

SECRETARY, USNRC

DEAR MR SECRETARY:

PLEASE ACCEPT THE FOLLOWING COMMENTS

THE MERITS OR LACK OF MERIT TO THE COMMISSION'S  
PROPOSED RULES ON ENFORCEMENT ACTIONS. 85 DEC 27 11:00

FIRST, I WISH TO EXPLORE THE VALUE OF ENFORCEMENT  
ACTIONS, IF ANY, OR WHETHER THE NRC'S ACTIONS  
REALLY ENFORCE ANYTHING, OR IF "ENFORCEMENT"  
IS JUST A CONVENIENT MYTH OR FICTION

SECONDLY I SHALL DISCUSS THE "MAGNITUDE"  
OR DOLLAR VALUE OF THE FINES AND THE  
"DOLLAR EFFECT" OF STOP WORK ~~OR~~ AND  
OTHER COMMISSION ORDERS. I SHALL DISCUSS  
WHETHER FINES HAVE THE DESIRED EFFECT,  
AN OPPOSITE EFFECT, OR A RANDOM, UNASSOCIATED  
EFFECT.

THIRDLY I SHALL DISCUSS ALTERNATE APPROACHES  
THAT ARE PROVEN, COST EFFECTIVE, AND MOST  
LIKELY TO IMPROVE SAFETY. ONE SUCH APPROACH  
HAS BEEN REPORTED BY THE STAFF AND  
DISCUSSED IN AN ACRS LETTER. THIS APPROACH  
WOULD EMULATE THE FAA'S "DESIGNATED  
REPRESENTATIVE". OTHER APPROACHES INCLUDE  
ALLOWING (~~OR PAYING FOR~~) AN INTERVIEWER  
SELECTED INSPECTOR ON SITE. THE INTERVIEWER'S  
INSPECTION MAY ACTUALLY BE PAID BY LICENSEE OR NRC.

1. FIRST THE VALUE OF FINES AND STOP WORK (AND OTHER) ORDERS IS PROBLEMATIC AT BEST. MOST LIKELY THE FINES AND ORDERS HAVE LITTLE OR NO EFFECT UPON THE ACTUAL PERPETRATORS OF THE VIOLATION. THE REASON THAT THE ENFORCEMENT ACTIONS HAVE LITTLE OR NO EFFECT UPON THE PERPETRATORS OF THE VIOLATION IS THAT THE ENFORCEMENT ACTION IS NOT DIRECTED AT OR EXECUTED UPON THE ACTUAL PERPETRATOR.

TO ILLUSTRATE THIS IMPASSE, I SHALL DISCUSS A RECENT VIOLATION AT LIMERICK. A START-UP ENGINEER OBJECTED TO PRESSURES BY SUPERVISION TO CORRECT DEFICIENCIES (OR IGNORE THEM) OUTSIDE THE 'NON CONFORMANCE REPORT PROGRAM.' OTHER OBJECTIONS INCLUDED JOB HARASSMENT AND A BECHTEL ENGINEER NOT UPDATING A PUNCHLIST WITH LATEST INFORMATION.

THE NRC INSPECTOR CONCURRED THAT THERE WAS A VIOLATION OF NRC REGULATIONS.

A FINE OR ORDER HAS NOT BEEN LEVIED TO DATE.

IF A FINE IS FORTHCOMING, THE FINE WILL NOT BE PAID BY THE SUPERVISION WHO PROMOTED OR CAUSED THIS VIOLATION.

WHO WILL PAY ANY FINE WHICH IS FORTHCOMING FOR THIS VIOLATION?

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2. LITIGATION IS BEING FIGHT WITH "PHANTOM TAXES." PHANTOM TAXES ARE LONG TERM LEAS, THAT UTILITIES ARE ALLOWED TO ACCRUE BY KEEPING FEDERAL TAXES PAID BY UTILITY CUSTOMERS IN THEIR BILLS, AND THAT UTILITIES USE TO BUILD NEW ELECTRIC GENERATING PLANTS. EVENTUALLY, THE RATEPAYERS WOULD BE REQUIRED TO PAY THIS FINE IF THE FINE IS ALLOWED INTO THE COST OF THE PLANT.

