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 To: David Nelson (HQ-OE); Dennis Dambly; Hubert J. Miller; Jim Dyer; Lawrence Chandler; OEMAIL; Rani Franovich
 Date: 1/22/04 2:17PM
 Subject: 3-week e-mail for OI Cases 1-2003-010, 010S, 008, 001, 015F, and 017
 Place: OEMAIL

Closure of OI Case 1-2003-010 (relates to Allegation RI-2002-A-0113 - Salem/Hope Creek)

On January 9, 2003 OI Region I initiated case #1-2003-010, to determine if a PSEG Nuclear, working at Salem/Hope Creek, was discriminated against for engaging in protected activity. Specifically, the [redacted] believed that [redacted] was suspended, had [redacted] site access removed, and was threatened with receiving a poor performance appraisal and termination in August 2002, because [redacted] raised a concern via the Artificial Island corrective action program in July 2002, about the adequacy of the transient review (TARP) procedure and [redacted] own qualifications to be on TARP. The OI investigation revealed that a pivotal issue was related to the fact that [redacted] did not want to accept, as part of [redacted] normal work activities, the duties of a TARP responder, which included the occasional need to respond to the site at abnormal hours and times. As such, site management's actions toward the [redacted] s refusal to accept a position on the TARP appeared to be actions in response to a matter of work performance, rather than engagement in protected activity. The [redacted] was given administrative leave (paid) to reconsider [redacted] refusal of the assignment, and [redacted] site access was also put on administrative hold at the time. The [redacted] then took a week of sick leave, and when [redacted] returned to the site, [redacted] site access was still on hold, as [redacted] supervisor assumed [redacted] was continuing to refuse the TARP assignment. When the supervisor learned that the [redacted] had accepted the assignment, the suspension was rescinded and the supervisor apologized to the [redacted]. Ultimately, the [redacted] did not have to participate on the TARP due to a medical condition.

A Region I ARB on September 3, 2003 agreed with OI's conclusions, and recommended closure of the allegation. However, shortly thereafter, before the allegation closure could be processed, the [redacted] provided additional information to Region I, which [redacted] believed indicated that an unsatisfactory performance appraisal on August 28, 2003, demonstrated continuing discrimination against [redacted]. A subsequent Region I ARB on September 22, 2003, directed OI to open a supplemental investigation to determine if the newer information would have any bearing on the earlier conclusions.

On September 22, 2003, OI Region I initiated supplemental case #1-2003-010S, to determine if PSEG was engaged in a continuing pattern of discrimination against the [redacted] including the issuance of an unsatisfactory mid-year performance appraisal in August 2003, because the [redacted] raised concerns through the CAP in July 2002 regarding qualifications for and procedural compliance associated with the transient assessment response plan (TARP).

It was OI's view that the [redacted] possibly misrepresented [redacted] mid-year performance appraisal to the NRC by not providing the complete appraisal for context. The [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, the [redacted] s credibility was called into question. Furthermore, the mid-year review was found to be specifically designed to identify weaknesses in performance and provide opportunities for improvement. The end of the performance appraisal becomes the official rating of record.

Contrary to the [redacted] s assertion that [redacted] received an unsatisfactory mid-year performance evaluation in 2003, OI deemed the Engineering Supervisor's testimony that the purpose of the appraisal was to identify areas for improvement and that the senior engineer was rated satisfactory overall, to be credible. Based on testimonial and documentary evidence, OI opined that the Engineering Supervisor's mid-year review of the [redacted] s performance was a good faith effort to help the [redacted] focus on the one area that needed improvement.

Based on the results of this supplemental investigation, OI reaffirmed its conclusion that the

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 Act, exemptions [redacted]
 FOIA 2004-0191

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was not discriminated against for having engaged in protected activities.

The OI (supplemental) report was distributed to the staff on December 23, 2003. An ARB was held on January 8, 2004, to discuss the matter. The ARB agreed with the conclusions of the OI case and directed that a closeout letter be sent to the [redacted] and that a letter be sent to the licensee describing the conclusions of the OI investigation, pending any further comments. If no other views are received within 3 weeks of the date of this e-mail, these letters will be distributed.