

April 5, 1999

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

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 on 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

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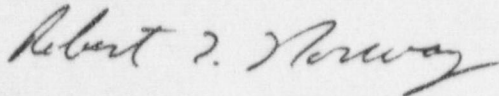
vulnerability of the NRC in being deceived by deliberate acts of misconduct in its regulatory affairs along with the findings of the Office of the Inspectors General in this discrimination case.

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. |

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 1
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.

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
~~_____~~
~~_____~~
~~_____~~

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.

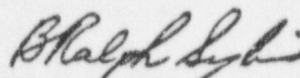
As a result of this change, you were included in the group to be reviewed. As further explanation, your assessment worksheet indicated that your inclusion in the group to be reviewed was due to the decision to rotate ISEG positions.

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**

A/4

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
- Evaluation
- 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

NAVY (NAT EMPLOYEE) ASSESSMENT

WORK SHEET

Branch Manager Rating within group:

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 ENGR (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	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% Quant. 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, C.A, Tech Services,

Branch Manager Rating within group
6 8

Is position being retained ☒ Yes ☐ No
Branch Manager recommendation (check one)
☒ Place in Transition Program
☐ Retain in current assignment position
☐ Retain within another branch than below

EMPLOYEE NAME: [REDACTED] JOB TITLE: ENGINEER 3 (mechanical)
FRANCIS, [REDACTED] MANAGER: [REDACTED]
PERFORMANCE EVALUATION LEVEL: Exceeds Competent (III) N/A (currently being completed)

Assign the employee based on performance 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.

PERFORMANCE OVERVIEW	5	4	3	2	1
a) RESULTS ACHIEVED			3.0		
b) SKILL ASSESSMENT		4.0	3.0	2.0	1.0
2) COMPARATIVE FLEXIBILITY: A rating capability to adapt to new, different or changing requirements. Capable of fulfilling multiple responsibilities.		4.0	3.0	2.0	1.0
3) COMPARATIVE POTENTIAL: Rating on the experience and capabilities willingness to take on additional responsibility to fulfill immediate business needs.		4.0	3.0	2.0	1.0

TOTAL OF RATINGS: 14.3 — IS THIS TOTAL RATING COMPLETE?

PLEASE PROVIDE ADDITIONAL COMMENTS. PLEASE PRINT, MUST BE FULLY

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

LIMITATIONS: Rated as lower 40% due to only reason for submitted (work skills
with others sometimes difficult)
TO Be Reviewed as a ROTATIONAL POSITION WITH ANOTHER
Generation of Engineering Position only reason for
Submitted to the Board Review Process

Supervisor Engineering, Mechanical Engineering, I & C, C&I, Tech Services

NUCLEAR SURV 1994 (ALJ Cop2)
 1994 MANAGEMENT EMPLOYEE ASSESSMENT

WORESTON

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

JOB TITLE: ENGINEER 3 (mechanical)

BRANCH: NUCLEAR ENGR (ISEG)

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.

1) CURRENT OVERALL PERFORMANCE

a) RESULTS ACHIEVED	5	4	3 ^{3.0}	2	1
b) SKILL ASSESSMENT	5	4 (3.8)	3	2	1
2) COMPARATIVE FLEXIBILITY: A ready capability to adapt to new, different or changing requirements. Capable of fulfilling multiple responsibilities.	5	4 (4.0)	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 (3.5)	3	2	1

TOTAL OF RATINGS: 14.3

PLEASE TOTAL RATINGS & COMPUTE

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 received 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 Submittal to the Board Review Process

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

000501

ISCG ROTATIONAL POSITIONAL

JOB TITLE: ENGINEER 3 (mechanical)

MANAGER: _____

Employ Contract (III)

(currently being completed)

NF3

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

ISCG ROTATIONAL POSITIONAL

JOB TITLE: ENGINEER 3 (mechanical)

MANAGER: J. SPANAGAS

Employ Contract (III)

(currently being completed)

NF3

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

May 10, 1999
DATED: _____

REQUEST FOR COMMENTS ON 10 CFR 2.206 PETITION , NINE MILE POINT NUCLEAR
STATION, UNIT NOS. 1 AND 2 (TAC NOS. MA5378 AND MA5379)

Docket File

PUBLIC

PDI-1 Reading

J. Zwolinski/S. Black

S. Bajwa

S. Little

D. Hood

OGC

ACRS

A. Blough, Region I

J. Lieberman

R. Subbaratnam

S. Rothstein

M. Stein

cc: Plant Service list

May 10, 1999

J. Mueller

- 2 -

If you have questions regarding this letter, contact me by phone at (301) 415-3049 or by electronic mail at dsh@nrc.gov.

Sincerely,

ORIGINAL SIGNED BY:

Darl S. Hood, Sr. Project Manager, Section 1
Project Directorate I
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket Nos. 50-220 and 50-410

Enclosure:

Letter to EDO dated April 5, 1999

cc w/encl: See next page

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