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WASHINGTON, D.C. 20555

848698

DOCKETED

August 9, 1984

*84 ASO 10 A10:07

Tuck Mizuno Karmon /Troby

MEMORANDUM FOR:

William Clements, Chief

Docketing and Services Branch

FROM:

Patricia Davis, OCM ...

SUBJECT:

ATTACHED MEMO TO PARTIES IN

WATERFORD PROCEEDING

Please serve the attached memo on the parties to the Waterford Proceeding. Also, please arrange to have the attached transcript

placed in the Washington and local PDRs.

Attachments: As stated

cc: William Reamer William Parler Stephen Sohinki

James Cutchin

OGC

8408130319 LP.



WASHINGTON, D.C. 20555

DOCKETER

August 9, 1984

*84 A30 10 A10:08

MEMORANDUM FOR:

Parties in Waterford OL Proceeding

FROM:

Patricia R. Davis, Legal Assistant

to Commissioner Asselstine

SUBJECT:

TRAMSCRIPT OF MEETING BETWEEN

COMMISSIONER ASSELSTINE AND

REPRESENTATIVES OF LOUISIANA POWER &

LIGHT

On July 16, 1984, Commissioner Asselstine met with Gerald Charnoff, an attorney with Shaw, Pittman, Potts and Trowbridge and James Cain, Chief Executive of Louisiana Power and Light. The LP&L representatives suggested to Commissioner Asselstine a plan for responding to the allegations which had been made about problems at the Waterford plant. There was no discussion of substantive matters at issue in the proceeding. However, a copy of the transcript is being placed in the public Document Room in Washington, D.C. and in the local Public Document Room for your inspection.



WASHINGTON, D. C. 20555

August 8, 1984

DOCKETED

MEMORANDUM FOR:

Commissioner Asselstine

A:0:08

FROM:

Martin G. Malsch

Acting General Counsel

SUBJECT:

TRANSCRIPT BRIEFING WITH CHARNOFF AND

KANE RE: WATERFORD

This responds to your July 23, 1984 request that OGC review the attached transcript to determine the advisability of serving it on the parties in the Waterford proceeding.

OGC has reviewed the transcript and found no "... substantive matter at issue in a proceeding on the record... pending before the NRC for the issuance... of a license..." 10 CFR § 2.780. The discussion contained no ex parte communication and would not be required under the law to be served on the parties. Therefore, whether or not the transcript ought to be served on the parties is a matter of discretion and, in this case, is a close question. On balance, OGC recommends serving the transcript if transcripts of similar conversations (e.g. with Ben Hayes) have also been served.

Attachment: Transcript

cc: Chairman Palladino Commissioner Roberts Commissioner Bernthal Commissioner Zech SECY

Contact: Beverly Segal, OGC X43224



WASHINGTON, D.C. 20555

July 23, 1984

COLASTER

*84 AGO 10 ATO:08

MEMORANDUM FOR: Herzel Plaine, OGC

FROM:

James K. Asselstine

SUBJECT:

TRANSCRIPT OF MEETING WITH CHARNOFF AND KANE RE:

WATERFORD

I have reviewed the attached transcript, and I do not believe it must be served on the parties in the Waterford proceeding. However, I would like your office to review the transcript and give an opinion.

cc: SECY

ORIGINAL ORIGINAL

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

DOCKETET

*84 ASO 10 A10:08

Pages: 1 - 21

In the Matter of:

WATERFORD

Location: Washington, D. C.

Date: Monday, July 16, 1984

8408130339 25 pp.

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

WATERFORD

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

Monday, July 16, 1984

COMMISSIONER PRESENT:

JAMES ASSELSTINE, Commissioner

PRESENTERS:

- J. Charnoff
- J. Kane

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PROCEEDINGS

MR. ASSELSTINE: I figure given the posture of the case and the pending investigation business, that for all parties concerned it would be best to go ahead and have the meeting transcribed and served on the parties.

First, I think we need to identify ourselves so the recorder can do it. I'm Jim Asselstine.

MR. CHARNOFF: Okay, and I'm Jerry Charnoff.

MR. KANE: And I'm Jim Kane.

MR. ASSELSTINE: Great. That way they can match the voices to the names.

MR. CHARNOFF: And I'm with Shaw, Pitman and we're counsel for Louisiana Power and Light, and we're here to talk about the Waterford case. We're not going to talk about anything that's at issue before a licensing board or review board, and indeed we're not even going to talk about the details of the investigation, most of which we don't know anything about anyway.

MR. ASSELSTINE: Good.