ANOTHER POSSIBILITY IS THAT THE FINE WILL NOT BE PLACED IN THE COST OF THE PLANT. IF THE FINE IS NOT PLACED INTO THE COST OF THE PLANT, THE FINE WILL MOST LIKELY BE PAID <sup>OUT OF</sup> ~~BY~~ THE STOCKHOLDER'S EQUITY. IN NO CASE THAT I HAVE EVER COME ACROSS, HAS THE PERPETRATOR OR RESPONSIBLE MANAGEMENT BEEN REQUIRED TO PAY ONE CENT OF ANY NRC FINE.

SINCE NO PERPETRATOR OR RESPONSIBLE MANAGEMENT IS LIABLE FOR ANY NRC FINE, PERPETRATOR'S OR RESPONSIBLE MANAGEMENT NEED NOT FEAR NRC'S FINES AND THEY HAVE NO INCENTIVE TO CHANGE THEIR BEHAVIOUR IN RESPONSE TO NRC'S FINES.

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SINCE NRC ENFORCEMENT ACTIONS HAVE LITTLE ABILITY TO CHANGE UNSAFE AND UNWANTED BEHAVIOURS (WHICH INVOLVE VIOLATIONS OF REGULATIONS), NRC ENFORCEMENT IS A MYTH AND A FICTION. LIMERICK IS USED AS A RECENT EXAMPLE. OTHER EXAMPLES OF NRC'S LACK OF EFFECTIVE ENFORCEMENT INCLUDE BYRON C/A DEFICIENCIES, ZIMMER CONCRETE DEFICIENCIES, LIMERICK WELDING NON-INSPECTIONS, AND A CONTINUING C/A INDUSTRY WIDE PROBLEM.

2. THE SECOND PART OF THIS QUESTION OF ENFORCEMENT ACTION IS WHAT IS THE EFFECT OF THE DOLLAR AMOUNT OF THESE FINES OR EFFECT OF STOP WORK ORDERS. FINES OF \$100,000 PER DAY PER VIOLATION EQUATE TO VERY LARGE AMOUNTS OF MONEY. THE EFFECT OF THESE FINES IN A STATE-OWNED NUCLEAR POWER PLANT, SUCH AS IN THE POWER AUTHORITY OF THE STATE OF NEW YORK (PAL VY), IS ANOTHER FEDERAL TAX UPON THE RATEPAYERS OR TAXPAYERS OF THAT PARTICULARLY UTILITY. THE RESULT OF FINING PRIVATELY OWNED UTILITIES IS SLIGHTLY DIFFERENT.  
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DUE TO MANY REASONS - INCLUDING SOME  
NRC FINES - PUC HAS BEEN GRANTED  
A 17+ % RETURN ON INVESTMENT  
, ONE OF THE HIGHEST RATES OF RETURN  
IN THE U.S. UTILITY INDUSTRY, BY THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION.  
THEREFORE, THE RESULTS OF THE NRC'S FINES  
ON ELECTRIC UTILITIES INCLUDE

- (a) A FEDERAL TAX PAID BY RATEPAYERS  
AND STOCKHOLDERS AND, SOMETIMES, TAXPAYERS  
WHO DO NOT BENEFIT FROM THE FINED UTILITY'S  
ELECTRICITY AT ALL (AS IN THE PASNY CASE.)
- (b) A HISTORY AND INCENTIVE FOR STATE  
UTILITY REGULATORY BODIES TO GRANT  
FINED UTILITIES VERY HIGH RATES OF  
RETURN TO KEEP THEM COMPETITIVE IN  
THE BOND MARKET (AS IN THE PUC/PEC. CASE)

3. THIRDLY THERE ARE MANY COST-EFFECTIVE,  
WELL DOCUMENTED, AND EASILY IMPLEMENTED  
APPROACHES TO ENFORCEMENT WHICH WORK WELL  
AND CONSISTENTLY IN TODAY'S WORKPLACE. ONE  
SUCH NON-CONFRONTATIVE APPROACH IS THE  
FAA'S 'DESIGNATED REPRESENTATIVE'. THE DR  
IS ELECTED BY THE WORKFORCE AND APPROVED  
BY MANAGEMENT. HIS JOB INCLUDES IMPROVING SAFETY.

