



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

APR 14 1989

The Honorable John Glenn, Chairman
Committee on Governmental Affairs
United States Senate
Washington, DC 20510-6250

Dear Mr. Chairman:

I am responding to your letter of April 5, 1989 in which you ask numerous questions about my involvement in an investigation related to the Office of Inspector and Auditor (OIA) at the Nuclear Regulatory Commission (NRC). I am pleased to have the opportunity to provide this response. I believe it is important to describe fully and in proper context the facts, issues, and decisions made during this investigation.

Mrs. Connelly came to see me in August of 1988 to solicit my help in an investigation she was initiating regarding new allegations by Mr. Douglas Ellison. Mr. Ellison had alleged wrongdoing by NRC employees (one of whom was Mr. Fortuna) and also alleged that NRC had not adequately addressed safety issues he had previously provided to NRC. Furthermore, Mrs. Connelly reported that Mr. Ellison said he had new safety allegations which had not previously been provided.

As you are now aware, and as I knew in 1987, Mr. Ellison was an instrument and control technician employed by Niagara Mohawk Power Corporation at the Nine Mile Point Unit 1 facility when he first made allegations in 1986 involving a number of activities with which he had direct knowledge and information. Many of these allegations were substantiated by subsequent inspections by the Nuclear Regulatory Commission. A number of these allegations resulted in the identification of violations of NRC requirements, which eventually culminated in the payment of a \$50,000 civil penalty by Niagara Mohawk Power Corporation in May 1987. Therefore, Mr. Ellison had demonstrated that he indeed did have factual information which led to confirmation that NRC requirements were violated at the Niagara Mohawk Nine Mile Point Unit 1 facility.

Mrs. Connelly informed me that Mr. Ellison would not cooperate and provide all of the information he had unless he was reimbursed for his effort. It was her understanding that the only way this could be accomplished was to reimburse him under a contractual arrangement for his time and expenses. Since she did not have the authority to approve such a contract, she requested that I do so if I determined it was necessary to conduct the agency's business. I discussed the matter of my authority with the NRC General Counsel, Mr. William Parler, who confirmed that I had such authority. We did not discuss specifics concerning the proposed contractor or the subjects of the investigation.

Mrs. Connelly also requested that I provide someone on my staff to assist in arranging the administrative, contractual, and financial details involved in any arrangement with Mr. Ellison. She did not want to use other members of her staff because she was concerned that details of the investigation would be leaked to the Office of Investigations (OI). She believed it was critical to

B907190311 B90714
PDR FOIA
AIROZOB9-256 PDR

FOIA-89-256

A-2

keep Mr. Ellison's name confidential since acknowledgement that OIA was pursuing his allegations might compromise the investigation. I chose Mr. James Blaha to assist Mrs. Connelly because I trusted him, he was between assignments, and he was familiar with contractual and financial processes. Mr. Blaha also was familiar with handling of agency safety issues and allegations and therefore could provide me with information on potential safety issues.

At this point I was not ready to approve proceeding with the contractual arrangement. I wanted additional substantiation that Mr. Ellison's allegations warranted further pursuit. Mrs. Connelly and I agreed that she, her Assistant Director, Mr. Mark Resner, and Mr. Blaha would interview Mr. Ellison near his home at Daytona Beach, Florida. This was done on August 29 and 30, 1988. Upon their return they briefed me on the results of their interview. They reported that Mr. Ellison had dozens of tape recordings and boxes of documents which he believed supported his allegations. Mr. Blaha informed me that there was additional information regarding new safety allegations for Nine Mile Point Unit 1 related to:

- A. An unreported fire in the reactor dry well
- B. Use of drugs by employees at the facility
- C. A safety pump that may not work
- D. Control rod pump drive problems
- E. Inadequate security of the process computer system
- F. Previous allegations not handled adequately by NRC Region I and the Office of Investigation

The potential safety significance of these allegations, if they are substantiated, is clear. For example, a fire in a reactor dry well raises serious questions about: the potential damage caused by the fire itself; the circumstances which allowed the fire to start; the adequacy of plant procedures intended to prevent fires; compliance with such procedures; and the possible cover-up of the fire's occurrence. Also, employees who use drugs and perform any plant safety functions are clearly unacceptable in a nuclear power plant.

