



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

August 3, 1978

CHAIRMAN

The Honorable Morris K. Udall, Chairman
Subcommittee on Energy and the Environment
Committee on Interior and Insular Affairs
United States House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

As you know, the Commission has been meeting over an extended period of time to review and consider the findings, conclusions, and recommendations of the Office of the General Counsel and the Office of Inspector and Auditor of the Commission who jointly conducted an inquiry into the testimony of Mr. Lee V. Gossick, the Commission's Executive Director for Operations, at a hearing before your Subcommittee on July 29, 1977. The inquiry also covered Mr. Gossick's testimony at a subsequent hearing before Chairman John Dingell on August 8, 1977. The inquiry was carried out by the General Counsel and the Director of the Office of Inspector and Auditor and senior members of their staffs. The inquiry report, in three volumes, was completed in February 1978 shortly before the hearing before your Subcommittee on February 27, 1978, into this matter. The background of the inquiry is summarized in Volume I of the report by OGC and OIA. The complete text of the findings, conclusions, and recommendations of the inquiry board are enclosed for convenience.

The Commission's conclusions on the recommendations of the inquiry board were forwarded to you with our letter of June 19, 1978. The Commission's views on the findings and conclusions of the inquiry board are set forth below. In several letters (May 8, June 23, and July 10, 1978) you have indicated dismay with the slow pace of the Commission's deliberations on this matter. The Commission shares your concern on this point. However, we would note that Chairman Hendrie and Commissioner Kennedy indicated their concurrence with the findings and conclusions of the inquiry board at the hearing before your Subcommittee on February 27, 1978. Commissioner Bradford could not be present at that hearing, but noted in a letter to you dated February 24, 1978, that he was in general agreement with the conclusions and recommendations of the report, although then as now, he

preferred to emphasize the particular conclusions set forth in his letter as being the most important points in his view. The Commission's views on the inquiry board findings and conclusions are as follows.

A. General

1. The Commission agrees with the inquiry board that "While past and present NRC Commissioners have expressed individual concern over the appropriateness of statements about 'no evidence' of theft or diversion, the Commission took no action to establish new policy or guidelines regarding such statements after the February 1976 briefings." The Commission also agrees with the final sentence of this finding to the effect that some such guidance should have been provided by the Commission to make it clear to the staff that unqualified "no evidence" statements were not appropriate and could be misleading.

There are differing views with regard to the inquiry board's finding that "except for Commissioner Gilinsky's expression of concern in August of 1977, about the 'no evidence' statement in the NRC MUF report, there was a pattern of Commission and staff actions, from 1975 to December 1977 which reflect the position that there is 'no evidence' of theft or diversion of SNM. If the Commission believed that the CIA briefing warranted particular caution or circumspection in public statements, it failed to communicate that message." Chairman Hendrie and Commissioner Kennedy believe that while there were actions in both directions, the preponderance of such actions formed a pattern clearly reflecting a "no evidence" position. They also believe that it is fair to say that the Commission failed to communicate any message of caution or circumspection in public statements following the CIA briefing. Commissioner Gilinsky does not agree that there was a pattern of Commission and staff actions clear enough to encourage unqualified "no evidence" statements by the staff. He notes that, judging by events, the Commission failed to communicate clearly enough a message that caution or circumspection in public statements was warranted. Commissioner Bradford feels that the Commission never articulated a position on this subject firmly enough for the staff to rely on unequivocally. He feels that some indication at both hearings that Commissioner Gilinsky held different views would have been in order.

2., 3. Chairman Hendrie and Commissioner Kennedy agree that these general conclusions, that the evolving role of the Executive Director of Operations has an important bearing in viewing the context of Mr. Gossick's testimony and that the high degree of secrecy attached

to the CIA briefing impeded Mr. Gossick's being properly informed, are correct. Commissioner Gilinsky agrees that there was a high degree of secrecy attached to the briefing and that the Executive Director's role was an evolving one, but he does not reach the same conclusions that the board does on those findings. He thinks that this point has little bearing on the matter of the EDO's testimony.

