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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

10/10/85

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85 OCT 11 P3:12

In the matter of:

TIME REQUESTED

COMMISSION MEETING

CLOSED MEETING  
(Exemptions 5 & 7)

DISCUSSION OF PENDING INVESTIGATIONS

Docket No. -

Location: Washington, D.C.  
Date: Monday, June 3, 1985

Pages: 1 - 48

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2 NUCLEAR REGULATORY COMMISSION

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4 DISCUSSION OF PENDING INVESTIGATIONS

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6 CLOSED MEETING

7 (Exemptions 5 & 7)

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9 Nuclear Regulatory Commission  
10 Room 1137  
11 1717 "H" Street, N.W.  
12 Washington, D.C.

13  
14 Monday, June 3, 1985

15  
16 The Commission met in closed session, pursuant to  
17 notice, at 1:37 o'clock p.m., NUNZIO J. PALLADINO, Chairman of  
18 the Commission, presiding.

19 COMMISSIONERS PRESENT:

20 NUNZIO J. PALLADINO, Chairman of the Commission  
21 THOMAS M. ROBERTS, Member of the Commission  
22 JAMES K. ASSELSTINE, Member of the Commission  
23 FREDERICK M. BERNTHAL, Member of the Commission  
24 LANDO W. ZECH, JR., Member of the Commission  
25

## 1 STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

2 S. CHILK

3 B. HAYES

4 W. HUTCHISON

5 C. KAGAN

6 W. WARD

7

## 8 AUDIENCE SPEAKERS:

9 R. MARTIN

10 H. DENTON

11 H. THOMPSON

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## P R O C E E D I N G S

CHAIRMAN PALLADINO: Good afternoon, ladies and gentlemen. The purpose of this afternoon's meeting is for the Commission to receive a briefing on pending investigations at Wolf Creek. Ben Hayes will make the presentation.

I understand from Ben that information that he will give during the meeting is very sensitive. Therefore, any discussion of this information we receive from Ben beyond the people who are present for this briefing should be carefully controlled.

This is not meant to exclude discussions with persons who have already been apprised of the information. However, if there are persons in the room who believe that others have a need to know, Ben would like to be consulted before any of the information is disseminated.

Commissioner Roberts is delayed. He will be here shortly. Do other Commissioners have any opening remarks?

(No response.)

CHAIRMAN PALLADINO: Let me turn the meeting over to Ben Hayes.

MR. CHILK: I think General Counsel wants to say something.

CHAIRMAN PALLADINO: All right.

MS. KAGAN: Yes. Mr. Chairman, we have a petition from the Government Accountability Project that was filed on



1 Friday asking that we open this meeting. However, the General  
2 Counsel feels that the meeting should remain closed and will  
3 advise Government Accountability Project after the meeting if  
4 you agree.

5 CHAIRMAN PALLADINO: All right. Any objection to  
6 that?

7 (Chorus of no's.)

8 CHAIRMAN PALLADINO: Thank you. All right. Let's  
9 proceed. Anything further?

10 (No response.)

11 CHAIRMAN PALLADINO: All right. Ben.

12 COMMISSIONER ASSELSTINE: Although I guess I have  
13 one question that we can talk about later on and that is to  
14 the extent to which Ben, your activities involve the kinds of  
15 questions that GAP has raised in the letter, what things are  
16 covered by what you are going to talk about and what things  
17 aren't. You could sort of cover that towards the tail end  
18 of the meeting, I assume, what things can be discussed in the  
19 following meeting related to what they have asked about.

20 MR. HAYES: The 2.206?

21 COMMISSIONER ASSELSTINE: That's right. It seems to  
22 me that some of their questions are fair game for the next  
23 meeting.

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MR. HAYES: On the Friday prior to the three-day holiday, the regional administrator in Region IV mounted a review of the Quality One files at Wolf Creek and asked for QI assistance in reviewing the wrong doing files in the Quality One Program.

We assigned two investigators to assist in that inspection and last week we looked at 112 allegations contained in approximately 75 files. That is, one file would contain more than one allegation obviously.

CHAIRMAN PALLADINO: How many allegations?

MR. HAYES: One hundred twelve. The break-down goes something like this: harassment/intimidation, 45 allegations, false documents, 19 allegations, drugs, 21 allegations, leaving a balance of 27 which at this point unclassified or miscellaneous. That totals the 112 allegations.

Our review of the files and that is all we did, we just reviewed the documents within the files, we took exception to 77 allegations in terms of the QI findings and no exception to 35.

COMMISSIONER ASSELSTINE: Do you want to explain what you mean by that?

MR. HAYES: The bottom line is when we looked at the documentation our observations were that those people that did the interrogations were really not trained in the question and

1 answer area. Some leads were not properly followed. Some  
2 information in the files was unused even though it was in the  
3 files.

4 Some of the conclusions that were in the file, we  
5 could not see from a data standpoint how they could get from  
6 point "A" to point "B." We are not saying that the  
7 conclusions are necessarily wrong. It is just that we have no  
8 basis from looking at the files to have any confidence in 77  
9 of their allegations as to whether they were or were not  
10 pursued adequately.

11 CHAIRMAN PALLADINO: Did you say anything to them  
12 about that?

13 MR. HAYES: No. We did not. Maybe the staff did  
14 in their close-out with the applicant that Friday, but we did  
15 not close out with them. We furnished data to the staff of  
16 the inspection report.

17 If I could continue, I will give you a flavor as to  
18 some of our concerns and some of the drug related matters as  
19 to who is involved and the documents that are alleged to be  
20 false and it might give you a better feeling for the  
21 situation.

22 CHAIRMAN PALLADINO: What I was trying to get at for  
23 the moment is there undoubtedly will be mention made of their  
24 Q1 Program and we may want to ask them about the degree to  
25 which they follow-up.



1 Was there any discussion with them, Bob?

2 MR. MARTIN: I am Bob Martin from Region IV. There  
3 was a close-out meeting with them after the team that was  
4 there last week reviewed all 750 files, not files, but  
5 allegations. The total package within the quality program  
6 consists of about 750 separate allegations which Ben has been  
7 describing a subset of those.

