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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555
August 19, 1981

74

Office of Inspector
and Auditor

Note to Dudley Thompson

Attached for your information is a copy
of OIA's report of investigation into
the allegations by Thomas Applegate regarding
the Zimmer Nuclear Power Station.

/s/

Arthur Schnebelen
Acting Assistant Director
for Investigation

Attachment:
OIA rpt of investigation
re Zimmer dtd 8/7/81

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

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September 17, 1981

MEMORANDUM FOR: Chairman Palladino

FROM: William J. Dircks
Executive Director for Operations

SUBJECT: JULY 30, 1981 OIA REPORT, "SPECIAL INQUIRY RE: ADEQUACY
OF IE INVESTIGATION 50-358/30-9 AT THE WILLIAM H. ZIMMER,
NUCLEAR POWER STATION"

Enclosed are the OIE comments relative to the OIA investigative findings. I would like to specifically direct your attention to the enclosed weld chronologies. Clearly, these welds had been identified and placed in a corrective action system prior to Applegate's involvement.

I believe the OIA report summary (page 2) best characterizes the safety issue.

"One of Applegate's main allegations was that defective welds in safety-related systems have been accepted, By virtue of prior IE inspections . . . , it is clear that Region III was well aware of the chronic and long history of welding problems at Zimmer: specifically, that unacceptable welds in safety-related systems had for all intents and purposes been accepted by both the contractor and, in some cases, the licensee. Based upon these inspections, Region III required the licensee to rereview radiographs and reports of all welds which had been accepted for turnover prior to operation; this review started in October 1979 and portions of this review are still being studied by Region III."

It appears to be irrelevant to debate whether or not the welds had been accepted; the pertinent fact is that the welds were in a system to obtain corrective action.

I am confident that the aggregate of licensee and NRC actions would have resulted in adequate welds prior to the operation of this plant, irrespective of Applegate's involvement.

William J. Dircks
Executive Director for
Operations

Enclosures:

1. Office of Inspection and Enforcement Comments
2. Weld Chronologies

cc: See Page 2

14pp

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



EDD 9/1

MEMORANDUM FOR: Chairman Palladino

FROM: William J. Dircks
Executive Director for Operations

SUBJECT: JULY 30, 1981 OIA REPORT, "ADEQUACY OF IE INVESTIGATION:
50-358/80-09 AT THE WILLIAM H. ZIMMER NUCLEAR POWER
STATION"

The OIA findings and supporting arguments contained in the August 7, 1981 memorandum, J. Cummings to the Commissioners, disturb me deeply. I am forced to conclude that OIA may not clearly understand the NRC mission or priorities, nor the processes and controls involved in the construction of a nuclear power plant. I am unable to conclude that the OIE investigation of Applegate's allegations was unsatisfactory.

Our goal for plants under construction is to ensure that they are constructed a manner to provide adequate public protection after they are licensed operate. We attempt to ensure that all potential construction defects, irrespective of how they are identified, are adequately corrected prior to the operation of a nuclear power plant. To that end, the optimal use of our resources is achieved when identified defects are verified to be in a utility's corrective action system. The potential for further reduction of risk to the public is not commensurate with the incremental resources required to broaden the depth and breadth of this type of investigation as suggested in the OIA report.

I have been informed there are factual inaccuracies in the OIA report. I will be forwarding our detailed comments on the OIA report in a separate memorandum.

William J. Dircks
Executive Director for
Operations

cc: See next page

TACT: T. L. Harpster, IE
49-24774

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2pp

Chairman Palladino

- 2 -

Commissioner Gillsky

Commissioner Bradford

Commissioner Ahearn

Commissioner Roberts

SECY

OPE

OGC

A. ISSUES TO OIA FINDINGS

1. OIA Finding

OIA review of investigative file disclosed inadequate documentation.

Discussion

The OIA comment on documentation (page 2) refers to the RIII investigative file, rather than the investigation report itself. They noted that no "results of interview" or copies of weld documentation reviews were in the file. On page 13, it is pointed out that no identification key was generated for the investigative file.

