

WACKENHUT

SECURITY SYSTEMS AND SERVICES THROUGHOUT THE WORLD

January 23, 2002

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

Re: Reply to Notice of Violation
EA-01-006
Callaway Nuclear Plant

To the Commission:

This responds to EA-01-006 letter dated May 14, 2001, which transmitted a Notice of Violation in this matter and which followed the Predecisional Enforcement Conference on March 7, 2001.

Please be advised that The Wackenhut Corporation (TWC) does deny the violation, and we request withdrawal of the Notice of Violation. Our Reply to the Notice of Violation is enclosed; none of the material in the Reply is viewed as proprietary by TWC.

Thank you for your attention to this matter.

Sincerely,



Richard A. Michau
President, Nuclear Services Division
The Wackenhut Corporation

IE/4.

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Encl. Reply to Notice of Violation
EA-01-006

Reply to a Notice of Violation

EA-01-006

Statement of Violation

On May 14, 2001, The Wackenhut Corporation ("TWC") received a Notice of Violation ("NOV") in No. EA-01-006. The NOV states that TWC and Union Electric (the licensee, "AmerenUE"), contrary to 10 CFR 50.7(a)(1)(i),

discriminated against a security officer and an 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.

Denial of the Violation

TWC denies the violation stated in the NOV (EA-01-006).

Basis for Denial of the Violation

TWC does not agree with the conclusions reached by the NRC staff in the Transmittal Letter of May 14, 2001 attaching the NOV in EA-01-006, to establish this violation, in the three numbered paragraphs, which state:

- (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.

For purposes of this denial and to provide an explanation for TWC's basis for denial of the violation, TWC has analyzed the motivation and credibility of the people involved in the review of the individual's high school records in August and October, 1999, the motivation and credibility of the

people who investigated the security officer's actions in November, 1999, and the motivation and credibility of the people who made the recommendation and decision to terminate the security officer in November, 1999. In so doing, this Reply does not address in detail the revocation issues involving the individual and the security officer, which AmerenUE will discuss separately in its response.

Motivation and Credibility of Individuals – August 1999 events.

The May 14, 2001 Transmittal Letter which attaches the NOV points to witnesses' conflict regarding what the security officer said to the administrative assistant in August 1999 about the individual's high school documents,¹ and goes on to state that TWC failed to consider "the obvious motives" of the administrative assistant to not be candid about her interactions with the security officer.

At the time of TWC interviews with the administrative assistant in October and November 1999, TWC was not aware of any prior relationship of the administrative assistant with the individual and his wife (after filing her administrative Department of Labor charge, the security officer stated that the administrative assistant had worked with the individual's wife at a hospital, had attended their wedding, and had asked the individual about his wife when he first began at Callaway). The security officer did not disclose such information in her interviews with TWC. Even if the security officer's disputed contention that the TWC supervisor "harassed and intimidated" her during his interview is accepted as accurate (which might provide some explanation why the security officer did not identify in that interview her

¹ TWC admits in this Reply, as it did at the Predecisional Enforcement Conference, that it failed to promptly discover deficiencies in the individual's educational background. Corrective actions regarding this failure and loggable event are outlined later in this Reply.

knowledge of the administrative assistant's prior social contact with the individual's wife), this in no way explains why the security officer did not disclose this information to the Director of Quality Assurance during his subsequent interview. The security officer has never claimed that there were threats or intimidation by the Director of Quality Assurance that might explain her reluctance to disclose what can fairly be viewed as relevant information on the administrative assistant's motivation. For unexplained reasons, the security officer first raised this information only after she had retained an attorney and pursued administrative claims.

Thus, TWC did not have this background information at the time of its investigation and decision-making process on termination of the security officer. TWC acknowledges that the project manager, the TWC supervisor and the Director of Quality Assurance perhaps should have been more thorough in independently investigating the administrative assistant's background relationship with the individual's wife. Still, any such oversight cannot constitute a basis for a finding of discrimination.

