around March or April of 1981 (see page 6 of Hoyt Report). At this point, IE had an investigation and continuing inspections ongoing, the FBI had an interest and conducted an investigation, OIA was investigating Region III's prior investigation and had initiated a separate criminal investigation and finally the DOJ was reviewing the

⁶ IE/OIA Policy for Referral of Criminal Matters to the Department of Justice and the FBI, "Nov. 29, 1980."

⁷ I did not agree with this policy and attempted through oral discussions with the Commission to change the policy, and formally raised the issue in a memorandum to the Commission. SECY 81-588.

⁸ Whether this Commission or the previously constituted Commission agrees with this view is unclear.

facts as they developed. A very confusing environment. To assure that the basic regulatory issue remained the focus of IE's attention, I made the management decision IE would concentrate its resources on health and safety investigations and inspections, and to accept the prior arrangement that the criminal investigation would be OIA's job.⁹ It was agreed that we would cooperate fully with OIA in this regard and the record demonstrates compliance with that agreement.

The transcript of the October 27 and 28, 1981 Commission meeting reflects the fact that these decisions and these arrangements were discussed with the Commission. The transcript also reflects the confusing interrelationships. This problem concerning the interrelationships between IE, OIA and DOJ was clearly spelled out in SECY 81-588 and Commission guidance was requested.

Again, the report by attributing to me personally a limitation on IE investigation effort, is in error and fails to deal with the underlying difficult policy issues of the relationship among the various staff offices involved in inspection and investigation activities and the interrelationship with the Department of Justice in cases in which there may be potential criminal information. Rather than dealing analytically with the problems and analyzing a range of potential solutions - the Report simply proposes a statutory Inspector General as a panacea.

9

This is, of course, not to suggest that I believed OIA's action to be correct but rather a decision that had to be made to continue with fulfilling IE's responsibilities.

Criminal Prosecution as an Element of Regulatory Enforcement

Recommendation 4 and Recommendation 5 contain language suggesting greater emphasis on criminal prosecutions. If the intent of these recommendations is that NRC use criminal prosecutions as an additional element in the regulatory arsenal of enforcement, I fully concur. An individual inflicting intentional damage to a nuclear facility or a senior management official lying about an important safety issue comes to mind as examples in this regard. In such instances, however, I believe that development of the criminal case should be under the direction of the DOJ with the assistance of trained FBI agents for fact gathering. We, of course, should be available to provide technical assistance upon request. Our agency is a highly technical one.

If, on the other hand, these recommendations are intended to propel NRC into the field of criminal investigation, I disagree. Criminal investigation and prosecution are fields as highly specialized in their own way as is the field of nuclear safety. Criminal investigations must be carried out by persons well trained in the pursuit of criminal evidence and the development of all the elements of a criminal case and well trained to assure due regard for the rights of persons involved in criminal investigations. Criminal investigation is not and should not be "in everyone's job description." To dilute the NRC's resources by taking on this additional highly specialized area leaves fewer resources to review, inspect and evaluate safety issues -- the area for which NRC as an agency is uniquely qualified.

It is inconceivable that any health and safety issue could arise for which NRC does not have sufficient authority to correct the situation to assure public health and safety. We can deny a license, modify, revoke or suspend an existing one. These regulatory tools, coupled with criminal enforcement carried out by agencies specially trained in criminal investigation and prosecution, provide a formidable regulatory arsenal.

In summary, I find myself driven to the conclusion that NRC ought to stick to health and safety and leave the pursuit of criminal matters to the FBI and DOJ.

B. Paper versus Hardware Problems

It is particularly difficult to deal with this issue, simply because there are only fragments of the "hardware versus paper" issue in the report. In fact, the concept is only mentioned in paragraph 6B on page 32 of the report. And not discussed anywhere else. Yet without any indication of basis the last sentence of Recommendation 6.B. states:

"Moreover, he exhibited a disturbing willingness to view 'paper problems' as a lesser form of regulatory violations than other types of deficiencies."

This assertion is refuted by the 95 elevated enforcement actions taken during my tenure as Director of IE. A review of these actions would dictate a contrary conclusion. Had the report authors made the effort, they would have found their accusation was completely untenable.

