

ACRS-2974

C E R T I F I E D

T.. S. Kress

June 8, 1995

Summary/Minutes of the  
ACRS Planning and Procedures  
Subcommittee Meeting  
May 3, 1995  
Rockville, Maryland

The ACRS Subcommittee on Planning and Procedures held a meeting on May 3, 1995, in Room 2B-1, Two White Flint North Building, Rockville, Maryland. The purpose of the meeting was to discuss matters related to the conduct of ACRS business and internal organizational and personnel matters relating to ACRS staff members. The meeting began at 1:15 P.M. and adjourned at 5:30 P.M.

ATTENDEESACRS Members

T.S. Kress, Chairman  
R.L. Seale  
J.C. Carroll  
W.J. Lindblad

ACRS Staff

J.T. Larkins  
R.P. Savio  
S. Duraiswamy  
C.A. Harris  
R. Summers

ITEMS DISCUSSED BY THE SUBCOMMITTEE

1. FINANCIAL DISCLOSURES FOR SGEs (Open) (JTL/CAH)  
OGE has directed that those Special Government Employees who have multiple-year term appointments nevertheless be required to complete a new entrant report every year. A memorandum dated April 11, 1995 (Attachment 1, pp. 1-2) states that an agency may collect these new entrant reports simultaneously once a year, regardless of the date of each SGE's initial appointment. OGC will continue to request reports as before. Government Ethics training will be given next month to ACRS members.

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PDR ACRS

Conclusion

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Members are reminded to complete the Standard Form 278, "Public Financial Disclosure Report, Executive Branch," by May 15th.

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2. REAPPOINTMENT OF MEMBERS (Open) (JTL)  
On April 18, 1995, the Commission approved the reappointment

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of Dr. Kress to the ACRS (Attachment 2, pp. 3-4). The memorandum also requests that, in future, the Commission be advised in sufficient time to allow for a slate of possible candidates to be developed. In a separate letter, the Commission plans to provide guidance to revise the current selection process.

#### Conclusion

SECY will revise the selection process with ACRS staff input. ACRS staff will draft a memorandum to address the need to fill expected vacancies in 1996.

### 3. REVIEW TEAM'S REPORT ON ACRS/ACNW SUPPORT FUNCTIONS (Open) (JTL/CAH)

By COMSECY-95-014, dated March 27, 1995 (See April 5, 1995 Handout), the EDO provided the Commission with a report based on a review of ACRS/ACNW support functions conducted by a special internal review team. The review team recommends some minor transfer of functions from the ACRS/ACNW to other offices (Attachment 3, p. 5); increased independent oversight for numerous functions; revision of reimbursement guidelines, and the establishment of an ad hoc consultation panel to address non-routine reimbursement requests.

Commissioner de Planque has requested the comments of the ACRS and ACNW, or a statement that they have no comments, prior to voting on COMSECY-95-014. ACRS/ACNW comments are required by May 15, 1995. ACRS Members Thomas Kress, Robert Seale and Jay Carroll and ACNW Chairman Martin J. Steindler have provided comments to be considered by the Subcommittee (see Attachment 4, pp. 6-20).

#### Conclusion

The ACRS will respond to this Review Team Report. A letter from the Committee will address the implied changes to the Employment Conditions under which members have been appointed. Dr. Larkins will work with the Review Team on implementing the administrative issues.

### 4. NATIONAL PERFORMANCE REVIEW (NPR) PHASE II (Open) (JTL)

The ACRS/ACNW Executive Director and management staff met with the NPR Steering Committee to discuss the agency's review of regulations and organizational efficiencies envisaged for the year 2000 and beyond. The role of the ACRS/ACNW in the agency's mission and the streamlining that has already been initiated to meet the agency's mandate were also discussed.

#### Conclusion

The Committee is scheduled to hear a presentation on this

subject on May 4, 1995 and it expects to provide a report to the Commission.

