



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 28, 1999

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ADJ. 1

Mr. Robert Norway
RR1 Box 576
Dewey Road
Mexico, NY 13114

Dear Mr. Norway:

This letter responds to the Petition you filed on April 5, 1999, pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206), as acknowledged in our letter to you on June 9, 1999. In your Petition you requested that the U.S. Nuclear Regulatory Commission (Commission or NRC) take action with regard to Niagara Mohawk Power Corporation (NMPC) and its senior nuclear and corporate management for allegedly altering and causing public release of documents about your performance, and for misrepresenting the findings of an Administrative Law Judge in the related U.S. Department of Labor discrimination case. Your request was referred to me pursuant to 10 CFR 2.206. The enclosed Final Director's Decision (Decision) addresses the issues you raised in your Petition.

I have complied with your request to forward your complaint to the NRC's Office of the Inspector General for an investigation of possible deliberate misconduct on the part of the NRC staff. I made that referral on May 17, 1999. In a separate letter dated October 6, 1999, the NRC has addressed your safety concern regarding the residual heat removal safety evaluation report independent of this Decision. While I understand that your petition is not intended to address the 1996 discrimination case, the NRC staff previously concluded that NMPC had violated 10 CFR 50.7 and issued a Notice of Violation and Proposed Imposition of Civil Penalty on July 24, 1996. I appreciate your additional concerns; however, we are unable to take additional actions on your remaining requests for the reasons explained in the enclosed Decision.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes a review of the Decision within that time.

I have also enclosed a copy of the notice of "Issuance of Final Director's Decision Under 10 CFR 2.206" that has been filed with the Office of the Federal Register for publication.

Although we do not support several of your requests, we recognize your efforts to bring these issues to our attention and appreciate your interest in and concern for ensuring public health


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R. Norway

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and safety and the continued operational safety of nuclear power reactors. Please feel free to contact Mr. Darl Hood, Project Manager, at 301-415-3049 (e-mail dsh@nrc.gov) to discuss these or any future concerns you have regarding NMPC or the Nine Mile Point Nuclear Station.

Sincerely,


Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Docket Nos. 50-220 and 50-410

Enclosures: 1. Director's Decision 99-13
2. *Federal Register* Notice

cc w/encls: See next page

Nine Mile Point Nuclear Station
Unit Nos. 1 and 2

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION
Samuel J. Collins, Director

In the Matter of)	Docket Nos. 50-220 and 50-410
)	
NIAGARA MOHAWK POWER CORPORATION)	License Nos. DPR-63 and NPF-69
)	
(Nine Mile Point Nuclear Station,)	
Unit Nos. 1 and 2))	

FINAL DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. INTRODUCTION

By letter dated April 5, 1999 (the Petition), pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206), Mr. Robert Norway (the Petitioner) requested that the Nuclear Regulatory Commission (Commission or NRC) take action with regard to Niagara Mohawk Power Corporation (NMPC) and its senior nuclear and corporate management. Specifically, the Petitioner requested that the Commission (1) take enforcement action against NMPC and its senior nuclear and corporate management and, as a minimum, against three named individuals, for submitting an altered 1994 employee record to the NRC at a predecisional enforcement conference (PEC) on May 10, 1996; (2) take enforcement action against these same parties for presenting at this PEC a false written record of what the Administrative Law Judge (ALJ) determined in the Department of Labor (DOL) proceeding in 95-ERA-005; (3) take enforcement action against these same parties for the placement of confidential employee information into the public record in violation of 10 CFR 2.790; and (4) take enforcement action against these same parties for an additional act of discrimination, pursuant to 10 CFR 50.7, for destroying the Petitioner's credibility and reputation in the nuclear

industry. The Petitioner also requested that the NRC forward these issues to the Department of Justice for consideration of criminal prosecution.

In addition to these requests for enforcement actions, the Petitioner also requested that the following other actions be implemented: (1) that the agency perform an independent review of all of NMPC's docketed files associated with the individuals who committed the alleged fraud; (2) that the NRC forward the Petitioner's complaint to the NRC's Office of the Inspector General for an investigation of possible deliberate misconduct on the part of the NRC staff; (3) that an independent oversight group be established to oversee the NMPC Human Resources Department and Employee Concerns Program; (4) that a public meeting be held to obtain public comments pertaining to issues of discrimination and the placement of fraudulent documentation into public records; and (5) that the NRC publicly post NMPC's Residual Heat Removal Alternate Shutdown (RHR ASD) Cooling Safety Evaluation 96-091 to make it available for public comment, or require NMPC to re-perform this safety evaluation.

II. BACKGROUND

As a basis for the requests described above, the Petitioner asserted in his Petition of April 5, 1999, that NMPC deliberately created a false employee record and fraudulently submitted this record, as well as a false written record of an ALJ decision, into the public record, under false pretenses and perjury, during a 1996 PEC with the NRC.¹

¹The 1996 PEC enabled the NRC staff to reach its conclusion that NMPC terminated the Petitioner in February 1994 for raising safety concerns to his employer beginning in 1991. The NRC staff concluded that, based upon the DOL ALJ's Recommended Decision and Order in DOL Case 95-ERA-005, dated March 15, 1996, NMPC had violated 10 CFR 50.7. A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$50,000 was issued to NMPC on July 24, 1996 (EA 96-116). At the time of the PEC, NMPC planned to appeal the ALJ's decision, but the case was subsequently settled by agreement among the parties before the appeal. The DOL's Administrative Review Board (ARB) approved the settlement agreement and dismissed the complaint with prejudice (see Final Order Approving Settlement and Dismissing Complaint, ARB Case No. 97-018 dated November 22, 1996). On December 16, 1996, NMPC paid the civil penalty imposed by the NRC.

Regarding the alleged false written record of an ALJ decision, Mr. James Lieberman, who was then Director of the NRC's Office of Enforcement, wrote a letter to the Petitioner on May 3, 1999. In this correspondence, Mr. Lieberman stated that the transcript of the enforcement conference was reviewed and indicated that the NRC staff understood that the document was the position of NMPC management and not that of the ALJ.

On May 10, 1999, the NRC Project Manager, Darl Hood, called to inform the Petitioner that the NRC's Petition Review Board had determined that the Petition did not raise issues of an immediate nature, and that the Director's Decision would be issued in October 1999. In a letter dated June 9, 1999, Mr. Roy Zimmerman, Acting Director of the Office of Nuclear Reactor Regulation, acknowledged receipt of the Petition.

In addition to the requests related to the alleged fraud, the Petitioner also submitted a technical concern over his continued efforts to address RHR ASD cooling issues. In a letter dated October 6, 1999, the NRC staff addressed the Petitioner's technical concern independent of this Final Director's Decision.

III. DISCUSSION

1. THE NRC SHOULD TAKE ENFORCEMENT ACTION AGAINST NMPC AND ITS SENIOR NUCLEAR AND CORPORATE MANAGEMENT AND, AS A MINIMUM, AGAINST THREE NAMED INDIVIDUALS, FOR SUBMITTING AN ALTERED 1994 EMPLOYEE RECORD TO THE NRC AT THE PEC ON MAY 10, 1996

The document at issue was related to the Petitioner's performance evaluation associated with an employee reduction (rightsizing) program that occurred at the Nine Mile Point facility in 1994. The NRC placed a redacted copy of this document into the Public Document Room as an attachment to the 1996 Notice of Violation to NMPC. The NRC staff removed the Petitioner's

name from this employee assessment, and from the other handouts given to the staff by NMPC management at the 1996 PEC.

The DOL ALJ noted with reference to the document at issue that there were irregularities in the various handwritings on the worksheet and, therefore, had not relied upon the document at issue in his Recommended Decision and Order dated March 15, 1996. The copy of the employee evaluation that the NRC redacted and placed in the Public Document Room differs from the copy submitted to the ALJ. The copies differ in that the NRC's copy does not include the name of the Petitioner's supervisor. The supervisor's name was known to the NRC and was mentioned at the PEC (Transcript at page 24). A comparison of the ALJ and NRC copies of the document (attachments 4 and 5 to the Petition) indicates that the documents are identical except for the absence of the supervisor's name. Neither copy bears the supervisor's signature. The March 15, 1994 letter to the Petitioner from NMPC management stated that the initial evaluation made by the Petitioner's supervisor did not place the Petitioner in the list of employees to be assessed by a Review Board process for rightsizing, but that a subsequent Senior Management planning session resulted in changes that did include the Petitioner in the group to be reviewed. Based on the absence of the supervisor's signature on both copies at issue and the clarification provided in the March 15, 1994 letter, there is no evidence that the supervisor's name was forged but rather included on the document as a statement of fact regarding the identity of the supervisor. Since there is no meaningful difference between the copies used during the DOL proceeding and that used at the PEC, the different handwriting observed by the ALJ and the missing name on the copy released by the NRC do not alter the substance of the documents and would not lead to a reviewer drawing different conclusions from the documents and, therefore, are of no consequence and are not in violation of 10 CFR 50.5, "Deliberate misconduct," or 10 CFR 50.9, "Completeness and accuracy of information." The document at

issue did not affect the NRC decision to issue its enforcement action against NMPC (Severity Level II Notice of Violation and \$80,000 Civil Penalty issued on July 24, 1996), since the NRC staff relied primarily upon the DOL ALJ decision in this case.

