

October 20, 2004

EA-04-180

Mr. Michael A. Balduzzi
Site Vice President
Entergy Nuclear Operations, Inc.
Pilgrim Nuclear Power Station
600 Rocky Hill Road
Plymouth, MA 02360-5508

SUBJECT: ALLEGED DISCRIMINATION (U.S. Department of Labor Occupational Safety and Health Administration Case No. 1-0240-04-004)

Dear Mr. Balduzzi:

On February 19, 2004, the U.S. Department of Labor's Occupational Safety & Health Administration (OSHA) in Providence, Rhode Island, received a complaint from an individual who indicated that he was blacklisted by Williams Power Corporation (WPC) in retaliation for voicing nuclear safety concerns to WPC supervisors. In response to that complaint, OSHA conducted an investigation, and in a letter dated September 8, 2004, the Area Director of OSHA found that the evidence obtained during its investigation supports a prima facie complaint and a merit finding against WPC. OSHA found that WPC had not shown by clear and convincing evidence that it did not blacklist the individual on September 18, 2003 when he was de-selected from an employee list appointed to work a scheduled maintenance shutdown at the Seabrook Nuclear Power Plant (Seabrook). OSHA found that this occurred after the individual had engaged in a protected activity at your Pilgrim Nuclear Power Plant (Pilgrim) in April 2003.

In its September 8, 2004 letter, OSHA noted that the individual was previously hired by WPC as a pipefitter for a plant shutdown at Pilgrim on or about April 3, 2003, and was laid off at Pilgrim on April 29, 2003, after refusing to work under conditions that he alleged were illegal. OSHA also noted that in refusing to violate requirements at Pilgrim, and in identifying the alleged illegality to the employer, the individual was engaged in a protected activity. In addition, OSHA found that on September 17, 2003, WPC gave the individual a start date of September 22, 2003, to commence work at Seabrook, but then informed the individual a day later (September 18, 2003) that he had been de-selected from the list of employees. Based on its investigation, OSHA concluded that WPC violated the employee protection provisions of the Energy Reorganization Act by blacklisting the individual in September 2003.

The NRC is concerned, based on the review of the information contained in the OSHA finding, that a violation of the employee protection provisions set forth in 10 CFR 50.7 may have also occurred at Pilgrim. OSHA noted that the individual was an experienced pipefitter in the nuclear industry, and was told by WPC supervisors at Pilgrim in April 2003 to replace level switches and related piping even though the individual did not have correct paperwork and

blueprints to do so. OSHA also noted that since the individual knew he would be violating safety requirements if he built parts at Pilgrim that were not in accordance with the specifications, he expressed concern to a WPC supervisor and was told "that's the way it's done at Williams and if you don't like it you can get your layoff slip now." The individual and some co-workers then left work at Pilgrim. Based on this OSHA finding, the NRC is also concerned whether the actions by the WPC supervisors at Pilgrim in April 2003 may have had a chilling effect on other station or contractor personnel at Pilgrim, including WPC personnel.

Accordingly, the NRC has decided that pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR 50.54(f), in order for the Commission to determine whether your license should be modified, suspended or revoked, or other enforcement action taken to ensure compliance with NRC regulatory requirements, you are required to provide this office, within 30 days of the date of this letter, a response in writing and under oath or affirmation that describes actions you have already taken or plan to take to assure that this matter is not having a chilling effect on the willingness of other employees at Pilgrim, including your own employees as well as contractor personnel, to raise safety and compliance concerns within your organization and, as discussed in NRC Form 3, to the NRC. After reviewing your response, the NRC will determine whether enforcement action is necessary at this time to ensure compliance with regulatory requirements.

We recognize that you may not believe that unlawful discrimination has occurred. Nonetheless, we request that you consider the need to address the *possible* chilling effect that an ongoing issue of this type may have on other employees.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter 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 should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Similar letters are being sent on this date to Williams Power Corporation, as well as FPL Energy Seabrook LLC (the operator of the Seabrook plant). Copies of those letters are enclosed. For questions concerning this letter, please contact Dr. Ronald Bellamy, NRC, Region I, at 610-337-5200 or via e-mail at RRB1@nrc.gov.

