

United States Senate

WASHINGTON, DC 20510

March 24, 2017

The Honorable Rick Perry
Secretary
U.S. Department of Energy
1000 Independence Ave., SW
Washington, D.C. 20585

Dear Mr. Secretary,

As we informed you earlier this month, the U.S. Government Accountability Office (GAO) completed a review of the Department of Energy's handling of whistleblower issues last July.¹ This work by GAO was done at our request and documented repeated failures to properly protect whistleblowers and ensure their procedural rights. As a result of her cooperation with GAO in this audit, Ms. Sandra Black, an employee concerns manager with Savannah River Nuclear Solutions, LLC (SRNS), a Department contractor, was fired by the company. An investigation by the Department's Office of the Inspector General (OIG) has since been completed and concluded that Ms. Black was improperly retaliated against for her cooperation with GAO.

More recently, the Department's Office of Hearings and Appeals (OHA) has reviewed the OIG findings and similarly concluded that Ms. Black was retaliated against. We understand that the OHA ordered back pay, some compensatory damages, and reinstatement to Ms. Black's previous position. We are encouraged to see that the Department has, finally, recognized that retaliation exists within the DOE complex. We remain deeply concerned that an employee working for a DOE contractor could be summarily retaliated against for cooperating with a congressionally-requested GAO review into the mistreatment of whistleblowers at DOE. That this could occur speaks volumes about the seriousness of the problem.

We are also concerned that OHA took no action on the underlying allegations that Ms. Black raised with GAO – allegations that SRNS management actively sought to reverse substantiated safety claims by whistleblowers at the site. Similarly, OHA took no action with regard to sanctions or penalties against SRNS or its managers who engaged in retaliatory behavior. Instead, OHA merely forwarded its findings to the Acting Assistant Secretary for Environmental Management and to the Associate Under Secretary for Environment, Health, Safety and Security "...for review and appropriate actions, if any."

We are writing to request that you explain to us what actions the Department has taken or will take to respond to the OHA findings. Specifically, we want to understand what actions are being taken to ensure that Ms. Black herself does not return to an environment in which she is subjected to further retaliation by those responsible for what happened to her in the first place.

¹ GAO, *Department of Energy – Whistleblower Protections Need Strengthening*; GAO-16-618; July, 2016; <http://www.gao.gov/assets/680/678332.pdf>

For instance, will the managers who retaliated against Ms. Black by firing her be subject to disciplinary action, up to and including termination of employment? What other penalties and corrective actions will the Department impose on SRNS, including whether DOE will deny or seek reimbursement for any administrative or legal costs incurred by SRNS for Ms. Black's retaliation claim? Additionally, what actions does the Department intend to take regarding Ms. Black's original allegations, made to GAO, of improper management intervention regarding employee claims of safety problems at SRNS? Finally, what measures do you intend to implement to ensure that whistleblowers at the Department like Ms. Black will be protected in the future?

We look forward to your prompt response.

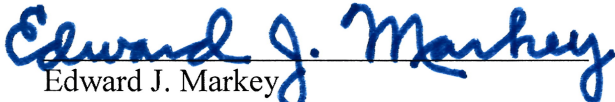
Sincerely,



Ron Wyden
United States Senator



Claire McCaskill
United States Senator



Edward J. Markey
United States Senator