



OFFICE OF THE
SECRETARY

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

August 12, 1988

James B. Hamlin, Esquire
SHAW, PITTMAN, POTTS & TROWBRIDGE
2300 N Street, N.W.
Washington, D.C. 20037

RE: FOIA Appeal 88-A-29C

Dear Mr. Hamlin:

This letter responds to your May 5, 1988 appeal of this Agency's denial of documents and portions of documents identified on Appendices E and F in our April 25, 1988 response to FOIA 87-444.

In response to your appeal, the withheld material was again reviewed. As a result of this review, it has been determined that the documents identified on Appendix E numbered 6, 12, 16, 17, 18, 31, 39, 41, 42, 43 and 44 are already in the Public Document Room. For your convenience, copies of these documents have been enclosed with this letter. It has also been determined that the documents identified on Appendix E numbered 21, 33, 49, 52 and 61 should be released in their entirety. They are also enclosed with this letter.

With regard to the balance of denied documents or portions of documents, I affirm the Agency's decision in this matter.

The documents or portions of documents that continue to be withheld pursuant to Exemption 5 of the FOIA all consist of inter-office memoranda. Appendix E documents numbered 1, 2, 7, 11, 19, 35, 51 and 59 and Appendix F documents numbered 6, 8, and 9 are memoranda from the Commissioners to various agency office directors. The memoranda reflect the Commissioners' solicitation of advice and contain directives regarding various aspects of the Diablo Canyon licensing proceedings, including the propriety of courses of action proposed by subordinate agency personnel.

Appendix E documents numbered 3, 4, 5, 10, 13, 15, 22, 23, 24, 25, 26, 27, 28, 29, 53, 54, 56, 57, and 58 consist of memoranda from one (or more) Commissioner to the other Commissioners. These memoranda contain discussions regarding the propriety of proposed courses of action in licensing Diablo Canyon, including the views and suggestions of the Commissioners.

Appendix E documents numbered 8, 9, 14, 20, 30, 36, 45, 48, 55, 60, 62, 63 and Appendix F document numbered 7 consist of memoranda from one (or

8809090111 880812
PDR FOIA
HAMLIN88-A-29 PDR

more) Commissioner to the General Counsel. By these memoranda, the Commissioners solicited the legal advice of counsel regarding the legality of proposed courses of action and interpretation of agency regulations.

Appendix E documents numbered 32, 34, 37, 38, 40, 46, 47, 50 and Appendix F documents numbered 1, 2, 3, 4, and 5 consist of memoranda from the Commission's Chairman to the other Commissioners. These memoranda contain the Chairman's views and suggestions regarding proposed agency action, licensing issues, and draft responses to Congressional inquiries. These memoranda also reflect the Chairman's views of the opinions and suggestions of the other Commissioners on Diablo Canyon licensing issues.

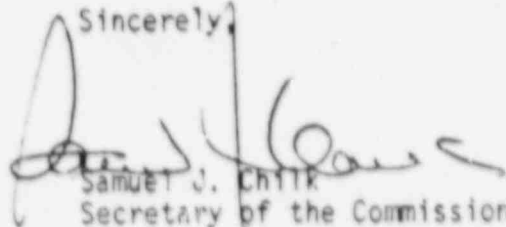
All of the above memoranda are predecisional in that they relate to then pending licensing action or proposed courses of action. The fact that some of the documents are dated after the last of the NRC's Diablo Canyon licensing decisions is not dispositive, for the Agency is continually engaged in a process of policy evaluation and examination. See, e.g., NLRB v. Sears Roebuck & Co., 421 U.S. 132, 151 n.8 (1975). The fact that some of the documents do not flow from a subordinate to a superior agency official is also not dispositive, there is no requirement under the FOIA that documents must flow from subordinate to superior in order to qualify for Exemption 5 protection.

The memoranda are also deliberative in that they contain candid discussions regarding licensing policy and procedure, and reflect the give and take exchange of ideas between the Commissioners themselves and between the Commission and subordinate agency officials. The memoranda from the Commissioners to the General Counsel are protected by the attorney-client privilege.

