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9/11/96

The Honorable Shirley Jackson
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Chairman Jackson:

I am writing to you as Chairman of the Nuclear Regulatory Commission on behalf of myself and do not intend to represent the opinions of any of the other members of the National Nuclear Safety Network (NNSN). I am responding to the position taken by James Lieberman in his letter to me as Spokesperson for NNSN dated August 9, 1996.

When we met on April 9, 1996, I was extremely encouraged that we finally had the leadership that the Commission needed to assure true nuclear safety. Your aggressive actions related to enforcement discretion, FSAR design controls, and meeting with the public at Millstone have been very encouraging to us as members of the concerned public.

During our meeting my primary concern was that proper protection was not being given to those licensee employees if and when they allege retaliation as a result of their involvement in protected activities. At the meeting, you indicated that you had provided direction to the NRC Staff to develop a position for the investigation of high priority cases. It was my assumption that high priority cases would be those that result in the termination or some other adverse actions against licensee employees.

The nuclear industry is unique in that employees are required to report violations or potential violations to management and/or the NRC. Failure to identify and report non-compliance with regulations may result in violations being issued to the individual. If the individual follows the recommendations of the recently issued Police Statement (SECY 96-056) he will be encouraged to report these concerns to management. However, according to Mr. Lieberman's response, should retaliation occur as a direct result of these actions and the individual is terminated by his immediate supervisor, even if directed by upper management, this is not a high priority and will not be investigated. This has the appearance of prosecution based not on the crime committed but based on the person committing the crime.

This assignment of priorities is completely inconsistent with the interests of public health and safety and is sure to increase the chilling effect and actual retaliation already rampant in the nuclear industry. If priorities have to be assigned, they must be based upon the nature of the actions taken and not the status of the person committing the alleged crime. Mr. Lieberman stated in his letter to me that high priority investigations included "[a]llegations of discrimination caused by a manager above first-line supervisor (consistent with current Enforcement Policy classification of Severity Level I or II violations)." Reading this, I can only assume that supervisors can retaliate and no investigation or enforcement actions will be considered by Mr. Lieberman.

If this policy is followed, then every case of alleged discrimination resulting in an employee termination must be designated a high priority. From my experience at NU, a termination always receives the approval of someone above the first-line supervision. The terminations occurring at

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NU in January of this year had the approval of the President of NU and likely the CEO. If this has been assigned a high priority, why are these people still awaiting the results of the NRC investigation? What has happened to the NCR's concept of "Prompt and Vigorous Enforcement Action?"

Mr. Lieberman refers to "expedited enforcement" for the high priority cases, however, he fails to define what is meant by this term. My case of alleged harassment was considered a high priority case and took more than three and one-half years for "expedited enforcement." Does "expedited enforcement" mean that the investigation will be completed within four years?

In July 1993, the NCR's Inspector General reported that out of 609 cases of alleged discrimination, only 44 or about 7% of these were ever investigated. Of these 44 cases only two resulted in "expedited enforcement." Are we to assume that this pattern will continue with Mr. Lieberman's new policy?

Chairman Jackson, I know you are doing your best to address the whistleblower problems. However, Mr. Lieberman's most recent letter indicates that it is business as usual at the NRC and he will continue with his policy of taking a "hands off" attitude when it comes to addressing this vital issue. Mr. Lieberman has made no commitment with respect to enforcement, resources, timeliness, investigations, or sanctions against management that continues to retaliate against people who identify safety concerns.

I applaud your statement to the House Subcommittee last week stating: "I am ruthless about what is right." We want what is right for those employees who elect to follow NRC Regulations. We expect the NRC investigate **all** alleged cases of discrimination, not just those high visibility cases as in the past. If the Mr. Lieberman continues to look the other way, then possibly the NRC should consider changing its requirement that licensee employees report violations of NRC Regulations.


Finally, I find Mr. Lieberman's response on the issue of licensee attorneys being included during OI investigative interviews to be less than forthcoming. The case cited by Mr. Lieberman applies only to OI interviews conducted with the issuance of a subpoena. I doubt very much that OI has issued any subpoenas to NU employees in connection with its investigations into the matters raised by George Galatis and others. Nor does Mr. Lieberman's response address why OI insists on keeping alleged and their attorneys in the dark during investigations while the licensee's attorneys have access to nearly all phases of the investigation.

I consider Mr. Lieberman's letter totally unresponsive to the concerns identified in the NNSN letter to you dated June 24, 1996.

I will be in Washington DC on November 11, 1996 to participate in an ANS sponsored panel on the nuclear whistleblower issues. If it is convenient, I would like another opportunity to meet with you to discuss this vital issue.

I look forward to your personal response.

Sincerely,


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