

AmerenUE
Callaway Plant

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January 22, 2002

Mr. Frank Congel
Director, Office of Enforcement
U. S. Nuclear Regulatory Commission
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ULNRC-4580

Gentlemen:

**REPLY TO NOTICE OF VIOLATION
INVESTIGATION REPORT NO. 4-1999-068
CALLAWAY PLANT
UNION ELECTRIC CO.**

This responds to NRC letter EA-01-005 dated May 14, 2001, which transmitted a Notice of Violation for events discussed in a predecisional enforcement conference March 7, 2001. Our reply, which denies the violation, is presented in the attachment. We request withdrawal of the Notice of Violation and remission of the proposed civil penalty.

AmerenUE does not agree with the conclusions reached by the NRC staff in section four of the NRC staff conclusions (NRC letter EA-01-005) to establish this violation. None of the material in the response is considered proprietary by Union Electric.

If you have any questions regarding this response, or if additional information is required, please let me know.

Very truly yours,


Garry L. Randolph

Attachment: 1) Reply to Notice of Violation

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REPLY TO NOTICE OF VIOLATION

Statement of Violation

On May 14, 2001, a "Notice of Violation and Proposed Imposition of Civil Penalty" ("NOV") was issued stating that Union Electric Company ("AmerenUE") violated 10 CFR § 50.7 and proposed a civil penalty of \$55,000. The NOV indicates that a United States Nuclear Regulatory Commission ("NRC") investigation found that on October 27, 1999, a Security Officer employed by The Wackenhut Corporation ("TWC") at the Callaway Nuclear Plant ("Callaway") engaged in protected activity by identifying to TWC that it had hired a Temporary Watchman for the security organization who lacked a high school diploma or equivalent, in violation of NRC requirements. The NRC transmittal letter and the NOV further state that:

"based at least in part on this protected activity, . . . Union Electric revoked the security officer's unescorted access authorization for lack of trustworthiness."

"Union Electric relied upon the biased TWC investigation and report to revoke the former security officer's unescorted access authorization for lack of trustworthiness, while simply terminating the unescorted access authorization of the individual who lacked a high school diploma or equivalent performance examination without conducting an adequate investigation into the individual's trustworthiness. Union Electric did not make a good faith effort to determine whether the individual had deliberately misrepresented his educational qualifications until discovery began in connection with the former security officer's complaint before the United States Department of Labor."

Denial of the Violation

AmerenUE denies the violation stated in the NOV (EA-01-005).

Reasons for the Denial

AmerenUE does not agree with the conclusions reached by the NRC staff in section four of the NRC staff conclusions (NRC letter EA-01-005) to establish this violation.

The NOV apparently relies on two assumptions to conclude that AmerenUE's revocation of the Security Officer's unescorted access authorization was intended, at least in part, to retaliate against her for having reported the improper hiring of the Temporary Watchman. First, AmerenUE allegedly relied on a "biased investigation and report" by TWC to revoke the Security Officer's unescorted access authorization. Second, AmerenUE allegedly failed to make a good faith effort to determine whether the Temporary Watchman misrepresented his educational qualifications when he applied for a position with TWC.

With respect to the first assumption, when AmerenUE's Access Control Supervisor revoked the Security Officer's unescorted access authorization, she had no reason to suspect that the TWC investigation was allegedly "biased." To the contrary, the Access Control Supervisor was informed that the investigation was independent and was conducted by an off-site auditor. The Access Control Supervisor was not aware of any of the information upon which the NRC bases its conclusion that the TWC investigation was allegedly "biased". Because the Access Control Supervisor had no reason to suspect that the investigation was "biased", she could not have knowingly relied on a "biased" investigation.

