



PDR
50-387/388

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

February 13, 1997

CHAIRMAN

The Honorable Paul E. Kanjorski
United States House of Representatives
Washington, D.C. 20515

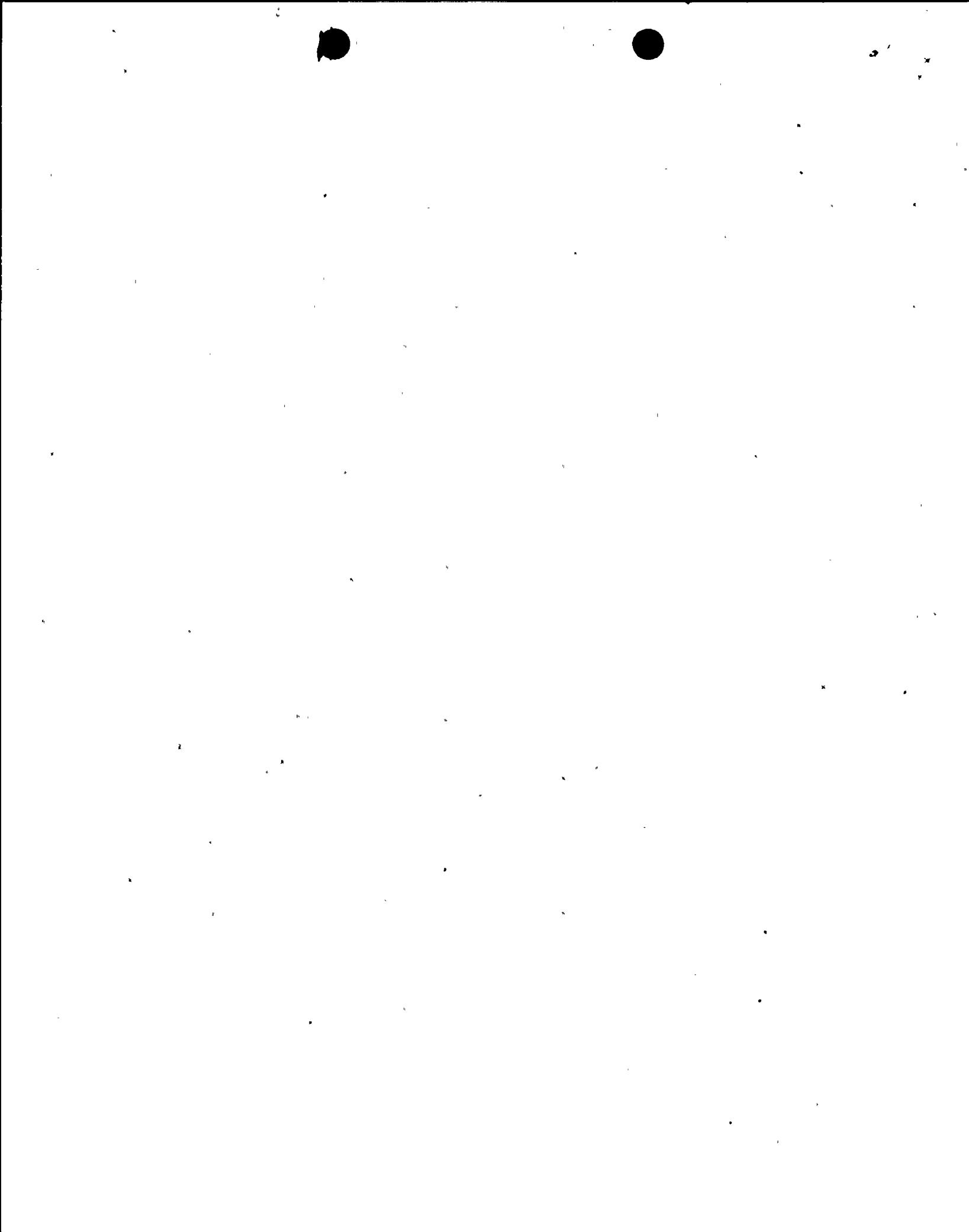
Dear Congressman Kanjorski:

