



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

PDR

OFFICE OF THE
SECRETARY

December 5, 1985

Billie Pirner Garde
Citizens Clinic Director
Government Accountability Project
1555 Connecticut Avenue, N.W.
Suite 202
Washington, D. C. 20036

Dear Ms. Garde:

Your letter of March 6, 1985, requested that the Commission appoint a member of the Licensing Board Panel to investigate the NRC staff's handling of allegations made by Mr. E. Earl Kent regarding welding practices by the Bechtel Power Corporation (Bechtel) at nuclear power plants.

The Commission has had its Office of General Counsel (OGC) and Office of Policy Evaluation (OPE) review the extensive record on this matter developed by NRC's Region III, Region V, and the Office of Inspector and Auditor (OIA). OPE and OGC concluded that no problem of safety significance to existing plants has been identified, that staff's efforts in this matter were reasonable, and that OIA's investigation was properly limited to the non-technical merits of the staff's review.

The Commission believes that the totality of the information developed in response to Mr. Kent's allegations provides reasonable assurance of continued safety at nuclear plants affected by his allegations. The Commission further believes that your unsupported allegations that OIA removed documents from the record and deliberately narrowed its investigation and report do not justify further inquiry. Thus, the Commission concludes that, based on present information, no further action on your request is warranted. Moreover, the Commission is confident that recent modifications to NRC's agency-wide allegation management system will minimize administrative and procedural difficulties such as those that arose in responding to Mr. Kent's allegations.

Sincerely,

Samuel J. Chilk
Secretary of the Commission

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GOVERNMENT ACCOUNTABILITY PROJECT

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March 6, 1985

Chairman Nunzio Palladino
Commissioner Thomas Roberts
Commissioner James Asselstine
Commissioner Frederick Bernthal
Commissioner Lando Zech
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Commissioners:

The Government Accountability Project regretfully requests that the Commissioners appoint a member of the Atomic Safety and Licensing Board (ASLB) to review, investigate and issue findings about the Nuclear Regulatory Commission Staff's handling of the allegations of Mr. E. Earl Kent.

We request this procedure because, frankly, the system established by your agency to protect the public's health and safety has failed for three years. And, it continues to fail to provide adequate responses to the questions raised by Mr. Kent as well as those raised by the public about the NRC's gross bungling of this matter.

Mr. Kent's experience with your agency has involved inspections by two Regions, the Office of Nuclear Reactor Regulation (NRR), the Office of Investigations (OI), the Office of Inspector and Auditor (OIA), and now the Brookhaven National Laboratories (BNL). Yet, his concerns about the generic welding procedure deficiencies remain unanswered.

If the OIA and BNL investigations had been competent and thorough, our request would not be necessary. Unfortunately, the OIA report is sophomoric, self-serving and short-sighted. The BNL report, although not yet publicly issued, is, allegedly, a regurgitation of the same flawed analysis that has plagued this inspection and investigation from the outset.

This request is not filed under 10 C.F.R. 2.206. The Staff, through its numerous branches, has had many opportunities to address Mr. Kent's allegations and/or the inadequacies of the agency's inspection efforts. Instead, we request the

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Cpys to: Chm, Cmrs, EDO, SECY, Docket..
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Commission exercise its authority and appoint a judicial proceeding, conducted by the agency's adjudicatory branch.

Background

Three years ago, in March 1982, E. Earl Kent was fired from his job as a Bechtel Quality Engineer at the now-defunct Midland nuclear power plant. He was told that he was being terminated because he could not adjust to the way things were being done at Midland. He was also told by his Bechtel supervisors that he had failed the oral part of a Level I examination. Mr. Kent knew then, as he knows now, that he was fired from the Midland site because he found and reported too many serious problems with the welds, the qualifications of the welders, the welding techniques and procedures, and the quality of the plant.

Mr. Kent immediately reported his concerns to the NRC through Region III inspectors. Soon thereafter, he also reported his concerns to a local citizen intervenor. In July 1982, he submitted, through the Government Accountability Project (GAP), an affidavit outlining his concerns about the Midland welding defects.

In August 1982, Mr. Kent visited Region III to check on the status of the investigation into his concerns. Region III had nothing to report to him. They did not tell him that, at that time, Region III had already decided that his concerns were of no safety significance.