The only other "obvious motive" which is apparent to TWC for the administrative assistant to lie about what the security officer said in August 1999 would be an attempt to deflect blame from herself for failing to discover the individual's Certificate of Attendance. This argument has some logic if the administrative assistant and the security officer had some peer relationship in examining the high school records of job applicants. However, the administrative assistant has consistently stated that the security officer's role was simply to assist her by photocopying birth certificates and the like. The administrative assistant has described how she herself performed the examination of the applicants' records for accuracy and completeness once they had been copied. The administrative assistant

failed to properly identify the individual's Certificate of Attendance as such, and she has been disciplined for that. Assuming *arguendo* that the security officer in fact pointed out that the individual had a Certificate of Attendance, the analysis is the same – the administrative assistant failed to appreciate the significance of the document when she reviewed it as part of her processing of new job applicants' paperwork. Even with a claim by the administrative assistant that the security officer never brought this issue to her attention, the administrative assistant still had the responsibility to examine applicants' documentation for accuracy and completeness. In fact, if the administrative assistant had herself identified, or even had reported that the security officer had pointed out, the Certificate of Attendance, she would have been credited with a self-identification. It would have been investigated and made an NRC loggable event with corrective action taken, and with no disciplinary action taken against the administrative assistant.

TWC's investigation in early November 1999 into the events of August 24, 1999 developed two inconsistencies as to what took place and what was said – those between the security officer and the administrative assistant described above, and those between the security officer and the training instructor.² A comparison of the security officer's and the training instructor's statements show discrepancies as to whereabouts and the substantive level of their conversation on this subject. To his credit, the training instructor acknowledged in writing (and again to the Director of Quality Assurance during a subsequent interview) that he learned information in August 1999 regarding the individual's lack of a high school diploma, even though this acknowledgement subjected the training instructor to disciplinary

² As will be developed further below, the common thread in the discrepancies that TWC identified in witnesses' statements was the security officer.

action for failing to come forward with that information. By contrast, the security officer was described as evasive on the issue of what she had told the training instructor, both in the interview conducted by the TWC supervisor and in the subsequent separate interview by the Director of Quality Assurance. Certainly if two people describe the same conversation and one person's version of events is not as forthcoming, one valid and supported conclusion is that such a person is being evasive. This conclusion is especially true for the facts here, when the security officer makes no claim that her recollection in November 1999 of the events of August 1999 was fuzzy.

Motivation and Credibility – October 1999 events.

As with the events of August 1999, the security officer's version of events in October 1999 conflict with the statements of others about what she said. The May 14, 2001 letter which attaches the Notice of Violation points to witnesses' conflict regarding what the security officer said to the high school principal in October 1999 during their phone conversation, and this letter further states that TWC failed to consider "the obvious motives" of the high school principal to not be candid about his phone call with the security officer.³

1. The High School Principal.

With regards to the high school principal, the issues can be fairly stated as the following: did he have sufficient motivation to lie to TWC investigators over the phone and then in person, as well as lie in his subsequent signed written statement, in his statement to an NRC

³ This letter fails to point to discrepancies between the security officer's statements and those of the high school secretary and also fails to identify any motivation on the part of the high school secretary. This is analyzed later in this Reply.

investigator, and in his sworn deposition testimony? If he did have such motivation, should TWC have discovered that motivation and evaluated it as part of the November 1999 investigation? Does the failure to discover and evaluate such possible motivation constitute retaliation against the security officer and the training instructor for protected activity?

This analysis begins with the observation that someone has misstated the substance of the phone conversation between the security officer and the high school principal. Either the security officer lied when she said she never identified herself in the phone calls with the high school as being associated with the Callaway plant, or the high school principal lied about how the security officer identified herself and what she said in that phone conversation. As with the events in August 1999, motivation for the security officer is apparent: she had a financial motive related to her further employment to claim she was handling an inquiry for the Callaway plant when she placed the phone call in October 1999 to the high school about the individual. Implicit in the conclusion that the high school principal should not be believed because of his "obvious motive" to lie about what the security officer said by phone is that the security officer also should not be believed because she also had a motive to lie.

