



**In the Matter of:**

**IFTIKHAR A. ABBASI,**

**ARB CASE NO. 06-136**

**COMPLAINANT,**

**ALJ CASE NOS. 2006-ERA-007  
2006-ERA-011**

**v.**

**DATE: June 30, 2008**

**CONSTELLATION ENERGY  
GROUP, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

**Iftikhar Abbasi, *pro se*, Joliet, Illinois**

***For the Respondent:***

**Paul J. Zaffuts, Esq., *Morgan, Lewis & Bockius, LLP*, Washington, District of  
Columbia**

**FINAL DECISION AND ORDER**

Iftikhar A. Abbasi filed two complaints with the United States Department of Labor in which he contends that when Constellation Energy Group (Constellation), his former employer, terminated his employment, it violated the employee protection provisions of the Energy Reorganization Act (ERA).<sup>1</sup> A Labor Department Administrative Law Judge (ALJ) granted summary decision to Constellation and dismissed Abbasi's complaints. Abbasi appealed. We affirm.

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<sup>1</sup> 42 U.S.C.A. § 5851 (West 2007).

## BACKGROUND

Constellation is the parent company of Nine Mile Point, LLC (NMP). NMP is a two-unit nuclear generation station located in Scriba, New York. Niagara Mohawk Power Company (Niagara Mohawk) previously owned NMP. Niagara Mohawk transferred ownership to NMP in 2001.

Abbasi worked as a licensing engineer at NMP from January 1998 through January 2004. Licensing engineers prepare, review, and finalize company correspondence and licensing submittals to the Nuclear Regulatory Commission (NRC) and other government entities. Steve Leonard, Abbasi's supervisor, reported to Denise Wolniak.

Over the course of his employment at NMP, Abbasi had a history of mediocre to negative performance reviews. Several of Abbasi's performance reviews indicated that his work needed improvement and criticized his attendance and productivity.

In October 2003, Abbasi received a mid-year review. Leonard marked Abbasi below expectations on several issues, far below expectations on several issues, and fully meets expectations on several issues. Leonard placed Abbasi on a 90-day performance improvement plan (PIP). The PIP required Abbasi to come to work on time, complete work according to schedule, work cooperatively with team members, provide colleagues with technical input commensurate with the skill level of a senior licensing engineer, demonstrate an appropriate level of technical knowledge, and balance priorities while managing his workload. The action plan also indicated that "[s]uccess is defined as achieving 100% of the goals. . . . If you are unable to achieve the goals or you are unable to sustain performance, the appropriate actions will be taken, including discharge."<sup>2</sup>

Constellation terminated Abbasi on January 12, 2004, for failing to successfully meet the requirements of the PIP. Abbasi filed his two ERA complaints with the Labor Department's Occupational Safety and Health Administration (OSHA). After OSHA investigated and denied both complaints, Abbasi requested a hearing. The ALJ consolidated the complaints.

Prior to the scheduled hearing, Constellation filed a motion for summary decision, primarily arguing that Abbasi did not engage in the kind of activity that the ERA protects.

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<sup>2</sup> Constellation Motion for Summary Decision (Motion), Tab 13.

The ALJ granted the motion and dismissed both of Abbasi's complaints.<sup>3</sup> Abbasi appealed to this Board.

### JURISDICTION AND STANDARD OF REVIEW

The Administrative Review Board (ARB) has jurisdiction to review the ALJ's recommended decision.<sup>4</sup> We review an ALJ's recommended grant of summary decision de novo.<sup>5</sup> Pursuant to 29 C.F.R. § 18.40(d), the ALJ may issue summary decision if the pleadings, affidavits, and other evidence show that there is no genuine issue as to any material fact and the moving party is entitled to prevail as a matter of law.<sup>6</sup> Once the moving party has demonstrated an absence of evidence supporting the non-moving party's position, the burden shifts to the non-moving party to establish the existence of an issue of fact that could affect the outcome of the litigation.<sup>7</sup> At this stage of summary decision, the non-moving party may not rest upon mere allegations, speculation, or denials of the moving party's pleadings, but must set forth specific facts on each issue upon which he would bear the ultimate burden of proof.<sup>8</sup>

If the non-moving party fails to establish an element essential to his case, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial."<sup>9</sup> Accordingly, the Board will affirm an ALJ's recommendation that summary decision be granted if, upon review of the evidence in the light most favorable to the non-moving party, we conclude, without weighing the evidence or

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<sup>3</sup> The ALJ granted summary decision on the issue of protected activity. He also concluded that Constellation was entitled to summary decision because Abbasi did not sufficiently demonstrate that his protected activity contributed to his firing.

