



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20556

March 22, 1988

OFFICE OF THE
SECRETARY

Billie P. Garde, Esq.
Richard E. Condit, Esq.
Government Accountability Project
25 E Street, N.W., Suite 700
Washington, D.C. 20001

Dear Ms. Garde and Mr. Condit:

This letter responds on behalf of the Commission to your letter and appeal dated March 21, 1988. That filing purports to appeal the denial by the Director of the Office of Nuclear Reactor Regulation of a § 2.206 petition filed by the Government Accountability Project ("GAP"). Furthermore, it requests the Commission to enter a 48 hour housekeeping stay of its authorization for the NRC Staff to issue a full power operating license to the South Texas Nuclear Project, Unit 1.

The Commission's regulations do not authorize appeals from § 2.206 denials (although such denials are reviewed sub sponte by the Commission). 10 CFR § 2.206(c)(2). Moreover, your request for a stay does not even attempt to meet the standards necessary in order to obtain such relief.

With regard to the necessary showing of a likelihood of success on the merits, you fail to even address certain significant obstacles to your prevailing on any challenge to the Director's Decision. In the first instance, GAP challenges the licensing of South Texas not as a party to the licensing proceeding, but rather as a requester for NRC enforcement action. As such, its legal rights to appeal to the Commission and to the courts stand on a far different footing than those of a party. Indeed, recent Supreme Court precedent makes clear that agency refusals to institute enforcement action are presumptively not judicially reviewable. Heckler v. Chaney, 470 U.S. 821 (1985). Moreover, to prevail on your judicial challenge you would not only have to convince a reviewing court that the Director's Denial is reviewable, but also you would have to show error in the technical judgment of the NRC that the South Texas facility is designed and constructed, and will be operated so as to provide reasonable assurance that the public health and safety will be protected.

Additionally, you have made no showing to suggest that irreparable harm will occur to GAP or anyone else absent the entry of a housekeeping stay. The Commission believes that the public interest favors prompt agency action, where, as here, the necessary statutory and regulatory findings can and have been made.

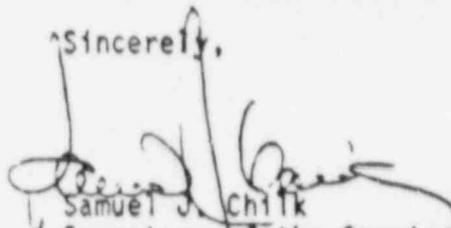
Finally, to the extent you are asserting that there is a lack of time for you to review the Staff's work in handling your allegations or for you to prepare a court challenge to a result with which you are

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displeased, you must recognize that to a large degree, if not entirely, these are problems of your own making. You purportedly had the allegations which the Staff has now reviewed since at least January 1987, yet you refused to provide the Staff with those materials until November, 1987. The confidentiality protections afforded by the NRC to those who complained to GAP of South Texas safety problems were precisely the same as the protections which were available under Commission policy and practice had you come forward eleven months earlier.

In sum the Commission is denying your requested appeal and your request for a 48 hour housekeeping stay. Your filing is being referred to the Staff to determine whether it raises anything that would cause the Director to reconsider his March 18 denial of your § 2.206 petition.

Sincerely,


Samuel J. Chirk
Secretary of the Commission