

February 24, 2005

EA-01-082
EA-04-172

Mr. Dan Daniels, President
Williams Power Corporation
Williams Speciality Services
2076 West Park Place
Stone Mountain, Georgia 30087

SUBJECT: NOTICE OF VIOLATION
[OFFICE OF INVESTIGATIONS REPORTS NO. 3-2000-025 AND 3-2000-025S]

Dear Mr. Daniels:

This refers to the investigation conducted by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) into alleged employment discrimination, during March 2000, by the Williams Power Corporation (Williams Power), a contractor at the FirstEnergy Nuclear Operating Company's (FENOC) Perry and Davis-Besse Nuclear Power Plants. A summary of OI Report No. 3-2000-025, concerning apparent violations of 10 CFR 50.7, "Employee Protection," was provided to Williams Power on May 4, 2001. A predecisional enforcement conference (PEC) was held with FENOC and Williams Power at the NRC Region III office on September 26, 2001. Subsequent to the PEC, a supplemental investigation was conducted by OI (Report No. 3-2000-025S) and an apparent violation concerning the completeness and accuracy of information was identified during that investigation. The synopsis from the OI supplemental investigation report is enclosed. The NRC staff deferred processing this enforcement action until the U. S. Department of Justice (DOJ) completed its action in this matter. On July 22, 2004, the Site Superintendent for Williams Power appeared in the U.S. District Court, Northern District of Illinois, Eastern Division, and entered a plea of guilty to violating 18 USC 1001(a)(2), "Statements or Entries Generally," a felony, for the false information he provided to the NRC.

Based on OI Report No. 3-2000-025, information presented by representatives of FENOC and Williams Power at the PEC, and upon information provided to the NRC following the PEC, the NRC staff has concluded that a violation of 10 CFR 50.7 occurred at the Perry Nuclear Power Plant (Perry) (EA-01-082). Additional information was provided by the complainant in an undated letter (postmarked November 24, 2001); in letters dated January 16 and February 28, 2002, from FENOC; letters from Williams Power Corporation dated October 17, October 19, and November 13, 2001; and an October 12, 2001, letter from the former Site Superintendent for Williams Power at Perry. The NRC has also concluded that a violation of 10 CFR 50.5(a)(2) occurred on November 2, 2000, and September 26, 2001 (EA-04-172). This conclusion is based on information provided to the NRC by Williams Power Corporation following the PEC, information contained in OI Report No. 3-2000-025S, and the individual's felony conviction in U.S. District Court on July 22, 2004. The violations are fully described in the enclosed Notice of Violation (Notice).

As described in the enclosed Notice of Violation, three painters employed by Williams Power engaged in activities protected by 10 CFR 50.7. Immediately afterwards, the Site Superintendent for Williams Power at Perry threatened the painters with termination if they did not volunteer for a layoff. As a result, two painters were laid off and the third was forced to resign. The protected activities were a contributing factor to the threats to the three painters, the layoffs, and the forced resignation, employment actions adverse to the compensation, terms, conditions and privileges of the painters' employment. Therefore, the actions of the Site Superintendent caused FENOC and Williams Power to be in violation of 10 CFR 50.7. In assessing this violation, the NRC considered the Site Superintendent's position in the overall organization of the Williams Power Corporation. Therefore, this 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 (EA-01-082).

In addition, the Site Superintendent deliberately provided inaccurate information to OI during a November 2, 2000, interview and to NRC staff during the September 26, 2001, PEC by denying that he had: (1) preselected the three painters for layoff; (2) prepared any termination paychecks prior to asking the painters to volunteer for lay off; and (3) destroyed one of the checks. This information was material to the NRC because it was capable of influencing a decision as to whether a violation of 10 CFR 50.7 had occurred. Following the PEC, the Williams Power Assistant General Counsel notified the NRC of his discovery that a termination paycheck had been destroyed and OI initiated a supplemental investigation. The Site Superintendent admitted in a January 12, 2002, interview with OI that he had prepared termination paychecks prior to asking the painters to volunteer for layoff and that he had destroyed one check when one of the three painters did not volunteer for layoff. Therefore, the Site Superintendent placed both himself (IA 04-030) and the Williams Power Corporation (EA 04-172) in violation of 10 CFR 50.5(a)(2). Since incomplete and inaccurate information was provided in order to affect the potential outcome of an investigation and enforcement position, this violation is categorized in accordance with the Enforcement Policy at Severity Level III.

