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November 29, 2019

VIA Regular United States mail and e-mail to Hearingdocket@nrc.gov

Office of the Secretary of the Commission
U.S. Nuclear Regulatory Commission

Washington, D.C. 20555-0001

Attention: Rulemaking and Adjudications Staff

Dear Secretary:

Enclosed please find a Motion to Intervene in the Case of Mr. Thomas B. Saunders, Confirmatory Order, IA-19-027, issued October 21, 2019. This Motion is filed pursuant to a grant of a ten-day extension granted by Mr. George A. Wilson, Director of the Office of Enforcement on November 18, 2019.

The Motion it is being filed both electronically and by deposit in the United States Mail. We request an exemption for this initial filing not being filed electronically. Efforts to obtain the NRC acceptance of the application for a Digital Certificate today were unsuccessful; however, upon receipt of the Digital Certificate, we will E-File in the future in this case.

Thank you for your attention to this matter.

Respectfully submitted,



Billie Pirner Garde

Attorney for Leonard Sparks

cc: Jane G. Perry
PA ID No. 25673
Penny Legal, LLC
800 North Third Street, Suite 201
Harrisburg, PA 17102

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
Mr. Thomas B. Sanders) IA-19-027
)

**MOTION TO INTERVENE and
MOTION TO COMBINE OPPOSITION WITH RELATED PROCEEDING**

Comes now, Leonard Sparks, pursuant to 10 CFR §2.309, and for the reasons set forth below, requests the Commission to:

- (1) Grant his request to Intervene in the above-styled proceeding; and
- (2) Combine this request for intervention with a factually related-proceeding.

The agreed upon actions by Mr. Saunders in *Confirmatory Order IA-19-027*, and by Southern Nuclear Company (SNC) in *Confirmatory Order EA-18-13- and EA -18-171* make the serious safety conscious work environment breakdown and tolerance of retaliation at Vogtle 3 & 4, worse. The Orders create a false impression that undermines safety; first, the Order creates the impression that Mr. Saunders is undertaking actions that will, in some way, improve the safety conscious work environment at Vogtle. That is not true, and the workforce recognizes this fallacy. Second, neither of the Confirmatory Orders are based on the facts. Thus, Mr. Saunders and SNC are only agreeing to take certain actions based on a set of alternative facts, agreed to through a mediated process, and are not based on a factual determination by the NRC. Under the “alternative, negotiated” circumstances of these two Orders, safety culture will suffer – Mr. Sparks and the workforce will become further impacted by the realization that misconduct can be negotiated away. A hearing will provide an opportunity to determine the facts; which Mr.

Sparks does not believe support the Confirmatory Order(s) agreed upon. Thus, by denying the present negotiated Order(s), the public interest and safety will be better served, and Mr. Sanders will be required to disclose the truth and the facts, and the safety conscious work environment (SCWE) at SNC will be improved.

Finally, Mr. Sparks asserts that the Order regarding Mr. Saunders, and the more recent Confirmatory Order against with SNC, alter the type of adverse actions currently prohibited by law and the terms of its license; leaving out “blacklisting” and “failure to hire” from the enumerated adverse actions that SNC agrees to review. This makes the SCWE even worse, and creates a situation where persons, like Petitoiner, are unable to get back to work at Vogtle as a result of engagement in legally protected activity. The prescribed corrective action does not alter the conditions that caused the problem, thus leaving Mr. Sparks and other similarly situated employees worse off than before the Order. On this basis, Mr. Sparks also challenges the issuance of the Confirmatory Order(s) to SNC, and requests intervention. (A separate request for intervention will be filed in the SNC case.)

BACKGROUND

Leonard J. Sparks is a nuclear mechanical planner, with multiple certifications, who has over 16 years of experience in the commercial nuclear industry. In the 2014-2015-time frame he was employed as a contractor, working at the Southern Nuclear Company’s (SNC) Vogtle 3 & 4 construction project. In the course of his employment he identified numerous safety and quality concerns. He raised the concerns through his line management, the Employee Concerns Program and ultimately to the Nuclear Regulatory Commission (NRC) Region II. Based on the continual mistreatment and pressure he was receiving by SNC and contract management he voluntarily left the project in February 2015.

In July, 2017 he was hired back to work at Vogtle, through another contractor. Within two days he was advised that “his services were no longer needed and escorted” out the gate of the facility. He then filed a complaint of retaliation with the NRC, which referred it for investigation by the Office of Investigations (OI). OI, RIII, completed the investigation, OI Case No. 2-2017-032, and issued the Report of Investigation concluding that, in fact, Mr. Sparks had been the subject of retaliatory termination.¹ (The OI investigation of the wrongful termination issue, in redacted form, is included as the factual support for the request for intervention. Attachment 1) (The OI conclusion regarding the Failure to Hire/Blacklisting case is not ripe for consideration because the issue has been resubmitted to the RII allegation staff with additional information and evidence, and corrections to the investigation record; the Department of Labor (DOL) case has not issued any initial investigation results into Mr. Sparks DOL complaint. The matter is ongoing.)

On October 21, 2017, as a result of the OI investigation findings, and an Alternative Dispute Resolution process, the NRC issued a Confirmatory Order against Mr. Thomas B. Saunders, the Southern Nuclear manager, who the NRC determined was responsible for the July 17, 2019 action in terminating Mr. Sparks. (*Confirmatory Order IA-19-027*). Mr. Saunders remains an employee of SNC. The Order requires Mr. Saunders to engage in a variety of actions to allegedly atone for his involvement in terminating Mr. Sparks, and demonstrate an understanding of the actions he should have taken; and that others should take to demonstrate the “lessons learned regarding the importance of employee protection (to include contractors), why it

¹ Mr. Sparks is not identified, by name, in the underlying Confirmatory Order; is the impacted employee described in the Order and in the attached, but redacted, OI report.

is necessary to ensure proper follow up response, and proper follow up when evaluating any potentially adverse personnel decisions.” Confirmatory Order, at 5.

A month later, on November 20, 2019 the NRC issued a second, related, Confirmatory Order to Southern Nuclear. (*Confirmatory Order Modifying License: Effective Upon Issuance EA0-18-130 and EA -18-171*) The SNC Order was based, in part on the facts regarding Mr. Sparks termination and the blacklisting of another employee by yet a different SNC manager, Mr. Mark Rauckhorst. The Confirmatory Order, which was agreed to during an Alternative Dispute Resolution (ADR) session, is characterized in the Order as a “preliminary settlement agreement.”

The Order states:

“This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on August 5, 2019 in Rockville, Maryland to address two apparent violations. The NRC and SNC agree to disagree as to whether the violations occurred.”

Failing to reach a determination on the facts, and whether those facts were a violation of NRC Regulations, the Order nonetheless includes 1) corrective actions that SNC has already completed to improve the nuclear safety culture (NSC) and safety conscious work environment (SCWE) at the site (provided to the NRC at the August 5, 2019 ADR mediation session); 2) agreed upon future actions; and 3) general provisions. The Order, allegedly,² modifies the SNC license for Vogtle 3 & 4 to include a variety of enhancements (previously completed)³ to its

² It is not clear if the Confirmatory Order is actually a final agreement between SNC and the NRC, since the parties disagreed on the factual basis for the Order; and the settlement agreement is described as “preliminary.” (Order, 3)

³ The Confirmatory Order does not identify when SNC allegedly completed the previous actions, but if it is referring to the actions taken in Response to the enforcement actions taken following the CB&I retaliation findings in 2016 (See, Chicago Bridge & Iron Confirmatory Order EA-12-189, September 16, 2013), then we would assert that those actions were not successful, since all

Employee Concerns Program, Corrective Action program, senior leadership training, and an updated SCWE policy. In addition, SNC agreed on further enhancements to the ECP presence at Vogtle 3&4, and other changes to the Adverse Action review processes, training, and other actions.

However, in the absence of any agreement on what the facts actually are with respect to Mr. Saunders, or SNC, and whether those facts constitute a violation of NRC regulations, the Confirmatory Order(s) should not be sustained.

I. REQUEST FOR INTEVENTION

10 CFR §2.309 provides for intervention in circumstances where, as here, a person is affected by an Agency decision. In order to establish standing, the impacted person must request a hearing and specify the contentions which the party seeks to have litigated in the hearing. 10 CFR §2.309(a). As set out below, Mr. Sparks has standing and has submitted two (2) valid contentions:

(d) **STANDING**

(i) Leonard Sparks, Petitioner

c/o Ms. Billie Garde
Clifford& Garde, Esq.
1828 L St., NW, Suite 600
Washington, D.C. 20036
(202) 280-6116 direct
(202) 255-9670 (cell)

(ii) **Right Under the Act to be made a party to the proceeding**

The Petitioner asserts a right to be made a party to the proceeding. First, because the Order itself harms Mr. Sparks, by failing to set out the facts and circumstances that led to his retaliatory

of these current events occurred AFTER those corrective actions were taken, which included retraining all the SNC managers several years ago.

termination. Instead of presenting the facts, the agreed upon Order simply sets out a vague statement that “Mr. Saunders acknowledges that a violation of 10 CFR 52.5 (Employee Protection) occurred.” (Order, at 2.) As a result, Mr. Sparks’ professional reputation and credibility remains in question, with the NRC’s actions failing to set forth the necessary facts to vindicate him. Moreover, it fails to demonstrate that Mr. Saunders actions – not established in the Order – in retaliating against Mr. Sparks is a violation of NRC regulations. The SCWE issues for the site, i.e., the existence of a “chilling effect” at the site. is ill served by this Confirmatory Order.

Mr. Saunders position as an intervenor is consistent with existing case law. See, generally, *Bellotti v NRC*, 725 F.2d 1380 (D.D.Cir 1983); *Alaska Department of Transportation & Public Facilities (Anchorage, Ak)*, CLI-04-26, 60 NRC 399, reconsid’n denied, CLI-04-38. 60 NRC 652(2004).

(iii) Property or Financial Interest

Mr. Sparks has a property and financial interest in being free to seek and obtain employment without the intentional retaliatory actions of any persons working for Licensees, in this case SNC; and, as the victim of Mr. Saunders’ action. He is entitled to raise a contention as an aggrieved person to the agreement of Mr. Saunders and the NRC’s agreement for resolution.

(iv) Possible Effect of Any Decision or Order that May be issued In the Proceeding on the Petitioner’s Interest

Should the Commission hear the facts of the case, and reject the agreed upon Confirmatory Order – reached as a result of ADR and settlement negotiations -- Petitioner asserts that decision will vindicate and restore his reputation. He believes that the facts that will be established at a hearing will reflect Mr. Sparks has been espousing since the underlying events

occurred. This will impact his professional reputation and credibility, and thus his ability to obtain employment in his field.

The facts of this case, as well as the facts of the companion Notice of Violation of Mr. Mark Rauckhorst, and the SNC Confirmatory Order Modifying License, demonstrate that this agreed upon Confirmatory Order decision(s) undermines safety, by promoting and regulating from a false or disputed narrative for the underlying facts in these matters. See, generally, In the Matter of Southern Nuclear Operating Company (Vogtle Electric Generating Plant, Units 3 and 4, License No. NPF-91 and NPF-92), *Confirmatory Order EA-18-130 and 18-171*, issued November 20, 2019; as well as the similar case against Mr. Mark Rauckhorst for blacklisting other employees⁴. (*NOV Investigation Report No. 2-2017-004*).

(f) CONTENTIONS

According to the Order, the only issue to be considered at the hearing is “... whether the Confirmatory Order should be sustained.” (Order, at 10.)

