

GOVERNMENT ACCOUNTABILITY PROJECT

1555 Connecticut Avenue, N.W., Suite 202

Washington, D.C. 20036

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(202) 232-8550

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October 31, 1984

Jack R. Goldberg, Esquire
Office of Executive Legal Director
Nuclear Regulatory Commission
Washington, D.C. 20555

DOCKET NUMBER
PROD & UTIL PT

50-289 SP

Dear Mr. Goldberg:

I am writing to respond to your letter of October 30, 1984 which rather than correcting the record in fact only misstates the substance of a conversation we held on Monday, October 22, and misinterprets a response by TMIA to one of the NRC Staff's interrogatories.

On October 22, I spoke to you to request that you determine if Mr. Gamble would be allowed access to certain of his previous files in the Office of Inspector and Auditor ("OIA") in order to prepare his testimony. At that time you asked me to detail for you the files to which he would like access. You stated at that time that you would attempt to determine if the documents were available but could make no promises about the documents' availability. You stated that OIA, as I already knew, was an office which reports directly to the Commission and is not part of the NRC Staff. I stated that I understood that and would appreciate whatever efforts you could make to see if Mr. Gamble would receive these documents in an expeditious fashion.

At the prehearing conference on October 26, 1984, I spoke to you again to determine the status of your search for the documents. At that time you informed me that you would check if you had an opportunity but did not know the status of the search at that time.

The previous day, October 25, TMIA had filed a response to the NRC Staff's late-filed interrogatories which required extensive information about Mr. Gamble's intended testimony. In response to Interrogatory 17, TMIA stated that it would supplement or modify a response if necessary based on the NRC Staff's representation that it would attempt to provide Mr. Gamble access to OIA files. In fact I had requested, and I presumed you had agreed to attempt to obtain for Mr. Gamble, certain OIA files which he had used in the course of his participation in the NUREG-0760 investigation.

My understanding was confirmed when you sent to me under cover of an October 30, 1984 letter some of the requested files.

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Given the fact that we apparently communicated to the extent that the NRC Staff provided me with some files which I had requested, I cannot understand in what way it is a misstatement to say that you represented to me that you "will attempt to provide Mr. Gamble with access to OIA files..."

Perhaps your problem with the wording of TMIA's interrogatory response is that it refers to "files" instead of "specific documents." I have looked up in Webster's dictionary the definition of file and found that one definition is "an orderly arrangement of papers, cards, etc., as for reference." The documents which I requested and you provided me clearly fall within that definition of file. So, I do not understand your failure to understand TMIA's response to Interrogatory No. 17 in TMIA's response to the NRC Staff's interrogatories to TMIA.

After I reviewed the documents you have sent I find that a number of them are not in fact the documents we requested. Given your statement to me that these are all the files in OIA responsive to my specific request, I request that you make a search of other NRC offices to determine if the agency has the requested documents. I have conferred with Mr. Gamble who gave me some information on where you might attempt to find these documents.

First, the tasking memorandum from Chairman Ahearne regarding OIA's role in the IE investigation into information flow is an official NRC document. I believe its date is March 21, 1980. It is a formal agency record which defined OIA's role in this investigation and as such I am sure is contained in numerous official agency files.

Second, the draft IE Report on information flow was transmitted to the Commission for its review prior to issuance in January, 1981. Therefore, not only is IE likely to have maintained a copy, but the Secretary for the Commission will likely have maintained a copy.

Third, the drafts compiled by Mr. Haynes and Mr. Fisher early in the investigation are probably maintained in IE files.

I suggest that you do a search of IE files and the Secretary's files for the requested documents.

In addition, given that I believe you will find some documents responsive to our specific request in those files, I would suggest that you review these files to determine if there are documents in these files responsive to TMIA's document requests.

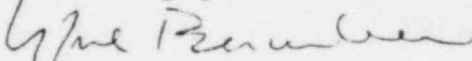
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Certainly the documents which have been produced in the PDR pursuant to TMIA's document requests and Ms. Doroshow's Freedom of Information Act request cannot be a complete response since many documents which we have reason to believe exist have not been produced. I would appreciate your immediate attention to this matter.

In response to the second point in your letter, as I told you over the phone, TMIA will provide, under separate cover, the appropriate affidavits to its responses which were served on you in a timely fashion. It has been the practice in this case, at least insofar as discovery between licensee and TMIA, that affidavits affirming the accuracy of interrogatory responses have been provided at later times under separate cover from the interrogatory responses. I have also been used to a similar practice in other NRC cases for discovery requests made of, and responded to by, the NRC Staff. I assumed, perhaps wrongly, that you were familiar with the practice. In any event, both TMIA and Mr. Gamble will be providing affidavits to affirm the TMIA responses provided to the NRC Staff's interrogatories to TMIA.

Finally, I note that Ms. Finkelstein had apparently sent me a letter on October 25, 1984 detailing certain documents identified by OIA as "possibly being responsive to TMIA's First Request for Production to the NRC Staff". I have never received that letter. In addition, although you apparently forwarded these documents to me on October 30, the documents which Ms. Finkelstein had told me she listed in her letter were not placed in the Public Document Room by Friday, as we were told would be done. You might wish to check to determine what happened to Ms. Finkelstein's letter of October 25 and what happened to the documents which are listed in that letter as available in the Public Document Room.

Sincerely yours,



Lynne Bernabei
Attorney for TMIA

cc: Service List