The Petitioner has not demonstrated that NMPC, its senior nuclear and corporate managers, or the three individuals named in the Petition, deliberately submitted to the NRC information that the person submitting the information knew to be incomplete or inaccurate in some respect material to the NRC. For this reason, and the reasons stated above, the Petitioner has not offered a sufficient basis that would warrant the NRC to take enforcement action against NMPC, its senior nuclear and corporate managers, or the three named individuals.

2. THE NRC SHOULD TAKE ENFORCEMENT ACTION AGAINST THESE SAME PARTIES FOR PRESENTING AT THIS PEC A FALSE WRITTEN RECORD OF WHAT THE ALJ DETERMINED IN THE DOL PROCEEDING IN 95-ERA-005

The Petitioner states that documentation was placed into federal custody and into the public record without accurately documenting the findings made by the ALJ upon these allegations. Specifically, the document, titled "Findings of the Administrative Law Judge," is allegedly inaccurate because its contents are not the findings of the ALJ (as implied by the title), but rather are the assertions of NMPC management. As mentioned previously, Mr. Lieberman stated in correspondence to the Petitioner dated May 3, 1999, that the NRC staff had reviewed the transcript of the PEC and determined that the NRC staff at the PEC understood that the document at issue represented the position of NMPC management and not that of the DOL ALJ. The staff notes that the opening document for NMPC's presentation, titled "Agenda," uses a more accurate title of "Discussion of Findings of the Administrative Law Judge." The NRC staff agrees with the Petitioner that the shortened title, "Findings of the Administrative Law Judge,"

does not accurately describe the document's contents, but the document's contents are clear when viewed in conjunction with the other documents that NMPC used during the PEC. In addition to NMPC's opening "Agenda," the NRC staff understood during the PEC that NMPC's disagreements with the ALJ's decision, that are expressed in this document, were the bases for the statement in NMPC's closing document, titled "Enforcement History," that NMPC did "[i]ntend to appeal the ALJ's decision in this case." Therefore, the inaccuracy created by the shortened title was of no consequence to the NRC, and does not constitute a "false record." When viewed in context with the other documents placed in the public record, the record is sufficiently clear that the document in question presents the views of NMPC management about the ALJ's decision. The staff concludes that NMPC did not submit a false written record of the ALJ's determination in the DOL proceeding in 95-ERA-005 and, therefore, no action to correct, clarify, or otherwise alter the public record is warranted.

3. THE NRC SHOULD TAKE ENFORCEMENT ACTION AGAINST THESE SAME PARTIES FOR PLACING CONFIDENTIAL EMPLOYEE INFORMATION INTO THE PUBLIC RECORD IN VIOLATION OF 10 CFR 2.790

The documentation at issue was part of the record of the PEC with NMPC in 1996. Neither NMPC nor its senior nuclear and corporate managers placed confidential employee information into the public record in violation of 10 CFR 2.790. This regulation states that subject to certain exceptions, correspondence to and from the NRC regarding a violation will be made available for inspection and copying at the NRC's Public Document Room. While one of these exceptions relates to personnel or medical files, the release of which would constitute an unwarranted invasion of personal privacy, the documentation dealing with confidential employee information, including the Petitioner's name, was fully redacted before being released to the Public Document Room.

As noted by Mr. Lieberman in his May 3, 1999, correspondence to the Petitioner, documents submitted by licensees are generally matters of public record and are placed in the NRC's Public Document Room. Because the document was fully redacted, there was no basis to grant the Petitioner's request to have this documentation removed from the Public Document Room. Equally, the Petitioner has not offered a sufficient basis that would warrant the NRC to take enforcement action against these parties for a violation of 10 CFR 2.790.

4. THE NRC SHOULD TAKE ENFORCEMENT ACTION AGAINST THESE SAME PARTIES FOR AN ADDITIONAL ACT OF DISCRIMINATION, PURSUANT TO 10 CFR 50.7, FOR DESTROYING THE PETITIONER'S CREDIBILITY AND REPUTATION IN THE NUCLEAR INDUSTRY

The Petitioner requests that the NRC take enforcement action against NMPC and its senior nuclear and corporate management for destroying the Petitioner's credibility and reputation in the nuclear industry. The Petitioner has not submitted any information related to an additional act of discrimination by NMPC, by its senior nuclear and corporate managers, or by the three individuals named in the Petition. In addition, the Petitioner has not presented any information that his credibility and reputation have been destroyed by any act of the parties named in the Petition. For this reason, and the reasons stated above, the Petitioner has not offered a sufficient basis that would warrant the NRC to take enforcement action against NMPC, its senior nuclear and corporate managers, or the three named individuals.

5. THE NRC SHOULD FORWARD THESE ISSUES TO THE DEPARTMENT OF JUSTICE FOR CONSIDERATION OF CRIMINAL PROSECUTION

Since the NRC has determined that the Petitioner has submitted no new information that would lead the NRC staff to conclude that a 10 CFR 2.790, or an additional 10 CFR 50.7,

violation² had occurred, there is no basis for forwarding these issues to the Department of Justice for consideration of criminal prosecution.

6. THE NRC SHOULD PERFORM AN INDEPENDENT REVIEW OF ALL OF NMPC'S DOCKETED FILES ASSOCIATED WITH THE INDIVIDUALS WHO COMMITTED THE ALLEGED FRAUD

Since, as stated above, the NRC has determined that the Petitioner has submitted no new information that would lead the NRC staff to conclude that a 10 CFR 2.790, or an additional 10 CFR 50.7, violation had occurred, there is no basis for performing an independent review of all of NMPC's docketed files associated with the individuals who committed the alleged fraud.

7. THE NRC SHOULD FORWARD PETITIONER'S COMPLAINT TO THE OFFICE OF THE INSPECTOR GENERAL FOR AN INVESTIGATION OF POSSIBLE DELIBERATE MISCONDUCT ON THE PART OF THE NRC STAFF

The Petitioner requested that the NRC forward a complaint to the Office of the Inspector General for an investigation of possible deliberate misconduct or negligence on the part of members of the NRC for failing to take proper action in the discrimination case, for allowing NMPC representatives to place false and fraudulent documents into NRC custody, and for allowing these documents to be placed into the public record. By memorandum dated May 17, 1999, the Petition was forwarded to the Acting Assistant Inspector General for Investigations, Office of the Inspector General. Therefore, the NRC staff has complied with this request by the Petitioner.

²An additional violation to that issued against NMPC in 1996, EA 96-116.

8. AN INDEPENDENT OVERSIGHT GROUP SHOULD BE ESTABLISHED TO OVERSEE NMPC'S HUMAN RESOURCES DEPARTMENT AND EMPLOYEE CONCERNS PROGRAM

Since the NRC has determined that the Petitioner has submitted no new information that would lead the NRC staff to conclude that a 10 CFR 2.790, or an additional 10 CFR 50.7, violation had occurred, there is not a sufficient basis for establishing an independent oversight group to monitor NMPC's Human Resources Department or its Employee Concerns Program. The need for such a group is obviated by corrective actions already taken by NMPC as a result of the NRC's enforcement action. These actions, which were discussed during the PEC and in NMPC's letter dated August 23, 1996, included and were not limited to (1) reemphasizing to management the rights and responsibilities of employees to raise safety issues; (2) reinforcing, at all levels of management, the value of reporting issues to improve performance; and (3) reemphasizing the availability of the Quality First Program (a program whereby employee concerns can be identified for further investigation in confidence, if desired, with results of the investigation provided to senior management, the offsite oversight committee, and the individual reporting the concern, and with final decisions regarding disputed results residing with the Chief Nuclear Officer). Notwithstanding NMPC's prompt and comprehensive correction actions, should the NRC obtain information in the future that an oversight group may be warranted, the NRC would consider requiring such a program at that time. There is no evidence that such a need currently exists.

