

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

REPORT OF ALLEGATIONS AT
DIABLO CANYON

Docket No.

Location: Washington, D. C.

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Date: Thursday, November 3, 1983

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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the
Nuclear Regulatory Commission

in the matter of: Report of Allegations at Diablo Canyon
(Closed meeting - Ex. 5,7)

Date of Proceeding: Thursday, November 3, 1983

Docket Number: _____

Place of Proceeding: 1717 H Street, N.W.
Washington, D. C.

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

Marilynn M. Nations

Official Reporter (Typed)

Marilynn M. Nations

Official Reporter (Signature)

MEMORANDUM FOR THE RECORDS AND TELECOMMUNICATIONS

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- A. MARTIN
- B. SAULNBERGER
- C. WILSON
- D. CREWS
- E. SHOLLENBERGER

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CONFERENCE

2 CHAIRMAN PALLADINO: We will get started. This
3 meeting concerns allegations relative to the Diablo Canyon
4 facility. The staff discussed a number of these allegations
5 in last week's meeting. Because the status of each
6 allegation differs from the others and they have various
7 sources, I would propose that we begin by asking Harold
8 Denton to summarize the allegations including any information
9 he has about when we receive the allegations, from whom,
10 what has been done so far about them and what further needs
11 to be done.

12 I would ask that particular emphasis be placed on
13 the Pullman allegations and to help us in that we have a phone
14 hook-up with Region V. Perhaps this is a good time to check
15 if we actually have a phone hook-up with Region V. Jack
16 Martin, are you there?

17 MR. MARTIN: Yes, we are. Can you hear us properly?

18 CHAIRMAN PALLADINO: Yes, we can hear you now.
19 Did you hear my remarks so far?

20 MR. MARTIN: Yes, I have.

21 CHAIRMAN PALLADINO: All right. Following the
22 discussion by NRR and Region V, then we can turn to specific
23 allegations that are currently being followed by OI. Are there
24 any additional comments Commissioners have before we get
25 started?

response.

2 CHAIRMAN FALLABINO: Let me turn the meeting over
3 to Mr. Denton.

4 MR. DENTON: Let me start by explaining just briefly
5 how the staff responds to allegations in general. Most
6 allegations come into the region and the regional administrator
7 decides in the first instance whether it is something technical
8 that he can review and it is something that he properly
9 handles himself. He decides whether he needs technical
10 assistance in resolving it or whether it is something properly
11 shipped to NRR, for example, if it is a matter under
12 licensing purview or if it is a matter involving misconduct,
13 he ships it to OI.

14 The vast majority of allegations that come in to the
15 NRC come into the region and are disposed of by the regional
16 administrator. If you look at the pending OL's before you,
17 you will find that there are probably a number of allegations
18 pending on every OL. We keep a tracking system that runs
19 a little bit behind real time but it records periodically
20 the status of all the allegations which have come to anyone's
21 attention.

22 If the allegation is referred to NRR, then we take
23 responsibility for closing. If it is referred to OI, they take
24 the responsibility. Sometimes allegations come in directly
25 to NRR. Not very often but during the past week we have had a

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number of allegations called to our attention by Henry Meyers
Darrell, we had a telephone conversation with Dr. Meyers just
this week about some Diabla allegations that he will call to
your attention.

Going to the Pullman case, I understand that the
Pullman allegation was raised in the course of a hearing
and I don't remember the context of the hearing but around
September 9. When the regional administrator became aware of
it in that timeframe, he sent a couple of his inspectors to
review the records in that. They did review the records and
they filed their views back before the Board on the Pullman
matter.

It was not sent to NRR at the time and apparently
it was not sent to the Commission. It was considered a
matter pending before the Board that was hearing that question.
We subsequently around the middle of October, I guess, got the
first referral from a Congressman, Congressman Thomas, is
that right, Darrell?

MR. EISENHUT: Yes.

MR. DENTON: Congressman Thomas sent us a letter
and attached some material regarding Pullman. That was
received by the FDO around the 17th or so of October. That
was referred to OI because it dealt with construction quality.
Then we received another letter from Congressman Panetta
dealing with Pullman but slightly different report. That came

10 11 that some time frame and that was referred to Martin.
12 Specifically when it comes to the Pullman one, that matter has
13 been handled by the region. I think that perhaps this is a
14 good time to turn to Jack Martin and let him describe how he
15 handled that one from time time it first got called to his
16 attention.

17 It has not been referred to OI or to NRR.

18 MR. EISENHUT: Harold, that one was the one, the
19 context was it related to the construction QA hearing.
20 Remember, the Commission referred the question of construction
21 QA that was before hearing, the Pullman report related to
22 construction deficiencies and apparently it was sent to the
23 board by the joint intervenors as Harold said in early
24 September. It was dealt with in that manner. It wasn't sent
25 to NRR or the Commission.

16 MR. DENTON: Jack, do you want to comment now
17 and tell us if I have summarized it properly?

18 MR. MARTIN: Yes. I guess the way I see this is
19 I am not sure it is really an allegation. There was a filing
20 as I understand it to the -- or rather the joint intervenors
21 submitted the Pullman audit and made the case that that
22 represented significant new information and there were also as
23 I recall some overtones of Pacific Gas and Electric had not
24 been forthright in hiding that report.

25 We looked into it on the basis of did it constitute

1 sufficient information of the kind of information
2 that we had already taken into account when the agency took
3 a position that we really shouldn't reopen the construction
4 quality hearing.

