

From: <VMBLANCH@aol.com>  
To: WND2.WNP3(jaz),udl.internet3("JAZWOL@aol.com")  
Date: 6/21/96 10:24pm  
Subject: TROJAN NOV

John:

Can you please have someone respond to me on this issue via e-mail. Even if you can only send me a copy of the NOV it would help.

Paul

I read an article in the Portland Oregonian dated June 8, 1996 that the NRC has fined PGE for "falsifying records and misleading officials about operations at the Trojan nuclear power plant before it closed in January 1993."

Excerpts from the article entitled "PGE faces \$50,000 safety fine" are as follows:

"Joe Callan, a commission official, said the violations resulted from significant management failures. The commission noted that Trojan, which is being decommissioned, has a different management team than when the offenses occurred.

"If it were not for the fact that Trojan has a new management team, that the plant has permanently ceased operations and the current efforts to keep the NRC staff informed of on-site activities, the NRC would have considered a civil penalty up to the statutory limit of \$100,000," Callan said. . .

"According to the commission, PGE knowingly falsified documents, justifying the use of certain electrical splices at the Rainier plant in 1990 before necessary tests had been conducted.

"It said PGE also submitted inaccurate and misleading information in 1991 on the integrity of some electrical assemblies. The assemblies carried cables through the containment building housing the nuclear reactor . . ."

It appears from this article that the NRC just issued a civil penalty for a violation that occurred in 1990. Other events occurred in 1991 (exactly when in 1991 is not specified). Thus, at least part of the penalty appears to be for a violation that occurred more than five years ago. What about the Statute of Limitations that the NRC recently cited in the Georgia Power case? If the article is accurate, there would seem to be a significant inconsistency in the NRC's application of the Statute of Limitations.

Do you know any more details? Is the article accurate? Do you have a copy of the NOV? If so, can you send it to me via internet?

CC: udl.internet3("ECHadley@aol.com","roym.hehs@gao.go...

From: <VMBLANCH@aol.com>  
To: WND2.WNP3(jnh,jaz),TWD1.TWP4(wjs,ljn1),WND1.WNP2(d...  
Date: 6/21/96 10:49am  
Subject: GUNDERSEN 2.206

June 20, 1996

George Mulley  
Office of Inspector General  
Nuclear Regulatory Commission  
Washington, D.C. 20555

re: Arnold Gundersen  
Petition under 10 C.F.R. 2.206

Dear Mr. Mulley:

On behalf of Arnold Gundersen and We the People, Inc., of the United States, this letter will constitute a request that your Office make an inquiry into the following matter. Specifically, I allege that the Nuclear Regulatory Commission ("NRC") is failing to uniformly enforce the provisions of 10 C.F.R. 2.206. Further, I am concerned that this failure is linked directly to the degree of public visibility that a petition under 2.206 receives. The basis for this complaint is set forth below.

On May 14, 1996, I filed a petition under 10 C.F.R. 2.206 on behalf of Mr. Gundersen and We the People requesting that the NRC revoke the license issued to Nuclear Energy Services ("NES") of Danbury, CT, to conduct activities under the Atomic Energy Act, as amended. In support of that request, I maintained that NES had engaged in a flagrant and continuing violation of 10 C.F.R. 30.7 and 30.10 by filing and pursuing a civil action against Mr. Gundersen seeking to hold him liable for activity protected under 42 U.S.C. 5851. A copy of the petition, along with exhibits, was provided to your Office.

On June 12, 1996, James Lieberman, Director, Office of Enforcement, NRC, denied the petition. (Exhibit 1) In relevant part, Mr. Lieberman states:

We agree that an employee need not be correct in his allegations in order to receive the protections of the statute or regulation and filing a lawsuit against an employee solely to discourage him or her from engaging in protected activity or to retaliate against a worker for engaging in protected activity may be a violation of 10 CFR 30.7. However, a person engaged in protected activity is not immune to adverse action by an employer or former employer if such action has a legitimate basis. Consequently, Mr. Gundersen's engaging in protected activity does not prohibit NES from filing a lawsuit on such grounds as breach of contract or defamation provided there is a nondiscriminatory basis for the suit.

NRC is not prepared to conclude, based on your submittal alone, that NES has abused the judicial process by filing

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a lawsuit in retaliation for Mr. Gundersen engaging in protected activities. In our view, this question should be answered by the court where this lawsuit is presently pending. Should the court determine that the lawsuit was filed as a pretext, then NRC may pursue the issue of whether NES did, in fact, commence the lawsuit in order to retaliate against Mr. Gundersen for engaging in protected activity.

