

July 24, 2012

Ms. Billie Pirner Garde
Law Office of Clifford & Garde, LLP
1707 L Street, N.W.
Washington, D.C. 20036

Dear Ms. Garde:

Thank you for your letters dated June 11, 2012 and June, 13, 2012, addressed to me and former Chairman Jaczko, respectively, in which you reiterated a number of concerns related to our handling of a Post-investigation Alternative Dispute Resolution (ADR) case involving your client's former employer. During our telephone conversation the prior week, you highlighted some of the same concerns, particularly 1) neither your client nor yourself were kept informed or consulted regarding the planned ADR mediation session, 2) neither your client nor yourself were notified in a timely manner after the issuance of the Confirmatory Order resulting from the ADR mediation session, and 3) neither your client nor yourself were notified of the issuance of the Federal Register notice thereby denying him the opportunity to consider whether he wants to challenge the issuance of the Confirmatory Order.

Although I don't align with all of the points in your letter to me, as I mentioned in our phone call, I do agree with your primary concerns that we should have kept you or your client informed of the status of the case. We are strengthening our procedures and practices related to the aspects of the issues you raised regarding this Nuclear Regulatory Commission (NRC) action for which the Post-investigation ADR program was used to resolve.

1. We will be taking steps to inform, in a timely manner, a concerned individual whose discrimination allegation forms the basis of a pending Post-investigation ADR mediation relating to an Employee Protection violation or apparent violation and solicit input regarding potential corrective actions for consideration during our mediation, recognizing that the concerned individual is not a party to the post ADR mediation process.
2. Similarly, we will be taking steps to ensure that the NRC takes action to inform, in a timely manner, a concerned individual whose discrimination allegation forms the basis of our enforcement action of the issuance of a confirmatory order (CO) relating to an Employee Protection rule violation or apparent violation on or about the date on which a confirmatory order is issued.
3. For this case, I also agree to extend the hearing request period to twenty (20) calendar days after the date of this letter.

I consider these steps reasonable and prudent to keep a concerned individual better informed regarding the outcome of his/her allegation of discrimination. As you know, our processes have several steps that promote transparency. For instance, shortly after the issuance of a CO, the CO is placed in the NRC's Agencywide Documents Access and Management System (ADAMS) as a publically available document. This is followed by its publication in a Federal Register notice which serves as the constructive notice to the public of its issuance. In addition, shortly after the issuance of a CO, we usually issue a public press release highlighting the issuance of a CO. Lastly, the NRC issues a close out letter to the concerned individual informing him/her of the closure of the allegation of discrimination by virtue of the NRC's enforcement action (which in this case was issued several weeks after the issuance of the CO). By making the changes referenced in the above paragraphs, which involves direct communication with the concerned individual, we will undoubtedly ensure that he/she is better informed.

On a separate issue, our Employee Protection cases provide arguably some of the most contentious and complex types of cases we endeavor to enforce. The complexity of these cases is compounded because of a factor not typically present in our other cases – the personal toll on the individual who is the subject of the alleged discriminatory action. So, although we appreciate an aggrieved individual's personal toll that may flow out of an adverse action may be significant, as you know, the NRC's regulatory purview does not extend to awarding personal remedies to the aggrieved individuals through our enforcement actions. The U.S. Department of Labor through its adjudicatory process is authorized to award compensatory and punitive remedies to the aggrieved individual.

As I have discussed with you during several conversations in recent years, we continually look for opportunities to make our programs more effective, timely and transparent. To that end, the views and concerns of our public stakeholders (such as yourself and your client) are instrumental in informing our decision making and ultimately improving our processes, programs and policies. Your input has served the public interest in a noteworthy manner and resulted in improvements to our processes. We appreciate and encourage your continued commitment to accept our invitations to share your views and recommendations relating to the Agency's various programs and policies involving Allegations, Enforcement, ADR and Safety Culture. As I expressed during our public meeting in November 2011 on the ADR program, we welcome views, comments and concerns of our stakeholders about potential weaknesses in our processes, particularly from those who are familiar with our processes, programs and policies such as yourself.

B. Garde

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Should you desire, I look forward to meeting with you at your convenience to discuss these matters further. If you have any further questions regarding this matter please contact Mr. Shahram Ghasemian of my staff at 301-415-3591.

Sincerely,

/RA/

Roy P. Zimmerman, Director
Office of Enforcement

B. Garde

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Sincerely,

/RA/

Roy P. Zimmerman, Director
Office of Enforcement

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