



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064**

May 14, 2001

EA-01-005

Garry L. Randolph, Senior Vice
President and Chief Nuclear Officer
Union Electric Company
P.O. Box 620
Fulton, Missouri 65251

**SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$55,000
(NRC INVESTIGATION REPORT 4-1999-068 and U.S. DEPARTMENT OF
LABOR CASE No. 2000-ERA-15)**

Dear Mr. Randolph:

This refers to the predecisional enforcement conference conducted on March 7, 2001, in the NRC Region IV office in Arlington, Texas. The conference was held to discuss the NRC's concern that Union Electric's contractor, The Wackenhut Corporation (TWC), had discriminated against a former TWC security officer and a TWC training instructor, in violation of 10 CFR 50.7, at the Callaway Nuclear Plant for identifying a violation of NRC requirements. Our concern was identified to members of your staff during a telephonic exit briefing on January 19, 2001, and was documented in our letter dated February 5, 2001.

After considering the information developed during the NRC investigation and the information provided during the predecisional conference, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice). The violation involves a former TWC security officer, who on October 27, 1999, contacted a high school and learned that an individual without a high school diploma or equivalent performance examination had been hired as a temporary watchman at the Callaway Nuclear Plant. The hiring of this individual was contrary to the requirements of 10 CFR Part 73, Appendix B, Section I.A.1.a. The security officer informed a TWC training instructor of this violation, and the training instructor informed TWC officials. On November 19, 1999, TWC unfavorably terminated the security officer, and reprimanded the training instructor for not having brought his concern about the individual's qualifications to the attention of TWC management earlier. Soon afterwards, Union Electric revoked the former security officer's unescorted access authorization based on trustworthiness concerns. On October 28, 1999, TWC unfavorably terminated the temporary watchman who had been improperly hired, and soon afterwards Union Electric terminated (not revoked) his unescorted access authorization. While preparing to respond to the complaint filed by the former security officer with the United States Department of Labor, Union Electric conducted an additional investigation into the educational qualifications of the individual who had been improperly hired, and in August 2000, revoked the temporary watchman's unescorted access authorization based on the falsification of his application for employment and for access authorization.

During the predecisional enforcement conference, Union Electric and TWC representatives asserted that no violation had occurred. Based upon an investigation conducted by the TWC Director of Quality Assurance, Union Electric and TWC managers asserted that the former security officer lacked trustworthiness because she had misrepresented herself to the high school principal, as a licensee screening official performing official business, in order to learn whether the individual in question had a high school diploma and thus to eliminate him as a competitor for a permanent security officer position. Based upon the same investigation, TWC asserted that the training instructor did not meet TWC expectations for a member of the management team because the training instructor had waited until October 1999 to report his concern about the individual's lack of a high school diploma, rather than in August 1999 when the matter first came to the attention of the training instructor. TWC stated that its decisions to terminate the security officer for lack of trustworthiness and to reprimand the training instructor involved no retaliatory intent and were made by TWC corporate managers, not by TWC personnel at the Callaway Nuclear Plant. Union Electric stated that its decision to revoke the former security officer's unescorted access authorization for lack of trustworthiness involved no retaliatory intent.

Based on a review of the circumstances surrounding these events, however, the NRC staff concludes that the former security officer and the training instructor engaged in a protected activity, that TWC managers and Union Electric managers were aware of the protected activity, that TWC managers took adverse actions against the security officer and the training instructor and that Union Electric took adverse action against the security officer, at least in part, because of their protected activity. Our conclusion that retaliation occurred is based, in part, on the following:

- (1) TWC concluded that the training instructor should have known in August 1999 to report his concern about the individual's educational qualifications to TWC management. However, the training instructor reasonably believed that any concern about the individual's educational qualification had been properly reported in August 1999. Further, the training instructor was under the same mistaken understanding as his supervisor and the TWC project manager that Union Electric would verify educational qualifications.
- (2) The stated intent of the investigation conducted by TWC's Director of Quality Assurance was to determine how TWC had hired the individual when he did not meet the educational requirements of 10 CFR Part 73 Appendix B, in order to take appropriate corrective action. Based upon mere suspicion, however, that investigation quickly became an inquiry into whether the former security officer had learned of the violation by misrepresenting herself to the high school and into her motives for contacting the high school. At the same time, despite the improbability of the individual's claim that he believed he had graduated from high school, the TWC investigation did not make a good faith attempt to determine whether he had deliberately misrepresented his educational qualifications.
- (3) The investigation was conducted with bias against the security officer and the training instructor. Examples of bias include, but are not limited to: (a) The investigative report recommended disciplinary action against the security officer for failing to raise the issue of the individual's lack of educational qualifications through the proper chain of command; (b) The report assumed that the security officer had lied about how she had

identified herself to the high school principal and about whether she had reported the matter in August 1999 to the TWC administrative assistant, based upon subjective perceptions of the security officer's "evasiveness" and a change in her handwriting during an interview, while failing to consider the obvious motives of the high school principal and the TWC administrative assistant to not be candid about their interactions with the security officer; and (c) The TWC Director of Quality Assurance relied upon the subjective impressions of and information supplied by a TWC supervisor, without consideration of a warning by the training instructor that information supplied by the supervisor was not reliable.

