

**United States
Nuclear Regulatory Commission**



Report of Investigation

PERRY NUCLEAR POWER PLANT

Discrimination Against a 

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Office of Investigations

Reported by OI: RIII

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Act, exemptions 5, 7C
FOIA- 204-0187

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Title: PERRY NUCLEAR POWER PLANT

DISCRIMINATION AGAINST A 

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Licensee:

Case No.: 3-1999-025

**FirstEnergy Nuclear Operating Company
P.O. Box 97, A200
Perry, OH 44081**

Report Date: June 30, 2000

Control Office: OI:RII

Docket No.: 50-440

Status: CLOSED

Reported by:

Reviewed and Approved by:



**Mary Kay Fahey, Senior Special Agent
Office of Investigations
Field Office, Region III**



**Richard C. Paul, Director
Office of Investigations
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ADMINISTRATIVE ACTION AND/OR CRIMINAL PROSECUTION.**

SYNOPSIS

This investigation was initiated by the U. S. Nuclear Regulatory Commission (NRC), Office of Investigations, Region III, on August 2, 1999, to determine whether a [REDACTED] at the Perry Nuclear Power Plant was discriminated against after he was identified as the complainant in a pending NRC enforcement action against FirstEnergy Nuclear Operating Company (FENOC) during two training sessions conducted by a FENOC contractor at the Davis-Besse Nuclear Power Plant on [REDACTED]

Based upon evidence developed during the investigation, it was concluded that the [REDACTED] was discriminated against by the [REDACTED] being identified by name and discussing the [REDACTED] discrimination complaint during a training session conducted on [REDACTED]. The evidence indicated that the violation was not deliberate.

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TABLE OF CONTENTS

	<u>Page</u>
SYNOPSIS	1
LIST OF INTERVIEWEES	5
DETAILS OF INVESTIGATION	7
Applicable Regulations	7
Purpose of Investigation	7
Background	7
Interview of Allegor	8
Coordination with Regional Staff	10
Coordination with the Regional Counsel	10
Review of Documentation	11
Evidence	11
Protected Activity	11
Knowledge of [REDACTED] Protected Activity	12
Unfavorable Action Taken Against [REDACTED]	12
Did the Unfavorable Action Result from [REDACTED] Engaging in Protected Activity	13
Agent's Analysis	15
Conclusion	16
SUPPLEMENTAL INFORMATION	17
LIST OF EXHIBITS	19

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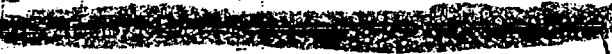
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LIST OF INTERVIEWEES

Exhibit
No.

AMMON-ZATKO, Annalisa, Nuclear Human Resource Associate, Davis-Besse 8


 5


COAD, Robert B., Operations Manager, Davis-Besse 6


HALEY, Daniel, Senior Engineer, Davis-Besse 7

HANSEN, Wesley Charles, Nuclear Qualification Instructor, Davis-Besse 12

HENDERSON, Todd A., Supervisor, Regulatory Issues and Communications, Perry 13

 11

 10

 Perry 2

SWEET, Barry L., Attorney 9

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DETAILS OF INVESTIGATION

Applicable Regulations

10 CFR 50.5: Deliberate Misconduct

10 CFR 50.7: Employee Protection

Purpose of Investigation

This investigation was initiated by the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region III (RIII), on August 2, 1999, to determine whether [REDACTED] at the Perry Nuclear Power Plant (Perry) was discriminated against after he was identified as the complainant in a pending NRC enforcement action against FirstEnergy Nuclear Operating Company (FENOC) during two training sessions conducted at the Davis-Besse Nuclear Power plant (Davis-Besse) on [REDACTED] by a FENOC contractor, the law firm of Shaw Pittman. 7C

Background

On July 20, 1999, [REDACTED] contacted James HELLER, RIII Office Allegation Coordinator. [REDACTED] had been the alger in an earlier discrimination complaint made against Perry (OI Case No. 3-1998-007). The NRC issued a civil penalty against Perry based on [REDACTED] complaint (EA 99-12). [REDACTED] said he believed that FENOC management personnel were attempting to harass and intimidate him because of the NRC action taken against them.