Therefore, to emphasize the importance of a workforce that is free of employment discrimination and the necessity for employees of Williams Power to act with integrity and communicate with candor to the NRC, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation.

Two related matters also require disposition. First, one painter who was laid off on March 9, 2000, by Williams Power at Perry was denied employment as a painter with Williams Power on March 17, 2000, at FENOC's Davis-Besse Nuclear Plant (Davis-Besse). Investigation by OI developed information indicating that the Production Manager for Williams Power at Davis-Besse may have discriminated against the painter because of the painter's earlier protected activities at Perry. At the September 26, 2001, PEC, representatives of FENOC and Williams Power presented information indicating that the local union had not referred the painter to Williams Power for employment at Davis-Besse. Other information presented by Williams Power indicated that the individual who Williams Power designated to be the Production Manager at Davis-Besse had not reported to that facility as of March 17, 2000, and thus could not have denied employment to the painter on March 17, 2000. Therefore, this

issue of potential employment discrimination at Davis-Besse is closed without further action (EA-01-091).

Second, the issues related to the Williams Power General Foreman's instruction to the painters to violate the licensee's painting procedure were identified to FENOC by the painters and the information was entered into the Perry corrective action system as Condition Report No. 00-752. No enforcement action is being taken for the issue concerning the General Foreman since the concerns were identified to the licensee, the information was entered into the corrective action system, and the matter was investigated by FENOC which led to employment action against the General Foreman. Other issues the painters brought to the attention of FENOC about the General Foreman concerned industrial safety. A FENOC investigation of the issues led to disciplinary action being taken against the General Foreman by Williams Power.

You are required to respond to this letter and should follow the instructions in the enclosed Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

The NRC has offered FENOC the opportunity to pursue resolution of the 10 CFR 50.7 violation with alternative dispute resolution (ADR). If FENOC elects to do so, Williams Power may also participate. Alternative dispute resolution is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC has decided to employ during a pilot program which is now in effect is mediation. Additional information concerning the NRC's pilot program is described in the enclosed brochure (NUREG/BR-0317) and can be obtained at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as an intake neutral. Please contact the ICR at (607) 255-1124 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosures 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. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential

commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Questions concerning this matter should be addressed to Kenneth Riemer, Chief, Plant Support Branch, who can be reached at (630) 829-9757.

Sincerely,

/RA/

James L. Caldwell
Regional Administrator

Dockets No. 50-346; 50-440
Licenses No. NPF-3; NPF-58

Enclosures:

1. Synopsis of OI Report 3-2001-025S
2. Notice of Violation
3. NUREG/BR-0317

cc w/encl:

The Honorable Dennis Kucinich
G. Leidich, President - FENOC
L. Myers, Chief Nuclear Operating Officer - FENOC
R. Anderson, Vice President - Nuclear, Perry
M. Bezilla, Vice President-Nuclear, Davis-Besse
J. Hagan, Senior Vice President Engineering and Services, FENOC
F. von Ahn, Plant Manager, Nuclear Power Plant Department
W. O'Malley, Manager, Maintenance Department
J. Lausberg, Manager, Regulatory Compliance
J. Messina, Director, Performance Improvement
T. Lentz, Director, Nuclear Engineering Department
M. O'Reilly, Attorney, First Energy
Public Utilities Commission of Ohio
Ohio State Liaison Officer
R. Owen, Ohio Department of Health
Plant Manager, Davis-Besse
Manager - Regulatory Compliance, Davis-Besse
President, Board of County Commissioners
of Lucas County
C. Koebel, President, Ottawa County Board of Commissioners
D. Lochbaum, Union Of Concerned Scientists
J. Riccio, Greenpeace
P. Gunter, N.I.R.S.

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J. Piccone, OSTP

C. Pederson, RIII

R. Caniano, RIII

M. Satorius, RIII

S. Reynolds, RIII

D. Holody, Enforcement Coordinator, RI

K. O'Brien, Enforcement Coordinator, RIII

G. Sanborn, Enforcement Coordinator, RIV

R. Franovich, Enforcement Coordinator, NRR

G. Longo, OGC

D. Starkey, OE

N. Hilton, OE

C. Weil, RIII

K. Riemer, RIII

Resident Inspector - Perry

Resident Inspector - Davis-Besse

R. Paul, RIII:OI

S. Kryk, RIII:OI

J. Strasma, RIII:PA

R. Lickus, RIII

J. Lynch, RIII

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¹ D. Starkey, OE, provided HQ concurrence by e-mail on February 22, 2005.