MR. CHARNOFF: We did want to talk to you because last week we had a meeting with Darryl Eisenhut and Ben Hayes on Friday. The situation at the moment, as we understand it, is that the Waterford Plant, first

of all, is really ready for fueling. It's being held up waiting for disposition from, well, it's waiting for a license which is waiting for a disposition of some matter that is before the Appeal Board on a petition to reopen. We're not here to talk about that.

It is also waiting the outcome of the NRC's efforts and investigation at Waterford into a number of allegations. And, indeed, the NRC has done a yeoman's job in some respects down there, I think, Jim.

There were a lot of allegations published in a newspaper called <u>Gambit</u>...

MR. ASSELSTINE: Yeah, right.

MR. CHARNOFF: ...months back, and the NRC proceeded to send down a CAT team down there. The CAT team came up with a report which indicated some problems, but not too many.

Actually, it was a very favorable, in the overall, a very favorable report. We felt pretty cheered by that. Simultaneously, some combination of the NRR and OI and OIE, they put together a team of about 30 or 40 or 50 people who went down there and we really appreciated the effort to do it on a team effort and do it all at once.

They looked into some 300 allegations, we understand, and out of the 300 they really disposed of

all but about 20. Maybe less than 20 but they resulted in about 20 some odd questions.

There was a public meeting that we had with
the Staff with a lot of television cameras about three
weeks ago and where the Staff told us the results of
that meeting and said that it would be, of the
investigation, and said that they would follow up
with some questions.

and a couple of days later we got some 23 questions from the Staff. As a result of that public meeting and the questions, Jim Kane is president of LP&L, put together a team of people within LP&L to look at the matters and engaged some senior people from NUS and UNC, that's Sol Levine from NUS and Bob Ferguson and Larry Humphries of UNC, as a three-man task force which is reporting directly to Jim on the whole program to resolve these 23 matters and what they mean.

That's on the way and working pretty well.

In addition, a number of NUS people are working with
the LP&L team to try to resolve these 23 matters and
find out what the facts are and report them both to

Jim and to NRC. And that's on the way.

The fellows down there in Louisiana have been talking to an NRC task team which is headed up

by Denny Crutchfield who works for Darryl Eisenhut, and I think they have a pretty good sense of an approach to the 23 questions.

By and large, since your task group, the Crutchfield task group, thinks that we're on the right path in terms of approach. I think they appreciate the task force concept that Jim Kane has set up because I think that gives us a good measure of a fresh look at things from very competent prople.

We ran into a little bit of a problem and that resulted in a meeting on, that we had on Friday with Ben Hayes of OI and his fellow Dick Kerr from

Arlington and Denny Crutchfield and Darryl Eisenhut.

That meeting grew out of some phone calls that I had with some of them with regard to the fact that here we have a comprehensive look being taken at the 23 questions.

We have assigned key people to look at these matters in a responsible way or a responsible reviewer way. It is apparent to us from statements made by either Ben Hayes or Eisenhut or Crutchfield that the NRC OI investigation of many of the allegations, which we were told are in two categories, one was harrasment and intimidation and the other was falsification of

documents, may not be over for several months. Now, it turns out and we don't know who they are that there is as a result of this investigation a cloud at least over some of the people that we are using in our principal reviewer role to handle these 23 questions.

And I suggested that it would be well if we were told who these people were, not for purposes of our taking any retaliatory measures toward them and not for purposes of impeding the investigation, we don't want to do either, but for purposes of allowing Jim Kane as Chief Executive Officer to, in effect, take any people who may have a cloud over them and maybe some others and just for the moment remove them from the exercise in responding to the 23 questions because it may turn out that all of these people have very clean hands and that the allegations were without substance, and we certainly don't want to do anything that's unfair to them.

Many of them may be very good people. At the same time, we are concerned, and I think Eisenhut and NRR is concerned, that during the next several weeks when we produce our responses to these questions many of those questions may be signed off on by people over whom there is, the word "cloud," an inappropriate word at the moment, over whom there is a cloud, warranted

or unwarranted. That will make it difficult for NRR and Eisenhut to, in effect, accept those answers, the integrity of the answers.

So we've suggested that if you would at least tell Jim Kane and Mike Ledig, who is the Senior VP for Nuclear down there, against whom there is no cloud and...

MR. ASSELSTINE: Right.

MR. CHARNOFF: ...there is no suggestion of a cloud. If you would tell us who the people are, then management has the responsibility to either decide that there's no basis for the cloud and we ought to just fight the NRC and let the project wait, or management can decide, and it won't, to fire these people right away without waiting for the results, and it's not about to do that. That wouldn't be fair.

