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Congress of the United States  
House of Representatives  
Washington, D.C. 20515

June 28, 1984

COMMITTEES:

JUDICIARY

SUBCOMMITTEE ON ADMINISTRATIVE LAW  
AND GOVERNMENTAL RELATIONS

SUBCOMMITTEE ON MONOPOLIES AND  
COMMERCIAL LAW

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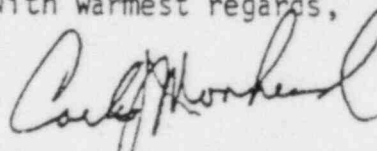
Chairman Nunzio J. Palladino  
Commissioner Victor Gilinsky  
Commissioner Thomas M. Roberts  
Commissioner James K. Asselstine  
Commissioner Frederick M. Bernthal  
United States Nuclear Regulatory Commission  
1717 H Street, N.W.  
Washington, D.C. 20555

Dear Sirs:

I want to extend my appreciation to you for your testimony at the Energy Conservation and Power Subcommittee hearing last week. Unfortunately, a scheduling conflict prevented me from fully participating in the hearing. I would have liked to have personally explored the topic of NRC management with you. To facilitate our Subcommittee consideration of this matter, I would appreciate your written response to the attached questions by July 20, 1984. Your response will be included in the hearing record.

Thank you for your attention to this matter.

With warmest regards,



Carlos J. Moorhead  
Ranking Minority Member  
Subcommittee on Energy  
Conservation and Power

CJM:rf

Enc. (1)

cc: Hon. Richard L. Ottinger

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## I. NRC MANAGEMENT OF LICENSING PROCEEDINGS

### A. Last Minute Allegations

I am sure that you are aware of the recent trend in many licensing proceedings for intervenor organizations to file large numbers of allegations just before Licensing Boards or the Commission are ready to render a final decision. This has happened at Diablo Canyon, where the NRC has been bombarded by literally hundreds of allegations. These allegations naturally delay decisions while they are investigated.

- (1) Have you investigated the possibility that these "last minute allegations" are not being filed to raise legitimate safety concerns, but are filed in bad faith solely for purposes of delay?
- (2) (a) Have you investigated whether the groups which are filing these allegations are actually saving up allegations until the last minute, and then filing them at the last possible moment?  
(b) Would you consider such action ethical?
- (3) Are you evaluating the steps you should take to protect the integrity of the administrative process from last minute allegations?
- (4) (a) Have you looked into whether the organizations filing the allegations have "screened" the allegations for substance before they file the allegations?  
(b) Should the NRC encourage such a "screening process"?  
(c) If so, what actions?

- (5) (a) Should the NRC take action to protect the administrative process from last minute allegations filed for the purpose of delay?
- (b) Or, is the process being burdened by a large number of allegations being filed late in a proceeding the price you are willing to pay to encourage the filing of allegations?

B. Diablo Canyon

- (1) What happened to the Commission's decisionmaking process that led the Commission to give the opinion of one staff engineer, Mr. Isa Yin, equal weight with the opinion of the entire reviewing staff and NRC management in making the decision about reinstating the low power license for Diablo Canyon?
- (2) (a) Have you learned anything from this incident?
- (b) If so, what?

C. Three Mile Island Restart

- (1) What is the current schedule for obtaining a decision in TMI-1 restart?
- (2) What remains to be done before the Commission is prepared to make a decision on TMI-1 restart?

D. Chairman Palladino's Memorandum on Licensing Delays

- (1) Please report on the status of the Commission's initiative to expedite several licensing proceedings that Chairman Palladino began with his March 20 memorandum?

- (a) Were there any meetings, correspondence or other communications with Members of Congress or their staff concerning the March 20 memorandum?
- (b) If so, please describe these communications in detail and also provide copies of such communication for possible inclusion in the Hearing Record.

