COMMITTEES

NATURAL RESOURCES
RANKING DEMOCRAT

ENERGY AND COMMERCE

EDWARD J. MARKEY
7TH DISTRICT, MASSACHUSETTS

2108 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–2107
(202) 225–2836

DISTRICT OFFICES:

5 HIGH STREET, SUITE 101
MEDFORD, MA 02155
(781) 396–2900

188 CONCORD STREET, SUITE 102
FRAMINGHAM, MA 01702
(508) 875–2900

http://markey.house.gov

Congress of the United States
House of Representatives
Washington, DC 20515–2107

January 8, 2013

The Honorable Allison M. Macfarlane
Chairman
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Chairman Macfarlane:

I write again regarding allegations of safety culture problems at the Nuclear Regulatory Commission's (NRC) Region IV office (which is headquartered in Arlington, TX). Your November 5 response[1] to my last letter was once again not fully responsive to the issues that I have raised regarding the repeated concerns raised by the NRC employees at this office. I therefore would like to reiterate my request for information relating to these problems, as well as my request for a credible, independent investigation of the problem.

I have been long concerned by the potential impact the Commission's failure to follow its own technical staff's recommendations on the necessary post-Fukushima safety measures – a matter which preceded your arrival at the agency.[2] Specifically, if NRC managers do not believe that you and your fellow Commissioners are fully 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. The available evidence appears to suggest that this has occurred at NRC's Region IV, and that the Commission's failure to act in response to my requests may have further emboldened an already-recalcitrant set of managers, based on recent reports to my staff made by Region IV employees.

This view is further amplified by the recent release of a survey that your November 5 response asserted would assist the Commission with its efforts to remedy any identified safety culture problems at the NRC. This survey[3] found that the NRC was "losing significant ground on negative reactions when raising views different from senior management, supervisor and peers," with only 49% of the nearly-3000 respondents saying that the NRC's process for enabling such different views to be raised was effective. More than half of the respondents also indicated that they had heard of someone receiving a negative reaction from their peers or their

[1] http://markey.house.gov/sites/markey.house.gov/files/documents/2012-11-05_NRC_letter_Markey.pdf
[2] http://markey.house.gov/content/timeline-recent-nrc-votes-against-safety-recommendations
[3] http://www.nrc.gov/about-nrc/regulatory/enforcement/2012-safety-culture-survey-employee-briefing.pdf

PRINTED ON RECYCLED PAPER

supervisors after raising a differing view. The portion of this survey that summarized the results for Region IV, which is not public but was recently provided to me by Region IV staff, are even more alarming, indicating that Region IV personnel felt even *less* positive about these aspects of their jobs than NRC employees as a whole. For example, these results indicate that in Region IV, only 55% of respondents had a favorable impression of NRC's differing professional opinion and non-concurrence processes[4], a drop of a staggering 12% in Region IV since the survey was last administered in 2009 and 4% lower than NRC as a whole.

As you know, I first wrote[5] the NRC about this matter on May 9, when I transmitted an anonymous letter[6] I received from staff at NRC's Region IV. These individuals alleged that Mr. Troy Pruett, the Deputy Division Director of the Division of Reactor Projects, openly denigrated, berated, and retaliated against professional staff for raising safety concerns with which he did not agree, and attempted to weaken serious nuclear reactor safety findings in inspection reports prior to their release. On June 4, I wrote[7] the NRC again after receiving new allegations of safety culture problems at Region IV as well as information describing the staff's concerns[8] regarding the adequacy of the Inspector General's (IG's) investigation into these matters.

On October 1, I wrote[9] you again, this time detailing discussions my staff had with Region IV staff and with Mr. Joseph McMillan, Assistant Inspector General for Investigations, which made it clear that the ongoing IG investigation is not attempting to determine whether safety culture in Region IV is consistent with the tenets of NRC's Safety Culture policy statement,[10] which you claim in your November 5 response to support. Instead, the IG is attempting to identify whether it can definitively identify and link any specific act of professional retaliation committed by Mr. Pruett to his staff's efforts to more aggressively oversee or enforce NRC safety regulations.