8 During the close-out, we did point out that there  
9 were some concerns from the investigative aspects of how they  
10 looked into certain issues and we made it clear that we would  
11 be pursuing those things further in those areas where we  
12 thought there were some soft areas without being very  
13 descriptive of what kind of follow-up that that would  
14 constitute.

15 CHAIRMAN PALLADINO: Were any of the issues that you  
16 took exception with or that QI took exception with, do they  
17 have significant safety implications at this time? Do they  
18 bear on our decision today?

19 MR. MARTIN: That is a difficult question per se to  
20 answer. It depends on if there were harassment and  
21 intimidation cases and if they inadequately followed up on  
22 them and if that was a problem and proved to be pervasive,  
23 that could have a safety impact.

24 There are many steps to be gone through before I  
25 could answer that absolutely definitively. From the

1 standpoint of perhaps a perspective that might assist you in  
2 that area, any one who comes to the Quality One Program, a  
3 part of their program is follow-up with the individual. The  
4 individuals also presumably know that they can come to us or  
5 come to other levels of management if they are not satisfied  
6 with Quality One.

7 We have not had people subsequently come to us who  
8 claimed that they were unhappy with the Q1 disposition. I  
9 don't know that is of itself a bench mark but at least it is a  
10 data point.

11 COMMISSIONER ASSELSTINE: Why don't we let Ben go  
12 ahead and talk about some of the details?

13 MR. HAYES: All right. Some of the areas of the  
14 false documents, we have a list and some of the areas in the  
15 alleged drug allegations we have a list of people involved in  
16 those.

17 It might be interesting for us to run through that.  
18 On my right is Bill Hutchison, a member of my staff, who has  
19 the data. Bill.

20 MR. HUTCHISON: To give you a flavor of the kind of  
21 personnel we are talking about in the area of drug use and  
22 drug sale and that is both on and off the installation.  
23 Incidentally, we seem to be finding that it is mostly in the  
24 soft drug area, marijuana and that type of drug.

25 There was an incident where allegations and these

1       were allegations, were made against ten Daniel's construction  
2       QC and QA managers and supervisors. We had instances where  
3       allegations were against pipe fitters, construction workers,  
4       start-up engineers and in fact, an allegation against start-  
5       engineers and others within the start-up group.

6               We did not have any allegations against reactor  
7       operators.

8               In the area of falsification of records to give you  
9       a better flavor of the kinds of falsifications that we are  
10      talking about, there were etch test records, Daniel's weld  
11      records, Westinghouse pump house inspection records, entries  
12      on various drawings, TMI procurement documents,  
13      instrumentation and calibration records, Daniel's hanger heat  
14      and traveler documents, start-up records, NCR disposition  
15      records, the stamping of quality stamps on threaded rod  
16      hangers, changing drawings in the area of structural steel,  
17      quality control, rebar records, maintenance records, cadwell  
18      inspection reports, quota records, MT tests, mechanical QC  
19      inspection records, B&B inspection records, cheating on  
20      qualification exams for QC inspectors, TMI inspection records  
21      and work packages to give you an idea.

22              That is not all inclusive but it will give you a  
23      good idea. These were allegations that were made concerning  
24      false records.

25              MR. HAYES: I guess our bottom line is we can't give

1 the Commission any more sense than what we have. It is  
2 undetermined as far as we are concerned as to the adequacies  
3 of the Q1 in the wrong doing area. That may throw out a  
4 policy concern that we have had since we have gotten involved  
5 with Q1 from a generic standpoint.

6 I am not sure we have a regulatory framework that  
7 requires an applicant to notify us of matters of wrong doing  
8 identified on the site unless it is a 50.55(e) situation or a  
9 Part 21 or there is any Board status where a BN would be  
10 appropriate.

11 I have done my research and we wrote OGC on it last  
12 December, I believe, and got a report back in January. That  
13 is my reading of OGC's response. The Q1 Program is not a  
14 regulatory requirement. It is something that the applicant  
15 initiated. I talked to them about it when I personally  
16 visited the site last year as to do they notify Region IV of  
17 these matters of wrong doing and they said, "no," that the  
18 files are available to us if we want to come in and examine  
19 them, that it is a generic concern.

20 CHAIRMAN PALLADINO: The question of reporting it to  
21 NRC is one thing. The reason I mention it as one thing is  
22 because I don't want to discourage them from their voluntary  
23 program but their voluntary program ought to be a good one.  
24 That is what concerns me.

25 You give me the sense that maybe that is not the

1 case.

2 MR. HAYES: I can't stand before you this afternoon  
3 and say that the conclusions are inadequate. What I can say  
4 is that the files in our view are in such a state that we  
5 cannot come to the conclusion that they did with the  
6 documentation in the file without additional work. We need to  
7 do more. We did a review during the five days and that is our  
8 bottom line.

9 COMMISSIONER ASSELSTINE: Let me put the question  
10 that I think the Chairman is asking to you in maybe in even a  
11 little more pointed way. When I visited the site I was told  
12 that we have this terrific program. It has highly qualified,  
13 competent trained people doing the follow-up on these  
14 allegations.

15 Each allegation is investigated thoroughly and a  
16 report is prepared and then our investigators go back to the  
17 people that have provided the allegation and explained what  
18 our conclusions are and have gone through the details of what  
19 we have found and determined whether those people then are  
20 satisfied with what we have done.

21 It is a very comprehensive, very thorough, very  
22 detailed program. That is the way it was described to me.  
23 Does your review of those reports support that?

24 MR. HAYES: No. It does not support that at  
25 least in the areas of wrong doing. The bulk of the files deal



1 with technical concerns obviously but not in the wrong doing  
2 arena.

3 COMMISSIONER BERNTHAL: I guess I missed something  
4 in the wrong doing arena though there is just sort of nothing  
5 there, is that right?

6 MR. HAYES: In some instances --

7 COMMISSIONER BERNTHAL: I guess I am losing the  
8 forest here. I have heard a lot of trees so far or seen a lot  
9 of trees.

10 MR. HAYES: We reviewed 75 files looking at 112  
11 allegations in those files. Our investigators took exception  
12 to about 60 allegations out of there, 60 percent of the  
13 allegations. That is, the files were inadequate for us to  
14 come down to where they came down. They would close it out  
15 and we could not understand why. There was no follow-up on  
16 leads. They would get an allegation about individuals doing  
17 dope on site and it would be turned over to security and that  
18 would close out the file.

