

September 22, 2000

IA-00-035

Mr. Thomas Whelan  
[Home Address Deleted  
Under 10 CFR 2.790(a)]

SUBJECT: NOTICE OF VIOLATION (NRC INVESTIGATION REPORT NO. 3-1999-047)

Dear Mr. Whelan:

This letter refers to an investigation completed by the NRC Office of Investigations (OI) on June 22, 2000, regarding your activities at the Commonwealth Edison Company's (ComEd) Byron Generating Station in November of 1999. Based on the results of that investigation, the NRC has concluded that you deliberately violated radiation protection procedures on November 2, 1999, when you entered a high radiation area within the containment building where the chemical and volume control system valve No. 214A was located. The area was posted and controlled as a high radiation area and contained highly contaminated plant components. A summary of the information developed, based on the OI investigation, was provided to you by the NRC in a letter, dated July 26, 2000. In that letter, you were given the opportunity either to discuss this matter at a predecisional enforcement conference or reply to the NRC in writing within 30 days. Since you have not requested a predecisional enforcement conference nor replied in writing, the NRC is proceeding with its enforcement action based on the results of the OI investigation.

Based on the NRC investigation, the NRC has determined that a deliberate violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) (Enclosure 1). In summary, while you were employed at ComEd's Byron Nuclear Station, you deliberately violated radiation protection procedures on November 2, 1999, when you entered a high radiation area within the containment building where the chemical and volume control system valve No. 214A was located without obtaining authorization for the entry from your supervisor or radiation protection staff. Your actions were deliberate in that your supervisor instructed you to work on another valve elsewhere and a radiation protection technician informed you that you were not authorized to work on the chemical and volume control system valve without attending a pre-job briefing and signing onto the appropriate radiation work permit. Your deliberate actions placed ComEd in violation of Byron Technical Specification 5.4.1 and Byron Procedure BRP 5000-7 (Revision 9), "Unescorted Access to and Conduct in Radiologically Posted Areas," and you in violation of 10 CFR 50.5, "Deliberate Misconduct" (Enclosure 2 is a copy of the letter and Notice of Violation issued to ComEd). Therefore, due to your deliberate actions the violation in the enclosed Notice is categorized in accordance with the "General Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, at Severity Level III.

In determining the appropriate sanction to be assessed in this case, the NRC staff considered issuing an Order prohibiting your involvement in NRC-licensed activities as a result of your actions. However, after consultation with the Director, Office of Enforcement, and after considering the circumstances of this case, including the facts that: (1) the actual safety significance was low, since your exposure was minimal and you did not become contaminated; and (2) ComEd took action regarding your wrongdoing, including removing your access to the Byron Generating Station, I have decided to issue the enclosed Notice of Violation. Nevertheless, you should be aware that if you are involved in NRC licensed activities in the future, additional deliberate violations could result in more significant enforcement action.

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.

Please feel free to contact Mr. Gary Shear of my staff if you have any questions. Mr. Shear can be contacted at telephone number (630) 829-9876.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures (with your home address removed), and your response will be 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/ James L. Caldwell for

J. E. Dyer  
Regional Administrator

Enclosures: 1. Notice of Violation  
2. Notice of Violation to ComEd

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

DOCUMENT NAME: G:\eics\00-035 ia sliii.wpd

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DATE	9/20/00		9/20/00		9/21/00		9/18/00 via email		9/22/00	

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DISTRIBUTION WITH ENCLOSURE 1:

PUBLIC IE-01

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CA

W. Travers, EDO

F. Miraglia, DEDR

D. Dambly, OGC

S. Bajwa, NRR

V. Ordez, NRR

T. Reis, OE

G. Dick, NRR

Enforcement Coordinators

RI, RII, and RIV

R. Paul, OI:RIII

OE

OE:EA (2)

RAO:RIII

PAO:RIII

SLO:RIII

OAC:RIII

Docket File

## NOTICE OF VIOLATION

Mr. Thomas Whelan  
[HOME ADDRESS DELETED]  
UNDER 10 CFR 2.790(a)]

IA-00-035

During an NRC investigation completed on June 22, 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 violation is listed below:

10 CFR 50.5(a)(1) requires, in part, that an employee of a licensee may not engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission.

Byron Station Technical Specification 5.4.1.a requires, in part, that written procedures be established, implemented, and maintained covering the applicable procedures recommended in Appendix A of Regulatory Guide 1.33, February 1978.

Appendix A, Section 7(e)(1) of Regulatory Guide 1.33, February 1978, recommends that radiation protection procedures be implemented which provide for access control to radiation areas including a radiation work permit system.

Procedure BRP 5000-7 (Revision 9), "Unescorted Access to and Conduct in Radiologically Posted Areas," implements the access control requirements specified in Appendix A of Regulatory Guide 1.33 and requires, in part, that to have access into a radiologically posted area the individual shall receive authorization from cognizant work supervision.

Contrary to the above, on November 2, 1999, you deliberately entered a radiologically posted area without receiving authorization from cognizant work supervision. Specifically, you entered an area posted as a high radiation area to perform work on a chemical and volume control system valve after being assigned by your immediate supervisor to work elsewhere, and after being informed by a radiation protection technician that you were not authorized to work on the valve without attending a pre-job briefing and signing onto the appropriate radiation work permit, both of which you failed to do. (01013)

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

Pursuant to the provisions of 10 CFR 2.201, Mr. Thomas Whelan is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region III, and a copy to the NRC Resident Inspector at the Byron Generating Station, 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 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, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because your response will be made available to the Public, 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. 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 22<sup>nd</sup> day of September 2000.