

February 19, 2003

MEMORANDUM TO: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: Dennis K. Rathbun, Director **/RA/** Laura Gerke for
Office of Congressional Affairs

SUBJECT: SENATE ENVIRONMENT AND PUBLIC WORKS
HEARING ON NRC OVERSIGHT, 2/13/03

The Senate Environment and Public Works Committee's Subcommittee on Clean Air, Climate Change, and Nuclear Safety held an NRC oversight hearing. The bulk of the hearing dealt with concerns about Davis-Besse's corroded vessel head, emergency planning at Indian Point 2, and groundwater contamination from Salem. Chairman Voinovich (R-OH) noted this was the fifth oversight hearing in six years, with such oversight being particularly important post-9/11. He added that he would be touching base with the Commission more than previous Subcommittee Chairmen: as an advocate of nuclear power, he believes there is a heavier burden on the NRC to do a good job in order to address issues raised by those not supportive of nuclear power. The Commission testified first, followed by Inspector General Hubert Bell.

Chairman Voinovich emphasized that he has been following the Davis-Besse issue and met with Chairman Meserve last fall. He expressed his strong concern regarding recent news articles about the plant's sump inadequacies, questioning how this squared with the NRC telling him that there were sufficient safety systems in place in case there had been an accident. He added that it was insufficient to know what happened; he wanted to know what would prevent such an incident from reoccurring. He rhetorically asked what the NRC plans to do with its request for \$53.1 million in FY 2004 for homeland security. Senator Inhofe (R-OK), Chair of the full Committee, gave a brief statement saying that nuclear power provided an answer to both the energy crisis and air pollution. Senator Carper (D-DE), ranking minority of the Subcommittee, described his close ties with Chairman Voinovich, noting their service together in the National Governors Association. As a "Navy guy," he said that he is comfortable with nuclear power but concerned about the events at Davis-Besse as well as the groundwater contamination at Salem; these concerns need to be addressed in order to advance a diverse energy supply. Senator Jeffords (I-VT), ranking minority on the full Committee, briefly spoke, thanking Chairman Meserve for his service.

Senator Voinovich began the line of questioning by saying the Davis-Besse investigation continues to contain surprises; would there be more surprises? Chairman Meserve replied that there was an enormous inspection effort at the plant and corrective actions were being taken. Regarding possible clogging of the sump in the event of an accident, the Chairman emphasized

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that we are dealing with “what-ifs.” He noted that the licensee raised the issue, which was being analyzed. Commissioner Diaz stressed that the NRC is very demanding and that while the sump may not have worked well, it would have worked adequately.

Senator Carper, referencing recent news articles, inquired about Salem’s tritium release into groundwater. The Chairman committed to providing the Senator with a timeline of when the NRC was notified by the licensee of the leak and when that information was made public. The other commissioners explained the nature of tritium.

Senator Jeffords asked how the Commission was, post-9/11, balancing security needs versus the public interest in being informed and reassured. The Chairman acknowledged this balancing act and stated that we have utilized our website, recognized as being extremely informative, to update the public. Senator Voinovich said that the post-9/11 environment underscores the public’s need to have faith in the integrity of Federal agencies since there is less direct information available about actions taken.

Senator Voinovich distributed the color copy of the corroded vessel head at Davis-Besse and asked whether the NRC reviewed the condition report containing the photo and regularly inspected the head; if not, then the Committee “may have to do an overhaul of NRC’s day-to-day oversight.” Chairman Meserve noted that the IG is investigating the allegation that the photo was shown to an NRC inspector who did not follow up. He added that NRC’s inspection program is focused on risk-significant issues, but the NRC failed to recognize the significance of stress cracking and head corrosion. The agency’s Lessons Learned Task Force (LLTF) had many recommendations for changes, the majority of which the NRC is adopting, including changes to our inspection procedures. The Senator then asked why the NRC was proposing to reduce its inspection budget in FY 2004. The Chairman replied that there is a slight reduction, but not for inspection resources on the ground: efficiency savings from the startup of the new Reactor Oversight Process (ROP), now in its third year, are being realized. The Chairman added that the budget was prepared before the LLTF recommendations, and this funding level could be reconsidered. Commissioner Diaz emphasized that Davis-Besse was preventable, but the NRC has reviewed the issue and is taking corrective action. The Senator asked whether any sanctions had occurred against NRC staff. The Chairman replied that the investigation was ongoing, but the issue was viewed as an institutional, rather than individual failing. The NRC is changing its inspection focus, getting research in hand on these types of issues, issuing an order this week on reactor vessel head inspections, as well as significant industry effort. Commissioner McGaffigan referenced human resource issues of vacancies and turnovers; Senator Voinovich asked what resources should have been in place at Davis-Besse, what was in place, and what is the NRC doing to ensure that a similar problem isn’t occurring elsewhere? This will be provided for the record.

The Senator referenced Ottawa County’s interest in seeing the plant come on line in a safe manner. The Chairman described the NRC’s 0350 process, stressing that the plant cannot restart without NRC permission, and significant licensee effort, including substantial plant modifications. He added that FirstEnergy has said it hopes to restart by late spring, but it is too early for the NRC to discuss a date with confidence.

Senator Voinovich asked for information on the ROP, as well as human capital issues: what is the NRC’s capacity to keep staff on board and ability to hire needed people? (The Senator also chairs the Governmental Affairs Committee’s Subcommittee on Oversight of Government Management, the Federal Workforce, and DC.) Chairman Meserve committed to provide the

above for the record, while adding that the agency has significantly improved its ratio, now 2:1, of employees above 60 to those under 30. A remaining challenge, however, is that 36% of NRC employees can retire in five years.