<sup>4</sup> See 29 C.F.R. § 24.8 (2006); Secretary's Order No. 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002) (delegating to the Board the Secretary's authority to review cases under the statutes listed in 29 C.F.R. § 24.1(a)).

<sup>5</sup> *Seetharaman v. Gen. Elec. Co.*, ARB No. 03-029, ALJ No. 2002-CAA-021, slip op. at 4 (ARB May 28, 2004); *Demski v. Ind. Mich. Power Co.*, ARB No. 02-084, ALJ No. 2001-ERA-036, slip op. at 4 (ARB Apr. 9, 2004).

<sup>6</sup> *Seetharaman*, slip op. at 4, citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986).

<sup>7</sup> *Seetharaman*, slip op. at 4.

<sup>8</sup> *Id.*, citing *Anderson*, 477 U.S. at 256; see also Fed. R. Civ. P. 56(e).

<sup>9</sup> *Seetharaman*, slip op. at 4, quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

determining the truth of the matters asserted, that there is no genuine issue as to any material fact and that the ALJ correctly applied the relevant law.<sup>10</sup>

## DISCUSSION

### A. *The Legal Standard*

The ERA provides, in pertinent part, that an employer may not discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee engages in certain protected acts. These protected acts occur when the employee: notifies a covered employer about an alleged violation of the ERA or the Atomic Energy Act (AEA);<sup>11</sup> refuses to engage in a practice made unlawful by the ERA or AEA; testifies regarding provisions or proposed provisions of the ERA or AEA; or commences, causes to be commenced or testifies, assists or participates in a proceeding under the ERA or AEA.<sup>12</sup>

Protected activity under the ERA includes making an informal complaint about safety to a supervisor.<sup>13</sup> The statute is designed to protect workers who report safety concerns and to encourage nuclear safety generally.<sup>14</sup> To constitute ERA-protected activity, an employee's acts must implicate safety definitively and specifically.<sup>15</sup> "The ERA does not protect every incidental inquiry or superficial suggestion that somehow, in some way, may possibly implicate a safety concern."<sup>16</sup> A whistleblower complaining about the employer's violation of the ERA or AEA or their implementing regulations must have actually believed that the employer was in violation, and that belief must be reasonable for an individual in the same circumstances with the same training and experience.<sup>17</sup>

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<sup>10</sup> *Seetharaman*, slip op. at 4; *Demski*, slip op. at 4.

<sup>11</sup> 42 U.S.C.A. § 2011 *et seq.* (West 2007).

<sup>12</sup> 42 U.S.C.A. § 5851 (a)(1) (West 2003).

<sup>13</sup> *See, e.g., Bechtel Constr., Inc. v. Sec'y of Labor*, 50 F.3d 926, 931-933 (11th Cir. 1995).

<sup>14</sup> *American Nuclear Res., Inc. v. U.S. Dep't of Labor*, 134 F.3d 1292, 1295 (6th Cir. 1998)

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* citing *Stone & Webster Eng'g Corp. v. Herman*, 115 F.3d 1568, 1574 (11th Cir. 1997).

<sup>17</sup> *Melendez v. Exxon Chems. Ams.*, ARB No. 96-051, ALJ No. 1993-ERA-006, slip op. at 27-28 (ARB July 14, 2000).

To prevail on his ERA claim, Abbasi must prove by a preponderance of the evidence that he engaged in ERA-protected activity, that Constellation knew about this activity and took adverse action against him, and that his protected activity was a contributing factor in the adverse action taken.<sup>18</sup>

## **B. *Abbasi's Concerns***

In his first ERA complaint Abbasi alleged that Constellation terminated his employment because he had “raised various concerns, including a safety concern.” During his deposition, Abbasi more fully explained these concerns. From the complaint and deposition, Constellation identified three activities for which Abbasi claims protection and moved for summary decision on each.