Moreover, the interview of me conducted by the report authors also demonstrates that I do not consider "paper problems" as a lesser form of regulatory violation. The following excerpt demonstrates the relationship between hardware and paper problems:

"Judge Hoyt: The serious problems that you thought had to be dealt with, were they in categories: Did you feel like your main problems were hardware problems, did you feel like you had a paper problem, that these papers were not generated as you described to us here, or did you feel that the hardware in that plant was the problem?"

"Mr. Stello: Given that there is a paper problem, you can't make the final judgment on the hardware. You have got to do that independently by some mechanism."

" So that when you have a paper problem you have to say you have serious question about the equipment. So you can't really separate them, because what you can't do then is say this piece of equipment is indeed okay because you don't have a document that shows it indeed is okay.

" But clearly the preponderance of questions were raised to try to capture the total of it, inadequate paper. That is what was the basis for raising the concern. But for everywhere where there was inadequate paper, the concern by definition is also a concern for equipment and you have to then resolve it.

" There was most recently this past several months a team of people who went out to do exactly this, to try to independently arrive at by our own inspections and measurements to gain some understanding, and clearly there was some equipment for which there were problems a lot of which have been recognized over the years which are not yet resolved.

" So there clearly are equipment problems, but the seriousness of it I think, if you forced me to answer the question this way, at that point in time how would I characterize what we had, real known, identifiable major problems with equipment or real known, identifiable major problems with equipment or real known, identifiable paper problems, I would have picked the latter and said we have to deal with this to try to find out whether we have a problem. That becomes a question, I don't know that it there, but I do know I had the paper problem." (p 20)

Also a further explanation of the concern for understanding the nature of the problem was offered:

(Mr. Stello) "I had a concern as to whether or not we had a full understanding of what that problem was and what has come to be discussed as to whether we really had 'a hardware problem or a paper problem' and what is the real problem at Zimmer, a question I don't feel like I could even truly get answered today, but that was the thrust of the concern was to try to get a real understanding and assessment of what the nature of the problem. Did we have a hardware problem? Was the equipment there bad and, if so, why and what equipment and what needed to be done about it.

" We clearly knew at that time that there was an awful lot of paper that had been generated associated with a lot of equipment for which we had significant problems, paper that was

generated and paper that should have been generated that wasn't generated, both. (p 13)

In summary, the conclusion reached by the authors of the report is incorrect. I do not view "paper problems" as a lesser form of regulatory violations. Furthermore, the record does not suggest nor support such a view. I was not then and would not now, however, propose to stop our investigatory process until we were satisfied that the equipment in a facility is acceptable and the people are capable of constructing and operating it safely.

Paper or more precisely QA/QC records are important, but reasonable assurance of public health and safety is derived in the final analysis from adequate performance of people and equipment. We are finally making progress in this regard. The quality confirmation program initiated almost two years ago is identifying inadequate equipment and causing necessary corrective action. Management deficiencies were ordered corrected in November 1982 and proposals to correct these people-related activities are expected in the next several weeks.

Conclusion

With respect to its references to me in Finding 4, Recommendation 6.B, and in the letter of transmittal, the report is in error. This is unfortunate since the error could have been easily avoided had the report authors indicated to me their interest in the policy elements

which formed the background to IE's Zimmer investigations. Unfortunately, they did not, at any time, indicate to me that this was the direction of their inquiry. Had they done so, I would have been able to provide additional information, such as the documents referenced in these Detailed Comments, which could have assisted them to correctly understand the underlying policy issues.

Enclosure 1

Comments on Recommendations 1 through 5

- 1.* The recommendation for a statutory Inspector General is made without supporting analysis of the pros and cons of various alternatives for resolving the questions NRC faces in connection with the interface between inspections and investigations focused on health and safety issues and investigations into potential criminal activity.

Congressman Markey has been holding hearings on a proposal identical to this recommendation and four of the present Commissioners have testified before Congressman Markey's subcommittee. None favored an independent statutory inspector general.

2. This recommendation suggests a central toll-free telephone line and tracking system for receiving and recording allegations be implemented. A tracking system for allegations has already been instituted although a specific toll-free telephone system is now not available. This suggestion has merit and should be considered.

The most difficult issue, however, relates to who in the Agency should receive such calls, and the need for around-the-clock coverage. The capability needs to be adequate to assure that the NRC can obtain

*Numbered recommendations contained in the report.

sufficient information from an allegor to assess the safety significance of the allegation. Perhaps an on-call duty officer system within IE, NRR and the Regional Offices could be devised for this purpose.

