

November 20, 2001

EA-01-264

Mr. Michael A. Balduzzi
Senior Vice President & Chief Nuclear Officer
Vermont Yankee Nuclear Power Corporation
185 Old Ferry Road
P.O. Box 7002
Brattleboro, Vermont 05302-7002

SUBJECT: OFFICE OF INVESTIGATIONS REPORT NO. 1-2000-009S
(DEPARTMENT OF LABOR CASE NO. 2000-ERA-00037)

Dear Mr. Balduzzi:

On April 19, 2000, the U. S. Department of Labor (DOL) received a discrimination complaint from a former contract employee at Vermont Yankee. The former contract employee alleged that his contract was terminated because he had raised safety concerns while performing his duties at Vermont Yankee.

On August 25, 2000, the Area Director for the DOL Occupational Safety and Health Administration (OSHA) office in Concord, New Hampshire, found that the evidence obtained during its investigation indicated that the former contract employee was engaged in a protected activity within the scope of the Energy Reorganization Act, and that discrimination as defined and prohibited by the statute, was a factor in the actions which comprised his complaint. Vermont Yankee appealed the OSHA finding to a DOL Administrative Law Judge (ALJ). However, prior to the DOL ALJ reaching a decision on the merits of the case, Vermont Yankee reached a mutually agreeable settlement with the former contract employee in this matter. The settlement was approved on January 8, 2001, by a DOL Administrative Law Judge in a Recommended Decision and Order Approving Settlement, which thereby dismissed the complaint with prejudice.

Subsequent to the DOL OSHA Area Director's decision on August 29, 2000, the NRC sent you a letter on October 2, 2000. The letter requested that you provide your position on this matter and any actions you had taken or planned to take concerning a chilling effect this decision may have had on the willingness of other Vermont Yankee employees to raise safety concerns. Although your response dated October 21, 2000, provided your position that retaliation did not occur, you did describe actions taken to address any potential chilling effect.

After the settlement was approved by the DOL ALJ, the NRC Office of Investigations (OI) initiated an investigation to determine if the former contract employee had been discriminated against by Vermont Yankee management for engaging in protected activities. The investigation was completed on September 28, 2001, and based upon the evidence developed during this investigation, OI did not substantiate that Vermont Yankee management discriminated against the former contract employee for engaging in protected activities. The enclosure to this letter contains a synopsis of the OI report.

The NRC has reviewed the results of the OI investigation and the DOL proceedings. Based on this review, the NRC was unable to substantiate that discrimination occurred, and therefore, no enforcement action is warranted.

You are not required to respond to this letter. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be made 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/reading-rm/adams.html> (the Public Reading Room).

Should you have any questions regarding this letter, please contact Mr. J. Bradley Fewell at (610) 337-5301.

Sincerely,

/RA/

Wayne D. Lanning, Director
Division of Reactor Safety

Enclosure: As Stated

Docket No. 50-271
License No. DPR-28

cc w/encl:

R. McCullough, Operating Experience Coordinator - Vermont Yankee
G. Sen, Licensing Manager, Vermont Yankee Nuclear Power Corporation
D. Rapaport, Director, Vermont Public Interest Research Group, Inc.
D. Tefft, Administrator, Bureau of Radiological Health, State of New Hampshire
Chief, Safety Unit, Office of the Attorney General, Commonwealth of Massachusetts
D. Lewis, Esquire
G. Bisbee, Esquire
J. Block, Esquire
T. Rapone, Massachusetts Executive Office of Public Safety
D. Katz, Citizens Awareness Network (CAN)
M. Daley, New England Coalition on Nuclear Pollution, Inc. (NECNP)
R. Shadis, New England Coalition Staff
State of New Hampshire, SLO Designee
State of Vermont, SLO Designee
Commonwealth of Massachusetts, SLO Designee
David C. May, DOL - OSHA Area Director

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* Concurrence not needed. Confirmed with J. Luehman 11/20/01.

SYNOPSIS

This investigation was initiated by the U.S. Nuclear Regulatory Commission, Office of Investigations (OI), Region I, on March 1, 2001, to determine if a contract fire protection training instructor had been discriminated against by Vermont Yankee Power Corporation (VY) management for engaging in protected activities.

Based upon the evidence developed during this investigation, OI did not substantiate that VY management discriminated against the contract fire protection training instructor for engaging in protected activities.