Neither NRC, IE, nor RIII procedures require a "results of interview" to be generated for each interview, and all interviews are not required to be portrayed in detail in an investigation report. Investigation reports should contain all pertinent information, whether obtained through observations, records or interviews, concerning the matter investigated.

There is no need for retention of copies of all documentation obtained during an investigation. If a document appears to be relevant to the case, it is often reviewed onsite, and no copy is obtained. If a document appears central to an allegation, it is then copied, and may be made an attachment to the report, if warranted by the issue involved.

2. OIA Finding

IE investigative report did not identify the dates on which the welding rework was conducted on weld K-B11.

Discussion

Although the IE investigation report did not identify the date when weld K-B11 was removed (approximately January 16, 1980), the report did correctly identify that the weld had been removed as provided by the disposition of NR No. E-2138R1. Thus, the weld alleged to be improper was nonexistent, having been removed eighty-two days prior to the investigation team's arrival at Zimmer. Determination of the date of rework was not necessary in our view.

3. OIA Finding

The IE investigation report did not identify that a nonconformance report (NR) on weld K-B11 had initially been closed with the notation "accept as is," and was later voided and reopened to order the weld cut out.

Discussion

The finding as stated is incorrect. The "accept as is" statement on the NR was conditional in that it only applied if a radiograph showed the weld to be acceptable. Apparently the OIA investigator misunderstood the NR.

4. OIA Finding

The investigation did not determine that weld RH-42 had been cut out and replaced after initiation of the investigation.

Discussion

The finding is correct. The investigation did, however, properly determine that weld defects had been identified and corrective action was planned. The actual date of corrective action is not significant.

5. OIA Finding

None of the welds alleged to have been deficient were inspected by the investigation team nor was all pertinent weld documentation reviewed.

Discussion

The finding is correct but considered irrelevant. The investigators did not inspect the welds but did review the radiographs, which was the correct method of evaluation. Visual examination of the weld would not identify internal defects. The investigators did not review all weld documentation but did review the pertinent documentation to establish proper weld disposition.

6. OIA Finding

The IE investigators did not fully investigate or accurately report on the alteration of a nonconformance report (NR) related to spool pieces containing defective welds. The IE report only identified an individual as a "CG&E official" vice "QA Manager," thus obscuring that this was the licensee's senior person responsible for the site QA program who ordered improper voiding of a NR.

Discussion

Investigator Phillip indicates that the matter was discussed with his supervisor, and the pursuit of who directed the lining-out was seen as having little significance. This was because a separate NR had been opened, providing tracing of the nonconformance. Finally, neither OIA nor QIE could substantiate the allegation.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20545

U-20071

MEMORANDUM FOR: Chairman Patterson

FROM: William J. Dircks
Executive Director for Operations

SUBJECT: JULY 30, 1981 OIA REPORT, "ADEQUACY OF IE INVESTIGATION
50-358/80-09 AT THE WILLIAM H. ZIMMER NUCLEAR POWER
STATION"

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William J. Dircks
Executive Director for
Operations

cc: See next page

WTACT: T. L. Harpster, IE
49-24774

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Chairman Palladino

- 2 -

Commissioner Dittusky

Commissioner Bradford

Commissioner Ahern

Commissioner Roberts

SECY

OPE

OGC

REPLIES TO OIA FINDINGS

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2. OIA Finding

IE investigative report did not identify the dates on which the welding rework was conducted on weld K-811.

Discussion

Although the IE investigation report did not identify the date when weld K-811 was removed (approximately January 16, 1980), the report did correctly identify that the weld had been removed as provided by the disposition of NR No. E-2136R1. Thus, the weld alleged to be improper was nonexistent, having been removed eighty-two days prior to the investigation team's arrival at Zimmer. Determination of the date of rework was not necessary in our view.

3. OIA Finding

The IE investigation report did not identify that a nonconformance report (NR) on weld K-811 had initially been closed with the notation "accept as is," and was later voided and reopened to order the weld cut out.

The finding as stated is incorrect. The "accept as is" statement on the NR was conditional in that it only applied if a radiograph showed the weld to be acceptable. Apparently the OIA investigator misunderstood the NR.

