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PY-CEI/NRR-2872L

Frank S. Congel, Director
Office of Enforcement
United States Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Perry Nuclear Power Plant
Docket Number 50-440
License Number NPF-58

Subject: Reply to a Notice of Violation and Notice of Payment of Civil Penalty; EA-01-083

Dear Sir:

Pursuant to 10 CFR 2.201, enclosed is the response to the Notice of Violation and Proposed Imposition of Civil Penalty - \$55,000, issued to the FirstEnergy Nuclear Operating Company (FENOC) by the Nuclear Regulatory Commission on February 24, 2005. The violation was issued for discrimination by a contractor at the Perry Nuclear Power Plant. FENOC admits to this violation and agrees to the imposition of the civil penalty. An electronic funds transfer in the amount of \$55,000 was made on March 24, 2005.

There are no regulatory commitments contained in this submittal. Any actions discussed in this document that represent intended or planned actions, are described for the NRC's information, and are not regulatory commitments.

If you have any questions or require additional information, please contact Mr. Jeffrey J. Lausberg, Manager-Perry Regulatory Compliance, at (440) 280-5940.

Very truly yours,



Attachment

cc: NRC Region III Administrator
Enforcement Officer, USNRC Region III
NRC Senior Resident Inspector - PNPP
NRR Project Manager – PNPP

Reply to a Notice of Violation; EA-01-083

Restatement of the Violation

During an NRC investigation completed on February 26, 2001, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and associated civil penalty are set forth below:

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, and in violation of 10 CFR 50.7, 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 violation of licensee painting 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 8, 2000. On March 9, 2000, the three painters met with the Perry Ombudsman to discuss their concerns, including instructions of 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 their meeting with the Perry Ombudsman, the painters were told by the Site Superintendent for Williams Power at Perry that they could volunteer for lay off or be terminated. As a result, two painters were subsequently laid off on March 9, 2000, and the third painter resigned his employment with Williams Power on March 10, 2000. The painters' discussion with the FENOC Maintenance Supervisor and their meeting with the Ombudsman were protected activities which contributed to the threat by the Williams Power Site Superintendent, to the subsequent layoff of two painters, and to the resignation of the third painter.

This is a Severity Level III violation (Supplement VII).
Civil Penalty - \$55,000 (EA-01-083)

Admission or Denial of the Alleged Violation

FENOC admits to this violation. An electronic funds transfer in the amount of \$55,000 was made on March 24, 2005.

The Reason for the Violation

This violation was caused by the discriminatory actions of the Williams Power Corporation (WPC) Site Superintendent, a contractor for the FirstEnergy Nuclear Operating Company (FENOC) at the Perry Nuclear Power Plant (PNPP). These actions were taken against three WPC painters who had raised concerns about procedure violations and subsequently had discussions with the PNPP Ombudsman (the site Employee Concerns Program representative.) Two of the WPC painters were laid off by WPC the same day as their meeting with the Ombudsman, and the third resigned the next day.

FENOC recognizes and accepts responsibility for the actions of its contractor. Additionally, upon learning that the individuals who had participated in protected activities had been laid off or resigned, FENOC did not pursue additional follow-up actions to address this employment action taken by its contractor.

The violation occurred because FENOC personnel at PNPP did not successfully provide sufficient oversight to the employment actions of its contractors, and was not sufficiently responsive to the potential chilling effect of the contractor's actions towards individuals who had engaged in protected activities.

The Corrective Action Steps that have been Taken and the Results Achieved

During the Predecisional Enforcement Conference conducted on September 26, 2001, actions and corrective actions taken pertaining to the Safety Conscious Work Environment (SCWE) were presented by FENOC. The items listed below are from that presentation.

Prior to the WPC Project at Perry

- Initial issue of FENOC policies on Employee Protection and Employee Concerns, July 1999
- SCWE/Employee Protection training conducted for FENOC salaried employees, July 1999
- Perry Vice President met with supervisors and managers to emphasize SCWE expectations, November 9, 1999

During the Progress of the WPC Contract at Perry

- Perry Superintendent gave WPC contract orientation address and discussed SCWE and open door policy, late November 1999

- Perry Supervisor conducted a stand-down with painters and laborers regarding the open door policy, SCWE, and access to the Ombudsman and the NRC, mid-December 1999
- Updated the FENOC Employee Concerns Program, February 2000
- Perry site survey results indicated improving SCWE trends, March 2000
- Open door policy reflected in discussions between concerned individual, Perry Supervisor, and interviews with Perry Ombudsman, March 9, 2000
- Perry Superintendent conducted stand-down, including discussion of SCWE and chain of command, March 13, 2000
- Updated Perry specifications and contracts to include added reference to 10 CFR 50.7/SCWE for emphasis, April 2000

