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October 30, 2004

AEP:NRC:2790-39

Docket Nos. 50-315
50-316

U. S. Nuclear Regulatory Commission
Attn: Mr. Frank J. Congel, Director
Office of Enforcement
Mail Stop O-14E1
Washington, DC 20555-0001

Donald C. Cook Nuclear Plant Units 1 and 2
RESPONSE TO NRC LETTER REGARDING
ALLEGED DISCRIMINATION

In a letter dated September 30, 2004, the Nuclear Regulatory Commission (NRC) requested that Indiana Michigan Power Company (I&M), the licensee for Donald C. Cook Nuclear Plant (CNP), provide information regarding actions it has taken, or will take, to ensure that the workforce at CNP feels free to raise safety concerns in light of a Recommended Decision and Order issued by an Administrative Law Judge (ALJ) of the U. S. Department of Labor (DOL) on June 29, 2004. The ALJ concluded that protected activity was a factor in the termination of a former test engineer at CNP on October 2, 2001. I&M has appealed the ruling to the Administrative Review Board, and the matter is presently pending there.

The matter arose in February 2002 when a complaint under Section 211 of the Energy Reorganization Act was filed with DOL by the former employee. Pursuant to regulation, the claim was investigated by the Occupational Safety and Health Administration (OSHA), and on July 11, 2002, a decision was reached by the OSHA Area Director concluding that the claim of retaliatory termination was not substantiated and dismissing the complaint. In addition, in a letter dated December 4, 2002, Ms. Cynthia D. Pederson of the NRC's Region III office informed I&M that an investigation by the NRC's Office of Investigations into the events described in the complaint did not substantiate that discrimination had occurred.

As described in detail in the attachment to this letter, I&M continues to take numerous actions intended to maintain a safety conscious work environment (SCWE) at CNP. We believe that these actions have not only been effective in maintaining an SCWE, but also in avoiding any chilling effect that may have

resulted from the ALJ's Recommended Decision. In particular, assessments of the CNP work environment by I&M and the NRC, as well as data reflecting vigorous and appropriate addressing of safety concerns in the Corrective Action Program, demonstrate that CNP workers are not reluctant to raise safety concerns.

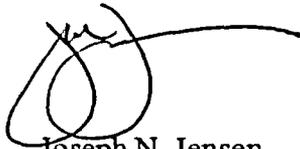
We understand that maintaining an SCWE is an ongoing process. For this reason, we continue to communicate our expectations and standards to our workers and provide appropriate SCWE and supervisory training. We are diligently implementing departmental action plans to enhance our workforce's willingness to raise concerns, and will continue to promptly investigate and resolve allegations brought to our attention.

In this regard, we have recently received from the Enforcement/Investigations Officer at Region III a request that we evaluate certain allegations related to CNP. Although the timing of the allegations is not completely clear, we are investigating the information provided to determine any possible effect on our SCWE.

There are no commitments included in this submittal.

Should you have any questions, please contact Mr. John A. Zwolinski, Director of Safety Assurance, at (269) 466-2428.

Sincerely,



Joseph N. Jensen
Site Vice President

JEN/jn

Attachment

- c: J. L. Caldwell – NRC Region III
- K. D. Curry – AEP Ft. Wayne, w/o attachments
- J. T. King – MPSC, w/o attachments
- C. F. Lyon – NRC Washington DC
- MDEQ – WHMD/HWRPS, w/o attachments
- NRC Resident Inspector

RESPONSE TO NRC LETTER REGARDING
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Background

The events leading up to the June 29, 2004, Recommended Decision and Order (RDO) of the Department of Labor's Administrative Law Judge (ALJ) began in September 2001 during an unscheduled outage affecting both units. The outage was caused by an intake of sand into the essential service water (ESW) system, which required maintenance and repair followed by post-maintenance testing. The individuals primarily involved were an Indiana Michigan Power Company (I&M) engineer and a Sun Technical Services contractor, both working in the Testing Group of the Donald C. Cook Nuclear Plant (CNP) Maintenance Department. The I&M employee had worked at CNP for approximately two years. The contractor had been brought on in August 2001.