3. We had a program for indoctrinating all new employees in the OIE to assure that they were made aware of investigative responsibilities. We presently have a training program in Chattanooga, Tennessee, for periodic training of inspectors. It would be a relatively simple matter to expand the course content as necessary to include investigative-type thinking into the technical courses for inspectors. A far more difficult task, however, would be to devise a course to provide sufficient technical training for nontechnical people characteristic of the investigators now being hired. To do a reasonably comprehensive job in this regard would require a considerable resource commitment, therefore, before any further policy is formulated in this regard a thorough study of this issue appears to be needed.

The last sentence of this recommendation deserves special comment.

"Since construction or operational deficiencies do violence to both the safety of a plant and the integrity of the NRC's regulatory program, inspectors and investigators should be cross-trained in both the technical and investigative fields to ensure that they can and will address both aspects."

Construction or operational deficiencies do not do violence to the integrity of the regulatory program unless we ignore them. If what is intended in this comment is to assure that the health and safety implications of deficiencies are dealt with, I concur. If the intent of this comment was to further suggest that investigators need to be reminded that health and safety matters must be first and foremost the fundamental purpose of their investigation, I concur. If, on the other hand, it is suggested by the comment that inspectors ought to be devoting their time to developing a "criminal case," I would urge the Commission to reject this notion.

4. This recommendation was discussed in my Detailed Comments.
5. Recommendation 5 urges the integration and coordination of inspections and investigations. This recommendation is similar to recommendations I have previously made, SECY 81-588.

There are at present four major components of the agency directly involved in the investigation process: OI, OIA, IE and NMSS. In addition, results of investigations at various times during the investigative process need to be coordinated both with the FBI and DOJ and at various times with state and local law enforcement agencies. Experience has shown that a confused environment can result.

Furthermore, with four separate offices involved, there is a an inherent fragmentation of agency-wide focus for NRC's inspection/investigation activities.

The principal function of the inspection process is to monitor compliance with NRC requirements with its focus on the health and safety implications of violations. Most violations are found as a result of information initially uncovered in inspections. The indepth investigation into particular issues was an important part of the overall assessment of the adequacy of licensee compliance with NRC requirements.

Transfer of the investigation function from IE to a Commission level office was intended to emphasize the investigative function and to bring about a fundamental implement in the NRC's investigative work product. I agree with these objectives and I agree that the change made by the Commission is accomplishing an improvement in the investigative process. But the focus of the investigative process has shifted to an emphasis on "wrong doing" and has isolated the investigation activity from the operational elements of the agency.

Isolation of the investigative activity and focusing its attention on "wrong doing" rather than operational safety implications of activities under investigation, will, in the long run, detract from plant safety. I recommend that:

- (1) OI be returned as an integral part of IE.
- (2) Coordination with DOJ be directly with IE. See SECY-81-588.
- (3) The Commission develop a formal policy statement, consistent with legal requirements and prudent use of agency resources that will cause NRC to focus on health and safety implications of regulatory noncompliance and refer all alleged or suspected criminal violations to DOJ.

NUCLEAR REGULATORY COMMISSION.

ORIGINAL

COMMISSION MEETING

In the Matter of:

BRIEFING ON PROPOSED ENFORCEMENT MATTERS

CLOSED MEETING - EXEMPTION 5

DATE: October 27, 1981 PAGES: 1 thru 128

AT: Washington, D. C.

ALDERSON  REPORTING

400 Virginia Ave., S.W. Washington, D. C. 20024

Telephone: (202) 554-1345

1 did a great deal of it and it carried over into the heavy
2 industry. Has that been done in the way in which it is the
3 best way to do it, I think is a legitimate question. I
4 don't know.

5 CHAIRMAN PALLADINO: It is probably one that we
6 will want to address as a separate issue.

7 MR. STELLO: I think it is a very good question.

8 COMMISSIONER ROBERTS: You are saying it is their
9 overkill on the QA requirements. I suspect it is.

10 MR. STELLO: To the point of where it is perhaps
11 even counterproductive because there is a system unto itself
12 that causes itself to be focused onto itself rather than the
13 end product which is the equipment.

