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FACIL: 50-331 Duane Arnold Energy Center, Iowa Electric Light & Pow 05000331
AUTH. NAME AUTHOR AFFILIATION
MCGAUGHY, R.W. Iowa Electric Light & Power Co. *See Rpt.*
RECIP. NAME RECIPIENT AFFILIATION
DAVIS, A.B. Region 3 (Post 820201)

SUBJECT: Responds to NRC 910114 ltr re complaint per Energy
Reorganization Act made to Dept of Labor in Nov 1989 by
contract employee. Encl withheld.

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Iowa Electric Light and Power Company

February 13, 1991

RICHARD W. McGAUGHY
VICE PRESIDENT, PRODUCTION

NG-91-0369

Mr. A. Bert Davis
Regional Administrator
Region III
U. S. Nuclear Regulatory Commission
799 Roosevelt Road
Glen Ellyn, IL 60137

Subject: Duane Arnold Energy Center
Docket No.: 50-331
Op. License No: DPR-49
Whistleblower Complaint
Reference: Letter from A. B. Davis, NRC to L. Liu, Iowa Electric
dated January 14, 1991
File: A-103, A-205d

Dear Mr. Davis:

This is in response to your letter of January 14, 1991, concerning a complaint pursuant to the Energy Reorganization Act made to the U.S. Department of Labor in November 1989 by an employee of Lumbermens Mutual Casualty Company, then a contractor of the Iowa Electric Light and Power Company at the Duane Arnold Energy Center. You requested a response which:

1. Provides the basis for the employment action regarding the former employee and includes a copy of any investigation reports you have regarding the circumstances of the action; and
2. Describes the actions, if any, taken or planned to assure that this employment action does not have a chilling effect in discouraging other licensee or contractor employees from raising perceived safety concerns.

Compliant and DOL Proceeding

The complainant (hereinafter referred to as Mr. X) alleged that:

As a direct and proximate result of the complainant's refusal to sign an unqualified certification Form NIS-2 09-89-26 concerning testing of certain piping, Iowa Electric called for the firing and removal of the complainant from the job of inspector at the plant and threatened the complainant's employer . . . with cancellation of the insurance contract between Iowa Electric and Lumbermens.

A copy of the complaint is attached (Attachment 1). It is totally without foundation.

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The District Director of the Department of Labor's Employment Standards Administration dismissed the complaint by letter dated December 14, 1989, on the grounds that the complaint had not been filed in a timely manner. Mr. X requested a hearing, which was held before an administrative law judge on December 28, 1989. The next day the judge issued a "First Procedural Order," announcing that he would rule on the timeliness issue by January 10, 1990, and directing the District Director "to reopen his investigation into the merits of this claim and to complete his investigation and render his conclusion by January 10, 1990." The District Director responded on January 8, 1990, declining "to begin the investigation which the Court has ordered him to conduct."

On January 9, 1990, the administrative law judge issued the Recommended Decision and Order in this proceeding which stated as follows:

It is recommended that the complaint of Mr. X under the Energy Reorganization Act filed on November 14, 1989 be dismissed because it was not timely filed.

Meanwhile, Lumbermens had advised Iowa Electric by letter dated January 4, 1990, that it would "disengage from the nuclear inspection line of activity" and was giving notice of its intention to terminate its contract with Iowa Electric effective 60 days after January 5, 1990. The contractual relationship between Lumbermens and Iowa Electric and the assignment of Mr. X to the DAEC facility continued until March 5, 1990.

Mr. X of course had the right to appeal the decision of the administrative law judge to the Secretary of Labor. This would have entailed additional expense for all parties without offering significant potential benefits for Mr. X in light of Lumbermens decision to leave "the nuclear inspection line of activity." The parties therefore decided to compromise, settle and resolve the dispute with payment of a small amount to Mr. X which was sufficient to pay his legal fees. This was done by means of an agreement executed in January, 1991 which recites that it "does not constitute an admission by Lumbermens and/or IOWA ELECTRIC that any action taken with respect to Mr. X was wrongful, unlawful, or in violation of any statutory provision." The Secretary of Labor approved the settlement and dismissed the case by order dated March 14, 1990.

