



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
101 MARIETTA STREET, N.W.
ATLANTA, GEORGIA 30323

(REC'D DEC 30)

REC'D JAN 03 (S)

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MEMORANDUM FOR: Bruno Uryc, Investigation/Allegation Coordinator

THRU: *Bru* ^{18/31} Alan R. Herdt, Chief, Engineering Branch
Lev T. E. Conlon, Chief, Plant Systems Section, PSS

FROM: John R. Harris, Civil Construction Inspector, PSS

SUBJECT: ALLEGED BACKFILL DEFICIENCIES
CASE NO: RII-85-A-0016

The enclosed inspection report (Nos. 424-85/53 and 425/85-38) discusses investigation of concerns expressed in the above case number. If you have any further questions regarding these concerns please contact me at extension 5576.

John R. Harris
John R. Harris

Enclosure:
Report Nos. 424/85-53 and 425/85-38

cc: A. Herdt
T. Conlon
J. " Harris

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PDR FOIA
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A-10

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matters of:

STEVE McNALLY)	Case No. 85-ERA-27
BILLY WEATHERFORD)	Case No. 85-ERA-29
JAMES REGISTER)	Case No. 85-ERA-30
SUSAN REGISTER)	Case No. 85-ERA-31
LESLIE PRICE)	Case No. 85-ERA-32
Plaintiffs,)	
v.)	
GEORGIA POWER COMPANY)	
Respondent.)	

BRIEF IN SUPPORT OF
GOERGIA POWER COMPANY'S PETITION TO THIS COURT
TO REQUEST A SUPPLEMENTAL AFFIDAVIT FROM
NRC INVESTIGATOR BRUNO URHLICH

Defendant has petitioned this Court to request a Supplemental Affidavit from NRC Investigator Urhlich because of the apparent mischaracterizations by Plaintiffs Susan Tiller Register and Leslie Price in their testimony before this Court on August 20, 1985. Their testimony is contained

in pages 40-46, 60-61, and 71 of the record of hearing before this Court.

Register and Price have used this testimony in an effort to toll the thirty (30) day limitation on filing complaints with the Department of Labor, and the other Plaintiffs to this action have used the confusion that Register and Price claim to bootstrap their arguments that the entire NRC Form-3 is unclear and misleading. However, the case support offered for this proposition is as misleading as the testimony offered by Register and Price.

The sole issue before this Court is whether Plaintiffs submitted complaints to the Department of Labor within thirty (30) days of the alleged acts of discrimination and, if not, are there circumstances of fact or law to allow the tolling of the thirty (30) day period. Plaintiffs cite the decision of In the Matter of Duke Power Co., 19 NRC 1418 (1984) to show that one judge found the overall NRC notice to be somewhat legalistic, but he was not specifically addressing the clarity, vel non, of the thirty (30) day provision in the notice. The issue in this case is not the clarity of the entire NRC Form-3, but whether Plaintiffs had actual or constructive notice of the thirty (30) day limitation. Since the required notices were posted prominently in areas where the Plaintiffs could view them on a daily basis, in the absence of any evidence to suggest that the thirty

(30) day provision itself is unclear, Plaintiffs should not be allowed to proceed with the instant act.

Similarly, in arguing that Plaintiffs' contacts with Mr. Urhlich support the principle of equitable tolling, Plaintiffs presuppose the credibility of the testimony of Ms. Price and Ms. Register. Their citation to Dartey v. Zach Company, 82-ERA-2, 5 and 6, and Thomas v. E.I. DuPont Nemours, 81 TSCA 1, 4 and 5 has limited application under the factual scenario they present. But if the facts regarding contact with the NRC are different from those presented by the Plaintiffs, then there is absolutely no legal justification for Plaintiffs' claims, and the cases they cite will be rendered wholly inapposite. Even under the facts alleged by Plaintiffs, their examples of equitable tolling offer little support because none of them include facts where notices of rights under the pertinent statute were prominently displayed by the employer and the employees had opportunity to learn of their rights and obligations.

