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11TH DISTRICT, PENNSYLVANIA

COMMITTEE ON BANKING AND
FINANCIAL SERVICES

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SUBCOMMITTEE ON CAPITAL MARKETS, SECURITIES,
AND GOVERNMENT SPONSORED ENTERPRISES

COMMITTEE ON GOVERNMENT REFORM
AND OVERSIGHT

DEMOCRATIC WHIP-AT-LARGE



Congress of the United States

Washington, DC 20515-3811

January 10, 1997

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Ms. Shirley Jackson
Chairman
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Ms. Jackson:

Enclosed please find copies of all the materials that my office has received from Mr. Mark Lindsey, a constituent in my congressional district. As I understand, Mr. Lindsey is currently the subject of a Demand for Information (DFI) by the Nuclear Regulatory Commission (NRC). This DFI seeks to determine the role that Mr. Lindsey played in an incident that occurred at Pennsylvania Power and Light Company's (PP&L) Susquehanna Steam Electric Station in Berwick, Pennsylvania, in June 1996. As outlined below, Mr. Lindsey has raised several issues about the DFI. Consistent with all applicable laws and regulations, I urge the NRC to respond in writing to Mr. Lindsey's concerns. Please send this response to my Washington office, and I will then forward it to Mr. Lindsey.

In the first section of his correspondence, Mr. Lindsey states that he believes that the NRC's enforcement policy treats low-level employees unfairly. In particular, Mr. Lindsey is concerned that the NRC differentiates between low-level employees and supervisors by applying separate standards for enforcement actions to each group. Mr. Lindsey believes that such a policy is discriminatory, and as a result, he concludes that the NRC may treat low-level workers unjustly. Accordingly, he would appreciate it if the NRC would detail (1) if it differentiates between low-level and supervisory workers in its enforcement actions, and (2) if so, what the justification is for that differentiation. In addition, please describe how the NRC ensures that it does not favor the pecuniary concerns of nuclear power generation companies and their executives over the rights of individual workers.

In the second part of his letter, Mr. Lindsey raises concerns about the pertinency of the DFI and its timing. Mr. Lindsey believes that the NRC has no right to regulate him as a former employee of a nuclear facility unless criminal activity has occurred. Further, if criminal activity did occur, then Mr. Lindsey feels that the NRC should have raised the matter under the Atomic Energy Act of 1954, not a DFI. Still further, even if the NRC has the authority to issue a DFI in this case, Mr. Lindsey believes that a ruling by the NRC on the DFI in the near future could prejudice a pending decision on a labor dispute between himself, PP&L, and others. Mr. Lindsey would, therefore, like to learn how the NRC derives its authority to issue this DFI. He would

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PDR COMMS NRCC
CORRESPONDENCE PDR

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Ms. Jackson

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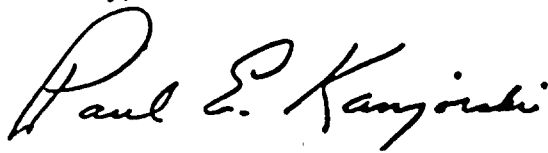
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also like to learn about the process used in DFI proceedings, including the rights and responsibilities of the subject of a DFI.

In the final part of his letter, Mr. Lindsey notes that this situation may be one where no party has an incentive to defend his legal interests. PP&L based Mr. Lindsey's firing on the grounds that he falsified official documentation. Because the bargaining agreement does not specifically address this issue, Mr. Lindsey feels that his union has little motivation to defend him. Please detail whom, in this situation, has the incentive to defend Mr. Lindsey, and how Mr. Lindsey may obtain appropriate and adequate legal representation.

I know that my legislative assistant, Mr. Todd M. Harper, has already spoken with Mr. Mike Callahan in the NRC's Congressional Affairs Office about many of Mr. Lindsey's concerns. I appreciate the helpful and courteous assistance your staff has provided to date, and I look forward to your prompt response to this inquiry. In the meantime, should your staff have questions about this matter, please feel free to contact Mr. Harper on (202) 225-6511.