Petitioner proposes that the proper contentions should be:

1. Whether the facts, as stated in the Order(s), are true; and whether the proposed sanction is supported by these facts;
2. Whether the actions agreed upon in the Confirmatory Order(s) are sufficient to ensure that the Mr. Saunders; and the Licensee (SNC), and its supervisors, managers, executives and support infrastructure, i.e., HR, Compliance and Concerns Department, and ECP, as well as contractors, are sufficient to ensure that the workforce (employees and contractors), are free to raise safety concerns without fear

⁴ On November 20, 2015, the NRC issued a Notice of Violation against Mr. Mark Rauckhorst, after a failure of ADR and as a result of a Preliminary Enforcement Action (PEA), the “NRC has determined that a deliberate violation of NRC requirements occurred for deliberate misconduct...” Causing “SNC, the Licensee, to be in violation of NRC requirements for employee protection, and you to be in violation of 10 CFR 52.4 (c)(1), “Deliberate Misconduct.” That misconduct was the submission of a list of 14 people who should not be hired, including at least one contract employee who was subsequently terminated “because he engaged in protected activity.”

of reprisal, in compliance with the NRC's requirements for Employee Protections 10 CFR 52.5 "Employee Protection."

In this case, where the facts apparently became secondary to the parties reaching agreement at ADR, it is critical that the facts that are the basis of the Confirmatory Orders are not "alternative facts" but are developed, substantiated, and credible. Only then can a determination be made on whether the proposed sanction is supported by the facts. Here, Mr. Sparks is intimately familiar with many of the facts, and other witnesses can and will supply more facts and support for what actually happened. Those witnesses are in the best position to support a factual determination in this enforcement action. (See, *In the Matter of Andrew Siemasko*, IA-05-021, at 8; June 2, 2006, citing, e.g., *North Anna*, ALAB-363, 4 NRC, at 633 (given the role that [Sun Ship] played in the fabrication of these particular supports, Sun Ship is well equipped to make a 'genuinely significant contribution to that exploration.') And, while this is not a technical case, as in *North Anna*, it is a case with witnesses who have direct, personal information about what happened. Much of that information is contained in the OI report which is attached and relied upon herein.

II. REQUEST FOR CONSOLIDATION

As stated throughout this Request for Intervention, the issue raised by the Confirmatory Order against Mr. Saunders must be considered along with the more recently issued Confirmatory Order against Southern Nuclear (Id.) and the Notice of Violation against yet another SNC manager, Mr. Mark Rauckhorst, for "blacklisting" employees engaged in protected activities. (Id.). Petitioner requests that the Commission consolidate these actions for consideration of the same identified contention above.

It should be noted that the actions proposed by SNC, and agreed to by the Staff, have a gaping hole in its coverage -- employees and contractors, like Petitioner, will not be protected by

the Confirmatory Order at all. The Adverse Action review discussed at pp 5-6, for Agreed Upon Future Actions, only applies to those actions that result in the termination or suspension against current members of the workforce. (See, Confirmatory Order, at 5=6.) The changes do not apply to those that have engaged in protected activities, have been terminated or removed in retaliation for raising concerns, and are trying to get back to work on the Vogtle units.

It is Petitioner's belief that there are numerous employees and contractors, like himself, who have been wrongfully terminated and have been unable to be rehired into the SNC workforce are still being blacklisted. Nothing in these Orders addresses this potential problem. Thus, it is critical for the facts underlying the SNC agreed upon Confirmatory Order to be developed, and for a determination on whether the facts support the agreed upon actions in both of the Orders.

For all the reasons stated above, Petitioner Leonard Sparks, requests that the Commission grant his request for intervention in the above-stated Enforcement Action, as well as consider his request to consolidate this matter with the SNC Confirmatory Order,

Respectfully submitted,



Billie Pirner Garde

Attorney for Petitioner Leonard Sparks

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Washington, D.C. 20036
(202) 280-6116

cc: Certificate of Service

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
Mr. Thomas B. Sanders) IA-19-027
)

CERIFICATE OF SERVICE

I certify that I have filed the enclosed MOTION TO INTERVENE and MOTION TO COMBINE OPPOSITION WITH RELATED PROCEEDING in the above-styled case as follows, on November 29, 2019:

The Office of Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-001

via email and U.S. Mail

Jane G Penny

janepenny@janepennylegal.com
and US mail

Penny Legal, LLC
800 North Third St., Suite 201
Harrisburg, PA 17102



Billie Pirner Garde



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
245 PEACHTREE CENTER AVENUE NE, SUITE 1200
ATLANTA, GEORGIA 30303-1257

October 16, 2019

SUBJECT: Concerns You Raised to the NRC Regarding Vogtle 3 & 4 - Allegation Report RII-2017-A-0109/OI Investigation Case Number 2-2017-032

Dear Sir or Madam:

The Nuclear Regulatory Commission (NRC) has completed its follow up in response to the concerns brought to our attention on July 18, 2017, and March, 2018, regarding the Southern Nuclear Company (SNC). Your concerns were related to discrimination for raising safety concerns while employed at SNC's Vogtle Electric Generating Plant, Units 3 and 4.

Enclosure 1 to this letter restates your concerns and describes the NRC's review and conclusions with regard to each concern. The NRC concluded that there was sufficient evidence to substantiate the allegation that you were fired for raising safety concerns (Concern 1). However, the NRC did not substantiate that you were not rehired in 2017-2018, as a result of your raising safety concerns (Concern 2). Based on the evidence developed during the investigation into Concern 1, the NRC identified an apparent violation of 10 CFR 52.5, "Employee Protection." Please refer to Enclosure 1 for additional information.

Enclosure 2 is a redacted copy of the Office of Investigations (OI) Report Number 2-2017-32. The OI report provides an overview of the evidence gathered during the investigation into your complaints of discrimination. Portions of the OI report have been redacted, but the substantive issues related to this case remain. The NRC has not made a final decision regarding the apparent violation; therefore, the NRC will not make the ROI available to the general public at this time, and we request that you also refrain from doing so.

You may request copies of documents related to your allegation under the Freedom of Information Act (FOIA). Requests for records under FOIA can be made to U.S. Nuclear Regulatory Commission, Mail Stop T-5 F09, Washington, DC 20555-0001, or you can fax your request to the NRC Rockville, Maryland office at (301) 415-5130, or email at FOIA.resource@NRC.GOV. Any information provided to you under FOIA will, to the extent consistent with that act, be purged of names and other potential identifiers.

Allegations are an important source of information in support of the NRC's safety mission. We take our safety responsibility to the public seriously and will continue to do so within the bounds of our lawful authority. As indicated in our previous correspondence, we take identity protection very seriously, which is why we no longer include your name on our written correspondence with you. We do not intend for the omission of your name to be impersonal. This new practice simply adds another layer of protection in our communications with you.

We believe that our actions have been responsive to your concerns. Should you have any additional questions, or if the NRC can be of further assistance, please call me at the regional office toll-free number 1-800-577-8510 extension 4426 or you may provide information to me in

writing at EICS, 245 Peachtree Center Avenue, NE, Suite 1200, Atlanta GA 30303-1257. You may also communicate with me by electronic mail, if you so choose. Also, please be advised that the NRC cannot protect the information during transmission on the Internet and there is a possibility that someone could read your response while it is in transit. Should you prefer to communicate by email, please use the following email addresses: R2Allegations@nrc.gov.

Sincerely,



Melanie
M.
Checkle

Digitally signed
by Melanie M.
Checkle
Date: 2019.10.16
15:45:34 -04'00'

Melanie M. Checkle
Sr. Allegations Coordinator
Enforcement and Investigation Coordination Staff

Enclosures: As stated

SOUTHERN NUCLEAR COMPANY**VOGLTE 3 & 4****STATEMENT OF CONCERNS****CONCERN 1:**

You were retaliated against (fired) for previously raising Unit 3, CA01 construction concerns back in 2014 and 2015.

RESPONSE TO CONCERN 1:

An investigation was conducted by the U. S. Nuclear Regulatory Commission, Office of Investigations (OI), Region II, to determine whether you, a former mechanical planner, were discriminated against (fired) for raising safety concerns pertaining to welding and material degradation. Based upon the evidence developed during this investigation, the NRC substantiated that you were discriminated against, i.e. fired, for having raised safety concerns. A copy of the redacted OI report Number 2-2017-32 is enclosed (Enclosure 2). The OI report provides an overview of the evidence gathered during the investigation into your complaints of discrimination.

Based on the evidence developed during its investigation, the NRC identified an apparent violation of 10 CFR 52.5, "Employee Protection." The NRC notified the Southern Nuclear Operating Company (SNC) of this apparent violation and gave SNC the opportunity to respond to the apparent violation by choosing to participate in a pre-decisional enforcement conference or to request to participate in alternative dispute resolution (ADR) session. SNC chose to participate in ADR.

You were informed of the potential enforcement action against SNC on July 11, 2019, via electronic message from Mr. John Harrison, Senior Enforcement Specialist with the NRC. On July 24, 2019, you provided comments for the potential enforcement action against SNC. On August 5, 2019, the NRC and SNC met in an ADR session. The NRC has not made a final decision regarding the apparent violation. If enforcement action is warranted, the NRC's follow-up actions will be documented as appropriate and would be made publicly available. Please note that, if the associated ADR session between the NRC and SNC results in a Confirmatory Order, the confirmatory order would have a 20-day comment period, effective the day of issuance. The Confirmatory Order is issued on the public record and a period of time (normally 20 days) is allotted wherein interested persons that may be affected by the Order (e.g. you) are afforded an opportunity to request a hearing.

CONCLUSION:

The NRC substantiated that you were discriminated against (fired), for having raised safety concerns. The NRC has not made a final decision regarding the apparent violation. If enforcement action is warranted, the NRC's follow-up actions will be documented as appropriate and would be made publicly available.

CONCERN 2:

You were retaliated against (not rehired) for previously raising unit 3, CA01 construction concerns back in 2014 and 2015.

RESPONSE TO CONCERN 2:

An investigation was conducted by the U. S. Nuclear Regulatory Commission, Office of Investigations (OI), Region II, to determine whether you, a former mechanical planner, were discriminated against (not rehired in 2017-2018) for raising safety concerns pertaining to welding and material degradation. Based upon the evidence developed during this investigation, the NRC did not obtain sufficient evidence to conclude that you were discriminated against, i.e. not rehired, for having raised safety concerns. There was no indication from the testimony that your raising concerns was related to your failure to rehire. A copy of the redacted OI report Number 2-2017-32 is enclosed. The OI report provides an overview of the evidence gathered during the investigation into your complaints of discrimination.

CONCLUSION:

On the basis of the foregoing, the NRC did not substantiate that you were not rehired in 2017-2018 as a result of your raising safety concerns.

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INVESTIGATION INFORMATION

Procedures for Handling
Sensitive Unclassified Non-Safeguards Information
Are Available In
Management Directive 12.6

NRC FORM 190D
(8-2007 NRCMD 12.6)

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U.S. NUCLEAR
REGULATORY COMMISSION

CASE NO. 2-2017-032



**United States
Nuclear Regulatory Commission**

Report of Investigation

VOGTLE 3 & 4

**DISCRIMINATION AGAINST A [REDACTED]
[REDACTED] FOR RAISING SAFETY CONCERNS**

Office of Investigations

Reported by OI:RIII

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Title: VOGTLE 3 & 4

DISCRIMINATION AGAINST A [REDACTED] FOR RAISING SAFETY CONCERNS

Licensee:

Southern Nuclear Operating Company
40 Inverness Center Parkway
Birmingham, AL 35242

Case No.: 2-2017-032

Report Date: November 20, 2018

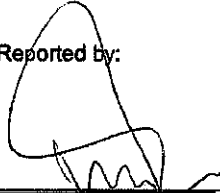
Control Office: OI:RII

Docket Nos.: 05200025, 05200026

Status: CLOSED

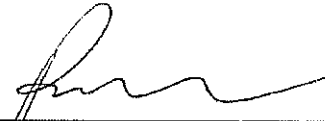
Allegation No.: RII-2017-A-0109

Reported by:



[REDACTED]
Office of Investigations
Field Office, Region III

Reviewed and Approved by:



[REDACTED]
Office of Investigations
Field Office, Region III

WARNING

DO NOT DISSEMINATE, PLACE IN THE PUBLIC DOCUMENT ROOM OR DISCUSS THE CONTENTS OF THIS REPORT OF INVESTIGATION OUTSIDE NRC WITHOUT AUTHORITY OF THE APPROVING OFFICIAL OF THIS REPORT. UNAUTHORIZED DISCLOSURE MAY RESULT IN ADVERSE ADMINISTRATIVE ACTION AND/OR CRIMINAL PROSECUTION.