(4) Union Electric relied upon the biased TWC investigation and report to revoke the former security officer's unescorted access authorization for lack of trustworthiness, while simply terminating the unescorted access authorization of the individual who lacked a high school diploma or equivalent performance examination without conducting an adequate investigation into the individual's trustworthiness. Union Electric did not make a good faith effort to determine whether the individual had deliberately misrepresented his educational qualifications until discovery began in connection with the former security officer's complaint before the United States Department of Labor.

In consideration of the severity of the actions taken against the former security officer and the training instructor, the level of management involved in the adverse action, and the nature of contractor/licensee relationships, this violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 at Severity Level III.

In accordance with the Enforcement Policy that existed in 1999, a base civil penalty in the amount of \$55,000 was considered for this Severity Level III violation. Because the violation involved willfulness, the NRC Staff considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Since the NRC identified the violation, credit for identification is not warranted. Based on our review of Union Electric's corrective actions, corrective action credit is warranted. This results in the assessment of a civil penalty at the base value. During the conference, you identified corrective actions to ensure a safety-conscious work environment (SCWE) by reviewing past allegations for adverse trends, enhancing the Employee Concerns Program (ECP) procedure, developing and posting a SCWE policy, training on the SCWE policy and ECP procedure in General Employee Training for employees and contractors, enhancing the Outage Handbook with guidance on the SCWE policy and ECP procedure, and reviewing with contractor management Union Electric's expectations regarding SCWE. In addition, you assigned responsibility for making future access revocation decisions to a committee of managers.

To emphasize the significance of this violation and the importance of maintaining a safety conscious work environment at the Callaway Nuclear Plant, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$55,000 for this Severity Level III violation.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. The NRC will use your response, in part, to

determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In addition, the NRC has concluded that Union Electric was also in violation of 10 CFR Part 73, Appendix B Section 1.A.1.a, in that an individual was assigned to the security organization without being in possession of a high school diploma or without having passed an equivalent performance examination. This violation, which you have already corrected, is of minor significance and is not subject to enforcement action in accordance with Section IV of the Enforcement Policy.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be made 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). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

Ellis W. Merschoff
Regional Administrator

Docket No.: 50-483
License No.: NPF-30

Enclosures: 1. Notice of Violation and Proposed Imposition
of Civil Penalty
2. NUREG/BR-0254, "Payment Methods"

cc (w/Enclosure):
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Union Electric Company

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NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Union Electric
Callaway Nuclear Plant

Docket No. 50-483
License No. NPF-30
EA-01-005

During an NRC investigation which concluded on November 27, 2000, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violation and the associated civil penalty are set forth below:

10 CFR 50.7(a) prohibits discrimination by a Commission licensee against an employee for engaging in certain protected activities. Discrimination includes discharge or other actions relating to the compensation, terms, conditions, and privileges of employment. Under 10 CFR 50.7(a)(1)(i), the activities that are protected include, but are not limited to, the reporting by an employee to his employer information about alleged regulatory violations.

Contrary to the above, The Wackenhut Corporation (TWC), a contractor of Union Electric, a 10 CFR Part 50 licensee, and Union Electric discriminated against a security officer and a training instructor for having engaged in protected activity. Specifically, on October 27, 1999, the security officer and the training instructor identified to TWC a violation of NRC requirements at the Callaway Nuclear Plant, namely that TWC had hired and assigned an individual to the security organization when that individual did not have a high school diploma or equivalent. The hiring of this individual was in violation of 10 CFR Part 73, Appendix B, Section I.A.1.a, which provides that prior to employment or assignment to a security organization, an individual must possess a high school diploma or pass an equivalent performance examination. Based at least in part on this protected activity, TWC unfavorably terminated the security officer's employment for lack of trustworthiness and gave a written reprimand to the training instructor on November 19, 1999, and Union Electric revoked the security officer's unescorted access authorization for lack of trustworthiness.

This is a Severity Level III violation (Supplement VII).
Civil Penalty - \$55,000

Pursuant to the provisions of 10 CFR 2.201, Union Electric (Licensee) is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for the alleged violation: (1) admission or denial of the alleged violation, (2) the reasons for the violation if admitted, and if denied, the reasons why, (3) the corrective steps that have been taken and the results achieved, (4) the corrective steps that will be taken to avoid further violations, and (5) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the

time specified in this Notice, an order or a Demand for Information may be issued as why the license should not be modified, suspended, or revoked or why such other action as may be proper should not be taken. Consideration may be given to extending the response time for good cause shown.

Within the same time as provided for the response required above under 10 CFR 2.201, the Licensee may pay the civil penalty proposed above in accordance with NUREG/BR-0254 and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission. Should the Licensee fail to answer within the time specified, an order imposing the civil penalty will be issued. Should the Licensee elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation" and may: (1) deny the violation listed in this Notice, in whole or in part, (2) demonstrate extenuating circumstances, (3) show error in this Notice, or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the factors addressed in Section VI.C.2 of the Enforcement Policy should be addressed. Any written answer in accordance with 10 CFR 2.205 should be set forth separately from the statement or explanation in reply pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Licensee is directed to the other provisions of 10 CFR 2.205, regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty due which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The response noted above (Reply to Notice of Violation, statement as to payment of civil penalty, and Answer to a Notice of Violation) should be addressed to: Mr. Frank Congel, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice.

Because your response will be made 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), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room). If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain

why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Dated this 14th day of May 2001

bcc:

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NRR Enforcement Coordinator See-Meng Wong (SMW1)

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