



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001**

May 16, 2002

EA-01-005

Garry L. Randolph, Senior Vice
President and Chief Nuclear Officer
Union Electric Company
P.O. Box 620
Fulton, Missouri 65251

**SUBJECT: ORDER IMPOSING CIVIL MONETARY PENALTY - \$55,000
(NRC Investigation Report 4-1999-068)**

Dear Mr. Randolph:

This refers to your letter dated January 22, 2002, in response to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice) sent to you by our letter dated May 14, 2001. Our letter and Notice described a violation of NRC requirements identified during an NRC investigation completed in November 2000. The violation involved discrimination against a security officer and security training instructor for having engaged in protected activity. To emphasize the significance of this violation and the importance of maintaining a safety conscious work environment at the Callaway Nuclear Plant, a civil penalty of \$55,000 was proposed.

In your January 22, 2002 letter, you denied this violation because you do not believe there is any evidence that decisions made by AmerenUE's Access Control Supervisor were motivated by an intent to retaliate against the security officer. You stated that based on the information known to the Access Control Supervisor at the time these decisions were made, the Access Control Supervisor acted reasonably and in good faith. You requested withdrawal of the Notice of Violation and remission of the proposed civil penalty.

With respect to your assertion that AmerenUE's Access Control Supervisor was not motivated by an intent to retaliate against the security officer, we did not make a finding that your Access Control Supervisor was motivated by an intent to retaliate. Discriminatory intent on the part of the Access Control Supervisor is not necessary for AmerenUE to have violated 10 CFR 50.7. A violation of 10 CFR 50.7 by an Ameren UE contractor is a violation of 10 CFR 50.7 by AmerenUE. The fact that AmerenUE delegated a portion of its responsibilities to a contractor, i.e., The Wackenhut Corporation (TWC), does not relieve AmerenUE of its responsibility to maintain compliance with NRC requirements at Callaway. AmerenUE participated in this matter by revoking the security officer's access to the facility, an adverse action, and in doing so AmerenUE relied upon biased information provided by its contractor, who thereby participated in taking this action. AmerenUE could have, and should have, exercised more care in

implementing adverse action against an individual who was known to have raised a concern about compliance with security requirements at Callaway.

After consideration of your denial of the violation, we have concluded, for the reasons given in the Appendix attached to the enclosed Order Imposing Civil Monetary Penalty, that 10 CFR 50.7 was violated, in that the security officer and training instructor were retaliated against for having engaged in protected activity.

Thus, we have concluded that the civil penalty proposed for this violation was appropriate and in accordance with the NRC's Enforcement Policy. Accordingly, we hereby serve the enclosed Order on AmerenUE imposing a civil monetary penalty in the amount of \$55,000. As provided in Section IV of the enclosed Order, payment should be made within 30 days in accordance with NUREG/BR-0254 (Enclosed). In addition, at the time payment is made, a statement indicating when and by what method payment is made, is to be mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

In your January 22, 2002 letter, you cited additional corrective actions that you had taken relevant to this matter, in addition to those that were referenced in our May 14, 2001 letter. Specifically, you stated that AmerenUE had amended its access authorization procedures to require that a Behavior Review Group review all access authorization withdrawals associated with "unfavorable" terminations to determine if denial of future unescorted access is appropriate. The NRC will review the effectiveness of your corrective actions during subsequent inspections. If you have any questions about this matter, please contact Barry Westreich, Office of Enforcement, at 301-415-3456.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and Enclosure 1 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/reading-rm.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

William F. Kane
Deputy Executive Director
for Reactor Programs

Docket No. 50-483
License No. NPF-30

Enclosures:

1. Order Imposing Civil Monetary Penalty
2. NUREG/BR-0254 Payment Methods

AmerenUE

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cc w/Enclosure 1:
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Board of Directors Coalition
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Lee Fritz, Presiding Commissioner
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AmerenUE

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

| | | |
|------------------------|---|--------------------|
| In the Matter of |) | |
| |) | |
| AmerenUE |) | License No. 50-483 |
| Callaway Nuclear Plant |) | Docket No. NPF-30 |
| |) | EA-01-005 |

ORDER IMPOSING CIVIL MONETARY PENALTY

I

AmerenUE (Licensee) is the holder of License No. NPF-30 issued by the Nuclear Regulatory Commission (NRC or Commission) on October 18, 1984. The license authorizes the Licensee to operate the Callaway Nuclear Plant in accordance with the conditions specified therein.

