



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

PDR
OLB

OCT 11 1985

Mozart G. Ratner, Esquire
1900 M Street, NW, Suite 610
Washington, DC 20036

IN RESPONSE REFER
TO FOIA-85-542

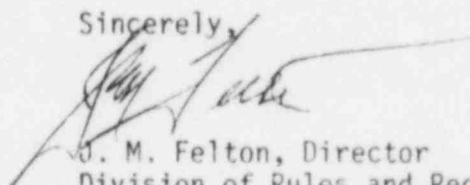
Dear Mr. Ratner:

This is the final response to your letter dated July 25, 1985, in which you requested, pursuant to the Freedom of Information Act (FOIA), copies of all memoranda and notes of all conferences and conversations on which the letter dated July 19, 1985, to you from Mr. Jensen of NRC's Office of the General Counsel (OGC) was based.

By letter dated August 26, 1985, we provided a partial response to your request and informed you that staff members were continuing to search for records. The search has been completed by the NRC staff, and no additional records subject to your request were located.

This completes NRC action on your request.

Sincerely,


J. M. Felton, Director
Division of Rules and Records
Office of Administration

LAW OFFICES
MOZART G. RATNER, P. C.

1900 M STREET, N. W.

SUITE 610

MOZART G. RATNER

WASHINGTON, D. C. 20036

AREA CODE 202
223-9472

July 25, 1985

FREEDOM OF INFORMATION
ACT REQUEST

FOIA-85-542

Rec'd 7-30-85

Mr. Joseph Felton
Division of Rules and Records
Office of Administration
Nuclear Regulatory Commission
Washington, D. C. 20555

Attention: Ms. Linda Robinson

Dear Mr. Felton:

The undersigned is a named party in Ratner and Schiller v. General Electric Company, 10 CFR 2.206 proceeding, currently under active investigation by national headquarters, NRC. Id., 2.206 (b). He filed the petition initiating this review proceeding as counsel to Vera M. English, and other unnamed G.E. WFMD employees, who informed NRC of many G.E. safety and quality violations.

English, until March, 1984, employed as a test operator in the Chemet Lab of G.E.'s WFMD, acting as "private attorney general," under ERA § 210 (42 U.S.C. § 5581, 2011), and 10 CFR §§ 19.15, 70.7, filed charges against G.E. alleging, inter alia, a host of "willful" violations of ERA (42 U.S.C. § 2273), including material misrepresentations of fact by G.E. management to NRC investigators (49 F.R. 8593, n. 15). These charges, and other charges, were investigated by inspectors of NRC Region II, who issued Reports of their findings.

The 2.206 petition prayed for review on the national level of these inspection reports; requested that they be set aside for illegal failure to find a large number of violations; to attribute substantive, rather than merely technical, significance to the violations found; to find that the violations were willful, not timely corrected, continuing, repeat and cumulative (49 F.R. 8589-8590); and to assign severity levels and appropriate penalties in accordance with NRC's enforcement policy (49 F.R. 8587-8594) and ERA (42 U.S.C. §§ 2201(o), 2232, 2233, 2236, 2273, 2282). The petition attributed the Report failures to G.E.'s misrepresentations to the NRC inspectors and to incompetence, lack of training and bias and prejudice of the NRC inspectors against employee

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informants and in favor of G.E. The current investigation by NRC's Office of Investigations (O.I.) is part of the § 2.206 proceeding.

Vera M. English is also plaintiff in DOL Case No. 85-ERA-2, English v. General Electric Company, brought under § 210. In that case she seeks relief against G.E. for allegedly discriminatorily transferring and discharging her because she filed charges with NRC against G.E. and furnished hard evidence to NRC and DOL in support of those charges. Joy Malpass was a witness and John Clifford "Buddy" Lewis was, to G.E.'s knowledge, an affiant supporting English at the trial of 85-ERA-2.

After the trial, Malpass and Lewis filed a complaint and amendments with DOL alleging, inter alia, that G.E. had attempted to intimidate Malpass to prevent her from testifying fully and freely against G.E. in the English case; engaged in acts of reprisal against her and "Buddy" Lewis for siding with English against the Company; and sought to intimidate and coerce employees, including Malpass and Lewis, not to furnish information to O.I. inspectors during the incipient O.I. investigation.

