

ALLEGATION OF SUNSHINE ACT AND  
EX PARTE COMMUNICATION VIOLATIONS  
BY NRC COMMISSIONERS

98-02S

May 27, 1998

## TABLE OF CONTENTS

	<u>Page</u>
BASIS AND SCOPE.....	3
BACKGROUND .....	4
DETAILS .....	6
FINDINGS .....	18

## **BASIS AND SCOPE**

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated this Event Inquiry (EI) into information contained in an article in the March 12, 1998, issue of the Wall Street Journal (WSJ) newspaper. In this article, the WSJ reported that in November 1997, Paul BLANCH, a consultant for Northeast Nuclear Energy Company (the licensee for the Millstone Nuclear Power Stations), met privately with NRC Chairman Shirley JACKSON and NRC Commissioners Nils DIAZ and Edward McGAFFIGAN at NRC Headquarters in Rockville, Maryland. The article also indicated that BLANCH had been telling local newspapers that the Millstone Nuclear Power Plants should be reopened. Additionally, Commissioner DIAZ was quoted in the WSJ newspaper article as saying that BLANCH made "a pretty good case" for the restart of the Millstone plants during their meeting. The WSJ article did not specify whether the NRC Commissioners met individually with BLANCH or as a group.

Following publication of the WSJ article, OIG received a number of complaints from private individuals and law firms in the vicinity of the Millstone plants alleging that BLANCH's meetings with the NRC Commissioners had violated either the letter or the spirit of the Government in the Sunshine Act ("Sunshine Act"), (Title 5, U.S. Code, Section 552b as prescribed in Title 10, Code of Federal Regulations (CFR), Part 9. 100) as well as the rules regarding ex parte communications contained in Title 10, CFR, Part 2.780.

Based on concerns raised by the public, OIG addressed in this EI the circumstances surrounding the meetings between the NRC Commissioners and BLANCH. In addition to the Sunshine Act and ex parte communication questions, OIG addressed the public's access to the NRC Commission, as well as the various sources of information available to the Commissioners to enable them to receive a balanced view regarding the status of the Millstone plants.

## BACKGROUND

In June 1996, the NRC designated the three units at Millstone as Category 3 plants on the NRC's watch list. Plants in this category have significant weaknesses that warrant maintaining them in a shutdown condition until the licensee can demonstrate to the NRC that it has both established and implemented adequate programs to ensure substantial improvement. Plants in this category require a vote by the NRC Commission prior to resuming operations.

On August 14, 1996, the NRC issued a Confirmatory Order directing Northeast Nuclear Energy Company (NNECO) to contract with a third-party to implement an Independent Corrective Action Verification Program (ICAVP) to verify the adequacy of its efforts to establish adequate design bases and design controls.

On October 24, 1996, the NRC issued an Order directing that, before restarting any Millstone unit, the licensee develop and submit to the NRC a comprehensive plan for reviewing and dispositioning safety issues raised by its employees and ensuring that employees who raise safety concerns can do so without fear of retaliation. The order also directed the licensee to retain an independent third-party to oversee implementation of its comprehensive plan.

On January 30, 1997, the NRC staff and the licensee briefed the Commission on their activities at Millstone. Subsequently, on April 23, August 6, December 12, 1997, and February 19 and May 1, 1998, the NRC staff, licensee and the independent third-party organizations involved in Millstone oversight activities provided the Commission with updates on these activities.

### **Regulations regarding Sunshine Act and ex parte communications**

As set forth in 10 CFR, Subpart 9.102, the procedures for compliance with the Government in the Sunshine Act state:

Commissioners shall not jointly dispose of Commission business in Commission meeting other than in accordance with this subpart. Except as provided in 9.104 (Closed Meetings), every portion of every meeting of the Commission shall be open to public observation.

A *meeting* is defined in 10 CFR, Subpart 9. 101 as:

Meeting means the deliberation of at least a quorum of Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business ...

The rules regarding ex parte communications found in 10 CFR, Subpart 2.780 state:

In any proceeding under this subpart(a) Interested persons outside the agency may not make or knowingly cause to be made to any Commission adjudicatory employee, any ex parte communication relevant to the merits of the proceeding.

(b) Commission adjudicatory employees may not request or entertain from any interested person outside the agency or make or knowingly cause to be made to any interested person outside the agency, any ex parte communication relevant to the merits of the proceeding ...

