

September 19, 2012

The Honorable Edward J. Markey
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

In response to your letter of May 9, 2012, concerning alleged harassment and retaliation by Mr. Troy Pruett, RIV Deputy Division Director of the Division of Reactor Projects against NRC inspectors for identifying safety concerns, the Chairman of the Nuclear Regulatory Commission (NRC) issued a non-publically available response on July 23, 2012. This response provided the agency's reply to specific information requests identified in your letter. Unfortunately, this dismissive response fails to adequately address the pervasive underlying safety culture issues identified by the NRC's staff.

The enclosure to this letter provides the staff's detailed analysis of the Commission's response. However, it should be noted that the specious content of the agencies response is indicative of NRC management's inability to critically assess and correct supervisory behaviors that not only suppress the staff's ability to identify and correct significant safety issues but are in direct conflict with the provisions of the "No FEAR Act of 2002".

As noted in the staff's previous correspondence regarding this matter, the NRC's Inspector General (IG) who reports directly to the Chairman, is neither independent nor are their Special Agents specifically trained to evaluate safety culture issues. Therefore, in order to arrive at a fair and equitable resolution of this issue it is imperative that the concerns originally identified to you in the staff's April 24, 2012, letter, be referred to an independent organization and that a court appointed administrative law judge be selected to oversee and correct this breach of trust and culture of complacency.

Sincerely,

Region IV Staff

Response to NRC Commission's July 23, 2012 Letter to Representative Edward J. Markey

- 1. Please provide a copy of SFA29 in the Regional Operations Plan referred to in the letter. Does the Commission support a performance award policy that equates bonuses to enforcement actions that are challenged or overturned by the licensee? If so, please explain. If not, what steps is the Commission taking to alter this policy?**

Commission Response: A copy of SFA29 is attached. The NRC does not have, and the Commission does not support, a performance award policy that equates bonuses to enforcement actions that are challenged or overturned by licensees.

Staff Analysis: Annually, each office director (including regional administrators) is required to submit a copy of their next fiscal year operating plan to the Executive Director for Operations (EDO). Accomplishment of each aspect of the Regional Operations Plan is used as a basis for judging the office's performance. The implementing Management Directive 10.137, "Senior Executive Service [SES] Performance management System," clearly states that one of its objectives was "to identify individual accountability for accomplishing goals and objectives." This Management Directive further states that another objective of using the results of the performance appraisals was to serve as a basis for adjusting base pay and for training, reviewing, reassigning, retaining and removing SES executives.

Accordingly, the failure to meet an operating plan metric would be used as a basis for downgrading a senior level employee's performance appraisal. Specifically, SFA29 indicates that the strategic goal and objective for the number of enforcement actions being retracted is less than or equal to 4. If this goal is not met, the performance of the responsible senior level employee would invariably result in being downgraded in this area.

Given that the SES performance appraisal bonus is predicated, in part, on not exceeding the specified number of violations being retracted, it is difficult to justify the Chairman's July 23, 2012, response that the NRC does not support a performance award policy that equates bonuses to enforcement actions that are overturned by licensees. As indicated in the NRC staff's April 23, 2012 letter to you, senior management's reluctance to support potentially controversial issues continues to be manifested by the unethical practice of using performance measures which directly equates SES bonuses to the number of enforcement actions challenged and overturned by licensee's. Accordingly, this metric serves as a significant deterrent to staff actively pursuing enforcement actions which could be refuted by licensees and thus have a negative impact on SES bonuses. Evidence of this regressive policy are routinely demonstrated in regional inspection debrief meetings where senior management's questions regarding inspection findings continuously focus on whether or not the licensee agreed with the proposed violation.

In order to objectively determine if the Commission condones a performance award policy that equates bonuses to enforcement actions that are challenged and overturned by the licensee it is recommended that a Congressional committee/subcommittee chairman, on behalf of the committee, or a court order be issued to obtain all relevant documentary evidence pertaining to this issue including regional SES performance appraisals and compensation records dating back to the inception of the reactor oversight program.