5. TERRY OLDBERG LETTERS (Open) (JTL)

During the March 1995 meeting, the Committee considered Mr. Terry Oldberg's paper entitled, "Erratic Measure," as well as Mr. Beckjord's February 17, 1995 response to Mr. Oldberg. Mr. Oldberg then sent another letter to NRC Chairman Selin dated March 17, 1995 (Attachment 5, pp 21-22), stating that Mr. Beckjord's response criticizes Mr. Oldberg's paper rather than reporting the Commission's action on its policy implications.

Mr. Oldberg also sent a letter to Dr. Larkins dated April 1, 1995, in which he requests that, if any ACRS member has a concern about the accuracy of the thesis presented in his paper, it be brought to his attention. In a letter to Mr. Oldberg dated April 3, 1995, Mr. Beckjord informed Mr. Oldberg that Mr. Beckjord's letter of February 17, 1995, addressed the thesis of Mr. Oldberg's paper and the basis for not accepting it, and that the matter is considered closed.

An ad hoc group (Dr. Kress, Dr. Shack, and Dr. Powers) was created to study whether there are any safety implications associated with the issues raised by Mr. Oldberg. The Subcommittee will discuss the comments from the ad hoc committee members and recommend a Committee position.

Conclusion

The ad hoc group will report to the Full Committee and recommend final action at the May 4-5, 1995 meeting.

6. FUTURE ACTIVITIES (Open) (SD)

A separate future activities handout was given to the Subcommittee and discussed. These activities will again be discussed at a Future Activities session of the Full Committee meeting.

7. MEMBERS' ISSUES (Open/Closed) (Members)

Travel

The Service Fee charged by some travel agents cannot be reimbursed because the NRC travel agent does not charge NRC for such services.

Communications

Greater attention will be paid to ensuring that important documents are sent by priority mail when necessary. The BBS

will be monitored daily until we obtain an 800 number for Internet/e-mail service.

#### INPO Reports

Arrangements have been made to obtain additional copies of INPO reports so that they can be provided to all ACRS members.

#### 8. TRAVEL

Travel requests were approved for Dana Powers to attend a fuel burn-up meeting in France and for Dr. Miller to attend an ISA/EPRI meeting in California. Commission approval has been received for Dr. Kress' trip to Turkey and for Dr. Catton's trip to Brazil.

9. IG RESPONSE TO COMMITTEE (Open/Closed)  
(JTL/RPS/RS) Review of ACRS proposed responses to the IG letter dated March 29, 1995.

#### Conclusion

The Subcommittee discussed the proposed responses to the Inspector General's memorandum and will make recommendations to the Full Committee.



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

April 11, 1995  
DO-95-019

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Stephen D. Potts  
Director *Stephen D. Potts*

SUBJECT: Confidential financial disclosure and special Government employees serving in a position for more than one year

BACKGROUND

A special Government employee (SGE) is defined at 18 U.S.C. § 202 as an officer or employee who is to perform temporary duties "with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days...." Based on this statutory definition and long-established personnel practice, it is our understanding that an individual is appointed with SGE status for one-year increments, and that for each such increment the agency must estimate whether the appointee will serve not more than 130 days in the following 365 days. If the agency does not formally reappoint an SGE who continues to serve after one year, it must at least redesignate the appointee as an SGE by reestimating the number of days' anticipated service during the following year. See, for example, Office of Government Ethics (OGE) Informal Advisory Letter 81 x 24 (July 23, 1981).

Against that background, the regulation on financial disclosure was written to require that all SGEs who are confidential filers complete a new entrant report not only when they are initially appointed but also upon each reappointment or redesignation as an SGE (5 C.F.R. § 2634.903(b)). This ensures continuous disclosure coverage for SGEs who serve longer than one year, since the separate regulatory requirement to file annual incumbent reports does not apply to them (5 C.F.R. § 2634.903(a)).

TERM APPOINTEES

After publishing the financial disclosure regulation in 1992, we discovered that some SGEs were being appointed to terms of more than one year for service on advisory committees or other similar groups, but not being reappointed or redesignated each year as SGEs with a new estimate of days to be served. In order to ensure that they continue to be covered as confidential filers, we commented in our DAEOgram of October 19, 1992, that these "term" SGEs should



file a report on each anniversary of their original appointment, the same as an SGE who is formally reappointed or redesignated.