In early September, after he (Mr. Kent) decided to contact Southern California Edison (SCE), the owner of San Onofre Nuclear Generating Station (SONGS), and tell them, as opposed to telling the NRC or Bechtel, about the generic welding procedure deficiencies, his allegations were dismissed almost immediately by SCE. However, they were duly reported to the Region V NRC office. The NRC accepted the disposition of Bechtel and SCE without comment.

Mr. Kent then contacted the local citizen intervenor group in California, the Alliance for Survival (Alliance), and told them of his concerns, and his frustrations about the failure of the NRC and SCE to study his safety concerns about defective Bechtel welding procedures.

The Alliance put Mr. Kent in contact with a Los Angeles Times reporter, Mr. John Odell. In October, Mr. Odell began calling the NRC and SCE and Bechtel to get to the bottom of the problems Mr. Kent had raised.

On October 13, 1982, the Los Angeles Times ran a large article about Mr. Kent and his concerns. The bureaucratic response was swift. OI, in concert with Region V, immediately interviewed Mr. Kent. Some weeks later, they took him on a site tour of San Onofre.

Less than six weeks later, the NRC released, at a press conference, its inspection and investigation effort into the Kent allegations -- which revealed, predictably, that there was no substance to his allegations.

For six months, GAP investigators probed the basis for the NRC conclusions. In a June 20, 1983, letter, GAP reported the results of its probe to the NRC Commissioners and Congress.

Another six months passed and in January 1984, OIA began its own probe into the Kent Affair. That report was submitted to the Commissioners for their review in April 1984, and was obtained by GAP in July 1984.

Meanwhile, in the fall of 1983, Region III submitted the Kent materials to BNL for an analysis of the generic welding concerns raised by Mr. Kent about the Bechtel welding procedures at Midland, San Onofre and the Palisades nuclear power plant. That study has been completed by BNL and submitted to the NRC. It has not yet been released to the public. Since BNL has never contacted Mr. Kent to determine what his allegations are, GAP does not expect the BNL report to adequately answer Mr. Kent's concerns.

The Report of the Office of Inspector and Auditor

On April 4, 1984, the Acting Director of OIA issued his report to the Commission on their investigation of the Kent Affair. The OIA investigation was prompted by a June 20, 1983, letter from GAP to the Commissioners regarding the fumbled Staff efforts to deal with the Kent issues up to that time.

The report, released to GAP under FOIA, is enlightening -- both on the issues the report addresses and on those it does not.

To summarize, the report confirms the following allegations about the NRC Staff's actions:

- (1) Region III "sat on" the allegations of generic welding problems provided to it by Mr. Kent from March through October 1982. (OIA Review of a Government Accountability Project Complaint Concerning NRC's Treatment of E. Earl Kent, at 1).
- (2) Region III's OI investigator provided to Region V investigators' only "credibility" (i.e., defamatory) information about Mr. Kent (given by Bechtel to the NRC). (Id. at 2).

- (3) Region V OI investigators utilized "strict interview and documentation standards" when obtaining information for Kent which were not applied to anyone else during the course of the subsequent Region V inspection. (Id. at 2).
- (4) Alternatively, when "pursuing the validity of Kent's allegations, Region V personnel conducted casual interviews of unidentified licensee and Bechtel personnel and documented these interviews by informal notes which were later destroyed." (Id. at 2).
- (5) Region V Office of Inspection and Enforcement (IE) personnel denied Kent "inspection tools guages, ladders, and other measuring equipment" during an October 25, 1982, site tour of the San Onofre plant. (Id. at 2).
- (6) Region V management personnel decided to conduct a press conference on December 6, 1982, in which they reported that Kent's allegations had been unsubstantiated. That did not notify Kent or his counsel (GAP), nor provide either with a copy of the inspection report. (Id. at 2).
- (7) Region V destroyed copies of drafts and notes of the final IE inspection into Kent's allegations. (Id. at 2).
- (8) Region V "is not able to support or verify its inspection activity with confirming records or data." (Id. at 4).
- (9) Region V responded to the Kent allegations only after major media interest followed the publication of the October 13, 1982, Los Angeles Times article. (Id. at 2).
- (10) The NRC never obtained a written statement from Mr. Kent. (As noted, the NRC has never conducted an adequate interview of Mr. Kent in order to understand his allegations.) (Id. at 3).
- (11) Other miscellaneous findings of inspection and investigation irregularities or inadequacies were discovered by OIA investigators. (See report summary).