II

An investigation of the Licensee's activities was completed in November 2000. The results of the investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated May 14, 2001. The Notice stated the nature of the violation, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated January 22, 2002. In its response, the Licensee denied the violation, requesting withdrawal of the violation and remission of the proposed civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined that the violation occurred as stated in the May 14, 2001 Notice of Violation and Proposed Imposition of Civil Penalty. Therefore, the NRC has determined that the civil penalty proposed for this violation should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The Licensee pay a civil penalty in the amount of \$55,000 within 30 days of the date of this Order, in accordance with NUREG/BR-0254. In addition, at the time of making the payment, the licensee shall submit a statement indicating when and by what method payment is made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an

Enforcement Hearing" and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be: Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice of Violation referenced in Section II, and whether on the basis of such violation, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

William F. Kane
Deputy Executive Director
for Reactor Programs

Dated this 16th day of May 2002

APPENDIX TO ORDER IMPOSING CIVIL PENALTY

NRC EVALUATION AND CONCLUSION OF LICENSEE'S REQUESTS

On May 14, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation of 10 CFR 50.7 identified during an NRC investigation. The Licensee responded to the Notice in a letter dated January 22, 2002. In its response, the Licensee denied the violation, requesting withdrawal of the violation and remission of the proposed civil penalty. The NRC's evaluation and conclusion regarding the licensee's response are as follows:

Restatement of Violation

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).
Civil Penalty - \$55,000

Summary of Licensee's Response to Violation

The Licensee denied the violation, asserting that there is no evidence that decisions made by AmerenUE's Access Control Supervisor were motivated by an intent to retaliate against the security officer. AmerenUE stated that based on the information known to the Access Control Supervisor at the time these decisions were made, the Access Control Supervisor acted reasonably and in good faith. The Licensee's specific arguments were:

- 1) AmerenUE did not knowingly rely on a biased investigation and report by TWC to revoke the security officer's Access Authorization because the Access Control Supervisor had no reason to suspect that the TWC Investigation was biased. The Access Control Supervisor spoke to the TWC Project Manager on November 20, 1999, to inquire about the security officer's

termination. The TWC Project Manager informed her that TWC discovered during the course of an investigation that the security officer misrepresented herself as a representative of Callaway when the security officer called the high school principal. The Access Control Supervisor was informed that the investigation was independent and was conducted by an off-site auditor. 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, 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 the TWC investigation was biased. Accordingly, she could not have knowingly relied on a biased investigation report. AmerenUE could not have violated 10 CFR 50.7 unless the preponderance of the evidence shows that the Access Control Supervisor revoked the security officer's access authorization with the intention of retaliating against the security officer for her protected activity.

2) The Access Control supervisor made a good faith effort to determine whether a temporary watchman knowingly misrepresented his educational qualifications by interviewing the high school principal on December 2, 1999. The principal stated his belief that the temporary watchman likely did not know he had not graduated, and "cited circumstances from the high school program to support this view." When AmerenUE subsequently became aware of information suggesting that the temporary watchman likely knew 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. The Access Control Supervisor had no motive to treat the temporary watchman more favorably than she treated the security officer.

NRC Evaluation of Licensee's Response to Violation

AmerenUE's principal argument is that AmerenUE, and the Access Control Supervisor in particular, were not motivated by an intent to retaliate against the security officer. AmerenUE then argues that there can be no violation of 10 CFR 50.7 on the part of AmerenUE without showing such intent. AmerenUE provides many facts in support of its arguments. The central issues are whether a violation of 10 CFR 50.7 occurred, and whether AmerenUE is responsible for that violation.

AmerenUE has provided no new information regarding whether a violation of 10 CFR 50.7 occurred, and did not address whether its contractor, TWC, engaged in discriminatory action. The NRC has reviewed the information in AmerenUE's January 22, 2002 response, as well as the information TWC provided in response to this violation in a January 23, 2002 letter, and concludes that a violation of 10 CFR 50.7 occurred. As stated in the Notice of Violation, the security officer and the training instructor engaged in protected activity, each was subjected to adverse action, and the adverse action occurred, at least in part, because of the protected activity.

AmerenUE's argument that the NRC must show retaliatory intent on the part of AmerenUE personnel is mistaken. Discriminatory intent on the part of its Access Control Supervisor is not necessary for AmerenUE to have violated 10 CFR 50.7. A violation of 10 CFR 50.7 by a licensee's contractor may be grounds for imposition of a civil penalty upon the licensee. 10 CFR 50.7(c)(2). See *Atlantic Research Corporation*, CLI-80-7, 11 NRC 413, 419-424 (1980).

The fact that AmerenUE delegated a portion of its responsibilities to a contractor, i.e., The Wackenhut Corporation (TWC), does not relieve AmerenUE of its responsibility to maintain compliance with NRC requirements at Callaway. AmerenUE participated in this matter by revoking the security officer's access to the facility, an adverse action, and in doing so AmerenUE relied upon biased information provided by its contractor, who thereby participated in taking this action. AmerenUE could have, and should have, exercised more care in implementing adverse action against an individual who was known to have raised a concern about compliance with security requirements at Callaway.

NRC Conclusion

The NRC has concluded that this violation occurred as stated, and that AmerenUE has not provided a basis for withdrawal of the Notice of Violation or the civil penalty. Consequently, the proposed civil penalty in the amount of \$55,000 should be imposed.