



Northern States Power Company

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February 24, 1994

Director, Office of Enforcement  
U.S. Nuclear Regulatory Commission  
Attn: Document Control Desk  
Washington, DC 20555

10 CFR Part 2  
Section 2.201

PRAIRIE ISLAND NUCLEAR GENERATING PLANT  
Docket Nos. 50-282 License Nos. DPR-42  
50-306 DPR-60

Reply to a Notice of Violation Contained in NRC Region III Letter, dated January 26, 1994  
Subject: Notice of Violation and Proposed Imposition of Civil Penalty -  
\$50,000 and Demand For Information (US Department of Labor Case No 93-ERA-12)

Pursuant to the provisions of 10 CFR Part 2, Section 2.201, our reply to the Notice of Violation dated January 26, 1994 is provided as attachment A. Also included is our response to your additional requirements addressed in the Notice of Violation transmittal letter. This is provided as attachment B.

It should be noted that while our responses have been provided in accordance with section 2.201, the facts and circumstances surrounding this issue remain unresolved and currently still under appeal with the U.S. Secretary of Labor.

This letter contains no new commitments to the NRC.

Please contact George T. Miserendino, Manager, Corporate Security, at (612) 330-5630, if you have any questions, or wish further information concerning this matter.

Sincerely,

Douglas D. Antony  
Vice President  
Nuclear Generation

c: Assistant General Counsel NRC  
Regional Administrator III NRC  
Senior Resident Inspector, Prairie Island NRC  
J. Silberg

Attachments: Affidavit to the US Nuclear Regulatory Commission  
Reply to Notice of Violation  
Reply to NRC Region III Letter, January 26, 1994

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UNITED STATES NUCLEAR REGULATORY COMMISSION

NORTHERN STATES POWER COMPANY

PRAIRIE ISLAND GENERATING PLANT

DOCKET NO: 50-282 AND 50-306

Reply to a Notice of Violation Contained in NRC Region III Letter, dated January 26, 1994  
Subject: Notice of Violation and Proposed Imposition of Civil Penalty - \$50,000 and Demand  
for Information (US Department of Labor Case No 93-ERA-12)

Northern States Power Company, a Minnesota Corporation, hereby provides the required responses to the Notice of Violation associated with NRC Region III letter, same subject, dated January 26, 1994. The Notice of Violation was transmitted to NSP via a transmittal letter from John B. Martin, NRC Region III Regional Administrator, to Douglas Antony, Northern States Power Company, on January 26, 1994.

This letter contains no restricted or other defense information.

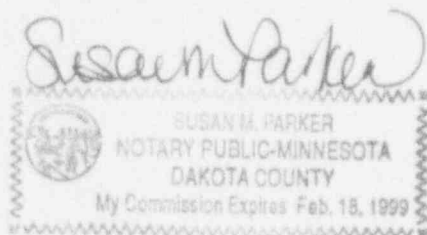
NORTHERN STATES POWER COMPANY

By: \_\_\_\_\_

*Douglas D. Antony*

Douglas D. Antony  
Vice President  
Nuclear Generation

On this 4 day of February, 1994, before me a notary public in and for said County, personally appeared Douglas D. Antony, Vice President, Nuclear Generation, and being duly sworn acknowledged that he is authorized to execute this document on behalf of Northern States Power Company, that he knows the contents thereof, and that to the best of his knowledge, information and belief the statements made in it are true and that it is not interposed for delay.



Reply To Notice of Violation  
Docket No's: 50-282 and 50-306

Violation:

*Section 210 (now 211) of the Energy Reorganization Act of 1974, as amended, and 10 CFR 50.7 prohibit discrimination by a commission licensee, permittee, an applicant for a Commission license or permit, or a contractor or subcontractor of a Commission licensee, permittee, or applicant, against an employee for engaging in certain protected activities. Discrimination includes discharge or other actions relating to the compensation, terms, conditions or privileges of employment. Activities protected by Section 210 of the Energy Reorganization Act of 1974, as amended (now section 211) include, but are not limited to, questioning the security practices employed at an NRC licensed facility.*