The NRC has assumed that information developed during its investigation must have been known to the Access Control Supervisor when she revoked the Security Officer's unescorted access authorization and when she declined to revoke the Temporary Watchman's unescorted access authorization. Where, as here, motive and intent are critical factors in assessing whether these acts were retaliatory, the key inquiry is what information was known by the Access Control Supervisor when the

alleged retaliatory acts were taken. Our evidence reveals that based on the information the Access Control Supervisor had at the time she revoked the Security Officer's unescorted access authorization and declined to revoke the Temporary Watchman's unescorted access authorization, the decisions she made were reasonable and were made in good faith.

Because the Security Officer's employment had been terminated unfavorably, the Access Control Supervisor was required to review the unescorted access authorization of the Security Officer. Accordingly, the Access Control Supervisor spoke with the TWC Project Manager on November 20, 1999 to inquire about the Security Officer's termination. The Project Manager informed the Access Control Supervisor that TWC conducted an investigation concerning the hiring of a Temporary Watchman who lacked a diploma, and discovered during the course of that investigation that the Security Officer misrepresented herself as a representative of Callaway when she contacted the high school principal on October 27, 1999. The Project Manager also informed the Access Control Supervisor that as a result of the misrepresentation, TWC had determined that her employment must be terminated. In addition, the Access Control Supervisor was told that the investigation was conducted by an off-site auditor from TWC's corporate office and was an independent review. Based upon this information, the Access Control Supervisor reasoned that an individual whose employment was terminated due to her lack of trustworthiness should not maintain her unescorted access authorization in accordance with 10 CFR 73.56 and therefore the Security Officer's unescorted access authorization was revoked.

The Access Control Supervisor did not see the TWC report until after the Security Officer's access was revoked and did not have cause to suspect that TWC investigation was biased. Accordingly, she could not have knowingly relied on a "biased investigation and report."

Under § 50.7 and NRC enforcement policy, a § 50.7 violation can be found to exist only if a preponderance of the evidence demonstrates that adverse action was taken, at least in part, because of protected activity.

The adverse action upon which the NOV is based is AmerenUE's revocation of the Security Officer's unescorted access authorization. The decision to revoke the Security Officer's unescorted access authorization was made by the AmerenUE Access Control Supervisor. Thus, AmerenUE could not have violated § 50.7 unless the preponderance of the evidence shows that the Access Control Supervisor revoked the Security Officer's unescorted access authorization with the intention of retaliating against the Security Officer for her protected activity.

Neither the NOV, the May 14, 2001 transmittal letter, the OI reports, or the predecisional enforcement conference transcript support a conclusion that the Access Control Supervisor revoked the Security Officer's unescorted access authorization to retaliate against the Security Officer for engaging in protected activity.

Neither of the OI reports nor the summary of the Access Control Supervisor's interview even discuss whether the Access Control Supervisor discriminated against the Security Officer.

With respect to the second assumption, the Access Control Supervisor made a good faith effort to determine whether the Temporary Watchman knowingly misrepresented his educational qualifications. On December 2, 1999, she interviewed the Principal of the High School that the Temporary Watchman had attended. The Principal stated his belief that the Temporary Watchman likely did not know that he had not graduated from high school, and cited circumstances from the high school program to support this view. Based on this information, the Access Control Supervisor did not revoke his access authorization in December 1999. When AmerenUE subsequently became aware of information suggesting that the Temporary Watchman likely knew that he had not graduated from high school, his access was revoked. The Access

Control Supervisor's failure to discover particular information in her initial investigation does not amount to bad faith, nor can it reasonably cast doubt on the good faith decision to revoke the Security Officer's access based on different evidence. This is made even more compelling by the fact that the Access Control Supervisor had no motive to treat the Temporary Watchman more favorably than she treated the Security Officer.

The NOV states that Union Electric did not make a good faith effort to determine whether the Temporary Watchman had deliberately misrepresented his educational qualifications. The record, however, demonstrates that AmerenUE's Access Control Supervisor did make a good faith attempt to investigate the trustworthiness and reliability of the Temporary Watchman by interviewing the High School Principal in December 1999.

