

MAY 17 1988

Docket Nos. 50-445/446

MEMORANDUM FOR: The Atomic Safety and Licensing Board for Comanche Peak
(P. B. Bloch, W. H. Jordan, K. A. McCollom, E. B. Johnson)

FROM: Christopher I. Grimes, Director
Comanche Peak Project Division
Office of Special Projects

SUBJECT: REPORT OF SPECIAL INQUIRY BY DAVID C. WILLIAMS, GAO
(BOARD NOTIFICATION NO. 88-03)

In Board Notification Nos. 86-24, dated December 11, 1986, 87-06, dated April 3, 1987, and 87-12, dated August 18, 1987, the staff provided you with information related to the Office of Inspector and Auditor (OIA) Report No. 86-10 and the results of the Comanche Peak Report Review Group (NUREG-1257).

Subsequently, Congressional representatives ^{requested that} ~~directed~~ the Office of Special Investigations of the General Accounting Office to conduct an inquiry into this and other matters concerning the NRC's investigative practices. The results of the GAO inquiry were recently released by the NRC in a press release (Enclosure 1) which attached the Special Report from David C. Williams (Enclosure 2).

Because this report addresses matters related to the referenced Board Notifications and inspection activities as they pertain to the Comanche Peak Steam Electric Station, the staff is providing this report for your information.

original signed by:

Christopher I. Grimes, Director
Comanche Peak Project Division
Office of Special Projects

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- Enclosures:
1. Press Release No. 88-46
 2. Letter from David C. Williams, GAO to Lando W. Zech, Jr., NRC, dated April 22, 1988, forwarding Special Report

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

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**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
Office of Governmental and Public Affairs
Washington, D.C. 20555

No. 88-46
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FOR IMMEDIATE RELEASE
(Monday, April 25, 1988)

SPECIAL INQUIRY ON NRC MATTERS COMPLETED

Nuclear Regulatory Commission Chairman Lando W. Zech, Jr., announced today that the NRC has received a report from David C. Williams of the General Accounting Office concerning a special inquiry conducted by Mr. Williams into three internal matters of concern to NRC and the Congress. Mr. Williams, head of GAO's Office of Special Investigations, conducted the independent inquiry at the request of the Commission. His report was made public today by the NRC.

In releasing the report, Chairman Zech said:

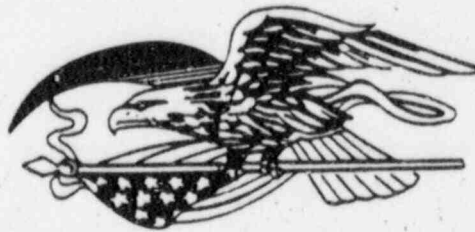
"David Williams has performed an important service to the Commission. I agree with his comment that the important mission and critical safety role of the NRC require that it possess a first-rate investigative capability with resources that will assure the NRC's ability to perform its function in a professional, competent manner. I am pleased that Mr. Williams' investigation found that the evidence does not support the allegation of improper discussions between the Executive Director for Operations and an official of TVA. I also am pleased that no evidence was developed to indicate that substantive changes were made in the Office of Inspector and Auditor investigative report on the Comanche Peak matter during the review and editing stage. The Williams report recognizes that we already have reviewed the policies and procedures for handling allegations involving Commissioners and their offices. The Commission will give careful consideration to Mr. Williams' entire report in our continuing efforts to assure that we carry out our investigative responsibilities fairly and efficiently."

Mr. Williams' inquiry at NRC focused on the adequacy of an Office of Inspector and Auditor (OIA) investigation of allegations of staff misconduct involving the Comanche Peak plant under construction in Texas; the adequacy of an OIA investigation of allegations of improper communication between Victor Stello, NRC Executive Director for Operations, and Steven White of the Tennessee Valley Authority; and the circumstances under which Mid-South Utilities obtained an internal NRC document that appears to have come from the files of Commissioner Thomas Roberts' office, and the subsequent handling of that matter.

GAO

SPECIAL REPORT

Office of Special Investigations



NOTICE: Further release of this document may not be in the best interests of the government for reasons stated herein.



United States
General Accounting Office
Washington, D.C. 20548

Office of Special Investigations

April 22, 1988

The Honorable Lando W. Zech, Jr.
Chairman
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Chairman:

The U.S. General Accounting Office, Office of Special Investigations, has investigated three matters bearing on the adequacy of the Nuclear Regulatory Commission's (NRC) investigative proceedings and practices. Enclosed is our statement of findings.

We have provided this report to the requestors: Chairman Morris K. Udall, Subcommittee on Energy and the Environment, House Committee on Interior and Insular Affairs; Chairman John D. Dingell, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce; Chairman Philip R. Sharp, Subcommittee on Energy and Power, House Committee on Energy and Commerce; and Congressman Edward J. Markey, Committee on Energy and Commerce, and Committee on Interior and Insular Affairs.