SYNOPSIS

This investigation was initiated on October 15, 2001, by the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations, Region III, to determine if a Williams Power Company Project Superintendent at the Perry Nuclear Power Plant made deliberate material false statement to the NRC.

Based upon the evidence developed, this investigation did substantiate that a Williams Power Company Project Superintendent made deliberate material false statements to the NRC.

NOTICE OF VIOLATION

Williams Power Corporation
Stone Mountain, Georgia

EA-01-082; EA-04-172

During NRC investigations completed on February 26, 2001, and February 25, 2002, violations of NRC requirements were identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violations are listed below:

- A. 10 CFR 50.7 prohibits, in part, discrimination by a Commission licensee or a licensee contractor against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to compensation, terms, conditions or privileges of employment. The protected activities are established in Section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act. Protected activities include providing information to a licensee or an employer about alleged violations of the Atomic Energy Act or Energy Reorganization Act.

Contrary to the above, in March 2000, the Site Superintendent for Williams Power Corporation (Williams Power), a contractor at the Perry Nuclear Power Plant (Perry), discriminated against painters employed by Williams Power for having engaged in protected activities. Specifically, three painters employed by Williams Power contacted a licensee Maintenance Supervisor on March 8, 2000, to discuss concerns about violations of licensee procedures by Williams Power. Condition Report No. 00-752 was prepared on March 9, 2000, based on the information the painters provided to the Maintenance Supervisor. On March 9, 2000, the painters met with the Perry Ombudsman to again discuss their concerns, including instructions from a Williams Power General Foreman that the painters were not to follow licensee procedures in preparing surfaces before applying paint in the Fuel Handling Building. Immediately following the painters' meeting with the Perry Ombudsman, the Site Superintendent for Williams Power told the painters they could volunteer for layoff or be terminated. As a result, two painters were laid off on March 9, 2000, and the third painter resigned on March 10, 2000. The painters' discussion with the FENOC Maintenance Supervisor and their meeting with the Perry Ombudsman were protected activities which contributed to the threat by the Williams Power Site Superintendent to layoff the painters and to the subsequent layoff of two painters and the resignation of the third painter.

This is a Severity Level III violation (Supplement VII) (EA-01-082).

- B. 10 CFR 50.5(a)(2) provides, in part, that a contractor of any licensee or an employee of a contractor of a licensee, who knowingly provides to any licensee any components, equipment, materials, or other goods or services that relate to a licensee's activities in 10 CFR Part 50, may not deliberately submit to the NRC information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

Contrary to the above, on November 2, 2000, and September 26, 2001, the Site Superintendent for the Williams Power Corporation at the Perry Nuclear Power Plant

deliberately provided materially inaccurate information to the NRC. Specifically, during a sworn transcribed interview with an NRC Office of Investigations Special Agent on November 2, 2000, and during a September 26, 2001, predecisional enforcement conference with the NRC staff, the Site Superintendent was questioned concerning a potential violation of 10 CFR 50.7 at the Perry Nuclear Power Plant. The Site Superintendent denied that he had preselected three painters for layoff, that he had prepared any termination paychecks before asking the painters to volunteer for a layoff, and that he had destroyed one of the termination paychecks. In fact, the Site Superintendent had preselected the three painters for layoff, had prepared termination paychecks prior to speaking to the painters about the layoff, and destroyed one termination paycheck when one of the painters did not volunteer for the layoff. This information was material to the NRC because it was capable of influencing a decision whether a violation of 10 CFR 50.7 had occurred.

This is a Severity Level III violation (Supplement VII) (EA-04-172).

Pursuant to the provisions of 10 CFR 2.201, Williams Power Corporation is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator and the Enforcement Officer, NRC Region III, 2443 Warrenville Road, Suite 210, Lisle, Illinois, and a copy to the NRC Resident Inspector at the Perry Nuclear Power Plant within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; (EA-01-082; EA-04-172)" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. Where good cause is shown, consideration will be given to extending the response time.

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response 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, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10

CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 24th day of February 2005