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SYNOPSIS

This investigation was initiated on August 21, 2017, by the U.S. Nuclear Regulatory Commission, Office of Investigations, Region II, to determine whether a [REDACTED] at Southern Nuclear Operating Company's Vogtle Electric Generating Plant, Units 3 & 4 (Vogtle), in Waynesboro, Georgia, was discriminated against by management for raising safety concerns.

Based on the evidence developed, the allegation that a [REDACTED] at Vogtle was discriminated against by management for raising safety concerns was substantiated.

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FIELD OFFICE DIRECTOR, OFFICE OF INVESTIGATIONS, REGION III

Case No. 2-2017-032

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Case No. 2-2017-032

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Case No. 2-2017-032

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Case No. 2-2017-032

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TESTIMONIAL EVIDENCE

Exhibit

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DETAILS OF INVESTIGATIONApplicable Regulations

10 CFR 50.7: Employee Protection (2017 Edition)
 10 CFR 50.5: Deliberate Misconduct (2017 Edition)

Purpose of Investigation

This investigation was initiated on August 21, 2017, by the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region II (RII), to determine if [REDACTED] a [REDACTED] at Southern Nuclear Operating Company's (SNOC) Vogtle Electric Generating Plant, Units 3 & 4 (Vogtle), in Waynesboro, Georgia, was discriminated against by management for raising safety concerns (Allegation No. RII-2017-A-0109) (Exhibit 1).

Background

On [REDACTED] a former [REDACTED] at Vogtle, contacted the NRC, RII, and reported he had been terminated for raising safety concerns. [REDACTED] reported that in 2014 and 2015, he was employed as [REDACTED] at Vogtle for Black Diamond Services (BDS), a staffing firm contracted with the Chicago Bridge & Iron Company (CB&I). According to [REDACTED] he raised many issues at the plant, which included material degradation, welding concerns, as well as a complaint to the Employee Concerns Program (ECP). [REDACTED] alleged he left the site in February 2015 due to pressure and for the way he was being treated by management (Exhibit 1; Exhibit 2, pp. 3-4).

In July 2017, [REDACTED] was hired to work with SNOC as a [REDACTED] at Vogtle. After being badged for only 2 days, [REDACTED] at the time the [REDACTED] for SNOC, advised [REDACTED] that his services were no longer needed and escorted [REDACTED] out the gate. According to [REDACTED] he was given no reason for the dismissal and was only advised to speak with his employer, Hire Technologies, Incorporated (Hire Technologies). Subsequent to being escorted off site, [REDACTED] contacted [REDACTED] at the Vogtle Units 1 & 2 ECP office to file a complaint. [REDACTED] asserted that because he had filed so many complaints in 2014-2015 and had participated in an NRC review, he was fired on July 14, 2017. It should be noted that [REDACTED] had been interviewed by NRC personnel relative to 2-2015-009F and may have had other issues reviewed relative to allegations RII-2015-A-0003, RII-2015-A-0017, and RII-2015-A-0022 (Exhibit 1; Exhibit 2, pp. 3, 9-11).

On August 1, 2017, this matter was brought before a RII Allegation Review Board (ARB). It was determined that [REDACTED] made a prima facie showing of employment discrimination and would be offered participation in the NRC's Alternative Dispute Resolution (ADR) program. On August 18, 2017, OI was advised that [REDACTED] had declined mediation and had requested his allegation be investigated (Exhibit 1; Exhibit 2, pp. 1, 11).

On March 9, 2018, [REDACTED] through his private attorney, amended his complaint by filing a failure to hire/blacklisting claim against SNOC, as well as Bechtel Power Corporation (Bechtel). The RII Enforcement and Investigation Coordination Staff (EICS) and regional counsel agreed

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Enclosure 2

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that there was a prima facie showing of discrimination and requested OI add the adverse action to its investigation (Exhibit 1; Exhibit 2, pp. 12-23).

Interview of ██████████ (Exhibit 3)

██████████ was interviewed by OI:RIII (Region III) on November 1, 2017, ██████████ was formerly employed as ██████████ for CB&I at Vogtle from March 2014 until February 2015. He returned to the site in 2017, as ██████████ for SNOG (Exhibit 3, pp. 2-5, 77). The following is a summary of the interview.

██████████ related that although he had been hired by BDS in his first stint at Vogtle, he had been "seconded" to CB&I and had worked under their supervisors and managers at the site. ██████████ identified ██████████ as his direct supervisor, ██████████ his manager, and ██████████ as his ██████████. According to ██████████ for most of his tenure working for these individuals, he incurred no disciplinary action, and he generally was on good terms with them. He claimed it was not until he began raising safety concerns that he was ignored and avoided by his management. ██████████ asserted that sometime around the June 2014, time frame, quality assurance (QA) inspection personnel identified through an inspection an issue involving a base metal repair. ██████████ explained a base metal repair was completed on a module, but it had not been authorized or signed off on by QA. In addition, a quality control (QC) hold point was bypassed in the process. ██████████ related this was a trend, and a corrective action needed to be written to document it. He recalled a conference call taking place with the ██████████ (later identified by OI as ██████████), who directed them to write a corrective action. ██████████ stated he wrote the corrective action, but was told later by ██████████ that a mistake was made, and that there had not been a base metal repair completed outside with no hold points. ██████████ surmised that management, particularly ██████████ did not want a corrective action written and was taking steps to mitigate the issue. ██████████ related that management changed their view of the matter and changed their story a few times, citing that rods were lost, then they had been broken, and then they had merely bent the rods. He remembered ██████████ maintaining an investigation had been conducted, and it had concluded there was no repair. ██████████ wanted ██████████ to change the corrective action as a result. ██████████ stated he requested the weld record, and QA was slow in producing it. ██████████ thought management's behavior was "very fishy" and reported his concern to ██████████ the ██████████. ██████████ suggested they conduct an acid etch test, but management refused to do so. ██████████ testified he also complained to the corrective action committee. He recalled ██████████ at the time ██████████ stating it was a serious matter; however, ██████████ contended the issue was subsequently "whitewashed" by the committee. ██████████ blamed ██████████ for the non-action, and argued it created an environment in which he was isolated and ignored (Exhibit 3, pp. 5-25).

██████████ related that about 1 or 2 months later, possibly August 2014, he raised another concern to management involving an inspection report written by ██████████. According to ██████████ the report concerned a base metal defect that had been uncovered while they were fitting wall panel CA0117. He viewed a photo of the defect and noted what he characterized as an "electrical arc." ██████████ suspected it was not a manufacturer defect and figured it was caused from a welding clamp. This precipitated a difference in opinion

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with [REDACTED] who suggested [REDACTED] "disposition" (i.e., close) it. [REDACTED] argued it was not a mere base metal defect and should have been looked into as a Part 21 violation. He contended that the defect was not given the significance it was due under the circumstances, and he brought the issue to the attention of [REDACTED] before writing Corrective Action Request (CAR) 2014-2276, dated October 21, 2014, on the issue (Exhibit 12). [REDACTED] contended he would not allow management to close it out and forced the issue. At the time, according to [REDACTED] he informed [REDACTED] about the matter. [REDACTED] pressured [REDACTED] the most, telling him to complete the disposition and fix it, because they needed to install the module. [REDACTED] related he did not experience any repercussions, but he was increasingly isolated. When asked what he specifically meant by being isolated, [REDACTED] replied his concerns were dismissed, and no one in management would communicate with him. He added he was not acknowledged and simply ignored (Exhibit 3, pp. 25-35).

[REDACTED] testified that during the September or October 2014 time frame, a recurring issue took place with cracks appearing from the bottom to the top of the modules because welders were violating weld procedures. He argued that after the modules were placed together, "delayed cracking" would occur because the modules, consisting of structural steel, were forced together and welded, causing enough stress to test the building structure. [REDACTED] remembered a 14-ton chain actually broke when they were pulling the modules together. According to [REDACTED] he informed [REDACTED] he was going to write a request for information (RFI) to CB&I about the code violations. He recalled [REDACTED] approaching him and asking him if he was trying to shut down the plant. [REDACTED] contended that [REDACTED] told [REDACTED] that he should not provide [REDACTED] any inspection reports about cracked welding. [REDACTED] was aware a meeting was held between field engineering, quality assurance, among others. He later learned from [REDACTED] that the meeting had concluded that the modules were not under any kind of stress. [REDACTED] stated he again felt ignored when he raised his concerns, and he specifically recalled meeting with the ECP on October 21, 2014. At the ECP he dealt with ECP specialists [REDACTED] and he was aware his concerns were raised to Westinghouse, as well as the corporate level of CB&I (Exhibit 11; Exhibit 13; Exhibit 15; Exhibit 17). [REDACTED] related he included complaints about stud welding as well. He added that Westinghouse avoided his RFIs and concerns also and refused to say how far a stud could be bent. [REDACTED] stated he also wrote Engineering and Design Change Requests (E&DCRs), but nothing was done about them either. [REDACTED] related he grew frustrated with both the ECP and management's inaction with his concerns, and he considered leaving the site. Prior to leaving the site, he engaged in the Differing Professional Opinion (DPO) process with management (Exhibit 3, pp. 36-56; Exhibit 25).

[REDACTED] stated his complaints led [REDACTED] to arrange a meeting with him and [REDACTED] and two other unknown individuals who he believed were from [REDACTED]. According to [REDACTED] he and [REDACTED] brought up their concerns and, while their concerns were acknowledged, they were told the concerns were already known and acted upon. [REDACTED] related he was told that "numerous complaints" about him were brought up to them over a period of time, and he was creating a hostile work environment. After the meeting, [REDACTED] complained to the ECP again about how the meeting turned from one involving concerns to an HR matter (Exhibit 3, pp. 56-60).

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AGENT'S NOTE: In an e-mail, dated January 9, 2015, [REDACTED] identified the two individuals from [REDACTED] (Exhibit 23). [REDACTED] (Exhibit 28, pp. 29-30).

[REDACTED] testified he left his position at Vogtle in late January 2015 or early February 2015, because of his concerns and his feeling "they were not building the plant properly." He had requested a transfer to [REDACTED] however, he was told there were no openings anywhere at the time. [REDACTED] complained he was criticized by [REDACTED] for writing his corrective actions, and how he "really put a lot of people in a bad spot." [REDACTED] added that [REDACTED] told him he did not understand "why you had to write the corrective actions in the way you did." [REDACTED], according to [REDACTED] suggested he look for other employment. After leaving Vogtle, [REDACTED] made an anonymous call to the NRC in early 2015 about [REDACTED] being pressured by [REDACTED] about calibration of instruments. He subsequently met with NRC personnel in March or April 2015 in [REDACTED] and provided testimony about it. According to [REDACTED] was afraid to report the matter because she was concerned for her job. [REDACTED] added he remained in contact with the ECP, specifically [REDACTED] through July 2015 (Exhibit 3, pp. 60-72).