As agreed by our requestors, we are providing a copy of the report to you as the Chairman of the NRC.

Should you have any questions regarding the content of this report, please contact me at (202) 272-5500.

Sincerely yours,

David C. Williams
David C. Williams
Director

Enclosure

On June 22, 1987, four members of the U.S. House of Representatives requested that the U.S. General Accounting Office (GAO), Office of Special Investigations, investigate three matters bearing on the adequacy of the Nuclear Regulatory Commission's (NRC) investigative proceedings and practices. Specifically, these members, Congressmen Morris K. Udall, Edward J. Markey, Philip R. Sharp, and John D. Dingell, asked that GAO do the following:

- Ascertain if the NRC Office of Inspector and Auditor (OIA) properly investigated and accurately reported on allegations relating to the inspection program at the Comanche Peak Steam Electric Station (CPSES). An NRC inspector at that Texas facility charged that he had been harassed, intimidated, and pressured by his superiors to alter or delete findings from his reports.
- Evaluate the thoroughness of OIA's investigation of an allegedly improper discussion between the NRC's Executive Director for Operations (EDO) and an official of the Tennessee Valley Authority (TVA). The discussion concerned a major NRC enforcement initiative focused on TVA.
- Determine if the NRC properly handled the question of whether a regulated utility had uncontrolled access to internal NRC documents. These documents concerned defects in a Louisiana nuclear plant and were found in the possession of the utility licensed to construct that plant.

In follow-up meetings with the requestors, GAO was asked to expand the scope of the work as necessary. Therefore, GAO reinvestigated certain portions of each of the three matters.

In summary, we have concluded on the basis of our investigation that the evidence does not support the allegations concerning the inspector at CPSES or the allegation of improper discussions between the EDO at the NRC and an official of TVA. However, as discussed in detail below, our work revealed a number of serious deficiencies in the conduct of these investigations by the NRC. We have concluded that the allegation concerning access by a regulated utility to internal NRC documents was also improperly handled.

BACKGROUND

The NRC is responsible for licensing and regulating nuclear facilities and materials, and for conducting research in support of the licensing and regulatory process, as mandated by the Atomic Energy Act of 1954, as amended. OIA is the internal investigative arm of the NRC and is charged with investigating misconduct by NRC employees and verifying the adequacy of NRC operations.

On April 9, 1987, during a hearing conducted by the Senate Committee on Governmental Affairs concerning the need to legislate an independent NRC inspector general, allegations surfaced that reflected on the adequacy of the NRC's internal investigative processes. After the Senate hearings, the NRC Chairman, Lando W. Zech, Jr., and four members of the U.S. House of Representatives called for an independent review of the allegations.

In response to the Congressmen's request, in July 1987 GAO initiated an investigation of the three cases. This report includes the histories of the three incidents, the NRC's handling of the matters, and GAO's investigative analysis of the NRC's disposition of the matters.

METHODOLOGY

- GAO's investigation included a review of the following:
- the NRC's policy documents, applicable laws, regulations, and standards;
 - relevant NRC investigative reports;
 - thousands of pages of transcribed interviews and congressional testimony that related to the three matters;
 - relevant OIA case files;
 - pertinent NRC correspondence with various congressional committees; and
 - other related documents, such as the report prepared by the Comanche Peak Report Review Group.

GAO supplemented its evaluation of documents with interviews of individuals involved in the three matters.

CASE 1: COMANCHE PEAK STEAM ELECTRIC STATION

Results in Brief

Although OIA's report might have reached the proper conclusion with respect to allegations of harassment and intimidation of NRC Inspector Shannon Phillips, GAO found serious problems with OIA's investigative processes. Phillips' allegations called into question the handling of inspection

findings by NRC Region IV managers. Among other things, GAO found that OIA did not interview several witnesses who could have added a needed perspective to Phillips' allegations. Furthermore, GAO found insufficient evidence to support the OIA investigator's claims that NRC managers interfered with the conduct of the OIA investigation or that the results were incorrectly reported.

Background

In March 1986, Shannon Phillips, an employee of NRC Region IV in Texas, telephoned NRC Commissioner James Asselstine and outlined allegations concerning Region IV's management of its inspection program at the Comanche Peak Steam Electric Station. Phillips serves as the Senior Resident Inspector for Construction at CPSES. Asselstine referred the allegations to the acting Director of OIA, Gary Eddles, and expressed concern that Phillips' allegations were serious and warranted attention. (OIA's Director, Sharon Connelly, was on administrative leave pending completion of an investigation of her conduct in the handling of an unrelated matter. Connelly returned to her duties as head of OIA on March 28, 1986.) In agreement with Asselstine, Eddles assigned OIA Investigator George Mulley to conduct the inquiry. Additionally, he agreed that all interviews would be conducted under oath and be transcribed.

