

# AmerGen

An Exelon/British Energy Company

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## Clinton Power Station

P.O. Box 678  
Clinton, IL 61727  
Phone: 217 935-8881

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Nuclear Regulatory Commission  
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Clinton Power Station, Unit 1  
Facility Operating License No. NPF-62  
NRC Docket No. 50-461

Subject: Reply to a Notice of Violation

This letter provides the AmerGen Energy Company, LLC, (i.e., AmerGen) response to the Notice of Violation resulting from Office of Investigations Report No. 3-2000-012, transmitted by letter dated April 6, 2001. The violation pertains to an employee protection issue. AmerGen does not contest the violation. The response to the violation is due by May 6, 2001, and is contained in the attachment to this letter. The attached response also provides written assurance that Station employees, including those in the Nuclear Training Department, work in an environment that is free of any chilling effect and where each employee may openly communicate nuclear safety-related concerns without fear of reprisal.

Respectfully,

  
J. M. Hefley  
Site Vice President  
Clinton Power Station

RSF/blf

Attachment

cc: Regional Administrator – NRC Region III  
NRC Senior Resident Inspector – Clinton Power Station

I E D I

## **Attachment Reply to a Notice of Violation**

In accordance with 10 CFR 2.201, "Notice of violation," this letter provides the response of AmerGen Energy Company, LLC (i.e., AmerGen) to the Notice of Violation resulting from Office of Investigations Report No. 3-2000-012 and transmitted by letter dated April 6, 2001. The Notice of Violation cites a violation of 10 CFR 50.7, "Employee protection," in that, contrary to the regulation, AmerGen discriminated against an instructor employed in the Nuclear Training Department (NTD) at the Clinton Power Station (CPS) for having engaged in protected activities. The Notice of Violation states in part:

"... 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."

### **Reason for the Violation**

The NRC has determined that a violation of 10 CFR 50.7 has occurred. Specifically, the NTD instructor initiated a Condition Report on October 28, 1999, documenting that five NTD employees had not completed the NTD employee orientation matrix within the allotted time. The NTD instructor perceived that the untimely orientation was a violation of licensee training requirements. A few months later, in mid-February 2000, the NTD instructor received a performance appraisal for 1999 with an overall rating of "does not meet expectations." As a result, AmerGen did not give the NTD instructor a bonus for 1999. Following an investigation of an allegation that the NTD instructor was discriminated against as a result of these actions by AmerGen, the NRC has determined that the NTD instructor received the unsatisfactory appraisal, and no bonus, "in part, as a result of his having engaged" in protected activity.

As additional background, AmerGen was notified by a letter dated February 24, 2000, from the U.S. Department of Labor (DOL) that a complaint under Section 211, "Employee Protection," of the Energy Reorganization Act of 1974 had been made by the NTD instructor, alleging discriminatory employment practices. The complaint stated that the NTD instructor's unsatisfactory appraisal and failure to receive a salary bonus were the result of the NTD instructor having engaged in certain protected activities at CPS. This matter was settled between AmerGen and the NTD instructor, as the NRC is aware, prior to any investigation by the DOL into the Section 211 complaint.

AmerGen does not agree that the NTD instructor's unsatisfactory appraisal and failure to receive a salary bonus for 1999 were related, even in part, to protected activities. This conclusion is based upon the results of a prompt investigation of this matter by the Human Resources Department at CPS, as noted further below, which did not find that the NTD instructor's protected activity (reporting of a Condition Report) was related, even in part, to the unsatisfactory appraisal and the failure to receive a salary bonus for 1999. In fact, AmerGen concluded that there were legitimate management concerns supporting

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the employment actions over the quality of the NTD instructor's written work and his aggressive behavior in certain circumstances.

Nevertheless, AmerGen does not contest the cited violation and considers this an isolated occurrence. AmerGen understands that the NRC has found that the violation was not deliberate and that there is no indication that any individual enforcement action will be taken. Should the characterization of the violation change or any individual enforcement action subsequently be taken, AmerGen reserves the right to supplement or modify this response.