On July 10 or 11, 1985, Eugene Lees, plant manager of G.E.'s WFMD, caused to be distributed to all Chemet Lab employees a letter from him dated July 9, 1985, attached hereto as Appendix 1. The letter stated that employees are not required to talk to O.I. Inspectors; offered to give them Company counsel to represent them; alleged that they could properly be represented by Company counsel; and forbade them to turn over to O.I. any documentary evidence against G.E. which they may have obtained in the course of their employment, on the ground that such documents are "company property."

The undersigned immediately moved DOL to secure temporary injunctive relief against this flagrant G.E. violation of § 210. DeFord v. Secretary of Labor, 700 F.2d 281, 286 (6 Cir. 1983). He simultaneously moved NRC to exercise its power under 10 CFR §30.63 and p. 134 (Orders (2)(d)) to suspend G.E.'s license SNM 1097, pending cessation and remedy of G.E.'s interference with the statutory and constitutional right of its employees to communicate freely, privately, and confidentially, as "eyes and ears of the NRC" (NRC Brief in Kansas Gas and Electric case, p. 11; 10 CFR §19.11, 19.12, 19.13, 19.14(b)), without any employer interference, law violations of their employer.

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The undersigned invoked NRC's official enforcement policy to "apply its full enforcement authority" (49 F.R. 8589), against "willful" violations (49 F.R. 8588, 8589), to assure that wrongdoers "do not profit from violations of NRC requirements" (49 F.R. 8587). "Orders are made effective immediately * * * when the order is responding to a violation involving willfulness." 49 F.R. 8590. He also invoked NRC's 1982 declaration of policy, 47 F.R. 304352-30458, NRC's understanding with DOL that "NRC and DOL have complementary responsibilities in the area of employee protection" (47 F.R. 54585); and its revised version of NRC Rev'd Form 3 (col. 6) which declares "NRC may conduct its own investigation where necessary to determine whether unlawful discrimination has prevented the free flow of information to the Commission."

On July 19, 1985, the undersigned received a letter from E. Neil Jensen, Attorney, Office of the General Counsel (attached here as Appendix 2), rejecting the undersigned's request for suspension of G.E.'s license as "premature," because OI has not yet determined that "its investigation is being impeded." Inquiry of Mr. Roger Fortuna, Deputy Director of O.I., the official responsible for rejection of the undersigned's request, elicited the information that Mr. Fortuna's "prematurity" conclusion was predicated on the theory that a court would not sustain an NRC suspension order absent evidence that the employer's interference had actually succeeded in blocking or preventing NRC from obtaining information from employees in the course of its investigation. However, the plain tendency of G.E.'s interference, as evidenced in the Lees letter of July 9 (App. 1) is unlawfully to chill and inhibit the willingness of employees to provide documentary and oral evidence to OI investigators during their incipient investigation.

✓ To test the reasoning and judicial authority which underlay Mr. Fortuna's legal conclusion, the undersigned, as a named party in the § 2.206 proceeding, as counsel for the interested employees, and pursuant to FOIA, requests that NRC produce all memoranda and notes, in any form, of all conferences and conversations, whether in person, by telephone, or other means of communication, on which the final letter decision dated July 19, 1985 (App. 2) was based. The undersigned is legally entitled to all information which may

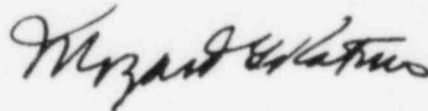
Mr. Joseph Felton
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cast light upon and explain the legal reasoning process by which OI and OGC determined that G.E.'s letter does not per se, as a matter of law, illegally interfere with exercise of the statutory and constitutional rights of the employees. Dunlop v. Backowski, 421 U.S. 560, 567, n. 7, 568, 571, n. 9, 572, 573-574, 575 (1975); Fla. Power & Light v. Lorion, ___ U.S. ___ 84 L.Ed.2d 643, 656 (1985).

