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

PDR

July 12, 1984

MEMORANDUM FOR: Chairman Palladino
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
Commissioner Zech

FROM: *George H. Messenger*
George H. Messenger, Acting Director
Office of Inspector and Auditor

SUBJECT: GUNDERSON/ROYCE - CLIENTS OF GAP ALLEGED
INSPECTION/INVESTIGATION IRREGULARITIES

The attached report documents an Office of Inspector and Auditor (OIA) investigation of information in a July 14, 1983, letter from Ms. Lynn Bernabei, Staff Counsel, Government Accountability Project (GAP) to the Commission. In this letter, GAP requested the Commission review the NRC staff's serious mishandling of its investigation into allegations by Mr. Robert D. Gunderson and Mr. Wallace Royce, former Bechtel employees at the Palo Verde Nuclear Generating Station (PVNGS), of deficiencies in electrical work and the startup testing program at the PVNGS, Units 1, 2, and 3. In addition to the allegations regarding mishandling of the investigation relative to the PVNGS, the July 14, 1983, letter also refers to a February 28, 1983, letter to Roger Fortuna, Deputy Director, Office of Investigations (OI), from Ms. Billie P. Garde, Director, Citizens Clinic, GAP. Regarding the February 28, 1983, letter, Bernabei alleged that Fortuna, to whom the letter was personally delivered, failed to review it or forward it to the appropriate office for three months. As a separate issue, Bernabei addressed a July 12, 1983, lawsuit filed by GAP pursuant to the Freedom of Information Act (FOIA) to obtain all documents held by NRC relating to the investigation of Gunderson's allegations. The GAP lawsuit reportedly stemmed from NRC's failure to identify or disclose materials used in compiling NRC inspection/investigation reports.

Based on our review of information sent by GAP, we determined the following six concerns were appropriate for investigation by OIA:

- There was an inordinate delay in completing the Region V and OI reports of investigation/inspection of alleged violations of the Commission's regulations at PVNGS.

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- NRC Region V inspection failed to meet minimum standards of inspection/investigation in that allegations were communicated to the licensee for resolution prior to NRC inspection.
- Region V failed to protect the identity of "whistleblowers."
- NRC disregarded the provisions of the FOIA in response to a GAP request for information.
- Region V violated NRC policy regarding communications of inspection findings to utility personnel.
- OI did not respond to GAP inquiries regarding the progress/conduct of the investigation, i.e., OI Headquarters failed to answer a GAP letter questioning the OI investigation of Gunderson's allegations and OI Region V refused to discuss the status of their investigation during a telephone conversation with GAP.

OIA investigation into the first issue substantiated what has been described as an inordinate delay by OI in issuing a report concerning its investigation of Gunderson's allegations. This belief is supported by the facts that: the investigation began on May 26, 1982 was essentially completed in June 1982; several reinterviews were conducted in April 1983; a draft final report was submitted by Region V/OI to OI Headquarters on July 5, 1983; and the final OI Report of Investigation was issued on November 3, 1983. Concern over the delay in completing and issuing the OI Report of Investigation was addressed in the Chairman's letter of December 12, 1983, to Congressman Morris K. Udall in which Chairman Palladino agreed that NRC follow-up on the allegations took too long to conclude.

Our review of GAP's fourth concern, NRC's processing of a FOIA request from GAP for information pertaining to the OI investigation of Gunderson's allegations, determined that although the FOIA request was received by NRC on March 31, 1983, the bulk of the documents requested by GAP were not released by NRC until November 10, 1983. Significant events occurring during this seven month period were an April 28, 1983, partial response by NRC to GAP which did not mention 300 OI documents pertaining to the Gunderson investigation; a lawsuit filed by GAP in U.S. District Court, Washington, DC, on July 13, 1983, seeking the records and information responsive to its FOIA request; and the ultimate release of over 300 documents by NRC on November 10, 1983, which was subsequent to the OI report of November 3, 1983. NRC response to the FOIA request was delayed pending resolution by NRC staff of several issues regarding the disclosure of records pertaining to ongoing OI investigations. Additionally, because OI was under pressure to finalize investigations, a decision was made to devote available OI staff to conduct investigations and to give the processing of FOIA requests a lower priority. This caused further delay as the NRC staff debated on what office would review the documents and process the FOIA request.

OIA investigation into the remaining four concerns did not disclose any improper release of allegations or inspection/investigation findings to the licensee nor any breach of confidentiality by NRC personnel during the handling of Gunderson's allegations. Similarly, we did not substantiate any impropriety by NRC personnel in responding to GAP inquiries about the

progress/conduct of the OI investigation. With respect to Roger Fortuna's handling of a February 28, 1983, letter from GAP, OIA learned that the language in the letter led OI to decide no NRC action in response to the letter was required until further information was submitted by GAP. Consequently, the letter was placed in a mail basket on Fortuna's desk until a press inquiry to OIA and a June 13, 1983, article in an Arizona newspaper, critical of OI's handling of the matter, caused the letter to be referred for OIA review.

Attachment:

As stated *see Rpts*

cc: W. Dircks, EDO (2)
B. Hayes, w/o attach