[REDACTED] told HELLER that a contractor was providing training on 10 CFR 50.7, "Employee Protection," to FENOC supervisors. On [REDACTED] the contractor, [REDACTED] called [REDACTED] and asked if mentioning his name during an upcoming training session at Perry was acceptable to [REDACTED]. [REDACTED] informed [REDACTED] that it was not acceptable. [REDACTED] then informed [REDACTED] that he had conducted a discrimination training session at Davis-Besse on [REDACTED] and that [REDACTED]'s name had been mentioned. [REDACTED] said that two sessions were conducted at Davis-Besse with the morning session being videotaped. 7C

[REDACTED] said he learned from workers at Davis-Besse that his name was mentioned several times during the afternoon session. A worker also stated that [REDACTED] for FENOC, stated that [REDACTED] had provided information to an individual who was suing FENOC for alleged employment discrimination.

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██████████ telephoned a Davis-Besse human resource specialist, Lisa ZATKO (aka Annalisa AMMON-ZATKO), and requested a copy of the videotape of the discrimination training session. ██████████ said he told ZATKO he wanted to confirm that his name had been mentioned and he wanted to determine in what context his name had been used. Once ██████████ informed ZATKO of the purpose of his request, ZATKO informed him that the tape had been destroyed because of technical difficulties encountered during the taping. ██████████ said his lawyer, Barry SWEET, subsequently learned that ██████████ had a copy of the tape. ██████████ indicated that ██████████ would not release a copy of the tape until ██████████ contacted the Shaw Pittman attorneys who had conducted the training sessions. Additionally, ██████████ told ██████████ that ██████████ had stated that ██████████ was not to call Davis-Besse personnel because he was disturbing the Davis-Besse work force. 7C

On August 2, 1999, an Allegation Review Board (ARB) was convened and OI was requested to obtain a copy of the videotape for an NRC Office of General Counsel (OGC) review to determine if discrimination had occurred against ██████████ in violation of 10 CFR 50.7 (Exhibit 1).

Interview of Alleger (Exhibit 2)

On October 14, 1999, ██████████ was interviewed by OI regarding the allegation he had reported to RIII. ██████████ provided substantially the following information:

██████████ stated that on the evening of ██████████ he received a telephone call at home from ██████████ concerning the training that ██████████ was conducting for FENOC. ██████████ indicated that he would be conducting training the next day, ██████████ at ██████████ and asked ██████████ for permission to discuss the enforcement action that the NRC had taken against FENOC. ██████████ asked ██████████ what he had discussed at Davis-Besse and ██████████ admitted that he had discussed the enforcement action, using the names of all the individuals involved. ██████████ informed ██████████ that he felt that ██████████ had inaccurately presented the facts of the matter. ██████████ also told ██████████ that he would not endorse any discussion of the enforcement action or the use of ██████████ name at the ██████████ training sessions (Exhibit 2, pp. 4-6). 7C

██████████ stated that all FENOC employees had the right to know the truth about the issue, however, ██████████ felt that it should only be discussed after the NRC had closed it's file. ██████████ further stated he felt the use of his name in a company-sponsored training session could send a negative message to anyone thinking of turning in a concern to the NRC. "Any reasonable person who had thoughts of turning in concerns to the Nuclear Regulatory Commission would now hesitate because of fear that their name will be made public by the company" (Exhibit 2, pp. 6-7).

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[REDACTED] learned that the morning training session conducted at Davis-Besse had been videotaped. [REDACTED] made several telephone calls to Davis-Besse to request a copy of the videotape. [REDACTED] was referred to and contacted ZATKO at Davis-Besse and requested a copy of the videotape. "When Ms. ZATKO learned who I was, she told me that the tape had a glitch in it and that it had been destroyed" (Exhibit 2, pp. 8, 10).

[REDACTED] contacted his attorney, SWEET, and apprised him of the situation. According to [REDACTED] SWEET contacted FENOC Attorney [REDACTED] who denied that the training session at Davis-Besse had been videotaped. [REDACTED] subsequently contacted SWEET and agreed to make the tapes available to [REDACTED] for review (Exhibit 2, p. 8-10).