19 We are not saying that if we went back and did our  
20 own investigation that we may not end up there where they did,  
21 but we certainly cannot endorse the product from the documents  
22 that we looked at.

23 You just can't get there from where the state their  
24 files are presently in.

25 COMMISSIONER ZECH: Isn't this a program that was a

1 utility initiative, as I understand it. They explained it to  
2 me when I was out there, too. As I understand it, it was a  
3 utility initiative program. It was above and beyond our  
4 regulations. It was their initiative to have a Quality First  
5 Program, is that right? That is my understanding. Do you  
6 agree with that?

7 MR. HAYES: Yes, I do.

8 COMMISSIONER ZECH: What you are telling us, I  
9 guess, is that your review of their program would lead to a  
10 different conclusion than they have come up with which is they  
11 think it is an excellent program and is on their initiative  
12 and they have pursued it.

13 You are saying that your conclusion is that it is  
14 not that good a program.

15 MR. HAYES: No. The program from a technical  
16 standpoint, we have no position on it and that is the bulk of  
17 the files. We looked at only 75 files out of 300-some files,  
18 those dealing with just the matters of wrong doing.

19 COMMISSIONER ZECH: So from a technical standpoint,  
20 you have no problem with their program?

21 MR. HAYES: We didn't look at the technical side of  
22 the house, Commissioner. We just examined the allegations  
23 that appeared to have matters of wrong doing.

24 COMMISSIONER ZECH: Then you have no comment on the  
25 technical side, I presume.

1 MR. HAYES: That is right.

2 COMMISSIONER ZECH: So you are just talking about  
3 the wrong doing side?

4 MR. HAYES: Yes, sir.

5 COMMISSIONER ZECH: In that case, you have concluded  
6 that your conclusion would be different from theirs. Is that  
7 what you are telling us?

8 MR. HAYES: Our conclusion is that we cannot  
9 conclude from the documentation in their files how they  
10 reached a specific positions. The Q&A's are inadequate.  
11 Pursuing the investigation was inadequate in our view. All  
12 those files might be absolutely correct.

13 MR. HAYES: They may be. What we are saying is that  
14 there is nothing in the file that we could hang our hat on to  
15 come to the conclusions that many of the files came to.

16 COMMISSIONER BERNTHAL: For about a third of the  
17 ones that you looked at?

18 MR. HAYES: About two-thirds.

19 COMMISSIONER ASSELSTINE: One- third looked okay and  
20 two-thirds were questionable?

21 MR. HAYES: Yes, sir.

22 CHAIRMAN PALLADINO: Is this an area that we should  
23 explore further with them in the open meeting? Is there any  
24 problem doing so? I look to either Bob or you, Ben, or both.

25 MR. HAYES: It wasn't an investigation as far as we



1 are concerned. It was a review of the files from an  
2 inspection standpoint. We only have one ongoing investigative  
3 matter so I don't think it would impinge upon OI.

4 CHAIRMAN PALLADINO: They apparently knew you made  
5 this review.

6 MR. HAYES: Absolutely.

7 CHAIRMAN PALLADINO: Apparently you talked to them  
8 and I forgot what you told them, that it wasn't quite  
9 adequate?

10 MR. MARTIN: I paraphrased but at the exit meeting  
11 it was described to them that we would be pursuing in these  
12 particular areas more information with them.

13 MR. DENTON: There is quite a bit of information we  
14 can talk about that doesn't deal with the wrong doing part  
15 that Bob's people put in a massive effort to review the files  
16 from a technical standpoint.

17 We were staying away from that this morning but I  
18 think that this is a generic issue that the Commission needs  
19 to focus on. There are several more plants coming to you that  
20 have Quality First Programs.

21 Ben did not review because it is a voluntary program  
22 the adequacy of their procedures from an investigatory sense.  
23 So I am concerned that maybe when Fermi gets here or Watts  
24 Bar, are there going to be questions about how good was their  
25 program.

1 I think if the Commission wants to be sure that the  
2 quality of the investigatory side of those programs for wrong  
3 doing meets Ben's standards, Ben needs to get involved and  
4 issue some sort of guidelines.

5 With regard to the technical adequacy of these  
6 programs, they were inspected four or five times by the  
7 regional people so the Region did its normal inspection of  
8 the program to be sure that it had met the technical sort of  
9 standards, but we are in a different posture with them with  
10 regard to wrong doing standards.

11 I just want to put that on the table on how you want  
12 to face it for the next plant.

13 COMMISSIONER ZECH: From a technical standpoint, you  
14 say that the staff does have confidence in their program?

15 MR. DENTON: I will let Bob, who conducted the  
16 program, speak for himself in this. I think the answer is  
17 yes.

18 COMMISSIONER ASSELSTINE: I think that is an open  
19 item.

20 CHAIRMAN PALLADINO: Ben didn't look at that but Bob  
21 did.

22 MR. DENTON: At the same time, it is disconcerting  
23 not to find here at this eleventh hour that Ben is happy with  
24 the quality of their wrong doing investigatory program. So to  
25 the extent that there are questions there and I think as I

1 read Ben, he is saying that from the documentation that he  
2 reviewed, he doesn't know if the Quality First Program pursued  
3 these things adequately or not.

4 What we do know is that they did not involve company  
5 employees by in large. There were only one or two individuals  
6 tagged in all of those programs and none of them are SRQ's or  
7 operators. I think there might have been one or two employees  
8 that were touched -- one employee. All the rest were contract  
9 personnel.

10 CHAIRMAN PALLADINO: Ben said that he could not  
11 comment on the technical aspects. Could Bob or someone else  
12 comment on the technical aspects.

13 COMMISSIONER ASSELSTINE: Why shouldn't they do that  
14 in the open meeting.

15 COMMISSIONER BERNTHAL: That is not a closeable item  
16 in my view.

17 CHAIRMAN PALLADINO: That is why I asked the  
18 question if there was a problem in discussing that in the open  
19 meeting.

20 COMMISSIONER ASSELSTINE: I would like to understand  
21 Ben what it is about what you discussed that is related to an  
22 ongoing investigation?

