

September 29, 2004

EA-04-038

Mr. Dennis Koehl
Site-Vice President
Point Beach Nuclear Plant
Nuclear Management Company, LLC
6610 Nuclear Road
Two Rivers, WI 54241-9516

SUBJECT: EXERCISE OF ENFORCEMENT DISCRETION
[NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-2001-033]

Dear Mr. Koehl:

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 the Point Beach Nuclear Plant. The NMC Employee Concerns Program (ECP) received information indicating that a General Foreman, employed by Day and Zimmerman Nuclear Power Systems (D&Z), a contractor at the Point Beach Plant, submitted the name of a D&Z electrician for lay-off on May 4, 2001, following the electrician's protected activities associated with a work package on March 27 and 28, 2001. The matter was investigated by NMC and the NMC investigator concluded that employment discrimination had occurred. The NRC Office of Investigations (OI) also investigated the matter and the information obtained by OI indicated that an apparent deliberate violation of 10 CFR 50.7, "Employee Protection," occurred when the D&Z General Foreman submitted the name of the D&Z electrician for lay-off after the electrician engaged in protected activities. A copy of the synopsis from the OI report was sent to you on April 1, 2004.

Based on the information developed during investigations by NMC and OI and information contained in a letter from NMC dated May 10, 2004, the NRC determined that a violation of NRC requirements occurred. Specifically, on March 27 and 28, 2001, a D&Z electrician and a coworker 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 stopped work on the assigned project and notified a D&Z supervisor of the problem. A coworker 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 28, 2001, and on March 30, 2001, that General Foreman threatened to terminate the employment of the electrician for stopping work. The General Foreman stated that his intention on March 30, 2001, was not to terminate the electrician or his coworker, but to separate the two employees from each other because of the excessive number of breaks they were taking. About April 30, 2001, the electrician was told that he would not be laid-off during a May 2001 reduction in force and he would be retained until the end of the project later that summer. However, the General Foreman submitted the

electrician's name for lay-off on May 4, 2001, in part, because the electrician engaged in protected activities on March 27 and 28, 2001. By submitting the electrician's name for lay-off, the General Foreman changed the compensation, terms, conditions, or privileges of the electrician's employment in violation of 10 CFR 50.7. Additionally, the General Foreman allowed two other electricians laid-off on May 4, 2001, to "hover" (remain immediately eligible for reemployment by D&Z without returning to the local union hall for reassignment). However, the General Foreman did not extend the offer to "hover" to the complainant in this matter. The NRC considered the General Foreman to be a first-line supervisor or other low-level manager within the D&Z organization; therefore, the violation is categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600 (Enforcement Policy), at Severity Level III. The NRC staff recognizes that the General Foreman was promoted to that position shortly before the violation of 10 CFR 50.7 occurred. Available information indicated that the General Foreman had not received sufficient training in employee protection or maintaining a safety conscious work environment at the time of the promotion. Therefore, the NRC staff concluded, that while the actions of the General Foreman caused NMC and D&Z to be in violation of 10 CFR 50.7, the General Foreman's actions were not deliberate in nature and the NRC is not taking a separate enforcement action against the General Foreman for violating the NRC regulation prohibiting deliberate misconduct, 10 CFR 50.5.

The NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Credit was warranted for the *Identification* factor because the violation was identified and investigated by NMC. An investigation was conducted by NMC and NMC notified the NRC of the results of the NMC investigation. Credit was also warranted for the *Corrective Action* factor. Corrective actions consisted of, but were not limited to: (1) taking disciplinary action against the General Foreman by the employer; (2) reaching a settlement agreement between the employer and the complainant; and (3) conducting surveys of the overall work environment to ensure that no residual effects existed in the safety conscious work environment following the May 4, 2001, employment action. Other actions are described in the previously referenced letter from NMC on May 10, 2004. The NRC acknowledges that the actions by NMC were prompt, comprehensive, addressed the specific situation and the overall work environment for raising safety concerns, and were done without intervention by the NRC.

Therefore, to encourage prompt identification and correction of violations without the intervention of the NRC, I have been authorized, after consulting with the Director, Office of Enforcement, and the Deputy Executive Director for Reactor Programs, to exercise discretion in accordance with Section VII.B.5 of the Enforcement Policy and not issue a Notice of Violation or civil penalty in this matter. Any future violation of 10 CFR 50.7 will be considered for full application of the Enforcement Policy.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance was achieved is already adequately addressed on the docket in the letter from

NMC dated May 10, 2004. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, please provide your response within 30 days of the date of this letter. Your response should be marked "Response to EA-04-038" and sent to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator and Enforcement Officer NRC Region III, and a copy to the Resident Inspector at the Point Beach Nuclear Power Plant. If you contest this enforcement action, you should also provide a copy of your response, with the basis of your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

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, if you choose to respond, 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>. To the extent possible, your response, if you choose to respond, should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov: select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA/ Geoffrey E. Grant for

James L. Caldwell
Regional Administrator

Dockets No. 50-266; 50-301
Licenses No. DPR-24; DPR-27

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| NAME | Grant for Caldwell | | | | | | | | | | | |
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OFFICIAL RECORD COPY

¹ No legal objection received from G. Longo, OGC, on September 22, 2004.

² Concurrence received from J. Luehman, OE, on September 22, 2004.

cc: R. Kuester, President and Chief
Executive Officer, We Generation
J. Cowan, Executive Vice President
Chief Nuclear Officer
D. Cooper, Senior Vice President, Group Operations
D. Weaver, Nuclear Asset Manager
Plant Manager
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