Concerning the high school principal, TWC investigators failed to identify any motive for the high school principal to lie when he spoke to them in November 1999. If TWC placed too much credence in what the high school principal said and he intentionally misrepresented facts, then TWC must accept some blame for failing to discover such lies. Such a judgmental error, however, cannot be said to constitute retaliation. As TWC understands the NRC's evaluation of the high school principal, his potential motive for fabricating what the security officer said over the phone was (a)

to avoid criticism from the individual's family for disclosing that the individual did not graduate from high school and (b) to avoid a claim that he improperly released high school information to the public.

It appears to be undisputed that shortly after the individual was suspended, he and his family questioned the high school principal on whether the individual graduated from high school. The NRC appears to have assumed that the individual or his family also told the high school principal that the woman who had called about his record had no authorization from the Callaway plant to make such an inquiry. The further assumption seems to be that the high school principal then used this additional information to create a story about what the security officer said in her phone call to the high school.

However, there is a lack of evidence to support the assumption that the high school principal knew that the security officer's call was not authorized by the Callaway plant before speaking with TWC investigators. According to all accounts (including OI interview documentation with the individual), the discussions of the individual and his family with the high school principal focused solely on the issue of whether he graduated, rather than why the high school principal disclosed the individual's graduation status. There is only supposition that the high school principal received information that the security officer's call was unauthorized and that he created this story before speaking with the TWC supervisor by phone on November 8, 1999 and before speaking with the TWC supervisor and the Director of Quality Assurance in person on November 10, 1999.⁴ Thus, the

⁴ At the end of the face-to-face interview with the high school principal, after the high school principal had already described his conversations with the security officer, the Director of Quality Assurance advised the high school principal that TWC preferred the release of educational information by written authorization only. This additional

contention that the high school principal had identified a motive to lie about how the security officer represented herself over the phone is based upon speculation only. Further, there is consistency in the high school principal's statements regarding what was said, and he has been emphatic that he knew from what the security officer said over the phone that she represented herself as someone authorized by the Callaway plant to make inquiries about the individual's high school records.

2. The High School Secretary.

Similarly, any motivation for the high school secretary to lie about what the security officer said is lacking. In her statement, the high school secretary states clearly that the security officer referenced "Callaway" when she called and asked about the Certificate of Attendance. While speculation may form the basis for the high school principal to lie (maybe the high school principal learned before he spoke with the TWC supervisor on November 8, 1999 that the security officer wasn't authorized to make the inquiry), the high school secretary made no disclosures to the security officer – she simply passed the call onto the principal for handling. She had no motivation to lie about what the security officer said in their brief conversation.

The high school principal and the high school secretary have provided statements, and the high school principal has given sworn testimony that the security officer held herself out as an authorized representative of the Callaway plant when she called about the individual's high school education. The NRC's postings on May 14, 2001 conclude that the high school principal (but, notably, not the high school secretary) had an "obvious motive" to lie

information to the high school principal, which would suggest that the security officer's call was unauthorized, does not provide a motive to misrepresent in his previous statements how the security officer had identified herself.

and that TWC was not justified in believing information from the high school principal. The NRC conclusion apparently is based on a belief that the high school principal lied to our investigators, in his statement provided to TWC's attorney, under oath in his deposition, and that the high school principal and the high school secretary lied to an NRC investigator.

Motivation and Credibility – November 1999 investigation.

With regards to TWC's investigation performed in November 1999, the issue posed is why would TWC ask any questions at all of the security officer about her actions in October 1999, since TWC wanted to know how the individual was hired without completing his high school education, not just how his high school records were discovered. The following witness-by-witness analysis explains the sequence of events and how this became an issue.

1. The Project Manager.

The project manager directed the initial stages of the investigation of the individual's employment. The project manager received information on October 27, 1999 regarding the individual's high school records from the training instructor and, indirectly, from the security officer. The project manager examined the individual's personnel file in the administrative assistant's office, and then went to AmerenUE screening. They obtained information from the high school that the individual did not have a high school diploma.