The Commission apparently does not care whether any independent examination of safety culture at Region IV ever takes place – and Region IV staff who have contacted my office have repeatedly described a worsening work environment since the Commission chose to ignore these concerns. In recent weeks, my office has been contacted by even more employees at Region IV who describe Region IV leadership as even worse than it was last spring. My staff has been told that Region IV management actively disparage both my Congressional oversight of their activities and NRC headquarters' attempts to respond to it. These people have informed me that individuals who agree to do Region IV management's bidding on safety-related matters are promoted, while those who question management are retaliated against.

---

[4] These are described as being the means by which NRC employees who disagree with versions of documents they helped to prepare or with mission-related issues can record their concerns and have them independently reviewed and responded to.

[5] http://markey.house.gov/document/2012/letter-nrc-regarding-texas-headquarters

[6] http://markey.house.gov/document/2012/letter-rep-marcy-nrc-region-4-staff

[7] http://markey.house.gov/document/2012/june-2012-letter-nrc-regarding-region-iv-follow

[8] http://markey.house.gov/sites/markey.house.gov/files/documents/Region%20IV%20whistelblower%20letter%20to%20Markey.pdf

[9] http://markey.house.gov/document/2012/letter-nrc-about-region-iv-ig-safety-culture-investigation

[10] http://www.gpo.gov/fdsys/pkg/FR-2011-06-14/pdf/2011-14656.pdf

I find the Commission's posture exceedingly disappointing, dangerous and entirely at odds with NRC's Safety Culture Policy Statement and its Open Collaborative Work Environment (which are described as being the means by which NRC employees who disagree with versions of documents they helped to prepare or with mission-related issues can record their concerns and have them independently reviewed and responded to).

I have made numerous requests for materials related both to allegations of retaliation made against NRC Region IV personnel by Mr. Troy Pruett and to the allegations that Mr. Pruett had improperly attempted to weaken safety findings for the Fort Calhoun Station.

In your November 5 response, you again refused to provide the former category of requested materials, citing privacy concerns. You even refused to follow up with earlier offers made by your staff to work towards a negotiated accommodation of my request that would satisfy all parties. This is unacceptable. Among the proposed solutions my staff discussed with yours included the provision of a mere list and brief description of all such allegations, with any information that could raise privacy concerns removed from the contents. There is simply no justification for the Commission's refusal to provide even a modicum of information regarding what is alleged by numerous NRC personnel to be highly inappropriate and problematic behavior by one of NRC's managers.

In response to my repeated requests for "all documents (including but not limited to emails, letters, telephone logs, and memos) to or from Commissioners, Commissioner staff, and senior NRC officials (including but not limited to Bill Borchardt, Marty Virgilio and Elmo Collins) that are in any way related to the decision to assign a "red" safety finding to the Fort Calhoun Station or to subject the Fort Calhoun Station to more aggressive oversight, including "any and all documents (including but not limited to emails, letters, telephone logs, and memos) to, from or about Mr. Pruett that are also related in any way to the decision to assign a "red" safety finding to the Fort Calhoun Station or to subject the Fort Calhoun Station to more aggressive oversight," your November 5 response provided me with a total of 8 pages of additional material – all of which were marked "not for public disclosure" but which have subsequently been cleared for public release by the NRC Office of General Counsel at my request.

A review of these sparse documents, along with previous correspondence sent to me by multiple Region IV staff[11] who indicated that no serious search for responsive documents has taken place, demonstrates your failure to follow internal Commission procedures for the provision of documents to Members of NRC's Oversight Committee. There is simply no plausible way that NRC's extensive oversight[12] of the Fort Calhoun Station involved only eight pages worth of internal documents, emails, letters, telephone logs or memos.