23 MR. HAYES: Nothing.

24 COMMISSIONER ASSELSTINE: Then I don't think that  
25 this discussion should be in closed session either.

1 CHAIRMAN PALLADINO: That is why I asked the  
2 question.

3 COMMISSIONER ASSELSTINE: I think according to the  
4 General Counsel's office, this should not be a closed meeting

5 CHAIRMAN PALLADINO: So far, on this item. We will  
6 have to review the transcript.

7 COMMISSIONER ASSELSTINE: The back door should be  
8 open if this discussion is going to continue.

9 CHAIRMAN PALLADINO: I was going to suggest that we  
10 bring it up in the open meeting but there are other pending  
11 investigations, I presume.

12 MR. HAYES: No, sir. We only had that one. We had  
13 closed out two inquiries which we have given the results to to  
14 the staff.

15 CHAIRMAN PALLADINO: Which ones are they?

16 COMMISSIONER ZECH: Could I ask Ben to just  
17 summarize what you have told us?

18 MR. HAYES: That the Office of Investigations has  
19 very little confidence in the files of Q1 as they relate to  
20 matters of wrong doing in the resolution indicated in the  
21 file. The documentation in our view does not support to the  
22 extent that we feel comfortable their conclusions.

23 COMMISSIONER ZECH: Is that what you are telling us?

24 MR. HAYES: Yes, sir.

25 COMMISSIONER ZECH: You are not comfortable with



1 their conclusions in the cases of wrong doing?

2 MR. HAYES: Yes, sir.

3 COMMISSIONER ASSELSTINE: You don't know if they are  
4 right or not?

5 MR. HAYES: That is basically it, Commissioner.

6 COMMISSIONER ZECH: Could be right or could be  
7 wrong?

8 MR. HAYES: Yes, sir.

9 COMMISSIONER ASSELSTINE: But the files themselves  
10 don't demonstrate that they have done a quality, thorough job  
11 in investigating the wrong doing issue.

12 MR. HAYES: That is correct.

13 COMMISSIONER BERNTHAL: Let me ask this. This whole  
14 transcript may end up being open and I don't know whether this  
15 is closeable or openable. Do you have a sense for the kind of  
16 people that were carrying out these investigations? I presume  
17 that they were not professional investigators. Is that true?

18 MR. HAYES: That is true. There was one person who  
19 was an ex-FBI agent in the program.

20 COMMISSIONER ASSELSTINE: I have to say though that  
21 when I visited the plant one of the big pitches from the  
22 utility was that these are top-notch professionals, these are  
23 people who understand these wrong doing issues, that can  
24 thoroughly investigate the matter.

25 In fact, they highlighted just that point. We have

1 an ex-FBI agent on here. These guys are a cracker-jack  
2 bunchy of guys and they know how to do this job. So the  
3 representations at least were just the opposite.

4 COMMISSIONER BERNTHAL: One other question. Did you  
5 follow up any particular cases? Granted the documentation is  
6 inadequate. You can draw no conclusion on the documentation.  
7 From what is in the documentation files, the investigatory job  
8 appears to be substandard. Did you follow up on any of those  
9 though to seek beyond what is in the files to try to determine  
10 whether there had been informal actions perhaps or other  
11 follow-up that for some reason or another wasn't in the  
12 files? After all, as Lando points out, this was a  
13 company-initiated action and one can imagine that in some  
14 cases they may or may not have pursued something and verbally  
15 an investigator tells his superior, yes, I have checked that  
16 out and there is nothing there or maybe there is something  
17 there.

18 Did you try the testing of any of those cases?

19 MR. HAYES: No. Many of the investigators are no  
20 longer on the site. The Program is really almost in remission  
21 at this point because they are so close to full power. I  
22 think the program was initiated in March of 1984 and we made  
23 our first visit in September of 1984 and we prepared a paper  
24 of our views at that point of Q1 and presented it to the  
25 staff.

1           This was just more of a formal presentation. We  
2 worked with the staff on this particular review.

3           COMMISSIONER BERNTHAL: So it is a fair point to be  
4 made that there are no regulatory requirements imposed on  
5 file keeping or otherwise for a company-introduced program,  
6 but it would be interesting to know whether there is anything  
7 informal beyond what appears in the adequate formal files or  
8 their rather inadequate formal files that they kept.

9           MR. HUTCHISON: Sir, it was not just the formal  
10 files that concerned our investigators, not merely the fact  
11 that the files do not reflect information. It was also the  
12 way the investigations were run that were reflected in the  
13 files that gave us problems.

14           COMMISSIONER BERNTHAL: I understand that, yes.

15           MR. HUTCHISON: Basically, the interviews.

16           COMMISSIONER BERNTHAL: Substandard techniques, I  
17 guess would be the word.

18           MR. HUTCHISON: Insufficient questions to solicit  
19 the answers they needed and when they got the answers, they  
20 failed to follow up.

21           COMMISSIONER BERNTHAL: My question was, do you know  
22 that there was in fact no informal follow-up? You didn't  
23 pursue any of these to say well now did you really do anything  
24 or is the file everything you did on this case? Did you do  
25 that with any of these cases?

1 MR. HUTCHISON: We did not go beyond the files  
2 because it was an assist to inspection as opposed to an  
3 investigation.

4 MR. HAYES: We only had five days.

5 COMMISSIONER ASSELSTINE: Presumably in those cases  
6 where you have problems with what is in the file, that is you  
7 saw the interviews, you saw what questions they asked and  
8 you saw flaws in that, there is probably a lot higher degree  
9 of confidence that that accurately reflects everything that  
10 was done.

11 MR. HAYES: We have no indication that the files  
12 were purged or phoned or anything of that nature.

13 COMMISSIONER ASSELSTINE: If they didn't ask the  
14 right questions, it is unlikely that they went back and asked  
15 the right questions later on. That contains the file of what  
16 was done in the investigation and at the end, it says based  
17 upon this, we have closed this out. It is very unlikely that  
18 someplace else there is some cure to that problem in that  
19 particular one.

20 COMMISSIONER BERNTHAL: Was there in every case the  
21 formal step that Jim is alluding to? Do all these files say  
22 that this matter has been closed?

