

From: James D. Dockery (JDD),OI
To: LMS LSLACK,RII
Date: Monday, April 3, 1995 8:38 am
Subject: EICS FILES

2-95-008

LINDA, I NEED TO COME UP AND REVIEW TWO EICS FILES IF THEY ARE AVAILABLE:

(1) - ALLEGATION FILE NO. RII-95-A-0026 (ST. LUCIE NP - ALLEGER G. PHIPPS, AND,

[REDACTED] 7C

WOULD APPRECIATE IT IF YOU COULD LET ME KNOW IF THESE FILES ARE AVAILABLE AND WHEN IT WOULD BE CONVENIENT FOR ME TO COME UP AND SEE THEM.

THANKS, JIM D.

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 7C

FOIA- 96-485

9702120258 970211
PDR FOIA
BINDER96-485 PDR


44

7C portions

NOTES - 2-95-008

St. Lucie Nuclear Plant
Alleged Discrimination of I&C Technician for Reporting
Safety Concerns.

Alleger: Gary PHIPPS

 7C
assistance - confirmed per EICS allegation file)
Work: (407) 468-3962

Facility: Florida Power and Light (FP&L)
St. Lucie Nuclear Plant (SLNP)
7585 S. Highway A1A (Hutchinson Island)
Jensen Beach, FL 34957-2010
* NRC Sr. Resident Inspector: R. Prevatte - RI M.
Miller - Tel.: (407) 464-7822

Attorney for FP&L (Respondent):
Paul C. HEIDMANN, Esq.
Muller, Mintz, Kornreich, Caldwell, Casey, Crossland &
Bramnick, P.A.
Suite 3600, First Union Financial Center
Miami, FL 33131-2338

DOL Wage & Hour Division:
299 E. Broward Blvd. - Rm. 408
Ft. Lauderdale, FL 33301
Ana R. MORENO - Asst. Area Director
W&H Decision 9/8/95 found for the alleger.

From 4/11/95 Letter/DOL Complaint:

2-95-008

RIT-95-A-0026 ST LUCIE

ALLERBER'S ID? HE DID NOT REQ CONFID.
HE TOLD NRE IT IS WELL
KNOWN THAT HE IS ALLEGING
DISCRIM BY LICENSEE

WHY OIG REFERRAL?

IS THE ALGR CALLING THIS AN OIG REF.
OR DID WE REFER SOMETHING TO OUR
OIG.

ADVERSE ACTION — DENYING HIM OUTAGE
WORK?

IS HE STILL EMPLOYED BY FPI L

GARY PHUAPS

([REDACTED]) 7C

DELIVERED IN SIDE IN BOX OF
SEE COMPUTER GENERATED CHRON
SUBSEQUENT INVESTIGATIVE/AN
ACTIVITY. J. D. Ock 2/10/95

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 7C
FOIA- 96-485.

W

ACTIVITY CODES

L/M = LETTER OR MEMO

TC = TELEPHONE CALL

INSP = INSPECTION

INT = INTERVIEW

INV = INVESTIGATION

REP = REPORT ISSUED

OFFICIAL USE ONLY

DO NOT DISCLOSE

CASE CHRONOLOGY

2-95-008

(ALLEGATION NO. RII-95-A-0026)

