

24 January, 2001

Freedom of Information Act and Privacy Officer
US Nuclear Regulatory Commission
Washington, DC 20555

Privacy Act Correction

Dear Sir

I file this request in accordance with 10 CFR 9.53 to correct fraudulent information pertaining to my Department of Labor discrimination complaint, specifically 95-ERA-005, which the NRC had placed into public record. The information is contained in the Niagara Mohawk Power Corporation's Q file for the Nine Mile Point Nuclear Power Station and pertains to the associated May 10, 1996 predecisional enforcement conference for that discrimination complaint. (Ref EA 96-116)

This false information has been damaging to my good name and character, a condition that has adversely affected my ability to retain employment in my profession, the nuclear power industry. I had informed both the Niagara Mohawk Power Corporation and the Nuclear Regulatory Commission to rectify the false information and neither has complied with my request. I therefore exercise my rights under the Freedom of Information Act and 10 CFR 9.53 to have the fraudulent information corrected and ensure that all members of the public that had been exposed to the fraudulent information are informed of the factual information pertaining to my discrimination case.

Attached please find the proof of my identification, required for this request.

Disputed Information

The specific information is contained in the Niagara Mohawk Presentation, dated May 10, 1996. The Agenda page lists the disputed page as the "Discussion of Findings of the Administrative Law Judge". The Page itself is titled as the "Findings of the Administrative Law Judge".

The fraudulent statements are as follows:

"Mr. Norway was not threatened with termination by Mr. Abbott."

"Mr. Norway's termination process was non-discriminatory."

As you can see, these phrases were presented as if they were the findings of the ALJ in the discrimination case. However, the ALJ findings specifically stated that the **Termination was Discriminatory**. In addition, the following paragraph was the judge's findings pertaining to the stated threat.

"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."

A discussion between my lawyer and the legal counsel for the Niagara Mohawk Power Corporation did confirmed that these phrases are improperly presented in their Handout. They admit that the phrases are their opinion of these issues and where they directly disagree with the specific findings made by the ALJ. Never the less, anyone that reads this page would incorrectly interpret these phrases as being part of the ALJ findings.

If you would again reference the AGENDA page, you would confirm that the NMPC presenters of this section are C D Terry and R B Abbott. This means that Mr. Abbott, who was directly associated with the threat of termination, had placed his biased opinion in a manner that would be interpreted as being the findings of the ALJ. It also means that C D Terry, who was the former VP of Nuclear Engineering found primarily responsible for the discrimination in the NRC Severity Level II Violation, personally placed the false statement into permanent public record, that the ALJ found that the termination was non-discriminatory. The false statements inaccurately present their position as being confirmed by the ALJ.

I consider this a childish act to manufacture false physical evidence that they won a favorable decision the discrimination case and a blatant attempt to damage my good name and reputation. After all, this handout was specifically created to be placed into public record.

In accordance with 10CFR 9.19 "Segregation of exempt information and deletion of identifying details", (b)(2) the NRC shall segregate-- "Factual information from advice, opinions, and recommendations in predecisional records unless the information is inextricably intertwined, or is contained in drafts, legal work products, and records covered by the lawyer-client privilege, or is otherwise exempt from disclosure."

Apparently there is total agreement between the NRC, the licensee and myself that these phrases are not the findings of the ALJ nor is it the licensee's senior nuclear management's 'opinion' that these are the findings of the ALJ in this discrimination case. These are the personal opinions of the individuals accountable for the inappropriate action (and of the licensee) and where they personally disagree with the findings of the ALJ. Compliance to 10CFR9.19(b)(2) and the NRC Enforcement Manual requires segregation between personal opinion and factual information.

Since an Administrative Law Judge had made a specific Finding upon these issues, the only opinion that can be presented as a **fact** is the Administrative Law Judge's Opinion. Since the Title of the page and index does not state that these are the opinions of the licensee and the title is "Findings of the Administrative Law Judge"; these statements must be presented in record as the ALJ Findings.

False Handout Statement of the Origin of the 40% Alteration

On page 7 of the licensee's Handout, presented by Carl Terry, the VP of Nuclear Engineering and the individual identified as being responsible for the discrimination in the subsequent Notice of Violation, is the statement "Supervisor submitted Board evaluation forms - noting Norway ranked in lower 40%."