Plaintiffs have accused the NRC of lulling them into inaction because of the words of Bruno Urhlich, and flatly stated they were "actively misled" by the NRC. Before this Court accepts this harsh premise, it should conduct appropriate inquiry into the issue of NRC conduct. All of the cases cited at pages 10-11 of Plaintiffs' Brief assume a factual finding that Plaintiffs were misled by the NRC. If

this Court receives an Affidavit from the NRC that presents conclusive contrary evidence,^{1/} then Plaintiffs will be left without case support for their proposition and jurisdiction over this matter should be properly denied.

Defendant submits that the information Mr. Urhlich can provide would be directly relevant to the credibility of the Plaintiffs, would show that Plaintiffs' complaints of retaliation for engaging in protected activity are wholly misplaced, and would provide some insight into the relationship between NRC and Department of Labor proceedings. The Memorandum of Understanding between these two agencies states that "[e]ach agency agrees to share and promote access to all information it obtains concerning a particular allegation..." Defendant is simply asking for the fulfillment of this commitment.

A Supplemental Affidavit from Bruno Urhlich is of fundamental importance to the determination of the issues

1/ To the extent that an affidavit from the NRC may present a credibility issue, reference to labor arbitrations where discharged employees dispute their supervisors' versions of events may be helpful. As summarized by Arbitrator Roumell,

in resolving credibility resolutions between an employee ... and the employee's accuser, weight may be given to the fact that the accused employee has an incentive for denying the charges against her and that she stands immediately to lose or gain in the case ... This recognition is especially cogent when the accusers have nothing to gain by their adverse testimony or when there is no demonstration of ill-will toward the accused.

before this Court and, in keeping with the spirit and intent of the Memorandum between these agencies, and as allowed by procedures under the Administrative Procedure Act, Defendant hereby petitions this Court to request the submission of a Supplemental Affidavit from NRC Investigator Bruno Urhlich on the issues as stated herein.

Respectfully submitted,

Charles W. Whitney

Jesse P. Schaudies, Jr.
Attorneys for Defendant
Georgia Power Company

TROUTMAN, SANDERS, LOCKERMAN
& ASHMORE
1400 Candler Building
Atlanta, Georgia 30043
(404) 658-8000

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DEPARTMENT OF LABOR
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GEORGIA POWER COMPANY'S PETITION TO THIS COURT
TO REQUEST A SUPPLEMENTAL AFFIDAVIT FROM
NRC INVESTIGATOR BRUNO URHLICH

COMES NOW DEFENDANT GEORGIA POWER COMPANY and petitions
this Court to request a Supplemental Affidavit in this
action from NRC Investigator Bruno Urhlich. In testimony
before this Court on August 20, 1985, Plaintiffs Susan
Register and Leslie Price made certain allegations with
regard to conversations and contact they had with Mr. Urhlich.
Plaintiffs have placed primary emphasis upon their character-
ization of Mr. Urhlich's actions and conversations in their

effort to toll the statutory thirty (30) day provision for reporting to the Department of Labor allegedly illegal activity under the Energy Reorganization Act.

This was a new and unexpected issue at the time of the hearing and in subsequent conversations with NRC officials, Defendant has learned that Plaintiffs have greatly mischaracterized Mr. Urhlich's statements and actions. Plaintiffs alleged in their post-hearing brief that they were "actively misled" by the NRC, but it appears from conversation with the NRC that Plaintiffs have actively misled this Court in their characterization of Mr. Urhlich's conduct and statements. Defendant has been informed by NRC officials that Mr. Urhlich would be permitted to give to this Court a Supplemental Affidavit on these issues in response to a direct request from the Administrative Law Judge.

