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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF INVESTIGATIONS

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of:
Crystal River Nuclear Plant

Case No. 2-94-036S

In Re: David Fields

MOTION TO QUASH SUBPOENA

COMES NOW David Fields, by and through counsel, and hereby moves that a subpoena served upon him on or about 7/28/95 by William J. McNulty, Field Office Director, Office of Investigations, Region II, be quashed. As grounds for this motion, Movant would make the following showing:

1.

The subpoena in question is marked hereto as Exhibit "A". It calls for testimony to be given before the Office of Investigation on August 15, 1995.

2.

Counsel for Movant has been advised that at least one of the subject areas about which the OI wishes to interview the movant concerns prior statements he made at an earlier OI interview.

3.

A request has been made of the NRC for transcripts of the prior statements that were made, upon information and belief, back in December, 1994. Notwithstanding a request for transcripts of this prior interview, this request has been denied.

4.

Denial of Movant's reasonable request for access to his prior NRC testimony constitutes a denial of his right to have effective representation of counsel during the upcoming OI interview.

5.

At the time of his prior interview, the Movant was not represented by counsel. In addition, it has been more than eight (8) months since his prior OI interview.

6.

The undersigned cannot effectively represent his client concerning questions about a prior interview if he is denied access to his client's prior transcript of interview. To deny the movant's request for a copy of his transcript not only will render his right to effective representation of counsel meaningless, it will also deprive him of due process of law.

7.

Upon information and belief, the Office of Investigations has had complete access to the movant's prior interview tape-recordings and transcript. Also, they have their field notes

from the prior interview and, in fact, intend to question the movant about his prior statements.

8.

Other individuals who were interviewed in connection with this case have obtained copies of their transcripts. Given that these other transcripts have already been made available to other witnesses, there would be no prejudice whatsoever to the Office of Investigations or the NRC in providing to Movant his transcript of the prior OI interview.

9.

To deny Movant's reasonable request for his transcript, when other witnesses have obtained their transcripts, denies Movant equal protection of the law. The Office of Investigations' denial of Movant's request for his transcript also suggests that the subpoena has been issued not such much as an aid in the search for the truth, but rather as an adversarial investigative tool.

10.

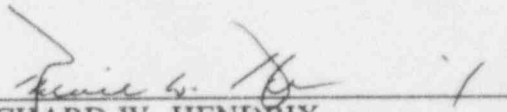
The OI interviews, hopefully, are designed to search for the truth. This objective cannot be fulfilled if witnesses do not have refreshed recollections of the facts.

WHEREFORE, in order to ensure the movant's right to effective representation of counsel, and in order to protect his due process rights, it is hereby respectfully requested that the subpoena served upon him, marked as Exhibit "A", be quashed until such time as the

Office of Investigations makes available to Movant a copy of his prior OI transcript. In lieu thereof, Movant would ask that an Order issue prohibiting OI from questioning him about any of the issues that were discussed at his prior OI interview.

Respectfully submitted,

FINCH, McCRANIE, BROWN & THRASH



RICHARD W. HENDRIX
Ga. Bar No. 346750
Attorney for Movant

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Atlanta, GA 30303
(404) 658-9070 / (800) 228-9159

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION OFFICE OF INVESTIGATIONS

IN THE MATTER OF: Crystal River Nuclear Plant

CASE NO. 2-94-036S

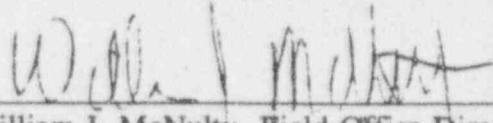
TO: David A. Fields

YOU ARE HEREBY COMMANDED, pursuant to Section 161 (c) of the Atomic Energy Act of 1954, as amended, to appear at the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations, 101 Marietta Street, Suite 2900, Atlanta, GA 30323 on the 15th day of August, 1995, at 1:30 p.m. to testify in the matter of an NRC investigation of Crystal River licensed control room operators.

YOU ARE FURTHER COMMANDED to provide the NRC all records, including but not limited to, documents, notes, phone records and computer records regarding control room operations at Crystal River on September 4 and 5, 1994.

BY ORDER OF THE DIRECTOR,
OFFICE OF INVESTIGATIONS

By


William J. McNulty, Field Office Director
Office of Investigations, Region II

Date

7/27/95

Requested by: James Y. Vorse, Sr. Investigator
Office of Investigations
U.S. Nuclear Regulatory Commission
101 Marietta Street, NW - Suite 2900
Atlanta, GA 30323
(404) 331-6502

On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the Commission may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms. Such motion should be directed to the Secretary of the Commission, Washington, DC 20555. Failure to comply with the terms of this subpoena may result in the Commission's seeking judicial enforcement of the subpoena pursuant to Section 233 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2281.

Exhibit A

RETURN

CERTIFICATE OF PERSONAL SERVICE:

I certify that I delivered a copy of this subpoena in hand to:

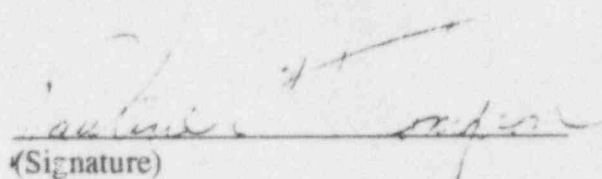
on _____, 19 ____, at _____ o'clock _____ M., at _____

CERTIFICATE OF SERVICE BY MAIL:

I certify that I caused a copy of this subpoena to be mailed by _____ Certified Mail _____

mail, postage prepaid, to the address specified and with delivery restricted to the person named

thereon on July 28, 1995, Receipt No. P 142 896 564


(Signature)

James Y. Vorse, Sr. Investigator
Office of Investigations Field Office, RII
U.S. Nuclear Regulatory Commission

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USNRC

UNITED STATES OF AMERICA ⁹⁵ AUG 17 11:06
NUCLEAR REGULATORY COMMISSION
OFFICE OF INVESTIGATIONS

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of:
Crystal River Nuclear Plant

Case No. 2-94-036S

In Re: David Fields

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of the above pleading by depositing a copy of same in the United States Mail with adequate postage thereon addressed as follows:

Mr. J. Brad Fewell
U.S. Nuclear Regulatory Commission
Region II
101 Marietta St., NW
Suite 2900
Atlanta, GA 30323-0199

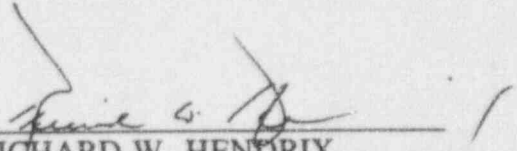
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. William J. McNulty
Field Office Director
Office of Investigations, Region II
U.S. Nuclear Regulatory Commission
101 Marietta St., N.W.
Suite 2900
Atlanta, GA 30323-0199

Mr. James Y. Vorse, Sr., Investigator
Office of Investigations, Region II
U.S. Nuclear Regulatory Commission
101 Marietta St., NW, Suite 2900
Atlanta, GA 30323

This 8 day of August, 1995.

FINCH, McCRANIE, BROWN & THRASH



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Attorney for Movant

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