...

(e) (1) The prohibitions of this section apply-(1) When a notice of hearing or other comparable order is issued in accordance with 2.104(a), 2.105 (e)(2), 2.202 (c), 2.204, 2.205(e), or 2.703;

...

(f) The prohibitions in this section do not apply to-(4) Communications regarding generic issues involving public health and safety or other statutory responsibilities of the agency (e.g., rulemakings, congressional hearings on legislation, budgetary planning) not associated with the resolution of any proceeding under this subpart pending before the NRC.

## DETAILS

### ***Government in Sunshine Act and ex parte rules not applicable***

To address the allegations that the Sunshine Act had been violated and that improper ex parte communications had occurred, OIG conducted initial inquiries which determined that BLANCH met separately with each of the Commissioners mentioned in the WSJ newspaper article (the Chairman, Commissioner McGAFFIGAN and Commissioner DIAZ). OIG then interviewed two senior representatives from the NRC Office of the General Counsel (OGC) with expertise in the areas of the Sunshine Act and ex parte communications. Both attorneys advised OIG that the Sunshine Act did not apply to the meetings between BLANCH and the Commissioners because the meetings were held individually with each Commissioner. They explained that the Sunshine Act as implemented by the agency in 10 CFR 9. 100 only applies to meetings when there is a quorum of the Commissioners and deliberations of official Commission business takes place. A Commission quorum has been held to mean three or more Commissioners.

Regarding the ex parte communications issue, both OGC attorneys stated that the rules prohibiting such communications apply only when there is an adjudicatory proceeding (as defined by 10 CFR) underway or if a Commission employee has knowledge that a notice of hearing will be issued. They explained that in the case of the Millstone restart, the matter is being handled as a licensing issue and no NRC adjudicatory proceeding is in effect or anticipated. Therefore, the ex parte communication rules did not apply to the meetings between BLANCH and the Commissioners.

### ***Arrangements made for BLANCH meeting with Chairman and Commissioners***

OIG interviewed Paul BLANCH who advised that he has been employed as a contractor/consultant for Northeast Nuclear Energy Corporation (NNECO) since February 1997. BLANCH described his current duties as being related to the NNECO Employee Concerns Program (ECP) and helping to establish/ensure a Safety Conscious Work Environment (SCWE) at Millstone. BLANCH stated that in his position, he meets with employees who have safety concerns, and he attempts to resolve their concerns.

BLANCH related to OIG that he first met with NRC Chairman Shirley JACKSON in April 1996 which was prior to his current period of employment at NNECO. BLANCH explained that the principal topic of that meeting was the NRC's handling of whistleblowers. At the conclusion of the April 1996 meeting, Chairman JACKSON reportedly invited BLANCH to return at a later date for further discussion. In August 1997, BLANCH sent a letter to the Chairman requesting a personal meeting. BLANCH stated to OIG that in the letter of request, he acknowledged that he had been a consultant for NNECO since the spring of 1997, but he stated that he was requesting the meeting with the NRC Chairman on his own behalf. OIG learned through review of BLANCH's letter that the topics he proposed for discussion included whistleblower issues, effectiveness of the NRC's enforcement process, and the NRC's identification and resolution of potentially significant safety issues.

BLANCH continued by stating that after the November 1997 meeting with the Chairman was scheduled, he made an inquiry to a manager in the NRC's Office of Nuclear Reactor Regulation (NRR) as to the availability of the other Commissioners to meet with him. The NRR manager, who had been the NRC staff's point of contact with BLANCH for an extended period of time, contacted the offices of NRC Commissioners McGAFFIGAN, DIAZ and DICUS to determine if they had any interest in meeting with BLANCH. According to BLANCH, the NRR manager learned that Commissioners McGAFFIGAN and DIAZ were agreeable to a meeting with BLANCH. Separate meetings with the two Commissioners were set up for November 14, 1997, the same day as the meeting with the Chairman. BLANCH stated that he was told that Commissioner DICUS was not available for a meeting on the scheduled date.