5 As a result what we did was to take a look at the
6 Pullman report, the audit report, which was quite critical.
7 We went into the company records to find out what they ever did
8 with this report. It appeared as if -- well, it didn't
9 appear. The Pullman Company responded to each of the audit
10 items and PG&E did their own audit to see that all the items
11 were closed out properly.

12 Our review in September prior to filing our views
13 was simply to see if each of the audit items in what
14 appeared to be an appropriate fashion and to review the
15 PG&E overview of it, to see if they were properly involved.
16 It seemed to us that the audit for three of them, that it
17 looked to us as if three of them were not being addressed
18 properly.

19 We had inspectors go down to the plant and get into
20 those two or three items to see if the records were clear and
21 they had been closed out properly. We later concluded that
22 they had been and documented that in an inspection report
23 and we characterized our review of this whole thing as being
24 mainly procedural and paperwork.

25 We did not go back and delve into the substance of

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the findings and any detailed inspections to see if the
corrective actions were actually taken, were there responses
to the findings, did it look appropriate and did it appear
to have been handled properly. We concluded it was.

I was quite troubled by the question of how could
all of this come up at the last minute when the report had
apparently been around for five years. I was considering
whether OI should be brought in to look at that. In order to
form some judgment on this I had our enforcement officer and
senior inspector spend a couple of days over in the company
offices talking to people to find out there appeared to be any
dishonesty or attempts to hide this audit report. My
conclusion was that their report had been there in the records
for us to look at and we may have looked at it at some point.

On the other hand, PG&E did not volunteer it but
it was there to look at had we wanted to look at those records.
I concluded that there wasn't any out and out lying. On the
other hand, they did not bring it to our attention during the
construction quality proceeding that had just been examined by
the Appeals Board.

COMMISSIONER ROBERTS: One has to ask the question,
do they have an obligation to do that and I am not necessarily
directing that to you.

CHAIRMAN PALLADINO: Maybe we ought to direct it to
you, Jack. From your work so far, do you feel that it was a

report that would have been directed to the WFO by PG&I

1 MR. MARTIN: I am sort of new at this sort of thing.
2 I am not quite sure. Certainly on a man-to-man basis, you
3 would expect it. I think we even said in our filing to the
4 Board that we were a bit irritated that they didn't, but I was
5 informed that there really isn't any legal obligation for them
6 to do it.

8 CHAIRMAN PALLADINO: Maybe we ought to ask Harold
9 and see if he has any comment or General Counsel?

10 MR. DENTON: With regard to Board notification, the
11 rules are pretty clear. It is whatever is material and
12 relevant. I don't feel ready to judge it from a distance.
13 It depends on what these matters being litigated were. Certain-
14 ly they have files full of such reports from contractors and
15 whether this one was specifically being litigated or not, I
16 can't tell.

17 I would have to look into it to give you any better
18 advice. It is not one that we focussed on.

19 COMMISSIONER GILINSKY: Can't that be settled pretty
20 simply whether that deals with one of the issues being litigated?

21 CHAIRMAN PALLADINO: I was going to ask Marty if he
22 had any comments or suggestions on how we might best proceed?

23 MR. MALSCH: I have three comments. One, I think
24 what has been dealt with before the Appeals Board is not the
25 issue of whether there was withholding information but the

... of whether there is any information of quality of construction. I think that was the essence of the staff's pleading filed with the Board. I think they did add the observation that they were troubled or disturbed, I forget what the exact wording was, about the failure to inform earlier.

On the duty to inform, if the content of the report is more or less accurately described by the intervenor as something out of the ordinary, unusual or extremely significant, I think there clearly was a duty to inform the Licensing Board. I think probably also duty to inform the staff.

COMMISSIONER GILINSKY: That sounds an awful lot like the North Anna case, doesn't it?

MR. MALSCH: It is very similar to the North Anna case. What I don't know is what exactly to make of PG&E's argument that this is just a run of the mill QA audit report like thousands of other ones. If that is so, there is something to be said for the proposition that there is nothing non-routine, unusual or significant about it although I must say that the way the intervenors characterized it, it was just the opposite. On the face of it, it looks like it was just the opposite.

COMMISSIONER ASSELSTINE: That's right. Yes.

MR. MALSCH: I haven't seen the report. I think that is the kind of thing you need a staff technical call on to

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3 On the third point, I think we have recognized that
4 the Commission refer to staff for further action and then --

5 CHAIRMAN PALLADINO: What is your third point?

6 MR. MALSCH: On what to do with it. We really for
7 lack of any other good idea as to how to handle it, we had
8 suggested that it simply be treated as a 2.206 petition
9 which is the way that staff would urge the Commission to treat
10 it, but before passing on criticality and low power operation
11 which was not the instant step but the step following that
12 which the Commission asked for a staff briefing very much
13 like this on status and then decide whether any further action
14 needs to be taken.

15 I arrived at that without giving it a lot of
16 thought.

17 CHAIRMAN PALLADINO: There are two questions one
18 of which I thought Jack Martin had answered. One, was there
19 any new information on the technical issues and I gather that
20 Jack Martin felt there was no new information and that
21 everything had been well considered.

