

April 6, 2001

EA-01-028

Mr. Michael Heffley
Vice President
Clinton Power Station
AmerGen Energy Company, LLC
RR3
P. O. Box 228
Clinton, IL 61727

SUBJECT: NOTICE OF VIOLATION
OFFICE OF INVESTIGATIONS REPORT NO. 3-2000-012

Dear Mr. Heffley:

This refers to the investigation conducted by the NRC Office of Investigations (OI) at the Clinton Power Station from March 16 until December 21, 2000, regarding an allegation that an instructor in the Clinton Nuclear Training Department (NTD) had been discriminated against. Specifically, it was alleged that the training instructor received a poor annual performance review and was denied a salary bonus as a result of his having engaged in protected activity. The protected activity consisted of his writing a Condition Report (CR) concerning a matter that he believed was a potential violation of NRC requirements. Although the individual filed a complaint with the U.S. Department of Labor (DOL), a settlement was reached between the individual and AmerGen Energy Company (AmerGen) before the complaint was investigated by the DOL Occupational Safety and Health Administration (OSHA).

Based upon the information developed by OI, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation. Specifically, the NRC concluded that the employee's calendar year 1999 performance was rated as "does not meet expectations," and he was not awarded an annual salary bonus in part because he wrote a CR concerning the failure of employees to complete orientation matrix items within the allotted time.

In determining the enforcement action for this violation the NRC considered the fact that the nuclear training instructor was incorrect in his belief that the matter raised in the CR constituted a violation of NRC requirements, the fact that AmerGen and the employee settled the employee's complaint prior to substantial involvement by DOL, and that the employee was made "whole" by having his appraisal revised to reflect "meets expectations" and was given a bonus. Also, both the employee and his supervisor are no longer employed at the Clinton Plant. Based on a review of the totality of the circumstances in this case, and after consultation with the Director, Office of Enforcement, the violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, (Enforcement Policy) at Severity Level IV.

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.

During the OI investigation, the NRC learned that AmerGen had developed information indicating that several NTD employees may be reluctant to discuss departmental issues within NTD. The NRC is concerned with the safety conscious work environment at its licensed facilities and requests that AmerGen provide the NRC with written assurance, included with your response to the violation, that NTD employees at the Clinton Power Station work in an environment that is free of any chilling effect and where each employee can openly communicate nuclear safety-related concerns without fear of reprisal.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your responses 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/

John A. Grobe, Director
Division of Reactor Safety

Docket No. 50-461
License No. NPF-62

Enclosure: Notice of Violation

cc w/encl: M. Pacilio, Plant Manager
M. Reandeau, Director - Licensing
G. Rainey, Chief Nuclear Officer
E. Wrigley, Manager-Quality Assurance
M. Aguilar, Assistant Attorney General
G. Strambach, Regulatory Licensing
Services Project Manager
General Electric Company
Chairman, DeWitt County Board
State Liaison Officer
Chairman, Illinois Commerce Commission

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 Division of Reactor Safety

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 M. Reandeau, Director - Licensing
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 M. Aguilar, Assistant Attorney General
 G. Strambach, Regulatory Licensing
 Services Project Manager
 General Electric Company
 Chairman, DeWitt County Board
 State Liaison Officer
 Chairman, Illinois Commerce Commission

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DATE		04/03/01	04/06/01		

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Enforcement Coordinators

RI, RII, RIV, and NRR

OPA

H. Bell, OIG

G. Caputo, OI

R. Paul, OI:RIII

T. Reis, OE/NRR

OE:ES

OE:EA (2)

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AJM

DFT

JBH1 (Project Mgr.)

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PLB1

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NOTICE OF VIOLATION

AmerGen Energy Company, LLC
Clinton Power Station

Docket No. 50-461
License No. NPF-62
EA-01-028

During an NRC investigation completed on December 21, 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 50.7(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 an employee providing his or her employer information about possible violations of requirements imposed by either of these statutes.

Contrary to the above, the AmerGen Energy Company, LLC, discriminated against an instructor employed in the Nuclear Training Department (NTD) at the Clinton Power Station for having engaged in protected activities. Specifically, on October 28, 1999, an NTD instructor prepared a condition report documenting that five NTD employees had not completed the NTD employee orientation matrix within the allotted time, which he perceived to be a violation of licensee training requirements. On February 15, 2000, the NTD instructor received his "Employee Performance Review" for the period January 1 to December 31, 1999, and was given an overall rating of "does not meet expectations." Additionally, the NTD instructor did not receive a salary bonus for that period. These actions were taken, in part, as the result of his having engaged in this protected activity. (01014)

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

Pursuant to the provisions of 10 CFR 2.201, AmerGen Energy Company, LLC, is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region III, and a copy to the NRC Resident Inspector at the Clinton Power 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 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, 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 electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS), 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. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room). 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.

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

Dated this 6th day of April 2001.