DATE OPENED: 03/03/95

OPENED BY: J. Dockery

DATE/INT'LS	(PAGE 1) ACTIVITY
03/10/95JDD	Case File Received By JDD.
03/13/95JDD	3:15p - Obtain, copy and review entire EICS allegation file. Determine alleged's ID, address, telephone numbers.
03/16/95JDD	6:10p-6:45p - Telcall to alleged Gary PHIPPS at residence [REDACTED] See memo to file. 7c
03/17/95JDD	9:35a - E-Mail msg to O. DEMIRANDA requesting that he notify OI ASAP after receiving documentation currently being prepared by alleged relative to this allegation, per 3/16 telcon between JDD and alleged. 9:56A - E-mail response rcd. from OXD acknowledging above request.
04/04/95JDD	8:50a - Review RII:EICS allegation file RII-95-A-0026. Contrary to alleged, PHIPPS, assurances to OI (See report of 3/16 telcon), EICS has not yet received documentation and/or DOL Complaint alleged said would be sent to EICS probably within 10 days of 3/16 telcon w/JDD.
04/13/95JDD	9:36a - Telcall to Alleged PHIPPS at residence. Per PHIPPS he mailed promised documentation (3/16 interview), six page letter w/supporting documents to RII:EICS yesterday (4/12) via priority mail. Should be available at RII by Fri. 4/14 for review over weekend. Algr called O. DEMIRANDA to advise he was sending info and told OD to ensure OI receives copy of documents (per algr, package marked to attention of OD and JDD). At same time docs sent to NRC, same package (i.e. Complaint) sent to DOL W&H Div. Advised alleged that JDD would re-contact him after OI review of his documentation.
05/02/95JDD	9:55a - 10a - Telcall from alleged PHIPPS inquiring whether OI has received/reviewed documentation generated by PHIPPS to support his allegation of discrimination by his employer. According to PHIPPS, he has received USPS Mail Return Receipt signed April 14, by O. DEMIRANDA. Algr reiterated that package sent to OD clearly marked for referral to OI/J. Dockery. Advised alleged, will attempt to locate and review documents and re-contact PHIPPS after review. 12:30p - Confer w/ FOD re:Coordination w/EICS regarding the alleged's documentation and delays in interviewing the alleged. Per FOD, evaluation/prioritization meeting with L. REYES and B. URYC due ASAP. Will address (CONT)

7c portion

CASE CHRONOLOGY

2-95-008

(ALLEGATION NO. RII-95-A-0026)

DATE OPENED: 03/03/95

OPENED BY: J. Dockery

DATE/INT'LS

(PAGE 2)

ACTIVITY

05/02/95JDD

(CONT) - OI/EICS coordination at that time. Review chron and advise FOD of OI activity in this investigation to date.

06/07/95JDD

9:30a - Confer w/FOD re:allegor's documentation. Advised E-mail to OXD requesting docs.

10:10a - E-mail request to OXD sent. Copy in file.

10:13a - Above E-mail opened by OXD.

06/13/95JDD

7:45a - E-mail request to OXD opened by BXU.

06/28/95JDD

AM - Copy of DOL Notification of complaint receipt to allegor, PHIPPS received at OI (in-box) w/attached 4/11/95 letter/complaint by PHIPPS (copy in OI file).

07/6/95JDD

10:12a-10:33a - Telcon from allegor, Gary PHIPPS. Believes that DOL investigation/compliance effort is not proceeding according to law (cited 29 USC "part 24"). Concerned that DOL will conclude "investigation" or reach settlement that does not include admission by the company that they "did wrong" and will not become a "permanent record." Advise that DOL process is entirely separate from and different jurisdiction than NRC:OI. However, based on his description, DOL procedure in his case is proceeding exactly according to established DOL policy and it would be premature for him or OI to interrupt. ALGR agrees that DOL process is his "best shot" to get satisfaction and DOL efforts should proceed. Also agreed to advise JDD by telcon when any formal (written) finding or agreement in DOL W&H actions is reached.

11:05a - Advise FOD of foregoing conversation w/algr and agreement by allegor that OI should not interfere with currently ongoing DOL W&H process. Also, after reviewing algr's complaint, hard to find "protected activity" articulated or "adverse action" suffered by allegor (i.e. probably no prima facie case). Believe this is more appropriately a labor union/mgmt dispute. Absent compelling indications of licensee wrongdoing, suggest best to let DOL W&H process conclude and review findings. FOD agrees, directed next ISR entry (July 95) for this case should be, "Unscheduled, lack of resources."