22 I thought there was only one other remaining issue.
23 Should PG&E have turned this over to us?

24 MR. MALSCH: I think the first question is the one
25 that the Appeal Board apparently has squarely faced. It is
denying the motion to reopen the record on construction quality

1 APPARENTLY. I DON'T HAVE THE BENEFIT OF THEIR REASONING BUT
2 THEY MUST HAVE REACHED SOME CONCLUSION ALONG THE LINES OF
3 THERE IS NO SIGNIFICANT NEW INFORMATION IN THIS REPORT.

4 I DON'T THINK ALTHOUGH WE CAN'T BE CERTAIN UNTIL
5 WE SEE THE OPINION, BUT I DON'T THINK THEY ARE PLANNING ON
6 ADDRESSING THE ISSUE OF WAS PG&E OBLIGATED TO INFORM US
7 AND DID THEY BREACH THAT OBLIGATION?

8 CHAIRMAN PALLADINO: YOU ARE SUGGESTING THAT WE ASK
9 NRR TO LOOK INTO THAT?

10 MR. MALSH: I DON'T KNOW WHETHER IT IS NRR --

11 CHAIRMAN PALLADINO: OR THE STAFF.

12 MR. MALSCH: WHETHER IT IS NRR MAKING A SIGNIFICANCE
13 CALL AND IF IT IS SIGNIFICANT, REFERRING IT TO OI. I AM NOT
14 EXACTLY SURE WHAT THE SEQUENCE WOULD BE BUT THE CONCEPT WAS
15 TO REFER IT TO STAFF FIRST FOR FURTHER ACTION.

16 CHAIRMAN PALLADINO: I DON'T KNOW IF THE COMMISSION
17 HAS ANY THOUGHTS ON THAT OR NOT. I WOULD BE INCLINED TO
18 REFER IT TO THE STAFF. IF THE STAFF FEELS THERE ARE SUBSTANCE
19 TO THE REQUIREMENT TO HAVE INFORMED US, THEN PERHAPS HAVE OI
20 LOOK INTO ANY FACTS THAT ARE IN QUESTION.

21 COMMISSIONER ASSELSTINE: I THINK THAT APPROACH
22 WOULD BE AGREEABLE WITH ME BUT I THINK IT IS SOMETHING THAT WE
23 HAVE TO HAVE AN ANSWER TO.

24 LET ME ASK YOU THIS, HAROLD. QUITE APART FROM WHETHER
25 THERE WAS A DUTY TO NOTIFY THE BOARD IN THIS PARTICULAR CASE

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... of the posture of the case where does the staff draw the
line in terms of something that they think a licensee has
an obligation to notify us about, notify the staff about,
and something that it is just fine to just have in their files
and if we find it when we happen to be reviewing their files
or records, that is fine.

It is not clear to me where the line is on the
kinds of things that you really would expect a licensee to
come forward to you regardless of the posture of an ongoing
proceeding.

MR. DENTON: Since the plant was under construction
at the time, if they were going to build it in a way different
than the application and the question came up the other day
suppose there was a new capable fault found in the area that
changed or potentially changed the design basis of the plant.
I would expect to be notified about those kinds of things,
if there were geologic discoveries which would change the
potential seismic design.

If they do an audit of the company installing
hangers and they find that the company is incompetent and
putting them in wrong and take proper remedial action and
replace the company and put in all new hangers and check it,
then I don't know that that corrective system calls for
notification.

In other words, during the construction you have the

1 to address the fire and safety defects, and if the region is
2 happy that that process is going on, then I don't see that we
3 need to be notified of every QA finding because there are an
4 awful lot of those.

5 Then if you get an issue being litigated like are
6 the hangers correct or not, then you would have to look to
7 see whether that information about the hanger company being
8 replaced was material and relevant to the contention. So I
9 haven't really looked to see if this Pullman Report tied directly
10 to the issues and I guess I would have to get together with
11 Larry Chandler to find out really what was being litigated
12 and see if this report had sufficient relevance to that issue
13 that it might have affected the staff's view on it.

14 If it is just a report of a QA deficiency that has
15 been fixed, then ordinarily we wouldn't be informed.

16 COMMISSIONER ROBERTS: Isn't that what Jack Martin
17 just told us?

18 MR. DENTON: It seemed to be very close to that
19 but I don't know for sure what was being litigated and we
20 don't have counsel here to tell me.

21 CHAIRMAN PALLADINO: Suppose you were to look into
22 it and try to make a determination or make a determination of
23 whether or not it is something that should have come to the
24 NRC or to the Board. I guess you could work with the region
25 for any further input you need and then based on that make a

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RECORDED... AS TO WHETHER OR NOT IT WOULD BE NECESSARY TO GET INTO IT.

MR. FINTON: Yes. The only thing that I am just not certain about is what issues were being litigated. The region was handling this hearing because it did go to aspects of construction quality and NRR didn't have witnesses that participated in that. So we didn't play a very big role in that hearing.

MR. MALSCH: There is one other consideration. This issue is one of the more difficult aspects of the Commission's policy on material false statements, when is something significant enough to call into play this obligation.

One test that has been suggested is if the information -- had you received the information at the time or when it was timely, you would have done something with it like initiate an investigation or a special inspection or done something different even if the end result might have been that things are okay.

COMMISSIONER GILINSKY: Actually the standard that I remember from the North Anna decision was that it would be taken into account.

MR. MALSCH: Taken into account.

COMMISSIONER GILINSKY: Not necessarily that you would do anything with it but that it was information that you would take into account in your decision.

MR. MALSCH: That's right.

COMMISSIONER ASSELSTINE: In that case it turned out
that the information subsequently turned out to be incorrect
or irrelevant at any rate.

