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FINAL REPLY:

David Lochbaum
Union of Concerned Scientists

TO:

Commission

FOR SIGNATURE OF : ** GRN ** CRC NO: 03-0510

DESC:

ROUTING:

Protesting Selective Application of NRC Regulation

Travers
Norry
Paperiello
Kane
Collins
Dean
Burns
Cyr, OGC

DATE: 08/08/03

ASSIGNED TO: CONTACT:

NRR

Borchardt

SPECIAL INSTRUCTIONS OR REMARKS:

For Appropriate Action.

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

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AUTHOR: David Lochbaum
AFFILIATION: UCS
ADDRESSEE: Chairman Diaz and Commissioners
SUBJECT: Protesting selective application of NRC regulation

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Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

July 28, 2003

Dr. Nils J. Diaz, Chairman
Mr. Edward McGaffigan, Jr., Commissioner
Mr. Jeffrey S. Merrifield, Commissioner
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT: PROTESTING SELECTIVE APPLICATION OF NRC REGULATION

Dear Chairman and Commissioners:

On behalf of the Union of Concerned Scientists, I attended a public meeting last Friday between Exelon and the NRC staff regarding the damaged steam dryer at Quad Cities Unit 2. The meeting notice¹ reported that the participants would be representatives of Exelon, representatives of General Electric, and members of the NRC staff and indicated "*Certain portions of the meeting may be closed to the public because the staff has determined that the information may be proprietary in nature.*" Exelon had informed the NRC staff that it would be presenting material that was proprietary to its contractor, General Electric and requested this information be withheld from public disclosure.²

As advertised, the NRC staff closed the meeting to the public at approximately 9:45am. The NRC staff asked the public attendees to adjourn to an adjacent room until the discussions involving proprietary information were concluded. As I walked next door, I asked NRC staffer L. Rossbach why most of the public attendees were staying inside the meeting room. His answer was that industry representatives could stay. The non-industry public attendees remained closeted next door until 11:40am, when we were allowed to rejoin the industry public attendees, participants, and NRC staff in the meeting room.

The purpose of this letter is to protest the selective application of regulation 10 CFR 2.790 by the NRC staff. Our aim is not to rectify what happened last Friday – the damage has been done. Rather, we respectfully ask the Commission to direct its staff to take steps necessary from repeating this mistake in the future.

The UCS is not challenging the right of companies like Exelon and General Electric to seek protection of trade secret information or the power of the NRC staff to close all or portions of meetings to provide such protection. We are not asserting that information discussed during the closed portion of the meeting last Friday failed to satisfy the trade secret criteria. We are merely protesting the selective closing of meetings to exclude only certain portions of the public attendees.

¹ Memo dated July 11, 2003, from Carl F. Lyon to Anthony J. Mendiola, "Forthcoming Meeting with Exelon Generation Company, LLC."

² Letter dated July 9, 2003, from Patrick R. Simpson, Manager – Licensing, Exelon Generation, to Nuclear Regulatory Commission, "Request to Withhold Information from Public Disclosure."

Last Friday, the NRC staff allowed most public attendees to remain inside the room during the closed portion of the meeting and only required non-industry public attendees to depart. Among those attendees remaining inside the room were at least three representatives of Entergy (an Exelon competitor last time we checked) for the Vermont Yankee plant, a representative of PSEG Nuclear for the Hope Creek plant, a representative for the Fermi plant, a representative for the Hatch plant, and a representative of a consulting firm.³ Among those banished from the room, other than me, were the nuclear engineer representing the State of Vermont and a reporter from the trade press.

Based on the non-proprietary version of the slides presented last Friday, the closed portions of the meeting covered the root cause determination and the steam dryer repair plan. It could be argued that representatives of companies with GE reactors having the same or similar steam dryers have an interest in the steam dryer repair plan. They clearly do and GE has every right to provide that information to these companies outside of closed NRC meetings. But it is improper for NRC to essentially sponsor an "infomercial" for GE to market its steam dryer repair plan to prospective customers. GE may not be the only supplier of steam dryer repairs and it is improper for NRC to unilaterally assist one company market its wares. After all, when damage was discovered in another internal part of GE reactors, the core shrouds, MPR Associates developed and implemented repair plans at several boiling water reactors as did GE.

It's not clear to the UCS why Entergy's representatives from Vermont Yankee were able to hear trade secret information GE provided to Exelon when the nuclear engineer from the State of Vermont who oversees Vermont Yankee was barred. It seems far more likely that Entergy's representatives would take the GE trade secret information and develop an in-house repair or seek a cheaper repair from another vendor than it is for the State of Vermont to compete with GE for steam dryer repair business.

The inappropriateness of Friday's meeting is further evidenced by how NRC handles proprietary information in its Public Document Room (PDR). When material is deemed to be proprietary under 10 CFR 2.790, the NRC enters it into ADAMS but codes it as being unavailable to the public. Thus, whether I call the PDR or Entergy calls the PDR, neither of us can obtain proprietary information submitted by Exelon under 10 CFR 2.790. That's the proper way to handle proprietary information: no favorites, no selective application of the regulation.

As we read 10 CFR 2.790, when a company like Exelon seeks protection of trade secret information, the NRC – if it makes a determination that the information is indeed proprietary – is required to protect that information from public disclosure. Thus, the NRC staff should have made all public attendees at last Friday's meeting depart for the closed portion. The meeting was advertised as being between NRC and Exelon and GE – all other attendees were non-participants (i.e., public). The only persons inside the room during the closed portion should have been the NRC staff, the NRC staff's consultants (including national laboratory representatives working on the issue), the licensee, and the licensee's consultants. The NRC should not have sub-divided the public into the industry and non-industry bins and selectively excluded only the non-industry types.

³ The consulting firm (SAIC) may have been part of the Independent Review Team hired by Exelon to review the corrective actions for the Quad Cities steam dryer. If so, the representative would have had reason to remain inside the room as a consultant to Exelon.

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We ask that you direct your staff to prevent such errors in the future.

Sincerely,

A handwritten signature in black ink, reading "David A. Lochbaum". The signature is written in a cursive style with a large, stylized "D" and "L".

David Lochbaum
Nuclear Safety Engineer
Washington Office