9. A PUBLIC MEETING SHOULD BE HELD TO OBTAIN PUBLIC COMMENTS PERTAINING TO A NUMBER OF ISSUES, INCLUDING DISCRIMINATION AND THE PLACEMENT OF FRAUDULENT DOCUMENTATION INTO PUBLIC RECORDS

Since the NRC has determined that the Petitioner has submitted no new information that would lead the NRC staff to conclude that a 10 CFR 2.790, or an additional 10 CFR 50.7, violation had occurred, there is not a sufficient reason to hold a public meeting to discuss discrimination, or to discuss the placement of allegedly fraudulent documents into the public record. Should a sufficient reason arise in the future, the NRC would consider holding a meeting with the public to obtain their comments on these issues at that time. There is no evidence that such a need currently exists.

10. THE NRC SHOULD PUBLICLY POST NMPC'S RHR ASD COOLING SAFETY EVALUATION 96-091 TO MAKE IT AVAILABLE FOR PUBLIC COMMENT OR REQUIRE NMPC TO RE-PERFORM THIS SAFETY EVALUATION.

As previously stated, by letter dated October 6, 1999, the NRC staff addressed the Petitioner's technical concern for the RHR ASD Cooling Safety Evaluation. The October 6, 1999, letter is publicly available through the NRC Public Document Room.

IV. CONCLUSION

For the reasons discussed above, no basis exists for taking the enforcement actions requested in the Petition. Nonetheless, as previously described, the Petitioner's complaint has been forwarded to the NRC's Office of the Inspector General. The Petitioner's technical concern, as discussed above, has been addressed by the NRC independent of this Final Director's Decision. The remaining aspects of the Petition are not supported.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided for by that regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes a review of the Decision within that time.

FOR THE NUCLEAR REGULATORY COMMISSION


Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland
this 28 th day of October 1999

DOCKETED
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UNITED STATES NUCLEAR REGULATORY COMMISSION

NIAGARA MOHAWK POWER CORPORATION

NINE MILE POINT NUCLEAR STATION, UNIT NOS. 1 AND 2

DOCKET NOS. 50-220 AND 50-410

ISSUANCE OF FINAL DIRECTOR'S DECISION UNDER 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a letter dated April 5, 1999, (Petition) filed by Robert Norway (Petitioner) pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206). The Petitioner requested that the U.S. Nuclear Regulatory Commission (Commission or NRC) take action with regard to Niagara Mohawk Power Corporation (NMPC) and its senior nuclear and corporate management. The Petitioner requested that the Commission (1) take enforcement action against NMPC and its senior nuclear and corporate management and, as a minimum, against three named individuals, for submitting an altered 1994 employee record to the NRC at a predecisional enforcement conference on May 10, 1996; (2) take enforcement action against these same parties for presenting at this predecisional enforcement conference a false written record of what the Administrative Law Judge determined in the Department of Labor's proceeding in 95-ERA-005; (3) take enforcement action against these same parties for placing confidential employee information into the public record in violation of 10 CFR 2.790; and (4) take enforcement action against these same parties for an additional act of discrimination, pursuant to 10 CFR 50.7, for destroying the Petitioner's credibility and reputation in the nuclear industry. The Petitioner also requested that the NRC forward these issues to the Department of Justice for consideration of criminal prosecution.

In addition to these requests for enforcement actions, the Petitioner also requested that the following other actions be implemented: (1) that the agency perform an independent review of all of NMPC's docketed files associated with the individuals who committed the alleged fraud; (2) that the NRC forward the complaint to the NRC's Office of the Inspector General for an investigation of possible deliberate misconduct on the part of the NRC staff; (3) that an independent oversight group be established to oversee the NMPC Human Resources Department and Employee Concerns Program; (4) that a public meeting be held to obtain public comments pertaining to a number of issues, including discrimination and the placement of fraudulent documentation into public records; and (5) that the NRC publicly post NMPC's Safety Evaluation 96-09, which addresses the Residual Heat Removal Alternate Shutdown Cooling for Unit 2, to make it available for public comment, or require NMPC to re-perform this safety evaluation.

The Director of the Office of Nuclear Reactor Regulation has complied with the Petitioner's request to have his complaint forwarded to the NRC's Office of the Inspector General. The Petitioner's technical concern has been addressed independent of the Director's Decision by the NRC staff's letter to the Petitioner dated October 6, 1999. The Petitioner's additional requests are not supported for the reasons that are explained in the "Final Director's Decision Pursuant to 10 CFR 2.206" (DD-9943). The complete text of the Final Director's Decision follows this notice and is available for public inspection at the Commission's Public Document Rooms located in the Gelman Building, 2120 L Street, NW., Washington, DC, and in the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As

provided for by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 28th day of October 1999

FOR THE NUCLEAR REGULATORY COMMISSION


Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

April 5, 1999

'99 OCT 28 P1:35

Mr. William D. Travers
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington D.C. 20555-0001

OFFICE
ADMINISTRATIVE
ADJUTANT

Re: PETITION PURSUANT TO 10 CFR 2.206, NINE MILE POINT NUCLEAR UNIT 1 & 2,
DOCKET NO. 50-220, 50-410.

Dear Mr. Travers:

As former member of the Niagara Mohawk Power Corporation's (NMPC) Nine Mile Point Unit 2 Independent Safety Engineering Group (ISEG), I had been discriminated against in Violation of 10 CFR 50.7. This has been proven before an Administrative Law Judge (ALJ) in Discrimination Case 95-ERA-005 and had resulted in a 1996 Severity Level II Violation by the Nuclear Regulatory Commission against the Niagara Mohawk Power Corporation. NMPC did not appeal the decision made by the Administrative Law Judge and the contents of our settlement agreement in the Discrimination Case and the ALJ's findings had been affirmed by the United States Secretary of Labor.

This petition is not intended to address that proven case of discrimination. The basics of this petition is to address the deliberate violation of NRC Regulations and potential criminal violation of federal laws on the part of senior nuclear and corporate managers of the Niagara Mohawk Power Corporation and the deliberate violation of NRC Regulations and potential criminal violation of federal laws and/or extreme negligence on the part of members of the Nuclear Regulatory Commission. The combined actions of the Niagara Mohawk Power Corporation and the Nuclear Regulatory Commission resulted in the placement of a confidential and fraudulent employee evaluation along with a fraudulent listing of the findings of the Administrative Law Judge in Discrimination Case 95-ERA-005 and confidential information pertaining to my work performance into public record (into the Public Document Room).

Since the actions taken by the Niagara Mohawk Power Corporation and the Nuclear Regulatory Commission was performed to permanently destroy my credibility within the Nuclear Industry and was involved with my original discrimination complaint, it constitutes a additional act of discrimination in Violation of 10 CFR 50.7. Since the actions taken by NMPC and the NRC to fraudulently document NMPC's position in my discrimination case does contain 'provisions' that destroys my credibility within the Nuclear Industry, which would "restrict or otherwise discourage" my employment within the Nuclear Industry, it is also in direct Violation of 10 CFR 50.7.(f).

The above actions may be directly connected to my continued efforts to address my original NMP2 RHR Alternate Shutdown Cooling Safety Concern by my questioning of the credibility of the NMP2 Safety Evaluation 94-091 and its conclusion that the alternate ASC did not need to meet the requirements of RG 1.139 to perform its intended safety function within 36 hours (even

though it was a licensed commitment in the NMP2 UFSAR) solely on the basis that this RG requirement is listed as a 'should' and not a 'shall', and that they had an (54 Hr) method available. I had also questioned the credibility of the corresponding NRC Inspection Report 50-220/97-04 & 50-410/97-04 (pg. 8) several times and the NRC refuses to give a response to this issue.

