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8/29/93

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AEP
INDIANA
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POWER

OFFICE OF SECRETARY
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AEP:NRC:0508AA

Chief, Rules Review and Directives Branch
Mail Stop: P-223
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Attn: Docketing and Service Branch

September 29, 1993

Dear Sir:

Re: Request for Public Comment Whistleblower Protection

Attached are our comments on the whistleblower procedures. We appreciate this opportunity to offer our comments.

Sincerely,

E. E. Fitzpatrick

E. E. Fitzpatrick
Vice President

dr

Attachment

cc: A. A. Blind
G. Charnoff
J. B. Martin - Region III
J. R. Padgett
NFEM Section Chief
NRC Resident Inspector

9310200107 931004
PDR PR
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Mr. Samuel J. Chilk

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AEP:NRC:0508AA

bc: S. J. Brewer
D. H. Malin/K. J. Toth
M. L. Horvath - Bridgman - w/o attachment
J. B. Shinnock - w/o attachment
W. G. Smith, Jr.
B. A. Wetzel, NRC - Washington, D.C.
AEP:NRC:0508AA
DC-N-6015.1

ATTACHMENT TO AEP:NRC:0508AA

PUBLIC COMMENT - WHISTLEBLOWER PROTECTION

INDIANA MICHIGAN POWER COMPANY'S COMMENTS

Indiana Michigan Power Company (I&M) fully endorses the comments and opinions expressed by NUMARC in its letter on behalf of the nuclear industry. I&M is dedicated to the safe operation of its D. C. Cook Nuclear Plant. The atmosphere encouraging the free expression of safety concerns by all site personnel at I&M's D.C. Cook Nuclear Plant is evidenced by the number of questions related to all aspects of plant operations which plant management receives from all site personnel each year through our corrective action program. Therefore, I&M believes that the NRC's statutory authority and current regulatory procedures are adequate to address safety concerns and handle complaints by whistleblowers of retaliatory discrimination.

However, I&M respectfully submits that some additional concerns should be considered as a part of this review of whistleblower procedures: (1) possible negative effects on safety resulting from bogus allegations of safety concerns by employees attempting to protect their jobs, retaliate against their supervisors, or set up a false claim for damages, and (2) the need for due process for licensees alleged to have engaged in retaliatory discrimination.

I. False Allegations of Safety Concerns

The current statutory and regulatory scheme protecting whistleblowers from discriminatory treatment is so broad and leans so far toward protection of the whistleblower that it may negatively impact safety. It is not hard to imagine a licensee or employer with legitimate concerns about the competency of, or necessity for, an employee being deterred from disciplining or terminating the employee if the employee has the foresight to make some allegation, any allegation, of a safety violation. While the NRC considers testimony and anecdotal evidence of the chilling effects of discrimination on employee reporting of safety concerns, it should also consider anecdotal evidence of the chilling effect which the whistleblower protections may have on legitimate human resources decisions which could impact on plant safety. Any employee whose job is in jeopardy for legitimate reasons, including incompetency, or who wants to retaliate against a supervisor or plant management for any reason, or who wants to extort money, can fabricate a safety concern and hold the employer or licensee hostage to fear of a claim of retaliatory discrimination.

II. Due Process for Licensees

Under current practices of the Department of Labor (DOL) in reviewing allegations of retaliatory discrimination, it is possible for the licensee to be kept totally in the dark by the DOL and

denied any participation in the DOL's review of the alleged discrimination, even though the licensee may ultimately be held responsible, if the alleged discriminatory actions were taken by licensee's contractor against one of the contractor's employees. I&M urges the NRC to work with the DOL to review their procedures to assure that, if a claim of retaliatory discrimination is made, the licensee of the nuclear facility where the discrimination allegedly occurred will be treated fairly and with due process, including the following:

- A. The licensee should receive prompt and detailed notice when the claim is filed so that the licensee may promptly investigate the allegation;
- B. The licensee should receive copies of all documents and pleadings filed during the course of the DOL review and, if not a party to the proceeding, should be added to the service list for receipt of copies and be given notice and an opportunity to participate in all proceedings; and
- C. Prior to a final finding by the NRC that unlawful discrimination has occurred, the DOL and NRC should refrain from issuing press releases detailing preliminary findings or investigations, which result in adverse negative publicity to the licensee which cannot be undone if the allegations are later found to be without merit.

I&M urges the NRC to consider changes in its procedures to discourage the filing of contrived safety concerns and to ensure licensee participation in proceedings relating to alleged retaliatory discrimination. These changes would have a positive influence on safety and would lead to more thorough investigations and accurate findings regarding alleged discrimination.

