

May 4, 2001

EA-01-083
EA-01-091

Mr. Robert F. Saunders
President
FirstEnergy Operating Company
76 South Main Street
Akron, OH 44308

SUBJECT: PREDECISIONAL ENFORCEMENT CONFERENCE
(OFFICE OF INVESTIGATIONS REPORT NO. 3-2000-025)

Dear Mr. Saunders:

This letter refers to the investigation conducted at Perry Nuclear Power Plant (PNPP) and Davis-Besse Nuclear Power Plant (DBNP), by the U. S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI). The purpose of the OI investigation was to determine if a contract painter, employed by Williams Power Corporation, was discriminated against by Williams Power management for engaging in protected activity. These issues were discussed during a May 2, 2001, telephone conversation with you. A factual summary of the OI investigation report is enclosed.

Throughout his employment from November 1999 until March 9, 2000, the contract painter reported concerns to the Williams Power General Foreman, as well as other Williams Power and FirstEnergy Nuclear Operating Company (FENOC) officials, regarding the failure to follow the approved procedures for preparing a surface before applying paint within the PNPP fuel handling building. After raising these concerns, the painter was apparently ordered not to raise safety concerns outside his chain-of-command, was harassed and intimidated, and was threatened with termination if he did not violate procedures as the General Foreman directed.

On March 9, 2000, the painter identified safety concerns involving the noncompliance with procedures to the PNPP Ombudsman. Following this meeting, the site superintendent for Williams Power at PNPP informed the painter that if he did not accept a voluntary layoff, he would be terminated. The painter accepted the "voluntary" layoff to avoid losing unemployment benefits.

On March 17, 2000, shortly after being laid off from PNPP, the painter was refused employment by another Williams Power Corporation site superintendent at the DBNPP. The DBNPP site superintendent asserted that the reason for the refusal was that the painter had a workmen's compensation claim pending against Williams Power Corporation. In fact, the painter had not filed such a claim.

Based on the information developed by OI, it appears that the actions taken against the individual constitute apparent violations of 10 CFR 50.7, "Employee Protection."

The apparent violations of 10 CFR 50.7 are being considered for escalated enforcement action in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600. The NRC is not issuing a Notice of Violation at this time; you will be advised by separate correspondence of the results of our deliberations on this matter. Also, please be aware that the characterization of the apparent violations described in this letter may change as a result of further NRC review.

A closed, transcribed predecisional enforcement conference to discuss these apparent violations will be held at the NRC Region III office, 801 Warrenville Road, Lisle, IL. We will provide you with the time and date of the conference when it is scheduled. We are requesting that certain representatives of FENOC and Williams Power Corporation attend the conference.

The NRC's Enforcement Policy permits the individual who is the subject of the alleged employment discrimination to participate in the conference. Accordingly, the painter will be invited to attend the conference. The painter may participate by observing the conference and following the presentation by FENOC and Williams Power, if desired by the painter, he may make a presentation to address his views on why he believes discrimination occurred and on the FENOC and Williams Power presentations. FENOC and Williams Power will then be afforded an opportunity to respond and the NRC may ask some clarifying questions. Under no circumstances will the NRC staff permit FENOC, Williams Power or the painter to cross-examine or question each other.

The decision to hold an enforcement conference does not mean that the NRC has made a final determination regarding whether violations occurred or whether an enforcement action will be taken. This conference is being held to obtain information to enable the NRC to make an enforcement decision, such as to obtain a common understanding of the facts, root cause, significance of the issue, and your plans for lasting and effective corrective action. In particular, we expect you to address: (1) FENOC's position on the apparent violations, the basis for that position, and the reasons for the apparent violations; (2) any involvement by FENOC-employed PNPP or DBNPP officials in these apparent violations; and (3) the details and results of any investigation that FENOC may have conducted into this matter. In addition, the conference is an opportunity for FENOC to point out any error in our findings and for you to provide perspectives on: (1) the severity level of the apparent violation; (2) the application of the factors that the NRC considers when it determines the amount of a civil penalty that may be assessed in accordance with Section VI.C of the Enforcement Policy; and (3) any other application of the Enforcement Policy to this case, including the exercise of discretion in accordance with Section VII.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter **with Enclosure 1 only** will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS) accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html>.

Sincerely,

/RA/

John A. Grobe, Director
Division of Reactor Safety

Dockets No. 50-346; 50-440
Licenses No. NPF-3; NPF-58

Enclosures: 1. Synopsis of OI Report
 2. Summary of OI Report (**EXEMPT FROM
PUBLIC DISCLOSURE**)

See Attached Distribution

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¹ No legal objection received from Susan Chidakel, OGC, on 4/25/2001.

² Concurrence received from Nick Hilton, OE, on 4/25/2001.

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J. Freels, Manager, Regulatory Affairs
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N. Hilton, OE

S. Chidakel, OGC

Enforcement Coordinator, NRR

OEMAIL (e-mail)

Enclosure 1

SYNOPSIS

This investigation was initiated on May 22, 2000, by the U.S. Nuclear Regulatory Commission, Office of Investigations, Region III, to determine if a contract painter employed by Williams Power Services was deliberately discriminated against by Williams management for raising health physics (HP) concerns.

Based on the evidence developed during this investigation it was substantiated that a contract painter was deliberately discriminated against by Williams management for raising HP concerns.