

January 14, 2000

EA 99-329

Mr. R. P. Powers
Senior Vice President
Nuclear Generation Group
American Electric Power Company
500 Circle Drive
Buchanan, MI 49107-1395

**SUBJECT: PREDECISIONAL ENFORCEMENT CONFERENCE
(NRC OFFICE OF INVESTIGATIONS CASE NO. 3-1998-041)**

Dear Mr. Powers:

This letter is in reference to an apparent violation of a U.S. Nuclear Regulatory Commission (NRC) requirement prohibiting discrimination against employees who engage in protected activities (i.e., 10 CFR 50.7, "Employee Protection"). The apparent violation involved a Duke Engineering Services Inc. (DES) employee, who was filling an American Electric Power (AEP) management position at the Buchanan engineering offices, terminating a Cataract contract engineer's employment. Although the management individual was not a permanent American Electric Power employee, the NRC holds American Electric Power, as the licensee, responsible for ensuring compliance with NRC requirements by contract personnel.

On October 1, 1998, a Cataract engineer reported to work at the Buchanan facility. Following the individual reporting, the acting Nuclear Engineering Structural Design Manager, to whom the individual reported, learned that the engineer had been "trouble" at another NRC-regulated facility and had "testified". On October 7, 1998, the acting manager terminated the individual's contract, purportedly because of a lack of "synergy". The NRC Office of Investigations conducted an investigation and the synopsis of their report and a summary of relevant facts are enclosed.

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Based on the results of the OI investigation, an apparent violation of 10 CFR 50.7 was identified and is being considered for escalated enforcement action in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, Revision 1. The NRC is not issuing a Notice of Violation at this time; AEP will be advised by separate correspondence of the results of our deliberations on this matter. Also, please be aware that the characterization of the apparent violation described in this letter may change as a result of further NRC review.

As requested by Mr. R. Gaston, D. C. Cook Regulatory Affairs Manager, on January 6, 2000, we will contact your staff within five days of the date of this letter to schedule a transcribed predecisional enforcement conference with AEP to discuss this apparent violation. The conference will be held at the NRC Region III Office in Lisle, Illinois. Since the performance of certain AEP employees or personnel contracted to AEP will be discussed during the conference, the conference will be closed to public observation. However, the former acting Nuclear Engineering Structural Design Manager will be invited to attend. In addition, Duke Engineering Services, Inc., and Cataract, Inc., as interested parties, have been invited to send representatives. Also, as discussed between Ms. Patricia Loughheed of my staff and Mr. R. Gaston on January 12, 2000, AEP is requested to bring a specified employee to the enforcement conference.

The NRC's Enforcement Policy permits the individual who was the subject of the alleged discrimination to participate in the conference. Accordingly, the complainant will be invited to attend the conference. He may participate by observing the conference and if desired, following the presentation by AEP, as well as any presentations by either Duke Engineering Services, Inc., or Cataract, Inc., should either party choose to make one, the individual may make a presentation to address his view on why he believes discrimination occurred and his views on the AEP presentation. American Electric Power Company will then be afforded an opportunity to respond, and the NRC may ask some clarifying questions. In no case will the NRC staff permit AEP or the complainant to cross-examine or question each other.

The decision to hold an enforcement conference does not mean that the NRC has determined that a violation has occurred or that enforcement actions will be taken. This conference is being held to ensure a common understanding of the facts, root causes, significance of the issue and, if necessary, plans for lasting and effective corrective action. Only then will NRC make its enforcement decision. In addition, this is an opportunity for you to point out any errors in our investigation findings and for you to provide any information concerning your perspectives on: (1) the severity of the violation; (2) the application of the factors that the NRC considers when it determines the amount of a civil penalty that may be assessed in accordance with Section VI.B.2 of the Enforcement Policy; and (3) any other application of the Enforcement Policy to this case, including the exercise of discretion in accordance with Section VII.

Finally, a violation of 10 CFR 50.7, if it occurred, could have a chilling effect on other employees in that it might deter them from identifying any nuclear safety related concerns they may have. Therefore, we request that at the conference you address the actions taken or planned to correct any perceived chilling effect upon other employees.

SYNOPSIS

This investigation was initiated by the U.S. Nuclear Regulatory Commission, Office of Investigations (OI), Region III (RIII), on November 16, 1998, to determine whether a contract engineer employed by Cataract, Inc., assigned to D. C. Cook Nuclear Power Plant, American Electric Power, in Buchanan, Michigan, was discriminated against because of his previous whistle blowing activities.

Based on the evidence developed during this investigation, OI:RIII substantiated the allegation that a contract engineer employed by Cataract, Inc., assigned to D. C. Cook Nuclear Power Plant, American Electric Power was discriminated against by a contract engineering manager because of his previous whistle blowing activities.

R. Powers

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter without Enclosure 2 will be placed in the NRC Public Document Room (PDR). The NRC will delay deciding whether to place a copy of Enclosure 2 in the PDR until a final enforcement decision has been made.

Sincerely,

John A. Grobe
for John A. Grobe, Director
Division of Reactor Safety

Docket Nos. 50-315; 50-316
License Nos. DPR-58; DPR-74

- Enclosures: 1. OI Report Synopsis
- 2. Summary of OI Report

- cc w/encl 1: A. C. Bakken III, Site Vice President
- J. Pollock, Plant Manager
- M. Rencheck, Vice President, Nuclear Engineering
- R. Whale, Michigan Public Service Commission
- Michigan Department of Environmental Quality
- Emergency Management Division
- MI Department of State Police
- D. Lochbaum, Union of Concerned Scientists

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* Per 1/11/00 discussion between Clayton & M. Stain, OE.

**ENCLOSURE 2 IS NOT FOR PUBLIC RELEASE WITHOUT THE APPROVAL OF THE
DIRECTOR, NRC OFFICE OF ENFORCEMENT**

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