On March 19, 1986, Mulley interviewed Shannon Phillips under oath. In the interview, Phillips made the following allegations:

- In January 1986, his Region IV supervisor, Thomas Westerman, made a statement about Inspection Report 84-32/11 that Phillips considered threatening.
- Westerman directed him to delete from draft Inspection Report 85-07/05 any reference to an inspection trend analysis that Phillips had performed at the direction of his former supervisor. The analysis was a computation of data relating to the frequency of unresolved quality assurance issues.
- Westerman had harassed and pressured him and another inspector to change or delete findings in draft Inspection Report 85-07/05.
- Region IV's data on NRC Form 766, Inspector's Report, was inaccurate. The 766 program is an information management system designed to capture, maintain, and report statistical and planning data concerning inspection and enforcement activities.
- Westerman made improper statements for a regulator.

- Westerman directed him to destroy drafts of Inspection Reports 85-07/05 and 85-13/09 because a Freedom of Information Act request had been received.
- Westerman had pressured and harassed him over technical differences on draft Inspection Report 85-14/11.
- Westerman improperly handled the allegations of a consultant group working for the utility.
- Westerman had pressured, harassed, and intimidated him to change draft Inspection Report 85-16/13.
- Eric Johnson, a Region IV manager, criticized him for how he had written a memorandum concerning possible wrongdoing relating to fire seals.
- Johnson told the Senior Resident Inspector at the Fort St. Vrain facility in Region IV not to write certain violations and to downgrade others.

Phillips further claimed that his disagreement with Region IV management's handling of his allegations resulted in his being harassed, intimidated, and isolated by Region IV management.

Between March 19, 1986, and November 26, 1986, Mulley, with the assistance of technical and support staff, investigated the allegations and prepared a 47-page report with attachments detailing the findings. The report, entitled Allegations of Misconduct by Region IV Management With Respect to the Comanche Peak Steam Electric Station, was issued on November 26, 1986, as OIA Report 86-10. The report concerned the allegations made by Phillips and was divided into the following three issues:

- (1) Did Region IV management harass and intimidate inspectors to pressure them to downgrade or delete proposed inspection findings at CPSES?
- (2) Was the Region IV Quality Assurance Inspection Program at CPSES inadequate?
- (3) Was data documented in Region IV's NRC Form 766, Inspector's Report, inaccurate?

In reference to the first allegation, the OIA report concluded that Phillips' findings were downgraded or deleted from draft inspection reports and that these changes were made at the direction of Region IV management. Mulley's technical advisors questioned the actions taken by Region IV management regarding certain inspection findings; however, OIA's investigation failed to substantiate that the Region IV supervisor, Westerman,

intentionally harassed or threatened Phillips in connection with these findings.

The OIA report generally concluded that the second and third allegations were accurate, and reviews performed by the technical assistants were used to buttress OIA's conclusions.

OIA Report 86-10 had considerable impact on the NRC. In response, in January 1987 the Commission approved the formation of a special review group comprised of senior NRC officials to address the specific issues raised in the OIA report. This review group, the Comanche Peak Report Review Group, issued its report on March 12, 1987, which reflected the following conclusions:

- None of the draft findings that had been downgraded or deleted were significant in terms of any direct adverse impact on plant safety.
- Region IV management acted appropriately in downgrading or deleting some of the inspectors' 34 draft findings; however, part of the problem could have resulted from the inspectors' failure to fully develop the issues of concern. Regional management should have provided the inspectors with guidance to properly focus and develop these items, rather than deleting them.
- There were previous gaps in the Region IV Comanche Peak Quality Assurance Inspection Program in relation to 1986 requirements, but the current augmented review and inspection effort at that location compensated for those gaps.
- The Form 766 data base was not used in making safety decisions, and its accuracy, completeness, and timeliness were not adequate for many needs.
- Some factors that came to light in the OIA investigation and its aftermath might have implications for other facilities.

On April 9, 1987, Mulley appeared before the Senate Committee on Governmental Affairs and testified concerning the conduct of the Comanche Peak investigation (OIA Report 86-10). In his testimony, Mulley asserted the following:

- He limited the scope of the Comanche Peak investigation because of pressure from EDO Victor Stello and OIA Director Sharon Connelly.
- His draft of the OIA report was modified by Connelly as follows:

- . She removed the conclusion that Region IV managers acted inappropriately to limit violations assessed and that Phillips was harassed and intimidated in an effort to get him to downgrade or delete his inspection findings.
- . She focused the report on the technical issues underlying the violations, an area outside the expertise of OIA.
- . She removed quotations of Region IV personnel that substantiated the conclusions stated above and demonstrated the lax enforcement attitudes of Region IV management.
- The decision to distribute the OIA report would make it extremely difficult to get NRC employees to cooperate in ongoing investigations.
- Phillips tried to inform the NRC that Region IV demonstrated an attitude of trying to help the utility obtain an operating license for Comanche Peak.

