

September 3, 1999

FOR: The Commissioners

FROM: William D. Travers /s/
Executive Director for Operations

SUBJECT: MILLSTONE INDEPENDENT REVIEW TEAM MARCH 12, 1999, REPORT ON ALLEGATIONS OF DISCRIMINATION IN NRC OFFICE OF INVESTIGATION CASES NDA: 1-96-002, 1-96-007, AND 1-97-007, AND ASSOCIATED LESSONS LEARNED--RECOMMENDATION NO. 6

PURPOSE:

This paper presents the staff's recommendations regarding the retention of certain licensee records related to reorganization or downsizing efforts.

BACKGROUND:

In a staff requirements memorandum (SRM) dated April 6, 1999, the Commission addressed several generic recommendations of the Millstone Independent Review Team (MIRT) report. Regarding Recommendation No. 6, the Commission noted that, in anticipating electric industry deregulation/downsizing, the agency should endeavor to ensure that the utilities retain all relevant documentary information regarding all those whose positions are affected by the reorganization/downsizing. Specifically, the Commission directed the staff to evaluate whether to require retention of licensee records relating to reorganization/downsizing efforts with full consideration of the usefulness of such records and resource implications. The SRM further directed that the staff should consider methods for achieving a better documented record.

DISCUSSION:

At this time, NRC has no requirements for licensees to retain records for positions eliminated as a result of a reorganization or downsizing. Licensees are required to provide adequate staffing levels to operate the facility in a safe manner consistent with the regulations and technical specifications for the facility. Staffing levels in the plant control room and training and qualifications requirements for nuclear power plant personnel are stated in [10 CFR 50.54\(m\)](#), "Conditions of Licenses," and [10 CFR 50.120](#), "Training and Qualification of Nuclear Power Plant Personnel," respectively. For plant personnel, discriminatory acts, including discharge from duties and other actions that relate to compensation, terms, conditions, or privileges of employment, are covered under [10 CFR 50.7](#), "Employee protection."

The NRC has encountered difficulty, at times, in resolving discrimination allegations filed under [10 CFR 50.7](#). MIRT Recommendation No. 6 specifically relates to retention of relevant documentary information regarding those employees whose positions are affected as a result of reorganization or downsizing. The staff has traditionally considered selection and retention of personnel as matters within the purview of the licensee and has deferred to licensees in these areas. However, in light of discrimination issues raised in the MIRT report, the Commission directed the staff to evaluate whether to require retention of licensee records related to reorganization and downsizing efforts.

The staff review of previous discrimination complaints stemming from larger layoffs or downsizing efforts identified six sites since 1993 at which larger layoffs resulted in two or more discrimination complaints. For the purpose of this review, the staff defined a larger layoff as one in which more than 10 individuals were discharged. From these historical data, the staff would expect, on average, one larger layoff or reorganization per year resulting in a discrimination complaint filed under [10 CFR 50.7](#) related to protected activity. In order to make appropriate recommendations, the staff considered the following options.

Option 1: No action. No new requirements would be added. The staff would continue to work within the existing regulatory framework in resolving issues that result from reorganization or downsizing. Upon receipt of an allegation of discrimination, OI would consider the need to promptly issue a subpoena to capture the relevant records.

Advantages:

- (i) No additional burden to the licensees or the NRC

Disadvantages:

- (i) NRC may encounter difficulties in the future in investigating certain types of discrimination allegations filed under [10 CFR 50.7](#), where records may assist in their resolution.

Option 2: Require licensees to create and retain records related to large-scale reorganization or downsizing efforts. This would be done through rulemaking efforts.

Advantages:

- (i) Records would be available to the NRC, if needed to investigate allegations filed under [10 CFR 50.7](#) of discrimination as a result of

downsizing or layoffs involving groups of employees.

Disadvantages:

- (i) Would create substantial burden for licensees to develop new procedures and new requirements for staff training and recordkeeping.
- (ii) Would create additional one time burden for the NRC staff to amend the regulations. This burden would be approximately 0.75 FTE.

Option 3: Require licensees to retain for a period of 1 year records they may have already created as part of any large-scale reorganization or downsizing effort. This option would specifically state that licensees are not required to create any new records to satisfy this new requirement.

Advantages:

- (i) Might assist the NRC in investigating certain discrimination allegations filed under 10 CFR 50.7 as a result of downsizing or layoffs involving groups of employees.
- (ii) Might assist licensees in responding to discrimination charges.

Disadvantages:

- (i) Licensees might consider the requirement additional burden although no new records would be created.
- (ii) Would create a one-time burden of approximately 0.75 FTE for the NRC to amend the regulations.

Option 4: Encourage licensees to document and retain all records relevant to any large scale reorganization or downsizing effort. Under this option, the NRC would issue an Information Notice or other generic communication to remind licensees of the advantages of retaining such records for the disposition of discrimination allegations.

Advantages:

- (i) Might assist the NRC in investigations of certain discrimination allegations filed under 10 CFR 50.7 as a result of downsizing or layoffs involving groups of employees.
- (ii) Might assist licensees in responding to discrimination charges.
- (iii) Would create minimal burden, if any, for the licensees.