AGENT'S NOTE: It was learned in this investigation that [REDACTED] actually met with OI:RII on February 17, 2015, in [REDACTED] and provided testimony about an undisclosed matter and his concerns regarding [REDACTED] at the time (Exhibit 3, pp. 61-67; Exhibit 35).

[REDACTED] related that after he departed Vogtle, he worked for [REDACTED] at MetalTek International (MTI) in Lakeland, Florida, for [REDACTED] in mid-2015. He left because MTI was purportedly experiencing financial problems. He joined Day & Zimmermann and worked with that company at the Turkey Point Nuclear Plant in Homestead, Florida, before taking a [REDACTED] position back at Vogtle with SNOC. He recalled showing up for work on July 10, 2017, and being introduced to [REDACTED] his [REDACTED] then brought [REDACTED] office and was told [REDACTED] would be his [REDACTED]. According to [REDACTED] a few days later, he observed [REDACTED] walking through the office. [REDACTED] stated their eyes met, and he said, "Hi" to [REDACTED] did not acknowledge him and quickly left the office. About 45 minutes later, [REDACTED] came to [REDACTED] and advised that [REDACTED] wanted to see him in his office. [REDACTED] walked with [REDACTED] office where [REDACTED] closed the door. [REDACTED] related that [REDACTED] told him that his services were no longer needed, and he and [REDACTED] then escorted [REDACTED] off site. [REDACTED] stated he asked [REDACTED] for the reason he was being walked off site, and [REDACTED] would not respond. [REDACTED] added he was told to contact [REDACTED] Hire Technologies; however, [REDACTED] later told him he was unaware why he was dismissed (Exhibit 3, pp. 71-91; Exhibit 8; Exhibit 26).

AGENT'S NOTE: [REDACTED] later contacted OI:RIII and the RII EICS and added a "blacklisting" complaint to this investigation. The complaint alleged that [REDACTED] has been barred from working in the industry, specifically with Bechtel and SNOC (Exhibit 2, pp. 12-23).

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Allegation: Discrimination Against a [REDACTED] for Raising Safety Concerns

Evidence

The testimony provided during interviews was reviewed regarding the allegation in this investigation. In addition, various documents related to this allegation, which are listed in the Review of Documentation section of this report, were also reviewed. Copies of the interview transcripts and documents determined to be relevant by OI:RIII are attached as exhibits to this report.

Review of Documentation

E-mail thread, dated May 20, 2014, from [REDACTED] Vogtle, to [REDACTED] Vogtle, RE: Weld Data Sheet Requests (Exhibit 9).

E-mail thread, dated August 29, 2014, from [REDACTED] Vogtle, to [REDACTED] CB&I, FW: "2014 CB&I Code of Conduct Training: Disclosure Comment and Resolution" (Exhibit 10).

E-mail thread, dated October 7, 2014, from [REDACTED] Vogtle, to [REDACTED] Subject: "Interview on Thursday October 9 (slc)" (Exhibit 11).

CB&I CAR 2014-2276, dated October 30, 2014, initiated by [REDACTED] Condition Title: "Damage to Safety Related Reactor Wall Plate Incorrectly Reported to QC" (Exhibit 12).

E-mail thread, dated October 30, 2014, from [REDACTED] Vogtle, to [REDACTED] RE: "Our Meeting" (Exhibit 13).

E-mail thread, dated October 30, 2014, from [REDACTED] Vogtle, RE: "Faying surface" (Exhibit 14).

E-mail thread, dated November 5, 2014, from [REDACTED] Vogtle, RE: "ITAAC (Inspections, Tests, Analyses and Acceptance Criteria) for Welding Program for SV (Steam Vent) 3" (Exhibit 15).

E-mail thread, dated November 18, 2014, from [REDACTED] Westinghouse, to [REDACTED] RE: "RFI answers from CB&I welding practices at SV3 & SV4" (Exhibit 16).

E-mail thread, dated December 1, 2014, from [REDACTED] CB&I, RE: "RFI answers from CB&I welding practices at SV3 & SV4" (Exhibit 17).

E-mail thread, dated December 9, 2014, from [REDACTED] FW: "Need to look at horizontal seam weld" (Exhibit 18).

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CB&I CAR 2014-2626, dated December 9, 2014, initiated by [REDACTED] instructs [REDACTED] not to disclose Inspection Report Info (Information) to [REDACTED] regarding welding issue being investigated" (Exhibit 19).

E-mail thread, dated December 11, 2014, from [REDACTED] RE: "Email (sic) to Westinghouse & CBI (sic) persons handling ITAAC at Vogtle 3 & 4" (Exhibit 20).

E-mail thread, dated December 15, 2014, from [REDACTED] FW: "N&D (Non-Conforming & Disposition) for CA01-01 to CA01-02 C/S (Carbon Steel) Joint" (Exhibit 21).

E-mail thread, dated December 16, 2014, from [REDACTED] Vogtle, Subject: "Question you posed yesterday in our discussion" (Exhibit 22).

E-mail thread, dated January 12, 2015, from [REDACTED] RE: "Our Meeting in Your Office at 11:30 AM Today" (Exhibit 23).

E-mail thread, dated January 13, 2015, from [REDACTED] Vogtle, FW: "email (sic) of concern" (Exhibit 24).

CB&I DPO, dated January 13, 2015, submitted by [REDACTED] (Exhibit 25).

Hire Technologies letter, dated July 17, 2017, from [REDACTED] Vogtle, Subject: "Separation Notice [REDACTED]" (Exhibit 26).

E-mail, dated December 5, 2014, from [REDACTED] Vogtle, [REDACTED] Vogtle, [REDACTED] Vogtle, Subject: "Need to look at horizontal seam weld" (Exhibit 31).

E-mail thread, dated November 21, 2014, from [REDACTED] Vogtle, to [REDACTED] et al., RE: "Classification of CAR 2014-2276" (Exhibit 32).

E-mail thread, dated December 9, 2014, from [REDACTED] FW: "Need to look at horizontal seam weld" (Exhibit 33).

E-mail thread, dated January 9, 2015, from [REDACTED] FW: "Our Meeting in Your Office at 11:30 AM Today" (Exhibit 34).

E-mail, dated February 3, 2015, from [REDACTED] NRC, OI, to [REDACTED] RE: "NRC Interview Feb 17, 2015" (Exhibit 35).

Letter, dated October 24, 2018, from [REDACTED] LLC, to [REDACTED] OI, NRC, Re: "Inquiry regarding (1) [REDACTED] Separation Correspondence; and (2) Supervisory Training Received Received by [REDACTED] on Safety Concerns/Whistleblower Protection" (Exhibit 46).

Learning History for [REDACTED] Vogtle, dated September 20, 2018 (Exhibit 47).

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Learning History for [REDACTED] Vogtle, dated September 20, 2018 (Exhibit 48).

Training Slides from Generic Awareness Section on Safety Conscious Work Environment (SCWE), undated (Exhibit 49).

Agent's Analysis

Protected Activity

[REDACTED] testified that sometime around the June 2014 time frame, QA inspection personnel identified an issue involving a base metal repair. [REDACTED] explained a base metal repair was completed on a module, but it had not been authorized or signed off on by QA. In addition, a QC hold point was bypassed in the process. [REDACTED] related this was a trend, and a corrective action needed to be written to document it. He recalled being directed by [REDACTED] at the time the [REDACTED] to write a corrective action. [REDACTED] stated he wrote the corrective action on the issue. [REDACTED] asserted that management, particularly [REDACTED] took steps to mitigate the issue. [REDACTED] related that management changed their view of the matter and changed their story a few times, citing that rods were lost, then they had been broken, and then they had merely bent the rods. [REDACTED] thought management's behavior was "very fishy" and reported his concern to [REDACTED] his [REDACTED] suggested they conduct an acid etch test, but management refused to do so. [REDACTED] testified he also had complained to the corrective action committee. He recalled [REDACTED] stating it was a serious matter; however, the issue, according to [REDACTED] was subsequently "whitewashed" by the committee (Exhibit 3, pp. 5-25).

[REDACTED] related that about 1 or 2 months later, possibly August 2014, he raised another concern to management involving an inspection report written by [REDACTED]. According to [REDACTED] the report concerned a base metal defect that had been uncovered while they were fitting wall panel CA0117. He viewed a photo, and noted what he characterized as an "electrical arc." [REDACTED] suspected it was not a manufacturer defect and figured it was caused from a welding clamp. This precipitated a conflict with [REDACTED] who suggested [REDACTED] "disposition" (i.e., close) it. [REDACTED] argued it was not a mere base metal defect and should have been looked into as a Part 21 violation. He contended that the defect was not given the significance it was due under the circumstances, and he brought the issue to the attention of [REDACTED] before writing CAR 2014-2276, dated October 21, 2014, on the matter (Exhibit 12). [REDACTED] contended he would not allow management to close it out and forced the issue. At the time, according to [REDACTED] he also informed [REDACTED] of his concern (Exhibit 3, pp. 25-35).

[REDACTED] testified that during the September or October 2014 time frame, a recurring issue was taking place with cracks appearing from the bottom to the top of the modules because welders were violating weld procedures. He argued that after the modules were placed together, "delayed cracking" would occur because the modules, consisting of structural steel, were forced together and welded, causing enough stress to test the building structure. [REDACTED] remembered a 14-ton chain had actually broke when they were pulling the modules together. According to [REDACTED] he informed [REDACTED] he was going to write an RFI to

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CB&I about the code violations. [REDACTED] was aware a meeting was held between field engineering, quality assurance, among others. He later learned from [REDACTED] that the meeting concluded that the modules were not under any kind of stress. [REDACTED] stated he also raised his concerns to the ECP on October 21, 2014, and included complaints about stud welding as well. [REDACTED] stated he also wrote E&DCRs, but nothing was done about them. [REDACTED] then engaged in the DPO process about the delayed cracking issue (Exhibit 3, pp. 35-56).

AGENT'S NOTE: [REDACTED] subsequently wrote CAR 2014-2626, dated December 9, 2014, concerning: [REDACTED] instructs [REDACTED] not to disclose Inspection Report info (sic) to [REDACTED] regarding welding issue being investigated" (Exhibit 19). Also, although [REDACTED] did not provide much detail about his visits with the ECP, e-mail exchanges obtained in this investigation corroborated his interaction with the program in late 2014 and early 2015 (Exhibits 11, 13, 18, 20, 21, 23, 24, 33, 34).

After leaving his position at Vogtle, [REDACTED] made an anonymous call to the NRC in early 2015 about [REDACTED] being pressured by [REDACTED] about calibration of instruments. He subsequently met with NRC personnel and provided testimony about it and another (undisclosed) issue. According to [REDACTED] was afraid to report the matter, because she was concerned for her job (Exhibit 3, pp. 60-72).

Management Knowledge

The following supervisors and managers directly involved in [REDACTED] allegations were interviewed, in part, for their knowledge of [REDACTED] protected activity. The following is a summary of their testimony on the matter. Their testimony collectively showed that while some of [REDACTED] concerns were vaguely recalled, his concerns leading to the DPO were widely known. Not only did witnesses remember [REDACTED] concerns in the DPO, but they also recalled the manner in which they were communicated.

[REDACTED] related he was familiar with [REDACTED] concerns which culminated in the DPO. According to [REDACTED] concerns involved "how a backing bar was fit up." In other words, [REDACTED] was concerned with how two plates were being held together by a backing bar support, and how the backing bar was "tack welded" in place, creating an "unacceptable offset." [REDACTED] recalled QC signing off on the work nevertheless, and he specifically remembered [REDACTED] being "confrontational" about his concerns also (Exhibit 7, pp. 8-14).

