

Detroit
Edison

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November 20, 1992
NRC-92-0128

Director, Office of Enforcement
U. S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, D. C. 20555

References: 1) Fermi 2
NRC Docket No. 50-341
NRC License No. NPF-43
2) NRC Letter to Detroit Edison, Notice of Violation
(U.S. Department of Labor Case No. 86-ERA-32), dated
October 23, 1992

Subject: Reply to NRC Notice of Violation EA 91-100, (U. S.
Department of Labor Case No. 86-ERA-32)

Attached is the response to the Notice of Violation contained in
Reference 2. This violation is associated with a complaint of
employment discrimination filed by a Nuclear Security (NS) Specialist
alleging that Detroit Edison had retaliated against the NS Specialist
in 1986 for raising concerns with the NRC.

Detroit Edison takes very seriously its responsibility to maintain an
atmosphere that encourages employees to bring safety and safeguards
issues to the attention of management. Detroit Edison believes that
such an atmosphere exists and that the incident has not had a chilling
effect on other employees such that they would not come forth with
concerns. Detroit Edison believes that this violation represented an
isolated case and is not characteristic of the current climate
regarding safety concerns in the Nuclear Organization.

Nevertheless, Detroit Edison has implemented actions that have
corrected the problems that caused or contributed to this incident.
First, the individual responsible was removed by the Company from any
Nuclear related activities. Second, other employees of the security
organization received briefings on this specific incident and the
Company's policy that no one is to be discriminated against for
raising concerns. Third, a comprehensive corrective action system was
implemented in 1989 which contains provision for employees anonymously

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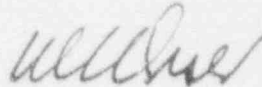
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identifying safety concerns. Fourth, an Ombudsman program has been implemented since this incident occurred. Fifth, Equal Employment Opportunity (EEO) Specialists have been sensitized on handling complaints with respect to issues of confidentiality, timeliness of response to complaints, and their roles as Company representatives. Finally, if a complaint appears to involve an employment discrimination issue the practice is to advise the complainant of the time limits for external filing, as appropriate.

Detroit Edison has also recently re-reviewed these issues and has determined that additional actions could be taken to further enhance the program for raising safety concerns and their prompt resolution. These actions will provide additional assurance that cases such as the one cited are avoided.

Should you have any questions regarding this response, please contact me at (313) 586-5201.

Sincerely,



Enclosure

cc: T. G. Colburn
A. B. Davis
W. J. Kropp
M. P. Phillips

REPLY TO NOTICE OF VIOLATION - EA 91-100 (U. S. DEPARTMENT OF LABOR

CASE NO. 86-ERA-32)

STATEMENT OF VIOLATION:

10 CFR 50.7 prohibits discrimination by a Commission licensee, or a contractor or subcontractor of a licensee, against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment. The protected activities include, but are not limited to, providing the NRC with information about possible violations of NRC requirements.

Contrary to the above, the Department of Labor (DOL) ruled that on April 23, 1986, a Nuclear Security Specialist employed by the Detroit Edison Company was unlawfully discriminated against by the Detroit Edison Company in that the Nuclear Security Specialist was reassigned from that position to the lesser position of Nuclear Security Officer in retaliation for having engaged in certain protected activities. The DOL decision was subsequently upheld by the United States Court of Appeals for the Sixth Circuit.

Those activities included: (1) providing information to the Nuclear Regulatory Commission during the period of November to December 1985, indicating that the Detroit Edison Company was not in compliance with the NRC requirements regarding the protection of Safeguards Information processed by and stored in a computer; and (2) providing information on February 24 and April 15, 1986, indicating that the Detroit Edison Company's then-Director of Nuclear Security at the Fermi 2 Nuclear Power Plant provided false or misleading information to an NRC inspector regarding the Nuclear Security Director's knowledge of the use of that computer to process and store Safeguards Information.

ADMISSION OR DENIAL OF THE ALLEGED VIOLATION:

The Detroit Edison Company concurs with the Nuclear Regulatory Commission's (NRC) recapitulation of the case history pertaining to the above matter. Detroit Edison accepts and acknowledges the decisions of the U.S. Court of Appeals for the Sixth Circuit and the U.S. Department of Labor.

REASON FOR THE VIOLATION:

The Detroit Edison Company believes that the incidents cited in the violation were the result of the actions of an individual, the then-Nuclear Security Director. Detroit Edison believes that the individual did not have a sufficient appreciation for NRC rules and regulations and the importance of adherence to those rules and regulations. The problem was compounded by Detroit Edison Company's Equal Employment Opportunity (EEO) office attempting to handle the employee's discrimination complaint using informal mediation methods without regard to the Department of Labor 30-day filing requirement.

CORRECTIVE STEPS THAT HAVE BEEN TAKEN AND RESULTS ACHIEVED:

Detroit Edison removed the former Nuclear Security Director from all nuclear-related activities. The former Nuclear Security Director was replaced by a Security Director with broad-based experience in dealing with NRC rules and regulations.

