

February 8, 2001

Brad Fagg, Esq.  
Morgan, Lewis & Bockius, LLP  
1800 M Street, N.W.  
Washington, D.C. 20036

RE: City of Lincoln, Nebraska v. Nebraska Public Power District,  
Docket #528, Lancaster County (Neb.) District Court;  
NRC File No. TR-01-01.

Dear Counselor:

The Office of the General Counsel has received your letter, dated January 25, 2001, requesting testimony by an NRC employee in the above-captioned matter. This Office has assigned the processing number "TR-01-01" to your request; please refer to that number in any future correspondence regarding this matter.

Your request seeks either deposition testimony or an affidavit from Mr. William Travers, the Executive Director for Operations ("EDO") of the NRC describing the NRC's view of the proposed testimony of Mr. John Montgomery, the former Deputy Regional Administrator of the NRC's Region IV Office in Arlington, Texas. For the reasons stated below, I am denying your request at this time.

Under the NRC's regulations at 10 C.F.R. §9.200, et seq., the NRC generally approves testimony by NRC employees as witnesses only if they are the only source of material facts relevant to the issues in dispute in the litigation. However, your letter does not demonstrate that Mr. Travers possesses such information. Instead, your letter expresses a concern about the weight a court may give to opinions of a former NRC official. But it is axiomatic that a government agency speaks only through official issuances, such as orders, regulations, and inspection reports, or through public statements by current officials of appropriate rank, such as the Chairman or the EDO. No NRC affidavit or testimony should be necessary to substantiate this self-evident proposition.

In this case, the lawsuit underlying your request involves two outages at the Cooper Nuclear Station in the early 1990's. The official NRC views on the circumstances surrounding those outages are expressed in contemporary agency documents which are in the public domain. In addition, the agency has not designated Mr. Montgomery to speak for the agency in any official capacity. Thus, by definition, any statements he makes in his testimony will consist of his own personal views, not those of the agency. Accordingly, I see no need for NRC testimony in this matter and, therefore, I am denying your request.

If you have any further questions regarding this matter, please feel free to raise them with Mr. Charles Mullins of this Office, to whom I have assigned this matter. You may reach Mr. Mullins at (301) 415-1606.

Sincerely,

/RA/

Stephen G. Burns  
Acting General Counsel

If you have any further questions regarding this matter, please feel free to raise them with Mr. Charles Mullins of this Office, to whom I have assigned this matter. You may reach Mr. Mullins at (301) 415-1606.

Sincerely,

/RA/

Stephen G. Burns  
Acting General Counsel

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