



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064**

February 5, 2001

EA-01-005

Garry L. Randolph, Senior Vice
President and Chief Nuclear Officer
Union Electric Company
P.O. Box 620
Fulton, Missouri 65251

**SUBJECT: APPARENT VIOLATION OF EMPLOYEE PROTECTION REQUIREMENTS
(NRC INVESTIGATION REPORT 4-1999-068, and U.S. DEPARTMENT OF
LABOR CASE No. 2000-ERA-15)**

Dear Mr. Randolph:

This is in reference to an apparent violation of NRC requirements prohibiting discrimination against employees who engage in protected activities, i.e., 10 CFR 50.7. Specifically, we are concerned that The Wackenhut Corporation (TWC) and Union Electric (the Licensee) may have discriminated against a former TWC employee at the Callaway Nuclear Plant. Although enforcement action is being considered against TWC, Union Electric's contractor, the NRC holds Union Electric responsible for ensuring compliance with NRC requirements by contract personnel working at its facility. This apparent violation was discussed with Mr. John Blosser, Mr. Joe Laux, Mr. Jim Peevy, and others of your staff, on January 19, 2001. In addition, we are concerned that this apparent violation may involve deliberate misconduct.

The apparent violation of 10 CFR 50.7 involves a former TWC security officer, Officer No. 1, who, on October 27, 1999, contacted a high school principal and learned that a fellow security officer, Officer No. 2, did not have a high school diploma as required by 10 CFR Part 73, Appendix B, Section I.A.1.a. Officer No. 1 informed a TWC training instructor of this, and the training instructor informed TWC officials. On November 19, 1999, Officer No. 1 was terminated by TWC without eligibility for rehire. The licensee revoked her unescorted access authorization and placed her on the denied access list on the grounds of lack of reliability and trustworthiness. The training instructor was reprimanded by TWC. Based on the NRC's review of the circumstances surrounding these events, it appears that Officer No. 1 and the training instructor engaged in a protected activity, that adverse action was taken against them, and that retaliation for engaging in the protected activity was a factor in the adverse actions. Therefore, it appears that there was a violation of 10 CFR 50.7. A factual summary of the apparent 10 CFR 50.7 violation is enclosed with this letter.

The apparent violation of 10 CFR 50.7 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. The current Enforcement Policy is included on the NRC's website at www.nrc.gov/OE. The NRC is not issuing a Notice of Violation at this time; you 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.

A predecisional enforcement conference to discuss this apparent violation has been scheduled for Wednesday, March 7, 2001, at 10 a.m. in the NRC's Region IV office. This conference will be closed to public observation in accordance with Section V of the Enforcement Policy and will be transcribed.

The decision to hold a predecisional enforcement conference does not mean the NRC has determined that a violation has occurred or that enforcement action will be taken. This conference is being held to obtain information to assist the NRC in making an enforcement decision. The conference is an opportunity for the licensee to provide its perspectives on: (1) the severity level of the apparent 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 the case, including the exercise of discretion in accordance with Section VII. In addition, we are interested in discussing actions that Union Electric has taken or is taking to address the environment for raising concerns at the Callaway Nuclear Plant.

The NRC is also identifying an apparent violation of 10 CFR Part 73, Appendix B, Section 1.A.1.a, in that Officer No. 2 was assigned to the security organization without being in possession of a high school diploma or without having passed an equivalent performance examination. Although not being considered for escalated enforcement, this apparent violation is related to this case and may be discussed during the predecisional enforcement conference. The NRC will make a final enforcement decision on this apparent violation in conjunction with the decisions related to the apparent violation of 10 CFR 50.7.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be made 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/

Ellis W. Merschoff
Regional Administrator

Docket No.: 50-483
License No.: NPF-30

Enclosure: Factual Summary

Union Electric Company

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ENCLOSURE

FACTUAL SUMMARY

OI Report No. 4-1999-068 involves a former security officer (Officer No. 1) employed by The Wackenhut Corporation (TWC). On August 24, 1999, during the course of her duties at TWC, Officer No. 1 saw a Certificate of Attendance from a high school for another security officer (Officer No. 2). Officer No. 1 stated that she told a TWC administrative assistant that the document did not look like a high school diploma. Officer No. 1 also reported this to a TWC training instructor. The training instructor believed that if Officer No. 2 did not have a high school diploma the licensee's screening officials would have dealt with the problem, and that since Officer No. 1 told the TWC administrative assistant, they had fulfilled their obligation to raise the issue.