Please note that this statement is presented under the heading of "Facts of the Case". It is important to note that this is not presented as an opinion or a disagreement, it is listed as a fact. This statement refers to the downsizing worksheet, which the licensee had submitted to the NRC during the Enforcement Conference and this statement was used for the purpose of presenting that worksheet to the NRC for the specific purpose of placing that worksheet into public record.

Specifically, this handout's statement identifies the following statement on that downsizing worksheet, which is also supported by the discussion contained in the transcripts of the enforcement conference. "Rated in the lower 40% Quantif is the only reason for submittal..." It was the licensee's opinion that my former Supervisor, the former Manager of the Nine Mile Point Independent Safety Engineering Group, had written that statement onto that downsizing worksheet.

However, the Administrative Law Judge had made specific Findings upon those allegations. The Administrative Law Judge found that the worksheet "showing that the Complainant is in the lower 40% for 1994 is of no value because it lacks consistency with other evidence". The Administrative Law Judge found that the worksheet's 40% statement was in "different handwriting". The Administrative Law Judge found that after the worksheet had been altered to add this 40% statement and "that there is no indication that this document was communicated to the complainant or to his immediate supervisor".

The FACTS IN THE CASE cannot be that the "Supervisor submitted Board evaluation forms - noting Norway ranked in lower 40%". The FACTS IN THE CASE are that the Administrative Law Judge found that the licensee had altered that record then accused the former Manager of the Independent Safety Engineering Group of writing their alteration.

If these were the licensee's opinion, they should have been presented it as their opinion. If the licensee objected to the ALJ Findings on these issues, their objections should have been stated and documented during the enforcement conference. The difference is clear. The licensee deliberately and falsely represented the discrimination case into public record.

The licensee, their chief nuclear officer or their VP of Nuclear Engineering had no authority to list their opinion as a statement of fact when there was standing and opposing ALJ Finding upon that issue. Since there is no licensee objections to these ALJ Findings and that the ALJ Findings are not specifically identified in the handout and because the associated downsizing worksheet had been passed to the NRC and into public record, the handout statements constitute deliberately false statements.

Since in his December 19, 1996 Reply to the NOV, Mr. Silvia had stated "For the reasons stated in the May 10, 1996 predecisional enforcement conference..." and that the transcripts and handout contain deliberately false statements pertaining to the 'writer' of the 40% statement, Mr. Silvia has endorsed these false statements in his final response to the NOV. Since his final response was submitted under oath and affirmation, it is my opinion that Mr. Silvia has committed perjury in his NOV response.

My opinion is that C D Terry wrote the 40% statement on the downsizing document. It was Mr. Terry who had presented that document to the NRC during the enforcement conference. It is Mr. Terry who is documented in the transcripts as making the claim that the former Manager of ISEG had written this alteration. That claim makes the altered document a deliberate act of falsification. Since their final response to the NOV endorses this deliberate act of falsification, Mr. Silvia has committed perjury.

Omission of Relevant Information

In accordance with 5 USC 552a(d)(2)(B)(i), I require that the NRC correct information that is not accurate or complete pertaining to my discrimination case.

The Licensee's Handout is neither accurate not complete as it pertains to the summary of the Administrative Law Judge's Findings and an accurate accounting of the factual information and evidence

of the discrimination case. This is especially true in regards with a document that the NRC had decided to place and maintain in public record. The controversial downsizing document that the Administrative Law Judge had determined to be of no value because it is not consistent with two licensee's signed letters and that it had been altered.

Specifically, the predecisional information provided in public record for this enforcement conference neither accurate nor complete in a manner that damages my good name, reputation and character. The handout lacks the following pertinent information:

- The Administrative Law Judge found that the termination process was discriminatory and that a threat of termination by Mr. Abbott was credible.
- The Administrative Law Judge found that the 40% statement was in different handwriting than the Manager of ISEG and there was no indication that the Manager of ISEG had been told of the alteration.
- The ALJ found that the downsizing document was of "no value because of its lack of consistency with" the March 15, 1996 letter from the licensee's Chief Nuclear Officer that "confirmed that that the complainant was not in the lower 40%" and that the termination was due to the implementation of a ISEG Rotational Training Program.
- The ALJ found that the downsizing document was of "no value because of its lack of consistency with" a letter from "a member of the Respondent's Human Resources Department. This letter said that the Employee was being terminated because his position was being abolished." The ALJ also found that "There is no evidence that the Complainant's job was abolished."
- The ALJ found that "If a employee was not in the lower 40% he was not in danger of termination." and "Any time he asked any of his superiors he was told he was not in jeopardy".

