



Entergy Nuclear Operations, Inc.
Pilgrim Nuclear Power Station
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Michael A. Balduzzi
Site Vice President

November 18, 2004

U. S. Nuclear Regulatory Commission
Attention: Document Control Desk
Washington, DC 20555

SUBJECT: Pilgrim Nuclear Power Station
Entergy Nuclear Operations, Inc.
Docket No.: 50-293
License No.: DPR-35

Response to NRC October 20, 2004 Request for Chilling Effect Analysis

REFERENCE: NRC letter, S. J. Collins to M. A. Balduzzi, Requesting Information
Relating to Potential Chilling Effect, dated October 20, 2004.

LETTER NUMBER: 2.04.114

Dear Sir or Madam:

On October 20, 2004, the NRC requested that Entergy Nuclear Operations, Inc. (ENO) address whether actions by Williams Power Company (WPC), a former Pilgrim Nuclear Power Station (Pilgrim Station) by contractor in April 2003, may have had a chilling effect on other station or contractor personnel at Pilgrim Station. ENO believes that at Pilgrim Station, neither discrimination nor a chilling effect on raising concerns due to the perception of discrimination resulted from WPC's actions in April 2003. Therefore, ENO believes that there was no violation of 10 CFR 50.7 at Pilgrim Station.

Attachment 1 to this letter contains the results of our investigation.

Should you have any questions regarding this matter, please contact Stephen J. Bethay, Director, Nuclear Assessment, Pilgrim Station at (508) 830-7800.

There are no commitments contained in this letter.

I declare under penalty of perjury that the foregoing is true and correct. Executed on the 18th day of November 2004.

Respectfully submitted,

Michael A. Balduzzi
Site Vice President

MJG/dm

Attachment: 1. Response to NRC October 20, 2004 Request for Chilling Effect Analysis

ADD 1

**Entergy Nuclear Operations, Inc.
Pilgrim Nuclear Power Station**

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**cc: Mr. Samuel J. Collins
Regional Administrator
U.S. Nuclear Regulatory Commission
Region I
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King of Prussia, PA 19406-1415**

**Senior Resident Inspector
Pilgrim Nuclear Power Station**

**Mr. Robert Fretz, Project Manager
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Attachment 1 to PNPS Ltr. 02.04.114

Response to NRC October 20, 2004, Request for Chilling Effect Analysis

WPC provided contract craft labor to Pilgrim Station for a period that included the 2003 refueling outage. On January 1, 2004, as part of an ENO fleet consolidation of contractors, The Shaw Group (Shaw) replaced WPC as Pilgrim Station's contractor for craft labor.¹ The WPC incident noted in the NRC request as potentially forming the basis of a violation of 10 CFR 50.7 or chilling effect was the subject of a Pilgrim Station Employee Concerns Program (ECP) investigation conducted in April 2003.

1. Pilgrim Station's ECP Investigation

On April 30, 2003, ENO's Indian Point Energy Center's ECP Coordinator received a confidential concern telephonically alleging that a WPC supervisor at Pilgrim Station instructed the caller to disregard procedures and paperwork. Specifically, a former WPC pipe-fitter at Pilgrim Station alleged that after several WPC employees questioned the sufficiency of a work package for installing feedwater heater level switches, they were instructed by a WPC supervisor to "put them (the level switches) in anyway, we will take the CR² and deal with it later". Pilgrim Station's Employee Concerns Program commenced an investigation that same day (April 30, 2003).

Based upon interviews with personnel involved, Pilgrim Station's ECP investigation determined the following with respect to worker instructions. On April 29, 2003, two WPC supervisors led a meeting with several WPC pipe-fitters working on the feedwater heater level switches. The first supervisor (Supervisor 1) began the meeting with a critical discussion about the work group's productivity. Supervisor 1 was especially critical of the group's long lunches, excessive breaks, and work quality that often resulted in the need to re-perform work. In response to Supervisor 1's comments, several workers complained about what they characterized as "limited documentation that was available to support" the work packages. Supervisor 1 responded that they were to "put them (the level switches) in anyway, we will take the CR and deal with it later". Supervisor 1 also told the work group that if they didn't like the work rules that they could leave.

Supervisor 1's comments upset several of the WPC personnel in attendance. After observing this reaction, a second supervisor (Supervisor 2) sought to clarify Supervisor 1's comments by explaining to the work group that the job at hand was not safety-related and therefore they could make changes in the field and the paperwork would catch up. Several workers responded to Supervisor 2 that this was not consistent with work practices at other ENO sites. After the meeting concluded, four WPC employees requested and received a voluntary layoff.

