



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
2443 WARRENVILLE RD. SUITE 210
LISLE, IL 60532-4352

February 11, 2016

EA-16-011

Mr. Anthony Vitale
Vice-President, Operations
Entergy Nuclear Operations, Inc.
Palisades Nuclear Plant
27780 Blue Star Memorial Highway
Covert, MI 49043-9530

**SUBJECT: RESULTS OF THE U.S. NUCLEAR REGULATORY COMMISSION
DISCRIMINATION INVESTIGATIONS AND REQUEST FOR INFORMATION
REGARDING THE U.S. DEPARTMENT OF LABOR FINDINGS OF
DISCRIMINATION**

Dear Mr. Vitale:

Per our phone conversation of February 11, 2016, the Nuclear Regulatory Commission (NRC) is providing the results of its investigations into claims of discrimination brought by two former security supervisors to the NRC. The NRC is also requesting information about what actions, if any, you have taken or plan to take to address the possible adverse impact that initial discrimination findings made independently by the U.S. Department of Labor (DOL) may have on the Safety Conscious Work Environment (SCWE) at your Palisades Nuclear Plant.

Upon receiving allegations of discrimination from the two Entergy security supervisors in December 2013, the NRC Office of Investigations (OI) conducted an investigation of the allegations. The NRC sent you letters dated March 23, 2015, detailing the results of our investigations and indicating that we did not substantiate the allegations of discrimination.

On April 1, 2015, the NRC received further information that required follow-up investigative work. The NRC has now completed multiple recorded interviews and reviews of company records as part of this follow-up investigative work. Based on the evidence gathered from this further investigation, we did not substantiate these allegations of discrimination and confirmed our original findings.

As you are aware, NRC regulations prohibit discrimination against nuclear workers engaged in activities that involve the safety and security of the plant and the public. Such regulations support the agency's expectations that employers establish and maintain a work environment where workers are free to raise potential safety issues with their employer or the NRC without fear of retribution. The NRC refers to this type of work environment as a Safety Conscious Work Environment. The NRC's Policy Statement entitled, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns without Fear of Retaliation," (Volume 61 of the Federal Register, page 24336; May 14, 1996), and the NRC Regulatory Issue Summary 05-018, "Guidance for Establishing and Maintaining a Safety Conscious Work Environment," dated August 25, 2005, describe the NRC's expectations in this area.

The NRC does not, however, have the authority to offer personal remedies, such as requiring licensees to reinstate workers or pay compensatory damages. For this reason, our agency directs any employee who believes that they have been discriminated against for engaging in protected activities to seek redress through an administrative proceeding before OSHA pursuant Section 211 of the Energy Reorganization Act. In this case, the NRC informed the two former security supervisors of their right to file a petition with the Secretary of Labor, in accordance with Commission policy.

The NRC has been closely monitoring the work environment at Palisades through routine and special inspections since 2013, when we began receiving allegations related to the SCWE at the plant. In response to these allegations, Entergy developed an action plan and in 2014 the NRC inspected the implementation of that plan and interviewed plant personnel to determine their willingness to raise safety and security issues. In December 2014, the NRC concluded that Entergy's actions were effective and the work environment at Palisades was conducive to raising safety concerns. The NRC continues to monitor this issue through inspections. A listing of the applicable documents is enclosed in this letter.

On December 20, 2013, the DOL Occupational Safety & Health Administration (OSHA) in Chicago, IL, received complaints from the two former security supervisors. The individuals alleged that they were discriminated against for raising safety concerns while performing their duties at Palisades. In response to those complaints, OSHA conducted an investigation, and on November 25, 2015, the Regional Administrator for OSHA, Region V, found that there was reasonable cause to believe that Entergy had discriminated against the complainants, in violation of Section 211 of the Energy Reorganization Act, 42 U.S.C. § 5851. We are aware that you have objected to OSHA's initial findings and are seeking further review through DOL's administrative hearing process.