Agent's Note: SWEET checked his handwritten notes regarding numerous conversations with [REDACTED], and could not confirm that [REDACTED] had denied that the Davis-Besse training session had been videotaped.

According to [REDACTED] [REDACTED] told SWEET to tell [REDACTED] to stop calling Davis-Besse, because he was disrupting the workplace. [REDACTED] stated, "I considered this statement a threat to my employment. I could be fired for disrupting the workplace." [REDACTED] further stated that he found the accusation to be an act of intimidation (Exhibit 2, pp. 10-11).

When [REDACTED] viewed the videotape, it was clear to him that the company had no intention of admitting any wrongdoing (in his original complaint against FENOC). "The tape was full of half-truths and false statements designed to send a clear message to anyone who had any notion, as I stated earlier, of voicing a complaint to the Nuclear Regulatory Commission or bringing a lawsuit against FENOC." [REDACTED] further stated that one could conclude from the videotape, "...one can't win a lawsuit against the company and if you blow the whistle against the company, the company will let everyone in the organization know that it was you who blew the whistle in an attempt to discredit you" (Exhibit 2, pp. 17, 23-24).

[REDACTED] stated that [REDACTED] had made comments during the question and answer period following the afternoon training session at Davis-Besse indicating that [REDACTED] knew [REDACTED] was passing information to [REDACTED]. [REDACTED] stated that he had spoken with Daniel HALEY, an engineer who had attended the afternoon training session at Davis-Besse. "Mr. HALEY told me that [REDACTED] had stated [REDACTED] was convinced that [REDACTED] was passing information to [REDACTED]" (Exhibit 2, p. 9).

[REDACTED] stated that he has spoken with very few people about his discrimination complaint against FENOC for fear of being accused of disrupting the workplace. [REDACTED] was only aware of one person at Davis-Besse having any knowledge of his complaint against the company. He

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further stated that if any of the managers in the audience at the Davis-Besse training session knew about his situation, the information did not come from [redacted] (Exhibit 2, pp. 12-13).

[redacted] stated, "I consider the training sessions held at Davis-Besse to be an adverse employment action, another example of the continuation harassment and intimidation of me by this company and by the same individuals who have been involved in this issue from the very beginning." [redacted] further stated he felt the use of his name in the training session was intended to embarrass him. [redacted] received feedback from people he knew at Davis-Besse "... wanting to know how I could show my face at Davis-Besse after these training sessions." [redacted] stated he felt this would impact his ability to work outages at Davis-Besse, which he does to supplement his income. He further stated that he was scheduled for an interview for a position as a [redacted] at Davis-Besse on [redacted]. [redacted] stated that he canceled his interview and withdrew his name for consideration for the position, "... and I decided not to go because I was embarrassed to show my [face] at Davis-Besse after this training session" (Exhibit 2, pp. 14-15, 17-19). 7C

Coordination with Regional Staff

On August 2, 1999, an ARB requested that OI provide assistance in obtaining a copy of the videotape of the Davis-Besse training session to provide for OGC review in determining whether any violation of 10 CFR 50.7 existed.

Based upon their review of the training videotapes, the OGC rendered an opinion on September 30, 1999, that [redacted] 5

On October 4, 1999, during a subsequent ARB and based upon the OGC opinion, OI was asked to determine whether discrimination occurred.

Coordination with the Regional Counsel

On September 30, 1999, Bruce A. BERSON, RIII Counsel, advised that [redacted] 7C

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Review of Documentation (Exhibit 4)

The morning session of the [REDACTED] training conducted by Shaw Pittman at Davis-Besse was videotaped by Davis-Besse. A copy of that training videotape was obtained by OI on August 4, 1999. The training session was conducted by [REDACTED] and [REDACTED]. The training was part of "FENOC-wide management training," to address their responsibilities as managers concerning discrimination issues and the "reinforcement of the requirements of the NRC employee discrimination regulations." 7C

During review of the videotaped training session, [REDACTED] was identified and the circumstances surrounding his discrimination complaint to the NRC were described to the audience by [REDACTED]. [REDACTED] supervisor [REDACTED] was also named, however, the "company's lawyer" was not further identified by [REDACTED].