During the course of ESW testing activities on Unit 1, which were on the critical path for restart, these two members of the Testing Group ignored management directions and failed to follow an agreed plan for resolution of some testing issues. This occurred on September 26, 2001, and management learned of the conduct late on that day. A fact-finding investigation team was assigned, and the two were suspended the following day, pending completion of the investigation. The I&M employee was terminated on October 2, without having returned to his job duties. The contractor was allowed to return to his work a few days later, but was laid off in late October with other contractors when budgeted funds for his project expired. He has not returned to CNP.

No complaints were filed by the I&M employee or the contractor with the Department of Labor until February 2002, approximately four months after they had left the site. The Occupational Safety and Health Administration (OSHA) investigated each complaint, and found that the complainants' allegations of retaliatory treatment were unsubstantiated.

Similarly, the Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) also investigated the circumstances involving the two, and likewise concluded that their allegations were unsubstantiated. Although CNP management made no announcement of the OSHA or OI findings, it seems likely that any remaining employees at CNP who had knowledge of and an interest in the claims of retaliation would also have learned informally of the rejection of those claims by the two government investigations.

In addition, the I&M employee who was terminated had incurred a substantial record of discipline during his two years working for I&M. He was suspended without pay on two occasions, and received written warnings and counseling on several others. While I&M does not publicize disciplinary actions, there is no way to preclude individuals from learning at least in general terms of the discipline through rumor or informal discussions among the workforce. We believe that the employee's prior disciplinary history was known to some extent, and would have

helped minimize any potential assumption that his termination following a fact-finding investigation was based on anything other than his conduct and employment history.

The trial proceeding on the terminated employee's claim occurred in July 2003, nearly two years after his termination (the former employee at that time had been employed at another nuclear site for more than a year, and the former contractor was working at a facility in Utah). There was no coverage of the trial in the media or any public statements by the participants or I&M. The ALJ's RDO was not issued until the end of June 2004, nearly a year later.

When the RDO was issued, it contained a requirement that I&M post a copy of the RDO at the plant. Because the opinion was lengthy, I&M complied by posting a notice of the decision and information about where the full opinion was available for review. Although the notice was posted for 60 days in several locations on site and at the engineering facility in Buchanan, MI, no employees or contractors at CNP requested the opportunity to review the decision.

Other factors have contributed to the absence of any observable interest being shown in the RDO at CNP. The upper management personnel who made the decision to terminate the testing group employee (the Site Vice-President, the Plant Manager, the Maintenance Director, and the Human Resources Director) have all left the Company. The direct supervisor of these two employees, after receiving appropriate discipline for his role in the occurrence, was ultimately laid off in a force reduction in December 2002. The manager who was alleged to have played the primary role in the investigation and termination moved in 2002 to another department.

Accordingly, we have no indications that the issuance of the RDO has had a negative impact on the willingness of CNP personnel to report any safety concerns. We have also collected other data points which we believe support our perception that there has been no chilling effect from the RDO.

CNP management continues to take proactive steps to maintain and enhance the SCWE at CNP, some of which are detailed below.

Other Indications of an SCWE at CNP

To help monitor the attitudes of workers toward an SCWE, CNP management has undertaken a number of anonymous surveys of the workforce to identify the extent of employees' knowledge of policies supporting SCWE and avenues for raising safety concerns. We also ask about employees' willingness to identify safety concerns using any of these available methods, including anonymous submission of complaints or direct contact with the NRC. The most recent survey was done in late July 2004, shortly after the notice of the RDO was posted. While the results identified discrete areas among the workforce where additional attention to SCWE is warranted, they also reflect that overall a strong SCWE continues to exist at CNP. Thus, over

99% of the respondents agreed¹ that each worker at CNP was responsible for identifying problems and adverse conditions. Similarly, over 92% believed that the culture at CNP is “conducive to raising nuclear safety and quality concerns.”

