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FOIA/PA REQUEST

Case No: 2001-0209
Date Rec'd: 3-30-2001
Action Off: BHOWK
Related Cases: _____

March 30, 2001

VIA FAX AND FIRST CLASS MAIL

FOIA Officer
Rules and Directives Branch
Division of Administration Services
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: FOIA Request

Dear FOIA Officer:

We represent RANDY ROBARGE. Pursuant to the Freedom of Information and Privacy Acts (FOIPA), 5 U.S.C. §§ 552 and 552a, et seq., we hereby request copies of any and all records and information, including but not limited to notes, letters, memoranda, drafts, minutes, diaries, logs, procedures, instructions, drawings, files, graphs, charts, maps, photographs, agreements, handwritten notes, studies, data, notebooks, books, telephone messages, computations, interim and/or final reports, status reports, and any and all other records relevant to and/or generated in connection with the following:

1. A letter dated August 11, 1998 from Kohn, Kohn & Colapinto addressed to the Chairman of U.S. Nuclear Regulatory Commission (NRC), concerning a number of allegations involving Commonwealth Edison's (ComEd's) Zion Station and a request for an investigation (Allegation No. RIII-98-A-0136);
2. A letter dated January 6, 1999 from H. Brent Clayton addressed to Kohn, Kohn & Colapinto, in response to their August 11, 1998 letter (see attached copy).

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This request covers the complete work product and entire investigatory files created by the NRC investigators, and also includes, but is not limited to the following information:

- (1) All documents directly or indirectly related to Randy Robarge;
- (2) All documents directly or indirectly related to the claim filed by Mr. Robarge with the U.S. Department of Labor concerning possible whistleblower retaliation (DOL file 5-1260-00-040/946079), including but not limited to any and all documents which were filed with the NRC related in any manner to Randy Robarge;
- (3) Copies of any statements and/or documents provided to the NRC or any other person with respect to Mr. Robarge's claim with the Department of Labor.

As you are aware, the FOIA requires you to release documents in segregable portions in the event they contain exempt material. For any documents or portions that you deny due to a specific FOIA exemption, please provide an index itemizing and describing the documents or portions of documents withheld.

We also ask that all fees be waived because the information requested will contribute significantly to the public's understanding of the operations of the government and/or is primarily in the public interest. Notably, the Secretary of Labor has determined that cases under 29 C.F.R. Part 24 involve the litigation of "health and safety hazards to the public" not merely "private harms." Polizzi v. Gibbs & Hill, Inc., No. 87-ERA-38, slip op. of SOL at pp. 2-3 (July 18, 1989). Moreover, a fee waiver should be granted because this request should not require major expenditures of staff time or place a burden on reproduction facilities.

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We look forward to hearing from you within twenty (20) working days as the law stipulates. Please feel free to call me at (202)342-1903 if you have any question.

Sincerely,

A handwritten signature in cursive script that reads "Amy S. Rogers". The signature is written in dark ink and is positioned to the right of the typed name.

Stephen M. Kohn

Amy S. Rogers



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

January 6, 1999

Stephen M. Kohn, Esq.
David K. Colapinto, Esq.
Kohn, Kohn & Colapinto, P.C.
3233 P Street, N. W.
Washington, D.C. 20007-2756

Dear Sirs:

This is in regard to your letter of August 11, 1998, addressed to the Chairman of the U.S. Nuclear Regulatory Commission (NRC), in which you listed a number of concerns involving Commonwealth Edison's Zion Station and requested that the NRC consider these as allegations. The NRC Region III (RIII) office has been assigned responsibility to review the allegations, excluding the concerns assigned to the NRC Office of the Inspector General as involving alleged potential misconduct of NRC staff.

In our investigation to date, we have reviewed the petition to intervene in the NRC license amendment proceeding and its associated exhibits, which included excerpts from deposition transcripts in a related Department of Labor case. Subsequently, we obtained the complete deposition transcripts. We have determined that additional details are required for some of the items in order for us to make a meaningful assessment of whether NRC safety or regulatory requirements may have been violated. We are, therefore, requesting that you provide specific information, including some statement of the requirement and the dates, places, and manner it was violated, and who committed the alleged violation or has pertinent information about it. The specific information requested is in the enclosure to this letter.

Please respond to this request within 30 days of the date of this letter. Your response should be sent in an envelope addressed to the Region III Enforcement/Investigations Officer.

We also request that your response contain no personal privacy, proprietary, or safeguards information. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, please specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

The enclosure to this letter should be controlled and distribution should be limited to personnel with a "need to know." The enclosure to this letter is considered "NOT FOR PUBLIC DISCLOSURE."

S. Kohn and D. Colapinto

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We appreciate your cooperation and will gladly discuss any questions you may have concerning this information.

Sincerely,



H. Brent Clayton
Enforcement/Investigations Officer

Enclosure: Details
(NOT FOR PUBLIC DISCLOSURE)

cc w/ encl: AMS File No. RIII-98-A-0136

Please reference tracking number 98-A-0136 in your response.

As stated in the cover letter, we have determined that additional details are required for the NRC RIII to make a meaningful assessment of whether NRC safety or regulatory requirements may have been violated. We are requesting that you provide specific information, including some statement of the requirement and the dates, places, and manner it was violated, and who committed the alleged violation or has pertinent information about it. This information is needed regarding the alleged occurrence of such violations in the following instances quoted from your letter:

1. "Commonwealth Edison's condoning of numerous willful and intentional violations of health and safety procedures, including the willful violation of procedures directly related to radiation protection."
2. "The approval of a flawed and down-graded training program."
3. "The failure of Commonwealth Edison to conduct proper root cause reviews of numerous Licensee Event Reports which may result in the continued mismanagement of Plant Zion."
4. "Preventative maintenance problems in the plant systems which could result in the release of radioactive materials into the outside environment."
5. "The improper elimination of radiation protection monitors."
6. "The improper harassment and intimidation of the work force."