[REDACTED] testified he could not remember [REDACTED] reported concern in the June 2014 time frame about a base metal repair. According to [REDACTED] the site experienced significant problems with base metal repairs, but he was unfamiliar with any base metal repairs or corrective actions associated with [REDACTED] also stated he did not have any knowledge of a corrective action written by [REDACTED] in August 2014 about a base metal defect in wall panel CA0117. He also denied knowing about [REDACTED] visiting the ECP in October 2014. [REDACTED] related he was familiar with the events leading to the DPO in late 2014 and early 2015. The DPO involved [REDACTED] having safety issues and stress concerns with CA0107 and CA0101 sub modules which were not being addressed (Exhibit 5, pp. 17-26, 40-55; Exhibit 25).

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██████ recalled ████████ being involved with multiple non-conformances as well as CARs associated with the production of structural modules, but could not otherwise provide specifics. According to ████████ many of ████████ CARs were "pretty rambling, and very opinionated" and, on a few occasions, accusatory. He remembered the DPO initiated by ████████ because it had been the focus of his attention for quite some time (Exhibit 25). Aside from the DPO, ████████ could not remember details of any of ████████ concerns, although he had acknowledged one of ████████ welding concerns in an e-mail, dated May 20, 2014 (Exhibit 9). As far as ████████ contacting the ECP on site, ████████ stated he was not aware of it, although he suspected it, given his periodic recommendation to his subordinates to utilize the ECP as well as ████████ passion about his DPO (Exhibit 4, pp. 12, 17-26, 36-44, 47-56).

██████ testified that before he became the ████████ he was the ████████ and he was in the latter position at the time of ████████ allegations. ████████ became aware that ████████ had concerns about modules shipped from CB&I in Lake Charles, Louisiana, being "unsatisfactory," particularly how structural welds were unnecessarily stressed. According to ████████ initiated several CARs, N&Ds (Nonconforming & Disposition), as well as the DPO which detailed poor construction and welding practices. ████████ related that ████████ concern in the September or October 2014 time frame about cracks appearing from the bottom to the top of the modules because welders were violating weld procedures resulted in the DPO. ████████ concerns included an e-mail from ████████ dated December 5, 2014, about a horizontal seam weld (Exhibit 31). ████████ also recalled ████████ raising a concern about a mill-induced discontinuity on a plate which may have been related to CAR 2014-2276, which ████████ described as a potential Part 21 violation (Exhibit 12). As far as ████████ reporting any concerns to either the ECP or the NRC, ████████ stated he did not have any knowledge of it (Exhibit 28, pp. 5-28, 43).

██████ related he was aware of ████████ writing multiple CARs while he was employed at Vogtle in 2014 and 2015, and he specifically recalled CAR 2014-2276 in which ████████ criticized ████████ about damage to a safety related reactor wall plate (Exhibit 12). According to ████████ many were aware of ████████ concerns about stress relief in the module, and how it led to the DPO. He was also aware of ████████ writing a CAR in June 2014 about a base metal repair, although he did not remember details. ████████ mentioned he figured ████████ had complained to the ECP because the ECP investigated and interviewed everyone associated with the DPO. ████████ also denied ████████ assertion that he had asked ████████ if he was trying to shut down the plant by raising his concerns (Exhibit 30, pp. 9-15, 17-22, 26-28, 30-35).

██████ stated he did not have knowledge about ████████ engaging in any protected activity prior to ████████ being escorted off site in July 2017. According to ████████ he did not know ████████ being hired at Vogtle, and he did not know anything about him from his previous work at the site. ████████ related that it was not until after ████████ was walked off site that he spoke with someone, possibly ████████ having worked at the site previously, and that "he had cost the company a lot of money." He added he did not have any details, and he preferred to stay out of it and not ask any questions. ████████ mentioned he did not know anything about a DPO ████████ might have been associated with either. When asked whether he was aware ████████ had written CARs during the time he was working for CB&I in 2014 and 2015, ████████ would not admit whether he was aware of it at all (Exhibit 29, pp. 5-6, 8-10, 18-24).

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██████████ at Vogtle. ██████████ at the site in 2017. He related he was unaware of ██████████ engaging in any sort of protected activity, including raising any nuclear safety concerns to management as well as complaints to the NRC, while he was employed at Vogtle (Exhibit 6, p. 19; Exhibit 44, pp. 6-7, 25-26).

██████████ for CB&I in 2014 and 2015 when ██████████ was employed by CB&I as a ██████████ testified he never had any real interaction with ██████████ but he was aware ██████████ was stopping work in the field and for "pulling work packages." According to ██████████ this involved either removing the hard copies of the work package from the field or by placing the work package on hold in the computer. Doing so would effectively stop work in the process. While ██████████ acknowledged this was a legitimate function in ██████████ role as a ██████████ he complained that ██████████ continually pulled the packages, and it always involved the same welding procedure. He specifically recalled ██████████ raising concerns about tack welds and how they had been cracking. ██████████ related that ██████████ manner of disrupting work by pulling packages as well as repeatedly raising the same concerns over several months was unnecessary, unreasonable, and "off-putting." Even though ██████████ was not familiar with ██████████ DPO, he was very familiar with the events leading up to it. As far as ██████████ reported complaints to the ECP and to the NRC, ██████████ stated he was unaware of it (Exhibit 37, pp. 6-8, 11-21, 24-31, 35).

██████████ testified he had been told by ██████████ sometime during the summer of 2017, that a worker, later identified as ██████████ had just been hired by the site. According to ██████████ he was informed by ██████████ that ██████████ was the worker "who wouldn't take no for an answer" when he worked at the site in 2014. ██████████ did not recall ██████████ name as much as he remembered how his concerns impacted the project's progress. They had been on a critical path at the time, and work was repeatedly delayed, if not stopped altogether, in the process. He recalled discussions with CB&I personnel about having a third party come in and expedite the resolution of ██████████ technical concerns, resulting in the DPO assessment (Exhibit 38, pp. 6-16, 34-35).

██████████ at Vogtle and had been ██████████. He did not recall ██████████ specifically, but was able to confirm that ██████████ had applied for an ITAAC ██████████ in May 2018. According to ██████████ he had not been familiar with ██████████ nor was he familiar with his background (Exhibit 43, pp. 6, 9-10).

██████████ stated he was not familiar with ██████████ nor his background when ██████████ applied for a ██████████ at Farley in February 2018. He also was not familiar with ██████████ DPO previously filed at Vogtle in early 2015 (Exhibit 40, pp. 6-10, 13-14, 21).

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██████████ at Vogtle and has the collateral duty as coordinating ██████████. ██████████ related he was not familiar with ██████████ nor did he recall him. After being contacted for the OI interview, ██████████ researched the name and learned ██████████ had applied for a ██████████ at Vogtle sometime between January-April 2018. ██████████ related he did not ask anyone at SNOC or at the plant about ██████████ and he was unaware of ██████████ engaging in any sort of protected activity (Exhibit 42, pp. 6-7, 17-18, 25-26, 28).

██████████ for Bechtel but had been the Bechtel ██████████ having the additional responsibility of interviewing applicants for project ██████████ at Vogtle in September 2017. According to ██████████ at the time of ██████████ application and interview process he was unaware of any safety concerns ██████████ had previously raised while employed at Vogtle, nor did he have knowledge of any other protected activity in which ██████████ might have participated (Exhibit 45, pp. 7, 10-11, 23-25).

██████████ for Bechtel, but in September 2017, he was tasked with ██████████ at Vogtle when Bechtel took over the work operation from Fluor. According to ██████████ he was not familiar with ██████████ at the time ██████████ was being considered for a ██████████ at Vogtle. He also was not familiar with any protected activity or safety concerns ██████████ might have been associated with during the process (Exhibit 50, pp. 7, 9-10, 18, 21-25).

Adverse Action

██████████ testified that as he raised his safety concerns to his management at Vogtle, he increasingly became ignored and isolated. According to ██████████ whenever he raised a concern, management would dismiss it and not communicate with him afterward. ██████████ recalled one occasion when, after writing a corrective action, he was approached by ██████████ and asked if he was trying to shut down the plant. ██████████ added that an unidentified member of the site's HR told him he was causing a hostile working environment. ██████████ also remembered being asked by ██████████ why he had written the corrective actions (Exhibit 3, pp. 7, 20, 23, 34-36, 43, 58-59, 68-70).

██████████ related that during the week of July 10, 2017, after being hired by Hire Technologies to work for SNOC at Vogtle, he was informed after only a few days by ██████████ that his services were no longer needed, and he was escorted off site (Exhibit 3, pp. 82-85). Since his OI interview, ██████████ has reported he has been unable to obtain any employment with Bechtel or SNOC (Exhibit 2, pp. 12-23).

Nexus

This investigation was tasked with determining whether ██████████ was discriminated against by management at Vogtle for raising concerns associated with base metal repairs and welding procedure violations. The allegations in this case also included whether ██████████ was precluded from working in the industry again as a result of his protected activity. ██████████ allegations concerning retaliation were compared against the licensee's argument that ██████████ adverse actions were the result of legitimate business practices. This comparison not only

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involved the chronology of events, but also considered the credibility of documentary and testimonial evidence, all of which provided context in assessing whether a nexus actually existed between [REDACTED] adverse actions and his protected activity.

The events and circumstances surrounding [REDACTED] allegations can easily be separated between [REDACTED] first stint at Vogtle from March 2014 to February 2015, and his return to the site 2½ years later in July 2017. It was during [REDACTED] first 12 months at Vogtle when he engaged in almost all of his protected activity. While he did provide testimony to the NRC on [REDACTED] concerning RII-2015-A-0017 and RII-2015-A-0022 after leaving Vogtle, no one in management had been aware of it anyway. Nevertheless, given both [REDACTED] OI testimony and the collective acknowledgement of his safety concerns by site personnel, it is undisputed [REDACTED] had engaged in a protected activity, and some of his concerns were widely known among the rank and file as well as management. This was clear in witness testimony and the documentary evidence obtained in this investigation. Although witness recollections were less than precise due to the lapse in time and were unable to specifically recall some of the concerns [REDACTED] had raised, all remembered those involving the DPO. The DPO was simply the culmination of most of [REDACTED] concerns and undoubtedly created a lot of attention, resulting in a third party study to provide an independent assessment.

While [REDACTED] concerns were clearly made and understood by management, it was also evident that his concerns, whether they were verbal, documented in CARs or reported in e-mails, exhibited passion not normally seen in corrective actions and e-mail communications. [REDACTED] concerns were known by those directly involved in the circumstances; however, the common denominator among all of the concerns was the manner in which [REDACTED] conveyed them. The way [REDACTED] communicated his concerns leading to the DPO was symptomatic of how he engaged in all of his protected activity. There was ample testimony that [REDACTED] exhibited a condescending and abrasive attitude toward others when they did not agree with him on an issue. According to [REDACTED] there were several reports from [REDACTED] peers and supervisors of him being disruptive. Specifically, he was causing dissension by questioning the "means and methods" of construction personnel which is normally the purview of construction, not [REDACTED]. This is evidenced by an e-mail, dated October 30, 2014, to [REDACTED] regarding "Faying surface," and another e-mail, dated November 21, 2014, to [REDACTED] regarding the "Classification of CAR 2014-2276" (Exhibits 14 and 32). [REDACTED] added that a number of craftsmen filed a complaint to CB&I's labor relations office. [REDACTED] testified [REDACTED] overstepped his boundaries which led to interfering with other peoples' work. He recalled numerous non-conformances and corrective actions being written by [REDACTED] and he did not have any problem with the concerns per se. However, [REDACTED] did not agree with the responses by engineering, and "he just wouldn't let go of it." [REDACTED] avoided the chain of command and investigated his concerns by himself. When an impasse was reached, the DPO process was initiated (Exhibit 4, pp. 13-22). The perception that [REDACTED] continued to pursue his concerns was corroborated by e-mails; one of which was to the legal/compliance division, dated August 29, 2014, about a "fit up" not meeting applicable codes, and another e-mail, dated November 18, 2014, in which he raised concerns to Westinghouse after receiving an insufficient response from CB&I (Exhibits 10 and 16).