The OIA report substantiates all of the GAP allegations which it addresses of procedural mishandling of Mr. Kent's concerns. However, the investigation does not address at all the most important questions that we raised. That is:

The second category, although separate from the actual hardware issues, is the question of the NRC's technical review of the issues raised by Mr. Kent. For example, although Region V requested assistance from the Office of Nuclear Reactor Regulation (NRR) to evaluate the technical details of Mr. Kent's allegations, it appears that, in fact, no independent review was done. Under the Freedom of Information Act we requested and received the communications, notes, memoranda, etc., that surrounded the issues raised by Mr. Kent. Review of these documents found a circular trail of verification that simply relied on the industry -- both Bechtel and Southern California Edison -- to interpret and explain Mr. Kent's allegations away. We have found no evidence of independent analysis of review by the NRC. (June 20, 1983, letter, p. 6).

Questions that remain not only unanswered, but apparently unasked, are:

- (1) Why did NRR adopt, virtually verbatim, the technical analysis of Kent's allegations, performed by Bechtel and provided to the NRC?
- (2) Why didn't Region V officials include in their inspection report that the basis of their conclusions about Mr. Kent's allegations came from Bechtel?
- (3) Why did Region V allow Bechtel and SCE to dictate the conclusions of the Kent allegations?

Also not addressed is the serious charge that "(t)he Kent inspection was curtailed and prejudiced at the onset by SCE and Bechtel influence."

OIA investigators apparently "defined out" of the scope of the investigation the evidence of impropriety in regards to the two-week NRR "blitzkrieg" inspection. (Id. at 15-16).

OIA did not interview anyone from NRR at all regarding their involvement in the shoddy disposition of Kent's allegations. Instead they based a conclusion that the Kent inspection was thorough on the totally self-serving statements of the alleged targets of the investigation.

OIA's conclusion simply is not supported by the facts and documents gathered during GAP's investigation. The investigators failed to perform basic interviews necessary for adequate disposition. For example,

- (1) The OIA investigators have never contacted Mr. Kent or GAP to determine whether the scope of their investigation was adequately addressing the concerns raised to the Commission.
- (2) BNL has never contacted Mr. Kent to determine what Mr. Kent's allegations are, therefore the "new independent look" at the Kent allegations is severely handicapped, if not totally crippled, because it draws the allegations from an inadequate and fatally flawed interview, an unsigned statement, a summary affidavit, and the self-serving interpretations of the allegations provided by Bechtel
- (3) The OIA investigator never contacted any representatives of Bechtel, SCE or Consumers Power to determine their knowledge, or establish the veracity of the NRC's statement.
- (4) It is our information and belief that OIA removed from the record, without explanation, memoranda or portions of memoranda about Mr. Jim Foster's dealings with Earl Kent.

GAP believes that the evidence suggests the OIA investigation was deliberately narrowed in scope. We also have reason to believe that the report finally submitted to the Commission is far less comprehensive than the original report. Those drafts were as usual withheld from the public.

GAP will soon file suit under the Freedom of Information Act in U.S. District Court to obtain the materials which the NRC refuses to disclose. We are committed to discover all the facts behind the Kent Affair. OIA obviously is not.

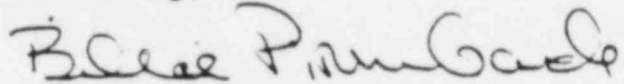
Clearly, OIA either cannot or will not address the key issue of the Kent affair -- the curtailment of an NRC inspection by the Bechtel Corporation. It is therefore up to the Commission.

GAP unfortunately realizes that this issue has become so adversarial that it is no longer possible for any branch of the NRC Staff to resolve it. In the past, the Commission has

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requested special administrative proceedings to resolve similar matters. This appears to be the only remaining agency remedy.

Sincerely,

A handwritten signature in cursive script, appearing to read "Billie Pirner Garde".

Billie Pirner Garde
Citizens Clinic Director