I require that the NRC add these statements to the licensee handout and to the licensee's altered downsizing document.

Enforcement Conference Summary Requirements

The NRC Enforcement Manual, Section 5.3.4 (Conduct of Predecisional Enforcement Conferences), (h) establishes the requirements and content of what is discussed in the enforcement conference. The conference is a means of providing to the NRC information it believes the agency should consider in determining the appropriate enforcement action. The intent is to establish the pertinent facts and other information relevant to the agency's enforcement decision.

The applicability of the NRC Enforcement Manual's requirements to the Enforcement Conference Summary for EA 96-116 is to establish the pertinent and factual information from the ALJ findings in this Discrimination Case. As indicated, the Nuclear Regulatory Commission's Enforcement Conference Summary for this May 10, 1996 Enforcement Conference is required to contained the known factual information and summary of the pertinent evidence from Discrimination Case 95-ERA-005.

Enforcement Conference Summary

The Handout does not does not identify the judiciary findings made against many of the allegations that the licensee had included in the handout. The handout is also accompanied the placement of a document

into public record that the Administrative Law Judge had already found to be of "no value because it lacks consistency with other evidence" and that it had been altered then blamed on the Manager of ISEG.

I understand that the Nuclear Regulatory Commission is required under federal law to accompany this handout and altered downsizing document with a predecisional enforcement conference summary and the handout can only serve as the summary if it meets specific qualifications. Since the licensee's handout does not meet the Manual's minimum requirements, the NRC is in violation of its Enforcement Manual and 10CFR 9.19 (b)(2)

No Objection to Some ALJ Findings

Since the predecisional enforcement conference is the forum where the licensee should state whether they disagree with the facts (in this case the ALJ Findings), I must point out that the licensee had only disagreed with the overall finding of Discrimination and the threat of termination. Since the licensee did not object to specific judiciary findings at the predecisional enforcement conference, the Nuclear Regulatory Commission must consider them not disputed. Although the licensee may have expressed their opinion on some of these issues within the handout, they did not state that they had disagreed or objected to the judiciary finding.

The licensee did not disagree with the ALJ Findings of:

- That the former Manager of the Independent Safety Engineering Group did not write the 40% statement on the downsizing worksheet.
- That the downsizing worksheet was 'altered' and that the alterations were not communicated back to the Complainant or his Supervisor (the former Manager of the Independent Safety Engineering Group).
- That the downsizing worksheet was of no value because it lacked consistency with other evidence. Specifically, a letter from the licensee's Human Resources Department and a letter from the licensee's chief nuclear officer.
- That the licensee had no credible evidence that the Complainant's job was abolished or any credible evidence showing that the Complainant was on the lower 40%.

Fraudulent Numbers on the Employee Downsizing Document

The NRC has confided with me and stated that you are aware that the downsizing numbers on the altered downsizing document is inaccurate and degrading from my actual performance. It does me and my reputation no good for the NRC to keep this revelation from the public since the NRC had decided to place that altered downsizing document into public disclosure. I require that the NRC identify that information within that document is false and degrading from my signed and approved job performance evaluation. I require that the NRC identify that the ALJ had found that the document had been altered. This notification must be provided to anyone whom has seen the downsizing document in the past or will see this document in the future.

The since the NRC has decided to maintain that altered downsizing document in public record, I also require that NRC to identify the individual or individuals responsible for making the alterations and include that information with the altered downsizing document.

The altered downsizing document is not consistent with my signed and approved performance evaluation.

- The RESULTS score of 3.0 is inaccurate and lower than what was required by the licensee's downsizing process
- The Total score is inaccurate and lower than what was required by their downsizing process.
- The ranking score of 6 of 8 is inaccurate and lower than the actual ranking of 4 of 8.

