

July 11, 2000

EA-99-163

Mr. James Knubel
Chief Nuclear Officer
and Senior Vice President
New York Power Authority
123 Main Street
White Plains, New York 10601

SUBJECT: NRC OFFICE OF INVESTIGATIONS REPORT 1-1998-022

Dear Mr. Knubel:

This refers to the subject investigation conducted by the NRC Office of Investigations (OI) at New York Power Authority's (NYPA's) Indian Point 3 Nuclear Power Plant. The purpose of the investigation, in part, was to determine whether a performance supervisor (PS) was discriminated against for engaging in protected activities. Based on the findings of the investigation, the NRC informed you, in a letter dated August 17, 1999, that an apparent violation of 10 CFR 50.7, "Employee Protection," occurred. The synopsis of the subject OI report was forwarded to you with the August 17, 1999 letter. The letter indicated that the apparent violation involved discrimination against the PS when the Senior Vice President (SVP), Human Resources (HR) withheld an adjustment to the employee's merit pay increase. The adjustment had been recommended by the Site Executive Officer (SEO) and endorsed by you as the Chief Nuclear Officer (CNO). The employee was involved in internal and NRC investigations related to safety concerns that had been previously raised by the employee.

Our subsequent letter, dated August 25, 1999, provided a summary of the facts that led the NRC to conclude that a violation may have occurred. On September 17, 1999, a predecisional enforcement conference (conference) was held with you and members of your staff to discuss the apparent violation, the causes, and your corrective actions.

At the conference, you contended that the SVP, HR's withholding of the adjustment to the PS's merit pay increase was not a violation of 10 CFR 50.7 because (1) the adjustment was withheld for legitimate reasons; and (2) the employee was not entitled to the proposed adjustment. Specifically, you indicated that the SVP, HR deferred the adjustment to the performance supervisor's merit pay increase because the circumstances surrounding the determination of the employee's merit pay increase were already being investigated. That investigation was initiated after the PS had raised concerns to the HR department, including concerns about the amount of his merit pay increase. You also indicated that the results of your internal investigation revealed that the determination of the employee's original merit pay increase was a valid, non-discriminatory action. This determination was confirmed by OI and the Department of Labor (DOL). At the conference, you also explained that, although the SEO proposed the adjustment because he believed that consideration of overtime in determination of a merit

increase was inappropriate, the manner in which the PS's supervisor considered overtime eligibility in the determination of the original merit increase was not prohibited by your salary administration policy. Therefore, you contended that the PS was not entitled to the proposed adjustment.

The NRC has carefully evaluated the information developed during the investigation and the information provided during and subsequent to the conference. Based upon our review of all available information, the NRC staff has concluded that enforcement action is not warranted in this case.

No response to this letter is required. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

Hubert J. Miller
Regional Administrator

Docket No. 50-286
License No. DPR-64

cc:

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