Sincerely,

/RA/

Samuel J. Collins
Regional Administrator

Enclosures

1. Letter to Williams Power Corporation
2. Letter to FPL Energy Seabrook, LLC

Docket No. 50-293
License No. DPR-35

cc:

G. J. Taylor, Chief Executive Officer, Entergy Operations
M. Kansler, President, Entergy Nuclear Operations, Inc.
J. T. Herron, Senior Vice President and Chief Operating Officer
S. J. Bethay, Director, Nuclear Assessment
D. L. Pace, Vice President, Engineering
B. O'Grady, Vice President, Operations Support
J. F. McCann, Director, Nuclear Safety Assurance
C. D. Faison, Manager, Licensing
M. J. Colomb, Director of Oversight, Entergy Nuclear Operations, Inc.
D. Tarantino, Nuclear Information Manager
B. S. Ford, Manager, Licensing, Entergy Nuclear Operations, Inc.
J. M. Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc.
S. Lousteau, Treasury Department, Entergy Services, Inc.
R. Walker, Department of Public Health, Commonwealth of Massachusetts
The Honorable Therese Murray
The Honorable Vincent deMacedo
Chairman, Plymouth Board of Selectmen
Chairman, Duxbury Board of Selectmen
Chairman, Nuclear Matters Committee
Plymouth Civil Defense Director
D. O'Connor, Massachusetts Secretary of Energy Resources
J. Miller, Senior Issues Manager
Office of the Commissioner, Massachusetts Department of Environmental Protection
Office of the Attorney General, Commonwealth of Massachusetts
Electric Power Division, Commonwealth of Massachusetts
R. Shadis, New England Coalition Staff
D. Katz, Citizens Awareness Network
Chairman, Citizens Urging Responsible Energy
J. Sniezek, PWR SRC Consultant
R. Toole, PWR SRC Consultant

Dan Daniels
Williams Power Corporation
2076 West Park Place
Stone Mountain, Georgia 30087

Mr. Mark E. Warner, Site Vice President
c/o James M. Peschel
FPL Energy Seabrook, LLC
Seabrook Station
P.O. Box 300
Seabrook, NH 03874

Distribution:

- A. Blough, RI
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- W. Lanning, RI
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- C. Anderson, RI
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- J. Luehman, OE
- L. Jarriel, OE
- B. Clayton, RIII
- J. Heller, RIII
- G. Cwalina, NRR
- OEMAIL
- F. Congel, OE
- C. Cameron, OGC
- Associate Director for Inspection & Programs, NRR [For NRR matters]
- W. Raymond, SRI, Pilgrim
- G. Dentel, SRI, Seabrook
- Fred Joseph Jr., Acting Area Director, OSHA

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OFFICE	RI/ORA		HQ/OE		RI/RA					
NAME	Kfarrar (KLF)		Fcongel *		Scollins (SJC)					
DATE	10/06/04				10/19/04					

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*** Concurrence via e-mail from Doug Sharkey, 10/13/04.**

October 20, 2004

EA-04-179

Williams Power Corporation
ATTN: Dan Daniels
2076 West Park Place
Stone Mountain, Georgia 30087

SUBJECT: ALLEGED DISCRIMINATION (U.S. Department of Labor Occupational Safety and Health Administration Case No. 1-0240-04-004)

Dear Mr. Daniels:

On February 19, 2004, the U.S. Department of Labor's Occupational Safety & Health Administration (OSHA) in Providence, Rhode Island, received a complaint from an individual who indicated that he was blacklisted by Williams Power Corporation (WPC) in retaliation for voicing nuclear safety concerns to WPC supervisors. In response to that complaint, OSHA conducted an investigation, and in a letter dated September 8, 2004, the Area Director of OSHA found that the evidence obtained during its investigation supports a prima facie complaint and a merit finding. OSHA found that WPC had not shown by clear and convincing evidence that it did not blacklist the individual on September 18, 2003 when he was de-selected from an employee list appointed to work a scheduled maintenance shutdown at the Seabrook Nuclear Power Plant (Seabrook). OSHA found that this occurred after the individual had engaged in a protected activity at the Pilgrim Nuclear Power Plant (Pilgrim) in April 2003.

In its September 8, 2004 letter, OSHA noted that the individual was hired by WPC as a pipefitter for a plant shutdown at Pilgrim on or about April 3, 2003, and was laid off at Pilgrim on April 29, 2003, after refusing to work under conditions that he alleged were illegal. OSHA also noted that in refusing to violate requirements at Pilgrim, and in identifying the alleged illegality to the employer, the individual was engaged in a protected activity. In addition, OSHA found that on September 17, 2003, WPC gave the individual a start date of September 22, 2003, to commence work at Seabrook, but then informed the individual a day later (September 18, 2003) that he had been de-selected from the list of employees. Based on its investigation, OSHA concluded that WPC violated the employee protection provisions of the Energy Reorganization Act by blacklisting the individual in September 2003.

While the NRC recognizes that WPC has appealed the OSHA finding to a DOL Administrative Law Judge, the NRC is concerned that a violation of the employee protection provisions set forth in 10 CFR 50.7 may have occurred. We are also concerned that this matter could have a chilling effect on other WPC personnel working at nuclear power plants, as well as other licensee or contractor personnel working at Pilgrim or Seabrook, in that these workers might be deterred from identifying any nuclear safety related concerns they may have.

