



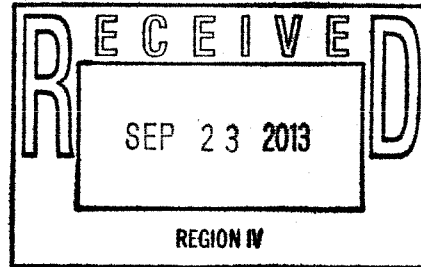
**ENERCON**

*Excellence—Every project. Every day.*

September 18, 2013

JDR13-019

Mr. Steven A. Reynolds  
Acting Regional Administrator  
United States Nuclear Regulatory Commission  
Region IV  
1600 East Lamar Blvd.  
Arlington, Texas 76011-4511



RE: NRC August 19, 2013 Letter Requesting Response Regarding OSHA Case No. 7-5880-12-070 and Chilling Effect (EA-13-153)


Dear Mr. Reynolds,

This letter serves as the response of Enercon Services, Inc. (ENERCON) to the referenced August 19, 2013 correspondence of the Nuclear Regulatory Commission. The NRC letter requested a response from ENERCON on whether its termination of a certain employee violated 10 C.F.R. 50.7 as well as a description of the action taken or to be taken by ENERCON to assure that the termination is not having a chilling effect on the willingness of other employees to raise safety and compliance concerns.

The referenced employee was terminated for legitimate business reasons and not in violation of 10 C.F.R. 50.7. Indeed, one of ENERCON's governing principles is to maintain a safety conscious work environment (SCWE) where employees are actively encouraged to raise safety and compliance issues. ENERCON has and will continue to monitor our SCWE. A review of Condition Reports issued at the site of the complaint, as well as ENERCON's overall Corrective Action Program have shown no trends indicating a chilling effect, and a recent question on an employee survey also gave positive indication that employees are comfortable raising issues about safety to their supervisor or manager. ENERCON has also increased SCWE communications and training to ensure that no chilling effect arises as a result of this OSHA complaint or the media coverage of it. The enclosed Attachment contains ENERCON's detailed response to these inquiries.

I declare under penalty of perjury that the foregoing is true and correct. Executed on the 18<sup>th</sup> day of September, 2013.

Respectfully Submitted,

  
John Richardson  
President

Enclosures (2)

Mr. Steven A. Reynolds

September 18, 2013

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cc:

Matthew W. Sunseri, President and Chief Executive Officer

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## ATTACHMENT

### ENERCON SERVICES, INC. RESPONSE TO NUCLEAR REGULATORY COMMISSION AUGUST 19, 2013 LETTER

#### I. ENERCON DID NOT TERMINATE AN EMPLOYEE IN VIOLATION OF 10 C.F.R. 50.7

On or about July 25, 2012, the Occupational Safety & Health Administration (“OSHA”) received a complaint from a former employee (“Complainant”) alleging that Enercon Services, Inc. (“ENERCON”) terminated his employment in retaliation for reporting a safety concern. The projects relevant to the complaint were performed at the Wolf Creek Nuclear Generating Station (“WCNGS”) in Burlington, Kansas. In January 2012, a trench for one of the projects invaded a four foot six inch safety barrier over piping. Following the breach of this safety barrier, ENERCON personnel conducted on-site interviews that established that the breach was the result of errors by the project team. Complainant had overall responsibility for the performance and supervision of the work on the project. As a result of these errors, four individuals, including Complainant, were ultimately terminated from employment.

Subsequent to his termination, Complainant submitted a complaint to the Wolf Creek Ombudsman. The Wolf Creek Ombudsman informed ENERCON that the results of his investigation confirmed Complainant was terminated for performance issues. Prior to the filing of the OSHA complaint, ENERCON’s Employee Concern Representative also conducted an investigation into Complainant’s allegations. This investigation likewise confirmed that Complainant was terminated for legitimate reasons and not in retaliation for reporting a safety concern.