Agent's Note: Later during the question and answer period following the training session, FENOC Attorney [REDACTED] identified [REDACTED] as the company's lawyer involved in the [REDACTED] matter.

During the training session, several examples were provided of the types of cases that [REDACTED] has been involved with as a result of OI investigations. [REDACTED] did not identify either facilities or names in those other examples.

Evidence

The following evidence was obtained regarding [REDACTED]'s allegation that he was discriminated against by [REDACTED] during a management training session conducted at Davis-Besse on [REDACTED]. 7C

1. Protected Activity

On July 16, 1999, [REDACTED] contacted the NRC and alleged licensee management harassment because of [REDACTED]'s involvement in an employment discrimination case against the licensee. As a result of the OI investigation which substantiated [REDACTED]'s allegation, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty - \$110,000 to FENOC on May 20, 1999. 7C

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2. Knowledge of [REDACTED] Protected Activity

During the management training conducted by FENOC at Davis-Besse on [REDACTED] [REDACTED] acknowledged to the audience that [REDACTED] discrimination complaint against FENOC is, "... currently the subject of ongoing enforcement action with the NRC" (Exhibit 4). 7C

3. Unfavorable Action Taken Against [REDACTED]

OGC rendered an opinion that [REDACTED] 5

[REDACTED] stated that the use of his name during the training sessions embarrassed him. He stated that he has received feedback from people he knows at Davis-Besse wanting to know how he could show his face at Davis-Besse after the training sessions. [REDACTED] further stated that because of his embarrassment, he canceled an interview for a position as [REDACTED] at Davis-Besse on July 19, 1999, and withdrew his name for consideration for the position (Exhibit 2, p. 18).

[REDACTED] also alleged that in a conversation with his attorney (SWEET), [REDACTED] had denied that the Davis-Besse training sessions had been videotaped. Based upon handwritten notes SWEET prepared during his numerous telephone conversations with [REDACTED], there was no indication that [REDACTED] had denied that the Davis-Besse training session had been videotaped. SWEET confirmed that he had made a notation that the training session at Perry had been videotaped, but there was no reference to conversation with [REDACTED] concerning the Davis-Besse videotapes. SWEET did recall that the same day he had his first conversation with [REDACTED] he received a telephone call from [REDACTED] who acknowledged that the training session had been videotaped and [REDACTED] was welcome to review those videotapes (Exhibit 9, pp. 6-8). 7C

[REDACTED] recalled that following [REDACTED] conversation with SWEET and subsequently with [REDACTED] requested that [REDACTED] obtain the master of the videotapes and ensure that they were not used for further training at Davis-Besse. [REDACTED] subsequently made the videotapes available to [REDACTED] for viewing. Neither [REDACTED] nor [REDACTED] were aware of any attempt by FENOC to destroy the videotapes of the Davis-Besse training session (Exhibit 10, pp. 10-12; Exhibit 5, p. 14; Exhibit 11, p. 15). 7C

OI was unable to substantiate there was any attempt to destroy the videotapes or to prevent [REDACTED] from viewing the videotapes.

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[REDACTED] also alleged that [REDACTED]'s comments about him disrupting the Davis-Besse workplace were intimidating. SWEET had handwritten notes indicating two comments [REDACTED] made to SWEET about [REDACTED] were, "your client should settle down," and "would [REDACTED] leave this alone." SWEET recalled that [REDACTED] requested that [REDACTED] not call Davis-Besse during the work day. SWEET stated that he passed those comments on to [REDACTED] (Exhibit 9, pp. 6-7, 12). 7C

[REDACTED] further alleged that [REDACTED] had made comments during the question and answer period following the afternoon training session at Davis-Besse indicating that [REDACTED] knew [REDACTED] was passing information to [REDACTED]. [REDACTED] stated that he had spoken with Daniel HALEY, an engineer who had attended the afternoon training session at Davis-Besse. "Mr. HALEY told me that [REDACTED] had stated [REDACTED] was convinced that [REDACTED] was passing information to [REDACTED]" (Exhibit 2, p. 9).