Accordingly, the NRC has decided that pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204

and 10 CFR 50.54(f), in order for the Commission to determine whether enforcement action should be taken to ensure compliance with NRC regulatory requirements, you are required to provide this office, within 30 days of the date of this letter, a response in writing and under oath or affirmation that describes the actions you have already taken or plan to take to assure that this matter is not having a chilling effect on the willingness of other employees to raise safety and compliance concerns within your organization and, as discussed in NRC Form 3, to the NRC. After reviewing your response, the NRC will determine whether enforcement action is necessary at this time to ensure compliance with regulatory requirements.

We recognize that you may not believe that unlawful discrimination has occurred. However, we request that you consider the need to address the *possible* chilling effect that an ongoing issue of this type may have on other employees. Such action may be needed not only because of this OSHA finding, but also in light of the WPC past history regarding discrimination issues, as noted below.

On August 3, 1999, the NRC issued WPC a Notice of Violation for discriminating against another WPC employee (electrician) at Seabrook (Reference: EA 98-338). In addition, the NRC is still reviewing potential violations for an apparent discrimination issue involving WPC wherein a WPC employee was laid off at the Perry Nuclear Power Plant after raising nuclear safety issues, and was subsequently denied reemployment at the Davis Besse Nuclear Power Plant.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter 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 should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Similar letters are being sent on this date to the operators of the Pilgrim and Seabrook plants. Copies of those letters are enclosed. For questions concerning this letter, please contact Dr. Ronald Bellamy, NRC, Region I, at 610-337-5200 or via e-mail at RRB1@nrc.gov.

Sincerely,

/RA/

Samuel J. Collins
Regional Administrator

Enclosures:

3. Letter to Entergy Nuclear Operations, Inc.
4. Letter to FPL Energy Seabrook, LLC

Mr. D. Daniels

3

cc:

Mr. Michael A. Balduzzi, Site Vice President
Entergy Nuclear Operations, Inc.
Pilgrim Nuclear Power Station
600 Rocky Hill Road
Plymouth, MA 02360-5508

Mr. Mark E. Warner, Site Vice President
c/o James M. Peschel
FPL Energy Seabrook, LLC
Seabrook Station
P.O. Box 300
Seabrook, NH 03874

Commonwealth of Massachusetts
State of New Hampshire
State of Ohio

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- J. Luehman, OE
- L. Jarriel, OE
- B. Clayton, RIII
- J. Heller, RIII
- G. Cwalina, NRR
- OEMAIL
- F. Congel, OE
- C. Cameron, OGC
- Associate Director for Inspection & Programs, NRR [For NRR matters]
- W. Raymond, SRI, Pilgrim
- G. Dentel, SRI, Seabrook
- Fred Joseph Jr., Acting Area Director, OSHA

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OFFICE	RI/ORA		HQ/OE		RI/RA					
NAME	KFarrar		Fcongell *		Scollins (SJC)					
DATE	10/06/04				10/19/04					

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* Concurrence received via e-mail from Doug Starkey, 10/18/04.

October 20, 2004

EA-04-181

Mr. Mark E. Warner
Site Vice President
c/o James M. Peschel
FPL Energy Seabrook, LLC
Seabrook Station
P.O. Box 300
Seabrook, NH 03874

SUBJECT: ALLEGED DISCRIMINATION (U.S. Department of Labor Occupational Safety and Health Administration Case No. 1-0240-04-004)

Dear Mr. Warner:

On February 19, 2004, the U.S. Department of Labor's Occupational Safety & Health Administration (OSHA) in Providence, Rhode Island, received a complaint from an individual who indicated that he was blacklisted by Williams Power Corporation (WPC) in retaliation for voicing nuclear safety concerns to WPC supervisors. In response to that complaint, OSHA conducted an investigation, and in a letter dated September 8, 2004, the Area Director of OSHA found that the evidence obtained during its investigation supports a prima facie complaint and a merit finding. OSHA found that WPC had not shown by clear and convincing evidence that it did not blacklist the individual on September 18, 2003, when he was de-selected from an employee list appointed to work a scheduled maintenance shutdown at your Seabrook Nuclear Power Plant (Seabrook). OSHA also found that this occurred after the individual had engaged in a protected activity at the Pilgrim Nuclear Power Plant (Pilgrim) in April 2003.

