



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

MAR 10 1994

Mr. Teh K. Hu  
211 Apache Court  
Newark, DE 19702

Dear Mr. Hu:

Subject: Request for Auditing and Certification of "the Substantial Evidence" Related to Employee Protection Case

I have received your letter of February 25, 1994 in which you request "auditing and certification of the substantial evidence related to employee protection case of Energy Reorganization Act of 1974, as amended." I have also been advised that you telephoned Joseph Gray of this Office on March 7, 1994 to explain what you are seeking in your request for an audit and certification of substantial evidence.

Based on your letter and the March 7, 1994 telephone conversation with Mr. Gray, I understand that

1. You have filed complaint of discrimination by Public Service Electric and Gas Company with the Department of Labor (DOL) and have had a hearing before a DOL Administrative Law Judge (ALJ) on your complaint.
2. The ALJ issued a Recommended Decision and Order on your complaint in which he failed to consider or address an analysis of your work assignments and rate of work on technical issues which you prepared and offered in support of your complaint of discrimination. You refer to your analysis as "the substantial evidence."
3. You are asking that NRC audit your analysis of your work assignments and certify, if it so determines, that your analysis is correct and that the rate of work on technical issues that your analysis shows is satisfactory performance. You intend to use any NRC audit and certification in your appeal of the ALJ's Recommended Decision and Order to convince DOL that your analysis is a valid indication of satisfactory performance in work on technical issues and should have been viewed by the DOL ALJ as "substantial evidence."

Under the Atomic Energy Act, Section 211 of the Energy Reorganization Act and the implementing Memorandum of Understanding (MOU) between the NRC and DOL (47 FR 54585, December 3, 1982), DOL has the responsibility to investigate employee complaints of discrimination and order a violator to take affirmative action to abate the violation, reinstate the complainant and award back pay and damages. NRC, though without direct authority to provide a remedy to an employee, has independent authority to take enforcement action against NRC licensees. Under the MOU, NRC often depends, in part, on the DOL investigation and decision on a discrimination complaint to determine whether

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enforcement action or some other regulatory action against an NRC licensee is warranted. That is the case with regard to your complaint.

In these circumstances, I believe that it would be inappropriate for NRC to "audit and certify" your analysis as you have requested. First, you are asking for NRC views on a work performance issue--a matter for which NRC has no particular expertise. Second, an NRC audit and certification would, in essence, involve NRC in the specific litigation of your complaint before DOL and would interject NRC into an evidentiary issue pending before the Secretary of Labor. In light of these circumstances, I believe that it would be inappropriate for NRC to get involved in this matter. Accordingly, I respectfully decline your request to audit and certify your analysis.

Sincerely,

*Original Signed By*  
*James Lieberman*

James Lieberman, Director  
Office of Enforcement

cc: Public Service Electric and Gas Co.  
Winston & Strawn

Distribution  
JLieberman  
JGray  
DCS  
PDR  
Day File

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