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Albert F. Gibson  
Director - Division of Reactor Safety  
United States Nuclear Regulatory Commission  
Region II  
101 Marietta Street, N.W., Ste. 2900  
Atlanta, GA 30323-0199

Re: Pre-Decisional Enforcement Conference  
David A. Fields and Robert Weiss

Dear Mr. Gibson:

In connection with the Enforcement Conference held regarding my clients David Fields and Rob Weiss, I enclose an affidavit which I would like to submit into the record for consideration by the panel. You will recall during our presentation that we mentioned that we were trying to secure the affidavit to supplement the record. I hereby supplement the record formally herewith by submission of this affidavit.

Please advise should you have any questions.

Sincerely,

FINCH, McCRANIE, BROWN & HENDRIX

  
Richard W. Hendrix

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Enclosure  
cc: Carol Evans  
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### AFFIDAVIT

My name is Lawrence King. I am submitting this affidavit freely and voluntarily, without any threats, inducements or coercion to Mr. Thomas Davine, who has identified himself to me as Legal Director of the Government Accountability Project. I am an inspector with the U.S. Nuclear Regulatory Commission ("NRC"), based out of Atlanta, Georgia regional office.

However, I am submitting this affidavit to express my views as a private citizen and not as a representative of the NRC. I am submitting this statement to Mr. Davine as a matter of conscience as to what I see as a gross injustice in the firing of two operators who were responsible for correction of an engineering error that could have resulted in serious consequences during an accident if it had not been corrected. The operators had tried numerous times by contacting management and the NRC with their concerns to correct what they saw as a significant safety concern. When both these avenues failed them they sought to prove their concern by using approved procedures and taking precautions by stationing operators at required positions.

Both the utility management and the NRC acted irresponsibly in this situation. The NRC acted in an irresponsible manner in jumping to conclusions without investigating the incident. Their actions caused the utility to take irresponsible action on the operators which they most likely would not have done were it not for the NRC characterizing this as a Chernobyl type action. There is no comparison between the two. Although the utility had all the information at hand they took actions against the operators without thoroughly investigating the incident in attempting to be responsive to the NRC. The NRC in turn reacted without investigating and now is forced to save face by blaming the operators.

I can relate to the position of the operators because in 1983 I was fired from my position as Site Operations Director at TMI2 when I refused to fire an Engineering Director who identified safety concerns with the polar crane. In this incident the three people involved received no support from the NRC although further investigations proved their concerns valid and might have averted an accident. I am the only individual of those three who is still in the nuclear industry. The other two were forced out and their careers ruined. I might have received the same treatment had my wife not overheard a conversation between NRC officials when I was testifying before Congress. An NRC official stated to the EDO of the NRC that I would never get another job in the nuclear industry.

The NRC has a history of ignoring whistleblowers and condoning utility management action in reprisals against whistleblowers. The present situation at Millstone is an example of this where reasonable individuals resorted to the media after several attempts on their part to correct serious safety concerns were ignored and management reprisals against those individuals were condoned. In one particular incident that I am aware of a consultant that I worked with tried for years to correct a faulty design. Meetings were held with all levels of NRC management and his concerns were ignored. He was forced to go to the media and write a book. The message is clear to people working at nuclear plants if you want to keep your job than you better keep quiet about safety concerns.

A similar plant to Crystal River is Oconee. I talked to the resident at Oconee and found that they had identified this problem months ago and contacted the NRC at Crystal River. Apparently either through ignorance of the situation or failure to followup the problem was not corrected. In addition the operators attempts to rectify the situation were ignored when they contacted the NRC and they were asked if they were making allegations. I don't know their response but can only assume they said no considering the history of supporting people who make allegations.

The NRC's own internal policies discourage dissent among their own inspectors. Their policy of Differing Professional Viewpoints does not even allow the individual who identifies the problem to be present to decide if his concern is valid. The operators at Crystal River are heroes in my opinion and I consider it a privilege to write this affidavit in support of them and would be honored if I am allowed to testify on their behalf.

