



UNITED STATES
NUCLEAR REGULATORY COMMISSION

OFFICE OF INVESTIGATIONS FIELD OFFICE, REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

December 22, 2003

MEMORANDUM TO: Hubert J. Miller, Regional Administrator
Region I

FROM: Ernest P. Wilson, Director *Ernest P. Wilson*
Office of Investigations Field Office, Region I

SUBJECT: SALEM/HOPE CREEK: DISCRIMINATION AGAINST A
SENIOR ENGINEER FOR RAISING CONCERNS
THROUGH THE CORRECTIVE ACTION PROGRAM
(CASE NO. 1-2003-010S)

Attached, for whatever action you deem appropriate, is the Office of Investigations (OI) Report of Investigation concerning the above matter. Neither this memorandum nor the report may be released outside the NRC without the permission of the Director, OI. Please ensure that any internal office distribution of this report is controlled and limited only to those with a need to know and that they are aware of the sensitivity of its contents. Treat as "Official Use Only."

Attachment:
Report w/exhibits

cc w/attach:
F. Congel, OE

cc w/report:
L. Chandler, OGC
J. Dyer, NRR (Attn: G. Cwalina)

Information in this record was deleted
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Act, exemptions b7C
FOIA- 2004-0191

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Ex 7C

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Title: SALEM/HOPE CREEK

DISCRIMINATION AGAINST A SENIOR ENGINEER FOR RAISING CONCERNS
THROUGH THE CORRECTIVE ACTION PROGRAM

Licensee:

Public Service Electric & Gas Company
P.O. Box 236
Hancocks Bridge, NJ 08038

Docket Nos.: 50-272/311/354

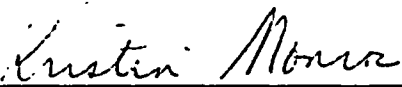
Case No.: 1-2003-010S

Report Date: December 18, 2003

Control Office: OI:RI

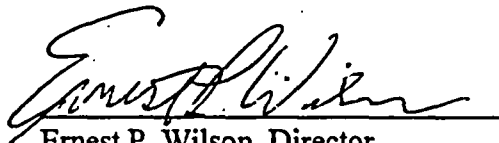
Status: CLOSED

Reported by:



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Field Office, Region I

Reviewed and Approved by:



Ernest P. Wilson, Director
Office of Investigations
Field Office, Region I

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SYNOPSIS

This supplemental investigation was initiated by the U.S. Nuclear Regulatory Commission, Office of Investigations (OI), Region I Field Office, on September 22, 2003, to determine if a senior engineer, PSEG Nuclear LLC (PSEG), working at Salem/Hope Creek Generating Stations, was discriminated against for engaging in a protected activity. Specifically, the senior engineer believes that PSEG showed a continuing pattern of discrimination when he/she received an unsatisfactory mid-year performance appraisal in August 2003 because he/she raised a concern through PSEG's Corrective Action Program in July 2002.

Based upon the evidence developed during this supplemental investigation, OI did not substantiate that the senior engineer was discriminated against for having engaged in a protected activity.

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LIST OF INTERVIEWEES

Exhibit

[REDACTED] Licensed Practical Nurse, Adecco, working at
Salem/Hope Creek Generating Stations (Salem/Hope Creek) 6

[REDACTED]
PSEG Nuclear LLC, Salem/Hope Creek 5

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DETAILS OF INVESTIGATION

Applicable Regulations

10 CFR 50.5: Deliberate misconduct (2003 Edition)

10 CFR 50.7: Employee protection (2003 Edition)

Purpose of Investigation

This supplemental investigation was initiated by the U.S. Nuclear Regulatory Commission (NRC), Office of Investigations (OI), Region I Field Office, on September 22, 2003, to determine if [REDACTED], Senior Engineer, PSEG Nuclear LLC (PSEG), working at Salem/Hope Creek Generating Stations (Salem/Hope Creek) was discriminated against for engaging in a protected activity. Specifically, [REDACTED] believes that PSEG showed a continuing pattern of discrimination when [REDACTED] received an unsatisfactory mid-year performance appraisal in August 2003 because [REDACTED] raised a concern through PSEG's Corrective Action Program (CAP) in July 2002 (Exhibit 1).

Background

In a letter to the NRC dated December 20, 2002, [REDACTED] advised that on [REDACTED] had raised a concern regarding procedural non-compliance with the Transient Assessment Response Plan (TARP) via PSEG's CAP. [REDACTED] claimed that as a result of raising that concern, several adverse actions were taken against [REDACTED] including suspension of employment and threats of a poor performance appraisal. On January 8, 2003, OI initiated an investigation (OI Case No. 1-2003-010) into [REDACTED] claim of discrimination. On July 25, 2003, the case was closed and issued as unsubstantiated (Exhibit 1).