BLANCH told OIG that he traveled to NRC Headquarters in November 1997 at his own expense and time. BLANCH stated that he informed NU management of his intention to meet with the NRC Commissioners in advance and there was mutual agreement between he and NU that he was going in his private capacity rather than as a representative of NU management. BLANCH stated that he had general discussions with NU managers concerning the topics he proposed to raise with the Commissioners; however, BLANCH asserted to OIG that there was no direction provided by NU managers on the topics of discussion. BLANCH told OIG that NU management provided no material for BLANCH to use during the commission meetings.

BLANCH acknowledged to OIG that he met separately with the NRC Chairman, Commissioner McGAFFIGAN and Commissioner DIAZ on the afternoon of November 14, 1997. Each meeting lasted approximately 30-45 minutes. BLANCH said he began each meeting with the statement that he was there as a private citizen and not as a representative of NU. He also informed the Commissioners that he did not intend to discuss the situation at Millstone unless the Commissioners desired that he do so. BLANCH told OIG that the NRC Chairman indicated that she did not want to discuss Millstone with him; however, both Commissioners McGAFFIGAN and DIAZ indicated that they wanted to talk about Millstone. BLANCH said that the discussion with the two Commissioners about Millstone centered around the status of the ECP and SCVVE. BLANCH indicated to Commissioners McGAFFIGAN and DIAZ that progress had been made in these areas; however, he felt there was still room for improvement. BLANCH was complimentary of the services being provided by Little Harbor Consultants (LHC). BLANCH denied to OIG that there was any discussion of the timing of the Millstone restart decision or of how any of the Commissioners intended to vote on the restart issue.

When questioned by OIG about the comment attributed to Commissioner DIAZ in the WSJ article that BLANCH made a "pretty good case" for restart during the meeting, BLANCH said that he was "surprised" by the comment because he did not believe that he had discussed the issue of Millstone restart with Commissioner DIAZ.

***OIG Review of Meeting Summary Prepared by BLANCH***

BLANCH advised OIG that he prepared a summary of his meetings with the Commissioners after returning to work at NU and while on NU's payroll. OIG reviewed the summary, which was intended to be an internal NU document, and found that it contained a list of the topics discussed with each Commissioner as well as BLANCH's personal views on the meetings. BLANCH indicated in the summary that both Commissioners DIAZ and McGAFFIGAN were primarily interested in Millstone issues. BLANCH wrote that the only topic generally related to Millstone which was discussed with the Chairman had to do with the public perception of the NRC in the vicinity of the Millstone plants.

The summary prepared by BLANCH also included the following personal view on how the Commissioners might vote on the restart of Millstone: "My overall assessment is that if the staff were to endorse the restart of Millstone today, we would have affirmative votes from Commissioners McGAFFIGAN and DIAZ. I think the Chairman is going to be very sensitive to public opinion. I have verbally summarized the meetings to (names of two NU managers), and we are all in agreement that follow up letters will be sent from me to the three Commissioners and Mr. Thadani. I will work with Communications to send these letters soon."

OIG learned that a copy of BLANCH's summary was provided to NU management shortly following preparation.

### ***Commissioner McGAFFIGAN describes meeting with BLANCH***

OIG interviewed Commissioner Edward McGAFFIGAN who recalled that when the November 1997 meeting with BLANCH was initially proposed, a member of his staff recommended that he meet with BLANCH. The staff member provided Commissioner McGAFFIGAN with background on BLANCH's past involvement with whistleblower and nuclear safety issues.

Commissioner McGAFFIGAN confirmed to OIG that at the outset of the meeting, BLANCH indicated that he was there as a private citizen and that he did not intend to discuss Millstone issues unless the Commissioner desired that he do so. Commissioner McGAFFIGAN told OIG he wanted to obtain BLANCH's view of the current situation at Millstone, and he informed him as such. The Commissioner was particularly interested in BLANCH's view of the ECP at Millstone. He recalled that BLANCH's comments were generally favorable of the ECP; however, BLANCH felt there was still room for improvement. Commissioner McGAFFIGAN advised OIG that BLANCH represented merely "one data point" of many that he (Commissioner McGAFFIGAN) would consider in assessing the situation at Millstone.

Commissioner McGAFFIGAN told OIG that he did not discuss either the scheduling of the Millstone restart vote or how he intended to vote on the subject. Commissioner McGAFFIGAN did not feel that BLANCH was "making a case" for a Millstone restart during their meeting.