Each of the other topics above also raises serious concern about adherence to procedures, records falsification, status of maintenance, and the general attitude about safety at the plant. A significant portion of the escalated enforcement actions taken by the NRC over the years has involved similar issues. More important than each specific allegation is the concern that an organizational culture may exist which does not place proper emphasis on safety issues, especially with regard to procedures, quality assurance, and conduct of maintenance.

At the time Mr. Blaha briefed me on these new allegations, Nine Mile Point Unit 1 had been shut down since December 1987 but was projected to start up again in the fall of 1988. For that reason, I felt it was important to promptly pursue these allegations; therefore, I approved the contract.

During the course of subsequent interviews with Mr. Ellison, Mr. Blaha kept me informed of additional information about safety issues. Because the projected startup date for the plant had slipped, there was no immediate need to address these issues. Mr. Blaha documented the safety issues during the interviews with Mr. Ellison with the intent that they would be pursued by the NRC before startup. At that time, it was expected that the investigation of employee

misconduct would be completed and the need for confidentiality would end well before the plant would be ready for startup. However, the current projected startup date is for the summer of this year. In recognition of the near-term startup of the plant, I have asked James Taylor, my Deputy, to request Mr. Rosenthal to make the information regarding these new allegations, gathered by Mr. Blaha and others, available to Mr. Taylor so that these issues can be pursued by the technical staff prior to the startup of the facility.

Although I recognized at the time that I authorized the contract with Mr. Ellison that my involvement in an OIA investigation of allegations against members of the OI staff could be misperceived by some and probably criticized, my overriding concern was to assure public health and safety. I was also, of course, concerned about the possibility that members of my staff might be compromising sensitive investigative information, and thus I felt that this matter needed to be investigated. In fact, had this information come to my attention from other sources, I would have requested an OIA investigation. In no way have I attempted to influence or steer the course of the OIA investigation. I am convinced that I acted in the best interest of safety and responsible management, given what I was told about Mr. Ellison's willingness to cooperate and the nature of his allegations.

As I stated, I was aware that my action might well, because of misperceptions, lead to an investigation such as the present one. However, I would much rather respond to this investigation than to the one which would occur had I not pursued safety allegations which were later determined to have contributed to an accident.

I trust my explanation is responsive to your concerns. Responses to your specific questions are enclosed.

Sincerely,
Original signed by
Victor Stello, Jr.
Victor Stello, Jr.
Executive Director
for Operations

Enclosure:
Answers to Questions

cc: Senator William V. Roth, Jr.

QUESTION 1. Please describe your knowledge concerning the Ellison allegations and the agency's internal investigation of those allegations during the period August 5, 1988 through February 23, 1989. In particular, please address:

When did you learn of all or a portion of the Ellison allegations?

Who informed you concerning these allegations?

What did you learn from Mrs. Connelly?

What did you learn from General Counsel William Parler?

What did you learn from Mr. James Blaha?

What did you know about the allegations during the period August 5, 1988 through February 23, 1989?

What did you know about the agency's internal investigation of these allegations during that same period?

ANSWER.

In mid to late August 1988, Mrs. Connelly requested my help in an investigation she was initiating because of allegations she received from Mr. Ellison. She indicated that Mr. Ellison alleged wrongdoing by NRC employees, including Roger Fortuna; that he also alleged that NRC had not adequately addressed the safety issues that he had provided in 1986; and that he had additional safety allegations that had not previously been provided to the NRC. Mrs. Connelly informed me that Mr. Ellison would not cooperate and

provide all of the information he had unless he was in some way reimbursed for his efforts. She explained that Mr. Ellison was having significant financial difficulty and emphasized that he was not prepared to spend time and effort explaining these allegations without being reimbursed for his services. Mrs. Connelly further explained that she did not have the authority to enter into a contract for this purpose, but it was her understanding that I, in fact, did have the authority to do this if I determined that it was necessary for the conduct of agency business.

During my discussion with Mrs. Connelly, I made it clear that I saw a division of responsibility with regard to the investigation of Mr. Ellison's allegations. Mrs. Connelly was responsible for employee wrongdoing issues. I, on the other hand, would be responsible for pursuing safety issues. I concluded the discussion and indicated that I would go forward with a contract when I had information to suggest there were safety issues that warranted further regulatory action.