Disadvantages:

- (i) Would create a one-time burden of approximately 0.2 FTE for the NRC to prepare an Information Notice or other generic communication.

For Option 2, regulations would be amended to require licensees to create and retain all records related to any reorganization or downsizing. These records may be useful to both the licensees and the NRC in managing of discrimination allegations filed under 10 CFR 50.7. The burden to the NRC would be the initial cost of amending regulations to specify the types of records to be created and the requirements for retaining the new records. There would be additional burden on the licensees to develop procedures to create new records consistent with the regulations, to make them available to other parties, if required, and to bear the cost of retaining these records.

For Option 3, licensees would not be required to create any new records to satisfy the amended regulations. The cost of retaining these records and making them available to other parties would be the same as for Option 2. The assumption for Option 3 is that in cases of any large-scale reorganization or downsizing, licensees would normally follow their personnel procedures and processes for eliminating positions and filling new positions. In doing this, it is assumed that licensees will create some records for employees whose positions are affected by the reorganization. For this option, licensees would be required to retain any such records that they have already created. These records most likely would be in a different format or level of detail for different licensees. However, the NRC staff believes that these records, although different, could prove to be useful in resolving certain discrimination allegations filed in accordance with 10 CFR 50.7. A retention period of 1 year was chosen because the NRC staff believes that this period would provide sufficient time to request such records if they are needed to resolve discrimination allegations.

For Options 2 and 3, licensees would be required to add new recordkeeping requirements. The one-time implementation costs to licensees are estimated to be about 70 hours per reactor for writing procedures and informing responsible managers of the procedures' contents. This is greater than the value of about 40 hours [NUREG/CR-4627, Rev.1," Generic Cost Estimates"] that is usually assumed to initiate, review, and approve a simple administrative

procedure because of the sensitivity of the issue. The initial cost to the industry is expected to be \$546,000.00 [70 hrs x \$75 per hr x 104 (number of reactors)]. The cost to the NRC to amend regulations for this administrative change is expected to be 0.75 FTE or \$101,250.00. The annual costs for the NRC and the industry are expected to be small. For Option 1, there would not be any change to the regulations and the NRC would remain passive on the issue. Under Option 4, the staff believes that the results can be accomplished by "encouraging" the utilities to follow the sound business/personnel procedures of documenting and retaining such records. This would be done through an Information Notice or other generic communication.

The staff considered the various options within the framework of the Planning, Budgeting, and Performance Management (PBPM) Process. This included consideration of the following four factors.

- (1) **Maintain Safety.** The proposed changes to the regulations outlined under Options 2 and 3 relate to retention of records created as part of a large layoff and/or reorganization. Such records may assist in proving a discrimination case, and therefore the resulting action would assist in maintaining safety by deterring actions that impede maintaining a safety conscious work environment. Option 4 would have a similar affect.
- (2) **Enhance Public Confidence.** Under Options 2, 3, and 4, there is some potential for an increase in public confidence because licensees will be required or encouraged to retain all relevant documentary information on positions that are affected in the reorganization or downsizing. This information could be useful, but the overall benefit to the NRC and the licensee will be minimal since it is expected that there may be only one such case each year in which the NRC may have difficulty in evaluating the allegation. Under Option 1, however, there is the potential for negative impact on public confidence if the public believes that the NRC's conclusion for a discrimination allegation is affected because no licensee records are available.
- (3) **Reduce Unnecessary Regulatory Burden.** The amended regulations under both Options 2 and 3 will increase recordkeeping burden for the licensees.
- (4) **Increase Efficiency and Effectiveness.** While not many cases are expected, a considerable effort is expended to resolve these cases. Having the information and records available should improve the effectiveness of the OI/OE process. However, since the number of cases is expected to be no more than about one every year, the overall benefit is minimal to the NRC and less to the licensees.

On the basis of the preceding discussion, the staff believes that, although the cost of adding these records requirements may not be substantial, the benefits could be very limited. In addition, adding new recordkeeping requirements would clearly be a backfit for each facility as described under 10 CFR 50.109, and a backfit analysis would have to be prepared. The staff believes that it would be difficult to justify imposition of new requirements under both Options 2 and 3 when a backfit regulatory analysis pursuant to the requirements of 10 CFR 50.109(c) is completed. Under Option 4, issuance of an Information Notice or other generic communication could enhance public confidence in our investigatory/regulatory program without any undue burden to licensees. Therefore, the staff recommends Option 4 as the preferred approach.

COORDINATION:

OE and OI have reviewed this paper and concurred in it. OGC has reviewed this paper and has no legal objection to its contents. The OCIO has reviewed this paper for information technology and information management implications and concurs in it. The OCFO has reviewed this paper for resource implications and has no objection to its contents.

RECOMMENDATION:

That the Commission approve the staff's proposed approach, that of not adding any new requirements for licensees but to encourage licensees to document and retain all records relevant to any large-scale reorganization or downsizing effort (Option 4).

William D. Travers
Executive Director for Operations

CONTACT: Raj Auluck NRR/DRIP/RGEB
(301) 415-1025