The Pilgrim Station ECP investigation also included a review of the work package for the feedwater heater level switches [plant design change (PDC) 02-05], including field revision notices and administrative change notices. PDC 02-05 provided a sketch of the approximate configuration of the level switch headers. Fabrication details were left to the skill of the craft. The only installation details identified as critical were the dimensions of the level switch set-point. All other information was generic (e.g., use pipe class XX per Spec M-300; attempt to minimize threaded couplings). Pilgrim Station Quality Control (QC) inspection personnel confirmed this practice to be common for nonsafety-related work. As a result, the work package was generic and flexible. Contained within the work plan was a step to fabricate and install the level switch headers. There were hold points in this work plan for Engineering to verify the critical dimensions and for QC to conduct the required verification or inspection. In addition,

¹ The Wackenhut Corporation remains Pilgrim Station's security contractor.

² CR refers to a Condition Report or Condition Reporting that is part of Pilgrim Station's Corrective Action Program.

Pilgrim Station Engineering Management explained that it was customary to avoid giving too much installation detail; too much detail often resulted in revisions to a design package when the craft identified a different but equivalent way to conduct the work. This method avoids "tying the hands" of the installation crew while still identifying the critical parameters and documenting the "as-left" fabrication details.

The Pilgrim Station ECP investigation reached two conclusions. First, the work packages, which permitted flexibility to build as required, were appropriate for a nonsafety-related job. Second, the communication to the work group by Supervisor 1 failed to meet Pilgrim Station expectations for a Safety Conscious Work Environment because it did not promote a questioning attitude and failed to adequately address several employees' concerns about the work package. As a result of the Pilgrim Station investigation, Pilgrim Station initiated the following corrective actions:

- (1) Pilgrim Station notified WPC of its conclusion that a WPC supervisor inappropriately communicated work instructions to the work group and failed to effectively respond to worker questions about the installation details. Pilgrim Station required that WPC take appropriate corrective action. WPC counseled the two supervisors involved in the incident.
- (2) Pilgrim Station confirmed the quality of workmanship of the level switches by engineering verification.
- (3) The Pilgrim Station ECP Coordinator initiated a condition report to evaluate, in light of shared resources among ENO plants, whether work packages are consistent within the ENO fleet.

2. Chilling Effect Evaluation

Because WPC is no longer a contractor at Pilgrim Station, ENO chose the following interview protocol to determine whether or not the April 2003 incident negatively impacted the site work environment. Pilgrim Station's ECP Coordinator interviewed contract personnel currently on-site at Pilgrim. These individuals had worked for WPC at Pilgrim Station during the refueling outage in 2003 and had returned to work at Pilgrim Station for Shaw in support of recent physical security related modifications. It was believed that these individuals would most likely have knowledge of the April 2003 incident. The interview population included the current Shaw site manager, a Shaw supervisor, and fourteen Shaw craft workers.

All personnel interviewed expressed willingness to raise nuclear safety issues to their supervisors and chain of command. No individual reported having ever experienced a negative reaction from a supervisor or manager for raising nuclear safety issues. Nor did any individual know of any other employee who had experienced a negative reaction for raising nuclear safety issues. Indeed, interviewees believed uniformly that both ENO and Shaw receive nuclear safety concerns favorably at Pilgrim Station, and that their supervisors were responsive to their concerns.

Only one individual had knowledge concerning the April 2003 WPC incident. That individual had been a WPC pipe-fitter dayshift foreman during the 2003 refueling outage and learned of the incident from his counterpart on night shift during a turnover meeting the day after the incident. This individual disapproved of Supervisor 1's actions, but did not attribute such behavior to be representative of WPC. This individual also noted that one of the four WPC pipe-fitters who had requested a voluntary layoff was subsequently denied employment by WPC at the Seabrook Station. This individual ultimately returned to Pilgrim Station as a WPC contractor.

Review of Pilgrim Station Corrective Action Program (CAP) and ECP records confirm that contractor personnel identify and report issues. For example, contractor personnel in Security have used the Pilgrim Station CAP extensively, having written over 270 Conditions Reports (CRs) since January 1, 2003. In addition, despite not having been trained on the site's electronic reporting system (i.e. Condition Reporting), temporary craft personnel supporting outages or modifications routinely raise concerns to their foremen and supervisors resulting in CRs. Fourteen CRs have been written on issues identified by temporary workers at Pilgrim Station since August 24, 2004. Review of the ECP files demonstrates that contractors are aware of this avenue for reporting concerns and use the program. Contractor personnel contacted ECP on six occasions during 2003 and 2004. In each instance, ECP evaluated and successfully resolved these concerns.

