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SUBJECT: Provides comments on NRC draft policy statement re freedom of employees to raise safety concerns w/o fear of retaliation. NRC attempting to address problem that has not been proven to exist to any significant degree.

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DUKE POWER

April 10, 1995

Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Attention: Docketing and Service Branch

Subject: Draft Policy Statement on Freedom of Employees to Raise Safety Concerns Without Fear of Retaliation; Duke Power Company Comments

Duke Power Company offers the following comments in response to the subject Draft Policy Statement, which was published in the February 8, 1995 Federal Register. In addition, Duke Power Company would like to take this opportunity to strongly endorse the comments on this subject that were submitted by NEI by their letter of April 10, 1995.

There are three basic flaws in the policy set forth in the Draft. The first, and possibly the most basic, is that the NRC is attempting to address a problem that has not been proven to exist to any significant degree. While isolated instances of worker intimidation, harassment, or retribution have occurred in the past in the industry, the NRC has not identified a persistent or widespread problem that merits increased scrutiny or action. Past legislation (e. g., Energy Policy Act of 1992, sec. 2902) and NRC enforcement actions relative to whistleblower protection have heightened awareness of and sensitivity to the issue across the industry, to the point where an additional statement of policy would be redundant.

The second flaw relates to the practice of imposing the will of the regulator (NRC) upon the licensee without the benefit of a rulemaking process. This was identified in the Towers-Perrin report as a significant concern of licensees. The policy makes recommendations and suggestions which, while not formal regulations, create an obvious opportunity for comparison to a licensee's program. The NRC's assertion, for example, that it is important that the licensee provide "escape valves" or "safety nets" (60 FR 7593) creates a standard to which the licensee may be held for scrutiny, with negative implications if the licensee does not agree that such mechanisms are necessary.

And, finally, the NRC is apparently attempting to get involved with licensee management decision-making procedures which are outside the scope of their regulatory authority. This, too, was identified in the Towers-Perrin report as a concern. For example, the policy stresses the need for senior management involvement in cases of alleged discrimination, without regard for the particular situation. The decision regarding the level of management to which a particular issue should be raised for resolution is the responsibility of the licensee. Similarly, the policy makes recommendations regarding what employees should be told about alleged discrimination cases, or the causes for any adverse action taken by the licensee against an employee who has alleged discrimination. These, too, are licensee decisions.

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In summary, Duke Power Company shares the NRC's expectation that employees will identify any safety concerns. Duke has implemented a telephone report line, staffed by an independent company, which has the capability to receive and process anonymously employee concerns. Also, NRC Form 3 is posted per existing regulation to ensure that employees are aware of the option to report concerns directly to the NRC. Employees are aware of their responsibilities to report safety concerns, and their right to protection if they do so.



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