

[NUREG-1600]

Policy and Procedure for Enforcement Actions; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement amendment; request for comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its General Statement of Policy and Procedure for Enforcement Actions (Enforcement Policy) regarding predecisional enforcement conferences that are based on findings of discrimination. For appropriate cases, this amendment will allow some degree of participation by the complainant in the predecisional enforcement conference.

DATES: This amendment is effective on March 24, 1997. Comments are due on or before April 23, 1997.

ADDRESSES: Send written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415-2741.

SUPPLEMENTARY INFORMATION: The Commission's Enforcement Policy was first issued on September 4, 1980. The Enforcement Policy is published as NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions (60 FR 34381; June 30, 1995)." Section V of the current policy provides that, when the NRC learns of a potential violation for which escalated action may be warranted, the NRC will normally provide the licensee an opportunity for a predecisional enforcement conference prior to taking the enforcement action. These predecisional enforcement conferences are a means for the NRC to gain additional information that will assist in determining the appropriate course of action.

The Commission is modifying its Enforcement Policy for predecisional enforcement conferences in which the conference is based on an NRC Office of Investigations (OI) report finding that discrimination as defined under 10 CFR 50.7 (or similar provisions in Parts 30,

40, 60, 70, or 72) has occurred. In such cases, the OI report will normally be made public, subject to withholding certain information (i.e., after appropriate redaction), and any resulting predecisional enforcement conference will normally be open to public observation. In a case where a particular individual is being considered potentially responsible for the discrimination, the conference will remain closed. In either case (i.e., whether the conference is open or closed), the employee or former employee who was the subject of the alleged discrimination (hereafter referred to as "complainant") will normally be provided an opportunity to participate in the predecisional enforcement conference.

These enforcement conferences will normally be held in the NRC's regional offices. Participation in the conference in person will be at the complainant's own expense. This participation will normally be in the form of a complainant statement and presentation in followup to the licensee's presentation, followed in turn by an opportunity for the licensee to rebut the complainant's presentation. In cases where the complainant is unable to attend in person, arrangements will be made for the complainant's participation by telephone or an opportunity given for the complainant to submit a written rebuttal to the licensee's presentation. If the licensee chooses to forego an enforcement conference and, instead, responds to the NRC's findings in writing, the complainant will be provided the opportunity to submit a written rebuttal to the licensee's response. For cases involving potential discrimination by a contractor or vendor to the licensee, any associated predecisional enforcement conference with the contractor or vendor would be handled similarly. These arrangements for complainant participation in the predecisional enforcement conference are not to be conducted or viewed in any respect as an adjudicatory hearing. As with any NRC meeting, the presiding officer of the conference may limit participation as necessary to control the conduct of the meeting.

This approach will give both the complainant and the licensee (or contractor) the opportunity to present their positions on the discrimination issue, and it should provide additional information on which the staff may base its initial enforcement decision. It may serve to address past concerns that the NRC bases its decision on enforcement action solely on the licensee's presentation. At the same time, it could

lead to additional allegations and issues concerning false or misleading statements, and it could lengthen the process. This approach may also raise concerns that the licensee will have more extensive resources than the complainant, enabling it to better present its position. In any event, these enforcement conferences are not adjudicatory forums, but rather a means to obtain additional information from the perspective of both the licensee and the complainant. The Commission intends, therefore, to limit both the licensee and the complainant to simple presentations and rebuttals without allowing experts to testify on the issues or allowing cross-examination of witnesses by the licensee or complainant. As with other predecisional enforcement conferences, the NRC staff will, where appropriate, question licensee's supervisors and their representatives to understand as clearly as possible the circumstances of the case.

Finally, for cases in which there is a full adjudicatory record before the Department of Labor, the NRC may not need to hold a predecisional enforcement conference. If a conference is held in such cases, generally the conference will focus on the licensee's corrective action. As with discrimination cases based on OI investigations, the complainant may be allowed to participate.

Paperwork Reduction Act Statement

This policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0136. The approved information collection requirements contained in this policy statement appear in Section VII.C.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a "major rule" and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Accordingly, the NRC Enforcement Policy, Section V, "Predecisional Enforcement Conferences," is amended as follows:

General Statement of Policy and Procedure for NRC Enforcement Actions

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V. Predecisional Enforcement Conferences

Whenever the NRC has learned of the existence of a potential violation for which escalated enforcement action appears to be warranted, or recurring nonconformance on the part of a vendor, the NRC may provide an opportunity for a predecisional enforcement conference with the licensee, vendor, or other person before taking enforcement action. The purpose of the conference is to obtain information that will assist the NRC in determining the appropriate enforcement action, such as: (1) A common understanding of facts, root causes and missed opportunities associated with the apparent violations, (2) a common understanding of corrective actions taken or planned, and (3) a common understanding of the significance of issues and the need for lasting comprehensive corrective action.

