NUMANCO L.L.C.
"Our Power is in Our People"

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

April 30, 2001

U. S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, D.C. 20555

SUBJECT: Reply to a Notice of Violation (EA-99-316) in Accordance With 10 C.F.R. § 2.201

Dear Sirs:

On September 6, 2000, the Nuclear Regulatory Commission (NRC) issued a Notice of Violation (NOV) to Numanco, L.L.C. (Numanco) proposing a violation of 10 C.F.R. § 50.7. The proposed violation was categorized at Severity Level III under the NRC's "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, May 1, 2000 (Enforcement Policy). The attachment provides Numanco's reply to the above captioned NOV.

In a letter from Mr. James Luehman, Deputy Director, NRC Office of Enforcement, dated October 2, 2000, the date for responding to the NOV was extended until Numanco and Rob Grant received information concerning the case pursuant to a Freedom of Information Act (FOIA) request. After receiving this information in late February, our counsel, Perry D. Robinson (Foley & Lardner), spoke with Mr. Barry C. Westreich, NRC Office of Enforcement, and the date for our reply was extended until April 30, 2001.

Numanco takes very seriously the NRC's mission to protect the public health and safety, particularly with regard to allegations of discrimination. In this regard, Numanco has taken steps to enhance its ability to maintain a healthy safety conscious work environment at all job sites, and will continue to take appropriate actions as needed in the future. Numanco also recognizes that the NRC must exercise its enforcement powers when adequate facts exist to support violations of regulatory requirements, such as 10 C.F.R. § 50.7. However, in the present case, Numanco does not believe that the facts adequately support the alleged violation. Therefore, Numanco respectfully requests that the violation be withdrawn. The basis for this request is set forth in the attachment.

One Memorial Place • 7633 East 63rd Place, 4th Floor • Tulsa, Oklahoma 74133
(918) 252-9111 • (800) 556-7572 • FAX (918) 459-3490
numanco@worldnet.att.net

In addition, Numanco believes that the NOV issued to Mr. Rob Grant should be withdrawn. As we indicated at the predecisional enforcement conference on March 15, 2000, we do not believe that Mr. Grant discriminated against his subordinate. In particular, we do not believe that his behavior was in any way deliberate. We fully support his response to the NOV and, like our own response, we respectfully request careful review of these matters.

We appreciate your careful consideration of this matter. If you have any questions concerning this reply, please contact me.

Very truly yours,

John Ellison

John Ellison
Executive Vice President
Numanco, L.L.C.

cc: Director, Office of Enforcement
Regional Administrator, Region III
NRC Resident Inspector (Dresden Station)

Attachment

Numanco, L.L.C. Submittal in Reply to a Notice of Violation (EA-99-316) in Accordance With 10 C.F.R. § 2.201

I. RESTATEMENT OF THE VIOLATION

During an NRC investigation completed on November 10, 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) prohibits discrimination by a Commission licensee or licensee contractor against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that related to compensation, terms, conditions or privileges of employment. The protected activities were established in Section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration and enforcement of a requirement imposed under the Atomic Energy Act or Energy Reorganization Act. Protected activities include providing a Commission licensee or contractor with information about nuclear safety at an NRC licensed facility.

Contrary to the above, Numanco, L.L.C., a contractor of the Commonwealth Edison Company, discriminated against a radiation protection technician for engaging in protected activities. On November 4, 1997, a radiation protection technician engaged in protected activities when he expressed a nuclear safety concern about the improper use of the Dresden Station, Unit 1 "counting room" for decontamination activities to the Numanco site coordinator for Dresden Station Unit 1. Based on this protected activity, Numanco, L.L.C., suspended the employment of the radiation protection technician on November 4, 1997.

II. THE REASON FOR THE VIOLATION, OR, IF CONTESTED, THE BASIS FOR DISPUTING THE VIOLATION OR SEVERITY LEVEL

The enforcement action restated above cites Numanco for a violation of 10 C.F.R. § 50.7 based on the actions of its employee, Mr. Rob Grant. Although Mr. John Ellison also was the subject of investigation by the NRC's Office of Investigations, he was exonerated of any liability, and enforcement action was not considered warranted. *See* NRC letter from J. E. Dyer to John Ellison, dated September 6, 2000. We believe that this was the correct decision on the part of the agency. We believe that the record also shows that Mr. Grant should be exonerated. Therefore, because Mr. Grant did not violate Section 50.7, Numanco likewise did not violate Section 50.7. Accordingly, we respectfully deny the above captioned violation.