These operators deserve a commendation for going beyond the call of duty when conventional authorities were asleep at the wheel. They would not have been forced to take this action if the utility management and the NRC had heeded their concerns and acted in a responsible manner. Instead, those same authorities are proposing to punish the individuals who may have prevented an accident from turning to disaster."

I am more concerned about the chilling effect this has on other operators who see these concerns and will ignore them. The NRC does not have the experience of these operators and is supposed to rely on people who are more familiar with the problems coming forth. There is no evidence to show that whistleblowers are encouraged although they are necessary if we are to avoid another Chernobyl or TMI2 considering the emphasis by utilities to cut costs.

My more specific concerns are listed below:

1. The operators did not engage in any material misconduct. They followed normal operating procedures to solve a serious problem that could have been Crystal River's Achilles's heel during an accident. Although the NRC has characterized their work as an unapproved "test," that is baloney. The operators engaged in the same problem solving work that occurs regularly without prior NRC approval. The only significant difference here was that they made a record of the results, to prove there is a problem from overpressurized hydrogen. If the operators had been making up their actions as they went, it would be different. But they didn't. They followed normal procedures and were conscientious enough to make a record of public safety threats that become obvious from doing the work. It undermines the NRC's mission to brand their diligence as misconduct that should be punished.

2. If anything were wrong, the NRC is applying inconsistent standards. There have been 11 incidents at Crystal River involving 30 out of 33 operators who engaged with impunity in much more extreme behavior than the NRC is accusing these individuals. To illustrate, Mr. Fields and the other operators in this instance stopped the procedure as soon as an alarm went off. In the past, operators have continued work for up to 1.5 hours with the alarm on. The Commission should not start enforcing technicalities it previously has ignored, when the alleged misconduct solves a public safety threat.

3. If punishment is appropriate, it should be directed at those who covered up any information that should have been

disclosed to the NRC. That means the licensee's responsible engineering and management personnel. The operators did not "cover anything up. They initially raised the issue with the engineering department, which was unwilling to concede or act on its error. The licensee had full access to the written results of the operators' activities, and in fact undertook corrective action to fix the problem after they proved it existed. Licensee management has responsibility to notify the NRC of any questionable activities. Licensee engineering personnel are responsible for testing. A written record of all the operators' actions were available to plant management and engineering. Neither told the NRC of the problem fixed thanks to the operators.

4. This case is tainted by a rush to judgment. The NRC's Atlanta regional office decided to act against the operators before there had been a full investigation of what happened. The subsequent "factfinding" was compromised, because NRC regional management made up its mind before learning the facts.

5. The NRC's own passivity is responsible for this controversy. The operators had gone to the NRC Resident Inspector three times about this critical safety threat, and he did not act. Indeed, he suggested filing a grievance. The government had the responsibility to go straight to the plant's Operations Manager to obtain resolution. At a similar facility, the Oconee nuclear facility, the NRC took appropriate action on a similar problem. Instead, the NRC sat on the problem and now proposes to discipline those who defended the public.



6. There should not be any confusion. Crystal River 3 was operating in a manner that violated nuclear safety law, by undermining the facility's ability to keep water flowing through the system when it is needed for a safe shutdown. The plant is operating in a lawful manner today only because Mr. Fields and the other operators actions proved this vulnerability.

7. Punishment in this case would have a chilling effect on other nuclear power plant operators. The clear message to the industry is that operators will not get in trouble if they act like sheep. On the other hand, they can and will be punished if they exercise independent judgment through approved procedures to expose serious problems that corporate and government bureaucracies do not want to hear about. That is exactly the opposite message that the NRC should be sending to the nuclear industry.

8. I am not alone in believing that the NRC's proposal is wrong, based on the evidence. To illustrate, another NRC inspector, Mr. Curt Rapp, has been serving as the agency's technical expert on the dispute. He was so disturbed by the agency's handling of this dispute that the agency made his concerns a Differing Professional View. Nor is Mr. Rapp alone. Our credibility as an agency enforcing nuclear safety laws is at stake.

I have read the above five page affidavit, and it is true,  
accurate and complete to the best of my knowledge and belief.

Lawrence King  
Lawrence King  
4/30/96

Cenice M. Drayton

Notary Public for Athens County

April 30, 1996

My Commission Expires 2-12-2002