ENERCON submitted a Position Statement to OSHA in response to the complaint summarizing its non-retaliatory reasons for termination of Complainant’s employment. In a letter dated May 15, 2013, however, OSHA issued a preliminary determination that there was reasonable cause to believe that ENERCON violated Section 211 of the Energy Reorganization Act of 1974 in its termination of Complainant. ENERCON has objected to OSHA’s preliminary determination and filed an appeal with the United States Department of Labor. ENERCON believes that, based upon the facts summarized below, the allegations in the complaint will be resolved in its favor through a full hearing on the merits before a DOL Administrative Law Judge.

In 2011, Wolf Creek requested ENERCON prepare an estimate to perform a modification to the security protection at the Essential Service Water Pump House (“ESW Pump House”) and Condensate Storage Tank (“CST”). The scope of work for the ESW Pump House project involved designing, planning and installing approximately 2,000 linear feet of eight-foot tall fence, gates and a twenty-five foot wide motorized crash barrier. The CST project scope of work

included designing, planning and installing approximately 400 linear feet of fourteen-foot tall fence and gating.

These projects required installing fences and excavating trenches over Essential Service Water Piping (“ESW Piping”) systems. Wolf Creek’s licensing basis requires maintaining a minimum of four feet six inches of coverage over ESW Piping. Due to time constraints, the ESW Pump House and CST fence projects were performed using Wolf Creek’s Concurrent Modification process, which allows changes to be implemented while the engineering package and documentation is being prepared.

Complainant was assigned by ENERCON as the Designated Licensed Engineer (“DLE”) on both projects. As DLE, Complainant was the licensed engineer assigned full responsibility for the projects and performance of the work. Complainant’s duties as DLE are clearly set forth in the Wolf Creek’s Procedures, which provide as follows:

#### 5.13 Designated Licensed Engineer

5.13.1 That Licensed Engineer assigned responsibility for a project or document involving Practice of Engineering. The Designated Licensed Engineer will have overall responsibility for performance of the work, including supervision of involved unlicensed individuals, final certification of the work, and final approval of the effort.

ENERCON communicated to Complainant his overall responsibility as DLE for the performance of the work on the projects. Prior to commencement of the projects, Complainant met with an ENERCON Project Manager and received instruction on the Concurrent Modification process, which included a description of his overall responsibilities as DLE for the performance of the work on the project as summarized above. Complainant’s duties and responsibilities as DLE were also addressed during the Technical Task Pre-Job Briefings conducted by Wolf Creek’s Engineering Supervisor.

During these pre-job briefings, Complainant, the Project Manager, the Superintendents and Wolf Creek’s Engineering Supervisor discussed and addressed the prohibition of breaching the four foot six inch barrier over the ESW pipes. In addition, in these pre-job briefings, Wolf Creek’s Engineering Supervisor communicated to Complainant his duties as the DLE including the responsibility to provide ongoing supervision and guidance for the projects. In fact, Complainant’s overall responsibility for the work on the project was so extensive that he was instructed by Wolf Creek’s Engineering Supervisor to perform daily walk downs to review the work performed on the projects and to ensure ongoing compliance with the Concurrent Modification process. Complainant was also instructed by both Wolf Creek and ENERCON that there would be no change in his status as DLE for these projects, as Wolf Creek wanted the DLE to remain the same throughout the project. During the pre-job briefings, Complainant and the Superintendents were also instructed to perform the necessary document reviews and appropriate surveys, including ground penetrating radar surveys, in order to identify the locations of the ESW pipes and to assure that the licensing basis for the required minimum coverage for ESW Piping would be maintained for the duration of the work.

The work on the projects commenced on or around December 12, 2011. On or about January 18, 2012, a grounding wire trench was excavated for the ESW Pump House fence over both trains of ESW pipes. The grounding wire trench was located over an area where the ESW pipes were buried at a shallow depth. As a result, the ground wire trench invaded the four foot six inch barrier. Although the plant was shut down at this time due to unrelated switchyard issues, the breach of the piping barrier was a substantial issue that required immediate remedial measures.