Commissioner McGAFFIGAN added that as of the date of the OIG interview (March



1998), he still had not made up his mind on the matter of restart. Commissioner McGAFFIGAN advised OIG that he had not visited the Millstone site up to this point due to a personal matter which restricts his travel outside of the Washington, D.C. area. He told OIG that he intended to vote to allow critics of Millstone to participate in future Commission meetings.

Commissioner McGAFFIGAN said that he does not turn down any requests for a meeting with him unless there is a legal reason to do so. He felt that Commissioners were in danger of becoming isolated from the real world if they turned down such requests from the public. Commissioner McGAFFIGAN advised that he had recently sent a letter to the editor of The DU, a New London, Connecticut newspaper, in response to an earlier editorial which had been critical of the Commissioners for meeting with BLANCH. In that letter to the editor, Commissioner McGAFFIGAN stated his willingness to meet with any member of the public who desired such a meeting.

A senior member of Commissioner McGAFFIGAN's staff who was present during the meeting with BLANCH was interviewed separately by OIG. That staff member provided information consistent with Commissioner McGAFFIGAN's account of the meeting with BLANCH.

### ***Commissioner DIAZ explains meeting with BLANCH***

Commissioner Nils DIAZ, when interviewed by OIG, advised that the November 1997 meeting with BLANCH was suggested by a member of his staff, and he agreed with the meeting. Commissioner DIAZ believed that he instructed his staff to ensure that the meeting was permissible, but he was uncertain as to what steps his staff may have taken in that regard. He said the fact that BLANCH was meeting with other Commissioners on the same day may have allayed his concerns about the legality of the meeting. Commissioner DIAZ told OIG that he believed the purpose of the meeting was for BLANCH to introduce himself to the Commissioners. He likened it to a "presentation of credentials" meeting. The Commissioner said that he was aware of BLANCH's past history as a whistleblower and that he had recently returned to NU as a consultant working in the area of ensuring a SCWE at the site. Commissioner DIAZ told OIG that he did not believe that BLANCH was working on technical issues at Millstone.

According to Commissioner DIAZ, at the start of the meeting, BLANCH said that he was there in his personal capacity and not as a representative of NU. Commissioner DIAZ estimated that two-thirds of the meeting was consumed by BLANCH telling about his past history and a discussion of an event in the 1980s in which fuel from a nuclear power plant had been exposed.

Commissioner DIAZ told OIG that he disagreed with BLANCH regarding the potential severe consequences of that event.

Commissioner DIAZ told OIG that following a brief pause in their conversation, BLANCH

asked the Commissioner if he wanted to talk about Millstone. The Commissioner looked around the table at the other attendees (his Executive Assistant and an NRR manager), and when no one objected, the discussion of Millstone proceeded. Commissioner DIAZ said that the conversation did not include specific restart issues but rather involved BLANCH's views on the SCWE at Millstone. Commissioner DIAZ indicated that BLANCH was complimentary of improvements in that area but indicated that there was still room for additional progress.

Commissioner DIAZ denied to OIG that he made the comment which appeared in the WSJ article that BLANCH had made a "pretty good case" for restart at Millstone. Commissioner DIAZ explained that he did not view the points made by BLANCH during the meeting as making a case for restart; therefore, he asserted to OIG that he would not have made such a statement. When asked if he had any explanation for the comment as reported in the WSJ article, Commissioner DIAZ explained that in response to a series of questions from the reporter regarding his views on the issue, he told the WSJ reporter that the "NRC staff was making a good case for restart" during Commission briefings.

A senior member of Commissioner DIAZ' staff present during the meeting with BLANCH was interviewed separately by OIG. The staff member told OIG that while making arrangements for the meeting, she was informed that BLANCH was coming as a private citizen and not as a representative of NU. The staff member characterized the meeting as a "pumps and valves" discussion of technical issues with which she was not conversant. She told OIG that she did not take notes during the meeting, but she believed that the NRR representative who was present during the meeting took notes. The Commissioner's staff member could not specifically recall if the issue of Millstone restart was discussed during the meeting, but stated that she doubted that it was.

### ***Contact with WSJ reporter***

The correspondent who wrote the article in the March 12, 1998, issue of the WSJ was contacted by OIG. The writer reconfirmed to OIG the accuracy of his article and declined a personal interview. When asked about the comment in the article attributed to Commissioner DIAZ regarding BLANCH making a "pretty good case" for the restart of Millstone, the correspondent advised OIG that the inclusion of quotations marks around the comment signified that the statement was verbatim by Commissioner DIAZ. The reporter added that the interview of Commissioner DIAZ for the WSJ article was done by telephone.