Alternatively, if the Commission does not support a performance award policy specified in Management Directive 10.137, that equates bonuses to enforcement actions that are challenged or overturned by licensee's, this position should be manifested by the immediate removal of this unethical metric from the operating plan and the prohibition of linking bonuses to retracted enforcement actions. Additionally, specific actions to remediate the chilled environment and the management culture that dissuades inspectors from actively pursuing safety issues should be undertaken, as soon as possible, in order to address the serious operational issues currently impacting San Onofre Nuclear Generating Station and Fort Calhoun Station.

2. Please provide a copy of all documents (including but not limited to emails, phone logs, memos, or letters) in which NRC staff have identified or complained about the management style, acts of retaliation or other personnel complaints associates with Mr. Pruett. For each complaint that was brought to the attention of more senior NRC personnel, please indicate a) whether the alleged action was investigated and if so, please provide a copy of all documents related to any such investigation, b) whether the alleged action was remedied or if so, please provide a copy of all relevant documents, and c) whether any disciplinary actions were taken against Mr. Pruett, and if so, please provide a copy of all relevant documents.

Commission Response: Any records responsive to Questions 2 are part of sensitive internal personnel files and contain personal privacy information. Without the permission of all individuals identified in the records, this information may not be released by the Agency without a request by a Congressional committee/subcommittee chairman, on behalf of the committee, or a court order.

Staff Analysis: In order to achieve full disclosure regarding the release of all documents in which NRC staff have identified or complained about harassment or retaliatory actions attributed to Mr. Pruett, it is recommended that a Congressional committee/subcommittee chairman, on behalf of the committee, or a court order be issued to obtain all relevant documentary evidence pertaining to this concern. It is also recommended that NRC staff and management who have personal knowledge of adverse personnel actions potentially involving harassment and retaliation related to this matter be subpoenaed to testify under oath before Congress.

3. Do you intend to proceed with the sort of independent and public investigation requested by Region IV staff? If so, please provide all details surrounding these plans, and if not, why not? What other actions have you taken or plan to take to investigate and remedy the problems identified in the April 24 letter I received?

Commission Response: The anonymous letter has been referred to the Office of the Inspector General (OIG). In the mean-time, senior managers have been communicating with staff about the importance of our safety mission and sharing safety concerns when they arise. We also are exploring other options for further assessing the safety culture.

Staff Analysis: As noted in the cover letter, the NRC's IG, who reports directly to the Chairman, is neither independent nor are they uniquely trained to evaluate safety culture issues. Furthermore, it is apparent that as long as NRC's IG retains responsibility for the investigation the potentially embarrassing aspects of this issue can be effectively suppressed through the Commission and the EDO. Relative to this issue, although the investigation of Mr. Pruett's alleged harassment and retaliation is ongoing, he recently boasted that IG has not substantiated any of the allegations and that he would be returning to his position as Deputy Division Director of the Division of Reactor Projects by December of this year. Although it is not clear if Mr. Pruett's statement was based on factual information, it does raise concerns about the independence of IG's investigation process. Therefore, in order to fairly and equitably resolve the underlying safety culture issues, it is imperative that the concerns originally identified to you in the staff's April 24, 2012, letter, be referred to an independent organization and that a court appointed administrative law judge be selected to oversee and correct this breach of trust and culture of complacency.

4. Please provide copies of 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, Mary 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.

Commission Response: We are currently searching our records and will provide all relevant documents once that review is complete. Any Commission office that has relevant documents will send them separately to your office.

Staff Analysis: The issue regarding contentious interactions between NRC staff and Mr. Pruett associated with the 'red' safety significance determination at Fort Calhoun Station was provided as an example of the repressive and retaliatory management style exhibited by Mr. Pruett. Although this question has merit and deserves a meaningful response, the fundamental issue is NRC's senior management's tolerance of a management style that is the antithesis of the "No FEAR Act" which specifies, in part, that Federal employees are free to identify safety issues without fear of retaliation.

