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Writer's Direct Dial Number:

March 12, 1985

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5211-85-2056

Mr. Harold R. Denton, Director  
Office of Nuclear Reactor Regulation  
United States Nuclear Regulatory Commission  
Washington, DC 20555

Dear Mr. Denton:

SUBJECT: THREE MILE ISLAND UNIT 1  
DOCKET NO. 50-289  
NUREG 0680 SUPPLEMENT 5

In connection with Supplement 5 to NUREG 0680, I have previously forwarded reports by Bechtel regarding the alleged harassment of Mr. Parks.

Enclosed is a letter from Kennedy P. Richardson, Esquire, with additional analysis of Items (2) and (3) of Section 10 of Supplement 5.

Basically, Mr. Richardson concludes that these two items go beyond the Department of Labor findings on Parks' allegations, that the record available does not support them, and that Supplement 5 refers only to Parks' statement without reference or apparent consideration of the directly contradictory information provided by Mr. Kanga.

I request that the enclosed letter be reviewed and considered by the Staff. By copy of this letter, I am also requesting that the Office of Inspection and Enforcement review and consider the contents of this letter. Finally, I request that I be informed of the results of your's and the Office of Inspection and Enforcement's review of this matter.

Very truly yours,

P. R. Clark  
President

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PDR ADOCK 05000289  
P PDR

pfk

Attachment

cc: Mr. James M. Taylor, Director  
NRC Office of Inspection and Enforcement  
Kennedy P. Richardson, Esquire  
Thelen, Marrin, Johnson & Bridges

APR 1 11  
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March 6, 1985

VIA FEDERAL EXPRESS

G.P.U.N. O/P  
PRESIDENT

MAR 6 1985

Mr. P. R. Clark  
President  
GPU Nuclear Corporation  
100 Interpace Parkway  
Parsippany, New Jersey 07054

Dear Mr. Clark:

In July, 1984, the Office of Nuclear Reactor Regulation issued a report entitled "TMI-1 Restart, An Evaluation of the Licensee's Management Integrity as It Affects Restart of Three Mile Island Nuclear Station Unit 1 Docket 50-289" and numbered NUREG-0680, Supp. No. 5 (hereinafter "Staff Report") which, among other topics, addressed Richard D. Parks' allegations of unlawful retaliation with respect to his employment at TMI, Unit 2. In this letter, I wish to supplement the earlier report of Bechtel North American Power Corporation (which was sent to you in October, 1984) and my affidavit of November 9, 1984 by offering the following comments with respect to the specific findings made in the Staff Report concerning Bahman Kanga as well as the general finding that Mr. Parks' suspension in March, 1983 constituted unlawful retaliation. (With respect to the other findings of the Staff Report concerning Parks' allegations, we believe that such findings were fully rebutted by Bechtel's aforementioned October, 1984 report.)

A. Findings Concerning Bahman Kanga

In sections 10.2.1 and 10.3.1 of the Staff Report, the staff reported on and adopted the general findings of the Wage and Hour Division of the Department of Labor

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(hereinafter "D.O.L."). In addition, the staff made two "additional findings" concerning Bahman Kanga which went beyond the findings of the D.O.L. These findings were:

"(2) The comments to Parks by Kanga, threatening him not to publicly state his concerns about the polar crane and telling him that another employee who had tried to publicly state his safety concerns had been humiliated, clearly represented harassment.

(3) Kanga told Parks that he had put Bechtel in a bad light with a client (presumably by raising safety concerns about the crane) and stood a good chance of being fired. This, in the staff's view, was a clear threat of retaliation." (Staff Report, pg. 10-18).

For convenience, these additional findings shall be referred to as additional findings (2) and (3).

1. The Evidence Developed by the D.O.L.

In support of additional findings (2) and (3), the staff only cited page 51 of Parks' affidavit of March 21, 1983, which described his version of a meeting with Kanga on the morning of March 17, 1983 -- hereinafter, "3/17 a.m. meeting". (A copy of this page is attached as Exhibit A hereto.) That the Staff Report does not mention, let alone evaluate, any contrary evidence, indicates that the staff may have assumed that Kanga did not contest Parks' allegations concerning the 3/17 a.m. meeting. This assumption is erroneous. In fact, Kanga expressly refuted Parks' allegations relating to the staff's additional findings.