### ***Interview of NRR Manager***

OIG interviewed the NRR manager who has been the NRC staff's point of contact with BLANCH and was present during the Chairman/BLANCH and Commissioner DIAZ/BLANCH meetings. The NRR manager stated that he was aware that BLANCH had

sent a letter in the late summer of 1997 requesting a meeting with the NRC Chairman. The manager advised that after the meeting with the Chairman was scheduled for November 1997, BLANCH asked the manager if any of the other NRC Commissioners would be available for a meeting on the same day. The NRR manager then contacted the staffs from the other Commissioners and learned that Commissioners McGAFFIGAN and DIAZ were willing to meet with BLANCH. The staff of Commissioner DICUS indicated that she would not be available to meet with BLANCH.

The NRR manager said that during telephone conversations with BLANCH in advance of the November meetings, both men agreed that it would be inappropriate to discuss NU issues during the meetings. During the same telephone discussions, the NRR manager learned that the principal topic for discussion during the meetings was whistleblowers. The NRR manager advised OIG that he had also been present during the prior April 1996 meeting between the Chairman and BLANCH. The NRR manager sat in on BLANCH's meetings with the Chairman and Commissioner DIAZ. He was not asked to sit in on the meeting with Commissioner McGAFFIGAN.

The NRR manager said that at the start of the meeting with Commissioner DIAZ, BLANCH informed the Commissioner that he had recently returned to work as a consultant at NU and that he did not intend to discuss NU or Millstone unless the Commissioner desired to do so. At that point, according to the NRR manager, Commissioner DIAZ spoke up and said that he was interested in hearing how BLANCH viewed the current situation at Millstone. The NRR manager estimated that Millstone was discussed for approximately 10 minutes out of the 30 minute meeting. However, the NRR manager told OIG that he did not view BLANCH's comments as "making a case" for restart of Millstone. The NRR manager opined that because BLANCH was working principally on ECP matters at Millstone, BLANCH did not have specific information regarding the technical issues in which Commissioner DIAZ appeared to be interested.

Following the meeting with Commissioner DIAZ, the NRR manager escorted BLANCH to the meeting with the Chairman. The NRR manager said that there was no discussion of NU or Millstone issues during that meeting. He said that "the lines were bold" in that both BLANCH and the Chairman made it clear at the outset that current Millstone issues would not be discussed.

The NRR manager confirmed to OIG that the Commission vote on the restart of Millstone was not discussed during either meeting.

### ***The NRC Chairman describes meeting with BLANCH***

NRC Chairman Shirley JACKSON advised OIG that her meeting with BLANCH in November 1997 was in response to a request from him. She stated she had met previously with BLANCH in April 1996 to discuss the NRC's handling of whistleblowers. At the start of the November 1997 meeting, the Chairman made it clear to BLANCH that she

did not want to discuss Millstone issues with him. She was sensitive to the fact that there were two NRC Orders in effect related to Millstone. The Chairman told OIG that during her November 1997 meeting with BLANCH there were general discussions of NRC's investigation of harassment and intimidation (H&I) cases, her views on "safety vs. compliance," design bases issues, the Senior Management Meeting (SMM) process, 10 CFR 50.59 process and risk-informed regulation.

During the OIG interview, the Chairman advised that she had visited the Millstone site on February 2, 1998, prior to the WSJ article. In addition to a news conference and the conduct of an evening public meeting, she met separately with representatives from a number of local groups including: Friends of a Safe Millstone (FOSM), the Connecticut Nuclear Energy Advisory Council (NEAC), and the Citizens Regulatory Commission (CRC).

Two members of the Chairman's staff who were present during the meeting with BLANCH were interviewed by OIG regarding the meeting. Both staff members confirmed that the Chairman did not discuss specific Millstone issues or the restart vote with BLANCH. The staff members stated that the meeting was viewed as a follow-up to an earlier April 1996 meeting with BLANCH in which the NRC's handling of whistleblowers was discussed. As recalled by the staff members, the NRC handling of whistleblowers was the principal topic of discussion during the November 1997 meeting.