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ANOTHER APPROACH IS TO STOP SENIOR NRC MANAGEMENT FROM MAKING PUBLIC STATEMENTS TO NRC STAFFERS THAT INSPECTORS SHOULD BE ABLE TO TELL IF A PLANT IS SAFE JUST "BY LOOKING AROUND." THIS SORT OF STATEMENT GIVES LICENSEES THE IDEA THAT SAFETY IS A MINOR CONSIDERATION. WHILE SAFETY IS PROBABLY A MINOR CONSIDERATION TO SOME NRC MANAGEMENT, THE RECENT BYRIN DECISION SHOWS THAT SAFETY IS NOT ALWAYS A MINOR ITEM IN LICENSING.

PRESENT NRC REGULATIONS STATE THE "ABILITY TO PAY" MUST BE CONSIDERED IN DETERMINING FINES. THIS PROTECTS UTILITIES FROM ANY BANKRUPTCY OR CASH FLOW PROBLEM. ALSO AS MUCH AS 20% OF A FINE CAN BE FORGIVEN FOR PROMPT REPORTING, GOOD PRIOR PERFORMANCE, AND EFFECTIVE RESPONSE. BETWEEN ALL THESE GUARANTEED ESCAPE CLAUSES, A UTILITY HAS NO REASON TO FEAR A FINE OR ITS EFFECT. REMOVING THESE ESCAPE CLAUSES IN THE REGULATION WOULD TEND TO MAKE UTILITIES MORE RESPONSIVE.

FINALLY I WISH TO PROPOSE AN

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7.  
APPROACH THAT WOULD BE PROMOTE SAFETY  
GREATLY, BE MOST COST EFFECTIVE, AND  
BE IMPLEMENTED QUICKLY AND TIDELY. I  
SUGGEST THAT EACH NUCLEAR POWER  
PLANT BE REQUIRED TO HAVE AN  
INTERVENOR DESIGNATED INSPECTOR ON  
EACH SITE. THE NRC INSPECTOR'S  
HAVE ~~CHASED~~ SHOWN TO BE INEFFECTIVE  
AT BYRON, ZIMMER, CALVERT CLIFFS  
AND THROUGHOUT THE NUCLEAR INDUSTRY.  
THIS APPROACH WILL PROMOTE SAFETY,  
RESULT IN HIGHER PUBLIC CONFIDENCE,  
AND BE EASILY AND QUICKLY IMPLEMENTED.

THE INTERVENOR'S INSPECTOR WILL BE MORE  
EFFECTIVE THAN THE NRC INSPECTOR  
BECAUSE THE INTERVENOR INSPECTOR  
WILL REPORT TO INTERVENORS INSTEAD OF  
THE NRC. THE NRC HAS SHOWN THAT  
ITS APPROACH TO SAFETY + Q/A IS WANTING.  
THE INTERVENORS HAVE AN INTEREST IN  
THE SAFETY OF THE PLANT BECAUSE THEY  
ARE RESIDENTS LIVING IN THE AREA OF  
THE PLANT. SAFETY IS AN IMMEDIATE  
AND REAL CONSIDERATION TO INTERVENORS.

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SAFETY IS NOT AN IMMEDIATE A CONCERN  
TO NRC STAFF <sup>BECAUSE</sup> MANY ~~OF THEM~~ DO NOT  
LIVE IN THE VICINITY OF THE PLANT  
BUT HUNDREDS OF MILES AWAY IN  
REGIONAL HEADQUARTERS OR THOUSANDS  
OF MILES AWAY IN WASHINGTON, D.C.

ALSO THE NRC HAS A  
HISTORY OF HARASSING EMPLOYEES  
THAT HAVE SHOWN CONCERN FOR  
SAFETY. ~~ABOVE STAFF~~

Respectfully submitted,

*Martin Lewis*

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4-23-8

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