The Facts Concerning the Subject of the Complaint

I am enclosing (Attachment 2) the document filed with the Department of Labor by Iowa Electric on December 7, 1989, which sets out our understanding of the facts which gave rise to the complaint filed by Mr. X. An internal company memorandum of November 28, 1989, concerning a review following receipt of the complaint is also enclosed (Attachment 3). The facts may be summarized as follows:

Iowa Electric had contracted with Lumbermens to serve as the authorized inspection agency at DAEC on behalf of American Nuclear Insurers (ANI). Mr. X, an employee of Lumbermens, served as the Authorized Inspector/Authorized Nuclear Inservice Inspector (AI/ANII) at DAEC. As is explained in detail in Attachment 2, disagreements arose between Mr. X and Iowa Electric personnel from time to time regarding interpretation of the ASME Boiler and Pressure Vessel

Code applicable to DAEC. As you know, the Code is a general document intended as a guide to good practice and prepared without specific reference to the DAEC or even to boiling water reactors. Nevertheless, Mr. X tended toward literal interpretations of the Code which were, in our view, unnecessary or inappropriate given the particular features of DAEC. In addition, Mr. X's manner of presenting his views and dealing with Iowa Electric personnel was not professional and created great friction.

The event upon which Mr. X apparently based his complaint occurred in December 1988. A section of piping had been replaced during a refueling outage and the Code required hydrostatic testing of the line. The Code-specified pressure was only three psig below the lowest setting of the main steam isolation valves. There was concern that, if the valves lifted during testing, equipment might be damaged and/or personnel exposed to unacceptable levels of radiation. Iowa Electric personnel therefore developed an alternative plan for testing the line (at slightly lower pressure) and prepared the technical justification to support that plan.

Mr. X refused to accept the plan for testing which had been prepared, declined to listen to the explanations offered by DAEC personnel, and refused to sign the Form NIS-2 09-89-26 regarding the pipe replacement. Iowa Electric explained the situation to the NRC inspector, an expert in the field of nondestructive testing, who inspected the pipe repair and reviewed the technical justification prepared by Iowa Electric. The inspector agreed that the company's action was appropriate and suggested that a Request for Relief be submitted to the agency. This was done on September 18, 1989. In a later telephone conversation, Mr. X's supervisor indicated to IE's Manager of Corporate Quality Assurance that Lumbermens contemplated requiring that Mr. X sign the certification referred to above. The QA Manager urged that no such action be taken.

The event described above was particularly disruptive because it occurred at the end of a lengthy refueling outage when plant personnel who were trying to resume operation had to deal with an inspector who adopted an unnecessarily rigid position and was abrasive in asserting it. It prompted Iowa Electric's QA Manager to ask Mr. X's supervisors early in 1989 whether Lumbermens had a practice of rotating its inspectors' assignments.

In August 1989 Iowa Electric management met to consider the possibility of seeking new proposals for the contract for an authorized nuclear inspector. Another insurance company was asked to make a presentation. Lumbermens apparently learned of these efforts through an inquiry made by the other company. Lumbermens then asked for, and received, permission to make a presentation to Iowa Electric. As of November 17, 1989, when Iowa Electric learned of the complaint filed by Mr. X, Iowa Electric had not decided to select a new contractor and had not told Lumbermens that its contract would be terminated.

According to documents furnished by Mr. X with his complaint to the DOL, on September 14, 1989, his supervisor offered him the opportunity to transfer to another nuclear generating station. Mr. X was advised that, if he did not accept the transfer offer, he could remain at DAEC until December 31, 1989, when an effort to find a job elsewhere within his department would be made. If no

other positions were available, his position would be eliminated effective January 12, 1990.