On October 8, 1987, the Senate Committee on Environment and Public Works, Subcommittee on Nuclear Regulation, held hearings at which Mulley again testified with reference to the Comanche Peak case. At that hearing Mulley stated the following:

- All of the facts and information developed during the investigation were in the report.
- He disagreed with the OIA Director, Sharon Connelly, about the way in which the report was prepared, particularly the overemphasis on technical issues, an area in which OIA lacked expertise.
- He was more interested in the treatment of Phillips than he was about the technical validity of the inspection findings.
- He believed that Phillips had been harassed by Region IV management.
- The staff of EDO Victor Stello was qualified to address technical issues and decide the validity thereof.
- He disagreed with some of the changes Connelly made; however, he did not think that anything was wrong, illegal, or "immoral" about what she did. The report was different from the way he would have written it. Stello wanted the report out because he wanted a document with which to work. In an effort to respond to the EDO, Mulley started to put it together quickly. He decided there were certain issues

that, at the time, did not need to be included in the report. No one attempted to alter the content of the report.

GAO's Investigative Analysis

GAO determined that OIA's investigation of allegations that NRC managers in Region IV mishandled findings proposed by NRC Inspector Shannon Phillips was accurate; however, the investigative processes used by OIA were questionable.

In support of the proposition that Phillips' findings had been improperly altered or deleted, OIA Investigator Mulley relied, in part, on statements by a former Region IV manager that Region IV management had a lax enforcement attitude. When interviewed by GAO, however, this same individual said that the OIA investigator misunderstood his meaning and that the point he was trying to make was that there were philosophical differences about how well developed a finding must be before it should be cited as a violation. Region IV managers Westerman and Johnson insisted that violations be cited only after the findings were fully developed and supportable, whereas some inspectors and managers believed in citing violations and placing the burden of proof on the utility to disprove them.

In contrast to his testimony of April 9, 1987, at the Senate Committee on Governmental Affairs hearing, Mulley told GAO that it was only his "opinion" that Phillips had been harassed and intimidated and that it might not have been done intentionally. Mulley could provide no direct support for his contention that Phillips had suffered harassment or intimidation. By failing to interview other Region IV supervisors, Mulley unintentionally skewed the harassment question. GAO interviewed other NRC personnel who provided a balancing perspective on Phillips' allegations and the proper oversight function of regional officials. Phillips stated he was being harassed and intimidated by his supervisors because his findings were critical of the utility. However, Phillips' supervisors advised that this was not the case. They stated Phillips failed to fully develop his findings and/or present them clearly in writing.

GAO's review indicated that Mulley was correct in asserting OIA should not have focused its report on the technical issues. Even with technical assistance, OIA lacked the expertise to resolve such issues in a competent fashion. If OIA found a need to challenge the technical judgments of Region IV management, it should have employed NRC's established procedure for resolution of differing professional opinions.

Finally, GAO was unable to verify Mulley's assertions that (1) he had been pressured to limit the scope and otherwise expedite completion of his investigation of the Phillips matter

and (2) his draft report had been substantially altered by Connelly. Mulley testified before the Senate Committee on Environment and Public Works that although he might have disagreed with some of the changes to his report, he did not think there was anything wrong with the changes made by the OIA Director. Furthermore, Stello denied that he had applied undue pressure on Mulley concerning the report. GAO reviewed all available drafts of Mulley's report and interviewed the principals involved in the preparation, editing, review, and approval process. No evidence was developed to indicate that substantive changes were made during the review and editing stages.

With regard to the distribution of Mulley's report, GAO found no basis to question the conduct of the EDO who explained that the Commission authorized the distribution to assist NRC management in addressing important matters, such as health and safety issues requiring immediate action. Witnesses told GAO they were disturbed about the distribution of the report containing unredacted transcripts of their statements to high-level management officials and to the principal witnesses. However, none of the witnesses interviewed asserted that they had been subjected to reprisals. Moreover, none of the witnesses identified in the OIA report or transcripts asked for or received a pledge of confidentiality from anyone in OIA, and Mulley voiced no objection to the release.

CASE 2: IMPROPER TVA DISCUSSION

Results in Brief

GAO's investigation revealed that OIA did not thoroughly investigate an alleged improper discussion between an NRC official and an official of the Tennessee Valley Authority concerning a major NRC enforcement initiative focused on TVA. OIA inadequately planned its investigation and failed to interview one of the two parties to the conversation. GAO learned that key OIA personnel did not know the purpose of their investigation of this matter.

Although the conversation was investigated by OIA, the NRC does not prohibit or discourage such conversations. A report of such contacts is now required by NRC regulations; however, none was required at the time of this incident.

Background

On December 19, 1985, a member of TVA's Nuclear Safety Review Staff (NSRS) briefed NRC Commissioner James Asselstine on the condition of the Watts Bar Plant. NSRS' position contrasted

sharply with the TVA's prior certification to the NRC that the plant was ready for fuel loading. In the briefing, NSRS listed several technical areas in which they believed deficiencies existed, which indicated to them fundamental weaknesses in the Watts Bar quality assurance program.