The NRC has reviewed the OSHA findings and, as is the agency's normal practice, will monitor the DOL proceedings to determine whether or not revisiting this matter is warranted. However, the NRC is concerned that the OSHA findings may cause the Palisades' workforce to be less willing to raise safety concerns because OSHA found that Entergy discriminated against the complainants and those findings were reported by the press on or about January 18, 2016.

Based on the information you provided during the February 11, 2016, phone conversation, we recognize that Entergy is taking actions to mitigate the potential effect that may have resulted from the publication of OSHA's finding. Nonetheless, we request that you provide this office, within 30 days of the date of this letter, a response in writing that describes the actions you have already taken or plan to take to assure that the initial OSHA findings are not having an adverse impact on the willingness of employees to raise safety and compliance concerns within your organization and, as discussed in NRC Form 3, to the NRC.

This letter does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing information collection requirements were approved by the Office of Management and Budget, Control Number 3150-0011.

Final NRC documents, including final OI reports, may be made available to the public under the Freedom of Information Act (FOIA) subject to redaction of information pursuant to the FOIA. Requests under the FOIA should be made in accordance with 10 CFR 9.23, Requests for Records. The instructions for making a request for information under the FOIA are accessible at <http://www.nrc.gov/reading-rm/foia-request.html>.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and your response will be made available electronically for public inspection in the NRC Public Document Room and in the NRC's Agencywide Document Access and Management 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. If personal privacy information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the personal privacy-related information and a redacted copy of your response that deletes the personal privacy-related information. Identify the particular portions of the response in question which, if disclosed, would create an unwarranted invasion of personal privacy, identify the individual whose privacy would be invaded in each instance, describe the nature of the privacy invasion, and indicate why, considering the public interest in the matter, the invasion of privacy is unwarranted.

If you request withholding on any other grounds, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Sincerely,

/RA/

Kenneth G. O'Brien, Director
Division of Reactor Safety

Docket No. 50-255
License No. DPR-20

Enclosure:
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DOCUMENTS RELATING TO PALISADES SAFETY CONSCIOUS WORK ENVIRONMENT

1. Palisades Nuclear Plant – Problem Identification and Resolution Focused Inspection (Report 05000255/2014009), Dated March 6, 2014 (ML14064A569)
2. Palisades Nuclear Plant – NRC Problem Identification and Resolution Inspection Report 05000255/2014007, Dated June 20, 2014 (ML14171A394)
3. Palisades Nuclear Plant Reply to Inspection Report 05000255/2014007, Dated July 18, 2014 (ML14199A559)
4. Confirmatory Order Related to NRC Report No. 05000255/ 2014406 and OI Report 3-2013-018; Palisades Nuclear Plant, Dated July 21, 2014 (ML14203A082)
5. Entergy Nuclear Operations, Inc. Six-Month Status Notification in Response to Confirmatory Order, EA-14-013 Dated December 18, 2014 (ML14352A286)
6. Palisades Nuclear Plant–Safety Conscious Work Environment Issue of Concern Follow-Up NRC Inspection Report 05000255/2014011, Dated January 20, 2015 (ML15020A067)
7. Letter Transmitting Results of NRC Office of Investigations Report No. 3-2014-012, Dated March 23, 2015 (ML15083A061)
8. Letter Transmitting Results of NRC Office of Investigations Report No. 3-2014-013, Dated March 23, 2015 (ML15083A080)
9. Entergy Nuclear Operations, Inc. One-Year Status Notification in Response to Confirmatory Order, EA-14-013, Dated June 19, 2015 (ML15170A076)

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/RA/

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¹ OE concurrence provided via e-mail from L. Jarriel dated 02/05/16

² OE concurrence provided via e-mail from N. Coleman dated 02/10/16

³ NSIR concurrence provided via e-mail from N. Coleman dated 02/10/16

⁴ OGC concurrence provided via e-mail from D. Straus dated 02/10/16

⁵ NRR concurrence provided via e-mail from L. Rankin dated 02/05/16

Letter to Mr. Anthony Vitale from Mr. Kenneth G. O'Brien dated February 11, 2016

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DISCRIMINATION INVESTIGATIONS AND REQUEST FOR INFORMATION
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