

October 28, 2001

Chairman Richard Meserve
United States Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2739

Re: RESPONSE TO NOTICE OF VIOLATION
(NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-1997-043S)

Dear Chairman Meserve:

I am writing to ask for your assistance in correcting unfair treatment the part of the NRC Region III staff. I was issued the above referenced violation on September 6, 2000. I denied the violation and provided substantial support for my position. I also requested an evidentiary hearing before an impartial party to review the facts of my case. The NRC staff upheld the violation and summarily denied my request for a hearing in a response dated September 7, 2001. I believe that the staff's denial of a hearing was not supported by their response, was arbitrary, was not supported by the facts and denies my right to due process under the law. I strongly urge you to use your discretionary power to grant me the hearing that I have requested.

After the much-publicized whistleblower cases at Millstone and Maine Yankee over the past few years it appears that the staff has taken an extreme stand on any cases of alleged discrimination against employees who raise safety concerns. These positions are often at the expense of the accused, who has limited opportunity and resources to adequately defend against the NRC's claim. It appears as though the standard of proof required by the staff is the mere raising of an allegation. In fact, this is the position that the nuclear industry has made in its responses to the draft Discrimination Task Group report.

Perhaps the most egregious and most concerning aspect of the staff's response is that the evidence in my case clearly does not support a finding of intentional misconduct (i.e., a violation of 10 CFR 50.5). I believe that the staff's handling of this case also casts doubt on a finding that there was a violation of 10 CFR 50.7. Moreover, I believe the staff's decision in my case was influenced by the desire to appear tough on employee protection cases rather than to decide the case strictly on its merits. If the staff were confident of the merits of its case they should not be concerned about taking the case before an impartial judge.

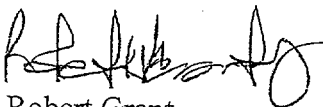
Likewise, the Commission should be more supportive of hearings in order to demonstrate its good faith support for ensuring that the staff's handling of discrimination cases is fair and accurate. To not allow for a hearing, especially in a case where my due process interests have been damaged sends the wrong message to all nuclear professionals. I strongly support the NRC's regulations under 10 C.F.R. § 50.7 and well as § 50.5. But, I also believe that parties accused of violating these provisions, in particular § 50.5 should be allowed an opportunity to have their case heard before an impartial judge.

Providing me with an opportunity to present my case in a hearing is particularly important here because the staff's view that no new evidence was provided is simply incorrect. Furthermore, the staff's response demonstrates that they ignored information that I provided and selected facts to support their position. Only through an impartial hearing, where the ground rules are clearly established and the playing field is level can all the facts be thoroughly and fairly evaluated. That the regulation does not necessarily contemplate a hearing where there is no civil penalty or order should not inhibit the Commission from exercising its discretion to grant me the opportunity to be heard. I believe that if a hearing were granted, the staff's position particularly regarding the allegation of willful behavior would be overturned by an administrative law judge.

I believe that it is in the interest of the Commission to grant a hearing. To do so will demonstrate that the Commission and the staff are willing to allow their actions and decisions concerning discrimination cases to be viewed in the open by the public. If, as the staff seems to suggest by its response, this case is a clear violation of NRC regulations, then a hearing should be a limited resource burden and one that will provide strong precedent for the agency. I am not asking that you order the NOV withdrawn, merely that you honor one of the principles upon which this country was founded, the right to due process.

Please feel free to contact me at (815) 941-4291 if you have any questions. Thank you for your prompt response to my request.

Sincerely,



Robert Grant

Cc:

Senator Dick Durbin
Senator Peter Fitzgerald
The Honorable Jerry Weller