### ***Commissioner DICUS unavailable to meet with BLANCH***

OIG interviewed NRC Commissioner Greta DICUS who related that she was out of town on November 14, 1997, the date of BLANCH's meetings with the other NRC Commissioners. Commissioner DICUS told OIG that she doubted that she would have met with BLANCH even if she was at NRC Headquarters on that date. She explained that while she saw no legal prohibition to such a meeting, she did not see it as particularly beneficial to meet with just one member of the public who wanted to provide his individual views on a particular situation.

### ***NRC Commission Visits to Millstone***

OIG reviewed the schedule of the NRC Commissioners' trips to the Millstone area. OIG learned that the NRC Chairman has visited Millstone on two occasions (August 1996 and February 1998). During both of those visits, she held public news conferences and responded to questions from the media. During the February 2, 1998, visit, the Chairman met separately for a brief period with members of the following groups: CRC, Citizens Advisory Group (CAG), FOSM, and the Nuclear Energy Advisory Council (NEAC). Additionally, the Chairman met with state and local elected representatives and the Connecticut Department of Environmental Protection during the February 1998 visit. The Chairman also conducted public meetings in Waterford, CT during both of her visits.

OIG learned that Commissioner DIAZ visited the Millstone plants for the first time on April 6, 1998. Following a tour of the plants, Commissioner DIAZ, conducted a press briefing

and met with members of local public interest groups. The groups meeting with Commissioner DIAZ included: the Connecticut NEAC, Millstone Advisory Council (MAC), CRC as well as local elected officials. The Region 1, NRC Office of Public Affairs (OPA) advised OIG that a verbal invitation was also extended to the following groups: Citizens Awareness Network (CAN), Connecticut CAG and FOSM; however, they did not attend the meeting with Commissioner DIAZ.

OIG determined that Commissioners McGAFFIGAN and DICUS have not visited the Millstone site. However, Commissioner DICUS indicated to OIG that she intended to visit the site in the future.

***Commission meetings with NU officials***

During the conduct of this EI, OIG learned that members of the NU Board of Trustees, senior NU management officials, and the Chair of the Nuclear Committee Advisory Team (NCAT) to the Nuclear Committee of the Board at NU met individually with NRC Commissioners on numerous occasions during 1997 and 1998 at NRC Headquarters in Rockville, MD.

According to NU records, OIG determined that the following meetings between NU officials and the NRC Commissioners took place:

<u>Commissioner</u>	<u>Number of Visits</u>	<u>Dates</u>
Chairman JACKSON	6	March 10, June 5, July 18, August 22, and September 18, 1997; January 16, 1998
Commissioner McGAFFIGAN	5	March 10, June 5, August 13 and September 18, 1997; January 16, 1998
Commissioner DICUS	5	June 5, July 16, August 22, and September 18, 1997; January 16, 1998
Commissioner DIAZ	4	March 10, June 11, and August 13, 1997; January 16, 1998
Commissioner ROGERS	3	March 10, June 5, and July 16, 1997

OIG determined that the above meetings were separate from the public Commission Meetings regarding Millstone that were held at NRC Headquarters.

All of the NRC Commissioners acknowledged to OIG their meeting with NU officials at various times other than the public Commission briefings. They noted that they also meet with senior officials from other licensees at NRC Headquarters. While there was no public record made of the discussions, the Commissioners advised that such meetings offer an opportunity for them to ask questions of the licensees. Only Commissioner DIAZ told OIG that he thought the meetings with NU could be characterized as "lobbying" attempts. However, Commissioner DIAZ added that he actively engaged NU officials in discussions during such meetings, and he did not just quietly accept their views on issues. Commissioner DIAZ indicated that notes were not maintained of the meetings with NU officials. Commissioner DICUS told OIG that either she or her staff member normally took notes during such meetings. Commissioner McGAFFIGAN said that he did not take notes during the meetings with NU officials, and he was uncertain if a member of his staff documented the meetings in any form. NRC Chairman JACKSON said that she was not aware of any record made of the issues discussed during her meetings with licensee officials unless one of her staff may have taken notes. A member of the Chairman's staff advised that meeting summaries had been discontinued for "drop-in" meetings due to concerns over compliance with the Freedom of Information Act (FOIA).