Kanga was interviewed by the D.O.L. investigator in the course of the D.O.L.'s preliminary investigation of Parks' allegations. The D.O.L. investigator's handwritten notes of this interview are included in the D.O.L. investigative report which was forwarded to the N.R.C. (A copy of this investigative report is attached as Exhibit 102 to the report of the Office of Investigations ("O.I.") dated May 18, 1984 concerning the discrimination claims of Parks, Larry King, and Edwin Gishel. (Large portions of

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the D.O.L. report are deleted in the version that was made available to Bechtel and other parties outside the government.) These notes record Kanga's description of the 3/17 a.m. meeting as follows:

"Kanga said he next met Parks on 3/17/83 about Parks' 3/16/83 letter to Mr. Sanford, Bechtel rep. in Gaithersburg. Kanga was concerned about the claim of intimidation made by Parks. Kanga asked if Parks had brought his concerns to any supervisor --[such] as John Barton (Deputy Dir. Unit 2) --or Thiesing, (Dir. of Recovery Programs) or Andy Wheeler (Parks' Gaithersburg, [illegible abbreviation] 'boss'? or to the GPUN ombudsman in Persippany? Parks said he had not. Parks said he did not know the basic Bechtel policy -- to discuss problems with supervisory personnel up the line. Kanga commented on Parks' right and responsibility to go through channels with his questions.

Relative to the 2nd ¶ of the 3/16 letter, Kanga said he had instructed QA to review these challenges. Larsen and Ballard would talk to Parks to resolve his procedural and technical concerns.

Relative to the 1st ¶ of the 3/16 letter -- re conflict of interest, Kanga said Bechtel's policy is to look into such problems via a special internal group from San Francisco. Kanga had no part in this, such audits are not originated in Gaithersburg. Parks asked Kanga why such a big deal is being made out of the issue. Kanga said he is not doing this -- he seeks understanding and wants to ensure that Bechtel employees do nothing to embarrass [the] client."

Regarding the threats which Parks alleges were made by Kanga during the 3/17 a.m. meeting, it is significant that the D.O.L. investigator did not consider these allegations sufficiently material to his investigation to warrant questioning Kanga with regard to

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the same. Rather, at the end of the interview, Kanga, on his own initiative, specifically denied making the alleged threats. Thus, the investigator's notes contain the following closing observations:

"Kanga wanted to comment also on claimed inaccuracies in Parks' complaint--

--Parks asked for the 3/17/83 [a.m.] meeting

--Kanga did not warn Parks not to go public

--Kanga did not speak of an employee who did and was 'humiliated'

--Kanga did say Parks' action in having a secretary type resumes put Bechtel in a bad position

--[Kanga] did not say Parks had a good chance of getting fired.

(If there is a concern that Kanga's description of the 3/17 a.m. meeting, as recorded in the D.O.L. investigator's report, should be in the form of a sworn affidavit, Kanga is quite willing to submit such an affidavit.)

In light of the foregoing, there is a serious question as to whether the staff adequately examined the basis for the alleged threats described in its additional findings (2) and (3). As the Staff Report acknowledges, the D.O.L. investigator made no such findings, presumably because he felt the alleged threats either were not creditworthy or were not germane to his investigation. And yet, the Staff Report is based on the aforementioned O.I. report and the findings of the D.O.L. investigator, which the O.I. report merely adopted. Again, it may be that the staff simply overlooked the D.O.L. investigator's interview of Kanga and, hence, wrongly assumed that Parks' allegations were tacitly admitted by Kanga.



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We respectfully request that the N.R.C. set aside the additional findings concerning the alleged threats. We have already explained our reasons for believing that, as compared with Parks' complaint, Kanga's testimony concerning the 3/17 a.m. meeting is more credible and more consistent with the surrounding events and circumstances. (See Bechtel's aforementioned October, 1984 report.) However, even if one confines the inquiry to the D.O.L. investigative report, the conclusion is inescapable that Parks' allegations concerning the alleged threats were categorically denied by Kanga. A preliminary investigative record reflecting such a clear factual conflict hardly supports a "finding" which the investigative agency chose not to make.

If the staff's additional findings concerning the alleged threats are based on matters outside the D.O.L. record, then Kanga should be given an opportunity to respond before a public finding is made which can seriously damage his professional reputation. For example, we note that O.I. did interview Parks concerning some of his allegations of retaliation, though apparently not his allegations regarding the 3/17 a.m. meeting. (See Exhibit 97 to the aforementioned O.I. report.) If this interview had a bearing on the staff's additional findings, then basic fairness requires that the N.R.C. also interview Kanga on these issues.