Or it could find some way to not remove them from their work, but remove them from this task which is very important. And we did talk to Eisenhut and Hayes about the idea that even if we remove them from the task of being principally involved in resolving the questions, that obviously some of these people are important to the corporate memory of what happened, could we have access to them.

And the answer is sure, there's no problem in that. They want us to have that. So the limited

issue is, at the moment, that we don't know against whom or over hwom there's some cloud.

We have some 30 names or so of people involved in key roles. We are concerned that they're going to work hard, as they are doing already, over the next two to six weeks to get you information, and we're crippled in that we can't, we have no options that management has to deal with the problems.

So we asked Ben if he would tell us who those people were. Ben appreciated the quandary that we're in and the quandary that he's in. He doesn't want to affect adversely the investigation, and nor do we, and he doesn't want to hold the plant hostage, which is really what may happen.

And that could be several months the plant is sitting there waiting. So he said that he would have to talk to the Commissioners about this, and we said to him, "Good."

"Would you please see the Chairman next week and the other Commissioners," and he said he was going to be on vacation today, he and Ben Hayes, and he would talk to the Chairman at the end of the week.

He was due back then, I gather. But he said that he would be with you during the middle of the week. You're going on a trip to Grand Gulf.

MR. ASSELSTINE: Grand Gulf, right.

MR. CHARNOFF: So, I said to him, do you mind if we talk to you and any of the other Commissioners and, in effect, they encouraged us to do that. Now, I did not have with me on Friday the NRC's policy statements on OI policies, but I did get it for this morning.

And as I see it, Jim, there are two policy numbers, 18 and 19, that may be pertinent, Eighteen, both say don't disclose unnecessarily what's going on with an investigation.

The first says don't do it without permission of the Director of OI, that's Ben Hayes, and the second one says don't normally get into the substance of an ivestigation.

Now, we're not interested in the substance at all here today. We are interested in encouraging you to understand the problem and to back Ben up with the authority he already has to give us that limited disclosure, which we will not disclose, and we've already told Ben we'll work some way, if necessary, to protect both the names of the people, we don't want to adversely affect them, and we don't want to hurt the investigation.

If that means putting an envelope over some larger number of people temporarily, we'll do that.

D.C. Area 261-1902 . Balt. & Annap. 269-6236

We'll do some way to mask it, at his directions, whatever he would want. Jim would work with him.

But we need ot get our of this pralysis
that we're in. And now when I saw over the weekend
and this morning these policy statements, I think he
has the authority but appropriately he wants to know
that the members of the Commission will understand
what he's doing. And that's our mission. Jim.

MR. KANE: Jim, you have my assurance, as the Chief Executive of Louisiana Power and Light, that I would certainly deal with this matter in an appropriate discretion and give it the necessary priority and overview that would confirm what Jerry has just shared with you, that I would in no way do anything that would prejudice or compromise the investigation underway by Director Hayes.

I would do nothing that would in any way reflect on the individuals to which I might be provided access that in any way would be condemning until there is the necessary conclusion to do so, and I would find that very uncomfortable, personally to in any way deal with one's career unless I was satisfied that ther was an adequate basis for coming to a conclusion.

But on the other hand, mindful of my

responsibilities to the corporate side of moving forward with the plant, attempting to bring to a conclusion the process to load fuel, to send a signal to the outside world that Waterford is a healthy plant, that it is financially viable, to reassure the citizens and customers in Louisiana that it is a plant that will cenerate kilowatt hours of electricity and that we're going about it in an orderly way, to reassure the Congressional delegation that there is the basis for understanding between the applicant and NRC, the regulator, and that we can work together, and I think with all of those assurances on my part, and I stand a great deal to lose if I lose credibility with you and other members of the Commission. Perhaps my own corporate career is at stake if I don't have credibility with you because I'm being looked to bring the plant to the point that I've just described.

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So, I would hope that you and other members of the Commission would find it within the wisdon of your judgement to not in any way frown on Mr. Hayes' willingness to work with us to find a method that stands the scrutiny of the outside world, but, yet at the same time, recognized individuals and the integrity of individuals involved. And I in no way intend to compromise those integrities.

MR. ASSELSTINE: I take it your feeling was that the 30 people that are involved in the task force from within the organization were really a key element in resolving the 23 open items?

MR. CHARNOFF: Well, we brought in the outside...

MR. KANE: We brought in the outside people to give sort of the third party overview, but some of these folks that we're talking about do have the corporate memory, do have the background and have a degree of specialization to bring a particular response to the point that it would be reviewed by Sol Levine, and it would be reviewed by Larry Humphries.