After the individual was terminated and the project manager promoted the security officer, he began looking into how the individual was hired. The project manager learned that the security officer said she had told the administrative assistant about problems with the individual's diploma in

August, and that the security officer had contacted the high school to confirm the individual's graduation status before she called the training instructor on the 27th. The project manager was concerned that the administrative assistant both missed the fact that the individual's Certificate of Attendance was not a diploma and that she might have ignored the security officer's comments about that document. According to the project manager, concerns about the security officer's contact with the high school did not occur to him.

Thus, the sources of information on how the individual was hired and on his high school education were the administrative assistant, the security officer, the training instructor and the high school. The project manager spoke first with the administrative assistant, on November 4, 1999. He then sent an e-mail to the TWC supervisor to have him speak with the security officer on November 5, 1999, and for the training supervisor to talk with the training instructor on November 8, 1999. There has never been any contention that requesting a statement from the training instructor or the manner in which the training supervisor handled that request constituted retaliation or willful misconduct.

TWC believes that the project manager's actions in interviewing the administrative assistant and in directing that the security officer and the training instructor be interviewed regarding the individual's high school records do not constitute retaliation. The project manager correctly viewed the hiring of the individual without the necessary high school education as a loggable event, one of hundreds he has handled throughout his career, but not as a severe risk to safety at the facility. The motivation for the project manager to retaliate against the security officer or the training instructor for reporting the individual's educational status is absent. The project

manager's responsibility was to conduct a root cause analysis and investigation into the individual's educational status and hiring process, which he did. Thus, the project manager's approval of contact with the high school was not motivated by a desire for retaliation, but was part of his root cause investigation. The project manager had already concurred in the earlier decision to contact the high school on October 27, 1999, and so the TWC supervisor's similar request on November 8, 1999 was not necessarily odd or unforeseen – the high school was the ultimate source of information on the individual's educational status. From that point forward, the project manager's role in the investigation was very limited.

2. The TWC Supervisor.

The person who first interviewed the security officer regarding events in August 1999 was the Security Operations Supervisor. The security officer and the training instructor subsequently claimed that this TWC supervisor had a motive to discriminate against the security officer in order to get back at the training instructor because of prior bad feelings between those two. Despite the fact that the project manager had been employed at the Callaway plant since the time it went on line, he was not aware of such animosity that would lead to the TWC supervisor handling the interview with the security officer in an inappropriate manner, and the TWC supervisor certainly has denied that he handled the interview of the security officer inappropriately. The security officer and the training instructor have never contended to TWC that the TWC supervisor conducted himself inappropriately in this interview because either the security officer or the training instructor engaged in protected activity; at most, the unsupported contention of the security officer and the training instructor has been that

the TWC supervisor had ill will towards the training instructor based on prior, non-protected activity.

Furthermore, the allegations of the security officer and the training instructor regarding the TWC supervisor were not brought to the attention of TWC during November 1999, when the investigation and decision on termination and discipline took place. Contrary to their present assertion, the Director of Quality Assurance was never advised of any such alleged motivation on the part of the TWC supervisor during the investigation by the Director of Quality Assurance. And certainly, such allegations were not part of the Director of Quality Assurance's report which was used by TWC corporate in deciding on termination and discipline.

It also is revealing that in her subsequent deposition in her DOL administrative action, the security officer reviewed the written statement that she provided to the TWC supervisor during the interview, and testified that the information in that statement was correct; she only indicated that one sentence in the statement was factually correct but not in wording that she would have used. While that testimony was not available to TWC during its deliberative process, neither was the allegation that the TWC supervisor had a motive to treat the security officer unfavorably during her interview.

In her handwritten statement given to the TWC supervisor, the security officer contradicted the training instructor's statement on what she told him in August 1999 about the individual's high school records. She also advised in her statement that she received information by phone from the high school principal regarding the individual's high school education. TWC had already obtained statements from the administrative assistant, the security officer and the training instructor. The only source of information

that had not been interviewed was the high school principal, and the TWC supervisor recommended taking that step to the project manager.