PETITION

I submit this petition pursuant to 10 CFR 2.206 requesting the to take immediate action to issue a Show Cause Order or Civil Penalty against the Niagara Mohawk Power Corporation and it's senior nuclear and corporate management (Enforcement Sanctions) for 1) submitting a altered employee record, under fraudulent pretences, to the Nuclear Regulatory Commission on May 10 1996 and 2) for their actions for placing confidential and fraudulent statements pertaining to my work performance, a false written record of what the Administrative Law Judge had determined in Discrimination Case 95-ERA-005 and the confidential and fraudulent 1994 employee evaluation (which the Administrative Law Judge had found to be altered) into federal custody and into public record. . These actions are in clear Violation of 10 CFR 2.790.(a). and 10 CFR 50.9. Specifically by 'being involved', 'participated in', 'had-knowledge-of' or 'allowing' the following to be submitted to the NRC during the Enforcement Conference under false pretences and perjury and in violation of NRC regulations and potential criminal violation of federal laws:

- 1) Placing documentation pertaining to confidential and unproven allegations of my prior (1993) work performance that is based upon 'secret' employee records (that I wasn't even allowed to see and that had no bearing on the 1994 termination) into federal custody and into public record.
- 2) Placing documentation into federal custody and into public record pertaining to confidential and false allegations of my 1994 work performance and my 1994 termination, 'without accurately documenting the findings made by the Administrative Law Judge upon those allegations'.
- 3) Placing fraudulent statements pertaining to what the Administrative Law Judge had determined in Discrimination Case 95-ERA-005 (and what was affirmed by the Secretary of Labor) into public record. Specifically the contents of the Handout page entitled 'Findings of the Administrative Law Judge'.
- 4) Placing the confidential and fraudulent 1994 employee document (my 1994 Rightsizing record) into federal custody and into public record as if it was an authentic document. Especially since the Administrative Law Judge had found that this record was of no value, conflicted with outer evidence and 'altered' without my former supervisor's knowledge and this finding had never been appealed and it had been affirmed by the Secretary of Labor. NMPC has no legal basis for placing this record into the PDR. In addition, this is especially significant since this employee evaluation is different from the copy that was submitted to the Administrative Law Judge in 1994.

The fraudulent documentation is located in the NMPC Docketed "Q" file in Inspection Report 50-

220/96-06 50-410/96-06 and is located at PDR film location 89130: 156 to 254. My 'Secret', 'Confidential' and 'fraudulent' employee evaluation in at film location 254. The difference between the 1994 proceeding evaluation and the 1996 Enforcement Conference is significant and virtually impossible, except by a deliberate act of falsification. The former Manager of the ISEG group's name had apparently fallen off the Manager (line) in the 1996 copy.

I submit this petition pursuant to 10 CFR 2.206 requesting the staff to take immediate action and issue a Show Cause Order or Civil Penalty against the Niagara Mohawk Power Corporation and it's senior nuclear and corporate management (Enforcement Sanctions) for Discrimination in Violation of 10 CFR 50.7, 10 CFR 2.790 and 10 CFR 50.7.(f) for their actions of 'being involved', 'participated in', 'had-knowledge-of' or 'allowing' confidential, false and fraudulent documentation that is disparaging, deleterious and damaging to my goodwill, integrity and reputation to be placed into permanent public record.

Significance of these issues

These issues are extremely significant because they constitute deliberate violation of NRC Regulations and potential criminal violation of federal laws. These actions could have only been performed by the combined efforts of the senior management team of a licensed nuclear power station along with corporate oversight, while under legal counsel (i.e. a organized criminal conspiracy). And for what? To minimize the financial responsibility due to an unlawful termination and to minimize personal accountability due to the termination?

The real significance of these actions are not concerned with this discrimination case alone, but what actions would these same individuals take pertaining to a significant safety issue, which would have the potential to cost millions of dollars or possibly shut down the station. Once it is proven that an individual can not be trusted to obey federal laws and NRC regulations, they have no right to work within the nuclear industry. And these acts had been committed by several high ranking nuclear managers.

These issues could also only have been accomplished due to either the deliberate misconduct or extreme negligence on the part of members of the Nuclear Regulatory Commission. The Nuclear Regulatory Commission ignored my complaints pertaining to the alleged falsification of that 1994 Rightsizing document and ignored the findings of the Administrative Law Judge that this record had been altered without my former supervisor's knowledge or consent. The NRC had never even interviewed the former manager of the Independent Safety Engineering Group prior to their decision of Enforcement Actions in this discrimination case.

The final result was that the senior and corporate managers of a licensed Nuclear Power Plant lied to the PUBLIC pertaining to a Regulatory Affairs of a LICENSED NUCLEAR POWER STATION by placing confidential, false and fraudulent documentation into public record in Violation of NRC Regulations. If this could happen in this discrimination case, it could happen on issues pertaining to NUCLEAR SAFETY. Regulatory is warranted until all personnel that was 'involved', 'participated in', 'had knowledge of' or 'allowed' the falsification this 1994 employee record, the presentation of fraudulent records into federal custody and the placement of

confidential, false and inaccurate documents into public record are identified.

In addition, since this issue had been identified by the 'victim' of Discrimination and not by the licensee or members of the Nuclear Regulatory Commission, it must be assumed that these same individuals could have made other fraudulent and/or falsified 'licensed' submittals to the Nuclear Regulatory Commission. Therefore all docketed files associated with the involved licensee personnel need to be confirmed to be truthful and forthright.

These issues are also significant since the same type of 'secret' employee evaluation that contains inaccurate downsizing numbers, altered and presented into federal custody in my discrimination case was used to terminate hundreds of employees from Nine Mile Point during NMPC 1993 and 1994 Downsizing Process. NMPC's handout did state that it was "Common for Board to conclude differently than supervisors". If the NMPC Senior Management Board had developed or tampered with other downsizing documentation the same way that my downsizing records were treated, there could be hundreds of other discrimination cases successfully covered-up.

Background

Niagara Mohawk Power Corporation's senior nuclear management are responsible for submitting a Employee Record, a 1994 Rightsizing Document to a Administrative Law Judge, Gerald M. Tierney in the 1994 Discrimination Proceeding 95-ERA-005. In addition this same Rightsizing document had been submitted to the EEOC (Charge No. 165940564) and previously submitted to the NRC. The same record had been submitted by NMPC personnel to the NRC during the May 10 1996 Enforcement Conference. However, there is one major difference in the 1996 record. The record submitted to the NRC in 1996 did not contain the former Manager of the Independent Safety Engineering Group's name on the line of Manager. The prior submittals in 1994 to the DOL, EEOC, NRC and to the ALJ all contained my former supervisor's name on the Manager's line.

Considering that my authentic 1994 Rightsizing document could not exist in both conditions, 'with and without' my former supervisor's name on the Manager's section, the existence of different copies of the document in 1996 provides absolute proof that this document had been altered without my former supervisor's knowledge or consent. The existence of this record in 1996 also provides absolute proof that the former Manager of the Independent Safety Engineering Group's name was 'forged' onto this document without his knowledge or consent (in the prior '1994' submittals) at some point in time. This is significant because the former Manager of the Independent Safety Engineering Group was blamed by NMPC senior managers for creating this record during the NMPC 1994 Downsizing process and lying about my downsizing ranking during that downsizing process. In any case, NMPC had no legal right to place a different employee record than what was entered into evidence before a Administrative Law Judge in Discrimination Case 95-ERA-005 into federal custody and into public record.

Since the Administrative Law Judge had found that this 1994 Rightsizing Document was of 'no value', that it conflicted with other credible evidence, that it was in 'different handwriting' and that there was 'no indication that this document was communicated to the Complainant or to his

immediate supervisor', it is a violation of NRC Regulations and a criminal violation of federal laws to submit this record as an authentic document. This fraudulent record had been submitted to the NRC as an authentic record and is currently located in public records in the Public Record Room (PDR). The ALJ had indicated within his findings that the intent of the Rightsizing record was changed from 'ISEG ROTATION' to 'being considered on the 40% list' and this alteration was in 'different handwriting' without the knowledge or consent of my former supervisor.

NMPC representatives could not submit this document to the NRC on May 10 1996, without an specific objection to the ALJ finding. At no time during the May 10 1996 Enforcement Conference (as indicated by the transcript and the NMPC Handout) did any NMPC representatives object to the findings of the ALJ pertaining that this record had been altered without my former supervisor's knowledge or consent. This document was submitted to the NRC by NMPC representatives under the pretense that it was solely created by my former supervisor and deceived the NRC in regards to the ALJ findings pertaining to its credibility

Because the Administrative Law Judge, had found that this 1994 employee evaluation had been altered without the responsible individual's knowledge or consent and that this finding had never been disputed or appealed, NMPC had no legal right to place this document into public record.

It is especially significant that my 1994 performance evaluation was placed into public record since NMPC's 1994 downsizing program had kept this evaluation a 'secret' from me. In this case NMPC took a 'altered', 'personnel' and 'confidential' employee record, that they had developed and maintained a secret from their own employee, and place them into public record. Both the NRC and NMPC also had kept the fact that this record had been placed into the PDR a 'secret' from me. This is a clear and BLATANT Violation of 10 CFR 2.790., committed by both the NRC and NMPC.

