



October 8, 1999

United States Nuclear Regulatory Commission  
Attention: Document Control Desk  
Washington, D.C. 20555

Re: Response to Notice of Violations - NRC OI Investigation 1-98-005

By separate letters dated August 3, 1999, NRC Region I Administrator Hubert J. Miller advised Williams Power Corp. (hereinafter "Williams") and Mr. Gary Pageau of the Commission's findings concerning the above-referenced investigation. In this correspondence, Mr. Miller included Notices of Violation EA98-338, directed to Williams, and EA99-003, directed towards Gary Pageau individually.

In subsequent correspondence dated August 26, 1999, NRC Region I counsel J. Bradley Fewell confirmed that the time period for response to the Notice of Violation for both Williams and Gary Pageau would be extended until October 8, 1999.

### **Nature of the Violation**

In the August 3, 1999 Notice of Violation, Regional Administrator Miller indicated that the NRC investigation had concluded that Williams was in violation of 10 CFR § 50.7, prohibiting discrimination for engaging in protected activity. Additionally, the Notice of Violation directed to Mr. Pageau indicated that Mr. Pageau was also in violation of § 50.7 as well as 10 CFR § 50.5 which prohibits deliberate misconduct that causes a licensee to be in violation of any NRC requirement.

Both notices of violation pertain to the same event -- the layoff of an electrician from the Seabrook Station in January, 1998. Based upon information obtained by the NRC's Office of Investigations ("OI") and information submitted by the licensee and the parties at the preenforcement conference in this matter, the following facts are undisputed:

- Williams' decision to layoff an electrician was based upon legitimate reasons related to reduced workload and economics.
- The electrician who was selected for that layoff was one of the candidates for the layoff (along with approximately eight other electricians who worked for Williams under Mr. Pageau's supervision).

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October 8, 1999

Page 2

- Shortly before the decision to select the electrician for a layoff, the electrician found a wiring discrepancy which he reported to Mr. Pageau and a Seabrook QC inspector.

The issue for the NRC was whether the decision to select the electrician in question for the layoff was motivated by the fact that he had raised a safety concern (found and reported a wiring discrepancy) shortly before he was selected.

As reflected in the NOVs issued to Williams and Mr. Pageau, the NRC resolved this issue against Williams and Mr. Pageau and found that there was some relationship between the safety concern raised by the electrician and the decision to select the electrician for the layoff. Specifically, as it related to Williams, NOV EA98-338 stated that:

. . . on January 16, 1998, Williams Power Corporation ("WPC"), a contractor for North Atlantic Energy Services Company, a Commission licensee, discriminated against a WPC electrician due to the employee's involvement in protected activity. Specifically, the electrician was selected for a layoff on January 16, 1998, due, at least in part, to the fact that he had raised a concern to a licensee quality control inspector on January 7, 1998, regarding a wiring discrepancy in the control panel of the control building air conditioning ("CBA") system, a safety-related system.

Similarly, NOV EA 99-003, which was issued to Mr. Pageau, stated:

. . . on January 16, 1998, you engaged in deliberate misconduct that caused North Atlantic Energy Services Corporation, an NRC licensee, to be in violation of 10 CFR § 50.7 in that you discriminated against an electrician employed by Williams Power Corporation at the licensee's Seabrook Station facility, as a result of his engaging in protected activity. Specifically, you retaliated against the electrician by selecting him for a layoff at least in part because he had raised a concern on January 7, 1998, to a licensee quality control inspector regarding a wiring discrepancy in the control panel of the control building air conditioning ("CBA") system, a safety-related system.

Both violations were classified as Severity Level III (Supplement VII). No penalties of any type were assessed against either Williams or Pageau based on these violations.

### **Reply to the Violation**

October 8, 1999

Page 3

Neither Williams nor Gary Pageau contests the violation. With all due respect to the NRC's findings, however, we believe that the information produced at the enforcement conference demonstrates that the electrician chosen for the layoff was the appropriate choice, and that the choice was based on legitimate business reasons. We are not aware of any evidence -- other than inferences that can be drawn due to the close proximity in time between the protected activity and the layoff decision and the apparent testimony of the electrician who was selected for the layoff -- that establishes any form of retaliation or discrimination on the part of either Williams or Gary Pageau. However, a great amount of time and resources have been expended in investigating the electrician's complaint and in responding to the NRC's investigation. We believe that it is time to bring this matter to a close and, therefore, do not contest the Commission's Notices of Violation that were issued to Williams and Mr. Pageau.

Having said that, however, we do wish to point out several facts which relate to this matter and which, we believe, are important to a full and complete understanding of this matter.

- 1. Neither Williams nor Mr. Pageau had any motive to retaliate against the electrician because he raised a safety concern.** At the same time it considered the allegations that Williams and Mr. Pageau retaliated against the electrician, the NRC also considered allegations that Williams and Mr. Pageau attempted to cover-up the safety concern raised by the electrician. This allegation was not supported by the facts and the NRC properly found no wrongdoing with regard to this manner in which the safety concern was handled by Williams or Mr. Pageau. In this regard, the facts are (1) the wiring discrepancy found by the electrician did not reflect adversely on anything that had been done by either Williams or Mr. Pageau; (2) the electrician was advised he had made a "good catch" when he found the wiring discrepancy, and (3) the safety concern was properly reported, investigated, and corrected by Williams and Mr. Pageau.
- 2. Williams and Mr. Pageau selected the electrician for the layoff because of legitimate reasons.** Both Williams and Mr. Pageau presented evidence to the NRC that the electrician was selected for the layoff because of his tardiness, his tendency to wander off of the job to "play with" computers, and his poor attitude and work habits regarding cable-pulling (which was the primary work that the electrical crew was scheduled to perform in the time period immediately following the layoff). These shortcomings were confirmed by the sworn testimony of nine of the electrician's co-workers.
- 3. The layoff in question was not perceived as retaliatory by the workers familiar with the situation, and it did not make those workers reluctant to raise safety concerns.** Nine individual co-workers of Mr. Pageau and the electrician provided sworn testimony to the NRC. These workers uniformly testified that they did not believe the electrician was laid off for raising a safety concern and that, both before and after the layoff, they were not the least bit reluctant to raise safety concerns to Williams or to Mr. Pageau. In addition, these