That DAEOgram also suggested that we might amend the final regulation to more clearly specify this requirement. We do not now believe, however, that such an amendment is necessary. The regulation explicitly requires SGEs to file a confidential financial disclosure report upon reappointment or redesignation, and agencies should be reappointing or redesignating term SGEs each year on the anniversary of their original appointment, as discussed above.

#### DUE DATES

Some agencies have indicated to us recently that it is quite cumbersome to collect additional new entrant reports on the anniversary of an SGE's initial appointment, because that date will vary for each SGE. Recognizing this problem, we have no objection if an agency wishes to collect follow-on new entrant reports simultaneously once each year for all its term SGEs or for groups of term SGEs such as specific advisory committees. This flexibility may also help to promote the purpose of confidential financial disclosure reports by aligning their due dates with a particular meeting of an advisory committee. Agencies do not need to seek further specific authorization from OGE for this limited procedural change.

Follow-on new entrant reports of term SGEs should cover the preceding twelve months from the date of each filing, as required by 5 C.F.R. § 2634.908(b). Any resulting gap in continuity between reports is outweighed by the benefits of flexibility with filing dates which this DAEOgram provides for term SGEs.



OFFICE OF THE  
SECRETARY

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

April 18, 1995

MEMORANDUM TO: John T. Larkins, Executive Director  
Advisory Committee on Reactor Safeguards

FROM: John L. Hoyle, Secretary

SUBJECT: COMSECY-95-015 - REAPPOINTMENT OF DR. THOMAS  
S. KRESS TO THE ADVISORY COMMITTEE ON REACTOR  
SAFEGUARDS

The Commission (with all Commissioners agreeing) has approved the reappointment of Dr. Thomas Kress for an additional term and agrees with the recommendation to amend the process for reappointment.

For future appointments, the Commission should be advised in sufficient time so that it has the option of reappointment of a current member, or completion of the selection process to bring forth a slate of possible candidates.

(ACRS)

(SECY Suspense: 6/16/95)

The Commission has agreed that the selection process for advisory committees should be revised. Guidance regarding the revisions will be provided under separate memorandum.

cc: The Chairman  
Commissioner Rogers  
Commissioner de Planque  
EDO  
OGC  
OCA  
OIG

If the Commission decides to reappoint Dr. Kress, the Committee recommends that the process be amended to permit reappointments without the need for a press release, a notice in the Federal Register, and a screening process. An amended process will not only facilitate reappointments in an expeditious manner but also save valuable time and resources. To solicit nominations with the intent of eventually reappointing Dr. Kress would be wasteful of agency time and resources and misleading to those who applied.

For the reasons noted above, the Committee strongly recommends that the Commission reappoint Dr. Kress for another term. We would appreciate being advised of the Commission's decision as soon as possible.

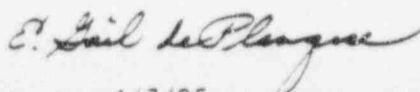
Sincerely,



John T. Larkins  
Executive Director

cc: K. C. Rogers, OCM  
E. G. de Planque, OCM  
SECY

I approve the reappointment of Dr. Thomas Kress to the ACRS for an additional term. For future reappointments, the Commission should be advised in sufficient time so that it has the option of reappointment of a current member, or completion of the selection process to bring forth a slate of possible candidates. I would suggest that a revision of the process be considered that would (1) provide for individuals who have been already reviewed by a screening panel to remain in consideration for a predetermined time (for example, three years) and (2) provide a method for screening only new applicants.





## SUMMARY OF RECOMMENDATIONS FOR ACRS SUPPORT STAFF FUNCTIONS

| <u>FUNCTION</u>  | <u>RECOMMENDATION</u>                |
|--|--------------------------------------|
| Reimbursements   | Transfer to ADM                      |
| Property Management  | Transfer to ADM                      |
| Filing and Maintenance of Group Minutes                        | Transfer to IRM                      |
| Records Management   | Partial transfer to IRM              |
| Travel   | Increased oversight by OC            |
| Compensation   | Increased oversight within ACRS/ACNW |
| Contracts  | Increased oversight by ADM           |
| Budget   | No change                            |
| Mail Sorting and Distribution                                  | No change                            |
| Document Control   | No change                            |
| Response to Public Information Requests                        | No change                            |
| Response to Information Retrieval Requests                     | No change                            |
| Maintenance of Reference Material and Subscription Renewals    | No change                            |
| Protection of Classified, Security and Proprietary Information | No change                            |
| Personnel Management Activities                                | No change                            |
| ACRS/ACNW Fellows Program                                      | No change                            |
| ACRS/ACNW Management Control Program                           | No change                            |