### ***Commission views on balance of information regarding Millstone***

All four NRC Commissioners told OIG that they were satisfied with the balance of information they received regarding the situation at the Millstone plants. They stated that they placed significant weight on the information being provided to them by the NRC staff in briefing memoranda and during public Commission meetings and staff briefings. All of the Commissioners relied on the NRC Office of Public Affairs (OPA) to screen the local and national news media for stories concerning Millstone. OIG was told this OPA effort represented a significant part of the input used by the Commissioners to assess the concerns of the public living around the plants.

The Commissioners told OIG that they also relied on the contractors selected to perform the Independent Corrective Action Verification Program (ICAVP) at Millstone as well as the third party oversight of the ECP as sources of information during the public Commission briefings. All of the Commissioners felt that the ICAVP and ECP contractors were sufficiently independent of the licensee to provide information of value to the Commission.

Chairman JACKSON and Commissioner McGAFFIGAN advised OIG that they paid particularly close attention to correspondence from the Union of Concerned Scientists (UCS) regarding technical issues associated with safety at nuclear power plants. Similarly, they looked closely at the NRC staff's responses to the UCS.

### ***Contact with NRC Special Projects Office (SPO)***

OIG interviewed a senior NRC manager in the NRR Special Projects Office (SPO) which was established by the NRC in November 1996 to provide specific management focus on

NRC activities associated with the Millstone units. OIG was told that the NRC staff has conducted a number of different types of meetings in the vicinity of Millstone which have involved either public observation and/or public participation. In the opinion of the SPO manager, the level of public involvement in the process at Millstone was "unprecedented" in comparison with other sites regulated by the NRC. Between December 1996 and March 1998, there have been 12 Restart Assessment Plan (RAP) meetings between the NRC staff and licensee which have been open to public observation. The RAP meetings were usually held in the Training Center at Millstone during the workday and lasted about four hours. The SPO manager advised OIG that the meetings were usually videotaped by the licensee as well as the CRC. The SPO manager acknowledged that while the public observed the RAP meetings, they did not actively participate in them.

OIG learned that during the period December 1996 to March 1998, the NRC staff has held 12 public meetings in the vicinity of Millstone. Most have taken place in the Waterford, CT town hall starting at 7:00 p.m. and lasting approximately four hours. The public has been permitted to ask questions of the NRC staff at these meetings. The public meetings were normally transcribed and the transcript was subsequently made available for review by the public.

Another category of meeting involving the NRC staff which has been open to public observation involve the licensee and Little Harbor Consultants (LHQ, a contractor hired by the licensee for work in the area of Safety Conscious Work Environment. There have been eight meetings between May 1997 and March 1998, involving discussions among the licensee, LHC and the NRC staff which have been open for public observation. Additionally, there has been a series of NRC inspection exit meetings at Millstone which have been open to the public.

The SPO manager advised OIG that as of February 1998, there had been five Commission meetings in Rockville, MD dealing with Millstone which have been open for public observation. A sixth Commission meeting scheduled for May 1, 1998, was slated to include opportunities for the public to address the Commission. Similar public participation is anticipated at other future Commission meetings on Millstone.

### ***Office of Public Affairs (OPA) screens news media***

OIG interviewed an NRC manager in NRC's OPA who advised that on a daily basis, OPA provided each of the NRC Commissioners, as well as other NRC offices, with copies of newspaper articles containing information of interest to the NRC. The office routinely screened The Washington Post, Washington Times, The New York Times, and The Wall Street Journal for information of interest to the NRC on a national level. The office also monitors The Boston Globe, Hartford Courant, and the New London Day for information regarding the local situation around Millstone. OPA also relied on their Region I public affairs staff to maintain close contact with representatives of the media in the areas surrounding the plants.

### ***Contact with Public Interest Groups***

OIG interviewed representatives from the CRC and FOSM as well as the First Selectman from the Town of Waterford, CT. Representatives from CRC and FOSM confirmed to OIG that they met individually with Chairman JACKSON for a brief period of less than 15 minutes each during her February 1998 visit to Millstone. Both individuals commented favorably on the Chairman's attentiveness and apparent concern during their separate meetings. The First Selectman indicated that he has met with Chairman JACKSON on two occasions: once at NRC Headquarters in Rockville, MD in January 1996, and again during her February 1998 visit to Millstone.

