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

CHAIRMAN

Sige
Post-hearing Q's

July 19, 1988

The Honorable Morris K. Udall, Chairman
Subcommittee on Energy and the Environment
Committee on Interior and the Environment
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

In response to your letter of May 12, 1988, I am enclosing the Commission's responses to questions submitted by Congressman Mavroules for the record of the April 26, 1988 Subcommittee hearing on bills to reform the Nuclear Regulatory Commission.

Sincerely,

Lando W. Zech, Jr.

Lando W. Zech, Jr.

Enclosure:
As Stated

cc: Rep. Manuel Lujan, Jr.

B/6

RESPONSE TO QUESTIONS FROM CONGRESSMAN MARVOULES

QUESTION 1 Are you aware of a statement that the NRC's top safety officer Victor Stello made to FEMA in January of this year that the NRC would "wage total war on FEMA" unless it withdrew its opposition to the emergency evacuation plan for the Seabrook Nuclear Power Plant?

ANSWER

Through various news media reports, Chairman Zech and Commissioner Roberts became aware of the allegations concerning statements to FEMA referred to in the above question. Chairman Zech inquired of Mr. Stello whether he had made the statements, and Mr. Stello said that he had not made the statements as reported. Neither Commissioner Carr nor Commissioner Rogers was aware of the alleged statement. Questions about whether Mr. Stello made such a statement have been raised in the ongoing adjudicatory proceedings involving the Seabrook facility.

Testimony on this issue was received by the Seabrook Licensing Board in late May of this year. The Commission has asked the staff to write to you under separate cover with additional information developed during the adjudicatory process.

QUESTION 2 What meetings did the NRC staff hold with officials of FEMA in January, 1988 concerning the Seabrook evacuation plan and FEMA's testimony in the New Hampshire hearings?

ANSWER

A meeting was held between the NRC staff and FEMA officials on January 19, 1988. This meeting concerned various offsite emergency planning issues affecting the Shoreham and Seabrook nuclear plants. The meeting was described in detail by three FEMA officials who attended the meeting (Grant Peterson, David McLaughlin and Richard Krimm), during the course of hearings on the Seabrook operating license application on May 25-27, 1988.

In addition, a meeting of the FEMA Regional Assistance Committee (RAC), of which the NRC is a member agency, was held on January 7-8, 1988. This meeting was described in detail by the NRC's RAC representative (Dr. Robert Bores) and by the FEMA RAC chairman (Edward Thomas) in testimony during Atomic Safety and Licensing Board hearings on the Seabrook operating license application on January 11-13, 1988.

QUESTION 3 Has the NRC had any meetings with the owners of the Seabrook Nuclear Power Plant that is not a part of the public record?

ANSWER

All NRC staff meetings with the Seabrook applicants/licensees are conducted in accordance with the NRC staff's Open Meetings policy, which is detailed in 43 FR 28058 (See attached Federal Register Notice). All meetings, including those which in accordance with the policy are closed in order to discuss proprietary or safeguards information, are publicly noticed, and once completed, written summaries of non-proprietary and unclassified portions of the meetings are prepared and made available to the public.

As part of the routine regulation of the licensee, the NRC staff communicates with the licensee's personnel through telephone contacts or informal face-to-face discussions in order to reach agreement on schedules, to make inquiries concerning licensing actions, and to conduct inspections. Typically, no public record is made of these interactions; however, the results of significant interactions are made part of the public record through documents such as safety evaluations and inspection reports.

In accordance with Commission practice, all Commission meetings with Seabrook's owners would have been held in public unless there was a specific need (such as discussion of security or proprietary information) to close the

meeting. No Commission meetings with Seabrook owners have been identified which were not open to the public. Because the Seabrook case has been under adjudication, private meetings between Seabrook owners and NRC Commissioners would be prohibited in most matters relevant to Seabrook by *ex parte* considerations.

Enclosure to Question 3

0.4 inch in diameter, all the foregoing of iron or steel, provided for in items 646.49, 646.54, 646.56, and 646.63 of the Tariff Schedules of the United States (19 U.S.C. 1202).

[FR Doc. 78-17970 Filed 6-27-78; 8:45 am]

[4410-18]

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

NATIONAL SCHOOL RESOURCE CENTER

Solicitation

The Office of Juvenile Justice and Delinquency Prevention announces a competitive grant program focusing on the problem of school violence and vandalism. The objective of this solicitation is development of a school resource network that provides assistance to students, teachers, parents, security personnel, school administrators, and community personnel. The national network is to include a national school resource center and four regional school resource centers. The national network will help local schools and school districts design and implement school violence and vandalism prevention programs through training, technical assistance, and advocacy that result in changes in school response to youth behavior.