14 Good question.

15 CHAIRMAN PALLADINO: Do you want to go on.

16 MR. KEPLER: Let me talk a little bit about
17 enforcement. We have recommended a substantial fine against
18 CG&E because of the major breakdown with the 10 C.F.R. 50,
19 Appendix B, the Commission's regulations for assuring
20 quality assurance. This matter is under review by I&E
21 headquarters and ELD.

22 Commissioner Gilinsky raised the question of
23 records and it is a matter that is of some concern to us.
24 Originally when we found indications of record problems we
25 were in touch with OIA and they took on a separate

1 investigation, an independent investigation to pursue the
2 record concern for whether there was sufficient information
3 to bring this matter to the attention of the Department of
4 Justice.

5 COMMISSIONER GILINSKY: Could you just explain to
6 me the basis, you know, what guidance you have for turning
7 something over to Jim, splendid gentleman that he is? Why
8 is he conducting an investigation?

9 MR. STELLO: Let me answer. We have a memorandum
10 of understanding with the Department of Justice that
11 whenever we see suspected or alleged violations of law we
12 are required in fact by the Act to report those and have the
13 FBI investigate them.

14 The agreement includes the interaction between my
15 office, or former office, or whatever and OIA. Whenever we
16 see this kind of a problem Jim and his people are instructed
17 to keep ---

18 COMMISSIONER GILINSKY: Are there written
19 instructions on this?

20 MR. STELLO: Yes. There is a memorandum of
21 understanding.

22 COMMISSIONER GILINSKY: From you to the regional
23 directors?

24 MR. KEPLER: I don't think so. (Simultaneous
25 Conversations - Inaudible).

1 MR. DIRCKS: I think they just circulated a copy
2 of the memorandum of understanding.

3 MR. STELLO: I think Dudley also has ---

4 COMMISSIONER GILINSKY: Between Justice and the
5 two offices?

6 MR. DIRCKS: OIE and OIA.

7 MR. STELLO: And I think there are some
8 supplemental instructions.

9 COMMISSIONER AHEARNE: (Simultaneous Conversations
10 - Inaudible) -- which is worked up with Justice.

11 MR. STELLO: Yes. And then that gets referred
12 over to OIA.

13 COMMISSIONER GILINSKY: Why when you run into a
14 potentially criminal matter does I&E drop it and turn it
15 over to Jim?

16 MR. CUMMINGS: I think there has to be a
17 clarification. The OIA does not do investigations, any
18 investigations for NRC enforcement purposes. That is all
19 the purview of I&E. They would come to us and say, look, we
20 have a problem with this particular case because it involves
21 or has the potential for involving criminality.

22 COMMISSIONER GILINSKY: Let me ask ---

23 MR. CUMMINGS: Let me just follow it through for a
24 moment.

25 COMMISSIONER GILINSKY: Sure.

1 MR. CUMMINGS: In this particular case the Justice
2 Department's position has been one that says fine, you, the
3 NRC, go ahead and do your health and safety. Finish it. We
4 want to address questions of documents or their falseness in
5 your enforcement package. When you get all finished come
6 back to us and we will review it to see if there is
7 something in that investigation that we would have an
8 interest in and we would want further investigation.

9 COMMISSIONER GILINSKY: But why are you involved
10 in this before you are finished?

11 MR. CUMMINGS: Because that was not their original
12 position. Their original position was one that said maybe
13 we should look at some of these things for fear that they
14 are going to get lost.

15 COMMISSIONER GILINSKY: So you are saying that you
16 would no longer be doing that.

17 MR. CUMMINGS: That was stopped. We had a meeting
18 with them and they agreed that this procedure ---

19 COMMISSIONER AHEARNE: They being the Justice
20 Department.

21 MR. CUMMINGS: Pardon me?

22 COMMISSIONER AHEARNE: You are saying they.

23 MR. CUMMINGS: The Justice Department.

24 MR. STELLO: I think we would probably need to go
25 a little further than that. There was at least a period of

1 about four weeks when it was unclear whether they would in
2 fact object to us releasing the report that we are now
3 releasing and that that was a matter being discussed with
4 them as well.

5 COMMISSIONER GILINSKY: Well, what I would like to
6 know, and again correct me if I am wrong, is that the matter
7 of falsification of records was turned over to OIA and I&E
8 was not dealing with that.