NSRS' perception that the plant was not ready for fuel loading prompted the NRC to request that TVA officially certify its position on NSRS' technical concerns. By letter dated January 3, 1986, the NRC's Office of Nuclear Reactor Regulation (NRR) requested that TVA certify its position on whether or not the quality assurance program met the criteria outlined in 10 CFR Part 50, Appendix B. The NRC's letter allowed 6 days for a sworn response and 30 days for "information on an item-by-item basis supporting the TVA corporate position." The Director of NRR, Harold Denton, subsequently agreed to extend the 6-day deadline. The extension was made to allow the TVA adequate time to consult with staff and because the new head of TVA's nuclear program, Steve White, would not report for duty until January 13, 1986. On March 20, 1986, White responded to Denton of NRR with TVA's position and addressed each of the issues underlying the NSRS perception. After White signed the letter and transmitted it for hand delivery by a TVA official, he determined a need to clarify one section of the letter. White contacted the courier while he was en route and directed him to go by TVA's Washington, D.C., office where the change was incorporated. The letter was subsequently delivered to the NRC.

On April 7, 1986, Ben Hayes, Director of the NRC's Office of Investigations (OI), informed then-NRC Chairman Nunzio Palladino that NRC's Executive Director for Operations, Victor Stello, had been overheard discussing TVA's response to Denton's letter with Steve White on or about the time that the TVA response was dispatched. OI is responsible for NRC investigations involving allegations of intentional violations of regulations by licensees, permittees, applicants, contractors, and vendors. At the Chairman's request, Hayes passed this information to the NRC's Director of OIA, Sharon Connelly. Hayes informed her that the Stello-White conversation had been overheard by Denton and the NRC's Director of Inspection and Enforcement, James Taylor.

OIA Director Connelly decided to investigate the matter and assigned the case to Keith Logan, then OIA's Assistant Director for Investigations. Logan interviewed Hayes on April 11, 1986. The transcript of the Hayes interview reveals the following points:

- OI was investigating a possible material false statement made in February 1985 by TVA's former nuclear power program manager.

- In the course of OI's false statement investigation, Denton was interviewed and advised that . . . or about March 20, 1986, while he, Taylor, and Stello were together in an NRC vehicle, Stello had a telephone conversation with White about the 10 CFR Part 50, Appendix B, matter.
- Taylor, in a later discussion with Hayes, confirmed that the conversation had taken place and indicated that he was uncomfortable with the conversation.
- On April 7, 1986, Hayes advised Chairman Palladino about the Stello-White conversation.
- The Chairman indicated that he wanted Hayes to discuss the matter with Connelly of OIA.
- Hayes informed Commissioner Asselstine about the Stello-White conversation in the event the issue came up in the Commissioner's forthcoming visit to TVA.

Following Logan's interview of Hayes, nothing more occurred in the OIA investigation until June 6, 1986. On that date, Asselstine asked Connelly about the status of the investigation during a briefing she was making to the Commission on unrelated OIA activities. In response, Connelly erroneously stated that the witnesses to the conversation had been interviewed and that Stello would be interviewed within the next two weeks. Four days later, Connelly corrected the record to show that neither witness had been interviewed, the case had been reassigned to Investigator Anthony Ward, and the first of the witnesses would be interviewed on June 10, 1986.

Ward interviewed Denton on June 10, Taylor on June 16, and Stello on July 30, 1986. On August 26, 1986, Ward telephoned an attorney in the NRC's Office of General Counsel, Sebastian Aloat, and synopsised the results of the four OIA interviews. Aloat stated that, based on the facts as presented, there was no apparent conflict of interest or impropriety on the part of Stello.

Two days later, George Mulley, who in June 1986 had been appointed OIA's Assistant Director for Investigations, signed OIA Report 86-30, and Connelly transmitted it to the Commission. The report did not indicate that other NRC officials had similarly discussed TVA's Appendix B response with White. The report concluded, "There was no information developed during this inquiry to substantiate any impropriety on the part of Stello during his telephone conversation with White." The report was correct in its conclusion; however, OIA's method of having

reached such a determination was questionable since they failed to interview the second party of the alleged improper conversation.

On April 8, 1987, Mulley, in preparation for his testimony at the Senate Committee on Governmental Affairs hearings, wrote a memorandum explaining why the investigation took as long as it did to complete and why, in reviewing the draft report, he saw no reason to interview Steve White. Mulley's memorandum stated that he was not involved with this investigation during the April to July 1986 time frame because of his preoccupation with the Comanche Peak and other investigations. Accordingly, the memorandum indicated, Mulley could not explain why the Stello-White investigation had taken so long to complete. The memorandum reported that Mulley reviewed the Stello-White report and "noted no conflict regarding the topic of the telephone conversation; the only point in dispute seemed to be the propriety of...(Stello's) actions." The memorandum further stated that "(Mulley) did not discern a need to interview (White)...because he would have provided no new significant information regarding (Stello's)...actions."

