



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, DC 20555 - 0001**

May 16, 2005

EA-05-098

Mr. Michael Kansler  
President  
Entergy Nuclear Operations, Inc.  
440 Hamilton Avenue  
White Plains, NY 10601

**SUBJECT:** ALLEGED DISCRIMINATION (U.S. Department of Labor, Office of Administrative Law Judges Case No. 2003-ERA-00022)

Dear Mr. Kansler:

On March 3, 2005, the U.S. Department of Labor (DOL), Office of Administrative Law Judges (ALJ) concluded in its Recommended Decision and Order (Case No. 2003-ERA-00022) that Entergy Nuclear Operations, Inc. (Entergy) discriminated against a former employee for raising nuclear safety issues at the James A. Fitzpatrick Nuclear Power Plant (FitzPatrick). Entergy has appealed the ALJ decision to the DOL Administrative Review Board (ARB), and that appeal is pending.

The U.S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI), had conducted an investigation into this matter (OI Report 1-2003-034). Based on the information obtained in the OI investigation, the NRC did not substantiate that the former employee was discriminated against for raising safety concerns, and determined that insufficient evidence existed to conclude that a violation of Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.7, "Employee Protection," occurred. We have reviewed the ALJ Decision, and as is our normal practice, we will monitor the DOL ARB proceedings to determine whether or not revisiting this matter is warranted.

We recognize that you may not believe that unlawful discrimination has occurred. However, the NRC is concerned that, because of the ALJ decision, there exists the potential for a chilling effect on the safety conscious work environment at the FitzPatrick facility. Specifically, our concern is that FitzPatrick employees could be reluctant to identify or raise potential safety concerns for fear of similar retaliation. Therefore, the NRC is requesting that Entergy inform the NRC of any actions it has taken, is taking, or plans to take to prevent this event from having a negative effect on the willingness of all FitzPatrick employees to raise safety concerns. Please provide your written response to me at U.S. Nuclear Regulatory Commission, Mail Stop O-14E1, 11555 Rockville, MD 20852, within 30 days of the date of this letter. After reviewing your response, the NRC will determine whether any further action is warranted at this time.

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.

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For questions concerning this letter, please contact Mr. Robert Fretz, NRC, Office of Enforcement at 301-415-1980 or via e-mail at [rxl@nrc.gov](mailto:rxl@nrc.gov).

Sincerely,

**/RA/**

Frank J. Congel, Director  
Office of Enforcement

Docket No.: 50-333

License No.: DPR-59

cc: T. Sullivan, Site Vice President

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Sincerely,

**/RA/**

Frank J. Congel, Director  
Office of Enforcement

Docket No.: 50-333

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cc: T. Sullivan, Site Vice President

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