

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

OFFICE OF ENFORCEMENT
R. W. Borchardt, Director

In the Matter of

SEABROOK NUCLEAR POWER STATION

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(10 CFR 2.206)

DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. INTRODUCTION

On March 31, 1999, David A. Lochbaum (Petitioner) filed a petition pursuant to 10 CFR 2.206 requesting that the U.S. Nuclear Regulatory Commission (NRC) take enforcement action against unspecified individuals working at the Seabrook Nuclear Power Station (Seabrook Station) who allegedly: (1) discriminated against a contract electrician in violation of 10 CFR 50.7; and (2) created a false record in violation of 10 CFR 50.9. More specifically, the Petitioner requested that the NRC ban these unspecified individuals from participating in licensed activities for a period of at least five years. The Petitioner also requested (3) permission to attend an upcoming predecisional enforcement conference between the NRC and the licensee on this matter.

As the basis for his request, the Petitioner cited a March 16, 1999, letter from the NRC to the North Atlantic Energy Service Corporation (NAESCO), the owner of the Seabrook Station. This letter informed NAESCO that an investigation conducted by the Office of Investigations (OI) had concluded that a Williams Power Corporation foreman had discriminated against an electrician, in violation of 10 CFR 50.7, for raising a safety concern and that this same Williams

Power Corporation foreman had deliberately caused an inaccurate record to be created, in violation of 10 CFR 50.9.

By a letter dated April 20, 1999, the Petitioner was informed that his requests for enforcement action had been referred to the Office of Enforcement and that pursuant to 10 CFR 2.206, action on his requests would be taken within a reasonable time.

II. DISCUSSION

On May 29, 1998, OI issued Report 1-1998-005 which concluded that a Williams Power Corporation foreman had discriminated against an electrician for raising a safety concern, in violation of 10 CFR 50.7, and that this same Williams Power Corporation foreman had deliberately caused an inaccurate record to be created, in violation of 10 CFR 50.9. On March 16, 1999, the NRC sent a letter to NAESCO which summarized the findings of the OI report and invited NAESCO's representatives to meet with the NRC and present their views on the apparent violations identified in the report. As is customary, a copy of the NRC's March 16, 1999, letter to NAESCO was placed in the Public Document Room and made available for public inspection.

The Petitioner obtained a copy of the NRC's March 16, 1999, letter to NAESCO and used the summary of the OI findings contained in the letter as a basis for requesting enforcement action under 10 CFR 2.206. A member of the NRC enforcement staff contacted the Petitioner on April 15, 1999, to determine whether the petitioner had any information regarding his March 31, 1999, request for action under 10 CFR 2.206 that was not contained in his petition or the NRC's March 16, 1999, letter to NAESCO. The Petitioner informed the NRC enforcement staff member that he had no knowledge of the apparent violations for which he was

requesting enforcement action other than that information summarized in the NRC's March 16, 1999, letter.

A closed predecisional enforcement conference was held on June 2, 1999, between the NRC and NAESCO, Williams Power Corporation, and the Williams Power Corporation foreman whose actions allegedly caused NAESCO to violate 10 CFR 50.7 and 50.9. This conference was closed to the public because it is the Commission's policy to normally close conferences to public observation when the enforcement action being contemplated by the NRC staff is based on the findings of an OI investigation report that has not been publically disclosed or when the enforcement action being contemplated may be taken against an individual. The Petitioner was informed that the fact that a 2.206 petition has been filed does not provide a basis for permitting public observation. During this conference, the participants discussed the circumstances that led to the foreman's decision to layoff the electrician who had raised a safety concern and the circumstances surrounding the creation of the document which OI concluded was inaccurate. The electrician who had raised the safety concern and was subsequently selected for layoff by Williams Power Corporation also attended the conference, and he met with the NRC participants following the conference to present his views on the matters discussed during the conference and to answer NRC questions.

Based on the information contained in OI Report 1-1998-005 and the information developed during the June 2, 1999, predecisional enforcement conference, the NRC staff concluded that a violation of 10 CFR 50.7 had occurred as stated in the OI report but that no violation of 10 CFR 50.9 had occurred because the allegedly inaccurate document was in fact complete and accurate in all material respects.

III. ANALYSIS

Based on the information contained in OI Report 1-1998-005 and the information developed during the June 2, 1999, predecisional enforcement conference, the NRC staff has concluded that enforcement action is warranted against NAESCO, the Williams Power Corporation, and the Williams Power foreman for discriminating against a contract electrician in violation of 10 CFR 50.7. After carefully weighing all the circumstances of the case, the NRC staff has concluded that it is appropriate to issue NAESCO a Severity Level III Notice of Violation and Proposed Civil Penalty in the amount of \$55,000 (EA 98-165), and to issue the Williams Power Corporation (EA 98-338) and the Williams Power Corporation foreman (IA 99-003) each Severity Level III Notices of Violation.

In reaching this enforcement decision against the foreman, the NRC staff weighed such factors as the past performance of the foreman and the electrician, the fact that the Williams Power Corporation foreman was only an acting first-line supervisor, and the severity of the adverse action including the fact that Williams Power Corporation, at the request of NAESCO, promptly rehired the electrician to reduce the probability that there would be a chilling effect on other employees for raising safety concerns. Consideration was also given to evidence presented at the predecisional enforcement conference which indicated that the foreman had encouraged his employees to raise their safety concerns with him and which indicated that the foreman had been receptive to safety concerns raised by employees in the past. The violation in this case is based on the NRC staff's conclusion that although the foreman might have encouraged his employees in the past to raise safety concerns, the foreman expected that his employees would bring all their concerns to him rather than raise their concerns directly with

representatives of NAESCO. The NRC staff concluded in this case that the foreman selected the electrician for layoff because the electrician raised a safety concern with a NAESCO QC inspector.

Given all the circumstances of this case, the NRC staff concluded that issuing the foreman a Severity Level III Notice of Violation was an appropriate enforcement action to put the foreman on notice that discriminating against employees who take their safety concerns directly to representatives of NAESCO is unacceptable. After meeting with the foreman, the NRC staff is satisfied that the foreman understands that employees are permitted by NRC regulations to raise their safety concerns with whomever they choose and that he cannot retaliate against individuals who choose to raise their concerns directly with NAESCO or the NRC. After meeting with the foreman, the NRC staff is also confident that the foreman will comply with NRC regulatory requirements in the future. Therefore, while the NRC staff considered issuing the foreman an order banning him from licensed activities, as requested by the Petitioner, the NRC staff does not believe that an order is warranted in this case or necessary to protect public health and safety.

Based on the information contained in OI Report 1-1998-005 and the information developed during the June 2, 1999, predecisional enforcement conference, the NRC staff has concluded that no violation of 10 CFR 50.9, "Completeness and Accuracy of Information," occurred. Specifically, the NRC concluded that, because the wiring discrepancy was noted in the work document by the contract electrician, the documentation of the control building air conditioning (CBA) system control panel work activities was accurate. However, the failure to terminate the conductors in accordance with the applicable design document constituted a violation of requirements contained in Seabrook site procedures. This violation was of minor significance and is not subject to formal enforcement action.

IV. CONCLUSION

For the reasons set forth above, the Petition is denied. In accordance with 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. As provided by this regulation, this Decision will constitute the final action of the Commission twenty-five days after issuance unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 3rd day of August 1999.

FOR THE NUCLEAR REGULATORY COMMISSION

R. W. Borchardt

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Office of Enforcement