



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

January 3, 1990

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

Dear Mr. Chairman:

Re: Roger B. Clough, et al. v. United States Nuclear Regulatory
Commission, et al., No. 89-CV-1496 (N.D.N.Y.)

Steven A. Hiett, et al. v. The Pacific Gas and Electric Co.,
No. C 89-4569 FMS (N.D.Cal.)

In Clough, employees (and labor unions representing employees) with access to the Fitzpatrick nuclear power plant in Lycoming, New York, have brought suit against the NRC and against the plant operator, the Power Authority of the State of New York (PASNY), to challenge random drug testing of PASNY employees with access to the Fitzpatrick plant. The PASNY random testing plan is set to take effect on January 3, 1990, pursuant to the NRC's fitness for duty regulations, 10 C.F.R. 26.1 et seq.

The plaintiffs' basic position is that the random testing requirement violates constitutional rights to privacy and due process. The Department of Justice is representing the NRC before the district court. We are arguing that the suit against the NRC lies, if anywhere, in the court of appeals, and that in any event the NRC regulations are fully constitutional. Plaintiffs were seeking a temporary restraining order, which was denied January 2, 1990, and a preliminary injunction preventing implementation of the random drug testing requirements. The case is set for hearing on January 19, 1990 on the application for a preliminary injunction and on the NRC's motion to dismiss the complaint.

In Hiett, a group of employees at the Diablo Canyon nuclear power plant in Avila Beach, California, have brought suit in district court against the plant operator, PG&E, to challenge random drug testing requirements imposed by PG&E pursuant to the NRC's fitness for duty regulations, 10 C.F.R. 26.1 et seq. The NRC is not named as a defendant in the suit. Nonetheless, we are consulting with the Department of Justice on whether to intervene as a defendant to defend the NRC regulations. At the least, we will file a brief as an amicus curiae justifying our rules. On December 29, 1989, the district court entered a

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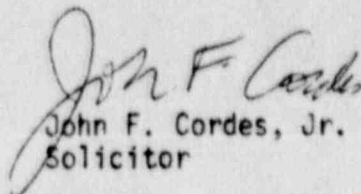
The Honorable John Breaux

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temporary restraining order temporarily preventing PG&E from implementing random drug testing. The order was entered ex parte; the court heard no presentation by the NRC or the utility. A preliminary injunction hearing is scheduled for January 10, 1990.

We will keep you advised of pertinent developments in these cases.

Sincerely,


John F. Cordes, Jr.
Solicitor

cc: The Honorable Alan K. Simpson



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

January 3, 1990

The Honorable Philip Sharp, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Re: Roger B. Clough, et al. v. United States Nuclear Regulatory Commission, et al., No. 89-CV-1496 (N.D.N.Y.)

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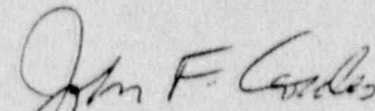
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John F. Cordes, Jr.
Solicitor

cc: The Honorable Carlos J. Moorhead



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

January 3, 1990

The Honorable Morris K. Udall, Chairman
Subcommittee on Energy and the Environment
Committee on Interior and Insular Affairs
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

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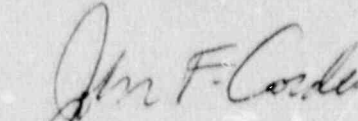
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John F. Cordes, Jr.
Solicitor

cc: The Honorable James V. Hansen



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

January 3, 1990

The Honorable Tom Beville, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

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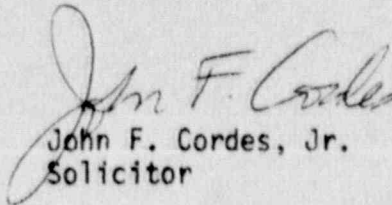
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John F. Cordes, Jr.
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cc: The Honorable John T. Myers



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

January 4, 1990

The Honorable J. Bennett Johnston, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States Senate
Washington, D.C. 20510

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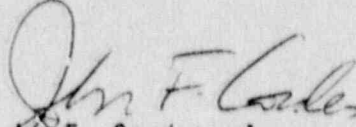
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cc: The Honorable Mark O. Hatfield