



OFFICE OF THE
GENERAL COUNSEL

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 1, 2011

Mark D. Davis
Wiltshire & Grannis LLP
1200 Eighteenth Street, NW, Suite 1200
Washington, DC 20036

Dear Mr. Davis,

Thank you for bringing to our attention the fact that my October 4, 2011 letter to Lisa Jones at the Department of Justice — which was marked in bold **“Non-public Attorney Work Product”**— had shown up in NRC’s public “ADAMS” records system. This occurred because of an inadvertent coding mistake by NRC recordkeepers. Upon learning of the mistake, we immediately (the same day) had the letter removed from public ADAMS and placed in our non-public ADAMS system, where it belongs.

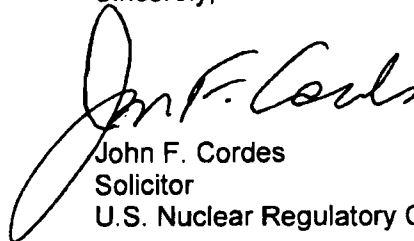
Because the letter was released inadvertently, we continue to regard it as a privileged, attorney work product document, consistent with recently-amended Rule 502(b) of the Federal Rules of Evidence. That rule codifies the principle that inadvertent disclosures do not waive attorney-client or attorney work product privileges if the holder takes immediate steps to rectify the error and took reasonable steps to prevent disclosure. The rule covers all federal litigation, including court of appeals cases, and “with respect to privileges applies at all stages of all actions, cases, and proceedings.” See Federal Rule of Evidence 1101(a), (c).

In this case, we immediately rectified the error. And we also took reasonable steps to avoid disclosure by properly labeling the document (“Non-public Attorney Work Product”) and directing NRC recordkeepers to store it in our non-public records system. Notably, the memorandum accompanying the letter was (and remains) properly stored in our non-public records, showing our intent to maintain privileged status.

Therefore, we expect that you will not disseminate or publicize the October 4 letter, or use it in litigation. It remains a privileged communication.

Thank you once again for your professionalism in bringing this error to our attention.

Sincerely,



John F. Cordes
Solicitor
U.S. Nuclear Regulatory Commission

cc: Service List