

April 6, 1999

MEMORANDUM TO: William D. Travers
Executive Director of Operations

Karen D. Cyr
General Counsel

FROM: Annette L. Vietti-Cook /s/

SUBJECT: STAFF REQUIREMENTS MEMORANDUM IN RESPONSE TO THE MILLSTONE INDEPENDENT REVIEW TEAM MARCH 12, 1999 REPORT ON ALLEGATIONS OF DISCRIMINATION IN NRC OFFICE OF INVESTIGATIONS CASE NOS. 1-96-002, 1-96-007, 1-97-007 AND ASSOCIATED LESSONS LEARNED

This Staff Requirements Memorandum addresses the generic recommendations of the Millstone Independent Review Team (MIRT). Commission determinations related to the individual cases reviewed by the MIRT will be handled separately. The Commission has reviewed the generic recommendations of the review team and directs the following actions regarding the six MIRT recommendations on investigative and enforcement processes:

Recommendation No. 1. At its inception, any "special" task force [such as the NRC 1996 task force that evaluated the workforce reduction process at Millstone] formed to investigate or otherwise review circumstances in which agency enforcement action is a possible outcome should have its role within the agency's existing investigative/enforcement processes clearly delineated.

The Commission agrees with Recommendation 1 and directs that it be implemented. The EDO shall establish an appropriate agency-wide mechanism to implement this aspect of the MIRT recommendations and shall report to the Commission on the method developed for implementation.

(EDO) (SECY Suspense: 6/1/99)

Recommendation No. 2. Particularly with respect to 10 C.F.R. 50.7 discrimination cases, to the degree practical, OI investigator impressions regarding witness credibility and veracity garnered through observation of the witnesses should be communicated to those making the decision on whether there is sufficient evidence to pursue enforcement action.

The Commission agrees with Recommendation No. 2 and directs that it be implemented. The Commission expects that OI investigators will record their individual observations and impressions regarding witness credibility and veracity contemporaneously with the interview. Agency procedures should be modified to reflect this.

(EDO) (SECY Suspense: 5/15/99)

Recommendation No. 3. Notwithstanding a DOJ request not to transmit an OI summary and conclusion for a case sent for prosecutorial review, the OI summary and conclusion should be prepared at the time the OI case report is assembled and, once the case is returned from DOJ, made a part of the OI report so as to be available as an aid in determining whether agency enforcement action is appropriate.

The Commission agrees with Recommendation No. 3 and directs that it be implemented. Analyses and conclusions of investigators should be recorded at the completion of the investigation, and the final OI report, including OI analyses and conclusions, should be forwarded to the staff for consideration of enforcement action. Agency procedures should be revised to reflect this.

(EDO) (SECY Suspense: 5/15/99)

Recommendation No. 4. Particularly with respect to 10 C.F.R. § 50.7 discrimination cases, an "articulated analytical process" should be incorporated into the enforcement conference process to the extent practicable.

The Commission agrees with Recommendation No. 4 and directs that the staff establish a documented standard of review (such as in the MIRT report) for going forward with enforcement and establish a documented analytical process, based on the standard of review, which should be used in arriving at recommendations concerning enforcement actions in 10 C.F.R. § 50.7 discrimination cases. The documentation describing this process shall be included in the enforcement file in any specific discrimination case(s).

(EDO) (SECY Suspense: 6/1/99)

Recommendation No. 5. Particularly with respect to 10 C.F.R. § 50.7 discrimination cases, OGC enforcement attorneys should take a more proactive role in the investigative process from its inception, with the expectation that, to the extent practicable, the attorney assigned to an OI case would be responsible for handling the case if it is adjudicated.

In response to Recommendation No. 5, the Commission notes that OGC has recently conducted a reorganization that has changed some OGC responsibilities and processes for assigning and tracking discrimination cases. In light of these recent changes, OGC, in consultation with the EDO, should report to the Commission on whether the recommendations of the task force with respect to OGC attorneys' involvement in discrimination cases should be implemented and whether they would result in further changes in how OGC assigns and tracks these investigations, associated enforcement actions and associated hearings. OGC should specifically address whether additional actions are needed to preserve the substance of OGC's evaluation of specific discrimination cases.

(OGC)

(SECY Suspense: 5/1/99)

Recommendation No. 6. Anticipating that electric industry deregulation and enhanced competition will produce other large scale reorganization/downsizing efforts, the agency should endeavor to ensure that the utility retains all relevant documentary information regarding all those whose positions are implicated in the reorganization/downsizing.

In response to Recommendation No. 6 the staff should evaluate whether to require retention of licensee records relating to reorganization/downsizing efforts with full consideration of the usefulness of such records and the resource implications. The staff should consider methods for achieving a better documented record. The evaluation should be provided to the Commission.

(EDO)

(SECY Suspense: 6/1/99)

cc: Chairman Jackson
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
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