



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
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ATLANTA, GEORGIA 30303-1200

February 28, 2018

EA-17-171

Michael Yox
Regulatory Affairs Director
Southern Nuclear Operating Company
7835 River Road, Bldg. 140,
Vogtle 3 & 4 Waynesboro, GA 30830

SUBJECT: U.S. DEPARTMENT OF LABOR FINDING OF DISCRIMINATION

Dear Mr. Yox:

On February 1, 2018, representatives of the NRC and Southern Nuclear Company's (SNC) Vogtle Electric Generating Plant (Vogtle) held a telephone conference call to discuss a recent finding by the U. S. Department of Labor's (DOL) Occupational Safety & Health Administration (OSHA), and the results of an investigation completed by the NRC's Office of Investigations (OI).

On October 27, 2015, the DOL OSHA in Atlanta, Georgia, received a complaint from a former Fitness For Duty (FFD) coordinator. The individual alleged that he was discriminated against for raising safety concerns while performing his duties at Vogtle 3 and 4. In response to those complaints, OSHA conducted an investigation, and on September 25, 2017, the Regional Administrator for OSHA, Region IV, found that there was reasonable cause to believe that WECTEC Global Project Services, Incorporated, had discriminated against the complainant, in violation of Section 211 of the Energy Reorganization Act, 42 U.S.C. § 5851. As SNC is aware, in approximately October 2015, the Nuclear Division of Westinghouse Electric Company signed an agreement to acquire CB&I Stone and Webster, the nuclear construction and integrated services business of CB&I. Coincident with the acquisition, Westinghouse formed a wholly owned subsidiary called WECTEC, LLC, who continued to provide contracting services to Vogtle Units 3 and 4. In August 2017, SNC assumed project management responsibilities from Westinghouse for the completion of Vogtle Units 3 and 4, and as a result WECTEC no longer oversees the FFD department. We are aware that WECTEC Global Project Services, Incorporated has objected to OSHA's initial findings and are seeking further review through DOL's administrative hearing process. The NRC will continue to monitor DOL's activities regarding this matter.

On August 31, 2016, the NRC's Office of Investigations completed an investigation into a claim of discrimination brought by the former FFD coordinator, who in May 2015 was employed by Chicago Bridge and Iron (CB&I), at Vogtle Units 3 and 4. The results of the NRC OI investigation were provided to you by letter dated October 5, 2017. In summary, NRC did not substantiate that the former FFD coordinator was the subject of discrimination for raising safety concerns.

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 (SCWE). 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 to Section 211 of the Energy Reorganization Act. In this case, the NRC informed the former FFD coordinator of the right to file a petition with the Secretary of Labor, in accordance with Commission policy.

During the phone call on February 1, 2018, SNC representatives acknowledged that they are aware of the DOL OSHA finding, and are continuing to monitor the SCWE at the Vogtle facility to ensure that the initial OSHA finding is not having an adverse impact on the willingness of SNC employees, contractors, and subcontractors to raise safety and compliance concerns. In summary, SNC conveyed a number of activities, including but not limited to: benchmarking with other SNC FFD departments; "Safe" monthly meetings between FFD staff and SNC management to foster a healthy SCWE; SNC continues to provide training to staff and contractors on its process and procedure with regards to raising safety and compliance concerns; SNC has undertaken efforts to provide a stronger corporate presence, with supervisors from other SNC sites to observe and provide feedback; SNC's Employee Concerns Program continues to monitor the SCWE, and tracks on a weekly basis the status and implementation of corrective actions associated with SCWE. Additionally, SNC noted that its recent work environment assessments have concluded that the work environment is healthy. If our understanding of your actions to ensure DOL OSHA's finding does not negatively impact the SCWE, as articulated above, are in any way in error, please inform us. Otherwise, a response to this letter is not required.

In addition, in 2017, the NRC conducted two SCWE inspections to assess the work environment at Vogtle 3 and 4. The first inspection was a focused inspection of the Site Operations Department, which includes FFD. The results of this inspection are documented in report 2017-002 (ADAMS Accession No. ML17226A034). The second inspection was a broader look at SCWE at the site. The results of this inspection are documented in report 2017-007 (ADAMS Accession No. ML17263B207).

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>.

You are not required to respond to this letter. In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice and Procedure," a copy of this letter and your response (if you choose to provide one), 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, any response provided 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/

William B. Jones, Director
Division of Construction Oversight

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Letter to Michael Yox from William B. Jones dated February 28, 2018.

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