8/11-
21/95JDD

ANNUAL LEAVE

8/23/95JDD

11:30a - Review EICS DOL file for Allegor, PHIPPS. (CONT)

CASE CHRONOLOGY

2-95-008

(ALLEGATION NO. RII-95-A-0026)

DATE OPENED: 03/03/95		OPENED BY: J. Dockery
DATE/INT'LS	(PAGE 3)	ACTIVITY
8/23/95JDD	(CONT)	EICS DOL file reflects no activity since 6/15/95 Tampa Wage & Hour Div. letter of notification to PHIPPS of receipt of his complaint on 6/05/95. 90 day W&H mediation/investigation period expires o/a 9/5/95. Copy of W&H letter to PHIPPS identifying W&H Investigator/tel. number is in OI case file.
9/6-15/95 JDD	9/6-8	- At Watts Bar NP per request of DRP to assist inspection of ECP program.
	9/10-15	- At Chattanooga NRC TTC to attend (required) OIG tech training course.
9/25/95JDD	1:30p	- Receive copy of 9/8/95 DOL W&H letter to Attys. for FP&L advising that W&H investigation found that "...Gary L. PHIPPS was a protected employee engaging in a protected activity within the scope of the [ERA] and that discrimination as defined and prohibited by statute was a factor in the actions which comprise his complaint."
	3:10P	- Xmittal letter to Reg. Counsel, CFE, requesting review/opinion of alleger's DOL complaint and 9/8 W&H letter drafted and TOT PAT1 for finalization.
9/26/95JDD	6:35a	- Letter to Reg. Counsel w/copies of documentation to FOD for signature/forwarding.
10/10/95JDD	6:45a	- Tel. Voice-mail from alleger, PHIPPS. Called 10/9 (Legal Holiday). Attempting to contact Oscar DeMiranda to see if he received "the videotape(?)."
	8:50a	- Telcon w/O. DeMiranda. PHIPPS claims he sent a videotape he made proving that simulator control room monitors are faulty. Claims he sent tape to RII several days ago and per previous telcons w/O. DiM tape not yet received. USPS trace placed on tape last week, will probably be located today. Per O.DeM, no apparent wrongdoing nor likely OI issue involved.
	9:52a	- Telcall fr. PHIPPS re:videotape. Advise algr that OI had no knowledge/involvement with tape and he should take it up w/O. DeM. Per PHIPPS, utility has appealed DOL W&H decision and will proceed before DOL ALJ. (Unsolicited) PHIPPS is "firing" his attorney today for lying and he expects to have to spend \$10,000 to proceed. Lengthy tirade ensued about unfairness. Reiterate previous advice that NRC and OI can provide no <u>remedy</u> , regulate licensees only. Further advise that OI investigation of DOL complaint is independent (CONT)

CASE CHRONOLOGY

2-95-008

(ALLEGATION NO. RII-95-A-0026)

DATE OPENED: 03/03/95		OPENED BY: J. Dockery
DATE/INT'LS	(PAGE 4)	ACTIVITY
10/10/95JDD	<p>(CONT) of DOL action. PHIPPS "happy to" be interviewed by OI. Explain interview will be court recorded, probably at hotel in Port St. Lucie area. Will call, probably next week to confirm date. OK, algr's current work schedule is 11:30p - 8:30a shift. Tel. No. is [REDACTED]</p> <p>Per 10/8/95 review of PHIPPS 2/6/89 testimony to OI in 2-88-012, PHIPPS apparently has history of claiming "whistleblower" status for past 6-7 years - since at least 11/88 incident described in OI transcript, pg 17 et. seq. and the detailed attachment/exhibit to the xcript.</p>	
10/12/95JDD	<p>Copy of October 6, 1995 RII "chilling effect" letter re: DOL W&H finding of discrimination by Florida Power & Light against PHIPPS received by OI. Letter requires FL&P response within 30 days of letter.</p> <p>12n - Confer w/FOD. Advise that since FP&L response to "chilling effect" letter due within next 30 days, would prefer not to interview allegor PHIPPS until licensee's response received since OI will eventually need to question allegor with respect to the claims made by licensee - more efficient to have licensee's response in advance of allegor interview. FOD concurred and advised that PHIPPS has made FOI request for xcript of 1989 OI interview. Advise FOD JDD reviewed that xcript last Sunday and have copy with this case if necessary to review/forward.</p> <p>1:25p - Telcall to allegor PHIPPS. Advise am expecting info from FP&L which needs to be reviewed before OI interview is conducted for efficiency's sake. Per PHIPPS, "No problem." Advise will contact to schedule interview as soon as FP&L info (response to "chilling effect" letter is received.</p>	
10/17/95JDD	<p>10:50a - Conf. w/C. Evans. Does not become involved in "chilling response" letters or licensee response to same. However, will ensure that when FP&L response to letter re: G. PHIPPS is received by EICS, copy will be obtained for JDD ASAP.</p>	
10/24/95	<p>3:35p - Telcon from C. Evans. Missing pages from PHIPPS DOL complaint. Will recopy and provide first thing tomorrow AM.</p>	
10/25/95	<p>7:55a - Copy of PHIPPS DOL complaint TOT C. Evans.</p>	