*Contrary to the above, Susan Yule, a former security guard at the Prairie Island Nuclear Generating Station and a former employee of Burns International Security Services (BURNS), a contractor of Northern States Power Company, was discharged on September 3, 1992. A U.S. Department of Labor Administrative Law Judge issued a Recommended Decision and Order in DOL Case 93-ERA-12, on June 24, 1993, which found that Ms. Yule's discharge was an unlawful act of retaliation for engaging in protected activities. The protected activities included:*

- ° on February 19, 1992, raising questions about the posting of an unarmed guard at a containment entry point;*
- ° during March and July 1992, reporting possible regulatory violations to NRC Inspectors; and*
- ° on August 10, 1992, reporting that the security badge issue section had been left unattended.*

*This is a Severity Level III Violation (Supplement VII), Civil Penalty Proposed \$50,000*

Response to the Violation:

While we do not believe a violation has occurred, the facts and circumstances surrounding this issue remain unresolved. Burns International Security Services has appealed the Administrative Law Judge's decision to the U.S. Secretary of Labor and the results are pending.

The basis of the Notice and Proposed Imposition of Penalty comes from the Administrative Law Judge's (ALJ) conclusions that 1) Burns discriminated against Ms. Yule, and 2) NSP was aware of Ms. Yule's protected activities and put pressure on Burns to remove her. It is noted that the issue of Ms. Yule's termination has been addressed a total of three times. The National Labor Relations Board ("NLRB") reviewed Ms. Yule's termination because of her complaint of discrimination on the basis of her union status. In that case, the Regional Director found that "there is insufficient evidence the Employer violated the Act, as alleged," and refused to issue Complaint in the matter. The issue of Ms. Yule's termination as a result of her subsequent complaint filed with the Department of Labor ("DOL") under the protected activity provisions of the Energy Reorganization Act was first addressed by the District Director of that Department in Minneapolis, Minnesota. Her decision with regard to Ms. Yule's complaint includes the following language:

"Section 3 (b) of the Energy Reorganization Act states, in part, no investigation required under Paragraph 2 shall be conducted if the employer demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior. After review of all the information relative to this matter, the Department has concluded that the employer has met this provision. As a result, no further action will be taken by this Department."

It is also noted that with the exception of the matter before the NLRB, NSP was not a party.<sup>1</sup> No employment relationship existed between Ms. Yule and NSP. As a result, the ALJ based his conclusions entirely on Ms. Yule's allegations. There was no due process with respect to NSP.

Ms. Yule's entire case appears to take the form that because she complained about NRC violations,<sup>2</sup> then everything that subsequently happened to her must have been in retaliation for her complaints. Protected activity laws are not intended to shield employees from the consequences of their misconduct, or provide them with a permanent shroud of immunity from disciplinary action. What employees have is the right to be protected from disciplinary action based on protected activity. It is our understanding that in this case, Ms. Yule was disciplined for unprotected activity, i.e., refusing to follow the order of her supervisor. Ms. Yule was directed by her supervisor on no less than four occasions to sign the training memorandum indicating that she understood the operation of the Secondary Alarm Station ("SAS") Door. She repeatedly refused to sign the memorandum, in violation of the well-defined principle of industrial law, "work now, grieve later," stating on one occasion that she would prefer to be

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<sup>1</sup> Before the NLRB, NSP argued the fact that no employment relationship existed between Ms. Yule and NSP. Based on the evidence produced and the entire record, the NLRB agreed.

<sup>2</sup> The results of an NRC inspection conducted at Prairie Island between December 14, 1992 and January 14, 1993, presumably because of approximately 13 concerns raised by Ms. Yule, identified one licensee identified non-cited violation, 3 program weaknesses, and compliance with requirements.

written up than to sign the memorandum. Given these facts, it is our understanding that Burns had no alternative, especially considering the unique nature of its business, but to discipline Ms. Yule for her failure to live up to its standards of performance.

**Responsive Action Taken and Results Achieved:**

Immediately following notification by Burns Security, that Ms Yule had filed a complaint with the Department of Labor and that a Department of Labor Administrative Law Judge had ruled she had been unlawfully terminated, NSP took several actions.