MR. NALSCH: That is correct. I was going to
suggest that if you adhere to past practice, it isn't enough
to dispose of the issue to say the end result was that Pullman
QA was okay. The question really was if you adopt the North
Anna test, would it have been something the staff would have
taken into account or if you adopt a slightly more stringent
test that we are recommending in our material false statement
study, would the staff have done something different than it
would not have done otherwise like initiate a study or
investigation.

MR. DENTON: I think the difficulty would be
defining that because clearly our precedent has been that we
don't have the licensee report to the Board and the staff
every result of a QA audit because there are literally
thousands of those during the course of construction and
trying to decide what is significant and what isn't hasn't
been written down within the staff.

COMMISSIONER ASSELSTINE: On the other hand, if you
don't have some kind of a test like that it seems to me and
I am not saying this is that kind of a case, but you would be
in the position where you could have reports coming into the
licensee saying that there is a fundamental breakdown in the QA

getting some other last details. It is getting information
which really gives you a different view of the situation
than you had at the time. I don't think you need every last
QA report but if a QA report comes through that says that
things are very different than they are generally thought to
be, then I would say that that is something that ought to get
considered.

MR. EISENHUT: Remember the Commission came down
with the policy that is now the Board notification process.
It has to be new information that is material and relevant
to the hearing. If someone comes forth and says they have a
whole box of non-conformance reports which is what one of
these allegations is, that is not necessarily bad in and
unto itself if everyone was systematically followed up and
if it was not new information that affected where we were
and where we were going at the time.

I think you are right. I think it has to be new
information in some sense. On the other hand, if there are
enough of these things going on where you may find every
day that there are multiple welding, let's say, that are
defective. Every one could be getting followed up as it went
along. The utility also has an obligation to look at it in
the overall sense and determine whether taken collectively
it is new information also.

COMMISSIONER GILINSKY: If the picture is different

that the the the the the the

2 MR. DENTON: He will follow it up but I guess I would
3 see a difference between something like geology which if it
4 is wrong can be fixed by the applicant and if it is a poor
5 well that has to be replaced it can be fixed. The QA process
6 was intended to find and fix bad practices. I would expect
7 a good QA program at any utility to be charting those things
8 up and fixing them. Certainly if you want me to look at it
9 and make a decision or make a recommendation, I will do that.

10 COMMISSIONER BERNTHAL: Just for my information,
11 what was the disposition of the North Anna case? What did
12 the Commission do?

13 COMMISSIONER GILINSKY: We fined VEPCO a very large
14 amount for those days.

15 COMMISSIONER ROBERTS: What was it?

16 COMMISSIONER GILINSKY: Thirty-five thousand
17 dollars which for those days was a whopping sum.

18 CHAIRMAN PALLADINO: For failure to report.

19 COMMISSIONER GILINSKY: For failure to bring forward
20 to us a report by one of their consultants stating that there
21 was a fault in the area. That report later turned out not to
22 be correct or at least the accepted view is different.

23 MR. DENTON: The issue was being litigated before
24 the Board about seismicity and faulting. So they had this
25 report, brand new information that wasn't brought to anyone's

ATTENTION.

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3 COMMISSIONER GILINSKY: The standard was that
4 something was material if it would have been taken into
5 account. We decided that not bringing it forward to us
6 was as much a statement as bringing forward something that
7 wasn't true.

8 CHAIRMAN PALLADINO: I gather it was a controversial
9 issue among the Commissioners at that time.

10 COMMISSIONER GILINSKY: I don't think so. I think
11 it was a unanimous decision as I recall.

12 CHAIRMAN PALLADINO: I thought John Ahearne had
13 some different points.

14 COMMISSIONER GILINSKY: I don't think he was even
15 here.

16 CHAIRMAN PALLADINO: Maybe that is why.

17 COMMISSIONER GILINSKY: There was a slight
18 difference in that there was something like 11 points or 12
19 points and there was some slight difference and some
20 Commissioners may have agreed with eight or something like
21 that but as I recall it was a unanimous decision.

22 COMMISSIONER BERNTHAL: I guess the reason I am
23 asking the question is just that I agree with Harold that
24 there is some distinction at least in the substance of what
25 is involved here and then my next question is sort of what
would the Commission do even if it were not pleased to the

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of feeling that this was an improper action of the part
of the utility. What would be our options? Are we talking
about a fine or what are we talking about? Therefore, the
question arises why we are talking about?

COMMISSIONER ASSELSTINE: They run the range,
I think.

CHAIRMAN PALLADINO: I am going to suggest that
we not try to answer all those questions now. I think we
needed to give some guidance as to how that Pullman allegation
should be addressed and I think we provided that guidance.
I think there has been additional guidance on criteria to
be used.

COMMISSIONER BERNTHAL: I really would just like
for my education, what options would be before the Commission
if we pursued this? Can anybody give me an answer?

MR. MALSCH: As a separate enforcement action, we
were we to find that there has been a material false statement,
we could do everything from issuing a notice of violation and
extracting a commitment not to to it again and to do better
in the future to a civil penalty of varying amounts to a
suspension to outright revokation of the license. There
isn't much to revoke at this point. In the initial licensing
case, we could reopen the record and take it into account
and it is at least on its face if the record should prove
there to be a material false statement, it is grounds for

time that's going all over the map.

