

Criscione, Lawrence

From: Criscione, Lawrence
Sent: Saturday, February 05, 2011 10:00 PM
To: Monninger, John
Subject: RE: Open Door meeting on Monday, Feb. 7

Thanks John. I'll be there at 3:30.

From: Monninger, John
Sent: Friday, February 04, 2011 4:19 PM
To: Criscione, Lawrence
Subject: RE: Open Door meeting on Monday, Feb. 7

Larry,

Regarding Monday's Open Door, it is possible to come after 3:30. The Chairman's schedule has changed and is not available from 3:00 to 3:30.

Thanks,
John M.

From: Criscione, Lawrence
Sent: Thursday, February 03, 2011 2:05 PM
To: Monninger, John
Subject: RE: Open Door meeting on Monday, Feb. 7

John,

I've attached the section out of the CFR for §2.206. My September 17, 2010 §2.206 request was rejected on January 19th. I would like to discuss the rejection of my §2.206 request with the Chairman prior to March 13th (the 25 day cut-off point mentioned in §2.206 (c)(1)).

I am not certain about the exact meaning of §2.206(c)(1) and (2), but the way I understand those two paragraphs is: the Commission will not entertain a formal petition from me to review Joe Giitter's January 19th decision to reject my petition.

Although I would like the Commission to review Mr. Giitter's decision to reject my petition, I am not coming by the Chairman's office to formally petition him to do that. I would like to meet with the Chairman during his Monday open door hour to discuss my petition to be sure he is aware of it and what I believe the implications of it are. I recognize that "No petition or other request for Commission review of a Director's decision...will be entertained by the Commission." I am merely wanting to ensure the Chairman is aware of the issues raised in the rejected §2.206 request.

The rest of this email is an abbreviated (but unfortunately still long) history of recent events.

On September 17th I submitted a §2.206 request for the NRC to issue a §2.204 Demand for Information to Callaway Plant in order to resolve some discrepancies which occurred with the investigation of the October 21, 2003 passive reactor shutdown at Callaway Plant.

I believe Region IV's investigation of the October 21, 2003 passive reactor shutdown at Callaway Plant was inadequately performed:

1. When (b)(7)(C) of the Office of Investigations interviewed me on November 6, 2007 there was no technical assistance present. Although OI procedures might not require technical assistants to be present, I believe the interviews conducted on March 31, 2008 and April 1, 2008 would have more likely been conducted adequately had the technical assistants (b)(7)(C) been present at my interview to hear my concerns directly. (b)(7)(C) did not accurately understand my concerns and since no one from the NRC with a technical background was present at my November 6, 2007 interview the NRC did not adequately record my concerns.
2. For Allegation RIV-2007-A-0096 Region IV did not send me a summary of my concerns at any time prior to conducting the OI interviews on March 31 and April 1, 2008. Had I been sent a summary of my concerns, I could have clarified any misperceptions the NRC had and it is possible that the March/April 2008 interviews would have been adequately performed.
3. During the interviews conducted on March 31, 2008 it is evident from statements made by (b)(7)(C) that he had not adequately prepared for the interview.
4. During the interviews conducted on April 1, 2008 it is evident from statements made by (b)(7)(C) that he had not adequately prepared for the interview.
5. During the interviews conducted on March 31 and April 1, 2008, it is evident from statements made by (b)(7)(C) that she did not understand my concerns.
6. During the interviews conducted on March 31 and April 1, 2008 the NRC inspectors/investigators failed to adequately follow through in their questioning of the operators. One example of this is (b)(7)(C) statement that the performance of off-normal procedure OTO-NN-00001 was the "biggest delay" in inserting the control banks (b)(7)(C) was never challenged as to why this procedure prohibited him from inserting the control banks yet did not prohibit him from performing a variety of other less important tasks in the control room (such as placing cooling tower blowdown in service, lowering intake flow, placing an extra 45 gpm letdown orifice in service, etc.). Also (b)(7)(C) was never challenged as to HOW procedure OTO-NN-00001 could possibly delay him for 106 minutes when all the main control room actions had been completed by before 9 am.
7. During their 2007-2010 investigations of the 2003 passive shutdown, the NRC failed to evaluate whether or not any of the NRC licensed operators (b)(7)(C) were consciously aware, prior to manually tripping the main turbine, that the reactor would go subcritical and passively shut down as a result of that action. Understanding what the operators were aware of is vital to this issue because it frames the direction of the investigation: if the operators consciously allowed the reactor to passively shut down, then it is possible they violated their operating procedures (which do not contain any guidance for conducting a reactor shutdown by removing steam demand and allowing the reactor to passively shut down), but if the operators were not consciously aware the reactor would passively shut down then (b)(7)(C) and (b)(7)(C) intentionally misled (b)(7)(C) during their OI interviews on March 31/April 1, 2008.

I have been advised by multiple people within the NRC that I should take my concerns to OIG. And I have, on two occasions (May 2009 and August 2010) spoken with OIG about concerns relating to inadequate investigations by Region IV.