- a) NSP validated that the NRC's "Notice To Employees" (Form 3) were conspicuously posted in areas frequented by all employees. Information developed indicated that the notices had been posted prior to, and independent of Ms Yule's termination.
- b) NSP validated that lesson plans used in the Prairie Island General Employee Training (GET) not only discussed the NRC Form-3, but also encouraged all employees to report safety concerns to NSP and/or the NRC without fear of discrimination or retaliation.
- c) NSP validated that a separate and independent method for reporting employee concerns existed. Specifically, NSP had implemented a self improvement program at Prairie Island which also encouraged employees to report concerns to management with assurances that their concerns would be addressed via a resolution feedback process.
- d) NSP validated that separate and independent of Ms. Yule's termination, the Prairie Island Security Force (to include both NSP and Contract personnel) participated in an NSP sponsored "Team Building" designed to enhance morale and address individual differences between members of the group. Ms. Yule was an active participant in this training.
- e) During August 1993, a letter was issued by the VP Nuclear Generation confirming the requirements of the NRC Form 3. Specifically, the letter reminded site personnel that no acts of reprisals would be taken against any employee for identifying concerns at either NSP Nuclear Power Plant.
- f) During August 1993, NSP conducted refresher training regarding the requirements of the NRC Form 3 and supervisory responsibilities identified in 10 CFR 50.7, for NSP and Contractor Managers/Supervisors performing work at Prairie Island.
- g) Prairie Island Site Management implemented quarterly *Security Issue* meetings between management and employees assigned to the Prairie Island Security Force. These meetings are designed to reinforce the rights of all security force personnel to report safety and security concerns without fear of retaliation or reprisals.

Steps Taken To Avoid Future Violations:

- a) Steps have been taken to improve the existing General Employee Training Program to further emphasize the rights and protections afforded all employees regarding reporting of safety concerns.
- b) Steps have been taken to assure NSP vendors that provide services to the nuclear sites are aware of their responsibilities regarding protected activity.
- c) Management has encouraged employees to raise and report safety issues at scheduled safety meetings. Again, the protection of employees from reprisals were stressed and a succinct clarification of the definition for protected activities was reiterated.
- d) NSP has developed and is implementing a formal "*Employee Concern Program*". This program has been outlined and implemented as a Administrative Control Directive (N1ACD 1.6).

All above listed actions and steps have been successfully completed.

Reply to United States Nuclear Regulatory Commission Region III Letter  
dated January 26, 1994

Background:

*In the NRC's Region III letter, dated January 26, 1994, a conclusion is derived, based on the Decision and Recommendations handed down by the Department of Labor, Administrative Law Judge during 1993. Specifically, this decision found that Burns International Security Service discriminated against a former security guard. The decision also concluded that NSP was aware of the individual's protected activities and put pressure on Burns to remove her. The ALJ concluded that Burns was in frequent communication with NSP concerning the security guard and that "the record was replete with enmity directed toward her by Burns because of her ...protected activities and the pressure placed on Burns by its client NSP, who was aware of her protected activities".*

*While harassment, intimidation or discrimination against any person for engaging in protected activities is cause for concern, discrimination by management is of special concern to the NRC. Therefore, ...you are hereby required pursuant to sections 161c, 161d, 182 and 186 of the Atomic Energy Act of 1954 as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR 50.54(f) to provide additional information regarding this matter.*

Requirement and Actions:

*"your basis for concluding that Burns International Security Service and NSP managers and supervisors involved in this event fully understand their responsibilities under your NRC license and their obligation to fulfill NRC regulations and license requirements:"*

Subsequent to receipt of your August 5, 1993 letter, and the attached DOL ALJ decision, NSP took three proactive steps to ensure Burns International and NSP Managers and Supervisors involved in Ms. Yule's termination were aware of their responsibilities. The first was via a letter issued to all employees and contractors, by the Vice President, Nuclear Generation, reminding them of their rights to report and their responsibility to notify proper NSP management of concerns to ensure prompt and timely response. Secondly, NSP conducted refresher training regarding the requirements of the NRC Form 3 and supervisory responsibilities identified in 10 CFR 50.7. The third step taken by NSP was a modification to the contract language between NSP and Burns International. Specifically, this language requires Burns International to not only comply with the applicable Federal and State laws and statutes, but also specifically, prohibits acts of discrimination and retaliation against employees for protected activities.

