

January 4, 2006

RI-2004-A-0024

Mr. Fred Dacimo  
Site Vice President  
Entergy Nuclear Operations, Inc.  
Indian Point Energy Center  
295 Broadway, Suite 1  
P.O. Box 249  
Buchanan, NY 10511-0249

Subject: NRC Office of Investigations (OI) Case 1-2004-015

Dear Mr. Dacimo:

On March 18, 2004, the Region I Field Office of the NRC Office of Investigations (OI) initiated an investigation (Case No. 1-2004-015) to determine if a former employee at the Indian Point Energy Center was discriminated against for raising safety concerns to Entergy management and to the Employee Concerns Program (ECP). The former employee believed that he/she was denied a Voluntary Severance Package, replaced as a manager and transferred to a minor position in the organization, and that his/her retirement annuity benefit was calculated inaccurately, in retaliation for raising safety concerns about a software conversion related to a wire/cable database.

From the evidence developed during the investigation, OI did not substantiate that the former employee was not considered for the VSP because he/she raised safety concerns. The VSP planning documents obtained during the investigation consistently identified the former employee's position as being exempt from consideration for the VSP. Entergy personnel involved in the implementation of the VSP program affirmed that the program was based on position and work load in an effort to reduce staffing levels, and that raising concerns had no connection to VSP eligibility. OI did not substantiate that the former employee was moved to a different job for raising safety concerns. Efforts to reorganize the former employee's work group were known, and it was determined that the identification of the former employee's replacement occurred weeks prior to the former employee's reporting of the concern identified as his/her protected activity. The former employee received no change in pay, or in job title, but was informed that he/she would no longer be a supervisor as part of the reorganization. Also, OI did not substantiate that the former employee's retirement annuity was reduced for raising safety concerns. The issue-in-question was determined to be a pension plan integration matter as a result of Entergy's purchase of Indian Point 3 from the New York Power Authority. Whether or not a former employee raised safety concerns played no part in the calculation of pension benefits.

The NRC also reviewed the results of a U. S. Department of Labor (DOL), Occupational Safety and Health Administration (OSHA) review of the same matter. In a finding dated October 1, 2004, the Regional Administrator of the DOL/OSHA Region 2 Office in New York, New York

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concluded that the former employee failed to show that he/she was denied eligibility for the VSP, that he/she was transferred from your managerial position to a lesser position, and that his/her retirement annuity benefit was reduced in retaliation for complaining to Entergy management and the ECP . The NRC has reviewed the DOL/OSHA finding and finds no reason to alter the conclusions of the OI investigation with regard this matter. The DOL/OSHA Regional Administrator's finding was appealed by the former employee to a DOL Administrative Law Judge (ALJ). However, prior to a decision being reached by the DOL/ALJ, the former employee reached a mutually agreeable settlement with Entergy.

Based on NRC staff review of the findings of OI Case No. 1-2004-015, and of the DOL/OSHA Regional Administrator's finding, the NRC was unable to substantiate that the former employee was discriminated against by Entergy for raising safety concerns.

Please note that final NRC investigatory documents, such as the OI report described above, may be made available to the public under the Freedom of Information Act (FOIA) subject to redaction of information appropriate under the FOIA. Requests under the FOIA should be made in accordance with 10 CFR 9.23, Requests for Records, a copy of which is enclosed for your information.

Should you have any questions regarding this letter, please feel free to contact Mr. Brian McDermott of my staff at (610) 337-5233.

Sincerely,

/RA/ D Lew for

Brian E. Holian, Director  
Division of Reactor Projects

Enclosure: 10 CFR 9.23, Requests for Records

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