If the NRC concludes that it has sufficient information to make an informed enforcement decision, a conference will not normally be held unless the licensee requests it. However, an opportunity for a conference will normally be provided before issuing an order based on a violation of the rule on Deliberate Misconduct or a civil penalty to an unlicensed person. If a conference is not held, the licensee will normally be requested to provide a written response to an inspection report, if issued, as to the licensee's views on the apparent violations and their root causes and a description of planned or implemented corrective actions.

During the predecisional enforcement conference, the licensee, vendor, or other persons will be given an opportunity to provide information consistent with the purpose of the conference, including an explanation to the NRC of the immediate corrective actions (if any) that were taken following identification of the potential violation or nonconformance and the long-term comprehensive actions that were taken or will be taken to prevent recurrence. Licensees, vendors, or other persons will be told when a meeting is a predecisional enforcement conference.

A predecisional enforcement conference is a meeting between the NRC and the licensee. Conferences are

normally held in the regional offices and are normally open to public observation. Conferences will not normally be open to the public if the enforcement action being contemplated:

(1) Would be taken against an individual, or if the action, though not taken against an individual, turns on whether an individual has committed wrongdoing;

(2) Involves significant personnel failures where the NRC has requested that the individual(s) involved be present at the conference;

(3) Is based on the findings of an NRC Office of Investigations report that has not been publicly disclosed; or

(4) Involves safeguards information, Privacy Act information, or information which could be considered proprietary;

In addition, conferences will not normally be open to the public if:

(5) The conference involves medical misadministrations or overexposures and the conference cannot be conducted without disclosing the exposed individual's name; or

(6) The conference will be conducted by telephone or the conference will be conducted at a relatively small licensee's facility.

Notwithstanding meeting any of these criteria, a conference may still be open if the conference involves issues related to an ongoing adjudicatory proceeding with one or more intervenors or where the evidentiary basis for the conference is a matter of public record, such as an adjudicatory decision by the Department of Labor. In addition, notwithstanding the above normal criteria for opening or closing conferences, with the approval of the Executive Director for Operations, conferences may either be open or closed to the public after balancing the benefit of the public's observation against the potential impact on the agency's decision-making process in a particular case.

The NRC will notify the licensee that the conference will be open to public observation. Consistent with the agency's policy on open meetings, "Staff Meetings Open to Public," published September 20, 1994 (59 FR 48340), the NRC intends to announce open conferences normally at least 10 working days in advance of conferences through (1) notices posted in the Public Document Room, (2) a toll-free telephone recording at 800-952-9674, (3) a toll-free electronic bulletin board at 800-952-9676, and on the World Wide Web at the NRC Office of Enforcement homepage (www.nrc.gov/OE). In addition, the NRC will also issue a press release and notify appropriate State liaison officers that a predecisional

enforcement conference has been scheduled and that it is open to public observation.

The public attending open conferences may observe but may not participate in the conference. It is noted that the purpose of conducting open conferences is not to maximize public attendance, but rather to provide the public with opportunities to be informed of NRC activities consistent with the NRC's ability to exercise its regulatory and safety responsibilities. Therefore, members of the public will be allowed access to the NRC regional offices to attend open enforcement conferences in accordance with the "Standard Operating Procedures For Providing Security Support For NRC Hearings and Meetings," published November 1, 1991 (56 FR 56251). These procedures provide that visitors may be subject to personnel screening, that signs, banners, posters, etc., not larger than 18" be permitted, and that disruptive persons may be removed. The open conferences will be terminated if disruption interferes with a successful conference. NRC's Predecisional Enforcement Conferences (whether open or closed) normally will be held at the NRC's regional offices or in NRC Headquarters Offices and not in the vicinity of the licensee's facility.

For a case in which an NRC Office of Investigations (OI) report finds that discrimination as defined under 10 CFR 50.7 (or similar provisions in Parts 30, 40, 60, 70, or 72) has occurred, the OI report will be made public, subject to withholding certain information (i.e., after appropriate redaction), and any resulting predecisional enforcement conference will normally be open to public observation. In a conference where a particular individual is being considered potentially responsible for the discrimination, the conference will remain closed. In either case (i.e., whether the conference is open or closed), the employee or former employee who was the subject of the alleged discrimination (hereafter referred to as "complainant") will normally be provided an opportunity to participate in the predecisional enforcement conference. This participation will normally be in the form of a complainant statement and presentation in followup to the licensee's presentation, followed in turn by an opportunity for the licensee to rebut the complainant's presentation. In cases where the complainant is unable to attend in person, arrangements will be made for the complainant's participation by telephone or an opportunity given for the complainant to submit a written rebuttal to the

licensee's presentation. If the licensee chooses to forego an enforcement conference and, instead, responds to the NRC's findings in writing, the complainant will be provided the opportunity to submit a written rebuttal to the licensee's response. For cases involving potential discrimination by a contractor or vendor to the licensee, any associated predecisional enforcement conference with the contractor or vendor would be handled similarly. These arrangements for complainant participation in the predecisional enforcement conference are not to be conducted or viewed in any respect as an adjudicatory hearing.

A predecisional enforcement conference may not need to be held in cases where there is a full adjudicatory record before the Department of Labor. If a conference is held in such cases, generally the conference will focus on the licensee's corrective action. As with discrimination cases based on OI investigations, the complainant may be allowed to participate.