23 MR. HUTCHISON: No.

24 COMMISSIONER BERNTHAL: They were just sort of  
25 sitting there in other words.



1 MR. HUTCHISON: Some of them reflected that the  
2 matter had been closed.

3 COMMISSIONER BERNTHAL: Questionably open or closed.

4 MR. HUTCHISON: Some of them were merely left.

5 MR. DENTON: I think you need a bigger answer to  
6 that question. My understanding was that they went back to  
7 essentially all of the people who had raised allegations and  
8 you said that they didn't go back, but I thought that was one  
9 of the principles that program was founded on was feedback to  
10 the people who raised the allegations.

11 MR. MARTIN: If anyone identified that they wanted  
12 feedback, part of the closure of this system included feedback  
13 to the individual. There were some I understand, a number of  
14 individuals, who indicated that they didn't want feedback.

15 My staff is telling me that in some of these areas  
16 and remember the regional staff are not investigators, but in  
17 some of these areas that they looked into as part of their  
18 routine follow-up during the course of the program, that there  
19 are in answer, partial answer, to your question, Commissioner,  
20 that there are sources of other information elsewhere in the  
21 company.

22 I don't know what standard they might adhere to or  
23 the satisfactory nature of them but there is places in some of  
24 these areas elsewhere in the company where there is additional  
25 information contained.

1           The adequacy of that issue is precisely the issue  
2   that Ben and I had a very brief conversation on and we  
3   identified to the company that we are going to have to look at  
4   those some further to assure ourselves collectively what  
5   action if any is appropriate for us to take.

6           MR. THOMPSON: I think I would like to add in that  
7   regard the focus of this program was set up not to look at  
8   wrong doing and drug abuse and those type items. It really  
9   was to look at the safety concerns and that where wrong doing  
10   was identified, they would either refer that back to the  
11   contractor for appropriate action in accordance with their  
12   agreed plan to address wrong doing or to the General Counsel  
13   where it was KG&E employees or whether it was to the physical  
14   security folks.

15           So there are records that may be available that were  
16   not evaluated at this particular time. I would add that where  
17   the standard that at least we looked at when we were looking  
18   and going back to the quality of the technical review was  
19   whether or not the KG&E Program resulted in actions which we  
20   would have been satisfied with if the allegation had been  
21   brought to us.

22           In all cases in the past review the answer was  
23   fairly clearly yes. There were a couple of cases where we  
24   went back to do field work, to check up on the field work, to  
25   make sure that we were still satisfied that the program did

1 produce the type of results that we thought it would on the  
2 technical issues and where this particular program fell down  
3 to the extent that it fell down was the fact that they did not  
4 have the quality of investigators that we do today in our  
5 Office of Investigations.

6 I doubt that many utilities have that quality of  
7 investigators. I don't think that they are readily available  
8 to the nuclear industry so I guess I am not totally surprised  
9 that that program did not meet the standard that we would if  
10 we had asked Ben to do that type of investigation.

11 COMMISSIONER BERNTHAL: I think you are right on  
12 point, Hugh, and in fact we are in a dilemma, it seems to me  
13 because in a sense when companies and I have no doubt we are  
14 going to see more of this, when licensees initiate programs  
15 like this in one sense it is helpful to use aside from being  
16 helpful to them but then if we suddenly start trying to hold  
17 the employees that they are able to get to a standard that you  
18 would expect of a federal agency that carries out major  
19 investigatory activities, the solution for the licensee is  
20 very clear to me. We ain't going to do that anymore and  
21 somehow you don't want that to happen either.

22 It is a tough call. You would like them, of course,  
23 to be able to hire the very best and most talented  
24 investigators they possibly can but if they don't do that then  
25 are you going to conclude that this is a lousy program and

1       therefore the licensee is not doing a good job of managing its  
2       affairs. I don't know. It is not an easy problem it seems to  
3       me and I am sure we are going to hear more of this kind of  
4       thing as we go on to some of these other plants.

5               MR. HAYES: Just a little background, Commissioner,  
6       we recognized this last year and that is one of the reasons we  
7       went to Wolf Creek to get a sense as to what Q1 was about  
8       because we have it at Fermi. We had it at Waterford, River  
9       Bend and around the country.

10              This was ostensibly to not grade them but to  
11       determine whether or not we could rely upon their  
12       investigatory product to endorse it on behalf of the  
13       Commission to save us resources. That was the thrust of our  
14       first visit.

15              CHAIRMAN PALLADINO: Are you implying that we are  
16       relying on these? To what extent are we relying on these Q1  
17       type processes?

18              MR. HAYES: From a wrong doing standpoint, we are  
19       not at this particular point. We have yet to formulate some  
20       national policy and direction as to what we should or should  
21       not do in this area.

22              COMMISSIONER BERNTHAL: In fact, your message here  
23       is that you simply find that we cannot rely on a large number.

24              MR. HAYES: At least with respect to this particular  
25       unit at Wolf Creek we have some concerns. It may be different

1 at Fermi. Our game plan was last year to hit two construction  
2 sites and one operating reactor to try to get a feel to better  
3 come back to the Commission and say that this is our sense of  
4 what is going on out there. We may or may not need some  
5 additional regulatory standards.

6 COMMISSIONER ZECH: It seems to me that we have two  
7 things to consider. One is here is a company that initiated  
8 the program that they perhaps felt was in their best interest  
9 and would be helpful to them as well as to us and that is a  
10 commendable effort in my judgment.

11 On the other hand, if other utilities have similar  
12 programs thinking that they are doing something helpful to  
13 themselves and to the regulatory program, that is something we  
14 ought to encourage as far as I am concerned.

15 But if we don't have a policy on those programs,  
16 perhaps we should have a policy that would be helpful to state  
17 our views on how those programs fit in and to give them some  
18 kind of character, some kind of overview.

19 It seems to me that we probably have a larger issue  
20 to face.

21 The second thing though I think here today, we have  
22 to try to conclude whether the plant at Wolf Creek has  
23 problems that the Office of Investigations is telling us about  
24 which would bear on a judgment to provide us with reasonable  
25 assurance that the public health and safety would be protected



1 before we authorize full power.

2 It seems to me that we have those two separate  
3 problems to address and we need to know, I guess, from OI if  
4 they feel in the second case whether there are serious  
5 problems here that should be looked into. We need to ask that  
6 question.

7 CHAIRMAN PALLADINO: In connection with your  
8 question, I thought I heard and perhaps it was Harold or Hugh  
9 that said that the people involved with regard to the wrong  
10 doing issues that you have looked to, involved contractor  
11 people and that there were no RO's or SRO's involved.

