

November 19, 2007

EA 07-279

Mr. David A. Christian
President and Chief
Nuclear Officer
Innsbrook Technical Center
5000 Dominion Boulevard
Glen Allen, VA 23060-6711

SUBJECT: EXERCISE OF DISCRETION, DOMINION ENERGY KEWAUNEE, INC.,
KEWAUNEE POWER STATION
(OFFICE OF INVESTIGATIONS REPORT 3-2007-008)

Dear Mr. Christian:

This letter refers to an investigation conducted by the Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) at the Dominion Energy Kewaunee, Inc. (DEK) Kewaunee Power Station. The purpose of the investigation was to determine, in part, if a former contract laborer with the Atlantic Group (now Day and Zimmerman) was the subject of employment discrimination in violation of 10 CFR 50.7, "Employee protection." Based on its investigation, OI substantiated that the contract laborer was discriminated against by DEK for raising a concern regarding a potential lapse in coverage for a tornado watch. The discriminatory act was the contract foreman issuing a written warning to the contract laborer on October 5, 2006.

Based on the staff's review of the OI investigation, the NRC identified a violation of 10 CFR 50.7 which was 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 **About NRC, Organization and Functions, Office of Enforcement, About Enforcement**, then **Enforcement Policy** and select **(Enforcement Policy)**. The staff did not find that the actions of the contract foreman were a deliberate effort to violate NRC regulations. Rather, the foreman failed to realize that the question raised by the laborer was a protected activity.

Although violations of 10 CFR 50.7 are of concern to the NRC because they create the potential for deterring employees from raising safety concerns, the NRC recognizes that DEK identified this matter and subsequently took significant action to reverse the discrimination so as to maintain a climate where employees feel free to raise safety concerns. These actions included: (1) removing the written warning from the contract laborer's personnel file; (2) counseling the contract foreman; (3) providing training to other Atlantic Group supervisory personnel on safety conscious work environment (SCWE); and (4) holding meetings and issuing a memorandum to all Atlantic Group employees working at Kewaunee about their company's policy and program regarding avenues available to personnel for raising safety concerns.

After careful consideration of all the factors in this case, the NRC decided to refrain from issuing a Notice of Violation or a proposed civil penalty after considering the guidance in Section VII.B.5 of the NRC Enforcement Policy. Exercising discretion and not taking enforcement in this case is appropriate because: (1) the discrimination was not the result of the acts of any individual above a first line supervisor; (2) you identified the discriminatory actions without any NRC or Department of Labor intervention, and (3) you took prompt, comprehensive and effective corrective action to address both the particular situation and the overall work environment for raising concerns.

Although the NRC has determined that enforcement action is not warranted in this case, any similar violations in the future may result in significant action.

You are not required to respond to this letter; however, if you choose to provide one your response should not, to the extent possible, include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. 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>.

Sincerely,

/RA/

Cynthia A. Carpenter, Director
Office of Enforcement

Docket No. 50-305
License No. DPR-43

cc: S. Scace, Site Vice President
C. Funderburk, Director, Nuclear Licensing
and Operations Support
T. Breene, Manager, Nuclear Licensing
L. Cuoco, Esq., Senior Counsel
D. Zellner, Chairman, Town of Carlton
J. Kitsembel, Public Service Commission of Wisconsin
State Liaison Officer, State of Wisconsin

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