

November 17, 2006

Mr. Tim Judson
Board of Directors
Central New York - Citizens Awareness Network
140 Bassett Street
Syracuse, NY 13210

Dear Mr. Judson:

On behalf of the Nuclear Regulatory Commission (NRC), I am responding to your petition dated September 13, 2006, as supplemented on October 11 and 23, 2006, addressed to Mr. Luis Reyes, Executive Director for Operations. Your petition was referred to the Office of Nuclear Reactor Regulation, pursuant to 10 CFR 2.206 of the Commission's regulations. You requested the NRC suspend the operating license of the James A. FitzPatrick Nuclear Power Plant (Fitzpatrick) until the following actions are completed: (1) NRC reopens its investigation of alleged discrimination against Mr. Carl R. Patrickson; (2) NRC completes an investigation of the potential chilled work atmosphere at FitzPatrick; and (3) NRC suspends its review of the application from Entergy Nuclear Operations (Entergy) for a 20-year extension of the FitzPatrick operating license until NRC completes an investigation of the potential chilling effect at FitzPatrick. In your October 11, 2006, supplement, you requested additional actions to include: (1) Entergy must reinstate Mr. Patrickson to his position at FitzPatrick; (2) NRC conduct an investigation to determine whether three Entergy managers proffered false testimony in Mr. Patrickson's hearing before the US Department of Labor (DOL) and, if so, suspend their clearance privileges; and (3) NRC conduct an investigation to determine whether Entergy officials were involved in or aware of the possible proffer of false testimony in Mr. Patrickson's DOL case. Lastly, in your October 23, 2006, supplement, you assert that there was secret cooperation between NRC and Entergy regarding your petition and request the removal of Mr. David Vito from the Petition Review Board (PRB).

You based your requests on a Recommended Decision and Order issued by a DOL Administrative Law Judge (ALJ), which found that Entergy had discriminated against Mr. Patrickson for reporting nuclear safety concerns to NRC. In addition, you asserted that Entergy's response to an NRC Office of Enforcement letter, regarding the potential chilling effect of the termination of Mr. Patrickson's employment, provided no assurance that Entergy has taken sufficient steps to address the potential chilling effect on the safety conscious work environment at FitzPatrick. Finally, in your October 11 and 23 supplements, you provided excerpts of testimony by certain Entergy managers in the DOL hearing and apparently contradictory statements to NRC Office of Investigations.

You discussed your petition with our Petition Review Board (PRB) in a public teleconference on October 12, 2006. The PRB did consider that discussion when it reviewed your request for enforcement action and determined whether or not the petition meets the criteria for consideration under 10 CFR 2.206.

The NRC staff has concluded that your submittal does not meet the criteria for review under 10 CFR 2.206 for several reasons, as explained below.

The issues regarding potential discrimination by Entergy against Mr. Patrickson are already the subject of ongoing NRC staff review and evaluation in the enforcement process. The DOL ALJ's Recommended Decision and Order has been appealed to the DOL Administrative Review Board (ARB), and the NRC staff will determine whether NRC enforcement action is necessary after reviewing any ARB decision. NRC will also consider your concerns when making that determination.

Your requests to open NRC investigations of false testimony in a DOL proceeding and of a chilled work environment at FitzPatrick, and to reopen the NRC investigation of potential discrimination against Mr. Patrickson, cannot be considered in the 10 CFR 2.206 process because such actions are not enforcement-related actions within the meaning of the regulation. First, DOL has jurisdiction regarding the proffer of false testimony to DOL, not NRC. Second, a potentially chilled work environment is not *per se* a violation of NRC requirements, and is addressed administratively, as has already been done. In its letter to Entergy on May 16, 2005, NRC requested to be informed of any actions that Entergy had taken, would take, or planned to take, to prevent the event from having a negative effect on the willingness of employees to raise safety concerns. After review of Entergy's response dated June 15, 2005, and as later clarified in a teleconference on July 21, 2005, that was documented in NRC letter dated August 31, 2005, NRC found that Entergy had taken adequate steps to prevent public knowledge of the ALJ decision from having a negative effect at FitzPatrick. Third, the NRC staff will consider the findings of fact reached in the DOL hearing before determining whether further action is necessary, and does not need to reopen the NRC investigation to do so. Finally, your request for reinstatement of Mr. Patrickson is not a request for enforcement-related action within the meaning of 10 CFR 2.206, as NRC has no jurisdiction to provide personal remedies.

The NRC staff also found that you did not set forth facts sufficient to constitute a basis for suspending the FitzPatrick operating license. In addition, your request that NRC suspend review of any license renewal application is not reviewable in the 10 CFR 2.206 process because it is not a request for enforcement-related action, and must be addressed in the licensing process.

In your October 23 supplement, you assert that the NRC staff and representatives from Entergy appear to have met privately, both prior to and after the public teleconference, and discussed matters pertaining to your petition. As you will note in the previously provided transcript of the teleconference, the NRC staff held no substantive discussion with Entergy before or after the teleconference. In accordance with the practice of the Headquarters Operation Center (HOC), through which the call was controlled, separate bridge lines were established to the NRC, petitioners, and Entergy. The audio file indicates that Entergy and the NRC staff were on separate bridge lines. When the teleconference was to begin, the HOC established the combined teleconference bridge by sequencing the connection of Entergy's and then the petitioners' bridge lines to the NRC line. The only conversation between Entergy and NRC prior to the start of the formal teleconference was an acknowledgment as to who was present at that point on the bridge. After the teleconference was completed, an NRC staff member contacted the HOC to separate the petitioners and Entergy from the NRC line to end the call. Only NRC staff personnel from Headquarters and Region I offices remained on the line to discuss the matters expressed in the petition and during the teleconference. Therefore, your assertion that the NRC held meetings with Entergy prior to and following the teleconference is not correct.

T. Judson

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Regarding your statements about the adequacy of the staff's conduct, I have forwarded these statements to the NRC Office of the Inspector General for review.

In your October 23 supplement, you also requested that Mr. David Vito, the former Senior Allegation Coordinator for Region I, be removed from the PRB because he was involved in the disposition of Mr. Patrickson's nuclear safety and discrimination issues. However, you did not provide any factual basis to support this request. Consequently, your request is now moot because of the PRB's determination regarding your petition.

Thank you for bringing these issues to NRC's attention.

Sincerely,

/RA/

J.E. Dyer, Director
Office of Nuclear Reactor Regulation

cc: See next page

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