[REDACTED] corroborated the statements made by [REDACTED] stating [REDACTED] was "combative" at times with the craft, and this prompted complaints to Westinghouse's HR department. Despite

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█████ characterization, there are no reports of █████ physically assaulting anyone. According to █████ there were many times he needed to mediate between █████ and construction personnel because █████ was working outside his assigned █████ role and veering into someone else's assignment. █████ asserted he felt as if █████ did not feel the need to report to him and █████ because they supposedly did not understand his concerns in a technical sense (Exhibit 5, pp. 10-17). █████ was very familiar with █████ concerns, and he argued █████ was outside of his element when he complained about welding issues. According to █████ complained about inadequate quality control, inadequate inspections, and subpar welding engineering. He maintained █████ would conduct his own investigations about his concerns, asking for various inspection and engineering documents and not completing any work which he was responsible. Although █████ acknowledged █████ background in welding, he described his concerns associated with the DPO as "nonsensical." He recalled advising █████ about there being no technical problems associated with his concerns, but he was rebuked by █████ testified that █████ caused such a threatening atmosphere at the site that when he entered the MAB (Modular Assembly Building), workers laid down their tools and stopped work (Exhibit 28, pp. 5-10, 27-28). █████ statements about █████ involving himself in issues outside his purview were shared by █████ which caused █████ to respond in an e-mail, dated December 16, 2014, titled, "Question you posed yesterday in our discussion." In that e-mail, █████ pushed back against █████ purported assertion that it was not █████ job to be involved in certain issues (Exhibit 22).

It is important to note that during the time of █████ allegations, Vogtle was operating under an NRC Confirmatory Order for a chilled working environment. This apparently had an impact on how management reacted to █████ behavior and his protected activity. Testimony from █████ particularly indicated clear avoidance in order not to give the perception of retaliation, and efforts were taken to avoid even the appearance of discrimination of any sort (Exhibit 5, pp. 23-25; Exhibit 28, p. 29). Whether this explained █████ complaint of being ignored and isolated is uncertain; however, given both sides' testimony, one can understand how █████ perception of being ignored and isolated likely resulted from the sites' apprehension of dealing with him in that environment. Despite the complaints made by personnel about █████ there were no adverse actions taken against him before he departed the site in early 2015. █████ claim that █████ asked if he was trying to shut down the plant was refuted by █████ On the other hand, █████ complaint about being told he was creating a hostile work environment was not unwarranted given the witness testimony. Even though there was much disagreement over █████ concerns leading to the DPO, there was no attempt to dissuade █████ from taking whatever measures he deemed necessary to resolve the impasse. While the DPO was allowed to continue its process, its ramifications were felt by some in management who felt their jobs were hanging in the balance. Although he was short on specifics, █████ believed there were some in management who felt threatened when █████ made his concerns known to higher levels of management. According to █████ asserted his concerns were being overlooked by some managers (Exhibit 28, pp. 35-36). Given the aforementioned Confirmatory Order, there was a heightened state of sensitivity concerning how management dealt with complaints, and it appeared there was a very cautious approach when it came to dealing with █████ Although there had been clear frustration with █████ approach in resolving his differences with management, up until the time he departed the site, there was no actual retaliation on the part of management. Evidently,

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protected activity at Vogtle did not affect his subsequent contracting work over the next 2½ years with MTI and Day and Zimmermann.

AGENT'S NOTE: It was learned in this investigation that PADS (Personnel Access Data System) listed access status as "FAV" (favorable). This status remains unchanged to this day.

The site, particularly CB&I, contracted with for what described as a "several million dollar" assessment (Exhibit 28, p. 39). The assessment ultimately resulted in the site's favor. Around the time of the assessment, departed the site, citing a better opportunity with MTI. After having worked in other locales for nearly 2½ years, returned to Vogtle as an SNOC on July 10, 2017. Judging by the testimonial evidence in this investigation, the case enters its most critical stage when all of the consequences from protected activity in 2014 and 2015 are acted upon. was more or less notorious for his concerns, and this was well-established by the testimony; however, there were no real adverse actions taken against him when he departed in February 2015. As stated, he left on his own accord, and worked without incident at other facilities before returning to Vogtle. In fact, concerns did not keep him from being hired at Vogtle. It was not until returned to the site when he felt the full impact of engaging in his protected activity. Despite consistent testimony from workers complaining about activities, disposition, and conduct in his first stint at Vogtle, the allegation hinges on a relatively brief conversation had with soon after returned to the site. This becomes the flashpoint when SNOC management is reminded of protected activity, and management consequently employed the adverse action as a retaliatory measure. The fact that 2½ years lapsed between protected activity and his adverse action was not significant since remembered the particulars from and his DPO, and the time in between did little to dispel the apparent contempt they felt for

AGENT'S NOTE: OI made inquiries with CB&I as to the actual cost of the independent assessment, but never received a definitive answer.

for CB&I, and despite having no daily interaction with he was aware of stopping work by raising concerns about discrepancies in welding procedures. shared many of the concerns that other members of the staff had with particularly how he was "pulling work packages." According to the work packages were the only guidance they would use in the field, and without a work package, nothing could be completed. These packages would be in either hard copy form or would be computerized. In either case, can put the package, and thus the work, on hold by stopping it from being issued in the computer or by physically removing the hard copy and keeping it from being checked out. explained a hold on a work package can be a legitimate action by a and can be done for several reasons. He recalled there, on occasion, being problems with how went about it. repeatedly pulled work packages for the same reason involving the same weld procedure. recalled concerns were associated with tack welds, and those concerns were addressed by

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multiple people over several months. Tack welds were described as a 1 inch piece of weld material used as to support two welded pieces of plate, and these were used in many locations. ██████ acknowledged ██████ concerns that the tack welds were cracking in some areas, but he argued this cracking was not uncommon, and it was nevertheless approved by QC personnel. When asked specifically how many times ██████ pulled the work packages, ██████ was uncertain, but replied it was more than once. He asserted it was more than necessary, and then testified it occurred several times. ██████ related he was confident that others felt the same as he did regarding ██████. Although he was familiar with ██████ concerns with the tack welds, he claimed he did not know his concerns led to a DPO (Exhibit 37, pp. 9-27, 30, 33-34).

██████ emphasized ██████ "irrational" behavior as well as the length of time, the many meetings, and the amount of professionals it took in resolving ██████ concerns. When asked to explain further the perception that ██████ was acting irrationally, ██████ responded that ██████ was constantly being told by the experts (e.g., QC and weld engineers) that the tack welds were fine, but he continued to stop work nonetheless. ██████ was also asked whether he believed in the 2014 time frame that ██████ concerns about the tack welds were a protected activity. According to ██████ he did not recognize it as such, because of the manner in which it was conveyed. He recognized that ██████ pulled packages "all the time," but he never considered it a protected activity per se. He viewed it as ██████ raising an invalid concern which was fully addressed, not once, but multiple times. ██████ asserted that he did not see ██████ concerns as protected because after it had been raised, it was continually addressed by experts who had a better understanding of the matter than ██████. Furthermore, ██████ stated he could not understand how ██████ concern could be protected when there was no formal stop work order. When ██████ was confronted with his own testimony that when ██████ pulled the work packages, he stopped work, ██████ argued it was merely a procedural issue. He attempted to make a distinction between ██████ stopping work by pulling a work package and management issuing an order to stop work. ██████ testified he also did not see ██████ specific concerns about tack welds as either a nuclear safety or industrial safety matter since "it has nothing to do with the final product." He argued that the final product is NDE (Non-Destructive Examination) tested, visually inspected twice and then "vacuum box tested (another form of NDE test)." He added that any of those processes would eliminate lack of fusion or any other type of inconsistency in the weld. ██████ asserted that only during this stage that it would be considered a nuclear safety matter (Exhibit 37, pp. 27-29, 44-50). ██████ attempts to explain and justify his actions can easily be viewed as either misguided, ignorant, or altogether misleading. However, ██████ testimony contradicts the annual training he received concerning SCWE, Deliberate Misconduct, Employee Protection, and ethical behavior (Exhibits 46, 47 & 49). His ill-founded statements about ██████ concerns not being protected were unreasonable and could not be reconciled with the facts.

██████ related that ██████ left the site and later returned in July 2017. According to ██████ he learned from someone in the field that ██████ was hired back at the site. He recalled ██████ from the tack weld matter, and then "made it a point" to ask ██████ "if he was aware that we were hiring this individual on-site." When asked why he made it such a priority to tell ██████ he replied, "I drew the conclusion that ██████ acted a little irrational about the whole welding problem." ██████ recalled the conversation with ██████ by adding the following (Exhibit 37, pp. 36-41),

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Well, we had that welding issue with this guy. Everybody told him it was okay, he continued to stop work and make it a big deal and, you know, it just seems like it's not the kind of contractor we should be having on a nuclear power construction site.

This information was passed on to [REDACTED] recalled the conversation. [REDACTED] thought process is noteworthy and is consistent with [REDACTED] mindset when reacting to [REDACTED] return to Vogtle. According to [REDACTED] he did not know [REDACTED] name until being told by [REDACTED] that [REDACTED] was "the guy that wouldn't take no for an answer" regarding the "issues we had with the *technical concerns* (italics added) . . . around the module fit-up years ago." [REDACTED] continued (Exhibit 38, pp. 8-9, 33-35),

He [REDACTED] gave me more details of – reminded me about kind of the guy's behaviors that happened basically after the technical folks at Westinghouse had satisfied – had answered the questions. The gentleman wouldn't accept those answers from the design authority.

And then it all kind of clicked in my head that I remembered some of the – I guess, just the gnashing of teeth and the machinations that the project went through to satisfy someone's issues with module seam welding and with module fit-up.

[REDACTED] testified to OI that [REDACTED] concerns in 2014 had been slowing progress on the project, and attempts had been made to expedite a resolution. [REDACTED] related he had never seen [REDACTED] nor did he know his name at the time. He added that he remembered the matter being more of a "behavioral issue." [REDACTED] continued (Exhibit 38, pp. 9-15),

I remember hearing the behavioral problems and we just – we don't need that type of behavior, that type of attitude. That's not constructive for getting the plant built.

When asked about his characterization of the word "behavior," [REDACTED] stated (Exhibit 38, pp. 15-16),

So the behavioral issues are basically not having a team spirit, not playing with the team.

We have rules, we follow the rules. We have procedures and processes, we follow the processes.

That's the governing rules and documents for how we build a plant and we – it's not – it's not okay for us, as for the project, the company, to support individuals who might go rogue, but who follow the processes, use the processes and don't like the answer they get, and they continue to drive their personal agenda, right?

And that's – that's what had happened at that point in the project. Based off all the aftermath and the post analysis and the DPO apparently that was done and

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all the information that came through, you know, there wasn't – the technical concern tied to these – the tack welds and the fit-up issues weren't a legitimate issue, they weren't nexus to safety, it was not a real problem.