2 We alerted you on the ones that touch on the
 3 adequacy of the design of the plant for seismic resistance.
 4 To show you how complicated the issue does become, Henry
 5 Meyers called this week and Darrell and a member of OI talked
 6 to Henry and apparently there is at least a box of material
 7 over there that pertains to these issues and Darrell has been
 8 invited over to look in the box and see what is in there.

9 You may recall that during the summer there was a
 10 notice in the paper that the attorney general of California
 11 had referred either to Congress or to the Department of
 12 Justice some allegations which I have been trying to find out
 13 what they were and haven't succeeded.

14 There are several allegations that we are working
 15 on where the people want to remain either confidential or
 16 anonymous that make it difficult. Darrell, maybe you would
 17 like to talk about the allegations you have been invited to
 18 go peruse. We don't know whether they touch on Pullman
 19 or other matters or misconduct.

20 CHAIRMAN PALLADINO: Where are these?

21 MR. DENTON: In Dr. Meyer's office.

22 MR. EISENHUT: Dr. Meyer's office has them now.
 23 I talked to him yesterday with a member of OI. Most of them
 24 generally relate to construction questions and they again
 25 not unlike the previous discussion we just had on Pullman, in

1 fact Pullman was one of the issues. In fact, the first issue.
2 They cover some 500 or so very different topics from certification
3 to QC personnel to adequacy of concrete pouring and the test
4 samples taken to loss of the traceability of wiring in the
5 plant to design change notices that are mixed up at Pullman,
6 Foley, PG&E, et cetera.

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8 They cover a broad variety of things. It was
9 characterized as "lots of documents." It was characterized
10 as covering a wide variety of things down to specific design
11 change notices by specific number that were characterized to
12 me in a broad number of areas including a large number of
13 non-conformance reports were in the box.

14 Some of them I got over the phone by serial number.
15 They were again laid out as non-conformance reports and
16 Dr. Meyer's says that it is not clear whether they were followed
17 up or not. It is very similar to the Pullman question. If
18 they are not significant new information, they probably did
19 not have an obligation to bring them forward.

20 But they may very well in many cases have been non-
21 conformance reports which at the time were legitimate non-
22 conformances that were followed up. So a detailed review is
23 going to have to be taken to determine what it is.

24 Dr. Meyers left it. He did not want to send the
25 staff the information. He specifically did not want to

1 said the information to the reporter but he would be happy and
2 I was welcome to come see the information. He felt in the past
3 no one was really willing to come and really look at it. No
4 one wanted to listen to him but he emphasized that we were
5 welcome to come over and look at the information.
6

7 He felt the stuff was quite a bit more substantial
8 than some of the things that have come up in the past and he
9 felt some of the things were of the nature that they could be
10 followed up on.

11 I guess where the staff is left on this one is
12 I don't think I have many options other than to go look at the
13 information.

14 COMMISSIONER BERNTHAL: Does he have an obligation
15 to reveal this information to us?

16 MR. EISENHUT: I don't know. That is certainly
17 a question I would defer to someone else.

18 CHAIRMAN PALLADINO: It seems to me that he does
19 have obligation to provide it to us. I think we ought to
20 explain it to him. I would be inclined if there is no other
21 way to contact Congressman Udall and say, "Look, you have the
22 allegations. We have to work on them. We will respect the
23 confidentiality where there are such requests."

24 COMMISSIONER ROBERTS: That seems quite reasonable.

25 CHAIRMAN PALLADINO: Suppose you go there and you
read them. Unless you have the copies to give to the

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1 MR. EISENHUT: It is not clear that they are
2 allegations. I don't think he characterized them as allega-
3 tions along that line. It is an assortment of documents,
4 many different kinds of documents.
5

6 CHAIRMAN PALLADINO: That makes it even more
7 important for you to go through them with your staff people.

8 MR. EISENHUT: I think that is correct.

9 It is clearly in my mind something that the region,
10 the people closest to the problem and it is going to take
11 regional personnel to go back through the non-conformance
12 reports and the samples of the concrete pourings, et cetera.

13 MR. DENTON: I would imagine that there may be
14 some reports somewhat like the Pullman Report that are other
15 reports that reflect adversely on certain phases of
16 construction but as Jack indicated, they are the files
17 that our inspectors routinely go through and audit and sample
18 although they may not necessarily look at every one.

19 MR. EISENHUT: A point on the Pullman. Apparently
20 the letter we got in from Congressman Panetta appears at
21 least at first reading to have a different Pullman audit
22 attached. It is an audit dated July 1977 whereas the second
23 audit covers the period through September 1977 so it may well
24 be that there are two separate ones labelled the "Pullman-
25 Kellogg" audit.

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1 Commissioner Bernthal called yesterday and we tried
2 to make connections on this subject and were just unable to
3 but this shows the difficulty of really trying to sit down
4 and follow up on this package of information however lengthy
5 it is.

6 COMMISSIONER BERNTHAL: Actually my question was
7 somewhat in quotation marks. I am almost sorry I asked it
8 that way. Is my understanding then that somehow this
9 material is not being released to you in a formal sort of way?

10 MR. EISENHUT: This information has not been
11 provided to the best of my knowledge to the staff as of right
12 now. I have no idea how long it has been available.

13 COMMISSIONER BERNTHAL: Have you asked for it?

14 MR. EISENHUT: We have asked. Apparently the
15 original discussion came from, Ben, did you talk to Henry
16 or one of your staff did?