Since the present letter requests the same action that already has been denied by the NRC in its November 19, 1993 Director's Decision and, since the letter does not offer new information that might indicate the Director's Decision was in error, the letter will not be reviewed under 10 CFR 2.206, and the request for action against NES is denied at this time.

(Id., emphasis added)

There are so many errors and inconsistencies in Mr. Lieberman's decision that it is difficult to determine where to begin to address them. In any event, let me try by addressing the highlighted areas.

First, however, let me note that I cannot understand why the petition I filed on behalf of Mr. Gundersen and We the People was addressed by the Director of the Office of Enforcement while a previous petition I filed on behalf of George J. Galatis and We the People is currently being processed by the Director of the Office of Nuclear Reactor Regulation.

The Commission's regulations, at 10 C.F.R. 2.206(b), provide that a request to institute a proceeding will be assigned to "the Director of the NRC office with responsibility for the subject matter of the request. . . ." Both the petition involving Mr. Gundersen and the petition involving Mr. Galatis set forth allegations of intentional misconduct by the licensee. How can it be, then, that both petitions are processed by different NRC offices?

Addressing the particulars of Mr. Lieberman's denial of the 2.206 petition, the first area of concern is the apparent lack of understanding by the Director of the Office of Enforcement of the appropriate legal standards under which to assess the petition. Nothing in the appropriate statute, or the Commission's regulations, require an employee to demonstrate the harassment, intimidation and discrimination is solely because of protected activities. Under 10 C.F.R. 30.7(a), a Commission licensee may not discriminate against an employee for engaging in protected activities as established by Section 211 of the Energy Reorganization Act, as amended.

Section 211 of the Act is codified at 42 U.S.C. 5851. Subsections (b)(3)(A) and (b)(3)(C) make clear that an employee only is required to demonstrate that the protected activities were a contributing factor in the employer's actions. If the employee makes such a showing, the the burden of proof shifts to the employer to demonstrate, by clear and convincing evidence, that it would have taken the same action even absent the protected activities. See, subsections (b)(3)(B) and (b)(3)(D).

Why is Mr. Gundersen being held to a legal standard that has no basis in statute or regulation and, in fact, flies directly in the face of both statute

and regulation? Given all of the attention to so-called "whistleblower" issues by the NRC in the past five years, and Mr. Lieberman's direct involvement in those issues, I find it hard to believe that he is not familiar with the correct legal standard under which to assess the petition. That he would not be familiar with the standard becomes even more incredulous since Mr. Lieberman advised me that he was guided in his decision by the NRC Office of General Counsel.

Setting aside the issue of the appropriate legal standard, I also do not understand why, if Mr. Gundersen proves that the lawsuit is solely because of his protected activity, Mr. Lieberman indicates this may be a violation of 10 C.F.R. 30.7. One can only wonder how a demonstration that the employer has acted solely because of protected activity could not be a violation of Section 30.7.

Next, Mr. Lieberman notes that an employee is not immune from an adverse action by an employer if the action has a legitimate basis. Subject to applying the appropriate burdens of proof, discussed above, this is a true legal statement. But, the questions becomes on what basis did Mr. Lieberman decide that the actions of NES in this case have a legitimate basis? As far as I know, NES filed no response to the petition and, certainly, Mr. Lieberman did not reference any response. Indeed, the clear implications of Mr. Lieberman's letter is that he made his decision based on my submittal alone. Thus, on what evidentiary basis did Mr. Lieberman conclude that there was a legitimate basis for the NES lawsuit against Mr. Gundersen?

We now come to the heart of my confusion about the rejection of this petition. Mr. Lieberman indicates that based on the petition alone, he is denying the petition and the request to revoke the license of NES. Section 2.206 authorizes an individual to request that the Commission "institute a proceeding" to revoke, suspend or modify a license. The whole purpose of a proceeding is that it gives the petitioner the opportunity to introduce evidence in support of his contentions. The question before Mr. Lieberman was not whether the petition so conclusively proved its allegations that the request for license revocation should be granted. Rather, the question was whether there was sufficient evidence to institute a proceeding. How can there not be sufficient evidence to at least institute a proceeding when corporate officials testify, under oath, that Mr. Gundersen is being sued for being "dead wrong" about his safety allegations and for testifying before a subcommittee of the Connecticut State Legislature?

As I am sure you are aware, the NRC recently held a public hearing on the petition involving Mr. Galatis. The primary purpose of that hearing was to give me the opportunity to present evidence, on behalf of my clients, to support the allegations in the petition. Why am I not being allowed the same opportunity to present evidence in support of the allegations in the instant petition? I do not believe the NRC can provide any rational answer to that question.

