

November 29, 2000

Mr. Richard Kester  
[HOME ADDRESS DELETED  
PER 10 CFR 2.790]

SUBJECT: RESPONSE TO REQUEST FOR NRC SUPPORT AT DEPARTMENT OF  
LABOR ADMINISTRATIVE HEARING

Dear Mr. Kester:

In a letter dated November 17, 2000, you requested that the NRC provide support prior to and during a Department of Labor (DOL) hearing of your discrimination complaint against Carolina Power and Light (CP&L). You also requested notification of actions taken by the NRC to ensure your protection under the Energy Reorganization Act (ERA).

The NRC notified you by letter dated November 5, 1999, that the Office of Investigations concluded the evidence developed during the investigation did not substantiate that you were terminated in retaliation for providing information to the NRC.

The DOL Occupational Safety and Health Administration (OSHA) notified the NRC of their investigation results in this matter by letter dated July 19, 2000. As you noted, OSHA's letter stated that the "Complainant's allegations had merit." However, OSHA also enclosed the letters sent to you and CP&L, as well as the Final Investigative Report (FIR). The FIR clearly indicated that there was "no evidence that protected activity was a factor in the decision to discharge him." The letters to you and CP&L were consistent with the investigative conclusion. Therefore, a typographical error apparently occurred when the letter to the NRC was prepared; specifically, the word "no" was omitted when indicating the results of the investigation. We contacted OSHA and verified that their conclusion in your case was that it had no merit.

Given that neither the NRC nor DOL have concluded that you were terminated in retaliation for providing information to the NRC, the NRC has not taken any enforcement action based on your case. However, as indicated in our November 5, 1999, letter to you, we continue to monitor the DOL process until a final decision is reached.

You also requested we have a representative appear with you at your hearing before the DOL Administrative Law Judge. The NRC and DOL have complementary, but separate, responsibilities in the area of employee protection. DOL has the responsibility under Section 211 of the ERA to investigate employee complaints of discrimination and may, after an investigation or hearing, order a violator to take affirmative action to abate the violation. NRC, although without authority to provide a remedy to an employee, has independent authority under the Atomic Energy Act (AEA) to take appropriate enforcement action against Commission licensees that violate the AEA or Commission requirements. Each agency carries

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out its statutory responsibilities independently and as such, the NRC does not provide representatives to either party during a hearing at DOL.

Should you have any questions regarding this issue, you may contact Nick Hilton of my staff at (301) 415-3055.

Sincerely,

/RA/

R. W. Borchardt, Director  
Office of Enforcement

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