Therefore, based on interviews of contractor personnel and a review of CAP and ECP records, ENO believes that the April 2003 WPC incident was isolated and did not result in any chilling effects on workers' willingness to identify and report concerns.

3. Clarification of OSHA Determination

The complainant's discrimination complaint against WPC involves alleged retaliation occurring at the Seabrook Nuclear Power Station. Pilgrim Station's involvement in the OSHA investigation consisted solely of a brief telephone conversation during which the Pilgrim Station ECP Coordinator confirmed to the OSHA investigator that the complainant engaged in protected activity while working for WPC at Pilgrim Station, in that he had questioned the sufficiency of the level switch work package and brought the matter to an ECP Coordinator's attention. OSHA neither requested nor received any Pilgrim Station records, including the ECP investigation report into the April 2003 WPC incident.

ENO recently received a copy of the September 8, 2004, OSHA determination. In its determination, OSHA concluded that, "Complainant . . . knew that he would be violating safety requirements if he built the parts not according to specifications . . . and along with three other members of the crew, took their layoff slips and left the site because they refused to work under conditions that they knew were illegal. . . . [Accordingly], . . . their refusal to continue to work under conditions by which they would have to violate safety rules and regulations . . . [amounted] to protected activity." OSHA Determination at 2. Apparently, OSHA's conclusion is based on the fact that the Pilgrim Station ECP investigation substantiated the complainant's concern. *Id.* ("The Employee Concerns Division of Entergy Nuclear Generation investigated the paperwork issue and found that [WPC supervisors] gave the pipe-fitters inappropriate guidance when they asked to crew to continue working without the correct blueprints.").

As discussed above, the Pilgrim Station ECP investigation did not substantiate that the work package for the level switch replacement job was inappropriate for a nonsafety-related job. Rather, the ECP investigation substantiated that the manner in which WPC supervisors responded to questions from WPC employees about the work package was inappropriate. OSHA therefore either misread the ECP close-out letter sent to the complainant (which ENO understands was provided to OSHA by that individual) or misunderstood the Pilgrim Station ECP Coordinator's telephone statement that the complainant had engaged in protected activity (consisting of questioning the sufficiency of the level switch work package and raising the concern an ECP Coordinator) while working as a WPC contractor at Pilgrim Station. There was nothing about the level switch work package that violated any NRC safety rule or regulation.

4. Safety Conscious Work Environment (SCWE) Initiatives at Pilgrim Station

ENO has a comprehensive fleet ECP policy that includes information on SCWE, which instructs all employees to raise nuclear safety concerns, and makes clear that retaliation will not be tolerated against an employee because the employee raised a concern. Pilgrim Station management takes a broad approach in implementing this policy with all employees working at the station. In addition to initial access training that describes the station's expectations for a SCWE, every ENO employee at Pilgrim Station receives training on promoting a SCWE. The employee module objectives include understanding the multiple avenues that exist for raising concern, and appreciating the components of a SCWE and why a SCWE is important. The supervisor module emphasizes responsibilities to promote a SCWE, how to detect and prevent discrimination, and how to effectively respond to employee concerns.

Contract organizations are required to promote a SCWE. This expectation is formalized in every service contract for companies providing workers at Pilgrim Station. Pilgrim Station management constantly reinforces its expectations for a SCWE.

Most recently, as part of the station's corrective actions to address the inattentive control room supervisor incident, the Pilgrim Station Site Vice President and General Manager conducted a series of site stand-down meetings with all station employees to discuss expectations for identifying and reporting concerns. These meetings emphasized the key role that each employee plays in identifying nuclear safety concerns and the multiple avenues that exist for reporting concerns, including the chain of command, any supervisor or manager, the ECP and the NRC. These meetings also emphasized that any behavior that discourages or punishes the reporting of concerns will not be tolerated.

The ECP at Pilgrim Station is a mature, trusted and understood alternative path for employees to raise concerns. The program is directed by an experienced individual whose technical and interpersonal skills have gained the trust and respect of the site's workforce. The ECP is highly visible through postings and all employees are briefed on the program during initial training. Recently, to ensure that Shaw personnel understood that the Pilgrim Station ECP was available to them (in addition to the Shaw ECP), the Pilgrim Station ECP Coordinator provided a briefing for onsite Shaw personnel that described Pilgrim Station's ECP and reinforced the multiple paths available for individuals to report concerns. As a result, the Pilgrim Station ECP is a well-known path for Pilgrim Station and contractor personnel to report concerns.

In sum, Pilgrim Station has a robust Safety Conscious Work Environment. Station management consistently and routinely reinforces its expectations that all employees are encouraged to identify and report nuclear safety concerns and that any discrimination for reporting concerns will not be tolerated.