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

December 23, 1986

Spokane

MEMORANDUM FOR: Chairman Zech
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
Commissioner Carr

FROM: William C. Parler
General Counsel

SUBJECT: OGC REVIEW OF OIA REPORT CONCERNING REGION IV
MANAGEMENT ACTIONS RELATIVE TO COMANCHE
PEAK (OIA INVESTIGATION NO. 86-10)

In accordance with Chairman Zech's memorandum to the Executive Director for Operations dated December 4, 1986, the Office of the General Counsel has reviewed the subject report. Principal matters reviewed were:

1. the need to delete information in order to prevent unwarranted invasions of personal privacy at such time as the report and its attachments are made available to the public;
2. the need to delete information in order to avoid compromising the NRC's ability to undertake appropriate investigations and/or referrals for investigation, e.g., to the Department of Justice;
3. whether the report justified the initiation of personnel actions; and,
4. the potential effect of the report on the ongoing Comanche Peak licensing proceeding.

Based on OGC's review of the report and its attachments, we have determined, with respect to the first inquiry, that, except for two documents (a consultant's resume which includes a home address and phone number and an identification of private contracts, and partial deletions of information in a completed NRC staff member's performance appraisal) no deletions to protect privacy appear to be required. Thus, the material in the report that was

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deleted for privacy reasons when it was initially released on December 11, 1986, can be left in the report.

As concerns the second area of inquiry, certain information concerning the certification of BISCO electrical penetration seals was deleted from the report itself prior to its initial release because of concerns that disclosure of the information could compromise the NRC's ability to investigate allegations of wrongdoing. Based upon our subsequent review of the report and relevant attachments, it appears that the technical concerns bearing on this issue were substantially disclosed in Inspection Report No. 50-445/85-16, 50-446/85-13, issued on April 4, 1986. (Preparation of this Inspection Report was among the matters investigated by OIA.) The Inspection Report, however, does not characterize the concern in terms of possible "false certifications", i.e., wrongdoing, by BISCO, but otherwise contains sufficient information such that one might reasonably infer that an investigation and/or referral of the matter could be appropriate. A review of Attachment P to the OIA report (Interview of Johnson at 17, 79-80, 99-101), discloses that, as stated in the OIA report, Johnson discussed the propriety of an OI investigation with the Region IV OI issues coordinator; the latter appears to have advised Johnson that there was insufficient information to then undertake an investigation but does not seem to have ruled out the possibility of initiating one at a later time should future facts warrant the action. Attachment P (at 15-16, 18, 78-80, 99-100) as well as a related attachment (Attachment Q, Interview of Fox), reveal that the matter was further reviewed by the Vendor Inspection Branch, IE in the context of similar issues raised by other Regions, as well as by NRR. The OIA report and its attachments do not refer to any subsequent action taken by either IE or NRR to refer the matter to OI following their reviews.

In order to determine whether there is a need to delete any information from the attachments to assure that the NRC retains the ability to effectively pursue investigations or otherwise refer matters for investigation, OIA was asked, in the context of the several pending FOIA requests and the discovery request filed in the Comanche Peak licensing proceeding, to review the attachments and to provide its views regarding the need to withhold information from public disclosure. In addition, IE and NRR have been requested to confirm that there is no need to undertake an investigation of the BISCO matter or any other issue identified by the subject OIA investigation because of concerns of wrongdoing. On December 22, 1986, we asked OI to review that portion of the OIA report which concerned BISCO and advise whether there was any investigative reason to withhold the BISCO matter from public release. OI has conducted the requested review and concluded that further evaluation, including perhaps a preliminary inquiry, is appropriate. OI asked that no further release of the BISCO information occur until they have their opportunity to pursue it. It appears, from OGC's perspective, that the information originally deleted from the OIA report, as well as relevant deletions from the attachments, should continue to be withheld subject to subsequent advice from OI. (Although the report notes that OIA is undertaking two additional investigations at Region IV, we have

been informed by OIA that release of the report and attachments would not be prejudicial to its activities. Investigative work on one of the matters is complete and the report is being drafted and neither the report nor the attachments contain information concerning the second.)

With respect to the third area of inquiry, no clear-cut violations of the NRC's personnel regulations, policies or procedures are apparent. We would note, however, that although the report and its attachments themselves do not contain any direct information that would sustain an action before a personnel tribunal, certain matters suggested by these documents but not investigated by OIA (and ancillary to the matters that are the subject of the report) are being pursued further to determine whether actions may be warranted.

Finally, in regard to the fourth area of inquiry, because the subject matter of the OIA report has a bearing on the quality assurance aspects of the Comanche Peak facility, which is among the central issues in the licensing proceeding, the report has the potential for protracting the hearing process.

As previously mentioned, there are, at this time, a number of Freedom of Information Act requests pending before the Commission requesting that the report and its attachments be released. On December 11, 1986, the Commission released a redacted version of the report itself. Also on this date, the staff issued a Board Notification in the Comanche Peak proceeding transmitting to the Licensing Board and parties a copy of the redacted version of the report. In connection with the licensing proceeding, the staff received a discovery request from the intervenor, CASE, seeking production of the report and all associated documents. (The Commission was informed of this request by memorandum from the Executive Director for Operations dated December 9, 1986.) To facilitate a response to both the FOIA requests and the discovery request, OIA was requested to itself review the report and attachments to determine whether, from its perspective, any deletions are appropriately made prior to release. By memorandum dated December 19, 1986, OIA advised that it had no objection to releasing the report and all associated documentation in response to the discovery request.

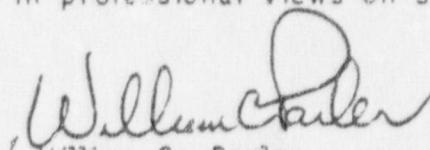
To summarize the foregoing in terms of a decision on the public release of the report and its attachments, it is recommended that, subject only to the limited deletions identified above and, upon completion of the reviews being undertaken, any additional deletions, the report and its attachments be released to the public at the earliest possible time. Because of the nature of the issues involved, OGC has not, in this memorandum, addressed whether the OIA report has broader implications in terms of the functioning of Region IV or even more broadly, whether it raises concerns affecting other Regions.

One additional observation is in order. It is unclear to OGC why reliance on the Regional Administrator and adherence to the NRC's longstanding procedures for handling Differing Professional Opinions, as set forth in NRC Manual Chapter, NRC-4125, would not have sufficed to permit a timely and effective resolution of all issues without having the situation escalate at the

The Commissioners

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outset to the point of a full-scale OIA investigation involving charges such as harassment and intimidation. The central issues which gave rise to this matter appear to involve differences in professional views on several matters.



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