I am not familiar with OIG's mission, processes or procedures, but when I have turned to them in the past they declined to assist me.

Although I believe individuals at Region IV inadequately handled by safety concerns, I do not believe this was due to negligence.

(b)(7)(C) (the OI investigator) attempted to do her job in a very professional manner, however she failed not because of negligence but because of OI's inadequate processes and procedures. (b)(7)(C) has a law enforcement background, not a background in nuclear reactor operations. She relied heavily on the technical assistance of (b)(7)(C) during her interrogations under OI Case 4-2007-049. However, neither (b)(7)(C) was present when (b)(7)(C) conducted her November 6, 2007 interview with me – the interview whose purpose was to capture my concerns to ensure they were adequately documented and investigated. (b)(7)(C) did not fully understand my concerns, as evidenced by the issues she focused on during her

interviews. Had I been able to directly explain my concerns to (b)(7)(C) my concerns would have likely been adequately captured and adequately investigated. (b)(7)(C) failure to invite these two men to my interview doomed her investigation. However, since this failure was not due to (b)(7)(C) negligence but was instead due to OI's processes and procedures, the Office of Inspector General is not interested in getting involved.

As evidenced by the issues they focused on during the OI interviews, (b)(7)(C) were inadequately prepared to provide technical assistance to (b)(7)(C) during the interviews which were conducted on March 31/April 1, 2008. There are those who might fault them for this, who might claim that they had everything they needed and were negligent in doing their job. I am not one of those people. I recognize that the job of the Resident Inspector is extremely demanding and they do not have time to spend days sifting through EVERY issue to get a complete understanding of it. And on their own, it would have literally taken days to sort through all the documentation of the October 21, 2003 passive reactor shutdown. However, they certainly could have spared a few hours to prepare for the interviews. And a few hours is all that it would have taken had they participated in (b)(7)(C) November 6, 2007 interview of me. Like (b)(7)(C) (b)(7)(C) were ill prepared not because of negligence but because of inadequate processes and practices. So, again, the OIG is not interested in getting involved.

RIV-2007-A-0096 was originated by Region IV in response to a letter (b)(7)(C) forwarded to them. The letter was written by me. It was to my US senator (Richard Durbin – IL) and in the letter I complained about Region IV's handling of three concerns I brought them – one of which was the October 21, 2003 passive reactor shutdown. As a courtesy, I gave a copy of this letter to (b)(7)(C) one day at Callaway Plant. I was on the way to the residents' office to drop it off when I ran into (b)(7)(C) in the hallway. Since we were in a hallway and since all the items in the letter concerning safety related equipment had already been processed as allegations and closed, the letter was not handled by (b)(7)(C) as a new allegation (which I believe was reasonable). However, when the letter was processed at Region IV it became an allegation and because of the informal matter in which it was passed off, Region IV did not record me as the "Concerned Individual". As a result, I was never provided the "30 day" contact by the region to clarify my concerns. This, in combination with the failure of (b)(7)(C) to invite the residents to my November 6, 2007 interview, caused my concerns to be incorrectly recorded, thus dooming the initial investigation. Again, this was not caused by negligence so OIG is not interested in getting involved.

In August 2008, (b)(7)(C) investigation (OI Case 4-2007-049) was closed. Since I was still not officially listed as the "Concerned Individual" I was never informed of the investigation's completion and became aware of it third hand in September 2008 when David Lochbaum of the Union of Concerned Scientists sent me a heavily redacted FOIA copy of the investigation summary.

In 2009, in response to a letter I sent to Region IV regarding misleading statements made by the Callaway Plant operators during their March/April 2008 sworn testimonies, Region IV re-opened the investigation of RIV-2007-A-0096. I was re-interviewed by a technical expert (b)(7)(C)

(b)(7)(C) on May 14, 2009. Although this interview went well, in that I believe (b)(7)(C) thoroughly understood my concerns, the follow through was less than adequate. (b)(7)(C) direction from Region IV management was to determine if Callaway Plant had adequately corrected their procedure deficiencies and not to determine if the operators had intentionally misled (b)(7)(C) during their March/April 2008 testimonies.

In February 2010 allegation RIV-2007-A-0096 was closed by Region IV without ever determining whether the operators had consciously allowed the reactor to passively shut down (as they implied to (b)(7)(C) during their testimony) or whether the operators had, for over an hour, failed to recognize the passive shutdown (as alleged by me). To me, the question of whether or not the passive shutdown was inadvertent or deliberate and the question of whether or not the operators were honest with OI are important questions. It is unfathomable to me that Region IV is intentionally shying away from these important questions. I have come to only one conclusion from this: because DISHONESTY is almost always impossible to definitively prove and it correspondingly almost always involves some level of subjective analysis AND because the consequences of making a determination that supervisors at a nuclear utility behaved dishonestly are so serious, the NRC is uncomfortable making the subjective "call" on dishonesty and therefore is unable to effectively deal with it.