Initial interviews were conducted by ENERCON Site personnel with Complainant, the Project Manager and the Superintendents regarding the problem. These discussions and the subsequent review made it readily apparent that these individuals did not review the appropriate drawings and surveys to ensure the barrier over the pipes was maintained in accordance with the plant's licensing basis. As DLE, Complainant should have engaged in drawing searches and drawing comparisons that were coordinated with the necessary survey results to determine the depth of the ESW pipes at various locations. Drawings indicating an elevation change in the pipes in the area of the proposed grounding wire trench were available prior to the implementation of the concurrent modification. In placing undue reliance on limited documentation, the Complainant, the Project Manager and the Superintendents apparently concluded that the ESW pipes were consistently located twelve feet below the ground surface and that they did not have to determine the accurate or exact location or depth of the ESW piping for the fence posts or the grounding wire trench.

Complainant's reliance upon only a single "working point" for an ESW pipe buried approximately twelve feet deep was unreasonable. Other ESW pipelines in the exact same area, however, were buried approximately four feet six inches below ground level. If the correct drawings and surveys had been consulted, it would have been clear to Complainant and others working on the projects that several working points on the drawings had to be located in order to obtain an accurate representation of the ESW pipe locations and depths. Complainant as well as other individuals involved in these projects did not incorporate information from other sources and drawings and did not take the necessary steps to ensure the location and depth of the pipes as instructed in the pre-job briefing sessions.

As DLE, Complainant had "overall responsibility for performance of the work, including supervision of involved unlicensed individuals, final certification of the work, and final approval of the effort." There were multiple errors on the projects on which Complainant had ultimate responsibility. The work orders did not provide sufficient detail to assure successful installation of the fence or digging of the trench. The actual performance under the work orders did not maintain compliance with the four feet six inch barrier around the ESW pipes. Although the design provided for the fence posts to straddle the ESW pipe, the holes were dug and the posts installed in a manner that encroached upon the four feet six inch barrier. Despite the fact that Complainant was to walk the project daily, the evidence establishes that significant deficiencies in the project for installation of the fence continued for more than thirty (30) days before Complainant finally recognized his mistakes.

ENERCON determined that the Project Manager and the Superintendents involved with the ESW and CST fence projects violated the instructions in the work orders and did not install the fence as required. The Project Manager and the two Superintendents, none of whom possessed the overall responsibility for the projects, were terminated from employment. Complainant was not immediately terminated by ENERCON, but instead was retained in an effort to have him assist in the engineering recovery efforts to correct his errors. Since the projects were still being implemented using the Concurrent Modification process and Complainant was the assigned DLE, he remained responsible for the implementation of the design as outlined in the Wolf Creek Procedures.

Compounding his prior errors, Complainant failed to accept ownership of his responsibility to correct the problems. The other members of the recovery team understood that the corrective task was a seven day a week effort that would continue until a safe field condition was achieved and the projects came back into design compliance. Although a number of individuals worked long hours to resolve the problems, Complainant disengaged himself from ENERCON's remediation efforts.

ENERCON's newly assigned Project Manager reported that Complainant expressed reluctance to work the hours needed to support the recovery efforts. During this period, ENERCON counseled with Complainant regarding his failure to assist in the efforts to address and resolve these problems. Despite these discussions, Complainant still did not display the initiative to lead the effort to resolve the issues created by his errors or even a willingness to meaningfully contribute as a member of the recovery team.

In light of these facts, ENERCON's Lead Project Manager, communicated to his supervisor, ENERCON's Site Manager, a recommendation that Complainant be terminated. ENERCON's Project Manager also recommended to ENERCON's Site Manager that Complainant be terminated. In fact, ENERCON received a communication from Wolf Creek expressing its displeasure with problems that had arisen in the project and a desire that necessary personnel changes occur to fix the problems. Based upon the foregoing facts and recommendations from various sources, ENERCON's Site Manager concurred in these assessments and Complainant's employment was terminated.

Complainant was terminated for legitimate non-retaliatory reasons. Complainant failed to perform in a manner that satisfied the standards of responsibility for a DLE. Complainant failed to meet ENERCON's expectations for quality work and problem resolution as defined in ENERCON's Defining Excellence Handbook (Attached). Complainant failed to take appropriate and necessary steps to address and correct his errors. The termination of Complainant was recommended by a number of different and independent sources familiar with the projects and his errors. The problems associated with Complainant's failure to fulfill his duties as DLE caused substantial safety, operational and licensing issues that required immediate corrective action. The direct cost to address and correct these problems, including ENERCON Engineering and Project Management; subcontractors; materials; and equipment and tool rental, exceeded \$500,000.00.