I am responding to your letter of January 10, 1997, in which you requested that the Nuclear Regulatory Commission (NRC) respond to concerns raised by Mr. Mark Lindsey about a Demand for Information (DFI) that was issued to him on December 10, 1996 by the NRC. The DFI was issued to Mr. Lindsey to request information from him about his role in specific matters while he was an employee of Pennsylvania Power and Light Company (PP&L) at its Susquehanna Steam Electric Station.

Pennsylvania Power and Light Company provided the NRC with reports of investigations that it conducted involving the misalignment of a diesel generator breaker and the performance and documentation of diesel generator alarm tests. This is a significant matter because as a result of the breaker misalignment, the diesel generator would not have been available to perform its safety function if called upon in an accident situation. Based on the NRC's review of PP&L's reports, the NRC has concerns about the performance and responsibilities of the licensee, as well as the performance of several individuals who appear to have been involved in these matters. It is our understanding that PP&L has taken disciplinary action against several of the employees, including, in some cases, termination of employment.

The NRC is continuing its review of this matter to determine what enforcement action, if any, may be appropriate against the licensee and the individuals involved in this case. However, before the agency makes an enforcement decision regarding this matter, the NRC staff concluded that it is appropriate to obtain information from the individuals to understand their positions on the matter. Therefore, DFIs were issued to those involved individuals to obtain their positions in this matter. Based on the responses, the NRC will determine whether further investigation is warranted or whether it is appropriate to initiate enforcement action.

In your letter you raised a concern as to whether the NRC differentiates between non-supervisory and supervisory workers in its enforcement actions. You also requested a discussion of how the NRC ensures that it does not favor pecuniary concerns of the nuclear power generating company and their executives over the rights of individual workers. Violations committed by supervisors and managers traditionally are considered more significant than violations committed by non-supervisory employees and are categorized at higher severity levels in the NRC's Enforcement Policy (NUREG-1600) (copy DFO3/1). *ACKS*



enclosed). This distinction is based in part on the individual's knowledge and responsibilities relative to licensed activities and the potential effect the individual's actions could have on the licensee's organization because of their position. Section VIII of the NRC's Enforcement Policy provides several factors that are considered in determining whether enforcement action should be taken against unlicensed individuals or solely against licensees. (See also sections IV.C and VII.B.1.d.) If the NRC takes actions against individuals, the NRC policy normally is to take enforcement action against the licensee also, since the NRC holds licensees responsible for the actions of their employees. The pecuniary concerns of nuclear power generating companies and their executives are not a consideration in determining whether the NRC takes enforcement action against a licensee or an individual.

With regard to the concern on the NRC's right to regulate Mr. Lindsey, a former employee of PP&L, the Commission has the authority, pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204, to issue a DFI to him to address his actions while he was subject to the jurisdiction of the Commission, regardless of whether there has been criminal activity. A DFI is not an enforcement action or an enforcement proceeding. It is an administrative information-gathering tool the agency may use to obtain information to aid the agency in making an enforcement decision. Instructions for responding (or not responding) to the DFI were included in the correspondence to Mr. Lindsey. An appropriate response to the DFI could include views as to why the DFI should not have been issued.

With respect to the concern raised in your letter regarding how Mr. Lindsey may obtain legal representation, the NRC cannot provide Mr. Lindsey personal legal advice regarding his employment with PP&L nor regarding his response to the DFI. The decision on whether to retain counsel must be made by Mr. Lindsey.

I appreciate the significance of Mr. Lindsey's concerns upon receiving the DFI. I note that the staff received a response to the DFI from Mr. Lindsey which the staff has under evaluation.

Sincerely,



Shirley Ann Jackson

Enclosure: NUREG-1600