

FYI

March 30, 1982

MEMORANDUM TO           File

FROM                    Andrew Grosso

SUBJECT                 2.206 Petition by the State of Massachusetts in the Boston Edison Company Penalty Case.

Today, March 30, 1982, I spoke with Margaret N. St. Clair, Secretary to the Governor of Massachusetts, Executive Office of Energy Resources. The subject of this conversation was the 2.206 petition which the State has filed in an attempt to obtain the funds which were assessed against the Boston Edison Company as a fine by the NRC. Boston Edison has already paid this fine by check. The State of Massachusetts is attempting to get the NRC to turn this money over, directly or indirectly, to its Executive Office of Energy Resources (EOER) where it will be put into a trust fund for use by a public interest group involved in energy conservation.

During this conversation, I advised Ms. St. Clair that the analysis of her request was still in the legal stage. That is, the NRC was not yet considering any policy implications of the request, but rather was still considering the legal ramifications for the NRC of accommodating the request. I asked if her office would be interested in supplying input to this legal analysis, on the theory that they had investigated it once already, for their 2.206 petition, and that they would be interested in providing as much input as possible in their own behalf. The two questions I asked them to focus on were: 1) what discretion a federal agency has to dispense monies it collects in civil penalty cases; and 2) what discretion a federal agency has to enter into settlement agreements with parties which it is considering imposing a civil penalty upon.

I also brought to the attention of Ms. St. Clair that the 2.206 petition failed to address the critical issues in the State of Massachusetts' request. Although the petition pointed out that the FTC and the Department of Energy have engaged in redirecting of civil penalty monies to third party funds, in the case of the Department of Energy there is specific statutory authority allowing DOE to do this, and in the case of the FTC, it is underneath the authority of a court that such a settlement agreement is imposed. The FTC has no authority of its own to impose administrative civil penalties.

An additional benefit I see in offering the State an opportunity to once more submit their own legal analysis is that if the legal answer to this question is that the NRC cannot accede to the state's request, then

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the State will see the legal reason for it themselves, and hopefully some political difficulties will be avoided.

Andrew Grosso