

July 1, 1975

UNITED STATES

SECY-75-324

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INFORMATION REPORT

For: The Commission

Thru: Executive Director for Operations *AK*

Subject: EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES FOR NRC
LICENSEE FACILITIES

Purpose: To inform the Commission of a proposed course of action by the NRC Office of Equal Employment Opportunity (EEO) in response to a Commission request for a future policy paper on the above subject (May 20, 1975 Commission Meeting).

Issue: What role should NRC undertake to aid the implementation of Equal Employment Opportunity programs at NRC licensed facilities?

Discussion: The Office of Federal Contract Compliance (OFCC), Department of Labor, has responsibility for ensuring that government contractors comply with equal employment opportunity requirements pursuant to Executive Order 11246. OFCC defines government contractor as any party with any agreement to provide a service to the government at a cost of \$10,000 or more. OFCC considers electrical utilities to be government contractors, and the responsibility for monitoring compliance has been assigned to the General Services Administration.

On June 5, NRC staff members met with staff members of OFCC to obtain information regarding the compliance record in the equal employment opportunity area of the electrical utilities in general, and the nuclear utilities in particular. OFCC advised that electrical utilities have contended that they are not government contractors and, therefore, not subject to OFCC equal employment opportunity regulations. The utility position has been that they are required by State and Federal law to supply electrical energy to the public. As far as the relationship with the government is concerned, neither party has a choice with respect to the

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arrangement and therefore the utilities argue that it does not constitute a consensual contract. In a recent court decision, however, (U.S. v. New Orleans Public Service) this assertion was rejected. In view of this decision, OFCC has decided to attempt to resolve the equal employment opportunity compliance problem with electrical utilities through conference. Should those initiatives fail, the Department of Justice has agreed to institute legal proceedings against individual utilities.

OFCC is of the opinion that NRC participation through an implementing NRC regulation would be of assistance in connection with their efforts as far as the nuclear utilities are concerned. In this area, traditional government contract remedies such as termination, debarment and suspension are not practical because the utilities are generally the sole sources of electrical energy available.

OFCC has noted NRC authority to impose civil penalties for violation of NRC regulations, and has suggested that should a NRC rule be established, this mechanism could possibly be used along with other sanctions (refusal to grant construction permits or operate licenses) to lend strength to OFCC enforcement of equal employment opportunity requirements. OFCC was informed that it was not certain whether the Commission could legally, or would desire to, apply civil penalties for noncompliance with such a rule.

OFCC suggested that should NRC adopt a helping rule, the Commission may wish to utilize OFCC criteria for development of licensee affirmative action plans and defer to GSA the responsibility for compliance reviews. The staff advised that as an independent regulatory commission, NRC under any plan would have to reserve a right to final review of any affirmative action plan required to be submitted by NRC licensees in order to assure that there would be no conflicts with licensing requirements based upon radiological health and safety considerations (for example, in the area of employment of reactor operators licensed pursuant to 10 CFR Part 55, or in the area of employment restriction based upon radiation dose limits imposed by 10 CFR Part 20).

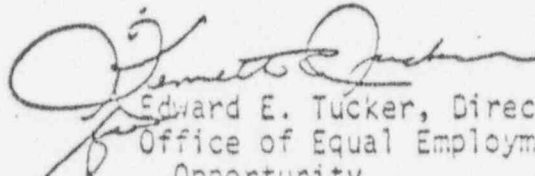
The Court of Appeals for the District of Columbia Circuit in the case of NAACP v. FPC on February 5, 1975, vacated the FPC order disclaiming authority to promulgate equal

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employment opportunity regulations covering employment practices of the industries which it regulates, and returned the matter to the FPC for further consideration. This case is relevant to the question of NRC authority to promulgate general equal employment opportunity regulations.

In conversations between the staff of this office and officials of FPC, we have been informed that the FPC has submitted a petition for certiorari to the Supreme Court asking review of the decision, (NAACP has also filed a petition for certiorari). It is, therefore, the recommendation of the Office of Equal Employment Opportunity that formal Commission consideration of the question of using NRC authority to aid in securing equal employment opportunity compliance by the nuclear electrical utilities should be deferred pending action by the Court on the petitions. In the meantime, the Office of Equal Employment Opportunity will maintain liaison with FPC and OFCC, and secure timely information concerning the equal employment opportunity compliance status of electrical utilities with nuclear power facilities.

Coordination: The Executive Legal Director concurs in the recommendation of this paper.


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Opportunity

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ENCLOSURE B

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NRC PROCEDURES CURRENTLY IN EFFECT FOR THE ENFORCEMENT OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

NRC regulations governing the enforcement of Title VI are found at 10 C.F.R. Part 4. Under Part 4, recipients of NRC-sponsored Federal financial assistance must furnish an assurance (usually in writing) that the NRC programs which constitute such assistance will be implemented without regard to the race, color or national origin of the beneficiaries of such programs. (Sex discrimination is also prohibited under Part 4 as a result of Section 401 of the Energy Reorganization Act of 1974.) The furnishing of this assurance of compliance is a condition to NRC approval of the program; the recipient is obligated to comply with this assurance for the duration of the program.

Recipients are also required to furnish compliance reports and provide NRC staff with access to its records to determine whether the program is being implemented in accordance with Part 4.

Participants, beneficiaries and other persons interested in the NRC-sponsored program must be informed by the recipient of the benefits of such program, of the provisions and applicability of Part 4 to the Federally-assisted program.

Part 4 provides for periodic NRC reviews of the practices of recipients to determine whether the regulations are being complied with and to assure that

no person, on the ground of sex, race, color or national origin, is excluded from participation in, is denied the benefits of, or is otherwise discriminated against under any NRC program which constitutes Federal financial assistance.

NRC must receive and investigate complaints filed by persons who allege to have been discriminated against under the program in question. The NRC shall, in such cases, seek informal resolution of the matter. If, however, the recipient remains in non-compliance, the NRC may refer the matter to the Department of Justice, or hold a hearing on the case following which the NRC may issue an order suspending, terminating or refusing to grant Federal financial assistance to the recipient. However, before NRC can terminate or refuse to grant such assistance, Congress must receive 30 days notice of the NRC action.

ENCLOSURE C