Even if the TWC supervisor had some motive to discriminate against the security officer because of past dealings with the training instructor, the proposal to contact the high school does not in and of itself rise to the level of a retaliatory act against the security officer, as opposed to a legitimate inquiry. While what the security officer said to the high school secretary and principal about her position at the Callaway plant and the purpose of her call may be tangential to the individual's actual high school records, those records were the subject matter of the phone conversations. The TWC supervisor's request for, and the project manager's decision to approve, contact with the high school to close the loop cannot rise to the level of retaliation. After contacting the high school, the TWC supervisor's role was limited, since the Director of Quality Assurance took over the investigation at the direction of TWC corporate.

3. The Director of Quality Assurance.

The transmittal letter of May 14, 2001 identifies actions and decisions by the Director of Quality Assurance during his investigation as a basis for retaliation. It should be noted that the Director of Quality Assurance had no prior relationship with the security officer or the training instructor, and he was not close to any management personnel at the Callaway plant. His independence, experience and his previously-scheduled trip to the facility were the primary reasons why TWC corporate assigned him to this investigation. His lack of motivation to retaliate against the security officer is reflected in his statement in his Audit that "she should be commended for pursuit of the matter".

As with the lack of any motivation on the part of the Director of Quality Assurance to retaliate against the security officer or the training instructor, TWC also respectfully disagrees with the conclusion that the Director of Quality Assurance discriminated against these two workers. An examination of the Director of Quality Assurance's report demonstrates that it had many purposes (*see, e.g.*, Points 1-4, unrelated to the individual, the security officer or the training instructor). The individual's educational status certainly was one issue that the report covered. The Director of Quality Assurance also investigated whether the training instructor had prior knowledge of the individual's high school status (note that the training instructor was listed as a reference on the individual's job application). This investigation necessarily examined the security officer's knowledge as well.

TWC was interested in whether the individual had intentionally misrepresented his high school education in his employment application, for purposes of the individual's access status, but an overreaching concern of the Director of Quality Assurance's investigation was how TWC could have missed this educational requirement, and what procedures should be implemented to catch both intentional and inadvertent misrepresentations of applicants' high school education. For this reason, TWC corporate did not specifically instruct the Director of Quality Assurance in November 1999 to investigate whether the individual had lied about his education, and instead the project manager was the contact person with AmerenUE on the individual's access status.

TWC acknowledges that this failure to instruct the Director of Quality Assurance to track down the individual off-site and confront him on his understanding of his high school status may have been an oversight on the part of TWC corporate. However, after the corporate decision was made to

terminate the individual, he would not have been re-hired and the larger concern involved the institutional failure of the company to detect this mistake and the steps necessary to prevent such an occurrence in the future, identifying any such misrepresentations earlier during the initial application process rather than after such an employee had already been working for TWC for two months and was offered a full time position. Certainly if TWC were confronted with this issue again with another applicant, there would be a very careful examination of the explanation offered by the applicant for such a misrepresentation. In this matter, the absence of such an interview with the individual stems directly from TWC corporate's instructions to the Director of Quality Assurance, rather than from any retaliatory animus on his part.

After the Director of Quality Assurance arrived at the Callaway plant, he was provided with copies of statements from the administrative assistant, the security officer and the training instructor and was briefed on the TWC supervisor's discussion with the high school principal, which indicated that the security officer may have misrepresented her position at the Callaway facility in her phone conversations with the high school principal. The Director of Quality Assurance then had the opportunity to interview witnesses himself and to independently assess their credibility. An examination of information collected before and after the Director of Quality Assurance's arrival reflects a high level of consistency: the administrative assistant was consistent in her prior handwritten statement and in her interview with the Director of Quality Assurance. The training instructor was consistent in his typed statement and in his interview with the Director of Quality Assurance. The high school principal reiterated in his face-to-face interview what he had said over the phone to the TWC supervisor. While

the security officer revised her story about what she said to the administrative assistant when the Director of Quality Assurance interviewed her (stating to the Director of Quality Assurance that she had said the individual's document did not look official), her subsequent deposition testimony endorsed the substance of her handwritten statement. Thus, even if the training instructor at some point warned the Director of Quality Assurance that information that the TWC supervisor had collected was not reliable – a contention that is in dispute – that claim lacks support, based upon witnesses' independent corroboration to the Director of Quality Assurance of their earlier statements, and based upon the security officer's subsequent testimony.