### **1. *Abbasi's Recommendations that Constellation Contact the NRC***

In June 2003, the NRC notified certain nuclear power plant licensees that it was concerned that plant operators who work inside plant control rooms might not be protected in the event of an accident that caused radiation contamination outside the control room. The Commission therefore requested that licensees provide information as to whether their control rooms were habitable in the event of an accident. Constellation scheduled tests for February 2004 to determine how much contamination might enter NMP's Unit 1 and Unit 2 control rooms. Because of the time required to plan and implement permanent modifications to the control rooms, Constellation needed to determine what temporary safeguards would be necessary if the tests showed that contamination could leak into the control rooms. In November 2003, Leonard tasked Abbasi to evaluate two interim compensatory actions Constellation might take to protect plant operators and whether Constellation needed prior NRC approval for those potential interim actions.<sup>19</sup>

Abbasi discussed a preliminary draft of a Position Paper on these topics with Leonard. He told Leonard that he had concluded that although NRC regulations did not specifically prohibit using one of the interim compensatory measures, the “alternative radiological source term” (AST), he nevertheless was going to recommend that Constellation “hold a conversation with the NRC” and “explain” that “it is our position that use of AST is permissible for nuclear plants.”<sup>20</sup> Leonard told Abbasi that discussion with the NRC about AST was not necessary and that to do so would violate a company

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<sup>18</sup> 42 U.S.C.A. § 5851(b)(3)(C). See *Kester v. Carolina Power & Light Co.*, ARB No. 02-007, ALJ No. 2000-ERA-031, slip op. at 7-8 (ARB Sept. 30, 2003).

<sup>19</sup> Motion at 19; Abbasi's April 29, 2004 Complaint to U.S. Department of Labor; Abbasi Deposition (Deposition) at 109-115.

<sup>20</sup> Deposition at 163-164, 151-152.

policy that stated that the NRC “shall not be used as a consultant” and that items presented to the NRC “should represent the position or decisions of [Nine Mile Point Nuclear Station] senior management.”<sup>21</sup>

In addition to his recommendation that Constellation discuss the use of AST with the NRC, Abbasi contends that he made another recommendation. According to Abbasi, in 1998 Niagara Mohawk, Constellation’s predecessor at Nine Mile Point, sent calculations pertaining to a license amendment to the NRC via faxes and e-mails, rather than by formal cover letter after formal reviews. Moreover, Abbasi claims that the NRC did not place these calculations on its public docket as its regulations require. Abbasi asserts that he discussed these concerns with Leonard, included them in his “original position paper,” and recommended that he or Leonard should contact the NRC about these two issues.<sup>22</sup>

Abbasi argues that these recommendations constitute protected activity and contributed to Constellation’s decision to terminate him. Constellation argues that Abbasi’s recommendation that Constellation confer with the NRC about using AST is not protected because it was but a “vague suggestion,” and because Abbasi did not reasonably believe that the interim use of AST or Constellation’s failure to consult with the NRC would violate the ERA or the AEA. Likewise, Constellation contends that Abbasi’s recommendation to contact the NRC about his concerns pertaining to Niagara Mohawk’s activities in 1998 and the NRC’s failure to docket the calculations is not protected because neither of these concerns pertains to safety or a violation of nuclear law or regulation.<sup>23</sup>

The ALJ noted that Constellation’s use of AST was contingent on whether the 2004 tests showed that the control rooms were susceptible to contamination. Therefore, since it was unknown whether AST would ever be used as an interim compensatory measure, the ALJ reasoned that Abbasi could not have reasonably believed that Constellation had violated or was about to violate any nuclear law or regulation. Furthermore, from Abbasi’s deposition, the ALJ found that Abbasi knew that using AST did not require prior NRC approval and that therefore there was no need to consult.<sup>24</sup> The ALJ concluded that Abbasi did not show that this recommendation was protected because the record demonstrated that neither he, nor an individual with his training and

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<sup>21</sup> *Id.* at 155, 162; R. D. & O. at 9, para. 35.

<sup>22</sup> Initial Brief at 6-7; Response to Motion for Summary Decision (Response) at 5; Deposition at 92-94, 131, 142.

<sup>23</sup> Motion at 29-31.