Complainant's report of a safety and/or compliance concern was not a factor in ENERCON's decision to terminate his employment. Further, other individuals assigned to the project and its remediation efforts also identified safety and/or quality concerns that required issuance of numerous Condition Reports and corrective actions. None of these individuals were terminated by ENERCON.

In conclusion, ENERCON's termination of Complainant was based upon his failure to perform his responsibilities as the project DLE evidenced by the performance failures summarized below:

- Failure to consult appropriate drawings and surveys to determine location and depths of the ESW pipes.
- Failure to supervise the performance of the work on the projects to ensure compliance with safety and licensing requirements that resulted in the breach of the four foot six inch barrier as a result of the ground wire trenching as well as breaches of the four foot six inch barrier by installation of fence posts.
- Failure to maintain overall responsibility for the work performed on the projects which included work orders that did not provide sufficient detail to ensure installation of the fence or digging of the trench would be in compliance with safety and licensing requirements as well as failure to install fence posts straddling the ESW pipe as provided in the design.
- Failure to identify errors on the projects during required daily walk downs of the job site over a 30-day period.
- Failure to participate at necessary levels in the remedial actions to correct the errors on the projects.

## **II. ENERCON MAINTAINS AND PROMOTES A SAFETY CONSCIOUS WORK ENVIRONMENT ("SCWE")**

### **A. ENERCON Has Established SCWE Policies and Practices**

ENERCON's corporate philosophy regarding Nuclear Safety and SCWE are embedded into its policies, procedures and demonstrated practices. ENERCON is an employee owned company with a stated principle to "maintain a safety conscious work environment where employees are free to discuss safety issues without fear of retaliation." This SCWE principle is contained in ENERCON's Defining Excellence Handbook that is furnished to all employees and posted on the company Intranet.

ENERCON's safety concerns policy is set forth in detail in its Employee Concerns/Safe Working Environment Program. This Employee Concerns Program establishes a process for employees to identify and address safety concerns. The purpose of the Program is to provide an effective method for employees working in the nuclear industry to confidentially report perceived concerns related to nuclear safety. The Employee Concerns Program provides a process where employees can contact a safety concern representative to discuss their concerns and it also provides employees with the necessary information to contact the Nuclear Regulatory Commission with any safety concerns.

**B. SCWE Is Regularly And Effectively Communicated to Employees by ENERCON.**

ENERCON actively communicates to its employees regarding SCWE and the Employee Concerns Program. The processes utilized by ENERCON to make these communications include the following:

1. All employees are provided a copy of ENERCON's Defining Excellence Handbook, which contains a separate section outlining ENERCON's commitment to Nuclear Safety and SCWE.
2. ENERCON's SCWE philosophy and procedures are covered with employees as part of new hire orientation.
3. ENERCON's Employee Concerns Program Procedure is available to all employees to access anytime through the ENERCON intranet.
4. ENERCON also identifies on its intranet the contact information for the employee concerns representative and the NRC.
5. SCWE topics are periodically covered by ENERCON managers in meetings with employees.
6. ENERCON posts the applicable NRC Form 3 and the Employee Concern Representative Contact information in the workplace, including at the Wolf Creek site at issue in this matter. The NRC Form 3 is also available for employees to access through ENERCON's intranet.

**C. ENERCON's Demonstrated Practice Establishes the Existence of a SCWE**

ENERCON has a demonstrated history of hiring, supporting and promoting individuals who have reported safety concerns. ENERCON's SCWE was the subject of a recently concluded case brought by Syed M.A. Hasan ("Hasan"), alleging that ENERCON refused to hire him because of his prior reports of safety concerns and his other activities protected under the Energy Reorganization Act. During the hearing, ENERCON presented evidence of its demonstrated pattern and practice of promoting a SCWE. In issuing an Order on behalf of ENERCON and against Mr. Hasan, which Order has subsequently been affirmed on appeal by the Administrative Review Board, Administrative Law Judge Clement Kenning made the following findings:

1. On the issue of safety Richardson [ENERCON President and CEO, John Richardson], stated that Respondent [ENERCON] regarded safety and its promotion in a work environment free of harassment and discrimination to be a core value. Respondent published its commitment to safety in employee handbooks and actively encouraged employees to report safety



concerns over the internet to line management, Respondent's Director of Human Relations and the NRC.