Inappropriate Actions:

1. Violation of 10CFR 9.19 (b)(2)

In accordance with 10CFR 9.19 "Segregation of exempt information and deletion of identifying details", (b)(2) the NRC shall segregate-- "Factual information from advice, opinions, and recommendations in predecisional records unless the information is inextricably intertwined, or is contained in drafts, legal work products, and records covered by the lawyer-client privilege, or is otherwise exempt from disclosure."

The NRC is in Blatant Violation of this law because they allowed the licensee to present their opinion as if it was the judge's opinion or as a fact and you placed a falsified document into public record without identifying the ALJ findings on that document. To fulfill this requirement, the NRC must complete a predecisional enforcement conference summary and attach it to the licensee's handout. The NRC is also in violation with the Enforcement Manuals instructions pertaining to the placement of a predecisional Enforcement Conference Summary into public record.

2. Obstruction of the DOL case by with holding significant evidence from the Administrative Law Judge.

The Nuclear Regulatory Commission withheld significant evidence, which it received at the May 10, 1996 Enforcement Conference from the Administrative Law Judge in the ongoing judicial process. It ironic that the NRC would determine that this information is worthy to be placed into public record, yet withhold the information from the complainant and presiding Administrative Law Judge. My opinion is that the NRC obstructed the DOL proceedings by withholding these records. By withholding this information, the NRC directly affected the outcome of the discrimination case.

3. Violation of my Civil Rights by failing to comply with FOIA 97-141.

The NRC also violated federal law, specifically the Freedom of Information Act, by failed to comply with my Freedom of Information Request (#97-141). The NRC failed to provide me with a copy of the Downsizing Document submitted to the NRC by the licensee at the May 10, 1996 Enforcement Conference and that document was specifically requested in my FOIA. The response back to me indicated that the document could not be located.

Specific information requested to be added.

I request that the Nuclear Regulatory Commission complies with federal law, specifically the FOIA, 10 CFR Part 9 and the NRC Enforcement Manual for the adequate documentation of the summary of evidence, factual information and the ALJ Judiciary Findings by completing the predecisional enforcement conference summary (or its equivalent) for the May 10, 1996 Enforcement Conference and

add this summary into public record, specifically attached to the licensee's handout. I also request that the NRC attached a Letter of Clarification to be attached to the downsizing worksheet entered in public record (and any other entry of this document in public record) to fully identify the judiciary findings that it had been 'altered' and of "no value" because it lacks consistency with documentation signed by the licensee senior management.

I also request that the two specific letters generated by the licensee that documented the licensee's Human Resource Department and Chief Nuclear Officer's official written responses for the termination and discussed during the enforcement conference is also added into public record. The NRC must note the judiciary finding that the downsizing worksheet was of 'no value' because it lacks consistency with these two signed documents.

Closure

I understand that this is only a request and the NRC had the option to refuse to implement these corrections. The responses that I had received back from the two 2.206 petitions on this issue indicates that the NRC knew that the documents were inaccurate, altered and harmful to my reputation when the NRC placed the fraudulent job performance evaluation summary into public record. The NRC willfully acted to use an inaccurate and inappropriate licensee's 'biased opinion' of the discrimination case as the NRC's official predecisional Enforcement Conference Summary. These willful actions are violations of federal law and damaging to my reputation.

Due to these actions, negligence on the part of the NRC is clearly shown, although proving negligence by the NRC is not pertinent in establishing my individual rights protected under the Freedom of Information Act. I find that the provisions of the "Freedom of Information Act" allow for the correction of inaccurate and damaging information, and segregation of factual information from opinion, recommendations and theories and the addition of pertinent information that was omitted from public record. It also mandates that all systems of records which the disputed information is maintained are corrected.

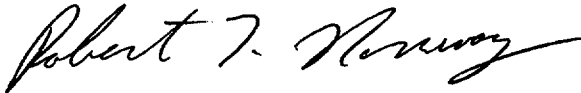
I understand that a refusal to correct these records could result in my opportunity to take action under 5 USC 552a(d)(3)&(4) and 10 CFR 9.67(a) by filing a Statement of Disagreement, which is required to be included in all systems of records which the disputed information is maintained. Since I fully expect the NRC to refuse to correct this documentation, I plan to take full advantage of this requirement and submit a Statement of Disagreement.