### **Corrective Steps that Have Been Taken and the Results Achieved**

On February 24, 2000, immediately upon receipt of the letter noted above from the DOL, the CPS Vice President, accompanied by the Director, Human Resources Department, met with the NTD instructor regarding his concerns. At the conclusion of the meeting, the Vice President instructed the Director, Human Resources Department to investigate the concern and provide a recommendation on an appropriate course of action.

The Human Resources Department's investigation did not find that the NTD instructor's unsatisfactory performance appraisal and failure to receive a salary bonus for 1999 was related to, even in part, any protected activity. However, the NTD instructor's overall rating for 1999 was restored to "meets expectations" and he was paid his bonus for the year, because upon review, there was little documented evidence of setting clear management expectations or providing timely feedback on performance to help the individual improve his performance.

On March 16, 2000, the Director, Human Resources Department, met with the NTD instructor to discuss the investigation and the actions that would be taken in response to the NTD instructor's concern. The NTD instructor confirmed at the end of this meeting that he considered the issue closed.

AmerGen provided a copy of the Human Resources Department's report to the DOL in its letter of March 21, 2000, noted above, and the Section 211 complaint was withdrawn with the individual's knowledge and concurrence, and a settlement was reached between AmerGen and the NTD instructor. The NTD instructor subsequently voluntarily ended his employment with AmerGen through a Voluntary Separation Program.

### **Corrective Steps that Will Be Taken to Avoid Further Violations**

AmerGen does encourage and support an environment where workers are willing to discuss safety concerns with supervision and has established a firm company policy against retaliation of any kind for raising safety issues. AmerGen clearly expects all contractors and employees to adhere to the employee protection provisions of 10 CFR 50.7.

The results of a safety conscious work environment survey issued December 19, 2000, indicate that a safety conscious work environment and a clear understanding of the responsibility to identify safety concerns was confirmed by CPS employees. The survey results show that overwhelmingly, employees including NTD employees, feel responsible for identifying nuclear safety and quality concerns and issues, and they

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responsible for identifying nuclear safety and quality concerns and issues, and they consider that a culture exists that is conducive to raising nuclear safety and quality issues. The report concludes that employees are familiar with the methods to raise nuclear safety and quality issues, they feel they can use those methods to raise nuclear safety and quality issues, and feel they can do so without fear of reprisal.

Although NTD personnel were included in the survey discussed above, a separate safety conscious work environment survey of the work environment in NTD was completed on May 2, 2001, in response to this notice of violation. The results of this survey have been evaluated, and overall, the employees in the NTD organization confirmed a high degree of safety consciousness and a sense of responsibility to identify safety concerns. The survey indicates that overwhelmingly NTD employees do not feel "chilled" and recognize their responsibility to identify nuclear safety and quality concerns and issues. In general they consider a culture exists that is conducive to raising nuclear safety and quality issues. Nearly all the respondents stated that they are familiar with the methods to raise nuclear safety and quality issues, and they feel they can use those methods without fear of reprisal.

The Director of NTD will reaffirm management's commitment to a work environment where every employee is encouraged to raise safety concerns and the zero tolerance for retaliation for having raised concerns.

CPS supervisors, directors and managers have received training on fostering an atmosphere that encourages employees to express their concerns, and the proper handling and resolution of concerns, particularly nuclear safety concerns. Since 1997, supervisors and management personnel have received annual training on Section 211 / 10CFR50.7. In addition, an annual refresher course is provided for supervisor and management personnel regarding proper handling of concerns.

The Site Vice President has reinforced his expectations to the CPS management staff regarding the importance of maintaining a safety conscious work environment and of ensuring compliance with all employee protection requirements.

### **The Date When Full Compliance Will Be Achieved**

AmerGen is presently in full compliance with the employee protection provisions of 10CFR 50.7.