

Congress of the United States
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June 4, 2012

The Honorable Greg Jaczko
Chairman
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Chairman Jaczko:

I write to again request that you commence an independent investigation of systemic allegations of retaliation against Nuclear Regulatory Commission (NRC) staff who report safety concerns or refuse to weaken nuclear reactor safety findings. I recently wrote¹ you regarding allegations that the current Deputy Division Director of the Division of Reactor Projects in NRC's Texas-based Region IV office has actively retaliated against individuals who bring safety concerns to his attention. Since that letter was sent, there have been additional developments that have led me to conclude that 1) the safety culture problem described to me² by Region IV staff NRC staff is a long-standing problem and is not confined to Region IV, and 2) the individuals who believe they are the subject of such retaliation have no confidence in NRC's Inspector General (IG) to investigate and resolve these problems.

The following is a description of the developments that have transpired since I wrote you last month:

- As I noted in my earlier letter to you, I have been concerned by the Commission's voting record³ on safety matters, especially on the post-Fukushima measures recommended by NRC's technical staff, and concerned that if NRC managers do not believe the Commission is committed to following the safety recommendations of its top technical staff, they may similarly feel empowered to reject the recommendations made by their inspectors, dismiss safety concerns, and retaliate against those who are making them. Documents I received in response to my earlier letter indicate that despite the highest significance "red" safety finding assigned to the Fort Calhoun Station in 2011, Commissioners Ostendorff, Svinicki and Apostolakis rejected your proposal to include this nuclear power plant on the agenda for NRC's June 1 2012 Agency Action Review Meeting. The purpose of this meeting is, in part, to review the agency's actions related to the nuclear power

¹ <http://markey.house.gov/press-release/markey-calls-independent-investigation-possible-retaliation-against-nrc-safety-staff>

² <http://markey.house.gov/document/2012/letter-rep-marey-nrc-region-4-staff>

³ <http://markey.house.gov/content/timeline-recent-nrc-votes-against-safety-recommendations>

plants “with significant performance problems.”⁴ It was also clear from these documents, which include May 2012 emails, that your colleagues have not ceased their practice of coordinating their planned votes against your proposals by way of emails amongst themselves that do not include your staff that regrettably defined⁵ many of their post-Fukushima efforts.

- Mr. Troy Pruett, the individual accused by Region IV staff of altering or removing safety findings from inspection reports prior to their release and then retaliating against the staff who made the safety findings in the first place, ironically responded to my request for an investigation into the allegations of retaliation by retaliating against me when he requested⁶ an investigation into my activities by the House Committee on Ethics.
- I received a second letter⁷ from NRC’s Region IV staff who informed me that the NRC IG, which has commenced an investigation into these matters, “is neither impartial in this matter, nor are they trained to objectively evaluate safety culture issues. In particular, based upon the line of questioning by the IG, it appears that they are more interested in establishing that the safety issues identified by RIV Staff were appropriately dispositioned rather than Mr. Pruett’s intimidating management style which has created a ‘chilled’ work environment. Specifically, the issue involving the ‘red’ finding at Fort Calhoun was provided as an example of Mr. Pruett’s repressive management style and that in spite of his inappropriate actions, the dedication and integrity of Region IV’s staff resulted in the appropriate disposition of this issue.”
- I received new communications from Region IV personnel who said they did not write either of the Region IV letters to me. In these communications, I was informed of additional examples where Mr. Pruett retaliated against them for disagreeing with them on both personnel and safety matters. This retaliation took the form of openly berating individuals in meetings, informing peers and supervisors that the individuals’ work performance was unsatisfactory, lowering the individuals’ performance rating after years of outstanding performance reviews, altering the reporting chain so that these individuals had to report all activities to Mr. Pruett on a daily basis, and issuing verbal and written reprimands. It is my understanding that in two such cases, formal written complaints against Mr. Pruett were forwarded by Region IV management to Mr. Pruett himself so that he could himself decide if his actions were retaliatory.
- Specific additional examples of the alteration of safety findings have also been conveyed to my office. When Region IV staffers recommended in a written report that NRC assemble an “Augmented Inspection Team” (the second most aggressive means of investigating safety problems) to inspect the 2011 fire at the Fort Calhoun Station in Nebraska, Region IV management altered the report to instead

