

October 10, 2000

MEMORANDUM TO: File

FROM: Barry Westreich **/RA/**
Office of Enforcement

SUBJECT: SUMMARY OF SEPTEMBER 14, 2000, DISCRIMINATION TASK
GROUP PUBLIC MEETING IN SAN LUIS OBISPO, CALIFORNIA

On September 14, 2000, a public meeting was held in San Luis Obispo, CA to discuss the NRC enforcement program and practices in employee protection cases. The meeting was part of a series of meetings being held to solicit stakeholder input on the NRC's processes for handling discrimination cases. A summary of the meeting presentations, materials and statements submitted and an attendance list is attached.

cc: FMiraglia, DEDR

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MEETING SUMMARY FOR SEPTEMBER 14, 2000 DISCRIMINATION TASK GROUP
MEETING IN SAN LUIS OBISPO,

The meeting began at 7:00 p.m.

Bill Borchardt, Director, NRC Office of Enforcement
(Presentation Slides are included as attachment 1)

Mr. Borchardt opened the meeting with a brief presentation outlining the formation of the Discrimination Task Group and the NRC processes for handling discrimination cases.

Ralph Beedle, Nuclear Energy Institute (NEI)
(Presentation slides included as attachment 2)

Mr. Beedle presented NEI's concerns with the current NRC process for handling discrimination complaints and suggestions for changes. There are clear examples of where managers are afraid to take action on an employee because they are afraid that they will be personally liable.

The NRC should be applying its principles of good regulation. The NRC needs to have an open, fair, transparent, and timely regulation.

Dual regulations of 50.7 and section 211 need to be resolved to draw a distinct line between two activities. Testimony that we have had today has raised the point that the confusion of the grieved individual is apparent.

Evidentiary standard needs to be resolved.

Review of the fundamental reason for 50.7, it should be realigned to focus on the agencies mission. In prosecuting of 10 CFR 50.7 we may be creating a chilled effect.

Question from Mr. Bill Borchardt: What is it about these regulations that are more burdensome than all the other regulations on discrimination that exist.

Answer: It is the way information is gathered that is very disturbing and lends itself to a lack of knowledge by all interested parties of what is happening and what the outcome is going to be. OI's methods for gathering information is very burdensome.

Question from Mr. Bill Borchardt: Is there standard training in the industry in this area?

Answer: There is a training toolkit that is out there for licensees to use in developing training. When companies are going through change as they are now there is a lot of opportunity to miscommunicate which can lead to problems. The other element is that employees know the NRC is going to take action on protected activities, then they always have a venue to challenge anything that happens as long as they are involved in protected activity. There are cases where blatant use of the regulations to protect them has been seen. Individuals have said that "they would go away for x amount of dollars".

Question from Mr Dambly: Does it change your perspective on the handling of these matters when we see that 9 of 10 allegations that the NRC receives are not substantiated?

Answer: No because it is the process that is a problem and if yours is the one of ten that is substantiated, you need to have a process that works.

Question from participants: The Mother's for Peace would like to know have you learned from Mr. Aiken's case and do we understand that the public's perception related to the remark that 90% of allegations are substantiated is not shared with the public.

Answer: NEI cannot comment on the Aiken case. With regard to Public perception issues, we have seen that large cases, such as Silkwood tend to make us generalize that utilities are bad players and that they are not looking out for the public. The utilities have good motives but individual managers are not always correct in their actions. Thousands of safety concerns are raised everyday and there is a whole staff at the plants to resolve these issues. There are human reactions to changes in the plant. There may be a perception that a move has been made because a concern was raised in the past. It is a challenge of dividing personnel action and discrimination and the perception of the employee may not always be correct. The public views that any time there is an allegation it is an indication of a safety concern.

The public is concerned with these cases and is looking to the federal agencies to give them a feeling that they are being handled the right way. The NRC needs to look at how to give the public and other affected people information on the status or outcome of a case. How does the public get informed for these issues and resolutions in these cases?

Question from Mr. Borchardt: Does that mean you think the NRC should cull out the safety issue and deal with that on it own, which we do now, but you are saying we should be a lot more forthcoming about the outcome of any safety issue?

