

*Presentation to
NRC Discrimination Task Group*

**Discrimination Task Group
Draft Review and Preliminary
Recommendations**

*Ralph E. Beedle
Senior Vice President and Chief Nuclear Officer
Nuclear Energy Institute
August 16, 2001*



NRC's Evaluation Process

- ▶ **Perform internal evaluation of current NRC investigative and enforcement processes**
- ▶ **Obtain views of stakeholders through public meetings and written comments**
- ▶ **Review processes used by other federal agencies**



Stakeholders Agree on Need for Reform

- ▶ **Strong consensus that NRC should revise approach to employee protection**
- ▶ **Stakeholders agree reform needed to address:**
 - ▶ **Conduct of OI investigations**
 - ▶ **Legal standards and evaluation process**
 - ▶ **Lack of fundamental fairness in enforcement process**
 - ▶ **Lack of transparency**
 - ▶ **Lack of timeliness**



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Discrimination Task Group Draft Review and Preliminary Recommendations

- ▶ **Suggests lack of objectivity**
 - ▶ **Largely justifies the *status quo***
 - ▶ **Fails to consider processes of other agencies**
- ▶ **Suggests lack of appreciation of stakeholder concerns**
- ▶ **Recommended changes will not produce a fairer, more understandable process**
 - ▶ **Result will be greater duplication and inefficiency**
- ▶ **Fails to justify significant expenditure of resources given industry performance**



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NRC Should Reconsider Preliminary Findings and Recommendations

- ▶ **NRC recommendations do not address issues of fundamental fairness**
 - ▶ **Retain current approach to conduct of investigations**
 - ▶ **Retain current legal standards/evidentiary bases for enforcement**
 - ▶ **Eliminate predecisional enforcement conference**
 - ▶ **No opportunity for hearing by individual subject to NOV**
 - ▶ **Continued failure to provide full explanation of bases for enforcement action**



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NRC Should Reconsider Policy Issues

- ▶ **Conduct of independent investigation and enforcement action**
- ▶ **Threshold for initiation of OI investigation**
- ▶ **Adverse impact on nuclear employee accountability**
- ▶ **Promotion of settlement through credit in Enforcement Policy**



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Bases for Reform of 50.7 Implementation

- ▶ **Nuclear industry performance demonstrates freedom of employees to report safety concerns**
- ▶ **Preserving nuclear employee accountability is an important public interest**
- ▶ **Current legal and evidentiary standards are inappropriate**
- ▶ **Lack of openness and transparency undermines credibility of results**
- ▶ **Current process promotes inefficient use of NRC resources**



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Achieving Reform

- ▶ **Fundamentally revise NRC's approach to individual discrimination claims by allowing Department of Labor to handle in first instance**
 - ▶ **Other federal agencies with similar public health and safety responsibility do not independently investigate or take enforcement action on grounds of discrimination**
- ▶ **NRC could retain enforcement authority--reserved for "exceptional circumstances"**



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Achieving Reform, con't

- ▶ **Revise the current process to achieve greater fairness, appropriate allocation of resources and transparency**
 - ▶ Adopt appropriate threshold for initiation of OI investigation
 - ▶ Adopt and apply appropriate legal standard and “preponderance of evidence” standard
 - ▶ Provide *meaningful* predecisional enforcement conference
 - ▶ Provide full and reasoned explanation of bases for enforcement
 - ▶ Provide right to hearing for individual subject to enforcement



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Conclusions

- ▶ **NRC should withdraw preliminary report and reconsider input from stakeholders and other agencies**
- ▶ **Substantive reform is imperative to address the flaws in the current process**
- ▶ **All stakeholders will benefit from a fairer, more open, and more timely approach**



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HARRY KEISER - TALKING POINTS FOR NRC MEETING AUGUST 16th 2001
Discrimination Task Force

As CNO of PSEG Nuclear, operator of the Salem and Hope Creek facilities, first I want to thank the NRC task force for their work. Second, I want to endorse the NEI position on this matter, but rather than restate NEI's concerns, I want to focus on our experiences with the NRC and DOL discrimination evaluation process.

We believe that the process can become fairer, more consistent and timely.

Specific concerns based on our experience include:

- Lets have "One bite at the apple", by that I mean eliminate the multitude agency reviews. Having two governmental agencies reviewing the same matter, aside from not being an efficient use of resources, is fundamentally unfair. We had a situation where we prevailed at DOL only to have an unfavorable finding at the NRC. I am unaware of any similar legal process where I would have to prevail in multiple forums to be found innocent.
 - TAKEAWAY: Lets be fair and have just one process.
- The NRC investigation process does not lend it self well to work place conflict or tension. The reality of running a company with over 2000 employees, both company and constructors, is that 'steam' is sometimes vented, both by employees and supervisors. While we do a remarkably good job in handling differences of opinions, if a supervisor makes one sharp remark, an NRC OI review can ensue and suddenly a 20-year career can be in serious jeopardy.
 - TAKEAWAY: Set appropriate thresholds for NRC review, including giving the licensee a chance to perform the review.
- Standard of Proof - Your draft report asserts that enforcement action is only taken when a "preponderance of the evidence supports the conclusion that discrimination has occurred". That has not been the impression of the industry regarding certain recent enforcement actions and has not been reflected in the language of the associated NOVs. Although that high standard is commendable, the lack of transparency in the process prevents me from understanding your evidence, which may not be the same as the evidence I have collected. Accordingly, that leaves me uncertain about the true standard which inhibits my options in managing any individual who has been involved in a protected activity.
 - TAKEAWAY: Enforcement should be limited to cases where the licensee cannot demonstrate that they would have taken the adverse action absent the protected activity. The enforcement process needs to be transparent to support the mutual understanding of conclusions.
- Reverse chilling – it can happen and has happened. When supervisors are afraid to do the right thing, for example, correcting employee conduct or seeking improved performance, for fear of having a regulatory hammer come down on them, it undermines supervisory authority and potentially erodes the margin of safety. We