D. Commission's Progress on Implementing NRC Regulatory Reform Task Force's Recommendations on Regulatory Reform

- (1) What is the status of the Commission's implementation of the Regulatory Reform Task Force's recommendations on regulatory reform?
- (2)
  - (a) When did the Task Force make its recommendations?
  - (b) Why is it taking so long to act on these recommendations?
- (3) Why did the Commission put the recommendations out for public comment in the form of "proposed proposals"?
- (4)
  - (a) Is the Regulatory Reform Task Force still working on reform?
  - (b) How many people are dedicated to this task?
  - (c) What is the Commission doing to support the Task Force's efforts?
  - (d) What actions is the Commission taking to coordinate the reform effort and make sure the various divisions of the NRC are supporting each others efforts and not acting independently of one another?
  - (e) What is the Commission doing to ensure that each office of the NRC, which may be concerned with protecting their respective bureaucratic turf, are in fact supporting the reform effort?

- (5) Please comment on whether the following reforms would improve the ability of the NRC to manage the licensing process. (All of these reforms are part of the package the Commission recently published for public comment.)
- (a) raising the threshold for contentions
  - (b) requiring submission of complete cross-examination plans
  - (c) return to the immediate effectiveness rule
- (6) Why doesn't the NRC make greater use of generic rulemaking to decide factual issues which are repeatedly raised in licensing proceedings?

E. Relationship of the NRC "Office of Investigations" to Licensing Proceedings

- (1) Please describe the Commission's efforts to ensure that the activities of the Office of Investigations are coordinated with licensing proceedings?
- (2) (a) Are there constitutional problems with the licensing boards being apprised of the status of OI investigations, and therefore having their decisions influenced, without the licensees and intervenors being given access to the same information and being able to respond?
- (b) Doesn't this violate at least the spirit of the ex parte provisions of the Administrative Procedures Act?

II. NRC'S MANAGEMENT OF STAFF

- A. Why does the Commission feel it is superior management to have a number of offices essentially performing the same or overlapping functions?

EXAMPLES:

- (1) Offices of General Counsel and Executive Legal Director
- (2) Offices of Inspection and Enforcement, and Investigations

- B. Wouldn't it be better to have a single legal office and a single investigations office, as suggested by the Appropriations Committee?

III. NRC MANAGEMENT OF REGULATORY REQUIREMENTS

A. NRC Development of Regulation on Backfitting

- (1) Please state what progress you've made since you testified before our Subcommittee last fall towards developing a new regulation to govern the imposition of backfits?
- (2) When do you expect to publish a final backfitting rule in the Federal Register, and when do you expect this rule to become effective?
- (3) What are you relying on in the meantime?
- (4) Is my understanding correct that the staff does not have to justify the backfit unless the utility formally files an appeal challenging the imposition of the backfit?

(5) What have you as a commission and managers of the NRC done to ensure that the Office of Nuclear Reactor Regulation is faithfully executing the "interim" guidance on backfitting you provided last summer?

(6) (a) Do you know whether the Office of NRR has pressured utilities not to raise backfitting issues by saying that challenges or opposition to certain backfits will lead to delay in the issuance of their Safety Evaluation Reports?

(b) I assume this is not the position of the Commission, is it?

B. NRC Management of Imposition of New Regulatory Requirements

(1) Have you, as the managers of the NRC, evaluated the problems that new or modified regulatory requirements pose for nuclear construction projects and reactors already in operation?

(2) (a) If so, have you come to any conclusions as to how the imposition of new regulations can be tailored to facilitate the utilities' transition to stricter requirements?

(b) If not, don't you think this should be done in light of cases like Byron, where utilities' and their contractors quality assurance programs became caught in the NRC's development of ever more stringent quality assurance requirements?

(3) (a) Has the Commission ever reduced or made more lenient a regulatory requirement?



- (b) How should NRC management conduct itself to re-evaluate the need for particular requirements, and perhaps reduce a regulatory standard?
  - (c) Are you making any progress on redefining the source term for nuclear reactors?
- (4) (a) Have you evaluated the "hostage" problem which many critics of the NRC have said is the result of your regulations on emergency planning?
- (b) What are you doing to develop a solution to the problem illustrated by Shoreham, where the state and counties refusal to participate in emergency planning could conceivably keep the utility from getting an operating license?
- (5) Have you re-evaluated the imposition of fines as a means for encouraging corrective actions?