<sup>24</sup> R. D. & O. at 14, citing Deposition at 165 and Motion, Exhibit 25.

experience, would reasonably believe that Constellation would violate nuclear law or regulation by not consulting with the NRC about this matter.<sup>25</sup>

The record below does not contain evidence that either of Abbasi's recommendations pertained to nuclear safety. To defeat summary decision, Abbasi must demonstrate that his recommendations implicate safety definitively and specifically. He must produce some evidence that he reasonably believed that consulting with the NRC about using AST was in some way necessary to insure safety at Nine Mile Point or that not consulting would violate the ERA, the AEA, or their implementing regulations. He adduced no such evidence. The record shows that Abbasi knew that using AST would not violate any regulation.<sup>26</sup> Nevertheless, he recommended that Constellation should "hold a conversation with the NRC on the subject of use of AST calculation, [and explain] that it is our position that use of AST is permissible for nuclear plants."<sup>27</sup> Abbasi does not tell us, in testimony or argument, how or why explaining to the NRC that Constellation proposes to use AST as a potential interim measure, a measure that does not violate any regulation, implicates safety.

With respect to Abbasi's recommendation that Constellation should discuss with the NRC Niagara Mohawk's allegedly informal communication in 1998 and the NRC's failing to docket calculations, we also find nothing in the record that informs us how this recommendation implicates safety. Abbasi's concern with Niagara Mohawk arose because, in his words, it provided the NRC with calculations pertaining to a license amendment "without a formal cover letter," that is to say, it lacked a "V.P. signature."<sup>28</sup> He appears to contend that Niagara Mohawk did not comply with an NRC regulation that requires license amendment applications to be submitted to the "NRC's Document Control Desk (if on paper, the signed original), with a copy to the appropriate Regional Office, and a copy to the appropriate NRC Resident Inspector . . . ."<sup>29</sup> But these regulations do not require a "V.P. signature."<sup>30</sup> And even if they did, such a regulation

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<sup>25</sup> R. D. & O. at 13-14. The ALJ did not address whether Abbasi's recommendation that Constellation consult with the NRC about Niagara Mohawk's use of informal communication in 1998 and the NRC's failure to docket calculations constituted protected activity.

<sup>26</sup> Deposition at 164-165.

<sup>27</sup> *Id.* at 151-152.

<sup>28</sup> *Id.* at 131, 144.

<sup>29</sup> See 10 C.F.R. § 50.4 (b)(1), the NRC regulation that Abbasi cites in his Initial Brief at 6.

<sup>30</sup> See 10 C.F.R. § 50.4 (c) which requires only that "paper copies submitted to meet the requirements set forth in paragraph (b) of this section must be typewritten, printed or

hardly pertains to safety. Moreover, Abbasi admitted that he did not see the actual calculations from Niagara Mohawk to the NRC.<sup>31</sup> Therefore, we reject his argument that Niagara Mohawk did not comply with the NRC regulation that requires that information provided to the NRC must be “complete and accurate in all material respects.”<sup>32</sup>

As for his concern that the NRC violated its own rule that requires docketing certain information, again Abbasi has not shown us how this implicates safety. His concern involves, at most, an administrative action required of the NRC, not Constellation.<sup>33</sup>

## **2. Abbasi’s Concern About a Procedure Problem in Preparing the 2003 Owner’s Group Activity Report**

In June and July 2003, Abbasi worked with Glenn Perkins and Edward Anderson to prepare the Owner’s Group Activity Report (OAR). This report was to be filed with the NRC. It “described the inspections that had been carried out on plant components important to nuclear safety, the requirements to which those inspections had been performed, and the exceptions that had been taken to the industry code (“ASME Code”) requirements.”<sup>34</sup>

Abbasi became concerned with the quality of some documents that Perkins and Anderson had prepared as part of the OAR. On June 25, 2003, by e-mail to Perkins, Anderson, and Leonard, Abbasi listed comments and questions he had about the documents.<sup>35</sup> He felt that Perkins and Anderson did not understand the NRC requirements and that the documents contained incomplete information. For instance, Abbasi questioned why Perkins and Anderson did not explain why they used a 1998 code rather than a 1992 code. He also wanted them to explain and clarify certain technical matters. And he noted some typographical errors. According to Abbasi, Perkins and

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otherwise reproduced in permanent form on unglazed paper,” and “[e]xceptions to these requirements imposed on paper submissions may be granted for the submission of micrographic, photographic, or similar forms.”