Commissioner Bradford does not see that the evolving role of the Executive Director is relevant to anything of any importance. The EDO had ample responsibility to know that something out of the ordinary was involved in the Apollo matter. Commissioner Bradford does feel that it is important to realize the uniqueness of the "lapsed quorum" situation in which this matter arose. The Executive Director for Operations has neither the experience in testifying nor the policymaking role of the NRC Commissioners. If he thought that the agency's position was in favor of the "no evidence" formulation, then he was in no position to vary from it. The important question as to the August 8 hearing remains why he paid so little heed to Commissioner Gilinsky's efforts to modify the formulation and why he did not bring the Gilinsky views to the Subcommittee's attention.

B. Testimony on July 29, 1977 Before the House Subcommittee on Energy and Environment

1. The Commission notes the inquiry board's citations of elements of Mr. Gossick's testimony; these are simply taken from the hearing transcript.

2. On balance, the Commission agrees with the inquiry board's finding that it is debatable whether "no evidence" accurately described NRC's knowledge about the Apollo matter, as distinguished from Mr. Gossick's knowledge. Judged by the interviews, Commissioners serving before June 30, 1977, would not have made an unqualified "no evidence" statement as describing NRC's knowledge of the matter at Apollo, at least after the February 1976 briefings. The staff, including senior members who had been present at the briefing, seems to have believed for the most part that the "no evidence" statement accurately described the Apollo situation. In the absence of explicit Commission guidance on the matter, the inquiry board's characterization of the point as debatable does not seem unreasonable. | 5-

The Commission agrees with the inquiry board's characterization of the "no evidence" phrase as being so inherently ambiguous as to have the potential to mislead. Commissioner Gilinsky feels that the "no evidence"

statement has, in fact, been used in an ambiguous way to convey a reassurance that the facts do not support. (See, for instance, Commissioner Gilinsky's remarks on pages 26 and 27 of the report on the February 27, 1978, Oversight Hearing before your Subcommittee.) Commissioner Bradford has noted a number of reservations with regard to the "no evidence" statement in his letter to you of February 24, 1978.

3. The Commission agrees with the inquiry board's finding that Mr. Gossick, having chosen to testify about the Apollo matter, should have been more expansive--either by detailing so much of the matter as he then knew, or by clearly defining his terms.

4. Chairman Hendrie and Commissioner Kennedy agree with the finding of the inquiry board that in his July 29, 1977, testimony Mr. Gossick did not knowingly and intentionally misrepresent facts or knowingly and intentionally fail to present an accurate description of the current understanding of the Apollo matter. Commissioner Gilinsky simply notes that he does not know what was in Mr. Gossick's mind in testifying on July 29. Commissioner Bradford does not feel that the evidence on this point is dispositive, but from what he knows of the matter, including the earlier meeting between Mr. Gossick and the Committee Chairman, he is prepared to assume that it is true of Mr. Gossick's testimony of July 29th. His impression is that Mr. Gossick's intention was to adhere strongly to what he felt was the predominant position within the U. S. Government on this subject.

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5. The Commission agrees with the inquiry board that the public record on other possible thefts or diversions of special nuclear material remains unclear in the light of Mr. Conran's testimony in the July 29, 1977, hearing. The Commission has moved to rectify this situation by directing the staff to identify instances of alleged successful thefts or diversions of such material and to prepare a list of such instances, including to the extent possible those mentioned by Mr. Conran, in a form suitable for filing in the Public Document Room. This action of the Commission is noted with regard to recommendation 4 of the inquiry board in the attachment to our letter to you of June 19, 1978.

C. Testimony on August 8, 1977, Before the House Subcommittee on Energy and Power

1. The Commission agrees with the findings of the inquiry board that Mr. Gossick testified incorrectly on August 8, 1977, when, in connection with a discussion on the Apollo matter he told Mr. Ward

that it was correct that "the Commission has also given assurance that they believe that no significant quantities have ever been diverted or stolen." The Commission agrees that Mr. Gossick also testified incorrectly in going on to state "I can only say, Mr. Ward, that the statement of the Commission that they had no evidence that indicated any diversion had taken place was made in full knowledge of the briefing that they had received. So while I personally was not briefed on that matter, the Commission did make, and has reaffirmed the judgment that, in their view, there has been no evidence to indicate that any diversion has taken place."