Members of the public attending open conferences will be reminded that (1) the apparent violations discussed at predecisional enforcement conferences are subject to further review and may be subject to change prior to any resulting enforcement action and (2) the statements of views or expressions of opinion made by NRC employees at predecisional enforcement conferences, or the lack thereof, are not intended to represent final determinations or beliefs.

When needed to protect the public health and safety or common defense and security, escalated enforcement action, such as the issuance of an immediately effective order, will be taken before the conference. In these cases, a conference may be held after the escalated enforcement action is taken.

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Dated at Rockville, Maryland, this 17th day of March, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

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[Docket Nos. 50-424 and 50-425]

Georgia Power Company, et al. Vogtle Electric Generating Plant, Units 1 and 2; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Acting Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition dated September 11, 1990, by Michael D. Kohn, Esquire, on behalf

of Messrs. Marvin Hobby and Allen Mosbaugh (Petitioners), pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). The Petition was supplemented by submittals made on September 21 and October 1, 1990, and July 8, 1991. The Petition pertains the Vogtle Electric Generating Plant, Units 1 and 2.

The Petition contained allegations regarding: the management of the Georgia Power Company (GPC) nuclear facilities; illegal transfer of GPC operating licenses to Southern Nuclear Operating Company (SONOPCO); intentional false statements to the NRC regarding GPC's organizational chain of command and the reliability of a diesel generator; perjured testimony submitted by a GPC executive during a DOL proceeding under Section 210 of the Energy Reorganization Act; repeated abuse at the Vogtle facility of Technical Specification 3.0.3; repeated willful technical specification violations at the Vogtle facility; repeated concealment of safeguards problems from the NRC; operation of radioactive waste systems and facilities at Vogtle in gross violation of NRC requirements; routine nonconservative and questionable management practices; and retaliation by GPC against managers who make their regulatory concerns known to GPC or SONOPCO management. The supplements to the Petition of September 21 and October 1, 1990, forwarded exhibits and provided additional information regarding the alleged illegal transfer of operating licenses. Based on these allegations, Petitioners requested that the NRC institute proceedings and take swift and immediate action.

The July 8, 1991, supplement to the Petition repeated several of the earlier allegations, and also alleged that GPC's Executive Vice President made material false statements in GPC's April 1, 1991, submittal to the NRC that responded to allegations in the original Petition. The supplement also alleged that false statements had been made to the NRC by the same individual during a transcribed meeting on January 11, 1991, to discuss the formation and operation of SONOPCO. Based on these allegations, Petitioners requested the NRC to take immediate steps to determine if GPC's current management has the requisite character, competence, fundamental trustworthiness, and commitment to safety to continue operating a nuclear facility.

Several issues in the Petition were further defined and reviewed in connection with the licensing proceeding before the Atomic Safety and Licensing Board (Docket Nos. 50-

424-OLA-3; 50-425-OLA-3) regarding GPC's application for license amendments to transfer operating authority of the Vogtle facility to Southern Nuclear Operating Company (SONOPCO), and proceedings before the U.S. Department of Labor (DOL) as a result of separate discrimination suites filed by Messrs. Hobby (DOL Case No. 90-ERA-30) and Mosbaugh (DOL Case Nos. 91-ERA-001 and 91-ER-A-011). Although the licensing proceeding concluded without a final Board decision when the parties settled and Mr. Mosbaugh withdrew as sole intervenor, the NRC staff has considered the evidence for the common issues in reaching decisions on the 10 CFR 2.206 Petition. The NRC staff recognizes that Mr. Mosbaugh has withdrawn his interest in the Petition. Nevertheless, the interest of Mr. Hobby in the joint Petition remains and is the purpose for the Acting Director's action to address the Petition. The decisions of the Secretary of Labor regarding the discrimination suites of Messrs. Hobby and Mosbaugh have been addressed by the NRC by means of enforcement action.

As discussed in the Director's Decision, certain concerns raised by the Petitioners are partially substantiated. Violations of regulatory requirements have occurred in the operation of the Vogtle facility. A number of violations were identified and three civil penalties have been issued to GPC for certain of these violations. The three civil penalties resulted from (1) opening a valve when it was required to be closed by the Vogtle Technical Specifications to protect against a potential "boron dilution" event (2) providing inaccurate and incomplete information to the NRC regarding diesel generator testing, and (3) violating 10 CFR 50.7, "Employee Protection," by discriminating against Messrs. Hobby and Mosbaugh for engaging in protected activities. The NRC has issued letters to GPC and to several GPC and SONOPCO individuals reminding them of their obligations to provide information to the NRC that is complete and accurate in all material respects, and of the need to ensure a proper environment in which employees can express regulatory concerns without fear of retaliation, harassment, intimidation, or discrimination. The licensee has committed to provide special training and notify the NRC before the individual who in 1990 was the Vogtle General Manager will be permitted to participate in licensed activities. As previously mentioned, Petitioner's request for proceedings has been