17 MR. HAYES: Yes. I spoke to Dr. Meyers and
18 indicated we would be willing to look at the material to
19 see if there were allegations of wrong doing and he suggested
20 a technical person join us. So a member of my staff and
21 Darrell then spoke to him on the telephone and he said that
22 he would like to do it on the telephone. I said, "Fine."
23 Those arrangements were made with Dr. Meyers yesterday, I
24 believe, Darrell?

25 MR. EISENHUT: Yes. As a result of that was when he

...it is that we are welcome to come and look at the information
in his office.

3 CHAIRMAN PALLADINO: Suppose you follow up on that.
4 you may find that there are categories of information that are
5 not a problem but then you are going to find if I am not
6 sure that are going to require some additional or further
7 inquiry. Then I think you should make a formal request for
8 them. We can back you up if that is necessary.

9 MR. EISENHUT: First, I think we would certainly in
10 this kind of situation, we generally follow-up promptly if
11 nothing else to find out what the information looks like
12 and what kind it is and what areas it is so we can focus the
13 right kind of people that are going to have to look at it.

14 Certainly, it is of a nature that is going to require
15 people to follow it up.

16 CHAIRMAN PALLADINO: Would you make sure that a
17 formal request is made for that information on which you
18 think you need to take action and if necessary, we will back
19 it up.

20 COMMISSIONER BERNTHAL: I see the General Counsel
21 over there with I presume thoughts running through his mind.
22 What is the legal status of the Commission in a matter like
23 this where a congressional office has material?

24 MR. MALSCH: That is what I was thinking about.
25 Ordinarily the obligation to inform attaches to licensees over

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1 ... we have jurisdiction. We can't have any kind of
2 ... jurisdiction over Congress.

3 COMMISSIONER ASSELSTINE: Or even non-routine
4 jurisdiction over Congress.

5 CHAIRMAN PALLADINO: We can always request.

6 MR. MALSCH: We can always request. I was just
7 musing in my own mind as to what the effect would be of a
8 Commission effort to subpoena a congressional staff member
9 and that would raise difficult questions about relations
10 between the Executive Branch and Congress. All I could think
11 of was that it would be a very interesting case.

12 COMMISSIONER ROBERTS: Are you defining this as the
13 Executive Branch? I think that is a mischaracterization.

14 CHAIRMAN PALLADINO: I think you are right.

15 MR. MALSCH: Not exactly.

16 COMMISSIONER ROBERTS: It is a lot more than not
17 exactly.

18 MR. MALSCH: It depends in what framework you are
19 operating. We clearly are not part of Congress and I am not
20 sure exactly how that subpoena situation would work out.

21 CHAIRMAN PALLADINO: I think if in the end we were
22 to contact Mo Udall and he says, "No, you can't have it," I
23 think that would be a definitive answer. I don't think we are
24 up there yet. I think we need to make it known after you
25 had looked at the material that you do need certain materials

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at all cost not to take any more a formal request of them. If
you have a problem beyond that, then we can address it because
we have to maintain working relationships and sometimes you
want to use carefully any leverage you have and when we have
to use it, we can.

MR. DENTON: He is the person who called it to our
attention. Apparently he gets a great deal of information
brought to him by people who don't think the NRC will respond
properly if brought up in the first place.

Just to summarize then, we put on a slide last time
showing a total of nine allegations, five of them were from
individuals who wanted to remain anonymous so they are very
difficult to deal with because you don't know anything more
than the bare statement on a piece of paper.

Three of them wanted to remain confidential and
one of them we have a name for and just received. So out of
that group of nine that we talked about only one of them,
the component cooling water system involving an individual
we name Mr. John Smith, had we fully put to bed. We intend
to pursue all nine of these and document our views on them.

But no progress has really been made since the last
meeting since all the technical staff is in hearing this week
on similar matters.

MR. EISENHUT: Let's see, Harold. There is one
other that we should mention, the major one that came in.

2 There was a call into Bill Jackson, I think. It was late Friday
3 or thereabouts and the call came in from Sandy Silver who
4 is one of the intervenors in the Diablo Canyon case. She
5 is one of the members of the Mothers for Peace in California.
6 She specifically requested a meeting with the EDO.

7 After a number of discussions both Mr. Dircks and
8 myself were out on travel for a couple of days this week, I
9 talked to her today. She had specifically stated that she had
10 some information that was very disturbing to them. She
11 specifically requested a meeting with Mr. Dircks. She said
12 she would be comfortable for me to accompany Mr. Dircks to a
13 meeting in California to go through information they have
14 which is very disturbing, a number of allegations.

15 She resigned herself to the fact that that meeting
16 would not be coming before the next scheduled meeting which
17 was November 8. She said though that as soon as possible
18 after that meeting she would like for Mr. Dircks and/or myself
19 to go to California to talk to representatives of the Mothers
20 for Peace and the joint intervenors to go through whatever
21 information they have.

22 They felt that there were a number of issues they
23 have they would prefer not taking through the hearing process
24 but they do want to have a forum to discuss them with senior
25 management. Again they specifically stated they wanted to
talk to Mr. Dircks rather than through the region in a normal

PROCEED:

1 That issue is one that we are still considering
2 and we will be talking to Mr. Dircks when he returns from
3 travel.
4

5 COMMISSIONER GILINSKY: You are next, Joe.

6 CHAIRMAN PALLADINO: I should have stayed out there.

7 MR. DIRCKS: It is causing us staff problems
8 when people say I don't trust the region or I don't trust the
9 resident or I don't trust Darrell or me or the EDO because
10 ultimately Darrell can't go inspect behind the breaker liner.
11 You have to get a person who is a specialist to do that.
12 So what is happening is everyone is picking out their favorite
13 person to talk to them about it.