Release of any of these documents would be likely to stifle honest and frank communication within the agency and compromise the integrity of the deliberative process. All reasonable segregable factual information has been provided.

This letter represents final agency action on your May 5, 1988 FOIA appeal. Judicial review of the denial of documents is available in Federal district court in the district in which you reside, or have your principal place of business, or in the District of Columbia.

Sincerely,



Samuel J. Chitt
Secretary of the Commission

Enclosures:
As Stated

APPENDIX E

DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY PURSUANT TO EXEMPTION 5

The following records are located in former Commissioner Bradford's files:

1. 10/29/81 Memo to Dircks from Bradford, subject: Diablo Canyon safety injection pump failing (PNO-V-81-60). (1 page)
2. 10/26/81 Memo to Remick from Bradford, subject: Diablo Canyon seismic. (1 page)
3. 11/10/81 Memo to Cmrs from Bradford, subject: Thoughts regarding the reassessment of the seismic issue at Diablo Canyon. (1 page)
4. 9/21/81 Memo to Cmrs from Bradford, subject: Suggest the Attached modifications to the Diablo Canyon Order. (5 pages)
5. 9/21/81 Memo to Cmrs from Bradford, Diablo Canyon fire protection provisions. (1 page)
6. 9/15/81 Bradford's comments to Chilk on Fleischaker letter subject: Response to motion of 9/11 requesting the disclosure of any discussions between J. Tourtelotte and Cmrs Roberts or other members of his staff regarding the Diablo Canyon licensing proceedings. (1 page)
7. 9/15/81 Memo to Chilk from Bradford, subject: SECY-81-508 review of ALAB-544 (In the Matter of Pacific Gas & Electric Company). (1 page)
8. 6/4/81 Memo to Bickwit from Bradford, subject: Diablo Canyon low power operating licensing proceeding. (1 page)
9. 3/31/81 Memo to Bickwit from Bradford, subject: Request for opinion on any rules of justification for the exclusion of Ms. Sandra Silver from the Diablo Canyon facility. (1 page)
10. 3/4/80 Memo to Cmrs from Bradford, subject: SECY-80-17-Request that the Commission institute proceedings to determine whether Commissioner Kennedy and Hendrie should be disqualified from further participation in the Diablo Canyon operating license proceedings. (1 page)

APPENDIX E
(Continued)

DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY PURSUANT TO EXEMPTION 5

The following records are located in former Commissioner Gilinsky's files:

11. 4/11/84 Memo to W. Dircks from Gilinsky, subject: Diablo Canyon loss of ECCS. (1 page)
12. 3/28/84 Memo to Cmrs from Gilinsky, subject: Diablo Canyon low power license. (1 page)
13. 3/23/84 Memo to Cmrs from Gilinsky, subj: Diablo Canyon seismic design. (1 page)
14. 2/28/84 Memo from W. Manning to H. E. Plaine, subject: Ex Parte review of Diablo Canyon draft reports 50-275/83-37 and 50-323/83-25. (1 page)
15. 2/27/84 Memo to Cmrs from Gilinsky, subject: Diablo Canyon allegation management. (1 page)
16. 12/23/83 Memo to Cmrs from Gilinsky, subject: Commercial licensed operating experience of Diablo Canyon licensed operators. (94 pages)
17. 9/28/83 Memo from Gilinsky to J. J. Ray, ACRS subject: 9/8 request for opinion on Tau effect re Diablo Canyon. (1 page)
18. 7/8/83 Memo to J. Ray from Gilinsky ACRS subject: "TAU Effect" re Daiblo Canyon".
19. 6/3/83 Memo from W. Manning to Chilk subj: Memo to T. Moore re treatment of information contained in ALAB-653 (Diablo Canyon physical security). (1 page)
20. 5/4/83 Memo for Leonard Bickwit from Gilinsky, subject: Purging of Diablo Canyon Physical security Decision. (2 pages)
21. 3/26/82 Note to Bill of National Journal from Gilinsky, subject: Diablo Canyon and breeder study. (1 page)
22. 12/18/81 Memo to Cmrs from Gilinsky, subject: Review of ALAB-644-Diablo Canyon seismic (SECY-87-508). (1 page)
23. 12/11/81 Memo to Cmrs from Gilinsky, subject: Review of ALAB-644--Diablo Canyon seismic decision (SECY-81-508). (1 page)