2. The Reference to Safety Concerns in  
Additional Finding (3)

In its additional finding (3), the staff states that "Kanga told Parks that he had put Bechtel in a bad light with a client (presumably by raising safety concerns about the crane) and stood a good chance of being fired . . . ." [Emphasis added]. The basis for this presumed connection with Parks' concerns regarding the polar crane is totally inexplicable. Parks himself describes Kanga's statement as having been made in reference to Parks' association with Mr. Larry King's conflict of interest as evidenced by Parks' arranging for resumes of G.P.U. employees to be typed for King's firm, Quiltec. (See Exhibit A hereto.) In this respect, there is no conflict between the testimonies of Parks and Kanga. The staff's presumption that Kanga's statement was

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motivated by Parks' safety concerns, a presumption which is key to the staff's finding of an improper threat, has no apparent basis in the existing record.

As noted above, during the D.O.L. interview Kanga specifically denied Parks' allegation that Kanga told Parks that he had a good chance of being fired, an alleged remark which Parks also confines to the context of the Quiltec/conflict of interest inquiry. However, Kanga and Parks did discuss the investigation of Parks by Bechtel's internal auditor, a matter which both Kanga and Parks took seriously. This discussion, however, simply cannot be equated with a retaliatory threat of termination.

B. Parks' Suspension

The factual basis for Bechtel's decision to suspend Parks from employment at TMI in March, 1983 has already been stated in our October, 1984 report. No one can seriously dispute that many of the allegations in the 56 page affidavit which Parks disseminated at a public press conference on March 23, 1983 disparaged his colleagues in highly provocative terms. Moreover, Parks' "mystery man" allegations concerning George Kunder, a key job site official, constituted a libel of grave proportions. Because the facts are not in dispute, we are concerned that the staff may not have understood the legal principle which underlay Bechtel's action.

The D.O.L. investigator and the staff apparently concluded that Parks' suspension was unlawful because it was coincidental with the technical/safety concerns expressed in Parks' 56 page affidavit and the technical/safety concerns (which were far more limited in scope) that Parks expressed prior to the filing of his affidavit. Although this temporal coincidence may raise a legitimate suspicion of a retaliatory motive, it does not establish unlawful discrimination.

Parks' press conference on March 23, 1983 presented Bechtel with a difficult problem. Bechtel does not dispute that Parks' 56 page affidavit contains a number of statements which could not be the basis for suspending or otherwise disciplining Parks; and some of Parks' earlier actions and statements were also

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unquestionably protected against disciplinary action. By themselves, these statements and actions were not only inoffensive but were consistent with Bechtel's policy of encouraging open debate on all technical/safety issues.

By contrast, Bechtel had good reason to be concerned about the inflammatory and disparaging accusations included in Parks' affidavit. If these grave charges were false and negligently asserted, they did not enjoy "protected" status, especially given the manner in which they were disseminated, viz. at a public press conference.

There is strong legal authority for the principle that an employer may discipline and even terminate an employee who engages in conduct which unduly disrupts his working relations with his co-workers or harms the employer's business relations even though the employee's conduct is associated with his otherwise protected pursuit of statutory rights. A good illustration is the case of Hochstadt v. Worcester Foundation for Experimental Biology, 545 F.2d 222 (1st Cir. 1976). There, a female research scientist alleged that the foundation which employed her had discriminated against her sex. Her claims were shown to be largely meritorious. However, in pressing her opposition to the foundation's employment practices, she engaged in behavior which was so antagonistic to her colleagues and injurious to the foundation's business objectives that the foundation felt compelled to terminate her employment. The federal Court of Appeals concluded that the employee had gone "too far" in promoting her statutorily protected goals and that her termination did not constitute unlawful retaliation. After reviewing other legal precedents, the court stated:

"[W]e think courts have in each case to balance the purpose of the Act to protect persons engaging reasonably in activities opposing sexual discrimination against Congress' equally manifest desire not to tie the hands of employers in the objective selection and control of personnel . . . .