OI was not able to corroborate this allegation. HALEY was interviewed by OI and did not recall [REDACTED] making such a statement. [REDACTED] did not recall whether [REDACTED] made such a statement during the training session (Exhibit 7, p. 8; Exhibit 5, pp. 13-14).

4. Did the Unfavorable Action Result from [REDACTED] Engaging in Protected Activity 7C

[REDACTED] stated that when he conducted his presentation during the FENOC management training, he had no intention of avoiding the use of [REDACTED]'s name. [REDACTED] explained that one of the reasons for the training was to try to clear up any rumors concerning [REDACTED] complaint against FENOC. [REDACTED] stated that he knew in advance that the target audience was supervisors and managers at Davis-Besse. [REDACTED] assumed that there was a lot of talk about [REDACTED] complaint, and that "there was a wide awareness of it, based on news coverage; not only the [REDACTED] case, but the [REDACTED] case as well" (Exhibit 5, pp. 6-7).

[REDACTED] stated that it never occurred to him that it might be inappropriate to use [REDACTED] name during the training sessions.

"The first recognition that I had that I might be in trouble was when a fellow whose name I don't know came up to me during one of the breaks - - and I don't remember whether it was the morning or the afternoon at Davis-Besse - - and said, Hey, have you talked with [REDACTED] about this. 7C

And up to that point, it had never occurred to me that it would be a problem for [REDACTED]. I only thought the problem was going to be from [REDACTED].

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and [REDACTED] given the NRC's decision at that point, which was contrary to them and the position that the company had taken. And I thought it might be an embarrassment to them" (Exhibit 5, pp. 6-8).

[REDACTED] admitted that in retrospect, the training could have been just as effective without using anyone's name, although it would not have put to rest some of the rumors or inaccurate information that people had heard (Exhibit 5, pp. 11-12).

Agent's Note: [REDACTED] in the training sessions at Davis-Besse, was interviewed by OI on March 22, 2000. [REDACTED] was interviewed to determine whether [REDACTED] and [REDACTED] may have had discussions about the use of [REDACTED] name prior to the actual training. [REDACTED] declined to answer any questions concerning conversations he had with [REDACTED] asserting the attorney-client privilege (Exhibit 11). 7C

[REDACTED] stated that [REDACTED] contacted [REDACTED] 3 or 4 days before the training was conducted and asked if [REDACTED] had any problem with him using [REDACTED] name specifically during the explanation of the Perry case. [REDACTED] stated that [REDACTED] gave [REDACTED] permission (Exhibit 10, pp. 6-7).

Robert B. COAD, Jr., Operations Manager, Davis-Besse, stated that he was aware that the NRC had issued a Notice of Violation to FENOC and that it involved Radiation Protection management personnel at Perry. COAD recalled reading about the matter in both a company newsletter and the local newspaper, the Toledo Blade. COAD stated that while the majority of the audience at the training session were aware that the company had been issued an NRC Notice of Violation as a result of some discrimination activities over at the Perry plant, he doubted seriously if more than a handful of people in the room knew the complainant was [REDACTED]. COAD stated that he obtained more specific information from the training class about [REDACTED] complaint than he had from either the company newsletter or the newspaper article (Exhibit 6, pp. 7-9, 15). 7C

Agent's Note: Neither the company newsletter nor the Toledo Blade mentioned [REDACTED] name.

COAD stated that he believed he spoke to both attorneys at some point during the training session. COAD explained that he provided positive feedback in that he felt that the training did a good job of presenting both [REDACTED] and [REDACTED] viewpoints. He also stated that he expressed his concern about the use of both [REDACTED] and [REDACTED] names during the training sessions to be held the next day at [REDACTED] since both [REDACTED] and [REDACTED] would be expected to attend the training sessions. "I think they could have gotten the message across just as easily by using, you know, Supervisor A and Manager B, if you will." According to COAD, the [REDACTED] 7C

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indicated that they understood the concern and had [REDACTED] full cooperation to use his name. They indicated, however, that they had not contacted [REDACTED] (Exhibit 6, pp. 10-11).