14 MR. EISENHUT: For example, when Commissioner
15 Bernthal was out there a question came up about the hollow
16 spaces behind the liner plate. She said that issue came up
17 about that time and she said that question came up from one
18 of their sources and apparently there is a question about
19 voids behind the liner and the explanation was that it was
20 unit two rather than unit one.

21 She said that was the kind of thing that came up
22 through their system.

23 CHAIRMAN PALLADINO: There were earlier questions
24 about voids in concrete pourings. A number of them were not
25 resolved. Whether or not this is new information still remains

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Harris characterized it correctly that among Denton, myself
and Ben Hayes we know what it is that is brought to our
attention. There seem to be others lurking in the background,
ones in Dr. Meyer's office or ones that Mrs. Silver will only
reveal to Bill Dircks.

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I think we know which ones have been brought to our
attention and have them assigned to the appropriate people to
follow up. I could go through again the ones that we talked
about last Friday but those are the only ones. I don't have
anything new since then.

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CHAIRMAN PALLADINO: Unless some Commissioner wants
it, I would suggest not going through those again. I guess
the observation I would make is that we try to collect them,
review them and determine what action we ought to take and get
the region where the region is the appropriate arm of the
agency to do it.

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When there is a reference, get them to OI, that the
referral be made. I know that is a very general statement.
That is probably what you intended to do any how. The question
that comes up is at any point are there allegations that would
impact on any decisions the Commission might make? There,
I guess, I would have to rely on your respective judgments to
keep us apprised of anything that falls within that category.

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MR. DENTON: I think we tend to err on the side of
caution such as with the Diablo Canyon study report which when

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1 it came to our attention we did send it to all parties and
2 would be alert to anything that comes up that bears on pending
3 decisions before you, we will certainly inform you.

4 CHAIRMAN PALLADINO: Jack, there was one point you
5 made the other night when we were talking about your relation-
6 ship with the local intervenor groups. I don't know whether
7 you want to share any of that with the Commission here.

8 MR. MARTIN: When I first got here there seemed to be
9 a lot of discussion at least with the local intervenors that
10 they didn't feel they could trust the agency, they couldn't
11 trust the region. They were skeptical that we would ever do
12 anything about items they brought up.

13 I spent a considerable amount of time both at Diable
14 Canyon and at the construction site opening up communication
15 with people just listening to what they had to say. In
16 particular with Mrs. Silver, I have met with her several
17 times. We have had lunch a few times and we even had some
18 discussions as late as last Tuesday and she has been at least
19 recently quite cooperative in telling us things that she hears
20 that she think we ought to look into.

21 I guess I am a little surprised that she would have
22 a bunch of items that she hasn't told me about. Perhaps she
23 does but I don't feel any real animosity on the part of the
24 Mothers for Peace down there right now at least nothing to
25 where they would be reluctant to talk to us here in the region.

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CHAIRMAN PALLADINO: I guess that remains to be seen after they talk to the EIC. But I thought your remarks were constructive.

Are we ready to turn to OI? Thank you, Jack.

MR. HAYES: Thank you, Mr. Chairman. The Office of Investigation has six matters that it is looking into, five of which are inquiries or preliminary investigation and one is an actual investigation.

If you wish, I can go into the matters individually or I can collectively summarize, whatever you desire is?

CHAIRMAN PALLADINO: Why don't you tell us about the one you have an actual investigation on and they summarize the rest.

COMMISSIONER ASSELSTINE: I think in Ben's case he ought to hit each one because this is one that we didn't get a lot of background on last week.

MR. HAYES: The one that is actually under a full scale investigation is an allegation of falsified background investigations done by Pinkerton, Inc. on behalf of the licensee. The FBI and NRC investigators are working jointly on this matter. The Federal Bureau of Investigation has a confidential informant who has furnished the allegations. I don't believe we know the identity of that confidential informant.

We have looked into the allegations and gone to the Pinkerton files as well as some of the licensee files and at

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the present time we have not found or see any indication of any wrongdoing on behalf of F&E management. It would appear as though if there is a problem, it is a local Pinkerton problem and we found possibly one background file that might be suspect. We looked at a total of somewhere between 15 and 20 total files and really haven't come up with too much at all.

As of this morning one of our investigators is with the FBI hopefully finishing up the case.

With respect to the preliminary investigations or the inquiries, we received one allegation where an employee of Pullman observed two fellow employees pass a cylindrical object through the fence line between units one and two and he thought it might be TNT.

COMMISSIONER ROBERTS: He thought it might be what?

MR. HAYES: TNT -- dynamite. The alleged has left the site to some place in Chicago, Illinois unknown. We have done everything we possibly can and we will be closing that out very shortly in a closing report. We don't feel the allegation is meritorious.

The second item, an agent from the Alcohol, Tobacco and Firearms Agency arrested an individual who purchased C-4 from an ATF undercover agent. C-4 is an explosive, a military type explosive. Apparently this individual was observed or has been observed in and around the site area and apparently is a member of the Diablo Canyon Blocade Group. I am not sure

... that if Hayes had not fall us in on that, but as far as we are concerned our investigation is concluded. There is nothing for us there.