Sincerely,

A handwritten signature in cursive script that reads "Paul E. Kanjorski". The signature is written in dark ink and is positioned above the printed name and title.

Paul E. Kanjorski
Member of Congress

Enclosures

PEK/tmh

To: The office of Congressman Paul Kanjorski
From: Mark Lindsey
Attention: Todd Harper
Date: January 2, 1997
Re: NRC Statement of Policy of Enforcement (10 CFR 2) NUREG 1600

I want to explore the policy. The conduct of the parties involved and the results of that conduct are the result of the policy. If it is necessary to examine what is apparently the result of the interpretation of that policy, then it must be so. However, it should not be necessary to look beyond the statement of policy itself to judge it discriminatory in nature and intent.

To ascribe a higher level of trust or trustworthiness to someone because of superior position or title is absurd. It is tantamount to saying slave owners are of better character than slaves because they own them or that Richard Nixon did not break the law because he was President.

In truth, every individual that works at a nuclear facility is subject to extreme scrutiny. You can not enter the site without security clearance or have unescorted access without a security clearance. This security scrutiny in effect levels the playing field. There are exceptions for safe guards information without making a proper request. Responsibility to radiological safety and the security of special nuclear material is maintained in this manner. Companies still have layers of disclosure with regard to policy and business strategies and decisions. This is normal.

It would be nice to say that because someone is, for example, "Senior Vice President of Nuclear", that his moral character is of the finest and he may be taken at his word. However, we only have to look around the business to see where people have been replaced to know this isn't true.

To make that distinction as a point of policy makes no sense. Everyone who works in and around Special Nuclear Material must be of the same high character and steps are taken to insure that in other parts of the Code.

Therefore it must be that this policy or part of the Code has "intent". The question then arises, "What is the intent of this policy?". Logically one must conclude that the "intent" is to allow "discriminations". It would be difficult to decide which party, the user or the regulator, desired to be able to discriminate, but the fact remains that discrimination is allowed.

The NRC is responsible for maintaining and enforcing the Code, the users are responsible for applying the pertinent parts of the Code to the conduct of their business in order to maintain a license to handle Special Nuclear Material.

The NRC then regulates the users according to how well they have complied to whatever regulation they have said, by mutual consent, applying to their particular business - a little like enforcing a pre-nuptial agreement.

It is clear though that the users are allowed to derive an unfair benefit from attacking the character and conduct of "low level" employees. Labor law allows companies to fire employees for nearly anything up to and including a whim. This "policy" allows users of Special Nuclear Material to exploit

that labor law for the sake of "mitigating" enforcement.

Enforcement is where the impact on profit comes in. Not only can enforcement result in direct fines assessed to the user by the NRC, but under circumstance of extreme situation; result in lost revenue either as the result of inability to make, ship and sell ones product or perhaps more significantly, in the stock markets as lost value or bond market as increased risk and therefore higher interest penalty. This places extreme financial pressure on the users to avoid enforcement regulation at all and in addition to "mitigate" the circumstance of enforcement in all cases.

It therefore must be concluded that the responsibility for the character of all nuclear workers must be the same and must rest solely with the user and that no distinction can be allowed that will result in profit for the user or increased regulation by the NRC at the expense of Labor. This kind of policy is the worst kind. It creates an atmosphere of distrust where open and honest disclosure of ones thoughts and deeds is suppressed to both the user and the regulator and it exploits workers who have little or no means of defense.

These workers are in effect no different than supervisors or licensed individuals. In fact, the supervisors and licensed individuals were once the same "low level" individuals that this policy exploits. A man's character does not change because of title or license and he is no less worthy of trust by reason of position or education. Certainly responsibilities change and its a matter of individual choice as to the level of responsibility he or she wants to deal with and is compensated accordingly. But to assume a man has low character because he either can not by reason of intelligence, education or preference ascend within a hierarchy is classiest and elitist.

Therefore I am left to conclude that this policy is discriminatory in both nature and intent and must be revised. The important nature of the individual "low level" employee must be elevated to prevent exploitation. The "low level" employee must be free from the fear that he or she may be sacrificed for the good of the company.