ATTACHMENT 3

Draft #0 - TSK  
4/27/95

The Honorable Ivan Selin  
The Honorable Kenneth C. Rogers  
The Honorable Gail E. de Plaque  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dear Commissioners:

We have reviewed Mr. James M. Taylor's memorandum to you [CONSECY-95-014 (3/27/95)] concerning the review and recommendations of the Special Review Team established to look at ACRS/ACNW administrative support functions.

On the surface, the recommendations of the report appear to be reasonable and benign. We believe, however, that there is a deeper overriding principle that seems not to have been considered. The various stakeholders in the nuclear enterprise look to ACRS/ACNW as being an independent arbiter on regulatory issues. Independence from the general body of NRC is the primary characteristic that allows ACRS/ACNW to provide completely unbiased and credible opinions and advice on nuclear regulatory issues. This independence is the one thing that should not be compromised. The transferring of important functions for administrative control and oversight to other offices of NRC does take away from that independence both in reality and in the perception which is equally important.

Compromise of ACRS/ACNW independence is not worth the minor (and probably illusory) savings of 1.3 FTEs. If such savings are required, it would be far better to accomplish it with reduced services.

We also believe that the team went well beyond its charter in proposing modifications to the Employment Conditions for committee members. The Commission should keep in mind that members abilities to work in a conducive, efficient, convenient, and professional atmosphere plays a significant role in maintaining the quality of membership and the resultant quality of the advice given.

We think you should reconsider the concept of consolidation of ACRS/ACNW functions.

TKRESS

ATTACHMENT 4

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**FAX Transmission**

From: Thomas S. Kress                      Kress Technical Associates  
Questions? Call (615) 483-7548            102-B Newridge Road  
To: J. Larkins (301)415-5589            Oak Ridge, TN 37830  
cc:    FAX (615) 482-7548  
Carroll (510)254-6324  
Seale (602)621-8096  
  
Company:  
Address:  
Date: April 27, 1995  
Time: 12:08 PM                              No. of pages 2 (including this one)

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Message:

Attached is my opinion on the "consolidation" report.

PAGES 8 THRU 12 OF ATTACHMENT

DELETION  
FOIA EX(b) (5)

8-12

DRAFT 1:4/26/95  
CARROLL/JTL:SD  
Rowe Mtg. Disc:Team.SD

Chairman Selin  
Commissioner Rogers  
Commissioner de Planque  
Commissioner Jackson

Dear Commissioners:

1 The ACRS and ACNW have reviewed the report prepared by the  
2 Special Review Team that was established by Mr. Taylor to analyze  
3 ACRS/ACNW administrative support functions. Based on the review  
4 of the recommendations of the Review Team, we offer the following  
5 comments.

6 The Review Team's recommendations with respect to support func-  
7 tions appear to be generally appropriate and our staff will work  
8 closely with other NRC offices to implement them.

9 We are concerned about the recommendation for an ad hoc Consulta-  
10 tion Panel from whom the ACRS/ACNW Executive Director can seek  
11 guidance on issues that are outside regular procedures. We are  
12 confident that the current ACRS/ACNW Executive Director can,  
13 does, and will continue to make sound decisions under unusual  
14 circumstances. He is highly sensitive to the impact of his  
15 decisions on the ACRS/ACNW activities and has the ability to  
16 recognize the need to get advice from appropriate quarters  
17 without a Consultation Panel. Consequently, we see no need for  
18 an ad hoc Consultation Panel. If the Commission, however,

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19 believes that a Consultation Panel is essential, we do not have a  
20 strong objection to the establishment of such a Panel. We  
21 recommend that a mechanism be established whereby the Inspector  
22 General is required to review and formally approve the guidance  
23 provided by this Panel in order to avoid the kind of situation  
24 that resulted in an OIG investigation of a recently retired ACRS  
25 member. Although the member meticulously followed agency guid-  
26 ance, the OIG still referred his case to the Department of  
27 Justice (DOJ) for criminal prosecution. DOJ declined to prose-  
28 cute this member. A similar problem could arise if guidance from  
29 an ad hoc Consultation Panel is followed by ACRS/ACNW members and  
30 is later found by the IG to be erroneous.