<sup>31</sup> Abbasi had only seen “stacks of the calculations.” He did not examine them. Deposition at 143. Abbasi also testified that he “didn’t know what exactly they [the undocketed communications] were.” *Id.* at 132.

<sup>32</sup> Initial Brief at 6-7, citing 10 C.F.R. § 50.9.

<sup>33</sup> Abbasi informs us that the NRC violated 10 C.F.R. § 50.4 when it did not docket the calculations. Initial Brief at 7. But this regulation governs the requirements for written communications to the NRC, not NRC docketing procedures or regulations.

<sup>34</sup> Response at 3.

<sup>35</sup> Response, Exhibit D.



Anderson did not want to make the corrections that Abbasi thought were necessary. Abbasi testified that Leonard did not want to get involved in resolving this dispute and told Abbasi to work with Perkins and Anderson's supervisor. Abbasi did work with the other supervisor and, according to Abbasi, "after a great deal of time and effort" on his part, complete and accurate documents were submitted to the NRC as part of the OAR.<sup>36</sup>

Abbasi e-mailed Leonard and other Constellation managers on August 18, 2003. He expressed concern that when he told Leonard that Perkins and Anderson would not accept his corrections or make corrections themselves, Leonard should have supported him but instead refused to become involved.<sup>37</sup>

Abbasi argues that his June and August 2003 e-mails constitute ERA-protected activity. "Surely my efforts and concerns regarding this regulatory filing (the "Owners Activity Report") implicated nuclear safety and were protected activity . . . ."<sup>38</sup> In its summary decision motion, Constellation argued that this activity was not protected because the record contained no evidence that when Abbasi sent the e-mails, he reasonably believed that Constellation had violated or was about to violate nuclear law or regulation.<sup>39</sup> The ALJ granted summary decision because the August 18th e-mail showed only that Abbasi disagreed with the way Leonard handled the conflict he had with Perkins and Anderson, and because Abbasi admitted that the issue had been resolved and that complete and accurate information had been sent to the NRC.<sup>40</sup>

Abbasi's deposition testimony clearly demonstrates that although he saw problems with the documents that Perkins and Anderson had prepared and, in the June 25 e-mail, sent comments and questions to them and Leonard, his concern was that Leonard had not complied with Constellation's "own procedures" to resolve the conflict with Perkins and Anderson.

Q: Okay. And then you worked with the supervisor of those individuals to resolve the questions and comments that you had?

A: Yes.

Q: And they were resolved?

A: Yes.

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<sup>36</sup> *Id.*; Deposition at 61-66, 258-269.

<sup>37</sup> Response, Exhibit E, para. 3.

<sup>38</sup> Initial Brief at 8.

<sup>39</sup> Motion at 31-32.

<sup>40</sup> R. D. & O. at 14-15.

Q: Okay. And your concern was not that inaccurate or incomplete documents went to the NRC, your concern was that you didn't think the process was efficient?

A: I didn't think that the process – I didn't feel we were in compliance with procedures, our own procedures.

Q: And did you indicate that? Did you state that to Ms. Wolniak, that there was a procedural problem?

A: I stated that to Mr. Leonard, my supervisor.

Q: Okay. And what was the procedural problem that you saw?

A: Huh?

Q: What was the procedure problem that you had, the concern?

A: The procedure problem is that if I let those kinds of things go and everybody reviews and concurs, then the document goes through a back end review. And at that back end review stage, the back end review is going to hold it up, because the items in the checklist have not been followed, which means that we are not going to be meeting our commitment date to the NRC.

Q: That was a schedule concern that you had?

A: Yes.

Q: Other than that, were there any other issues –

A: Also besides the schedule, under time pressure, people make errors. And it's a big problem in the nuclear industry right now, people making errors under time pressure.<sup>[41]</sup>

In other words, Abbasi was concerned that if he had not carefully scrutinized the documents that Perkins and Anderson had prepared and had not asked them to make changes, somewhere down the road others would see the errors and have to see to it that corrections were made. This would cause Nine Mile Point to miss the NRC deadline for submitting the OAR and, he speculates, the resulting “time pressure” might cause people to make errors. Or perhaps he meant that because Leonard had not intervened on his behalf, he had to spend a “great deal of time and energy” on the documents which, with the NRC deadline looming, could have caused him to make errors.