APPENDIX E
(Continued)

DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY PURSUANT TO EXEMPTION 5

The following records are located in former Commissioner Gilinsky's files:

24. 11/27/81 Memo to Cmrs from Gilinsky subject: Commission review of Diablo Canyon Seismic issue. (1 page)
25. 11/9/81 Memo to Cmr from Gilinsky, subject: Diablo Canyon. (1 page)
26. 10/19/81 Memo to Cmrs from Gilinsky subject: Diablo Canyon seismic analysis and resolution of design problems.
27. 9/23/81 Memo to Cmrs from Gilinsky, subject: Commission review of Diablo Canyon seismic decision (ALAB-644). (1 page)
28. 9/8/81 Memo to N. Palladino from Gilinsky, subject: Diablo Canyon low-power decision. (1 page)
29. 9/4/81 Memo to Chairman Palladino from Gilinsky, subject: Diablo Canyon low power decision. (1 page)
30. 6/3/81 Memo to Bickwit from Gilinsky, subject: Diablo Canyon low power license proceeding. (1 page)

The following records are located in former Chairman Palladino's files:

31. 11/10/81 Memorandum to Cmrs from Palladino, subject: Diablo Canyon. (1 page)
32. 11/18/81 Note to Gilinsky from Palladino, subject: TMR Proposal for Diablo Canyon Order. (2 pages)
33. 11/7/83 Memo to Cmrs from Palladino, subject: Diablo Canyon Order. (10 pages)
34. 12/27/83 Memo to Cmrs from Palladino, subject: Proposed Response to Congress Markey re NRC handling of Working Paper for Diablo Canyon case study. (CR-87-173). (1 page)
35. 1/13/84 Memo to Zerbe from Palladino, subject: Commercial Licensed Operating Experience of Diablo Canyon Licensed Operators. (1 page)

APPENDIX E
(Continued)

DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY PURSUANT TO EXEMPTION 5

The following records are located in former Chairman Palladino's files:

36. 1/23/84 Memo to H. E. Plaine from Palladino, subject: Diablo Canyon. (1 page)
37. 1/30/84 Memo to Asselstine from Palladino, subject: Diablo Canyon. (1 page)
38. 4/3/84 Memo to Gilinsky from Palladino, subject: COMYG-87-4-Diablo Canyon Low Power License. (1 page)
39. 4/4/84 Memo to J. Ebersole from Palladino, subject: ACRS Review of Diablo Canyon Issues. (1 page)
40. 4/13/84 Memo to Cmrs from Palladino, subject: Draft Order on Diablo Canyon. (6 pages)
41. 4/13/84 Memo to J. Ebersole from Palladino, subject: ACRS Review of Diablo Canyon Issues. (1 page)
42. 6/13/84 Memo to Cmrs from Palladino, subject: Revised Response to Congressman Panetta (CR-84-43 Diablo Canyon). (3 pages)
43. 6/19/84 Memo to Dircks from Palladino, subject: Response to 2/8 Ltr re Diablo Canyon. (4 pages)
44. 6/29/84 Memo from Palladino to W. J. Dircks, subject: ACRS Review of Diablo Canyon SSER. (1 page)
45. 8/24/84 Memo to Plaine from Palladino, subject: Diablo Canyon. (2 pages)
46. 10/9/84 Memo to J. K. Asselstine from Palladino, subject: Concur with F. Bernthal's suggestion re 9/1/84 ltr from Richard Parks re Diablo Canyon. (1 page)
47. 10/9/84 Memo to J. K. Asselstine from Palladino, subject: Diablo Canyon. (1 page)
48. 10/11/84 Memo to Plaine from Palladino, subject: Review of Transcripts of Meetings on Diablo Canyon. (1 page)
49. 11/2/84 Memo to Briggs from Palladino subject: NRC Brief in Diablo Canyon Case. (2 pages)
50. 11/8/85 Memo to Cmrs from Palladino, subject: Response to Rep Markey's Ltr re Earthquake and Emergency Planning at Diablo Canyon (CR-85-74A).