2. Richardson testified that safety was so important to Respondent that it supported employees when they reported safety problems, even in the face of client opposition. As evidence of such, Richardson gave the example of employee David Lochbaum, who Respondent backed over client opposition, when he reported safety concerns over the issue of spent fuel pool heating to the NRC. Respondent supported Lochbaum even though by doing so it lost revenues.
3. Concerning safety, Studley, as an employee of Respondent [David Studley is currently an ENERCON Vice President], reported safety concerns and no adverse action was taken. Rather Respondent regarded his reporting of safety issues as a positive attribute.... Studley stated that he had been promoted and now is the Division Manager and Engineering Director of the Northeast and Midwest operations that includes Northern New Jersey and Mount Arlington offices.

In his conclusions, ALJ Kennington made the following rulings:

As far as the other elements of circumstantial evidence, the undersigned finds contrary to Hasan assertions no evidence of improper motive, bias, animus, temporal proximity pretext, shifting explanations or material changes in employer practices that warrant a discriminatory finding against Respondent. Rather, **the evidence of record supports a finding of encouragement of whistle blowing activities by Respondent such that individuals who blow the whistle are hired and promoted within Respondent's structure....**

**Rather the undersigned finds a deep and abiding respect for safety emanating from Respondent's president to its hiring managers and directors, with employees rewarded and promoted for raising such issues even though doing so could cost the client substantial sums of money and, in some cases, result in a loss of business for Respondent. Indeed safety has to be a priority because of adverse consequences to the public if it is not observed both in theory and in practice.**

(bold emphasis supplied by ENERCON). These findings and conclusions further corroborate that SCWE is the philosophy, policy and demonstrated practice of ENERCON.

These activities of promoting a SCWE have and will continue to be part of the culture of ENERCON. One of the more recent examples is an ENERCON I&C Engineering Supervisor who directly contacted the NRC in August 2012 to report a concern. The Supervisor was concerned that the client was not expediting resolution of issues related to technical specification limits on instrument set points. The Supervisor exercised his rights to contact the NRC directly and subsequently informed ENERCON management that he had reported the concern. There has

not been and there will not be any negative repercussions nor retaliatory actions taken against the Supervisor for making the report. Instead, ENERCON has and will continue to support him in functioning in his role as a Supervisor in ENERCON's Engineering Design organization.

### **III. ENERCON'S ACTIONS ASSURING NO CHILLING EFFECT**

#### **A. ENERCON's Communications to its Employees**

ENERCON understood that the OSHA reasonable cause finding was publically available and published in various media outlets. Accordingly, ENERCON took immediate action to ensure that all its employees understood the importance of SCWE as well as the context of the OSHA finding.

After receipt of the OSHA finding, ENERCON's Employee Concerns Representative sent an e-mail communication to all ENERCON employees underscoring again the critical importance that ENERCON places on SCWE and advising employees of ENERCON's response to the OSHA finding. The May 22, 2013 e-mail from the Employee Concerns Representative to all ENERCON employees is set forth below:

Based on a preliminary review, the Occupational Safety and Health Administration (OSHA) recently issued a reasonable cause finding in a complaint filed by a former ENERCON employee. ENERCON is appealing the finding reached by OSHA. The full hearing that will follow the appeal is a welcomed opportunity for ENERCON to establish that the employee's termination was for legitimate business reasons and not for reporting safety concerns. ENERCON also objects to the media's inaccurate representation of our safety-conscious work environment and our Defining Excellence Principles.