October 8, 1999

Page 4

workers also testified that both Williams and Mr. Pageau encouraged them to raise safety concerns and rewarded people who identified concerns.

Notwithstanding our disagreement with the NRC's NOVs, we fully agree with the Commission that all employees have the absolute right, if not the obligation, to identify and raise concerns, and that employees who engage in this type of activity should be protected from any form of retaliation. Both Williams and Mr. Pageau are absolutely committed to fully protecting that right.

### **Corrective Steps That Have Been Taken and That Will Be Taken**

Even before the NRC issued its NOVs in this matter, both Williams and Gary Pageau, together and individually, took immediate steps to insure that all Williams employees are aware of their right to raise safety concerns without fear of retaliation, and to ensure that decisions made in this particular situation would not have a negative impact on other employees' willingness to engage in protected activity. The steps have included:

1. Immediate reinstatement of the electrician in question when the licensee's employee concern program ("EAR") raised questions about how this layoff could be perceived by other employees and about whether it might have a potential "chilling effect."
2. Special meetings with Williams supervision in order to explain the situation, insure that all supervisors and managers were aware of Williams' absolute commitment to safety, and aware of Williams' commitment to the licensee's total safety program.
3. Improvement in the type and use of documentation regarding employment decisions.
4. Interviews with all employees supervised by Mr. Pageau to determine whether any individuals had any concerns regarding their freedom to raise quality issues and, if so, the nature and extent of those concerns. These interviews were taken under oath, were videotaped, and copies of these tapes have been provided to the NRC.

Additionally, Williams and Gary Pageau continue to emphasize to employees their right to engage in protected activity without fear of retaliation. Negative personnel actions that have an adverse impact on Williams employees will be reviewed by senior management prior to implementation and any adverse action involving an employee who has engaged in protected activity will receive special scrutiny. Both Williams Management and Mr. Pageau have met with Williams employees, including members of Mr. Pageau's crew and re-emphasized their absolute commitment to insuring a retaliation and discrimination free work environment.

October 8, 1999

Page 5

Specific detailed information concerning the steps that have been and will be taken was provided at the enforcement conference at June 2, 1999 and were documented as part of the conference proceeding. That information was accurate and any commitments made at the enforcement conference either have been met or will be met in the future.

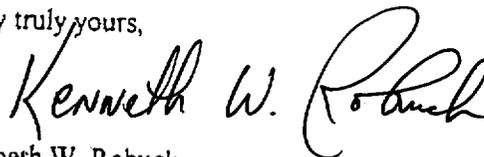
Both Williams and Gary Pageau believe that they are currently in full compliance with the requirements of 10 CFR § 50.7 and, in Mr. Pageau's situation, 10 CFR § 50.5. Both Williams' management and Mr. Pageau are committed to taking all necessary actions to remain in full compliance, and to ensure that all employees continue to fully raise concerns without fear of retaliation.

Conclusion

While we disagree with the Commission's finding in this particular case, we are in total agreement with and support of the Commission's insistence on a retaliation-free work environment. We will continue to insure that all Williams' employees are aware of our commitment, that safety concerns are addressed immediately and appropriately, and that any future personnel actions be reviewed to insure compliance with our policies.

We trust that this letter has been responsive to the Commission and clear regarding our commitment to nuclear safety. As always, if we can provide any additional information or assistance, please do not hesitate to contact me.

Very truly yours,



Kenneth W. Robuck  
President, Williams Power Corporation

Gary Pageau



10-8-99

cc: H.J. Miller  
NRC Region I Administrator  
475 Allendale Road  
King of Prussia, PA 19406

R.K. Lorson  
NRC Senior Resident Inspector

October 8, 1999

Page 6

Seabrook Station  
Seabrook, NH 03874



Certification

The undersigned, having reviewed the joint response of Williams Power Corporation and Gary Pageau to the Nuclear Regulatory Commission Notice of Violations dated October 8, 1999, hereby swear or affirm that the information set forth therein is true and correct to the best of our knowledge and belief.

Kenneth W. Robuck  
KENNETH W. ROBUCK

SWORN TO BEFORE ME and subscribed in my presence this 8<sup>th</sup> day of October, 1999.

Brenda Pries  
Notary Public



Commission Expires: 8/29/2002  
[NOTARIAL SEAL]

Gary Pageau 10-8-99  
GARY PAGEAU

SWORN TO BEFORE ME and subscribed in my presence this \_\_\_\_\_ day of October, 1999.

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Notary Public

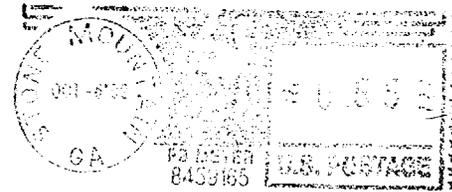
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**WILLIAMS**



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