



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

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MEMORANDUM FOR: E. Neil Jensen, OGC
FOR: Charles E. Mullins, OGC
SUBJECT: SUBPOENAS FOR NRC STAFF MEMBERS IN AGREEMENT STATE PROCEEDINGS

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In the process of responding to the recent request for NRC staff testimony in the Neutron Products license revocation proceeding in Maryland, an Agreement State, we focused on a couple of points which might be helpful in responding to future requests of this nature. Following my discussions with Robert Bernero, Director, NMSS, we decided that, to the extent that NRC inspectors and other employees have factual information resulting from inspections of an agreement state licensee or other NRC duties, and this information appears relevant and material to an agreement state licensing or enforcement proceeding, the NRC should accede to a reasonable request to make these employees available to assist the decision maker in reaching a fair and informed judgment. However, we have also decided that it is important procedurally to follow our Touhy regulations with respect to such testimony as much as possible. In this specific case, we decided:

1. To require subpoenas for staff testimony as with any other Touhy request, regardless of which party issues the "demand" for testimony;
2. To allow personal appearance by the subpoenaed individual if the proceeding is of the type normally conducted by the NRC, i.e., if the state "stands in the shoes" of the NRC, regardless of which party issues the "demand" for testimony.
3. To allow testimony by those individuals who are "fact" witnesses, i.e., who have made inspections at the facility or who have personal knowledge of the matters at issue;
4. To oppose requests for testimony by individuals who are subpoenaed as "experts" if they are not also "fact" witnesses;
5. In short, with the exception of Item #2, supra, we agreed to process a Touhy request in an agreement state proceeding as we would process any other Touhy request.

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