Senator Voinovich referenced the “unacceptable statistics” in the recent IG safety survey of NRC employees in which 53% of respondents said they feel safe speaking up, and 25% feel that the agency’s commitment to safety is apparent. The Chairman said the survey showed significant improvement in attitudes in most areas. The Commission takes the survey seriously and tasked the EDO to examine the underlying causes. Senator Voinovich stated that there must be a comfort level for people to speak up; the Chairman replied that we can ask no less of ourselves than we do of our licensees. Other Commissioners described the DPO process and stressed that they have an open door policy. The Senator commended this action, saying too often, businesses ignore their internal customers while focusing on external customers. He asked whether the agency has quality management and self-improvement teams; the Chairman replied that the NRC is trying to flatten the organization with employees having responsibility for and taking pride in their work. For the record, the Senator asked for specific examples of how the NRC is doing things differently as a result of employee recommendations on how to do a job better. Commissioner Diaz noted that with the agency’s new risk-informed environment, some employees feel that change is occurring too fast; the Senator agreed that there can be resistance to change.

Senator Carper inquired what lies ahead with new technology. The Chairman replied that decisions regarding new technology are not the NRC’s, but rather, investors’ to make. He noted that the NRC has revised its regulatory system for licensing of plants, is expecting three applications for early site permits this year, and has a design certification process. Commissioner Merrifield added that steam generators and vessel heads are now manufactured abroad, so the NRC will need to conduct business differently.

Senator Clinton (D-NY) expressed concern about Indian Point 2’s (IP2) emergency planning, saying that due to its proximity to densely populated areas and difficult topography, combined with concerns raised by the Witt report, it would be unlikely that an evacuation would be practical or could be implemented. She then tied this concern to the Chairman’s letter to her of February 12th which stated that there was “undue weight” placed on evacuation needed for terrorism. She challenged this statement, saying that there is a difference with such evacuations: even if the amount of radiation released from an accident or from terrorism is the same, the conditions under which the release takes place stresses the ability to effectively evacuate. She recognizes that the NRC is trying to “do what needs to be done,” but the agency is not thinking strategically and hard enough, nor is it communicating well to the public. She added that the IG report on offsite communication problems during the 2000 steam generator event and the current state of limbo regarding FEMA consideration of emergency planning adequacy despite the objection of State and local officials, were of concern. She asked for an update on NRC and licensee actions to correct emergency planning weaknesses, and stressed that there should not be the continuing troubling trend of NRC giving licensees extended time from oversight.

The Chairman replied that the NRC takes the Witt report seriously, by his “undue weight” statement he meant that terrorism is not unique in its ability to challenge emergency planning, and he described security upgrades post-9/11. Commissioner McGaffigan suggested that the next exercise at IP2 could be a security event to increase public confidence. Senator Clinton sought confirmation that there would be a force-on-force exercise later this year at the facility,

with the Chairman clarifying that the exact time would not be announced. She asked when NRC would revise the DBT; the Chairman provided a status report. Commissioner Diaz emphasized that there has been a de facto revised DBT in place since September 11th. The Senator concluded by stating her appreciation for Chairman Meserve's service, noting that everyone was in uncharted terrain, asking hard questions, and pushing each other to be creative, but such thinking was necessary because what served us well in the past might not work now. She added that the sincerity with which the Commission speaks here does not resonate elsewhere with the public; there is a disconnect.

Senator Clinton stated her intention to submit for the record two questions for the IG: (1) The IG is still investigating NRC's enforcement of regulatory commitments at IP2; she wants a date certain when she will receive the report; and (2) as a result of Davis-Besse concerns, what is NRC's workforce capacity and training?

The IG presented testimony regarding how he conducts oversight of the NRC. Senator Voinovich asked the IG if he believed the NRC is doing what was needed to prevent another incident like Davis-Besse. The IG replied that the NRC is a confident regulator, but he cannot answer whether there is always the appropriate balance between safety and risk factors. He added that there is a cost associated with change, and the NRC needs to decide what is acceptable. Noting that the report stated that there was an emphasis on financial matters in the delayed shutdown decision for Davis-Besse, the Senator questioned whether the agency would have allowed the delay if it had had correct information. George Mulley of OIG replied, no. He added that the staff weighed financial information for several months, but did not give it undue weight. Regarding the meeting to decide whether to allow a delayed shutdown, the Senator said in the future, the NRC should do a better job of documenting decisions so that the issue of arbitrariness goes away. The Senator asked for the IG's report, when completed, on the NRC's handling of the 2000 condition report containing the photo of the corroded head.

The Senator asked how the 53% of survey respondents willing to speak up compares with other organizations; the IG will submit an answer for the record, but he added that the response is above or equal to the norm. The Senator also inquired about NRC contacts with DOE regarding licensing of the repository; the IG replied that the meetings were sanctioned and above-board. He asked whether the NRC is able to review the repository license in an independent and impartial manner. The IG replied that his 2004 audit plan includes reviewing the licensing requirements; since the license application hasn't been filed yet, there is nothing to review. The Senator concluded by noting that when he was Governor, the Ohio IG would meet with various agencies to identify issues that could be controversial, in order to highlight them before problems occurred. He recommended this approach to the IG. He asked whether the IG had adequate funds and staff to do his job. The IG replied that he did, although a challenge is employee transfers within the IG community, with higher turnover in his office than he would like. He noted that a technical unit is being created.

Chairman Voinovich outlined the Subcommittee's agenda, noting future plans for a hearing on nuclear security as well as a markup on nuclear security legislation. Copies of the testimonies submitted by Chairman Meserve and Inspector General Bell are attached.

Attachments: As stated

cc: SECY OGC/Cyr OGC EDO NRR NMSS RES OIP OCAA OPA OIG CFO NSIR