They bring the outside perspective; some of these people provide the inside perspective. We just don't want to develop what we think is a good response to one of the areas and then three weeks, four weeks down the road say, "Well, you know, that's a good answer, but so and so was involved in it and we're not so sure because of his involvement that we necessarily agree with the response and so on."

MR. CHARNOFF: I think we don't want to unnecessarily remove anybody who knows the background because that will impede it. But I think if your question was, Jim, could we just use total outsiders,

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I think the answer is probably no. That is going to take just one heck of a lot more learning to cover that.

And, indeed, when we talked to Eisenhut and Hayes about it, they agreed that even the people with cloud would have to be sources of information.

They wouldn't be the guys who would determine what was overall right or wrong.

But they, you know, if we, there are a lot of people down at the plant. Hopefully, not everybody's under a cloud. And the concept is that within limits we could move some people out of the direct responsibility for responses to some of these questions, use them as resources, but not have them determine the results, have somebody else go on the line and say that this is a correct, incorrect or wise answer.

But it's not a circumstance, I think that easily can be remedied by just saying let's take total outside organizations, you know, So, that it is a question of selection and knowing, and, you know, your fellows have been on this for abour three months so they probably have a reasonable idea of who should be investigated further and who shouldn't.

And what we need to do is gain access to that, as we told Darryl and Ben eth othere day. If you want,

we'll hire some of the people out of OI and compete with you for htose people and do our own internal investigations and Ben said, "please don't do that."

In fact, there aren't that many people, and

I din't know that we want every utility to have a

bunch of house investigators to do this kind of thing.

I suspect that that's not appropriate for organizations
to have, everybody ahve their own police department.

But we're really talking bout is the taxpayers, including ourselves, have, in effect, invested
a lot into the ongoing investigation, and to deprive us
of the first cut of that information means we have to
operate in the dark and play with this for months
while Ben continues his investigation and it puts
Darryl Eisenhut in a difficult position.

So it is a question of getting access to that in a credible, legitimate way, limited disclosure, and, as they say, not even interested in knowing what the nature of the allegations are, just tell us who we shouldn't use temporarily for this role.

MR. KANE: Well, I guess it goes to further basics of trust. Do you truse me? I have to trust you in doing the right thing in issuing a license to assure the safety of the plant.

Do you truse me, that I will do what is right in handling this matter to bring it to what I hope to be an orderly conclusion?

MR. CHAFNOFF: It does come down to that.

In the regulated interprise system the Government has got to have some confidence that chief exec's or some others are all right unless there's a basis for discrediting them and worrying about it.

In this case nobody's suggesting any; and it doesn't exist, therefore, the question is how do you take them into your confidence to a limited extent so that they can go about their business in an intelligent and an efficient way.

My sense is that Hayes appreciate this quandary and I think he just needs to know that you fellows on the Commission see it the same way.

MR. KANE: How do you react, sir?

MR. ASSELSTINE: I am sympathetic to the jroblem that you have, and I do think that given the fact that you've set up an organization to go forward, we ought to look at every possibility to make sure that, that can go forward and that the work will be, will then be not subject to question when it gets done.

I guess I would like to talk to Ben once

more, I talked to him briefly this morning, once more
about what he sees as the potential harm to the
investigation, particularly if something like the
enveloping or masking approach were used so that it
-wouldn't be readily apparent that there were one, two

or three people who were really the focus of allegations ,

and the focus of any further NRC investigations and that they have been removed so that everyone would then clearly know who they were, or importantly, they would know who they were.

So I'd like to talk to Ben before I reach a conclusion on the matter. My concern is not to impede you all and let you go forward with an approach that will be credible and get your work completed on the 23 open items, but at the same time, not do something that's going to open ourselves up to challenge or criticism, our investigation. I don't think that benefits either of us as well.

MR. CHARNOFF: It doesn't. The only point

I'm concerned about is the masking. I cqn appreciate

the masking anomaly for purposes of protecting the

investigation, but frankly, for protecting the

individuals. That's just as important to me.

On the other hand, if you put too big of a pillowcase over everyone, then you've removed too many

people and made it impossible for us to perform.

MR. ASSELSTINE: That's right, yeah.

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MR. CHARNOFF: So some judgment has to go in on that, but we're really willing to work with Ben in some way to find a way to do that and clear with him, if you will, how we're going to do it.

MR. ASSELSTINE: And I agree with you that there does have to be an element of trust between, between us. One of the things that we do have to sort our with the investigation program is how to use that, but at the same time not create problems for reelves that are going to open the investigations up to criticism or challenge or concern that we just didn't do the job right.