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WR-K-516

SEP 4 1981

MEMORANDUM FOR: R. F. Warnick, Chief, Reactor Projects Section 2B
FROM: A. Bert Davis, Deputy Director
SUBJECT: ZIMMER INVESTIGATION, WELD CY-516

REJECTABLE

As you know weld CY-516 was determined to have indications when it was radiographed. This weld is in a system where RT is not required; the NDE for welds in this system is visual inspection. I understand based on the RT that the licensee plans to cut out and replace this weld. If the licensee is doing this because the RT has shown that the weld is unacceptable for the service intended, then this casts questions on other welds in this system. We then need to make an evaluation whether the other welds need to be further reviewed. If, on the other hand, the licensee is replacing CY-516 just because the weld indications have come to the attention of many people, then there would be no reason to become concerned about other welds in the system.

Please determine the reason for replacing CY-516 and if appropriate, assure other welds in the system are reevaluated.

A. Bert Davis
Deputy Director

cc: P. A. Barrett
D. H. Danielson
C. E. Morelius
R. L. Spessard
E. D. Ward

R111

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
799 ROOSEVELT ROAD
GLEN ELLYN, ILLINOIS 60137

MEMORANDUM FOR: James G. Keppler, Director, Region III
FROM: James E. Foster, Investigator
SUBJECT: SUPPLEMENTARY COMMENTS ON OIA REPORT "ADEQUACY OF I&E
INVESTIGATION 50-358/80-09 AT THE WILLIAM H. ZIMMER NUCLEAR
POWER STATION"

I have reviewed the subject report several times now, and have supplementary comments to add to my memo of September 3, 1981.

One major point in the OIA report is where they indicate (page 3, bottom) "it was suspected and later confirmed that many of the [GAP] allegations described in the petition were, in fact, not brought to the attention of Region III personnel at the time of the initial investigation." This conclusion is apparently based on a two month review of GAP-supplied material and other information.

No information is provided regarding the GAP-supplied information studied or which allegations were determined to be subsequent to the Region III investigation, or the method of confirmation of their suspicions. Mr. Phillip believes that the sole "confirmation" was his statements to OIA personnel. The finding is one of the central findings of the report, apparently involving two months work, but is given only one short paragraph in the report.

Less significantly, the following errors were noted:

<u>Location</u>	<u>Error</u>
Transmittal, Page 1	Wrong date for OIA report (report was apparently finalized July 30, 1981).
Transmittal, Page 2	No mention of W. Ward involvement in investigation.
Page 2, Paragraph 4, Line 8	Region III did not "require" this action, it was a licensee response.
Page 8, Paragraph 1, Line 5	Wrong title for Schwiers, Manager, <u>QA&S</u> .
Page 23, Paragraph 2, Line 9	<u>Duane</u> Danielson.
Page 29, Paragraph 2, Line 4	<u>Tom</u> Daniels.

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James G. Keppler

- 2 -

Page 31, Paragraph 2, Line 8

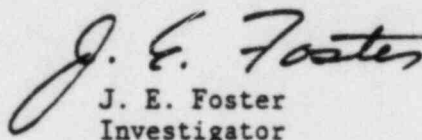
Ed Lee.

Page 39, Paragraph 1, Line 1

February 19, 1981 date appears to be in error if comment on document request (page 34, paragraph 5, line 3) is correct.

Page 39, Paragraph 2, Lines 4,
5, and 8

Date is actually 1980.


J. E. Foster
Investigator

MEMORANDUM FOR: James G. Keppler, Director, Region III

FROM: James E. Foster, Investigator

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James G. Keppler

- 2 -

Page 31, Paragraph 2, Line 8

Ed Lee.