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Under the principles of the labor cases, the district court was entitled to conclude that Dr. Hochstadt's actions went beyond the scope of protected opposition because they damaged the basic goals and interests of the Foundation. An employer has a legitimate interest in seeing that its employees perform their work well. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 801 (1973). In the employment setting at the Foundation, the employer had a particular interest in maintaining a harmonious and congenial working environment conducive to the interchange of ideas and the sharing of research. The district court was entitled to find that Dr. Hochstadt's constant complaints to colleagues damaged relationships among members of the cell biology group and sometimes even interfered with laboratory research. Even if justified, they occurred upon some occasions when the employer was entitled to expect her full commitment and loyalty. Section 704(a) [of the Civil Rights Act of 1964] does not afford an employee unlimited license to complain at any and all times and places.

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. . . . Although Dr. Hochstadt's actions were associated with a protected objective, the district court reasonably concluded that they constituted serious acts of disloyalty which damaged the employer's interests and were of an excessive nature which was not warranted as a response to any conduct of the Foundation. Accordingly, the district court did not err in holding that the discharge had a sufficient and nondiscriminatory basis.\*  
545 F.2d at 231, 233, & 234

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In the case of Parks, his 56 page affidavit goes well beyond a statement of technical/safety concerns. Rather, it is replete with sweeping personal attacks against a number of his colleagues, including representatives of Bechtel's client and broadly condemns the basic integrity of the TMI-2 recovery program. By distributing this affidavit to the world at large, Parks was obviously throwing a gauntlet at most of his fellow engineers and managers. It is absurd to expect that Parks would have been able to maintain productive working relationships with these individuals after his explosive press conference and the highly charged atmosphere which it generated at T.M.I.

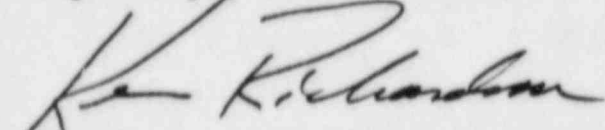
Parks' suspension was the only realistic solution to a difficult situation. It achieved the immediate purpose of preventing unproductive confrontations between Parks and those he had publicly attacked. In addition, since the suspension was with pay, it allowed Bechtel to investigate the factual background and validity of Parks' disparaging accusations without any adverse economic consequences for Parks. The results of the investigations undertaken by Bechtel, GPU, and the N.R.C. have demonstrated that most of Parks' allegations were both false and recklessly made. This careless behavior coupled with his gross libel against a high ranking client representative would have warranted Parks' termination under the aforementioned Hochstadt decision and similar court decisions. (Indeed, Parks' libel against George Kunder would have even justified termination under the high constitutional standards applicable to public employees. See, e.g. Pickering v. Board of Education, 391 U.S. 563 (1968)). If there were good grounds for ultimately terminating Parks, surely there can be no legal restriction against suspending him with pay during the investigation of the facts relating to his accusations.

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I hope the foregoing observations will assist the  
N.R.C. in evaluating the propriety of Bechtel's actions in  
this matter.

Respectfully submitted,

Very truly yours,

A handwritten signature in dark ink, appearing to read "Ken P. Richardson". The signature is fluid and cursive, with a large initial "K" and "R".

Kennedy P. Richardson

KPR/law

On Thursday, March 17, at 8:00 a.m., Mr. Kanga had me in for a two-and-a-half-hour meeting about the letter I had delivered the day before. I informed him that to date I still had not received a satisfactory response to my concerns on the polar crane; that I still had serious problems with it; and that I was being pressured to approve the load test.

Kanga said his door was always open if I felt intimidated or threatened, but that any further reassurances would be up to Mr. Sanford. Nevertheless, he warned me not to go public with my concerns. He said that once before things had gotten much worse for an employee who had tried that and was "humiliated." He said it could be as long as two weeks before any decision was reached on me about Quiltec. He volunteered that it was unfortunate, but other individuals like myself had come to Bechtel without any indoctrination. He said that was a problem he would have to resolve. He said that he had to send a report to Bob Arnold describing how the issue with me had been handled; that I personally had put Bechtel in a bad light with a client; and that as a result I stood a good chance of getting fired.

Kanga did, however, promise that the Licensing and QA departments would submit written responses to satisfy my concerns on the polar crane. I told him that failure to ensure reviews required by the QA Manual and applicable standards, procedures and regulations constituted an unreviewed safety question. I said this was especially true, since we worked at TMI Unit II and had told the world that public health and safety were our top priority. Mr. Kanga was becoming openly nervous and agitated. We finished the meeting.

EXHIBIT A