31 With respect to the recommendations that do not address support  
32 functions, we believe the Review Team went well beyond its  
33 charter in proposing certain significant modifications to the  
34 "Employment Conditions" for Committee members as described in  
35 Attachment 3 of the Team's Report. These changes could have a  
36 substantial impact on the working conditions of some of our  
37 members and could result in greater expense to the government.

- 38 • The Special Review Team states on page 6 of its Report that  
39 "OGC has recommended discontinuance of reimbursement for  
40 home office space" for ACRS/ACNW members. Members may,  
41 however, continue to rent commercial office space. We  
42 believe that this proposed change reflects a lack of under-



standing by the Review Team of the nature of the work performed by ACRS/ACNW members. Those members who use a home office spend over half the time they devote to Committee activities working in it on Committee business. In addition, the members' home offices are used for storage of ACRS/ACNW documents 365 days a year.

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Cmt

OGC raises a concern about IRS regulations that provide for personal income tax deductions for use of home offices. (See January 13, 1995 memorandum from Hassell to Burns). In our view, these regulations have been used only to provide the basis for reimbursement for home office expenses (i.e., the formula that taxpayers use to compute tax deductions for use of home offices). Extending this use of the IRS formula to recent IRS tax ruling on who qualified for such deductions seems to us to be irrelevant. Members need a place to work when they are at home.

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Even if OGC is correct, it does not appear that they have a viable case that IRS would not allow members to deduct home office expenses. They cite as a basis an IRS ruling that a teacher cannot claim a deduction for home office expenses even though the teacher spends time at home preparing for class and grading papers. IRS apparently reasons that the teacher could have performed these activities at her school. ACRS members have an entirely different situation in that

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67 the members cannot practically use office space in TWFN  
68 short of taking up residence in the area.

69 One of our members has discussed this situation in detail  
70 with his tax consultant who is a highly experienced Enrolled  
71 Agent. She believes that ACRS/ACNW members would be enti-  
72 tled to deduct home office expenses for their work under  
73 current tax law if they were not being reimbursed by the  
74 NRC.

75 Since at least 1981, members have been reimbursed for the  
76 use of their home offices. The recommended discontinuance  
77 of reimbursement for home office space is arguably a breach  
78 of the member's "Employment Conditions" contract with the  
79 agency. Furthermore, this decision would force some members  
80 to rent commercial office space at considerably greater  
81 expense to the government and at great inconvenience to the  
82 members. For some members, the nearest commercial office  
83 space is more than 10 miles from their homes. We do not  
84 believe sufficient justification for this modification was  
85 included in the Review Team's report.

86 We endorse the option of a standard maximum allowance for  
87 office space, based on a reasonable square footage and  
88 rental rate, for which any member could apply, wherever the

89 space is located. Members claiming this allowance would be  
90 required to provide documentation and would be subject to  
91 NRC audit.

92 • Attachment 3 of the Team's Report states that members may  
93 not hire or contract with family members to furnish goods or  
94 services for ACRS purposes (presumably this is also applica-  
95 ble to ACNW members). The present OGC guidance allows the  
96 Chairman of the NRC to waive the restrictions of 18 U.S.C.  
97 Section 208(a) regarding spousal employment when he or she  
98 believes that "... the need for the Member's services out-  
99 weighs the potential for a conflict of interest created by  
100 the particular financial interest involved." We believe the  
101 final version of Attachment 3 should include this waiver.

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102 • Finally, the recommendation that members use a government  
103 Bankcard to make small purchases may not be feasible. The  
104 conditions for storage and use of a Bankcard for those who  
105 do not work in government office space may prove too cumber-  
106 some and inappropriate for the level of purchases made by  
107 ACRS/ACNW members.