On September 22, 2003, a Region I Allegation Review Board was held wherein it was determined that OI would review [REDACTED] September 2, 2003, letter to the NRC which alleged continued discrimination (Exhibit 2) and conduct such other investigation deemed appropriate to determine if [REDACTED] unsatisfactory mid-year performance appraisal related to [REDACTED] having engaged in a protected activity (Exhibit 3).

Allegation: Discrimination Against a Senior Engineer for Raising Concerns Through the Corrective Action Program

Evidence

Review of [REDACTED] September 2, 2003, letter to the NRC (Exhibit 2)

[REDACTED] wrote that in accordance with fitness-for-duty (FFD) requirements [REDACTED] informed

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[redacted] supervisor) on several occasions that [redacted] was taking medication. [redacted] letter further discloses that [redacted] wrote that [redacted] compliance with the FFD program is "a de facto refusal" to accept a TARP assignment, which resulted in an "Unsatisfactory" performance appraisal rating on August 29, 2003, which was the lowest rating possible. [redacted] also wrote that the rating required immediate corrective action up to termination of [redacted] employment (Exhibit 2, p. 1 and Exhibit 4).

AGENT'S NOTE: Following a review of [redacted] letter and related documentation, OI determined that it was not necessary to interview [redacted] to obtain additional information. However, OI did request that [redacted] forward a copy of the 2003 mid-year appraisal and [redacted] 2002 appraisal.

Protected Activity

On [redacted] [redacted] initiated PSEG Notification No. [redacted] regarding procedural non-compliance with the TARP procedure. [redacted] also discussed [redacted] concerns about [redacted] qualifications to be on TARP with [redacted] (see OI Report 1-2003-010).

Management Knowledge

[redacted] became aware that [redacted] had a concern with [redacted] TARP qualifications in a July 8, 2002, email. [redacted] knew that [redacted] had initiated a notification [about the TARP procedure] because [redacted] reviewed notifications daily (see OI Report 1-2003-010).

Adverse Action as Perceived by [redacted]

On August 29, 2003 [redacted] received an "Unsatisfactory" mid-year performance appraisal rating (Exhibit 4).

Was [redacted] Mid-year Performance Appraisal Adversely Impacted Due to Raising an Issue About TARP Through the Corrective Action Program?

Exhibit 4 is a copy of [redacted] mid-year performance appraisal dated August 28, 2003. The performance appraisal discloses that [redacted] was rated on five Core Job Objectives. [redacted] received a satisfactory rating on four objectives and a rating of highly competent on the fifth objective. [redacted] was also rated on eight Power Behaviors. [redacted] received six satisfactory ratings, one marginal and one unsatisfactory rating. [redacted] overall mid-year performance rating was "satisfactory."

AGENT'S NOTE: When OI requested the mid-year performance appraisal from [redacted] forwarded only an excerpt which reflected the "unsatisfactory" rating which was not a true reflection of his overall performance rating, i.e., satisfactory.

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[redacted] received only one unsatisfactory rating, that being for Power Behavior 6 (Exhibit 4, p. 8), entitled "Engenders Respect and Trust." The manager feedback section for that behavior discloses that [redacted] recent acceptance of the TARP assignment occurred with the single word "fine" which was followed up with a "de facto refusal" via an email that indicated that a medical restriction of duty was known at the time of his acceptance of the TARP assignment. The repeat behavior "shades the core of this behavior." [redacted] behavior was a significant oppression of open communication. Prompt improvement of this behavior is required (Exhibit 4, p. 8).

Interview of [redacted] (Exhibit 5)

Due to restructuring at the site, [redacted] advised that as of September 29, 2003, [redacted] was no longer [redacted] supervisor. [redacted] now reports to [redacted] (nfi) (p. 3).

[redacted] explained that the mid-year performance appraisal was meant to be a "course adjustment opportunity." If there was an area(s) that required improvement, it was an opportunity to identify to the employee the area(s) which needed improvement. The final performance appraisal at the end of the year summed up the year's activities with an emphasis on end of the year behavior (p. 5).

Exhibit 4, Power Behavior 6, "Engenders Respect and Trust," discloses in part that, [redacted] interaction with [redacted] supervisor was unsatisfactory. [redacted] chose not to communicate with [redacted]. This was characterized by [redacted] refusal to participate in normal office matters, failure to discuss progress or status of tasks, curt and non-responsive answers to [redacted] inquiries and responding only to [redacted] direct questions, never initiating discussions (p. 8).