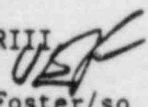
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
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J. E. Foster
Investigator

RIII

Foster/so
9/21/81

RIII

Streeter
9/23/81

MEMO COPY
~ 9/21/81

MEMORANDUM FOR: James G. Keppler, Director, Region III
FROM: James E. Foster, Investigator
SUBJECT: SUPPLEMENTARY COMMENTS ON OIA REPORT "ADEQUACY OF I&E
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James G. Keppler

- 2 -

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J. E. Foster
Investigator

RIII

Foster/so
9/21/81

RIII

Streeter



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

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September 17, 1981

MEMORANDUM FOR: Chairman Palladino

FROM: William J. Dircks
Executive Director for Operations

SUBJECT: JULY 30, 1981 OIA REPORT, "ADEQUACY OF IE INVESTIGATION
50-358/80-09 AT THE WILLIAM H. ZIMMER NUCLEAR POWER
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Our goal for plants under construction is to ensure that they are constructed in a manner to provide adequate public protection after they are licensed to operate. We attempt to ensure that all potential construction defects, irrespective of how they are identified, are adequately corrected prior to the operation of a nuclear power plant. To that end, the optimal use of our resources is achieved when identified defects are verified to be in a utility's corrective action system. The potential for further reduction of risk to the public is not commensurate with the incremental resources required to broaden the depth and breadth of this type of investigation as suggested in the OIA report.

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William J. Dircks
Executive Director for
Operations

cc: See next page

CONTACT: T. L. Harpster, IE
49-24774

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Chairman Palladino

- 2 -

cc: Commissioner Gilinsky
Commissioner Bradford
Commissioner Ahearne
Commissioner Roberts
SECY
OPE
OGC
OIA✓

This Chapter and 10 CFR 1.30 establish OIA as an internal investigative and auditing organization.

In contrast, Manual Chapter 0127 (as well as 10 CFR 1.64), gives IE a broad external investigative mandate. Among other things, it confers on IE the responsibility to investigate licensees, their contractors or suppliers, applicants, individuals, and any organization subject to NRC jurisdiction. MC 0127 describes the purpose of these investigations as being "to ascertain the status of compliance with NRC requirements" and to "identify conditions...that may adversely affect the public health and safety, the common defense and security, the environment, or the safeguarding of nuclear materials and facilities." In addition, MC 0127 specifically charges IE to "investigate incidents, accidents, allegations, and other unusual circumstances involving matters in the nuclear industry which may be subject to NRC jurisdiction..." Neither the Manual Chapter nor the regulation limit IE's investigative role in matters that may involve potential criminality.

The issue of authority as specified in the NRC Manual and Regulations notwithstanding, there are several other compelling reasons that lead me to conclude that IE requires a clear external investigative mandate. For instance, it appears to me that it is inconsistent to have OIA perform external investigations, thus involving a Commission staff office in an operational activity. Commission policy has been to place operational activities under the cognizance of the Executive Director for Operations. Assigning external investigative authority to OIA represents a departure from this practice.

Even more important, however, is the impact of OIA involvement in external investigations on the inspection and enforcement program in general and on enforcement coordination in particular. Indeed, the problems already encountered in such investigations as South Texas, Nuclear

Pharmacy Incorporated, Stepan Chemical, Zimmer, and the various TMI investigations have demonstrated the need to have this conflict corrected. In these cases, all of which involved potential criminality as well as major health and safety issues, it is not clear that all developed information has been provided to IE or the Department of Justice, enforcement actions have been delayed, and licensees have been confused by having to deal with two sets of NRC investigators. The Department of Justice has been brought into some of these matters with only limited IE consultation regarding the program implication of such an action. The latter has caused elevated enforcement actions to be held in abeyance pending DOJ resolution of relatively minor criminality. There have also been occasions where DOJ has declined prosecution in cases where IE believed prosecution to be warranted for reasons of program impact.

Relatedly, there have been instances where IE Enforcement meetings with licensees have led to NRC/Licensee Agreements which were later challenged by DOJ. The Niagara Mohawk, Stepan Chemical, & Nuclear Pharmacy cases are examples where this has occurred.

These examples point out the need for IE's authority to deal directly with DOJ regarding those external matters that IE investigates. This would afford IE an opportunity to ensure that all relevant information is made available to DOJ in a manner sufficient for DOJ to understand the relationship of the data to the public health and safety. Such direct contact would also enhance mutual understanding of the respective roles of DOJ and NRC, and could be expected to shorten the length of time that it now requires to obtain a prosecutive determination. I believe these factors demonstrate that the present procedures that require IE to deal with DOJ via a third party are not satisfactory, and provide no discernable benefit to the NRC.