GAO's Investigative Analysis

GAO investigated the Stello-White telephone conversation to determine the propriety of the interaction between the principals and to evaluate the thoroughness of OIA's investigation of the matter. On March 14, 1988, the NRC's Office of Investigations issued a report entitled Watts Bar Nuclear Plant: Possible Willful Attempt by TVA Management to Mislead the NRC. OI's report concluded that White knowingly and willfully made a material false statement in his March 20, 1986, certification letter to the NRC. Because it was beyond the scope of the request made of GAO, GAO did not evaluate the OI investigation or report. However, GAO did review transcripts of OI interviews that were relevant to White's March 20, 1986, conversations with Stello and Denton.

GAO concluded that OIA's investigation of the alleged improper conversation between Stello and White was not sufficiently thorough. OIA failed to determine what it was investigating, e.g., there was inadequate effort devoted to determining the nature of what was said and the impact that the conversation had on the actions of either party. Furthermore, OIA failed to pursue the investigation in a timely and systematic manner. The investigation should not have been initiated without a proposed plan of action and specification of the rule, law, or regulation that might have been violated. This was

evidenced during GAO's interviews of Ward, Mulley, and Connelly since not one of them could provide a convincing justification for their failure to interview White about the alleged improper conversation.

During GAO's interview of White, he denied having sought or obtained improper pre-approval for TVA's position. White stated that the purpose of his calls to NRC officials was to assure that TVA's letter was fully responsive to the NRC's request. White asserted that it was his discussion with Denton, not with Stello, that led him to make a clarification in TVA's response. White made contemporaneous notes of his conversations, which he provided to GAO. These notes, which were part of White's ongoing diary for this period, add credence to his version of what transpired in his conversations with NRC officials.

When interviewed, Stello and Denton's account of the events coincided with White's version of what transpired in the telephone calls of March 20, 1986. White asserted that he was not trying to discern if TVA's position was acceptable, but to assure himself that the letter was fully responsive to the NRC's request for information. White told GAO that his change to the letter did not reflect a substantive change in TVA's position, but only served to clarify a detail that Denton considered important. GAO was not able to develop any information indicating that Stello, Denton, or other NRC officials coached White on what position TVA should adopt to assure favorable action by the NRC. GAO learned in its interviews of Denton and Taylor that their discomfort with the Stello-White conversation was only because they felt White was going around them in dealing with Stello.

An NRC regulation (10 CFR 0735.49a) prohibits employee actions that might result in, or create the appearance of, giving preferential treatment to any person or making a government decision outside official channels. Under NRC policy applicable to the time frame in question, GAO believes that this regulation did not prohibit the type of discussions that apparently took place in this case. Until recently, the NRC policy with reference to this regulatory provision was permissive, as evidenced by the commentary of Chairman Zech on July 10, 1987, wherein he stated "so long as it is understood that any staff discussions do not constitute the staff's formal judgment on the merits of any issue." He further stated in his commentary, "The agency views preliminary discussions and informal preliminary staff opinions as important ways to better understanding on the part of all concerned of the issues surrounding a potential request for regulatory action."

Accordingly, GAO's investigation substantiated that the Stello-White conversation did not contravene relevant NRC regulations as applied at the time in question.

CASE 3: LEAK OF NRC DOCUMENTS

Results in Brief

GAO concluded that the NRC did not properly address the issue of whether a regulated utility had access to its internal documents. Commissioner Roberts' investigation of the matter was very limited, but none of the Commissioners seemed to have had an appreciation of that fact. A significant factor explaining why the matter was not properly addressed was the failure of the NRC to refer the matter to OIA at the outset as required by NRC guidelines.

Background

On June 8, 1983, James Joosten, a technical assistant to then-NRC Commissioner Victor Gilinsky, sent Richard DeYoung, an NRC official, documentation that he had received from a freelance reporter regarding alleged safety problems with a nuclear power plant in Louisiana. DeYoung served as Director of the NRC's Office of Inspection and Enforcement. The memorandum transmitting the documentation called attention to the reporter's concerns about cracks in the concrete under the containment vessel at the Louisiana Power and Light Company's (LPL) Waterford III plant. The materials included published articles written by the reporter that raised questions about possible collusion between LPL and NRC inspectors. Joosten's memorandum suggested DeYoung assure that the reporter's concerns be reviewed objectively. Joosten sent copies of his memorandum and attachments to Steve Chestnutt, technical adviser to Commissioner Thomas M. Roberts, and to other NRC officials. Copies of the Joosten memorandum were publicly released by NRC three months later pursuant to a Freedom of Information Act request.