This is also an occasion to again emphasize to all our employees that ENERCON maintains and promotes a safety-conscious work environment. ENERCON's policies, as well as its demonstrated practice, are to encourage and protect employees who report safety concerns. ENERCON's Employee Concerns Program is described in Procedure AD 2.2.12 in the Operations Manual on the Intranet. This procedure communicates ENERCON's principle that employees are expected and encouraged to discuss safety concerns with their immediate supervision and/or management to validate the concern and determine the most appropriate method to address it. Another option for reporting a safety concern is to contact me. As ENERCON's Employee Concerns Representative, I act as a neutral party, helping those raising concerns to remain confidential if they so desire and facilitating resolution of reported concerns. Employees also have the right to communicate any nuclear concerns directly to the USNRC. ENERCON's Leadership Team is committed to receiving concerns, following-up on issues raised and pursuing remedial measures to correct any unsafe condition or practice. As indicated in AD 2.2.12 and in the Defining Excellence Handbook, it is ENERCON's policy and practice, as consistently demonstrated, not to intimidate, harass, retaliate, or discriminate against employees who raise safety concerns.

If you have any questions or concerns about the ENERCON policies and procedure described above, please contact me.

As noted in the e-mail, a copy of ENERCON's Employee Concerns Program was attached for further review by all ENERCON employees.

With respect to the employees at Wolf Creek, ENERCON's Site Manager conducted a focused SCWE Training Program with all ENERCON employees at Wolf Creek on May 29, 2013. This training covered the OSHA Ruling; the e-mail referenced above from ENERCON's Employee Concerns Representative; ENERCON's Nuclear Safety and SCWE statements set forth in its Defining Excellence Policy; Wolf Creek's corporate policies on Nuclear Safety Culture and SCWE; and a discussion of the numerous ways employees are encouraged to report safety concerns (through ENERCON, Wolf Creek, DOL/OSHA, and the NRC). In a further effort to promote and advance a SCWE, ENERCON's Site Manger sent an e-mail the day following the training to all ENERCON employees assigned to Wolf Creek which provided electronic links to the various ENERCON and Wolf Creek policies and procedures identified above and attached copies of these documents as well. The e-mail also provided ENERCON employees with internet links to the Wolf Creek Ombudsman, OSHA and NRC sites for reporting concerns.

ENERCON also understood that the OSHA finding was being presented to various media outlets for publication by Complainant's counsel. In an effort to address these publications, ENERCON submitted the following statement for inclusion in news reports regarding the finding:

ENERCON Services Inc., an employee owned company, maintains and promotes a safety conscious work environment. ENERCON's policies as well as it demonstrated practice is to encourage and protect employees who report safety concerns. ENERCON objects to and is appealing the finding of reasonable cause issued by OSHA after its preliminary review. ENERCON welcomes the opportunity for a full hearing to establish that the termination was for legitimate business reasons and not for reporting safety concerns.

In response to the NRC Chilling Effect letter, ENERCON's Employee Concerns Representative sent an e-mail communication on August 28, 2013 to all ENERCON managers. This e-mail reiterated ENERCON's SCWE and instructed managers to review the Employee Concerns Program with their employees. The e-mail communication provided in pertinent part:

Most importantly, however, ENERCON wants to take this opportunity to ensure that all of its employees are again made aware of ENERCON's Safety Conscious Work Environment. ENERCON has policies and procedures in place, including the attached Employee Concerns/Safe Working Environment Program and our Defining Excellence Handbook, which encourage employees to report safety concerns and prohibit retaliation against employees who report safety concerns. Please make sure you take the time this week to emphasize ENERCON's Safety-Conscious Work Environment with your staff, including by distributing and

discussing the attached procedure. I would appreciate receiving a response e-mail confirming these meetings have occurred and any relevant information arising out of these meetings.

This email attached the May 22, 2013 e-mail referenced above as well as ENERCON's Procedure for Employee Concerns/Safe Working Environment Program.