° *"the steps you have taken to ensure that the NSP and Burns International Security Service personnel whom the DOL ALJ indicated were involved in the discriminatory action that is addressed herein will perform their duties in compliance with the Commission's requirements."*

NSP Management took several steps to reduce the likelihood that a similar situation could occur in the future. While the focus of these activities were geared toward the entire plant population, and ensuring all employees were cognizant of the requirements regarding harassment and discrimination, additional steps were taken with the individuals allegedly involved in the unlawful activity. This included:

- ° conducting informal training and discussions for both Corporate and Site Security personnel.
- ° conducting specific training regarding discrimination, harassment and protected activities at Security Force Guard Mount and Supervisor meetings.
- ° conducting coaching and counseling for the individuals allegedly involved with the discrimination. Coaching and Counseling is the first step in the NSP discipline program.
- ° reaffirming NSP Management's expectations regarding adherence of license and NRC requirements with NSP and Burns International Management and Supervisory personnel. This has been accomplished through formal and informal meetings regarding operational matters.
- ° issuing, as instructed by your letter, a copy of the NRC's Notice of Violation to all individuals cited by the DOL ALJ report for involvement in Ms Yule's wrongful termination.
- ° *"the steps you have taken to ensure that managers, supervisors and employees of both NSP and NSP's contractors, including Burns International Security Service, understand their responsibilities regarding the right of individuals to raise safety concerns without fear of retaliation or discrimination."*

As previously stated NSP took three proactive steps:

- a) A letter was issued to all employees and contractors, by the Vice President, Nuclear Generation reminding them of their rights to report and their responsibility to notify NSP management and/or the NRC of safety concerns at NSP's nuclear facilities.
- b) Refresher training was conducted for NSP and Contractor Managers/Supervisors, reminding them of their responsibilities outlined in 10 CFR 50.7 and on the NRC Form 3.



c) Steps have been taken to assure NSP vendors that provide services to the nuclear sites are aware of their responsibilities regarding protected activities.

Additionally, to ensure that individuals understood their rights to raise safety concerns without fear of retaliation or discrimination, a survey was conducted during August 1993 by the NSP Nuclear Quality Department. The process used to conduct the survey was to randomly interview 35 individuals assigned to Prairie Island and to ascertain their understanding of *Protected Activities, Employee Rights to Voice Concerns and the NRC Form 3*". The group of individuals selected included Burns International Security employees.

The results of the survey substantiated NSP's position that individuals understood their rights and obligations to report safety concerns. Only one individual was hesitant to report concerns, citing his belief that he would not receive feedback from management; not out of fear of retaliation or reprisal.

During September 1993, as part of a follow-up activity, security officers at NSP's Monticello Nuclear Plant participated in an identical survey. The results of this survey indicated that inhibitions or reservations to report safety concerns were *not* present.

° *"what actions you plan to take to ensure that you are aware of allegations of discrimination made by your contractor employees and what actions you plan to take to ensure investigation and resolution of such complaints."*

To ensure that allegations of discrimination and other employee concerns are investigated and resolved, NSP has instituted an *"Employee Concern Process"*. This process, which has already been implemented, is administratively controlled and appropriate investigative activity directed by the NSP Nuclear Quality Department. The actual process has been documented in a Nuclear Administrative Control Directive (N1ACD 1.6).

### Summary

In summary we feel the aforementioned actions and responses to your letter will reduce the likelihood of a future recurrence or event regarding improper employment actions involving employees engaged in protected activities. NSP feels strongly about issues regarding employee and contractor rights highlighted in the Energy Reorganization Act of 1974. NSP values the involvement of its employees and contractors in the self identification of problems and concerns to assure the overall success of the operations.