[redacted] explained that [redacted] behavior was not good for the group. Prior to documenting the comment in the mid-year performance appraisal, [redacted] had one discussion with [redacted] [between May and August 2003] where [redacted] told [redacted] that [redacted] non-communication was an ongoing issue and that they needed to work together as professionals. [redacted] did not receive any response from [redacted] nor did [redacted] behavior change (Exhibit 5, p. 9).

Circa August 4, 2003, [redacted] told [redacted] that it was time to rotate TARP positions and that it was [redacted] turn to be a TARP member. [redacted] response to [redacted] was "fine." Based upon that comment, [redacted] assumed that [redacted] was accepting the position. A week later [August 11, 2003] [redacted] received an email (Exhibit 2, p. 6) that indicated that [redacted] could not drive while taking medication, essentially telling [redacted] that [redacted] could not be on the TARP team. [redacted] said that the email contradicted [redacted] earlier acceptance of the assignment the previous week. The "de facto refusal" comment in the mid-year performance appraisal (see Exhibit 4, p. 8) relates to the fact that [redacted] clearly knew" when [redacted] accepted the TARP assignment that some of [redacted] activities would be restricted

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because [redacted] was on medication. [redacted] thought that [redacted] acceptance of the assignment knowing that [redacted] had restrictions because of the medication was a "less than forthright" way to deal with a supervisor. As such, [redacted] viewed [redacted] behavior as unsatisfactory (Exhibit 4, pp. 11 and 12).

Regarding the repeat behavior comment in the mid-year performance appraisal, [redacted] said that in August 2002 [redacted] had accepted the TARP assignment and then a few hours later, [redacted] told [redacted] that [redacted] was not fit for duty because of the medication that [redacted] was taking (Exhibit 5, p. 15).

[redacted] restated that the purpose of the mid-year performance appraisal was the opportunity to correct behavior, which is what [redacted] told [redacted] told [redacted] that prompt improvement of the behavior was required and that [redacted] still had an opportunity to do very well if [redacted] changed [redacted] behavior (Exhibit 5, p. 18).

When asked by OI if one unsatisfactory rating put [redacted] in a position for termination [redacted] responded, "Hardly. It is not even a pimple on the road to termination." [redacted] did not tell [redacted] that the unsatisfactory rating could lead to termination. [redacted] viewed [redacted] mid-year performance appraisal as being a positive appraisal overall (Exhibit 5, pp. 18 and 19).

[redacted] Licensed Practical Nurse, Adecco, working at Salem/Hope Creek was interviewed by OI for purposes of obtaining information on Salem/Hope Creek's FFD policy. [redacted] did not have any information that related to [redacted] allegation of discrimination (Exhibit 6).

Agent's Analysis

[redacted] has worked at Salem/Hope Creek for approximately twelve years. [redacted] alleges that there was continued discrimination against [redacted] because [redacted] raised a safety concern about TARP in July 2002. [redacted] asserts that [redacted] received an unsatisfactory mid-year performance appraisal in August 2003 as a result of raising that safety concern.

It is OI's view that [redacted] possibly misrepresented [redacted] mid-year performance appraisal to the NRC by not providing the complete appraisal for context. [redacted] only provided the NRC with an excerpt from [redacted] mid-year appraisal which reflected one "unsatisfactory" rating, when, in fact [redacted] had received an overall mid-year evaluation of "satisfactory." By providing only selected information [redacted] credibility is called into question. Furthermore, the mid-year review is designed to identify weaknesses in performance and opportunities for improvement. The end of the performance appraisal becomes the official rating of record.

Contrary to [redacted] assertion to the NRC that [redacted] received an unsatisfactory mid-year performance evaluation, OI deems [redacted] testimony that the purpose of the appraisal was

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to identify areas for improvement and that [REDACTED] was rated satisfactory overall to be credible. In OI's view of the testimony and documentary evidence, it appears that [REDACTED] mid-year review of [REDACTED] performance was a good faith effort to help [REDACTED] focus on the one area that needed improvement, i.e., power behavior #6.

Conclusion

Based upon the evidence developed during this supplemental investigation, OI did not substantiate that [REDACTED] was discriminated against for having engaged in a protected activity.

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LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
1	Investigation Status Record, dated September 22, 2003 (1 page).
2	Letter to the NRC's VITO, from [REDACTED] dated September 2, 2003, with attachments (15 pages).
3	Allegation Review Board Disposition Record, Allegation No. RI-2002-A-0113, dated September 22, 2003 (1 page).
4	A copy of [REDACTED] 2003 Mid-Year Performance Appraisal (11 pages).
5	Transcript of Interview with [REDACTED] dated October 14, 2003 (21 pages).
6	Transcript of Interview with [REDACTED] dated October 14, 2003 (24 pages).

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