At the present time, there is no national strategy to assist schools in dealing effectively with school crime. Resources are minimal and fragmented. Many local programs are developed solely in the interest of security. They fail to accomplish their objectives, fail to address the real needs of the school systems, and fail to provide benefits that are consistent with their costs. A national school resource network dedicated to advocacy, reform, and a safer environment for students and teachers is needed to provide overall direction and coordination of existing and new school resources.

Preliminary applications in response to this announcement are due November 1, 1978. While it is anticipated that only one grant award will be made, subgrant arrangements are both acceptable and encouraged. The grant period will be for a duration of fifteen (15) months; the award amount will be up to a maximum of $2,500,000. Preliminary applications will be considered only from public and private nonprofit agency, organizations, and institutions. All such agencies, organizations, and institutions must have demonstrated experience in dealing with youth.

Copies of the program guidelines will be released on August 1, 1978, and can be obtained by contacting the Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, Department of Justice, 633 Indiana Avenue NW., Washington, D.C. 20531.

JOHN M. RECTOR,
Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 78-17870 Filed 6-27-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

DOMESTIC LICENSE APPLICATIONS

Open Meetings and Statement of NRC Staff Policy

The Nuclear Regulatory Commission's (NRC's) regulations in 10 CFR 2.102 permit applicants to confer informally with the NRC technical staff during reviews of domestic license or permit applications. These meetings have served as an essential means for the exchange of technical information and views necessary for the technical review of applications. For several years other parties or potential parties to domestic licensing proceedings, as well as members of the general public, have, upon request, been permitted to attend applicant-NRC technical staff meetings as observers. However, the Commission's regulations do not require that others be permitted to attend such informal meetings between applicant and staff, and the general practice being followed in this regard has never been formally articulated. This statement is intended to provide such articulation. It is also noted that this matter is related to the provision for increased public participation which was approved by the Commission during its consideration of NUREG 0292 (Denton Report).

As a general matter, the Commission and staff try to involve concerned citizens in any Commission activity in which they have expressed an interest. All meetings conducted by the NRC technical staff as part of its review of a particular domestic license or permit application (including an application for an amendment to a license or permit) will be open to attendance by all parties or petitioners for leave to intervene in the case. These meetings are intended by the NRC technical staff to facilitate an exchange of information between the applicant and the staff. It is expected that the NRC technical staff and the applicant will actively participate in the meeting. Others may attend as observers. Likewise, when meetings are scheduled between the staff and other parties or petitioners, applicants would be permitted to attend only as observers.

The general policy of open meetings described above will admit of only a few exceptions, which must be approved by the Director of the relevant division. For example, some persons may not be permitted to attend meetings where classified or proprietary information (including sensitive safeguards information) is to be discussed. The NRC staff will prepare a written summary of the unclassified and nonproprietary portions of such meetings and forward the summary to interested persons unable to attend so that they will be informed of what transpired at the meeting. However, attendance will not be limited solely because preliminary opinions, recommendations, or advice will be offered on the merits of the applications during the meeting.

When a party or petitioner for leave to intervene requests, reasonable efforts will be made by the NRC staff to inform the party or petitioner of forthcoming meetings conducted by the NRC technical staff so that appropriate arrangements for attendance can be made. It is recognized that in some cases the need for a prompt meeting may make it impossible or impracticable to notify all parties and petitioners. The policy described above also cannot practicably be applied to chance encounters between NRC technical staff personnel and other parties or petitioners but such chance encounters will not be permitted to serve as a source of information for the conduct of licensing reviews.

Dated at Bethesda, Md. this 20th day of June, 1978.

For the Nuclear Regulatory Commission.

LEE V. GOSSICK,
Executive Director for Operations.

[FR Doc. 78-17916 Filed 6-27-78; 8:45 am]

[7590-01]

[Docket No. 50-219]

JERSEY CENTRAL POWER & LIGHT CO.

Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 32 to Provisional Operating License No. DPR-16, issued to Jersey Central Power & Light Co. (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station (the facility), located in Ocean County, N.J. The amendment is effective 30 days after the date of its issuance.

The amendment revised the Technical Specifications to incorporate requirements for establishing and maintaining the drywell to suppression chamber differential pressure and suppression chamber water level, to maintain the margins of safety established in the NRC staff's "Mark I Containment Short Term Program Safety

QUESTION 4 There is a letter that an attorney with Connor and Wetterhahn wrote to Gulf States Utilities Company of Beaumont, Texas that states that he talked with NRC Commissioner Fred Bernthal and was able to change his vote. Are you familiar with such a letter, and, if so, what vote is he referring to and what relationship did it have with Gulf States Utilities?