APPENDIX E
(Continued)

DOCUMENTS BEING WITHHELD IN THEIR ENTIRETY PURSUANT TO EXEMPTION 5

The following records are located in former Commissioner Ahearne's files:

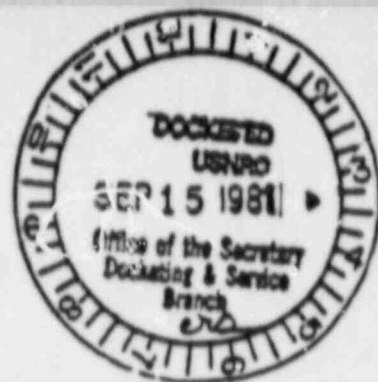
51. 6/5/80 Memo to SECY from Ahearne, subject: SECY-A-80-57AL Diablo Canyon - Release of Physical Security Plan to Intervenors. (1 page)
52. 3/9/81 Memo to the Chairman and Commissioners from Ahearne, subject: SECY-81-115A - Diablo Canyon Prehearing Conference Order. (3 pages)
53. 3/24/81 Memo to Chairman and Commissioners from Ahearne, subject: Revised Diablo Canyon Order (SECY-81-115A). (2 pages)
54. 3/30/81 Memo from V. Harding to Commissioners' Assistants, subject: Revised Diablo Canyon Order - March 28, OGC Version (See SECY-81-115A). (2 pages)
55. 8/6/81 Memo from Ahearne to OGC, subject: Diablo Canyon low power contentions. (2 pages)
56. 9/1/81 Memo from Ahearne to Commission, subject: Contentions not admitted in Diablo Canyon low power proceeding (COMVG-81-6). (10 pages)
57. 9/4/81 Memo from Ahearne to Chairman Palladino, subject: Diablo Canyon low-power decision. (1 page)
58. 9/14/81 Memo from Ahearne to OPE, subject: Seismic consultant for Diablo Canyon. (1 page)
59. 11/12/81 Memo from Ahearne to OPE, subject: Diablo Canyon proceeding. (1 page)
60. 12/23/81 Memo from V. Harding to T. Rothschild, subject: Newmark issue in Diablo Canyon. (1 page)
61. 2/8/82 Memo from Ahearne to Commission, subject: Diablo Canyon notice of violation. (4 pages)
62. 4/30/82 Ahearne's comments on 4/22/82 memo from Bickwit to Commission, subject: Diablo Canyon physical security. (2 pages)
63. 7/13/82 Memo from Ahearne to Commission, subject: Diablo Canyon Phase II. (1 page)

APPENDIX FDOCUMENTS BEING WITHHELD IN PART

1. 8/27/81 Memo from Gilinsky to Commission, subject: Diablo Canyon power decision (3 pages), Exemption 5, entirety, with attachments: SECY-81-115, dated 2/23/81, portions withheld, Exemption 5; SECY-81-115A, dated 3/6/81, Exemption 5, entirety; SECY-81-329, dated 5/27/81, Exemption 5, with attachment: Order CLI-81-5, released.
2. 10/19/83 Memo from Gilinsky to Commissioners, subject: Diablo Canyon "TAU-Effect", (3 pages) Exemption 5; with attachments: Letters to Byron Georgiou and Lawrence Lanpher with views of individual Commissioners re: decision of Commission review of ALAB-644 (in PDR Accession Nos. 8203230111, and 8203230121).
3. 11/13/81 Memo to Commissioners from Palladino, subject: Diablo Canyon (1 page) release; with attached Approach for the Independent Reverification of the Diablo Canyon Design (1 page) withheld, Exemption 5.
4. 7/31/84 Memo from Palladino to Commission, subject: Diablo Canyon (1 page) withheld, Exemption 5; with attachment: Letter from Representatives Patterson and Panetta. Released.
5. 10/5/84 Memo from Palladino to Commission, subject: Telecon-Congressman Markey (2 pages), withheld, Exemption 5, with attachment: 9/17/84 letter from Rep. Markey and 9/21/84 response (2 pages) Released.
6. 11/12/81 Memo from Palladino to Remick, subject: OPE Analysis of Diablo Canyon Seismic Issues (1 page) release, handwritten notes of P. Bradford's being withheld, Exemption 5.
7. 1/28/81 Memo from Ahearne to L. Bickwit, subject: Diablo Canyon Scheduling Estimates (1 page), withheld Exemption 5, with attachment: 1/23/81 memo from Denton to Ahearne. (3 pages), released.
8. 2/19/81 Memo from Ahearne to Chilk, subject: SECY-81-76: Diablo Canyon (1 page) released, attached draft additional views being withheld, Exemption 5. (1 page)
9. 4/20/82 Memo from Ahearne to SECY, subject: Diablo Canyon Physical Security Order (1 page) released, attached draft additional views (1 page) withheld, Exemption 5.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555
September 15, 1981