Mr. Fortuna's decision for the Commission is final and judicially reviewable under 42 U.S.C. § 2239(a)(1) and 28 U.S.C. § 2239(b) (Lorion, supra, at 651-656); 28 U.S.C. § 1337 (Backowski, supra, at 566); APA, 5 U.S.C. § 702, 704, 706 (2) (A) (id., at 572-576).

Because this is an emergency matter, affecting a current investigation, and because the requested documentation, if any, is immediately available through the office of the General Counsel and the office of Mr. Fortuna, Deputy Director of O.I., having been prepared during the past week, the undersigned asks that this production request be given emergency, priority, treatment.

Very truly yours,



Mozart G. Ratner

MGR/hej

cc: Roger Fortuna, Esq.
Mr. Robert Burch
Mr. John Craig
Mr. John T. Collins
E. Neil Jensen, Esq.
James Lieberman, Esq.
Mr. James Y. Vorse
Cornelius S. Donoghue, Jr., Esq.

NUCLEAR FUEL MANUFACTURING DEPARTMENT
Wilmington, North Carolina

July 9, 1985

[REDACTED]

SUBJECT:

NRC INVESTIGATION

The NRC is conducting, through its Office of Investigations (OI), an inquiry into certain allegations made against the General Electric Company regarding activities at NFMD.

The OI investigator could possibly conclude that you may have information bearing upon these allegations. Therefore, you may be receiving a request from the investigator to discuss any information that you may have. If this should happen, the Company encourages you to cooperate fully to assure complete and accurate development of the facts, but feels that you should be aware of the following:

You are legally free to either talk to the investigator or refuse to do so, although the Company urges you to cooperate in the investigation. You also have the legal right to refuse to answer questions during the interview, or to request that any question be clarified before you answer it, or to request a recess or stop the interview at any time.

You have the right to insist, as a condition of being interviewed, on being accompanied during your interview by a third person of your choice, such as an attorney. Because we have no reason to believe that either you or the Company has been involved in any wrongdoing, we do not believe that your use of a Company attorney would conflict with your rights. A Company attorney is available for this purpose, if you so desire. You may also meet privately with the investigator. Any contact with NRC is protected activity under Section 210 of the Energy Reorganization Act, and no discriminatory action can or will be taken against you as a result.

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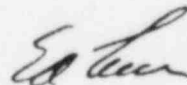
If you do choose to be interviewed, you may thereafter be asked to write, or sign, a sworn statement. You are legally free to provide such a signed statement, or to refuse to do so. You should carefully review such a statement, and insist that it be corrected before signing it. You have a right to keep a copy of any such statement which you do sign.

If you agree, the investigator may choose to tape record or transcribe the interview with you. You have a right to receive a copy of the tape or transcript.

If you do elect to be interviewed or to provide a statement, you should be completely accurate, to the best of your ability, and absolutely truthful.

Finally, if the investigator requests that you provide documents, be aware that any documents prepared by you or others in the course of employment are the property of the Company, and you are not authorized to provide them. The investigator can request such documents from the Manager, Regulatory Compliance.

Call me at any time if you have any other information or concerns you want to discuss.



E. A. Lees



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

July 18, 1985

Mozart G. Ratner, Esquire
1900 M Street, N.W., Suite 610
Washington, D.C. 20036

Dear Mr. Ratner:

I have been asked to acknowledge receipt of your letter of July 12, 1985 addressed to Ben Hayes and your letters of July 15 and 16 addressed to Judge Plaine. Since OGC is legal counsel to OI, we are here responding to the communications to both offices.

We appreciate the information you provided, including actions taken by officials at the General Electric Company's Wilmington facility during the course of the present OI investigation at that location. I understand OI is fully cognizant of these actions.

Should OI determine that its investigation is being impeded, it will take whatever action is necessary to protect the investigatory process. OI and OGC agree, however, that it would be premature, at this time, to take the steps suggested in your motion to the Department of Labor.

Thank you for your continued interest in this investigation.

Sincerely,

A handwritten signature in dark ink, reading "E. Neil Jensen", is written over the typed name.

E. Neil Jensen
Attorney
Office of the General Counsel

cc: Ben Hayes
James M. Taylor
James Lieberman
Cornelius S. Donoghue, Jr.

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