These responses are supported by NRC Inspection Reports in the last few years which have found “no evidence [based on information obtained in interviews by NRC staff] that a safety conscious work environment did not exist” at CNP², and that “there was no indication of a reluctance by licensee staff to identify safety issues.”³

Moreover, in February 2004 the NRC issued an Inspection Report presenting the results of interviews conducted in December 2003 by NRC inspectors with plant staff and with CNP’s Employee Concerns Program (ECP) personnel. Employees interviewed did not express SCWE concerns and were aware of programs (Corrective Action Program [CAP], ECP) for raising and resolving safety concerns.⁴ We consider it significant that NRC Inspection Reports issued both before and after the termination of the employee and the contractor have found no evidence of reluctance on the part of the workforce to identify safety issues.

Management at CNP also continues to monitor the generation of Condition Reports (CRs) in the CAP, the primary method for documenting and resolving safety concerns of any nature. Through September 2004, CRs initiated in calendar 2004 total approximately 8,500, at a monthly average of almost 950/mo. For comparison, the monthly average during 2003 was approximately 775 and the annual total was 9,269. If the rate of CR initiation continues through the remainder of 2004 at the average monthly rate through September, we anticipate approximately 11,380 CRs for this year, exceeding the number initiated in calendar 2003 by more than 2,100. We believe these figures indicate a willingness to raise and document concerns at CNP, and are doubtful that the issuance of the RDO is having any significant impact on that attitude.

Additionally, the February 2004 Inspection Report discussed above also assessed CNP’s Problem Identification and Resolution activities, including the entry of CRs into the Corrective Action Program and the significance level assigned. The report concluded (page 2) that “Both the number and significance level distribution of these condition reports appeared to be appropriate for the facility.” The same report also documented (page 1) the inspectors’ conclusion that “the licensee had established a safety-conscious work environment where people were not reluctant to raise issues.” These findings that the entry of CRs is proceeding

¹ The survey format asked workers if they fully agreed, strongly agreed or generally agreed with a statement, as well as providing space to express disagreement and strong disagreement.

² NRC Inspection Report No. 50-315/2002004; 50-316/2002004, transmitted May 22, 2002, page 22.

³ NRC Inspection Report No. 50-315/2001003; 50-316/2001003, transmitted February 15, 2001, page 13.

⁴ NRC Inspection Report No. 50-315/2003015; 50-316/2003015, transmitted February 2, 2004, page 7.

appropriately, coupled with the statistics showing an increase in the initiation rate from 2003 to 2004, indicate strengths in the CNP safety culture upon which we will continue to build.

Site Policy Promoting a SCWE at CNP

I&M policy on raising safety concerns is contained in PMI-2015, "Policy for Maintaining a Safety Conscious Work Environment." This policy sets forth I&M's expectations of an SCWE at CNP and the specific responsibilities for the various levels of plant personnel for accomplishing this expectation. The policy recognizes the clear relationship between an SCWE and safe operation. It outlines the duty of all personnel to promote an SCWE, and the existence of numerous ways by which a worker can raise, and obtain resolution of, his or her concerns. It expressly states that retaliation in any form will not be tolerated:

Essential to safe operation is a safety conscious work environment where all workers are free to raise concerns and question activities without fear of reprisals. AEP will not tolerate harassment or intimidation of, or retaliation or discrimination against an employee because the employee raises a safety concern.

All workers have a duty to maintain a safety conscious work environment within AEPNG by promoting a workplace environment in which employees are encouraged to raise concerns and where such concerns are promptly reviewed, given the proper priority based on their potential safety significance, and appropriately resolved with timely feedback to employees.

To foster a Safety Conscious Work Environment, AEP has established a variety of avenues by which workers may report and obtain resolution of safety concerns, including the Employee Concerns Program.

This policy is readily available to the workforce on the CNP intranet, as well as in hardcopy form.

I&M Communicates its Expectations for an SCWE to the CNP Workforce Through Various Channels

CNP senior management has reinforced I&M's SCWE policy and company expectations to CNP workers during frequent meetings held with supervisors and with the workforce. At several all hands meetings held this year, the Chief Nuclear Officer emphasized the importance of a strong nuclear safety culture and an SCWE, and encouraged employees to identify issues and pursue their appropriate resolution.