TWC does concur with the NRC's criticism of the choice of language in the Director of Quality Assurance's report regarding the security officer's failure to bring forward information she learned in August 1999 through "the proper chain of command". This wording is regrettable, because it suggests that employees have only one avenue for reporting safety concerns. This, of course, is not true and is not TWC's policy, a point that TWC emphasized and documented at the Predecisional Enforcement Conference. The Director of Quality Assurance also corrected himself on this issue during the Conference, and indicated accurately that employees had many avenues through which they could express concerns about safety. TWC corporate's focus in reviewing the Director of Quality Assurance's report was not on this comment, and it did not play a role in the decision on the security officer.⁵

⁵ Similarly, the observation about a change in the security officer's handwriting style was not a consideration in assessing her credibility in TWC's decision-making process on termination.

Having analyzed the issues raised as to any perceived motives of the administrative assistant and the high school principal, and now having addressed any perceived motives of the project manager, the TWC supervisor and the Director of Quality Assurance, it is respectfully submitted that accepting the contentions of the security officer would require TWC to conclude:

- The administrative assistant's past relationship with the individual's wife was so close that the administrative assistant was willing to sneak through the individual's Certificate of Attendance even after the security officer specifically brought the sufficiency of the document to her attention and even though the administrative assistant thought (incorrectly) that Ameren would do its own verification of high school employment on the individual and the other job applicants; and the administrative assistant was willing to lie to her superiors and to a federal investigator about what the security officer said.
- The TWC supervisor was so motivated by past dealings with the training instructor that he "harassed and intimidated" the security officer during her interview and fabricated her evasiveness; and the TWC supervisor was willing to lie to his superiors and to a federal investigator about what the security officer said and how she acted.
- The project manager was so upset by the security officer and the training instructor bringing to his attention a loggable event that he manipulated the interview process of the TWC supervisor and subsequently of the Director of Quality Assurance to ensure that the security officer would be terminated; and the project manager was willing to lie to his superiors and to a federal investigator about them.
- The high school principal was so concerned about how the individual and his family reacted to his accurate disclosure of the individual's high school education that he fabricated a story about what the security officer said on the phone (even though he had no information at the time of the TWC supervisor's and the Director of Quality Assurance's inquiries that the security officer was not authorized by Callaway to make her inquiry); the high school principal was willing to lie to private and federal investigators, in a signed statement and under oath in his deposition; and the high school principal managed to get the high school secretary to lie to a federal investigator that the security officer identified Callaway in her phone call to the high school.

- The Director of Quality Assurance was so fooled by the TWC supervisor's comments on the security officer's demeanor during her interview (which comments were based on the TWC supervisor's animus towards the training instructor) that the Director of Quality Assurance allowed his independent evaluation of the security officer in a separate one-on-one interview (which she herself described as non-confrontational) to become tainted and biased.

TWC submits that adopting this set of extraordinary circumstances was not a reasonable method of investigation, when it required ignoring the obvious motive of the security officer.

Motivation and Credibility – TWC Corporate Decision.

The collected information was examined at the director level, and the TWC Vice President and President of TWC's Nuclear Services Division approved the decision to terminate the security officer over concerns about her trustworthiness. The TWC corporate personnel involved in this review and the decision-making had no relationship to speak of with the individuals involved, and there was no indication that the erroneous hiring of the individual compromised TWC's relationship with the licensee. Simply put, there was no motivation on the part of TWC corporate personnel to retaliate against the security officer or the training instructor.

TWC corporate's review of the facts indicated that there was some question as to the level of discussion between the security officer and the administrative assistant in August 1999 regarding the individual's high school documentation, but the training instructor's statement about what the security officer said to him in August demonstrated that she appreciated the significance of what she observed. It thus appeared that she held onto this information until the opportunity arose to use it for personal advantage. The main focus, however, was on the security officer's statements in phone

conversations with the high school. The investigative report did not identify any motive on the part of the high school principal or the high school secretary to lie about what the security officer said.