I then decided that Mr. Blaha, who was between assignments and readily available, could accompany Mr. Resner and Mrs. Connelly to interview Mr. Ellison near his Daytona Beach, Florida, residence to get further information regarding these allegations. Mr. Blaha was chosen because of his familiarity with administrative, contractual, and financial processes and his general familiarity with the handling of agency safety issues and allegations. I had complete confidence and trust in Mr. Blaha's ability to do the job and to maintain the strict confidence that Mrs. Connelly indicated was necessary.

During a meeting in late August (and prior to the trip to Florida), Mrs. Connelly, Mr. Parler, myself, and possibly either Mr. Herr or Mr. Resner discussed alternative ways to get the information from Mr. Ellison, including the use of a subpoena. Mrs. Connelly believed that issuing a subpoena was not a viable option because Mr. Ellison's cooperation was necessary for the information he had to be of value. As I indicated earlier, she believed Mr. Ellison's cooperation without reimbursement was not possible. The meeting concluded with my believing that the only viable option for obtaining the information was to enter into a contract with Mr. Ellison to obtain the cooperation necessary for getting useful information.

I recall that during this discussion I noted that Mr. Ellison had previously provided allegations regarding safety issues at Nine Mile Point Unit 1 and that some of these allegations were substantiated. In particular I recall stating that Mr. Ellison's allegation that he had used an unqualified Radio Shack connector in the reactivity control system of the Nine Mile Point Unit 1 reactor was substantiated. (This system is an important safety system in the plant because it is relied on for shutting down the reactor in an emergency.)

I asked Mr. Parler to confirm that I had authority to enter into a contract to obtain safety-related information. I relied on his assurance that I indeed had the legal authority to enter into a contract to obtain information that I determined to be necessary to carry out the agency's public health and safety responsibilities.

Mr. Blaha, Mr. Resner, and Mrs. Connelly then spent a day talking to Mr. Ellison near his Florida residence. As I have explained in my cover letter, upon his return from that visit, Mr. Blaha informed me that there were new safety allegations.

At that point, given Mr. Blaha's description of the dozens of tape recordings and documents that Mr. Ellison possessed, I had no reason to doubt that Mr. Ellison would in fact provide important safety information regarding various activities at the Nine Mile Point Unit 1 facility. This judgment was reinforced because a number of allegations made by Mr. Ellison in 1986 were substantiated and showed that violations of our requirements existed and eventually led to a \$50,000 civil penalty that was paid by Niagara Mohawk Power Corporation.

In summary, before authorizing the contract I was persuaded that there were safety issues that had to be pursued, and I was aware that there were serious allegations regarding the mishandling of investigations by NRC employees, including Mr. Fortuna. Before authorizing the contract I was aware that there were recorded conversations with Mr. Fortuna that raised serious questions in my mind regarding his conduct. I recall specifically pointing out to Mrs. Connelly that the issues of the investigation of NRC employees' misconduct was her responsibility, but that in my judgment the conduct of an investigation was warranted.

After Mr. Blaha briefed me, I received a memorandum from Mrs. Connelly dated September 1, 1988. It requested that I set up a consulting contract with Mr. Ellison. I authorized that contract, and it was issued on September 1, 1988.

During the conduct of the investigation, I was informed from time to time by both Mr. Blaha and Mrs. Connelly, in very general terms, of the overall status of the investigation. Mr. Blaha provided some additional details regarding Mr. Ellison's belief that our investigation of his earlier allegations was not thorough and, in some cases, had been incorrect. He provided details regarding Niagara Mohawk's failure to report information to the NRC that, in Mr. Ellison's opinion, should have been reported. Mr. Blaha indicated that from the documents and recordings provided he believed there was substantial evidence that the Niagara Mohawk Power Corporation had intimidated and harassed Mr. Ellison because of his pursuit of safety allegations. Mr. Blaha also indicated that the large bulk of Mr. Ellison's materials related primarily to technical and safety issues.