Plaintiffs have placed the facts surrounding Mr. Urhlich's actions and conversations in a pivotal position in this case. Defendant submits it is incumbent upon this Court to invoke its powers under the Administrative Procedure Act and the "Memorandum of Understanding Between the NRC and the Department of Labor" by requesting a Supplemental Affidavit from NRC Investigator Bruno Urhlich on the issue of his conversations and contacts with Plaintiffs Susan Register and Leslie Price and any actions taken by him as a result of those conversations and contacts. For this reason, and the

reasons stated in Defendant's "BRIEF IN SUPPORT OF GEORGIA POWER COMPANY'S PETITION TO THIS COURT TO REQUEST A SUPPLEMENTAL AFFIDAVIT FROM NRC INVESTIGATOR BRUNO URHLICH", Defendant hereby petitions this Court to request the necessary Supplemental Affidavit by contacting NRC Regional Counsel at the following address:

Mr. Bradley Jones
USNRC Region II
Suite 3100
101 Marietta Street
Atlanta, Georgia 30303

Respectfully submitted,

Charles W. Whitney

Jesse P. Schaudies, Jr.
Attorneys for Defendant
Georgia Power Company

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Atlanta, Georgia 30043
(404) 658-8000

Vogtle inspectors harassed and intimidated

By Bob Drennan
Staff Writer

The head of the Nuclear Regulatory Commission's Atlanta office said Wednesday that he was embarrassed at the length of time it was taking his office to reach an enforcement decision concerning the intimidation and harassment of quality control inspectors at the Vogtle nuclear power plant.

Nelson Grace, administrator of the Atlanta Regional Office of the NRC, said that the problems at Vogtle had been corrected, however, and vehemently denied charges that his staff is allowing nuclear power plants to be built in the Southeast without proper regard for safety.

Meanwhile, a Washington-based public interest organization charged Wednesday that inspectors at Vogtle are continuing to be harassed and intimidated. The group, the Government Accountability Project, has opened an Augusta office to investigate allegations that subcontractors are punishing workers who report construction or inspection practices that could be compromising Vogtle's safety.

The nuclear plant is being built near Augusta. Its current projected cost is \$8.4 billion.

Since last November, the Government Accountability Project has interviewed more than 80 workers at Plant Vogtle who have charged that quality control inspectors who cite safety concerns at the plant often end up being fired, demoted or transferred, according to Billie Garde, citizen clinic director for the Project.

She said that instead of responding to the complaints, the NRC has ignored them. Ms. Garde charged that the NRC's Atlanta office has responded to worker complaints about nuclear power plant construction practices by contacting the utilities building the plants, instead of initiating NRC investigations that might result in punitive measures being taken against the utilities.

"We do not call the utility," said Grace. "I have never done that, and if they can find evidence

that I have, they'd better come forward with it," he added.

Grace became regional administrator last spring, replacing James P. O'Reilly, who joined Georgia Power as its senior vice president in charge of nuclear operations.

Grace and members of his staff met Wednesday with officials from the Georgia Power Co. concerning an NRC investigation into allegations that construction supervisors harassed and intimidated quality control inspectors at Vogtle, in an attempt to manipulate them.

The investigation was begun in 1983 and completed during the summer of 1984, with NRC investigators reaching the conclusion that employees of Pullman Power Products Inc., which is installing pipes at Vogtle, were intimidating and harassing some of their own employees, who were responsible for quality and safety inspections at the plant.

Pullman transferred its project manager to a new assignment, and the NRC investigation indicated that the action was sufficient to correct the problem, Grace said.

But the NRC has yet to decide whether to take enforcement action against Georgia Power as a result of the situation.

"The problem's been fixed," Grace said. "For some reason, enforcement action was delayed until this spring. We could have followed up sooner," he said. "The timeliness of our enforcement action is embarrassing."

Georgia Power officials have denied that harassment ever took place at Vogtle, a contention company officials repeated Wednesday before the NRC.

Ms. Garde said the Government Accountability Project, which is 10 years old, has reviewed the way in which each of the NRC's five regional offices responds to workers' concerns about nuclear power plant construction. The response from Region II's office, the Atlanta office that administers NRC functions in the Southeast, has been "absolutely terrible," she said.

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404-724-4900

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Plant Vogtle, Georgia Power

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Nuclear inspection system a guarantee of harassment

Why is it so important that the construction of nuclear power plants be held to extremely strict standards? Because the nature of the atomic energy heat source used in the plants means the consequences of sloppy work could be catastrophic.

