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March 15, 1988

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

Dear Chairman Zech:

I am extremely concerned about the apparent intention of the Nuclear Regulatory Commission to approve the re-start of TVA's Sequoyah 2 nuclear plant, irrespective of the unresolved questions surrounding the credibility of Mr. Steven White, director of TVA's nuclear program. I am concerned not only about the Commission's determination to push the process along, but also by the manner in which the NRC has attempted to dismiss the report prepared by its Office of Investigations.

The Office of Investigations found that Mr. White had lied intentionally to the NRC regarding the safety of TVA's Watts Bar plant. The Justice Department is still considering bringing criminal charges against Mr. White on the basis of those willful false statements. It is regrettable that the Commission fails to see or does not care that if Mr. White lied to the NRC about the condition of Watts Bar, his credibility regarding the safety of Sequoyah 2 must be in question.

Rather than accepting that there is a problem that could detract from the safety of TVA's nuclear power plants, the NRC has given the back of its hand to its trained professional investigators. The Office of Investigations gave the Commission news it did not want to hear at a time when it did not want to hear it. The Commission's response was to refuse to believe OI. For the first time, the Commission established a formal group to second guess an investigation of OI.

Moreover, the Office of Investigations was largely excluded from the staff review of the OI report. In fact, it is our understanding that, with the exception of a single meeting, members of the review group were instructed not to talk with the Office of Investigations. The investigators were prepared to

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discuss their findings and respond to any questions or concerns. They were never asked to address the review group's concerns. To date, the Commission has not attempted to reconcile the findings of the review group with those of OI. When the NRC briefed the Department of Justice on this matter, the review group was present but not one of those who had performed the investigation for OI was invited to the hastily called meeting.

It is of note that the Commission's second guessing of OI is a relatively recent development. It is our understanding that in the past, the Commission would defer to the fact-finding and investigative judgments made by its professional investigators. However, apparently when a new Executive Director for Operations took control in 1986, things changed. It is our understanding that the staff now performs its own assessment of the adequacy of OI's work. They do not limit their inquiry to the regulatory use to which OI's findings should be put nor to the identification of any egregious mistakes. The staff simply second guesses OI's work product. That would seem to be a wasteful duplication of effort, especially since those conducting the investigation are trained and experienced in the investigative field.

This approach was first taken in the Fermi case which has been documented by this Subcommittee in its report "NRC Coziness with Industry." There are obvious parallels between the two situations. In both cases, OI found that the licensee had intentionally lied to the NRC regarding a matter material to the approval of starting the plant. In both cases, before the OI review had been completed, the staff decided to second guess OI's preliminary findings. In both cases, the staff formally disagreed with OI's findings. In both cases, the NRC was anxious to have the plant start up and, by all indications, did not want the investigative findings to interfere. In both cases, the staff's analysis made it quite difficult for the Department of Justice to proceed in a criminal action. This is a disturbing pattern of NRC response to its investigators.

The staff's actions here go beyond Fermi in an important respect. Just a year earlier, on January 13, 1987, the Executive Director for Operations stated that

"...the staff believes that TVA apparently obfuscated the answer to the staff and misrepresented the status of the Watts Bar facility in an issue material to the licensing of Watts Bar."

In a five-page memorandum, the EDO documented and elaborated on his position and asked OI "to determine to what extent such action was intentional." The EDO asked OI to exercise its expertise and judgment, and when OI did so in a way that did not suit the NRC, the staff took an action that would effectively undermine the OI findings. It is of note that it took the staff

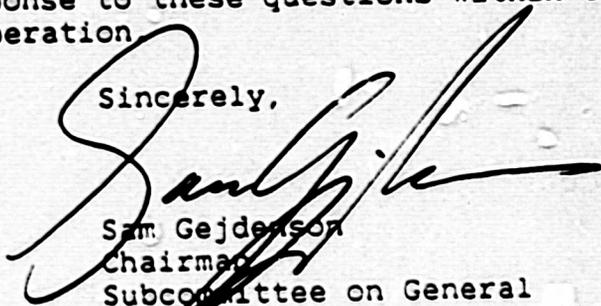
only a few short weeks to perform work that had taken trained investigators ten months.

This series of events raises several serious questions to which the Subcommittee would appreciate answers:

1. Is it the role of the staff to second guess OI in its findings of wrongdoing, or is the staff to restrict its review of OI investigations to a determination of the appropriate regulatory actions to be taken in response to an OI investigation?
2. Did the Commission approve the change in approach away from deference to OI's findings when a new Executive Director for Operations took control in 1986?
3. Why was the review group formed?
4. Did the Commission authorize the formation of the review group?
5. Is it the intention of the NRC to reconcile the findings of the review group with those of OI?
6. Should OI have been given the opportunity to respond to the staff's review of its investigation? If not, why not?

I would appreciate a response to these questions within one week. Thank you for your cooperation.

Sincerely,



Sam Gejdenson
Chairman
Subcommittee on General
Oversight and Investigations