COAD stated that he was scheduled to interview [REDACTED] within the next week or two for a position as a [REDACTED] at Davis-Besse. COAD stated that while he was aware that [REDACTED] had requested that his name be removed from the list of candidates, he was unaware of [REDACTED] reason for withdrawing (Exhibit 6, pp. 11-12). 7C

Daniel HALEY, Senior Engineer, Davis-Besse, stated that following the training sessions at Davis-Besse, there was discussion among the workers. HALEY stated that the discussion centered upon surprise that specific names had been used in the discussion during the training session (Exhibit 7, p. 8).

Agent's Analysis

[REDACTED] admitted that he had no intention of avoiding the use of [REDACTED] name during the training sessions. [REDACTED] further testified that he recognized that the use of their names might cause embarrassment to [REDACTED] and [REDACTED] obtained permission to use their names during the training session from them in advance. In fact, [REDACTED] contacted [REDACTED] 3 or 4 days in advance of the training concerning the use of [REDACTED] name. However, [REDACTED] did not recognize that the use of [REDACTED] name might cause him the same embarrassment. [REDACTED] contacted [REDACTED] at the suggestion of COAD, the Operations Manager, following the training sessions at Davis-Besse. 7C

No evidence was provided to justify a legitimate business reason for identifying [REDACTED] and specifically articulating the circumstances surrounding his discrimination complaint against FENOC. FENOC had previously issued information about the Notice of Violation in a company newsletter which did not identify [REDACTED] or anyone else involved in the matter, by name. Other examples were provided to the audience during the training sessions, and in those examples, facilities and names were not identified, nor did those examples involve matters currently pending enforcement action before the NRC.

No evidence was developed by OI to indicate that [REDACTED] use of [REDACTED] name during the training session was directed by any FENOC employee or manager. 7C

No evidence was developed to indicate that FENOC management made any effort to destroy the videotapes of the training sessions. AMMON-ZATKO stated that when she told [REDACTED] that the videotape had been "destroyed," those were her own words based upon information that she had received from her supervisor, Jeff BOURDO. Earlier the same day, BOURDO had told

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AMMON-ZATKO that the videotapes were not going to be used and she assumed that meant they would be destroyed, which was what she told [REDACTED]

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Conclusion

Based upon the testimonial and documentary evidence developed during the investigation, it is concluded that [REDACTED] was subjected to discrimination after [REDACTED] identified [REDACTED] by name and openly discussed [REDACTED] discrimination complaint against FENOC during management training sessions conducted on [REDACTED] at Davis-Besse. The evidence indicated that [REDACTED] actions were not deliberate.

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SUPPLEMENTAL INFORMATION

On June 27, 2000, William P. SELLERS, Senior Litigation Counsel, Criminal Division, Fraud Section, U.S. Department of Justice, Washington, D.C., advised that in his view, this case did not warrant prosecution and rendered an oral declination.

The following persons were interviewed during this investigation, but their testimony is not referenced in the Report of Investigation:

HANSEN, Wesley Charles (Exhibit 12)
HENDERSON, Todd A. (Exhibit 13)

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LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1	Investigation Status Record, OI Case No. 3-1999-025, dated August 2, 1999.
2	Transcript of Interview of ██████████ dated October 14, 1999.
3	Memorandum from BERSON, dated September 30, 1999.
4	Two (2) Training videotapes, "Regulatory Responsibilities, Whistleblower Issues and Employee Concerns," Davis-Besse Nuclear Power Plant, ██████████ (Due to the format, these items are not attached as exhibits, but can be found in OI Case File No. 3-1999-025.)
5	Transcript of Interview of ██████████ dated April 11, 2000.
6	Transcript of Interview of COAD, dated November 10, 1999.
7	Transcript of Interview of HALEY, dated November 10, 1999.
8	Transcript of Interview of AMMON-ZATKO, dated November 10, 1999.
9	Transcript of Interview of SWEET, dated October 14, 1999.
10	Transcript of Interview of ██████████ dated May 4, 2000.
11	Transcript of Interview of ██████████ dated March 22, 2000.
12	Transcript of Interview of HANSEN, dated November 10, 1999.
13	Transcript of Interview of HENDERSON, dated May 4, 2000.

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