██████████ was clear in his testimony he viewed ██████████ tack weld concern as a technical concern, albeit less than a nuclear safety concern. ██████████ refused to see the safety issue when the matter was asked and answered by the experts. He was also clear that ██████████ penchant for not accepting the answer he was looking for was a large part of the problem as he perceived it. Nevertheless, this did not keep him from acknowledging that ██████████ concerns were properly dealt with through the processes at the site. ██████████ also acknowledged that ██████████ so-called agenda involved his being correct on the issue, and ██████████ viewed himself as the technical authority. ██████████ understood ██████████ concerns had run their course through each of the plant processes, whether it be expressed verbally, through CARS, RIFs, N&Ds, E&DCRs or the DPO. Although ██████████ complained in his OI interview about ██████████ interpersonal conflicts with the rank and file and management, he subsequently admitted he was not privy to ██████████ interactions with personnel until he began preparing for the OI interview. Nevertheless, ██████████ asserted that because of "the attitudes ██████████ exhibited" after being corrected on his concerns, he decided to remove ██████████ from the site. While ██████████ acknowledged the DPO in his interview, he denied the DPO had any effect on his decision to remove him. ██████████ was asked whether he viewed the welding concerns within the DPO as a protected activity, he claimed he did not know if the "formal DPO" had even been pursued. This was a specious statement since he had testified he was directly involved in the decision to have a third party assessment to finally resolve the DPO impasse between ██████████ and management. Based on his testimony alone, he understood there was a DPO, and the collective testimony in this case showed the events leading to the DPO were widely known. The testimony which followed demonstrated insight as to his mindset when he decided to walk ██████████ off site (Exhibit 38, pp. 16-25, 32-33, 45-46).

██████████ uneven testimony about the DPO was comparable to his statements about ██████████ protected activity. While ██████████ conceded that ██████████ concerns could have been construed as a protected activity since it was raised and documented as a formal concern, he argued that his decision was solely based on his behavior "after the fact," i.e., the fact "he just would not accept the technical authority disposition of his concerns." ██████████ synopsised his mindset when he testified to the following (Exhibit 38, pp. 46-48),

... Westinghouse answered his questions and ██████████ didn't like the answer and took the next step and got another answer and didn't like it and took – and the next step, right?

So that whole won't – take-no-for-an-answer, that behavior – I mentioned earlier, we have a process, we follow the processes. We need people that believe in our processes and don't – you can't work outside of the processes, right?

I mean, that's what they're there for to protect these type of things, to protect these behaviors, to protect this type of concern.

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And so, that's all vetted out, that's all good, but it doesn't give you the right to behave in such a way that it causes discontent among the organization, within your teammates, behave in such a way that it poisons the work environment, right, with your personal, you know, attitudes.

You don't have that authority to do that just because you write a safety concern, right? They're totally separate paths, right?

Throughout his testimony, [REDACTED] continually mentioned "the process" and inferred that as long as anyone stayed within that process, their respective concerns would be seen as legitimate and worthy of protection. He viewed this as any documented report or procedure involving the concern. Despite initial misgivings, [REDACTED] agreed that the DPO that [REDACTED] filed was part of the process he constantly referenced (Exhibit 38, p. 48). His argument that [REDACTED] concerns were not a consideration in his decision to remove him from the site is not credible. Whether [REDACTED] was technically correct or incorrect regarding his concerns is not as significant as the fact he reasonably believed in its legitimacy, and he pursued his concerns through the processes afforded him. Up until the time he left Vogtle in February 2015, he was allowed to raise his concerns, even when his manner while doing so was at times bordering on unprofessional. Nonetheless, his somewhat unprofessional behavior during his first stint at Vogtle was never realized by [REDACTED] (although [REDACTED] unsuccessfully tried to use this in his testimony). There is no evidence they were aware of it. Rather, they testified they were bothered with [REDACTED] continually stopping work to raise his concerns. As [REDACTED] continued to persistently follow through, his activity was undoubtedly protected, although [REDACTED] were willfully blind to that fact. Despite their arguments to the contrary, they were aware of [REDACTED] protected status, given their training and experience (Exhibits 46-49).

AGENT'S NOTE: As reported, many shared the feelings of [REDACTED] and [REDACTED]. This investigation revealed that [REDACTED] and [REDACTED] had a similar conversation about [REDACTED] returning to the site around the time of [REDACTED] termination. [REDACTED] had the same misgivings about [REDACTED] returning and related these concerns about [REDACTED]. However, [REDACTED] concerns about [REDACTED] were never passed on to [REDACTED] the decision-maker, when it came to [REDACTED] termination (Exhibit 27, pp. 40-53; Exhibit 29, pp. 8-13, 23-24).

As noted by [REDACTED] he was not informed by SNOC why he was terminated. While he was told to check with Hire Technologies, the staffing company was not informed either (Exhibit 8). A routine check was made with SNOC legal counsel, and it was learned there is no documentation of the termination with the company (Exhibit 46).

[REDACTED] maintained he not only was retaliated against by management when he was terminated by SNOC, but he was effectively "black-listed" from working in the industry again. Although [REDACTED] had been advised by Hire Technologies in a letter, dated July 17, 2017, that he was "eligible for rehire within the Southern Company fleet," he still has found it impossible to find work with either Bechtel or SNOC (Exhibit 26). According to the complaint he filed with the Department of Labor's Occupational Safety & Health Administration, [REDACTED] argued he

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applied for positions at SNOC facilities, including Vogtle and Farley. He also contended in his complaint he was denied positions with Bechtel and asserted it was for raising his safety concerns during his first stint at Vogtle (Exhibit 2, pp. 15-24). This investigation was able to determine that [REDACTED] applied for the following SNOC and Bechtel positions:

Bechtel – [REDACTED] September 2017

Vogtle 3 & 4 – [REDACTED] November 2017

Farley – [REDACTED] February 2018

Vogtle 3 & 4 – [REDACTED] February 2018

Vogtle 3 & 4 – [REDACTED] May 2018

This investigation was also able to confirm that [REDACTED] had applied for these positions and was denied employment. The first of such applications took place in September 2017 when [REDACTED] with Bechtel at Vogtle. This was confirmed by [REDACTED] the [REDACTED] for Bechtel, who was working temporarily at Vogtle in late 2017. According to [REDACTED] he did not have any specific recollection of [REDACTED] and needed to review his interview notes to refresh his memory. He was able to determine that he did, in fact, interview [REDACTED] but he could not remember whether the interview was conducted over the telephone or in person. [REDACTED] related he did not believe [REDACTED] met the minimum requirements for [REDACTED] position. He felt [REDACTED] was a better fit for [REDACTED] vacancies at the site instead, given his work order planning background, and he referred [REDACTED] resume to those considering applicants in [REDACTED]. As stated, [REDACTED] was not familiar with any safety concerns [REDACTED] had raised during his time at Vogtle and was not aware of any other protected activity associated with [REDACTED] (Exhibit 45, pp. 10-26). It was determined in this investigation that after [REDACTED] referred [REDACTED] resume to [REDACTED] was tasked by Bechtel to evaluate [REDACTED]. According to [REDACTED] he reviewed [REDACTED] resume and then conducted an interview with him. He did not specifically recall the interview with [REDACTED] and did not remember whether the interview was conducted in person or over the phone. Upon reviewing the evaluation form, he related [REDACTED] was given an "average" score. [REDACTED] explained that interviewees are rated as either eligible for an offer, if their application be placed on hold, or if they are rejected. [REDACTED] application was placed on hold. [REDACTED] stated [REDACTED] was interviewing for a [REDACTED] but his resume consisted of a [REDACTED] if a position in which [REDACTED] was better suited for became open, he could be considered for that position; however, Bechtel was not hiring [REDACTED] at that time. [REDACTED] estimated he interviewed 100 to 150 applicants for multiple positions, and [REDACTED] did not stand out in the process. He related he was not contacted by anyone, either at Bechtel or SNOC, about [REDACTED] and he was not influenced by anyone about [REDACTED] application. Most importantly, [REDACTED] stated he was not aware of [REDACTED] protected activity (Exhibit 50, pp. 11-26).

As far as [REDACTED] application with SNOC vacancies, a review of the process involved in establishing and selecting candidates was conducted, and the operation at SNOC is more or

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less streamlined and consistent in its application. According to [REDACTED] for the Southern Company, a requisition would be completed by the manager at the site responsible for filling that position, and she would distribute it to one of several contracting staffing firms (e.g., Hire Technologies). [REDACTED] explained the staffing firm would then submit resumes to her. If an applicant previously worked for Southern Company or its subsidiary, SNOC, the applicant's name and last four numbers of their social security number would be submitted to Southern Company's HR department to ascertain whether that applicant is eligible for rehire. In the instance involving [REDACTED] he was eligible for rehire, and his resume was allowed to continue in the process. [REDACTED] related there are a few reasons why a worker would be ineligible for rehire, and these included job performance and "job abandonment." She added she would not be told why someone might be ineligible if that was the case. [REDACTED] resume, and she remembered forwarding his resume sometime in February 2018, to [REDACTED] the [REDACTED] at Farley. [REDACTED] added she sent every applicants' resume in separate e-mails to [REDACTED] mentioned she was not informed by anyone to treat [REDACTED] application status any differently than anyone else. After she forwarded [REDACTED] resume to [REDACTED] she was out of the process and did not receive any feedback from [REDACTED] (Exhibit 41, pp. 6, 11-24). In his OI interview, [REDACTED] confirmed [REDACTED] testimony about preliminary actions taken in processing resumes. According to [REDACTED] he had never heard of [REDACTED] at the time and knew nothing about his background. He recalled receiving 34 e-mails (equaling 34 applicants) from [REDACTED] regarding [REDACTED] position, arriving the same day sometime in February 2018. [REDACTED] related he placed what he thought were all of the resumes into a folder in his computer and then sent the folder containing the resumes to the [REDACTED] explained that it was not until he was preparing for the OI interview that he realized he submitted only 32 of the 34 resumes to [REDACTED]. The two resumes that inadvertently were not sent to the [REDACTED] included [REDACTED] resume. He maintained he simply missed them, adding he unintentionally overlooked them and never placed the resumes in the folder sent to the [REDACTED] stated the [REDACTED] selected the top 3 of the 32 applicants for the final stage in the hiring process. Of the top three, [REDACTED] selected the best candidate. [REDACTED] related that he did review [REDACTED] resume prior to his OI interview and believed he was qualified for the position; however, in his opinion, [REDACTED] would not have reached the top tier of candidates anyway (Exhibit 40, pp. 8-22).

AGENT'S NOTE: The investigator acknowledges the dubious nature of [REDACTED] statements about overlooking [REDACTED] resume. While questions about his testimony are understandable given the circumstances, [REDACTED] credibility is not being disputed here, and, absent any evidence to the contrary, his answers will be accepted as forthright.

[REDACTED] testified that [REDACTED] applied for additional positions within the SNOC fleet as well, including [REDACTED] position at Vogtle 3 & 4 in February 2018. [REDACTED] did not remember specifics, but recalled sending [REDACTED] resume to [REDACTED]. More importantly, once again [REDACTED] denied being told to derail [REDACTED] application process in any way. She testified that while she was aware [REDACTED] had previously been separated from SNOC, she did not know under what circumstances it had occurred (Exhibit 41, pp. 20-33). [REDACTED] recalled [REDACTED] resume when [REDACTED] applied for a [REDACTED] in November or December 2017. According to [REDACTED] resume was among many others, and he noted later that [REDACTED] did not include in his resume's work history his short

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stint with SNOC in July 2017. There were 10 to 12 such positions with openings at the time, and about 7 of those were to be filled from workers who had worked at the recently closed V.C. Summer Nuclear Station (V.C. Summer). The remaining 3 to 5 positions were filled in the traditional manner of accepting and reviewing resumes. [REDACTED] stated they were looking for someone with more of an electrical background, and [REDACTED] did not meet that criteria. [REDACTED] also stressed that since the closing of V.C. Summer, the candidate pool has expanded and has increased the competition for positions. As a result, [REDACTED] did not pass the first round of cuts based on his resume alone. In his OI interview, [REDACTED] was questioned extensively about whether he was aware of [REDACTED] protected activity at the time he considered [REDACTED] resume, and he denied knowing about it. [REDACTED] testified he did not even recognize [REDACTED] as being the same person that was walked off site in July 2017, and it was not until a week or two afterward he realized that [REDACTED] was the same individual (Exhibit 44, pp. 7-29). [REDACTED] was contacted during this investigation, and his statements to OI were consistent with other witness testimony about [REDACTED] failure to be hired with SNOC. [REDACTED] also opined that [REDACTED] did not have the qualifications for the positions he had applied for at SNOC, and the fact he was not hired was not surprising to him (Exhibit 39).