Answer:

Yes. This letter was the subject of a Congressional inquiry by the Subcommittee on Nuclear Regulation, Senate Committee on Environment and Public Works, during a hearing held on October 20, 1987, at which the Commissioners were present. The letter was placed in the public record of the hearing by Subcommittee Chairman John Breaux. The vote mentioned in the letter was a Commission vote in May 1985 on SECY-85-149, the Proposed Rule on Material False Statements. This was a proposed generic rule change under consideration by the Commission in its legislative or rulemaking capacity. The proposed rule potentially affected many NRC licensees, including Gulf States Utilities. As a rulemaking rather than an adjudication, the Commission's ex parte rules did not apply, and there was no impropriety involved in a Commissioner discussing the proposed rule change with representatives of the law firm.

At issue in the Senate hearing was the Commission's subsequent denial of an FOIA request for SECY-85-149, which had already been placed in the Public Document Room. The letter and the FOIA denial seemed to suggest that some

members of the public had access to information unavailable to others. This matter was reviewed by the Commission's General Counsel. A copy of a memorandum discussing that review and the letter transmitting it to the Subcommittee is attached.

Commissioners Carr and Rogers note that they were not aware of the letter until it was raised as an issue during the October 20, 1987 hearing and that they were not members of the Commission at the time the letter was written.

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

CHAIRMAN

Enclosure to
Question 4

December 23, 1987

The Honorable John B. Breaux, Chairman
Subcommittee on Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

During the Commission's appearance before your Subcommittee on October 29, 1987, I committed to report to the Subcommittee on the circumstances surrounding the disposition of an FOIA request filed by Inside NRC on June 7, 1985.

Our General Counsel has looked into this matter and has concluded that an inadvertent error was made while processing this particular FOIA request. A copy of his report on this matter is enclosed. However, I reiterate that, as I stated at the hearing, the Commission does not routinely make predecisional material, such as its vote sheets, public.

On May 3, 1985, a transcript of a May 2, 1985 Commission meeting and a copy of SECY-85-149 were placed in the Public Document Room (PDR). The Commission's Correspondence and Records Branch is customarily notified when Commission documents go into the PDR. In this particular case either the notification was overlooked or misplaced. Had that Branch received such notification, it would have logged SECY-85-149 as a public document. Inside NRC, at that point, would have and should have been notified of this fact and been given the accession number of the document for retrieval purposes. A document search reveals that an employee in the Office of the Secretary, a Commission level office, sent a memorandum to the Division of Rules and Records advising that the Commission had determined that SECY-85-149 was to be withheld pursuant to Exemption 5 of the FOIA. However, the usual documentation that would indicate that the Commission had in fact been consulted has not been located. Thus, as the General Counsel notes, the most that can be said is that "it was determined at the Commission level that SECY-85-149 was withholdable...."

However, the requested vote sheets had not been made public and would not have been released except by the election of each individual Commissioner. One Commissioner did so elect in this case. I cannot assume that Mr. Mark Wetterhahn had access to these vote sheets in order to make the statements in his July 16, 1985 letter that you read during the hearing. There were no ex parte considerations that would preclude discussion of this proposed rule. Thus, Mr. Wetterhahn could have reached conclusions in his statements by using information gathered from informal conversations, speeches, transcripts of meetings, and other communications.

The Commission does not believe that the circumstances surrounding the handling of this isolated FOIA request means that our FOIA procedures are generally flawed. I assure you and the other members of the Subcommittee that we make every effort to be fair in complying with FOIA requirements.

Sincerely,

Lando W. Zech, Jr.

Lando W. Zech, Jr.

cc: Senator Alan K. Simpson

Attachment:
As stated

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

October 28, 1987

MEMORANDUM FOR: Chairman Zech

FROM: William C. Parler
General Counsel

SUBJECT: DENIAL OF A FOIA REQUEST FOR A RECORD ALREADY MADE PUBLICLY AVAILABLE

Background

On October 20, 1987 at a hearing of the Subcommittee on Nuclear Regulation, an incident was discussed concerning the agency's processing of a FOIA request submitted by Inside NRC. Apparently, the agency denied Inside NRC's request for a record, SECY-85-149, which had already been released to the Public Document Room ("PDR"). I asked an OGC attorney to look into this matter with the following results:

> SECY-85-149 (Subject: Staff's Proposed Rule on Material False Statements) was submitted to the Commission on April 26, 1985. Discussion on the paper was scheduled for May 2, 1985 at an open Commission meeting. Prior to the May 2 meeting, a Commission monitor assigned to the Secretary's office was advised by the Office of the Executive Legal Director to make SECY-85-149 available to members of the public who would be attending the meeting. The monitor accomplished this by placing copies of the paper on a table in the back of the room where the meeting was to be held.
>
> On May 3, 1985, a transcript of the May 2 meeting and copies of SECY-85-149 were delivered to the PDR, and on May 15, 1985, these documents were catalogued and otherwise made available for release to any requesting member of the public. SECY papers are catalogued by number. Consequently, Mr. Wetterhahn (CONNER & WETTERHAHN) or any other member of the public could have obtained a copy of the SECY paper from the PDR by

Contact:
Carolyn F. Evans, OGC
x41493

simply requesting "SECY-85-149," assuming it was not obtained at the Commission meeting.