I want to make my intentions very clear. Who ever sees (or has seen) that fraudulent downsizing record, due to its placement into public disclosure by the NRC, will be fully informed by the NRC that it is not consistent with my job performance evaluation and the credible evidence in this case.

The NRC shall also inform all "viewers of these records" that the Administrative Law Judge found that this document had been altered to establish downsizing eligibility and that alteration had been specifically claimed by the licensee to be the original record (written by the former Manager of the Nine Mile Point Independent Safety Engineering Group).

If the NRC refuses to make these corrections under the "Privacy Act Correction, I will make the correction myself, under a Statement of Disagreement.

Sincerely yours,

A handwritten signature in cursive script, reading "Robert T. Norway". The signature is fluid and stylized, with a long horizontal flourish extending from the end.

Robert T. Norway

(EXAMPLE)
Discrimination Case "EA-96-116 (NRC), 95-ERA-005 (DOL)"

The Administrative Law Judge Findings in the case.

- The Administrative Law Judge found that the termination process was discriminatory and that a threat of termination by Mr. Abbott was credible.
- The Administrative Law Judge found that the 40% statement was in different handwriting than the Manager of ISEG and there was no indication that the Manager of ISEG had been told of the alteration.
- The ALJ found that the downsizing document was of "no value because of its lack of consistency with" the March 15, 1996 letter from the licensee's Chief Nuclear Officer that "confirmed that that the complainant was not in the lower 40%" and that the termination was due to the implementation of a ISEG Rotational Training Program.
- The ALJ found that the downsizing document was of "no value because of its lack of consistency with" a letter from "a member of the Respondent's Human Resources Department. This letter said that the Employee was being terminated because his position was being abolished." The ALJ also found that "There is no evidence that the Complainant's job was abolished."
- The ALJ found that "If a employee was not in the lower 40% he was not in danger of termination." and "Any time he asked any of his superiors he was told he was not in jeopardy".

The licensee did not disagree with the Administrative Law Judge Findings of:

- The former Manager of the Independent Safety Engineering Group did not write the 40% statement on the downsizing worksheet.
- The downsizing worksheet was 'altered' and that the alterations were not communicated back to the Complainant or his Supervisor (the former Manager of the Independent Safety Engineering Group).
- The downsizing worksheet was of no value because it lacked consistency with other evidence. Specifically, a letter from the licensee's Human Resources Department and a letter from the licensee's chief nuclear officer.
- The licensee had no credible evidence that the Complainant's job was abolished or any credible evidence showing that the Complainant was on the lower 40%.

The altered downsizing document is not consistent with the employee's signed and approved performance evaluation.

- The RESULTS score of 3.0 is inaccurate and lower than what was required by the licensee's downsizing process.
- The Total score is inaccurate and lower than what was required by the downsizing process.
- The indicated ranking 6 of 8 is inaccurate and lower than the actual ranking 4 of 8.

**NRC ENFORCEMENT
CONFERENCE
EMPLOYEE DISCHARGE**

May 10, 1996

**Niagara Mohawk
Presentation**

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

STATUS OF THE DOL CASE

- ➡ Mr. Norway notified of termination February 15, 1994
- ➡ Mr. Norway files with DOL June 26, 1994
- ➡ Wage & Hour Division, DOL finds no discrimination October 21, 1994
- ➡ Hearing before ALJ December 20-21, 1994
- ➡ ALJ issues Recommended Decision March 15, 1996
- ➡ Offer of Re-employment May 3, 1996
- ➡ Decision on damages expected May 15, 1996

THE RIGHTSIZING PROCESS

⇒ Reduced professional staff by 200 positions in 1993-1994

⇒ Issues

- Reductions were not equalized across branches
- Develop a selection process to ensure fairness and retain the best talent

⇒ Pool/Assessment

- Branch Managers assessed and ranked personnel
- Lower ranked personnel pooled and submitted to Review Board (20% in 1993 and 40% in 1994)