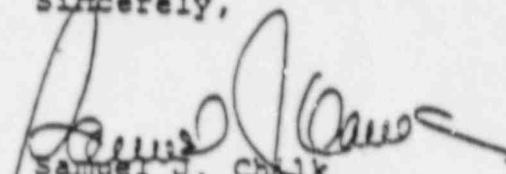


David S. Fleischaker, Esq.
P. O. Box 1178
Oklahoma City, Oklahoma 73102

Dear Mr. Fleischaker:

Your motion of September 11, 1981, requested the disclosure of any discussions between James Tourtellotte and Commissioner Thomas Roberts or other members of his staff regarding the Diablo Canyon licensing proceedings. This is to inform you that there have been no such discussions whatsoever. Commissioner Roberts, Mr. Tourtellotte, and other members of the Commissioner's staff are fully aware of the restrictions placed on inter-office discussion of Diablo Canyon by Mr. Tourtellotte's previous experience as a staff attorney in these proceedings. To ensure compliance with these restrictions, Mr. Tourtellotte is not participating in the Commission review of any aspect of the Diablo Canyon proceedings.

Sincerely,


Samuel J. Chalk
Secretary of the Commission

cc: Service List

8109170186
TP

E-6



OFFICE OF THE
COMMISSIONER

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

March 28, 1984

MEMORANDUM FOR THE COMMISSIONERS

SUBJECT: DIABLO CANYON LOW POWER LICENSE

In light of the delay in licensing the Diablo Canyon plant while the NRC staff and ACRS further review the piping support issues, I believe that the Commission should move forward on the following items:

1. The Commission should ask the ACRS to comment in the next few weeks on the seismic study license condition at Diablo Canyon.
2. The ACRS should also review the testimony before the Commission on the recently received paper which recharacterized the Hosgri fault, and provide their views to the Commission.
3. A prompt meeting should be scheduled with Quadrex to discuss the NSC audit.
4. Since we have agreed that the standard to be applied for advisor testing at Diablo Canyon should be comparable to the plant-specific portion of the NRC SRO exam, the issue on advisor testing is reduced to who administers the examination. The increased time frame will now allow the NRC to prepare and administer license level exams to the advisors. This would guarantee objectivity. License exams were given at Diablo Canyon a few weeks ago so examiners must be up to speed. If the staff moved forward on administering the exams in the next couple of weeks, there would be ample time available to review the results.

SECY please track responses.

Victor Gilinsky
Victor Gilinsky

cc: SECY
OGC
OPE
EDO

E-12

*81104040149
lp.*



OFFICE OF THE
COMMISSIONER

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

December 23, 1983

MEMORANDUM FOR THE COMMISSIONERS

SUBJECT: COMMERCIAL LICENSED OPERATING EXPERIENCE OF
DIABLO CANYON LICENSED OPERATORS

I have attached a compendium, prepared at my request, on the experience of personnel at Diablo Canyon. I was particularly interested in the commercial licensed experience of the operating crews.

Sadly, it appears that only three of the licensed operators on shift are represented as having any prior licensed commercial experience, and that was at PG&E's Humbolt Bay power plant, a 65 MWe boiling water reactor which has been shut down for some years. None of this experience is more recent than 10 years ago and one of these operators had only about a year and a half's experience as a control operator. I would not describe any of this as relevant commercial licensed experience. This, in effect, puts Diablo Canyon in the same category as Shoreham and Grand Gulf. This is an unsatisfactory state of affairs.