In March 1985, OI Investigator Bill Ward, while working on an unrelated case, discovered a copy of the Joosten memorandum and attachments in an LPL file at the Waterford plant. Attached to the material was a cover memorandum dated June 15, 1983, from George White, a vice president of Middle South Utilities, the holding company for LPL. The White memorandum was addressed to John Cordaro, an executive of the company, and read as follows:

"Attached is a memorandum which I have received from sources inside the Nuclear Regulatory Commission regarding Waterford Quality Assurance matters. This memo is for your information but I would hope that you limit its distribution to protect the source within the NRC."

On March 13, 1985, after conferring with his staff on what to do about the discovery, OI Director Ben Hayes took a copy of the documents to then-NRC Chairman Palladino. Following a discussion with his legal advisor on what actions the discovery warranted, Palladino decided to make Commissioner Roberts aware of the matter. Palladino did so because the copy Hayes provided appeared to have been duplicated from Roberts' office file copy.

After obtaining the documents from Palladino, Roberts assembled his staff and asked each member if he or she had leaked the documents. Roberts tape-recorded the staff interview. During the taped interview, none of Roberts' staff acknowledged having given the documents to George White. After the meeting, Roberts' staff established that the Joosten memorandum had been released to the public on September 23, 1983, pursuant to a Freedom of Information Act request.

On March 14, 1985, Palladino sent a memorandum to Ben Hayes informing him that NRC's Reorganization Plan No. 1 of 1980 made it the responsibility of the individual Commissioners to supervise personnel in their immediate offices and, therefore, the matter was Roberts' to deal with. On March 15, 1985, Hayes and Ward met with Roberts and his legal advisor, James M. Cutchin. At Roberts' request for all documents related to the matter, Hayes turned over to him copies of the White memorandum, along with two pages of handwritten notes that Hayes had made of his discussions with Palladino.

In his discussion with Hayes, Roberts made a remark that Hayes and Ward interpreted as an expression of concern that the matter might become an issue in Roberts' upcoming confirmation hearing. The matter did not arise in the June 18, 1985, confirmation hearing; however, it surfaced just prior to the Senate Committee on Governmental Affairs hearing on April 9, 1987.

On March 30, 1987, White prepared an affidavit for the Senate Committee on Governmental Affairs staff. In it he stated the following under oath:

-- The June 15, 1983, memorandum attached to the Joosten material and bearing what appears to be his signature, was, in fact, dictated from Washington D.C., signed by his

secretary, Peggy Balsamo, in New Orleans, and was not the type of memorandum he was accustomed to sending or receiving.

- He had no recollection of preparing or dictating the memorandum or receiving the attachments thereto.
- He did not recall ever having had possession of internal NRC documents or information regarding Waterford nuclear plants that would not have been provided or left for Middle South Utilities, or made available for the public in the normal course of business.
- He did not recall ever having had a source or having heard of a source for internal NRC documents or information within the NRC, and he did not consider anyone then or formerly employed by the NRC to be a source for such documents or information.

At the April 9, 1987, hearing, Senator John Glenn, the Committee Chairman, questioned Roberts about his investigation of how White obtained the Joosten materials. Roberts testified that he had not questioned White about the matter but satisfied himself that no one in his office had leaked the documents. Roberts said he met with the other Commissioners and informed each of them that he was terminating his investigation without having determined the source of the leak. At the hearing, Roberts testified he destroyed all copies of the documents that Palladino and Hayes had given him. Roberts explained he did this because he was "somewhat paranoid" and thought someone might be out to get him. A day after the hearing, Roberts notified Senator Glenn that he had located the documents he had previously testified to having destroyed. Senator Glenn subsequently referred the matter to the Department of Justice for consideration of possible criminal prosecution.

On April 14, 1987, an NRC management meeting was held in which the Office of General Counsel was requested to review the policies and procedures for handling allegations involving the Commissioners and their offices. The General Counsel replied that OIA had authority to investigate such matters, subject to the judgment of the Commission.

During testimony before the Senate Committee on Environment and Public Works in October 1987, OIA Director Sharon Connelly was asked if, in cases of alleged wrongdoing by the Commissioners or their staffs, she thought the NRC should determine whether to refer the matter to OIA or not. Connelly responded that she thought the Commission had determined that all such allegations were to be referred to OIA and, if not, to the FBI.

GAO's Investigative Analysis

Without determining how NRC documents came into the possession of Middle South Utilities, GAO has been unable to ascertain whether any federal law or NRC regulation was violated.

In his affidavit to the Senate Committee on Governmental Affairs, White did not deny dictating the June 15, 1983, memorandum that transmitted the material to LPL. GAO interviewed White on January 29, 1988. In this interview, White "seemed to recall" that he had dictated the memorandum and stated that he employed words in it containing a certain amount of "puffery" designed to impress his superiors. White stated that in retrospect, had he seen how the words looked on paper, he might not have signed the memorandum. White told GAO that he did not remember where or from whom he obtained the documents, except to say that it was not from a source or sources within the NRC. Additionally, White advised GAO that no official of LPL or Middle South Utilities who was an addressee of his "confidential" memorandum acknowledged having received the materials.