The fact that the Access Control Supervisor did not draw the same inferences as OI about the Principal's motive to lie does not evidence a lack of good faith on her part. The Access Control Supervisor did not have cause to suspect the credibility of the Principal when she spoke with him on December 2, 1999. The Access Control Supervisor said the Principal told her that the high school had contributed to the Temporary Watchman's belief that he had graduated from high school. He was allowed to cross the stage and received a Certificate of Attendance.

The Access Control Supervisor's failure to draw the same inferences as OI about the Principal's credibility does not amount to evidence of an intent to treat the Temporary Watchman more favorably than the Security Officer. Indeed, when the Access Control Supervisor made the decision not to revoke the Temporary Watchman's access, she did not know the Temporary Watchman, had never met him, and was "uncertain if she would know him if she saw him." She had therefore, no motive to provide him more favorable treatment.

In summary, the Access Control Supervisor did make a good faith effort to investigate whether the Temporary Watchman deliberately misrepresented his educational qualifications. The fact that the Access Control Supervisor did not draw the same inferences as OI about the Principal's credibility does not evidence an intent to discriminate against the Security Officer by treating the Temporary Watchman more favorably, especially in light of the complete absence of any evidence of a reason why the Access Control Supervisor would give preferential treatment to someone she did not know.

Conclusion

There is no evidence suggesting that decisions made by the Access Control Supervisor concerning the unescorted access authorization of the Temporary Watchman and the Security Officer were motivated by an intent to retaliate against the Security Officer for her protected activity. Instead, based on the information known to the Access Control Supervisor at the time she made these decisions, she acted reasonably and in good faith. Accordingly, the Access Control Supervisor could not have caused AmerenUE to violate § 50.7. We therefore request withdrawal of the Notice of Violation and remission of the proposed civil penalty.

Corrective Steps Taken and Results Achieved:

The transmittal letter from the Region IV Regional Administrator to the Senior Vice President and Chief Nuclear Officer of AmerenUE, dated May 14, 2001, states that based on a review of AmerenUE's corrective actions, corrective action credit is warranted. The letter identifies the following corrective actions AmerenUE has taken:

"During the conference, you identified corrective actions to ensure a safety-conscious work environment (SCWE) by reviewing past allegations for adverse trends, enhancing the Employee Concerns Program (ECP) procedure, developing and posting a SCWE policy, training on the SCWE policy and ECP procedure in General Employee Training for employees and contractors, enhancing the Outage Handbook with guidance on the

SCWE policy and ECP procedure, and reviewing with contractor management Union Electric's expectations regarding SCWE."

These actions taken were part of a planned programmatic upgrade of the Employee Concerns Program and were not precipitated by this specific event. These changes have led to a stronger Safety Conscious Work Environment and an increased awareness of 10 CFR 50.7.

Corrective Steps to Avoid Further Violations

AmerenUE continues to take numerous measures to instill a questioning attitude in its employees and the employees of its contractors. In addition, AmerenUE vigorously encourages workers at every level to always put safety first and to promptly identify and evaluate all safety issues. During the predecisional enforcement conference, AmerenUE reported that it intended to proceduralize the use of an access authorization team to review unescorted access issues arising from unfavorable terminations. AmerenUE has amended the procedure governing the "Access Authorization Program for Callaway Plant" (APA-ZZ-01104, Rev. 15) to require that when a Notification of Employee Termination or Access Withdrawal form which classifies a termination as "unfavorable" is received by the Access Control Supervisor, the form must be reviewed by a Behavior Review Group (BRG) "to determine if denial of future unescorted access is appropriate." The diversity of the BRG should provide further assurance that a complete investigation will be performed and that the final unescorted access authorization decision will be appropriately reached.

In summary, AmerenUE has taken comprehensive actions to promote a SCWE and to enhance the decision-making process for unescorted access revocations of unfavorably terminated employees.

Date When Full Compliance Will be Achieved

AmerenUE is presently in full compliance with 10 CFR 50.7.