12 MR. HAYES: We are very sensitive to drug  
13 allegations with licensees including reactor operators and the  
14 files did not contain an allegation that one of our licensees  
15 did on-site or off-site narcotics, marijuana or what-have-you,  
16 none of that.

17 COMMISSIONER ASSELSTINE: What about start-up  
18 engineers?

19 MR. HAYES: There was an allegation that a start-up  
20 engineer group utilized marijuana off-site and sold it  
21 on-site.

22 COMMISSIONER BERNTHAL: What did that particular  
23 file look like? Do you remember?

24 COMMISSIONER ASSELSTINE: Joe, could I ask you what  
25 your intention is with reference to the 2:30 meeting?

1           CHAIRMAN PALLADINO: I was going to suggest that as  
2 soon as possible we cut this off. I would ask OGC to review  
3 the transcript to see what was closeable and what was not  
4 closeable and that which was not closeable, then we would make  
5 available and do whatever is legally required to do.

6           (Commissioner Roberts entered the meeting.)

7           COMMISSIONER ASSELSTINE: Is there anything that  
8 OGC thinks in the discussion that we have heard apart from the  
9 initial discussion of the one open investigation that is  
10 closeable?

11          MS. KAGAN: I am not sure.

12          CHAIRMAN PALLADINO: I was going to suggest that we  
13 not ask for a snap judgment and let them look through it.

14          COMMISSIONER ASSELSTINE: I would like to pursue  
15 this discussion at the 2:30 meeting.

16          MR. HAYES: Let me raise one issue, Mr. Chairman. I  
17 think our review and Bob, help me on this, our review of the  
18 Q1 files, was it under the proviso that we would maintain some  
19 degree of confidentiality with those files?

20          MR. MARTIN: The only confidentiality understanding  
21 we have is to protect the confidentiality of the individuals,  
22 not the existence of the system or the general  
23 characterization of the number of concerns but we are  
24 sensitive to the individuals' confidential status within that  
25 program.

1           The company has always kept the files open to us in,  
2   general including the names of individuals. We have just been  
3   sensitive to making sure that we don't broach the  
4   confidentiality they granted to their own people.

5           COMMISSIONER ASSELSTINE: But there has been no  
6   discussion at least in terms of the meeting that we have had  
7   now on individuals.

8           CHAIRMAN PALLADINO: That's right.

9           MR. MARTIN: That is correct. I have not spotted  
10   anything that would violate that.

11          COMMISSIONER BERNTHAL: Could you answer the  
12   question that I asked you. Do you have the information here?

13          MR. HAYES: Yes. File number QC-1, 84-71, is KG&E  
14   start-up group, allegation received July 1984. The allegation  
15   is basically that this particular set of individuals did drugs  
16   on-site and off-site and in fact sold on-site. The Q1  
17   closed it out to the security chief. The security chief  
18   closed it out for lack of information and no subsequent  
19   investigation.

20          Those are just my cryptic notes. I wouldn't take  
21   that to the bank, Commissioner, without the file in front of  
22   me.

23          COMMISSIONER BERNTHAL: Who looked at that file?

24          MR. HAYES: Two of my investigators.

25          COMMISSIONER BERNTHAL: They aren't here though?



1 MR. HAYES: No, sir.

2 COMMISSIONER BERNTHAL: It seems like they would  
3 stand out in their minds.

4 MR. WARD: Commissioner, I also looked at that file  
5 and found similar information when I reviewed it back in  
6 probably the October time frame.

7 The interesting thing is many of these drug  
8 allegations would have the notation referred to security.  
9 However, for your information the security department at Wolf  
10 Creek has no investigators.

11 CHAIRMAN PALLADINO: Has no investigators.

12 MR. WARD: Has no investigative personnel assigned  
13 to them. I did a cross-check on that because the question was  
14 raised earlier about perhaps the completion is elsewhere. As  
15 of again approximately October, I counted a rough count of  
16 about 14 allegations that I felt were drug oriented. The  
17 security chief had four that were referred to him. So there  
18 are ten in limbo.

19 MR. MARTIN: Only for the sake of perspective, under  
20 the Alcohol and Drug Abuse Program of KG&E if there is an  
21 instance of an allegation of drug or alcohol abuse by  
22 contractor personnel, the company's policy and their alcohol  
23 and drug abuse program turns the issue over to the contractor  
24 and allows the contractor's alcohol and drug abuse program to  
25 follow up on that.

1           One of the weaknesses that was identified with Ben's  
2 help and through my own staff, a combination of the two, is  
3 that the close-out and feedback mechanism from contractors  
4 back to the Q1 Program is weak in that regard. That is one of  
5 the areas that they are going to have to address strengthening  
6 up.

7           I just wanted you to understand that their not  
8 investigating it is consistent with the program that they, in  
9 fact, have in place. You might not recognize that the  
10 start-up test group was a contractor organization. Those were  
11 contractor personnel, not KG&E people.

12           COMMISSIONER ASSELSTINE: What that tends to show is  
13 that there is a flaw in their fitness for duty program by not  
14 assuring that those things are properly closed out to their  
15 satisfaction.

16           CHAIRMAN PALLADINO: I think when we get into  
17 fitness for duty, we are straying quite a long way.

18           MR. MARTIN: I don't know whether to agree with you  
19 sir as to whether that is a flaw since we haven't really  
20 specified what we measure that flaw against at this moment.

21           COMMISSIONER ASSELSTINE: It is another flaw in  
22 these voluntary programs that the industry is urging us  
23 to adopt in lieu of a requirement.

24           CHAIRMAN PALLADINO: I think the fitness for duty  
25 question is an appropriate one to ask in the open meeting. I

1 think we are straying quite a ways from pending  
2 investigations. I am going to suggest that the fitness for  
3 duty questions be discussed in the open meeting and we may  
4 want to bring up questions of the staff with regard to how  
5 they evaluate the Q1 Program.

6 COMMISSIONER ASSELSTINE: And Q1.

7 CHAIRMAN PALLADINO: I include -- excuse me, Q1, in  
8 case somebody thinks you are not also staff. I didn't say EDO  
9 staff.