In April 1995, your Office raised questions about the Commission's interpretation of 2.206. As a result, in May 1995, the Office of General Counsel ("OGC") issued, "OGC Analysis of the Inspector General's Regulatory Commentary on 10 C.F.R. 2.206." In that analysis, the OGC specifically represented to your Office that it follows the criteria set forth in NRC

Management Director 8.11 in reviewing petitions under 2.206. Id. at p. 5. Part III of the Management Directive provides:

A petition will be reviewed under the requirements of 10 CFR 2.206, whether specifically cited or not, if the request meets all of the following criteria:

x The request is for enforcement action: a request that the NRC impose requirements by order; or issue an order modifying, suspending, or revoking a license; or issue a notice of violation, with or without a proposed civil penalty.

x The request must specify the enforcement action requested and the facts that constitute the bases for taking the particular action. The request is not simply a general statement of opposition to nuclear power or a general assertion without supporting facts (e.g., the quality assurance at the facility is inadequate). The petitioner must provide some element of support beyond the bare allegation. The facts stated in support must be credible and sufficient to warrant further inquiry.

x The request is not used to avoid or circumvent an ongoing proceeding in which the petitioner is or could be party.

Clearly, the petition I filed on behalf of Mr. Gundersen and We the People met all three criteria: (1) the request was for enforcement action, specifically, it was requested that the NRC revoke the license of NES; (2) the facts on which the petition was based were set forth with particularity and supported by exhibits; and (3) the request was not used to circumvent any ongoing proceeding. Under the second criterion, the petitioner only is required to demonstrate sufficient credible facts to warrant further inquiry.

It is difficult to believe that the petition did not fulfill this criterion. The petition was supported by some 14 exhibits, including self-authenticating documents and sworn testimony. Why, then, was there no further inquiry?

I would appreciate your inquiry into this matter and any response you can give that will shed light on the NRC's handling of this specific 2.206 petition, as well as the generic implications that are raised by the apparent inconsistent processing of 2.206 petitions in general. As noted by the OGC in its analysis of the process, "the 2.206 process plays an important role in promoting public participation in nuclear matters because 2.206 provides the only means by which private persons can seek enforcement of the Atomic Energy Act." Id. at pp. 3-4. Obviously, the public cannot participate unless we know what the rules are and those rules are applied consistently across the board.



C. Hadley

Ernest

cc: A. Gundersen  
W. Manion, NES  
Sen. J. Lieberman

**From:** <VMBLANCH@aol.com>  
**To:** WND2.WNP6(jx1), WND2.WNP3(jaz), WND2.WNP4(wtr), KPD1....  
**Date:** 6/21/96 8:30am  
**Subject:** Fwd: Important

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Forwarded message:

**From:** JAF1978@aol.com  
**To:** VMBLANCH@aol.com  
**CC:** JRiccio@atl.mindspring.freelancem, lochbaum@enercon.com,  
AJR2100@aol.com,  
ECHadley@aol.com, DayWrite@aol.com, Konrad.Witte@connriver.net  
**Date:** 96-06-20 19:20:55 EDT

To all NNSN members and friends,

I unfortunately am the bearer of tragic news. Ann and Bill Harris' daughter Kim was brutally murder by her husband early this morning. Needless to say Ann and Bill are devastated. Many of you may remember meeting Kim and her little girl Sam while we were in Tenn. She was such a refreshingly open and loving young woman. I remember Kim telling me how impressed she was of us and how proud she was of her "Mama" Well, now her "Mama" needs all of us... thru prayer and what ever signs of support we can offer. Ann and Bill's address is Route 1, Box 26

Pickel Rd  
Ten Mile Tenn. 37880

An event as God awful as this certainly reminds us all of our priorities in life. I am sure Ann and Bill need and would appreciate our prayers and thoughts. jane

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I THOUGHT ENFORCEMENT DISCRETION WAS DEAD?

+-----+ NOTIFICATIONS

+		+		+		+	
1	N	Y	100	POWER OPERATION	100	POWER	
OPERATION							
2	N	Y	100	POWER OPERATION	99	POWER	
OPERATION							

~~10283~~ 2pp.