Subsequent to the WPC contract at Perry

- Supervisory continuing training was conducted, including SCWE, October 2000
- FENOC SCWE Policy Statement updated and re-issued, November 27, 2000
- Organization change established FENOC Director of Oversight and Process Improvement responsibility for Quality Assurance and Employee Concerns, January 2001
- Re-emphasized expectations, including SCWE, at all-hands pre-RFO8 meeting, January 16, 2001
- In-processing/outage training prior to RFO8 included SCWE discussion
- Contractor supervisor training prior to RFO8 included SCWE expectations for supervisors
- Maintenance/Modification and Integrated Outage contractors implemented their own SCWE programs prior to RFO8
- Pending outcome of investigation/evaluation of concerns, FENOC terminated WPC contract at Davis-Besse for Spring 2001 painting, May 10, 2001
- FENOC SCWE expectations and SCWE policies mailed to all FENOC contractors/subcontractors in a letter dated June 18, 2001
- FirstEnergy CEO and FENOC President met with FENOC Ombudsmen to conduct annual review of Employee Concerns Program performance, June 19, 2001
- Supervisory Continuing Training emphasized workplace professionalism, including 10 CFR 50.7/SCWE, July-August 2001
- General population training conducted to raise sensitivity to harassment, July-August 2001
- 2001 site survey results identified positive improvement regarding issue identification

The Corrective Action Steps Taken to Avoid Further Violations

The presentation during the Predecisional Enforcement Conference held on September 26, 2001, also included a discussion of SCWE initiatives planned and in progress. The items listed below are from that presentation, updated with the current status.

SCWE Initiatives Planned and In Progress

- Adoption of common FENOC specification and contract wording for Employee Protection/SCWE requirements and expectations, actions completed September 17, 2001

- Update of the bid evaluation process to include consideration of prospective contractor SCWE performance, actions completed September 18, 2001
 - Include in standard specification
 - Evaluate SCWE performance/emphasis
- Updated specifications for maintenance/modification, integrated outage, and engineering services contractors to require 10 CFR 50.7/SCWE program and specified point of contact, actions completed January 8, 2002
- SCWE Sensitivity training (developed and implemented in 2002, in preparation for RFO9)
 - Temporary Supervisors and Contractor Oversight
 - Project Managers
- Continued improvements to the Ombudsman/Employee Concerns Program
 - Oversight and Process Improvement Department business plan goals for Ombudsman job description and training (the Perry Ombudsman completed the Ombudsman 101 training on 10/24/01, and completed the Ombudsman Workshop Advanced Series course on Advanced Communication Techniques on 10/21/02)

Since nearly three and a half years have elapsed since the Predecisional Enforcement Conference (and nearly five years since the violation occurred), it is appropriate to identify a number of additional actions that have been taken by FENOC to foster continuous improvement of the SCWE. For information, these are described below:

- The Director of Oversight and Process Improvement position was elevated to Vice President, Oversight – May 2002
- A more structured Employee Concerns Program (ECP) replaced the Ombudsman program, which more clearly described the scope to include contractor employees – December 2002
- FENOC ECP personnel were trained on detecting and preventing retaliation – February 2003
- FENOC ECP personnel were trained on investigation techniques through the Employee Concerns Program Forum training academy – March 2003
- The Safety Conscious Work Environment Review Team (SCWERT) was established across the FENOC fleet
- A FENOC SCWE survey and Safety Culture assessment was completed with challenge areas addressed in the corrective action program – December 2003
- A FENOC Employee Concerns Program informational web page was created for general employee access including links to ECP performance indicators – 2004
- A periodic SCWE survey was completed – December 2004
- An Independent Safety Culture assessment was completed by the Human Performance Analysis Corporation – December 2004

The Date When Full Compliance will be achieved

Full compliance was achieved by or before May 10, 2001, with the termination by FENOC of the WPC scheduled painting project (and contract) on May 10, 2001.

Conclusion

FENOC has taken significant corrective actions with respect to the specific violation associated with the WPC personnel. FENOC recognizes the importance of demonstrating its commitment to an effective Safety Conscious Work Environment and compliance with 10 CFR 50.7. FENOC continues to monitor the effectiveness of its Employee Concerns Program as well as reinforce the expectations, to both employees and employees of contractors, for maintaining an environment free from any fear of retaliation or retribution as a result of raising safety concerns.