Consequently, I reiterate my request that an independent entity examine the allegations of safety culture problems in Region IV, and in particular examine all allegations related to Mr. Pruett's actions. I also ask for the following documents to be provided to my office by close of business on January 25, 2013:

---

[11] See for example, http://markey.house.gov/document/2012/region-iv-whistleblower-september-follow-letter

[12] http://www.nrc.gov/info-finder/reactor/fcs/special-oversight.html

1) All documents (including but not limited to emails, letters, telephone logs, and memos) that are in any way related to the decision to assign a "red" safety finding to the Fort Calhoun Station. Please ensure that your document production includes documents to, from or in the possession of any NRC employee with responsibility for the safety oversight of Fort Calhoun Station.
2) All documents (including but not limited to emails, letters, telephone logs, and memos) that are in any way related to the NRC's oversight of the Fort Calhoun Station since May 9 2012. Please ensure that your document production includes documents to, from or in the possession of any NRC employee with responsibility for the safety oversight of Fort Calhoun Station.
3) All drafts of the September 2, 2011 document[13] entitled "Confirmatory Action Letter – Fort Calhoun Station."
4) All drafts of the December 13, 2011 document[14] entitled "Notification of Change to Regulatory Oversight of Fort Calhoun Station".
5) All drafts of the March 12, 2012 document[15] entitled "Fort Calhoun Station – NRC Special Inspection Report 05000285/2011014; Finding Of Preliminary High Safety Significance"
6) All drafts of the April 10, 2012 document[16] entitled "Final Significance Determination of Red Finding and Notice of Violation, NRC Inspection Report 05000285/2012010, Fort Calhoun Station."
7) All drafts of the June 11, 2012 document[17] entitled "Confirmatory Action Letter – Fort Calhoun Station".
8) All drafts of the June 13, 2012 document[18] entitled "Fort Calhoun Station - NRC Triennial Fire Inspection Report."
9) All drafts of the August 13, 2012 document[19] entitled "Fort Calhoun - NRC Integrated Inspection Report Number 05000285/2012003"
10) All drafts of the October 2, 2012 document[20] entitled "Fort Calhoun - NRC Integrated Inspection Report Number 05000285/2012004"
11) All drafts of the November 13, 2012 document[21] entitled "U.S. Nuclear Regulatory Commission Manual Chapter 0350 Panel Fort Calhoun Station Restart Checklist Basis Document"
12) All drafts of the November 13, 2012 document[22] entitled "Fort Calhoun - NRC Integrated Inspection Report Number 05000285/2012005, And Notice Of Violation"
13) All documents (including drafts) related to the Commission's response to my May 9, June 4, or October 2 letters regarding Region IV safety culture concerns, including copies of any "green ticket" requests generated as a result thereof.

---

[13] http://pbadupws.nrc.gov/docs/ML1124/ML112490164.pdf
[14] http://pbadupws.nrc.gov/docs/ML1134/ML113470721.pdf
[15] http://pbadupws.nrc.gov/docs/ML1207/ML12072A128.pdf
[16] http://pbadupws.nrc.gov/docs/ML1210/ML12101A193.pdf
[17] http://pbadupws.nrc.gov/docs/ML1216/ML12163A287.pdf
[18] http://pbadupws.nrc.gov/docs/ML1216/ML12165A258.pdf
[19] http://pbadupws.nrc.gov/docs/ML1222/ML12226A630.pdf
[20] http://pbadupws.nrc.gov/docs/ML1227/ML12276A456.pdf
[21] http://pbadupws.nrc.gov/docs/ML1231/ML12318A319.pdf
[22] http://pbadupws.nrc.gov/docs/ML1231/ML12318A341.pdf

14) Please list all agency-wide actions NRC plans to undertake in response to the recently released survey that showed serious concerns with its different professional opinion and non-concurrence processes, along with a timeline for each proposed action. Please specifically address the NRC's response to the Region IV survey results, which show its safety culture to be worse than NRC as a whole.
15) While you stated in your November 5 response that the NRC does believe that the safety culture of the Nuclear Regulatory Commission itself should conform with the principles outlined in its Final Safety Culture Statement, you did not respond to the following question. Please do so. Does the Commission believe that the only measure of whether there is a strong safety culture or an open and collaborative work environment at the NRC to be the definitive disposition of whistleblower retaliation complaints? If not, how does the Commission intend to assess the safety culture and work environment at Region IV?

Thank you for your attention to this matter. I look forward to your response. 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

Edward J. Markey