And I happen to think that the team approach that we used already to try and narrow this down to the 23 items is a good step in the right direction. I also happen to think that, that, in general, OI and the work they've been doing has helped matters. I think people have a great deal more confidence in the product of those investigations now than they did a copyle of years ago when they were being done by IE.

When issues now get settled, I think generally people are quite confident that the work has been done thoroughly, and I don't want to undermine

that either. But I agree with ... that's right, that's 2 right. 3 MR. CHARNOFF: No, that's important to us, too. It really is. As an industry, we need to be sure that 4 5 the investigations are solid and accepted. On the 6 other hand, we can't allow these plants to become hostages 7 to ongoing investigations nor to unnecessarily hurt the reputations of the individuals. 8 But there really is, in this case at least, 9 there really is a way to work it, and I'm really glad to 10 say I think when you look at your policies, it really, it 11 12 opens the door to exactly this kind of plan. There's certainly nothing in the policies that precludes this. 13 14 MR. ASSELSTINE: Yeah, I think that's right. I think that's right. And I would agree with you that 15 16 Ben has that authroity, although I also think that he's smart in asking for whatever guidance we 17 18 want to give him to make sure that he doesn't get crosswise of what the Commission wants. 19 20 MR. CHARNOFF: Yeah, we don't have any 21 problem with that. The only thing we'd like to urge 22 MR. ASSELSTINE: Expeditious. is time. 23 MR. CHARNOFF: Because we really are already 24 waiting. So if that could be worked on this week, somehow 25 or other.

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1	MR. ASSELSTINE: All right.
2	MR. CHARNOFF: It would be very helpful.
3	MR. ASSELSTINE: At least for myself, why
4	don't I give you a reaction tomorrow?
5	MR. CHARNOFF: Great.
6	MR. ASSELSTINE: That'll give me a chance
7	to talk to Ben first and then get back to you and
8	if, I'll just give Jerry, are you going to be around
9	tomorrow?
10	MR. CHARNOFF: I'm going to be in a trial
11	in St. Louis but I can call you in the afternoon.
12	MR. KANE: Or he can call me.
13	MR. CHARNOFF: Or consult Jim Kane
14	tomorrow.
15	MR. ASSELSTINE: All right, why don't I
16	do that. Yeah, I'm leaving for Grand Gulf I guess
17	about one or so, so if I could call in the morning.
18	MR. CHARNOFF: Okay. I'm in trial I know
19	until one. So if you'd call Jim Kane, that would be
20	fine. Okay, I appreciate it very much. Sorry to get
21	you at the last minute.
22	MR. ASSELSTINE: No, that's, that's fine.
23	MR. KANE: Somewhere I carry some cards.
24	They tell me I'm supposed to.
25	MR. ASSELSTINE: Okay, thanks, Jim.

1	MR. CHARNOFF: None of us know how to turn						
2	off the record so I guess it						
3	MR. ASSELSTINE: No, we have to call						
4	somebody to come turn it off. Okay. Thank you. Jim,						
5	it's good to see you.						
6	MR. KANE: Hope you have a nice trip to						
7	Grand Gulf.						
8	MR. CHARNOFF: How long are you going to						
9	be down there?						
10	MR. ASSELSTINE: Two days.						
11	MR. CHARNOFF: Is this a tour of the plant?						
12	MR. ASSELSTINE: Combination. The first						
13	thing I wanted to do is Wednesday						
14	END OF MEETING						
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CERTIFICATE OF PROCEEDINGS

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

In the matter of: Waterford

Date of Proceeding: Monday, July 16, 1984

Place of Proceeding: Washington, D. C.

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

TAPE TRANSCRIPTION /NO REPORTER Official Reporter - Typed

Official Reporter - Signature

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

In the Matter of)		
LOUISIANA POWER AND LIGHT COMPANY)	Docket No.(s)	50-3820L
(Waterford Steam Electric Station,) Unit 3)		
}		

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document(s) upon each person designated on the official service list compiled by the Office of the Secretary of the Commission in this proceeding in accordance with the requirements of Section 2.712 of 10 CFR Part 2 - Rules of Practice, of the Nuclear Regulatory Commission's Rules and Regulations.

Dated at Washington, D.C. this

100 day of aug 1974.

Office of the Secretary of the Commission

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UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

In the Matter of			3			
LOUISIANA POWER AND LIGHT	COMPANY)	Docket	No.(s)	50-3820L
(Waterford Steam Electric	Station,	Unit	2)			
)			

SERVICE LIST

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