9 MR. STELLO: For the purpose of investigating
10 whether or not there was a criminal issue is what OIA was
11 doing. The purpose of falsification of records as they
12 relate to the safety ---

13 COMMISSIONER GILINSKY: What do you mean as they
14 relate to the safety?

15 MR. STELLO: A falsified record? That is the
16 safety issue that is generated in the falsified record
17 itself.

18 COMMISSIONER GILINSKY: Now, wait a minute. If
19 somebody is going to question whether a record has been
20 falsified, that obviously has got significance for the
21 regulatory setup. I just don't understand this.

22 MR. DIRCKS: Does the falsified record lead to a
23 defective thing.

24 COMMISSIONER GILINSKY: I know.

25 MR. DIRCKS: Another question is does the

1 falsified record lead to someone who has falsified the
2 record.

3 (Laughter.)

4 COMMISSIONER GILINSKY: That is right. I agree
5 (Simultaneous Conversations - Inaudible).

6 MR. DIRCKS: If that will lead to the man or
7 person who falsified the record do you chase that down at
8 this point in time in this investigation or was that
9 referred over to OIA?

10 (Laughter.)

11 MR. KEPLER: Let me try it a different way.

12 (Laughter.)

13 CHAIRMAN PALLADINO: (Simultaneous Conversations -
14 Inaudible).

15 MR. KEPLER: I can say yes, but I won't.

16 (Laughter.)

17 MR. KEPLER: At the point in time when you were
18 out to my office you were up there to go over to Palisades
19 with me. At that point in time we were not doing anything
20 with the "falsification issue" or the record issue because
21 at that point in time the matter was still being considered
22 or being discussed with the Department of Justice and CIA.
23 We later received word from the Department of
24 Justice that they were not going to do anything in this
25 particular case until we had "completed" our investigation

1 on all the action that we were contemplating. So at that
2 point in time I contacted Mr. Cummings' staff and told him I
3 wanted to pursue the record falsification issue from a civil
4 consideration and that I would like whatever pieces of
5 information they might be able to help us with or give us
6 that would support that case.

7 They really didn't have anything specific to help
8 me with but they told us to go ahead and we could do some
9 additional investigative work if we wanted to. So we did
10 pursue some of these record issues further at that time.

11 We have clearly some problems with what I will
12 call misrepresentative records that range all the way from
13 falsification down to some issues that are less clear but
14 are certainly misleading and we have a citation in our
15 enforcement action against that.

16 COMMISSIONER GILINSKY: Could you refer me to it
17 because I saw the word "misrepresentive" but I didn't know
18 what it meant.

19 MR. STELLO: Jim, I also think that Commissioner
20 Gilinsky wanted to know why did we ever stop in the first
21 place.

22 COMMISSIONER GILINSKY: Well, I will tell you, it
23 isn't that I want to, you know, bore in on this particular
24 case, although I am very much concerned about this one,
25 too ---

1 MR. STELLO: But isn't that the thrust of your
2 question, why did we ever stop; why didn't we just continue?

3 COMMISSIONER GILINSKY: I want to know really what
4 has been on that issue in this case.

5 CHAIRMAN PALLADINO: I am going to suggest that
6 maybe it would be just as well to stick to this case and not
7 try to generalize. Otherwise, we are going to try to solve
8 policy issues at the same time we are trying to understand
9 Zimmer.

10 COMMISSIONER GILINSKY: Could you just refer me in
11 this package to the ---

12 MR. STELLO: Find the place where you used
13 "misrepresentive."

14 COMMISSIONER GILINSKY: Well, you used the word
15 "misrepresentive," but you said included in the examples is
16 one related to misrepresentative records.

17 MR. KEPLER: It is the first item in the notice of
18 violation, Appendix A, right after the letter. The first
19 item.

20 COMMISSIONER AHEARNE: Misrepresentative records.

21 MR. STELLO: I hope we made it clear that we sent
22 this package down to try to give the Commission a complete
23 understanding. It is certainly not finished and there is
24 quite a bit of work that needs to be done on it.

25 COMMISSIONER AHEARNE: I thought you said you were

NUCLEAR REGULATORY COMMISSION

ORIGINAL

COMMISSION MEETING

In the Matter of: CLOSED MEETING

CONTINUATION OF BRIEFING ON PROPOSED
ENFORCEMENT MATTERS

DATE: October 28, 1981 PAGES: 1 - 44

AT: Washington, D. C.