Answer: Very few of these issues involve a real safety issue, but the regulation is to ensure that a good environment exists where employees feel free to raise these concerns.

Comment from participants: The enforcement sanction plays a large part. There is no other regulation that can take the same catastrophic effect of taking someone out of their job for a number of years. The specter of the NRC bringing in their badges and in secret to take action is ominous.

Question from Mr. Brad Fewell: Are you suggesting that it is wrong for the NRC to take action in these cases?

Answer: We need to go back to the reason the regulation exists which is to ensure there is no chilling effect. Banning someone has no impact on a chilling effect and should be removed. This regulation has the effect of polarizing the employee management relationship which is of more a deterrent to the workforce. This is not how you get a good workforce.

Jim Becker, Operational Services Manager at Pacific Gas and Electric (PGE).
(Slides included as attachment 3)

PGE supports the NEI comments.

The Federal Register announcement asked for input on a number of areas. PGE's recommendations fall into three categories.

- Clarify the different federal agency's delineation of authority in the employee protection area.
- Make results of the investigations available.
- Improve the formality of the DOL investigative process.

PGE has had recent experience with the process. OI investigated alleged discrimination. A DOL complaint was filed. There were differences between NRC and DOL. The NRC was very formal and interviewed over 60 witnesses with sworn testimony. The DOL process did not require sworn testimony and interviewed only 10 people. The two agencies reached different conclusions in the case. The NRC found that no discrimination had occurred. DOL found that discrimination had occurred.

After the DOL conclusion, the report was issued and it was not redacted. The report listed names of employees interviewed and was very critical of PGE. Employees that were named felt their reputations had been injured. The NRC's basis for their conclusion that no discrimination occurred was never made public. This resulted in the public only having one side of the story. The NRC should make its conclusions public.

The NRC needs to clarify the delineation of responsibilities when both NRC and DOL are doing an investigation. The NRC should focus on the underlying safety issue and the DOL should focus on the discrimination claims. There should be a process to resolve DOL/NRC conflicts. The results of the investigations should be shared between agencies. Results of investigations should be made available to the public and licensees. The formality of the DOL process should be improved. Such as the release of the DOL investigation.

Question: Is there any difference in your mind in the case where discrimination was found and where no discrimination was found?

Answer: In any event, if the basis for the decision was available there would be a more informed discussion. We aren't sure that we want the entire report released. These things receive a lot of attention and in this case only one report was issued. Later, the NRC made it more clear what the outcome was. If NRC appears to be following different rules than the DOL and we don't make it public it doesn't help the environment at the plant. We don't like the lack of knowledge that results from the lack of information provided.

Comment from Mr. Borchardt: We do want to point out that the NRC is trying to make a balance of privacy information and getting the facts out. The Agency typically errs on the side of privacy for the people involved if we don't establish discrimination.

Mr. Becker stated that these cases have gotten a lot of the attention because people are looking at the government to assist them and if they don't know of the outcome, how do they determine whether the issue was properly resolved.

Comment from Mr. Dambly: To clarify a point, the NRC OI does not come out with a finding of no discrimination. Only that they didn't have enough to substantiate discrimination.

Mr. Becker stated that the NRC was much more thorough and it would have been helpful to get that information out.

Comment from Mr. Beedle: Two observations. The fact that one government agency says yes there was discrimination and another agency says no, that there was no discrimination creates

a major problem for the public. The treatment of the same facts should not come up with different results. The second point is the fact that we say that we cannot substantiate a case because of insufficient evidence is wrong. Either we need to say that it happened or it didn't.

Comment from Mr. Dambly: When you are talking about motive it is in many cases very hard to really know. The most you can say is that we have enough evidence to substantiate or not substantiate discrimination.

Comment from Mr. Beedle: Does the NRC work on the presumption of guilt or innocence. This approach implies that you are looking at the presumption of guilt.

Comment from Mr. Dambly: If we are going on the presumption of guilt we are doing a pretty lousy job because we only substantiate 1 of 10 cases.