CASE CHRONOLOGY

2-95-008

(ALLEGATION NO. RII-95-A-0026)

DATE OPENED: 03/03/95

OPENED BY: J. Dockery

DATE/INT'LS	(PAGE 5) ACTIVITY
10/31/95	<p>9:44A - E-mail to EICS Dir. B. Uryc requesting prompt notification when FP&L response to NRC 10/6/95 "Chilling Effect" letter re: allegor, PHIPPS, received by EICS. Copy of E-mail in file.</p> <p>11a - E-mail response from BYU to above rcd. Licensee response not due until 12/10 (extension requested by licensee).</p>
12/16/95 through 1/2/96	JDD - ANNUAL LEAVE (Use or lose).
1/10/96	A.M. - Copy of licensee (FPL) response (dated 12/11/95) to NRC "Chilling Effect" letter received (from EICS?) with attached licensee investigation of allegor's (PHIPPS) "concerns." Also received from EICS, copy of DOL ALJ "ORDER CANCELLING HEARING AND RECOMMENDED ORDER OF DISMISSAL" dated 11/30/95 based on 10/30/95 settlement agreement between allegor and FPL.
2/13/96	<p>9:05a - Telcall to allegor PHIPPS to attempt to arrange interview. Not in, advised by ? to call back at 10am.</p> <p>10:30a - Telcall to allegor. Answering machine message left, ID, purpose of call and request PHIPPS to call back at RII 800 number.</p> <p>12:40p - Telcall from PHIPPS. Tentatively, to accommodate algr's schedule, set up interview for afternoon/evening of Wed. 2/28/96. Will finalize in telcall to PHIPPS on 2/20. Immediate carping about previous (years ago - i.e. previous OI interview) "chilling" of employees. Advise subject of pending interview confined to most recent written complaint. Other allegations should be made to allegation coordinator. OK.</p>
2/14/96	12:35p - PHIPPS' DOL/W&H "investigation" package received from FOD..
2/20/96	<p>12:05p - Telcall to Allegor, PHIPPS. Arrange interview at Holiday Inn, Hutchinson Island on Wednesday 2/28 at 4:00pm. PHIPPS very familiar w/Hotel. PHIPPS to bring annual performance evaluations since 1991.</p> <p>2:00p - E-mail request for Court Reporter for allegor interview to Sherma Donovan, CCed to D. Moran & J. Whetstine.</p>

CASE CHRONOLOGY

2-95-008

(ALLEGATION NO. RII-95-A-0026)

DATE OPENED: 03/03/95

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DATE/INT'LS

(PAGE 6)

ACTIVITY

3/1/96

10:15a - Telcall to allegor PHIPPS to reschedule interview. Message/800 number left on answering machine.

3/4/96

10:10a - Telcall to allegor, PHIPPS. Can be available for Court recorded interview on Fri. March 8, 8:30a at Holiday Inn.

3/7&8/96

3/7 - Travel to Jensen Beach, Fl to conduct allegor interview.

3/8 - Court recorded interview of Allegor, PHIPPS, conducted 8:00a - 11:30a.