At a bare minimum, the Commission should require that any ascension to power be a good deal more gradual than usual, and subject to formal evaluations at each stage by the Company and the Commission.

Victor Gilinsky

cc: SECY
OGC
OPE
EDO
Region V

86-01020690
+P.

E-16



OFFICE OF THE
COMMISSIONER

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

September 28, 1983

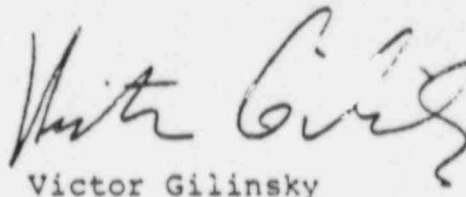
MEMORANDUM FOR DR. J. RAY, CHAIRMAN
ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

SUBJECT: TAU EFFECT

On September 8, I asked the ACRS for its opinion on whether it was appropriate to use the "tau effect" at Diablo Canyon. Because there seems to be some residual uncertainty about what this question means, let me be more explicit:

I would like the Committee's evaluation of the application of the tau effect to reduce the response spectrum for the earthquakes used in the Diablo Canyon analysis. In particular, I would like to know whether the Committee believes the specific quantitative reductions applied to the Diablo Canyon spectrum are justified on the basis of scientific or engineering analysis. And if so, can the Committee provide me with such an analysis leading to the result employed at Diablo Canyon.

I realize that the Committee may want to supplement its discussion of the tau effect with a discussion of the overall seismic standard applied to the plant. However, I would like the tau effect analysis to be independent of any other factors that bear on the overall adequacy of the design.


Victor Gilinsky

cc: Chairman Palladino
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
SEY
OGC
OPE

~~8407120169~~
4 E-17



OFFICE OF THE
COMMISSIONER


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

July 8, 1983

MEMORANDUM FOR JEREMIAH RAY, CHAIRMAN, ACRS

I regret that we did not have an opportunity to discuss the quantification of seismic design margins during our meeting this afternoon. I am particularly interested in the validity of the reductions in a seismic spectrum which fall under the rubric of "tau effect", especially because the Appeal Board's opinion in Diablo Canyon, and the Commission's decision not to take review of that opinion, would seem to endorse the application of this technique in other cases. In its July 14, 1978 letter to the Commission, the ACRS did not appear to specifically endorse this technique but commented favorably on certain off-setting factors for this already completed plant.

I would like to know whether the tau effect has a sufficiently sound scientific or engineering basis to justify its use to reduce seismic design standards that apply to nuclear power plants. Should NRC do further research on this question? I would be grateful if the Committee could provide a response within two months.


Victor Gilinsky
Commissioner

cc: Chairman Palladino
Commissioner Roberts
Commissioner Asselstine
SECY
OPE
OGC

8309030021 XA
lp. E-18



CHAIRMAN

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

November 10, 1981

MEMORANDUM FOR: Commissioner Gilinsky
Commissioner Bradford
Commissioner Ahearne
Commissioner Roberts

FROM: Nunzio J. Palladino

SUBJECT: DIABLO CANYON

I have read Commissioner Gilinsky's November 4 memo suggesting a brief meeting to discuss Diablo Canyon reverification.

I strongly believe that we must find a credible solution to the reverification problem. While it is probably not practical to affect aspects of the reverification work already completed at this time, I do think that for any subsequent arrangement where NRC would exercise its right to approve a reverification activity, we should give due consideration to the points raised by Governor Brown and others. I think we must not lose sight of the fact that we have to convince not only Governor Brown, but many others who have written to us, as well as ourselves, that the reverification effort undertaken at Diablo Canyon will be truly credible.

To give us some time to get our thoughts in order before we meet, I would suggest that the Commission adjust next week's schedule to meet on Monday afternoon to consider my views, as well as those of the other Commissioners. Further, immediately after this meeting, I think we should hear from the staff on the Diablo Canyon enforcement matter.

cc: SECY
OGC
OPE
EDO

870224065
JP
E-31