



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

May 14, 2001

EA-01-006

Mr. Rich Michau  
Wackenhut Nuclear Services  
4200 Wackenhut Drive  
Palm Beach Gardens, Florida 33410

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

Dear Mr. Michau:

This refers to the predecisional enforcement conference conducted on March 7, 2001, in the NRC Region IV office in Arlington, Texas. The conference was held to discuss the NRC's concern that The Wackenhut Corporation (TWC), under contract to Union Electric at the Callaway Nuclear Plant, had discriminated against a former TWC employee and a TWC training instructor, in violation of 10 CFR 50.7, for identifying a violation of NRC requirements. Our concern was identified to you and others on your staff during a telephonic exit briefing on January 19, 2001, and was documented in our letter dated February 5, 2001.

After considering the information developed during the NRC investigation and the information provided during the predecisional enforcement conference, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice). The violation involves a former TWC security officer who, on October 27, 1999, contacted a high school and learned that an individual without a high school diploma or equivalent performance examination had been hired as a temporary watchman at the Callaway Nuclear Plant. The hiring of this individual was contrary to the requirements of 10 CFR Part 73, Appendix B, Section I.A.1.a. The security officer informed a TWC training instructor of this violation, and the training instructor informed TWC officials. On November 19, 1999, TWC unfavorably terminated the security officer and reprimanded the training instructor for not having brought his concern about the individual's qualifications to the attention of TWC management earlier. Soon afterwards, Union Electric revoked the former security officer's unescorted access authorization based on trustworthiness concerns. On October 28, 1999, TWC unfavorably terminated the temporary watchman, and shortly afterwards, Union Electric terminated his unescorted access authorization. While preparing to respond to the complaint filed by the former security officer with the United States Department of Labor, Union Electric conducted an additional investigation into the educational qualifications of the temporary watchman who had been improperly hired, and in August 2000, revoked his unescorted access authorization based on the falsification of his application for employment and for access authorization.

During the predecisional enforcement conference, Union Electric and TWC representatives asserted that no violation had occurred. Based upon an investigation conducted by the TWC Director of Quality Assurance, Union Electric and TWC managers asserted that the former security officer lacked trustworthiness because she had misrepresented herself to the high school principal, as a licensee screening official performing official business, in order to learn whether the individual in question had a high school diploma and thus to eliminate him as a competitor for a permanent security officer position. Based upon the same investigation, TWC asserted that the training instructor did not meet TWC expectations for a member of the management team because the training instructor had waited until October 1999 to report his concern about the individual's lack of a high school diploma, rather than in August 1999 when the matter first came to the attention of the training instructor. TWC stated that its decisions to terminate the security officer for lack of trustworthiness and to reprimand the training instructor involved no retaliatory intent and were made by TWC corporate managers, not by TWC personnel at the Callaway Nuclear Plant. Union Electric stated that its decision to revoke the former security officer's unescorted access authorization for lack of trustworthiness involved no retaliatory intent.

Based on a review of the circumstances surrounding these events, however, the NRC staff concludes that the former security officer and the training instructor engaged in a protected activity, that TWC managers were aware of the protected activity, and that TWC managers took adverse actions against security officer and the training instructor, at least in part, because of their protected activity. Our conclusion that retaliation occurred is based, in part, on the following:

- (1) TWC concluded that the training instructor should have known in August 1999 to report the concern about the individual's educational qualifications to TWC management. However, the training instructor reasonably believed that any concern about the individual's educational qualification had been properly reported in August 1999. Further, the training instructor was under the same mistaken understanding as his supervisor and the TWC project manager that Union Electric would verify educational qualifications.
- (2) The stated intent of the investigation conducted by TWC's Director of Quality Assurance was to determine how TWC had hired the individual when he did not meet the educational requirements of 10 CFR Part 73, Appendix B, in order to take appropriate corrective action. Based upon mere suspicion, however, that investigation quickly became an inquiry into whether the security officer had learned of the violation by misrepresenting herself to the high school and into her motives for contacting the high school. At the same time, despite the improbability of the individual's claim that he believed he had graduated from high school, the investigation did not make a good faith attempt to determine whether he had deliberately misrepresented his educational qualifications.
- (3) The investigation was conducted with bias against the security officer and the training instructor. Examples of bias include, but are not limited to: (a) The investigative report recommended disciplinary action against the security officer for failing to raise the issue of the individual's lack of educational qualifications through the proper chain of command; (b) The report assumed that the security officer had lied about how she had identified herself to the high school principal and about whether she had reported the

matter in August 1999 to the TWC administrative assistant, based upon subjective perceptions of the security officer's "evasiveness" and a change in her handwriting during an interview, while failing to consider the obvious motives of the high school principal and the TWC administrative assistant to not be candid about their interactions with the security officer; and (c) The TWC Director of Quality Assurance relied upon the subjective impressions of and information supplied by a TWC supervisor, without consideration of a warning by the training instructor that information supplied by the supervisor was not reliable.

In consideration of the severity of the actions taken against the former security officer and the training instructor, the level of management involved in the adverse action, and the nature of contractor/licensee relationships, this violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 at Severity Level III.

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.

In addition to the Notice of Violation, we note that TWC's actions caused Union Electric to be in violation of 10 CFR 50.7. A copy of the Notice of Violation and Proposed Imposition of Civil Penalty issued to Union Electric is enclosed with this letter.

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

Enclosures: 1. Notice of Violation  
2. Letter to Union Electric regarding Notice of Violation  
and Proposed Imposition of Civil Penalty

cc (w/Enclosure 1):  
Garry L. Randolph, Senior Vice  
President and Chief Nuclear Officer  
Union Electric Company  
P.O. Box 620  
Fulton, Missouri 65251

## NOTICE OF VIOLATION

The Wackenhut Corporation  
Palm Beach Gardens, Florida

EA-01-006

During an NRC investigation which concluded on November 27, 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) prohibits discrimination by a Commission licensee against an employee for engaging in certain protected activities. Discrimination includes discharge or other actions relating to the compensation, terms, conditions, and privileges of employment. Under 10 CFR 50.7(a)(1)(i), the activities that are protected include, but are not limited to, the reporting by an employee to his employer information about alleged regulatory violations.

Contrary to the above, The Wackenhut Corporation (TWC), a contractor of Union Electric, a 10 CFR Part 50 licensee, and Union Electric discriminated against a security officer and a training instructor for having engaged in protected activity. Specifically, on October 27, 1999, the security officer and the training instructor identified to TWC a violation of NRC requirements at the Callaway Nuclear Plant, namely that TWC had hired and assigned an individual to the security organization when that individual did not have a high school diploma or equivalent. The hiring of this individual was in violation of 10 CFR Part 73, Appendix B, Section I.A.1.a, which provides that prior to employment or assignment to a security organization, an individual must possess a high school diploma or pass an equivalent performance examination. Based at least in part on this protected activity, TWC unfavorably terminated the security officer's employment for lack of trustworthiness and gave a written reprimand to the training instructor on November 19, 1999, and Union Electric revoked the security officer's unescorted access authorization for lack of trustworthiness."

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

Pursuant to the provisions of 10 CFR 2.201, The Wackenhut Corporation (TWC) 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 IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas, 76011, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice, 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.

Dated this 14th day of May 2001

bcc:

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NRR Enforcement Coordinator See-Meng Wong (SMW1)

via e-mail:

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DOCUMENT NAME:EA-01-006 TWC NOV.wpd

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