Mrs. Connelly also kept me informed of the status of the investigation, including her interactions with the FBI to determine if parts of the investigation should be taken over by the FBI. I was also made aware that she had contacted the Department of Justice for its consideration of potential criminal wrongdoing. I was kept informed of attempts to interview Mr. Fortuna during January/February 1989. These attempts eventually culminated in the proposed removal of Mr. Fortuna from his position for failure to comply with a management directive to appear for an on-the-record interview.

QUESTION 2: What did you know about Mr. Ellison's (a) background, (b) history with Region I, OI and OIA, (c) allegations and/or convictions concerning sexual offense(s), and (d) employment status and financial condition during the period August 5, 1988 through February 23, 1989? Who informed you concerning Mr. Ellison? When were you so informed?

ANSWER:

- (a) I knew Mr. Ellison had been employed as an instrumentation and control technician at the Niagara Mohawk Nine Mile Point Unit 1 facility.
- (b) As I explained in the cover letter, I was aware of the allegations Mr. Ellison made to Region I and OI in 1986-1987. I am aware that the Region and OI pursued these allegations, many of which were substantiated. I am also aware that we advised Mr. Ellison to pursue his intimidation and harassment charges with the Department of Labor, which he subsequently did, and I understand that he reached a settlement with the company.
- (c) Prior to August 5, 1988, I was made aware in general terms that there were allegations regarding unusual behavior by Mr. Ellison. I cannot recall any specifics concerning those allegations, nor can I recall who first informed me of them. Most likely it was Dr. Thomas Murley (the Administrator of NRC Region I) sometime in 1986 or 1987. Upon his return from Florida Mr. Blaha informed me that Mr. Ellison had pleaded guilty to some charge pertaining to sexual misconduct with a minor. I never

focused on any specifics concerning Mr. Ellison's sexual offenses until the issue was raised as part of your investigation. I did not consider it relevant to whether Mr. Ellison possessed safety significant information, in light of the fact he had already provided NRC with substantiated safety allegations.

- (d) Before I approved the consulting contract with Mr. Ellison, Mrs. Connelly informed me that Mr. Ellison was unemployed and was having difficulty providing for his family.

QUESTION 3. What was your relationship to the fund established to make the payments related under the consulting arrangement and any other payments related to the agency's internal investigation of the Ellison allegations (FIN: B8169, "Support for DEDROGR")? Did you ever refuse to allow such fund to be audited by any component of the agency? If so, why?

ANSWER.

I approved the establishment of an imprest fund to support expenses related to the agency's internal investigation of the Ellison allegations. I approved the suggestion that Mr. Ellison be paid in cash since the cutting of government checks could have compromised the confidentiality of Mr. Ellison's name. I also approved the obligations and payments from that imprest fund. Mr. James Blaha was the subcashier who managed the fund.

At no time did I refuse to allow the imprest fund to be audited by any component of the agency. I understand that there was one occasion when a fund verification was deferred. The Controller, Ronald M. Scroggins, who is familiar with the situation, has provided the following statement regarding this question:

This fund was established on August 31, 1988 by the staff with monies from Financial Identification Number (FIN) B8169, Support for Deputy Executive Director for Regional Operations and Generic Requirements (DEDROGR) as an administrative convenience since it had been in existence for the last few years. The staff who selected the FIN had no knowledge of the subject of the investigation.

The fund was a subcashier imprest fund with Mr. James Blaha designated as the subcashier. This designation and advance of funds from the principal cashier was accomplished in accordance with established procedures.

Unannounced audits of NRC imprest funds are conducted by the Office of Inspector and Auditor (OIA) at least once a year. Since the subcashier's imprest fund was in existence for only about a month, the fund was not in existence when the OIA audits were performed in 1988.

However, on September 14, 1988 in accordance with established procedures, a member of my staff planned to perform the quarterly verification of the headquarters imprest funds. Since I had been informed that the subcashier's imprest fund would be closed out prior to September 30, 1988, I knew a close-out verifications would be required. I informed my staff member that it did not appear necessary to verify the fund at this time and again in a few weeks. Subsequently, I personally verified the imprest fund on September 26, 1988 and it was also independently verified by the principal cashier on that date as part of the subcashier imprest fund close-out process in accordance with established procedures.