Dishonesty is real. It might not be prevalent in the nuclear industry, but neither is it rare. Our Reactor Oversight Process fundamentally relies on honesty. We rely on the utility providing us complete and accurate information. We can never ignore dishonesty. Acceptance sets the standard. By letting the operators at Callaway Plant get away with blatantly misleading our OI investigators, we are setting a dangerous standard.

My §2.206 request was about adequately investigating the October 21, 2003 incident. It was about asking the questions which we failed to ask during the March/April 2008 interviews. All it was asking for was to have Ameren submit, in writing, answers to the questions which should have been asked during the allegation process. I do not know how we can close a serious allegation like RIV-2007-A-0096 without knowing whether the operators intentionally allowed the reactor to shut down or whether they inadvertently failed to notice it.

"If responsibility is rightfully yours, no evasion, or ignorance or passing the blame can shift the burden to someone else."

Thank you for your time. I will see you on Monday.

Larry

From: Monninger, John
Sent: Thursday, February 03, 2011 6:52 AM
To: Criscione, Lawrence
Subject: RE: Open Door meeting on Monday, Feb. 7

Larry,

Yes, he has open door scheduled for this coming Monday from 3-4. Feel free to come on by.

John M.

From: Criscione, Lawrence
Sent: Thursday, February 03, 2011 5:39 AM
To: Monninger, John
Subject: Open Door meeting on Monday, Feb. 7

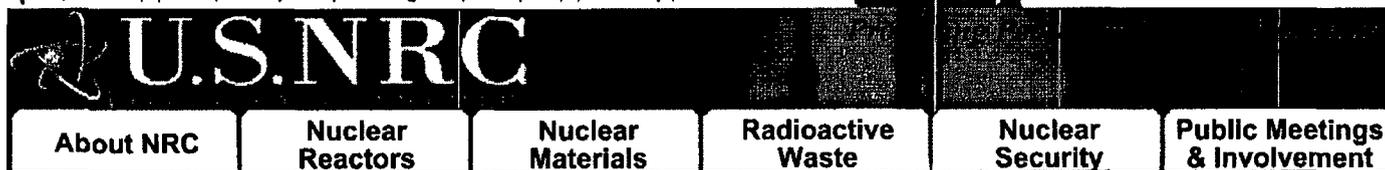
John,

Is the chairman having his open door hour this coming Monday from 3-4 pm? If so, I would like to come by.

Thanks,

Larry

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§ 2.206 Requests for action under this subpart.

(a) Any person may file a request to institute a proceeding pursuant to § 2.202 to modify, suspend, or revoke a license, or for any other action as may be proper. Requests must be addressed to the Executive Director for Operations and must be filed either by hand delivery to the NRC's Offices at 11555 Rockville Pike, Rockville, Maryland; by mail or telegram addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; or by electronic submissions, for example, via facsimile, Electronic Information Exchange, e-mail, or CD-ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at <http://www.nrc.gov/site-help/e-submittals.html>; by e-mail to MSHD.Resource@nrc.gov; or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555 0001. The request must specify the action requested and set forth the facts that constitute the basis for the request. The Executive Director for Operations will refer the request to the Director of the NRC office with responsibility for the subject matter of the request for appropriate action in accordance with paragraph (b) of this section.

(b) Within a reasonable time after a request pursuant to paragraph (a) of this section has been received, the Director of the NRC office with responsibility for the subject matter of the request shall either institute the requested proceeding in accordance with this subpart or shall advise the person who made the request in writing that no proceeding will be instituted in whole or in part, with respect to the request, and the reasons for the decision.

(c)(1) Director's decisions under this section will be filed with the Office of the Secretary. Within twenty-five (25) days after the date of the Director's decision under this section that no proceeding will be instituted or other action taken in whole or in part, the Commission may on its own motion review that decision, in whole or in part, to determine if the Director has abused his discretion. This review power does not limit in any way either the Commission's supervisory power over delegated staff actions or the Commission's power to consult with the staff on a formal or informal basis regarding institution of proceedings under this section.

(2) No petition or other request for Commission review of a Director's decision under this section will be entertained by the Commission.

(3) The Secretary is authorized to extend the time for Commission review on its own motion of a Director's denial under paragraph (c) of this section.

[39 FR 12353, Apr. 5, 1974, as amended at 42 FR 36240, July 14, 1977; 45 FR 73466, Nov. 5, 1980; 52 FR 31608, Aug. 21, 1987; 53 FR 43419, Oct. 27, 1988; 64 FR 48948, Sept. 9, 1999; 68 FR 58799, Oct. 10, 2003; 69 FR 2236, Jan. 14, 2004; 69 FR 41749, July 12, 2004; 70 FR 69421, Nov. 16, 2005; 72 FR 33386, Jun. 18, 2007; 74 FR 62679, Dec. 1, 2009]

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Wednesday, February 03, 2010