The handout submitted to the NRC during the 1994 Enforcement Conference contained a page titled "Findings of the Administrative Law Judge" that contained specific statements that are fraudulent presented as being part of the Administrative Law Judge's (ALJ) findings. These statements were admitted by NMPC representatives (as indicated in the transcripts from the conference as being NMPC opinion of where the ALJ had made an error in his findings) and are not the ALJ's documented findings. This document was submitted to the NRC with the full knowledge that it would be made a public document and placed into the Public Document Room (PDR).

The submittal of these fraudulent records to the NRC for placement into public record constitutes a deliberate act intended to destroy my credibility within the nuclear industry. Carl Terry, Ralph Silvia and Richard Abbott are personally responsible for submitting this fraudulent written record to the NRC, in violation of 10 CFR 50.9, and failing to comply with the requirements of 10 CFR 2.790 by allowing it to be placed into public record.

As a member of the Nine Mile Point Independent Safety Engineering Group (ISEG), I was not identified under the NMPC 1994 downsizing process for termination. I had been selected, along with another NMPC ISEG (nuclear safety) engineer to be included in a new training program

called 'ISEG ROTATION'. Under this program, I had been rotated into the transition group identified for terminated under the NMPC 1994 downsizing process. Although NMPC later presented this 'secret' employee record, a Rightsizing Form, that they claimed to show that I was on their 40% list (and therefore subject to termination by downsizing) this record was determined to be of no value and altered by the ALJ.

The reasons behind the ALJ findings are irrefutable. This rightsizing form did contain a statement that placed me on the 40% list. However, this statement was found by the ALJ to be in different handwriting than the originator (assumed to be the former Manager of ISEG) and inconsistent with all testimony. The rightsizing form also conflicted with other credible evidence such as a letter signed by Mr. B. Ralph Silvia, the former NMPC chief nuclear officer, that clearly stated that I was not on the 40% list, that I was being terminated under this ISEG ROTATION program and that my downsizing form indicated that my "inclusion in the group was due to the decision to rotate ISEG positions".

In addition, although not known by the ALJ, the downsizing numbers are also inaccurate. This document contains downsizing numbers that are lower than what I had been entitled to under the downsizing process. In other words, the downsizing numbers themselves are fraudulent. Specifically, the RESULTS downsizing number is the average of the RESULTS section of the 1994 employee performance evaluation, and that the 3.0 RESULTS score shown on my downsizing record is less than the average of the RESULTS or my performance evaluation. These numbers show that I had been cheated out of credit during the ISEG downsizing process that was under direct and personnel control by Carl Terry, the former VP of Nuclear Engineering. However, it doesn't matter who is responsible for the creation of a document that contain a fraudulent calculation. What is important is that NMPC senior nuclear managers willfully placed a document that they knew contain fraudulent numbers into public record (and the NRC allowed this to occur even though they were aware of the numbers were fraudulent). Does the NRC also allow documents based upon fraudulent calculations into public record on issues pertaining to safety?

Although my downsizing record is marked as being 6 of 8, which NMPC claims is proof that my former supervisor had placed me on the 40% list, this marking only represents the fact that my employee evaluation was the sixth employee evaluation form that my former supervisor had created and is not a representation of my downsizing ranking. It is obvious that the direct control that Carl Terry, the former VP of Nuclear Engineering had over the step by step downsizing process and his misrepresentation of the downsizing process to my former supervisor was directly responsible for the errors that exists in the ISEG downsizing records. The direct control that Carl Terry had over the ISEG group's downsizing records resulted in fraudulent and inaccurate records. Therefore, NMPC presented my 1994 downsizing record to the NRC at the Enforcement Conference under fraudulent pretences. It also marks extreme negligence on the part of the NRC for failing to discuss the origin of this employee record with my former supervisor.

It is obvious that my 1994 Rightsizing record that was presented to the NRC on May 10 1996 had been altered by the placement of the statement that I had been on the lower 40% list. It is now

known that even my supervisor's name was placed on this record without his knowledge or consent. These alterations can not be considered as part of the normal downsizing process, since there was no NMPC provisions that would allow the alteration of this employee record. As such, this constitutes a deliberate act of falsification and a Violation of 10 CFR 50.5.

Based upon the facts: 1) Finding of the Administrative Law Judge that this Rightsizing record had been altered, 2) NMPC had not appealed or disputed this finding, and 3) NMPC did not object to this finding during the Enforcement Conference, 4) there are discrepancies in the document's physical appearance and the downsizing numbers contained on this employee record 5) the NOV was not denied and the fine was paid, a violation for the falsification of this record is warranted. Personnel Enforcement Sanctions are also warranted for the responsible individuals.

Based upon the facts there can be no question that it is a direct and blatant Violation of NRC Regulations and potential crimination violation of federal laws to place a confidential, inaccurate and altered employee evaluation into public record. This is especially significant since a ALJ had already found that this document was of no value, conflicted with other evidence and was altered. It is also significant since, it appears, that once documents are in public record there is no way to remove it or to identify who has seen it. Therefore a violation for the placement of this document into public record is warranted and personnel Enforcement Sanctions are also warranted for the responsible individuals. The placement of this downsizing record into public record was a deliberate act 'performed or allowed' by members of the NMPC senior management board that attended the May 10 1996 Enforcement Conference. They are all responsible and accountable for this crime.

And based upon the facts, it is a direct and blatant Violation of NRC Regulations and potential crimination violation of federal laws to place a false listing of what the Administrative Law had determined in Discrimination Case 95-ERA-005 along with confidential employee information that are based upon secret and unproven 1993 downsizing records, into public record. Therefore a violation for the placement of this document into public record is warranted and personnel Enforcement Sanctions are also warranted for the responsible individuals.

Considering number of senior management personnel involved in this fraud that are still retained within the NMPC senior nuclear management team and the fact that the removal of these personnel would subject these units to a dangerously low level of senior management oversight, their removal shall be considered a direct **Risk to Nuclear Safety** at Nine Mile Point. It would also be considered a direct **Risk to Nuclear Safety** to retain personnel involved in the deliberate violation of NRC Regulations and in potential Criminal Violation of federal laws within a position of authority in a licensed activity. In addition, considering that NMPC had been represented by legal console (in Discrimination Case 95-ERA-005 and at the May 10 1996 Enforcement Conference) and monitored by NMPC at a corporate level, it is imperative that the staff takes sufficient action to ensure **Nuclear Safety at the Nine Mile Point Nuclear facility**.

Requested Actions

Issue a Show Cause Order or Civil Penalty against the Niagara Mohawk Power Corporation and its senior nuclear and corporate management (Enforcement Sanctions) against, as a minimum, Ralph Silvia, Carl Terry and Richard Abbott for 'participated in', 'had-knowledge-of' or 'allowed' the falsification of this 1994 employee record (as indicated by the ALJ Findings) and/or its submittal, under fraudulent pretences, into federal custody on May 10 1996 and/or for placing it into public record in Violation of 10 CFR 50.9, 10 CFR 2.790 and 10 CFR 50.5. The Nuclear Regulatory Commission shall forward these issues to the Department of Justice for consideration of criminal prosecution.

Issue a Show Cause Order or Civil Penalty against the Niagara Mohawk Power Corporation and Enforcement Sanctions against, as a minimum, Ralph Silvia, Carl Terry and Richard Abbott for 'participated in', 'had-knowledge-of' or 'allowing' the presentation of a written document into federal custody that falsely lists their position in Discrimination case 95-ERA-005 as being supported by the Administrative Law Judge and allowing it to become public record in Violation of 10 CFR 50.9 and 10 CFR 2.790. And for 'participated in', 'had-knowledge-of' or 'allowing' the placement of confidential employee information that constitutes an unwarranted invasion of personal privacy into public record in violation of 10 CFR 2.790. The Nuclear Regulatory Commission will forward these issues to the Department of Justice for consideration of criminal prosecution.

Perform a review and verification of all Niagara Mohawk Power Corporation's docketed files associated with the individuals that were 'involved-in', 'participated-in', 'had-knowledge-of' or 'allowed' the [improper alteration of this employee record, its submittal into federal custody under fraudulent pretences and into public record and the fraudulent written presentation of the Administrative Law Judge's findings in case 95-ERA-005] are completed by independent review.

The NRC will forward a complaint to the Office of the Inspectors General for an investigation of possible deliberate misconduct or negligence on the part of members of the NRC for failing to take proper action in this discrimination case, allowing NMPC representatives to place false and fraudulent documents in NRC custody and for allowing these documents to be placed into public record.