Relative to your request for documentation concerning NRCs senior management's involvement in deciding the safety significance of the 'red' finding at Fort Calhoun Station, it is noted that congressional requests of this nature typically generate a "Green Ticket" from the EDO. This administrative tracking mechanism would be forwarded to all potentially affected NRC staff in order to conduct the requisite records search. However, to date, no such request has been forwarded to RIV staff for documents related to this matter which brings into question the veracity of the NRC's response.

As described in the RIV staff's April 24, 2012, letter to you, the collegial organizational acceptance of senior management behaviors that challenge the ability of inspectors to identify and document violations of regulatory requirements, necessitates an independent investigation. Furthermore, because of the unwillingness of the NRC to provide meaningful responses to Congressional inquiries it is recommended that a Congressional committee/subcommittee chairman, on behalf of the committee, or a court order be issued to obtain all relevant documentary evidence pertaining to this concern. It is also recommended that NRC staff and management who have personal knowledge of adverse personnel actions potentially involving harassment and retaliation related to this matter be subpoenaed to testify under oath before Congress.

5. Does the Commission believe that safety or enforcement findings should be altered for any reason other than one based on their technical merits? If so, please fully explain your response.

Commission Response: The commission's expectation for safety findings are set forth in the Reactor Oversight Process (ROP). The ROP is used to inspect and assess power reactor licensee performance in a manner that is risk-informed, objective, predictable, and understandable. The process is designed to focus on those plant activities most important to safety. As part of the ROP, the safety or security significance of inspection findings identified at operating power reactors is evaluated using the risk-informed Significance Determination Process (SDP). The SDP assigns a color to the inspection finding (i.e., Red, Yellow, White, or Green), based on the safety significance of the finding, with Red being the most significant. It is important to note that, although the significance assigned to an inspection finding is determined by the SDP, a violation of an NRC requirement associated with that inspection finding is dispositioned in accordance with the guidance in the NRC Enforcement Policy (Policy).

The Enforcement Policy sets forth the Commissions' expectations for assessing and dispositioning violations of NRC requirements. The Policy allows the NRC to determine what enforcement actions should be taken in a particular case. After considering the general tenets of the Policy and the safety and security significance of the violation and its surrounding circumstances, judgment and discretion may be exercised in escalating or mitigating the severity levels of the violation and the appropriate enforcement sanctions to be taken. When determining an appropriate enforcement sanction, the NRC will typically consider whether the

licensee self-identified the violation and the extent and appropriateness of the corrective actions taken by the licensee.

Staff Analysis: Restating the inspection and assessment attributes associated with the ROP and referencing the provisions of the NRCs Enforcement Policy fails to address the fundamental issue of a conflicted senior management structure that condones repressive supervisory behaviors that are contrary to the open and collaborative work environment that the NRC purports.

Relative to the ROP process, it should be noted that following the identification of boric acid corrosion on the reactor vessel head at Davis Bessie, which had eroded through approximately 6 inches of carbon steel, leaving only 3/8 inch cladding as the pressure boundary, a risk analysis was performed. The results of this risk analysis indicated a 'green' safety significance determination of low safety significance. Given that the Reactor Pressure vessel is one of the three primary barriers to the release of radioactive material to the environment and accident analysis assumes that the vessel does not fail, this counter intuitive result was challenged by the NRC's EDO. A subsequent risk analysis was performed that resulted in a 'red' safety significance determination which indicates extreme variability in this risk assessment process that the NRC maintains is "risk-informed, objective, predictable, and understandable."

Short of a Congressional inquiry consistent with the staffs above noted analysis, and a court order to obtain all relevant documentary evidence pertaining to this concern, it is unlikely that your requests for information related to this issue will be productive. Therefore, it is recommended that NRC staff and management who have personal knowledge of adverse personnel actions potentially involving harassment and retaliation related to this matter be subpoenaed to testify under oath before Congress.