On June 7, 1985, Margaret L. Ryan, Chief Editor, Inside NRC submitted a FOIA request for "all notation votes made by the Commission in the months of January, February, March, April, and May 1985." In instances where the vote was to approve any documents not attached to the vote sheets such as SECY papers, Ms. Ryan requested release of these documents as well. In this way, SECY-85-149 was captured by Ms. Ryan's FOIA request which was subsequently assigned the sequential FOIA number 85-409 by the Division of Rules and Records.

Ms. Ryan's FOIA request was processed in the customary manner. Copies of her request were forwarded to all offices reasonably expected to have responsive records. Forty-six documents in all (including SECY-85-149) were identified as responsive to Ms. Ryan's request. These documents were then reviewed for the purpose of making a release/withhold determination under the FOIA. The review process was two tiered. First, the offices which authored the documents reviewed them and made an initial release/withhold recommendation. The documents were then reviewed at the Commission level. With respect to SECY-85-149, the Office of the Executive Legal Director made an initial "release" recommendation. This recommendation was not followed. Instead it was determined at the Commission level that SECY-85-149 was withholdable under Exemption 5 of the FOIA and it was denied on that basis.

Discussion

Inadvertent error can be isolated as the cause of the agency's "faulty" processing of Inside NRC's FOIA request. When the transcript of the May 2, 1985 meeting and copies of SECY-85-149 were delivered to the PDR, someone apparently forgot to advise the Chief of the Commission's Correspondence & Records Branch of the transmittal. Had he been so advised, he would have listed SECY-85-149 in his log as a publicly available record. Thus, when SECY-85-149 was identified as a responsive document, his log would have shown that the document was already in the PDR, Inside NRC would have been advised of this fact and given the accesssion number of the document for retrieval purposes, and the document would never have been reviewed for release/withhold determination. The error could have also been avoided if the Division of Rules and Records had

accessed the Document Control System ("DCS") to see if any of the SECY papers identified as responsive to Inside NRC's request had been previously released to the public. The system would have indicated that SECY-85-149 was a publicly available document.

cc: Commissioner Roberts
Commissioner Bernthal
Commissioner Carr
Commissioner Rogers
EDO
SECY

ONE HUNDREDTH CONGRESS

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RICHARD AGNEW
CHIEF MINORITY COUNSEL

May 12, 1988

The Honorable Lando Zech, Jr.
Chairman
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Chairman:

I would appreciate the Commission's answers to the four questions contained in the attached letter from Congressman Mavroules.

Thank you for your help.

Sincerely,

MOUdall

MORRIS K. UDALL
Chairman

Attachment

NICHOLAS MAVROULES
6TH DISTRICT, MASSACHUSETTS

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ARMED SERVICES
SMALL BUSINESS

CHAIRMAN:
SUBCOMMITTEE ON
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April 29, 1988

MAY 05 1988

Chairman Morris K. Udall
House Subcommittee on Energy and the Environment
1327 Longworth House Office Building
INSIDE MAIL

Dear Chairman Udall:

Following is a list of questions I would like to submit for the hearing record of April 26, 1988 on bills to reform the Nuclear Regulatory Commission. I would appreciate your assistance in obtaining responses from Chairman Lando W. Zech, Jr. on all four questions and from all of the Commissioners on questions 1 and 4.

1) Are you aware of a statement that the NRC's top safety officer Victor Stello made to FEMA in January of this year that the NRC would "wage total war on FEMA" unless it withdrew its opposition to the emergency evacuation plan for the Seabrook Nuclear Power Plant?

2) What meetings did the NRC staff hold with officials of FEMA in January, 1988 concerning the Seabrook evacuation plan and FEMA's testimony in the New Hampshire hearings?

3) Has the NRC had any meetings with the owners of the Seabrook Nuclear Power Plant that is not a part of the public record?

4) There is a letter that an attorney with Connor and Wetterhahn wrote to Gulf States Utilities Company of Beaumont, Texas that states that he talked with NRC Commissioner Fred Bernthal and was able to change his vote. Are you familiar with such a letter, and, if so, what vote is he referring to and what relationship did it have with Gulf States Utilities?

Thank you.

Sincerely,

Nicholas Mavroules
Member of Congress

NM/gpw