A Independent Oversight Group shall be established to provide oversight of the Niagara Mohawk Power Corporation's Human Resources Department and Employee Concerns Program. This group will ensure that the Niagara Mohawk Power Corporation does not develop or maintain employee records that are a 'secret' and/or different that what the employee is told. The group will also ensure that all prior 'secret' employee records are forwarded to their corresponding owners (current or former employee) and provide a media for resolving complaints of fraud. The group will also provide nuclear safety oversight, specifically, perform the job function of the Independent Safety Engineering Group for both Unit 1 & 2 and provide for the future verification (Nuclear Compliance and Independent Verification) of all licensee submittals to any federal agency and into NRC docketed files.

A public meeting shall be held to obtain public comment pertaining personal accountability, discrimination, the placement of fraudulent documentation into public records and the

April 5, 1999

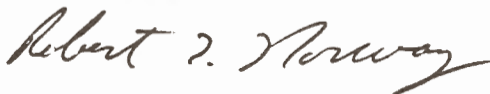
vulnerability of the NRC in being deceived by deliberate acts of misconduct in its regulatory affairs along with the findings of the Office of the Inspectors General in this discrimination case.

The Nuclear Regulatory Commission will publicly post NMPC's NMP2 RHR ASD Safety Evaluation 96-091 (along with its associated sections from IR 50-410/97-04, under SELECTED REPORTS on the internet) to make it available for public comment OR require NMPC 60 days to re-perform this safety evaluation in order to thoroughly review and document this issue to the NMP2 Licensing basis. If it is NMPC's intention not-to-have any RHR alternate shutdown cooling methods available to meet the 36 hour requirement specified in RG 1.139 (i.e. not to meet this USAR/Reg. Guide Licensing Basis Requirement), then NMPC shall follow the appropriate regulatory process to take an exception to this Reg. Guide licensing requirement, provide adequate engineering and safety evaluations (to demonstrate that all previously analyzed accidents limits are not exceeded) and Modify their License accordingly.

All future placement of documentation into public record for this discrimination case 95 ERA-005 shall be in conformance with the 'Settlement Agreement' and the 'Findings of the Administrative Law Judge' (both of which was affirmed by the Secretary of Labor) and in compliance with the NRC Enforcement Manual for Enforcement Conferences as it was amended by NUREG-1600. Specifically, no future documentation will be placed into public record pertaining to this discrimination case without the complainant's knowledge and a written response on any submittal will be allowed as indicated by NUREG-1600.

Issue a Show Cause Order or Civil Penalty against the Niagara Mohawk Power Corporation and it's senior nuclear and corporate management (Enforcement Sanctions) for Discrimination in Violation of 10 CFR 50.7 and 10 CFR 50.7.(f) for 'being-involved', 'participated-in', 'had-knowledge-of' or 'allowing' the placement of false and fraudulent documentation that is disparaging, deleterious and damaging to my goodwill, integrity and reputation into public record.

Sincerely yours,



Robert T. Norway

ATTACHMENT INDEX

- | # | Title |
|---|---|
| 1 | Applicable Sections of 10 CFR |
| 2 | Section "Discussion and Findings" of the Administrative Law Judge Decision in Discrimination Case 95-ERA-005. |
| 3 | Letter from Ralph Silvia to R. Norway dated March 15, 1994. |
| 4 | Partial May 10 1994 Enforcement Conference Handout. PDR File Location 89130: 156 to 254. |
| 5 | 1994 Employee Performance Evaluation as it was submitted to the ALJ. |
| 6 | Blowups of Manager's line of both the 1994 and 1996 employee evaluation. |

Attachment 1
10 CFR Sections Impacted

APPLICABILITY OF 10 CFR to PETITION

Section b of 10 CFR 2.790 places the owner of the information responsible for the contents. Since this information is in NMPC docketed files, specifically, 50-220/50-410 "Q" files, they are the owners and are responsible for its contents. The NRC primary vehicle to implement this responsibility is to re-present the information slated to be put into public record back to the licensee. This handout was presented to NMPC as an attachment to Inspection Report 50-220/96-06; 50-410/96-06 as an attachment along with another Enforcement Conference Handout on the NMP1 Blowout Panels. NMPC had a period of time to implement the provisions of 10 CFR 2.790.b to remove any and all unwarranted material.

Therefore, Niagara Mohawk Power Corporation is fully responsible and accountable for the information contained in public record in their "Q" files. The only exception would be Government Required documentation such as the contents of the Inspection Report that was written by the NRC.

It is likely that NMPC had used their authority under the provisions of 10 CFR 2.790.b. to remove Mr. Silvia's March 1994 ISEG ROTATION letter (evidence CX11) from public disclosure.

Personnel and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy are prohibited from being placed into public record. Although NMPC did have the right to present personnel notes and files to the NRC, its disclosure on a Handout specifically intended to be placed into public record is a Violation of 10 CFR 2.790.a.2.6.

In addition section (b) contains: Whether the information has been held in confidence by its owner, whether the information is of a type customarily held in confidence by its owner and whether the information was transmitted to and received by the Commission in confidence; whether the information is available in public sources; and whether public disclosure of the information sought to be withheld is likely to cause substantial harm to the competitive position of the owner of the information are requirements that were violated by the release of personnel information on the PDR. The Nuclear Regulatory Commission also has accountability in their failure to enforce these provisions.

A violation of 10 CFR 2.790. (b) is especially significant for my 1994 performance evaluation since their 1994 downsizing program had kept this evaluation a 'secret' from me. In this case NMPC took personnel record 'that they had developed and maintained a secret from their own employee' and place them into public record.

Information that a reasonable person could misinterpret, (their discretion) as being inaccurate in any material way is a violation of 10 CFR 2.790.a.3. and 10 CFR 50.9. As such, the presentation of Niagara Mohawk Power Corporation's complaints pertaining to the Administrative Law Judge's Findings as being part of the Administrative Law Judge's Findings is a violation of those sections.

In addition, since my 1994 Personnel Evaluation had been found by the Administrative Law Judge to be of no value, conflicted with credible evidence and altered ("in different handwriting" without Mr. Spadafore's knowledge), NMPC has placed a altered (or falsified) document into public record in Violation of 10 CFR 50.9 and 10 CFR 2.790.

As per sections of 10 CFR 50.7.f, since NMPC had taken action in violation of 10 CFR 50.9 and 10 CFR 2,790 that places documentation that 'contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section', their actions constitute another Violation of 10 CFR 50.7

Applicable Sections of 10 CFR

§2.790 Public inspections, exemptions, requests for withholding.

(a) Subject to the provisions of paragraphs (b), (d), and (e) of this section, final NRC records and documents,⁽⁸⁾ including but not limited to correspondence to and from the NRC regarding the issuance, denial, amendment, transfer, renewal, modification, suspension, revocation, or violation of a license, permit, or order, or regarding a rule making proceeding subject to this part shall not, in the absence of a compelling reason for nondisclosure after a balancing of the interests of the person or agency urging nondisclosure and the public interest in disclosure, be exempt from disclosure and will be made available for inspection and copying in the NRC Public Document Room, except for matters that are:

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C.) 552(b), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types or matters to be withheld.

(5) Interagency or intraagency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Commission;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(b)(1) A person who proposes that a document or a part be withheld in whole or part from public disclosure on the ground that it contains trade secrets or privileged or confidential commercial or financial information shall submit an application for withholding accompanied by an affidavit which:

(ii) Contains a full statement of the reasons on the basis of which it is claimed that the information should be withheld from public disclosure. Such statement shall address with specificity the considerations listed in paragraph (b)(4) of this section. In the case of an affidavit submitted by a company, the affidavit shall be executed by an officer or upper-level management official who has been specifically delegated the function of reviewing the information sought to be withheld and authorized to apply for its withholding on behalf of the company. The affidavit shall be executed by the owner of the information, even though the information sought to be withheld is submitted to the Commission by another person. The application and affidavit shall be submitted at the time of filing the information sought to be withheld. The information sought to be withheld shall be incorporated, as far as possible, into a separate paper. The affiant may designate with appropriate markings information submitted in the affidavit as a trade secret or confidential or privileged commercial or financial information within the meaning of §9.17(a)(4) of this chapter and such information shall be subject to disclosure only in accordance with the provisions of §9.19 of this chapter.

(3) The Commission shall determine whether information sought to be withheld from public disclosure pursuant to this paragraph: (i) is a trade secret or confidential or privileged commercial or financial information; and (ii) if so, should be withheld from public disclosure.

