

April 9, 2002

EA 02-051

Mr. J. Alan Price, Vice-President -
Nuclear Technical Services/Millstone
c/o Mr. D. A. Smith, Manager,
Regulatory Affairs
Dominion Nuclear Connecticut, Inc.
Rope Ferry Road
Waterford, CT 06385

SUBJECT: EXERCISE OF DISCRETION
(Office of Investigations Report 1-2000-040)

Dear Mr. Price:

This letter refers to an investigation conducted by the NRC Office of Investigations (OI) at the Dominion Nuclear Connecticut, Inc. (DNCT) Millstone Power Station. This investigation was initiated after you informed the NRC, in October 2000, that an investigation by your Employee Concerns Program (ECP) revealed that a supervisor at Millstone, alone and unknowingly, had violated 10 CFR 50.7 by taking action against an individual. The individual believed that as a result of raising concerns about the Regulatory Commitment Management Program (RCMP): (1) the individual's supervisor falsified documentation that indicated the individual had been given an oral reprimand in May 2000, and presented that information to an executive review board; and, (2) the individual's 2000 performance review was adversely impacted. You indicated at the time that even though there existed legitimate business reasons for the disciplinary actions taken against the employee, the nexus to a protected activity provided sufficient cause for the ECP to substantiate that discrimination occurred.

Based on its investigation, OI substantiated, as noted in the attached synopsis of the investigation, that the individual was discriminated against in the 2000 performance appraisal for raising concerns about the RCMP. However, the OI investigation did not substantiate that the oral reprimand given to the individual in May 2000 was discriminatory. The evidence suggests that the oral reprimand was not in retaliation for raising concerns about the RCMP, but rather due to the individual's failure to respond to a legitimate directive from the individual's supervisor to attend a meeting to discuss the individual's concerns.

The 2000 performance appraisal was found to be discriminatory because negative comments were placed in the appraisal, due to the individual raising concerns about the RCMP. As a result, the supervisor's actions resulted in a violation of the employee protection standards set forth in 10 CFR 50.7. The staff did not find, however, that the actions of the supervisor were a deliberate effort to violate NRC regulations. Rather, the supervisor failed to understand that the language used in the appraisal was discriminatory in nature.

Although any violations of 10 CFR 50.7 are significant because they create the potential for

detering other employees from raising safety concerns, the NRC recognizes that you identified this matter and subsequently took significant action to reverse the discrimination so as to maintain a climate where employees feel free to raise safety concerns. These actions included: (1) hiring an independent investigator to investigate the discrimination concerns; (2) counseling the supervisor concerning the use of language in an appraisal that could be viewed as discriminatory in nature, and taking disciplinary action; and, (3) removing the 2000 performance appraisal from the individual's personnel file.

The NRC considered whether enforcement action was warranted for this violation. After careful consideration of all the factors in this case, the NRC has determined that enforcement action is not warranted, after considering the guidance in Section VII.B.5 of the NRC Enforcement Policy, "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600 (Enforcement Policy). Exercising discretion and not taking enforcement in this case is appropriate because: (1) the discrimination was not the result of the acts of any individual above a first line supervisor; (2) you identified the discriminatory actions without any NRC or DOL intervention, promptly informed the NRC of your finding, and took prompt, comprehensive and effective corrective action to address this situation; and, (3) after DNCT purchased the Millstone Power Station from Northeast Nuclear Energy Company and became the operator of the facility in March 2001, there has been no history of discrimination at the facility. The last finding of discrimination that occurred at the facility was in July and August 1997, which was subsequently identified by a Northeast contractor and resulted in the issuance of an \$88,000 civil penalty to Northeast Nuclear Energy Company on March 9, 1999.

Although the NRC has determined that enforcement action is not warranted in this case, any similar violations in the future may result in significant action.

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 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 Electronic Reading Room).

Sincerely,

/RA/ James T. Wiggins Acting For

Hubert J. Miller
Regional Administrator

Docket Nos. 50-336; 50-423
License Nos. DPR-65; NPF-49

Enclosure: Synopsis of NRC Investigation No. 1-2000-040

cc w/encl:

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* Concurrence via phone call from N. Hilton, OE.

SYNOPSIS OF NRC INVESTIGATION 1-2000-040

This investigation was initiated on November 3, 2000, by the Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region I, to determine if an individual at the Dominion Nuclear Connecticut (DNCT) Millstone Nuclear Power Station (MNPS) was discriminated against by licensee management in 2000, as a result of raising concerns about changes to the Regulatory Commitment Management Program (RCMP).

Based on the evidence developed during this investigation, OI substantiated that the individual was discriminated against in his/her 2000 performance appraisal for raising concerns regarding the RCMP. However, the investigation did not substantiate that an oral reprimand given to the individual in May 2000 was discriminatory.