

August 19, 1996

EA 96-238

Mr. Cecil Ray Owen
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: NRC OFFICE OF INVESTIGATIONS REPORT NO. 2-95-018

Dear Mr. Owen:

The NRC has recently completed an investigation of the apparent falsification of your application for employment at the North Anna Power Station (NAPS). The investigation was performed by the NRC Office of Investigations (OI) and completed in June 1996. The purpose of the investigation was to determine whether you falsified a background questionnaire in order to avoid revealing that you had tested positively for controlled substances while working for a previous employer.

The OI investigation concluded that you completed a Westinghouse Electric Corporation background questionnaire for a position at NAPS and deliberately failed to list your previous employment where you were terminated for a positive drug test. Evidence obtained during the investigation confirmed that you had previously tested positively for control substances at a non-nuclear contract site. A copy of the synopsis of the OI Report is enclosed (Enclosure 1).

Based on the results of the OI investigation, your actions appear to have violated NRC requirements. Specifically, you engaged in deliberate misconduct as defined by 10 CFR 50.5 (Enclosure 2) by falsifying a background questionnaire in order to avoid revealing that you had tested positively for controlled substances at a prior place of employment. 10 CFR 50.5(a)(2) prohibits any employee of a licensee from deliberately submitting information to the NRC or a licensee that the employee knows to be inaccurate or incomplete. This apparent violation is being considered for escalated enforcement action in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, a copy of which is enclosed for your reference (Enclosure 3). However, be advised that the characterization of the apparent violation described here may change as a result of further NRC review.

Before the NRC makes its final enforcement decision in this case, we are providing you an opportunity to participate in a predecisional enforcement conference to discuss the apparent violation. The decision to hold a conference with you does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. This conference is to

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obtain information to enable the NRC to make an enforcement decision, such as a common understanding of the facts, root cause, corrective actions, significance of the issues, and the need for lasting and effective corrective action. In addition, this is an opportunity for you to provide any additional information concerning your perspectives on the severity of the violation and application of the mitigation factors discussed in the Enforcement Policy. Please notify this office, in writing, within 10 days of your receipt of this letter whether you intend to participate in a predecisional enforcement conference. Should you decline to participate in a conference, your written response should include an explanation addressing the above. This written explanation should be provided within 30 days of your receipt of this letter. Also be advised that should you decide not to participate in a conference, the NRC will pursue enforcement action based on the information obtained during the OI investigation. Upon receipt of your reply, and if you choose to participate in a predecisional enforcement conference, we will contact you to make the necessary arrangements. Please be advised that any conference would be closed to the public and transcribed and that you have the right to bring a personal representative or legal counsel.

Your attention is directed to Section V of the Enforcement Policy which explains the purpose of predecisional enforcement conferences and Section VIII which explains enforcement actions involving individuals. Note that the enforcement sanctions that could be assessed against an individual include a Letter of Reprimand, a Notice of Violation, and/or an Order prohibiting or restricting involvement in NRC licensed activities.

At the conclusion of NRC's deliberations on the matter, in accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be placed in the NRC Public Document Room.

If you have any questions, please contact Mr. Paul E. Fredrickson, Chief, Special Inspection Branch at (404) 331-5596 or (800) 577-8510.

Sincerely,

Original Signed by AFG

Albert F. Gibson, Director
Division of Reactor Safety

Enclosures: 1. Synopsis for OI Case No. 2-92-018
2. 10 CFR 50.5, Deliberate Misconduct
3. NUREG-1600

Distribution w/encs 1 and 2 [HOME ADDRESS DELETED]:

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R. McWhorter
 Senior Resident Inspector
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HOLD
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 EICS ACTION

ENCLOSURE 1
Synopsis for OI Case No. 2-92-018

SYNOPSIS

The U.S. Nuclear Regulatory Commission, Region II, Office of Investigations initiated this investigation on September 12, 1995, to determine if a Westinghouse Electric Corporation (WEC) contractor employed at the Virginia Electric and Power Company, North Anna Power Station (NAPS) had falsified his job application. It was alleged that the contract employee falsified a background questionnaire in order to avoid revealing that he had tested positive for controlled substances at a previous employer.