Mr. X, apparently declined the offer in a conversation with his supervisor on September 22, 1989, and elected to remain at DAEC until December 31. Lumbermens reiterated the offer to Mr. X on October 10; Mr. X rejected it again. At the DOL hearing, Mr. X testified that his supervisor had called him on December 20, 1989, and stated that he would be retained at DAEC for some unspecified period of time beyond December 31. Presumably that call was prompted by Lumbermens decision to withdraw from the nuclear inspection business, a decision which was conveyed to Iowa Electric by letter of January 4, 1990. The absence of a "chilling effect" may be exemplified by the fact that Mr. X attempted to gain employment with Iowa Electric after his dismissal from Lumbermens.

It is clear that Iowa Electric management was dissatisfied with Mr. X but that the dissatisfaction did not stem from his engaging in any "protected activities" as defined in 10 C.F.R. § 50.7.

Notice to Employees

Iowa Electric has adopted a company policy which prohibits harassment and intimidation of its employees and those of its contractors and encourages employees to advise the company or the Nuclear Regulatory Commission of any safety concerns which they have. Notices of this policy are posted in the Duane Arnold Energy Center (DAEC) and distributed to all personnel. Several examples of letters on this subject sent to employees in the past by DAEC management and corporate officers are enclosed (Attachments 4, 5, 6 and 7). NRC Form 3 is also posted throughout the plant; it provides information concerning access to the NRC concerning, inter alia, safety matters. Every person to whom a DAEC badge is issued is required to attend General Employee Training (GET). As part of that training, the provisions of 10 C.F.R. § 50.7 are explained and discussed. Badged personnel attend refresher GET sessions annually. An excerpt from our GET materials is enclosed (Attachment 8).

Since receiving your letter of January 14, 1991, we have reviewed the events of which Mr. X complained, the fact that he complained, and the replacement of Lumbermens Casualty as contractor with a view to deciding whether it is likely that others at the plant perceived these events as involving discrimination against Mr. X because he had engaged in protected activities. We have concluded that this possibility is very remote although it cannot be entirely discounted. Those at DAEC who had occasion to work with Mr. X were only too aware of the difficulties which arose in working with him. They were also generally informed of the facts surrounding the event which Mr. X cited in his complaint--i.e., his refusal in late 1988 to sign a certification--and recognized that Iowa Electric's actions in this matter adequately protected public health and safety and that any questions had been resolved satisfactorily with the NRC.

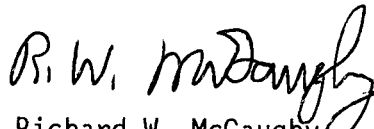
Given these facts, Iowa Electric took no further action to assure that neither the event nor the complaint had a "chilling effect." However, in light of your letter of January 14, we have reexamined our practice in this area and decided that henceforth company management will periodically remind its nuclear employees and those of its contractors that we encourage them to inform us or

Mr. Davis
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the NRC of any safety concerns which they may have. We will reiterate that corporate policy and NRC regulations prohibit the taking of discriminatory action against persons who make their safety concerns known (or engage in any "protected activities" as defined in the statute) and that we intend to assure compliance with this policy and the regulatory requirements. The next such reminder will be issued during 1991. We plan to issue such documents annually in the future. Of course, if events should dictate other-than-routine communication with employees on this subject, we will undertake same.

The attached documents identify by name the person who filed the complaint with DOL. We know of no reason to make that information public and therefore suggest that you may wish to remove the attachments before sending this letter to the Public document Room.

Very truly yours,



Richard W. McGaughy
Vice President, Production

RWM/KS/pjv+

- Attachments:
- 1) Complaint to US DOL, November 17, 1989
 - 2) Letter from Cohen to Lammers, December 7, 1989
 - 3) Memo from Salmon to Hannen, November 28, 1989
 - 4) Policy Statement from Mineck, October 11, 1990
 - 5) Policy Statement from Mineck, February 12, 1990
 - 6) Policy Statement from Hannen, April 21, 1989
 - 7) Policy Statement from Rothert, September 25, 1987
 - 8) Excerpt from General Employee Training, R8, 6/13/90

cc: R. Salmon
L. Liu w/o
L. Root w/o
D. Mineck w/o
K. Shea (N & H)
J. Cohen
USNRC Document Control Desk (original)