(4) In making the determination required by paragraph (b)(3)(i) of this section, the Commission will consider:

(i) Whether the information has been held in confidence by its owner;

Attachment I
10 CFR Sections Impacted

- (ii) Whether the information is of a type customarily held in confidence by its owner and whether there is a rational basis therefor;
- (iii) Whether the information was transmitted to and received by the Commission in confidence;
- (iv) Whether the information is available in public sources;
- (v) Whether public disclosure of the information sought to be withheld is likely to cause substantial harm to the competitive position of the owner of the information, taking into account the value of the information to the owner, the amount of effort or money, if any, expended by the owner in developing the information; and the ease or difficulty with which the information could be properly acquired or duplicated by others.

§50.9 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

§50.7 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

The initial threshold in proving his case is easily met by the Complainant. His position as a member of the ISEG was required by the licensing basis that allowed Niagara Mohawk to operate Unit No. 2. This unit was created solely for the purpose of discovering and discussing potential safety problems. The name of the group itself recognizes its independence and purpose. To take adverse action against a member of the group for performing his job is the prototypical action protected by the statute. Such action would be interference with the basis on which the Respondent's license was granted.

There is no dispute that the Respondent was aware of the Complainant's safety complaints. In fact, the Respondent had a procedure for dealing with these complaints. The PR and procedure recognize the importance of safety issues raised by members of the ISEG. The history of the Respondent's action taken in response to the Complainant's PR on the RHR system in 1993 are well documented and verified by all witnesses.

That the Respondent took adverse action against the Complainant is also not in dispute. He was terminated by the Respondent in 1994.

The Complainant's explanation of why he was terminated supports his contention that his persistence in pursuing his safety complaints was the reason for the adverse action. The PR filed in 1991 is by itself proof of such action. The Complainant's continued pursuit of this safety problem was supported by his immediate supervisor Jim Spadafore.

The Complainant relates in detail a discussion he had with Mr. Abbott as a result of his persistence. This confrontation in which the Complainant was threatened with termination if he did not drop the complaint is not denied by the Respondent. Mr. Abbott merely stated he does not recall any such confrontation; this cannot be considered a denial. The action taken against the Respondent starting after he again raised essentially the same issue in 1994 indicates a direct link between the warning and the termination action.

These actions constitute proof of a prima facie case by the Complainant. The burden therefore shifts to the Respondent.

The Respondent's counter argument is that the termination was motivated by a nondiscriminating action. In support of this the Respondent stated that there was a general downsizing called rightsizing that took place in 1993-1994 in an effort to streamline the utility and make it competitive with others in the power business.

The fact that a general downsizing took place in the years 1993-1994 is not in dispute. According to the published criteria the targeted group consists of employees whose performance evaluations were in the lower 40%. In 1993-1994 the goal was to reduce the number of nuclear engineers. If an employee was not in the lower 40% he was not in danger of termination.

The evidence establishes that the Complainant was repeatedly told that he was not in the targeted group. Any time he asked any of his superiors he was told he was not in jeopardy. No one ever told him he was in this group.

The Respondent counters with several arguments. They say that the Complainant was in the lower 40% and was terminated strictly in accordance with the stated criteria. A second not wholly consistent position is that there were other nonpublished criteria that justified the firing of the Complainant.

The first of these arguments is based on performance evaluation that shows the Complainant in the lower 40%. These evaluations were prepared during the last stage of the downsizing. There is no indication that they were ever communicated to the Complainant. They also include different handwriting. Most importantly they are totally inconsistent with the verbal assurances given to the Complainant.

The document in question is RX6. A close look shows that there is no indication that this document was communicated to the Complainant or to his immediate supervisor. It includes the statement that the position is not being right sized.

Attachment 2

Judge's Discussion and Findings in Discrimination case 95-ERA-005

<http://www.oalj.dol.gov/public/wblower/decsn/95era05a.htm>

The record is consistent in showing that the Complainant was told he was not in the lower 40% of the rankings. (TR 61, 62, 126). The question remaining is whether there is any other legitimate reason for terminating the Complainant.

The Complainant received a letter from Mr. Sylvia dated March 15, 1994. (CX 11). Mr. Sylvia confirmed that the Complainant was not in the lower 40%. He stated the termination was due to the Complainant being included in an ISEG rotation. It noted that the decision to rotate employees was made after the downsizing was in progress.

The Complainant received another explanation from Kathy Mills, a member of the Respondent's Human Resources Department. This letter said the Employee was being terminated because his position has been abolished.

Ultimately the question in this case is one of credibility. The Complainant has shown that he raised important safety issues with which the Respondent disagreed. As a result he was threatened with loss of his position. The Respondent doesn't deny this, but merely states he can't recall the conversation. The Complainant has shown that he was repeatedly assured he was not in the group eligible for termination. The testimony of all witnesses confirms this position.

The Respondent, on the other hand, has not shown why the Complainant was terminated. They have suggested several reasons, none of which is supported by the evidence. The record shows there was no rotation plan for ISEG engineers. There is also no evidence that the Complainant's job was abolished. The only performance evaluation showing the Complainant is in the lower 40% for 1994 is of no value because of its lack of consistency with other evidence.

Based on the above the Complainant has proved his case and is entitled to damages.

B. Ralph Sylvia
Executive Vice President
Nuclear

March 15, 1994

Robert T. Norway
[REDACTED]
[REDACTED]
[REDACTED]

Dear Bob:

I asked Jerry Krueger, Director HRD-Nuclear, to assist me in reviewing the concerns expressed in your letter dated February 28, 1994.

Indeed the initial evaluation made by Jim Spadafore did not place you on the list of employees to be assessed by the Review Board process, nor was your position abolished as a result of the staff reductions within the ISEG group.

However, in a subsequent Senior Management planning session, a decision was made to rotate members of the ISEG group on a periodic basis. This rotation process would provide development opportunities, as well as bring new perspectives to the ISEG group.

As a result of this change, you were included in the group to be reviewed. As further explanation, your assessment worksheet indicated that your inclusion in the group to be reviewed was due to the decision to rotate ISEG positions.

As part of the Review Board process, another employee was selected for placement into the ISEG group. Unfortunately, the Board was unable to match your experience and background to displace a lesser qualified employee, which resulted in your being placed in the transition program.

In reviewing the circumstances outlined above, I have concluded the rightsizing process was followed, even though the decision was made to rotate members after the initial process had begun.

I trust this will provide satisfactory explanation to your concerns.

Sincerely,



B. Ralph Sylvia
Executive Vice President - Nuclear

BRS/bwr

NRC ENFORCEMENT
CONFERENCE

EMPLOYEE DISCHARGE

May 10, 1996

Niagara Mohawk
Presentation

ALY

AGENDA

Introduction	B. R. Sylvia
Status of the Case	B. R. Sylvia
Rightsizing Process	K. M. Miles
Facts of the Case	C. D. Terry
Discussion of Findings of the Administrative Law Judge	C. D. Terry/ R. B. Abbott
Climate for Raising Safety Issues	R. A. Hall
Corrective Actions	R. B. Abbott
Enforcement History	B. R. Sylvia
Closing Remarks	B. R. Sylvia

FACTS OF THE CASE

- ➡ Mr. Norway was hired in 1982 as a startup engineer
- ➡ Joined ISEG in 1989; was one of 9 individuals in group
- ➡ Duties identical to other ISEG engineers
 - Investigation
 - Evaluate
 - Identify Issues
 - Issue PRs/DERs
- ➡ Rightsizing program began in 1993
 - Eliminate 10% of all positions
 - Lower ranked 20% of individuals on a site basis identified for consideration
- ➡ In 1993, Mr. Norway was ranked in bottom 20% of group
 - Considered in rightsizing pool
 - Retained
- ➡ In 1994, a second round of rightsizing was begun
 - Eliminate 20% of all positions
 - Lower ranked 40% of individuals on a site basis identified for consideration

FACTS OF THE CASE (cont'd)

APPLICATION OF PROCESS TO ISEG

- ⇒ Unit 2 Technical Specification requirement for 5 degreed engineers in ISEG would be satisfied
- ⇒ Supervisor position would be counted against degreed engineer requirement
- ⇒ Three individuals were technicians and did not meet the degree requirements for retention in ISEG
- ⇒ One engineer's position would have to be eliminated
- ⇒ Supervisor evaluated all engineers and selected three for consideration by the review process
 - Supervisor informed Norway that he was submitted for rotation (non-specific) only
 - Supervisor submitted Board evaluation forms - noting Norway ranked in lower 40%
- ⇒ Review panel considered all candidates separately
 - Candidates given opportunity to provide feedback for Board's consideration (Norway did so)
 - Secret ballot
 - Selected Norway for transition

FINDINGS OF THE ADMINISTRATIVE LAW JUDGE

- ⇒ Agree that Mr. Norway was a protected employee

- ⇒ Mr. Norway, as well as all other ISEG members, was directed by management to raise and evaluate safety issues and all did so
 - Persistence and dogged pursuit of issues are positive attributes for ISEG

