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March 2, 1985

Neal E. Abrams, Esq.
Patent Counsel
Operations and Administration Division
Office of the Executive Legal Director
Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Vera M. English v. General Electric Company
DOL Case No. 85-ERA-2

Dear Mr. Abrams:

Enclosed please find a letter addressed to ALJ Judge Brissenden by G.E.'s attorney, Scott Klion, who purports to defend his deliberate omission from complainant's service copy of Attachment A, Report No. 70-1113-84/15, to his motion to dismiss or for summary judgment, filed with ALJ Brissenden, on the ground that NRC has determined that this Attachment "contains security/safeguards information," and that neither in public trial or in any order issued by the ALJ should "any information from the Inspection Report" be cited. (Emphasis added.)

If, indeed, NRC has classified as "security/safeguards" any information in this or any other Inspection Report, or if any of the documents which I have requested that NRC produce have been categorized as containing "security/safeguards" information, within the meaning of 10 CFR § 9.5(a)(1), please advise precisely the words and lines of said reports and other documents which have so been classified, and provide a copy of the classified document with the "security/safeguards" information deleted so that these documents, without "security/safeguards" information, may freely be offered in evidence at the hearing in 85-ERA-2, without reservation.

I respectfully call attention to the fact that documents classified as containing "security/safeguards" information must "in fact [have been] properly [so] classified." 10 CFR § 9.5(a) 1. Any information contained in a document which has not been properly classified as security/safeguards

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information is and must be available for production in evidence, without prior in camera examination, by a party-litigant in a public trial. Otherwise, a litigant could not comply with 10 CFR §§ 2.907, 2.908, 2.910.

Even information which has been properly classified as "security/safeguards" enjoys no such absolute immunity against introduction in evidence as Mr. Klion asserts. It enjoys only qualified immunity, at best. 10 CFR § 2.906, provides:

"It is the obligation of all parties in a proceeding subject to this part to avoid, where practicable, the introduction of Restricted Data or National Security Information into the proceeding. This obligation rests on each party whether or not all other parties have the required security clearance." (Emphasis added.)

10 CFR § 2.911 provides:

"A presiding officer shall not receive any Restricted Data or other National Security Information in evidence unless:

(a) The relevance and materiality of the Restricted Data or other National Security Information to the issues in the proceeding, and its competence, are clearly established; and

(b) The exclusion of the Restricted Data or other National Security Information would prejudice the interests of a party or the public interest." (Emphasis added.)

Thus, even properly classified security/safeguards information may be received in evidence if exclusion "would prejudice the interests of a party or the public interest," as it surely would here.

In this case, one avenue of proof of discrimination against Mrs. English for whistle blowing is management's historic "laxity" towards, and cover up for, supervisors and employees who by breaking safety rules, create nuclear safety hazards, endangering themselves and other employees, the ostensible pretext relied on by G.E. for the transfer and discharge of Mrs. English. It is utterly "impractical," indeed, impossible, to present complainant's case without introducing

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into evidence, in the DOL proceeding, the relevant documents which sustain that showing, including NRC inspection reports. Unless those portions of documents claimed to contain "Restricted Data or National Security Information" are, on one copy furnished to complainant's counsel, deleted, so that complainant's counsel can determine whether those portions are relevant and material, complainant cannot undertake to comply with the obligation in 10 CFR §§ 2.906, 2.907 and 2.908. Needless to say, Mr. Klion's ploy is a sophomoric attempt to escape the statute by making it impossible effectively to try complainant's case.

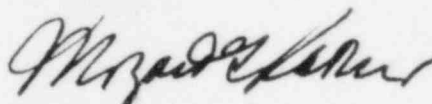
Please do not await completion of the collection of data I have requested before forwarding the data to me. The most urgently needed documents are Items 6, 7, 13, 14, 23, 24 and 25 of my original request, and Item 1 of my supplemental request. If I were to attach priority within those, I would choose Item 25 of my original request and Item 1 of the supplemental request.

As of March 11th, I will be taking up residence at the Wilmington Hilton in Wilmington, North Carolina, for the duration of the hearing which has currently been scheduled to last through March 27th. Please have all documents forwarded and correspondence addressed to me after March 10, 1985, to my temporary Wilmington law office as follows:

Mozart G. Ratner
c/o Rountree & Seagle
11 South Fifth Avenue
Wilmington, North Carolina 28401

During the week of the 11th I will be reachable either through the Hilton ((919) 763-9881)) or at that office ((919) 763-3404)). The hearing begins on the 18th, and after the hearing adjourns each day, I will be reachable either at the Hilton or at the above office number.

Very truly yours,



Mozart G. Ratner

MGR/hej

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Enclosures

1. Letter from Mr. Klion to ALJ Brissenden
2. G.E.'s Motion to Dismiss
3. Complainant's Motion to Strike

cc: James Lieberman, Esq.