ALDERSON  REPORTING

400 Virginia Ave., S.W. Washington, D. C. 20024

Telephone: (202) 384-2343

1 COMMISSIONER BRADFORD: Actually one of them was
2 the one you asked.

3 CHAIRMAN PALLADINO: I know John has some questions.

4 MR. STELLO: There was one question that was left
5 over from yesterday, and that was the issue of the interviews
6 at the site, and I had Mr. Keppler go back, and I guess if you
7 wish I'll just give you a copy of the memo that he prepared.

8 I'll just give it to you.

9 To understand why this did in fact happen -- and I
10 gave a copy to Mr. Cummings -- I think the memo will explain
11 this -- the issue was raised by OIA and their investigators and
12 passed on to our people that were doing the interviews. Mr.
13 Campbell and Mr. ^{Gu}glia from OIA were the individuals who in fact
14 passed on those instructions that caused us to have the
15 interviews conducted in the way that they were.

16 The interviews of these individuals, although not yet
17 complete, were conducted by OIA, and I think as the memo
18 indicates, that one of the interviews was in fact taped and
19 the other was not, and I guess with the status of those
20 interviews, where they are, maybe Jim could speak to it.

21 COMMISSIONER AHEARNE: Let me ask a question, and
22 then he can.

23 Do I gather then I&E did not interview Giddings?

24 MR. KEPPLER: Not with respect to the record of
25 falsification.

1 COMMISSIONER AHEARNE: But I&E did interview Giddings?

2 MR. KEPPLER: Yes.

3 * COMMISSIONER AHEARNE: But your point is you did not
4 follow up on issues such as did he tell people, did he order
5 people away from -- move them away from their previous job, and
6 you didn't take a deposition on that? That was because of OIA's
7 instructions? That had nothing to do with falsification of
8 records; the issue was there --

9 MR. KEPPLER: That's correct.

10 COMMISSIONER AHEARNE: -- have been charges made
11 of the QA manager, Giddings, had removed QA inspectors on
12 instructions from the construction people.

13 Now your interview in here didn't follow that, and
14 the point was you felt you couldn't follow that because of OIA
15 instructions?

16 MR. KEPPLER: My understanding is that when the
17 question came up as to whether or not to take signed statements
18 from the four senior people involved here, that because of
19 their involvement in this issue, that might jeopardize the
20 other considerations involved. We did not take them.

21 COMMISSIONER AHEARNE: I'll ask Cummings in a minute,
22 but let me follow that point.

23 The interview, at least quoted here, didn't follow
24 the point did he remove QA inspectors, because he had been
25 requested to do so by the construction people.

1 MR. KEPPLER: I'm sorry, I'm not following you.

2 COMMISSIONER AHEARNE: The interview that you have
3 here --

4 MR. KEPPLER: Yes.

5 COMMISSIONER AHEARNE: There are a number of other
6 interviews of QA people. The QA people say they were removed
7 from their assignment and they were told they were removed
8 because they had been too aggressive or had been pushing too
9 hard and they believe they had been removed because the
10 construction people had gone to the QA manager and got them
11 removed.

12 The interview of Giddings doesn't follow that
13 issue.

14 MR. KEPPLER: Can you answer that?

15 MR. WARNICK: In our interviews with Mr. Giddings,
16 we were instructed -- first of all, OIA conducted the interviews,
17 and our investigator was instructed to limit his amount of
18 questioning to specific concerns --

19 COMMISSIONER GILINSKY: By whom?

20 MR. WARNICK: By OIA.

21 COMMISSIONER GILINSKY: Is I&E effectively under
22 the control of OIA during these sorts of investigations?

23 MR. WARNICK: No, but we work with them very closely.

24 MR. KEPPLER: We were involved in the control of
25 criminal issues.

1 COMMISSIONER GILINSKY: But we have our own interest,
2 which is to make sure the regulatory system is protected. Now
3 who is looking out for that?

4 MR. STELLO: If the Department of Justice did in fact
5 request limitation in whatever fashion, to cause those
6 limitations, we are in our Memorandum of Understanding obligated
7 to comply with their wishes.