⇒ Review Boards

- Two boards with cross-section of Branch Managers headed by Vice President
- Review process
 - HRD managed process to ensure fairness (no vote)
 - Personnel grouped by common skill sets
 - Board reviewed:
 - › Branch Manager assessment and recommendation
 - › Employee feedback
 - › Resume data

THE RIGHTSIZING PROCESS (cont'd)

- Common for Board to disagree with supervisor's recommendation (80/320 - 1994)
 - Each Board challenged the other's decisions
 - Board was final factor in decision process
- By secret ballot voted to retain, terminate or hold pooled personnel
- ➡ Appeal process available - appeal to 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
 - Identify Issues
 - Evaluation
 - 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

CLIMATE FOR RAISING SAFETY ISSUES

PROGRAMS IN PLACE

⇒ DER program

- 1994 3,588
- 1995 3,423
- 1996 (to date) 1,174

⇒ Back to Basics training

⇒ Technical training to improve knowledge levels

⇒ Four 4-C's meetings per month

- Compliments
- Convictions
- Concerns
- Comments

⇒ Town Hall meetings

⇒ HRD breakfast

⇒ Diversity Task Force

⇒ Support for Q1P (employee concerns program)

⇒ Normal safety oversight

- QA
- ISEG
- SORC
- SRAB

CLIMATE FOR RAISING SAFETY ISSUES

(cont'd)

QUALITY FIRST PROGRAM

- ➡ Program began 1984
- ➡ NIP-ECA-04 provides administrative control
 - Applies to employees and contract personnel
- ➡ Scope includes
 - Safety related issues
 - Quality related issues
 - Non-safety related issues
- ➡ Overall responsibility with Chief Nuclear Officer
- ➡ Program offers protection including confidentiality and anonymity
- ➡ Contact can be accomplished via:
 - Phone
 - Mail
 - Face to face visit
- ➡ Issues addressed to senior management with notification to NRC
- ➡ Available anytime; offered at termination
 - Concernee informed of issue resolution; opportunity to dispute results

CLIMATE FOR RAISING SAFETY ISSUES

(cont'd)

- If disputed, goes to Chief Nuclear Officer for final decision

⇒ Statistics to date

- | | | |
|--------|----|--------------------|
| • 1994 | 24 | • 1996 (to date) 3 |
| • 1995 | 31 | |

CORRECTIVE/PREVENTIVE ACTIONS

⇒ Station standdown by end of June 1996

- Open climate depends on effective management and oversight, not a single program
- Re-emphasize rights and responsibilities to raise safety issues
- Effective self-identification/assessment
- Management reinforcement at all levels of the value of reporting issues to improve performance
- Re-emphasize availability of Q1P

ENFORCEMENT HISTORY

- ➡ Relatively few ERA §210/211 cases filed against Niagara Mohawk in past 12 years
- ➡ None have resulted in DOL finding of discrimination by Niagara Mohawk
- ➡ Intend to appeal the ALJ's decision in this case
- ➡ Positive record based on favorable environment for reporting issues
 - Encourage reporting without fear of intimidation, discrimination or harassment
 - Management committed to improvement through reporting

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



#2

NIAGARA MOHAWK
GENERATION
BUSINESS GROUP

NUCLEAR LEARNING CENTER, 450 LAKE ROAD, OSWEGO, NY 13126/TELEPHONE (315) 349-2882

December 19, 1996
NMP1L 1167

B. RALPH SYLVIA
Executive Vice President
Electric Generation
Chief Nuclear Officer

Mr. James Lieberman
Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
One White Flint North, Mail Stop O-7 H5
11555 Rockville Pike
Rockville, MD 20852-2738

RE: Nine Mile Point Unit 2
Docket No. 50-410
NPF-69

Subject: *Reply to Notice of Violation and Proposed Imposition of Civil Penalty*
EA 96-116

Gentlemen:

The case which is the subject of NRC correspondence dated July 24, 1996 and Niagara Mohawk correspondence dated August 23, 1996 has been settled and the settlement agreement has been approved by the Administrative Review Board of the Department of Labor (DOL). Accordingly, the purpose of this correspondence is to provide Niagara Mohawk's answer in this matter.