In addition, Nuclear Security department managers, who were cognizant of the circumstances of this matter, have subsequently taken measures to assure that the employee is not discriminated against due to her action. Specifically, the supervisor of the employee was counseled to treat the employee fairly in accordance with accepted standards and to ensure that all employees within the section do likewise. The employee, who was subsequently promoted to an equivalent position has had an open dialogue with the current Security Organization Management. The Nuclear Security Director has also held meetings with members of the Security Organization to discuss this matter and to assure members of the organization that no one would be discriminated against in any way for raising concerns.

Detroit Edison has reviewed its programs and policies for handling employee complaints. Particular attention was directed toward employee knowledge of how complaints can be filed, confidentiality, and the atmosphere that exists for individuals to raise safety and safeguards issues.

As discussed in the violation transmittal letter, the processing of the NS Specialist's complaint was not handled in a proper and timely manner. At the time that this incident occurred, Detroit Edison treated matters of alleged discrimination through a defined employee complaint system or, alternatively, through an informal mediation process. Since this matter occurred, alleged discriminations are no longer handled via informal mediation. Employees of the Company's Equal Employment Opportunity organization have been made aware of these changes.

Additionally, Detroit Edison has established a Fermi 2 Ombudsman program. The Ombudsman program is described in the Fermi 2 Site

Orientation handbook which is provided to all employees during in-processing and at the annual requalification training. This program provides that anyone with a concern may contact the Ombudsman, in confidence, to obtain assistance in resolving the concern. The Ombudsman currently reports directly to the Senior Vice President-Nuclear Generation.

With respect to employee awareness of alternate methods to raise safety issues or file complaints, Detroit Edison believes there is adequate information provided to employees on bulletin boards located throughout the site, which are posted in accordance with 10CFR50.7 and other regulations, as to their options to file a complaint with or raise a safety issue to appropriate government agencies.

Furthermore, since 1986, Detroit Edison has made additional adjustments to programs at Fermi designed to ensure concerns of this or any other nature are appropriately addressed. The adjustments include:

1. Changes to the Corrective Action Program which permits anyone to write a Deviation Event Report (DER) on any issue that is adverse to quality or safety. The process is designed to objectively evaluate the information of concern and ensure that corrective action, if necessary, is accomplished and documented.
2. Included within the Corrective Action Program is the provision for DERs to be submitted anonymously to the Plant Safety organization. "Anonymous" DERs must be dispositioned in the same manner as other DERs.
3. Senior management has initiated periodic meetings with groups of employees to open lines of communication and listen to concerns and ideas.
4. Detroit Edison initiated a Human Performance Evaluation System (HPES) program. The program is designed to systematically understand and resolve occurrences such that quality is not impacted, and programs and procedures are modified to address concerns of employees as appropriate. Site personnel view the HPES coordinator as performing a role similar to QA and have on occasion contacted him with concerns.
5. Wide dissemination of the content of this Notice of Violation was made. The Fermi 2 site "Management Update," which is a daily publication distributed site-wide to highlight key plant activities and issues, discussed the citation and the Senior Vice President-Nuclear Generation reminded personnel at that time that the individual who filed the complaint remains at the plant and that the employee is not to be discriminated against due to the action.

6. Detroit Edison offers employees and workers leaving the site the opportunity to provide job critique information or concerns relative to work at the Fermi 2 site. The information is normally collected during out-processing.

A review of records since the occurrence of this event disclose the following:

- There have been 14 documented allegations made to the NRC by plant workers that Detroit Edison is aware of.
- There have been 5 anonymous DER's initiated.
- There have been 6 Ombudsman Concerns filed in 1992 to date.
- Detroit Edison has a quality circle (PRIDE) program which is a mechanism to resolve problems and identify concerns amongst work groups. Although the focus of this program is work process improvement, nuclear safety concerns may be raised and are directed to the plant corrective action program for resolution.

Detroit Edison believes that its program is effectively identifying and addressing concerns and that the process is fundamentally sound. It is recognized that promptly and adequately addressing concerns minimizes the opportunity for such matters becoming employment discrimination issues.

CORRECTIVE STEPS THAT WILL BE TAKEN TO AVOID FURTHER VIOLATIONS:

To assess the need for further action in this area, Detroit Edison assembled a task force under the direction of the General Director-Nuclear Assurance. The task force conducted a review of existing programs available to site employees to address concerns in a timely manner. This review was initiated both as a result of this violation and as a response to recent events of a similar nature within the industry. As a result of the review the Company identified the following additional activities which would strengthen the program at Fermi 2:

1. A specific Nuclear Generation policy statement on concerns and their handling, including precautions with regards to protected activities, will be developed. The policy will include the principle that each employee has access to senior management for the purpose of discussing safety concerns without fear of reprisal. Employees will be made aware of this policy. Responsibilities will be assigned for execution of this policy and the monitoring of its effectiveness.
2. Appropriate changes will be made to improve feedback regarding the disposition of concerns to the affected employee and others, as applicable, either directly through the supervisor or anonymously through the site Ombudsman, as appropriate.

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3. The employee out-processing critique will be strengthened to more specifically elicit information about concerns.

DATE WHEN FULL COMPLIANCE WILL BE ACHIEVED:

Detroit Edison is presently in compliance with 10 CFR 50.7 and the actions described will be fully implemented by December 31, 1992.