8 COMMISSIONER GILINSKY: Did they have that?

9 MR. STELLO: That's what I said.

10 COMMISSIONER GILINSKY: Okay.

11 COMMISSIONER AHEARNE: Let me, if I can, finish
12 on the guy who was interviewed.

13 So you people did not follow up on this other aspect
14 because you felt you were constrained by OIA from following up
15 on it?

16 MR. WARNICK: Yes. I'm not sure of the exact
17 questions our investigators asked, but his line of questioning
18 was governed by instructions and agreement with OIA.

19 COMMISSIONER AHEARNE: But as best as you can tell,
20 the reason that that issue would not have been followed up would
21 be he felt he was under restraints from OIA?

22 MR. KEPPLER: I don't know that we can answer that.

23 MR. STELLO: Well, wait a minute, Jim. Maybe if
24 you can explain the statement that's in the memo, that might
25 help. You said that the decision not to interview personnel

1 -- and you named those -- at all, was there was a limitation
2 on interviewing. Is that literally true?

3 MR. KEPPLER: My understanding, Vic, when I talked
4 to McCartin² last night was that the reason we didn't take signed
5 statements from them, which was the question that Commissioner
6 Ahearne raised, was tied to the fact that if these people were
7 involved in the records issue to one degree or another, and that
8 if we got them to give us signed statements, that it may somehow
9 affect the other work that was going on and develop into
10 potential criminal prospects.

11 MR. STELLO: I understand that.

12 MR. KEPPLER: Let me just say that as far as other
13 aspects, what interviews may have been conducted, I don't know,
14 offhand, but there was no signed statements.

15 MR. STELLO: My question was, the memo reads not to
16 interview them at all, not only with respect to taking signed
17 statements, but not to do the interview. Is that literal?

18 That says not to interview. Do you know?

19 MR. KEPPLER: It's in connection with the record
20 aspect.

21 MR. STELLO: Okay.

22 COMMISSIONER AHEARNE: Not to interview them --

23 MR. STELLO: With respect to records.

24 MR. KEPPLER: With respect to that issue.

25 COMMISSIONER AHEARNE: Maybe Cummings can answer on

300 7TH STREET, S.W., REPORTERS BUILDING, WASHINGTON, D.C. 20024 (202) 554-2345

1 that.

2 MR. CUMMINGS: I just got this, and I haven't talked
3 ^{Cummins} to Campbell, but I think there are a couple of points that have
4 to be made here.

5 First of all, we did not give I&E any restrictions
6 on not to interview anybody.

7 COMMISSIONER GILINSKY: Were the requests from Justice

8 MR. CUMMINGS: No.

9 The other point I would like to make is that we
10 didn't get into this until June or July of, I guess, 1980. I
11 don't know what happened between January and June, but clearly
12 that full period of time cannot be in question.

13 COMMISSIONER AHEARNE: But this I think is talking
14 about Spring of '81.

15 MR. CUMMINGS: Now I know for a fact that we did
16 interview Giddings. No question about that. We have that
17 interview, and I think that interview, along with any other
18 interviews that we have conducted, we have discussed with Dudley.

19 COMMISSIONER AHEARNE: Well, the issue here, though,
20 is --

21 MR. CUMMINGS: Which would be a normal practice.
22 In other words, if in a criminal investigation, we conduct
23 any interviews, the understanding we have with I&E is that we
24 will take those interviews, give them to I&E, because we don't
25 hold ourselves out as experts in recognizing a --

1 COMMISSIONER GILINSKY: Why were you conducting
2 interviews at all? Had you been asked to do that by the
3 Department of Justice?

4 MR. CUMMINGS: At that point we had been asked both
5 by the Department of Justice and by I&E and Burt Davis to try
6 and get involved in this.

7 You could have ideally, and as a rule, we don't
8 do that; we don't get into these cases until they are finished,
9 until the end.

10 MR. KEPPLER: I'm sorry, you know, when the allega-
11 tions first came up on Applegate, you were involved. You were
12 out in my office the first period of weeks that was going on,
13 and your people were out there.

