



CHAIRMAN

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

PDR

May 16, 1988

50-348

The Honorable Philip Sharp, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

I am enclosing responses to questions contained in your letter of March 29, 1988, regarding the Joseph M. Farley Nuclear Plant. I understand our respective staffs have discussed the late receipt of your letter and the resulting delay in this response.

The documents provided in response to Question 1 have not been released to the public. We request that you preserve their confidentiality through restricting access and use to the Members and Staff of the Subcommittee.

I assure you that the Commission will keep you informed on the status of this investigation.

Sincerely,

Lando W. Zech Jr.
Lando W. Zech, Jr.

Enclosures:
As Stated

cc: Rep. Carlos J. Moorhead

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QUESTION 1.

On December 10, 1987 the Director of the Office of Inspector and Auditor stated that their investigation would be completed in 60 days. However, in your February 17, 1988 letter to me, you state that the investigation will be completed in another 90 days.

(a) What caused this delay?

ANSWER

The Office of Inspector and Auditor (OIA) has completed two investigations relating to the Farley Nuclear Power Plant and has one other ongoing. The first completed investigation relates to an alleger's claim that the NRR Region II Allegation and Investigations Coordinator mischaracterized the alleger's concern about contamination of a creek by discharges from Farley. A copy of the OIA memorandum dated March 29, 1988, closing this investigation is enclosed. Confidential source information included in the memorandum has been omitted.

The second completed investigation is based on allegations that NRC was attempting to impede an investigation by the Office of Investigations of the Alabama Power Company and that NRC had removed NRC inspection reports from the Local Public Document Room in Dothan, Alabama, to preclude public access to them. OIA's report dated May 13, 1988, is also enclosed.

The third investigation involves several general allegations pertaining to NRC's regulation of Farley. Investigative field work on these allegations is currently ongoing. Barring any unforeseen developments during the field work stage, OIA anticipates completing this portion of its Farley investigation within 60 days.

The delay in completing these investigations resulted from the need to assign OIA's limited investigative staff to higher priority investigations.

The documents that are provided in response to this question have not been released to the public. We request that you preserve their confidentiality through restricting access and use to the Members and Staff of the Subcommittee.

(b) Please provide the final report, when completed.

ANSWER

We will provide to you a copy of the final report for the ongoing investigation as soon as it is issued by OIA.

QUESTION 2.

The Department of Justice recommended adoption of regulations dealing with the sequestration of lawyers in a letter on January 21, 1987. However, no action has been taken.

- (a) Were the Commissioners told of this advice? If so, when?
- (b) Why has no action been taken on this recommendation?

ANSWER:

The Commissioners and their respective staffs did not become aware of the Department of Justice letter until December 1987 or January 1988, at the earliest, while the staff was compiling draft responses to your November 19, 1987, letter.

The Office of Investigations (OI) elected not to pursue promulgation of a sequestration rule. It was not deemed reasonable or feasible to hold the Farley investigation in abeyance pending the adoption of a sequestration rule. Rather, other approaches to resolving the Farley impasse were pursued. However, the drafting of a sequestration rule such as that recommended by the Department of Justice was begun shortly after receipt of the Justice recommendation. At the present time, the proposed rule is in its final drafting stage.

QUESTION 3.

Please explain the reason for delay in response to my November 19, 1987 letter. Please explain who decided to eliminate much of the information in the draft letter and for what reason.

ANSWER

Your letter of November 19, 1987, was received by NRC on November 20, 1987, and was referred to the Office of Investigations (OI) for response. The December 18, 1987 draft response to which you refer was not approved by the Director of OI and provided to the Office of the Chairman until January 4, 1988. On January 11, 1988, after review by the Office of the Chairman, the proposed response was returned to the EDO and OI to assure there had been adequate review of the technical answers and to obtain OI and EDO responses to several suggested revisions and comments from the Office of the Chairman. On January 13 and 26, 1988, the EDO and OI, respectively, provided their redraft to the Office of the Chairman. On February 1, 1988, the proposed response was circulated for comment to the offices of the other four Commissioners.

On February 11, 1988, an Office of the General Counsel attorney serving temporarily in the Chairman's office redrafted the letter. His marked up version of the letter was circulated to the Commissioners on the same day. A copy of the marked up version is enclosed and it makes clear that the changes made were intended to assure the accuracy and completeness of the response.

In response to a suggestion from another Commission office that the answer to question 2 was excessively detailed, the Chairman's office shortened the answer, but attached the correspondence between the investigators and the attorneys involved in the disputes concerning the investigation so that there could be no suggestion that pertinent information was being withheld. This approach was discussed with and concurred in by OI. A final version of the letter was prepared for the Chairman's signature. Upon returning to the office on February 16, 1988 the Chairman reviewed the final version of the letter and it was signed and hand delivered to your office on February 17, 1988.

In sum, while the Commission does not condone the extent of the delay in responding to your November 19, 1987 letter, there are occasions on which the need for an accurate and clear response, fully reflecting the Commission's position, means that a particular letter passes through several drafts, a process which can be time-consuming. In this instance, the effect of the changes to the draft of the February 17, 1988 letter to you did not eliminate essential information from the response package.

Enclosure

QUESTION 4.

Please provide the Subcommittee with a monthly status report on this case, and provide a copy of the final report.

ANSWER

In the matter of the Farley plant investigation in which you have expressed an interest, we are continuing to pursue resolution of issues concerning interviewing witnesses. On April 13, 1988, the Office of Investigations (OI) mailed eleven (11) subpoenas to employees of the Alabama Power Company's Farley Nuclear Plant. Alabama Power has retained counsel independent of counsel for the company for these employees. The subpoenas have return dates of May 17, and 25, 1988. On April 27, 1988, the employees filed a motion with the Commission to quash the subpoenas; their motion was denied (the Commission's May 6, 1988 order denying the motion is attached). Alabama Power and 18 management officials, filed a motion to intervene in the proceeding on the motion to quash. This was also denied. In a letter dated May 9, 1988, counsel for the employees informed OI that he intended to advise his clients not to comply with the NRC subpoena in the absence of a Federal District Court order unless OI both agreed to release a transcript of the interviews within 10 days and recognized intervenor's rights to be represented by any attorney. We are preparing to request an order to enforce the subpoenas from the appropriate court.

A monthly status report will be provided.