3/12/96

9:40a - Per FOD, JDD assigned as Lead Special Agent of Investigative Team (JYV, GHC & CTT) assigned to expeditiously conduct investigation of potential wrongdoing by Northeast Utility Services Co. (NUSC) at the licensee's Millstone NP and possibly others in CT. Per POD, based on conference call between OI Director Caputo and all FODs, the issue to be addressed is "most significant" investigative issue currently under OI consideration. JDD to suspend investigative activity in all other investigations to concentrate efforts in 1-96-010. Per FOD: **STATUS: PENDING ECD: UNSCHEDULED**

4/2/96

1:10p - Copy of Allegor interview transcript forwarded (via E-mail) to RII Counsel CFE w/request for opinion on "prima facie" elements of 10 CFR 50.7/ERA 211 complaint as contained in allegor's testimony.

5/7/96

2:40p - Telcall from EICS Anne Boland - Status of case? (AB aware JDD currently assigned to Millstone invest on "priority" basis) Advise PHIPPS interviewed, xcript TOT C. Evans for review. No response received yet. In JDD opinion, PHIPPS did not articulate "prima facie" evidence of violation of 50.7. PHIPPS recently called B. Uryc to allege that he is again being discriminated against (Simulator I&C techs not being given Plant work during outage). Advise AB that his complaint is a labor/union matter. AB agrees but BYU wants to close out current allegation (this case) and open a new allegation file. AP to speak to CE to "speed review" of the xcript.

5/30/96

2: - E-mail request to Reg. Counsel C. Evans requesting advice/response to previous (9/25 & 4/26) xmitts of allegor's complaint and transcript for CFE review.

2:45p - E-mail request sent to SLNP RII Project (CONT)

CASE CHRONOLOGY

2-95-008

(ALLEGATION NO. RII-95-A-0026)

DATE OPENED: 03/03/95

OPENED BY: J. Dockery

DATE/INT'LS

(PAGE 7)

ACTIVITY

5/30/96

(CONT) Mgr. E. Lea to determine dates of 1995 SLNP outage identified by allegor in xcript. Copy in file.

6/4/96

6:40a - 6/3 E-mail response to request to C. Evans received. Agrees that complaint/interview responses of allegor PHIPPS does not support substantiated 50.7 violation.

6/20/96

8:30a - 5/30 E-mail to E.LEA opened, never answered - **RESENT.**

6/21-28/96

Acting RII:OI FOD.

6/28/96

Response (e-mail) to 6/20 E. LEA received.

6/29-7/7/96

JDD ON ANNUAL LEAVE

7/19-27/96

Compose and draft ROI (at residence) & prepare Exhibits to this investigation.

7/27/96

1:10p - E-mail PAT1 to advise that ROI should be available on G-drive for finalization.

7/31/96

ROI issued by FOD.

8/5/96

INVESTIGATION CLOSED



CASE CHRONOLOGY

2-95-008

(ALLEGATION NO. RII-95-A-0026)

DATE OPENED: 03/03/95

OPENED BY: J. Dockery

DATE/INT'LS

(PAGE 7)

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6/21-28/96

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7/31/96

ROI issued by FOD.

8/5/96

INVESTIGATION CLOSED

8/22/96

8:15a - Per O. DeMiranda, contacted by PHIPPS after receipt of letter advising OI investigation did not substantiate discrimination allegation. PHIPPS disagrees. OD provided algr w/tel nos. for JD and OIG.

8:40a - Review voice-mail message left (over-night?) by PHIPPS stating vehement disagreement w/OI finding and stressing need to "discuss how decision was made" w/JDD.

9:03a-9:10a - Telcall from PHIPPS. See memo to file.

10/9/96

3:10p - Telcall from R. Fortuna w/questions about this investigation (in response to PHIPPS' complaint to OIG). Specifically, "protected activity" conclusion. Advise JDD did not even consider issue since licensee conceded protected activity by PHIPPS. OK.

10/10/96

10:45a - Telcall from J. Hunt, OI/HQS re: PHIPPS' FOIA request #96-366. Advised to copy complete case file (including Case Chron & ISRs and ROI /exhibits, bracket names in pencil and forward to her by week of 10/21. OK.