14 MR. CUMMINGS: That had to do with Applegate.

15 MR. KEPPLER: No, I'm talking '81.

16 COMMISSIONER AHEARNE: Spring of this year.

17 MR. KEPPLER: We got the allegations from Applegate --

18 COMMISSIONER AHEARNE: The second set.

19 MR. KEPPLER: -- at the end of the year, January.

20 COMMISSIONER AHEARNE: That's the second set.

21 MR. KEPPLER: The second set I'm talking about.

22 MR. CUMMINGS: Right.

23 MR. KEPPLER: And your people were involved right
24 from the beginning because falsification of records was a clear
25 issue right from the start.

1 MR. CUMMINGS: But, Jim, what I'm trying to point out
2 is that the number of interviews that we conducted, aside from
3 those issues that related to what the Commission had asked us
4 to do on evaluating the I&E investigation, I'm sure don't number
5 more than a half a dozen.

6 We did spend considerable time reviewing the work
7 that McCartin had done, and reviewing those interviews and
8 discussing them with I&E, but we weren't telling you you can't
9 go out and interview.

10 COMMISSIONER GILINSKY: Vic, what instructions did
11 you give to your people on their responsibilities in connection
12 with issues of falsification?

13 MR. STELLO: Whenever there is an issue raised --

14 COMMISSIONER GILINSKY: In this particular -- that
15 would apply to this particular case.

16 What were their instructions?

17 MR. STELLO: I don't recall any specific instructions.
18 The general instructions apply. When there is an issue for
19 which we have notified OIA and there is a criminal issue for
20 which Department of Justice is interested in, and any of the
21 restrictions that the Department of Justice tells us that they
22 want or anything that they want us to do, unless we have an
23 immediate health and safety issue that dictates that we must
24 proceed, then we agree and will accommodate --

25 COMMISSIONER GILINSKY: But there are no restrictions

1 here, as I understand, and there were no restrictions.

2 MR. DIRCKS: I think if the matter is referred over
3 there, if there is a de facto feeling that I&E --

4 COMMISSIONER GILINSKY: I understand. Is that down
5 explicitly anywhere, or is it just understood, or was that
6 your modus operandi or what?

7 MR. STELLO: It was understood that if OIA passed
8 on instructions, the investigators --

9 COMMISSIONER GILINSKY: I mean that's what you
10 conveyed to your people?

11 MR. DIRCKS: That's the understanding, I think that
12 is.

13 COMMISSIONER GILINSKY: Well, why? I don't understand
14 why.

15 MR. STELLO: Well, because OIA has the responsibility
16 under the memorandum to treat these matters that have that
17 criminal implication in them.

18 COMMISSIONER GILINSKY: Not so far as our responsibility
19 under the Atomic Energy Act are concerned.

20 CHAIRMAN PALLADINO: I think that's the reason why
21 we would like some clarification of the responsibilities.

22 MR. STELLO: Well, I think that's the reason that
23 the memorandum that you have before you, that speaks to this
24 whole question of inside-outside issues, I think deserves to be
25 an example of one of them where it does create a problem.

CHAIRMAN PALLADINO: We have to address the generic
ALDERSON REPORTING COMPANY, INC.

1 problem, and maybe to get a feel for what went on in this case,
2 we might even want Messrs. Puglia and ^{Campbell} Campbell to --

3 COMMISSIONER AHEARNE: And McCartinⁱ. I gather
4 McCartin^e was . . .

5 CHAIRMAN PALLADINO: Well, I'm not sure that we're
6 going to shed more light as far as Zimmer is concerned at the
7 moment.

8 MR. DIRCKS: I think it cuts across many, many cases.

9 COMMISSIONER AHEARNE: This is a good example.

10 COMMISSIONER GILINSKY: I must say I'm left with a
11 feeling that I&E was not too keen to get into these areas itself,
12 and was only too prepared to let -- I hope I'm wrong.

13 MR. DIRCKS: It may be true, but there is also a
14 feeling that I&E does not want to be critiqued for messing up a
15 case that Justice is going to pursue.

16 MR. KEPPLER: And we have been.

17 MR. DIRCKS: And we have been.

18 Once tainted with that, they don't want to get hit
19 again with that same critique.

20 COMMISSIONER GILINSKY: You are referring to what?
21 To this case or to others?

22 CHAIRMAN PALLADINO: I wonder if maybe we haven't
23 exhausted this issue for the moment as it applies to Zimmer.
24 I do understand that there are differing opinions on what went
25 on, but maybe we can take this up as a broader issue, using this