Evidence obtained during this investigation confirmed that the contract employee had previously tested positive for controlled substances at a non-nuclear contract site. This investigation concluded that the contract employee completed a WEC background questionnaire for a position at NAPS and deliberately did not identify his previous employment where he was terminated for the positive drug test.

ENCLOSURE 2
10 CFR 50.5. Deliberate Misconduct

Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, two copies to the appropriate Regional Office, and one copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility.

- (i) Emergency plan pursuant to § 50.34;
- (ii) Change to an emergency plan pursuant to § 50.54(q);
- (iii) Emergency implementing procedures pursuant to Appendix E.V of this part.

(6) *Updated FSAR.* An updated Final Safety Analysis Report (FSAR) or replacement pages, pursuant to § 50.71(e) must be submitted as follows: the signed original and 10 copies to the Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, one copy to the appropriate Regional Office, and one copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility.

(7) *Quality assurance related submittals.* (i) A change to the Safety Analysis Report quality assurance program description pursuant to § 50.54(a)(3) or § 50.55(f)(3), or a change to a licensee's NRC-accepted quality assurance topical report pursuant to § 50.54(a)(3) or § 50.55(f)(3), must be submitted as follows: the signed original to the Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, one copy to the appropriate Regional Office, and one copy to the appropriate NRC Resident Inspector if one has been assigned to the site of the facility.

(ii) A change to an NRC-accepted quality assurance topical report from nonlicensees (i.e., architect/engineers, NSSS suppliers, fuel suppliers, constructors, etc.) must be submitted as follows: one signed original to the Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555.

(c) *Form of communications.* All copies submitted to meet the requirements set forth in paragraph (b) of this section must be typewritten, printed or otherwise reproduced in permanent form on unglazed paper. Exceptions to these requirements may be granted for the submittal of micrographic, photographic, or electronic forms. Prior to making any submittal in other than paper form, the applicant or licensee must contact the Information and Records Management Branch, Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-7230, to obtain specifications, copy requirements, and prior approval.

(d) *Delivery of communications.* Written communications may be delivered to the Document Control Desk at 11555 Rockville Pike, Rockville, Maryland between the hours of 8:15 a.m. and 4:00 p.m. Eastern Time. If a submittal due date falls on Saturday, Sunday, or Federal holiday, the next Federal working day becomes the official due date.

(e) *Regulation governing submission.* Licensees and applicants submitting correspondence, reports, and other written communications pursuant to the regulations of this part are requested but not required to cite whenever practical, in the upper right corner of the first page of the submittal, the specific regulation or other basis, requiring submission.

(f) *Conflicting requirements.* The communications requirements contained in this section and §§ 50.12, 50.30, 50.36, 50.36a, 50.44, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.62, 50.71, 50.73, 50.82, 50.90, and 50.91 supersede and replace all existing requirements in any license conditions or technical specifications in effect on January 5, 1987. Exceptions to these requirements must be approved by the Information and Records Management Branch, Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415-7230.

§ 50.5 Deliberate misconduct.

(a) Any licensee or any employee of a licensee; and any contractor (including a supplier or consultant), subcontractor, or any employee of a contractor or subcontractor, of any licensee, who knowingly provides to any licensee, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's activities subject to this part, may not:

(1) Engage in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission, or

(2) Deliberately submit to the NRC, a licensee, or a licensee's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(c) For purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation, of any license issued by the Commission, or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order or policy of a licensee, contractor, or subcontractor.

§ 50.7 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of the section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

56 FR 40664

58 FR 52406

51 FR 40303

60 FR 24549

53 FR 6137

52 FR 31601

60 FR 24549

56 FR 40664