

May 5, 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: NOTICE OF VIOLATION (NRC OFFICE OF INVESTIGATIONS REPORT
NO. 3-1998-041)

Dear Mr. Powers:

This letter refers to the investigation by the U.S. Nuclear Regulatory Commission (NRC) Office of Investigations (OI) conducted November 16-23, 1999, at the American Nuclear Power Company's (AEP's) Buchanan engineering offices. The investigation was initiated to determine whether a contractor engineer employed by Cataract, Inc., who was hired to perform engineering tasks for the D. C. Cook Nuclear Power Plant was discriminated against because he had previously engaged in protected activity. Based on evidence developed during the investigation, OI determined that discrimination had occurred in violation of the NRC's Employee Protection regulation, 10 CFR 50.7. The synopsis of the OI report and a summary of relevant facts were provided to AEP by letter dated January 14, 2000, and a closed, transcribed, predecisional enforcement conference was held in the NRC Region III office on February 24, 2000.

Based on the information developed during the investigation and the information provided during the conference, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice), and the circumstances surrounding the violation are described in detail in the summary which was provided as an enclosure to the Commission's January 14, 2000 letter.

Specifically, the contractor engineer reported to AEP's engineering offices on October 1, 1998, for a six-month assignment. The contractor engineer had previously engaged in protected activity in that he had testified as an intervenor at an NRC licensing hearing while employed at the Comanche Peak Nuclear Power Plant. On the day that he reported to work at AEP, an AEP engineer recognized the contractor engineer from previous employment at Comanche Peak and advised the supervisor that the contractor engineer was "trouble" and that he had testified. The supervisor was the acting AEP Nuclear Engineering Design Manager (design manager) and was employed by Duke Engineering Services. The design manager terminated the contractor engineer's employment with AEP on October 7, 1998. The contractor engineer filed a discrimination complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) on October 17, 1998, and AEP and the complainant reached a settlement on November 20, 1998, without an OSHA investigation.

At the conference, AEP representatives, including yourself, denied that the contractor engineer was terminated because of protected activity, and presented information indicating that the action was taken because the design manager believed that the contractor engineer's performance would not be satisfactory. You also stated that you recognized the action could have been perceived as retaliatory by other individuals employed at the facility.

Based on the information developed during the investigation and the information that you provided during the predecisional enforcement conference, the NRC has determined the employment action against the contractor engineer was taken in part for his participation in protected activity and that a violation of NRC requirements occurred. Specifically, the NRC has determined that the design manager terminated the contractor engineer's employment based in part upon the input provided by the AEP engineer regarding the contractor engineer's having previously engaged in protected activity. Discrimination against an employee for engaging in protected activity can have a chilling effect on other employees' and contractors' willingness to raise safety concerns, and the design manager who took the adverse employment action was a first line supervisor. Therefore this violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, as a Severity Level III violation.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$55,000 is considered for a Severity Level III violation. Because the D. C. Cook Nuclear Plant was the subject of escalated enforcement actions within the two years preceding this violation,¹ the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.B.2 of the Enforcement Policy. *Identification* credit is warranted because AEP identified this incident as having the potential of being perceived as discriminatory and determined that corrective action was needed. Credit is also warranted for *Corrective Action*. Corrective actions included, but were not limited to: (1) promptly settling the complaint before an OSHA investigation; (2) holding meetings with all supervisors; (3) enhancing the employee concerns program (ECP) and publicizing it; (4) strengthening the utility's policy on discrimination; (5) providing training to all managers and supervisors; and (6) taking steps to ensure that contractors understand and abide by the AEP policy on discrimination. It is noted that AEP had identified that the ECP program needed strengthening and had begun taking steps to enhance it prior to the violation occurring.

Therefore, to encourage prompt identification and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty.

¹ A Notice of Violation was issued April 21, 1998, for a Severity Level III problem involving violations of requirements for transporting radioactive material. (EA 98-113).