TWC respectfully submits that an appropriate decision was made based upon the available facts, and without any discriminatory animus. Even after analyzing in this Reply possible motivations of others to retaliate which were not apparent during the decision-making process in November 1999, TWC submits that, in the absence of a standard of review of strict liability, its actions were explainable and justified and did not rise to the level of retaliation.

To summarize, TWC denies the Notice of Violation. The TWC investigation was handled in a fair and even-handed manner, despite the security officer's contentions to the contrary. While there are aspects of the investigation that would be handled differently if a similar situation presents itself in the future at the job application stage, it cannot be said that any flaws in the process resulted in discrimination. The reasonable inference from the investigation was that the security officer's actions indicated a lack of trustworthiness. TWC therefore requests withdrawal of the Notice of Violation.

Corrective Actions

TWC has implemented a selection and hiring policy to ensure that job applicants meet the criteria of Appendix B. This involves a mandatory eight step screening process for applicants. TWC also uses a checklist

documenting the verification performed during the screening process, to be completed before the recruit begins to perform security duties.

TWC no longer accepts copies of the diploma or GED equivalency to establish the applicant's educational qualifications. TWC now contacts the high school or GED authority for each recruit prior to completing the checklist. An Education Verification form is completed that documents this verification and is retained with the checklist. A copy of the diploma/GED equivalency is placed in personnel records.

Personnel who screen applicants have been trained concerning the requirements of Appendix B, and have been specifically instructed to examine diplomas and GED equivalencies. The Project Manager and another employee now review the completed checklist and accompanying documentation prior to allowing recruits to perform Security Plan duties.

TWC has monitored subsequent events at Callaway closely and has seen no chilling effect as a result of the employment actions involving the security officer, the training instructor and the administrative assistant. TWC will continue to safeguard and encourage its employees' protected rights to report safety concerns. As was identified at the Predecisional Enforcement Conference, this process includes training, distribution of our employee concerns policy, and through an incentive program for reporting safety concerns. The employee concerns policy is also available on shift in the Procedures Manual at designated posts.

TWC has re-emphasized the company "open door" policy to insure that employees immediately report all safety or regulatory concerns. Employees can express concerns to on-site supervisors, through a toll-free number, to the licensee or, of course, directly to the NRC. Many of these same issues are also addressed in the GET training new employees receive at the

Callaway plant, and are reflected in the "Problem Reporting" section of the Callaway Orientation Quality Assurance and Quality Control Program ("Federal law prohibits an employer from firing or discriminating against a worker for reporting items to the NRC").

To further this goal, TWC corporate office underwent formal training earlier this year before the Notice of Violation was received. This was conducted by corporate counsel who addressed "whistle blower" laws and termination guidelines for use by corporate staff to ensure that there is no possible retaliation connected with a termination. Also, all Project Managers have been trained, or in most cases, re-trained, in the first half of this year through their site programs on these same issues.

At its highest management level, TWC corporate also is following through on these efforts through letters to all employees posted at facilities, through annual project manager seminars, and through personal visits to facilities. TWC directors have been instructed to bolster these efforts through their own direct contact with managers and employees on-site so that TWC can do its best to foster and maintain a safety-conscious work environment.

All terminations are handled at the corporate level. In cases where it is determined, or appears, that protected activity may be involved, TWC will have an independent (*i.e.*, outside the TWC Nuclear Services Division) investigator perform the investigation. Such an investigation, directed from the corporate level and not directed by personnel on site, would necessarily involve an assessment of witnesses' motivation and prior relationships in assessing information they provide.

This process has allowed TWC to perform a critical self-analysis of its actions and decisions in this matter, and to strengthen procedures and implement additional steps to ensure that the company's commitment to a safety-conscious work environment is carried out at the facilities where security is provided to the nuclear industry as well as at the corporate level on a daily basis. While TWC respectfully denies the NOV, this process has been helpful in focusing on these critical issues and re-committing the company's resources.

Date When Full Compliance Will be Achieved

TWC is presently in full compliance with 10 CFR 50.7.