Comment from Mr. Beedle: We believe the agency should look at the way you do investigations and this presumption of guilt aspect should be looked at.

Question from Mr. Borchardt: With regard to the difference in formality of the NRC and DOL that was mentioned. Should the DOL or NRC change its procedures for conducting investigations and the formality that is used during the investigation?

Answer from Mr. Becker: DOL should evaluate their investigations and procedures because they need to be more formal.

Joe Wambold: Vice President San Onofre Nuclear Generating Station (SONGS)-
(slides included as attachment 4)

Southern California Edison agrees with the NEI comments.

The issue of being guilty until proven innocent is of concern.

Mr. Wambold gave a presentation of the SONGS Safety Conscious Work Environment training at SONGS.

Question from Mr. Fewell: Is there a method of evaluating how well supervisors do in implementing the training given in this area?

Answer: There is a survey done to evaluate how safety issues are being resolved, but not on a manager by manager mode. Performance reviews in this area are included.

Comment from Mr. Dambly: Going back to the earlier discussions regarding comments that the OI investigation or NRC involvement disrupts the manager/employee relationship; if an employee is already making the allegation and going to NRC and DOL, isn't the relationship already having problems?

Answer from Mr. Beedle: Allegers don't like the process either. At the point of allegations going to DOL and the NRC we agree there is already a major breakdown in the management/employee relationship.

Question from Mr. Dambly: Should the NRC get out of the investigation business altogether?

Answer: When OI comes in, they are interacting with a whole group of people. The secrecy and techniques they use are not only on the target but on fact witnesses and the alleged himself. These techniques don't encourage cooperation with government.

Mr. Dambly asked: Should OI do more informal investigations?

Answer: OI should ratchet down the whole enforcement issue and the NRC should address the safety concern and chilling effect. Are the OI investigative techniques designed to gain cooperation or do they do just the opposite. The law enforcement aspect does not help.

Mr. Dambly asked: Does the industry believe that the NRC should decriminalize 10 CFR 50.7?

Answer: That is a start. But you need to look at doing more.

Comment from PGE: The OI investigation was very thorough. PGE felt that we had an opportunity to get the information out. More people would like to get the information out, but without the type of information coming back in, only the DOL report, people are confused as to what happened. What is the impact on other managers when they see how serious these issues are and the investigations that occur? How are they supposed to take action on employees when they see what happens on any allegation of discrimination?

Comment from Cindy Pederson: Can you be more specific on the impact this has on other managers?

Answer: The investigation has an impact on the whole organization. We know that there is a tool that someone can use to drag you into under oath testimony just by making the allegation. This is quite frightening and you may not ever know what the outcome is. We see supervisors unwilling to deal with normal management problems because of fear of what could happen.

Comment from Mr. Dambly: Do you believe that supervisors are less inhibited in dealing with all the other discrimination issues? The NRC typically issues NOV's to individuals when it finds deliberate discrimination occurred versus actions that other agencies take. One difference is that an OSHA result is an investigator decision. Our decision, when it is made is an Agency decision

Answer from PGE: It is not anything about the NOV. It is about being investigated and the time required is extensive. The aura around one of the OI investigations is overwhelming. Everybody knows when OI is onsite.

Comment from Mr. Dambly: Is the OSHA investigation less widely known than an OI investigation?

Answer from PGE : Yes. The NRC should do a benchmark on the other federal processes that are used to investigate matters.

Question from Mr. Borchardt: A new aspect to what we have heard tonight is that OI has a site wide impact. Another question; for pre-decisional enforcement conferences, what is the appropriate role of the alleged?

Question from Mr. Beedle: The first question is what is the purpose of the conference?

Mr. Borchardt: It is the last element of the fact gathering process.

Mr. Beedle: The answer lies in the purpose. At the conclusion of the conference all the facts needed should have been gathered. Then we can't avoid having the aggrieved individual there. Part of the problem is the people don't know the facts that they are trying to defend against. This is the OI report release issue. Underscore the fact that we need to make sure the utility and public know that the safety issue has been resolved.

Mr. Borchardt concluded the meeting at 9:00 p.m.