On about October 25, 1999, Officer No. 1 learned that she had been passed over for promotion to permanent security officer. From her home, on October 27, 1999, Officer No. 1 called the high school that Officer No. 2 had attended, and learned that Officer No. 2 had not graduated. Officer No. 1 claimed she did not represent herself as someone who worked at the Callaway plant. Officer No. 1 then notified the training instructor, who then notified TWC management, that Officer No. 2 had been hired when he did not have a high school diploma. The training instructor also informed TWC management that Officer No. 1 discovered this information when she contacted the high school. [Assigning a security officer to the security organization without his being in possession of a high school diploma or equivalent is a violation of 10 CFR Part 73, Appendix B, Section I.A.1.a.]

Within days after being notified about Officer No. 2's lack of a diploma, TWC management initiated an investigation into how Officer No. 1 had obtained that information. TWC representatives were unable to provide a satisfactory reason as to why they investigated Officer No. 1's actions.

At the time she saw the Certificate of Attendance (on August 24, 1999), Officer No.1 was a temporary watchman who had not handled this type of paper work before, and had assumed that by telling the administrative assistant any required action would be taken. Then, in October, when Officer No. 1 was passed over and Officer No. 2 received a promotion to a permanent security officer position, Officer No. 1 recalled Officer No. 2's Certificate of Attendance. The principal of the high school recalled that Callaway was mentioned in some context during the call with Officer No. 1. However, the principal also indicated that his recollection of the call was poor since he had been interviewed so many times and could not be certain about what was said.

As a result of TWC's investigation, TWC concluded that Officer No. 1 had misrepresented herself to the principal. TWC indicated that there was no reason for the high school principal to misstate the facts or be less than truthful. However, within hours of Officer No.1's conversation with the principal, Officer No. 2, his brother, and his mother had visited or telephoned the principal about his disclosure of this information.

On November 19, 1999, TWC terminated Officer No. 1 under unfavorable conditions without eligibility for rehire. The licensee also revoked her authorization for unescorted access to the Callaway Nuclear Plant and, on the grounds of lack of reliability and trustworthiness, placed her on the denied access list. TWC stated that these actions were taken against Officer No. 1

because she had misrepresented herself as a TWC or a Union Electric employee conducting official business to obtain the information from the high school. TWC also reprimanded the training instructor for not reporting the problem with Officer No. 2's educational background when he first learned of the problem in August 1999.

On October 28, 1999, after finding that Officer No. 2 did not meet the minimum education requirements of a high school diploma or equivalent, TWC terminated Officer No. 2's employment. Officer No. 2, however, was told he could return to work once he had a high school diploma or equivalent. TWC concluded that Officer No. 2 believed he had graduated from high school, based on the uncorroborated opinion of the high school principal. The evidence, however, indicates that Officer No. 2 knew that he had in fact not graduated. Subsequently, only after Officer No. 1 had filed a DOL complaint, the licensee placed Officer No. 2 on the denied access list on the grounds that he knowingly misrepresented his educational qualifications.

On November 3, 1999, Officer No. 1 complained to her TWC supervision of prank calls being made to her while she was on shift, and identified the caller by the sound of his voice. In response, TWC only interviewed her and inquired whether the calls could be traced.

Based on the evidence developed during the investigation, Officer No. 1 and the training instructor engaged in protected activity when they reported a violation of NRC requirements, TWC was aware of the protected activity, and adverse actions appear to have been taken in retaliation for the protected activity.

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