All three representatives interviewed by OIG acknowledged being invited by the NRC to meet with Commissioner DIAZ during his April 1998 visit to the site after the article appeared in the WSJ. In that instance, according to the CRC representative who attended, Commissioner DIAZ met with a small group of representatives from the invited groups for a period of about 90 minutes. The FOSM representative confirmed that he was invited to attend, but he was unable to do so. While none of the representatives were aware of any denials by any Commissioners to meet with members of the public around Millstone, the CRC representative indicated that her organization had sent correspondence to the NRC Chairman in the past requesting that she travel to Millstone and address the public.

Regarding the public interaction with the NRC staff in the Millstone area, the FOSM representative and the First Selectman commented favorably on the extent of public involvement in the ongoing situation at Millstone. The CRC representative was critical of both the extent and manner in which the public has been allowed to participate in the process. During her interview with OIG, the CRC representative described the NRC staff as arrogant and condescending in the way they interacted with the public. She also criticized the format of the public meetings and believed that they should be expanded to include two evenings rather than one due to the number of issues to be covered.

A nuclear safety engineer with the UCS was contacted by OIG. He advised that he has never requested to meet personally with any NRC Commissioner. He explained that since UCS was a public interest group, interactions with the Commission were usually in writing to ensure that a clear and public record existed of what was being said. The engineer advised that responses from the Commission were normally in writing as well. The UCS representative advised that in January 1997, during a conference in Fort Lauderdale, Florida, former Commissioner ROGERS invited him to come to NRC Headquarters to talk; however, the UCS representative did not do so. In April 1997, the UCS representative met with Commissioner McGAFFIGAN and a member of his staff at NRC Headquarters. The UCS representative stated he has attended the public Commission briefings on Millstone in Rockville; however, he has not attended the public meetings in the vicinity of Millstone.

### ***NRC Principles of Good Regulation***

OIG learned that on January 17, 1991, then NRC Chairman Kenneth M. CARR published



Announcement No. 6, "Principles of Good Regulation," established by the Commission as a guide to both agency decision-making and to individual behavior as NRC employees. According to Chairman CARR, diligent adherence to the principles by every NRC employee should help ensure that NRC regulatory activities are of the highest quality, appropriate, and consistent. The five principles of good regulation set forth in the announcement are: Independence, Openness, Efficiency, Clarity and Reliability. Two of those principles (Independence and Openness) are described in the following terms:

**"Independence** - Nothing but the highest possible standards of ethical performance and professionalism should influence regulation. However, independence does not imply isolation. All available facts and opinions must be sought openly from licensees and other interested members of the public. The many and possibly conflicting public interests involved must be considered. Final decisions must be based on objective, unbiased assessments of all information, and must be documented with reasons explicitly stated."

**"Openness** - Nuclear regulation is the public's business, and it must be transacted publicly and candidly. The public must be informed about and have the opportunity to participate in the regulatory process as required by law. Open channels of communication must be maintained with Congress, other government agencies, licensees, and the public, as well as with the international nuclear community."

## FINDINGS

OIG found that the meetings between the NRC Commissioners and BLANCH, an NNECO consultant, did not violate the Government in the Sunshine Act or the rules regarding ex parte communications. BLANCH met with the Commissioners individually rather than as a group comprising a quorum; therefore, the requirements of the Sunshine Act did not apply. Further, since there was no NRC adjudicatory proceeding in existence at the time of the BLANCH meetings, the rules regarding ex parte communications were not applicable.

OIG determined that although the public had the opportunity for frequent contact with the NRC staff during various meetings in the area of Millstone which were open to public observation and/or participation, the public had limited opportunity for direct access to individual Commissioners to express their concerns regarding the Millstone plants. This was due to a lack of Commission invitations and requests by the public for such meetings. Prior to the initiation of this EI in March 1998, Chairman Jackson was the only NRC Commissioner to travel to Millstone and include time in her schedule for public participation.

During this inquiry, OIG learned that since March 1997, a number of meetings took place between individual NRC Commissioners and senior officials from NU at NRC Headquarters. Although not prohibited by law or regulation, the frequency of these non-public meetings coupled with the lack of a public record of the issues discussed and the virtual absence of similar meetings with members of the public are actions which appear to run counter to the promulgated Principles of Good Regulation regarding Independence and Openness. The principles of Independence and Openness require the NRC to transact nuclear regulation publicly and candidly, and to openly seek and consider the public's input during the regulatory process.