had a situation where a supervisor delayed taking reasonable action – essentially freezing – because of his awareness of the regulatory jeopardy that another superior incurred in dealing with an employee. This does not advance our common safety objectives.

- TAKEAWAY: The process needs to be balanced, fair to employees and management.
- Lumping timeliness, transparency and openness, together under process issues. I cannot run my plants or business without current, accurate and complete information. During an OI investigation that is exactly what I am faced with. Is there a plant issue that needs addressed? Is there an employee issue that needs addressed? What lessons learned are there for other in the organization? The problem is I do not know and by the time I do know it's one to two years later and either people have formed their own opinion based on rumor or don't care anymore.
 - TAKEAWAY: Being open and timely will add credibility to the process.
- The pre-decisional enforcement conference process needs to be balanced. While the NRC does a good job in allowing the licensee to present our side of the story, it is only after the NRC staff has been briefed and biased by reading a multiple month or year long investigation report, that the licensee does not have access to. The stakes are real and high, especially for people being accused of wrongdoing – it should not be played like a poker game with cards held close to the vest. Two real life examples: (1) witnesses recollection can change – reliance by either the NRC or licensee on shifting testimony can result in materially different conclusions on whether discrimination occurred; (2) multiple interviews with slightly varying recollection can discredit witness credibility. Often witnesses while wanting to assist an investigation in any way possible are unfamiliar with the regulatory process and in the case of one individual after three interviews realized the focus was on him – naively thinking that since he did nothing, no harm could result – he was only right after two years and outside counsel support.
 - TAKEAWAY: Sharing of the information forming the basis for the conclusions in the pre-decisional enforcement conference will provide for a fairer result.

I'd like to add a few other comments: I believe that contractors should not be subjected to civil penalties. We, the licensees, should provide oversight and retain accountability for a contractor's performance.

Thank you.



Comments on Draft Discrimination Task Group Report

R.S. Kundalkar
Vice President - Nuclear Engineering
Florida Power & Light Company
August 16, 2001

Overall Conclusions

- The existing discrimination process is closed, adversarial, and unpredictable
- Many of the changes proposed by the Task Group would worsen rather than improve the discrimination process

Significant Issues

- NRC should reexamine its role in handling discrimination cases
- The OI investigative process is in need of reform
- Sequencing of enforcement conference should not be changed

Significant Issues

- The full OI report should be released prior to an enforcement conference
- The NRC's discrimination process has a chilling effect on plant management
- An individual accused of deliberate discrimination should have right to a hearing

Suggestions

- Revisit stakeholder comments on fundamental role of NRC in discrimination cases
- Consider impact of process on plant staff
- Engage an independent review of process
- Withdraw the report

Comments Related to Discrimination Task Group Draft Report

Terry Morton

NGG Manager Performance Evaluation and
Regulatory Affairs

August 16, 2001



Introduction

- CPL & FPC significance of this issue
- Experience with NRC OI and DOL investigations
- Provide a utility's perspective on Safety Conscious Work Environment and offer some recommendations



CPL and FPC Perspective

- Open expression of employee concerns is a fundamental quality of a world-class organization
- Essential to safe and efficient operation of our nuclear facilities
- Employees are encouraged to report concerns to management as soon as they are identified; however,



Safety Conscious Work Environment

- Monitored by the Employee Concerns program
 - ▶ Confidential Program
 - ▶ Investigate every item submitted
- Employee survey to monitor SCWE performed periodically
 - ▶ Provides trend data to benchmark our culture with other stations throughout the US



Mission

- To provide a two-way communications channel between employees and senior management, enabling CP&L and contractor employees to raise any concern/allegation, pose a question, or express an opinion on any nuclear safety concern or any company-related topic.



History

- Program has been in place since 1984
- Employee concerns representatives for each site and corporate
- Employee concerns representatives report to corporate administrator/CNO



Recommendations

- Minimize OI investigations
 - ▶ Stressful
 - ▶ Duplication; therefore defer to DOL to handle discrimination cases-NRC only if case is safety/significant
 - ▶ Often untimely
- NRC provide oversight of results of DOL investigations and take appropriate actions
- NRC should continue to review SCWE/EC type programs as a part of Problem Identification Reporting inspections