4
5 The third allegation involves an allegation that a
6 outfit that furnishes manpower to the site, Cataract Engineering
7 is the organization, the allegation is that Cataract is
8 falsifying background data resumes of its personnel so they
9 can get them hired by the licensee and of course, they get a
10 fee for that.

11 The allegor again has disappeared on us and we have
12 not been able to amplify that allegation.

13 COMMISSIONER ROBERTS: What type of personnel do
14 Cataract provide? Are these trade crafts or are these
15 professionals?

16 MR. HAYES: I would assume, Commissioner, that
17 these are trade crafts. I don't have that information here.
18 We have not been able to locate the allegor to get any
19 amplification on it and that is still open and continuing.

20 We received an allegation from a former QC inspector
21 for Pullman who was there for five or six months and it is
22 an intimidation/harrassment allegation. The allegor again
23 has moved to somewhere in Indiana and a field check of his
24 neighbors as well as with the Post Office failed to disclose
25 a forwarding address and we can't locate that individual.
At this point we don't feel that there is any merit to his

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The particular alleged was terminated for
excessive tardiness for the licensee records.

That, gentlemen, are the basic allegations in the
preliminary stage and the one that we have looked at from an
investigatory standpoint, the Pinkerton thing, that overall
I don't feel that any of these particular inquiries and/or
the single investigation is significant.

CHAIRMAN PALLADINO: All right. Any questions?

(No response.)

CHAIRMAN PALLADINO: We thank you all. I guess
we will see how these come into our deliberations later.
Thank you, Jack. Can we confirm who was on the other end?

MR. MARTIN: Yes, we can. It is me, Bishop,
Shollenberger, Crews and Faulkenberry.

CHAIRMAN PALLADINO: Thank you very much. Unless
anybody else has anything to say, we will stand adjourned.

(Whereupon, the meeting was adjourned at 2:30 o'clock
p.m., to reconvene at the Call of the Chair.)

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ORIGINAL

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

DISCUSSION OF HEARING REQUESTS
AND WHETHER TO LIFT SUSPENSION
AT DIABLO CANYON

Docket No.

Location: Washington, D. C.

Pages: 1 - 61

Date: Thursday, November 3, 1983

TAYLOE ASSOCIATES

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3 - - -

4 DISCUSSION OF HEARING REQUESTS AND WHETHER
5 TO LIFT SUSPENSION AT DIABLO CANYON

6 - - -

7 CLOSED MEETING

8 (Exemptions 5 and 10)

9 - - -

10 Nuclear Regulatory Commission
11 Commissioners' Conference Room
12 11th Floor
13 1717 "H" Street, N. W.
14 Washington, D. C.

15 Thursday, November 3, 1983

16 The Commission met in closed session, pursuant to
17 notice, at 2:50 o'clock p.m., Nunzio J. Palladino, Chairman
18 of the Commission, presiding.

19 COMMISSIONERS PRESENT:

- 20 NUNZIO J. PALLADINO, Chairman of the Commission
21 VICTOR GILINSKY, Member of the Commission
22 THOMAS ROBERTS, Member of the Commission
23 JAMES ASSELSTINE, Member of the Commission
24 FREDERICK BERNTHAL, Member of the Commission

25 STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

- 26 S. CHILK
27 M. MALSCH
28 R. PARRISH
29 J. ZERBE

1 STAFF AND PRESENTERS SEATED AT COMMISSION TABLE: (cont.)

2 D. RATHBUN
3 J. WILSON
4 B. HAYES

5 AUDIENCE SPEAKERS:

6 J. FOUCHARD
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DISCLAIMER

This is an unofficial transcript of a meeting of the States Nuclear Regulatory Commission held on November 3, in the Commission's office at 1717 H Street, N. W. Washington, D. C. The meeting was open to public attendance and observation. This transcript has not been reviewed, corrected, or edited. It may contain inaccuracies.

The transcript is intended solely for general information purposes. As provided by 10 CFR 9.103, it is not part of the formal or informal record of decision of the matters discussed. Expressions of opinion in this transcript do not necessarily reflect final determinations or beliefs. No pleading or other paper may be filed with the commission in any proceeding as a result of or addressed to any statement or argument contained herein, except as the Commission may authorize.

P R O C E E D I N G S

1
2 CHAIRMAN PALLADINO: Let me call the meeting to
3 order. Before we begin with the subject that was announced
4 we have just been informed by Ben Hayes that he has another
5 allegation from Region V that he just received that he feels
6 he ought to acquaint the Commission with. So I would propose
7 to hear him unless the Commission has objection to doing it.

8 (No response.)

9 CHAIRMAN PALLADINO: Why don't we take a minute
10 or two on that.

11 MR. HAYES: I apologize for not discussing this
12 previously. We just recently as of a few weeks ago received
13 a request from a regional administrator to look into the
14 possibility of a material false statement made by the licensee
15 in response to a notice of violation.

16 We dispatched investigators to the site in the hopes
17 of resolving this very quickly. We have determined that the
18 information that was submitted to the Commission stems from
19 the lowest level quality control inspector on the site and
20 apparently it was an error on that gentleman's part. We do
21 not have any indication of willful intent on behalf of the
22 licensee to intentionally mislead the NRC.

23 In our opinion it is not a willful and material false
24 statement but it may result in a civil penalty.

25 CHAIRMAN PALLADINO: All right. Thank you. Any