In the above-cited investigations, OIA involvement was predicated on evidence of apparent criminality.¹ It is my view that investigations of actual or potential criminality are only a subset of each of the larger categories of internal versus external investigations. Hence, it is instructive to examine the topic of criminality in light of our experience to date.

¹Pursuant to section 221(b) of the Atomic Energy Act, the FBI is required to investigate all alleged or suspected criminal violations of the Atomic Energy Act.

As it pertains to the NRC, actual or potential criminality can be considered as falling into two categories. The first category is encountered during inspections or investigations (or is brought to the attention of the NRC in some other fashion) and is only peripheral to NRC's principal interest or responsibilities. Examples of this type of criminal activity range from theft of private property or embezzlement of licensee funds to violations of specific federal laws, such as smuggling, counterfeiting, or evading payment of income tax. In such cases, we make the information available to the Federal, State, or local law enforcement agency having jurisdiction over the matter. NRC has neither the authority nor the desire to investigate such matters except to the extent that they may bear upon NRC statutory responsibilities.

In the second category are those instances of potential criminality that are clearly related to matters within the jurisdiction of the NRC. The vast majority of these involve potential violations of the Atomic Energy Act or the General Fraud Against the Government Statutes (such as 18 USC 1001 or 18 USC 371). Some examples of these are willful violations of NRC regulations made criminal by statute, records falsification, lying to an inspector or investigator, unlicensed possession of nuclear material, or attempts to deceive the NRC in order to obtain a license.

It is important to note that the vast majority of investigations conducted by IE involve, at least at the outset of the investigation, the possibility of criminality. IE is dealing with, or has dealt with recently, dozens of instances where the initial information indicated either possible falsification of records relied upon by the NRC or the knowing and willful violation of NRC regulations.

In each of these examples, the elements of potential criminality and NRC's regulatory interests are inextricably intertwined. No decisions can be made regarding either health and safety actions or criminal prosecution until there is an adequate amount of information available on which to base such a decision. It is my belief that the appropriate way to acquire this information is to initiate or continue an investigation concerning the matter at issue. By following this course of action IE would be able to ensure that it promptly possesses information of sufficient quantity and quality on which to make its decisions involving the health and safety of the public. At the same time, such an approach would not foreclose a future decision to pursue criminal prosecution. In that regard it should be noted that most instances of potential criminality encountered by IE are not of the "smoking gun" type. The

existing NRC-Department of Justice agreement covering criminal referrals provides guidelines for making such referrals and for the conduct of necessary health and safety investigations and the taking of necessary enforcement actions, even after such referrals.

In those rare cases in which prompt field response by the FBI might be warranted, such as theft of Special Nuclear Material (SNM) or sabotage, IE investigators could either assist the FBI or conduct a parallel investigation in coordination with the FBI as was done in the recent Beaver Valley investigation and three other cases in the past year. Provisions for such actions are currently contained in the NRC/DOJ agreement.

Whether or not criminality is involved, IE investigators need to collect sufficient information to support successful NRC enforcement actions. To this end, they need to identify and collect copies of pertinent records, and identify and interview persons who can provide substantive information. When warranted by the nature of the case, statements must be obtained. It should be noted that statements, or admissions, or other evidence obtained by IE investigators could be used for prosecutive as well as civil enforcement purposes. Thus, these IE investigations would enhance rather than hinder any subsequent criminal investigation or prosecution.

In summation, IE and OIA have both had difficulty regarding the respective investigative jurisdictions of the two offices. Thus I feel that this matter needs to be clarified by the Commission. I believe that the following points support the IE position:

- (1) The appropriate NRC Manual Chapters and Regulations presently give IE rather than OIA broad authority to conduct external investigations. This external authority is not further conditioned by whether the matter also involves potential criminality.
- (2) A thorough IE investigation could provide the basis for NRC health and safety as well as referral decisions.
- (3) External investigations, as an operational activity, belong under the cognizance of an EDO line office.
- (4) IE has the capability to conduct such investigations.