ENERCON has also initiated communications with its employees regarding its Employee Concerns/Safe Working Environment Program and ENERCON management's directive to ensure an employee's right to raise safety and quality concerns. These communications have been in writing as well as through in-person meetings. For example, ENERCON's Employee Concerns/Safe Working Environment Program was specifically discussed with ENERCON's management team during weekly leadership meetings on July 22, 2013 and August 26, 2013. These discussions emphasized the responsibilities outlined in the procedure and encouraged management to foster a SCWE throughout the organization. An emphasis on SCWE was also provided to all new employees who attended the "Meet the Manager" program on August 30, 2013. Later, on September 3, 2013, all managers and leaders within ENERCON were instructed to take time during that week to discuss with their employees ENERCON's Employee Concerns Program and SCWE. On September 9, 2013, all ENERCON managers and leaders were reminded to complete these employee discussions regarding the Employee Concerns Program and directed to assure that all their employees working in the nuclear industry take the newly created mandatory on-line SCWE e-learning training by the required due date. On that same date, John Richardson, President of ENERCON, reviewed the Employee Concerns Program with ENERCON's Executive Leadership team and re-emphasized the importance of maintaining and promoting a SCWE at ENERCON. In his role as President, he also verifies when traveling to various offices and job sites, that management has recently re-enforced SCWE policies and procedures, and appropriate postings are displayed. For example, during a recent visit to ENERCON's engineering staff at Diablo Canyon Power Plant he verified that ENERCON's Employee Concerns Program/Safe Working Environment Procedure was posted on the bulletin board and that the site lead had recently reviewed it with employees at the site.

As summarized above, ENERCON has been vigilant in monitoring the communications that are made by various third parties on this subject and has appropriately responded with communications that further underscore ENERCON's SCWE philosophy. ENERCON will continue to monitor this environment and issue further responses and communications as appropriate.

#### **B. ENERCON's Monitoring Shows No Chilling Effect**

ENERCON is not aware of any facts or circumstances that would support a conclusion that there is or has been a chilling effect upon employee's willingness to report safety concerns. ENERCON has reviewed the Condition Reports issued at Wolf Creek during this relevant period of time. Based upon this review, ENERCON has concluded that there was no chilling effect upon employees issuing Condition Reports as a result of the termination of Complainant. Instead, the Condition Reports have been issued at a consistent rate that is determined by the issues and conditions encountered in ENERCON's projects and assignments at Wolf Creek.

Corrective Action Reports (CARs) filed within ENERCON's own system were reviewed as well, and there was no evidence of any negative trends or effects on CARs filed by ENERCON employees.

In July 2012, ENERCCON surveyed a sampling of employees to assess retention issues. ENERCON included a question in the survey on SCWE, which sought a response to the following statement: "I am comfortable raising potential issues about safety to my supervisor or manger." An overwhelming number of respondents - 92% - strongly agreed/ agreed with this statement. Only 6.9% of the respondents provided a neutral response and 1.1% disagreed/strongly disagreed with the statement. It is important to note that all responders within the division that supports Wolf Creek, where Complainant was assigned, strongly agreed/agreed with the statement.

### **C. ENERCON's Active Review and Improvement of SCWE**

ENERCON has continued to review, evaluate and where appropriate, take steps to improve and enhance its SCWE. For example, ENERCON developed an e-learning program regarding SCWE. This program is a further effort by ENERCON to ensure employees working in the nuclear industry have an understanding of ENERCON's commitment to SCWE and how it relates to reporting safety concerns. All employees working in the nuclear industry have been assigned this training, which takes approximately twenty (20) minutes to complete, and they must have it done by the end of September. The training also incorporates a quiz to evaluate the employee's understanding of the training session and ENERCON's Learning Management System will capture all the training records.

ENERCON is in the process of reviewing and revising its procedure for Employee Concerns Program/Safe Working Environment. While ENERCON believes that the current form of the Program is effective, it is exploring ways to further clarify, refine and simply the SCWE issues for its employees. ENERCON anticipates that the updated version will be ready for issuance by the end of the next month. ENERCON has engaged Edward Baker, Senior Nuclear Regulatory Consultant with Talisman who has 34 years of nuclear regulatory and safety experience, to review and assess ENERCON's Employee Concerns Program. Mr. Baker is consulting on ENERCON's proposed procedure revisions, and has also reviewed actions taken and proposed by ENERCON in response to the events outlined in this response.

As referenced above, ENERCON has engaged in a course of conduct designed to monitor its SCWE and has taken appropriate steps to address any external issues that could have a chilling effect on an employee's willingness to report a safety concern. ENERCON will continue its regular communication with employees on the subject of SCWE and will perform additional reviews and surveys as appropriate. ENERCON will ensure that its foundational principle of a "deep and abiding respect" for SCWE continues in the workplace.