- ⇒ Four issues discussed in Judge's decision:
 - 1991 PR
 - 1993 DER
 - Evaluation of Operating Experience reviews
 - Containment Spray Systems - repeated safety evaluations

- ⇒ Mr. Norway was not threatened with termination by Mr. Abbott

- ⇒ Mr. Norway's termination process was non-discriminatory
 - 1993 DER was not a consideration of Board; senior managers not aware of DER
 - Notified of consideration for transition
 - Feedback form submitted by Norway
 - Norway's supervisor actions unfortunate
 - Board evaluation based on performance
 - Common for Board to conclude differently than supervisors

WESTINGHOUSE
EMPLOYEE ASSESSMENT

WORK SHEET

Branch Manager Ranking within group:

6 of 8

Is position being right-sized? Yes No

Branch Manager recommendation: (choose one)

Place in Transition Program

Retain in current non-right-sized position

Retain within another branch (see below)

[ISEG ROTATIONAL POSITION]

EMPLOYEE NAME: [REDACTED]

JOB TITLE: ENGINEER 3 (Mechanical)

BRANCH: NUCLEAR ENR (ISEG)

MANAGER: _____

1993 PERFORMANCE EVALUATION LEVEL: FULLY COMPETENT (III) 14.3 (currently being completed)

Assess the employee based on categories below using the following rating scale: 5 HIGHEST / 1 LOWEST; INSTRUCTIONS: 1) Current performance ratings shall match the annual performance evaluation being performed. 2) Flexibility and; 3) Potential shall be comparative ratings to others in your work group.

1) CURRENT OVERALL PERFORMANCE

a) RESULTS ACHIEVED	5	4	<u>3.0</u>	2	1
b) SKILL ASSESSMENT	5	4	<u>3.8</u>	3	2
2) COMPARATIVE FLEXIBILITY: A ready capability to adapt to new, different or changing requirements. Capable of fulfilling multiple responsibilities.	5	4	<u>4.0</u>	3	2
3) COMPARATIVE POTENTIAL: Possesses the experience and/or capabilities and willingness to take on additional responsibility to fulfill immediate business needs.	5	4	<u>3.5</u>	3	2

TOTAL OF RATINGS: 14.3

← PLEASE TOTAL RATINGS & COMPLETE

PLEASE PROVIDE ADDITIONAL COMMENTS:

PLEASE PRINT - MUST BE LEGIBLE

STRENGTHS: Top level Computer skills & Analysis Techniques

Capable of reviewing any type of work and completing the required effort. Good level of experience in STARTUP, I&C and Mechanical Areas. Very Flexible in adapting to changes.

LIMITATIONS: Rated in lower 40% Quantitative only reason for submitted (verbal skills with others sometimes difficult)

To Be Reviewed as a ROTATIONAL POSITION WITH ANOTHER GENERATION or Engineering Position only reason for submitted to the Board Review Process

** If position is right-sized and recommendation is retain in another Branch, please explain What Branch and Why?

System Engineering, Mechanical Engineering, I&C, CIA, Tech Services,

BRANCH MANAGER'S EVALUATION OF EMPLOYEE PERFORMANCE

Branch Manager Rating within group: 6 4 8

Is position being retrained: Yes No

Branch Manager recommendation: (choose one)
 Place in Transition Program
 Retain in current assignment and position
 Retain within another branch than below

EMPLOYEE NAME: [REDACTED] JOB TITLE: ENGINEER 3 (Mechanical)

FRANCHISE: WARRIOR ENR (2500) MANAGER: _____

IMMEDIATE PERFORMANCE EVALUATION LEVEL: Fully Competent (FC) NR (currently being completed)

Assign the employee based on ratings below using the following rating scale: 5 HIGHEST - 1 LOWEST; INSTRUCTIONS: 1) Check performance ratings; 2) If match the annual performance evaluation being performed; 3) Flexibility and; 4) Potential should be given positive ratings to others in your work group.

PERFORMANCE OVERALL PERFORMANCE

A) RESULTS ACHIEVED	5	4	3 <u>3.5</u>	2	1
B) SKILL ASSESSMENT	5	4	3 <u>3.5</u>	2	1
C) COMPARATIVE FLEXIBILITY: A ready capability to adapt to new, different or changing requirements. Capable of fulfilling multiple responsibilities.	5	4	3 <u>4.0</u>	2	1
D) COMPARATIVE POTENTIAL: Success in the experience and/or capabilities and willingness to take on additional responsibility to fulfill immediate business needs.	5	4	3 <u>3.5</u>	2	1

TOTAL OF RATINGS: 14.3 — MEAN TOTAL RATING IS COMPLETE

PLEASE PROVIDE ADDITIONAL COMMENTS: PLEASE PRINT - MUST BE FOLDED

STRENGTHS: Top level Computer skills & Analysis Techniques
Capable of Reviewing Any Type of work and completing
the required effort. Good level of experience in
Startup, I & C and Mechanical Areas. Very Flexible in
Adapting to changes.

LIMITATIONS: Rating is lower to compare only reason for submitted (overall skills
with others sometimes difficult)

To Be Retained as a ROTATIONAL POSITION WITH ANOTHER
GENERATION of Engineering Position only reason for
Submitted to the Board Review Process

Systems Engineering, Mechanical Engineering, I & C, CA, Tech Services

Branch Manager Ranking within group:
6 of 8

Is position being rightsized: Yes No
 Branch Manager recommendation: (choose one)
 Place in Transition Program
 Retain in current non-rightsized position
 Retain within another branch (see below)

ISEG ROTATIONAL POSITION
 EMPLOYEE NAME: Robert Norway
 BRANCH: NUCLEAR ENGR (ISEG)
 JOB TITLE: ENGINEER 3 (MECHANICAL)
 MANAGER: J. SPADAFONE

1993 PERFORMANCE EVALUATION LEVEL: FULLY COMPETENT (III) 14.3 (currently being completed)

Assess the employee based on categories below using the following rating scale: 5 HIGHEST / 1 LOWEST; INSTRUCTIONS:
 1) Current performance ratings shall match the annual performance evaluation being performed. 2) Flexibility and; 3) Potential shall be comparative ratings to others in your work group.

D) CURRENT OVERALL PERFORMANCE

a) RESULTS ACHIEVED	5	4	3 <u>3.0</u>	2	1
SKILL ASSESSMENT	5	4 <u>3.5</u>	3	2	1
2) COMPARATIVE FLEXIBILITY: A ready capability to adapt to new, different or changing requirements. Capable of fulfilling multiple responsibilities.	5	4 <u>4.0</u>	3	2	1
3) COMPARATIVE POTENTIAL: Possesses the experience and/or capabilities and willingness to take on additional responsibility to fulfill immediate business needs.	5	4 <u>3.5</u>	3	2	1

TOTAL OF RATINGS: 14.3 ← PLEASE TOTAL RATINGS & COMPLETE

PLEASE PROVIDE ADDITIONAL COMMENTS: PLEASE PRINT - MUST BE LEGIBLE

STRENGTHS: Top level Computer skills & Analysis Techniques
CAPABLE OF REVIEWING ANY TYPE OF WORK AND COMPLETING
the required effort. Good level of experience in
STARTUP, I & C AND MECHANICAL AREAS. Very Flexible in
Adapting to changes.

LIMITATIONS: Rated in lower 40% Quantitative only reason for submitted (verbal skills
with others sometimes difficult)
TO Be Reversed as a ROTATIONAL POSITION WITH ANOTHER
GENERATION OF ENGINEERING POSITION ONLY REASON FOR
Submitted to the Board Review Process

* If position is rightsized and recommendation is retain in another Branch, please explain What Branch and Why?
System Engineering, Mechanical Engineering, I & C, QA, Tech Services,

[ISEG ROTATIONAL POSITION]



JOB TITLE: ENGINEER 3 (mechanical)

MANAGER: _____

Fully competent (III) N3 (currently being completed)

by the following rating scale: 5 HIGHEST / 1 LOWEST; INSTRUCTIONS:
annual performance evaluation being performed. 2) Flexibility and; 3) Potential
group.

[ISEG ROTATIONAL POSITION]

JOB TITLE: ENGINEER 3 (mechanical)

MANAGER: J. SPADAFAG

Fully competent (III) N3 (currently being completed)

by the following rating scale: 5 HIGHEST / 1 LOWEST; INSTRUCTIONS:
annual performance evaluation being performed. 2) Flexibility and; 3) Potential