August 22, 2006

EA-06-178

Mr. Dennis L. Koehl
Site Vice President
Point Beach Nuclear Plant
Nuclear Management Company, LLC
6590 Nuclear Road
Two Rivers, WI 54241-9516

SUBJECT: APPARENT VIOLATION OF EMPLOYEE PROTECTION REQUIREMENTS (OFFICE OF INVESTIGATIONS REPORT NO. 3-2005-010)

Dear Mr. Koehl:

This letter refers to an investigation conducted at the Nuclear Management Company, LLC (NMC) Point Beach Nuclear Plant (Point Beach) by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI). The purpose of the investigation was to determine whether a senior reactor operator (SRO) at Point Beach was the subject of employment discrimination in violation of 10 CFR 50.7, "Employee protection." The OI investigation substantiated that the SRO was discriminated against, in part, by Point Beach management for identifying potential technical specification violations in a corrective action program (CAP) document concerning deficiencies in a service water operation procedure. This issue was discussed with you during an August 22, 2006, telephone conversation. The enclosed Report of Investigation (ROI) No. 3-2005-010 provides an overview of the evidence gathered during this investigation. Further release of this information is not permitted.

Based on the staff's review of the OI investigation, an apparent violation of 10 CFR 50.7 was identified and is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy can be found on the NRC's Web site at www.nrc.gov; select ***What We Do, Enforcement***, then ***Enforcement Policy***. The apparent violation involves a SRO who received a Level "C" (unsatisfactory or below expectations) rating for his 2004 performance management plan (PMP) evaluation and who was later placed on a performance improvement plan (PIP) which adversely impacted his annual merit pay increase. The investigation revealed that the SRO was subjected to these adverse employment actions at least, in part, because the SRO had filed CAP [number redacted], which was viewed as "emotional."

Since the NRC has not made a final determination in this matter, no Notice of Violation is being issued at this time. In addition, please be advised that the number and characterization of the apparent violation(s) may change as a result of further NRC review.

Before the NRC makes its enforcement decision, we are providing you an opportunity to either: (1) respond to the apparent violation addressed in the OI investigation within 30 days of the date of this letter, (2) request to participate in a closed predecisional enforcement conference (PEC), or (3) request to participate in an alternative dispute resolution (ADR) session. The various

options are discussed in the paragraphs that follow. Please contact Mr. Russell Arrighi, Senior Enforcement Specialist, Office of Enforcement, at (301) 415-0205 or via e-mail at rja1@nrc.gov, within 7 days of the date of this letter to notify the NRC of your intended response.

If you choose to provide a written response, it should be clearly marked as a "Response to An Apparent Violation(s); EA-06-178" and should include for the apparent violation: (1) the reason for the apparent violation, or, if contested, the basis for disputing the apparent violation, (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. If an adequate response is not received within the time specified or an extension of time has not been granted by the NRC, the NRC will proceed with its enforcement decision or schedule a predecisional enforcement conference.

The purpose of the PEC would be to obtain information to assist the NRC in making an enforcement decision. This may include information to determine whether a violation occurred, information to determine the significance of a violation, information related to the identification of a violation, and information related to any corrective actions taken or planned. The conference would provide an opportunity for you to give your perspective on these matters and any other information that you believe the NRC should take into consideration in making an enforcement decision. A PEC does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken.

The NRC's Enforcement Policy permits the individual who was the subject of the alleged employment discrimination to participate in the conference. Accordingly, the SRO would be invited to attend the PEC. The SRO may participate by observing the conference and, following the presentation by NMC, may, if desired, present his/her views on why he (she) believes the discrimination occurred and comment on the NMC presentation. Representatives of NMC would then be afforded an opportunity to respond and the NRC may ask some clarifying questions. Under no circumstances would the NRC staff permit NMC or the SRO to cross-examine or question each other.

Instead of a PEC, you may request ADR with the NRC. ADR 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 ICR at 877-733-9415 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR.

Enclosed is a redacted copy of OI Report Number 3-2005-010. The OI report provides an overview of the evidence gathered during this investigation. Portions of the OI report have been redacted, but the substantive issues related to this case remain. The OI report is only being provided to NMC at this time. After a full review of the circumstances, the NRC may conclude that no enforcement action is warranted. Therefore, we request that you not make

the OI report available to the general public. If a PEC is held, the other PEC participants will be sent a copy of the redacted OI report.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, without the enclosures, and your response (if you choose to provide one) 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.

Sincerely,

/RA/

James Luehman, Deputy Director
Office of Enforcement

Docket Nos. 50-266; 50-301
License Nos. DPR-24; DPR-27

Enclosures:
1. Redacted Copy of the Office of Investigations Report No. 3-2005-010
   (**EXEMPT FROM PUBLIC DISCLOSURE**)
2. NUREG/BR-0317 Post-Investigation ADR Program

cc w/out encl: F. Kuester, President and Chief
Executive Officer, We Generation
D. Cooper, Senior Vice President, Group Operations
J. McCarthy, Site Director of Operations
D. Weaver, Nuclear Asset Manager
Plant Manager
Regulatory Affairs Manager
Training Manager
Site Assessment Manager
Site Engineering Director
Emergency Planning Manager
J. Rogoff, Vice President, Counsel & Secretary
K. Duveneck, Town Chairman
Town of Two Creeks
Chairperson
Public Service Commission of Wisconsin
J. Kitsembel, Electric Division
Public Service Commission of Wisconsin
State Liaison Officer

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OFFICE	OE:ES		OGC		OE:DD			
NAME	RArrighi		GLongo		JLuehman			
DATE	08/14/06		08/14/06		08/22/06			

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Enclosure 1

Redacted Copy of the Office of Investigations Report No. 3-2005-010

ML

Enclosure 2

NUREG/BR-0317 Post-Investigation ADR Program