

October 13, 1999

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: Annette Vietti-Cook, Secretary /s/

SUBJECT: STAFF REQUIREMENTS - SECY-99-223 -- 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

The Commission has disapproved the staff's recommendation (Option 4) to encourage licensees to document and retain records relevant to any large scale reorganization or downsizing effort.

The Office of Investigations (OI) should consider this matter further as it investigates future discrimination cases. If OI believes that licensees are destroying or failing to generate records that are necessary for the NRC to determine whether a licensee has disparately treated whistleblowers, OI should immediately inform the Commission of this matter. In that event, OI should work with the Office of the General Counsel to determine the legal and policy implications of requiring records to be "documented and retained."

The staff noted that options 2 and 3 would be a backfit pursuant to [10 CFR 50.109](#). This conclusion is inconsistent with Commission policy and should not prevent the staff from pursuing the issue of records retention. As a policy matter, pure record-keeping and reporting requirements do not need to meet the requirements of the backfit rule to be justified. The backfit rule would require a showing of a "substantial increase in safety" as a result of the new requirement to be imposed. The test for record keeping is different. Specifically, such rules are subject to the balancing in [10 CFR § 50.54\(f\)](#), that "the burden to be imposed on respondents is justified in view of the potential safety significance of the issue to be addressed in the requested information." The Commission recently reiterated this policy in the Statement of Considerations on a final rule amending [10 CFR Part 72](#) and in the statement of considerations for the proposed rules on reporting of reactor events. See 64 Fed Reg 33,178; 33,181 (1999) and 64 Fed Reg 36291, 36303 (July 6, 1999).

cc: Chairman Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
CIO
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Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
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