10 COMMISSIONER ASSELSTINE: All right.

11 MR. THOMPSON: Mr. Chairman, I have one point of  
12 information that might be helpful that I think is more  
13 appropriate for the closed meeting.

14 It is my understanding that the GAP organization  
15 does have in its possession a number of the files, the Q1  
16 files, that have been gathered by this organization. They  
17 probably obtained those either through some clandestine or  
18 some leak but you should be aware that those files are  
19 available into the intervenor organization.

20 COMMISSIONER BERNTHAL: I just want to say that I  
21 think Lando has made a good point a few minutes ago. There  
22 won't be any programs like this if we don't go on the record  
23 with what we are going to expect from such a program if it is  
24 initiated.

25 I am inclined to think that the question you have to

1 ask yourself is would we and the utility and we as regulators  
2 I guess for emphasis be better off if they had never done  
3 anything.

4 Maybe the answer to that is yes and if the answer is  
5 no then somehow here we don't want to drive such programs out  
6 of existence because that just means that sooner or later at  
7 some point there won't be any files at all and instead of  
8 having an incomplete file to deal with, Ben will end up having  
9 to start from scratch. That is not good either.

10 CHAIRMAN PALLADINO: I do think we have to be  
11 careful in our questioning but I think that it is appropriate  
12 since the staff did make an evaluation of what they thought to  
13 get that feedback and I think Bob's point that they want to  
14 discuss it further with them is a good point. I do not know  
15 what else to draw from this.

16 Each person has to decide whether or not it impacts  
17 on start-up of this plant.

18 COMMISSIONER BERNTHAL: May I ask one last question,  
19 Joe?

20 CHAIRMAN PALLADINO: Surely.

21 COMMISSIONER BERNTHAL: Why is it that we had five  
22 days on this at such a late date if these files existed for so  
23 long? Is that our fault or how did we get in this spot?

24 MR. MARTIN: Perhaps I can try to explain that if I  
25 can. During the course of the Q1 Program from the time it

1 began we have inspected it somewhere between five and seven  
2 times-- eight times.

3 We had looked at roughly 50 percent of the files.  
4 We had looked up until prior to last week at some 50 percent  
5 of the files including field follow-up, including verification  
6 that work was conducted by technical staff members, not  
7 by investigators, but by technical staff members.

8 Then late in the prior week, not last week but the  
9 week before, late in that week some interest was evidenced by  
10 I guess Congressman Glickman assisted by Dr. Henry Myers. We  
11 received the 2,206 Petition which claimed that this was a  
12 cover-up. Region IV was in cahoots with K&E in covering up  
13 serious safety deficiencies.

14 I perceived myself in a position of somebody asking  
15 me could I have done more to look at Q1 and the answer  
16 obviously is yes since I had only looked at half of it. So I  
17 asked for the offices to provide me support, (SE, NRR, Region  
18 IV and Q1, so I could send out a combined team. I sent out an  
19 SES Division Director to lead 16 people starting on Monday,  
20 the holiday, at 8:00 o'clock in the morning and they looked at  
21 one hundred percent of the files, all of them.

22 In some half a dozen cases the staff through a  
23 systematic review process identified about half a dozen items  
24 which the file looked a little weak on technically and if it  
25 wasn't resolved well could have been a concern to the staff on



1 full power licensing

2 They went out and did further field inspections to  
3 make sure that that was okay. So if you would, that is the  
4 genesis and the background of the review knowing that this  
5 meeting was coming up and trying to give you a stronger  
6 position in light of the questions that were raised than I  
7 felt I was in a position to do earlier with just a 50 percent  
8 review.

9 COMMISSIONER BERNTHAL: But there had been no  
10 understanding that ran throughout the period of this Q1  
11 program and I don't even know when it started, there had been  
12 no understanding from the day of its inception as to how an  
13 allegation which perhaps the licensee felt it could not handle  
14 or an allegation which it felt was a significance, perhaps  
15 even public health and safety significance, how the interface  
16 would be handled then between the licensee's voluntary program  
17 and findings and your office? Is that a fair statement?

18 MR. MARTIN: There was the understanding that those  
19 files were open to us in their entirety at any time we wanted  
20 to walk in.

21 COMMISSIONER BERNTHAL: At any time. Oh, there was.

22 MR. MARTIN: There was no stipulation that anything  
23 they found would be handled in any other fashion. That is  
24 open information with us. We looked at them as to whether or  
25 not they reported them to us, if they were required to be



1 reportable under the reporting regulations, information and  
2 names. There was a very open dialogue with such things as  
3 enforcement would have been handled the way we handled any  
4 enforcement case given it is a program where the licensee  
5 identifies and takes appropriate corrective action.

6 COMMISSIONER BERNTHAL: I have to say that aside  
7 from the fact that maybe the licensee was overly enthusiastic  
8 in appraising its own program if we have had access to those  
9 files from the very beginning, one licensee might do a program  
10 that is better than our own QI could do and another licensee  
11 might do one half as good and another licensee might barely  
12 scratch the surface of collecting complaints and putting them  
13 in a file and saying, "There they are, NRC."

14 It is not clear to me aside from the apparent flaws  
15 in self-appraisal perhaps that the fault doesn't lie at least  
16 in part at our doorstep if we have had five days in the last  
17 week to do all this.

18 CHAIRMAN PALLADINO: I was thinking of doing the  
19 following during the open meeting. At what looks like the  
20 appropriate time I would state that I understood that there  
21 had been a review of the QI Program and ask Bob Martin to give  
22 some background on that such as he just did and then ask Ben  
23 to give his comments.

24 COMMISSIONER ZECH: May I ask Ben just one more  
25 question?

1 CHAIRMAN PALLADINO: Surely

2 COMMISSIONER ZECH: Ben, as I understand it, you are  
3 telling us that in the case of wrong doing in the Quality  
4 First Program, you are not satisfied that it was either  
5 complete and you can't give us any conclusion in their wrong  
6 doing allegations?

7 In other words, you are telling us that you are not  
8 sure whether they were good or bad and you can't give us any  
9 conclusions, is that correct?

10 MR. HAYES: That is partially true. My statement to  
11 the Commission is that the files that we have reviewed  
12 certainly did not reach our understanding as to what a  
13 competent investigation would entail.

14 COMMISSIONER ZECH: I understand that, right. But  
15 do you know of any wrong doing, do you know of any reason in  
16 your area of responsibility that this plant should not be  
17 authorized to go to full power?

