



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

December 10, 1977

OFFICE OF THE
CHAIRMAN

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

Dear Mr. Chairman:

The letter of November 15, 1977 from you and Congressman Tsongas says that you believe Mr. Lee V. Gossick, the Executive Director for Operations of the Commission, seriously misrepresented the facts concerning the Apollo-NUMEC matter in testimony before the Subcommittee on Energy and the Environment on July 29, 1977. You say also that you believe it necessary for me to explain Mr. Gossick's alleged "failure to present an accurate description of the current understanding of the Apollo matter."

I have asked Mr. Gossick to set forth his response to your charges and his viewpoint on his testimony in a memorandum to me. He has done so and his memorandum is enclosed. I have reviewed the memorandum and the testimony, and have discussed the matter with Mr. Gossick and other members of the staff, with Commissioners Kennedy and Gilinsky, and with former Chairman Rowden.

Let me note some of the circumstances of that hearing as I understand them. First, Mr. Gossick was testifying on behalf of a Commission that had lost a quorum a month earlier and had delegated to Mr. Gossick the responsibility to speak for the Commission until a quorum was restored. Second, Mr. Gossick had not been present at the classified briefings by the Executive Branch of the Commission and certain senior staff in 1976 on the Apollo matter. My understanding is that attendance at those briefings was limited on a strict "need-to-know" basis as determined by Chairman Anders. I do not consider it unreasonable that Mr. Gossick refrained from requesting sensitive information on a subject from which the Chairman had specifically excluded him.

Third, having not attended the classified briefings, Mr. Gossick could not state a personal position on Apollo, and was left to relate the position of the agency, as he understood it, on whether a diversion had occurred. In more normal circumstances, with an operating Commission,

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he probably would not have had occasion to attempt to speak for the Commission on the matter. But the circumstances were not normal and he was placed in that position.

Mr. Gossick tells me that in attempting to answer the Subcommittee's questions, he was aware of the kind of "no evidence of diversion" statements that had been made in connection with the safeguarding of special nuclear material by the AEC before the reorganization of early 1975 and by ERDA and NRC after the reorganization. He was particularly aware of such statements in connection with the draft inventory differences reports of ERDA (ERDA 77-68) and NRC (NUREG-0350). These drafts, publicly released a few days later, were in final printing at the time of his testimony. In the NRC report (p. 2), there is the statement "The Nuclear Regulatory Commission has no evidence that any significant amount of strategic SNM has ever been stolen or diverted." Prior to the Subcommittee's hearings, comments were provided to Mr. Gossick's office on a near-final draft of this NRC report by the Commission's Office of Policy Evaluation. The comments did not address that statement. However, I understand that some members of the staff construed the statement to apply only to the post-January 1968 period. Mr. Gossick tells me he did not so read the sentence and, in any event, believed the Commission's position (in the sense of a collegial position as contrasted to views of individual Commissioners) on the question of diversion to be as he stated it to the Subcommittee on July 29, 1977.

From these considerations, from my discussions with Mr. Gossick and others, and from review of the testimony and other documents, I am convinced that Mr. Gossick was trying in good faith to state what he honestly thought the Commission believed. I believe he had a reasonable basis for his assumption and I can find no intent on his part to misrepresent the facts to you.

With regard to Mr. Gossick presenting an account of the "current understanding of the Apollo matter," I note that he did not attempt such an account and indicated his unfamiliarity with the circumstances. When he stated that NRC had no evidence of a significant amount of special nuclear material having been stolen, he was simply presenting the conclusion of the agency as it had been expressed up to the time of his appearance. Mr. Gossick tells me he was aware that Chairman Anders had contacted the White House after the briefings, but understood the contact to be one of making sure the White House was aware of the Apollo matter, rather than one of particular concern that a diversion had occurred. With regard to Mr. Chapman's statement in a radio interview, I believe that came after the hearing before your Subcommittee. With regard to the Apollo information not being relevant to Mr. Gossick's duties, his memorandum to me notes that it was not his intention to so imply, and that he believes that any such information certainly should be considered by NRC in evaluating our safeguards program requirements.

Mr. Gossick has amplified his position by noting his testimony before the Subcommittee on Energy and Power, Committee on Interstate and Foreign Commerce, on August 8, 1977, after publication of the ERDA and NRC inventory differences reports. His testimony there is consistent with his testimony before your Subcommittee. After a meeting on August 2, 1977, to discuss the release of the NRC inventory differences report, Mr. Gossick and the staff members who were to appear at the press briefing were cautioned to avoid any broad assertions that no diversions had ever occurred, since the information available to the NRC would not justify such a positive conclusion. There was some discussion of the proper form of the "no evidence" statement as well as of the time frame to which the statement should apply. Recollections vary, but I gather that those who read "evidence" to mean hard facts, as contrasted to circumstantial material and speculation, felt the "no evidence" statement was correct; while those who read "evidence" in the broader sense of reasons for belief, or indications, felt that the statement should be qualified to say "no conclusive evidence" or "no hard evidence."

Mr. Gossick tells me that he continued to feel that the "no evidence" statement fairly represented the agency position. He so testified before the Subcommittee on Energy and Power, and I conclude he was there, as before your Subcommittee, trying to present the agency's views as he understood them. Others seem to have expressed similar views on the question of the evidence, or lack of it, on diversion. I note the testimony of Mr. Robert Fri, Acting Administrator of ERDA, on the Apollo matter at the August 8th hearing:

"In 1965 a significant inventory difference was identified at Apollo. The Atomic Energy Commission took immediate action to investigate the incident thoroughly and it interrogated employees. They found, after intensive investigation, no evidence that a diversion has indeed occurred." (Draft Transcript, p. 11)

and

"So it has been an evolving system. It is a much better one today than it was yesterday and last year; much less ten years ago. Weighing all information available to me has led me to the conclusion that no significant quantities of special nuclear materials have been stolen or otherwise diverted." (Draft Transcript, p. 13)

I would like to add some personal comments about the matters raised here, first with regard to how the word "evidence" is to be read. The

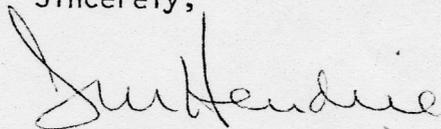
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"no evidence of diversion" phrase seems to have become a term of art with regard to the Apollo matter. It apparently was never meant as a sweeping assurance that diversion could not have occurred at Apollo, or as a conclusion that there was no basis or room for suspicion of that possibility. I have not had the benefit of the Executive Branch briefings on Apollo, but I think something like the qualified "no conclusive evidence" form is probably more appropriate. On a related matter, I conclude that the "no evidence" statement on page 2 of NUREG-0350 is ambiguous, and must be understood to apply only to the period covered by that report, from January 1, 1968 to September 30, 1976, as stated on page 1 of the report and in the associated news releases.

Finally, it seems to me that there is a clear and important lesson in the Apollo matter for NRC safeguards programs. Given the range of views on the Apollo matter, as reported in the press, in the testimony before your Subcommittee and the Subcommittee on Energy and Power, and in the Conran Task Force Report, I conclude that for regulatory purposes we must assume the circumstances were such that a diversion could have occurred, and must construct our safeguards requirements accordingly. It is my understanding that this is being done, and I intend to assure myself that it indeed is done.

In the enclosed memorandum, Mr. Gossick expresses his desire for a personal meeting with you to discuss his testimony. Since I am deeply concerned about this matter, I feel that I should attend such a meeting.

Sincerely,



Joseph M. Hendrie
Chairman

Enclosure:
Memorandum from Mr. Gossick
dtd 12/1/77

cc: Honorable Paul E. Tsongas