As we discussed in our various submittals to the NRC and at the pre-decisional enforcement conference on March 15, 2000, we believe that Mr. Grant did not deliberately violate the provisions of Section 50.7. Under difficult circumstances, Mr. Grant made reasoned judgements based on the facts that he knew at the time. His actions on November 4, 1997, were aimed at ensuring that all of the concerns of the parties involved, including Mr. Webb's, were appropriately addressed under the circumstances. Moreover, we reviewed the record provided as part of the NRC's response to our Freedom of Information Act (FOIA) request and believe that it corroborates our views that Mr. Grant did not evince any discriminatory animus or take any actions that he knew or understood to be discriminatory.

We have reviewed Mr. Grant's proposed response to the enforcement action issued against him by the NRC and find it factually accurate and consistent with the NRC's enforcement policy and precedent. Accordingly, we support his request for the withdrawal of the violations. In the event that Mr. Grant's request for withdrawal is not granted, we support his request for a hearing before the Commission. Numanco however wants to be clear that, although we do not believe the record substantiates the proposed violation, we do not intend to pursue the matter further.

III. THE CORRECTIVE STEPS THAT HAVE BEEN TAKEN AND THE RESULTS ACHIEVED

Although Numanco respectfully denies the violation, as indicated below, we have implemented a number of enhancements in response to this situation. Numanco understands and firmly believes in the importance of maintaining a healthy safety conscious work environment (SCWE). It has a long record of adherence to and support for the NRC's prohibition against discrimination. Consequently, as a result of this incident, Numanco has taken several steps to further strengthen the awareness and understanding among our supervisors concerning the NRC's prohibition against discrimination.

First, in January 1999, we conducted detailed training for personnel at one of our annual Site Coordinator Meetings. Instructors discussed the laws protecting employees, what a "chilled" environment means, how to effectively handle concerns raised by individuals, the purposes of an Employee Concerns Program and the role of supervisors in maintaining a SCWE. The focus of this training was very much on the practical aspects of effectively and properly addressing any issues raised by a concerned individual.

We also modified our Site Coordinators Manual and our Field Employee Handbook to reflect Numanco's position concerning situations involving a pending investigation. The Manual clearly indicates that it is within the discretion of the supervisor to use administrative leave with pay as a temporary assignment pending an investigation. The Manual also makes clear that such an assignment is not to be construed in any way as disciplinary action or a change in the terms or conditions of employment. When the need to utilize this approach arise, it is our expectation that supervisors will review company's policy with the affected person as part of the overall investigation process.

In addition to these enhancements, we want to also emphasize that Numanco has brought in a new senior manager. Mr. Mark Marano became President of Numanco last year. Mr. Marano has substantial experience with the nuclear power industry, particularly in the area of corrective action programs. He has been on the turn-around teams for several utilities at nuclear plants such as Salem, Crystal River and D.C. Cook. These experiences and others have brought him into contact with a number of Employee Concerns Programs being implemented at other nuclear plants. Mr. Marano, along with the complete management team, strongly supports the NRC's prohibition against discrimination and is working to ensure that best practices for addressing employee concerns are implemented at Numanco.

IV. THE CORRECTIVE STEPS THAT WILL BE TAKEN TO AVOID FURTHER VIOLATIONS

Clearly, Numanco has learned from this experience and will continue its efforts to ensure that a healthy SCWE is maintained among its employees. We intend to periodically repeat the training discussed above at our Site Coordinator Meetings. We also intend to periodically remind personnel of Numanco's policy of zero tolerance for discrimination. Finally, as needed in the future, Numanco will further adjust its policies and procedures to reflect current regulatory expectations.

V. THE DATE WHEN FULL COMPLIANCE WILL BE ACHIEVED

Numanco believes that it has been and currently is in full compliance.