

May 30, 2000

EA 97-351

Mr. Harold W. Keiser
President and Chief Nuclear Officer
Nuclear Business Unit
Public Service Electric and Gas Company
Post Office Box 236
Hancocks Bridge, New Jersey 08038

SUBJECT: NOTICE OF VIOLATION
(NRC OI Investigation 1-96-031)

Dear Mr. Keiser:

This letter refers to the investigation conducted by the NRC Office of Investigations between September 1996 and July 1997 to determine if a contract security officer employed by the Wackenhut Corporation (Wackenhut) at your Salem/Hope Creek facilities was discriminated against for raising safety concerns. Based upon the evidence developed during that investigation, OI concluded that the security officer was discriminated against for her involvement in raising concerns regarding a security incident at the facility. A redacted version of the OI report was forwarded to you on October 1, 1997, which formed, in part, the bases for discussions at an enforcement conference held with members of your staff on December 9, 1997.

Since the security officer also filed a complaint with the US Department of Labor in February 1997, we informed you, in letters dated March 20, 1998 and April 24, 1998, that the NRC decided to await issuance of the DOL Secretary of Labor's Administrative Review Board decision prior to making a final enforcement decision in this case. At the time, the first two levels of DOL, namely the OSHA District Director, as well as the Office of Administrative Law Judges (Reference: U.S. Department of Labor ALJ Case No. 97-ERA-52), had already issued their findings, and similar to OI, concluded that discrimination occurred.

The DOL ARB issued its final decision on February 29, 2000 (reference: U.S. Department of Labor ARB Case No. 98-067). In its ruling, the DOL ARB dismissed the complaint stating that there was a lack of unfavorable personnel action. Specifically, the ARB indicated that in this case, where the employer promptly aborted the adverse consequences, its unfavorable action did not have an adverse effect on the employee's terms, conditions, or privileges of employment. However, this ruling does not preclude the NRC from taking action pursuant to its authority under the Atomic Energy Act.

As a result, the NRC has carefully evaluated the findings of the NRC OI investigation which concluded that the contract security officer was discriminated against for raising safety concerns. Specifically, the officer was placed on administrative leave without pay and suspended for three days in August 1996 after she expressed concern to Wackenhut personnel (investigating other incidents at the facility) regarding a supervisor's failure to perform a crane gate crawl test in June 1996. A crawl test is required by procedure to ensure that alarms are operational after trucks pass over a bed of stones at the crane gate entrance. In reaching its conclusion, OI noted that a Wackenhut Systems Operation Supervisor advised OI, in a sworn statement, that in all likelihood he did tell the security officer that she was being placed on administrative leave because she had spoken to the NRC.

The NRC has also carefully evaluated the information that you provided to the NRC during the enforcement conference. During the conference, you contended that the suspension of the security officer was not discriminatory. You acknowledged that the officer raised the crawl test issue to her supervisor at the time the incident occurred and took it to the union after the supervisor's response was deficient. However, you stated that the officer did not raise the issue with higher levels of management, and you contended that your procedures, which require immediate reporting of a degraded security condition, should have led the officer to do so. In addition, you indicated that the security officer was not treated any differently than several other individuals who were similarly suspended within twenty-four hours of the suspension of the officer in question, for violating program requirements. Further, you stated that neither the Wackenhut Systems Operation Supervisor (who advised OI that in all likelihood he did tell the security officer that she was being placed on administrative leave because she had spoken to the NRC), nor the security Project Manager, was involved in the decision to suspend the officer, contending that whether or not the officer did, in fact, speak to the NRC, was not a part of the decision to suspend her. Finally, you emphasized that within three days of the suspensions of the security personnel, Wackenhut and PSE&G concluded that problems with security leadership resulted in a cultural decline in security at the facility, and they rescinded the suspension of all of the individuals, and restored their pay and removed the action from the personnel files.