The Commission notes Mr. Gossick's testimony at the February 27, 1978, hearing before your Subcommittee to the effect that the inquiry board's explicit reference to the MUF report (NUREG-0350) in connection with these two statements was in error, and that he believed that Mr. Ward and he were referring to various "no evidence" statements made in the 1976-1977 time frame. However, the particular phrasing of Mr. Ward's question; "no significant quantities have ever been diverted or stolen," is unique, so far as we can determine, to the MUF report and it seems fair to assume that Mr. Ward took that phrase from the MUF report. Since the MUF report was understood to be limited to the post-1968 time frame, any assurance from that report could hardly be applied to the Apollo matter, as the inquiry board noted.

As noted, Mr. Gossick has asserted that he was not thinking of the MUF report in his answers to Mr. Ward, but rather of "no evidence" statements from other documents that might apply to the pre-1968 period. However, the argument that the Commission has in the past failed to provide clear and explicit guidance to the staff with regard to "no evidence" types of statements cuts both ways here. If the staff had not been cautioned against the unqualified use of such statements by the Commission in any clear way, neither had the Commission clearly established such statements as representing its collegial position. The Commission agrees with the inquiry board that Mr. Gossick should have limited his testimony to the period covered by the MUF report. We note Mr. Gossick's agreement with this conclusion at the February 27th hearing. We believe that in the absence of a clearly stated Commission view, Mr. Gossick should not have attempted to reflect a Commission position on the Apollo matter.

The Commission notes the inquiry board's finding that it has no information indicating that Mr. Gossick's August 8th testimony was given with an intent to deceive or mislead the subcommittee. Chairman Hendrie and Commissioner Kennedy believe that Mr. Gossick

testified in accordance with his understanding at the time of the Commission's position and that he had no intent to mislead the Subcommittee. They note their confidence in Mr. Gossick's character, honesty, and integrity, and the similar endorsements of former Chairmen Anders and Rowden and former Commissioner Mason. Commissioner Gilinsky adds that he continues to hold to the views expressed in his letter of December 12, 1977, to Chairman Dingell. There he expressed his opinion that Mr. Gossick's testimony was not only incorrect but inexplicable in view of the two meetings held on August 2. As noted previously, it is Commissioner Bradford's impression that it was Mr. Gossick's intention to adhere strongly to what he felt was the predominant position within the U.S. Government on this subject. What Commissioner Bradford finds most difficult is Mr. Gossick's failure to tell the Subcommittee on August 8th at least that Commissioner Gilinsky held a separate view.

(The inquiry report does not have a finding C.2; further, since they do not deal directly with the August 8 hearing, the next two findings apparently should have been designated D. and E. We maintain the numbering of the original report, however, to avoid confusion.)

3. Chairman Hendrie and Commissioner Kennedy agree with the inquiry board finding that Mr. Gossick's absence from the February 1976 briefings was not due to any lack of confidence in him. Commissioner Bradford agrees that the finding reasonably represents the evidence available in the inquiry report. Commissioner Gilinsky notes that he does not know why Mr. Gossick was not present at the 1976 briefings.

4. The Commission agrees with the inquiry board's findings that no packet of information was offered by the CIA briefer or refused by NRC at the 1976 briefings.

RECOMMENDATIONS

As noted previously, the Commission's actions on the recommendations of the inquiry board were previously forwarded to you with our letter of June 19, 1978. A copy of the Commission memorandum on the subject is enclosed to provide in this letter a complete record of the Commission's views and actions on the inquiry report.

Your letter of July 10, 1978, listed four questions with regard to Mr. Gossick's testimony which you believe should be answered by the Commission. Answers to the four questions posed in your July 10th letter follow. Commissioner Gilinsky has chosen to answer these questions separately in a letter dated July 28, 1978, which he has left with me for delivery to you with this letter.

"1. Was Mr. Gossick's July 29 testimony, with regard to whether there was evidence of a diversion, an accurate representation of the facts?"

No. As noted under finding B.3 in the discussion of the inquiry board's findings, the Commission believes that Mr. Gossick, having chosen to testify about the Apollo matter, should have been more expansive-- either by detailing so much of the matter as he then knew, or by clearly defining his terms.

"2. Did Mr. Gossick's August 8 testimony accurately describe the Commission's position with regard to whether there was evidence of a diversion?"

As detailed under finding C.1, the Commission believes that Mr. Gossick testified incorrectly on August 8, 1977, with regard to the Commission's position on the Apollo matter, and believes that Mr. Gossick should have limited his testimony to the period covered by the MUF report and, in the absence of a clearly stated Commission view, should not have attempted to reflect a Commission position on the Apollo/NUMEC matter.