[REDACTED] testified he did not recall [REDACTED] applying for a [REDACTED] in early 2018 and needed to review application documents to refresh his memory. According to [REDACTED], he was able to confirm [REDACTED] had applied for the [REDACTED] vacancy and was one of 130 or so applicants. He reviewed [REDACTED] resume and noted it was probably average at best compared to other resumes. [REDACTED] pointed out that [REDACTED] resume did not speak enough to [REDACTED]. He figured the resume was in the lower third of all the resumes submitted. [REDACTED] related that [REDACTED] did not go any further in the process as a result. [REDACTED] denied any knowledge of [REDACTED] engaging in any protected activity – past or present – and was not otherwise influenced by anyone from Vogtle or SNOC (Exhibit 42, pp. 17-30).

As far as [REDACTED] applying to be [REDACTED] in May 2018, [REDACTED] testified he did not recall [REDACTED] and when he was contacted about the OI interview, he needed to research his records. According to [REDACTED] applied for an [REDACTED] position in May 2018, and [REDACTED] received [REDACTED] as well as other candidates' resumes through SNOC's supplemental staffing division. [REDACTED] explained he received about 50 resumes, and he acted as the initial reviewer. One of his first screening criteria is a [REDACTED] recalled that [REDACTED]. He narrowed his list to 4 candidates, and a telephone interview was conducted with each. The list was reduced to 2 candidates and, after a face-to-face interview, [REDACTED] made his selection. [REDACTED] did not make the final 4 candidates in the selection process, and [REDACTED] opined that [REDACTED] was below average based on the competition, his not having a [REDACTED] background, not to mention any protected activity. [REDACTED] also denied having any conversations with anyone about [REDACTED] concerning his previous work at Vogtle (Exhibit 43, pp. 9-18).

Concerning [REDACTED] allegation of retaliation, there are several segments in the time line of events which could be compartmentalized and analyzed on their own. These consisted of [REDACTED] first 12 months at Vogtle in 2014/2015, his return as well as subsequent termination in

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July 2017, and his efforts at finding employment with SNOC and Bechtel in 2017/2018. The totality of the evidence in this case established a causal nexus between [REDACTED] protected activity, particularly the DPO, and his adverse action of being terminated and escorted off site in July 2017. [REDACTED] concerns culminating in the DPO were well known by management; however, the manner in which [REDACTED] often conveyed those concerns were equally acknowledged by most witnesses. At times condescending, sometimes abrasive and always relentless and passionate, [REDACTED] did not ingratiate himself with management, and this was reflected by members of the rank and file as well. While it can be successfully argued that management went to great lengths to accommodate [REDACTED] by affording him every opportunity to challenge welding practices and by spending a lot of money for the DPO assessment, there was undoubtedly some resentment on the part of the staff. Testimonial accounts by [REDACTED] demonstrated a fear among some in [REDACTED] chain of command that their jobs were in jeopardy while the assessment was being conducted. Given these elements – [REDACTED] unabashed behavior, the perception among several that [REDACTED] would not take “no” for an answer, and the possibility of careers being negatively impacted – and couple it with [REDACTED] reported statements about [REDACTED] costing the company a large sum of money, there is a reasonable belief that [REDACTED] DPO was a source of tension among many at the site. Although [REDACTED] contributed to this tension by his behavior at times, his actions regarding the DPO were protected nonetheless. [REDACTED] caustic attitude, while unprofessional at times, cannot be used as a pretext to retaliate against him. Even more importantly, there was no overt effort by management to discriminate against him prior to his departure in February 2015. Although he did not return to Vogtle until 2½ years later, workers, particularly [REDACTED] remembered him. Notwithstanding [REDACTED] reported behavior, the testimony is clear his personal indiscretions with management and workers were not known by [REDACTED] and [REDACTED] and were never a consideration. What transpired during his first stint at Vogtle was just as important as what was communicated to SNOC, namely [REDACTED] in July 2017. All of the events, circumstances, perceptions, and dialogues boiled down to the conversation [REDACTED] had with [REDACTED] about [REDACTED] and it is at this juncture where the protected activity and [REDACTED] termination converge and overlap. Although [REDACTED] tried to claim that [REDACTED] unprofessional behavior was part of his decision-making process to walk him off site, he acknowledged he did not have this knowledge until after [REDACTED] had filed his complaint with the NRC. Left with [REDACTED] protected activity as the sole reason for his separation, [REDACTED] attempted to argue that [REDACTED] concerns leading to the DPO were not a protected activity. His argument defied credulity and denied [REDACTED] right to raise safety concerns without retaliation.

As far as [REDACTED] allegation that he was effectively blacklisted from working in the industry again, there is no evidence to suggest he was further retaliated against by not being hired for positions with SNOC and Bechtel. Rather, [REDACTED] failure to be hired by SNOC and Bechtel stemmed from nondiscriminatory reasons. While one might suspect there could be a relationship between [REDACTED] protected activity and his failure to be hired, there is credible evidence indicating otherwise. As was noted, despite his termination in July 2017, [REDACTED] had a favorable status in PADS, and he was able to obtain a contractor position at the Palisades Nuclear Plant in Covert, Michigan, in 2018. In summary, this investigation concluded that [REDACTED] was not retaliated against by management at Vogtle in 2014 or 2015, when he engaged in his protected activity. However, SNOC, namely [REDACTED] used [REDACTED] protected activity against him by terminating him in July 2017. There was no evidence to suggest [REDACTED] was further discriminated against by not being hired for positions with SNOC

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and Bechtel. In the final analysis, given the convincing evidence indicating that [REDACTED] was retaliated against by the licensee for engaging in a protected activity, the allegation he was discriminated against by management is substantiated.

Conclusion

Based on the evidence developed, the allegation that [REDACTED] at Vogtle, was discriminated against by management for raising safety concerns is substantiated.

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Enclosure 2

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SUPPLEMENTAL INFORMATION

██████████ filed a complaint with the U.S. Department of Labor (USDOL), Occupational Safety & Health Administration, involving a violation of Section 211 of the Atomic Energy Act/Energy Reorganization Act. The case was investigated by ██████████ Office of Whistleblower Protection Program, USDOL, and is referenced under case number ██████████. The investigation had been concluded, and the case was dismissed without merit. ██████████ attorney, ██████████, appealed the finding and amended the original complaint to include a failure to hire/ blacklisting claim against SNOC. That claim is pending.

██████████ was interviewed by OI:RIII on March 29, 2018, at Vogtle 1 & 2. ██████████ is currently a ██████████ at Vogtle 1 & 2, but had been the ██████████ at the site during the time of ██████████ allegations. Contrary to what ██████████ had testified, ██████████ could not recall any interaction with ██████████ during the time he was the ██████████ nor could he locate any ██████████ reports or notes he had taken involving ██████████. ██████████ did not have any other information of evidentiary value which could further this investigation (Exhibit 36, pp. 3, 6-18).

On August 6, 2018, ██████████ Environmental Crimes Section, U.S. Department of Justice (DOJ), was briefed on the results of the investigation. On November 13, 2018, after considering the facts in the investigation, ██████████ declined federal charges in lieu civil action available to the NRC.

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LIST OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
1	Investigative Status Record, OI Case No. 2-2017-032, dated August 21, 2017 (1 page).
2	ARB Summary and related follow-up, dated August 1, 2017 (23 pages).
3	Transcript of interview with [REDACTED] dated November 1, 2017 (98 pages).
4	Transcript of interview with [REDACTED] dated December 6, 2017 (74 pages).
5	Transcript of interview with [REDACTED] dated December 6, 2017 (61 pages).
6	Transcript of interview with [REDACTED] dated December 6, 2017 (23 pages).
7	Transcript of interview with [REDACTED] dated January 17, 2018 (42 pages).
8	Interview Report of [REDACTED] dated January 30, 2018 (1 page).
9	E-mail thread, dated May 20, 2014 (3 pages).
10	E-mail thread, dated August 29, 2014 (3 pages).
11	E-mail thread, dated October 7, 2014 (2 pages).
12	CAR 2014-2276, dated October 30, 2014 (4 pages).
13	E-mail thread, dated October 30, 2014 (5 pages).
14	Email thread, dated October 30, 2014 (7 pages).
15	E-mail thread, dated November 5, 2014 (2 pages).
16	Email thread, dated November 18, 2014 (2 pages).
17	E-mail thread, dated December 1, 2014 (3 pages).
18	E-mail thread, dated December 9, 2014 (3 pages).
19	CAR 2014-2626, dated December 9, 2014 (4 pages).
20	E-mail thread, dated December 11, 2014 (3 pages).
21	Email thread, dated December 15, 2014 (2 pages).
22	E-mail thread, dated December 16, 2014 (2 pages).

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- 23 E-mail thread, dated January 12, 2015 (2 pages).
- 24 E-mail thread, dated January 13, 2015 (7 pages).
- 25 DPO, dated January 13, 2015 (34 pages).
- 26 Hire Technologies Separation Notice, dated July 17, 2017 (1 page).
- 27 Transcript of interview with [REDACTED] dated February 14, 2018 (61 pages).
- 28 Transcript of interview with [REDACTED] dated February 14, 2018 (46 pages).
- 29 Transcript of interview with [REDACTED] dated February 14, 2018 (28 pages).
- 30 Transcript of interview with [REDACTED] dated February 14, 2018 (47 pages).
- 31 E-mail, dated December 5, 2014 (1 page).
- 32 E-mail, dated November 21, 2014 (3 pages).
- 33 E-mail thread, dated December 9, 2014 (3 pages).
- 34 E-mail thread, dated January 9, 2015 (2 pages).
- 35 E-mail, dated February 3, 2015 (1 page).
- 36 Transcript of interview with [REDACTED] dated March 29, 2018 (19 pages).
- 37 Transcript of interview with [REDACTED] dated March 29, 2018 (52 pages).
- 38 Transcript of interview with [REDACTED] dated March 29, 2018 (62 pages).
- 39 Report of interview with [REDACTED] dated April 12, 2018 (2 pages).
- 40 Transcript of interview with [REDACTED] dated May 15, 2018 (23 pages).
- 41 Transcript of interview with [REDACTED] dated May 16, 2018 (35 pages).
- 42 Transcript of interview with [REDACTED] dated June 12, 2018 (31 pages).
- 43 Transcript of interview with [REDACTED] dated June 12, 2018 (19 pages).
- 44 Transcript of interview with [REDACTED] dated June 12, 2018 (32 pages).
- 45 Transcript of interview with [REDACTED] dated September 20, 2018 (30 pages).

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- 46 Letter, dated October 24, 2018 (2 pages).
- 47 Learning History for [REDACTED] dated September 20, 2018 (5 pages).
- 48 Learning History for [REDACTED] dated September 20, 2018 (4 pages).
- 49 Training Slides, undated (5 pages).
- 50 Transcript of interview with [REDACTED] dated October 29, 2018 (27 pages).

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