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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

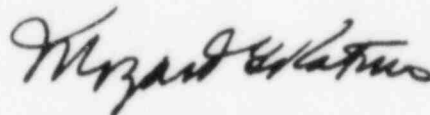
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cast light upon and explain the legal reasoning process by which OI and OGC determined that G.E.'s letter does not per se, as a matter of law, illegally interfere with exercise of the statutory and constitutional rights of the employees. Dunlop v. 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.