"3. Did Mr. Gossick's testimony on July 29 and August 8 reflect accurately his state of knowledge of the Apollo/NUMEC situation?"

Noting that his testimony at both hearings included statements that he had not been present at the Commission briefings on the Apollo matter, as well as the "no evidence" statements that he believed represented the Commission's position, Chairman Hendrie and Commissioner Kennedy believe that Mr. Gossick's testimony on the two occasions cited did reasonably reflect his state of knowledge of the Apollo/NUMEC situation. They note, however, as stated in the discussion of finding B.3, that Mr. Gossick should have more clearly detailed the limitations on his personal knowledge or more clearly explained the sense in which he was using the "no evidence" statement. Commissioner Bradford does not feel that the evidence on this point is dispositive, but from what he knows of the matter he is prepared to assume that it is true of Mr. Gossick's testimony on July 29th. Commissioner Bradford's impression is that it was Mr. Gossick's intention to adhere strongly to what he felt was the predominant position within the U.S. Government on this subject. What Commissioner Bradford finds most difficult is the later failure to tell the Subcommittee on August 8th at least that Commissioner Gilinsky held a separate view.

"4. To what extent does Mr. Gossick's testimony on July 29 and August 8 represent a failure to fulfill his obligation to keep appropriate committees of Congress fully and currently informed?"

As indicated in the discussions of findings B.3 and C.1, the Commission believes that Mr. Gossick should have been clearer about the limitations on his own knowledge, suitable qualified or otherwise explained the "no evidence" statements, or limited his testimony to the post-1968 period, and should not have attempted to reflect a Commission position on the Apollo matter in the absence of a clearly stated Commission view on the subject. His failure to do so represents a failure to keep appropriate committees of Congress fully and currently informed. The Commission notes Mr. Gossick's response to a question by you at the hearing on February 27, 1978, in which you ask Mr. Gossick if he believes that his statement of "no evidence" complied with the spirit and the letter of the law to keep the Congress fully and currently informed. Mr. Gossick answered, "Mr. Chairman, I guess I would have to say that I cannot consider my statement of my answers to the question brought out during that hearing as being unto themselves full compliance with keeping you fully and currently informed."

Based on its review of this matter, the Commission is directing the Executive Director to correct the records of the July 29th and August 8th hearings with regard to his testimony about Apollo/NUMEC. Further, the Commission is re-emphasizing to the Executive Director and the staff its continuing commitment to a policy of full and timely disclosure in all matters in our relationships with the Committee and Members of the Congress, and of complete candor in these relationships.

There are some general observations that should be made about both the OGC/OIA inquiry and our assessment of it. That inquiry was not intended to be a definitive look into the Apollo/NUMEC matter. It was intended to give the Commission a reasonably thorough basis for assessing the Executive Director's testimony in the context in which it was given.

Limitations of time, resource, and scope preclude its having been an exhaustive investigation in which every possible lead was followed and every inconsistency reconciled. For our purposes in arriving at an assessment of the testimony and of necessary management and policy actions, the investigation has been sufficient, and no further investigative steps are proposed.

The definitive word on what, if anything, actually occurred at NUMEC will have to come from some other sources. For NRC purposes, it is enough that our assumptions about safeguards and possible threats

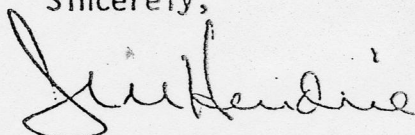
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have changed a great deal since that time. There is no comparison between the safeguards planned and already in effect as against those that were in existence in the time at which the material in question was determined to be unaccounted for at NUMEC.

The Apollo/NUMEC matter remains important in terms of whether violations of law occurred, in terms of proliferation assessments, and to some extent in terms of possible methods of diversion. As to possible diversion paths, we have indicated that we do not believe that the conditions that existed at NUMEC in the early 60's could possibly be repeated at any facility that we regulate today. The question of legal violation and of proliferation assessment, while of importance to us, are the primary responsibilities of other agencies. Consequently, we do not believe that we can justify the expenditure of further resources of any substantial amount in any NRC investigation of the Apollo/NUMEC matter at this time. The Commission has answered separately your letter of May 25, 1978, with regard to the lessons learned from the Apollo/NUMEC matter. Commissioner Ahearne has not participated in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Hendrie".

Joseph M. Hendrie

Enclosures:
As stated