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Telecopier No. 301-415-3431

Director of the Office of Enforcement
Mr. James Lieberman
U.S. Nuclear Regulatory Commission
White Flint, Maryland 20555

Dear Mr. Lieberman

I am in receipt of your correspondence and response of June 6, 1995. I am also in receipt of yours dated June 12, 1995, advising me that I will be allowed to attend the enforcement conference scheduled for June 16, 1995. My initial review of yours of June 6, indicates that your response fails to address the substance of several of my questions. I am in the process of preparing a detailed reply. However, I believe the more pressing matter to be the enforcement conference scheduled for this Friday.

I was mystified when I read in your answer to my question number 2 that your Office of Enforcement apparently intends to determine at the hearing whether a violation of NRC regulations and requirements has occurred. As I am sure you know, the NRC Office of Inspector General in its investigation of case number 92-49i has already determined that violations of the NRC regulations have occurred.

As set forth in the C.F.R., the sole purpose of the enforcement conference is to

- (1) discuss the violations or non-conformance, their significance and causes, and the licensee's corrective action;
- (2) determine whether there are any aggravating or mitigating circumstances; and
- (3) obtain other information which will help determine the appropriate enforcement action.

Given this very limited purpose as set forth in the C.F.R., it seems incredible that your office is contemplating making a determination of whether violations have occurred. Given the fact that the Department of Labor, the Administrative Law Judge and the NRC have each

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thoroughly investigated this matter and/or conducted an extensive trial of the case and reached the unanimous conclusion that the terminations were unlawful and in violation of the law, it is truly incredible that your Office of Enforcement may now take the position that it should evaluate, or even consider, whether or not violations have occurred. In fact, any effort on behalf of the Enforcement Department to determine whether or not a violation has occurred in an enforcement conference would clearly exceed the scope of the purpose set forth in 10 C.F.R. Ch. 1, pt. 2, app. C, § iv. That determination has already been made.

I have learned that HL&P intends to "present evidence" by a person by the name of Lynn Culmer to the effect that the process used to terminate Messrs. Lamb and Dean was appropriate and properly applied. Obviously, this argument has no appropriate place in an enforcement conference under the purposes set forth in the C.F.R. This is yet another attempt to justify the exact same process which heretofore has been evaluated by the Department of Labor investigator, the NRC's Office of the Inspector General and the Administrative Law Judge. Each of those entities have considered the exact same arguments and found them to be contrived and incredible. As stated by the DOL investigator, the process was a "futile attempt to disguise his (wrongful) termination through the use of the rating process." Likewise, the NRC's Office of the Inspector General concluded that "the SPP process, used to justify the terminations of Lamb, Dean and Worth, was conducted in a manner prejudicial to these individuals." Finally, the Administrative Law Judge found that the SPP process "was unfairly applied to whistleblowers to achieve pre-determined results." It should be noted that the three investigations or trials referred to above were not conducted in a vacuum, but were conducted by impartial parties who heard and considered evidence on both sides. As stated above, any further explanation of this process is redundant and exceeds the scope of enforcement conferences' stated purpose.

I also have been advised that Mr. Randy Leavitt may be present and may attempt to speak on behalf of HL&P at the conference. As you may know, Mr. Leavitt is one of the team of five attorneys representing HL&P at the trial of this matter before the NRC. Mr. Leavitt obviously has been paid by HL&P to claim that no violation or non-conformance has ever occurred. Accordingly, what benefit could possibly be derived from discussing the violation or non-conformance, its significance and causes, and any corrective actions with Mr. Leavitt? Likewise, Mr. Leavitt was not present and could have absolutely no personal knowledge of any aggravating or mitigating circumstances existent at the time of Messrs. Lamb and Dean's illegal terminations. Furthermore, in light of the fact that HL&P has repeatedly and staunchly lied to the NRC about this entire matter (according to the Department of Labor, the Administrative Law Judge and the NRC Office of Enforcement) it is difficult to conceive of a more aggravating scenario. As of this date, there has still been no good faith effort to resolve the claims of Messrs. Lamb or Dean in the mitigation of this case. It is frankly inconceivable and beyond comprehension that the Office of Enforcement needs to go to the very licensee who has misrepresented, concealed, and lied about this case from its inception to ask what enforcement action might be appropriate. To even suggest that any straight forward, honest, or even marginally objective input could be obtained from such an inquiry is ludicrous.

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Likewise, it is anticipated that Mr. Balcolm may attempt to speak in justification of his illegal termination of my clients. No one who has listened to Mr. Balcolm's contrived explanations or his reasoning, has believed him. I spoke yesterday with the Department of Labor investigator who reiterated to me that he never believed anything that Mr. Balcolm told him about the process. The Administrative Law Judge, who witnessed Mr. Balcolm's demeanor and testimony under cross-examination and direct examination, found him to be an incredible sophistrist. Likewise, the NRC, in its investigation, found that his explanations were incredible and that the terminations were in violation of the law.

Mr. Lieberman, I sincerely hope that my concerns about the NRC's enforcement process will prove to have been unwarranted. Hopefully, the conference will be limited to the scope of its purpose, as set forth in the C.F.R. and appropriate violations and penalties will issue.

Very truly yours,

FIBICH & GARTH, P.C.

By:


S. Tanner Garth

STG/sr

c: Joe Barton
Ivan Sellin
Ron Wyden
John Dingle
Tom Bliley
James Dean
Dave Lamb