For the reasons stated in the May 10, 1996, predecisional enforcement conference and the August 23, 1996 response, Niagara Mohawk believes that the DOL decision in this case is in error and, therefore, that no violation of 10CFR50.7 has occurred. It is our view, however, apparently shared by the complainant, that further expenditure of time and resources is not in the best interests of the parties. Accordingly, without admitting any culpability in this matter, Niagara Mohawk has settled the case to the satisfaction of the complainant and the DOL.

As noted, this settlement is not an admission of any violation of the Energy Reorganization Act or the regulations of the U.S. Nuclear Regulatory Commission. We maintain our firm conviction that the DOL decision is in error and that the Company did not engage in discriminatory conduct. To the extent, however, that the facts underlying this case may have caused a contrary perception on the part of any NMPC employee, we believe that the corrective measures identified in our August 23rd response have addressed that matter.

With regard to the employee survey discussed in the August 23rd response, Niagara Mohawk completed development of an action plan based on the Senior Management Team's analysis of survey results. In part, the plan requires branch management to discuss the results of the survey with their branches to ensure appropriate feedback to employees. During these sessions, emphasis is again placed on management's commitment to ensuring that all employees feel free to raise safety issues without fear of harassment, intimidation, or discrimination.

A/2 24

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Our remittance in the amount of \$80,000 is enclosed in final settlement of this matter.

Very truly yours,



B. Ralph Sylvia
Chief Nuclear Officer

BRS/WDB/kap

xc: Mr. H. J. Miller, NRC Regional Administrator
Mr. S. S. Bajwa, Acting Director, Project Directorate I-1, NRR
Mr. B. S. Norris, Senior Resident Inspector
Mr. D. S. Hood, Senior Project Manager, NRR
Records Management

UNITED STATES NUCLEAR REGULATORY COMMISSION

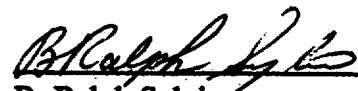
In the Matter of)

Niagara Mohawk Power Corporation)

Nine Mile Point Unit 2)

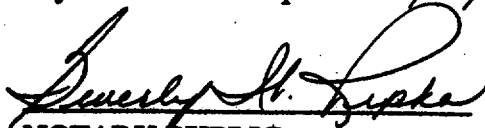
Docket No. 50-410

B. Ralph Sylvia, being duly sworn, states that he is Chief Nuclear Officer of Niagara Mohawk Power Corporation; that he is authorized on the part of said Corporation to sign and file with the Nuclear Regulatory Commission the document attached hereto; and that the document is true and correct to the best of his knowledge, information and belief.


B. Ralph Sylvia
Chief Nuclear Officer

Subscribed and sworn before me,
in and for the State of New York
and the County of Oswego,
this 19 day of December, 1996

My Commission expires: 2/28/98


NOTARY PUBLIC

BEVERLY W. RIPKA
Notary Public State of New York
Qual. in Oswego Co. No. 4644879
My Commission Exp. Mar. 30, 1998

2/28/98

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.

Attachment 2

Judge's Discussion and Findings in Discrimination case 95-ERA-005
<http://www.oalj.dol.gov/public/wblower/decsn/95era05a.htm>

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.

EMPLOYEE ASSESSMENT

Branch Manager Ranking within group:

6 of 8

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: [REDACTED]

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: Considers 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 & 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% Quantif only reason for submittal (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

** If position is right-sized and recommendation is retain in another Branch, please explain What Branch and Why?

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

INTEGRATED NUCLEAR SUB INTEGRATED 1993 MANAGEMENT EMPLOYEE ASSESSMENT

Branch Manager Ranking within group:

6 of 8Is 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 NorwayJOB TITLE: ENGINEER 3 (mechanical)BRANCH: NUCLEAR ENGR (ISEG)MANAGER: J. SPADAFONE1993 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 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 3.5	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% 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
Submitted to the Board Review Process

* If position is rightsized and recommendation is retain in another branch, please explain What Branch and Why?

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

NIAGARA MOHAWK

NINE MILE POINT—UNIT 2/P.O. BOX 63, LYCOMING, NY 13093/TELEPHONE (315) 343-2110

February 17, 1994

Mr. Robert Norway

Dear Bob:

As you are aware, on February 15, 1994 your position was abolished. Effective February 16, 1994 you will be eligible to participate in an extended career transition program.

