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October 2, 1985

Honorable Chairman Nunzio Palladino  
Honorable Lando Zech  
Honorable James Asselstine  
Honorable Thomas Roberts  
Honorable Frederick Bernthal  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Gentlemen:

Intervenors across the country are becoming alarmed with the consideration of extra-judicial information by the Commissioners in the decision-making process on license applications. This letter raises the issue to you for your consideration.

It has become increasingly popular in recent years for the Commissioners to gather first-hand knowledge about nuclear plants under consideration for licenses by making on-site visits. We fear that these site visits have begun to substitute for a thorough and careful review of the record. Furthermore, there are several dangers in this process, the most significant being that information gathered in this way is not "on the record," but still may influence a Commissioner's vote on a contested issue. In such a case a Commissioner's vote might have to be disqualified since extra-record material is unreviewable and not subject to cross-examination or rebuttal by the parties. Seacoast Anti-Pollution League v. Costle, 572 F.2d. 872 (1st Circuit, 1978); cf. Three Mile Island Alert v. U.S.N.R.C., No. 85-3301 at 61 (3rd Cir. Aug. 27, 1985) (Adams dissenting). This would appear to us to be too great a risk to run for such a limited benefit. In fact the greater the usefulness of information obtained "off the record" the greater the risk that a subsequent decision by the Commissioners will be overturned as the result of obtaining and using this information.

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Historically one of the most difficult tasks which the Commissioners of the NRC have faced is having sufficient reliable and relevant information to make decisions. A substantial part of this problem is inherent in any large organization with a pyramidal structure and is not unique to the NRC. Nonetheless, many have felt that the problem is worse at the NRC and several suggestions have been made to correct the problem.

One suggestion, which has gone unheeded in Congress, is to increase the size of the personal staff of each Commissioner to enable each Commissioner to be able to receive and process more information and avoid excessive reliance on the selective information provided by the regulated industry, the public and the Regulatory staff, all of which approach the Commissioners with a particular point of view to "sell."

We believe there is an even better way for the Commissioners to obtain the information they need to do their job and still preserve the integrity of the licensing process. First, if the Commissioners merely want to see the plant, a site visit would be appropriate, but only if all parties are in attendance and no substantive discussions occur. Second, if there are particular substantive aspects of the plant or ongoing staff work about which a Commissioner wishes more information this can be accommodated by:

- a) inviting all parties to give a written or on the record oral briefing to the Commissioner, or
- b) requesting the hearing board to conduct an inquiry which is then available to the Commissioner or
- c) have a Commissioner attend a hearing where the focus is of particular interest and ask clarifying questions as needed.

Any of these options would actually enhance the quality of the information received by the Commissioners and assure that the information was "on the record" thus avoiding subsequent court challenges.

Although those of us signing this letter represent parties on only one "side" of licensing, our suggestions are neutral to that advocacy and are intended to provide a practical way to deal with a legitimate need of the Commissioners and at the same time protect the due process of the hearings.

We would welcome an opportunity to discuss these proposals with you at your convenience. At the same time, we must advise you that it is our view that site visits to plants where any action is under consideration in public proceedings are improper unless the guidelines proposed above are scupulously followed.

Sincerely,

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cc: The Honorable John Dingell  
The Honorable Edward J. Markey  
The Honorable Morris K. Udall  
The Honorable John Simpson