The Commissioners

- 6 -

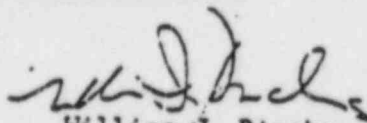
- (5) The current situation is having an adverse impact on the inspection and enforcement program and is causing confusion among licensees.
- (6) It is reasonable for IE to present the issues of a case directly to DOJ rather than through an intermediary. Such direct communication would facilitate mutual understanding and promote the ultimate objective of advancing the safety of nuclear activities.
- (7) The July 9, 1981 GAO report on OIA notes the need for OIA to concentrate on its legitimate internal audit role.

Recommendation:

I recommend that the Commission clarify the Delegations of Authority in MC 0113 and 0127, designating IE as the NRC agent for all investigations external to the agency and OIA as the NRC agent for all internal investigations. Further, both offices should have coordination and referral responsibilities with DOJ for matters falling within their respective jurisdictions.

Coordination:

The Offices of NRR, NMSS, RES, ADM and OELD concur in this recommendation. We have provided a copy of this paper to OIA for their information. OIA has indicated its desire to withhold written comment until such time as this paper is forwarded to the Commission.



William J. Dircks
Executive Director for Operations

Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Monday, October 26, 1981.

Commission staff office comments, if any, should be submitted to the Commissioners NLT October 19, 1981, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

Distribution:

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Handwritten signature and initials
(96) J. Sinclair

November 20, 1981

Docket No. 50-358

Mr. Douglas Lowenstein
Cox Newspapers
1901 Pennsylvania Avenue, N.W.
Suite 501
Washington, DC 20006

IN RESPONSE REFER
TO FOIA-81-376

Dear Mr. Lowenstein:

This is in partial response to your letter dated September 18, 1981, in which you requested, pursuant to the Freedom of Information Act, copies of (1) the Office of Inspector and Auditor's report entitled "Adequacy of IE Investigation 50-358/80-09 at the William H. Zimmer Nuclear Power Station," (2) all written material regarding the report and (3) transcripts of any meetings at which the request was discussed.

The seven documents listed on Appendix A are subject to your request. I understand that you received the first five documents on November 17, 1981. The last two documents are enclosed.

We will be in touch with you further regarding any transcripts.

Sincerely,

(Signed) J. M. Felton

J. M. Felton, Director
Division of Rules and Records
Office of Administration

Enclosures: As stated

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Appendix A

1. Memorandum to Chairman Palladino, et. al., from J. J. Cummings dated August 7, 1981 re: "Adequacy of IE Investigation 50-358/80-09 at the William H. Zimmer Nuclear Power Station" with attachment.
2. Memorandum to Chairman Palladino from W. J. Dircks dated September 17, 1981 re: "July 30, 1981 OIA Report, 'Adequacy of IE Investigation 50-358/80-09 at the William H. Zimmer Nuclear Power Station.'"
3. Memorandum to Chairman Palladino from W. J. Dircks dated September 17, 1981 re: "July 30, 1981 OIA Report, 'Special Inquiry Re: Adequacy of IE Investigation 50-358/80-09 at the William H. Zimmer Nuclear Power Station'" with enclosures.
4. Memorandum to Chairman Palladino from J. J. Cummings dated October 8, 1981 re: "OIA Report Dated August 7, 1981, 'Adequacy of IE Investigation 50-358/80-09 at the William H. Zimmer Nuclear Power Station'" without attachments.
5. Letter to M. K. Udall from N. J. Palladino dated November 16, 1981.
6. Memorandum to J. G. Keppler from G. A. Phillip, undated, re: "Comments on OIA Report of Adequacy of IE Investigation Report No. 50-358/80-09 at the William H. Zimmer Nuclear Power Station" with attachment.
7. Memorandum to J. G. Keppler from J. E. Foster dated September 3, 1981 re: "OIA Report 'Adequacy of I&E Investigation 50-358/80-09 at the William H. Zimmer Nuclear Power Station'" with attachments.