Under this program you will be an active employee with full pay and benefits for the two month period ending April 15, 1994. During this two month career transition period, you may take full advantage of the counseling services offered at the outplacement center as you continue your job search activities. The outplacement center located at the Salina Meadows Office complex on Buckley Road in Liverpool will be open Monday through Friday from 8:00 a.m. to 4:30 p.m.

Your last day as an active Niagara Mohawk employee is April 15, 1994. Effective April 16, 1994 you will begin receiving the separation allowance benefit as defined in your Employee Handbook and be eligible for COBRA.

Human Resource Development will continue to work closely with you over the next two months. If you have any immediate questions, please contact me at Site extension 4409.

Sincerely,



Kathleen Miles
General Supervisor
Human Resource Development

KM/jc

cc: D. Thompson
C. Waterman
File

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

FOIA — 97-141

RESPONSE TYPE

☒ FINAL☐ PARTIAL

DATE MAY 29 1997

DOCKET NUMBER(S) (If applicable)

REQUESTER

Robert T. Norway

RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

PART I.—AGENCY RECORDS RELEASED OR NOT LOCATED (See checked boxes)

<input type="checkbox"/>	No agency records subject to the request have been located.
<input type="checkbox"/>	No additional agency records subject to the request have been located.
<input type="checkbox"/>	Requested records are available through another public distribution program. See Comments section.
<input type="checkbox"/>	Agency records subject to the request that are identified in Appendix(es) _____ are already available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.
<input type="checkbox"/>	Agency records subject to the request that are identified in Appendix(es) _____ are being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.
<input type="checkbox"/>	The nonproprietary version of the proposal(s) that you agreed to accept in a telephone conversation with a member of my staff is now being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number.
<input type="checkbox"/>	Agency records subject to the request that are identified in Appendix(es) _____ may be inspected and copied at the NRC Local Public Document Room identified in the Comments section.
<input type="checkbox"/>	Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.
<input checked="" type="checkbox"/>	Agency records subject to the request are enclosed. Appendix A records are enclosed.
<input type="checkbox"/>	Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you.
<input checked="" type="checkbox"/>	Fees
<input checked="" type="checkbox"/>	You will be billed by the NRC for fees totaling \$ 81.34 [2 hrs, 25 mins. search]
<input type="checkbox"/>	You will receive a refund from the NRC in the amount of \$ _____.
<input type="checkbox"/>	In view of NRC's response to this request, no further action is being taken on appeal letter dated _____, No. _____.

PART II. A—INFORMATION WITHHELD FROM PUBLIC DISCLOSURE

Certain information in the requested records is being withheld from public disclosure pursuant to the exemptions described in and for the reasons stated in Part II, B, C, and D. Any released portions of the documents for which only part of the record is being withheld are being made available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC in a folder under this FOIA number.

COMMENTS

The NRC staff did not locate any records that are subject to categories 3 through 9 of your request.

This completes NRC action on your request.

SIGNATURE, DIRECTOR, DIVISION OF FREEDOM OF INFORMATION AND PUBLICATIONS SERVICES

Re: FOIA-97-141

APPENDIX A
DOCUMENTS BEING RELEASED IN THEIR ENTIRETY

NUMBER	DATE	DESCRIPTION
1.	8/23/96	Letter from B. Ralph Sylvia to James Lieberman, subject: Reply to a Notice of Violation and Proposed Imposition of Civil Penalty EA 96-116. (7 pages) [Subject to Item 1, first section of request]
2.	12/19/96	Letter from B. Ralph Sylvia to James Lieberman, subject: Reply to Notice of Violation and Proposed Imposition of Civil Penalty EA 96-116. (3 pages) [Subject to Item 2, first section of request]
3.	5/10/96	Copy of first page of transcript of enforcement conference on May 10, 1996, with list of attendees. (1 page) [Subject to Item 1, second section of request]
4.	5/10/96	NRC Enforcement Conference hand-out - Employee Discharge - Niagara Mohawk Presentation, with enclosures. (13 pages) [Subject to Item 2, second section of request.]