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EVENT TEXT  
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| LICENSEE COMMENCED A TS REQUIRED SHUTDOWN OF BOTH UNITS AFTER DETERMINING  
| THAT SURVEILLANCE TESTING OF MANUAL SI ACTUATION WAS INADEQUATE.  
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| A REVIEW OF SURVEILLANCE TEST PROCEDURES CONCLUDED THAT A REACTOR TRIP ON  
| MANUAL SI ACTUATION FROM THE CONTROL BOARD HAND SWITCHES HAD NEVER BEEN  
| VERIFIED FOR EITHER UNIT. THIS PLACED BOTH UNITS IN TS 3.0.3 WHICH  
| REQUIRES THAT WITHIN 1 HOUR FROM 1757 CDT ACTIONS BE TAKEN TO PLACE BOTH  
| UNITS INTO MODE 3 OR BE IN HOT STANDBY WITHIN THE FOLLOWING 6 HOURS. UNIT  
| 2 IS CURRENTLY RAMPING DOWN AT 1 MW/MIN. UNIT 1 PLANS TO BEGIN RAMPING  
| DOWN AT .5 MW/MIN SHORTLY. THE LICENSEE INFORMED THE NRC RESIDENT  
| INSPECTOR.  
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| HOONOTE: A CONFERENCE CALL IS SCHEDULED AT 2100 EDT WITH THE LICENSEE TO  
| CONSIDER A REQUEST FOR ENFORCEMENT DISCRETION.  
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| \* \* \* UPDATE 2210 EDT 6/20/96 FROM COLLINS TO S.SANDIN \* \* \*  
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| CONTROL ROOM NOTIFIED AT 2054 CDT THAT ENFORCEMENT DISCRETION WAS GRANTED.  
| UNITS 1 AND 2 ARE CURRENTLY AT 94% AND 72% POWER, RESPECTIVELY. THE  
| LICENSEE WILL RAMP BOTH UNITS TO 100% POWER.  
|  
|

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From: <VMBLANCH@aol.com>  
To: WND2.WNP3(jnh,jaz),TWD1.TWP4(wjs,ljn1),WND1.WNP2(d...  
Date: 6/20/96 1:14pm  
Subject: WALL STREET JOURNAL ARTICLES

NRC Faults Reviews  
At Northeast Utilities,  
Slowing Plant Restart

BERLIN, Conn. -- Federal regulators have ordered stricter safety reviews by Northeast Utilities at the company's Millstone nuclear power plant. The order has prompted the utility once again to push back the plant's estimated restart dates until September at the earliest, potentially adding tens of millions of dollars more to its replacement-power bills.

In addition, the Berlin, Conn., company said in documents filed with the Securities and Exchange Commission, it expects reviews related to the shutdown of the nuclear plant to cost it about \$100 million, \$24 million more than previously estimated. The company also expects to spend millions more than it had expected on fossil-fuel plants it is buying to make up for the lost power, said a spokesman.

The tab has been rising steadily for the shuttered three-reactor Millstone plant, in Waterford, Conn., since it was put on the "watch list" of the country's most-troubled plants by the U.S. Nuclear Regulatory Commission last January.

Northeast Utilities, which owns most of Millstone, estimates it is spending about \$25 million a month for replacement power while the plant's three reactors are out of service. Moreover, because Millstone usually provides about 10% of New England's electricity, regional power authorities have forecast shortages and rising prices for consumers this summer.

Previously, Northeast Utilities said it hoped to file documents by July 2 that would allow the restart of its Millstone 3 reactor by August. But the utility has been told by the NRC that an internal safety program is "inadequate" and must be strengthened, said a company spokesman, Anthony Castagno. The agency also cited five technical safety problems, for which the company may face fines.

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#### Northeast Utilities Allocates Extra \$25 Mln To Buy Capacity

BERLIN, Conn. (Dow Jones)--Northeast Utilities will spend about \$25 million more than expected to acquire additional electric-generating capacity to meet demand for electricity this summer.

A spokesman said the company expects to spend a total of \$45 million this year to lease, or return to service, additional fossil-fueled power plants in Connecticut, which together are expected to generate 210 megawatts of electricity.

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The company had previously estimated it would spend about \$20 million for the plants. The new estimate reflects rising equipment costs and the renegotiation of contracts under which large industrial customers receive rate breaks in return for agreeing to tolerate power outages during periods of peak demand, the spokesman said.

The new fossil plants are meant to ease a capacity shortage in the region created by the extended outage of its three nuclear reactors at its Millstone Plant in Waterford, Connecticut, which are shut down pending safety reviews.

Friday, the company pushed back restart dates for two of those reactors and said it expects to spend an additional \$24 million on safety reviews due to criticism by the Nuclear Regulatory Commission.

Northeast Utilities is New England's largest public utility. Its main units operate in Connecticut, Massachusetts and New Hampshire.

From: <VMBLANCH@aol.com>  
To: WND2.WNP3(jnh,jaz),TWD1.TWP4(wjs,ljn1),WND1.WNP2(d...  
Date: 6/20/96 1:14pm  
Subject: GEORGE GALATIS

Friends:

I have just been informed that George and NU have reached agreement on all employment issues and as of today, George is no longer employed by NU.

George and Ernie Hadley will not be available for any comments for a few days. Please do not attempt to contact either of these people as they will have no further comment.

Paul

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