After evaluating the OI report, and your position as described at the enforcement conference, the NRC has concluded that the reason you gave for the security officer's suspension (the failure to report the crawl test incident in a timely manner) was pretextual. This NRC conclusion is based on the several factors. First, although records were expunged from the files of all of the individuals who were suspended, there does not appear to have been a record generated concerning the reasons for the security officer's suspension, as there apparently was for the other individuals. The normal practice was to provide written documentation to the employee suspended. Second, the other security officers involved in the crawl test incident, who also failed to report the incident to Wackenhut supervision, were suspended at a later time than the security officer, suggesting that the reason for the suspension of the concerned security officer was different from the reason for the suspensions of the other security officers. Finally, although the supervisor who informed the security officer that she was suspended may not have actually been involved with the decision to suspend her, the NRC has concluded that his remarks and the other evidence developed by OI indicate that management officials who did make the decision to suspend her were aware of her having raised concerns about the crawl test incident, and made the decision to suspend her, at least in part, based upon her having engaged in this protected activity. Therefore, the staff concludes that a violation of 10 CFR 50.7 occurred.

With respect to your contention that the officer's suspension was justified because she did not raise the issue with higher levels of management, the NRC supports policies that encourage individuals to raise safety issues to higher levels of management if action is not taken at the lower levels of management. However, in this case, the evidence suggests that the officer's engagement in a protected activity, rather than that failure to raise the issue higher, contributed to the suspension.

The significance of this violation was lessened by the facts that (1) the adverse action was promptly rectified by contractor management without NRC or licensee intervention; and (2) the negative impact of the discriminatory action was effectively lessened by the corrective actions taken by PSE&G and Wackenhut to address the broad problems in the security department at that time, including the personnel changes within the security department. Those actions, which included removal of the site program manager and acknowledgment of the management problems, sent the message to the security force that they could raise concerns and action would be taken. Therefore, the violation is classified at Severity Level IV in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence of the violation. In particular, you should address situations in which managers and supervisors are required to respond to performance issues with employees who are also involved in protected activities. In addition, you should describe your actions for assuring that this violation does not have a chilling effect on other employees' willingness to raise safety issues. After reviewing your response to this Notice, including your proposed corrective actions, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

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 placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

Sincerely,

/RA/

Hubert J. Miller
Regional Administrator

Docket Nos. 50-272: 50-311: 50-354
License Nos. DPR-70: DPR-85; NPF-57

Enclosure: Notice of Violation

cc w/encl:

E. Simpson, Senior Vice President and Chief Administrative Officer
M. Bezilla, Vice President - Nuclear Operations
D. Garchow, Vice President - Technical Support
M. Trum, Vice President - Maintenance
T. O'Connor, Vice President - Plant Support
E. Salowitz, Director - Nuclear Business Support
G. Salamon, Manager - Licensing
A. F. Kirby, III, External Operations - Nuclear, Connectiv Energy
J. McMahon, Director - QA/Nuclear Training/Emergency Preparedness
R. Kankus, Joint Owner Affairs
A. Tapert, Program Administrator
J. J. Keenan, Esquire
R. R. Wackenhut, President & COO, Wackenhut Corporation
Consumer Advocate, Office of Consumer Advocate
W. Conklin, Public Safety Consultant, Lower Alloways Creek Township
M. Wetterhahn, Esquire
State of New Jersey
State of Delaware
J. Guinan, NJ PIRG
N. Cohen, Coalition for Peace and Justice
R. Fisher
F. Berryhill
B. August

OFFICE	OE						
NAME	RBorchardt (JGL for)						
DATE	05/24/00						

ENCLOSURE

NOTICE OF VIOLATION

Public Service Electric and Gas Company
Salem Units 1 and 2 & Hope Creek

Docket Nos. 50-272 and 50-311
License Nos. DPR-70 and DPR-85
EA 99-055

Based on an investigation conducted by the NRC Office of Investigations, 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 set forth below:

10 CFR 50.7 prohibits discrimination by a Commission licensee or contractor 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. The activities which are protected included, but are not limited to, reporting of safety concerns by an employee to his employer or to the NRC.

Contrary to the above, on August 19, 1996, Wackenhut Corporation, a security force contractor for PSEG (the licensee) discriminated against its employee, a security officer, for engaging in protected activities. Specifically, the security officer was suspended without pay for raising nuclear security concerns related to crawl testing of a crane gate.
(01014)

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

Pursuant to the provisions of 10 CFR 2.201, Public Service Electric & Gas Company (Licensee) is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region I, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) 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 to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

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, DC 20555-0001.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your

Enclosure

2

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.

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

Dated this 30th day of May 2000