The CNP Recovery Plan includes steps directed at this important topic. The Recovery Plan actions included the dissemination of the "Principles for a Strong Nuclear Safety Culture" to CNP managers and supervisors. The ECP conducted SCWE update training that provided

factual examples of what occurs when workers suppress known safety issues or fail to utilize available resolution processes.

An employee's right to raise issues, the mechanisms available to do so, and I&M's zero tolerance policy regarding retaliation for reporting concerns are also a frequent subject of articles in the plant's newsletter, the Plan-It. Recent articles by the Site Vice-President address the eight principles of a strong nuclear safety culture, and emphasize management's commitment to them and their critical role in CNP's safety performance. SCWE topics are also frequently included on the plant's closed circuit television system, Plan-It Vision. The eight principles of a strong nuclear safety culture are:

- Everyone has a role in nuclear safety
- Leaders demonstrate commitment to safety
- Trust permeates the organization
- Decision-making reflects safety first
- Nuclear is recognized as unique
- A questioning attitude is cultivated
- Organizational learning is embraced
- Nuclear safety undergoes constant examination

SCWE Training Is Provided to All Plant Personnel

I&M further reinforces SCWE concepts and responsibilities through a number of training programs provided to the workforce. For example, the site Nuclear General Employee Training (NGET), provided to all workers seeking or having access to the plant, identifies and describes CNP's SCWE policy, reiterates I&M's strict prohibition of discrimination for raising safety or quality concerns, and presents the various mechanisms available to raise concerns. All personnel with site access must successfully complete NGET annually.

A large proportion of the CNP workforce has also attended training focused specifically on SCWE. This training, provided by the ECP, discusses the rights and obligations of all personnel to raise nuclear safety and quality concerns, and the multiple avenues for doing so, including the ECP. The training also presents workers with information concerning how to report concerns confidentially or anonymously.

CNP supervisors and managers also receive training on management's particular responsibilities in the promotion and maintenance of an SCWE. The majority of CNP supervisors and managers received this training as a stand-alone course. The training is conducted by the ECP and/or legal staff on an ongoing basis as a specific module during supervisory training for new supervisors. Included in this training is compliance with 10 CFR 50.7 and Section 211 of the Energy Reorganization Act, NRC expectations regarding SCWE, ways in which management personnel can encourage employees to raise concerns, and methods that have been effective for resolving concerns to the employees' satisfaction.

I&M's Employee Concerns Program

The CNP ECP is one of the options available to workers for raising and resolving concerns independent of line management. As such, it provides a safety net to workers who may not feel comfortable raising issues to their direct management. The ECP is widely publicized to the workforce and is highlighted in NGET and SCWE training, posters and pamphlets distributed throughout the plant, and in the Plan-It and on Plan-It Vision. The ECP conducts confidential investigations of concerns with the identities of individuals disclosed only on a need-to-know basis. The program provides feedback to the concerned individual. "Customer feedback forms" supplied to persons using the ECP allow an opportunity for the concerned individual to provide a candid evaluation of ECP's performance. To date, the vast majority of individuals that have completed a feedback form have expressed satisfaction with the ECP process.

The ECP is also sensitive to the potential that legitimate employment decisions could impact the willingness of workers to raise concerns. For this reason, the ECP is tasked with conducting targeted assessments of the work environment of particular workgroups where the potential for a chilling effect may exist.

I&M Contractor's Responsibilities for Maintaining a SCWE

I&M also requires that companies with whom it contracts for services at CNP be sensitive to SCWE issues and ensure that their employees working at CNP understand that they are free to raise concerns internally or to the NRC. This reaffirmation by contractor management supplements the message communicated to contractors in NGET and through the other media utilized at CNP.

Conclusion

We believe that an SCWE is well-established at CNP and that the actions discussed above have been effective in ensuring that the issuance of the ALJ's RDO has not negatively affected the willingness of plant employees to raise safety concerns. We will continue to monitor our employees and contractors to assess these SCWE indicators and take appropriate actions as needed to encourage the raising of safety concerns.