

Board request that OI "conduct a high priority investigation and that a final report be made to the Board and the parties prior to conclusion of the evidentiary hearings on the issue of harassment and intimidation. CASE's Motion, p.6. CASE states that referral will "assure [that] the matter is thoroughly investigated by persons uniquely qualified to do so and to whom investigation of potential criminal conduct by Applicant... is assigned..." Id. The NRC Staff ("Staff") hereby responds to CASE's Motion.

II. BACKGROUND

The Ron Jones Incident occurred at the September 20, 1984 hearing session in the hearing room at the Ramada Inn Central, Forth Worth, Texas. In brief, CASE claims that Mr. Jones' high school transcript was given to CASE representatives in circumstances that suggest that Applicants were attempting to intimidate Mr. Jones from testifying on behalf of CASE in the CPSES operating license proceeding. The Ron Jones Incident is set forth at Tr. 17,936-53.

CASE filed a discovery request against Applicants on September 24, 1984. ^{2/} Applicants responded to the CASE discovery request on October 2, 1984. ^{3/} CASE then filed its Motion for Referral of the Ron Jones Incident.

^{2/} CASE's Motion for Production of Documents and Interrogatories.

^{3/} Applicants' Response to CASE's Motion for Production of Documents and Interrogatories.

III. DISCUSSION

CASE's Motion raises the question of whether the Licensing Board has the authority to direct OI to initiate an investigation. We have found that the Commission adopted policies related to the functioning of OI, as memorialized in a memorandum for Ben B. Hayes, Director, Office of Investigations from Samuel J. Chilk, Secretary dated March 4, 1984. (copy attached). Policy 4 states, in part, that "OI investigations may be initiated at the request of the Commission, the EDO, or a Regional Administrator, or on the initiative of the Director, OI...." While the Board does not appear to have the authority to direct the initiation of an OI investigation into the Ron Jones incident, it may refer the matter to the Director of OI, who, on his own initiative may initiate an investigation. The Staff does not oppose referral if the Board chooses to do so.

On the other hand, there does not appear to be any need at this time for the Board to decide now that the record should be kept open, in the event that OI undertakes an investigation, until the Board and parties receive the OI report on this subject. A substantial amount of evidence has been received into the record on a number of allegations of intimidation. The Board and parties are also aware of the EG&G, Idaho, Inc. ("EG&G") report commissioned by the Staff on whether a climate of intimidation existed at CPSES. The Board and parties are also aware, and the Board has directed the release of, a substantial number of OI Reports ^{4/} concerning intimidation and other matters at CPSES. Memorandum and

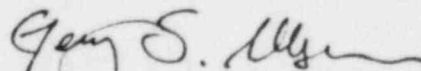
^{4/} Board Notification 84-149 (August 23, 1984).

Order (Directing Release of OI Reports) (September 17, 1984). Finally, as indicated in the "NRC Staff Report on Status and Schedule for Addressing Hearing Issues" (October 19, 1984), the Staff's Technical Review Team's finding will be relevant to the overall programmatic QA issue in the operating license proceeding. Once these issues are litigated, there may be little need to hold the record open to allow litigation of relatively discrete matter involving one incident of alleged intimidation.

IV. CONCLUSION

In conclusion, the Staff has no objection to the Board's referral of the Ron Jones Incident to OI if the Board concludes that such referral is warranted. If the Board decides to refer the Ron Jones Incident to OI, the Board should defer ruling whether the OI Report is necessary for a full and complete record on the issues in this proceeding until the Staff has developed a position on intimidation issues and these intimidation issues have been litigated. The parties will then have the opportunity to argue whether the state of the record is such that the Board should continue to hold open the record until release of the OI Report.

Respectfully submitted,


Geary S. Mizuno
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 30th day of October, 1984



OFFICE OF THE
SECRETARY

NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

March 4, 1983

MEMORANDUM FOR: Ben B. Hayes, Director
Office of Investigations

FROM: Samuel J. Chilk, Secretary

SUBJECT: OI POLICIES

This is to inform you that the Commission has unanimously adopted the Policies elaborated in your February 25, 1983 memorandum, with the following exceptions:

- A. Policy 4 as adopted by the Chairman and Commissioners Ahearne and Roberts should read, "OI investigations may be initiated at the request of the Commission, the EDO, or a Regional Administrator, or on the initiative of the Director, OI. The Director, OI, will promptly inform the Chairman of all investigations commenced by OI."

Commissioners Gilinsky and Asselstine would have preferred to have allowed individual Commissioners to initiate such investigations.

Commissioner Roberts would have preferred to have limited the Director, OI's initiation of such investigations by requiring the concurrence of the Chairman.

- B. Policy 6 should be held in abeyance pending receipt of the report of the Advisory Committee on Rights of Licensee Employees Under Investigation and a Commission decision on this policy.
- C. Policy 7 should be revised to read, "OI investigators may grant requests for confidentiality during the course of an investigation. NRC will respect an OI investigator's promise of confidentiality unless and until the interviewee's testimony is required for an administrative or judicial proceeding or the interviewee discloses the testimony. The identity of persons not subject to the reporting requirements of 10 CFR Part 21 who report to the Commission information addressed by that regulation will also be accorded confidentiality as required by 10 CFR 21.2."

A final version of the adopted policies is attached.

cc: Chairman Palladino
Commissioner Gilinsky
Commissioner Ahearne
Commissioner Roberts
Commissioner Asselstine
Commission Staff Offices
ASLB^F
ASLAP^F
ACRS
PDR
EDO

OI POLICY STATEMENTS

POLICY 1

OI will perform thorough, timely and objective investigations. This will include investigations of allegations of wrongdoing by individuals or organizations, other than NRC employees or NRC contractors, which are within the scope of NRC authority.