How does one ensure that the strict standards are met? Not by taking the builder's word for it, or even the owning utility's, but by watching the construction like a hawk and inspecting each part of the work as it is done.

And how does one ensure that the inspectors themselves have the independence and opportunity to do their vital job correctly? Most of us would say by using people from an appropriate regulatory agency, or at least by hiring reputable and qualified people who aren't connected to any of the parties involved, right?

Incredibly, the Nuclear Regulatory Commission and the American nuclear power industry don't see it that way. They think it's perfectly all right to use inspectors who are employees of the very company whose work they are supposed to be inspecting — and blowing the whistle on if they find mistakes or shoddy work.

Not many people have the nerve to bite the hand that feeds them like that, even if the employing company behaves impeccably. In the real world it's even worse, as NRC investigators have found out at Georgia Power's Plant Vogtle construction site. There, inspectors working for Pullman Power Products Inc. charge, construction bosses — also employees of Pullman — have threatened their jobs and salaries if they did their job too well and slowed down the project.

We're not surprised at the allegations that construction people under tremendous pressure to meet hurried schedules might be tempted to pass on some of that pressure to anyone who gets in their way over such minor details as safety.

What we are surprised at is a system in which the inspectors — the people whose first and only interest is supposed to be safeguarding the public — are employed by the very people they are supposed to be inspecting. How can they serve their employers and the public at the same time, when the two interests directly conflict any time there is a question about quality?

The NRC is going to have to do something about the specific allegations of harassment at the Plant Vogtle site, and Georgia Power ought to do something other than try to deny that it has occurs. But more important than incidents at one plant is the foolishness of perpetuating an arrangement that virtually guarantees harassment — when the inspectors and the inspectee are paid with the same checks. That is a problem that could be resolved by the exertion of a little common sense and a modicum of regulatory authority, and we'd like to see it done fast.

whistleblowers will attend the Augusta press conference.

FOR RELEASE WEDNESDAY, SEPTEMBER 25
Press contact: Tim Johnson 404-659-5675 (day) 525-6400 (evening)
Augusta GAP, 303 Tenth St., Augusta, GA 30901 404-724-4900

WORKERS AT PLANT VOGTLE DISCLOSE SAFETY VIOLATIONS

In a no-holds-barred effort to complete Plant Vogtle, Georgia Power officials are covering up serious safety problems at the nuclear facility and harass, intimidate and fire workers who refuse to go along, according to former workers at the construction site. The Government Accountability Project (GAP) has opened an office in Augusta to represent the whistleblowers and investigate the safety problems. GAP is a D.C.-based, nonprofit law firm established to support workers' rights.

This and other information will be described at an Atlanta press conference at 9:30 a.m. Wednesday morning, September 25 in the Rotunda of the State Capitol. The press conference is cosponsored by Educational Campaign for a Prosperous Georgia (an intervenor against the plant), the ACLU of Georgia (which is representing the workers before the U.S. Labor Department) and GAP. Another press conference will be held at the new GAP office in Augusta at 3:00 Wednesday afternoon.

According to the whistleblowers, a common attitude among workers at the plant is that, while they are usually pronuclear, they would not feel safe living near Plant Vogtle if it operates as it is now being built.

"The disclosures concerning safety problems, coverups and harassment of workers who are trying to do their jobs are shocking," said Tim Johnson, Executive Director of Educational Campaign for a Prosperous Georgia, a nonprofit consumers' group with more than 1,500 members statewide. "It is becoming clearer and clearer that not only is Plant Vogtle an economic disaster we cannot afford, but it is being built unsafely." ECPG has called for cancellation of the project.

"The Nuclear Regulatory Commission should investigate the workers' complaints promptly," said Atlanta ACLU attorney Laurie Fowler, who is representing the whistleblowers. "And the urinalysis program which is being used to harass workers who make safety complaints should be abandoned."

Also attending the Atlanta press conference will be Billie Gard of the D.C. GAP office and Georgia ACLU Executive Director Gene Guerrero. Plant Vogtle whistleblowers will attend the Augusta press conference.

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