18 MR. HAYES: That is very difficult because with 21  
19 allegations of narcotics or what-have-you where we feel  
20 uncomfortable with the intimidation/harassment files, the  
21 false documents, we have a litany of false documents and I am  
22 not sure what the criteria is for a full power operation.  
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10 investigations? Do you have any other investigations that you  
11 think ought to be started?

12 COMMISSIONER BERNTHAL: That is the key question it  
13 seems to me.

14 COMMISSIONER ASSELSTINE: That is right.

15 CHAIRMAN PALLADINO: That is why I asked it.

16 COMMISSIONER ASSELSTINE: It focuses on those 77  
17 files that they have looked at. If I understand what you have  
18 been saying, Ben, it is that in the case of 77 of these files  
19 dealing with wrong doing, there are allegations of wrong doing  
20 involving harassment/intimidation, false documentation and  
21 drug abuse and you can't tell whether those have been  
22 satisfactorily resolved.

23 MR. HAYES: That is correct.

24 COMMISSIONER ASSELSTINE: Based upon the information  
25 you have now, those may well be open questions about this

1 plant.

2 MR. HAYES: That is correct. On the other hand, we  
3 have searched our memories to determine whether we have  
4 regulatory authority here for those people to notify us of  
5 these issues. We find a very large void there.

6 COMMISSIONER BERNTHAL: For what people to notify  
7 us?

8 MR. HAYES: The applicant. In fact, when I was on  
9 site and I saw these matters of wrong doing, I said, "When do  
10 you notify the region that you have received an allegation of  
11 false documents?" They said, "We do not."

12 COMMISSIONER BERNTHAL: That is precisely the point  
13 I was making earlier but we were free to walk in anytime and  
14 look at those files.

15 MR. HAYES: Absolutely.

16 COMMISSIONER BERNTHAL: We didn't do it until a week  
17 ago.

18 MR. HAYES: There have been half a dozen inspections  
19 conducted by the staff of the Q1 files.

20 COMMISSIONER BERNTHAL: Of Q1's staff?

21 MR. HAYES: No, Region IV, since last year.

22 COMMISSIONER BERNTHAL: Nevertheless, here we are  
23 the last week, right, and the fact is and I think we should  
24 get back to Joe's question if I may because it is the key  
25 question, now you have gone through the files and you have



1 looked what is in them and what isn't in them. Is there  
2 information there that would lead you to open investigations?

3 MR. HAYES: What our game plan was as of this  
4 morning when we got briefed by our two investigators who did  
5 the review is that I am scheduled to go to Region IV in two  
6 weeks and I want to sit down with the staff and go over their  
7 notes.

8 We don't have the detail of their notes and they  
9 made detailed notes of the review of every file to determine  
10 whether or not there was such a matter there that we didn't  
11 think was pursued that was significant and we may open up an  
12 investigation just to close those particular matters out.

13 As Bob Martin said, he and I have struck an  
14 agreement to meet with the applicant on some of these issues  
15 and we may find it necessary to protect the Commission here to  
16 do our own investigation to validate if nothing else the  
17 applicant's conclusion there.

18 COMMISSIONER BERNTHAL: I will quit talking here.  
19 It still seems to me --

20 CHAIRMAN PALLADINO: We are opening up a can of  
21 worms.

22 COMMISSIONER BERNTHAL: When was your office first  
23 asked to look into these files?

24 MR. HAYES: The Friday before the holiday.

25 COMMISSIONER ASSELSTINE: Before Memorial Day.

1 MR. HAYES: Before Memorial Day.

2 COMMISSIONER BERNTHAL: So we are talking about  
3 whatever it is, ten days ago at best or something like that.  
4 It seems to me that the licensee would have a legitimate  
5 complaint because these files have been open from the very  
6 beginning.

7 COMMISSIONER ASSELSTINE: That may be but don't  
8 forget that the genesis of this kind of program really came  
9 in urgings by us and by the staff to licensees that they had  
10 better get involved and they had better set up effective  
11 programs to identify these concerns and make sure they are  
12 resolved.

13 The warning was that if you guys don't do it and we  
14 get to license decision day and there are still all these  
15 things that are still open that are questionable that haven't  
16 been resolved, then you have a problem.

17 So whether we should have looked at the files before  
18 or not, the applicant had an obligation to set up an effective  
19 program to lay these issues to rest. That is what they told  
20 us they were doing.

21 CHAIRMAN PALLADINO: But they claim they have.

22 COMMISSIONER BERNTHAL: Or at least to bring to the  
23 attention, if they weren't going to do it if there were open  
24 issues that anyone could see, for example, the drug issues  
25 that either by their own inadequate personnel or whatever it



1 might have been they are unable to resolve, then one would  
2 think that they would have preferred to step forward and bring  
3 our attention to files even though we might not have on our  
4 own initiative gone in and looked at them.

5 I think there is a problem on both sides here.

6 CHAIRMAN PALLADINO: I am going to suggest that we  
7 terminate this meeting. We do ask General Counsel to review  
8 the transcript to see that only the closeable material remains  
9 closed and then to do whatever is appropriate on the other.  
10 Anything more to come before us at this time?

11 (No response.)

12 CHAIRMAN PALLADINO: All right. We will adjourn  
13 this meeting and reconvene in about five minutes which should  
14 give the audience a chance to come in.

15 (Whereupon, the Commission meeting was adjourned at  
16 2:33 o'clock p.m., to reconvene at the Call of the Chair.)

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1 CERTIFICATE OF OFFICIAL REPORTER

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4  
5 This is to certify that the attached proceedings  
6 before the United States Nuclear Regulatory Commission in the  
7 matter of Commission Meeting - CLOSED

8 (Exemptions 5 & 7)

9 Name of Proceeding: Discussion of Pending Investigations

10  
11 Docket No.

12 Place Washington, D.C.

13 Date: Monday, June 3, 1985

14  
15 were held as herein appears and that this is the original  
16 transcript thereof for the file of the United States Nuclear  
17 Regulatory Commission.

18  
19 (Signature) Marilynn M Nations  
20 (Typed Name of Reporter) Marilynn Nations

21  
22  
23 Ann Riley & Associates, Ltd.  
24  
25