Part II

I am currently the subject of some regulation by the NRC. It is called a Demand For Information or a DFI which the NRC may or may not have the right to impose on me. I believe that the NRC has no right to regulate me as a former employee of a nuclear facility unless there is reason to suspect criminal activity and they would have to bring criminal charges under cause of investigation pursuant to the Atomic Energy Act of 1954.

Assuming I have done nothing criminal and that the NRC has done no independent investigation of fact that would indicate criminal behavior, their DFI is probably improper. It may be that it was convenient. I do wish to comply, but the circumstances of compliance are prejudiced by impending adjudication of the current labor dispute. Put another way, if the NRC merely accepts the action of PP&L as the basis for their DFI, and if the DFI results in the NRC taking any action against any individual before the labor dispute is settled, then it will prejudice the outcome of the labor dispute before guilt or the amount to which guilt can be ascribed or discerned.

If the NRC has legitimate safety concern with the conduct of the utility, they must deal with that separately or conduct their own investigation. It is not justified or in the interest of the industry to regulate anyone on what may prove to be a false claim. It would not serve the purposes of the industry as a whole

It must therefore be concluded that the NRC must delay action until the labor process is complete. Stated in other words, an agent of the government should not interfere with what is considered "Due Process" in the labor market unless there is strong and substantive evidence that this action is warranted to protect the public safety. I don't see where this is the case.

Part III

Certainly each party wants to derive something from this situation. If the public is at risk the NRC must act quickly and decisively. If not, the NRC is not harmed by delay and in either case they should not interfere with the labor case. In fact settlement of the labor case may greatly simplify what the NRC has to accomplish. I expect the NRC to resist this because they feel a sense of urgency to regulate the activity of "low level individuals" and have demonstrated this historically at Nine Mile Point; Seabrook Station; Millstone I, II, and III; and Pilgrim Station. Their concern is the Subject of Information Notice 92-30 and Generic Letter 93-03. It has been the agenda of the nineties thus far.

The utility has their concerns. Not the least of which is convincing the NRC that business at the station is being conducted in a reasonable and safe manner by competent operators who care about their work and are performing their work as prescribed. The utility needs to continue operating the facility to make profit and return investment and a few "low level" employees are a small price to pay in view of the potential impact financially.

The Union has its concerns. It does not want to lose what it believes to be its one franchise with the industry and labor. That is, it doesn't want to fail in "negotiation" of settlement that appears to satisfy the contract. So if they are locked out by regulations, i.e. men fired outside the contract, they feel reasonably certain they can continue as the representative of the remainder so they are happy to wait and see what they have to do.

The only people who are in immediate need of relief are the men who were fired. They have wives, children and bills. We need to get this settled and settled quickly. Unlike every other party involved, our source of income is cut off, our resources are limited and we need help. We believe in our innocence and take our responsibility soberly. It is unfair to portray us as maladroits. We have worked hard and successfully at our craft for

a collective 135 years or better. With us in the plant PP&L has established extremely impressive "run" records - one at least was 427 days of continuous operation. We do our job and we do it second to none. To imply otherwise is to pervert the accomplishment of the past 15 years. PP&L did not become a well run plant in spite of us and the honor belongs to the men who actually perform the work. We know what our jobs are and do them well. PP&L needs to be brought into negotiation with the men who were fired and at the earliest possible time. The concerns of all need to be aired in an open forum and a reasonable solution needs to be arrived at.

It also has to be considered that the specialized nature of working in the nuclear industry imposes an additional penalty on those men who were terminated. We can not go ply our trade at the nuclear facility down the road because there isn't one and if there were, we are effectively "Black Balled" from work in the industry until this matter is resolved. This is not completely unlike being disbarred as a lawyer. What can we do with a life that was built around our abilities in an extremely specialized field? So what may be a small matter in some cases, is magnified in this circumstance. A man's life must stand for something even against the policies of the NRC or the financial need of a power utility. We have harmed no one. Why are we being treated so unjustly?