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108 We request that the Commission address these issues before  
109 approving the Review Team's recommendations.

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Sincerely,

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T. S. Kress

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ACRS Chairman

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M. J. Steindler

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ACNW Chairman

18/12/1



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

April 3, 1995

Mr. Terry Oldberg  
27250 Julietta Lane  
Los Altos Hills, CA 94022

Dr. Ronald Christensen  
Entropy Limited  
South Great Road  
Lincoln, MA 01773

Gentlemen:

I am replying to your March 17 letter to Chairman Selin, and to Mr. Oldberg's March 18 letter, also addressed to Chairman Selin. I believe that my February 17, 1995 letter does address the thesis of your paper, and makes clear the basis for not accepting it. Consequently I am not adding to my response. Enclosure (1) attached to this letter is a list of the correspondence relevant to this subject, and a review of it shows that NRC has devoted considerable resources to addressing the points you have raised. At some point the question should be put to third parties for their review and conclusion, and I think we are at that point. As I stated in my February 17 letter to you, I have referred your paper, and my February 17 letter to the Advisory Committee on Reactor Safeguards (ACRS), and to the ASME Section XI Committee. Enclosures (2) and (3) are copies of their responses, which speak for themselves.

For my part, I consider that these responses are valid third party reviews, and on the basis of the findings of the ACRS, and the ASME Section XI Committee, I regard the matter as closed.

Sincerely,

Eric S. Beckjord, Director  
Office of Nuclear Regulatory Research

Enclosures:  
As stated

cc: M. R. Green, ASME  
J. F. Cook, ASME NDE Division  
O. F. Hedden, ASME SXI  
D. E. Bray, Texas A&M  
J. T. Larkins, ACRS

Listing of Relevant Correspondence

1. Letter from Terry Oldberg to Chairman Ivan Selin, dated March 18, 1995.
2. Letter from Terry Oldberg and Ronald Christensen to Chairman Ivan Selin, dated March 17, 1995.
3. Letter from Eric S. Beckjord to Terry Oldberg, dated February 17, 1995.
4. Letter from Terry Oldberg to Chairman Ivan Selin, dated February 1, 1994[5].
5. Letter from Terry Oldberg to Chairman Ivan Selin, et al, dated October 14, 1994.
6. Letter from Terry Oldberg to Eric S. Beckjord, dated September 12, 1992.
7. Letter from Eric S. Beckjord to Terry Oldberg, dated June 29, 1992.
8. Letter from Terry Oldberg to James M. Taylor, dated March 31, 1992.
9. Letter from Terry Oldberg to Eric S. Beckjord, dated March 22, 1992.
10. Letter from Eric S. Beckjord to Terry Oldberg, dated March 19, 1992.
11. Letter from James M. Taylor to The Honorable Tom Campbell (Member U.S. House of Representatives), dated March 10, 1992.
12. Letter from Eric S. Beckjord to Terry Oldberg, dated January 29, 1992.
13. Letter from Terry Oldberg to Eric Beckjord, dated November 17, 1991.
14. Letter from Eric S. Beckjord to Terry Oldberg, dated November 7, 1991.
15. Letter from Terry Oldberg to Eric S. Beckjord, dated October 17, 1991.
16. Letter from Eric S. Beckjord to Terry Olberg, dated October 2, 1991.
17. Letter from Terry Olberg to Chairman Ivan Selin, dated September 12, 1991.
18. Letter from Terry Oldberg to Eric S. Beckjord, dated July 23, 1991.
19. Letter from Eric S. Beckjord to Terry Oldberg, dated July 17, 1991.
20. Letter from Terry Oldberg to Eric s. Beckjord, dated July 1, 1991.
21. Letter from Terry Oldberg to Joseph Muscara, dated June 28, 1991.
22. Letter from Terry Oldberg to Eric S. Beckjord, dated May 13, 1991.
23. Letter from Eric S. Beckjord to Terry Oldberg, dated May 8, 1991.
24. Letter from Terry Oldberg to Chairman Kenneth M. Carr, dated April 6, 1991.