⁴ <http://pbadupws.nrc.gov/docs/ML0609/ML060940095.pdf>

⁵ <http://markey.house.gov/document/2011/regulatory-meltdown-report>

⁶ <http://www.omaha.com/assets/pdf/OW7219516.PDF>

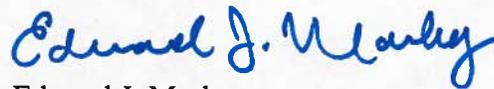
⁷ <http://markey.house.gov/document/2012/letter-nrc-rep-markey-follow-regional-v-questions>

recommend a less-intense, paperwork-focused “Special Inspection Team” without the concurrence of the NRC staff who had recommended the more aggressive approach. As has been well-documented, NRC eventually did issue the most serious “red” finding for this incident; however, the individual who reported the inspection dispute to my office also attested to Mr. Pruett’s efforts to prevent that finding from being issued for ‘political’ reasons.

- A second example of a safety-related concern that Mr. Pruett allegedly attempted to improperly influence occurred in 2009/2010, when an NRC staff member recommended the issuance of a “yellow” safety finding at the Fort Calhoun Station due to inadequate flood protection measures. Mr. Pruett attempted to argue that “flood findings can’t be yellow” and assigned a new NRC analyst to perform an in depth independent review of the analysis. That NRC analyst concurred with the first “yellow” finding, and as a result, the nuclear power plant was prepared for the 2011 floods that impacted it. It allegedly took more than a year for the NRC to take the appropriate action against the licensee because of Mr. Pruett’s efforts to delay and weaken the response.
- It is my understanding that Dr. Said Abdel-Khalik, a member of NRC’s Advisory Committee on Reactor Safeguards, has resigned from that Committee due to his concerns about inappropriate nuclear industry influence on its activities.
- Another individual from NRC’s Region IV office also contacted my office to inform me of their own active case in which they were retaliated against after raising a safety concern about the San Onofre Nuclear Generating Station that was subsequently validated. The safety concern was first validated by NRC in 2006, but the licensee allegedly failed to correct the problem and took steps to retaliate against the employee. The individual then elevated the concern to the Region IV office in 2010. In 2011, NRC revalidated the safety concern. However, neither NRC nor the NRC IG have taken steps to remedy the claims of retaliation.
- After reading the first letter I received from Region IV staff, an inspector from NRC’s Region III office contacted my office to inform me of a similar concern in which safety inspection findings identified during an engineering inspection performed at the Fermi Nuclear Power Plant in 2010 were subsequently removed from the inspection report by Region III middle management. Retaliatory actions were taken immediately after the inspector contacted the NRC IG office to request an investigation concerning the removal of the identified safety findings.
- Every individual who contacted my office expressed concerns that they did not trust the NRC IG to resolve their concerns, in part because the NRC IG has a history of reporting whistleblower retaliation concerns back to the very same management accused of the retaliation in the first place, and in part because of a perceived bias on the part of the IG towards making conclusions that support NRC management’s views. Suggestions were made that the Commission engage a firm such as Conger and Elsea or other organization to conduct an independent investigation.

It remains my belief that an independent examination of NRC's safety culture is warranted. Even if the NRC IG intends to engage in an unbiased and thorough investigation of its own, it will be limited in its ability to obtain a complete accounting of these problems if whistleblowers fear disclosing their experiences to IG staff because of a perceived lack of objectivity. I urge you to move quickly to begin an independent, credible investigation of NRC's safety culture, not just in Region IV but throughout the agency and its Advisory Committees. Thank you very much for your attention to this important matter. If you have any questions or concerns, please have your staff contact Dr. Michal Freedhoff of my staff at 202-225-2836.

Sincerely,



Edward J. Markey