In its September 8, 2004 letter, OSHA noted that the individual was previously hired by WPC as a pipefitter for a plant shutdown at Pilgrim on or about April 3, 2003, and was laid off at Pilgrim on April 29, 2003, after refusing to work under conditions that he alleged were illegal. OSHA noted that in refusing to violate requirements at Pilgrim, and in identifying the alleged illegality to the employer, the individual was engaged in a protected activity. In addition, OSHA found that on September 17, 2003, WPC gave the individual a start date of September 22, 2003, to commence work at Seabrook, but then informed the individual a day later (September 18, 2003) that he had been de-selected from the list of employees. Based on its investigation, OSHA concluded that WPC violated the employee protection provisions of the Energy Reorganization Act by blacklisting the individual in September 2003.

The NRC recognizes that WPC has appealed the OSHA finding to a DOL Administrative Law Judge. However, since WPC was working as a contractor for Seabrook, and since you are responsible for the acts of your contractors as they apply to the Seabrook station, the NRC is concerned, based on the information contained in the OSHA finding, that a violation of the employee protection provisions set forth in 10 CFR 50.7 may have occurred. We are also concerned that this matter could have a chilling effect on other licensee or contractor personnel

working at Seabrook in that it might deter them from identifying any nuclear safety related concerns they may have.

Accordingly, the NRC has decided that pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR 50.54(f), in order for the Commission to determine whether your license should be modified, suspended or revoked, or whether other enforcement action should be taken to ensure compliance with NRC regulatory requirements, you are required to provide this office, within 30 days of the date of this letter, a response in writing and under oath or affirmation that describes actions you have already taken or plan to take to assure that this matter is not having a chilling effect on the willingness of other employees at Seabrook to raise safety and compliance concerns within your organization and, as discussed in NRC Form 3, to the NRC. After reviewing your response, the NRC will determine whether enforcement action is necessary at this time to ensure compliance with regulatory requirements.

We recognize that you may not believe that unlawful discrimination has occurred. However, we request that you consider the need to address the *possible* chilling effect that an ongoing issue of this type may have on other employees. Such action may be needed not only because of this OSHA finding, but also in light of a previous discrimination finding involving a WPC employee at Seabrook. Specifically, on August 3, 1999, the NRC issued a \$55,000 civil penalty to North Atlantic Energy Service Corporation (NAESC) (the prior operator of Seabrook) as well as a Notice of Violation to WPC, for a violation involving the discrimination against a WPC employee (electrician) at the Seabrook station (Reference; EA 98-338). NAESC paid the civil penalty on September 2, 1999.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter 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 should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction.

Similar letters are being sent on this date to Williams Power Corporation, and well as Entergy Nuclear Operations (the operator of the Pilgrim plant). Copies of those letters are enclosed. For questions concerning this letter, please contact Dr. Ronald Bellamy, NRC, Region I, at 610-337-5200 or via e-mail at RRB1@nrc.gov.

Sincerely,

/RA/

Samuel J. Collins
Regional Administrator

Enclosures

5. Letter to Williams Power Corporation
6. Letter to Entergy Nuclear Operations, Inc.

Docket No. 50-443
License No. NPF-86

cc:

J. A. Stall, FPL Senior Vice President, Nuclear & CNO
J. M. Peschel, Manager - Licensing
G. F. St. Pierre, Station Director - Seabrook Station
R. S. Kundalkar, FPL Vice President - Nuclear Engineering
D. G. Roy, Nuclear Training Manager - Seabrook Station
Office of the Attorney General, Commonwealth of Massachusetts
P. McLaughlin, Attorney General, State of New Hampshire
P. Brann, Assistant Attorney General, State of Maine
M. S. Ross, Attorney, Florida Power & Light Company
R. Walker, Director, Dept. of Public Health, Commonwealth of Massachusetts
B. Cheney, Director, Bureau of Emergency Management
C. McCombs, Acting Director, MEMA
Administrator, Bureau of Radiological Health, State of New Hampshire
W. Meinert, Nuclear Engineer, Massachusetts Municipal Wholesale Electric company
T. Crimmins, Polestar Applied Technology
R. Backus, Esquire, Backus, Meyer and Solomon, New Hampshire
Town of Exeter
Board of Selectmen
S. Comley, Executive Director, We the People of the United States
R. Shadis, New England Coalition Staff
M. Metcalf, Seacoast Anti-Pollution League

Dan Daniels
Williams Power Corporation
2076 West Park Place
Stone Mountain, Georgia 30087

Mr. Michael A. Balduzzi, Site Vice President
Entergy Nuclear Operations, Inc.
Pilgrim Nuclear Power Station
600 Rocky Hill Road
Plymouth, MA 02360-5508

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- Associate Director for Inspection & Programs, NRR [For NRR matters]
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OFFICE	RI/ORA	HQ/OE	RI/RA		
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DATE	10/06/04		10/19/04		

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* Concurrence via e-mail from Doug Starkey, OE 10/18/04.