The June 25 e-mail merely reflects what Abbasi later described in his August 18 e-mail as “professional differences” with Perkins and Anderson. Abbasi's speculation about what might have happened does not make his August 18 e-mail an ERA-protected activity.<sup>42</sup> He admitted that the problems he had with Perkins and Anderson had been

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<sup>41</sup> Deposition at 66-68.

<sup>42</sup> *American Nuclear Res., Inc.*, 134 F.3d at 1295 (“The ERA does not protect every incidental inquiry or superficial suggestion that somehow, in some way, may possibly implicate a safety concern.”)

resolved by the time he sent the August 18 e-mail.<sup>43</sup> The record here contains no evidence that Abbasi voiced a nuclear safety concern in either the June 25 or the August 18 e-mails. Nor does the record reveal that Abbasi was indicating that Leonard had violated or was about to violate a regulation pertaining to nuclear safety. Therefore, Constellation is entitled to summary decision as to this alleged protected activity.

### **3. Abbasi's Concern About the Procedure for Submitting Changes to License Amendment Requests**

An "onsite review committee" had approved a license amendment request to be sent to the NRC. Abbasi found an "editorial error" in the request and corrected it.<sup>44</sup> Abbasi then forwarded the request to an "offsite review organization," one of whose members went to Leonard and complained about Abbasi's change. Leonard asked Abbasi why he had not cleared the change with him, Leonard. Abbasi informed Leonard that one of Constellation's administrative instructions permitted him to make the change without Leonard's approval because the change he made was not "substantive," but "editorial."<sup>45</sup> Leonard disagreed, saying the need for a change should have been assessed by someone other than Abbasi. Abbasi countered by stating that the instruction "doesn't have any such guidance in it." On December 1, 2003, Abbasi filed a "Deviation Event Report" that indicated that "there was a problem" because the instruction was not clear.<sup>46</sup>

Abbasi contends that expressing his concern about the administrative instruction is protected because it involved submitting a "complete and accurate license amendment application to the NRC" and "correct[ing] a drawback in the amendment processing Instruction."<sup>47</sup> Constellation argues that Abbasi's real concern was Leonard's management, not nuclear safety.<sup>48</sup> The ALJ found no evidence that Abbasi believed that Constellation violated or was about to violate a nuclear safety law or regulation. In fact,

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<sup>43</sup> Deposition at 264-265.

<sup>44</sup> Abbasi changed the phrase "probability of an accident" to "probability or consequences of an accident." The sentence thus read, "The analyses do not change the method of operating the plant and have no effect on the probability or consequences of an accident initiating event or transient." Initial Brief, Exhibit I.

<sup>45</sup> The portion of the administrative instruction to which Abbasi refers reads: "Licensing submittals or correspondence that receive substantial technical and/or editorial comments after management review or SORC, and which require material revision, are to be reprocessed." Initial Brief, Exhibit H.

<sup>46</sup> Deposition at 68-75.

<sup>47</sup> Initial Brief at 9-10.

<sup>48</sup> Motion at 32.

the ALJ noted, Leonard's insistence that the amendment undergo further review could only have enhanced safety at Nine Mile Point. Therefore, he granted summary decision as to this alleged protected activity.<sup>49</sup>

In his deposition, Abbasi clearly states what concerned him:

Q: Was your concern about the instruction or was your concern about the accuracy of the document going to the NRC?

A: My concern was about the inadequate guidance in the instruction.

Q: So, you had a concern about the ambiguity in an instruction, is that it?

A: I had a concern about there being unclear direction in the instruction.<sup>50</sup>

Therefore, summary decision is appropriate here because Abbasi's own testimony indicates that he was not concerned with nuclear safety when he quarreled with Leonard and wrote the deviation event report about the instruction.

#### CONCLUSION

To avoid summary decision on the issue of protected activity, an essential element of his case, Abbasi must present some facts that his alleged protected acts implicated nuclear safety. Abbasi did not present sufficient evidence to create a genuine issue that his claimed protected activities implicated nuclear safety. Therefore, like the ALJ, we **GRANT** Constellation's motion for summary decision and **DENY** Abbasi's complaints.

**SO ORDERED.**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

**DAVID G. DYE**  
**Administrative Appeals Judge**

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<sup>49</sup> R. D. & O. at 15-16.

<sup>50</sup> Deposition at 87-88.