



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

August 16, 1983

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

FROM: *for* *George S. Messersmith*
James J. Cummings, Director
Office of Inspector and Auditor

SUBJECT: CONTACTS WITH THE DEPARTMENT OF JUSTICE

The purpose of this memorandum is to inform the Commission of recent communications with the Department of Justice (DOJ) concerning TMI-related litigation.

On August 8, 1983, the Office of Inspector and Auditor (OIA) received a telephone call from Mr. James West, Assistant U. S. Attorney, Middle District of Pennsylvania, Harrisburg, Pennsylvania in response to my August 3, 1983, letter. Mr. West requested additional information concerning NRC's intention to release the NRC investigation report reporting the alleged material false statement made to NRC by GPU and which the NRC has proposed a \$140,000 civil penalty. Arrangements were subsequently made for a conference call between Mr. West and appropriate NRC personnel on August 9, 1983.

On August 9, 1983, Mr. West was contacted by Jane Axelrad, Director, Enforcement Staff, IE. Also participating in the call were: James Leiberman, ELD; James Fitzgerald, OGC; Roger Fortuna, OI; Hollis Bowers, OIA; and Albert Puglia, OIA.

Mr. West was advised that the NRC Commission had decided to release the NRC investigation report to GPU upon receipt of a written request and appropriate justification. In addition, the Commission had instructed the NRC staff to advise the DOJ of its intention to release the report. West was also informed that failure to release the report to GPU was contrary to NRC's standard procedure in such matters and would result in protracted litigation in the matter.

West advised he was pursuing a criminal case and a prosecution was anticipated in the next two to six months and release of the report at this time could jeopardize the prosecution. West, upon hearing the NRC rationale for

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releasing the report, viewed the NRC action in the matter, as a gratuitous and voluntary gesture and recommended the release of the report not occur. West also indicated he would prepare a written request to the NRC formalizing his request.

On August 10, 1983, Mr. Jack Goldberg, NRC Attorney, ELD contacted Mr. West to advise him that he had been contacted by a private attorney, Mike McBride. McBride represents Mr. James Floyd a Metropolitan Edison employee who may be a subject in the Grand Jury leak rate investigation at Harrisburg, Pennsylvania. Goldberg advised West that Attorney McBride had expressed a desire to have information contained in the Faegren Benson Report and NUREG 0986 put before the Grand Jury. In addition, Attorney McBride requested the NRC make available for interview NRC employees, Donald Haverkamp and the authors of NUREG 0986.

Mr. West indicated he did not want Attorney McBride talking to potential witnesses before he fully discussed the matter with him. Mr. West emphasized that any potential witness can talk to anyone but that as the government prosecutor in the case it is his desire that no one interfere with the ability of potential Government witnesses to recall facts. Mr. West expressed that he perceives significant problems being generated in developing a viable prosecution should these interviews occur. Mr. West went on to say it is an NRC agency decision to allow its employees to be made available to McBride but as the DOJ representative in the matter he recommends that it not be done.

Mr. West then requested a copy of NUREG 0986 which Mr. Goldberg agreed to furnish him. In addition, Mr. West requested NRC's assistance in furnishing an NRC employee to assist him in developing the leak rate prosecution. Mr. West requested an employee with a high degree of expertise in technical requirements surrounding leak rates, and NRC regulatory requirements, etc. This individual would act as a Government expert witness in any subsequent prosecution. Mr. West was then advised by OIA that his request would be forwarded to the Commission for consideration and he would be subsequently advised of a decision in the matter.

Mr. West terminated the telephone conversation by expressing his personal frustration over NRC conduct concerning the pending criminal cases that have been referred to him by the NRC.

cc: W. Dircks, EDO
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H. Plaine, OGC
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