## UNITED STATES OF AMERICA RAS 9113 NUCLEAR REGULATORY COMMISSION

#### DOCKETED 01/05/05

COMMISSIONERS:

SERVED 01/05/05

Nils J. Diaz, Chairman Edward J. McGaffigan, Jr. Jeffrey S. Merrifield

In the Matter of

RENE CHUN

Investigation 1-2003-037

### CLI-05-03

#### <u>ORDER</u>

This matter is before the Commission on Mr. Chun's "Motion For Clarification and Amendment" of our previous Memorandum and Order, CLI-04-34. We deny the Motion to amend the Memorandum and Order. However, as explained below, we find that Mr. Chun's Declaration satisfies the requirements stated in CLI-04-34.

In CLI-04-34, we quashed that portion of the subpoena that sought the tapes and notes of Mr. Chun's interview with the former plant employee. We conditioned our action on the requirement that, *inter alia*, Mr. Chun "releas[e] without reservation any claim of ownership in the materials (based upon his creation of them) to the magazine." Slip Op. at 3. The instant Motion challenges that requirement.

In CLI-04-34, we noted that the magazine had informed the NRC that it lost the materials at issue during an office move. We included the requirement that Mr. Chun release his rights in the tapes or notes as an effort to ensure that the NRC would have access to those materials in the event that the magazine does, at some point in the near future, discover them. Our concern has now evaporated. In his Declaration, Mr. Chun "waive[s] any objection I would

otherwise have" to the magazine providing the tapes or notes to the NRC in response to an NRC subpoena. Chun Declaration at ¶13. We find Mr. Chun's waiver sufficient to meet our goal of assuring NRC's access to the materials, should the magazine ever locate them. Given Mr. Chun's explanation of the circumstances, we also accept the unsigned contract as fulfillment of the second requirement. Therefore, we find Mr. Chun's Declaration meets the requirements of CLI-04-34.

In sum, we accept Mr. Chun's Declaration, dated December 21, 2004, as fulfilment of the conditions established in CLI-04-34. We note that Mr. Chun also agrees to the interview pursuant to the subpoena, but that his attorney has a conflict with the date. The Office of Investigations is authorized to reach agreement with Mr. Chun's counsel on a mutually acceptable date, time, and place for the interview of Mr. Chun.

To the extent the Motion seeks any further clarifications, modifications, or amendments to CLI-04-34, it is denied.

IT IS SO ORDERED.

For the Commission

/**RA**/

Annette L. Vietti-Cook, Secretary of the Commission

Dated at Rockville, Maryland this <u>5<sup>th</sup></u> day of January, 2005

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# CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION ORDER (CLI-05-03) have been served upon the following persons by U.S. mail, first class, or through NRC internal distribution with copies by electronic mail as indicated.

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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland, this 5<sup>th</sup> day of January 2005