POLICY 2

OI investigations will be conducted in accordance with general procedures and practices of other investigatory agencies.

POLICY 3

OI investigators may be delegated authority to administer oaths or affirmations during the course of OI investigative efforts.

POLICY 4

OI investigations may be initiated at the request of the Commission, the EDO, or a Regional Administrator, or on the initiative of the Director, OI. The Director, OI, will promptly inform the Chairman of all investigations commenced by OI.

POLICY 5

The criteria established for initiating an inspection or an investigation do not preclude concurrent conduct of both types of activity.

POLICY 7

OI investigators may grant requests for confidentiality during the course of an investigation. NRC will respect an OI investigator's promise of confidentiality unless and until the interviewee's testimony is required for an administrative or judicial proceeding or the interviewee discloses the testimony. The identity of persons not subject to the reporting requirements of 10 CFR Part 21 who report to the Commission information addressed by that regulation will also be accorded confidentiality as required by 10 CFR 21.2.

POLICY 8

Investigators and others assigned to OI investigations shall identify, collect, and preserve evidence relevant to investigations which would have potential value in an enforcement or other proceeding. When necessary, OI may request orders or subpoenas to preserve or obtain such evidence.

POLICY 9

Investigators and others assigned to OI investigations shall attempt, when warranted by the importance to the investigations, to witness and/or photographically record the violation or condition that is the focus of the investigation.

POLICY 10

Investigators and others assigned to OI investigations will be alert for indications of deliberate violations of NRC regulations or Federal statutes and will pursue relevant leads. They will also make reasonable efforts to determine the extent of involvement or awareness by management of licensees, applicants, vendors or other entities in any instances of deliberate violation of NRC regulations or Federal statutes.

POLICY 11

Other NRC components will provide OI with timely legal and technical assistance consistent with its impact on the overall NRC mission.

POLICY 12

OI may use the investigative support of Federal, State or local agencies or other organizations during the course of OI investigations.

POLICY 13

The Office of Inspector and Auditor (OIA) shall be the primary office responsible for referral, and related discussions of investigative matters with the Department of Justice (including the U.S. Attorneys and the Federal Bureau of Investigation). Emergency situations requiring prompt field referral to the DOJ and/or FBI should be made without delay or consultation with OIA. Referrals for prosecution or investigation, inquiries or the transmittal of investigative information to these agencies shall be promptly documented in writing with copies provided to offices concerned.

POLICY 14

Investigative activity of OI may occasionally develop information within the jurisdiction of another agency. This information will be routinely provided to that agency under appropriate controls.

POLICY 15

OI shall keep NRC components which request OI investigations informed of significant developments in ongoing investigations.

POLICY 16

The requestor of an OI investigation and any NRC component aware of such ongoing investigation shall advise OI of any additional information it receives/develops during the pendency of the investigation.

POLICY 17

OI shall advise cognizant NRC components of safety issues discovered as the result of an ongoing OI investigation.

POLICY 18

With the exception of significant safety issues, information regarding an ongoing OI investigation will not be disclosed by any NRC employee outside NRC without the specific approval of the Director, OI, or his designee.

POLICY 19

Investigators and others assigned to an OI investigation or inquiry will normally not discuss the substance of ongoing OI inquiries and investigations with licensees or other non-NRC personnel in entrance or exit interviews, except safety items requiring immediate corrective action.

POLICY 20

Investigators will thoroughly and accurately document their investigative efforts and substantive information developed during investigation.

POLICY 21

OI investigative reports shall be in sufficient detail to permit an informed managerial review of the issues under investigation, and to permit an NRC determination as to the need for enforcement or other corrective actions.

POLICY 22

Reports of Investigation (ROI) prepared by OI investigators should contain an objective recitation of all relevant facts developed in the course of the investigation. They should not contain either the opinions or conclusions of the investigators. Opinions or conclusions of persons interviewed are permissible, however. In a memorandum transmitting the Report of Investigation to the NRC action office, OI management will normally include overall conclusions regarding what OI believes occurred in the matter investigated or its opinion as to the weight of the evidence. OI will not make a determination as to whether the occurrence constitutes a violation or furnish recommendations for enforcement/corrective action.

POLICY 23

OI reports of investigation, while in preparation or review, will not be circulated outside NRC without specific approval of the Chairman.

POLICY 24

OI reports of investigation, while in preparation or review, will normally not be circulated to other NRC offices. In those cases where OI perceives the existence of safety questions requiring prompt attention or determines that it would be of substantial benefit to the accuracy of the final report, OI may have other NRC officials review, and comment on pertinent portions of the report. Final OI investigative reports will be provided to the appropriate NRC officials.

POLICY 25

The Office of Inspector and Auditor retains responsibility for investigations regarding NRC employee and contractor misconduct and internal waste, fraud and abuse.

POLICY 26

OI shall be informed promptly by NRC employees of all allegations which involve wrongdoing, other than allegations of wrongdoing on the part of NRC employees or NRC contractors, which are the responsibility of OIA.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
TEXAS UTILITIES ELECTRIC) Docket Nos. 50-445/2
COMPANY, et al.) 50-446/2
)
(Comanche Peak Steam Electric)
Station, Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO CASE'S MOTION FOR REFERRAL OF THE RON JONES INCIDENT TO THE NRC'S OFFICE OF INVESTIGATIONS" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or deposit in the Nuclear Regulatory Commission's internal mail system (*), or by express mail or overnight delivery (**), or by hand delivery (***), this 30th day of October, 1984:

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Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Herbert Grossman, Alternate Chairman***
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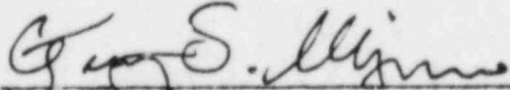
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