

PDR



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

January 7, 1986

CHAIRMAN

The Honorable John D. Dingell, Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your December 23, 1985 letter regarding the interviews of NRC Region II employees in connection with the Subcommittee's investigation of NRC regulation of TVA.

It has been and will continue to be our policy to cooperate fully with the Subcommittee. Before the Subcommittee staff interviews of our Region II employees were scheduled to take place, a representative of our General Counsel's Office discussed the interviews with the Subcommittee's Chief Counsel. We believed that mutually agreeable guidelines had been developed as a result of those discussions. It is now apparent that a misunderstanding subsequently occurred in their application.

The Commission agreed to make an attorney from the Office of General Counsel available to interviewed Region II employees if requested by the individual employee. The Commission has no plans to debrief either the OGC attorney present during the interview or the interviewed employees. The Commission has not changed its position in this regard. You have our assurance that the Commission will not ask any NRC employee to divulge to Commission officials the substance of Subcommittee interviews. In addition, a copy of this letter will be provided to each Region II employee with whom an interview has been requested to assure that each is personally aware that this assurance has been given by the Commission to the Subcommittee.

We do have serious reservations about whether the NRC employee being interviewed should agree to an absolute restriction on his or her ability to discuss the interview with others. For example, the employee may believe it is necessary to inform appropriate NRC personnel about possible safety problems revealed to him or her for the first time during the interview, so that proper safety measures can be taken. In this instance, such a restriction would adversely affect the individual's duty as a Federal employee to promote public health and safety. Thus, we believe that the question of whether the employee being interviewed should communicate about the interview to anyone else is a matter for the employee to decide.

Representatives of our Office of the General Counsel and Office of Congressional Affairs met with the Subcommittee staff in an effort to clear

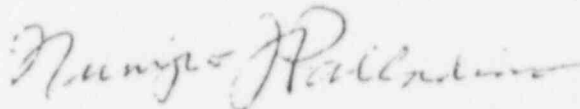
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away what we perceive to be a misunderstanding. We understand that the attached guidelines were found to be mutually agreeable during that meeting, and we hope that the interviews can be rescheduled promptly. The attached guidelines will be provided to the Region II employees along with a copy of this letter.

Commissioner Asselstine understands that, subject to certain guidelines, the Subcommittee does not object to the possibility that an OGC attorney will be present during Subcommittee interviews of NRC personnel. Given that understanding, the Commissioner has no objection to an OGC lawyer making himself available to any NRC employee who wishes to have him present. However, when this issue was first raised Commissioner Asselstine saw no reason for an OGC attorney to be present during Subcommittee interviews of NRC personnel. He continues to question whether there will be any benefit to the agency or to the individual employees from having an OGC lawyer, who cannot personally represent the individual, present during those interviews.

Your letter also expressed certain concerns regarding NRC regulation of TVA and regarding our preliminary response to your letter of November 18, 1985. Our preliminary response indicated that investigations are currently being conducted by our Office of Investigations (OI) and our Office of Inspector and Auditor (OIA). We will further address your concerns when those investigations are completed.

Sincerely,

A handwritten signature in cursive script, reading "Nunzio J. Palladino".

Nunzio J. Palladino

Attachment:
As stated

cc: Rep. James T. Broyhill

GUIDELINES

1. The Commission's policy is to cooperate with oversight committees. Accordingly, NRC Region II employees will be encouraged to cooperate, tell the truth, answer questions fully, and comply with all reasonable requests.
2. An OGC attorney will be present to offer assistance during the interview, but only if the Region II employee to be interviewed specifically so requests. Whether the employee should request OGC presence and assistance is his or her decision alone. NRC officials will not require the employee to request OGC presence during the interview.
3. If the Region II employee requests NRC to provide a tape recording of the interview, this will be done. NRC officials will not require a tape recording; whether there should be a recording will be for the employee alone to decide. If a recording is made, the Subcommittee staff may receive a copy if they so request.
4. If an OGC attorney is present to offer assistance during the interview, it should be understood that the attorney's client is the agency, not any particular employee, and that the Region II employee is being represented to the extent that his or her interests, and the interests of the agency

are not in conflict. Assistance by the attorney will not be the same as representation by a private attorney, which would be a traditional attorney-client relationship with confidentiality extended to communications to and from the client and the attorney free of any other conflicting duties. However, the agency has a legitimate interest in fair treatment of all its employees.

5. NRC officials will not require or request the OGC attorney present during an interview, or any Region II employee who was interviewed to divulge to any NRC official the substance of the Subcommittee interviews. Whether the employee being interviewed should describe the substance of the interview to any other person, including another NRC employee, is the employee's decision alone. An NRC employee will not be asked to pledge that he or she will never voluntarily disclose the substance of the interview to any other person, including another NRC employee.
6. If a safety problem or evidence of wrongdoing is disclosed for the first time during the interview, the OGC attorney present could bring the matter to the attention of some NRC officials so that proper corrective measures can be initiated; before such disclosure the Subcommittee staff will be consulted.