A Notice of Violation and Proposed Imposition of Civil Penalty of \$500,000 was issued October 13, 1998, at Severity Level II for programmatic concerns involving the ice condenser containment (EA 98-150).

The NRC has concluded that sufficient information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved has already been provided in the slides from the enforcement conference. Therefore, you are not required to respond to this letter unless the description herein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response (if you choose to reply) will be placed in the NRC Public Electronic Reading Room link at the NRC homepage, <http://www.nrc.gov/NRC/ADAMS/index.html>.

Sincerely,

/RA/

J. E. Dyer
Regional Administrator

Docket No. 50-315; 50-316
License Nos. DPR-58; DPR-74

Enclosure: Notice of Violation

cc w/encl: 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
W. Campbell, Jr., Executive Vice President, Duke Engineering and Services, Inc.
V. Berlin, Vice President, RCM Technologies
K. Gilbert, Acting Area Director, U.S. Department of Labor

DOCUMENT NAME: G:\eics\99-329.NOV

To receive a copy of this document, indicate in the box "C" = Copy w/o attach/encl "E" = Copy w/attach/encl "N" = No copy

OFFICE	RIII		OE		OGC		OE:DD	
NAME	Clayton/bh		*BWestreich		*DDambly		*JLuehman	
DATE	05/04/00		4/13/00		05/03/00		04/13/00	
OFFICE	OE:D		RIII					
NAME	*RBorchardt		Dyer					
DATE	05/03/00		05/04/00					

OFFICIAL RECORD COPY

*via telecon

DISTRIBUTION:

PUBLIC IE-01

SECY

CA

WTravers, EDO

FMiraglia, DEDR

DDambly, OGC

SCollins, NRR

JGrobe, RIII

Enforcement Coordinators

RI, RII and RIV

JGilliland, OPA

HBell, OIG

GCaputo, OI

RPaul, OI:RIII

OE:ES

OE:EA (2)

RAO:RIII

SLO:RIII

PAO:RIII

OAC:RIII

DRS:RIII

DRP:RIII

OCFO/LFARB w/o encl.

NOTICE OF VIOLATION

American Electric Power Company
D. C. Cook Nuclear Plant
Units 1 and 2

Dockets No. 50-315; 50-316
Licenses No. DPR-58; DPR-74
EA-99-329

Based on an NRC investigation completed on November 24, 1999, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 50.7(a), in part, prohibits discrimination by a Commission licensee against an employee for engaging in certain protected activities. 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. Protected activities include providing a Commission licensee with information about nuclear safety at an NRC licensed facility and testifying in any Commission proceeding.

Contrary to the above, on October 7, 1998, American Electric Power Company (AEP) through the actions of the acting AEP Nuclear Engineering Structural Design Manager, discriminated against an engineer employed by its contractor, Cataract, Inc., for having engaged in protected activities. Specifically, the contractor engineer engaged in protected activities by testifying in an NRC licensing hearing for the Comanche Peak Nuclear Power Plant prior to his employment at AEP. Based in part on this protected activity, AEP terminated the engineer's employment at AEP after he had been employed for seven days of a six-month assignment. (01013)

This is a Severity Level III violation (Supplement VII).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance was achieved is already adequately addressed in the slides from the enforcement conference. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description described herein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region III, 801 Warrenville Road, Lisle, IL 60532-4351, and a copy to the NRC Resident Inspector at the D. C. Cook Nuclear Plant, within 30 days of the date of the letter transmitting this Notice.

If you contest this enforcement action, you should also provide a copy of your response to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, D.C. 20555-0001.

If you choose to respond, your response will be placed in the NRC Public Electronic Reading Room (PERR) link at the NRC homepage, <http://www.nrc.gov/NRC/ADAMS/index.html>. Therefore, to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PERR without redaction. Under the authority of Section 182 of Act 42 U.S.C. 2232, any response shall be submitted under oath or affirmation.

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 5th day of May 2000.