GAO's investigation verified that no LPL or Middle South Utilities official brought to the attention of the NRC an employee's assertion of the existence of a "mole" within the NRC. White's memorandum, no matter how self-serving, demonstrated that a regulated utility secured unauthorized access to NRC documents. The ability to obtain such materials could impact on the NRC's enforcement program, licensing functions, and regulatory procedures.

GAO determined that Roberts did not concern himself with the question of how White obtained the NRC documents, but only addressed the issue of whether someone on his personal staff might have been the utility's avenue of access. In this instance, Roberts dismissed the leak implication by simply asking his small staff if any of them provided the documents to the utility. By doing this, Roberts ignored the potential of a broader problem in that a utility official claimed to have a "source" within the NRC.

Chairman Palladino's referral of the matter to Roberts for handling did not oblige Roberts to adhere to relevant investigative standards. Palladino, like Roberts and the other Commissioners, apparently believed that the referral and disposition of this matter was an exclusive delegation of investigatory authority and discretion. An April 16, 1987, opinion from the NRC's General Counsel appropriately points out the error in this assumption by distinguishing between the functions of supervision and investigation.

Prior to the April 1987 Senate hearings, Roberts learned that his handling of this matter would be subjected to scrutiny. On the day prior to his testimony, Roberts met with a former NRC General Counsel. In this meeting, Roberts advised the former NRC official that he knew this issue would surface at the April 9, 1987, hearing.

The less-than-professional handling of the matter by the NRC, combined with Roberts' cursory investigative effort, might well have jeopardized any possibility for determining where or how White obtained the NRC documents. When the issue first surfaced in 1985, a properly conducted investigation, including an interview of White, might have provided NRC with the identity of "the source within the NRC."

GAO'S INVESTIGATIVE OVERVIEW

GAO was advised by the requestors to expand the scope of its work as necessary to cover unforeseen but related matters that might develop. During the course of its investigation, GAO noted apparent problems with the NRC's investigative capability.

The NRC and the U.S. Department of Justice (DOJ) have failed to execute a Memorandum of Understanding governing the referral of possible criminal violations stemming from questionable actions of nuclear licensees. Critics have cited such cases as the D.C. Cook, Three Mile Island, and Fermi cases as examples of the NRC being too cozy with the industry it is charged with regulating. In each of these cases, allegations surfaced that NRC officials engaged in actions that adversely affected the potential criminal prosecution of the concerned utility.

The Senate Committee on Governmental Affairs hearings revealed deficiencies in the NRC's investigative programs and led the Committee to report, "OIA lacks authority, competence and independence." GAO's analysis of the Comanche Peak matter suggests that a supervisor-employee conflict was elevated to the highest levels of the NRC. The matter was raised to such levels because OIA failed to provide NRC management with a proper perspective on the matter under investigation. In another instance, OIA failed to understand the basic issue that they were investigating, thus they were unable to properly serve the needs of the agency. GAO conducted a review of several closed OIA investigative case files. This review found that OIA routinely initiates investigations without first establishing a threshold for acceptance. When interviewed by GAO, Connelly acknowledged this to be true. Additionally, GAO's review of OIA records from 1984 to the present reflects that OIA has not successfully presented a case for criminal prosecution.

NRC management is faced with a problem in which its two primary investigative organizations, OIA and OI, demonstrate a mutual lack of trust, respect, and cooperation. This is evidenced by the OI Director's involvement with the matters GAO reviewed. The OI Director advised that when he learned of the alleged improper conversation between the EDO and a utility official, he did not make a direct referral to OIA, but instead took the information to the Chairman. In the leak of the "sensitive" document matter, the OI Director stated he brought the information to the Chairman, not to OIA, because it concerned a Commissioner. Appropriately handled, both matters should have been referred to OIA for evaluation of wrongdoing. OIA Director Connelly's statement that she is suspicious of the nature of any investigative referral that she receives from OI further demonstrates the lack of cooperation between the two NRC investigative offices.

These three issues suggest a need for the NRC to evaluate its investigative capability. The NRC should assure that its investigators conduct their work in a competent manner using professional standards. Accurate, complete investigative findings are often of major importance to NRC management and the Department of Justice. When investigations focus on criminal matters, the NRC must assure that evidence is properly gathered, safeguarded, and referred to the Department of Justice. The NRC should continue to support the Justice Department throughout the investigative and adjudicatory period. The NRC should assure that its two investigative offices work together with a high level of coordination and cooperation. Their respective missions complement one another and often overlap considerably. This fact requires strong close professional relations. Lastly, the NRC should develop and enforce a strong, clear policy directing the manner in which investigations are initiated, conducted, and referred for judicial or management action that will assure independence and professionalism.

The important mission and critical safety role of the NRC require that it possess a first-rate investigative capability with resources that will assure the NRC's ability to perform its function in a professional, competent manner.

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