

April 1, 2004

EA-04-038

Mr. Gary D. Van Middlesworth
Site Vice-President
Point Beach Nuclear Plant
Nuclear Management Company, LLC
6610 Nuclear Road
Two Rivers, WI 54241-9516

SUBJECT: REQUEST FOR INFORMATION
[NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-2001-033]

Dear Mr. Van Middlesworth:

This refers to information provided to the U.S. Nuclear Regulatory Commission (NRC) on July 6, 2001, by a representative of Nuclear Management Company (NMC) concerning alleged employment discrimination at NMC'S Point Beach Nuclear Plant. Based on the information developed during an investigation by NMC, it appears that on March 27 and March 28, 2001, an electrician and co-worker found that the required signatures of the duty shift supervisor and reviewing engineer were missing from a work package. The electrician and a co-worker, both employed by Day and Zimmerman Nuclear Power Systems (D&Z), a contractor at the Point Beach Nuclear Plant, stopped work on the project and notified a D&Z supervisor of the problem. A co-worker of the electrician prepared a Condition Report on the subject. A D&Z General Foreman learned of the electrician's activities on March 27 and March 28, 2001, and on March 30, 2001, the General Foreman threatened to terminate the employment of the electrician for stopping work. The General Foreman contended that his intention on March 30, 2001, was not to terminate the electrician or his co-worker. Rather, the General Foreman wanted to separate the electrician from the co-worker because of the excessive number of telephone and smoking breaks the two employees were taking. The General Foreman subsequently submitted the name of the electrician for lay-off on May 4, 2001.

From information obtained during the NMC investigation, the NMC investigator concluded that the General Foreman submitted the electrician for lay-off, in part, for the electrician's protected activities associated with the work package. The NRC Office of Investigations (OI) also investigated the matter and determined that the General Foreman deliberately submitted the name of the electrician for lay-off on May 4, 2001, due, in part, to the electrician's protected activity associated with the work package. A copy of the synopsis from the OI report is enclosed.

The lay-off of an employee for engaging in a protected activity is considered an adverse employment action and an apparent violation of 10 CFR 50.7, "Employee Protection." A violation of 10 CFR 50.7 is normally considered for enforcement in accordance with the

“General Statement of Policy and Procedure for NRC Enforcement Actions, ”(Enforcement Policy),” NUREG-1600. The current Enforcement Policy is included at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**.

Information available to the NRC staff indicates that NMC identified and investigated the issue through its ECP and notified the NRC of the possible violation. Other information indicates that both NMC and D&Z conducted surveys of the overall work environment. Also, the electrician and D&Z reached a settlement. Disciplinary action was taken by D&Z against the General Foreman. Therefore, it may not be necessary to hold a predecisional enforcement conference for this matter. However, before the NRC staff proceeds with further evaluation of this matter, we are requesting that NMC provide, on the docket, all relevant information concerning the specific actions taken by NMC and D&Z to correct the apparent violation and to prevent recurrence of the apparent violation, and specific details of the NMC and D&Z assessments of the overall work environment. Your response should fully describe any training, including, but not limited to general employee training, provided to all NMC employees, supervisors and managers, as well as the employees of NMC contractors, subcontractors, and vendors, to fully implement and maintain a safety conscious work environment (SCWE) and avoid potential violations of 10 CFR 50.7. The response should include a description of the training provided to the D&Z General Foremen on employee protection and SCWE, and include copies of training materials, examinations and attendance sheets. Additionally, the response should include the actions that you have taken or plan to take to prevent this issue from causing a chilling effect at the Point Beach Nuclear Plant. You are also requested to address the criteria for assessing enforcement discretion for an apparent violation of 10 CFR 50.7 (see Section VII of the Enforcement Policy).

The electrician also indicated that his employment was terminated on August 31, 2001, because of his earlier protected activity. Based on the information obtained during the OI investigation, the allegation of continued employment discrimination against the contract electrician was not substantiated.

Your response to this letter should be sent to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532-4352, with a copy to the Enforcement Officer at the same address and marked, “Response to EA-04-038, Open by Addressee Only,” within 30 days of the date of this letter.

If you have any questions, please contact Julio Lara, Chief, Electrical Engineering Branch, at (630) 829-9731.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

/RA by Roy Caniano Acting for/

Cynthia D. Pederson, Director
Division of Reactor Safety

Docket Nos. 50-266; 50-301
License Nos. DPR-24; DPR-27

Enclosure: Synopsis from OI Report No. 3-2001-033

cc w/encl: R. Kuester, President and Chief
Executive Officer, We Generation
J. Cowan, Executive Vice President
Chief Nuclear Officer
D. Cooper, Senior Vice President, Group Operations
J. McCarthy, Site Director of Operations
D. Weaver, Nuclear Asset Manager
Plant Manager
Regulatory Affairs Manager
Training Manager
Site Assessment Manager
Site Engineering Director
Emergency Planning Manager
J. Rogoff, Vice President, Counsel & Secretary
K. Duvneck, Town Chairman
Town of Two Creeks
Chairperson
Public Service Commission of Wisconsin
J. Kitsembel, Electric Division
Public Service Commission of Wisconsin
State Liaison Officer

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Chief Nuclear Officer
D. Cooper, Senior Vice President, Group Operations
J. McCarthy, Site Director of Operations
D. Weaver, Nuclear Asset Manager
Plant Manager
Regulatory Affairs Manager
Training Manager
Site Assessment Manager
Site Engineering Director
Emergency Planning Manager
J. Rogoff, Vice President, Counsel & Secretary
K. Duveneck, Town Chairman
Town of Two Creeks
Chairperson
Public Service Commission of Wisconsin
J. Kitsembel, Electric Division
Public Service Commission of Wisconsin
State Liaison Officer

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|--------|-----------|---|----------------------|---|------------------|---|-------------------|---|---------|---|--------------------------|---|
| NAME | Weil /RA/ | | Paul | | Dambly | | Congel | | Clayton | | RCaniano for Pederson | |
| DATE | 3/9/04 | | 04/ /04 | | 3/23/04 | | 3/23/04 | | 3/9/04 | | 04/01/04 | |

OFFICIAL RECORD COPY

¹ Approval to release Synopsis from OI Report No. 3-2001-033.

² No legal objection received on March 23, 2004, from M. Lemoncelli, OGC.

³ Concurrence received on March 23, 2004, from N. Hilton, OE.

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SYNOPSIS

This investigation was initiated on July 23, 2001, by the U.S. Nuclear Regulatory Commission, Office of Investigations, Region III, to determine if a contract electrician working at the Point Beach Nuclear Plant was discriminated against for raising a concern about a deficient work package and stopping work, by being laid-off as a result on or about May 4, 2001, and after returning to work, being laid-off again on or about August 31, 2001.

Allegation 1: Deliberate Discrimination Against a Contract Electrician for Raising a Concern about a Deficient Work Package.

Based on the available evidence developed, the investigation did substantiate the allegation of deliberate employment discrimination against the contract electrician by the former general foreman for the contract electrician's May 4, 2001, termination.

Allegation 2: Continued Discrimination Against the Same Electrician

Based on the evidence developed, this investigation did not substantiate the continued employment discrimination against the contract electrician for his August 31, 2001, termination.